

IN RE: PETITION FOR VARIANCE
N/S of Old Court Road, 242 ft.W
centerline of Courtleigh Drive
2nd Election District
4th Councilmanic District
(5005 Old Court Road)

Howard Irvin Bolling
Petitioner

* BEFORE THE
* DEPUTY ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE NO. 04-118-A

*

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Variance for the property located at 5005 Old Court Road in the western area of Baltimore County. The Petition was filed by Howard Irvin Bolling., the legal owner of the property. The Petitioner is requesting variance relief from Section 100.6 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit 5 ducks on a lot with an area less than one acre.

The property was posted with Notice of Hearing on October 23, 2003, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on October 23, 2003 to notify any interested persons of the scheduled hearing date.

Applicable Law

Section 307 of the B.C.Z.R. – *Variances*.

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

CRD
Date 11/18/03
By R. J. [signature]

variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance."

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) Comments are made part of the record of this case and contain the following highlights. The ZAC comments from the Department of Planning opposing the variance are attached hereto and made a part hereof.

Interested Persons

Appearing at the hearing on behalf of the requested variance relief were Howard and Lore Bolling. The protestant was a nearby property owner, Emily Wolfson. A letter of opposition was received from adjacent property owners, Gary and Ruthie Sholly. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

Mr. and Mrs. Bolling testified that the five ducks were once five ducklings that were given to their two small children and which, as could be expected, the children had become very attached. They explained that in order to educate and foster love for animals, they procured a shallow pond for the ducks, had an enclosed area in which to keep them and that the ducks were simply household pets which now follow the children about in the back yard. A newspaper article in the file was submitted which shows Ms. Bolling, the children and the ducks and gives more background on the issue.

The Petitioners, reacting to the letter of opposition from their neighbors and the Planning Office comments, denied that the ducks were or would become a health hazard. They noted that the ducks were very territorial and contrary to claims otherwise, had actually killed a rat, which

4/18/03
R. Zimmerman

the neighbors feared would be a source of infestation. Substantial time was taken in testimony regarding how to guard against rodents getting into the open containers of duck food and the merits of hanging feeders. Ms. Bolling opined that any rat infestation was coming from a group home in the neighborhood and not their duck facility. The Bollings also denied that the ducks generated offensive odors or that they were noisy at night so as to annoy the neighbors. They testified that they regularly cleaned the straw for the ducks so that the ducks would not create odors.

Ms. Wolfson testified that she was worried about the ducks causing a health hazard because the droppings and duck food attract rodents. She noted that the Bollings already have one large dog, five cats, gerbils and hamsters along with the five ducks on the property. Ms. Bolling noted that she could replace the five ducks with five pot-bellied pigs and that there was nothing the neighbors could do about it.

Findings of Fact and Conclusions of Law

The Petitioners make a powerful argument that removal of the five ducks would create real hardship and practical difficulty. From the testimony, the Petitioners' children have raised the ducks from ducklings and it would be emotionally hard on the children if they had to give up the now adult ducks.

A decade ago, that would be all they needed to show in order to be granted the variance they request. However, the Court of Special Appeals in the case of *Cromwell v Ward*, 102 MD 691 (1995) redefined the test for variance, requiring that before one even gets to the question of hardship and practical difficulty, there must be a finding that the property is unique when compared to other properties in the neighborhood. By this, the Court requires a finding that the property has some special circumstances or conditions existing that are peculiar to the land or

structure, which is the subject of the variance request. This finding must be made before any consideration of hardship or difficulty is made and if the property is not found to be unique, no variance can be granted.

Equally important, the Court wanted to correct the practice of many jurisdictions of finding hardship and difficulty first which would then be used to show the property was unique, reasoning that the unusual situation on the property was different from that found on surrounding properties.

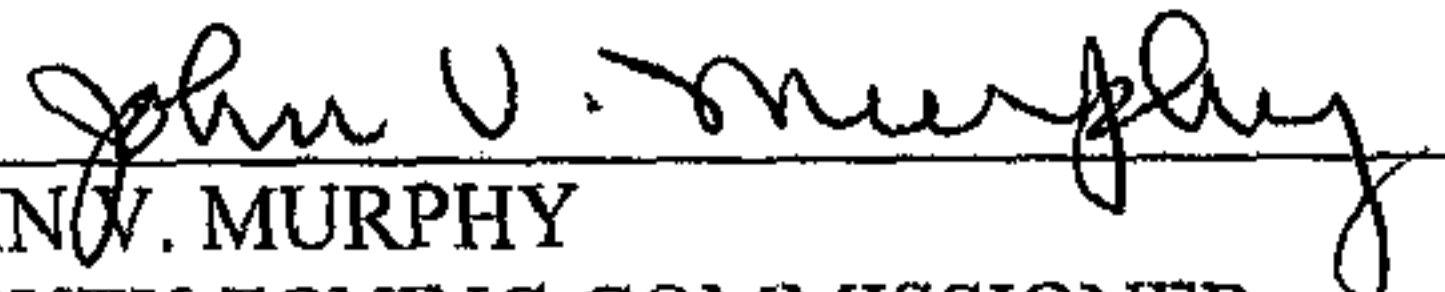
The evidence before me gives no indication that the regulations requiring one acre of property to raise ducks impacts the Bolling property in any way different from the other lots in the neighborhood. The lot is as plain a rectangle as one could find. The overwhelming weight of the testimony and evidence is that this lot is indistinguishable from others in the neighborhood. As far as I can tell, the property is a flat lot, has no steep slopes, rivers, wetlands or the like that would in any way distinguish it or impose on it any special burden to follow the ordinance. Further, the size of the property is only one quarter the size required by the regulations. This is not a close case. The Petitioners, although caring for their children's feelings for ducklings raised for some time, simply do not have nearly the acreage to adequately care for the ducks in a way not to impact the neighborhood. This is no one's fault. It simply happens that the property, which is adequate for the Bolling family, is not adequate to raise ducks.

I find no special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. As important, I may not use the finding that strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship to indicate uniqueness.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be denied.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 18 day of November, 2003, that the Petitioners' request for variance from the Baltimore County Zoning Regulations (B.C.Z.R.), to permit 5 ducks on a lot with an area less than one acre, be and is hereby DENIED.

IT IS FURTHER ORDERED, that any appeal of this decision must be made within thirty (30) days of the date of this Order.



JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:raj

ORDER
Date 11/18/03
By H. J. Jenson

IN THE MATTER OF
THE APPLICATION OF
HOWARD BOLLING – OWNER/PETITIONER
FOR VARIANCE ON PROPERTY LOCATED
ON THE N/S OF OLD COURT ROAD, 242'
W OF C/L OF COURTHLEIGH DRIVE
(5005 OLD COURT ROAD)
2ND ELECTION DISTRICT
4TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD
* OF
* BALTIMORE COUNTY
* CASE NO. 04-118-A

* * * * *

OPINION

This case comes before the Baltimore County Board of Appeals on a timely appeal brought by the Petitioner, Howard Bolling, legal owner, resulting from a decision by the Deputy Zoning Commissioner, dated November 18, 2003, to deny a Petition for Variance seeking relief from § 100.6 of the *Baltimore County Zoning Regulations* (BCZR) to permit five ducks on a lot with an area less than one acre.

The subject property is located at 5005 Old Court Road, 2nd Election District, 4th Councilmanic District of Baltimore County.

A *de novo* public hearing before the Board of Appeals was held on August 10, 2004. A public deliberation followed on September 15, 2004.

The Petitioner/legal owner represented himself. The Protestants, Ruthie Betia-Sholly and Gary Sholly, 8502 Church Lane, Randallstown, MD 21133, represented themselves.

Peter Max Zimmerman and Carole S. Demilio, Office of People's Counsel, Baltimore County, entered a letter, dated August 5, 2004, as Joint Exhibit #1, with comments on the case and the issues involved therein.

Testimony

Mr. Bolling, the Petitioner, was the first witness. He testified that his request for a variance was denied below because he had not supplied sufficient information. It was, he stated,

his intent to rectify that deficiency.

Mr. Bolling directed the Board's attention to the letter from People's Counsel, which recited the regulation in question as follows:

Section 100.6 - A tract of land used for the accessory stabling and pasturing of animals and which is not a commercial agricultural operation is subject to the following provisions:

Type	Limitation	Minimum Acreage
	* * *	
Fowl or poultry		
Chickens, ducks, turkeys, geese	No numerical limit, provided that a nuisance is not created or allowed to exist on the property	1

In requesting a variance from this regulation, Mr. Bolling explained that his lot of .24 acre is unique, possessing a sloping topography with soil of heavy clay, which does not drain. He opined that for this reason whatever he had planted there in the past had died. He introduced the ducks as a method of building rich compost and constructed a pond for the ducks to catch the runoff from the slope.

In addition the rear yard acts as an extended living area, in Mr. Bolling's words, with a heated pool and deck for his children plus 800 square feet of garden. Mr. Bolling entered as part of Petitioner's Exhibit 2, a certification as a Natural Wildlife Backyard Habitat. Mr. Bolling opined that the situation as it currently exists on his lot increases property values and acts as a buffer with a 6-foot privacy fence and tall perennial plantings.

Addressing the second criterion for approving a variance, Mr. Bolling explained that the

ducks are pets for his children as well as a source of eggs for food. He detailed the educational benefits as well as the enjoyment of having the ducks. He testified that removing the ducks would cause emotional distress and hardship for his family, especially the children who care for them.

As for impact on the neighborhood, Mr. Bolling disputed the claim that an inspector from Baltimore County had examined his property. He noted once again the 6-foot privacy fence and the fact that the ducks are enclosed from dusk to dawn. He cited the noise of traffic on Old Court Road which exceeds, in his opinion, any noise the ducks could make. He also noted that neighbors on each side of the subject property did not find the ducks a problem

As to an issue of sanitation, Mr. Bolling stated that the pond is pumped and refilled as required and the waste from the ducks is removed regularly. He also opined that the prevailing winds from the south and southwest blow away from the Protestants. He added that food for the ducks is kept in closed containers, no rodent problem is apparent, and the ducks help control mosquito larvae.

He emphasized that the presence of the five ducks is not a detriment to the neighborhood and that no nuisance complaints had been filed since the ducks were on site.

As Petitioner's Exhibit #3, Mr. Bolling submitted a paper acquired from the Animal Welfare Institute describing "Humane Criteria for Ducks." The Petitioner pointed out that the Animal Welfare Institute recommends a minimum of 10 feet per duck and that the subject property provides over 10 times that amount of space. Mr. Bolling also directed the Board's attention to the fact that § 100.6 places no limit on the quantity of fowl and poultry permitted so long as the property is a minimum of one acre. It is the latter point from which Mr. Bolling

requests a variance.

Mrs. Betia-Sholly, Protestant, testified following Mr. Bolling. She stated that her property is directly behind the subject property, with the adjoining backyards separated by a fence. She described the portion of the Bolling lot housing the ducks as being closest to her yard.

Mrs. Betia-Sholly testified that she first noticed an "overwhelming smell" when she was mowing her lawn. She indicated that she contacted Mrs. Bolling who told her that a new filtering system would rectify the odor problem. The Protestant stated that the smell then stopped.

Nevertheless, Mrs. Betia-Sholly and her husband continue to be bothered by the ducks. Mrs. Betia-Sholly stated that she and her husband work long hours and shifts; the noise of the ducks wakes them and interferes with their sleep. She emphasized that the privacy fence does not keep out the noise. Mrs. Betia-Sholly also complained that there are areas along the fence on her side where no grass will grow. She noted that her lot is lower than the Bolling lot. Therefore she receives any runoff. She also stated that the Bolling lot is not unique from others in the neighborhood and allowing the ducks on less than an acre would set an unfortunate precedent.

In rebuttal Mr. Bolling testified that the neighborhood is typically suburban with noise from traffic, music, etc. He reiterated that he had taken steps to alleviate the odor problem and that no other neighbors had complained.

On questioning from Board Chair Mr. Wescott, Mr. Bolling stated that the lots adjacent to his, on the east and west, are "identical."

Decision

The applicable law in this case, § 307 of the BCZR, permits granting of a variance of this regulation upon certain terms and conditions, which in pertinent part in this case, allow a

variance where special circumstances or conditions exist that are peculiar to the land that is the subject of the variance requested, and where strict compliance with the zoning regulations would result in practical difficulty or unreasonable hardship. Such a 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 welfare. The Board shall have no power to grant any other variances.

The burden to establish special circumstances or conditions was clarified by the Court of Special Appeals in *North v. St. Mary's County*, 99 Md.App 502 (1994), when Judge Cathell stated:

An applicant for variance bears the burden of overcoming the assumption that the proposed use is unsuited. That is done, if at all, by satisfying fully the dictates of the statute authorizing the variance.

Under the Court of Special Appeals decision in *Cromwell v. Ward*, 102 Md.App. 691 (1995), which sets forth the legal benchmark by which a variance may be granted, the Board of Appeals, hearing the case *de novo*, is given the task of interpreting regulations and statutes where issues are debatable in the light of the law. The first burden on the Petitioner for variance is to prove that the property is unique. This standard must be met before other parts of the variance requirements, namely hardship and spirit and intent, can be properly considered. If the property is not found to be unique, the variance must be denied.

The Court defined the term "uniqueness" and 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 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.

After reviewing exhibits and testimony, this Board finds as a matter of fact that the subject property does not meet the criteria for uniqueness. A map in People's Counsel Joint Exhibit #1, provided by the Maryland Department of Assessments and Taxation (District 02, Account Number 0202572240) shows the subject property similar in size and shape to the other lots along the same street and neighborhood. In Mr. Bolling's own testimony before the Board, he described the adjacent lots to his as "identical." Although Mr. Bolling has created a humane domicile for the five ducks in question and has been certified as a Natural Wildlife Backyard Habitat, his altering of the use of his subdivision property does not constitute uniqueness under the law.

Furthermore § 100.6 of the BCZR speaks to the creation of a nuisance. The regulation requires a minimum of one acre; the subject property is less than one-quarter of that. We find that the presence of ducks in the environment described negatively impacts the Protestants in a way they would not normally expect in a neighborhood such as theirs. Indeed the implementation of the minimum size of the lot in D.R. 5.5 was developed to prevent such an impact. The nuisance factor is supported in the file by the Zoning Advisory Comments, dated November 6, 2003, from the Office of Planning:

An inspection of the above referenced property revealed that the requested variance would be detrimental to the health, safety, and welfare of the surrounding community. The foul (sic) could contribute noise and disease, jeopardize the enjoyment of nearby residential uses. Planning recommends denial of the requested variance to allow five ducks on a lot less than one acre.

The Board therefore finds unanimously that the variance as requested from § 100.6 of the BCZR be denied.

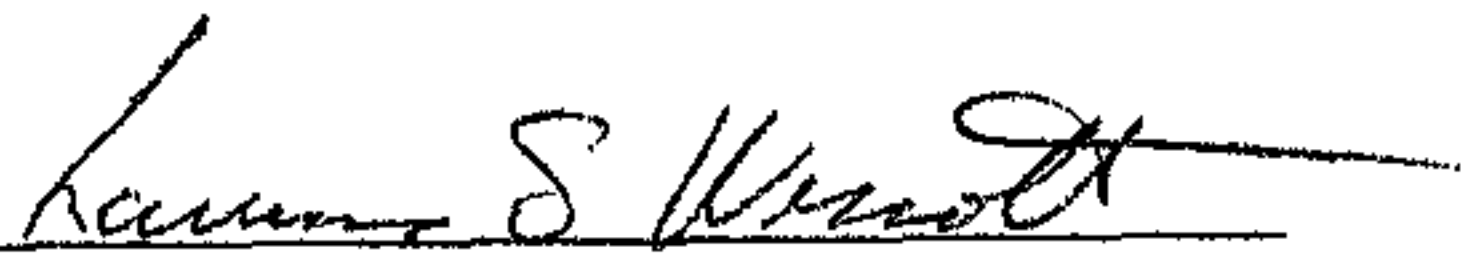
ORDER

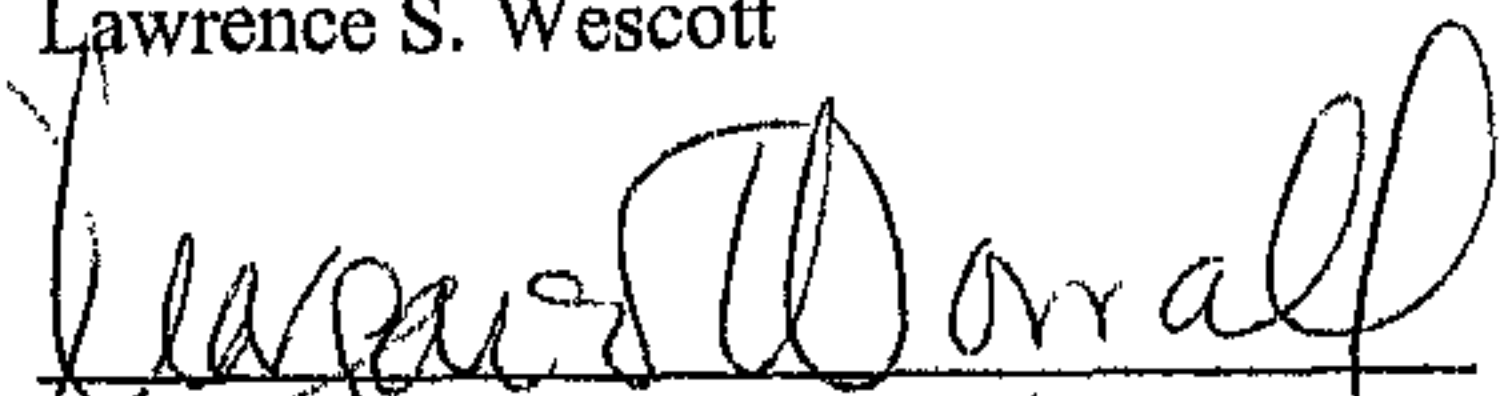
THEREFORE, IT IS THIS 10th day of November, 2004 by the County Board of Appeals of Baltimore County

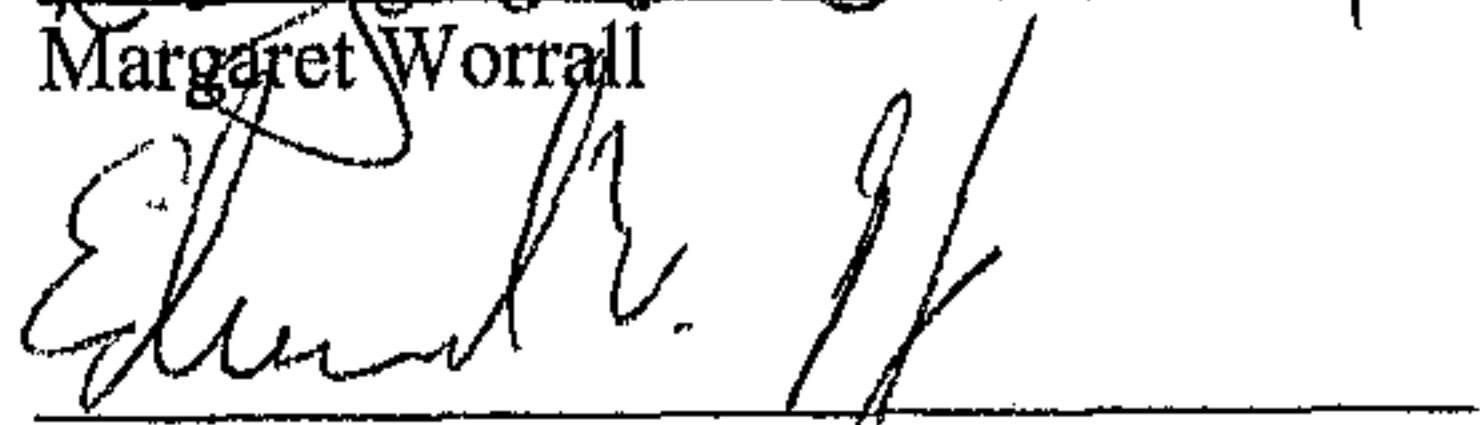
ORDERED that Petitioners' request for variance from § 100.6 of the *Baltimore County Zoning Regulations* (BCZR) to permit five ducks on a lot with an area less than one acre be and is hereby **DENIED**.

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 S. Wescott


Margaret Worrall


Edward W. Crizer, Jr.

RECEIVED

NOV 12 2004

DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

Zoning Commissioner

Suite 405, County Courts Building
401 Bosley Avenue
Towson, Maryland 21204
Tel: 410-887-3868 • Fax: 410-887-3468



Baltimore County

James T. Smith, Jr., County Executive
Lawrence E. Schmidt, Zoning Commissioner

November 18, 2003

Mr. & Mrs. Howard I. Bolling
5005 Old Court Road
Randallstown, Maryland 21133

Re: Petition for Administrative Variance
Case No. 04-118-A
Property: 5005 Old Court Road

Dear Mr. & Mrs. Bolling:

Enclosed please find the decision rendered in the above-captioned case. The petition for variance has been denied in accordance with the enclosed Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from the date of the Order to the Department of Permits & Development Management. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Very truly yours,

A handwritten signature in cursive script that reads "John V. Murphy".

John V. Murphy
Deputy Zoning Commissioner

JVM:raj
Enclosure

c: Ms. Emily Wolfson
8506 Church Land
Randallstown, MD 21133

Mr. & Mrs. Gary M. Sholly
8502 Church Lane
Randallstown, MD 21133

Visit the County's Website at www.baltimorecountyonline.info



Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 5005 OLD COURT ROAD
which is presently zoned DR5.5

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) 100.6, BCZR; TO PERMIT 5 DUCKS
ON A LOT WITH AN AREA LESS THAN ONE ACRE.

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

TO BE PRESENTED AT HEARING.

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

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

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

Contract Purchaser/Lessee:

Name - Type or Print _____

Signature _____

Address _____ Telephone No. _____

City _____ State _____ Zip Code _____

Attorney For Petitioner:

Name - Type or Print _____

Signature _____

Company _____

Address _____ Telephone No. _____

City _____ State _____ Zip Code _____

Case No. 04-118A

REV 9/15/98

Legal Owner(s):

HOWARD ARVEN BOLLING
Name - Type or Print _____

Signature _____

Name - Type or Print _____

Signature _____

5005 OLD COURT ROAD 114106554112
Address _____ Telephone No. _____

RANDALLSTOWN MD 21133
City _____ State _____ Zip Code _____

Representative to be Contacted:

SAME
Name _____

Address _____ Telephone No. _____

City _____ State _____ Zip Code _____

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By JCM Date 9.5.03

ZONING DESCRIPTION FOR 5005 OLD COURT ROAD

Beginning at a point on the North side of Old Court Road which is 42 feet wide at the distance of 242.68 feet west of the centerline of the nearest improved intersecting street Courtleigh Drive which is 42 feet wide. Being Lot #8, Block E, Section 3 in the subdivision of Courtleigh as recorded in Baltimore County Plat Book #22, Folio #87, containing .236 acres. Also known as 5005 Old Court Road and located in the 2nd Election District, 4th Councilmatic District.

115
No. 23667

ACCOUNT CC-CC6-6152

AMOUNT \$ 67.

H. Bellis

Test CLD
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YELLOW - CUSTOMER

CASHIER'S VALIDATION

THE
NEW
YORK
PUBLIC

LIBRARY

ASTOR LENOX TILDEN FOUNDATION

100 N. 6TH ST.
NEW YORK, N.Y.

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THE UNIVERSITY OF CHICAGO

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Figure 1. Schematic diagram of the experimental setup. The subject is seated in a chair and views the screen through a mirror. The screen displays the target (a red dot) and the starting position (a black dot). The subject's hand is positioned at the starting position. The distance between the starting position and the target is 10 cm. The subject is instructed to move the hand from the starting position to the target. The distance between the starting position and the target is 10 cm. The subject is instructed to move the hand from the starting position to the target. The distance between the starting position and the target is 10 cm.

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**NOTICE OF ZONING
HEARING**

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

Case: #04-118-A
6005 Old Court Road
N/side of Old Court Road,
242 feet west of centerline
of Courtlight Drive
2nd Election District
4th Councilmanic District
Legal Owner(s): Howard
Irvin Bolling

Variance: to permit 5 ducks
on a lot with an area less
than one acre.

Hearing: Monday, Novem-
ber 10, 2003 at 10:00 a.m.
In Room 407, County
Courts Building, 401 Bos-
ley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are
Handicapped Accessible; for
special accommodations
Please Contact the Zoning
Commissioner's Office at
(410) 887-4388.

(2) For information con-
cerning the file and/or
hearing, contact the Zoning
Review Office at (410) 887-
3301.

10/303 Oct. 23 C632886

CERTIFICATE OF PUBLICATION

10/24/2003

THIS IS TO CERTIFY, that the annexed advertisement was published
in the following weekly newspaper published in Baltimore County, Md.,
once in each of 1 successive weeks, the first publication appearing
on 10/23/2003.

- ☒ The Jeffersonian
- ☐ Arbutus Times
- ☐ Catonsville Times
- ☐ Towson Times
- ☐ Owings Mills Times
- ☐ NE Booster/Reporter
- ☐ North County News

S. Wilkinson

LEGAL ADVERTISING

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. **32656**

DATE 1/16/04 ACCOUNT 001-006-6150
AMOUNT \$ 300.00

RECEIVED FROM: Howard + Elizabeth Balling
FOR: Appeal (04-118-A)
5005 Old Ct. Rd.

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

PAID RECEIPT

| BUSINESS | ACTUAL | TIME | DRW |
|----------------------------|-----------|-------------------------|------|
| 1/21/2004 | 1/20/2004 | 10:55:52 | 1 |
| REL US01 | WALKIN | JRIC JMR | |
| RECEIPT # | 172532 | 1/20/2004 | OFLN |
| Dept | 5 | 528 ZONING VERIFICATION | |
| CR NO. | 032656 | | |
| Recpt Tot | \$300.00 | | |
| \$300.00 | 1K | \$1.00 | CA |
| Baltimore County, Maryland | | | |

CASHIER'S VALIDATION

APPEAL SIGN POSTING REQUEST

CASE NO.: 04-118-A

Howard Bolling

5005 OLD COURT ROAD, RANDALLSTON

Ind

~~1~~ ELECTION DISTRICT

APPEALED: 12/17/2003

ATTACHMENT - (Plan to accompany Petition - Petitioner's Exhibit No. 1)

24 J 12

APPEAL SIGN POSTING REQUEST

CASE NO.: 04-118-A

Howard Bolling

5005 OLD COURT ROAD, RANDALLSTON

Ind ~~EST~~ ELECTION DISTRICT

APPEALED: 12/17/2003

ATTACHMENT – (Plan to accompany Petition – Petitioner's Exhibit No. 1)

*******COMPLETE AND RETURN BELOW INFORMATION*******

CERTIFICATE OF POSTING

TO: Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Attention: Kathleen Bianco
Administrator

CASE NO.: 04-118-A

Petitioner/Developer:

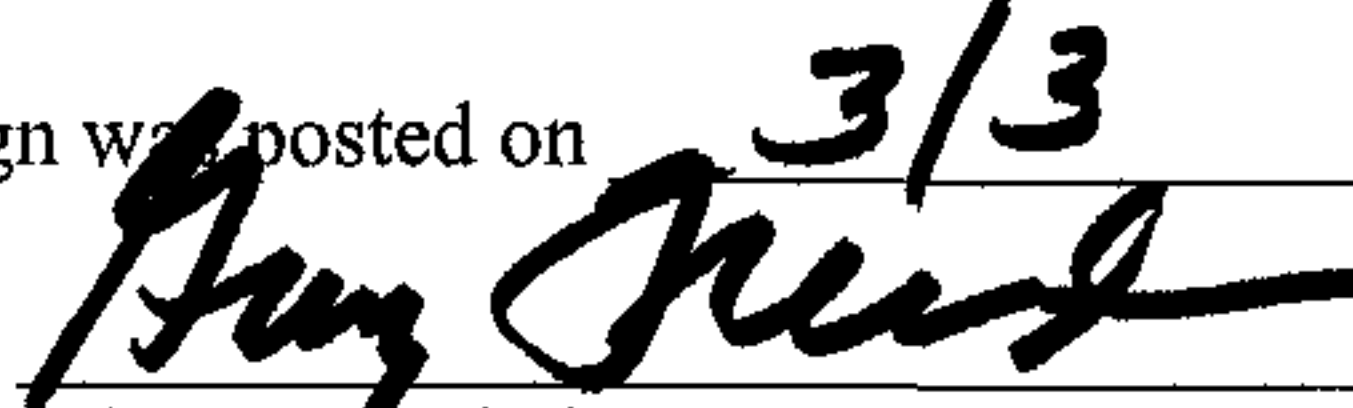
HOWARD BOLLING

This is to certify that the necessary appeal sign was posted conspicuously on the property located at:

5005 OLD COURT ROAD, RANDALLSTON

The sign was posted on 3/3, 2004

By:


(Signature of Sign Poster)

GARY FREUND

(Printed Name)

CERTIFICATE OF POSTING

RE: Case No.: 04-118-A

Petitioner/Developer: _____

Howard Bolling

Date of Hearing/Closing: 11-10-03

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

Attention: Becky Hart

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law
were posted conspicuously on the property located at 5005 Old Court Road
Randallstown, MD 21133

October 23, 2003

(Month, Day, Year)

Sincerely,

Stacy Gardner 10/23/03
(Signature of Sign Poster and Date)

Stacy Gardner

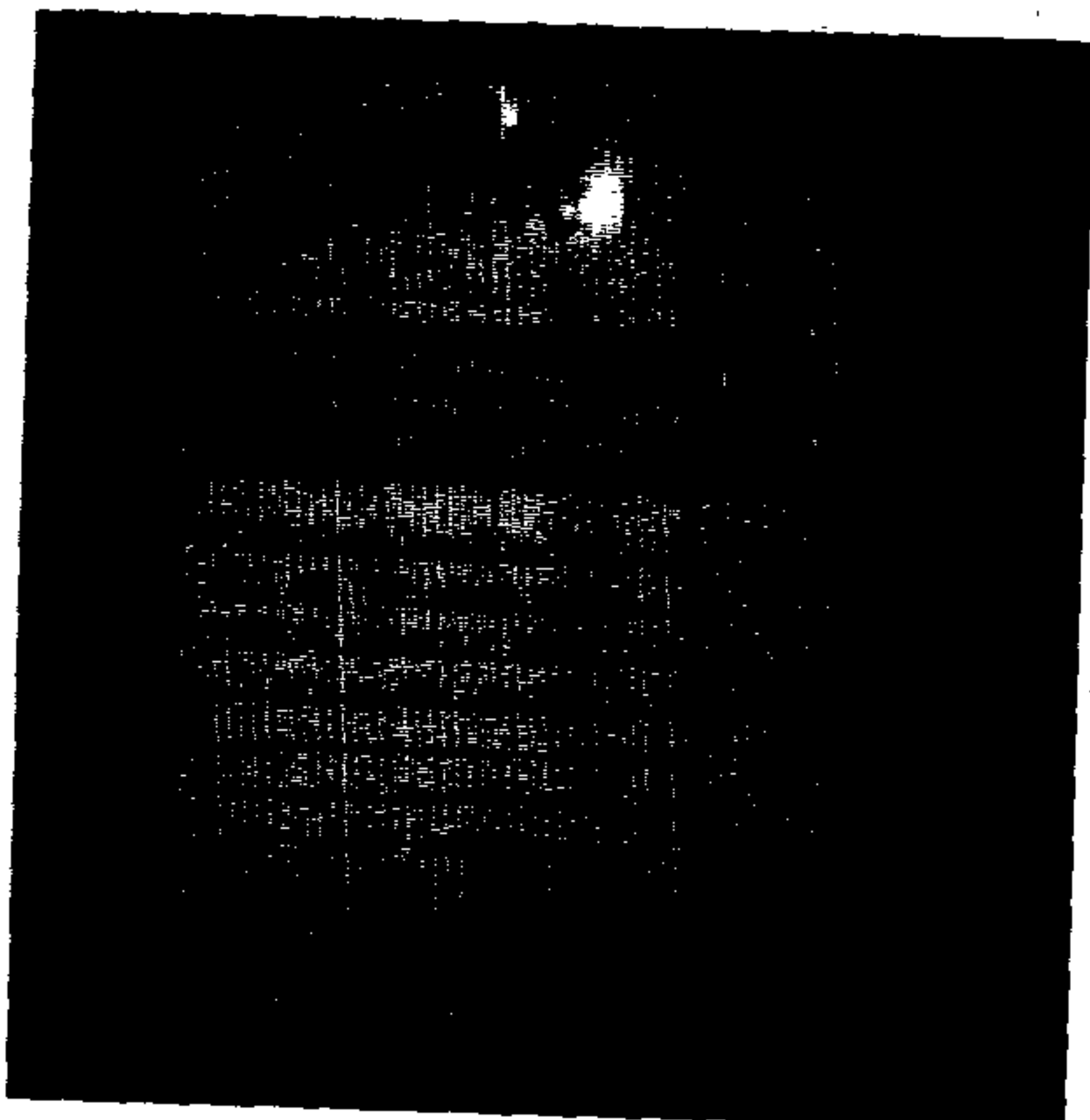
(Printed Name)

Shannon-Baum Signs, Inc.
105 Competitive Goals Drive

(Address)

Eldersburg, MD 21784 ::
410-781-4000

(City, State, Zip Code)





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

September 30, 2003

NOTICE OF ZONING HEARING

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

CASE NUMBER: 04-118-A

5005 Old Court Road

N/side of Old Court Road, 242 feet west of centerline of Courtleigh Drive

2nd Election District – 4th Councilmanic District

Legal Owner: Howard Irvin Bolling

Variance to permit 5 ducks on a lot with an area less than one acre.

Hearings: Monday, November 10, 2003 at 10:00 a.m. in Room 407, County Courts
Building, 401 Bosley Avenue

A handwritten signature in black ink, reading "Timothy Kotroco".

Timothy Kotroco
Director

TK:rlh

C: Howard I. Bolling, 5005 Old Court Road, Randallstown 21133

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, OCTOBER 25, 2003.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY
Thursday, October 23, 2003 Issue - Jeffersonian

Please forward billing to:
Howard Bolling
5005 Old Court Road
Randallstown, MD 21133

410-655-4112

NOTICE OF ZONING HEARING

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

CASE NUMBER: 04-118-A

5005 Old Court Road
N/side of Old Court Road, 242 feet west of centerline of Courtleigh Drive
2nd Election District – 4th Councilmanic District
Legal Owner: Howard Irvin Bolling

Variance to permit 5 ducks on a lot with an area less than one acre.

Hearings: Monday, November 10, 2003 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

**DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW**

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:

Item Number or Case Number: 118

Petitioner: HOWARD Bollins

Address or Location: 5005 OLD COURT ROAD, RANDALLSTOWN, Md. 21133

PLEASE FORWARD ADVERTISING BILL TO:

Name: _____

Address: Same

Telephone Number: 410 - 655-4112



County Board of Appeals of Baltimore County

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

August 11, 2004

NOTICE OF DELIBERATION

IN THE MATTER OF:

HOWARD BOLLING -- Legal Owner
Case No. 04-118-A

Having heard this matter on 8/10/04, public deliberation has been scheduled for the following date /time:

DATE AND TIME : WEDNESDAY, SEPTEMBER 15, 2004 at 9:00 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

Kathleen C. Bianco
Administrator

c: Appellant /Petitioner : Howard Bolling

Emily Wolfson
Mr. and Mrs. Gary M. Sholly

Office of People's Counsel
Lawrence E. Schmidt /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

FYI: 4-3-7





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

May 21, 2004

NOTICE OF ASSIGNMENT

CASE #: 04-118-A

IN THE MATTER OF: HOWARD BOLLING -
Legal Owner /Petitioner 5005 Old Court Road
2nd Election District; 4th Councilmanic District

11/18/2003 – D.Z.C.'s order in which requested variance relief was DENIED.

ASSIGNED FOR:

TUESDAY, AUGUST 10, 2004 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 /Petitioner

: Howard Bolling

Emily Wolfson
Mr. and Mrs. Gary M. Sholly

Office of People's Counsel
Lawrence E. Schmidt /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM



**Department of Permits and
Development Management**

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



Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

November 7, 2003

Howard Irvin Bolling
5005 Old Court Road
Randallstown, MD 21133

Dear Mr. Bolling:

RE: Case Number: 04-118-A, 5005 Old Court Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on September 5, 2003.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

A handwritten signature in black ink, reading "W. Carl Richards, Jr.", is written over the typed name.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:klm

Enclosures

c: People's Counsel

Visit the County's Website at www.baltimorecountyonline.info



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Tim Kotrocco, Director
Department of Permits and Development Management

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

November 6, 2003

SUBJECT: ZAC Comments

INFORMATION:

- **Item Number:** 04-118
- Property Address** Old Court Road
- Petitioner:** Howard Bolling
- Property Size:** .7 Acres
- Zoning:** DR 5,5
- Requested Action:**

Special Hearing

To allow ducks on a lot less than 1 acre.

Hearing Date:

• SUMMARY OF RECOMMENDATIONS:

An inspection of the above referenced property revealed that the requested variance would be detrimental to the health, safety, and welfare of the surrounding community. The foul could contribute noise and disease, jeopardize the enjoyment of near by residential uses. Office of Planning will recommends denial of the requested variances to allow 5 ducks on a lot less than 1 acre.

Section Chief



S:\COMPLAN\Dave Green\ZAC041558615churchlane..doc

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits &
Development Management

DATE: September 30, 2003

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

SUBJECT: Zoning Advisory Committee Meeting
For September 29, 2003
Item Nos. 113, 114, 115, 116, 117,
118, 122, 125, 126, 128, 130, and
136

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

RWB:CEN:jrb

cc: File

Robert L. Ehrlich, Jr., *Governor*
Michael S. Steele, *Lt. Governor*



Robert L. Flanagan, *Secretary*
Neil J. Pedersen, *Administrator*

Date: 9.23.03

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

RE: Baltimore County
Item No. 118 JCM

Dear Ms. Hart:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

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

Very truly yours,

Kenneth A. McDonald Jr., Chief
Engineering Access Permits Division



**Baltimore County
Fire Department**

700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4500

County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

September 24, 2003

ATTENTION: Rebecca Hart

Distribution Meeting of: September 22, 2003

(118)

Item No.: 112, 114-122, 124, 126, 128-130, 136

Dear Ms. Hart:

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

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

LIEUTENANT JIM MEZICK
Fire Marshal's Office
PHONE 887-4881
MS-1102F

cc: File

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



Printed with Soybean Ink
on Recycled Paper

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Tim Kotroco

FROM: R. Bruce Seeley *RB Seeley*

DATE: October 22, 2003

Zoning Petitions

Zoning Advisory Committee Meeting of September 22, 2003

SUBJECT: NO COMMENTS FOR THE FOLLOWING ZONING ITEMS:

04-113,114,118,119,120,121,122,123,127,128,129,130,136

RE: PETITION FOR VARIANCE
5005 Old Court Road; N/side of Old Court
Road, 242' W c/line of Courtleigh Drive
2nd Election & 4th Councilmanic Districts
Legal Owner(s): Howard Irvin Bolling
Petitioner(s)

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* 04-118-A

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and 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
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of September, 2003, a copy of the foregoing Entry of Appearance was mailed to, Howard I. Bolling, 5005 Old Court Road, Randallstown, MD 21133, Petitioner(s).

RECEIVED

SEP 26 2003

Per.....

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

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: December 21, 2004

TO: Timothy Kotroco, Director
Permits & Development Management
Attn.: David Duvall

FROM: Theresa R. Shelton 
Board of Appeals

SUBJECT: **CLOSED APPEAL CASE FILES**

The following case(s) have been finalized and the Board of Appeals is closing the copy of the appeal case file(s) and returning the file(s) and exhibits (if applicable) attached herewith.

| <u>BOARD OF
APPEALS
CASE NUMBER</u> | <u>PDM
FILE NUMBER</u> | <u>NAME</u> | <u>LOCATION</u> |
|--|-----------------------------------|-------------------------------|------------------------|
| 04-010-SPHX | <i>04-010-SPHX</i> | LYNDA STEUART/BUTLER
STONE | 15027 FALLS ROAD |
| 04-011-SPHX | <i>04-011-SPHX</i> | LYNDA STEUART/BUTLER
STONE | 15027 FALLS ROAD |
| 04-118-A | <i>04-118-A</i> | HOWARD BOLLING | 5005 OLD COURT ROAD |
| 04-423-A | <i>04-423-A</i> | CRAIG AND SUSAN
BANCROFT | 303 GAILRIDGE ROAD |

**Department of Permits and
Development Management**

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



Baltimore County

James T. Smith, Jr., County Executive
Timothy M. Kotroco, Director

January 16, 2004

Howard Bolling
5005 Old Court Road
Randallstown, MD 21133

Dear Mr. Bolling:

RE: Case :04-118-A, 5005 Old Court Road

RECEIVED

JAN 21 2004

**BALTIMORE COUNTY
BOARD OF APPEALS**

Please be advised that you filed an appeal, on the above-referenced case, in this office on December 17, 2004 in your behalf. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

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 "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

c: Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Emily Wolfson, 8506 Church Lane, Randallstown 21133
Mr. & Mrs. Sholly, 8502 Church Lane, Randallstown 21133

Visit the County's Website at www.baltimorecountyonline.info

APPEAL

Petition for Variance
5005 Old Court Road
N/s of Old Court Rd., 242 ft. W/centerline of Courtleigh Drive
2nd Election District – 4th Councilmanic District
Howard Bolling – Legal Owner

Case No.: 04-118-A

Petition for Variance (September 5, 2003)

Zoning Description of Property

Notice of Zoning Hearing (November 10, 2003)

Certification of Publication (October 23, 2003)

Certificate of Posting (October 23, 2003) by Stacy Gardner

Entry of Appearance by People's Counsel (September 26, 2003)

Petitioner(s) Sign-In Sheet
One Sheet

Protestant(s) Sign-In Sheet
One Sheet

Citizen(s) Sign-In Sheet
One Sheet

Zoning Advisory Committee Comments 11-7-03

Petitioners' Exhibit
1. Plat to accompany petition for zoning variance

Protestants' Exhibits:
None

Miscellaneous (Not Marked as Exhibit)
1. Newspaper article from Community Times (10/29 – 11/4/03)
2. Letter from neighbors Gary and Ruthie Sholly

Deputy Zoning Commissioner's (November 18, 2003 - DENIED)

Notice of Appeal received on December 17, 2003 from Howard Bolling

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Howard Bolling, 5005 Old Court Road
Emily Wolfson, 8506 Church Lane, Randallstown 21133
Mr. & Mrs. Gary Sholly, 8502 Church Lane, Randallstown 21133

date sent January 20, 2004, klm

HOWARD BOLLING
5005 OLD COURT ROAD
RANDALLSTOWN MD 21133
Petitioner/Appellant

EMILY WOLFSON
8506 CHURCH LANE
RANDALLSTOWN MD 21133

MR AND MRS GARY M SHOLLY
8502 CHURCH LANE
RANDALLSTOWN MD 21133

RECEIVED
JAN 21 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Case No. 04-118-A

In the Matter of: Howard Bolling -- Legal Owner /Petitioner

VAR -- To permit 5 ducks on a lot with an area less than one acre.

11/18/2003 -- D.Z.C.'s Order in which requested variance relief was
DENIED.

5/21/04 -Notice of Assignment sent to following; assigned for hearing on Tuesday, August 10, 2004 at 10 a.m.:

Howard Bolling
Emily Wolfson
Mr. and Mrs. Gary M. Sholly
Office of People's Counsel
Lawrence E. Schmidt /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

8/05/04 -- Letter from P. Zimmerman and C. Demilio -- Office of People's Counsel -- comments on case and issues involved. (Entered at hearing by the Board as Joint Exhibit #1)

8/10/04 -- Board convened for hearing (Wescott, Worrall, Crizer); concluded hearing this date; to be assigned for public deliberation (9/15/04) and notice sent.

8/11/04 -- Notice of Deliberation sent to parties; assigned for Wednesday, September 15, 2004 at 9:00 a.m. FYI copy to 4-3-7).

9/15/04 -- Board convened for deliberation (Wescott, Worrall, Crizer); Unanimous denial of variance request. Appellate period to run from date of written Order. (3)

BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF:

Howard Bolling
Case No.: 04-118-A

DATE:

September 15, 2004

BOARD/PANEL:

| | |
|-----------------------|-----|
| Margaret Worrall | MW |
| Lawrence S. Wescott | LSW |
| Edward W. Crizer, Jr. | EWC |

RECORDED BY:

Theresa R. Shelton / Legal Secretary

PURPOSE: To deliberate the Petition for Variance filed by Howard Bolling to permit 5 ducks on a lot with an area less than one acre.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

- ✓ Relief from regulation 100.6
- ✓ Minimum one (1) acre required
- ✓ Petitioners only have .2236 acre
- ✓ Noise, smell, infestation by rodents
- ✓ Nothing unique with regards to the property. The rear slopes back – the elevation was not changed and lots are all similar
- ✓ you can not create uniqueness
- ✓ his property is in a subdivision and properties are all alike
- ✓ Petitioner lives on less than an acre and law is very clear that nothing is permitted on less than an acre
- ✓ Variance is very clear that property has to be unique; no evidence presented to prove that property is unique
- ✓ Asian pot belly pigs mentioned with regards to not being regulated
- ✓ Living in a subdivision is not like living on a farm

DECISIONS BY BOARD MEMBERS: Unanimous decision by the panel to DENY the Petitioners request.

FINAL DECISION: That the Petition for Variance filed by Howard Bolling to permit 5 ducks on a lot with an area less than one acre is DENIED.

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

Respectfully submitted,



Theresa R. Shelton
County Board of Appeals

HOWARD I. BOLLING
hbolling@howardbolling.com

December 16, 2003

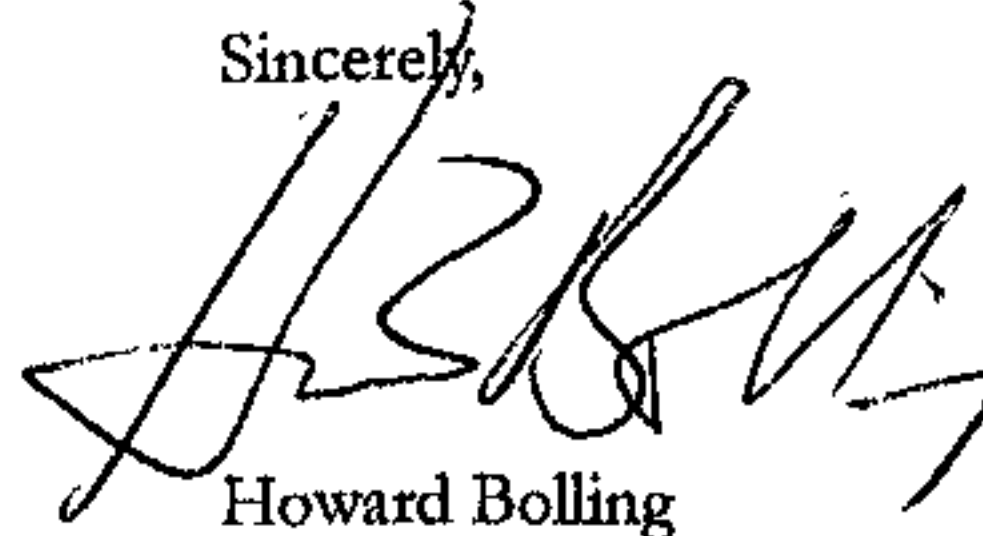
Mr. Timothy Kotroco
Director, Department of Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson MD 21204

RE: Appeal of variance decision, case 04-118, variance to allow five ducks on a lot with a size under one acre

Dear Sir:

Please consider this formal notification that I wish to exercise my right to appeal the initial decision with respect to the above request. A check for \$300 is included herewith.

Sincerely,



Howard Bolling

Property Owner

Enc: check for \$300.00

RECEIVED

DEC 17 2003

Per. *D. Thompson*

5005 OLD COURT ROAD • RANDALLSTOWN MD • 21133
PHONE: 410.655.4112 • FAX: 509.695.2340

RECEIVED

DEC 17 2003

03-6043

DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT

gm
11/10

Gary M. Sholly
Ruthie Bethea-Sholly
8502 Church Lane
Randallstown, Maryland #21133

Mr. John V. Murphy/Deputy Zoning Commissioner
Baltimore County
401 Bosley Ave.
Room 405
Towson, Maryland # 21204

Re: Case # 4-118-A

Illegal ducks on property at 5005 Old Court Rd., Randallstown, Md.

Sir,

We are unable to appear because we can not cancel a previously planned out of town trip. We are writing because we oppose allowing the 5 ducks to remain at the property involved in this case. The ducks are against the law and zoning codes. We have other concerns as well, especially if the 5 ducks are allowed to remain. We live directly adjacent to this property with the 5 ducks. Only a wooden privacy fence separates us. The 5 ducks are kept directly against this fence. The ducks are down wind from the owners home. However, we are down wind from the 5 ducks' abode. When the wind blows or when it is hot, we can smell the 5 ducks' defecation. During the cold weather we are not in our yard and our bedroom window is down. When we cut our grass, sit on the patio or work on the flowers in our back yard the odor is offensive. We can not plan to have family nor guest out in our yard since we never know when the odor will come. Unfortunately ducks can not be potty trained like children. The owners do not allow the ducks to run over the entire yard (which is far from being close to a acre of land). They are confined just to a small area against the fence. I think this area is too restricted for the 5 ducks. When this family goes away, even for a few days who is there to clean up the defecation and feed these 5 ducks. The wife has told me that she now has rats not mice, coming in her yard. She said she found them in the duck's area. One was dead in the small duck pond. She also admitted to me that she was beating one rat that was still alive. She told me that she is sure that the rats have come because of the "open containers of food they put down for the 5 ducks. We do not need a rat infestation. If there is not enough food out in the 5 duck's area, the rats will soon start moving into the surrounding homes. While my neighbors intention, no doubt was not for any thing bad, we need to look at the long term ramifications. This area is not a farm. When you have these type of animals foul orders and rodents follow. Although we like our neighbors, the 5 ducks remaining at their property will have a direct impact on us and we feel we must speak up against the 5 ducks being allowed to stay. When the family goes on vacation, how do they intend to feed the 5 ducks??? Do they plan to put "open" food out for the 5 ducks while they are gone for rats to scavenge also.

We are asking you to rule against this case. Please let us know of your decision by letter.

Thank you.

Sincerely,

Gary & Ruthie Sholly 10/30/03

Gary and Ruthie Sholly

Case Number 04-118-A

PLEASE PRINT LEGIBLY.

PROTESTANT'S SIGN-IN SHEET

[illegible]

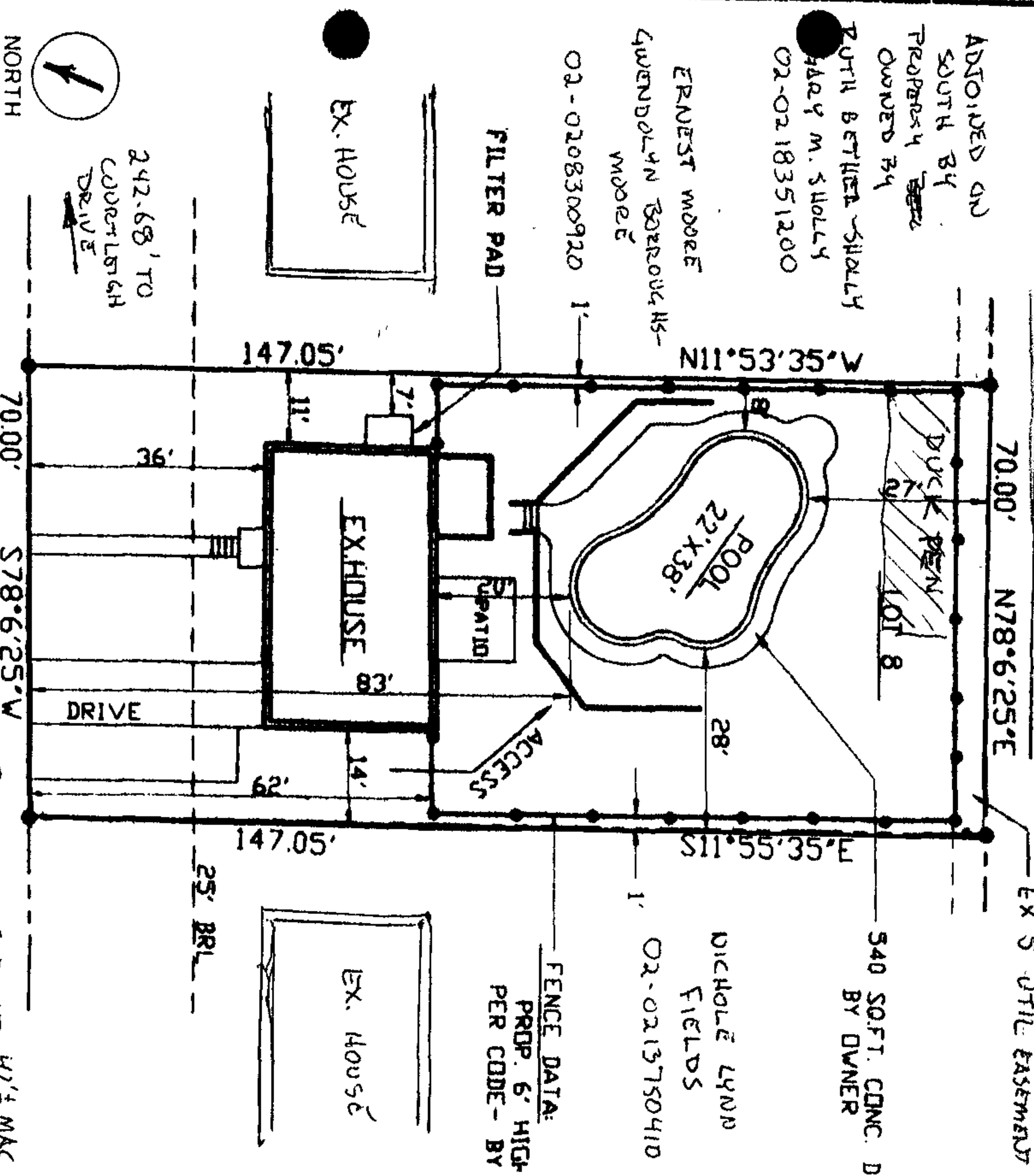
PLAT TO ACCOMPANY PETITION FOR ZONING ☒ VARIANCE ☐ SPECIAL HEARING

PROPERTY ADDRESS 5005 Old Courts Road SEE PAGES 5 & 6 OF THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION

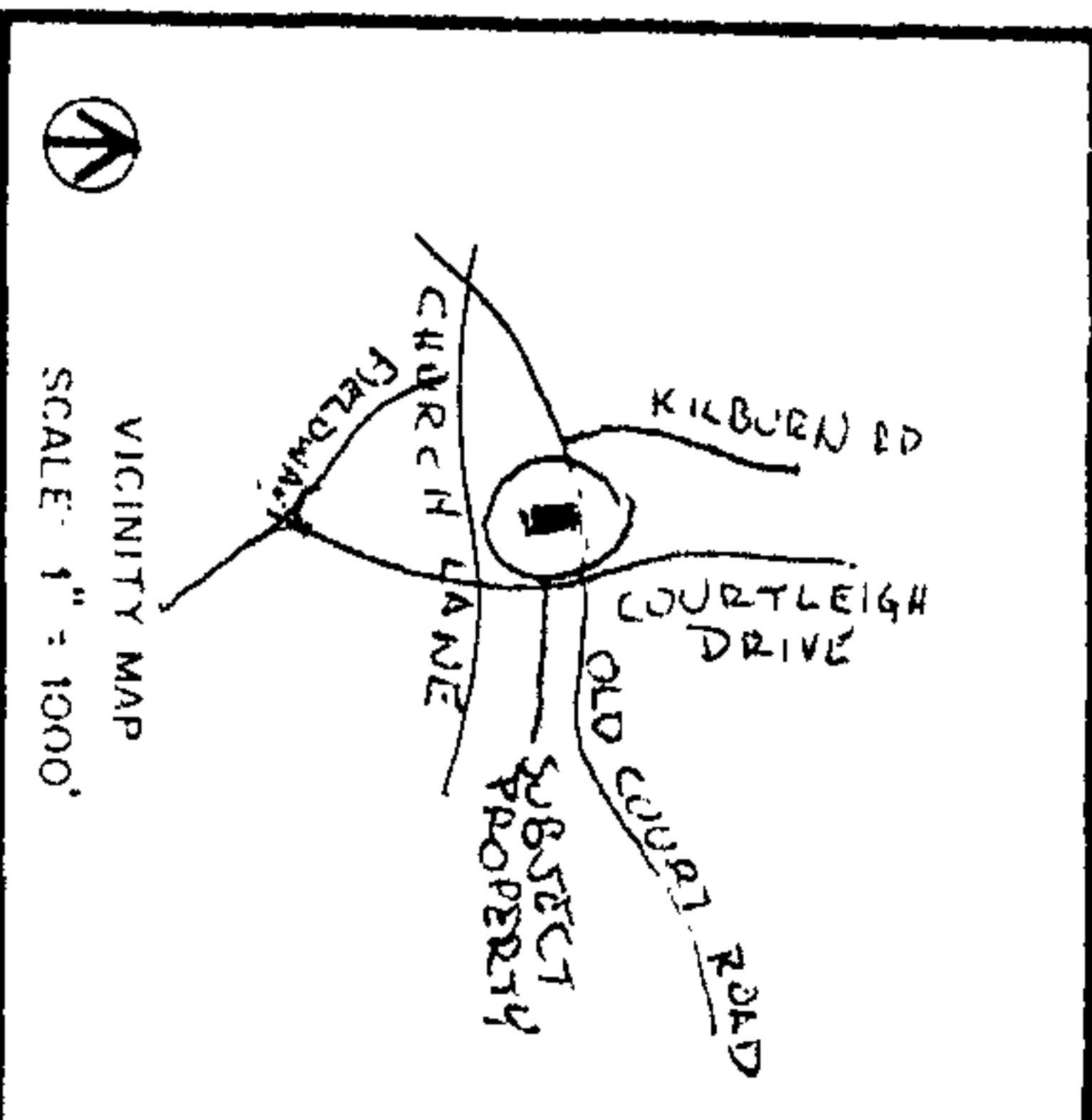
SUBDIVISION NAME COURTLEIGH

PLAT BOOK 1787 FOLIO # 8 LOT # 8 SECTION # 1

OWNER Howard Irving Bolling



PREPARED BY HJB SCALE OF DRAWING: 1" = 20'



LOCATION INFORMATION

ELECTION DISTRICT 2

COUNCILMANIC DISTRICT 4

1" = 200' SCALE MAP # 2C

ZONING D25.5

LOT SIZE 0.236 ACREAGE 10,290 SQUARE FEET

SEWER ☒ PUBLIC ☐ PRIVATE

WATER ☒ ☐

CHESAPEAKE BAY CRITICAL AREA ☐ YES ☒ NO

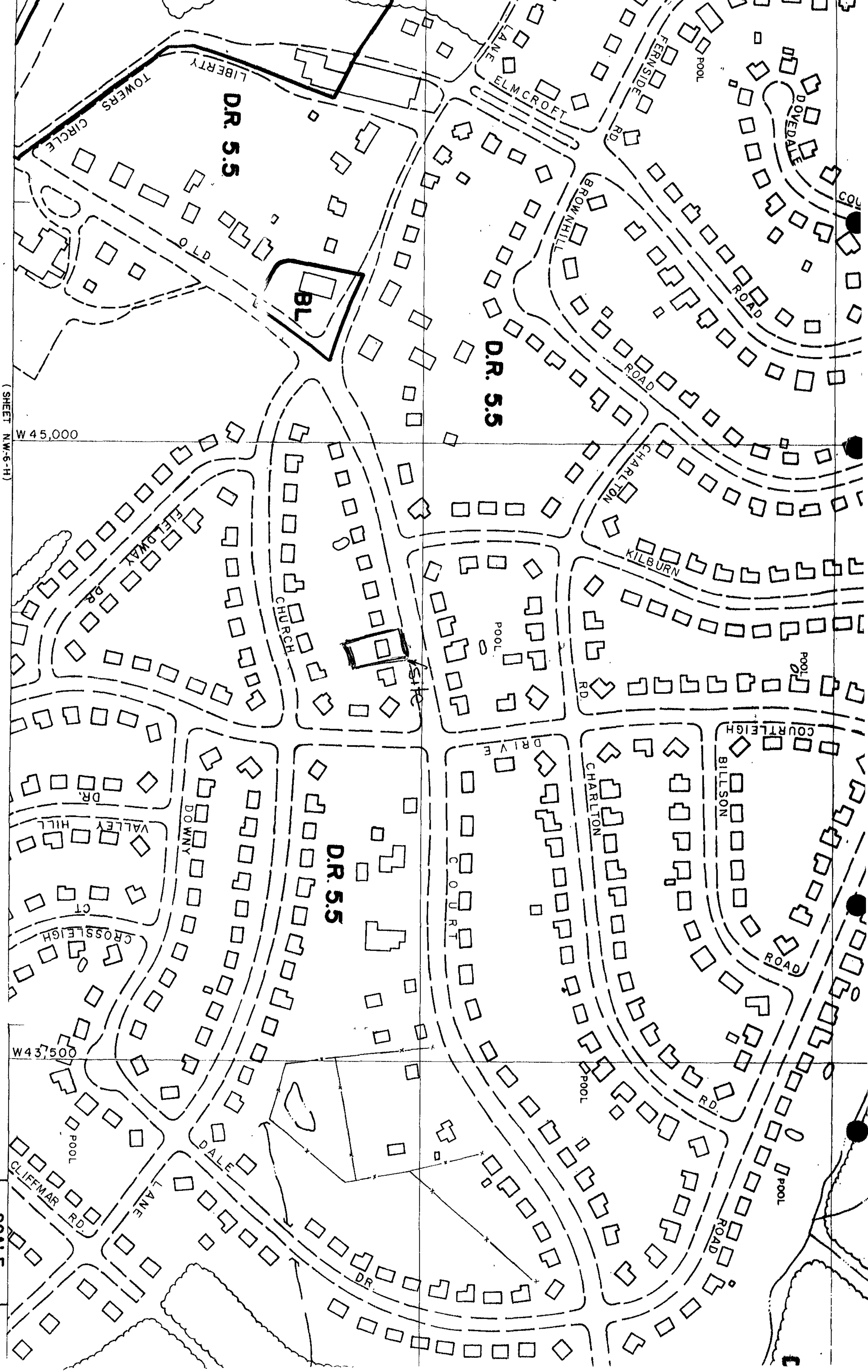
100 YEAR FLOOD PLAIN ☐ YES ☒ NO

HISTORIC PROPERTY / BUILDING ☐ YES ☒ NO

PRIOR ZONING HEARING NO

ZONING OFFICE USE ONLY
REVIEWED BY Jun 118 CASE # 1

Pat Ex #1



D.R. 5.5

D.R. 5.5

D.R. 5.5

BL

SITE

W 45,000

W 43,500

(SHEET NW-6-H)

Business

Briefs

ie Walowitz and Wartzberg dental-care have hired Dr. Sin Kim, specializes in prosthodontics.

ie Pavilion Dental Team located in the Physician's Union, 10085 Red Run in Owings Mills.

ines & Noble has begun k discussion groups. k tested book lovers are ted to the store at 1819 sterstown Road.

fiction and literature k discussion group meets first Monday of every nth at 7 p.m.

book discussion group people affected by cancer ets the second Tuesday of month at 3 p.m. every er month. The next date Tuesday, Nov. 11, at 3 p.m.

women's studies book cussion group begins in tober and will regularly et the second Monday of ery month at 7 p.m.

Judica book discussion up will regularly meet the ond Tuesday of every uth at 7 p.m.

for more information, call 0-415758. People with dis- ilities, should call 410-415- 82 at least 24 hours in vance of an event to range for special consid- ions.

Also, children's all-ages crytimes have moved fromaturday mornings to Sun-ay afternoons at 1:30 p.m. re-registration is not

Ducks

From Page A1

Loré and her husband, Howard, said they have been working hard to make the duck pond, picket-fenced enclosure and lean-to attractive and odor-free.

Howard recently installed a new pump for the pond, which is emptied and refilled every two weeks. Loré and 10-year-old daughter Katie rake the straw regularly and replace soiled straw with four fresh bales of hay every two weeks.

But beyond the noise and smell, neighbors have also complained that the duck feed is attracting rats.

Loré admits she has seen one rat.

"The ducks killed it," she said.

She blames the rats on a nearby group home. "They leave their trash uncovered," she said.

Loré and Howard Bolling have lived on Old Court Road for 15 years. They don't understand the opposition to their ducks.

"I grew up a block away from here, when this really was a farm," said Howard.

"We feel like we're trying to keep the ideal. We're fighting rap music outside, a group home over here, broken glass out on the front yard. It's the last bastion of peace," said Loré.

"Why are they bothering us, when there are much bigger problems in this neighborhood?" she added.

Loré said she keeps the address informed of her



SUSAN C. INGRAM/STAFF PHOTO

Loré Bolling and her daughters Katie, 10, and Janie, 3, by the duck pond at their Randallstown home.

efforts to reduce the smell and has told neighbors to let her know if they have concerns. She said none have had any major complaints.

The Bollings' two children, Katie and 3-year-old Janie, enjoy helping care for the ducks and their other pets, including a black Labrador, six rescued cats, a rabbit, gerbils and a hermit crab.

Loré hopes to expand her duck pond dream by adding a small heated barn before winter sets in.

But if neighbors show up to oppose the ducks at a Nov. 10 zoning hearing the five Pekins,

named Digger, Finney, Quacker, Lu and Smiley, may have to go and the barn will remain a dream for the time being.

"Then we'll have to find a good home for them," Loré said while watching the ducks waddle in the hay and glide in the small, rock-edged pond.

Loré said she and her husband have another dream — to save up, move to Howard County and get a piece of land big enough for a horse, a pig and a flock of Pekin ducks.

From P...

Plans call for classrooms, as kindergarten kindergarten classroom. It has a media center, lab, science classrooms, a department.

Strang said the adjacent to the separated by a tion. The space for school asse

"Typically, schools we do uns anymore. The gymnasium as large as a gymnasium.

Code require tated installi rooms than th tary model. St Board men seemed please

al. Board pres Sasiadek prai executive.

"This is a ple of his for schools. We support from uive," Sasiad

OPEN HOUSE

11th Anniversary Celebration

SALES • SERVICE • 1

LET YOUR PAPER
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Letters to the Editor
at etimes@lenisford.com



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 5, 2004

CAROLE S. DEMILIO
Deputy People's Counsel

Lawrence S. Wescott, Chairman
County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Re: Howard Irvin Bolling, Petitioner
5005 Old Court Road
Case No.: 04-118-A

RECEIVED
AUG 5 2004
BALTIMORE COUNTY
BOARD OF APPEALS

Dear Chairman Wescott,

This case involves a petition for variance to allow five ducks on a property less than one-quarter acre in size. The Deputy Zoning Commissioner denied the petition in an extensive opinion dated November 18, 2003. Petitioner has appealed. Consistent with our office's function to participate and pursue the public interest in zoning cases under the County Charter Sec. 524.1, we offer this comment to help focus on the issues in this case set for hearing August 10, 2004.

This appears to be the first case involving a variance for ducks on a residential lot which is undersized as to the minimum acreage of one acre required under BCZR 100.6. The law states, in pertinent part:

100.6 A tract of land used for the accessory stabling and pasturing of animals and which is not a commercial agricultural operation is subject to the following provisions:

* * *

| Type | Limitation | Minimum
Acreage |
|------|------------|--------------------|
|------|------------|--------------------|

* * *

Fowl or poultry

| | | |
|-----------------------------------|--|-----|
| Chickens, ducks, turkeys
geese | No numerical limit,
provided that a nuisance
is not created or allowed
to exist on the property | 1 . |
|-----------------------------------|--|-----|

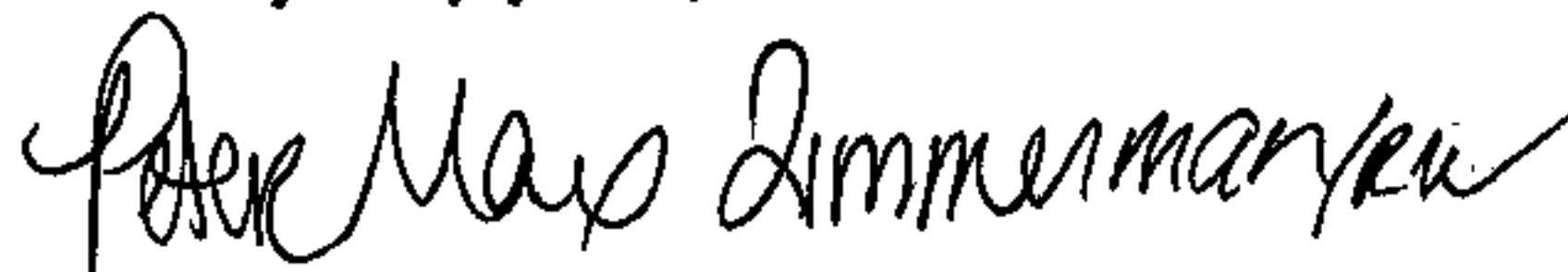
Upon review of the record and relevant documents, there is no evidence so far that the property satisfies the BCZR 307.1 "uniqueness" standard for variances. See Cromwell v. Ward 102 Md. App. 691 (1995). We enclose a copy of the standard tax assessment information and map. It shows the property to be a residential lot of about the same size and shape of neighboring lots. The Deputy Zoning Commissioner's finding that the property is not unique in any significant way appears to be correct.

It is also arguable that the request is for a kind of density variance (albeit for ducks, not dwellings). BCZR 307.1 does not allow residential density variances. Other sections in BCZR 100.6 provide minimum acreage for horses, burros, cattle, sheep, goats and pigs. It is thus a type of "density" statute for animals, presumably for the welfare of the animals as well as the community.

In addition, there have been concerns expressed by neighbors that the ducks create a nuisance in various types of ways. The enclosed Office of Planning and Zoning comment dated November 6, 2003 also identifies these problems. They are relevant to the practical difficulty standard under McLean v. Soley 270 Md. 208 (1973), especially the criteria on justice in the neighborhood, the spirit of the ordinance, and public welfare.

With the above in mind, we trust that the other interested parties will present the evidence they consider pertinent to the case. We trust also that this letter will be useful to the Board in its review and deliberation on this matter.

Very truly yours,



Peter Max Zimmerman
People's Counsel for Baltimore County



Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw

cc: Howard Bolling, 5005 Old Court Road, Randallstown, Maryland 21133
Emily Wolfson, 8506 Church Lane, Randallstown, Maryland 21133
Gary & Ruthie Sholly, 8502 Church Lane, Randallstown, Maryland 21133
Lynn Lanham, Office of Planning



Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

[Go Back](#)
[View Map](#)
[New Search](#)
[Ground Rent](#)

Account Identifier: District - 02 Account Number - 0202572240

Owner Information

| | | | |
|-------------------------|--|-----------------------------|----------------------|
| Owner Name: | BOLLING HOWARD IRVIN | Use: | RESIDENTIAL |
| | | Principal Residence: | YES |
| Mailing Address: | 5005 OLD COURT RD
RANDALLSTOWN MD 21133 | Deed Reference: | 1) / 7752/ 654
2) |

Location & Structure Information

Premises Address
 5005 OLD COURT RD

Legal Description

167 W COURTLEIGH DR
 COURTLEIGH

| | | | | | | | | | | |
|------------|-------------|---------------|---------------------|--------------------|----------------|--------------|------------|--------------|------------------|----------|
| Map | Grid | Parcel | Sub District | Subdivision | Section | Block | Lot | Group | Plat No: | 3 |
| 71 | 10 | 343 | | | | E | 8 | 80 | Plat Ref: | 22/ 87 |

Special Tax Areas

| | |
|--|-------------------|
| | Town |
| | Ad Valorem |
| | Tax Class |

Primary Structure Built
 1956

Enclosed Area
 1,794 SF

Property Land Area
 10,290.00 SF

County Use
 04

Stories
 2

Basement
 NO

Type
 SPLIT LEVEL

Exterior
 ASBESTOS SHINGLE

Value Information

| | | | | |
|---------------------------|-------------------|--------------------|-----------------------------------|--------------|
| | Base Value | Value As Of | Phase-in Assessments As Of | As Of |
| | | 01/01/2004 | 07/01/2003 | 07/01/2004 |
| Land: | 32,570 | 41,570 | | |
| Improvements: | 89,260 | 94,440 | | |
| Total: | 121,830 | 136,010 | 121,830 | 126,556 |
| Preferential Land: | 0 | 0 | 0 | 0 |

Transfer Information

| | | |
|------------------------------------|---------------------------|------------------------|
| Seller: FINE JEFFREY STUART | Date: 12/21/1987 | Price: \$77,900 |
| Type: IMPROVED ARMS-LENGTH | Deed1: / 7752/ 654 | Deed2: |
| Seller: | Date: | Price: |
| Type: | Deed1: | Deed2: |
| Seller: | Date: | Price: |
| Type: | Deed1: | Deed2: |

Exemption Information

| | | | |
|-----------------------------------|--------------|------------|------------|
| Partial Exempt Assessments | Class | 07/01/2003 | 07/01/2004 |
| County | 000 | 0 | 0 |
| State | 000 | 0 | 0 |
| Municipal | 000 | 0 | 0 |

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

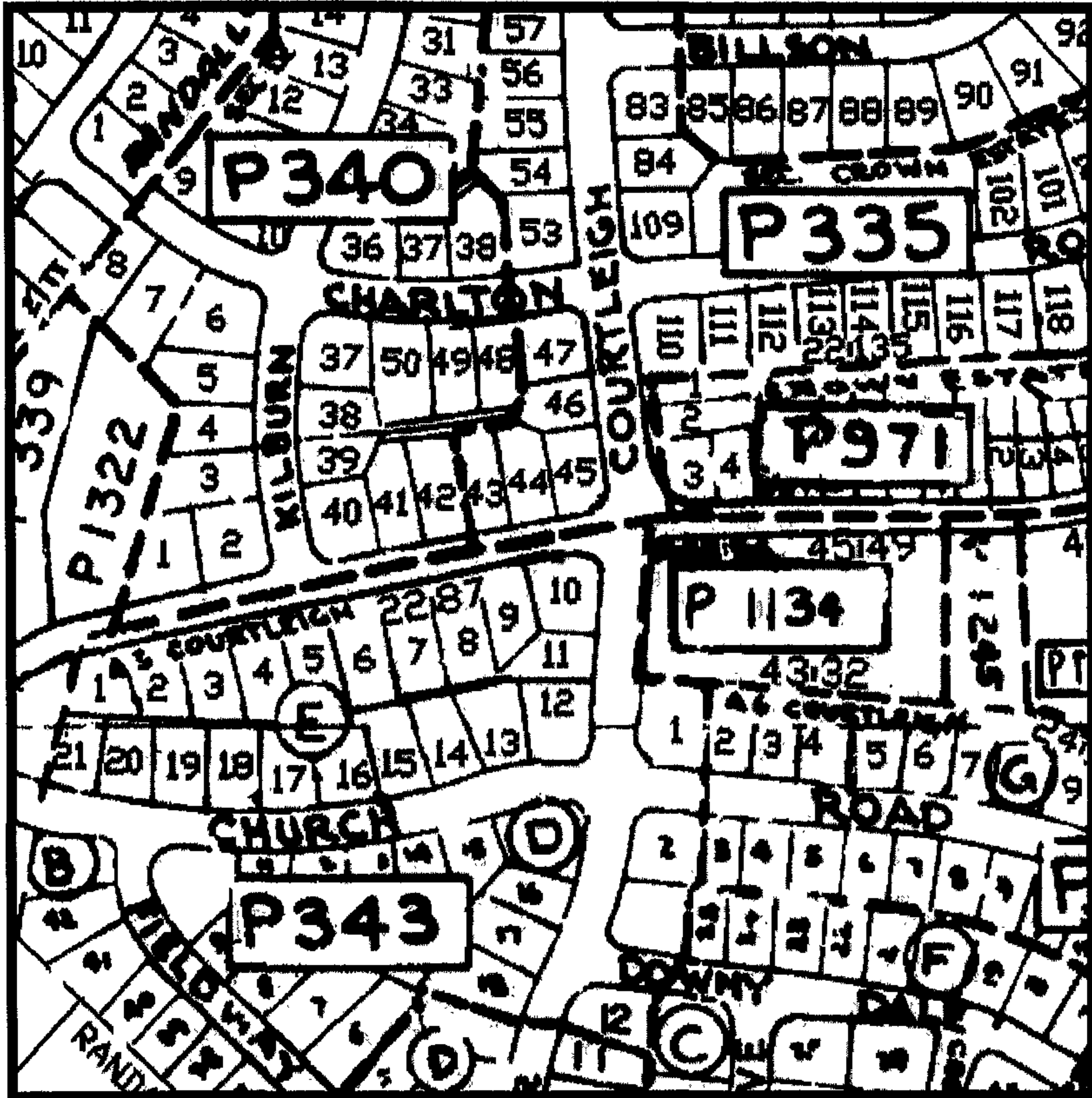
* NONE *



Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
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District - 02 Account Number - 0202572240



Property maps provided courtesy of the Maryland Department of Planning ©2001 - 2002.
For more information on electronic mapping applications, visit the Maryland Department of Planning web
site at www.mdp.state.md.us/webcom/index.html

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Tim Kotrocco, Director
Department of Permits and Development Management

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

November 6, 2003

SUBJECT: ZAC Comments

INFORMATION:

- **Item Number:** 04-118

Property Address Old Court Road
Petitioner: Howard Bolling
Property Size: .7 Acres
Zoning: DR 5.5
Requested Action:

Special Hearing

To allow ducks on a lot less than 1 acre.

Hearing Date:

• SUMMARY OF RECOMMENDATIONS:

An inspection of the above referenced property revealed that the requested variance would be detrimental to the health, safety, and welfare of the surrounding community. The foul could contribute noise and disease, jeopardize the enjoyment of near by residential uses. Office of Planning will recommends denial of the requested variances to allow 5 ducks on a lot less than 1 acre.

Section Chief



S:\COMPLAN\Dave Green\ZAC041558615churchlane..doc

Re: # 1

August 10, 2004

Howard & LoRè Bolling
5005 Old Court Road
Randallstown MD 21133

County Board of Appeals
400 Washington Avenue
Towson MD 21204

Re: Howard Irvin Bolling, Petitioner
5005 Old Court Road
Case No: 04-118-A

Dear Sir/Madam:

"This appears to be the first case involving a variance for ducks..."¹

Since there is no reliable precedent in this case, the Petitioners have undertaken extensive research and preparation to support their request for a variance to allow them to keep their five pet ducks.

People's Counsel's Density Assertion

As noted by the People's Counsel², BCZR 100.6 provides that fowl or poultry are subject to a minimum acreage of 1 with "no numerical limit, provided that a nuisance is not created or allowed to exist on the property." The statement in the letter that "it is arguable that the request is for a kind of density variance"³ is, by definition, untrue. Otherwise, as with larger animals, BCZR 100.6 would specify a density for poultry instead of explicitly not regulating their density. It is interesting to note that Asian potbellied pigs are also specifically excluded from density measures.

Uniqueness of Property

The Petitioners agree that there has been no evidence so far that the property satisfies the BZCR 307.1 "uniqueness" standard, as noted by Deputy Zoning Commissioner John Murphy.⁴ To wit, "As far as I can tell, the property is a flat lot, has no steep slopes... that would in any way distinguish it." At the original hearing, the property owners did not present evidence of uniqueness. Hence, partial grounds for this appeal.

In matter of fact, the rear of the property falls at a considerable angle due to the grading associated with installation of a swimming pool, said installation not in accordance with original drawings, and drains poorly due to clay content in the soil. As a result, the pond, straw, and presence of the ducks in fact aid the ecology of the yard.

¹ Letter to Lawrence S. Wescott from the Office of People's Counsel, August 5, 2004, page 1

² Letter, page 1

³ Office of People's Counsel letter, page 2

⁴ Findings of Fact and Conclusions of Law, Case No. 04-118-A, November 18, 2003, page 4

but from the sirens, engine noise, and enthusiastic music amplification that occur on a heavily traveled road such as Old Court Road, or from ridiculously-oversized riding lawnmowers used on postage-stamp lots.

Third, there is no evidence that ducks, even if overlooking the inspector's characterization of them as "foul" instead of "fowl," contribute, cause, or abet disease in any manner. We assert that the Inspector who couldn't have inspected the property is not qualified to make that statement. Further, noise measurements consistent with any disruption of or comparison with the area's traffic were not presented, and have, to the best of the Petitioner's knowledge, never been made. Exactly how they can be "detrimental to the health, safety, and welfare" of the community is not, and cannot be, stated.

In fact, the opposite is true: the ducks are beneficial to the property and surrounds:

The ducks are enclosed from dusk until after dawn, so there is no nighttime noise.

The drainage pond in which the ducks swim is pumped and refilled as required to prevent objectionable odors.

The heavy layer of straw in the duck yard, in addition to being a sound way of improving the soil's drainage over time, also absorbs odors.

Prevailing winds from the south-southwest⁷ blow from the duck pond *away* from surrounding properties.

Ducks eat insects, including mosquito larvae.

At the first hearing, Deputy Commissioner Murphy notes that a local resident whose property does not adjoin the Petitioner's was "worried" because "duck food attracts rodents."⁸ In fact, the duck's feed is in an enclosure, kept in a hanging feeder; no rodents have been observed in the three-quarters of a year in which that's been the case.

Immediate neighbors on both sides of the Petitioner's property have stated that the ducks are no bother at all. In one case, the neighbor said his grandkids "love to watch them." A written statement from one neighbor is attached to the package of information and photos that accompanies this letter.

The indisputable fact that the ducks are not a nuisance is evidenced by a complete lack of nuisance complaints to police, health, or animal welfare authorities in the full quarter of the ducks' life expectancy that they have been on the property.

The presence of the ducks does not constitute a nuisance, or any detriment to the welfare or safety of the neighborhood.

⁷ Maryland State Department of the Environment - <http://www.mde.state.md.us/assets/document/47>

⁸ Findings, page 3

August 10, 2004

Howard Irvin Bolling, Petitioner
Case No. 04-118-A

Welfare of the Ducks

Deputy Commissioner Murphy noted that the Petitioners “simply do not have nearly the acreage to adequately care for the ducks.”⁹ This is simply untrue:

If there is no limit to the number of ducks on a one-acre lot, there is no base of expertise or precedent to state that the property is “not adequate.”

According to The Animal Welfare Institute,¹⁰ “a minimum of 10 square feet of ground space per duck is required.” The Petitioners have allocated almost 500 square feet, *ten times the specified number*, for the exclusive use of the ducks.

In fact, as with any well-loved pet, the Petitioners take great care to assure the health and well-being of the ducks, with adequate food, environment, and care.

Summary

The Petitioner’s request meets all criteria for the Board of Appeals to grant the variance in this matter; it should be finalized forthwith.

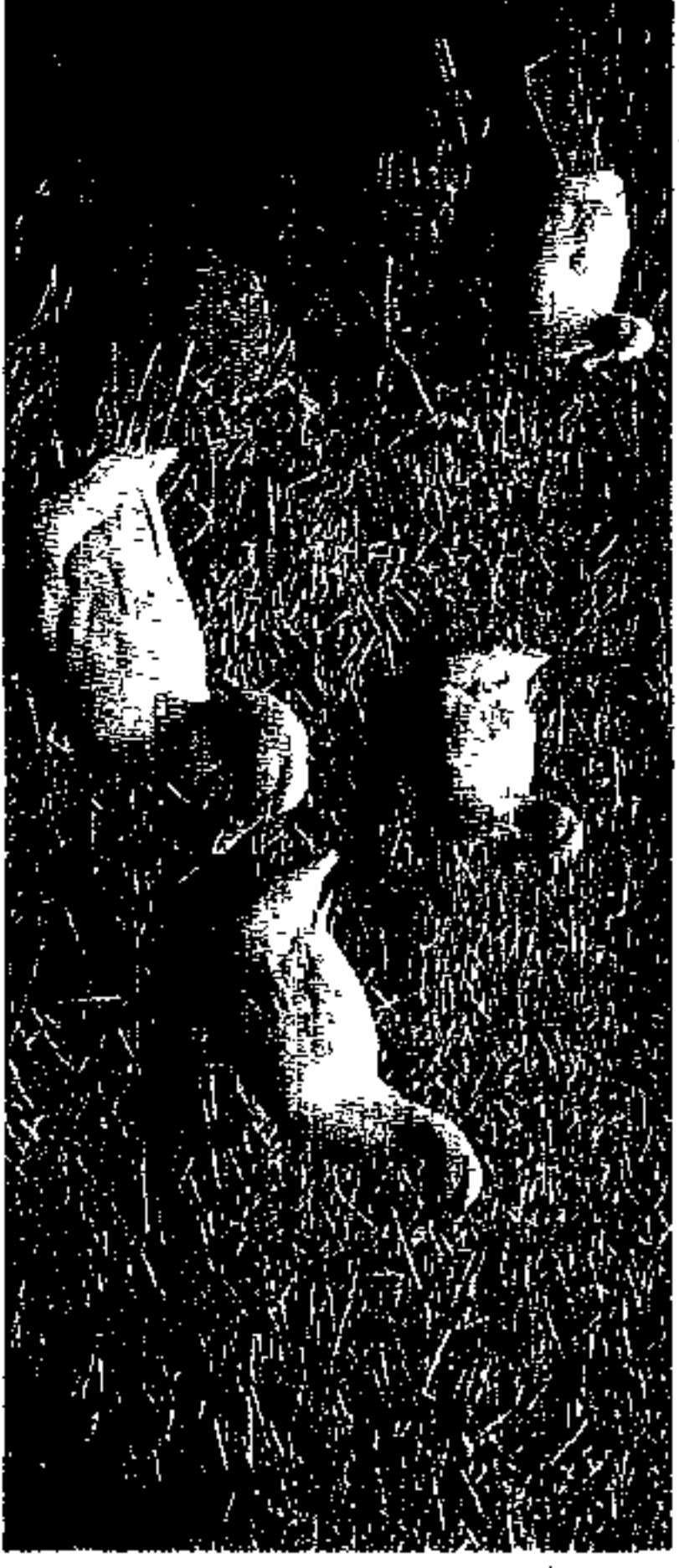
Respectfully,

Howard and LoRè Bolling, Petitioners

⁹ Findings, page 4

¹⁰ <http://www.awionline.org>, “Humane Husbandry Criteria for Ducks,” attached

Zoning Variance Appeal



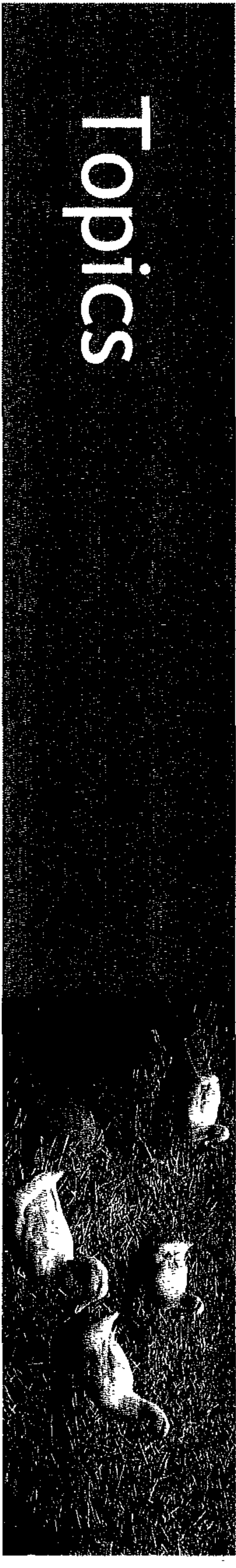
Case 04-118-A,

5005 Old Court Road

August 10, 2004

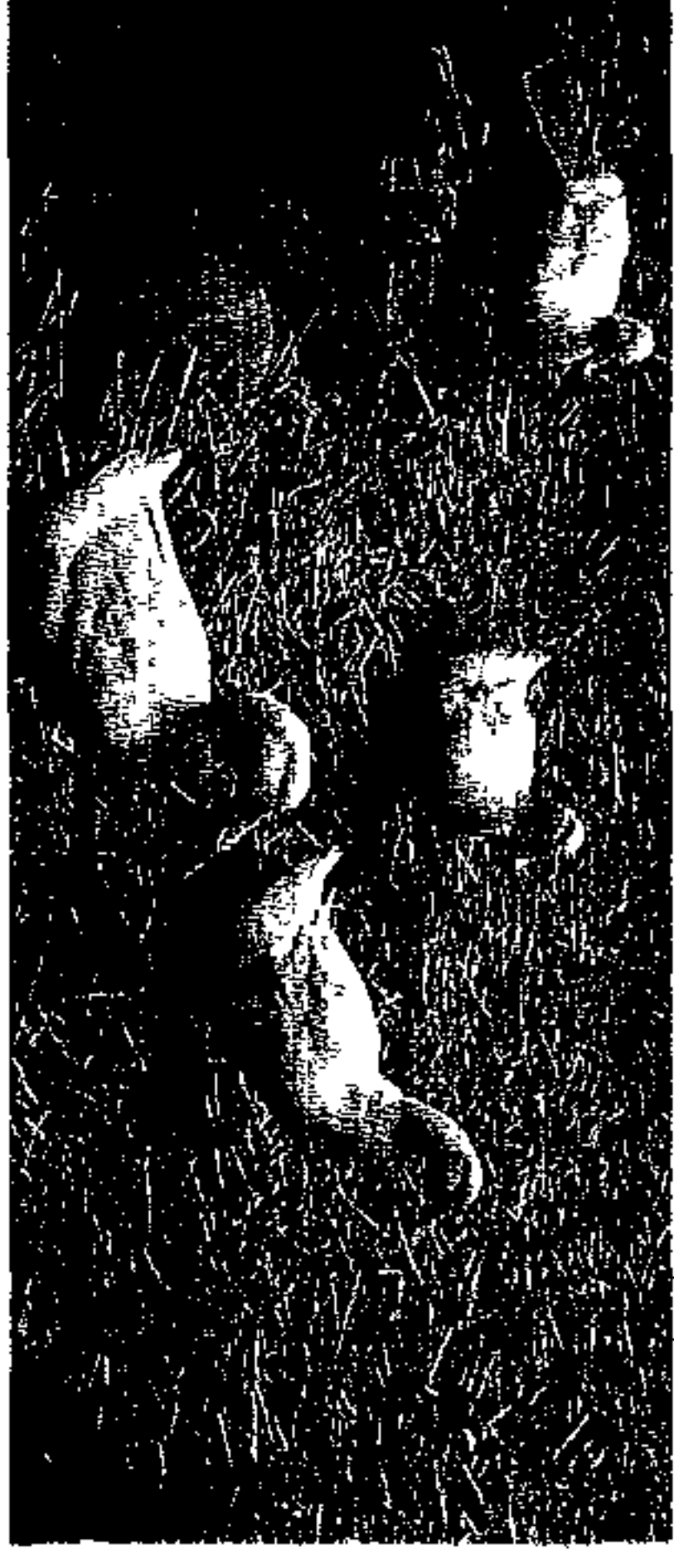
Per. # 2

Topics



- **🐑 Requirements for variance**
 - Characteristics of Lot – “special”
 - Hardship if not granted
- **🐑 Other considerations**
 - Impact on the neighborhood
-

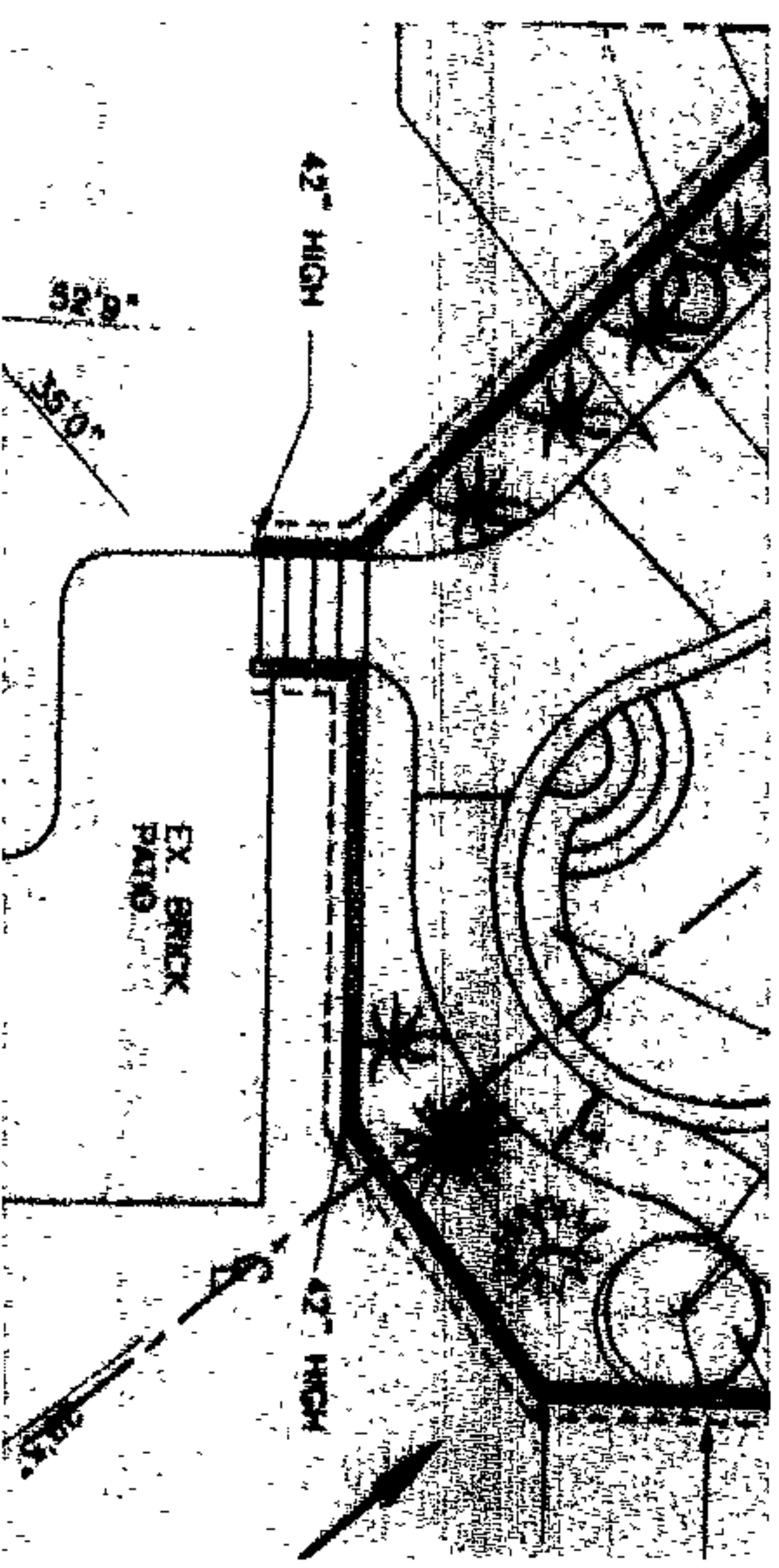
Characteristics of lot - it is special



- **🦘 Physical characteristics**
 - Slope
 - Drainage
- **🦘 Use of yard**
 - Extended living area
 - Backyard Wildlife Refuge
 - Substantial investment in making it special
 - Physical privacy

Physical - Slope

- 🦜 Lot falls 48" from rear entry to fence
- 🦜 Pool plan specified 42" retaining wall at head of pool deck
- 🦜 Under-excavation resulted in 26" wall
- 🦜 Remaining 16" of fall added to rear of property
- 🦜 Result: heavy slope, combined with clay soil, gives poor drainage and absorption of moisture



Physical - Drainage



- Before ducks: standing water, dying landscape plants
- Now: heavy straw layer and digging by ducks is gradually building rich layer of well-draining compost
- Lined pond catches runoff for evaporation; ducks remove mosquito danger by eating nymphs
- Ducks are part of balanced ecosystem



Use - Extended Living Area



- April – November use
 - Heated pool extends outdoor season
 - 792 sq ft deck, 168 sq ft patio, 580 sq ft pool area
 - 40' playscape includes 48 sq ft playhouse, 32 sq ft deck, 12 ft x 3 ft swinging bridge, slide, climbing wall, swings, “monkey” bars, slide, etc.



Federation Backyard

37319

to raise their young.



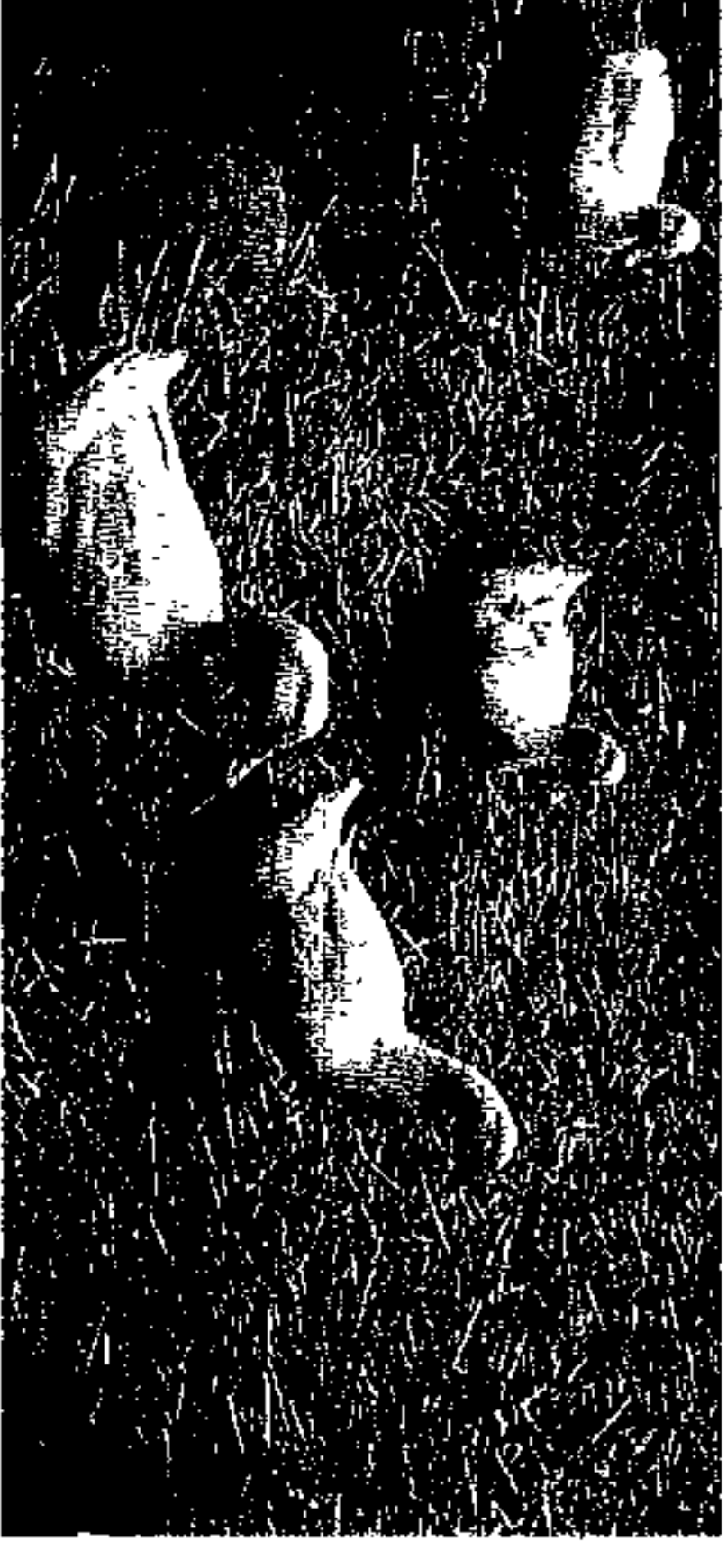
NATIONAL WILDLIFE FEDERATION®

This Certificate recognizes the establishment and maintenance of Backyard Wildlife Habitat

This habitat is certified in the National Wildlife Federation's worldwide network of mini-refuges where, because of the owner's conscientious planning, landscaping, and gardening, wildlife may find quality habitat—food, water, cover, and places to raise their young.

Prasidkna:

Use - Significant Investment in “Making it Special”



-  Pool and improved areas
-  Playscape (currently undergoing major renovation)
-  Significant annual investment in perennial and annual plantings – over 800 sq ft
-  Goal (in addition to enjoyment) – increase property values, add quality to neighborhood



Use - Physical Privacy

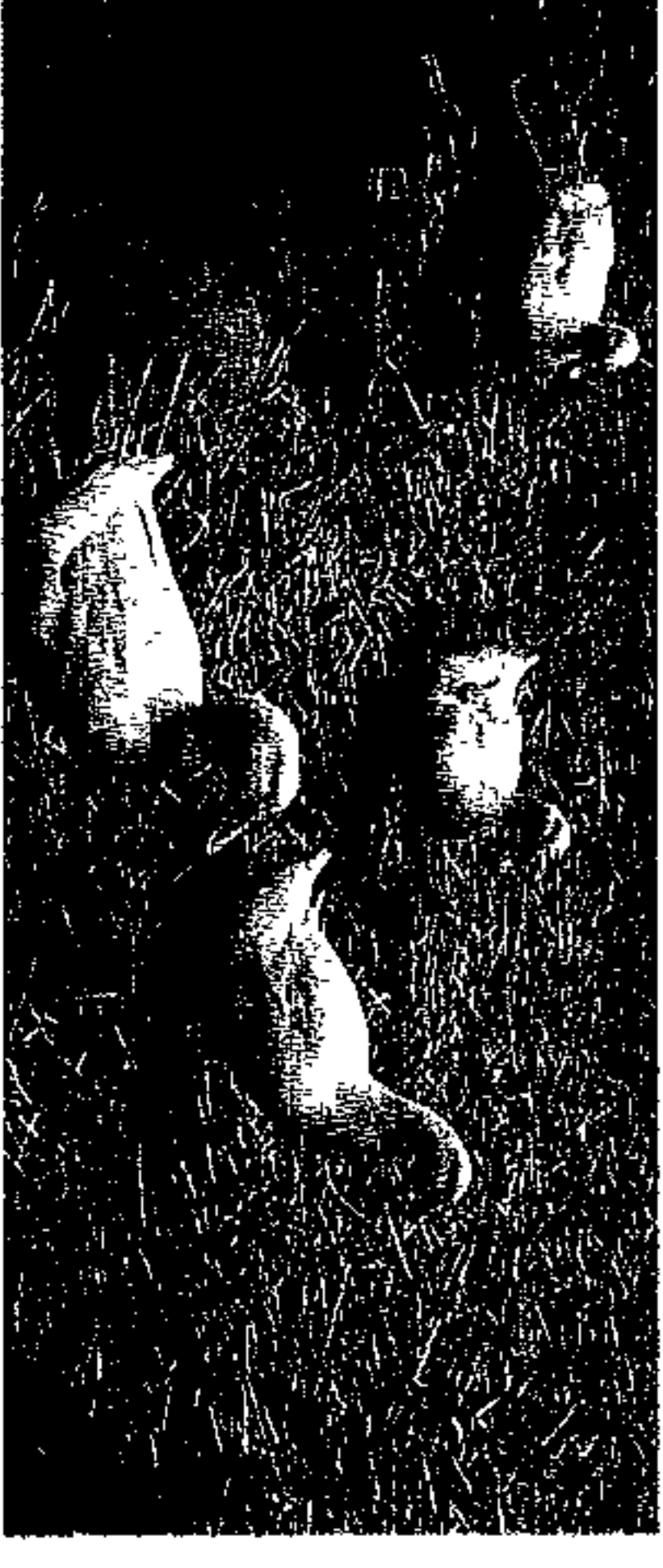


Physical and acoustical buffer

- 6 ft privacy fence
- Tall perennial plantings
- Waterfall

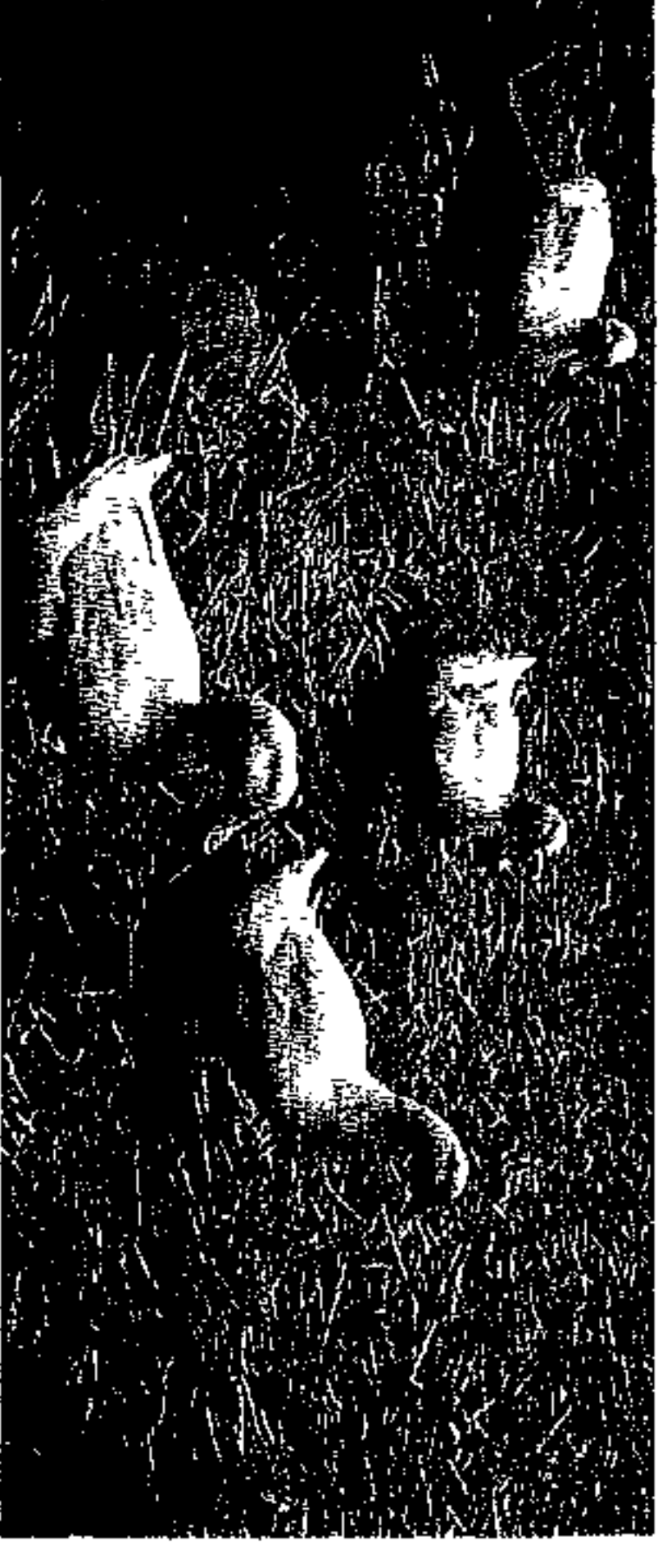


Hardship



- 🐾 Family pets
- 🐾 Educational for children
- 🐾 Enjoy sound and sight
- 🐾 Source of food

Hardship - Family Pets



- **2 Family is very attached to the ducks as pets**
- **Also witness the hundreds of dollars spent for variance request and appeal**
- **2 Being forced to remove pets would cause emotional distress**

Hardship - Educational



- 2 Observation of ducks and their behavior provides educational experience for children
 - Husbandry
 - Economics
 - Responsibility
- 2 Forced removal of ducks would teach a negative lesson

Hardship - Enjoyment



- Entire family enjoys watching ducks' antics
- Caring for the ducks – feeding, egg collecting, cleaning pond and “barn” – is a hobby
- Sound of ducks, combined with waterfall and wind chimes, is pleasing and buffers street noise
- Removal of ducks would have a negative impact on family quality of life

Hardship - Source of Food



- **2** Pekin ducks produce about 120 eggs per season
- **2** Duck eggs are equivalent to about 1.5 chicken eggs (and taste better, too)
- **2** Forced removal of ducks would result in loss of equivalent of 720 chicken eggs (60 dozen) per year

Other Considerations - Impact on Neighborhood

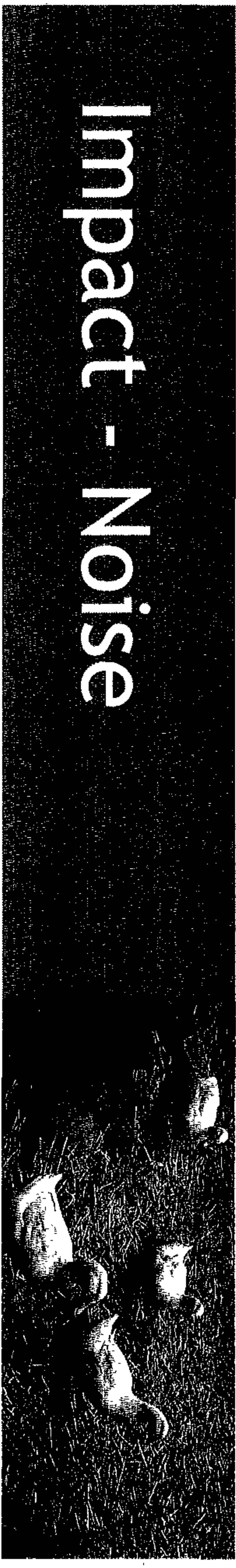


-  Noise

-  Sanitation (smell)

-  Pest attractor

Impact - Noise



- **🦆 Ducks are enclosed from dusk until after dawn**
- **🦆 Even when the ducks are agitated (seldom), they are less noisy than street traffic**
- **🔊 Sirens due to local hospital and fire station**
 - 🔊 **High traffic roads; engine and car stereo noise**

Impact - Sanitation

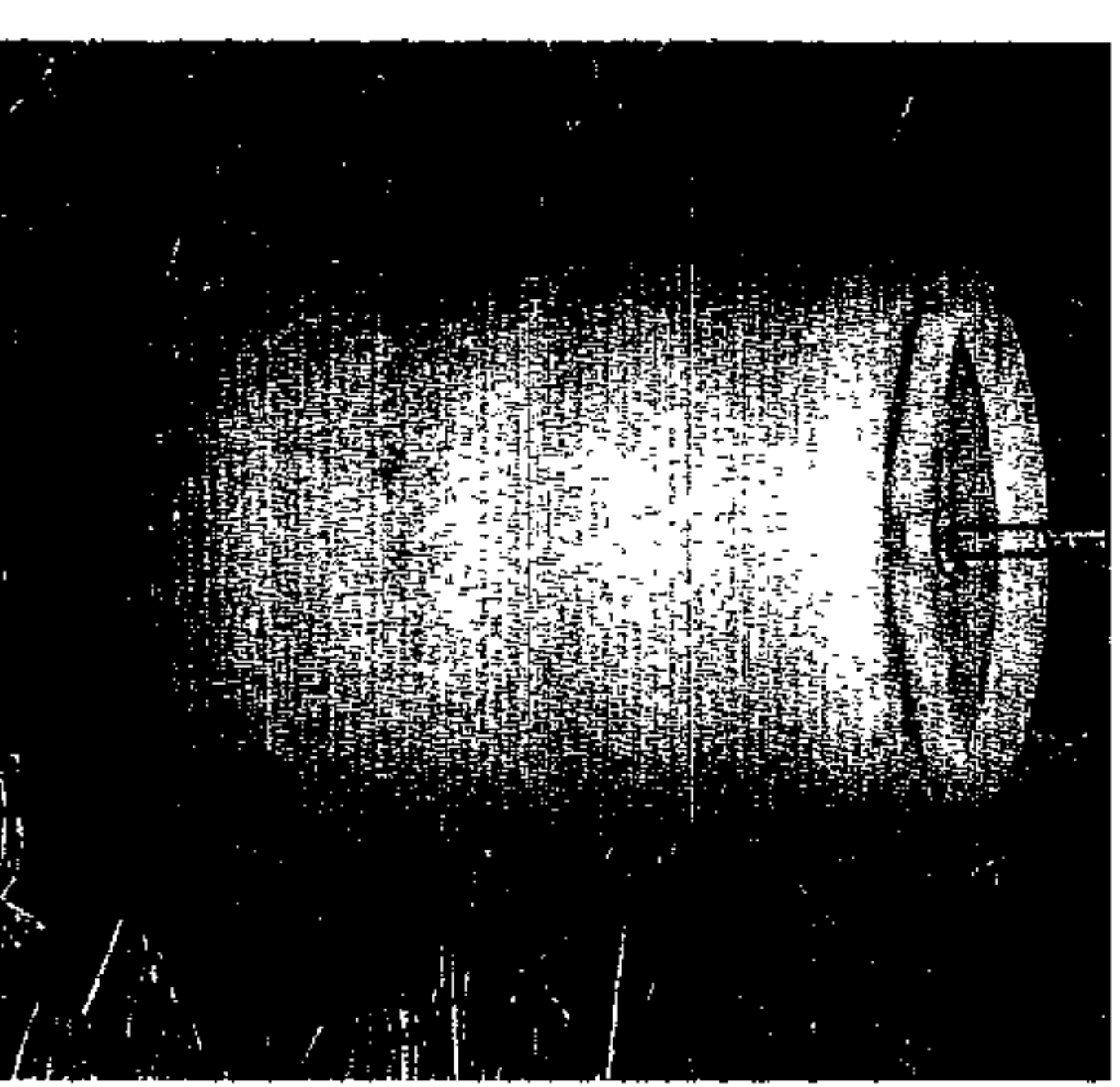


- **2** Pond is pumped and refilled as required – typically every week in hot weather, less often in cooler weather
- **2** Much of waste is contained in enclosed space which is cleaned regularly
- **2** Straw in yard absorbs any other odor, supplemented with fresh straw as required
- **2** Prevailing winds from south-southwest (see next slide) blow any stray odors toward our house and shrub-buffered yards on eastern side of 5005

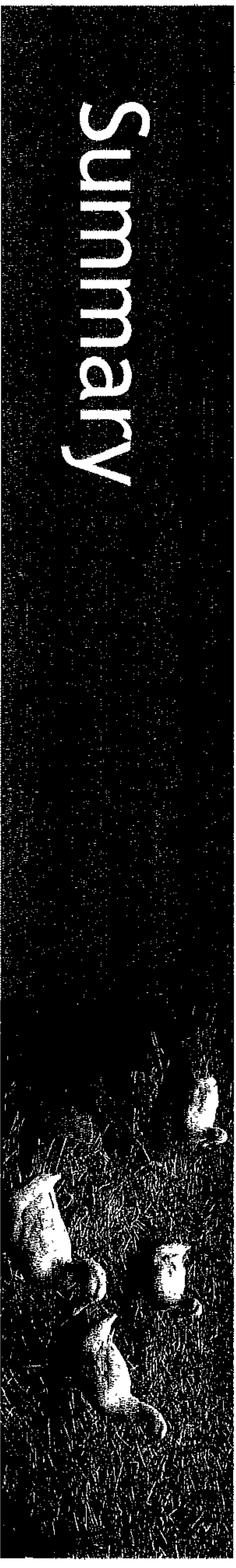
Impact - Pest Attractor



-  Feed is enclosed in “barn”, and is contained in off-the ground hanging feeder
 - no attraction to rodents
-  Ducks eat insects, including mosquito larvae



Summary



- 🐑 Property is special by characteristics and use
- 🐑 Removal of pets would cause a significant hardship
- 🐑 “Responsible neighboring” means there’s no negative impact on the neighborhood

Attachments



2 Letter from neighbor

August 8, 2004

To whom it may concern:

I reside at 5007 Old Court Road, Randallstown, Maryland. My yard shares one of its longer sides with 5005 Old Court Road. The Bolling's ducks do not bother me at all; they are not noisy, there is no noticeable odor or other negative effect on the neighborhood.

A handwritten signature in black ink, appearing to read "Mrs. Bolling", with a long horizontal flourish extending to the right.

Per. # 3



Animal Welfare Institute

www.awionline.org

Humane Husbandry Criteria for Ducks©

The premise of AWI's humane husbandry program is that animals are allowed to behave naturally. Infliction of pain and fear are strictly prohibited. The following criteria allow ducks the opportunity to express natural behaviors essential to health and well-being such as swimming, bathing, and foraging for food. Provisions are made to ensure social interaction, comfort, and physical and psychological well-being.

Breeds and origin of stock

Genetically engineered animals are prohibited. The purchase of stock from caged systems is prohibited.

The use of slow growing strains for meat production is strongly recommended so as not to add stress to the animals.

The mailing of eggs and ducklings is prohibited.

Pasture and Range

Outdoor access is required. Ducks must have continuous and unobstructed access to land covered with suitable and properly managed vegetation. In climates where access to vegetation is impossible year round, for example due to winter snow cover, ducks must still have access to the outdoors. Ducks must also have access to shelter at all times and be provided with protection from predators and adverse weather conditions.

Pasture must be rested from ducks to allow vegetation to grow back.

Ducks are aquatic birds and as such must have access to water for swimming and for head immersion. Access to water allows ducks to express their basic nature and behavior and maintain personal hygiene. Water must be of such a quantity that birds are able to submerge their bills and swim. To prevent drowning, bodies of water must be graded and/or contain rocks so that ducklings can easily get out of the water. Water must be well maintained and managed to prevent stagnant water and decaying vegetation. [Minimum and maximum water levels are under review.] However, since most ducks prefer shallow water throughout their lives, it is conceivable that the water level need only be two feet deep.

Ducks must not be overcrowded; a minimum of 10 square feet of ground space per duck is required. Ducks must be able to express natural behaviors including standing, spreading their wings, turning around, flapping their wings in water, and preening themselves without touching another bird.

Areas of retreat must be provided. Ducks need vegetative cover when outdoors. Muscovy ducks are secretive and spend a lot of time in trees or in vegetation in shallow water.

Nests, and in the case of muscovy ducks, covered, cavity nests, must be provided.

Housing

Ducks should not be subjected to dim, constant lighting.

Housing must allow for social interaction and include physical substrate for digging and hiding. Whether inside or outside, at all times, ducks must be able to make normal postural adjustments including turning around and resting and exhibit normal behavior such as wing flapping without touching another bird.

Housing must include a predator proof frame structure. Any stationary housing structure should be surrounded by a cement perimeter that is 3 feet deep into the ground. This protects the ducks from predators and rodents. [Additional suggestions will be made to help ensure protection from predators.]

Ducks shall have constant shelter that protects them from wind, heat, cold, rain, direct sunlight, and predators. Buildings housing ducks must have adequate lighting to enable the animals to be inspected at any time.

[Minimum and maximum temperatures and humidity levels will be established.] Minimum temperatures are of particular concern because feet are sensitive to the cold.

All ducks must be thoroughly inspected by a stock-keeper not less than once each day to check that they are in a state of well-being. If during inspection or at any other time, any of the animals are not in a state of well-being then corrective measures must be taken immediately to safeguard the ducks.

Ducks must have access to solid flooring that allows all ducks to stand and rest at the same time without overlaying one another. Wire mesh and slatted flooring, with or without litter, are prohibited. Forcing ducks to stand and walk on wire or slatted floors results in painful foot problems such as abrasions, bruises, lameness, and torn skin.

Ducks must be provided with areas of retreat. Indoors, muscovy ducks in particular need cubby holes or overhangs that are secure for sleeping. When breeding, ducks are less gregarious. During this time, small groups should be sheltered together rather than one large flock. [Group size is under review.]

Most domestic ducks have lost their ability to fly, so a 4-foot fence should be sufficient to keep them contained.

Structures housing ducks must have good ventilation and temperature and humidity controls. [Specific temperature and humidity levels will be established.]

Temporary Separation

Cages are prohibited. A duck shall not be kept in isolation unless briefly required for vaccination, feeding, identification, or veterinary procedures. The primary enclosure for temporarily single-housed animals should be of such a size to allow the animal to comfortably turn around, stand up, and spread her wings.

Space Requirements

Housing should always be sufficiently sized to allow normal postural adjustments with freedom of movement and adequately enriched to prevent boredom. Housing shall be sufficiently spacious to allow all animals to stand, rest and express natural behaviors such as stretching wings without touching another duck.

[Maximum indoor and outdoor stocking densities are under review.]

Bedding

Litter material should be straw, chopped straw, or shavings from non-treated wood. Suggested litter for birds up to ten days old is sawdust or pelleted straw material. Chopped straw can also be used at this age but it must be free of mold. For older birds, wood shavings and straw are suggested. Bedding must be clean and dry at all times.

Paper based bedding material is prohibited.

The animals' living quarters shall be kept dry and be of good hygienic quality and be cleaned by procedures that ensure good hygiene.

Breeding and Parenting

[The use of incubators is under review.] If the use of incubators is allowed and laying ducks are on the farm, artificial eggs must replace eggs taken from the nest, and the mother duck must be allowed to sit on the nest for one month.

[The use of artificial lighting is under review.]

It is suggested that there be one drake for every three to five ducks.

Feeding

Forced molting and restricted diets are prohibited.

Ducks shall have constant free access to clean, fresh water and constant access to food. Animals shall have a feeding plan that will guarantee a sufficient, varied, and well-balanced diet.

[Dietary requirements, specifically succulent greens and vegetation, are under review.]

Animal by-products are prohibited.

Ducks must have access to insoluble grit.

Ducks naturally spend a substantial amount of time searching for food. Therefore, food must be distributed or occur in the environment in such a way that the ducks search for it thereby providing enrichment and exercise.

All ducks shall be fed daily. Housing, stocking density, and food distribution shall be designed to minimize competition for food.

The routine use of non-therapeutic antibiotics, hormones, or sulfas to control or mask disease or promote growth is not permitted.

To help eliminate or reduce the animals' vulnerability to disease and the need for antibiotics at therapeutic levels, vaccines may be administered on an individual basis.

Handling

Ducks are strong and their legs and wings are easily injured, so they need to be brought under control carefully. Ducks should never be grabbed by their wings or legs. When a duck is lifted from the ground, the duck's weight should rest on the handler's forearm, the duck should be upright, and the wings should be held firmly but gently against the handler's side.

Quietness and avoiding sudden movements are essential to minimizing stress during handling and catching.

Ducks must be caught with a minimum of chasing. [Capture methods will be specified.]

In the event a duck suffers accidental injury on the farm or during transport, the animal shall receive individual treatment designed to minimize pain and suffering. Ill or injured animals shall not be transported in the same compartment with healthy or uninjured animals. Whether on the farm or at the slaughterhouse, animals that are sick or injured, in such a way that recovery is not realistic, must be promptly and humanely euthanized.

Transport

During transport, ducks must have adequate space to stand in their natural position without hitting their heads, and they must have room to rest. The floor must be non-slip and covered with sufficient litter to absorb droppings and ensure a non-slip surface.

If crates are used, they must have adequate ventilation and be spacious enough to avoid overcrowding. The doors must be sufficiently large to allow the easy insertion and extraction of the ducks and the floors must be solid and contain bedding.

The containers in which ducks are transported must be thoroughly cleaned prior to loading, allow for inspection and care of animals, and not be stacked in a way which interferes with ventilation. They must also have a mark indicating the upright position and a symbol showing they contain live animals.

Any person transporting animals shall ensure they are transported without delay to their destination. The person in charge of the animals must ensure that he is not causing injury or suffering while the ducks are either waiting to be loaded on to the transport vehicle or after they have been unloaded. No person shall transport any animal in a way which causes or is likely to cause injury or suffering to the animal.

[Minimum and maximum transport temperatures will be established.]

Slaughter

Ducks should be unloaded and slaughtered as soon as possible after arrival at the slaughterhouse and handled as little as possible up to the point of slaughter. Containers should be unloaded horizontally and should be handled with care to ensure they are not dropped, thrown, or knocked over.

[Minimum slaughter ages for Pekin, Muscovy, and Mallard ducks are under review.]

[Slaughter methods are under review.]

Provisions must be made to ensure that birds are not alive when submerged in scalding water for de-feathering.

Any duck that is sick or disabled must be kept apart from healthy ones until slaughtered, and any duck who is experiencing pain or suffering during transport or following arrival at the slaughterhouse must be euthanized immediately upon arrival at the slaughterhouse.

No person shall cause or permit a duck to sustain any avoidable excitement, pain, or suffering. Any person involved in any part of the killing or slaughter process, including movement of the animals, must have the knowledge and skill to perform those tasks humanely and efficiently.

All ducks must be restrained prior to stunning, slaughter, or killing in a manner which spares them any avoidable pain, suffering, agitation, injury, or contusions. Stunning must be followed immediately by bleeding or killing and where one person is responsible for both operations they must be carried out consecutively on one duck before moving on to the next.

Practical Prohibitions and Requirements

The environment shall contain appropriate materials with which to fulfill instinctive behaviors. A behaviorally appropriate and comfortable environment should eliminate the need for routine mutilations. If problems do arise, farmers must identify and eliminate the cause rather than resort to routine mutilations.

The equipment and fittings in buildings and other premises that ducks access shall be designed in such a way that they do not inflict injuries or pose risks to the animals. Muscovy ducks are prone to facial injuries because the bare patches of skin above the bill (caruncles) are vascularized and bleed readily. Fittings and other equipment shall not prevent the animals from behaving naturally nor unwarrantably limit their freedom of movement or otherwise cause them distress.

Debilling and bill heat treatment are prohibited. The bill of a duck is filled with nerves and the bill is used for dabbling or straining plankton and other microorganisms in mud and water. Debilling is a painful, debilitating mutilation that prevents ducks from maintaining bodily hygiene by preening. Debilled ducks are susceptible to bill infections, and because they cannot preen properly with a mutilated bill stump, they are more likely to become infested with lice, mites, and other external parasites. Debilling actually encourages abnormal feather pulling as does chronic stress, pain, boredom, nutritional deficiency, and a biologically impoverished, and filthy environment.

Pinioning and wing clipping are prohibited.

Leg bands can be used for identification. Care must be taken to ensure the band is appropriately sized so it will not become too tight as the bird grows. Toe punching and slitting of the webs of the feet are prohibited.

["Pin-type" wing identification is under review.]

Toe removal and toenail trimming are prohibited.

Materials given to ducks, whether bedding materials or occupational materials should not be from treated wood which could contain toxic chemicals.

Each farm must have a management plan addressing the prevention of disease.

Type of Farm

Each farm shall be a family farm, that is, a farm on which the family or a family member (a) owns the ducks; (b) depends upon the farm for livelihood; (c) and participates in the daily physical labor to manage the ducks and the farm operation. This shall not prohibit networking among family farmers as long as all criteria listed herein are adhered to by every member of the network.

General Principles

The Animal Welfare Institute will provide advice from veterinarians and experts in duck behavior when needed or requested.

Farmers in this program will be distinguished by a humane and conscientious attitude toward the animals in their care as well as by housing and husbandry standards which meet Animal Welfare Institute (AWI) criteria.

Recognizing that slight variations in the methods used to fulfill the above husbandry standards will exist, it is the goal of the AWI that the highest level of husbandry be maintained at all times, with the possible exception of temporary deviations when unexpected circumstances arise that are not under the control of the farmer. A farmer's extended deviation from Animal Welfare Institute criteria shall be cause for withdrawal of permission to use the Animal Welfare Institute name in conjunction with that farmer's product.

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CASE NAME 5005 Old Court Rd
CASE NUMBER 04-118-A
DATE 11/10/03

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[illegible]

The property is also distinguished from others in the community by the permanent improvements in structure and landscaping that have been applied to the property with the express intent of making it unique and increasing its value. Improvements include over 1,500 square feet of improved deck, pool, and play area, and over 800 square feet of perennial and cultivated annual plantings, and a six foot privacy fence.

The property is further unique in that it has been certified as a Backyard Wildlife Habitat by the National Wildlife Federation "because of the owner's conscientious planning, landscaping, and gardening, wildlife may find quality habitat – food, water, cover, and places to raise their young."⁵

There is no doubt that the property meets the BCZR 307.1 uniqueness standard "special conditions exist that are peculiar to the land... which is the subject of the variance request."

Hardship

In his Findings, Deputy Commissioner Murphy found that "the Petitioners make a powerful argument that removal of the five ducks would create real hardship and practical difficulty."⁶ This is still the case; in fact, the intervening time has amplified the family's attachment to the ducks as pets, and use of them as a source of food, entertainment, and instruction.

In addition, the ducks are full-grown, and have been treated as pets for almost a year and a half. Removal of them, even if the owners could figure out how to transport them practically and safely, would endanger the animals' welfare.

Forced removal of the ducks qualifies as a "practical difficulty" and "unreasonable hardship" in accordance with BCZR307.1.

Other Considerations

BCZR 307.1 specifies that a variance must be in "harmony" with the "spirit and intent" of the regulations, "and only in such manner as to grant relief without injury to public health, safety, or general welfare."

In a memorandum to the Director of Permits and Development Management, the Director, Office of Planning asserts that, "an inspection of" a property size of ".7" acres on Old Court Road revealed that "the foul could contribute noise and disease, [and] jeopardize the enjoyment of near by residential uses." This statement is specious and untrue from a number of standpoints:

First, no County inspector ever entered onto the property to perform an inspection.

Second, the property is isolated by a six foot privacy fence, and numerous plantings in an attempt to buffer noise, not from the soft quacking of five ducks,

⁵ National Wildlife Federation *Backyard Wildlife Habitat* Certificate 37319

⁶ Page 3