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~~10/29/97
No evidence
received from complainant
case closed~~

ORDERS
OPINIONS
MEMORANDA

20070246

supplemental

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Received 1-10-13 C. P.

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1/14/10

RECEIVED
FEB 19 2010

IN THE MATTER OF:

THOMAS NEUWILLER

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* Case No.: 03-C-09-008342
*

BALTIMORE COUNTY
BOARD OF APPEALS

* * * * *

**THOMAS NEUWILLER'S APPEAL FROM THE
COUNTY BOARD OF APPEALS' DECISION**

Question Presented for Appeal

Did the Zoning Board of Appeals err by denying a variance for the Petitioner Thomas Neuwiller?

Summary

This Court finds that the Zoning Board of Appeals did not err by denying the requested variance. The conclusions drawn from the facts and inferences in the record could be reached by a reasonable mind, and thus, the Zoning Board of Appeals' decision is AFFIRMED.

Statement of Facts

Appellant is the owner of a heavily wooded property that abuts Bean Run Stream located at 5597 Gunpowder Road in Baltimore County. The property is subject to a Forest Conservation Buffer which was established when the Appellant improved the property. The property is also subject to a twenty foot wide easement allowing access to property owned by the Appellee at 5599 Gunpowder Road. Appellant took title to the property in 2002 and constructed a single family dwelling. In 2004, Appellant hired

FILED FEB 04 2010

cc: Schmidt, Covey, County Board of Appeals of Balto

Blue Haven Pool Company to construct an in-ground pool on the property. The contractor, acting as an agent for the Appellant, submitted a request for a permit, incorrectly claiming that the pool would be located in the rear of the property, while the location of the pool was clearly in the property's side yard. A permit was issued and the pool was completed in the same year.

Before the Board, Appellant contended that the bedrock in the rear of his property made excavation difficult and that the Forest Conservation Buffer on the rear of the property limited his ability to build there. He also contended that he voluntarily agreed to create a buffer larger than required by the statutory provisions. There was also unanimous testimony of witnesses before the Board that the entire neighborhood contains large rock formations and outcroppings and that several large rocks had to be removed from the Petitioner's side yard location where the pool was constructed. Unanimous witness testimony also established that the entire neighborhood area is heavily wooded. Furthermore, witness testimony established that several properties within the neighborhood abutted or straddled the stream in question. There was also evidence before the Board that the construction of the Appellant's pool caused the grade of the property to be altered significantly. Previously, the property sloped from the front to the rear, where it abuts the stream. Presently, the area around the pool is flat, with the pool and adjoining concrete patio well above the adjoining portions of the Respondent's property.

Standard of Review

The standard of review of the action of an administrative agency is "limited to determining whether there is substantial evidence on the record as a whole to support the agency's finding of fact and whether the agency's conclusions of law were correct."

Motor Vehicle Administration v. Atterbeary, 368 Md. 480, 796 A.2d 75, 81 (2002). The agency decision is presumptively correct, and the correctness of an agency's findings of fact must be reviewed under the substantial evidence test. Dept. of Human Resources v. Thompson, 103 Md. App. 175, 652 A.2d 1183 (1995); State Election Board v. Billhimer, 314 Md. 46, 548 A.2d 819 (1988). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Supervisor of Assessments v. Group Health Ass'n, Inc., 308 Md. 151, 159, 517 A.2d 1076 (1986) quoting Bulluck v. Pelham Wood Apts., 283 Md. 505, 512, 390 A.2d 1119 (1978). Accordingly, this Court must affirm the Board's findings if substantial evidence exists to conclude that its determinations were reasonable.

A reviewing court may, and should, examine facts found by an agency to see if there is evidence to support each fact found. If evidence exists in the record to support an agency's fact-finding, the reviewing court cannot substitute its assessment of credibility of the evidence for that of the agency, no matter how questionable or conflicting the source of evidence may be. Commissioner, Baltimore City Police Dept. v. Cason, 34 Md. App. 487, 368 A.2d 1067 (1977), *cert. denied*, 280 Md. 728 (1977). It is well settled that the reviewing court should not substitute its judgment for the expertise of the agency, as the agency has a superior ability to understand its own rules and regulations. Board of Education v. Paynter, 303 Md. 22, 35, 491 A.2d 1186 (1985); Bulluck, 283 Md. 505, 512, 390 A.2d 1119. When an agency infers the existence of a fact that is not supported by direct proof from the record, the reviewing court should examine such an inference to determine if it reasonably flows from other facts that are supported by direct proof. Even though an agency may have been reasonable in drawing

a different inference, the court has no power to disagree with the facts so inferred. Id. at 508.

The court should review the agency's conclusion to determine whether "reasoning minds could reasonably reach that conclusion from facts in the record before the agency, by direct proof, or by permissible inference. If the conclusion could so be reached, then it is based upon substantial evidence, and the court has no power to reject that conclusion." Id.

Discussion

Petitioner alleges three (3) factual errors made by the County Board of Appeals:

1. That the Board erred in denying the Motion for Reconsideration;
2. That the Board erred in denying the requested variance;
3. That the Board erred in its failure to remand the matter to the Zoning Commissioner

The Petitioner first alleges that the Board erred in denying his Motion for Reconsideration. For the following reasons, this contention fails. Petitioner argues that the Board utilized an inappropriate standard in denying hearing his Motion for Reconsideration. Petitioner cites Thodos v. Bland, 75 Md.App. 700, 542 A.2d 1307, 1313 (1988) which states, "Where one result is clearly unjust and the other is clearly not, the limits of exercising discretion are narrow." Petitioner argues that his motion should have been heard because the Board's discretion must be applied in ways that do not run afoul of justice. Petitioner contends that the language the Board used in stating their denial of the motion was inappropriate in that it elevated the proper standard.

However, Petitioner also offers no grounds to show that he was denied the opportunity to present any evidence upon which his Motion for Reconsideration later

added. Simply filing a Motion for Reconsideration because Petitioner forgot something does not meet the burden that Petitioner cites in Thodos. The fact that the Petitioner failed to appropriately argue his case the first time around does not allow him to re-argue facts previously available to him. Clearly, this Court is not dealing with a situation where one result is just and the other is unjust. As the standard set forth in Thodos v. Bland, 75 Md.App. 700 is not met, Petitioner's contention that the Board erred by not granting his Motion for Reconsideration fails.

Next, Petitioner argues that the Board erred by denying his requested variance. Specifically, Petitioner argues that his property is unique. The applicable standard to determining variances is explained in Cromwell v. Ward, 102 Md.App. 691 (1995). Cromwell explains that variances should be granted sparingly and only under exceptional circumstances. Cromwell at 703. Furthermore, the standard requires both uniqueness and practical difficulty or unreasonable hardship. Cromwell at 694. Petitioner contends that his property is unique because it has inherent characteristics not shared by others in the area, as the standard set forth in Trinity Assembly of God of Baltimore City v. People's Counsel for Baltimore County, 407 Md. 53, 80 (2008). The Petitioner submits that the Forest Buffer Easement makes the property unique. However, there is no evidence in the record to prove that his property is the only one subject to this type of easement. Furthermore, any properties developed in the neighborhood currently developed would be subject to the same easement as the Petitioner. Therefore, his property is not unique for this reason.

The Petitioner also argues that his property is unique because of significant bedrock formations to the rear of the property. However, the Board found that "the testimony and evidence, including that of the Petitioner himself and his called

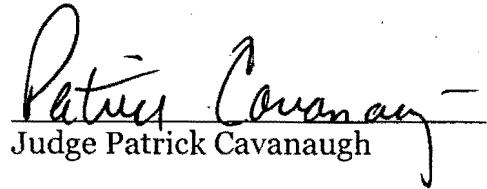
witnesses, are clear and uncontradicted that virtually all the properties in the area substantially contain significant bedrock formations and outcroppings." *Board of Appeals Order*, 5. Petitioner further submits that not all rock outcroppings are the same, therefore making his property unique as his are larger and more obtrusive than others in the neighborhood. Contrarily, numerous witnesses testified about the rock outcroppings throughout the neighborhood in many of the properties. The fact that Petitioner feels that his outcroppings are different than others is unsubstantiated speculation. For the reasons above, Petitioner fails to show that the Board erred in determining that his property was not unique.

In determining that the property was not unique, the Board determined that Petitioner's hardship was self-inflicted. Petitioner contends that the Board erred in determining the Forest Buffer Easement to be larger than required by DEPRM. Presently, both parties agree that the standard that must be shown is a "practical difficulty" standard. Ultimately, the Board of Appeals ruled that it did not have to reach the practical difficulty standard because it found that the Petitioner's property was not unique. As this Court is upholding the Board in determining the property not to be unique, it does not have to address the practical difficulty standard either.

Finally, Petitioner argues that the Board erred in failing to remand the matter to the Zoning Commissioner. Petitioner contends that the preliminary motion by Appellee's counsel should have been granted because the public notice which was given fails to adequately inform the public of the variance actually required. Petitioner essentially asserts that as a result of his error by not requesting the proper relief, the posted notice does not provide the requisite information sufficient to fairly apprise all potential participants of the case. Furthermore, Petitioner argues that the Board erred

in denying the Appellee's motion. This final argument also fails to show that the Board of Appeals erred. This court, like the Board of Appeals, will not reward the Petitioner for an error made by the lack of diligence of the Petitioner. Notice requirements are for the protection of the public, not the filing party.

If evidence exists in the record to support an agency's fact-finding, the reviewing court cannot substitute its assessment of credibility of the evidence for that of the agency, no matter how questionable or conflicting the source of evidence may be. *See supra, Commissioner, Baltimore City Police Dept. v. Cason*, 34 Md. App. 487, 368 A.2d 1067 (1977). This Court finds that the record reflects that all determinations made by the Zoning Board of Appeals were supported by the record. Therefore, Petitioners Appeal from the Zoning Board of Appeals is DENIED.


Judge Patrick Cavanaugh

1/14/10
Date

CLERK TO NOTIFY

8/6/09

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
THOMAS NEUWILLER

FOR JUDICIAL REVIEW OF THE OPINION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
JEFFERSON BUILDING – ROOM 203
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

CIVIL ACTION
NO: 03-C-09-008342

IN THE MATTER OF :
THOMAS NEUWILLER – LEGAL OWNER/
PETITIONER
PETITION FOR VARIANCE
ON PROPERTY LOCATED ON THE
SE/SIDE PHILADELPHIA ROAD, 245' NE OF
C/L FORGE ROAD
(5597 GUNPOWDER ROAD)

11TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 07-246-A

* * * * *

**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 original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

**ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
OF BALTIMORE COUNTY**

No. 07-246-A

November 30, 2006	Petition for Variance filed by Thomas Neuwiller, Petitioner, to permit an existing single family dwelling with open projection (deck, pool, pool equipment) to have a side yard setback of 4 feet and a sum of side yards of 24 feet in lieu of the required 11.25 feet and 30 feet respectively.
December 11	Entry of Appearance filed by People's Counsel for Baltimore County.
January 18, 2007	Certificate of Publication in newspaper
January 23	Certificate of Posting.
January 31	ZAC Comments.
February 5	Hearing held before the Zoning Commissioner
February 12	Findings of Fact and Conclusions of Law issued by the Zoning Commissioner. Petition for Variance was GRANTED with restrictions.
March 13	Notice of Appeal filed by Bruce Edward Covahey, Esquire, on behalf of Mary Jane Oelke, Appellant/Protestant.
July 9	Certificate of Posting
April 29, 2008	Board convened for hearing.

Exhibits submitted at hearing before the Board of Appeals:

Petitioner's Exhibit No.

- 1 – Findings of Fact and Conclusions of Law issued by the Zoning Commissioner dated February 12, 2007 (6 pages)
- 2 – Application for Permit completed by Blue Haven Pools dated 4/29/05.
- 3 – Plat to Accompany Petition for Zoning Variance
- 4 – 1995 Aerial Photograph of Baltimore County
- 5 – Internet aerial photograph of subject property and surrounding properties. (2 photographs)
- 6 – Photograph of Petitioner's house
- 7 – Deed (2 pages) FOR IDENTIFICATION PURPOSES ONLY
NOT ADMITTED INTO EVIDENCE.

Protestants' Exhibit No.

- 1 – Aerial photograph of Neuwiller and Oelke properties
- 2 – Transcript of deposition of Thomas G. Neuwiller pages 1-4 and 81-84; Specifically page 82, Line 12. (2 pages)
- 3 – 2 Photographs of Neuwiller pool and fence (2 pages; one black and white copy and one color copy.
- 4 – Photograph of Neuwiller fence and view of pool
- 5 – Photograph of fence and grading
- 6 – 2 Photographs of Neuwiller pool toward Steigman property (2 pages; one black and white copy and one color)
- 7 – Department of Permits and Development Management requirements signed by Petitioner and dated 4/13/05
- 8 – Photograph of front of house with fence and boulder prior to moving fence backward
- 9 – Photograph of Oelke woods
- 10 – Photograph of Oelke woods
- 11 – Photograph of Oelke woods
- 12 – Photograph of Oelke woods
- 13 – FOR IDENTIFICATION PURPOSES ONLY NOT ADMITTED INTO EVIDENCE- Schematic of Oelke/Neuwiller Properties (not located in file)

May 28, 2008	Memorandum in Support of Decision of Zoning Commissioner filed by Thomas Neuwiller, Petitioner
May 29	Brief and memorandum of Protestant in Opposition to Petition for Variance filed by Bruce Edward Covahey, Esquire on behalf of Protestant, Mary Oelke
June 17	Board convened for Public deliberation.
October 6	Entry of Appearance dated October 2, 2008 filed by Lawrence E. Schmidt, Esquire on behalf of Petitioner, Thomas Neuwiller.
January 28, 2009	Final Opinion and Order issued by the Board in which the Petition for Variance was DENIED.
February 9	Amended Opinion issued by Board. The only amendment in the Opinion is the removal of Nancy West, Assistant County Attorney, as an appearing party in this matter.
February 27	Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Petitioner.

April 6, 2009 Memorandum of Protestant in Opposition to Motion for Reconsideration
filed by Bruce E. Covahey, Esquire on behalf of Protestant, Mary Oelke

April 22 Board convened for Public Deliberation on Motion for Reconsideration.

June 12 Ruling on Petitioner's Motion for Reconsideration issued by Board,
Motion DENIED.

June 16 Amended Ruling on Petitioner's Motion for Reconsideration As to Date of
Ruling Only issued by Board.

July 16 Petition for Judicial Review filed in the Circuit Court for Baltimore
County by Lawrence E. Schmidt, Esquire, on behalf of Thomas Neuwiller,
Petitioner

July 21 Copy of Petition for Judicial Review received from the Circuit Court for
Baltimore County by the Board of Appeals.

July 23 Certificate of Compliance sent to all parties and interested persons.

August 6 Transcript of testimony filed.

August 6 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 into evidence
before the Board.



Sunny Cannington, Legal Secretary
County Board of Appeals
The Jefferson Building, Suite 203
105 W. Chesapeake Ave.
Towson, Maryland 21204
410-887-3180

cc: Lawrence E. Schmidt, Esquire
 Thomas Neuwiller
 Sheree Heard
 Lou Miller
 Office of People's Counsel
 William J. Wiseman III /Zoning Commissioner
 Timothy M. Kotroco, Director /PDM

Bruce E. Covahey, Esquire
Mary Jane Oelke
Edgar Steigleman
Kevin Sabolcik

Arnold F. "Pat" Keller, Director/Planning
John E. Beverungen, County Attorney

7/16/09
PETITION OF: THOMAS NEUWILLER

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

Jefferson Building
105 W. Chesapeake Avenue, Room 203
Towson, MD 21204

IN THE CASE OF: Thomas Neuwiller,
Petitioner/Legal Owners
5597 Gunpowder Road
White Marsh, MD 21162

Case No. CBA-07-246-A

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY

* Case No.

C-09-8342

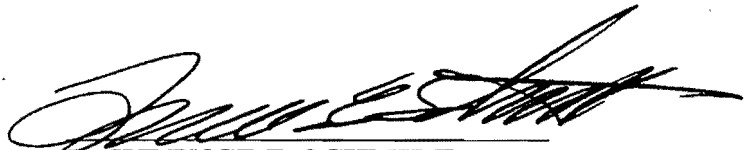
* * * * *
PETITION FOR JUDICIAL REVIEW

The Appellant, Thomas Neuwiller, by and through his attorney, Lawrence E. Schmidt and Gildea & Schmidt, LLC, herein file his Petition for Judicial Review pursuant to Rule 7-203(b) from the Opinions and Orders of the County Board of Appeals of Baltimore County in the above referenced matter dated January 28, 2009, and amended on February 9, 2009, attached hereto. Also this Petition requests Judicial Review of the Ruling/Opinion dated July 12, 2009 and amended to correct date on June 16, 2009, denying the Motion for Reconsideration filed by Petitioner and affirming the decision of Case No. 07-246-A, also attached hereto. The Appellant was a party to the agency proceeding and the Motion for Reconsideration and has standing to pursue Judicial Review.

Respectfully submitted,

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JUL 21 2009

BALTIMORE COUNTY
BOARD OF APPEALS



LAWRENCE E. SCHMIDT
Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
410-821-0070
Attorney for Appellant

RECEIVED AND FILED

2009 JUL 16 AM 10:02

CIRCUIT COURT
BALTIMORE COUNTY

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 16th day of **July, 2009**, a copy of the foregoing Response to Petition for Judicial Review was mailed, first-class mail, postage pre-paid to:

Bruce Edward Covahey, Esquire
Covahey, Boozer, Devan & Dore, P.A.
614 Bosley Avenue
Towson, MD 21204

Theresa R. Shelton
County Board of Appeals of Baltimore County
The Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204



LAWRENCE E. SCHMIDT

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

Case Number: 03-C-09-008342 AA

County Board Of Appeals Of Baltimore County The

Jefferson Building

105 W. Chesapeake Avenue, Room 203

Baltimore, MD 21204

FOLD HERE

Circuit Court for Baltimore County

City or County

CIVIL-NON-DOMESTIC CASE INFORMATION REPORT

Directions:

Plaintiff: This Information Report must be completed and attached to the complaint filed with the Clerk of Court unless your case is exempted from the requirement by the Chief Judge of the Court of Appeals pursuant to Rule 2-111(a). A copy must be included for each defendant to be served.

Defendant: You must file an Information Report as required by Rule 2-323(h).

THIS INFORMATION REPORT CANNOT BE ACCEPTED AS AN ANSWER OR RESPONSE.

FORM FILED BY:	☒ PLAINTIFF ☐ DEFENDANT	CASE NUMBER:	_____ (Click to insert)
CASE NAME:	Thomas Neuwiller - 5597 Gunpowder Road v The County Board of Appeals of Baltimore County		
JURY DEMAND:	☐ Yes ☒ No	Anticipated length of trial:	_____ hours or _____ days
RELATED CASE PENDING?	☐ Yes ☒ No	If yes, Case #(s), if known:	_____
Special Requirements?	☐ Interpreter/communication impairment	Which language	_____
(Attach Form 1-332 if Accommodation or Interpreter Needed)	☐ ADA accommodation:	Which dialect	_____

NATURE OF ACTION
(CHECK ONE BOX)

DAMAGES/RELIEF

TORTS		LABOR		A. TORTS	
☐ Motor Tort	☐ Premises Liability	☐ Workers' Comp.	☐ Wrongful Discharge	Actual Damages	
☐ Assault & Battery	☐ Product Liability	☐ EEO	☐ Other	☐ Under \$7,500	☐ Medical Bills
☐ Professional Malpractice	☐ Wrongful Death	CONTRACTS		☐ \$7,500 - \$50,000	\$ _____
☐ Business & Commercial	☐ Libel & Slander	☐ Insurance	☐ Confessed Judgment	☐ \$50,000 - \$100,000	☐ Property Damages
☐ False Arrest/Imprisonment	☐ Nuisance	☐ Other	☐ Other	☐ Over \$100,000	\$ _____
☐ Toxic Torts	☐ Fraud	REAL PROPERTY		☐ Wage Loss	\$ _____
☐ Malicious Prosecution	☐ Lead Paint	☐ Judicial Sale	☐ Condemnation	B. CONTRACTS	
☐ Asbestos	☐ Other	☐ Landlord Tenant	☐ Other	☐ Under \$10,000	C. NONMONETARY
		☐ Civil Rights	☐ Environmental	☐ \$10,000 - \$20,000	☐ Declaratory Judgment
		☐ ADA	☐ Other Admin. Appeal	☐ Over \$20,000	☐ Injunction
					☐ Other _____

ALTERNATIVE DISPUTE RESOLUTION INFORMATION

Is this case appropriate for referral to an ADR process under Md. Rule 17-101? (Check all that apply)

A. Mediation	☐ Yes ☒ No	C. Settlement Conference	☐ Yes ☒ No
B. Arbitration	☐ Yes ☒ No	D. Neutral Evaluation	☐ Yes ☒ No

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.

☒ ½ 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	

PLEASE SEE PAGE TWO OF THIS FORM FOR INSTRUCTIONS PERTAINING TO THE BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM AND ADDITIONAL INSTRUCTIONS IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE COUNTY, BALTIMORE CITY OR PRINCE GEORGE'S COUNTY.

Date 7/16/09 Signature [Signature]

BUSINESS AND TECHNOLOGY CASE MANAGEMENT PROGRAM

For all jurisdictions, if Business and Technology track designation under Md. Rule 16-205 is requested, attach a duplicate copy of complaint and check one of the tracks below.



Expedited

Trial within 7 months of
Defendant's response



Standard

Trial - 18 months of
Defendant's response

☐ EMERGENCY RELIEF REQUESTED _____

Signature

Date

IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE COUNTY, BALTIMORE CITY, OR PRINCE GEORGE'S COUNTY PLEASE FILL OUT THE APPROPRIATE BOX BELOW.

CIRCUIT 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 judgments.
- ☐ 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 complex cases 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.

CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY

To assist the Court in determining the appropriate Track for this case, check one of the boxes below. This information is not an admission and may not be used for any purpose other than Track Assignment.

- ☐ Liability is conceded.
- ☐ Liability is not conceded, but is not seriously in dispute.
- ☐ Liability is seriously in dispute.

CIRCUIT COURT FOR BALTIMORE COUNTY

- ☒ Expedited Attachment Before Judgment, Declaratory Judgment (Simple), Administrative Appeals, District Court Appeals and Jury Trial Prayers, Guardianship, Injunction, Mandamus.
(Trial Date-90 days)
- ☐ Standard Condemnation, Confessed Judgments (Vacated), Contract, Employment Related Cases, Fraud and Misrepresentation, Intentional Tort, Motor Tort, Other Personal Injury, Workers' Compensation Cases.
(Trial Date-240 days)
- ☐ Extended Standard 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.
(Trial Date-345 days)
- ☐ Complex Class Actions, Designated Toxic Tort, Major Construction Contracts, Major Product Liabilities, Other Complex Cases.
(Trial Date-450 days)

IN THE MATTER OF THE
THE PETITION OF
THOMAS NEUWILLER – LEGAL OWNER
FOR A VARIANCE ON PROPERTY
LOCATED AT SE/S PHILADELPHIA ROAD
245' NW OF C/LINE FORGE ROAD
(5597 GUNPOWDER ROAD)

11TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 07-246-A
*

* * * * *

AMENDED OPINION

This matter comes before the Baltimore County Board of Appeals on an appeal filed by the Protestant, Mary Jane Oelke, by and through her attorney, Bruce Edward Covahey, Esquire, from the decision of the Zoning Commissioner dated February 12, 2007. The Legal Owner is Thomas Neuwiller, who appeared pro se. A public de novo hearing was held on April 29, 2008. Written closing briefs were filed on May 29, 2008 and the Board convened for a Public Deliberation on June 17, 2008.

Background

The Petitioner is requesting variance relief for the property located at 5597 Gunpowder Road. The variance requested by the Petitioner, was from the requirements of the Baltimore County Zoning Regulations (BCZR) §1B02.3c1 to allow a side yard setback of four (4) feet and a sum of side yards of twenty-four (24) feet in lieu of the required 11.25 feet and thirty (30) feet respectively. The Zoning Commissioner also granted a variance from BCZR §400.1 to allow a pool and pool equipment in the side yard of the subject property in lieu of the required rear yard. As a condition to the above approval, Petitioner was required to relocate his front yard fence and ameliorate any related water run off onto Protestant's property.

IN THE MATTER OF THE
THE PETITION OF
THOMAS NEUWILLER – LEGAL OWNER
FOR A VARIANCE ON PROPERTY
LOCATED AT SE/S PHILADELPHIA ROAD
245' NW OF C/LINE FORGE ROAD
(5597 GUNPOWDER ROAD)

11TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 07-246-A
*

* * * * *

OPINION

This matter comes before the Baltimore County Board of Appeals on an appeal filed by the Protestant, Mary Jane Oelke, by and through her attorney, Bruce Edward Covahey, Esquire, from the decision of the Zoning Commissioner dated February 12, 2007. The Legal Owner is Thomas Neuwiller, who appeared pro se. Nancy West, Assistant County Attorney from the Office of Law, represented Baltimore County. A public de novo hearing was held on April 29, 2008. Written closing briefs were filed on May 29, 2008 and the Board convened for a Public Deliberation on June 17, 2008.

Background

The Petitioner is requesting variance relief for the property located at 5597 Gunpowder Road. The variance requested by the Petitioner, was from the requirements of the Baltimore County Zoning Regulations (BCZR) §1B02.3c1 to allow a side yard setback of four (4) feet and a sum of side yards of twenty-four (24) feet in lieu of the required 11.25 feet and thirty (30) feet respectively. The Zoning Commissioner also granted a variance from BCZR §400.1 to allow a pool and pool equipment in the side yard of the subject property in lieu of the required rear yard. As a condition to the above approval, Petitioner was required to relocate his front yard fence and ameliorate any related water run off onto Protestant's property.

IN THE MATTER OF THE
THE PETITION OF
THOMAS NEUWILLER – LEGAL OWNER
FOR A VARIANCE ON PROPERTY
LOCATED AT SE/S PHILADELPHIA ROAD
245' NW OF C/LINE FORGE ROAD
(5597 GUNPOWDER ROAD)

11TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 07-246-A
*

* * * * *

RULING ON PETITIONER'S MOTION FOR RECONSIDERATION

This matter comes before the Board on a Motion for Reconsideration requested by Lawrence E. Schmidt and Gildea & Schmidt, LLC, on behalf of the Petitioner, Thomas Neuwiller. A Memorandum of Protestant in Opposition to the Motion for Reconsideration was filed by Bruce Edward Covahey and Covahey, Boozer, Devan & Dore, P.A. on behalf of Protestant, Mary Oelke. A public deliberation was held for this Motion on April 22, 2009.

This Board believes that a Motion for Reconsideration should only be necessary when there has been substantive new case law or enactment of a statute not available previously, which would clearly merit a modification of a Board's previous decision.

Upon deliberation, the Board concluded that the fact of Petitioner's *pro se* representation at the hearing does not legally open the door to a representation of additional evidence to this Board to clarify an alleged "confusion" by the newly retained Counsel, as raised in Paragraph I of Petitioner's Memorandum.

The Board further concludes that the denial of a Protestant's procedural motion, absent a change in the law during the time between the hearing and the Motion for

IN THE MATTER OF THE
THE PETITION OF
THOMAS NEUWILLER – LEGAL OWNER
FOR A VARIANCE ON PROPERTY
LOCATED AT SE/S PHILADELPHIA ROAD
245' NW OF C/LINE FORGE ROAD
(5597 GUNPOWDER ROAD)

11TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 07-246-A
*

* * * * *

AMENDED RULING ON PETITIONER'S MOTION
FOR RECONSIDERATION AS TO DATE OF RULING ONLY

This matter comes before the Board on a Motion for Reconsideration requested by Lawrence E. Schmidt and Gildea & Schmidt, LLC, on behalf of the Petitioner, Thomas Neuwiller. A Memorandum of Protestant in Opposition to the Motion for Reconsideration was filed by Bruce Edward Covahey and Covahey, Boozer, Devan & Dore, P.A. on behalf of Protestant, Mary Oelke. A public deliberation was held for this Motion on April 22, 2009.

This Board believes that a Motion for Reconsideration should only be necessary when there has been substantive new case law or enactment of a statute not available previously, which would clearly merit a modification of a Board's previous decision.

Upon deliberation, the Board concluded that the fact of Petitioner's *pro se* representation at the hearing does not legally open the door to a representation of additional evidence to this Board to clarify an alleged "confusion" by the newly retained Counsel, as raised in Paragraph I of Petitioner's Memorandum.

The Board further concludes that the denial of a Protestant's procedural motion, absent a change in the law during the time between the hearing and the Motion for

GILDEA & SCHMIDT, LLC

600 WASHINGTON AVENUE

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DAVID K. GILDEA

LAWRENCE E. SCHMIDT

D. DUSKY HOLMAN

SEBASTIAN A. CROSS

CHARLES B. MAREK, III

JASON T. VETTORI

July 16, 2009

Ms. Theresa R. Shelton
County Board of Appeals of Baltimore County
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

Re: 5597 Gunpowder Road
Case No.: 07-246-A

Dear Ms. Shelton:

Please find enclosed a copy of the Petition for Judicial Review in the above referenced matter. Additionally, I have enclosed the original Board of Appeals transcript for your records.

Very truly yours,

Lawrence E. Schmidt

Lawrence E. Schmidt

LES: jkl
Enclosures

RECEIVED
JUL 16 2009

**BALTIMORE COUNTY
BOARD OF APPEALS**

6/23/09

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
THOMAS NEUWILLER

FOR JUDICIAL REVIEW OF THE OPINION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
JEFFERSON BUILDING – ROOM 203
105 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

CIVIL ACTION
NO: 03-C-09-008342

IN THE MATTER OF :
THOMAS NEUWILLER – LEGAL OWNER/
PETITIONER
PETITION FOR VARIANCE
ON PROPERTY LOCATED ON THE
SE/SIDE PHILADELPHIA ROAD, 245' NE OF
C/L FORGE ROAD
(5597 GUNPOWDER ROAD)

11TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

BOARD OF APPEALS CASE NO.: 07-246-A

* * * * *

CERTIFICATE OF COMPLIANCE

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:

Thomas G. Neuwiller
5597 Gunpowder Road
Baltimore, MD 21162

Lawrence E. Schmidt, Esquire
Gildea & Schmidt, LLC
600 Washington Ave, Suite 200
Towson, MD 21204

RECEIVED AND FILED
2009 JUL 23 AM 8:14
CLERK OF THE COURT

Mary Jane Oelke
5599 Gunpowder Road
Baltimore, MD 21162

Bruce Edward Covahey, Esquire
Covahey, Boozer, Devan & Dore, PA
614 Bosley Avenue
Towson, MD 21204

Sheree Heard
11706 Larch Road
Baltimore, MD 21162

Edgar Steigleman
5601 Gunpowder Road
Baltimore, MD 21162

Lou Miller
17416 Astoria Lane
Silver Spring, MD 20905

Kevin Sabolcik
12000 Boxer Hill Road
Cockeysville, MD 21030

Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, MD 21204

William J. Wiseman, III, Zoning
Commissioner
The Jefferson Building, Suite 103
105 W. Chesapeake Avenue
Towson, MD 21204

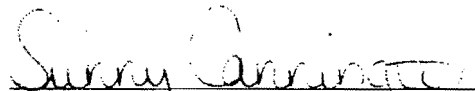
Arnold F. "Pat" Keller, Director
Office of Planning
The Jefferson Building, Suite 101
105 W. Chesapeake Avenue
Towson, MD 21204

Timothy Kotroco, Director
Office of Permits and Development Mgmt
County Office Building
111 W. Chesapeake Avenue, Suite 105
Towson, MD 21204

John E. Beverungen, County Attorney
Office of Law
400 Washington Avenue
Towson, MD 21204

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

I HEREBY CERTIFY that on this 23rd day of June, 2009, a copy of the foregoing Certificate of Compliance has been mailed to the individuals listed above.


Sunny Cannington, Legal Secretary
County Board of Appeals
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
410-887-3180



County Board of Appeals - Baltimore County

JEFFERSON B. DALL
SECOND FLOOR - SUITE 210
100 WATKINS ST. - BALTIMORE, MD 21204
TOWSON, MD 21204
410-867-1234
FAX 410-867-1235

July 23, 2009

Lawrence E. Schmidt, Esquire
Gildea & Schmidt, LLC
600 Washington Ave., Suite 200
Towson, MD 21204

Bruce Edward Covahey, Esquire
Covahey, Boozer, Devan & Dore, P.A.
614 Bosley Avenue
Towson, MD 21204

RE: Petition for Judicial Review
Circuit Court Case No.: 03-C-09-008342
In the Matter of: Thomas Neuwiller
Board of Appeals Case No.: 07-246-A

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules that a Petition for Judicial Review was filed on July 16, 2009, by Lawrence E. Schmidt, Esquire on behalf of Thomas Neuwiller 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 with the Circuit Court for Baltimore County within 30 days after the date of this letter. pursuant to the Maryland Rules.

A copy of the Certificate of Compliance has been enclosed for your convenience.

Very truly yours,

Sunny Cannington
Legal Secretary

Duplicate Original Cover Letter

Enclosure

cc: Thomas Neuwiller
Sheree Heard
Lou Miller
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Timothy M. Kotroco, Director /PDM

Mary Jane Oelke
Edgar Steigleman
Kevin Sabolcik
Pat Keller, Planning Director
John E. Beverungen, County Attorney

6/16/09

IN THE MATTER OF THE
THE PETITION OF
THOMAS NEUWILLER – LEGAL OWNER
FOR A VARIANCE ON PROPERTY
LOCATED AT SE/S PHILADELPHIA ROAD
245' NW OF C/LINE FORGE ROAD
(5597 GUNPOWDER ROAD)

11TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 07-246-A
*

* * * * *

**AMENDED RULING ON PETITIONER'S MOTION
FOR RECONSIDERATION AS TO DATE OF RULING ONLY**

This matter comes before the Board on a Motion for Reconsideration requested by Lawrence E. Schmidt and Gildea & Schmidt, LLC, on behalf of the Petitioner, Thomas Neuwiller. A Memorandum of Protestant in Opposition to the Motion for Reconsideration was filed by Bruce Edward Covahey and Covahey, Boozer, Devan & Dore, P.A. on behalf of Protestant, Mary Oelke. A public deliberation was held for this Motion on April 22, 2009.

This Board believes that a Motion for Reconsideration should only be necessary when there has been substantive new case law or enactment of a statute not available previously, which would clearly merit a modification of a Board's previous decision.

Upon deliberation, the Board concluded that the fact of Petitioner's *pro se* representation at the hearing does not legally open the door to a representation of additional evidence to this Board to clarify an alleged "confusion" by the newly retained Counsel, as raised in Paragraph I of Petitioner's Memorandum.

The Board further concludes that the denial of a Protestant's procedural motion, absent a change in the law during the time between the hearing and the Motion for

Reconsideration does not form the basis for a reconsideration, as raised in Paragraph II of the Petitioner's Memorandum.

In his Motion for Reconsideration, the Petitioner raised several points to be considered by the Board. Those being:

- I. Whether the Petitioner is entitled to an opportunity to present additional evidence as a result of alleged "confusion" over forest buffer and forest conservation regulations that was engendered by the petitioner's own presentation of evidence.
- II. Whether the Petitioner can rely upon the denial of the Protestant's procedural motion as a basis for Reconsideration of the findings of the Board of Appeals.
- III. Whether the Petitioner is entitled to reconsideration of the findings of the Board of Appeals because he wishes to present additional, previously available evidence regarding the issues considered by the Board of Appeals.
- IV. Whether the evidence actually presented before the Board of Appeals supports its findings that (1) the Petitioner's property is not unique and (2) the application of the Baltimore County Zoning Regulations does not impose a practical difficulty on the Petitioner.

The Board finds no legal basis for accepting previously available evidence by way of re-hearing after the close of the hearing in this matter, as urged in Paragraph III above.

As to the concern raised in Paragraph IV above, the Board concludes that it will not re-visit its decision upon a Motion For Reconsideration based upon an assertion that the ruling was incorrect as raised in Paragraph IV above.

The Board concludes that the Motion for Reconsideration does not point to any fraud, mistake or irregularity in the conduct of the hearing in this case, nor does the Board find there is any indication of the existence of new law or evidence not available to the Petitioner at the time of the hearing.

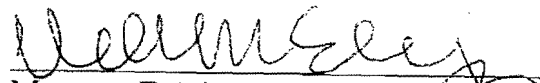
The appellate procedure in cases of this type is clear and established. Therefore, any redress to which Petitioner is entitled lies elsewhere. The Board's Opinion and Order issued on January 28, 2009 and subsequent Amended Opinion and Order issued February 9, 2009 remains this Board's final decision in this matter.

Therefore, after a thorough review of the facts, testimony and law in this case, the Board unanimously determines that the Motion for Reconsideration is hereby denied.

IT IS THEREFORE ORDERED THIS 16th day of June 2009
that the Motion for Reconsideration filed in this matter is **DENIED**.

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

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Maureen E. Murphy, Panel Chairman


Lawrence M. Stahl


Wendell H. Grier



County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

June 16, 2009

Lawrence E. Schmidt, Esquire
GILDEA & SCHMIDT LLC
600 Washington Ave., Suite 200
Towson, MD 21204

RE: *In the Matter of: Thomas G. Neuwiller, LO*
Case No. 07-246-A

Dear Mr. Schmidt:

Enclosed please find a copy of the Amended Ruling on Petitioner's Motion for Reconsideration As To Date of Ruling Only 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 of Procedure*, **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,

Theresa Shelton/kc

Theresa R. Shelton
Administrator

Enclosure
TRS/klc

c: Thomas G. Neuwiller
Bruce Edward Covahey, Esquire
Lou Miller
Edgar Steigleman
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Arnold F. "Pat" Keller, Planning Director
Timothy M. Kotroco, Director /PDM
Mike Mohler, Code Enforcement /PDM
John E. Beverungen, County Attorney
Margaret Z. Ferguson, Code Official /PDM /CC-06-5432

Mary Jane Oelke
Sheree Heard
Kevin Sabolcik

7/12/09
6/12/09
7
IN THE MATTER OF THE
THE PETITION OF
THOMAS NEUWILLER - LEGAL OWNER
FOR A VARIANCE ON PROPERTY
LOCATED AT SE/S PHILADELPHIA ROAD
245' NW OF C/LINE FORGE ROAD
(5597 GUNPOWDER ROAD)

11TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 07-246-A
*

* * * * *

RULING ON PETITIONER'S MOTION FOR RECONSIDERATION

This matter comes before the Board on a Motion for Reconsideration requested by Lawrence E. Schmidt and Gildea & Schmidt, LLC, on behalf of the Petitioner, Thomas Neuwiller. A Memorandum of Protestant in Opposition to the Motion for Reconsideration was filed by Bruce Edward Covahey and Covahey, Boozer, Devan & Dore, P.A. on behalf of Protestant, Mary Oelke. A public deliberation was held for this Motion on April 22, 2009.

This Board believes that a Motion for Reconsideration should only be necessary when there has been substantive new case law or enactment of a statute not available previously, which would clearly merit a modification of a Board's previous decision.

Upon deliberation, the Board concluded that the fact of Petitioner's *pro se* representation at the hearing does not legally open the door to a representation of additional evidence to this Board to clarify an alleged "confusion" by the newly retained Counsel, as raised in Paragraph I of Petitioner's Memorandum.

The Board further concludes that the denial of a Protestant's procedural motion, absent a change in the law during the time between the hearing and the Motion for

Reconsideration does not form the basis for a reconsideration, as raised in Paragraph II of the Petitioner's Memorandum.

In his Motion for Reconsideration, the Petitioner raised several points to be considered by the Board. Those being:

- I. Whether the Petitioner is entitled to an opportunity to present additional evidence as a result of alleged "confusion" over forest buffer and forest conservation regulations that was engendered by the petitioner's own presentation of evidence.
- II. Whether the Petitioner can rely upon the denial of the Protestant's procedural motion as a basis for Reconsideration of the findings of the Board of Appeals.
- III. Whether the Petitioner is entitled to reconsideration of the findings of the Board of Appeals because he wishes to present additional, previously available evidence regarding the issues considered by the Board of Appeals.
- IV. Whether the evidence actually presented before the Board of Appeals supports its findings that (1) the Petitioner's property is not unique and (2) the application of the Baltimore County Zoning Regulations does not impose a practical difficulty on the Petitioner.

The Board finds no legal basis for accepting previously available evidence by way of re-hearing after the close of the hearing in this matter, as urged in Paragraph III above.

As to the concern raised in Paragraph IV above, the Board concludes that it will not re-visit its decision upon a Motion For Reconsideration based upon an assertion that the ruling was incorrect as raised in Paragraph IV above.

The Board concludes that the Motion for Reconsideration does not point to any fraud, mistake or irregularity in the conduct of the hearing in this case, nor does the Board find there is any indication of the existence of new law or evidence not available to the Petitioner at the time of the hearing.

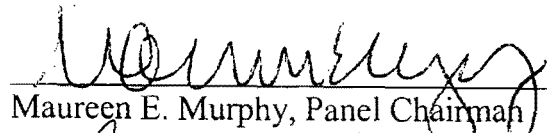
The appellate procedure in cases of this type is clear and established. Therefore, any redress to which Petitioner is entitled lies elsewhere. The Board's Opinion and Order issued on January 28, 2009 and subsequent Amended Opinion and Order issued February 9, 2009 remains this Board's final decision in this matter.

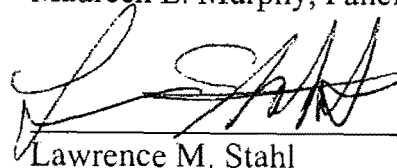
Therefore, after a thorough review of the facts, testimony and law in this case, the Board unanimously determines that the Motion for Reconsideration is hereby denied.

IT IS THEREFORE ORDERED THIS 12th day of July 2009
that the Motion for Reconsideration filed in this matter is **DENIED**.

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

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Maureen E. Murphy, Panel Chairman


Lawrence M. Stahl


Wendell H. Grier

6-7/12/09



County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
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TOWSON, MARYLAND, 21204
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June 12, 2009

Lawrence E. Schmidt, Esquire
GILDEA & SCHMIDT LLC
600 Washington Ave., Suite 200
Towson, MD 21204

RE: *In the Matter of: Thomas G. Neuwiller, LO*
Case No. 07-246-A

Dear Mr. Schmidt:

Enclosed please find a copy of the Ruling on Petitioner's Motion for Reconsideration 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 of Procedure*, **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,

Theresa Shelton/kc

Theresa R. Shelton
Administrator

Enclosure
TRS/klc

c: Thomas G. Neuwiller
Bruce Edward Covahey, Esquire
Mary Jane Oelke
Lou Miller
Sheree Heard
Edgar Steigleman
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Arnold F. "Pat" Keller, Planning Director
Timothy M. Kotroco, Director /PDM
Mike Mohler, Code Enforcement /PDM
John E. Beverungen, County Attorney
Margaret Z. Ferguson, Code Official /PDM /CC-06-5432

4/6/09

IN THE MATTER OF

THOMAS G. NEUWILLER

Local Owner/Petitioner

* BEFORE THE COUNTY
* BOARD OF APPEALS
* FOR
* BALITMORE COUNTY
* CASE NO. 07-246-A

RECEIVED

APR 06 2009

BALTIMORE COUNTY
BOARD OF APPEALS

* * * * *

MEMORANDUM OF PROTESTANT
IN OPPOSITION TO MOTION FOR RECONSIDERATION

Mary Oelke, Protestant, by Bruce Edward Covahey and Covahey, Boozer, Devan & Dore, P.A., her attorneys, respectfully submits this Memorandum of Protestant in Opposition to Motion for Reconsideration pursuant to Rule 10 of the Rules of Practice and Procedure of the County Board of Appeals of Baltimore County and states:

INTRODUCTION

The instant case commenced when the Petitioner, Thomas Neuwiller, filed a Petition for Variance ("Petition") seeking a variance from § 1B02.3.C.1 of the Baltimore County Zoning Regulations ("BCZR") to "permit an existing single family dwelling with an open projection (deck, pool, pool equipment) to have a sideyard setback of 4' and a sum of sideyards of 24' in lieu of the required 11.25' and 30' respectively." The Petition included no other requests for relief.

A hearing on the Petition was held before William J. Wiseman, III, Zoning Commissioner for Baltimore County, after which Commissioner Wiseman issued Findings of Fact and Conclusions of Law in which the following relief was granted:

1. A variance was granted from BCZR § 1B02.3.C.1 permitting "an existing single family dwelling with an open projection (deck, pool, pool equipment) to have a sideyard setback of 4' and a sum of sideyards of 24' in lieu of the required 11.25' and 30' respectively."

2. A variance was granted from BCZR § 400.1 to "allow accessory structures (pool and pool equipment) in the side yard in lieu of the required rear yard."

3. The Petitioner was required to relocate the fence in his front yard "by moving it back a distance of 2½ to 3 feet from the surface of the use-in-common driveway" serving the property of Protestant, Mary Oelke.

4. The Petitioner was required to address conditions related to water runoff onto the property of the Protestant when relocating his fence as described above.
Petr.'s Ex. 1.

This matter came before the Board of Appeals ("Board") as a result of an appeal filed by Protestant, Mary Oelke ("Protestant"), from the Findings of Fact and Conclusions of Law issued by Commissioner Wiseman. A public hearing on the merits of the Petition was held on April 29, 2008, after which the parties submitted written briefs at the request of the Board. A public deliberation was held on June 17, 2008.

On January 28, 2009, the Board issued its Amended Opinion and Order in which it denied the Petition and all variances requested therein. Thereafter, the Petitioner filed a Motion for Reconsideration ("Motion") pursuant to Rule 10 of the Rules of Practice and Procedure of the County Board of Appeals of Baltimore

County ("Board Rules") in which he raised several grounds in support of his request for relief.

QUESTIONS PRESENTED

- I. WHETHER THE PETITIONER IS ENTITLED TO AN OPPORTUNITY TO PRESENT ADDITIONAL EVIDENCE AS A RESULT OF ALLEGED "CONFUSION" OVER FOREST BUFFER AND FOREST CONSERVATION REGULATIONS THAT WAS ENGENDERED BY PETITIONER'S OWN PRESENTATION OF EVIDENCE.
- II. WHETHER THE PETITIONER CAN RELY UPON THE DENIAL OF A *PROTESTANT'S* PROCEDURAL MOTION AS A BASIS FOR RECONSIDERATION OF THE FINDINGS OF THE BOARD OF APPEALS.
- III. WHETHER THE PETITIONER IS ENTITLED TO RECONSIDERATION OF THE FINDINGS OF THE BOARD OF APPEALS BECAUSE HE WISHES TO PRESENT ADDITIONAL, PREVIOUSLY AVAILABLE EVIDENCE REGARDING THE ISSUES CONSIDERED BY THE BOARD OF APPEALS.
- IV. WHETHER THE EVIDENCE ACTUALLY PRESENTED BEFORE THE BOARD OF APPEALS SUPPORTS ITS FINDINGS THAT (1) THE PETITIONER'S PROPERTY IS NOT UNIQUE AND (2) THE APPLICATION OF THE BALTIMORE COUNTY ZONING REGULATIONS DOES NOT IMPOSE A PRACTICAL DIFFICULTY ON THE PETITIONER.

ARGUMENT

I. THE PETITIONER'S REQUEST REPRESENTS AN UNSUPPORTABLE EFFORT TO RECEIVE A SECOND CHANCE TO PRESENT HIS CASE.

Reduced to its essence, the Petitioner's Motion for Reconsideration constitutes an attempt to have the Board grant a new hearing with regard to the variances requested in the Petition. The gravamen of that request is the Petitioner's effort to have the Board either (1) allow him to present new evidence regarding issues central to its consideration of the Petition or (2) permit him to renew legal arguments *previously* presented and considered. In both instances, the Petitioner does not indicate that he intends to offer or rely upon evidence that was not previously available, but instead simply wishes to overcome possible shortcomings in his prior presentation of evidence before the Board.

The Petitioner has offered no reasonable basis to show why he should be awarded a second hearing on the merits of the Petition or otherwise be afforded the relief requested in his Petition. Accordingly, the Petitioner's Motion for Reconsideration must be denied.

II. ANY "CONFUSION" REGARDING FOREST CONSERVATION OR FOREST BUFFER REQUIREMENTS RESULTED FROM THE PETITIONER'S PRESENTATION OF EVIDENCE BEFORE THE BOARD.

In the Petitioner's Motion for Reconsideration, he first seeks relief on the ground that the Board's Amended Opinion and Order may have been effected by "[c]onfusion over forest buffer and forest conservation regulations and the impact of those regulations on the [Petitioner's] Variance request." Motion, p. 2. In contending that such "confusion" may have existed, the Petitioner suggests that he

was erroneous when he testified that he "donated" a "forest conservation buffer" that "was larger than required." Motion, p. 3. He then continues in an effort to distinguish between "forest conversation regulations" and "forest buffer regulations" and their respective applications, if any, to this matter. Id.

To support his contention that his testimony was inaccurate, the Petitioner offers a letter dated February 25, 2009 from Paul Dennis of the Baltimore County Department of Environmental Protection and Resource Management ("DEPRM") regarding the circumstances of the creation of a forest buffer on the subject property. Motion, Ex. B. The Petitioner makes no suggestion that Mr. Dennis was not available to testify in that regard at the April 29, 2008 hearing or that Mr. Dennis's letter sets forth evidence that was not, or could not have been, discovered at that time. Instead, it is apparent that the Petitioner simply elected not to offer such testimony at the hearing before the Board despite being fully able to do so.

The Petitioner further supports his position by proffering that his property is "unique" because it is the only property in his subdivision subject to imposition of a forest buffer because his house was built much later than those of his neighbors. Motion, p. 5. It is not clear that that statement is factually accurate. In any event, the Petitioner offers no indication as to the source of that information. Furthermore, he also offers no information suggesting that such evidence was not available at the time of the April 29, 2008 hearing before the Board.

In effect, the Petitioner's claim for relief is predicated on *alleged inaccuracies in his own testimony and/or his own purported failure* to explain the circumstances behind the imposition of a forest buffer on the subject property. If the Board were to

grant the Petitioner's Motion for that reason, it would effectively reward the Petitioner for his own failure to offer sufficient evidence to the Board at the hearing and to persuade the Board of the merits of his position in his brief. Since there is no evidence to suggest that the Petitioner was precluded from offering any of his new evidence or arguments on his own behalf when this matter was first before the Board, his Motion must be denied.

III. THE PETITIONER CANNOT RELY UPON DENIAL OF A PROTESTANT'S MOTION AS A BASIS FOR THE RELIEF SOUGHT.

The Petitioner next takes the fairly novel, if not unique, approach that he is entitled to reconsideration of the Board's Amended Opinion and Order because *he* failed to give sufficient public notice of the zoning relief requested in his variance. Specifically, the Petitioner notes that the Protestant moved for dismissal of the Petition because the Petitioner requested setback relief pursuant to BCZR §1B02.3.C.1 instead of a variance to locate an accessory structure in a side yard pursuant to BCZR § 400.1. He then claims he is entitled to the relief granted in the Motion because the Protestant's motion was *not* granted.

First of all, the Board did not predicate its decision in this matter on the issue of notice. Instead, the Board considered the Petitioner's variance request on its merits and denied it because he could not meet the criteria set forth in Cromwell v. Ward. 102 Md.App. 691 (1995). Therefore, any alleged error or deficiency in notice was, at most, harmless error and does not afford the Petitioner grounds for reconsideration of the Board's ruling.

Of further note, the notice requirements upon which the Petitioner relies exist for the protection of the *public*. They are not intended to provide a fallback position for the party seeking a variance if his request is denied. Accordingly, unless the Board wishes to reward the Petitioner for his own lack of diligence, those requirements cannot provide a basis for the relief sought in the Petitioner's Motion for Reconsideration.

The Petitioner notes that any failure to complete his Petition correctly resulted because "[h]e is a layman and not familiar with the intricacies of [the BCZR]." Motion, p. 7. Assuming that assertion to be correct, the Petitioner's election not to obtain competent assistance at the commencement of the variance process does not excuse him from adhering to the proper procedures. Moreover, it does not justify granting him a second chance to revisit the process if he erred in the first instance.

IV. THE PETITIONER IS NOT ENTITLED TO OFFER ADDITIONAL EVIDENCE IN SUPPORT OF HIS POSITION.

As noted above, the Petitioner's Motion for Reconsideration includes a recitation of evidence regarding the creation or donation of a "forest buffer easement" that was not offered at the April 29, 2008 hearing before the Board. Motion, p. 3-6. In support of the contention that his property is unique, the Petitioner also states in his Motion, *inter alia*, that his property is the only one in his neighborhood subject to forest buffer regulations, that the stream on the rear of his property is closer to his dwelling than any other home in the neighborhood and that the Protestant once advised him of the presence of "a rare American Ginseng" on

the property. Motion, p. 5, 9-10. However, none of those facts, whether true or not, were offered into evidence at the hearing.

The Petitioner has never contended, let alone established, that any of the additional evidence he set forth in his Motion was unavailable at the time of the hearing before the Board. Instead, assuming any such evidence is even relevant to the issues that were before the Board at that hearing, he simply elected not to present such evidence.

Rule 10 of the Board Rules does not exist to allow a party to present previously available evidence that was not offered before the Board at a hearing on the merits. Nevertheless, the Petitioner is attempting to utilize Rule 10 as just such a vehicle. Whether or not the failure to present such evidence was a matter of trial strategy or resulted from the fact that Mr. Neuwiller elected to represent himself at the hearing before the Board, his efforts to effectively conduct that hearing for a *second* time must be rebuffed. Accordingly, his Motion for Reconsideration must be denied.

V. THE ADDITIONAL FACTS RELIED UPON BY THE PETITIONER DO NOT RENDER HIS PROPERTY "UNIQUE" IN ACCORDANCE WITH APPLICABLE STANDARDS.

Assuming the Board elects to consider and give credence to the additional evidence presented by the Petitioner, application of those facts to the relevant legal standards shows that his property is not "unique" as required by Cromwell v. Ward, *supra*, as a prerequisite for entitlement to a variance.

The Petitioner first asserts that his property is unique because it is the only property in the neighborhood encumbered by a forest buffer easement generated by

his house's proximity to Bean Run. Motion, p. 5, 9. Assuming that assertion to be accurate, by the Petitioner's own statements, it is true only because the other properties were developed before adoption of the forest buffer regulations. Id. Moreover, he has not demonstrated that other homes in the neighborhood were constructed in areas that would violate the forest buffer regulations were they constructed today and were thus afforded a benefit denied to him. Therefore, his assertion does not establish that his property is unique in that regard.

Next, the Petitioner makes the unsupportable assertion that the orientation of his property to the main public road means the side yard where his pool is located "is as much of a back yard as what is technically considered the rear yard." Motion, p. 9. The Board already had the opportunity to consider this point, however the Protestant feels compelled to show again that the Petitioner's contention is without merit.

While the main public road lies on the opposite side of the Petitioner's house from the pool, a cursory glance at the photographs offered into evidence makes it clear that the pool is located in the *side* yard. The front door of the Petitioner's residence faces the driveway used jointly by the Petitioner, Protestant and neighbor Edgar Steigleman as their sole means of access to the public road. Petr.'s Ex. 4. (T.25). His house also faces in the same direction as that of the residence of neighbor Sheree Heard, who testified on his behalf at the April 29, 2008 hearing. Petr.'s Ex. 4. The Petitioner has also utilized the *actual* back yard as a back yard by constructing a large concrete patio in the rear of the house. Petr.'s Ex. 4. (T.25).

Finally, and most tellingly, the Petitioner refers to the area in which his pool is located as his "side yard" throughout his testimony and/or witness examinations. (T.19, 26, 28). The area on the opposite side of his house from his driveway and front door, where his patio was constructed, is repeatedly called the "back yard." (T.26, 28, 44).

The Petitioner also notes that there is a rock formation in the rear "that would require significant blasting" for construction of a pool. Motion, p. 9. As made clear during the hearing before the Board, including during the Petitioner's own testimony and his case in chief, *all* of the properties in the area have large rock formations and outcroppings on them. Sheree Heard went so far as to call such rock formations "indigenous" to the neighborhood. (T. 13). In addition, Edgar Steigleman acknowledged that the Petitioner's pool construction contractor had to remove large rocks to construct the pool in the *side* yard. (T. 22-23). Therefore, the existence of rock formations in the Petitioner's rear yard could hardly be said to make his property "unique", nor could it be said to warrant locating the pool in the side yard.

Finally, the Petitioner offers the new suggestion that his property is unique because of the presence of "a rare American Ginseng." Motion, p. 9. First of all, the Petitioner never demonstrates that that plant is not present on *other* properties in the area. In fact, his own statement is that the Protestant offered to "grow him some new plants for replanting", suggesting that the same plant also grows on *her* property. *Id.* In any event, the purported existence of such a plant does not render the subject property "unique" for the purposes of reviewing a request for a variance.

VI. THE ADDITIONAL EVIDENCE PROPOSED BY PETITIONER DOES NOT NEGATE THE LACK OF PRACTICAL DIFFICULTY IN THIS CASE.

As noted above, the Petitioner's Motion suggests that the subject property is "unique", as required by Cromwell v. Ward, *supra*, because it is the only property in his subdivision encumbered by a forest buffer, has a large rock formation in its rear and is home to a rare plant. Assuming, *arguendo*, that the Petitioner's contentions are accurate *and* that his property is unique as a result of those facts, the Petitioner is still not entitled to the requested variance because he cannot prove that adherence to the terms of the BCZR imposes a "practical difficulty" upon him. Cromwell, 102 Md. at 694; McLean v. Soley, 270 Md. 208, 214-15 (1973).

To obtain a variance, the party seeking the variance must first show that his property is unique. Cromwell, 102 Md. at 694. Assuming that sizable hurdle can be cleared, that party must next show "that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property." *Id.*

In McLean v. Soley, *supra*, the Court of Appeals set forth the burden that must be met to establish a "practical difficulty", assuming the party seeking a variance can first prove that his property is unique. The McLean Court stated that the party seeking a variance must show:

1. Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height 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 270 Md. at 214-15.

In his Motion, the Petitioner never addresses the critical issue of "practical difficulty", instead electing to end his argument with a discussion of "uniqueness." Nevertheless, the Protestant believes it is necessary to reiterate her position regarding the lack of any "practical difficulty."

First, it must be noted that the Petitioner is seeking a variance for the installation of an in-ground pool, which constitutes an "accessory building" or "accessory structure" under the BCZR. BCZR § 101. He is not requesting relief from the provisions of the BCZR so he may make some reasonable use of his property, as he has *already* constructed a home in accordance with those provisions. Instead, he is asking the Board to grant him extraordinary relief so he can construct a luxury amenity for that home.

The Petitioner presented no evidence to show that he was *unable* to construct his pool in his rear yard, as required by BCZR § 400.1. However, assuming, *arguendo*, that that is the case, that inability does not present a "practical difficulty", as he would not be prevented from making a core use of his property. Instead, he would merely be prevented from engaging in a *recreational activity*.

Applying the standard set forth in McLean, the Board must first consider whether strict compliance with BCZR §§ 400.1 and 1B02.3.C.1 "would

unreasonably prevent the [Petitioner] from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." McLean, 270 Md. 214. As noted above, the Petitioner has already constructed a residence on the Property and is thus making a reasonable use of the property. Beyond that, the Petitioner presented no evidence whatsoever to suggest that he could not construct an in-ground pool in the rear of the Property.

To the extent that rock in that area might impact construction of an in-ground pool, the Petitioner and Mr. Stiegleman confirmed that the Petitioner's pool contractor had to remove significant amounts of rock to build the pool *in the side yard*. (T.22, 55). The Petitioner offered no evidence beyond mere speculation to show that it would have been any *more difficult* to construct the pool in the rear yard than in the side yard.

With regard to the forest buffer, the Petitioner acknowledged that it began approximately thirty five feet beyond the edge of his house. (T.48). His pool is only twelve feet wide, meaning an identically sized pool could easily have been constructed within the permitted building envelope, even when accounting for a concrete patio or apron around the pool. (T.48).

As shown above, even if the new evidence offered by the Petitioner is considered, he cannot prove that compliance with the applicable regulations would "prevent [him] from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." Therefore, he has failed to meet the first prong of the test set forth in McLean.

The Board must next consider "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." McLean, 270 Md. at 214-15. This portion of the test dovetails with the language of BCZR § 307 requiring the Board to grant a variance only "in such manner as to grant relief without injury to public health, safety and general welfare." BCZR § 307.

The evidence shows that the granting of the Petitioner's variance request would subject the Protestant to the *permanent* imposition of injuries she has *already* suffered as a result of the Petitioner's pool construction. Whereas the review of most variance petitions requires the Board to speculate as to the injury to other parties, the fact that the Petitioner has already installed his pool allows the Board to see that actual, ongoing harm is already occurring.

Testimony and exhibits offered by the Protestant show beyond doubt that the Petitioner seriously altered the grade of the Property when the pool was constructed. Protestant's Ex. 3, 4. (T.67, 76, 84-88, 91). The grade in the side yard pool area was raised significantly from the natural grade, which ran downhill from the front of the Property to the creek in the rear. The grade in that area is also now much higher than that in adjoining areas of the Protestant's property. Protestant's Ex. 3, 4. (T.76, 84-88, 91). As a result, the Protestant has been subjected to substantially increased water runoff and has experienced discolored well water on several occasions. (T.77, 86-88, 91). Allowing that condition to

continue by granting the Petitioner's variance would cause significant injury to the Protestant, thus the Petitioner has not satisfied the second prong of the McLean standard.

The final portion of the Board's analysis requires determining "[w]hether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured." This prong parallels the language of BCZR § 307 allowing the Board to grant a variance only if the variance is "in strict harmony with the spirit and intent" of the applicable regulations. BCZR § 307.

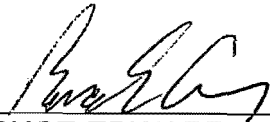
The "spirit and intent" of BCZR § 400.1 is to shield neighboring owners from the sights, sounds and impacts typically associated with accessory uses and structures, including pools. In this case, the Petitioner acknowledged that the Protestant can only access her property via the paved driveway running across the front of the Property. (T.41). While the Petitioner's side yard adjoins what he refers to as the Protestant's rear yard, the Protestant and her family and guests must drive within forty feet of the existing pool on every trip to and from the Protestant's property. (T.42). Therefore, she exits her property in the manner that most property owners use to exit their front yards. Insofar as BCZR § 400.1 exists to shield property owners from pools and other accessory structures abutting their front yards, forcing the Protestant to encounter the Petitioner's pool and surrounding fence during every trip to and from her property is wholly inconsistent with the "spirit and intent" of that regulation.

Overall, even if the Petitioner's new, previously available evidence is considered, the application of the McLean standard demonstrates that strict

application of the provisions of BCZR §§ 400.1 and 1B02.3.C.1 would not result in a "practical difficulty" for the Petitioner. Accordingly, his Motion for Reconsideration must be denied.

VII. CONCLUSION.

For the reasons set forth above, it is clear that the Petitioner is not entitled to reconsideration of his Petition for Variance and/or the Board's Amended Opinion and Order pursuant to Rule 10 of the Rules of Practice and Procedure of the County Board of Appeals of Baltimore County. Therefore, the Petitioner's Motion for Reconsideration must be denied.

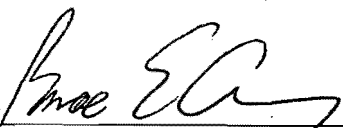


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410-828-9441
Attorneys for Protestant, Mary Oelke

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of April, 2009, a copy of the foregoing Memorandum of Protestant in Opposition to Motion for Reconsideration was mailed, first class, postage prepaid, to:

Lawrence E. Schmidt, Esquire
Gildea & Schmidt, LLC
600 Washington Avenue
Suite 200
Towson, MD 21204
Attorney for Petitioner



BRUCE EDWARD COVAHEY

bec090303

2/27/09

IN THE MATTER OF THE
PETITION OF:
THOMAS NEUWILLER – LEGAL OWNER
FOR A VARIANCE ON PROPERTY
LOCATED AT SE/S PHILADELPHIA ROAD
245' NW OF C/LINE FORGE ROAD
(5597 GUNPOWDER ROAD)

11TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 07-246-A
*

* * * * *

MOTION FOR RECONSIDERATION

Thomas Neuwiller, Petitioner, by Lawrence E. Schmidt and Gildea & Schmidt, LLC, his attorneys¹, file this Motion for Reconsideration of the Opinions and Orders of the County Board of Appeals of Baltimore County ("Board") dated January 28, 2009 and amended of February 9, 2009, pursuant to Rule 10 of the Board's Rules of Practice and Procedure and respectfully states:

Introduction

Following a public hearing on April 29, 2008, submission of written closing briefs by the respective parties and public deliberation on June 17, 2008, the Board issued its written opinion on January 28, 2009.² That opinion and order denied the Petition for Variance filed herein by the Petitioner; which sought relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations ("BCZR") to permit an existing single-family dwelling with open projection (deck, pool and pool equipment) to have a side yard setback of 4 feet and a sum of side yards of 24 feet in lieu of the required 11.25 and 30 feet, respectively.

The Petitioner, within this Motion, will not repeat the statements of fact and legal arguments previously offered. However, the Board's file, the evidence and those statements of

¹ Petitioner was unrepresented by counsel prior to this Motion.

² The Amended Order published on February 9th, 2009 was issued pursuant to Rule 11.

fact and arguments are referenced herein, particularly as they relate to the issues raised within this Motion for Reconsideration.

Authority

Rule 10 of the Board's Rules of Practice and Procedure permits a party to file a Motion for Reconsideration of an order of the Board of Appeals within thirty (30) days of the original order. Therefore, this Motion for Reconsideration has been timely filed. The filing of this Motion shall stay all further proceedings in the matter, including the time limits and deadlines for the filing of a Petition for Judicial Review.

Petitioner, in accordance with Rule 10, requests that the Board exercise its discretion and, after public deliberation, convene a hearing to receive testimony or argument (or both) on the issues identified in this Motion. The grounds and reasons to be set forth herein support the proposition that a hearing should be convened to resolve the open issues.

Grounds and Reasons for Reconsideration

The Board denied the Petition for Variance seeking relief from Section 1B02.3.C.1 of the BCZR to permit an existing single-family dwelling with open projection (deck, pool and pool equipment) to have a side yard setback of 4 feet and a sum of side yards of 24 feet in lieu of the required 11.25 feet and 30 feet, respectively. For the foregoing reasons, the request for relief should be reconvened for a hearing to address a multitude of issues which are not clearly addressed in the Order.

The following grounds and reasons support the proposition that the Board should reconsider its denial of the Petition for Variance: 1) Confusion over forest buffer and forest conservation regulations and the impact of those regulations on the Variance request; 2)

Adequacy of notice required and specific issues involved with the approval of the swimming pool use; 3) Reiteration of evidence supporting uniqueness determination.

Argument

A. The "Forest Conservation Buffer" Easement

In the Board's recitation of the testimony on page 2 of the Opinion, it is stated that the Petitioner "donated" the "forest conservation buffer" to Baltimore County "when he purchased the property" and he further agreed or indicated that the dedication/donation "was larger than required." The Board's *decision*, in the interest of judicial economy, further noted that there is no *practical difficulty* in the instant matter, since the Petitioner created a self-inflicted hardship when he donated a "forest conservation buffer" easement in excess of what the Department of Environmental Protection and Resource Management ("DEPRM") required. Respectfully, the Board's conclusions are inaccurate and misstate both the undisputed facts and applicable law. First, there is no such thing as a "forest conservation buffer." Next, the Petitioner did not "donate" anything, let alone more than was required.

Baltimore County's environmental regulations are contained in Article 33 of the Baltimore County Code ("BCC"). There are "forest buffer" and, separately, "forest conservation" regulations. Both are easily distinguished from one another in everything but the use of the word "forest" in their title. The forest buffer regulations for Baltimore County are contained in Baltimore County Code ("BCC") § 33-3-101, et seq. The forest conservation regulations are contained in BCC 33-6-101, et seq.

The forest buffer regulations do not regulate forests and the designation of those regulations as "forest buffer regulations" can be considered a misnomer and obviously led to the Board's confusion of this issue. The forest buffer regulations do not provide for the protection of "forests," rather, these regulations and requirements establish rules intended to protect water resources; including the quality of rivers, streams, wetlands and floodplains. The forest buffer regulations are applicable to the Petitioner's property because of the location of the Gunpowder River (and tributaries thereto, including Bean Run) located on the Petitioner's property. The required "forest buffer" on Petitioner's property (i.e. the required no disturbance area from the water) was established by DEPRM. The creation of the forest buffer easement is clear and unambiguous evidence of DEPRM's determination regarding the boundaries of the forest buffer. Furthermore, the existence and size of the forest buffer supports a determination the subject site is unique. The forest buffer specifically established on this property is an environmental constraint that is unique to this lot. It is the only uncontradicted evidence of the steepness or slope of the subject site and adjoining properties in the record. As no other property has an established forest buffer easement, laymen's testimony regarding the impact of the forest buffer regulations is tantamount to little more than conjecture.

Article 33, Title 6 is entitled "Forest Conservation." These regulations were codified by Baltimore County to meet the requirements of §§ 5-1601 through 5-1613 of the Natural Resources Article of the Annotated Code of Maryland. As the name implies, these regulations are concerned with the conservation of existing forest. The forest conservation regulations do not apply to the instant property, since less than 40,000 square feet has been developed. BCC § 33-6-103(a)(1). Thus the Board's finding of a "forest buffer easement" is an error. Moreover, even if

the forest conservation regulations were applicable, there are no "buffers" from forested areas that are designated for conservation.

Despite the forest conservation regulations not being applicable to the instant property, the presence of the stream, which generates the existing forest buffer requirements, resulted in an easement that protects the greater part of the subject site. The subject site is part of Plat No. 2 of the Darryl Gardens subdivision that was approved in 1946. The subdivision was built out over the years. The subject site, due to its later development and being the ONLY property in the Darryl Gardens subdivision that has an easement under the forest buffer regulations created a unique attribute not shared by any other lots in the subdivision.

The Opinion indicates that the Petitioner dedicated a forest buffer easement that was larger than required. This is simply not true. DEPRM does not accept such easements. A private easement could be created that would protect additional space in perpetuity, but DEPRM designates an area as the forest buffer area and requires an easement in accordance therewith. David Lykens, Development Coordinator with DEPRM, noted in DEPRM's Zoning Advisory Committee ("ZAC") comment dated February 8, 2007 that the only area to construct an in-ground pool was the side yard due to the forest buffer easement, ***required by DEPRM in 2004 as a condition of building permit approval***, being approximately 35' from the rear of the dwelling. Mr. Lykens further stated that steep slopes exist behind the dwelling and these slopes would cause the pool, if it were to be located in the rear yard, to violate the grading provisions of BCC § 33-3-112. A copy of DEPRM's ZAC comment is attached hereto as Exhibit A.

In addition to the written comment from DEPRM which is contained in the Board's file, attached hereto as Exhibit B is a letter dated February 25, 2009, signed by Paul Dennis, the reviewer from DEPRM who visited the site, determined the forest buffer area to be dedicated by

Mr. Neuwiller, and accepted the dedication of the easement to protect said forest buffer area. As his letter states, he determined the required forest buffer and required an easement thereon. The accepted area designated was no more, nor no less, than required by law.

In summary, the Opinion clearly indicates that the Board was confused with regard to the specifics of what was dedicated to the County and the regulations that governed that dedication. The Board's determination that the forest buffer easement was a self-inflicted hardship is not supported by the record or the existing forest buffer regulations.

B. Adequate Notice of Relief Required

The Petitioner in the instant matter did not give sufficient public notice of the zoning relief required. Counsel for the Protestant, in a preliminary motion before the Board, argued that the Petitioner, in the Petition for Variance, and by extension, the hearings before the Zoning Commissioner and the Board of Appeals, did not request the proper relief necessary to bring the swimming pool use into compliance with the Zoning Regulations. Protestant's counsel, among other things, argued that the requested relief for a set back requested under BCZR §1B02.3.C.1 was incorrect and that the Petitioner failed request a required Variance for an *accessory structure* under BCZR § 400.1. In support of his proposition, he cited *Cassidy v. Board of Appeals*, 218 Md. 418, 146 A.2d 896 (1958).

The preliminary motion by Protestant's counsel *should have been granted* and the matter remanded to the Zoning Commissioner so the Petition for Variance could have been amended to reflect the proper relief required. For the following reasons, the public notice which was given in this case fails to adequately inform the public of the variance actually required. The Petitioner,

with the assistance of the Zoning Review Bureau/Permits and Development Management (but without the benefit of counsel/zoning consultant) completed/filed the Petition for Variance. He is a layman and not familiar with the intricacies of the zoning code. The proper relief was not requested. As a result, the record is extremely confusing and does not provide to all persons notice of the variance actually required for the swimming pool use to continue. Neither the record, nor the Board's opinion, adequately addresses this issue.

A review and summary of the Zoning Regulations applicable to the swimming pool and this case is as follows. The "small lot" chart found in Baltimore County Zoning Regulations ("BCZR") § 1B02.3.C.1 (page 1B:22) sets forth the setback standards for dwellings in D.R. zones. It was a setback variance under this regulation that was erroneously requested, notwithstanding the obvious fact that the structure at issue is a swimming pool and not a dwelling. The dwelling setbacks for D.R. 2 zoned property, which is the zoning of the subject property, require a minimum width of the individual side yard of 15 feet and a minimum sum of side yard setback widths of 40 feet. The Petition for Variance not only cited an inapplicable section but also incorrectly identified the requirements therein. That is, the requirement for an individual side yard as 15 feet, rather than 11.25 feet; and 40 feet, rather than 30 feet, for the minimum sum of side yard setback widths. A review of the Zoning Regulations does not disclose any requirement for an 11.25 foot individual side yard setback requirement and 30 foot sum of the side yards setback requirement. The Petitioner followed the instruction of the staff employee who assisted him in the filing of the petition and it is unknown why/where the employee used these requirements.

The property both was not an issue in the 2008 Comprehensive Zoning Map Process (CZMP) and the zoning has not changed after the petition was filed. Thus, the setback

requirements are no different now then when the petition was filed. Moreover, a review of the Comprehensive Manual of Development Policies does not disclose any additional provision which modifies the D.R. 2 "small lot" bulk regulations. Clearly, the quoted section in the petition does not apply and it is incorrectly cited.

More significantly, the swimming pool use is specifically listed and identified as an accessory use allowed in the DR zone under BCZR § 1B01.1.A.18.g. As such, the pool is subject to the height and area provisions set forth in BCZR § 400.

In sum, the approval requested and BCZR Section listed in the petition for variance filed by the petitioner are incorrect and not applicable to the subject site. The Protestant's counsel recognized this within his preliminary objection to the Board but his objection was incorrectly overruled. The Board cannot consider a variance from BCZR § 400.1 when no such specific request is listed in the Petition for Variance. The Petition for Variance fails in this regard to give adequate notice to the public regarding the relief required. Moreover, minimum side yard setback applicable to an accessory use under BCZR § 400.1 is 2.5 feet, not 11.25 feet. The subject site is not within 2.5 of the property line and therefore no side yard setback variance is required. The Board should reconvene its hearing to consider this request, or remand the case to the Zoning Commissioner for him to permit a formal amendment of the petition and public hearing to consider the appropriate variance.

C. Uniqueness

In addition to the above issues, the Board's finding that the property was not unique was in error. As noted above, the property was unimproved for many years after the Darryl Gardens subdivision was approved in 1946. It was not improved due to its proximity to Bean Run, the

stream that lies in the rear of the property. As stated above, it is the only property in the immediate neighborhood that is encumbered by a forest buffer easement. Other properties were developed prior to the enactment of those environmental regulations. Moreover the property has a unique orientation to the rest of the lots in the subdivision, features steep slopes and is served by a use-in-common driveway. The stream is closer to the Petitioner's dwelling than any other property in the subdivision. The property has houses on three sides of it. It is the only such house in the vicinity that has such an orientation.

The Protestant lives down the hill from the Petitioner and cannot see the pool without concerted effort. The two property owners adjacent to the Petitioner who live within 100 feet of his residence do not oppose the swimming pool. The side yard, determined strictly based upon the orientation of the front door, in many senses, very much so for the subject property, is as much of a back yard as what is technically considered the rear yard. In addition to the forest buffer easement line 35 feet from the rear property line, there is a rock formation in the rear yard, directly where the pool would be situated, that would require significant blasting that could potentially damage surrounding personal property. The mere size of the forest buffer easement is, in and of itself, evidence that the property is uniquely encumbered. The Protestant indicated to the Petitioner at one point that a rare American Ginseng found on his property had been damaged and she could grow him some new plants for replanting. The existence of a rare American Ginseng, according to the Protestant, further evidenced that the property is unique. In further support of the litany of unique conditions of the site, DEPRM so much as stated that the property was unique in its ZAC comment. These conditions are shown in the exhibits and

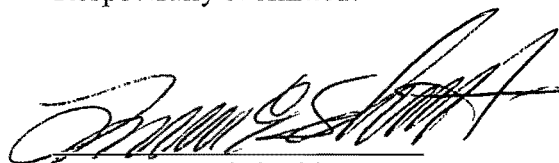
through the testimony offered at the hearing and the Board erred in its finding that the property was not unique. The Board's decision did not consider/address any of these factors.

Conclusion

Based upon the foregoing, the Petitioner requests that the Board reconsider its decision in this matter. As noted above, the petition was incorrectly filed and requested the incorrect variance. To allow the Board's opinion and order to remain would cause confusion if a corrected petition were re-filed. Moreover, it is respectfully contended that the Board did not appreciate the environmental regulation which encumbers this property and contributes to a finding that the property is unique. As the Protestant correctly noted by her counsel's preliminary objection in open hearing, proper public notice need be given of the variance requested. Thus, the Board should either:

1. Remand this matter to the Office of the Zoning Commissioner to entertain at public hearing a request for the variance required under law (after public notification); or,
2. Strike its order and conduct a de novo hearing on the variance required by law.

Respectfully submitted:



Lawrence E. Schmidt
Gildea and Schmidt, LLC
600 Washington Avenue
Suite 200
Towson, MD 21204
(410) 821-0070
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of Feb., 2009, a copy of the foregoing Motion for Reconsideration was mailed, postage prepaid, to: Bruce Edward Covahey, 614 Bosley Avenue, Towson, MD 21204, attorney for Mary Jane Oelke.

Lawrence E. Schmidt

BCZR § 1B01.1.A.18
General use regulations in D.R. Zones

18. Accessory uses or buildings other than those permitted only by special exception, including, but not limited to:

- a. Accessory radio or television receiving antennas.
- b. Wireless transmitting and receiving structures, provided that any such structure: is a radio antenna in conjunction with transmitting and receiving facilities used by a resident amateur radio operator possessing an amateur radio operator's license issued by the Federal Communications Commission; if it is an independent structure, shall be subject to the same requirements as are applied to buildings under Section 400; if it is a rigid-structure antenna, shall be no higher than 50 feet above grade level and with no supporting structure thereof closer than 10 feet to any property line; and does not extend closer to the street on which the lot fronts than the front building line. Editor's Note: Former Item c, which followed this item and permitted automotive-service stations, was repealed by Bill No. 172-1993.
- c. Home occupations, as defined in Section 101. Editor's Note: Former Item c, which followed this item and permitted offices of certain professional persons as an accessory use to their residences, was repealed by Bill No. 105-1972, effective 8-26-1982.
- d. Parking spaces, including accessory garage spaces.
- e. Offices for the conduct of business incidental to the rental, operation, service or maintenance of apartment buildings.
- f. Signs, subject to Section 450. [Bill No. 89-1997]
- g. Swimming pools, tennis courts, garages, utility sheds, satellite receiving dishes (subject to Section 429) or other accessory structures or uses (all such accessory structures or uses subject to the height and area provisions for buildings as set forth in Section 400). [Bill No. 71-1987]

BCZR § 1B02.3.C
Special regulations for certain existing developments or subdivisions and for small lots or tracts in D.R. Zones

C. Development standards for small lots or tracts.

1. Any dwelling hereafter constructed on a lot or tract described in Subsection A.3 or A.4 shall comply with the requirements of the following table:

Zoning Classification	Minimum Net Lot Area per Dwelling Unit (square feet)	Minimum Lot Width (feet)	Minimum Front Yard Depth (feet)	Minimum Width of Individual Side Yard (feet)	Minimum Sum of Side Yard Widths (feet)	Minimum Rear Yard Depth (feet)
D.R.1	40,000	150	50	20	50	50
D.R.2	20,000	100	40	15	40	40
D.R.3.5	10,000	70	30	10	25	30
D.R.5.5	6,000	55	25	10	—	30
D.R.10.5	3,000	20	10	10	—	50
D.R.16	2,500	20	10	25	—	30

2. Other standards for development of small lots on tracts as so described shall be as set forth in provisions adopted to the authority of Section 504.

BCZR § 400.1
Accessory Buildings in Residences Zones

§ 400.1 Location; lot coverage.

Accessory buildings in residence zones, other than farm buildings (Section 404) shall be located only in the rear yard and shall occupy not more than 40% thereof. On corner lots they shall be located only in the third of the lot farthest removed from any street and shall occupy not more than 50% of such third. In no case shall they be located less than 2 1/2 feet from any side or rear lot lines, except that two private garages may be built with a common party wall straddling a side interior property line if all other requirements are met. The limitations imposed by this section shall not apply to a structure which is attached to the principal building by a covered passageway or which has one wall or part of one wall in common with it. Such structure shall be considered part of the principal building and shall be subject to the yard requirements for such a building.

Ex "A"

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



TO: Timothy M. Kotroco
FROM: Dave Lykens, DEPRM - Development Coordination
DATE: February 8, 2007
SUBJECT: Zoning Item # 07-246-A
Address 5597 Gunpowder Rd
(Neuwiller Property)

Zoning Advisory Committee Meeting of December 4, 2006

_____ The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.

X The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

X Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

_____ Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Additional Comments:

A Forest Buffer Easement (i.e. stream buffer) required by DEPRM in 2004 as a condition of building permit approval extends to approximately 35' from the rear of the dwelling. Furthermore, steep slopes exist behind the dwelling that would cause any grading for the pool to extend into this buffer in violation of Section 33-3-112. Consequently, the only area to construct the proposed in-ground pool out of this buffer would be in the side yard.

Reviewer: Glenn Shaffer

Date: February 8, 2007

Ex "B"

GILDEA & SCHMIDT, LLC

600 WASHINGTON AVENUE

SUITE 200

TOWSON, MARYLAND 21204

TELEPHONE 410-821-0070

FACSIMILE 410-821-0071

www.gildeallc.com

DAVID K. GILDEA

LAWRENCE E. SCHMIDT

D. DUSKY HOLMAN

SEBASTIAN A. CROSS

CHARLES B. MAREK, III

JASON T. VETTORI

February 25, 2009

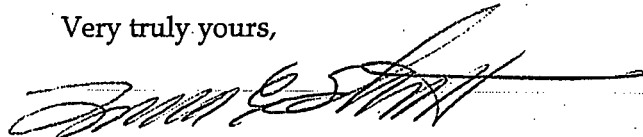
Mr. Paul Dennis
DEPRM
401 Bosley Avenue
Room 416
Towson, MD 21204

Re: Neuwiller & Watson/5597 Gunpowder Road
Case No. 07-246-A

Dear Paul:

I am writing as a follow up to the meeting that I had with you about the evidence/testimony before the Board of Appeals regarding the Forest Buffer Easement Mr. Thomas Neuwiller dedicated to the County. In its opinion, the Board of Appeals found that the easement area for the required Forest Buffer was greater than the Department of Environmental Protection and Resource Management ("DEPRM") required. Specifically, the Board stated that Mr. Neuwiller had "donated" a larger area of forest buffer than required by DEPRM. Please confirm, by signing below, that Mr. Neuwiller dedicated the area included in the Forest Buffer Easement for the above referenced property, as required and directed to by DEPRM. To be perfectly clear, this dedication (i.e. what was improperly called a "donation") was determined based upon your field inspection and was no more nor no less than DEPRM required. Thank you for your consideration of this most important matter.

Very truly yours,



Lawrence E. Schmidt

LES: dls

CC: Jason T. Vettori, Esquire

APPROVED AS TO FORM AND CONTENT:



Paul Dennis

GILDEA & SCHMIDT, LLC

600 WASHINGTON AVENUE

SUITE 200

TOWSON, MARYLAND 21204

TELEPHONE 410-821-0070

FACSIMILE 410-821-0071

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DAVID K. GILDEA

LAWRENCE E. SCHMIDT

D. DUSKY HOLMAN

SEBASTIAN A. CROSS

CHARLES B. MAREK, III

JASON T. VETTORI

February 27, 2009

Via Hand Delivery

Theresa R. Shelton

County Board of Appeals of Baltimore County

The Jefferson Building

105 W. Chesapeake Avenue, Suite 203

Towson, MD 21204

RECEIVED

FEB 27 2009

BALTIMORE COUNTY
BOARD OF APPEALS

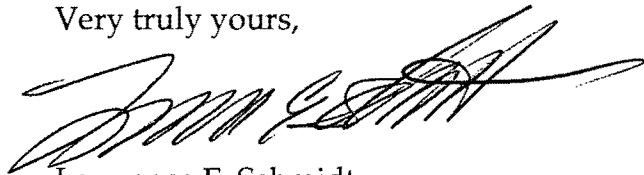
**Re: Neuwiller & Watson/5597 Gunpowder Road
Motion for Reconsideration
Case No.: 07-246-A**

Dear Ms. Shelton:

Enclosed herein please find an original and three (3) copies of a Motion for Reconsideration regarding the above referenced matter. Also attached to the Motion are exhibits A and B as well as the applicable provisions of the BCZR.

Thank you for your time and attention to this most important matter. With kind regards, I am

Very truly yours,



Lawrence E. Schmidt

LES: jk

Enclosures

CC: Tom Neuwiller

Kenneth J. Wells, KjWellsInc.

Jason T. Vettori, Esquire

2/9/09

IN THE MATTER OF THE
THE PETITION OF
THOMAS NEUWILLER – LEGAL OWNER
FOR A VARIANCE ON PROPERTY
LOCATED AT SE/S PHILADELPHIA ROAD
245' NW OF C/LINE FORGE ROAD
(5597 GUNPOWDER ROAD)

11TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 07-246-A
*

* * * * *

AMENDED OPINION

This matter comes before the Baltimore County Board of Appeals on an appeal filed by the Protestant, Mary Jane Oelke, by and through her attorney, Bruce Edward Covahey, Esquire, from the decision of the Zoning Commissioner dated February 12, 2007. The Legal Owner is Thomas Neuwiller, who appeared pro se. A public de novo hearing was held on April 29, 2008. Written closing briefs were filed on May 29, 2008 and the Board convened for a Public Deliberation on June 17, 2008.

Background

The Petitioner is requesting variance relief for the property located at 5597 Gunpowder Road. The variance requested by the Petitioner, was from the requirements of the Baltimore County Zoning Regulations (BCZR) §1B02.3c1 to allow a side yard setback of four (4) feet and a sum of side yards of twenty-four (24) feet in lieu of the required 11.25 feet and thirty (30) feet respectively. The Zoning Commissioner also granted a variance from BCZR §400.1 to allow a pool and pool equipment in the side yard of the subject property in lieu of the required rear yard. As a condition to the above approval, Petitioner was required to relocate his front yard fence and ameliorate any related water run off onto Protestant's property.

Testimony

Sheree Heard was called by the Petitioner and Cross-Examined by Counsel for the Protestant. She is a neighbor of the Petitioner and testified that significant rock formations were "indigenous" to the neighborhood and were present on virtually all of the properties in the area. She also acknowledged the forested nature of the area, but couldn't identify the specific locations of the rock formations of the area or of the site in question.

Edgar Steigleman, also a neighbor of the Petitioner, was called and confirmed the existence of the extensive rock formations and wooded areas. In addition he testified that large rocks had been removed from the side yard of the subject site as part of the pool construction by the Petitioner.

Petitioner, Thomas Neuwiller, testified. He submitted, described and commented upon various exhibits and photographs and was cross-examined by Protestants' Counsel. He stated that he shared a property line with the Heards', who of necessity, drove by the subject pool and house everyday. He acknowledged that he had donated the forest conservation buffer to Baltimore County when he purchased the property and agreed that it was larger than required. He too confirmed the numerous visible outcroppings of rock which existed not only on his property but also on those of others in the area. The Petitioner further testified under cross-examination that he had brought in approximately 60 tons of stone and crush-and-run to the site and had, he believed, dealt with any run off problem that may have existed. He finally described the relocation backward of the fence on the property line and maintained that the grade to Protestant's property is now about the same as it was before the pool project.

Amber Oelke-DiLeggi, the adult daughter of the Protestant, testified that although she lived in the Protestant's home as a child, she was now there once a month when at school and about twice a week when not so occupied. After being shown several photographs of the neighborhood, she also confirmed the geological characteristics of the area as well as its heavily wooded nature. On cross-examination she acknowledged that she had not been a regular resident of the area for some time and therefore had no specific knowledge regarding the improvement or construction of other pools in the area.

Protestant, Mary J. Oelke, testified as to her property and its relationship to that of the Petitioner. She described her observations and belief that in constructing the existing pool Petitioner significantly raised the grade at their mutual property line by several feet. She noted that since the pool was built, a great deal more water comes down to her property; and in fact, when it rains hard, the perceived run off causes her well water to become colored. Nevertheless, she acknowledged under cross-examination that she has no technical knowledge of drainage systems nor of the arrangements on site or elsewhere in the area.

Case Law

The Board has reviewed the testimony, exhibits, as well as the statutes and case law relevant to this matter.

Section 307.1 of the BCZR, in pertinent part, reads 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...." *Id.* 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 non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.... *Id.* at 710.

In applying the law, the Board observes that only when the prerequisite "uniqueness" has been established an area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. *McLean v. Soley*, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must produce evidence to allow the following questions to be answered affirmatively:

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

observed and public safety and welfare secured.

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

The law is also clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell*, *supra*, Judge Cathell noted:

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

Decision

This Board finds unanimously that the Petitioner has not met the burden as required for a variance under BCZR §307.1 and the standard established in *Cromwell vs. Ward*.

The first prong requires that the land itself, of the subject property, must be "unique" from others in the neighborhood to qualify for a variance. The testimony and evidence, including that of the Petitioner himself and his called witnesses, are clear and uncontradicted that virtually all the properties in the area substantially contain significant bedrock formations and outcroppings. Our review of the exhibits, along with this uncontradicted testimony convinces us that the subject site is not different from the other home sites in the area.

Moreover, we heard no testimony that established any steepness or slope or other condition that would render the subject property as unique. We do not believe that the fact the front of the subject property faces two back yards is a situation which, in and of itself, would render Petitioner's property "unique" for the purposes of the variance statute.

Having so found, the Board need go no further in denying these requested variances. However, in the interest of judicial economy, we find that Petitioner's establishment with the

County of an extra large forest buffer, and his previous actions in determining to locate his pool at his chosen location on his property, are clearly self-inflicted hardships. We find, therefore, that no "practical difficulty" has been established.

Accordingly, we unanimously deny the Petitioner's requested variances.

ORDER

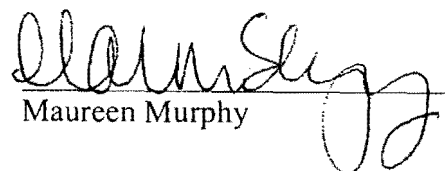
THEREFORE, IT IS, this 9th day of February, 2009, by the Board of Appeals of Baltimore County,

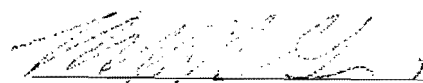
ORDERED that the Petition for Variance in Case No.: 07-246-A, seeking relief from Section 1B02.3.C.1 of the *Baltimore County Zoning Regulations* (BCZR) to permit an existing single-family dwelling with open projection (deck, pool and pool equipment) to have a side yard setback of 4 feet and a sum of side yards of 24 feet in lieu of the required 11.25 feet and 30 feet respectively, is hereby **DENIED**.

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

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence Stahl, Panel Chairman


Maureen Murphy


Wendell Grier

2/9/9



County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

February 9, 2009

Lawrence E. Schmidt, Esquire
GILDEA & SCHMIDT LLC
600 Washington Avenue
Suite 200
Towson, MD 21204

RE: *In the Matter of: Thomas G. Neuwiller, LO*
Case No. 07-246-A
Amended Opinion

Dear Mr. Schmidt:

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

Please be advised that the only amendment in the Opinion is the removal of Nancy West, Assistant County Attorney, as an appearing party in this matter. As you are aware, Ms. West did not appear on behalf of the County.

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

Theresa Shelton/sc
Theresa R. Shelton
Administrator

TRS/klc
Enclosure

c: Bruce Edward Covahey, Esquire
Mary Jane Oelke
Lou Miller
Thomas G. Neuwiller
Sheree Heard
Edgar Steigleman

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM
Mike Mohler, Code Enforcement /PDM
Donald E. Brand, Acting Code Enforcement Hearing
Official/PDM/CC-06-5432

1/28/09

IN THE MATTER OF THE
THE PETITION OF
THOMAS NEUWILLER – LEGAL OWNER
FOR A VARIANCE ON PROPERTY
LOCATED AT SE/S PHILADELPHIA ROAD
245' NW OF C/LINE FORGE ROAD
(5597 GUNPOWDER ROAD)

11TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 07-246-A
*

* * * * *

OPINION

This matter comes before the Baltimore County Board of Appeals on an appeal filed by the Protestant, Mary Jane Oelke, by and through her attorney, Bruce Edward Covahey, Esquire, from the decision of the Zoning Commissioner dated February 12, 2007. The Legal Owner is Thomas Neuwiller, who appeared pro se. Nancy West, Assistant County Attorney from the Office of Law, represented Baltimore County. A public de novo hearing was held on April 29, 2008. Written closing briefs were filed on May 29, 2008 and the Board convened for a Public Deliberation on June 17, 2008.

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In applying the law, the Board observes that only when the prerequisite "uniqueness" has been established an area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. *McLean v. Soley*, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must produce evidence to allow the following questions to be answered affirmatively:

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

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The law is also clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell, supra*, Judge Cathell noted:

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

Decision

This Board finds unanimously that the Petitioner has not met the burden as required for a variance under BCZR §307.1 and the standard established in *Cromwell vs. Ward*.

The first prong requires that the land itself, of the subject property, must be "unique" from others in the neighborhood to qualify for a variance. The testimony and evidence, including that of the Petitioner himself and his called witnesses, are clear and uncontradicted that virtually all the properties in the area substantially contain significant bedrock formations and outcroppings. Our review of the exhibits, along with this uncontradicted testimony convinces us that the subject site is not different from the other home sites in the area.

Moreover, we heard no testimony that established any steepness or slope or other condition that would render the subject property as unique. We do not believe that the fact the front of the subject property faces two back yards is a situation which, in and of itself, would render Petitioner's property "unique" for the purposes of the variance statute.

Having so found, the Board need go no further in denying these requested variances. However, in the interest of judicial economy, we find that Petitioner's establishment with the County of an extra large forest buffer, and his previous actions in determining to locate his

pool at his chosen location on his property, are clearly self-inflicted hardships. We find, therefore, that no "practical difficulty" has been established.

Accordingly, we unanimously deny the Petitioner's requested variances.

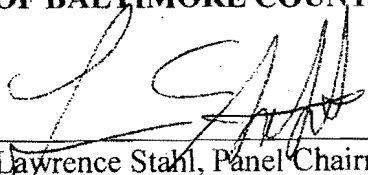
ORDER

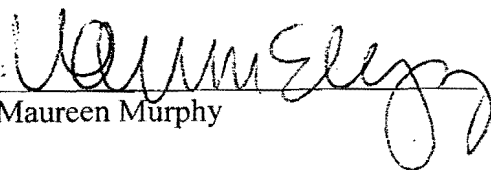
THEREFORE, IT IS, this 28th day of January, 2009, by the Board of Appeals of Baltimore County,

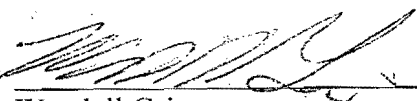
ORDERED that the Petition for Variance in Case No.: 07-246-A, seeking relief from Section 1B02.3.C.1 of the *Baltimore County Zoning Regulations* (BCZR) to permit an existing single-family dwelling with open projection (deck, pool and pool equipment) to have a side yard setback of 4 feet and a sum of side yards of 24 feet in lieu of the required 11.25 feet and 30 feet respectively, is hereby **DENIED**.

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

**COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence Stahl, Panel Chairman


Maureen Murphy


Wendell Grier

5/24/08

IN THE MATTER OF	*	BEFORE THE COUNTY
THOMAS G. NEUWILLER	*	BOARD OF APPEALS
Legal Owner/Petitioner	*	FOR
	*	BALITMORE COUNTY
	*	CASE NO. 07-246-A

* * * * *

**BRIEF AND MEMORANDUM OF PROTESTANT
IN OPPOSITION TO PETITION FOR VARIANCE**

Mary Oelke, Protestant, by Bruce Edward Covahey and Covahey, Boozer, Devan & Dore, P.A., her attorneys, respectfully submits this Brief and Memorandum in Opposition to Petition for Variance in lieu of closing argument as requested by the Board of Appeals at the conclusion of the hearing held on April 29, 2008.

STATEMENT OF THE CASE

The instant case commenced when the Petitioner, Thomas Neuwiller, filed a Petition for Variance ("Petition") seeking a variance from § 1B02.3.C.1 of the Baltimore County Zoning Regulations ("BCZR") to "permit an existing single family dwelling with an open projection (deck, pool, pool equipment) to have a sideyard setback of 4' and a sum of sideyards of 24' in lieu of the required 11.25' and 30' respectively." The Petition included no other requests for relief.

A hearing on the Petition was held before William J. Wiseman, III, Zoning Commissioner for Baltimore County, after which Commissioner Wiseman issued Findings of Fact and Conclusions of Law in which the following relief was granted:

RECEIVED

MAY 29 2008

BALTIMORE COUNTY
BOARD OF APPEALS

1. A variance was granted from BCZR § 1B02.3.C.1 permitting "an existing single family dwelling with an open projection (deck, pool, pool equipment) to have a sideyard setback of 4' and a sum of sideyards of 24' in lieu of the required 11.25' and 30' respectively."

2. A variance was granted from BCZR § 400.1 to "allow accessory structures (pool and pool equipment) in the side yard in lieu of the required rear yard."

3. The Petitioner was required to relocate the fence in his front yard "by moving it back a distance of 2½ to 3 feet from the surface of the use-in-common driveway" serving the property of Protestant, Mary Oelke.

4. The Petitioner was required to address conditions related to water runoff onto the property of the Protestant when relocating his fence as described above. Petr.'s Ex. 1.

This matter comes before the Board of Appeals ("Board") as a result of an appeal filed by Protestant, Mary Oelke, from the Findings of Fact and Conclusions of Law issued by Commissioner Wiseman.

QUESTIONS PRESENTED

- I. WHETHER PETITIONER MET THE REQUIRED BURDEN OF PROOF TO ESTABLISH THAT HIS PROPERTY IS UNIQUE AND THAT DENIAL OF HIS VARIANCE REQUEST WOULD CAUSE HIM PRACTICAL DIFFICULTY OR UNREASONABLE HARDSHIP.**
- II. WHETHER THE INABILITY TO CONSTRUCT AN IN-GROUND POOL CONSTITUTES A PRACTICAL DIFFICULTY SUFFICIENT TO JUSTIFY A VARIANCE FROM THE PROVISIONS OF BCZR § 400.1.**

III. WHETHER THE PETITIONER'S ELECTION TO CREATE A LARGER FOREST CONVERSATION BUFFER THAN REQUIRED BARS HIM FROM OBTAINING THE RELIEF REQUESTED IN HIS PETITION FOR VARIANCE.

III. WHETHER THE BOARD OF APPEALS CAN GRANT A VARIANCE FROM THE PROVISIONS OF BCZR § 400.1 DESPITE THE PETITIONER'S FAILURE TO REQUEST SUCH RELIEF IN HIS PETITION FOR VARIANCE.

STATEMENT OF THE FACTS

Petitioner is the owner of property located at 5597 Gunpowder Road ("Property"). The rear of the Property is heavily wooded and abuts a stream, subjecting the property to a Forest Conversation Buffer. (T.26-27, 43-44). The Property is also subject to a 20 foot wide easement allowing access to property owned by the Protestant and located at 5599 Gunpowder Road upon which her principal residence is located. (T.25, 41). The locations of the Property and the Protestant's property, which abut one another, are shown on Petitioner's Exhibit Nos. 4 and 5.

Upon taking title to the Property, the Petitioner constructed a new single family dwelling on the Property. Thereafter, in 2004, the Petitioner hired Blue Haven Pool Company to construct an 12 ft. x 30 ft. in-ground pool on the property. (T.26-29). The contractor, acting as the Petitioner's agent, submitted a request for permit incorrectly claiming that the pool would be located in the rear of the Property, while the location of the pool was clearly in the Property's side yard. Petr.'s Ex. 2. (T.27-29). A permit for the construction of the pool was issued in reliance upon the

Petitioner's misrepresentation, with the construction of the pool being completed later in 2004.

In support of his request for a variance, the Petitioner contended that the bedrock in the rear of the Property made excavation in that area difficult. (T.13, 16-17, 26). He further contended that the Forest Conservation Buffer on the rear of the Property limited his ability to build there, though the buffer area begins approximately 35 feet from the rear of the dwelling on the Property. (T.26-29, 48).

The unanimous testimony of all witnesses before the Board proved that the entire neighborhood in which the Property is located is rife with large rock formations and outcroppings. Protestant's Ex. 9-12. (T.13, 16-17, 22-23, 26, 45-46, 75, 78). The testimony of several witnesses further showed that large rocks had to be removed from the side yard location where the Petitioner's pool was constructed. (T.22-23, 55).

The unanimous testimony of all witnesses also established that the entire neighborhood is heavily wooded, with several properties abutting or straddling the stream at the rear of the Property. Petr.'s Ex. 4, Protestant's Ex. 9-12. (T.17, 26-27, 31-34, 42-44, 74-75, 77-78). The Petitioner acknowledged that any other properties abutting the stream would also be subject to a Forest Conversation Buffer. (T.42-43).

Additional evidence before the Board demonstrated that the construction of the Petitioner's pool caused the grade of the Property to be altered significantly. Before the construction of the pool, the Property sloped from its front to the rear where it abuts the stream. (T.50). The area around the pool is now flat, with the

pool and adjoining concrete patio being located well above the adjoining portions of the Protestant's property. Protestant's Ex. 4. (T.50, 70, 86).

ARGUMENT

I. VARIANCES MUST ONLY BE GRANTED IN RARE AND COMPELLING CIRCUMSTANCES.

The seminal appellate decision on the issue of zoning variances in Maryland is Cromwell v. Ward, 102 Md.App. 691 (1995), in which the Court of Special Appeals considered a request for a variance from the provision of the BCZR governing the height of auxiliary structures. In reviewing the law governing variance requests, the Cromwell Court first noted that "[t]he general rule is that the authority to grant a variance should be exercised *sparingly* and only under *exceptional circumstances*." Cromwell, 102 Md.App. at 703. The Court of Special Appeals went on to note that cases affirming the grant of variances were "exceedingly rare." Id at 708.

II. THE PETITIONER FAILED TO MEET THE HEAVY BURDEN OF PROOF TO ESTABLISH THAT THE PROPERTY IS UNIQUE AND THAT DENIAL OF HIS REQUEST WOULD CAUSE A PRACTICAL DIFFICULTY.

In Cromwell v. Ward, the Court of Special Appeals articulated the benchmark against which all Baltimore County variance cases are to be measured. Judge Cathell, writing for the Court of Special Appeals, which reversed a decision affirming this Board's granting of a variance, crystallized the variance process as a two step process:

The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is – in and of itself – unique and unusual in a manner different from the

nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship.

Cromwell, 102 Md.App. at 694.

Judge Cathell, writing for the Court of Special Appeals in North v. St. Mary's County, 99 Md.App. 502 (1994), previously expounded on what is required in order to show that a property is unique.

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, historic significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions.

North, 99 Md.App. at 514 (emphasis added).

The Petitioner offered no evidence to show that the Property was unique. To the contrary, the Petitioner and his own witnesses, Sheree Heard and Edgar Steigleman, affirmed that the entire neighborhood was full of rock formations and outcroppings. (T.13, 16-17, 22-23, 45). Ms. Heard went so far as to proclaim that rock formations and outcroppings were "indigenous" to the neighborhood. (T.13). Mr. Steigleman testified that large rocks were removed from the side yard of the Property during the course of pool construction, just as had been the case in installing sewer lines in the neighborhood. (T.22).

The prevalence of rock in the neighborhood was further emphasized by the testimony of Amber Oelke-Dileggi. Ms. Oelke-Dileggi, who is the daughter of the Protestant and a former resident of the neighborhood, identified a series of photographs showing outcroppings on the Protestant's property and confirmed that they were representative of the entire neighborhood. Protestant's Ex. 9-12. (T.74-75).

The same witnesses also confirmed that the entire neighborhood is heavily wooded. (T.17, 26-27, 31-34, 42-44, 74-75, 77-78). Photographs entered into evidence by the Petitioner and Protestant only served to reinforce that point. Petr.'s Ex. 4, Protestant's Ex. 9-12.

To the extent that the Petitioner is claiming hardship resulting for the bedrock and woods on the Property, he utterly failed to show that the property was "unique" in accordance with the Cromwell and North standards. Accordingly, the Board need not continue its inquiry and must deny the Petitioner's request for a variance.

III. THE PETITIONER'S ALLEGED INABILITY TO CONSTRUCT A POOL ON THE PROPERTY IN ACCORDANCE WITH THE TERMS OF THE BCZR § 400.1 DOES NOT CONSTITUTE A "PRACTICAL DIFFICULTY" AS REQUIRED TO WARRANT A VARIANCE.

As noted above, Cromwell provides that the Board need not continue its inquiry since the Property is not "unique." Cromwell, 102 Md.App. at 694. However, assuming the Board finds that the Petitioner has scaled his first hurdle, the Protestant will address the second prong of the Cromwell test.

Whether the Board must apply the "undue hardship" or "practical difficulty" standard in reviewing a variance depends upon the nature of the variance in

question. When the request is for a use variance, the “undue hardship” applies, while the “practical difficulty” standard applies to area variances.

In this instance, the Petitioner has requested an area variance, as he has sought relief from setback requirements and/or restrictions governing the location of his pool. Accordingly, the Protestant concedes that the “practical difficulty” standard applies.

In McLean v. Soley, 270 Md. 208 (1973), the Court of Appeals set forth the burden that must be met to establish a “practical difficulty”, assuming the party seeking the variance can first prove that his property is unique. The McLean Court stated that the party seeking a variance must show:

1. Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height 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 270 Md. at 214-15.

In this instance, it must be noted that the Petitioner is seeking a variance for the installation of an in-ground pool, which constitutes an “accessory building” or “accessory structure” under the BCZR. BCZR § 101. He is not requesting relief from the provisions of the BCZR so he may make some reasonable use of his property, as he has *already* constructed a home in accordance with those provisions. Instead, he

is asking the Board to grant him extraordinary relief so he can construct a luxury amenity for that home.

The Petitioner presented no evidence to show that he was *unable* to construct his pool in his rear yard, as required by BCZR § 400.1. However, assuming, *arguendo*, that that is the case, that inability does not present a "practical difficulty", as he would not be prevented from making a core use of his property. Instead, he would merely be prevented from engaging in a *recreational activity*.

If the Board determines that the inability to construct a luxury amenity and/or engage in certain recreational activity on one's property constitutes a "practical difficulty", it would be difficult to stop *any* Baltimore County property owner from obtaining a variance such as that sought by the Petitioner. In fact, it would be reasonable to expect a flood of requests for the construction of pools on otherwise inadequate lots. Therefore, the Board should not conclude that an inability to construct an in-ground pool equals a "practical difficulty."

It should also be noted that the Petitioner has always had the option of constructing an *above-ground* pool on the Property. Insofar as the Petitioner presented no evidence to suggest that that option was not available, even an actual inability to construct an in-ground pool in his rear yard would not completely preclude him from having a pool on the Property.

IV. THE PETITIONER HAS FAILED TO PROVE THAT A "PRACTICAL DIFFICULTY" EXISTS UNDER THE FACTS OF THIS CASE.

Assuming the Board concludes that the alleged inability to construct an in-ground pool on one's property *may* create a "practical difficulty" for zoning

purposes, the facts of the case at bar demonstrate that the Petitioner has not proven that he has suffered a "practical difficulty."

Applying the standard set forth in McLean, the Board must first consider whether strict compliance with BCZR §§ 400.1 and 1B02.3.C.1 "would unreasonably prevent the [Petitioner] from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome." McLean, 270 Md. 214. As noted above, the Petitioner has already constructed a residence on the Property and is thus making a reasonable use of the property. Beyond that, the Petitioner presented no evidence whatsoever to suggest that he could not construct an in-ground pool in the rear of the Property.

To the extent that rock in that area might impact construction of an in-ground pool, the Petitioner and Mr. Stiegleman confirmed that the Petitioner's pool contractor had to remove significant amounts of rock to build the pool *in the side yard*. (T.22, 55). The Petitioner offered no evidence beyond mere speculation to show that it would have been any *more difficult* to construct the pool in the rear yard than in the side yard.

With regard to the forest buffer, the Petitioner acknowledged that it began approximately thirty five feet beyond the edge of his house. (T.48). His pool is only twelve feet wide, meaning it could easily have been constructed within the permitted building envelope, even when accounting for a concrete patio or apron around the pool. (T.48).

As shown above, the Petitioner cannot prove that compliance with the applicable regulations would "prevent [him] from using the property for a permitted

purpose or would render conformity with such restrictions unnecessarily burdensome." Therefore, he has failed to meet the first prong of the test set forth in McLean.

The Board must next consider "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." McLean, 270 Md. at 214-15. This portion of the test dovetails with the language of BCZR § 307 requiring the Board to grant a variance only "in such manner as to grant relief without injury to public health, safety and general welfare." BCZR § 307.

The evidence shows that the granting of the Petitioner's variance request would subject the Protestant to the *permanent* imposition of injuries she has *already* suffered as a result of the Petitioner's pool construction. Whereas the review of most variance petitions requires the Board to speculate as to the injury to other parties, the fact that the Petitioner has already installed his pool allows the Board to see that actual, ongoing harm is already occurring.

Testimony and exhibits offered by the Protestant show beyond doubt that the Petitioner seriously altered the grade of the Property when the pool was constructed. Protestant's Ex. 3, 4. (T.67, 76, 84-88, 91). The grade in the side yard pool area was raised significantly from the natural grade, which ran downhill from the front of the Property to the creek in the rear. The grade in that area is also now much higher than that in adjoining areas of the Protestant's property.

Protestant's Ex. 3, 4. (T.76, 84-88, 91). As a result, the Protestant has been subjected to substantially increased water runoff and has experienced discolored well water on several occasions. (T.77, 86-88, 91). Allowing that condition to continue by granting the Petitioner's variance would cause significant injury to the Protestant, thus the Petitioner has not satisfied the second prong of the McLean standard.

The final portion of the Board's analysis requires determining "[w]hether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured." This prong parallels the language of BCZR § 307 allowing the Board to grant a variance only if the variance is "in strict harmony with the spirit and intent" of the applicable regulations. BCZR § 307.

The "spirit and intent" of BCZR § 400.1 is to shield neighboring owners from the sights, sounds and impacts typically associated with accessory uses and structures, including pools. In this case, the Petitioner acknowledged that the Protestant can only access her property via the paved driveway running across the front of the Property. (T.41). While the Petitioner's side yard adjoins what he refers to as the Protestant's rear yard, the Protestant and her family and guests must drive within forty feet of the existing pool on every trip to and from the Protestant's property. (T.42). Therefore, she exits her property in the manner that most property owners used to exit their front yards. Insofar as BCZR § 400.1 exists to shield property owners from pools and other accessory structures in their front yards, forcing the Protestant to encounter the Petitioner's pool and surrounding

fence during every trip to and from her property is wholly inconsistent with the "spirit and intent" of that regulation.

Overall, the application of the McLean standard demonstrates that strict application of the provisions of BCZR §§ 400.1 and 1B02.3.C.1 would not result in a "practical difficulty" for the Petitioner. Accordingly, his Petition for Variance must be denied.

V. THE PETITIONER IS NOT ENTITLED TO A VARIANCE BECAUSE ANY HARDSHIP OR DIFFICULTY ASSOCIATED WITH THE FOREST BUFFER HAS BEEN SELF-CREATED.

In this matter, the Petitioner has acknowledged that he *elected* to make the forest buffer on the Property larger than required. (T.27, 43-44). To the extent the forest buffer has limited the Petitioner's ability to construct an in-ground pool on the rear of the Property, that situation was created *by the Petitioner*. The Petitioner should not be *rewarded* for bringing about the difficulty alleged by him. Accordingly, his Petition for Variance should be denied.

VI. THE PETITIONER IS BARRED FROM ANY RELIEF BECAUSE THE PETITION AND PUBLIC NOTICE FAILED TO GIVE NOTICE THAT HE WAS SEEKING A VARIANCE FROM BCZR § 400.1.

In Cassidy v. Board of Appeals, 218 Md. 418 (1958), the Court of Appeals reiterated the well settled principle that "the failure of an administrative . . . board to give a proper notice of a hearing, required by law, is fatal to the jurisdiction of the . . . board to conduct the hearing." Id at 421-422. In discussing the sufficiency of notification of administrative action, the Court of Appeals went on to note that the "notification must indicate the *authority* under which the administration is acting." Id at 424 (quoting 2 Merrill, Notice, § 796)(emphasis added).

In the case at bar, the Petition for Variance, and by extension the hearing notice issued by the Zoning Commissioner, made *no reference whatsoever* to BCZR § 400.1, which applies to the placement of accessory structures. Instead, both documents referred solely to BCZR § 1B02.3.C.1, which applies to side yard setbacks.

While the documents in question make reference to the Petitioner's desire to place a pool and pool equipment in his side yard, their failure to refer to BCZR § 400.1 means they do not indicate the authority under which the Petitioner sought relief and/or the Zoning Commissioner and Board acted. They also fail to provide reasonable notice of the precise nature of the Petitioner's requested relief. Therefore, the Zoning Commissioner and Board have both lacked jurisdiction to consider this matter.

VII. CONCLUSION

For the reasons set forth above, it is clear that the Petitioner has failed to meet his burden of proof pursuant to BCZR § 307, Cromwell v. Ward, and other applicable statutes. Therefore, the Petitioner's Petition for Variance must be denied.

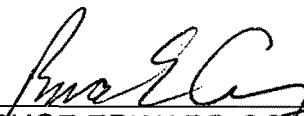


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Attorneys for Protestant, Mary Oelke

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of May, 2008, a copy of the foregoing Brief and Memorandum in Opposition to Petition for Variance was mailed, first class, postage prepaid, to:

Thomas Neuwiller
5597 Gunpowder Road
White Marsh, MD 21162



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Attorneys for Protestant, Mary Oelke

bec080512

* BEFORE THE

* BALTIMORE COUNTY

* BOARD OF APPEALS

*
Case No. 07-246-A

5597 Gunpowder Road
White Marsh, MD 21162

White Marsh, MD 21162

Petitioner/Appellee

* * * * *

MEMORANDUM IN SUPPORT OF DECISION
OF ZONING COMMISSIONER

On February 12, 2007 the Zoning Commissioner for Baltimore County granted the Petition for Variance filed by Petitioner/Appellee herein, Thomas G. Neuwiller, which decision was appealed by Protestant Mary Jane Oelke.

Section 307 of the Baltimore County Zoning Regulations provides that 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 ... where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance ... would result in practical difficulty or unreasonable hardship.” The Zoning Commissioner in the case at hand, in his Findings of Fact and Conclusions of Law, recognized the property’s “unique configuration and site constraints.” The testimony was uncontradicted that Mr. Neuwiller’s front yard faces two back yards and is not on a public road. Furthermore, as the Commissioner observed and as Mr. Neuwiller testified on appeal, the extensive bedrock formation prevalent in the area as well as the steep slopes to the rear of Mr. Neuwiller’s property made a placement of the pool in the rear yard impossible. Mr. Neuwiller’s homesite is the only homesite that borders Bean Run with a forest

buffer. As the Commissioner further observed, the testimony about the environmental constraints were substantiated by the Department of Environmental Protection and Resource Management, which noted that “the steep slopes [that] exist behind the dwelling ... would cause any grading for the pool to extend into this buffer in violation of Section 33-3-112.

Consequently, the only area to construct the proposed in-ground pool out of this buffer would be in the side yard.” There was additional testimony at the hearing that even if the pool could be constructed in the back yard, blasting of the bedrock would cost \$10,000 a day. The testimony at the hearing satisfied both the uniqueness and hardship requirements of variances.

There is a significant distance between the property of Mr. Neuwiller and the residence of Ms. Oelke and substantial vegetation in between. It is clear that the opposition of Ms. Oelke is merely a continued opposition to anything that Mr. Neuwiller might do with his property. She has time and time again filed unsubstantiated complaints that go back to her original promise to Mr. Neuwiller that she “would do everything in her power to stop the construction of Mr. Neuwiller’s house.” As their mutual neighbor, Mrs. Heard, testified at the hearing, Ms. Oelke even approached her to buy the property so that Mr. Neuwiller would not build on the property.

The factual scenario that dictates a variance in the instant case is different from that contained in *Cromwell v. Ward*, 102. Md. App. 691 (1995). In the instant case, the property is clearly unusual or unique before the variance was sought and the hardship is not self-created by the landowner. To the extent that *Cromwell v. Ward* is applicable, it supports the granting of the variance in the instant case.

For these reasons and the other reasons advanced at the hearing, the decision of the Zoning Commissioner should be affirmed.



Thomas G. Neuwiller, Petitioner/Appellee
5597 Gunpowder Road
White Marsh, Maryland 21162
(410) 931-8579

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of May, 2008 a copy of the foregoing Memorandum was mailed, via first class mail, postage prepaid, to:

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Assistant County Attorney
Baltimore County Office of Law
400 Washington Avenue
Towson, MD 21204



Thomas G. Neuwiller, Petitioner/Appellee

May 28, 2008

VIA HAND DELIVERY

County Board of Appeals of Baltimore County
Jefferson Building, Suite 203
105 West Chesapeake Avenue
Towson, Maryland 21204

Attn: Ms. Kathleen C. Bianco, Administrator

Re: Appeal from Order Granting Variance
In the Matter of Thomas G. Neuwiller
5597 Gunpowder Road, White Marsh, MD 21162
Case No. 07-246-A

RECEIVED
MAY 28 2008
BALTIMORE COUNTY
BOARD OF APPEALS

Dear Ms. Bianco:

Enclosed please find an original and three copies of Petitioner/Appellee's Memorandum in Support of Decision of Zoning Commissioner for consideration in the above-referenced appeal.

Thank you for your assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "TG Neuwiller". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Thomas G. Neuwiller

2/12/07

IN RE: **PETITION FOR VARIANCE**
SE/S Philadelphia Road, 245' NW
of c/line Forge Road
(5597 Gunpowder Road)
11th Election District
5th Council District

Thomas G. Neuwiller
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF
* BALTIMORE COUNTY
* **Case No. 07-246-A**

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owner of the subject property, Thomas G. Neuwiller. The Petitioner seeks relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing single-family dwelling with open projection (deck, pool and pool equipment) to have a side yard setback of 4 feet and a sum of side yards of 24 feet in lieu of the required 11.25 feet and 30 feet respectively. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the request were Thomas G. Neuwiller, property owner, and his adjoining neighbors, Sheree Heard and Edgar Steigleman. Appearing in opposition to the requests were Mary Jane Oelke and her fiancé, Lou Miller. It should be noted that Ms. Oelke shares a use-in-common right-of-way with the Petitioner in order to access and egress her property and home located to the east of Petitioner as depicted on an aerial photograph submitted as Protestants' Exhibit 4.

There was a great deal of confusion on behalf of the Protestants concerning the nature and scope of the hearing. The confusion, however, was brought about when a "permit process

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Date 2-12-07

By [Signature]

expeditor" on behalf of Blue Haven Pools couldn't differentiate the front yard from the side yard when obtaining Permit No. B-590021 for the Petitioner's 12-foot by 30-foot in-ground pool. What is the front and side yard in this case was made difficult to determine due to the lot's orientation with the intersection of public roads, Gunpowder and Larch. A swimming pool, being an accessory structure, is to be located in accordance with B.C.Z.R. Section 400.1 in the rear yard as opposed to the side yard. Due to the placement of the pool, a 72-inch privacy fence was erected in the Petitioner's front yard running parallel to the paved surface of the use-in-common right-of-way. The minimum height required for safety fences that surround a swimming pool is 48 inches. The disputed fence location has resulted in the parties obtaining boundary surveys, peace orders and civil litigation. As stated repeatedly during the course of the hearing, I cannot determine the ownership of real property, that determination is vested solely in the Circuit Court. As to these disputes and/or difficulties, the respective remedies must be obtained elsewhere. Likewise, construction issues that Ms. Oelke has with Mr. Neuwiller are not properly before me.

Testimony and evidence offered disclosed that the subject property is a rectangular shaped corner lot located with frontage near the easterly side of a curve formed by the intersecting roads known as Larch Road and Gunpowder Road in the subdivision of Darryl Gardens in White Marsh. The property contains a gross area of 43,200 square feet (.99 acres), zoned D.R.2 and improved with a two-story single-family dwelling which features an existing in-ground, 12-foot by 30-foot pool, with a combination of walk ways and patios connecting to the pool area in the side yard. The Petitioner purchased the property in May 2002, contracted to have the described improvements built, and made improvements in having the use-in-common right-of-way from Larch and Gunpowder Roads blacktopped. In this regard,

testimony and photographs received show the extensive bedrock formation prevalent in this area and the grade and steep slopes to the rear of the property which is bisected by the Bean Stream as more particularly shown on the site plan. Mr. Neuwiller explained that the placement of the pool in the rear yard was impossible due to these environmental constraints. This testimony is substantiated by the Department of Environmental Protection and Resource Management (DEPRM) whose Zoning Advisory Committee (ZAC) comment, dated February 8, 2007, states in pertinent part:

“A Forest Buffer Easement (i.e. stream buffer) required by DEPRM in 2004 as a condition of building permit approval extends to approximately 35’ from the rear of the dwelling. Furthermore, steep slopes exist behind the dwelling that would cause any grading for the pool to extend into this buffer in violation of Section 33-3-112. Consequently, the only area to construct the proposed in-ground pool out of this buffer would be in the side yard.”

Further testimony disclosed that the six-foot high fence along the use-in-common driveway provides privacy for pool activities from the adjacent side yard of Mr. Steigleman, which he uses as a parking area. In this regard, the Petitioner produced photographs which demonstrate the existence of the fence and its relationship to the uses on the Steigleman property. Both Steigleman and Heard testified and produced notarized affidavits (Petitioner’s Exhibits 3A and 3B) in favor of the pool’s placement and fence, indicating that it improves the aesthetic value of their homes. Moreover, no neighboring front yards abut the Petitioner’s property and to the east, the property of Mary Oelke, is densely forested for some 100 to 120 feet between the rear of her home and the subject swimming pool.

As noted above, Ms. Oelke, the adjacent property owner, appeared in opposition to the request and in the past has complained to the Division of Code Inspection and Enforcement concerning the pool, the six-foot fence and water run off (*see* Violation Case 06-5432).

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By D&D

Additionally, she has had inspectors from the Maryland Department of Environment respond to the subject property to conduct investigations of alleged discharges of pool water into the Bean Stream. These Inspection Findings accepted as Protestants' Exhibit 8 did not substantiate the existence of pollution violation(s). Ms. Oelke and Lou Miller testified that the fence encroaches upon the 20-foot right-of-way in violation of a deed, dated December 19, 1951, and recorded among the Land Records of Baltimore County in Liber G.L.B. No. 2077, Page 219, and interferes with their access and clearing of snow from the driveway. Ms. Oelke expressed concerns about water run off problems along her boundary line and on the use-in-common driveway which she believes were brought about by the Petitioner. She has called upon County and State agencies to investigate her complaints, however, they have not offered any solutions and she has retained Counsel to pursue this matter civilly. She submitted photographs received into evidence as Protestants' Exhibits 1, 2, 3 and 7 which show the area of the fence and where water runs off onto her property.

Based upon the evidence presented, I am persuaded to grant the requested variance. Relief is necessitated given the property's unique configuration and site constraints. As shown on the site plan, the property is a large rectangular shaped parcel that features an extensive forest buffer easement area in the rear yard. Thus, all of the existing improvements are located on the eastern side or portion of the lot. I find that the Petitioner has met the requirements of Section 307 of the B.C.Z.R. for relief to be granted and that strict compliance with the regulations would result in a practical difficulty and undue hardship. Although I appreciate the concerns raised by Ms. Oelke and her fiancé, Lou Miller, it would appear from the photographs submitted that the Petitioner's property is at a higher elevation than theirs, and thus, it is expected that water run off from the subject property would flow in that direction. There were

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By DSJ

no adverse ZAC comments submitted by any County reviewing agency and the majority of neighbors have no objections. It appears, although I am certain Ms. Oelke will not concur, that the relief requested can be granted and that there will be no detrimental impact to adjacent properties or the surrounding locale. However, to minimize impacts to Ms. Oelke, as a condition to the relief granted, I will impose constraints that the fence be moved back away from the use-in-common driveway and that any water run off from down spouting, lawn and garden watering be addressed and corrected by the Petitioner.

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

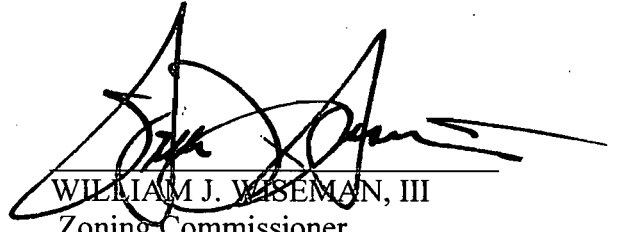
THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County, on this 12th day of February, 2007, that the Petition for Variance seeking relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing single-family dwelling with open projection (deck, pool and pool equipment) to have a side yard setback of 4 feet and a sum of side yards of 24 feet in lieu of the required 11.25 feet and 30 feet respectively, in accordance with Petitioners' Exhibit 1, be and is hereby GRANTED; and

IT IS FURTHER ORDERED that a Variance from B.C.Z.R. Section 400.1 to allow accessory structures (pool and pool equipment) in the side yard in lieu of the required rear yard, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, however, is subject to the following restrictions:

1. ADVISORY: This Order approves the requested variances but does not address the height of the privacy fence in the front yard beyond a height of 48 inches. That is a matter of the Department of Permits and Development Management for consideration and processing.

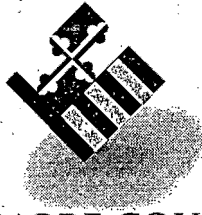
2. Within ninety (90) days from the date this Order becomes final, the Petitioner shall relocate the fence in the front yard by moving it back a distance of at least 2-½ to 3 feet from the paved surface of the use-in-common driveway.
3. To insure that water run off complained of by the Protestants, be it from watering the lawn, flower beds or downspout discharges, Petitioner shall address these conditions when relocating the fence.

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



WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

COPIES RECEIVED FOR FILING
Date 2-12-07
By DBW



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

February 12, 2007

Mr. Thomas G. Neuwiller
5597 Gunpowder Road
White Marsh, Maryland 21162

RE: PETITION FOR VARIANCE

SE/S Philadelphia Road, 245' NW of c/line Forge Road
(5597 Gunpowder Road)
11th Election District - 5th Council District
Thomas G. Neuwiller - Petitioner
Case No. 07-246-A

Dear Mr. Neuwiller:

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

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

Very truly yours

A handwritten signature in black ink, appearing to read "William J. Wiseman III", written over a horizontal line.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw
Enclosure

- c: Ms. Sheree Heard, 11706 Larch Road, White Marsh, Md. 21162
Mr. Edgar Steigleman, 5601 Gunpowder Road, White Marsh, Md. 21162
Ms. Mary Jane Oelke, 5599 Gunpowder Road, White Marsh, Md. 21162
Mr. Lou Miller, 17416 Astoria Lane, Silver Spring, Md. 20905
People's Counsel; Division of Code Inspections & Enforcement, DPDM; Case File

~~95-4625~~
~~95-0835~~
~~96-0835~~

PETITION
COMMENTS
CORRESPONDENCE

20070246

Supplemental

②



Petition for Variance

to the Zoning Commissioner of Baltimore County
for the property located at 5597 Gunpowder rd
which is presently zoned DR2

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) 1802.3.C.1

To permit an existing single family dwelling with open projection (deck, pool pool equipment) to have a sideyard set back of 4' and a sum of sideyards of 24' in lieu of the required 11.25' and 30' respectively

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

TO BE DISCUSSED AT THE HEARING

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

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

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address

Telephone No.

City

State

Zip Code

Legal Owner(s):

Thomas Newwiller

Name - Type or Print

Signature

Name - Type or Print

Signature

5597 Gunpowder rd

410-808-6579

Address

Telephone No.

White Marsh

MD

21162

City

State

Zip Code

Representative to be Contacted:

Thomas Newwiller

Name

5597 Gunpowder rd

410-808-6579

Address

Telephone No.

White Marsh

MD

21162

City

State

Zip Code

OFFICE USE ONLY

Case No. 07-246-A FOR FILING

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING

Date 2-12-01

Reviewed By

CTM

Date 11/30/06

By PLW

ZONING DESCRIPTION FOR 5597 Gunpowder Road

Beginning at a point on the south easterly side of
Philadelphia Road which is 66'
wide at the distance of 245.73' North West of the
centerline of the nearest improved intersecting street Forge Road
which is 50' wide. Being Lot # 1-A, 6 and 7
Block L, Section #2 in the subdivision of Darryl Gardens
as recorded in Baltimore County Plat Book #13, Folio #50
containing 43,200 S.F. Also known as 5597 Gunpowder Road
and located in the 11 Election District, ⁵~~4~~ Councilmanic District.

246

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

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:

Item Number or Case Number: x 07-246-A
Petitioner: Thomas Neuwiller
Address or Location: 5597 GUNPOWDER RD.

PLEASE FORWARD ADVERTISING BILL TO:

Name: Thomas Neuwiller
Address: P.O. Box 218
White Marsh, MD
21162
Telephone Number: 410-808-6579

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: # 07-246-A

5597 Gunpowder Road

S/east side of Philadelphia Road, 245 feet n/west centerline of Forge Road

11th Election District - 5th Councilmanic District

Legal Owner(s): Thomas Neuwiller

Variance: To permit an existing single family dwelling with open projection (deck, pool, pool equipment) to have a side yard setback of 4 feet and a sum side yards of 24 feet in lieu of the required 11.25 feet and 30 feet, respectively.

Hearing: Monday, February 5, 2007 at 11:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

WILLIAM J. WISEMAN, III

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.

1/188 Jan. 18

121814

CERTIFICATE OF PUBLICATION

1/18/2007

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 1/18/2007.

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

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No.: 07-246-A

Petitioner/Developer: THOMAS

NEUWILLER

Date of Hearing/Closing: FEB 5-2007

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

ATTN: Kristen Matthews {(410) 887-3394}

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at: _____

5597 GUNPOWDER RD

The sign(s) were posted on 1-20-07
(Month, Day, Year)

Sincerely,

Robert Black 1-23-07
(Signature of Sign Poster) (Date)

SSG Robert Black

(Print Name)

1508 Leslie Road

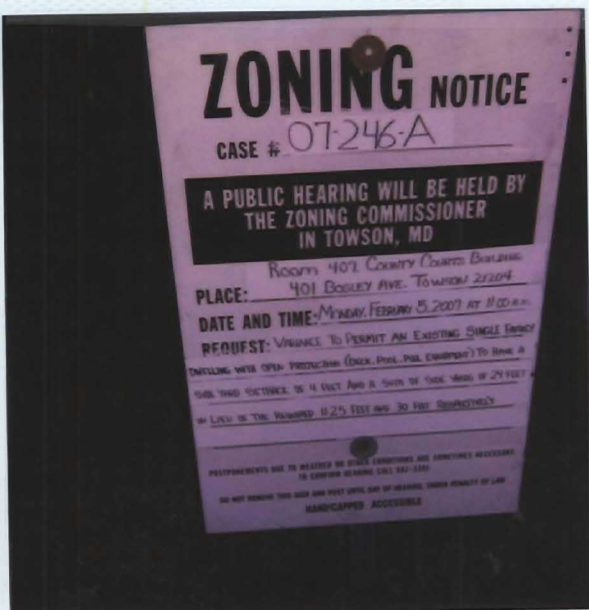
(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)



Requested: 5/25/07

APPEAL SIGN POSTING REQUEST

CASE NO. 07-246-A

THOMAS G. NEUWILLER

11th ELECTION DISTRICT

APPEALED: 3/13/2007

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, MD 21204

Attention: Kathleen Bianco
Administrator

CASE NO.: 07-246-A

LEGAL OWNER: THOMAS G. NEUWILLER

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

5597 GUNPOWDER ROAD

The sign was posted on 7/9, 2007.

By: [Signature]
(Signature of Sign Poster)

Jeff Radcliffe
(Print Name)

MAP 30C4

TO: PATUXENT PUBLISHING COMPANY
Thursday, January 18, 2007 Issue - Jeffersonian

Please forward billing to:
Thomas Neuwiller
P.O. Box 218
White Marsh, MD 21162

410-808-6579

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: 07-246-A

5597 Gunpowder Road
S/east side of Philadelphia Road, 245 feet n/west centerline of Forge Road
11th Election District – 5th Councilmanic District
Legal Owner: Thomas Neuwiller

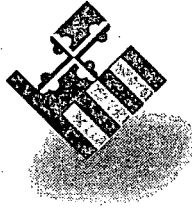
Variance to permit an existing single family dwelling with open projection (deck, pool, pool equipment) to have a side yard setback of 4 feet and a sum of side yards of 24 feet in lieu of the required 11.25 feet and 30 feet, respectively.

Hearing: Monday, February 5, 2007 at 11:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204



WILLIAM J. WISEMAN III
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.



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

TIMOTHY KOTROCO
December 15, 2006
Department of Permits and
Development Management

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: 07-246-A

5597 Gunpowder Road

S/east side of Philadelphia Road, 245 feet n/west centerline of Forge Road

11th Election District – 5th Councilmanic District

Legal Owner: Thomas Neuwiller

Variance to permit an existing single family dwelling with open projection (deck, pool, pool equipment) to have a side yard setback of 4 feet and a sum of side yards of 24 feet in lieu of the required 11.25 feet and 30 feet, respectively.

Hearing: Monday, February 5, 2007 at 11:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue, Towson 21204

A handwritten signature in cursive script that reads "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

C: Thomas Neuwiller, 5597 Gunpowder Road, White Marsh 21162

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, JANUARY 20, 2007.**
- (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.



County Board of Appeals of Baltimore County

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

*PP'd to 4/29/08
@ Ag. of Duane
for Appellant -
CSA conflict.*

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

January 2, 2008

NOTICE OF ASSIGNMENT

CASE #: 07-246-A

IN THE MATTER OF: THOMAS AG. NEUWILLER – Legal Owner
/Petitioner 5597 Gunpowder Road 11th E; 5th C

2/12/2007 – Z.C.'s Decision in which requested zoning relief was GRANTED with restrictions.

ASSIGNED FOR:

THURSDAY, MARCH 6, 2008 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: Counsel for Appellant /Protestant
Appellant /Protestant
Lou Miller

: Bruce Edward Covahey, Esquire
: Mary Jane Oelke

Legal Owner /Petitioner

: Thomas G. Neuwiller

Sheree Heard
Edgar Steigleman

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Mike Mohler, Code Enforcement /PDM
Raymond S. Wisnom, Jr., Code Official /PDM /CC-06-5432
Timothy M. Kotroco, Director /PDM



COVAHEY, BOOZER, DEVAN & DORE, P. A.
ATTORNEYS AT LAW
614 BOSLEY AVENUE
TOWSON, MARYLAND 21204

EDWARD C. COVAHEY, JR.
F. VERNON BOOZER *
MARK S. DEVAN
THOMAS P. DORE
BRUCE EDWARD COVAHEY
JENNIFER MATTHEWS HERRING
FRANK V. BOOZER, JR.

410-828-9441
FAX 410-823-7530

ANNEX OFFICE
SUITE 302
606 BALTIMORE AVE.
TOWSON, MD 21204
410-828-5525
FAX 410-296-2131

January 9, 2008

*ALSO ADMITTED TO D.C. BAR

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

Attn: Kathleen C. Bianco, Administrator

RE: In the Matter of Thomas AG Neuwiller
Case No. 07-246-A

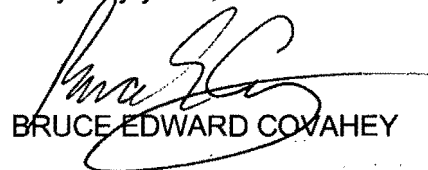
Dear Ms. Bianco:

As you are aware, I represent Mary Jane Oelke, the Appellant/Protestant, in the above referenced matter. In that regard, I am writing to request a postponement of the Evidentiary Hearing scheduled for March 6, 2008 at 10:00am.

With regard to the scheduled hearing date, please be advised that I am counsel of record for the Appellant in the matter of *Linda Ann Senez vs. Ann Collins, et vir.*, which is pending in the Court of Special Appeals (#00111, Sept. Term, 2007). I have enclosed a Notice from the Court of Special Appeals indicating that oral argument in the aforementioned matter has been scheduled for a series of dates which includes March 6, 2008. The specific date of the argument has not been selected, meaning I must keep March 6, 2008 open for oral argument. Accordingly, I require a postponement of the hearing in this matter to avoid the potential of a conflict with the argument for the Court of Special Appeals.

Please do not hesitate to contact me should you have any questions or require any additional information. Thank you for your anticipated courtesy and cooperation.

Very truly yours,



BRUCE EDWARD COVAHEY

Enclosure

cc: Mary Jane Oelke
Lou Miller
Thomas G. Neuwiller
Sheree Heard
Edgar Steigleman
0109gab01

Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner
Pat Keller, Planning Director
Mike Mohler, Code Enforcement/PDM
Raymond S. Wisnom, Jr., Code Official/PDM
Timothy M. Kotroco, Director/PDM



LESLIE D. GRADET
CLERK

Court of Special Appeals
Robert C. Murphy Courts of Appeal Building
Annapolis, Md. 21401-1699

(410) 260-1450
WASHINGTON AREA 1-888-200-7444

ROBERT J. GREENLEAF
CHIEF DEPUTY

No. 00111, September Term, 2007

Linda Ann Senez
vs.
Ann Collins et vir.

IMPORTANT
**This is how the case must
be titled on all briefs.**

The Record in the captioned appeal was received and docketed on 09/17/2007.

The brief of the APPELLANT is to be filed with the office of the Clerk on or before 10/29/2007.
(Rule 8-502(a)(1)).

The brief of the APPELLEE is to be filed with the office of the Clerk on or before 30 days after
filing of appellant's brief (Rule 8-502(a)(2)).

This appeal has been set for argument before this Court one of the following days:
March 03, 04, 05, 06, 07, 10, 11, 12, 2008.

IF, DUE TO A CURRENTLY SCHEDULED COURT APPEARANCE OR OTHER
EXTRAORDINARY CAUSE, YOU WILL BE UNABLE TO APPEAR ON ONE OR MORE OF
THESE DATES, YOU MUST INFORM THE CLERK WITHIN TEN DAYS AFTER THE DATE
OF THIS NOTICE. OTHERWISE, THE DATE SELECTED FOR ARGUMENT WILL NOT BE
CHANGED.

Stipulations for extensions of time within which to file briefs will only be accepted if the appellee's
brief will be filed at least 30 days, and any reply brief, at least 10 days, before the scheduled
argument or submission on brief (Rule 8-502(b)).

NOTICE: Law firm name and address must be printed on brief and record extract.

September 26, 2007

Maryland Relay Service
1-800-735-2258
TT/VOICE



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

January 17, 2008

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 07-246-A

IN THE MATTER OF: THOMAS G. NEUWILLER – Legal Owner
/Petitioner 5597 Gunpowder Road 11th E; 5th C

2/12/2007 – Z.C.'s Decision in which requested zoning relief was GRANTED with restrictions.

which was scheduled to be heard on 3/06/08 has been POSTPONED at the request of Counsel for Protestant due to Court of Special Appeals schedule conflict; and has been

REASSIGNED FOR: TUESDAY, APRIL 29, 2008 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: Counsel for Appellant /Protestant : Bruce Edward Covahey, Esquire
Appellant /Protestant : Mary Jane Oelke
Lou Miller

Legal Owner /Petitioner : Thomas G. Neuwiller

Sheree Heard
Edgar Steigleman

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Mike Mohler, Code Enforcement /PDM
Raymond S. Wisnom, Jr., Code Official /PDM /CC-06-5432
Timothy M. Kotroco, Director /PDM



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

TO: Maureen
Larry S.
Wendell

DATE: April 7, 2009

FROM: Theresa

RE: Neuwiller – Memorandum in Opposition

This matter is set for Deliberation of the Motion for Reconsideration filed by Lawrence E. Schmidt.

The deliberation is set for 4/22/09 at 9:30.

Attached is a Memo in Opposition to that Motion filed by Bruce Covahey on behalf of Mary Oelke.

Thank you.

T ☺



County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

April 29, 2008

NOTICE OF DELIBERATION

IN THE MATTER OF:

THOMAS G. NEUWILLER -Legal Owner /Petitioner
Case No-07-246-A

which was heard by the Board on 4/29/08 has been scheduled for public deliberation on the following date and time:

DATE AND TIME : **TUESDAY, JUNE 17, 2008 at 9:30 a.m.**

LOCATION : **Hearing Room #2, Second Floor
Jefferson Building, 105 W. Chesapeake Avenue**

NOTE: Closing briefs are due on Thursday, May 29, 2008
(Original and three [3] copies)

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 Appellant /Protestant : Bruce Edward Covahey, Esquire
Appellant /Protestant : Mary Jane Oelke
Lou Miller

Legal Owner /Petitioner : Thomas G. Neuwiller

Sheree Heard
Edgar Steigleman

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Mike Mohler, Code Enforcement /PDM
Raymond S. Wisnom, Jr., Code Official /PDM /CC-06-5432
Timothy M. Kotroco, Director /PDM

Copy to: 2-1-4



County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

March 4, 2009

NOTICE OF DELIBERATION /Motion for Reconsideration

IN THE MATTER OF: THOMAS G. NEUWILLER – Legal Owner/Petitioner
5597 Gunpowder Road 11th E; 5th C / CASE #: 07-246-A

In response to the filing of a Motion for Reconsideration by Lawrence, E. Schmidt, Esquire, counsel for the Petitioner, a public deliberation has been scheduled for the following date and time pursuant to Board Rule 10, which states as follows:

Rule 10: Motion for Reconsideration.

A party may file a motion for reconsideration of an order of the board of appeals. The motion shall be filed within thirty (30) days after the date of the original order. The motion shall state with specificity the grounds and reasons for the motion. **The filing of a motion for reconsideration shall stay all further proceedings in the matter, including the time limits and deadlines for the filing of a petition for judicial review.** After public deliberation and in its discretion, the board may convene a hearing to receive testimony or argument or both on the motion. Each party participating in the hearing on the motion shall be limited to testimony or argument only with respect to the motion; the board may not receive additional testimony with respect to the substantive matter of the case. Within 30 days after the date of the board's ruling on the motion for reconsideration, any party aggrieved by the decision shall file a petition for judicial review. The petition for judicial review shall request judicial review of the board's original order, the board's ruling on the motion for reconsideration or both. [Bill 50-05] [Emphasis added.]

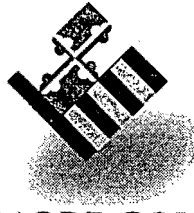
DATE AND TIME : WEDNESDAY, APRIL 22, 2009, at 9: 30 a.m.

LOCATION : Hearing Room #2, Second Floor (next to Suite 203)
The Jefferson Building, 105 W. Chesapeake Avenue

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

Theresa R. Shelton, Administrator

c: Counsel for Legal Owner /Petitioner	: Lawrence E. Schmidt, Esquire
Legal Owner /Petitioner	: Thomas Neuwiller
Counsel for Appellant /Protestant	: Bruce Edward Covahey, Esquire
Appellant /Protestant	: Mary Jane Oelke
Lou Miller	Sheree Heard
	Edgar Steigleman
Office of People's Counsel	
William J. Wiseman III /Zoning Commissioner	
Pat Keller, Planning Director	
Margaret Z. Ferguson, Code Enforcement Hearing Officer / PDM	
Mike Mohler, Code Enforcement /PDM	
Raymond S. Wisnom, Jr., Code Official /PDM /CC-06-5432	
Timothy M. Kotroco, Director / PDM	



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management

January 31, 2007

Thomas Neuwiller
5597 Gunpowder Road
White Marsh, MD 21162

Dear Mr. Neuwiller:

RE: Case Number: 07-246-A, 5597 Gunpowder Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on November 30, 2006.

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

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

Very truly yours,

A handwritten signature in black ink, reading "W. Carl Richards, Jr." in a cursive style.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:amf

Enclosures

c: People's Counsel

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: December 11, 2006

FROM: ^{DAK} Dennis A. Kennedy, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For December 11, 2006
Item Nos. 07-240, 242, 244, 245, (246),
247, 249 and 251

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

DAK:CEN:clw

cc: File

ZAC-NO COMMENTS-12112006.doc

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence



RECEIVED

FEB 8 2007

TO: Timothy M. Kotroco
FROM: Dave Lykens, DEPRM - Development Coordination
DATE: February 8, 2007
SUBJECT: Zoning Item # 07-246-A
Address 5597 Gunpowder Rd
(Neuwiller Property)

Zoning Advisory Committee Meeting of December 4, 2006

_____ The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.

X The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

X Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

_____ Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Additional Comments:

A Forest Buffer Easement (i.e. stream buffer) required by DEPRM in 2004 as a condition of building permit approval extends to approximately 35' from the rear of the dwelling. Furthermore, steep slopes exist behind the dwelling that would cause any grading for the pool to extend into this buffer in violation of Section 33-3-112. Consequently, the only area to construct the proposed in-ground pool out of this buffer would be in the side yard.

Reviewer: Glenn Shaffer

Date: February 8, 2007

Fire Department

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



Baltimore County

James T. Smith, Jr., County Executive
John J. Hohman, Chief

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

December 7, 2006

ATTENTION: Zoning Review Planners

Distribution Meeting Of: December 4, 2006

Item Number(s): 240 through 251

246

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

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

Lieutenant Roland P Bosley Jr.
Fire Marshal's Office
410-887-4881 (C) 443-829-2946
MS-1102F

cc: File

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: December 12, 2006

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

SUBJECT: 5597 Gunpowder Road

INFORMATION:

Item Number: 7-246

Petitioner: Thomas Neuwiller

Zoning: DR 2

Requested Action: Variance

RECEIVED
DEC 21 2006
ZONING COMMISSIONER

SUMMARY OF RECOMMENDATIONS:

The Office of Planning does not oppose the petitioner's request, as the accessory structure (pool equipment storage - shown on the petitioners site plan) should not have a negative impact on the neighboring property owners nor the community as a whole.

For further information concerning the matters stated here in, please contact Kevin Gambrill at 410-887-3480.

Reviewed by:



Division Chief:
AFK/LL: CM



RE: PETITION FOR VARIANCE * BEFORE THE
5597 Gunpowder Road; SE/S Philadelphia *
Road, 245' NW c/line Forge Road * ZONING COMMISSIONER
11th Election & 5th Councilmanic Districts *
Legal Owner(s): Thomas Neuwiller * FOR
Petitioner(s) * BALTIMORE COUNTY
* 07-246-A

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent/ documentation filed in the case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of December, 2006, a copy of the foregoing Entry of Appearance was mailed to, Thomas Neuwiller, 5597 Gunpowder Road, White Marsh, MD 21162, Petitioner(s).

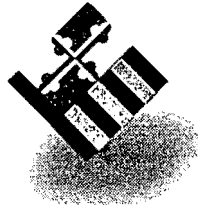
RECEIVED

DEC 11 2006

Per.....

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, *Director*
Department of Permits and
Development Management

May 11, 2007

Thomas Neuwiller
5597 Gunpowder Road
White Marsh, MD 21162

Dear Mr. Neuwiller:

RE: Case: 07-246-A, 5597 Gunpowder Road

Please be advised that an appeal of the above-referenced case was filed in this office on March 13, 2007 by Bruce Edward Covahey. 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,
Handwritten signature of Timothy Kotroco in black ink.

Timothy Kotroco
Director

TK:amf

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Bruce Edward Covahey Covahey, Boozer, Devan & Dore, P.A. 614 Bosley Avenue
Towson 21204
Sheree Heard 11706 Larch Road White Marsh 21162
Edgar Steigleman 5601 Gunpowder Road White Marsh 21162
Mary Jane Oelke 5599 Gunpowder Road White Marsh 21162
Lou Miller 17416 Astoria Lane Silver Spring 20905
Thomas F. McDonough Royston, Mueller, McLean & Reid, LLP Suite 600 102
West Pennsylvania Avenue Towson 21204-4575

APPEAL

Petition for Variance
5597 Gunpowder Road
Southeast side Philadelphia Road, 245 feet northwest of centerline Forge Road
11th Election District – 5th Councilmanic District
Legal Owner(s): Thomas G. Neuwiller

Case No.: 07-246-A

- ✓ Petition for Variance (November 30, 2006)
- ✓ Zoning Description of Property
- ✓ Notice of Zoning Hearing (December 15, 2006)
- ✓ Certification of Publication (January 18, 2007)
- ✓ Certificate of Posting (January 20, 2007) by Robert Black
- ✓ Entry of Appearance by People's Counsel (December 11, 2006)
- ✓ 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. Site plan
- ✓ 2. Pool permit and diagram
- ✓ 3. A & B: Letters of support under Notarial Seal
- ✓ 4. Copy of "Use in Common right of way"
- ✓ 5. 9 pages of photographs

Protestants' Exhibits:

- ✓ 1. Photograph
- ✓ 2. Photograph showing fence
- ✓ 3. Photograph depicting boundaries
- ✓ 4. Aerial photograph
- ✓ 5. Diagram attached to permit for pool
- ✓ 6. Packet of info from violation file with protestants notations
- ✓ 7. Photograph
- ✓ 8. Inspection findings Md. Dept. of the Environment

Miscellaneous (Not Marked as Exhibit)

- ✓ 1. Violation Case Documents
- ✓ 2. Letter from Thomas F. McDonough
- ✓ 3. Copy of Zac Agenda
- ✓ 4. Livability System report
- ✓ 5. Code Enforcement – Daily Worksheet
- ✓ 6. Code Enforcement report
- ✓ 7. Standard Assessment Inquiry
- ✓ 8. Real Property Search
- ✓ 9. Zoning map

RECEIVED
MAY 11 2007
BALTIMORE COUNTY
BOARD OF APPEALS

- ✓ Zoning Commissioner's Order (GRANTED in accordance w/order – February 12, 2007)

Notice of Appeal received on March 13, 2007 from Bruce Edward Covahey

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Bruce Edward Covahey Covahey, Boozer, Devan & Dore, P.A. 614 Bosley Avenue Towson 21204
Sheree Heard 11706 Larch Road White Marsh 21162
Edgar Steigleman 5601 Gunpowder Road White Marsh 21162
Mary Jane Oelke 5599 Gunpowder Road White Marsh 21162
Lou Miller 17416 Astoria Lane Silver Spring 20905
Thomas F. McDonough Royston, Mueller, McLean & Reid, LLP Suite 600 102 West
Pennsylvania Avenue Towson 21204-4575
Thomas Neuwiller 5597 Gunpowder Road White Marsh, MD 21162

add - Rick Wisnom
date sent May 11, 2007, amf

LAWRENCE E. SCHMIDT, ESQUIRE Counsel for Petitioner
GILDEA & SCHMIDT LLC entered appearance
600 WASHINGTON AVENUE 10/06/08
SUITE 200
TOWSON, MD 21204

RECEIVED

FEB 19 2010

**BALTIMORE COUNTY
BOARD OF APPEALS****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

02/18/10

Case Number: 03-C-09-008342 AA OTH

Date Filed: 07/16/2009

Status: Closed/Active

Judge Assigned: To Be Assigned,

Location :

CTS Start : 07/16/09 Target : 01/12/11

In the Matter of Thomas Neuwiller

C A S E H I S T O R Y**OTHER REFERENCE NUMBERS**

Description	Number
Case Folder ID	C09008342V01
Administrative Agency	CBA-07-246-A

INVOLVED PARTIES

Type Num	Name (Last, First, Mid, Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
PET - 001	Neuwiller, Thomas		BT DO 02/04/10	07/17/09
		Party ID: 1407600		
	Capacity : Legal Owner			
Mail:	5597 Gunpowder Road	07/17/09		07/17/09 RLM
	White Marsh, MD 21162			
Attorney:	0007161 Schmidt, Lawrence	Appear: 07/17/2009		07/17/09
	Gildea & Schmidt, LLC			
	600 Washington Avenue			
	Suite 200			
	Towson, MD 21204			
	(410)821-0070			

Type Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
ADA	001 County Board Of Appeals Of Baltimore County The		BT DO 02/04/10	07/17/09
	Party ID: 1407599			
	Mail: Jefferson Building	07/17/09		07/17/09 RLM
	105 W. Chesapeake Avenue, Room 203			
	Baltimore, MD 21204			
ITP	001 Oelke, Mary Jane		BT DO 02/04/10	08/05/09
	Party ID: 1415079			
	Attorney: 0015608 Covahey, Bruce Edward	Appear: 08/05/2009		08/05/09
	Covahey & Boozer, P. A.			
	614 Bosley Avenue			
	Baltimore, MD 21204			
	(410)828-9441			
	0018893 Boozer, Frank Vernon	Appear: 08/05/2009		08/05/09
	Covahey, Boozer, Devan & Dore P. A.			
	614 Bosley Ave			
	Towson, MD 21204			
	(410)828-9441			

CALENDAR EVENTS

Date	Time	Fac	Event Description	Text SA	Jdg Day	Of Notice	User ID
Result			ResultDt By Result Judge	Rec			
12/23/09	09:30A	CR05	Civil Non-Jury Trial	Y	PC	01 /01	JMO
			Held/Concluded	Y			
			12/23/09 H P.Cavanaugh				
			Stenographer(s): Marina Coyle				

DISPOSITION HISTORY

Disp	Disp	Stage	Activity
Date	Code Description	Code Description	User Date
02/04/10	DO Decree or Order	BT BEFORE TRIAL/HEARING	JBJ 02/04/10

JUDGE HISTORY

JUDGE ASSIGNED	Type Assign	Date Removal	RSN
TBA To Be Assigned	J	07/17/09	

DOCUMENT TRACKING

Num/Seq Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
0001000 Petition for Judicial Review (with exhibits)	07/16/09	07/17/09	PET001	TBA	02/04/10	RLM JBJ
0001001 Response to Petition For Judicial Review	07/31/09	08/05/09	ITP001	TBA	02/04/10	NF JBJ
0001002 Reply Memorandum	11/09/09	11/17/09	PET001	TBA	02/04/10	LAC JBJ
0002000 Notice of Service of Discovery *	07/23/09	07/30/09	ADA001	TBA	02/04/10	SND JBJ
0003000 Notice of Service of Discovery *	07/23/09	07/30/09	ADA001	TBA	02/04/10	SND JBJ
0004000 Transcript of Record from Adm Agency*	08/06/09	08/07/09	ADA001	TBA	02/04/10	NF JBJ
0005000 Notice of Transcript of Record Sent	08/07/09	08/07/09	PET001	TBA	08/07/09	NF
0006000 Notice of Transcript of Record Sent	08/07/09	08/07/09	ADA001	TBA	08/07/09	NF
0007000 Notice of Transcript of Record Sent	08/07/09	08/07/09	ITP001	TBA	08/07/09	NF
0008000 Scheduling Order	09/16/09	09/16/09	000	TBA	09/16/09	JMO
0009000 Stipulation to Amended Briefing Schedule Filed by PET001-Neuwiller, ITP001-Oelke	09/11/09	09/26/09	PET001	TBA	09/26/09	RLM
0010000 Memorandum in Support of Petition for Judicial Review	09/16/09	10/05/09	PET001	TBA	10/05/09	LAC
0011000 Memorandum of Appellee in Opposition to Petition for Judicial Review	10/20/09	11/03/09	ITP001	TBA	11/03/09	LAC
0012000 Open Court Proceeding	12/23/09	12/23/09	000	PC Subcuria/Reserved	12/23/09	BH
0013000 Order of Court Thomas Neuwiller's Appeal From The County Board Of Appeals Decision is DENIED As Specified	02/04/10	02/04/10	000	PC Denied	02/04/10	JBJ
0014000 Docket entries sent to Baltimore County Board of Appeals	02/18/10	02/18/10	000	TBA		CVM

TICKLE

Code Tickle Name	Status Expires	#Days	AutoExpire	GoAhead	From Type	Num Seq
TANS 1st Answer Tickle	CLOSED 07/31/09	0	no	no	DANS D	001 001

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1YRT	One Year Tickle (Jud	CLOSED	07/16/10	365	no	no		DAAA D	001	000
EXPU	Exhibit Pickup Notic	CLOSED	04/05/10	30	no	no			000	000
SLTR	Set List For Trial	CANCEL	07/31/09	0	yes	no		IANS T	001	001
SLTR	Set List For Trial	Done	08/06/09	0	yes	yes		DTRA D	004	000

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp	Dt	Dis	By
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Offered By: ADA 001 County Board Of Appeals Of Ba.

000 I BOX 662/CBA TRANSC B

DIFFERENTIATED CASE MANAGEMENT**TRACKS AND MILESTONES**

Track: R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 09/16/09 Order Date: 09/16/09
Start Date: 09/16/09 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322	10/01/09	02/04/10	CLOSED	
All Motions (excluding Motions in Limine	11/13/09	02/04/10	CLOSED	
TRIAL DATE is	12/23/09	12/15/09	12/23/09	REACHED

ACCOUNTING SUMMARY

NON-INVOICED OBLIGATIONS AND PAYMENTS

Date	Rcpt/Initials	Acct Desc	Oblig	Payment	Total MOP	Balance
07/16/09	200900017501/CPW	1265 MLSC	.00	25.00	-25.00 CK	-25.00
07/16/09	200900017501/CPW	1102 CF-Civil Fil	.00	80.00	-80.00 CK	-105.00
07/16/09	200900017501/CPW	1500 Appearance F	.00	10.00	-10.00 CK	-115.00
07/17/09		1102 CF-Civil Fil	80.00	.00	80.00	-35.00
07/17/09		1265 MLSC	25.00	.00	25.00	-10.00
07/17/09		1500 Appearance F	10.00	.00	10.00	.00

02/17/10 INVOICE# 2010000397/SAP TOTAL: \$10.00 STATUS: Invoice Mailed
PARTY: Thomas Neuwiller

Invoice Mailed on 02/17/10
Invoice Created on 02/17/10

Date	Rcpt/Initials	Acct Desc	Oblig	Payment	Total MOP	Balance
02/17/10		1500 Appearance F	10.00	.00	10.00	10.00

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

RECEIVED
SEP 17 2009

BALTIMORE COUNTY
BOARD OF APPEALS

County Board Of Appeals Of Baltimore County The Assignment Date: 09/16/09
Jefferson Building
105 W. Chesapeake Avenue,
Baltimore MD 21204

Case Title: In the Matter of Thomas Neuwiller
Case No: 03-C-09-008342 AA

County Bd of Appeals of Balt Co

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Joy M Keller at (410) 887-3233.

You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 10/01/09
2. All Motions (excluding Motions in Limine) are due by..... 11/13/09
3. TRIAL DATE is..... 12/23/09

Civil Non-Jury Trial: Start Time: 09:30AM: To Be Assigned: 1/2 HOUR ADMINISTRATIVE APPEAL

Honorable John Grason Turnbull II
Judge

Postponement Policy: 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 counsel/parties involved. All requests for postponement must be approved by the Judge.

Settlement Conference (Room 507): All counsel and their clients **MUST** attend the settlement conference in person. All insurance representatives **MUST** attend this conference in person as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more information.)

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Civil Assignment Office at (410)-887-2660 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Voluntary Dismissal: Per Md. Rule 2-506, after an 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.

Court Costs: All court costs **MUST** be paid on the date of the settlement conference or trial.

Camera Phones Prohibited: Pursuant to Md. Rule 16-109 b.3., cameras and recording equipment are strictly prohibited in courtrooms

and adjacent hallways. This means that camera cell phones should not be brought with you on the day of your hearing to the Courthouse.

cc: Lawrence Schmidt Esq
cc: Bruce Edward Covahey Esq
cc: Frank Vernon Boozer Esq
Issue Date 09/16/09

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

RECEIVED
AUG 11 2009

BALTIMORE COUNTY
BOARD OF APPEALS

N O T I C E O F R E C O R D

Case Number: 03-C-09-008342 AA
Administrative Agency : CBA-07-246-A
C I V I L

In the Matter of Thomas Neuwiller

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 6th day of August, 2009.

Suzanne Mensh *(signed)*



Suzanne Mensh
Clerk of the Circuit Court, per *Yp*

Date issued: 08/07/09

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY THE
Jefferson Building
105 W. Chesapeake Avenue, Room 203
Baltimore, MD 21204



County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

October 10, 2008

Lawrence E. Schmidt, Esquire
GILDEA & SCHMIDT LLC
600 Washington Avenue
Suite 200
Towson, MD 21204

RE: *In the Matter of: Thomas G. Neuwiller, LO*
Case No. 07-246-A

Dear Mr. Schmidt:

This will acknowledge receipt of your letter dated October 2, 2008, entering you appearance as attorney for the Petitioners in the subject matter.

Please be advised that you and your firm have been added to our case file, and that you will receive a copy of the final decision when it is issued by the Board, as well as copies of any future correspondence and/or notices in this matter.

Please call me if I can be of any further assistance.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Kathleen C. Bianco".

Kathleen C. Bianco
Administrator

c: Thomas Neuwiller
Bruce Edward Covahey, Esquire
Mary Jane Oelke



RECEIVED
FEB - 4 2009
BALTIMORE COUNTY
BOARD OF APPEALS

JAMES T. SMITH, JR.
County Executive

JOHN E. BEVERUNGEN
*County Attorney
Office of Law*

February 3, 2009

via hand delivery

Lawrence Stahl, Chairman
County Board of Appeals
for Baltimore County
Jefferson Building, Suite 203
105 West Chesapeake Avenue
Towson, Maryland 21204

Re: In the Matter of the Petition of Thomas Neuwiller
5597 Gunpowder Road
CBA Case No. 07-246-A

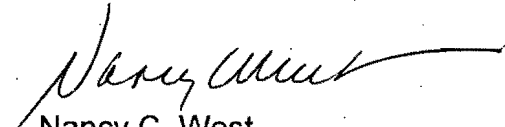
Dear Chairman Stahl:

I recently received a copy of the Board's Opinion in the above-referenced matter. Although I had some preliminary discussion with the parties prior to the hearing, I did not enter my appearance nor did I participate at the hearing.

I am writing to you because the Board's Opinion indicates that I appeared on behalf of the County Office of Law. I wanted to bring this matter to your attention so that in the event of an appeal, the record reflects the proper parties.

Thank you for your kind assistance.

Sincerely yours,



Nancy C. West
Assistant County Attorney

NCW:sm

cc: Bruce Edward Covahey, Esquire
Thomas Neuwiller
Lawrence Schmidt, Esquire

COVAHEY, BOOZER, DEVAN & DORE, P. A.

ATTORNEYS AT LAW
614 BOSLEY AVENUE
TOWSON, MARYLAND 21204

EDWARD C. COVAHEY, JR.
F. VERNON BOOZER *
MARK S. DEVAN
THOMAS P. DORE
BRUCE EDWARD COVAHEY
JENNIFER MATTHEWS HERRING
FRANK V. BOOZER, JR.

410-828-9441
FAX 410-823-7530

ANNEX OFFICE
SUITE 302
606 BALTIMORE AVE.
TOWSON, MD 21204
410-828-5525
FAX 410-296-2131

*ALSO ADMITTED TO D.C. BAR

March 13, 2007

Office of the Zoning Commissioner
For Baltimore County
Attn: Appeals Clerk
County Courts Building
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

RECEIVED

MAR 13 2007

Per. 

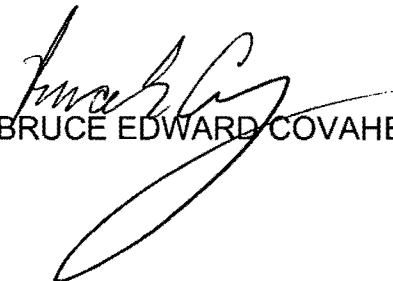
RE: Petition for Variance
SE/S Philadelphia Road, 245' NW of c/line Forge Road
(5597 Gunpowder Road)
11th Election District – 5th Council District
Thomas G. Neuwiller - Petitioner
Case No. 07-246-A

Dear Sir or Madam,

Please be advised that this office has been retained to represent Ms. Mary Jane Oelke in this matter. Ms. Oelke is an interested person who appeared before the Zoning Commissioner at the hearing on the above-referenced Petition for Variance

Please note an appeal to the Board of Appeals in the above captioned matter. Enclosed please find a check for the appeal fee of Four Hundred Dollars (\$400.00). Should you have any questions please do not hesitate to contact my office.

Very truly yours,


BRUCE EDWARD COVAHEY

0312bec03

Enclosure

Cc: Mr. Thomas G. Neuwiller
Mr. Edgar Steigleman
Mr. Lou Miller
Office of the People's Counsel
Dept. of Permits and Development Management, Division of Code Inspections

GILDEA & SCHMIDT, LLC

600 WASHINGTON AVENUE

SUITE 200

TOWSON, MARYLAND 21204

TELEPHONE 410-821-0070

FACSIMILE 410-821-0071

www.gildeallc.com

DAVID K. GILDEA

LAWRENCE E. SCHMIDT

D. DUSKY HOLMAN

SEBASTIAN A. CROSS

CHARLES B. MAREK, III

JASON T. VETTORI

October 2, 2008

Ms. Kathy C. Bianco
Board of Appeals
The Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

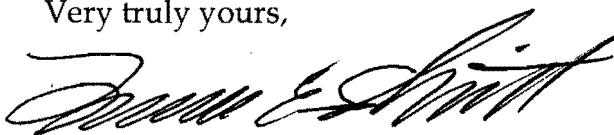
**Re: Case No. 07-246-A
Lori Watson and Thomas Neuwiller Petitioners**

Dear Ms. Bianco:

Kindly enter my appearance as attorney for the Petitioners, Lori Watson and Thomas Neuwiller in the above action. Although I appreciate that the Board has completed its public hearing and deliberation on this matter, I would request that a copy of any written decision issued in this case be sent to me. Additionally, if there are any further proceedings, kindly advise me.

Thank you for anticipated corporation regarding this matter. With kind regards, I am

Very truly yours,



Lawrence E. Schmidt

LES: dls

CC: Lori Watson and Thomas Neuwiller
Mary Jane Oelke

RECEIVED

OCT 06 2008

BALTIMORE COUNTY
BOARD OF APPEALS

ROYSTON, MUELLER, McLEAN & REID, LLP
ATTORNEYS AT LAW

R. TAYLOR McLEAN
E. HARRISON STONE
WILLIAM F. BLUE
THOMAS F. McDONOUGH
LAUREL PARETTA REESE*
KEITH R. TRUFFER*
ROBERT S. HANDZO*
EDWARD J. GILLISS
JOHN W. BROWNING
TIMOTHY J. OURSLER
ROBERT G. BLUE
CRAIG P. WARD

LEANNE M. SCHRECENGOST
DOUGLAS S. WALKER+
DAVID E. LUBY

SUITE 600
THE ROYSTON BUILDING
102 WEST PENNSYLVANIA AVENUE

TOWSON, MARYLAND 21204-4575

TELEPHONE 410-823-1800
FACSIMILE 410-828-7859
www.rmmr.com

OF COUNSEL
RICHARD A. REID
EUGENE W. CUNNINGHAM, JR., P.A.
H. EMSLIE PARKS*
BRADFORD G.Y. CARNEY
LISA J. McGRATH

CARROLL W. ROYSTON
1913-1991
H. ANTHONY MUELLER
1913-2000

* ALSO ADMITTED IN D.C.
+ ALSO ADMITTED IN PA.

March 5, 2007

VIA HAND DELIVERY

John E. Beverungen, County Attorney
Baltimore County Office of Law
Old Court House
400 Washington Avenue
Towson, Maryland 21204

Re: Thomas G. Neuwiller
5597 Gunpowder Road
White Marsh, MD 21162

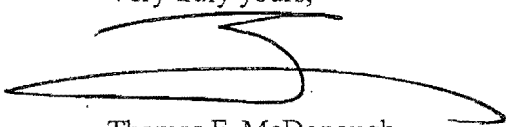
Dear Mr. Beverungen:

Please be advised that I represent Thomas G. Neuwiller. Mr. Neuwiller purchased the above-captioned property in 2002 and has since built a home and other improvements on the property. Since he purchased the property, he has been the subject of numerous complaints to the County, all of which have been registered by a neighbor, Mary Oelke at 5599 Gunpowder Road. Some if not most of the complaints I believe have been registered anonymously.

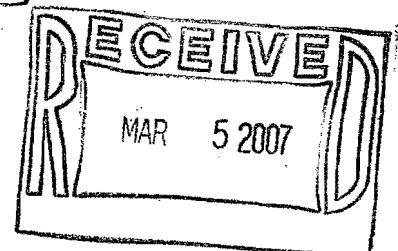
I am requesting, pursuant to the Maryland Public Information Act, copies of all documents held by the County regarding any complaints – whether related to alleged zoning violations, environmental complaints, or complaints of any kind – that the County might have in its possession.

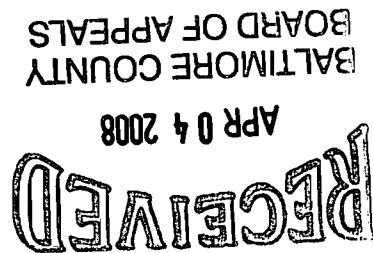
If you have any questions, or require further information, please don't hesitate to give me a call.

Very truly yours,


Thomas F. McDonough

TFM/laf
cc: Mr. Thomas G. Neuwiller
F:\COMMERCIAL\WB\CLIENTS\Neuwiller\Beverungen\lr3-507.doc





April 2, 2008

Administrator Board of Appeals
Attn: Kathleen C. Bianco
105 W. Chesapeake Suite 203
Towson, MD 21204

Reference: Written Request for Site Visit - Case #07-246-A

Dear Mrs. Bianco,

This is my formal request for a site visit at 5597 Gunpowder Road in reference to Case #07-246-A. I feel a visit is necessary in order to get the full scope of the property layout. The protestant's home is more than 200 feet from my property (the petitioner & legal owner) and that is why I feel it's important to have a site visit from your office.

Thank you in advance for considering my request. I can be reached at 410-808-6579 w/ any questions.

Sincerely,

A handwritten signature in cursive script that reads "Thomas G. Nuewiller".

Thomas G. Nuewiller

Linda Fliegel - Re: 5597 Gunpowder Appeals of Baltimore County



OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

From: Raymond Wisnom

To: Fliegel, Linda

410-887-3180

Date: 10/30/07 11:37 AM

FAX: 410-887-3182

Subject: Re: 5597 Gunpowder

Thank You. Flag me please.

>>> Linda Fliegel 10/30/2007 10:05 AM >>>

Dear Mr. Wisnom,

Since the name for the above-captioned property sounded very familiar to me I decided to check into the matter further. I contacted Kristen Matthews and she told me that the case came before the Zoning Commissioner back in February of 2007. For whatever reason, I thought that this case was more recent so I only checked back three or four months in my log while you were here. According to our log, we received the file in early May 2007.

Although the Board does have this file, a hearing date has not yet been assigned.

If you would like, I could flag our file to make sure that you are aware of any up and coming hearing(s) and/or deliberations.

I apologize for any inconvenience.



Theresa Shelton - Board of Appeals Decision-1109 Justa Lane Zoning Variance Appeal

From: Kevin Sabolcik
To: Theresa Shelton
Date: 4/27/2009 11:51 AM
Subject: Board of Appeals Decision-1109 Justa Lane Zoning Variance Appeal

Ms. Shelton,

On Tuesday, April 14th, 2009 the Board of Appeals meet at 9:00 am to discuss and decide a zone variance appeal submitted by the owners of 1109 Justa Lane, Cockeysville, Maryland (owner Gary Mueller). Is there a public document available from this decision and if so how could I obtain a copy of it?

Thank you with this request.

Kevin J. Sabolcik
12000 Boxer Hill Road
Cockeysville, MD 21030
Phone: 410-370-8153

→ Please send
Copy of Ruling

From: Theresa Shelton
To: Sabolcik, Kevin
Date: 4/27/2009 3:08 PM
Subject: Re: Board of Appeals Decision-1109 Justa Lane Zoning Variance Appeal
Attachments: Deliberation-Mtn for Recon.doc

Good Afternoon:

The final Ruling on the Motion for Reconsideration has not been completed by the Panel; however, I have attached the Deliberation Minutes for you. It normally takes between 4 - 6 weeks for the Ruling to be written, transcribed, reviewed and signed.

I have added your name to the notification list and you will receive a copy of the final Ruling and Order when it is issued.

Please do not hesitate to call me if you have any questions. Thank you.

Theresa

Theresa R. Shelton, Administrator
Board of Appeals for Baltimore County
Suite 203, The Jefferson Building
105 W. Chesapeake Avenue
Towson, MD 21204

410-887-3180
410-887-3182 (FAX)
tshelton@baltimorecountymd.gov

>>> Kevin Sabolcik 4/27/2009 11:50 AM >>>
Ms. Shelton,

On Tuesday, April 14th, 2009 the Board of Appeals meet at 9:00 am to discuss and decide a zone variance appeal submitted by the owners of 1109 Justa Lane, Cockeysville, Maryland (owner Gary Mueller). Is there a public document available from this decision and if so how could I obtain a copy of it?

Thank you with this request.

Kevin J. Sabolcik
12000 Boxer Hill Road
Cockeysville, MD 21030
Phone: 410-370-8153

Subj: case # CBA-08-101 (also regarding case 07-246-A)
Date: 4/19/08 10:26:51 A.M. Eastern Daylight Time
From: StringlingCo
To: pdmenforcement@baltimorecountymd.gov
CC: ktroco@baltimorecountymd.gov, countycouncil@baltimorecountymd.gov

re: CBA-08-101

Sir or Madam,

During the appeal of this matter, the board told Mr. Neuwiller he would have to abide by hearing Officer Raymond Wisnons' ruling to remove the fence from the right of way and reduce the height to 48 inches. Instead Mr. Neuwiller has built a large (tall) mound of earth (and rock) along the right of way thus NOT reducing the height of the fence and subjecting the right of way to erosion and mud. This is not acceptable as he had previously scraped all the stone dust (crush and run) on the right of way away and left mostly dirt. When a heavy rain storm comes the right of way is going to be mired with mud and mulch.. The height requirement ruling has been skirted by the huge mound of earth. Also , he has placed chunks of concrete in the right of way along its' length. for what purpose I do not know but it is inconsistent with the description of the right of way in my deed which refers to the twenty foot wide ROADWAY! He should not be able to put chunks of concrete in a roadway. Please inspect this and while you are there please note that the grade has been raised along my property line with no retaining wall or setback to accomodate increased runoff from his impervious concrete constructions.

Thank you for your attention to this matter.

Sincerely ,
Mary Jane Oelke

5599 Gunpowder Rd. , White Marsh, Md. 21162

Need a new ride? Check out the largest site for U.S. used car listings at [AOL Autos](#).

RECEIVED

APR 21 2008

BALTIMORE COUNTY
BOARD OF APPEALS

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: THOMAS G. NEUWILLER 07-246-A

DATE: June 17, 2008

BOARD/PANEL: Lawrence Stahl
 Maureen Murphy
 Wendell Grier

RECORDED BY: Sunny Cannington/Legal Secretary

PURPOSE: To deliberate an appeal of the following:

1. Petitioner seeks Variance to allow for in-ground swimming pool in side yard.
2. Is the property unique pursuant to the conditions set forth in Cromwell vs. Ward?
3. If the property is unique pursuant to the conditions set forth in Cromwell vs. Ward; will failure to grant the Variance present a practical difficulty or unusual hardship on the property owner?

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

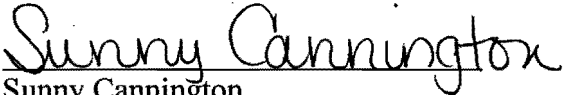
- The Petitioner's Memorandum argues that four features of the property make the property unique pursuant to the conditions set forth in Cromwell vs. Ward.
 - a. The front yard of the property faces two back yards
 - b. The property contains extensive bedrock.
 - c. The property contains a steep slope in the rear yard
 - d. The rear yard of the property is against a forest buffer minimizing the space available for a swimming pool
- The fact that the front of the house faces two back yards was not deemed relevant to the uniqueness issue because it is the side and back yards of the property that the Board is concerned with.
- All of the properties in the area have extensive bedrock and therefore the property is not unique to the area.
- The only mention of the slope and forest buffer comes from DEPRM which indicates that the slope goes into the forest buffer and that the forest buffer has been enlarged by the owner because he likes the forest area.
- No evidence was provided to indicate the steepness of the slope or the cost of leveling the grade.
- The Accessory Structure was not requested in the Variance.

DECISION BY BOARD MEMBERS: The property did not fit the conditions of Cromwell vs. Ward for uniqueness.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY Petitioner's request for Variance because it does not meet uniqueness requirements. The Board also comments that in the event the decision made here is overturned, the arguments did not set forth the hardship caused by not filing for relief under §400.1.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above 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,


Sunny Cannington

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF:

Thomas G. Neuwiller

07-246-A

DATE:

April 22, 2009

BOARD/PANEL:

Lawrence Stahl
Maureen Murphy
Wendell Grier

RECORDED BY:

Sunny Cannington/Legal Secretary

PURPOSE:

To deliberate the following:

1. Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Petitioner.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

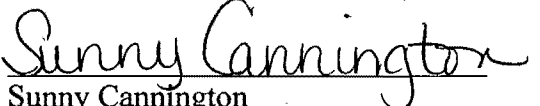
- The Petitioner had appeared pro se at the hearing before the Zoning Commissioner and at the hearing before the Board. Only after this case had been heard did the Petitioner hire Mr. Schmidt to represent him.
- Frequently there are preliminary Motions indicating that the Petitioner didn't file correctly or didn't ask for the right thing or that they did ask for it correctly but they are doing it wrong. As in this case, those Motions are usually quashed at the beginning of the case.
- The Petitioner made the argument that if he were an attorney or if he had hired an attorney, this case may have turned out differently. In this matter, the Board feels that the Petitioner presented his case and the Board made a decision based on the evidence and testimony presented. The Board feels that it is not appropriate to use a Motion for Reconsideration to request a new hearing so that an attorney can represent you and do things differently.
- Generally the law requires that fraud, mistake, irregularity, new law or new evidence not known about at the original hearing, be presented in order to grant a Motion for Reconsideration.
- The evidence and testimony heard in this matter indicated to the Board that the property did not meet the standards of "uniqueness" as set forth in *Cromwell v. Ward*.

DECISION BY BOARD MEMBERS: This matter did not meet the "uniqueness" requirements set forth in *Cromwell v. Ward* at the hearing. The Board feels that nothing presented in the Motion to Reconsider or the Answer changes the fact that the property is not unique.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY the Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Petitioner.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above 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,


Sunny Cannington

ZAC AGENDA

Item Number: 246 **Case Number:** 7-246-A **Primary Use:** Residential **Reviewer:** LTM

Type: Variance

Legal Owner: Thomas Neuwiller

Contract Purchaser:

Critical Area: No **Flood Plain:** No **Historic:** No **Election Dist:** 11th **Councilmanic Dist:** 5th

Property Address: 5597 Gunpowder Road

Location: Southeast side Philadelphia Road, 245 feet northwest centerline Forge Road.

Existing Zoning: DR - 2

Area: 0.99 acres +/-

Proposed Zoning: VARIANCE To permit an existing single family dwelling with open projection (deck; pool, pool equipment) to have a side yard setback of 4 feet and a sum of side yards of 24 feet in lieu of the required 11.25 feet and 30 feet, respectively.

Attorney:

Miscellaneous: Violation #06-5432

Case No: 07-1552Address: 05597 GUNPOWDER RD 21161Insp Area: 011 Dist: 000 Date Rcv: 3/02/2007 Grp: ENF Intk: LHInspec: PROPALIS Inspec2: Date Inspec: 0/00/0000Close: 0/00/0000 Activity: Delete:

Problem: 11/15/06 MR NEUWILLER WAS ADVISED TO LOWER FENCE IN FRONT YARD TO 4
2" & AS OF 2/28/07 HAS NOT LOWER FENCE IN FRONT YARD

CL Name: MILLER LOUISCL Address: 17416 ASTORIA LNSILVER SPRING MD 20905CL Home Phone: 301-788-8469 CL Work Phone: 240-351-3602 Tax Acct. 1105019275Owner: THOMAS G NEUWILLER

Enter=Continue F12=Cancel

Code Enforcement - Daily Worksheet

Inspector -

PROPALIS

Area Case # Location Apt Zip Date Rec Reinsp Dt
 011 07-1552 5597 GUNPOWDER RD 21161 3/02/2007

Tax Acct #: 1105019275

Owner: THOMAS G NEUWILLER

Complainant Name: (Last) MILLER (First) LOUIS
 Addr: 17416 ASTORIA LN
 Str # Dir Street Name Type Apt
 SILVER SPRING MD 20905
 City ST Zip
 Phone: (Home) 301/788-8469 (Work) 240/351-3602

Problem: 11/15/06 MR NEUWILLER WAS ADVISED TO LOWER FENCE IN FRONT
 YARD TO 42" & AS OF 2/28/07 HAS NOT LOWER FENCE IN FRONT YAR
 D

3/5/07 decision rendered in 07-246-A permitted fence
 in front yard to 48" because of pool. Appeal
 time frame goes to 3/12/07. Spoke with Mr.
 Newwiller. Wants to wait until he is sure no
 appeal is filed before proceeding with fence waiver.
 This makes sense to me. Tried to explain that to
 complainant, who insisted that violation be pursued
 (owner's phone is 410-808-6579)

P/U Date	3/12/07		Closed Date	Gary F to update	
Anonymous Complaint	Complainant Updated	Updated by voice message	Unable to update	Update not necessary	
Executive office Complaint	Yes	No	If Yes is Executive memo attached?	Yes	No

CODE ENFORCEMENT REPC

Active Case

DATE: 2/28/07 INTAKE BY: JH CASE #: 07-1552 06-5432 11th INSPEC:

COMPLAINT
LOCATION:

5597 Gunpowder Road

ZIP CODE: 21161 DIST: 11th

COMPLAINANT
NAME:

Louis Miller

PHONE #: (H)

301 788 8469 (W) 240 351 3606

ADDRESS:

17416 Astoria LA St Sp Md

ZIP CODE:

20905

PROBLEM:

11-15-06 Mr Newiller was advised to
lower Fence in front yard to 42" & As of 2-28-07
has ~~not~~ Not lower Fence in front yard or asked for Adam

IS THIS A RENTAL UNIT?

YES

NO

☒

IF YES, IS THIS SECTION 8?

YES

NO

☒OWNER/TENANT
INFORMATION:

Thomas G Ne

TAX ACCOUNT #:

ZONING:

INSPECTION:

~~Assign~~ Assign Matter to
DEER PROBLEMS

REINSPECTION:

REINSPECTION:

REINSPECTION:

DATE: 03/02/2007

STANDARD ASSESSMENT INQUIRY (1)

TIME: 10:57:04

PROPERTY NO.	DIST	GROUP	CLASS	OCC.	HISTORIC	DEL	LOAD DATE
11 05 019275	11	3-0	04-00	N	NO		02/02/07

NEUWILLER THOMAS G

DESC-1.. IMPSPT LT 1A,6,7

DESC-2.. DARRYL GARDENS

5597 GUNPOWDER RD

PREMISE. 05597 GUNPOWDER

RD

00000-0000

WHITE MARSH

MD 21162-1142 FORMER OWNER: CANTALUPO CARMINE

----- FCV ----- PHASED IN -----

	PRIOR	PROPOSED		CURR	CURR	PRIOR
				FCV	ASSESS	ASSESS
LAND:	51,050	119,800				
IMPV:	208,220	301,650	TOTAL..	367,390	367,390	313,330
TOTL:	259,270	421,450	PREF...	0	0	0
PREF:	0	0	CURT...	0	0	0
CURT:	0	0	EXEMPT.		0	0

DATE: 12/04 09/05

---- TAXABLE BASIS ---- FM DATE

ASSESS: 367,390 11/10/05

ASSESS: 313,330

ASSESS: 0

ENTER-INQUIRY2 PA1-PRINT PF4-MENU PF5-QUIT PF7-CROSS REF

[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 - 11 Account Number - 1105019275

Owner Information

Owner Name: NEUWILLER THOMAS G **Use:** RESIDENTIAL
Principal Residence: NO
Mailing Address: 5597 GUNPOWDER RD **Deed Reference:** 1) /16413/ 623
 WHITE MARSH MD 21162-1142 2)

Location & Structure Information

Premises Address
 5597 GUNPOWDER RD

Legal Description
 PT LT 1A,6,7
 600 NE RAWLEIGH RD
 DARRYL GARDENS

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:	
.73	3	317				L	1A	3	2	
									Plat Ref:	13/ 50

Special Tax Areas

**Town
Ad Valorem
Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
2004	3,118 SF	43,200.00 SF	04
Stories 2	Basement YES	Type STANDARD UNIT	Exterior SIDING

Value Information

	Base Value	Value As Of 01/01/2006	Phase-in Assessments As Of 07/01/2006	As Of 07/01/2007
Land:	51,050	119,800		
Improvements:	208,220	301,650		
Total:	259,270	421,450	313,330	367,390
Preferential Land:	0	0	0	0

Transfer Information

Seller: CANTALUPO CARMINE	Date: 05/15/2002	Price: \$20,000
Type: UNIMPROVED ARMS-LENGTH	Deed1: /16413/ 623	Deed2:
Seller: EDWARDS HEBRON	Date: 09/04/1970	Price: \$2,500
Type: IMPROVED ARMS-LENGTH	Deed1: / 5124/ 241	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *



CASE NAME _____
CASE NUMBER _____
DATE _____

[illegible]

PETITIONER'S
DEVELOPER'S
EXHIBITS

8
1/2/10

20070246 "A"

supplemental

3

Case No.:

07-246-A

Exhibit Sheet

Petitioner/Developer

Protestant

No. 1	SITE PLAN	PHOTOGRAPH
No. 2	POOL PERMIT AND DIAGRAM	PHOTO SHOWING FENCE
No. 3	Letters of Support under Notional Seal	PHOTO claiming no stabilization of Property between Boundaries
No. 4	use in Common st of Way = 20'	Aerial Photograph from Cosel Earth
No. 5	9 Pages of Photographs noting - unique driveway Layout and "bedrock" in rear yard.	REASONS TO AVOID PERMIT Diagram attached to Permit for Pool that she says are inaccurate - see red lines
No. 6		Packet of INFO FROM VIOLATION FILE - WITH PROTESTANTS NOTATIONS
No. 7		Photo of grading higher than her grading
No. 8		INSPECTION FINDINGS MD Dept. of the Environment
No. 9		
No. 10		
No. 11		
No. 12		

OWNER Thomas Neuwiller

A hand-drawn site plan of a property, likely a residential or commercial development. The plan shows several buildings, dimensions, and labels.

Top Section:

- A wavy line at the top is labeled "BEAN STREAM".
- Dimensions: "100'" (width), "260'" (length), "427' ±" (length), and "432' ±" (length).

Left Section:

- Label: "Pt. Lots 1A, 6+7".
- Label: "Jeff + Sherree HEARD".
- Building: "Ex. Dwelling #1706" with "Front" and "Back" labels. Dimensions: "20'", "40'", "43'", "50'".

Center Section:

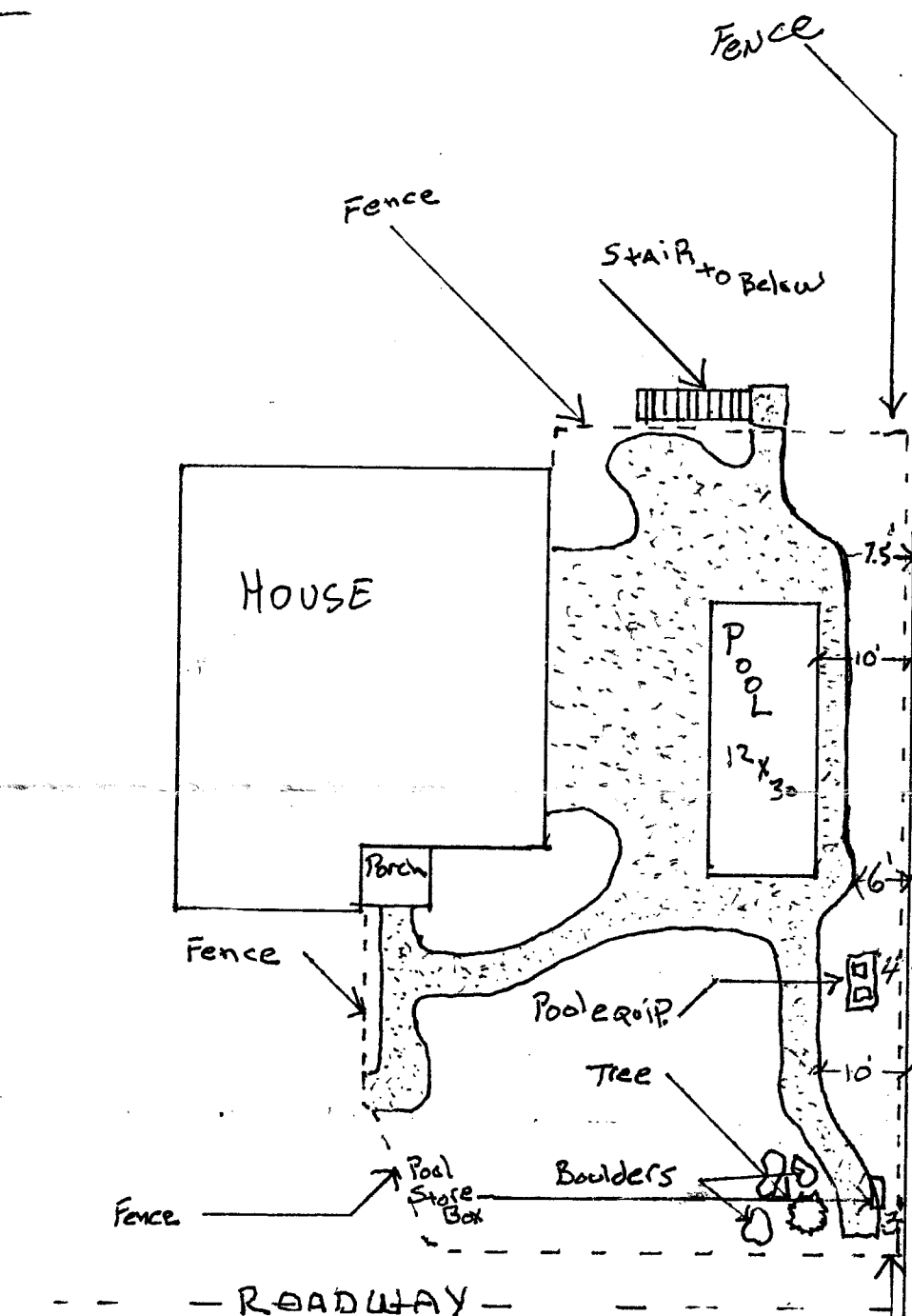
- Label: "Pt. Lots 1A, 6+7".
- Building: "Existing OPEN Projection 12x30 SEE INSET with Pool".
- Building: "Ex. Dwelling #3397" with "Front" and "Back" labels. Dimensions: "40'", "40'", "40'", "40'".
- Building: "Ex. Dwelling #3601" with "Front" and "Back" labels. Dimensions: "37'", "26'", "33'".
- Label: "Lot 8 Edgar + Amie Steigleman".

Right Section:

- Building: "Ex. Dwelling #5599" with "Front" label. Dimensions: "80'", "189'".
- Label: "Pt. Lots 1A, 6+7 Mary Oelke".

Bottom Section:

- Label: "R/W 19' PAVING)".
- Label: "50' R/W 20' PAVING)".
- Label: "± 105' ± E Gravel Rd".



CONCRETE

Subject Property

Philadelphia Rd

CARRINGTON DR.

RANA LAUGHER

LARCH

GUNPOWDER RD

Welcome A

VICINITY MAP
SCALE 1" = 1000'

LOCATION INFORMATION
ELECTION DISTRICT 11
COUNCILMANIC DISTRICT 5
1" = 200' SCALE MAP # 073A1
ZONING DR2
LOT SIZE 99 43,200
ACREAGE SQUARE FEET

	<u>PUBLIC</u>	<u>PRIVATE</u>
SEWAR	☒	☐
WATER	☒	☐
	YES	NO
CHESAPEAKE BAY CRITICAL AREA	☐	☒
100 YEAR FLOODPLAIN	☐	☒
HISTORIC PROPERTY/ BUILDING	☐	☒
PRIOR ZONING HEARING		

NONE

ZONING OFFICE USE ONLY
REVIEWED BY ITEM# CASE#

PETITIONER' S

EXHIBIT NO.

SCALE: 1" = 50'

APPROVED BY:

Prepared By - Thomas Newwiler

TIME: 11:29:59 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 04/25/2005
DATE: 09/28/2006 GENERAL PERMIT APPLICATION DATA TLM 13:02:34

PERMIT #: B590021 PROPERTY ADDRESS
RECEIPT #: A518182 5597 GUNPOWDER RD
CONTROL #: RS SUBDIV: DARRYL GARDENS
XREF #: B590021 TAX ACCOUNT #: 1105019275 DISTRICT/PRECINCT 11 04

OWNERS INFORMATION (LAST, FIRST)

FEE: 25.00 NAME: NEUVWILLER, TOMM
PAID: 25.00 ADDR: 5597 GUNPOWDER ROAD WHITE MARSH MD 21162
PAID BY: APPL

DATES

APPLICANT INFORMATION

APPLIED: 04/25/2005 NAME:
ISSUED: 04/25/2005 COMPANY: BLUE HAVEN POOLS
OCCPNY: ADDR1: 9104 INDUSTRY DRIVE
FINAL INSPECT: ADDR2: MANASSAS VA 20111
INSPECTOR: 11R PHONE #: 888-257-0007 LICENSE #: 30083
NOTES: MR/TLM

PASSWORD :

ENTER - PERMIT DETAIL PF3 - INSPECTIONS PF7 - DELETE PF9 - SAVE
PF2 - APPROVALS PF4 - ISSUE PERMIT PF8 - NEXT PERMIT PF10 - INQRY

TIME: 11:29:37
DATE: 09/28/2006

AUTOMATED PERMIT TRACKING SYSTEM
BUILDING DETAIL 1

PAGE 1 OF 1
LAST UPDATE: 09/28/2006
TLM: 11:29:37

PERMIT # B590021 PLANS: CONST 00 PLOT 2 PLAT 0 DATA 0 SE 1 PL 2
TENANT

BUILDING CODE: CONTR: BLUE HAVEN POOLS
IMPRV 1 ENGR: *pool constructed*
USE 05 POOL SELLR: *front and side*

FOUNDATION BASE WORK: CONST INGROUND POOL IN REAR YARD OF *side*
12'X30'=360SF.3'-6' POOL. POOL LEVER ATTACHED
CONSTRUC FUEL SEWAGE WATER CARTRIDGE FILTER. TO BE FILLED BY *owner*
1E 1E BY OWNER.

CENTRAL AIR
ESTIMATED COST

33,620.00 PROPOSED USE: SFD & POOL

OWNERSHIP: 1 EXISTING USE: SFD

RESIDENTIAL CAT: 1

#EFF: #1BED: #2BED: #3BED: TOT BED: TOT APTS:

1 FAMILY BEDROOMS: PASSWORD:

ENTER - NEXT DETAIL PF2 - APPROVALS PF7 - PREV. SCREEN PF9 - SAVE
PF1 - GENERAL PERMIT PF3 - INSPECTIONS PF8 - NEXT SCREEN CLEAR - MENU

TIME: 11:29:37 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 04/25/2005
DATE: 09/28/2006 BUILDING DETAIL 1 TLM 13:08:16

DRC#

PERMIT # B590021 PLANS: CONST 00 PLOT 2 PLAT 0 DATA 0 EL 1 PL 2

TENANT

BUILDING CODE: CONTR: BLUE HAVEN POOLS

IMPRV 1 ENGR:

USE 05 POOL SELLR:

FOUNDATION BASE WORK: CONST INGROUND POOL IN REAR YARD OF SFD.

12'X30'=360SF.3'-6'POOL.POOL LETTER ATTACHED.

CONSTRUC FUEL SEWAGE WATER CARTRIDGE FILTER.TO BE FILLED BY TRUCK.FENCE
1E 1E BY OWNER.

CENTRAL AIR

ESTIMATED COST

33,620.00 PROPOSED USE: SFD & POOL

OWNERSHIP: 1 EXISTING USE: SFD

RESIDENTIAL CAT: 1

#EFF: #1BED: #2BED: #3BED: TOT BED: TOT APTS:

1 FAMILY BEDROOMS: PASSWORD:

ENTER - NEXT DETAIL PF2 - APPROVALS PF7 - PREV. SCREEN PF9 - SAVE
PF1 - GENERAL PERMIT PF3 - INSPECTIONS PF8 - NEXT SCREEN CLEAR - MENU

TIME: 11:29:47
DATE: 09/28/2006

AUTOMATED PERMIT TRACKING SYSTEM
BUILDING DETAIL 2

LAST UPDATE: 09/28/2006
TLM

PERMIT #: B590021

BUILDING SIZE
FLOOR: 360SF
WIDTH: 30'
DEPTH: 12'
HEIGHT: 3'-6'
STORIES:

LOT NOS: 1A
CORNER LOT:

LOT SIZE AND SETBACKS
SIZE: 43,200SF
FRONT STREET:
SIDE STREET:
FRONT SETB: NC
SIDE SETB: 77' / 10' 2"
SIDE STR SETB:

REAR SETB: 54'
ASSESSMENTS
LAND: 0054050.00
IMPROVEMENTS: 0208220.00
TOTAL ASS.:

GARBAGE DISP:
POWDER ROOMS:
BATHROOMS:
KITCHENS:

ZONING INFORMATION

DISTRICT:
PETITION:
DATE:
MAP:
BLOCK:
SECTION:
LIBER: 001
FOLIO: 050
CLASS: 04

PLANNING INFORMATION

MSTR PLAN AREA: SUBSEWER: CRIT AREA: PASSWORD:

ENTER - NEXT DETAIL PF2 - APPROVALS PF7 - PREV. SCREEN PF9 - SAVE
PF1 - GENERAL PERMIT PF3 - INSPECTIONS PF8 - NEXT SCREEN CLEAR - MENU

TIME: 11:29:47
DATE: 09/28/2006

AUTOMATED PERMIT TRACKING SYSTEM
BUILDING DETAIL 2

LAST UPDATE 04/25/2005
TLM 13:08:16

PERMIT #: B590021

BUILDING SIZE

LOT SIZE AND SETBACKS

FLOOR: 360SF

SIZE: 43,200SF

WIDTH: 30'

FRONT STREET:

GARBAGE DISP:

DEPTH: 12'

SIDE STREET:

POWDER ROOMS:

HEIGHT: 3'-6'

FRONT SETB: NC

BATHROOMS:

STORIES:

SIDE SETB: 77'/10'2

KITCHENS:

SIDE STR SETB:

LOT NOS: 1A

REAR SETB: 54'

CORNER LOT:

ZONING INFORMATION

ASSESSMENTS

DISTRICT:

BLOCK:

LAND: 0051050.00

PETITION:

SECTION:

IMPROVEMENTS: 0208220.00

DATE:

LIBER: 001

TOTAL ASS.:

MAP:

FOLIO: 050

CLASS: 04

PLANNING INFORMATION

MSTR PLAN AREA:

SUBSEWER:

CRIT AREA:

PASSWORD:

ENTER - NEXT DETAIL

PF2 - APPROVALS

PF7 - PREV. SCREEN

PF9 - SAVE

PF1 - GENERAL PERMIT

PF3 - INSPECTIONS

PF8 - NEXT SCREEN

CLEAR - MENU

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
DEPARTMENT OF PERMITS & DEVELOPMENT MANAGEMENT
TOWSON, MARYLAND 21204

DATE: 4/25/05
OEA: MK
HISTORIC DISTRICT/BLDG.

PERMIT #: B590021
RECEIPT #: A518182
CONTROL #: RS
XREF #:

PROPERTY ADDRESS: 5397 Gunpowder Rd.
SUITE/SPACE/FLOOR: YES ☐ NO ☒
SUBDIV: Darryl Gardens
TAX ACCOUNT #: 1105019275
OWNER'S INFORMATION (LAST, FIRST): 11 4

FEE: 25.00
PAID: 25.00
PAID BY: appd
INSPECTOR: JPP

NAME: Tom Newwiler
ADDR: 5397 Gunpowder Rd.
White Marsh, Md. 21162
APPLICANT INFORMATION

I HAVE CAREFULLY READ THIS APPLICATION
AND KNOW THE SAME IS CORRECT AND TRUE,
AND THAT IN DOING THIS WORK ALL PROVI-
SIONS OF THE BALTIMORE COUNTY CODE AND
APPROPRIATE STATE REGULATIONS WILL BE
COMPLIED WITH WHETHER HEREIN SPECIFIED
OR NOT AND WILL REQUEST ALL REQUIRED
INSPECTIONS.

NAME: Blue Haven Pools
COMPANY: 9104 Indusway Dr.
CITY, ST, ZIP: Manassas, Va. 20111
PHONE #: 888-257-0007 MHIC # 30083 MHBR #

APPLICANT
SIGNATURE: [Signature] DRC#
PLANS: CONST 8 PLOT 2 PLAT 0 DATA 0 EL 1 PL 2
TENANT: owner
CONTR: Blue Haven Pools
ENGR: [Signature]
SELLR:

TYPE OF IMPROVEMENT

1. ☒ NEW BLDG CONST
2. ☐ ADDITION
3. ☐ ALTERATION
4. ☐ REPAIR
5. ☐ WRECKING
6. ☐ MOVING
7. ☐ OTHER

DESCRIBE PROPOSED WORK: Build inground pool -
360' x 12' x 30' - Depth 3' - 6' - Pool
Letter Attached. Cart. to be
filled by truck
Fence by owner

TYPE OF USE

RESIDENTIAL

01. ☐ ONE FAMILY
02. ☐ TWO FAMILY
03. ☐ THREE AND FOUR FAMILY
04. ☐ FIVE OR MORE FAMILY
(ENTER NO UNITS)
05. ☒ SWIMMING POOL
06. ☐ GARAGE
07. ☐ OTHER

NON-RESIDENTIAL

08. ☐ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09. ☐ CHURCH, OTHER RELIGIOUS BUILDING
10. ☐ FENCE (LENGTH HEIGHT)
11. ☐ INDUSTRIAL, STORAGE BUILDING
12. ☐ PARKING GARAGE
13. ☐ SERVICE STATION, REPAIR GARAGE
14. ☐ HOSPITAL, INSTITUTIONAL, NURSING HOME
15. ☐ OFFICE, BANK, PROFESSIONAL
16. ☐ PUBLIC UTILITY
17. ☐ SCHOOL, COLLEGE, OTHER EDUCATIONAL
18. ☐ SIGN
19. ☐ STORE MERCANTILE RESTAURANT
20. ☐ SWIMMING POOL
SPECIFY TYPE
21. ☐ TANK, TOWER
22. ☐ TRANSIENT HOTEL, MOTEL (NO. UNITS)
23. ☐ OTHER

TYPE FOUNDATION

1. ☐ SLAB
2. ☐ BLOCK
3. ☐ CONCRETE

BASEMENT

1. ☐ FULL
2. ☐ PARTIAL
3. ☐ NONE

TYPE OF CONSTRUCTION

1. ☐ MASONRY
2. ☐ WOOD FRAME
3. ☐ STRUCTURE STEEL
4. ☐ REINF. CONCRETE

TYPE OF HEATING FUEL

1. ☐ GAS 3. ☐ ELECTRICITY
2. ☐ OIL 4. ☐ COAL

TYPE OF SEWAGE DISPOSAL

1. ☒ PUBLIC SEWER ☒ EXISTS PROPOSED
2. ☐ PRIVATE SYSTEM
SEPTIC EXISTS PROPOSED
PRIVY EXISTS PROPOSED

CENTRAL AIR: 1. ☐ 2. ☐

ESTIMATED COST: \$ 33,000

OF MATERIALS AND LABOR

1. ☒ PUBLIC SYSTEM ☒ EXISTS PROPOSED
2. ☐ PRIVATE SYSTEM ☐ EXISTS PROPOSED

PROPOSED USE:

EXISTING USE:

3 SFD + Pool
SFD

OWNERSHIP

1. ☒ PRIVATELY OWNED 2. ☐ PUBLICLY OWNED 3. ☐ SALE 4. ☐ RENTAL

RESIDENTIAL CATEGORY:

1. ☒ DETACHED 2. ☐ SEMI-DET. 3. ☐ GROUP 4. ☐ TOWNHSE 5. ☐ MIXED

#EFF: #1BED: #2BED: #3BED: TOT BED: TOT APTS/CONDOS: 6. ☐ MIXED

1 FAMILY BEDROOMS

GARBAGE DISPOSAL 1. ☐ YES 2. ☐ NO

POWDER ROOMS

BATHROOMS

KITCHENS

CLASS

LIBER

FOLIO 50

Blk 2

Plot 2

APPROVAL SIGNATURES

DATE

BUILDING SIZE

LOT SIZE AND SETBACKS

FLOOR 360 sq ft

SIZE 4300 sq ft

WIDTH 30 ft

FRONT STREET 77

DEPTH 20 ft

SIDE STREET 1

HEIGHT 30'3"

FRONT SETBK 10'

STORIES 1

SIDE SETBK 10'

NOT #S 11

SIDE STR SETBK 10'

CORNER LOT 11

REAR SETBK 10'

1. ☐ YES 2. ☒ NO

ZONING: 11

BLD INSP:

BLD PLAN:

FIRE:

SEDI CTL:

ZONING: 11

PH SEV:

ENVRMNT:

PERMITS: 11

DATE: 4/25/05

PETITIONER'S

EXHIBIT NO. 2

MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND -- NO PERMIT FEES REFUNDED

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
DEPARTMENT OF PERMITS & DEVELOPMENT MANAGEMENT
TOWSON, MARYLAND 21204

DATE: 4/25/05
OEA: SMC
HISTORIC DISTRICT/BLDG.

PERMIT #: 0590021
RECEIPT #: 151818
CONTROL #: RS
XREF #:

PROPERTY ADDRESS 5397 Gunpowder Rd.
SUITE/SPACE/FLOOR
SUBDIV: Doreen Gardens
TAX ACCOUNT #: 1105819275
OWNER'S INFORMATION (LAST, FIRST)
NAME: Tom Newmiller
ADDR: 5397 Gunpowder Rd.
White Marsh, Md. 21162

FEE: 25.00
PAID: 25.00
PAID BY: app
INSPECTOR: app

I HAVE CAREFULLY READ THIS APPLICATION
AND KNOW THE SAME IS CORRECT AND TRUE,
AND THAT IN DOING THIS WORK ALL PROVI-
SIONS OF THE BALTIMORE COUNTY CODE AND
APPROPRIATE STATE REGULATIONS WILL BE
COMPLIED WITH WHETHER HEREIN SPECIFIED
OR NOT AND WILL REQUEST ALL REQUIRED
INSPECTIONS.

APPLICANT INFORMATION

NAME: Blue Haven Pools
COMPANY: Blue Haven Pools
STREET: 7104 Industry Dr.
CITY, ST, ZIP: Maryland 21111
PHONE #: 888-257-0807 MHIC # 30083 MHBR #
APPLICANT
SIGNATURE: [Signature] DRCH
PLANS: CONST 0 PLOT 2 PLAT 0 DATA 0 EL 1 PL 2
TENANT: owner
CONTR: Blue Haven Pools
ENGR: [Signature]
SELLR:

DOES THIS BLDG.
HAVE SPRINKLERS
YES NO

TYPE OF IMPROVEMENT

1. NEW BLDG CONST
2. ADDITION
3. ALTERATION
4. REPAIR
5. WRECKING
6. MOVING
7. OTHER

TYPE OF USE

RESIDENTIAL

01. ONE FAMILY
02. TWO FAMILY
03. THREE AND FOUR FAMILY
04. FIVE OR MORE FAMILY
(ENTER NO UNITS)
05. GARAGE
07. OTHER

NON-RESIDENTIAL

08. AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09. CHURCH, OTHER RELIGIOUS BUILDING
10. FENCE (LENGTH HEIGHT)
11. INDUSTRIAL, STORAGE
12. SERVICE STATION, REPAIR GARAGE
13. HOSPITAL, INSTITUTIONAL, NURSING HOME
14. OFFICE, BANK, PROFESSIONAL
15. PUBLIC UTILITY
16. SCHOOL, COLLEGE, OTHER EDUCATIONAL
17. SIGN
18. STORE MERCANTILE RESTAURANT
19. SPECIFY TYPE
20. SWIMMING POOL SPECIFY TYPE
21. TANK, TOWER
22. TRANSIENT HOTEL, MOTEL (NO. UNITS)
23. OTHER

DESCRIBE PROPOSED WORK:
360 = 12' x 30' - Depth 3'-6" - Pool
Letter Attached. Cont. to be
be filled by truck
Fence by owner.

Handwritten
here in rear
yard!

TYPE FOUNDATION

1. SLAB
2. BLOCK
3. CONCRETE

BASEMENT

1. FULL
2. PARTIAL
3. NONE

TYPE OF CONSTRUCTION

1. MASONRY
2. WOOD FRAME
3. STRUCTURE STEEL
4. REINF. CONCRETE

TYPE OF HEATING FUEL

1. GAS 3. ELECTRICITY
2. OIL 4. COAL

TYPE OF SEWAGE DISPOSAL

1. PUBLIC SEWER
2. PRIVATE SYSTEM
SEPTIC EXISTS PROPOSED
PRIVY EXISTS PROPOSED

CENTRAL AIR: 1. 2.

ESTIMATED COST: \$ 33,620
OF MATERIALS AND LABOR
PROPOSED USE: SFD & Pool
EXISTING USE: SFD

OWNERSHIP

1. PRIVATELY OWNED 2. PUBLICLY OWNED 3. SALE 4. RENTAL

RESIDENTIAL CATEGORY:

1. DETACHED 2. SEMI-DET. 3. GROUP 4. TOWNHSE 5. MIDRISE
#EFF: #1BED: #2BED: #3BED: TOT BED: TOT APTS/CONDOS: 6. HIRISE
1 FAMILY BEDROOMS
GARBAGE DISPOSAL 1. Y. 2. N. BATHROOMS CLASS 04 LIBER 13 FOLIO 50 Blk-2
POWDER ROOMS KITCHENS

BUILDING SIZE

FLOOR 360 sq ft
WIDTH 30 ft
DEPTH 12 ft
HEIGHT 30'3"6"
STORIES 1
CORNER LOT 10'2"

LOT SIZE AND SETBACKS

SIZE 43,000 sq ft
FRONT STREET 77
SIDE STREET 1
FRONT SETBK 10'2"
SIDE SETBK 10'2"
REAR SETBK 10'2"

APPROVAL SIGNATURES

BLD INSP :
BLD PLAN :
FIRE :
SEDI CTL :
ZONING / PERMITS :
ENVRMT :
DATE 4/25/05

MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND -- NO PERMIT FEES REFUNDED

error!

APPLICATION FOR PERMIT
BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS & DEVELOPMENT MANAGEMENT
TOWSON, MARYLAND 21204

DATE: 4/23/05
OEA: MR
HISTORIC DISTRICT/BLDG.

PERMIT #: B590021
RECEIPT #: A518182
CONTROL #: RS
XREF #:

PROPERTY ADDRESS 5397 Gunpowder Rd.
SUITE/SPACE/FLOOR
SUBDIV: Dareyl Gardens
TAX ACCOUNT #: 1105019275
OWNER'S INFORMATION (LAST, FIRST)
NAME: Tom Mueller
ADDR: 5397 Gunpowder Rd.
White Marsh, Md. 21162

YES ☐ NO ☒
DO NOT KNOW ☒
DISTRICT/PRECINCT
11 4

FEE: 25.00
PAID: 25.00
PAID BY: appl
INSPECTOR:

APPLICANT INFORMATION

NAME:
COMPANY: Blue Haven Pools
STREET: 9104 Industry Dr.
CITY, ST, ZIP: Manassas, Va. 20111
PHONE #: 888-257-0007 MHIC # 30083 MHRB #
SIGNATURE: Tom Mueller DRC#

DOES THIS BLDG.
HAVE SPRINKLERS
YES ☐ NO ☐

I HAVE CAREFULLY READ THIS APPLICATION
AND KNOW THE SAME IS CORRECT AND TRUE,
AND THAT IN DOING THIS WORK ALL PROVI-
SIONS OF THE BALTIMORE COUNTY CODE AND
APPROPRIATE STATE REGULATIONS WILL BE
COMPLIED WITH WHETHER HEREIN SPECIFIED
OR NOT AND WILL REQUEST ALL REQUIRED
INSPECTIONS.

PLANS: CONST 0 PLOT 2 PLAT 0 DATA 0 EL 1 PL 2
TENANT: owner
CONTR: Blue Haven Pools
ENGR:
SELLR:

TYPE OF IMPROVEMENT

1. ☒ NEW BLDG CONST
2. ☐ ADDITION
3. ☐ ALTERATION
4. ☐ REPAIR
5. ☐ WRECKING
6. ☐ MOVING
7. ☐ OTHER

DESCRIBE PROPOSED WORK:

360' = 12' x 30' - Depth 3' - 6' - Pool
Letter Attached. Cart. to be filled by truck
Fence by owner.

TYPE OF USE

RESIDENTIAL

01. ☐ ONE FAMILY
02. ☐ TWO FAMILY
03. ☐ THREE AND FOUR FAMILY
04. ☐ FIVE OR MORE FAMILY
(ENTER NO UNITS)
05. ☒ SWIMMING POOL
06. ☐ GARAGE
07. ☐ OTHER

NON-RESIDENTIAL

08. ☐ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09. ☐ CHURCH, OTHER RELIGIOUS BUILDING
10. ☐ FENCE (LENGTH HEIGHT)
11. ☐ INDUSTRIAL, STORAGE BUILDING
12. ☐ PARKING GARAGE
13. ☐ SERVICE STATION, REPAIR GARAGE
14. ☐ HOSPITAL, INSTITUTIONAL, NURSING HOME
15. ☐ OFFICE, BANK, PROFESSIONAL
16. ☐ PUBLIC UTILITY
17. ☐ SCHOOL, COLLEGE, OTHER EDUCATIONAL
18. ☐ SIGN
19. ☐ STORE MERCANTILE RESTAURANT
20. ☐ SWIMMING POOL SPECIFY TYPE
21. ☐ TANK, TOWER
22. ☐ TRANSIENT HOTEL, MOTEL (NO. UNITS)
23. ☐ OTHER

TYPE FOUNDATION

1. ☐ SLAB
2. ☐ BLOCK
3. ☐ CONCRETE

BASEMENT

1. ☐ FULL
2. ☐ PARTIAL
3. ☐ NONE

TYPE OF CONSTRUCTION

1. ☐ MASONRY
2. ☐ WOOD FRAME
3. ☐ STRUCTURE STEEL
4. ☐ REINF. CONCRETE

TYPE OF HEATING FUEL

1. ☐ GAS 3. ☐ ELECTRICITY
2. ☐ OIL 4. ☐ COAL

TYPE OF SEWAGE DISPOSAL

1. ☒ PUBLIC SEWER ☒ EXISTS ☐ PROPOSED
2. ☐ PRIVATE SYSTEM ☐ SEPTIC ☐ EXISTS ☐ PROPOSED
☐ PRIVY ☐ EXISTS ☐ PROPOSED

CENTRAL AIR: 1. ☐ 2. ☐

ESTIMATED COST: \$33,520

OF MATERIALS AND LABOR

PROPOSED USE:

EXISTING USE:

OWNERSHIP

1. ☒ PRIVATELY OWNED 2. ☐ PUBLICLY OWNED 3. ☐ SALE 4. ☐ RENTAL

RESIDENTIAL CATEGORY:

1. ☒ DETACHED 2. ☐ SEMI-DET. 3. ☐ GROUP 4. ☐ TOWNHSE 5. ☐ MIDRISE
#EFF: #1BED: #2BED: #3BED: TOT BED: TOT APTS/CONDOS: 6. ☐ HIRISE
1 FAMILY BEDROOMS
GARBAGE DISPOSAL 1. ☐ Y 2. ☐ NO BATHROOMS CLASS OK FOLIO 50 Blk 2
POWDER ROOMS KITCHENS LIBER 13 Plat 2

BUILDING SIZE

FLOOR 360 sq ft

WIDTH 30 ft

DEPTH 12 ft

HEIGHT 3' - 6'

STORIES 1

1. ☐ Y 2. ☐ N

CORNER LOT

LOT SIZE AND SETBACKS

SIZE 43,800 sq ft

FRONT STREET 77'

SIDE STREET 1'

FRONT SETBK NO

SIDE SETBK NO

SIDE STR SETBK NO

REAR SETBK 10' 2"

ZONING

APPROVAL SIGNATURES

DATE

BLD INSP:
BLD PLAN:
FIRE:
SEDI CTL:
ZONING: RESIDENTIAL
PUB SERV:
ENVRMT:
PERMITS: TRP / TLM
DATE: 4/23/05

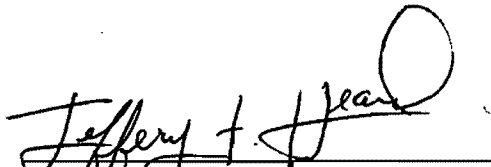
MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND -- NO PERMIT FEES REFUNDED.

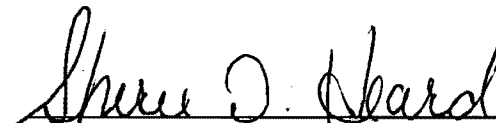
November 10, 2006

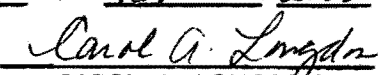
I hereby solemnly swear and affirm under the penalty of perjury that the following is true and correct knowledge to the best of my belief.

We have absolutely no objections to the placement of the Pool and Fence at 5597 Gunpowder Road.

Sincerely,


Jeffrey Heard


Sheree Heard

of Maryland, County of Baltimore, SS.
I have observed and sworn to before me in my presence,
14th day of November, 2006.

CAROL A. LONGDON
NOTARY PUBLIC STATE OF MARYLAND
My commission expires September 1, 2008

PETITIONER'S

EXHIBIT NO.

3A

Property Tax Account No.: 11-05-019275
File No.: 02/8352

THIS DEED, Made this 7th Day of May, in the year Two Thousand Two, by and between CARMINE CANTALUPO and JUDITH C. CANTALUPO, his wife, Parties of the first part, of Baltimore County, State of Maryland, and THOMAS G. NEUWILLER, party of the second part.

WITNESSETH, That in consideration of the sum of TWENTY THOUSAND AND 00/100ths (\$20,000.00) DOLLARS, and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said parties of the first part, do hereby grant and convey unto the said party of the second part, his personal representatives, heirs and assigns, in fee simple, all that lot of ground situate in Baltimore County, State of Maryland, and described as follows that is to say:

BEGINNING for the same at a point on the southeasterly side of Philadelphia Road (66 feet wide) distant south 33 degrees 41 minutes 30 seconds west 245.73 feet from the northwesterly corner of Lot No. 1-A, in Block L, as shown on the Plat of Darryl Gardens, No. 2, which Plat is duly recorded among the Plat records of Baltimore County in Plat Book R.J.S. No. 13, folio 150, etc., and thence with and binding on the southeasterly side of said Philadelphia Road, south 33 degrees 41 minutes 30 seconds west 100 feet, thence by a new line of division south 54 degrees 05 minutes 30 seconds east 427 feet, more or less, to intersect the northwesterly line of Lot No. 8, Block L, as shown on the Plat of Darryl Gardens, No. 2, recorded as aforesaid; thence with and binding on the northwesterly line of said Lot No. 8, Block L, north 35 degrees 54 minutes 30 seconds east 100 feet, thence by a new line of division north 54 degrees 05 minutes 30 seconds west 432 feet more or less to the place of beginning

BEING and comprising a portion of Lots 1-A, 6 and 7, in Block L, as shown on the Plat of Darryl Gardens, No. 2, recorded as aforesaid.

SUBJECT, HOWEVER to use in common with others of a right-of-way 20 feet wide running along the third line of the parcel of ground hereinabove described for its entire length and together with the right in a deed dated December 19th, 1951 and recorded among the Land Records of Baltimore County in Liber G.L.B. No. 2077 folio 219 by the said Walter W. Powers and Susie Grey Powers, his wife, to use a 20 foot right-of-way extending from the 20 foot right-of-way reserved in this paragraph first mentioned, through Lot No. 7, Block L, to the Larch Road and Gunpowder Road, all as shown on Plat No. 2, Darryl Gardens, recorded as aforesaid.

BEING the same lot of ground described in a Deed dated September 3, 1970 and recorded among the Land Records of Baltimore County in Liber OTG 5124 folio 241 was granted and conveyed by Hebron Edwards and Ruth E. Edwards, his wife, unto Carmine Cantalupo and Judith C. Cantalupo, his wife.

TOGETHER with the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

TO HAVE AND TO HOLD the said described lot of ground and premises to the said party of the second part, his personal representatives/heirs and assigns, in fee simple forever.

PETITIONER'S

EXHIBIT NO. 4

5397

CORNER of
LARCH and GUNPOWDER

No Part of 5397 Gunpowder borders
A county/public road upon its entrance

PETITIONER'S

Collectively

EXHIBIT NO.

5

A thru H



im movable
boulder

Existing Patio

Bedrock below

Bench

Example of Bedrock under
existing patio.

Bench



From top of Gun Powder Rd. Looking towards 5597, Pool and R.O.W and Fence



From 5597's pool looking toward 5599, which cannot be seen from my where around our house.



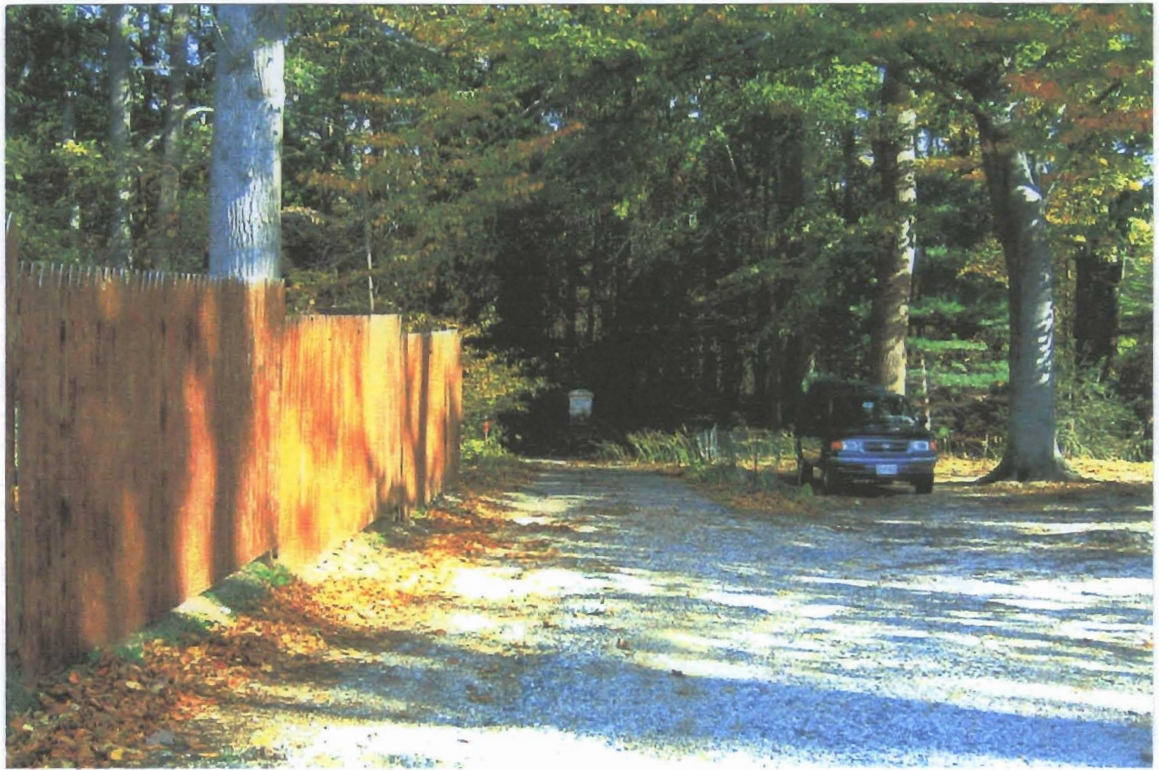
Looking into front yard of 5597 and towards 5599 which
cannot be
seen from
our house



From backyard - parking area of 5601 looking toward front and
side yard of 5597



Looking At R.O.W. And Privacy Fence & 5597



6

Looking towards 5597 From Phil. Rd.



Thickly wooded
 ROW @ 8'
 At its widest
 and 6' At its
 most narrow,
 has been this
 way since
 1957



±

Photo's taken before construction
 of 5597
 2007: ROW At its most narrow @ 12'
 and its widest @ 20' as seen in photos
 for variance



Plans Review
has site plan

PROTESTANT'S EXHIBITS

20070246
supplemental
A

④

Case No.:

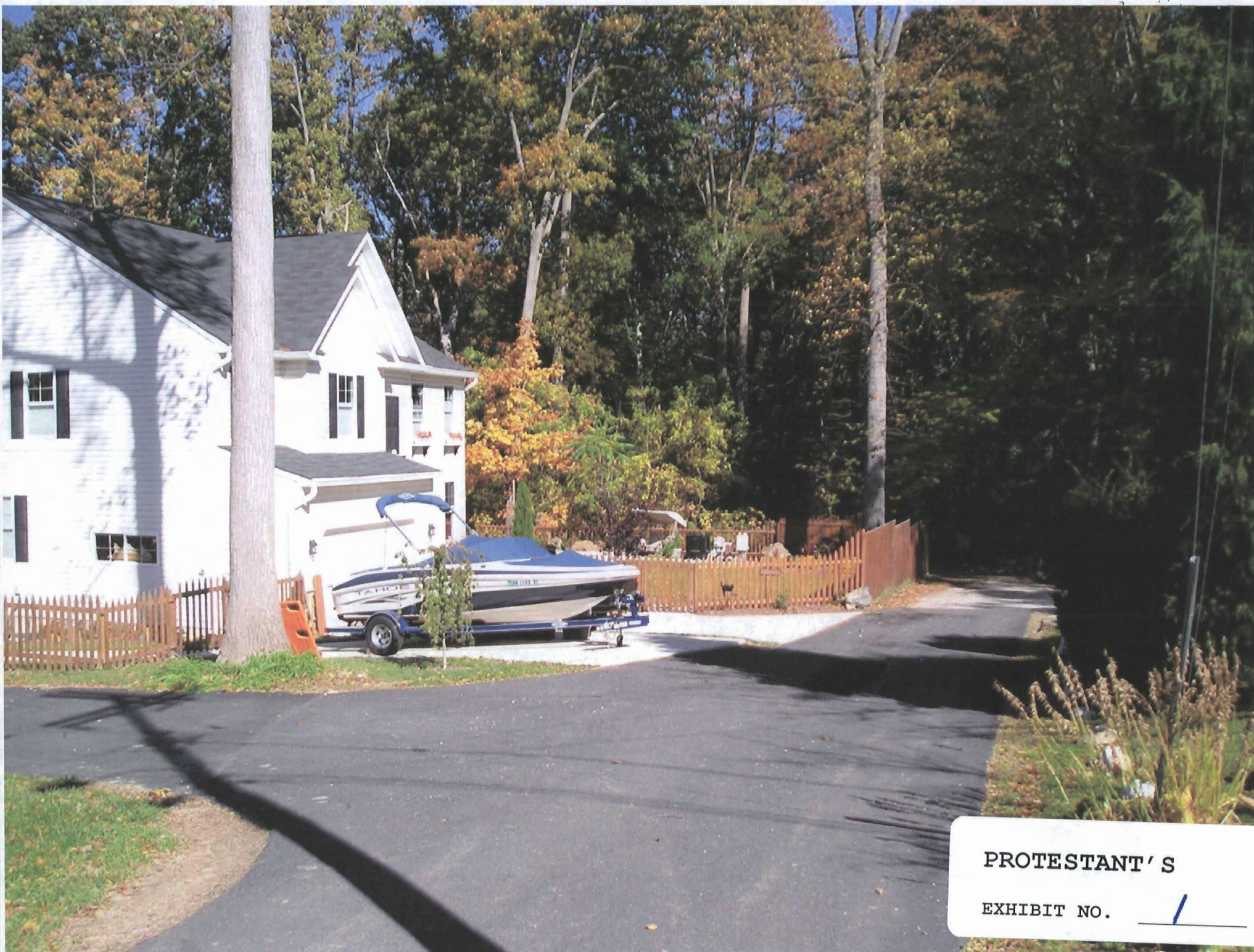
07-246-A

Exhibit Sheet

Petitioner/Developer

Protestant

No. 1	SITE PLAN	PHOTOGRAPH
No. 2	POOL PERMIT AND DIAGRAM	PHOTO SHOWING FENCE
No. 3	Letters of Support under Notarial Seal	PHOTO claiming no stabilization of Property between Boundaries
No. 4	use in Common 1st of Way = 20'	Aerial Photograph from Cosel Earth
No. 5	9 Pages of Photographs noting - unique driveway Layout and "bedrock" in rear yard.	REASON TO AVOID - PERMIT Diagram attached to Permit for Pool that she says are inaccurate - see red lines
No. 6		PACKET OF INFO FROM VIOLATION FILE - WITH PROTESTANTS NOTATIONS
No. 7		Photo of grading higher than her grading
No. 8		INSPECTION FINDINGS Md Dept. of the Environment
No. 9		
No. 10		
No. 11		
No. 12		



PROTESTANT' S

EXHIBIT NO. 1

pool equipment in front yard fence in access roadway



PROTESTANT' S

EXHIBIT NO.

2

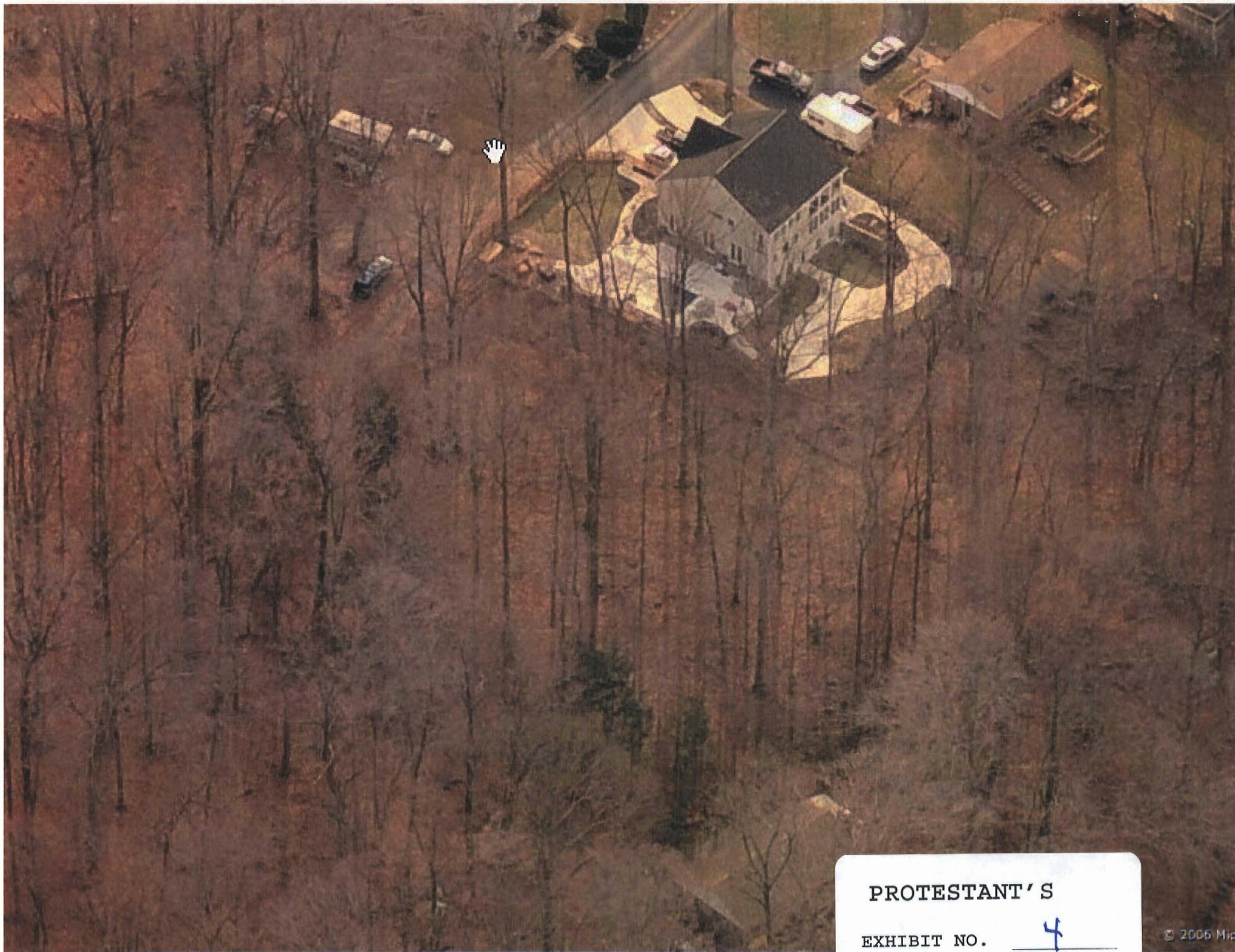
water entering my property



PROTESTANT' S

EXHIBIT NO. _____

3



PROTESTANT'S

EXHIBIT NO. 4

all of
Protestants
Excluded
& whose
is
Protestant

totally
inaccurate

Fence not code
KYLE PER CODE
PER BUREAU

SCALE: 1" = 20'

CLIMATE

not
accurate

house
actually
much

closer
to 20' ROW

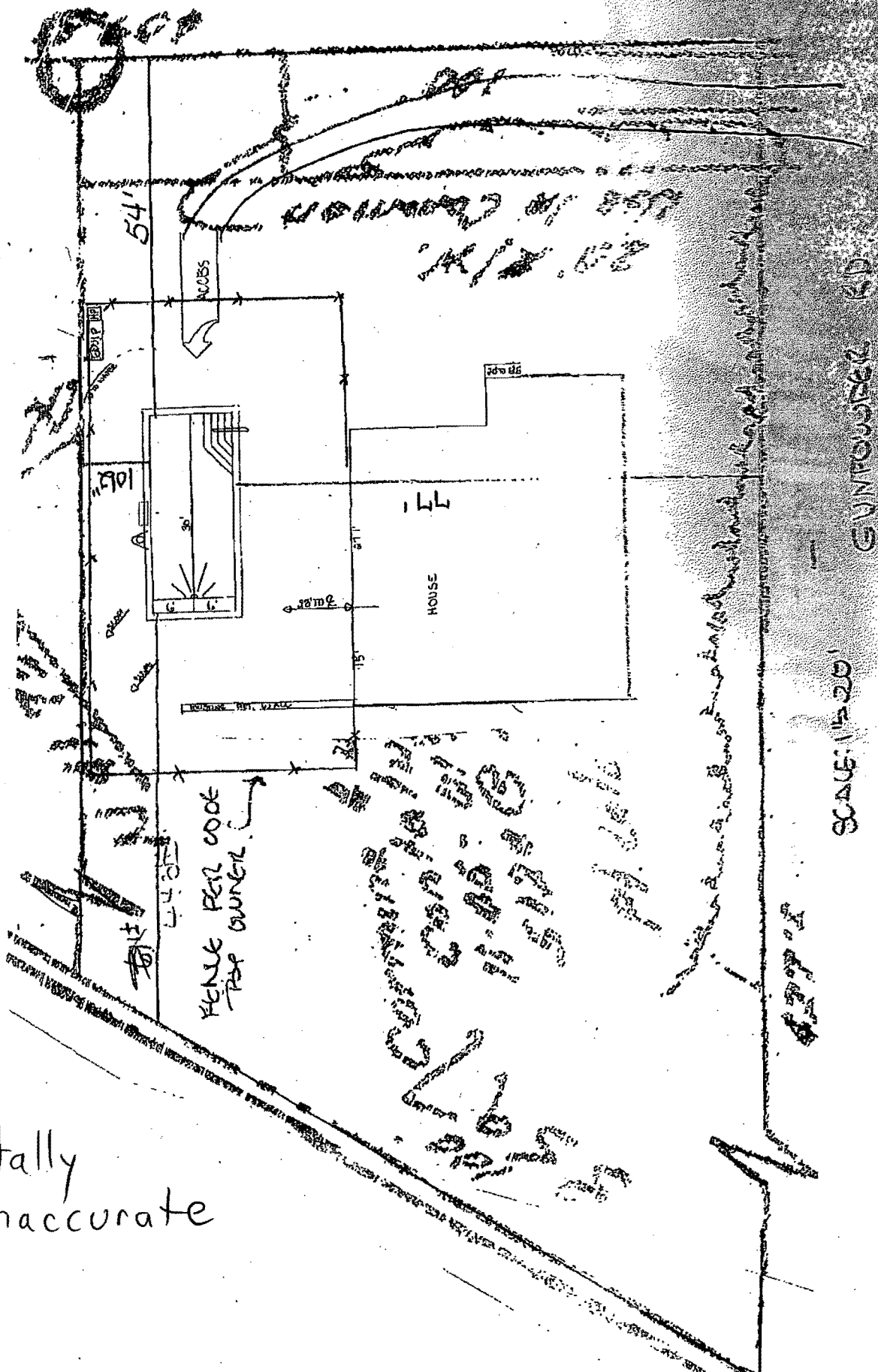
in on

actual
fence
in
road
es
20'

PROTESTANT'S

EXHIBIT NO.

5



SCALE: 1/4" = 20'

CONTOUR RD

totally
innaccurate



PROTESTANT' S

EXHIBIT NO. 7



MARYLAND DEPARTMENT OF THE ENVIRONMENT

1800 Washington Boulevard • Baltimore MD 21230

410-537-3000 • 1-800-633-6101

Robert L. Ehrlich, Jr.
Governor

Kendall P. Philbrick
Secretary

Michael S. Steele
Lt. Governor

Jonas A. Jacobson
Deputy Secretary

Facsimile transmittal

TO: Mary Oelke DATE: 10-27-06
FROM: Carol FAX: _____
RE: _____ PAGES: 5 including coversheet
CC: _____

☐ Urgent

☐ For Review

☐ Please Comment

☐ Please Reply

NOTES:

PROTESTANT'S

EXHIBIT NO. 8

**Maryland Department of the Environment
Central Division
Montgomery Park Business Center
1800 Washington Boulevard, Ste 425
Baltimore, MD 21230-1708**

Field Inspection Report by: Clay Troy

Permit / Approval Numbers:

Date/Time: 10/17/2006

Facility Address: 5597 Gun Powder Rd.
White Marsh, MD

Site Name: Gun Powder Rd., 5597 - possible
pool discharge

Site Status: Currently Inactive

Permit Type: Industrial NPDES/Discharge
Permit

Site Condition: Satisfactory/Compliance

Contact(s): Mary Oelke, complainant

Recommended Action: Additional investigation
required

Evidence Collected: VISUAL OBSERVATION

Inspection Reason: PAF

Follow-up for PAF#: 07-2247

INSPECTION FINDINGS

Inspection occurred in response to a complaint about a next door neighbor at 5597 Gun Powder Road, discharging pool water into a small stream, and onto the complainant's property at 5559 Gun Powder Rd. Inspection took place with Mary Oelke (complainant), and Tom Blair (MDE inspector). There is an in-ground pool, full of water at 5597 Gun Powder Rd. There is no pool water discharge at this time. Mrs. Oelke advised that she expects the pool owner to discharge the pool in the near future. She expressed her concern of chlorinated water entering a nearby stream, killing vegetation on her property, and also polluting her well. There is a stream at the toe of slope, at the north side of Mary Oelke's property. The stream is approximately 300' - 400' from 5597 Gun Powder Road; most of the area between the pool and stream is wooded and sloped. She said that the most recent pool discharge was approximately June, 2006. She showed me photos of a discharge from the property of 5597 Gun Powder Rd., however, it could not be verified by the photos that the discharge was of pool water. There is the end of an underdrain pipe (approx. 4" black corrugated PVC pipe) under the fence of 5597. Mrs. Oelke said that she believes that the pool water is discharged via this pipe. Mrs. Oelke said that she did not actually observe the June 2006 discharge enter the subject stream. I advised Mrs. Oelke that no Water Pollution violation exists today, and that MDE would have to observe chlorinated water entering waters of the state to document a violation. I advised her that it would be a civil matter if pool water damages vegetation on her property.

I advised her that I would arrange to meet with the owner of 5597 Gun Powder Road, to address MDE's position concerning chlorinated pool water discharges.

Permit / Approval Numbers:

Date/Time: 10/17/2006

Facility Address: 5597 Gun Powder Rd.
White Marsh, MD

Inspector: _____

Clay Troy

Received by: _____

**Maryland Department of the Environment
Central Division
Montgomery Park Business Center
1800 Washington Boulevard, Ste 425
Baltimore, MD 21230-1708**

Field Inspection Report by: Clay Troy

Permit / Approval Numbers:

Date/Time: 10/18/2006

Facility Address: 5597 Gun Powder Rd.
White Marsh, MD

Site Name: Gun Powder Rd., 5597 - possible
pool discharge

Site Status: Currently Inactive

Permit Type: Industrial NPDES/Discharge
Permit

Site Condition: Satisfactory/Compliance

Contact(s): Thomas Nuewiller, Prpty. owner

Recommended Action: Dead File

Evidence Collected: VISUAL OBSERVATION

Inspection Reason: PAF Follow-up

Follow-up for PAF#: 07-2247

INSPECTION FINDINGS

Inspection occurred as a follow up to initial inspection of 10/17/06. Today, I met with the home owner of 5597 Gun Powder Road, Thomas Neuwiller, at his pool. John Douglas (MDE inspector trainee), was also present. I explained to Mr. Neuwiller, the nature of the complaint (i.e., chlorinated pool water discharging from his pool into a stream, and onto the property of 5599 Gun Powder Rd. The pool is full of water. Mr. Neuwiller said that he did not discharge any pool water in June 2006. He said that the 4" corrugated black plastic pipe, terminating at the east edge of the his property under a wooden fence is connected to the roof drain of his house. By my observation, this appears to be the case. Mr. Neuwiller said that the pool will contain most of its water in the winter, to prevent damage to the interior of the pool. He said that he does not intend to pump out any pool water.

I explained to Mr. Neuwiller, the Maryland Department of the Environment's position concerning chlorinated pool water discharges. Mr. Neuwiller said that the pool would usually maintain a maximum chlorine level of 0.5 ppm (same as 0.5 mg/L). I advised him that Maryland's water quality chlorine standard is <0.1 ppm (<0.1 mg/L).

No water pollution law violation observed at this time. No problems observed at this time.

**** REMINDER: IT IS A VIOLATION OF MARYLAND WATER POLLUTION LAW, TITLE-9, ENVIRONMENT, TO DISCHARGE CHLORINATED WATER (0.1 mg/L or higher) TO ANY WATERS OF THE STATE (any stream, pond, river, storm drain, ditch, etc.). ANY VIOLATOR MAY BE SUBJECT TO PENALTY ACTION UNDER TITLE-9, ENVIRONMENT, FOR SUCH VIOLATIONS. POOL DISCHARGES COULD BE DIRECTED TO THE SANITARY SEWER SYSTEM, OR TO A WELL VEGETATED AREA THAT WOULD ALLOW THE WATER TO INFILTRATE INTO THE GROUND. DECHLORINATION OF CHLORINATED POOL WATER PRIOR TO DISCHARGING IS ACCEPTABLE; THE PERSON DISCHARGING THE WATER WOULD BE REQUIRED TO VERIFY/MEASURE THAT**

Permit / Approval Numbers:

Date/Time: 10/18/2006

Facility Address: 5597 Gun Powder Rd.
White Marsh, MD

CHLORINE LEVELS ARE <0.1 mg/L PRIOR TO A DISCHARGE TO WATERS OF THE
STATE.

Today, I left a copy of tis report in Thomas Neuwiller's mailbox.

Inspector: _____

Clay Troy

Received by: _____

Baltimore County

Department of Permits and Development Management
 County Office Building
 111 West Chesapeake Avenue
 Towson, Maryland 21204
 410-387-3900/Fax: 410-387-2824

Permit No. _____

Location

5597 Gunpowder Rd. White Marsh, Md. 21162

The residential swimming pool you propose is subject to the following requirements:

1. It must be emptied by methods that prevent nuisance and/or water damage to adjacent properties. 1.
2. If regarding the pool site area, adequate disposal of surface drainage must be provided and existing property line grades must be met. The correction of any problem resulting from grading is the responsibility of the property owner. No construction or grading is allowed in any county-owned easement. 2.
3. Placement cannot be within ten feet of any overhead wires (NEC 680-8). 3.
4. A fence or equivalent barrier, 48 inches high with self-closing and self-latching gates, must enclose the pool. Any openings in the barrier must be too small to allow the passage of a four inch ball. The fence must support a 200-pound lateral load at the top. New enclosure fences or new sections of enclosure fences also are subject to the following requirements: 4.

-Picket-Type Fences: Horizontal members less than 45 inches apart (top to top) must be located on the pool side of the fence. Openings between vertical members must be 1 1/4 inches or less.

-Chain Link or Lattice-Type Fences: Maximum opening must be 1 1/4 inch and 1 1/4 inches, respectively, unless provided with slats.

-Dwelling Wall (forms part of the barrier): Doors from the dwelling directly into the pool enclosure must have an audible alarm.

5. Certification of the above must be filed with the building application and be by the owner in fee. Any other signature will nullify the permit. 5.

Douglas A. Swan
 Permit Services Supervisor

I hereby certify that I am the owner in fee of the referenced property and that I have read the above requirements.

Sharon Hill
 Signature of Owner in Fee

4.13.05
 Date

(* pool in side and front yards!)

1. water emptied onto adjacent property
 (photo/witnesses proof)

2. proper grade raised, draining all out to
my property adjacent to this pool

3. fence 6 foot high in front yard encroaches →

DIVISION OF CODE INSPECTIONS AND ENFORCEMENT

VIOLATION CASE DOCUMENTS

VIOLATION CASE: 06-5432

5597 Gunpowder Road

Miscellaneous
(Not marked
as Exhibits)

Comments Rec'd

OP ✓

DPR ✓

FID ✓

Notice ✓

Posting ✓

07-246-A

ZONING CASE: 07-246-A
5597 GUNPOWDER ROAD

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

DATE: December 27, 2006

TO: W. Carl Richards, Jr.
Zoning Review Supervisor

FROM: Rick Wisnom, Hearing Officer
Division of Code Inspections & Enforcement

SUBJECT: Item No.: 246
Legal Owner/Petitioner: Thomas Neuwiller
Contract Purchaser:
Property Address: 5597 Gunpowder Road
Location Description: Southeast side of Philadelphia Road, 245 feet northwest centerline
Forge Road

VIOLATION INFORMATION: **Case No.: 06-5432**
Defendants: Thomas Neuwiller

Please be advised that the aforementioned petition is the subject of an active violation case.
When the petition is scheduled for a public hearing, please notify the following person(s) regarding the hearing date:

**Mary Oelke
5599 Gunpowder Road
Whitemarsh, MD 21161**

In addition, please find attached a duplicate copy of the following pertinent documents relative to the violation case, for review by the Zoning Commissioner's Office:

Complaint Intake Form
State Tax Assessment printout
Correction Notice/Code Violation Notice
Other: letter

After the public hearing is held, please send a copy of the Zoning Commissioner's order to Lisa Henson in Room 213 in order that the appropriate action may be taken relative to the violation case.

RSW/
c: Derek Propalis

CODE ENFORCEMENT REPORT RE-OPEN G. Kidd

DATE: 10/12/06 INTAKE BY: JHT CASE #: 06-5432 INSPEC: 11th

COMPLAINT
LOCATION:

5597 Gunpowder Road

ZIP CODE: 21162 DIST: 11th

443-465-3064-cell

COMPLAINANT
NAME:

MARY DELKE

PHONE #: (H) 410-256-7843 (W)

ADDRESS:

5599 Gunpowder Road

ZIP CODE: 21162

PROBLEM:

Pool PLACED IN SIDE YARD;
6ft. High FENCE ERECTED IN Front yard;
FENCE ERECTED without a permit; WATER RUN-
OFF From Pool

IS THIS A RENTAL UNIT?

YES NO

IF YES, IS THIS SECTION 8?

YES NO

OWNER/TENANT

INFORMATION:

thomas G. Newwiller

TAX ACCOUNT #:

11-05-019275

ZONING:

DR-2

INSPECTION:

Note: Pool Permit ISSUED 4/25/05
Permit No. B 590021

REINSPECTION:

REINSPECTION:

REINSPECTION:

CODE ENFORCEMENT REPORT ACTIVE CASE

DATE: 2-28-07 INTAKE BY: [Signature] CASE #: 07-1552 06-5432 11th
 INSPEC: _____

COMPLAINT LOCATION: 5597 Gunpowder Road
 ZIP CODE: 21161 DIST: 11th

COMPLAINANT NAME: Louis Miller PHONE #: (H) 301 788 8469 (W) 240 351 3600
 ADDRESS: 17416 Astoria LA Sil Spr Md ZIP CODE: 20905

PROBLEM: 11-15-06 Mr Newiller was advised to
lower Fence in front yard to 42" & As of 2-28-07
has ~~not~~ Not lower Fence in front yard or asked for Admin
 IS THIS A RENTAL UNIT? YES _____ NO X
 IF YES, IS THIS SECTION 8? YES _____ NO X
 OWNER/TENANT INFORMATION: Thomas G Ne Vari

TAX ACCOUNT #: _____ ZONING: _____

INSPECTION: ~~Assign~~ Assign Matter to:
DEEK Prognis!

REINSPECTION: _____

REINSPECTION: _____

REINSPECTION: _____

Case No: 06-5432Address: 05597 GUNPOWDER RD 21162Insp Area: 017 Dist: 000 Date Rcv: 7/19/2006 Grp: ENF Intk: HOPKINS, KInspec: KIDD, G. Inspec2: Date Inspec: 0/00/0000Close: 9/11/2006 Activity: Delete: P

Problem: LARGE FENCE AROUND POOL W/O PERMIT. PUT IN IN EASEMENT. POOL PUT IN W
/PERMIT BUT FENCE DONE BY OWNER

CL Name: OELKE MARYCL Address: 00000CL Home Phone: 410-256-7843 CL Work Phone: Tax Acct. 1105019275Owner: NEUWILLER, THOMAS

Enter=Continue F12=Cancel

For:

Mary OELKE

Director
Timothy
M. Kotraco111 WEST
CHESAPEAKE
AVE
TOWSON, MD 21204
410-887-3353

PROTESTANT'S

EXHIBIT NO. 6

More →

Case No: 06-5432

Notes: 06-5432 7/24/06 VISITED SITE. MET COMPLAINANT ON SITE. COMPLAINANT WAS CONCERNED ABOUT 20 FT WIDE EASEMENT & POOL FENCE ALONGSIDE ROAD. I TOLD COMPLAINANT BALTO COUNTY DOES NOT GET INVOLVED W/PROPERTY LINE DISPUTES & THAT ANY ACTION WOULD BE CIVIL. ~~NO CAUSE FOR ACTION~~. COMPLAINANT CALLED. SAID SHE WOULD HAVE HER LOT SURVEYED. I SAID WHEN WE HAVE THE PROPER INFO CASE WOULD BE RE-OPENED. CASE CLOSE. G.KIDD/NS***

9/11/06 LEFT MESSAGE TO OWNER ON MACHINE. UNABLE TO DETERMINE PROPERTY LINES. CASE CLOSED. G.KIDD/NS***

Enter=Continue F12=Cancel

No cause for action?
He stood there and looked at the
raised grade & 6 foot fence in front
yard and this fence left only 11 feet
8 inches access to my property (20 foot
deded access roadway not honored by
construction of fence!) Also he stood
there and saw the pool in the front
and side yard - not the back
yard!

Code Enforcement - Daily Worksheet

Inspector -

PROPALIS

Area Case # Location

Apt Zip Date Rec Reinsp Dt

011 07-1552 5597 GUNPOWDER RD

21161 3/02/2007

Tax Acct #: 1105019275

Owner: THOMAS G NEUWILLER

Complainant Name: (Last) MILLER (First) LOUIS

Addr: 17416 ASTORIA LN

Str # Dir Street Name

SILVER SPRING MD 20905

City ST Zip

Type Apt

Phone: (Home) 301/788-8469 (Work) 240/351-3602

Problem: 11/15/06 MR NEUWILLER WAS ADVISED TO LOWER FENCE IN FRONT YARD TO 42" & AS OF 2/28/07 HAS NOT LOWER FENCE IN FRONT YARD

06-5492

3/5/07 decision rendered in 07-246-A permitted fence in front yard to 48" because of pool. Appeal time frame goes to 3/12/07. Spoke with Mr. Newwiller. Wants to wait until he is sure no appeal is filed before proceeding with fence waiver. This makes sense to me. Tried to explain that to complainant, who insisted that violation be pursued (owner's phone is 410-808-6579)

P/U Date	3/12/07		Closed Date	Gary F to update	
Anonymous Complaint	Complainant Updated	Updated by voice message	Unable to update	Update not necessary	
Executive office Complaint	Yes	No	If Yes is Executive memo attached?	Yes	No

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 - 11 Account Number - 1105019275

Owner Information

Owner Name: NEUWILLER THOMAS G

Use: RESIDENTIAL
Principal Residence: NO

Mailing Address: 5597 GUNPOWDER RD
WHITE MARSH MD 21162-1142

Deed Reference: 1) /16413/ 623
2)

Location & Structure Information

Premises Address
5597 GUNPOWDER RD

Legal Description
PT LT 1A,6,7
600 NE RAWLEIGH RD
DARRYL GARDENS

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:	
73	3	317				L	1A	3	2	
									Plat Ref:	13/ 50

Special Tax Areas

Town
Ad Valorem
Tax Class

Primary Structure Built
2004

Enclosed Area
3,118 SF

Property Land Area
43,200.00 SF

County Use
04

Stories
2

Basement
YES

Type
STANDARD UNIT

Exterior
SIDING

Value Information

	Base Value	Value As Of 01/01/2006	Phase-in Assessments As Of 07/01/2006	As Of 07/01/2007
Land:	51,050	119,800		
Improvements:	208,220	301,650		
Total:	259,270	421,450	313,330	367,390
Preferential Land:	0	0	0	0

Transfer Information

Seller: CANTALUPO CARMINE	Date: 05/15/2002	Price: \$20,000
Type: UNIMPROVED ARMS-LENGTH	Deed1: /16413/ 623	Deed2:
Seller: EDWARDS HEBRON	Date: 09/04/1970	Price: \$2,500
Type: IMPROVED ARMS-LENGTH	Deed1: / 5124/ 241	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2006	07/01/2007
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Permits and Development Management
Code Inspections and Enforcement
County Office Building, Rm. 111
111 West Chesapeake Ave
Towson, Maryland 21204



Code Enforcement 410-887-3351
Building Inspector 410-887-3353
Electrical Inspector 410-887-3960
Plumbing Inspector 410-887-3620
Signs/Fences 410-887-3896

CODE INSPECTIONS AND ENFORCEMENT CORRECTION NOTICE

CASE NUMBER 06-5432	PROPERTY TAX ID 1105 019 275	DATE ISSUED 10/17/06
NAME(S): Thomas Nejmiller		
MAILING ADDRESS 5597 Gunpowder Rd.		
CITY White Marsh MD	STATE MD	ZIP CODE 21162
VIOLATION ADDRESS same		
CITY BALTIMORE	STATE MARYLAND	ZIP CODE

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

RESIDENTIAL ZONE CLASSIFICATION

- ☐ DR1 ☐ DR2 ☐ DR3.5 ☐ DR5.5 ☐ DR10.5 ☐ DR16
☐ RC2(1A01) ☐ RC4(1A03) ☐ RC20 & 50 (1A05) ☐ RC6(1A07)
☐ RC3(1A02) ☐ RC5(1A04) ☐ RCC (1A06) ☐ RC7 (1A08)
☐ OTHER: _____

NON-RESIDENTIAL CLASSIFICATION

- ☐ BL (230) ☐ BR (236) ☐ BM (233)
☐ MR (240) ☐ ML (253) ☐ MH (256)
☐ OTHER: _____

BALTIMORE COUNTY ZONING REGULATIONS (B.C.Z.R.)

AUTHORITY TO ENFORCE ZONING REGULATIONS: 32-3-102; 32-3-602; 32-3-603; 32-4-114

- | | |
|---|--|
| ☒ 101; 102.1: Definitions: general use | ☐ 415A: License/ remove untagged recreation vehicle |
| ☒ 1B01.1: DR Zones-use regulations | ☐ 415A: Improperly parked recreation vehicle |
| ☐ 428: License/ Remove all untagged/ inoperative or damaged/ disabled motor vehicle(s) | ☐ 415A: One recreational vehicle per property |
| ☐ 1B01.1D: Remove open dump/ junk yard | ☐ 410: Illegal Class II trucking facility |
| ☐ 431: Remove commercial vehicle(s) | ☐ 400: Illegal accessory structure placement |
| ☐ 101; 102.1: Remove contractors equip. storage yard | ☐ 1B02.1; 270; 421.1: Illegal kennel. Limit 3 dogs |
| ☐ 101; 102.1; ZCPM: Cease service garage activities | ☐ 102.5: Residential site line violation /obstruction |
| ☐ 402: Illegal conversion of dwelling | ☐ 408B: Illegal rooming/ boarding house |
| ☐ 101; 102.1; ZCPM: Illegal home occupation | ☐ BCC: 32-3-102; 500.9 BCZR; ZCPM:
Violation of commercial site plan and/or zoning order |

BALTIMORE COUNTY CODE (B.C.C)

- | | |
|--|--|
| ☐ 13-7-112: Cease all nuisance activity | ☒ 35-2-301: Obtain building/ fence/ sign permit |
| ☐ 13-7-115: County to abate nuisance & lien costs | ☐ 18-2-601: Remove all obstruction(s) at street, alley, road |
| ☐ 13-7-310: Remove all trash & debris from property | ☐ 13-7-310(2): Remove bird seed / other food for rats |
| ☐ 13-7-312: Remove accumulations of debris, materials, etc | ☐ 32-3-102: Violation of development plan/ site plan |
| ☐ 13-7-201(2): Cease stagnant pool water | ☐ IBC 115; BCBC 115: Remove/ Repair unsafe structure board and secure all openings to premise |
| ☐ 12-3-106: Remove animal feces daily | ☐ 13-7-401; 13-7-402; 13-7-403: Cut & remove all tall grass and weeds to three (3) inches in height |
| ☐ 35-5-208(a)(c): Seal exterior openings from rodents & pests | |
| ☐ 13-4-201(b)(d): Store garbage in containers w/tight lids | |

OWNER OCCUPIED HOUSING (B.C.C)

- | | |
|---|--|
| ☐ 35-5-302(a)(1): Unsanitary conditions. | ☐ 35-5-302(a)(2): Store all garbage in trash cans |
| ☐ 35-5-302(a)(3): Cease _____ infestation from prop. | ☐ 35-5-302(b)(1): Repair exterior structure |
| ☐ 35-5-302(b)(1)(2): Repair decorative trim, cornices, etc | ☐ 35-5-302(b)(1)(3): Repair exterior extensions |
| ☐ 35-5-302(b)(1)(4): Repair chimney & similar extensions | ☐ 35-5-302(b)(1)(5): Repair metal/wood surfaces |
| ☐ 35-5-302(b)(1)(6): Repair defective door(s) / window(s) | ☐ 35-5-302(b)(1)(7): Repair defective fence |

INVESTMENT PROPERTY (B.C.C)

- | | |
|--|---|
| ☐ 35-2-404(a)(1)(i): Remove hazardous or unsafe condition | ☐ 35-2-404(a)(1)(ii): Repair ext. walls / vertical members |
| ☐ 35-2-404(a)(1)(iii): Repair roof or horizontal members | ☐ 35-2-404(a)(1)(iv): Repair exterior chimney |
| ☐ 35-2-404(a)(1)(v): Repair ext. plaster or masonry | ☐ 35-2-404(a)(1)(vi): Waterproof walls/ roof / foundations |
| ☐ 35-2-404(a)(1)(vii): Repair exterior construction (see below) | ☐ 35-2-404(a)(1)(2): Remove trash, rubbish, & debris |
| ☐ 35-2-404(a)(1)(3): Repair /remove defective exterior sign(s) | ☐ 35-2-404(a)(4)(i)(ii): Board & secure. Material to match building color of structure |

OTHER VIOLATIONS OR REMARKS: also BCZR 400

- ① No accessory uses in side yard. ② No fence above 42" in front yards. Remove your pool and reduce fence height to 42" in front yard or file for multiple zoning variances. (Call 410 887- 3391 for info) You must have appt. to review your variance paperwork by date

☒ NOTICE POSTED AND MAILED

POTENTIAL FINE: ☒ \$200 ☐ \$500 ☐ \$1000 per day, per violation and to be placed as a lien upon your tax bill.

COMPLIANCE DATE: 11.18.06

INSPECTOR NAME: Propolis

PRINT NAME

(Rev 9/05)

AGENCY

Petition to Hearing Officer

Reasons to void pool permit at 5597 Gunpowder Rd

- * Pool permit application **is for a pool in the BACK yard,**
- * The pool was constructed in the side and front yards, NOT the back yard.
- * No other side or front yard pools exist in the entire area.
- * No variance was applied for before constructing the pool in the side and front yards.
- * Existing **property line grades are NOT met. The grade has been raised considerably.**
- * Required set-backs are NOT met.
- * There is no disposal of surface drainage provided. Because of the raised grade, neighboring property is subject to excessive runoff.
- * Disposal of pool water onto neighboring property has created a nuisance.(Several occurrences)
- * No stabilization. No retaining wall. No sediment control.
- * Pool could have just as easily been put in back yard.
(Next door neighbor with similar plot has a back yard pool.)

submitted by

Mary Jane Oelke

Mary J Oelke

2/5/07

Oelke Protestant's Exhibits

- 1 Aerial photo of Neuwiller & Oelke house
- 2 Depo Thomas Neuwiller p. 82 Line 12 Transcript
- 3 photo Neuwiller pool & fence (colored photo in file)
- 4 Photo of Neuwiller fence and view of pool
- 5 Photo of fence & grading
- 6 Photo of Neuwiller Pool toward Steigman property
- 7 DPDM 4/13/05 Requirements signed by Neuwiller
- 8 Photo front house w/ fence and boulder prior to moving fence backward
- 9 Photo Oelke Woods
- 10 Photo " "
- 11 Photo " "
- 12 Photo " "

Id
Only
NOT
Evidence

(13)

Schematic of Oelke / Nauwela
Property
(not found)

Protestant's Ex: 1



1 MARY J. OELKE, : IN THE
 2 Plaintiff :
 3 vs :
 4 THOMAS G. NEUWILLER, : CIRCUIT COURT
 5 Defendant :
 6
 7 THOMAS G. NEUWILLER, and: FOR
 8 LORI WATSON, :
 9 Plfs/Counter Defts.: BALTIMORE COUNTY
 10 vs :
 11 MARY J. OELKE, : Case No 03-C-07-2193 OC
 12 Deft/Counter Plf. :
 13
 14
 15 The deposition of THOMAS G. NEUWILLER,
 16 taken on Tuesday, October 23, 2007 beginning at
 17 12:48 p.m., was held at The Law Offices of Gerald
 18 W. Soukup, 8330 Belair Road, Baltimore, Maryland
 19 21236 before Jane Hienz, a Notary Public.
 20 Reported by:
 21 Jane Hienz

Jane Hienz Reporting, Inc. 410-833-4240

1 A P P E A R A N C E S
 2 On behalf of the Plaintiff, Mary J. Oelke,
 3 GERALD W. SOUKUP, ESQUIRE
 4 8330 Belair Road
 5 Baltimore, Maryland 21236
 6 410-265-0901 (Voice)
 7
 8 On behalf of the Defendants/Counter
 9 Plaintiffs, Thomas Neuwiller and Lori Watson,
 10 THOMAS F. MCDONALD, ESQUIRE
 11 Royston, Mueller, McLean & Reid LLP
 12 102 West Pennsylvania Avenue
 13 Suite 600
 14 Towson, Maryland 21204
 15 410-823-1800 (Voice)
 16
 17 Also Present: Lori Watson and
 18 Mary Oelke
 19
 20
 21

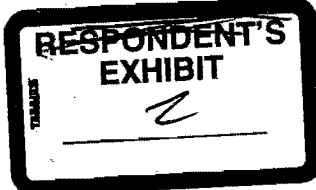
Jane Hienz Reporting, Inc. 410-833-4240

1 THOMAS G. NEUWILLER,
 2 a witness called for examination, was sworn and
 3 testified as follows:
 4 THE REPORTER: State your full name and
 5 address and spell your last name for the record.
 6 THE WITNESS: Thomas Gary Neuwiller,
 7 N-E-U-W-I-L-L-E-R. 5597 Gun Powder Road, White
 8 Marsh, Maryland 21162.
 9 EXAMINATION BY MR. SOUKUP:
 10 Q Mr. Neuwiller, I am Gerald Soukup.
 11 Thank you for coming in a little earlier for the
 12 deposition today. Let me ask, have you ever been
 13 deposed before?
 14 A No.
 15 Q Just a couple of rules. I am going to
 16 ask questions. If you don't understand the
 17 question or you don't hear the question, Ms. Hienz
 18 can read it back for you or I will rephrase it as
 19 the case may be. If you do under take to answer,
 20 I will assume that you understood and heard the
 21 question.

Jane Hienz Reporting, Inc. 410-833-4240

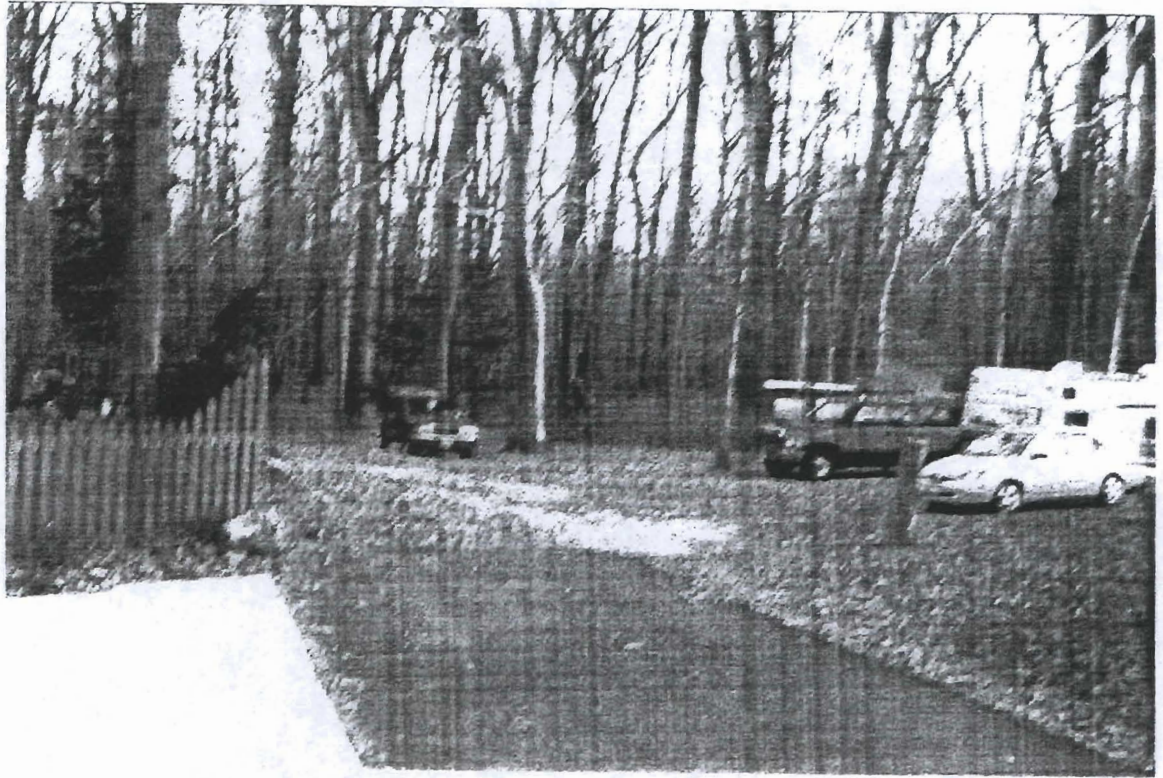
1 A Okay.
 2 Q With regard to speaking, you are going
 3 to guess a lot of answers before I finish the
 4 question. Hold off giving your response until I
 5 get the question out so Ms. Hienz can get all the
 6 testimony down. Let me ask you your age.
 7 A Forty-one.
 8 Q Date of birth?
 9 A August 16, 1966.
 10 Q What is your educational background?
 11 A High school and trade.
 12 Q Trade. Have you taken any formal
 13 education as far as tradesman type work?
 14 A I hold, I believe it is, twelve
 15 certificates with licenses with the United States
 16 Coast Guard.
 17 Q What type of trade are you involved in?
 18 A I am in the construction business right
 19 now.
 20 Q Do you own your own company?
 21 A No, I don't.

Jane Hienz Reporting, Inc. 410-833-4240



Protestants.

From Driveway of 5597 looking into backyard - parking area of 5601



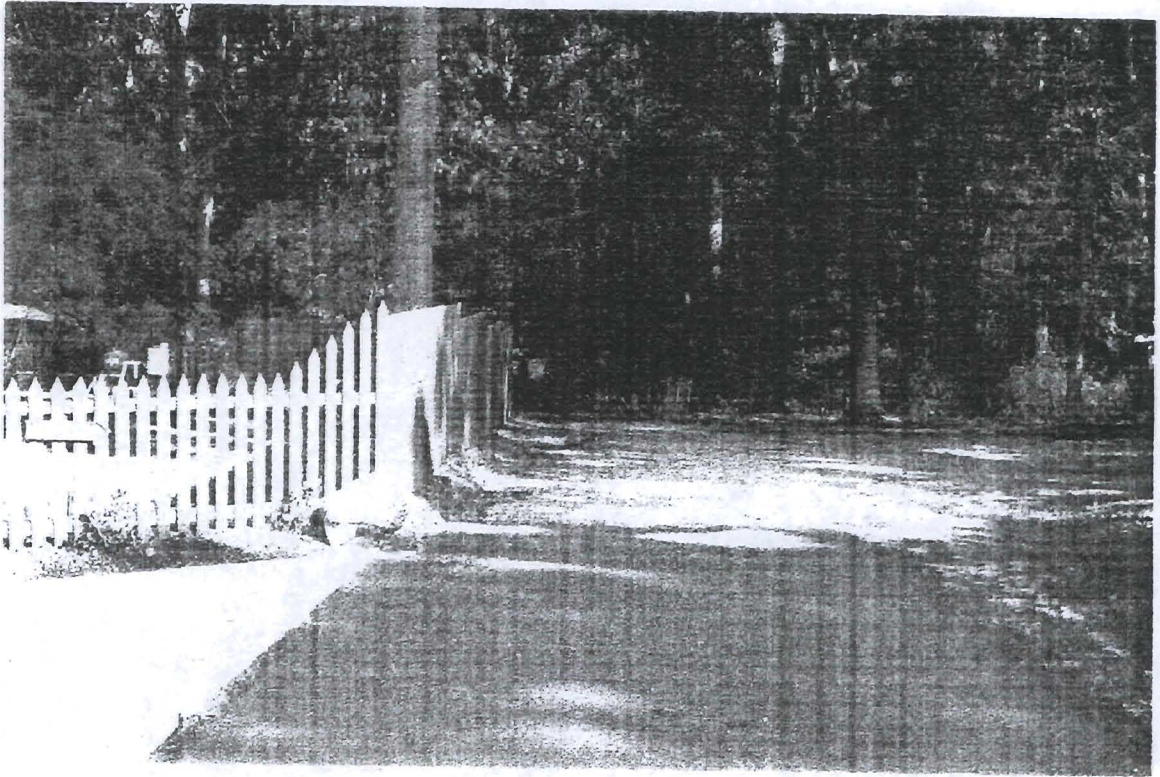
A

Looking at side yard of 5597, and looking into backyard of 5399



RESPONDENT'S
EXHIBIT
3
Protestant

From Prop. line of 5597 looking towards entrance of 5599



From Pool at 5597 looking toward backyard of 5601



RESPONDENT'S
EXHIBIT

6
Protestants



RESPONDENT'S
EXHIBIT
8
Protestant



Protestant's

TAMM	RESPONDENT'S
	EXHIBIT
	9



Protestant's

TAMM	RESPONDENT'S
	EXHIBIT
	<u>10</u>



Protestant's

TABLES	RESPONDENT'S
	EXHIBIT
	11



Protestant's

TAKES	RESPONDENT'S
	EXHIBIT
	12

NEUWILLER
EXHIBITS

TRANSCRIPT

20070246

supplemental

"A"

5

07-246-A

Neuwiller
5597 Hungowder Rd

Exhibits

Neuwiller Exhibits

① Findings Fact Conclusions Low.
ZC 2/12/07.

② Blue Haven Pools 4/29/05

③ Plat Accompany Petition for Zoning.

④ 1995 Aerial Photo B. County.

⑤ Internet aerial photo.

⑥ Photo of Neuwiller house.

Not
evidence [⑦ Deed 2 pages
- Id Only]

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
SE/S Philadelphia Road, 245' NW	*	ZONING COMMISSIONER
of c/line Forge Road	*	
(5597 Gunpowder Road)	*	OF
11 th Election District	*	
5 th Council District	*	BALTIMORE COUNTY
Thomas G. Neuwiller	*	
Petitioner	*	Case No. 07-246-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owner of the subject property, Thomas G. Neuwiller. The Petitioner seeks relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an existing single-family dwelling with open projection (deck, pool and pool equipment) to have a side yard setback of 4 feet and a sum of side yards of 24 feet in lieu of the required 11.25 feet and 30 feet respectively. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the request were Thomas G. Neuwiller, property owner, and his adjoining neighbors, Sheree Heard and Edgar Steigleman. Appearing in opposition to the requests were Mary Jane Oelke and her fiancé, Lou Miller. It should be noted that Ms. Oelke shares a use-in-common right-of-way with the Petitioner in order to access and egress her property and home located to the east of Petitioner as depicted on an aerial photograph submitted as Protestants' Exhibit 4.

There was a great deal of confusion on behalf of the Protestants concerning the nature and scope of the hearing. The confusion, however, was brought about when a "permit process

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
DEPARTMENT OF PERMITS & DEVELOPMENT MANAGEMENT
TOWSON, MARYLAND 21204

DATE: 4/25/05
DEA: MR
HISTORIC DISTRICT/BLDG.

PERMIT #: 0590021
RECEIPT #: 151811
CONTROL #: 15
XREF #:

PROPERTY ADDRESS: 5397 Gunpowder Rd.
SUITE/SPACE/FLOOR: YES NO
SUBDIV: Darcy Gardens DO NOT KNOW
TAX ACCOUNT #: 1105019275 DISTRICT/PRECINCT
OWNER'S INFORMATION (LAST, FIRST) 11 4
NAME: Tom Neuwiller
ADDR: 5397 Gunpowder Rd.
White Marsh, Md. 21162

FEE: 25.00
PAID: 25.00
PAID BY: app
INSPECTOR: app
I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS.

APPLICANT INFORMATION

NAME:
COMPANY: Blue Hawk Pools
STREET: 1144 Radcliff Dr.
CITY, ST, ZIP: 21075-0511
PHONE #: 858-257-0007 MHIC # 30083
APPLICANT SIGNATURE: Wagoner DRCH
PLANS: CONST 1 PLOT 2 PLAT 0 DATA 0 RL 1 PL 2
TENANT: owner
CONTR: Blue Hawk Pools
ENGR:
SELLER:

DOES THIS BLDG.
HAVE SPRINKLERS
YES NO

TYPE OF IMPROVEMENT

1. ☒ NEW BLDG CONST
2. ☐ ADDITION
3. ☐ ALTERATION
4. ☐ REPAIR
5. ☐ WRECKING
6. ☐ MOVING
7. ☐ OTHER

DESCRIBE PROPOSED WORK:

360 = 12' x 30' - Depth 3' 6" - Pool
Letter Attached. Certificate to be filed by owner.
Fence by owner.

TYPE OF USE

RESIDENTIAL

01. ☐ ONE FAMILY
02. ☐ TWO FAMILY
03. ☐ THREE AND FOUR FAMILY
04. ☐ FIVE OR MORE FAMILY (ENTER NO UNITS)
05. ☒ SWIMMING POOL
06. ☐ GARAGE
07. ☐ OTHER

NON-RESIDENTIAL

08. ☐ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09. ☐ CHURCH, OTHER RELIGIOUS BUILDING
10. ☐ FENCE (LENGTH HEIGHT)
11. ☐ INDUSTRIAL, STORAGE BUILDING
12. ☐ PARKING GARAGE
13. ☐ SERVICE STATION, REPAIR GARAGE
14. ☐ HOSPITAL, INSTITUTIONAL, NURSING HOME
15. ☐ OFFICE, BANK, PROFESSIONAL
16. ☐ PUBLIC UTILITY
17. ☐ SCHOOL, COLLEGE, OTHER EDUCATIONAL
18. ☐ SIGN
19. ☐ STORE MERCANTILE RESTAURANT
20. ☐ SWIMMING POOL SPECIFY TYPE
21. ☐ TANK, TOWER
22. ☐ TRANSIENT HOTEL, MOTEL (NO. UNITS)
23. ☐ OTHER

TYPE FOUNDATION

1. ☐ SLAB
2. ☐ BLOCK
3. ☐ CONCRETE

BASEMENT

1. ☐ FULL
2. ☐ PARTIAL
3. ☐ NONE

TYPE OF CONSTRUCTION

1. ☐ MASONRY
2. ☐ WOOD FRAME
3. ☐ STRUCTURE STEEL
4. ☐ REINF. CONCRETE

TYPE OF HEATING FUEL

1. ☐ GAS
2. ☐ OIL
3. ☐ ELECTRICITY
4. ☐ COAL

TYPE OF SEWAGE DISPOSAL

1. ☒ PUBLIC SEWER
2. ☐ PRIVATE SYSTEM
3. ☐ SEPTIC
4. ☐ PRIVY

CENTRAL AIR: 1. ☐ 2. ☐

ESTIMATED COST: \$33,500

OF MATERIALS AND LABOR

1. ☒ PUBLIC SYSTEM
2. ☐ PRIVATE SYSTEM

PROPOSED USE:

EXISTING USE:

OWNERSHIP

1. ☒ PRIVATELY OWNED
2. ☐ PUBLICLY OWNED
3. ☐ SALE
4. ☐ RENTAL

RESIDENTIAL CATEGORY:

1. ☒ DETACHED
2. ☐ SEMI-DET.
3. ☐ GROUP
4. ☐ TOWNHSE
5. ☐ MIDRISE
6. ☐ HIGHRISE

POWDER ROOMS

GARBAGE DISPOSAL

1. ☐ 2. ☐

BATHROOMS

KITCHENS

CLASS

LIBER

FOLIO

50

Blk-2

Plat 2

100X400

APPROVAL SIGNATURES

DATE

BLD INSP:

BLD PLAN:

FIRE:

SEDI CTL:

ZONING: RESIDENTIAL

ENVIRNT:

PERMITS: 1/25/05

MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND -- NO PERMIT FEES REFUNDED

PLAT TO ACCOMPANY PETITION FOR ZONING VARIANCE

Neuwiller #3

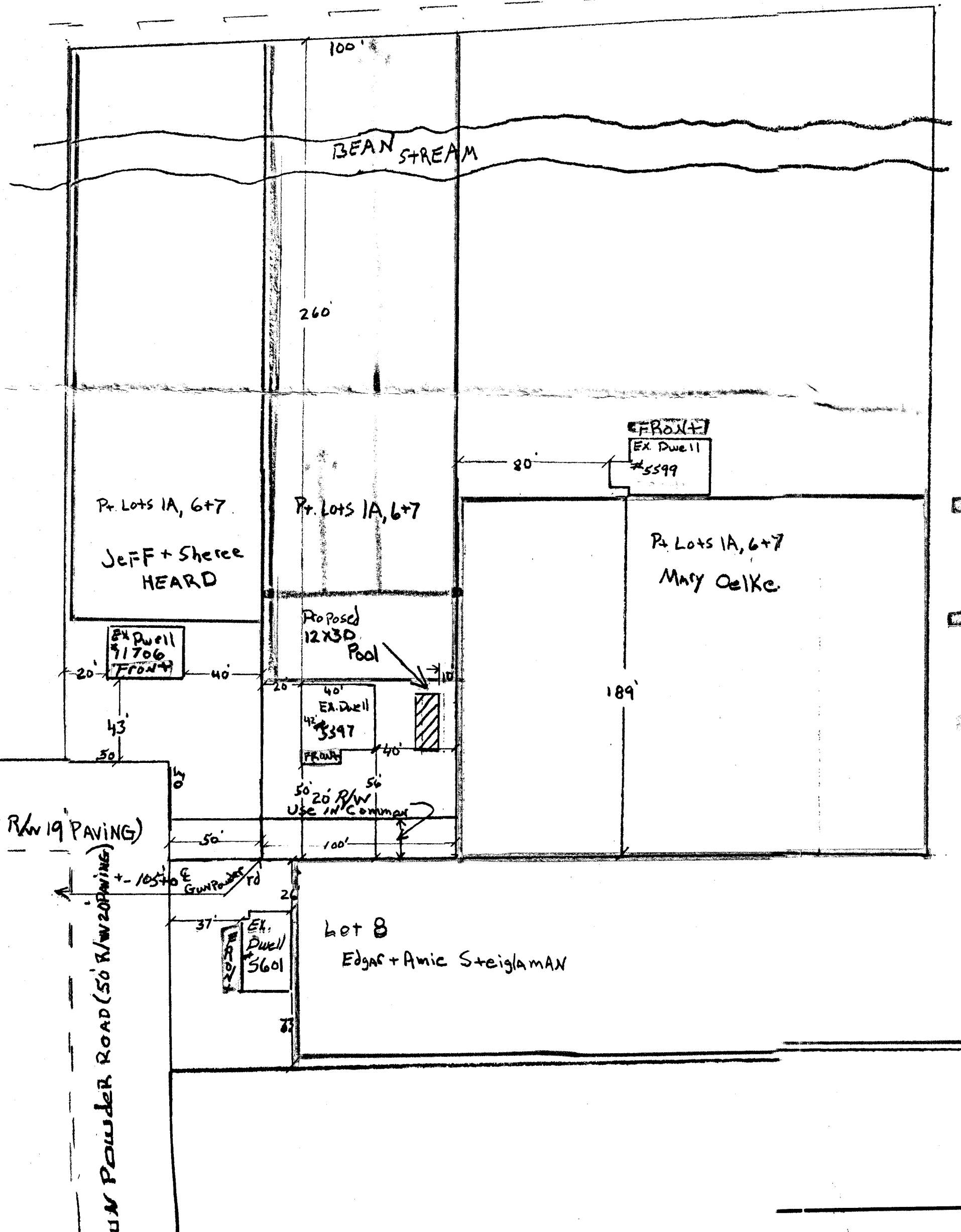
PROPERTY ADDRESS 5597 GUNPOWDER ROAD

SUBDIVISION NAME DARRYL GARDENS

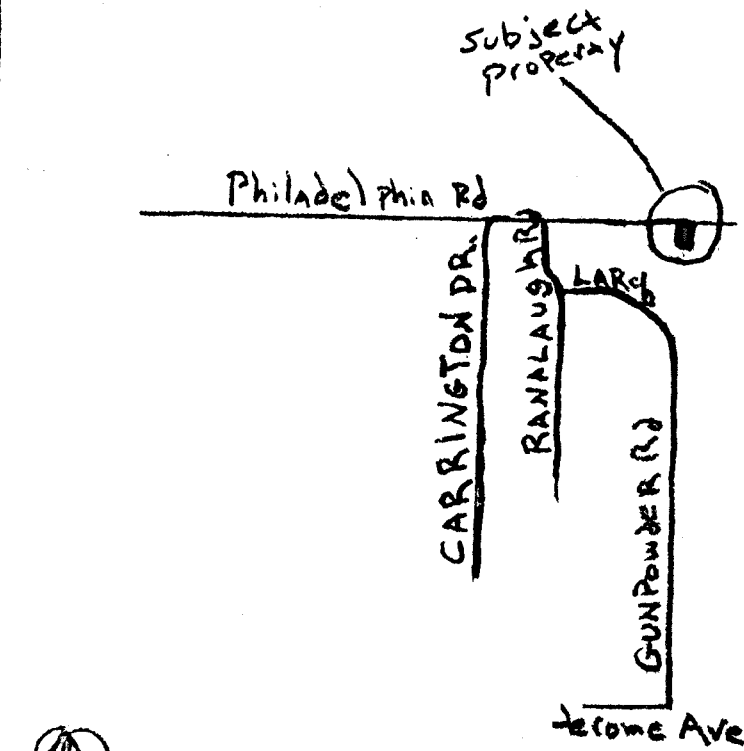
PLAT BOOK # 13 FOLIO # 50 LOT # Plots 1A, 6+7 SECTION # 2

OWNER Thomas Neuwiller

Philadelphia Road (66' RW 23' Paving)



- = Pink highlighter indicates dwelling frontages/entry doors
- = orange highlighter indicates dwellings back yards
- = green highlighter indicates Donated Forest Buffer



VICINITY MAP
SCALE 1" = 1000'

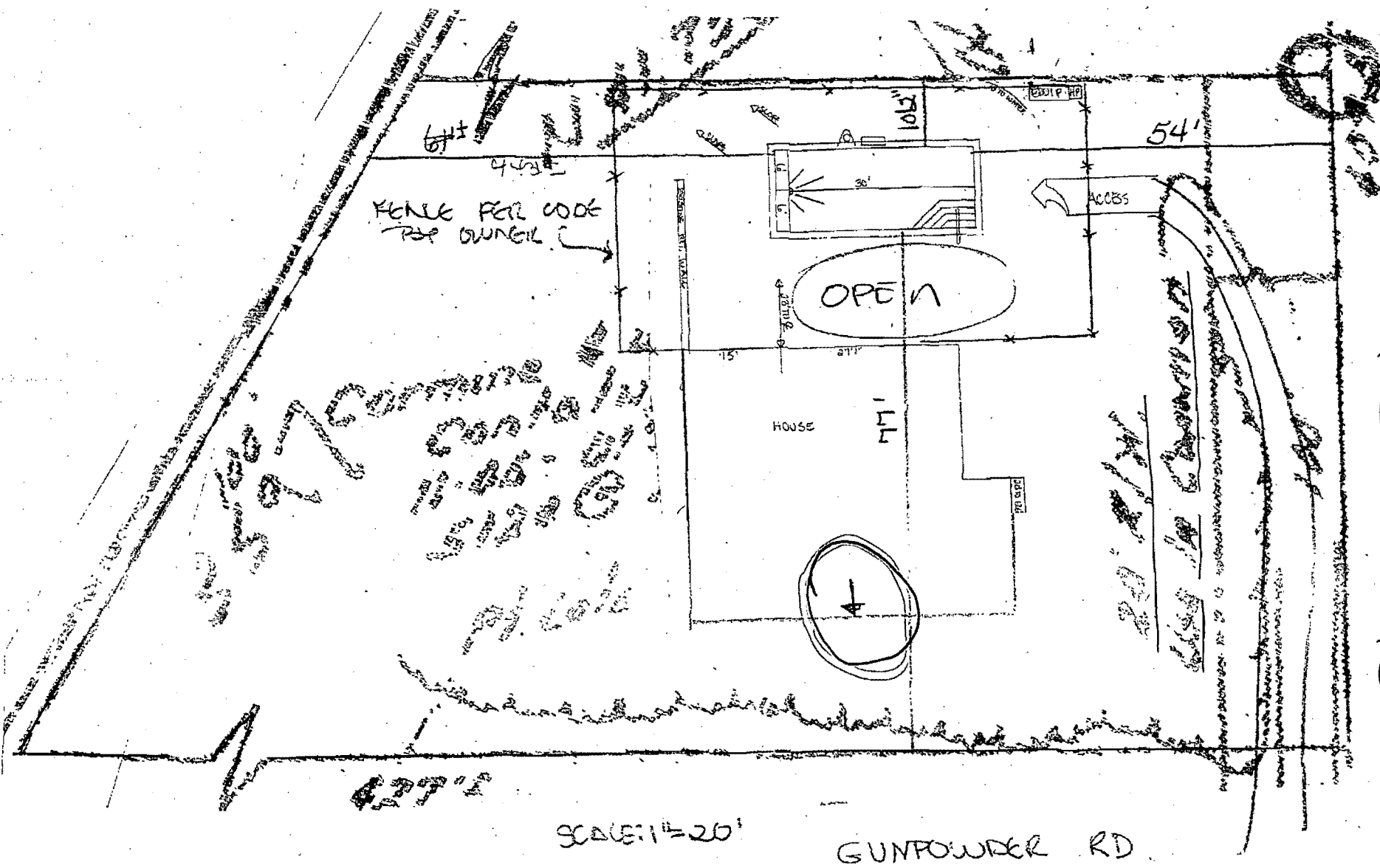
LOCATION INFORMATION
ELECTION DISTRICT 11
COUNCILMANIC DISTRICT 4
1" = 200' SCALE MAP #
ZONING DR2
LOT SIZE .99 43,200
ACREAGE SQUARE FEET

	PUBLIC	PRIVATE
SEWAR	☒	☐
WATER	☒	☐
CHEESAPEAKE BAY CRITICAL AREA	YES ☐	NO ☒
100 YEAR FLOODPLAIN	☐	☒
HISTORIC PROPERTY/BUILDING	☐	☒
PRIOR ZONING HEARING		

ZONING OFFICE USE ONLY
REVIEWED BY ITEM# CASE#

SCALE: 1" = 50' APPROVED BY: DATE:

Prepared By - Thomas Neuwiller



Plot for Pool



Newwiller Ex: 5

11706 Larch
Herd Home

Gunpowder
River

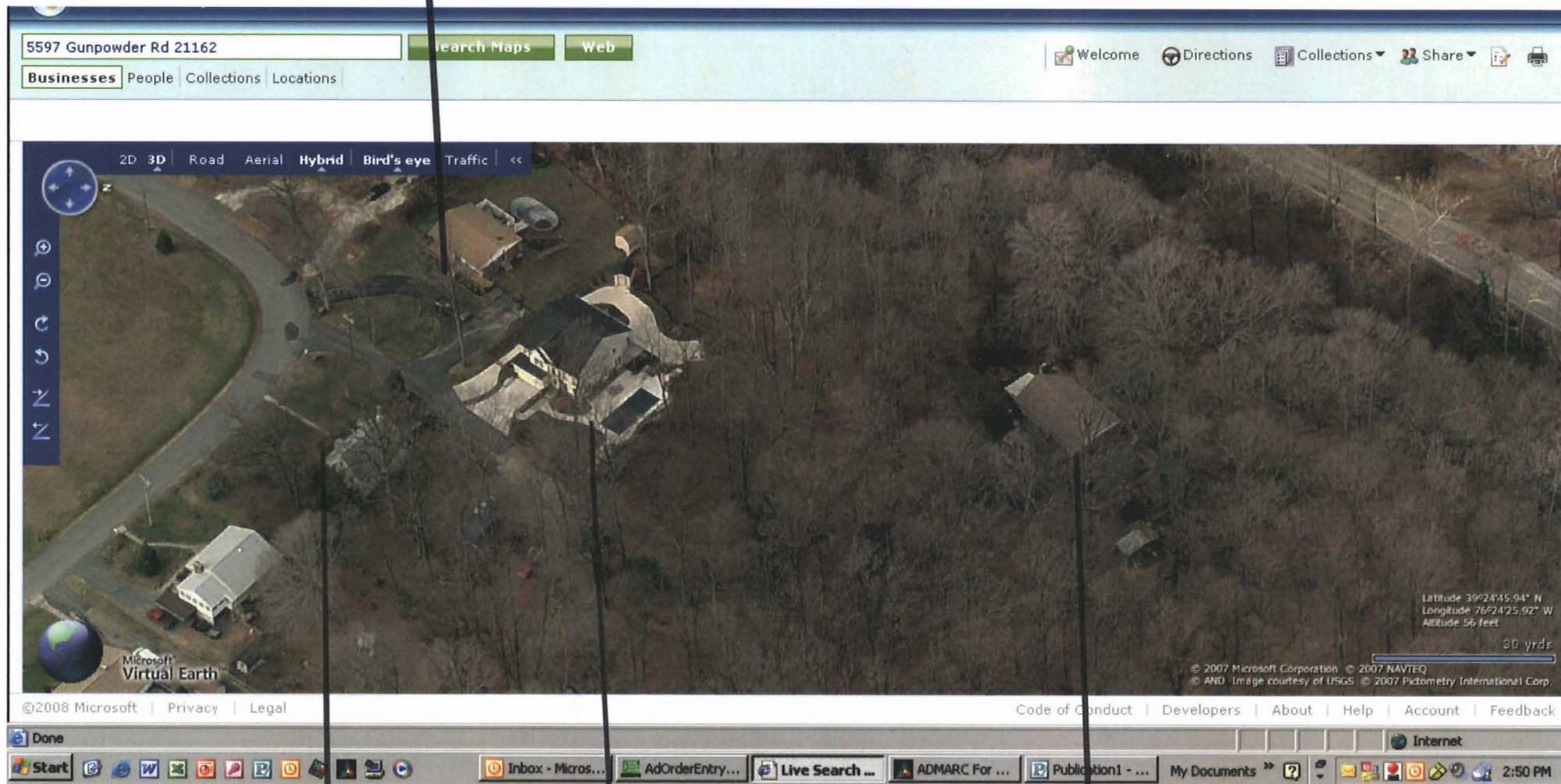


5601
Steigleman
Home

5597
Newwiller
Home
Pool

5599
Mary Oelke
Protestant's home

Heard's



Streigleman's

Newwiller's

Ms. Oelke's

Neuwiller Ex: 6

Full compliance of Zoning Commissioner's Findings. A site visit would be better than a photo.

Vehicle in clear view of private drive in both directions



New fence location and height reduced to 48"

Previous grassy area re landscaped and mulched to reduce water run-off

New stepping stones for icy and snowy conditions

Down spout discharge relocated

ID Only : Newwiller Ex: 7

1989

DEED - FEE SIMPLE - INDIVIDUAL GRANTOR - LONG FORM

LIBER 8290 PAGE 441

5599

This Deed, MADE THIS 29th day of September

in the year one thousand nine hundred and eighty-nine

by and between

John R. Younkin and Lois M. Younkin, his wife,

of Baltimore County, Maryland

of the first part, and

Kimbel E. Oelke and Mary J. Oelke, his wife,

of the second part.

WITNESSETH, That in consideration of the sum of \$130,000.00

C R C/F 14.00

C T TX 450.00

C R OCS 450.00

RECEIVED
SM CLERK 1314.00

the said John R. Younkin and Lois M. Younkin, his wife,

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Baltimore County
10/05/89

10-5-89
by Date

do es grant and convey to the said Kimbel E. Oelke and Mary J. Oelke, his wife,
as tenants by the entirety their assigns, the survivor of them and his or her

personal representatives/successors and assigns

in fee simple, all

that lot of ground situate in Baltimore County, Maryland

and described as follows, that is to say:

BEGINNING FOR THE SAME at a point in the easterly line of Philadelphia Road 66 feet wide at the northwest corner of Lot 1-A in Block L of Darryl Gardens NO. 2, according to the Plat thereof recorded in Book 13 of Plats, page 150 among the Baltimore County Land Records, thence with and binding on the northeasterly line of said Lot 1-A and of Lot 7 in Block L of said subdivision south 56 degrees 13 minutes east 443.96 feet to the northwesterly corner of Lot 8 in said Block L, thence with and binding on the westerly line of said Lot 8 south 35 degrees 54 minutes west 245.73 feet, more or less, to the land of J.A. Keller, thence by a new line of division with and binding on the line of Keller north 54 degrees 05 minutes 30 seconds west 432 feet, more or less, to the easterly line of said Philadelphia Road, thence with and binding on the easterly line of said Philadelphia Road north 33 degrees 41 minutes 30 seconds east 245.73 feet to the place of beginning. Being and comprising a part of Lots 1-A, 6 and 7 in Block L as shown on Plat of Darryl Gardens No. 2, recorded as aforesaid. The improvements thereon being known as 592 Gun Powder Road.

TOGETHER WITH the right to the within named grantees, their heirs and assigns, to the use in common, with others entitled thereto, of a 20-foot road (said road having been heretofore reserved to the within named grantor) binding along a part of the northwest line of Lot No. 8 in Block L as shown on said plat and extending from the southeastern part of the property hereinabove described to Gunpowder Road and Larch Road, for the purpose of free entry, ingress and regress over said 20-foot road to and from Gunpowder Road and Larch Road and the roads connecting therewith.

BEING the same lot of ground which by Deed dated January 24, 1956 and recorded among the Land Records of Baltimore County in Liber GLB No. 2866 folio 19 was granted and conveyed by Walter W. Powers, widower, unto John R. Younkin and Lois M. Younkin.

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE

8 0083****208000** 10581 SIGNATURE DATE 10-5-89

CP add wot of choice cont
0012125 235
Id only Newwiler Ex 1997
7
THIS DEED, MADE THIS ^{7th} day of March, in the year one thousand nine hundred and ninety-seven, by and between KIMBEL E. OELKE and MARY G. OELKE, his wife, parties of the first part, and MARY J. OELKE, party of the second part.

NOW, THEREFORE, This Deed witnesseth: That in consideration of the premises and the sum of Zero Dollars (\$0.00), the said parties of the first part do grant and convey unto the said party of the second part, her personal representatives and assigns, in fee simple, all that lot of ground situate in Baltimore County, Maryland, and described as follows, that is to say:

BEGINNING FOR THE SAME at a point in the easterly line of Philadelphia Road 66 feet wide at the northwest corner of Lot 1-A in Block L of Darryl Gardens No. 2, according to the Plat thereof recorded in Book 13 of Plats, page 150 among the Baltimore County Land Records, thence with and binding on the northeasterly line of said Lot 1-A and of Lot 7 in Block L of said subdivision south 56 degrees 13 minutes east 443.96 feet to the northwesterly corner of Lot 8 in said Block L, thence with and binding on the westerly line of said Lot 8 south 35 degrees 54 minutes west 245.73 feet, more or less, to the land of J.A. Keller, thence by a new line of division with and binding on the line of Keller north 54 degrees 05 minutes 30 seconds west 432 feet, more or less, to the easterly line of said Philadelphia Road, thence with and binding on the easterly line of said Philadelphia Road north 33 degrees 41 minutes 30 seconds east 245.73 feet to the place of beginning. Being and comprising a part of Lots 1-A and 6 and all of Lot 7 in Block L as shown on Plat of Darryl Gardens No. 2, recorded as aforesaid. The improvements thereon being known as 3599 Gunpowder Road, previously known as 592 Gun Powder Road.

TOGETHER WITH the right to the within named grantees, their heirs and assigns, to the use in common, with others entitled thereto, of a 20-foot road (said road having been heretofore reserved to the within named grantor) binding along a part of the northwest line of Lot No. 8 in Block L as shown on said plat and extending from the southeastern part of the property hereinabove described to Gunpowder Road and Larch Road, for the purpose of free entry, ingress and regress over said 20-foot road to and from Gunpowder Road and Larch Road and the roads connecting therewith.

BEING the same lot of ground by Deed dated September 29, 1989 and recorded among the Land Records of Baltimore County in Liber No. 8290, folio 441, was granted and conveyed by John R. Younkin and Lois M. Younkin, his wife, unto Kimbel E. Oelke and Mary J. Oelke, his wife. The said Mary G. Oelke was inadvertently referred to as Mary J. Oelke.

TOGETHER with the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto

1A AND 6 AND ALL OF Lot 7

IN THE MATTER OF:

THOMAS G. NEUWILLER-

Legal Owner

5597 Gunpowder Road

11th Election District

5th Councilmanic District

*

*

*

*

*

*

*

BEFORE THE

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

Case No. 07-246-A

April 29, 2008

The above-entitled matter came on for hearing

before the County Board of Appeals of Baltimore County,

at the Jefferson Building, 2nd Floor, 105 W. Chesapeake

Avenue, Towson, Maryland 21204, at 10 a.m., April 29,

2008.

Reported by:

C.E. Peatt

April 2, 2008

APR 2 4 2008

Administrator Board of Appeals
Attn: Kathleen C. Bianco
105 W. Chesapeake Suite 203
Towson, MD 21204

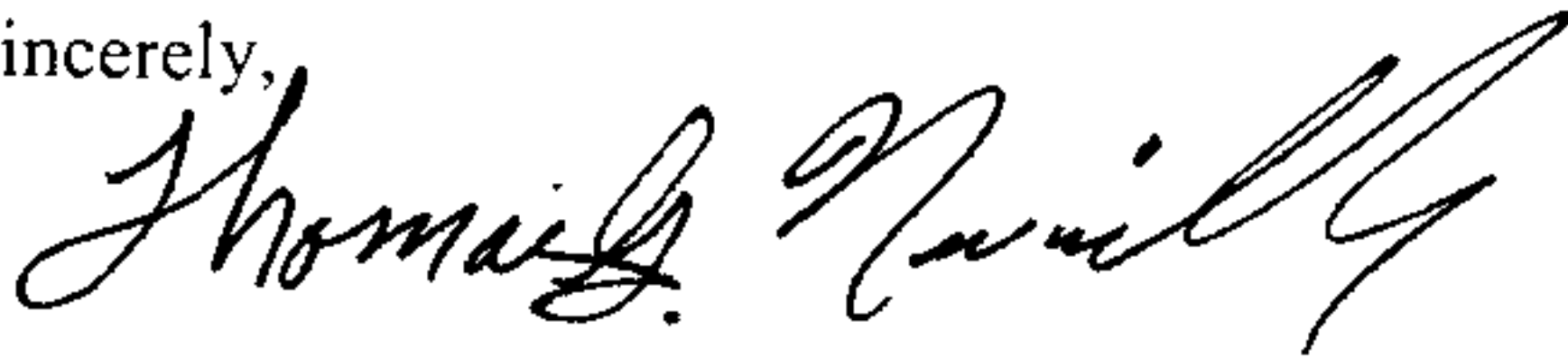
Reference: Written Request for Site Visit - Case #07-246-A

Dear Mrs. Bianco,

This is my formal request for a site visit at 5597 Gunpowder Road in reference to Case #07-246-A. I feel a visit is necessary in order to get the full scope of the property layout. The protestant's home is more than 200 feet from my property (the petitioner & legal owner) and that is why I feel it's important to have a site visit from your office.

Thank you in advance for considering my request. I can be reached at 410-808-6579 w/ any questions.

Sincerely,



Thomas G. Nuewiller

COVAHEY, BOOZER, DEVAN & DORE, P. A.

ATTORNEYS AT LAW
614 BOSLEY AVENUE
TOWSON, MARYLAND 21204

EDWARD C. COVAHEY, JR.
F. VERNON BOOZER *
MARK S. DEVAN
THOMAS P. DORE
BRUCE EDWARD COVAHEY
JENNIFER MATTHEWS HERRING
FRANK V. BOOZER, JR.

410-828-9441

FAX 410-823-7530

8005 01 1111
ANNEX OFFICE
SUITE 302
606 BALTIMORE AVE.
TOWSON, MD 21204
410-828-5525
FAX 410-296-2131

January 9, 2008

*ALSO ADMITTED TO D.C. BAR

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

Attn: Kathleen C. Bianco, Administrator

RE: In the Matter of Thomas AG Neuwiller
Case No. 07-246-A

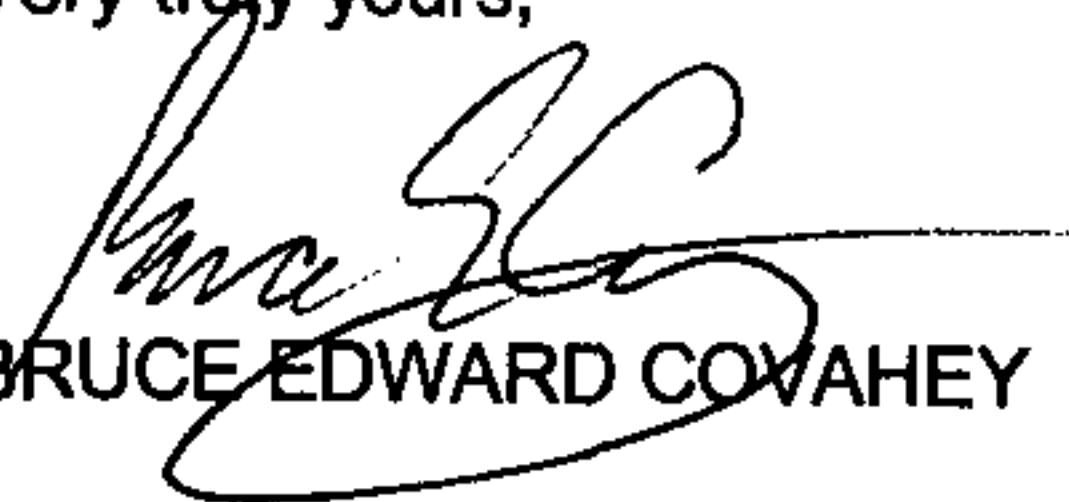
Dear Ms. Bianco:

As you are aware, I represent Mary Jane Oelke, the Appellant/Protestant, in the above referenced matter. In that regard, I am writing to request a postponement of the Evidentiary Hearing scheduled for March 6, 2008 at 10:00am.

With regard to the scheduled hearing date, please be advised that I am counsel of record for the Appellant in the matter of *Linda Ann Senez vs. Ann Collins, et vir.*, which is pending in the Court of Special Appeals (#00111, Sept. Term, 2007). I have enclosed a Notice from the Court of Special Appeals indicating that oral argument in the aforementioned matter has been scheduled for a series of dates which includes March 6, 2008. The specific date of the argument has not been selected, meaning I must keep March 6, 2008 open for oral argument. Accordingly, I require a postponement of the hearing in this matter to avoid the potential of a conflict with the argument for the Court of Special Appeals.

Please do not hesitate to contact me should you have any questions or require any additional information. Thank you for your anticipated courtesy and cooperation.

Very truly yours,


BRUCE EDWARD COVAHEY

Enclosure

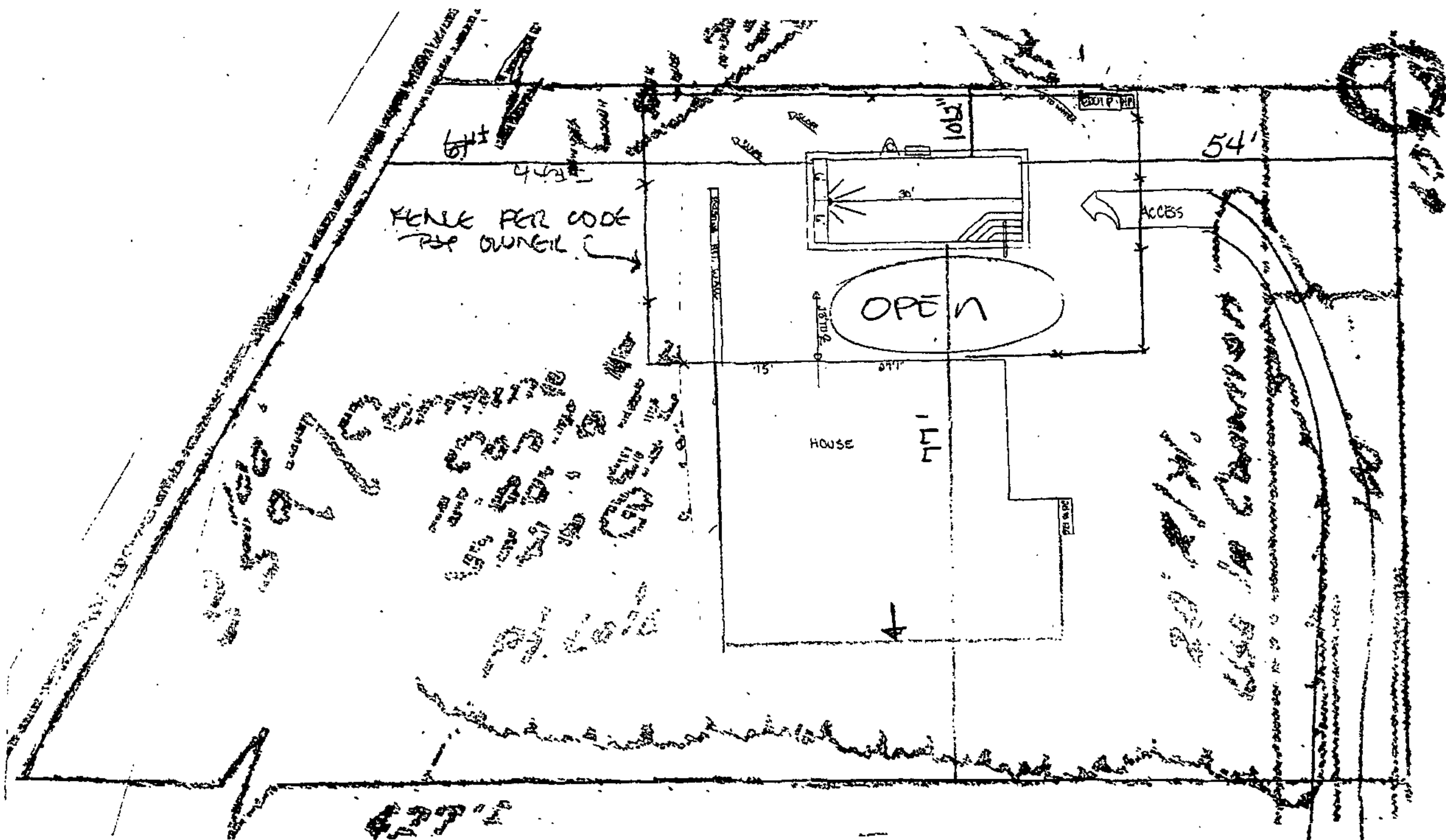
cc: Mary Jane Oelke
Lou Miller
Thomas G. Neuwiller
Sheree Heard
Edgar Steigleman

0109gab01

Office of People's Counsel
William J. Wiseman, III, Zoning Commissioner
Pat Keller, Planning Director
Mike Mohler, Code Enforcement/PDM
Raymond S. Wisnom, Jr., Code Official/PDM
✓ Timothy M. Kotroco, Director/PDM

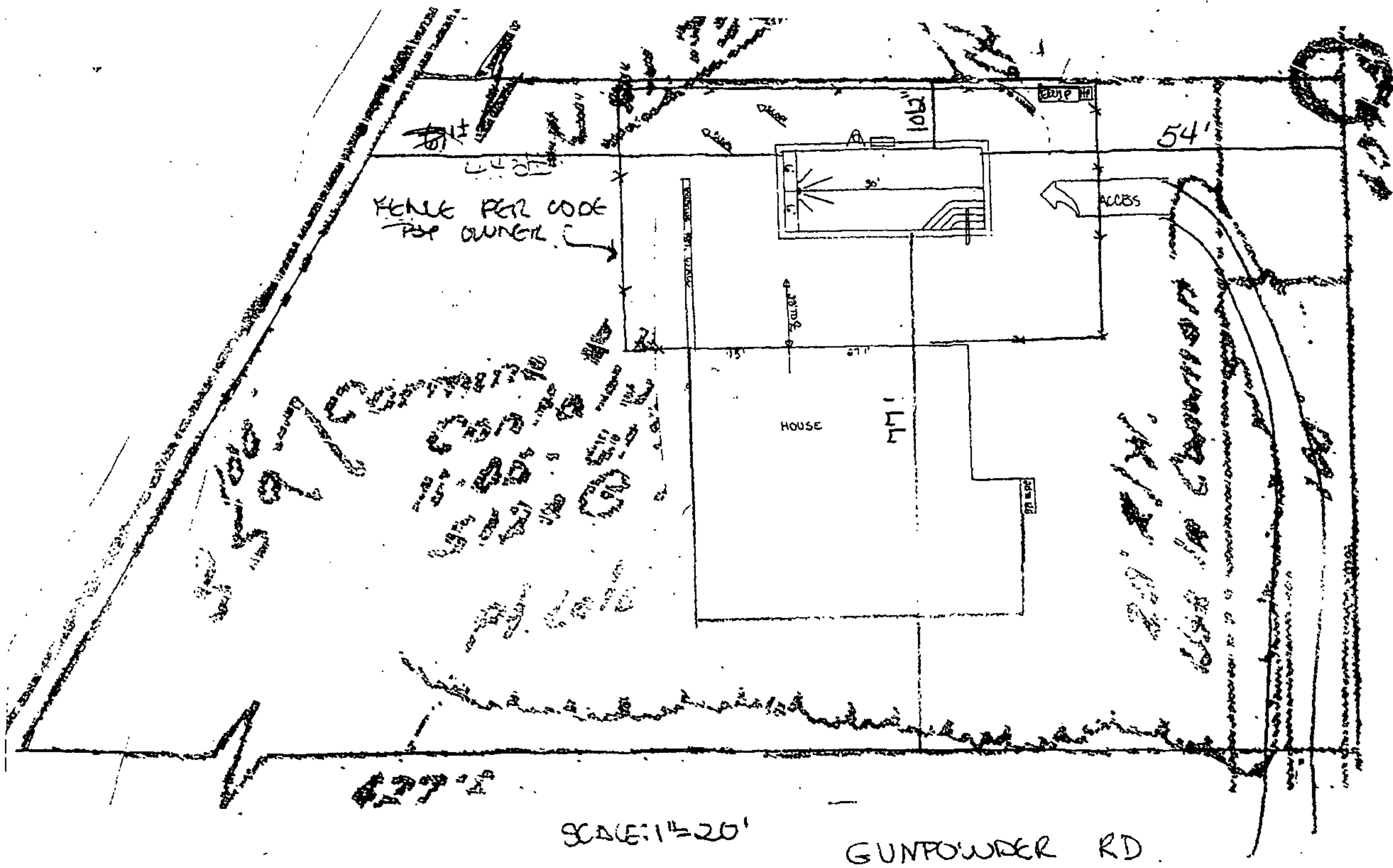
JAN 10 2008

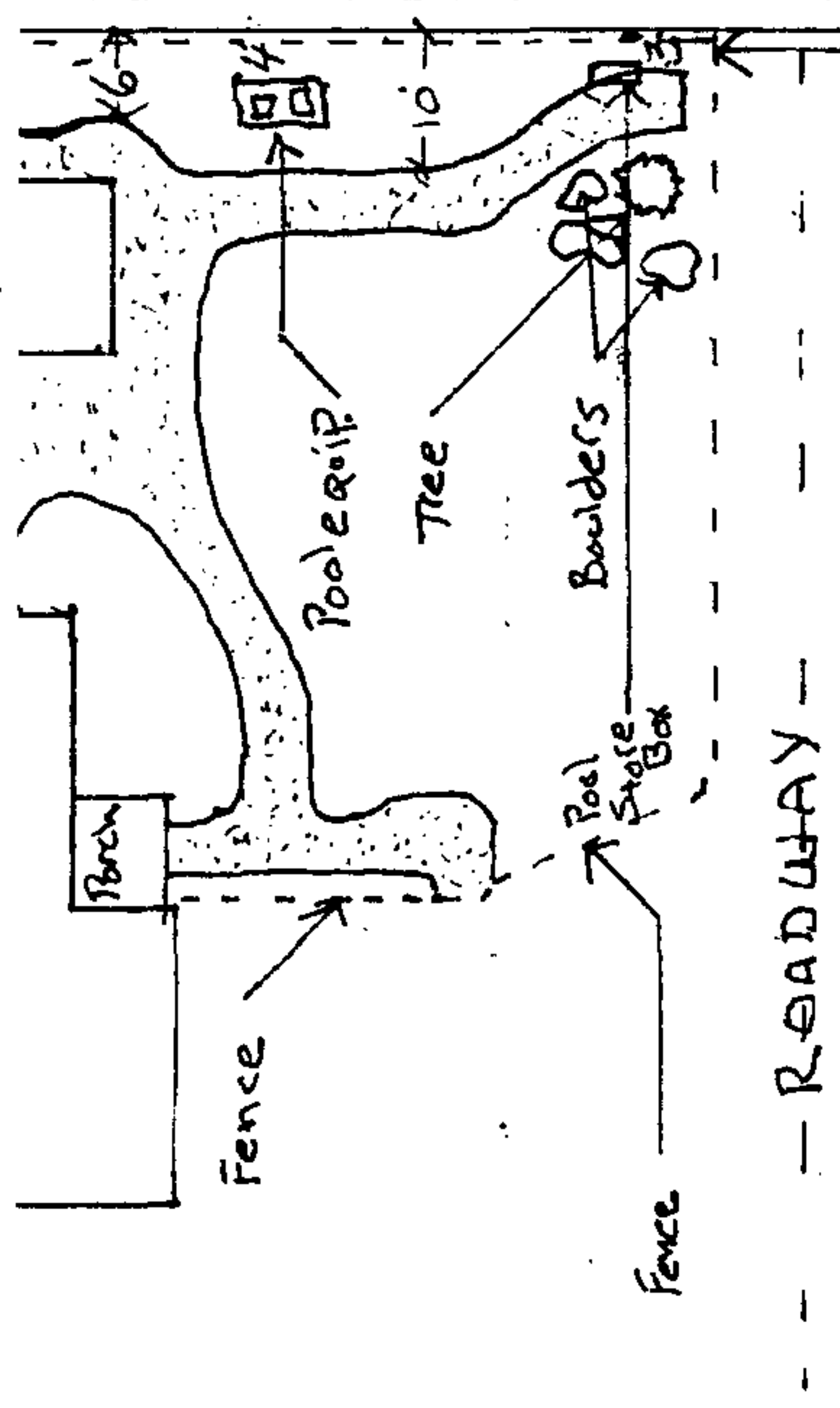
DEPT. OF PERMITS AND
DEVELOPMENT MANAGEMENT



SCALE: 1" = 20'

GUNPOWDER RD.





INSET - 1" = 20'

☒ CONCRETE

FENCE

WATER	☐		
CHESAPEAKE BAY CRITICAL AREA	YES ☐	NO ☒	
100 YEAR FLOODPLAIN	☐	☒	
HISTORIC PROPERTY/ BUILDING	☐	☒	
PRIOR ZONING HEARING			
NONE			

ZONING OFFICE USE ONLY	
REVIEWED BY	ITEM# CASE#

PETITIONER'S	
EXHIBIT NO.	/

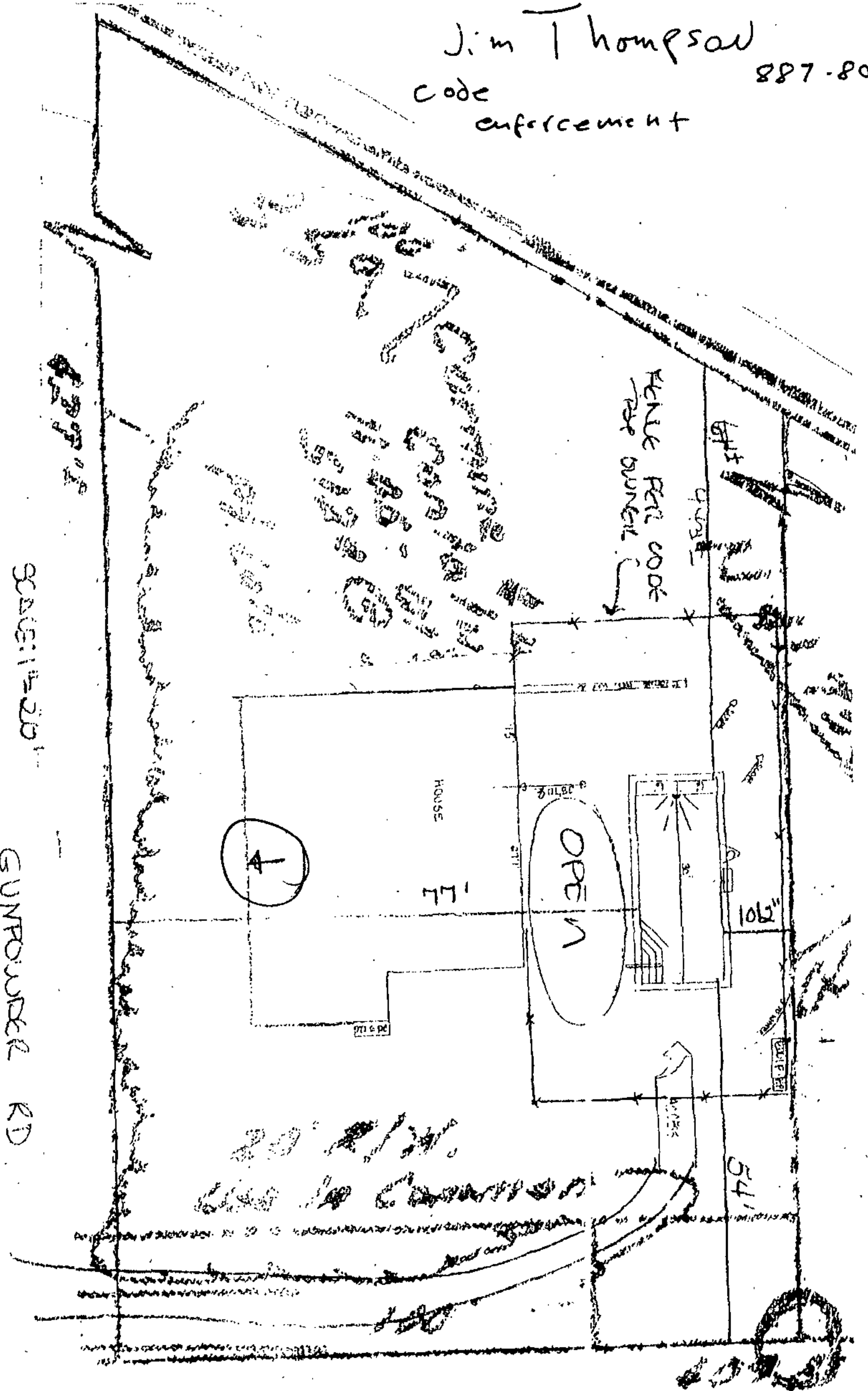
SCALE: 1" = 50'	APPROVED BY:
DATE:	

Prepared By - Thomas Newmiller

Jim Thompson
code
enforcement

887-8099

SCALE 1"=20'
GUNPOWDER RD

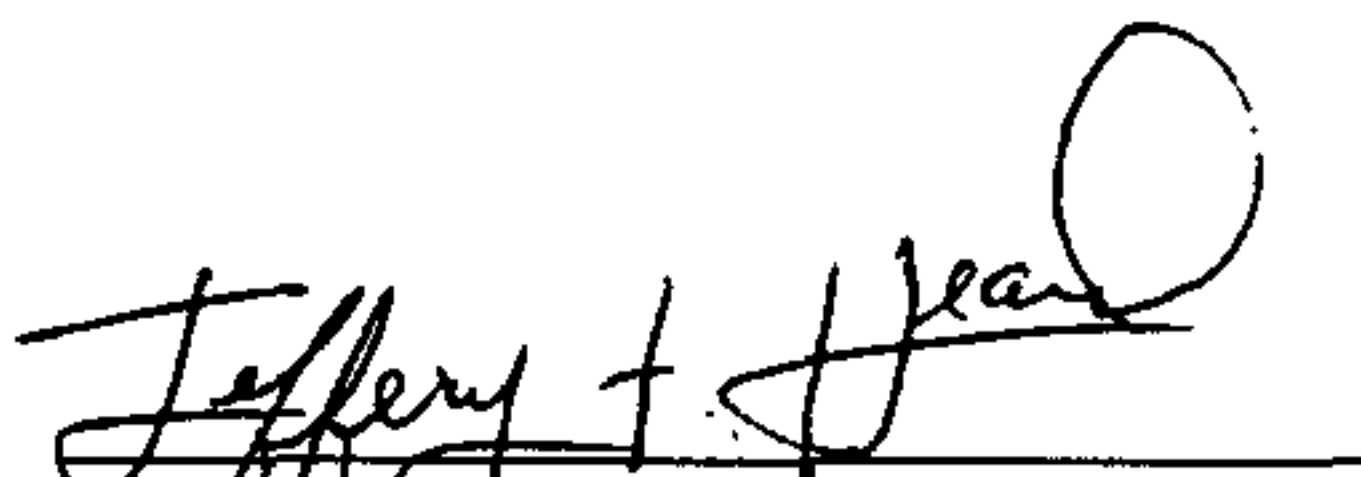


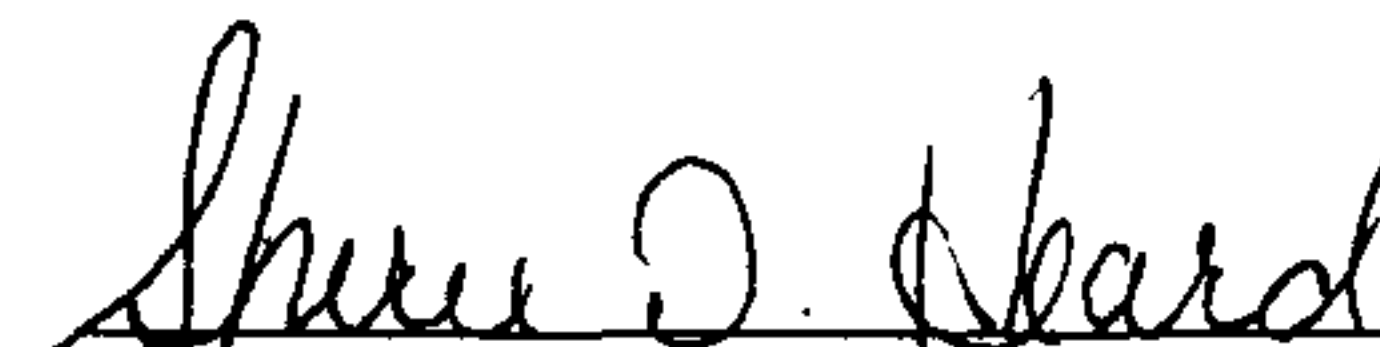
November 10, 2006

I hereby solemnly swear and affirm under the penalty of perjury that the following is true and correct knowledge to the best of my belief.

We have absolutely no objections to the placement of the Pool and Fence at 5597 Gunpowder Road.

Sincerely,


Jeffrey Heard


Sheree Heard

State of Maryland, County of Baltimore, ss
Subscribed and sworn to before me in my presence,
this 14th day of November, 2006.

CAROL A. LONGDON
NOTARY PUBLIC STATE OF MARYLAND
My commission expires September 1, 200

PETITIONER'S

EXHIBIT NO. 3A

November 10, 2006

I hereby solemnly swear and affirm under the penalty of perjury that the following is true and correct knowledge to the best of my belief.

We have absolutely no objections to the placement of the Pool and Fence at 5597 Gunpowder Road. Furthermore, we believe that it has actually improved the aesthetic value of our home.

Sincerely,

Edgar Steigleman
Edgar Steigleman

Amie Steigleman
Amie Steigleman

State of Maryland, County of Baltimore, SS
Subscribed and sworn to before me in my presence,
this 14th day of November, 2006.

Carol A. Longdon
CAROL A. LONGDON
NOTARY PUBLIC STATE OF MARYLAND
My commission expires September 1, 2008

PETITIONER'S

EXHIBIT NO.

3B

Property Tax Account No.: 11-05-019275
File No.: 02/8352

THIS DEED, Made this 7th Day of May, in the year Two Thousand Two, by and between CARMINE CANTALUPO and JUDITH C. CANTALUPO, his wife, Parties of the first part, of Baltimore County, State of Maryland, and THOMAS G. NEUWILLER, party of the second part.

WITNESSETH, That in consideration of the sum of TWENTY THOUSAND AND 00/100ths (\$20,000.00) DOLLARS, and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said parties of the first part, do hereby grant and convey unto the said party of the second part, his personal representatives, heirs and assigns, in fee simple, all that lot of ground situate in Baltimore County, State of Maryland, and described as follows that is to say:

BEGINNING for the same at a point on the southeasterly side of Philadelphia Road (66 feet wide) distant south 33 degrees 41 minutes 30 seconds west 245.73 feet from the northwesterly corner of Lot No. 1-A, in Block L, as shown on the Plat of Darryl Gardens, No. 2, which Plat is duly recorded among the Plat records of Baltimore County in Plat Book R.J.S. No. 13, folio 150, etc., and thence with and binding on the southeasterly side of said Philadelphia Road, south 33 degrees 41 minutes 30 seconds west 100 feet, thence by a new line of division south 54 degrees 05 minutes 30 seconds east 427 feet, more or less, to intersect the northwesterly line of Lot No. 8, Block L, as shown on the Plat of Darryl Gardens, No. 2, recorded as aforesaid; thence with and binding on the northwesterly line of said Lot No. 8, Block L, north 35 degrees 54 minutes 30 seconds east 100 feet, thence by a new line of division north 54 degrees 05 minutes 30 seconds west 432 feet more or less to the place of beginning.

BEING and comprising a portion of Lots 1-A, 6 and 7, in Block L, as shown on the Plat of Darryl Gardens, No. 2, recorded as aforesaid.

SUBJECT, HOWEVER to use in common with others of a right-of-way 20 feet wide running along the third line of the parcel of ground hereinabove described for its entire length and together with the right in a deed dated December 19th, 1951 and recorded among the Land Records of Baltimore County in Liber G.L.B. No. 2077 folio 219 by the said Walter W. Powers and Susie Grey Powers, his wife, to use a 20 foot right-of-way extending from the 20 foot right-of-way reserved in this paragraph first mentioned, through Lot No. 7, Block L, to the Larch Road and Gunpowder Road, all as shown on Plat No. 2, Darryl Gardens, recorded as aforesaid.

BEING the same lot of ground described in a Deed dated September 3, 1970 and recorded among the Land Records of Baltimore County in Liber OTG 5124 folio 241 was granted and conveyed by Hebron Edwards and Ruth E. Edwards, his wife, unto Carmine Cantalupo and Judith C. Cantalupo, his wife.

TOGETHER with the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

TO HAVE AND TO HOLD the said described lot of ground and premises to the said party of the second part, his personal representatives/heirs and assigns, in fee simple forever.

PETITIONER'S

EXHIBIT NO.

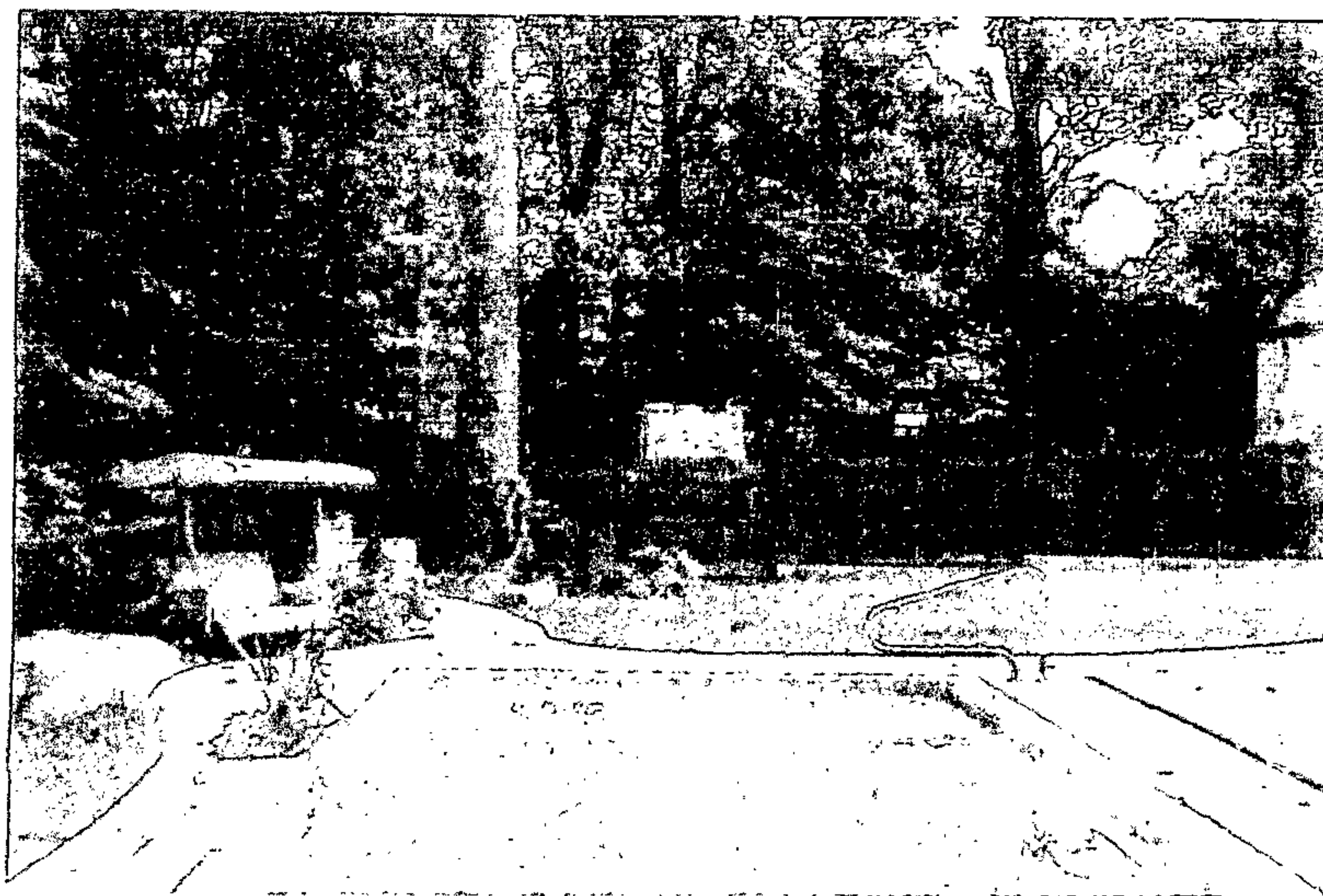
4

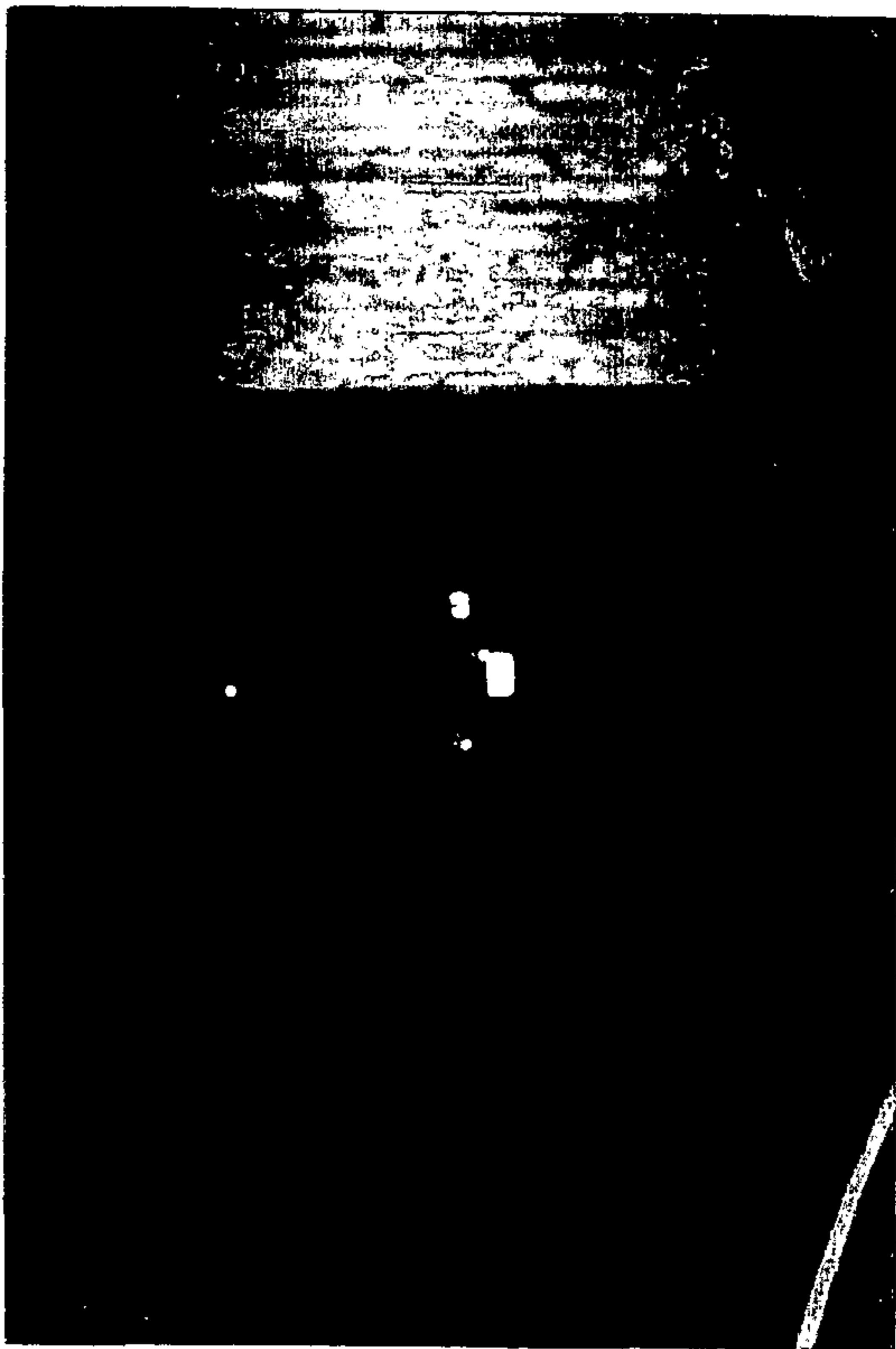
From Prop. line of 5597 looking towards entrance of 5599



2
C

From Pool at 5597 looking toward backyard of 5601





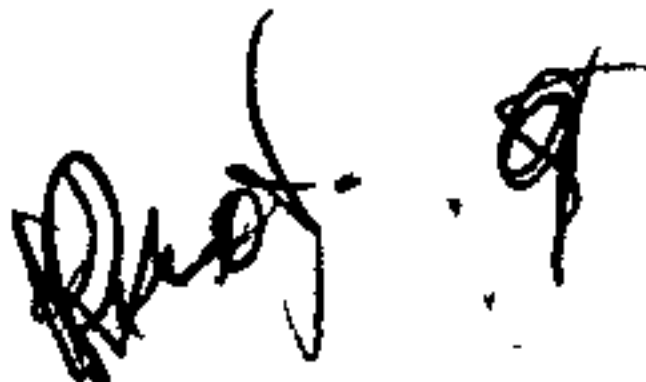
Pre. ~~A~~ 4



Sept. 45



DISTRICT COURT OF MARYLAND


Go Back**Case Information**

Court System: **DISTRICT COURT FOR HOWARD COUNTY - CIVIL CITATION SYSTEM**
Case Number: **00837672S3** Tracking No: **0000837672S3**
Case Type: **DEPT OF NATURAL RESOURCES CITATION**
District Code: **10** Location Code: **01**
Document Type: **CITATION** Issued Date: **11/29/1993**
Case Status: **CLOSED** Case Disposition: **TRIAL**

Defendant Information

Defendant Name: **HEARD, JEFFREY THOMAS**
Race: **WHITE, CAUCASIAN, ASIATIC INDIAN, ARAB**
Sex: **M** Height: **508** Weight: **190** DOB: **12/1971**
Address: **2913 SHELLEY COURT**
City: **ABINGTON** State: **MD** Zip Code: **21009 - 0000**

Charge and Disposition Information

(Each Charge is listed separately. The disposition is listed below the Charge)

Charge No: **001** Description: **HNTG PRIV LND W/O PERMIT**
Statute: Description:
Amended Date: CJIS Code: MO/PLL: Probable Cause:
Incident Date From: To: Victim Age:

Disposition

Plea: **GUILTY**
Disposition: **GUILTY** Disposition Date: **02/18/1994**
Fine: **\$240.00** Court Costs: **\$20.00** CICF: **\$0.00**
Amt Suspended: Fine: **\$0.00** Court Costs: **\$0.00** CICF: **\$0.00**
PBJ EndDate: Probation End Date: Restitution Amount: **\$0.00**
Jail Term: Yrs: Mos: Days:
Suspended Term: Yrs: Mos: Days:
Credit Time Served:

Related Person Information

(Each Person related to the case other than the Defendant is shown)

Name: **MCLAUGHLIN, H**
Connection: **COMPLAINANT/POLICE OFFICER**
Agency Code: **HE** Agency Sub-Code: **0013** Officer ID: **0710**

Name: **WEAL, MICHAEL A**
Connection: **ASSISTANT STATES ATTORNEY**
Address: **3451 COURTHOUSE DRIVE**
City: **ELLCOTT CITY** State: **MD** Zip Code: **21043**

Event History Information

Event Date	Comment
DOCI 12/02/1993	CIT ISSUED 931129

Pro. 56

Amber Oelke-DiLeggi
2904 Wyman PKWY
Baltimore MD, 21211
November 30, 2007

To whom it may concern:

I am the daughter of the resident of 5599 Gunpowder Road, Mary Jane Oelke, and frequently visit her during the week. I have on several occasions while leaving her home been almost backed into or directly driven into by the residents of 5597 Gunpowder Road. The reason for this is the fence on the property of 5597 Gunpowder Road. It is far too close to the drive way, and impossibly high, thus causing hazardous driving conditions. It is impossible for either resident to see one another while egressing due to the position and height of the fence.

Sincerely,

Amber Oelke-DiLeggi

Amber Oelke-DiLeggi

pre. 7

12/4/07

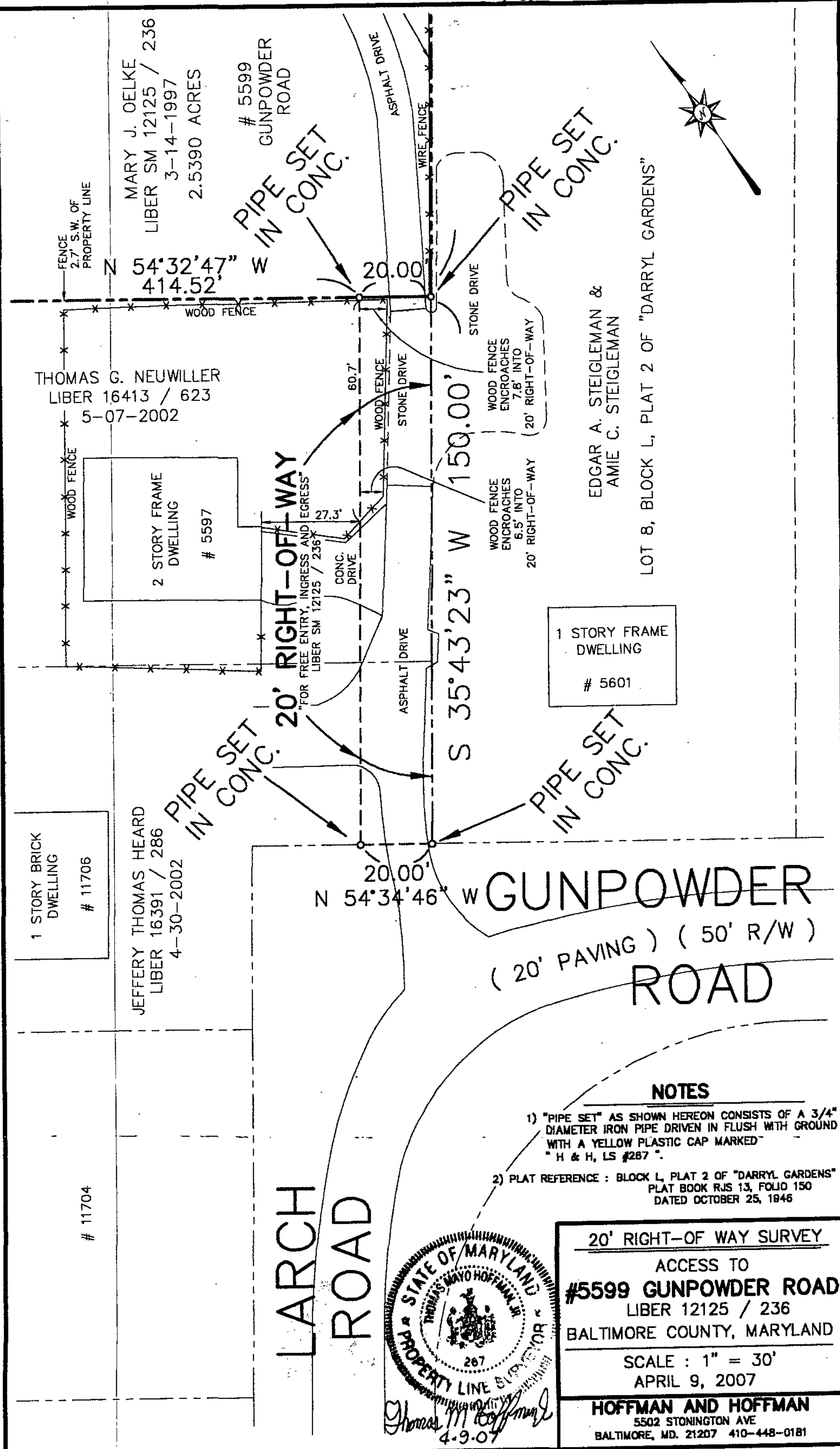
Adam Pazourek
1213 Hesselius Ct.
Annapolis, Md. 21403

Re: Obstructed view at 5599 Gunpowder Rd. White Marsh, Md. 21162

To whom it may concern,

On a week day morning in late November 07, while leaving the property listed above, I observed a light colored sports coupe backing out of the garage at the house at 5597 Gunpowder Rd. As I passed the tall fence that obstructed my vision I was almost backed into by said vehicle, the driver was totally unaware of my presence. As I passed the house it was a near miss as the driver continued to back out without knowledge of my vehicle.


Adam Pazourek



NOTES

- 1) "PIPE SET" AS SHOWN HEREON CONSISTS OF A 3/4" DIAMETER IRON PIPE DRIVEN IN FLUSH WITH GROUND WITH A YELLOW PLASTIC CAP MARKED "H & H, LS #267".
- 2) PLAT REFERENCE : BLOCK L, PLAT 2 OF "DARRYL GARDENS" PLAT BOOK RJS 13, FOLIO 150 DATED OCTOBER 25, 1946

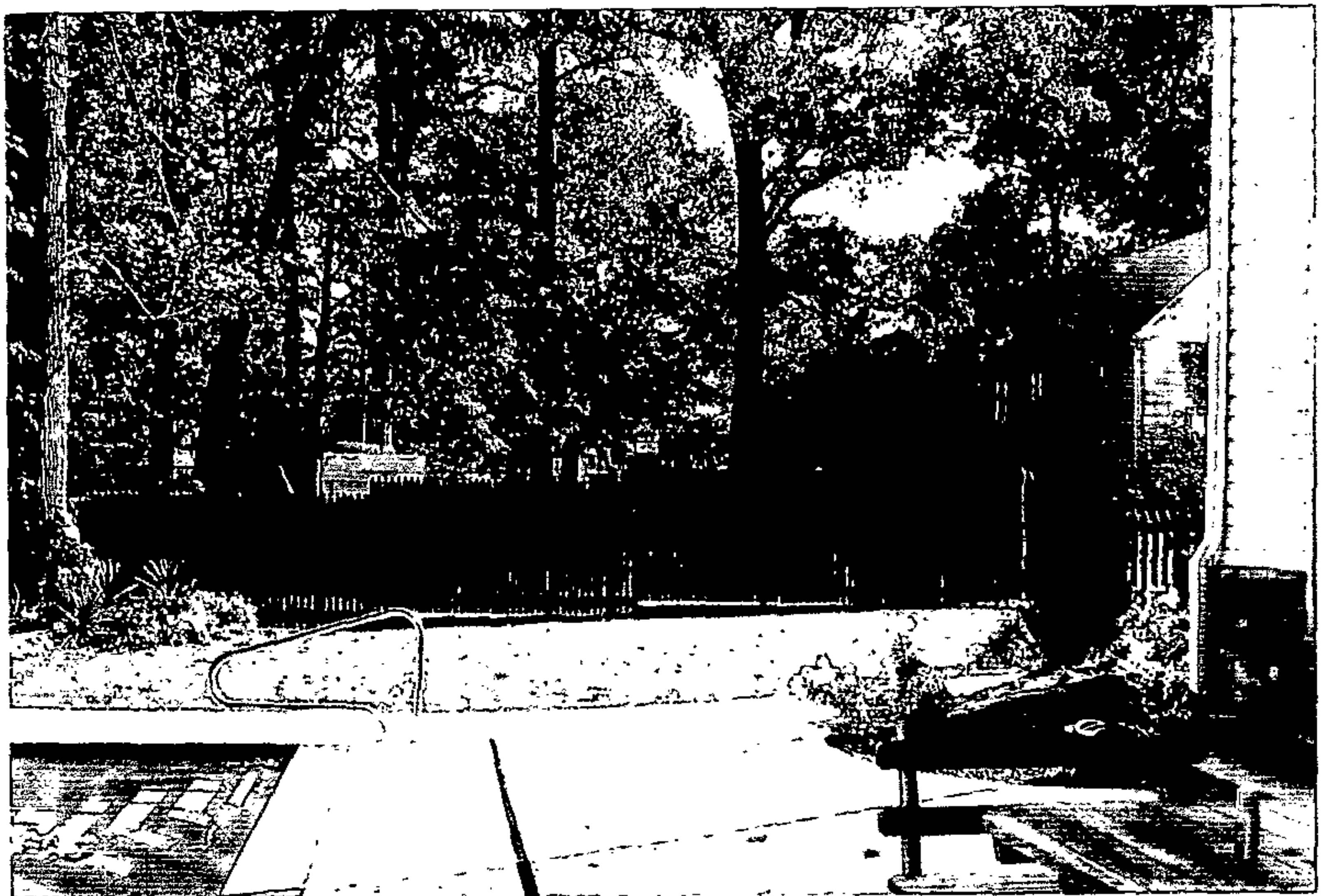


20' RIGHT-OF WAY SURVEY

ACCESS TO
#5599 GUNPOWDER ROAD
LIBER 12125 / 236
BALTIMORE COUNTY, MARYLAND

SCALE : 1" = 30'
APRIL 9, 2007

HOFFMAN AND HOFFMAN
5502 STONINGTON AVE
BALTIMORE, MD. 21207 410-448-0181





2

5599 GUNPOWDER RD

120

38

5597 GUNPOWDER RD

11708 LARCH RD

11704 LARCH RD

5601 GUNPOWDER RD

145

5605 GUNPOWDER RD

148.2

5609 GUNPOWDER RD

11702 LARCH RD

11700 LARCH RD

LARCH RD

GUNPOWDER RD

150

5626 GUNPOWDER RD

ANELACH RD

2



Re: 07246A + other issues
County Board of Appeals
Permits + Development Mgmt
Attention Timothy Kotroko
Baltimore County Zoning code enforcement,



According to the Board of appeals hearing in March '08 regarding the fence located in my right of way at 5597 Gunpowder Rd. the ruling of the previous hearing officer, Mr. Raymond Wisnon, (Dec. 6, 07) is to be abided by WHILE case 07-246A is pending; therefore according to their recommendations, Mr. Neuwiller of 5597 Gunpowder Rd. must remove his fence from my right of way effective immediately. I request that the continued presence of said illegal fence NOW result in fines else I will consider the zoning enforcement department to be in further prejudicial, biased and discriminatory stance.

During his testimony, Mr. Neuwiller said he was told by a Mr. Peropolis of zoning code enforcement that he doesn't have to remove his fence from my right of way. In light of the recommendation by the board of appeals members present at the March hearing, I ask that immediate action be taken to have this fence removed or fines to be imposed immediately. This situation has lasted long enough as said fence was found to pose an imminent safety threat to both parties by Mr. Wisnon.

You should also be aware that Mr. Peropolis intercepted my complaint that the pool installed illegally in Mr. Neuwillers side yard was installed by raising the grade next to my property line which as you know is another violation, separate from any setback issue. Said illegal pool was installed with no setback, no stabilization and no retaining wall with adequate setback with drainage directed away from my property. I phoned the county zoning code enforcement department when this pool was being dug in the side yard! I do not understand why no investigator or zoning enforcement officer was dispatched at that time! These matters are not addressed in the matter of case 07246A which is a setback variance and does not even refer to a pool. Please refer to the enclosed material when deciding what action to take. Mr. Neuwiller continues to try to assassinate my character during every hearing in order to keep his fence in my right of way. Perhaps you will be interested in seeing the sign he posted on the illegal fence after accosting me in my right of way and judge for yourself as to who shows indications of lack of upright character. Since it was alledged under oath that I was "mental" for complaining to zoning enforcement about the illegal fence, this sign is tantamount to a hate crime and has been reported to the FBI as such. I have also enclosed photos of rocks placed by him IN the right of way to damage my car and frighten me further after his numerous threats and accostings, all an attempt at witness intimidation. Your immediate attention to this matter is greatly appreciated.

Sincerely,

cc Baltimore County Board of Appeals
FBI, Baltimore
Baltimore County Board of Ethics
Baltimore County Office of Fair Practices

MAR 18 2008

BALTIMORE COUNTY
BOARD OF APPEALS



STATE'S
EXHIBIT

PSYCHO PARKWAY

Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
Baltimore County, Maryland

In the Matter of

Thomas G. Neumiller

5597 Gunpowder Road

Petitioner

FINDINGS OF FACT AND CONCLUSION OF LAW
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER

This matter came before the Code Enforcement Hearing Officer for the Department of Permits and Development Management on December 6, 2007, for a hearing on a request for a waiver of the Baltimore County Building Code requirements to allow a 72" fence in lieu of the maximum allowed 42" fence in the front yard of 5597 Gunpowder Road, 21163.

Mr. Thomas Neumiller appeared as petitioner

Mary Jane Oelke appeared in protest represented by Bruce E. Covahey, Esquire.

Subject property enjoys a variance granted to allow a swimming pool in the side yard in lieu of the rear yard. Petitioner requested a variance to erect a 72" fence in the front yard however was advised that fence height issues was a matter of the Department of Development Management.

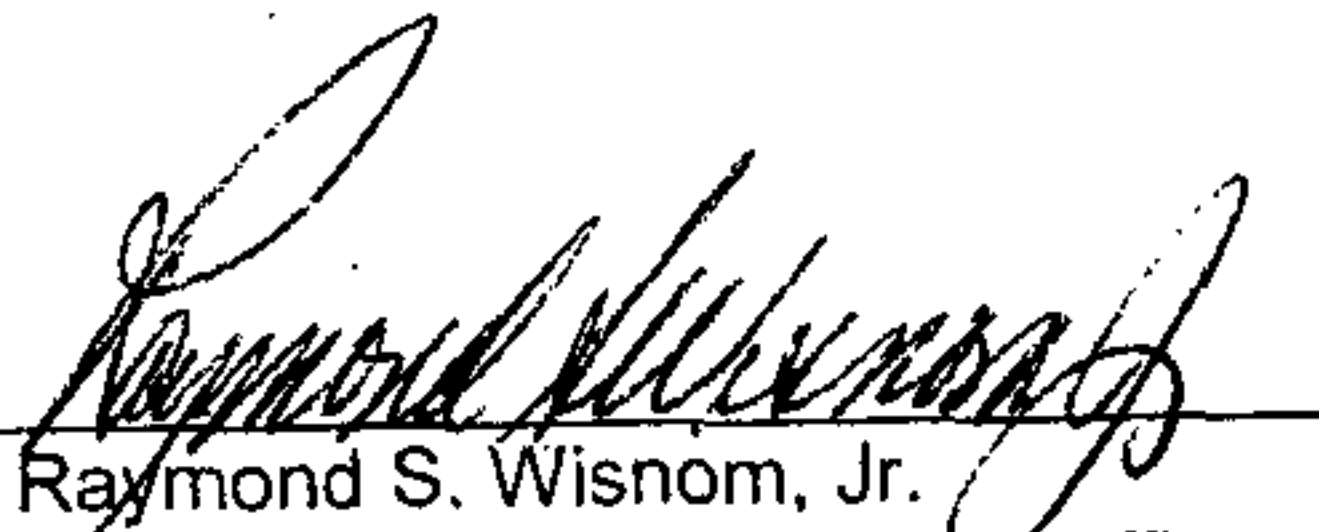
Subject property was posted advertising the request for a 72" fence in lieu of 42" fence. Subject property was also posted advertising the Hearing of December 6, 2007.

Building Code requirements set pool safety barrier heights at 48". Given the variance approval for the pool in the side yard and the required 48" barrier height, there appears cause to allow a 48" fence height in lieu of the maximum required 42" height. Baltimore County Zoning Regulations section 427 allows a maximum height of 42" for any residential fence that adjoins the front yard of another except for fences required to screen a swimming pool.

Subject fence is erected. Subject fence is erected in and encroaches upon a 20' right-of-way. This fact is clearly shown on survey of the access to 5599 Gunpowder Road, sealed by Thomas Mayo Hoffman, Jr. registered and licensed surveyor by the State of Maryland. Baltimore County is not empowered to issue a permit to erect a fence in a right-of-way. Therefore any fence erected shall be located so as to not encroach upon the right-of-way.

Testimony was given to show that vehicles are shielded from view causing safety issues for both the petitioner and the protesting party. A 48" fence would allow persons in either driveway a view of a moving vehicle above the fence line. The existing 72" fence does not afford this visibility.

The petitioner's request for a 72" fence is hereby denied. The petitioner is granted the ability to erect a 48" fence that meets County Code Standards for a pool barrier. Subject 48" fence shall not be located in the 20' right-of-way. The petitioner must also reduce the height to 48" of any section or sections of fencing that adjoins the front yard of 5599 Gunpowder Road. Petitioner is required to apply for and obtain a fence permit with the aforementioned conditions to be conditions of the fence permit.

Signed: 

Raymond S. Wisnom, Jr.
Code Enforcement Hearing Officer

The violator is advised that pursuant to §3-6-301(a), Baltimore County Code, an appeal to the Baltimore County Board of Appeals may be taken within fifteen (15) days after the date of a final Order. §3-6-302(a)(b)(c)(d) requires the filing of a petition setting forth the grounds for appeal and a filing fee of \$150. The appellant is urged to read the requirements for the appeal petition. Security in the amount of the civil penalty must be posted with the Director.

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 448194

DATE

11/22/06

ACCOUNT

60522

AMOUNT

\$ 2001.00

RECEIVED
FROM:

THOMAS WIEGAND

FOR:

07-246-A

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

CASHIER'S VALIDATION

PAID RECEIPT

11/22/06 11:22:06 11/22/06

PAID BY: BALTIMORE COUNTY

PAID TO: 60522

PAID FOR: 07-246-A

PAID AMOUNT: \$ 2001.00

PAID BY: [Signature]

PAID FOR: [Signature]

PAID DATE: 11/22/06

PAID BY: [Signature]

PAID FOR: [Signature]

PAID AMOUNT: \$ 2001.00

PAID BY: [Signature]

PAID FOR: [Signature]

PAID DATE: 11/22/06

PAID BY: [Signature]

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PAID AMOUNT: \$ 2001.00

PAID BY: [Signature]

PAID FOR: [Signature]

PAID DATE: 11/22/06

PAID BY: [Signature]

PAID FOR: [Signature]

PAID AMOUNT: \$ 2001.00

CERTIFICATE OF POSTING

RE: Case No.: HEARING OFFICER'S HEARING

Petitioner/Developer: _____

Date of Hearing/Closing: 12/6/07

Baltimore County Department of
Permits and Development Management
County Office Building, Room 100
111 West Chesapeake Avenue
Towson, MD 21204

Attention: JUNE FISHER

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at _____

5597 GUNPOWDER RD.

The sign(s) were posted on _____

11/20/07

(Month, Day, Year)

HEARING OFFICER'S HEARING

Sincerely,

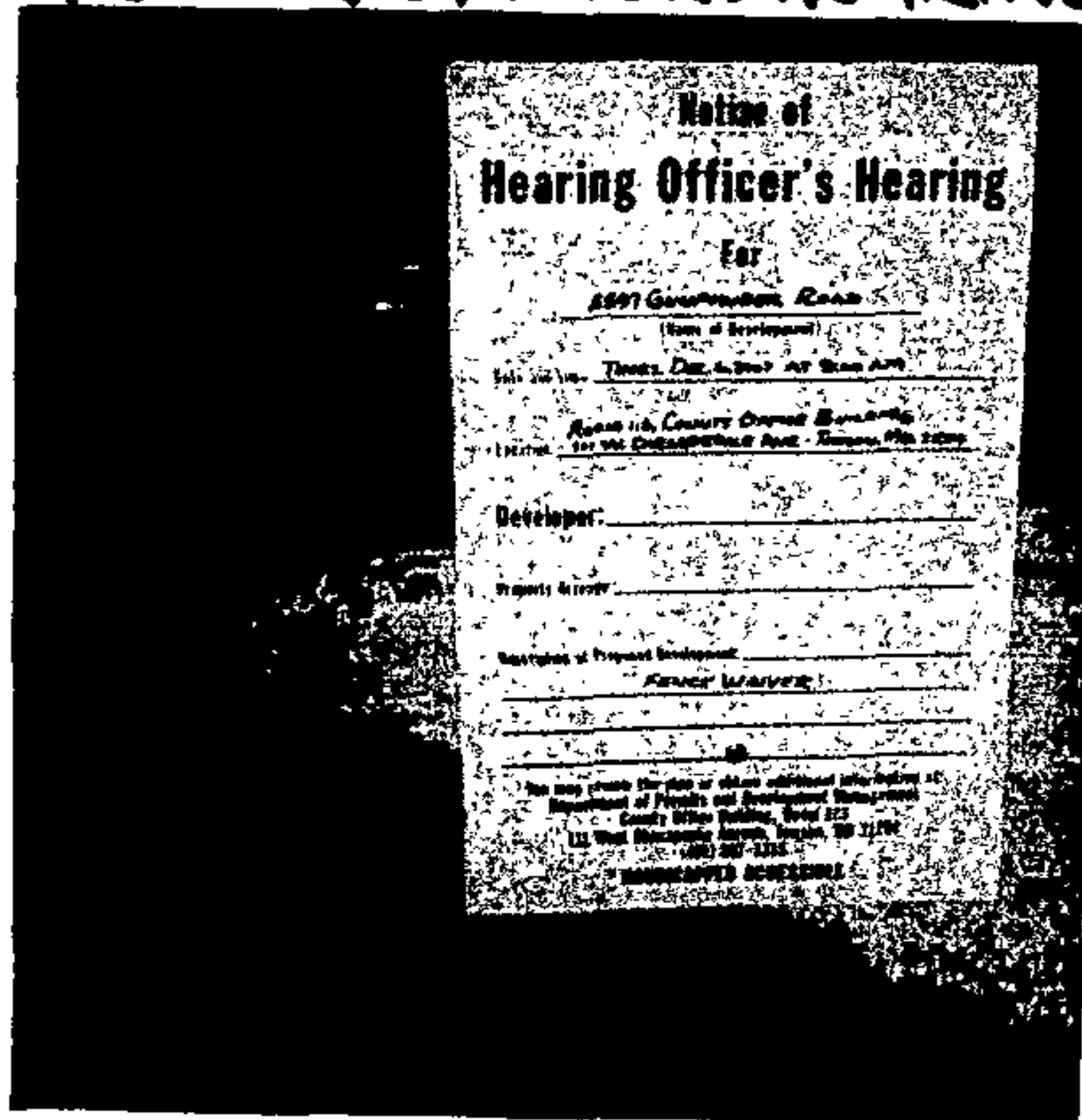
Richard E. Hoffman 11/20/07
(Signature of Sign Poster and Date)

RICHARD E. HOFFMAN
(Printed Name)

904 DELLWOOD DR.
(Address)

FALLSTON, MD 21047
(City, State, Zip Code)

(410) 879-3122
(Telephone Number)



**5597 GUNPOWDER RD.
POSTED 11/20/07
Richard E. Hoffman 11/20/07**

FENCE WAIVER

NOTICE	
In accordance with Section 241A of the Baltimore County Code, a request has been made for a waiver to construct a fence higher than allowed.	
Request Information:	
Fence location:	FAIRPLAY PLAZA
Height allowed:	42"
Height requested:	72"
Anyone living within 1,000 feet of this property may request a public hearing on this matter if such request is made within 30 days of the posting date set forth below or submit written comments for consideration to the address below.	
Posting Date:	10/25/07
Address: 5597 GUNPOWDER RD.	
Please contact 410-687-5373 for information	
Building Engineer for Baltimore County	
Department of Planning & Development Management	
100 West Chesapeake Avenue, Ste. 105	
Towson, Maryland 21204	

5597 GUNPOWDER RD.
 POSTED 10/25/07
 Daniel F. Smith 10/25/07

CERTIFICATE OF POSTING

RE: Case No.: FENCE WAIVER
5597 GUNPOWDER RD

Petitioner/Developer: _____

THOMAS NEWMILLER

Date of Hearing/Closing: 11/9/07

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

Attention:

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law
were posted conspicuously on the property located at _____

5597 GUNPOWDER RD

The sign(s) were posted on _____

10/25/07

(Month, Day, Year)

FENCE WAIVER

Sincerely,

Richard E. Hoffman 10/25/07

(Signature of Sign Poster and Date)

RICHARD E. HOFFMAN

(Printed Name)

904 DELLWOOD DR.

(Address)

FALLSTON, MD 21047

(City, State, Zip Code)

(410) 879-3122

(Telephone Number)

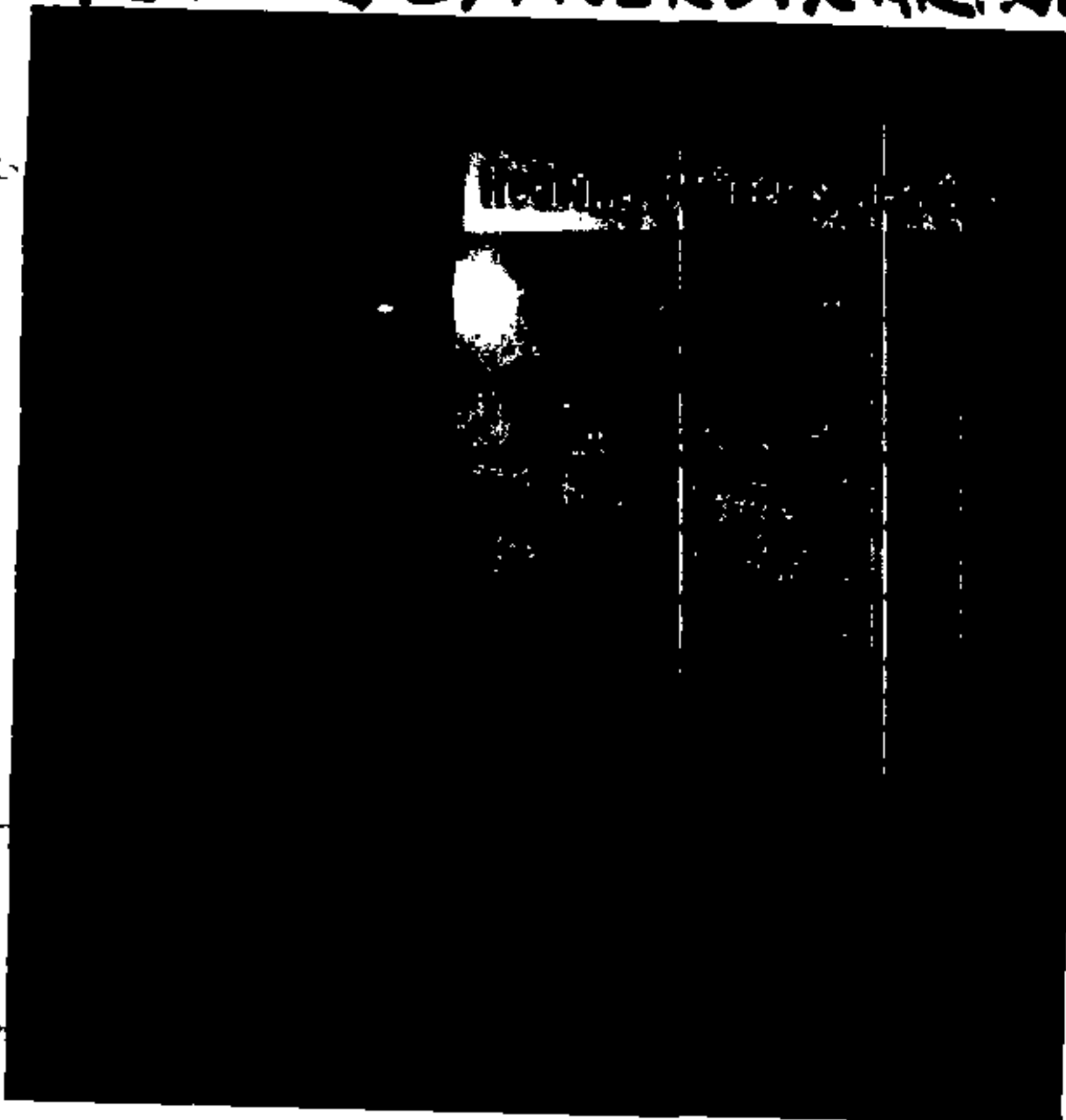
NOTICE
In accordance with Section 3111.4 of the Baltimore County Code, a request has been made for a waiver to construct a fence higher than allowed.
Request information:
Fence location: FRONT YARD
Height allowed: 42"
Height requested: 72"
Anyone living within 1,000 feet of this property may request a public hearing on this matter if such request is made within 15 days of the posting date set forth below or submit written comments for consideration to the address below.
Posting Date: 10/25/07
Address: 5597 Gunpowder Rd.
Please contact 410-867-1373 for information.
Buildings Engineer for Baltimore County
Department of Permits & Development Management
111 West Chesapeake Avenue, Rm. 105
Towson, Maryland 21204

5597 GUNPOWDER RD.

POSTED 10/25/07

***Richard E. Hoffman* 10/25/07**

HEARING OFFICER'S HEARING



5597 GUNPOWDER RD.

POSTED 11/20/07

Officer E. J. H. 11/20/07

IN THE MATTER OF
MR. AND MRS. THOMAS G. NEUWILLER
- APPLICANTS / LEGAL OWNERS
5597 GUNPOWDER ROAD
7TH ELECTION DISTRICT
5TH COUNCILMANIC DISTRICT

RE: DENIAL OF APPLICATION FOR
ADMINISTRATIVE FENCE WAIVER

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. CBA-08-101

* * * * *

ORDER OF DISMISSAL

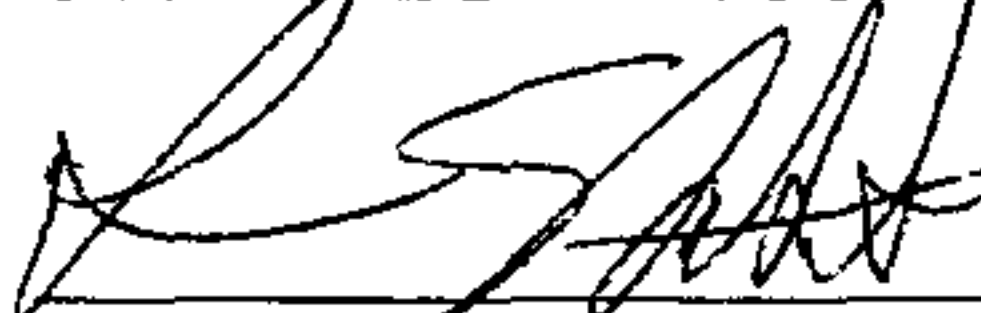
This matter comes to the Board on appeal from a decision of Raymond S. Wisnom, Jr., Hearing Official, in which Appellant's Application for Administrative Waiver / Fence Height, filed pursuant to § 3111.4 of the *Baltimore County Building Code*, was denied by Order dated December 6, 2007, and appealed to this Board pursuant to § 32-4-281 of the *Baltimore County Code*.

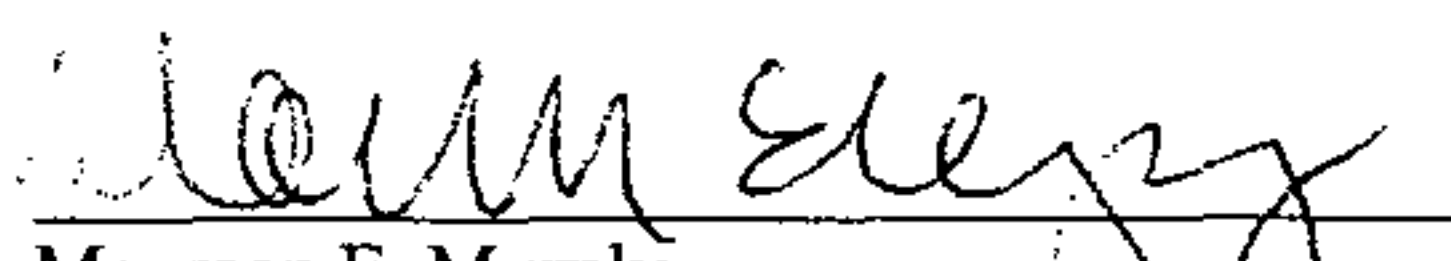
WHEREAS, a hearing was scheduled to be held before this Board on Tuesday, April 29, 2008, at 10:00 a.m. The Board convened at the scheduled hearing time. Thomas G. Neuwiller, Applicant / Appellant, appeared pro se; Bruce E. Covahey, Esquire, appeared on behalf of Mary Oelke, Protestant; and Nancy C. West, Assistant County Attorney, appeared on behalf of Baltimore County. At the onset of the hearing, Appellant moved to withdraw and dismiss his appeal filed in Case No. CBA-08-101; and

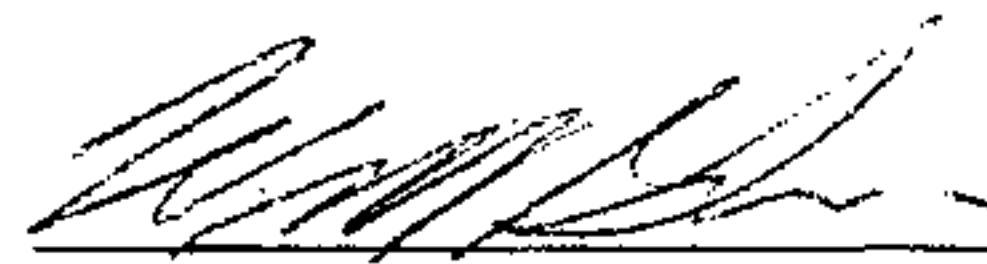
WHEREAS, it was requested by Appellant that the appeal filed in Case No. CBA-08-101 be dismissed and withdrawn as of April 29, 2008,

IT IS HEREBY ORDERED this 19th day of May, 2008 by the County Board of Appeals of Baltimore County that said appeal be and the same is hereby **DISMISSED**.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Lawrence M. Stahl


Maureen E. Murphy


Wendell H. Grier

IN THE MATTER OF

THOMAS G. NEUWILLER

5597 Gunpowder Road
White Marsh, MD 21162

Petitioner

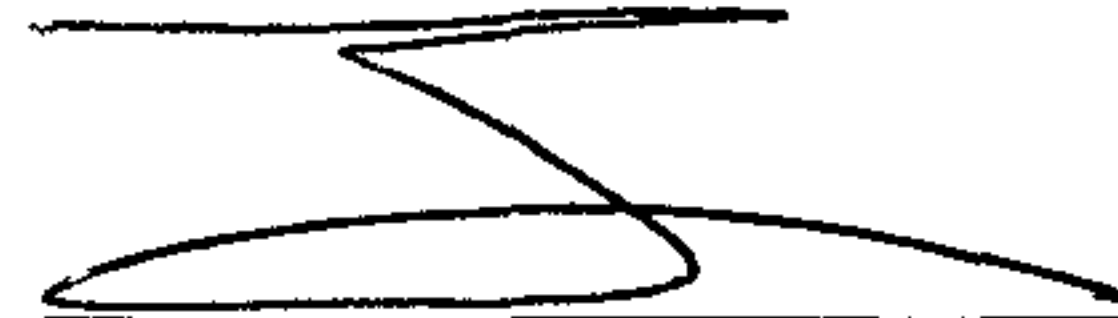
* BEFORE THE
* BALTIMORE COUNTY
* BOARD OF APPEALS

*

* * * * *

NOTICE OF APPEAL

Thomas G. Neuwiller, Petitioner, hereby notes an appeal of the Findings of Fact and Conclusion of Law/Final Order of the Code Enforcement Hearing Officer entered in the above-captioned matter.



Thomas F. McDonough
Royston, Mueller, McLean & Reid, LLP
The Royston Building, Suite 600
102 West Pennsylvania Avenue
Towson, Maryland 21204
(410) 823-1800
Attorneys for Petitioner

**ROYSTON, MUELLER,
MCLEAN & REID, LLP**
SUITE 600
102 W. PENN. AVE.
TOWSON, MARYLAND
21204-4575
410-823-1800

IN THE MATTER OF:

THOMAS G. NEUWILLER

5597 Gunpowder Road
White Marsh, MD 21162

Petitioner

* BEFORE THE
* BALTIMORE COUNTY
* BOARD OF APPEALS

*

* * * * *

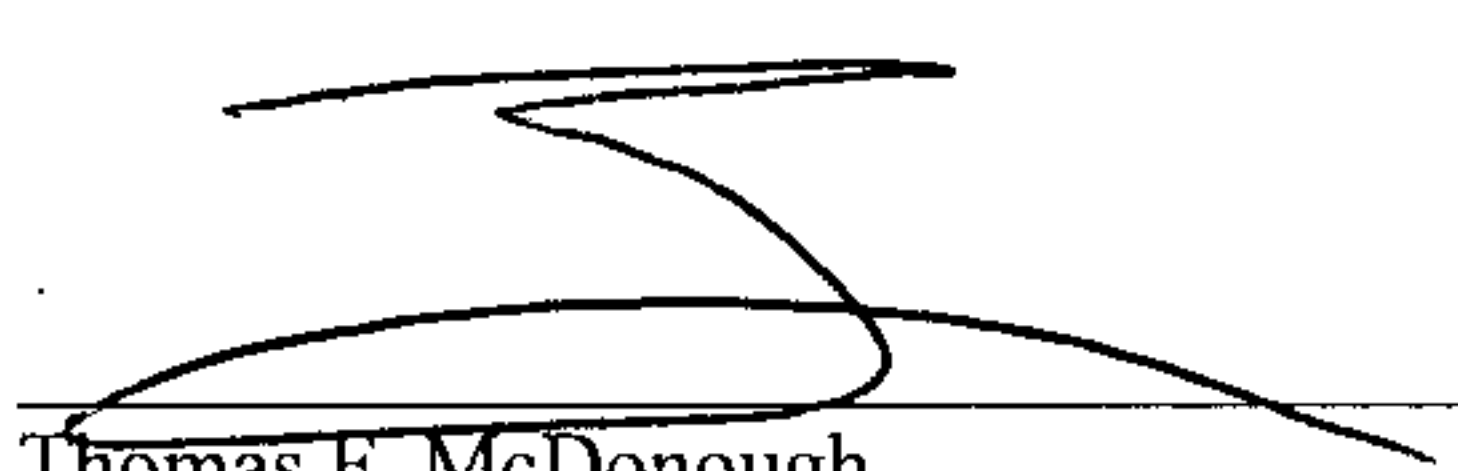
PETITION

1. The grounds for appeal in this case include:

A. The hearing officer erred in stating that Code requirements set pool safety barrier heights at 48 inches when in fact 13-6-101 requires a minimum of 48 inches;

B. The hearing officer gratuitously decided an issue that is a matter of litigation (Baltimore County Circuit Court case no. 03-C-07-002193 OC) when he concluded that the subject fence is erected in and encroaches upon a 20-foot right-of-way. That issue was unnecessary for his decision and currently being litigated in the Circuit Court for Baltimore County. His statement that Baltimore County is not empowered to issue a permit to erect a fence in a right-of-way is in error, both because the survey relied upon may be erroneous, and, in fact, a permit to erect a fence has been issued.

2. There are no safety issues as the ingress and egress is limited to that of the protestant. There is an exceedingly small amount of traffic in the right-of-way.


Thomas F. McDonough
Royston, Mueller, McLean & Reid, LLP
The Royston Building, Suite 600
102 W. Pennsylvania Avenue
Towson, MD 21204-4575
(410) 823-1800
Attorneys for Petitioner

ROYSTON, MUELLER,
MCLEAN & REID, LLP
SUITE 600
102 W. PENN AVE
TOWSON MARYLAND
21204-4575
410-823-1800

CASE #: CBA-08-101

IN THE MATTER OF: *MR. AND MRS. THOMAS G. NEUWILLER* –
Applicants /Appellants 5597 Gunpowder Road 7th E; 5th C

RE: Application for Administrative Waiver of Building Code Fence Height
Limitations (BOCA 3111.4 per § 32-4-281, BCC)

12/06/2007 – Decision of Buildings Engineer denying Applicant's request.

2/01/08 – Notice of Assignment sent to parties; scheduled for hearing on Tuesday, March 4, 2008 at 9:00 a.m.:

Thomas F. McDonough, Esquire
Mr. and Mrs. Thomas Neuwiller
Bruce E. Covahey, Esquire
Mary J. Oelke
Amber Oelke-DiLeggi (daughter)
Donald E. Brand, P.E. /Buildings Engineer
Timothy M. Kotroco, Director /PDM
Nancy C. West, Assistant County Attorney
John E. Beverungen, County Attorney

3/04/08 – Board convened for hearing (Stahl, Murphy, Grier); after the start of argument in this matter, Counsel for Applicants stated that a related Petition for Variance regarding the existing pool is presently pending for hearing before the Board; scheduled for 4/29/08. After brief discussion, the Board, with agreement of parties, continued this fence waiver hearing as the outcome of the 4/29/08 zoning case will have a direct impact on the outcome of this matter.

-- Notice of Assignment sent to parties this date, assigning the instant fence waiver hearing on the same date and time as the related zoning matter; scheduled for Tuesday, April 29, 2008 at 10:00 a.m. FYI copy to 2-1-4.

4/25/08 – Entry of Appearance filed by Nancy C. West, Assistant County Attorney and John Beverungen, County Attorney.

4/29/08 – Board convened for hearing (Stahl, Murphy, Grier). On the record, Appellant, who appeared at this hearing pro se, withdrew and dismissed his appeal filed in this matter. (The Board continued on 4/29/08 for hearing in the Neuwiller zoning matter 07-246-A.) Order of Dismissal to be issued in CBA-08-101.

IN THE MATTER OF

MR. & MRS. THOMAS G. NEUWILLER
5597 Gunpowder Road
White Marsh, MD 21162

Applicants/Appellants

* BEFORE THE
* COUNTY BOARD
* OF APPEALS
* FOR BALTIMORE COUNTY
* Case No.: CBA-08-101

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of the undersigned in the above-referenced case as counsel for Baltimore County, Maryland, and forward all notices of future hearings to my attention.

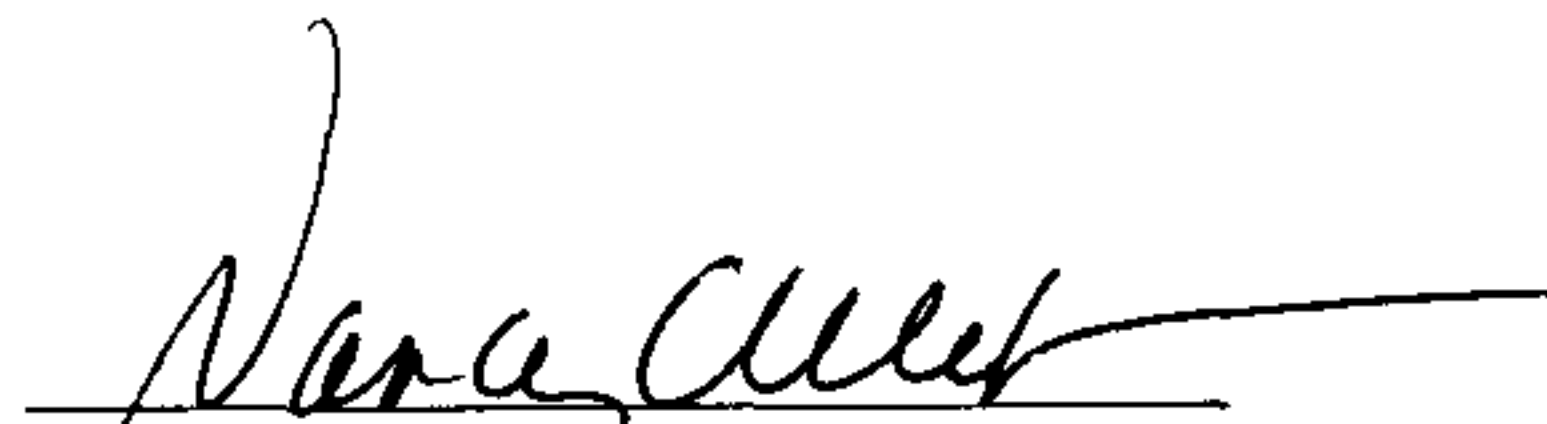
John E. Beverungen
County Attorney

RECEIVED
APR 25 2008
BALTIMORE COUNTY
BOARD OF APPEALS


Nancy C. West
Assistant County Attorney
Office of Law
400 Washington Avenue, 2nd Flr.
Towson, MD 21204
410-887-4420
Attorneys for Baltimore County, Maryland

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of April 2008, a copy of this *Entry of Appearance* was mailed first class to: Thomas F. McDonough, Esq., Royston, Mueller, McLean & Reid, LLP, The Royston Building, Suite 600, 102 W. Pennsylvania Avenue, Towson, MD 21204, and Bruce E. Covahey, Esq., Covahey, Boozer, Devan & Dore, P.A., 614 Bosley Avenue, Towson, MD 21204.


Nancy C. West
Assistant County Attorney



County Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180

Hearing Room #2, Second Floor FAX: 410-887-3182
Jefferson Building, 105 W. Chesapeake Avenue

March 4, 2008

NOTICE OF REASSIGNMENT

CASE #: CBA-08-101

IN THE MATTER OF: MR. AND MRS. THOMAS G. NEUWILLER –
Applicants /Appellants 5597 Gunpowder Road 7th E; 5th C

RE: Application for Administrative Waiver of Building Code Fence Height
Limitations (BOCA 3111.4 per § 32-4-281, BCC)

12/06/2007 – Decision of Buildings Engineer denying Applicant's request.

which was continued on the record on 3/04/08 has been reassigned for hearing on the same date as related zoning matter, Case No. 07-246-A; and has been

REASSIGNED FOR:

TUESDAY, APRIL 29, 2008 at 10:00 a.m.

This matter has been assigned for hearing in accordance with Section 3111.4 /§ 32-4-281, BCC.

NOTICE: 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).

For further information, see Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.

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: Counsel for Appellants /Applicants
Appellants / Applicants

: Thomas F. McDonough, Esquire
: Mr. and Mrs. Thomas Neuwiller

Counsel for Protestant
Protestant

: Bruce E. Covahey, Esquire
: Mary J. Oelke
Amber Oelke-DiLeggi (daughter)

Donald E. Brand, P.E. /Buildings Engineer
Timothy M. Kotroco, Director /PDM
Nancy C. West, Assistant County Attorney
John E. Beverungen, County Attorney



County Board of Appeals of Baltimore County

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

Hearing Room #2, Second Floor
Jefferson Building, 105 W. Chesapeake Avenue

February 1, 2008

NOTICE OF ASSIGNMENT

CASE #: CBA-08-101

IN THE MATTER OF: *MR. AND MRS. THOMAS G. NEUWILLER* –
Applicants /Appellants 5597 Gunpowder Road 7th E; 5th C

RE: Application for Administrative Waiver of Building Code Fence Height
Limitations (BOCA 3111.4 per § 32-4-281, BCC)

12/06/2007 – Decision of Buildings Engineer denying Applicant's request.

ASSIGNED FOR:

TUESDAY, MARCH 4, 2008 at 9:00 a.m.

This matter has been assigned for hearing in accordance with Section 3111.4 /§ 32-4-281, BCC.

NOTICE: 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).

For further information, see Board's Rules of Practice & Procedure, Appendix B, *Baltimore County Code*.

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

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John E. Beverungen, County Attorney



ROYSTON, MUELLER, McLEAN & REID, LLP
ATTORNEYS AT LAW

R. TAYLOR McLEAN
E. HARRISON STONE
WILLIAM F. BLUE
THOMAS F. McDONOUGH
LAUREL PARETTA REESE*
KEITH R. TRUFFER*
ROBERT S. HANDZO*
EDWARD J. GILLISS
JOHN W. BROWNING
TIMOTHY J. OURSLER
ROBERT G. BLUE
CRAIG P. WARD

LEANNE M. SCHRECENGOST
DOUGLAS S. WALKER+
DAVID F. LUBY

SUITE 600
THE ROYSTON BUILDING
102 WEST PENNSYLVANIA AVENUE

TOWSON, MARYLAND 21204-4575

TELEPHONE 410-823-1800
FACSIMILE 410-828-7859
www.rmmlr.com

OF COUNSEL
RICHARD A. REID
EUGENE W. CUNNINGHAM, JR., P.A.
H. EMSLIE PARKS*
BRADFORD G.Y. CARNEY
LISA J. McGRATH

CARROLL W. ROYSTON
1913-1991

H. ANTHONY MUELLER
1913-2000

* ALSO ADMITTED IN D.C.
+ ALSO ADMITTED IN PA.

March 5, 2007

VIA HAND DELIVERY

John E. Beverungen, County Attorney
Baltimore County Office of Law
Old Court House
400 Washington Avenue
Towson, Maryland 21204

Re: Thomas G. Neuwiller
5597 Gunpowder Road
White Marsh, MD 21162

Dear Mr. Beverungen:

Please be advised that I represent Thomas G. Neuwiller. Mr. Neuwiller purchased the above-captioned property in 2002 and has since built a home and other improvements on the property. Since he purchased the property, he has been the subject of numerous complaints to the County, all of which have been registered by a neighbor, Mary Oelke at 5599 Gunpowder Road. Some if not most of the complaints I believe have been registered anonymously.

I am requesting, pursuant to the Maryland Public Information Act, copies of all documents held by the County regarding any complaints – whether related to alleged zoning violations, environmental complaints, or complaints of any kind – that the County might have in its possession.

If you have any questions, or require further information, please don't hesitate to give me a call.

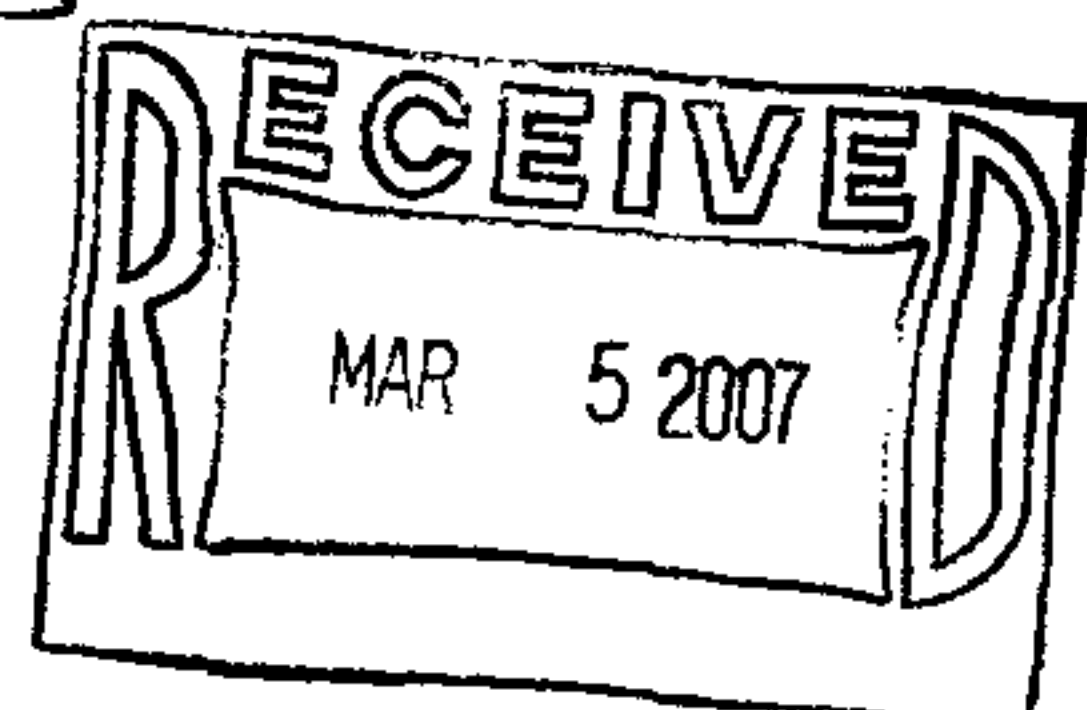
Very truly yours,


Thomas F. McDonough

TFM/laf

cc: Mr. Thomas G. Neuwiller

F:\COMMERCIAL\JWB\CLIENTS\Neuwiller\Beverungen\lr3-5-07.doc



11/2/07

fno ①

Dear Sir or Madam,

This is to inform you in writing that a hearing has been requested regarding the matter of a waiver of height requirement ^(survey available) for the illegal six foot fence built in the right of way (access easment) at 5597 Gunpowder Rd. in front of the house. Said fence poses a safety hazard to vehicles exiting from my property due to impeded visibility. Also an access easment cannot be fenced.

I spoke to R. Wisnon at the posted phone number on 10/29/07. Your attention to this matter is appreciated. Please see attached documents. Sincerely,

Mary J. Deke

5599 Gunpowder Rd
White Marsh, Md.

21162

(410) 256-7843

Q. What zoning regulations must I comply with to construct an addition to my dwelling?

A. To ascertain this information, you must contact 410-887-3391, Monday through Friday from 8 a.m. - 4:30 p.m., or come into the office with the location of the property, size of the addition, type of dwelling (single, group, or semi-detached), book and folio numbers from your deed (if in a recorded subdivision), and name of the recorded subdivision.

Q. Is it legal for my neighbor to build a large shed close to my property line?

A. Accessory structures (storage sheds, garages, etc.) must be located in the rear yard behind the rear foundation wall line, must occupy no more than 40 percent of the yard, and must be located two and one-half feet from the side and rear property lines. If there is an alley, there must be a minimum setback of fifteen feet from the centerline. There is a height limitation of fifteen feet; and, if located on a corner lot (intersection of two streets), the structure must be situated in the one-half of the lot furthest from the side street. A building permit is required if the structure is over one hundred square feet. Information on how to obtain a building permit may be obtained by calling Building Permit Processing at 410-887-3900, Monday through Friday, 8 a.m. - 4:30 p.m.

Q. What are the regulations for fences?

A. A permit is required for fences over forty-two inches high (measured vertical to ground, even if the fence is placed on top of a wall). If a fence is erected within an easement and is required to be removed, it would be at the owner's expense. An access easement can not be fenced.

On a corner lot, no fence or other obstruction to vision is permitted higher than three feet within twenty-five feet of the corner of the two streets, fifteen feet of a street and alley, and ten feet of two alleys. A residential fence in a side or rear yard which adjoins a residential front yard cannot exceed forty-two inches if it is setback zero to ten feet, forty-eight inches if setback ten to twenty feet, sixty inches if setback twenty to thirty feet, and if setback over thirty feet, there is no height limit. Required pool fences and houses more than two hundred feet apart are exceptions.

No residential fence may exceed a maximum height of forty-two inches in the front yard and six feet in the side and rear yards at the property line. If there is a setback of two feet for every vertical foot over six feet, the maximum height may not exceed ten feet in the side and rear yards.

Q. How can I purchase the Baltimore County Zoning Regulations?

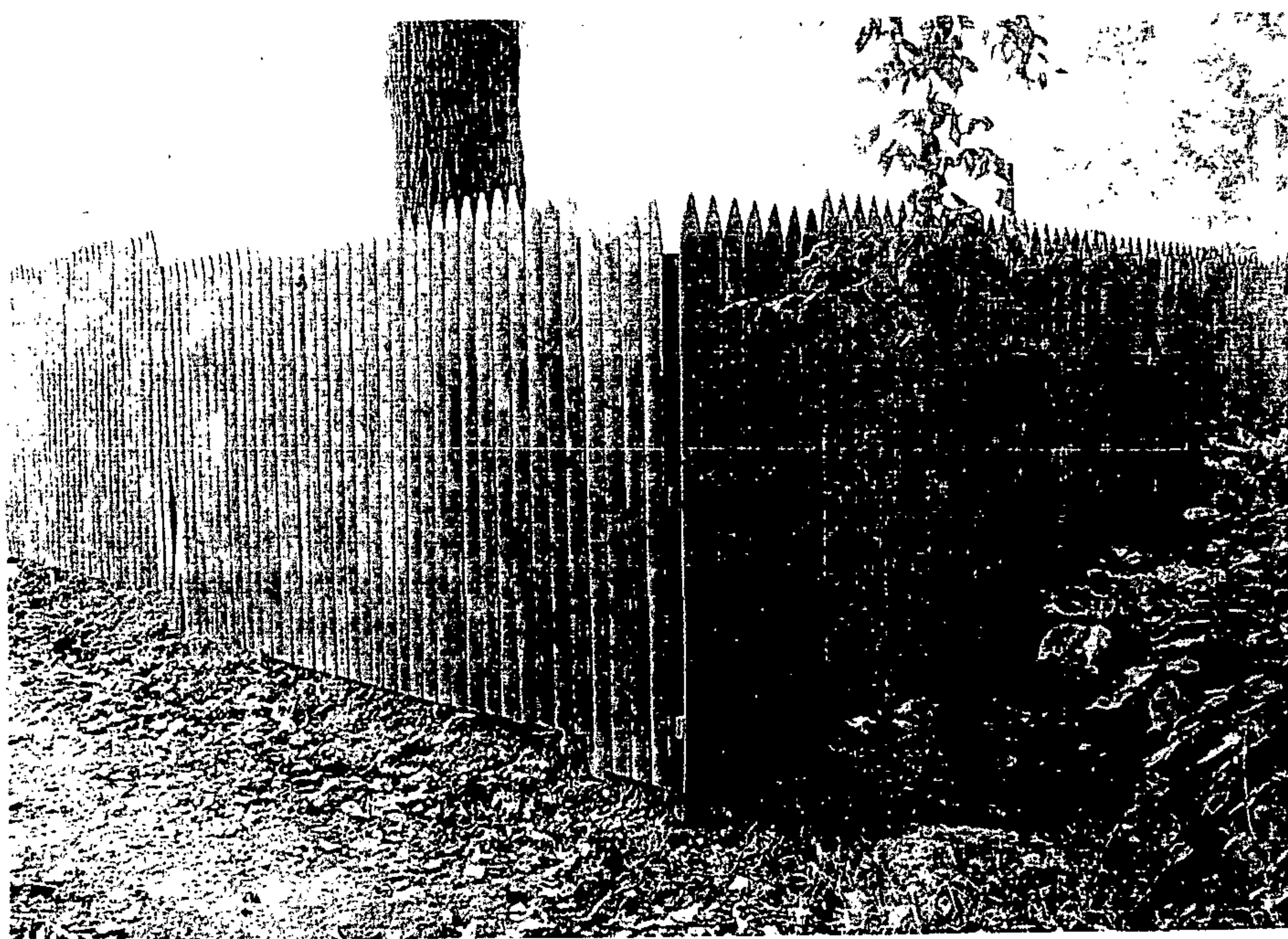
A. Contact General Code Publishers at 1-800-836-8834 or at their website: <http://www.generalcode.com/bczr.html>.

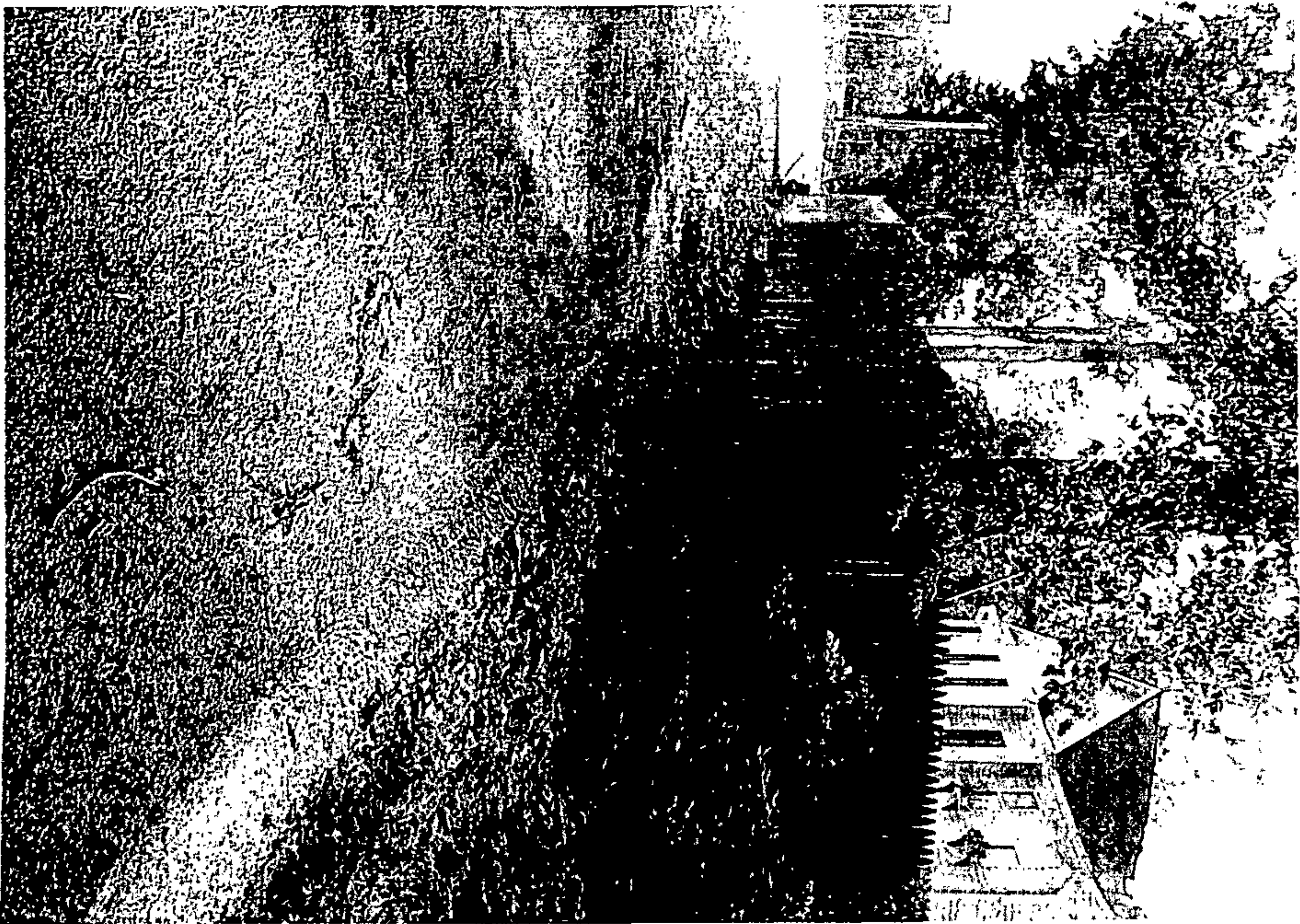
Main FAQ

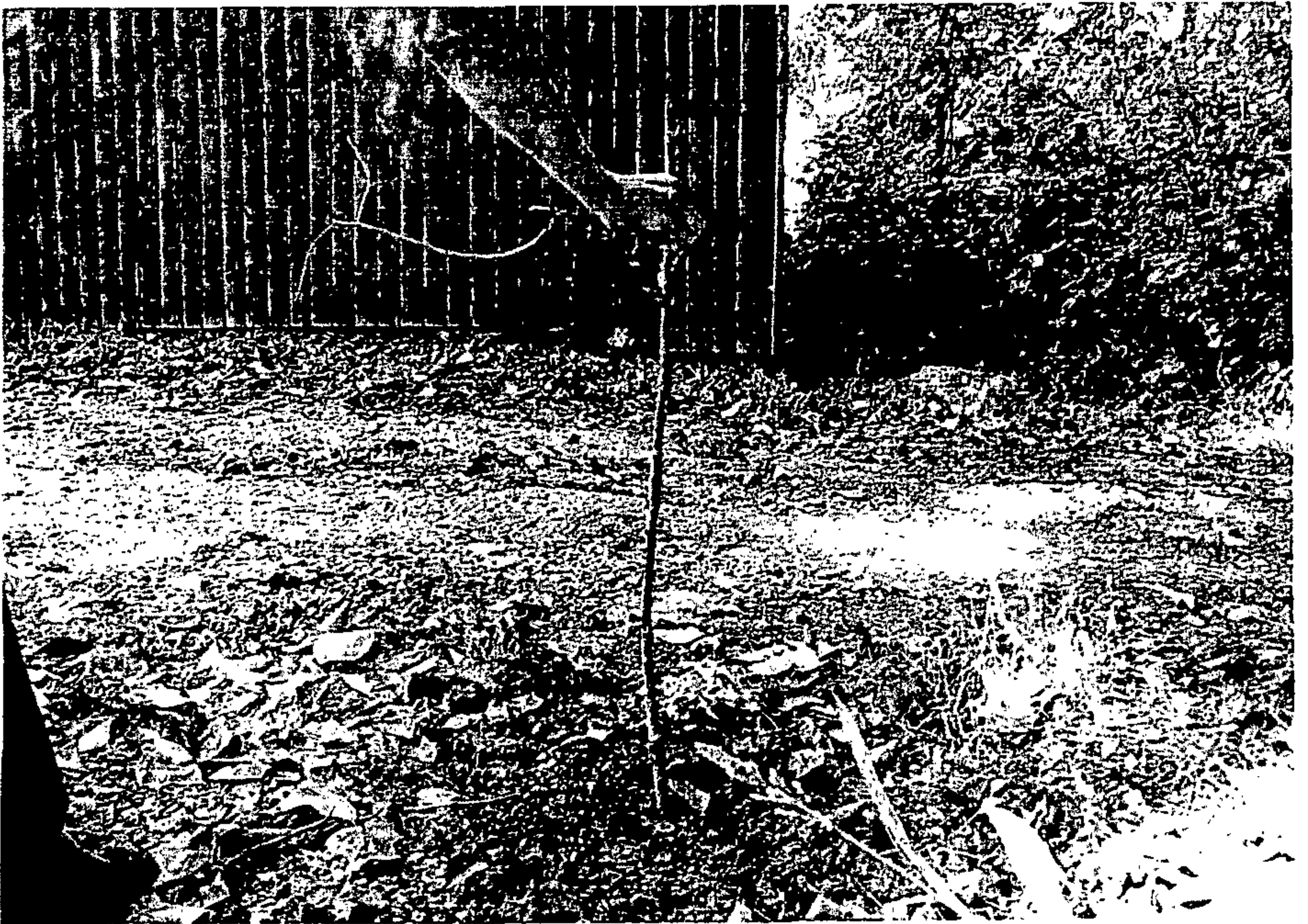
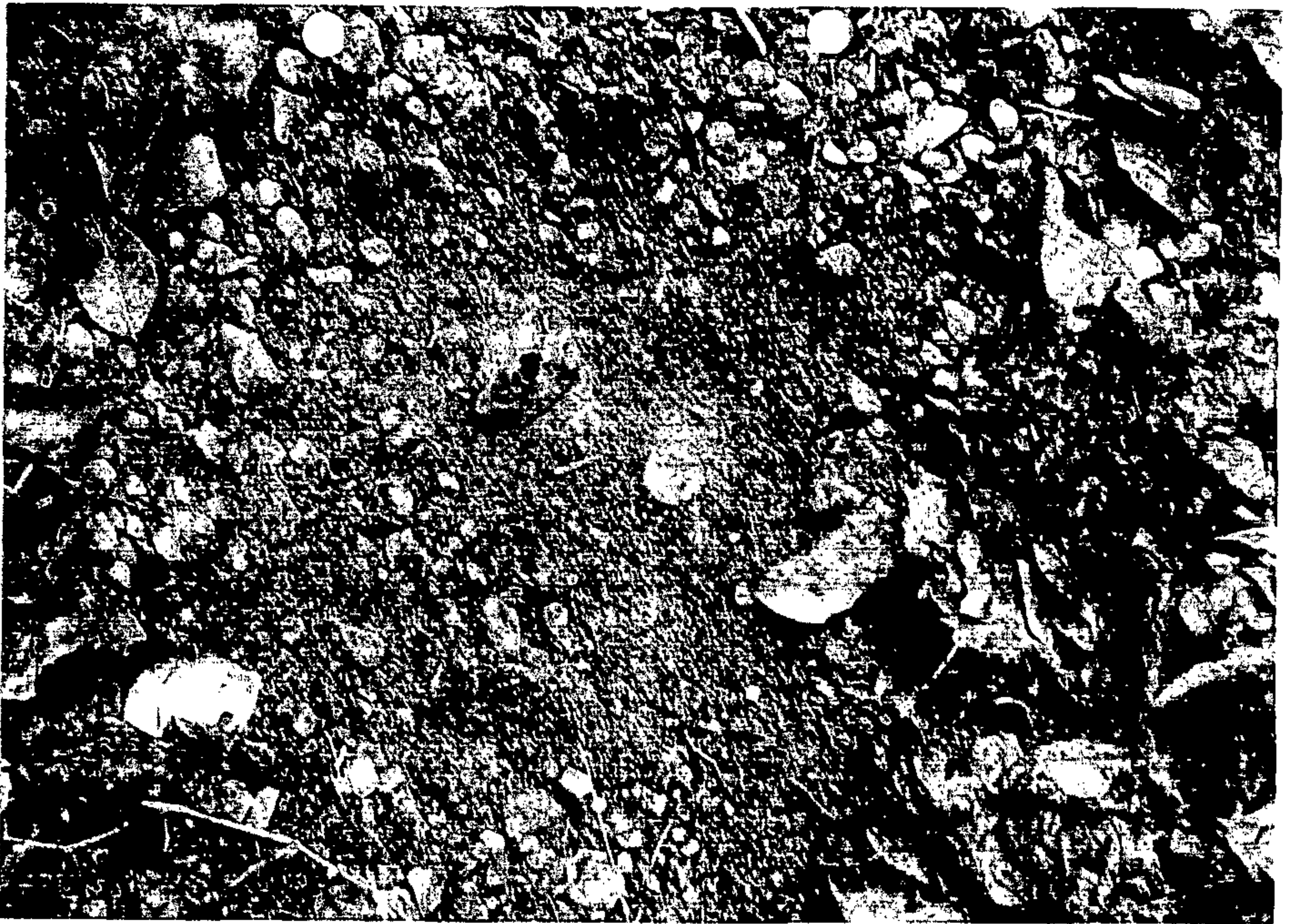
Revised February 9, 2005

applicable
zoning regulations

licensed
survey available









WITNESSETH, That in consid
jon of the sum of \$130,000.00

C 1953 650.1

DEED
CLERK

1314.0

the said John R. Younkin and Lois M. Younkin, his wife,

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Baltimore County

By 11-5-89 Date

do es grant and convey to the said Kimbel E. Oelke and Mary J. Oelke, his wife,
as tenants by the entirety their assigns, the survivor of them and his or her

personal representatives/~~successors~~ and assigns

, in fee simple, all

that lot of ground situate in Baltimore County, Maryland

and described as follows, that is to say:

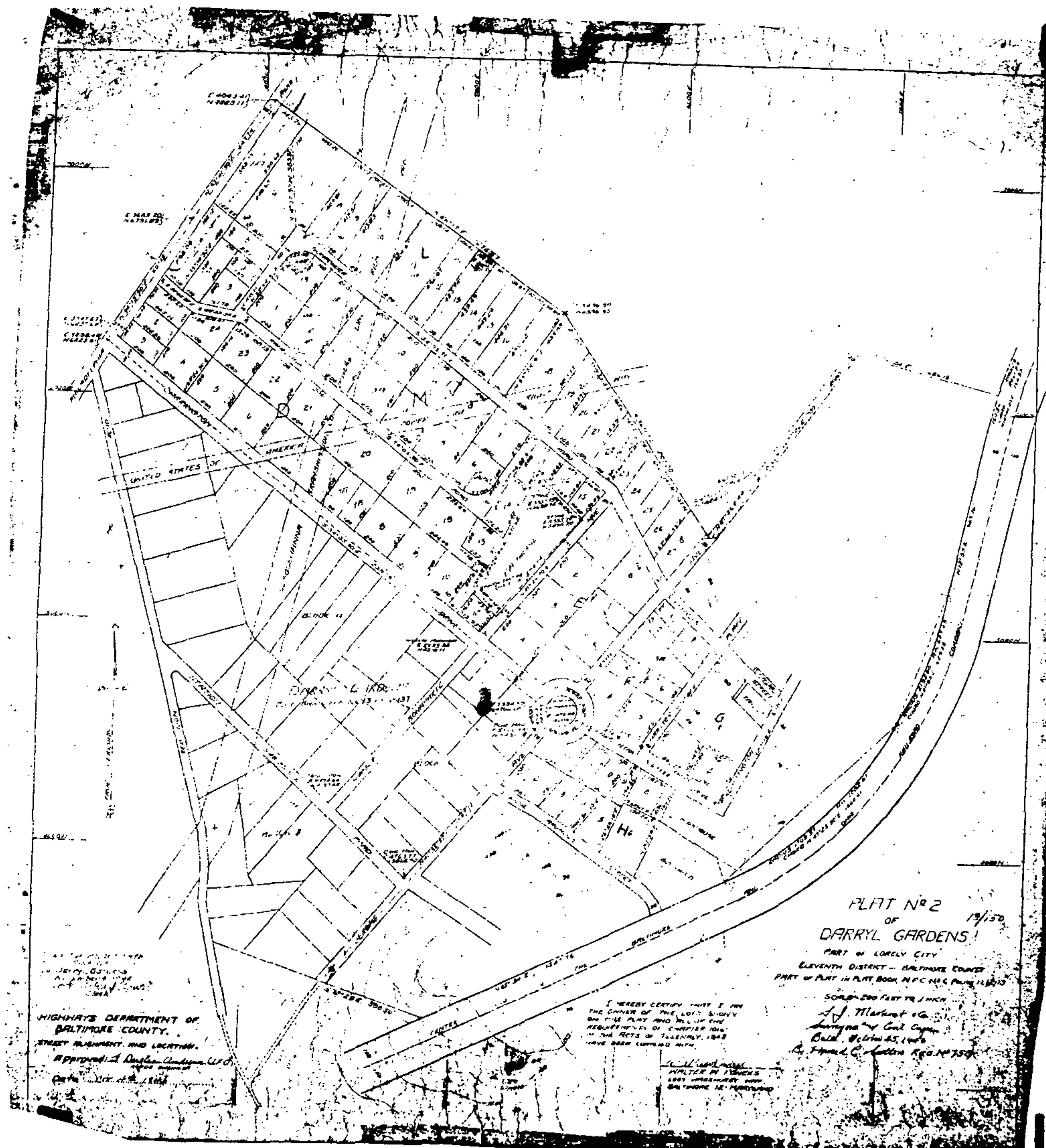
BEGINNING FOR THE SAME at a point in the easterly line of Philadelphia Road 66 feet wide at the northwest corner of Lot 1-A in Block L of Darryl Gardens NO. 2, according to the Plat thereof recorded in Book 13 of Plats, page 150 among the Baltimore County Land Records, thence with and binding on the northeasterly line of said Lot 1-A and of Lot 7 in Block L of said subdivision south 56 degrees 13 minutes east 443.96 feet to the northwesterly corner of Lot 8 in said Block L, thence with and binding on the westerly line of said Lot 8 south 35 degrees 54 minutes west 245.73 feet, more or less, to the land of J.A. Keller, thence by a new line of division with and binding on the line of Keller north 54 degrees 05 minutes 30 seconds west 432 feet, more or less, to the easterly line of said Philadelphia Road, thence with and binding on the easterly line of said Philadelphia Road north 33 degrees 41 minutes 30 seconds east 245.73 feet to the place of beginning. Being and comprising a part of Lots 1-A, 6 and 7 in Block L as shown on Plat of Darryl Gardens No. 2, recorded as aforesaid. The improvements thereon being known as 592 Gun Powder Road.

TOGETHER WITH the right to the within named grantees, their heirs and assigns, to the use in common, with others entitled thereto, of a 20-foot road (said road having been heretofore reserved to the within named grantor) binding along a part of the northwest line of Lot No. 8 in Block L as shown on said plat and extending from the southeastern part of the property hereinabove described to Gunpowder Road and Larch Road, for the purpose of free entry, ingress and regress over said 20-foot road to and from Gunpowder Road and Larch Road and the roads connecting therewith.

BEING the same lot of ground which by Deed dated January 24, 1956 and recorded among the Land Records of Baltimore County in Liber GLB No. 2866 folio 19 was granted and conveyed by Walter W. Powers, widower, unto John R. Younkin and Lois M. Younkin.

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE

B B 083****208000^a SIGNATURE 11-5-89 DATE

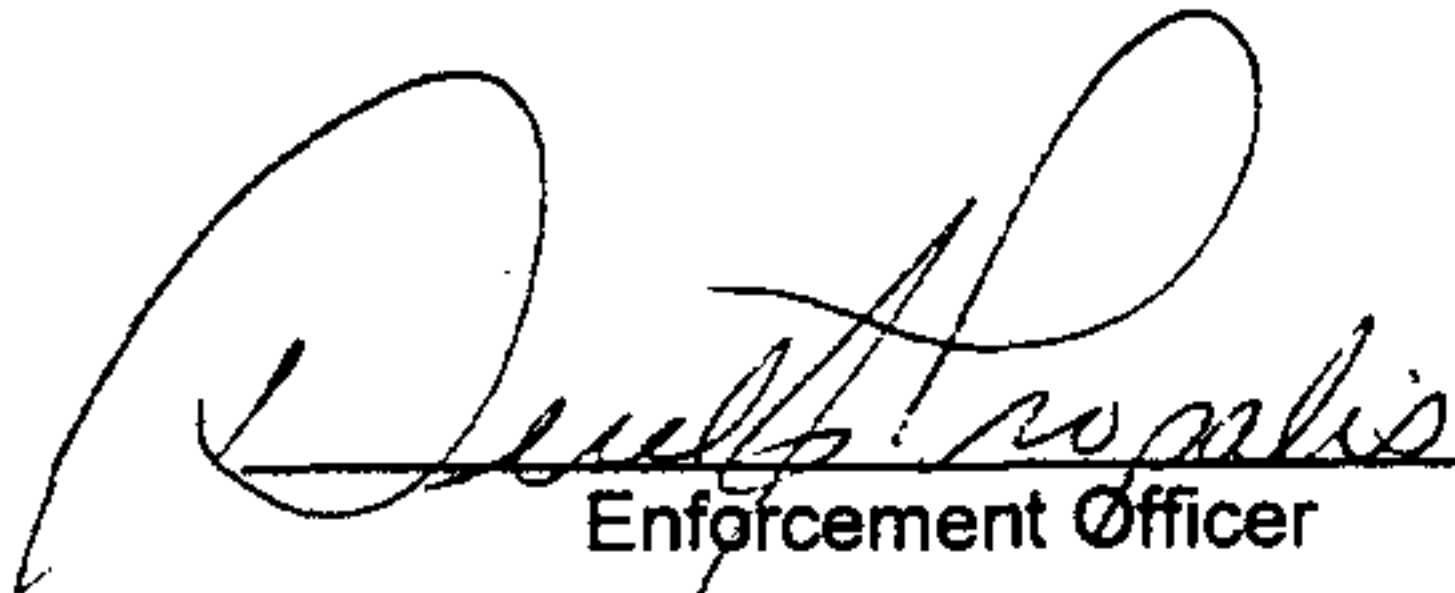


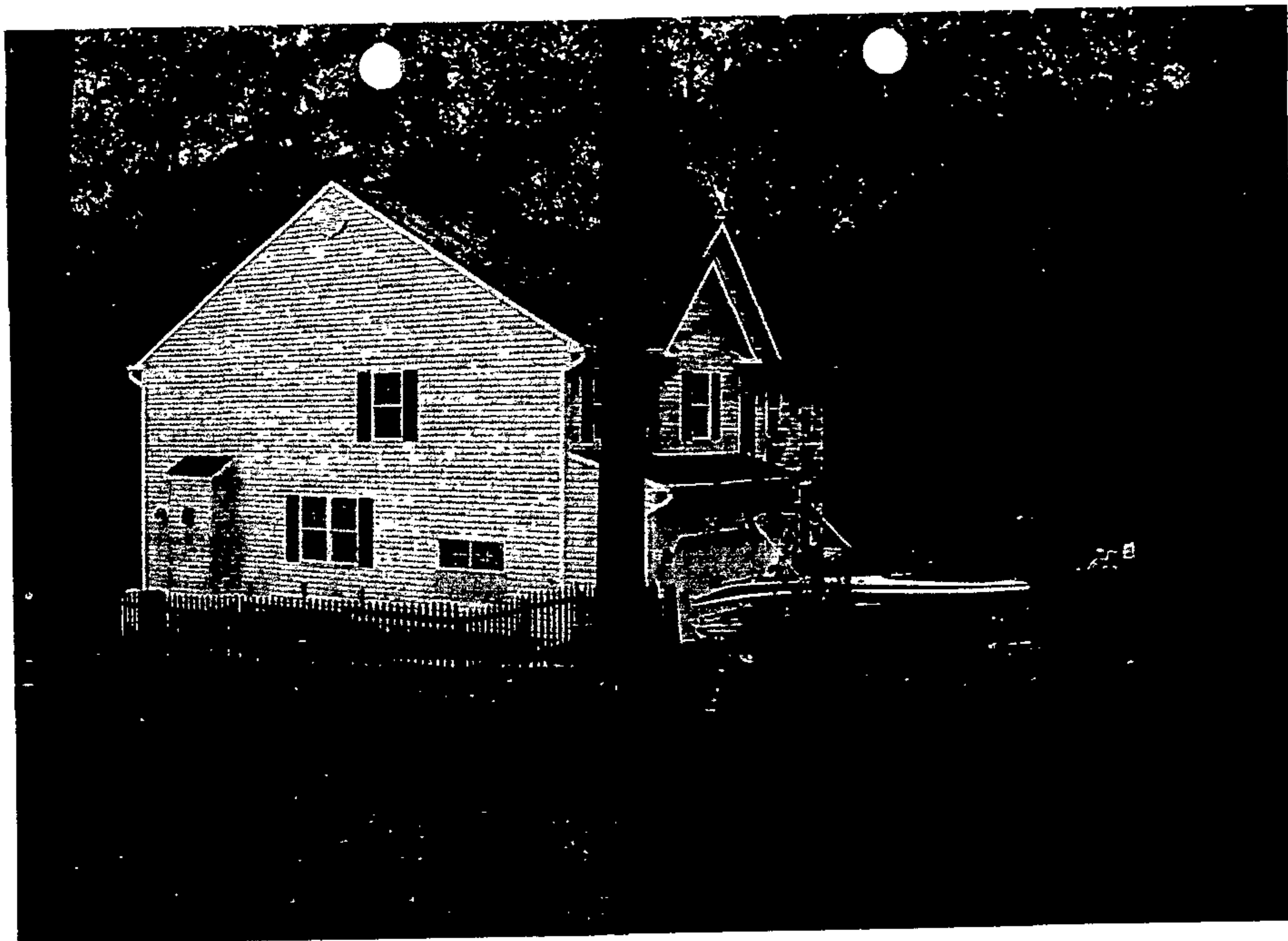
PHOTOGRAPHIC RECORD

Citation/Case No.: 06-5432 5597 Gunpowder

Date of Photographs: 10/17/06

I HEREBY CERTIFY that I took the 5 photographs set out above, and that these photographs
(number of photos)
fairly and accurately depict the condition of the property that is the subject of the above-referenced
citation/case number on the date set out above.


Enforcement Officer



accosted by Neuwillers in Oct 06



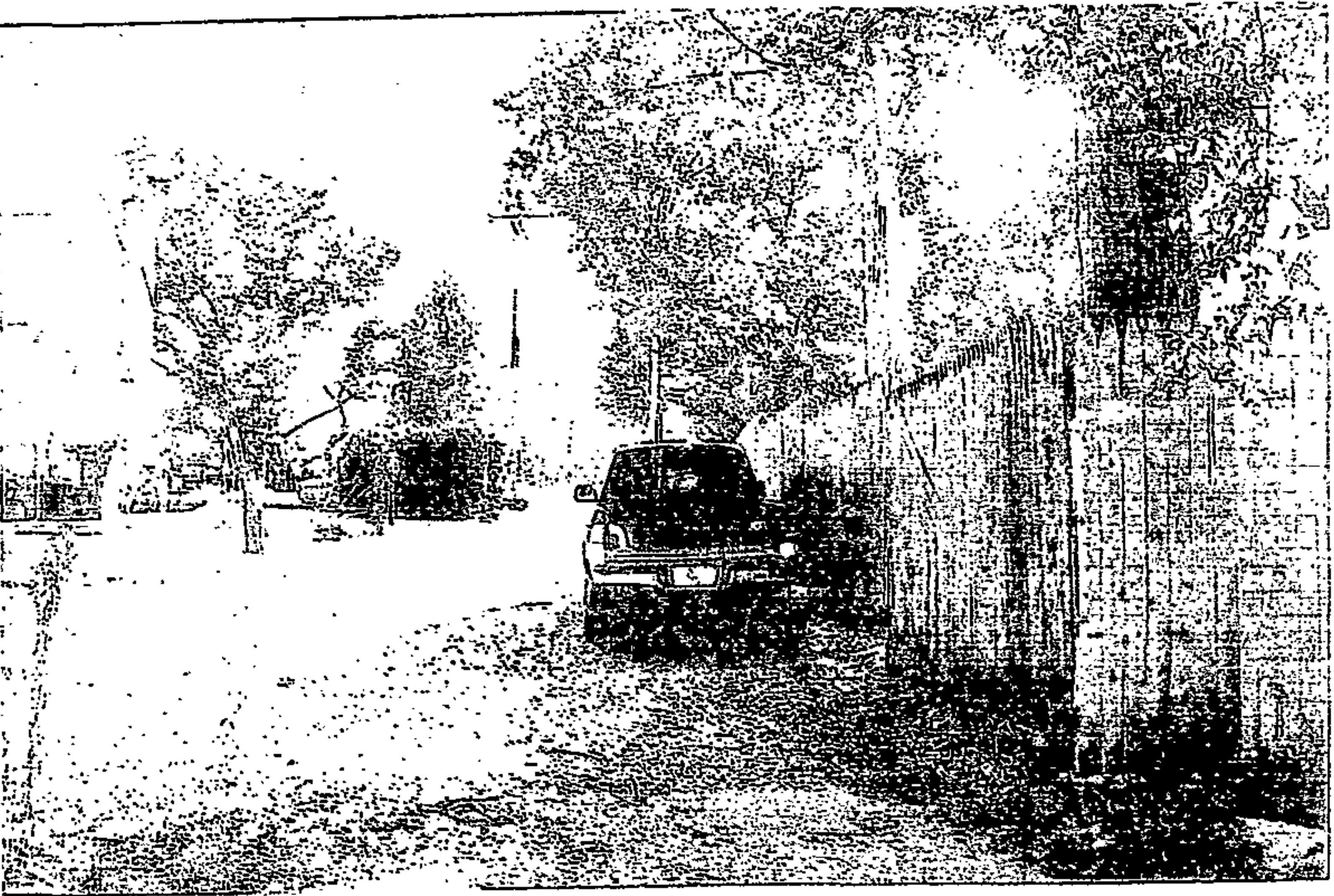
← She was cursing at me for complaining about fence in easement



← fence in right of way

Shows Mr + Mrs. Neuwiller, Parking in, standing in right of way, preventing me from leaving my home, I had to call 911

Newill's truck parked
IN right of way
↓



Rocks placed in
right of way



← Fence

original photos available

Why is there no retaining

Baltimore County
Department of Permits and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, MD 21204
410-887-3900
Fax: 410-887-2824

wall
for his raised-
grade pool?

X Not in Permit
unless stated on Deed

Permit No. _____

Location _____

This is to advise that the above-referenced permit for a retaining wall is subject to review by the Department of Public Works if the proposed work involves a Baltimore County easement.

Additionally, in order to avoid any possible damage to adjacent properties, the retaining wall should not be placed directly on your property lines, but should be set back far enough to allow sufficient space for the surface water to flow to the common property lines and seek its outfall within your property.

You are further advised that you are fully responsible for damages on adjacent properties caused by ponding or flooding of storm water as a result of said construction and that location within a county-owned easement is subject to removal at your expense.

Certification of the above must be filed with the building application and be by the owner in fee. Any other signature will nullify the permit.

Douglas A. Swam
Permit Services Supervisor

I hereby certify that I am the owner in fee of the referenced property and that I have read the above requirements.

Signature of Owner In Fee

Date

Department of Permits and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204
Baltimore County, Maryland

In the Matter of

Thomas G. Neumiller

5597 Gunpowder Road

Petitioner

**FINDINGS OF FACT AND CONCLUSION OF LAW
FINAL ORDER OF THE CODE ENFORCEMENT HEARING OFFICER**

This matter came before the Code Enforcement Hearing Officer for the Department of Permits and Development Management on December 6, 2007, for a hearing on a request for a waiver of the Baltimore County Building Code requirements to allow a 72" fence in lieu of the maximum allowed 42" fence in the front yard of 5597 Gunpowder Road, 21163.

Mr. Thomas Neumiller appeared as petitioner

Mary Jane Oelke appeared in protest represented by Bruce E. Covahey, Esquire.

Subject property enjoys a variance granted to allow a swimming pool in the side yard in lieu of the rear yard. Petitioner requested a variance to erect a 72" fence in the front yard however was advised that fence height issues was a matter of the Department of Development Management.

Subject property was posted advertising the request for a 72" fence in lieu of 42" fence. Subject property was also posted advertising the Hearing of December 6, 2007.

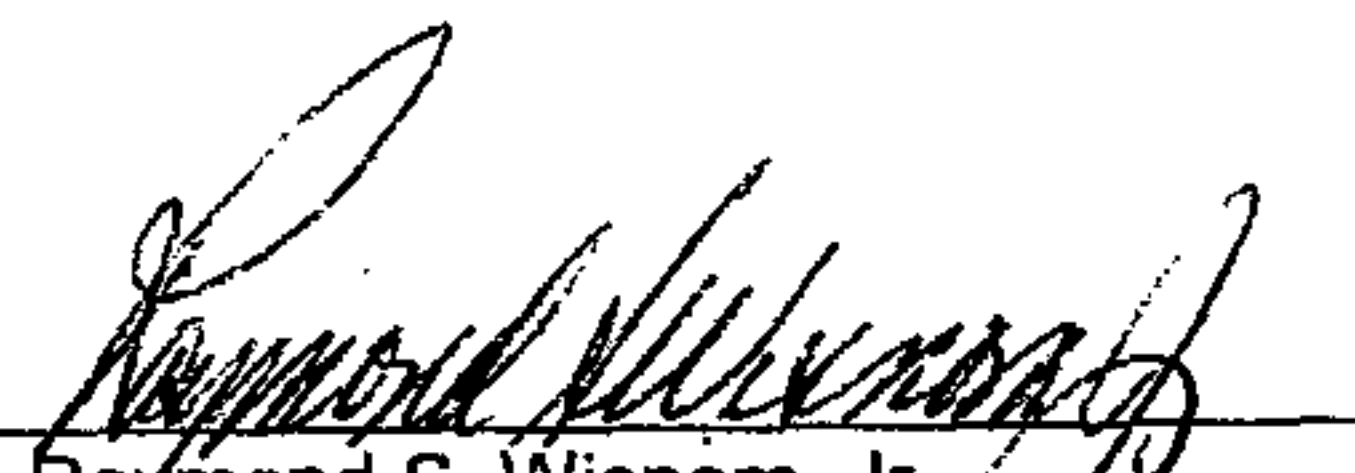
Building Code requirements set pool safety barrier heights at 48". Given the variance approval for the pool in the side yard and the required 48" barrier height, there appears cause to allow a 48" fence height in lieu of the maximum required 42" height. Baltimore County Zoning Regulations section 427 allows a maximum height of 42" for any residential fence that adjoins the front yard of another except for fences required to screen a swimming pool.

Subject fence is erected. Subject fence is erected in and encroaches upon a 20' right-of-way. This fact is clearly shown on survey of the access to 5599 Gunpowder Road, sealed by Thomas Mayo Hoffman, Jr. registered and licensed surveyor by the State of Maryland. Baltimore County is not empowered to issue a permit to erect a fence in a right-of-way. Therefore any fence erected shall be located so as to not encroach upon the right-of-way.

Testimony was given to show that vehicles are shielded from view causing safety issues for both the petitioner and the protesting party. A 48" fence would allow persons in either driveway a view of a moving vehicle above the fence line. The existing 72" fence does not afford this visibility.

The petitioner's request for a 72" fence is hereby denied. The petitioner is granted the ability to erect a 48" fence that meets County Code Standards for a pool barrier. Subject 48" fence shall not be located in the 20' right-of-way. The petitioner must also reduce the height to 48" of any section or sections of fencing that adjoins the front yard of 5599 Gunpowder Road. Petitioner is required to apply for and obtain a fence permit with the aforementioned conditions to be conditions of the fence permit.

Signed:


Raymond S. Wisnom, Jr.
Code Enforcement Hearing Officer

The violator is advised that pursuant to §3-6-301(a), Baltimore County Code, an appeal to the Baltimore County Board of Appeals may be taken within fifteen (15) days after the date of a final Order. §3-6-302(a)(b)(c)(d) requires the filing of a petition setting forth the grounds for appeal and a filing fee of \$150. The appellant is urged to read the requirements for the appeal petition. Security in the amount of the civil penalty must be posted with the Director.

M. J. DeLke
5599 Gumpow Rd
White Marsh, Md.
21162

County Board of Appeals of Baltimore County
Jefferson Building
105 West Chesapeake Ave
Towson, Md.
21204

21204-4325 CO10 21204



7007 2560 0002 5484 3890



UNITED STATES
POSTAL SERVICE

0000



21204

U.S. POSTAGE

PHIL
WHITE MARSH, MD

MAR 18 2008

PMOUNT

\$3.23

00035349-08

Baltimore County

Department of Permits and Development Management
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
410-327-3900/Fax: 410-327-2824

Permit No. _____

Location

5597 Gunpowder Rd.,
White Marsh, MD 21162

The residential swimming pool you propose is subject to the following requirements:

1. It must be emptied by methods that prevent nuisance and/or water damage to adjacent properties.
2. If regarding the pool site area, adequate disposal of surface drainage must be provided and existing property line grades must be met. The correction of any problem resulting from grading is the responsibility of the property owner. No construction or grading is allowed in any county-owned easement.
3. Placement cannot be within ten feet of any overhead wires (NEC 680-8).
4. A fence or equivalent barrier, 48 inches high with self-closing and self-latching gates, must enclose the pool. Any openings in the barrier must be too small to allow the passage of a four inch ball. The fence must support a 200-pound lateral load at the top. New enclosure fences or new sections of enclosure fences also are subject to the following requirements:

-Picket-Type Fences: Horizontal members less than 45 inches apart (top to top) must be located on the pool side of the fence. Openings between vertical members must be 1 1/4 inches or less.

-Chain Link or Lattice-Type Fences: Maximum opening must be 1 1/4 inch and 1 1/4 inches, respectively, unless provided with slats.

-Dwelling Wall (forms part of the barrier): Doors from the dwelling directly into the pool enclosure must have an audible alarm.

5. Certification of the above must be filed with the building application and be by the owner in fee. Any other signature will nullify the permit.

Douglas A. Swan
Permit Services Supervisor

I hereby certify that I am the owner in fee of the referenced property and that I have read the above requirements.


Signature of Owner in Fee

4.13.05
Date