

2/8/11

IN THE MATTER OF
THE APPLICATION OF
JOSEPH AND URSZULA ANTONELLI
LEGAL OWNERS/PETITIONERS
PETITION FOR VARIANCE -NE/COR
COOPERFIELD COURT AND COOPER ROAD
(14601 COOPER ROAD)
10TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 08-474-A

* * * * *

ORDER OF DISMISSAL

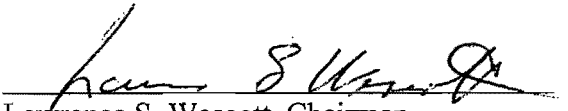
This matter comes to the Board of Appeals by way of an appeal filed by J. Carroll Holzer, Esquire on behalf of Lisa Viscuso, Laura Reiners, and John and Leslie Reistrup, Appellants, from a decision of the Zoning Commissioner dated July 17, 2008, in which the requested zoning relief was granted with conditions.

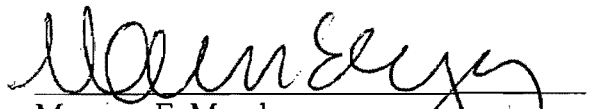
WHEREAS, the Board is in receipt of a Request to Withdraw Petition filed by Howard L. Alderman, Jr., Esquire on behalf of Joseph and Urszula Antonelli, Petitioners (a copy of which is attached hereto and made a part hereof); and

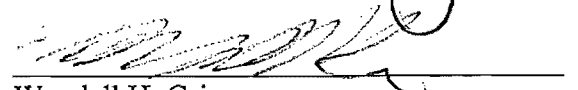
WHEREAS, said Petitioner requests that the Petition for Variance that is the subject matter of this appeal be withdrawn and dismissed without prejudice,

IT IS THEREFORE ORDERED this 8th day of February, 2011 by the Board of Appeals of Baltimore County that the Petition for Variance filed in Case No. 08-474-A be and the same is hereby **WITHDRAWN AND DISMISSED**, and that the Zoning Commissioner's Order dated July 17, 2008, including any and all relief granted therein, is rendered **null and void**.

**BOARD OF APPEALS
OF BALTIMORE COUNTY**


Lawrence S. Wescott, Chairman


Maureen E. Murphy


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

February 8, 2011

Howard L. Alderman, Jr., Esquire
Levin & Gann, P.A.
502 Washington Avenue, 8TH Floor
Towson, MD 21204

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286

RE: *In the Matter of: Joseph and Urszula Antonelli – Legal Owner/Petitioners*
Case No.: 08-474-A

Dear Counsel:

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

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

Very truly yours,

Theresa Shelton/KC

Theresa R. Shelton
Administrator

TRS/klc
Enclosure
Duplicate Original Cover Letter

c: Lisa Viscuso
John & Leslie Reistrup
Laura Antonelli
Timothy Fluharty /Fluharty Electric, Inc.
Pat Van Den Beemt
Renee & Ed Wheeler
Mark Cibor
Katherine Yates
Carroll Nordhoff
Office of People's Counsel
Lawrence M. Stahl, Administrative Law Judge
Michael Field, County Attorney

Laura Reiners
Joseph & Urszula Antonelli
Bruce Doak /Gerhold, Cross & Etzel, Ltd.
George Hudnet /Green Power, LLC
Ken Bosley
Dan Lyons
Jack Dillon
Teresa Moore /Valleys Planning Council
Mr. and Mrs. Richard F. Price
Jeff Mayhew, Acting Planning Director
Arnold Jablon, Director /PAI
Nancy C. West, Assistant County Attorney

BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY

RE: PETITION FOR VARIANCE
N/E corner of Cooperfield Court and
Cooper Road
(14601 Cooper Road)

10th Election District
3rd Councilmanic District

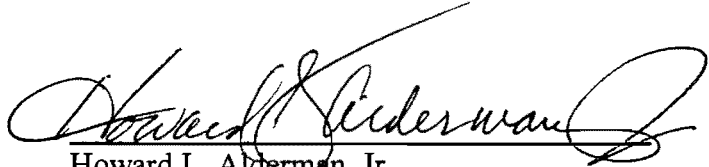
Joseph and Urszula Antonelli,

Petitioners/Owners

Case No.: 2008-0474-A

WITHDRAWAL OF PETITION WITHOUT PREJUDICE

Joseph and Urszula Antonelli, Petitioners/Owners in the above-captioned case, have authorized their undersigned legal counsel, in strict accord with Rule 3.b. of the *Rules of Practice and Procedure* promulgated by this Board, to withdraw without prejudice thier Petition for Variance in the above-referenced case. This withdrawal is more than fifteen (15) days in advance of the Board's hearing on this matter which, at the time of the filing of this Withdrawal, has not yet been scheduled.



Howard L. Alderman, Jr.

Levin & Gann, P.A.

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Towson, Maryland 21204

410.321.0600 [voice]

410.296.2801 [fax]

halderman@LevinGann.com [e-mail]

Attorneys for Joseph and Urszula Antonelli,
Petitioners/Owners

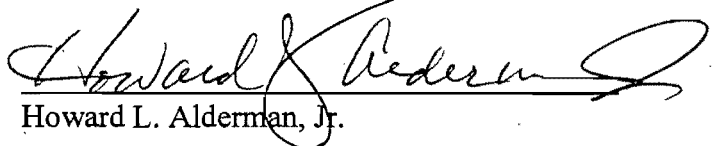
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of February, 2011, a copy of the foregoing Withdrawal of Petition Without Prejudice and the proposed Order attached thereto, was mailed via First-Class, United States Mail to: i) J. Carroll Holzer, Esquire, Holzer & Lee, P.A., 508 Fairmount Avenue, Towson, Maryland 21286; and ii) Peter Max Zimmerman, Esquire and Carole S. Demilio, Esquire, both of the Baltimore County Office of People's Counsel, The Jefferson Building, Suite 204, 105 West Chesapeake Avenue, Towson, Maryland 21204.

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BALTIMORE COUNTY



Howard L. Alderman, Jr.

7/27/08

IN RE: PETITION FOR VARIANCE	*	BEFORE THE DEPUTY
NE corner of Cooperfield Court and	*	ZONING COMMISSIONER
Cooper Road	*	
(14601 Cooper Road)	*	OF BALTIMORE COUNTY
10th Election District	*	
3rd Councilmanic District	*	
Joseph and Urszula Antonelli	*	Case No.: 2008-0474-A
Petitioners		

* * * * *

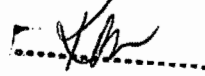
NOTICE OF APPEAL

LISA VISCUSO, OF 13 COOPERSTOWN COURT; LAURA REINERS, OF 15 COOPERSTOWN COURT; AND JOHN & LESLIE REISTRUP, OF 12 COOPERSTOWN COURT, ALL OF PHOENIX, MARYLAND 21131, individual Appellants in the above captioned matter, by and through their attorney, J. Carroll Holzer, P.A., feeling aggrieved by the decision of the Deputy Zoning Commissioner in Case No. 2008-0474-A, hereby note an appeal to the County Board of Appeals from Findings of Fact and Conclusions of Law of the Deputy Zoning Commissioner of Baltimore County dated July 17, 2008 and attached hereto and incorporated herein as **Exhibit #1**.

Filed concurrently with this Notice of Appeal is Appellants' check made payable to Baltimore County to cover the costs of the appeal. Appellants were parties below and fully participated in the proceedings.

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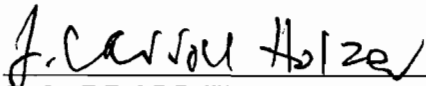
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LAW OFFICE
HOLZER AND LEE
THE 508 BUILDING
508 FAIRMOUNT AVENUE
TOWSON, MARYLAND
21286

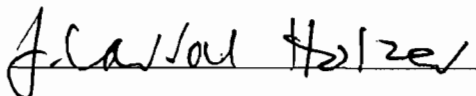
(410) 825-6961
FAX: (410) 825-4923

Respectfully submitted,


J. CARROLL HOLZER, Esquire
Holzer & Lee
508 Fairmount Avenue
Towson, Maryland 21286
410-825-6961
Attorney for Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of July, 2008, a copy of the foregoing Notice of Appeal was mailed first class, postage pre-paid to: Howard Alderman, Esquire, Levin & Gann, 502 Washington Ave., Towson, MD 21204; County Board of Appeals, Jefferson Building, 105 West Chesapeake Ave., Suite 203, Towson, MD 21204; and People's Counsel for Baltimore County, Jefferson Building, 105 West Chesapeake Ave., Suite 204, Towson, M, 21204.


J. CARROLL HOLZER, Esquire

7/17/08

IN RE: PETITION FOR VARIANCE

NE corner of Cooperfield Court and
Cooper Road
10th Election District
3rd Councilmanic District
(14601 Cooper Road)

Joseph and Urszula Antonelli
Petitioners

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
* **Case No. 2008-0474-A**

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owners of the subject property, Joseph and Urszula Antonelli. Petitioners are requesting variance relief from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure in the side yard in lieu of the required rear yard, and from Section 400.3 of the B.C.Z.R. for an accessory structure (tower with a wind turbine generator) 120 feet tall in lieu of the maximum 15 feet allowed. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 1.

As will be explained in greater detail, this is a case of first impression in Baltimore County as the relief requested by Petitioners involves an innovative method of addressing current national and global energy challenges. The Antonelli family's proposal to construct a 120 foot tower with a small wind energy system in the form of a wind turbine generator (hereinafter referred to as a "windmill") represents the first Baltimore County zoning case involving a request to use wind power as an alternative method of providing energy to a Baltimore County home. Since the B.C.Z.R. does not currently contain regulations specifically pertaining to the construction or maintenance of a windmill, this Petition was filed as a request for variance from height and location area regulations.

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Appearing at the requisite public hearing in support of the variance request were Petitioners Joseph and Urszula Antonelli along with their daughter Laura Antonelli, and their attorney, Howard L. Alderman, Jr., Esquire. Also appearing in support of the requested relief was Bruce Doak with Gerhold, Cross & Etzel, Ltd., the licensed property line surveyor who prepared the site plan, and Timothy Fluharty with Fluharty Electric, Inc., Petitioners' electrical and wind turbine expert. A number of nearby neighbors also attended the hearing in support of the requested relief, including Dan Lyons of 11 Cooperstown Court, who testified at the hearing. The names and addresses of the other supporting neighbors are identified on the "Petitioner's Sign-In Sheet" that was circulated just prior to the hearing and is contained within the case file.

As is understandable given the unique nature of the requested relief, the case garnered significant interest in the community and several Protestants attended the hearing as well. The names and addresses of these individuals are identified on the "Citizen's Sign-In Sheet" that was also circulated prior to the hearing and is contained within the case file. These individuals include three neighbors, Lisa Viscuso of 13 Cooperstown Court, Laura Reiners of 15 Cooperstown Court, and Katherine Yates of 14509 Cooper Road, each of who provided testimony in opposition to the requested relief.

At the outset of the hearing, Protestants raised a preliminary issue arguing that Petitioners had not complied with the requirement of providing proper notice of the hearing, since the sign that provided the requisite notice had been posted in an area of the subject property that was partially covered with brush, and also because the *North County News* had published notice of the hearing that apparently listed an incorrect location of the public hearing. After reviewing the evidence, I determined that Petitioners had fulfilled the notice requirement by conspicuously posting notice of the hearing on the subject property. Consistent with the Court of Appeals standard, the sign provided notice that alerted interested parties to defend their interest and

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described the nature of the request at issue before the Zoning Commissioner. *See, Cassidy v. Board of Appeals of Baltimore County*, 218 Md. 418, 421-2 (1958). Furthermore, actual notice of the public hearing was evidenced by the attendance and participation of various Protestants at the public hearing. *See, Largo Civic Ass'n v. Prince George's County*, 21 Md. App. 76, 86 (1974). With regard to the alleged publishing error by the *North County News*, Petitioners met the requirement to publish notice of the hearing in *The Jeffersonian*, which listed the correct date, time, and location of the hearing, and were not responsible for publishing notice in any other periodicals. Thus, the public hearing was permitted to proceed.

Testimony describing the subject property and requested relief was initially offered by Bruce Doak, followed by Joseph Antonelli and Timothy Fluharty. The evidence revealed that the subject property is a large, irregular-shaped property containing approximately 58.735 acres of land zoned R.C.2. The property is located less than a mile north of Paper Mill Road on the east side of Cooper Road -- adjacent to the intersection of Stockton Road, in the Phoenix area of Baltimore County. It is bordered to the south by Cooperfield Court. As shown on the site plan, the property is presently improved with two existing barns. A two-story wood frame and metal barn is located toward the northeast portion of the property. The second two-story wood frame and concrete block barn and metal silo are located approximately 100 feet south of the wood frame and metal barn. Petitioners have also removed the former dwelling structure that once occupied the site and are currently constructing a single-family residence near the center of the property, which will also include a pool, pool house, and the proposed tower and windmill that is the subject of the instant requests for variance.

Mr. Doak submitted a marked copy of the site plan and numerous photographs that provided an overview of the layout of the subject property and surrounding area. The marked site plan served as a photo key identifying the location and vantage point of each of the

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accompanying photographs and was marked and accepted into evidence as Petitioners' Exhibit 2. The photographs were marked and accepted into evidence as Petitioners' Exhibits 2A through 2R, respectively. Petitioners' Exhibits 2A through 2K provide a view of the property and surrounding areas looking outward from the proposed site of the windmill in a clockwise rotation, starting with a view to the west and ending with a view to the southeast. The photographs reveal a rural, green property consisting primarily of rolling hills with open fields and wooded areas. Petitioners' Exhibits 2L and 2M move south from the previous photographs and capture the view looking south from the eastern side of the proposed pool house, which is located near the center of the subject property. These photographs reveal additional open fields and show several homes in the distance that are located to the southeast of the property. Finally, Exhibits 2N through 2R move to the western side of the property to show the area where Petitioners are proposing to construct a gate and access driveway to their home. These photographs helped paint a picture of the area surrounding the proposed windmill, in an effort to show the extent of Petitioners' property vis-à-vis the proposed location of the tower and windmill.

Further evidence demonstrated that the Antonelli family is proposing to construct an eco-friendly "hybrid house" -- through the use of geothermal construction materials, over 250 feet of solar panels, and the proposed windmill -- which will help provide energy to the residence and the other accessory structures. Mr. Antonelli testified that the family recognizes the national struggle over energy dependence and proposes to construct a home "that will be part of the solution rather than the problem." While it would be much easier, and initially cheaper, to simply connect into Baltimore County's existing power grids, Mr. Antonelli testified that the family is attempting to set an example and benefit the surrounding community by decreasing their carbon footprint and using wind -- one of Maryland's greatest natural, renewable energy

resources -- to power their home. Despite some rumors and concerns, Mr. Antonelli testified that his family has no interest in leasing any portion of their property to permit the construction of additional windmills for surrounding neighbors. According to Mr. Antonelli, the goal is to provide renewable energy for their home, not to create a wind farm. Moreover, in response to Protestants' contention (which will be discussed in more detail, *infra*) that the proposed windmill should not be permitted at such a height beyond what is permitted by the zoning regulations, especially since it will arguably benefit only Mr. Antonelli and his family, Mr. Antonelli indicated that he believes his proposed windmill is a first step in what he hopes will be a larger effort -- participated in by more and more citizens -- to find and utilize more innovative, cost effective, and environmentally responsible energy sources. He is hopeful that permitting the proposed windmill will have far-reaching, positive consequences in that direction.

The testimony of Timothy Fluharty provided further insight into the details and potential costs and benefits of constructing and erecting the proposed tower and windmill. Mr. Fluharty has been the owner of Fluharty Electric, Inc. for the past 33 years and is currently the only electrician in Maryland with experience in the installation of towers and windmills. Mr. Fluharty has already constructed and installed eight windmills throughout the Eastern Shore, ranging in height from 33 to 60 feet, and has received several additional requests throughout Maryland. The windmill that is the subject of this variance request is a Bergey BWC Excel 60 10 kilowatt (kW) direct drive wind turbine with fan style blades 11 feet in length, totaling 22 feet in diameter, mounted at the top of a 120 foot monopole tower. According to Mr. Fluharty, the proposed windmill would not contain any artificial light, would not need to provide any notification for airplanes since it is less than 200 feet tall, and would meet all applicable building and electrical codes as all wires would be underground. The proposed location of the pole would maximize the access to wind, and would also be at least 1.1 times the proposed height from all

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surrounding roads, property and utility lines to prevent any public injury in case of the monopole breaking and falling.

Mr. Fluharty testified that the proposed Bergey powered windmill system would be relatively sound efficient, producing noise levels of between 50 and 60 decibels (dB) -- the approximate level of sound given off by a window air conditioning unit. Mr. Fluharty also indicted that the proposed 120 foot height of the windmill is necessitated by the prevailing winds in the area. The blades of the windmill would begin to turn at wind speeds of 10 miles per hour (mph), and would need at least 7 mph to keep the windmill turning. Winds in the subject area at the proposed 120 foot height average approximately 13 mph throughout the year. Mr. Fluharty acknowledged that the height of the windmill could be reduced; however, he also indicated that a decrease in height would result in a significant loss in efficiency. In short, Mr. Fluharty believes the 120 foot height at the subject location will offer the best opportunity to capture the available wind power, and to channel the kilowatt hours generated by the windmill into usable energy.

In order to minimize the visual impact on the surrounding neighborhood, the proposed tower will be a monopole constructed by the Rohn Towers Company in Norman, Oklahoma. Petitioners submitted two photographs of the types of tower structures available, which were marked and accepted into evidence as Petitioners' Exhibits 3A and 3B. Petitioners' Exhibit 3A provides a view of a lattice tower with guy wires, and Petitioners' Exhibit 3B shows a monopole with a series of holes alongside the tower. Mr. Fluharty testified that these holes are filled with bolts that enable workers to climb the pole to perform construction and maintenance activities when necessary, and at all other times the bolts are removed to a certain level to prevent children or trespassers from having any access to climb the pole. The tower proposed by Petitioners most closely resembles the type depicted in Petitioners' Exhibit 3B. According to Mr. Fluharty, the

equipment that would be used in conjunction with the proposed windmill would have a life expectancy of approximately 30 years and, because it is a monopole, would not utilize guy wires.

Mr. Fluharty also testified as to the potential energy benefits of the proposed windmill. As earlier indicated, testimony revealed that the tower is proposed to be 120 feet tall because this is the minimum height at which the windmill will function at a 100% efficiency rate. If, for example, the height were dropped to 90 feet tall, the windmill would function at 75% efficiency. At the proposed height, the windmill would produce between 1,200 and 1,800 kilowatt hours of electricity per month, or the equivalent of 25% of the household's anticipated energy use. The windmill would provide quiet, safe, renewable energy and would remove seven tons of carbon pollution from the air each year. Mr. Fluharty testified that wind is one of Maryland's most available and abundant natural resources, and the implementation of infrastructure in the future that will enable consumers to use natural, reusable resources to power their homes will have a positive effect throughout the State of Maryland and the United States, which he indicates is currently lagging in the use of alternative energy technologies.

The Protestants' case was presented primarily from the testimony of three neighbors, Lisa Viscuso, Laura Reiners, and Katherine Yates. All of these individuals reside within view of Petitioners' property and potentially within view of the proposed windmill. Each of the neighbors expressed their concerns of the potential negative impacts on their property values and the nature and feel of the surrounding community. Protestants also expressed concerns over the potential noise to be generated from the windmill, the potential for increased traffic and public attention to their currently quiet and mostly rural neighborhood, the impact on wildlife and birds, and the potential for setting a precedent for constructing other large windmill towers in rural areas. In particular, Ms. Viscuso indicated that aesthetically, the proposed windmill would be an eyesore, visible from her home. She believes that more should be done to study the potential

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impact of the tower and windmill on noise, safety, and privacy. Ms. Reiners indicated she is also concerned about the noise impact and that the appearance of the windmill would not be consistent with the surrounding community. She also expressed concern over allowing any variance to what is permitted by the zoning regulations. Ms. Yates expressed her concern about a precedent being set and believes a proper cost/benefit analysis had not been performed that would justify the variance relief.

In support of the sound issue, Protestants submitted two printouts, which were marked and accepted into evidence as Protestants' Exhibits 1 and 2. The first printout, Protestants' Exhibit 1, contained a quote from the American Wind Energy Association (AWEA), which essentially stated that noise might travel farther in hilly terrain, where nearby residences are in dips and hollows downwind that are sheltered from the wind. Protestants testified that the sound might have a greater impact on their properties since this is the type of terrain that dominates the surrounding locale. The second printout, Protestants' Exhibit 2, was taken from the Bergey Website and contained a chart listing the Bergey Excel 10 kW motor, which is being proposed in this case, as potentially giving off 92.3 dB of sound, rather than the 50-60 dB to which Mr. Fluharty had previously testified. On cross examination, Protestants did acknowledge that the data in Protestants' Exhibit 2 was somewhat distorted by the fact that the diameter of the blades in the instant matter would be much smaller than the blades used for the proposed sound calculations in Protestants' Exhibit 2. Still, the sight and noise implications remained a primary concern for Protestants.

In order to respond to each of the concerns that Protestants raised, Petitioners re-called Mr. Fluharty in rebuttal. First, Mr. Fluharty testified that the risk of a collision with the windmill blades is far less to flying birds and wildlife than to that of a clear glass window. With regard to the sound issue, Mr. Fluharty stressed several times that the Antonelli family is proposing to

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construct a "small wind turbine" that the AWEA has documented producing between 50 and 60 dB of sound (less than an office, or the general buzz created by a single-family home). Petitioners submitted a supporting document printed directly from the AWEA website containing a chart setting forth the sound level of a small wind turbine as in the 50 – 60 dB range, which was marked and accepted into evidence as Petitioners' Exhibit 5. When addressing the visual impact of the windmill, Mr. Fluharty likened the view of the windmill to that of a flagpole and testified that the monopole tower should have no greater visual impact than a radio tower or light pole. The proposed location of the windmill would also serve to minimize the impact on the surrounding neighbors since the object would appear smaller over the 58 acres of Petitioners' property from farther away. While there are shorter devices available, Mr. Fluharty testified that the alternative types of windmills are much bigger and less efficient, and appear more for "show" than to provide a meaningful level of renewable, sustainable energy.

With regard to the issue of any potential negative impact on property values, Mr. Fluharty indicated there has never been a study documenting any such impact; however, Petitioners submitted an additional document from the AWEA website, which was marked and accepted into evidence as Petitioners' Exhibit 6. This document overviews research conducted by the Bergey Windpower Company which revealed little or no negative impact on neighborhood property values, and the potential for an increase in property values where, as in a California study, residents were willing to pay more for property with access to alternative energy infrastructure. Additionally, while it is possible this request may set a precedent for future landowners to file similar requests for windmills, Mr. Fluharty commented that the global energy

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crisis is inevitable and real, and the need for alternative energy will remain regardless of the outcome of this case.¹

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comments from the contributing agencies indicated no opposition or other recommendations concerning the requested relief. In connection with this matter, the undersigned received a comment letter dated July 1, 2008 from Elizabeth S. Glenn with the Baltimore County Office of Community Conservation, supporting the requests for variance relief. Specifically, Ms. Glenn wrote:

The Office of Community Conservation has implemented a Green Building Program, which supports and encourages the usage of renewable energy sources and encourages the use of sustainable and green building practices that minimizes the negative impact of development on our environment. The Office of Community Conservation supports the request for zoning variance because it is consistent with the goals of our Green Building Program and utilizes renewable energy sources which minimizes dependency on the public's energy grid, reduces the proposed project's overall carbon footprint, and thereby maximizes the sustainability of the natural and built environment.

As previously mentioned, this is a case of first impression in Baltimore County as it represents the first request for variance to construct a windmill for alternative energy purposes.² Baltimore County currently has no regulations in place that specifically regulate windmills.³

¹ To illustrate the stark reality painted by the current energy crisis, and what many have argued to be the fallacy of this country's current energy policy over the past decades, and in particular the nation's dependence on traditional energy sources -- specifically foreign oil -- one need only review the "Pickens Plan" set forth by T. Boone Pickens, founder and chairman of BP Capital Management. According to the Pickens Website found at <http://www.pickensplan.com>, "[t]he Pickens Plan is a bridge to the future -- a blueprint to reduce foreign oil dependence by harnessing domestic energy alternatives, and buy us time to develop even greater new technologies." Chief among the solutions proposed by Mr. Pickens is the use of wind power.

² Although since the instant case was filed, the Zoning Review Office has received at least two additional requests for similar variance relief, which are now pending before this Commission.

³ This issue has gained considerable interest given the unusual subject matter of the variance requests. In an article in the *Baltimore Examiner* dated June 21-22, 2008, Baltimore County Councilman Vincent Gardina indicated that County legislators may need to consider adopting zoning changes to address further requests in the future. Thereafter, as reported in *The Sun* on July 8, 2008, the Baltimore County Council during its July 7, 2008 Legislative Session introduced and unanimously approved Resolution 52-08, requesting the Planning board to propose amendments to the zoning regulations in order to regulate the location and use of windmills for residential energy use. In that vein, Section 426 of the B.C.Z.R. pertaining to wireless telecommunications facilities and Section 426A of the B.C.Z.R. governing radio operator antennas may be appropriate areas of the regulations for the Planning Board and the Council to consider adding amendments pertaining specifically to windmills.

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Carroll County has implemented zoning regulations pertaining to the construction, maintenance, and abandonment of "small wind energy systems." Petitioners submitted a copy of the relevant sections of the Carroll County Zoning Regulations, which were marked and accepted into evidence as Petitioners' Exhibit 4. Section 223-2 contains definitions for terms such as "small wind energy system," "wind tower," and "wind generator." Sections 223-214 through 223-220 provide standards and guidelines for Carroll County's Zoning Administrator to consider when reviewing a request to erect and maintain a windmill as an accessory use.

Given the B.C.Z.R. framework that presently governs Petitioners' request to construct a windmill, the Petition was filed for an "accessory structure" seeking variances from Sections 400.1 (requesting to place the structure in the side yard in lieu of the required rear yard) and 400.3 (requesting a height of 120 feet in lieu of the required 15 feet) of the B.C.Z.R. Before determining whether the variances should be granted, the threshold issue that must be determined is whether the windmill attached to the 120 foot monopole tower constitutes an accessory structure as defined in the zoning regulations.

The term "tower" is not specifically defined in Section 101 of the B.C.Z.R. The preamble to this section states that "[a]ny word or term not defined in this section shall have the ordinarily accepted definition as set forth in the most recent edition of Webster's Third New International Dictionary of the English Language, Unabridged." Webster's defines "tower" as

A building or structure designed primarily for elevation that is higher than its diameter and high relative to its surroundings, that may stand apart, be attached to a larger structure, or project above or out from a wall, and that may be of skeleton framework. (emphasis added).

The term "structure" is also not specifically defined in Section 101 of the B.C.Z.R. Webster's defines "structure" generally as "something constructed or built." Section 101 of the B.C.Z.R. defines an Accessory Use or Structure as:

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A use or structure which: (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served ...

Clearly, based on the aforementioned definitions and the testimony and evidence presented at the hearing, the proposed windmill affixed to the 120 foot monopole tower falls within the definition of a "structure" and in particular an "accessory structure." In fact, notwithstanding that it would be of substantial height relative to the other structures on the property, the proposed windmill and tower fits precisely within the four definitions of an accessory structure set forth in Section 101 of the B.C.Z.R.

The next issue is to determine whether the requested variances should be granted for the proposed accessory structure. Section 307.1 of the B.C.Z.R. states in pertinent part that:

The Zoning Commissioner of Baltimore County ... shall have and [is] 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.

Considering all the testimony and evidence presented, I am persuaded that the requested relief should be granted. Initially, I find that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance requests. The subject property is a very large tract, especially in relation to other nearby residentially used properties, and is irregular-shaped. In addition, the topography provides an excellent location for collecting wind, while numerous nearby trees help to partially shield the view of the tower and windmill from surrounding residents. I also find that Petitioners' innovative proposal to build a completely eco-friendly, green or "hybrid" house -- one that will fully utilize natural, renewable energy sources -

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7-17-08

pm

- represents a "special circumstance" that is peculiar to this property. Thus, I find that the property is unique in a zoning sense.

I further find that the imposition of zoning on this property disproportionately impacts the subject property as compared to others in the zoning district. In particular, the property is large enough to handle a 120 foot tower while maintaining a distance greater than 1.1 times the height from all neighboring roads, property and utility lines. Holding Petitioners to the 15 foot height limitation contained in Section 400.3 of the B.C.Z.R. would unduly burden Petitioners by negating any chance for the Antonelli family to implement a groundbreaking method of capturing alternative energy. Additionally, the layout of the property lends itself to constructing the tower and windmill in either of the proposed locations shown on the site plan, one of which happens to be in the side yard rather than the rear yard as required by Section 400.1 of the B.C.Z.R. Locating the windmill in the side yard (labeled on the site plan as "proposed windmill location #1) will take into account the interests of the surrounding public by maintaining a safe distance from roads and utilities infrastructure, and shielding more of the view from surrounding neighbors.

Finally, I find that this variance can be granted in strict harmony with the spirit and intent of said regulations, and in such a manner as to meet the requirements of Section 307.1 of the B.C.Z.R, as set forth in *Cromwell v. Ward*, 102 Md.App. 691 (1995). After reviewing all of the evidence, I am convinced that Petitioners' request should be granted, and that the family should be permitted to forge new ground in the growing field of alternative, renewable energy. Certainly, the country's dependence on foreign oil and other costly energy sources has resulted in significant debate concerning the use of alternative energy sources. It has also caused federal, state, and local governments to re-evaluate the energy producing paradigm that currently exists. In that vein, it is crucial for the Baltimore County Zoning Regulations, and the interpretation of

said regulations, to be enduring and responsive to novel and innovative approaches that account for changes in technologies and the unpredictable global dynamics of the world.

On paper, the Antonelli's request is simply a request for variance, but the implications of the family's actions may well reflect a change in American attitudes regarding oil and alternative energy uses. Certainly, the Protestants in this case raise a number of valid concerns and those concerns should continue to receive scrutiny, especially as the County Planning Board investigates and makes findings and recommendations to the County Council for proposed legislation on the regulation of windmills going forward; however, for the reasons stated above, the absence of such specific regulations is not fatal to Petitioners' cause. It is clear in my judgment that Petitioners' have met the legal standards necessary for granting the requested relief. I am also convinced that Petitioners have demonstrated the anticipated benefits of the windmill will be greater than any perceived negative impacts on the community. While the windmill will provide the Antonelli family with renewable, clean energy, Petitioners and the surrounding locale will also benefit from the seven fewer tons of carbon pollution being released into the atmosphere each year, as well as providing a working example of utilizing alternative energy sources. In my view, granting the requested variances in this particular case and allowing Petitioners to proceed with their plans is a step -- albeit a relatively small one -- in the appropriate direction to deal with the energy challenges affecting citizens throughout Baltimore County.⁴

⁴ Protestants and other interested citizens may view the granting of relief in the instant matter as a license for others to seek and automatically be granted similar relief in the future; however, such is not the case. As has always been the policy of this Commission, each case that is filed requesting zoning relief is heard individually and decided on its own merits based on the facts and circumstances and legal principles involved. While prior decisions of this Commission are certainly helpful and reviewed for guidance in future cases, the ultimate decision in a particular matter is driven by the evidence presented in the case.

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

THEREFORE, IT IS ORDERED this 17th day of July, 2008 by this Deputy Zoning Commissioner, that Petitioners' Variance requests from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure in the side yard in lieu of the required rear yard; and from Section 400.3 of the B.C.Z.R. for an accessory structure (tower with a wind turbine generator) 120 feet tall in lieu of the maximum 15 feet allowed, be and are hereby GRANTED, subject to the following restrictions which are conditions precedent to the relief granted herein:

1. Petitioners are advised that they may apply for any required building permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, Petitioners would be required to return, and be responsible for returning, said property to its original condition.
2. Unless superceded by subsequent legislation providing amendments to the zoning regulations pertaining to the construction, maintenance, and location of small wind energy systems, the small wind energy system granted herein shall comply with the following:
 - a) The proposed monopole tower shall be located such that it is at least 1.1 times the proposed height from all surrounding roads, property and utility lines.
 - b) All necessary ground mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
 - c) The tower shall be designed and installed so as not to provide step bolts or a ladder readily accessible to the public for a minimum of eight (8) feet above the ground.
 - d) All electrical wires associated with the windmill system -- other than wires necessary to connect the wind generator to the wind tower wiring, the wind tower wiring to the disconnect junction box, and the grounding wires -- shall be located underground.

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7-17-08

pm

- e) The tower and wind generator shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA).
 - f) The tower and wind generator shall remain painted or finished the color or finish that was originally applied by the manufacturer, and shall be such a grayish or other similar color or finish that blends in to the extent possible with the horizon, and the surrounding wooded and rural character of the area.
 - g) All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on the tower and wind generator visible from any public road shall be prohibited.
 - h) The construction and erection of the windmill system shall comply with all applicable construction and electrical building codes.
 - i) The tower and windmill system shall not be connected to any guy wires.
 - j) In the event the small wind energy system granted herein is no longer used by the owners of the subject property or is otherwise out of service for a continuous six month period, it shall be deemed to have been abandoned. Following such abandonment, and after exhausting any and all administrative or other judicial remedies concerning a determination of such abandonment, the owners shall remove the wind generator and tower from the property at the owners' sole cost and expense within ninety (90) days of the final determination of such abandonment.
3. The decision rendered in this case is limited to the facts and circumstances and legal principles presented at the hearing in support of the Petition. It shall not constitute legal precedent that may be cited as such in any other zoning case, prior to the enactment of legislation pursuant to Council Resolution No. 52-08.

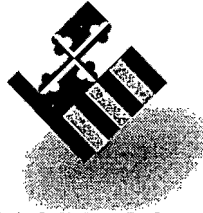
Any appeal of this decision must be made within thirty (30) days of the date of this

Order.


THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz

2008 RECEIVED FOR FILING
JED 7.17.08
PS



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

THOMAS H. BOSTWICK
Deputy Zoning Commissioner

July 17, 2008

HOWARD ALDERMAN JR., ESQUIRE
LEVIN & GANN
502 WASHINGTON AVENUE, 8TH FLOOR
TOWSON, MD 21204

Re: Petition for Variance
Case No. 2008-0474-A
Property: 14601 Cooper Road

Dear Mr. Alderman:

Enclosed please find the decision rendered in the above-captioned case.

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

Very truly yours,

A handwritten signature in dark ink, appearing to read "Th. H. Bostwick".

THOMAS H. BOSTWICK
Deputy Zoning Commissioner
for Baltimore County

THB:pz
Enclosure

c: Joseph and Urszula Antonelli, 1728 Monkton Farms Drive, Monkton MD 21111
Bruce Doak, Gerhold, Cross & Etzel, Ltd., 320 E. Towsontown Blvd., Suite 100, Towson MD 21286
Timothy Fluharty, Fluharty Electric, Inc., P.O. Box 389, Tilghman MD 21671
George Hudnet, Green Power LLC, 11833 Gontrum Road, Kingsville MD 21087
Ken Bosley, Wind Power Services, Box 585, Sparks MD 21132
Please See Attached List



Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 14601 Cooper Rd

which is presently zoned RC2

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) SEE ATTACHED

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

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

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

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

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):

JOSEPH ANTOHELLI
Name - Type or Print _____

Signature _____

URSZULA ANTOHELLI
Name - Type or Print _____

Signature _____

1728 MONIKTON FARMS DR
Address _____ Telephone No. _____

MONIKTON MD 21111
City _____ State _____ Zip Code _____

Representative to be Contacted:

SCOTT HODGKINS 823-4470
Name SUITE 100

320 E. TOWSON TOWN BLVD
Address _____ Telephone No. _____

TOWSON MD 21286
City _____ State _____ Zip Code _____

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Case No. 2008-0474-A

REV 9/15/98

Reviewed By JF Date 4/10/08

7-17-08

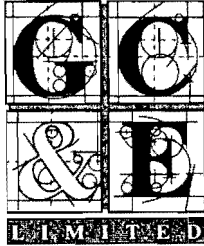
per

VARIANCE REQUESTED

14601 COOPER ROAD

FOR AN ACCESORY STRUCTURE IN THE SIDE YARD IN LIEU OF THE
REQUIRED REAR YARD PER SECTION 400.1 OF THE B.C.Z.R

FOR AN ACCESORY STRUCTURE 120' TALL (TOWER WITH A WIND TURBINE
GENERATOR) IN LIEU OF THE MAXIMUM 15' ALLOWED PER SECTION 400.3
OF THE B.C.Z.R



Gerhold, Cross & Etzel, Ltd.

Registered Professional Land Surveyors • Established 1906

Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

March 28, 2008

ZONING DESCRIPTION ANTONELLI PROPERTY 14601 Cooper Road Baltimore County, Maryland

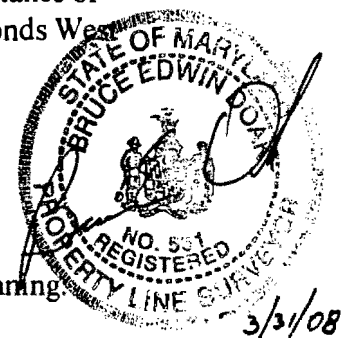
All that piece or parcel of land situate, lying and being in the Tenth Election District, Third Councilmanic District of Baltimore County, Maryland and described as follows to wit:

Beginning for the same at the point of intersection of the centerlines of Cooper Road and Stockton Road, running thence along the centerline of Stockton Road,

- 1) North 22 degrees 12 minutes 10 seconds East 568.48 feet,
- 2) North 23 degrees 40 minutes 27 seconds East 202.76 feet,
- 3) South 51 degrees 14 minutes 08 seconds East 1555.18 feet,
- 4) South 22 degrees 04 minutes 03 seconds West 1196.59 feet,
- 5) South 50 degrees 00 minutes 00 seconds West 48.08 feet,
- 6) thence by a line curving to the right having a radius of 280.00 feet for an arc distance of 136.84 feet, the chord of said arc bearing South 64 degrees 00 minutes 00 seconds West 135.48 feet,
- 7) South 78 degrees 00 minutes 00 seconds West 236.79 feet,
- 8) thence by a line curving to the right having a radius of 180.00 feet for an arc distance of 100.53 feet, the chord of said arc bearing North 86 degrees 00 minutes 00 seconds West 99.23 feet,
- 9) North 70 degrees 00 minutes 00 seconds West 169.11 feet,
- 10) thence by a line curving to the left having a radius of 120.00 feet for an arc distance of 165.36 feet, the chord of said arc bearing South 70 degrees 31 minutes 30 seconds West 152.58 feet,
- 11) South 31 degrees 03 minutes 00 seconds West 22.55 feet,
- 12) North 68 degrees 37 minutes 00 seconds West 372.53 feet,
- 13) North 20 degrees 23 minutes 00 seconds East 208.72 feet,
- 14) North 68 degrees 37 minutes 00 seconds West 409.47 feet,
- 15) North 19 degrees 47 minutes 35 seconds East 476.81 feet,
- 16) North 22 degrees 07 minutes 31 seconds East 632.77 feet, to the point of beginning.

Containing 58.735 acres of land, more or less.

Note: This description only satisfies the requirements of the Office of Zoning and is not to be used for the purposes of conveyance.



POSITIVELY
NO
CROSSING

CASE # :2008-0474-A

**A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
IN TOWSON, MD.**

PLACE: Room 106 County Office Building
111 West Chesapeake Avenue, Towson, MD

TIME & DATE : Monday, June 16, 2008 @ 10:00 a.m.

Variance: to permit an accessory structure
in the side yard in lieu of the required rear yard
and for an accessory structure 120 feet tall (tower
with a wind turbine generator) in lieu of the maxi-
mum 15 feet allowed.

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES
NECESSARY TO CONFIRM HEARING
CALL 410-687-3391 THE DAY BEFORE THE SCHEDULED HEARING DATE.

DO NOT REMOVE THIS SIGN AND POSTUNDERTAKING OF HEARING UNDER PENALTY OF LAW
HEARINGS ARE HANDICAPPED ACCESSIBLE

GCE

ZONING NOTICE

CASE # : 2008-0474-A

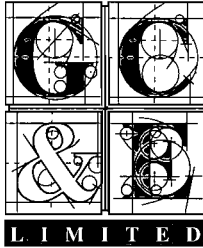
**A PUBLIC HEARING WILL BE HELD BY
THE ZONING COMMISSIONER
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PLACE: Room 106 County Office Building
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HEAVY AND HAND-TRIPPED ACCESSIBLE



Gerhold, Cross & Etzel, Ltd.

Registered Professional Land Surveyors • Established 1906

Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

CERTIFICATE OF POSTING

RE: CASE#08-0474-A
PETITIONER/DEVELOPER:
Joseph & Urszula Antonelli
DATE OF HEARING: June 16, 2008

BALTIMORE COUNTY DEPARTMENT OF
PERMITS AND DEVELOPMENT MANAGEMENT
COUNTY OFFICE BUILDING, ROOM 111
111 WEST CHESAPEAKE AVE.
TOWSON, MARYLAND 21204

ATTENTION: KRISTEN MATTHEWS

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

(see page 2 for full size photo)

LOCATION:
14601 Cooper Road

SIGNATURE OF SIGN POSTER

Bruce E. Doak

GERHOLD, CROSS & ETZEL, LTD
SUITE 100
320 EAST TOWSONTOWN BLVD
TOWSON, MARYLAND 21286
410-823-4470 PHONE
410-823-4473 FAX

POSTED ON: 5 / 22 / 08

**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: ~~4774~~ 208-0474-A
Petitioner: Joseph & Urszula Antonelli
Address or Location: 14601 Cooper Rd

PLEASE FORWARD ADVERTISING BILL TO:

Name: Joseph & Urszula Antonelli
Address: 1728 Monkton Farms Dr
Monkton, MD 21111
Telephone Number: 410-823-4470

Revised 2/20/98 - SCJ

Requested: September 22, 2008

APPEAL SIGN POSTING REQUEST

CASE NO.: 08-474-A

14601 Cooper Road

10th ELECTION DISTRICT

APPEALED: 7/23/2008

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

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

CERTIFICATE OF POSTING

TO: Baltimore County Board of Appeals
The Jefferson Building, Suite 203
102 W. Chesapeake Avenue
Towson, MD 21204

Attention: Kathleen Bianco
Administrator

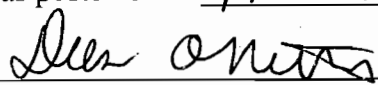
CASE NO.: 08-474-A

LEGAL OWNER: Joseph and Urszula Antonelli

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

14601 COOPER ROAD
NE/CORNER OR COOPERFIELD CT AND COOPER ROAD

The sign was posted on 11-25-08, 2008.

By: 
(Signature of Sign Poster)

DAN ONEILL
(Print Name)



ZONING APPEAL

PUBLIC HEARING

CASE NUMBER:

08-474-A

FOR INFORMATION CALL

887-3180

DO NOT REMOVE
UNDER PENALTY OF LAW

BALTIMORE COUNTY BOARD OF APPEALS

11.25.2008 15:44

TO: PATUXENT PUBLISHING COMPANY
Thursday, May 29, 2008 Issue - Jeffersonian

Please forward billing to:

Joseph & Urszula Antonelli
1728 Monkton Farms Drive
Monkton, MD 21111

410-823-4470

NOTICE OF ZONING HEARING

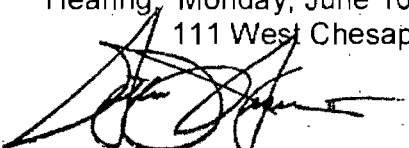
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2008-0474-A

14601 Cooper Road
N/east corner of Cooperfield Court and Cooper Road
10th Election District – 3rd Councilmanic District
Legal Owners: Joseph & Urszula Antonelli

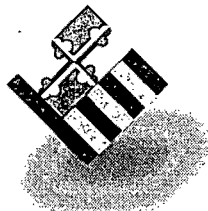
Variance to permit an accessory structure in the side yard in lieu of the required rear yard and for an accessory structure 120 feet tall (tower with a wind turbine generator) in lieu of the maximum 15 feet allowed.

Hearing: Monday, June 16, 2008 at 10:00 a.m. in Room 106, County Office Building,
111 West Chesapeake 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

April 24, 2008
TIMOTHY M. KOTROCO, Director
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: 2008-0474-A

14601 Cooper Road
N/east corner of Cooperfield Court and Cooper Road
10th Election District – 3rd Councilmanic District
Legal Owners: Joseph & Urszula Antonelli

Variance to permit an accessory structure in the side yard in lieu of the required rear yard and for an accessory structure 120 feet tall (tower with a wind turbine generator) in lieu of the maximum 15 feet allowed.

Hearing: Monday, June 16, 2008 at 10:00 a.m. in Room 106, County Office Building,
111 West Chesapeake Avenue, Towson 21204

A handwritten signature in black ink that reads "Timothy Kotroco".

Timothy Kotroco
Director

TK:klm

C: Mr. & Mrs. Antonelli, 1728 Monkton Farms Drive, Monkton 21111
Scott Hodgkins, 320 E. Towsontown Blvd., Ste. 100, Towson 21286

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, MAY 31, 2008.**
- (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

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

PP

Hearing Room #2, Jefferson Building
105 W. Chesapeake Avenue, Second Floor
(adjacent to Suite 203)

October 1, 2008

NOTICE OF ASSIGNMENT

CASE #: 08-474-A

IN THE MATTER OF: JOSEPH AND URSZULA ANTONELLI

-Legal Owners /Petitioners

14601 Cooper Road 10th Election District; 3rd Councilmanic District

7/17/2008 - D.Z.C.'s decision in which requested zoning relief to permit accessory structure (tower with a wind turbine generator) was **GRANTED** with conditions.

ASSIGNED FOR:

TUESDAY, JANUARY 6, 2009, 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 Appellants /Protestants
Appellants /Protestants

: J. Carroll Holzer, Esquire
: Lisa Viscuso
Laura Reiners
John & Leslie Reistrup

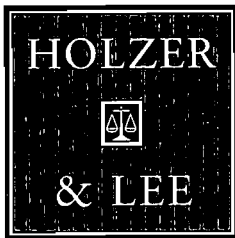
Counsel for Petitioners
Petitioners
Laura Antonelli
Bruce Doak /Gerhold, Cross & Etzel, Ltd.
Timothy Fluharty /Fluharty Electric, Inc.

: Howard L. Alderman, Jr., Esquire
: Joseph & Urszula Antonelli

George Hudnet /Green Power, LLC
Ken Bosley
Dan Lyons
Jack Dillon
Teresa Moore /Valleys Planning Council

Pat Van Den Beemt
Renee & Ed Wheeler
Mark Cibor
Katherine Yates

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



LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER

1907-1989

THOMAS J. LEE

OF COUNSEL

THE 508 BUILDING

508 FAIRMOUNT AVE.

TOWSON, MD 21286

(410) 825-6961

FAX: (410) 825-4923

E-MAIL: JCHOLZER@BCPL.NET

jcholzer@cavtel.net

December 1, 2008

#7803

Ms. Kathleen Bianco, Administrator
Baltimore County Board of Appeals
Jefferson Building
105 West Chesapeake Avenue
Second Floor, Suite 203
Towson, Maryland 21204

RE: In the Matter of Joseph & Urszula Antonelli

Case No.: 08-474-A

Dear Ms. Bianco:

This case has not been postponed before. The above-captioned matter is currently scheduled for Tuesday, January 6, 2009, at 10:00 a.m. I would request a postponement of that date for the following reasons:

1. The County Council has submitted Resolution 52-08 requesting the Planning Board to propose legislation regulating the location or use of windmills. (See attached Resolution 52-08).
2. The Planning Office is currently working to implement the Council's Resolution.

RECEIVED
DEC - 1 2008

**BALTIMORE COUNTY
BOARD OF APPEALS**

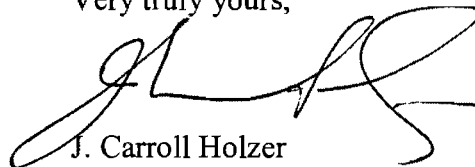
Ms. Kathleen Bianco, Administrator
December 1, 2008
Page two

3. Two other proposed windmill cases have been continued by the Zoning Commissioner pending the proposed new regulations:
 - A. A proposed windmill in the Pikesville area. (See the attached Zoning Commissioner comments quoted in the "Times" for his reasoning).
 - B. Case No.: 08-527-A – in which the Zoning Commissioner opined to continue the case. (See Attached).
4. My clients are individual home owners who will be forced to expend significant sums of money in presenting their case, including expert witness fees; as well as multiple hearing days before the Board. Not only the parties money, but the Board's time will be expended unnecessarily if the case is tried before the County Council has an opportunity to address the issue of windmills.

In summary, it appears to the Protestants that a Continuance would be appropriate from a judicial economy standpoint. In light of the Office of the People's Counsel statements in Case No.: 08-527-A, it would appear that they share my view that a Continuance would be appropriate.

I therefore, respectfully request a Continuance to allow the County Council to have the opportunity to address this significant countywide issue.

Very truly yours,



J. Carroll Holzer

JCH:mlg

Enclosure

cc: Howard Alderman, Esquire
Peter Max Zimmerman, Esquire
Mr. John Reistrup



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

December 11, 2008

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, MD 21286

Re: *In the Matter of: Joseph and Urszula Antonelli, Petitioners/Owners*
Case No. 08-474-A

Dear Mr. Holzer:

This letter will acknowledge receipt of your letter dated December 1, 2008 wherein you request a postponement of the subject case scheduled for hearing on Tuesday, January 6, 2009. As indicated in your letter, Resolution 52-08 has been submitted by the County Council, regarding windmill legislation. Your request for postponement has been taken into account and is granted at this time.

However, it is to be noted that this postponement has been granted over the objection of Mr. and Mrs. Joseph Antonelli, by way of letter dated December 2, 2008 to this office from Howard L. Alderman, Jr., Counsel for Petitioners.

Enclosed is a Notice of Postponement, indicating that the matter has been pulled and will be reassigned a new date.

Should you have any questions, please call me at 410-887-3180.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Theresa R. Shelton".

Theresa R. Shelton

Legal Administrative Secretary

c: Howard L. Alderman, Jr., Esquire
Joseph & Urszula Antonelli

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



County Board of Appeals of Baltimore County

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

**Hearing Room #2, Jefferson Building
105 W. Chesapeake Avenue, Second Floor
(adjacent to Suite 203)**

December 11, 2008

NOTICE OF POSTPONEMENT

CASE #: 08-474-A

IN THE MATTER OF: JOSEPH AND URSZULA ANTONELLI

-Legal Owners /Petitioners

14601 Cooper Road 10th Election District; 3rd Councilmanic District

7/17/2008 – D.Z.C.'s decision in which requested zoning relief to permit accessory structure (tower with a wind turbine generator) was **GRANTED** with conditions.

This matter was scheduled for Tuesday, January 6, 2009 and has been postponed; TO BE RE-ASSIGNED.

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.

Theresa R. Shelton, Legal Administrative Secretary

c: Counsel for Appellants /Protestants
Appellants /Protestants

: J. Carroll Holzer, Esquire
: Lisa Viscuso
Laura Reiners
John & Leslie Reistrup

Counsel for Petitioners
Petitioners

: Howard L. Alderman, Jr., Esquire
: Joseph & Urszula Antonelli

Laura Antonelli

Bruce Doak /Gerhold, Cross & Etzel, Ltd.

Timothy Fluharty /Fluharty Electric, Inc.

George Hudnet /Green Power, LLC

Ken Bosley

Dan Lyons

Jack Dillon

Teresa Moore /Valleys Planning Council

Pat Van Den Beemt

Rence & Ed Wheeler

Mark Cibor

Katherine Yates

Office of People's Counsel

William J. Wiseman III /Zoning Commissioner

Pat Keller, Planning Director

Timothy M. Kotroco, Director /PDM



County Board of Appeals of Baltimore County

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

FAX: 410-887-3182

Hearing Room #2, Jefferson Building
105 W. Chesapeake Avenue, Second Floor
(adjacent to Suite 203)

January 13, 2009

NOTICE OF REASSIGNMENT

CASE #: 08-474-A

IN THE MATTER OF: JOSEPH AND URSZULA ANTONELLI

-Legal Owners /Petitioners

14601 Cooper Road 10th Election District; 3rd Councilmanic District

7/17/2008 - D.Z.C.'s decision in which requested zoning relief to permit accessory structure (tower with a wind turbine generator) was
GRANTED with conditions.

This matter was scheduled for Tuesday, January 6, 2009 and was postponed; it is re-assigned for:

RE-ASSIGNED FOR: **TUESDAY, APRIL 7, 2009 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.

Theresa R. Shelton, Administrator

c: Counsel for Appellants /Protestants
Appellants /Protestants

: J. Carroll Holzer, Esquire
: Lisa Viscuso
Laura Reiners
John & Leslie Reistrup

Counsel for Petitioners
Petitioners

: Howard L. Alderman, Jr., Esquire
: Joseph & Urszula Antonelli

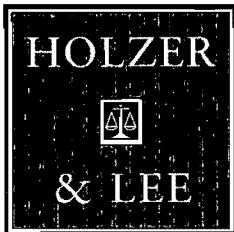
Laura Antonelli
Bruce Doak /Gerhold, Cross & Etzel, Ltd.
Timothy Fluharty /Fluharty Electric, Inc.

George Hudnet /Green Power, LLC
Ken Bosley
Dan Lyons
Jack Dillon
Teresa Moore /Valleys Planning Council
Mr. And Mrs. Richard F. Price

Pat Van Den Beemt
Renee & Ed Wheeler
Mark Cibor
Katherine Yates
Carroll Nordhoff

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner

Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM



LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER

1907-1989

THOMAS J. LEE

OF COUNSEL

THE 508 BUILDING

508 FAIRMOUNT AVE.

TOWSON, MD 21286

(410) 825-6961

FAX: (410) 825-4923

~~XXXXXXXXXXXXXXXXXXXX~~

jcholzer@cavtel.net

January 21, 2009
#7803

Ms. Theresa R. Shelton, Administrator
County Board of Appeals
of Baltimore County
Jefferson Building
105 West Chesapeake Avenue
Second Floor, Suite 203
Towson, Maryland 21204

RE: Case No.: 08-474-A
In the Matter of: Joseph and Arzulla Antonelli
1401 Cooper Road

Dear Ms. Shelton:

I just received the Board's reassignment of the above-captioned case for Tuesday, April 7, 2009, at 10:00 a.m. I forwarded this material to my clients, Lisa Viscuso, Laura Reiners and John and Leslie Reistrup. I have received the attached e-mail from Ms. Viscuso, who indicates that she will be out-of-town for Spring break that week which conflicts with the new date for the windmill appeal. Also, see Laura Reiners same conflict that they have made family plans to take a trip during Baltimore County School's spring break. As a result, I would request that we reschedule the April 7, 2009, hearing to a new date. I would be glad to discuss an appropriate date with Mr. Alderman. I would also point out that the Board had postponed this matter back in December. Based upon my letter to the Board on December 1, 2008, in which the Board agreed with postponing the matter pending the action of the County Council in amending and providing for direction and guidelines for the use of windmills.

RECEIVED

JAN 21 2009

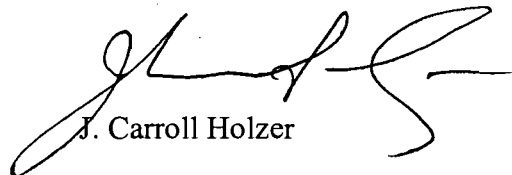
BALTIMORE COUNTY
BOARD OF APPEALS

Ms. Theresa R. Shelton
January 21, 2009
Page two

While I do not know whether or not the County Council will have completed its work by April 7, 2009, which might necessitate another request for continuance, I do know that right now the spring break week for the Baltimore County School System will prevent my clients from participating in the hearing, which is absolutely necessary. As a result, I am writing this letter very early so that we can come to some accommodation in regard to the April 7, 2009 date.

Thank you for your cooperation.

Very truly yours,



J. Carroll Holzer

JCH:mlg

Enclosure



STERLING LEESE J CARROLL HOLZER PA <jcholzer@cavtel.net>

Conflict with Appeal Hearing (Windmill)

2 messages

lav63@comcast.net <lav63@comcast.net>**Mon, Jan 19, 2009 at 5:04 PM**

To: "J.Carroll Holzer" <jcholzer@cavtel.net>

Cc: Laura Reiners <LReiners@comcast.net>, John Reistrup <johnreistrup@yahoo.com>

Carroll,

I will be out of town 4/3-4/11/09 for spring break, conflicting with the new date of 4/7/09 for the windmill appeal hearing. Also, wasn't the idea of the zoning board postponement to wait for a decision from the planning board?

John plans to call you but I wanted to give you my schedule conflict ASAP. Thanks. Lisa Viscuso

lreiners@comcast.net <lreiners@comcast.net>**Tue, Jan 20, 2009 at 7:51 AM**

To: lav63@comcast.net

Cc: John Reistrup <johnreistrup@yahoo.com>, "J.Carroll Holzer" <jcholzer@cavtel.net>

Hi Carroll,

We also have the same conflict. We have made plans to take a family trip during that week of spring break, and will be out of town. Baltimore County Public Schools have set up strict guidelines, against parents pulling children from school for family trips, so we are pretty tied to that week for any type of get away.

Thanks,

Laura Reiners

[Quoted text hidden]



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, Jefferson Building
105 W. Chesapeake Avenue, Second Floor
(adjacent to Suite 203)
FAX: 410-887-3182

January 22, 2009

NOTICE OF POSTPONEMENT

CASE #: 08-474-A

IN THE MATTER OF: JOSEPH AND URSZULA ANTONELLI

-Legal Owners /Petitioners

14601 Cooper Road 10th Election District; 3rd Councilmanic District

7/17/2008 – D.Z.C.'s decision in which requested zoning relief to permit
accessory structure (tower with a wind turbine generator) was
GRANTED with conditions.

This matter was scheduled for Tuesday, April 7, 2009 and has been postponed:
TO BE RE-ASSIGNED.

NOTICE: This appeal is an evidentiary hearing; therefore, parties should consider the
advisability of retaining an attorney.

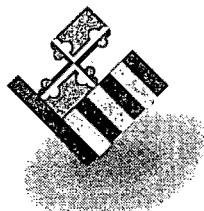
Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.

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.

Theresa R. Shelton, Administrator

c: Counsel for Appellants /Protestants	: J. Carroll Holzer, Esquire
Appellants /Protestants	: Lisa Viscuso
	Laura Reiners
	John & Leslie Reistrup
Counsel for Petitioners	: Howard L. Alderman, Jr., Esquire
Petitioners	: Joseph & Urszula Antonelli
Laura Antonelli	
Bruce Doak /Gerhold, Cross & Etzel, Ltd.	
Timothy Fluharty /Fluharty Electric, Inc.	
George Hudnet /Green Power, LLC	Pat Van Den Beemt
Ken Bosley	Renee & Ed Wheeler
Dan Lyons	Mark Cibor
Jack Dillon	Katherine Yates
Teresa Moore /Valleys Planning Council	Carroll Nordhoff
Mr. And Mrs. Richard F. Price	
Office of People's Counsel	Pat Keller, Planning Director
William J. Wiseman III /Zoning Commissioner	Timothy M. Kotroco, Director /PDM



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.

County Executive

Joseph & Urszula Antonelli
1728 Monkton Farms Drive
Monkton, MD 21111

TIMOTHY M. KOTROCO, *Director*
Department of Permits and Development Management
June 11, 2008

Dear: Joseph & Urszula Antonelli

RE: Case Number 2008-0474-A, Address: 14601 Cooper Rd.

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on April 10, 2008. This letter is not an approval, but only a **NOTIFICATION**.

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 that reads "W. Carl Richards, Jr.".

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:lnw

Enclosures

c: People's Counsel
Scott Hodgkins, 320 E. Towsontown Blvd. Suite 100, Towson, MD 21286

TB 6/16 10am

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: May 1, 2008

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

RECEIVED
MAY 05 2008

SUBJECT: Zoning Advisory Petition(s): Case(s) 08-~~8~~474- Variance

8-474
X

BY:.....

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer.

For further questions or additional information concerning the matters stated herein, please contact Jessie Bialek in the Office of Planning at 410-887-3480.

Prepared By:

Curtis M. Murray

Division Chief:

Pat Keller

CM/LL

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

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

DATE: April 28, 2008

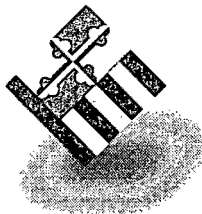
FROM: ^{DAK}Dennis A. Kennedy, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For April 28, 2008
Item No.: 08-470, 471, 472, 474, 475, 476,
477, 478, 479, 480, 481, 482, 483, 484,
485, 486, 487, and 488.

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

DAK:CEN:lrk
cc: File

ZAC-04282008-NO COMMENTS



BALTIMORE COUNTY

M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

JOHN J. HOHMAN, *Chief*
Fire Department

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

April 24, 2008

ATTENTION: Zoning Review Planners

Distribution Meeting Of: April 21, 2008

Item Number: 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481,
482, 483, 484, 485, 486 and 488

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.

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

Lieutenant Roland P Bosley Jr.
Fire Marshal's Office
410-887-4880 (C) 443-829-2946
MS-1102F

cc: File



Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor

State Highway
Administration

John D. Porcari, Secretary
Neil J. Pedersen, Administrator

Maryland Department of Transportation

Date: April 21, 2008

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

RE: Baltimore County
Item No. 8-474-A
14601 COOPER ROAD
ANTONELLI PROPERTY
VARIANCE

Dear Ms. Matthews:

Thank you for the opportunity to review your referral request on the subject of the above captioned. We have determined that the subject property does not access a State roadway and is not affected by any State Highway Administration projects. Therefore, based upon available information this office has no objection to Baltimore County Zoning Advisory Committee approval of Item No. 8-474-A.

Should you have any questions regarding this matter, please contact Michael Bailey at 410-545-2803 or 1-800-876-4742 extension 5593. Also, you may E-mail him at (mbailey@sha.state.md.us).

Very truly yours,

For Steven D. Foster, Chief
Engineering Access Permits
Division

SDF/MB

My telephone number/toll-free number is _____

Maryland Relay Service for Impaired Hearing or Speech: 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone: 410.545.0300 • www.marylandroads.com

RE: PETITION FOR VARIANCE * BEFORE THE
14601 Cooper Road; NE corner of *
Cooperfield Court & Cooper Road * ZONING COMMISSIONER
10th Election & 3rd Councilmanic Districts *
Legal Owner(s): Joseph & Urszula Antonelli* FOR
Petitioner(s) * BALTIMORE COUNTY
* 08-474-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 and all documentation filed in the case.

Peter Max Zimmerman

RECEIVED

APR 28 2008

Per.

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

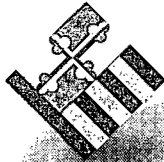
CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of April, 2008, a copy of the foregoing Entry of Appearance was mailed to Scott Hodgkins, Gerhold, Cross & Etzel, Ltd, 320 E Towsontown Blvd, Towson, MD 21286, Representative for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

TIMOTHY M. KOTROCO, Director
August 28, 2008
Department of Planning and
Development Management

Howard Alderman, Jr.
Levin & Gann
502 Washington Avenue, 8th Fl
Towson, MD 21204

Dear Mr. Alderman, Jr:

RE: Case 2008-0474-A, 14601 Cooper Road

Please be advised that an appeal of the above-referenced case was filed in this office on July 23, 2008 from J. Carroll Holzer. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

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

Sincerely,

Timothy Kotroco
Director

TK:klm

- c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
- ✓ Mr. & Mrs. Antonelli, 1728 Monkton Farms Dr., Monkton 21111
 - ✓ Bruce Doak, GC & E, 320 E. Towsontown Blvd., Ste. 100, Towson 21286
 - ✓ Timothy Fluharty, P.O. Box 389, Tilghman 21671
 - ✓ George Hudnet, Green Power, LLC, 11833 Gontrum Road, Kingsville 21087
 - ✓ Ken Bosley, P.O. Box 585, Sparks 21132
 - ✓ Dan Lyons, 11 Cooperstown Court, Phoenix 21131
 - ✓ Jack Dillon, 118 W. Pennsylvania Avenue, Towson 21204
 - ✓ Teresa Moore, 118 W. Pennsylvania Avenue, Towson 21204

RECEIVED

SEP - 2 2008

Pat Van Den Beemt, P.O. Box 37, Monkton 21111
Renee & Ed Wheeler, 3618 Mt. Carmel Road, Upperco 21155
✓ Laura Reiners, 15 Cooperstown Court, Phoenix 21131
Mark Cibor, 2801 Lieb Road, Parkton 21120
Katherine Yates, 14509 Cooper Road, Phoenix 21131
✓ Lisa Viscuso, 13 Cooperstown Court, Phoenix 21131

APPEAL

Petition for Variance
14601 Cooper Road
NE/corner Cooperfield Ct and Cooper Road
10th Election District – 3rd Councilmanic District
Legal Owners: Joseph & Urszula Antonelli

Case No.: 2008-0474-A

- ✓ Petition for Variance (4/10/08)
- ✓ Zoning Description of Property
- ✓ Notice of Zoning Hearing (4/24/08)
- Certification of Publication (Not able to locate in file)
- ✓ Certificate of Posting (5/22/08) by Bruce Doak
- ✓ Entry of Appearance by People's Counsel (April 28, 2008)
- ✓ 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. Plan to accompany photos & Photos (A thru R)
- ✓ 3. Photos (A & B)
- ✓ 4. Article XXXII, Small Wind Energy Systems
- ✓ 5. Small Wind Factsheet
- ✓ 6. Small Wind Factsheet

Protestants' Exhibits:

- ✓ 1. 4.6 Wachusett – History of Noise
- ✓ 2. Bergey Windpower News

Miscellaneous (Not Marked as Exhibit)

- ✓ 1. Email from Andrea Knight (6/23/08)
- ✓ 2. Letter from Mr. & Mrs. Reistrup
- ✓ 3. Email from Lisa Viscuso (6/27/08)
- ✓ 4. Letter from ~~Thomas Bestwick~~ (7/108)
ELIZABETH GLENN

- ✓ Deputy Zoning Commissioner's Order (GRANTED – 7/17/08))
- ✓ Notice of Appeal received on July 23, 2008 from J. Carroll Holzer

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
See attached list

date sent September 2, 2008, klm

RECEIVED
SEP - 2 2008
BALTIMORE COUNTY
BOARD OF APPEALS



BALTIMORE COUNTY
MARYLAND

**OFFICE OF COMMUNITY
CONSERVATION**

MARY L. HARVEY
Director

July 1, 2008

Thomas Bostwick
Deputy Zoning Commissioner
105 W. Chesapeake Avenue
Towson, MD 21204

RE: Barry and Urszula Antonelli
Monkton Farms Drive
Phoenix, MD 21131

RECEIVED
JUL 03 2008
BY:

Dear Mr. Bostwick:

Barry and Urszula Antonelli have requested a zoning variance to permit an accessory structure in excess of 15 to erect a small wind system on their property located in Phoenix on Monkton Farms Drive. The Antonelli household plans to build a green and sustainable residence complete with a main house, garage, and accessory buildings. The building plan calls for an integrated energy system that will utilize photo voltaics, a small wind system consisting of a windmill on a 120-foot tower, and a geothermal heating and cooling system. The integrated energy system will provide sufficient energy to allow the Antonelli residence to utilize renewable energy sources that may make them completely independent of the energy grid thereby minimizing their overall carbon footprint and promoting a sustainable lifestyle.

The Office of Community Conservation has implemented a Green Building Program, which supports and encourages the usage of renewable energy sources and encourages the use of sustainable and green building practices that minimizes the negative impact of development on our environment. The Office of Community Conservation supports the request for the zoning variance because it is consistent with the goals of our Green Building Program and utilizes renewable energy sources which minimizes dependency on the public's energy grid, reduces the proposed project's overall carbon footprint, and thereby maximizes the sustainability of the natural and built environment.

Please feel free to contact me, if necessary, for further clarification.

Sincerely,


Elizabeth S. Glenn



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

January 6, 2011

J. Carroll Holzer, Esquire
508 Fairmount Avenue
Towson, Md 21286

Howard L. Alderman, Jr., Esquire
Levin & Gann, P.A.
Nottingham Centre, 8th Floor
502 Washington Avenue
Towson, Md 21204-4525

Re: Joseph and Urszula Antonelli / Legal Owners - Petitioners
14601 Cooper Road
Case No.: 08-474-A

Dear Counsel:

In January 2009 I returned to the Board of Appeals in the capacity of Administrator. I am currently in the process of reviewing all the files which still remain open on the docket. The instant case was postponed in January 2009 pending Council Legislation regarding windmills.

Please be advised that Councilman Gardina introduced **and then withdrew** Bill 62-10 Small Wind Energy System PILOT Program, which might have impacted this case. *There is no other pending legislation.*

To date, the Board of Appeals has not been contacted with regards to re-scheduling the matter, nor has a Petition to Withdrawal the Appeal/Petition been received. This matter is still pending before the Board. Please contact this office upon receipt of this letter if you intend to proceed. If there is no response filed to this letter after the expiration of 30 days from the date of this Notice, an Order of Dismissal of Petition for lack of prosecution will be entered in the above-captioned matter. Upon receipt of a request filed at any time before 30 days after date of this Notice, the Board, for good cause, may defer entry of the Order of Dismissal for the period and on the terms it deems proper.

Thank you for your time and assistance. I remain,

Very truly yours,

A handwritten signature in cursive script that reads "Theresa R. Shelton".

Theresa R. Shelton
Administrator

Duplicate Originals

Case 2008-0474-A Antonelli Property/Windmill

Dear Deputy Commissioner Bostwick,

On June 25th, 2008, my wife and I moved into our dream home at 12 Cooperstown Court, Phoenix, MD. We looked at over 75 properties in Baltimore County, and selected our home based upon two things: 1. the beautiful views of the rolling green country side and natural setting
2. Potential to resell if we have to relocate.

We just learned of Barry and Urszula Antonelli's proposal currently under your review (Case 2008-0474-A) to construct a personal-use 120 foot /12 story windmill which will tower over our property, create noise pollution, damage the natural setting and environment, negatively impact property values and the local economy, and set a precedent for Baltimore County. The height of their accessory proposal exception request would exceed 175 - 200 feet over our home because the site is at the highest point in the area.

We would have not purchased the home if we had known that there were plans to build such a structure. We respectfully urge you to consider the economic and environmental impact of that this personal-use windmill tower will have on the appreciation and resale value of the homes and properties in our community. There are numerous studies of the noise surrounding these windmills. In fact, we have toured many places in Denmark and Sweden where these are very common, and noticed the loud noise they create. We agree with the concept of renewable energy when there is benefit for the greater good and all other environmental standards of equal importance are met. The noise pollution and obstruction of the natural beauty and landscape of the area will be far more detrimental to the community and the environment than the personal benefit the owners will get with their partial renewable energy tool.

Please kindly consider the recent decision by Governor Martin O'Malley, a supporter of environmental protection and renewable energy sources. He has over-turned the construction of a windmill farm in Western Maryland for the same reasons – which in this case was to benefit the entire state, not just one owner. O'Malley announces position on wind turbines April 12, 2008 by Associated Press in WJZ TV13

"Gov. Martin O'Malley said Saturday that his administration will not allow commercial wind turbines on state forest land, ending a heated four-month debate. While we must continue to explore and make progress on creating a more sustainable and independent energy future for Maryland, we will not do so at the expense of the special lands we hold in the public trust," the Democratic governor said. O'Malley spoke at a news conference at a scenic overlook in the Savage River State Forest. ...The state sought public comment on the concept, bringing 1,400 responses, 83 percent of them opposed, DNR spokeswoman Olivia Campbell said."

We urge you to uphold the current limit of Baltimore Country for personal-use accessory structures to 15 feet and encourage development of other renewal energy technologies which provide the same benefits as a windmill, without the detriment to other homeowners, the community and environment.

Please contact us and let us know what we can do to be heard on this matter or if we can provide any additional information. Thank you for your consideration.

With warmest regards,

John M. Reistrup

cc: T. Bryan McIntire

John M. Reistrup & Leslie H. Reistrup
12 Cooperstown Court
Phoenix, MD 21131
703-629-2150 (C)

Thomas Bostwick - Zoning Commission Question

From: "Andrea Seefeldt Knight" <askzig@hughes.net>
To: <tbostwick@baltimorecountymd.gov>
Date: 06/23/08 5:44 PM
Subject: Zoning Commission Question

Dear Mr. Bostwick:

I have been reading with interest about the windmill variance request on Cooper Rd.

We too are interested in installing a windmill on our property in Sparks. I just wanted to let you know that there are more of us out here hoping to use this alternative energy form. We are in very preliminary planning and are hoping that Baltimore County will approve the variance and future windmills.

Thank you,

Andrea Seefeldt Knight

Thomas Bostwick - Case 2008-0474-A, Antonelli Property/Windmill

From: <lav63@comcast.net>
To: <tbostwick@baltimorecountymd.gov>
Date: 06/27/08 3:44 PM
Subject: Case 2008-0474-A, Antonelli Property/Windmill

Dear Deputy Commissioner Bostwick,

On June 16, 2008 I attended the Zoning hearing for the above property and issue. Since then I have contemplated several issues and observations that arose during the interviews. Please consider my concerns as you make your ruling.

As you stated in the proceedings, the preponderance of proof rested on Mr. Antonelli for approval of the variance. However, I felt underrepresented as a Baltimore County citizen. I do not have the ability to finance "experts" and a well known Baltimore County attorney to state my opinions and wishes for the record. I am counting on you to be that representation for me and my family.

I would also like you to consider that the pictures/exhibits you were provided with by Mr. Alderman were taken only from the perspective of the farm. Not one picture was provided from the point of view of my home on 13 Cooperstown Court. I would have a direct view of the windmill on a daily basis. The proposed site of the towering 12 story structure will be out of the way of Mr. Antonelli's direct view. It is purely subjective to state it will not be an eyesore. Take a drive to the property, drive east on Stockton Road and imagine the massive tower whirring and turning 24/7, disturbing the peace and natural beauty of the area.

Mr. Fluarty, of Fluarty Electric deemed himself an expert due to the eight windmills he had been involved in erecting. I feel his training and experience as a Master Electrician is likely documented by his state license. I did not recall hearing of any special certifications or degrees in Engineering or Environmental Protection to support his claim of expertise. I do not feel that doing eight of anything makes you an expert.

Mr. Bruce Doke, of Gerhold, Cross & Etzel provided his personal, subjective opinion that the windmill will appear smaller on my property. I am not aware of any proof or specialty certifications that were provided to support his claim or expertise to provide such testimony. He also did not testify on the visual impact to our home by reporting a visit to my property or driveway. Currently I can see the large size of the barns and silos, the windmill will be at least twice the height of those and not at all as picturesque. The financial and advertising/marketing benefits both experts would gain from this project must be considered when deciding on the impartiality of their testimony.

I am in strong disagreement that noise will not be a problem. Not one independent study by Baltimore County has been done to prove that the sound will not travel to my property which is downwind and in a valley below the proposed windmill site. Only Internet Googling provided support for the case of decibel levels, hardly an objective finding. Topography plays a large role with the noise levels. During construction of Mr. Antonelli's home, I hear workers voices and their vehicles and activities when they are at work. I know this is temporary, however the windmill activity will never stop, day or night. There are many homes that border the deciduous tree line surrounding the property and proposed windmill. Once those leaves have fallen in the Fall and Winter, the visual and noise barrier will be gone, exposing those residents to the same concerns I have.

I feel this precedent setting wind energy technology should be presented to the community by way of formal legislation to establish guidelines and protections that are good for the whole community. I do not feel it is fair to use Carroll County as a leader for our decisions. Of note, Maryland has an Electric Choice program in place. Green energy can also be obtained by individuals to lessen their carbon footprint. This could be compromise to appease the community and be a conservationist.

This project is purely for one individual and his family, not for the good of all. A project like this should have a comprehensive plan, hopefully in a commercially zoned area.

I thank you very much for "listening" to my concerns and again, I am looking to you to be my representative.

Sincerely,
Lisa Viscuso

From: Barbara Weaver
To: lav63@comcast.net
CC: Schlabach, Kathy
Date: 8/5/2009 8:15 AM
Subject: Re: Wind Turbines in Baltimore County
Attachments: Barbara Weaver.vcf

Ms. Viscuso,

Thank you for sending us your comments on Wind Turbines in Baltimore. We are forwarding them to the Planning Board and will also keep a hard copy available in our office.

Barbara

Barbara J. Weaver
Planning Associate
Baltimore County Office of Planning
105 W. Chesapeake Ave., Ste 101
Towson, MD 21204
410-887-3495
(Fax) 410-887-5862
bweaver@baltimorecountymd.gov

>>> <lav63@comcast.net> 8/4/2009 4:44 PM >>>

Ms. Weaver,

Would you please forward this letter to Chairman Gillis, Vice Chairman Gregory and the Planning Board members?

Thank you,

Lisa Viscuso

Sent via email, USPS

August 4, 2009

Mr. Adam Thomas Sampson
Esquire Director
Bodie Nagle Attorneys at Law
21 W. Susquehanna Avenue
Towson, MD 21204

Dear Mr. Sampson,

We are Baltimore County residents living in Phoenix, Maryland for over 14 years and are very concerned with the personal wind turbine matter which is being considered by the Planning Board and the committee formed at the July 3rd meeting. We moved to our present home to enjoy the beautiful, peaceful environment and convenience of the Phoenix area. My husband and I paid a premium price for the investment in the area, as well as the associated higher property taxes. We were quite surprised to learn of a 120 foot wind turbine request by Mr. Antonelli to the zoning board in May, 2008 and were optimistic that such an eyesore combined with its noise emission would never be allowed. Unfortunately, we were forced along with other families to appeal the poorly formed decision by Deputy Zoning Commissioner Thomas Bostwick which would have allowed this structure.

Similar to the windmill proponents, we support and live with conservation principles and are environmentally conscientious. However we feel allowing these systems as a right and not on an exception basis and allowing them in or close to residential areas is irresponsible and unfair to citizens like us. We are in complete opposition to wind turbines and related towers or structures such as these in or adjacent to residential areas. They are erected with little acknowledgement that there are other ways with more impact to lessen their carbon footprint and respect your community.

Since the Antonelli case was presented to the zoning board, we have researched the issue and become united with many community associations and individuals who feel as we do. It is absolutely detrimental to the community and a waste of funds, public and private, to approve the erection of ugly, noise producing towers that deplete the environment of its serenity and natural beauty and produce very limited alternative energy value. Wind turbines, towers and like structures lower property values and open the door for future entrepreneurs who are capitalizing on "greening" their pockets without consideration of their neighbors.

Wind turbines in or near residential communities are risky. They must be licensed, maintained and enforced by Baltimore County. There needs to be a budget, staff and 24 hour contacts available to protect the community. These are energy systems that have complexities not readily addressed by most electricians and local utility companies. What are the protocols for residents when a tower malfunctions or is not being maintained as mandated? The risk of property damage, injury or death could result from disrepair, harsh weather or

malfunction. Ours and many communities are full of children who would be curious of such a structure and tempted to explore despite their parents restrictions.

During your research you will find that Baltimore County has a Poor rated wind production (See the U.S. Department of Energy, Maryland Wind Map). Real estate professionals, appraisers and in particular a November, 2007 case of the Derby Vermont Board of Civil Authority resulted in a 10% lowered appraised value due to close proximity to a wind turbine. No doubt if these towers are allowed across the country, more citizens will assert their right and succeed in their appeals. Is this the precedent Baltimore County wants to set for homeowners and future homebuyers? Our personal real estate agent with over 30 years of experience has strongly confirmed the negative effects of a tower on the future saleability of a home.

We are encouraged the Planning Board has approved a committee to properly analyze all the data related to the topic of wind energy, including alternatives to personal use wind turbines. A search of www.cleancurrents.com will reveal positive options for Baltimore County residents. In addition, this technology warrants comprehensive research including consultation from sound engineers, real estate and appraisal professionals, environmental researchers and very importantly, input from residents of Baltimore County knowledgeable and directly affected on the topic.

It is crucial to provide a community voice in this very important position statement phase. It is simply not enough to provide a citizen speaking opportunity at the Planning Board meeting. We can nominate several individuals for this responsibility that could provide valuable input to the committee. Until the issue directly affected us, we were unaware of the ramifications of these personal wind turbines. Research and discussion has demonstrated there are better options. Thank you for your consideration of our concerns and of the request for Baltimore County resident participation on this committee.

Sincerely,

Lisa and Ernest Viscuso

13 Cooperstown Court

Phoenix, MD 21131

410-472-9989

cc: County Executive Jim Smith

Councilman T. Bryan McIntire

From: Theresa Shelton
To: Field, Mike; West, Nancy
Date: 11/16/2010 10:03 AM
Subject: 08-474-A / Antonelli / wind turbine generator
Attachments: DZC Order.DOC

Good Morning:

The above mentioned zoning appeal has been pending before the Board awaiting a determination regarding a Council Bill pending guidelines on windmills. To date, the only legislation that I have found is Bill No.: 83-10.

The Antonelli's request was granted with conditions and the appeal was filed by Mr. Holzer on behalf of citizens opposed. The Antonelli property is located at 14601 Cooper Road.

Does this matter have any bearing on Bill 83-10? Is there any other legislation pending that I am unaware of regarding this matter? Would it be pre-mature for the Board to schedule a hearing on this matter without clear guidelines?

I have attached the Findings of Fact and Conclusions of Law in the zoning case. The Order states that the BCZR does not currently contain regulations pertaining to windmills and that the Petition was filed as a request for variance from height and location area regulations.

Any assistance you can give the Board would be greatly appreciated. There has been no request from Counsel to set this matter in, however, the appealed was filed over two (2) years ago and I would like to proceed if that would be a viable option.

Thank you for your time, counsel and support.

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

"I took the Green @ Work Energy Challenge Pledge."

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COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2010, Legislative Day No. 14

Bill No. 83-10

Councilmembers T. Bryan McIntire, Olszewski & Gardina

By the County Council, September 7, 2010

A BILL
ENTITLED

AN ACT concerning

Zoning Regulations - Anemometers

FOR the purpose of permitting an anemometer to be located on properties in certain zones; defining terms; specifying certain limitations; providing for a permit; and generally relating to the use of anemometers.

BY adding

Section 404.14
Baltimore County Zoning Regulations, as amended

1 SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY,
2 MARYLAND, that Section 404.14 be and it is hereby added to the Baltimore County Zoning Regulations,
3 as amended, to read as follows:

404.14. ANEMOMETERS:

(A) AS USED IN THIS SECTION, AN "ANEMOMETER" IS A TEMPORARY WIND SPEED INDICATOR CONSTRUCTED FOR THE PURPOSE OF ANALYZING THE POTENTIAL FOR UTILIZING A WIND ENERGY TURBINE AT A GIVEN SITE. THIS INCLUDES THE TOWER, BASE

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
 [Brackets] indicate matter stricken from existing law.
 ~~Strike-out~~ indicates matter stricken from bill.
 Underlining indicates amendments to bill.

1 PLATE, ANCHORS, CABLES AND HARDWARE, WIND DIRECTION VANES, BOOMS TO HOLD
2 EQUIPMENT, DATA LOGGER, INSTRUMENT WIRING, AND ANY TELEMETRY DEVICES THAT
3 ARE USED TO MONITOR OR TRANSMIT WIND SPEED AND WIND FLOW CHARACTERISTICS
4 OVER A PERIOD OF TIME FOR EITHER INSTANTANEOUS WIND INFORMATION OR TO
5 CHARACTERIZE THE WIND RESOURCE AT A GIVEN LOCATION.

6 (B) (1) AS ACCESSORY TO A PERMITTED PRINCIPAL USE, AN ANEMOMETER IS
7 PERMITTED IN AN R.C. ZONE R. C. ZONES AND MANUFACTURING ZONES SUBJECT TO THE
8 ISSUANCE OF A USE PERMIT BY THE DEPARTMENT OF PERMITS AND DEVELOPMENT
9 MANAGEMENT.

10 (2) AN ANEMOMETER MAY REMAIN ON A PROPERTY FOR UP TO ONE (1) YEAR
11 FROM THE DATE ON WHICH IT BEGINS COLLECTING DATA. THE TOTAL HEIGHT OF THE
12 ANEMOMETER MAY NOT EXCEED 100 FEET.

13 (3) AN ANEMOMETER SHALL BE SET BACK FROM THE NEAREST PROPERTY LINE
14 A DISTANCE AT LEAST EQUAL TO ITS HEIGHT.

15 (4) AN ANEMOMETER MAY NOT BE ARTIFICIALLY LIT UNLESS LIGHTING IS
16 REQUIRED BY THE FEDERAL AVIATION ADMINISTRATION.

17 (C) AN APPLICATION FOR A USE PERMIT FOR AN ANEMOMETER SHALL INCLUDE:

18 (1) A SITE PLAN THAT SHOWS THE PROPERTY LINES AND DIMENSIONS OF THE
19 PROPERTY AND ALL ABUTTING PROPERTIES;

20 (2) THE LOCATION OF ALL EXISTING BUILDINGS ON THE PROPERTY AND
21 ABUTTING PROPERTIES; AND

22 (3) ANY ADDITIONAL INFORMATION REQUIRED BY THE DIRECTOR OF PERMITS
23 AND DEVELOPMENT MANAGEMENT.

24 SECTION 2. AND BE IT FURTHER ENACTED, that this Act shall take effect 45 days after its
25 enactment.

From: Theresa Shelton
To: Field, Mike; West, Nancy
Date: 12/20/2010 12:43 PM
Subject: Re: 08-474-A / Antonelli / wind turbine generator

Nancy: Thank you. Understood.

>>> Nancy West 12/20/2010 12:07 PM >>>

The CBA doesn't have a similar 2-507 rule for dismissal for lack of prosecution. But it often does close out its files once a year has passed without any action... on the same underlying rationale as the Circuit Ct.

>>> Mike Field 12/20/10 10:32 AM >>>

Theresa:

I'm sorry it took so long to get back to you.

This bill has no direct effect on this case as it allows only the positioning of anemometers, not the small wind energy system and it is NOT retroactive.

Councilman Gardina introduced **and then withdrew** Bill 62-10 Small Wind Energy System PILOT Program, which might have impacted this case, though it too was not retroactive.

I know of no other pending legislation.

I, frankly, cannot say whether it would be premature to schedule a hearing without guidelines. My guess is that this not a hot topic for the new council given all the other pressures, so I'd be surprised if we saw a bill anytime soon.

Isn't it true that at some point, an appeal can/should be dismissed for lack of prosecution?

Nancy, your thoughts?

Michael E. Field
Acting County Attorney
Baltimore County Office of Law
400 Washington Avenue
Towson, Maryland 21204
(410) 410-887-4420

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Good Morning:

I know that it has been extremely busy with all of the impending changes, but if you could advise on this matter, at your earliest convenience, I would very much appreciate your input.

This original e-mail sent 11/16/10 stated as follows:

The above mentioned zoning appeal has been pending before the Board awaiting a determination regarding a Council Bill pending guidelines on windmills. To date, the only legislation that I have found is Bill No.: 83-10.

The Antonelli's request was granted with conditions and the appeal was filed by Mr. Holzer on behalf of citizens opposed. The Antonelli property is located at 14601 Cooper Road.

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Any assistance you can give the Board would be greatly appreciated. There has been no request from Counsel to set this matter in, however, the appealed was filed over two (2) years ago and I would like to proceed if that would be a viable option.

Thank you for your time, counsel and support.

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
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tshelton@baltimorecountymd.gov

I took the Green @ Work Energy Challenge Pledge.

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From: Theresa Shelton
To: West, Nancy
CC: Field, Mike
Date: 12/20/2010 9:46 AM
Subject: 08-474-A / Antonelli / wind turbine generator
Attachments: DZC Order.DOC

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Theresa

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"I took the Green @ Work Energy Challenge Pledge."

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halderman@LevinGann.com

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A PROFESSIONAL ASSOCIATION
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8th Floor
TOWSON, MARYLAND 21204
410-321-0600
TELEFAX 410-296-2801

ELLIS LEVIN (1893-1960)
CALMAN A. LEVIN (1930-2003)

December 2, 2008

RECEIVED

DEC 03 2008

**BALTIMORE COUNTY
BOARD OF APPEALS**

Kathleen Bianco, Administrator
County Board of Appeals for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

RE: ***Joseph & Urszula Antonelli, Petitioners/Owners***
14601 Cooper Road
Case No. 2008-0474-A
Opposition to Postponement Request

Dear Ms. Bianco:

On behalf of my clients, Mr. and Mrs. Joseph Antonelli, please accept this letter opposition to the letter request for postponement submitted by J. Carroll Holzer, Esquire, dated December 1, 2008. The efforts of the Appellants/Protestants to submit newspaper articles of opposition of other windmills and the decision of the Zoning Commissioner delaying a decision on another windmill have no import or relevance to the issues in the above-referenced appeal.

The Appellants also cite the Resolution of the Baltimore County Council (Councilman Gardina as sponsor) requesting that the Planning Board propose amendments to the *Baltimore County Zoning Regulations* regarding windmills. That Resolution is dated in July, 2008. In my telephone conversation with Office of Planning personnel earlier today I am advised that a first-cut, working "draft" of proposed modifications has only been printed this week. That draft is subject to in-house review and potential review by a future advisory panel, all before submission to the Planning Board for their consideration.

The Planning Board will then have an opportunity to review and revise the proposed modifications and, as is the general course, schedule a public hearing for additional comments. Eventually, the Planning Board will file its recommendations with the County Council. However, there is no guarantee that the County Council will ever enact legislative modifications to permit windmills.

My clients' new, hybrid home (wind, solar and geothermal energy sources) is presently under construction. Requiring my clients to wait, for legislative modifications that may never occur, before their case is heard will work a severe disservice to them. Mr. Holzer's clients surely were aware of the costs of the appeal that they took; those costs should not be a basis to cause further delay and harm to my clients.

Kathleen Bianco, Administrator
December 2, 2008
Page 2

The Board's hearing, presently scheduled for January 6, 2009 should not be delayed. Should you or the Board need any additional information in support of this request to deny the Appellants' request for postponement, please do not hesitate to contact me.

Thank you.

Very truly yours,

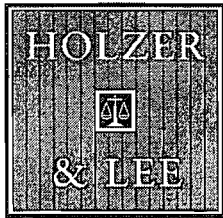


Howard L. Alderman, Jr.

HLA/gk

c: Mr. and Mrs. Barry Antonelli
J. Carroll Holzer, Esquire
People's Counsel for Baltimore County
Bruce E. Doak, PLS
Andrew R. Sandler, Esquire

Carol - PC -
Believes this
should be PP
until legislation
is passed -



LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER
1907-1989

THOMAS J. LEE
OF COUNSEL

508 BUILDING

508 FAIRMOUNT AVE.

TOWSON, MD 21286

(410) 825-6961

FAX: (410) 825-4923

E-MAIL: JCHOLZER@CAVTEL.NET

January 13, 2011

#7803

Ms. Theresa R. Shelton, Administrator
County Board of Appeals
of Baltimore County
Jefferson Building
105 West Chesapeake Avenue
Second Floor, Suite 203
Towson, Maryland 21204

RECEIVED

JAN 14 2011

**BALTIMORE COUNTY
BOARD OF APPEALS**

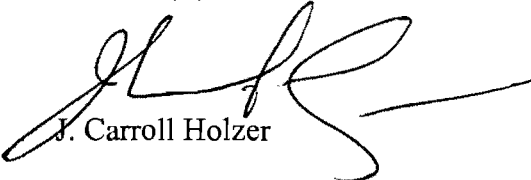
RE:

Dear Ms. Shelton:

Please be advised that I do not want the Board to dismiss our appeal without a hearing. It has made sense for the Board to continue to hold this case pending legislation concerning wind towers. In any event we do not wish this matter to be dismissed.

If you have any questions, please feel free to give me a call.

Very truly yours,

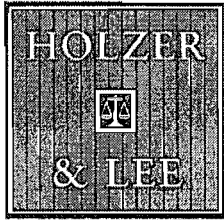


J. Carroll Holzer

JCH:mlg

Enclosure

cc: Howard L. Alderman, Jr., Esquire



LAW OFFICES

J. CARROLL HOLZER, PA

J. HOWARD HOLZER
1907-1989

THOMAS J. LEE
OF COUNSEL

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E-MAIL: JCHOLZER@CAVTEL.NET

January 31, 2011

#7803

Ms. Theresa R. Shelton, Administrator
County Board of Appeals
of Baltimore County
Jefferson Building
105 West Chesapeake Avenue
Second Floor, Suite 203
Towson, Maryland 21204

RECEIVED
FEB - 2 2011

**BALTIMORE COUNTY
BOARD OF APPEALS**

RE: *Joseph and Urszula Antonelli, Legal Owners, Petitioners*
14601 Cooper Road
Case No.: 08-474-A

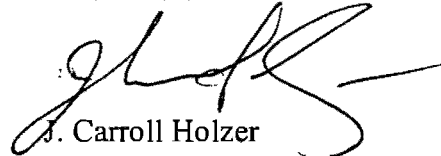
Dear Ms. Shelton:

Please be advised that in this particular case a windmill was approved by the Zoning Commissioner. My clients, the Reistrups filed an appeal and the case has been put on hold pending legislation relative to windmills.

I have contacted my clients who have advised me that they do not want their appeal dismissed because the Zoning Commissioner's Decision would then stand even though apparently the property is for sale. I would therefore request that the matter not be dismissed unless Mr. Alderman withdraws his request on behalf of Antonelli.

If you have any question s or intend to set the case for a hearing, please advise.

Very truly yours,



J. Carroll Holzer

JCH:mlg

cc: Howard L. Alderman, Jr., Esquire
Mr. John Reistrup

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

DIRECT DIAL
410-321-4640

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410-321-0600
TELEFAX 410-296-2801

ELLIS LEVIN (1893-1960)
CALMAN A. LEVIN (1930-2003)

February 3, 2011

RECEIVED
FEB - 4 2011

**BALTIMORE COUNTY
BOARD OF APPEALS**

County Board of Appeals for Baltimore County
Attn: Ms. Theresa R. Shelton, Administrator
The Jefferson Building
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

RE: ***Joseph and Urszula, Petitioners/Owners***
14601 Cooper Road
Case No. 2008-0474-A
Withdrawal of Petition Without Prejudice

Dear Ms. Shelton:

Enclosed, please accept for filing on behalf of the above-named Petitioners their Withdrawal of Petition Without Prejudice and proposed Order. Should you or any member of the Board desire additional information in this regard, please do not hesitate to contact me.

Very truly yours,


Howard L. Alderman, Jr.

HLA/gk

c: Mr. and Mrs. Joseph Antonelli
J. Carroll Holzer, Esquire
Peter Max Zimmerman, People's Counsel

BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY

RE: PETITION FOR VARIANCE
N/E corner of Cooperfield Court and
Cooper Road
(14601 Cooper Road)

10th Election District
3rd Councilmanic District

Joseph and Urszula Antonelli,

Petitioners/Owners

Case No.: 2008-0474-A

ORDER

Upon consideration of the Petitioner's Withdrawal of Petition for Special Hearing in this case, filed more than fifteen (15) days in advance of the Board's scheduled hearing date as required by Rule 3.b. of this Board's *Rules of Practice and Procedure*, it is this ____ day of _____, 2011,

ORDERED, that the Petition for Variance filed in this case be and the same is hereby withdrawn without prejudice; and it is

FURTHER ORDERED, that all materials in this case shall be returned to the Office of Zoning, within the Department of Permits, Approvals and Inspections.

BOARD OF APPEALS

CASE NAME Antimelli Popovich
CASE NUMBER 2008-474 A
DATE 16 JUNE 08

[illegible]

CASE NAME _____
CASE NUMBER 08-474-A
DATE 6-16-08

CASE NAME _____
CASE NUMBER 08-474-A
DATE 6-16-08

NAME	ADDRESS	CITY, STATE, ZIP	E-MAIL
Katherine Yates ✓	14509 Cooper Rd	Phoenix Md 21131	Kyates@jhsph.edu
KEN BOSLEY ✓ WIND POWER SERVICES	Box 585, SPARKS, Md.	SPARKS, Md - 21132 PAGER 1-800-8-WIND-LA	WINDeergy@EARTH LINK. 410-472-1081
DAN LYONS ✓	11 COOPERSTOWN CT	PHOENIX 410-472-0313 PH -	410-472-1081
LISA VISCUSO ✓	13 Cooperstown Ct.	Phoenix 410 472 9989	lav63@comcast.net
Laura Reiners ✓	15 Cooperstown Ct.	Phoenix, MD 21131	LReiners@comcast.net
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11/30/10
Sun paper

Balto Co. councilman opposes residential wind turbines

By Arthur Hirsch

ARTHUR.HIRSCH@BALTSUN.COM

As the Baltimore County Council prepares to consider new regulations for wind turbines in residential neighborhoods, at least one member is strongly opposed to the idea.

The Planning Board voted unanimously recently to recommend allowing one wind turbine no taller than 60 feet per one-acre property. The recommendation — which came in response to a council request for new regulations — would set rules for residential areas only. The Planning Board said it did not intend to limit the prospects for wind energy in industrial and commercial zones.

The proposal — a seven-page staff and subcommittee report that also included rules on wind turbine noise and appearance — has yet to be put on the agenda for the seven-member council. Most members contacted said they had not seen it.

Council member T. Bryan McIntire said he had not reviewed the proposal, but he stood "adamantly opposed to the use of windmills in the north county."

McIntire represents the northern and largely rural 3rd District, where much of the opposition to residential wind turbines has emerged. His reasons echo the arguments made by his constituents at Planning Board hearings: He said studies show few areas in the county where there's enough wind to power even a private home, and it was not worth spoiling the scenery. He said he did not want the "bucolic views to be interrupted by these hideous windmills."

While farms in that part of the county

have used windmills for generations, McIntire said "they weren't nearly as tall" as the proposed regulations allow.

He said those who are concerned about using alternative energy can buy power from utilities generating power from "wind farms out west. You don't have to build a windmill to be green."

Council member Stephen G. Samuel Moxley of the Catonsville area said he wanted to hear more about the proposal but added, "I would be reluctant to allow wind turbines in residential communities."

Council members Kenneth N. Oliver of District 4, Joseph Bartenfelder of District 6 and John Olszewski of District 7 said they would not comment until they had read the board's report.

Until now, the county has treated wind turbines as "accessory structures" — that is, because they are not defined in the zoning regulations, they have been allowable as special exceptions, with the approval of the zoning commissioner — but there has hardly been a rush for applications. The only one to be approved so far came from Barry Antonelli of Phoenix, in McIntire's district. That application helped prompt the council to request the zoning proposals in July 2008.

Antonelli's request for a 120-foot turbine is held up pending an appeal filed by his neighbors, which in turn hinges on the outcome of the zoning amendments that will be considered by the council.

About a third of the state's counties, including Carroll, Frederick, Montgomery and Allegany, have changed their zoning rules to accommodate wind energy systems.

Time to act regionally on wind power

Ruth Goldstein

Now that Baltimore City has had its first wind turbine zoning case, it's time for Metropolitan Baltimore to get serious about a regional advisory panel on renewable energy resources. Baltimore County has been grappling with this issue since last year, when a farmer in Phoenix wanted to erect a 120-foot windmill on his 97-acre property — far larger than the 8-foot turbine a city zoning panel rejected for a rowhouse rooftop in Federal Hill. In the county, which, like Baltimore, had no regulations to provide guidance, the zoning commissioner granted the request.

Now the suburban subdivisions of 1-acre lots with million-dollar homes that bookend the farm will all have perfect views of this industrial tower silhouetted on the ridge of the pristine valleys in which they are nestled.

Still, a farm in Phoenix seemed far removed from most people's lives until one resident on a quiet little street of suburban ranchers on half-acre lots in Pikesville requested a variance for an 80-foot windmill. Neighbors quickly mobilized and launched a petition drive to oppose this skyscraper in their backyard. They didn't need scientifically conducted studies to convince them that the safety issues, noise and effect on property values made a structure the size of a cellular phone tower incompatible with suburban living.

After that case, Baltimore County finally decided it was time to write legislation to regulate wind turbines, and the facts have come rolling in. The problem is,

in an effort to demonstrate support for reducing Baltimore County's carbon footprint (and who isn't in favor of reducing our carbon footprint?) the draft proposal submitted to the Baltimore County Planning Board for its approval made flawed recommendations.

The proposal chose to completely ignore the issue of aesthetics and property values. But there are precedents: The town of Derby, Vt. ruled that a wind turbine reduced the value of an adjacent property by 10 percent for real property tax purposes. In Goshen, Ct. a town council voted to deny a proposal for a 200-foot turbine because of concerns about its "adverse effects upon the existing and probable future character of the neighborhood or its property values."

The fact is, there is an aesthetic value placed on real property, and whether it is an urban-scale roof-turbine or a towering industrial structure, these machines as they are currently conceived are simply incompatible with residential communities.

Then there is the little detail of wind: The draft report concedes that there is a "lack of steady energetic wind" in Baltimore County, but there is no requirement in the recommendation for a mandatory wind study before a turbine can be erected.

The worst section by far, though, is the part that specifically permits one 150-foot-high wind turbine on any lot of 1 acre or more by right, not by special exception. That means no hearing, no input by the community, no opportunity for neighbors to find out about the project, no chance for

the zoning board to investigate the site, the engineering plans, the setbacks, the wind study, the ambient noise level — or any other variables that could be presented in a case-by-case situation.

Amid opposition from community groups, the planning board postponed a decision and in July formed an ad hoc committee to consider the issue further.

More than an ad hoc committee, this technology warrants comprehensive research, including consultation from sound engineers, real estate and appraisal professionals, environmental researchers, public policy experts and, very importantly, input from residents who are directly affected. Now that Baltimore City has heard its first case, this is clearly a metropolitan issue with over-lapping communities and interests.

A regional renewable energy advisory panel could produce an integrated package of legislation for residential consumers that would address all appropriate technology, creating a holistic, sustainable energy policy that promotes a range of viable, alternative energy sources (such as solar, geothermal, large-scale energy co-ops, etc.) to reduce our collective carbon footprint, rather than a narrow recommendation that focuses solely on wind turbines.

A well-thought out public policy can insure that we do not suffer from the unintended consequences of well-intentioned people.

Ruth Goldstein is president of the Greater Midfield Association. Her e-mail is ruth-goldstein@comcast.net.

of the restaurant and the adjoining house, he said.

"These are exciting plans that all fit within the Hereford Plan," said Paul Cummins, the association's secretary, who ran the meeting. "This will complement the town."

Nell Heneghan said she wants to highlight fresh food and local growers with the breakfasts and lunches she'll serve.

"We'll have a new menu for each season and it'll change depending on the fresh fruits and vegetables we can get," she said. "We care a lot about nutrition and we'll offer options for people's special dietary needs."

Soup'R Natural will even feature an item called "Eating My Words Burger," Dan Heneghan said, in response to pleas for

hamburgers after he mentioned in a *North County News* story that the restaurant would serve them.

The menu is still being shaped, Nell said. A few hours before the meeting, Betty Winner stopped by to donate her famous chili recipe to the new restaurant. Winner's parents started the eatery in 1949 and she ran the Wagon Wheel from 1976 until she sold it

in 2006 to Geraldine and Michael Forti.

The Heneghans, who live in Monkton, bought the restaurant and adjacent house at auction in April.

Proposed hours are Monday through Saturday, 7 a.m. to 6 p.m. There will be limited take-out service available, and the restaurant can be rented in the evening for occasional catered events.

Public comment session set on turbine regulation plan

By Pat van den Beemt

pvd@comcast.net

A year ago, Barry and Ursula Antonelli received county approval to install a 120-foot wind turbine at their new home in Phoenix and neighbors immediately appealed that decision.

Realizing there were no specific zoning regulations for windmills or wind turbines, the county's planning staff has spent the past year working on recommendations to regulate wind turbines for residential use.

A 16-page document listing the proposed regulations is done and the county's Planning Board is seeking input from experts and the public at two September meetings as they decide whether to accept or alter the staff recommendations.

Tentatively, Sept. 15 is the date for wind turbine experts to testify before the Planning Board. The public can attend, but not testify.

The public's turn to talk comes a week later, when the Planning Board holds another hearing, tentatively scheduled for Sept. 22. Both meetings begin at 5 p.m. in Towson.

"There's a lot of public interest in this issue and we felt we wanted to hear from the experts about technical issues, too," said Adam Sampson, chair of the Planning Board's six-member wind turbine committee. "We're also happy to receive e-mails or letters from the public."

The planning staff recommends wind turbines be permitted as an accessory use with restrictions such as: a maximum tower height of 150 feet; minimum lot size of 1 acre; setback from property lines of 110 percent of total turbine height; noise cannot exceed 55 decibels at the property line; and the energy produced must be for personal use.

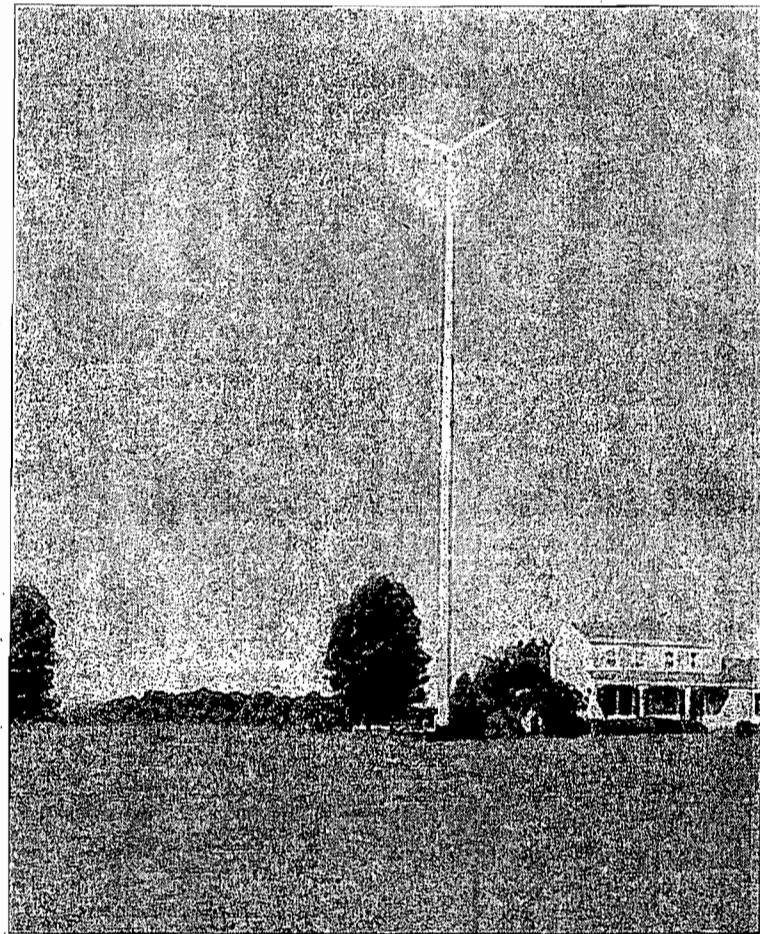
The Antonellis' wind turbine is proposed for a new home they're building on Cooper Road, in Phoenix. The house features energy-saving devices such as geothermal heat and solar panels and the Antonellis wanted a wind turbine to help produce their own electricity.

But several neighbors appealed the county's approval of the wind turbine, including Lisa and Ernest Viscuso of Cooperstown Court, in Phoenix.

They sent committee chairman Sampson a letter Aug. 4 about the proposed legislation.

"We support and live with conservation principles and are environmentally conscientious. However, we feel allowing these systems as a right and not on an exception basis and allowing them in or close to residential areas is irresponsible and unfair to citizens like us."

The proposed legislation calls for small wind energy systems to be permitted in any zone. Special exceptions are needed on parcels that are on the county's preliminary or



The county's Planning Board is seeking feedback on a 16-page document that lists proposed regulations for residential wind turbines. One of the restrictions is a maximum tower height of 150 feet. The photo above shows a standard-size house with a 150-foot tower.

PHOTO COURTESY OF BALTIMORE COUNTY OFFICE OF PLANNING

final landmarks list, in historic preservation districts or areas visible from scenic routes or views identified in the county's Master Plan.

To read the planning staff report, go to www.baltimorecountymd.gov/agencies/planning and click on Wind Turbines icon on the right-hand side. That same Web

site will post confirmation of the meeting dates.

E-mail comments to the Planning Board at bweaver@baltimorecountymd.gov. Letters can be sent to Baltimore County Office of Planning, 105 W. Chesapeake Ave., Towson, MD 21204. The public meetings will be held at that same location.

County broke ground for new agriculture center

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2008, Legislative Day No. 12

Resolution No. 52-08

Mr. Vincent J. Gardina, Councilman

By the County Council, July 7, 2008

A RESOLUTION of the Baltimore County Council requesting the Planning Board to propose amendments to the Zoning Regulations in order to regulate the location and use of windmills for residential energy use.

WHEREAS, Baltimore County is committed to the goal of environmental sustainability; and

WHEREAS, the County Council has asked the Planning Board, in conjunction with other agencies, to create a model for a Baltimore County Sustainability Program; and

WHEREAS, wind energy is a plentiful, renewable and clean source of power that can be used in a wide range of applications from wind farms to home wind power; and

WHEREAS, wind turbines have been used for household electricity generation over many decades in remote areas as a reliable source of residential wind power; and

WHEREAS, creating electricity using windmill power can help homeowners reduce utility costs, provide power during emergency situations or when traditional sources of power are unavailable, and provide a benefit to the environment; and

WHEREAS, the Baltimore County Zoning Regulations do not currently regulate the location or use of windmills for the generation of power for residential energy use; now, therefore be it

RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the Baltimore County Planning Board be and it is hereby requested to propose amendments to the Zoning Regulations in order to regulate the use of windmills for residential energy use.

6-16-08

IN RE: PETITION FOR VARIANCE

NE corner of Cooperfield Court and
Cooper Road
10th Election District
3rd Councilmanic District
(14601 Cooper Road)

Joseph and Urszula Antonelli
Petitioners

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
* Case No. 2008-0474-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the legal owners of the subject property, Joseph and Urszula Antonelli. Petitioners are requesting variance relief from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure in the side yard in lieu of the required rear yard, and from Section 400.3 of the B.C.Z.R. for an accessory structure (tower with a wind turbine generator) 120 feet tall in lieu of the maximum 15 feet allowed. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioners' Exhibit 1.

As will be explained in greater detail, this is a case of first impression in Baltimore County as the relief requested by Petitioners involves an innovative method of addressing current national and global energy challenges. The Antonelli family's proposal to construct a 120 foot tower with a small wind energy system in the form of a wind turbine generator (hereinafter referred to as a "windmill") represents the first Baltimore County zoning case involving a request to use wind power as an alternative method of providing energy to a Baltimore County home. Since the B.C.Z.R. does not currently contain regulations specifically pertaining to the construction or maintenance of a windmill, this Petition was filed as a request for variance from height and location area regulations.

Exh. #1

Case No.: 08-474-A

Exhibit Sheet

Petitioner/Developer

Protestant

No. 1	SITE PLAN	American Wind Energy Association printouts - admitted for quote
No. 2	PHOTO KEY (2) (A) (B) PHOTOS	PRINTOUT BERG WEB SITE (larger photos)
No. 3	(A) PHOTOS WINDMILL (B)	
No. 4	CARD COPY STATUTES	
No. 5	AWEA Printout	
No. 6	AWEA PRINTOUT	
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

(A)



ALL-STATE LEGAL®
PETITIONER'S
EXHIBIT
2A→2R





































lattice tower w/ guy wires



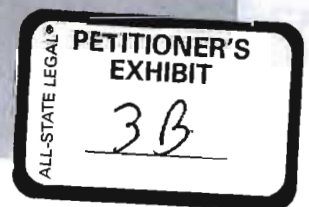
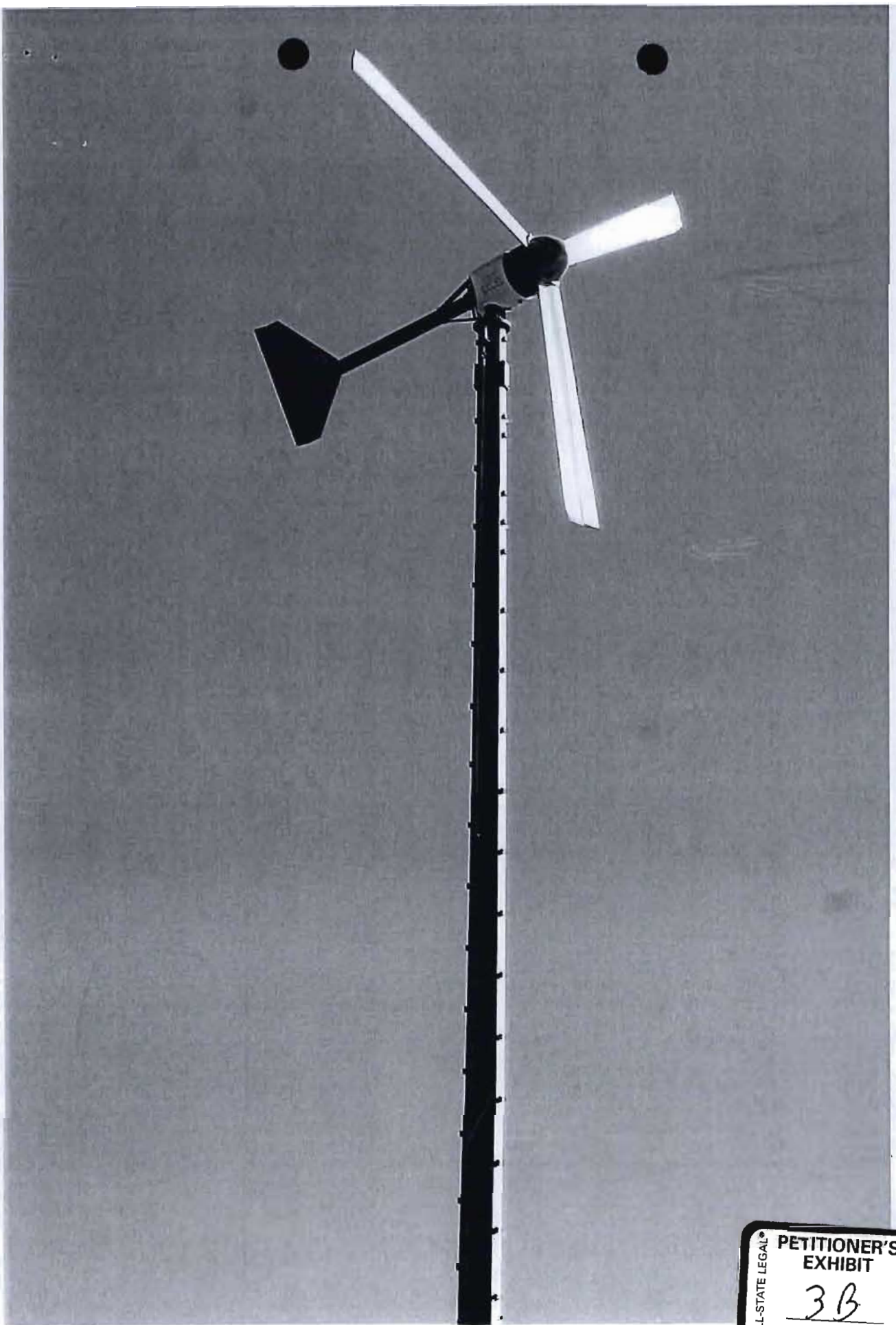
ALL-STATE LEGAL
PETITIONER'S
EXHIBIT
3A

lattice tower w/ guy wires

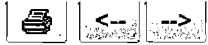


ALL-STATE LEGAL® PETITIONER'S
EXHIBIT
3B

monopole



monopole



Carroll County Maryland

Code of Public Local Laws and Ordinances

ARTICLE XXXII, Small Wind Energy Systems.

[Added 05/06/08 by Ord. No. 08-02]

§ 223-214. Applicability.

[Added 05/06/08 by Ord. No. 08-02]

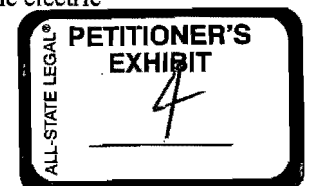
In order to properly integrate all regulating provisions affecting Small Wind Energy Systems, as defined in § 223-2, and to regulate such systems in an orderly and comprehensive manner, it is hereby provided that Small Wind Energy Systems are subject to the regulations as set forth herein. The purpose of this Article is to oversee the permitting of Small Wind Energy Systems, and to preserve and protect public health and safety without significantly increasing the cost or decreasing the efficiency of a Small Wind Energy System. These provisions shall apply to all Small Wind Energy Systems located in Carroll County.

§ 223-215. Standards.

[Added 05/06/08 by Ord. No. 08-02]

A Small Wind Energy System shall be an accessory use in all zoning districts subject to the following requirements:

- A. **Setbacks.** A wind tower for a Small Wind Energy System shall be set back a distance equal to its total height plus an additional 20 feet from:
 - (1) any State or County right-of-way or the nearest edge of a State or County roadway, whichever is closer;
 - (2) any right of ingress or egress on the owner's property;
 - (3) any overhead utility lines;
 - (4) all property lines; and
 - (5) any existing guy wire, anchor or small wind energy tower on the property.
- B. **Access.**
 - (1) All ground mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
 - (2) The tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground.
- C. **Electrical wires.** All electrical wires associated with a Small Wind Energy System, other than wires necessary to connect the wind generator to the wind tower wiring, the wind tower wiring to the disconnect junction box, and the grounding wires shall be located underground.
- D. **Lighting.** A wind tower and generator shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA). Lighting of other parts of the Small Wind Energy Systems, such as appurtenant structures, shall be limited to that required for safety purposes, and shall be reasonably shielded from abutting properties.
- E. **Appearance, color, and finish.** The wind generator and wind tower shall remain painted or finished the color or finish that was originally applied by the manufacturer.
- F. **Signs.** All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, wind tower, building, or other structure associated with a Small Wind Energy System visible from any public road shall be prohibited.
- G. **Code compliance.** A Small Wind Energy System including wind tower shall comply with all applicable construction and electrical codes.
- H. **Utility notification and interconnection.** Small Wind Energy Systems that connect to the electric utility shall comply with the Public Service Commission regulations.
- I. Small Wind Energy Systems shall not be attached to any building, including guy wires.



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Displays

Success Stories

Resources

TOOLS YOU CAN USE
Small Wind Factsheets**How Much Noise Do Small Wind Systems Make?**

Download this document as a pdf (223k)

Few moving parts

Most residential-sized wind generators are direct-drive devices with few moving parts. Unlike the utility-scale turbines used in wind farms, they do not have high-speed transmissions. Thus, most of the sound that comes from a residential sized wind turbine is aerodynamic noise caused by the blades passing through the air. The noise level of most modern residential turbines measures close to the ambient noise levels under average wind conditions. It is audible, if you are out of doors and listening for it, but no noisier than your average refrigerator.

Most residential turbines do not begin turning until a certain threshold, or "cut-in" wind-speed is reached - typically about 7 m.p.h. So, on a calm, windless day (or night), the turbine is still and silent.

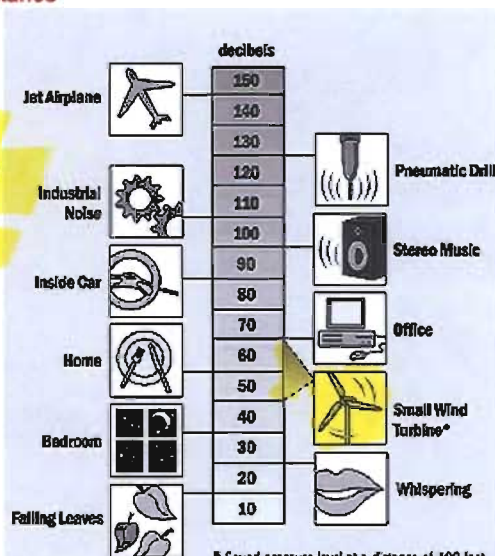
Background noise masks aerodynamic sounds

Just how audible depends on the distance of the listener from the turbine - and also on the level of existing background noise including traffic, farm machinery, barking dogs, children playing, lawn mowers, and even the environment itself. Residential-sized wind turbines are variable speed devices, turning faster and thus creating more sound as wind speed increases. At the same time, the wind itself creates sound, rustling through trees, shrubs, and fields, and even rattling buildings. These natural background sounds also increase with wind speed, thereby effectively masking much of a small turbine's aerodynamic sound. The sound of a wind turbine may be distinguishable from ambient (background) noise even though it is not louder. However, the same can be said for all of the other components of ambient noise, including things like barking dogs, traffic, kids playing, tractors, and even trees.

Sound levels fall with distance

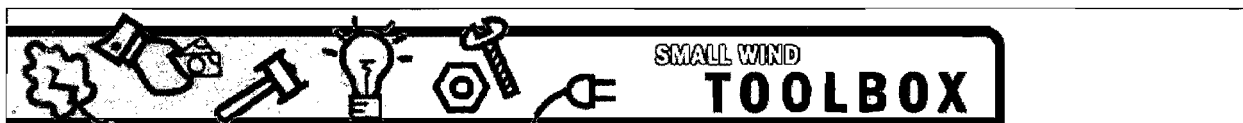
Sound levels fall off significantly with distance. In one sound test carried out on a Bergey Windpower 10 kW BWC Excel wind system at a distance of 300 feet and in 25 mph winds, the BWC Excel generated sound with a 54 dB(A) to 55 dB(A) rating, making the wind generator barely audible over the 52.5 dB(A) rating of the surrounding environment's background noise. At about 500 feet, the BWC Excel sound rating was 53 dB(A), making it just another part of the background sound.

In another instance, sounds from a 10-kW Jacobs wind system were measured by a representative of the Clinton (Iowa) Detective Bureau. "In wind speeds between 16 mph and 36 mph and at a position only 50 feet from the wind generator, the decibel meter registered the sound of the wind generator between 55 dB(A) and 59 dB(A). The detective noted that, 'at this location, the sound output from the generator was observed to be partially masked by the sounds from the rustling of leaves in



<http://www.awea.org/faq/noisefaq.html>



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.. TOOLS YOU CAN USE ..
Small Wind Factsheets**How Do Small Wind Systems Affect Property Values?**

Download this document as a pdf (137k)

There is no evidence to support the concern sometimes raised that the existence of a residential wind turbine will lower property values on adjacent or near-by properties. Michael Bergey of Bergey Windpower writes,

"The fear of diminished property values is a charge that is sometimes raised by abutters or other concerned neighbors that for whatever reason do not want the small wind turbine installed in their neighborhood. But, there is no evidence of this having ever occurred. Our customers have sold their homes, and adjacent lots they owned, and they have had direct and nearby neighbors sell their homes. In all cases but one the wind turbine was not an issue. In the one case where the turbine was an issue the turbine had been partially installed on the abutting property due to a faulty survey. This situation was resolved amicably between the turbine owner and the new neighbor."¹

Property values have not declined

- Informal surveys of property values around three small windmills in the Rochester, NY area showed that the asking price for most property near residential wind turbines was higher than the assessed value."²
- During the permitting of Dave Blittersdorf's 10-kilowatt Bergey wind turbine for his family's rural home on 10 acres of land in Vermont, a distant neighbor presented two letters from real estate appraisers subjectively claiming that the wind turbine would decrease the value of other homes in the area. Data disproving this came during 2001 when the neighbor closest to Blittersdorf's wind turbine sold their home in 24 hours above the listing price. The new neighbors wanted to live in a neighborhood that was concerned about the environment and loved the idea of being next door to a wind turbine. ³
- Mr. Bruce Bailey of AWS Scientific, a consultant in wind energy, states that "property operating windmills do not negatively impact neighbors nor harm property values."⁴

Some home buyers would pay more for renewable energy

A survey of 300 California homeowners, conducted for the California Energy Commission by a market research firm, found that 50% of homeowners surveyed "would be willing to pay more for a home equipped with solar and wind technology," according to an article in the March 15, 2002 issue of *Realty Times*, a publication dedicated to real estate news and advice. The study also found that 60% of homeowners surveyed "would be more interested in a home that has a renewable energy system already installed versus a home that does not."⁵

References

1. Michael Bergey, Bergey Windpower.
2. <http://www.windzone.mkeis.org>
3. Posting on <http://www.egroups.com/list/awea-windnet>, 11/13/2002
4. AWS Report
5. *Realty Times*, March 15, 2002

Other Fact Sheets Available on Small Wind Energy:

What is Small Wind?
How Much Noise Do Small Wind Turbines Make?
Do Small Turbines Kill Birds?

EXHIBIT

tabbles

6

Case No.: 08-474-A

Exhibit Sheet

Petitioner/Developer

Protestant

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No. 5	AWEA Printout	
No. 6	AWEA PRINTOUT	
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

4.6 WACHUSETT – HISTORY OF NOISE

The Wachusett Mountain State reservation's southwest side is quiet – not quieter. The present windmills in that environment make a lot of noise. Maybe the new ones are quieter. But will they be quiet? Will they accommodate the noise rights afforded under Article 97.

I, on many occasions and under many conditions, have made video/audio tapes of the present WTGs and their noises. They are both mechanical – from the turbines, and aerodynamic – from the blades cutting the wind.

The present WTGs are unnatural in their noise – so that levels equal to the environmental background would be annoying and stand out. In music, setting two vocalists' voices to equal volumes in no way eliminates either one; they have the same amplitude. Neither is masked. In fact the unnatural one (the turbine) in the case of the Wachusett reservation would stick out – as it is unusual in that environment. It would be as obvious as a sour note amongst a group of vocalists.

Simply the idea is to provide an opportunity for the unwanted sound to dissipate with distance. This is particularly indeterminate in environments such as Wachusett where the sound source is above the receivers who sit in the rises and valleys below.

As such the present turbines offer strange acoustical patterns. They go unheard at 1/2 mile; but in the same direction at 1 mile away they are heard. Today they are heard 1-mile away from the WWS on Rhodes Road to the west, and in the opposite direction, 1 mile away on Mountain Road to the southeast (at the Fernside, on the National Historic Register).

The above is confirmed for the WWS, although tentatively, in the following quote by the AWEA -- wind industry advocates.

"...background noise of the wind tends to mask any sounds that might be produced by operating wind turbines... The only occasional exception to this general rule occurs when a wind plant is sited in hilly terrain where nearby residences are in dips and hollows downwind that are sheltered from the wind – in such a case the noise may travel further than on a flat terrain."

(Facts About Wind Energy and Noise; American Wind Energy Association)

4.7 NOISE – WINDMILL AT HULL

In Hull, Massachusetts, there is a windmill about 1/2 the size of the proposed WWS WTGs. This single windmill is noisy. I've seen it and videotaped it. This is subjective as is the view of people who consider it quiet.

One thing that is for sure is that Wachusett isn't Hull – when it comes to background noise. The windmill there is amidst and masked by surf sounds, the sounds of the high school ball field, the densely populated beach-town noises, the sounds of the diesel motors of the boats in the harbor and the jets overhead in this landing ~~flyway~~ for Logan

PROTESTANT' S

EXHIBIT NO. /

NREL Tests Document Low Noise from Bergey Turbines

November 15, 2003

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The technical paper "Acoustic Tests of Small Wind Turbines", authored by Paul Migliore, Jeroen van Dam, and Arlinda Husky, will be presented January 5-8 2004 in Reno, Nevada. A copy of the full paper (PDF, 700 KB) is available by [clicking here](#).

The NREL noise tests included products from Bergey Windpower, Southwest Windpower, Northern Power, and Atlantic Orient Corp. (now a Canadian company). The tests were performed using the IEC international standard and the results are presented for both the noise volume right at the wind turbine (sound power level) and at a specified distance from the turbine (sound pressure level). The results are presented against background sound levels and in some cases the test data could not distinguish between the turbine noise and the background noise.

This was particularly true for the Bergey XL.1. For the XL.1 the NREL technical paper states "The measured values are quite low and the apparent sound power level at 8 m/s cannot be reported because the turbine noise level could not be separated from the background noise."

Probably the best product-to-product comparison available in the technical paper is the apparent sound power levels at a wind speed of 9 m/s (20 mph), as provided in Table 1 of the paper. These results are summarized below for current production models. Please note that sound power level can not be directly compared to the noise scale used in municipal noise ordinances because it does not take into account the reduction in noise level as you get farther away from the noise source.

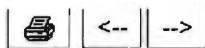
10 kW Excel
60

Brand	Model	Rated Power	Diameter	Rotor Area	Sound Power Level*
Southwest	Air X	400 W	1.1 m	1.0 m ²	81.3 dB
Southwest	Whisper H40	900 W	2.1 m	3.5 m ²	87.4 dB
Bergey	XL.1	1,000 W	2.5 m	4.9 m ²	75.8 dB
Bergey	Excel	10 kW	6.2 m	29.9 m ²	92.3 dB
Atlantic Orient Corp.	15/50	50 kW	15 m	177 m ²	101.9 dB
Northern Power	NW 100	100 kW	19.1 m	287 m ²	95.1 dB

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EXHIBIT NO. 2



Carroll County Maryland

Code of Public Local Laws and Ordinances

ARTICLE XXXII, Small Wind Energy Systems.

[Added 05/06/08 by Ord. No. 08-02]

§ 223-214. Applicability.

[Added 05/06/08 by Ord. No. 08-02]

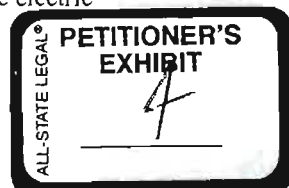
In order to properly integrate all regulating provisions affecting Small Wind Energy Systems, as defined in § 223-2, and to regulate such systems in an orderly and comprehensive manner, it is hereby provided that Small Wind Energy Systems are subject to the regulations as set forth herein. The purpose of this Article is to oversee the permitting of Small Wind Energy Systems, and to preserve and protect public health and safety without significantly increasing the cost or decreasing the efficiency of a Small Wind Energy System. These provisions shall apply to all Small Wind Energy Systems located in Carroll County.

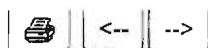
§ 223-215. Standards.

[Added 05/06/08 by Ord. No. 08-02]

A Small Wind Energy System shall be an accessory use in all zoning districts subject to the following requirements:

- A. **Setbacks.** A wind tower for a Small Wind Energy System shall be set back a distance equal to its total height plus an additional 20 feet from:
 - (1) any State or County right-of-way or the nearest edge of a State or County roadway, whichever is closer;
 - (2) any right of ingress or egress on the owner's property;
 - (3) any overhead utility lines;
 - (4) all property lines; and
 - (5) any existing guy wire, anchor or small wind energy tower on the property.
- B. **Access.**
 - (1) All ground mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
 - (2) The tower shall be designed and installed so as to not provide step bolts or a ladder readily accessible to the public for a minimum height of 8 feet above the ground.
- C. **Electrical wires.** All electrical wires associated with a Small Wind Energy System, other than wires necessary to connect the wind generator to the wind tower wiring, the wind tower wiring to the disconnect junction box, and the grounding wires shall be located underground.
- D. **Lighting.** A wind tower and generator shall not be artificially lighted unless such lighting is required by the Federal Aviation Administration (FAA). Lighting of other parts of the Small Wind Energy Systems, such as appurtenant structures, shall be limited to that required for safety purposes, and shall be reasonably shielded from abutting properties.
- E. **Appearance, color, and finish.** The wind generator and wind tower shall remain painted or finished the color or finish that was originally applied by the manufacturer.
- F. **Signs.** All signs, other than the manufacturer's or installer's identification, appropriate warning signs, or owner identification on a wind generator, wind tower, building, or other structure associated with a Small Wind Energy System visible from any public road shall be prohibited.
- G. **Code compliance.** A Small Wind Energy System including wind tower shall comply with all applicable construction and electrical codes.
- H. **Utility notification and interconnection.** Small Wind Energy Systems that connect to the electric utility shall comply with the Public Service Commission regulations.
- I. Small Wind Energy Systems shall not be attached to any building, including guy wires.





Carroll County Maryland

Code of Public Local Laws and Ordinances

§ 223-2. Definitions.

In this chapter the following terms have the meanings indicated. Any words not defined herein shall have their generally accepted meaning.

ACCESSORY DWELLING UNIT -- An additional attached or detached dwelling unit on a lot with a principal dwelling unit. *[Added 11/28/00 by Ord. No. 00-9]*

ACCESSORY USE -- A use of land or all or part of a building which is customarily incidental and secondary to the principal use of the property and which is located on the same lot with the principal use.

ADULT ENTERTAINMENT BUSINESS -- An adult store or an adult movie theater. *[Added 04/04/01 by Ord. No. 01-3]*

ADULT MOVIE THEATER -- A business establishment open to the public, or to members, that maintains display devices for viewing on the premises, films, videos or other viewable material, if a substantial portion of the stock or trade is characterized by an emphasis on matters depicting, describing or relating to sexual activities. This does not include a motion-picture theater which has seating for at least 50 persons per screen. *[Added 04/04/01 by Ord. No. 01-3]*

ADULT STORE -- A business establishment open to the public, or to members, that offers for sale or rental any printed, recorded, photographed, filmed or otherwise viewable material, or any sexually oriented paraphernalia, if a substantial portion of the stock or trade is characterized by an emphasis on matters depicting, describing or relating to sexual activities. The term does not include a motion-picture theater which has seating for at least 50 persons per screen. *[Added 04/04/01 by Ord. No. 01-3]*

AGRICULTURAL OR AGRICULTURAL PURPOSES -- The raising of farm products for use or sale, including livestock or poultry husbandry, and the growing of crops such as grain, vegetables, fruit, grass for pasture or sod, trees, shrubs, flowers, and similar products of the soil, and including stables for boarding and training horses.

AIR FIELD -- A strip of land designed and altered to accommodate the takeoff and landing of aircraft.

AIRPARK -- A planned industrial and/or commercial development area adjacent to or surrounding an airport.

AIRPORT -- An area or tract of land including one or more airfields designed and intended to be used for and maintained as a facility to accommodate the takeoff and landing of aircraft and for receiving and discharging of passengers and/or cargo and that usually has facilities for the shelter and repair of aircraft.

AMUSEMENT ARCADE -- Any facility for the use or operation of 5 or more game machines.

APARTMENT -- An area within a two-family or multifamily dwelling arranged or designed as one dwelling unit.

APARTMENT BUILDING -- Any building having or designed to have 3 or more apartments.

ASSISTED-LIVING FACILITY -- A facility to provide housing and supportive services, supervision, personalized assistance, health-related services, or a combination thereof, that meets the needs of individuals who are unable to perform or who need assistance in performing the activities of daily living in a way that promotes optimum dignity and independence for the individuals. *[Added 06/27/01 by Ord. No. 01-6]*

ATTACHED ACCESSORY DWELLING -- A portion of a single-family dwelling that shall provide complete, independent living facilities for sleeping, eating, cooking and sanitation within the main dwelling unit, but which is separate from the main dwelling unit's cooking area, bathroom(s) and living areas. *[Added 11/28/00 by Ord. No. 00-9]*

AUTOMOBILE SERVICE CENTER -- Land and buildings in which any or all of the following are conducted:

- A. The retail sale and installation of motor vehicle parts, accessories, and lubricants, including but not limited to tires, batteries, mufflers, brakes, radiators, lights, ignition system parts, oil, grease, and coolants for automobiles, pickup trucks and similar passenger-type vehicles; and

dwelling units for independent living, assisted-living facilities, plus a skilled nursing care facility of a suitable size to provide treatment or care of the residents; it may include ancillary facilities for the further employment, service or care of the residents. The facility is restricted to persons 60 years of age or older or couples where either occupant is 60 years of age or older. *[Added 06/27/01 by Ord. No. 01-06]*

CONTRACTOR'S EQUIPMENT STORAGE FACILITY -- Property used for the parking or storage of equipment, vehicles, or machinery used in construction; including, but not limited to, equipment, vehicles or machinery used in excavating, earthmoving, paving, or in the hauling of earth and building materials.

COTTAGE INDUSTRY -- Manufacturing or assembly conducted by a member or members of the family residing on the property with no more than one nonresident employee. The use is not a cottage industry if it generates traffic, parking, sewerage, or water use to a greater extent than would normally result from residential occupancy; includes inventory or merchandise kept for sale on the premises; changes the external appearance of the dwelling and is visible from the street; includes any outside storage or display, other than a sign not exceeding one foot by 2 feet; and creates a hazard to any person or property; results in electrical interference, or becomes a nuisance.

COUNTRY INN -- Any dwelling at least 50 years old, in which rooms are rented to paying guests on an overnight basis with meals served daily, the entire service to be included in one stated price. A country inn may also provide catering and facilities for banquets, weddings, receptions, reunions, and similar one-time events which are not open to the public generally.

CURTILAGE -- Buildings and areas in close proximity to a dwelling which are habitually used for residential purposes.

DAY-CARE CENTER -- A facility licensed for the care of more than 8 children or adults away from their own homes, on a daily rather than an overnight basis.

DECLARATORY RULING -- An opinion by the Zoning Administrator as to a matter of general interpretation of a provision in the Zoning Ordinance. A declaratory ruling is intended to give guidance to facilitate uniform interpretation of an ambiguous provision in the Zoning Ordinance and is not to be construed as binding in any fact-specific case. *[Added 09/17/01 by Ord. No. 01-11]*

DETACHED ACCESSORY DWELLING -- A dwelling unit (excluding mobile homes) on the same lot as the primary dwelling unit, but physically separated from the primary dwelling unit. A detached accessory dwelling unit shall provide complete, independent living facilities for one or more persons, including permanent facilities for living, sleeping, eating, cooking and sanitation. *[Added 11/28/00 by Ord. No. 00-09]*

DEVELOPMENT RIGHT -- The potential for the creation of residential subdivision lots existing because of the zoning classification of the parcel.

DISASTER -- A sudden calamitous event bringing great damage or destruction such as fire, windstorm, flood, explosion, act of public enemy or accident, which event results in a home being declared unsafe for occupancy by the Code Official, as Code Official is defined in the Carroll County Building Code, or an unforeseen condition which renders a home unfit for human habitation for medically documented reasons due to the presence of contaminants which endanger the health of humans.

DISPLAY DEVICE -- An electronically or mechanically controlled still or motion-picture machine, film projector, videotape player or other image-producing device that may be activated directly or indirectly by viewers or at the request of viewers for which a fee is charged. *[Added 06/27/01 by Ord. No. 01-06]*

DWELLING -- Any building arranged, designed, or used in whole or in part for residential purposes, but not including a tent, cabin, trailer, or mobile home, or a room in a hotel or motel.

A. **DWELLING, SINGLE-FAMILY** -- A detached building designed for or used exclusively for residential purposes by residents as a single dwelling unit.

B. **DWELLING, TWO-FAMILY** -- A detached building with one dwelling unit above the other (duplex) or 2 semidetached dwelling units located on abutting lots or on the same lot, separated by a party wall without openings, in either case for or used exclusively for residential purposes, but not more than a total of 2 families or 2 housekeeping units.

C. **DWELLING, MULTIFAMILY** -- A detached building or a group of attached buildings, designed for or used exclusively for residential purposes by more than 2 families or more than 2 housekeeping units.

DWELLING UNIT -- A single unit providing complete independent living facilities for one or more

B. LOT FRONTAGE -- The front of a lot shall be construed to be the portion nearest the street. For the purpose of determining lot frontage on a lot served by a use-in-common driveway, the line of the use-in-common driveway may be considered the front.

C. LOT WIDTH -- The horizontal distance between side lot lines measured at the midpoints of the side lot lines.

MASSAGE -- Any method of treating the external parts of the human body, for compensation, by touching, rubbing, stroking, kneading, tapping or vibrating with the hand, arm, foot or other body part, provided by a massage technician. *[Added 04/04/01 by Ord. No. 01-03]*

MASSAGE ESTABLISHMENT -- Any establishment where a massage technician administers a massage to another person for compensation. This does not include a hospital, nursing home, medical clinic or other establishment where massages are administered by individuals certified as massage therapists as defined by § 3-5A-01 of the Health Occupations Article of the Annotated Code of Maryland. *[Added 04/04/01 by Ord. No. 01-03]*

MASSAGE TECHNICIAN -- An individual who administers a massage to another individual for compensation. This does not include:

A. A certified massage therapist as defined by § 3-5A-01 of the Health Occupations Article of the Annotated Code of Maryland; or

B. A medical practitioner as defined by this chapter.

[Added 04/04/01 by Ord. No. 01-03]

MASTER PLAN -- The policies, statements, goals, and interrelated plans for private and public land use, transportation, and community facilities documented in text and maps which constitute the guide for the County's future development.

MEDICAL CENTER -- A medical or dental clinic building occupied by medical practitioners and dispensing health services.

METEOROLOGICAL TOWER (Met Tower) -- Defined to include the tower, base plate, anchors, guy wires and hardware, anemometers (wind speed indicators), wind direction vanes, booms to hold equipment, anemometers and vanes, data logger, instrument wiring, and any telemetry devices that are used to monitor or transmit wind speed and wind flow characteristics over a period of time for either instantaneous wind information or to characterize the wind resource at a given location. *[Added 05/06/08 by Ord. No. 08-02]*

MEDICAL PRACTITIONER -- A physician, dentist, optometrist, chiropractor, podiatrist, psychologist, physical therapist, nurse, massage therapist or other similar health professional licensed and/or certified by the state. *[Added 04/04/01 by Ord. No. 01-03]*

MINERAL RESOURCE -- Any solid material, aggregate, or substance of commercial value, whether consolidated or loose, found in natural deposits on or in the earth, including (but not limited to) clay, diatomaceous earth, gravel, marl, metallic ores, sand, shell soil, and stone.

MINERAL RESOURCE NOTIFICATION AREA (MRN) -- An area which is within ½ mile of an MR or a VRA and in which notification of property owners and clustering away from the mineral resource are required.

MINERAL RESOURCE RECOVERY AREA (MR) -- An area which is underlain by a mineral resource and under which mineral resource recovery is a principal permitted use.

MINERAL RESOURCE RECOVERY OPERATION (MRO) -- An operation composed of extractive operations and/or processing operations.

MINI STORAGE -- A structure containing multiple, separate, self-contained storage units, that are leased or rented on an individual or collective basis.

MOBILE HOME -- A structure, transportable in one or more sections, and which is built on a permanent chassis with or without a permanent foundation and which is designed to be used or is used as a dwelling, or is used for the conduct of any business or for storage.

MOBILE HOME PARK -- Any site, lot, parcel, or tract of land which is designed, used or intended to accommodate 3 or more mobile homes for living purposes.

MODULAR HOUSING -- See "industrialized building."

NONCONFORMING USE -- Any building, structure, premises, or use lawfully existing at the time of the adoption of this chapter or lawfully existing at such time as this chapter is amended; and which does

general public for meals or overnight accommodations. Housing for participants may be in lodges, dormitories, sleeping cabins (with or without baths), or in such other temporary quarters as may be approved by the Board, but kitchen and dining facilities shall be located in a single centrally located building or buildings.

RIDING ACADEMY -- An establishment where horses and ponies are boarded and cared for; where instruction in riding, jumping, and showing may be offered; or where the general public, for a fee, may hire horses for riding.

ROTOR DIAMETER -- Means the cross sectional dimension of the circle swept by the rotating blades. *[Added 05/06/08 by Ord. No. 08-02]*

SANITARY LANDFILL -- Any premises used primarily for the disposal of garbage, or any refuse, by dumping, reduction, incineration, or burial.

SENIOR CITIZEN -- A person at least 55 years of age.

SERVICE STATION or SERVICE GARAGE-- Any area of land, including buildings and other structures thereon that are used to dispense motor vehicle fuels, oil, and accessories at retail, and no storage or parking space is offered for rent. *[Amended 08/29/06 by Ord. No. 06-11]*

SETBACK LINE -- That line that is the required minimum distance from the street right-of-way line or any other lot line that establishes the area within which the principal structure must be erected or placed.

SEWAGE SLUDGE -- The accumulated semiliquid suspension, settled solids, or dried residue of these solids that is deposited from sewage in a wastewater treatment plant, whether or not these solids have undergone treatment.

SEWAGE SLUDGE STORAGE -- The interim containment of sewage sludge, treated sewage sludge, or any other product containing these materials after removal from the wastewater and before disposal or utilization. It does not mean the storage of sewage sludge generated on site incidental to the operation and as part of a permitted and duly licensed wastewater treatment plant.

SEXUAL ACTIVITIES -- Includes nudity or partial nudity, as defined herein, and sexual conduct, sexual excitement or sadomasochistic abuse, as defined in Article 27, § 416A of the Annotated Code of Maryland. *[Added 04/04/01 by Ord. No. 01-03]*

SHELTERED HOUSING -- Housing provided by a resident family for 4 to 15 adults who are capable of living in the community but incapable of independent living due to disability or advanced age.

SIGNS -- A name, identification, description, display, logo, illustration, or device which is affixed, stationed, or represented directly or indirectly upon a building, structure, or land and which directs attention to a product, place, activity, person, institution, or business.

A. **SIGN, ON PREMISES** -- A sign which directs attention to a business or profession or to a commodity, service, or entertainment sold or offered upon the premises where the sign is located.

B. **SIGN, OUTDOOR ADVERTISING** -- A sign structure which directs attention to a business, commodity, service, or entertainment not necessarily conducted, sold, or offered upon the premises where such sign is located.

SMALL WIND ENERGY SYSTEM -- Means a single-towered wind energy system that:

A. Is used to generate electricity;

B. Has a rated nameplate capacity of 50 kilowatts or less; and

C. Has a total height of 150 feet or less. *[Added 05/06/08 by Ord. No. 08-02]*

STABLE, BOARDING -- A structure in which more than 2 horses or ponies are housed, boarded, or kept for consideration.

STABLE, COMMERCIAL -- A boarding stable or a riding academy.

STABLE, PRIVATE -- An accessory structure designed for the shelter, feeding, and care of no more than 2 horses, ponies, or cattle or equivalent numbers of sheep, goats, or other ruminants, maintained on the property as pets or for domestic use, as distinguished from agricultural or commercial stables.

STORAGE MODULE -- A self-contained storage unit which can only be delivered to the site in one piece and which has no chassis.

STORAGE OF UNLICENSED MOTOR VEHICLES -- Any property occupied by an unlicensed vehicle. For the purpose of this section, a vehicle shall mean a vehicle of a type which would be subject to the licensing requirements of the Motor Vehicle Administration if operated on a public road. "License"

property upon which a Small Wind Energy System will be operated in accordance with this Chapter.

[Added 05/06/08 by Ord. No. 08-02]

WIND GENERATOR -- Means blades and associated mechanical and electrical conversion components mounted on top of the tower. *[Added 05/06/08 by Ord. No. 08-02]*

WIND TOWER -- Means the monopole, freestanding, or guyed structure that supports a wind generator. *[Added 05/06/08 by Ord. No. 08-02]*

YARD -- An open area on the same lot with a principal building(s) which lies between such building(s) and the lot line and is open and unoccupied from the ground up.

- A. **FRONT YARD** -- A yard extending across the full width of the lot and lying between the front lot line and the nearest line of the principal building. For the purpose of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided as required herein, except that not more than one rear yard shall be required.
- B. **REAR YARD** -- A yard extending across the full width of the lot and lying between the rear lot line and the nearest line of the principal building.
- C. **SIDE YARD** -- A yard between the side line of the lot and the nearest line of the principal building and extending from the front yard to the rear yard.

ZONING CERTIFICATE -- A written statement issued by the Zoning Administrator, authorizing buildings, structures, or uses in accordance with the provisions of this chapter.

NREL Tests Document Low Noise from Bergey Turbines

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EXHIBIT NO. 2

manufacturers have made product improvements over the past few years that have significantly reduced the noise emissions from their products. "We're pleased to see our products rank so well in the first comprehensive noise test of U.S. small wind turbines. We have put quite an effort into noise reduction in the last five years and we have made good progress. We will continue to make low noise a priority in our R&D program" noted Mike Bergey, president of Bergey Windpower.

For further information, please contact:

Steve Wilke, Customer Service, Bergey WindPower Co.

T: 405-364-4212 F: 405-364-2078 E-mail: swilke@bergey.com

4.6 WACHUSETT – HISTORY OF NOISE

The Wachusett Mountain State reservation's southwest side is quiet – not quieter. The present windmills in that environment make a lot of noise. Maybe the new ones are quieter. But will they be quiet? Will they accommodate the noise rights afforded under Article 97.

I, on many occasions and under many conditions, have made video/audio tapes of the present WTGs and their noises. They are both mechanical – from the turbines, and aerodynamic – from the blades cutting the wind.

The present WTGs are unnatural in their noise – so that levels equal to the environmental background would be annoying and stand out. In music, setting two vocalists' voices to equal volumes in no way eliminates either one; they have the same amplitude. Neither is masked. In fact the unnatural one (the turbine) in the case of the Wachusett reservation would stick out – as it is unusual in that environment. It would be as obvious as a sour note amongst a group of vocalists.

Simply the idea is to provide an opportunity for the unwanted sound to dissipate with distance. This is particularly indeterminate in environments such as Wachusett where the sound source is above the receivers who sit in the rises and valleys below.

As such the present turbines offer strange acoustical patterns. They go unheard at 1/2 mile; but in the same direction at 1 mile away they are heard. Today they are heard 1-mile away from the WWS on Rhodes Road to the west, and in the opposite direction, 1 mile away on Mountain Road to the southeast (at the Fernside, on the National Historic Register).

The above is confirmed for the WWS, although tentatively, in the following quote by the AWEA -- wind industry advocates.

"...background noise of the wind tends to mask any sounds that might be produced by operating wind turbines... The only occasional exception to this general rule occurs when a wind plant is sited in hilly terrain where nearby residences are in dips and hollows downwind that are sheltered from the wind – in such a case the noise may travel further than on a flat terrain."

(*Facts About Wind Energy and Noise*; American Wind Energy Association)

4.7 NOISE – WINDMILL AT HULL

In Hull, Massachusetts, there is a windmill about 1/2 the size of the proposed WWS WTGs. This single windmill is noisy. I've seen it and videotaped it. This is subjective as is the view of people who consider it quiet.

One thing that is for sure is that Wachusett isn't Hull – when it comes to background noise. The windmill there is amidst and masked by surf sounds, the sounds of the high school ball field, the densely populated beach-town noises, the sounds of the diesel motors of the boats in the harbor and the jets overhead in this landing ^{flyway for Logan}

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International Airport. Compared this to Wachusett? Don't take my word or anyone's word for it – find out with proper noise measuring equipment, operated by an independent audio professional.

4.8 NOISE – INDUSTRY ASSESSMENTS AND MITIGATIONS

“Strategies for addressing or mitigating noise from turbines should consider the different tonal frequency of the sounds emanating from wind turbine, not just the overall decibel level. Background noise should also be considered. Most local requirements use some form of exceedance over measured background levels as a threshold. The exceedance level can vary from 5 to 8 decibels.

Distance is the most effective mitigating measure in addressing noise from wind turbines. Utilizing setbacks that specify a certain sound level at a certain distance from the turbine is also effective.”

(Wind Energy Development: A Guide for Local Authorities in New York; page 30; New York State Energy Research & Development Authority, Albany, NY October 2002)

“If noise is an aspect which is required to be remedied or mitigated through a plan or in a consent condition, it is most appropriate to do this by setting a level not to be exceeded at a receiving point, rather than by determining turbine location, distance or type. This leaves a developer free to make choices in respect of the means of achieving the performance requirement.”

(Guidelines for Renewable Energy Developments; New Zealand Government; 1995)



“ a change in sound level of 5 dB will typically result in a noticeable community response; and



“ a 10 dB increase is subjectively heard as an approximate doubling in loudness, and almost always causes an adverse community response.”

(Wind Energy Development: A Guide for Local Authorities in New York; page 30; New York State Energy Research & Development Authority, Albany, NY October 2002)

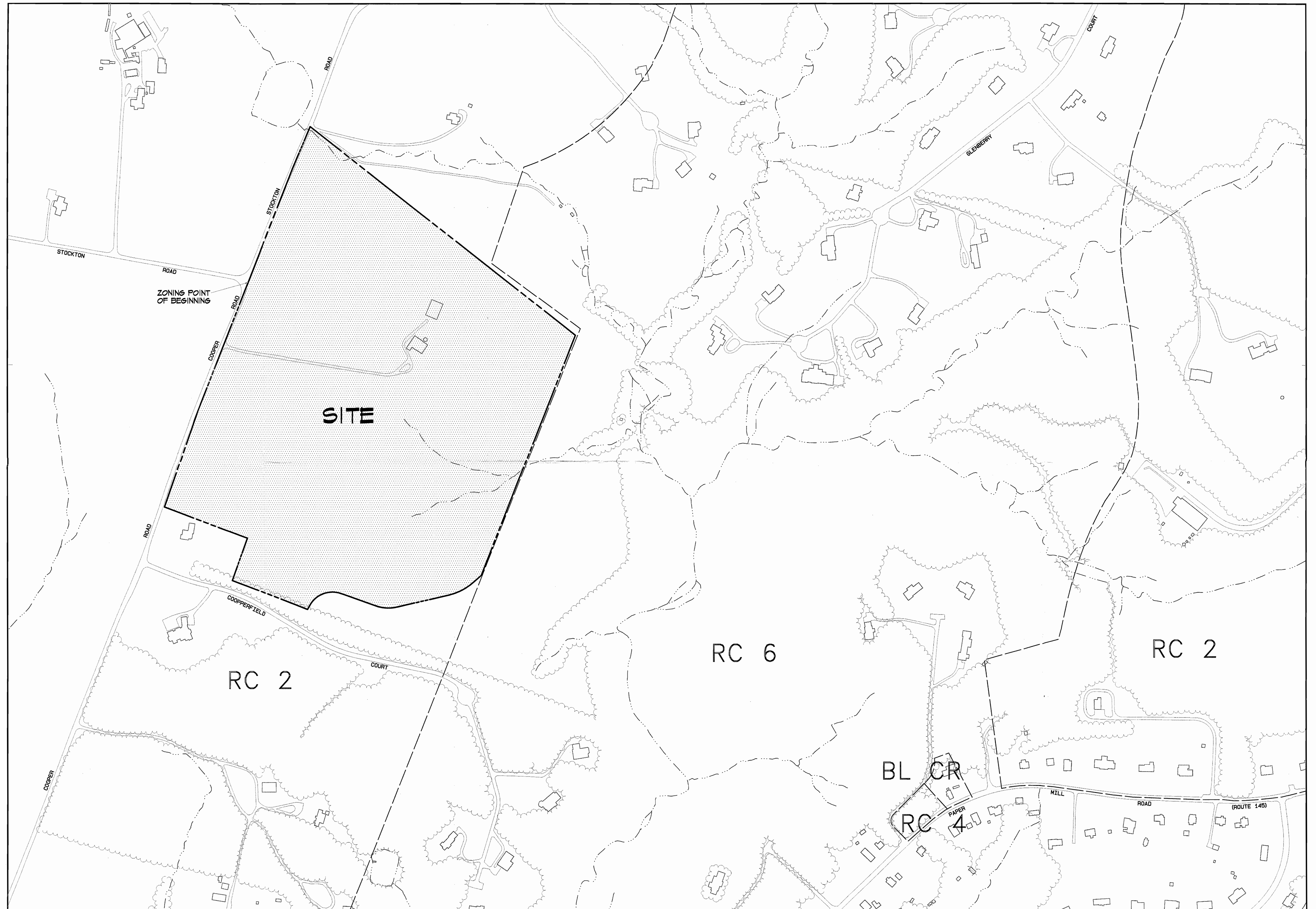
“The Department has established a Noise Level Policy for implementing this regulation. The policy specifies that the ambient sound level, measured at the property line of the facility or at the nearest inhabited buildings, shall not be increased by more than 10 decibels weighted for the “A” scale [dB(A)] due to the sound from the facility during its operating hours.

(DEP Bureau of Waste Prevention Noise Policy; Massachusetts Department of Environmental Protection; 310 CMR 7.10 – U Noise; 1990)

4.9 WACHUSETT WIND SITE NOISE – THE BOTTOM LINE

The messages from this Section 2, on icing, are:

- Noise will be generated by the proposed Wachusett Wind Site (WWS) turbines
- Noise will emanate non-linearly based on industry findings and WWS experience of 20-years.
- Estimates are that noise level at the Wachusett Reservation boundary will be equal to that of a clothes dryer (57 dB at 150-feet per PB Power)
- No noise study has been done by the proponent
- Industry recommends setback – as a proven mitigation of noise
- Mass DEP limits noise to 10dB gain at property line
- Article 97 grants rights to “freedom from excessive and unnecessary noise”
- Due to proximity of the WWS (proposed turbine locations) and the Wachusett State Reservation *reasonable setback*, based on industry findings, will ensure on the citizen’s Article 97 rights
- PMLD (the project proponent) has failed to research, test, assess, map and mitigate the noise levels, to the Article 97 protected Wachusett Reservation environment that their proposed WTGs will present.
- Of such, the proponent should be comprehensively required, using an independent agency – before any sanction of this filing is conditionally or permanently granted, by any agency of the Commonwealth – for the unencumbered exercise of its citizen’s rights



ZONING MAP

GIS TILES: 035B2, 035B3

SCALE: 1" = 200'



4/10/08

PLAN TO ACCOMPANY A PETITION FOR A VARIANCE ANTONELLI PROPERTY

14601 COOPER ROAD

Deed Ref: S.M. No. 25321 folio 237

Tax Account No.: 23-00-000199

Zoned RC 2; GIS Tile 035B2, 035B3

Tax Map 35; Grid 15; Parcel 128

10th ELECTION DISTRICT

3rd COUNCILMANIC DISTRICT

BALTIMORE COUNTY, MARYLAND

Scale: 1"=100'

Date: MARCH 26, 2008

CASE # 2008-0474-A



GERHOLD, CROSS & ETZEL, LTD.

REGISTERED PROFESSIONAL LAND SURVEYORS

Suite 100

320 East Townsontown Boulevard

Towson, Maryland 21286

(410) 823-4470

REVISION

DATE

COMPUTED:

DRAWN: SMH

CHECKED:

FILE:X:\Antonelli\Cooper Road\ZONING PLAN.pr

PLAN TO ACCOMPANY PHOTOGRAPHS

PLAN TO ACCOMPANY A
PETITION FOR A VARIANCE
ANTONELLI PROPERTY

14601 COOPER ROAD
Deed Ref: S.M. No. 25321 folio 237
Tax Account No.: 23-00-000199
Zoned RC 2; GIS Tile 035B2, 035B3
Tax Map 35; Grid 15; Parcel 128
10th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

Scale: 1"=100'

Date: MARCH 26, 2008

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320 East Townsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

REVISION

DATE

COMPUTED:

DRAWN: SMH

CHECKED:

ALL-STATE LEGAL®

PETITIONER'S
EXHIBIT

[Signature]

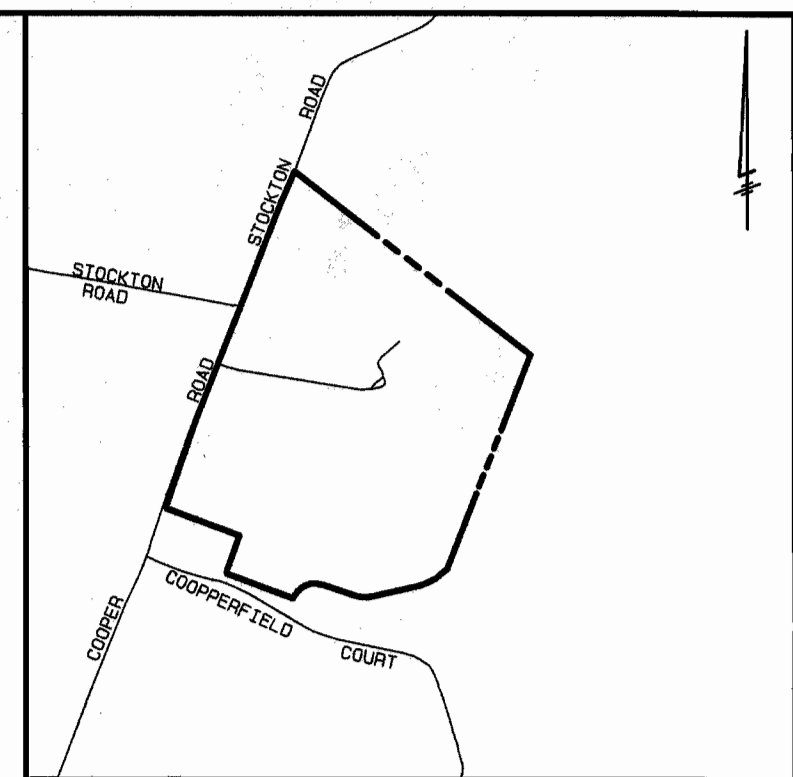
FILE: X:\Antonelli\Cooper Road\ZONING PLAN.pro

VARIANCE REQUESTED

FOR AN ACCESSORY STRUCTURE IN THE SIDE YARD IN LIEU OF THE REQUIRED REAR YARD PER SECTION 400.1 OF THE B.C.Z.R.

FOR AN ACCESSORY STRUCTURE 120' TALL (TOWER WITH A WIND TURBINE GENERATOR) IN LIEU OF THE MAXIMUM 15' ALLOWED PER SECTION 400.3 OF THE B.C.Z.R.

DEED S.M. 14038/627



VICINITY MAP
1" = 2000'

GENERAL NOTES

1. THE BOUNDARY SHOWN HEREON IS FROM DEED S.M. 14038/627.
2. THE TOPOGRAPHY SHOWN HEREON HAS BEEN TAKEN FROM BALTIMORE COUNTY GIS TILES 03553 & 03552.
3. THE SOIL TYPES SHOWN HEREON WERE TAKEN FROM BALTIMORE COUNTY SOIL SURVEY MAP NO. 18.
4. GENERAL TRACT 41000 REGIONAL PLANNING DISTRICT 305
5. WATERSHED LOCH RAVEN RESERVOIR SUBWERSHED NONE
6. THE SUBJECT PROPERTY IS NEITHER HISTORIC NOR WITHIN A HISTORIC DISTRICT.
7. THERE ARE NO KNOWN PRIOR ZONING CASES ON THE SUBJECT PROPERTY.
8. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
9. THE SUBJECT PROPERTY IS NOT WITHIN A 100 YEAR FLOOD PLAIN.
10. ALL APPARENT SEPTIC SYSTEMS, WELLS, AND SOIL PERCOLATION TESTS WITHIN 100' OF THE PROPERTY LINES WERE FIELD LOCATED.
11. ALL LOTS SHOWN HEREON ARE TO BE SERVED BY PRIVATE WELLS AND SEPTIC SYSTEMS.

LEGEND

EXISTING WELL	Δ
PROPOSED DWELLING	□
EXISTING BUILDING	□
SOIL LINE	—
WOODS LINE	—
EXISTING PAVING	—
PROPOSED PAVING	—
ZONING LINE	—
PROPERTY LINE	—
CONTOURS	—

OWNER/DEVELOPER
JOSEPH B. ANTONELLI
URSULA M. ANTONELLI
1728 MONKTON FARMS DR
MONKTON, MD 21111

PLAN TO ACCOMPANY A PETITION FOR A VARIANCE ANTONELLI PROPERTY

14601 COOPER ROAD
Deed Ref: S.M. No. 25521 folio 237
Tax Account No.: 23-00-000191
Zoned RC 2; 615 Tile 03552, 03553
Tax Map 35; Grid 15; Parcel 128
10th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

Scale: 1"=100' Date: MARCH 26, 2008

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REGISTERED PROFESSIONAL LAND SURVEYORS

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320 East Towsontown Boulevard
Towson, Maryland 21286
(410) 823-4470



Zoning CASE # 2008-0474-A



REVISION DATE COMPUTED DRAWN SHI CHECKED

SOIL TYPES & LIMITATIONS

TYPE	SEPTIC FILTER FIELDS	HOMESITES W/BASEMENT	STREETS & PARKING
6cB2, 6cC2	Slight	Slight	Moderate slope
6cB2, 6cC2	Moderate slope	Moderate slope	Severe slope
6cB	Severe, high water table, moderately slow permeability	Severe, high water table	Severe, high water table
McD2, McD3, McD2, McE	Severe slope	Severe slope	Severe slope
McD2, McD3, McE	Severe, high water table, moderately slow permeability	Severe, high water table, poor natural drainage	Severe, high water table, poor natural drainage

VARIANCE REQUESTED

FOR AN ACCESSORY STRUCTURE IN THE SIDE YARD IN LIEU OF THE REQUIRED REAR YARD PER SECTION 400.1 OF THE B.C.Z.R.

FOR AN ACCESSORY STRUCTURE 120' TALL (TOWER WITH A WIND TURBINE GENERATOR) IN LIEU OF THE MAXIMUM 15' ALLOWED PER SECTION 400.3 OF THE B.C.Z.R.

GENERAL NOTES

1. THE BOUNDARY SHOWN HEREON IS FROM DEED S.M. 14038/627.
2. THE TOPOGRAPHY SHOWN HEREON HAS TAKEN FROM BALTIMORE COUNTY GIS TILES 03553 & 03552.
3. THE SOIL TYPES SHOWN HEREON WERE TAKEN FROM BALTIMORE COUNTY SOIL SURVEY MAP No. 18.
4. GENIUS TRACT: 14038 REGIONAL PLANNING DISTRICT: 305
5. WATERSHED: LOCH RAVEN RESERVOIR SUBWERSHED: NONE
6. SCHOOL DISTRICT: ELEMENTARY - JACKSONVILLE E.S.; MIDDLE - HERFORD H.S.; HIGH - HERFORD H.S.
7. THERE ARE NO KNOWN PRIOR ZONING CASES ON THE SUBJECT PROPERTY.
8. THE SUBJECT PROPERTY IS NEITHER HISTORIC NOR WITHIN A HISTORIC DISTRICT.
9. THERE ARE NO KNOWN UNDERGROUND FUEL STORAGE TANKS ON THE SUBJECT PROPERTY.
10. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
11. THE SUBJECT PROPERTY IS NOT WITHIN A 100 YEAR FLOOD PLAIN.
12. ALL APPARENT SEPTIC SYSTEMS, WELLS, AND SOIL PERCOLATION TESTS WITHIN 100' OF THE PROPERTY LINES WERE FIELD LOCATED.
13. ALL LOTS SHOWN HEREON ARE TO BE SERVED BY PRIVATE WELLS AND SEPTIC SYSTEMS.

LEGEND

EXISTING WELL	△
PROPOSED DWELLING	□
EXISTING BUILDING	□
SOIL LINE	—
WOODS LINE	—
EXISTING PAVING	—
PROPOSED PAVING	—
ZONING LINE	—
PROPERTY LINE	—
CONTOURS	—

SOIL TYPES & LIMITATIONS

TYPE	SEPTIC FILTER FIELDS	HOMESITES W/BASEMENT	STREETS & PARKING
GcB2, McC2	Slight	Slight	Moderate: slope
McC2, GcC2	Moderate: slope	Moderate: slope	Severe: slope
GnB	Severe: high water table; moderately slow permeability.	Severe: high water table	Severe: high water table
McD2, McD3	Severe: slope	Severe: slope	Severe: slope
McD2, McD3	Severe: high water table; moderately slow permeability.	Severe: high water table; poor natural drainage	Severe: high water table; poor natural drainage

OWNER/DEVELOPER

JOSEPH B. ANTONELLI
URSULA M. ANTONELLI
1728 MONKTON FARMS DR
MONKTON, MD 21111

PLAN TO ACCOMPANY A PETITION FOR A VARIANCE ANTONELLI PROPERTY

14601 COOPER ROAD
Deed Ref: S.M. No. 25521 folio 237
Tax Account No.: 23-00-000199
Zoned RC 2; GIS Tile 03552, 03553
Tax Map 35; Grid 15; Parcel 128
10th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

Scale: 1"=100'

Date: MARCH 26, 2008

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ZONING CASE # 2008-0474-A

REVISION	DATE	COMPUTED	DRAWN	SMH	CHECKED

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LEGEND

EXISTING WELL	Δ
PROPOSED DWELLING	[Symbol]
EXISTING BUILDING	[Symbol]
SOIL LINE	[Symbol]
WOODS LINE	[Symbol]
EXISTING PAVING	[Symbol]
PROPOSED PAVING	[Symbol]
ZONING LINE	[Symbol]
PROPERTY LINE	[Symbol]
CONTOURS	[Symbol]

SOIL TYPES & LIMITATIONS

TYPE	SEPTIC FILTER FIELDS	HOMESITES W/BASEMENT	STREETS & PARKING
ScB2, McC2	Slight	Slight	Moderate: slope
McC2, ScC2	Moderate: slope	Moderate: slope	Severe: slope
GrB	Severe: high water table; moderately slow permeability.	Severe: high water table	Severe: high water table
McC2, McC3, McC2, McC3	Severe: slope	Severe: slope	Severe: slope
McC2, McC3, McC2, McC3	Severe: high water table; moderately slow permeability.	Severe: high water table; poor natural drainage	Severe: high water table; poor natural drainage

GENERAL NOTES

1. THE BOUNDARY SHOWN HEREON IS FROM DEED S.M. 14038/621.
2. THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILES 095B3 & 095B2.
3. THE SOIL TYPES SHOWN HEREON WERE TAKEN FROM BALTIMORE COUNTY SOIL SURVEY MAP No. 18.
4. CENSUS TRACT 41000 REGIONAL PLANNING DISTRICT 305
5. WATERSHED LOCH RAVEN RESERVOIR SUBSEVERSHED NONE
6. SCHOOL DISTRICT, ELEMENTARY - JACKSONVILLE E.S.; MIDDLE - HEREFORD M.S.; HIGH - HEREFORD H.S.
7. THERE ARE NO KNOWN PRIOR ZONING CASES ON THE SUBJECT PROPERTY.
8. THE SUBJECT PROPERTY IS NEITHER HISTORIC NOR WITHIN A HISTORIC DISTRICT.
9. THERE ARE NO KNOWN UNDERGROUND FUEL STORAGE TANKS ON THE SUBJECT PROPERTY.
10. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHEAPENSAE BAY CRITICAL AREA.
11. THE SUBJECT PROPERTY IS NOT WITHIN A 100 YEAR FLOOD PLAIN.
12. ALL APPARENT SEPTIC SYSTEMS, WELLS, AND SOIL PERCOLATION TESTS WITHIN 100' OF THE PROPERTY LINES WERE FIELD LOCATED.
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URSULA M. ANTONELLI
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MONKTON, MD 21111

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PLAN TO ACCOMPANY A
PETITION FOR A VARIANCE
ANTONELLI PROPERTY
14601 COOPER ROAD
Deed Ref: S.M. No. 25321 folio 231
Tax Acc't No.: 23-00-000199
Zoned RC 2, GIS Tile 025B2, 025B3
Tax Map 35, Grd 15, Parcel 128
10th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

Scale: 1"=100'

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