

The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

DANA MARK LEVITZ JUDGE COUNTY COURTS BUILDING TOWSON, MARYLAND 21204 410-887-2630 FAX 410-887-5910

RULING

CASE NO.

03-C-05-10822

DATE OF RULING 05/08/06

TITLE

Petition for Judicial Review

HEARING DATE 05/08/06

In the Matter of: Atkins Family Living Trust, et al.

Mr. Clerk:

Please file this ruling and send copies to counsel of record.

RULING

Upon consideration of the Atkins Family Living Trust's Petition for Judicial Review, it is the ruling of this Court that the decision of the Board of Appeals is hereby AFFIRMAD.

DANA M. LEVITZ, Judge

FILED MAY 12 2006

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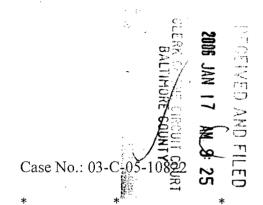
IN THE MATTER OF
ATKINS FAMILY LIVING TRUST
(DENNIS & CAROL ATKINS)LEGAL OWNERS/Petitioners/Appellants
VARIANCE FOR THE PROPERTY
LOCATED ON THE W/S OF RIDGE
ROAD, 149 S/OF CENTERLINE
OF EDMONDSON AVENUE
(2 RIDGE ROAD)

1ST ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT

Case No.: 05-024-A

IN THE CIRCUIT COURT FOR

BALTIMORE COUNTY



APPELLEE'S MEMORANDUM

Now comes Susan Johnson and Diane Kingsbury, Protestants/Appelles below, through counsel, Leslie M. Pittler, and pursuant to Md. Rule 7-207, submits this Memorandum to the Court to assist it in reaching a decision in this case.

STATEMENT OF THE CASE

The Petitioners/Appellants, the Atkins Family Living Trust, by its Trustees, through counsel, submitted a Petition for Administrative Variance, of Baltimore County, seeking an area variance, pursuant to BCZR 415.A.1.A, to allow a recreational vehicle to be stored 1' from the side lot, in lieu of the required 2 ½' from any side lot line. Prior to the expiration of the closing date for the Administrative Variance, a request for hearing was received from adjacent neighbors, Susan Johnson and Diane Kingsbury, dated July 5, 2004, requiring a hearing to be held on this Petition. After a hearing on October 18, 2004, the Deputy Zoning Commissioner, by Statements of Fact and Conclusions of Law, and Order, dated October 29, 2004, granted the variance. A timely appeal was filed by the adjacent Protestants/Appellees, Susan Johnson and

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Diane Kingsbury. This matter was scheduled for a denovo hearing April 6, 2005, and the Board of Appeals, by subsequent Opinion and Order, dated September 16, 2005, denied the variance relief requested. Petitioners/ Appellants, through counsel, timely filed a Petition For Judicial Review on October 13, 2005. A response was timely filed by Protestants/Appellees.

TESTIMONY SUPPORTING THE BOARD OF APPEAL DECISION

The reasons for the variance, according to counsel for Petitioner, are that the recreational vehicle is very expensive (T.7, l.10), that it has been vandalized (T.7, l.11) and that his clients are living on a fixed income (T.7, l.12).

The Petitioner called as their expert witness, Mr. Herbert Malmud, their property surveyor (T.12, l.1). Mr. Malmud testified that the parking on Ridge Road is allowed on both sides of the street and affects every house on Ridge Road, not just the Petitioners (T.7, l. 15&16).

The Petitioners were aware of all improvements on their property when said property was purchased (T.20, 1. 7&8). The Petitioners in fact, were not being denied the ability to have a car or other means of transportation, but could not have a the type of recreational vehicle they wanted according to their own expert's testimony (T. 27, 1. 1-4). Since every residence in this neighborhood has narrow a lot, Petitioner's lot is not peculiar, as admitted by their own expert (T. 27, 1. 7-13). The side yard of the Petitioners is consistent with every other location in their neighborhood and not peculiar to the Petitioners again as testified to by their expert witness (T28, 1. 2-7). The overhang on the Petitioner's house is not peculiar to their house, as their expert could not say one way or another (T.28, 1. 13-15). In sum, at the close of the Petitioner's expert witness's testimony, there was no evidence whatsoever of uniqueness.

Mr. Atkins, Petitioner, testified about a telephone pole in front of his house. This was known to him prior to the purchase of the recreational vehicle. He had knowledge of the pole

prior to their buying the recreational vehicle in question. (T. 34, l. 16&17).

Mr. Atkins's own testimony proves that there is nothing unique in regard to the property (T. 61, I. 16-21). He admitted in answer to his own counsel's question that a lot of houses in this neighborhood have overhangs on the side of their house as does the Petitioners', and yet gave the overhang as the reason he needs the variance (T. 62, I. 8-11).

Mr. Atkins, on cross-examination, agreed with his expert witness that there is nothing unique as to his property in comparison with the other properties in the neighborhood (T. 67, 1. 17-21 & T. 68, 1. 1-10). Furthermore, he was well aware of his property's constraints when he purchased the recreational vehicle, which is the subject of this action (T. 69, I. 15-18). Mr. Atkins further testified that his purchase of the recreational vehicle was for his own convenience and no other reason (T. 70, I. 4-8 & T. 70, I. 15-18).

Further, he tried to convince the Board that the Protestants' fence caused the need for the variance. That fence, however, is on the Protestants' property and not that of the Petitioners' property and is lawfully placed (T. 71, l. 4-11).

ARGUMENT

I. The Court should Affirm the County Board of Appeals Decision to Deny the Variance Either as a Matter of Law, Because Petitioner Failed to Produce Sufficient Evidence and Could Not Withstand Un-contradicted Cross Examination Evidence Or, in any event, Because the CBA Was Not Persuaded, A Discretionary Judgment Which the Court Must Respect.

Scope of Judicial Review

Application of Law to Facts; Inferences

In Snowden v. City of Baltimore, 224 Md. 443, 448 (1961), Judge Hall Hammond, later

Chief Judge, explained the essential principles:

"The judicial function in appeals from an administrative agency is well established and defined. The court will correct illegal actions and those, which are arbitrary and unreasonable because they are not based on substantial evidence but it will not substitute its own independent examination or its own judgment on the facts for those of the agency by which the carrying out of state policy has been delegated.

The heart of the fact-finding process is often the drawing of inferences from the facts. The administrative agency is the one to whom is committed the drawing of whatever inferences reasonably are to be drawn from the factual evidence. 'The Court may not substitute its judgment on the question whether the inference drawn is the right one or whether a different inference would be better supported.' The test is reasonableness, not rightness."

In Eger v. Stone 253 Md. 533, 542 (1969), the Court elaborated:

"We have made it quite clear that if the issue before the administrative body is 'fairly debatable', that is, that its determination involved testimony from which a reasonable man could come to different conclusions, the courts will not substitute their judgment for that of the administrative body, in the absence of an unconstitutional taking of property for public use without the payment of just compensation."... [Citations omitted].

"This rule will be adhered to even if we were of the opinion that the administrative body came to a conclusion we probably would not have reached on the evidence."

In Board of County Comm'rs. V. Holbrook, 314 Md. 210, 218 (1988) the Court quoted Snowden. The Court further explained in Board of Physicians Quality Assurance v. Banks, 354 Md. 59 (1999):

"A court's role in reviewing an administrative agency decision is narrow...; it 'is limited to determining if there is substantial evidence in the record as a whole to support the agency's finding and conclusions, and to determine if the administrative decision is premised on an erroneous conclusion of law..." 354 Md. At 67-68.

"in applying the substantial evidence test, a reviewing court decides 'whether a reasoning mind could have reached the factual conclusion the agency reached'... A reviewing court should defer to the agency's fact-

finding and drawing of inferences if they are supported by the record... A reviewing court 'must review the agency's decision in the light most favorable to it;... the agency decisions *prima facie* correct and presumed valid and... it is the agency's province to resolve conflicting evidence' and to draw inferences from that evidence." 354 Md. at 68.

In <u>Riffin v. People's Counsel fro Baltimore County</u> 137 Md. App. 90, 93-94, 767 A.2d 922 (2001), Judge Moylan stated for the Court of Special Appeals that:

"With regard to the standard of review to be applied in a case such as this, we explained in <u>Stover v. Prince George's County</u>, 132 Md. App. 373, 380-81, 752 A.2d 686 (2000), that:

[w]hen reviewing a decision of administrative agency, this Court's role is "precisely the same as that of the circuit court." "Judicial review of administrative agency action is narrow. The court's task on review is *not* to substitute its judgment for the expertise of those persons who constitute the administrative agency."

Rather, "[t]o the extent the issues on appeal turn on the correctness of an agency's finding of fact, such finding must be reviewed on the Substantial evidence test." The reviewing court's task is to determine "whether there was substantial evidence before the administrative agency on the record as a whole to support its conclusions." The court cannot substitute its judgment for that of the agency, but instead must exercise a "restrained and disciplined judicial judgment so as not to interfere with the agency's factual conclusions." (Citations omitted; emphasis supplied)."

The Quality of Substantial Evidence

In Futoryan v. Mayor and City Council of Baltimore 150 Md. App. 157,177,819 A.2d 1074 (2003), Judge Moylan said:

"As to the quality of "substantial evidence," Judge Jarrell had earlier described that quality in *Friends of the Ridge v. Baltimore Gas and Electric Co.*, 120 Md. App. 444, 466, 707 A.2d 866 (1998), vacated in part, 352 Md. 645, 724 A.2d 34 (1999):

The substantial evidence standard applicable to the Board's finding of fact and resolution of mixed questions of law and fact, sometimes referred to as the "fairly debatable" test, is implicated by our assessment of whether the record before the Board contained at least "a little more than a scintilla of evidence" to support the Board's scrutinizes action. If such substantial evidence exists, even if we would not have reached the same conclusions as the Board based on all the evidence, we must affirm. Stated another way,

substantial evidence pushes the Board's decision into the unassailable realm of judgment call, one for which we may not substitute our own exercise of discretion. (Emphasis supplied)."

The Burden of Persuasion; The Effect Where the Agency Is Not Persuaded

In <u>Pollard's Towing v. Bermans Towing</u> 137 Md.App. 277,768 A.2d 131 (2001), Judge Loylan illuminated the function of the reviewing court when an agency is simply not persuaded by the Petitioner. He wrote:

"In this case all that was required was that the Board be not persuaded that there was a need for additional towing service. To the extent its finding was weightier than that, the incremental weight was surplusage. Far less is required to support a merely negative instance of non-persuasion that is required to support an affirmative instance of actually being persuaded of something." 137 Md.App. at 289.

He quoted Starke v. Starke, 134 Md.App. 663 (2000) at 137 Md.App. 290:

"[I]t is far easier to sustain as not clearly erroneous the decisional phenomenon of not being persuaded than it is to sustain the very different decisional phenomenon of being persuaded... Mere non-persuasions... require nothing but a state of honest doubt. It is virtually, albeit perhaps not totally, impossible to find reversible error in that regard."

Baltimore County Decision on Zoning Variances

Riffin, supra, and Red Roof Inns v. Peoples's Counsel 96 Md. App 219 (1993) affirmed the Baltimore County CBA's denial of variances. Daihl v. Baltimore County Board of Appeals 258 Md. 157 (197); Cromwell v. Ward 102 Md. App. 691 (1995) and Umerley v. People's Counsel 108 Md. App. 497, cert. Denied 342 Md. 584 (1996) reversed grants of variances. Cromwell explained that variances under BCZR 307.1 should rarely be granted, and certainly not for advantage or convenience of a property owner. The height variance (7 feet) there was innocuous in comparison. It was for a garage and wine cellar on a house in a residential area. We cannot find any appellate case reversing the Baltimore County CBA's denial of a zoning variance.

Implementation of the Variance Statute

The first inquiry under BCZR 307.1 is whether the property is peculiar or "unique" so as to cause an unusual difficulty. If evidence of uniqueness is insufficient or unpersuasive, the inquiry ends there. Cromwell, Umerley, and Riffin supra. If this threshold is passed, the further question is whether the unique condition results in a "practical difficulty" particular to the site. Easter v. Mayor & City Council 191 Md. 395 (1950). The term "practical difficulty" is itself a term of art, with criteria defined in McLean v. Soley 270 Md. 208, 213-15 (1973).

The purpose of variance law is to allow relief so a property owner has some reasonable use of his property. See 3 Young, <u>Anderson's American Law of Zoning</u> 4th, Sec. 20.02 (1996):

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

A key point is that the property owner's liability to comply with the zoning law for the purpose of a selected use does not justify a variance. Otherwise, a variance would have to be granted in every case; and zoning law would collapse. The Court addressed this issue in <u>Umerley</u>, *supra*, where the property owner observed that he could not possibly expand the trucking facility without the variances from the setback requirements set under the current zoning law. Judge Bishop observed, at 108 Md. App. 508:

"In their briefs, the Umerleys fail to point to any evidence that would support a finding that their property is 'unique' within the meaning of Maryland case law and BCZR 307.1. The Umerleys only point to evidence that shows that their operations predate the 1976 trucking facility regulations, that their facility has always been in violation of those regulations, that their operations cannot comply with those regulations, and that their operation is important to the economy of both Baltimore County and the State of Maryland. Because the uniqueness requirement mandates that the subject property 'have an *inherent* characteristic not shared by other properties in the area,' such evidence cannot support a finding that the Umerleys' property is unique within the

meaning of Maryland Law. A review of the record fails to reveal any other evidence that would support such a finding.

As an example, environmental constraints common to the area do not justify a variance. This issue came up in Chester Haven L.P. v. Queen Anne's County Board of Appeals 103 Md. App. 324, 337-41 (1955). There, the developer of a waterfront property owner based a request for variances on the constraints imposed by the Chesapeake Bay Critical Area law. But the Court pointed out that the waterfront properties in the area all had similar constraints, so there was no unique situation resulting in a particular problem. In affirming the zoning board denial of variances, the Court wrote:

There was little, if any, evidence presented below as to differences, if any, between other properties in the neighborhood (or area or district) and the subject property. Presumably, the provisions of the zoning ordinance would similarly impact on such nearby properties. 103 Md.App. at 339.

Uniqueness Resulting in Difficulty

The word "unique" is defined strictly. Otherwise, anyone could make some sort of claim. In <u>Cromwell</u>, 102 Md.App. at 710 (1955), the court stated:

"In the zoning context the 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property.

"Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls."

The uniqueness must also relate to a particular difficulty. The court said in <u>Easter v.</u>

<u>Mayor & Cit Council</u> 195 Md. 395 (1950):

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

Practical Difficulty

The criteria in McLean v. Soley, 270 Md. 208, 214-15 (1973) are:

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

McLean reflects that the "practical difficulty" concept focuses mainly on impact to the property owner. A tenant who desires a use of a singular type and scale is in a lesser position, if any, to claim practical difficulty

Variances for Expansion and Convenience Are Generally Not Allowed

Appellants' proposed variance is for an the storage of an recreational vehicle for their own convenience, which their property cannot accommodate under section. The Court of Appeals has rejected such requests because their essence is relative advantage or convenience. Marino v. City of Baltimore, 215 Md. 206 (1957); Cleland v. City of Baltimore, 198 Md. 440 (1951); Pem Constr. Co. v. City of Baltimore, 233 Md. 372 (1964).

Also, Appellate courts have, in this connection, rejected variance claims based on financial or revenue considerations. Burns v. Mayor & City Council, 251 Md. 554

(1968); <u>Daihl v. County Board of Appeals</u>, 258 Md. 157 (1970); <u>Cromwell</u>, *supra*, quoting <u>Xanthos v. Board of Adjustment</u>, 658 P.2d 1032, 1037 (1985):

"Hardship is not demonstrated by economic loss alone... Every person requesting a variance can indicate some economic loss. To allow a variance any time any economic loss is alleged would make a mockery of the zoning program."

Here Appellants request involves a convenience to them.

I. On this Record, The Evidence of "Uniqueness" is Legally Insufficient.

The claim "uniqueness" boils down to the argument that the property has an overhang on the house and a telephone pole near the driveway. If this were enough to satisfy the legal standard, then every property would be unique. Indeed, as taught in law school for the purpose of specific performance of real estate contracts, every property is "unique" in the sense that it has some location or characteristic peculiar to itself.

Uniqueness according to the appellants equates to a telephone pole near front of the driveway and the existence of an overhang. There was no testimony by Appellant that this was unique to their property. Their own expert offered no testimony that this was a unique factor on their property and in fact testified to the contrary.

The Appellants' argument about the subdivision and when the subdivision was platted means nothing as to the uniqueness of this particular site. As a matter of fact, it contradicts that contention because of the similarity of all lots in their subdivision.

Relevancy of Article 4 of the Baltimore County Zoning Regulations (BCZR)

If the Appellants were able to prove uniqueness, which they clearly were not able to do, then they would have to prove not only practical difficulty but also undue hardship.

Nowhere does Appellant point out the relationship to this case Article 4 of said regulations. Article 4 of the Baltimore County Zoning Regulations states:

Section A400 "Purpose"

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

Section 415A 1 "Recreational Vehicles and Boats"

One Recreational Vehicle may be stored on a residential lot.

Section 415A.1P:

Where you have a single family detached or semi-detached dwelling, one such vehicle may be stored 2 ½ feet from any rear or side lot line, however when in a side yard must be at least 8' to the rear of the lateral projection of the front foundation line of dwelling.

Section 415B:

Where the requirements set forth herein for the storage of the Recreational Vehicles would create an undue hardship, the Zoning Commission may approve a modified storage plan upon Petition and Public Hearing, thereon, according to the procedure defined in Title 26, Sec 26-127(b).

Section 415B is clear that the test <u>Green v. Bair</u> 77 Md. App. 140 (19880, as set out in the County Board of Appeals Opinion, would govern even if the uniqueness test would have been met.

Analysis of Board's Decision

On page two (2) of its opinion the Board correctly stated that the Petitioners expert witness agreed that the size and shape of the subject property was not peculiar for the area and was in fact consistent with the rest of the neighborhood. The Board again correctly summarized the testimony of the Petitioner wherein it stated on page three (3) of its opinion that he was aware the property lines and limitations when he purchased the subject recreational vehicle.

The Board then correctly stated the relevant statute section 307 of the Baltimore County Zoning Regulations as well as <u>Cromwell v. Ward</u>, 102 Md.App. 691 (1995) and <u>McLean v.</u>
Soley, 270 Md. 208 (1973) as well as Green v. Bair, 77 Md. App. 140 (1988), in finding that the

uniqueness test of Cromwell and the hardship test of Bair was not met.

CONCLUSION

There being no evidence of uniqueness as the test is set out in <u>Cromwell</u> and other cases Cited, there was no need for the Board of Appeals to consider undue hardship, but the Board of Appeals made it clear that if it would have, the Petitioners/Appellants case failed to persuade them based on the testimony herein set forth.

Respectfully Submitted,

Leslie M. Pittler, Esquire 25 Wandsworth Bridge Way Lutherville, Maryland 21093

(410) 823-4455 Fax: (410) 296-4461

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 17th day of January, 2006, a copy of the foregoing Appellees Memorandum was mailed first class mail, postage paid to Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Ave, Towson, Maryland 21204, Attorney for Petitioners/Appellants, The Atkins Family Living Trust, and to Peter Max Zimmerman, Esquire, Peoples' Council for Baltimore County, Room 47, 400 Washington Avenue, Towson, Maryland, 21204.

LESLIE M. PITTLER, Esquire

Leslie M. Pittler, Esquire 25 Wandsworth Bridge Way Lutherville, Maryland 21093

(410) 823-4455 Fax: (410) 296-4461

January 17, 2006

Clerk Civil Division County Courts Building 401 Bosley Avenue Towson, MD 21204

Re:

In the Matter of Atkins Family Living Trust

Case No.: 03-C-05-10822

Dear Madam Clerk:

Enclosed for filing please find Protestants/Appellees Memorandum regarding the above captioned matter.

Thank you for your assistance in the matter. Please feel free to contact me should you have any questions.

Respectfully,

Leslie M. Pittler, Esquire

Enclosure(s)

cc: Peter Max Zimmerman, Esquire

Michael P. Tanczyn, Esquire

Susan Johnson and Diane Kingsbury

IN THE MATTER OF
ATKINS FAMILY LIVING TRUST
(DENNIS & CAROL ATKINS)LEGAL OWNERS/Petitioners/Appellants
VARIANCE FOR THE PROPERTY
LOCATED ON THE W/S OF RIDGE
ROAD, 149 FEET S/OF CENTERLINE
OF EDMONDSON AVENUE
(2 RIDGE ROAD)

1ST ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT

Case No.: 05-024-A

IN THE CIRCUIT COURT FOR

BALTIMORE COUNTY

*

*

Case No.: 03-C-05-10822

APPELLANTS' MEMORANDUM

Now comes The Atkins Family Living Trust, by its Trustees, Dennis Atkins and Carol Atkins, Petitioners/Appellants below, through counsel, Michael P. Tanczyn, and pursuant to Md. 7-207, submits this Memorandum to the Court to assist the Court in reaching a decision in this

STATEMENT OF THE CASE

The Petitioners/Appellants, the Atkins Family Living Trust, by its Trustees, through counsel, submitted a Petition for Administrative Variance, of Baltimore County, seeking a minor area variance, pursuant to BCZR 415.A.1.A, to allow a recreational vehicle to be stored 1' from the side lot line, in lieu of the required 2.5' from any side lot line. Prior to the expiration of the closing date for the Administrative Variance, a request for hearing was received from adjacent neighbors, Susan Johnson and Diane Kingsbury, dated July 5, 2004, requesting a hearing be held on this Petition. After hearing held before the Deputy Zoning Commissioner for Baltimore County on October 18,

2004, the Deputy Zoning Commissioner, by Statements of Fact and Conclusions of Law, and Order, dated October 29, 2004, granted the variance relief sought. A timely appeal was filed by the adjacent Protestants/Appellees, Susan Johnson and Diane Kingsbury. This matter was scheduled for hearing April 6, 2005, and the Board of Appeals, by subsequent Opinion and Order, dated September 16, 2005, denied the variance relief requested. Petitioners/Appellants, through counsel, timely filed a Petition For Judicial Review on October 13, 2005.

STATEMENT OF FACTS

The Petitioners/Appellants' lot, described by expert witness, Herbert Malmud, a registered licensed surveyor, with more than thirty years experience, as being lot 4 in block B in the subdivision of North Paradise, approved April 23, 1920 (T-14). Dimensions of the Petitioners/Appellants' lot show on the plat as being 35' by 120', but the Deed by which they took title to the property, shows the width of the lot to be 50' (T14-15). The plat of North Paradise, approved in 1920 was admitted as Petitioners' Exhibit 2 (T-14), and the Petitioners/Appellants' lot, with improvements, on the plat to accompany Petition for Zoning Variance was admitted as Petitioners' Exhibit 1. improvements shown on Petitioners' Exhibit 1 for 2 Ridge Road, the Petitioners/Appellants' residence, showed the original two-story frame dwelling, with a one-story addition to the rear, and a pool with deck in the rear yard, and with fencing, as well as the existing concrete drive, located on the north side of the property, with the overhang on the house, which extended out and over the portion of the existing driveway, just above the side entrance door to 2 Ridge Road (T-15). The property was identified as being located in the DR 5.5 zoned land (T-16), and found to comprise 6,000 square feet, based on the dimensions of 50' by 120' (T-16). The property is directly accessed from Edmondson Avenue, if one was coming east, by making a right turn on Ridge Road and coming

150' down Ridge Road from Edmondson Avenue to the property (T-17). Ridge Road was described by the surveyor as 20' wide in this area, with parking allowed on both sides, which the surveyor found significant in terms of the Petitioners/Appellants' ability to maneuver their RV in and out of this 13.5' wide driveway (T-17).

Carol and Dennis Atkins had purchased this property, by Deed January 5, 1976, admitted as Petitioners' Exhibit 3 (T-18), and conveyed the property from themselves individually to the Atkins Family Living Trust, by Deed August 21, 1998 (T-18), admitted as Petitioners' Exhibit 4 (T-18-19). Petitioners' Exhibit 5A was a location survey prepared by the licensed survey firm of Spellman Larson & Associates, dated January 6, 1976, showing the improvements on the property at the time the Atkins purchased the property, admitted as Petitioners' Exhibit 5A (T-19-20). Petitioners' Exhibit 5, the SDAT printout, showing the improvements on the Petitioners/Appellants' property had been constructed in 1926 (T-19).

The Protestants/Appellees' property, 6003 Edmondson Avenue, had a portion of its rear yard adjacent to the Petitioners/Appellants' side yard, and evidence indicated that the Protestants/Appellees had purchased that property in 2001, admitted as Petitioners' Exhibit 6, showing the improvements on 6003 Edmondson Avenue had been constructed in 1942 (T-20). The surveyor, Mr. Malmud, testified that approximately 60' of the Protestants/Appellees' rear yard lays adjacent to the rear yard of 2 Ridge Road (T-21), and that the first 60' of the Petitioners/Appellants' side yard lot line from Ridge Road lays adjacent to the owners of 6001 Edmondson Avenue (T-22). Mr. Malmud testified that Petitioners/Appellants' lot was a narrow lot on a northerly narrow street, and that the driveway was less than 11' wide, with limited ways to get in and out (T-22). He further testified that because of the overhang over the side door on 2 Ridge Road, that the

Petitioners/Appellants' recreational vehicle could not be parked any closer to the house than the projection on the porch (T-23). He further testified that if the Board were to grant the variance relief, it would not increase the residential density at 2 Ridge Road (T-24), and that any lesser variance amount granted would not afford the Petitioners/Appellants the right to park the RV where they park it at present (T-24), and that the variance could be granted without injury to the public health, safety, and general welfare (T-25).

One of the Petitioners/Appellants' Trustees, Dennis Atkins testified that he was 59 years of age, and working (T-29), and that he and his wife, Carol, had continuously resided at 2 Ridge Road since 1976 (T-30). He testified he had a recreational vehicle parked at that location for approximately ten years continuously, except for the time periods when they would be using the vehicle while away on a trip (T-30). He testified his first recreational vehicle was approximately 24' long and approximately the same width as the current 31' long RV, which he believed to be 10' wide (T-31). He had been the operator of the RVs, in terms of pulling them in or backing them out (T-31). He further testified that he had never hit the overhang, nor the Protestants/Appellee neighbors' fence since it was constructed (T-32). He testified as to the accuracy of the pictures showing the improvements, including fences and additions to the property shown thereon, at 2 Ridge Road (T-33). He testified about a telephone pole located right in the sidewalk next to his driveway, that had been there ever since they resided there, in 1976 (T-34). He testified that the location of the telephone pole hindered the maneuverability of the RV, and made it much more difficult to maneuver the vehicle in and out and that he always backed the RV in (T-35). He testified that was necessary, because it was easier, and for safety reasons, because you can not back it out, as the operator would not be able to see the traffic on Ridge Road or the area on Ridge Road, where the

vehicle was being backed out (T-35). He testified that the overhang with the shingles on it, as shown adjacent to the RV had always been there, and serves the purpose of protecting the door entrance from the weather (T-36). He testified that the aluminum siding around the overhang, shown in the picture had been installed in approximately 1981 (T-36), as shown on Petitioners' Exhibit 6A admitted (T-37).

He testified that the exit on the RV is located on the right side as you face the RV, and when the RV was parked, was located almost directly in front of their side entrance door (T-37). He further testified that the RV door opens out, and that when it is parked, the RV door can be opened without hitting the overhang (T-38). He further testified that the side door entrance of 2 Ridge Road, at the point of the overhang, opens out towards the driveway (T-38). He testified that the driveway had been replaced approximately ten years before the hearing (T-39), before they had purchased any RVs (T-39), and the previously existing driveway was concreted, since the original driveway had basically been two strips of concrete broken up, and they had the entire driveway paved (T-39).

Petitioners' Exhibit 7 included photographs of the RV parked in the driveway, and was admitted (T-40), and marked at the request of the Chairman of the Board of Appeals by Dennis Atkins, to indicate where he believed the side property line for the property was located (T-41). He testified further that when the RV was parked, as shown in the pictures, that approximately 6' of the RV was parallel to the Protestants/Appellees' adjacent wooden fence (T-42-43), and the remainder of the RV would be located between the fence and Ridge Road, on his driveway (T-43). He further testified that when the RV was parked in that way, there was approximately 1' between the rear of the RV and fence, at the rear of his driveway (T-43), which was not enough room for him to walk around the back of the RV (T-43). He testified that the fence on the rear of this driveway had been

placed there before he had the RVs (T-44), and that the Protestants/Appellees' wooden fence had been put in place approximately two years before the hearing (T-44). He identified the photograph showing the distance between the Protestants/Appellee neighbors' fence and his storage shed and garage in the rear of this property, as Petitioners' Exhibit 9 (T-44). He further testified it was impossible for he and his wife to store the RV on the other side of his house (T-45), because there was no driveway area there and it was inaccessible for vehicles (T-45). He testified that the approximate distance between the front of the overhang where the side of the RV is parked was at most about 6" to the RV (T-46), as shown in Petitioners' Exhibit 10 (T-47).

RVs or recreational trailers parked in the side yards, at 32 and 39 Prospect Avenue, which he testified was located one street over from their property, in the same subdivision of North Paradise (T-49-50). He testified that since the Deputy Zoning Commissioner's hearing, he had tried to park even closer to the overhang than he did before (T-52). He further testified that he and his wife had permission from the neighbors at 6001 Edmondson to park their other vehicles on the rear of their property (T-52). He testified that when he backed the RV in, he was able to keep the wheels of the RV on his driveway (T-55), and that if the RV had been pulled in, as opposed to backing it in from Ridge Road, he would not be able to see anything at all at the rear of the RV, when backing up, of the cars, traffic, or parked cars on Ridge Road, because the RV would have to be all the way across Ridge Road, which is very narrow, before the driver could see traffic on Ridge Road (T-55-56). He further testified that his neighbor across Ridge Road moved their vehicle to allow him to maneuver his RV into the driveway, and that he could not do so if they had not been willing to do that (T-56). He testified that no one would live in the RV when it was parked in his driveway, therefore it would

not increase density if the variance were to be granted (T-57), and that the RV had always been mechanically ready to move, as required by BCZR 415.A (T-57). He testified that regardless of whether the overhang was there or not, he would still back the RV into his driveway, because of the safety considerations regarding Ridge Road (T-58), and that it was impractical to back it out onto Ridge Road (T-58).

He further testified that from the front corner of the house to where the overhangs starts is 12' from the front of the house, and that he understood that the zoning law required him to park his RV so it is at least 8' behind the front corner. He testified that if the RV was parked closer to the house, he would not be able to get into the house or into the RV, because they are directly adjacent to each other, and he would not be able to access either one (T-59). He testified that he and his wife went on trips using the RV, two to four times a year in the last two or three years prior to the hearing (T-60). He further testified to the rear window of the RV having been broken out in the last several years while parked, at a cost to them of \$1,000.00 to have it repaired (T-61), and that he believed they had paid \$55,000.00 for the RV when they bought it in 2001. He further testified that, in looking at the other pictures showing RVs in the neighborhood, that those houses did not have overhangs on their side driveway, as did the Petitioners/Appellants (T-62). He further testified he had not received any complaints from Ms. Johnson about the RV before she filed the zoning enforcement complaint several years prior to the hearing (T-62). He testified about pictures produced as Petitioners' Exhibits 15B-E, showing the area of the side yard before the neighbors' wooden fence was put in place (T-65). He estimated they were taken two years prior to the hearing (T-66). He testified at the area of the fence, that at the rear of his driveway, there was an 8" buildup of the driveway right at the fence, which led to his patio beyond the fence (T-67).

Susan Johnson, Protestants' witness, testified that the RV affected the integrity and ambience of her property, and that it posed a real risk for her to incur property damage (T-74). She testified that the RV was a deterrent to the value of her property if it would hit her fence, because the vehicle carried gasoline (T-77). She acknowledged pictures of the RV, showing where it was parked, was typical of where it was normally parked (T-80). She had not performed any study of the width of RV s, to see if there were available RVs substantially narrower than the ones Petitioners/Appellants had.

QUESTIONS PRESENTED

- 1. WHAT IS THE SCOPE OF REVIEW OF THE BOARD OF APPEALS DECISION TO DENY THE AREA VARIANCE FOR A 1' SET BACK FROM THE SIDE YARD LOT LINE, IN LIEU OF THE REQUIRED 2.5' FOR THE RV?
- 2. DID THE BOARD ERR IN ITS CONCLUSION ON THE EVIDENCE BEFORE THEM THAT THE PETITIONERS FAILED TO SHOW THAT THEIR PROPERTY WAS UNIQUE IN THE ZONING SENSE?
- 3. DID THE BOARD ERR IN FAILING TO FIND PRACTICAL DIFFICULTY OR UNREASONABLE HARDSHIP ON THE SUBSTANTIAL EVIDENCE PETITIONERS PRESENTED?

WHAT IS THE SCOPE OF REVIEW OF THE BOARD OF APPEALS DECISION TO DENY THE AREA VARIANCE FOR A 1' SET BACK FROM THE SIDE YARD LOT LINE, IN LIEU OF THE REQUIRED 2.5' FOR THE RV?

In reviewing of Board of Appeals' decision to deny the area variance sought of setbacks from the property line, the Court's role in reviewing the decision of the Board of Appeals is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions and to determine if the administrative decision is premised upon an erroneous conclusion of law. When reviewing a zoning board's legal conclusions, the court must

determine whether the board interpreted and applied the correct principles of law governing the case and no deference is given to a decision based solely on an error of law. If the court finds no substantial or sufficient evidence to support the factual findings of a zoning board, the board's decision will be reversed because it was arbitrary and illegal. A reviewing court may not uphold a decision of the zoning board unless it is sustainable on the board's findings and for the reasons stated by the board. Eastern Outdoor Advertising Company v. Mayor and City Council of Baltimore, 128 Md.App. 494, 739 A.2d 854 (1999). The reviewing court may not uphold the agency's decision without well reasoned and articulated administrative findings. The agency's decision must be precise and clear enough to allow for meaningful appellate review; if the agency fails to meet this basic requirement, the decision is considered arbitrary and the case must be remanded for purposes of correcting the deficiency. A reviewing court may not uphold the agency order unless it is sustainable on the agency's findings and for reasons stated by the agency. The judicial review of administrative decisions is generally limited to whether substantial evidence on the record supports the agency's decision; however in limited circumstances, the Circuit Court may consider material beyond the actual record. Colao v. County Council of Prince George's County, 109 Md.App. 431, 675 A.2d 148 (1996).

Stated another way, the Circuit Court and the Court of Special Appeals standard of review of administrative decision is limited to whether that decision is in accordance with the law or whether it is arbitrary, illegal, and capricious; the test is whether the question before the agency was fairly debatable, i.e., whether the agency's decision is supported by substantial evidence on the record taken as a whole. Moseman v. County Council of Prince George's County, 99 Md.App. 258, 636 A.2d 499 (1994). There are two general standards of review of the decision of the zoning board:

In regard to findings of fact, the trial court cannot substitute its judgment for that of the agency and must accept the agency's conclusions if they are based upon substantial evidence and if reasoning minds could reach the same conclusion based on the record; however, when the court reviews findings of law, no such deference is given agency's conclusion. <u>Hayfields, Inc. v. Valleys Planning Council, Inc.</u>, 122 Md.App. 616, 716 A.2d 311 (1998).

A court reviewing decision of a county board of appeals to grant a use and occupancy certificate shall not give any deference to the board's conclusions of law beyond the weight merited by the persuasive force of the reasoning employed. Cowles v. Montgomery County, 123 Md. App. 426, 718 A.2d 678 (1998). Generally, a decision of an administrative agency, including a local zoning board, is owed no deference when its conclusions are based upon an error of law. Alviani v. Dixon, 365 Md. 95, 775 A.2d 1234 (2001). Belvoir Farm Home Owners Association, Inc. v. North, 335 Md. 259, 734 A.2d 227 (1999). If the reviewing court must determine whether the agency interpreted and applied the correct principles of law governing the case, no deference is given to a decision based solely on an error of the law, and the court may substitute its own judgment. County Council of Prince George's County v. Curtis Regency Service Corp., 121 Md. App. 123, 708 A.2d 1058 (1998) cert denied, 351 Md. 5, 715 A.2d 964.

On pure questions of law, review court extends no deference to the zoning board beyond the weight merited by the persuasive force of the reasoning employed. Friends of the Ridge v. Baltimore

Gas and Electric Company, 120 Md.App. 444, 707 A.2d 866 (1998) cert granted, 350 Md. 488, 713

A.2d 980, vacated 352 Md. 645, 724 A.2d 34. The function or right of the court is only to determine whether the board of zoning appeals has properly applied the governing law to the facts. Erdman v. Board of Zoning Appeals of Baltimore County, 212 Md. 288, 129 A.2d 124 (1957). On appeal

from the Board of Zoning Appeals, the court will reverse only where there are no grounds for reasonable debate or where there are no supporting facts in the record to justify the legislative action of the board. Eckes v. Board of Zoning Appeals of Baltimore County, 209 Md. 432, 121 A.2d 249 (1956).

To determine whether the decision of the County Board of Appeals is arbitrary, illegal or capricious, and thus capable of being set aside by the reviewing court as not in accordance with the law, reviewing court must decide whether the question before the agency was fairly debatable. Anne Arundel County v. 2020C West Street, Inc., 104 Md.App. 320, 656 A.2d 341 (1995), cert denied, 339 Md. 166, 661 A.2d 700. The court may not substitute its judgement for that of a legislative body or zoning authority, if question of re-zoning is fairly debatable; however, if it is clear that the question was not debatable or that there are no facts to justify the authority to re-zone, then its action would be arbitrary in law, and it would be the duty of the court, under such circumstances, to reverse the zoning authority. Board of Zoning Appeals of Baltimore County v. Bailey, 216 Md. 536, 141 A.2d 502 (1958).

DID THE BOARD ERR IN ITS CONCLUSION ON THE EVIDENCE BEFORE THEM THAT THE PETITIONERS FAILED TO SHOW THAT THEIR PROPERTY WAS UNIQUE IN THE ZONING SENSE?

The BCZR §307.1, entitled "Variances", recites:

"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 public health, safety and general welfare. They shall have no power to grant any other 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."

The portion of the statute to be considered in determining whether a property is unique says:

"Where special circumstances or conditions exist that are peculiar to the land or structure, which is the subject of the variance request."

That section was construed in the case of <u>Cromwell v. Ward</u>, 102 Md.App. 691, 651 A.2d 424 (1995), when the Court of Special Appeals held:

"The Baltimore County ordinance requires 'conditions...peculiar to the land...and...practical difficulty....' Both must exist. But the terms 'practical difficulty' and 'unreasonable hardship' are stated in the ordinance disjunctively. Thus, at least as to variances other than use variances, if the property is found to be unique, the practical difficulty standard would then apply...It is only when that uniqueness is first established that we then concern ourselves with practical difficulties." Cromwell supra @ 698-699.

In considering whether a property is unique, the Court of Special Appeals held in the Cromwell case that the following factors are to be considered:

"'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as

unusual architectural aspects and bearing or party walls." Cromwell supra @ 434.

The Board, in its Opinion, found the Petitioner's lot was not unique (Board Opinion page 4), where the Board said:

"This Board believes that neither BCZR through §307 nor Cromwell contains or supports such a suggestion. The testimony from Petitioners' surveyor adopted and confirmed by the Petitioner himself, is that the subject site is not peculiar to, but rather is consistent with the neighborhood. The various relevant exhibits, including the Petitioners' Exhibit 2, clearly illustrate that the subject site is not unique under either BCZR or Cromwell."

The Board ignored the clear evidence before it of uniqueness found in the position of the telephone pole right in the sidewalk, at the front of Petitioners/Appellants' driveway, and the existence of the overhang projection from their house not present in either of the other pictures showing RVs parked in side yards within the same subdivision. The Board further ignored and gave no effect to the probative evidence that this subdivision was platted in 1920, some 35 years before the present zoning regulations came into effect, and were then first applied to this property and the narrowness of the lots, as platted. The Board failed to give weight to the portion of Cromwell, talking about uniqueness, referring to structures having to do with characteristics as unusual architectural aspects as bearing or party walls. Cromwell supra @434. The Board further ignores the position of the Petitioners/Appellants' property on 2 North Ridge, contrasted with the position of the other interior lots on Prospect Avenue having no overhangs and being further distant from the busy traffic of Edmondson Avenue as an access point to the community. The Board of Appeals' failure in this case to take note of how the zoning regulations adopted 35 years after the subdivision was platted affect the need for a variance has been the subject of other appeals in which the Board's

decision has been reversed by the Circuit Court on that specific basis as inconsistent with the evidence.

The Board further erred in failing to note that the Petitioners/Appellants' custom and practice of backing the RV in as close as possible to the existing overhang, which had been done without accident or incident involving the Protestants/Appellees' property to the time of hearing was significantly required, because the driver of the RV would have no way of seeing what the traffic was on Ridge Road; and because the operator's view of the traffic on Ridge Road would be blocked because of the position of the improvements at 2 Ridge Road, until the 31' RV had been backed all the way out into Ridge Road, which is obviously a more dangerous alternative.

Furthermore, the illogic of pulling in the RV would not change any perceived threat to the Protestants/Appellees' wooden stockade fence, but would rather exacerbate it. By the Petitioners/Appellants' testimony, the height of the RV was such that it could not be parked any closer to the house without striking the overhang, than it was being parked at present. If the RV were to be pulled into the driveway, when the driver exited the vehicle, the RV door would have to open towards the Protestants/Appellees' fence, and the width of the door, as shown in the pictures was far more than the 1' to the property line sought as a variance amount from the regulations. Therefore, if the Petitioners/Appellants were to pull in the vehicle and open the door to the RV, there would be a far greater chance, since that was the sole exit provided on the RV, without going out the windows, of the RV striking the Protestant/Appellees' wooden fence, if it were to be parked in the manner preferred by the Protestant/Appellees. Therefore, the manner utilized by the Petitioners/Appellants minimized the potential for damage or the potential for the Petitioners/Appellants to have to walk over the property line. Even a more significant point overlooked by the Board, is that the

Protestant/Appellees' fence turned 90 degrees at their property corner and headed towards Edmondson Avenue. Therefore, anyone exiting the RV or walking around the RV would be walking on the property of 6001 Edmondson Avenue, rather than the Protestant/Appellees' property in any event. The Petitioners/Appellants proved uniqueness for zoning purposes with the indication of the telephone pole and the overhang as limited factors on the movement in and out of the Petitioners/Appellants' driveway, of the RV, which would not be placed on the other side of the Petitioners/Appellants' house. The Board's conclusion that the property was not unique was arbitrary and capricious, and against the weight of the evidence. The evidence before the Board indicates that other property owners in North Paradise have RVs and trailers in their side yards.

DID THE BOARD ERR IN FAILING TO FIND PRACTICAL DIFFICULTY OR UNREASONABLE HARDSHIP ON THE SUBSTANTIAL EVIDENCE PETITIONERS PRESENTED?

In its Opinion, the Board concluded first that it believed that "the requested variance is an area variance (Board Opinion page 4). As such, the practical difficulty standard would be applicable, under McLean v. Soley, 270 Md. 208. However, the Board erred when it next found:

"We found no such practical difficulty exists. Petitioners can continue to reasonably utilize his property even without the requested variance. Moreover, as Petitioners purchased the present recreational vehicle, knowing the size and limited nature of the location's available parking arrangements, we find that it is, a 'self imposed' difficulty, and one that could be relieved by either purchasing a smaller vehicle or by implementing alternate parking arrangements."

In so concluding, the Board ignored the only testimony in the case, that the older RV, of 24' long and the newer one, 31' long, were of the same uniform width. The reason for the variance request is simply the width of the vehicle, rather than its length. RVs were generally not in use in 1920 when this subdivision was platted and therefore were not an area of concern for the persons

platting this subdivision. Further, the zoning regulations imposing the setback requirements were not adopted until 1955, some 35 years after this subdivision plat was approved. The Board, in this case, disregarded the evidence found, of the location of the telephone pole as that impacted on the ability to maneuver the RV in and out of Petitioners/Appellants' driveway, as well as the effect of the overhang projection on the side of their house, not present on either of the other residences, as shown on the pictures located on Prospect Avenue, where other RVs were located. consideration of an area variance is considered to be less drastic than a use variance, under Anderson The testimony of all v. Town of Chesapeake Beach, 22 Md. App. 28, 322 A.2d 220. Petitioners/Appellants' witnesses at the hearing was to the practical difficulty imposed on the Petitioners/Appellants having an RV, which when parked as close as possible to the overhang, could be no further than 1' from the side lot line adjacent to 6001 Edmondson Avenue, rather than the Protestants/Appellees' property at 6003 Edmondson Avenue. There was no testimony before the Board of any damage to the Protestants/Appellees' fence from this RV. The testimony of the Protestants/Appellees did not dispute that the pictures, as taken by the Petitioners/Appellants were accurate. In fact, all of the evidence shows that the Petitioners/Appellees' claimed hardship was a direct result of the unique physical features of this property, and not because of actions taken by the landowner, and therefore, the Board of Appeals erred in this case in denying the variance relief requested. In so doing, the Board of Appeals ignored the holding of Lewis v. Department of Natural Resources, 377 Md. 382, 833 A2d. 563 (2003). The Court of Appeals in that case concluded that:

"In respect to variances and buffer areas, the correct standard is not whether the property owner retains a reasonable and significant use for the property outside the buffer, but whether he or she is being denied a reasonable use of the property within the buffer." Lewis supra @ 419.

In this case, Petitioners/Appellants sought that which their other neighbors had already attained, namely an RV or trailer parked in their side yard, which is all they sought in their use of 2 Ridge Road, occasioning the need for a variance in this matter. The matters of the vandalism to their RV show the need for them to have the RV close at hand to where they can keep an eye on it.

Further, in the case of <u>Richard Roeser Professional Builder</u>, Inc. v. Anne Arundel County, 368 Md. 294, 793 A.2d 545 (2002), the Court of Special Appeals, reinstated the Circuit Court's decision that the local Board of Appeals had made an error of law and applied an erroneous standard, with respect to the Board's denial of a request for variances in that case made by the Petitioner. Specifically, the Court found in that case that the Petitioner did not self-create a hardship by buying property for which he knew variances would be required in order to build a house of the size it desired. Roeser supra @ 296. The Court of Special Appeals overruled its own longstanding decision in <u>Gleason v. Keswick Improvement Association</u>, 97 Md. 46, 78 A.2d 164 (1951). In that case, the Court of Appeals found, as in the Roeser case, that:

"The variance at issue in the case <u>subjudice</u>, is an 'area' variance, not a 'use' variance." <u>Gleason</u>, cited by the Court of Special Appeals, never applied to "area" variances, and, as we have indicated in the several cases we have cited, we made that distinction long ago. <u>Roeser</u> supra @ 318.

As this Circuit Court is well aware, area variances are deemed not to change the character of an area and to be less significant and subject to a lesser standard of practical difficulty required under the zoning statute, including BCZR, Section 307. <u>Anderson v. Town of Chesapeake Beach</u>, 22 Md. App. 28, 322 A.2d 220.

CONCLUSION

The Petitioners/Appellants' requested variance met all tests of BCZR § 307, and will not increase residential density, will not change the existing character of the community, and will not create a threat to the public health, safety, and welfare. Petitioners/Appellants request that the Court grant the variances requested, finding the Board of Appeals' decision to be arbitrary, capricious, or illegal, or based on other error of law. In the alternative, Petitioners/Appellants request this Court, after review, to reverse the Board and remand the case to the Board of Appeals with instructions and for further consideration, in accordance with the Court's Opinion. The Petitioners/Appellants request argument before the Court when this matter is heard.

Respectfully Submitted,

MICHAEL P. TANCZYN, Esquire

Suite 106, 606 Baltimore Avenue

Towson, Maryland 21204

(410) 296-8823

Attorney for the Petitioners/Appellants

The Atkins Family Living Trust

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 19th day of December, 2005, a copy of the foregoing Appellants/ Memorandum was mailed by first class mail, postage prepaid to Leslie M. Pittler, Esquire, 25 Wandsworth Bridge Way, Lutherville, Maryland 21093, Attorney for Protestants/Appellees, Susan Johnson and Diane Kingsbury, and to Peter Max Zimmerman, Esquire, Peoples' Council for Baltimore County, Room 47, 400 Washington Avenue, Towson, Maryland 21204.

MICHAEL P. TANCZYN, Esquire

606 Baltimore Avenue, Suite 106 Towson, Maryland 21204 (410) 296-8823 Attorney for the Petitioners The Atkins Family Living Trust 11/21/05

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF:

ATKINS FAMILY LIVING TRUST

Dennis & Carol Atkins – Legal Owners/Petitioners W/S of Ridge Road – 149' S/of Centerline of Edmondson Avenue

(2 Ridge Road)

FOR JUDICIAL REVIEW OF THE OPINION OF * THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY OLD COURTHOUSE, ROOM 49 400 WASHINGTON AVENUE TOWSON, MARYLAND 21204

IN THE MATTER OF ATKINS FAMILY LIVING TRUST Dennis & Carol Atkins – Legal Owners/Petitioners W/S of Ridge Road – 149' of Centerline of Edmondson Avenue (2 Ridge Road)

ELECTION DISTRICT 11st COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 05-024-A

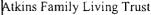
CIVIL ACTION No. 3-C-05-10822

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

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the Petition for Judicial Review directed against it in this case, herewith transmits the record of proceedings had in the above-entitled matter, consisting of the following original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

NOV 2.1, 20



Atkins Family Living Trust Board of Appeals, Case NO.: 05-024-A

Baltimore Co. Circuit Court Case No.: 3-C-05-10822

ENTRIES FROM THE DOCKET OF THE BOARD APPEALS AND DEPARTMENT OF PERMITS & LICENSES OF BALTIMORE COUNTY

05-024-A

3	
July 5, 2004	Letter to Zoning Comm. from Susan Johnson and Diane Kingsbury.
July 12	Petition for Variance.
July 30	Entry of Appearance by People's Counsel.
Sept. 9	Corrected Notice of Zoning Hearing.
Sept. 30	Certificate of Publication (The Jeffersonian).
Sept. 30	Certificate of Posting by Garland Moore.
Oct. 14	Zoning Advisory Committee comments.
Oct. 18	Hearing before the Deputy Zoning Commissioner.
Oct. 18	Sign in sheets for Petitioner(s) & Protestant(s) from hearing.
Oct. 29	Findings of Fact and Conclusions of Law.
Nov. 19	Letter - Appeal Request - Susan Johnson & Diane Kingsbury
Jan. 3, 2005	Letter from Timothy Kotroco, Dir. Notifying that an appeal was filed on November 22, 2004.
Feb. 4	Notice of Assignment.
Feb. 8	Notification of Sign Posting.
April 5	Letter from People's Counsel to Lawrence M. Stahl, Chairman.
April 6	Hearing before the Board of Appeals.

Atkins Family Living Trust

Board of Appeals Case NO.: 05-024-A

Baltimore Co. Circuit Court Case No.: 3-C-05-10822

Petitioner's Exhibits –

Atkins Family – CBA-05-024-A

- 1. Property plat
- 2. North Paradise Plat – 1920
- Deed 3.
- 4. 1998 Atkins Trust Deed
- 5. SDAT – 2 Ridge Road
- Multi page document conveying Deed plus survey 5.a.
- SDAT for 6003 Edmondson Avenue 6.
- 6.a. Photos of house and driveway
- 7. Photos of driveway
- 8. Photos
- 9. Photos
- Photos 10.
- 11. Photos
- 12. Photos – Prospect Avenue houses
- 13. Photos – Recently taken
- 14. Photos
- 15. Photos – Petitioner's – Enveloped - A - E

Protestants – Exhibits

1. Protestant's Exhibits – Enveloped – 1A - 1L

April 8 Notice of Deliberation Date.

April 13 Deliberation by the Board of Appeals.

April 13 Deliberation Notes.

Sept. 16 Opinion and Order issued by the Board of Appeals.

Oct. 4 Copy of letter to Circuit Court for Baltimore County from Michael P. Tanczyn, Esq. filing Petition for Judicial Review received in the

Board of Appeals on October 13, 2005.

Dct. 17 Received Petition for Judicial Review from Michael P. Tanczyn,

Esq. in the Board of Appeals.

Atkins Family Living Trust

Board of Appeals Case NO.: 05-024-A

Baltimore Co. Circuit Court Case No.: 3-C-05-10822

Oct. 20 Certificate of Notice filed in the Circuit Court for Baltimore

County.

Oct. 25 Letter from Michael P. Tanczyn, Esq. acknowledging that a copy

of the transcript in this case has been ordered from the court

reporter.

Oct. 27 Received transcript of case from court reporter.

Nov. 18 Response to Petition for Judicial Review from Leslie M. Pittler,

Esquire.

Nov. 21 Record of Proceedings filed in the Circuit Court for Baltimore

County.

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

Respectfully submitted,

Linea B Fliegel

Linda B. Fliegel, Legal Secretary

County Board of Appeals of Baltimore County

400 Washington Avenue, Room 49 Towson, MD 21204 (410) 887-3180

Michael P. Tanczyn, Esquire

Peter M. Zimmerman,

cc:

People's Counsel of Baltimore County

Leslie T. Pittler, Esqire

IN THE MATTER OF
ATKINS FAMILY LIVING TRUST
(DENNIS & CAROL ATKINS)LEGAL OWNERS/PETITIONERS
VARIANCE FOR THE PROPERTY
LOCATED ON THE W/S OF RIDGE
ROAD,149 FEET S/OF CENTERLINE
OF EDMONDSON AVENUE
(RIDGE ROAD)

1ST ELECTION DISTRICT
1ST COUNCILMATIC DISTRICT

IN THE CIRCUIT COURT FOR

BALTIMORE COUNTY

CASE NUMBER: 03- C-05-10822

BALTIMORE COUNTY BOARD OF APPEALS

CASE NO.:05-024-A

RESPONSE TO PETITION FOR JUDICIAL REVIEW

The protestants, below, Susan Johnson and Diane Kingsbury by their attorney Leslie M. Pittler submits this Response to the Petition For Judicial Review and state that they intend to participate in this action for judicial review. The said Protestants were parties to the above referenced proceedings before the County Board of Appeals of Baltimore County. This Response is in accordance with Maryland Rule 7-204.

Respectfully submitted,

Leslie M. Pittler

25 Wandsworth Bridge Way

Lutherville, Maryland 21093

Attorney for Susan Johnson and Diane Kingsbury

10/20/05

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF:
ATKINS FAMILY LIVING TRUST
DENNIS & CAROL ATKINS –
LEGAL OWNERS/PETITIONERS
W/S OF RIDGE ROAD – 149' S/OF CENTERLINE OF EDMONDSON AVENUE
(2 RIDGE ROAD)

FOR JUDICIAL REVIEW OF THE OPINION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY OLD COURTHOUSE, ROOM 49 400 WASHINGTON AVENUE TOWSON, MARYLAND 21204

IN THE MATTER OF THE APPLICATION ATKINS FAMILY LIVING TRUST DENNIS & CAROL ATKINS - LEGAL OWNERS/PETITIONERS W/S OF RIDGE ROAD – 149' OF CENTER-LINE OF EDMONDSON AVENUE (2 RIDGE ROAD)

1^{tST} ELECTION DISTRICT 1ST COUNCIL'MANIC DISTRICT

CASE NO.: 05-024-A

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the County Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely:

REGEIVED AND FILED

05 OCT 20 PM I2: 03

CIVIL ACTION

NO. **03-C-05-10822**

CLERK OF THE CIRCUIT COURT BALTIMORE COURTS ATKINS FAMILY LIGHT TRUST CIRCUIT COURT CASE NO. 03-C-05-10822 BOARD CASE NO.: 05-024-A

Michael P. Tanczyn, Esq. 606 Baltimore Avenue – Suite 106 Towson, MD 21204 Attorney for Petitioners

Leslie M. Pittler, Esquire 25 Wandsworth Bridge Way Lutherville, MD 21093 Attorney for Protestants

People's Counsel for Baltimore County, Maryland Old Courthouse – Room 47 400 Washington Avenue Towson, MD 21204

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.

Linda B. Fliegel, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)

I HEREBY CERTIFY that on this 20¹ day of October, 2005, a copy of the foregoing Certificate of Notice has been mailed to Michael P. Tanczyn, Esq., 606 Baltimore Avenue, Suite 106, Towson, MD 21204, Attorney for Petitioners, Leslie M. Pittler, Esquire, 25 Wandsworth Bridge Way, Lutherville, MD 21093, Attorney for Protestants and to People's Counsel for Baltimore County, Maryland, Old Courthouse – Room 47, 400 Washington Avenue, Towson, MD 21204.

Linda B. Fliegel, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue

Towson, MD 21204 (410-887-3180)

min B Flugel



County Board of Appeals of Baltimore County

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

October 20, 2005

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

RE:

Circuit Court Civil Action No. 03-C-05-10822

Petition for Judicial Review Atkins Family Living Trust

Board of Appeals Case No.: 05-024-A

Dear Mr. Tanczyn:

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the Petition for Judicial Review, which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days. The cost of the transcript of the record must be paid by you and must be paid in time to transmit the same to the Circuit Court within the sixty day timeframe, as stated in the Maryland Rules.

The Court Reporter that you need to contact to obtain the transcript and make arrangement for payment is as follows:

CAROLYN PEATT

TELEPHONE: 410- 486-8209 HEARING DATE: April 6, 2005

This office has also notified Ms. Peatt that a transcript on the above captioned matter is due by <u>December 19, 2005</u>, for filing in the Circuit Court. A copy of your Petition, which includes your telephone number, has been provided to the Court Reporter, which enables her to contact you for payment provisions.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

ine B- Flugel

Linda B. Fliegel Legal Secretary

C: Carolyn Peatt, Court ReporterLeslie M. Pittler, EsquirePeople's Counsel for Balto. Co., MD



County Board of Appeals of Baltimore County

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

October 20, 2005

Leslie M. Pittler, Esquire 25 Wandsworth Bridge Way Lutherville, MD 21093

RE: Circuit Court Civil Action No. 03-C-05-

Petition for Judicial Review

Atkins Family Living Trust

Board of Appeals Case No.: 05-024-A

Dear Mr. Pittler:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on October 13th, 2005, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, <u>must be filed under Civil Action No. 03-C-05-10822.</u>

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

tive B. Flugge

Linda B. Fliegel Legal Secretary

/lbf Enclosure

c: Michael P. Tanczyn, Esq.
People's Counsel for Baltimore County, MD
William J. Wiseman/Zoning Commissioner
Timothy M. Kotroco/Director PDM
Pat Keller/Planning Director

10/13/.05

IN THE MATTER OF
ATKINS FAMILY LIVING TRUST
(DENNIS & CAROL ATKINS)LEGAL OWNERS/PETITIONERS
VARIANCE FOR THE PROPERTY
LOCATED ON THE W/S OF RIDGE
ROAD, 149 FEET S/OF CENTERLINE
OF EDMONDSON AVENUE
(2 RIDGE ROAD)

1ST ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT

Case No.: 05-024-A

- IN THE CIRCUIT COURT FOR
- BALTIMORE COUNTY

C-05-10822

Case No .:

PETITION FOR JUDICIAL REVIEW

Now comes The Atkins Family Living Trust, by its Trustees, Dennis Atkins and Carol Atkins, Petitioners below, to appeal the decision and Order of the Board of Appeals of Baltimore County, of September 16, 2005. The Petitioners below intend to participate in this appeal.

RECEIVED AND FILED

MICHAEL P. TANCZYN, Esquire 606 Baltimore Avenue, Suite 106 Towson, Maryland 21204 (410) 296-8823

Attorney for the Petitioners
The Atkins Family Living Trust

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this day of October, 2005, a copy of the foregoing Petition For Judicial Review was mailed by first class mail, postage prepaid to Kathy Bianco, Administrator, County Board of Appeals, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland

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OCT 17 2005

BALTIMORE COUNTY BOARD OF APPEALS S

21204 and to Leslie M. Pittler, Esquire, 25 Wandsworth Bridge Way, Lutherville, Maryland 21093, Attorney for the Protestants, Susan Johnson and Diane Kingsbury.

MICHAEL P. TANCZYN, Esquire 606 Baltimore Avenue, Suite 106 Towson, Maryland 21204 (410) 296-8823 Attorney for the Petitioners The Atkins Family Living Trust CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-05-010822



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

LAW OFFICES

MICHAEL P. TANCZYN, P.A.

Suite 106, 606 Baltimore Avenue Towson, Maryland 21204

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

October 4, 2005

Clerk Civil Division County Courts Building 401 Bosley Avenue Towson, MD 21204

Re:

In the Matter of Atkins Family Living Trust

Dear Madam Clerk:

Enclosed please find Petition for Judicial Review, with mail cert, and our check for filing costs. Please forward the case number to us as filed, and notice of all hearing dates.

Thank you for your assistance in this matter. Please feel free to contact me should you have any questions.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/cbl Enclosure(s)

cc:

Dennis and Carol Atkins

Board of Appeals

Leslie M. Pittler, Esquire

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day of November, 2005, a copy of the foregoing RESPONSE TO PETITION FOR JUDICIAL REVIEW was mailed to Michael P. Tanczyn, Esquire 606 Baltimore Avenue, Suite 106, Towson Maryland 21204 and Kathleen C. Bianco, Administrator County Board of Appeals for Baltimore County, Room 49, Old Courthouse, Towson Maryland 21204

LESLIE M. PITTLER

9/16/05

IN THE MATTER OF

ATKINS FAMILY LIVING TRUST
(DENNIS & CAROL ATKINS) LEGAL OWNERS/PETITIONERS
VARIANCE FOR THE PROPERTY
LOCATED ON THE W/S OF RIDGE
ROAD, 149 FEET S/OF CENTERLINE
OF EDMONDSON AVENUE
(2 RIDGE ROAD)

1ST ELECTION DISTRICT 1ST COUNCIEMANIC DISTRIC

- BEFORE THE
- COUNTY BOARD OF APPEALS
- OF
- BALTIMORE COUNTY
- * CASE NO.: 05-024-A

OPINION

This case comes before the Board of Appeals from a decision of the Deputy Zoning

Commissioner dated October 29, 2004 in which the Petitioners' request for a variance from

§ 415.A.1.A of the *Baltimore County Zoning Regulations* (BCZR) to allow a recreational vehicle
to be stored 1 foot from a side lot line in lieu of the required 2½ feet was granted.

A public hearing on the instant matter was held on April 6, 2005. Petitioners were represented by Michael P. Tanczyn, Esquire, and Appellants/Protestants by Leslie M. Pittler, Esquire. A subsequent Public Deliberation was held on April 13, 2005.

Herbert Malmud, a professional land surveyor, was qualified as an expert witness and testified on behalf of the Petitioners. Relating that he had reviewed the applicable plats and records, he described the subject site as containing 6,000 square feet zoned D.R. 5.5, known as "Lot 36" of the "North Paradise" subdivision (recorded in 1920). He described the subject lot as 55 feet wide and 120 feet deep, improved by Petitioners' dwelling set 13.5 feet from the north property line. There is a small overhang from the side entrance, which extends 2.5 feet from the side of the home, extending over a cement parking pad. He noted a remaining 11-foot clear space between the overhang and the north property line.



The witness testified in support of the admission into evidence of a number of exhibits relating to the ownership, history, location, size, and shape of the property. After having reviewed Petitioners' request on site, he opined that the necessary space was extremely narrow and that as a result of the overhang it was impossible for the Petitioners to park their recreational vehicle (RV) closer to the subject dwelling than what was already being done. He concluded that it was his belief that the requested variance would not affect density, would be in harmony with the spirit and intent of the applicable zoning regulations, and should therefore be granted.

In a brief cross-examination, the witness acknowledged that a standard motor vehicle could be parked on the pad without the need for a variance and that the size of the Petitioners' motor home is what has necessitated the request. He had no knowledge of whether or how the overhang could be removed, but agreed that the size and shape of the subject property was not peculiar for the area and was in fact consistent with the rest of the neighborhood.

Petitioner Dennis Atkins testified. He adopted the previous historical and related testimony of witness Malmud and related that he parked an RV on his parking pad over 10 years. He stated that his previous RV was approximately 24 feet long, while the present RV, purchased in 2001, is 31 feet long. Both are approximately the same width. He explained that he backs into the parking pad space because a poorly placed telephone pole hinders maneuverability. This makes it difficult to enter the RV because the door is too close to the house. Additionally, he was concerned that Protestant's fence was too close and was in and of itself a hindrance to the parking of his vehicle.

The witness described the overhang as a protection from the weather and did not remove it when the siding was redone in 1981 because of the cost involved in redoing the siding.

ily Living Trust

On cross-examination the witness agreed with his surveyor's characterization that the lots in the neighborhood (including his own) were generally the same. He admitted that he had never attempted to pull into the driveway as has been suggested and acknowledged that he was aware of the property lines and limitations when he purchased the most recent recreational vehicle.

Susan Johnson, Protestant, testified as to her concerns with the pending request, including safety issues she believed resulted from the Petitioners' recreational vehicle parking arrangements and the conceivable detrimental effect upon her property value.

The law regarding variance requests in Baltimore County is well settled. Section 307 of the *Baltimore County Zoning Regulations* states, in pertinent part, as follows:

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

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

...The Baltimore County ordinance requires "conditions ...peculiar to the land...and...practical difficulty...." Both must exist. ...However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when the uniqueness is first established that we then concern ourselves with the practical difficulties.... <u>Id.</u> at 698.

In requiring a pre-requisite finding of "uniqueness", the Court defined the term 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 nonaccess to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.... Id. at 710.

This Board believes that neither BCZR §307 nor Cromwell contains or supports such a suggestion. The testimony from Petitioners' surveyor adopted and confirmed by the Petitioner himself is that the subject site is not peculiar to, but rather is consistent with the neighborhood. The various relevant exhibits, including the Petitioners' Exhibit No. 2, clearly illustrate that the subject site is not unique under either the BCZR or Cromwell.

Having so found, we need not proceed to make a determination as to the second prong of the Cromwell test. However, in the furtherance of judicial economy, we will briefly discuss the issue of resultant difficulty. This Board believes that the requested variance is an "area" variance. As such, in applying the "practical difficulty" standard set forth in McClean v. Soley, 270 Md. 208 (1973), we find that no such practical difficulty exists. Petitioners can continue to reasonably utilize his property even without the requested variance. Moreover, as Petitioners purchased the present recreational vehicle knowing the size and limited nature of the location's available parking arrangements, we find that it is, in fact, a "self-imposed" difficulty; and one that could be relieved by either purchasing a smaller vehicle or by implementing alternate parking arrangements.

Assuming in arguendo, that the required variance would be considered a "use" variance, we would apply the "undue hardship" standard set forth in Green v. Bair, 77 Md. App. 140, 151 (1988). Where this standard applies, the Petitioner must meet three criteria:

- If he complied with the ordinance, he would be unable to secure a reasonable 1) return from or to make reasonable use of his property....
- The difficulties or hardships were peculiar to the property in question and contrast 2) with those of other property owners in the same district....

The hardship was not the result of the applicant's own actions....

The Board unanimously concludes that Petitioners can still clearly secure a reasonable return and use on their property without a variance; that the stated difficulties are not peculiar to the subject property; and that any resultant hardship is self-imposed.

For all of the above, this Board unanimously denies the requested variance relief.

ORDER

THEREFORE, IT IS THIS 16 day of Legetember, 2005 by the County

Board of Appeals of Baltimore County

ORDERED that Petition for Variance to allow a recreational vehicle to be stored I foot from the side lot line in lieu of the required 1½ feet from any side lot line 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 BALTIMORÉ COUNTY

Awrence M. Stahl, Chairman

Lawrence S. Wescott

Dr. Margaret Brassil



County Board of Appeals of Baltimore County

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

September 16, 2005

Leslie M. Pittler, Esquire 25 Wandsworth Bridge Way Lutherville, MD 21093

RE: In the Matter of: Atkins Family Living Trust (Dennis and Carol Atkins). – Petitioners Case No. 05-024-A

Dear Mr. Pittler:

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

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

Very truly yours,

Kathleen C. Bianco Scarco, 25

Administrator

Enclosure

c: Susan Johnson
Diane Kingsbury
Michael P. Tanczyn, Esquire
Atkins Family Living Trust
(Dennis and Carol Atkins)
Herbert Malmud
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

IN THE MATTER OF:

* BEFORE THE

ATKINS FAMILY LIVING TRUST * COUNTY BOARD OF APPEALS

(Dennis & Carol Atkins) -

Legal Owners/Petitioners

* BALTIMORE COUNTY

2 Ridge Road

* Case No. 05-024-A

1st Election District

* April 6, 2005

1st Councilmanic District

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 a.m., April 6, 2005.

ORIGINAL

Reported by:

C.E.Peatt

10/29/04

IN RE: PETITION FOR VARIANCE

W/S of Ridge Road, 149 ft. S centerline of Edmondson Avenue 1st Election District 1st Councilmanic District (2 Ridge Road)

Atkins Family Living Trust
By: Dennis & Carol Atkins, Trustees
Petitioners

- BEFORE THE
- DEPUTY ZONING COMMISSIONER
- * OF BALTIMORE COUNTY
- * CASE NO. 05-024-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Variance filed by the Atkins Family Living Trust, by Dennis and Carol Atkins, Trustees, the legal owners of the subject property. The Petitioners are requesting variance relief for property they own at 2 Ridge Road in the western area of Baltimore County. The variance is requested from Section 415.A.1.A of the B.C.Z.R., to allow a recreational vehicle to be stored 1 ft. from the side lot line, in lieu of the required 2 ½ ft. from any side lot line.

The property was posted with Notice of Hearing on September 30, 2004, 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 August 24, 2004 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

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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 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: None.

Interested Persons

Appearing at the hearing on behalf of the variance request were Herbert Malmud, Professional Surveyor, and Dennis & Carol Atkins, the Petitioners. Michael P. Tanczyn, Esquire represented the Petitioners. Susan Johnson and Diane Kingsbury appeared at the hearing in opposition to the request. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Code Enforcement Comments

This matter is currently the subject of an active violation case (Case No. 03-8488) in the Division of Code Inspections and Enforcement. A citation for code violation has been issued in this matter due to the fact that the adjacent property owners object that a recreational vehicle is stored 1 ft. from the side property line.

It should be noted, for the record, that the fact that a zoning violation is issued is simply ignored in this zoning case. This means that the Petitioners cannot use the fact that a structure has been built to set a precedent in order to allow it to continue. Nor does the fact that a structure may be costly to remove or modify come into consideration of the zoning case. The reason for this is

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that this condition is clearly self-imposed and as such cannot be a basis for the hardship or practical difficulty required by Section 307 of the B.C.Z.R. Conversely, the fact that something may have been done which could violate the law is not held against the Petitioners as some sort of an additional punishment. Zoning enforcement is conducted by the Department of Permits and Development Management, which has the authority to impose fines and other penalties for violation of law. This is not the province of this office.

Testimony and Evidence

Testimony and evidence indicated that the property, which is the subject of this variance, contains 6,000 sq. ft. and is zoned DR 5.5. Mr. Tanczyn proffered that the property is improved with a single-family dwelling, which is lot 36 of the "North Paradise" subdivision that was recorded in the Land Records in April 1920. See Petitioners' Exhibit No. 2. This is a 50 ft. wide lot with a home 13.5 ft. from the north property line. However, the home has a small roof over the side door, which overhangs the existing concrete parking pad by 2.5 ft. See Petitioners' Exhibit No. 1. This leaves 11 ft. of clear space between the overhang and the north boundary. The Petitioners own a recreational vehicle, which they would like to park on the existing concrete pad, which apparently is nearly 10 ft. wide. This leaves 1 ft. of setback from the property line and the reason for the request for variance. Section 415.A.1.A requires such vehicles to be 2 ft. 6 in. from the side lot line.

The Petitioners purchased the property in 1976. The home itself was erected in 1926 according to the records of the State Department of Assessments and Taxation. See Petitioners' Exhibit No. 5. Mr, Tanczyn proffered that the Petitioners' RV's exit door is on the passenger side. He indicated that from a safety standpoint the RV must be backed into its storage space as shown in the photographs of Petitioners' Exhibit No. 8. He indicated that if the variance were granted the Petitioners could live with the tight spaces for parking the vehicle. He also presented photographs

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of several other properties in the neighborhood which have similar RV's campers, etc. parked in driveways.

The protestants' home on Edmondson Avenue backs up to the area where the RV is stored. Testimony indicated that the Petitioners and protestants have had a long and bitter relationship with one party or the other 'filing complaints with Zoning Enforcement against the other. This case arises from the protestants' complaint. The protestants recently had their property surveyed and then erected a wooden privacy fence which they contend is 6 in. inside of their property line with the Petitioners. See protestants' photograph, Protestants' Exhibit No. 1E, in which the protestants show the location of the property line (the red rebar) and the distance the RV tire is from the line of nine inches. The wooden fence is again 6 in. from the property line according to the protestants. Consequently, the protestants contend that even if the variance were granted the RV would remain in violation of the regulations.

The protestants contend that the RV can be pulled into the driveway rather than backed in which puts the side door of the RV on the north side of the property. They contend there is room to open the door on this side so that no variance is needed. On the other hand, the Petitioners could remove the overhang and meet the regulations. They were concerned that the RV would damage their new wooden fence when the RV is backed into its location. They indicated that although their insurance carrier would likely deal with such damage they did not want to deal with the inconvenience.

Mr. Tanczyn noted that the property is unique in a zoning sense since the lot and homes were laid out and constructed much before the Zoning Regulations were imposed. He noted that it would be a hardship on the Petitioners' if they could not store their RV at their home because they are retired and take trips frequently. The RV must be stored 8 ft. behind the front of the Petitioners'

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home. He indicated that there is no other place on the lot to store the RV and that it would be a hardship to either remove the overhang, which protects the side door on the Petitioners' home, or to forbid the RV presence on the lot.

The protestants contend that the Petitioners could pull into the driveway rather than backing in. On cross-examination, they noted that Ridge Road is a narrow street with two-way traffic and ordinarily has parking only on one side. When backing out onto Ridge Road, a driver of the RV would not be able to see oncoming traffic on Ridge Road as their vision would be blocked by the home on the corner of Edmondson and Ridge or the Petitioner's home.

Findings of Fact and Conclusions of Law

As mentioned at the hearing, whatever decision I make in this case will likely not end the ongoing dispute between the parties. I regret that, but can only request that the parties end the controversies to bring peace back to the neighborhood.

Considering the evidence and testimony before me, I find that the subject property is unique in a zoning sense. The lot was recorded and home erected many years before the present zoning regulations were imposed on the property. As such, the regulations impact the lots in these old subdivisions more harshly than similar lots in the area which have been laid out according to the later regulations. I also find that the Petitioners would suffer hardship and practical difficulty if the variance were not granted in that the Petitioners have no other place to store their RV on the lot. I find that the variance can be granted within the spirit and intent of the regulations. RV's are permitted in residential zones and this is not an unusual request in this suburban setting.

The most difficult issue is whether or not granting the variance would have an adverse impact on the neighborhood. The dimensions are amazingly tight and margin for error very small. In backing the RV onto the parking pad the driver must clear the overhang and the protestants' fence

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with only inches to spare. Any mistake will likely result in damage to one or the other. The protestants have a legitimate worry and insurance aside, repairing damage after the fact is not something one looks forward to.

On the other hand, not granting the variance means the Petitioners cannot store their RV on their property which implies the expenses of renting another place and the added logistical burden of outfitting an RV for an extended trip when it is located somewhere else. I have no reason to doubt protestants' Exhibit Nos. 1E and 1K, which I understand were taken at different times. Protestants Exhibit No. 1E shows the front wheel of the RV 9 in. from the property line and on another occasion the body of the RV 9 in. from the protestants' fence. If I grant the variance, both occasions would violate the variance requested. Nevertheless, Mr. Tanczyn says the Petitioners can live with the requested variance of 1 ft. This means getting much closer to the overhang to avoid future complaints.

I accept Mr. Tanczyn's argument that the RV cannot safely be pulled into the space as the protestants suggest. The problem arises when backing out onto Ridge Road. Not only is this a narrow street with parked cars, the driver has to negotiate a telephone pole and traffic on Ridge Road to safely exit the property. But, the view of the street is largely blocked by the subject home and the home located at the corner of Edmondson Avenue and Ridge Road. As terrible as it may be to back in, at least the RV driver can be cognizant of traffic on Ridge.

On balance, I find that the RV parked as proposed will not adversely affect the health, safety, or welfare of the neighborhood. This retired couple needs to park the RV on their own lot to make practical use of the vehicle. Just as clearly, the vehicle is too large for that parking spot. All I can hope, in granting the variance, is that the Petitioners exercise extreme caution in backing the vehicle on the pad because if this is not done, the protestants will be either filing damage claims or zoning

ONDER PORTOR MARKE

violation complaints.

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

THEREFORE, IT IS ORDERED, this <u>39</u> day of October, 2004, by this Deputy Zoning Commissioner, that the Petitioners' request for special hearing requested pursuant to Section 415.A.1.A of the B.C.Z.R., to allow a recreational vehicle to be stored 1 ft. from the side lot line, in lieu of the required 2 ½ ft. from any side lot line, be and is hereby GRANTED.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

OHN V. MURPHY

DEPUTY ZONING COMMISSIONER

FOR BALTIMORE COUNTY

JVM:raj

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 William J. Wiseman III, Zoning Commissioner

October 29, 2004

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

> Re: Petition for Variance Case No. 05-024-A Property: 2 Ridge Road

Dear Mr. Tanczyn:

Enclosed please find the decision rendered in the above-captioned case. The petition for variance has been granted 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 and 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,

Jøhn V. Murphy

Deputy Zoning Commissioner

JVM:raj Enclosure

c: Dennis & Carol Atkins, 2 Ridge Road, Baltimore, MD 21228
 Herbert Malmud, 12018 Ridge Valley Dr., Owings Mills, MD 21117
 Susan Johnson & Diane Kingsbury, 6003 Edmondson Ave., Catonsville, MD 21228



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



Contract Purchaser/Lessee:

REV 9/15/98 33

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 2 Ridge Road, Balto, MD which is presently zoned DR 5.5

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) 415.A.1.A of the BCZR, to allow a

recreational vehicle to be stored 1' from the side lot line, in lieu of the required 2 1/2'from any side lot line.

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

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

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

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

Legal Owner(s):

	Atkins Family Living Trust
Name - Type or Print	Name - Type or Print
	Demo E. Alterio Carol J. Atkins
Signature	Signature
	Dennis and Carol Atkins - Trustees
Address Telephone No.	Name - Type or Print
City State Zip Code	Signature
Attorney For Petitioner:	2 Ridge Road 410-788-2491 Address Telephone No.
Michael P. Tanczyn	Baltimore, Maryland 21228
Name Typefor Print	City State Zip Code
To the time of time of time of the time of	Representative to be Contacted:
Signature	
Law Offices Michael P. Tanczyn, P.A.	
Company	Name
606 Balto Ave., Ste. 106 410-296-8823	
Addings Telephone No.	Address Telephone No.
Toy Maryland 21204 City State Zip Code	
City State Zip Code	City State Zip Code
	OFFICE USE ONLY
OFF PETITION	
Case No 205-024-A	ESTIMATED LENGTH OF HEARING
	UNAVAILABLE FOR HEARING
Reviewed By	

ATTACHMENT

- 1. The lot is 50' wide.
- 2. The original structure, with the overhang, was constructed approximately in 1926.
- 3. Even if the 2 ½' overhang on the side of our residence, adjacent to the concrete drive, were removed and the recreational vehicle moved closer to the house, then the position of the recreational vehicle would prevent opening the right hand doors of either the recreational vehicle, or the door to exit the house, which would constitute a fire hazard.
- 4. The Petitioners have lived in the home continuously since 1976, and have had a recreational vehicle in the same position in the side yard for many years, without complaint or question.
- 5. The only portion of the recreational vehicle, when parked on the concrete drive at present, which is closer than 2 ½' from the 6' backyard stockade fence of the neighbors is the last 6' length of the recreation vehicle. The portion from the front of the recreational vehicle to where the last 6' begins are more than 2 ½' from our side property line. Neighboring property owners, who are the Complainants, have previously erected a 6' solid fence on the property line.
- 6. Petitioner's side yard where the RV is parked adjoins Complainants rear yard for 6003 Edmondson Avenue, which has a solid 6' high fence on the rear property line adjacent to the RV.
- 7. The original structure built on Petitioners' property as a residence precedes zoning regulations adoption in Baltimore County. The concrete driveway to the side and rear has always been located within 1' of the side lot line. No special zoning approval is required to park cars or trucks within 2 ½ 'of the side lot line.

H. MALMUD & ASSOCIATES, INC. 12018 RIDGE VALLEY DRIVE OWINGS MILLS, MARYLAND 21117

TELEPHONE: 410-382-2959

ZONING DESCRIPTION
2 RIDGE ROAD
BALTIMORE, MARYLAND 21228
1 ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

BEGINNING FOR THE SAME ON THE WEST SIDE OF RIDGE ROAD, AT THE DISTANCE OF ONE HUNDRED FORTY-NINE AND THIRTY-THREE ONE-HUNDREDTHS FEET SOUTHERLY FROM THE CORNER FORMED BY THE INTERSECTION OF THE WEST SIDE OF RIDGE ROAD WITH THE SOUTH SIDE OF EDMONDSON AVENUE (AS NOW LAID OUT AND WIDENED); THENCE RUNNING SOUTHERLY BINDING ON THE WEST SIDE OF RIDGE ROAD FIFTY FEET; THENCE RUNNING WESTERLY AT RIGHT ANGLES TO RIDGE ROAD ONE HUNDRED AND TWENTY FEET; THENCE RUNNING NORTHERLY PARALLEL WITH RIDGE ROAD FIFTY FEET; THENCE RUNNING EASTERLY AT RIGHT ANGLES TO RIDGE ROAD ONE HUNDRED AND TWENTY FEET TO THE PLACE OF BEGINNING. THE IMPROVEMENTS ON SAID LOT OF GROUND BEING NOW KNOWN AS NO. 2 RIDGE ROAD. Being a lot of 6,000 square feet

THIS DESCRIPTION IS FOR ZONING PURPOSES ONLY AND NOT FOR THE CONVEYANCE OF TITLE.

THIS PROPERTY IS SUBJECT TO ANY AND ALL AGREEMENTS, EASEMENTS, RIGHTS OF WAY, AND/OR COVENANTS OF RECORD AND LAW.

HERBERT MALMUD REGISTERED LAND SURVEYOR MARYLAND #7558 JULY 2, 2004

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. #05-024-A

- 2 Ridge Road

W/side of Ridge Road at the distance of 149 feet \$/side 🖟 of Edmondson Ave.

1st Election District 1st Councilmanic District

Legal Owner(s): Atkins Family Living Trust, Dennis & Carol Atkins

Variance: to allow a receational vehicle to be stored 1 foot from the side lot line, in lieu of the required 2 1/2 feet from any side of lot line.

Hearing: Monday, October 18, 2004 at 11:00 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 accommodations 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.

9/428 Sept. 30 1

CERTIFICATE OF PUBLICATION

9/20/ 00/
THIS IS TO CERTIFY, that the annexed advertisement was published
in the following weekly newspaper published in Baltimore County, Md.,
once in each ofsuccessive weeks, the first publication appearing
on 980,2004.
•
The Jeffersonian
☐ Arbutus Times
☐ Catonsville Times
☐ Towson Times
Owings Mills Times
☐ NE Booster/Reporter
☐ North County News

Wilkinger LEGAL ADVERTISING

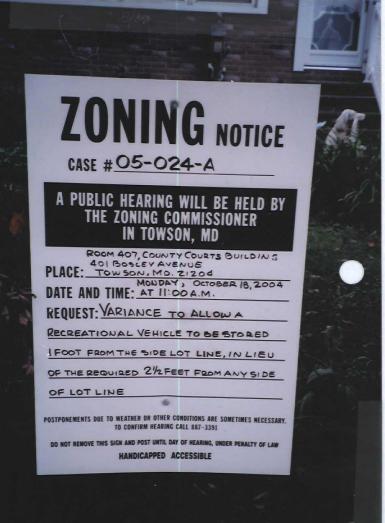
	RE: Case No.: 05 - 024 A
	Petitioner/Developer: DEALLIS & CAMOL ATICLES
and the second s	Date of Hearing/Closing: Oct - 18, 2004
Baltimore County Department of	
Permits and Development Management	(C. N)
County Office Building, Room 114 11 West Chesapeake Avenue	TO SIGNATION DAY
owson, MD 21204	DEVISION TO SIGN MONDAY DEVISION TO MONDAY CHANGED DAY CHANGED DA
\ <	EVISION DATE OF PARTY
Attention: Becky Hart	CHANGE
	NEW
Ladies and Gentlemen: This letter is to	certify under the penalties of perjury that the necessary sign(s) required by
aw were posted conspicuously on the p	property located at \$\frac{1000}{2000}
The sign(s) were posted on	PT. 30, 7009
the sign(s) were posted on	(Month, Day, Year)
	Since rely,
•	
	Hard De Vone
,	(Signature of Sign Poster and Date)
. 1	
er en	GARLANDE, MOORE
	(Printed Name)
	3225 RYERSON CIRCLE
•	(Address)
	BAUTIMORE, MD. 21227
	(City, State, Zip Code)
	(410) 242-4263 (Telephone Number)
•	(1 stephone 14th toer)

RECEIVED

OCT - 4 2004

DEPT. OF PERMITS AND DEVELOPMENT MANAGEMENT

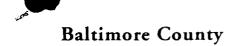




Department of Permits and Development Management

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





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

September 9, 2004

CORRECTED 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: 05-024-A

2 Ridge Road

W/side of Ridge Road at the distance of 149 feet s/side of Edmondson Avenue

1st Election District – 1st Councilmanic District

Legal Owners: Atkins Family Living Trust, Dennis & Carol Atkins

<u>Variance</u> to allow a recreational vehicle to be stored 1 foot from the side lot line, in lieu of the required 2 ½ feet from any side of lot line.

Hearing: Monday, October 18, 2004, at 11:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Timothy Kotroco

Director

TK:klm

C: Michael Tanczyn, 606 Baltimore Ave., Ste. 106, Towson 21204 Dennis & Carol Atkins, 2 Ridge Road, Baltimore 21228 Sue Johnson 6003 Edmondson Avenue Catonsville 21228

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY FRIDAY, OCTOBER 1, 2004.

- (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.

APPEAL SIGN POSTING REQUEST

CASE NO.: 05-024-A

ATKINS FAMILY LIVING TRUST - LEGAL OWNER

2 RIDGE ROAD, CATONSVILLE

1ST ELECTION DISTRICT RECEIVED AT BOARD ON 1/4/2005

APPEALED: 11/22/2004

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.: 05-024-A

Petitioner/Developer:

ATKINS FAMILY LIVING TRUST – LEGAL OWNER

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

2 RIDGE ROAD, CATONSVILLE

2 8 05 1112

The sign was posted on EDCREED Sh., 2005

By: (Signature of Sign Poster)

EDCREED Sh.
(Printed Name)







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

February 4, 2005

NOTICE OF ASSIGNMENT

CASE #: 05-024-A

IN THE MATTER OF: ATKINS FAMILY LIVING TRUST (Dennis & Carol Atkins) - Legal Owner /Petitioner

2 Ridge Road 1st Election District; 1st Councilmanic District

10/29/04 - D.Z.C.'s Order in which variance request was GRANTED.

ASSIGNED FOR:

WEDNESDAY, APRIL 6, 2005 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 B, 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:

Appellants /Protestants

: Susan Johnson Diane Kingsbury

Counsel for Legal Owners /Petitioners:

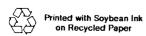
Legal Owners /Petitioners

: Michael P. Tanczyn, Esquire : Atkins Family Living Trust

(Dennis and Carol Atkins)

Herbert Malmud

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM









County Board of Appeals of Baltimore County

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

April 8, 2005

NOTICE OF DELIBERATION

IN THE MATTER OF:

ATKINS FAMILY LIVING TRUST (Dennis & Carol Atkins) -- Legal Owner /Petitioner

<u>Case No. 05-024-A</u>

Having heard this matter on 4/06/05, public deliberation has been scheduled for the following date /time:

DATE AND TIME

WEDNESDAY, APRIL 13, 2005 at 12:30 p.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:

Counsel for Appellants /Protestants

Appellants /Protestants

: Leslie M. Pittler, Esquire

: Susan Johnson Diane Kingsbury

Counsel for Legal Owners /Petitioners:

Legal Owners /Petitioners

: Michael P. Tanczyń, Esquire

: Atkins Family Living Trust

(Dennis and Carol Atkins)

Herbert Malmud

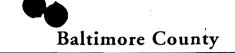
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

FYI: 2-3-5

Department of Permits and Development Management

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





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

October 14, 2004

Michael P. Tanczyn Law Offices of Michael P. Tanczyn 606 Baltimore Avenue, Ste 106 Towson, Maryland 21204

Dear Mr. Tanczyn:

RE: Case Number: 05-024-A, 2 Ridge Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on July 12, 2004.

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.

M. Call Richal

W. Carl Richards, Jr. Supervisor, Zoning Review

WCR: clb

Enclosures

People's Counsel
 Atkins Family Living Trust Dennis and Carol Atkins 2 Ridge Road Baltimore 21228







Robert L. Ehrlich, Jr., Governor Michael S. Steele, Lt. Governor Robert L. Flanagan, Secretary Neil J. Pedersen, Administrator

Maryland Department of Transportation

Date:

7.23-04

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

RE:

Baltimore County

Item No. 024 JRF

Dear. Ms. Matthews:

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,

Steven D. Foster, Acting Chief **Engineering Access Permits Division**

1. J. Gred la







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 July 22, 2004

ATTENTION: Kristen Mathews

Distribution Meeting of: July 26, 2004

Item No.:

017 = 035

Dear Ms. Mathews:

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.

6. 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

20ning

DATE: August 4, 2004

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

Department of Permits & Development Management

FROM:

Robert W. Bowling, Supervisor Bureau of Development Plans

Review

SUBJECT:

Zoning Advisory Committee Meeting

For August 2, 2004

Item Nos. 017, 020, 022, 024, 025, 026, 027, 028, 029, 030, 033, 034,

and 035

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

RWB:CEN:jrb

cc: File



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

Department of Permits and Development Management

FROM:

Arnold F. 'Pat' Keller, III

Director, Office of Planning

SUBJECT:

Zoning Advisory Petition(s): Case(s) 4-561 and 5-02

DATE: August 3, 2004

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer. For further questions or additional information concerning the matters stated herein, please contact Mark A. Cunningham in the Office of Planning at 410-887-3480.

MAC/LL

RE: PETITION FOR VARIANCE

2 Ridge Road; W/side of Ridge Road,

149' S of Edmonson Avenue

1st Election & 1st Councilmanic Districts

Legal Owner(s): Atkins Family Living Trust,*

Dennis & Carol Atkins

(

Petitioner(s)

ZONING COMMISSIONER

BEFORE THE

FOR

BALTIMORE COUNTY

05-24-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.

RECEIVED

JUL 3 0 2004

Per KIL

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

CAROLE S. DEMILIO

Deputy People's Counsel

Old Courthouse, Room 47

400 Washington Avenue

Towson, MD 21204

(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of July, 2004, a copy of the foregoing Entry of Appearance was mailed to, Michael Tancyzn, Esquire, 606 Baltimore Avenue, St. 106, Towson, MD 21204, Attorney for Petitioner(s).

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

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 3, 2005

Michael Tanczyn 606 Baltimore Avenue, Ste. 106 Towson, MD 21204

Dear Mr. Tanczyn:

RE: Case: 05-024-A, 2 Ridge Road



BALTIMORE COUNTY BOARD OF APPEALS

Please be advised that an appeal of the above-referenced case was filed in this office on November 22, 2004 by Susan Johnson and Diane Kinsgbury. 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

Timothy Kotroco Director

Kotroco

TK:klm

c: William Wiseman, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Dennis & Carol Atkins, 2 Ridge Road, Baltimore 21228
Herbert Malmud, 12018 Ridge Valley Drive, Owings Mills 21117
Susan Johnson & Diane Kingsbury, 6003 Edmondson Ave., Catonsville 21228



LAW OFFICES

MICHAEL P. TANCZYN, P.A.

Suite 106 • 606 Baltimore Avenue Towson, Maryland 21204

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

December 22, 2004

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

DEC 2 3 2004

BALTIMORE COUNTY
BOARD OF APPEALS

Re:

Case Number: 05-024-A

2 Ridge Road

W/side of Ridge Road at the distance of 149 feet s/side of Edmondson Avenue

1st Election District - 1st Councilmanic District

Legal owners: Atkins Family Living Trust, Dennis & Carol Atkins

Dear Ms. Bianco:

Please note that we represent the Petitioners in the above referenced matter, which was appealed by the neighbor Protestants. To this time, we have not been given a hearing date. Could you please assign a hearing date? We do not anticipate this will take more than $1\frac{1}{2}$ - 2 hours for presentation.

Please advise.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/cbl

cc: client

APPEAL

Petition for Variance 2 Ridge Road

W/s of Ridge Road, 149 ft. s/of centerline of Edmondson Avenue

1st Election District – 1st Councilmanic District

Atkins Family Living Trust (Dennis & Carol Atkins) - Petitioners

Case No.: 05-024-A

VPetition for Variance (July 12, 2004)

✓Zoning Description of Property

Notice of Zoning Hearing (September 9, 2004)

✓ Certification of Publication (The Jeffersonian – September 30, 2004)

Certificate of Posting (September 30, 2004) by Garland Moore

✓ Entry of Appearance by People's Counsel (July 30, 2004)

√Petitioner(s) Sign-In Sheet – One Sheet

VProtestant(s) Sign-In Sheet - None

VCitizen(s) Sign-In Sheet - One Sheet

VZoning Advisory Committee Comments /0-/4-04

RECEIVED

BALTIMORE COUNTY

BOARD OF APPEALS

Petitioners' Exhibit

Plat to accompany to petition

√2. North Paradise Plat

√3. Deed

√4. Fee Simple Deed

√5. Real Property Data Search – 2 Ridge Road

√6. Real Property Data Search – 6003 Edmondson Avenue

6A. Photos

7. Photos

V8. Photos

V9. Photos

vio. Photos

1.12 Photos

12a-d. Photos

13A. Photo

Protestants' Exhibits:

1A-L. Photos

Miscellaneous (Not Marked as Exhibit)

1. Letter of Opposition dated July 5, 2004

√ Deputy Zoning Commissioner's Order (GRANTED – October 29, 2004)

Notice of Appeal received on November 22, 2004 from Diane Kingsbury & Susan Johnson

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Dennis & Carol Atkins
Herbert Malmud
Susan Johnson & Diane Kingsbury

date sent January 4, 2005, klm

SUSAN JOHNSON
DIANE KINGSBURY
6003 EDMONDSON AVENUE
CATONSVILLE MD 21228
APPELLANTS

LESLIE M. PITTLER, ESQUIRE

DENNIS AND CAROL ATKINS, TRUSTEES 2 RIDGE ROAD BALTIMORE, MID 21228 PETITIONERS

MICHAEL P TANCZYN, ESQUIRE 606 BALTIMORE AVENUE SUITE 106 TOWSON,MD 21204 ATTORNEY FOR PETITIONERS



Case No. 05-024-A

In the Matter of: Atkins Family Living Trust (Dennis & Carol Atkins)
- Petitioners

VAR – To allow a recreational vehicle to be stored 1' from the side lot line ilo the required 1 ½' from any side lot line.

10/29/04 - D.Z.C.'s Order in which requested variance relief was GRANTED.

12/23/04 - Letter of entry of appearance filed by Michael P. Tanczyn, Esquire - counsel for Petitioners. Requesting hearing date. File not yet received from PDM.

2/04/05 -Notice of Assignment sent to following; assigned for hearing on Wednesday, April 6, 2005 at 10 a.m.:

Susan Johnson
Diane Kingsbury
Michael P. Tanczyn, Esquire
Atkins Family Living Trust
(Dennis and Carol Atkins)
Herbert Malmud
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

4/05/05 - Letter from People's Counsel re standards for requested relief and copy of *Green v. Bair*.

4/06/05 - Board convened for hearing (Stahl, Wescott, Brassil); completed case this date; no written briefs to be filed; deliberation to be assigned. Added Leslie M. Pittler, Esquire to the file on behalf of Protestants; entry of appearance to be filed.

4/08/05 – Notice of Deliberation sent to parties; deliberation assigned for Wednesday, April 13, 2005 at 12:30 p.m. FYI copy with note of deliberation BEFORE 1 p.m. case on 4/13/05 sent to 2-3-5; confirmed with 5 that ½ hour would adequate for this deliberation.

November 19, 2004

Department of Permits & Development Management Appeals Department 1111 W. Chesapeake Avenue Towson, MD 21204

RE: APPEAL REQUEST

Petition for Variance Case No. 05-024-A

Property: 2 Ridge Road

Date of Order: October 29, 2004

Appeals Department:

This letter will serve as notification within 30 days of the above request to appeal the Order that was granted on October 29, 2004 for Variance of 2 Ridge Road as we are opposed to the Order.

Please call if any additional information is needed in order to move forward with this request to Appeal the Order for Variance.

Respectfully,

Susan Johnson

Diane Kingsbury

6003 Edmondson Avenue Catonsville, MD 21228

Phone 410-719-2337

Cell 410-371-2305

Cell 410-371-5241

RECEIVED

NOV 2 2 2004

Per XVM

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 William J. Wiseman III, Zoning Commissioner

October 29, 2004

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

> Re: Petition for Variance Case No. 05-024-A Property: 2 Ridge Road

Dear Mr. Tanczyn:

Enclosed please find the decision rendered in the above-captioned case. The petition for variance has been granted 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 and 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,

Jøhn V. Murphy

Deputy Zoning Commissioner

JVM:raj Enclosure

c: Dennis & Carol Atkins, 2 Ridge Road, Baltimore, MD 21228 Herbert Malmud, 12018 Ridge Valley Dr., Owings Mills, MD 21117 Susan Johnson & Diane Kingsbury, 6003 Edmondson Ave., Catonsville, MD 21228

IN weiting - 275.00 + 75.00 - Two checks

1N weiting - 275.00 + 75.00 - Two checks

40 695 to 26 A - WEST ROAD

40 40 South Right LANE (R)

1111 W. Chescrute and Rm 1111

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





OFFICE OF PEOPLE'S COUNSEL

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

> 410-887-2188 Fax: 410-823-4236

PETER MAX ZIMMERMAN People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

April 5, 2005

Lawrence M. Stahl, Chairman County Board of Appeals Old Courthouse, Room 49 400 Washington Avenue Towson, MD 21204



BALTIMORE COUNTY BOARD OF APPEALS

Re: Atkins Family Living Trust (Dennis & Carol Atkins)

Case No. 05-024-A

Dear Chairman Stahl,

This petition for a setback variance for a recreational trailer relates to the standards found in BCZR Section 415A.1.A. This section is within Article 4 of the BCZR, which establishes "Special Regulations" for certain uses.

BCZR A400 provides:

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

These Special Regulations, therefore, are effectively use regulations. Some of these regulations relate to standards which ordinarily would be classified as area standards, but they are of a different character than general area standards which apply to an entire zone.

While the County Board of Appeals has traditionally entertained petitions under BCZR 307 for variances from Special Regulations, these warrant, at the very least, a higher level of scrutiny for consistency with the intent of the regulations.

In this vein, BCZR 415A.3.B appears to provide an "undue hardship" standard for a modified storage plan for recreational vehicles. This would appear to be a specific additional standard, over and above the BCZR 307 standards. It is settled that "undue hardship" requires proof of elements additional to "practical difficulty." McLean v. Soley 270 Md. 208 (1973). An

Lawrence M. Stahl, Chairman County Board of Appeals April 5, 2005 Page 2

excellent discussion of this standard is found in the enclosed decision in <u>Green v. Bair</u> 77 Md. App. 144 (1988), cert. denied (1989). It should be emphasized that all of these standards, along with the uniqueness standard under BCZR 307, relate to the property and not the applicants.

In light of the above, this office is particularly interested in the implementation of the relevant legal standards. We hope this letter will be helpful upon the hearing.

Sincerely,

Peter Max Zimmerman

People's Counsel for Baltimore County

PMZ\rmw Enclosure

cc: Michael Tancyzn, Esquire (sent via fax & first class mail)

Susan Johnson Diane Kingsury legal services and the value of the legal services are exclusively for the judge to determine.

A legally trained judge is far better able than a jury to assess the quality of legal services. The issue of what pretrial motions and pleadings were valuable or necessary in a case is one essentially beyond the competence of a jury. For a jury to determine the necessity for and value of legal services in a nonjury case would virtually require a retrial of the case before the jury. The assessment of legal fees in divorce actions and custody cases, for instance, would be drawn into chaos if the law were otherwise. Were Dr. L. to prevail, we can imagine a court-appointed criminal defense attorney refusing to accept a fee awarded by the judge and arguing to a jury that the fee should have been far greater.

In a case such as this, the initial decision by the judge to appoint an attorney to act in the interests of the children, the determination by the judge as to the appropriate remuneration for those legal services and the assessment by the judge of the costs for those legal services simply do not represent a "civil action" within the remote contemplation of § 4–402(e).

JUDGMENT IN CASE NO. 171 REVERSED; JUDG-MENT IN CASE NO. 710 AFFIRMED; COSTS TO BE PAID BY DR. L., THE APPELLEE IN CASE NO. 171.

> 549 A.2d 762 Sue H. GREEN, et al.

> > V.

Scott S. BAIR, Sr.

No. 187, Sept. Term. 1988.

Court of Special Appeals of Maryland.

Nov. 4, 1988.

Certiorari Denied March 8, 1989.

Owners of medical building and physicians practicing within it sought zoning variance from setback requirements

in municipal zoning code. The Westminster Board of Zoning Appeals granted the variance. The Circuit Court, Carroll County, Donald J. Gilmore, J., reversed. On appeal, the Court of Special Appeals, Robert M. Bell, J., held that physicians and building owner wives failed to demonstrate undue hardship which would justify grant of zoning variance from the setback requirement.

Affirmed.

Zoning and Planning \$\infty\$504

Under Westminster Zoning Code, financial hardship suffered by physicians and their property owner wives due to space difficulties they suffered in medical building were insufficient to demonstrate either an inability to secure a reasonable return on or use of their property, or that hardship suffered was peculiar to property to demonstrate undue hardship and justify variance from zoning setback requirements.

William B. Dulany (David K. Bowersox and Dulany, Parker & Scott on the brief), Westiminster, for appellants.

Clark R. Shaffer (C. Rogers Hall, Jr. on the brief), Westminster, for appellee.

Argued before MOYLAN, ROBERT M. BELL, and WENNER, JJ.

ROBERT M. BELL, Judge.

This case reaches us on an appeal and cross-appeal from the judgment of the Circuit Court for Carroll County. The City of Westminster Board of Zoning Appeals, after a public hearing, granted, in part, the application, of Sue H. Green and Beulah C. Chang, appellants/cross-appellees, (hereinafter "appellants"), for variances from the City's set back requirements, thus permitting enlargement of an existing medical office building. Upon the appeal of Scott S. Bair, Sr., appellee/cross-appellant, (hereinafter "appellee"),

NOTICE OF CAVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754

'Assignment Date: 02/15/2006

Case Title:In The Matter of: Atkins Family Living Trust, et al Case Number:03-C-05-010822 AE

To:

The above case has been assigned to the **EXPEDITED APPEAL TRACK**. Should you have any questions concerning this Scheduling Order, please contact the DCM office, at (410)887-3233 or Civil Assignment at (410)887-2660. You must notify the Civil Assignment Office in writing (fax number:410-887-3234) within 15 days of receipt of this Order as to any conflicts with the following dates:

- 1. Motions to Dismiss under MD. Rule 2-322(b) are due by $\dots 03/02/06$
- 2. All Motions (excluding Motions in Limine) are due by03/29/06

<u>Trial Date:</u> Please note that if the case does not settle on the initial Settlement Conference date set forth in this Order, an agreed trial date shall be obtained at the Settlement Conference. **The Disposition Deadline for this case is :04/11/07.** The trial MUST be scheduled prior to the Disposition Deadline date.

Date Issued: 02/15/06

<u>Honorable John Grason Turnbull, II</u> Administrative Judge

<u>Postponement Policy:</u> No postponements of dates under this Order will be approved, except for undue hardship or emergency situations. All requests for postponement must be submitted in writing, with a copy to all parties/attorneys involved. The Administrative Judge must approve all requests for postponement.

<u>Settlement Conference (Room 507):</u> All parties, attorneys and corroborating witnesses MUST attend the Settlement Conference in person. Failure to attend may result in sanctions by the Court. (Call 410-887-2920 for more information).

<u>Voluntary Dismissal:</u> Per Md. Rule 2-506, after answer or Motion for Summary Judgment is filed a plaintiff may dismiss an action without leave of court by filing a stipulation of dismissal signed by all parties who have appeared in the action. The stipulation shall be filed with the Clerk's Office. Also, unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action.

<u>Special Assistance Needs:</u> If you need an accommodation under the Americans with Disabilities Act, please call the Civil Assignment Office at (410)887-2660, or use the Court's TDD line, (410)887-3081 or the Voice/TDD M.D Relay Service, (800)735-2258.

Court Costs: All court costs <u>MUST</u> be paid on the date of Settlement Conference or Trial.

Date Issued: 02/15/06

cc: Baltimore County Board Of Appe.

Old Courthouse Room 49 400 Washington Avenue Baltimore MD 21204

cc: Leslie M Pittler
cc: Michael P Tanczyn Esq

29 W Susquehanna Ave Suite 610 Towson MD 21204 606 Baltimore Avenue Suite 106 Baltimore MD 21204

IT COURT FOR BALTIMORE C SUZANNE MENSH, CLERK COUNTY COURTS BUILDING 401 BOSLEY AVENUE

TOWSON, MD 21285 PHONE: (410) 887-2601 TTY: (800) 735-2258

BILL OF COSTS

In The Matter of: Atkins Family Living Trust, et al

Invoice No. 2006000881

Case No.

03-C-05-010822

Date:

05/15/2006

Date	Receipt #	<u> Item</u>		Assessed	Payment	Balance
05/15/06	•	Appearance	Fee	10.00		10.00
				TOTAL	DUE:	10.00
	*					
3					*	

NOW DUE:

10.00

Case No. 03-C-05-010822 Invoice No. 2006000881

If the account is referred to a collection agency, a collection fee will be added. Please detach and send payment to: Suzanne Mensh, Clerk Civil Department County Courts Building 401 Bosley Avenue Towson, MD 21285

FILE COPY

Michael P Tanczyn Esq 606 Baltimore Avenue Suite 106 Baltimore MD 21204

Balt	tί	more	Coun	tv
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Circuit Court for_

City or County

CIVIL—NON-DOMESTIC CASE INFORMATION REPORT

District NET ON 1					
Directions: Plaintiff: This Information Report must be completed and attached to the complaint filed with the Clerk of Court					
Plaintiff: This Information	Report must be completed to	and attached to the complaint	filed with the Clerk of Court		
unless your case is exempted f	rom the requirement by the	Chief Judge of the Court of A	ppeals pursuant to Rule		
2-111. A copy must be include	led for each defendant to be	served.			
Defendant: You must file of	in Information Report as rec	nuired by Rule 2-323(h).			
		ACCEPTED AS AN ANSW	FROR RECROVER		
		/ 1/	ERUK RESPONSE.		
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JURY DEMAND: Yes	PIQUITIT	ed length of trial: ho	Dellenciant days		
RELATED CASE PENDING? [Yes No If yes, Ca	ase #(s), if known:			
HAS ALTERNATIVE DISPUTE	E RESOLUTION (ADR):	Been Tried? Yes	No		
	•		No		
If yes, specify:		***			
	nterpreter/communication imp	airment			
	Other ADA accommodation:		-		
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(CHECK O	NE BOX)				
TORTS	LABOR	A. T	ORTS		
Motor Tort	Workers' Comp.	Actual Damages			
Premises Liability	Wrongful Discharge	Under \$7,500	Medical Bills		
Assault & Battery	☐ EEO	\$7,500 - \$50,000	" •		
Product Liability	Other	\$50,000 - \$100,000	Property Damages		
Professional Malpractice	CONTRACTS	Over \$100,000	Co Property Damages		
1 ==	Insurance	U Over \$100,000			
Wrongful Death	Confessed Judgment		☐ Wage Loss		
Business & Commercial	Other		\$		
Libel & Slander	REAL PROPERTY	-			
False Arrest/Imprisonment	Judicial Sale	B. CONTRACTS	C. NONMONETARY		
☐ Nuisance	Condemnation		RELIEF		
Toxic Torts	Landlord Tenant	☐ Under \$10,000			
☐ Fraud	Other ZOMN G	\$10,000 - \$20,000	Declaratory Judgment		
Malicious Prosecution	OTHER		Injunction:		
Lead Paint	Civil Rights	Over \$20,000			
Asbestos	☐ Environmental		Other David		
Other	ADA		ZONING ADVIN		
	Other		APPRAL		
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TRACK REQUEST					
With the exception of Baltimore County and Baltimore City, please fill in the estimated LENGTH OF TRIAL. THIS CASE					
WILL THEN BE TRACKED ACCORDINGLY.					
☐ 1/2 day of trial or less ☐ 3 days of trial time					
☐ 1 day of trial time ☐ More than 3 days of trial time					
2 days of trial time					
IE VOIL ARE FILL	NC VOLID COMPLETE TO	DALTHIODE COURTS PAIN	THE COME COME		
3	•	BALTIMORE COUNTY, BALT			
PRINCE GEORGE	S COUNTY, PLEASE SEE R	EVERSE SIDE OF FORM FO	KINSTRUCTIONS.		
Date: 0213,2065. Signature: Mill P Townsy.					
NIDCID (AMA)					

IF YO	U ARE FILING YOUR TTY, PLEASE FILL OU	COMPLAINT IN BALTIMORE COUNTY, BALTIMORE CITY, OR PRINCE GEORGE: T THE APPROPRIATE BOX BELOW.
	CIRC	UIT COURT FOR BALTIMORE CITY (check only one)
	Expedited	Trial 60 to 120 days from notice. Non-jury matters.
	Standard-Short	Trial seven months from Defendant's response. Includes torts with actual damages up to \$7,500; contract claims up to \$20,000; condemnations; injunctions and declaratory judgment
	Standard-Medium	Trial 12 months from Defendant's response. Includes torts with actual damages over \$7,500 and under \$50,000, and contract claims over \$20,000.
	Standard-Complex	Trial 18 months from Defendant's response. Includes complexicases requiring prolonged discovery with actual damages in excess of \$50,000.
	Lead Paint	Fill in: Birthdate of youngest plaintiff
. 🗆	Asbestos	Events and deadlines set by individual judge.
	Protracted Cases	Complex cases designated by the Administrative Judge.
	CH	RCUIT COURT FOR PRINCE GEORGE'S COUNTY
	admission and may not be Liability is conceded.	mining the appropriate Track for this case, check one of the boxes below. This information is be used for any purpose other than Track Assignment. d, but is not seriously in dispute. dispute.
		CIRCUIT COURT FOR BALTIMORE COUNTY
Ø	Expedited (Trial Date-90 days)	Attachment Before Judgment, Declaratory Judgment (Simple), Administrative Appeals, District Court Appeals and Jury Trial Prayers, Guardianship, Injunction, Mandamus.
	Standard (Trial Date-240 days)	Condemnation, Confessed Judgments (Vacated), Contract, Employment Related Cases, Fraud and Misrepresentation, Intentional Tort, Motor Tort, Other Personal Injury, Workers' Compensation Cases.
	Extended Standard (Trial Date-345 days)	Asbestos, Lender Liability, Professional Malpractice, Serious Motor Tort or Personal Injury Cases (medical expenses and wage loss of \$100,000, expert and out-of-state witnesses (parties), and trial of five or more days), State Insolvency.
	Complex (Trial Date-450 days)	Class Actions, Designated Toxic Tort, Major Construction Contracts, Major Product Liabilities, Other Complex Cases.

LAW OFFICES

MICHAEL P. TANCZYN, P.A.

Suite 106 • 606 Baltimore Avenue Towson, Maryland 21204

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

October 25, 2005

County Board of Appeals of Baltimore County Attn: Linda B. Fliegel Old Courthouse, Room 49 400 Washington Avenue Towson, MD 21204

RE:

Circuit Court Civil Action No. 03-C-05-10822

Petition for Judicial Review Atkins Family Living Trust

Board of Appeals Case No.: 05-024-A

Dear Ms. Fliegel:

Thank you for your letter of October 20, 2005. Some time ago we ordered and have previously obtained the transcript from the hearing from Ms. Peatt. We appreciate your letter nonetheless. Please advise when the Board has forwarded the case file and exhibits to the Circuit Court.

Thank you for your assistance in that regard.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/cbl

cc:

clients

10/26/05

Linda – re attached letter from Mike Tanczyn /Atkins Family Living Trust transcript

I've spoken with Carolyn – she has the original for this case (Mike paid for it at the time he obtained a copy from Carolyn).

Carolyn will get it to you well before filing time.

kathi



FAX COVER SHEET

	For You, For Baltimore County	Date:	
Could You	Census 20	Number	of Pages including cover sheet:
To: Car	olign Beatt	From	County Board of Appeals 400 Washington Ave., Rm. 49
			Towson, MD 21204
Phone:			e: (410) 887-3180
Fax # 4/0	321-0272	Fax #	(410) 887-3182
<u>'c:</u>			
REMARKS:	☐ Úrgent ☐ Fo	r your review R	eply ASAP Please comment
	. 4		
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§ 415A

SPECIAL REGULATIONS

§ 415A

Section 415A Recreational Vehicles and Boats [Bill Nos. 29-1974; 54-1993]

- 415A.1 Contrary provisions of these regulations notwithstanding, one recreational vehicle may be stored on a residential lot as set forth below. Such vehicle, except a truck camper, shall have a current license, may not be lived in, or otherwise occupied, when stored on a lot and shall be mechanically ready to be moved at any time. A recreational boat, whether mounted on a trailer or stored on land with or without the use of supports, is subject to these provisions. A boat less than 16 feet in length is not subject to these provisions, except when such boat is mounted on a trailer. The space occupied by such a recreational vehicle or boat may be counted as a required parking space.
 - A. On a lot occupied by a single-family detached or semi-detached dwelling, one such vehicle may be stored 2½ feet from any rear or side lot line; however, when in a side yard it must be situated at least eight feet to the rear of a lateral projection of the front foundation line of the dwelling. Such vehicle may be stored in any garage.
 - B. On the lot of any individually owned row or group house, one such vehicle may be stored, provided that it is situated entirely in the rear yard, 2½ feet from the side or rear lot lines.
 - C. Such vehicles may be stored on a specially designed parking area of any multifamily rental or condominium unit. Such areas must be screened from adjacent off-site residential uses, as required by the Director of Permits and Development Management.
- 415A.2 A residentially used or vacant residentially zoned waterfront lot shall have no more than one pier (whether fixed or floating). As of November 15, 1993, the number of boats, not including those smaller than 16 feet, permitted to be stored at a pier, slip, buoy or any other mooring device in the water at such a lot shall be limited in accordance with the following schedule:

Waterside Lot Line	Number of Boats Permitted			
0 to 50 feet			4	*
51 to 100 feet			5	
Over 100 feet	•	•	6 .	

415A.3 Exceptions.

A. From November 1 through March 31, out-of-water boat storage on residential waterfront lots is permitted, subject to the setback provisions in Section 415A.1.A or B and in accordance with the following schedule:

Jun.

8 415A

BALTIMORE COUNTY ZONING REGULATIONS

§ 415B

Waterside Lot Line

Number of Boats Permitted

0 to 75 feet

2 boats, or 1 boat and 1 other recreational vehicle

Over 75 feet

3 boats, or 2 boats and 1 other recreational vehicle

3. Where the requirements set forth herein for the storage of recreational vehicles would create an undue hardship, the Zoning Commissioner may approve a modified storage plan upon petition and public hearing thereon according to the procedure defined in Title 26, Section 26-127(b), except that if no hearing is requested the modified plan may be approved by the Director of Permits and Development Management, subject to appeal to the Baltimore County Board of Appeals.

Section 415B Collection Trailers [Bill No. 154-1982]

- Contrary provisions of these regulations notwithstanding, collection trailers, profit and nonprofit, may be temporarily placed on shopping center properties subject to a use permit being granted by the Zoning Commissioner in accordance with Section 500.4.
- 2. Prior to issuing a use permit for a collection trailer, the Zoning Commissioner shall approve the location of said trailer which must be shown on an overall functional site plan of the shopping center in question. In addition to other considerations that he may deem necessary, the Zoning Commissioner shall give consideration to the following factors and may impose any appropriate conditions, resulting from such consideration, upon the use permit:
 - a. The size and vehicular accessibility of the shopping center.
 - b. The available number of parking spaces in the center.
 - c. Whether or not an attendant is provided, and/or required for the trailer.
 - d. Hours of operation.
 - e. The proposed location of the trailer with regard to interior vehicular circulation and adjoining residential premises.
 - f. The purpose for the trailer; i.e., to provide a convenient location for the placement of facilities designed to receive from the public household products, including used beverage cans and foil products, to be recycled for reuse.
 - g. Whether a written authorization has been given by the owner or manager of the shopping center granting permission to locate a collection trailer on the shopping center property.

July 5, 2004

Zoning Commissioner
Baltimore County Department of Permits and Development Management
County Office Building
111 West Chesapeake-e Avenue
Towson, MD 21204

Full Variance Cond. 1/1/09
Hereing per RSW! HA

RE: 2 Ridge Road

Requesting Denial of Closed Hearing

Case # 038488

Zoning Violation Hearing Request for Zoning Variance

Sir/Madam:

We are writing regarding the above zoning violation with regards to a large camper not parked within zoning requirements. The camper should be 2.5 feet from a shared property line. The camper is only 9 inches from a shared property line.

We notified zoning in November of 2003 regarding the zoning violation. To date (7-5-04) the camper is parked only 9 inches off our property line. We have had our property surveyed and since have put up a 6 foot privacy fence. The camper is approx 5-6 inches from our new fence, due to the back end of the camper hanging over their cement driveway. This fence has come with a cost of \$8900.00. The corner run is 120 feet and the side run is approximately 150 feet. Should the camper hit the fence at the corner where it sits, it would cause us unnecessary hardship and stress seeking any needed repairs as well as the notion of proving these neighbors had indeed caused the damage. We do not have any communication with these neighbors and desire not to. These are neighbors who led us to believer part of our property belonged to them. Also Mrs. Atkins stated that BG&E placed a drainage system on her property. After our survey was completed it clearly indicated the drainage system was on our property. We checked with BG&E and learned they had not placed any drainage there. The Atkins were a sent a certified letter to remove bushes and drainage which were on our property within 10 days of the date of the letter sent on October 23,2003. They only removed the bushes forcing us to remove all stone and drainage prior to having our fence erected. They have treated us without regard to respect and dignity as indicated from an incidence on November 3, 2003, where Mrs. Atkins pulled her shorts down and mooned us in front of her husband and 3-4 year old grandson and

our friends. So one can clearly see where we simply want to be left alone and enjoy our home and property free from harassment, unnecessary stress, hardship or hassles.

There was a zoning hearing on May 18, 2004 advising them to seek a variance within 30 days. However as of June 18th they had not sought a variance. We were told by Jeff Radcliff - Zoning Inspector on July 2, 2004 that they are now seeking a closed hearing on this matter.

We can not believe this closed hearing would be permitted considering the issue at hand. We had originally notified the Zoning Commission regarding the zoning violation and should be permitted to discuss our opposing views at the hearing. Respectfully we request to be present at any hearings regarding this issue and advised of any additional information regarding this matter.

We would also like to know when this will come to a FINAL outcome? We have sought correction of this issue since November 2003.

We are diligently **opposed** to the camper being parked outside of zoning requirements as well as a closed hearing.

I have photos as well as evidence of the cost of the fence. Please feel free to call me at 410-576-5976 work, or 410-719-2337 if needed to discuss in greater detail.

Respectfully

Susan Johnson Home Owner

Diane Kingsbury

Home Owner

6003 Edmondson Avenue

Catonsville, MD 21228

Home phone 410-719-2337

Work phone 410-576-5976

cc: Jeff Radcliff of Baltimore County Zoning,

Zoning Commissioner

Office of Baltimore County Council

BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF:

Atkins Family Living Trust - Dennis & Carol Atkins

- Legal Owners/Petitioners

Case No.: 05-024-A

DATE:

April 13, 2005

BOARD/PANEL

Larry M. Stahl Larry S. Wescott

Margaret Brassil

RECORDED BY:

Linda B. Fliegel/Legal Secretary

PURPOSE: To deliberate if a variance should be granted.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

There appears to be nothing unique about this property.

Many houses in the area are approximately the same size and have

There is no apparent hardship if this variance is not granted.

Without variance approval they can still enter/exit their recreational

Petitioners had a smaller recreation vehicle and chose to purchased a larger one.

DECISION BY BOARD MEMBERS: Unanimous decision not to grant variance.

FINAL DECISION: After a deliberation of the facts between the Board members it was decided that the statute had not been met and therefore the variance could not be granted.

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 the Board.

Respectfully Submitted

Linda B. Fliegel

County Board of Appeals

CASE NAME & Rodge Rd CASE NUMBER 05-024 A DATE 02 18 2004

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL	
Michael TADCZYN	Steine, GOZ BALTIMORP AUS	Towson Md 27204	MPTLAW@ VERIZON, NET	
PENNIS ÉCAROL ATK	ins 2 Ridge Rd.	CATONSVILLE Mol. 21228		
HERBURY MALMUE		DWINGS MILLS, MOZILIT		
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CASE NAME & Ridge Rd.
CASE NUMBER 05-024-A
DATE 10/18/04

CITIZEN'S SIGN-IN SHEET						
	of the second	·				
NAME	∕` ADDRESS	CITY, STATE, ZIP	E- MAIL			
Lennis & Carol atkin	s 2 Ridge Road	Catonsville Md2/22	8-1908			
SUSAN JOHNSON 7	6003 EDMONDSON AUR	CATONSVILLE MD ZIZZ8				
DimE Kingsbury	6003 EDMONDSON AUE	CATONSVILL MD 21228	* * * * * * * * * * * * * * * * * * * *			
	Protestants		.,			
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Baltimore County Zoning Commissioner Office of Planning Suite 405, County Courts Bldg. 401 Bosley Avenue Towson, Maryland 21204













bb5634, bb5634_06

Taken 1/2/04 Ritz, RB108, B7/84/84

1/



Roll of

bb5634, bb5634_09

Ritz, R0108, 07/04/04

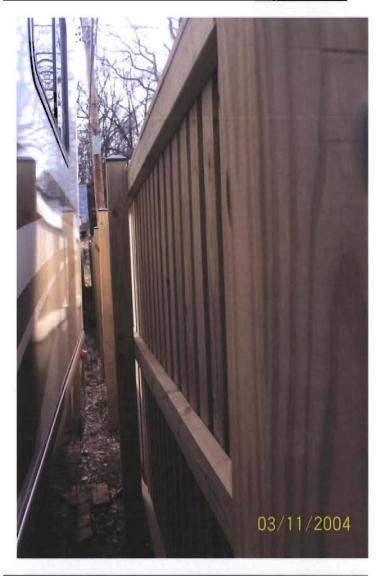


bb5634, bb5634_88

Taken Hafoy

Ritz, R0108, 07/04/04

2/6/10



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Ritz,

R1511, 05/17/04





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To 1D



Pro 1C



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Ritz, R1511, 05/17/04

pro



9559962, 559862_81

Ritz, R1511, 05/17/84

Pro # 1 A



Baltimore County Zoning Commissioner Office of Planning Suite 405, County Courts Bldg. 401 Bosley Avenue Towson, Maryland 21204

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PA 13A

Ba Pat 15 B



Pet 13B

BA Pat 15C



Pet 13C

Bd Pet 150

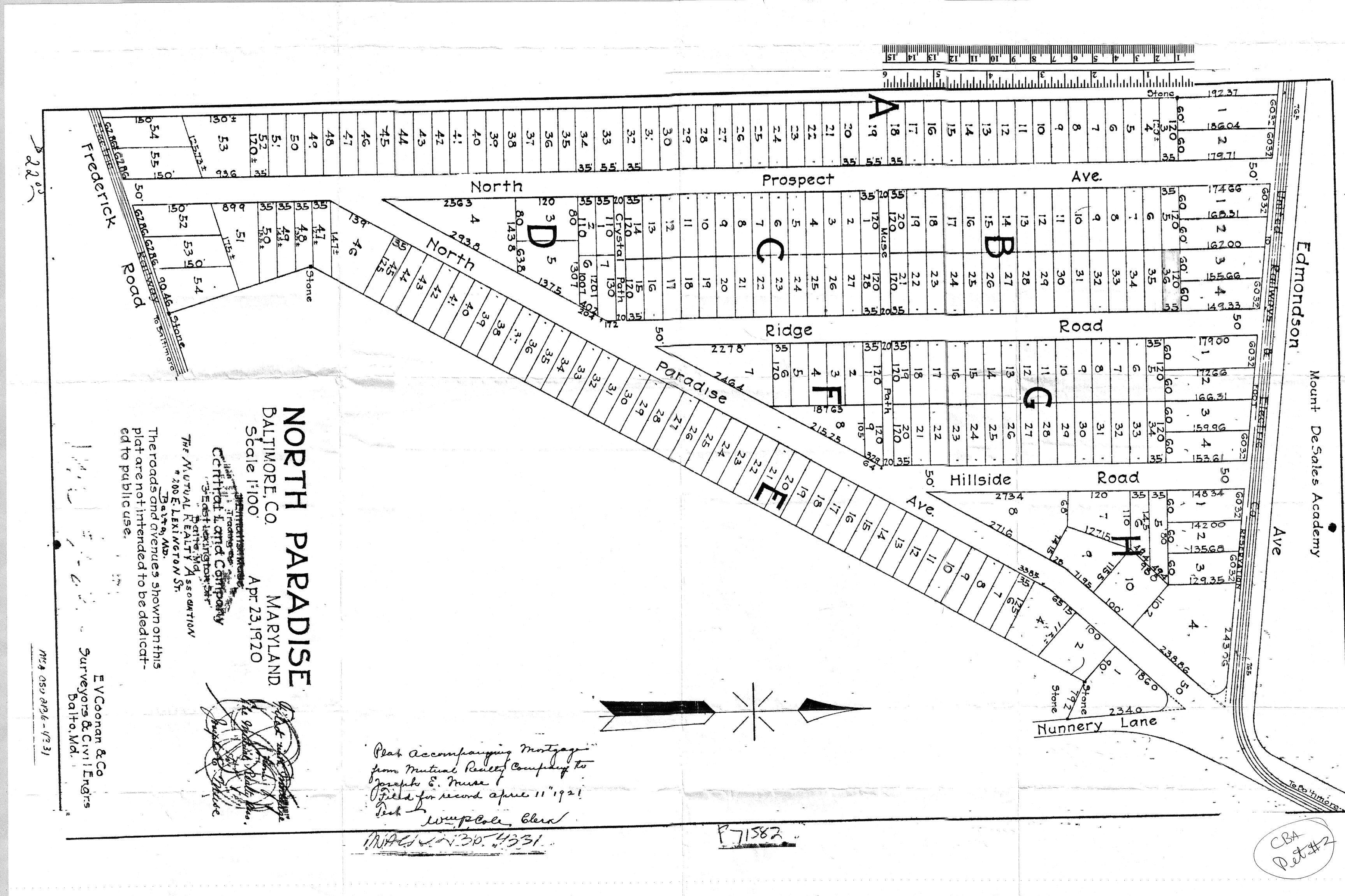


PA 13 D

Bd Pat 15 E

Petitioners Exhibits Jerixed 1,05 Atkins Family CBA 05 -924-A Property Plat Pet 2 North Panaduse Plat 1920 Pet 34 Deed 1998 Atknowing trist Doed SDAT a Ridge Rd Oce Multipage dec conveying deed plus survey Pet 5 Al Pet 6/5DAT Per 6003 Edmandson Ave Pet 6A Photes of house and drivenay Pet 7 Photo of driveway ad Pet 8 - Photes Pat 9 - Photes Pet 10 Pholes Pet 11 Phales Pation Phodes - Prospect Are houses Pet 12 Photes - Recently taken Pet 15 Photos

PLAT TO ACCOMPANY PETITION FOR ZONING XVARIANCE PROPERTY ADDRESS 2 8 A SOUTH CHECKLIST F	OF ADDITIONAL REQUIRED INFORMATION
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CASE 03-8488	ZONING OFFICE USE ONLY REVIEWED BY ITEM # CASE #
PREPARED BY MET SCALE OF DRAWING: 1" = 20;	JR+ 024



Our File No. 5130-75

2

DEED

FROM

ALBERT G. LENGTERMAN

LUCILLE EN LEATHERMAN

DENNISCE. ATKES

CAROL SE ATKINS

BLOCK NO.

Cost of Record, \$_____

Law Offices

ARNOLD, BEAUCHEMIN & HUBER, P.A. 807 W. R. Grace Building

Baltimore and Charles Streets Baltimore, Md. 21202

THE GREAT SECOND CO., MALTINGRE, MD. BIRDS

A B A

01-12-200041

HECKLYSH & RECORDS OF CHACOL CO.

PALTO. CO.

78 JAN - 7 % 2:14

Jip. ey

NO CONSIDERATION NO TITLE SEARCH

FEE SIMPLE DEED

THIS DEED dated <u>AUG 2 1 1998</u>, from DENNIS E. ATKINS and CAROL S. ATKINS, Grantors, to DENNIS E. ATKINS and CAROL S. ATKINS, Trustees, or their successors in trust under the ATKINS LIVING TRUST dated <u>AUG 2 1 1998</u>, and any amendments thereto, Grantees.

The Grantors, for no consideration and for estate planning purposes, grant and convey to the Grantees, their successors and assigns in fee simple, all that lot of ground located in Baltimore County, Maryland and described on the attached Schedule A.

BEING the same property which by Deed dated January 5, 1976, and recorded among the Land Records of Baltimore County in Liber 5598, Page 631, was granted lift of the by Albert G. Leatherman and Lucille E. Leatherman to the Grantors herein.

TOGETHER with the buildings and improvements thereupon; and the grights Hallowsk 4 3792
Nov 24: 1998 12:55 may ways, waters, privileges, appurtenances and advantages to the same belonging or in anywise appertaining.

TO HAVE AND TO HOLD the property hereby conveyed unto the Grantees, their successors and assigns, in fee simple.

AND the Grantors covenant to warrant specially the property hereby conveyed and to execute such further assurances of the property as may be requisite.

F:\pr1\cliess\atkiesd\dred\Page |



Click here for a plain text ADA compliant screen.



Go Back View Map New Search Ground Rent

Account Identifier: District - 01 Account Number - 0112200040

Owner Information

Owner Name:

ATĶINS DENNIS E

ATKINS CAROL S, TRUSTEES

Use:

RESIDENTIAL

Principal Residence:

Mailing Address:

2 RIDGE ROAD

BALTIMORE MD 21228-1908

Deed Reference:

1) /13323/ 17

2)

YES

Location & Structure Information

Premises Address

2 RIDGÉ RD

Legal Description

2 RIDGE RD

EDMÖNDSON RIDGE

Sub District Subdivision Block Map Grid Parcel Section Lot Group Plat No: 101 1089 80 Plat Ref: 3 Town

Special Tax Areas

Ad Valorem

Tax Class **Primary Structure Built Enclosed Area**

Property Land-Area +6,000.00 SF

County Use

1926 1,368 SF Stories **Basement** Type **Exterior** YES STANDARD UNIT SIDING 1 1/2

Value Information

Te de la companya de	Base	Value	Phase-in Assessments		
	Value	As Of	∜ As Of	As Of	
•	•	01/01/2004	07/01/2003	07/01/2004	
Land:	31,000	67,500			
Improvements:	74,780	105,230		*,	
Total:	105,780	172,730	105,780	128,096	
Preferential Land:	, 0	0	0	0	

T	ra	n	s	fe	r I	nfo	rm	ati	on

Seller: ATKINS DENNIS E NOT ARMS-LENGTH Type: Seller: LEATHERMAN ALBERT G Type: IMPROVED ARMS-LENGTH Seller:

11/24/1998 Date: Deed1: /13323/ 17

Price:

Deed2: Date: 01/07/1976 Price: \$42,000 Deed1: /,5598/631

Date:

Deed2: Price:

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: Exempt Class:

Type:

NO

Special Tax Recapture

* NONE *

LAW OFFICES OF

ARNOLD, BEAUCHEMIN & HUBER, P. A.

SUITE BOY W. R. BRACE BUILDING BALTIMORD & CHARLES STREETS

BALTIMORE, MARYLAND 21202

TELEPHONE B37-0216 AREA CODE BOI E. JAMES THOMPSON, JR. WILLIAM S. BARTON
JOBL G. FRADIN
ROBERT EARL WILSON
LAURENCE S. RABER

January 28, 1976

Mr. & Mrs. Dennis Atkins 2 Ridge Road - Baltimore, Maryland 21228

> Re: Our File No. 5130-75 2 Ridge Road Baltimore County

Dear Mr. & Mrs. Atkins:

Enclosed herewith please find your Deed dated January 5, 1976 and recorded among the Land Records of Baltimore County in Liber E.H.K., Jr. No. 5598, folio 631 from Albert G. Leatherman and Lucille E. Leatherman unto yourselves.

Please retain this among your personal records for safekeeping.

Very truly yours,

rnold, beauchemin & Huber, P.A.

Laurence B. Raber

LBR/v Encl.

HERBERT J. ARNOLD

E. GEORGE BENDOS

RICHARD R. BEAUCHEMIN

GEDRGE L. MUBER, JR.

CBA-PAL5A

Click here for a plain text ADA compliant screen.

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

Go Back View Map New Search **Ground Rent**

Account Identifier:

District - 01 Account Number - 0102200150

Owner Information

JOHNSON SUSAN ANN

Üse:

RESIDENTIAL

KINGSBURY DIANE

in the second Principal Residence:

YES

Mailing Address:

6003 EDMONDSON AVE

Deed Reference:

1) /16110/ 664

BALTIMORE MD 21228-1935

Location & Structure Information

Premises Address

6003 EDMONDSON AVE

Legal Description

An James 6003 EDMONDSON AVE

NORTH PARADISE

Map Parcel-101

1089

Section В

Plat No: 80

Plat Ref:

Special Tax Areas

Ad Valorem Tax Class

14

Finclosed Area Property Land Area 1,920 SF 9,510*00 SF

County Use

7/8

1942 Stories Basement YE\$

Primary Structure Built

Type STANDARD UNIT Exterior

SIDING

Value Information

Base. Value Phase-in Assessments As Of Value As Of 01/01/2004 07/01/2003 32,620 69,510 Land: Improvements: 103,490 151,680 Total: 136,110 221,190 136,110 Preferential Land: 0

164,470

07/01/2004

As Of

Transfer Information

Seller: JOHNSON SUSAN ANN NOT ARMS-LENGTH Type:

Deed1:

02/14/2002 /16110/664 Price: 50

Deed 2:

Seller: BMW GROUP INC Type: **IMPR@VED*ARMS*LENGTH ...

Date: Deed1:

J 10/03/1995 /11239/496

Price: \$126,000 Deed 2:

Seller: BECCIO MICHAEL M BECCIO FRANK J Date: Type: NOT ARMS-LENGTH

05/03/1995

Price: \$50,000

Deed1: /11029/ 458 Deed2:

Exemption Information

0

0

Partial Exempt Assessments

07/01/2003

07/01/2004

0 0

Tax Exempt: **Exempt Class:**

County

Municipal

State

NO

Special Tax Recapture:

* NONE *

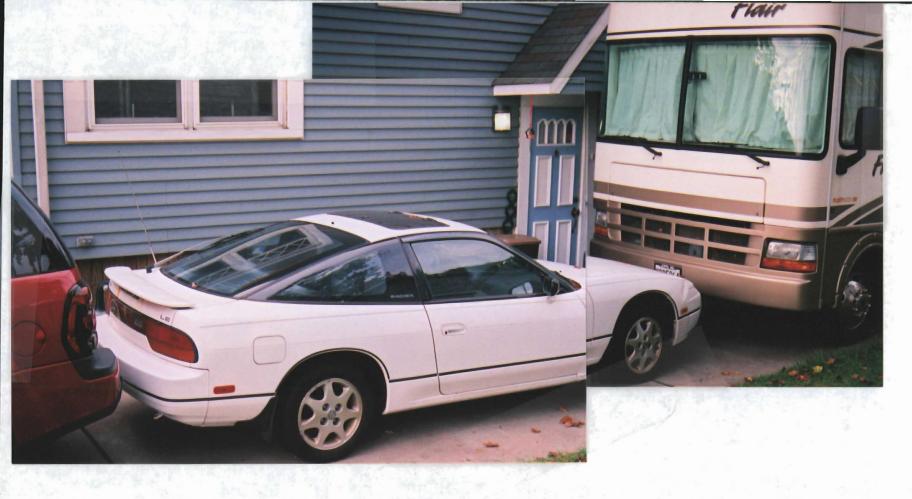
ATKINS FAMILY



Ritz, R1511, 11/84/84









CBA Pat Ex 7

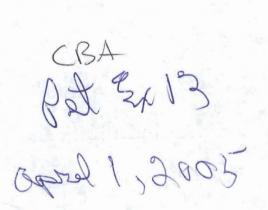
DA

CBA Pat 2x 6A













Pot ENH aprel 1, 2005

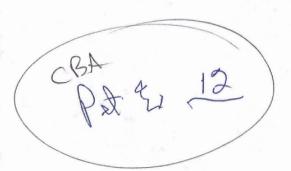
11 x3 tag



39NF rougest



32 N. Prespect











CBA Pater 8







Pat Ex 9

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: #05-024-A

2 Ridge Road

W/side of Ridge Road at the distance of 149 feet s/side of Edmondson Avenue

1st Election District - 1st Councilmanic District Legal Owner(s): Atkins Family Living Trust, Dennis & Carol Atkins

Variance: 'to allow a recreational-vehicle to be stored 1 foot from the side lot line, in lieu of the required 2 1/2 feet from any side of lot line.

from any side of lot line.

Hearing: Thursday, September 9, 2004 at 1100 a.m. in Room 407. County Courts Building, 401 V.Bosley.

Avenue.

Avenue.

LAWRENCE E. SCHMIDT

Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible for special accommodations Please Contact the Zohing Commissioner's Office at (410) 887-4386. (1) (2) For Information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3891.

JT 8/778 August 24

CERTIFICATE OF PUBLICATION

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., successive weeks, the first publication appearing once in each of The Jeffersonian ☐ Arbutus Times ☐ Catonsville Times ☐ Towson Times Owings Mills Times ☐ NE Booster/Reporter ☐ North County News

LEGAL ADVERTISING

BALTIMORE COUNTY, MAI OFFICE OF BUDGET & FINANCE	NOTE	
MISCELLANEOUS RECEIPT	ACCOUNT CON LAW SULLY AMOUNT S LAW S LA	TOTAL STATE TOTAL STATES TOTAL STATES OF THE STATES TOTAL STATES TOTA
RECEIVED 1111 (1111) PROMI		Explain CS B. IB CM Explaine County Peryland
FOR SUPPLY AND		
DISTRIBUTION WHITE CASHIER PINK AGENCY	YELLOW - CUSTOMER	CABHIER'S VALIDATION

TE_7-/2-04	ACCOUNT_001-006-6150
	AMOUNT \$ 65.00
CEIVED Michael 7	910271
B: VARIANCE	TTEM # 024

PAID RECEIPT

PUSINESS ACTUAL TIME DRW
7/13/2004 7/12/2004 12:39:31 5
REG WSOS MALKIN MHEL MAH
>>RECEIPT # 360725 7/12/2004 OFLN
Dept 5 528 ZONING VERIFICATION
CR NO. 039343
Recpt Tot \$65.00
\$65.00 CK \$1.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

CERTIFICATE OF POSTING

Baltimore County Department of Permits and Development Management	•
County Office Building, Room 111	7
111 West Chesapeake Avenue Towson, MD 21204	
201730H, 14120 21204	
Attention: Becky Hart	
Ladies and Gentlemen: This letter is to certify under the	ne penalties of perjury that the necessary sign(s) required by
law were posted conspicuously on the property located	tat #72 RIDGE 120AD
——————————————————————————————————————	
	n
	30, 7009
	onth, Day, Year)
	#11 a
	Sincerely,
	$\mathcal{L}_{\mathcal{L}}$
	(Signature of Sign Poster and Dato)
	GARLANDE, Woons (Printed Namo)
	3225 RYERSON CIRCLE
	(Address)
	POAUTINIORE, MD. 21227
•	(City, State, Zip Code)
	(410) 242-4263
	(Telephone Number)
	•

RE: Case No.: 05-024-A

Petitioner/Developer: DEMINS & Conpoce STKINS

Date of Hearing/Closing: Oct. 18, 2004

TO: PATUXENT PUBLISHING COMPANY

Tuesday, August 24, 2004 Issue - Jeffersonian

Please forward billing to:

Michael Tanczyn 606 Baltimore Avenue, Ste. 106 Towson, MD 21204

410-296-8823

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: 05-024-A

2 Ridge Road

W/side of Ridge Road at the distance of 149 feet s/side of Edmondson Avenue

1st Election District – 1st Councilmanic District

Legal Owners: Atkins Family Living Trust, Dennis & Carol Atkins

Variance to allow a recreational vehicle to be stored 1 foot from the side lot line, in lieu of the required 2 ½ feet from any side of lot line.

Hearing: Thursday, September 9, 2004, at 11:00 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

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

July 21, 2004

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: 05-024-A

2 Ridge Road

W/side of Ridge Road at the distance of 149 feet s/side of Edmondson Avenue

1st Election District – 1st Councilmanic District

Legal Owners: Atkins Family Living Trust, Dennis & Carol Atkins

Variance to allow a recreational vehicle to be stored 1 foot from the side lot line, in lieu of the required 2 ½ feet from any side of lot line.

Hearing: Thursday, September 9, 2004, at 11:00 a.m. in Room 407, County Courts Building,

401 Bosley Avenue

Timothy Kotroco

Director

TK:kim

C: Michael Tanczyn, 606 Baltimore Ave., Ste. 106, Towson 21204 Dennis & Carol Atkins, 2 Ridge Road, Baltimore 21228

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, AUGUST 25, 2004.

- (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

Tuesday, September 21, 2004 Issue - Jeffersonian

Please forward billing to:

Michael Tanczyn 606 Baltimore Avenue, Ste. 106 Towson, MD 21204

410-296-8823

CORRECTED 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: 05-024-A

2 Ridge Road

W/side of Ridge Road at the distance of 149 feet s/side of Edmondson Avenue

1st Election District – 1st Councilmanic District

Legal Owners: Atkins Family Living Trust, Dennis & Carol Atkins

Variance to allow a recreational vehicle to be stored 1 foot from the side lot line, in lieu of the required 2 ½ feet from any side of lot line.

Hearing: Wednesday, October 6, 2004, at 9:00 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

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

August 2, 2004

CORRECTED 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: 05-024-A

2 Ridge Road

W/side of Ridge Road at the distance of 149 feet s/side of Edmondson Avenue

1st Election District – 1st Councilmanic District

Legal Owners: Atkins Family Living Trust, Dennis & Carol Atkins

Variance to allow a recreational vehicle to be stored 1 foot from the side lot line, in lieu of the required 2 ½ feet from any side of lot line.

Hearing: Wednesday, October 6, 2004, at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Timothy Kotroco Director

TK:klm

C: Michael Tanczyn, 606 Baltimore Ave., Ste. 106, Towson 21204 Dennis & Carol Atkins, 2 Ridge Road, Baltimore 21228

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, SEPTEMBER 21,2004.

- (2) HÉARINGS 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, September 30, 2004 Issue - Jeffersonian

Please forward billing to:

Michael Tanczyn

606 Baltimore Avenue, Ste. 106

Towson, MD 21204

410-296-8823

CORRECTED 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: 05-024-A

2 Ridge Road

W/side of Ridge Road at the distance of 149 feet s/side of Edmondson Avenue

1st Election District – 1st Councilmanic District

Legal Owners: Atkins Family Living Trust, Dennis & Carol Atkins

<u>Variance</u> to allow a recreational vehicle to be stored 1 foot from the side lot line, in lieu of the required 2 ½ feet from any side of lot line.

Hearing: Monday, October 18, 2004, at 11:00 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 <u>Baltimore County Zoning Regulations</u> (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

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

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

Item Num	ber or Case Number: <u>05 - 024 - A</u>
	The Atkins Family Living Trust - Dennis E. Atkins and Caro
Address c	rLocation: 2 Ridge Rd., Balto., MD 21228 S. Atkins - Trustees
	FORWARD ADVERTISING BILL TO: Michael P. Tanczyn, Esquire
Address:	606 Baltimore Avenue, Suite 106
	Towson, Maryland 21204
Telephone	Number: 410-296-8823

Revised 2/20/98 - SCJ

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

August 2, 2004

Michael Tanczyn 606 Baltimore Avenue, Ste. 106 Towson, MD 21204

Dear Mr. Tanczyn:

RE: Case Number: 05-024-A, 2 Ridge Road

The above matter, previously scheduled for September 9, 2004, has been postponed. Once the hearing has been rescheduled you will be notified by mail.

Please be advised that the responsibility of the appropriate posting of the property is with the Petitioners. The petitioner or his/her agent may not personally post or change a zoning sign. One of the currently approved vendors/posters must be contacted to do so. If the property has been posted with the notice of the original hearing date, as quickly as possible after you have been notified, the new hearing date should be affixed to the sign(s).

Verytruly yours,

Timothy Kotroco

Director

TK:klm

C: Dennis & Carol Atkins, 2 Ridge Road, Baltimore 21228



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

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

September 7, 2004

Michael Tanczyn 606 Baltimore Avenue, Ste. 106 Towson, MD 21204

Dear Mr. Tanczyn:

RE: Case Number: 05-024-A, 2 Ridge Road

The above matter, previously scheduled for October 6, 2004, has been postponed. The hearing has been rescheduled and the new notice is attached.

Please be advised that the responsibility of the appropriate posting of the property is with the Petitioners. The petitioner or his/her agent may not personally post or change a zoning sign. One of the currently approved vendors/posters must be contacted to do so. If the property has been posted with the notice of the original hearing date, as quickly as possible after you have been notified, the new hearing date should be affixed to the sign(s).

rery truly yours

Timothy Kotroco Director

TK:klm

C: Dennis & Carol Atkins, 2 Ridge Road, Baltimore 21228
Susan Johnson & Diane Kingsbury, 6003 Edmondson Ave., Catonsville 21228



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

APPEAL

Petition for Variance 2 Ridge Road

W/s of Ridge Road, 149 ft. s/of centerline of Edmondson Avenue 1st Election District – 1st Councilmanic District Atkins Family Living Trust (Dennis & Carol Atkins) - Petitioners

Case No.: 05-024-A

Petition for Variance (July 12, 2004)

Zoning Description of Property

Notice of Zoning Hearing (September 9, 2004)

Certification of Publication (The Jeffersonian - September 30, 2004)

Certificate of Posting (September 30, 2004) by Garland Moore

Entry of Appearance by People's Counsel (July 30, 2004)

Petitioner(s) Sign-In Sheet - One Sheet

Protestant(s) Sign-In Sheet - None

Citizen(s) Sign-In Sheet - One Sheet

Zoning Advisory Committee Comments

Petitioners' Exhibit

- 1. Plat to accompany to petition
- 2. North Paradise Plat
- 3. Deed
- 4. Fee Simple Deed
- 5. Real Property Data Search 2 Ridge Road
- 6. Real Property Data Search 6003 Edmondson Avenue
- 6A. Photos
- 7. Photos
- 8. Photos
- 9. Photos
- 10. Photos
- 11. Photos
- 12. Photos
- 12a-d. Photos
- 13A. Photo

Protestants' Exhibits:

1A-L. Photos

Miscellaneous (Not Marked as Exhibit)

1. Letter of Opposition dated July 5, 2004

Deputy Zoning Commissioner's Order (GRANTED - October 29, 2004)

Notice of Appeal received on November 22, 2004 from Diane Kingsbury & Susan Johnson

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Dennis & Carol Atkins
Herbert Malmud
Susan Johnson & Diane Kingsbury

date sent January 4, 2005, klm

Intake Planner		Date Assigned
	DROP-OFF PETITION PROCESSING CHECK-	/S
Two Questions Answe Any previous revi Any current buildi	ews in the zoning office?	RECEIVED)
Petition Form Matches Address Zoning Legal Owner(s) Contract Purchas Request (if listed	er(s)	Petition Br Vonionce Mot Administrative
Request: Section Number Correct Wooding. Volume Wording. Volume Wording. Volume Wording. Volume Wording. Volume Wording. Volume Signature (Address Signature)	rding (must relate to the code, esperiances must include the request ractical Difficulty Reasons tract Purchaser: (originals) oed Name and Title (if company) orated)	pecially floodplain and historical standard in lieu of the required code quantities. 1) show to carron of the R 2) show the length of the R 3) show the setback of the foundation
Correct Number of Peti	ition Forms, Descriptions and Pla	ats 4) show the correct elec
200 Scale Zoning Map	-	district on the plan-
Check: Amount Correct	t? Signed?	5) Show the lot acreage
ZAC Plat Information: Location (by Carl)	Edwardson Ave.	approx 185 5. Carton line
CBCA Floodplain Elderly Historical Pawn Shop Helicopter	Acreage:	Need newsporper advertising form. 3) Indicate zoning viole cuse # on the plan
•	nt Special Handling Category Here	

Item Number Assigned

Date Accepted for Filing

RE: PETITION FOR VARIANCE

2 Ridge Road; W/side of Ridge Road,

149' S of Edmonson Avenue

1st Election & 1st Councilmanic Districts

Legal Owner(s): Atkins Family Living Trust,*

Dennis & Carol Atkins

Petitioner(s)

BALTIMORE COUNTY

ZONING COMMISSIONER

BEFORE THE

05-24-A

FOR

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.

RECEIVED

JUL 3 0 2004

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

CAROLE S. DEMILIO Deputy People's Counsel

Old Courthouse, Room 47 400 Washington Avenue

Towson, MD 21204

(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of July, 2004, a copy of the foregoing Entry of Appearance was mailed to, Michael Tancyzn, Esquire, 606 Baltimore Avenue, St. 106, Towson, MD 21204, Attorney for Petitioner(s).

> X/machan PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

LAW OFFICES

MICHAEL P. TANCZYN, P.A.

Suite 106 • 606 Baltimore Avenue Towson, Maryland 21204

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

August 27, 2004

Baltimore County
Department of Permits and
Development Management
Attn: Kristen Matthews
County Office Building
111 West Chesapeake Avenue
Towson, MD 21286

RE: 2 Ridge Road

Citation/Case No.: 03-8488

Dear Kristen:

I just received notice from the Patuxent Publishing Company on the Atkins case, which is Case 05-024 A, that this matter has been advertised, and I have received the certificate of publication. However, the ad, as run, was for the original hearing date of September 9, 2004, and not for the substituted date of October 6, 2004. As soon as we receive the original notice of hearing, we contacted you and let you know that we had a conflict on that September 9, 2004 date. The postponement was then granted and rescheduled for October 6, 2004. Can you please advise if this has to be re-advertised, or whether it can be opened and continued on September 9, 2004 if anybody shows up on that day. Our posting, which will be done, will show the correct date of October 6, 2004.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/cbl

cc:

clients

July 5, 2004

Zoning Commissioner
Baltimore County Department of Permits
and Development Management
County Office Building
111 West Chesapeake-e Avenue
Towson, MD 21204

Full Variance
Hereing par RSW!

HEREING PAR RSW!

JOHN STORY

19 GT

RE: 2 Ridge Road

Requesting Denial of Closed Hearing

Case # 038488

Zoning Violation Hearing Request for Zoning Variance

Sir/Madam:

We are writing regarding the above zoning violation with regards to a large camper not parked within zoning requirements. The camper should be 2.5 feet from a shared property line. The camper is only 9 inches from a shared property line.

We notified zoning in November of 2003 regarding the zoning violation. To date (7-5-04) the camper is parked only 9 inches off our property line. We have had our property surveyed and since have put up a 6 foot privacy fence. The camper is approx 5-6 inches from our new fence, due to the back end of the camper hanging over their cement driveway. This fence has come with a cost of \$8900.00. The corner run is 120 feet and the side run is approximately 150 feet. Should the camper hit the fence at the corner where it sits, it would cause us unnecessary hardship and stress seeking any needed repairs as well as the notion of proving these neighbors had indeed caused the damage. We do not have any communication with these neighbors and desire not to. These are neighbors who led us to believer part of our property belonged to them. Also Mrs. Atkins stated that BG&E placed a drainage system on her property. After our survey was completed it clearly indicated the drainage system was on our property. We checked with BG&E and learned they had not placed any drainage there. The Atkins were a sent a certified letter to remove bushes and drainage which were on our property within 10 days of the date of the letter sent on October 23,2003. They only removed the bushes forcing us to remove all stone and drainage prior to having our fence erected. They have treated us without regard to respect and dignity as indicated from an incidence on November 3, 2003, where Mrs. Atkins pulled her shorts down and mooned us in front of her husband and 3-4 year old grandson and

05-024-A

our friends. So one can clearly see where we simply want to be left alone and enjoy our home and property free from harassment, unnecessary stress, hardship or hassles.

There was a zoning hearing on May 18, 2004 advising them to seek a variance within 30 days. However as of June 18th they had not sought a variance. We were told by Jeff Radcliff - Zoning Inspector on July 2, 2004 that they are now seeking a closed hearing on this matter.

We can not believe this closed hearing would be permitted considering the issue at hand. We had originally notified the Zoning Commission regarding the zoning violation and should be permitted to discuss our opposing views at the hearing. Respectfully we request to be present at any hearings regarding this issue and advised of any additional information regarding this matter.

We would also like to know when this will come to a FINAL outcome? We have sought correction of this issue since November 2003.

We are diligently opposed to the camper being parked outside of zoning requirements as well as a closed hearing.

I have photos as well as evidence of the cost of the fence. Please feel free to call me at 410-576-5976 work, or 410-719-2337 if needed to discuss in greater detail.

Respectfully,

Susan Johnson Home Owner

Diane Kingsbury

Home Owner

6003 Edmondson Avenue

Catonsville, MD 21228

Home phone 410-719-2337

Work phone 410-576-5976

cc:

Jeff Radcliff of Baltimore County Zoning

Zoning Commissioner

Office of Baltimore County Council

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NORTH ZONING OFFICE USE ONLY REVIEWED BY ITEM # CASE #	1
PREPARED BY MPT SCALE OF DRAWING: 1" = 201 OPF 024	

K. K.



(2)
DEED FROM
FROM
ALBERT G. LEAFERMAN
A SECONDARY OF THE PROPERTY OF
LUCILLE ET LEATHERNAN (8
TO TO
DENNISCE. ATKINS
CAROL SI ATKINS
BLOCK NO.
Received for Record, 19
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one of the Land Record of
, and examined per
Clerk.
Cost of Record, \$
Law Offices
ARNOLD, BEAUCHEMIN & HUBER, P.A.

01-12-200040

Baltimore, Md. 21202

307 W. R. Grace Building

Baltimore and Charles Streets

This Deed, Made this

in the year one thousand nine hundred and seventy-six , by and between ALBERT G. by Eye Lucille Leatherman, his Attorney-in-Fact LEATHERMAN and LUCILLE E. LEATHERMAN, his wife

parties

, of the first part, and

DENNIS E. ATKINS and CAROL S. ATKINS, his wife, parties

of the second part;

Witnesseth, that in consideration of the sum of Five (\$5.00) Dollars and other good and valuable consideration, the receipt of which is hereby acknowledged, the said Eva Lucille Leatherman in execution and pursuance of the powers contained in the Power of Attorney herein after referred to and the said Lucille B. Leatherman

hereby grant and convey unto the said parties of the second part as tenants ďΦ by the entireties, their assigns, the survivor of them and the survivor's personal representatives

inchestatic cosignia,

in fee simple, all

that

lot(s) of ground, situate, lying and being in

Baltimore County

, State of Maryland, and described as follows, that is to say:-

Beginning for the same on the west side of Ridge Road, at the distance of one hundred forty-nine and thirty-three one-hundredthe feet southerly from the corner formed by the intersection of the west side of Ridge Road with the south side of Edmondson Avenue (as now laid out and widehed); thence running eoutherly binding on the west side of Ridge Road fifty feet; thence running westerly at right angles to Ridge Road one hundred and twenty feet; thence running northerly parallel with Ridge Road fifty fact; thence running easterly at right angles to Ridge Road one hundred and twenty feet to the place of beginning. The improvements on said lot of ground being now known as No. 2 Ridge Road

BEING the same lot or parcel of ground described in a Dead of Assignment dated September 17, 1925 and recorded among the Land Records · of Baltimore County in Liber W.P.C. No. 624, folio 425 from the Sterling Realty Company to Albert G. Leatherman and Lucillo E. Loatherman, his wife, the within named grantors.

BEING also the same lot or parcel of ground described in a Deed of Redemption dated April 20, 1935 and recorded among the Land Records of Baltimore County in Liber C.W.B., Jr. No. 951, folio 370 from The City Real Estate Company to Albert G. Leatherman and Lucilla E. Leatherman, his wife, the within named Grantors. All the state of the state of

53000 mi

See also Power of Attorney from Albert G. Leatherman, Sr. to Eva Lucille Leatherman and Luanne L. Perry, jointly and individually dated August 26, 1972 and recorded or intended to be recorded emong the Land Records of Baltimore County immediately prior hereto.

MI -7-76 210815H ***361.10
MI -7-76 210815DB ***138.60
MI -7-76 210314DE ***210.00
MI -7-76 210313DE ****12.50

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

To Have and To Hold the said lot of ground and premises, above described and mentioned, and hereby intended to be convoyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said parties of the second part as tenants by the entireties, their assigns, the survivor of them and the survivor's personal representatives

Arcina and assigns,

in fee simple.

And the said parties of the first part hereby coverant that they have not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that they will warrant specially the property granted and that they execute such further assurances of the same so may be requisite.

Witness the hands and seals of said grantors

Trar:

LEATHERMAN, by Dvs Lucille Leatherman, his Attorney-in-Fact

LUCILLE

State of Maryland,

, to wit:

I Henesy Creatry, That on this

まいり day of January

, 19 76 ,

before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore County by Eya Lucille , personally appeared Albert G. Leatherman/and Lucille E. Lestharmen, his Attorney-in-Fact Loathorman, his wife

known to me (or satisfactorily proven) to be the person(s) whose name(s) xis/are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained, and in my presence signed and scaled the same.

In Wirman Weersor, I hereunto set my hand and official seal.

My Commission expires:

Notary Public

Per Money II. . Estilates, atman allered

Research No.

NO CONSIDERATION NO TITLE SEARCH

FEE SIMPLE DEED

THIS DEED dated <u>AUG 2 1 1998</u>, from DENNIS E. ATKINS and CAROL S. ATKINS, Grantors, to DENNIS E. ATKINS and CAROL S. ATKINS, Trustees, or their successors in trust under the ATKINS LIVING TRUST dated <u>AUG 2 1 1998</u>, and any amendments thereto, Grantees.

The Grantors, for no consideration and for estate planning purposes, grant and convey to the Grantees, their successors and assigns in fee simple, all that lot of ground located in Baltimore County, Maryland and described on the attached Schedule A.

BEING the same property which by Deed dated January 5, 1976, and recorded among the Land Records of Baltimore County in Liber 5598, Page 631, was granted in Colleged by Albert G. Leatherman and Lucille E. Leatherman to the Grantors herein.

TOGETHER with the buildings and improvements thereupon; and the grights halley 1 3792 hov 24, 1998 12:55 m ways, waters, privileges, appurtenances and advantages to the same belonging or in anywise appertaining.

TO HAVE AND TO HOLD the property hereby conveyed unto the Grantees, their successors and assigns, in fee simple.

AND the Grantors covenant to warrant specially the property hereby conveyed and to execute such further assurances of the property as may be requisite.

F:\prIveliess\askinachdeschPage |

Psth

WITNESS the hands and seals of the	Grantors.
WITNESS:	
Thomas Com	DENNIS E. ATKINS, Gramo
Demos Com	CAROL S. ATKINS, Granto
STATE OF MARYLAND, CITY/COUNTY	OF TO WIT:
I HEREBY CERTIFY that on AUG 2 the State of Maryland, personally appeared DI known to me (or satisfactorily proven) to be the within Instrument, who acknowledged that the contained.	he hersons whose names are enhancibled as the
WITNESS my hand and Notarial Scal. Notary Public My commission My Commission Expires: expires April 10, 2001	NOTARY PUBLIC THE PUBLIC TO THE PUBLIC THE PUBLIC THE PUBLIC TO THE PUBLIC TH
This is to certify pursuant to the Annotated Co 104 (f) (1), that the within instrument has been undersigned Maryland attorney.	de of Maryland, Real Property Article, § 3. prepared by or under the supervision of the
	Jank Marken
The ATKINS LIVING TRUST is for the benef	it of the Grantors herein.
Dennis E. Atkins	CAROL S. ATKINS
Please return this instrument to DENNIS E. ATKINS and CAROL S. ATKINS Ridge Road, Catonsville, Maryland 21228-19) O8

Schedule A

Beginning for the same on the west side of Ridge Road, at the distance of one hundred forty-nine and thirty-three one-hundredths feet southerly from the corner formed by the intersection of the west side of Ridge Road with the south side of Edmondson Avenue (as now laid out and widened); thence running southerly binding on the west side of Ridge Road fifty feet; thence running westerly at right angles to Ridge Road one hundred and twenty feet; thence running northerly parallel with Ridge Road fifty feet; thence running easterly at right angles to Ridge Road one hundred and twenty feet to the place of beginning. The improvements on said lot of ground being now known as No. 2 Ridge Road

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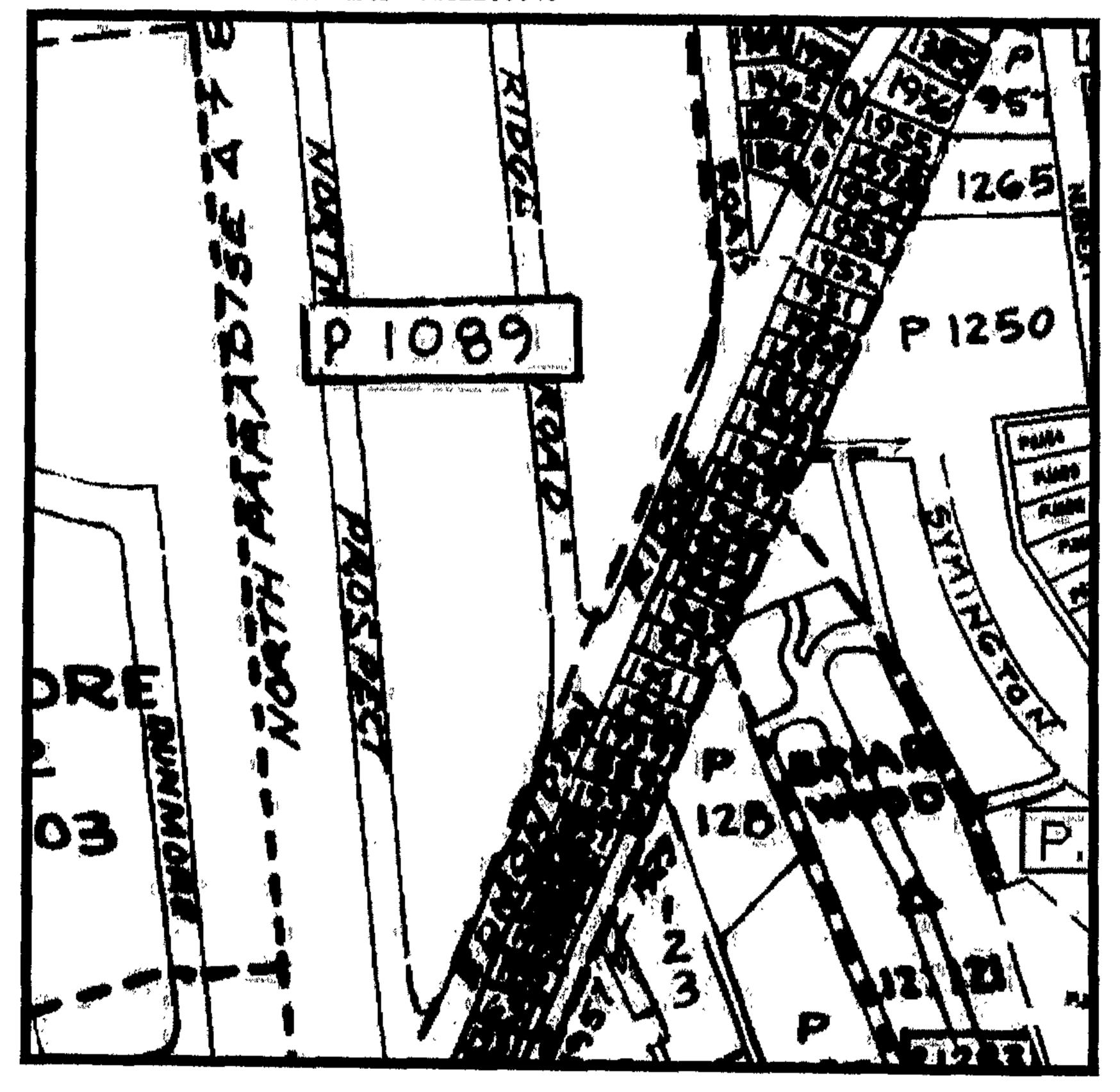
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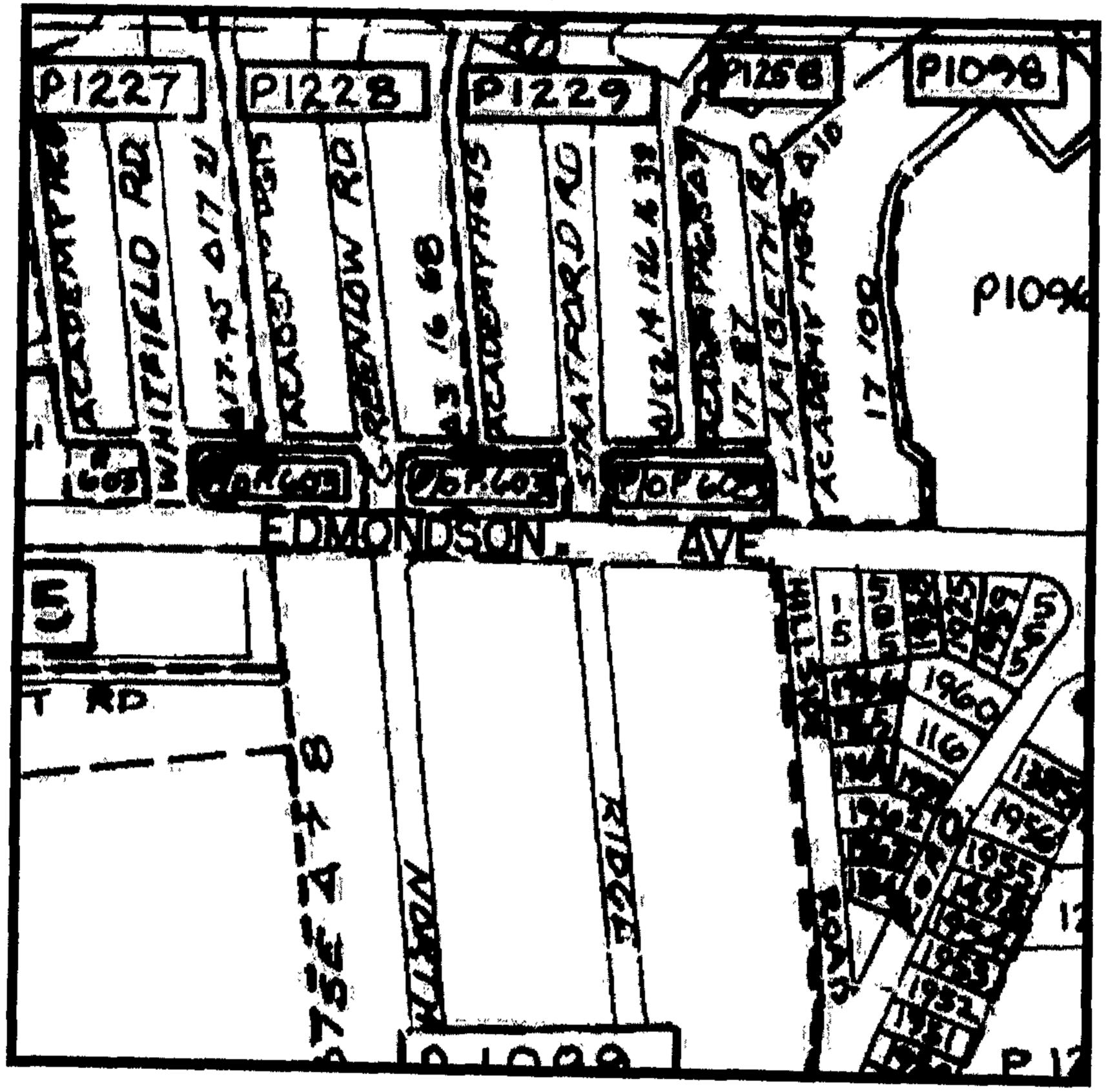


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
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