

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Kristen Matthews, DPDM
File

FROM: William J. Wiseman, III
Zoning Commissioner

SUBJECT: Petition for Variance
N/S Betz Avenue, 430' W of Lincoln Avenue
(7304 Betz Avenue)
15th Election District – 7th Council District
John W. Watkins, et ux - Petitioners
Case No. 2009-0291-A

DATE: July 10, 2009

* THIS DOCUMENT
IS THE "DECISION"

The above-referenced matter was scheduled for a public hearing before me on July 9, 2009 at 2:00 PM. As you know, the property was not posted and I spoke to Mr. John Watkins, who is frustrated – to say the least given the conflicting advice he received from County personnel and People's Counsel.

This was one of the reasons I've asked that these petitions be deferred and/or that Petitioners be advised as to what might lie ahead.

This file is being returned to you for safekeeping.

WJW:dlw
Attachment



Petition for Variance

to the Zoning Commissioner of Baltimore County
for the property located at 7304 Betz Avenue
which is presently zoned DR S.5

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 400.1 & 400.3, BC2R, to permit a proposed

accessory structure (windmill) to be located in the front yard with a height of 51 feet in lieu of the permitted rear yard only with a height of 15 feet.

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

TO BE PRESENTED AT HEARING

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

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

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

Contract Purchaser/Lessee:

JOHN WATKINS
Name - Type or Print
John Watkins
Signature
7304 BETZ AVE 410-477-1819
Address Telephone No.
BALTO MD 21219
City State Zip Code

Attorney For Petitioner:

N/A
Name - Type or Print
Signature
Company
Address Telephone No.
City State Zip Code

Case No. 2009-0291-A

Legal Owner(s):

X JOHN W WATKINS
Name - Type or Print
X John W Watkins
Signature
X MARIA E WATKINS
Name - Type or Print
X Maria E Watkins
Signature
X 7304 BETZ AVE X 410-477-1819
Address Telephone No.
X BALTIMORE X MD X 21219
City State Zip Code

Representative to be Contacted:

Name
Address Telephone No.
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By JNP Date 5/5/09

ZONING DESCRIPTION FOR 7304 BETZ AVENUE
(ADDRESS)

BEGINNING AT A POINT ON THE NORTH SIDE OF
(NORTH, SOUTH, EAST OR WEST)

BETZ AVENUE WHICH IS 30 FEET WIDE
(NAME OF STREET ON WHICH PROPERTY FRONTS (NUMBER OF FEET AT RIGHT-OF-WAY

AT A DISTANCE OF 430 FT WEST OF THE
(NORTH, SOUTH, EAST OR WEST)

CENTERLINE OF THE NEAREST IMPROVED INTERSECTION STREET LINCON AVE
(NAME OF STREET)
WHICH IS 30 FEET WIDE WIDE.
(NUMBER OF FEET OF RIGHT-OF-WAY WIDTH)

IN THE SUBDIVISION OF CHESAPEAKE TERRACE
(NAME OF SUBDIVISION)

AS RECORDED IN BALTIMORE COUNTY PLAT BOOK # 5, FOLIO # 34.

CONTAINING .519 AC ALSO KNOWN AS 7304 BETZ AVENUE
(SQUARE FEET OR ACRES) (PROPERTY ADDRESS)

AND LOCATED IN THE 15th ELECTION DISTRICT, 7th COUNCILMANIC DISTRICT
AS RECORDED IN DEED LIBER 20247, FOLIO 581 WITH THE FOLLOWING
METES AND BOUNDS DESCRIPTION:

PROPERTY LINE COURSES

LINE	BEARING	DISTANCE
1	N 84°23'25" W	167.16'±
2	N 12°46'02" E	50.94'
3	N 16°52'18" E	19.18'
4	N 38°16'38" E	43.48'
5	N 41°25'30" E	22.90'
6	N 67°56'20" E	35.24'
7	N 61°26'18" E	22.61'
8	N 81°26'35" E	38.68'
9	N 54°13'35" E	24.74'
10	N 71°22'24" E	6.33'
11	N 03°44'34" W	3.00'
12	N 86°15'26" E	9.04'
13	S 05°36'35" W	186.44'±

AREA = 0.519 AC±

2009-0291-A

No: 39921

1. The first part of the document is a list of names and titles, including "The Hon. Mr. Justice" and "The Hon. Mr. Justice".

PLEASE PRINT NAME, TITLE, PHONE NUMBER, ADDRESS, CITY, STATE, ZIP CODE

一、政治
 二、經濟
 三、教育
 四、文化
 五、社會
 六、法律
 七、宗教
 八、藝術
 九、科學
 十、其他

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19-01112

THE NEW YORK PUBLIC LIBRARY

70-10-01

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THE UNIVERSITY OF CHICAGO

1. 1990年12月15日，在“中国—东盟”贸易合作会议上，中国外长钱其琛在会上的讲话中，首次提出“中国—东盟自由贸易区”的概念。

[illegible]

1. *Chlorophyll a* (Chl *a*) is the primary photosynthetic pigment in most plants and algae. It is a green pigment that absorbs light energy in the blue and red regions of the visible spectrum. Chl *a* is essential for the light-dependent reactions of photosynthesis, where it converts light energy into chemical energy.

100

1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 26

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1. *Chlorophyll a* (Chl *a*) is the primary photosynthetic pigment in most plants and algae. It is responsible for capturing light energy and converting it into chemical energy through the process of photosynthesis. Chl *a* is a green pigment and is found in the chloroplasts of plant cells.

100

CASHIER'S

VALIDATION

100

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1. The first step in the process is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the problem.

DISTRIBUTION

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Journal of Management Studies, 19(1), 67-80.

YELLOW - CUSTOMER

SHARD!!!

[illegible]

GOLD - ACCOUNTING

15

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VALIDATION

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8.

**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: # 2009-0291-A
7304 Betz Avenue
N/side of Betz Avenue, 430 feet west of Lincoln Avenue
15th Election District
7th Councilmanic District
Legal Owner(s):
John Watkins

Variance: to permit a proposed accessory structure (windmill) to be located in the front yard with a height of 51 feet in lieu of the permitted rear yard only with a height of 15 feet.

Hearing: Thursday, July 9, 2009 at 2:00 p.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 accommodations. Please Contact the Zoning Commissioner's Office at (410) 887-4386.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT/6/889 June 23 204126

CERTIFICATE OF PUBLICATION

6/25/2009

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 6/23/2009.

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

J. Wilkinson

LEGAL ADVERTISING

TO: PATUXENT PUBLISHING COMPANY
Tuesday, June 23, 2009 Issue - Jeffersonian

Please forward billing to:
John Watkins
7304 Betz Avenue
Baltimore, MD 21219

410-477-1819

NOTICE OF ZONING HEARING

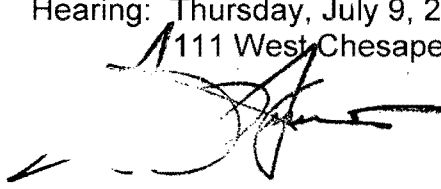
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2009-0291-A

7304 Betz Avenue
N/side of Betz Avenue, 430 feet west of Lincoln Avenue
15th Election District – 7th Councilmanic District
Legal Owners: John Watkins

Variance to permit a proposed accessory structure (windmill) to be located in the front yard with a height of 51 feet in lieu of the permitted rear yard only with a height of 15 feet.

Hearing: Thursday, July 9, 2009 at 2:00 p.m. in Room 106, County Office Building,
1111 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.

**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/neighbor 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.

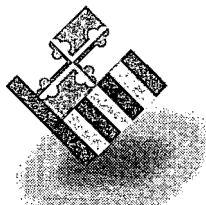
OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Item Number or Case Number: 2009-0291-A
Petitioner: John & Maria Watkins
Address or Location: 7304 Betz Avenue

PLEASE FORWARD ADVERTISING BILL TO:

Name: JOHN WATKINS
Address: 7304 BETZ AV.
SPARROWS POINT MD 21219
Telephone Number: 410-477-1819



BALTIMORE COUNTY
M A R Y L A N D

JAMES T. SMITH, JR.
County Executive

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

July 1, 2009

John & Maria Watkins
7304 Betz Ave.
Baltimore, MD 21219

Dear: John & Maria Watkins

RE: Case Number 2009-0291-A, 7304 Betz Ave.

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on May 5, 2009. 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, reading "W. Carl Richards, Jr." with a stylized flourish at the end.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:lnw

Enclosures

c: People's Counsel

BW 7/9 2pm

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: June 9, 2009

RECEIVED

JUN 11 2009

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

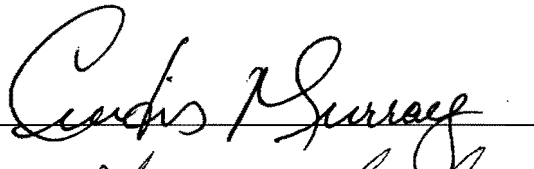
ZONING COMMISSIONER

SUBJECT: Zoning Advisory Petition(s): **Case(s) 09-291- Variance**

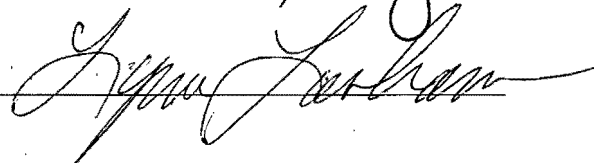
The Office of Planning has reviewed the above referenced case(s) and has no comments to offer.

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

Prepared By:



Division Chief:
CM/LL



BALTIMORE COUNTY, MARYLAND**Inter-Office Correspondence**

TO: Timothy M. Kotroco
FROM: Dave Lykens, DEPRM - Development Coordination
DATE: June 3, 2009
SUBJECT: Zoning Item # 09-291-A
Address 7304 Betz Avenue
(Watkins Property)

Zoning Advisory Committee Meeting of May 18, 2009

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

X Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004, and other Sections, of the Baltimore County Code).

Additional Comments:

This property is within a Limited Development Area (LDA) of the Chesapeake Bay Critical Area and must meet all LDA requirements. Lot coverage is limited to 5,445 square feet and 15% afforestation applies. The lot is not within a Buffer Management Area, therefore any proposed development within the 100-foot buffer will require a Critical Area variance. There is no guarantee of Critical Area variance approval.

Reviewer: Regina Esslinger

Date: May 29, 2009



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 9, 2009

ATTENTION: Zoning Review Planners

Distribution Meeting Of: May 11, 2009

Item Numbers 0284, 0290, 0291, 0292

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

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

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

cc: File

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: June 9, 2009

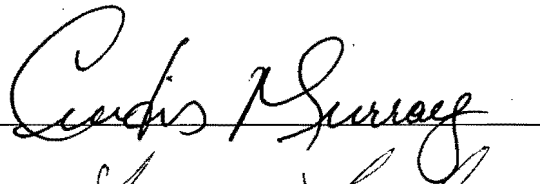
FROM: Arnold F. 'Pat' Keller, III
Director, Office of Planning

SUBJECT: Zoning Advisory Petition(s): **Case(s) 09-291- Variance**

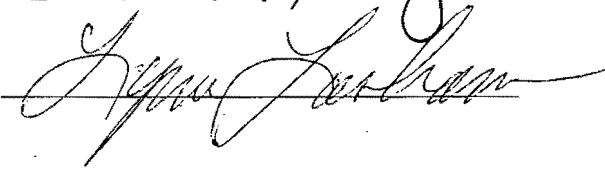
The Office of Planning has reviewed the above referenced case(s) and has no comments to offer.

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

Prepared By:



Division Chief:
CM/LL



BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

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

FROM: Dennis A. Kennedy, Supervisor
Bureau of Development Plans
Review

SUBJECT: Zoning Advisory Committee Meeting
For May 18, 2009
Items Nos. 2009-234, 284, 290, 291
and 292

DATE: May 15, 2009

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

DAK:CEN:cab

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: MAY 14, 2009

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

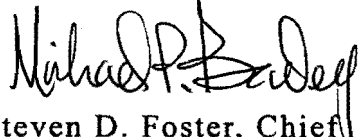
RE: Baltimore County
Item No 2009-0291A
7304 BETZ AVENUE
WATKINS PROPERTY
VARIANCE

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. 2009-0291A

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



RE: PETITION FOR VARIANCE	*	BEFORE THE
7304 Betz Avenue; N/S Betz Avenue,		
430' W of Lincoln Avenue	*	ZONING COMMISSIONER
15 th Election & 7 th Councilmanic Districts		
Legal Owner(s): John & Maria Watkins	*	FOR
Contract Purchaser(s): John Watkins		
Petitioner(s)	*	BALTIMORE COUNTY
	*	09-291-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.

RECEIVED

MAY 28 2009

.....

Peter Max Zimmerman

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 May, 2009, a copy of the foregoing Entry of Appearance was mailed to John & Maria Watkins, 7304 Betz Avenue, Baltimore, MD 21219, Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

June 15, 2009

Timothy Kotroco, Director
Permits & Development Management
111 W Chesapeake Avenue
Towson, Maryland 21204

RECEIVED
RECEIVED

JUN 15 2009

ZONING COMMISSIONER

Re: John & Maria Watkins
7304 Betz Avenue
Case No.: 09-291-A

Dear Mr. Kotroco:

Our office entered our appearance in the aforementioned case following receipt of the Petition for Variance. The matter is scheduled for a hearing at the Zoning Commissioner level on July 9th.

As you are aware the issue of windmills as an accessory use is under consideration by the Baltimore County Council which passed Resolution 52-08 requesting the Planning Board to propose legislation regulating the location or use of windmills. Other cases have been filed seeking approval of the windmill use as well as variances for height and location. In each case, our office has requested or supported requests to postpone the hearing until the Planning Board and County Council have acted. Those postponements have been granted pending legislative action. (Case No. 08-474-A and 08-527-A).

Under the current law, we believe there is no authority for the windmill use. Likewise, we could not support the variance requests for location and height in those cases under the standards established in Cromwell v. Ward and subsequent variance cases in the appellate courts.

Our office also opposes the instant case under the current law. However we believe it would be more expeditious for the Petitioner as well as our office and the administrative agencies if this case is postponed until the County Council addresses the issue under pending legislation.

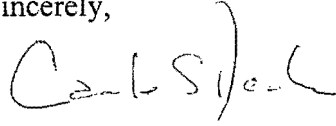
Timothy Kotroco, Director

June 15, 2009

Page 2

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carole S. Demilio".

Carole S. Demilio
Deputy People's Counsel

CSD/rmw

cc: John & Maria Watkins
William J. Wiseman, III, Zoning Commissioner

April 29, 2009

To Whom it may Concern,

We the undersigned do hereby give our approval for the resident at 7304 Betty Ave to erect a power generating Windmill.

Jerry J. Anthony 7306 Betty Ave. Jerry Anthony
Keith Stanton 7305 Betty Ave. Keith Stanton

2009-0291-A

Pt. Bk. 5 Folio 36
1522450390

1513203832

1508005630

1600010072

1519510370

1519510360

1507000950

JONES CREEK

JONES CREEK HYDROLOGY AREA

1518471340

1506350760

Pt. Bk. 7 Folio 189

1508655160

JONES CREEK

111B3
SE 7-H

DR 5.5

1516350220

7304 • 15 ED

Flood Zone AE

7306

7308

7 CD

6.1

BETZ AVE

JONES CREEK

JONES CREEK

HYDROLOGY AREA

7305

1503670820

Pt. Bk. 5 Folio 34

1518300140

1510001930

7309

7307

2009-0291-A



Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search (2007 vw6.3)

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

Account Identifier: District - 15 Account Number - 1516350220

Owner Information

Owner Name:	WATKINS JOHN W WATKINS MARIA E	Use:	RESIDENTIAL
Mailing Address:	7304 BETZ AVE BALTIMORE MD 21219-2002	Principal Residence:	YES
		Deed Reference:	1) /20247/ 581 2)

Location & Structure Information

Premises Address	Legal Description
7304 BETZ AVE	7304 BETZ AVE CHESAPEAKE TERRACE
WATERFRONT	

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
111	22	127						3	Plat Ref: 5/ 34

Special Tax Areas

Town	
Ad Valorem	
Tax Class	

Primary Structure Built	Enclosed Area	Property Land Area	County Use
2004	2,187 SF	15,862.00 SF	34
Stories	Basement	Type	Exterior
1 1/2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value	Phase-in Assessments	
		As Of	As Of	As Of
		01/01/2009	07/01/2008	07/01/2009
Land	155,460	155,460		
Improvements:	211,310	278,020		
Total:	366,770	433,480	366,770	389,006
Preferential Land:	0	0	0	0

Transfer Information

Seller: TRACEY RAYMOND R	Date: 06/16/2004	Price: \$190,000
Type: NOT ARMS-LENGTH	Deed1: /20247/ 581	Deed2:
Seller: PHELPS MARY L	Date: 08/21/1975	Price: \$27,000
Type: IMPROVED ARMS-LENGTH	Deed1: / 5558/ 836	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2008	07/01/2009
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

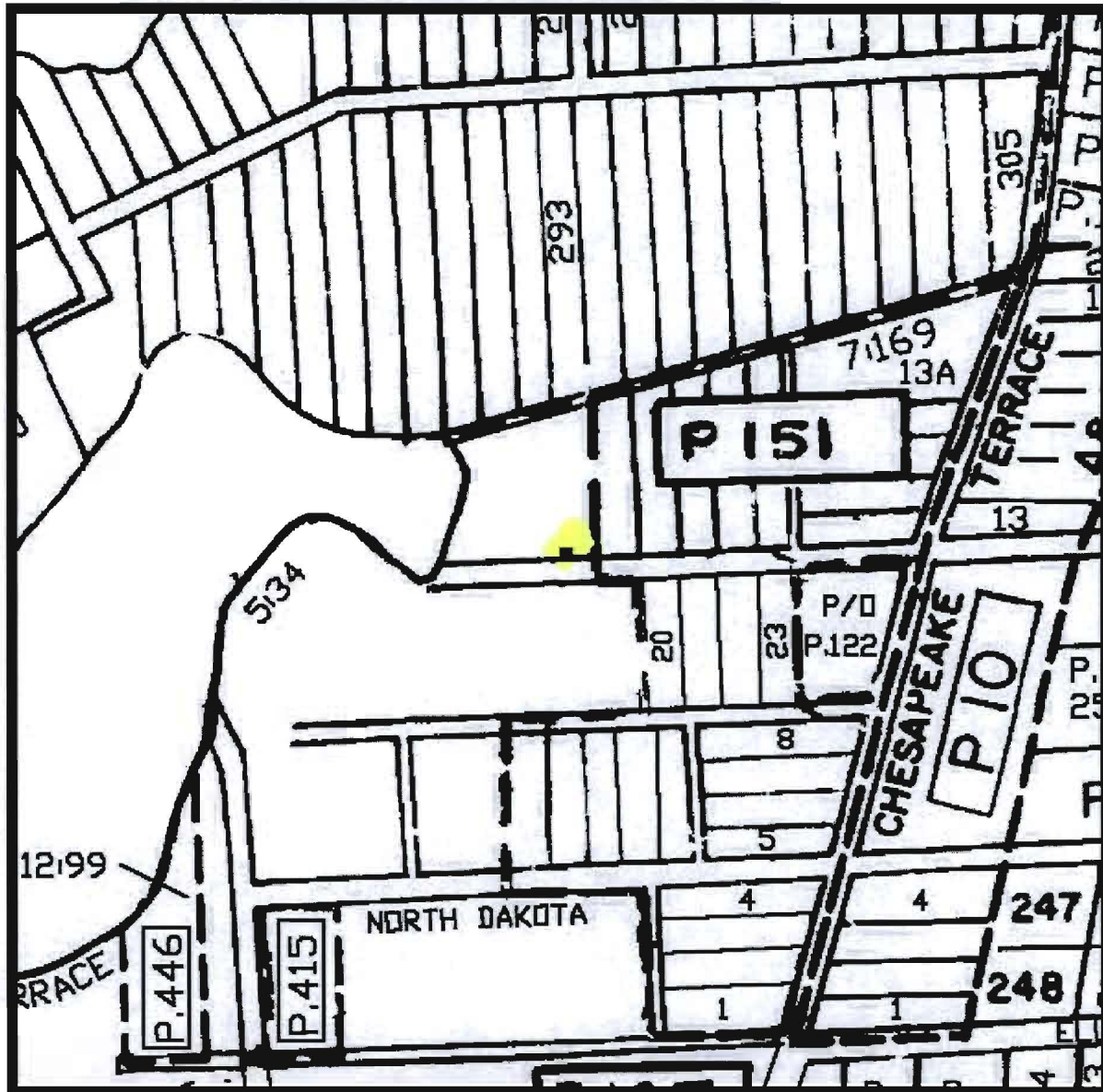
Special Tax Recapture:
 * NONE *



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

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

District - 15 Account Number - 1516350220



Property maps provided courtesy of the Maryland Department of Planning ©2008.
For more information on electronic mapping applications, visit the Maryland Department
of Planning web site at www.mdp.state.md.us/webcom/index.html

Amendments to the Baltimore County Zoning Regulations Regarding Small Wind Energy Systems

A Staff Report of the Baltimore County Office of Planning
Draft--April 16, 2009

PROJECT DESCRIPTION

This report pertains to the Baltimore County Zoning Regulations regarding the location and use of windmills. On July 7, 2008 the Baltimore County Council passed Resolution 52-08, which asks the Planning Board to propose amendments to the zoning regulations in order to regulate the location and use of windmills for residential energy use. At the request of the Planning Board, the Office of Planning has proposed the following amendments to the zoning regulations.

BACKGROUND AND PROJECT SCOPE

Windmills have been a part of Baltimore County's history since the mid-1800s. Windmills were used for grinding grains into flour, to draw up water, as well as other uses. They were powered by the wind, converting this energy into mechanical energy¹. The modern day windmill is more formally known as a wind turbine and is commonly used to convert the power of the wind into electricity. Other names for a wind turbine include wind generator, wind energy system, wind power unit (WPU), wind energy converter (WEC), or aerogenerator. This report will use the term wind turbine.

Where there is sufficient steady wind, large commercial wind turbines can be arrayed in wind farms to provide renewable power for sale to the electrical grid. Commercial units can be 300 feet high and have megawatt electrical output for each turbine. However, the US Department of Energy's National Renewable Energy Laboratory rates the wind resources in Baltimore County as generally poor (Figure 1, following page). Since there does not appear to be sufficient wind in this area to justify commercial wind farms, this report does not address their use.

Rather this report focuses on smaller wind turbine systems primarily used to offset the cost of electrical energy for individual homes or businesses. These are described generally as "small wind energy systems," and have an electrical capacity of 100 kilowatts or less. While these systems can be connected to the electrical grid in some circumstances, they are not intended to generate electricity for sale off site.

Currently, Baltimore County's zoning regulations do not define small wind energy systems and their allowed uses. Consequently, Baltimore County has treated small wind energy systems as accessory uses under Section 400.3 BCZR which allows a maximum height of 15 feet thus requiring variances to allow installation. Carroll County is the only county in Maryland that has passed legislation to allow small wind energy systems. Harford County is in the process of researching and writing legislation. The Ocean City town council has recently passed regulations for small wind energy systems. The legislative resources used for this staff report come from these jurisdictions, as well as model ordinances from New Hampshire and California. It will address their use on residential

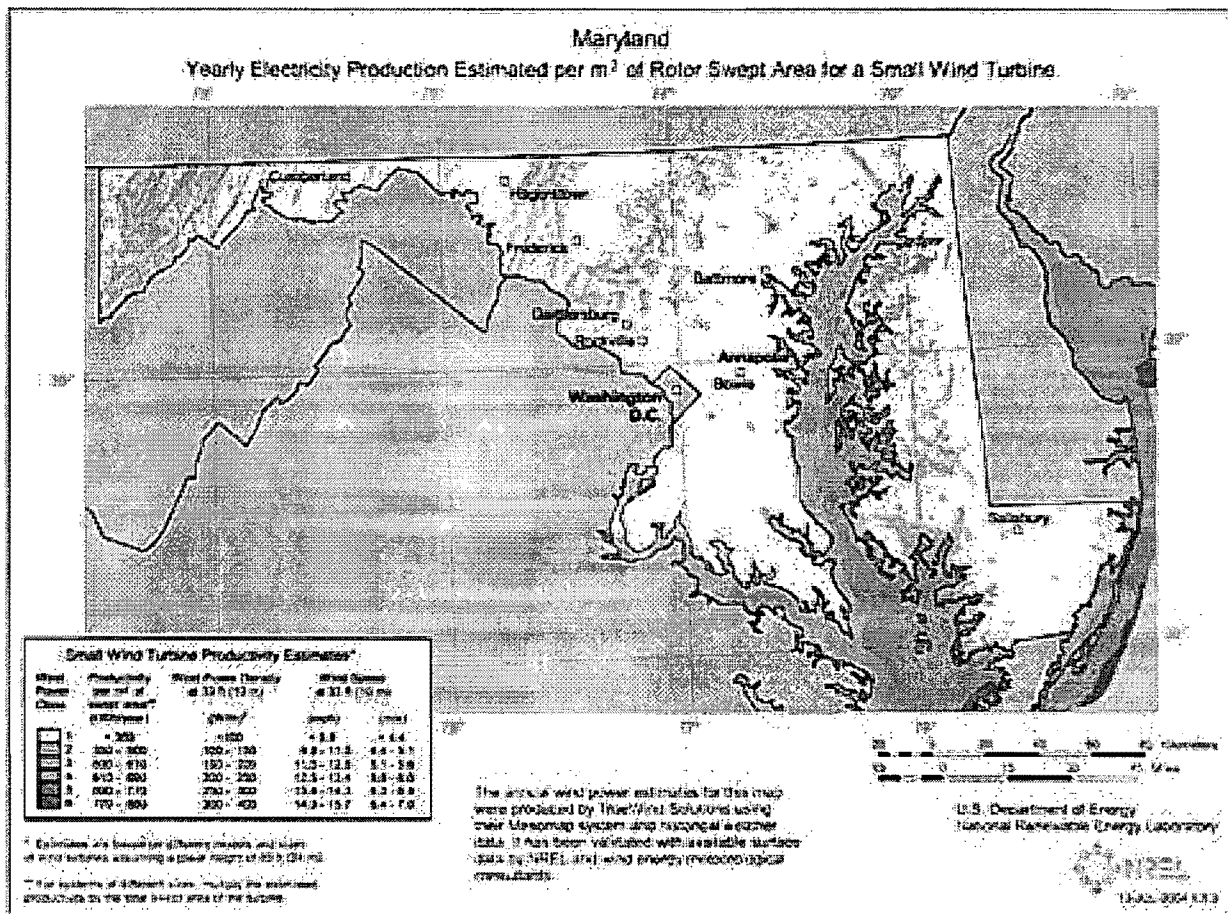


Figure 1: Maryland Small Wind Turbine Productivity Estimates

properties as a source of electrical power as well as other locations. As described later in this staff report, small wind energy system are becoming more prominent throughout the country and their benefits are becoming increasingly apparent. Therefore the Office of Planning believes that wind turbine legislation should not be limited to residential areas but rather extend to all zones in the County.

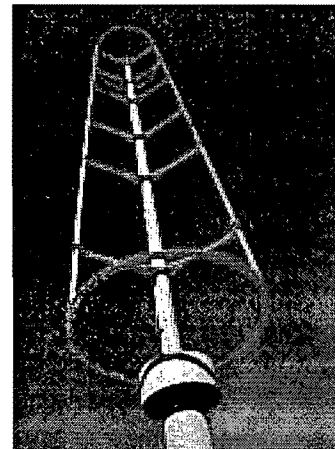
There are two physical configurations of wind turbines – horizontal axis and vertical axis. Horizontal axis wind turbines, also known as HAWT, have blades, or rotors, at the top of a wind tower, which must be pointed into the wind (Figure 2). The wind tower can be constructed as a monopole as in Figure 2, or as a lattice, or guyed structure.

Vertical axis small wind energy systems (VAWT) have their blades

Figure 2: Horizontal Axis Wind Turbine



Figure 3: Vertical Axis Wind Turbine



arranged vertically and do not require being pointed into the wind (Figure 3). Both types of turbines can be freestanding or mounted onto the tops of buildings and can reach speeds up to six times the wind speed.

To operate efficiently, the wind turbine must be placed at a height to avoid the friction, or ground drag, created when the air moves across the earth's surface. It also must be placed high enough to avoid the turbulence caused by ground clutter, which includes trees and buildings. The rule of thumb is to site the turbine so that the bottom of the blade clears the highest wind obstacle that is within a 500 foot radius by at least 30 feet. To reduce the effects of ground clutter, the best location for a wind turbine is often the highest point on the property.

An added benefit to placing a turbine at increased heights is that wind speeds can increase dramatically with distance from the earth. Generally, the higher the tower, the greater the potential energy to be captured. Because of the costs involved, however, tower height is usually limited to suit the needs of the user. Typically, freestanding wind turbines used in small energy systems range in height from 35 to 150 feet.

The smaller scale systems, in the range of 1 to 10 kW, are generally capable of producing enough energy to support a household, farm or small business. Even smaller turbines can be used for

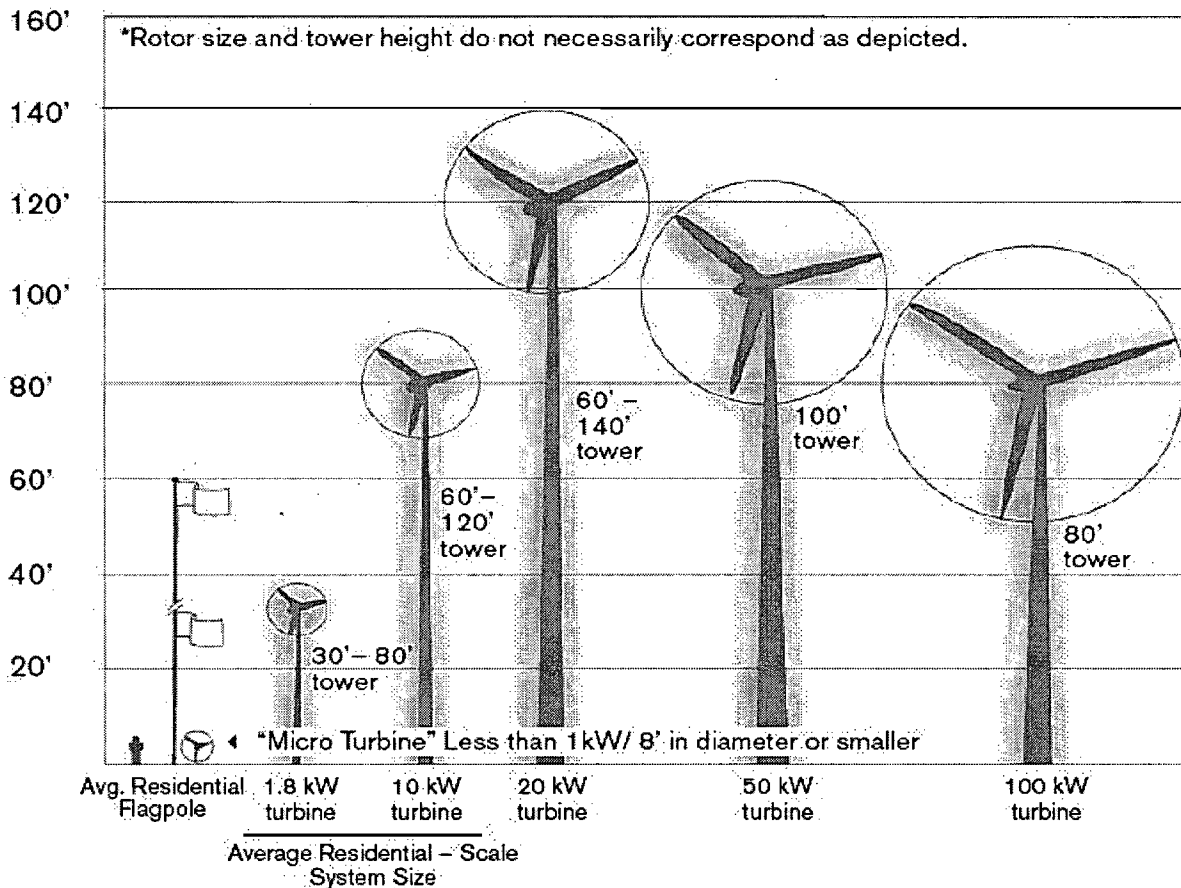


Figure 4: Typical Range of Small Wind Energy Systems

specific purposes, such as pumping water for irrigation or to run appliances. The larger turbines are appropriate for commercial or institutional uses with larger energy needs.

Small wind energy systems can also be mounted on rooftops, although this is not recommended. Over time, the wind turbine can damage the structure of the building because of the vibration it produces. Additionally, there is evidence that roof-mounted systems are not efficient in producing energy. Recent studies show that the performance of rooftop models is generally poor due to wind turbulence.² However, in some places, such as along shorelines, good wind may be available at rooftop height.

The cost of a small wind energy system can range between \$3,500 and \$40,000, depending on the size and type, or approximately \$3,000 to \$5,000 per kilowatt of generating capacity. Thus, a 2kW system, which, under ideal conditions, has the potential to generate enough energy for an average household, would cost around \$8,000. If optimally located, the system will typically pay for itself in 15 years while the life of a wind turbine is typically 20-30 years.³

Technology is quickly evolving in this field. More and newer kinds of wind turbines are being created which are better able to capture the potential power with less wind resources. The energy ball (Figure 5) sold by Dutch Based Home Energy International, for example, spins at lower wind speeds and creates less noise, while still capturing ample potential power.

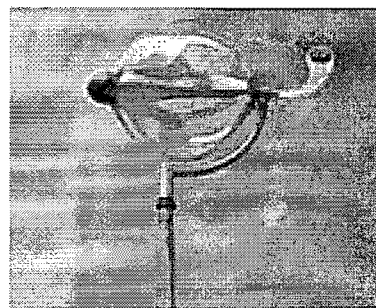


Figure 5: Energy ball

DISCUSSION

In general, small wind energy systems can be a reliable and inexpensive source of electricity and can serve as a backup during utility outages. In addition to personal energy savings, the larger community could benefit through increased local energy independence, reduced pressure on the local electricity grid, and the use of a clean energy source that will reduce the pollutants contributing to global warming. Because of these benefits, small wind energy systems are proliferating across the country and are beginning to appear in the Baltimore region.

However, with the lack of steady energetic wind in this area, it is not likely that there will be a substantial demand for small wind energy systems. But, there may be certain areas or situations where use of wind energy will be of benefit to the property owner. The Baltimore County Zoning Regulations should allow for their use in these situations, while at the same time, ensuring that there will not be any unintended negative impacts for the property owner or the surrounding community. These potential negative impacts include safety, noise, visual aesthetics and danger to wildlife.

Safety: A number of safety precautions should be addressed for wind turbines. All components of a small wind energy system must be securely anchored and be able to withstand high wind force. Systems must be equipped with both manual and automatic shut-off controls to reduce the potential for turbine failure. For wind towers, the ability for an unauthorized person to climb up the structure should be minimized. Additionally, there should be ample room on the site to accommodate the

tower in a horizontal position should it topple or need to be taken down for maintenance. Most ordinances from other jurisdictions require a setback equal to 110% of the tower height.

Noise: The wind turbines manufactured today create less noise than those produced in the past. The typical wind turbine creates between 52-55 decibels, which is equivalent to the noise of a humming refrigerator. The amount of noise created by a particular wind turbine will depend on the make of turbine, how much wind is present, and site conditions. Ambient noise levels found outdoors, which could include the sounds of traffic, dogs barking and rustling leaves, average 55 decibels--generally the same as wind turbines. While the noise level is not usually louder than the background noise, the frequency level of the turbine may be different so that it may be discernible. The noise will usually decrease, and blend into the background noise, with increasing distance from the tower. However, on some sites, the terrain and other features may actually amplify the noise.

Visual aesthetics: Because of the height and clearance requirements of wind turbines, they are generally sited in very visible locations. Many people are concerned about visual clutter, and the impact on property values. In examining ordinances from other jurisdictions, most provide limitations to reduce the potential for negative visual impact. These include measures that limit color, reflectiveness, lighting and signage. Some also exclude wind turbines from areas where the visual character is especially important, such as historic districts or scenic preservation areas. Other regulations limit the number of wind turbines allowed on a property, or restrict the type to monopoles because they are less visually intrusive than latticed or guyed poles. Most ordinances also require a large setback, generally for safety purposes, but this also helps to reduce the turbine's visual impact. Some ordinances limit the height of wind turbines based on the use it is serving. For example, in residential areas, the wind tower may be limited to a 10 kW capacity with an 80-foot tower.

Environmental Impact: Concern has been raised about the damaging effect of wind turbines on wildlife, including birds and bats. These problems are generally related to large, commercially-operated turbines. Studies have found that on average, a small wind energy system kills fewer birds than housecats or sliding glass doors.⁴

STAFF RECOMMENDATION

While current wind energy technology is not at a point that it generally will provide economic benefit for county property owners, there may be certain situations where owners may want to install a wind turbine for their personal use. Staff recommends that small wind energy systems be allowed in any zone as an accessory use with certain limitations to reduce any potential negative impacts.

Small wind energy systems need room to operate efficiently. As mentioned previously, to access optimal wind, the lowest blade of the turbine must be 30 feet higher than any obstacles within 500 feet, including existing and future neighboring buildings and trees. In residential areas, the maximum building height is commonly 50 feet. A tower would need to be at least 80 feet tall to avoid the turbulence caused by buildings. More likely, the tower would need to be about 110 feet tall to avoid the turbulence produced by trees, which can reach heights of 80 feet or more. If the setback for the tower is 110% the height of the tower, the smallest lot size that could accommodate an 80-foot tower is 0.7 acres; at a tower height of 110 feet the smallest lot size is 1.1 acres; and at a

maximum height of 150 feet, the smallest lot size is 2 acres. By requiring a large setback and lot size, potential negative visual and noise impacts are also reduced. Therefore, staff recommends a minimum lot size of 1 acre for all small wind energy systems.

REGULATORY RECOMMENDATIONS

~~Strike through~~ indicates material to be deleted. **Bold** indicates material to be added.

1. Add the following section to Article 4, Special Regulations:

Section 451, Small wind energy systems

451.1 Definitions

Flicker – The moving shadow created by the sun shining on the rotating blades of the wind turbine.

Meteorological Tower (Met Tower) – An accessory structure designed to support the gathering of wind energy resource data, and includes the tower, base plate, anchors, guy cables 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.

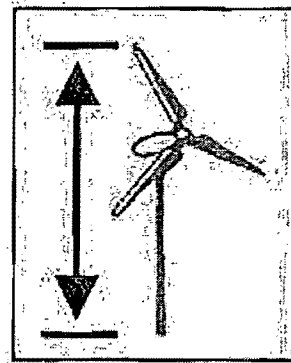
Physical Removal – Removal of wind turbine, including all aboveground structures and equipment, as well as restoration of the location of the wind turbine to its natural conditions.

Rotor Diameter – The cross sectional dimension of the circle swept by the rotating blades.

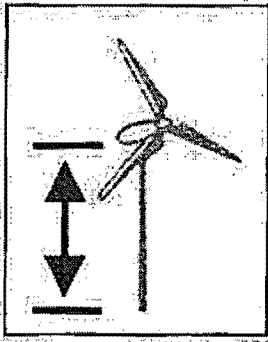
Shadow – The outline created on the surrounding area by the sun shining on the wind turbine.

Small wind energy system – A freestanding tower or rooftop mounted wind turbine having a maximum output of 100 kilowatts of energy for use primarily on site and not for sale. However, the energy output may be delivered to a power grid to offset the cost of energy on site.

Total Height, for a wind turbine mounted on a wind tower – The vertical distance from ground level to the tip of a wind generator blade when the tip is at its highest point. For a small wind energy system mounted on a roof, total height is the verti-



Total Height



Tower Height

cal distance from the top of the roof or parapet, to the tip of a wind generator blade when the tip is at its highest point.

Tower Height, for a wind turbine mounted on a wind tower – The vertical distance from ground level to the top of the fixed portion of the tower, excluding the wind turbine.

Wind Turbine – An accessory structure, which is mounted on a monopole, lattice or guyed structure or mounted on a roof, composed of rotating blades that converts and then stores or transfers energy from the wind into usable forms of energy, such as electrical energy. The equipment includes any base, blade, foundation, generator, nacelle, rotor, tower, transformer, vane, wire, inverter, batteries, guy wire or other component used in the system.

Wind Tower – The monopole, lattice, or guyed structure that supports a wind turbine.

451.2 Legislative policy for small wind energy systems. It is the intent of Baltimore County that small wind energy systems should:

- A. Be placed in appropriate locations;
- B. Minimize any adverse visual, safety, and environmental impacts; and
- C. Protect the public's health, safety and welfare.

451.3 Location, height and area restrictions

- A. A small wind energy system shall be permitted in any zone in accordance with the requirements of this section, except as limited by Section 451.3.B and Section 451.3.C.
- B. A small wind energy system shall only be permitted by special exception on parcels designated as Baltimore County Preliminary or Final Landmarks, parcels within designated as Baltimore County Historic Preservation Districts, or areas within the viewshed of scenic routes or views identified in the Baltimore County Master Plan.
- C. Wind turbines are not permitted within the Critical Area 100' buffer. All environmental regulations to protect natural resources must be met.
- D. The minimum lot size required for a small wind energy system is one acre.
- E. The maximum total height for a wind turbine mounted on a tower is 150 feet, unless Federal Aviation Standards require otherwise.

F. The maximum total height of a roof-mounted wind turbine is one-third of the total height of the building, unless Federal Aviation Standards require otherwise.

G. Minimum Ground Distance. The blade of any wind turbine shall, at its lowest point, have a ground clearance of no less than 15 feet, as measured at the lowest point of the arc of the blades.

451.4 Setback requirements

A. A wind turbine shall be set back a distance equal to its total height plus 10% 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 used by the public;**
- 3. Any overhead utility lines or easement, whichever is closer;**
- 4. Any property line; and**
- 5. Any existing guy wire, anchor or tower on the property.**

B. For roof-mounted turbines, all components of the system shall comply with the principal building setbacks.

451.5 Safety

A. Access.

- 1. All ground mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.**
- 2. The wind 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 12 feet above the ground.**
- 3. All access doors to wind turbine towers and electrical equipment shall be lockable.**

B. Electrical Wires. All electrical wires associated with a wind turbine shall be located within its tower or mounting structure, or within an existing structure, or underground. There shall be no additional towers or structures erected to support electrical wiring or connections to any power grid or use on the subject property.

451.6 Visual Impacts

A. Lighting. A wind tower and wind turbine shall not be artificially lit unless such lighting is required by the Federal Aviation Administration.

B. Appearance, Color, and Finish. Small wind energy systems shall be painted or finished in a non-reflective, non-obtrusive color or finish that conforms to the environment and architecture of the community as determined by the Director of Planning, unless Federal Aviation Standards require otherwise.

C. Signs. All signs, both temporary and permanent, are prohibited on a wind turbine, wind tower or other structure associated with a wind turbine, except the manufacturer or installer's identification or appropriate warning signs or placards.

D. Flicker/Shadow. Small wind energy systems shall be sited in a manner that does not result in shadowing or flicker impacts on neighboring or adjacent uses.

451.7 Additional conditions for small wind energy systems

A. Code Compliance. A small wind energy system including wind turbine and tower shall comply with all applicable construction and electrical codes.

B. MET towers shall be permitted under the same standards, permit requirements, and permit procedures as a wind turbine.

C. Sound Levels and Measurement. Audible sound due to wind turbine operations shall not exceed the ambient noise level for any period of time. The level, however, may be exceeded during short-term events such as utility outages and/or severe windstorms. The sound level shall be measured at ground level at the property line.

D. Each property is eligible for one small wind energy system only. A property includes all lots and parcels within the overall property boundaries owned by or controlled by the applicant.

E. A wind turbine shall have a maximum output of 100 kilowatts of energy which shall be used on site and not for sale. However the energy output of a wind turbine may be delivered to a power grid to offset the cost of energy on site.

F. Small wind energy systems constructed and installed in accordance with these regulations shall not be deemed to constitute and expansion of a nonconforming lot, use or structure.

451.8 Variances. The Zoning Commissioner, and Board of Appeals upon appeal, may grant a variance to a height, setback, and number of small wind energy systems in accordance with Section 307 of these regulations.

451.9 Removal of defective or abandoned small wind energy systems.

A. Any small wind energy system found to be unsafe shall be repaired by the property owner to meet these regulations and any applicable federal, state and local safety standards or be physically removed within 90 days.

B. The Code Enforcement Official may issue a citation to the owner for physical removal of a wind turbine within 90 days of receipt of citation if:

1. The Code Enforcement Official determines that the wind turbine has not been in actual and continuous use for 12 consecutive months; except if the property owner has set forth reasons for the operational difficulty and has provided a reasonable timetable for corrective action.

2. The owner has notified the Code Enforcement Official that use of the wind turbine has terminated.

End Notes

1. Wikipedia
2. National Renewable Energy Laboratory for the U.S. Department of Energy
3. National Renewable Energy Laboratory for the U.S. Department of Energy
4. American Planning Association

Figure Credits

Figure 1: National Renewable Energy Laboratory for the U.S. Department of Energy

Figure 2: Wind Energy 7

Figure 3: LaMonica, Martin

Figure 4: American Wind Energy Association

Figure 5: Shirber, Michael

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IN RE: PETITION FOR VARIANCE

S side of Timberfield Lane, 650 feet S
of c/l of Lightfoot Drive
3rd Election District

~~2nd Councilmanic District~~

(3315 Timberfield Lane)

David S. Blum
Petitioner

* BEFORE THE
* DEPUTY ZONING
* COMMISSIONER
* FOR BALTIMORE COUNTY
* **Case No. 2009-0060-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 owner of the subject property, David S. Blum. Petitioner is requesting variance relief from Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure (windmill) with a height of 80 feet in lieu of the maximum permitted 15 feet. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner's Exhibit 1.¹

Appearing at the requisite public hearing in support of the variance request was Petitioner David S. Blum. Two citizens, Ruth Goldstein and Ellen Levy, appeared in opposition to the Petition for Variance. While there were no other Protestants or interested citizens in attendance at the hearing, a number of nearby residents and neighborhood associations submitted letters opposing the requested relief. These letters, which will be explained in greater detail, were marked and accepted into evidence as Protestants' Exhibits 1 through 6.

At the outset of the hearing, Protestants raised a preliminary issue arguing that Petitioner had not met the notice requirement since the property was not properly posted on October 14,

¹ Before reaching the merits of the variance request, Mr. Blum proposed an amendment to the site plan to move the location of the proposed windmill farther south on the property, near the marking in the center of the southern section of the property stating "owned by David S. Blum." Since this amendment did not change the nature of the variance request, and the requested relief remained the same, Mr. Blum was permitted to proceed with the petition as amended.

2008, fifteen days prior to the public hearing. However, the case file reflects that Richard E. Hoffman, who is an approved sign poster, certified under the penalties of perjury that the property had been posted at least fifteen days prior to the scheduled public hearing. After weighing the evidence, I found that Petitioner had met his notice requirement by conspicuously posting notice of the upcoming 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 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, along with the large number of opposing letters contained in the case file. *See Largo Civi Ass'n v. Prince George's County*, 21 Md. App. 76, 86 (1974). Thus, the public hearing was permitted to proceed.

Testimony and evidence offered revealed that the subject property is an irregular-shaped property containing approximately 0.98 acre of land zoned D.R.2. The property is located south of Timberfield Lane, immediately east of Pikesville Middle School, in a residential neighborhood in the Pikesville area of Baltimore County. The property, similar to many parcels in the surrounding area, is improved with a one-story brick rancher style home. The home also contains an addition with an indoor swimming pool. Mr. Blum testified that the property is actually made up of two parcels, and he purchased the area marked "parcel A" on the site plan from Baltimore County in 1984. Together, the two parcels comprise approximately one acre.

Further testimony revealed that Mr. Blum is seeking to reduce his energy costs, which are apparently higher than average due to the maintenance of an indoor swimming pool and Mr. Blum's hobby of model railroading with toy trains. Mr. Blum 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 the surrounding area. Mr. Blum also testified that the location of the proposed windmill is ideal due to the "natural wind tunnel" that is created by a gap in the trees toward the rear of his property. According to Mr. Blum, the windmill would be sheltered on three sides by trees and would not easily be visible to neighbors.

Protestants were represented at the hearing by Ms. Goldstein and Ms. Levy, each of whom testified in opposition to the variance request. Ms. Goldstein, President of the Midfield Association, Inc., presented a two-page letter opposing the variance for a number of reasons. The letter, which was marked and accepted into evidence as Protestants' Exhibit 3 and was essentially read into the record, reflected the neighbors' concerns that the windmill would be incompatible, unsafe, and premature due to the fact that the Baltimore County Planning Board is in the process of providing comments to the County Council on the issue of windmills. Similar concerns were expressed in letters from interested citizens Noel Levy; Rebecca Gutin; Alan Zukerberg, President of the Pikesville Communities Corporation; Arthur Putzel, President of the Pikesville-Greenspring Community Coalition, and Karen and David Whitehead. These letters were respectively marked and accepted into evidence as Protestants' Exhibits 1, 2, 4, 5, and 6.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. Comments were received from the Office of Planning dated September 29, 2008, which indicate that the property is in a residential neighborhood inside the Urban Rural Demarcation Line. The site is located east of Pikesville Middle School and has single-family detached units to the east and north. With an 80 foot tower, the residence at 3313 Timberfield

Lane would be impacted should the tower fail and fall. County Council passed Resolution 52-08 asking the Planning Board to prepare a report addressing the issue of wind turbines. At its September 4, 2008 meeting, the Planning Board acknowledged that request and asked the Office of Planning staff to prepare a report on wind turbines. Without clear guidance on how and where wind turbines should be sited and the potential impact to the adjoining property, the Office of Planning recommends denial. When clear guidance has been established, the Office of Planning will evaluate each request fairly and consistently.

As the Office of the Zoning Commissioner determined in previous Case number 08-474-A, which was the first request for variance to permit a windmill in Baltimore County, given the B.C.Z.R. framework that presently governs Petitioner's request to construct a windmill, the Petition was appropriately filed as a request for an "accessory structure." The determination that windmills qualify as accessory structures will not be revisited in this case. Thus, the only remaining issue is whether the requested variance 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.

For the following reasons, and after considering all of the testimony and evidence presented, I am not persuaded that the requested relief should be granted.

Initially, I cannot find that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. The property lies in a residential neighborhood filled with similar sized properties, many of which are improved with houses of a similar size and nature to Petitioner's. In short, Petitioner did not present sufficient

evidence to support a conclusion that the property is unique in a zoning sense, or that there are unique characteristics of the property that drive the need for the variance.

Additionally, I am not convinced that the imposition of zoning on this property disproportionately impacts the subject property as compared to others in the zoning district, and I cannot find that the denial of this variance would cause Petitioner any undue burden or expense. Section 400.3 appears to affect the subject property in the same manner as the surrounding properties, and any undue financial burden caused by the maintenance of an indoor pool and toy train hobby appears self imposed.

Finally, at this juncture, I cannot find that this variance could 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). While I have great respect for Petitioner's request to forge new ground in the growing field of alternative, renewable energy, and I believe that the interpretation of the B.C.Z.R. must be enduring and responsive to novel and innovative approaches that account for changes in technologies and the unpredictable global dynamics of the world, I cannot find any legal or practical basis for approving a windmill on this particular property. The size of the subject site, the potential size of the wind turbine and the height of the tower in relation to its proximity to other homes in the neighborhood and a nearby school, and Petitioner's lack of specificity regarding the type of wind turbine proposed, leads me to the conclusion that this property does not lend itself to such a substantial accessory structure. Accordingly, the Petition for Variance is denied.

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 Petitioner's variance request should be denied.

THEREFORE, IT IS ORDERED this 24th day of November, 2008 by this Deputy Zoning Commissioner, that Petitioner's Variance request from Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure (windmill) with a height of 80 feet in lieu of the maximum 15 feet allowed, be and is hereby DENIED.

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

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.

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

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

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

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

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

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

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.

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:

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 -

- 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.

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.

- 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

**IN RE: PETITION FOR ADMINISTRATIVE
VARIANCE**

NE of Sharon Drive, 1,680' SE c/line of

Harford Road

(11511 Harford Road)

11th Election District

3rd Council District

Roland C. Twining, et ux
Petitioners

BEFORE THE

ZONING COMMISSIONER

FOR

BALTIMORE COUNTY

Case No. 08-527-A

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the legal owners of the subject property, Roland C. Twining and his wife, Ida C. Thompson. Petitioners are requesting variance relief from Section 400.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit an accessory structure (wind turbine generator) with a height of 66-feet in lieu of the maximum 15-feet.¹ 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 nearly a case of first impression as the Petition represents only the second 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 a section pertaining to the construction or maintenance of a wind turbine generator (hereinafter referred to as a "windmill"), this Petition was appropriately filed as a request for variance from the accessory structure height limitations contained in Section 400.3

¹ This case was originally filed as a Petition for Administrative Variance but a public hearing was scheduled at the request of the Office of People's Counsel.

of the B.C.Z.R. The subject matter, however, is far from the typical requests for variance that frequent the Office of the Zoning Commissioner.

Appearing at the requisite public hearing in support of the variance request were Petitioners Roland Twining and Ida Thompson along with several of their family members and friends including Noah Twining, Mike Pierce and Shawn Kidd. The Office of People's Counsel was represented by Carole S. Demilio, Esquire who appeared in opposition to the requested relief. There were no Protestants or other interested persons in attendance at the hearing.

Testimony describing the subject property and requested relief was offered by Petitioner Roland Twining. The evidence revealed that the subject property is a large irregular-shaped site containing approximately 24.442 acres of land zoned R.C.2 and R.C.5. The property is located in the Glen Arm area of Baltimore County, southeast of Harford Road, and is essentially made up of what appears to be two rectangular shaped parcels connected via a central thin stretch of land as illustrated on the site plan. The first rectangular section, which is closest to Harford Road, is zoned R.C.2. The second rectangular section, on the northwestern portion of the site, is where the proposed windmill is to be located in the R.C.5 zone.

Mr. Twining testified that this property, along with over 300 acres of surrounding land, has been owned by his family since 1859. In the 1970's, the property was subdivided into three parts, each currently owned by a member of the Twining family. A portion of the property was also purchased by Baltimore County for use as the Gunpowder Falls State Park. The Petitioners submitted numerous photographs (Petitioners' Exhibit 3) which provide an overview of the layout of the subject property and surrounding area. The photographs reveal a rural, green, wooded area that is primarily dedicated to open farmland. Mr. Twining's brother operates a commercial farm business by growing hay on over 20 acres of the site.

Mr. Twining marked on several of the aforementioned photographs the location of the windmill. This proposed location is over 200 feet from the nearest property line, appears far from any public roads or utilities and is shielded from the vision of all but a few surrounding neighbors. Mr. Twining submitted a Petition signed by seven surrounding neighbors who own all of the adjoining properties that may be able to see the windmill from their homes, and all signed in favor of the requested relief. The Petition was marked and accepted into evidence as Petitioners' Exhibit 2. All of the evidence presented at the hearing demonstrated that the surrounding community fully supports the Petitioners' request to construct a windmill. The Petitioners appeared true to their words: "hard-working blue collar people" who are simply trying to use technological advancements to decrease their energy costs and increase the likelihood that they will be able to maintain their family farmland.

In addition to the support of the surrounding community, the Petitioners indicated that the State of Maryland, through its WindSwept Grant Program, had agreed to provide a significant financial contribution (\$2,750.00) to the cost of their windmill construction. The Petitioners submitted a pamphlet from the United States Department of Energy that is entitled "A Maryland Consumer's Guide to Small Wind Electric Systems," which was marked and accepted into evidence as Petitioners' Exhibit 5. The pamphlet supports the Petitioners contention that the State of Maryland is making significant efforts to support the use of alternative energy to fuel residential homes throughout the State. The Petitioners had conducted a wind assessment which revealed that the proposed site would receive an average of 11 mph of wind, just over the 10 mph necessary to power a windmill. The only step remaining for the Petitioners to obtain their grant and start constructing their windmill is the zoning relief which is the subject of this Petition.

Mr. Twining's testimony provided further insight as to the type of structure that the family intends to build. The proposed windmill would stand 66 feet in height and would provide four to seven kilowatt-hours of electricity per month or approximately 50-75% of the Petitioners' energy costs. The windmill would plug directly into the existing electrical grid and would be composed of a single pole, similar to a lamp pole, which would stand without guy wires or other support mechanisms. The top of the pole would contain fan style blades spanning 6 feet in diameter. Petitioners submitted several photographs containing examples of the type of structure that they intend to build, which were collectively marked and accepted into evidence as Petitioners' Exhibit 4. As previously mentioned, all of the surrounding neighbors who may be able to see the windmill from their homes signed a Petition in support of the requested relief. *See* Petitioners' Exhibit 2.

The Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The comments indicate no opposition or other recommendations concerning the requested relief.

On behalf of the Office of People's Counsel, Carole S. Demilio appeared at the hearing in opposition to the requested relief. Ms. Demilio, who herself lives on a farm, appeared sympathetic to the Petitioners' request but argued that the Zoning Commissioner currently does not have the authority to grant the requested variance. She presented legal argument that a windmill is not a "customary accessory use" which is permissible as an accessory structure as currently delineated in the B.C.Z.R. Citing to the case of *Kowalski v. Lamar*, 25 Md. App. 493, 334 A.2d 536 (1975), Ms. Demilio argued that the only permissible property uses are those directly suggested in the B.C.Z.R. Since windmills are not referenced in the regulations, Ms. DeMilio claimed that the Zoning Commissioner currently does not have the authority to address

this Petition, or any windmill petition. Additionally, Ms. Demilio pointed to the fact that the County Council recently passed Resolution 52-08 on July 7, 2008, which directs the Planning Board to look into the use of windmills and acknowledges that the current regulations do not currently govern the use of windmills. Thus, the crux of her argument is that this Petition is not ripe until the Council evaluates the use of windmills and provides guidelines that will prevent the adjudication of similar requests on a case-by-case basis. Ms. Demilio did flatly state that if this Petition or any similar relief were granted, the Office of People's Counsel would have no choice but to file an appeal to the County Board of Appeals.

At the conclusion of the public hearing, the parties essentially agreed to stay the current proceedings until the County Council produces formal regulations governing requests for windmills on residential properties. Mr. Twining, along with his son Noah Twining, expressed their frustration with Baltimore County for continually promoting "being green" and making their family's quest to build an eco-friendly device that would provide alternative energy so difficult. However, at this point the parties agreed that the most cost efficient method of helping the Petitioners reach their goal would be to stay the current proceeding until regulations are passed that might eventually render this Petition moot.

WHEREFORE, it is ORDERED by the Zoning Commissioner for Baltimore County this _____ day of July 2008 that a continuance of these proceedings should be granted in favor of Petitioners pending amendments to the Zoning Regulations that govern the location or use of windmills for the generation of power for residential energy use; and

IT IS FURTHER ORDERED that in the event that the Planning Board or County Council of Baltimore County, Maryland unduly delay the implementation of the said proposed amendments to the Zoning Regulations, Petitioners may, in that event, request a final

determination on their Petition based upon the testimony and evidence presented at the hearing on July 16, 2008.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

PLAT TO ACCOMPANY PETITION FOR ZONING ☒ VARIANCE ☐ SPECIAL HEARING

PROPERTY ADDRESS 7304 Betz Avenue

SEE PAGES 5 & 6 OF THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION

SUBDIVISION NAME Chesapeake Terrace

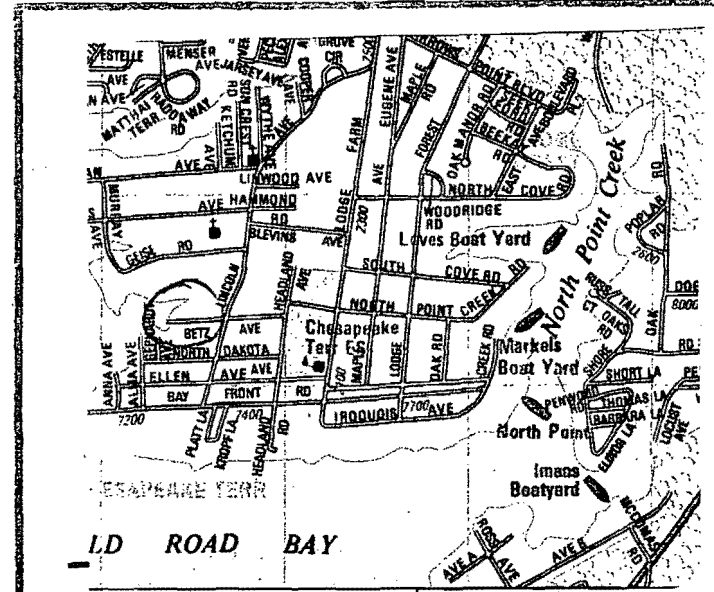
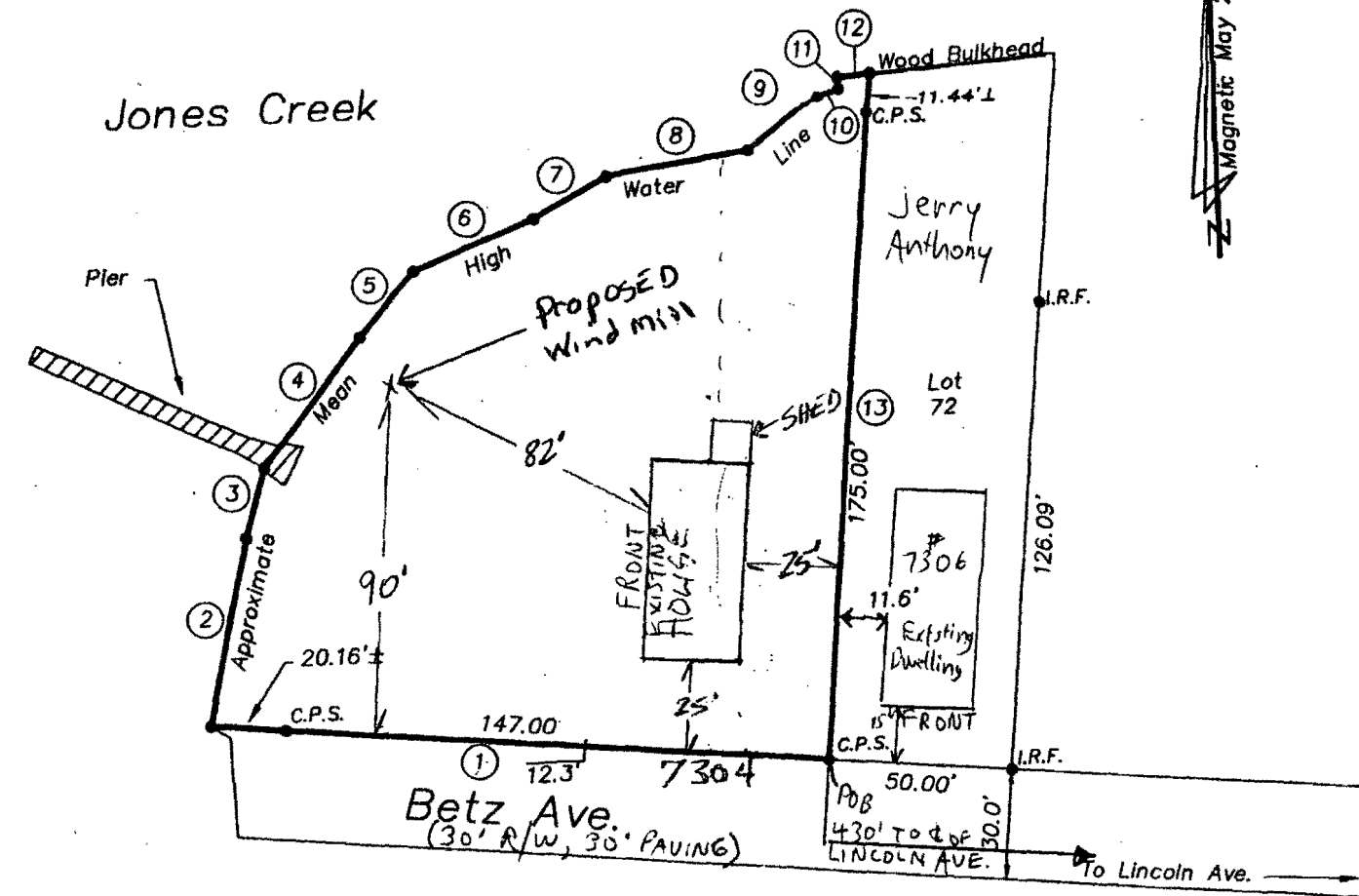
PLAT BOOK # 5 FOLIO # 34 LOT # SECTION #

OWNER John & Maria Watkins

PROPERTY LINE COURSES

LINE	BEARING	DISTANCE
1	N 84°23'25" W	167.16'±
2	N 12°46'02" E	50.94'
3	N 16°52'18" E	19.18'
4	N 38°16'38" E	43.48'
5	N 41°25'30" E	22.90'
6	N 67°56'20" E	35.24'
7	N 61°26'18" E	22.61'
8	N 81°26'35" E	38.68'
9	N 54°13'35" E	24.74'
10	N 71°22'24" E	6.33'
11	N 03°44'34" W	3.00'
12	N 86°15'26" E	9.04'
13	S 05°36'35" W	186.44'±

AREA = 0.519 AC±



SCALE: 1" = 2000'

LOCATION INFORMATION

ELECTION DISTRICT 15th
COUNCILMANIC DISTRICT 7th
1"=200' SCALE MAP # 111B3
ZONING DR S.5
LOT SIZE .519 (x 43560) = 22607.64
ACREAGE SQUARE FEET

	PUBLIC	PRIVATE	YES	NO
SEWER	☒	☐	☒	☐
WATER	☒	☐	☒	☐
CHESAPEAKE BAY CRITICAL AREA			☒	☐
100 YEAR FLOOD PLAIN			☒	☐
HISTORIC PROPERTY/BUILDING			☐	☒
PRIOR ZONING HEARING				<u>None</u>

ZONING OFFICE USE ONLY
REVIEWED BY JNP ITEM # 0291 CASE # 2009-0291-A

PREPARED BY John Watkins

SCALE OF DRAWING: 1" = 50'