

14-094-54H

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

June 25, 2018

Scott S. Harris
Clerk of the Court
(202) 479-3011

Mr. Peter Max Zimmerman
Office of People's Counsel for Baltimore County
105 West Chesapeake Avenue, Suite 204
Towson, MD 21204

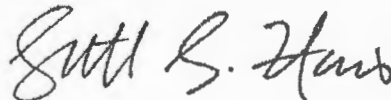
Re: William Geddes, et al.
v. People's Counsel of Baltimore County, et al.
No. 17-1467

Dear Mr. Zimmerman:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk



14-094-5PH

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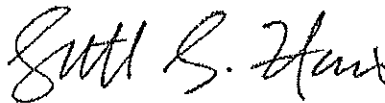
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The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



Scott S. Harris, Clerk



IN THE MATTER OF:

JAMES AND KAROLE RIFFIN
CASE NUMBER: 14-094-SPH

Hearing Date: July 15, 2014

Pursuant to Notice, the above-entitled hearing was held before the Board of Appeals for Baltimore County at the Jefferson Building, Second Floor, Suite 203, 105 West Chesapeake Avenue, Towson, Maryland 21204, commencing at 10:00 AM.

PANEL PRESIDING:

ANDREW M. BELT, CHAIRMAN

WAYNE R. GIOIOSO, JR., BOARD

RICHARD A. WISNER, BOARD

PRESENT:

PETER ZIMMERMAN, PEOPLE'S COUNSEL

WILL GEDDES, APPELLANT

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Christine R. Leary
9529 Fox Farm Road
Baltimore, Maryland 21236

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2755

September Term, 2015

WILLIAM GEDDES, ET AL.

v.

PEOPLE'S COUNSEL FOR BALTIMORE
COUNTY, ET AL.

Eyler, Deborah S.,
Nazarian,
Salmon, James P.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: March 31, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This case arises out of a dispute over the permitted uses for a parcel of property in Baltimore County known as 11019 Gateview Road, which is the primary residence of James and Karole Riffin, appellants.

On October 15, 2013, the Riffins filed with the Office of Administrative Hearings for Baltimore County a petition for special hearing to determine: 1) whether various uses on their property were permitted under Baltimore County zoning law; and 2) when is it lawful for a county code enforcement officer to enter upon private land.¹ By agreement, Baltimore County did not participate in that action but the People’s Counsel for Baltimore County did participate.² After a public hearing, an Administrative Law Judge (“ALJ”) issued a written opinion and order dated January 7, 2014, finding that the uses proposed by the Riffins were not permitted. The ALJ dismissed the claim pertaining to the issue of whether an inspector had a right to enter upon private land. Mr. Riffin filed a motion for reconsideration, which was denied.

Pursuant to a prior agreement with Baltimore County in which the Riffins agreed not to “appeal or otherwise contest” the ALJ’s decision, the Riffins did not appeal, but their

¹ For clarity, we note that since 2011, “[a]ny reference to the Zoning Commission for Baltimore County Zoning Regulations shall be deemed to be a reference to the Office of Administrative Hearings.” Baltimore County Code, § 3-12-104(b). “All references in law to the board of zoning appeals shall be construed to refer to the county board of appeals.” Baltimore County Charter, § 602.

² The People’s Counsel for Baltimore County is an independent organization, separate from Baltimore County, with the “specific public interest function” of defending the comprehensive zoning maps and master plan in a variety of cases, including special hearings. *See generally* Baltimore County Charter, § 524.1(a)(3)A.

neighbor, Will Geddes, who is an appellant in the instant case, filed an appeal with the Baltimore County Board of Appeals (“the Board”).³ Despite the prior agreement with Baltimore County, Mr. Riffin participated in Mr. Geddes’s appeal as a self-styled “petitioner,” filed a memorandum, and gave testimony at the hearing. Mr. Riffin argued, among other things, that because the Board of Appeals was not an appellate body, he was not participating in an appeal and was therefore not in violation of his agreement with Baltimore County. The Board ultimately determined that Mr. Riffin was precluded from pursuing the appeal.

In addition to Mr. Geddes and Mr. Riffin, the People’s Counsel appeared and participated in the hearing before the Board. An Assistant County Attorney for Baltimore County was seated in the courtroom gallery but did not participate in the case before the Board.

In a written order dated November 7, 2014, the Board determined that the proposed uses and storage of equipment on the Riffins’ property were unlawful, denied the special hearing request, and dismissed the claim that a code inspector did not have the right to enter upon private property.

After losing before the Board of Appeals, Mr. Geddes and the Riffins filed in the Circuit Court for Baltimore County a petition for judicial review. A hearing was held on

³ Mr. Geddes was permitted to appeal pursuant to § 32-3-401(a) of the Baltimore County Code which, provides that “[a] person aggrieved or feeling aggrieved by a decision of the Zoning Commissioner or the Director of Permits, Approvals, and Inspections may appeal the decision or order to the Board of Appeals.” The Board determined that Mr. Geddes “clearly testified that he felt ‘aggrieved’ by [the ALJ’s] decision.”

December 2, 2015. The circuit court dismissed the petition for judicial review as to Ms. Riffin, determined that Baltimore County’s motion to intervene was moot, denied a motion to strike Baltimore County’s pleadings, and affirmed the decision of the Board. Thereafter, Mr. Geddes and the Riffins, *pro se*, filed this timely appeal.

QUESTIONS PRESENTED

Mr. Geddes and the Riffins present numerous questions⁴ for our consideration, which we have consolidated and rephrased as follows:

⁴ In their Brief, Mr. and Mrs. Riffin and Mr. Geddes set forth the following questions for our consideration:

Was it arbitrary, capricious, unreasonable, or contrary to law:

- A. For the Circuit Court to permit Baltimore County to Intervene?
- B. What is the nature of a *de novo* hearing?
- C. For the Board to interpret, or rely upon, the terms and conditions contained in a private contract between Riffin and Baltimore County, Maryland?
- D. For the Board to bar Riffin from fully participating at the Board hearing?
- E. For the Board to fail to consider whether Riffins’ property was ‘eligible for Agricultural Assessment?’
- F. For the Board to consider issues/admit evidence on issues that were not raised/argued before the ALJ, and/or were not appealed?
- G. For the Board to hold that it did not have the jurisdiction to rule on the Constitutional issue of whether Baltimore County Code Inspector Mills (“Mills” or “Inspector Mills”) violated Riffin’s 4th Amendment Right barring warrantless searches and seizures?
- H. Was there ‘substantial evidence’ in the record before the Board to support the Board’s holding that none of the uses enumerated by Riffin, were permitted in a DR-1 or RC-6 zone?
- I. May the right to a *de novo* hearing be waived?
- J. Must new notice be given when having a *de novo* hearing?

(continued...)

I. Did the agreement between Baltimore County and the Riffins preclude the Riffins from participating as parties in the actions before the Board, the Circuit Court for Baltimore County, and this Court?

II. Was there substantial evidence in the record to support the Board's denial of the petition for special hearing?

III. Is Baltimore County a party to this action?

IV. Did the Board err in determining that it was without jurisdiction to rule on the constitutionality of a Baltimore County Code Inspector's warrantless entry onto private property?

V. Did the Board err in failing to address issues pertaining to *de novo* hearings?

VI. Did the Board fail to consider whether the Riffins' property was eligible for Agricultural Assessment?

For the reasons set forth below, we shall dismiss the appeals of Mr. and Mrs. Riffin and affirm the judgment of the circuit court in all other respects.

I.

FACTUAL AND PROCEDURAL BACKGROUND

The basic facts of the case are not in dispute. The Riffins' property is about 13 acres and includes the Riffins' residence and significant wooded areas. The property is split zoned RC-6 (Rural Conservation and Residential) and DR-1 (Density Residential). At issue is the legality of several land uses at the Riffins' property, particularly the storage by

(...continued)

In addition, the appellants state "[the] Joint Memorandum contains a number of additional issues, and argument thereon, none of which are waived, all of which are incorporated by reference herein. Due to the Rule's word limitation of 9,100 words, this brief will focus on the more egregious errors committed by the Board."

the Riffins of various pieces of construction equipment, trucks, buses, automobiles, railroad cars, and railroad track.

In September 2013, Baltimore County issued a code enforcement violation and correction notice to the Riffins alleging illegal use of their property (under both the Baltimore County Zoning Regulations and the Baltimore County Code) resulting from the storage of heavy industrial equipment. Before issuing the citation, the inspector visited the property twice and took photographs of items stored there. The Riffins maintained, among other things, that most of their uses of the property were permitted as accessory to farm use, that the inoperable buses were used as residential sheds, and that the railroad cars and tracks were recreational.

In early October 2013, Baltimore County and the Riffins entered into a comprehensive settlement agreement pursuant to which the Riffins agreed to file a petition for special hearing to obtain a determination of whether their uses of the property were in compliance with the zoning regulations. Baltimore County agreed to suspend its code enforcement proceeding and refrain from imposing any fines or other penalties until after the Office of Administrative Hearings (“OAH”) issued a decision on the petition for special hearing. In addition, the County agreed to refrain from having an Assistant County Attorney appear at the proceedings on the petition for special hearing and the Riffins agreed that if the ALJ denied any portion of their petition and determined that any of the activities on the property violated the County’s zoning regulations, or any other state or local law, they would “immediately cease any unlawful activities and ... remove, without exception, any prohibited items” from the property within six months of the date of the ALJ’s order.

The Riffins specifically agreed that the order of the ALJ would be “a final Order and they will forego any right to appeal or otherwise contest the Order.”

The Riffins filed a petition for special hearing seeking to determine whether their proposed principal and accessory uses, which were listed in the petition, were lawful and whether, and under what circumstances, a Baltimore County code inspector and enforcement officer could enter upon their private property. Mr. Riffin and his neighbor, Mr. Geddes, attended the public hearing on the petition. It is unclear if Mrs. Riffin attended the hearing, but she did not testify.

Mr. Riffin testified that on July 26 and September 16, 2013, Baltimore County Code Enforcement Officer Phillip Mills entered onto his property and took photographs, without his permission, and in violation of no trespassing signs that were posted on the property. Mr. Riffin further testified that he once owned a railroad and hoped to acquire another one. He kept on his property railroad equipment, tracks, a caboose, and other items, including a crane, two highboy trailers, one low trailer, a bobcat, two extendable semi-trailers, a man lift, an air compressor, and water storage tanks. Mr. Riffin kept the caboose for recreational purposes and used some of the other items to maintain trees that he claimed to be cultivating for future sale as ship masts. Mr. Riffin also testified that “[e]verything that I have is used in connection with my farming activities, one way or another[.]”

Mr. Geddes, a neighbor who owns property abutting the Riffins’ property, had been on the Riffins’ property and seen some of the items kept there. He testified that he did not have any objection to the items being kept on the Riffins’ property.

The ALJ concluded that the principal use of the property was for residential dwelling purposes, that “it is plausible (though not free from doubt) that the [Riffins] utilize the property for residential agricultural purposes, as an accessory use,” and that such a use was permitted. The ALJ further concluded that the railroad cars, tracks, ties, and related equipment could not lawfully be kept on property zoned DR-1 and RC-5.⁵ Nor could the Riffins keep untagged motor vehicles or commercial vehicles stored outside on the property. With respect to certain other equipment, the ALJ said:

Mr. Riffin also testified that he has a large crane, man lift, 70’ tractor trailer and trucks. He indicated that these items are “very handy” and that he uses them “a lot” to pull pipes out of wells, assist in harvesting trees or to help his neighbors. Again, such heavy equipment and materials are not customarily used for residential or even agricultural purposes. No evidence was presented that any of the vehicles or equipment were registered as “farm vehicles” with the State of Maryland. These items, as alleged by Baltimore County, are items that must be stored in a “contractor’s equipment storage yard,” and not on residential property. That term is defined as follows in the [Baltimore County Zoning Regulations (“BCZR”)]:

“The use of any space, whether inside or outside a building, for the storage or keeping of contractor’s equipment or machinery, including building materials storage, construction equipment storage or landscaping equipment and associated materials.”

I find that Petitioners are in fact using the property for such a purpose, which is permitted by special exception only in commercial zones. As such, I do not believe these items can be lawfully kept on the premises.

After making these findings, the ALJ denied the request for special hearing. Mr. Riffin filed a motion for reconsideration, which was denied. Mr. Geddes filed a notice of appeal.

⁵ In addressing Mr. Riffin’s motion for reconsideration, the ALJ acknowledged that he mistakenly referred to the property as being zoned RC-5 rather than RC-6.

At the hearing before the Board of Appeals, Mr. Geddes was identified as the appellant and Mr. Riffin identified himself as one of the “petitioners.” The Board recognized that the Riffins had agreed not to file an appeal or otherwise contest the ALJ’s decision and therefore precluded Riffin from pursuing the appeal.

Mr. Geddes was not a signatory to the agreement between the Riffins and Baltimore County. He testified that he felt aggrieved by the ALJ’s decision. Although the Board described Mr. Geddes’s appeal as “contrary to the spirit of the Agreement between the Riffins and the County,” it permitted him to proceed with the appeal of the ALJ’s decision pursuant to §32-3-401(a) of the Baltimore County Code, which provided:

In general. A person aggrieved or feeling aggrieved by a decision of the Zoning Commissioner or the Director of Permits, Approvals, and Inspections may appeal the decision or order to the Board of Appeals.

Mr. Geddes acknowledged that Mr. Riffin asked him to file the appeal but testified that it was in his interest to do so as Mr. Riffin plows his driveway when it snows.

Mr. Geddes called Mr. Riffin as a witness, and the latter testified that he obtained signed affidavits from many of his neighbors who claimed not to have any problem with the equipment being kept on his property. Mr. Riffin acknowledged that he kept a significant amount of equipment on his property including, but not limited to, a rough terrain crane that weighed over 80,000 pounds, had a boom length of 92 feet, and could pick up 60,000 pounds. In addition to the crane, Mr. Riffin kept other equipment on his property including, but not limited to: a bobcat, a dump truck, an excavator, two 70 to 80 foot semi-trailers, a man lift, a boom truck, air compressors, jack hammers, generators, light towers, a chipping machine, and numerous trucks and trailers, all of which he claimed

were used in conjunction with his tree farming operations and forestry activities. Mr. Riffin also kept a “large quantity of railroad equipment,” all of which was functional, and railroad tracks, which he used for the trains to ride upon. Mr. Riffin testified that, on occasion, he invited children to play on the railroad equipment.

Mr. Riffin admitted that some of the vehicles were not tagged, but claimed he used them as utility sheds. He also acknowledged that he previously had three storage buildings and “a large quantity of that material that I used to store in those buildings is now sitting on my property because I don’t have any other place to put it.”

The People’s Counsel called Baltimore County Code Enforcement Officer Phillip Mills as a witness. Mr. Mills went to the Riffins’ property on July 26 and September 16, 2013, and took photographs on both occasions. He walked off the Riffins’ driveway and saw what he described as an “open dump and junk yard conditions.” He observed, among other things: cranes, trains, bobcats, large cylinders, tires, buckets, inoperable vehicles, untagged cars, front end loaders, school buses, compressors, lots of ladders, concrete, trailers, junk, trash, and debris.

Ultimately, the Board rejected Mr. Riffin’s argument that the items on his property were either accessory to farming or recreational. The Board noted that there was no evidence of any current sales or active agricultural activities on the property; that it would be years before Mr. Riffin’s trees would be ready to sell; and that there was no specific evidence about how the equipment was being used to trim trees on the property. The Board also rejected the idea that Mr. Riffin’s equipment constituted an accessory use or structure, and concluded that the uses of the property were “more in line with” a contractor’s

equipment storage yard and a junkyard. The Board determined that the proposed uses and storage of equipment on the Riffins' property were unlawful, and denied the special hearing request. The Board determined that it did not have jurisdiction to address the issue of whether a county code inspector can enter onto private land.

Following the Board's decision, Mr. Geddes and the Riffins filed a petition for judicial review. At a hearing on December 2, 2015, Mr. Geddes and Mr. Riffin each appeared without counsel. The People's Counsel also appeared, and Baltimore County moved to intervene in the proceeding. Mr. Riffin opposed the County's motion to intervene on the ground that it had not participated in the underlying proceedings.

In a written memorandum opinion and order, the circuit court dismissed the petition for judicial review as to Mrs. Riffin, who did not appear at the December 2nd hearing. The court affirmed the decision of the Board and determined that there was substantial evidence to support the Board's conclusion that the Riffins' uses of the property were not permitted in RC-6 or DR-1 zoned land. With respect to the issue of whether a county code inspector may enter onto private property, the court recognized that the Baltimore County Code permits inspectors to enter upon private land in the performance of their duties, which included enforcing the county's zoning regulations and inspecting property for enforcement purposes. Nevertheless, the court held that that issue was "beyond the jurisdictional scope of the Board." The court also held that the exclusionary rule does not apply to civil proceedings and that the photographs taken by Inspector Mills were properly admitted. Finally, the court declined to address the conditions under which a county code inspector may enter upon private land, on the ground that it sought an advisory legal

opinion. In a separate order, the court denied Baltimore County's motion to intervene on the ground that it was moot and denied Geddes's motion to strike Baltimore County's pleadings.

STANDARD OF REVIEW

We review the decision of an administrative agency under the same statutory standards as the circuit court, meaning we evaluate the decision of the agency directly, not the decision of the lower court. *People's Counsel for Baltimore County v. Surina*, 400 Md. 662, 681 (2007); *Gigeous v. Eastern Correctional Inst.*, 363 Md. 481, 495-96 (2001). Our role is "limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *Grasslands Plantation, Inc. v. Frizz-King Enterprises, LLC*, 410 Md. 191, 203 (2009)(quoting *United Parcel Service, Inc. v. People's Counsel for Baltimore County*, 336 Md. 569, 577 (1994)). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Md. State Police v. Warwick Supply & Equip. Co., Inc.*, 330 Md. 474, 494 (1993)(citations omitted). We may not substitute our judgment for that of the Board of Appeals unless the agency's conclusions were not supported by substantial evidence or were premised on an error of law. *Stansbury v. Jones*, 372 Md. 172, 182-83 (2002).

DISCUSSION

I.

The first issue to be resolved is whether Mr. and Mrs. Riffin and Mr. Geddes are properly before this Court as appellants. The petition for judicial review in the circuit court and the notice of appeal to this Court were filed by Mr. and Mrs. Riffin and Mr. Geddes. On October 2, 2013, however, Mr. and Mrs. Riffin entered into a “Complete and Comprehensive Settlement Agreement” with Baltimore County, pursuant to which they agreed that if any portion of their petition for special hearing was denied and the ALJ determined that any of the activities on their property violated the Baltimore County Code, zoning regulations, or other state or local law, they would “immediately cease any unlawful activities,” “remove, without exception, any prohibited items from the [p]roperty within six (6) months” of the date of the ALJ’s order, and “forego any right to appeal or otherwise contest” the ALJ’s order.

There is no dispute that the Riffins’ petition for special hearing was denied and that the ALJ concluded that “neither the principal [n]or accessory use of the property entitles the Petitioners to keep on the property those items described in the petition.” The ALJ held that the railroad cars, tracks, ties and related equipment could not “be lawfully kept on DR 1 and RC 5 [sic] zoned property,” and that the Riffins “large crane, man lift, 70’ tractor trailer and trucks” must be stored in a ‘contractor’s equipment storage yard,’ and cannot be kept on the Riffins’ property. The ALJ also rejected the Riffins’ contention that untagged motor vehicles on their property were being used as utility sheds. The ALJ held that the outside storage of untagged motor vehicles and commercial vehicles on the property was

unlawful and rejected the idea that any of the vehicles or equipment at issue fell within an exception for farm equipment. In light of these rulings, Mr. and Mrs. Riffin were required by their agreement with Baltimore County to “immediately cease any unlawful activities” and “remove, without exception, any prohibited items from the [p]roperty within six (6) months.”

Mr. Geddes contends that it was “arbitrary, capricious, unreasonable, or contrary to law” for the Board to interpret, or rely upon, the terms and conditions contained in the private contract between the Riffins and Baltimore County and to bar the Riffins from fully participating in the hearing before the Board. We disagree. At the hearing before the Board, Mr. Riffin acknowledged that he was bound by the agreement. By accepting the terms of their agreement with Baltimore County, and in light of the ALJ’s decision, the Riffins waived their right to appeal. Waiver “includes the intentional relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such right, and may result from an express agreement or be inferred from circumstances.” *Gould v. Transamerican Assocs.*, 224 Md. 285, 294 (1961)(footnote omitted). “The doctrine of acquiescence – or waiver – is that ‘a *voluntary* act of a party which is inconsistent with the assignment of errors on appeal normally precludes that party from obtaining appellate review.’” *Board of Physician Quality Assurance v. Levitsky*, 353 Md. 188, 199 (1999)(quoting *Franzen v. Dubinok*, 290 Md. 65, 69 (1981))(emphasis in original); accord *Downtown Brewing Co., Inc. v. Mayor of Ocean City*, 370 Md. 145, 149-51 (2002). Here, by the terms of their agreement with Baltimore County, both Mr. and Mrs. Riffin consented to the ALJ’s decision and waived their right to challenge that decision on appeal or to

“otherwise” contest” the ALJ’s decision. Accordingly, we shall dismiss this appeal with respect to both Mr. and Mrs. Riffin.

Mr. Geddes, who availed himself of the language contained in § 32-3-401(a) of the Baltimore County Code, proffered to the Board that he felt aggrieved by the ALJ’s decision because Mr. Riffin’s ability to keep on his property at least some of the equipment at issue was very helpful to him. Mr. Riffin had used his bobcat to remove ice and snow from Mr. Geddes’s driveway. In addition, if necessary, Mr. Riffin could use his crane to move trees that fall on Mr. Geddes’s property. Assuming, without deciding, that Mr. Geddes’s feelings of being aggrieved were sufficient to permit him to appeal, he was the sole appellant before the Board and is the only person who has a right to file this appeal.

II.

Having determined that Mr. Geddes was the sole appellant appropriately before the Board, and accepting for purposes of this appeal that Mr. Geddes was aggrieved by the administrative decision regarding the uses on the Riffins’ property, we must determine whether there was substantial evidence in the record to support the Board’s denial of the Riffins’ petition for special hearing. Our review of the record convinces us that there was.

With regard to the contention that the Riffins’ equipment was used in farming or agricultural activities on their property, we recognize that farms are permitted in RC-6 and DR-1 zones. *See* Baltimore County Zoning Regulations (“BCZR”) §§ 1A07.3A(2) and 1B01.1A(7). The term “farm” is defined, in relevant part, as “[t]hree acres or more of land, and any improvements thereon, used primarily for commercial agriculture, as defined in these regulations, or for residential and associated agricultural uses.” BCZR §101.1.

Although Mr. Riffin testified that he used all of his equipment in the cultivation and culling of trees he is growing on his property, and that he hopes one day to sell the trees to be used as ship masts, there was no evidence of any current agricultural activities, sales, or other commercial activities relating to agricultural uses on the property. In fact, Mr. Riffin acknowledged that he last sold wood from his trees three years before the hearing and that he was “not in the market of selling right now[.]” In addition, Inspector Mills’s testimony about the equipment and materials on the Riffins’ property supported the Board’s conclusion that those items were not farm equipment, but were consistent with equipment found in a junkyard or contractor’s storage yard. A “junkyard” is defined as:

Any land used commercially or industrially for storage or for sale of scrap metal, wastepaper, rags or other junk, and any land, except as provided for by Section 428, used for the storage of unlicensed or inoperative motor vehicles, dismantling or storage of such vehicles or parts thereof, or used machinery, regardless of whether repair or any other type of commercial operation occurs, but excluding scrap for use in manufacturing processes on the premises or waste materials resulting from such processes or resulting from the construction or elimination of facilities for such processes. The term does not include unlicensed motor vehicles located at automotive service stations, service garages or new or used motor vehicle outdoor sales areas, or any vehicle stored pursuant to Section 405A.

BCZR § 101.1. A contractor’s equipment storage yard is defined as “[t]he use of any space, whether inside or outside a building, for the storage or keeping of contractor’s equipment or machinery, including building materials storage, construction equipment storage or landscaping equipment and associated materials.” BCZR § 101.1. In light of these zoning regulations and the evidence presented, a reasonable mind could reasonably have concluded that the Riffins’ equipment did not meet the definition of farm equipment.

As for the railroad equipment, Mr. Riffin testified that it was used for recreational purposes, but that is not a permitted use on the property by right or special exception. BCZR §§ 1A07.3 and 1B01.1. Nor were the Riffins' uses permissible as accessory uses or structures under BCZR §§ 1A07.3A(7) or 1B01.1A(18). An "accessory use or structure" is defined, in relevant part, as one that:

(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[.]

BCZR § 101.1. There was substantial evidence to support the Board's conclusion that the Riffins' uses did not meet that definition. The evidence presented to the Board established the presence of an enormous quantity of heavy equipment and vehicles on the property, including, but not limited to: trains, trucks, a crane, a bobcat, a front-end loader, buses, untagged and inoperable motor vehicles, and trailers. The Board properly concluded that the untagged and unlicensed vehicles on the property could not be converted into utility sheds, which are permitted on DR zoned property, simply by filling them with personal belongings or household items, as such a use would be contrary to the purpose of the Baltimore County Zoning Regulations.

III.

Mr. Geddes argues that Baltimore County “does not have the right, nor standing, to intervene” in this matter. Baltimore County did not participate in the proceedings before the OAH or the Board, although an Assistant County Attorney observed the proceedings before the Board. The circuit court concluded that the presence of the Assistant County Attorney at the hearing before the Board was sufficient to establish the county as a party in the petition for judicial review, but denied the county’s motion to intervene on the ground that it was moot. We need not resolve the issue of whether Baltimore County had the right to intervene. Baltimore County did not attempt to intervene in the proceeding before the Board. Our task in this appeal is limited to determining if there was substantial evidence in the record as a whole to support the agency’s findings and conclusions, and to determine if the administrative decision was premised upon an erroneous conclusion of law. *Grasslands Plantation, Inc.*, 410 Md. at 203. We have already determined that there was substantial evidence to support the Board’s findings and conclusions, and that determination would not be affected in any way by a determination of the county’s right to intervene. As the issue is moot, we shall not address it.

IV.

Mr. Geddes contends that the Board erred in determining that it was without jurisdiction to determine the conditions under which a code inspection and enforcement officer may enter upon private property. We need not reach this issue. Given the unusual procedural history of this case, the question before us is raised by Mr. Geddes, who does not own the property upon which the county inspection and enforcement officer entered.

As a general rule, in a civil case, in order to demonstrate reversible error, the appellant must not only establish error, but also that the error was prejudicial. *Flores v. Bell*, 398 Md. 27, 33 (2007). Mr. Geddes did not establish that he suffered any prejudicial effect from the Board's determination that it was without jurisdiction to address the conditions under which a code inspection and enforcement officer could enter upon the Riffins' property.

Moreover, in their petition for special hearing, the Riffins raised this issue generally, asking under what conditions a county code inspector may enter upon private land. Any decision on that particular issue would be advisory in nature. The role of an appellate court is not to render advisory opinions. *Alston v. State*, 433 Md. 275, 285 (2013)(ordinarily, courts will not decide moot or abstract questions, or render advisory opinions); *Montgomery County Career Fire Fighters Ass'n v. Montgomery County*, 210 Md. App. 200, 209 (2013)(role of appellate court is not to render advisory opinions).

Even if Mr. Geddes had standing to challenge the specific issue of Inspector Mills's entry onto the Riffins' property, reversal would not be warranted. The Baltimore County Code permits open land inspections. *See* Baltimore County Code, § 32-3-602(b)(2). The inspections of the uses in question did not involve any protected curtilage and the few photographs taken close to the Riffins' residence did not pertain to any of the uses in controversy and were not considered by the Board. As to the evidence that was presented, we note that contrary to the appellants' argument, the Exclusionary Rule, which is based upon the Fourth Amendment to the United States Constitution, does not apply to civil proceedings. *See, e.g., Coleman v. Anne Arundel County Police Dept.*, 136 Md. App. 419,

444 (2001)(“exclusionary rule applies only to criminal proceedings and forfeiture cases”)(citing *Sheetz v. Mayor and City Council of Baltimore*, 315 Md. 208, 212 (1989)).

V.

Mr. Geddes presents the following three questions pertaining to *de novo* hearings: (1) “[w]hat is the nature of a *de novo* hearing,” (2) “[m]ay the right to a *de novo* hearing be waived,” and (3) whether new notice must be given “when having a *de novo* hearing.” Preliminarily, we note that Mr. Geddes did not raise before the Board any issue pertaining to *de novo* hearings. Those issues were raised only by Mr. Riffin, who was a witness, not a party, in the action before the Board. To the extent Mr. Geddes contends that proper notice was not provided for the hearing before the Board, the docket entries reveal that notice was provided. No additional public posting was required.

Finally, the questions presented concerning generally the nature of *de novo* hearings, the right to waive them, and whether new notice must be given, all seek advisory opinions. As we have already noted, our role is not to render advisory opinions, and we decline to do so. See *Alston*, 433 Md. at 285; *Montgomery County Career Fire Fighters Ass’n*, 210 Md. App. at 209.

VI.

Lastly, Mr. Geddes contends that the Board failed to consider whether the Riffins’ property was eligible for an agricultural assessment. This contention is without merit. The Riffins did not include in their petition for special hearing, a request for a determination as to their eligibility for an agricultural assessment. Moreover, in the Board of Appeals

proceeding, Mr. Geddes did not raise any issue pertaining to the eligibility of the Riffins' property for agricultural assessment, nor would he have had standing to do so.

**APPEAL DISMISSED AS TO KAROLE AND
JAMES RIFFIN; CASE AFFIRMED IN ALL
OTHER RESPECTS. COSTS TO BE PAID BY
JAMES RIFFIN, KAROLE RIFFIN AND
WILLIAM GEDDES, JOINTLY AND
SEVERALLY.**

IN THE MATTER
OF
JAMES RIFFIN, *et al.*

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE COUNTY
* CASE NO.: C-14-13332

* * * * *

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on the timely Petition for Judicial Review filed by James Riffin, Karole Riffin, and William Geddes (collectively, "Petitioners"), seeking review of the November 7, 2014 decision of the Baltimore County Board of Appeals ("Board"). The Board's decision affirmed the January 7, 2014 decision by an Administrative Law Judge ("ALJ") denying the Riffins' Petition for Special Hearing. The purpose of the Riffins' Petition for Special Hearing was to determine whether the Riffins' proposed principal and accessory uses of the property located at 11019 Gateview Road, Cockeysville, Maryland (the "Property") are lawful and to determine under what conditions a Code Inspection and Enforcement Officer may enter upon private land. Respondents, People's Counsel for Baltimore County ("People's Counsel") and Baltimore County, filed timely responses in Opposition to Petitioners' Petition. This Court held a hearing on this matter on December 2, 2015. For the reasons set forth below, the decision of the Board is AFFIRMED. The Petition for Judicial Review is DISMISSED as to Karole Riffin, who did not appear at this Court's December 2, 2015 hearing.

BACKGROUND

The Property is a 13-acre parcel of land situated in Cockeysville in Baltimore County, and is split-zoned R.C. 6 (Rural Conservation and Residential) and D.R. 1

(Density Residential). ALJ's Opinion and Order at 1. On October 9, 2013, the Riffins entered into a comprehensive Settlement Agreement (the "Agreement") with Assistant County Attorney Adam Rosenblatt. Board's Opinion at 1. Under the terms of the Agreement, the Riffins would apply for a Petition for Special Hearing to seek a determination of whether their uses are in compliance with the Baltimore County Zoning Regulations ("BCZR"). In return, the County agreed to suspend enforcement of the code enforcement proceeding against the Riffins, to refrain from imposing fines or penalties, and that no Assistant County Attorneys would appear at the hearing on the Petition for Special Hearing. The Riffins further agreed that if any portion of their Petition for Special Hearing was denied, or if the ALJ determined that any of the Riffins' activities violated the BCZR or other state or local law, the Riffins would immediately cease unlawful activities and would remove any prohibited items from their property within six months of the date of the ALJ's Order. The Riffins also agreed to "forego any right to appeal or otherwise contest the [ALJ's] Order."

The Riffins then filed a Petition for Special Hearing on October 15, 2013, raising two issues. *Id.* at 1-2. The Riffins sought to determine whether the proposed principal and accessory uses enumerated in their Petition were lawful, and to determine under what conditions a Code Inspector and Enforcement Officer may enter private land. ALJ's Opinion and Order at 1.

A hearing was held before ALJ John Beverungen on December 20, 2013, and a decision was rendered on January 7, 2014. ALJ's Opinion and Order. The ALJ dismissed the Riffins' Special Hearing request with respect to the Code Inspector issue, and denied the Riffins' request with respect to their proposed uses of the Property and

storage of equipment. ALJ's Opinion and Order at 2, 5. The ALJ found that neither the principal nor accessory uses of the Property permitted the Riffins to maintain the equipment enumerated in their Petition for Special Hearing on their property. *Id.* at 5. Among the items enumerated in the Petition for Special Hearing and kept on the Riffins' property were railroad equipment, including railroad cars and tracks; a crane; disabled vehicles and buses, some of which are not tagged; an excavator; a bobcat; jack hammers; trailers; air compressors; and log chipping equipment. See Riffins' Petition for Special Hearing. Petitioners Riffin filed a Motion for Reconsideration, which was denied by Order dated February 25, 2014.

Following the denial of the Riffins' Motion for Reconsideration, the Riffins' neighbor, William Geddes, filed an appeal to the Board. The Board held a hearing on July 15, 2014, and public deliberation on August 5, 2014. Among those present at the July 2014 hearing were Peter Zimmerman, representing People's Counsel, James Riffin, William Geddes, and Adam Rosenblatt, Assistant County Attorney for Baltimore County. Baltimore County, though present, did not participate in the hearing.

At that hearing, the Board first ruled on several preliminary motions, which were raised by James Riffin. First, Mr. Riffin contested People's Counsel's standing to participate in the appeal. The Board determined that it was appropriate for People's Counsel to participate in the appeal. Board's Opinion at 2-4. Second, Mr. Riffin argued that the appeal before the Board should be held on the record, and should not be held *de novo*. The Board found that it is well-established based on case precedent and standard practice that appeals from ALJ decisions in zoning cases are held *de novo*. *Id.* at 4-5. Finally, People's Counsel raised the preliminary issue of whether Mr. Riffin could

participate in the appeal, given his Agreement with the County to not contest or appeal the ALJ's decision. The Board found that Mr. Riffin had voluntarily signed the Settlement Agreement with the County, and that he was bound by that agreement. *Id.* at 5. However, the Board held that Petitioner Geddes testified to feeling "aggrieved" by the ALJ's decision, so the Board was obligated to permit Petitioner Geddes's appeal to proceed, as he did not surrender his right to appeal. *Id.* at 6. Mr. Riffin was permitted to appear as a participant in Mr. Geddes's appeal.

Following the resolution of those three preliminary issues, the Board considered the merits of the case. The Board concluded that the Riffins' uses of their property were not permitted in R.C. 6 zoned property, or in D.R. zoned property. *Id.* at 8. Likewise, the Board concluded that the Riffins' uses were of a sufficient magnitude that their size, scope, and character exceeded the framework of "accessory uses." *Id.* at 9. Finally, the Board concluded that it did not have the power to construe or interpret the Baltimore County Code, so the Board was unable to answer Petitioners' question regarding under what circumstances a County Code Inspector may enter onto private land. Board's Opinion at 10.

Following the Board's Opinion denying the Riffins' Petition for Special Hearing with respect to the proposed uses issue and dismissing the Petition with respect to the Code Inspector Issue, Petitioners James Riffin, Karole Riffin, and William Geddes timely filed a Joint Petition for Judicial Review.

QUESTIONS PRESENTED

Maryland Rule 7-207 requires that a Memorandum set forth a concise statement of the questions presented for review. In Petitioner's Memorandum, under the heading

"Questions Presented for Review," Petitioners list issues before the Zoning Commissioner, issues before the Board of Appeals, issues raised "due to People's Counsel's intervention," "Additional Issues Raised Due to Board Of Appeals' Decision," and even "Issues Not Presented." Accordingly, the requirement of Maryland Rule 7-207 that a memorandum include a "concise statement" of the questions presented for review has not been met.

This Court will consider the following questions as having been suggested by one or more issues raised by Petitioners:

- (1) Whether the Board of Appeals erred in concluding that the Riffins' uses were not permitted in R.C. 6 or D.R. 1 zoned land?
- (2) Was the County Code Inspector authorized to enter onto the Riffins' property?

STANDARD OF REVIEW

"A court's role in reviewing an administrative agency adjudicatory decision is narrow." *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 67 (1999). The court is "limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine [sic] if the administrative decision is premised upon an erroneous conclusion of law." *United Parcel Service, Inc. v. People's Counsel for Baltimore County*, 336 Md. 569, 577 (1994).

"In applying the substantial evidence test, a reviewing court decides 'whether a reasoning mind reasonably could have reached the factual conclusion the agency reached.'" *Banks*, 354 Md. at 68 (quoting *Bulluck v. Pelham Wood Apts.*, 283 Md. 505, 512 (1978)). The court "must review the agency's decision in the light most favorable

to it; the agency's decision is prima facie correct and presumed valid...." *CBS, Inc. v. Comptroller*, 319 Md. 687, 698 (1990) (quoting *Ramsay, Scarlett & Co., Inc. v. Comptroller*, 302 Md. 825, 834-35 (1985)). The forgiving substantial evidence test applies both to questions of fact and to mixed questions of law and fact. See *Baltimore Lutheran High School Ass'n, Inc. v. Employment Sec. Admin.*, 302 Md. 649, 664 (1985) ("even if conflicting inferences could be drawn from the factual findings made by [the] Board in the exercise of its function as the trier of fact...it is for the Board to draw the inference, not the reviewing court"). Where the agency's factual findings are supported by substantial evidence and those findings support more than one legal conclusion, the Court may not substitute its judgment for that of the agency's, so long as the agency's legal conclusion was reasonable. See *Ramsay, Scarlett & Co., Inc.*, 302 Md. at 839. "When, however, the agency's decision is predicated solely on an error of law, no deference is appropriate and the reviewing court may substitute its judgment for that of the agency." *Maryland State Police v. Lindsey*, 318 Md. 325, 334 (1990).

DISCUSSION

A Petition for Special Hearing under BCZR § 500.7 is analogous to a declaratory judgment proceeding. *Antwerpen v. Baltimore County*, 163 Md. App. 194, 209 (2005). Through such a hearing, a person can determine any rights that person has in any property in Baltimore County, insofar as those rights are affected by the zoning regulations. See BCZR § 500.7. The purpose of the Riffins' Petition for Special Hearing was to determine whether their proposed uses of their property were lawful under the BCZR. A particular use or structure must be enumerated as permitted by right or by special exception in the applicable zoning regulation in order to be legally permissible.

BCZR § 102.1 ("No land shall be used or occupied and no building or structure shall be erected, altered, located or used except in conformity with these regulations and this shall include any extension of a lawful nonconforming use.")

The Riffins' property is partially zoned as R.C. 6 (Rural Conservation and Residential) and partially zoned as D.R. 1 (Density Residential). The uses permitted in a R.C. 6 zone are enumerated in BCZR § 1A07.3. The uses permitted by right include, among other uses, dwellings, farms, open space, schools, streets, churches, and accessory uses or structures. BCZR § 1A07.3A. There are additional uses which are permitted by special exception, which are listed in BCZR § 1A07.3B. The uses permitted in a D.R. zone are enumerated in BCZR § 1B01.1A, and uses permitted by special exception are listed in BCZR § 1B01.1C.

Having reviewed the Board's decision in the light most favorable to the Board, and presuming that the Board's decision is correct, this Court finds that there is substantial evidence in the record to support the Board's conclusions that the Riffins' uses are not permitted in R.C. 6 or D.R. 1 zoned land.

Petitioners are correct that farms are permitted uses in R.C. 6 zones and D.R. zones. BCZR § 1A07.3A(2); BCZR § 1B01.1. "Farm" is defined as "three acres or more of land, and any improvements thereon, used primarily for commercial agriculture, as defined in these regulations, or for residential and associated agricultural uses." BCZR § 101.1. However, the Board concluded that Petitioners failed to present evidence of any sales or active agricultural activities and so there was no ongoing commercial agriculture. Board's Opinion at 8. Mr. Riffin testified that all of his equipment is dedicated to the cultivation of his trees, and occasionally to cull his trees. Transcript of

the OAH Hearing ("Transcript") at 69:18-21. Mr. Riffin also testified that he last sold a piece of wood from his trees approximately three years ago, and that he is "not in the market of selling right now...." Transcript at 68:17-18.

Mr. Riffin asserted that his railroad equipment, tracks, and caboose are his toys, and that this equipment is used for recreational purposes. Transcript at 71:17-25. However, the Board is correct that railroad equipment used for recreational purposes is not listed as a permitted use by right or by special exception in D.R. Zones or R.C. 6 Zones. Board's Opinion at 8; BCZR §§ 1A07.3, 1B01.1.

Petitioners also contend that the Riffins' uses are permissible because they are accessory uses or structures, permitted under BCZR § 1A07.3A(7) and § 1B01.1A(18). An accessory use or structure is one that "(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...." BCZR § 101.1.

County Inspector Mills testified that he observed trains, cranes, road tires, Bobcats, van lifts, junk, trash, debris, untagged cars, inoperable motor vehicles, cylinders, front-end loaders, school busses, compressors, hood vents, ladders, concrete and trailers on the Riffins' property. Transcript at 88:19-89:3. Mr. Riffin testified that his crane has a boom length of ninety-two feet, and that he also has a man lift capable of lifting him eighty-two feet in the air. Transcript at 35:20-24; 58:7-9.

The Board found that the Riffins' property appears to be residential use, and the State Department of Assessments Real Property data sheet identifies the property as residential. Board's Opinion at 8-9. Considering the amount of equipment on the Riffins' property, and the size of that equipment, this Court concludes that there is substantial evidence in the record to support the Board's finding that the Riffins' uses do not meet the "accessory use or structure" definition. Board's Opinion at 9. This is especially apparent, when considering that the Court of Appeals has analyzed the meaning of "incidental" and concluded that a twelve feet by twenty-two feet second-floor addition to a structure was not "incidental." Board's Opinion at 9-10; *Dampman v. City of Baltimore*, 231 Md. 280, 286-87 (1963). Despite Petitioners' argument that 1.5 acres of the Riffins' property is used for residential purposes, 1.5 acres is driveway, 8 acres are used for forestry, 1 acre is used for cultivation of fruits and nuts, and only half an acre is used to store the uses at issue, the photographs admitted before the Board, which represent the only photographic evidence of the Riffins' uses, depict a massive quantity of equipment and vehicles. Inspector Mills testified extensively about the uses at issue, which covered a substantial area of the property. Transcript at 77:21-111:6.

Additionally, the Board concluded that the Riffins' various equipment was not "farm equipment," and was more in line with equipment found in a junkyard or contractor's equipment storage yard. Board's Opinion at 10. "Junkyard" is defined as land used for storage or sale of scrap metal, unlicensed or inoperative motor vehicles, used machinery, etc. BCZR § 101.1. "Contractor's Equipment Storage Yard" is defined as space used for the storage of contractor's equipment or machinery, including construction equipment or landscaping equipment. *Id.* Recognizing the Board's

expertise in interpreting zoning regulations, this Court finds that a reasonable mind could reasonably have concluded that the Riffins' equipment does not meet the definition of "farm equipment," and this Court will not substitute its judgment for that of the Board. *Annapolis v. Annap. Waterfront Co.*, 284 Md. 383, 395 (1979); *Motor Vehicle Administration v. Lindsay*, 309 Md. 557, 563 (1987).

Petitioners' argument that the untagged or unlicensed vehicles on the property were permitted uses because they constitute "utility sheds," which are permitted in D.R. zoned property, also cannot succeed. The Board concluded that untagged and inoperable vehicles are not permitted, and the Riffins cannot convert this impermissible use into a permissible one by filling the untagged vehicles with personal belongings or household items and calling them "utility sheds." Otherwise, various impermissible uses could be converted into permissible uses, contrary to the purpose of the BCZR.

This Court acknowledges that the Riffins obtained and introduced into evidence at the hearing before the ALJ letters from many neighbors who do not take issue with the Riffins' equipment or use of their property. It seems that Mr. Riffin is a good neighbor to some, plowing driveways and moving felled trees for certain neighbors. However, Mr. Riffin's neighborliness is not the issue before this Court. Also, it was apparently one or more complaints that triggered the Riffins' citations, which led to the Settlement Agreement between the Riffins and the County and the Riffins' Petition for Special Hearing. Transcript at 87:18-22; 115:23-24.

With regard to Petitioners' question about when a County Code Inspector may enter private land, this Court agrees with the Board that such a question is beyond the jurisdictional scope of the Board. Board's Opinion at 10. The Riffins filed a Petition for

Special Hearing pursuant to BCZR § 500.7. The Zoning Commissioner, or ALJ, has the power to conduct hearings and pass orders that are, in his or her discretion, necessary for the proper enforcement of all zoning regulations. BCZR § 500.7. Determining when a County Code Inspector may enter private land does not involve interpretation or enforcement of zoning regulations, so the Board properly concluded that analyzing that issue was outside its jurisdictional scope. This Court does note that Baltimore County Code § 32-3-602(b) permits inspectors to enter upon private land during the performance of their duties, which include enforcing the Baltimore County Zoning Regulations and inspecting property for enforcement purposes. B.C.C. § 32-3-602(b).

Furthermore, People's Counsel is correct that the exclusionary rule does not apply to civil proceedings, and the photographs taken by Inspector Mills were properly admitted.

Finally, in their Petition for Special Hearing, the Riffins raised the issue more generally, asking under what conditions a county code inspector may enter upon private land. Such a question is not properly phrased, as it seems to seek an advisory legal opinion, and this Court will not address that question.

CONCLUSION

For the reasons set forth above, it is, this 22nd day of December, 2015, hereby

ORDERED that the decision of the Baltimore County Board of Appeals is **AFFIRMED**.


Judge Susan Souder

Copies mailed to:

James and Karole Riffin
P.O. Box 4044
Timonium, MD 21094

William Geddes
1115 Powers Ave.
Cockeysville, MD 21030

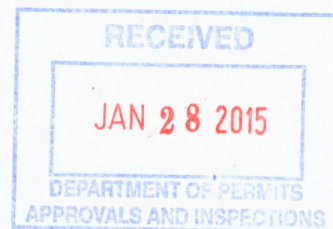
Peter Max Zimmerman
People's Counsel for Baltimore County
105 West Chesapeake Avenue
Towson, MD 21204

R. Brady Locher
111 W. Chesapeake Avenue
Towson, MD 21204



Board of Appeals of Baltimore County

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



January 28, 2015

Civil Clerk
Circuit Court for Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

RE: In the matter of: James Riffin and Karole Riffin – Legal Owner
Civil Action No.: 03-C-14-013332
Board of Appeals Case No.: 14-094-SPH

Dear Clerk:

Enclosed for filing please find the Proceedings before the Administrative Law Judge and the Board of Appeals for Baltimore County. Additionally, please allow this letter to reflect the filing of one accordion folder containing the entire Board of Appeals case file, exhibits, and transcript pursuant to Maryland Rule 7-206.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Tammy A. McDiarmid
Legal Secretary

tam

Enclosures

c: William Geddes
James and Karole Riffin
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Arnold Jablon, Director/PAI
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney/Office of Law
Michael Field, County Attorney/Office of Law



Board of Appeals of Baltimore County

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

January 28, 2015

Civil Clerk
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Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in cursive script, reading "Tammy A. McDiarmid".

Tammy A. McDiarmid
Legal Secretary

tam

Enclosures

c: William Geddes
James and Karole Riffin
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Arnold Jablon, Director/PAI
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney/Office of Law
Michael Field, County Attorney/Office of Law

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
WILLIAM GEDDES,
JAMES RIFFIN AND KAROLE RIFFIN

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

CIVIL ACTION
NO. : 03-C-14-013332

IN THE MATTER OF:
JAMES RIFFIN AND
KAROLE RIFFIN- LEGAL OWNERS
FOR PROPERTY LOCATED AT
11019 GATEWAY ROAD

8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

BOARD OF APPEALS
CASE NO.: 14-094-SPH

RECEIVED AND FILED
2015 JAN 28 A 11:35
CLERK OF CIRCUIT COURT
BALTIMORE COUNTY

* * * * *

**PROCEEDINGS BEFORE THE ADMINISTRATIVE LAW JUDGE
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY**

TO THE HONORABLE, THE JUDGE OF SAID COURT:

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

**ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
OF BALTIMORE COUNTY**

October 15, 2013	Petition for Special Hearing 1) to determine whether the owner's proposed principal and accessory uses enumerated in the petition (and the personal property and equipment described therein) are lawful; and 2) to determine under what conditions may a Code Inspection and Enforcement Officer enter upon private land, filed by James Riffin and Karole Riffin, Petitioners.
November 7, 2013	Entry of Appearance filed by People's Counsel for Baltimore County.
November 28, 2013	Certificate of Publication in newspaper
December 1, 2013	Certificate of Posting.
December 12, 2013	ZAC Comments.
December 20, 2013	Hearing held before the Administrative Law Judge.
December 30, 2013	Memorandum of Petitioner James Riffin.
January 7, 2014	Opinion and Order issued by the Administrative Law Judge wherein the Petition for Special Hearing was DENIED.
February 4, 2014	Motion for Reconsideration filed by Petitioner James Riffin.
February 19, 2014	Motion to Stay Decision on Motion for Reconsideration until after Petitioner Submits His Memorandum of Law filed by Petitioner James Riffin.
February 24, 2014	Memorandum of Law of Petitioner James Riffin.
February 25, 2014	Order on Motion for Reconsideration issued by the Administrative Law Judge wherein the Motion was DENIED.
March 26, 2014	Notice of Appeal filed by William Geddes.
March 31, 2014	Appeal received by Board of Appeals.
April 16, 2014	Notice of Assignment issued by the Board. Hearing scheduled for June 5, 2014.
May 9, 2014	Notice of Postponement and Reassignment issued by Board. Hearing rescheduled for July 15, 2014 due to the unavailability of Board members.

July 11, 2014	Copy of Transcript of Hearing held December 20, 2013 before the Administrative Law Judge.
July 14, 2014	Appellant and Petitioners' Joint Motion Challenging People's Counsel Standing to Appear in this Proceeding filed by William Geddes, James Riffin and Karole Riffin.
July 14, 2014	People's Counsel for Baltimore County's Pre-Hearing Memorandum Concerning Certain Preliminary Issues
July 14, 2014	Appellant and Petitioners' Joint Motion to Proceed on the Existing Record in this Proceeding filed by William Geddes, James Riffin and Karole Riffin.
July 15, 2014	Appellant and Petitioners' Joint Reply to People's Counsel's Pre-Hearing Memorandum Concerning Certain Preliminary Issues.
July 15, 2014	Appellant and Petitioners' Joint Argument
July 15, 2014	Board convened for Public Deliberation on Appellant and Petitioners' Joint Motion Challenging People's Counsel for Baltimore County's Standing to Appear in these Proceedings; Appellant and Petitioner's Joint Motion to Proceed on Existing Record in this Proceeding; People's Counsel for Baltimore County's Pre-Hearing Memorandum Concerning Certain Preliminary Issues; and responses thereto.
July 15, 2014	Board convened for a hearing.

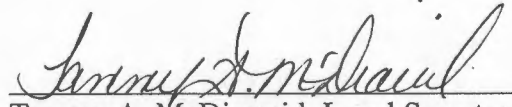
Exhibits submitted at hearing before the Board of Appeals:

People's Counsel Exhibit No.

- 1 – Deed dated August 9, 1976, Liber 5663, folio 511
- 2 – SDAT print-out, 11019 Gateway Road
- 3 – My Neighborhood Map
- 4 – Aerial-black and white, sections marked in green/pink
- 5 A-U – Code Enforcement Inspection Photos with cover sheet,
7/26/2013
- 6 – A-F Code Enforcement Inspection Pictures with cover sheet,
9/16/2013
- 7 – Google Earth photo of driveway
- 8 – Email and zoning history documents, 11/12/2013

July 30, 2014	Appellant and Petitioners' Joint Closing Argument / Brief submitted by William Goddes and James Riffin and Karole Riffin, with attached Memorandum of Petitioner James Riffin.
July 30, 2014	People's Counsel for Baltimore County's Post-Hearing Memorandum
August 4, 2014	Appellant and Petitioners' Joint Reply to People's Counsel's Post-Hearing Memorandum filed by Appellant William Geddes, and Petitioners James Riffin and Karole Riffin.
August 5, 2014	Board convened for Public Deliberation on Petition for Special Hearing, and to determine when Code Enforcement Official is permitted to enter upon private property.
November 7, 2014	Opinion and Order issued by the Board in which the Petition for Special Hearing was DENIED.
December 5, 2014	Petitioners' Joint Petition for Judicial Review of the November 7, 2014 Decision of the Baltimore County Board of Appeals in Case No. 2014-0094-SPH filed in the Circuit Court for Baltimore County by William Geddes, Appellant, and James Riffin and Karole Riffin, Appellants/ Petitioners.
December 11, 2014	Copy of Petitioners' Joint Petition for Judicial Review of the November 7, 2014 Decision of the Baltimore County Board of Appeals in Case No. 2014-0094-SPH received from the Circuit Court for Baltimore County by the Board of Appeals.
December 16, 2014	Certificate of Compliance sent to all parties and interested persons.
December 16, 2014	Response to Petition for Judicial Review filed in the Circuit Court for Baltimore County by People's Counsel for Baltimore County.
January 28, 2015	Transcript of testimony filed.
January 28, 2015	Record of Proceedings filed in the Circuit Court for Baltimore County.

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



Tammy A. McDiarmid, Legal Secretary
Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3180

c: William Geddes
James and Karole Riffin
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney/Office of Law
Michael Field, County Attorney/Office of Law

PETITION OF WILLIAM GEDDES & JAMES AND
KAROLE RIFFIN FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

* IN THE
*
* CIRCUIT COURT

IN THE CASE OF JAMES & KAROLE RIFFIN
LEGAL OWNERS, PETITION FOR SPECIAL HEARING
ON PROPERTY LOCATED AT 11019 GATEVIEW RD

*
* FOR

8th Election District, 3rd Councilmanic District

* BALTIMORE COUNTY

Case No. 2014-094-SPH
Before the County Board of Appeals

* Case No. 03-C-14-013332

* * * * *

RESPONSE TO PETITION FOR JUDICIAL REVIEW

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, in accordance with Maryland Rule 7-204, submits this response to the Petition for Judicial Review filed by William Geddes and James & Karole Riffin and states that it intends to participate in this action for Judicial Review. The undersigned participated in the proceeding before the County Board of Appeals.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S Demilio

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

RECEIVED

DEC 16 2014

BALTIMORE COUNTY
BOARD OF APPEALS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of December, 2014, a copy of the foregoing Response to Petition for Judicial Review was mailed to Will Geddes, 11115 Powers Avenue, Cockeysville, Maryland 21030 and to James & Karole Riffin, 1941 Greenspring Drive, Timonium, MD 21093.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF:
WILLIAM GEDDES,
JAMES RIFFIN AND KAROLE RIFFIN

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

IN THE MATTER OF:
JAMES RIFFIN AND
KAROLE RIFFIN- LEGAL OWNERS
FOR PROPERTY LOCATED AT
11019 GATEWAY ROAD

8TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

BOARD OF APPEALS
CASE NO.: 14-094-SPH

* * * * *

CERTIFICATE OF COMPLIANCE

Madam Clerk:

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

William Geddes
11115 Powers Avenue
Cockeysville, MD 21030

James Riffin
Karole Riffin
1941 Greenspring Drive
Timonium, MD 21093

RECEIVED AND FILED

2014 DEC 16 P 1:54

CLERK OF CIRCUIT COURT

CIVIL ACTION BALTIMORE COUNTY

NO. : 03-C-14-013332

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, MD 21204

Lawrence M. Stahl
Managing Administrative Law Judge
The Jefferson Building, Suite 103
105 W. Chesapeake Avenue
Towson, MD 21204

Arnold Jablon, Director
Permits, Approvals and Inspections
County Office Building
111 W. Chesapeake Avenue, Suite 105
Towson, MD 21204

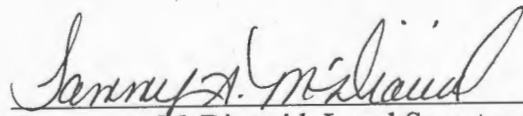
Andrea Van Arsdale, Director
Department of Planning
The Jefferson Building, Suite 100
105 W. Chesapeake Avenue
Towson, MD 21204

Nancy C. West, Assistant County Attorney
Baltimore County Office of Law
The Historic Courthouse
400 Washington Avenue
Towson, MD 21204

Michael Field, County Attorney
Baltimore County Office of Law
The Historic Courthouse
400 Washington Avenue
Towson, MD 21204

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

I HEREBY CERTIFY that on this 16th day of December, 2014 a copy of the foregoing Certificate of Compliance has been mailed to the individuals listed above.



Tammy A. McDiarmid, Legal Secretary
Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3180



Board of Appeals of Baltimore County

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

December 16, 2014

William Geddes
11115 Powers Avenue
Cockeysville, Maryland 21030

James Riffin
Karole Riffin
1941 Greenspring Drive
Timonium, Maryland 21093

RE: Petition for Judicial Review
Circuit Court Case No.: 03-C-14-013332
In the Matter of: James Riffin and Karole Riffin – Legal Owners
Board of Appeals Case No.: 14-094-SPH

Dear Mr. Geddes and Mr. and Mrs. Riffin:

Notice is hereby given, in accordance with the Maryland Rules that a Petition for Judicial Review was filed on December 5, 2014 by William Geddes, James Riffin and Karole Riffin, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response with the Circuit Court for Baltimore County within 30 days after the date of this letter, pursuant to the Maryland Rules.

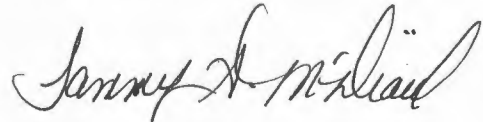
In accordance with the Maryland Rules, the Board of Appeals is required to submit the record of proceedings of the Petition for Judicial Review within 60 days. William Geddes, James Riffin and Karole Riffin, having taken the appeal, are responsible for the cost of the transcript of the record and the transcript must be paid for in time to transmit the same to the Circuit Court within the 60 day timeframe as stated in the Maryland Rules.

Courtsmart was the official record of the hearings before the Board. The disk(s) will be copied by this office and provided to you for transcription. The transcriptionist must meet the requirements set forth in Maryland Rule 16-406d(B) which states: "*a stenographer, court reporter, or transcription service designated by the court for the purpose of preparing an official transcript from the recording.*" The Board of Appeals can assist in obtaining a qualified transcriptionist upon request.

Please be advised that the ORIGINAL transcripts must be provided to the Board of Appeals no later than JANUARY 28, 2015 so that they may be transmitted to the Circuit Court with the record of proceedings, pursuant to the Maryland Rules.

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

Very truly yours,



Tammy A. McDiarmid
Legal Secretary

Duplicate Original
Enclosure

c: Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Arnold Jablon, Director/PAI
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney
Michael Field, County Attorney/Office of Law



Board of Appeals of Baltimore County

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

December 16, 2014

William Geddes
11115 Powers Avenue
Cockeysville, Maryland 21030

James Riffin
Karole Riffin
1941 Greenspring Drive
Timonium, Maryland 21093

RE: Petition for Judicial Review
Circuit Court Case No.: 03-C-14-013332
In the Matter of: James Riffin and Karole Riffin – Legal Owners
Board of Appeals Case No.: 14-094-SPH

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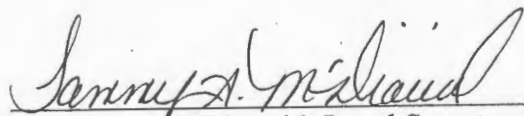
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Tammy A. McDiarmid, Legal Secretary
Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3180

COPY

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF **WILLIAM GEDDES**,
11115 POWERS AVENUE, COCKEYSVILLE, MD 21030,

AND PETITION OF **JAMES RIFFIN AND KAROLE RIFFIN**,
P. O. BOX 42, COCKEYSVILLE, MD, 21030,

FOR JUDICIAL REVIEW OF THE NOVEMBER 7, 2014
DECISION OF THE BALTIMORE COUNTY
BOARD OF APPEALS, Suite 203, 105 W. Chesapeake Ave
Towson, MD 21204

IN THE CASE OF:

In re: 11019 Gateview Road
Cockeysville, MD 21030

Case No.: 2014 - 0094 - SPH

RECEIVED AND FILED

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CIVIL ACTION
CLERK OF CIRCUIT COURT
BALTIMORE COUNTY
NO.:

03-C-14-13332

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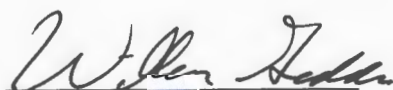
BALTIMORE COUNTY
BOARD OF APPEALS

* * * * *

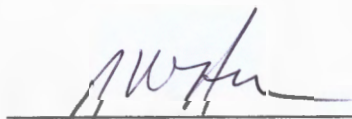
**PETITIONERS' JOINT PETITION FOR JUDICIAL REVIEW
OF THE NOVEMBER 7, 2014 DECISION OF THE BALTIMORE COUNTY
BOARD OF APPEALS IN CASE NO.: 2014 - 0094 - SPH**

William Geddes, Appellant and a party before the Board of Appeals, and **James Riffin** and **Karole Riffin**, Petitioners in the Special Hearing before the Zoning Commissioner, and parties before the Board of Appeal, jointly and severally file this **Petition for Judicial Review** of the **November 7, 2014** decision rendered by the Baltimore County Board of Appeals in Board of Appeals Case No. **2014 - 0094 - SPH**.

Respectfully,



William Geddes
Appellant



James Riffin
Petitioner



Karole Riffin
Petitioner

CIRCUIT COURT FOR BALTIMORE COUNTY
Julie L. Ensor
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-14-013332

TO: BALTIMORE COUNTY BOARD OF APPEALS THE
105 W Chesapeake Ave
Suite 203
Towson, MD 21204

RECEIVED
DEC 11 2014
BALTIMORE COUNTY
BOARD OF APPEALS

RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
11019 Gateview Road; E/end of Gateview		
Road, 140' E of Norgate Court	*	BOARD OF APPEALS
8 th Election & 3 rd Councilmanic Districts		
Legal Owner(s): James & Karole Riffin	*	FOR
Petitioner(s)	*	BALTIMORE COUNTY
	*	2014-094-SPH

* * * * *

OPINION

Background

This case comes to the Board of Appeals for Baltimore County (CBA) as an appeal from a Petition for Special Hearing heard before Administrative Law Judge John Beverungen (ALJ) pursuant to a October 9, 2013 Complete and Comprehensive Settlement Agreement (the Agreement) between the County and the Petitioners. The Agreement and subsequent hearing before ALJ Beverungen grows out of County Zoning Enforcement proceedings brought against James and Karole Riffin. The issues presented during the hearing before ALJ Beverungen related to the legality of several land uses at their residential property at 11019 Gateview Road in the northern county. In exchange for the County staying enforcement of several citations related to the Riffin property, the Riffins agreed to allow ALJ Beverungen to make a legal determination as to legality of machinery located on the property. The Riffins also agreed to waive their right to appeal the ALJ's findings.

The Agreement enabled the Riffins to file a Petition for Special Hearing, during which time the county would suspend enforcement proceedings, pending a decision by the Administrative Law Judge. The County agreed also that the County Attorney's Office would not participate in the proceedings. The Riffins agreed, in turn, that they would abide by and comply with the ALJ decision. As stated in the Agreement:

"James and Karole Riffin agree that the Order of the Administrative Law Judge is a final Order and they will forego any right to appeal or otherwise contest the Order."

On October 15, 2013, as contemplated by the Agreement, the Riffins filed a Petition for Special Hearing to determine the legitimacy of many controversial uses on their property.

After a hearing, ALJ John Beverungen denied the petition by opinion and order dated January 7, 2014. Upon review of Petitioners' Motion for Reconsideration, ALJ Beverungen issued his final order denying the motion on February 25th 2014. As agreed, the County Attorney's office did not appear in the proceedings.

The Petitioners, James and Karole Riffin, did not appeal. But a neighbor, Will Geddes, filed an appeal. Despite the agreement with County, Mr. Riffin filed a memorandum in Mr. Geddes' appeal before this Board and appeared as a participant at the hearing. Both Mr. Riffin and Mr. Geddes appeared without counsel. Peter Max Zimmerman appeared on behalf of People's Counsel. Baltimore County did not participate in the hearing.

PRELIMINARY MOTIONS

Prior to the Board's hearing of this matter, Mr. Riffin filed motions contesting People's Counsel's standing to participate in this appeal and requested that the appeal before the Board be on the record and not held *de novo*.

1. Does People's Counsel have standing to participate in the case at bar?

People's Counsel for Baltimore County argues that it appears in zoning cases to defend the comprehensive zoning maps and master plan in the public interest. Baltimore County Charter Sec. 524.1 People's Counsel further states that the office's function and responsibility extends broadly to zoning and related cases, including special hearings and development cases with zoning issues.

Section 524.1(a)(3)A, it states in pertinent part,

"Powers and duties. The People's Counsel shall have the following powers and duties:

He shall appear as a party before the zoning commissioner of Baltimore County, his deputy, the county board of appeals, the planning board, and the courts on behalf of the interests of the public in general to defend any duly enacted master plan and/or comprehensive zoning maps as adopted by the county council, and in any matter or proceeding now pending or hereafter brought involving zoning reclassification and/or variance from or special exception under the Baltimore County Zoning Regulations as now or hereafter in force or effect, in which he may deem the public interest to be involved."

People's Counsel cites People's Counsel v. A.V. Williams 45 Md. App. 617 (1980), a zoning reclassification case, where the appellate courts approved and recognized People's Counsel's participation and standing. Additionally, People's Counsel notes that in 1989, the Court of Appeals recognized the authority of People's Counsel to participate in special hearing cases. People's Counsel v. Maryland Marine Mfg. Co. 316 Md. 491 (1989), determination of geographic extension of zoning lines into navigable waters; Board of Child Care v. Harker 316 Md. 683 (1989), zoning of child care facilities, including preemption and immunity issues.

In 1992, upholding People's Counsel's participation in development cases where zoning issues are involved, the Court of Appeals discussed the office's "broad charge to protect the public interest in zoning and related matters." People's Counsel v. Crown Development Corp. 328 Md. 303, 317 (1992). The case arose in a County Review Group residential development proceeding, but also involved a zoning issue relating to transfer of density. Judge McAuliffe wrote:

"People's Counsel has been given a broad charge to protect the public interest in zoning and related matters. See Baltimore County Charter Sec. 524.1. Density regulation is an important part of the zoning process. West Mont. Assn. V. MNCP & P Com'n 309 Md. 183 (1987). Although participation in the development process may often be outside the intended ambit of People's Counsel's authority, where protection against a violation of a density regulation is involved, People's Counsel has a legitimate interest."

In the case at bar, Petitioners James and Karole Riffin request a determination as to whether various uses at their Gateview Road property are permitted under Baltimore County Zoning Law. Consequently, the following regulations become applicable: BCZR Section 102.1

relating to permitted uses generally; BCZR 1B01 for the D.R. 1 (Density Residential) Zone; BCZR Sec. 1A07 for the R.C. 6 (Rural Conservation and Residential) Zone; BCZR 101.1 for definitions of principal and accessory uses; and several other provisions of the zoning law. In light of the plethora of cases cited by People's Counsel and the standard practice of this Board, the Board is convinced that these issues are directly within the purview of People's Counsel's charter authority and that its participation in this matter is appropriate.

2. Is the Petitioner's Appeal to be heard *de novo*?

County Charter Section 603 states, in relevant part,

"All hearings held by the board shall be *novo*, unless otherwise provided by legislative act of the County Council, and shall be open to the public."

The appellate courts have recognized this provision Pollard's Towing v. Berman's Body Frame & Mechanical 137 Md. App. 277, 289 (2001). In Pollard's Towing, Judge Moylan explained the contours of the *de novo* process,

"Sect. 603 of the Baltimore County Charter provides:

All hearings held by the board shall be held *de novo*. Boehm v. Anne Arundel County, 54 Md.App. 497, 511, 459 A.2d 590 (1983), elaborated on a *de novo* hearing:

A trial or hearing '*de novo*' means trying the matter anew as if it had not been heard before and as if no decision had been previously rendered.

BCZR Sec. 501.6 is consistent with this framework, in that it begins,

"Appeals from the Zoning Commissioner shall be heard by the Board of Zoning Appeals *de novo*."

The reference to the Zoning Commissioner translates to the Administrative Law Judge, who functions in zoning cases in the capacity of zoning commissioner. See Bill 123-10, Code Sec. 3-12-104(b).

As pointed out by People's Counsel, the pertinent provision for appeals of ALJ decisions in zoning cases is Code Section 32-3-401. It does not "otherwise provide" for an appeal process different from that set by the County Charter as *de novo*.

Based on the wealth of case law, precedent and standard practice of this Board, it is clear and well-established that the case at bar shall be heard *de novo*.

3. May Riffin Contest ALJ Beverungen's final Order

While Mr. Riffin raised the issues of the People's Counsel's standing and the Board's power to hear this matter *de novo*, People's Counsel raised the issue as to whether Mr. Riffin could participate in this matter in the first place. As was previously noted, the Riffins made the commitment in the Agreement that they would not appeal or contest ALJ Beverungen's final Order.

In arguing his position before the Board, Mr. Riffin acknowledged that he was a signatory to the agreement and was bound by it. Mr. Riffin attempted to explain his participation in the hearing before the Board by arguing that the Board of Appeals was not an appellate body and that what he was participating was not an "appeal". As previously discussed, the role of the Board of Appeals in Baltimore County is well established and Mr. Riffin's arguments to the contrary are without merit. Consequently, it is clear that Mr. Riffin was participating in a proceeding that he admitted he was precluded from pursuing by agreement. The agreement between the Riffins and the County was entered into for purposes of equity and judicial economy. Enforcing such agreements is in the interest of sound public policy and should not be disregarded lightly. As Mr. Riffin offered no testimony that he was in anyway mislead or forced into this agreement, this Board will hold him to its conditions and finds that he is precluded from pursuing an appeal of this matter.

While it is clear that Mr. Riffin entered into an agreement with the County which waived his right to appeal, his neighbor Will Geddes made no such agreement and is permitted to pursue an appeal pursuant to statute.

BCC §32-3-401(a) *In general.* A person aggrieved or feeling aggrieved by a decision of the Zoning Commissioner or the Director of Permits, Approvals, and Inspections may appeal the decision or order to the Board of Appeals.

In light of BCC §32-3-401(a), Mr. Geddes clearly testified that he felt “aggrieved” by ALJ Beverungen’s decision. Despite the fact that this Board finds that Mr. Geddes’ appeal is contrary to the spirit of the Agreement between the Riffins and the County, we are obligated to allow him to proceed as the Appellant in that he was not a signatory to the Agreement.

DISCUSSION

After a clarification of the issues, this case then went forward on the merits of the proposed land uses with Mr. Geddes acting as the Appellant. Mr. Geddes testified personally and called James Riffin as a witness, who often took the opportunity to answer fact questions with legal arguments. People’s Counsel called Inspector Phillip Mills, who testified to his two site visits in July and September, 2013. He produced an array of 108 photos correlated with “zones” delineated on a GIS aerial photo of the property. P.C. Ex. 4, 5A-U, 6A-F. Mr. Riffin objected. Mr. Riffin contended either that Mr. Mills’ evidence somehow violated the County Attorney’s promise not to participate or that his “search” was improper. This objection was overruled. Inspector Mills’ testimony and photos provide the only pictorial evidence of the actual site conditions and uses.

During the hearing, it was clearly established through Mr. Geddes’ testimony that he had been instructed to “sign” an Appeal drafted by Mr. Riffin, with Mr. Riffin also paying the appeal fee. Mr. Geddes testified additionally that Mr. Riffin plows his driveway in the winter, and, as

far as he is concerned, Mr. Riffin's uses are not objectionable to him. Mr. Geddes was not familiar with the nature of the issues involved in the Petition for Special Hearing.

SPECIAL HEARING PETITIONS

Despite the unique procedural issues present in the case at bar, the actual purpose of the Appeal before the Board is to determine the questions presented in the Request for Special Hearing as previously done by ALJ Beverungen.

Special Hearing petitions under BCZR Sec. 500.7 relate either to determination, and application of zoning law to particular situations or to determination of nonconforming use status. The present case is the former. In Antwerpen v. Baltimore County 165 Md. App. 194, 209 (2005), Judge Salmon found that a Special Hearing is analogous to a declaratory judgment proceeding. It is the CBA's function to declare the rights of the parties under the law.

As argued by People's Counsel, the interpretation of zoning use definitions involves evaluation of law and language and also applies to the differentiation of accessory and principal uses. Arundel Supply Co. v. Cason 265 Md. 371, 377-78 (1972); Smith v. Miller 249 Md. 390, 394-95 (1968); St. Clair v. Colonial Pipeline Co. 235 Md. 578, 582-83 (1964); Kenyon v. Board of Zoning Appeals 235 Md. 388, 394 (1964); Kowalski v. Lamar 25 Md. App. 493, 496-501 (1975); United Parcel Service v. People's Counsel 93 Md. App. 59, 71-74 ((1993), rev'd on other grounds 336 Md. 569 (1994).

Under zoning law, to be permitted, a use or structure must be enumerated as permitted by right or special exception in the particular zone. BCZR Sec. 102.1 states,

"No land shall be used or occupied and no building or structure shall be erected, altered, located or used except in conformity with these regulations and this shall include any extension of a lawful nonconforming use." Apx. 25.

See Kowalski v. Lamar 25 Md. App. 493, 496-501 (1975); People's Counsel for Baltimore County v. Surina 400 Md. 662, 688 (2007).

The uses at issue are located in the main R.C. 6 Zone section of the split-zoned property. The R.C. 6 Zone permitted uses are listed in BCZR Sec. 1A07.3. As noted by People's Counsel, none of Riffins' uses, described earlier, are listed as permitted uses, either by right or special exception. The uses are likewise not among the uses permitted by right or special exception in D.R. (Density-Residential) Zones. BCZR Sec. 1B01.1.A, C.

The Appellant, through the testimony of Mr. Riffin, argues his uses are either accessory to farming, recreational, or part of his hobbies. As to farm use, he says he is growing trees for eventual sale for use as "mast" grade lumber. He contends that such lumber is marketable for use as ship masts. There was no evidence presented of any current sales or active agricultural activities. Mr. Riffin testified that it would be several years before his trees would be ready for sale and could not recall any past sales.

As noted by People's Counsel, the burden of proof is on the petitioners. See Grasslands Plantation v. Frizz-King Enterprises 410 Md. 191, 204-17 (2009); Turner v. Hammond 270 Md. 41, 54-55 (1974). Unfortunately, neither Mr. Geddes nor Mr. Riffin provided any testimony that would lead to that burden being met. Mr. Geddes' testimony had nothing to do with the issues. Mr. Riffin went through a catalog of his uses and stated his case for their legitimacy. He said some of the equipment was used to trim trees which eventually might be sold years from now. But he did not provide specifics.

As Mr. Riffin clarified, the crane and railroad equipment were imported relatively recently from Mr. Riffin's industrial properties on Greenspring Dr. and Beaver Dam Road. The State Department of Assessments Real Property data sheet entered into evidence by Peoples Counsel identifies the Gateview Road property as residential.

People's Counsel called Inspector Mills as a witness to provide personal observations and photographic evidence of the specific land uses.

Through the aerial photography provided by People's Counsel and the testimony of Inspector Mills, the property appears to be residential use; there is a significant wooded area; and there are the various items of construction equipment; railroad cars, tracks, and material; and trucks, buses, and automobiles.

BCZR §101.1 defines "accessory use or structure" and "principal use." Apx. 19:

"ACCESSORY USE OR STRUCTURE: 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; except that, where specifically provided in the applicable regulations, accessory off-street parking need not be located on the same lot. An accessory building, as defined above, shall be considered an accessory structure. A trailer may be an accessory use or structure if hereinafter so specified. An ancillary use shall be considered as an accessory use; however, a use of such a nature or extent as to be permitted as a "use in combination" (with a service station) shall be considered a principal use."

"PRINCIPAL USE: A main use of land, as distinguished from an accessory use."

As noted by People's Counsel, here, the size, scope, and character of the various uses are of sufficient magnitude to exceed the framework of "accessory uses." The proposed uses do not meet the "accessory use or structure" definitional criterion of (a) "customarily incident and subordinate to ... the principal use." Nor are they (b) "subordinate in area, extent, or purpose." Rather, they are akin to a "principal use." It is "[a] main use of land, as distinguished from an accessory use."

There is nothing "incidental," or "appertaining, subordinate, or casual," about this use or structure either in size or character. In Dampman v. City of Baltimore 231 Md. 280 (1963), the Court analyzed the meaning of "incidental" where the ordinance allowed an "incidental" addition to a legal nonconforming use. The Court held that a second-floor addition, 12 feet wide and 22 feet long was not incidental, and wrote,

"The statute in requiring that the use be 'incidental' does not, we think, contemplate a major addition to or a major expansion of the nonconforming use, but rather one appertaining, subordinate or casual thereto." 231 Md. at 286.

Here, the uses of Mr. Riffin's property are more in line with the BCZR 101.1 definitions of "contractor's equipment storage yard" and "junkyard." As noted by ALJ Beverungen many of these items are more akin to things found in a "contractor's equipment storage yard" not on a residential property. As the Webster's 3rd New International Dictionary defines "farm equipment" as including combines, farm tractors, plows, harrows, seeders, balers and spreaders, this Board is not persuaded that any of the items found on Mr. Riffin's property meet this definition either.

In sum, the various uses are not accessory to the principal residential use and are not recreational residential uses.

In regards to the Appellant's question as to whether a County Code Inspector can enter onto private land, this Board concurs with ALJ Beverungen that such a question is beyond the jurisdictional scope of the OAH, and thus is beyond the jurisdictional scope of the Board of Appeals. Both the B.C.C. and the B.C.Z.R. provide that the Zoning Commissioner may interpret the zoning regulations, however, the Zoning Commissioner is not given the power to construe or interpret the B.C.C. in the context of a Special Hearing. Accordingly, the Board will not address this issue.

Consequently, Appellant's Special Hearing Request should be dismissed without prejudice with respect to the Code Inspector issue and DENIED with respect to the proposed uses and storage of enumerated equipment in the DR and RC zone.

ORDER

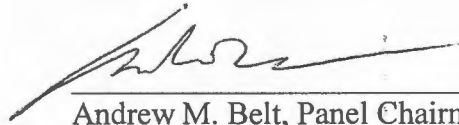
THEREFORE, IT IS THIS 7th day of November, 2014 by the

Board of Appeals of Baltimore County

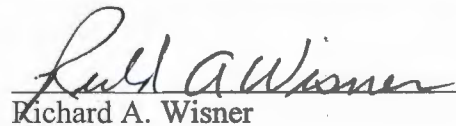
ORDERED that the Petition for Special Hearing to determine which uses are permitted in a DR-1, RC-6, zone and which are non-conforming be and is hereby DENIED.

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

**BOARD OF APPEALS
FOR BALTIMORE COUNTY**

A handwritten signature in dark ink, appearing to read "Andrew M. Belt", written over a horizontal line.

Andrew M. Belt, Panel Chairman

A handwritten signature in dark ink, appearing to read "Richard A. Wisner", written over a horizontal line.

Richard A. Wisner

Wayne R. Gioioso, Jr. was a Panel member at the hearing on July 15, 2014 and public deliberation on August 5, 2014. He resigned effective October 11, 2014.



Board of Appeals of Baltimore County

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

November 7, 2014

Mr. Will Geddes
11115 Powers Avenue
Cockeysville, Maryland 21030

Peter M. Zimmerman, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, Maryland 21204

RE: *In the Matter of: James & Karole Riffin – Legal Owners*
Case No.: 14-094-SPH

Dear Mr. Geddes and Mr. Zimmerman:

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

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT.** Please note that all **Petitions for Judicial Review** filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: James & Karole Riffin
Lawrence M. Stahl, Managing Administrative Law Judge
Arnold Jablon, Director/PAI
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney
Michael Field, County Attorney/Office of Law



Board of Appeals of Baltimore County

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Very truly yours,

A handwritten signature in cursive script that reads "Sunny Cannington".

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: James & Karole Riffin
Lawrence M. Stahl, Managing Administrative Law Judge
Arnold Jablon, Director/PAI
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney
Michael Field, County Attorney/Office of Law



County Board of Appeals of Baltimore County

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

August 8, 2014

Mr. James Riffin
1941 Greenspring Drive
Timonium, Maryland 21093

Re: In the Matter of: James & Karole Riffin
Case No. 14-094-SPH

Dear Mr. Riffin:

I am in receipt of your request for a transcript in the above referenced matter. Please be advised that we have sent the recording to the typist listed below.

The typist has been instructed to contact you by phone upon receipt of the recording. She will be able to provide you with the estimated cost, required deposit, and projected completion date.

Please direct all payments and questions regarding the transcript to the typist listed below.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Tammy McDiarmid".

Tammy McDiarmid
Legal Secretary

Typist:	Christine Leary
Telephone #:	443-622-4898
Mailing Address:	9529 Fox Farm Road, Baltimore, MD 21236

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County

Phone: 410-887-3180

Fax: 410-887-3182

To: Chris

From: Tammy McDiarmid, Legal Secretary

Date: August 8, 2014

Re: In the matter of: James & Karole Riffin
Case No.: 14-094-SPH

Hi,

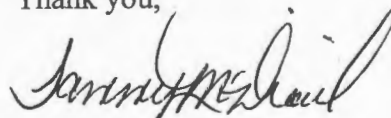
The attached is the recording from the above referenced case which was held on July 15, 2014. The Board members who sat on this case are Andrew M. Belt, Chairman; Wayne R. Gioioso, Jr., took exhibits; and Richard A. Wisner, operated CourtSmart.

I have enclosed a copy of the Address list for your convenience.

Mr. James Riffin is requesting the transcript of the hearing and is responsible for the cost. His contact information is below.

Should you have any questions or problems, please do not hesitate to contact me.

Thank you,



Tammy McDiarmid

Mr. James Riffin
1941 Greenspring Drive
Timonium, MD 21093
(443) 414-6210

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: James and Karole Riffin – Legal Owner 14-094-SPH
Will Geddes - Appellant

DATE: August 5, 2014

BOARD/PANEL: Andrew M. Belt, Chairman
Wayne Gioioso, Jr.
Richard Wisner

RECORDED BY: Sunny Cannington/Administrator

PURPOSE: To deliberate the following:

1. Petition for Special Hearing to determine which uses are permitted in a DR-1, RC-6 and which are non-conforming; and
2. To determine when a Code Enforcement Official is permitted to enter upon private property.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board reviewed the preliminary motions rulings made at the beginning of the hearing on July 15, 2014.
- The Board discussed that a major preliminary issue stemmed from an agreement between Mr. Riffin and Baltimore County. The agreement stated that Mr. Riffin would not appeal the decision of the ALJ in this matter. Mr. Riffin's neighbor, Will Geddes, appealed the decision of the ALJ. The law states that "...anyone feeling aggrieved..." can appeal a zoning case to the Board of Appeals. The Board determined that they could not deny the neighbor their right to due process. The Board also determined that Mr. Riffin was bound by the agreement he entered with the County which meant, he was not able to be a party to this case even though he originally filed the Petition. The Board allowed Mr. Riffin to be a witness for Mr. Geddes.
- The Board discussed the issue of when a Code Enforcement Official is permitted to enter onto private property. The ALJ determined that he did not have jurisdiction to decide this issue. The Board discussed that no evidence or testimony was presented regarding this issue at the hearing in July. The Board determined that this issue is beyond the purview of the Board of Appeals to determine.
- The Board reviewed the issue of use. The property is zoned for residential use and allows for agricultural use. The property is the location of the principle residence of Mr. Riffin. Based on the evidence and testimony presented to the Board, they were not convinced that anything was purposely being grown on the property. The Board acknowledged testimony that a certain type of tree is growing on the property which could be cut down and used for sailing masts but no evidence was presented which proved that an agricultural business is taking place on the property. The Board heard testimony that so far, no trees have been cut and/or sold and no evidence was presented which convinced them the trees would be cut and/or sold.
- The Board also reviewed the types of equipment on the property. They determined that the train and rail equipment is not typically used in an agricultural business. Nor are school buses or cranes. The Board heard candid testimony from Mr. Riffin explaining that he owned several properties which he had sold in the recent past. On one property he had a train yard, on another he

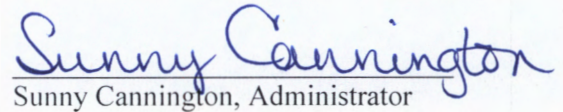
had intended to open a bungee-jumping business. When he sold those properties, he brought the equipment from those sites to this property. The Board determined, based on testimony, that some of the vehicles on the property can be properly tagged, some cannot and must be removed from the property.

- The Board reviewed testimony which convinced them that no one can see any of the equipment on Mr. Riffin's property. Unfortunately, the Board is not aware of a "no harm no foul" statute. The Board determined that in essence, Mr. Riffin is using his property as a contractor's equipment storage yard. The law does not allow such storage yards to be located in a residential zone.
- The Board reviewed that even if Mr. Riffin had an agricultural use on his property, 99% of the equipment, vehicles, and other machinery is not relevant to an agricultural use. The Board discussed that based on the evidence and testimony provided by Mr. Geddes, the only equipment he came in contact with was used for snow removal which is not directly associated with an agricultural use.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY the relief requested in the Petition for Special Hearing.

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

Respectfully Submitted,


Sunny Cannington, Administrator

In re: 11019 Gateview Road
Cockeysville, MD 21030

Before the Board of Appeals
of Baltimore County
Case No.: 2014 - 0094 - SPH

* * * * *

**APPELLANT AND PETITIONERS' JOINT REPLY TO
PEOPLE'S COUNSEL'S POST-HEARING MEMORANDUM**

RECEIVED

AUG 04 2014

**BALTIMORE COUNTY
BOARD OF APPEALS**

1. Come now your Appellant, William Geddes, and Petitioners, James Riffin and Karole Riffin, who respectfully reply to People's Counsel's Post-Hearing Memorandum.

2. People's Counsel's little "sayings" were quite entertaining. Mr. Zimmerman is a well-read man.

3. Had People's Counsel not elected to participate in this proceeding, the issues would have been straight forward. As it turns out, his appearance has raised issues that have come to dominate this proceeding, issues that have no relevance to the merits of this proceeding.

PHILLIP MILLS GAVE PERJURED TESTIMONY

4. James Riffin visited the Baltimore County Code Enforcement Office on Friday, **August 1, 2014**. He asked for a copy of **all** complaints that had been filed for Petitioners' Property. He was handed a copy of three complaints, dated **June 26, 2012, September 12, 2013, and May 14, 2014**. Four photocopies of these complaints are attached hereto.

5. The **June 26, 2012** complaint was filed by E-mail. James Riffin has not been provided with a copy of that e-mail, so he does not presently know who the complaining party was. The Inspector assigned to that Complaint was Mr. Cohen. The complaint states that Mr. Cohen

visited Petitioners' Property on **June 28, 2012**. Mr. Cohen noted on the complaint that the driveway was "chained," and that "no entry signs [were] posted." Mr. Cohen then marked the complaint "case closed."

6. Phillip Mills testified before the Board that on **July 26, 2013**, he visited Petitioners' Property, observed the numerous No Trespassing signs, observed the locked chain across the driveway, and testified that he "walked around the chain, walked down the driveway, and took numerous photographs." Mr. Mills freely admitted to the Board that he trespassed onto Petitioners' posted Property.

7. A copy of the photographs that Mr. Mills took on July 26, 2013, was introduced into the record by People's Counsel. The photographs are date-stamped: **July 26, 2013**. On that date, **no "open" complaints were in the file.**

8. On cross examination, Mr. Mills was asked why he inspected Petitioners' Property. He replied:

"Because a complaint had been filed."

9. Mr. Mills was asked if he had a copy of the complaint. He replied:

"No. The Complaint is in the file."

10. Since on July 26, 2013, there were no "open" complaints in the Code Enforcement file for Petitioners' Property, the reason offered to the Board for why Mr. Mills inspected Petitioners' Property on July 26, 2013, **was a lie**, and thus was **perjured testimony**.

11. This has great significance, when determining whether Mr. Mills' warrantless inspection of Petitioners' Property on July 26, 2013, was "unreasonable," and a violation of Petitioners' 4th Amendment Constitutional Right to be free of "unreasonable searches and seizures." (As noted

in *Davis v. U.S.*, 327 F. 2d 301, 304 (9th Cir. 1964), a warrantless search of private property is particularly egregious when the government official **intends** to knowingly and intentionally violate the property owner's 4th Amendment rights.)

THE REAL REASON WHY MR. MILLS INSPECTED PETITIONERS' PROPERTY

12. On **July 27, 2013**, Petitioners and Baltimore County settled long-running litigation involving Petitioners' property on York Road (the Barrel Warehouse property). On that date, Adam Rosenblatt informed James Riffin that the Code Enforcement file on Petitioners' Property, **contained a large number of photographs**, which Mr. Rosenblatt and Arnold Joblon, the Director of Permits, Approvals and Inspections (and who is Mr. Rosenblatt's and Mr. Mills' boss), had seen.

13. On Friday, **September 6, 2013**, James Riffin visited the Code Enforcement Office. He asked to see the file on Petitioners' Property. He was provided with the file. Riffin noted that on that date, **the ONLY complaint in the file, was the CLOSED June 26, 2012 complaint**. He looked at the photographs, and asked for a copy of the photographs. He was told that only black and white copies were possible. He paid the fee to make a black and white copy of the color photographs in the file.

14. James Riffin then had a conversation with Mr. Mills. During that conversation with Mr. Mills, Riffin asked Mr. Mills why he had inspected Petitioners' Property. Mr. Mills replied: "Because my boss [Lionel VanDommelen, Chief, Code Enforcement] instructed me to visit your Property." Riffin remarked to Mr. Mills that the only complaint in Petitioners' file was the June 26, 2012 complaint, which had been marked 'closed.' Riffin then asked Mr. Mills why Mr. VanDommelen had instructed Mr. Mills to inspect Petitioners' Property. Mr. Mills replied: "My boss had been instructed by Arnold Joblon to inspect your property."

15. Circa June, 2013, Adam Rosenblatt sent an e-mail to Eric Strohmeyer, who lives in New Jersey. (Mr. Strohmeyer is an associate of James Riffin. He had some involvement in the litigation between Baltimore County and James Riffin. He also acted as the mediator in the settlement negotiations between James Riffin and Baltimore County.)

16. Mr Strohmeyer told James Riffin that in a telephone conversation between Mr. Strohmeyer and Mr. Rosenblatt, Mr. Rosenblatt told Mr. Strohmeyer that he intended to have Petitioners' Property inspected by a Code Enforcement Person, for the purpose of issuing citations to Petitioners, in order to pressure Petitioners to agree to sell Petitioners' 10919 York Road property (known as the Barrel Warehouse) to Baltimore County.

17. The real reason why Mr. Mills unlawfully trespassed upon Petitioners' Property, appears to be to procure evidence that could be used to pressure the Petitioners into selling to Baltimore County, Petitioners' Barrel Warehouse property. That constitutes the crime of 'extortion.'

18. On the **September 12, 2013** complaint, there appears a notation from Mr. Rosenblatt. The notation indicates that James Riffin visited Mr. Rosenblatt' office on **October 9, 2013**. During that visit, James Riffin informed Mr. Rosenblatt that James Riffin was preparing to seek a "peace order" against Mr. Mills, and that James Riffin intended to ask the District Court to issue a restraining order against Mr. Mills, prohibiting Mr. Mills from ever setting foot on Petitioners' property again. James Riffin also informed Mr. Rosenblatt that James Riffin had prepared two complaints against Mr. Mills, and that James Riffin intended to file one complaint the following day, charging Mr. Mills with trespass, and intended to file the second complaint, charging Mr. Mills with violating Petitioners' 42 U.S.C. §1983 Civil Rights,¹ shortly thereafter.

¹ 42 U.S.C. §1983 states every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State, subjects, or causes to be subjected, any citizen of the United States to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

19. The notation indicates that “none of that scared me at all.” And further indicates that “I have learned from the past 6 years that it is always faster and far less time consuming to try to settle with Riffin than to go through the judicial process.”

20. Mr. Rosenblatt offered to settle. The Petitioners agreed. The Settlement Agreement was executed.

21. One of the major underlying reasons for the settlement agreement, was to determine, in a forum where Mr. Mills would not have to be prosecuted, whether Mr. Mills had a right to be on Petitioners’ Property without Petitioners’ consent, and without a search warrant.

22. In the event that the Board elects not to address the issue of whether a Code Enforcement Person may enter upon private property without the consent of the property owner, or without a search warrant, that issue will be determined in a forum where there is a high-probability that Mr. Mills and Baltimore County will face significant penalties. The Petitioners and Baltimore County would prefer to determine this issue in a ‘non-threatening’ forum, such as before the Board.

23. Regarding Mr. Rosenblatt’s statement that “none of that scared me at all:” At the time Mr. Rosenblatt made that statement, neither he nor Petitioners were aware of the U.S. Supreme Court’s decision in *Camara v. Municipal Court of the City and County of San Francisco*, 387 U.S. 523 (1967), an 8-1 decision, four copies of which are attached hereto for the Board’s convenience. In the *Camara* case, the Supreme Court referenced the leading Maryland case, *Givner v. State*, 210 Md. 484 (1956), 387 U.S. at 528 fn 3, (wherein Maryland’s Court of Appeals held that municipal inspections could be made without benefit of a search warrant), and referenced the Supreme Court’s prior two cases, *Frank v. Maryland*, 359 U.S. 360 and *Eaton v. Ohio*, 364 U.S. 263, both of which followed the holding in *Givner*, then **expressly held that both *Frank v. Maryland* and *Eaton v. Ohio* must be reversed**, 387 U.S. at 528.

24. At 387 U.S. 540, the Supreme Court held:

“[W]e therefore conclude that appellant had a constitutional **right to insist that the inspectors obtain a warrant to search** and that appellant may not constitutionally be convicted for refusing to consent to the inspection. It appears from the opinion of the District Court of Appeal that under these circumstances **a writ of prohibition** will issue to the criminal court under California law.” Bold added.

25. People’s Counsel cited, Post-Memorandum Brief at 12, and relied upon, the *Givner* case to argue that a Code Enforcement Person does not need a search warrant to search Petitioners’ Property. *Givner*, as discussed above, has been held by the Supreme Court to no longer be the ‘law of the land.’

26. Since *Camara*, it is no longer debatable whether a Code Enforcement Person must obtain a search warrant before entering ‘curtilage,’ or for that matter, before inspecting any private property where there is an ‘expectation of privacy,’ such as dwellings, office buildings, or telephone booths.

27. Once again, Petitioners will respectfully suggest that the Board address the issue of when a Code Enforcement Person may enter upon private property without the consent of the property owner, or without a search warrant. If the Board addresses the issue, the issue will be decided in a forum in which neither Mr. Mills nor Baltimore County will be subject to penalties.

EXCLUDING MR. MILL’S TESTIMONY AND EVIDENCE

THE ‘EXCLUSION’ RULE

28. People’s Counsel is correct, that to date, no illegally obtained evidence has been excluded in a civil proceeding. See *Mayor and City Council of Baltimore v. One 1995 Corvette*, 119 Md. App. 691 (1998). Cited by People’s Counsel in its Post-Hearing Memorandum at p. 14.

29. However, the courts have been careful to say that exclusion in a civil proceeding has not been warranted to date, because the ‘deterrent’ effect in the civil proceedings where the issue has been raised, has not been ‘sufficient.’ (The underlying justification for the ‘exclusion’ rule is to

deter future misconduct.) No court has ever said illegally obtained evidence cannot be excluded in a civil proceeding. The courts have only said that there is no 4th Amendment right to have the illegally obtained evidence excluded in a civil proceeding. A court may, at its discretion, exclude illegally obtained evidence.

**TESTIMONY AND EVIDENCE NOT RELATED TO THE ISSUES APPEALED
ARE NOT ADMITTABLE**

30. The testimony and evidence given by Mr. Mills, and the Agreement between Baltimore County and Petitioners, **are not admissible** in this proceeding. In *Halle Companies v. Crofton Civic Association*, 339 Md. 131, 141 (1995), the Court of Appeals made the following statements:

“We think that the context in which the term *de novo* is used in Section 501.6 and 501.3 [similar to the language found in section 603 of the Baltimore County Code] ... means that on appeal there shall be a *de novo* hearing **on those issues which have been appealed and NOT** on every matter covered in the application. In this sense *de novo* means that the Board of Appeals may hear testimony and consider additional evidence **pertaining to the issue or issues presented on appeal.**” Bold and all caps added.

MR. MILLS EVIDENCE AND TESTIMONY

31. In this proceeding, People’s Counsel introduced into the Record Mr. Mills photographs, to show **Petitioners’ existing uses** of Petitioners’ Property.

32. Petitioners’ **existing uses, ARE NOT, AND NEVER HAVE BEEN**, issues which Petitioners’ have asked the Administrative Law Judge to address, or this Board to address.

33. The first and foremost question raised by Petitioners, is “**which of the uses enumerated below are permitted in a DR-1 zone, [and] which are permitted in a RC-6 zone ...**.” See ¶ 1 of Petitioners’ “Petition for Special Hearing.”

34. Paragraph 2 of Petitioners' "Petition for Special Hearing," lists **two primary uses**:
"Dwelling, one-family detached," and "Farm."

35. Paragraph 3 of Petitioners' "Petition for Special Hearing," lists **39 "accessory uses."**

36. Paragraph 4 of Petitioners' "Petition for Special Hearing," asks the question:

"Under what conditions may a Code Inspection Person enter upon private land?"

37. At the December 20, 2013 hearing before the Administrative Law Judge, James Riffin asked the Administrative Law Judge to answer the following questions:

- A. "What I'm asking you to do is give some clarification of what, under what conditions may a code enforcement person enter land." Transcript p. 15, L. 7-10.
- B. "So as I was saying, the question that I'm presenting to you is, under what conditions may a code enforcement person enter upon private land, particularly if it's posted?" Transcript p. 16, L. 23-25, p. 17, L. 1.
- C. "The Code says that you have the right to interpret the Code. So I'm asking you to interpret the phrase, open land, and to consider the constitutional limitations of a government, that are applicable to a government person going onto private land. When can they go on to it? When can they not?" Transcript p. 17, L. 22-25, p. 18, L. 1-3.
- D. "And a corollary to that would be, if they do go onto the land for whatever reason, hopefully a legal reason, do they have the constitutional right to lift up a tarp and look underneath it and see what's under it without a search warrant?" Transcript p. 18, L. 4-8.
- E. So I'd ask you to interpret, what is a junkyard?" Transcript p. 25, L. 25, p. 26, L. 1.
- F. "But in my particular case, what I'm asking you to do is to say, is to define, what's a shed? What's a utility shed? Is a utility shed anything that will hold something, store something?" Transcript p. 45, L. 11-14.
- G. "[I]f a code enforcement person can't come onto your land and see it, but he illegally comes onto your land and sees it, can he cite you for it? Is it a valid citation?" Transcript p. 47, L. 23-25, p. 48, L. 1.

H. "I'm actually here to determine, what can you do on land if it's used for farming purposes." Transcript p. 48, L. 8-10.

I. "And I also should ask you that, directly ask you, do you find that I am using this for farming purposes?" Transcript p. 48, L. 10-12.

J. "And I ask that you find my land is being used for agriculture uses." Transcript p. 48, L. 13-14.

38. Petitioners emphasize that **nowhere in their Petition, nor at any time during the hearing before the Administrative Law Judge, did Petitioners EVER ask: Are Petitioners' present uses permitted?**

39. Consequently, since the evidence and testimony given by Mr. Mills is unrelated to the issues raised in Petitioners' Petition for Special Hearing, and is unrelated to the issues appealed, Mr. Mills' evidence and testimony **is not admissible, and must be struck from the record / not relied upon.**

THE BALTIMORE COUNTY / PETITIONERS AGREEMENT

40. The Agreement between Baltimore County and Petitioners, is not admissible in this proceeding, since the Agreement is unrelated to the issues raised in Petitioners' Petition for Special Hearing, and is unrelated to the issues appealed.

41. The Agreement was not an issue in Petitioners' Petition.

42. The Agreement was never entered into the record before the Administrative Law Judge.

43. The Appellant specifically stated that he was appealing the two decisions of the Administrative Law Judge. Nothing more.

44. The Agreement is not mentioned in the January 7, 2014 Opinion and Order. It is mentioned in the Order on Motion for Reconsideration, only to explain why Baltimore County

did not present any evidence. Nothing more. Appellant has never indicated that the Agreement was an issue, or at issue.

45. Since the Board of Appeals may **only** “consider additional evidence **pertaining to the issue or issues presented on appeal,**” and since the Agreement **is not** an “issue presented on appeal,” it was error for the Board to permit People’s Counsel to put the Agreement into the Board’s Record, error to receive testimony and argument regarding the Agreement, and would be error, and highly prejudicial to Appellant and Petitioners, for the Board to use the Agreement to support any argument made by People’s Counsel, including People’s Counsel’s argument in support of his motion to dismiss the Appeal, and People’s Counsel’s argument in support of his motion to bar Petitioners from participating fully in the hearing before the Board.

MOTION TO DISMISS APPEAL

46. People’s Counsel argued the Appeal should be dismissed, due to the stipulation in the Agreement that Petitioners agreed with Baltimore County not to appeal, nor to contest, the Administrative Law Judge’s decision.

47. The Agreement is a private contract between Baltimore County and Petitioners. As such, only Baltimore County and Petitioners have any rights associated with the Agreement, and only Baltimore County and Petitioners can rely on those rights.

48. People’s Counsel is not privy to the Agreement. People’s Counsel is without standing to contest, or rely upon, any of the provisions in the Agreement.

49. The Board heard testimony from Mr. Geddes, wherein he testified that he “felt aggrieved” by the Administrative Law Judge’s two Orders, specifically, that he would be prejudiced were Petitioners compelled to remove their equipment from Petitioners’ property. The Board ruled that Mr. Geddes, ‘feeling aggrieved,’ had the right to file the appeal that he filed. The Board ruled that if the appeal were to be dismissed, Mr. Geddes would be prejudiced

by such a dismissal, and would have his right to file an appeal, abridged. The Board ruled the appeal should not be dismissed. It would be error, and highly prejudicial to Mr. Geddes, for the Board to reverse its decision to permit the appeal to proceed.

RIGHTS AND OBLIGATIONS ASSOCIATED WITH A *DE NOVO* APPEAL

50. People's Counsel knows what a *de novo* hearing before the Board is supposed to be. He stated it succinctly on p. 6 of his Post-Hearing Memorandum:

“As stated in our pre-hearing memorandum, the meaning and nature of the *de novo* appeal is that **the case starts over, as if there were no proceeding or decision below.** **Consequently, we are dealing once again with the Riffins' petition.**” Bold added.

51. If there is “no ... decision below,” Riffin cannot be “contesting” a non-existent decision.

52. If there was “no proceeding ... below,” then the proceeding before the Board **was** **Petitioners' hearing on their Petition for Special Hearing.**

53. It was highly prejudicial error for the Board to bar Petitioners from participating fully in **their** special hearing.

54. James Riffin spoke with Mr. Zimmerman after Appellant and Petitioners filed their Closing Brief. Riffin directed Mr. Zimmerman's attention to paragraph 23 in Appellant's and Petitioners' Closing Brief, wherein it is suggested that People's Counsel indicate to the Board that under the circumstances, the Board should schedule another hearing, whereat Petitioners could fully participate. People's Counsel indicated that he would not make a suggestion to the Board. Having read People's Counsel's Post-Hearing Memorandum, wherein People's Counsel reiterates his request that the Board dismiss the appeal, it is clear why People's Counsel does not wish to communicate with the Board prior to the Board addressing People's Counsel's request to have the appeal dismissed. If the appeal is dismissed, there will be no need for a second hearing. (At least not until a higher appellate court so orders.) If on the other hand, the Board stands by

its original decision, to let the appeal go forward, then it would be appropriate at that time, to address the issue of whether barring Petitioners from full participation in the July 15, 2014 hearing, was clear, prejudicial error / mistake. If the Board concludes that it was material error to bar the Petitioners from full participation in **their** Special Hearing before the Board, then the prudent thing to do, would be to reschedule another hearing. That would eliminate the error.

PRINCIPAL USE OF PETITIONERS' PROPERTY

55. The BCZR define "principal use" as: "A main use of land."
56. Petitioners' Property contains 13 acres.
57. **One** of those 13 acres, **(7.7%)**, is used as Petitioners' Dwelling.
58. **About one-half of one** of those 13 acres (3.8%) is used to store Petitioners' agricultural-related equipment.
59. **About one-half of one** of those 13 acres (3.8%) is used to store Petitioners' "recreational amenities," to wit, Petitioners' railroad "toys."
60. The remaining **11 acres (84.6%)** is used for agricultural uses: About one acre is devoted to fruit trees and field crops (raspberries, vegetables). The remaining 10 acres are devoted to forestry uses.
61. The Department of Assessment and Taxation Property Record Card lists the following uses of Petitioners' Property:

- A. Primary Improved: 1 ac. (The dwelling.)
- B. Secondary: 4 ac. (The fruit-trees / field crops / recreational amenities)
- C. Tertiary: 8 ac. (The area devoted exclusively to forestry.)

62. If **85%** of Petitioners land is used for agricultural uses, then the “main use” of Petitioners’ land is **for agricultural purposes**.

63. Petitioners’ dwelling use of their land, is the “accessory” use, **not** the “principal” use.

“CUSTOMARY” ACCESSORY USES

64. People’s Counsel argued on p. 10 of its Post-Hearing Memorandum, that the Uses enumerated by Petitioners, were not “customary” uses, especially on land zoned residential.

65. The Baltimore County Planning Board stated in its Report to the County Council, that farms use “heavy equipment,” and “fleets of trucks.” That “farms” are a permitted “industrial” use on residentially-zoned land.

66. It would appear that Mr. Mills has never been on a farm before. Had he inspected a farm, he would have found many pieces of large, heavy, pieces of equipment, and numerous large, heavy vehicles, such as trucks and semi-trailers. Had Mr. Mills looked at the zoning maps for northern Baltimore County, where many farms are located, he would have noted that **all** of those farms are located in “resource conservation” or “residential” zones. Heavy equipment, such as he found on Petitioners’ Property, is the norm, **not the exception**, on land devoted to agricultural uses.

67. Recreational amenities are a permitted use on DR-1 and RC-6 zoned land. The BCZR lists “swimming pools, tennis courts” as some, but not all, of what would constitute a “recreational amenity.”

68. People’s Counsel argued, p. 10 of his Post-Hearing Memorandum, that the recreational amenities on Petitioners’ Property (Petitioners’ railroad ‘toys’), that Petitioners’ recreational amenities were not ‘customary’ recreational amenities. He made no attempt to indicate what he would consider to be ‘customary,’ nor did he make any attempt to offer how the Board should

determine whether a 'recreational amenity' was 'customary.' (The BCZR do not limit 'recreational amenities only to 'customary' recreational amenities.)

69. That raises the question: If 'recreational amenities' are limited only to 'customary' amenities, how should it be determined whether a particular 'recreational amenity' is 'customary?' One objective way would be to determine the total number of residences in Baltimore County, then determine how many of those residences have whatever particular recreational amenity that is being scrutinized. One then could rather arbitrarily pick a percentage, as the cut-point for being 'customary,' versus 'atypical.'

70. A significant absolute number of residences have swimming pools. **Very few** residences have tennis courts, or horses, or trampolines, or all-terrain vehicles, or motor homes, or boccie² courts. In terms of percentages, it is probably less than one in ten-thousand residences that have a tennis court, or keep horses. In Baltimore County, there may be only one or two residences that have a boccie court. (There are a significant number in Baltimore City.)

71. If a boccie court would be considered a 'recreational amenity,' then any other recreational amenity that exists in the same proportion as a boccie court, would also constitute a 'recreational amenity.'

72. The criteria for a 'recreational amenity' should be: Is it used for recreational purposes? If so, then it is a 'recreational amenity,' regardless of how large, or small, the 'recreational amenity' is, and regardless of how many other residences have a similar 'recreational amenity.'

73. Petitioners have testified, and argued, that the railroad equipment located on Petitioners' Property, is used for 'recreational purposes,' not only by Petitioners, but also by neighbors' and visitors' children and adults. Petitioners' railroad equipment is used for recreational purposes while the equipment is static, much like 'jungle gyms' and other static playground equipment,

² Boccie: An Italian variety of lawn bowling, played in a small court.

and while in motion. Petitioners' railroad equipment, is not visible from adjacent properties. The equipment makes little noise and emits few odors when operating, and makes no noise and emits no odors, when static.

74. All of Petitioners adjacent neighbors have signed sworn affidavits that they have no objection to Petitioner having his railroad equipment on Petitioners' Property, thereby completely eliminating any argument that Petitioners' railroad equipment might constitute a prohibited 'nuisance.'

75. Consequently, there is no reason, short of an arbitrary or capricious reason, why Petitioners' railroad equipment would not constitute a 'recreational amenity.'

CASES CITED BY PEOPLE'S COUNSEL

76. People's Counsel cited the following cases for the proposition that an appellate **court** could substitute its judgment for how a Board of Appeals interpreted zoning regulations:

Smith v. Miller, 249 Md. 390 (1968). Post-Hearing Memorandum at p. 10.

Arundel Supply Corp. v. Cason, 265 Md. 371 (1972). Post-Hearing Memo at p. 11.

77. In the above two cases, the Board of Appeals held that the uses were permitted. The Court of Appeals substituted its interpretation of the zoning laws, then held that the uses were not permitted.

78. If the above two cases were to be heard today, the result would likely be just the opposite. In *Marzullo v. Kahl*, 366 Md. 158 (2001), the Court of Appeals reversed the Circuit Court and Court of Special Appeals, which had substituted their judgment for the judgment of this Board of Appeals (which had held that per its interpretation of the BCZR, Mr. Kahl's snake breeding operations were not permitted on land zoned RC).

79. In effect, post *Marzullo*, this Board's interpretation of the BCZR is unlikely to be upset, unless 'clearly erroneous.' (This Board's interpretation of any law other than the BCZR, on the other hand, will be reviewed *de novo*.)

80. To justify its decision, the Board must base its decision on substantial evidence properly in the Record. Petitioners' argue that they have presented substantial evidence to support their argument that the uses enumerated in their Special Hearing Petition, would be permitted uses on a 'farm,' as defined in the BCZR. There is no **evidence**, that such uses would not be permitted uses on a 'farm.' There is only People's Counsel's **argument, which is not 'evidence.'**

PETITIONERS' "EXPECTATION OF PRIVACY"

81. People's Counsel has argued that by the mere fact of filing a Petition for Special Hearing, to determine what uses would be permitted on a 'farm,' Petitioners have waived their 'expectation of privacy' on their Property. Post-Hearing Memorandum at p. 13.

82. Petitioners' current uses are not, and never have been, at issue in this or the below proceeding. The uses listed were 'theoretical,' 'hypothetical' uses.

83. Holding that any Special Hearing Petitioner waives their 4th Amendment Constitutional Right to be free of "unreasonable searches and seizures," retroactively, and prospectively forever, would have such a 'chilling' effect on citizens' exercise of their rights, that such a ruling would itself be declared to be unconstitutional. Any waiver of a fundamental Constitutional Right, must be knowing, and voluntary. The 4th Amendment is a fundamental Constitutional Right.

84. People's Counsel cited *Department of Transportation v. Armacost*, 299 Md. 392 (1992), Post-Hearing Memorandum at p. 12, to support its argument of exemption of one's 4th Amendment rights. In *Armacost*, Carroll County protested implementation of the Vehicle Emission Inspection Program. The Court found that there is no 'expectation of privacy' associated with a vehicle's exhaust gases as they exit a vehicle. The tailpipe and exhaust gases

were clearly visible to the 'public.' People do not have an 'expectation of privacy' in areas 'visible to the public.' In addition, the government has the right to regulate the use of its highways. And the government can demand giving up one's rights in exchange for granting a privilege to use the State's highways.

85. Owning property is a constitutionally protected right, not a government granted privilege. The State cannot attach conditions to the right to own property. It may regulate how that property is used, to protect the public health and safety. No more.

86. "A man's house is his castle." The concept of 'castle,' extends to the 'curtilage' around one's 'castle.' If one makes an effort to remove their property from the public's view, if one restricts the public's access to one's property, if one uses their property for the 'intimacies of family life,' that property is 'curtilage.' This was discussed in great detail in Petitioners' Memorandum and Memorandum of Law.

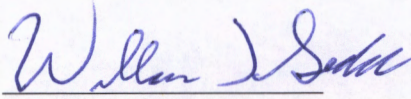
NEIGHBORS' AFFIDAVITS

87. A plebiscite cannot be used to justify, or not justify, a use on property. The legality of a particular use is to be determined by an interpretation of the applicable zoning regulations.

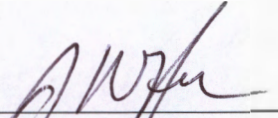
88. However, the views of one's neighbors should, and may, be one of the factors considered. The purpose of the Zoning Regulations is to protect the public health and welfare.

89. Since it is the public's health and welfare that the government is trying to protect, the public's views on whether its government is protecting its health and welfare, would be relevant and admissible. Petitioners' neighbors have voiced their opinion: Petitioners' use of Petitioners' Property does not adversely affect their public health and welfare. They also are of the opinion, that if Petitioners use of Petitioners' Property were to be declared to be illegal, such a ruling **would adversely affect** Petitioners' neighbors' health and welfare, for they would lose the free snow plowing and tree trimming / removal, that they currently enjoy.

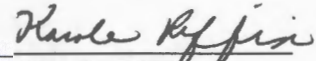
Respectfully submitted,



William Geddes
Appellant



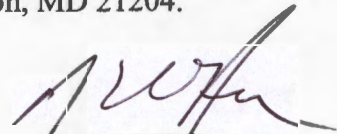
James Riffin
Petitioner



Karole Riffin
Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of August, 2014, a copy of the foregoing Appellant and Petitioners' Reply to People's Counsel's Closing Brief, was hand delivered to the Office of People's Council, 2nd floor, 105 W. Chesapeake Avenue, Towson, MD 21204.



James Riffin



Department of Permits, Approvals & Inspections Complaint Report

Report Criteria:
Complaint Record ID: CO0113481

<u>Record ID</u> CO0113481	<u>AS/400 Case</u>	<u>Assigned To</u> Paul Cohen	<u>Assigned Date</u> 06/26/2012	<u>Scheduled Time</u>	<u>Received By</u> Kaitlyn Heinbach	<u>Received Date</u> 06/26/2012	<u>Status</u> Closed	<u>Hearing Date</u>	<u>ADC Grid</u> 19A3
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Complaint Description: I am concerned with what appears to be strange activity happening in my neighborhood. We saw 2 large rail cars (actual C & D) with wheels being transported to a neighbors property last evening. I was wondering if this is a violation for a residential property and neighborhood. Other neighbors have seen at least 2 other rail cars go to this property previously. The address of the property is 11019 Gateview Road, Cockeysville, MD 21030. One car yesterday came through in the afternoon, one at 10:00pm. In addition to the rail cars, there have been numerous large equipment vehicles going to the property at all hours of the day as well as late into the night. While I am reporting this anonymously, I am available for follow up as needed.

<u>Facility:</u> FA0168655 PDM 1800011282 11019 GATEVIEW RD COCKEYSVILLE, MD 21030	<u>Owner:</u> RIFFIN JAMES RIFFIN KAROLE A PO BOX 42 COCKEYSVILLE MD 21030	<u>Complainant:</u>
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Daily Activity Details

<u>Serial Number</u>	<u>Inspector</u>	<u>Activity Date</u>	<u>Service</u>	<u>Result</u>	<u>Action</u>
DA0170528		12/14/2012	INITIAL INSPECTION	FACT FINDING	CLOSE CASE

Inspector Notes: 6/28/12 NO ENTRY , DRIVEWAY CHAINED --NO ENTRY SIGNS POSTED-- CASE CLOSED FOR MORE AVAILABILITY PC

Violation Details - No Data

Comment Details - No Comments

Lien Information - None

True copy
8/1/14
ARW



Department of Permits, Approvals & Inspections Complaint Report

Report Criteria:
Complaint Record ID: CO0137585

<u>Record ID</u>	<u>AS/400 Case</u>	<u>Assigned To</u>	<u>Assigned Date</u>	<u>Scheduled Time</u>	<u>Received By</u>	<u>Received Date</u>	<u>Status</u>	<u>Hearing Date</u>	<u>ADC Grid</u>
CO0137585		Phillip Mills	09/13/2013		Phillip Mills	09/12/2013	Open - Normal		19A3

Complaint Description: Open dump/ Junk yard conditions

Facility:

FA0168655
PDM 1800011282
11019 GATEVIEW RD
COCKEYSVILLE, MD 21030

Owner :

RIFFIN JAMES RIFFIN KAROLE A
PO BOX 42
COCKEYSVILLE MD 21030

Complainant:

Daily Activity Details

<u>Serial Number</u>	<u>Inspector</u>	<u>Activity Date</u>	<u>Service</u>	<u>Result</u>	<u>Action</u>
DA0205438		10/22/2013	REINSPECTION	NOT IN COMPLIANCE	MONITOR

Inspector Notes: 10/21/13, SPECIAL HEARING REQUESTED, 2014-0094-SPH, PM

Violation Details - No Data

<u>Serial Number</u>	<u>Inspector</u>	<u>Activity Date</u>	<u>Service</u>	<u>Result</u>	<u>Action</u>
DA0204702		10/15/2013	REINSPECTION	NOT IN COMPLIANCE	MONITOR

Inspector Notes: >>> Adam Rosenblatt 10/10/2013 9:35 AM >>>

Yesterday Riffin came to my office and we spent an hour reaching a settlement agreement with respect to his property that Mr. Mills has been involved with.

Riffin told me his plan was to go to District Court Monday seeking a peace order from Mills, to sue him for violating his constitutional rights by entering his property to take photographs, and to press the issue to the supreme court if necessary. While none of that scared me at all, I have learned from the past 6 years that it is always faster and far less time consuming to try to settle with Riffin than to go through the judicial process.

Thus, we reached the attached agreement, with the following key points:

Riffin to apply for a special hearing to see if what he is doing is legal

CE to stay their action until the ALJ hearing on the SPH petition

Riffin to waive the right to appeal or otherwise contest the ALJ Order

If the Order tells Riffin he can't do some of the things he's doing, he will stop immediately and will remove any illegal items within 6 months of the Order

If Riffin does not remove the items within 6 months, he will be assessed a civil penalty of \$100 per day for every day the items remain on the property and has waived his right to contest or appeal the penalties.

This will save CE, and me, hours and hours of time and frustration. Either he gets the SPH relief and he's in compliance with the code, or he doesn't get it (more likely) and he's auto fined if he doesn't get the stuff off the property.

No way we could've resolved this in 6 months otherwise, so let's take it and move on!

Adam

Adam M. Rosenblatt

Violation Details - No Data

Comment Details - No Comments

Lien Information - None

True copy
8/1/14
ARW



Department of Permits, Approvals & Inspections Complaint Report

Record Id: CC1403387

<u>Record ID</u>	<u>Assigned To</u>	<u>Assigned Date</u>	<u>Received Date</u>	<u>Status</u>	<u>Compliance Date</u>	<u>Hearing Date</u>
CC1403387	Paul Cohen		05/14/2014	Pending closed		

Complaint Description: STORAGE OF LARGE EQUIPMENT IN RESIDENTIAL AREA, REMOVING TREES TO ENLARGE DRIVEWAY TO ACCOMMODATE LARGE EQUIPMENT, BRINGING IN LARGE STORAGE CONTAINERS

BE VERY CAREFUL WHEN ENTERING PROPERTY

<u>Property</u>	<u>Owner</u>	<u>Complainant</u>
11019 GATEVIEW RD COCKEYSVILLE, MD 21030 Tax Id: 1800011282	RIFFIN JAMES RIFFIN KAROLE A PO BOX 42 COCKEYSVILLE, MD 21030-0042	

Inspection Details

<u>Inspector</u>	<u>Date</u>	<u>Service</u>	<u>Result</u>	<u>Action</u>	<u>Complied On</u>
Paul Cohen	05/16/2014	Initial Inspection	No Violation	No Violation	

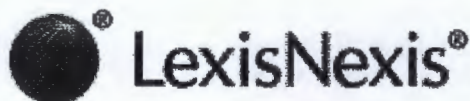
Lien Information - No Lien

Comments Detail

5/16/2014: See open case Cc99 c00137585 , inspector Mills, close

True copy
8/1/14
ARW

P. 10- GUNNER v md overruled
 P. 22- Need search warrant



CAMARA v. MUNICIPAL COURT OF THE CITY AND COUNTY OF SAN FRANCISCO

No. 92

SUPREME COURT OF THE UNITED STATES

387 U.S. 523; 87 S. Ct. 1727; 18 L. Ed. 2d 930; 1967 U.S. LEXIS 1254

February 15, 1967, Argued
 June 5, 1967, Decided

PRIOR HISTORY: APPEAL FROM THE DISTRICT COURT OF APPEAL OF CALIFORNIA, FIRST APPELLATE DISTRICT.

DISPOSITION: 237 Cal. App. 2d 128, 46 Cal. Rptr. 585, vacated and remanded.

CASE SUMMARY:

PROCEDURAL POSTURE: Petitioner occupant sought review of a judgment from the District Court of Appeal of California, First Appellate District, which affirmed the decision of the California superior court denying his request for a writ of prohibition. The occupant sought to enjoin criminal proceedings against him based upon his refusal to submit to a warrantless search of his apartment by a building inspector for respondent city.

OVERVIEW: A city ordinance gave city building inspectors the right to enter any building at reasonable times in furtherance of their code enforcement duties. The occupant denied entrance to building inspectors on three separate occasions, each time demanding that they first obtain a warrant. He was prosecuted under another ordinance that made it a crime to refuse to comply with the inspectors' requests. He claimed the warrantless search requested by the building inspectors violated his *Fourth Amendment* rights. The Court agreed and, to the extent that its prior decision in *Frank v. Maryland*, 359 U.S. 360, permitted warrantless administrative searches, it overruled that decision. The Court held that the administrative search was not peripheral to the occupant's *Fourth Amendment* interests because a criminal prosecution could and did result from his refusal to submit. The Court held that probable cause would still be required for

issuance of a warrant for an administrative search, but the standard was lower than for issuance of a warrant in criminal cases. The standard would be met by a reasonableness showing, in light of the reasonable goals of code enforcement.

OUTCOME: The Court vacated the judgment of the California district court of appeal and remanded for further proceedings, including issuance of a writ of prohibition to the California criminal court.

LexisNexis(R) Headnotes

Criminal Law & Procedure > *Search & Seizure* > *Warrantless Searches* > *General Overview*
Criminal Law & Procedure > *Bail* > *Denial of Bail*
Real Property Law > *Zoning & Land Use* > *Building & Housing Codes*

[HN1] San Francisco, Cal., Housing Code § 503, stated that authorized employees of the City departments or City agencies, so far as may be necessary for the performance of their duties, shall, upon presentation of proper credentials, have the right to enter, at reasonable times, any building, structure, or premises in the City to perform any duty imposed upon them by the Municipal Code.

Constitutional Law > *Bill of Rights* > *Fundamental Rights* > *Search & Seizure* > *Scope of Protection*
Criminal Law & Procedure > *Search & Seizure* > *Search Warrants* > *Affirmations & Oaths* > *General Overview*

387 U.S. 523, *, 87 S. Ct. 1727, **;
18 L. Ed. 2d 930, ***; 1967 U.S. LEXIS 1254

even with a warrant, is reasonable only when there is probable cause to believe that they will be uncovered in a particular dwelling.

Administrative Law > Agency Investigations > Scope > Inspections

[HN9] The only effective way to seek universal compliance with the minimum standards required by municipal codes is through routine periodic inspections of all structures.

***Governments > Local Governments > Finance
Governments > Public Improvements > Community
Redevelopment***

Real Property Law > Zoning & Land Use > Building & Housing Codes

[HN10] Section 311(a) of the Housing and Urban Development Act of 1965, 42 U.S.C.S. § 1468, authorizes grants of federal funds to cities, other municipalities, and counties for the purpose of assisting such localities in carrying out programs of concentrated code enforcement in deteriorated or deteriorating areas in which such enforcement, together with those public improvements to be provided by the locality, may be expected to arrest the decline of the area.

Constitutional Law > Bill of Rights > Fundamental Rights > Search & Seizure > Scope of Protection

[HN11] Unfortunately, there can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails. But a number of persuasive factors combine to support the reasonableness of area code-enforcement inspections. First, such programs have a long history of judicial and public acceptance. Second, the public interest demands that all dangerous conditions be prevented or abated, yet it is doubtful that any other canvassing technique would achieve acceptable results. Many such conditions -- faulty wiring is an obvious example -- are not observable from outside the building and indeed may not be apparent to the inexperienced occupant himself. Finally, because the inspections are neither personal in nature nor aimed at the discovery of evidence of crime, they involve a relatively limited invasion of the urban citizen's privacy.

***Constitutional Law > Bill of Rights > Fundamental Rights > Search & Seizure > Probable Cause
Criminal Law & Procedure > Search & Seizure > Search Warrants > Probable Cause > General Overview***

Governments > Local Governments > Licenses

[HN12] Having concluded that the area inspection is a reasonable search of private property within the meaning of the *Fourth Amendment*, it is obvious that probable cause to issue a warrant to inspect must exist if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling. Such standards, which will vary with the municipal program being enforced, may be based upon the passage of time, the nature of the building (e. g., a multi-family apartment house), or the condition of the entire area, but they will not necessarily depend upon specific knowledge of the condition of the particular dwelling.

***Constitutional Law > Bill of Rights > Fundamental Rights > Search & Seizure > Probable Cause
Criminal Law & Procedure > Search & Seizure > Search Warrants > Probable Cause > General Overview***

[HN13] The warrant procedure is designed to guarantee that a decision to search private property is justified by a reasonable governmental interest. But reasonableness is still the ultimate standard. If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant. Such an approach neither endangers time-honored doctrines applicable to criminal investigations nor makes a nullity of the probable cause requirement in this area. It merely gives full recognition to the competing public and private interests here at stake and, in so doing, best fulfills the historic purpose behind the constitutional right to be free from unreasonable government invasions of privacy.

***Constitutional Law > Bill of Rights > Fundamental Rights > Search & Seizure > Warrants
Criminal Law & Procedure > Search & Seizure > Search Warrants > General Overview
Criminal Law & Procedure > Search & Seizure > Warrantless Searches > General Overview***

[HN14] In the case of most routine area inspections, there is no compelling urgency to inspect at a particular time or on a particular day. Moreover, most citizens allow inspections of their property without a warrant. Thus, as a practical matter and in light of the *Fourth Amendment's* requirement that a warrant specify the property to be searched, it seems likely that warrants should normally be sought only after entry is refused unless there has been a citizen complaint or there is other satisfactory reason for securing immediate entry. Similarly, the requirement of a warrant procedure does not suggest any change in what seems to be the prevailing

387 U.S. 523, *; 87 S. Ct. 1727, **;
18 L. Ed. 2d 930, ***; 1967 U.S. LEXIS 1254

In applying any reasonableness standard, including one of constitutional dimension, an argument that the public interest demands a particular rule must receive careful consideration.

SEARCH AND SEIZURE §25 ;

necessity of warrant -- ;

Headnote:[8]

In assessing whether the public interest demands creation of a general exception to the *Fourth Amendment's* warrant requirement, the question is not whether the public interest justifies the type of search in question, but whether the authority to search should be evidenced by a warrant, which in turn depends in part upon whether the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search.

SEARCH AND SEIZURE §25 ;

administrative search -- ;

Headnote:[9]

Administrative searches to enforce a municipal fire, health, or housing inspection program being significant intrusions upon the interests protected by the *Fourth Amendment*, such searches, when authorized and conducted without a warrant procedure, lack the traditional safeguards which the *Fourth Amendment* guarantees to the individual.

SEARCH AND SEIZURE §27 ;

probable cause -- ;

Headnote:[10]

In cases in which the *Fourth Amendment* requires that a warrant to search be obtained, "probable cause" is the standard by which a particular decision to search is tested against the constitutional mandate of reasonableness; to apply this standard, it is necessary first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen.

SEARCH AND SEIZURE §27 ;

search for goods -- reasonableness -- ;

Headnote:[11]

A search for specific stolen or contraband goods, even with a warrant, is "reasonable" only when there is "probable cause" to believe that they will be uncovered in a particular dwelling.

SEARCH AND SEIZURE §27 ;

inspection of premises -- reasonableness -- ;

Headnote:[12]

In determining whether a particular inspection in the enforcement of a municipal fire, health, or housing inspection program is reasonable--and thus in determining whether there is probable cause to issue a warrant for that inspection--the need for the inspection must be weighed in terms of the reasonable goals of code enforcement.

SEARCH AND SEIZURE §8 ;

area inspection -- ;

Headnote:[13]

Area inspection carried out in the enforcement of a municipal fire, health, or housing inspection program is a reasonable search of private property within the meaning of the *Fourth Amendment*.

SEARCH AND SEIZURE §27 ;

inspection of premises -- probable cause -- ;

Headnote:[14]

Probable cause to issue a warrant to inspect premises in the enforcement of a municipal fire, health, or housing inspection program must exist if reasonable legislative or administrative standards for conducting an area inspection are satisfied with respect to a particular dwelling; such standards, which will vary with the municipal program being enforced, may be based upon the passage of time, the nature of the building, or the condition of the entire area, but they will not necessarily depend upon specific knowledge of the condition of the particular dwelling; if a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant.

SEARCH AND SEIZURE §25 ;

inspection of premises -- emergency -- ;

Headnote:[15]

Prompt inspection of premises, even without a warrant, is proper in emergency situations, such as the seizure of unwholesome food, compulsory smallpox vaccination, health quarantine, or summary destruction of tubercular cattle.

387 U.S. 523, *; 87 S. Ct. 1727, **;
18 L. Ed. 2d 930, ***; 1967 U.S. LEXIS 1254

JUDGES: Warren, Black, Douglas, Clark, Harlan,
Brennan, Stewart, White, Fortas

OPINION BY: WHITE

OPINION

[*525] [***933] [**1728] MR. JUSTICE
WHITE delivered the opinion of the Court.

In *Frank v. Maryland*, 359 U.S. 360, this Court upheld, by a five-to-four vote, a state court conviction of a homeowner who refused to permit a municipal health inspector to enter and inspect his premises without a search warrant. In *Eaton v. Price*, 364 U.S. 263, a similar conviction [**1729] was affirmed by an equally divided Court. Since those closely divided decisions, more intensive efforts at all levels of government to contain and eliminate urban blight have led to increasing use of such inspection techniques, while numerous decisions of this Court have more fully defined the *Fourth Amendment's* effect on state and municipal action. E. g., *Mapp v. Ohio*, 367 U.S. 643; *Ker v. California*, 374 U.S. 23. In view of the growing nationwide importance of the

problem, we noted probable jurisdiction in this case and in *See v. City of Seattle*, post, p. 541, to re-examine whether administrative inspection programs, as presently authorized and conducted, violate *Fourth Amendment* rights as those rights are enforced against the States through the *Fourteenth Amendment*. 385 U.S. 808.

Appellant brought this action in a California Superior Court alleging that he was awaiting trial on a criminal charge of violating the San Francisco Housing Code by refusing to permit a warrantless inspection of his residence, and that a writ of prohibition should issue to the criminal court because the ordinance authorizing such inspections is unconstitutional on its face. The Superior Court denied the writ, the District Court of Appeal affirmed, and the Supreme Court of California denied a petition for hearing. Appellant properly raised and had considered by the California courts the federal constitutional questions he now presents to this Court.

Though there were no judicial findings of fact in this prohibition proceeding, we shall set forth the parties' factual allegations. On November 6, 1963, an inspector

387 U.S. 523, *; 87 S. Ct. 1727, **;
18 L. Ed. 2d 930, ***; 1967 U.S. LEXIS 1254

[*527] Appellant nevertheless refused the inspectors access to his apartment without a search warrant. Thereafter, a complaint was filed charging him with refusing [**1730] to permit a lawful inspection in violation of § 507 of the Code.² Appellant was arrested on December 2 and released on bail. When his demurrer to the criminal complaint was denied, appellant filed this petition for a writ of prohibition.

2 "Sec. 507 PENALTY FOR VIOLATION. Any person, the owner or his authorized agent who violates, disobeys, omits, neglects, or refuses to comply with, or who resists or opposes the execution of any of the provisions of this Code, or any order of the Superintendent, the Director of Public Works, or the Director of Public Health made pursuant to this Code, shall be guilty of a misdemeanor and upon conviction thereof shall

be punished by a fine not exceeding five hundred dollars (\$ 500.00), or by imprisonment, not exceeding six (6) months or by both such fine and imprisonment, unless otherwise provided in this Code, and shall be deemed guilty of a separate offense for every day such violation, disobedience, omission, neglect or refusal shall continue."

Appellant has argued throughout this litigation that § 503 is contrary to the *Fourth* and *Fourteenth Amendments* in that it authorizes municipal officials to enter a private dwelling without a search warrant and without probable cause to believe that a violation of the Housing Code exists therein. Consequently, appellant contends, he may not be prosecuted under § 507 for refusing to permit an inspection unconstitutionally authorized by § 503. Relying on *Frank v. Maryland*, *Eaton v. Price*, and decisions in other States,³ [***935] the District

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18 L. Ed. 2d 930, ***; 1967 U.S. LEXIS 1254

[*529] is "unreasonable" unless it has been authorized by a valid search warrant. See, e. g., *Stoner v. California*, 376 U.S. 483; *United States v. Jeffers*, 342 U.S. 48; *McDonald v. United States*, 335 U.S. 451; *Agnello v. United States*, 269 U.S. 20. As the Court explained in *Johnson v. United States*, 333 U.S. 10, 14:

"The right of officers to thrust themselves into a home is also a grave concern, not only to the individual but to a society which chooses to dwell in reasonable security and freedom from surveillance. When the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or government enforcement agent."

In *Frank v. Maryland*, this Court upheld the conviction of one who refused to permit a warrantless inspection of private premises for the purposes of locating and abating a suspected public nuisance. Although *Frank* can arguably be distinguished from this case on its facts, the *Frank* opinion has generally [***936] been interpreted as carving out an additional exception to the rule that warrantless searches are unreasonable under the *Fourth Amendment*. See *Eaton v. Price*, *supra*. The District Court of Appeal so interpreted *Frank* in this case, and that ruling is the core of appellant's challenge here. We proceed to a re-examination of the factors which

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[*531] has a very tangible interest in limiting the circumstances under which the sanctity of his home may be broken by official authority, for the possibility of criminal entry under the guise of official sanction is a serious threat to personal and family security. And even accepting *Frank's* rather remarkable premise, inspections of the kind we are here considering do in fact jeopardize "self-protection" interests of the property owner. Like most regulatory laws, fire, health, and housing codes are enforced by criminal processes. In some cities, discovery of a violation by the inspector leads to a criminal complaint.⁷ Even in cities where discovery of a violation produces [***937] only an administrative compliance order,⁸ refusal to comply is a criminal offense, and the fact of compliance is verified by a second inspection, again without a warrant.⁹ Finally, as this case demonstrates, refusal to permit an inspection is itself a crime, punishable by fine or even by jail sentence.

6 See *Abel v. United States*, 362 U.S. 217, 254-256 (MR. JUSTICE BRENNAN, dissenting);

District of Columbia v. Little, 85 U. S. App. D. C. 242, 178 F.2d 13, aff'd, 339 U.S. 1.

7 See New York, N. Y., Administrative Code § D26-8.0 (1964).

8 See Washington, D. C., Housing Regulations § 2104.

9 This is the more prevalent enforcement procedure. See Note, Enforcement of Municipal Housing Codes, 78 Harv. L. Rev. 801, 813-816.

The *Frank* majority suggested, and appellee reasserts, two other justifications for permitting administrative health and safety inspections without a warrant. First, it is argued that these inspections are "designed to make the least possible demand on the individual occupant." 359 U.S., at 367. The ordinances authorizing inspections are hedged with safeguards, and at any rate the inspector's particular decision to enter must comply with the constitutional standard of reasonableness even if he may enter without a warrant.¹⁰ In addition, the argument

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[*533] search. See cases cited, p. 529, *supra*. We simply cannot say that the protections provided by the warrant procedure are not needed in this context; broad statutory safeguards are no substitute for individualized review, particularly when those safeguards may only be invoked [***938] at the risk of a criminal penalty.

[***LEdHR7] [7] [***LEdHR8] [8] The final justification suggested for warrantless administrative searches is that the public interest demands such a rule: it is vigorously argued that the health and safety of entire urban populations is dependent upon enforcement of minimum fire, housing, and sanitation standards, and that the only effective means of enforcing such codes is by routine systematized inspection of all physical structures. Of course, in applying any reasonableness standard, including one of constitutional dimension, an argument that the public interest demands a particular rule must receive careful consideration. But we think this argument misses the mark. The question is not, at this stage

at least, whether these inspections may be made, but whether they may be made without a warrant. For example, to say that gambling raids may not be made at the discretion of the police without a warrant is not necessarily to say that gambling raids may never be made. [HN6] In assessing whether the public interest demands creation of a general exception to the *Fourth Amendment's* warrant requirement, the question is not whether the public interest justifies the type of search in question, but whether the authority to search should be evidenced by a warrant, which in turn depends in part upon whether the burden of obtaining a warrant is likely to frustrate the governmental purpose behind the search. See *Schmerber v. California*, 384 U.S. 757, 770-771. It has nowhere been urged that fire, health, and housing code inspection programs could not achieve their goals within the confines of a reasonable search warrant requirement. Thus, we do not find the public need argument dispositive.

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[*535] interests of the private citizen. For example, in a criminal investigation, the police may undertake to recover specific stolen or contraband goods. But that public interest would hardly justify a sweeping search of an entire city conducted in the hope that these goods might be found. Consequently, a search for these goods, even with a warrant, is "reasonable" only when there is "probable cause" to believe that they will be uncovered in a particular dwelling.

[***LEdHR12] [12]Unlike the search pursuant to a criminal investigation, the inspection programs at issue here are aimed at securing city-wide compliance with minimum physical standards for private property. The primary governmental interest at stake is to prevent even the unintentional development of conditions which are hazardous to public health and safety. Because fires and epidemics may ravage large urban areas, because unsightly conditions adversely affect the economic values of neighboring structures, numerous courts have upheld the police power of municipalities to impose and enforce

such minimum standards even upon existing structures.¹¹ In determining whether a particular inspection is reasonable -- and thus in determining whether there is probable cause to issue a warrant for that inspection -- the need for the inspection must be weighed in terms of these reasonable goals of code enforcement.

11 See *Abbate Bros. v. City of Chicago*, 11 Ill. 2d 337, 142 N. E. 2d 691; *City of Louisville v. Thompson*, 339 S. W. 2d 869 (Ky.); *Adamec v. Post*, 273 N. Y. 250, 7 N. E. 2d 120; *Paquette v. City of Fall River*, 338 Mass. 368, 155 N. E. 2d 775; *Richards v. City of Columbia*, 227 S. C. 538, 88 S. E. 2d 683; *Boden v. City of Milwaukee*, 8 Wis. 2d 318, 99 N. W. 2d 156.

There is unanimous agreement among those most familiar with this field that [HN9] the only effective way to seek universal compliance with the minimum standards required by municipal codes is through routine periodic

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[*537] other than by balancing the need to search against the invasion which the search entails. But we think that a number of persuasive factors combine to support the reasonableness of area code-enforcement inspections. First, such programs have a long history of judicial and public acceptance. See *Frank v. Maryland*, 359 U.S., at 367-371. Second, the public interest demands that all dangerous conditions be prevented or abated, yet it is doubtful that any other canvassing technique would achieve acceptable results. Many such conditions - faulty wiring is an obvious example - are not observable from outside the building and indeed may not be apparent to the inexperienced occupant himself. Finally, because the inspections are neither personal in nature nor aimed at the discovery of evidence of crime, they involve a relatively limited invasion of the urban citizen's privacy. Both the majority and the dissent in *Frank* emphatically supported this conclusion:

"Time and experience have forcefully taught that the power to inspect dwelling places, either as a matter of systematic area-by-area search or, as here, to treat a specific problem, is of indispensable importance to the maintenance of community health; a power that would be greatly hobbled by the blanket requirement of the safeguards necessary for a search of evidence of criminal acts. The need for preventive action is great, and city after city has seen this need and granted the power of inspection to its health officials; and these inspections are apparently welcomed by all but an insignificant few. Certainly, the nature of our society has not vitiated the need for inspections first thought necessary 158 years ago, nor has experience revealed any abuse or inroad on freedom in meeting this need by means that history and dominant public opinion have sanctioned." 359 U.S., at 372.

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[*539] But we do not agree. [HN13] The warrant procedure is designed to guarantee that a decision to search private property is justified by a reasonable governmental interest. But reasonableness is still the ultimate standard. If a valid public interest justifies the intrusion contemplated, then there is probable cause to issue a suitably restricted search warrant. Cf. *Oklahoma Press Pub. Co. v. Walling*, 327 U.S. 186. Such an approach neither endangers time-honored doctrines applicable to criminal investigations nor makes a nullity of the probable cause requirement in this area. It merely gives full recognition to the competing public and private interests here at stake and, in so doing, best fulfills the historic purpose behind the constitutional right to be free from unreasonable government invasions of privacy. See *Eaton v. Price*, 364 U.S., at 273-274 (opinion of MR. JUSTICE BRENNAN).

III.

[***LEdHR15] [15] Since our holding emphasizes the controlling standard of reasonableness, nothing we say today is intended to foreclose prompt inspections, even without a warrant, that the law has traditionally upheld in emergency situations. See *North American Cold Storage Co. v. City of Chicago*, 211 U.S. 306 (seizure of unwholesome food); *Jacobson v. Massachusetts*, 197 U.S. 11 (compulsory smallpox vaccination); *Compagnie Francaise v. Board of Health*, 186 U.S. 380 (health quarantine); *Kroplin v. Truax*, 119 Ohio St. 610, 165 N. E. 498 (summary destruction of tubercular cattle). On the other hand, [HN14] in the case of most routine area inspections, there is no compelling urgency to inspect at a particular time or on a particular day. Moreover, most citizens allow inspections of their property without a warrant. Thus, as a practical matter and in light of the *Fourth Amendment's* requirement that a warrant specify the property to be searched, it seems likely that warrants should normally be sought only after entry is refused unless

RE: PETITION FOR SPECIAL HEARING
11019 Gateview Road; E/end of Gateview
Road, 140' E of Norgate Court
8th Election & 3rd Councilmanic Districts
Legal Owner(s): James & Karole Riffin
Petitioner(s)

* BEFORE THE
* BOARD OF
* APPEALS FOR
* BALTIMORE COUNTY
* 2014-094-SPH

* * * * *

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S
POST-HEARING MEMORANDUM

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IN THE JUNGLE

"It's a Jungle Out There," Burkhard Dallwitz *It's a Jungle Out There* (1998)

A zoning case can feel and look like a jungle. There may be tangled procedural branches and swamps. There may be shaded, multi-colored leaves of law. There may be canopies of spin which obscure what is going on. But then there are those clearings, those openings, those oases, where the light shines through and we can understand.

This is one of those cases.

The Petitioners in this *de novo* zoning appeal are James and Karole Riffin. Yet the Appellant is Will Geddes. This extraordinary situation is just one of the many extraordinary dimensions of this matter.

The enforcement case and Complete and Comprehensive Settlement Agreement (the Agreement) executed October 9, 2013 between the County Attorney and the Riffins set the stage as an extraordinary background. Given the Riffins' contractual bargain and commitment to file a petition for special hearing, but not to appeal or contest any subsequent adverse Administrative Law Judge's Order, there is the extraordinary structure of this appeal. The proposed land uses themselves are extraordinary for the Resource Conservation and Residential zones. There is also a multitude of extraordinary issues which Mr. Riffin has raised and continues to raise.

WHAT'S GOING ON?

What's going on, I wanna know?

Adam Ant, What's Going On (Moroder,/Belotte) (1984), Metropolis

Last year, 2013, there was an anonymous complaint concerning uses at the Riffins' 13-acre wooded residential property at 11019 Gateview Road in northern Baltimore County. There followed inspections by Zoning Inspector Phillip Mills and citations issued September 16 and October 2, 2013 relating to various uses in the R.C. 6. (Rural Conservation and Residential) Zone section of the property. The property is split-zoned R.C. 6 and D.R. 1 (Density Residential), with the majority R.C. 6, as shown on the My Neighborhood Map.

The uses are many and varied. They are difficult to summarize. Suffice it to say they include a 2-story crane, a man-lift, construction equipment and material (bobcats or front-end loaders), tires, debris, railroad cars (including a caboose) and tracks, truck tractors and trailers, dump trucks, two buses (one leaning at an angle), and various trucks and automobiles. The vehicles are mostly inoperable, untagged, or with expired tags.

Shortly thereafter, the County Attorney's office and the Riffins entered into the Agreement. The Riffins proceeded to file their Petition for Special Hearing for a legal determination of the permissibility of a list of enumerated uses. There was a hearing before ALJ John Beverungen. As promised by the County Attorney, there was no appearance by that office. ALJ Beverungen denied the petition by written opinion and order January 7, 2014 and denied also the Riffins' Motion for Reconsideration on February 25, 2014.

Will Geddes, who was present at the ALJ hearing, then filed an appeal to the CBA. The Petitioners, however, remain the Riffins.

THE JULY 15, 2014 CBA HEARING: SETTING THE STAGE

All the world's a stage

William Shakespeare, As You Like It Act II, Scene VII (1599)

Upon review of preliminary issues raised in memoranda filed by James Riffin and Will Geddes, argued by Mr. Riffin, the CBA made several decisions. First of all, the CBA decided that our office, People's Counsel for Baltimore County does have authority

to participate in the proceeding to defend the comprehensive zoning maps. Secondly, the CBA decided the appeal hearing is a *de novo* hearing. Thirdly, the CBA decided, despite the Riffins' promise not to contest the ALJ denial (and despite Mr. Riffin's domination of the appeal) that Will Geddes could proceed under the liberal County Code provision allowing appeals by anyone "feeling aggrieved." Code Sec. 32-3-401.

Significantly, Mr. Riffin conceded that he entered into the Agreement voluntarily. Ironically, at times where he saw an advantage, he argued for enforcement of particular provisions of the Agreement. So, there is no dispute about the validity of the Agreement, just about its interpretation and application.

The case then went forward on the merits of the proposed land uses. Will Geddes testified, with the Board Chair facilitating questions and answers. Mr. Geddes then called James Riffin, who often took the opportunity to answer fact questions with excursion into legal interpretation, argument, and other matters outside the scope of the questions. Mr. Riffin summarized and argued for the legitimacy of all his uses.

People's Counsel called Inspector Phillip Mills, who testified to his two site visits in July and September, 2013. He produced an array of 108 photos correlated with "zones" delineated on a GIS aerial photo of the property. P.C. Exh. 4, 5A-U, 6A-F. Mr. Riffin objected. Mr. Riffin contended either that Mr. Mills' evidence somehow violated the County Attorney's promise not to participate or that his "search" was improper. The CBA chair overruled the objection. Inspector Mills' testimony and photos provide the only pictorial evidence of the actual site conditions and uses.

Despite the unusual structure of the Geddes/Riffin appeal, geared to circumvent the Agreement, we understand the CBA's Chair's cautious decision to proceed based on the liberality of the Code. Nevertheless, we submit that the Riffins are effectively breaching their commitment made in the "complete" and "comprehensive" Agreement, paragraph 4. The Riffins should not be allowed to proceed under the cover or guise of an appeal by Mr. Geddes.

Accordingly, we ask the CBA to revisit the situation. The CBA should hold that the Riffins' pursuit of their petition at the appeal stage is invalid and warrants dismissal.

At the same time, the CBA's ruling did enable a review of the merits. We submit that the Riffins failed to meet their burden to prove the legitimacy of their uses. We also submit that Inspector Mills' testimony and photographic array show graphically that the mass of construction, railroad, and other uses are impermissible uses in the zone.

The CBA denied Mr. Riffin's attempts to inject an issue of concerning the validity of Inspector Mills' inspection of the property. We anticipate he may bring it up again. We shall, therefore, address this issue as well. In our view, the inspections are valid and the relevant evidence pertains to open areas. Anyway, the exclusionary rule derived from the Fourth Amendment and Maryland Declaration of Right does not apply to civil proceedings.

QUESTIONS PRESENTED, IN BRIEF

1. Do the Geddes appeal and Riffin pursuit of the petition *de novo* conflict with the settlement agreement?
2. Are the proposed uses permitted as a matter of law?
3. Was there lawful "open land" inspections by county zoning inspector Phillip Mills; anyway is his resulting testimony and photographic evidence admissible?
4. Does it matter that there are friends and neighbors who support the Riffins?

BACKSTORY

All the curious uses, where do they all come from?

Based on The Beatles, Eleanor Rigby (1966)

Mr. Riffin is not a stranger to the CBA. We will never forget Mr. Riffin's bungee-jumping zoning foray at 1941 Greenspring Drive in Timonium. The CBA decided this case on December 31, 1998. Case No. 98-336-SPHXA. That case went to the Court of Special Appeals (CSA), which affirmed the CBA's denial of his request for a bungee jumping operation as illegal under Maryland law not permitted by right, and not available via special exception or variance. Riffin v. People's Counsel 137 Md. App. 90, cert. denied 363 Md. 660 (2001). Memo Exhibit A, attached. As Mr. Riffin acknowledged, the crane for the bungee operation has moved to Gateview Road.

Subsequently, Mr. Riffin had occasion to visit the CBA on appeal of a Code Enforcement Officer decision relating to construction, permit, and environmental problems at 10919 York Road in Cockeysville. After another prolific round of litigation, the CBA affirmed the hearing officer's decision on July 1, 2008. Case No.CBA 08-102. The Circuit Court Judge Lawrence Daniels affirmed the CBA order on November 25, 2008. Case C-08-008110. This was just one of many Riffin cases addressed by the CSA in Riffin v. Circuit Court for Baltimore County 190 Md. App. 11 (2010). Memo Exhibit B. Upon remand, on March 3, 2010, Circuit Judge John Turnbull filed an opinion and order finding Mr. Riffin to be a frivolous and vexatious litigant. Judge Turnbull ordered that Mr. Riffin obtain leave of court before filing any other action. Case 03-C-08-008110. Memo Exhibit C. Remarkably, the railroad cars, tracks, and equipment at the center of that litigation have now made their way to Gateview Road.

As the CSA observed, Mr. Riffin may hold sincere opinions. Arguably, Mr. Riffin does what many petitioners do in zoning cases. They spin the facts, law, and language to get a favorable result, regardless of objective reality and acceptable, conventional English language usage. The difference with Mr. Riffin is that his presentations may involve a form, style, persistence, and tenacity which becomes troublesome.

I. YOUR WORD IS YOUR BOND

Les Jeux Sont Fait (the Chips Are Down), Jean-Paul Sartre, Les Jeux Sont Fait (1947)

As noted, there was considerable preliminary discussion of the October 9, 2013 Agreement between the Baltimore County and the Riffins. Despite concerns about the Riffins' utilization of an appeal by Mr. Geddes to evade their agreement, the CBA Chair showed leniency in allowing the appeal to forward. While we understand and respect this approach, given the extraordinary situation, we must register our view that as the case unfolded, it became even more obvious that the Riffins were in breach of the Agreement.

Even before the July 15th hearing, Mr. Riffin was on record in "joining" the appellant in filing four different pleadings: a joint motion to challenge People's Counsel's standing, a joint motion to proceed on the record, a joint reply to People's Counsel's pre-hearing memorandum, and a joint argument. At the hearing, Mr. Riffin elaborated on all

these motions and pleadings. Mr. Geddes did not present any argument. It is evident that Mr. Riffin composed the various pleadings. These filings and oral argument show plainly that Mr. Riffin was utilizing Mr. Geddes' appeal to contest the ALJ decision.

At the hearing, it also became apparent that Mr. Geddes was there because Mr. Riffin is his friend, Mr. Riffin plows his driveway in the winter, and, as far as Mr. Geddes is concerned, Mr. Riffin's uses are not objectionable to him. Mr. Geddes had no idea of the nature of the issues involved in the petition for special hearing. Meanwhile, Mr. Riffin, in his role as witness, essentially took over the case and interspersed argument with his answers to questions.

So, this is Mr. Geddes' appeal in name only. In substance, it is Mr. Riffin's appeal. In any event, it is beyond a reasonable doubt that Mr. Riffin is contesting the ALJ Order. The great Judge Benjamin Cardozo, while on the New York Court of Appeals, wrote in the classic Wood v. Lucy, Lady Duff-Gordon 118 N.E. 214 (1917) that a contract may be silent on a particular duty, yet still may impose an obligation. As he wrote,

"A promise may be lacking, and yet the whole writing may be instinct with an obligation, imperfectly expressed." 118 N.E. 214.

Even if we assume that the Agreement does not cover explicitly the unusual situation of the Geddes appeal, the whole writing is instinct with the Riffins' obligation not to proceed to challenge the ALJ decision.

There is more. The CBA exercises appellate jurisdiction here, even though zoning appeals proceed as *de novo* appeals. United Parcel Service v. People's Counsel 336 Md. 569, 589-91 (1994); Halle Companies v. Crofton Civic Ass'n 339 Md. 131, 141-44 (1996). As stated in our pre-hearing memorandum, the meaning and nature of the *de novo* appeal is that the case starts over, as if there were no proceeding or decision below. Consequently, we are dealing once again with the Riffins' petition. But the Riffins have agreed not to contest the ALJ decision. Therefore, they may not proceed in a *de novo* setting to challenge the ALJ's denial of their petition for special hearing.

The Agreement, albeit in a civil enforcement setting, is analogous to a plea bargain in a criminal case. The courts have consistently supported the public interest in

plea bargains and enforced them when entered into voluntarily and within the law. In a civil setting, the courts have also encouraged and enforced settlement agreements. There is a public policy to “look with favor upon the compromise or settlement of law suits in the interest of efficient and economical administration of justice and the lessening of friction and acrimony.” Chertkof v. Harry Weiskittel Co. 251 Md. 544, 550 (1968), cert. denied 394 U.S. 974 (1969); Clark v. Elza 286 Md. 208, 218-19 (1979)

Under all the circumstances, the CBA should find that there are grounds for dismissal of the petition because its pursuit via appeal conflicts with the Riffins’ commitments in the Agreement. Their pursuit here perpetuates the friction and acrimony which the Agreement was intended to lessen and resolve. This is inimical to the efficient and economical administration of justice. It is another exercise in excessive litigation. In the words of Yogi Berra, it is *déjà vu* all over again.

II. THE USES ARE NOT PERMITTED *All the curious uses, where do they all belong?*

Special Hearing petitions under BCZR Sec. 500.7 relate either to determination, and application of zoning law to particular situations or to determination of nonconforming use status. The present case is the former. In Antwerpen v. Baltimore County 165 Md. App. 194, 209 (2005), Judge Salmon found that a special hearing is analogous to a declaratory judgment proceeding. It is the CBA’s function to declare the rights of the parties under the law.

The legendary Confucius advised that the first thing to be done to administer government well is to name things correctly. We must use language in accordance with the truth of things. Confucius, Analects, Book 13, Verse 3

The interpretation of zoning use definitions involves evaluation of law and language. This also applies to the differentiation of accessory and principal uses. Arundel Supply Co. v. Cason 265 Md. 371, 377-78 (1972); Smith v. Miller 249 Md. 390, 394-95 (1968); St. Clair v. Colonial Pipeline Co. 235 Md. 578, 582-83 (1964); Kenyon v. Board of Zoning Appeals 235 Md. 388, 394 (1964); Kowalski v. Lamar 25 Md. App. 493, 496-

501 (1975); United Parcel Service v. People's Counsel 93 Md. App. 59, 71-74 ((1993), rev'd on other grounds 336 Md. 569 (1994).

Under zoning law, to be permitted, a use or structure must be enumerated as permitted by right or special exception in the particular zone. BCZR Sec. 102.1 states,

“No land shall be used or occupied and no building or structure shall be erected, altered, located or used except in conformity with these regulations and this shall include any extension of a lawful nonconforming use.” Apx. 25.

See Kowalski v. Lamar 25 Md. App. 493, 496-501 (1975); People's Counsel for Baltimore County v. Surina 400 Md. 662, 688 (2007).

The uses at issue are located in the main R.C. 6 Zone section of the split-zoned property. The R.C. 6 Zone permitted uses are listed in BCZR Sec. 1A07.3, Memo Exhibit D, attached. None of Riffins' uses, described earlier, are listed as permitted uses, either by right or special exception. The uses are likewise not among the uses permitted by right or special exception in D.R. (Density-Residential) Zones. BCZR Sec. 1B01.1.A, C.

Riffin nevertheless argues his uses are either accessory to farming, recreational, or in the nature of toys. As to farm use, he says he is growing trees for eventual sale. Yet, there is no evidence of any current sales or active agricultural activities. There is no evidence that the crane, man-lift, and construction equipment are in active farm use. At most, there is passive growth of trees.

The burden of proof is on the petitioners. See Grasslands Plantation v. Frizz-King Enterprises 410 Md. 191, 204-17 (2009); Turner v. Hammond 270 Md. 41, 54-55 (1974). But their presentation was vague. It was replete with generalities and conclusions. Mr. Geddes' testimony had nothing to do with the issues. Mr. Riffin went through a catalog of his uses and argued for their legitimacy. He said some of the equipment was used to trim trees which eventually might be sold years from now. But he did not provide specifics. He did not produce any photographs.

As Mr. Riffin conceded, the crane and railroad equipment were imported relatively recently from Mr. Riffin's industrial properties on Greenspring Drive (still listed as his address on the petition) and Beaver Dam Road. This goes along with Mr.

Riffin's testimony that most of the equipment and vehicles arrived at the Gateview Road property in 2013.

Correlatively, the State Department of Assessments Real Property data sheet identifies the Gateview Road property as residential. This runs contrary to Mr. Riffin's emphasis on agricultural qualifications and uses of the property.

Simply put, there was not a credible, substantial evidentiary presentation. Another way to describe the proof is scanty and unconvincing. It was riddled with contradictions. In sum, the appellant and petitioners failed to satisfy the burden of proof. On this basis alone, the CBA should deny the petition.

Anyway, our office called Inspector Mills as a witness to provide personal observations and photographic evidence of the specific land uses. Ironically, Mr. Riffin objected to his testimony. We shall deal with his objections below. Suffice it to say here that Mr. Riffin's objections did not enhance his credibility.

From all indications, whether it be the aerial photography or Inspector Mills' description, the property is in residential use; there is a significant wooded area; and there are the various items of construction equipment; railroad cars, tracks, and material; and trucks, buses, and automobiles, mostly inoperative, strewn along the driveway and or at some distance from the driveway.

BCZR §101.1 defines "accessory use or structure" and "principal use." Apx. 19:

"ACCESSORY USE OR STRUCTURE: 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; except that, where specifically provided in the applicable regulations, accessory off-street parking need not be located on the same lot. An accessory building, as defined above, shall be considered an accessory structure. A trailer may be an accessory use or structure if hereinafter so specified. An ancillary use shall be considered as an accessory use; however, a use of such a nature or extent as to be permitted as a "use in combination" (with a service station) shall be considered a principal use."

"PRINCIPAL USE: A main use of land, as distinguished from an accessory use."

Here, the size, scope, and character of the various uses are of sufficient magnitude to exceed the framework of "accessory uses." The proposed uses do not meet the "accessory use or structure" definitional criterion of (a) "customarily incident and subordinate to ... the principal use." Nor are they (b) "subordinate in area, extent, or purpose" Rather, they are akin to a "principal use." It is "[a] main use of land, as distinguished from an accessory use."

There is nothing "incidental," or "appertaining, subordinate, or casual," about this use or structure either in size or character. In Dampman v. City of Baltimore 231 Md. 280 (1963), the Court analyzed the meaning of "incidental" where the ordinance allowed an "incidental" addition to a legal nonconforming use. The Court held that a second-floor addition, 12 feet wide and 22 feet long was not incidental, and wrote,

"The statute in requiring that the use be 'incidental' does not, we think, contemplate a major addition to or a major expansion of the nonconforming use, but rather one appertaining, subordinate or casual thereto." 231 Md. at 286.

Furthermore, the proposal is not "customary." As Inspector Mills said, in his experience, he never saw anything like this on a residential property. The uses are extraordinary. This reinforces the point that they are not "accessory."

As to Mr. Riffin's additional argument that some uses are recreational or like toys (the caboose and railroad cars) or sheds (the inoperable buses), these make no sense at all. They are not incidental and they are not customary residential uses.

Moreover, where zoning regulations define specifically a use or structure which fits the one in question, the use may not be rationalized under the guise of another more general use, whether "principal" or "accessory." Here, the uses come close to fitting the BCZR 101.1 definitions of "contractor's equipment storage yard" and "junkyard." To illustrate, in Smith v. Miller, 249 Md. 390 (1968), the Harford County Board of Appeals had granted a special exception for a sawmill operation in an agricultural zone. A special exception was permitted for "Processing of. . . farm products." But the law explicitly listed "sawmill" as a permitted use in a manufacturing zone. The Zoning Board and Circuit Court had reasoned that "timber is a farm product; a sawmill processes it;

therefore, Mr. Miller is entitled to build a sawmill in an agricultural district.” The Court of Appeals reversed, as a matter of law,

“The testimony before the Board reveals the character of Mr. Miller’s operation. . . This can scarcely be regarded as consistent with the other conditional uses possible under Section 702. To take any other view would open the county’s agricultural district to any industrial development remotely connected with the processing of dairy and farm products . . . and would make meaningless the provision of the Ordinance which attempts to confine sawmills, . . . to a general industrial district.” 249 Md. at 393-4.

“The provisions of the Ordinance must be considered as an entirety, and we do not think the Board could rely on a conditional use provision to permit in an agricultural use district a use which the Ordinance manifestly intended to confine to a general industrial district.” 249 Md. at 395.

Subsequently, in Arundel Supply Corp. v. Cason, 265 Md. 371, 378 (1972), the Court rejected the argument that washing and screening of gravel from other sites was accessory to a permitted gravel pit use. Judge McWilliams wrote,

“We are not persuaded that this is so any more than we could be persuaded that a commercial bakery in an agricultural zone could be said to be a use accessory to the raising of wheat.”

To reach this conclusion, there was also this observation,

“The plausibility of what we have said is enhanced by the fact that under the 1948 ordinance washing, screening and batching required a highly restrictive special exception.”

In sum, the various uses are not accessory to the principal residential use and are not recreational residential uses.

III. THE INSPECTIONS WERE LEGAL, AND ANYWAY THE EVIDENCE IS ADMISSIBLE

“Needles and Pins,” The Searchers, Needles and Pins (1964)

The Riffins assert that Inspector Mills illegally and unconstitutionally searched their property. On this basis, they have attempted to exclude his evidence.

People’s Counsel’s position is that the inspection is legal under County Code Section 32-3-602(b)(2) as “open land.” It is also constitutional under the Fourth Amendment of the United States Constitution and the analog Article 26 of the Maryland

Declaration of Rights as beyond the "curtilage.". Furthermore, in filing a Petition for Special Hearing, the Riffins have, by implication, waived any expectation of privacy and effectively consented to an inspection of their property.

Anyway, the ultimate issue is the admissibility of the evidence. The bottom line is that the exclusionary rule does not apply to civil proceedings. So, even if the inspection were questionable, it would not warrant exclusion of the evidence.

As background, it is noteworthy that the United States Fourth Amendment and Maryland Article 26 constitutional limitations allow greater flexibility in administrative inspections for public health and fire safety purposes than in criminal cases. Givner v. State 210 Md. 484, 503-05 (1956). For example, in sustaining the Vehicle Emissions Inspection Program (VEIP), the Court discussed the balancing test involving the intrusion, on one hand, and legitimate governmental interests on the other. Department of Transportation v. Armacost 299 Md. 392, 405-08 (1992).

Here, the inspector did not enter the premises. The evidence pertinent to the uses named in the petition involved inspection and photography on open land. Mr. Riffin's dwelling use is not in controversy. Nor is anything inside the dwelling. The uses in issue were, as noted, at substantial varying distances from the dwelling.

The aforesaid County Code subsection 32-3-602(b)(2) provides, as enforcement powers, that "Representatives of the Department of Permits, Approvals, and Inspections,

"(b)(2) May enter upon open land during the performance of their duties."

This contemplates the type of inspection done by Inspector Mills, where he stayed outside the residence. His inspection and photography of the uses at issue took place at a fair distance from the residence, mostly hundreds of feet away along or near a driveway extending 1000 feet from the entrance to the property. In other words, the relevant evidence involved uses in open lands. Whether or not there was a "No Trespass" sign is immaterial. Nor is it relevant whether there was a rope up at the entrance, as may have been on one of the two inspections. The inspector is entitled to proceed to open land.

In this context, the Supreme Court has defined "curtilage" as an area with an expectation of privacy. In Brown v. State 75 Md. App. 22, 30-32, cert. denied 313 Md. 31

(1988), Judge Bishop reviewed the Supreme Court cases and discussed the concept in detail. He found no set formula. He quoted United States v. Dunn 480 U.S. 294 (1987),

“... that curtilage questions should be resolved with particular reference to four factors: the proximity of the area claimed to be curtilage to the home, whether the area is included in an enclosure surrounding the home, the nature of the uses to which the area is put, and the steps taken by the resident to protect the area from observation by people passing by.

“We do not suggest that combining these factors produces a finely tuned formula that, when mechanically applied, yields a ‘correct’ answer to all extent-of-curtilage questions. Rather, these factors are useful analytical tools only to the degree that, in any given case, they bear upon the centrally relevant consideration --- **whether the area in question is so intimately tied to the home itself that it should be placed under the home’s umbrella of the Fourth amendment protection.**” Emphasis supplied

In essence, the protected curtilage is an area close to the dwelling used for activities related to the dwelling.

The Riffins’ uses extend broadly across their 13-acre property in open and/or wooded areas at significant distances from the dwelling. These uses are unrelated to dwelling activities. The inspections and evidence of the uses in question did not involve any protected curtilage.

As to any expectation of privacy, the Riffins can hardly insist on such it because they voluntarily placed the uses in issue with their zoning petition. Otherwise, it would leave the case vulnerable to a property owner’s one-sided presentation. The county and the public would be left with their hands tied behind their back. That is not justice.

In filing the petition for special hearing, the Riffins gave their implicit consent to a reasonable inspection of their property. Analogously, as the Court said in Armacost, *supra*, 299 Md. at 407-08, “It is well accepted that ‘consent to minimal intrusions may be required by the State as a prerequisite to use of regulated means of travel.’” The same goes for the property of petitioners in zoning cases.

While it is important to emphasize that Phillip Mills’ inspections are legal and constitutional as to open land beyond the curtilage, it is equally important to underline that the exclusionary rule for illegally obtained evidence does not apply to civil proceedings. Policy considerations justify the strict rule for criminal proceedings, with a

defendant's liberty at stake. But they do not apply in the different civil context. The Supreme Court clarified this in INS v. Lopez-Mendoza 468 U.S. 1032 (1984). This involved deportation proceedings. The Court of Special Appeals followed in Mayor & City Council of Baltimore v. One 1995 Corvette 119 Md. App. 691 (1998), a forfeiture case. These cases had more drastic personal and property consequences than the present situation.

Plainly, there is no valid objection to the evidence provided by Inspector Mills. Ironically, the Riffins' objection cuts the other way. It is virtually an admission against interest, as if there is something to hide.

IV. SUPPORT FROM FRIENDS AND NEIGHBORS

"The Last Hurrah" J. Ford, The Last Hurrah (1958)

The Riffins seek solace in the support of neighbors, of Appellant Will Geddes and of others who did not attend the hearing but signed affidavits. Even if it were assumed there is unanimous or overwhelming area support, this would not justify the petition.

The Court of Appeals held long ago that zoning decisions are not subject to a plebiscite by neighbors. Benner v. Tribbitt 190 Md. 6, 20 (1948), citing, *inter alia*, Eubank v. City of Richmond 226 U.S. 137 (1912). While Benner addressed a situation where various neighbors opposed a building permit for a gas station, the principle applies equally to any neighborhood opinion, whether favorable or unfavorable. So, in Cabin John Limited Partnership v. Montgomery County Council 259 Md. 661, 674 (1970), the Court sustained the trial judge's exclusion of a market survey, on the ground that it was equivalent to a plebiscite. Judge Smith there cited and quoted Benner as the main case, with subsequent iterations in Smith v. Board of County Comm'rs 252 Md. 280, 285 (1969); Mayor & Council of Rockville v. Cotler 230 Md. 335, 340 (1963); and Montgomery County v. Scrimgeour 211 Md. 306, 313 (1956). The principle is so well settled that the key precedents were established years ago.

In the present case, none of the area residents appeared in opposition. But citizens are sometimes shy to participate actively. Frequently, as here, a citizen makes an

anonymous complaint. They may believe the facts to be clear, that county staff will investigate, and that decision-makers will base their decisions on the facts and the law.

To be sure, it is often helpful to have area citizens appear and testify to relevant facts. But where the facts are clear enough, their participation is not indispensable.

Here, although there was no evidence presented at the hearing by neighbors with complaints, the uses in issue can plausibly cause problems --- such as visual, noise, and traffic. They may in the future cause problems here. Such uses could cause problems if placed on other residential properties, even if not aggregated or massed to the extent here.

As the Supreme Court observed in Village of Euclid v. Ambler Realty Co. 272 U.S. 365, 388-89 (1926), the legislature may decide it is appropriate to include a reasonable margin to insure effective enforcement,

“Here, however, the exclusion is in general terms of all industrial establishments, and it may thereby happen that not only offensive or dangerous industries will be excluded, but those which are neither offensive nor dangerous will share the same fate. But this is no more than happens in respect of many practice-forbidding laws which this court has upheld, although drawn in general terms so as to include individual cases that may turn out to be innocuous in themselves. Hebe Co. v. Shaw, 248 U. S. 297, 303, 39 S. Ct. 125, 63 L. Ed. 255; Pierce Oil Corp. v. City of Hope, 248 U. S. 498, 500, 39 S. Ct. 172, 63 L. Ed. 381. The inclusion of a reasonable margin, to insure effective enforcement, will not put upon a law, otherwise valid, the stamp of invalidity. Such laws may also find their justification in the fact that, in some fields, the bad fades into the good by such insensible degrees that the two are not capable of being readily distinguished and separated in terms of legislation. In the light of these considerations, we are not prepared to say that the end in view was not sufficient to justify the general rule of the ordinance, although some industries of an innocent character might fall within the proscribed class. It cannot be said that the ordinance in this respect ‘passes the bounds of reason and assumes the character of a merely arbitrary fiat.’ Purity Extract Co. v. Lynch, 226 U. S. 192, 204, 33 S. Ct. 44, 47 (57 L. Ed. 184). Moreover, the restrictive provisions of the ordinance in this particular may be sustained upon the principles applicable to the broader exclusion from residential districts of all business and trade structures, presently to be discussed.”

The Riffins’ argument based on the support of friends and area residents is not germane.

OUT OF THE JUNGLE

“I can see clearly now, the rain is gone

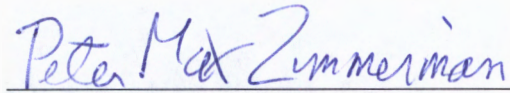
I can see all obstacles in my way”

Johnny Nash, I Can See Clearly Now (1972)

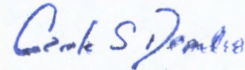
The County Board of Appeals should deny the petition for special hearing.

Mr. Riffin's presentation, has been creative, original, persistent, single-minded and indefatigable. He has done it without a professional advocate. He has done it without an army of expert spin doctors. He has done it his way. But it is time to turn the page.

His presentation, however original, follows a path trod frequently in zoning cases. A petitioner gives us his take on language, facts, and law to get a result, regardless of reality. It is our office's job to defend the zoning law and to show where a petitioner's presentation does not withstand objective analysis. This is what we have tried to do. Now, the ball is in the CBA's court to decide.



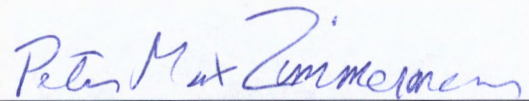
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of July, 2014, a copy of the foregoing People's Counsel for Baltimore County's Post-Hearing Memorandum has been mailed to Will Geddes, 11115 Powers Avenue, Cockeysville, Maryland 21030 and to James & Karole Riffin, 1941 Greenspring Drive, Timonium, MD 21093, Petitioner(s).



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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Court of Special Appeals of Maryland.
 James RIFFIN,
 v.
 PEOPLE'S COUNSEL FOR BALTIMORE
 COUNTY, Maryland, et al.

No. 3002, Sept. Term, 1999.
 March 2, 2001.

Landowner appealed decision of the county board of appeals denying request for a special exception to construct a commercial recreation facility to accommodate bungee jumping. The Circuit Court, Baltimore County, [Thomas J. Bollinger, Sr.](#), J., affirmed. Landowner appealed. The Court of Special Appeals, [Moylan, J.](#), held that the proposed use was a "bungee jumping operation" prohibited by state law and county ordinance.

Affirmed.

West Headnotes

[1] Administrative Law and Procedure 15A
 791

15A Administrative Law and Procedure

15AV Judicial Review of Administrative Decisions

15AV(E) Particular Questions, Review of
15Ak784 Fact Questions

15Ak791 k. Substantial evidence. **Most Cited Cases**

The standard of review of an administrative agency's findings of fact requires the Court of Special Appeals to determine whether substantial evidence on the record as a whole supports its conclusions.

[2] Administrative Law and Procedure 15A
 784.1

15A Administrative Law and Procedure

15AV Judicial Review of Administrative Decisions

15AV(E) Particular Questions, Review of
15Ak784 Fact Questions

15Ak784.1 k. In general. **Most Cited Cases**

The Court of Special Appeals cannot substitute its judgment for that of an administrative agency on findings of fact, but must exercise a restrained and disciplined judicial judgment so as not to interfere with the agency's factual conclusions.

[3] Zoning and Planning 414 **1505**

414 Zoning and Planning

414IX Variances and Exceptions

414IX(A) In General

414k1505 k. Entertainment and recreation; theaters and clubs. **Most Cited Cases**
 (Formerly 414k505)

Landowner's proposed commercial recreation facility to accommodate bungee jumping was a "bungee jumping operation" prohibited by state law and county ordinance, rather than a "commercial recreational facility," and, thus, the landowner was not entitled to a special exception; the crane operator acknowledged payment by the landowner, and the county ordinance defined "commercial recreational facility" to exclude an amusement park or similar use. [Code, Business Regulation, § 3-503.](#)

[4] Zoning and Planning 414 **1473**

414 Zoning and Planning

414IX Variances and Exceptions

414IX(A) In General

414k1473 k. Grounds for grant or denial in general. **Most Cited Cases**
 (Formerly 414k489)

The county board of appeals cannot grant a special exception for a use that is neither permitted by law nor by county zoning regulations.

[5] Zoning and Planning 414 **1505**

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414 Zoning and Planning
 414IX Variances and Exceptions
 414IX(A) In General
 414k1505 k. Entertainment and recreation; theaters and clubs. [Most Cited Cases](#)
 (Formerly 414k539)

Evidence supported conclusions by the county board of appeals that a one-story office building was not unique and that the landowner was not entitled to special exception and variances to construct a commercial recreation facility.

[6] Zoning and Planning 414 1465

414 Zoning and Planning
 414IX Variances and Exceptions
 414IX(A) In General
 414k1465 k. Nature and necessity in general. [Most Cited Cases](#)
 (Formerly 414k481)

A "variance," if granted, permits a use that is normally prohibited and presumed to be in conflict with the ordinance.

[7] Zoning and Planning 414 1544

414 Zoning and Planning
 414IX Variances and Exceptions
 414IX(B) Proceedings for Variances and Exceptions

414k1539 Notice and Hearing
 414k1544 k. Presumptions and burden of proof. [Most Cited Cases](#)
 (Formerly 414k536)

An applicant for a variance bears the burden of overcoming the presumption that the proposed use is unsuitable.

****923 *91** James Riffin, Timonium, for appellant.

Peter Max Zimmerman and [Carole S. Demilio](#), Towson, for appellees.

***92** Submitted before [MOYLAN](#),^{FN*} [SONNER](#) and [PAUL E. ALPERT](#) (retired, specially assigned), JJ.

FN* [Moylan, J.](#), participated in the hearing and conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

MOYLAN, Judge.

The appellant, James Riffin, challenges an Order issued by Judge Thomas J. Bollinger in the Circuit Court for Baltimore County affirming the decision of the Baltimore County Board of Appeals, which denied his petitions for a special hearing, special exception, and five separate zoning variances. On appeal, he contends:

1. that the Board erred in finding that the appellant's proposed use of the property constituted a "bungee jumping operation"; and
2. that the Board acted arbitrarily and capriciously in denying his petitions.^{**FN1**}

FN1. We note that in his brief to this Court, the appellant raised five issues with approximately twenty subcontentions. We have condensed those subcontentions into two.

At some point in the spring of 1998, the appellant petitioned the Baltimore County Zoning Commissioner for a Special Hearing, for a Special Exception, and for nine area parking and sign variances in an effort to operate a "Commercial Recreational Facility" at 1941 Greenspring Avenue Drive in Timonium. At that time, there existed on the property an old one-story building which was rented for office space. The property was zoned for M.L. (Manufacturing-Light). It was the appellant's intention in seeking the exception and the variances to create a commercial/recreation facility that would accommodate bungee jumping.

On June 1, 1998, the Zoning Commissioner granted four of the requested nine variances for existing non-conforming front and side-yard setbacks

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but denied all of the other requests. The appellant appealed that decision to the Baltimore County Board of Appeals ("the Board") and a three day public hearing *93 began on November 25, 1998. ^{FN2} In the course of that hearing, the Board heard extensive testimony from the appellant regarding his plans for the property. The Board also heard testimony from adjacent property owners, from the Office of the People's Counsel, and from a representative from the Greater Timonium Community Council, all of whom testified in opposition to the appellant's petitions.

^{FN2}. The public hearing was held on November 25, December 15, and December 17, 1998.

On December 31, 1998, the Board issued an extensive written Opinion denying the appellant's request for both the Special Hearing and Special Exception for bungee jumping and for the requested variances that had been denied by the Zoning Commissioner. The appellant appealed to the Circuit Court for Baltimore County. On October 4, 1999 a hearing was held before Judge Bollinger. On October 7, Judge Bollinger affirmed the Board's decision, finding that it was supported by substantial evidence and was not premised on any error of law. The appellant noted this timely appeal.

[1][2] With regard to the standard of review to be applied in a case such as this, we explained in *Stover v. Prince George's County*, 132 Md.App. 373, 380-81, 752 A.2d 686 (2000), that:

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

****924** Rather, "[t]o the extent the issues on appeal turn on the correctness of an agency's findings of fact, such findings must be reviewed on

the substantial evidence test." The reviewing court's task is to determine "whether there was substantial evidence before the administrative agency on the record as a whole to support its conclusions." *The court cannot substitute its judgment for that of the agency, but *94 instead must exercise a "restrained and disciplined judicial judgment so as not to interfere with the agency's factual conclusions."*

(Citations omitted; emphasis supplied).

[3] The appellant first contends that the trial court erred in denying his petition for a Special Hearing and a Special Exception in order to accommodate bungee jumping. The appellant specifically contends that the trial court erred in finding that his proposed use of the property would amount to a "bungee jumping operation," which both parties agree is prohibited in Maryland, ^{FN3} rather than a "recreational use," which is permissible. We are not persuaded.

^{FN3}. Md.Code, Business Regulation, § 3-503 specifically provides:

§ 3-503. Prohibition on bungee jumping operation.

(a) *Definitions.*-(1) in this section the following words have the meaning indicated.

(2) "Bungee jump" means jumping or falling by an individual from a height while attached to a rope or cord that is elastic, rubber, or latex.

(3) "Bungee jumping operation" means an operation that allows an individual to bungee jump for a fee or dues.

(b) *Prohibition.*-A person may not conduct a bungee jumping operation.

(c) *Penalties.*-A person who violates subsection (b) of this section is guilty of

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a misdemeanor and, on conviction, is subject to a fine not exceeding \$2,500 or imprisonment not exceeding 6 months or both.

In its Opinion denying the appellant's request for a Special Hearing and Special Exception, the Board set out, in great detail, its findings with respect to the appellant's proposed use:

The Board has carefully considered the testimony produced and the numerous exhibits of the evidence admitted and items marked for identification and weight assessment. This Board's initial review involved bungee jumping and how it is addressed in the Maryland Code. A review of the law and supporting documents afforded the Board members some insight into the thinking of the legislature on this subject.... *The Board concluded that the bungee jumping operations as proposed by the appellant/petitioner was in actuality a bungee jumping operation.* Regardless of *95 whether using the word "operation" or the word "activity," it is semantical and one resembles the other. The inference regarding fees came out in the testimony by a crane operator who acknowledged that he was paid by Mr. Riffin for operating the crane, and that he expected to continue on as a crane operator if Mr. Riffin were allowed to have a bungee jumping operation. As well, Mr. Riffin indicated that individuals would be able to rent the crane and /or any needed equipment in order to perform bungee jumping activities. *These representations produce the appearance of being a bungee jumping operation, which is not allowed by Maryland law, this would not be a permitted use under the Baltimore County Zoning Regulations ["BCZR"].*

The Board then explored whether the appellant's proposed use could in any way be viewed as a Commercial Recreational Facility, a permissible use for the property under the zoning regulations. In rejecting the appellant's contention, the Board stated:

The Board then looked at the definitions of Commercial Recreational Facilities under BCZR 101.... *The definition notes that a commercial recreational facility shall not include an amusement park or similar use.* Throughout the numerous discussions as to what bungee jumping would be considered, it came up **925 that it was frequently done in conjunction with amusement-like operations and was described by expert witnesses as a "thrill seeking activity." It was noted that State legislation regarding bungee jumping was put in that Section of the Annotated Code as amusement activities.

In rejecting the appellant's final two arguments with respect to his request for a Special Exception, the Board found 1) that bungee jumping did not qualify as a permitted use under Section 253 of the BCZR, which permits practice or physical training conditioning facilities and fields for amateur or professional sports organizations; and 2) that bungee jumping did not qualify as a use permitted without special exception under Section 270 of the BCZR 2-115 Schedule of Special Exceptions. That Schedule provides that a community building,*96 swimming pool, or other structural or land use devoted to civic, social or recreational and educational activities is a use permitted without special exception.

[4] The appellant is correct in that a requested special exception should be granted unless there is substantial evidence that it would have an adverse effect above and beyond those inherently associated with such a special exception use irrespective of its location within the zone. What the appellant fails to acknowledge, however, is that the Board made a factual finding that the appellant's proposed use of the property amounted to a "bungee jumping operation," not a "recreational facility." That finding alone required the Board to deny the petition for the special exception. The Board simply cannot grant a special exception for a use that is neither permitted by law nor by Baltimore County Zoning Regulations. There is substantial evidence in the record to support that finding by the Board. We see no error.

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[5] Additionally, we note that even assuming *arguendo* that the Board erred in finding that the appellant's proposed use was an illegal "bungee jumping operation," we would still hold that the Board did not err in denying the appellant's petition for a Special Exception. In its Opinion the Board carefully examined the criteria for granting a request for a special exception under Section 502.1 of the BCZR.^{FN4} After *97 doing so, the Board found that the appellant failed to satisfy those criteria. We hold that there was substantial evidence on the record supporting that decision.

FN4. Section 502.1 specifically provides:

Before any Special Exception may be granted, it must appear that the uses for which the Special exception is requested will not:

- a. Be detrimental to the health, safety or general welfare of the locality involved;
- b. Tend to create congestion in roads, streets or alley therein;
- c. Create a potential hazard from fire, panic, or other dangers;
- d. Tend to overcrowd land and cause undue concentration of population;
- e. Interfere with adequate provisions for schools, parks, water, sewerage, transformations or other public requirements, convenience, or improvements;
- f. Interfere with adequate light and air;
- g. Be consistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; nor
- h. Be inconsistent with the impermeable surface and vegetative retention provi-

sions of these Zoning Regulations.

[6][7] With regard to the appellant's variance requests, we note that a variance, if granted, permits a use that is normally prohibited and presumed to be in conflict with the ordinance. *North v. St. Mary's County*, 99 Md.App. 502, 510, 638 A.2d 1175 (1994). "An applicant for a variance bears the burden of overcoming the presumption that the proposed use is unsuitable. That is done, if at all, by satisfying fully the dictates of the statute authorizing the variance." *North*, 99 Md.App. at 510, 638 A.2d 1175.

In denying the appellant's requests for variances, the Board explained:

Section 307.1 of the *Baltimore County Zoning Regulations* states, in pertinent part, as follows:

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

As well, this Board enjoys the guidance provided by the Court of Special Appeals in *Cromwell v. Ward*, 102 Md.App. 691 [651 A.2d 424] (1995). In requiring a pre-requisite finding of "uniqueness," the Court defined the term and stated:

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

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

It is this Board's finding that the proposed site is in no way unique, unusual or different from the other properties that are existent in this M.L.-I.M. zone. The Maryland Department of Assessments and Taxation, real Property System map, shows just how similar in size and shape all of the properties are along Greenspring Drive. Testimony by Mr. Patton indicated that this property was consistent with others in the community, and he noted that the gentle slope off of Greenspring Drive was consistent with other properties, further noting that some chose to fill in their properties before building and have entrances at the rear of their locations.... At no time in the hearing did the appellant entertain any historical significance to the site nor were environmental or subsurface conditions documented. Mr. Riffin did testify as to the damage to the interior of his building but did not document the same with photographic exhibits, receipts for repairs or documentation by some authority regarding the nature or extent of this damage. There was no testimony or evidence regarding abutting properties restricting his activities or imposing any unique characteristics upon his site. In the absence of an initial finding of uniqueness, the inquiry under Section 307.1 stops and, in this case, the three variances must be denied.

(Emphasis supplied). We see no error.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.

Md.App.,2001.

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(The decision of the Maryland Court of Appeals is referenced in the Atlantic Reporter in a table captioned "Petitions for Writ of Certiorari.")

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People's Counsel

No. 652 Sept. 2000
April 13, 2001

Opinion of the Court of Special Appeals unreported (No. 3002, Sept. Term 1999).

Disposition: Denied.

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Court of Special Appeals of Maryland.
 James RIFFIN
 v.
 CIRCUIT COURT FOR BALTIMORE COUNTY,
 et al.
 No. 2939, Sept. Term, 2008.
 Jan. 5, 2010.

Background: Pro se litigant appealed pre-filing order of the Circuit Court, Baltimore County, Davis, Zarnoch, Sharer, J. Frederick, JJ., declaring him a "frivolous" or "vexatious" litigant, who would be required to seek judicial approval before filing any further pleadings, and entered in six pending actions. Cases were consolidated for appeal.

Holdings: The Court of Special Appeals, Zarnoch, J., held that:

- (1) order constituted a sua sponte injunction, and, thus, order was appealable;
- (2) litigant filed a sufficient answer and, thus, injunction was immediately appealable; and
- (3) order violated litigant's right to due process.

Order vacated, and cases remanded.

West Headnotes

[1] Injunction 212 ⇐1169

212 Injunction
 212IV Particular Subjects of Relief
 212IV(A) Courts and Actions in General
 212k1168 Abusive, Vexatious, or Harassing Litigation
 212k1169 k. In general. Most Cited

Cases

(Formerly 212k26(4))

A pre-filing order is a sua sponte injunction and, if properly issued, is a remedy available to a Maryland court to control the actions of a vexatious or frivolous litigant. Md. Rule 15-502(b).

[2] Appeal and Error 30 ⇐100(1)

30 Appeal and Error
 30III Decisions Reviewable
 30III(E) Nature, Scope, and Effect of Decision
 30k96 Relating to Provisional Remedies
 30k100 Injunction
 30k100(1) k. In general. Most Cited

Cases

Pre-filing order, which declared pro se litigant to be a "frivolous" or "vexatious" litigant, who would be required to seek leave from the administrative judge before filing any pleadings, constituted a sua sponte injunction, and, thus, order was appealable. Md. Rule 15-602(b); West's Ann.Md.Code, Courts and Judicial Proceedings, § 12-303(3)(i).

[3] Appeal and Error 30 ⇐100(1)

30 Appeal and Error
 30III Decisions Reviewable
 30III(E) Nature, Scope, and Effect of Decision
 30k96 Relating to Provisional Remedies
 30k100 Injunction
 30k100(1) k. In general. Most Cited

Cases

Pro se litigant's response to county attorney's letter requesting court to declare litigant a frivolous litigant and refuse acceptance of his further pleadings without prior judicial approval was a sufficient answer, thus, injunction that followed was immediately appealable; although circuit court did not receive litigant's response until after order issued, order was issued only five days after date of letter, and litigant attached document to letter, entitled "answer," and argued that he was not a frivolous or vexatious litigant. West's Ann.Md.Code, Courts and Judicial Proceedings, § 12-303(3)(i).

[4] Appeal and Error 30 ⇐78(1)

985 A.2d 612
 190 Md.App. 11, 985 A.2d 612
 (Cite as: 190 Md.App. 11, 985 A.2d 612)

30 Appeal and Error
 30III Decisions Reviewable
 30III(D) Finality of Determination
 30k75 Final Judgments or Decrees
 30k78 Nature and Scope of Decision
 30k78(1) k. In general. Most Cited

Cases

Pre-filing order, which refused acceptance by pro se litigant of any further court filings without prior judicial approval, ended in a final judgment, allowing appellate court to review validity of order, even though circuit court denied litigant's motion to revise judgment after he noted appeal from pre-filing order, as court subsequently approved litigant's motion to withdraw motion to revise.

[5] Constitutional Law 92 ⇐3960

92 Constitutional Law
 92XXVII Due Process
 92XXVII(E) Civil Actions and Proceedings
 92k3956 Access to Courts; Right to Seek Remedy
 92k3960 k. Vexatious or frequent litigants. Most Cited Cases

Injunction 212 ⇐1534

212 Injunction
 212V Actions and Proceedings
 212V(C) Notice
 212k1534 k. Restrictions on litigants and filings. Most Cited Cases
 (Formerly 212k115)

Injunction 212 ⇐1582

212 Injunction
 212V Actions and Proceedings
 212V(F) Trial or Hearing
 212k1582 k. Right or necessity. Most Cited Cases
 (Formerly 212k130)
 Due process requires that before a trial court may sua sponte enter a pre-filing order, requiring an alleged frivolous or vexatious litigant to obtain

judicial approval for the filing of any pleading, the litigant must be afforded notice and an opportunity to be heard. U.S.C.A. Const.Amend. 14; West's Ann.Md. Const.Declaration of Rights, Art. 24.

[6] Courts 106 ⇐209(2)

106 Courts
 106VI Courts of Appellate Jurisdiction
 106VI(A) Grounds of Jurisdiction in General
 106k209 Procedure in General
 106k209(2) k. In issuance of writs.
 Most Cited Cases
 Appellate court may issue a pre-filing order with an opportunity to be heard only on the papers.

[7] Injunction 212 ⇐1169

212 Injunction
 212IV Particular Subjects of Relief
 212IV(A) Courts and Actions in General
 212k1168 Abusive, Vexatious, or Harassing Litigation
 212k1169 k. In general. Most Cited Cases
 (Formerly 212k189, 212k26(4))

Injunction 212 ⇐1596

212 Injunction
 212V Actions and Proceedings
 212V(G) Determination
 212k1596 k. Findings and conclusions.
 Most Cited Cases
 (Formerly 212k130)
 In considering issuance of pre-filing order, requiring an alleged frivolous or vexatious litigant to obtain judicial approval for filing of any future pleading, trial court should document record that justifies pre-filing order, make substantive findings as to frivolous or harassing nature of litigant's actions, by examining both number and content of filings, bearing in mind that plaintiff's claims must not only be numerous, but also be patently without merit, and court should narrowly tailor order.

**613 James Riffin, Pro Se.

Paul M. Mayhew, Adam M. Rosenblatt, John E. Beverungen, County Atty., on brief, for Appellee.

Panel: DAVIS, ZARNOCH, SHARER, J. FREDERICK (Retired, Specially Assigned) JJ.

ZARNOCH, J.

*13 These consolidated cases raise the important question of whether due process requires notice and an opportunity to be heard before a court declares a person to be a "frivolous" or "vexatious" litigant, who must seek leave from the administrative judge before filing "any pleadings." In this appeal, James Riffin, appellant, contends that the Circuit Court for Baltimore County failed to afford him due process before issuing *14 such an order. Appellees ^{FN1} argue that the order is not presently appealable, and, alternatively, that the ruling was justified under the circumstances. We conclude that this pre-filing order was a *sua sponte* injunction authorized by Md. Rule 15-602(b) and thus, appealable under Md.Code (1973, 2006 Repl.Vol.), Courts and Judicial Proceedings (CJP) Article, § 12-303(3)(i). However, we agree with the unanimous holdings of federal and state authorities that due process requires notice to the alleged frivolous or vexatious litigant and an opportunity for him to be heard before the issuance of a pre-filing order. The question of whether such an order is warranted is for the circuit court to determine after due process has been satisfied. Therefore, we must vacate the circuit court's order and remand for further proceedings.

FN1. The appellees named by Riffin are Baltimore County, the Board of Appeals of Baltimore County, Raymond S. Wisnom Jr., and the Mayor and City Council of Baltimore City. Only the County parties have filed a brief.

FACTUAL AND PROCEDURAL BACKGROUND

Riffin has repeatedly and unsuccessfully sought

judicial approval of his contention that he and certain entities owned by him are a "railroad" exempt from certain State and local environmental regulations. Spawning a multitude of cases before trial and appellate courts in various jurisdictions, he also has attempted to remove his litigation to federal court. After one such attempt in September 2007, the United States District Court for the District of Maryland responded with a "Memorandum **614 Opinion," explaining the reasons why removal was improper, and then stating:

Riffin has made numerous attempts to disrupt valid state proceedings by filing civil rights complaints seeking injunctive relief against Baltimore County and by removing proceedings to this Court, forcing state proceedings to a grinding halt. Riffin's use of federal litigation to stonewall efforts by local authorities to enforce state law is abusive and this Court declines to facilitate those efforts any further.*15 Federal courts have the power and the obligation to protect themselves from abusive filing of frivolous and repetitive claims." *McMahon v. F.M. Bank-Winchester*, 45 F.3d 426 (4th Cir.1994) (unpublished) (per curiam), *cf. Procup v. Strickland*, 792 F.2d 1069, 1070-71 (11th Cir.1986) (en banc). Before Riffin will be permitted to file another *pro se* civil action in this Court he will be required to seek leave to do so. In so doing, Riffin will be required to state succinctly how the original complaint or removed case differs from other actions filed and dismissed or remanded by this Court. In the event the claim is accepted for filing and it is revealed that Riffin misrepresented the nature of the proceedings, he will be required to show cause why he should not be subject to sanctions.

Baltimore County, Maryland v. James Riffin, Civil Action No. RDB-07-2301 (D.Md. Oct. 4, 2007) (footnote omitted). ^{FN2}

FN2. These conclusions were embodied in an order filed the same day.

Apparently buckling under the weight of

Riffin's filings, the Baltimore County Attorney's Office learned of the federal ruling and decided to take action. On January 28, 2009, County Attorney John E. Beverungen wrote to The Hon. Peter B. Krauser, Chief Judge, Court of Special Appeals, and The Hon. John G. Turnbull, II, Chief Judge, Circuit Court for Baltimore County, with a "cc" to James Riffin. ^{FN3} The letter stated:

FN3. A certificate of service was not attached.

I wish to bring to your attention a situation that has, frankly, gotten out of hand.... James Riffin[] owns a warehouse in northern Baltimore County that abuts Beaver Dam Run, a stream that flows into Loch Raven reservoir. For the last five years, State and County officials have been trying to get Mr. Riffin to comply with various zoning and environmental laws. He has contemptuously resisted all such attempts on the grounds that he is purportedly running a railroad on the property and is, therefore, allegedly exempt from State and Local law. However, this preemption*16 argument has been squarely rejected by the United States District Court for the District of Maryland (Bennett, J.), and that ruling was affirmed by the Fourth Circuit Court of Appeals. Yet these adverse rulings have not kept Mr. Riffin from filing over 100 pleadings, motions, and appellate briefs in your courts over the past several years, each one more frivolous than the last.

After detailing five years of Riffin's litigation efforts, the letter went on to note:

While this brief history provides an overview of some of the major events that have occurred over the last four years, it does not come close to explaining the amount of time that the Baltimore County Office of Law has spent responding to Mr. Riffin's pleadings. Mr. Riffin has already been declared a frivolous litigant in Federal District Court.... However, rather than stemming the flow of frivolous pleadings, this has merely caused Riffin to file more **615 papers in the

state courts. As I am sure you will understand, the Baltimore County Office of Law does not have the time or manpower to continue to respond to Mr. Riffin's frivolous pleadings. As such, I would respectfully request that you too declare Mr. Riffin a "frivolous litigant" and refuse to accept any further court filings without prior judicial approval.

In response to the County's request, Chief Judge Turnbull issued a "Memorandum Opinion" dated February 3, 2009. The opinion, which contained no docket number, but was captioned "*In Re: James Riffin*", said:

As Chief Administrative Judge of the Circuit Court for Baltimore County, it has come to my attention that James Riffin is a party to thirteen (13) open cases before the Court. All of these cases arise out of the same legal controversy; to wit, whether he, as an alleged railroad operation, is exempt from State and local environmental regulations. After reviewing the numerous previously decided cases involving Mr. Riffin and state and local authorities, it is clear that the legal controversy underlying this *17 dispute has already been decided against Mr. Riffin in administrative, State and Federal Courts. However, Mr. Riffin continues to file frivolous and vexatious litigation against Baltimore County and various County officials, including the Assistant County Attorneys working on these cases, for the purpose of avoiding or forestalling the legal rulings that this and other courts have made against him. It appears that the volume of papers that Mr. Riffin has filed in this Court has increased since he was declared a frivolous litigant by Judge Richard Bennett and barred from filing any further papers in the United States District Court without first obtaining leave of Court....

The opinion then noted:

Courts have the power and the obligation to protect themselves from abusive filing of frivolous and repetitive claims. See Maryland Rule 1-341. While an argument for the payment of at-

torney's fees could already be made in this case, the Court will reserve on this issue and instead hold that Mr. Riffin is hereby declared a frivolous litigant. Accordingly, before Mr. Riffin will be permitted to file any further pleadings or civil actions in this Court, he will be required to seek leave to do so from the Administrative Judge or acting Administrative Judge of this Court. Mr. Riffin will be required to state succinctly how the original complaint or subsequent pleading differs from other actions filed and adjudicated by this Court. No pleading will be accepted for filing by Mr. Riffin, or on Mr. Riffin's behalf, until he obtains prior approval from the Court. In the event that Mr. Riffin does obtain such approval, and it is revealed that he misrepresented the nature of the proceedings, he will be required to show cause why he should not be subject to further sanctions....

The memorandum opinion was accompanied by an order that stated in pertinent part:

For the reasons stated in the foregoing Memorandum Opinion, it is ... hereby ORDERED that:

1. James Riffin is hereby declared a frivolous litigant.

*18 2. The Clerk SHALL NOT ACCEPT FOR FILING any pleadings filed by James Riffin, or filed on his behalf, unless he has first obtained leave of this Court to do so from the Administrative Judge o[r] acting Administrative Judge of this Court.

**616 Although neither the February 3 opinion nor the order noted specific cases, the circuit court, the following day, entered both the opinion and order in six pending actions.^{FN4}

FN4. Specifically, the circuit court entered the orders in case files 03-C-07-013308; 03-C-07-013983; 03-C-08-000551; 03-C-08-008110; 03-C-09-000064; 03-C-08-011104.

In a letter dated February 3, 2009, and addressed to Chief Judge Turnbull, Chief Judge Krauser, and Chief Judge Robert Bell of the Court of Appeals, appellant stated that he had received Baltimore County's letter on February 2, 2009, and that he requested the "return [of] Mr. Beverungen's letter" because it constituted an improper ex parte communication. Alternatively, appellant "ask[ed] for [l]eave of the [c]ourts to reply to [the] [l]etter." A certificate of service dated February 3, 2009, was attached to the letter.^{FN5} A 17-page document entitled "James Riffin's Answer to Mr. Beverungen's Letter" accompanied this letter, and argued that appellant was not a frivolous or vexatious litigant. This document bore a certificate of service dated February 3, 2009.^{FN6} An envelope postmarked February 4, 2009 was stapled to the letter and answer. Noted in blue ink in the bottom right hand corner of the envelope was "2/5/09." These documents, which were not date-stamped or docketed, are located in the record of Case Number 03-C-09-000064.

FN5. The signed certificate reported service on February 3, 2009 by hand delivery to the County Attorney.

FN6. The signed certificate of service stated: "I HEREBY CERTIFY, that on this 3rd day of February, 2009, a copy of the foregoing James Riffin's Answer to Mr. Beverungen's Letter, was hand delivered to the Baltimore County Office of Law, 2d floor, Old Court House Building, Towson, Maryland, attention John Beverungen, Attorney for Baltimore County."

*19 Appellant sent another letter dated February 7, 2009, to Chief Judge Bell and Chief Judge Krauser, with a copy to Chief Judge Turnbull. An envelope with an unreadable postmark was stapled to the letter. The letter stated in pertinent part:

1. Late afternoon on February 2, 2009, I received a copy of a letter dated January 28, 2009, postmarked January 29, 2009, which was pre-

pared by John E. Beverungen, Baltimore County Attorney....

2. On February 3, 2009, before I could complete, then mail, on February 3, 2009, my response to Mr. Beverungen's letter, Judge Turnbull, without providing me any opportunity to respond to Mr. Beverungen's letter, signed an Order, declaring me to be a frivolous litigant, and barring me from filing any further pleadings in the Baltimore County Circuit Court.

3. On Friday, February 6, 2009, I received a letter postmarked February 5, 2009, which contained a copy of Judge Turnbull's Order....

5. On Friday, February 6, 2009, I went to the Circuit Court for the purpose of obtaining a print out showing all the suits I have been involved in, and the current disposition of those cases. I arrived at the court house at 3:45 p.m. After I went through the security check, I was informed I had been denied access to the court house. Upon further inquiry, I was told Judge Turnbull had issued an Order barring me from the courthouse.

If Baltimore County or Judge Turnbull still desired to have me declared a "frivolous litigant," Baltimore County **617 could formally file a motion for sanctions, specifying the particular pleading(s) and particular proceedings(s) it felt were unsupported by "good grounds." Judge Turnbull could then schedule a Show Cause Hearing, wherein Baltimore County could argue its case, and I would be afforded an opportunity to refute Baltimore County's *20 allegations. Following this procedure would at least comply with the basic tenets of Due Process.

(Emphasis omitted). Appellant then proceeded to argue that he was not a frivolous or vexatious litigant. Attached to this letter was a certificate of service dated February 9, 2009.^{FN7} This letter, which

was not date-stamped or docketed, is located in the record of Case Number 03-C-09-000064.

FN7. The signed certificate asserted service by mail on February 9, 2009, on Chief Judges Bell, Krauser and Turnbull and the County Attorney.

On February 27, 2009, Riffin filed a notice of appeal from the February 3, 2009 order, referring to each of the six docketed actions. See n. 4, *supra*. On April 17, 2009, this Court consolidated the appeals and captioned the case, *James Riffin v. Circuit Court for Baltimore County, et al.*

QUESTIONS PRESENTED^{FN8}

FN8. Appellant has presented the following questions in his brief:

[1]. Was Appellant denied his Due Process Rights when [the circuit court], in response to a letter, declared Appellant to be a frivolous litigant, then imposed sanctions upon the Appellant, without providing the Appellant an opportunity to be heard?

[2]. Does Appellant's defense invoking the preemptive reach of 49 U.S.C. 10501(b), present a "colorable claim?"

(emphasis omitted). Appellees have framed these issues:

1. Whether the circuit court's decision to declare Mr. Riffin a frivolous litigant is a final order subject to appeal[.]

2. Whether the circuit court erred in declaring Mr. Riffin a frivolous litigant who is barred from filing any further pleadings without first seeking leave of court to do so[.]

In light of our disposition of the questions presented as we perceive them, we

need not reach the second question of either party.

I. Was the circuit court authorized to issue the order?^{FN9}

FN9. Although Riffin does not appear to have specifically raised the question of the circuit court's authority to issue a pre-filing order, the question is so entwined with both the appealability and due process issues that we believe it must be addressed.

II. Is the order appealable?

III. Did the circuit court afford appellant adequate due process before issuing the order?

*21 DISCUSSION

I. Authority of the Circuit Court to Issue the Order

A. Md. Rule 1-341

We are not aware of a Maryland case that addresses a circuit court's authority to issue a pre-filing order. When issuing the order here, the circuit court cited Maryland Rule 1-341, which provides:

In any civil action, if the court finds that the conduct of any party in maintaining or defending any proceeding was in bad faith or without substantial justification the court may require the offending party or the attorney advising the conduct or both of them to pay to the adverse party the costs of the proceeding and the reasonable expenses, including reasonable attorney's fees, incurred by the adverse party in opposing it.

Rule 1-341's plain language does not appear to provide the court with the power to issue a pre-filing order, particularly a "global" ruling not tied to a single "proceeding" *618 and triggered by a letter to the administrative judge, rather than by a complaint or motion. Even if Rule 1-341 authorized the order, the court did not make an explicit evidentiary finding of bad faith or lack of substan-

tial justification as required by Rule 1-341. See, e.g., *Johnson v. Baker*, 84 Md.App. 521, 528-29, 581 A.2d 48 (1990).

B. State Caselaw—No Need for Statutory Authority

There is no Maryland statute expressly providing the circuit court with the power to issue a pre-filing order.^{FN10} However, courts in other states have found such a power to exist even absent express statutory authority. See *DeNardo v. Cutler*, 167 P.3d 674, 680-81 (Alaska 2007) (citing *2242 Am.Jur.2d *Injunctions* § 191, and federal and state law); *Eismann v. Miller*, 101 Idaho 692, 619 P.2d 1145, 1149-50 (1980) (relying on state constitutional provisions); *Bowman v. Lake County Pub. Bldg. Comm.*, 31 Ill.2d 575, 203 N.E.2d 129, 131 (1964) (citing sections addressing injunctions in American Jurisprudence and Corpus Juris Secundum); *Town of Brookline v. Goldstein*, 388 Mass. 443, 447 N.E.2d 641, 645 n. 6 (1983) (failing to reveal the origin of its authority); *Rines v. Clerk of Cts.*, 332 Mass. 527, 126 N.E.2d 124, 127 (1955); *Petition of Thorndike*, 257 Mass. 409, 153 N.E. 888, 889 (1926); *Spickler v. Key Bank of S. Me.*, 618 A.2d 204, 207-08 (Me.1992) (relying on federal and state cases); *State v. Smith*, 2002 ML 2810, 37-39 (Mont.Dist.Ct.2002) (citing federal cases); *Jordan v. State of Nevada on Relation of the Dept. of Motor Vehicles and Pub. Safety*, 121 Nev. 44, 110 P.3d 30, 41-46 (2005) (relying on a state constitutional provision similar to the federal All Writs Act, 28 U.S.C. § 1651(a)), overruled on other grounds by *Buzz Stew LLC v. City of N. Las Vegas*, 181 P.3d 670 (Nev. 2008); *Spremo v. Babchik*, 155 Misc.2d 796, 589 N.Y.S.2d 1019, 1020 (N.Y.Sup.Ct.1992) (citing federal and out of state authority); *Fed. Land Bank v. Ziebarth*, 520 N.W.2d 51, 55-59 (N.D.1994) (relying in part on "the court's inherent power to control its docket and to protect its jurisdiction and judgments, the integrity of the court, and the orderly and expeditious administration of justice"); *Tilli v. Capobianco*, 502 Pa. 447, 466 A.2d 1334, 1335 (1983) (relying on common law and federal case law); *Minniecheske v.*

Griesbach, 161 Wis.2d 743, 468 N.W.2d 760, 762-63 (1991) (relying on federal cases).

FN10. At least six states have statutes that seem to address situations similar to this case. Cal.Civ.Proc.Code § 391 (2008); Del.Code Ann. tit. 10, § 8803(e) (2009); Fla. Stat. § 68.093 (2008); Haw.Rev.Stat. § 634J (2008); Ohio Rev.Code Ann. § 2323.52 (2008); Tex. Civ. Prac. & Rem.Code Ann. § 11.054 (2009).

C. Common Law Authority

Another possible source of authority for state courts to issue orders curbing frivolous and vexatious litigants is the common law. In *Tilli*, 466 A.2d at 1335, the Pennsylvania Supreme Court stated: "Enjoin[ing] repeated frivolous actions by 'pertinacious litigants'... [was] known to common law...." See also Robin Miller, Annotated, *Validity, Construction, and Application of State Vexatious Litigant Statutes*, 45 A.L.R.6th 493 (2009). ("A cause of action for vexatious litigation may *23 also exist ... at common law....") But see Part I. F, *infra* (indicating that a court's authority to issue an injunction *sua sponte* was not authorized by the common law).

D. Equitable Powers

Alternatively, numerous courts have recognized that equity allows courts to issue *619 pre-filing orders in the form of injunctions. See, e.g., *Bridgeport Hydraulic Co. v. Pearson*, 139 Conn. 186, 91 A.2d 778, 781 (1952); *Sylvester Coal Co. v. St. Louis*, 130 Mo. 323, 32 S.W. 649, 650-51 (1895); *Shevalier v. Stephenson*, 92 Neb. 675, 139 N.W. 233, 234-35 (1912); *John Hancock Mut. Life Ins. Co. v. Fiorilla*, 83 N.J.Super. 151, 199 A.2d 65, 66 (1964); *Ramantanin v. Poulos*, 240 S.C. 13, 124 S.E.2d 611, 617 (1962). According to 42 Am.Jur.2d *Injunctions* § 191 (2008):

Although litigiousness alone will not support an injunction restricting a plaintiff's filing activities, the courts have the authority to enjoin persons engaged in the manifest abuse of the judicial

process, regardless of whether the threatened litigation is legal or equitable in character, or whether the vexatious litigation results from the prosecution of many suits by the same individual, or from many suits by different individuals. The courts may take creative actions to discourage hyperactive litigators so long as some access to courts is allowed, such as by limiting the amount of filings a litigant may make, and prescribing conditions precedent to those filings so as to determine the propriety of a suit on a case by case basis.

See also 16B Am.Jur.2d *Constitutional Law* § 620 (2008) ("[W]hen a litigant is abusing the judicial process by 'haggridding' individuals solely out of ill will or spite, a court of equity may enjoin such vexatious litigation.")

One federal court has attempted to trace the history of an equity court's powers in this area:

[I]t has long been settled that a court of equity may enjoin the institution of repetitious and baseless litigation. The ancient bill of peace had this as one of its purposes. See 1 *24 Pomeroy, *Equity Jurisprudence* 246, 261j (5th ed.1941); *Stafford, Equity* 414 (1934). As early as 1709, the English court acted to grant an injunction against the commencement of suits contesting matters which had been settled in previous litigation. *Earl of Bath v. Sherwin*, 4 Brown's Parl.Cas. 373 (1709). In more recent times, this power was affirmed, and perhaps extended, in England by the Vexatious Actions Act, 59 & 60 Vict. c. 51, which authorized the High Court to enjoin the bringing of further actions by "any person (who) has habitually and persistently instituted vexatious legal proceedings without any reasonable ground * * *"

The English Courts have not hesitated to exercise the power thus vested in them by restraining what Professor Chafee refers to as "pertinacious litigants" from abusing the process of the courts by the repeated institution of frivolous litigation.

Chafee, *Cases on Equitable Remedies* 222 (1938). Professor Chafee refers to a number of cases in which the English courts and other courts of the British Commonwealth have exercised this power....

The courts of the United States have also acted to enjoin a litigant from subjecting another to repeated, baseless and vexatious suits on the same subject matter, recognizing without question that such a course of conduct is a sufficient ground for the issuance of an injunction. The action which I propose to take also finds support in a line of cases in this Commonwealth [of Massachusetts] which assert the power of a court, not only to protect an individual litigant from harassment, but to protect its own records from irrelevant, unimportant and superfluous papers.

In my view, the authorities and principles to which reference has been made leave little doubt as to the power of this Court to protect these litigants from **620 repeated and purely vexatious suits, and to protect itself from unwarranted and patently frivolous impositions upon its jurisdiction.

Rudnicki v. McCormack, 210 F.Supp. 905, 909-10 (D.R.I.1962) (some citations omitted).

*25 E. The Authority of Federal Courts

Most federal courts have identified the All Writs Act, 28 U.S.C. § 1651(a), as the source of their power to issue pre-filing orders. *See, e.g., Mayfield v. Klevenhagen*, 941 F.2d 346, 348 (5th Cir.1991); *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir.2007); *Tripoti v. Beaman*, 878 F.2d 351, 352 (10th Cir.1989); *see also Procup v. Strickland*, 792 F.2d 1069, 1073 (11th Cir.1986) ("Federal courts have both the inherent power and the constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions.").

The All Writs Act provides: "The Supreme Court and all courts established by Act of Congress

may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." "[F]ederal courts are courts of limited jurisdiction," and the All Writs Act provides federal courts "with the procedural tools—the various historic common-law writs—necessary for them to exercise their limited jurisdiction." *United States v. New York Telephone Co.*, 434 U.S. 159, 187, 98 S.Ct. 364, 54 L.Ed.2d 376 (1977).

The "writ" most commonly identified by federal courts in cases involving pre-filing orders, particularly those involving their issuance *sua sponte*, is the injunction. *See, e.g., Martin-Trigona v. Lavien*, 737 F.2d 1254, 1261-62 (2d Cir.1984); *Cromer v. Kraft Foods, Inc.*, 390 F.3d 812, 817 (4th Cir.2004); *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 188-89 (5th Cir.2008); *In re Pointer*, 345 Fed.Appx. 204, 205, 2009 U.S.App. LEXIS 18851, at *2 (8th Cir. Aug. 19, 2009). Specifically, the Third Circuit has said: "As appellant filed no documents for adjudication prior to the issuance of the district court's *sua sponte* order, the [pre-filing] order is most aptly considered as an injunction." *In re Oliver*, 682 F.2d 443, 445 (3d Cir.1982). FN11

FN11. In the case of pre-filing orders, the federal cases do not apply the usual injunction prerequisites. *See Martin-Trigona*, 737 F.2d at 1262 ("[T]he traditional standards for injunctive relief, *i.e.* irreparable injury and inadequate remedy at law, do not apply to the issuance of an injunction against a vexatious litigant."); *see also Baum*, 513 F.3d at 189.

*26 F. The Authority of Maryland Courts

A Maryland court has all the powers of the common law unless altered by statute. *See* Article 5 of the Maryland Declaration of Rights. In addition, we have recognized that our courts have certain inherent powers to deal with vexatious litigants. *See Needle v. White, Mindel, Clarke & Hill*, 81 Md.App. 463, 474, 568 A.2d 856 (1990) ("conced[ing] that a trial court has inherent power

to impose sanctions for continuing an action vexatiously, wantonly, or for oppressive reasons"). Most significantly, a Maryland court has the express power to issue an injunction *sua sponte*. FN12

FN12. Unlike a federal court, which has the implied power to issue such injunctions under the All Writs Act, Maryland courts have express authority under the Maryland Rules, without a need for any additional statutory authority. *Cf. In re Petition for Writ of Prohibition*, 312 Md. 280, 302 n. 13, 539 A.2d 664 (1988).

Maryland Rule 15-502(b) provides, "Subject to the rules in this Chapter, the court, at any stage of an action and at the instance of any party or on its own initiative, may grant an injunction upon the terms and conditions justice may require." **621 (Emphasis added.) The committee note to Rule 15-502 states that "[t]his Rule is derived from former Rules BB71, 76, 77, 78, and 79." Former Rule BB77 stated:

Although an injunction may not have been prayed, pursuant to section 4 of Rule 370 (Bill of Complaint—Petition), the court may at any stage of an action, on application of any party thereto, or party in interest, by petition, or of its own motion, grant an injunction, subject to the provisions of this Subtitle, and upon such other terms and conditions as justice may require.

Its source was the now-repealed Md.Code (1957) Art. 16, § 89. This statute provided:

The court may at any stage of a cause or matter, on the application of any party thereto, or party in interest, by motion or petition, or of its own motion, order the issue of a *27 mandate (affirmative injunction) or injunction, directing and commanding any party to such cause or matter, or any party properly brought before it under the existing practice, to do, or abstain from doing, any act or acts, whether conjointly or in the alternative, whether in the nature of specific per-

formance or otherwise named in such mandate or injunction, and may make such terms and conditions (as to security, & c.) as to it may seem fit, preliminary to the granting of such mandate or injunction.

It was enacted in 1886. *See* ch. 441, § 1 of the Acts of 1886. Before 1886, "The general rule [was] that injunctions [could be] issue[d] only on bill filed, and with a proper prayer therefor; it was no doubt originally so in England, for it was one of the articles of impeachment against Cardinal Wolsey, as chancellor, that he had granted injunctions without bill put in." Charles Fisk Beach, Jr., *Modern Equity: Commentaries on the Law of Injunctions as Determined by the Courts and Statutes of England and the United States* § 140 (1895) (footnote omitted). Nevertheless, "the practice of granting injunctions before the filing of the bill [was] quite common in the counties of Maryland, though there was a rule prohibiting such a practice in the Maryland chancery; the omission so to file [was] deemed a mere irregularity for which the order ought not to be reversed." *Id.* (footnote omitted) (citing *Davis v. Reed*, 14 Md. 152, 157 (1859)). FN13

This practice appears to have carried over from Maryland's provincial *28 courts. Beach, *supra*, at § 143. ("[W]hile Maryland was a province an injunction could be obtained on an affidavit stating the facts of the case, before the filing of the bill."). Thus, the General Assembly's enactment of ch. 441 in 1886 could be read as a legislative decision to abandon the English rule and expressly recognize the common practice in Maryland of issuing injunctions absent a bill filed. Nevertheless, by 1895, Beach noted, "In Maryland it is said that the only mode of obtaining an injunction is by a bill; but by the Laws of 1886, ch. 441, it is enacted that at any stage of a cause, or matter, the court may on its own motion or **622 'the motion or petition' of a party, issue an injunction." *Id.* § 128 (footnote omitted). In any event, current law allows the court to issue an injunction on its own motion.

FN13. In *Davis*, the Court of Appeals said:

Objection was also made, on the ground, that the bill was not filed until after the injunction had been ordered; but this ought not to operate a reversal of the order. It was, at most, a mere irregularity. It is not uncommon, in some of the counties, to proceed in this way. In the Court of Chancery there was a rule prohibiting such a practice; but we are not advised that any such exists in the court where this order was passed; nor do we say, that if there were such a rule, an appeal would lie, merely because it had been disregarded by the judge. When a practice has become inveterate it is better to adhere to it, until changed by a prospective rule, than to incur the risk of doing injustice to a party who may have followed it, and especially where the opposite side has not been injured by the alleged irregularity. 14 Md. at 157.

[1] This statute, which, over the years, has been transformed into Md. Rule 15-502(b), is clear authority for a Maryland court to issue a pre-filing order^{FN14} without the necessity^{*29} of a complaint or motion. ^{FN15} In short, a pre-filing order is a *sua sponte* injunction and, if properly issued, is a remedy available to a Maryland court to control the actions of a vexatious or frivolous litigant.

FN14. Proper exercise of the authority to address the actions of a vexatious litigant is not defeated by Article 19 of the Maryland Declaration of Rights, which provides "[t]hat every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the land." We recognize that "[f]ree access to the courts is an important and valuable aspect of an effective system of jurisprudence, and a party pos-

sessing a *colorable* claim must be allowed to assert it without fear of suffering a penalty more severe than that typically imposed on defeated parties." *Dent v. Simmons*, 61 Md.App. 122, 124, 485 A.2d 270 (1985) (citation and quotation omitted) (emphasis in original). However, a litigant's interest in accessing the courts is neither supreme nor absolute. In fact, authority from other jurisdictions indicates otherwise. See, e.g., *Bd. of Commrs. of Morgan Cty. v. Winslow*, 862 P.2d 921, 924 (Colo.1993) ("[A] litigant's right of access to the courts must be balanced against and, in a proper case, must yield to the interests of other litigants and of the public in general in protecting judicial resources from the deleterious impact of repetitious, baseless *pro se* litigation." (quoting *Bd. of County Comm'rs of Morgan County v. Winslow*, 706 P.2d 792, 794 (Colo.1985))); *Eismann*, 619 P.2d at 1150 ("[T]he ultimate injury here necessarily falls upon the people of Idaho.... [E]very individual in our society has a right of access to the courts.... However, the exercise of that right cannot be allowed to rise to the level of abuse, impeding the normal and essential functioning of the judicial process. To allow one individual ... to incessantly [engage in] *pro se* litigation ... only serves to debilitate the entire system of justice."); *Minniecheske*, 468 N.W.2d at 763 ("This order is drafted narrowly enough to strike a balance among [the litigants'] access to the courts, the [defendant's] interest in *res judicata*, the taxpayers' right not to have frivolous litigation become an unwarranted drain on their resources and the public interest in maintaining the integrity of the judicial system."); *Smith*, 2002 ML at 37-39 (warning that the court may "employ[] injunctive remedies to protect the integrity of the courts").

FN15. We note that some cases counsel against issuing a pre-filing order *sua sponte*. See *Pavilonis v. King*, 626 F.2d 1075, 1079 (1st Cir.1980) ("Generally, this kind of order should not be considered absent a request by the harassed defendants."); *Oliver*, 682 F.2d at 445 n. 5; *Jordan*, 110 P.3d at 42, 44.

II. Appealability

Appellees argue that the pre-filing order issued by the circuit court is not a final appealable order disposing of all claims in Riffin's numerous cases.

Although there is no Maryland case directly on point, courts in other jurisdictions are divided on the issue. Those viewing a vexatious or frivolous designation as a sanctions "order" have regarded the court's action as interlocutory and not appealable until the conclusion of the case. See, e.g., *Molski*, 500 F.3d at 1054-56; *People v. Harrison*, 92 Cal.App.4th 780, 785, n. 6, 112 Cal.Rptr.2d 91 (Cal.Ct.App.2001). Those courts that consider a pre-filing order to be an injunction take the position that such a directive is immediately appealable. See, e.g., *Oliver*, 682 F.2d at 445; *Luckett v. Panos*, 161 Cal.App.4th 77, 90, 73 Cal.Rptr.3d 745 (Cal.Ct.App.2008).

[2] Like most federal courts, see Part I.E, *supra*, we have concluded that a *sua sponte* pre-filing order, such as that issued here, is most aptly characterized as an injunction.^{FN16} ^{*30} The order is more than a sanction in an individual case, but transcends each separate case and, in fact, would require pre-filing approval of "any" pleadings filed by Riffin. ^{FN17} Clearly, such a pre-filing order, like an injunction, prohibits "a specific act." *LOOC v. Kohli*, 347 Md. 258, 265-67, 701 A.2d 92 (1997). ^{FN18} Entertaining the appeal of the injunction in this case comports with the common denominator of the CJP § 12-303 exceptions to the final judgment rule in that "irreparable harm ... may be done to one party if he had to await final judgment before entering an appeal." *Flower World of Am., Inc. v. Whittington*, 39 Md.App. 187, 192, 385 A.2d

85 (1978). Absent some action by appellees or the circuit court, which they are not required to take, to finally conclude one of the matters in which the order was entered, appellant would be unable to appeal the order.

FN16. The County Attorney's letter requesting a pre-filing order was not a motion in a particular case, or a complaint in a new one. Thus, the court's order has to be regarded as a *sua sponte* action.

FN17. Such an order could have far-reaching effects. For example, repeated failures by Riffin to win approval for filing of a pleading could lead to dismissal for want of prosecution under Md. Rule 2-507, without the ability of the plaintiff to successfully file a motion asserting good cause to prevent dismissal. It would also seem to require judicial approval even before he could file an answer to the pre-filing injunction order or note his appeal.

FN18. Appellees have not argued that the pre-filing order is an administrative rather than a judicial order. Such a contention would not be persuasive in any event. See *Boyd v. Bell Atl.-Md., Inc.*, 390 Md. 60, 86, 887 A.2d 637 (2005) (holding that an order was an injunction because it prohibited specific acts when it barred class members from pursuing their claims in any other forum).

[3] Of course, CJP § 12-303(3)(i) allows an appeal from an injunction only where the appellant has answered. Appellant attached to his February 3, 2009 letter an answer to the County's letter. It appears as though the circuit court did not receive this document until after it issued the order. We cannot fault appellant in this regard. The circuit court issued the order five days (weekend included) after the date of the letter. In light of these facts, we conclude that Riffin has sufficiently answered, so that the injunction in this case was immediately appeal-

able under CJP § 12-303(3)(i).

*31 An additional ground for Riffin's appeal is that it would appear that at least one of his cases (Case No. 03-C-09-000064) has ended in a final judgment. In an order filed January 20, 2009, Riffin's petition for injunctive relief was dismissed with prejudice. A motion to revise judgment was filed on February 2, 2009, and approved for filing on February 26, 2009.

[4] Although Riffin noted an appeal from the circuit court's pre-filing order on February 27, 2009, the circuit court denied appellant's motion to revise on March 3, 2009. On March 20, 2009, appellant moved to withdraw his motion to revise. The circuit court granted that motion that same day. Also on March 20, appellant noted an appeal "to ensure that all decisions rendered by the trial court prior to the date of filing this Notice of Appeal, are reviewed." Thus, Case Number 03-C-09-000064 ended in a final judgment, so that we can review the validity of the circuit court's pre-filing order, even if it were deemed interlocutory in his other cases.

III. Due Process

A. Notice and Opportunity to be Heard

Riffin contends that the circuit court failed to afford him a due process right to **624 be heard before requiring that he seek judicial approval for the filing of any pleading.^{FN19} Understandably, appellees have not responded to this contention.

FN19. The 14th Amendment to the U.S. Constitution provides that a State shall not "deprive any person of life, liberty, or property without due process of law." The Maryland constitutional analog, Article 24 of the Declaration of Rights provides that no person may be "deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land."

Every appellate court that has considered the question has held that before a trial court may sua

sponte enter a pre-filing order, due process requires that it afford the alleged vexatious litigant notice and an opportunity to be heard. See *Cok v. Family Ct. of Rhode Island*, 985 F.2d 32, 35-36 (1st Cir.1993); *Oliver*, 682 F.2d at 446; *Cromer*, 390 F.3d at 819; *32*Baum*, 513 F.3d at 189; *De Long v. Hennessey*, 912 F.2d 1144, 1147 (9th Cir.1990); *Tripathi v. Beaman*, 878 F.2d 351, 354 (10th Cir.1989); *Pointer*, 2009 U.S.App., LEXIS 18851, at *2-5; *DeNardo v. Maassen*, 200 P.3d at 315; *In re. Lawsuits of Carter*, 235 Ga.App. 551, 510 S.E.2d 91, 95 (1998); *Jordan*, 110 P.3d at 42-43. FN20

FN20. This uniform array of authority has not appeared to halt the summary issuance of pre-filing orders by trial courts. For example, after the Fourth Circuit's 2004 decision in *Cromer*, the federal appeals court has repeatedly vacated pre-filing orders that were entered by district courts without compliance with due process. See, e.g., *Scott v. Wells Fargo Home Mortgage, Inc.*, 143 Fed.Appx. 525 (4th Cir.2005); *In re Head*, 174 Fed.Appx. 167 (4th Cir.2006); *Thomas v. Fulton*, 260 Fed.Appx. 594 (4th Cir.2008); *Larrimore v. Williamson*, 288 Fed.Appx. 62 (4th Cir.2008); *Larrimore v. Hooks*, 289 Fed.Appx. 576 (4th Cir.2008); *Larrimore v. Exxon Mobil Oil Corp.*, 301 Fed.Appx. 212 (4th Cir.2008). Such a history would have undercut any reliance by the circuit court on the 2007 U.S. District Court pre-filing order aimed at Riffin.

[5] Whether the alleged vexatious litigant's right is grounded in his property interest in his cause of action, see *Dua v. Comcast Cable of Md., Inc.*, 370 Md. 604, 638, 805 A.2d 1061 (2002), or his liberty interest in his right of access to the courts, *Molski*, 500 F.3d at 1057, due process dictates that he should have been afforded notice and an opportunity to be heard before issuance of the pre-filing order.^{FN21}

FN21. Although Riffin has not challenged

the sufficiency of his notice of the order, we note that notice *did not come from the court* through some authorized means. Rather, notice came in the form of a letter from the County Attorney that was acted on by the court within a short week of its receipt.

[6] The above cases do not mandate that due process requires that the recipient of a proper pre-filing order receive an "in-person hearing" before issuance of the order. See *Tripathi*, 878 F.2d at 354. However, the Maryland Rules of Procedure might dictate otherwise. Maryland Rule 2-311(f) provides that if a party requests a hearing on a motion, the court may not render a dispositive decision without a hearing. If this rule applied to an injunction on the court's "own motion," an in-person hearing would be required. The Maryland Rules on injunctions, which mandate a hearing on a *33 preliminary injunction, Md. Rule 15-505(a), and a trial on the merits of a permanent injunction, Md. Rule 15-505(b); *National Collegiate Athletic Ass'n v. Johns Hopkins Univ.*, 301 Md. 574, 580, 483 A.2d 1272 (1984), would also seem to impact a sua sponte pre-filing order that is tantamount to an injunction. Until these rules are clarified, we believe the safest course of action for the circuit court on remand would be to accord Riffin an in-person hearing (if he desires one) after court-generated notice.^{FN22}

FN22. These rules do not affect an appellate court's ability to issue a pre-filing order with an opportunity to be heard only "on the papers." See *Green v. Warden, U.S. Penitentiary*, 699 F.2d 364, 367-70 (7th Cir.1983). Moreover, it is not clear that due process would even apply to a pre-filing order issued by a certiorari court, exercising discretionary review, such as the Court of Appeals of Maryland. The United States Supreme Court has addressed the problem of frivolous litigants by summarily directing its clerk not to accept further

in forma pauperis petitions without the payment of the docketing fee. See *Day v. Day*, 510 U.S. 1, 114 S.Ct. 4, 126 L.Ed.2d 1 (1993); *Martin v. District of Columbia Court of Appeals*, 506 U.S. 1, 113 S.Ct. 397, 121 L.Ed.2d 305 (1992) (per curiam); *In re Sindram*, 498 U.S. 177, 111 S.Ct. 596, 112 L.Ed.2d 599 (1991) (per curiam); *In re McDonald*, 489 U.S. 180, 184, 109 S.Ct. 993, 103 L.Ed.2d 158 (1989).

**625 B. Appropriate Standards

[7] The many appellate cases that have determined the validity of pre-filing orders have articulated a number of factors that should be appropriately considered by trial courts. For the guidance of the circuit court on remand, we set forth those conditions. Relevant authorities indicate that the court must document a record that justifies a pre-filing order. *Cok*, 985 F.2d at 35; *De Long*, 912 F.2d at 1147; *In re Powell*, 851 F.2d 427, 431 (D.C.Cir.1988); *DeNardo*, 167 P.3d at 681; *Howard v. Sharpe*, 266 Ga. 771, 470 S.E.2d 678, 680 (1996) ("[R]estrictions on an inmate's right of access to the courts must be ... clearly warranted by the particular circumstances of each case."). To satisfy this factor, some jurisdictions require the court to "create an adequate record for review, including a list of all the cases and documents, or an explanation of the reasons, that lead it to conclude that a restrictive *34 order was needed to curb repetitive or abusive activities." *Jordan*, 110 P.3d at 43. In doing so,

a court considering a restrictive order must use caution in reviewing filings in other cases, so as not to interfere with other judges' pending assignments. The judge issuing the restrictive order should rely only on observations obtained from cases to which he or she is assigned, and on actual rulings in other cases. Further, while a restrictive order may be warranted based solely on documents before the court in that particular case, the district court must identify those documents and explain how, by filing them, the litigant abused

the court system.

Id. (footnotes omitted).

In addition, after composing this record, the court should make substantive findings as to the frivolous or harassing nature of the litigant's actions. *De Long*, 912 F.2d at 1148 (citing *Powell*, 851 F.2d at 431). To decide whether a litigant's filings are frivolous or harassing, courts should examine "both the number and content of the filings." *Powell*, 851 F.2d at 431. Indeed, "[t]he plaintiff's claims must not only be numerous, but also be patently without merit." *Moy*, 906 F.2d at 470.

Most importantly, in light of the far-reaching order in this case, the court must narrowly tailor a pre-filing order. See *Cromer*, 390 F.3d at 818; *Ortman v. Thomas*, 99 F.3d 807, 811 (6th Cir.1996) (holding that an order was impermissible when it completely barred a litigant from filing lawsuits); *DeNardo*, 167 P.3d at 680-81; *Spickler*, 618 A.2d at 207 (stating that "[t]he court must be careful not to issue a more comprehensive injunction than is necessary"); *Howard*, 470 S.E.2d at 680 ("[R]estrictions on an inmate's right of access to the courts must be drawn so as to avoid unjustifiably obstructing access to the courts...."); *Hooper v. Harris*, 236 Ga.App. 651, 512 S.E.2d 312, 315 (1999) (vacating a restrictive order because it was overly broad when it declared "all" of an individual's filings "null and void"); **626 *Jordan*, 110 P.3d at 43-44; *Hooker v. Sundquist*, 150 S.W.3d 406, 413 (Tenn.Ct.App.2004) ("[T]he *35 screening mechanism imposed by the trial court was narrowly tailored and short in duration...."); *Minniecheske*, 468 N.W.2d at 763. One court stated:

[E]ven though courts may, as a general rule, restrict vexatious litigants' access, constitutional considerations prohibit a complete ban on filings by indigent proper person litigants if the ban prevents the litigant from proceeding in criminal cases and in original civil actions that sufficiently implicate a fundamental right; such orders are impermissible. Since restrictive orders necessar-

ily implicate future filings, which may involve criminal cases or fundamental rights, even broad restrictive orders should set an appropriate standard against which any future filings will be measured.

Jordan, 110 P.3d at 43-44 (footnotes omitted).
FN23

FN23. According to 42 Am.Jur.2d *Injunctions* § 78 (2008):

[I]njuncts restricting court access across the board in situations are very much the exception to the general rule of free access to the courts, and should be issued only when abuse is so continuous and widespread as to suggest no reasonable alternative. For example, injunctions issued pursuant to the All Writs Act power to restrict the filing of meritless pleadings by litigants when the pleadings raise issues identical or similar to those that have already been adjudicated are extreme remedies that should be narrowly tailored and sparingly used....

See also *Cromer*, 390 F.3d at 818 (stating that the use of a pre-filing order "against a pro se plaintiff should be applied with particular caution and should remain very much the exception to the general rule of free access to the courts" (citations and quotations omitted)).

In this regard, it may be helpful for the court to examine the following five factors identified by the Second Circuit in *Safir v. U.S. Lines, Inc.*, 792 F.2d 19, 24 (2d Cir.1986):

(1) the litigant's history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, e.g., does the litigant have an objective good faith expectation of prevailing?; (3) whether the litigant is represented by

counsel; (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties.

*36 See also *Pavilonis*, 626 F.2d at 1078-79; *Cromer*, 390 F.3d at 818; *Green*, 699 F.2d at 368.

C. Desirability of a Rule

We have noted that while Maryland courts have the authority to issue a pre-filing order to a frivolous or vexatious litigant, such an order does not fit comfortably within the rules for civil actions or injunctions. It may be desirable for the Rules Committee to consider whether it should propose a rule that expressly authorizes pre-filing orders and establishes procedures for notice, opportunity to be heard, standards for issuance of such orders, appropriate parties, and case captioning.

CONCLUSION

We conclude that the circuit court's order is reviewable, and that the circuit court possessed authority to issue the order. However, we vacate the order because the circuit court failed to afford appellant due process before its issuance. In closing, we think it is appropriate to note **627 the thoughts expressed in *Cromer* by Judge Diana G. Motz of the Fourth Circuit (and formerly of this Court):

We recognize that judicial resources are in scarce supply. Meritorious claims often take years to wend their way through our court system, in part because the judicial system is so overburdened. Undoubtedly, the conduct of *Cromer*, and litigants like him, would frustrate even the most patient. But a judge may restrict a right as fundamental as access to our courts only in limited circumstances and in strict accordance with established protections. That was not done here.

390 F.3d at 820.

ORDER VACATED. CASES REMANDED TO THE CIRCUIT COURT FOR BALTIMORE COUNTY FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY BALTIMORE COUNTY.

Md.App.,2010.
Riffin v. Circuit Court for Baltimore County
190 Md.App. 11, 985 A.2d 612

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BALTIMORE COUNTY
BOARD OF APPEALS

The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

CHAMBERS OF
JOHN GRASON TURNBULL, II
CIRCUIT ADMINISTRATIVE JUDGE AND
COUNTY ADMINISTRATIVE JUDGE

COUNTY COURTS BUILDING
TOWSON, MARYLAND 21204
410-887-2647

IN RE: JAMES RIFFIN
1941 Greenspring Drive
Timonium, MD 21093

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IN THE

*

CIRCUIT COURT

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FOR

*

BALTIMORE COUNTY

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03-C-08-8110

* * * * *

MEMORANDUM OPINION

This issue comes before this Court on remand from the Court of Special Appeals of Maryland vacating an Order signed and issued by the Honorable John G. Turnbull, II. This Court took particular notice to the opinion of the Court of Special Appeals and strictly adhered to its guidance regarding the issue. In accordance with Mr. Riffin's Due Process rights, this Court notified Mr. Riffin twenty (20) days prior to the hearing, and allowed Mr. Riffin unlimited time in order to convey his arguments and points of authority to persuade this Court.¹ Upon hearing argument from both parties at the heart of these disputes, James Riffin and Baltimore County, in open court on January 28th, 2010, this Court has applied the five (5)

¹ It should be noted that the Judge Turnbull, II's staff even called, and spoke with, both sides on January 27th, 2010 in order to ensure their presence at the January 28th, 2010 hearing date.

factor test outlined by the Court of Special Appeals Order which is found in *Safr v. U.S.*

Lines, Inc., 792 F.2d 19, 24 (2d Cir. 1986):

(1) the litigant's history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits; (2) the litigant's motive in pursuing the litigation, e.g., does the litigant have an objective good faith expectation of prevailing?; (3) whether the litigant is represented by counsel; (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and (5) whether other sanctions would be adequate to protect the courts and other parties.

Id.

This Court has come to the following conclusions in regard to each of the five factors set forth herein concerning this continuing matter.

1. LITIGANT'S HISTORY

Mr. Riffin is a party to thirteen (13) open cases before this Court, and to over thirty (30) cases beginning in 2004 ranging from State Court, Court of Special Appeals, Federal Courts and Administrative Hearings and Proceedings. All of these cases arise out of the very same legal issue; to wit, whether Mr. Riffin, as an alleged railroad operation or "railroad maintenance-of-way facility," is exempt from State and local environmental regulations. However, that issue has been decided since September 17th, 2004 when the Honorable Richard D. Bennett of the United States District Court for the District of Maryland found that: "On September 8th, 2004, this Court conducted an expedited hearing to determine whether the ICCTA (Interstate Commerce Commission Termination Act) conferred federal removal jurisdiction over the state and local claims. After hearing extensive argument, the Court

determined that ICCTA does not completely preempt the state and local environmental regulations on which the lawsuits were based, and that this Court therefore lacked jurisdiction...this Court found that there is no subject matter jurisdiction because the regulations at issue were not completely preempted by federal law."2 Thus, since the Baltimore County Circuit Court had already found Mr. Riffin to not be a railroad operation or "railroad maintenance-of-way facility" and therefore not permitted or afforded the benefits of federal statute or federal grounds that might allow his argument Mr. Riffin so vehemently supports of: federal issue/statute that preempts or does not subject him to state and/or local environmental regulations, every open case of Mr. Riffin's has previously been decided on the underlying dispute.3

2. LITIGANT'S MOTIVE - OBJECTIVE GOOD FAITH EXPECTATION OF PREVAILING

There is little doubt that Mr. Riffin's motive is to bypass the state and local environmental regulations, which in turn are applicable to Mr. Riffin, making him subject to numerous and costly penalties and fines.

The objective standard is one that all courts are all too familiar with, basically: How would a reasonable person conduct themselves in the same circumstances? Here, we have an individual who has been denied relief on the same grounds for over six (6) years and over thirty (30) legal proceedings, yet he continues to file pleadings and motions arising from the same issues which achieve nothing more than delaying the Court system, the Court's staff, as well as the parties involved. Despite Mr. Riffin's subjective conviction on this issue, he has

2 "Court" meaning the United States District Court for the District of Maryland.

been denied and appealed, only to be denied again, through virtually every available avenue afforded by American law. Any rational person would reasonably determine that they are wrong and deal with the consequences.

3. LITIGANT'S REPRESENTATION

It is undisputed that Mr. Riffin was not, nor ever has been represented by counsel. At every proceeding of every case he has preceded pro-se.

4. LITIGANT CAUSED NEEDLESS EXPENSE TO PARTIES OR UNNECESSARY

BURDEN ON THE COURTS AND THEIR PERSONNEL

At the hearing in front of this Court on January 28th, 2010, the Assistant County Attorney brought to light just how much work and money has been produced and spent by his office by just Mr. Riffin alone. To visibly show this Court the degree of work product the County introduced what was marked as County Exhibit #5, which is a filing box completely filled and packaged extremely tight, with only filings by Mr. Riffin. Needless to say, the "man hours" and monetary expenses the County Attorney's Office had to spend answering and defending/pursuing their interest is solely driven by Mr. Riffin's frivolous filings. This Court takes notice that some litigation is more complex and costly than other; however, that is simply not the situation in any of these matters involving Mr. Riffin.

The Court itself also suffers tremendous detriment due to Mr. Riffin's frivolous filings. From the clerk's office, to assignment office (both civil and central), to the Judge him/herself, to their staff, the entire Court system suffers when precious time is taken due to a resolved and meritless dispute. As the Court of Special Appeals noted from *Cromer v. Kraft Foods, Inc.*,

³ The underlying dispute as to every case has therefore been decided both in state and federal court.

390 F.3d 812, (4th Cir. 2004): "We recognize that judicial resources are in scarce supply. Meritorious claims often take years to wend their way through our court system, in part because the judicial system is so overburdened." *Id.*

5. OTHER SANCTIONS ADEQUATE TO PROTECT THE COURTS AND OTHER PARTIES

Courts have the power and obligation to protect themselves from abusive filing of frivolous and repetitive claims. Furthermore, this Court refuses to tolerate Mr. Riffin's continuous trivial attempts to disrupt valid state proceedings by way of his filing frivolous and vexatious pleadings, motions and complaints.

This Court finds no other choice than to deem Mr. Riffin to be a frivolous and vexatious litigant. The only recourse this Court has is to prevent Mr. Riffin from continuing to file papers in this Court unless he seeks leave to do so by the Administrative Judge or acting Administrative Judge of this Court prior to filing. Additionally, Mr. Riffin will be required to state succinctly how any original complaint or subsequent filing differs from other actions filed in this Court. In the event that Mr. Riffin does obtain such approval, and it is revealed that he misrepresented the nature of the filing or proceedings, he will be required to show cause why he should not be subjected to further sanctions.

For the reasons stated *supra*, it is this 29th day of January, 2010, by the Circuit Court for Baltimore County, it is hereby ORDERED that:

1. James Riffin is hereby declared a frivolous and vexatious litigant.
2. The Clerk SHALL NOT ACCEPT FOR FILING any pleadings/papers filing by James Riffin, or filed on his behalf, unless he has first obtained leave of this Court to do so from the Administrative Judge or acting Administrative Judge of this Court.
3. The Clerk SHALL MAIL a copy of the foregoing Memorandum Opinion to Mr. Riffin at: 1941 Greenspring Drive, Timonium, MD 21093.

True Copy Test

SUZANNE MENSCH, Clerk

Per

Darlene Faulkner
Assistant Clerk

John Grason Turnbull, II
JOHN GRASON TURNBULL, II
Judge

Cc: John E. Beverungen, Esquire, Baltimore County Attorney
Adam M. Rosenblatt, Esquire, Assistant Baltimore County Attorney
Billy Allen, Baltimore County Chief Deputy Clerk

Board of Appeals

Baltimore County, MD
Tuesday, July 22, 2014

ARTICLE 1A. RESOURCE CONSERVATION ZONES

SECTION 1A07. R.C.6 (Rural Conservation and Residential) Zone

§ 1A07.3. Permitted uses.

A. Uses permitted by right. The following uses are permitted by right in an R.C.6 Zone:

1. Dwellings, one-family detached.
2. Farms and limited acre wholesale flower farms, subject to Section 404.
3. Open space, common.
4. Schools.
5. Streets and ways.
6. Telephone, telegraph, electrical power or other lines or cables, provided that any such line or cable is underground; underground gas mains; shared well and septic systems when approved by the Department of Environmental Protection and Sustainability; or other underground conduits, except interstate pipelines.
[Bill No. 122-2010]
7. Accessory uses or structures, subject to Section 429, including:
 - a. Farmer's roadside stand and produce stand, subject to Section 404.4;
 - b. Home occupations;
 - c. Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians or other professionals, provided that any such office or studio is established within the same building as that serving the professional person's primary residence; does not occupy more than 25% of the total floor area of that residence; and does not involve the employment of more than one nonresident employee;
 - d. Parking and residential garage space, subject to Section 409;
 - e. Signs, subject to Sections 450 and 1A07.8.C.5; and
 - f. Swimming pools, tennis courts and other recreational amenities, if accessory to a dwelling or residential subdivision only.
8. Commercial film production, subject to Section 435.
9. Churches and other buildings for religious worship, provided that no more than 10% of any lot may be covered by impervious surfaces which include buildings, structures or required parking.

B. Uses permitted by special exception. The following uses only may be permitted by special exception in an R.C.6 Zone:

1. The following uses provided that they are located in a principal building that was originally constructed before the effective date of Bill 73-2000; and the building is converted to the new use without any external enlargement after the effective date of Bill 73-2000:
 - a. Antique shop;
 - b. Bed and breakfast;

- c. Tea room; and
 - d. Residential art salon.
- 2. Animal boarding places regardless of class, commercial kennels, private kennels, and veterinarian offices.
[Bill No. 87-2001]
 - 3. Campgrounds and day camps.
 - 4. Cemeteries, which are exempt from the provisions of Sections 1A07.4, 1A07.5, 1A07.6, 1A07.7, 1A07.8, 1A07.9 and 1A07.10.
[Bill No. 11-2008]
 - 5. Churches and other buildings for religious worship if more than 10% of any lot is covered by impervious surfaces which include buildings, structures or required parking.
 - 6. Golf courses.
 - 7. Landscape service operations, subject to Sections 404.1 and 404.3.
 - 8. Shooting ranges, including archery, pistol, skeet, trap and target (small-bore rifle only) except that any such use existing at the time of the effective date of Bill 73-2000 may continue at the same level, provided that within one year of the effective date, the owner shall file for a use permit under Section 500.4, and turkey shoots.
 - 9. Offices for agricultural-related uses.
 - 10. Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians or other professionals as an accessory use, provided that any such office or studio is established within the same building as that serving the professional person's primary residence; does not occupy more than 25% of the total floor area of that residence; and does not involve the employment of more than one nonresident professional associate nor two other nonresident employees.
 - 11. Public utility uses not permitted by right.
 - 12. Riding stables.
 - 13. Volunteer fire company or ambulance rescue facilities.
 - 14. Wireless telecommunications towers, subject to Section 426.
 - 15. The following agricultural support uses as principal commercial uses:
 - a. Winery, including accessory retail and wholesale distribution of wine produced on the premises. Temporary promotional events, such as wine tasting or public gatherings associated with the winery, are permitted within any limits set by the special exception.
 - b. Bottled water plant, if the source of water is located on the same site as the plant, and provided that the Director of Environmental Protection and Sustainability makes a finding that the proposed facility is not expected to adversely affect the quality of capacity of surface water or ground water.
[Bill No. 122-2010]
 - c. Notwithstanding any provision of this section or any other county law or regulation to the contrary, if a property to which the zoning classification R.C.6 is applied had a development plan filed, accepted and pending for approval as of September 5, 2000, the development plan shall be reviewed based upon the zoning classification applicable to the property at the time the development plan was filed.
 - 16. Funeral homes, if in conjunction with a previously approved cemetery consisting of at least 150 acres. A funeral home is exempt from the provisions of Sections 1A07.4, 1A07.5, 1A07.6, 1A07.7, 1A07.8, 1A07.9, and 1A07.10. Any structure dedicated to funeral home use shall be set back at least 200 feet from any tract boundary and 300 feet from any public right-of-way, and may not exceed 50 feet in height.
[Bill No. 11-2008]

In re: 11019 Gateview Road
Cockeysville, MD 21030

*

Before the Board of Appeals

*

of Baltimore County

*

Case No.: 2014 - 0094 - SPH

* * * * *

APPELLANT AND PETITIONERS' JOINT CLOSING ARGUMENT / BRIEF

1. Come now your Appellant, William Geddes, and Petitioners, James Riffin and Karole Riffin, who respectfully provide the Board of Appeals with their closing argument / brief.

2. The vast majority of Appellant and Petitioners' argument was presented to the Administrative Law Judge. On July 15, 2014, the Appellant and Petitioners filed a written version of their Joint Argument (an original plus three copies), which Joint Argument reiterated the issues of importance to the Appellant and Petitioners, and which directed the attention of the Board of Appeals to those pages and paragraphs of previously filed pleadings, where argument has already been made on the issues presented by this proceeding. A very small amount of additional argument appears in this Joint Closing Argument Brief.

3. The Appellant and Petitioners adopt, and incorporate by reference, into this Closing Argument / Brief, and if fully set forth in this Closing Argument / Brief:

A. Their July 15, 2014 Argument, and the pleadings cited therein;

B. Their July 15, 2014 Appellant and Petitioners' Joint Reply to People's Counsel's Pre-Hearing Memorandum Concerning Certain Preliminary Issues;

C. The photocopy of §8-209, Use Assessments, of Maryland's Tax-Property Valuation and Assessment Article, filed on July 15, 2014;

RECEIVED
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BALTIMORE COUNTY
BOARD OF APPEALS

- D. The photocopy of Title 18, Department of Assessments and Taxation, Subtitle 02 Real Property Assessments, Chapter 03 Agricultural Use Assessments, filed on July 14, 2014.
- E. The Department of Assessment and Taxation Property Record Card for their 13-acre Parcel, which parcel is the subject of this proceeding, filed on July 15, 2014, showing that the entirety of Petitioners' 13-acre parcel is classified as "curtilage;"
- F. The transcript of the December 20, 2013 hearing before the Administrative Law Judge, which transcript was filed on July 14, 2014;
- G. Petitioners' Memorandum, which was filed about December 31, 2013 (four copies are being provided to the Board with this Closing Argument);
- H. Petitioners' Memorandum of Law, which was filed on February 24, 2014 (four copies are being provided to the Board with this Closing Argument);
- I. Petitioners' Motion for Reconsideration, which was filed on February 4, 2014 (four copies are being provided to the Board with this Closing Argument);
- J. Petitioners' Neighbors' Affidavits, which were filed on December 20, 2014 (four copies are being provided to the Board with this Closing Argument);
- K. Four copies of the following cases, which are cited in this Closing Argument, for the convenience of the Board: *Boehm v. Anne Arundel County*, 54 Md. App. 497 (1983); *Lohrmann v. Arundel Corp.*, 65 Md. App. 309 (1985); *Pollard's Towing v. Berman's Body Frame & Mechanical*, 137 Md. App. 277 (2001); *Marzullo v. Kahl*, 135 Md. App. 663 (2002); *Marzullo v. Kahl*, 366 Md. 158 (2001).

ADDITIONAL ARGUMENT

4. As stated above, much of Appellant's and Petitioners' Closing Argument has been previously filed, and is incorporated by reference herein. Below is additional Closing Argument, which addresses issues not previously addressed.

DE NOVO HEARING

5. Section 501.6 of the Baltimore County Code states that appeals to the Board of Appeals are to be *de novo*. There are no qualifying statements in the statute.

6. In *Boehm v. Anne Arundel County*, *op. cit.*, at p. 511 (on p. 17 of the attached Lexis copy), the Court of Special Appeals stated:

"As such, unless otherwise limited by statute or court rule, a *de novo* hearing is an **entirely new hearing at which time all aspects of the case should be heard anew as if no decision had been previously rendered.**" Bold added.

7. The bold portion of the quote in ¶6 above, was reiterated and emphasized in *Lohrmann v. The Arundel Corp.*, 65 Md. App. 309 (1985), p. 319 (Lexis p. 10).

8. In *Boehm*, at p. 512 (p. 18 Lexis copy), the Court further stated:

"Before an agency takes action which adversely affects particular rights and obligations, those affected **must be given notice and an opportunity to present their side of the case** in a full and fair hearing. **But more is required of agencies than minimal compliance with the 'hear the other side' principle.** When due process requires a hearing, it requires many of the elements of a 'trial-type' hearing. Building upon the due process foundation, the courts have constructed an imposing edifice of formal adjudicatory procedure. The consequence has been a virtual judicialization of the administrative process. Administrative procedure has acquired many of the attributes of courtroom procedure.

The rights required by due process before an administrative agency typically include the right to:

- (1) notice, including an adequate formulation of the subjects and issues involved in the case;
- (2) **present evidence (both testimonial and documentary) and argument;**
- (3) **rebutte adverse evidence, through cross-examination and other appropriate means;**
- (4) appear with counsel;
- (5) have the decision based only upon evidence introduced into the record of the hearing;
- (6) have a complete record, which consists of a transcript of the testimony and arguments, together with the documentary evidence and all other papers filed in the proceedings.” **Bold added.**

9. In *Lohrman, op. cit.*, at 319 (Lexis at p. 10), the Court further stated:

“In effect, then, in this case **the Board was exercising what amounts to original jurisdiction. It was as though the zoning officer had made no decision.** In that situation, **Arundel had the same burden it had before the zoning officer** – ‘the burden of proof (including the burden of going forward with the evidence and the burden of persuasion) of all questions of fact.’ ”

10. In *Pollard's Towing v. Berman's Body Frame & Mechanical*, 137 Md. App. 277 (2001), at p. 288 (Lexis p. 13), the Court of Special Appeals had an opportunity to address the nature of a *de novo* hearing before the Baltimore County Board of Appeals. In *Pollard's*, the Court reiterated what it had said in *Boehm*:

“A trial or hearing ‘de novo’ means **trying the matter anew as if it had not been heard before and as if no decision had been previously rendered.**

As such, unless otherwise limited by statute or court rule, a *de novo* hearing is an entirely new hearing at which time **all aspects of the case should be heard anew as if no decision had been previously rendered.**

In *Lohrmann v. Arundel Corp.*, 65 Md. App. 309, 319, 500 A.2d 344 (1985), we further observed:

In effect, then, in this case **the Board was exercising what amounts to original jurisdiction. It was as though the zoning officer had made no decision.**

See also *Hill v. Baltimore County*, 86 Md. App. 642, 587 A.2d 1155 (1991), (the ‘**de novo hearing is for all intents and purposes the first hearing of the case.**’).” Bold added.

11. The hearing before the Baltimore County Board of Appeals on July 15, 2014, was a *de novo* hearing. As such, the Board was exercising ‘original jurisdiction.’ It was “the first hearing of the case.” As such, Petitioners had the absolute right (and the obligation), to present their case in chief, including the right to introduce into the record whatever they felt was appropriate, and very importantly, the full and unfettered right to question, cross-exam, or challenge any witness, or any testimony by any witness.

12. Petitioners were denied their Due Process Right to participate fully in the July 15, 2014 hearing before the Board.

13. The only basis offered by the Board for denying Petitioners their Due Process Right to participate fully, was that there is an Agreement between Petitioners and Baltimore County, which stipulates that Petitioners will not appeal the Administrative Law Judge’s decision.

14. The Board found that the appeal that was filed, was filed by William Geddes. The Board further found that Mr. Geddes had demonstrated that he “felt aggrieved” by the decision of the Administrative Law Judge, and consequently, that he had the right to file an appeal.

15. Once that appeal was filed, the hearing before the Administrative Law Judge legally became a nullity, as did the Administrative Law Judge’s two opinions.

16. As Petitioner James Riffin argued, before the Board, Riffin was not “challenging the validity of the Administrative Law Judge’s Order.” By law, once Mr. Geddes filed his appeal, **there no longer was an Administrative Law Judge Order to challenge.** Riffin was “defending the position he had taken before the Administrative Law Judge.” Riffin was

attempting to do that which he has the absolute right to do: Present his case-in-chief, as if the hearing before the Board of Appeals was **the first hearing**.

17. Petitioners were severely prejudiced by the Board's edict barring Petitioners from actively and fully participating in the hearing before the Board. Petitioners were denied their right to introduce into evidence whatever facts or other documents they felt supported their position. Petitioners were also denied their right to cross-examine People's Counsel's witness: Mr. Phillip Mills. And most importantly, Petitioners were denied their right to move to suppress whatever evidence Mr. Mills collected while trespassing on Petitioners' Property, including the multiple photographic images the Board permitted People's Counsel to introduce into the record.

18. The Agreement between Baltimore County and Petitioners, is a private agreement. The only parties to the Agreement are Petitioners and Baltimore County. Contract Law does not give anyone other than the parties to a contract, any rights created by a contract. One must stand in "privity of contract," to obtain any benefits from a contract. Since Baltimore County has not objected to Petitioners' participation in the Board of Appeals proceeding, that Agreement cannot be used by anyone other than Baltimore County, as a basis to argue that Petitioners cannot participate in proceedings occurring after the Administrative Law Judge proceeding. (Baltimore County was fully aware that Mr. Geddes had appealed the Administrative Law Judge's decision, and that Petitioners were participating in the proceeding before the Board of Appeals. Having that knowledge, Baltimore County elected not to contest Petitioners' participation in the Board of Appeals' proceeding.)

REMEDIES

19. It is clear, Petitioners were denied their Due Process Right to present their case-in-chief to the Board, to cross-examine Mr. Mills, and to move to suppress Mr. Mills' photographic images of Petitioners' Property. This denial of Petitioners' Due Process Rights is more than sufficient grounds to reverse whatever decision the Board renders.

20. The Board has two choices: It can order that its Order barring Petitioners from full participation in the hearing before the Board was "improvidently granted," then reschedule another hearing, at which time Petitioners would be afforded their right to participate fully in that rescheduled hearing, or the Board can render a decision based on what is before the Board. Since whatever decision the Board renders that does not provide for a new hearing, will be appealed, and since there is nearly a 100% probability that any decision the Board renders that does not provide for a rescheduled hearing, will be reversed, and once reversed, the Board will be ordered to give the Petitioners a new hearing, it would conserve the judicial resources of the Board, and the appellate courts, if the Board rescheduled a new hearing on its own motion / order.

21. It is a unseemly trait of humans that humans are reluctant to admit that they made a mistake. But it is far more noble to admit a mistake, than to have a superior tribunal hold that a mistake was made, then order the offending tribunal to rectify the error.

22. While it would have been better for the Board to take a short recess, review the cases cited by Petitioner at the Hearing, then make a more informed ruling on the effect of a *de novo* hearing, that did not occur. Petitioners and Appellant are providing the Board with copies of the cases cited by Riffin. It is respectfully suggested that the Board read the pertinent portions of the cases, then reschedule another hearing.

23. It is further respectfully suggested that after People's Counsel has read its copy of this Closing Argument / Brief, People's Counsel submit a pleading to the Board, indicating that People's Counsel concurs that the Board should reschedule a new hearing.

24. The present members of the Board are fairly new members of the Board. The nature of a *de novo* hearing before the Board, is not something practitioners before the Board, or new members of the Board, typically would have intimate knowledge of. However, the same cannot be said of People's Counsel. Mr. Zimmerman has been practicing before the Board for decades. The *de novo* cases cited, were cited by Mr. Zimmerman in his Pre-Hearing Memorandum. Mr. Zimmerman knew, or should have known, that the hearing before the Board was 'the first

hearing,' that the orders of the Administrative Law Judge were legal nullities, and that Petitioners had not only the right, but the obligation, to present their case-in-chief to the Board.

25. If the Board does reschedule another hearing, Petitioners respectfully further suggest that the Board address the "Notice" issue raised by Petitioner: Has the General Public been given sufficient notice of the rescheduled hearing, to satisfy the General Public's Due Process Rights?

26. Since no member of the General Public appeared at the hearing before the Administrative Law Judge, it could be argued that there is no need to give the General Public any further notice. But since the hearing before the Board in effect is the 'first hearing,' it could also be argued that notice of all 'first hearings' must be given to the General Public. Petitioners have found no cases which address this notice issue.

27. If a new hearing is scheduled, it might be prudent for the Board to suggest to the Parties that the Parties submit memorandi on this issue.

CLOSING ARGUMENT ON THE MERITS

28. Appellant and Petitioners respectfully request that the Board address Petitioners' issues in the order in which Petitioners present the issues, namely:

- A. First, determine which of Petitioners enumerated uses would be permitted on a "farm" that is engaged in "commercial agriculture," to wit: forestry, the cultivation of "plants," or the "production of field crops." This was argued extensively in ¶¶ 21 to 52 of Petitioners' Memorandum.
- B. If Petitioners enumerated uses would be permitted on a "farm," then determine whether Petitioners have presented substantial evidence that Petitioners are in fact engaged in "forestry," the "cultivation of plants," or the "production of field crops." This was argued extensively in ¶¶ 12 to 26 of Appellant and Petitioners' July 15, 2014

Joint Argument.

- C. Determine whether the Board has the authority to interpret relevant sections of the Baltimore County Code. This was argued extensively in ¶¶ 5 - 28 of Petitioners' Memorandum of Law, and again in ¶¶ 70-73 in Petitioners' Motion for Reconsideration.
 - D. Determine whether a Code Enforcement Person can enter "curtilage" without a search warrant or without the consent of one in possession of "curtilage." This was argued extensively in ¶¶ 29 to 92 of Petitioners' Memorandum of Law.
 - E. Determine whether the Board has the authority to hold a "suppression" hearing, to determine what evidence a Code Enforcement Person has possession of, will be "suppressed." This was argued in ¶¶ 5-28 of Petitioners' Memorandum of Law, and was specifically addressed in ¶¶ 27 and 28 of Petitioners' Memorandum of Law.
 - F. Address the other issues argued in Appellant and Petitioners' Joint Argument, such as recreational amenities, farm equipment / utility sheds / unlicensed vehicles / commercial vehicles, and the additional issues raised by Mr. Mills, namely whether Petitioners' Property is being used as a 'Contractors' Storage Yard,' a 'Junk Yard,' a 'Trucking Facility,' a 'Solid Waste Storage Facility,' or a 'rat harborage.'
29. Appellant and Petitioners have attached copies of *Marzullo v. Kahl*, 366 Md. 158 (2001).
30. In *Marzullo*, beginning at p. 178 (Lexis at p. 19) the Court of Appeals had an extensive discussion of the phrase: "Commercial Agriculture."
31. Of particular significance is the cited testimony of the Baltimore County Planning Board, beginning at p. 177 (Lexis at p. 23).

32. The Planning Board was tasked with making comments and suggestions regarding amending the definition of the term: "Farm." The Court of Appeals cited many of those comments.

33. Of particular note are the Planning Board's Comments that appear on p. 178 (Lexis p. 24) of the *Marzullo* decision:

- A. "All of the business practices listed above are far removed from traditional agricultural operations. ... Often involved in processing and distribution, today's farmers are more likely **to use heavy equipment**. Some farmers **own a fleet of trucks**." Bold added.
- B. "Formulation of a separate definition for agriculture is essential to complete the proposed set of farm definitions. 'Agriculture' has a broader meaning than 'farm'. ... '[A]griculture' *represents a class of land uses* and thus accommodates operations which might be agricultural in nature but do not fit into the narrower, traditional farm definition. ... The proposed definition acknowledges that **agriculture is an industrial use** which involves such activities as storage, processing, marketing, distributing and financing ." Bold added. Italics in original.
- C. "Farmers may conduct their business on a full-time or on a part-time basis and in addition to production, **they may be involved in an array of industrial type activities**." *Id.* At 180 (Lexis at p. 26). Bold added.

34. The Planning Board recognized that "farming" is an "industrial type activity," that often involves the use of "heavy equipment." Farmers also frequently "own a fleet of trucks."

35. Petitioners have argued, without opposition, that they are engaged in "forestry," one of the enumerated "farm uses." Petitioners have argued, without opposition, that their "forestry" operations require the use of "heavy equipment," such as man-lifts, cranes and excavators. Petitioners have also argued, without opposition, that they use their "fleet of trucks" to "distribute" their "forestry" products, namely mast-quality trees, mulch, and timber.

36. Appellant and Petitioners have also appended copies of the Court of Special Appeals *Marzullo* decision, found at 135 Md. App. 663. The Court of Special Appeals gave a detailed

discussion of how that Court felt the Baltimore Zoning Regulations **should** be read. While the Court of Special Appeals decision is not binding on the Board (it was reversed by the Court of Appeals, since the Court of Special Appeals had not sufficiently deferred to the Board's interpretation of the Zoning Regulations), it is indicative of how the Court of Special Appeals feels the Board **should** interpret the Baltimore County zoning regulations, and in particular, the terms "farm" and "commercial agriculture."

AGRICULTURAL ASSESSMENT

37. In *Marzullo*, the Board found that Mr. Kahl's land was not assessed "agricultural."

38. The Court of Special Appeals held that the criteria was "eligible for agricultural assessment," **not** "is assessed agricultural."

"Section 101 of the Baltimore County Zoning Regulations also requires appellee's farm to **qualify** for the agricultural use assessment tax, pursuant to *section 8-209* of the Tax - Property Article of the Maryland annotated Code. BCZR §101.

It does not require appellee to have his land assessed agricultural, which is optional to a landowner. The Board found that because appellee's property was zoned 'residential,' he did not meet this part of the definition. **This conclusion was in error.**

The statute does not exclude property that is zoned as residential from being 'commercial agriculture.' BCZR section 101 **only requires that the property 'qualifies' for the agricultural use assessment.** BCZR §101. There are many reasons why a property owner may chose not to apply for the agricultural use assessment. First, a landowner may be subjected to certain tax penalties. See State Department of Assessment and Taxation, Real Property, The Agricultural Use Assessment, (Sept. 23, 2000). ('Because certain risks in the form of potential tax penalties can result from receiving the agricultural use assessment, the property owner should carefully evaluate the actual tax savings against those risks.') Second, property assessed in the Agricultural Use category could be subjected to Agricultural Transfer Taxes upon transfer or other disposition of the land. See *id.* **It is clearly not mandatory, therefore, to have one's land assessed as 'agricultural use' in order to farm it.** Rather, BCZR section 101 looks to the *Tax-Property Article section 8-209* for additional guidance in determining if a land is being used for agricultural use.

Because the Board incorrectly understood this portion of section 101's definition and did not rely on any other evidence in making its determination, **we remand this case back to the Board in order to determine whether appellee's land would qualify for the agricultural land use assessment, if he were to apply for it.**

On remand, **the Board must decide if appellee would qualify for the agricultural use assessment pursuant to *section 8-209 of the Tax-Property Article*, if appellee were to apply.**" Pp. 677-678 (Lexis pp. 15-16. Bold added. Italics in original.

39. It should be emphasized that the Court of Special Appeals' **ordered** the Board to determine whether Mr. Kahl's property **was eligible** for agricultural assessment.

40. The Court of Appeals **did not** reverse these "assessment" holdings by the Court of Special Appeals. Therefore, these holdings still represent "the law of the land."

41. What the Court of Special Appeals held was that the Board not only **has the authority to interpret** §8-209 of the Tax-Property Article, and the regulations found at Title 18, Subtitle 02, Chapter 03, Agricultural Use Assessments, but also **has the duty** to determine whether a parcel appears eligible for agricultural use assessment.

42. The Court of Special Appeals further noted why a property owner might not actually want its property assessed 'agricultural.' (There are a number of penalties associated with that assessment class.)

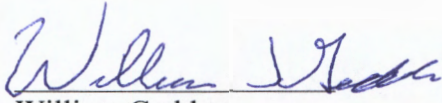
43. Petitioners argued that their property **is eligible** for agricultural use assessment. This was argued in detail in ¶¶ 28 to 37 in Petitioners' Memorandum. No one opposed Petitioners' argument that their land was 'eligible' for agricultural assessment. People's Counsel merely noted that Petitioners' property was assessed 'residential,' rather than 'agricultural.'

44. WHEREFORE, for the foregoing reasons, Appellant and Petitioners respectfully ask that the Board:

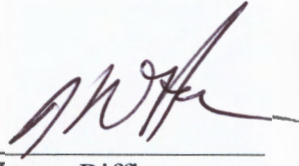
- A. Reschedule a new hearing, where Petitioners may fully participate; and
- B. Address the issue of whether notice of the rescheduled hearing must be given to the General Public, and if so, in what form, and at whose expense.
- C. **IF** the Board declines to reschedule a new hearing, **THEN**
- D. Determine that the uses enumerated in Petitioners' Petition for Special Hearing would be permitted uses on a Farm, as defined in the BCZR, especially if that Farm meets the criteria of Commercial Agriculture, as defined in the BCZR, and the agricultural uses on that Farm included Forestry, Production of Crops, or Cultivation of Plants;
- E. Determine that Petitioners' Property is used for forestry purposes;
- F. Determine that Petitioners' Property is used for the Production of Crops;
- G. Determine that Petitioners' Property is used for the Cultivation of Plants;
- H. Determine that 5 acres or more of Petitioners' Property is used for 'forestry' purposes;
- I. Determine that Petitioners Property **is eligible** for agricultural assessment pursuant to §8-209 of the Tax-Property Article;
- J. Determine that Petitioners' Property contains more than three acres;
- K. Determine that Petitioners; Property is used for "Commercial Agriculture," as that term is defined in the BCZR;
- L. Determine that Petitioners Property is used as a "Farm," as defined in the BCZR;
- M. Determine that the uses enumerated in Petitioners' Petition for Special Hearing would be permitted uses on Petitioners' Property, so long as Petitioners' Property is used as a "Farm," and so long as Petitioners Property continues to meet the criteria of "Commercial Agriculture."
- N. Determine that the Board has the authority to interpret sections of the Baltimore County Code ("BCC") that are relevant to Zoning Issues, and in particular, that the Board has the authority to interpret §32-3-602(b)(2) of the BCC;
- O. Determine that a Code Enforcement Person may not enter upon "curtilage" without either a search warrant, or consent from one in possession of the "curtilage;"
- P. Determine that all 13 acres of Petitioners' Property constitute "curtilage;"
- Q. Determine that a Baltimore County Code Enforcement Person may not enter upon Petitioners' Property without a search warrant, or without the consent of Petitioners;

- R. Determine that none of Petitioners' Uses of their Property, other than their agricultural uses, are visible from any public area;
- S. Determine that Petitioners' have presented Affidavits from their neighbors, and that the Affidavits indicate that Petitioner's neighbors do not oppose Petitioners' use of Petitioners' Property;
- T. Determine that "Recreational Amenities" are not limited to "tennis courts" or "swimming pools;"
- U. Determine that "Recreational Amenities" may include any item which a property owner can use on their property for recreational purposes, including but not limited to trampolines, all terrain vehicles, telescopes, observatories, swing sets, railroad cars, whether full scale, or scaled, including scale models capable of transporting humans;
- V. Determine that Petitioners have presented substantial evidence that Petitioners use their full-scale railroad equipment and cars, including Petitioners' caboose, for recreational purposes, and that therefore, such uses are permitted uses;
- W. Determine that Utility Sheds are Permitted Uses on property zoned DR-1 or RC-6;
- X. Determine that a Utility Shed is any structure that is used to store personal property;
- Y. Determine that a "structure" may be constructed of any material, including, but not limited to, wood, metal, masonry, straw, adobe, or any combination of materials;
- Z. Determine that a School Bus, or a Van, when used to store personal property, when not visible from an adjacent public area, and when not visible from an adjacent private property, or if visible from an adjacent private property, when no neighbor objects, would constitute a "Utility Shed," and as such, would be a permitted use on Petitioners' Property;
- AA. Determine that a vehicle with a gross vehicle weight over 10,000 pounds, with historic license plates on it, is not a "Commercial Vehicle," as defined in the BCZR, and thus may be parked / stored on land zoned DR-1 and RC-6;
- BB. Determine that the Petitioners are not using their Property as a "Contractor's Storage Yard," a "Junk Yard," a "Trucking Facility," a "Solid Waste Storage Facility," or a "rat harborage;"
- CC. And for such other and further relief as would be appropriate.

Respectfully submitted,



William Geddes
Appellant



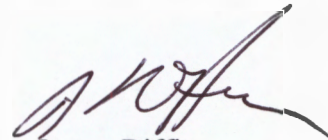
James Riffin
Petitioner



Karole Riffin
Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of July, 2014, a copy of the foregoing Appellant and Petitioners' Closing Argument, was hand delivered to the Office of People's Council, 2nd floor, 105 W. Chesapeake Avenue, Towson, MD 21204.



James Riffin

In re: 11019 Gateview Road
Cockeysville, MD 21030

* Before the Zoning Commissioner
* of Baltimore County
* Case No.: 2014 - 0094 - SPH

* * * * *

MEMORANDUM

1. Comes now your Petitioner, James Riffin, who respectfully submits this Memorandum.

2. Appended are additional Affidavits from additional neighbors. The Affidavits support Petitioner. These affiants specifically requested that their Affidavits be placed into the record, even though they were executed after the December 20, 2013 hearing date. It would be legally permissible to add these Affidavits to the record, since they are being submitted prior to a decision being rendered, and since their inclusion is unopposed.

ISSUES

3. The proceeding presents the following issues:

When may a Code Enforcement person enter upon private land?

4. Petitioner James Riffin had a discussion with Phillip Mills, the Code Enforcement person who cited Petitioners, regarding by what right had Mr. Mills entered upon Petitioners' posted / gated property and by what right had he taken photographs (seized images) of private (not visible from adjacent public / private properties) areas of Petitioners' property, and by what right had Mr. Mills entered a gated / fenced area immediately adjacent to Petitioner's residence, and by what right had Mr. Mills climbed a ladder and taken photographs of the second story area of Petitioners' residence, and by what right had Mr. Mills placed his camera on the windows of Petitioners' residence, and taken photographs of the interior of Petitioners' residence, all of which was done without benefit of a search warrant, and all of which was done surreptitiously,

9. Article 13, Title 4, concerns Solid Waste disposal sites. The Petitioner does not have a solid waste disposal site. Consequently, §13-4-401 is inapplicable.

10. The controlling statute is Section 32-3-602(b)(2), BCC, which states:

“(b) Enforcement powers and duties of Department of Permits, Approvals and Inspections. Representatives of the Department of Permits, Approvals and Inspections:

*(2) May enter upon **open land** during the performance of their duties.” Bold added.*

11. The word “open” is defined as: “So arranged or governed as to permit ingress, egress, or passage; Having no enclosing or confining barrier; Free from fences, boundaries, or other restrictive margins; Adjusted in a position that permits passage.”

12. Petitioners’ Property is conspicuously posted with numerous “No Trespassing Violators will be Prosecuted” signs. Petitioners’ driveway is gated and kept locked. There is a gated fence surrounding Petitioners’ dwelling. None of Petitioners’ Property is: “So arranged or governed as to permit ingress, egress, or passage; Having no enclosing or confining barrier; Free from fences, boundaries, or other restrictive margins.” Petitioners’ Property is decidedly **not** “open land.”

13. All statutes must be interpreted so that they are Constitutional. The U.S. Supreme Court has interpreted the Fourth Amendment of the U.S. Constitution on numerous occasions. The underlying theme in all of their decisions, is that government agents may not enter (search) those areas where a person has an “expectation of privacy.”

14. The most appropriate interpretation of the phrase “open land,” would be “land where the owner does not have an ‘expectation of privacy’.”

19. Appended to Petitioners' Special Hearing Petition was a copy of that portion of Baltimore County's Zoning Map applicable to the Property that is the subject of this proceeding. The Western portion of Petitioners' property is currently zoned **DR-1**. The Eastern portion of Petitioners' property is currently zoned **RC-6**. The portion currently zoned RC-6 was previously zoned DR-1, and has been so zoned since the inception of the Baltimore County Zoning Regulations ("**BCZR**") . (Previously DR-1 zones were referred to as R-40 zones, meaning 40,000 square feet minimum lot size.)

Primary Uses Permitted by Right

20. "Dwellings" and "Farms" are permitted by right in DR-1 zones (see §1B01.1 A 1 and 7 BCZR) and RC-6 zones (see §1A07.3 A 1 and 2 BCZR). Consequently, both of Petitioners' **Primary Uses** (Dwelling, one-family detached and Farm) are permitted by right in both DR-1 and RC-6 zones.

Accessory Uses Permitted by Right

21. Accessory Uses are permitted by right in both DR-1 zones (see §1B01.1 A 18 BCZR) and RC-6 zones (see § 1A07.3 7 BCZR).

22. Accessory Uses are defined in §101.1 BCZR as follows:

"Accessory Use or Structure. 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; except that, where specifically provided in the applicable regulations, accessory off-street parking need not be located on the same lot. An accessory building, as defined above, shall be considered an accessory structure. A trailer may be an accessory use or structure if hereinafter so specified. An ancillary use shall be considered as an accessory use; however, a use of such a nature or extent as to be permitted as a 'use in combination'

28. §8-209 of the Tax-Property Article of the Annotated Code of Maryland states (a) that it is in the public interest to foster and encourage farming activities; “(e)(1) the Department shall establish in regulations criteria to determine if land that appears to be actively used for farm or agricultural purposes (i) is actually used for farm or agricultural purposes; and (ii) qualifies for assessment under this section; (e) (2) The criteria shall include: (i) The zoning of the land; (ii) The present and past use of the land including land under the Soil Bank Program of the United States; (iii) The productivity of the land, including timberlands and reforested lands; and (iv) The gross income that is derived from the agricultural activity.” (e)(7) states that: “The gross income requirement of paragraph (2) of this subsection does not apply: (i) If the owner is at least 70 years of age.”

29. Title 18, Subtitle 02, Chapter 03.06, entitled Woodland, states:

“.06 Woodland. A woodland parcel of **5 acres** or more **shall** receive agricultural use assessment only if it is:

A. A part of a parcel of land which is determined to be **actively used** as defined in Regulation .01B(1) of this chapter ... **or** F. **Actually devoted** land as defined in Regulation .01B(2) of this chapter.” Bold added.

30. Regulation .01B(1) states: “‘**Actively used** land’ means land that is actually and primarily used for a continuing farm or agricultural use.

31. Regulation .01B(2) states: “(2) ‘**Actually devoted** land’ means that portion of actively used land which is engaged in an approved agricultural activity.

32. Regulation .01B(4) states: “(4) ‘Approved agricultural activity’ means those activities recognized as agricultural pursuits under Regulation .03 of this chapter.”

33. Regulation .03 states:

“A. Approved agricultural activities are as follows:

Are the Uses listed in Petitioners' Special Hearing Petition, Permitted Uses?

38. Petitioners ask that the Zoning Commissioner determine whether two primary, and 39 specific accessory uses are permitted in a DR-1 zone or in a RC-6 zone. Petitioners further ask that if any of the specific listed uses are not permitted as of right, would they be permitted non-conforming uses. Each use will be addressed below.

39. As discussed above in ¶18 above, Petitioners' two primary uses are permitted by right.

40. Petitioners argue that the 39 specific accessory uses are permitted as accessory uses, or are permitted by right.

41. §1A07.3A expressly permits by right in an RC-6 zone: Home occupations [7b]; Offices of other professionals [7c]; Parking and residential garage space [7d]; and Recreational amenities [7f].

42. §1B01.1A BCZR permits the following uses by right in a DR-1 zone:

Trailers [2]; accessory uses, including, but not limited to, home occupations [18c]; parking spaces [18d]; garages, utility sheds, "or other accessory structures or uses (all such accessory structures or uses subject to the height and area provisions for buildings as set forth in Section 400)." [18g].

43. Section 400 BCZR states:

"Accessory buildings in residence zones, **other than farm buildings** (Section 404) shall be located only in the rear yard and shall occupy not more than 40% thereof."

44. All of the uses specified in Petitioners' Petition are located in the **rear yard** of Petitioners' property. (Petitioners' front door is located on the East end of their dwelling. All of the uses listed in Petitioners' Petition occur on the West end of their dwelling, which would be in

A licensed (historic plates) truck tractor [2Id], is used to haul semi-trailers on the road. A licensed (historic plates) dump truck [2Id], is used to haul dirt, stone, mulch, bricks and other bulk materials to / from Petitioners' property, and is used to move dirt / stone / mulch / bricks about Petitioners' property. Two unlicensed dump trucks are used to store / move bulk materials about the Property [2Ie]. An unlicensed boom truck is used to pick up felled trees, or building materials, and to move / lift such materials about the property [2Ie]. Two licensed (special mobile equipment) hydraulic cranes [2If] are used to hold trees upright while the trees are being cut (to control where the tree will fall, and to regulate the velocity of the tree as it falls, to prevent damage to the tree and to other adjacent trees). They are used to pull the pump out of the Property's well, when the pump fails. They are used to hold / suspend building materials and equipment. Three licensed [special mobile equipment] air compressors [2Ig] are used to provide compressed air for equipment operated by compressed air, and are used to inflate equipment tires. Two hydraulic excavators [2Ii] are used to dig / move dirt, to change the elevation of the Property, to dig ditches within which to bury electric and water lines, are used to lift up equipment / material and are used to dig out tree stumps. Building materials, such as steel, masonry units, lumber, asphalt millings, crusher-run stone [2Ij] are used to erect structures to store farm-related equipment and crops, are used to erect walls, and are used to prevent dust and erosion of traveled / storage surfaces. Five generators [2Ik] are kept at the property, to provide electricity when the electricity goes out (several times a year), to provide electricity on those parts of the Property currently unserved by electricity, and are used to provide 3-phase electricity for equipment that runs on 3-phase electricity. (3-phase electricity is not available.) Air conditioning units [2Il] are kept at the Property, to provide cooling and refrigeration during the summer. Grass mowing equipment [2Im] is used at the Property to mow several acres of grass. Some unlicensed motor vehicles [utility vans] [2In] are used as utility sheds, to store weather-sensitive equipment, material, fertilizer, and seed, and those with extensive glassed areas (windows) are used to propagate seeds to seedlings in the Spring (they are used as greenhouses). Some unlicensed, operable motor vehicles [2Io] are used to transport farming-related equipment and material about the Property. There are a

50. §428.1 BCZR regulates the outside storage of unlicensed or inoperative motor vehicles on residential property. Paragraph C of that section states:

“C. Nothing contained in Subsection B shall be construed to prohibit the outside storage of unlicensed but operative farm tractors or farm equipment actually and regularly used on a farm, farmette or satellite farm.”

51. As discussed above, the unlicensed motor vehicles on Petitioners’ property are actually and regularly used on Petitioners’ farm. They are used to move equipment / material about the property. Some are used for non-motor vehicles purposes, to wit: as utility sheds and as greenhouses.

52. Utility sheds are a permitted use. A “shed” is defined as: “A slight structure (as a penthouse, lean-to, partially open separate building) built primarily for shelter or storage. The term “utility” is defined as: “The state or quality of being useful.” So a “utility shed” is a “slight structure” that is “useful.” A “structure” is defined as “anything composed of organized or interrelated elements.” A motor vehicle is “anything composed of organized or interrelated elements.” If it is used as a place of shelter or storage, then it has been converted from a motor vehicle into a ‘utility shed.’ The unlicensed, inoperable former motor vehicles on Petitioners’ Property are no longer motor vehicles. They are being used as ‘utility sheds,’ and as ‘greenhouses,’ both of which are permitted uses.

COMMERCIAL VEHICLES

53. §101.1 BCZR defines the phrase ‘Commercial Vehicle’ as follows:

“Any vehicle with a gross vehicle weight or gross combination weight over 10,000 pounds or any vehicle, regardless of weight, which: (1) is used for the transportation of materials, products, freight, other vehicles or equipment in furtherance of any commercial activity; (2) is used ‘for hire;’ or (3) displays advertising thereon. Identification of the vehicle’s manufacturer model or dealer shall not be considered as advertising. Commercial vehicles **shall not** be deemed to include any **farm vehicle or farm equipment** actually and regularly used on a farm, satellite farm or farmette; school or

67. Petitioners' land is not "**primarily**" used, nor is it used at all: "(a) to accommodate the transfer of goods or chattels from trucks or truck trailers to other trucks or truck trailers or to vehicles of other types in order to facilitate the transportation of such goods or chattels."

68. While Petitioners land is used "(b) for truck or truck-trailer parking or storage," it is **NOT "primarily" so used.**

69. Petitioners' argue that their "[l]and [is] used for the parking, storage or repair of trucks used as an accessory to a lawful business:" farming. Petitioners further argue that "such parking or storage area ... shall not be considered a trucking facility within the meaning of this definition."

GARBAGE, MANURE, ANIMAL AND BIRD FEED

70. §13-7-310 (a) states:

"(a) Dumping prohibited. A person may not place, leave, dump, or allow to accumulate any garbage, rubbish, trash, or manure in an improved or vacant building or premises, or on any open lot or alley so that the garbage, rubbish, trash, or manure may become food for rats or a rat harborage."

71. The operative words are "garbage, rubbish, trash, or manure." Petitioners do not have any manure on their Property. So the question becomes, do they have any "garbage, rubbish or trash" on their property that "may become food for rats" or that may become "a rat harborage."

72. Perhaps the first question should be: Are there any rats on Petitioners' Property, and if so, are they an integral part of the ecological habitat on Petitioners' Property? Petitioners Property is populated by a number of foxes (6 or so), a number of raccoons (8 or so), an owl or two, and hawks. These wild life need food to survive. Rats and mice are an important part of their diet. Petitioners have not seen any rats, nor have Petitioners seen any signs that rats are

79. §13-7-312 BCC states:

“(a) Accumulation prohibited.

- (1) This subsection does not apply to material that is evenly piled or stacked on open racks that are elevated at least 18 inches above the ground.
- (2) A person may not accumulate or allow the accumulation of lumber, boxes, barrels, cans, leaves, brush, tree limbs, bricks, stones, containers, or similar materials on any premises, improved or vacant, or on any open lot or alley, **if the accumulation is conducive to a rat harborage.** Bold added.

(b) Limitation on section.

- (1) This section does not require elevation of:
 - (i) Stone or sand in a stone quarry or sand pit;
 - (ii) Bricks in a brickyard;
 - (iii) Heavy machinery or equipment;
 - (v) Lumber in a lumberyard;
 - (vi) Material temporarily placed on the site of new construction or on the site of repairs to or alteration of old construction; or
 - (vii) Other materials in similar instances in which elevation is not practical and not customary and usual.

80. The phrase “rat harborage” is defined in § 13-7-301(i) as follows:

- “(i) Rat harborage. (1) ‘Rat harborage’ means a condition that may constitute a normal and ordinary rat habitat conducive to their multiplication and continued existence in, under, or adjacent to a building.*
(2) ‘Rat harborage’ includes burrows.” Bold added.

81. None of the lumber, bricks, stones, or containers on Petitioners’ Property is “adjacent to a building.”

82. All of the building materials on Petitioners’ Property has been “temporarily placed on the site of new construction or on the site of repairs to or alteration of old construction.” Petitioners have applied for a building permit to construct 300 +/- linear feet of masonry fencing. The building materials on Petitioners’ Property is used in their farming activities.

83. The statute provides for a number of exceptions, including bricks in a ‘brickyard’ [where bricks are stored], and ‘heavy machinery or equipment.’

89. None of the equipment or material on Petitioners' Property comports with the previously defined words: Garbage and Rubbish.

90. The word 'refuse' is defined as follows:

"Refuse. Something that is discarded as worthless or useless; rubbish; trash; garbage."

91. As previously stated, none of the equipment or material on Petitioners' Property has been 'discarded,' nor is any of the equipment and material 'worthless or useless.' Consequently, none of the equipment or material on Petitioners' Property comports with the definition of the word: 'Refuse.'

92. The word 'rubble' is defined in §13-4-101 (t) BCC as follows:

"(t) *Rubble.*

- (1) 'Rubble' means building demolition debris, tree stumps and other land clearing debris, solidified paving debris, and other similar waste authorized by the approving authority.
- (2) 'Rubble' does not include garbage, friable asbestos or other special wastes, refractory brick, liquid petroleum products, industrial waste, controlled hazardous substances, medical waste, or free liquids."

93. None of the equipment and material on Petitioners' Property is 'demolition debris, tree stumps and other land clearing debris, solidified paving debris, and other similar waste.'

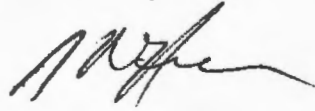
94. None of the equipment and material on Petitioners' Property is "incinerator ash, offal, animal carcasses."

95. Consequently, **none** of the equipment or material on Petitioners' Property comports with the definition of the term: "Solid Waste," as defined in the BCC.

RECREATIONAL AMENITIES

99. I affirm under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge and belief.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'JRiffin', with a long horizontal flourish extending to the right.

James Riffin, Petitioner
1941 Greenspring Drive
Timonium, MD 21093
(443) 414-6210



Board of Appeals of Baltimore County

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

July 16, 2014

NOTICE OF DELIBERATION

IN THE MATTER OF: James and Karole Riffin
11019 Gateview Road
14-094-SPH 8th Election District; 3rd Councilmanic District

Re: Petition for Special Hearing to determine which uses are permitted in a DR-1, RC-6, and which are non-conforming.

1/7/14 Opinion and Order of the Administrative Law Judge wherein the requested relief was denied in part and dismissed without prejudice in part.

2/25/14 Order on Motion for Reconsideration issued by Administrative Law Judge wherein the Motion was Denied.

This matter having been heard and concluded on February 26, 2014, a public deliberation has been scheduled for the following:

DATE AND TIME: TUESDAY, AUGUST 5, 2014 at 9:00 a.m.

LOCATION: Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

NOTE: Closing briefs are due on Wednesday, July 30, 2014 by 3:00 p.m.
(Original and three [3] copies)

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

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

c: Appellant

: Will Geddes

Petitioner/LO

: James and Karole Riffin

Office of People's Counsel
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney

Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Michael Field, County Attorney, Office of Law

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: James and Karole Riffin (Petitioners) 14-094-SPH
William T. Geddes (Appellant)

DATE: July 15, 2014

BOARD/PANEL: Andrew M. Belt, Chairman
Wayne R. Gioioso, Jr.
Richard A. Wisner

RECORDED BY: Krysundra "Sunny" Cannington/Administrator

PURPOSE: To deliberate the following:

1. Appellant and Petitioners' Joint Motion Challenging People's Counsel for Baltimore County's Standing to Appear in this Proceeding;
2. Appellant and Petitioners' Joint Motion to Proceed on Existing Record in this Proceeding;
3. People's Counsel for Baltimore County's Pre-Hearing Memorandum Concerning Certain Preliminary Issues; and
4. All responses thereto.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

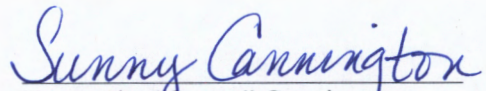
- The Board began by discussing the Appellant and Petitioners' Joint Motion to Proceed on Existing Record in this Proceeding. The Petitioner argued that the Appellant can chose to waive his right to a de novo hearing. The Petitioner argued that if the Board is required to hold a de novo hearing, the Board should be required to fulfill all the notification requirements the ALJ is bound to. People's Counsel made a brief argument that the Board is bound by statute. The statute states that the Board of Appeals "shall" hold a de novo hearing. The Board determined that "shall" means it is mandatory and they are bound by statute. Therefore the Joint Motion to Proceed on Existing Record is denied.
- The Board then discussed the Joint Motion Challenging People's Counsel for Baltimore County's Standing to Appear in this matter. The Board acknowledges that this is a fairly regular issue before the Board. The Petitioner argues that the Baltimore County Charter provides express powers to People's Counsel. The Petitioner admits that People's Counsel entered their appearance in the matter before the ALJ but since they did not appear at the hearing below, Petitioner argues that People's Counsel waived their right to appear before the Board. The Petitioner also argues that case law allows that someone can object to People's Counsel's presence. People's Counsel argues that standing has already been determined in a wide variety of case law. People's Counsel cited case law which indicates that the Charter's list of cases which People's Counsel can be involved is illustrative and not exclusive. Additionally, People's Counsel argues that because the case is de novo before the Board, anyone can appear at the Board level and enter as an interested party. The Board determined that the standing of People's Counsel has been previously determined by the Courts in a variety of issues, and People's Counsel has standing in this matter.

- The Board reviewed People's Counsel's Pre-Hearing Memorandum. People's Counsel provided the Board with a copy of an agreement executed in October 2013 between James and Karole Riffin and Baltimore County. The said agreement provides that the Petitioner will apply for a Petition for Special Hearing and in exchange the County will suspend the Code Enforcement matter. Both parties agreed that the ALJ decision on the Petition for Special Hearing would be the final decision on this matter and neither party would "...appeal or otherwise contest the Order." Further remedies were provided by are not directly relevant to this matter. The Petitioner agrees that he is bound to this agreement. The Petitioner acknowledges that by signing the agreement he waived his right to appeal. The question becomes what is the Petitioner's role in this proceeding. The Board acknowledges that this is unprecedented territory. The Appellant Mr. Geddes, affirms that he felt aggrieved by the decision of the ALJ and therefore he appealed that decision. The Petitioner argues that he is not contesting the ALJ's decision; he is here to defend his petition. The Board determined that the Petitioner, Mr. Riffin is precluded from this de novo hearing because if he is an active participant, he would be contesting the decision of the ALJ. The Board determined that the Appellant, Mr. Geddes, has a right to proceed with this appeal. The Board determined that Mr. Geddes must present his legal arguments. Mr. Geddes can call Mr. Riffin as a witness to his case, but Mr. Riffin will not be the bringer of argument before the Board.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY the Appellant and Petitioners' Joint Motion Challenging People's Counsel for Baltimore County's Standing to Appear in this Proceeding; DENY the Appellant and Petitioners' Joint Motion to Proceed on Existing Record in this Proceeding; and rule that the Petitioner is precluded as an active party in this appeal due to the signing of a settlement agreement with Baltimore County.

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

Respectfully Submitted,


Krysundra "Sunny" Cannington

RECEIVED
JUL 15 2014

In re: 11019 Gateview Road
Cockeysville, MD 21030

*
*
*

Before the Board of Appeals
of Baltimore County
Case No.: 2014 - 0094 - SPH

* * * * *

**APPELLANT AND PETITIONERS' JOINT REPLY TO
PEOPLE'S COUNSEL'S PRE-HEARING MEMORANDUM
CONCERNING CERTAIN PRELIMINARY ISSUES**

1. Come now your Appellant, William Geddes, and Petitioners, James Riffin and Karole Riffin, who respectfully reply to People's Counsel's Pre-Hearing Memorandum Concerning Certain Preliminary Issues.

2. Appellant and Petitioners jointly objected to People's Counsel's standing to participate in this proceeding, and jointly moved to proceed on the record forwarded to the Board of Appeals.

PEOPLE'S COUNSEL'S STANDING

3. Appellant and Petitioners quoted the portion of Baltimore County's Charter that grants unto Baltimore County's People's Counsel its powers and duties. The Charter grants unto the People's Counsel the power to participate as a party in five enumerated circumstances:

- A. To defend Baltimore County's Master Plan;
- B. To defend Baltimore County's Zoning Maps;
- C. To participate in any zoning reclassification;
- D. To participate in any zoning variance proceeding;
- E. To participate in any zoning special exception proceeding;

4. This proceeding **does not involve any of the foregoing circumstances**. Consequently, Appellant and Petitioners argued that People's Counsel does not have the statutory power to participate as a party in this proceeding.

5. In support of People's Counsel's Memorandum arguing that People's Counsel does have the requisite statutory power to participate in this proceeding, People's Counsel cited **24 cases**, which People's Counsel argued supported People's Counsel's power to participate in this proceeding.

6. Petitioner James Riffin read each and every one of the 24 cases cited by People's Counsel in support of People's Counsel's standing argument. **Not one of the 24 cases actually support People's Counsel's argument.**¹

7. Yes, it is true that People's Counsel has participated as a party in proceedings that do not fall within the five enumerated categories noted above in paragraph 3. However, People's Counsel's participation in those very few cases, **was without opposition.**² It is a tenet of law that if one does not object timely, one waives their right to object.

8. Occasionally it has been People's Counsel that has filed a Petition for Special Hearing. See *Marzullo v. Kahl*, 366 Md. 158 (2001).

¹ Cases cited in which People's Counsel has a right to participate in: **Master Plan** cases: *HNS Development v. People's Counsel*, 425 Md. 436 (2012); *People's Counsel v. Webster*, 65 Md. App. 694 (1986). **Zoning Map** case: *People's Counsel v. Maryland Marine Mfg. Co.*, 316 Md. 491 (1989). **Zoning reclassification** cases: *People's Counsel v. A.V. Williams*, 45 Md. App. 617 (1980); *People's Counsel v. Mockard*, 73 Md. App. 340 (1987); *People's Counsel v. Beachwood I LP*, 107 Md. App. 627 (1995). **Zoning Variance / Special Exception** cases: *Lucas v. People's Counsel*, 147 Md. App. 209 (2002) [SE]; *Riffin v. People's Counsel*, 137 Md. App. 90 [SE, V]; *People's Counsel v. Mangione*, 85 Md. App. 738 (1991); *Umerley v. People's Counsel*, 108 Md App. 497 (1996); *People's Counsel v. Loyola College*, 406 Md. 54 (2008); *Red Roof Inns v. People's Counsel*, 96 Md. App. 219 (1993); *Trinity Assembly of God v. People's Counsel*, 407 Md. 53 (2008).

²Cases in which no objection was noted: *Board of Child Care v. Harker*, 316 Md. 683 (1989) [participated at 1st hearing]; *Sycamore Realty Co. v. People's Counsel*, 344 Md. 57 (1996); *Antwerpen v. Baltimore County*, 163 Md. App. 194 (2005); *People's Counsel v. Surina*, 400 Md. 662 (2007) [on same side as existing party]; *Seminary Galleria v. Dulaney Valley Improvement Assoc.*, 192 Md. App. 719 (2010) [on same side as existing party]; *Security Management v. Baltimore County*, 104 Md. App. 234 (1995) [on same side as existing party];

9. Appellant and Petitioners have timely objected: At the first hint that People's Counsel was going to attempt to participate in this proceeding.

10. In only **one** of the cases cited by People's Counsel, *People's Counsel v. Crown Development Corp.*, 328 Md. 303, 317 (1992), was an objection lodged regarding People's Counsel's standing to participate in that proceeding. The Court of Appeals, in permitting People's Counsel to participate, premised its holding on two key points:

- A. The party objecting had not argued that it was prejudiced by the presence of People's Counsel; and
- B. People's Counsel supported a party that was a proper party in the proceeding.

11. In this proceeding, People's Counsel is **not supporting** an existing party in this proceeding.

12. Furthermore, Appellant and Petitioners argue that they would be materially prejudiced by People's Counsel's participation in this proceeding, since People's Counsel is taking a position adversarial to Appellant and Petitioners' positions.

DE NOVO HEARING

13. Appellant and Petitioners acknowledge that Section 501.6 of the Baltimore County Code states that appeals to the Board of Appeals are to be *de novo*. And Appellant and Petitioners acknowledge that the cases cited by People's Counsel do address some aspects of what a *de novo* hearing entails.

14. Maryland's Court of Special Appeals has noted that there are different types of *de novo* appeals when it comes to appeals from Administrative Agencies. See *Lohrmann v. Arundel Corp.*, 65 Md. App. 309 (1985). Some are held based on the record below, with an opportunity to admit additional evidence. All purge whatever order was made below.

15. Often it has been held that a *de novo* “appeal” is **not in fact an “appeal,”** since the entirety of the proceeding below is purged. The “appeal” becomes a proceeding of “original jurisdiction.” The word “appeal,” is a misnomer. See *Boehm v. Anne Arundel County*, 54 Md. App. 497 (1983).

16. If the “appeal” is truly *de novo*, that is, the proceeding begins anew as if the first proceeding never existed, then the courts have held that the *de novo* proceeding is subject to the Due Process requirements of Notice and a reasonable opportunity to respond. See *Boehm, Id.*

17. As mentioned in Appellant’s and Petitioners’ Motion to Proceed on the existing record, the issue of Due Process is of great concern to Appellant and Petitioners.

18. If the proceeding before the Board of Appeals is truly going to be *de novo*, that is, anyone can participate, any one can present new evidence, all existing evidence can be challenged, then Notice similar to the Notice required in the Administrative Law Judge proceeding **must be provided.**

19. In the Administrative Law Judge proceeding, the hearing date was advertised in a newspaper of general circulation, and was conspicuously posted on Petitioners’ Property. This Notice was designed to give Notice not only to Baltimore County citizens in the vicinity of the Property, but also to all Baltimore County citizens.

20. Notice of the July 15, 2014 hearing before the Board of Appeals **was not given to anyone except Appellant, Petitioners and People’s Counsel.**

21. If the entirety of what occurred at the Administrative Law Judge proceeding is purged, as a full *de novo* proceeding requires, see *Lohrmann, op. cit.* ¶14 and see *Pollard’s Towing v. Berman’s Body Frame & Mechanical*, 137 Md. App. 277 (2001), then the newspaper notice and sign-posting notice are likewise purged, as if it never occurred. That would cause the entire Special Hearing proceeding to become a nullity, due to the lack of Due Process notice.

22. The Notice required for the Special Hearing before the Administrative Law Judge is rather pricey: It costs in excess of \$500.

23. Section 501.6 of the Baltimore County Code, does not address the issue of Notice.

24. If the Baltimore County Council truly wants all appeals to the Board of Appeals to be fully *de novo*, then the Baltimore County Code needs to be amended, to cover the issue of Notice.

25. Petitioners would suggest the following approach:

A. Appeals **may** be *de novo*. If a *de novo* appeal is desired, then the party requesting the *de novo* appeal is responsible for the costs of providing notice of the Board of Appeals *de novo* hearing. This puts the extra burden associated with a *de novo* appeal squarely on the party seeking the *de novo* appeal. Precisely where the burden should be.

B. If notice of the Board of Appeals is not provided, then the appeal is heard on the record, just like a regular appeal.

PEOPLE'S COUNSEL CONTRADICTIONARY ARGUMENTS

26. People's Counsel appears to be making contradictory arguments:

27. On the one hand, People's Counsel argues for a *de novo* appeal, which has been held to **not be an appeal** at all. See *Lohrmann, op. cit.* ¶14, and *Boehm, op. cit.* ¶ 15, at p. 510.

28. If a *de novo* "appeal" is not a real "appeal," then Petitioners have the absolute right to request a *de novo* hearing before the Board of Appeals, since Petitioners' Agreement with Baltimore County only bars Petitioners from "appeals."

**PEOPLE'S COUNSEL HAS NO STANDING WITH REGARDS TO THE AGREEMENT
BETWEEN BALTIMORE COUNTY AND PETITIONERS**

29. The Agreement between Baltimore County and Petitioners is a contract. The only parties to that contract are Baltimore County and Petitioners. No one else, including People's Counsel, have any rights predicated on that Agreement.

30. **The only party** that can object to Petitioners' participation in the proceeding before the Board of Appeals, is Baltimore County. Certainly not People's Counsel.

31. Baltimore County has not objected to Petitioners' participation in the proceeding before the Board of Appeals.

32. Consequently, People's Counsel has no standing to object to Petitioners participation in the proceeding before the Board of Appeals.

33. Furthermore, Petitioners agreed to only one thing: *Petitioners* would not note an appeal. Petitioners never intended to relinquish their right to participate in a proceeding before the Board of Appeals, if an appeal was filed by someone other than the Petitioners.

34. At the time the Agreement was executed, neither Baltimore County nor Petitioners had any inkling as to who might appear at the hearing before the Administrative Law Judge, and who might feel sufficiently aggrieved by the decision of the Administrative Law Judge to note an appeal.

35. Had the Administrative Law Judge rendered a decision that the Petitioners had been comfortable with, and had that decision been appealed by one of Petitioners neighbors, Petitioners certainly would have exercised their right to defend that favorable decision.

THE AGREEMENT BETWEEN BALTIMORE COUNTY AND PETITIONERS

36. Baltimore County and Petitioners litigated for 10 years over one of Petitioners' properties. Employees of Baltimore County engaged in unlawful activities, in an effort to force the Petitioners to convey to Baltimore County one of Petitioners' properties. Petitioners filed the first of multiple civil and criminal suits against those employees. Petitioners and Baltimore County were at an impasse. The prospect of another 10 years of litigation was real. Petitioners and the lead council for Baltimore County, Adam Rosenblatt, agreed to call a truce. Petitioners agreed to dismiss all pending lawsuits involving Baltimore County, and agreed not to file any more lawsuits against Baltimore County or its employees. In exchange, Baltimore County agreed to dismiss unfounded citations issued against Petitioners. Baltimore County also agreed to let the Petitioners present their case to the Administrative Law Judge. Baltimore County agreed not to participate: If the Petitioners could make their case, so be it. Baltimore County no longer cared how the Petitioners elected to use their Property. Or more accurately, it was not worth the expense of another 10 years of litigation to object to Petitioners use of their Property, if Petitioners' neighbors did not object to Petitioners' use of their Property, particularly if Petitioners' use of their Property was not visible to any of Petitioners' neighbors, nor to anyone standing on a public right-of-way.

37. Adam Rosenblatt knew full-well that Petitioners would advocate forcefully in support of their position regarding the use of their Property. Mr. Rosenblatt knew full-well that were the Petitioners to prevail, Petitioners may realize a benefit that Petitioners might not obtain were the proceeding before the Administrative Law Judge to be adversarial. That was a price Baltimore County was willing to pay to end the litigation. In effect, Baltimore County was signaling to the Administrative Law Judge to permit the Petitioners to use their Property as they so desired, so long as no neighbor objected. The Administrative Law Judge missed his cue. People's Counsel missed the same cue.

38. This proceeding was supposed to be straight-forward, and was supposed to be non-controversial. The Agreement was designed to end litigation, not to foster more litigation.

39. If People's Counsel is permitted to participate as a party, the original issue, the use of Petitioners' Property, will be subsumed by other totally unrelated issues: Does People's Counsel have the power to participate in a proceeding not listed in Baltimore County's Charter creating People's Counsel, when such participation is objected to and when People's Counsel is not advocating a position held by an original party? If a *de novo* hearing is requested before the Board of Appeals, must new notices be promulgated? And if so, at who's expense? Is Section 501.6 of Baltimore County's Code Constitutional, since no provision is made for proper Due Process Notice and Opportunity to Respond?

40. One thing is for certain: If People's Counsel is permitted to intervene, this case will be litigated for another 10 years, all the way to the U.S. Supreme Court, just as three of Petitioners' other cases were litigated all the way to the U.S. Supreme Court, including one involving Mr. Rosenblatt. Given Mr. Zimmerman's age, he may well have retired long before this case is ultimately resolved.

INTERVENTION

41. In effect, since People's Counsel chose not to participate in the proceeding before the Administrative Law Judge, he is attempting to "intervene" in the proceeding before the Board of Appeals.

42. One of the rules for intervention, is that the intervening party is barred from raising any issues not raised by the original parties. The parameters of the original complaint cannot be expanded.

43. In this proceeding, Petitioners determined the issues. No one added to those issues when the matter was before the Administrative Law Judge. The issues have been set in stone. As an intervenor, People's Counsel is barred from raising any issue not before the Administrative Law Judge. Period.

44. Intervention is either by right or permissive. Petitioners have argued that the enabling statute for People's Counsel does not permit intervention by right. People's Counsel has cited no case holding differently. Permissive intervention is permitted if no objections are noted. The cases cited by People's Counsel involve permissive intervention: No objections were noted.

45. Appellant and Petitioners strongly object to intervention by People's Counsel. Appellant and Petitioners will be materially prejudiced by the intervention of People's Counsel, since People's Counsel has already taken a position contrary to the position advocated by Appellant and Petitioners. People's Counsel cannot "piggy-back" on an original party, by supporting the position taken by an original party. People's Counsel wants to become an original party, after the fact.

46. If People's Counsel wanted to participate in this proceeding, People's Counsel should have presented itself before the Administrative Law Judge, and argued to have a seat at the table. This it failed to do. Having failed to act in a timely manner, whatever right People's Counsel may have had, has been waived by People's Counsel.

47. People's Notice of Intent to Participate filed with the Administrative Law Judge is similar to the Notice of Intent to Defend filed by a defendant in a civil proceeding: It may reserve a seat at the table. But if the defendant does not in fact appear at the trial, what rights the defendant may have had, are waived. The defendant is forever barred from participating in any further proceedings.

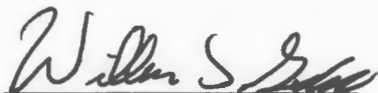
48. If you sleep on your rights, you lose them. People's Counsel slept on whatever rights it may had. Those rights, if they ever existed, are now waived, and cannot be resurrected.

CONCLUSION

49. WHEREFORE, for the foregoing reasons, Appellant and Petitioners would respectfully pray that the Board of Appeals:

- A. **Bar** People's Counsel from this proceeding, for lack of standing, and / or for having waived whatever rights People's Counsel may have had;
- B. **Limit** the issues in this proceeding to those raised before the Administrative Law Judge;
- C. Make its decision based on the evidence in the record presented to the Board of Appeals, with the exception of taking judicial notice of the Property Record Card filed in this proceeding by Petitioners;
- D. And for such other and further relief as would be appropriate, such as, but not limited to, Ordering Notice be given in a newspaper of general circulation and notice be posted on the Property, all at the expense of the party requesting a *de novo* proceeding, giving Notice of the proceedings before the Board of Appeals, **IF** the Board of Appeals permits the proceeding to be fully *de novo* before the Board of Appeals.

Respectfully,



William Geddes
Appellant



James Riffin
Petitioner



Karole Riffin
Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of July, 2014, a copy of the foregoing Reply to People's Counsel Pre-Hearing Memorandum, was hand delivered to the Office of People's Council, 2nd floor, 105 W. Chesapeake Avenue, Towson, MD 21204.



James Riffin

In re: 11019 Gateview Road
Cockeysville, MD 21030

Before the Board of Appeals

of Baltimore County

Case No.: 2014 - 0094 - SPH

* * * * *

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JUL 15 2014

APPELLANT AND PETITIONERS' JOINT ARGUMENT

BALTIMORE COUNTY
BOARD OF APPEALS

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1. Come now your Appellant, William Geddes, and Petitioners, James Riffin and Karole Riffin, who respectfully provide the Board of Appeals with a written version of their argument.

2. The vast majority of Appellant and Petitioners' argument was presented to the Administrative Law Judge. This Joint Argument will reiterate the issues of importance to the Appellant and Petitioners, and will direct the attention of the Board of Appeals to those pages and paragraphs where argument has already been made on these issues. A very small amount of additional argument appears in the Conclusion section of this Joint Argument.

EVIDENCE IN THE RECORD

3. Petitioners summarized the evidence in the record in ¶¶ 7 to 10 in their Motion for Reconsideration. **No evidence was introduced** that contradicted the evidence presented by James Riffin, Mr. Geddes or the affiants.

ISSUES

4. The issues of importance to Appellant and Petitioners are as follows:

I. UNDER WHAT CONDITIONS MAY A CODE ENFORCEMENT PERSON ENTER UPON PRIVATE LAND?

5. Do the Administrative Law Judge, and the Board of Appeals, have the jurisdiction to interpret those portions of Baltimore County's Code that have a bearing on the interpretation and application of Baltimore County's Zoning Regulations? [For example: §§32-3-101 to 32-3-607, and especially §32-3-602(b)(2).]

Petitioners argue: Yes. See ¶¶5 to 29, Petitioners' Memorandum of Law.

6. Does a Code Enforcement Person have a right to enter upon Constitutionally protected private property without a search warrant, or without the consent of one in possession of

the property? **Petitioners argue:** No See ¶¶ 29 to 92, Petitioners' Memorandum of Law, and ¶¶ 4 to 19 of Petitioners' Memorandum..

7. Does a Code Enforcement Person have the right to look under a tarpaulin? **Petitioners argue:** No. See ¶ 18, Petitioners' Memorandum.

8. Would any evidence seized by a Code Enforcement Person, e.g. items including, but not limited to, images observed by the Code Enforcement Person and images recorded on photographic or other recording equipment by that person while he was unlawfully on Constitutionally protected property, be subject to a suppression hearing, and if so, would that suppression hearing be before the Administrative Law Judge, the Board of Appeals, or before a judge of the Circuit Court of Baltimore County? **Petitioners argue:**
Subject to a suppression hearing before the Administrative Law Judge, and before the Board of Appeals, if appeal is *de novo*. See Petitioners' Memorandum of Law ¶¶ 5 to 92.

II. ARE FARMS A PERMITTED USE IN A DR-1 ZONE, OR A RC-6 ZONE?

9. Are "Farms," as defined in the Baltimore County Zoning Regulations ("BCZR"), a permitted use in a DR-1 Zone? **Answer: Yes** See §1B01.1A7 BCZR.

10. Are "Farms," as defined in the BCZR, a permitted use in a RC-6 Zone? **Answer: Yes** See §1A07.3A2 BCZR.

III. WHICH OF THE ACCESSORY USES LISTED IN PETITIONERS' "PETITION FOR SPECIAL HEARING," WOULD BE PERMITTED IN A DR-1 ZONE, OR A RC-6 ZONE, IF SUCH USE IS ACCESSORY TO A "FARM?"

11. **Petitioners argue:** All of the listed accessory uses. See ¶¶ 21 to 52 of Petitioners' Memorandum.

IV. ARE PETITIONERS USING THEIR PROPERTY AS A "FARM?"

12. **"FARM** – Three acres or more of land, and any improvements thereon, used primarily for commercial agriculture, as defined in these regulations, **or** for residential and associated agricultural uses. The term does not include the following uses as defined in these regulations: limited-acreage wholesale flower farms, riding stables, landscape service, firewood operations and horticultural nursery businesses. [Bill Nos. 85-1967; 51-1993]." **Bold added.**

13. Does Petitioners' property contain three acres or more of land? **Answer: Yes.** See State Department of Assessments and Taxation Property Record Card. and Transcript p. 6, lines 14 to 18.

14. Is Petitioners' property used:

- a. As a "Limited-acreage wholesale flower farm?" **Answer: No** See Transcript.
- b. As a "riding stable?" **Answer: No** See Transcript
- c. For "landscape service? **Answer: No** See Transcript
- d. For "firewood operations?" **Answer: No** See Transcript
- e. For a "horticultural nursery business?" **Answer: No** See Transcript

15. Is Petitioners' property used primarily for "commercial agriculture," as that term is defined in the BCZR? **Petitioners argue: Yes** See Transcript pp. 39 to 46, and in particular lines 7 to 15 on p. 40 of the transcript, and ¶¶ 23 to 37 of Petitioners' Memorandum, and in particular ¶34 of Petitioners' Memorandum. See also ¶¶ 34 to 45 of Petitioners' Motion for Reconsideration.

16. **"Commercial agriculture** – The use of land, including ancillary structures and buildings, to **cultivate plants or raise or keep animals for income**, provided that the land also qualifies for farm or agricultural use assessment pursuant to Section 8-209 of the Tax-Property Article of the Annotated Code of Maryland, as amended. Commercial agriculture includes the

production of field crops, dairying, pasturage agriculture, horticulture, floriculture, aquaculture, apiculture, viticulture, **forestry**, animal and poultry husbandry, horse breeding and horse training and also includes ancillary activities such as processing, packing, storing, financing, managing, marketing or distributing, provided that any such activity shall be secondary to the principal agricultural operations. [Bill No. 51-1993].” **Bold added.**

17. Does Petitioners’ property **appear to qualify** for “farm or agricultural use assessment pursuant to Section 8-209 of the Tax-Property Article of the Annotated Code of Maryland?” **Petitioners argue: Yes.** See Tax-Property Article 8-209 and Title 18, Department of Assessments and Taxation, Subtitle 02, Chapter 03 and ¶¶ 25 to 37 of Petitioners’ Memorandum.

18. Are Petitioners required to provide evidence of income from their farming operation?
Petitioners’ argue: No.

19. Since Petitioners are 70 years old or older, per Tax – Valuation and Assessment Article, §8-209(g)(7)(i), “The gross income requirement of paragraph (2) of this subsection does not apply.”

20. See also: Title 18: Department of Assessments and Taxation Subtitle 02: Real Property Assessments Chapter 03: Agricultural Use Assessment .05 **Parcels of Less Than 20 Acres – Use Test vs. Income Test.** A. (2): “If at least 5 acres but less than 20 acres are actually devoted, *the land qualifies* for agricultural use assessment *regardless of gross income.*” **Bold italics added.**

21. See also: The definition of “commercial agriculture” in the BCZR. The word “income” is **only associated** with the phrase: “cultivate plants or raise or keep animals for income.” The word “income” is **not** associated with the succeeding sentence, which states: “Commercial agriculture includes ... forestry”

22. Is Petitioners' property used to cultivate plants or to raise or keep animals for income?

Petitioners argue: Yes See Transcript p. 38, L. 10-15; p. 40, L. 1 to 13.

23. Is Petitioners' property used for the "production of field crops?" **Petitioners argue:**

Yes. See Transcript p. 40, Lines 8-13 and ¶ 34 of Petitioners' Memorandum.

24. Is Petitioners' property used for "forestry?" **Petitioners argue: Yes.** See Transcript

p. 40, Line 3 to p. 43; and ¶ 34 of Petitioners' Memorandum.

25. Is Petitioners' property used primarily for "residential agricultural uses?"

Petitioners argue: No See Transcript.

26. Is Petitioners' property used primarily for "associated agricultural uses?"

Petitioners argue: Yes See Transcript p. 38 to p. 43, and ¶¶ 24 to 37 of Petitioners' Memorandum.

V. RECREATIONAL AMENITIES

27. Recreational amenities are permitted by right in a DR-1 zone, see §1B01.1A18g, ["swimming pools, tennis courts ... or other accessory ... uses ... subject to the height and area provisions for buildings as set forth in Section 400."] and in a RC-6 zone, see §1A07.3A7f ["and other recreational amenities, if accessory to a dwelling or residential subdivision only."].

28. The Petitioners argue that their railroad equipment constitutes "recreational amenities," and as such, is permitted by right in both DR-1 and RC-6 zones. See ¶¶ 96 to 97 in Petitioners' Memorandum, and ¶¶ 11 to 24 in Petitioners' Motion for Reconsideration.

VI. FARM EQUIPMENT / UTILITY SHEDS / UNLICENSED VEHICLES

29. The definitions of "Farm Equipment," and Utility Sheds are addressed in ¶¶ 46 to 59 of Petitioners' Motion for Reconsideration. The application of these definitions to the equipment and "utility sheds" that are present on Petitioners' Property, are also addressed in ¶¶ 56 to 59 of Petitioners' Motion for Reconsideration.

VII. COMMERCIAL VEHICLES

30. "Commercial vehicles," as that term is defined in the BCZR, and the application of that term to the vehicles on Petitioners' Property, are discussed in ¶¶ 60 to 63 of Petitioners' Motion for Reconsideration.

OTHER ISSUES

31. Phillip Mills, a Baltimore County Code Enforcement Person sent to Petitioners' Property by the head of the Baltimore County Code Enforcement Department to cite the Petitioners for any and all potential Baltimore County code violations (in an effort to extort the Petitioners into agreeing to sell to Baltimore County Petitioners' "Barrel Warehouse" property), unlawfully entered upon Petitioners' Property, then issued citations to Petitioners, alleging that Petitioners' Property was being unlawfully used for the uses listed below. Below is Petitioners' response / argument that those citations were totally without legal basis.

32. Since Baltimore County's Code Enforcement Department has attempted to cite the Petitioners for the following baseless infractions, Petitioners ask that the Board of Appeals address each of the following issues, then issue an opinion stating that **none** of the following alleged infractions, have merit.

VIII. IS PETITIONERS' PROPERTY BEING USED AS A "CONTRACTOR'S STORAGE YARD?"

33. The issue of whether the Petitioners are using their Property as a "Contractor's Storage Yard" is addressed in ¶¶ 25 to 33 of Petitioners' Motion for Reconsideration, and in ¶ 98 of Petitioners' Memorandum.

IX. IS PETITIONERS' PROPERTY BEING USED AS A "JUNK YARD?"

34. The issue of whether Petitioners' Property is being used as a "Junk Yard," is addressed in ¶¶ 56 to 64 of Petitioners' Memorandum.

X. IS PETITIONERS' PROPERTY BEING USED AS A "TRUCKING FACILITY?"

35. The issue of whether Petitioners' Property is being used as a "Trucking Facility," is addressed in ¶¶ 65 to 69 of Petitioners' Memorandum.

**XI. IS PETITIONERS' PROPERTY BEING USED AS A
"SOLID WASTE STORAGE FACILITY?"**

36. The issue of whether Petitioners' Property is being used as a "Solid Waste Storage Facility," is addressed in ¶¶ 86 to 95 of Petitioners' Memorandum.

**XII. DO PETITIONERS' HAVE GARBAGE, RUBBISH, TRASH OR MANURE
THAT MAY BECOME FOOD FOR RATS OR A RAT HARBORAGE?**

37. The issue of whether Petitioners' Property has "garbage, rubbish, trash or manure that may become food for rats or a rat harborage," is addressed in ¶¶ 70 to 78 of Petitioners' Memorandum.

**XIII. IS PETITIONERS' STORAGE OF LUMBER, BOXES, BRICKS
AND OTHER MATERIALS CONDUCTIVE TO A RAT HARBORAGE?**

38. The issue of whether Petitioner's storage of lumber, boxes, bricks and other materials is conducive to a rat harborage, is addressed in ¶¶ 79 to 85 of Petitioners' Memorandum.

CONCLUSION

39. Petitioner James Riffin, Appellant William Geddes, and numerous Affiants have provided testimony and evidence supporting Petitioners' arguments. The evidence in the record is "substantial evidence."

40. **NO** contradictory evidence appears in the record. When the evidence presented by James Riffin, Mr. Geddes and by the numerous Affiants is weighed and compared against the non-existent contradictory evidence, the balance of the evidence is entirely in favor of the Petitioners, and thus constitutes a "preponderance of the evidence."

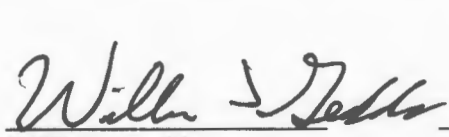
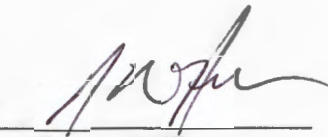
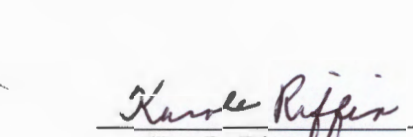
41. Administrative Law requires that a decision be made in favor of the party presenting a "preponderance of the evidence," when that evidence legally qualifies as "substantial evidence."

42. Since it is the application of Baltimore County's Code and Zoning Regulations to Petitioners' Property, and to no other property in Baltimore County, that is at issue, and since Baltimore County made the informed decision **not to challenge** any evidence or argument presented by the Petitioners, and have agreed to abide by whatever decision the Board of Appeals renders, Baltimore County, by making such an agreement, has signaled to the Board of Appeals that Baltimore County implicitly prefers that the Board of Appeals rule in favor of the Petitioners, in order to comprehensively settle all past and potential future litigation between the Petitioners and Baltimore County (including Petitioners' potential civil and criminal claims against Baltimore County and Phillip Mills, for civil and criminal trespass, for malfeasance and for extortion).

43. Consequently, under the circumstances presented in this proceeding, the Board of Appeals **should / must** rule in favor of the Petitioners. To do otherwise, would be arbitrary,

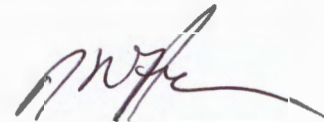
capricious, unreasonable, or unlawful, and would be contrary to the intent and spirit of the Comprehensive Settlement Agreement between Petitioners and Baltimore County.

Respectfully submitted,

		
William Geddes	James Riffin	Karole Riffin
Appellant	Petitioner	Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of July, 2014, a copy of the foregoing Appellant and Petitioners' Joint Argument, was hand delivered to the Office of People's Council, 2nd floor, 105 W. Chesapeake Avenue, Towson, MD 21204.


James Riffin

RECEIVED

JUL 14 2014

BALTIMORE COUNTY
BOARD OF APPEALS

RE: PETITION FOR SPECIAL HEARING
11019 Gateview Road; E/end of Gateview
Road, 140' E of Norgate Court
8th Election & 3rd Councilmanic Districts
Legal Owner(s): James & Karole Riffin
Petitioner(s)

* BEFORE THE
* BOARD OF
* APPEALS FOR
* BALTIMORE COUNTY
* 2014-094-SPH

* * * * *

**PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S PRE-HEARING
MEMORANDUM CONCERNING CERTAIN PRELIMINARY ISSUES**

Background

This case comes to the County Board of Appeals (CBA) in an unusual posture. The zoning petition at issue grows out of and is, in a sense, a sequel to county zoning enforcement proceedings brought against James and Karole Riffin. The issues relate to the legality of several land uses at their residential property at 11019 Gateview Road in the northern county. On October 9, 2013, the County and the Riffins executed a Complete and Comprehensive Settlement Agreement (the Agreement). It is in the CBA record, but we nevertheless attach it to this memorandum for convenience.

The Agreement enabled the Riffins to file a petition for special hearing, during which time the county would suspend enforcement proceedings, pending a decision by the administrative law judge. The County agreed also that the County Attorney's Office would not participate in the proceedings. The Riffins agreed, in turn, that they would abide by and comply with the ALJ decision. The conclusion to Paragraph 4 says,

"James and Karole Riffin agree that the Order of the Administrative Law Judge is a final Order and they will forego any right to appeal or otherwise contest the Order."

On October 15, 2013, as contemplated by the Agreement, the Riffins filed a petition for special hearing to determine the legitimacy of many controversial uses on their property. As is our office's custom in zoning cases, we filed an entry of appearance and mailed it to the Petitioners. We have followed the case's progress.

After a hearing, ALJ John Beverungen denied the petition by opinion and order dated January 7, 2014. Upon review of Petitioners' Motion for Reconsideration, ALJ

Beverungen issued his final order denying the motion on February 25th 2014. As agreed, the County Attorney's office did not appear in the proceedings.

The Petitioners, James and Karole Riffin, did not appeal. But a neighbor, Will Geddes, filed an appeal. The Riffins evidently intend to appear to contest ALJ Beverungen's Order, despite their stated promise in Section 4 of the Agreement. In this unusual situation, it is unclear if Appellant Geddes filed the appeal, on his own behalf, on behalf of the Riffins or both. In any event, the question arises under Paragraph 4 of the agreement whether the Riffins may still contest the matter.

Our office remains interested in the case and intends to appear and participate in the appeal proceedings. The overriding public interest is in the defense of the zoning maps and the pertinent use provisions of the D.R. 1 and R.C. 6 Zones.

In the week prior to the scheduled July 15th, 2014 CBA *de novo* appellate trial hearing, we chanced to speak with Mr. Riffin. He told us he would challenge the office's interest or standing to participate in a special hearing case. On July 14th, Appellant Will Geddes and the Riffins filed a motion with an objection to our office's participation.

Our office has addressed and overcome such objections in previous cases. Therefore, we are able promptly to respond. There is ample precedent for our office's charter authority and responsibility to participate in special hearing cases.

We also can address the Appellant's and the Riffins' request for a review of the appeal on the record. Under County Charter Section 603, in the absence of legislation to the contrary, all County Board of Appeals hearings are *de novo*. BCZR Sec. 501.6 is consistent with this charter provision. All zoning appeals are, and have been, properly conducted as *de novo* trial hearings.

We must also underline that the Riffins' efforts to contest ALJ Beverungen's final order is in direct conflict with their explicit promise in the Agreement. In this context, there is a threshold question as to whether the Riffins must be held to honor their commitment.

I. The Baltimore County Charter Assigns to People's Counsel a Broad Charge to Defend the Comprehensive Zoning Maps in the Public Interest

People's Counsel for Baltimore County appears in zoning cases to defend the comprehensive zoning maps and master plan in the public interest. Baltimore County Charter Sec. 524.1 The office's function and responsibility extends broadly to zoning and related cases, including special hearings and development cases with zoning issues.

Section 524.1(a)(3)A, it states in pertinent part,

"Powers and duties. The People's Counsel shall have the following powers and duties:

He shall appear as a party before the zoning commissioner of Baltimore County, his deputy, the county board of appeals, the planning board, and the courts on behalf of the interests of the public in general to defend any duly enacted master plan and/or comprehensive zoning maps as adopted by the county council, and in any matter or proceeding now pending or hereafter brought involving zoning reclassification and/or variance from or special exception under the Baltimore County Zoning Regulations as now or hereafter in force or effect, in which he may deem the public interest to be involved." (Emphasis supplied).

While zoning reclassifications, variances, and special exceptions are included as familiar types of zoning cases, the charter language refers to them in the conjunctive, following the word "and." This language is broad in scope and not restrictive. Accordingly, People's Counsel has consistently participated in special hearing, variance, and special variance cases to determine important zoning issues.

Beginning with People's Counsel v. A.V. Williams 45 Md. App. 617 (1980), a zoning reclassification case, the appellate courts have consistently approved or recognized our office's participation and standing. In addition to reclassification, variance, and special exception cases, the many reported appellate decisions have included special hearings, development cases, and direct litigation.

In 1989, the Court of Appeals recognized the authority of People's Counsel to participate in special hearing cases. People's Counsel v. Maryland Marine Mfg. Co. 316 Md. 491 (1989), determination of geographic extension of zoning lines into navigable waters; Board of Child Care v. Harker 316 Md. 683 (1989), zoning of child care facilities, including preemption and immunity issues.

In 1992, sustaining People's Counsel's participation in development cases where zoning issues are involved, the Court of Appeals discussed the office's "broad charge to protect the public interest in zoning and related matters." People's Counsel v. Crown Development Corp. 328 Md. 303, 317 (1992). The case arose in a County Review Group residential development proceeding, but also involved a zoning issue relating to transfer of density. Judge McAuliffe wrote:

"People's Counsel has been given a broad charge to protect the public interest in zoning and related matters. See Baltimore County Charter Sec. 524.1. Density regulation is an important part of the zoning process. West Mont. Assn. V. MNCP & P Com'n 309 Md. 183 (1987). Although participation in the development process may often be outside the intended ambit of People's Counsel's authority, where protection against a violation of a density regulation is involved, People's Counsel has a legitimate interest."

In Sycamore Realty Co. v. People's Counsel 344 Md. 57 (1996), People's Counsel participated in a landmark development case concerning zoning estoppel. The current leading case on the relationship of the master plan to development is HNS Development v. People's Counsel 425 Md. 436 (2012).

Subsequent special hearing cases include Marzullo v. Kahl 366 Md. 158 (2001), a special hearing for legal interpretation of a snake and reptile breeding and sales business, estoppel, and vested rights issues; Lucas v. People's Counsel 147 Md. App. 209 (2002), in part, determination of character of helicopter use – helistop, heliport, or airport; Antwerpen v. Baltimore County 163 Md. App. 194 (2005), transitional law issues and vested rights; and People's Counsel v. Surina 400 Md. 662 (2007), legal interpretation issues, relating permitted uses, immunity and infrastructure; and Seminary Galleria v. Dulaney Valley Improvement Association 192 Md. App. 719 (2010), *res judicata* issues. Riffin v. People's Counsel 137 Md. App. 90, cert. denied 363 Md. 660 (2001), while involving a special exception and variances, also addressed the legality of a proposed bungee jumping operation. In Antwerpen, the appellate court compared a special hearing to a declaratory judgment proceeding in the judicial context.

There have also been declaratory judgment cases in court involving defense of the master plan and the comprehensive zoning maps where the office has intervened and participated. Security Management v. Baltimore County 104 Md. App. 234, cert. denied

339 Md. 643 (1995), cert. denied 516 U.S. 1115 (1996), civil rights issues; Freeland Legacy Alliance v. Baltimore County, Nos. 46-47, September Term, 2010 (filed June 7, 2011), contract zoning, spot zoning, and police power issues; Acorn Land v. Baltimore County, federal and state court litigation.

Reported cases involving zoning reclassifications include, in addition to Williams, People's Counsel v. Mockard 73 Md. App. 340 (1987) and People's Counsel v. Beachwood I LP 107 Md. App. 627 (1995), cert. denied 342 Md. 472 (1996).

Reported cases involving special exceptions include People's Counsel v. Webster 65 Md. App. 694 (1986); People's Counsel v. Mangione 85 Md. App. 738 (1991); Umerley v. People's Counsel 108 Md. App. 497, cert. denied 342 Md. 584 (1996) and People's Counsel v. Loyola College 406 Md. 54 (2008).

People's Counsel has litigated such variance cases as Red Roof Inns v. People's Counsel 96 Md. App. 219 (1993) and Trinity Assembly of God v. People's Counsel 407 Md. 53 (2008).

In their present special hearing petition, Petitioners James and Karole Riffin request a determination as to whether various uses at their Gateview Road property are permitted under Baltimore County zoning law. This brings into play BCZR Section 102.1 relating to permitted uses generally; BCZR 1B01 for the D.R. 1 (Density Residential) Zone; BCZR Sec. 1A07 for the R.C. 6 (Rural Conservation and Residential) Zone; BCZR 101.1 for definitions of principal and accessory uses; and several other provisions of the zoning law. These issues are directly within the path of People's Counsel's charter authority and the many reported cases in which the office has participated.

II. The County Board of Appeals Proceeding on Zoning Appeals is *De Novo*

County Charter Section 603 states, in relevant part,

"All hearings held by the board shall be novo, unless otherwise provided by legislative act of the County Council, and shall be open to the public."

The appellate courts have recognized this provision Pollard's Towing v. Berman's Body Frame & Mechanical 137 Md. App. 277, 289 (2001).

In Pollard's Towing, Judge Moylan explained the contours of the *de novo* process,

"Sect. 603 of the Baltimore County Charter provides:

All hearings held by the board shall be held *de novo*. Boehm v. Anne Arundel County, 54 Md.App. 497, 511, 459 A.2d 590 (1983), elaborated on a *de novo* hearing:

A trial or hearing '*de novo*' means trying the matter anew as if it had not been heard before and as if no decision had been previously rendered.

* * *

As such, unless otherwise limited by statute or court rule, a *de novo* hearing is an entirely new hearing at which time all aspects of the case should be heard anew as if no decision had been previously rendered.

In Lohrmann v. Arundel Corp., 65 Md.App. 309, 319, 500 A.2d 344 (1985), we further observed:

In effect, then, in this case the Board was exercising what amount to original jurisdiction. It was as though the zoning officer had made no decision.

See also Hill v. Baltimore County, 86 Md.App. 642, 587 A.2d 1155 (1991) (the "*de novo* hearing is for all intents and purposes the first hearing of the case.").

BCZR Sec. 501.6 is consistent with this framework, in that it begins,

"Appeals from the Zoning Commissioner shall be heard by the Board of Zoning Appeals *de novo*."

The reference to the Zoning Commissioner translates to the Administrative Law Judge, who functions in zoning cases in the capacity of zoning commissioner. See Bill 123-10, Code Sec. 3-12-104(b).

The pertinent provision for appeals of ALJ decisions in zoning cases is Code Section 32-3-401. It does not "otherwise provide" for an appeal process different from that set by the County Charter as *de novo*.

Therefore, the CBA hearing is under law properly a *de novo* hearing. This has been the CBA's practice in zoning cases. It is consistent with the law.

III. There is a Serious Question as to Whether Petitioners James and Karole Riffin May Contest ALJ Beverungen's final Order

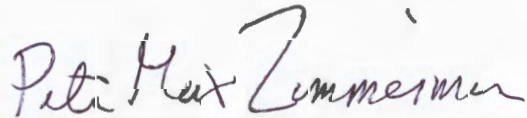
As explained in our discussion of the background, the Riffins made the commitment in the Agreement that they would not appeal or contest ALJ

Beverungen's final Order. It is a well-known doctrine of law that even constitutional rights can be waived if done voluntarily and intelligently. This is true even in criminal proceedings. We know of no principle or rule which would preclude the CBA from recognizing and enforcing the commitment made by the Riffins.

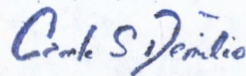
Conclusion

This pre-hearing memorandum addresses responds to motions filed by Appellant Will Geddes and the original Petitioners, the Riffins, regarding the standing of People's Counsel and regarding the appellate framework and procedure. We also take this opportunity to highlight the Riffins' explicit commitment not to appeal or contest the final Order of the administrative law judge.

Other issues may arise depending on how the CBA resolves these threshold issues. We will address any other issues as necessary and appropriate under the evolving circumstances.



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



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 14th day of July, 2014, a copy of the foregoing People's Counsel for Baltimore County's pre-Hearing Memorandum Concerning Certain Preliminary Issues has been mailed to Will Geddes, 11115 Powers Avenue, Cockeysville, Maryland 21030 and to James & Karole Riffin, 1941 Greenspring Drive, Timonium, MD 21093, Petitioner(s). Additional copies will be hand-delivered at the hearing.



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

FA 01686 55

COMPLETE AND COMPREHENSIVE SETTLEMENT AGREEMENT

WHEREAS, on October 2, 2013 Baltimore County, Maryland charged James and Karole Riffin with various violations of the Baltimore County Code and Zoning Regulations on the property known as 11019 Gateview Road, Cockeysville, Maryland 21030 (the "Property"); and

WHEREAS, Baltimore County and James and Karole Riffin (collectively the "Parties") desire to reach a complete settlement as to the process for resolving any and all violations on or about the Property;

NOW, THEREFORE, in consideration of the afore-mentioned recitals, which are material terms and are expressly incorporated in the body of this agreement, the Parties agree as follows:

1. James and Karole Riffin hereby agree on or before the close of business on October 11, 2013 to apply for a Petition for Special Hearing in the Baltimore County Zoning Review Office to seek a determination of whether the actions at issue in the code enforcement case on the Property are in compliance with the Baltimore County Code and Zoning Regulations.

2. In exchange for James and Karole Riffin's filing of the Petition for Special Hearing, Baltimore County will suspend the aforementioned code enforcement proceeding and refrain from imposing any fines or other penalties until the Office of Administrative Hearings issues a decision on the Petition for Special Hearing.

3. Baltimore County also agrees that undersigned counsel (and all Assistant County Attorneys) will not appear at the hearing on the Petition for

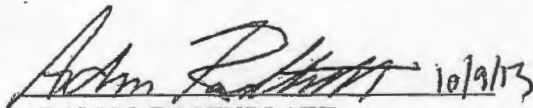
Special Hearing and will allow the Riffins to make their case to the Administrative Law Judge.

4. James and Karole Riffin agree that if the Administrative Law Judge denies any portion of the Petition for Special Hearing and determines that any of the activities on the Property violate the Baltimore County Code, Zoning Regulations, or other state or local law, that they will immediately cease any unlawful activities and will remove, without exception, any prohibited items from the Property within six (6) months of the date of the Order of the Administrative Law Judge. James and Karole Riffin agree that the Order of the Administrative Law Judge is a final Order and they will forego any right to appeal or otherwise contest the Order.

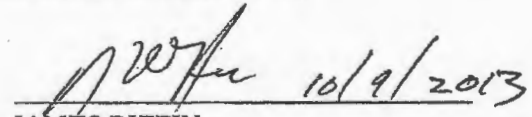
5. Baltimore County agrees that if the Administrative Law Judge grants any portion of the Petition for Special Hearing and determines that any activities that are subject to the code enforcement proceeding are permissible, the County will withdraw any action seeking correction of those portions of the code or regulations.

6. James and Karole Riffin agree that if the Administrative Law Judge finds that certain items are not permitted on the Property and they fail to remove the items within the 6 month period specified in paragraph 4 of this Agreement, they are immediately subject to a civil penalty of One Hundred Dollars (\$100.00) per day for each day over the 6 month removal period. James and Karole Riffin agree that the civil penalties will be immediately imposed at the conclusion of the 6 month removal period and the Riffins knowingly and voluntarily waive any right to appeal or otherwise contest the imposition of the civil penalties.

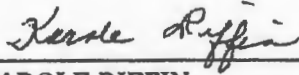
BY SIGNING BELOW, THE PARTIES EXPRESSLY AGREE THAT THEY
UNDERSTAND THE TERMS OF THIS AGREEMENT AND ARE VOLUNTARILY
CHOOSING TO RESOLVE ANY AND ALL OUTSTANDING LITIGATION.

 10/9/13

ADAM M. ROSENBLATT
Assistant County Attorney for
Baltimore County, Maryland
Attorney for Baltimore County

 10/9/2013

JAMES RIFFIN
1941 Greenspring Drive
Timonium, MD 21093



KAROLE RIFFIN
1941 Greenspring Drive
Timonium, MD 21093

In re: 11019 Gateview Road
Cockeysville, MD 21030

Before the Board of Appeals BALTIMORE COUNTY
BOARD OF APPEALS

of Baltimore County

Case No.: 2014 - 0094 - SPH

* * * * *

APPELLANT AND PETITIONERS' JOINT MOTION CHALLENGING

PEOPLE'S COUNSEL STANDING TO APPEAR IN THIS PROCEEDING

1. Come now your Appellant, William Geddes, and Petitioners, James Riffin and Karole Riffin, who respectfully challenge Baltimore County's People's Counsel's Standing to participate in this proceeding, and in support of this Challenge state:

2. The powers and duties of the Baltimore County People's Counsel are set forth in Section 524.1(a)(3) of the Baltimore County Charter, which states:

"(3) Powers and duties: The People's Counsel shall have the following powers and duties:

- A. He shall appear as a party before the zoning commissioner of Baltimore County, his deputy, the **county board of appeals**, the planning board, and the courts on behalf of the interests of the public in general, **to defend any** duly enacted **master plan** and / or **comprehensive zoning maps** as adopted by the county council, and **in any matter or proceeding** now pending or hereafter brought **involving zoning reclassification** and / or **variance** from or **special exception** under the Baltimore County Zoning Regulations, as now or hereafter in force and effect, in which he may deem the public interest to be involved. **In defense of the zoning maps or master plan**, he may appear as a party in interest before all state and federal agencies, boards, and courts on matters involving the preservation of the quality of the air, land, and water resources of Baltimore County, and / or may initiate such proceedings in the public interest. He shall have in such appearance, all the rights of counsel for a party in interest, including but not limited to the right to present his case, to cross examine, to object, to be heard, and to file and prosecute an appeal in his capacity as people's counsel from any order or act of the zoning commissioner of Baltimore County or his deputy, or of the county board of appeals to the courts as an aggrieved party pursuant to the provisions of Section 604 of this Charter to promote and protect the health, safety and general welfare

of the community. The people's counsel may also prosecute an application before any state or federal court for injunctive and other relief incidental thereto, to enjoin violation of any Baltimore County **zoning maps** or **master plan** or as authorized by resolution by the county council. (Bill No. 90, 1978, §1) (Approved by voters Nov. 7, 1978; effective Dec. 8, 1978.)" **Bold added.**

3. Section 524.1(a)(3) of the Baltimore County Charter grants unto the Baltimore County People's Counsel the right "to defend any ...master plan ... comprehensive zoning maps ... and in any matter or proceeding ... brought involving zoning reclassification ... or variance ... or special exception under the Baltimore County Zoning Regulations."

4. People's Counsel may defend "the zoning maps or master plan."

5. People's Counsel may "prosecute an application ... to enjoin violation of any Baltimore County zoning maps or master plan ... or as authorized by the county council."

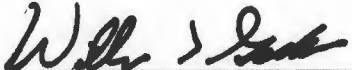
6. This proceeding **does not** involve any "master plan," or "zoning map." This proceeding **does not** involve a "zoning reclassification," a "variance," nor a "special exception."

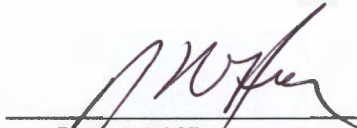
7. The Baltimore County Council **has not** authorized People's Council to appear in this proceeding.

8. Since this proceeding does not involve any of the proceedings that Baltimore County's People's Council has the power and duty to participate in, People's Council **does not** have the power, nor the duty, to participate in this proceeding.

9. WHEREFORE, Appellant and Petitioners would respectfully move that People's Council be barred from participating in this proceeding, and for such other and further relief as would be appropriate.

Respectfully,


William Geddes
Appellant


James Riffin
Petitioner


Karole Riffin
Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of July, 2014, a copy of the foregoing Motion Challenging People's Council's Standing, was hand delivered to the Office of People's Council, 2nd floor, 105 W. Chesapeake Avenue, Towson, MD 21204.


James Riffin

RECEIVED
JUL 14 2014

In re: 11019 Gateview Road
Cockeysville, MD 21030

Before the Board of Appeals

BALTIMORE COUNTY
BOARD OF APPEALS

of Baltimore County

Case No.: 2014 - 0094 - SPH

* * * * *

**APPELLANT AND PETITIONERS' JOINT MOTION TO PROCEED
ON THE EXISTING RECORD IN THIS PROCEEDING**

1. Come now your Appellant, William Geddes, and Petitioners, James Riffin and Karole Riffin, who respectfully move to proceed on the existing record in this proceeding, with one exception, and in support hereof state:

2. Section 501.6 of the Baltimore County Code states:

"Appeals from the Zoning Commissioner shall be heard by the Board of Zoning Appeals *de novo*. At such hearing, all parties, including the Zoning Commissioner, shall have the right to be represented by counsel, to produce witnesses and to file and submit all proper oral or written evidence." **Bold added.**

3. This proceeding would have been before the Zoning Commissioner prior to the merger of that office with other agencies' "hearing officers."

4. While the Appellant and Petitioners have the right to a *de novo* proceeding, they are moving to decline that right, with one exception, noted below.

5. The record in this proceeding was fully developed in proceedings before the Zoning Commissioner / Administrative Law Judge. It would conserve the limited judicial resources of the Board of Appeals, and the resources of Appellant and Petitioners, to proceed on the record forwarded to the Board of Appeals from the Office of Administrative Hearings.

6. All parties who had an interest in this proceeding, were given an opportunity to present evidence and testimony at the hearing before the Administrative Law Judge. Only the Appellant

and Petitioners appeared at that hearing, and only the Appellant and Petitioners gave testimony and presented evidence at that hearing.

7. The hearing before the Administrative Law Judge was advertised in a newspaper of general circulation. The property that is the subject of this proceeding, was posted with notice of the Administrative Law Judge Hearing. People's Council, and ten agencies of Baltimore County, were given notice and an opportunity to make comments, give oral testimony, and present evidence. Two comments were received from Baltimore County agencies. Only the Appellant and Petitioners made the effort to attend and give testimony at the hearing before the Administrative Law Judge.

8 It could be argued that having a *de novo* hearing before the Board of Appeals, would violate the Notice requirement of Constitutional Due Process, thereby subjecting whatever decision the Board of Appeals renders, to appellate review on Due Process grounds, rather than on the merits of the case. (Any entity in Baltimore County could complain that it was not given proper / sufficient notice of the hearing before the Board of Appeals, since no notice of the Board of Appeals hearing was published in a newspaper of general circulation, nor was notice posted on the property that is the subject of this proceeding.)

9. Evidence / appellate law holds that any evidence / testimony / issue not presented or raised at the 'trial' of the matter, is waived, and cannot be argued at the appellate level.

10. For the above reasons, Appellant and Petitioners would respectfully decline, and furthermore move, that the hearing before the Board of Appeals **be on the record forwarded to the Board of Appeals**, with the exception of the one 'judicial notice' noted below.

11. In the proceeding before the Administrative Law Judge, the issue of how much of Petitioners' property lies within the curtilage, was raised and argued by Petitioners.

12. On Thursday, July 10, 2014, Petitioner James Riffin was speaking with Kathy Phillips, an assessor at the Maryland Department of Assessments and Taxation, about a totally unrelated property tax matter concerning the Property that is the subject of this proceeding . During the course of that conversation, Ms. Phillips, without any prompting from Mr. Riffin, blurted out:

“All thirteen acres of your property are curtilage.”

13. Mr. Riffin requested, and was provided, with a True Test Copy of the Property Record Card for the property that is the subject of this proceeding. That True Test Copy is appended hereto, just as it was received by Mr. Riffin, along with three additional photocopies, upon which pertinent sections have been circled, to direct the attention of the Board of Appeals to those pertinent sections.

14. Petitioners would ask that the Board of Appeals take judicial notice of this official Maryland Record, and the notations thereon, and in particular the notations signifying that the Maryland Department of Assessments and Taxation has classified all thirteen acres of the Property that is the subject of this proceeding, as being “curtilage.”

15. The issue of the extent of Petitioners’ curtilage, is particularly relevant to Petitioners’ argument that no Baltimore County Code Enforcement Person may enter upon Petitioners’ curtilage, or the curtilage of any other Baltimore County property, without either a search warrant, or the consent of someone in possession of the property, subject to very limited exceptions not relevant in this proceeding.

16. The file that was forwarded to the Board of Appeal contains material that **was not** placed into the Record by any party. Appellant and Petitioners argue that **only the following are, and should be, a part of the Record, and move to exclude from the Record any other material in the file forwarded to the Board of Appeals:**

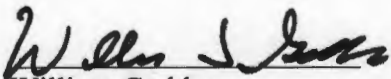
- A. Petitioners' Petition for Special Hearing, with accompanying exhibits / documents.
(Petitioners' 4-page "Petition for Special Hearing" containing numerous uses;
Petitioners' Special Hearing Plan; the color copy of the Zoning Map for the Property;
the sign-posting and newspaper-advertising certifications.)
- B. The four Exhibits introduced into the Record by Petitioners;
- C. The transcript of the December 20, 2013 hearing before the Administrative Law
Judge;
- D. The January 7, 2014 Administrative Law Judge Opinion and Order
- E. Petitioners' February 4, 2014 Motion for Reconsideration;
- F. Petitioners' Memorandum, containing additional affidavits and additional argument;
- G. Petitioners' February 24, 2014 Memorandum of Law, addressing under what
circumstances a Code Enforcement Person may enter upon "open land."
- H. The February 25, 2014 Order on Motion for Reconsideration.
- I. William Geddes' March 25, 2014 Notice of Appeal

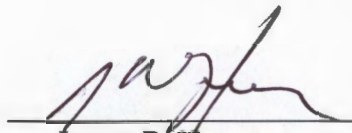
17. In addition, Petitioners would move that the appended Maryland Department of Assessments and Taxation Property Record Card be admitted into the Record, and that the Board of Appeals take judicial notice of the entries on that Property Record Card.

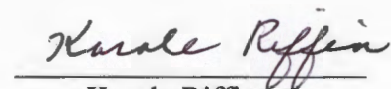
18. WHEREFORE, for the reasons stated above, Appellant and Petitioners:

- A. Respectfully decline, and furthermore move, that the hearing before the Board of Appeals **be on the record forwarded to the Board of Appeals**, as denoted above, with the exception of the one 'judicial notice' noted above;
- B. Move to enter into the Record before the Board of Appeals, the appended Maryland Department of Assessments and Taxation Property Record Card for the subject Property, and that the Board of Appeals take judicial notice of the entries on that Property Record Card;
- C. Reserve their right to present argument at the Board of Appeals hearing;
- D. Move to bar any party other than the Appellant or Petitioners, to present any argument, to cross examine any witness, or to offer into evidence any oral testimony or other evidence;
- E. And for such other and further relief as would be appropriate.

Respectfully,

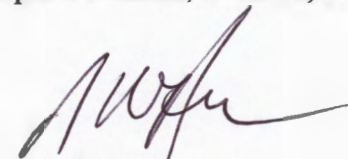

William Geddes
Appellant


James Riffin
Petitioner


Karole Riffin
Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of July, 2014, a copy of the foregoing Motion to Proceed on Existing Record, was hand delivered to the Office of People's Council, 2nd floor, 105 W. Chesapeake Avenue, Towson, MD 21204.


James Riffin

Owner

RIFFIN JAMES

Mail Addr

PO BOX 42
COCKEYSVILLE, MD 21030-0042

Property Use

Residential

Occupancy

Owner Occupied

Valued By

0416

Value Method

MD Value

Map/Gri/Par/Sec/Bl/Lt

040042 / 0024 / 0379 / 1 / 3

Field Sequence Number

01841-000-00-00

Neighborhood

8030046.04

BPRUC

Legal Description

13.0 AC.
RED FOX FIELDS

DWELLING DATA

Dwelling No.

1 Year Built

1976

Type

Standard Unit Model No.

178

Quality

Below Average Curtilage

No

SECTION NAME

AREA

HEATED AREA

1.5 Story No Basement

1,040

1,560

Concrete Patio w/Roof

149

0

Total Heated Area

1,560

DWELLING CHARACTERISTICS

COVER RES

COMPOSITION

100

HEATING TYPE RES

HOTWATERRADIAT

100

PHYSICAL CONDITION

FAIR

100

EXTERIOR WALL

FRAME

100

CATEGORY

UNITS

BATHS

1.00

DORMER: LINEAR FOOT

24.00

HALF BATHS

1.00

DEPRECIATION & ADJUSTMENTS

DEPRECIATION TYPE

ADJUSTMENT

Functional Obsolescence

0.1000

Total Depreciation

0.3400

PRICE INDEX TYPE

ADJUSTMENT

Neighborhood Adj.

1.0000

Quality Multiplier

1.1000

Quality Factor

0.8500

Structure Adjustment

1.0000

DWELLING VALUE

\$101,586

VALUE PER SQ. FT. OF HEATED AREA

130.56

CERTIFIED TRUE COPY

Daphne Halling

7-11-14

date

SITE ADDRESS: 11019 GATEVIEW RD 0-0000

OUTBUILDING DATA

DESCRIPTION

BLD

YR BLT

LENGTH

WIDTH

UNITS

QUALITY

CURTILAGE

PRICE/UNIT

%COND

VALUE

OVR. VALUE

NOTES

Shed

0

0

399.00

Below Average

No

8.62

50

1,721

LAND DATA

DESCRIPTION

FRONT FEET

DEPTH

UNITS

UNIT TYPE

INFLUENCE

ADJUSTMENT

CURTILAGE

VALUE

OVR. VALUE

LAND NOTE

Primary Improved 1

0.00

0.00

1.00

AC

1.00

No

150,000

Tertiary 1

0.00

0.00

8.00

AC

1.00

No

60,000

Secondary 1

0.00

0.00

4.00

AC

1.00

No

60,000

PARCEL NOTES

12/13 OUT OF CYCLE NOTICE DUE TO PHONE INQUIRY, PER PLAT & HARD CARD CHGE AC TO 13.0 #99
S/A 08-09. Increase FO for leaky roof and mold problems under floor per Mr. and decrease dormer size per Mr. R/A 08-09. 11019 Gateview Road. Chain across driveway; no trespassing sign and house not visible from road. Unable to contact owner. PTAAB #05-545 05-08 RED IMPS -4520 FOR FO FOR DEPR OF ROOF, MOLD PRBS, ETC. s/a05-06 abete 1 shed<32> R/a 05-08 former model 255<32> RA02/03 P/U AC, ATTIC FIN, INFT DORMER, CCPAT DEPR SHEDS; 2% ADDL ADJ ON PRIME FOR EXCAVATION WATER LINE, REVIEW NEXT RA #31. PTAAB - 13% OFF LAND-BAD TOPO, STEEP FOR AGE UNFIN COND. NO TRESPASSING#00.

PROPERTY CHARACTERISTICS

CATEGORY

CHARACTERISTIC

Sewer System

Septic

ADS Tax Roll Indicator

Initial tax roll account

VALUE SUMMARY

FULL CASH VALUE

Total Land

270,000

270,000

Total Improvements

118,900

103,200

Total Value

388,900

373,200

Preferential Land

0

0

Curtilage

388,900

373,200

SALES DATA

Sale Date

Sale Price

BUILDING NOTES

RECEIVED

JUL 15 2014

BALTIMORE COUNTY BOARD OF APPEALS

STATE OF MARYLAND DEPARTMENT OF ASSESSMENTS AND TAXATION
PROPERTY RECORD CARD - REASSESSMENT YEAR 2014

Owner RIFFIN JAMES		Property Use Residential		Map/Gr/Par/Sec/Bl/Lt 040042 / 0024 / 0379 / 3		Legal Description 13.0 AC. RED FOX FIELDS	
Mail Addr PO BOX 42 COCKEYSVILLE, MD 21030-0042		Occupancy Owner Occupied		Field Sequence Number 01841-000-00-00			
Valued By		Valued By 0416		Neighborhood 8030046.04			
Value Method MD Value		MD Value		BPRUC			

DWELLING DATA		
Dwelling No.	1 Year Built	1976
Type	Standard Unit Model No.	178
Quality	Below Average Curtilage	No

SECTION NAME	AREA	HEATED AREA
1.5 Story No Basement	1,040	1,560
Concrete Patio w/Roof	149	0

Total Heated Area 1,560

DWELLING CHARACTERISTICS		
TYPE	TYPE	%
COVER RES	COMPOSITION	100
HEATING TYPE RES	HOTWATER RADIAT	100
PHYSICAL CONDITION	FAIR	100
EXTERIOR WALL	FRAME	100

CATEGORY	UNITS
BATHS	1.00
DORMER: LINEAR FOOT	24.00
HALF BATHS	1.00

SITE ADDRESS: 11019 GATEVIEW RD 0-0000

OUTBUILDING DATA												
DESCRIPTION	BLD	YR BLT	LENGTH	WIDTH	UNITS	QUALITY	CURTILAGE	PRCE/UNIT	ACORD	VALUE	OVR. VALUE	NOTES
Shed			0	0	399.00	Below Average	No	8.62	50	1,721		

DEPRECIATION & ADJUSTMENTS	
DEPRECIATION TYPE	ADJUSTMENT
Functional Obsolescence	0.1000

Total Depreciation 0.3400

PRICE INDEX TYPE		ADJUSTMENT
Neighborhood Adj.		1.0000
County Multiplier		1.1000
Quality Factor		0.8500
Structure Adjustment		1.0000

DWELLING VALUE		\$101,586
VALUE PER SQ. FT. OF HEATED AREA		130.56

LAND DATA										
DESCRIPTION	FRONT FEET	DEPTH	UNITS	UNIT TYPE	INFLUENCE	ADJUSTMENT	CURTILAGE	VALUE	OVR. VALUE	LAND NOTE
Primary Improved 1	0.00	0.00	1.00	AC		1.00	No	150,000		
Tertiary 1	0.00	0.00	8.00	AC		1.00	No	60,000		
Secondary 1	0.00	0.00	4.00	AC		1.00	No	60,000		

PARCEL NOTES		PROPERTY CHARACTERISTICS	
12/13 OUT OF CYCLE NOTICE DUE TO PHONE INQUIRY, PER PLAT & HARD CARD CHGE AC TO 13.0 #99		CATEGORY	CHARACTERISTIC
S/A 08-09. Increase FO for leaky roof and mold problems under floor per Mr. and decrease dormer size per Mr. R/A 08-09. 11019 Gateview Road. Chain across driveway; no trespassing sign and house not visible from road. Unable to contact owner. PTAAB #05-545 05-06 RED IMPS -4520 FOR FO FOR OF ROOF, MOLD PRBS, ETC. a/a05-08 abete 1 shed<32> R/a 05-06 former model 255<32> RA02/03 P/U AC, ATTIC FIN, UNFT DORMER, CCPAT DEPR SHEDS; 2% ADDL ADJ ON PRIME FOR EXCAVATION WATER LINE, REVIEW NEXT RA #31. PTAAB - 13% OFF LAND-BAD TOPO, STEEP FOR AGE UNFIN COND. NO TRESSPASSING#90.		Sewer System ADS Tax Roll Indicator	Septic Initial tax roll account

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Note 2

3. Burden of proof

§ 8-208. Reserved

Dept: Assessments & Taxation

Part II. Use Assessments

§ 8-209. Farm and agricultural land

(a) The General Assembly declares that it is in the general public interest of the State to foster and encourage farming activities to:

- (1) Maintain a readily available source of food and dairy products close to the metropolitan areas of the State;
- (2) Encourage the preservation of open space as an amenity necessary for human welfare and happiness; and
- (3) Prevent the forced conversion of open space land into other uses because of the economic pressures caused by the high rates or levels incompatible with the preservation of open space land.

(b) It is the intent of the General Assembly that the State shall encourage the use of land for farming and agricultural purposes.

- (1) Maintain a readily available source of food and dairy products close to the metropolitan areas of the State;
 - (2) Encourage the preservation of open space as an amenity necessary for human welfare and happiness; and
 - (3) Prevent the forced conversion of open space land to more intensive uses because of the economic pressures caused by the assessment of the land at rates or levels incompatible with its practical use for farming.
- (b) It is the intention of the General Assembly that the assessment of farmland:
- (1) Be maintained at levels compatible with the continued use of the land for farming; and
 - (2) Not be affected adversely by neighboring land uses of a different nature.
- (c) Land that is actively used for farming shall be assessed on the basis of that use.

- (1) Be maintained at levels compatible with the continued use of the land for farming; and
- (2) Not be affected adversely by neighboring land uses of a more intensive nature.
- (c) Land that is actively used for farm or agricultural use shall be valued on the basis of that use and may not be valued as if subdivided.
- (d) Land that is valued under subsection (c) of this section shall be valued on the basis of its use value.
- (e)(1) The Department shall

- (e)(1) The Department shall establish in regulations criteria to determine if land that appears to be actively used for farm or agricultural purposes; and
- (i) Is actually used for farm or agricultural purposes; and
- (ii) Qualifies for assessment under this section.
- (2) The criteria shall include:
- (i) The zoning of the land;
- (ii) The present and past use of the land including land under the Bank Program of the United States;
- 202

the land is leased and the nature of the farm or agricultural use related to the amount of the land in farm or agricultural use would be expected to yield an average gross income of at least \$2,500 from the agricultural use of the land and the amount of income reasonably would be expected to be derived from the use of the land;

the agricultural use of the land has adversely affected the income derived from the use of the land during a 3-year period; or

the farm or agricultural use, the nature of the use in farm or agricultural use reasonably would be expected to yield an average gross income of at least \$2,500 if the

(iv) If part of the land is owned by a person other than the owner of the land which is the subject of the assessment, the land shall be treated as if it were owned by the same person as the land which is the subject of the assessment;

(v) Parcels of woodland of less than one hectare;

(vi) Land that fails to meet the requirements of this section.

(g) No more than 2 parcels of less than one hectare may qualify for the agricultural use discount.

Acts 1985, c. 8, § 2; Acts 1986, c. 171; c. 3, § 1, eff. March 7, 1995; Acts 1995, § 1, eff. June 1, 1997; Acts 2000, c. 80, formerly Art. 81, §§ 14, 19.

Historical

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§ 8-20

(iii) The productivity of the land, including timberlands and reforested lands; and

(iv) The gross income that is derived from the agricultural activity.

In administering this section, periodically, the Director shall consult with:

- (1) The Secretary of Agriculture;
- (2) Officials of the State who are knowledgeable in agriculture;
- (3) Representatives of the agricultural community;
- (4) Officials of counties and cities;
- (5) Other persons.

(1) The Secretary of Agriculture; and
 (2) Officials of the State who are knowledgeable in agriculture;
 (3) Representatives of the agricultural community;
 (4) Officials of counties and municipal corporations; and
 (5) Other persons as determined by the Director.

(1) In this subsection, the following words have the meanings indicated:

(i) "actively used" means land that is actually and primarily used for a continuing farm or agricultural use;

(ii) "agricultural land unit" means the combination of not more than 3 parcels of land when the parcels are:

1. located in the same county; and
2. Under the same ownership;

(i) "average gross income" means the average gross income of the land

- (iii) "average gross income" means the average of the 2 highest years of gross income during a 3-year period;
- (iv) "family farm unit" means not more than 1 parcel of land of less than 20 acres for each immediate family member for land that is:
 1. contiguous to land receiving the farm or agricultural use assessment; and
 2. owned by a member or members of the immediate family of the owner of the farm or agricultural use land; and
- (v) "gross income" means the actual income the farm or agricultural use land received in any year that results directly from the farm or agricultural use of the land.

(2) In determining if a parcel of land of less than 20 acres, or not zoned for agricultural use, is actively used, the Department may require the owner of the land to affirm, under oath, on a standard form provided by the Department that the farm or agricultural use of the land results in an average income of at least \$2,500 from the parcel or the agricultural use of the land.

(3) The Department may require an owner who is not the owner of the land by paragraph (2) of this subsection to verify the actual income that is received in a family of the farm or agricultural use of the land, and the results directly from the farm or agricultural use of the land, by providing:

- (i) Copies of sales receipts;
- (ii) Lease agreements;
- (iii) Tax returns;
- (iv) Other documents that show the actual income that is received in a family of the farm or agricultural use of the land.

- (i) Copies of sales receipts or
- (ii) Lease agreements.
- (iii) Other documents
- (4) An affidavit

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BALTIMORE COUNTY
BOARD OF APPEALS

Title 18
DEPARTMENT OF ASSESSMENTS AND TAXATION

Subtitle 02 REAL PROPERTY ASSESSMENTS

Chapter 03 Agricultural Use Assessments

Authority: Tax-Property Article, §§2-201, 2-202, and 8-209,
Annotated Code of Maryland

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

- (1) "Actively used land" means land that is actually and primarily used for a continuing farm or agricultural use.
- (2) "Actually devoted land" means that portion of actively used land which is engaged in an approved agricultural activity.
- (3) "Agricultural land unit (ALU)" means the combination, for the purpose of qualifying for agricultural use assessment, of not more than three parcels of land located in the same county and under the same ownership.
- (4) "Approved agricultural activity" means those activities recognized as agricultural pursuits under Regulation .03 of this chapter.
- (5) "Associated land" means that portion of actively used land which is not actually devoted land but is located on the same parcel as actually devoted land, including woodland under Regulation .06A—C of this chapter, and other vacant land which is devoted to passive use.
- (6) "FCMA" means a forest conservation and management agreement under Tax-Property Article, §8-211, Annotated Code of Maryland.
- (7) "Gross income" means the actual income that is received in a calendar year that results directly from the farm or agricultural use of the land.
- (8) "Parcel" means a piece of land of any size in one ownership.
- (9) "Ratio requirement" means the ratio of associated land to actually devoted land which determines the total amount of actively used land eligible for agricultural use assessment.
- (10) "Same ownership" means, in terms of the ownership of two or more parcels, that at least one common name appears as grantee in all deeds to those parcels.

.02 Criteria to Be Considered.

The following criteria shall be considered in determining whether land that appears to be actively used is in fact actively used and qualifies for agricultural use assessment under Tax-Property Article, §8-209, Annotated Code of Maryland:

A. Zoning applicable to the land, in particular if land is zoned to a more intensive use than is permitted under agricultural zoning;

B. Present and past use of the land;

C. Participation in governmental or private agricultural programs;

D. Extent of production for sale of plants, timber, livestock, and food for human and animal consumption;

E. Size of the parcel or parcels farmed, in particular, whether the size is economically compatible with the agricultural use to which the land is devoted;

F. Amount of acreage in crops, pasture, and woodland;

G. Amount of livestock or poultry;

H. Inventory of farm buildings and equipment and condition of same;

I. Marketing of the land as evidenced by multiple sales of parcels out of a tract;

J. Ratio of associated land to actually devoted land; and

K. The gross income that is derived from the agricultural activity on the land.

DEPARTMENT OF ASSESSMENTS AND TAXATION

18.02.03.03

.03 Approved Agricultural Activities.

A. Approved agricultural activities are as follows:

- (1) Raising grains, fruit, herbs, melons, mushrooms, nuts, seeds, tobacco, or vegetables;
- (2) Raising poultry, for example, chicken, turkeys, or eggs;
- (3) Dairy, for example, milking cows;
- (4) Raising livestock, for example, cattle, sheep, lambs, hogs, or pigs;
- (5) Horse boarding, breeding, or training;
- (6) Turf farming;
- (7) Raising ornamental shrubs, plants, and flowers, including aquatic plants;
- (8) Aquaculture; and
- (9) Silviculture. = woodlands/forestry

B. An activity not listed in §A of this regulation may be recognized as an approved agricultural activity at the discretion of the Department.

.04 Ratio Requirement.

A. The ratio requirements are established by regions as follows:

- (1) Western region—Garrett, Allegany, and Washington counties, 10:1;
- (2) Central region—all counties on the western shore of Maryland, except Harford County and those listed in §A(1) of this regulation, 5:1; and
- (3) Eastern region—all counties on the eastern shore of Maryland, and Harford County, 10:1.

B. Only Class 3 land under Regulation .08 of this chapter may be used in developing the ratio requirement.

C. Examples of Ratio Requirements.

(1) A taxpayer owns a 401-acre parcel in the western region (10:1 ratio). None of the land is Class 1 or Class 2 land under Regulation .08 of this chapter. Twenty acres are actually devoted. There is a 1-acre homesite. The amount of actively used land eligible for agricultural use assessment is 220 acres, calculated as follows:

$20 \times 10 = 200$ acres associated land + 20 acres actually devoted land = 220 acres eligible for agricultural use assessment. The remaining 181 acres are valued and assessed at market value.

(2) A taxpayer owns a 400-acre parcel of vacant, passively used land. Because there is no actually devoted land, a ratio requirement cannot be met and no land qualifies for agricultural use assessment.

.05 Parcels of Less Than 20 Acres—Use Test vs. Income Test.

A. A parcel of land or ALU less than 20 acres but greater than or equal to 3 acres shall receive agricultural use assessment if it meets one of the following tests:

(1) If at least 3 acres but less than 5 acres are actually devoted and \$2,500 gross income is derived from the approved agricultural activities; or

(2) If at least 5 acres but less than 20 acres are actually devoted, the land qualifies for agricultural use assessment regardless of gross income.

B. Different approved agricultural activities may be combined to meet the requirements of §A of this regulation.

C. The Department may determine the reasonableness of gross income claimed by an owner.

.06 Woodland.

A woodland parcel of 5 acres or more shall receive agricultural use assessment only if it is:

A. A part of a parcel of land which is determined to be actively used as defined in Regulation .01B(1) of this chapter:

B. A parcel contiguous to a parcel qualifying for agricultural use assessment provided both parcels are in the same ownership;

REAL PROPERTY ASSESSMENTS

18.02.03.07

C. A parcel separated from a parcel of land which qualifies for agricultural use assessment, provided both parcels were purchased at the same time by the same owner;

D. Subject to and in compliance with a forestry management plan prepared by a registered professional forester;

E. Subject to and in compliance with an FCMA; or

F. Actually devoted land as defined in Regulation .01B(2) of this chapter.

.07 Homesites.

A. Except as provided in §B of this regulation, for each dwelling house located on a parcel for which agricultural use assessment is determined applicable, a minimum of 1 acre shall be designated as homesite and assessed at fair market value. If the amount of land serving the dwelling house as homesite exceeds 1 acre, that greater amount of acreage shall be assessed at fair market value.

B. When a dwelling is located on a parcel under an FCMA of less than 6 acres, the Department may adjust the size of the homesite.

.08 Agricultural Use Value Rates.

The following ranges govern the valuation and assessment of land eligible for agricultural use assessment, based on the capitalization of Statewide farmland rentals:

	Use Value/Assessment
Class 1 FCMA land	\$125 per acre/\$125 per acre
Class 2 Land under a private woodland management plan	\$187.50 per acre/\$187.50 per acre
Class 3 Other eligible land	\$125—\$500 per acre/\$125—\$500 per acre

Administrative History

Effective date: January 7, 1982 (8:26 Md. R. 2106)

Chapter revised effective November 17, 1986 (13:23 Md. R. 2481); December 5, 1994 (21:24 Md. R. 1990)

Regulation .08 amended effective October 16, 2000 (27:20 Md. R. 1841)

ORIGINAL

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IN RE: PETITION FOR SPECIAL HEARING-11019 GATEVIEW ROAD
December 20, 2013 BEFORE JUDGE JOHN E. BEVERUNGEN

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BALTIMORE COUNTY
BOARD OF APPEALS

IN RE: * BEFORE THE
PETITION FOR SPECIAL HEARING
(11019 Gateview Road) * OFFICE OF
8th Election District
3rd Councilmanic District * ADMINISTRATIVE HEARINGS
Karole & James Riffin
Petitioners * FOR BALTIMORE COUNTY

* Case No. 2014-0094-SPH

* * * * *

TRANSCRIPT OF OFFICIAL PROCEEDINGS

(Administrative Hearing)

BEFORE: THE HONORABLE JOHN E. BEVERUNGEN, Judge

HEARING DATE: December 20, 2013

APPEARANCES: _____

For the Petitioner: James Riffin, Land Owner

Transcriptionist: Christine M. Aiello
Transcription Service: ACCUSCRIBES TRANSCRIPTION SERVICE
1301 York Road, Suite 601
Lutherville, Maryland 21093

Proceedings recorded by digital media with video,
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IN RE: PETITION FOR SPECIAL HEARING-11019 GATEVIEW ROAD
December 20, 2013 BEFORE JUDGE JOHN E. BEVERUNGEN

P R O C E E D I N G S

(On the record - 09:57:28 a.m.)

THE COURT: Have anyone else coming?

MR. RIFFIN: I don't.

THE COURT: Okay.

MR. RIFFIN: I don't think anybody is coming.

THE COURT: This is a public zoning hearing being recorded in case number 2014-0094-SPH. It's a petition for Special Hearing. Property address is 11019 Gateview Road. The legal owners are Karole and James Riffin. And the petition for Special Hearing seeks confirmation of whether the owners are permitted, or the owners proposed principle and accessory uses, enumerate in the petition attached to the zoning case is permitted by right in the DR 1 zone.

Okay. I took a look in the file. I see there's some sort of settlement agreement with the County as a result of the citation that was issued. So maybe you can tell me about that. And the property has been posted and advertised, so that satisfies the notice requirement. So you can tell me what you want to tell me.

MR. RIFFIN: Okay. I'm James Riffin. I'm the property owner of 11019 Gateview Road, Cockeysville, Maryland. It appears on tax map 42, identified as

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December 20, 2013 BEFORE JUDGE JOHN E. BEVERUNGEN

1 THE COURT: All right.

2 MR. RIFFIN: If I look here for a moment, I
3 might be able to give you an exact date. July 26th --

4 THE COURT: Okay.

5 MR. RIFFIN: -- 2013. He was directed to come
6 to the property, it's my understanding. And it's my
7 understanding he was directed to enter upon the
8 property and take photographs of whatever he could find
9 on that property. There were some conversations
10 between me and the attorney for Baltimore County,
11 Mr. Rosenblatt, and conversations between Mr.
12 Rosenblatt and the person (inaudible) he lives in New
13 Jersey.

14 And the indication was, if I continue to
15 oppose Baltimore County's acquisition of my property,
16 my property on North Road, Baltimore County would do
17 everything in its power to make my life miserable
18 zoning-wise with regard to my property.

19 THE COURT: Okay.

20 MR. RIFFIN: Mr. Phillip Mills did come on to
21 my property on July 26, 2013. My property is
22 conspicuously posted, no trespassing, violators may be
23 prosecuted. He entered upon the property without
24 announcing his presence, without seeking any added
25 permission, and he took, I don't know how many, I don't

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1 Mr. Will Geddes is in the room with us today, and
2 shortly he will be giving some testimony.

3 THE COURT: Okay.

4 MR. RIFFIN: I mention that to you now, so you
5 can sort of orient yourself as to where Mr. Geddes's
6 property is. Shortly I'm going to be introducing some
7 affidavits from a large number of my neighbors. And
8 I've written on, not quite the whole pile, but I've
9 written on most of them, the parcel number, their
10 respective parcels, so --

11 THE COURT: Okay.

12 MR. RIFFIN: -- Your Honor can figure out
13 where do they live relative to my property.

14 THE COURT: Okay.

15 MR. RIFFIN: Back to background information,
16 so Mr. Phillip Mills came onto the property,
17 unbeknownst to me, took all these pictures, and of
18 particular significance to me was, he actually went all
19 the way back to my house. To get onto my property, you
20 come off of Gateview, if you look at the map, you come
21 down 200-some-odd feet of driveway, there's a gate
22 there, it's conspicuously placed, no trespassing.

23 He went past there, he got out of his vehicle
24 and walked onto the property. And in the center of the
25 property is where I have a large quantity of equipment,

IN RE: PETITION FOR SPECIAL HEARING-11019 GATEVIEW ROAD
December 20, 2013 BEFORE JUDGE JOHN E. BEVERUNGEN

1 THE COURT: Yeah.

2 MR. RIFFIN: Okay, good.

3 THE COURT: It can hear you --

4 MR. RIFFIN: And if I stand here --

5 THE COURT: -- anywhere in the room.

6 MR. RIFFIN: -- I can sort of show you, well,
7 I can be here and you're there and that way I can sort
8 of show you what it is I'm looking at. Let me look at
9 this one here. This is a patio area that's glass.
10 This is a fence. And the gate, let's see if this is in
11 the gate here. Let me see, this is looking this way.
12 I'm looking for -- it is difficult to discern what is
13 here. In the upper left-hand corner picture, in the
14 background you can see the outline of an A-frame
15 structure.

16 And in the foreground of that, you can see
17 there is an enclosed area with, it's only one-story
18 high, that is a patio area, is what it is you're
19 actually looking at. And on the right-hand side, which
20 would be the north side, is where you enter into the
21 area. And if we look at the upper top right-hand
22 corner, we see a picture that is taken from the south
23 side looking north, of the patio. And on the right
24 side of the picture, which is the east side, you can
25 see there is a walkway, and you can see there is a

IN RE: PETITION FOR SPECIAL HEARING-11019 GATEVIEW ROAD
December 20, 2013 BEFORE JUDGE JOHN E. BEVERUNGEN

1 morning.

2 THE COURT: This says twelve twenty-one.

3 MR. RIFFIN: In that case, this is your -- I
4 apologize. If that one there was twelve twenty-one
5 then, there are some additional pictures that were
6 taken on a different date.

7 THE COURT: Okay. So this is about noon on
8 July 26th.

9 MR. RIFFIN: Okay. Anyway, so entered upon
10 the land, broke the cloves, went into the house, went
11 into the second fence and started taking pictures of
12 the interior of the house. And he did not announce
13 himself, nor did he leave anything to indicate that
14 he'd even been there. I believe that what he did was a
15 violation of the law. I believe that it was not only
16 civil, but it actually rose to the level of being
17 criminal, because the property is posted, violators can
18 be prosecuted.

19 Some years ago I had occasion to file a
20 complaint against an individual who came onto my
21 property. And the judge at the time indicated that the
22 distinction between a civil trespass and a criminal
23 trespass is what the sign says. If the sign says,
24 violators will be prosecuted, that turns it into
25 criminal. If it just says no trespassing, that's

IN RE: PETITION FOR SPECIAL HEARING-11019 GATEVIEW ROAD
December 20, 2013 BEFORE JUDGE JOHN E. BEVERUNGEN

1 who they are, but a neighbor emailed a complaint to the
2 County. It wasn't really a complaint, it was more in
3 the nature of a question. And the question was, they
4 observed me driving down the road with a truck and a
5 trailer and on the truck trailer was a large quantity
6 of railroad equipment.

7 I'm in the railroad business. I used to own
8 a railroad and I'm trying to acquire another one and
9 I've got a lot of railroad equipment. I also like
10 railroad stuff just for recreational purposes. Anyway,
11 the neighbor saw me going down the street. The
12 neighbor emailed the County and asked the question, is
13 it permissible to store railroad stuff on residential
14 property?

15 And Mr. Cohen visited his property in June
16 of, I think it was June of 2012. He approached my
17 driveway. He saw that there was a sign. It was
18 posted, the sign, and he saw there was a gate across
19 it. He took three photographs right there and wrote in
20 his file, the property is posted, I don't see anything,
21 and he closed the case. So if we want to call it a
22 complaint, that's the only complaint we have in the
23 file.

24 So in 2013 when Mr. Phillip Mills showed up,
25 it wasn't pursuant to a complaint. If it was a

IN RE: PETITION FOR SPECIAL HEARING-11019 GATEVIEW ROAD
December 20, 2013 BEFORE JUDGE JOHN E. BEVERUNGEN

1 did violates the U.S. Constitution. The Supreme Court
2 has ruled that if you have an expectation of privacy,
3 and that's the phrase that they like to use, if you
4 have an expectation of privacy, then it's not permitted
5 for a government agent to go into that area without a
6 search warrant.

7 What I'm asking you to do is give some
8 clarification of what, under what conditions may a code
9 enforcement person enter land. For a police officer,
10 the rule generally is that if an officer comes to
11 private land, and the land is, there's some indication
12 that you're not supposed to be on the land, you see
13 it's posted, there's a fence, anything that indicates
14 that this isn't available to the general public to walk
15 onto; he's not permitted to go onto the land unless he
16 sees a crime.

17 If he sees something at the scene of the
18 crime occurring, that gives him permission to go on the
19 land without the search warrant; but if he's looking at
20 land and he doesn't see anything that obviously appears
21 to be criminal or might be criminal, he needs to go get
22 a search warrant. And in this particular case, when
23 you approach my property, you can't see anything
24 through the trees. It's 13 acres, it's heavily wooded.
25 And they're there when all the leaves are on the trees

IN RE: PETITION FOR SPECIAL HEARING-11019 GATEVIEW ROAD
December 20, 2013 BEFORE JUDGE JOHN E. BEVERUNGEN

1 particularly if it's posted? I've looked at what can a
2 tax assessor do. And I just looked at it, and in the
3 tax assessor's enforcement section, it indicates that
4 they can come onto the land unless the property owner
5 says you can't. And if the property owner says you
6 can't, then they need to contact the property owner and
7 ask for permission.

8 And if you can't, if you don't get
9 permission, you can't just go on it. You could go on
10 if you got a search warrant, but barring getting a
11 search warrant, you're prohibited from going on the
12 land. When Baltimore County's legislation was enacted,
13 I don't think they were thinking it through too far. I
14 wouldn't have been thinking it through (inaudible) but
15 I raised the question of, if land is posted, no
16 trespassing, and you can't see anything that appears to
17 be a violation of Baltimore County's Code; I would
18 postulate that the code enforcement person cannot go
19 onto that land unless he gets a search warrant.

20 And for that he needs to show probable cause
21 if he thinks a violation is occurring. So I think
22 that's what the rule should be. The Code says that you
23 have the right to interpret the Code. So I'm asking
24 you to interpret the phrase, open land, and to consider
25 the constitutional limitations of a government, that

IN RE: PETITION FOR SPECIAL HEARING-11019 GATEVIEW ROAD
December 20, 2013 BEFORE JUDGE JOHN E. BEVERUNGEN

1 meantime, it's sitting there and you've got it covered.
2 And I would argue that under that circumstance, the
3 code enforcement person could not legally cite the
4 person for having that vehicle on the land if you can't
5 see the vehicle or if you can't see it's unregistered.
6 It's covered with a tarp and you can't see, does it
7 have a license plate? If you can't see if it does or
8 doesn't, you don't have the right to pick up the tarp
9 and look is what I would argue.

10 Let me finish up on the background. So
11 Baltimore County and I had this very serious
12 disagreement that's been going on for quite some time.
13 Since you were the County attorney for a while, you
14 probably have personal knowledge about a lot of this.
15 I would hope that you could sort of forget all that so
16 you don't have to recuse yourself, and you only look at
17 what's in this proceeding.

18 But the controversy has gone on for some
19 time. As it turns out in July of this year, after
20 these photographs were taken, Mr. Rosenblatt and I
21 reached a settlement agreement. I think I heard you
22 say it is a part of the record.

23 THE COURT: Yeah.

24 MR. RIFFIN: And the summary agreement
25 basically says, we're going to agree to agree. And it

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1 to stop fighting each other and let somebody decide
2 what the rules are, and then I'm going to abide by the
3 rules instead of arguing about it.

4 Anyway, he came on and he actually wrote a
5 citation, and he proposed to fine me \$30,000 or so.
6 That has, Mr. Rosenblatt, once he found out what he
7 did, he, I don't know if he called him in his office or
8 not, but the process stopped is kind of what happened.
9 And everyone is under the understanding that we're not
10 going to do anything more citation-wise,
11 enforcement-wise with regard to Mr. Riffin. We need to
12 resolve what is it he can, what is it he cannot do.

13 And the agreement also stipulates that if
14 there are items on my land that I am not permitted to
15 have on my land, then the County would give me six
16 months to remove it from the land.

17 THE COURT: Okay.

18 MR. RIFFIN: So I've got until May, June of
19 next year to remove whatever it is you happen to
20 determine is not appropriate so have on my land. So
21 that's sort of a background of why are we here. In
22 their citations, they cite a number of Baltimore County
23 Zoning Regulations in the Code. And one thing that
24 they try to use is junkyards. They basically say,
25 junkyards are prohibited in Baltimore County. I will

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1 with regard to machinery as if you're dismantling it
2 and it is for commercial purposes. Over the years
3 they've changed that a little bit. And I happen to
4 have the 2008 Zoning Regulations, that section in front
5 of me, and I'll read that one. It defines a junkyard
6 as any land used (inaudible) or industrially, so we've
7 still got the commercial aspect to it, for storage or
8 for the sale of scrap metal, wastepaper, rags, or other
9 junk.

10 And then it says, and any land, except as
11 provided by 6 and 428, used for the storage of
12 unlicensed or inoperative motor vehicles, dismantling
13 or storage of such vehicles or parts thereof, or used
14 machinery. So the relevant portion of that is, any
15 land used for storage of used machinery, is what you
16 can discern out of that.

17 A lawnmower is a piece of machinery. Once
18 you buy it, it becomes used. If we literally reap that
19 definition, if you have your lawnmower sitting outside
20 your house, you've got a junkyard. It's a piece of
21 used machinery. If you have a generator outside that
22 you use when the power goes off, you've got a piece of
23 used machinery outside, you can't have a generator
24 outside.

25 If you have an air conditioning unit, you

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1 residence and you have an awful lot of stuff out in
2 your yard and it does look junky in the common sense of
3 the word, if you can see it, if your adjacent neighbors
4 can see it and they find it offensive, that probably
5 does rise up to the level of a junkyard and shouldn't
6 be permitted.

7 So I think the emphasis should be on, is it
8 offensive to the neighbors, is it offensive to the
9 sensibilities is kind of what it is. If it relates to
10 the use of the property, even if it doesn't look
11 appropriate, but if it relates to how the property is
12 being used, I don't have a problem with that. Because
13 what you want to use a generator is not pretty. And
14 they're noisy. But if the power goes off, they're very
15 handy and it's an appropriate thing to be using on
16 occasion.

17 Lawnmowers, they're not pretty, well, they
18 try to make them pretty, but most of the time after a
19 few years they're not really pretty and noisy as all
20 get out. But is it appropriate to use a lawnmower?
21 Yeah, you need to cut your lawn. So if the aesthetics
22 of it, while it factors in, we get back to, is it
23 something that is used, can be used at that public
24 place.

25 So I'd ask you to interpret, what is a

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1 on.

2 THE COURT: Okay.

3 MR. RIFFIN: All of the affidavits, except for
4 the affidavit of Keith Elliott, which will be the third
5 piece of paper in the file, all of the affidavits say
6 that they can't see my stuff. The third piece of paper
7 down, which is Keith Elliott.

8 THE COURT: Right.

9 MR. RIFFIN: He's at 110008 Gateview. He's
10 literally right, his property is immediately adjacent
11 to mine. There's two of them adjacent to mine as you
12 come in from the west. One is Mr. Baker, and one is
13 Mr. Elliott. Mr. Elliott, if you're in his backyard
14 and you look over in my direction, it is possible for
15 him to see some of my stuff.

16 THE COURT: Okay.

17 MR. RIFFIN: So I do have a neighbor that can
18 see some of my stuff. And what I find of significance
19 is, even though he sees it, he doesn't object to it.

20 THE COURT: Okay. He's in lot one; you're in
21 lot three.

22 MR. RIFFIN: And in a minute, I'm going to put
23 Mr. Geddes, who is behind me, on the stand, who will
24 basically say the same thing. In the case of
25 Mr. Geddes, to summarize sort of what it is I'm going

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1 Mr. Riffin's house?

2 THE WITNESS: Well, I think I have, I'm not
3 sure how many feet, well, probably the biggest neighbor
4 as far as footage that abuts his property.

5 THE COURT: Okay.

6 MR. RIFFIN: Earlier --

7 THE WITNESS: More than a hundred yards, maybe
8 it's, it might be 400.

9 THE COURT: Okay. How long have you been
10 there?

11 THE WITNESS: Since 1986.

12 THE COURT: Okay, all right, good.

13 BY MR. RIFFIN:

14 Q I've shown the Zoning Commissioner a portion
15 of tax map 42, and is parcel 119 your parcel here?

16 A Yes.

17 Q Okay. There's a lot of small parcels that
18 are sort of stuck in the center of yours, but you've
19 got the larger, a larger parcel with little things
20 sitting inside it, would that be correct?

21 A Yes, some of those parcels are also mine.

22 Q Okay. You've already testified you've been
23 there since 1986. When you're on your land, can you
24 see any of my equipment?

25 A No.

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1 MR. RIFFIN: You can sit down.

2 So Mr. Geddes, we, our common property line
3 is a little over a thousand feet long, as it turns out.
4 He is the only neighbor that's actually seen
5 everything, everything that I have. Mr. Baker
6 occasionally has come onto my land, and he's seen some
7 of it. I didn't ask him to comment in this affidavit
8 part, but the point I'm trying to make is that the two
9 neighbors that know what's on my land, well,
10 Mr. Elliott doesn't know everything, he can only see
11 some of it from his parcel, but none of my neighbors
12 have any objection to what I have on my land.

13 As I get to my land, there's two aspects of
14 the complaint if we want to call it that. One is the
15 storage of stuff on my land, and another aspect is, is
16 me driving to and from my land on a public street. I
17 have a dump truck, I have a truck tractor and I have
18 some highboy trailers and I have a lowboy trailer and I
19 go up and down the street occasionally with these
20 items. And when I do, you can see me driving by. You
21 know, I typically drive about 10 to 15 miles an hour.

22 I drive slow for a number of reasons, one of
23 which is I'm trying reduce how much noise I'm making.
24 As it turns out, once I turn onto Powers, it's downhill
25 from there, and if I put my truck in neutral and go

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1 MR. RIFFIN: I think it's in there some place.

2 THE COURT: Okay.

3 MR. RIFFIN: It's definitely an issue.

4 THE COURT: All right.

5 MR. RIFFIN: I have a number of trailers.

6 They call them high -- I've got one lowboy trailer and
7 a number of highboy trailers.

8 THE COURT: Okay.

9 MR. RIFFIN: I think I've got four highboy
10 trailers and one lowboy trailer. Two of the highboy
11 trailers are on my property where I live, and two of
12 them are some place else on a commercial property, but
13 I do have them. I have a large quantity of stuff on my
14 property. I've alluded to the fact that I have
15 railroad equipment there. I have a caboose. The
16 caboose is for recreational purposes.

17 And the Code says that recreational amenities
18 are permitted into residential areas. That's a
19 recreational amenity is what I could argue. It's
20 actually a nice caboose. It actually has, it's
21 somewhat historic as it turns out. If you went on the
22 Internet, you can actually see a picture of it. It
23 used to be an old (inaudible) museums and one that
24 refurbished it and repainted it. And when it came out
25 of there, it was really pretty when they gave it back

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1 Pardon me. But railroad equipment, that's just what it
2 looks like. It just isn't pretty, but it's very
3 functional. And if you need it, and it's not easy to
4 come by some of this stuff. It's outrageously
5 expensive if you want to buy a new set. So I do have
6 some railroad equipment there.

7 In addition, I have a crane and I've had this
8 crane almost 15 years now and it's a pretty good size
9 one and I use this crane on my property, a lot. I use
10 it for my well goes out, I have a water a well. I use
11 the crane to pull the pipe out of the ground with. And
12 I use it to pick up things with. If I need to do
13 something on my house or I need to pick something up
14 and put it out on my deck, I can use my crane to do
15 that with.

16 You know, not everybody has a crane, but I
17 can tell you, cranes are really handy. If you just
18 happen to have one laying around, it's really handy.
19 I've got (inaudible) that's something that elevates you
20 in the air. And that's very handy when it comes to
21 either making repairs to my house. It's very handy
22 when I trim my trees. It's very handy when I pick my
23 fruit that is on the trees that are on my property.

24 So just about everything that I have, I use
25 it on that property, and it makes my life there a lot

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1 saved (inaudible) forest, he had a net of 58 acres.
2 And the 58 acres were transferred all the way down to
3 Lawrence Roberts, that last, that transfer occurred in
4 1958.

5 In 1966 Mr. Roberts sold 29 of his 58 of his
6 acres to a man named Howard Gates. It's 4683 and 4007.
7 By the way, Mr. Roberts's deed reference is book 377,
8 page 56. And that's June 23, 1904. So Mr. Roberts --
9 Mr. Gates bought 29 acres in 1966. And he began
10 developing it and putting houses on it. At the time
11 some of the property was zoned DR 1, one house per
12 acre. Some of it was zoned DR 2, two houses per acre.
13 The vast majority of it was DR 2.

14 And he made, he subdivided it, if you look at
15 your zoning map, his subdivision is going to be parcel
16 389. He's got an A, B, C, D sections of it. But all
17 that 389 and that A, B, C, D, that's what Mr. Gates
18 did. He stopped developing it when he got to my
19 property. I told you he had the deed to it, it just
20 suddenly stops. When I was looking to buy it in 1975,
21 the question came to mind, why did you stop doing what
22 you're doing, because you wouldn't expect that to
23 happen.

24 I did a lot of research and found out that
25 buried in the Plumbing Code is a statute that says you

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1 history.

2 And he said, well, it was farmed, we've used
3 it for farm purposes and that's what we've always used
4 it for. And I see signs of that all over the property.
5 He indicated that he and his predecessors planted a
6 number of fruit-bearing trees. I found the
7 fruit-bearing trees. They're actually still here
8 today.

9 So I learned that it was used for farming
10 purposes historically and had been used for farming
11 purposes before the Zoning Regulations came into
12 existence in 1945. And when you're using it for
13 farming purposes, there's an awful lot of things that
14 you can do if you're using it for farming purposes that
15 you couldn't do, couldn't use it for if it wasn't for
16 farming purposes. That's the nonconforming use parts
17 portion.

18 I would argue that it's been used for a farm
19 before these silly regulations came into existence.
20 And it's been, my 13 acres has been continuously used
21 for farming purposes since 1904 and probably even
22 before that. Mr. Merriman (phonetic) had it before
23 that, and he used it for farming purposes and that goes
24 back to 18 thirties. So it turns out my little
25 13 acres has been used for farming purposes for a

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1 good 50 to 60 percent of them are very straight trees.
2 There like a mast on a ship, like utility poles. They
3 don't have Ys in them. And I realized this when I
4 bought the property in 1976 almost 40 years ago. And
5 they were pretty tall then. They were 40-some-odd feet
6 tall. Well, the taller they get, the more valuable
7 they get. And it's not just a straight line increase
8 in value, it's an exponential increase. Fifty feet is
9 worth a whole lot more than 40 feet. And it's not
10 20 percent more because it's 20 percent longer, no,
11 it's more like 400 percent more because it's 50 feet
12 long.

13 And the taller they get, you know, the bigger
14 in diameter they get, the greater the value. And I
15 have a considerable number of these very valuable trees
16 growing on my property. I haven't had a reason to cut
17 them down. I don't need the money, haven't needed the
18 money. So my desire would be to keep growing. It's a
19 good investment, just let them keep growing.

20 Now I have a considerable number of trees
21 that are at 60 feet. And at the 60-foot crack mark,
22 (inaudible) down. So these are really desirable trees.
23 You want it for a mast on your ship. They don't
24 typically use these kind of trees for utility poles,
25 they prefer pipe; but if you're talking about ships,

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1 The better thing to do is literally cut the tree, pick
2 it up, and gently set it down on the ground and not
3 have it touch anything you don't want it to touch. And
4 I found my crane to be very, very useful for that
5 purpose. This crane is called a rough terrain crane.
6 That means it's got gigantic tires on it, and you can
7 literally ride just about any place. That's a very
8 handy crane.

9 The semitrailers, on those occasions when I
10 need to, when I actually do cut some of my woods, some
11 of my timbers, I need a trailer, and I need some -- in
12 fact, I need a pretty long trailer to move these off.
13 It turns out two of my trailers are extendible
14 trailers, that means I can extend them out to 80 to 90
15 feet long. And if I've got a tree that's 70 feet long,
16 I need a trailer that's 70 feet long. I just happen to
17 have two of them, so I take my trailer and I'd stick it
18 out and put my tree on it with my crane and then I can
19 take it to the salt mill or wherever it is I'm taking
20 it and I have the ability to transport.

21 All my trailers by the way, semitrailers have
22 tags on them. So they're licensed, registered, road
23 worthy. And I do, in fact, drive on the road. Not
24 very often, but I do use them on the road.

25 THE COURT: Okay. You're going to have to

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1 when I need water for irrigation purposes, I have
2 water. So I have a considerable number of tanks, and
3 they vary in size. And I use them to store water with.

4 The Zoning Regulations permit utility sheds.
5 When I look it up, it doesn't define a utility shed.
6 When I look up the definition of utility shed, maybe if
7 you've got a particular dictionary at your disposal to
8 use. And I actually read that one from, I believe, my
9 own dictionary. The utility shed is anything that is
10 capable of holding something is basically what it says.
11 But in my particular case, what I'm asking you to do is
12 to say, is to define, what's a shed? What's a utility
13 shed? Is a utility shed anything that will hold
14 something, store something?

15 I would argue it is. It doesn't matter if
16 it's made out of wood, brick, masonry, metal. If it's
17 a structure of whatever kind, no matter how or what
18 it's constructed from, if it's used, being used for the
19 storage of something; I would say that is a utility
20 shed. And when I think about that, I broadened it out
21 a bit.

22 If I have a, let's say a utility vehicle and
23 I am storing stuff in it because it's watertight, I
24 would say while that used to be a motor vehicle, it's
25 no longer a motor vehicle. I converted it into a

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1 given --

2 MR. RIFFIN: Are we running out of time?

3 THE COURT: -- you 70 minutes. Yeah.

4 MR. RIFFIN: Okay.

5 THE COURT: We've got other cases here that I
6 need to hear. Is there anything else that you want to
7 tell me that you haven't?

8 MR. RIFFIN: I think I've fairly well given
9 you an outline of what the dispute is. You've seen
10 what the citations, I presume, there in the record.

11 THE COURT: They are.

12 MR. RIFFIN: So you have some feel for what
13 did they find, what did the code enforcement person
14 find to be objectionable. I have a -- I'm going to ask
15 you to address a legal question. When you're
16 addressing that, when can he come onto my land, then I
17 back up and say, I don't think I have to do it, I'm
18 going to mention it anyway, but I don't think you have
19 to address it, address it. It's not before you, am I
20 guilty of these things that they cited me.

21 That's in the (inaudible) but what is before
22 you, the question I would have you sort of put at least
23 in the back of your mind is, if a code enforcement
24 person can't come onto your land and see it, but he
25 illegally comes onto your land and sees it, can he cite

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1 to you. Do you have, I've gotten your name and
2 address, sir, Mr. Geddes?

3 MR. RIFFIN: I have a petitioner (inaudible).

4 THE COURT: Yeah, why don't you hand me that.

5 MR. RIFFIN: And --

6 THE COURT: We like to have those in the file.

7 MR. RIFFIN: And I've got my name and address.

8 THE COURT: Good.

9 MR. RIFFIN: And I've got Mr. Geddes's.

10 THE COURT: Okay. And what I wanted to say is
11 you'll both get a copy of the order. And I usually do
12 them within a week. This may take a little longer,
13 we've got holidays are coming up and it may take a
14 little longer, but it won't be too much longer, and
15 I'll send a copy to both of you all.

16 (Off the record 11:04:17 a.m.)

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A \$30,000 21:5 A-frame 9:14 a.m 3:2 49:16 abide 21:2 ability 43:20 50:11 able 5:3 12:25 18:25 32:5,7 36:1 abuts 29:4 accessory 3:13 accurate 50:10 ACCUSCRIBES 1:22 acquire 4:12 13:8 34:5 acquisition 5:15 acre 37:12,12 40:8 acres 6:14,17,18,18 15:24 36:14,16,25 37:1,2,6,9 38:8,24 39:20,25 40:14,14 act 48:2 activities 20:18 46:10 activity 20:24 actual 8:9,21 10:2,8 added 5:24 40:8 addition 35:7 46:13 additional 10:15 11:5 14:3,21 36:22 40:4 address 3:9 28:14 47:15,19,19 49:2,7 addressing 47:16 adjacent 6:24 25:3 27:10,11 Administrative 1:6 1:13 50:6 advertised 3:20 aesthetics 25:21 affidavit 27:4 31:7 affidavits 2:12 7:7 26:6 27:3,5 32:10 affirm 28:5 agent 15:5 ago 11:19 20:11	40:18 41:4 agree 19:25,25 22:1 24:18,25 agreement 3:17 19:21,24 20:10,14 20:17,19 21:13 agricultural 40:15 48:17,19 agriculture 48:14,16 Aiello 1:21 air 23:25 24:1,3 35:20 46:12,14,15 alluded 33:14 amenities 33:17 34:22 46:4 amenity 33:19 and/or 22:20 announce 11:12 announcing 5:24 anybody 3:6 32:11 anymore 20:18,24 anyway 11:9 13:10 21:4 47:18 48:20 apologize 8:20 11:4 APPEARANCES 1:19 appeared 38:14 appears 3:25 15:20 17:16 apple 40:5,6 applicable 18:1 appreciate 44:3 approach 15:23 approached 13:16 approaching 16:14 appropriate 12:11 21:20 25:11,15,20 area 9:9,17,18,21 10:2,5,14,16,22 15:5 16:19 32:18 areas 33:18 argue 19:2,9 32:21 33:19 34:20 39:18 45:15	arguing 21:3 ascetically 24:14 asked 12:7 13:12 14:5 38:10,25 44:10 asking 15:7 17:23 45:11 aspect 23:7 31:15 aspects 31:13 40:10 48:17 assessor 17:2 assessor's 17:3 attached 3:14 attempt 8:21 attorney 5:10 19:13 automobile 22:8 automobiles 22:6 available 15:14 average 36:10 awful 22:5 25:1 39:13 B B 37:16,17 back 7:15,19 8:2,2,10 8:12 20:12 22:9,14 22:17 25:22 33:25 39:24 47:17,23 background 7:15 9:14 19:10 21:21 36:18 backyard 27:13 bad 42:10 Baker 27:12 31:5 36:16 Baltimore 1:8 4:6,11 4:16,16 5:10,15,16 8:22 12:9 17:12,17 19:11 21:22,25 22:18 barbwire 38:13,14 barring 17:10 basically 14:12 19:25 21:24 26:12 27:24 45:10	began 37:9 belief 12:15,17,17 46:18 believe 4:21 11:14,15 22:9 45:8 46:19 beneficial 46:22 best 50:11 better 36:5,8 43:1 BEVERUNGEN 1:15 big 44:16 bigger 41:13 biggest 29:3 bit 23:3 45:21 black 40:9 black-and-white 8:18 Bobcat 36:7,10 book 6:20 37:7 boss 14:7 bottom 10:18 42:18 bought 36:15,15,20 36:24 37:9 38:10 40:18 41:4 44:12 boy 38:4 branch 40:19,19 break 42:8,8,20,23 breaks 42:6 brick 45:16 brief 4:2 bring 42:16 broad 24:19 broadened 45:20 broke 11:10 buried 37:25 business 13:7 24:21 24:23 buy 23:18 35:5 37:20 38:8 C C 3:1 37:16,17 caboose 33:15,16,20 34:2,3
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410-494-7015

§ 8-207

Note 2

tain other land in the Annapolis area. Code 1957, art. 21, §§ 11-101(m), 11-122, 11-122(b); art. 81, §§ 14(a), (b)(1); Const. Declaration of Rights, art. 15. Supervisor Assessments of Anne Arundel County v. Southgate Harbor, 1977, 369 A.2d 1053, 279 Md. 586. Taxation = 485(3)

3. Burden of proof

Burden is on one who challenges a legislative classification as violative of equal protection to show that it does not rest on any reasonable basis but, rather, is essentially arbitrary. U.S.C.A. Const. Amend. 14. Condominium

Owners 5-7 Slade Ave. v. Supervisor of Assessments of Baltimore County, 1978, 388 A.2d 116, 283 Md. 29. Constitutional Law = 213.1(2)

4. Review

Although revision of statute eliminated controversy for the future, writ of certiorari would not be dismissed as improvidently granted since there were several pending cases arising under the unamended version. Condominium Owners 5-7 Slade Ave. v. Supervisor of Assessments of Baltimore County, 1978, 388 A.2d 116, 283 Md. 29. Certiorari = 60

§ 8-208. Reserved

Dept: Assessments & Taxation

Part II. Use Assessments

§ 8-209. Farm and agricultural land

(a) The General Assembly declares that it is in the general public interest of the State to foster and encourage farming activities to:

- (1) Maintain a readily available source of food and dairy products close to the metropolitan areas of the State;
- (2) Encourage the preservation of open space as an amenity necessary for human welfare and happiness; and
- (3) Prevent the forced conversion of open space land to more intensive uses because of the economic pressures caused by the assessment of the land at rates or levels incompatible with its practical use for farming.

(b) It is the intention of the General Assembly that the assessment of farmland:

- (1) Be maintained at levels compatible with the continued use of the land for farming; and
- (2) Not be affected adversely by neighboring land uses of a more intensive nature.

(c) Land that is actively used for farm or agricultural use shall be valued on the basis of that use and may not be valued as if subdivided.

(d) Land that is valued under subsection (c) of this section shall be assessed on the basis of its use value.

(e)(1) The Department shall establish in regulations criteria to determine if land that appears to be actively used for farm or agricultural purposes:

- (i) Is actually used for farm or agricultural purposes; and
- (ii) Qualifies for assessment under this section.

(2) The criteria shall include:

- (i) The zoning of the land;
- (ii) The present and past use of the land including land under the Soil Bank Program of the United States;

TAX-PROPERTY

EVALUATION & ASSESSMENT

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§ 8-209

(iii) The productivity of the land, including timberlands, and reforested lands; and

(iv) The gross income that is derived from the agricultural activity.

(f) In administering this section, periodically, the Director shall consult with:

- (1) The Secretary of Agriculture;
- (2) Officials of the State who are knowledgeable in agriculture;
- (3) Representatives of the agricultural community;
- (4) Officials of counties and municipal corporations; and
- (5) Other persons as determined by the Director.

(g)(1) In this subsection, the following words have the meanings indicated:

(i) "actively used" means land that is actually and primarily used for a continuing farm or agricultural use;

(ii) "agricultural land unit" means the combination of not more than 3 parcels of land when the parcels are:

1. located in the same county; and
2. Under the same ownership;

(iii) "average gross income" means the average of the 2 highest years of gross income during a 3-year period;

(iv) "family farm unit" means not more than 1 parcel of land of less than 20 acres for each immediate family member for land that is:

1. contiguous to land receiving the farm or agricultural use assessment; and
2. owned by a member or members of the immediate family of the owner of the farm or agricultural use land; and

(v) "gross income" means the actual income that is received in a calendar year that results directly from the farm or agricultural use of the land.

(2) In determining if a parcel of land of less than 20 acres, or not zoned for agricultural use, is actively used, the Department may require the owner of the land to affirm, under oath, on a standard form provided by the Department that the farm or agricultural use of the land results in an average gross income of at least \$2,500 from the parcel or the agricultural land unit.

(3) The Department may require an owner who submits an affirmation under paragraph (2) of this subsection to verify the gross income from the land by providing:

- (i) Copies of sales receipts or invoices;
- (ii) Lease agreements; or
- (iii) Other documents required by the Department.

(4) An affirmation under paragraph (2) of this subsection shall be filed before July 1 of the taxable year.

(5) If land that appears to be actively used does not yield an average gross income of \$2,500, the Director shall waive the gross income requirement of finding that:

(i) The land is leased and the nature of the farm or agricultural use of the land when related to the amount of the land in farm or agricultural use reasonably would be expected to yield an average gross income of at least \$2,500;

(ii) The nature of the farm or agricultural use of the land and the amount of the land in farm or agricultural use reasonably would be expected to yield an average gross income of at least \$2,500 from the agricultural products, if sold, that are derived from the use of the land;

(iii) A drought or other natural cause has adversely affected the income-producing capability of the land during a 3-year period; or

(iv) For a newly established farm or agricultural use, the nature of the use and the amount of the land in farm or agricultural use reasonably would be expected to yield an average gross income of at least \$2,500 if the use had existed for a 3-year period.

(6) The Director may grant only the following additional waivers:

(i) Under paragraph (5)(iii) of this subsection, for 1 additional consecutive 3-year period; and

(ii) Under paragraph (5)(iv) of this subsection, for 1 additional consecutive 3-year period.

(7) The gross income requirement of paragraph (2) of this subsection does not apply:

(i) If the owner is at least 70 years of age and applies for waiver of the gross income requirement as to land that was assessed on July 1, 1984, on the basis of farm or agricultural use under the law or regulations of the Department that were in effect on or before that date;

(ii) If the owner becomes disabled and is unable to continue the farm or agricultural use of the land and applies for waiver of the gross income requirement as to land that is assessed on the basis of farm or agricultural use; or

(iii) If the land is actively used as a family farm unit.

(8) For purposes of qualifying for the agricultural use assessment under this section, the following real property is deemed to be a single contiguous parcel:

(i) Parcels that are created or separated by roads, easements, or other rights-of-way; and

(ii) Land relating to a right-of-way that reverts back to its owner's use for purposes of farming.

(h)(1) Subject to paragraph (2) of this subsection, the following land does not qualify to be assessed under this section:

(i) Land rezoned to a more intensive use than the use that immediately preceded the rezoning, if a person with an ownership interest in the land has applied for or requested the rezoning;

(ii) Land used as a homesite, which means the area of land that is reasonably related to a dwelling;

(iii) Parcels of land of less than 3 acres that are under the same ownership excluding the homesite unless:

1. the land is owned by an owner of adjoining land that is receiving the farm or agricultural use assessment and is actively used;

2. the owner receives at least 51% of the owner's gross income from the active use; or

3. the parcels are part of a family farm unit;

(iv) If part of a subdivision plat, parcels of land of less than 10 acres that are owned by an owner of 5 other parcels of land of less than 10 acres each that are located in the same county and that are receiving the farm or agricultural use assessment;

(v) Parcels of woodland of less than 5 acres excluding the homesite; or

(vi) Land that fails to meet the gross income requirement of subsection (g) of this section.

(2) No more than 2 parcels of less than 3 acres under the same ownership may qualify for the agricultural use assessment.

Acts 1985, c. 8, § 2; Acts 1986, c. 171; Acts 1990, c. 268; Acts 1990, c. 642; Acts 1995, c. 3, § 1, eff. March 7, 1995; Acts 1995, c. 267, § 1, eff. June 1, 1995; Acts 1997, c. 326, § 1, eff. June 1, 1997; Acts 2000, c. 80, § 1, eff. Oct. 1, 2000.

Formerly Art. 81, §§ 14, 19.

Historical and Statutory Notes

2000 Legislation

Acts 2000, c. 80, §§ 7 and 13, provide:

"SECTION 7. AND BE IT FURTHER ENACTED, That, except as expressly provided otherwise in this Act:

"(1) Effective October 1, 2000, real property tax rates, for purposes of application against the full value assessment established by Section 1 of this Act, shall be 40% of the real property tax rates effective July 1, 2000;

"(2) It is the intent of the General Assembly that the impact of this Act be revenue neutral;

"(3) Any limit on a local tax rate in a local law or charter provision in effect on September 30, 2000 that is expressed as a rate to be applied to an assessment of real property, shall be construed to mean a rate equal to 40% times the rate stated in the local law or charter provision;

and any debt limit in a local law or charter provision in effect on September 30, 2000 that is expressed as a percentage of an assessment of real property or assessable base of real property, shall be construed to mean a percentage equal to 40% times the percentage stated in the local law or charter provision; and

"(4) This Act may not be construed to alter or affect the fiscal impact of any provision of State or local law or county or municipal charter on any computation prescribed by law or regulation that uses property tax assessments as part of the computation."

"SECTION 13. AND BE IT FURTHER ENACTED, That Sections 1, 3, 6, 8, and 11 of this Act shall take effect October 1, 2000 and shall be applicable to all taxable years beginning after June 30, 2001."

Law Review and Journal Commentaries

Section of Taxation Reports: The Agricultural Land Transfer Tax. Randall D. Van Dolson, 19 Md. B.J. 22 (July 1986).

Library References

Key Numbers

Taxation ¶348.1(3).

Westlaw Key Number Search: 371k348.1(3).

Encyclopedias

C.J.S. Taxation § 411.

Maryland Law Encyclopedia Revenue and Taxes § 46.



Board of Appeals of Baltimore County

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410-887-3180
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May 9, 2014

NOTICE OF POSTPONEMENT AND REASSIGNMENT

IN THE MATTER OF: James and Karole Riffin
11019 Gateview Road
14-094-SPH 8th Election District; 3rd Councilmanic District

Re: Petition for Special Hearing to determine which uses are permitted in a DR-1, RC-6, and which are non-conforming.

1/7/14 Opinion and Order of the Administrative Law Judge wherein the requested relief was denied in part and dismissed without prejudice in part.

2/25/14 Order on Motion for Reconsideration issued by Administrative Law Judge wherein the Motion was Denied.

The hearing scheduled for June 5, 2014 has been postponed by the Board of Appeals. This matter has been

REASSIGNED FOR: TUESDAY, JULY 15, 2014, AT 10:00 A.M.

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

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

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

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

c: Petitioner/LO

: James and Karole Riffin

Appellant

: Will Geddes

Office of People's Counsel
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney

Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Michael Field, County Attorney, Office of Law



Board of Appeals of Baltimore County

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May 9, 2014

James & Karole Riffin
1941 Greenspring Drive
Timonium, MD 21093

Will Geddes
11115 Powers Avenue
Cockeysville, MD 21030

Re: In the matter of: James and Karole Riffin
Case number: 14-094-SPH

Dear Mr. and Mrs. Riffin and Mr. Geddes:

Please be advised that the hearing scheduled for June 5, 2014 before the Board of Appeals for Baltimore County is hereby postponed. We have had two Board members leave the Board and several of the remaining members are not available that date.

Enclosed please find a Notice of Postponement and Reassignment.

Thank you for your cooperation in this matter. Should you have any questions, please do not hesitate to contact us.

Very truly yours,

Sunny Cannington

Krysundra "Sunny" Cannington
Administrator

Duplicate original

cc: Peter M. Zimmerman, People's Counsel for Baltimore County



Board of Appeals of Baltimore County

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

April 16, 2014

NOTICE OF ASSIGNMENT

IN THE MATTER OF: James and Karole Riffin
11019 Gateview Road
14-094-SPH 8th Election District; 3rd Councilmanic District

Re: Petition for Special Hearing to determine which uses are permitted in a DR-1, RC-6, and which are non-conforming.

1/7/14 Opinion and Order of the Administrative Law Judge wherein the requested relief was denied in part and dismissed without prejudice in part.

2/25/14 Order on Motion for Reconsideration issued by Administrative Law Judge wherein the Motion was Denied.

ASSIGNED FOR: **THURSDAY, JUNE 5, 2014, AT 10:00 A.M.**

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

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

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

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

c: Petitioner/LO

: James and Karole Riffin

Appellant

: Will Geddes

Office of People's Counsel
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney

Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Michael Field, County Attorney, Office of Law

KEVIN KAMENETZ
County Executive



LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

March 31, 2014

Karole and James Riffin
1941 Greenspring Drive
Timonium, Maryland 21093

RECEIVED
MAR 31 2014

RE: APPEAL TO BOARD OF APPEALS
Case No. 2014-0094-SPH
Location: 4512 Old Court Road

**BALTIMORE COUNTY
BOARD OF APPEALS**

Dear Mr. and Mrs. Riffin:

Please be advised that an appeal of the above-referenced case was filed in this Office on March 26, 2014. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals ("Board").

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "L. Stahl", is written over a horizontal line.

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS/sln

c: Baltimore County Board of Appeals
People's Counsel for Baltimore County
Will Geddes, 11115 Powers Avenue, Cockeysville, MD 21030

KEVIN KAMENETZ
County Executive



LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

March 31, 2014

Karole and James Riffin
1941 Greenspring Drive
Timonium, Maryland 21093

RECEIVED
MAR 31 2014
BALTIMORE COUNTY
BOARD OF APPEALS

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Case No. 2014-0094-SPH
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LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS/sln

c: Baltimore County Board of Appeals
People's Counsel for Baltimore County
Will Geddes, 11115 Powers Avenue, Cockeysville, MD 21030

APPEAL

**Petitions for Special Hearing
(11019 Gateview Road)
8th Election District – 3rd Councilmanic District
Legal Owner: Karole & James Riffin
Case No. 2014-0094-SPH**

Petition for Special Hearing (October 15, 2013)

Zoning Description of Property

Notice of Zoning Hearing (November 13, 2013)

Certificate of Publication (November 26, 2013)

Certificate of Posting (November 29, 2013) Linda O'Keefe

Entry of Appearance by People's Counsel (November 7, 2013)

Petitioner(s) Sign-in Sheet – One

Citizen(s) Sign-in Sheet – None

Zoning Advisory Committee Comments

Petitioner(s) Exhibits -

1. Md. Dept. of Planning Map
2. Black & White Photos
3. Black & White Photos
4. Affidavits

Protestants' Exhibits – None

Miscellaneous (Not Marked as Exhibits) –Code Enforcement Citation No.: 137585 (dated September 16, 2013); Memorandum from James Riffin, Petitioner (date stamped December 30, 2013); Memorandum of Law from James Riffin, Petitioner (dated February 24, 2014) and Motion to Stay Decision on Motion for Reconsideration from James Riffin, Petitioner (dated February 19, 2014)

Administrative Law Judge Order and Letter (DENIED on January 7, 2014)

Request for Motion for Reconsideration from: James Riffin on February 4, 2014

Administrative Law Judge Order and Letter on Motion for Reconsideration (DENIED on February 25, 2014)

Notice of Appeal –March 26, 2014 from Will Geddes, 11115 Powers Avenue, Cockeysville, MD. 21030

APPEAL

**Petitions for Special Hearing
(11019 Gateview Road)
8th Election District – 3rd Councilmanic District
Legal Owner: Karole & James Riffin
Case No. 2014-0094-SPH**

- ✓ Petition for Special Hearing (October 15, 2013)
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- ✓ Citizen(s) Sign-in Sheet – None
- ✓ Zoning Advisory Committee Comments
- Petitioner(s) Exhibits -
 - ✓ 1. Md. Dept. of Planning Map
 - ✓ 2. Black & White Photos
 - ✓ 3. Black & White Photos
 - ✓ 4. Affidavits
- ✓ Protestants' Exhibits – None
- Miscellaneous (Not Marked as Exhibits) – Code Enforcement Citation No.: 137585 (dated September 16, 2013); Memorandum from James Riffin, Petitioner (date stamped December 30, 2013); Memorandum of Law from James Riffin, Petitioner (dated February 24, 2014) and Motion to Stay Decision on Motion for Reconsideration from James Riffin, Petitioner (dated February 19, 2014)
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- ✓ Notice of Appeal – March 26, 2014 from Will Geddes, 11115 Powers Avenue, Cockeysville, MD. 21030

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No.

91034

Date:

3-26-14

PAID RECEIPT

AMOUNT \$265.00
 DATE 3/26/2014
 TIME 09:00:25
 BY [Signature]
 RECEIPT # 91034
 BALTIMORE COUNTY, MARYLAND

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6156				265.00
001	806	0000		6150				50.00

Total:

315.00

Rec

From:

Will Geddes, 1115 Powers Ave., 2630

For:

Appeal + CD Proceedings
 Case No. 2014-0094-SPH

note +
 CD picked
 up

3-28
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DISTRIBUTION

WHITE - CASHIER

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YELLOW - CUSTOMER

GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

**CASHIER'S
 VALIDATION**

In re: 11019 Gateview Road
Cockeysville, MD 21030

Before the Zoning Commissioner
of Baltimore County

Case No.: 2014 - 0094 - SPH

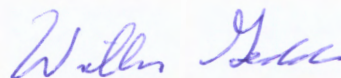
* * * * *

NOTICE OF APPEAL

My name is Will Geddes. My address is 11115 Powers Avenue, Cockeysville, MD. I attended the December 20, 2013 hearing in Case No. 2014 - 0094 - SPH, and gave testimony. I received a copy of the Decision rendered on January 7, 2014, and a copy of the decision rendered on February 25, 2014, denying Mr. Riffin's Motion for Reconsideration.

I herewith file my Notice of Appeal.

Sincerely,



Will Geddes
11115 Powers Avenue
Cockeysville, MD 21030

RECEIVED

MAR 26 2014

OFFICE OF ADMINISTRATIVE HEARINGS

CERTIFICATE OF SERVICE

I certify that on Wednesday, March 25, 2014, I mailed a copy of the above Notice of Appeal to James Riffin at 1941 Greenspring Drive, Timonium, MD 21093.



Will Geddes

IN RE: **PETITION FOR SPECIAL HEARING**
(11019 Gateview Road)
8th Election District
3rd Councilmanic District
Karole & James Riffin
Petitioners

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **Case No. 2014-0094-SPH**

* * * * *

ORDER ON MOTION FOR RECONSIDERATION

Now pending is Petitioner's motion for reconsideration (and Memorandum of Law in support thereof), which will be denied as explained below.

The Petitioner correctly notes that the undersigned mistakenly identified a portion of the property as being zoned RC 5, rather than RC 6. In the end, it is a distinction without a difference, since the pertinent use regulations are similar for both zones.

The Petitioner emphasizes the testimony he presented at the hearing as well as the affidavits of 15 adjacent neighbors, none of whom objected to the Petitioner's use of the property and storage of vehicles and equipment thereon. Petitioner notes that no contrary evidence was presented, and he argues that as a result the Administrative Law Judge (ALJ) is required by law to find in his favor.

While in an ordinary case one might expect that Baltimore County would present evidence which contradicts that presented by Petitioner, this is not an ordinary case. Here, the Petitioner and the County entered into a settlement agreement (contained in the case file) which provides that attorneys for the County will not "appear at the hearing" but would instead "allow the Riffins to make their case to the ALJ." So that explains why the County did not participate in the hearing.

ORDER RECEIVED FOR FILING

Date

2/25/14

By

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But more importantly, it is Petitioner's burden to prove by a preponderance of the evidence that he is entitled to the relief sought. Calvert County v. Howlin Realty Inc., 364 Md. 301 (2001). It is not the County's burden to prove that the Petitioner is not entitled to the relief sought, and in this regard, I simply do not believe the Petitioner sustained his burden of proof in this case. No new evidence or facts were presented in the motion for reconsideration which would alter that conclusion.

The only relevant testimony presented at the hearing was that of Petitioner, which is recounted at pages 2-3 of the motion. Four exhibits were presented: a map showing the zoning of the property, two sets of black and white photos depicting the single family dwelling on the property and the areas around the dwelling that were entered by the inspector, and the fifteen (15) affidavits from neighbors mentioned earlier. What was not presented was any evidence to corroborate Petitioner's testimony concerning the historical and present uses of the property and the equipment and vehicles thereon. There were no photographs of the property itself or any of the equipment and vehicles at issue in the case. No receipts, tax returns, or documents of any sort were presented which would substantiate Petitioner's claims, including that the property is used for "commercial agriculture" and the "railroad equipment" (not just the caboose) is used for "recreational purposes" and to "entertain children."

An ALJ, like any fact finder, is entitled to make credibility determinations and factual findings, and I simply do not believe the Petitioner has satisfied his burden to prove that the vehicles and railroad equipment can be lawfully kept at the premises under the B.C.Z.R. While it is true Petitioner testified he uses the vehicles for commercial agricultural purposes and the railroad equipment as a "recreational amenity," saying something is so does not make it so.

The Petitioner is correct that both the DR and RC 6 zones permit (as "accessory uses")

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“swimming pools, tennis courts” and other recreational amenities. In construing a statute, the doctrine of *ejusdem generis* dictates that a general statutory term followed by a list of particulars is to be interpreted narrowly to “include only those things or persons of the same class or general nature as those specifically mentioned.” In re Wallace W., 333 Md. 186, 190 (1993). In this regard, railroad equipment is clearly not of the same class or nature as swimming pools and tennis courts.

This conclusion is also buttressed by the B.C.Z.R.’s definition of “accessory” uses, which contains a requirement that the use (or structure) be “customarily incident . . . to and serve a principal use or structure.” B.C.Z.R. §101.1. Again, railroad equipment (unlike a swimming pool) is not customarily found or used in service of a single family dwelling, which is the “principal use” of Petitioner’s property. In addition, the Petitioner failed to provide testimony or exhibits which would tend to establish that such railroad equipment was customarily used or found in residential settings.

The remaining arguments in the Motion are the same or very similar to those Petitioner made at the public hearing. To that extent, they are not the proper subject of a motion for reconsideration. Howlin Realty Inc., 364 Md. at 325 (agency “may reconsider an action previously taken and come to a different conclusion upon a showing that . . . some new or different factual situation exists that justifies the different conclusion”).

WHEREFORE, IT IS ORDERED this 25th day of February, 2014, that the Motion for Reconsideration filed by Petitioner, be and is hereby DENIED.


JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

ORDER RECEIVED FOR FILING

Date

2/25/14

By

sln

KEVIN KAMENETZ
County Executive



LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

7

February 26, 2014

Karole and James Riffin
1941 Greenspring Drive
Timonium, Maryland 21093

MOTION FOR RECONSIDERATION

RE: Petitions for Special Hearing
Case No.: 2014-0094-SPH
Property: 11019 Gateview Road

Dear Mr. and Mrs. Riffin:

Enclosed please find a copy of the decision rendered in the Motion for Reconsideration.

Sincerely,

A handwritten signature in black ink, appearing to read "JEB", is written over the printed name of John E. Beverungen.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

c: Will Geddes, 11115 Powers Avenue, Cockeysville, Maryland 21030

In re: 11019 Gateview Road
Cockeysville, MD 21030

*

Before the Zoning Commissioner

*

of Baltimore County

*

Case No.: 2014 - 0094 - SPH

* * * * *

MEMORANDUM OF LAW

1. Comes now your Petitioner, James Riffin, who respectfully submits this Memorandum of Law.

2. Petitioner asked the Hearing Officer to interpret and determine under what circumstances may a Code Enforcement Person enter upon private land without benefit of a search warrant.

3. The Hearing Officer, in his January 7, 2014 decision, elected not to address this important issue, questioning whether the Hearing Officer had the requisite jurisdiction to interpret §§ 32-3-602(b)(2) and 13-4-410 of the Baltimore County Code ("BCC").

4. The purpose of this Memorandum of Law, is to address the following issues of law:

A. Does the Hearing Officer have the jurisdiction to interpret those portions of the Baltimore County Code that relate to the Baltimore County Zoning Regulations?

B. Under what circumstances may a Code Enforcement Person enter upon private land without benefit of a search warrant?

C. What portions of Petitioners' property, if any, may a Code Enforcement Person enter without benefit of a search warrant?

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FEB 24 2014

I. JURISDICTION TO INTERPRET BALTIMORE COUNTY CODE

5. The Hearing Officer, citing BCC §32-3-301 and Baltimore County Zoning Regulation ("BCZR") 500.7, held that he only had the authority to interpret Zoning Regulations, not relevant sections of the Baltimore County Code.

6. Petitioner submitted a Motion for Reconsideration, wherein Petitioner quoted that portion of §500.7 BCZR that stated:

"The said Zoning Commission shall have the power ... to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations."

7. The phrase, "any rights whatsoever in any property in Baltimore County" is without limitation.

8. The phrase "as they are affected by these regulations" is also without limitation.

9. When a Code Enforcement Person enters upon private land, pursuant to BCC 32-3-602(b) (2), BCZR, that Code Enforcement Person is determining whether the owner / user of that private land is using that private land in compliance with the Baltimore County Zoning Regulations. This is very similar to a police officer entering upon private land to determine whether the owner / user of that private land is using the land in compliance with the criminal laws.

10. Any evidence obtained by the intrusion upon private land, can be the subject of a suppression hearing.

11. It should be evident without saying, that the evidence obtained by a Code Enforcement Person can be the subject of a suppression hearing, just like the evidence obtained by a police person can be the subject of a suppression hearing.

12. As the Zoning Officer correctly determined, a Special Hearing is similar to a Declaratory Judgement proceeding, wherein a court is being asked to determine the rights of the Petitioner.

13. All judicial proceedings, including administrative proceedings, are subject to basic Constitutional limitations, including the Constitutional right to Due Process. And a basic Due Process right is the Constitutional right for a citizen to be free of unreasonable searches and seizures, as guaranteed by the 4th Amendment of the U.S. Constitution and by Article 26 of the Maryland Constitution.

14. The Zoning Commissioner, per §500.7, BCZR, is given the explicit authority “to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these [Baltimore County Zoning] regulations.

15. The seizure of evidence by a Code Enforcement Person for the purpose of enforcing the Baltimore County Zoning Regulations with regard to a particular property constitutes the seizure of evidence for the purpose of having that property “affected by these [zoning] regulations.”

16. Since the purpose of seizing zoning-related evidence is to have an “affect” on the property from which the evidence is seized, and since the desired “affect” is pursuant to the Baltimore County Zoning Regulations, any evidence thus seized will cause a zoning regulations’ “affect” on the property from which the evidence was seized.

17. Once evidence is seized, and once the zoning regulations are utilized to ‘affect’ the property, then pursuant to §500.7 BCZR, the Zoning Commission may then “determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these [Baltimore County Zoning] regulations”

18. “Any rights whatsoever” is not limited to those rights embodied in the Baltimore County Zoning Regulations. Pursuant to the clear, express and unambiguous language of §500.7 BCZR, once the Baltimore County Zoning Regulations are implicated, the Zoning Commissioner has the

jurisdiction to determine 'any rights whatsoever,' including any rights guaranteed by the U.S. Constitution, the Maryland Constitution, and any rights flowing from Maryland's statutes or based upon Baltimore County's Code.

19. Section 32-3-301 (2) BCC gives the Zoning Commissioner the jurisdiction to "Interpret the zoning regulations."

20. The Zoning Commissioner has the jurisdiction to interpret §32-3-301 of the Baltimore County Code, in order to determine the extent of the Zoning Commissioner's jurisdiction. If the Zoning Commissioner can interpret this section of the BCC, then the Zoning Commission would also have the jurisdiction to interpret all other related sections of the BCC, including §§ 32-3-302 to §§32-3-607.

21. In carrying out his administrative functions, the Zoning Commissioner must interpret §§32-3-101 to 32-3-607, BCC.

22. The Baltimore County Zoning Regulations do not dictate what criteria must be followed for a hearing, do not dictate how appeals are to be taken, nor do the Baltimore County Zoning Regulations dictate how the Baltimore County Zoning Regulations are to be enforced. All of these criteria are found in §§32-3-101 to 32-3-607 of the Baltimore County Code.

23. To carry out his / her administrative duties pursuant to §§32-3-101 to 32-3-607 of the Baltimore County Code, the Zoning Commissioner must "interpret" these sections of the BCC, since these sections of the BCC do not give detailed instructions as to how these sections of the BCC are to be utilized. If these sections of the BCC were so detailed as to not to require any discretion on the part of the Zoning Commissioner, then the duties of the Zoning Commissioner with regard to these sections of the BCC, would be 'ministerial.'

24. That the Zoning Commissioner has some 'discretionary' authority, is revealed by § 32-3-606 BCC, which gives the Zoning Commissioner the 'discretion' to "institut[e] any

appropriate action or proceeding at law or in equity for the enforcement of zoning violations or the correction of the violations.”

25. Since the Zoning Commissioner has the ‘discretion’ to institute other appropriate actions or proceedings, the exercise of this ‘discretion’ requires the ‘interpretation’ of zoning-related sections of the Baltimore County Code.

26. And if the Zoning Commissioner has the jurisdiction to interpret at least one section of the Baltimore County Code, then the Zoning Commissioner has the jurisdiction to interpret other zoning-related sections of the BCC, including §§ 32-3-602 (b)(2) and 13-4-401, both of which Phillip Mills, a Baltimore County Zoning Enforcement person, said he relies upon to gain entry onto private land without benefit of a search warrant.

27. Judicial economy would also grant unto the Zoning Commissioner the jurisdiction to interpret zoning-related sections of the BCC. It would be extremely time-consuming and very wasteful of judicial resources to have a bifurcated hearing process: One in a court to determine whether evidence seized by a Code Enforcement Person was admissible, or should be the subject of a suppression motion, and one before the Zoning Commissioner, once a court had determined that the evidence seized was admissible.

28. If the Zoning Commissioner continues to hold that the Zoning Commissioner does not have the jurisdiction to rule on the admissibility of zoning-related evidence, that will open the door for defense lawyers to move to stay all zoning hearings while the defendant moves a court to rule on whether evidence seized without benefit of a search warrant, should be suppressed due to violating the 4th Amendment of the U.S. Constitution or Article 26 of the Maryland Constitution.

II. UNDER WHAT CIRCUMSTANCES MAY A CODE ENFORCEMENT PERSON ENTER PRIVATE LAND WITHOUT BENEFIT OF A SEARCH WARRANT

ENTRY UPON LAND IN GENERAL

§13-4-401 BCC

29. Per §13-4-401, BCC, a “permittee shall allow agents of the approving authority, after they have provided proper identification, entry onto property owned or controlled by the permittee for the purpose of (1) Collecting samples, records, and information; (2) Taking photographs; and (3) Ascertaining whether the permittee is following the regulations and orders of the approving authority.”

30. A “permittee” is defined in § 13-4-101, BCC as: “a person to whom a permit has been issued.”

31. §13-4 of the BCC regulates Solid Waste processing and disposal.

32. The “permit” referenced in §13-4-101 is the permit required by §13-4-301. §13-4-301 BCC requires all solid waste processing facilities, and all solid waste disposal sites, to be ‘permitted.’

33. The ‘right of entry’ provided by §13-4-401 BCC is **only** to a solid waste disposal site, and to a solid waste processing facility. This right of entry **would not** be applicable to land that is not being used either as a solid waste processing facility, or used as a solid waste disposal site. This right of entry **would not** grant a Code Enforcement Person a right to enter private land in general, nor Petitioners’ property in particular.

34. §13-4-401 would pass 4th Amendment muster under the ‘consent’ exception to the 4th Amendment requirement that all entries by government officials upon those portions of private land not exposed to the public, must be pursuant to a search warrant. (A permittee must grant ‘consent’ to search a solid waste processing / disposal site, as a condition precedent to obtaining a ‘permit.’)

§32-3-602(b)(2) BCC

35. §32-3-602(b)(2) BCC grants authority to a Code Enforcement Person to “enter upon open land during the performance of their duties.”

DEFINITION OF ‘OPEN LAND:’ ZONING REGULATIONS

36. Petitioner, in his Memorandum, extensively discussed the phrase “open land.” That discussion is adopted by reference herein, as if fully reproduced herein. To summarize that discussion:

37. The meaning of any words or phrases not defined in the Zoning Regulations, is to be ascertained by reference to a dictionary. Neither the word ‘open’ nor the word ‘land,’ nor the phrase ‘open land,’ is defined in the Zoning Regulations. The dictionary defines the word ‘open’ as being ‘without barriers, obstacles.’ That is: Ingress and Egress can be effected freely.

38. Petitioners argue that §32-3-602(b)(2) grants a Code Enforcement Person authority to enter land that has no ‘barriers or obstacles,” subject to the Constitutional limitations against unreasonable searches and seizures, as guaranteed by Article 26 of Maryland’s Constitution, and by the 4th Amendment to the U.S. Constitution.

39. The BCZR limit the right of entry to ‘open land.’ Petitioners argue that any land that has a barrier, such as a fence, a hedge, vegetation, signs prohibiting trespass, or anything that prevents or proscribes unimpeded ingress or egress, is not ‘open land.’

40. Petitioner’s land has numerous barriers, such as locked gates, fences, dense thorny vegetation and numerous “No Trespassing:” signs. Ingress into and Egress from Petitioner’s land is hampered by numerous ‘barriers and obstacles.’

41. Petitioner’s land is decidedly **not** ‘open land.’

42. Therefore, Petitioners argue that a Code Enforcement Person may go no further than Petitioners' locked gate, per the express language in the BCZR.

4TH AMENDMENT: UNREASONABLE SEARCHES AND SEIZURES

43. Petitioners further argue that entry upon land without 'barriers' or 'obstacles,' is still limited by Article 26 of the Maryland Constitution and by the 4th Amendment to the U.S. Constitution.

44. The 4th Amendment to the U.S. Constitution reads as follows:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized."

45. Article 26 of the Maryland Constitution states:

"All warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted."

46. It should be noted that Article 26 of the Maryland Constitution has much broader language than the 4th Amendment. The 4th Amendment is limited to "persons, houses, papers, and effects," while Article 26 **is not limited**.

47. In *Scott v. Maryland*, 366 Md. 121, 139 (2000), Maryland's Court of Appeals reiterated that Maryland's courts have "tended to use the *in pari materia* construction essentially to equate the Federal and State provisions, notwithstanding their very different language [citation omitted] and to construe the Maryland provision in conformance with constructions given to the Fourth Amendment by the Supreme Court [citations omitted]."

LAND CATEGORIES

48. Case law interpreting the 4th Amendment divides land into three categories: (A) 'Open Fields,' which has been defined as "unoccupied, undeveloped land," such as fields where crops are grown, and forests; (B) Homes, commercial structures, and public telephone booths; (C) Curtilage.

49. 'Open fields' receive no 4th Amendment protection. Homes, commercial structures, public telephone booths and curtilage, are afforded full 4th Amendment protection.

50. Numerous court cases have addressed the issue of what constitutes 'open fields,' and what constitutes 'curtilage.' Some of those cases are discussed below.

PRE / POST 1967

PRE / POST *KATZ V. U.S* (1967); *OLIVER V. U.S* (1984); *U.S. V. DUNN* (1987)

51. While entry by a Code Enforcement Person onto private land that is open to the public, would not violate the 4th Amendment (per the 'open fields' exception), that does not mean that in Maryland, such entry would be lawful under Maryland law.

TRESPASS

52. **Before 1967:** Prior to *Katz v. U.S.*, 389 U.S. 347 (1967), if the police trespassed onto private land, that was dispositive as to whether evidence seized during the trespass was admissible as evidence: **ALL evidence seized after the trespass was not admissible as evidence.** It was felt that the 'means (trespass) did not justify the end (getting a conviction).'

53. *Beale v. State*, 230 Md. 182 (1962) is illustrative of the trespass-is-dispositive doctrine. In *Beale* (which is still good law in Maryland, see *Brown v. State* below), the Maryland Court of Appeals held that:

“it is apparent to us that the police were trespassers at the time the narcotics equipment was picked up in the back yard. Officer Davis became a trespasser the moment he entered the enclosed back yard.” *Id.* 184-185.

“officers wrongfully on the premises of a suspect may not lawfully search the premises and seize such illegal possessions as they may find there.” *Id.* 185.

AFTER 1967

54. **After 1967 (after *Katz v. U.S.*):** In *Katz v. U.S.*, 389 U.S. 347 (1967), the Supreme Court held that the 4th Amendment protects **people**, not **places**.

“For the *Fourth Amendment* protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of *Fourth Amendment* protection. See *Lewis v. U.S.*, 385 U.S. 206, 210; *U.S. v. Lee*, 274 U.S. 559, 563. **But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected.**”. *Katz* at 351. Bold added.

“The Government contends, however, that the activities of its agents in this case should not be tested by *Fourth Amendment* requirements, for the surveillance technique they employed involved no physical penetration of the telephone booth from which the petitioner placed his calls. [The police placed a recording microphone on the outside of a public telephone booth, and recorded the defendant’s portion of the telephone call.] It is true that the absence of such penetration was at one time thought to foreclose further *Fourth Amendment* inquiry, *Olmstead v. U.S.*, 277 U.S. 438, 457, 464, 466; *Goldman v. U.S.*, 316 U.S. 129, 134-136, for that Amendment was thought to limit only searches and seizures of tangible property. But ‘the premise that property interests control the right of the Government to search and seize has been discredited.’ *Warden v. Hayden*, 287 U.S. 294, 304. Thus, although a closely divided Court supposed in *Olmstead* that surveillance without any trespass and without the seizure of any material object fell outside the ambit of the Constitution, we have since departed from the narrow view on which that decision rested. Indeed, we have expressly held that the *Fourth Amendment* governs not only the seizure of tangible items, but extends as well to the recording of oral statements, overheard without any ‘technical trespass under ... local property law’ *Silverman v. U.S.* 365 U.S. 505, 511. Once this much is acknowledged, and once it is recognized that the *Fourth Amendment* protects people – and not simply ‘areas’ – against unreasonable searches and seizures, it becomes clear that the reach of that Amendment cannot turn upon the presence or absence of a physical intrusion into any given enclosure.” *Katz* at 352. 353.

“The government urges that, because its agents relied upon the decisions in *Olmstead* and *Goldman*, and because they did no more here than they might properly have done

with prior judicial sanction, we should retroactively validate their conduct. That we cannot do. It is apparent that the agents in this case acted with restraint. Yet the inescapable fact is that this restraint was imposed by the agents themselves, not by a judicial officer. They were not required, before commencing the search, to present their estimate of probable cause for detached scrutiny by a neutral magistrate. They were not compelled, during the conduct of the search itself, to observe precise limits established in advance by a specific court order. Nor were they directed, after the search had been completed, to notify the authorizing magistrate in detail of all that had been seized. In the absence of such safeguards, this Court has never sustained a search upon the sole ground that officers reasonably expected to find evidence of a particular crime and voluntarily confined their activities to the least intrusive means consistent with that end. **Searches conducted without warrants have been held unlawful 'notwithstanding facts unquestionably showing probable cause,'** *Agnello v. U.S.* 269 U.S. 20, 33, **for the Constitution requires 'that the deliberate, impartial judgment of a judicial officer ... be interposed between the citizen and the police ...'** *Wong Sun v. U.S.*, 371 U.S. 471, 481-482. 'Over and again this Court has emphasized that the mandate of the [Fourth] Amendment **requires** adherence to judicial processes.' *U.S. v. Jeffers*, 342 U.S. 48, 51, and that searches conducted outside the judicial process, **without prior** approval by the judge or magistrate, **are per se unreasonable** under the the *Fourth Amendment* — subject only to a few specifically established and well-delineated exceptions." *Katz* at 356-357. Bold added.

55. In *Brown v. State*, 75 Md. App. 22 (1987), Maryland's Court of Special Appeals stated:

"The Fourth Amendment protects a person's home from unreasonable searches and seizures. The Court in *United States v. Dunn*, 480 U.S. 294 (1987) stated that **'the Fourth Amendment protects the curtilage of a house and that the extent of the curtilage is determined by factors that bear upon whether an individual reasonably may expect that the area in question should be treated as the house itself.'** The curtilage is defined as those areas near the residence which harbor the **'intimate activity associated with the 'sanctity of a man's home and the privacies of life.'** ' *Oliver v. U.S.* 466 U.S. 170, 180 (1984)." *Brown* at 30. Bold added.

"In *Dunn, supra*, the Court said,

we believe, that curtilage questions should be resolved with particular reference to four factors:

- [1] the proximity of the area claimed to be curtilage to the home,
- [2] whether the area is included within an enclosure surrounding the home,
- [3] the nature of the uses to which the area is put, and
- [4] the steps taken by the resident to protect the area from observation by people passing by.

We do not suggest that combining these factors produces a finely tuned formula that, when mechanically applied, yields a 'correct' answer to all extent-of-curtilage questions. Rather, these factors are useful analytical tools only to the degree that, in any given case, **they bear upon the centrally relevant consideration – whether the area in question is so intimately tied to the home itself that it should be placed under the home's 'umbrella' of Fourth Amendment protection.**" *Dunn* at 301. *Brown* at 31. Bold added.

"entry into Brown's curtilage was a trespass, *Beale v. State*, 230 Md. 182, 184-185 (1962), into an area protected by the Fourth Amendment, and the entry may not be legitimated on the grounds advanced by the State. ... **We hold that the entry into Brown's curtilage was a trespass which, absent a valid warrant or proper exigent circumstances, violated the Fourth Amendment as an unreasonable search.**" *Brown* at 35. Bold added.

"Courts in other jurisdictions have also held that **entries into areas of the curtilage not open to the public**, such as in the case *sub judice*, **are violations of the Fourth Amendment absent a valid warrant or proper exigent circumstances.**" [Three citations omitted. Illinois, Florida and North Dakota.] *Brown* at 35. Bold added.

"Assuming, *arguendo*, that a 'search' occurred, Brown argues that the warrantless entry into his curtilage violated his Fourth Amendment right to be free from an unreasonable search and seizure. He relies heavily on *Beale v. State*, 230 Md. 182 (1962) and *Hobson v. U.S.*, 226 F.2d 890 (8th Cir. 195). **We agree.**" *Brown* at 37. Bold added.

In *Beale*, "[t]he court said, 'it is apparent to us that the police were trespassers at the time the narcotics equipment was picked up in the backyard. Officer Davis became a trespasser the moment he entered the enclosed backyard.' *Id.* At 185-185. The Court held that 'the seizure of the narcotics equipment by the police was clearly illegal ... [a]nd, inasmuch as at least one of the police officers was an intruder when the equipment was picked up in the backyard without a search warrant, it is evident that the unauthorized seizure was unreasonable.' *Id.* At 187." *Brown* at 38.

"We hold that *Beale* is dispositive." *Brown* at 38. Bold added.

"We do not read *Oliver*, as the State would have us read it, to hold or imply that a trespass is never a consideration on the issue of whether there has been a Fourth Amendment violation. Rather, we read *Oliver* as stating that **the law of trespass is a consideration, although not dispositive, on the issue of whether there has been a violation of the Fourth Amendment.**" *Brown* at 39. Bold added.

JONES V. MARYLAND (2008)

56. In *Jones v. Maryland*, 407 Md 33, 45-46 (2008), a case cited by the Zoning Commissioner, Maryland's Court of Appeals made the following declarations:

- (1) "The Supreme Court has held that the threshold of a home is not a protected area **when voluntarily exposed**, [*U.S. v. Santana*, 427 U.S. 38 (1976)], and
- (2) **open land not otherwise subject to a reasonable expectation of privacy** is not made so by the presence of a no trespassing sign, even if the investigating officer sees it. *Oliver v. U.S.* [466 U.S. 170 (1984)]." Bold added.

CODE ENFORCEMENT PERSON'S RIGHT OF ENTRY IN GENERAL

57. Pursuant to *Jones*, a Code Enforcement person could:

- (A) Approach the threshold of a home, **so long as the threshold was exposed to the public;** and
- (B) Enter upon 'open land,' even when a 'No Trespassing' sign is visible, **so long as the 'open land' was NOT** 'subject to a reasonable expectation of privacy.' That is, a Code Enforcement person could enter upon 'open fields,' as defined by the U.S. Supreme Court, but **could NOT enter the 'curtilage,' nor a 'home.'** [The 'curtilage' is defined as that area around a home that is 'subject to a reasonable expectation of privacy,' and that 'harbors the intimate activity associated with the 'sanctity of a man's home.' *Oliver* at 180.]

CODE ENFORCEMENT PERSON'S RIGHT OF ENTRY ONTO PETITIONERS' LAND

58. *Jones*, *Santana* and *Oliver* are distinguishable from Petitioners' property in the following ways:

JONES V. MARYLAND

59. Holdings: A. The Police can go where the public can go without violating the 4th Amendment.

B. A No Trespassing sign will not turn an 'open field' into a 4th Amendment protected area.

60. In *Jones*, the 'no trespassing' sign was on a tree 30 feet from the roadway, and was covered by vegetation. In addition to 'no trespassing,' it also said 'no hunting and fishing.' The Court of Special Appeals had this to say about the 'no trespassing' sign:

"The inclusion of the words 'hunting and fishing' and the fact that the sign is placed back from the road in the middle of a field is significant to the Court as to the expectations of the owners of the property and the significance they intended that sign to have.

In this case, the evidence as to the placement of that sign is that again it is a sign which is **out in the field** and includes reference to hunting or fishing, so that one might reasonably infer that that was the primary intent of it, to keep people from going out in the fields." Bold added.

61. In this proceeding, Petitioner's 'no trespassing' signs (Plural – there are six 'no trespassing' signs clearly visible from Petitioner's locked gate. There are an additional 30+ signs around the perimeter of Petitioners' property.) **are not** in a 'field.' They are immediately adjacent to the roadway. There are **two** 'no trespassing' signs on the post supporting the locked gate. There are no 'open fields' immediately adjacent to the roadway. There are dense, thorny thickets immediately adjacent to the roadway. **Petitioner's property has fencing around it.**

62. In *Jones*, "there were mailboxes which were up the driveway. And that a mailman regularly would go to the same area that the police had gone." The mailboxes near Petitioner's property are located some 200 feet **before** one gets to Petitioner's locked gate. No mailman 'regularly would go to the same area that the police had gone.'

63. In *Jones*, the defendant was receiving Fed-X and UPS deliveries daily, which deliveries were made to an outbuilding on the defendant's property. Petitioner **never receives, nor has Petitioner ever received** any kind of Fed-X, UPS, or U.S. Postal Service delivery at Petitioner's property. Petitioner Karole Riffin has a post office box, to which Karole Riffin's mail is sent. James Riffin receives all of his mail at his 1941 Greenspring Drive, Timonium, MD address. All Fed-X or UPS deliveries are made to Petitioner's 1941 Greenspring Drive address.

64. In *Jones*, the court said:

"I would assume that there was electricity and heating in these homes, so they were probably also receiving either electricity – I mean either heating oil deliveries or people coming to read the electric meters."

65. Petitioners **do not** get automatic oil deliveries. Any oil used by Petitioners, is brought to the property by Petitioners. Petitioners' electric meter is mounted on a board about 100-feet from the locked gate. (Petitioners' electric meter is located **one-quarter mile** from Petitioners' dwelling.) It is read via a wireless link. The BGE meter reader merely drives up to Petitioners' locked gate, and 'reads' the meter from his / her vehicle, without going past Petitioners' locked gate. In short, **no one** comes onto Petitioners' land without first getting Petitioners' express consent, each and every time entry onto Petitioners' land occurs. (Neighbor Will Geddes **always** calls **before** entering Petitioners' land, and obtains Petitioners' consent to be on Petitioners' land each and every time entry onto Petitioners' land occurs. No other neighbor comes onto Petitioners' land, for all of Petitioners neighbors know not to enter Petitioners' land without first obtaining permission.¹

¹ It is common knowledge in Petitioners' neighborhood that some years ago a man and wife came onto Petitioners' property at a time when Petitioners' expressly told the man and wife not to come to the property. While on Petitioners' property, the wife was attacked by a dog. The wife received significant dog bites. Petitioners filed civil trespass charges against the man and wife. The judge told the man and wife that had the Petitioners' No Trespassing signs said "Violators will be prosecuted," the trespass would have been criminal, not civil. Today, **all** of Petitioners' No Trespassing signs say: "Violators will be prosecuted." The neighbors know not to come onto Petitioners' land without first contacting Petitioners.

INTENT WHEN COMING ONTO PRIVATE LAND

66. The courts have made it clear that the intent in coming onto a property is a crucial factor. See *Davis v. U.S.*, 327 F. 2d 301, 304 (9th Cir., 1964), wherein the 9th Circuit said:

“It is obvious from its denial of defendant’s motion to suppress that the trier of the fact credited the testimony of the officers that they had gone to defendant’s home **solely for the purpose of talking to him – and not for the purpose or intent of entering and searching the premises**, or arresting him, without a warrant. Likewise, it is certain that he believed the officers’ testimony as to the manner of entry into the house and that **the intent of the officers at the instant of entry was still but to attempt to talk to the defendant.**” Bold added.

67. *Jones* was a ‘knock and talk’² situation. The police did not come to the defendant’s property for the purpose of conducting a warrantless search of defendant’s property. The police came to ‘talk,’ not to conduct a warrantless search.

68. In *Scott*, a 2001 case, the Court made it clear that “absent express orders to the contrary,” a ‘knock and talk’ does not violate the 4th Amendment. In *Jones*, a 2008 case, the Court elaborated on what ‘express orders to the contrary’ were: A police officer can go where the public can go. A No Trespassing sign in a field, does not equal ‘express orders to the contrary.’ The police **may not** enter where there is an ‘expectation of privacy.’ The purpose of

² A ‘knock and talk’ “is a procedure in which police officers, lacking a warrant or other legal justification for entering or searching a dwelling place, approach the dwelling, knock on the door, identify themselves as law enforcement officers, request entry in order to ask questions concerning unlawful activity in the area, and, upon entry, eventually ask permission to search the premises. Permission is often given, and, if the police then find contraband or other evidence of illegal activity, the issue is raised of whether the procedure has in some way contravened the occupant’s Fourth Amendment right.” *Scott v. Maryland*, 366 Md. 121, 129 (2001).

“ ‘Absent express orders from the person in possession against any possible trespass, there is no rule of private or public conduct which makes it illegal per se, or a condemned invasion of the person’s right of privacy, for anyone openly and peaceably, at high noon, to walk up the steps and knock on the front door of any man’s ‘castle’ with the honest intent of asking questions of the occupant there – whether the questioner be a pollster, a salesman, or an officer of the law.’ ” *Scott at 130.*

a 'knock and talk,' is to ask questions, **not** to seize evidence. The property owner has the absolute right to refuse to talk to the police, to answer any of the police's questions, and to order the police to leave, either initially, or after 'talking' for a period of time.

69. A Code Enforcement person comes to a property for the express purpose of seizing evidence that can be used to support a zoning violation citation. A Code Enforcement Person comes onto private land **intending** to conduct a warrantless search of the premises, **intending** to seize evidence to be used against the property owner. A Code Enforcement person rarely, if ever, starts his inquiry with a knock on the door, to ask questions. A Code Enforcement person immediately begins to take ('seize') photographs of the premises, **before** any 'consent' to 'search' the premises is given. The courts have uniformly held this to be unconstitutional. See *Davis, supra*, paragraph 66.

70. In *Jones*, after the police knocked on the front door of the dwelling, which front door was visible from where the mailboxes were located, a user of the property (the defendant's wife), gave the police consent to be on the property, and escorted the police to various outbuildings, let the police into the outbuildings, gave the police consent to search defendant's automobile, and gave the police the keys to the automobile, wherein the police found the incriminating evidence.

71. In this proceeding, the Petitioners have never consented to having a Code Enforcement person on their property.

72. In *Jones*, the court concluded that "the front of the house and the door were exposed to the public, and appellant had no reasonable expectation of privacy with respect to entry of the yard and a knock on the door by investigating officers." *Jones* at 46.

73. The front door of Petitioners' dwelling is located more than one-quarter mile from the nearest public right-of-way, and is decidedly **not** exposed to the public. There are at least six 'No Trespassing, Violators will be Prosecuted' signs immediately adjacent to Petitioners' driveway, and 30+ more No Trespassing signs surrounding Petitioners' property, letting the

public know coming onto Petitioners' land without Petitioners' express permission, constitutes a **criminal** trespass, not just a civil trespass. There is a locked gate across Petitioners' driveway. There is a fence around the perimeter of Petitioners' property. The vegetation and topography prevent the public from viewing the interior of Petitioners' property. Petitioners' engage in 'intimate activities' in the center and eastern portions of their property: Dining, viewing the heavens, sleeping, entertaining guests, doing office work, feeding and observing wildlife on a daily basis. The Petitioners decidedly have an 'expectation of privacy.' In addition, when one enters Petitioners' property, they enter via Petitioners' **back yard, not Petitioners' front yard**. See Petitioners' Site Plan. Courts have uniformly held that the back yard of a dwelling is a part of the curtilage, and that citizens have 'a reasonable expectation of privacy' and have a reasonable expectation that government officials will not enter citizens' back yards without benefit of a search warrant. See *Young v. City of Radcliff*, 561 F. Supp. 2d 767 (W.D. Kentucky, 2008), discussed below in paragraphs 88 and 90.

U. S. V. SANTANA

74. In *U.S. v. Santana*, 427 U.S. 38 (1976), an undercover narcotics person arranged to buy drugs from a drug dealer. The drug dealer went into a house, obtained the drugs, then got into the undercover agent's car. The actual drug buy occurred two blocks away from the house. The undercover agent returned to the house, where the agent saw Santana in the doorway to the house. The undercover agent identified himself as police, then attempted to apprehend Santana, while Santana was at the threshold of the house. Santana retreated into the house, where Santana was apprehended. The legal question presented was whether Santana's 4th Amendment rights were violated when the police entered the house, without a search warrant, and arrested Santana, without an arrest warrant. The Supreme Court held Santana's 4th Amendment rights were not violated.

75. The Supreme Court held:

A. A warrantless arrest in a public place with probable cause did not violate the 4th Amendment.

B. "What a person knowingly exposes to the public, even in his own house or office, is not a subject of *Fourth Amendment* protection. *Katz v. U.S.*, 389 U.S. 347, 351 (1967). She was not merely visible to the public but was as exposed to public view, speech, hearing, and touch as if she had been standing completely outside her house. *Hester v. United States*, 265 U.S. 57, 59 (1924). Thus, when the police, who concededly had probable cause to do so, sought to arrest her, they merely intended to perform a function which we have approved in *Watson*." *Id.* at 42. 4

76. *Santana* is distinguishable from Petitioners' case in the following ways:

77. The **only** portion of Petitioners' property that Petitioners have "knowingly exposed to the public," is the area immediately surrounding Petitioners' locked gate. At most, the public, while standing at Petitioners' locked gate, can see 100 feet into Petitioners' property. All views of Petitioners' property more than 100 feet from Petitioners' locked gate, are blocked by dense vegetation, and by the natural topography of Petitioners' property. **None** of Petitioners' equipment and material are visible to the public from Petitioners' locked gate. See Petitioners' Affidavits. The public, if standing at Petitioners' locked gate, **cannot** 'see,' 'hear,' nor 'touch' any of Petitioners' equipment and material, nor can the public 'see,' 'hear,' nor 'touch' Petitioner, when Petitioner is in the same location as his equipment and material.

OLIVER V. U.S.

78. In *Oliver v. U.S.*, 466 U.S. 170 (1984), Kentucky State Police, acting on reports that marihuana was being raised on petitioner's farm, went to the farm to investigate. "Arriving at the farm, they drove past petitioner's house to a locked gate with a "No Trespassing" sign, but with a footpath around one side. The agents then walked around the gate and along the road and found a field of marihuana over a mile from petitioner's house." *Id.* At 173.

79. The Supreme Court held:

“The ‘open fields’ doctrine, first enunciated by this Court in *Hester v. U.S.*, 265 U.S. 57 (1924), permits police officers to enter and search a field without a warrant.” *Id.* 173.

“We conclude, as did the Court in deciding *Hester v. United States*, that the government’s intrusion upon the open fields is not one of those ‘unreasonable searches’ proscribed by the text of the *Fourth Amendment*.

This interpretation of the *Fourth Amendment*’s language is consistent with the understanding of the right to privacy expressed in our *Fourth Amendment* jurisprudence. Since *Katz v. United States*, 389 U.S. 347 (1967), the touchstone of Amendment analysis has been the question whether a person has a ‘constitutionally protected reasonable expectation of privacy.’ *Id.* at 360 (Harlan, J. Concurring). The Amendment does not protect the merely subjective expectation of privacy, but only those ‘[expectations] that society is prepared to recognize as ‘reasonable.’ *Id.* at 361.” *Oliver* at 177.

“In assessing the degree to which a search infringes upon individual privacy, the Court has given weight to such factors as the intention of the Framers of the *Fourth Amendment*, e.g. *United States v. Chadwick*, 433 U.S. 1, 708 (1977), the uses to which the individual has put a location, e.g. *Jones v. United States*, 362 U.S. 257, 265 (1960), and our societal understanding that certain areas deserve the most scrupulous protection from government invasion, e.g. *Payton v. New York*, 445 U.S. 573 (1980). These factors are equally relevant to determining whether the government’s intrusion upon open fields without a warrant or probable cause violates reasonable expectations of privacy and is therefore a search proscribed by the Amendment.” *Oliver* at 178.

“In this light, the rule of *Hester v. United States*, *supra*, that we affirm today, may be understood as providing that an individual may not legitimately demand privacy for activities conducted out of doors in fields, **except in the area immediately surrounding the home.** [citation omitted] This rule is true to the conception of the right to privacy embodied in the *Fourth Amendment*. The Amendment reflects the recognition of the Framers that **certain enclaves should be free from arbitrary government interference.** For example, the Court since the enactment of the *Fourth Amendment* has stressed ‘the overriding respect for the sanctity of the home that has been embedded in our traditions since the origins of the Republic. **Bold added.**

8. The *Fourth Amendment* protection of offices and commercial buildings, in which there may be legitimate expectations of privacy, is also based upon societal expectations that have deep roots in the history of the Amendment. See *Marshall v. Barlow’s Inc.*, 436 U.S. 307, 311 (1978).” *Oliver* at 178. **Bold added.**

“In contrast, **open fields do not provide the setting for those intimate activities that the Amendment is intended to shelter from government interference or**

surveillance. There is no societal interest in protecting the privacy of those activities, such as the cultivation of crops, that occur in open fields. Moreover, as a practical matter these lands usually are accessible to the public and the police in ways that a home, an office, or commercial structure would not be. It is not generally true that fences or 'No Trespassing' signs effectively bar the public from viewing open fields in rural areas. And both petitioner Oliver and respondent Thornton concede that the public and police lawfully may survey lands from the air. For these reasons, the asserted expectation of privacy in open fields is not an expectation that 'society recognizes as reasonable.' " *Oliver* at 179. Bold added.

"The dissent conceives of open fields as bustling with private activity as diverse as lovers' trysts and worship services. *Post* at 191-193. But in most instances **police will disturb no one when they enter upon open fields. These fields, by their very character as open and unoccupied, are unlikely to provide the setting for activities whose privacy is sought to be protected by the Fourth Amendment.** One need think only of the vast expanse of some western ranches or of the undeveloped woods of the Northwest to see the unreality of the dissent's conception. Further, the *Fourth Amendment* provides ample protection to activities in the open fields that might implicate an individual's privacy. An individual who enters a place defined to be 'public' for *Fourth Amendment* analysis does not lose all claims to privacy or personal security. [citation omitted] For example, the *Fourth Amendment's* protections against unreasonable arrest or unreasonable seizure of effects upon the person remain fully applicable." *Oliver* at 179. Bold added.

"The historical underpinnings of the open fields doctrine also demonstrate that the doctrine is consistent with respect for 'reasonable expectations of privacy.' As Justice Holmes, writing for the Court, observed in *Hester*, 265 U.S. at 59, the common law distinguished 'open fields' from the 'curtilage,' the land immediately surrounding and associated with the home. See 4 W. Blackstone, Commentaries, 225. The distinction implies that only the curtilage, not the neighboring open fields, warrants the *Fourth Amendment* protections that attach to the home. At common law, **the curtilage is the area to which extends the intimate activity associated with the 'sanctity of a man's home and the privacies of life,'** *Boyd v. United States*, 116 U.S. 616, 630 (1886), and therefore has been considered part of the home itself for *Fourth Amendment* purposes. Thus, courts have extended *Fourth Amendment* protection to the curtilage; and they have defined the curtilage, as did the common law, by reference to the factors that determine whether **an individual reasonably may expect that an area immediately adjacent to the home will remain private.**" *Oliver* at 180. Bold added.

"Neither petitioner Oliver nor respondent Thornton has contended that the property searched was within the curtilage. Nor is it necessary in these cases to consider the scope of the curtilage exception to the open fields doctrine or the degree of *Fourth Amendment* protection afforded the curtilage, as opposed to the home itself. It is clear, however, that the term 'open fields' **may include any unoccupied or undeveloped area outside of the curtilage.** *Oliver* at 180. Bold added.

“The clarity of the open fields doctrine that we reaffirm today is not sacrificed, as the dissent suggests, by our recognition that the curtilage remains within the protections of the *Fourth Amendment*. Most of the many millions of acres that are ‘open fields’ **are not close to any structure and so not arguably within the curtilage**. And, for most homes, the boundaries of the curtilage will be clearly marked; and **the conception defining the curtilage – as the area around the home to which the activity of home life extends** – is a familiar one easily understood from our daily experience. *Oliver* at 182. Bold added.

OPEN FIELDS VS CURTILAGE

80. The Supreme Court listed the following criteria, which if present, would suggest that the land being analyzed, would be 4th Amendment unprotected ‘open fields,’ versus 4th Amendment protected curtilage:

A. UNOCCUPIED / UNDEVELOPED LAND

81. **Land that is unoccupied or undeveloped.** *Oliver* at 180. Petitioners’ land is both occupied and developed. **Occupied:** The central and eastern portion of Petitioners’ land, where James keeps his equipment and material, is occupied by both Petitioners. Petitioners ‘occupy’ [use / are present on a daily basis / engage in “intimate activities that the Amendment is intended to shelter from government interference or surveillance,”] the eastern and central portions of their property in the following ways: Karole feeds / observes wildlife (done daily for two hours each day by Karole); James and guests observe, via an 8" reflecting telescope, the stars and planets, (done in a specially-built structure in the central portion of Petitioners’ property, in the middle of where Petitioners’ equipment and material is stored, which structure has a roof that can be moved, opening up the night sky to permit viewing the stars and planets); James performs office and personal tasks, such as filling out income tax forms, creating and typing legal pleadings (Petitioners use the caboose as an office wherein legal pleadings are created and typed, / as an intimate dinning area / as sleeping quarters / and as a place where guests may be entertained / may spend the night sleeping.). No crops are grown in this area. The crops (vegetables / berries) grown on the property by Petitioners, are grown on the perimeter of the central and eastern portion of Petitioners’ property. The fruit bearing trees are scattered

about the eastern portion of the property. The mast-quality trees are grown in the northern portion of the property. **Developed:** The **eastern portion** of Petitioners' property has the primary dwelling, along with two additional structures, both of which are used to store Petitioners' personal property, both of which are used by Petitioner as a 'shop,' where James Riffin constructs household items, such as wood cabinetry, and repairs household items, such as motors, kitchen and bathroom appliances, air conditioning and heating appliances. The **central portion** of Petitioners' property has been graded, leveled, and has had a dust-free pervious surface placed on it. Petitioner has placed / erected utility sheds in this area, which are used to store personal property / used to store and repair agricultural material and implements / used as a place of refuge and solitude.

B. IMMEDIATELY SURROUNDING HOME

82. **Immediately surrounding the home.** *Oliver* at 178. The **eastern portion** of Petitioners' land is where Petitioners' primary dwelling is located. This area is 'immediately surrounding the home' of Petitioners. The **central portion** of Petitioners' property is where Petitioners' 'accessory' home is located: Where Petitioners' caboose is located, which is used as an office, as secondary sleeping quarters, as a 'fancy' dining area, as a 'fancy' place to entertain guests. A 'utility shed' is used to house a telescope, which is used by Petitioners and guests, to view the stars and planets during the evening. The telescope was placed in this location in order to avoid 'heated' areas (heat radiation will distort images of the sky), to avoid as much background light as possible, and to avoid vibrations incident to a house. (High powered telescopes are very sensitive to heat radiation and to vibrations.)

C. CURTILAGE

83. The "curtilage is the area to which extends the intimate activity associated with the 'sanctity of a man's home and the privacies of life an individual reasonably may expect.' " *Oliver* at 180. Both the eastern and central portions of Petitioners' property would constitute 'curtilage.' It is in these areas where Petitioners have extended "the intimate activity associated

with the 'sanctity of a man's home and the privacies of life an individual reasonably may expect.'

" Both the eastern and central portions of Petitioners' property are in the back yard of Petitioners' primary dwelling. See Site Plan attached to Petition for Special Hearing. The back yard of a dwelling has been held to be 'curtilage.' See *Young v. City of Radcliff*, 561 F. Supp. 2d 767 (W.D. Kentucky, 2008), wherein the court held that the curtilage included not only the back yard of a dwelling, but also included an area outside of the fenced portion of the back yard. See also: *Beale v. State*, 230 Md. 182, 186 (1982), wherein a police officer entered an enclosed back yard, without permission, and observed the defendant throw narcotics paraphernalia from a window when another police officer approached the front door. The Court ruled that the back yard was subject to 4th Amendment protection. And also see: *Brown v. State*, 75 Md. App. 22 (1988), wherein the court held that the police violated the 4th Amendment when the police entered a back yard, after receiving no answer to knocking on the front door.

D. FRONT DOOR

84. **Front door of house.** *Jones v. State*, 178 Md. App. 454, 472 (2008). In this case, the Court of Special Appeals stated:

"In the case before us, the front of the house and the door were exposed to the public, and appellant had no reasonable expectation of privacy with respect to entry of the yard and a knock on the door by investigating police officers."

"[T]he front door area was entitled to extremely limited *Fourth Amendment* protection because the defendant was not entitled to an expectation of privacy **in an area in which the public was welcome.**" *Id.* At 475. Bold added.

"The Supreme Court has held (1) that the threshold of a home is not a protected area **when voluntarily exposed**, *Santana*, 427 U.S. 38." 178 Md App. at 473. Bold added.

85. In *Davis v. U.S.*, 327 F. 2d 301, 303 (9th Cir. 1964), the court held:

"The uncontradicted evidence of the officers was that at the time they went to defendant's residence, **it was not their intention** to arrest the defendant nor **to search**

the premises. They went there for the purpose of talking to Davis, whom none of them, apparently, had ever met before. The words addressed to Pamela when the door was opened were: 'I would like to talk to Albert Davis.' ” Bold added,

“**Absent express orders from the person in possession against any possible trespass,** there is no rule of private or public conduct which makes it illegal per se, or a condemned invasion of the person's right of privacy, for anyone openly and peaceably, at high noon, to walk up the steps and knock on the front door of any man's 'castle' with the honest intent of asking questions of the occupant thereof – whether the questioner be a pollster, a salesman, or an officer of the law.” Bold added.

86. As stated *supra*, paragraphs 61, 65, 73, and 77, Petitioners' front door **is not** 'voluntarily exposed' to the public,' nor is Petitioners' front door 'in an area in which the public was welcome.' Likewise, Petitioners have given 'express orders against any possible trespass.'

87. Petitioners' front door is more than one-quarter mile from the nearest public right-of-way, is protected by **two** locked gates, and is protected by **no less than eight** No Trespassing signs, all of which decidedly make the public **Unwelcome**, all of which would constitute 'express orders against any possible trespass,' and all of which decidedly **do not voluntarily** expose Petitioners' front door to the public.

INTENT OF CODE ENFORCEMENT PERSON

88. In *Davis*, the court made it clear that it was not the intent of the police to search the premises. In *Young v. Radcliff*, *op. cit.* at 782, the court also made a similar comment: “especially where, as here, the officers [were] not on a quest for evidence but [were] merely observing to see if anyone exits the residence while another officer knocks at the front door.”

89. As stated in paragraph 69 above, when a Code Enforcement person comes onto private land, the intent of that Code Enforcement person is to search the premises for the express intent of seizing evidence (taking photographic images) to be used to prosecute a citation. A Code Enforcement person, has no intent, nor desire, to 'talk' to the occupant, nor to 'ask questions' of the occupant. The Code Enforcement person intends to conduct a warrantless search of the

premises for the express purpose of seizing evidence to be used against the defendant. And it is that intent, which calls into play the protections afforded by the 4th Amendment and Article 26 of Maryland's Constitution.

90. In *Radcliff*, *Id.* at 782, the 9th Circuit stated:

"It is a 'basic principle of *Fourth Amendment* law' that searches and seizures, inside a home without a warrant are presumptively unreasonable." *Payton v. New York*, 445 U.S. 573, 586 (1980). In general, an unreasonable search is defined in terms of a person's 'reasonable expectation of privacy' and **is analyzed under a two-part test**. *Widgren v. Maple Grove Twp.*, 429 F. 3d 575, 578 (6th Cir. 2005) [citing *Katz v. U.S.*, 389 U.S. 347 (1967)]. **First, 'has the individual manifested a subjective expectation of privacy in the object of the challenged search?' And (2) 'is society willing to recognize that expectation as reasonable?'** *Widgren*, 429 F. 3d at 578 [quoting *California v. Ciraolo*, 476 U.S. 207, 211 (1986)]. **'Assessing the degree of intrusion requires addressing both the methods used and the purpose for the intrusion.'** *Id.* At 583. Bold added.

"Generally, a search involves looking 'over or through for the purposes of finding something.' *Kyllo*, 533 U.S. 27, 33 n. 1 (2001), although 'a search may occur even where the officer was not intentionally looking for something, **so long as the 'objective effect of his actions' infringed on a reasonable expectation of privacy.**' *Widgren*, 429 F. 3d at 580 [quoting *U.S. v. Maple*, 358 U.S. App. D.C. 260, 348 F. 3d 260, 263 (D.C. Cir. 2003)]. The Sixth Circuit has also described a search to imply **'an examination of one's premises or person with a view to the discovery of contraband or evidence of guilt to be used in prosecution of a criminal action.'** *Taylor v. Michigan Dept. Of Nat. Res.*, 502 F. 3d 452, 457 (6th Cir. 2007) [quoting *U.S. v. Blackburn*, 389 F.2d 93, 95 (6th Cir. 1986)]." Bold added.

"*Fourth Amendment* protections hinge on the occurrence of a search. Burton and Smallwood argue that because they were 'merely observing to see if anyone exited the rear of the residence' (as opposed to a 'quest for evidence') and because they did not enter the fenced perimeter of Young's backyard, they were not engaged in a search for purposes of the *Fourth Amendment*. However, the **subjective intent of the officers is impossible to discern and irrelevant** to determining whether their actions amount to a search. See *Taylor*, 502 F. 3d at 457 (6th Cir. 2007) [citing *Bond v. U.S.* 529 U.S. 334, 339 n. 2 (2000)]. The Court concludes that what Burton and Smallwood describe as 'observing the rear of the residence' **amounts to a search**, if the *Katz* analysis indicates that the object of the search was subject to a reasonable expectation of privacy." *Radcliff* at 783. Bold added.

"The first question under *Katz* is whether Young manifested a subjective expectation of privacy in the *object* of the challenged search. Burton and Smallwood's testimony

indicates that they were peering into the interior of Young's home through his glass back doors, effecting a visual search of the interior of Young's home. The Supreme Court has described observation of the interior of the home as 'the prototypical ... area of protected privacy.' *Kyllo*, 533 U.S. at 27. Indeed, '[a]t the very core stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion.' *Id.* at 31." *Radcliff* at 783.

"The second part of the *Katz* inquiry examines whether this expectation was one society recognizes as reasonable, or in other words 'what the person wanted to protect his privacy from, for example, non-family members ... strangers passing by on the street.' *Widgren*, 429 F. 3d at 579 (citation omitted). The *Fourth Amendment* protection of the home does not 'require law enforcement officers to shield their eyes when passing by a home on public thoroughfares. Nor does the mere fact that an individual has taken measures to restrict some views of his activities preclude an officer's observation from a public vantage point where *he has a right to be* and which renders the activities clearly visible.' *Ciralo*, 476 U.S. at 213." *Radcliff* at 784. Italics in original.

"Next the Court must determine whether Burton and Smallwood had a 'right to be' at the location on Young's property when they peered into his home. Burton and Smallwood argue that because they did not enter the fenced perimeter of Young's backyard, they were in 'open fields,' a term which defines an area in which a property owner has no reasonable expectation of privacy, and from which vantage point an officer can peer into constitutionally protected areas. See *U.S. v. Dunn*, 480 U.S. 294 (1987) [concluding that observation of objects protected by the *Fourth Amendment* from a vantage point in the open fields does not violate the *Fourth Amendment*]; *Oliver v. U.S.*, 466 U.S. 170, 177 (1984). A related concept is that ***Fourth Amendment* protections also extend to the curtilage around a home.** See *Oliver*, 466 U.S. at 180. Bold added.

"Curtilage includes the land surrounding and associated with the home which 'harbors the intimate activity associated with the sanctity of a man's home and the privacies of life' *Hardesty v. Hamburg Township*, 461 F. 3d 646 (6th Cir. 2006) [quoting *Dunn*, 480 U.S. 294 at 300 (1987). In *Dunn*, the Supreme Court explained that:

Curtilage questions should be resolved with particular reference to four factors:

- (1) the proximity of the area claimed to be curtilage to the home,
- (2) whether the area is included within an enclosure surrounding the home,
- (3) the nature of the uses to which the area is put, and
- (4) the steps taken by the resident to protect the area from observation by people passing by.

480 U.S. at 301 (numbers added). Applying the four *Dunn* factors here, the Court concludes that the area where Burton and Smallwood stood **was within the curtilage.** [Bold added.]

The second factor might suggest that they were in an area beyond the curtilage because Burton and Smallwood were standing outside a fence. It is true that courts often consider the fence as a strong indication of the boundary of the curtilage. The photographic exhibits of Young's residence submitted by Burton and Smallwood, however, reveal that the 'nature and uses to which the area is put' indicate that the fence did not necessarily mark the boundary of the 'intimate activity' and actually enclosed only a very small area directly adjacent to the house.

In addition, a covered grill, dinner triangle, chairs, and **birdhouse** all were situated just outside the small wooden fence in the area where Burton and Smallwood stood. Although these items were not within an enclosure, they manifest evidence that the area where the officers were standing was used for activities and privacies of domestic life, and was not as Burton and Smallwood argue, an 'open field.' See, e.g. *Wigren*, 429 F. 3d at 582 (finding that a picnic table, a fire pit, and pruned trees sufficient to indicate an area is within curtilage); *U.S. v. Jenkins*, 124 F. 3d 768, 773 (6th Cir. 1997) (finding evidence of laundry and **gardening to weigh in favor of finding an area to be within curtilage**)." Bold added.

Finally, the very location of the area immediately surrounding the home are really extensions of the dwelling itself. This is not true simply in a mechanical sense because the areas are geographically proximate. It is true because people have both actual and reasonable expectations that many of the private experiences of home life often occur outside the house."

"Thus, the *Dunn* factors weigh in favor of finding that the area where Burton and Smallwood were standing was part of the curtilage of Young's home" *Radcliff* at 784 - 785.

CONCLUSION:

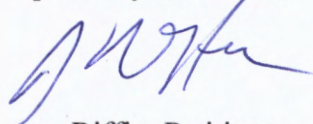
A CODE ENFORCEMENT PERSON DOES NOT HAVE A RIGHT TO ENTER PETITIONERS' LAND WITHOUT A SEARCH WARRANT

91. Petitioners' have (A) taken numerous steps to prevent the public from entering their land east of their locked gate; (B) have put the public on notice that it is a criminal trespass to enter upon Petitioners' land east of their locked gate; (C) use that portion of their land east of their locked gate for 'intimate activities associated with a man's home;' (D) have a reasonable expectation of privacy on that portion of their land that is east of their locked gate. That portion of Petitioners' land that is east of their locked gate (E) cannot be 'viewed' nor 'touched' by the public without committing a criminal trespass. (F) That portion of Petitioners' land that is east

of their locked gate is within the 'curtilage' of their home, and as such, is to be afforded the full protection of the 4th Amendment of the U.S. Constitution and Article 26 of the Maryland Constitution.

92. A Baltimore County Code Enforcement Person **does not** have any right to enter upon that portion of Petitioners' land that is east of their locked gate without a court issued search warrant.

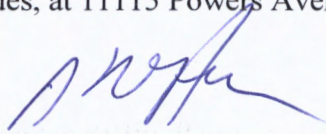
Respectfully submitted,



James Riffin, Petitioner
1941 Greenspring Drive
Timonium, MD 21093
(443) 414-6210

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of February, 2014, I hand delivered a copy of the foregoing Memorandum of Law to Will Geddes, at 11115 Powers Avenue, Cockeysville, MD.



James Riffin

In re: 11019 Gateview Road
Cockeysville, MD 21030

JB 1-3-14
* Before the Zoning Commissioner
* of Baltimore County
* Case No.: 2014 - 0094 - SPH

* * * * *

**MOTION TO STAY DECISION ON MOTION FOR RECONSIDERATION
UNTIL AFTER PETITIONER SUBMITS HIS MEMORANDUM OF LAW**

1. Comes now your Petitioner, James Riffin, who respectfully submits this Motion to Stay Decision on Motion for Reconsideration Until After Petitioner Submits his Memorandum of Law.
2. A significant issue before the Hearing Officer is whether a Code Enforcement person may enter upon private land without benefit of a search warrant, and whether the Hearing Officer has the jurisdiction to address this issue.
3. Petitioner has been preparing for the past 10 days, a Memorandum of Law which addresses both the jurisdiction to address the issue question, and the issue of whether Petitioner's land constitutes 'curtilage,' or 'open fields.'
4. As this note is being written, the majority of Petitioner's Memorandum of Law has been written. (18 pages so far.) Petitioner expects to submit his Memorandum of Law to the Hearing Officer on or before Friday, **February 21, 2014.**
5. WHEREFORE, the Petitioner would respectfully request that the Hearing Officer stay rendering his decision on Petitioners' Motion for Reconsideration until **after** Petitioner submits his Memorandum of Law to the Hearing Officer.

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FEB 19 2014

OFFICE OF ADMINISTRATIVE HEARINGS

Respectfully submitted,



James Riffin, Petitioner
1941 Greenspring Drive
Timonium, MD 21093
(443) 414-6210

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of February, 2014, I hand delivered a copy of the foregoing Motion for Stay of Decision of Motion for Reconsideration to Will Geddes, at 11115 Powers Avenue, Cockeysville, MD.



James Riffin

JB 12-20-14
Order
1-7-14

In re: 11019 Gateview Road
Cockeysville, MD 21030

Before the Zoning Commissioner
of Baltimore County
Case No.: 2014 - 0094 - SPH

* * * * *

MOTION FOR RECONSIDERATION

1. Comes now your Petitioner, James Riffin, who respectfully submits this Motion for Reconsideration, and in support hereof states.
2. A hearing was held on December 20, 2014. The only parties present were the Hearing Officer, Petitioner James Riffin ("**Riffin**") and an adjacent neighbor, Will Geddes.

THE JANUARY 7, 2014 DECISION

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3. On **January 7, 2014**, the Hearing Officer rendered his Opinion and Order. OFFICE OF ADMINISTRATIVE HEARINGS
4. On page 3 of the Opinion, the following appears (bold added):

"With regard to the railroad cars, tracks, ties and related equipment, Mr. Riffin testified that some of the equipment is to 'maintain rails,' and he indicated he hopes to start a new railroad in New Jersey. He also indicated that a caboose is used as a "recreational amenity." Neither the residential or agricultural uses of the property would necessitate any of the described railroad equipment, and none of the equipment (including the caboose) is commonly or customarily associated with such uses. As such, I do not believe it can be lawfully kept on DR 1 and **RC 5** zoned property."

5. The Parcel is split zoned: DR 1 and **RC 6**, NOT RC 5.
6. The Zoning Commissioner needs to reconsider his decision, and determine the rights of the Petitioners in light of their RC-6 zoning, not in light of the zoning regulations applicable to RC 5 zoned property.

EVIDENCE IN THE RECORD

7. Riffin gave testimony:

- A. That the Parcel was a 13-acre part of a larger 62 acre parcel.
- B. That the 62-acre parcel had been used for farming purposes by the Roberts' family since 1904. This testimony was based on information obtained by Riffin in 1976 from Lawrence Roberts, a descendant of John F. Roberts, who bought the 62-acre parcel in 1904. Lawrence Roberts told Riffin that he had lived on the Parcel all of his life. Lawrence Roberts was in his 60's when Riffin spoke with him.
- C. That the Parcel had about 7 acres in timber (mast) trees, several acres of fruit and nut bearing trees and berry-bearing vines, an acre or so of field crops, two acres or so for his dwelling site, and an acre or so to store Riffin's agricultural-uses-related equipment.
- D. That the Parcel had nut (black walnut) and fruit (red and black cherry, pear, peach, apple) bearing trees and red and black raspberry-bearing vines on it when purchased by Riffin in August, 1976, and that Riffin has continued to cultivate these fruit and nut bearing trees and berry-bearing vines.
- E. That the Parcel had about 7 acres of mast-quality trees. (Desiderius trees that have a straight trunk with no Y's.) That the trees were now 50-60 feet in height, were 15 inches to 2-feet in diameter at their base, and would reach harvest-maturity in another ten to 15 years.
- F. That the equipment (cranes, man-lifts, excavators, reel trailers, extendable trailers, light towers, generators, tanks, truck tractor, boom truck, dump trucks, Bobcat) were used to facilitate cultivation and harvest of the mast-quality trees.
- G. That the railroad equipment on the Parcel, including the Caboose, was used by Riffin for recreational purposes, and that this railroad equipment constituted "recreational amenities."

H. That Riffin used some former dairy refrigerated (insulated) boxes, some former school buses, and some box utility semi-trailers, as "utility sheds," to store his agricultural-uses- related equipment and material.

I. That the Parcel has numerous, conspicuous, No Trespassing signs posted around its perimeter, that the entrance to the Parcel is blocked with a locked chain, and that dense shrubbery, thickets, briars, vegetation, and fencing prevent ingress and egress from the Parcel except through the locked chain entrance.

J. That the "front door" of Riffin's residence is not visible from any public right-of-way, that Riffin's residence is 1/4 mile from the nearest public right-of-way, and that ingress to the "front door" of Riffin's residence is barred by physical barriers, such as locked chains and heavy, thorny vegetation.

8. Will Geddes gave testimony that he was aware of what was on Riffin's Parcel, since he had walked on Riffin's Parcel when pursuing deer that he had shot. He further testified that he had no objection to what was on Riffin's Parcel, since none of Riffin's equipment or material was visible from his adjacent property.

9. Riffin introduced into evidence fifteen verified affidavits from 15 of his adjacent neighbors, all of which affiants testified that they could not see any of Riffin's equipment or material, and further testified that they had no objection to seeing Riffin driving down the street with his trucks or trailers.

10. **No evidence** was introduced that contradicted the evidence presented by Riffin, Mr. Geddes or the affiants. For that matter, there was no other evidence introduced into the record other than the evidence presented by Riffin, Mr. Geddes and the affiants.

RAILROAD EQUIPMENT

11. On page 3 of the Opinion, the following appears (bold added):

“With regard to the railroad cars, tracks, ties and related equipment, Mr. Riffin testified that some of the equipment is to ‘maintain rails,’ and he indicated he hopes to start a new railroad in New Jersey. **He also indicated that a caboose is used as a “recreational amenity.”** Neither the residential or agricultural uses of the property would necessitate any of the described railroad equipment, and none of the equipment (including the caboose) is commonly or customarily associated with such uses. As such, I do not believe it can be lawfully kept on DR 1 and **RC 5** zoned property.”

12. The Parcel is split zoned: DR 1 and **RC 6, not RC 5.**

13. §1A07.3. [Baltimore County Zoning Regulations, “BCZR”] Permitted Uses.” states:

“7. Accessory uses or structures, subject to Section 429, including:

f. Swimming pools, tennis courts and **other recreational amenities** if accessory to a dwelling or residential subdivision only.” **Bold added.**

14. Section 429, BCZR, has to do with Satellite Receiving Dishes, which is not relevant in this proceeding.

15. Riffin gave testimony that he **presently** uses his railroad equipment for “recreational” purposes. He also gave testimony that he **may** use his railroad equipment-some day in the future, for railroad purposes, in New Jersey. This hearing had to do with **present** uses, not speculative potential **future** uses. Riffin testified that **presently** he uses his railroad equipment for recreational purposes, not only for himself personally, but also to entertain children that he invites on to his property.

16. §1A07.3 (7) (f) BCZR clearly states “recreational amenities” are permitted-by-right uses in a RC 6 zone.

17. The Parcel is split zoned DR 1 and RC 6.

18. It appears that the Hearing Officer inadvertently looked at the permitted uses for a RC 5 zoned property, and found that "recreational amenities" are not expressly enumerated as permitted-by-right in a RC 5 zone. See §1A04.2 (11) (f) BCZR.

19. §1B01.1 A 18 g, [Uses permitted as of right] BCZR lists the following uses permitted as of right in a DR 1 zone:

"18 Accessory uses or buildings other than those permitted only by special exception, including, **but not limited to:** (Bold added.)

g. Swimming pools, tennis courts, garages, utility sheds, satellite receiving dishes (subject to Section 429) or other accessory structures or uses (all such accessory structures or uses subject to the height and area provisions for buildings as set forth in Section 400)."

20. The beginning language in the DR 1 zone recreational uses permitted by right section (Swimming pools, tennis courts) is the same language used in the RC 6 regulation (swimming pools, tennis courts). The RC 6 regulation, which was enacted in 2000, used the phrase "and other recreational amenities," rather than the phrase "but not limited to," which is used in the DR 1 regulation, which was enacted in 1970.

21. It is clear that 'recreational amenities' are permitted by right in both DR 1 and RC 6 zones.

22. It is equally clear that Riffin gave testimony that he presently uses his railroad equipment as 'recreational amenities.' There is substantial evidence in the record that Riffin's railroad equipment is a 'recreational amenity.' There is **no** evidence in the record controverting or challenging whether Riffin's railroad equipment constitutes a 'recreational amenity.'

23. Administrative Procedure Law requires all findings to be supported by 'substantial evidence.' There being no evidence that Riffin's present use of his railroad equipment is not a 'recreational amenity,' the Administrative Law Judge is required by law, to find that such use of Riffin's railroad equipment is a permitted-by-right accessory use. Any other finding would be

arbitrary, capricious, unreasonable or unlawful, since any other finding would not be supported by substantial evidence in the record.

24. Riffin elaborated on his recreational use of his railroad equipment in paragraph 97 of his Memorandum, which is incorporated by reference herein as if fully set out herein.

NON RAILROAD EQUIPMENT

25. On p. 4 of the Opinion, the following statements appear:

“Mr. Riffin also testified that he has a large crane, man lift, 70' tractor trailer and trucks. He indicated that these items are ‘very handy’ and that he uses them ‘a lot’ to **pull pipes out of wells, assist in harvesting trees** or to help his neighbors. Again, such heavy equipment and materials are not customarily used for residential or even agricultural purposes. No evidence was presented that any of the vehicles or equipment were registered as ‘farm vehicles’ with the State of Maryland. These items, **as alleged by Baltimore county**, are items that must be stored in a ‘contractor’s equipment storage yard,’ and not on residential property.

‘The use of any space, whether inside or outside a building, for the storage or keeping of contractor’s equipment or machinery, including building materials storage, construction equipment storage or landscaping equipment and associated materials.’

I find that Petitioners are in fact using the property for such a purpose, which is permitted by special exception only in commercial zones. As such, I do not believe these items can be lawfully kept on the premises.” Bold added.

26. This is **no evidence** in the Record that Baltimore County **“alleged”** that any of Riffin’s non-railroad equipment must be stored in a contractor’s storage yard. Baltimore County did not present any testimony at the hearing, nor did Baltimore County submit any affidavits or other evidence into the record. The Hearing Officer expressly found that “[t]here were no Protestants in attendance at the hearing,” Opinion at 1, and that “[n]o substantive Zoning Advisory Committee (ZAC) comments were received from any of the County reviewing agencies.” Opinion at 1.

27. None of Riffin's equipment, including his crane, man-lift, generators, lighting towers or other equipment, needs to be registered with the Maryland Department of Motor Vehicles ("DMV"). The absence of "Farm Vehicle" license plates on any of this equipment is irrelevant.

28. The DMV gives the owner of a motor vehicle that is driven on a highway, several options with regards to license plates for that motor vehicle. While "Farm Vehicle" plates are an option, so too are "Historic" license plates, providing the vehicle is at least 20 years old. (Riffin's dump truck and truck tractor are both over 20 years old.) The registration fee for a "Farm Vehicle" is one-half of the registration fee for a commercial motor vehicle. The registration fee for a dump truck or truck tractor with a registered gross vehicle weight rating of 65,000 pounds is approximately \$800. The fee for the same vehicle with "Farm Vehicle" plates, would be approximately \$400. The fee for "Historic" plates is only about \$20. Regular or Farm Vehicle plates permits the regular use of that vehicle. Historic plates only permit "occasional" use. Since Riffin's use of his dump truck and truck tractor off-site (on highway) is very 'occasional,' and since there is such a drastic difference in the registration fee for 'regular,' 'Farm,' or 'historic' license plates, Riffin has elected to obtain 'historic' plates for his dump truck and truck tractor. If he wanted to use these motor vehicles on-highway on a regular basis, he could, and would, obtain 'farm' vehicle plates for these vehicles. Also, since 'historic' plates are only permitted for vehicles over 20 years of age, were Riffin to acquire a dump truck or truck tractor newer than 20 years old, he would have to obtain non-historic plates. Since he is eligible for 'farm vehicle' plates, he would obtain 'farm vehicle' plates, if 'regular use' plates were needed.

29. DMV regulations **do not permit** a semi-trailer to be registered as a 'farm vehicle.' 'Farm Vehicle' plates are only issued to **motorized** vehicles. Semi-trailers do not have a motor. All semi-trailer license plates are the same, regardless of the use or age of the semi-trailer. (There are no 'regular,' 'occasional,' 'farm,' or 'historic' plates for semi-trailers.)

'CUSTOMARY' USE OF HEAVY EQUIPMENT

30. The Opinion at p. 4 stated:

“Again, such heavy equipment and materials are not customarily used for residential or even agricultural purposes.”

31. The Hearing Officer appears to have provided his own ‘testimony’ or ‘evidence’ as to the ‘customary’ use of heavy equipment, and as to the ‘customary’ type of equipment used for agricultural purposes. This is evident since the **only** evidence in the record regarding how Riffin’s heavy equipment was used in his agricultural pursuits, was introduced into the record by Riffin. And Riffin expressly made it clear how such heavy equipment was ‘customarily’ used in the agricultural pursuits that he testified that he was involved in, namely, the growth and cultivation of mast-quality desiderius trees. See paragraph 48 of Riffin’s Memorandum, which is incorporated by reference herein as if fully set forth herein.

32. The Hearing Officer appears to have a very limited knowledge of agricultural uses of land. On page 5 of the Opinion, the hearing officer limited his recitation of ‘farm equipment’ to ‘farm tractors,’ ‘combines,’ ‘plows,’ ‘harrows,’ ‘seeders,’ ‘balers,’ and ‘spreaders.’ All of these types of farm equipment are used to cultivate field-grown agricultural products, such as vegetables or hay. None of these types of farm equipment, with the exception of a farm tractor, would be used to cultivate trees. Plowing around a tree would disturb the trees’ roots. Trees are not propagated from seeds. You do not cut trees with a combine, nor are trees baled like hay when harvested. The cultivation of large trees requires a different set of farm equipment. Because of the mass and height of a tree, only heavy equipment will suffice. A farm tractor is no match for a 10-ton 60-foot tall tree. Such a tree requires the use of equipment that is heavier than the tree. Felling a 60-foot tree without damaging the felled tree, or adjacent trees, requires the use of a very heavy piece of equipment: Either a crane or a heavy-duty hydraulic tree shear. Removing damaged or diseased limbs from a 60-foot tree requires the use of a very large (tall) man-lift. (80-feet height capability.) Trimming trees on rough terrain, requires the use of rough terrain vehicles with either very large diameter tires or tracks. Bucket trucks cannot negotiate such terrain. Riffin’s crane and man-lift have rough terrain tires on them, and can negotiate rough terrain. Riffin’s crane and man-lift are precisely the type of heavy equipment that is

needed to cultivate and harvest mature mast-quality trees that are 60-plus feet in height.

33. Hauling a 60-plus foot tree to market, without cutting the tree to a shorter length, requires the use of 'extendable' semi-trailers, which can be extended to 70 or 80 feet in length. These are precisely the type of special duty semi-trailers that Riffin testified that he had on the Parcel.

THE PARCEL IS USED FOR COMMERCIAL AGRICULTURE

34. §1A07.3 A 2, BCZR, states that 'farms' are permitted by right in RC 6 zones.

35. §1B01.1 A 7, BCZR, states that 'farms' are permitted by right in a DR 1 zone.

36. §101.1, BCZR, defines the word 'farm' as follows:

"FARM Three acres or more of land, and any improvements thereon, used primarily for commercial agriculture, as defined in these regulations, or for residential and associated agriculture.

37. §101.1, BCZR, defines the phrase 'commercial agricultural' as follows:

AGRICULTURE, COMMERCIAL The use of land, including ancillary structures and buildings, to cultivate plants or raise or keep animals for income, provided that the land also **qualifies** for farm or agricultural use assessment pursuant to §8-209 of the Tax Property Article of the Annotated code of Maryland, as amended. Commercial agriculture includes the production of field crops, dairying, pasturage agriculture, **horticulture**, floriculture, aquiculture, apiculture, viticulture, **forestry**, animal and poultry husbandry, the operation of an equestrian center, horse breeding and horse training and also includes ancillary activities such as processing, packing, storing, financing, managing, marketing or distributing, provided that any such activity shall be secondary to the principal agricultural operations." Bold added.

38. Riffin testified that he used the Parcel for Commercial Agriculture, including 'horticulture,' and 'forestry.' Riffin further testified that the Parcel contained 13 acres, ten acres

more than the 3-acre minimum for a farm. Riffin further testified that the Parcel "qualifies for farm or agricultural use assessment pursuant to §8-209 of the Tax Property Article of the Annotated code of Maryland." Riffin discussed this extensively in paragraphs 23 to 37 of his Memorandum, which is included by reference herein as if fully set forth herein.

39. Riffin went into great detail in his Memorandum, demonstrating that the Parcel "qualifies for farm or agricultural use assessment pursuant to §8-209 of the Tax Property Article of the Annotated code of Maryland."

40. The Opinion did not address the issue of whether the Parcel met the definition of "Commercial Agricultural." The Opinion limited the use of the Parcel to "residential agriculture."

41. There was no testimony or evidence contradicting Riffin's argument or testimony that the Parcel was being used for Commercial Agriculture.

42. Administrative Procedure Law requires a finding in support of an argument that is supported by substantial evidence, particularly when there is no evidence contrary to the evidence in the record. Consequently, it would be arbitrary, capricious, unreasonable or contrary to law for the Hearing Officer to find that the Parcel was not being used for Commercial Agriculture.

43. Commercial Agriculture use includes any use ancillary to, or in support of, the primary agriculture use.

44. Riffin testified, and argued in his Memorandum, that the non-railroad heavy equipment on the Parcel is used in support of his Commercial Agriculture activities. There was no evidence in the record contrary to Riffin's testimony or argument. Once again, it would be arbitrary, capricious, unreasonable or contrary to law for the Hearing Officer to find that the non-railroad heavy equipment on the Parcel was not being used in support of Riffin's Commercial Agriculture activities.

45. And if Riffin's non-railroad heavy equipment is being used in furtherance of his Commercial Agriculture activities, then these pieces of non-railroad heavy equipment are permitted by right on the Parcel.

UTILITY SHEDS / UNLICENSED MOTOR VEHICLES

46. §428.1 A and B, BCZR, prohibit the storage of inoperative or unlicensed motor vehicles on residential lots.

47. §428 C, BCZR, permits the storage of "farm equipment" "actually and regularly used on a farm," even when that farm is located on residentially zoned land.

48. The word 'farm' is defined in the Zoning Regulations. See paragraphs 33 and 34 above. There is no evidence contrary to Riffin's testimony and argument that the Parcel is being used as a 'farm,' as that word is defined in the Zoning Regulations.

49. The phrase "farm equipment" is not defined in the Zoning Regulations. In such a situation, reference is made to the Dictionary.

50. The word 'equipment' is defined in the Dictionary as follows:

"Anything kept, furnished, or provided for a specific purpose."

51. Combining the definition of the defined word 'farm' with the dictionary definition of the word 'equipment,' results in the following definition for the phrase 'farm equipment:'

"Anything kept, furnished, or provided for a specific purpose on a 3-acre parcel used primarily for the production of field crops, dairying, pasturage agriculture, **horticulture**, floriculture, aquiculture, apiculture, viticulture, **forestry**, animal and poultry husbandry, and also includes ancillary activities such as processing, packing, **storing**, financing, managing, marketing or **distributing**, provided that any such activity shall be secondary to the principal agricultural operations." Bold added.

52. The non-railroad heavy, and not-so-heavy, equipment used for the specific agricultural purposes enumerated in paragraph 48 of Riffin's Memorandum, incorporated by reference herein, all constitutes 'farm equipment,' which is permitted in a residential zone.

53. As denoted in paragraph 48 of Riffin's Memorandum, the unlicensed motor vehicles on the Parcel are used for the purposes denoted in paragraph 48 of Riffin's Memorandum.

54. This is further discussed and argued in paragraphs 50 to 52 of Riffin's Memorandum, which are incorporated by reference herein.

55. The term 'utility shed' is undefined in the Zoning Regulations. It was defined in great detail in paragraph 52 of Riffin's Memorandum. A 'utility shed' is a 'slight structure for shelter or storage.' What a utility shed is constructed of, is of no importance. It could be made out of newspaper, cardboard, used sheet metal, bales of straw, or an unlicensed, inoperative motor vehicle, particularly one that was used to carry merchandise when it was operative and licensed.

56. The Opinion at p. 4, used the word 'transmogrified.' That word means "to change in appearance or form, especially strangely or grotesquely." Since Riffin has not changed the appearance of the unlicensed / inoperative vehicles on the Parcel, neither subtly nor grotesquely, that word does not appear to be appropriate. A more appropriate word would be the word 'transform,' which means 'to change in character.' Riffin has changed the 'character' of the unlicensed vehicles on the Parcel: From that of a motor vehicle capable of transporting goods from different points via a highway, to being capable of transporting goods over non-highways, or merely holding goods in a stationary position (storing the goods).

57. Of particular note are the types of unlicensed vehicles on the Parcel: Some utility vans, which were designed to carry / store goods, and school buses, which were designed to carry children. Being unlicensed does not impair the vehicle's ability to perform a major part of their original function: the holding of goods. And in the case of school buses, the removal of the bus seats makes it possible for the buses to hold goods in great quantity, rather than children in great

quantity.

58. The Zoning Regulations do not give any indication as to why a vehicle becomes reprehensible when it is no longer licensed. It looks the same, rather licensed or not. Perhaps it is the aesthetics. Or it is the potential to become unpleasant to look at. Whatever the underlying reason or goal, Riffin's use of unlicensed vehicles as utility sheds, does not give rise to any unpleasing aesthetics: Riffin's unlicensed vehicles are not visible from any adjacent property. They are barely discernable from the air, since they are covered in vegetation.

59. Since the Zoning Regulations do not limit or otherwise restrict what a utility shed is constructed of, there is no legal basis to prohibit utility sheds made from used vehicles, while permitting utility sheds made of rusted sheet metal, cardboard, mud bricks, or bales of straw. So long as an unlicensed vehicle is used to store goods ancillary to the principle use of a property, it should be permitted. Otherwise, it becomes arbitrary, capricious or unreasonable to ban one type of utility shed, while permitting other less aesthetically pleasing types of utility sheds.

COMMERCIAL VEHICLES

60. §431 of the BCZR prohibits the storage of 'commercial vehicles' on residentially zoned property, with one exception: One commercial vehicle may be parked on residential property providing no goods are visible, it has limited markings on it, and it is parked in a side or rear yard.

61. The phrase 'commercial vehicle' is defined in §101.1 of the BCZR. Of particular note are the exemptions found in that definition: Any heavy vehicle that has 'historic' plates on it and any 'farm vehicle' or 'farm equipment.' As argued above, Riffin's dump truck and truck tractor have current 'historic' license plates on them. As such, they are expressly not classified as a 'commercial vehicle.' In addition, as argued above, the other over 10,000 pound gross vehicle weight vehicles on Riffin's Parcel, are used as 'farm vehicles,' or are used as 'farm equipment.' This is detailed in paragraph 48 of Riffin's Memorandum, which is incorporated by

reference herein.

62. The Opinion did not address the issue of commercial vehicles with 'historic' plates on them, nor did it address the issue of whether the other heavy vehicles were being used as 'farm vehicles,' or as 'farm equipment.' Riffin testified, and argued in his Memorandum, that his heavy vehicles were regularly being used as 'farm vehicles' on the Parcel, or were regularly being used as 'farm equipment' on the Parcel.

63. As discussed above, the Opinion took a very myopic view of what constitutes 'farm equipment,' limiting the equipment only to those implements used to cultivate field crops. While Riffin does cultivate a few field crops, the vast majority of Riffin's agricultural activities revolve around the cultivation and harvest of mast-quality timber, and the cultivation and harvest of tree-borne fruits and nuts, which requires a totally different set of farm implements than what is needed to cultivate and harvest field-grown crops.

THE OPINION DID NOT ADDRESS THE ISSUES PRESENTED IN THE PETITION

64. The Petition presented to the Hearing Officer asked very specific questions, namely, would certain specified pieces of equipment or vehicles be permitted on residentially-zoned land if that land was used for Commercial Agriculture, and if the use of the equipment / vehicle directly related to the Commercial Agriculture use.

65. The Zoning Regulations are quite clear: Any equipment or vehicles used for agricultural related uses, are permitted on residentially-zoned land when that land is used for agricultural purposes, and when the land contains at least 3 acres.

66. The Petition was also quite specific: Were the Petitioners using their land for agricultural purposes? Did Petitioners' land contain at least three acres?

67. The Opinion held that the Parcel was being used for Residential Agriculture. The Opinion did not directly address the issue of whether the Petitioners were using their Parcel for Commercial Agriculture, nor did it address the issue of whether there was substantial evidence / testimony that the Parcel **was eligible** (not whether it was approved) for agricultural assessment. The Zoning Regulations do not require that land be assessed for agricultural use. The Zoning Regulations only require that land **be eligible** for agricultural assessment.

68. Paragraphs 23 to 37 of Riffin's Memorandum extensively discussed the criteria for agricultural assessment: Five acres minimum, actively used for 'silvaculture' (cultivation of forest trees, woodlands) or for the raising of "grains, fruit, herbs, melons, mushrooms, nuts, seeds, tobacco, or vegetables."

69. There was no evidence in the record controverting Riffin's testimony that the Parcel contained at least five acres, that the Parcel was actively used for silvaculture and the raising of fruit, melons, nuts and vegetables, and that the Parcel was fully eligible for agricultural assessment. (An aside note: The assessed value of 12 of the 13 acres is **the same as** the assessed value would be if the Parcel were zoned 'agricultural use.' So there is no financial incentive to change the assessed use to 'agricultural use,' which is why Riffin has not asked that the assessed use be changed to 'agricultural use.')

JURISDICTION TO INTERPRET THE APPLICATION OF BALTIMORE COUNTY CODE TO THE ZONING REGULATIONS

70. §500.7 BCZR grants unto the Zoning Commissioner the power and authority:

"to determine any rights whatsoever of such person in any property in Baltimore County"

71. The Petitioner asked the Zoning Commissioner to determine whether Petitioner's rights in his property were abridged when Mr. Mills, a Code Enforcement person, came onto Petitioner's property without benefit of a search warrant, even though Petitioner's property is

conspicuously posted with No Trespassing signs, and ingress onto Petitioner's property is barred by numerous physical barriers, includedⁱⁿ a locked chain across Petitioner's driveway, fencing, and dense heavy thorny vegetation.

72. The Opinion, on p. 2, stated:

"But the Zoning Commissioner for Administrative Law Judge is not given the power to construe or interpret the B.C.C in the context of a petition for special hearing. As such, I will not address this issue."

73. Petitioner would argue that the very broad language in §500.7 does in fact grant to the Zoning Commissioner the requisite jurisdiction to determine Petitioner's property rights, including Petitioner's property right to bar a County Official from entering upon Petitioner's property.

CONCLUSION

74. Petitioners would respectfully ask that the Hearing Officer Reconsider his January 7, 2014 Opinion and Order, and specifically address the following issues:

- A. Address whether the Petitioners' use of the Parcel is in conformity with RC 6 zoned land, as opposed to RC 5 zoned land;
- B. Address the specific questions presented in the Petition: Whether the equipment and vehicles described in the Petition would be permitted if the use of the equipment and vehicles related to / was ancillary to, agricultural uses of the Parcel, and in particular, to the cultivation and harvest of mast-quality trees, rather than the cultivation and harvest of field-grown crops.
- C. Address the specific issue of whether there was evidence that the Parcel was eligible / met the specified criteria, for agricultural use as set out in § 8-209 of the Tax -

Property Article;

- D. Address the specific issue of whether the Parcel met the Zoning Regulation's criteria for 'Commercial Agriculture.'
- E. Address the specific issue of what constitutes a 'recreational amenity.'
- F. Address the specific issue of whether there is substantial evidence in the record supporting Riffin's contention that his railroad equipment meets the definition of the phrase, 'recreational amenity.'
- G. Address the specific issue of whether a dump truck or truck tractor with 'historic' plates on them, are exempt from the prohibition of having commercial vehicles on residential property.
- H. Address the issue of what constitutes / what is the definition of, a 'utility shed.'
- I. Address the issue of whether utility vans, box trailers, or dairy boxes, meet the definition of the phrase, 'utility shed.'
- J. And for such other and further relief as would be appropriate.

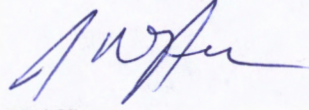
Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'J. Riffin', is written over a light blue circular stamp.

James Riffin, Petitioner
1941 Greenspring Drive
Timonium, MD 21093
(443) 414-6210

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of February, 2014, I hand delivered a copy of the foregoing Motion for Reconsideration to Will Geddes, at 11115 Powers Avenue, Cockeysville, MD.



James Riffin

M E M O R A N D U M

DATE: January 27, 2014
TO: Zoning Review Office
FROM: Office of Administrative Hearings
RE: Case No. 2014-0094-SPH – Appeal Period Expired

The appeal period for the above-referenced case expired on January 22, 2014. There being no appeal filed, the subject file is ready for return to the Zoning Review Office and is placed in the 'pick up box.'

c: Case File
Office of Administrative Hearings

✓ JB 12-20-13

IN RE: PETITION FOR SPECIAL HEARING	*	BEFORE THE
(11019 Gateview Road)		
8 th Election District	*	OFFICE OF
3 rd Councilmanic District		
Karole & James Riffin	*	ADMINISTRATIVE HEARINGS
Petitioners		
	*	FOR BALTIMORE COUNTY
	*	Case No. 2014-0094-SPH

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed by Karole and James Riffin, the legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") as follows: (1) to determine whether the owner's proposed principal and accessory uses enumerated in the petition (and the personal property and equipment described therein) are lawful; and (2) to determine under what conditions may a Code Inspection and Enforcement Officer enter upon private land.

Appearing at the public hearing in support of the requests was James Riffin, property owner. The Petition was advertised and posted as required by the B.C.Z.R. There were no Protestants in attendance at the hearing. Will Geddes, Petitioners' neighbor, attended the hearing and expressed support for the Petitioners. No substantive Zoning Advisory Committee (ZAC) comments were received from any of the County reviewing agencies.

The subject property is 13 +/- acres in size and is split-zoned RC 6 and DR 1. The Petitioners have filed a petition for special hearing which, as noted by the Maryland Court of Special Appeals, is akin to a declaratory judgment action. *Antwerpen v. Balto. Co.*, 163 Md. App. 194, 209 (2005).

In terms of the second issue concerning the code inspector's entry onto private land, I believe that this inquiry is beyond the jurisdictional scope of the OAH. Both the Baltimore County Code (B.C.C.) and the B.C.Z.R. provide that the Zoning Commissioner may interpret the zoning regulations. B.C.C. § 32-3-301; B.C.Z.R. § 500.7. But the Zoning Commissioner (or Administrative Law Judge [ALJ]) is not given the power to construe or interpret the B.C.C. in the context of a petition for special hearing. As such, I will not address this issue, other than to note the court of appeals recently decided a case involving the "open fields" doctrine, and the court found that the presence of a "no trespassing" sign (a fact upon which Riffin places emphasis) will not create a reasonable expectation of privacy if such a sign was posted on "open land," which is the same verbage found in B.C.C. § 32-3-602. *Jones v. State*, 407 Md. 33, 45-46 (2008). The *Jones* court also held that the "front door" area of a dwelling is not subject to a reasonable expectation of privacy. *Id.*

The primary focus of the Petition seeks a determination of the lawful uses of the Petitioners' property, including whether certain enumerated vehicles and equipment may be kept on the premises. This is an unwieldy task, given that the record contains only a site plan, zoning and subdivision maps, and affidavits from nearby owners (Exhibit 4), all of whom state they do not object to Petitioners' activities or storage of equipment on the premises. The only photographs in the file (Exhibits 2 and 3) are black and white photocopies of several photos allegedly taken by the County inspector, which Petitioner introduced to show that the inspector conducted an illegal search. What is missing are photographs of the 13 acre site and the personal property ("chattels") at issue.

The only testimony was from James Riffin, who testified to the historic use of the property, his current use of the property for dwelling and agricultural purposes, and his use of the

equipment in those endeavors. In these circumstances, it is difficult to make a determination as to the propriety of the uses and/or equipment. Just the same, based on Mr. Riffin's testimony and an examination of the plan and zoning/subdivision maps (Exhibit 1), it seems clear the principal use of the property is for residential/dwelling purposes. According to tax records, the dwelling on the property was constructed in 1976, and the property is categorized as "residential."

Based on Mr. Riffin's testimony, it is plausible (though not free from doubt) that the Petitioners utilize the property for residential agricultural purposes, as an accessory use. Both this accessory use and the principal residential use are permitted as of right in the DR 1 and RC 6 zones. B.C.Z.R. §§ 1A07.3 and 1B01.1. For purposes of this opinion, it is safe to assume that the agricultural accessory use exists, even though Petitioners submitted no exhibits indicating that produce and/or fruit is grown or sold from the property, and the State of Maryland does not categorize the property -- in whole or part -- as being used for agricultural purposes.

But neither the principal or accessory use of the property entitles the Petitioners to keep on the property those items described in the petition.

With regard to the railroad cars, tracks, ties and related equipment, Mr. Riffin testified that some of the equipment is to "maintain rails," and he indicated he hopes to start a new railroad in New Jersey. He also indicated that a caboose is used as a "recreational amenity." Neither the residential or agricultural uses of the property would necessitate any of the described railroad equipment, and none of the equipment (including the caboose) is commonly or customarily associated with such uses. As such, I do not believe it can be lawfully kept on DR 1 and RC 5 zoned property.

Mr. Riffin also testified that he has a large crane, man lift, 70' tractor trailer and trucks. He indicated that these items are "very handy" and that he uses them "a lot" to pull pipes out of wells, assist in harvesting trees or to help his neighbors. Again, such heavy equipment and materials are not customarily used for residential or even agricultural purposes. No evidence was presented that any of the vehicles or equipment were registered as "farm vehicles" with the State of Maryland. These items, as alleged by Baltimore County, are items that must be stored in a "contractor's equipment storage yard", and not on residential property. That term is defined as follows in the B.C.Z.R.:

"The use of any space, whether inside or outside a building, for the storage or keeping of contractor's equipment or machinery, including building materials storage, construction equipment storage or landscaping equipment and associated materials."

I find that Petitioners are in fact using the property for such a purpose, which is permitted by special exception only in commercial zones. As such, I do not believe these items can be lawfully kept on the premises.

With respect to the untagged motor vehicles on site, Mr. Riffin contends that those (and some of the truck trailers as well) have been transmogrified into "utility sheds." While a creative argument, I do not believe it can withstand scrutiny. If such an argument were accepted, every citizen in the County could keep on his/her residential property inoperable and/or untagged vehicles (which is illegal per B.C.Z.R. § 428) by the expedient of storing household items or personal belongings inside. The regulations are clear that such vehicles may not be kept on residential property, and as such the Petitioners may not keep such vehicles on this residential property. This same conclusion applies to any "commercial vehicles" stored on the property, the outside storage of which on residential property is unlawful per B.C.Z.R. § 431.

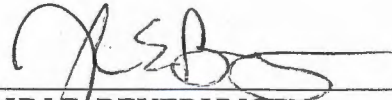
The B.C.Z.R. excludes from the definition of "commercial vehicle" and from the sections prohibiting storage of unlicensed motor vehicles, "farm tractors" or "farm equipment" actually and regularly used on a farm. B.C.Z.R. §§ 101, 428.1.C. These terms are not defined in the B.C.Z.R. or Webster's 3rd New International Dictionary. As such, generally accepted principles of statutory construction indicate that these terms should be given their "ordinary and natural meaning." *O'Connor v. Balto. Co.*, 382 Md. 102, 113 (2004).

The ordinary meaning of "farm equipment" would include combines, farm tractors, plows, harrows, seeders, balers and spreaders. Such items could be kept on the premises if Petitioners could establish they were "actually and regularly used" for farming purposes. But none of these items are described in the Petition, and I do not believe that any of the vehicles or equipment listed would be considered "farm equipment," even if employing a generous definition of that term. Accordingly, I do not believe Petitioners can avail themselves of this "farm equipment" exception.

Pursuant to the advertisement, posting of the property, and the public hearing, I find that Petitioners' Special Hearing request should be dismissed without prejudice with respect to the code inspector issue, and denied with respect to the proposed uses and storage of enumerated equipment in the DR and RC zone.

THEREFORE, IT IS ORDERED this 7th day of January, 2014, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to determine whether the owner's proposed principal and accessory uses enumerated in the petition (and the personal property and equipment described therein) are lawful, be and is hereby DENIED.

IT IS FURTHER ORDERED that the Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to determine under what conditions may a Code Inspection and Enforcement Officer enter upon private land, be and is hereby DISMISSED without Prejudice.



JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/dlw

TO: PATUXENT PUBLISHING COMPANY
Tuesday, November 26, 2013 Issue - Jeffersonian

Please forward billing to:
James Riffin
1941 Greenspring Drive
Timonium, MD 21093

443-414-6210

NOTICE OF ZONING HEARING

The Administrative Law Judge 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: 2014-0094-SPH

11019 Gateview Road

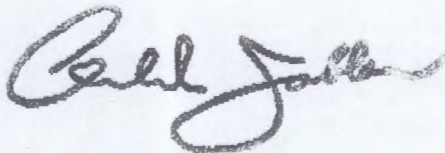
East end of Gateview Road, 140 ft. E/of Norgate Court

8th Election District – 3rd Councilmanic District

Legal Owners: Karole & James Riffin

Special Hearing to approve owners proposed principal and accessory uses enumerated in the petition attachment as permitted by right in the DR-1 zone, permitted by right in the RC-6 zone or permitted as a non-conforming principal or accessory use; and to determine under what conditions may a Code Inspection and Enforcement Officer enter upon private land.

Hearing: Friday, December 20, 2013 at 10:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204



Arnold Jablon
Director of Permits, Approvals and Inspections for Baltimore County

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
- (2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 11019 GATEVIEW RD which is presently zoned RC-6/DR1
Deed References: 5663 / 511 10 Digit Tax Account # 08-18-00-011282
Property Owner(s) Printed Name(s) KAROL AND JAMES RIEFFIN

(SELECT THE HEARING(S) BY MARKING **X** AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. ☒ a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve The owner's Proposed uses.
(SEE ATTACHED)
2. ☐ a Special Exception under the Zoning Regulations of Baltimore County to use the herein described property for
3. ☐ a Variance from Section(s)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:
(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

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

I, or we, agree to pay expenses of above petition(s), 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.

Legal Owner(s) Affirmation: I / we do so 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 / these Petition(s).

Contract Purchaser/Lessee:

Name- Type or Print

Signature

Mailing Address

Zip Code

Telephone #

Email Address

Attorney for Petitioner:

Name- Type or Print

Signature

Mailing Address

City

State

Zip Code

Telephone #

Email Address

Legal Owners (Petitioners):

KAROL RIEFFIN | JAMES RIEFFIN

Name #1 - Type or Print

Name #2 - Type or Print

Karol Rieffin

Signature #1

JRieffin

Signature #2

1941 GREENSPRING DR TIMONUM MD

Mailing Address

City

State

21093 | 443 4146210 |

Zip Code

Telephone #

Email Address

Representative to be contacted:

owners

Name - Type or Print

Signature

Mailing Address

City

State

Zip Code

Telephone #

Email Address

CASE NUMBER 2014-0094-SPH Filing Date 10/15/2013

Do Not Schedule Dates:

Reviewer JNP for AR

DROP OFF PETITION - NO REVIEW



PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 11019 Gateview Rd which is presently zoned RC-6/DR1
Deed References: 5663/511 10 Digit Tax Account # 08-18-00-011282
Property Owner(s) Printed Name(s) KAROL AND JAMES RIFFIN

(SELECT THE HEARING(S) BY MARKING **X** AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. ☒ **a Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve The owner's Proposed uses
(see Attached)
2. ☐ **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for
3. ☐ **a Variance** from Section(s)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:
(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

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

I, or we, agree to pay expenses of above petition(s), 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.

Legal Owner(s) Affirmation: I / we do so 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 / these Petition(s).

Contract Purchaser/Lessee:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Attorney for Petitioner:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

KAROL RIFFIN | JAMES RIFFIN
Name #1 - Type or Print Name #2 - Type or Print

Karol Riffin | JR
Signature #1 Signature #2

1941 GREENSPRING DR TIMONIUUM MD
Mailing Address City State

21093 | 4434146210 |
Zip Code Telephone # Email Address

Representative to be contacted:

OWNERS
Name - Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

CASE NUMBER 2014-0094-SAH Filing Date 10/15/2013 Do Not Schedule Dates: Reviewer JNP for AK

DROP OFF PETITION - NO REVIEW

In re: 11019 Gateview Road
Cockeysville, MD 21030

Before the Zoning Commissioner
of Baltimore County

Case No.: 2014 - 0094 - SPH

* * * * *

PETITION FOR SPECIAL HEARING

1. Your Petitioners respectfully ask that the Zoning Commissioner for Baltimore County determine which of the uses enumerated below are permitted in a DR-1 zone, which are permitted in a RC-6 zone, and which are permitted non-conforming uses.

	<u>DR-1</u>	<u>RC-6</u>	<u>Non-Conforming</u>
2. Primary uses:			
A. Dwelling, one-family detached:	Y N	Y N	Y N
B. Farm:	Y N	Y N	Y N
3. Accessory uses:			
A. Home occupations:	Y N	Y N	Y N
B. Offices of professionals occupying less than 25% of total Floor area and not involving the employment of more than one nonresident employee:	Y N	Y N	Y N
C. Parking:	Y N	Y N	Y N
D. Residential garage space:	Y N	Y N	Y N
E. Buildings and other structures used to store farming-related equipment, materials and crops:	Y N	Y N	Y N

	<u>DR-1</u>	<u>RC-6</u>	<u>Non-Conforming</u>
F. Buildings and other structures related to cultivation of crops:	Y N	Y N	Y N
G. Utility sheds.	Y N	Y N	Y N
H. Recreational amenities, such as but not limited to 1:1 scale Railroad cars, track maintenance equipment, rails, cross-ties and other track material:	Y N	Y N	Y N
I. Parking or storage of:			
a. Truck tractors, dump trucks or other trucks currently licensed as historic vehicles:	Y N	Y N	Y N
b. Semi-trailers, currently licensed, used in connection with farming activities:	Y N	Y N	Y N
c. Semi-trailers, unlicensed, used in connection with farming activities:	Y N	Y N	Y N
d. Trucks, licensed, used in connection with farming:	Y N	Y N	Y N
e. Trucks, unlicensed, used in connection with farming:	Y N	Y N	Y N
f. Cranes used in connection with farming:	Y N	Y N	Y N
g. Air compressors, used to inflate tires and used for other farming activities:	Y N	Y N	Y N
h. Felled logs, being air-dried:	Y N	Y N	Y N

	<u>DR-1</u>	<u>RC-6</u>	<u>Non-Conforming</u>
i. Excavation, grading or land cultivation equipment used in connection with farming:	Y N	Y N	Y N
j. Building materials, such as steel, masonry units, lumber, asphalt millings, crusher-run:	Y N	Y N	Y N
k. Generators:	Y N	Y N	Y N
l. Air conditioning condensing units:	Y N	Y N	Y N
m. Grass mowing equipment:	Y N	Y N	Y N
n. Motor vehicles, unlicensed, used to store farming-related equipment and material:	Y N	Y N	Y N
o. Motor vehicles, unlicensed, used to transport farming-related equipment and materials about and on farm property:	Y N	Y N	Y N
p. Containers used to store farming-related equipment and material:	Y N	Y N	Y N
q. Tanks and containers used to store water, crops, and other farming-related materials:	Y N	Y N	Y N
r. Stone crushing equipment:	Y N	Y N	Y N
s. Lighting towers, used to illuminate farming activities after sunset:	Y N	Y N	Y N

	<u>DR-1</u>	<u>RC-6</u>	<u>Non-Conforming</u>
t. Fencing material:	Y N	Y N	Y N
u. Heating equipment:	Y N	Y N	Y N
v. Ice making equipment:	Y N	Y N	Y N
w. Tires for farming-related equipment:	Y N	Y N	Y N
x. Farm stand display equipment:	Y N	Y N	Y N
y. Rope:	Y N	Y N	Y N
z. Hydraulic equipment:	Y N	Y N	Y N
aa. Plowing equipment:	Y N	Y N	Y N
bb. Crop cleaning equipment:	Y N	Y N	Y N
cc. Grapple equipment:	Y N	Y N	Y N
dd. Log chipping equipment:	Y N	Y N	Y N
ee. Man lifts:	Y N	Y N	Y N

4. Under what conditions may a Code Inspection Person enter upon private land?

ZONING HEARING PROPERTY DISCRIPTION

ZONING PROPERTY DESCRIPTION FOR 11019 Gateview Road, Cockeysville, MD.

Beginning at a point on the East end of Gateview Road, which is 50 feet wide, at the distance of 140 feet East from the centerline of the nearest improved intersecting street, Norgate Court, which is 50 feet wide, Being Lot # 3 in the subdivision of Red Fox Fields, as recorded in Baltimore County Plat Book # 44, Folio # 130, containing 13 acres. Located in the 8th Election District and 3rd Council District.

2014-0094-SPH

DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS

ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:

Item Number or Case Number: 2014-0094-SPH
Petitioner: RIFFIN
Address or Location: 11019 GATEVIEW ROAD

PLEASE FORWARD ADVERTISING BILL TO:

Name: JAMES RIFFIN
Address: 1941 GREENSPRING DRIVE
TIMONIUM, MD 21093
Telephone Number: 443-414-6210

DROP OFF PETITION- NO REVIEW

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. **105012**
Date **10/15/2013**

PAID RECEIPT

BUSINESS ACTUAL TIME
10/16/2013 10/15/2013 10/15/2013
RECEIPT # 651201 10/15/2013
Dept 5 520 ZONING CERTIFICATION
CR NO. 105012

Fund	Dept	Unit	Sub Unit	Rev Source/Obj	Sub Rev/Obj	Dept Obj	BS Acct	Amount
001	806	0000		6100				75.00

Total: **75.00**

RCB From

James E. Karole Riffin

For

**Special Hearing - 11019 Gateview Road
2014-0094-SPH (Riffin)**

DISTRIBUTION

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
PLEASE PRESS HARD!!!!

Recpt 1st \$75.00
\$75.00 0 1.00 CR
Baltimore County, Maryland

CASHIER'S
VALIDATION



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
*Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections*

December 12, 2013

Karole & James Riffin
1941 Greenspring Drive
Timonium MD 21093

RE: Case Number: 2014-0094 SPH, Address: 11019 Gateview Road

Dear Mr. & Ms. Riffin:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on October 15, 2013. 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: jaf

Enclosures

c: People's Counsel

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



James T. Smith, Jr., Secretary
Melinda B. Peters, Administrator

Date: 11-6-13

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

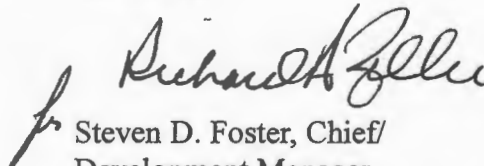
RE: Baltimore County
Item No. 2014-0094-SPH
Special Hearing
Karole & James Riffin
11019 Gateview Road

Dear Ms. Lewis:

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. 2014-0094-SPH.

Should you have any questions regarding this matter, please contact Richard Zeller at 410-545-5598 or 1-800-876-4742 extension 5598. Also, you may E-mail him at (rzeller@sha.state.md.us).

Sincerely,


Steven D. Foster, Chief/
Development Manager
Access Management Division

SDF/raz

My telephone number/toll-free number is _____
Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone 410.545.0300 • www.roads.maryland.gov

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

DATE: November 7, 2013

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

SUBJECT: Zoning Advisory Committee Meeting
For November 4, 2013
Item No. 2014-0094, 0100, 0102 and 0104

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

DAK:CEN
Cc: file

G:\DevPlanRev\ZAC -No Comments\ZAC11042013 -.doc

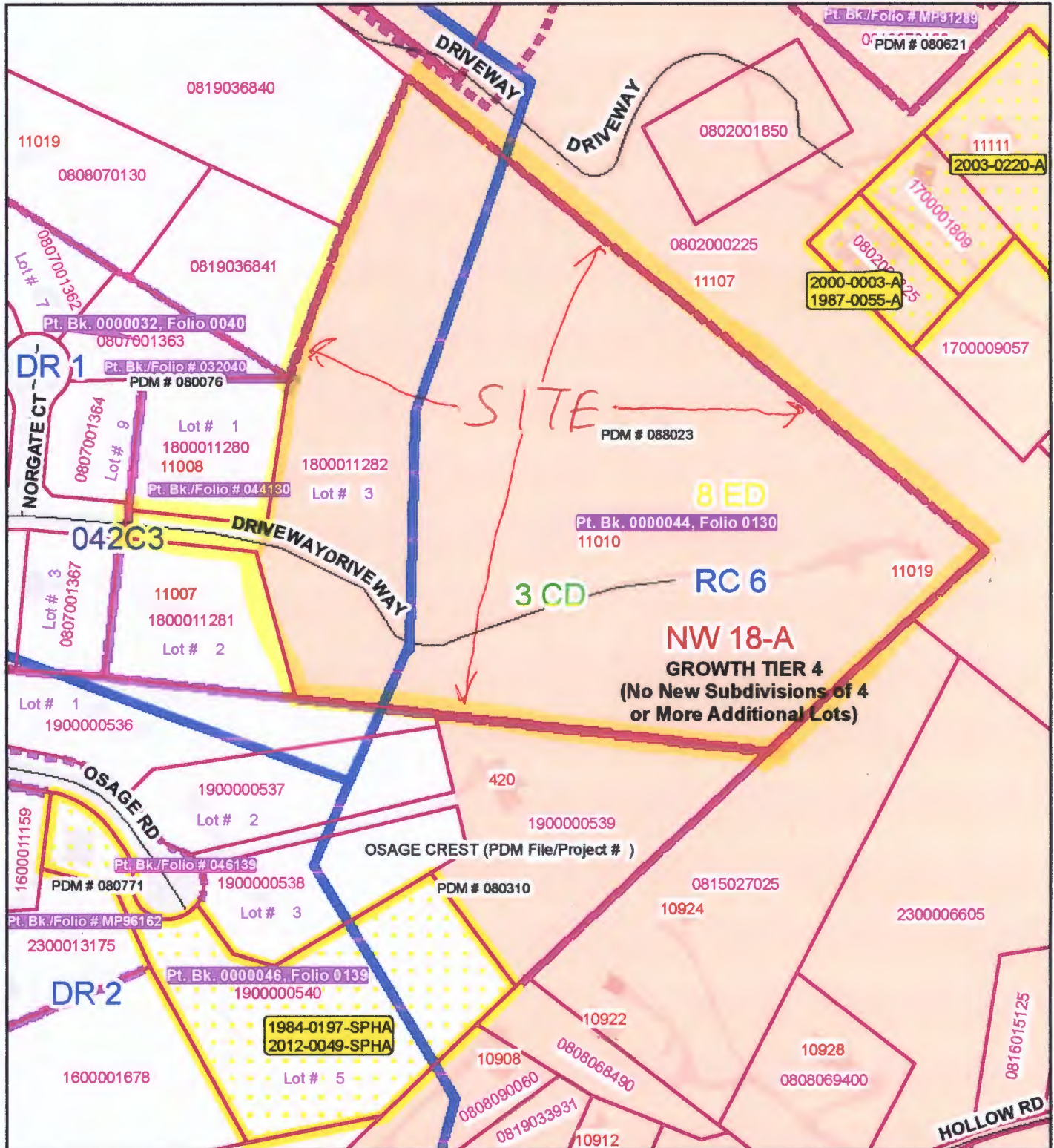
Real Property Data Search (w4)

[Search Help](#)

Search Result for BALTIMORE COUNTY

View Map	View GroundRent Redemption	View GroundRent Registration
Account Identifier:	District - 08 Account Number - 1800011282	
Owner Information		
Owner Name:	RIFFIN JAMES	Use: RESIDENTIAL
	RIFFIN KAROLE A	Principal Residence: YES
Mailing Address:	PO BOX 42	Deed Reference: 1)
	COCKEYSVILLE MD 21030-0042	2)
Location & Structure Information		
Premises Address:	11019 GATEVIEW RD	Legal Description: 13.0 AC.
	0-0000	RED FOX FIELDS
Map: 0042	Grid: 0024	Parcel: 0379
Sub District:	Subdivision: 0000	Section:
		Block: 3
		Lot: 2014
		Assessment Year:
		Plat No: 0044/ 0130
		Plat Ref: 0044/ 0130
Special Tax Areas:		
Town: NONE		
Ad Valorem:		
Tax Class:		
Primary Structure Built	Above Grade Enclosed Area	Finished Basement Area
1976	1,560 SF	1.5200 AC
Property Land Area	County Use	
1.5200 AC	04	
Stories	Basement	Type
1.500000	NO	STANDARD UNIT
Exterior	Full/Half Bath	Garage
FRAME	1 full/ 1 half	
Last Major Renovation		
Value Information		
Base Value	Value	Phase-in Assessments
	As of	As of
	01/01/2011	07/01/2013
		As of
		07/01/2014
Land:	270,000	270,000
Improvements	118,900	118,900
Total:	388,900	388,900
Preferential Land:	0	
Transfer Information		
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Exemption Information		
Partial Exempt Assessments:	Class	07/01/2013
County:	000	0.00
State:	000	0.00
Municipal:	000	0.00
Tax Exempt:	Special Tax Recapture:	
Exempt Class:	NONE	
Homestead Application Information		
Homestead Application Status: Denied		

11019 Gateview Road



Publication Date: 10/15/2013



Publication Agency: Permits, Approvals & Inspections
Projection/Datum: Maryland State Plane,
FIPS 1900, NAD 1983/91 HARN, US Foot



0 50 100 200 300 400 Feet

1 inch = 200 feet

2014-0094-SPH

SPECIAL HEARING PLAN

Zoning hearing plan for Special Hearing.

Address: 11019 Gateview Road Cockeysville, MD 21030 Owner: Karole & James Riffin

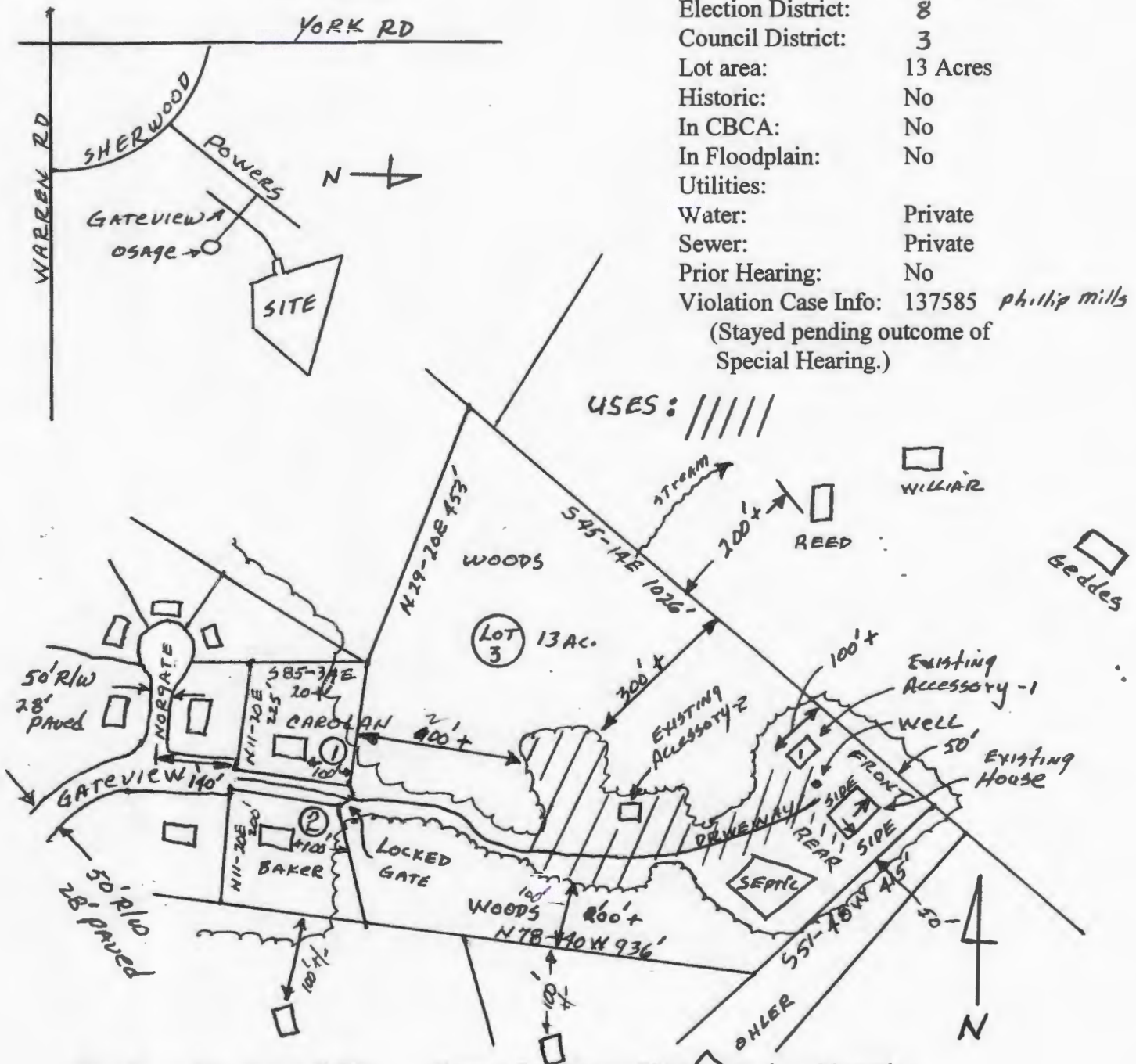
Subdivision Name: Red Fox Fields Lot: 3

Plat Book # 44 Folio # 130 Tax No.: 08-18-00-011282 Deed: Liber 5663 Folio 511

SITE VICINITY MAP

(Not to scale)

Zoning Map #: 042C3
 Site Zoned: RC-6 /DR-1
 Election District: 8
 Council District: 3
 Lot area: 13 Acres
 Historic: No
 In CBCA: No
 In Floodplain: No
 Utilities:
 Water: Private
 Sewer: Private
 Prior Hearing: No
 Violation Case Info: 137585 *philip mills*
 (Stayed pending outcome of
 Special Hearing.)



Plan drawn by: James Riffin

Date: October 12, 2013

Scale: No scale

2014-0094-SPH

SPECIAL HEARING PLAN

Zoning hearing plan for Special Hearing.

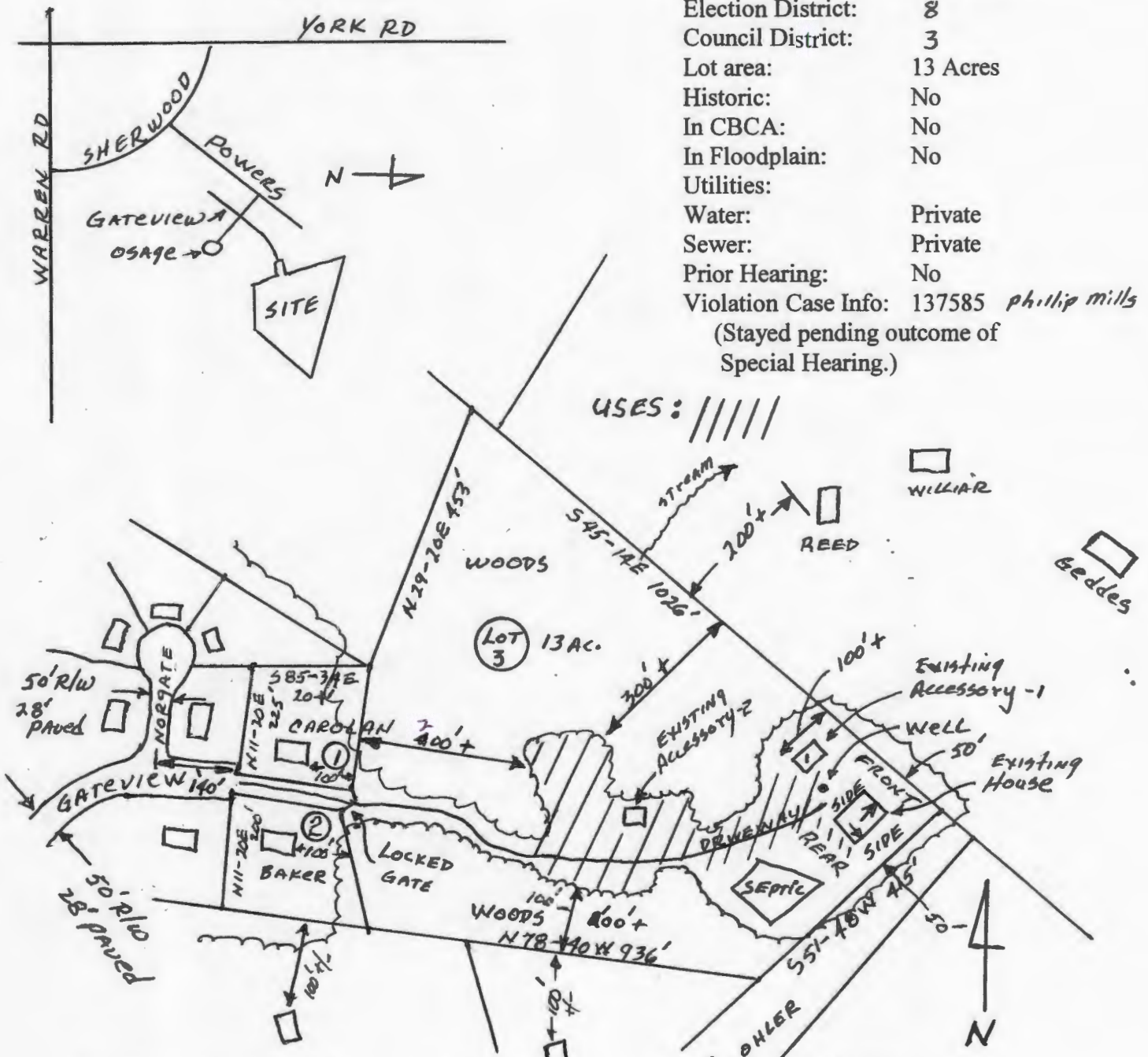
Address: 11019 Gateview Road Cockeysville, MD 21030 Owner: Karole & James Riffin

Subdivision Name: Red Fox Fields Lot: 3

Plat Book # 44 Folio # 130 Tax No.: 08-18-00-011282 Deed: Liber 5663 Folio 511

SITE VICINITY MAP
(Not to scale)

Zoning Map #: 04203
 Site Zoned: RC-6/DRT
 Election District: 8
 Council District: 3
 Lot area: 13 Acres
 Historic: No
 In CBCA: No
 In Floodplain: No
 Utilities:
 Water: Private
 Sewer: Private
 Prior Hearing: No
 Violation Case Info: 137585 *philip mills*
 (Stayed pending outcome of
 Special Hearing.)

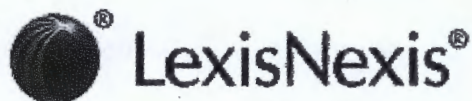


Plan drawn by: James Riffin

Date: October 12, 2013

Scale: No scale

2014-0094-SPH



De Novo - p. 17
Rights - p. 18

LOUIS A. BOEHM v. ANNE ARUNDEL COUNTY, MARYLAND et al.

No. 916, September Term, 1982

Court of Special Appeals of Maryland

54 Md. App. 497; 459 A.2d 590; 1983 Md. App. LEXIS 277

May 4, 1983, Decided

SUBSEQUENT HISTORY: [***1] *Certiorari* Denied, Court of Appeals of Maryland, September 14, 1983.

PRIOR HISTORY: Appeal from the Circuit Court for Anne Arundel County; Thieme, J.

DISPOSITION: *Judgment affirmed; appellant to pay the costs.*

CASE SUMMARY:

PROCEDURAL POSTURE: Petitioner applicant challenged an order of the Circuit Court for Anne Arundel County (Maryland), which affirmed the decision of defendant county Board of Appeals (Board) that the lawful nonconforming status of the applicant's property be denied.

OVERVIEW: The applicant sought a nonconforming use for his landfill. The zoning office granted the nonconforming use subject to certain conditions. The applicant and neighborhood protestors appealed the decision to the Board, which found that a landfill operation had not existed on the site and denied the nonconforming status. The applicant sought review. The court affirmed the decision of the Board because it found that: (1) the trial court properly excluded additional evidence of the Board's discrimination because the comparable decisions sought to be introduced were issued by different administrative zoning bodies; (2) the zoning administrator's thought processes were properly excluded; (3) the Board was not bound by the decision of the zoning office; (4) the quality and quantity of the evidence was sufficient to make the issue fairly debatable; and (5) substantial evidence in the record supported the Board's decision.

OUTCOME: The court affirmed the decision of the Board, which denied nonconforming use status for the applicant's property.

CORE TERMS: zoning, de novo, dumping, landfill, nonconforming use, administrative agency's, administrative decision, debatable, planning, de novo, protestants', hearing de novo, hear, excavation, administrative law, substantial evidence, non-conforming, adjudicatory, landfilling, notice, acres, comparable, fair hearing, close proximity, discriminatory, nonconforming, supplied, county attorney, interruption, convinced

LexisNexis(R) Headnotes

Civil Procedure > Appeals > Records on Appeal
Civil Procedure > Appeals > Reviewability > Preservation for Review

[HN1] Upon appeal, the circuit court, in its review of the evidence, is bound by the record made before the governmental body from which the appeal is taken.

Administrative Law > Judicial Review > Reviewability > Factual Determinations

[HN2] It is improper to probe the mental processes of administrator in reaching his conclusion. Those legally responsible for a decision must in fact make it, but the method of doing so is largely beyond judicial scrutiny.

Administrative Law > Agency Adjudication > Review of Initial Decisions

54 Md. App. 497, *; 459 A.2d 590, **;
1983 Md. App. LEXIS 277, ***

*Administrative Law > Agency Adjudication > Hearings
> Right to Hearing > Statutory Right*

*Administrative Law > Judicial Review > Standards of
Review > De Novo Review*

*Civil Procedure > Appeals > Standards of Review > De
Novo Review*

[HN8] The scope of de novo review of the actions of administrative agencies, or the significance of a trial designated as a trial de novo in such case, may vary with the subject matter of the review or the function of the agency, and may be tested in the light of the nature and scope of the remedy through which such trial is made available and the proper distribution of governmental powers among the various branches of government under the Constitution.

*Administrative Law > Judicial Review > Standards of
Review > De Novo Review*

*Civil Procedure > Appeals > Standards of Review > De
Novo Review*

*Real Property Law > Zoning & Land Use > Judicial
Review*

[HN9] Unless otherwise limited by statute or court rule, a de novo hearing is an entirely new hearing at which time all aspects of the case should be heard anew as if no decision had been previously rendered.

*Constitutional Law > Bill of Rights > Fundamental
Rights > Procedural Due Process > Scope of Protection*

[HN10] Whether constitutional or statutory requirements or elements of fair play and impartiality have been violated in an administrative hearing should be decided on a case by case basis. The literal meaning of due process is fair procedure.

*Administrative Law > Agency Adjudication > Hearings
> Right to Hearing > Due Process*

*Constitutional Law > Bill of Rights > Fundamental
Rights > Procedural Due Process > Scope of Protection*

[HN11] Before an agency takes action which adversely affects particular rights and obligations, those affected must be given notice and an opportunity to present their side of the case in a full and fair hearing. When due process requires a hearing, it requires many of the elements of a "trial-type" hearing.

*Administrative Law > Agency Adjudication > Hearings
> General Overview*

*Constitutional Law > Bill of Rights > Fundamental
Rights > Procedural Due Process > Scope of Protection*

[HN12] The rights required by due process before an administrative agency include the right to: (1) notice, including an adequate formulation of the subjects and issues involved in the case; (2) present evidence (both testimonial and documentary) and argument; (3) rebut adverse evidence, through cross-examination and other appropriate means; (4) appear with counsel; (5) have the decision based only upon evidence introduced into the record of the hearing; (6) have a complete record, which consists of a transcript of the testimony and arguments, together with the documentary evidence and all other papers filed in the proceeding.

*Administrative Law > Judicial Review > Standards of
Review > Substantial Evidence*

*Real Property Law > Zoning & Land Use > Constitu-
tional Limits*

*Real Property Law > Zoning & Land Use > Judicial
Review*

[HN13] The action of a zoning board will not be reversed on appeal if there is "substantial evidence" in the record to support the board's finding. If such evidence does exist in the record, the matter is considered to be "fairly debatable", and the courts may not substitute their judgment for that of the board which is presumed to exercise a degree of expertise in zoning. On the other hand, where the action of the board is not supported by substantial evidence the board's decision cannot be said to be "fairly debatable". Under those circumstances the board's finding falls into the category of being arbitrary, capricious, and a denial of due process of law. It is only where there is no room for reasonable debate, or where the record is devoid of supporting facts, that a court is justified in declaring the action of the board arbitrary or discriminatory.

HEADNOTES

Administrative Law -- De Novo Administrative Appeal -- Absent Statute Or Rule To Contrary De Novo Hearing Is Entirely New Proceeding In Which All Aspects Of Case Are Heard Anew As If No Prior Decision Had Been Rendered -- Board Of Zoning Appeals In No Manner Bound By Prior Decision Of Zoning Agency -- Effect Of De Novo Hearing Is To Purge Potential Error From Earlier Decision Of Zoning Agency.

Zoning -- Appeal -- Evidence -- Admission Of Evidence Outside Record On Appeal From Zoning Board -- Generally, Review Of Evidence By Court Limited By Record Before Zoning Board From Which Appeal Is Taken -- Trial Court's Refusal To Permit Additional Evidence Of Comparable Decisions To Support Claim Of Discrimination In Board's Decision Held Not Erroneous Where Decisions Sought To Be Introduced Were Issued

54 Md. App. 497, *; 459 A.2d 590, **;
1983 Md. App. LEXIS 277, ***

[*499] testified that there were no dumping and landfilling activities on the Boehm property prior to July, 1952 and that the landfilling activities had only begun in the late 1960's and early 1970's. According to county witnesses, the county became aware of the landfilling and dumping on the Boehm property in 1976. At this time the county had sent violation notices to Boehm requesting he apply for a nonconforming use or bring his property into compliance with the law.

In response, Boehm submitted a plat, map and several affidavits to show the limits of his operation. This plat had been the basis for the April, 1979 Zoning Office decision [***5] that limited the Boehm property to 18 acres of nonconforming use as landfill. Owen White of the Office of Planning and Zoning in his testimony before the Board indicated, however, that his initial decision was based upon vague and incomplete information. He stated that after hearing the additional testimony before the Board, he believed Boehm had not met his burden of proof on the question of prior use and [**593] implied that his initial decision appeared incorrect.

The Board issued a written Opinion and Order on October 23, 1980. The findings concluded "[t]he Board was not convinced that a landfill or excavation operation existed on the property prior to July, 1952. On the contrary, the Board is convinced by the evidence that there was no excavation and little more than sporadic dumping on a few occasions prior to July, 1952." The Board's Order declared the Office of Planning and Zoning decision null and void and determined that the lawful nonconforming status of the subject property was to be denied.¹

¹ The full text of the operative portion of the Board's findings is as follows:

Testimony by numerous witnesses was presented on behalf of both petitioners and protestants. In most instances this testimony was in direct conflict as to whether or not a landfill and excavation op-

eration existed on this property prior to July 1, 1952, and has been an ongoing operation, without a consecutive twelve-month interruption, since.

The County witnesses all indicated there is no proof of this operation having been in existence prior to July 1, 1952, nor of its having continued without interruption since. Owen White, Office of Planning and Zoning, stated he presently believes his administrative decision in this case, based on the information his office had at the time, was not correct.

Although several witnesses testified there was dumping here prior to 1952, and that it continued without a consecutive twelve-month interruption until the present, many witnesses for the protestants testified there was no dumping or excavation prior to July 1, 1952. Testimony of other witnesses indicated there was no evidence of a landfill operation here until 1969 at the earliest.

Based on all the evidence and exhibits, the Board was not convinced that a landfill or excavation operation existed on this property prior to July 1, 1952. On the contrary, the Board is convinced by the evidence that there was no excavation and little more than sporadic dumping on a few occasions prior to July 1, 1952.

[***6]

54 Md. App. 497, *; 459 A.2d 590, **;
1983 Md. App. LEXIS 277, ***

[*507] Baltimore Board of Municipal and Zoning Appeals. The Court stated, at 242 Md. at 279, 219 A.2d at 97:

We have also held that the favorable reports of the Fire Commissioners, the Commissioner of Health and the Department of Transit and Traffic are not controlling. *Shell Oil Co. v. City of Baltimore*, 225 Md. 463, 472, 171 A.2d 234, 238 (1961).

Appellant contends, however, that the hearing before the Board is less than purely *de novo*, and that great deference must be given to the Zoning Office decision. We

disagree. The hearing before the Board is completely *de novo*. The Board is in no manner bound by the decision of the Zoning Office.

Section 602 (a) and 602 (d) of the Anne Arundel County Charter [***17] provide for a *de novo* review by the Board of Appeals of the Zoning Office decision. At the time of this appeal, ² that section provided:

[HN4] [**597] (a) *Appeals from orders relating to zoning.* The County Board of Appeals shall have and exercise all the functions and powers of the Board of Appeals of

54 Md. App. 497, *; 459 A.2d 590, **;
1983 Md. App. LEXIS 277, ***

[*509] hearings of the Board, the manner in which its Chairman shall be selected and the term which he shall serve as Chairman and other pertinent matters deemed appropriate and necessary for the Board. *All decisions by the County Board of Appeals shall be made after notice and hearing de novo upon the issues before said Board.* All hearings held by the Board shall be open to the public, and the Board shall cause to be maintained complete public records of its proceedings, with a suitable index. All parties to the proceedings or their attorneys of record shall receive a copy of the decision of the Board. (emphasis supplied).

Addressing the issue of what constitutes a *de novo* hearing before an administrative body, counsel concede and we concur that there is no authority in this State [**598] to answer this question.³ An excellent exposition, [***20] however, of what a "*de novo*" hearing

embraces can be found in 2 Am. Jur. 2d *Administrative Law* § 698 (1962). That section provides:

[HN7] *A trial or hearing "de novo" means trying the matter anew the same as if it had not been heard before and as if no decision had been previously rendered. Thus, it is said that where a statute provides that an appeal shall be heard de novo such a hearing is in no sense a review of the hearing previously held, but is a complete trial of the controversy, the same as if no previous hearing had ever been held, especially where the hearing is in a court of general, original jurisdiction.* Where a statute provides for a trial de novo and does not provide that the findings of the administrative agency shall be conclusive or of any force, the whole matter is opened up for consideration on appeal as if the proceeding had been originally brought in the

54 Md. App. 497, *; 459 A.2d 590, **;
1983 Md. App. LEXIS 277, ***

[*511] of the nature and scope of the remedy through which such trial is made available and the proper distribution of governmental powers among the various branches of government under the Constitution. Thus, there may be a trial *de novo* upon the record as some statutes expressly provide, and a trial *de novo* in which the court must consider the record before the agency, accord a presumption of correctness or proper deference to the agency findings and conclusion, and refrain, at least in matters other than judicial, from substituting its discretion or judgment for that of the administrative [**599] agency. [***23] (footnotes omitted) (emphasis supplied).

As such, [HN9] unless otherwise limited by statute or court rule, a *de novo* hearing is an entirely new hearing at which time all aspects of the case should be heard anew as if no decision had been previously rendered. Thus, the Board of Appeals may consider the decision of the Zoning Office in any light it desires but is not bound by the earlier decision in its *de novo* review. The *de novo* hearing, which is in actuality the first formal hearing on the issue, purges any potential errors from the earlier decision of the Zoning Office.

3 However, see, *Hardy v. State*, 279 Md. 489, 369 A.2d 1043 (1977) (criminal appeal *de novo*); *State v. Rutherford*, 145 Md. 363, 125 A. 725 (1922) (right of appellant to jury trial in appeal from Board of Zoning Appeals to Baltimore City Court). See also, *Montgomery Ward v. Herrmann*, 190 Md. 405, 58 A.2d 677 (1948); *Zitzer v. Jones*, 48 Md. 115 (1878); *Borden Mining Co. v. Barry*, 17 Md. 419 (1861), each of which dealt with *de novo* appeals from a judgment of a justice of the peace.

[***24] II. Due Process

Appellant argues that he was denied due process of law and a fair hearing before the Board. This argument is based upon the reversal in position of White in his testimony before the Board, the alleged prejudice caused by the disqualification of two of the five Board members, the political atmosphere surrounding the hearing, and the County Attorney's position as adversary to Boehm.

[HN10] Whether constitutional or statutory requirements or elements of fair play and impartiality have been violated in this type of hearing should be decided on a case by case basis. *Hyson v. Montgomery County Council*, 242 Md. 55, 217 A.2d 578 (1966). In discussing due process within the context of administrative hearings, Professor Schwartz, in his treatise on Administrative Law, states:

54 Md. App. 497, *; 459 A.2d 590, **;
1983 Md. App. LEXIS 277, ***

[*513] B. Schwartz, *Administrative Law*, *supra* § 67 at 192-93.

All of those rights [***26] were afforded the appellant herein.

We have already commented on the testimony of White before the Board of Appeals. Suffice to say that upon modifying his former conclusions, he was subject to vigorous cross-examination. He was cross-examined as any other witness might be; he was subject to being impeached on his factual statements in the same manner as in any case. The receipt of prejudicial evidence does not amount to unfairness. The disqualification of certain Board Members was admirable. This served to insure the appellant a fair hearing. Appellant's contention regarding the anti-Boehm atmosphere is likewise without merit. There is no evidence that would support this argument, [**600] especially in light of the well reasoned decision of the Board of Appeals. Appellant's argument with respect to the conduct of the county attorney is meritless. It is contended that the county attorney improperly acted as an appellant of the Zoning Office deci-

sion and as an adversary to appellant's application before the Board in not representing the Zoning Office. However, the county attorney's office was neither an appealing party nor an adversary; it had merely expressed concern [***27] over the conflicting evidence which had been presented to the Zoning Office and the Board.

III. *The Decision of the Board of Appeals*

Finally, we consider whether the issues were fairly debatable and the decision of the Board of Appeals supported by sufficient facts on the record so that a reasonable mind could have reached the same conclusion. The standard for review by a court of an administrative decision has been set forth many times. In *Neuman v. City of Baltimore*, 23 Md. App. 13, 14, 325 A.2d 146 (1974), a nonconforming use case, we observed:

The general rule is that [HN13] the action of a zoning board will not be reversed on appeal if there is "substantial evidence" in the record to support the

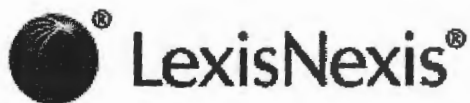
54 Md. App. 497, *; 459 A.2d 590, **;
1983 Md. App. LEXIS 277, ***

[*515] activities, nor any occasional smell of dumping. Aerial photographs failed to reveal any dumping in 1952 and tenants, hunters, loggers, and farmers using the property testified that they did not notice dumping and landfill activities during the period in question. Consequently, the Board concluded that there was "little more than sporadic dumping on a few occasions prior to July, 1952." The record supports this conclusion and we shall not substitute our judgment for that of the Board.

As to the question of whether there was substantial evidence in the record to support the Board's conclusion, we answer in the affirmative. The Board, in its findings of October 23, 1981, carefully summarized the essential testimony of each witness. Hence, it appears to have

considered the [**601] [***30] entire record. As already noted, the evidence appears fairly debatable. Unlike *Neuman v. City of Baltimore*, *supra*, where there was not "even a scintilla of evidence . . . that a non-conforming use did not exist," the conclusions of the Board were supported by substantial evidence on the record. It would not appear unreasonable that the Board felt Boehm failed to convince it that landfilling activities occurred prior to July, 1952 in light of the quantity and quality of the protestants' testimony and evidence. By Boehm's own admission, his initial purposes in the late 1940's and early 1950's was to use his property to fill the ravines for future farming, not commercial landfilling. Hence, the Board's conclusion was reasonable.

Judgment affirmed; appellant to pay the costs.



de Novo - p. 10

Vernon E. LOHRMANN, Sr., et al. v. The ARUNDEL CORPORATION, et al.

No. 253, September Term, 1985

Court of Special Appeals of Maryland

65 Md. App. 309; 500 A.2d 344; 1985 Md. App. LEXIS 479

November 18, 1985

PRIOR HISTORY: [***1] Appeal from the Circuit Court for Arundel County, Bruce C. Williams, Judge.

split decision was to deny the corporation's request for a special exception.

DISPOSITION: MOTION TO DISMISS DENIED. JUDGMENT REVERSED. CASE REMANDED FOR ENTRY OF DECLARATORY JUDGMENT CONSISTENT WITH THIS OPINION. APPELLEES TO PAY THE COSTS.

OUTCOME: The court reversed the trial court's judgment to allow the zoning officer's decision to grant a special zoning exception for the corporation to set up a funeral home to remain in force in light of the county board of appeals' split decision on the issue.

CASE SUMMARY:

CORE TERMS: de novo, zoning, special exception, summary judgment, hearing officer, declaratory judgment, final judgment, statutory remedy, evenly-divided, split decision, original jurisdiction, declaration, original proceedings, burden of proof, condemnation, correctness, tribunal, aggrieved, de novo hearing, declaratory relief, administrative appeal, affirmance, appealable, persuasion, embodied, supplied, split, voting

PROCEDURAL POSTURE: Appellant citizens sought review of the decision of the Circuit Court for Arundel County (Maryland), which held that because the county board of appeals failed to render a decision either way in its split decision in an action by the citizens challenging appellee corporation's application for a special zoning exception, the zoning officer's original decision to grant the exception remained in force.

LexisNexis(R) Headnotes

OVERVIEW: The corporation requested a special exception to permit the operation of a cemetery, funeral home, and crematory on certain lands in the county. The request was opposed by the citizens but was granted by the zoning hearing officer. The citizens filed an appeal from the decision to the county board of appeals. The county board of appeals rendered a split decision. The county office of planning and zoning decided to give effect to the zoning officer's decision to grant the special exception. The citizens appealed from the county board of appeal's split decision. The trial court held that because the board failed to render a decision either way, the decision of the zoning officer remained in force. The citizens challenged that decision. The court reversed, holding that the effect of the county board of appeal's

Civil Procedure > Summary Judgment > Appellate Review > Appealability

Civil Procedure > Summary Judgment > Standards > General Overview

Civil Procedure > Appeals > Appellate Jurisdiction > Final Judgment Rule

[HN1] There is no right of appeal from the grant of a motion for summary judgment because the grant of the motion is nothing more than a determination that the moving party is entitled to a judgment. It does not itself constitute the entry of final judgment.

Civil Procedure > Appeals > Appellate Jurisdiction > Final Judgment Rule

65 Md. App. 309, *; 500 A.2d 344, **;
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[*318] wiped clean. But it is otherwise in different types of *de novo* "appeals." In this second category of proceedings, the use of the word "appeal," to the extent it denotes review of the action of a lower tribunal, is a misnomer, for there is no review.

Perhaps the best example of proceedings in this category is that of *de novo* "appeals from the District Court to the circuit courts." [HN5] Section 12-401(d) of the Courts Art. provides: "In every . . . case [other than a civil case in which the amount in controversy is more than \$ 1,000] an appeal shall be filed *de novo*." In *Hardy v. State*, 279 Md. 489, 493, 369 A.2d 1043 (1977), the Court of [***14] Appeals observed that "[t]his Court has consistently treated *de novo* appeals [from courts of limited jurisdiction to circuit courts] as wholly original proceedings, that is, as if no judgment had been entered in the lower court." See also, e.g., *Harding v. State*, 250 Md. 188, 242 A.2d 135 (1968), *Montgomery Ward & Co. v. Herrmann*, 190 Md. 405, 58 A.2d 677 [**349] (1948), and *Pinkett v. State*, 30 Md.App. 458, 352 A.2d 358, cert. denied, 278 Md. 730 (1976). When such an appeal is abandoned by the appellant, the judgment of

the District Court is not revived; instead, the circuit court enters "as its judgment the judgment of the lower court." *Md. Rule 1314 c.* In short, when this type of *de novo* "appeal" is involved, there is no review of the decision of the lower tribunal. Instead, the case proceeds in most respects as an original proceeding, with the burdens of proof and persuasion allocated as an original proceeding, and with the entry of a new judgment at the conclusion of the trial.⁴

4. These principles are not modified by *Stanton v. State*, 290 Md. 245, 428 A.2d 1224 (1981), which held only that for purposes of consecutive sentencing in a separate proceeding, a District Court conviction remains in effect despite a pending *de novo* appeal from that conviction.

[***15] We find similar reasoning in cases dealing with *de novo* appeals from Orphans' Courts under § 12-502 of the Courts Art.; *Lowenthal v. Rome*, 45 Md.App. 495, 413 A.2d 1360 (1980), *aff'd*, 290 Md. 33, 428 A.2d 75 (1981). And see the

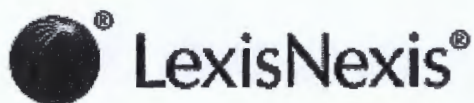
65 Md. App. 309, *; 500 A.2d 344, **;
1985 Md. App. LEXIS 479, ***

[*320] Board's action was to deny Arundel's
[***17] request for a special exception. *See Walker and
Gorin*, both *supra*.

For these reasons we reverse the judgment of the
trial court. We remand with direction that the judgment

be entered declaring that the Board's evenly-divided de-
cision constitutes a denial of Arundel's application.

MOTION TO DISMISS DENIED. JUDGMENT
REVERSED. CASE REMANDED FOR ENTRY OF
DECLARATORY JUDGMENT CONSISTENT WITH
THIS OPINION. APPELLEES TO PAY THE COSTS.

de Novo p.13

POLLARD'S TOWING, INC., et al. v. BERMAN'S BODY FRAME & MECHANICAL, INC., T/A BERMAN'S TOWING

No. 249, September Term, 2000

COURT OF SPECIAL APPEALS OF MARYLAND

137 Md. App. 277; 768 A.2d 131; 2001 Md. App. LEXIS 39

March 7, 2001, Filed

SUBSEQUENT HISTORY: [***1] As Corrected March 13, 2001.

PRIOR HISTORY: APPEAL FROM THE Circuit Court for Baltimore County. Thomas J. Bollinger, Sr., JUDGE.

DISPOSITION: JUDGMENT REVERSED; COSTS TO BE PAID BY APPELLEE.

CASE SUMMARY:

PROCEDURAL POSTURE: Appellants, licensed towing companies, appealed a ruling of the Circuit Court for Baltimore County, Maryland, which reversed the Baltimore County Board of Appeals' denial of a towing license to the appellee under Baltimore County, Md., Code § 24-229.

OVERVIEW: The court on appeal first noted that the decision it was reviewing was the decision of the Baltimore County Board of Appeals. It was not reviewing the procedural propriety of how the board handled an earlier determination further down the administrative chain. The appellate court was only reviewing its de novo decision on the ultimate merits of whether the towing license should have been granted. The court found that the board was not simply unpersuaded of a need for the license, it was affirmatively persuaded that there was no need for the license. There was evidentiary support for the board's findings in that regard. The testimony established that eight criteria had been consistently used for several years in determining whether, under Baltimore County, Md., Code § 24-229, a need existed for towing services. Those criteria, although not formally published, were common

sense and logical factors to be considered when attempting to reach a conclusion as to whether a need for towing services existed. The permit department which had granted a license to appellee, severely departed from prior practice relied upon by previous applicants in applying for a towing license.

OUTCOME: The judgment was reversed. Substantial evidence supported the Baltimore County Board of Appeals' denial of a towing license. It had relied on the established, although unpublished, criteria to determine that there was no need for another license. The lower departmental decision granting appellee the license had not done so.

CORE TERMS: towing, license, tower's, supplied, licensed, administrative agency, roadway, substantial evidence test, tow, de novo hearing, disabled vehicles, traveled, geographical area, non-persuasion, recommendation, issuance, traffic, earlier decision, agency's decision, police department, accident scene, administrative body, addressing, proximity, normally, regular, times, trucks, evidence to support, final decisions

LexisNexis(R) Headnotes

*Governments > Local Governments > Licenses
Governments > State & Territorial Governments > Licenses*

*Transportation Law > Private Vehicles > Towing
[HN1] See Baltimore County, Md., Code § 24-226(a).*

137 Md. App. 277, *, 768 A.2d 131, **;
2001 Md. App. LEXIS 39, ***

[HN11] When an administrative agency overrules the recommendation of an administrative law judge, a reviewing court's task is to determine if the agency's final order is based on substantial evidence in the record.

Civil Procedure > Appeals > Standards of Review > Clearly Erroneous Review

Civil Procedure > Appeals > Standards of Review > Reversible Errors

[HN12] It is far easier to sustain as not clearly erroneous the decisional phenomenon of not being persuaded than it is to sustain the very different decisional phenomenon of being persuaded. Actually, to be persuaded of something requires a requisite degree of certainty on the part of the fact finder (the use of a particular burden of persuasion) based on legally adequate evidentiary support (the satisfaction of a particular burden of production by the proponent). There are within reasonable frequency reversible errors in those regards. Mere non-persuasions, on the other hand, requires nothing but a state of honest doubt. It is virtually, albeit perhaps not totally, impossible to find reversible error in that regard.

Governments > State & Territorial Governments > Licenses

[HN13] Factors to be considered in determining whether or not, under Baltimore County, Md. Code § 24-229, a towing license should be granted are: (1) geographic location of the tower, and the area of roadway system; (2) number of accidents on the roadway system; (3) proximity of other licensed towers in the area; (4) previous year's statistical data from towers; (5) growth potential; (6) average daily traffic counts in the general area

served by the tower; (7) location where licenses had previously existed; and (8) the quality of the applicant's operation.

COUNSEL: ARGUED BY Michael B. Sauer of Towson, MD. FOR APPELLANT.

ARGUED BY M. Albert Figinski (Saul, Ewing, Weinberg & Green on the brief) all of Baltimore, MD. FOR APPELLEE.

JUDGES: ARGUED BEFORE * MOYLAN, DAVIS, and THIEME, Raymond G. (Retired, specially assigned), JJ. OPINION BY MOYLAN, J.

* Moylan, J., participated in the hearing of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

OPINION BY: MOYLAN

OPINION

[**131] [*278] OPINION BY MOYLAN, J.

Filed: March 7, 2001

In this appeal, the appellants, Pollard's Towing, Inc.; Bud and Jeff Dansicker, Inc.; Pikesville Auto and Body Repair, Inc.; and Baltimore County Organized Licensed Towers, Inc., challenge a ruling in the Circuit Court for Baltimore County which reversed the Baltimore County Board of Appeals's denial of a towing license to the appellee, Berman's Towing.

[*284] 4. A history of the previous year; late response times, no response times, number of trucks and complaints of the current licensed towers;

5. The growth potential for the particular geographical area in which the applicant is located;

6. The average daily traffic count for the heavily traveled roadways in the applicant's area;

7. Whether or not the application is for a location where a tow license had previously existed; and

8. The quality of the operation of the applicant, including the number of trucks, the number of years experience in towing, and whether or not the tower is in a position [***10] to furnish specialized services.

The County Police Department in its Memo discussed in detail each of those eight factors, but it made no formal recommendation as to whether, in its opinion, a towing license should be issued to the appellee. On March 4, 1998, the Department [**135] approved the

appellee's application, and it issued the appellee a towing license for State Police towing only.

On April 1, 1998, the appellants, all of which operated towing businesses in the geographical area for which the appellee had been approved to operate his towing business for the State Police, appealed the Department's decision to issue the appellee a permit. On November 5, 1998, a hearing was held before the Board of Appeals. On December 31, 1998, a fifteen-page Opinion was issued by the Board in which it explained:

The issue involved concerns the issuance of a towing permit to the Applicant, which the Appellants contend is in violation of statute since the Applicant did not satisfy the "need" requirement of the law; and, in the alleged "illegal" issuance, the Appellants have been "aggrieved."

* * *

The Board, in its assessment of this case, clearly believes the permit department acted in an arbitrary [***11] manner in

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[*286] considered these matters to be the equivalent of published criteria on which it could rely in arriving at its decision. ...

ORDERED, that the Order of December 31, 1998, of the County Board of Appeals is hereby reversed, and this matter is remanded to the County Board of Appeals to reinstate the Petitioner's license as established and granted by the Department of Permits and Development Management to [***13] tow disabled vehicles "for the State Police only."

(Emphasis supplied). From that decision the appellants appealed.

[136] Standard of Review**

[HN4] When asked to consider the validity of the ruling of an administrative agency,

a reviewing court, be it a circuit court or an appellate court, shall apply the substantial evidence test to the final decisions of an administrative agency, but it must not itself substitute its judgment for that of the

agency. *Baltimore Lutheran High School v. Employment Security Admin.*, 302 Md. 649, 662, 490 A.2d 701 (1985). We are bound by the agency's findings of fact and may not substitute our judgment for that of the agency unless no "reasoning mind reasonably could have reached the factual conclusion the agency reached." *Bulluck v. Pelham Wood Apartments*, 283 Md. 505, 512, 390 A.2d 1119 (1978). We further view the agency's decision in the light most favorable to the agency, "since the decisions of administrative agencies are prima facie correct, and carry with them the presumption of validity." *Id.* at 513.

In *Eger v. Stone*, 253 Md. 533, 542, 253 A.2d 372 (1969), the Court [***14] of Appeals further elaborated on the deference given to the decision of an administrative agency:

We have made it quite clear that [HN5] if the issue before the administrative body is "fairly debatable," that is, that its determination involved testimony from which a reasonable man could come to different conclusions, the courts will not

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[*294] his findings [**140] reflected there was no need for a towing license at the time of his investigation.

In its analysis of whether there was adequate support for the Department's issuance of a towing license to the appellee, [***25] the Board explained:

According to the testimony of Mr. Freeman, the report of the [County] Police authority was not considered in the decision making -- only and exclusively the "need" expressed by the Maryland State Police was used in his "need" evaluation and determination. This was a departure from the prior practice of the permits department in assessing "need." Previously, eight criteria had been established in the determination by the department in establishing need.

[The Board then listed each of the eight criteria]

This Board has, on numerous occasions, heard cases in which towing licenses had been denied based on the permits department consideration of the referenced criteria,

and failure of the respective tower's burden to satisfy the requirements as set forth above.

* * *

The permit department severely departed from prior practice relied upon by previous applicants in applying for a towing license. This Board on recent occasions (one of which involved Berman's towing) upheld the decision of the permits department in the denial of a new license due to the lack of "need" based on the established criteria. Based upon prior practices, these eight criteria [***26] have become established criteria in which the department has established the "need" factor, and upon which the towing companies have relied in filing for a towing license.

(Emphasis supplied).

In the last analysis, all that was required of the Board was that it was not persuaded that a need existed for the additional towing license. That was the effect of its decision. We hold that the Board had a substantial basis for not issuing the

TAX Assessment - P. 15, 16



MARY PAT MARZULLO, et al. v. PETER A. KAHL

No. 2301, Sept. Term, 1999

COURT OF SPECIAL APPEALS OF MARYLAND

135 Md. App. 663; 763 A.2d 1217; 2000 Md. App. LEXIS 212

December 26, 2000, Filed

PRIOR HISTORY: [***1] APPEAL FROM THE Circuit Court for Baltimore County. John Grason Turnbull, II, JUDGE.

DISPOSITION: JUDGMENT REVERSED; CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE COUNTY WITH DIRECTIONS TO REMAND TO THE BALTIMORE COUNTY BOARD OF APPEALS FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO ABIDE THE RESULT.

CASE SUMMARY:

PROCEDURAL POSTURE: Appellants sought review of a decision by the Circuit Court for Baltimore Co., Maryland, which reversed a decision of the county board of appeals by holding that a facility used for raising and marketing snakes was a farm within the meaning of the RC-4 zone under Baltimore Co., Md., Zoning Regs. § 1A03.1 (2000).

OVERVIEW: Appellee used his land to breed, raise, and market snakes for income. Appellants filed a petition for a special hearing arguing that appellee's facility was not a "farm" and thus not a permitted use in a RC-4 zone under Baltimore Co. Zoning Regs. § 1A03.1 (2000). The zoning commissioner approved appellee's site for raising and selling reptiles, but later reversed its own decision holding that the snake facility was not a use permitted as of right in a RC-4 zoning district. The circuit court reversed and appellee sought review. The court held appellee's facility was a farm as a matter of law based on the fact that snakes were animals as defined by the ordinance and land was being used to breed and raise animals for

income, pursuant to the plain language of Baltimore Co. Zoning Regs. § 101.

OUTCOME: The lower court's judgment was reversed and remanded with directions because appellee's snake facility was a farm and therefore a permitted use in a RC-4 zone.

LexisNexis(R) Headnotes

Environmental Law > Zoning & Land Use > Nonconforming Uses

Real Property Law > Zoning & Land Use > Nonconforming Uses

[HN1] See Baltimore Co., Md. Zoning Regs. § 5C (2000).

Administrative Law > Judicial Review > Review > Factual Determinations

Administrative Law > Judicial Review > Standard Review > Clearly Erroneous Review

Environmental Law > Litigation & Administrative Proceedings > Judicial Review

[HN2] The court's review of an administrative decision is narrow. The court will not disturb agency's factual findings unless those findings are erroneous. In other words, the court will not set aside judgment for an agency's factual findings if it contains substantial evidence to support them.

Administrative Law > Judicial Review > Review > Abuse of Discretion

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Carroll Holzer and Holzer & Lee for appellant, Marzullo on the brief) all of Towson, MD., FOR APPELLANTS.

ARGUED BY: Michael J. Moran of Towson, MD., and John B. Gontrum and Romadka, Gontrum & McLaughlin, P.A. on the brief) all of Baltimore, MD., FOR APPELLEE.

JUDGES: ARGUED BEFORE: Eyler, Karwacki, Robert L. (Ret., specially assigned), and Fischer, Robert F., Jr. (Ret., specially assigned), JJ. Opinion by Fischer, J. Dissenting opinion by Karwacki, J.

OPINION BY: Robert F. Fischer, Jr.

OPINION

[*665] [***1218] Opinion by Fischer, J.

Filed: December 26, 2000

This is an appeal by Mary Pat Marzullo and People's Counsel for Baltimore County, appellants, from a decision by the Circuit Court for Baltimore County reversing the County

135 Md. App. 663, *; 763 A.2d 1217, **;
2000 Md. App. LEXIS 212, ***

[*667] for color, pattern characteristics, and temperament. Appellee retains a significant portion of the snakes for breeding purposes. To attain these goals, appellee maintains extensive records and files on the snakes. Appellee also testified that he does not board or keep any animals for others at his facility. The Board noted that appellee's "expertise has resulted in the development of many varied strains of both Boas and Pythons relative to color and stripes and temperament."

Appellee's building is a two-level, ten thousand square foot, barn-like structure. The snakes are housed on the first floor, comprised of sixteen rooms, one of which is appellee's office. Installed in the building is an elaborate heating, cooling and ventilation system and each room is equipped with a sink, window, and radiant [***4] floor heat. The rooms are temperature controlled for optimal breeding, hatching, and growing conditions. In addition to the ordinary safety measures of locks and fire alarms, appellee's facility contains extraordinary safety measures, including an alarm system in the incubation room set to monitor the temperature and a security system that requires all the snakes' cage doors and doors

to the facility to be locked before the alarm can be set or the door locked.

The snakes are normally maintained inside the facility, but they are taken outside for exercise and "sunning." Appellee also testified that the best breeding results require the females to exercise in order to maintain good muscle tone.

The barn is served by its own well and septic system that guarantees the snakes are hydrated and their cages cleansed with clean water. A compost system breaks down the snakes' waste and is used to fertilize the yard. Within the facility, appellee breeds rats and rat pups that are used to feed the snakes.

Despite the snakes' outside exercise, the Board did not find that the snakes pose any threat to the community. In fact, the Board found that this case "is not a situation of community safety, [***5] increased traffic, [or] snake security...." The Board further found that "testimony is uncontradicted that Kahl raises, breeds, keeps and markets these animals (snakes)."

135 Md. App. 663, *; 763 A.2d 1217, **;
2000 Md. App. LEXIS 212, ***

[*669] required before the Zoning Commissioner prior to any zoning approvals. We are submitting a copy of....

In November 1996, appellee, pursuant to section 26-171(a)(7) of the Baltimore County Code, requested a limited exemption from the requirements of [***7] the building regulations. This request was granted by the Development Review Committee, Department of Permits and Development Management, by a letter from Mr. Jablon dated November 26, 1996. By virtue of this provision, appellee was exempted from both the community input meeting and the public hearing.

Appellee's first building permit was issued on February 14, 1997. Because appellee decided to add a basement to his facility, he re-applied and was issued a new permit on March 27, 1997, allowing for a 10,000 square foot facility.³

3 The original application stated that the facility would have a private water and sewage system, but the permit stated that the property would be fed by the public water and sewage system. The

Board found that this discrepancy was merely an administrative error that was not "germane to the case."

On April 16, 1997, Mr. Carl Richards, Supervisor of Baltimore County's Zoning Review Section, wrote appellee a letter informing him that there had been community complaints about his [***8] proposed usage for the barn. Mr. Richards pointed out that any citizen could file a petition for special hearing. Section 500.7 of the zoning regulations explains by whom and for what a petition for special hearing can be requested. It permits:

[HN1] any interested person to petition the zoning commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations.

BCZR § 500.7 (2000). In that same letter, however, Mr. Richards stated that his department accepted the Advisory Board's recommendation that appellee's property was a

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[*671] evidence to support them. *Banks*, 354 Md. at 67. [HN3] We review whether an agency correctly applied the facts to the law to determine if it abused its discretion. *Pierce*, 116 Md. App. at 529. In evaluating whether an abuse of discretion occurred, "we accord great deference to the agency and ask merely whether a reasoning mind could reasonably have reached the conclusion reached by the agency." *Sterling Homes Corp. v. Anne Arundel County*, 116 Md. App. 206, 216-17, 695 A.2d 1238 (1997)(quoting *Evans v. Shore Communs.*, 112 Md. App. 284, 299, 685 A.2d 454 (1996)). [HN4] An agency's legal conclusions, however, will [***11] be reviewed *de novo*. *Maryland State Dept. of Educ. v. Shoop*, 119 Md. App. 181, 197, 704 A.2d 499, cert. denied 349 Md. 495, 709 A.2d 140 (1998).

[HN5] Questions of statutory construction and interpretation are questions of law. See *Enviro-Gro Technologies v. Bockelmann*, 88 Md. App. 323, 329, 594 A.2d 1190, cert. denied 325 Md. 94, 599 A.2d 447 (1991) (quoting *Harford County v. McDonough*, 74 Md. App.

119, 122, 536 A.2d 724 (1988) ("The order of an administrative agency, such as a county zoning board, must be upheld on review if it is not premised upon an error of law....")). Our cases have long held that a reviewing court is not bound by the agency's interpretation of statutes. See *Department of Human Resources v. Thompson*, 103 Md. App. 175, 190, 652 A.2d 1183 (1995). When the facts are not disputed, we will review the agency's decision to determine that it is not based upon an erroneous conclusion of law. *Banks*, 354 Md. at 67-68.

In this case, all parties agree that appellee uses his snake breeding facility to breed, grow, and sell exotic boas and pythons. The question is whether [***12] this use meets the definition of "farm" as used in the Baltimore County Zoning Regulations. BCZR § 101 (2000).

IV. Applicable Rules of Statutory Construction

[HN6] Long-standing canons of statutory interpretation mandate that we interpret a statute's words using their plain

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2000 Md. App. LEXIS 212, ***

[*673] as to enlarge its meaning." *Abington Ctr. Assocs. Ltd. v. Baltimore County*, 115 Md. App. 580, 603, 694 A.2d 165 (1997).

V. Discussion

The Baltimore County Zoning Regulations delineate uses permitted as of right and by special exception in section 1A03.3(A) and (B), respectively. BCZR § 1A03. Appellee argues that the snake breeding and raising facility is a use permitted as of right under section 1A03.3(A)(2), which entitles one in a RC-4 zone to use property as a farm. BCZR § 1A03.3(A)(2). "Farm" is defined by the zoning regulations as,

[HN10] Three acres or more of land, and any improvements thereon, used primarily for commercial agriculture, as defined in these regulations, or for residential and associated agricultural uses. The term does not include the following uses as defined in these regulations: limited-acreage wholesale flower farms, riding stables, landscape [***15] service, firewood operations and horticultural nursery businesses.

BCZR § 101. The zoning regulations, also in section 101, define "commercial agriculture":

[HN11] The use of land, including ancillary structures and buildings, to cultivate plants or raise or keep animals for income, provided that the land also qualifies for farm or agricultural use assessment pursuant to *Section 8-209 of the Tax-Property Article* of the Annotated Code of Maryland, as amended. Commercial agriculture includes the production of field crops, dairying, pasture agriculture, horticulture, floriculture, aquaculture, apiculture, viticulture, forestry, animal and poultry husbandry, horse breeding and horse training and also includes ancillary activities such as processing, packing, storing, financing, managing, marketing or distributing, provided that any such activity shall be secondary to the principal agricultural operations.

[**1223] Id. [HN12] Because "animal" is not defined in section 101, the zoning regulations assign it the definition as stated in the most recent edition of the Webster's Third New International Dictionary.

[*675] was ultimately to be used for agricultural purposes. The zoning authority had to decide at what point the sludge metamorphosized into an agricultural product. The case at bar is distinguishable. Whether one believes that [***18] a snake paved the way for the Golden Reign of Augustus, or felled Adam and Eve from the Garden of Eden, there is no question that a snake is an animal. ⁵ There is also no dispute as to the underlying facts. In this case, the only question is whether appellee's snakes live on a "farm" as defined by the BCZR.

5 After losing the Battle of Actium in 31 BC, Cleopatra committed suicide, in order to save herself the humiliation of being led by Augustus through the streets of Rome, by sneaking an asp into her tower and letting it bite her. Plutarch, *Lives*. The Bible tells how the serpent coerced Eve into biting the apple, causing Adam's and Eve's subsequent fall from Eden. 3 Genesis 14.

Appellee testified that he suns and exercises his animals outside. He composts their waste and spreads it over his land. The breeding facility is supported by the

land and is hydrated from the well on the land. It is difficult to draw a distinction between this use of the land and other modern farm uses.

The Board determined [***19] that the legislative body intended to limit "the use of land" to uses that produced food or fiber. This conclusion was in error because the Board superimposed the definition of "farm animal" found in Baltimore County Code (BCC), Article I, section 6-1 (1991), onto the legislature's choice of the more general word, "animal." BCC Article I, [**1224] section 6-1 defines "farm animal" as "any animal being maintained for the production of food, food products, and fiber." However, the "commercial agriculture" definition only requires that the land be used to "raise or keep animals for income." BCZR § 101.

In several places, the Board reasoned that appellee's use was not a "farm" within the BCZR's meaning because "there is no crop, growth, production or animal raised primarily *for food or fiber*." (Emphasis added). To arrive at this deduction, the Board relied on appellant's expert witnesses. This reliance was misplaced, however, because that testimony

[*677] "pets" within the definition of "pet shop," but not domestic for purposes of animal husbandry. See BCZR § 101 ("PET SHOP -- a store for the sale of dogs, cats, birds, tropical fish and/or other domesticated pets..."); cf. E. 36-37 ("... the Board concludes that in ordinary parlance as well as by the dictionary the word 'domestic' means relating to the home or household... This Board, while recognizing Mr. Kahl's efforts to breed snakes as domesticated, does not agree that they fit the definition....").

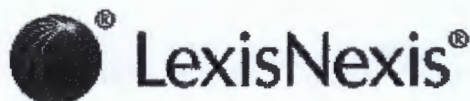
The Board also concluded that appellee's use was an "animal [***22] boarding place" permitted in certain zones. [HN13] An animal boarding place involves "boarding, breeding and care of animals for profit, but excluding a farm, kennel, pet shop, veterinarian's office or veterinarium." BCZR § 101. This definition does not include raising and keeping animals, but the farm definition does. There is no dispute about the fact that appellee raised and kept animals. The BCZR's definition of "animal boarding place" indicates that it is a more limited facility than a farm.

Section 101 of the Baltimore County Zoning Regulations also requires appellee's farm to qualify for the agricultural use assessment tax, pursuant to *section* [***1225] 8-209 of the Tax-

Property Article of the Maryland Annotated Code. BCZR § 101.

It does not require appellee to have his land assessed agricultural, which is optional to a landowner. The Board found that because appellee's property was zoned "residential," he did not meet this part of the definition. This conclusion was in error.

[HN14] The statute does not exclude property that is zoned as residential from being "commercial agriculture." BCZR section 101 only requires that the property "qualifies" for the agricultural use assessment. BCZR [***23] § 101. There are many reasons why a property owner may chose not to apply for the agricultural use assessment. First, a landowner may be subjected to certain tax penalties. See State Department of Assessment and Taxation, Real Property, The Agricultural Use Assessment, (Sept. 23, 2000)



Agricultural Assessment - P. 16-17

PLANNING BOARD FARM - P. 23-26
Definition

MARY PAT MARZULLO et al. v. PETER A. KAHL

No. 10, September Term, 2001

COURT OF APPEALS OF MARYLAND

366 Md. 158; 783 A.2d 169; 2001 Md. LEXIS 782

October 12, 2001, Filed

SUBSEQUENT HISTORY: [***1] As Corrected November 7, 2001.

PRIOR HISTORY: Certiorari to the Court of Special Appeals (Circuit Court for Baltimore County). John Grason Turnbull, II, JUDGE.

DISPOSITION: JUDGMENT OF THE COURT OF SPECIAL APPEALS REVERSED; CASE REMANDED TO THAT COURT WITH INSTRUCTIONS TO REVERSE THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AND TO REMAND THE CASE TO THE CIRCUIT COURT FOR BALTIMORE COUNTY WITH DIRECTIONS TO AFFIRM THE DECISION OF THE BOARD OF APPEALS FOR BALTIMORE COUNTY; COSTS IN THIS COURT AND IN THE COURT OF SPECIAL APPEALS TO BE PAID BY RESPONDENT.

CASE SUMMARY:

PROCEDURAL POSTURE: The Court of Special Appeals (Maryland) affirmed the trial court's decision, which reversed the decision of the county board of appeals. The county board of appeals had decided that respondent landowner was not allowed to operate his reptile breeding business in an R.C. 4 zone. The writ of certiorari filed by petitioners, individual and people's counsel, and the cross-petition for a writ of certiorari filed by the landowner, were granted.

OVERVIEW: The state's highest court held, first, that the appellate court did not give appropriate deference to the expertise of the county board of appeals (BOA) in interpreting the zoning regulations. The BOA properly found that the landowner's business did not satisfy the

definition of commercial agriculture, because he was not involved in the use of the land or in animal husbandry. The definition of commercial agriculture in the zoning regulations did not include activities like breeding reptiles, so the landowner's business did not satisfy the definition of a farm, and he was unable to conduct his business in an R.C. 4 zone. Second, the landowner was not entitled to a vested right to use his property to breed reptiles. Since the landowner's business was not a use allowed in an R.C. 4 zone, he could not satisfy the first prong of vested rights jurisprudence, as his permit was not properly issued. Finally, because the landowner knew, or should have known, that the permit he obtained was improper when it was issued, it could not be grounds for estopping the county from enforcing the zoning regulations and preventing the landowner from using his property to conduct his business.

OUTCOME: The judgment of the appellate court was reversed. The case was remanded to the appellate court with instructions to: (1) reverse the judgment of the trial court; and (2) remand the case to the trial court with directions to affirm the decision of the county board of appeals.

CORE TERMS: farm, zoning, animal, agriculture, zone, snake, raising, agricultural, breeding, reptile, planning board, municipality, ordinance, estopped, agricultural uses, vested right, deference, crop, farmer, qualify, animal husbandry, domestic animal, food, ancillary, livestock, equitable estoppel, husbandry, poultry, zoned, horse

LexisNexis(R) Headnotes

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[HN12] In applying the substantial evidence test, a reviewing court decides whether a reasoning mind reasonably could have reached the factual conclusion the agency reached. A reviewing court should defer to the agency's fact-finding and drawing of inferences if they are supported by the record. A reviewing court must review the agency's decision in the light most favorable to it; the agency's decision is prima facie correct and presumed valid, and it is the agency's province to resolve conflicting evidence and to draw inferences from that evidence.

Administrative Law > Judicial Review > Reviewability > Questions of Law

Administrative Law > Judicial Review > Standards of Review > Statutory Interpretation

[HN13] A court's task on review is not to substitute its judgment for the expertise of those persons who constitute the administrative agency. Even with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency. Thus, an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts. Furthermore, the expertise of the agency in its own field should be respected.

Real Property Law > Zoning & Land Use > Judicial Review

[HN14] Even though the decision of a zoning board of appeals may be based on the law, its expertise should be taken into consideration and its decision should be afforded appropriate deference in a reviewing court's analysis of whether it was premised upon an erroneous conclusion of law.

Civil Procedure > Appeals > Standards of Review > General Overview

Environmental Law > Zoning & Land Use > Judicial Review

Real Property Law > Zoning & Land Use > Judicial Review

[HN15] In Baltimore County, Maryland, since at least 1978, the Baltimore County Board of Appeals has been charged with all the functions and duties relating to zoning appeals described in Md. Ann. Code art. 25A. Baltimore County, Md., Charter § 602(a). As such, its presumed expertise in interpreting the Baltimore County, Maryland, Zoning Regulations, developed over the ensuing years, is what gives weight to appropriate deference in a reviewing court's analysis of its legal reasoning.

Governments > Legislation > Interpretation

[HN16] The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. Legislative intent must be sought first in the actual language of the statute. Where the statutory language is plain and free from ambiguity, and expresses a definite and simple meaning, courts normally do not look beyond the words of the statute to determine legislative intent.

Governments > Legislation > Interpretation

[HN17] Statutory language is not read in isolation, but in light of the full context in which it appears, and in light of external manifestations of intent or general purpose available through other evidence. To this end, when a court pursues the context of statutory language, it is not limited to the words of the statute as they are printed. The court may, and often must, consider other external manifestations or persuasive evidence, including a bill's title and function paragraphs, amendments that occurred as it passed through the legislature, its relationship to earlier and subsequent legislation, and other material that fairly bears on the fundamental issue of legislative purpose or goal, which becomes the context within which the court reads the particular language before it in a given case.

Real Property Law > Zoning & Land Use > General Overview

[HN18] The definition of commercial agriculture in Baltimore County, Md., Zoning Regs. § 101 explicitly states that aquaculture and poultry husbandry are included as commercial agriculture. The definition does not state that the raising, breeding, and selling of snakes--snake husbandry--is included as commercial agriculture.

Governments > Legislation > Interpretation

[HN19] The Maryland Court of Appeals has long recognized and applied the principle that a change in a statute as part of a general recodification will ordinarily not be deemed to modify the law unless the change is such that the intention of the Maryland Legislature to modify the law is unmistakable. That is because the principal function of code revision is to reorganize the statutes and state them in simpler form, and thus, changes are presumed to be for the purpose of clarity rather than for a change in meaning.

Governments > Legislation > Interpretation

[HN20] There are certain instances where it is appropriate to consider other factors when interpreting a statute.

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of a municipal charter, it cannot matter that a party relies upon erroneous official advice to its detriment.

Civil Procedure > Pleading & Practice > Defenses, Demurrers & Objections > Affirmative Defenses > General Overview

Governments > Local Governments > Duties & Powers

Governments > Local Governments > Licenses

[HN28] A municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law.

Civil Procedure > Pleading & Practice > Defenses, Demurrers & Objections > Affirmative Defenses > General Overview

Governments > Local Governments > Employees & Officials

Governments > Local Governments > Licenses

[HN29] A permit issued without the official power to grant does not, under any principle of estoppel, prevent the permit from being unlawful nor from being denounced by the municipality because of its illegality.

Civil Procedure > Pleading & Practice > Defenses, Demurrers & Objections > Affirmative Defenses > General Overview

Governments > Local Governments > Licenses

Real Property Law > Zoning & Land Use > Special Permits & Variances

[HN30] Even where a municipality has the power, but has done nothing, to ratify or sanction the unauthorized act of its officer or agent, it is not estopped by the unauthorized or wrongful act of its officer or agent in issuing a permit that is forbidden by the explicit terms of an ordinance.

Environmental Law > Zoning & Land Use > Statutory & Equitable Limits

Governments > Local Governments > Licenses

Real Property Law > Zoning & Land Use > Special Permits & Variances

[HN31] Some authorities hold that the principle of estoppel does not apply against a city, but the majority rule is to the effect that the doctrine of estoppel in pais is applied to municipal, as well as to private, corporations and individuals, at least where the acts of its officers are within the scope of their authority and justice and right requires that the public be estopped. And it has been held that municipalities may be estopped by reason of the issuance of permits. However, the cases and text-writers

very generally state that a municipality is not estopped to set up the illegality of a permit. And the issuance of an illegal permit creates no vested rights in the permittee.

Environmental Law > Zoning & Land Use > Statutory & Equitable Limits

Governments > Local Governments > Ordinances & Regulations

Real Property Law > Zoning & Land Use > Ordinances

[HN32] Generally, permits that have been issued that are in violation of the zoning ordinances are unlawful and cannot be grounds for estopping a municipality from the enforcement of the ordinance.

Real Property Law > Zoning & Land Use > Special Permits & Variances

[HN33] The concept of vested rights generally protects a party from a subsequent change to a zoning ordinance after construction under a valid permit has commenced.

HEADNOTES

Headnote: Peter A. Kahl, respondent, constructed a building on his property that was zoned R.C.4 for the purpose of conducting his business - the breeding, raising, and selling of reptiles. The Baltimore County Board of Appeals determined that respondent was not permitted to conduct his business in an R.C.4 zone. The Circuit Court for Baltimore County reversed the Board of Appeals and the Court of Special Appeals affirmed the Circuit Court. We hold that the Circuit Court and the Court of Special Appeals failed to afford the findings of the Board of Appeals the proper deference. We also hold that respondent has not acquired a vested right to conduct his business on the property and that Baltimore County is not estopped from preventing the use of the property to raise, breed, and sell snakes.

COUNSEL: ARGUED BY: Carole S. Demilio, Deputy People's Counsel, and Peter Max Zimmerman, People's Counsel, Office of the People's Counsel for Baltimore County of Towson, MD; (J. Carroll Holzer of Holzer & Lee of Towson, MD) all on brief, FOR PETITIONERS/CROSS RESPONDENTS.

ARGUED BY: Michael J. Moran (The Law Offices of Michael J. Moran, P.C. of Towson, MD); John B. Gontrum (Romadka, Gontrum & McLaughlin, P.A. of Baltimore, MD) all on brief, FOR RESPONDENT/CROSS-PETITIONER.

JUDGES: ARGUED BEFORE: Bell, C.J., Eldridge, Raker, Wilner, Cathell, Harrell, Battaglia, JJ.

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[*161] 2. Whether the Court of Special Appeals erred in failing to give deference to the expertise of the County Board of Appeals in applying the BCZR pursuant to *Board of Physician v. Banks*, 354 Md. 59, 729 A.2d 376 (1999) [***3] as suggested by Judge Karwacki in his Dissenting Opinion[?]

Respondent presented two questions in his Conditional Cross Petition for our review:

1. Has the landowner acquired a vested right, pursuant to either the common law or local ordinance, to use the property to raise, breed and keep reptiles or snakes?

2. Is the County estopped from preventing the use of the property to raise, breed and keep snakes or reptiles?

We hold that the Circuit Court and the Court of Special Appeals failed to afford the findings of the Board of Ap-

peals the proper deference when those courts held that the raising, breeding, and keeping of [**171] snakes and reptiles was a "farm" under the Baltimore County Zoning Regulations. Respondent's business was a use which is prohibited in an R.C.4 zone. We also hold that respondent has not acquired a vested right to conduct his business on the property and that the County is not estopped from preventing the use of the property to raise, breed, and keep snakes and reptiles.

I. Facts

In 1991 respondent purchased a parcel of land to use as his residence. When respondent moved into the residence he used part of the residence to engage in his hobby [***4] of herpetology. ¹ Specifically, respondent was engaged in the raising and breeding of pythons and boas. ² Respondent's hobby eventually grew into a business and to accommodate its growth and to provide a proper facility for the care of the snakes, respondent

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[*163] Land Preservation Advisory Board (hereinafter Advisory Board) review respondent's intended use and advise the Department of Zoning as to whether respondent's intended use qualified as a farm which was allowed by right in an R.C.4 [*172] zone. ⁶ At an April 12, 1995 meeting, the Advisory Board found that the building used for the breeding, raising, and sale of snakes qualified as a farm. ⁷

3 In 1995, the Department of Zoning and Development Management became the Department of Permits and Development Management.

[***6]

4 [HN2] Section 1A03.1 of the Baltimore County Zoning Regulations (hereinafter BCZR) provides that:

"The County Council finds that major, high-quality sources of water supply for the entire Baltimore Metropolitan Area and for other neighboring jurisdictions lie within Baltimore County and that continuing development in the critical watersheds of those water supply sources is causing increased pollution and sedimentation in the impoundments, resulting in increasing water treatment costs and decreasing water storage capacity. The R.C.4 zoning classification and its regulations are established to provide for the protection of the water supplies of metropolitan Baltimore and neighboring jurisdictions by preventing contamination through unsuitable types or levels of development in their watersheds."

5 [HN3] Section 1A03.3 of the BCZR provides that:

"A. Uses permitted as of right. The following uses, only are permitted as of right in R.C.4 Zones:

1. Dwellings, one-family detached.
2. Farms and limited-acreage wholesale flower farms"

6 In the inter-office correspondence from the Department of Zoning to the Advisory Board, the Director of the Department of Zoning stated that:

"This office is officially requesting verification of the legitimacy of a farm use on the referenced property. In the judgement of the Director and/or the Zoning Commissioner, in consideration of your findings, a special hearing may be required before the Zoning Commissioner prior to any zoning approvals."

[***7]

7 The Baltimore County Agricultural Land Preservation Advisory Board's opinion was advisory; the opinion did not have any authority. [HN4] Section 14-451 of the Baltimore County Code states that:

" **Sec. 14-451. Agricultural land preservation advisory board; created; duties and responsibilities; membership; terms of office.**

(c) *Duties and responsibilities.* The agricultural preservation advisory board shall be vested with and shall possess all the powers and duties in this article specified and also all powers necessary to properly carry out fully and factually, the provisions of this article. In addition to those duties prescribed by state law, the board shall:

(5) Review and make recommendations to the office of zoning administration and development management on zoning regulation proposals that relate to agricultural uses such as tenant buildings, farmer's roadside stands and other agricultural issues as the need arises."

The Department of Zoning then submitted respondent's request to construct a building to the Development Review Committee. The Development [***8] Review Committee granted respondent a limited exception under [HN5] section 26-171(a)(7) of the Baltimore County Code, which provides for a limited exception to the public hearing process for "the construction of residential accessory structures or minor commercial structures." In a November 25, 1996 letter from the Department of Zoning, respondent was told of the limited exception and that he could proceed with his building permit application.

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[*165] was dismissed by the Board of Appeals because, at the time, the Baltimore County Code only provided for an appeal by the applicant after a denial of a building permit.

On April 29, 1997, petitioners filed a Petition for Special Hearing under section 500.7 of the BCZR. [HN6] Section 500.7 states that:

"The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any

property [***11] in Baltimore County insofar as they are affected by these regulations." [Emphasis added.]

The petition stated that it was filed to determine "whether or not the Zoning Commissioner should approve in an RC 4 Zone, the use of the site for the breeding, raising and selling of reptiles."

On September 22, 1997, a hearing was held before the Zoning Commissioner of Baltimore County (hereinafter Zoning Commissioner) on the Petition for Special Hearing. In his Findings of Fact and Conclusions of Law, the Zoning Commissioner stated that the issue was whether respondent's use of the property qualified as a farm under the BCZR. If the use qualified as a farm, then it is a use by right and if the use was not as a farm, then it was not permitted, even by special exception. [HN7] Section 101 of the BCZR defines a "Farm" as:

"FARM - Three acres or more of land, and any improvements thereon, used primarily for commercial agriculture,[¹⁰]

[*167] on November 30, 1998, which stated that "the use of the subject site for the breeding, raising, and selling of reptiles is not permissible in the R.C. 4 zone." The Board of Appeals found that respondent had not satisfied the definition of "Commercial Agriculture. [***14] " The Board of Appeals stated that:

"Terms such as 'animal,' 'animal husbandry,' and 'domestic animal' need to rest interpretively on an *ordinarily accepted* definition as stated above. The Board does not disagree with the Zoning Commissioner or the Petitioner's analysis that a snake is an 'animal.' Testimony is uncontradicted that Kahl 'raises, breeds, keeps and markets' these animals (snakes). Is this practice, however, 'commercial agriculture'; and, further, is it the practice of 'animal husbandry'? 'Commercial agriculture' is defined under Section 101 [of the BCZR]. Webster's defines [HN9] 'animal husbandry' as: '... A branch of agriculture concerned with the production and care of domestic animals ... the scientific study of the problems of animal production.' A 'domestic animal' may include '... any of the various animals ... which have been

domesticated by man so as to live and breed in a tame condition.' Webster defines 'domestic' as '... relating to the household or family ... connected with the supply, service, activities of the household and private residences ... suited to the physical livability of a private dwelling.' And 'domestic' means to 'bring [***15] into a degree of conformity and comfortable accommodation ... to subject to control and service of man.'

Having heard the testimony and a review of the various exhibits and evidence, this Board has concluded that the Property Owner's use of the R.C. zoned land is an improper use, and hence illegal under present statutory law. . .

In reaching its decision, the Board has also given weight to the definitions assigned to significant terms which have been the subject of the various briefs submitted by Counsel. The first defect in the Property Owner's case is one involving 'the use of land' as it appears in the BCZR 'Farm' definition. . . . There was more than sufficient testimony and

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[*169] 'Any animal of a species that in its natural life is wild, dangerous, or ferocious and, though it may be trained and domesticated by the owner, will remain dangerous to the public at large.'

A 'farm animal' is defined as:

'Any animal being maintained for the production of food, food products, and fiber.'

Clearly, the Property Owner back in 1994 did not believe his operation fit the definition of a 'farm animal' facility, but rather one of a 'holding facility . . . requiring the use of a wild animal license.' Mr. Kahl vividly described his attempts to demonstrate how Boas and Pythons could be domesticated. Yet, if left unattended and not fed on a regular and systematic basis, they are aggressive and will seek out food and prey by scent. What contemplates food or prey is anyone's guess, but one [***18] must conclude that they must [be] considered dangerous by nature of their size and capacity of constriction

and causing death to prey. By definition, domestic animals cannot include any wild animal. While opinions may vary, the Board concludes that in ordinary parlance as well as by the dictionary the word 'domestic' means relating to the home or household and the word 'domesticated' means made domestic or converted to domestic use.

This Board, while recognizing Mr. Kahl's efforts to breed snakes as domesticated, does not agree that they fit the definition as viewed by the members of this Board *or the general public*. While the Board has concluded that Mr. Kahl's activities are an improper use in R.C.4 zone, it is the conclusion of the Board that present zoning classifications do permit such usage as a pet shop defined [**176] under Section 101 as 'a person or establishment that sells and/or offers to sell animals, whether as an owner, agent or on consignment, to the general public,' which permits the marketing of pets; and BCZR Section 270 provides appropriate zones where animal boarding places (Class A and Class B) are permitted. While not a use permitted by right or special exception [***19] in an R.C.4 zone, they are permitted by special exception in

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[*171] agricultural, respondent's property must merely qualify for the agricultural use assessment. In conclusion, the Court of Special Appeals, remanding the action to the [***21] Board of Appeals, stated that:

"In conclusion, we hold that appellee's [respondent] snake facility is a place that uses the land to breed and raise animals for income, pursuant to the plain language of BCZR section 101. On remand, the Board must decide if appellee would qualify for the agricultural use assessment pursuant to section 8-209 of the Tax-Property Article, if appellee were to apply."

Petitioners then filed a Petition for Writ of Certiorari to this Court and respondent filed a Conditional Cross Petition for Writ of Certiorari. We granted both petitions.

II. Discussion

A. Standard of Review

In *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 729 A.2d 376 (1999), we examined an appellate court's role in reviewing an administrative

[**177] agency. Judge Eldridge, writing for the Court, stated that:[HN11]

"A court's role in reviewing an administrative agency adjudicatory decision is narrow, *United Parcel v. People's Counsel*, 336 Md. 569, 576, 650 A.2d 226, 230 (1994); it 'is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings [***22] and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.' *United Parcel*, 336 Md. at 577, 650 A.2d at 230. See also Code (1984, 1995 Repl. Vol.), § 10-222(h) of the State Government Article; *District Council v. Brandywine*, 350 Md. 339, 349, 711 A.2d 1346, 1350-1351 (1998); *Catonsville Nursing v. Loveman*, 349 Md. 560, 568-569, 709 A.2d 749, 753 (1998).

[HN12] In applying the substantial evidence test, a reviewing court decides "whether a reasoning mind reasonably could have reached the factual conclusion the agency reached." *Bulluck v. Pelham Wood Apts.*, 283 Md. 505, 512, 390 A.2d

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[*173] administrative agencies will often include the authority to make 'significant discretionary policy determinations'); *Bd. of Ed. For Dorchester Co. v. Hubbard*, 305 Md. 774, 792, 506 A.2d 625, 634 (1986) ('application of the State Board of Education's expertise would clearly be desirable before a court attempts to resolve the' legal issues)."

354 Md. at 67-69, 729 A.2d at 380-81 (footnotes omitted). In the case *sub judice*, the facts [*178] of the case are not in dispute; [***25] however, the Board of Appeals' interpretation and application of the BCZR is in dispute. As stated in *Banks*, [HN14] even though the decision of the Board of Appeals was based on the law, its expertise should be taken into consideration and its decision should be afforded appropriate deference in our analysis of whether it was "premised upon an erroneous conclusion of law." " *Banks*, 354 Md. at 68, 729 A.2d at 380, quoting from *United Parcel Service, Inc. v. People's Counsel for Baltimore County*, 336 Md. 569, 577, 650 A.2d 226, 230 (1994).

11 [HN15] In Baltimore County, since at least 1978, the Board of Appeals has been charged with "all the functions and duties relating to zoning [appeals] described in Article 25A of the Annotated Code of Maryland." Baltimore County Charter, § 602 (a). As such, its presumed expertise in interpreting the BCZR, developed over the ensuing years, is what gives weight to appropriate deference in our analysis of its legal reasoning in this matter.

Respondent [***26] contends that the appropriate standard of review is the substituted judgment standard. Respondent states that the decision of the Board of Appeals is not due any deference. Among other cases, respondent cites *Montgomery County v. Buckman*, 333 Md. 516, 636 A.2d 448 (1994) for the proposition that "the agency's resolution of the legal question is not due deference" We do not find the language in *Buckman* to support the proposition that the decision of an administrative agency is not due any deference.

B. Commercial Agriculture

Petitioners contend that the Court of Special Appeals erred by failing to give the proper deference to the decision of the Board of Appeals and by substituting its judgment for that of

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[*175] snakes bred by respondent do not fit the definition of domestic animals.

12 As stated, *supra*, commercial agriculture is defined in section 101 of the BCZR as:

"**AGRICULTURE, COMMERCIAL** - The use of land, including ancillary structures and buildings, to cultivate plants or raise or keep animals for income, provided that the land also qualifies for farm or agricultural use assessment pursuant to Section 8-209 of the Tax-Property Article of the Annotated Code of Maryland, as amended. Commercial agriculture includes the production of field crops, dairying, pasturage agriculture, horticulture, floriculture, aquaculture, apiculture, viticulture, forestry, animal and poultry husbandry, horse breeding and horse training and also includes ancillary activities such as processing, packing, storing, financing, managing, marketing or distributing, provided that any such activity shall be secondary to the principal agricultural operations." [Emphasis added.]

[***28] We commence our analysis of the relevant aspects of the BCZR by attempting to ascertain the intent of the legislative body, in this case the County Council of Baltimore County. In *State v. Bell*, 351 Md. 709, 720 A.2d 311 (1998), we stated that:

"We have said that [HN16] 'the cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature.' *Oaks v. Connors*, 339 Md. 24, 35, 660 A.2d 423, 429 (1995). Legislative intent must be sought first in the actual language of the statute. *Marriott Employees Fed. Credit Union v. Motor Vehicle*

Admin., 346 Md. 437, 444-45, 697 A.2d 455, 458 (1997); *Stanford v. Maryland Police Training & Correctional Comm'n*, 346 Md. 374, 380, 697 A.2d 424, 427 (1997) (quoting *Tidewater v. Mayor of Havre de Grace*, 337 Md. 338, 344, 653 A.2d 468, 472 (1995)); *Coburn v. Coburn*, 342 Md. 244, 256, 674 A.2d 951, 957 (1996); *Romm v. Flax*, 340 Md. 690, 693, 668 A.2d 1, 2 (1995); *Oaks*, 339 Md. at 35, 660 A.2d at 429; *Mauzy v. Hornbeck*, 285 Md. 84, 92, 400 A.2d 1091, 1096 (1979); *Board of Supervisors v. Weiss*, 217 Md. 133, 136, 141 A.2d 734, 736 (1958). [***29] Where the statutory language is plain and free from ambiguity, and expresses a definite and simple meaning, courts normally do not look beyond the words of the statute to determine legislative intent. *Marriott Employees*, 346 Md. at 445, 697 A.2d at 458; *Kaczorowski v. Mayor of Baltimore*, 309 Md. 505, 515, 525 A.2d 628, 633 (1987); *Hunt v. Montgomery County*, 248 Md. 403, 414, 237 A.2d 35, 41 (1968).

This Court recently stated that [HN17] 'statutory language is not read in isolation, but "in light of the full context in which [it] appears, and in light of external manifestations of intent or general purpose available through other evidence.'" *Stanford v. Maryland Police Training & Correctional Comm'n*, 346 Md. 374, 380, 697 A.2d 424, 427 (1997) (alterations in

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[*177] The Baltimore County Planning Board (hereinafter Planning Board) was charged by the Baltimore County Council, in response to the number and the complexity of zoning regulations for farms and agriculture-related businesses, to study the situation. The County Council requested that the Planning Board propose amendments to the BCZR in order to clarify the various zoning regulations dealing with farming and agriculture related operations. A Final Report of the Planning Board was presented on October 17, 1991. The report was titled "Proposed Amendments to the Baltimore County Zoning Regulations Regarding [***32] Definition of Commercial Agriculture and Farm."

The Planning Board started the report by providing background as to why amendments were needed to the definition for a farm. The Planning Board stated that:

"The agricultural industry is changing dramatically. Consumer preferences and economic necessity are transforming the manner in which agricultural businesses are operated. More and more farmers are engaged in retail distribution in addition to production activities. For example, *The Pennsylvania Farmer*, a magazine geared

towards the farming community, reports innovative business practices which have greatly increased farm revenues. One farmer raised his income by selling some of his fruits in fruit baskets and delivering them to nearby offices and homes, as well as shipping them via mail order. Another farmer began to process his crops into cider after a hailstorm downgraded his apples. Today he is blending his ciders with cranberries, cherries, grapes and fruits purchased from other farms and is producing 10,000 gallons per day. Different products are being tried out. An apiarian, who initially restricted his production to honey only developed a carob/cranberry bar utilizing [***33] honey and by-products from honey processing. Ocean Spray, the cranberry operative, became one of his major buyers

New types of crops are becoming commonplace. Farmers experiment with raising ornamental and edible fish, shellfish and aquatic plants for the wholesale and retail

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[*179] The principal standard that sets agricultural uses apart is that land or structures and buildings are utilized to produce plants or raise animals for income. The proposed definition [***35] acknowledges that agriculture is an industrial use which involves such activities as storage, processing, marketing, distributing and financing, but qualifies that all of the above activities must be ancillary to the principal agricultural operation." [Emphasis added.]

The Planning Board then examined the old definitions of "farm" and discussed why a new definition for farm and commercial agriculture was needed. The Planning Board stated that:

"The Baltimore County Zoning Regulations presently offer two definitions for farm and two additional definitions, which describe different types of farms:

Farm: Three acres or more of land, and any improvements thereon, used primarily for commercial agriculture, including but not limited to: crop, dairy, stock and poultry farming; greenhousing, flower farms and nurseries, whether wholesale or retail, excluding a limited-acreage

wholesale flower farm. (Bill No. 85, 1967.)

Farm: A single tract of land more than three acres, primarily devoted to agriculture, including but not limited to raising of crops, dairy, forestry, livestock and poultry farming; horse breeding, training and stabling, grazing, commercial greenhousing, [***36] flower farms and nurseries, whether wholesale or retail, excluding a limited-acreage wholesale flower farm and commercial or noncommercial riding stables. (Bill No. 98, 1975.)

Farm, Satellite: A tract of land owned by the farmer or another individual or individuals which is more than 5 acres, and is primarily devoted to productive agriculture, including but not limited to the raising of crops, forestry, dairy, or livestock grazing; provided that the products from these areas are processed on the site or are [**182] brought to and processed on the principal farm, as defined, or are processed in other appropriate areas. (Bill No. 98, 1975.)

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[*181] The Planning Board then proposed a definition for "Commercial Agriculture" that was eventually enacted, without change, by the County Council by Bill No. 51-93 on April 19, 1993. This proposed and enacted definition is the same as the definition used by the Board of Appeals in the case at bar.

At the hearing before the Board of Appeals, petitioners presented testimony from two experts in the area of land planning. The first to testify was Paul Solomon, who, among other credentials, had worked for the Baltimore County Office of Planning and Zoning and the Baltimore County Department of Environmental Protection and Resource Management. Specifically, Mr. Solomon was the planner in charge of the implementation of the resource conservation zoning classifications, which included the R.C.4 zone. In his testimony, Mr. Solomon stated that:

"Q. Do you remember the question? Do you agree with the Zoning Commissioner's approach to the issues?

A. Yes, I recall the question. No, I do not agree with the Zoning Commissioner's opinion, nor the basis for it in this case.

Q. Why not, Mr. Solomon?

...
A. Well, there are several reasons that I base my answer on. [**183]

First, there's no apparent [***39] - it's not apparent he considered the evolution of the R.C. zones that took place and then the need for them, so forth, I think clearly sheds light on this issue of what is a farm.

Secondly, in the definition itself, the definition is now in the zoning regulations which was put in in '91.

Incidentally, he didn't consider all the aspects of the definition which have to be taken together, and pulls out one word, basically, animals, and he does not consider the various types of agricultural described in that definition and how they relate to this exotic use.

He does not understand or consider the fact that land is the key component of the definition.

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[*183] livestock would qualify, and I think we were pretty steadfast in that regard. [***41]

Q. Now, for example, would breeding of dogs be included in this concept you just described?

A. No, it would not.

Q. Why not?

A. In the first place, it is not land-based. It doesn't require land for feed or even towards disposal of waste materials, anything of that type.

It is more of a suburban-urban type use involving kennels, so forth. Dogs are not food or fiber, so it passed neither aspects of the tests.

It is not land based, and it was not production of food or fiber.

Q. Now, you mentioned earlier in your testimony when you were discussing the agricultural - commercial agriculture [**184] definition in the Baltimore County zoning regulations, that - strike that.

There was a prior definition before the one that's currently in the zoning regulations, is that correct?

A. That is correct.

Q. And, in your opinion, does the current definition differ materially from the original definition of commercial agriculture?

A. It differs only in one regard, a very specific regard, that is, the newer definition requires that in order . . . to accommodate commercial agriculture, the land must qualify for the agricultural use assessment.

With that one difference, the definition is precisely, [***42] or is the same. And, in fact, reinforces the intent and meaning of the earlier definition by adding other agricultural uses such as aquaculture.

It's conspicuous here it does not add uses such as exotic pets, or other non-agricultural uses.

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[*185] Q. Based on your experiences in developing the agricultural zones in Baltimore County, what is your understanding of the term 'animal husbandry'?

A. Animal husbandry consists of production of livestock or the raising of livestock primarily for food, although in the case of the horse industry, for other uses as well, but it's also land-based.

Q. And in your opinion, does the operation conducted by Mr. Kahl consist of animal husbandry, or is it consistent with that definition? [**185]

A. No, it is not land-based. It is not land-based in any sense of the word.

Q. In preparing for [***44] the zoning case, is it appropriate to sometimes consult the Baltimore County Code for reference?

A. Yes, it is.

Q. And did you consult the Code in this case?

A. Yes, I did.

Q. What, if anything, did you find that may be relevant to the issues that we are discussing today?

A. In looking or in reviewing the County Code, I reviewed the Title VI, Article 9.

Title VI is entitled animals, and Article 9 refers to wild animals.

But in the definition section, it breaks down animals into various groupings. It breaks them down into domestic animals, cats and dogs, basically, or as an example. It distinguishes very clearly farm animals.

And then it includes a third category called wild or exotic animals. . . .

Q. Was the County Code helpful to you in forming your opinion in this case?

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[*187] In the first instance, the definition starts out by saying 'the use of land,' so the [***46] livestock operation, the animal operation has to be land-based, which it is not in this case.

Then there's a comment after land. It goes on to say 'including ancillary structures and buildings,' which makes it very clear that any structures are ancillary [**186] or secondary to the actual use of the land.

Then it goes on to say 'to cultivate plants or raise or keep animals for income, providing that the land also qualifies for farm or agriculture or agricultural land use assessment.'

In this case, there is clear, clear evidence that it is presently not assessed for agricultural use

A. So I am now discussing the actual definition of commercial agriculture in trying to show where the use that's before this Board is not consistent with this definition.

Coming to the end of that definition, it lists, and it is updated, it lists based on

the '90 changes to the definition which includes all types of agriculture, they list nine or ten forms of agriculture.

They take commercial agriculture. It includes production of field crops, dairying, pasturage, agriculture, horticulture, aquaculture, apiculture, viticulture, forestry and animal and poultry husbandry, horse breeding and horse training. [***47]

And then it includes ancillary activities such as processing packages, so forth.

But if the Zoning Commissioner would have taken a look at those uses, there is not a hint there it involves pets or exotic animals or anything of the kind.

Q. Mr. Solomon, my original question was, on what did you base your opinion? Is there anything else?

A. Yes.

Q. Other than what you have discussed?

A. In addition to the definition itself, the Zoning Commissioner, in my opinion, should have looked at the County

[*189] use does not meet the definition of a farm and that this use is not related to the land.

Respondent alleges that he is using the land in the same manner as poultry husbandry and aquaculture, two forms of commercial agriculture. " At the hearing, the distinction was drawn between the two recognized forms of commercial agriculture in that they both provide food. Respondent also alleges that he practices animal husbandry within the definition of commercial agriculture. The Board of Appeals distinguished respondent's business because it involves wild animals, not domestic animals, and the definition of animal husbandry is the production and care of domestic animals.

14 [HN18] The definition of commercial agriculture, stated *supra*, explicitly states that aquaculture and poultry husbandry are included as commercial agriculture. The definition does not state that the raising, breeding, and selling of snakes - snake husbandry - is included as commercial agriculture.

[***50] After an examination of the record, we determine that there is substantial evidence in the record to support the Board of Appeals' decision to find that the breeding, raising, and selling of snakes is not a permissible use in an R.C.4 zone. There is no dispute as to the facts. Moreover, the legislative intent, as evidenced by the County Council's adoption of the Planning Board's proposed amendments and the testimony as to the intent of the Planning Board, provided the Board of Appeals with substantial evidence to interpret and apply the statutes in the manner in which it did. Examining the Board of Appeals' decision and giving the appropriate deference to the expertise of the Board of Appeals in interpreting the BCZR, we hold that the Board of Appeals' decision was not premised on an erroneous conclusion of law.

Furthermore, we have held that a change in a statute as part of a recodification will not modify the law unless the intent of the legislative body to change the law is clear. In *Blevins & Wills v. Baltimore County*, 352 Md. 620, 642, 724 A.2d 22, 32-33 (1999), we stated that:

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[*191] expert witness. They include the fact that we do not set aside common experience and common sense when construing statutes. Absurd constructions are to be avoided. Simply stated, in the absence of proof that the legislative body expressly intended otherwise, the terms "farm" or "farm animals" would not [***53] normally include pythons and boa constrictors. Pythons, boa constrictors, and, for that matter, snakes in general, are not "farm animals." One can breed, raise, and sell snakes, but you cannot farm them. A snake is no more the equivalent of chickens, pigs, cows, goats, and sheep, than are lions, tigers, and elephants. In arriving at this assumption, we do not rely on treatises, scientific documentation, or other published works; we rely on common sense. A snake, however loveable it may be to some, is not a farm animal unless legislatively declared to be such. A boa constrictor can be an animal on a farm, but that does not make it a "farm animal," any more than a fox on the way to raiding the hen house is a "farm animal."

We hold that the Court of Special Appeals failed to give the proper deference to the decision of the Board of Appeals. The decision of the Board of Appeals was supported by substantial evidence in the record and was not premised on an erroneous conclusion of law. The Court of Special Appeals erred in finding that respondent's business was a permitted use in an R.C.4 zone. The Court of Special Appeals should have affirmed the decision of the Board of Appeals.

[***54] C. Vested right

Respondent contends that he has obtained a vested right to use his property to raise, breed, and keep reptiles or snakes. In his brief, respondent states that in order for him to have a vested right he must satisfy two prongs. The first prong is that there has to be a valid permit. The second prong is that substantial work has to be performed under the permit so that it would be discernable to a member of the general public that work under the permit was occurring. Respondent states that he has satisfied both of the prongs and has a vested right to use the property for his business.

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[*193] proceed under that permit or certificate to exercise it on the land involved so that the neighborhood may be advised that the land is being devoted to that use. See *Feldstein v. LaVale Zoning Board*, 246 Md. 204, 210, 227 A.2d 731, 734 (1967), indicating that [*Mayor & City Council v.*] *Shapiro*[, 187 Md. 623, 51 A.2d 273 (1947)] as well as *Chayt v. Board of Zoning Appeals*, 177 Md. 426, 9 A.2d 747 (1939), established as one of the tests for determining the existence of a nonconforming use "is whether such use was known in the neighborhood."

254 Md. at 255-56, 255 A.2d at 404.

In *Rockville Fuel & Feed Co. v. Gaithersburg*, 266 Md. 117, 291 A.2d 672 (1972), we said that 'such [HN23] a "vested right" could [***57] only result when a lawful permit was obtained and the owner, in good faith, has proceeded

with such construction under it as will advise the public that the owner has made a substantial beginning to construct the building and commit the use of the land to the permission granted.' *Id.* at 127, 291 A.2d at 677; see also *County Council for Montgomery County v. District Land Corp.*, 274 Md. 691, 337 A.2d 712 (1975)."

330 Md. at 312-13, 623 A.2d at 1303-04 (alteration in original); see *Sycamore Realty Co., Inc. v. People's Counsel of Baltimore County*, 344 Md. 57, 67, 684 A.2d 1331, 1336 (1996).

In the case *sub judice*, respondent obtained a permit and completed substantial construction; however, he is not entitled to have a vested right because there has been no change, applicable to his case, in the zoning law itself and the permit was improperly issued. When respondent obtained his permit and started construction, the BCZR was the same as when petitioners filed for a hearing before the Zoning Commissioner. The Zoning Commissioner and later the Board of Appeals were not making a subsequent change to the BCZR, they were just interpreting [***58] the BCZR as it was already enacted. Based on the decision [**190] of the Board of Appeals that we are affirming, respondent's permit was not a lawful permit because he could not lawfully conduct his business in an R.C.4 zone.

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[*195] deliberate safeguards attendant upon the legislative process, purports to bind the municipality through passage of a simple resolution which is neither subject to executive approval nor veto nor the public right of referendum. Of course, no principle [***60] is better settled than that [HN26] persons dealing with a municipality are bound to take notice of limitations upon its charter powers. See *City of Hagerstown v. Long Meadow Shopping Center*, 264 Md. 481, 493, 287 A.2d 242; *Hanna v. Bd. of Ed. of Wicomico Co.*, 200 Md. 49, 57, 87 A.2d 846 (1952); *Gontrum v. City of Baltimore*, 182 Md. 370, 375, 35 A.2d 128 (1944). Consequently, 'everyone dealing with officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.' *Lipsitz v. Parr*, 164 Md. 222, 228, 164 A. 743. See also *Berwyn Heights v. Rogers* 228 Md. 271, 279, 179 A.2d 712. Therefore, the doc-

trine of equitable estoppel 'cannot be . . . invoked to defeat the municipality in the enforcement of its ordinances, because of an error or mistake committed by one of its officers or agents which has been relied on by the third party to his detriment.' *Lipsitz*, 164 Md. at 228, 164 A. 743. In the same vein, McQuillin, [**191] *supra*, [***61] § 29-104c states that [HN27] estoppel cannot make lawful a municipal action which is beyond the scope of its power to act or is not executed in compliance with mandatory conditions prescribed in the charter. In other words, the doctrine of equitable estoppel cannot be invoked to defeat a municipality's required adherence to the provisions of its charter simply because of reliance upon erroneous advice given by an official in excess of his authority. See *City of Baltimore v. Crane*, 277 Md. 198, 206, 352 A.2d 786. When, as here, it is a patent violation of one of the most fundamental provisions of a municipal charter - that its legislative body, when required to act in a legislative capacity, do so only by

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[*197] be in violation of law. Paragraph 31 of the ordinance forbade the officials of the municipality to grant the permit which the plaintiff asked and obtained; and paragraph 41 made it a misdemeanor for the plaintiff to use his premises as a factory to make ice as the invalid permit purported to empower.

If the provision of the ordinance be constitutional, it was therefore unlawful for the officers and agents of the municipality to grant the permit, and it would be unlawful for the licensee to do what the purporting permit apparently sanctioned. [HN29] A permit thus issued without the official power to grant does not, under any principle of estoppel, prevent [**192] the permit from being unlawful nor from being denounced [***64] by the municipality because of its illegality. In the issuance of permits pursuant to the ordinance at bar, the municipality was not acting in any proprietary capacity nor in the exercise of its contractual powers, but in the discharge of a governmental function through its public officers of limited authority, and *the doctrine of equitable estoppel cannot be here invoked to defeat the municipality in the enforcement of this ordinances, because of an error or mistake committed by one of its officers or*

agents which has been relied on by the third party to his detriment. Every one dealing with the officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.

So, [HN30] even where a municipality has the power, but has done nothing, to ratify or sanction the unauthorized act of its officer or agent, it is not estopped by the unauthorized or wrongful act of its officer or agent in issuing a permit that is forbidden by the explicit terms of an ordinance.

It follows that, because the ordinance prohibited [***65] the use of the premises in question for the making of ice by artificial methods, any permit issued would be void, and the person who received the permit would derive no benefit, and whatever he might do in pursuance of this permission would be

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[*199] *did not estop the appellant [the Town of [*193] Berwyn Heights] from prosecuting this suit."*

228 Md. at 279-80, 179 A.2d at 716 [***67] (citations omitted) (emphasis added).¹⁶

16 There have been cases where we have granted equitable estoppel against a municipality; however, they are distinguishable from the case at bar. In *Permanent Financial Corp. v. Montgomery County*, 308 Md. 239, 518 A.2d 123 (1986), a builder sought to estop the county from asserting that the top floor of a building exceeded a height control imposed by local zoning ordinances. We held that the county was estopped because the builder had designed and constructed the building in reliance on the building permits and the county's long-standing and reasonable interpretation as to how a building's height should be calculated. The record in the case at bar does not indicate any long-standing practice in Baltimore County to include snakes as farm animals or the raising and breeding of snakes as commercial agriculture. To the extent there is any such evidence, it is to the contrary.

While we are sympathetic to the plight in which respondent has found himself, we [***68] hold that the county is not estopped from enforcing the BCZR as it was applied by the Board of Appeals. We have held, [HN32] generally, that permits that have been issued that are in violation of the zoning ordinances are unlawful and cannot be grounds for estopping a municipality from the enforcement of the ordinance. We stated in *Lipsitz* that "the doctrine of equitable estoppel cannot be here invoked to defeat the municipality in the enforcement of its ordinances, because of an error or mistake committed by one of its officers or agents which has been relied on by the third party to his detriment." *Lipsitz*, 164 Md. at 227, 164 A. at 746.

III. Conclusion

We hold that the Court of Special Appeals failed to give appropriate deference to the expertise of the Board of Appeals in interpreting the BCZR. Furthermore, there was substantial evidence in the record to support the findings made by the Board of Appeals and the decision made by the Board of Appeals was not based on an erroneous conclusion of law. The Board of Appeals properly found that respondent's business does not satisfy the definition of "commercial agriculture," because respondent was not involved in [***69] the use of the

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[*201] COSTS IN THIS COURT AND IN THE COURT OF SPECIAL APPEALS TO BE PAID BY RESPONDENT.

AFFIDAVIT

P. 389

C-6

My name is: Jeanine Petzold & Lissel Petzold
(Print your name)

I am the property owner of: 10915 Gateview Rd
(Write your street address)

I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

I do not object to any of Mr. Riffin's activities on his property. None of his equipment is visible. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.

Lissel Petzold.

(Signature)

Jeanine Petzold.

Mr. Jim Riffin

11019 Gateview Road

Cockeysville, MD 20130

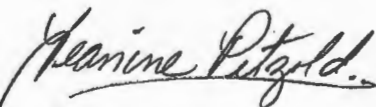
12/18/13

Dear Mr. Riffin:

First and foremost my Mother and I would like to thank you so much for plowing our driveway when it snows (10915 Gateview Rd). We didn't know who was cleaning it but I wanted to find you to thank you as it is a tremendous help to us. As I am my Mother's caregiver and my time is very limited between working and taking care of my 85 year old Mother, your kindness is a huge help and is very much appreciated. Our neighbor Mr. Tom Shepard would plow our driveway until he passed away; he was such a good Man and now you have come along to help us out. Thank you for your time, effort and kindness. I'm sure all our other neighbors will agree with me that we appreciate you greatly. My parents moved into this neighborhood 40 years ago in the summer of 1973. Over these past four decades my family has been living here and the neighborhood has changed a lot. Today there are more elderly people living here than young families. There are so many widows, especially on this side of Gateview Road. Another neighbor of mine is also a caregiver to his wife, so you see, you are a blessing to so many.

I am appalled to hear that someone is complaining about your equipment and your generosity! After all we are in the county and not in the city. When you clean our driveway I don't even hear you out there because if I did, I would have immediately come out to thank you. In regards to seeing your equipment on your property, it cannot be seen as I have driven past your home recently and could not find anything to complain about. Certainly you have my full support in keeping your equipment on your property as I do not see it as an eyesore or any other way to complain about it. If there is any way that I can be of help, please let me know.

Sincerely,


Jeanine Retzold

10915 Gateview Road

Cockeysville, MD 21020

Phone: (410) 628-1195

AFFIDAVIT

p. 379
#1

My name is Heath Elliott.

I am the property owner of 11008 Gateview Road, Cockeysville, MD.

I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

I do not object to any of Mr. Riffin's activities on his property. While some of his equipment is visible from my property, I do not object to his equipment being on his property. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.


12/19/2013

AFFIDAVIT

P. 379
#2

My name is: DAVID W. BAKER
(Print your name)

I am the property owner of: 11007 GATEVIEW RD.
(Write your street address)

I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

I do not object to any of Mr. Riffin's activities on his property. None of his equipment is visible. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.

David W. Baker
(Signature)

AFFIDAVIT

P. 389
B-3

My name is: SHIREEN GONZAGA
(Print your name)

I am the property owner of: 11005 GATEVIEW RD, COCKEYSVILLE
(Write your street address) MD 21030

I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

I do not object to any of Mr. Riffin's activities on his property. None of his equipment is visible. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.

Shireen P. Gonzaga
(Signature)

AFFIDAVIT 10 Dec 2013

P. 389
A-2

My name is: Anthony J. Anastasi

**I am the property owner of: 11000 Gateview Rd.
Cockeysville, MD 21030**

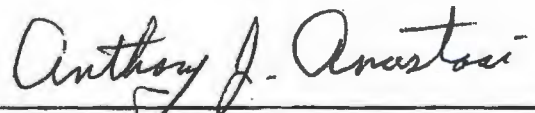
I am a Senior citizen and am competent to make this affidavit.

I am in support of Mr. Riffin in Case # 2014-2014-0094 SPH

I do not object to Mr. Riffin's activities on his property. His equipment is not visible to me because his property is approximately 3 Acres away from mine. I do not recall hearing any noise from his property.

I rarely see Mr. Riffin except from a distance when he appears after a snow storm and plows out my driveway and many other driveways in the neighborhood. He seems to enjoy plowing the streets for us while Baltimore County is busy on the major roads beyond our community. I really appreciate his kindness in removing all that snow and thank him for doing that job.

I understand that under the penalties of perjury that the above information is true and correct to the best of my abilities.



Signature

AFFIDAVIT

p- 389
B-1

My name is: MARSHA J. PARHAM
(Print your name)

I am the property owner of: 11001 Gateview Road
(Write your street address)

I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

I do not object to any of Mr. Riffin's activities on his property. None of his equipment is visible. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.

Marsha J. Parham
(Signature)

P. 389
C-5

AFFIDAVIT

My name is: Debbie Nicolette
(Print your name)

I am the property owner of: 10921 Gateview Rd, Cockeysville MD
(Write your street address) 21030

I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

I do not object to any of Mr. Riffin's activities on his property. None of his equipment is visible. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.

Debbie Nicolette
(Signature)

P-389
A-9

AFFIDAVIT

My name is: THOMAS KRAMER
(Print your name)

I am the property owner of: 1 NORFOLK CT. 21030
(Write your street address)

I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

I do not object to any of Mr. Riffin's activities on his property. None of his equipment is visible. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.

Robert Kramer
(Signature)

AFFIDAVIT

p. 136

My name is: Bret Barrow
(Print your name)

I am the property owner of: 416 Osage Rd. 21030.
(Write your street address)

I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

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I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.


(Signature)

AFFIDAVIT

My name is: Britney (Scott) Harant
(Print your name)

I am the property owner of: 10921 Powers Ave.
(Write your street address)

I am over the age of 21. I am competent and authorized to make this Affidavit.

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I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.

Britney Harant
(Signature)

AFFIDAVIT

My name is: Anthony Buscemi
(Print your name)

I am the property owner of: 10811 Powers Ave.
(Write your street address)

I am over the age of 21. I am competent and authorized to make this Affidavit.

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I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.

Anthony Buscemi
(Signature)

AFFIDAVIT

My name is: Mary Jane Buscemi
(Print your name)

I am the property owner of: 10812 Powers Ave.
(Write your street address)

I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

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I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.

Mary Jane Buscemi
(Signature)

AFFIDAVIT

My name is: Mike Kramer
(Print your name)

I am ~~the property owner~~ ^{A RESIDENT} of: Powers Ave
(Write your street address)

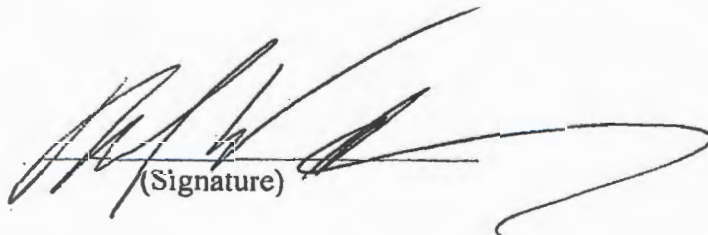
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I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.


(Signature)

AFFIDAVIT

My name is:

Loeci Burgess

(Print your name)

I am the property owner of:

10900 Powers Ave - Cockeysville

(Write your street address)

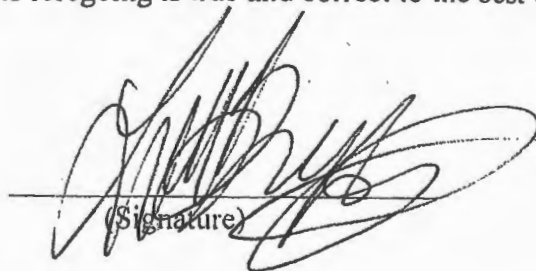
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I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.


(Signature)

AFFIDAVIT

My name is: MARY RANDOLPH
(Print your name)

I am the property owner of: 10808 Power-ave
(Write your street address)

☒ I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

☒ I do not object to any of Mr. Riffin's activities on his property. None of his equipment is visible. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.

Robert Randolph
Mary Randolph
(Signature)

KEVIN KAMENETZ
County Executive



LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

January 7, 2014

Karole and James Riffin
1941 Greenspring Drive
Timonium, Maryland 21093

RE: Petition for Special Hearing
Property: 11019 Gateview Road
Case No.: 2014-0094-SPH

Dear Mr. and Mrs. Riffin:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

Sincerely,

A handwritten signature in black ink, appearing to read "JEB", is written over the printed name of John E. Beverungen.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:dlw
Enclosure

c: Will Geddes, 11115 Powers Avenue, Cockeysville, MD 21030

IN RE: **PETITION FOR SPECIAL HEARING**
(11019 Gateview Road)
8th Election District
3rd Councilmanic District
Karole & James Riffin
Petitioners

* BEFORE THE
* OFFICE OF
* ADMINISTRATIVE HEARINGS
* FOR BALTIMORE COUNTY
* **Case No. 2014-0094-SPH**

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Hearing filed by Karole and James Riffin, the legal owners. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") as follows: (1) to determine whether the owner's proposed principal and accessory uses enumerated in the petition (and the personal property and equipment described therein) are lawful; and (2) to determine under what conditions may a Code Inspection and Enforcement Officer enter upon private land.

Appearing at the public hearing in support of the requests was James Riffin, property owner. The Petition was advertised and posted as required by the B.C.Z.R. There were no Protestants in attendance at the hearing. Will Geddes, Petitioners' neighbor, attended the hearing and expressed support for the Petitioners. No substantive Zoning Advisory Committee (ZAC) comments were received from any of the County reviewing agencies.

The subject property is 13 +/- acres in size and is split-zoned RC 6 and DR 1. The Petitioners have filed a petition for special hearing which, as noted by the Maryland Court of Special Appeals, is akin to a declaratory judgment action. *Antwerpen v. Balto. Co.*, 163 Md. App. 194, 209 (2005).

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Date 1-7-14

By BW

In terms of the second issue concerning the code inspector's entry onto private land, I believe that this inquiry is beyond the jurisdictional scope of the OAH. Both the Baltimore County Code (B.C.C.) and the B.C.Z.R. provide that the Zoning Commissioner may interpret the zoning regulations. B.C.C. § 32-3-301; B.C.Z.R. § 500.7. But the Zoning Commissioner (or Administrative Law Judge [ALJ]) is not given the power to construe or interpret the B.C.C. in the context of a petition for special hearing. As such, I will not address this issue, other than to note the court of appeals recently decided a case involving the "open fields" doctrine, and the court found that the presence of a "no trespassing" sign (a fact upon which Riffin places emphasis) will not create a reasonable expectation of privacy if such a sign was posted on "open land," which is the same verbage found in B.C.C. § 32-3-602. *Jones v. State*, 407 Md. 33, 45-46 (2008). The *Jones* court also held that the "front door" area of a dwelling is not subject to a reasonable expectation of privacy. *Id.*

The primary focus of the Petition seeks a determination of the lawful uses of the Petitioners' property, including whether certain enumerated vehicles and equipment may be kept on the premises. This is an unwieldy task, given that the record contains only a site plan, zoning and subdivision maps, and affidavits from nearby owners (Exhibit 4), all of whom state they do not object to Petitioners' activities or storage of equipment on the premises. The only photographs in the file (Exhibits 2 and 3) are black and white photocopies of several photos allegedly taken by the County inspector, which Petitioner introduced to show that the inspector conducted an illegal search. What is missing are photographs of the 13 acre site and the personal property ("chattels") at issue.

The only testimony was from James Riffin, who testified to the historic use of the property, his current use of the property for dwelling and agricultural purposes, and his use of the

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Date 1-7-19

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By DW

equipment in those endeavors. In these circumstances, it is difficult to make a determination as to the propriety of the uses and/or equipment. Just the same, based on Mr. Riffin's testimony and an examination of the plan and zoning/subdivision maps (Exhibit 1), it seems clear the principal use of the property is for residential/dwelling purposes. According to tax records, the dwelling on the property was constructed in 1976, and the property is categorized as "residential."

Based on Mr. Riffin's testimony, it is plausible (though not free from doubt) that the Petitioners utilize the property for residential agricultural purposes, as an accessory use. Both this accessory use and the principal residential use are permitted as of right in the DR 1 and RC 6 zones. B.C.Z.R. §§ 1A07.3 and 1B01.1. For purposes of this opinion, it is safe to assume that the agricultural accessory use exists, even though Petitioners submitted no exhibits indicating that produce and/or fruit is grown or sold from the property, and the State of Maryland does not categorize the property -- in whole or part -- as being used for agricultural purposes.

But neither the principal or accessory use of the property entitles the Petitioners to keep on the property those items described in the petition.

With regard to the railroad cars, tracks, ties and related equipment, Mr. Riffin testified that some of the equipment is to "maintain rails," and he indicated he hopes to start a new railroad in New Jersey. He also indicated that a caboose is used as a "recreational amenity." Neither the residential or agricultural uses of the property would necessitate any of the described railroad equipment, and none of the equipment (including the caboose) is commonly or customarily associated with such uses. As such, I do not believe it can be lawfully kept on DR 1 and RC 5 zoned property.

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Date 1-7-14

By [signature]

Mr. Riffin also testified that he has a large crane, man lift, 70' tractor trailer and trucks. He indicated that these items are "very handy" and that he uses them "a lot" to pull pipes out of wells, assist in harvesting trees or to help his neighbors. Again, such heavy equipment and materials are not customarily used for residential or even agricultural purposes. No evidence was presented that any of the vehicles or equipment were registered as "farm vehicles" with the State of Maryland. These items, as alleged by Baltimore County, are items that must be stored in a "contractor's equipment storage yard", and not on residential property. That term is defined as follows in the B.C.Z.R.:

"The use of any space, whether inside or outside a building, for the storage or keeping of contractor's equipment or machinery, including building materials storage, construction equipment storage or landscaping equipment and associated materials."

I find that Petitioners are in fact using the property for such a purpose, which is permitted by special exception only in commercial zones. As such, I do not believe these items can be lawfully kept on the premises.

With respect to the untagged motor vehicles on site, Mr. Riffin contends that those (and some of the truck trailers as well) have been transmogrified into "utility sheds." While a creative argument, I do not believe it can withstand scrutiny. If such an argument were accepted, every citizen in the County could keep on his/her residential property inoperable and/or untagged vehicles (which is illegal per B.C.Z.R. § 428) by the expedient of storing household items or personal belongings inside. The regulations are clear that such vehicles may not be kept on residential property, and as such the Petitioners may not keep such vehicles on this residential property. This same conclusion applies to any "commercial vehicles" stored on the property, the outside storage of which on residential property is unlawful per B.C.Z.R. § 431.

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Date 1-7-14

By bw

The B.C.Z.R. excludes from the definition of "commercial vehicle" and from the sections prohibiting storage of unlicensed motor vehicles, "farm tractors" or "farm equipment" actually and regularly used on a farm. B.C.Z.R. §§ 101, 428.1.C. These terms are not defined in the B.C.Z.R. or Webster's 3rd New International Dictionary. As such, generally accepted principles of statutory construction indicate that these terms should be given their "ordinary and natural meaning." *O'Connor v. Balto. Co.*, 382 Md. 102, 113 (2004).

The ordinary meaning of "farm equipment" would include combines, farm tractors, plows, harrows, seeders, balers and spreaders. Such items could be kept on the premises if Petitioners could establish they were "actually and regularly used" for farming purposes. But none of these items are described in the Petition, and I do not believe that any of the vehicles or equipment listed would be considered "farm equipment," even if employing a generous definition of that term. Accordingly, I do not believe Petitioners can avail themselves of this "farm equipment" exception.

Pursuant to the advertisement, posting of the property, and the public hearing, I find that Petitioners' Special Hearing request should be dismissed without prejudice with respect to the code inspector issue, and denied with respect to the proposed uses and storage of enumerated equipment in the DR and RC zone.

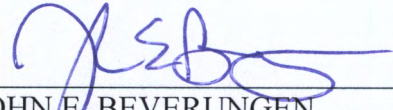
THEREFORE, IT IS ORDERED this 7th day of January, 2014, by this Administrative Law Judge, that the Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to determine whether the owner's proposed principal and accessory uses enumerated in the petition (and the personal property and equipment described therein) are lawful, be and is hereby DENIED.

ORDER RECEIVED FOR FILING

Date 1-7-14

By EW 5

IT IS FURTHER ORDERED that the Petition for Special Hearing pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R."), to determine under what conditions may a Code Inspection and Enforcement Officer enter upon private land, be and is hereby DISMISSED without Prejudice.



JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/dlw

ORDER RECEIVED FOR FILING

Date 1-7-14

By BW

In re: 11019 Gateview Road
Cockeysville, MD 21030

* Before the Zoning Commissioner
* of Baltimore County
* Case No.: 2014 - 0094 - SPH

* * * * *

MEMORANDUM

1. Comes now your Petitioner, James Riffin, who respectfully submits this Memorandum.
2. Appended are additional Affidavits from additional neighbors. The Affidavits support Petitioner. These affiants specifically requested that their Affidavits be placed into the record, even though they were executed after the December 20, 2013 hearing date. It would be legally permissible to add these Affidavits to the record, since they are being submitted prior to a decision being rendered, and since their inclusion is unopposed.

ISSUES

3. The proceeding presents the following issues:

When may a Code Enforcement person enter upon private land?

4. Petitioner James Riffin had a discussion with Phillip Mills, the Code Enforcement person who cited Petitioners, regarding by what right had Mr. Mills entered upon Petitioners' posted / gated property and by what right had he taken photographs (seized images) of private (not visible from adjacent public / private properties) areas of Petitioners' property, and by what right had Mr. Mills entered a gated / fenced area immediately adjacent to Petitioner's residence, and by what right had Mr. Mills climbed a ladder and taken photographs of the second story area of Petitioners' residence, and by what right had Mr. Mills placed his camera on the windows of Petitioners' residence, and taken photographs of the interior of Petitioners' residence, all of which was done without benefit of a search warrant, and all of which was done surreptitiously,

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without any notice to Petitioner.

5. Mr. Mills cited §§ 32-3-602(b)(2) and 13-4-401, Baltimore County Code (“BCC”), as statutory authority to enter upon private, posted, fenced and gated property without benefit of a search warrant. Mr. Mills sincerely believes that the phrase “open land” means “land without a roof over it.” Under his definition, he believes that he has the absolute right to enter upon private land that is posted against trespassing and / or is gated or fenced. He also believes that he has the right to stand anywhere where he can see the sky over his head, including standing on a ladder leaning on the exterior of a residence. Thus, under Mr. Mills interpretation of the statute, he has the absolute right to place a ladder on the exterior of a residence, climb the ladder, then place his camera on the exterior of a second-floor bedroom window, then take photographs of the interior of that bedroom, totally unannounced, even when a female is inside that bedroom getting dressed. He also believes that any photographs he takes, can be placed in a public file, accessible by the public.

6. §13-4-401 [Subtitle 3. Processing and Land Disposal Sites] states:

“A permittee shall allow agents of the approving authority, after they have provided proper identification, entry onto property owned or controlled by the permittee for the purpose of:

- (1) Collecting samples, records, and information;
- (2) Taking photographs; and
- (3) Ascertaining whether the permittee is following the regulations and orders of the approving authority.”

7. Article 13 of the BCC, concerns Public Health, Safety, and the Environment. Title 4 of Article 13 regulates Solid Waste.

8. §13-4-101 (p) defines the word “permittee” as follows:

“(p) *Permittee*. “Permittee” means a person to whom a permit has been issued.”

9. Article 13, Title 4, concerns Solid Waste disposal sites. The Petitioner does not have a solid waste disposal site. Consequently, §13-4-401 is inapplicable.

10. The controlling statute is Section 32-3-602(b)(2), BCC, which states:

“(b) *Enforcement powers and duties of Department of Permits, Approvals and Inspections.* Representatives of the Department of Permits, Approvals and Inspections:

(2) May enter upon **open land** during the performance of their duties.” Bold added.

11. The word “open” is defined as: “So arranged or governed as to permit ingress, egress, or passage; Having no enclosing or confining barrier; Free from fences, boundaries, or other restrictive margins; Adjusted in a position that permits passage.”

12. Petitioners’ Property is conspicuously posted with numerous “No Trespassing Violators will be Prosecuted” signs. Petitioners’ driveway is gated and kept locked. There is a gated fence surrounding Petitioners’ dwelling. None of Petitioners’ Property is: “So arranged or governed as to permit ingress, egress, or passage; Having no enclosing or confining barrier; Free from fences, boundaries, or other restrictive margins.” Petitioners’ Property is decidedly **not** “open land.”

13. All statutes must be interpreted so that they are Constitutional. The U.S. Supreme Court has interpreted the Fourth Amendment of the U.S. Constitution on numerous occasions. The underlying theme in all of their decisions, is that government agents may not enter (search) those areas where a person has an “expectation of privacy.”

14. The most appropriate interpretation of the phrase “open land,” would be “land where the owner does not have an ‘expectation of privacy’.”

15. Petitioner argues that land that is posted with “No Trespassing” signs, that is fenced, that is enclosed with hedges, would be land where the owner has an ‘expectation of privacy.’ Petitioner argues that land that is not visible from a public right-of-way, is land where the owner has an ‘expectation of privacy.’ Under this criteria, the back yard of a residence would be an area where the owner has an ‘expectation of privacy, even if unfenced and unposted, while an ‘expectation of privacy’ would not attach to the front or side yards of a residence (unless fenced, surrounded by hedges, or posted ‘No Trespassing’).

16. Petitioner’s land is gated. It is conspicuously posted with numerous “No Trespassing Violators will be Prosecuted” signs. It has dense foliage on its perimeter, which makes the interior of Petitioners’ land not visible from public rights-of-way, and not visible from adjacent private properties. The topography of Petitioners’ land also makes the interior of Petitioners’ land not visible from adjacent properties.

17. Petitioner argues that all of his land falls within the purview of the Constitution’s ‘expectation of privacy,’ Petitioner further argues that no Baltimore County Code Enforcement person may enter upon Petitioners’ land without a search warrant, and that the taking of photographic images would constitute an unlawful “seizure” of images of Petitioners’ land, and the uses he makes thereof.

May a Code Enforcement Person Look Under a Tarpaulin?

18. Petitioner argues that when a person covers personal property with a tarpaulin, that protects the property from the weather, and gives rise to an ‘expectation of privacy.’ Therefore Petitioner argues that a Code Enforcement Person **does not** have the right to lift up a tarpaulin to see what is under the tarpaulin, even when tarpaulin-covered personal property is visible from a public right-of-way. For example, a Code Enforcement person would not have the right to lift up a tarpaulin-covered vehicle to see if the vehicle was currently registered.

How is Petitioners’ Property Zoned?

19. Appended to Petitioners' Special Hearing Petition was a copy of that portion of Baltimore County's Zoning Map applicable to the Property that is the subject of this proceeding. The Western portion of Petitioners' property is currently zoned **DR-1**. The Eastern portion of Petitioners' property is currently zoned **RC-6**. The portion currently zoned RC-6 was previously zoned DR-1, and has been so zoned since the inception of the Baltimore County Zoning Regulations ("**BCZR**") . (Previously DR-1 zones were referred to as R-40 zones, meaning 40,000 square feet minimum lot size.)

Primary Uses Permitted by Right

20. "Dwellings" and "Farms" are permitted by right in DR-1 zones (see §1B01.1 A 1 and 7 BCZR) and RC-6 zones (see §1A07.3 A 1 and 2 BCZR). Consequently, both of Petitioners' **Primary Uses** (Dwelling, one-family detached and Farm) are permitted by right in both DR-1 and RC-6 zones.

Accessory Uses Permitted by Right

21. Accessory Uses are permitted by right in both DR-1 zones (see §1B01.1 A 18 BCZR) and RC-6 zones (see § 1A07.3 7 BCZR).

22. Accessory Uses are defined in §101.1 BCZR as follows:

"Accessory Use or Structure. 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; except that, where specifically provided in the applicable regulations, accessory off-street parking need not be located on the same lot. An accessory building, as defined above, shall be considered an accessory structure. A trailer may be an accessory use or structure if hereinafter so specified. An ancillary use shall be considered as an accessory use; however, a use of such a nature or extent as to be permitted as a 'use in combination'

(with a service station) shall be considered a principal use.

Are Petitioners using their land for “farming / agricultural” purposes?

23. The word “farm” is defined in §101.1 BCZR as follows:

“Farm. Three acres or more of land, and any improvements thereon, used primarily for commercial agriculture, as defined in these regulations, or for residential and associated agricultural uses. The term does not include the following uses as defined in these regulations: limited-acreage wholesale flower farms, riding stables, landscape service, firewood operations and horticultural nursery businesses.

24. The phrase “commercial agriculture” is defined in §101.1 BCZR as follows:

“Agriculture, Commercial. The use of land, including ancillary structures and buildings, to cultivate plants or raise or keep animals for income, provided that the land also qualifies for farm or agricultural use assessment pursuant to **§8-209 of the Tax-Property Article** of the Annotated Code of Maryland, as amended. Commercial agriculture includes the production of **field crops**, dairying, pasturage agriculture, **horticulture**, floriculture, aquiculture, apiculture, viticulture, **forestry**, animal and poultry husbandry, the operation of an equestrian center, horse breeding and horse training and **also includes ancillary activities such as** processing, packing, **storing**, financing, managing, marketing or distributing, provided that any such activity shall be secondary to the principal agricultural operations.” Bold added.

25. The word “horticulture” is defined as: “The cultivation of flowers, fruits, vegetables, or ornamental plants.”

26. The word “forestry” is defined as: “The science of planting and taking care of forests.”

27. The word “forest” is defined as: “A large tract of land covered with trees and underbrush; extensive wooded area.

28. §8-209 of the Tax-Property Article of the Annotated Code of Maryland states (a) that it is in the public interest to foster and encourage farming activities; “(e)(1) the Department shall establish in regulations criteria to determine if land that appears to be actively used for farm or agricultural purposes (i) is actually used for farm or agricultural purposes; and (ii) qualifies for assessment under this section; (e) (2) The criteria shall include: (i) The zoning of the land; (ii) The present and past use of the land including land under the Soil Bank Program of the United States; (iii) The productivity of the land, including timberlands and reforested lands; and (iv) The gross income that is derived from the agricultural activity.” (e)(7) states that: “The gross income requirement of paragraph (2) of this subsection does not apply: (i) If the owner is at least 70 years of age.”

29. Title 18, Subtitle 02, Chapter 03.06, entitled Woodland, states:

“.06 Woodland. A woodland parcel of **5 acres** or more **shall** receive agricultural use assessment only if it is:

A. A part of a parcel of land which is determined to be **actively used** as defined in Regulation .01B(1) of this chapter ... **or** F. **Actually devoted** land as defined in Regulation .01B(2) of this chapter.” **Bold added.**

30. Regulation .01B(1) states: “‘**Actively used** land’ means land that is actually and primarily used for a continuing farm or agricultural use.

31. Regulation .01B(2) states: “(2) ‘**Actually devoted** land’ means that portion of actively used land which is engaged in an approved agricultural activity.

32. Regulation .01B(4) states: “(4) ‘Approved agricultural activity’ means those activities recognized as agricultural pursuits under Regulation .03 of this chapter.”

33. Regulation .03 states:

“A. Approved agricultural activities are as follows:

(1) Raising grains, fruit, herbs, melons, mushrooms, nuts, seeds, tobacco, or vegetables;

(9) Silviculture." [Forest trees, woodlands]

34. Petitioners' parcel contains 13 acres of land. Approximately 7-8 acres is woodlands. Another acre +/- is devoted to fruit trees (apple, pear, peach, cherry), seed trees (black walnuts), red and black raspberries, and to the cultivation of vegetables (tomatoes, bell peppers, melons) and herbs (mint, basil). The land has been used to raise livestock (cattle, rabbits, ducks), and as pasturage. Petitioners' woodlands are unique: Unlike most deciduous trees (whose trunk is rarely straight), the trunks of Petitioners' trees are ship-mast straight, and of ship-mast quality. Having grown an additional 37 years since Petitioners' purchased the property in 1976, Petitioners' trees are now 60+ feet tall, and are 12 inches or more in diameter at the 50-foot height mark. In another 10 years or so, they should be ready to be harvested.

35. The Zoning Regulations' definition of a farm is a parcel at least 3 acres in size, used for "commercial agriculture, as defined in these regulations, or for residential and associated agricultural uses." Petitioners' property meets this definition. Petitioners' parcel is 13 acres in size vs. the minimum of three acres. Petitioners use their property for agricultural uses.

36. Petitioners' property meets the definition of 'commercial agriculture.' Petitioners use their land to cultivate 'plants.' Petitioners' land qualifies for agricultural use assessment pursuant to §8-209 of the Tax-Property Article. More than 5 acres of Petitioners' property is used for the cultivation of woodlands. An acre +/- of Petitioners' property is devoted to the cultivation of fruit and seed trees, vegetables, and berries. Petitioners' use the major portion of their property to produce 'field crops,' for 'horticulture,' and for 'forestry.'

37. CONCLUSION: Petitioners ARE using their land for "farming / agricultural" purposes.

Are the Uses listed in Petitioners' Special Hearing Petition, Permitted Uses?

38. Petitioners ask that the Zoning Commissioner determine whether two primary, and 39 specific accessory uses are permitted in a DR-1 zone or in a RC-6 zone. Petitioners further ask that if any of the specific listed uses are not permitted as of right, would they be permitted non-conforming uses. Each use will be addressed below.

39. As discussed above in ¶18 above, Petitioners' two primary uses are permitted by right.

40. Petitioners argue that the 39 specific accessory uses are permitted as accessory uses, or are permitted by right.

41. §1A07.3A expressly permits by right in an RC-6 zone: Home occupations [7b]; Offices of other professionals [7c]; Parking and residential garage space [7d]; and Recreational amenities [7f].

42. §1B01.1A BCZR permits the following uses by right in a DR-1 zone:

Trailers [2]; accessory uses, including, but not limited to, home occupations [18c]; parking spaces [18d]; garages, utility sheds, "or other accessory structures or uses (all such accessory structures or uses subject to the height and area provisions for buildings as set forth in Section 400)." [18g].

43. Section 400 BCZR states:

"Accessory buildings in residence zones, **other than farm buildings** (Section 404) shall be located only in the rear yard and shall occupy not more than 40% thereof."

44. All of the uses specified in Petitioners' Petition are located in the **rear yard** of Petitioners' property. (Petitioners' front door is located on the East end of their dwelling. All of the uses listed in Petitioners' Petition occur on the West end of their dwelling, which would be in

their rear yard.)

45. Petitioners use of their property for accessory uses is less than 40% thereof. [40% of 13 acres is 5.2 acres. Petitioners use about one acre for the uses listed in their Petition (less than 10%).]

46 Petitioners' accessory uses are located more than 100 feet from their nearest property line, and are not visible from public rights-of-way nor from adjacent private properties. The only neighbor who indicated that he could see any of Petitioners' equipment (the Elliotts), indicated in their Affidavit that they did not object to seeing any of Petitioners' equipment.

47. Petitioners' use of their Property to store their farming-related equipment: "(a) is customarily incident and subordinate to and serves a principal use [farming] or structure; (b) is subordinate in area [10% of total land], 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." Consequently, Petitioners use of their land falls within the ambit of the definition of the phrase, "Accessory Use."

48. All farming-related uses would be permitted as 'accessory uses.' Petitioners argue that the following uses are farming-related, and are permitted farming-related accessory uses:

Buildings and other structures used to store farming-related equipment, materials and crops [2E]; Buildings and other structures related to the cultivation of crops [2F]; Semi-trailers, currently licensed [2Ib], and also those unlicensed [2Ic], used in connection with farming activities. [The licensed (6) semi-trailers are used to haul felled trees, heavy equipment and other material / equipment. Two of the licensed semi-trailers are extendable trailers (can be extended up to 80 feet in length), and thus can be used to haul extra long trees (up to 100 feet in length). The unlicensed semi-trailers (10 +/-) are used to haul farm equipment / material / water to different locations on Petitioners' property.]

A licensed (historic plates) truck tractor [2Id], is used to haul semi-trailers on the road. A licensed (historic plates) dump truck [2Id], is used to haul dirt, stone, mulch, bricks and other bulk materials to / from Petitioners' property, and is used to move dirt / stone / mulch / bricks about Petitioners' property. Two unlicensed dump trucks are used to store / move bulk materials about the Property [2Ie]. An unlicensed boom truck is used to pick up felled trees, or building materials, and to move / lift such materials about the property [2Ie]. Two licensed (special mobile equipment) hydraulic cranes [2If] are used to hold trees upright while the trees are being cut (to control where the tree will fall, and to regulate the velocity of the tree as it falls, to prevent damage to the tree and to other adjacent trees). They are used to pull the pump out of the Property's well, when the pump fails. They are used to hold / suspend building materials and equipment. Three licensed [special mobile equipment] air compressors [2Ig] are used to provide compressed air for equipment operated by compressed air, and are used to inflate equipment tires. Two hydraulic excavators [2Ii] are used to dig / move dirt, to change the elevation of the Property, to dig ditches within which to bury electric and water lines, are used to lift up equipment / material and are used to dig out tree stumps. Building materials, such as steel, masonry units, lumber, asphalt millings, crusher-run stone [2Ij] are used to erect structures to store farm-related equipment and crops, are used to erect walls, and are used to prevent dust and erosion of traveled / storage surfaces. Five generators [2Ik] are kept at the property, to provide electricity when the electricity goes out (several times a year), to provide electricity on those parts of the Property currently unserved by electricity, and are used to provide 3-phase electricity for equipment that runs on 3-phase electricity. (3-phase electricity is not available.) Air conditioning units [2Il] are kept at the Property, to provide cooling and refrigeration during the summer. Grass mowing equipment [2Im] is used at the Property to mow several acres of grass. Some unlicensed motor vehicles [utility vans] [2In] are used as utility sheds, to store weather-sensitive equipment, material, fertilizer, and seed, and those with extensive glassed areas (windows) are used to propagate seeds to seedlings in the Spring (they are used as greenhouses). Some unlicensed, operable motor vehicles [2Io] are used to transport farming-related equipment and material about the Property. There are a

number of containers [former insulated milk-truck bodies with lift gates] [2Ip] that are used to store temperature- and weather-sensitive equipment, material and supplies.

There are a number of containers [2Iq] that are used to store rain water, for irrigation, and that are used to store fuel. There is one stone-crusher [2Ir] that is used to crush large boulders. The crushed stone is used to pave areas traversed by equipment, and to reduce dust from storage areas. There are a number of diesel-powered light towers [2Is], that provide light during non-daylight hours, particularly in the winter, when the sun sets before 5 pm. There is fencing material [2It] that is used to fence off areas so that wild life cannot eat the crops within the enclosed area. There is heating equipment [2Iu] that is used to warm structures in the winter, and to dry crops / material. There is ice making equipment [2Iv] that is used to make ice, to cool crops / vegetables. There are a number of replacement tires on the Property [2Iw], which are on rims and which are fully inflated. Whenever a tire malfunctions, a replacement tire is available to replace the malfunctioning tire. There is some farm stand display equipment on the Property [2Ix], which can be used to display crops after harvest. There is rope (both manila and wire) [2Iy] which is used to hold items (such as tree limbs, trees). There is hydraulic equipment [2Iz] which is used to dig / move dirt, trees, equipment, and material. There is plowing equipment [2Iaa] which is used to cultivate the land. There is crop cleaning equipment [2Ibb] which is used to clean harvested crops. There is grapple equipment [2Icc], which is used to hold / lift equipment, material and felled trees. There is log chipping equipment [2I dd] which is used to chip / mulch vines and tree limbs. And there are man-lifts [2Iee] which are used to gain access to the upper reaches of trees, to trim branches, to pick fruit, and to remove vines.

49. Petitioners argue that all of the above uses / equipment constitute permissible accessory uses of Petitioners' Property.

SPECIFIC USES / ISSUES

UNLICENSED MOTOR VEHICLES

church vehicle located at a civic, educational, social, recreational or religious institution; recreational vehicle as defined in Section 101; **trailer** (or mobile home) as defined in Section 101; vanpool or **historic vehicle** as registered with the State Motor Vehicle Administration." Bold added.

54. Many of the vehicles on Petitioners' Property have a gross vehicle weight rating over 10,000 pounds. All of these vehicles are actually and regularly used on Petitioners' farm. In addition, two of these vehicles have historic plates on them, and as such, **are not deemed** to be "commercial vehicles" as that term is defined in the BCZR. None of these vehicles are 'for hire' vehicles.

55. Petitioners argue that none of Petitioners' over 10,000 pound gross vehicle weight vehicles constitute a 'commercial vehicle' as defined in the BCZR.

JUNK YARDS

56. Junk Yards are no longer permitted in residential zones. See§1B01.1D BCZR.

57. §101.1 BCZR defines a Junk Yard as follows:

"Any land used commercially or industrially for storage or for sale of scrap metal, wastepaper, rags or other junk, and **any land**, except as provided for by Section 428, **used for the storage of** unlicensed or inoperative motor vehicles, dismantling or storage of such vehicles or parts thereof, or **used machinery**, regardless of whether repair or any other type of commercial operation occurs, but excluding scrap for use in manufacturing processes on the premises or waste materials resulting from such processes or resulting from the construction or elimination of facilities for such processes. The term does not include unlicensed motor vehicles located at automotive service stations, service garages or new or used motor vehicle outdoor sales areas, **or any vehicle stored pursuant to Section 404A.**" Bold added.

58. The phrase 'junk yard' is defined in the BCZR as being "any land ... used for the storage of ... used machinery" If interpreted literally, this definition of a junk yard would outlaw the presence of many pieces of machinery commonly found in residential zones. Think about the

50. §428.1 BCZR regulates the outside storage of unlicensed or inoperative motor vehicles on residential property. Paragraph C of that section states:

“C. Nothing contained in Subsection B shall be construed to prohibit the outside storage of unlicensed but operative farm tractors or farm equipment actually and regularly used on a farm, farmette or satellite farm.”

51. As discussed above, the unlicensed motor vehicles on Petitioners' property are actually and regularly used on Petitioners' farm. They are used to move equipment / material about the property. Some are used for non-motor vehicles purposes, to wit: as utility sheds and as greenhouses.

52. Utility sheds are a permitted use. A “shed” is defined as: “A slight structure (as a penthouse, lean-to, partially open separate building) built primarily for shelter or storage. The term “utility” is defined as: “The state or quality of being useful.” So a “utility shed” is a “slight structure” that is “useful.” A “structure” is defined as “anything composed of organized or interrelated elements.” A motor vehicle is “anything composed of organized or interrelated elements.” If it is used as a place of shelter or storage, then it has been converted from a motor vehicle into a ‘utility shed.’ The unlicensed, inoperable former motor vehicles on Petitioners' Property are no longer motor vehicles. They are being used as ‘utility sheds,’ and as ‘greenhouses,’ both of which are permitted uses.

COMMERCIAL VEHICLES

53. §101.1 BCZR defines the phrase ‘Commercial Vehicle’ as follows:

“Any vehicle with a gross vehicle weight or gross combination weight over 10,000 pounds or any vehicle, regardless of weight, which: (1) is used for the transportation of materials, products, freight, other vehicles or equipment in furtherance of any commercial activity; (2) is used ‘for hire;’ or (3) displays advertising thereon. Identification of the vehicle's manufacturer model or dealer shall not be considered as advertising. Commercial vehicles **shall not** be deemed to include any **farm vehicle or farm equipment** actually and regularly used on a farm, satellite farm or farmette; school or

following items: A lawn mower; a generator; an air conditioning condensing unit; any type of motorized toy. All of these items are 'machinery.' All of these items, once removed from their original place of sale, become 'used.'

59. Petitioners argue that over the years, there has been no intention to alter the original definition of a 'junk yard.'

60. The original definition of a 'junk yard' is more in conformity with present day usage of used machinery on residentially zoned property:

"20. Junk Yard. **Any land or area used**, in whole or in part, for storage of paper, rags, scrap metal or other junk or for the storage of automobiles not in running condition or **for the dismantling of** automobiles or other vehicles or **machinery.**" 1945 BCZR. Bold added.

61. It is not the storage of usable used machinery that is offensive, it is the storage of 'junk,' or the storage of machinery and that is being scraped or dismantled, that is offensive.

62. 'Junk' is defined as "old or discarded material or objects; anything regarded as worthless. Unwanted or trashy."

63. While 'beauty is in the eyes of the beholder,' so to is the 'worth' of an item. In today's throw-away world, items of value, sometimes items of great value, are routinely discarded as being 'worthless' to the individual discarding the item. Dictating the 'worth' of an item, is dangerous. An air conditioning unit that has an energy efficiency rating of 10 or less, would be considered 'worthless' by most air conditioning specialists (worthless being defined as not worth the cost of fixing / maintaining the old air conditioning unit), but would be considered of great value to anyone on a fixed / limited income, without the financial resources to pay several thousands of Dollars for a new, more energy efficient unit. An old, ugly energy inefficient AC unit is much preferred over no AC unit, particularly when the temperature is 100 degrees Fahrenheit.

64. Petitioners argue that the used machinery on their Property is not 'junk.' To them, the used machinery has great worth (and in fact does have great worth, since it all works, and since the cost of buying a 'prettier' piece of machinery, is in the thousands of Dollars).

TRUCKING FACILITY

65. The BCZR define two types of Trucking Facilities:

"Trucking Facility Class I (Truck Terminal). A trucking facility whose primary purpose is to accommodate the transfer of goods or chattels from trucks or truck trailers to other trucks or truck trailers or to vehicles of other types, in order to facilitate the transportation of such goods or chattels."

"Trucking Facility, Class II. A trucking facility other than a Class I trucking facility, including a truck yard (the **primary purpose** of which is to accommodate the parking or storage of truck, truck trailers or truck tractors.)" Bold added.

66. Both Trucking Facilities definitions refer to a "trucking facility," which is also defined in the BCZR as follows:

"Trucking Facility. A structure or land used or intended to be used primarily (a) to accommodate the transfer of goods or chattels from trucks or truck trailers to other trucks or truck trailers or to vehicles of other types in order to facilitate the transportation of such goods or chattels; or (b) for truck or truck-trailer parking or storage. A trucking facility may include, as incidental uses only, sleeping quarters and other facilities for trucking personnel, facilities for the service or repair of vehicles, or necessary space for the transitory storage of goods or chattels. The term 'trucking facilities' includes facilities for the storage of freight-shipping containers designed to be mounted on chassis for part or all of their transport but does not include a warehouse, moving and storage establishment or truck stop. **Land used for the parking, storage or repair of trucks used as an accessory to a lawful business or industrial use of the land that such parking or storage area forms a part of shall not be considered a trucking facility within the meaning of this definition.** As used in this definition, the terms, 'trucks,' 'truck-trailers,' and 'truck tractors' do not include any vehicle whose maximum gross weight is 10,000 pounds or less, as rated by the State Motor Vehicle Administration." Bold added.

67. Petitioners' land is not "**primarily**" used, nor is it used at all: "(a) to accommodate the transfer of goods or chattels from trucks or truck trailers to other trucks or truck trailers or to vehicles of other types in order to facilitate the transportation of such goods or chattels."

68. While Petitioners land is used "(b) for truck or truck-trailer parking or storage," it is **NOT** "**primarily**" so used.

69. Petitioners' argue that their "[l]and [is] used for the parking, storage or repair of trucks used as an accessory to a lawful business:" farming. Petitioners further argue that "such parking or storage area ... shall not be considered a trucking facility within the meaning of this definition."

GARBAGE, MANURE, ANIMAL AND BIRD FEED

70. §13-7-310 (a) states:

"(a) *Dumping prohibited.* A person may not place, leave, dump, or allow to accumulate any garbage, rubbish, trash, or manure in an improved or vacant building or premises, or on any open lot or alley so that the garbage, rubbish, trash, or manure may become food for rats or a rat harborage."

71. The operative words are "garbage, rubbish, trash, or manure." Petitioners do not have any manure on their Property. So the question becomes, do they have any "garbage, rubbish or trash" on their property that "may become food for rats" or that may become "a rat harborage."

72. Perhaps the first question should be: Are there any rats on Petitioners' Property, and if so, are they an integral part of the ecological habitat on Petitioners' Property? Petitioners Property is populated by a number of foxes (6 or so), a number of raccoons (8 or so), an owl or two, and hawks. These wild life need food to survive. Rats and mice are an important part of their diet. Petitioners have not seen any rats, nor have Petitioners seen any signs that rats are

present in their neighborhood. Part of the reason for the absence of these rodents, is due to the large number of rat / mice predators. Petitioners' Property is currently (and has been for some time) in a state of ecological equilibrium. Whatever rodents live on Petitioners' Property, do so because of the habitat that is on Petitioners' Property. Disturbing this long-standing habitat would disturb and upset the ecological balance that nature has created. It is never a good idea to upset nature's delicate ecological balance.

73. "Garbage" is defined in §13-4-101 (h) BCC as: "(h) *Garbage*. 'Garbage' means the animal and vegetable waste resulting from the handling, preparation, cooking, and consumption of foods."

74. There is no "animal and vegetable waste" on Petitioners' Property.

75. The word "rubbish" is undefined in the BCC. It is defined in the dictionary as:

"Rubbish. Worthless, unwanted material that is rejected or thrown out; debris; litter; trash."

76. None of the equipment or material on Petitioners' Property is "worthless" nor is it "unwanted." None of it has been "rejected or thrown out." Therefore, none of Petitioners equipment and material is "rubbish."

77. The word "trash" is undefined in the BCC. It is defined in the dictionary as:

"Trash. Anything worthless or useless; rubbish."

78. None of the equipment or material on Petitioners' Property is "worthless" nor is it "useless." None of it is rubbish. Therefore, none of Petitioners equipment and material is "trash."

LUMBER, BOXES, BRICKS, AND OTHER MATERIALS

79. §13-7-312 BCC states:

“(a) Accumulation prohibited.

- (1) This subsection does not apply to material that is evenly piled or stacked on open racks that are elevated at least 18 inches above the ground.
- (2) A person may not accumulate or allow the accumulation of lumber, boxes, barrels, cans, leaves, brush, tree limbs, bricks, stones, containers, or similar materials on any premises, improved or vacant, or on any open lot or alley, **if the accumulation is conducive to a rat harborage.** Bold added.

(b) Limitation on section.

- (1) This section does not require elevation of:
 - (i) Stone or sand in a stone quarry or sand pit;
 - (ii) Bricks in a brickyard;
 - (iii) Heavy machinery or equipment;
 - (v) Lumber in a lumberyard;
 - (vi) Material temporarily placed on the site of new construction or on the site of repairs to or alteration of old construction; or
 - (vii) Other materials in similar instances in which elevation is not practical and not customary and usual.

80. The phrase “rat harborage” is defined in § 13-7-301(i) as follows:

- “(i) Rat harborage. (1) ‘Rat harborage’ means a condition that may constitute a normal and ordinary rat habitat conducive to their multiplication and continued existence in, under, or adjacent to a building.*
- (2) ‘Rat harborage’ includes burrows.” Bold added.*

81. None of the lumber, bricks, stones, or containers on Petitioners’ Property is “adjacent to a building.”

82. All of the building materials on Petitioners’ Property has been “temporarily placed on the site of new construction or on the site of repairs to or alteration of old construction.” Petitioners have applied for a building permit to construct 300 +/- linear feet of masonry fencing. The building materials on Petitioners’ Property is used in their farming activities.

83. The statute provides for a number of exceptions, including bricks in a ‘brickyard’ [where bricks are stored], and ‘heavy machinery or equipment.’

84. As stated above, there are no signs of any kind of rat infestation in Petitioners' neighborhood. Whatever rats, if there are any, and mice that may exist in Petitioners' woodlands, are kept in check by the natural predators that exist on Petitioners' Property.

85. None of the equipment and material on Petitioners' Property "is conducive to a rat harborage."

SOLID WASTE STORAGE

86. §13-4-201 BCC states:

- "(a) *Application*. This section does not apply to solid waste storage at processing facilities permitted in accordance with provisions of this title and the regulations of the Department.
- (b) *Premises to be free from accumulations*. A person shall keep the person's premises free from accumulations of improperly stored solid waste.
- (c) *Approved receptacles*. All solid waste storage at public and private properties shall be in approved receptacles suitable for storage purposes.
- (d) *Storage of garbage*. All garbage shall be stored in approved rodent-resistant, watertight containers with tight-fitting lids."

87. §13-4-101 defines the phrase 'solid waste' as follows:

"(w) *Solid waste*.

- (1)(ii) 'Solid waste' means all garbage, rubbish, refuse, rubble, incinerator ash, offal, animal carcasses, and other materials generated from any property, public or private, which unless recycled into a product for reuse, would be subject to incineration or disposal."

88. None of the equipment or material on Petitioners' Property is "subject to incineration or disposal." All of the equipment or material on Petitioners' Property will be either 'reused' just as it is, or 'recycled' into a product for reuse. Consequently, none of the equipment or material on Petitioners' Property comports with the definition of 'solid waste.'

89. None of the equipment or material on Petitioners' Property comports with the previously defined words: Garbage and Rubbish.

90. The word 'refuse' is defined as follows:

"Refuse. Something that is discarded as worthless or useless; rubbish; trash; garbage."

91. As previously stated, none of the equipment or material on Petitioners' Property has been 'discarded,' nor is any of the equipment and material 'worthless or useless.' Consequently, none of the equipment or material on Petitioners' Property comports with the definition of the word: 'Refuse.'

92. The word 'rubble' is defined in §13-4-101 (t) BCC as follows:

"(t) *Rubble.*

(1) 'Rubble' means building demolition debris, tree stumps and other land clearing debris, solidified paving debris, and other similar waste authorized by the approving authority.

(2) 'Rubble' does not include garbage, friable asbestos or other special wastes, refractory brick, liquid petroleum products, industrial waste, controlled hazardous substances, medical waste, or free liquids."

93. None of the equipment and material on Petitioners' Property is 'demolition debris, tree stumps and other land clearing debris, solidified paving debris, and other similar waste.'

94. None of the equipment and material on Petitioners' Property is "incinerator ash, offal, animal carcasses."

95. Consequently, **none** of the equipment or material on Petitioners' Property comports with the definition of the term: "Solid Waste," as defined in the BCC.

RECREATIONAL AMENITIES

96. "Recreational amenities" are permitted by right accessory uses. See §1A07.3 (7)f, and see §1B01.1 A 18 g, BCZR.

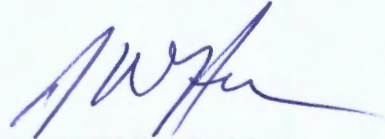
97. Petitioners have a number of operational full-scale pieces of railroad equipment, including a caboose, several 'speeders,' a Burro crane, and several pieces of functional railroad maintenance-of-way equipment. Petitioners have placed rails and cross ties on their Property. Their railroad pieces are on rails. Occasionally, the pieces of equipment are started (those that have engines in them), and are moved over the rails. Occasionally, children are permitted to climb on, and play on, Petitioners' railroad pieces. Occasionally, Petitioners themselves climb on, and play on, their railroad pieces. Petitioners enjoy trains, and things associated with trains and railroads. They have the somewhat unique opportunity of being able to play with full-scale train pieces, as opposed to scale-model trains. The end result is the same: Petitioners' railroad equipment, including the rails, cross ties and track material, provide Petitioners with recreational enjoyment. Some people are into race cars, historic cars, muscle cars, swimming pools, tennis courts, trampolines and all-terrain vehicles. Petitioners are into trains and railroads. Petitioners' recreational amenities are not visible from public rights-of-way nor are they visible from adjacent private properties (and in the case of the only adjacent private property where they are visible, the Elliotts, there are no objections). Consequently, Petitioners' Recreational Amenities are permitted by right accessory uses.

CONTRACTORS EQUIPMENT STORAGE YARD

98. Petitioner James Riffin was a contractor for many years. He now has retired from the contracting business. None of Petitioners' equipment and material are intended to be used as 'contractors equipment.' Consequently, the presence on Petitioners' Property of large pieces of contractor-like equipment and material does not convert Petitioners' Property into a "Contractors Storage Yard." The equipment and material are personal property, that is used by Petitioners for recreational enjoyment, and in furtherance of their farming / agricultural pursuits.

99. I affirm under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge and belief.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'J. Riffin', with a long horizontal flourish extending to the right.

James Riffin, Petitioner
1941 Greenspring Drive
Timonium, MD 21093
(443) 414-6210



PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 11019 GATEVIEW RD which is presently zoned RC-6/DR1
Deed References: 5663/511 10 Digit Tax Account # 08-18-00-011282
Property Owner(s) Printed Name(s) KAROL AND JAMES RIFFIN

(SELECT THE HEARING(S) BY MARKING **X** AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. ☒ **a Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve The owner's Proposed uses (see Attached)
2. ☐ **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for
3. ☐ **a Variance** from Section(s)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:
(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

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

I, or we, agree to pay expenses of above petition(s), 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.

Legal Owner(s) Affirmation: I / we do so 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 / these Petition(s).

Contract Purchaser/Lessee:

Name- Type or Print

Signature

Mailing Address

Zip Code Telephone # Email Address

Attorney for Petitioner.

Name- Type or Print

Signature

Mailing Address

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

KAROL RIFFIN JAMES RIFFIN
Name #1 - Type or Print Name #2 - Type or Print

Karol Riffin JRiffin
Signature #1 Signature #2

1941 GREENSPRING DR TIMONIUUM MD
Mailing Address City State

210931 443414 6210
Zip Code Telephone # Email Address

Representative to be contacted:

OWNERS
Name - Type or Print

Signature

Mailing Address

Zip Code Telephone # Email Address

CASE NUMBER 2014-0094-SAH Filing Date 10/15/2013 Do Not Schedule Dates: Reviewer JNP for AR

DROP OFF PETITION - NO REVIEW

In re: 11019 Gateview Road
Cockeysville, MD 21030

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Before the Zoning Commissioner
of Baltimore County

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Case No.: 2014 - 0094 - SPH

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PETITION FOR SPECIAL HEARING

1. Your Petitioners respectfully ask that the Zoning Commissioner for Baltimore County determine which of the uses enumerated below are permitted in a DR-1 zone, which are permitted in a RC-6 zone, and which are permitted non-conforming uses.

	<u>DR-1</u>	<u>RC-6</u>	<u>Non- Conforming</u>
2. Primary uses:			
A. Dwelling, one-family detached:	Y N	Y N	Y N
B. Farm:	Y N	Y N	Y N
3. Accessory uses:			
A. Home occupations:	Y N	Y N	Y N
B. Offices of professionals occupying less than 25% of total Floor area and not involving the employment of more than one nonresident employee:	Y N	Y N	Y N
C. Parking:	Y N	Y N	Y N
D. Residential garage space:	Y N	Y N	Y N
E. Buildings and other structures used to store farming-related equipment, materials and crops:	Y N	Y N	Y N

	<u>DR-1</u>	<u>RC-6</u>	<u>Non-Conforming</u>
F. Buildings and other structures related to cultivation of crops:	Y N	Y N	Y N
G. Utility sheds.	Y N	Y N	Y N
H. Recreational amenities, such as but not limited to 1:1 scale Railroad cars, track maintenance equipment, rails, cross-ties and other track material:	Y N	Y N	Y N
I. Parking or storage of:			
a. Truck tractors, dump trucks or other trucks currently licensed as historic vehicles:	Y N	Y N	Y N
b. Semi-trailers, currently licensed, used in connection with farming activities:	Y N	Y N	Y N
c. Semi-trailers, unlicensed, used in connection with farming activities:	Y N	Y N	Y N
d. Trucks, licensed, used in connection with farming:	Y N	Y N	Y N
e. Trucks, unlicensed, used in connection with farming:	Y N	Y N	Y N
f. Cranes used in connection with farming:	Y N	Y N	Y N
g. Air compressors, used to inflate tires and used for other farming activities:	Y N	Y N	Y N
h. Felled logs, being air-dried:	Y N	Y N	Y N

	<u>DR-1</u>	<u>RC-6</u>	<u>Non- Conforming</u>
i. Excavation, grading or land cultivation equipment used in connection with farming:	Y N	Y N	Y N
j. Building materials, such as steel, masonry units, lumber, asphalt millings, crusher-run:	Y N	Y N	Y N
k. Generators:	Y N	Y N	Y N
l. Air conditioning condensing units:	Y N	Y N	Y N
m. Grass mowing equipment:	Y N	Y N	Y N
n. Motor vehicles, unlicensed, used to store farming-related equipment and material:	Y N	Y N	Y N
o. Motor vehicles, unlicensed, used to transport farming-related equipment and materials about and on farm property:	Y N	Y N	Y N
p. Containers used to store farming-related equipment and material:	Y N	Y N	Y N
q. Tanks and containers used to store water, crops, and other farming-related materials:	Y N	Y N	Y N
r. Stone crushing equipment:	Y N	Y N	Y N
s. Lighting towers, used to illuminate farming activities after sunset:	Y N	Y N	Y N

	<u>DR-1</u>	<u>RC-6</u>	<u>Non-Conforming</u>
t. Fencing material:	Y N	Y N	Y N
u. Heating equipment:	Y N	Y N	Y N
v. Ice making equipment:	Y N	Y N	Y N
w. Tires for farming-related equipment:	Y N	Y N	Y N
x. Farm stand display equipment:	Y N	Y N	Y N
y. Rope:	Y N	Y N	Y N
z. Hydraulic equipment:	Y N	Y N	Y N
aa. Plowing equipment:	Y N	Y N	Y N
bb. Crop cleaning equipment:	Y N	Y N	Y N
cc. Grapple equipment:	Y N	Y N	Y N
dd. Log chipping equipment:	Y N	Y N	Y N
ee. Man lifts:	Y N	Y N	Y N

4. Under what conditions may a Code Inspection Person enter upon private land?

ZONING HEARING PROPERTY DISCRIPTION

ZONING PROPERTY DESCRIPTION FOR 11019 Gateview Road, Cockeysville, MD.

Beginning at a point on the East end of Gateview Road, which is 50 feet wide, at the distance of 140 feet East from the centerline of the nearest improved intersecting street, Norgate Court, which is 50 feet wide, Being Lot # 3 in the subdivision of Red Fox Fields, as recorded in Baltimore County Plat Book # 44, Folio # 130, containing 13 acres. Located in the 8th Election District and 3rd Council District.

2014-0094-SPH



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

November 13, 2013

NOTICE OF ZONING HEARING

The Administrative Law Judges 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: 2014-0094-SPH

11019 Gateview Road

East end of Gateview Road, 140 ft. E/of Norgate Court

8th Election District – 3rd Councilmanic District

Legal Owners: Karole & James Riffin

Special Hearing to approve owners proposed principal and accessory uses enumerated in the petition attachment as permitted by right in the DR-1 zone, permitted by right in the RC-6 zone or permitted as a non-conforming principal or accessory use; and to determine under what conditions may a Code Inspection and Enforcement Officer enter upon private land.

Hearing: Friday, December 20, 2013 at 10:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

A handwritten signature in dark ink, appearing to read "Arnold Jablon", is written over the printed name and title.

Arnold Jablon
Director

AJ:kl

C: Mr. & Mrs. Riffin, 1941 Greenspring Dr., Timonium 21093

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SAT., NOVEMBER 30, 2013.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.



THE BALTIMORE SUN MEDIA GROUP

Baltimore, Maryland 21278-0001

November 28, 2013

THIS IS TO CERTIFY, that the annexed advertisement was published in the following newspaper published in Baltimore County, Maryland, ONE TIME, said publication appearing on November 26, 2013

☐ The Jeffersonian

THE BALTIMORE SUN MEDIA GROUP

By: Susan Wilkinson

Susan Wilkinson

NOTICE OF ZONING HEARING

The Administrative Law Judges 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: #2014-0094-SPH

11019 Gateview Road

East end of Gateview Road, 140 ft. E/of Norgate Court

8th Election District - 3rd Councilmanic District

Legal Owner(s): Karole & James Riffin

Special Hearing: to approve owners proposed principal and accessory uses enumerated in the petition attachment as permitted by right in the DR-1 zone, permitted by right in the RC-6 zone or permitted as a non-conforming principal or accessory use; and to determine under what conditions may a Code Inspection and Enforcement Officer enter upon private land.

Hearing: Friday, December 20, 2013 at 10:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204.

ARNOLD JABLON, DIRECTOR OF PERMITS, APPROVALS AND INSPECTIONS FOR BALTIMORE COUNTY

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Administrative Hearings Office at (410) 887-3868.

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

JT 11/805 Nov. 26

959500

CERTIFICATE OF POSTING

ATTENTION: KRISTEN LEWIS

DATE: 12/01/2013

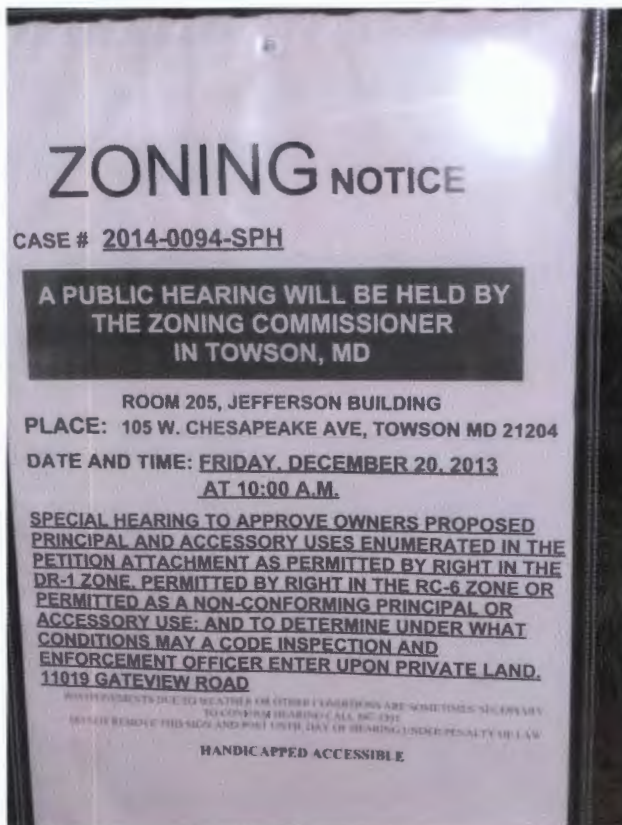
Case Number: 2014-0094-SPH

Petitioner / Developer: MR. & MRS. RIFFIN

Date of Hearing (Closing): DECEMBER 20, 2013

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at:
11019 GATEVIEW ROAD

The sign(s) were posted on: NOVEMBER 29, 2013



Linda O'Keefe
(Signature of Sign Poster)

Linda O'Keefe
(Printed Name of Sign Poster)

523 Penny Lane
(Street Address of Sign Poster)

Hunt Valley, Maryland 21030
(City, State, Zip of Sign Poster)

410 - 666 - 5366
(Telephone Number of Sign Poster)

RE: PETITION FOR SPECIAL HEARING
11019 Gateview Road; E/end of Gateview
Road, 140' E of Norgate Court
8th Election & 3rd Councilmanic Districts
Legal Owner(s): James & Karole Riffin
Petitioner(s)

* BEFORE THE OFFICE
* OF ADMINSTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* 2014-094-SPH

* * * * *

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party 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

NOV 07 2013

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 7th day of November, 2013, a copy of the foregoing Entry of Appearance was mailed to James & Karole Riffin, 1941 Greenspring Drive, Timonium, MD 21093, Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

DATE 12/20/2013

PETITIONER'S SIGN-IN SHEET

[illegible]



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
*Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections*

December 12, 2013

Karole & James Riffin
1941 Greenspring Drive
Timonium MD 21093

RE: Case Number: 2014-0094 SPH, Address: 11019 Gateview Road

Dear Mr. & Ms. Riffin:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on October 15, 2013. 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: jaf

Enclosures

c: People's Counsel

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



Maryland Department of Transportation

James T. Smith, Jr., Secretary
Melinda B. Peters, Administrator

Date: 11-6-13

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

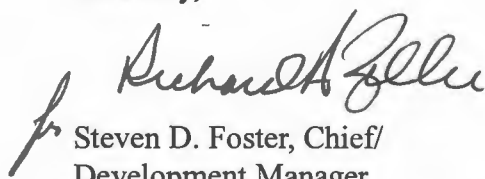
RE: Baltimore County
Item No. 2014-0094-SPH
Special Hearing
Karole & James Riffin
11019 Gateview Road

Dear Ms. Lewis:

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. 2014-0094-SPH.

Should you have any questions regarding this matter, please contact Richard Zeller at 410-545-5598 or 1-800-876-4742 extension 5598. Also, you may E-mail him at (rzeller@sha.state.md.us).

Sincerely,


Steven D. Foster, Chief/
Development Manager
Access Management Division

SDF/raz

My telephone number/toll-free number is _____
Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone 410.545.0300 • www.roads.maryland.gov

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

DATE: November 7, 2013

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

SUBJECT: Zoning Advisory Committee Meeting
For November 4, 2013
Item No. 2014-0094, 0100, 0102 and 0104

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

DAK:CEN
Cc: file

G:\DevPlanRev\ZAC -No Comments\ZAC11042013 -.doc



CODE ENFORCEMENT

CORRECTION NOTICE

CASE NUMBER	FA NUMBER	PROP. TAX ID	ZONE
137585	0168655	180-001-1282	RC6

NAME(S): James Riffin
Karole A. Riffin
MAILING ADDRESS: P.O. Box 42
CITY Cockeysville STATE MD ZIP CODE 21030
VIOLATION ADDRESS: 11019 Gateview Rd
CITY Cockeysville STATE MARYLAND ZIP CODE 21030

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

BALTIMORE COUNTY ZONING REGULATIONS (B.C.Z.R.)

- ☒ 431: Improper parked/ illegal commercial vehicle(s)
- ☐ 450: Non permitted sign(s)
- ☒ 428: License/ Remove all untagged/ inoperative or damaged/ disabled motor vehicle(s) in residential zone
- ☒ 1B01.1D: Remove open dump/ junk yard
- ☐ 102.5: Residential site line violation/ obstruction
- ☒ 101; 102.1: Remove contractors equip. storage yard
- ☐ 1B01.1, ZCPM: Cease service garage activities
- ☐ 402: Illegal conversion of dwelling
- ☐ 400: Illegal accessory structure
- ☐ 415A: License/ remove untagged recreation vehicle
- ☐ 415A: Improperly parked recreation vehicle
- ☐ 415A: One recreational vehicle per property
- ☐ 100.6: Non permitted livestock / fowl / poultry
- ☐ 408B: Non permitted rooming/ boarding house
- ☐ 1B01: Non permitted private kennel. Limit 3 dogs
- ☐ 101; 102.1; ZCPM: Illegal home occupation
- ☐ 500.9 BCZR; ZCPM; BCC: 32-3-102: Violation of commercial site plan and/or zoning order
- ☒ 410A: Non permitted class II Trucking Facility

BALTIMORE COUNTY CODE (B.C.C.)

- ☒ 13-4-201(b)(d): Store garbage in containers w/tight lids
- ☐ 13-7-309; 13-7-310: Remove animal feces daily
- ☒ 13-7-310(a): Remove all trash & debris from property
- ☒ 13-7-312: Remove accumulations of debris, materials, etc
- ☐ 13-7-310(c): Cease all outside feeding of animals/birds
- ☐ 13-7-306: Cease rat harborage on premise
- ☐ 13-7-305: Eradicate all rat infestation on premise
- ☐ 13-7-112: Remove graffiti
- ☐ 35-2-301: Obtain building/ fence/ sign permit
- ☐ 35-6-105: Obtain rental housing license
- ☐ 18-2-608: Exceeding time limit, Temp. Storage Unit
- ☐ 35-2-206: Postall address numbers to rear of home
- ☐ IBC 115; BCBC-21: Remove/ Repair unsafe structure board and secure all openings to premise
- ☐ 13-7-401; 13-7-402; 13-7-403: Cut & remove all tall grass and weeds to three (3) inches in height

RENTAL LIVABILITY CODE (B.C.C.)

- ☐ 35-5-203: Condemnation of structure / equipment
- ☐ 35-5-208(a): Repair exterior structure
- ☐ 35-5-209(a): Repair interior structure
- ☐ 35-5-210 (a)(c): Provide proper lighting in structure
- ☐ 35-5-211(c): Repair plumbing defects to structure
- ☐ 35-5-212: Repair heating / cooking equipment
- ☐ 35-5-213: Provide fire and safety protection
- ☐ 35-5-231.1: Provide Carbon Monoxide detectors
- ☐ 35-5-214: Remove all accumulations & storage blocking egress, stairwells, passageways, doors, windows, etc

INVESTMENT PROPERTY (B.C.C.)

- ☐ 35-2-404(a)(1)(i): Remove hazardous / unsafe condition
- ☐ 35-2-404(a)(1)(iii): Repair roof / horizontal members
- ☐ 35-2-404(a)(1)(v): Repair ext. plaster / masonry
- ☐ 35-2-404(a)(1)(vii): Repair ext. construction (see below)
- ☐ 35-2-404(a)(1)(3): Repair / remove defective ext. sign(s)
- ☐ 35-2-404(a)(1)(ii): Repair ext. walls / vertical members
- ☐ 35-2-404(a)(1)(iv): Repair exterior chimney
- ☐ 35-2-404(a)(1)(vi): Waterproof walls/ roof/foundations
- ☐ 35-2-404(a)(1)(2): Remove trash, rubbish, & debris
- ☐ 35-2-404(a)(4)(i)(ii): Board & secure openings

OTHER VIOLATIONS OR REMARKS: Cease open dump / junk yard
Conditions. Free property of all junk, trash, &
debris. Current state of conditions not permitted
in RC6 Zone. All vehicles must be tagged &
operable. Properly tag or remove motor vehicles.
Remove trailers, buses, contractor trucks, etc. (Page 10-2)

Failure to comply with this correction notice, may result in a \$ 200.00 fine / penalty per day pursuant to BCC: 1-2-217; 32-3-602 and/or the County sending a contractor to correct the violation(s) at your expense. Call the assigned inspector below for more info. (See reverse side for important information)

COMPLIANCE DATE: 10, 16, 13

INSPECTOR NAME: T. M. 11/15
(PRINT NAME)

09, 16, 13
ISSUED DATE

Page 1 of 2

Permits, Approvals, and Inspections
Code Inspections & Enforcement
County Office Building, Room 111
111 West Chesapeake Ave
Towson, Maryland 21204



Code Enforcement 410-887-3351
HUD Inspector 410-887-3375
Electrical Inspection 410-887-3960
Plumbing Inspection 410-887-3620
Building Inspection 410-887-3953

CODE ENFORCEMENT

CORRECTION NOTICE

CASE NUMBER 137585	FA NUMBER 0168655	PROP. TAX ID 180-001-1282	ZONE EC6
------------------------------	-----------------------------	-------------------------------------	--------------------

NAME(S): James Riffin Karole A. Riffin			
MAILING ADDRESS: P.O. Box 42			
CITY Cockeysville	STATE MD	ZIP CODE 21030	
VIOLATION ADDRESS: 11019 Gateview Rd			
CITY Cockeysville	STATE MARYLAND	ZIP CODE 21030	

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

BALTIMORE COUNTY ZONING REGULATIONS (B.C.Z.R.)

- | | |
|--|--|
| ☒ 431: Improper parked/ illegal commercial vehicle(s) | ☐ 415A: License/ remove untagged recreation vehicle |
| ☐ 450: Non permitted sign(s) | ☐ 415A: Improperly parked recreation vehicle |
| ☒ 428: License/ Remove all untagged/ inoperative or damaged/ disabled motor vehicle(s) in residential zone | ☐ 415A: One recreational vehicle per property |
| ☒ 1B01.1D: Remove open dump/ junk yard | ☐ 100.6: Non permitted livestock / fowl / poultry |
| ☐ 102.5: Residential site line violation /obstruction | ☐ 408B: Non permitted rooming/ boarding house |
| ☐ 101; 102.1: Remove contractors equip. storage yard | ☐ 1B01: Non permitted private kennel. Limit 3 dogs |
| ☐ 1B01.1, ZCPM: Cease service garage activities | ☐ 101; 102.1; ZCPM: Illegal home occupation |
| ☐ 402: Illegal conversion of dwelling | ☐ 500.9 BCZR; ZCPM; BCC: 32-3-102: |
| ☐ 400: Illegal accessory structure | ☐ Violation of commercial site plan and/or zoning order |
| | ☒ 410A: Non permitted class II Trucking Facility |

BALTIMORE COUNTY CODE (B.C.C.)

- | | |
|--|--|
| ☒ 13-4-201(b)(d): Store garbage in containers w/tight lids | ☐ 35-2-301: Obtain building/ fence/ sign permit |
| ☐ 13-7-309; 13-7-310: Remove animal feces daily | ☐ 35-6-105: Obtain rental housing license |
| ☒ 13-7-310(a): Remove all trash & debris from property | ☐ 18-2-608: Exceeding time limit, Temp. Storage Unit |
| ☒ 13-7-312: Remove accumulations of debris, materials, etc | ☐ 35-2-206: Install address numbers to rear of home |
| ☐ 13-7-310(c): Cease all outside feeding of animals/birds | ☐ IBC 115; BCBC 121: Remove/ Repair unsafe structure |
| ☐ 13-7-306: Cease rat harborage on premise | ☐ board and secure all openings to premise |
| ☐ 13-7-305: Eradicate all rat infestation on premise | ☐ 13-7-401; 13-7-402; 13-7-403: Cut & remove all tall |
| ☐ 13-7-112: Remove graffiti | ☐ grass and weeds to three (3) inches in height |

RENTAL LIVABILITY CODE (B.C.C.)

- | | |
|--|---|
| ☐ 35-5-203: Condemnation of structure / equipment | ☐ 35-5-212: Repair heating / cooking equipment |
| ☐ 35-5-208(a): Repair exterior structure | ☐ 35-5-213: Provide fire and safety protection |
| ☐ 35-5-209(a): Repair interior structure | ☐ 35-5-231.1: Provide Carbon Monoxide detectors |
| ☐ 35-5-210 (a)(c): Provide proper lighting in structure | ☐ 35-5-214: Remove all accumulations & storage blocking egress |
| ☐ 35-5-211(c): Repair plumbing defects to structure | ☐ stairwells, passageways, doors, windows, etc |

INVESTMENT PROPERTY (B.C.C.)

- | | |
|--|---|
| ☐ 35-2-404(a)(1)(i): Remove hazardous / unsafe condition | ☐ 35-2-404(a)(1)(ii): Repair ext. walls / vertical members |
| ☐ 35-2-404(a)(1)(iii): Repair roof / horizontal members | ☐ 35-2-404(a)(1)(iv): Repair exterior chimney |
| ☐ 35-2-404(a)(1)(v): Repair ext. plaster / masonry | ☐ 35-2-404(a)(1)(vi): Waterproof walls/ roof / foundations |
| ☐ 35-2-404(a)(1)(vii): Repair ext. construction (see below) | ☐ 35-2-404(a)(1)(2): Remove trash, rubbish, & debris |
| ☐ 35-2-404(a)(1)(3): Repair / remove defective ext. sign(s) | ☐ 35-2-404(a)(4)(i)(ii): Board & secure openings |

OTHER VIOLATIONS OR REMARKS:

Remove accumulations of junk, trash, & debris including but not limited to wood, tires, train tracks, car & train parts, metal, contractor debris, trash, etc.

(Page 2 of 2)

Failure to comply with this correction notice, may result in a \$ 200.00 fine / penalty per day pursuant to BCC: 1-2-217; 32-3-602 and/or the County sending a contractor to correct the violation(s) at your expense. Call the assigned inspector below for more info. (See reverse side for important information)

COMPLIANCE DATE: 10, 16, 13

INSPECTOR NAME:

T. M. B.
(PRINT NAME)

ISSUED DATE

09, 16, 13

Page 2 of 2



CODE ENFORCEMENT & INSPECTIONS CITATION

CASE NUMBER 137585	PROPERTY TAX ID 180-001-1282	ZONE RCG
------------------------------	--	--------------------

Related Citations: _____

☐ Owner ☐ Occupant ☐ Other

NAME(S): James Riffin		
Karole A. Riffin		
MAILING ADDRESS: P.O. Box 42		
CITY Cockeysville	STATE MD	ZIP CODE 21030
VIOLATION ADDRESS: 11019 Gateview Rd		
CITY Cockeysville	STATE MARYLAND	ZIP CODE 21030
VIOLATION DATES: 09-16-13 to 11-20-13		

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

BCZR 431 Failure to remove Commercial Vehicles.
BCZR 428 Failure to License/Remove all untagged/imperative
or damaged/disabled motor vehicles. BCZR 410A Failure
to cease non permitted Class II trucking facility (Parking of
& storage of trucks, trailers, & truck tractors) BCZR 130.1d
Failure to cease open dump/junk yard conditions
BC 13-7-310/312 Failure to remove accumulations of
junk, trash, & debris. (Page 1 of 2)

Pursuant to Section 1-2-217, Baltimore County Code, civil penalty
has been assessed, as a result of the violation(s) cited herein, in the
amount indicated:

\$ **13,000.00**

A quasi-judicial hearing has been pre-scheduled in:
Jefferson Building, 105 W. Chesapeake Ave, Rm 205
Towson, Maryland, 21204

DATE: **11/20/13**

TIME: **1:30** A.M./P.M. **P.M.**

If a violator does not appear at the Code Enforcement hearing, the citation and
any civil penalty are deemed a non-appealable Final Order of the Code Official
or the Director.

I do solemnly declare and affirm, under the penalty of perjury, that the contents stated above are
true and correct to the best of my knowledge, information, and belief.

Inspector Printed Name: **P. Mills**

INSPECTOR SIGNATURE: **P. Mills** Date: **10/02/13**

Page 1 of 2



CODE ENFORCEMENT & INSPECTIONS CITATION

CASE NUMBER 137585	PROPERTY TAXID 180-001-1282	ZONE RC 6
------------------------------	---------------------------------------	---------------------

Related Citations: _____

☐ Owner ☐ Occupant ☐ Other

NAME(S): James Riffin Karole A. Riffin		
MAILING ADDRESS: P.O. Box 42		
CITY Cockeysville	STATE MD	ZIP CODE 21030
VIOLATION ADDRESS: 11019 Gateview Rd		
CITY Cockeysville	STATE MARYLAND	ZIP CODE 21030
VIOLATION DATES: 09-16-13 to 11-20-13		

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY LAWS:

*(Page 2 of 2) Including but not limited to
Wood, tires, train tracks, car & train parts,
Contractor debris, trash, etc. BCC 13-4-2
Failure to properly store trash in cans w/
fitting lids. BCZR 101; 102.1. Failure to
Contractors equip/storage yard. BCZR
Word usage; definitions*

Pursuant to Section 1-2-217, Baltimore County Code, civil penalty
has been assessed, as a result of the violation(s) cited herein, in the
amount indicated:

\$ **13,000.00**

A quasi-judicial hearing has been pre-scheduled in:
Jefferson Building, 105 W. Chesapeake Ave, Rm 205
Towson, Maryland, 21204

DATE: **11/12/13**

TIME: **9:00**

If a violator does not appear at the Code Enforcement hearing, the citation and
any civil penalty are deemed a non-appealable Final Order of the Code Official
or the Director.

I do solemnly declare and affirm, under the penalty of perjury, that the contents stated above are
true and correct to the best of my knowledge, information, and belief.

Inspector Printed Name: **P. Mills**

INSPECTOR SIGNATURE: _____

Date: **10/02/13**

Page 2 of 2

443-44-6210 ce4

BALTIMORE COUNTY, MARYLAND
CODE ENFORCEMENT

v.

JAMES RIFFIN

* HEARING BEFORE THE
* BALTIMORE COUNTY
* CODE OFFICIAL
* Case No. CO 13 - 137585

* * * * *

REQUEST FOR A HEARING

Now comes your Defendant, James Riffin, who respectfully files this Request for a Hearing, and for reasons states:

1. Your Defendant, James Riffin, ("Riffin" or "Defendant"), is the fee simple owner of a parcel of land located in Baltimore County, Maryland. The Property Tax Identification Number for this Parcel is: 180 - 001 - 1282. The Parcel is located at 11019 Gateview Road, Cockeysville, Maryland ("Parcel").

2. On September 16, 2013, Phillip Mills, a Baltimore County Code Inspection Inspector, issued Correction Notice No. 137585. The Correction Notice ordered Riffin to remove a large quantity of Riffin's personal chattels from the Parcel, alleging that it is unlawful for these chattels to be located on the Parcel.

3. Riffin disputes the allegation that it unlawful for the specified chattels to be located on the Parcel.

4. Riffin alleges that it was lawful for Mr. Mills to enter upon the Parcel, and to take images of Riffin's proprietary uses of the Parcel.

5. The Correction Notice only gave Riffin until October 16, 2013, to remove his chattels from the Parcel.

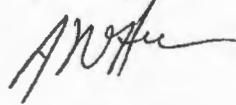
6. Since it is contested whether Riffin has the right to keep his chattels on the Parcel, and since the removal of the Chattels would entail significant expense, it is prayed:

A. That a hearing be scheduled as soon as possible to determine whether it is unlawful for Riffin to have his chattels on the Parcel; and

B. That the time to remove whatever chattels is determined must be removed, be extended to a date beyond the date of the hearing; and

C. For such other and further relief as would be appropriate.

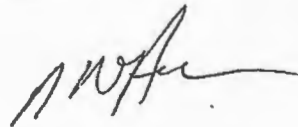
Respectfully,



James Riffin

CERTIFICATE OF SERVICE

I hereby certify that on the 27th Day of September, 2013, a copy of the foregoing Request for Hearing, was hand delivered to Phillip Mills.



James Riffin

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. **105012**

Date: **10/15/2013**

PAID RECEIPT

BUSINESS RETURN TIME 10/16/2013 10/15/2013 14:31:24 2
 REC 0902 WALKIN 10/15/2013
 RECEIPT # 051001 10/15/2013 OPEN
 Dep 5 12N SWING VERIFICATION
 OF NO. 105012

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				75.00

Recpt Int \$75.00
 \$75.00 CH \$1.00 CA
 Baltimore County, Maryland

Total: **75.00**

Rec From: **James & Karole Riffin**

For: **Special Hearing - 11019 Gateview Road**
2014-0094-JPH (Riffin)

DISTRIBUTION

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
 PLEASE PRESS HARD!!!!

**CASHIER'S
 VALIDATION**

FA 0168655

COMPLETE AND COMPREHENSIVE SETTLEMENT AGREEMENT

WHEREAS, on October 2, 2013 Baltimore County, Maryland charged James and Karole Riffin with various violations of the Baltimore County Code and Zoning Regulations on the property known as 11019 Gateview Road, Cockeysville, Maryland 21030 (the "Property"); and

WHEREAS, Baltimore County and James and Karole Riffin (collectively the "Parties") desire to reach a complete settlement as to the process for resolving any and all violations on or about the Property;

NOW, THEREFORE, in consideration of the afore-mentioned recitals, which are material terms and are expressly incorporated in the body of this agreement, the Parties agree as follows:

1. James and Karole Riffin hereby agree on or before the close of business on October 11, 2013 to apply for a Petition for Special Hearing in the Baltimore County Zoning Review Office to seek a determination of whether the actions at issue in the code enforcement case on the Property are in compliance with the Baltimore County Code and Zoning Regulations.

2. In exchange for James and Karole Riffin's filing of the Petition for Special Hearing, Baltimore County will suspend the aforementioned code enforcement proceeding and refrain from imposing any fines or other penalties until the Office of Administrative Hearings issues a decision on the Petition for Special Hearing.

3. Baltimore County also agrees that undersigned counsel (and all Assistant County Attorneys) will not appear at the hearing on the Petition for

FA 0168655

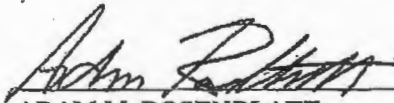
Special Hearing and will allow the Riffins to make their case to the Administrative Law Judge.

4. James and Karole Riffin agree that if the Administrative Law Judge denies any portion of the Petition for Special Hearing and determines that any of the activities on the Property violate the Baltimore County Code, Zoning Regulations, or other state or local law, that they will immediately cease any unlawful activities and will remove, without exception, any prohibited items from the Property within six (6) months of the date of the Order of the Administrative Law Judge. James and Karole Riffin agree that the Order of the Administrative Law Judge is a final Order and they will forego any right to appeal or otherwise contest the Order.

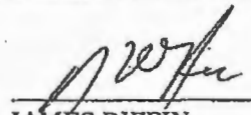
5. Baltimore County agrees that if the Administrative Law Judge grants any portion of the Petition for Special Hearing and determines that any activities that are subject to the code enforcement proceeding are permissible, the County will withdraw any action seeking correction of those portions of the code or regulations.

6. James and Karole Riffin agree that if the Administrative Law Judge finds that certain items are not permitted on the Property and they fail to remove the items within the 6 month period specified in paragraph 4 of this Agreement, they are immediately subject to a civil penalty of One Hundred Dollars (\$100.00) per day for each day over the 6 month removal period. James and Karole Riffin agree that the civil penalties will be immediately imposed at the conclusion of the 6 month removal period and the Riffins knowingly and voluntarily waive any right to appeal or otherwise contest the imposition of the civil penalties.

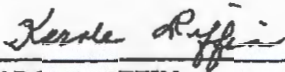
BY SIGNING BELOW, THE PARTIES EXPRESSLY AGREE THAT THEY UNDERSTAND THE TERMS OF THIS AGREEMENT AND ARE VOLUNTARILY CHOOSING TO RESOLVE ANY AND ALL OUTSTANDING LITIGATION.

 10/9/13

ADAM M. ROSENBLATT
Assistant County Attorney for
Baltimore County, Maryland
Attorney for Baltimore County

 10/9/2013

JAMES RIFFIN
1941 Greenspring Drive
Timonium, MD 21093



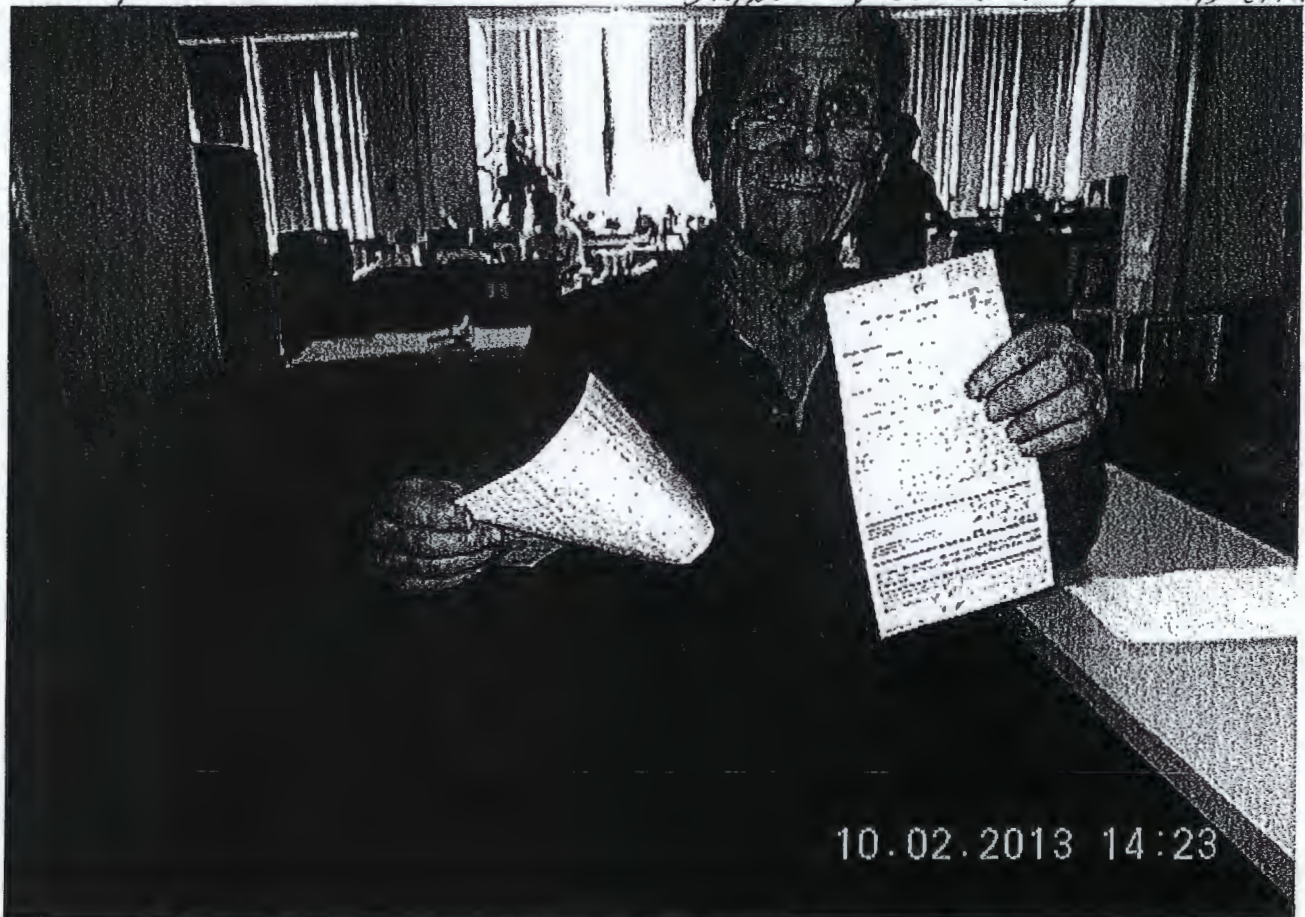
KAROLE RIFFIN
1941 Greenspring Drive
Timonium, MD 21093

Form No. 10-61 (Rev. 1-25-60)
 Instructions: (a) This form is to be filled out by the person or persons who have knowledge of the facts and circumstances of the case. (b) It should be filled out in full, even if the case is not yet closed. (c) It should be filled out in full, even if the case is not yet closed. (d) It should be filled out in full, even if the case is not yet closed. (e) It should be filled out in full, even if the case is not yet closed. (f) It should be filled out in full, even if the case is not yet closed. (g) It should be filled out in full, even if the case is not yet closed. (h) It should be filled out in full, even if the case is not yet closed. (i) It should be filled out in full, even if the case is not yet closed. (j) It should be filled out in full, even if the case is not yet closed. (k) It should be filled out in full, even if the case is not yet closed. (l) It should be filled out in full, even if the case is not yet closed. (m) It should be filled out in full, even if the case is not yet closed. (n) It should be filled out in full, even if the case is not yet closed. (o) It should be filled out in full, even if the case is not yet closed. (p) It should be filled out in full, even if the case is not yet closed. (q) It should be filled out in full, even if the case is not yet closed. (r) It should be filled out in full, even if the case is not yet closed. (s) It should be filled out in full, even if the case is not yet closed. (t) It should be filled out in full, even if the case is not yet closed. (u) It should be filled out in full, even if the case is not yet closed. (v) It should be filled out in full, even if the case is not yet closed. (w) It should be filled out in full, even if the case is not yet closed. (x) It should be filled out in full, even if the case is not yet closed. (y) It should be filled out in full, even if the case is not yet closed. (z) It should be filled out in full, even if the case is not yet closed.

10 02 2013 14:22

10-02-13 Owner James Riffin stopped by office to pick up citations

Pr/-



10.02.2013 14:23

Case No: 14-094-SM Case Name: RIFFIN/GEDDES V PEOPLE'S COUNSEL

Exhibit List

Party: PEOPLE'S COUNSEL Date: 7-15-14

Exhibit No:	Description:
✓ 1	DEED L: 5663 F: 511
✓ 2	SDAT PRINT OUT of 11019 GATEVIEW RD
✓ 3	ZONING MAP
✓ 4	AERIAL B/W w/ 28 SECTIONS MARKED IN GREEN/PINK
✓ 5 A-U	PHOTOS w/ COVER SHEET A/1-4 THRU U/1-2
✓ 6 A-F	PHOTOS w/ COVER SHEET A/1-4 THRU F/1-4
✓ 7	GOOGLEEARTH PHOTO OF DRIVEWAY
✓ 8	EMAIL + DOCS OF ZONING HISTORY 11/12/2013
	VERIFIED BY <u>KAC</u> DATE: <u>7/16/14</u>

EX 1

THIS DEED, made this 9th day of August in the year nineteen hundred seventy-six, by and between HOWARD L. GATES, of Baltimore County, State of Maryland, party of the first part; and JAMES RIFFIN and KAROLE A. RIFFIN, his wife, parties of the second part.

WITNESSETH:

THAT in consideration of the sum of five Dollars and other good and valuable considerations, the receipt of which is hereby acknowledged, the said party of the first part does hereby grant and convey unto the said JAMES RIFFIN and KAROLE A. RIFFIN, his wife, as tenants by the entireties, the survivor of them, their assigns, and the heirs and assigns of the survivor, in fee simple, all that lot of ground situate on Gateview Road, Eighth Election District of Baltimore County, State of Maryland, and described as follows, that is to say:

Beginning for the same at a concrete marker set at the east corner of lot No. 8 Block A as laid out on the plat of Section No. 2 "Sherwood Hills," which plat is recorded among the Plat Records of Baltimore County in Plat Book O.T.G. No. 32 folio 40, said place of beginning also being at the beginning of the second line of a parcel of land which by a deed dated October 11, 1966 and recorded among the Land Records of Baltimore County in Liber O.T.G. No. 4683 folio 407 was conveyed by Lawrence H. Roberts and wife to Howard L. Gates and running thence with and binding on the second, third, fourth and fifth lines and on a part of the sixth line of said parcel of land, the five following courses and distances viz: North 29 degrees 20 minutes East 225.00 feet to a concrete marker, North 29 degrees 20 minutes East 228.82 feet to a concrete marker, South 45 degrees 14 minutes East 1026.25 feet to a stone, South 51 degrees 48 minutes West 415.61 feet to an iron pipe and North 78 degrees 40 minutes West 936.65 feet to the end of the second line of a parcel of land which by a deed dated August 12, 1975 and

JUL 30 3 62 AUG 10

900.00 MSC

recorded among the Land Records of Baltimore County in Liber E.H.K. Jr. No. 5568 folio 447 was conveyed by Howard L. Gates to Richard L. Bell and wife, thence binding reversely on said second line North 11 degrees 20 minutes East 200 feet to a point on the southernmost side of Gateview Road as laid out on the aforesaid plat of "Sherwood Hills," thence binding on the southernmost side of said road, South 78 degrees 40 minutes East 6.95 feet, thence binding along the east end of Gateview Road and along the east outline of lot No. 9 Block A as laid out on the aforesaid plat of "Sherwood Hills," in all, North 11 degrees 20 minutes East 225.45 feet to the northeast corner of lot No. 9 and thence binding on a part of the south line of lot No. 8 as laid out on said plat of "Sherwood Hills," South 85 degrees 34 minutes 50 seconds East 204.24 feet to the place of beginning.

Containing 15.009 Acres of land more or less.

BEING a part of a parcel of land which by a deed dated October 11, 1966 and recorded among the Land Records of Baltimore County in Liber O.T.G. No. 4683 folio 407 was conveyed by Lawrence H. Roberts and wife to Howard L. Gates.

TOGETHER with the buildings and improvements thereon; and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said described parcel of ground and premises unto and to the use of the said JAMES RIFFIN and KAROLE A. RIFFIN, his wife, as tenants by the entirety, the survivor of them, their assigns, and the heirs and assigns of the survivor, forever, in fee simple.

AND the said party of the first part hereby covenants that he has not done nor suffered to be done any act, matter or thing whatsoever to encumber the property hereby conveyed; that he will warrant specially the property hereby granted; and that he will

execute such further assurances of the same as may be requisite.

WITNESS the hand and seal of said Grantor.

TEST:

Richard H. Kerr

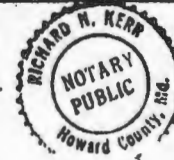
Howard L. Gates (SEAL)
Howard L. Gates

STATE OF MARYLAND, CITY OF BALTIMORE, to wit:

I HEREBY CERTIFY that on this 9th day of August in the year nineteen hundred seventy-six, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City, personally appeared HOWARD L. GATES, known to me (or satisfactorily proven) to be the person named in the foregoing instrument and he acknowledged the foregoing Deed (to James Riffin and Karole A. Riffin, his wife) to be his act and that he executed the same for the purposes therein contained and in my presence signed and sealed the same.

AS WITNESS my hand and Notarial Seal

Richard H. Kerr



AUG 10-76 1883382 ***1050
AUG 10-76 1883382 ***3000
AUG 10-76 1883382 ***2900
AUG 10-76 1883382 ***55050

AUG 10 1976

Recorded for record with 100103/1050
Per Elmer H. Kahline, Jr., Clerk
Mail to James Riffin
10:50

EX 2

Real Property Data Search (w1)

[Search Help](#)

Search Result for BALTIMORE COUNTY

View Map	View GroundRent Redemption	View GroundRent Registration
Account Identifier: District - 08 Account Number - 1800011282		
Owner Information		
Owner Name:	RIFFIN JAMES RIFFIN KAROLE A PO BOX 42 COCKEYSVILLE MD 21030-0042	Use: RESIDENTIAL Principal Residence: YES Deed Reference: 1) 2)
Mailing Address:		
Location & Structure Information		
Premises Address:	11019 GATEVIEW RD 0-0000	Legal Description: 13.0 AC. RED FOX FIELDS
Map: 0042	Grid: 0024	Parcel: 0379
Sub District:	Subdivision: 0000	Section:
Block:	Lot: 3	Assessment Year: 2014
Plat No:	Plat Ref: 0044/ 0130	
Special Tax Areas:	Town:	Ad Valorem: NONE
Tax Class:		
Primary Structure Built 1976	Above Grade Enclosed Area 1,560 SF	Finished Basement Area 1.5200 AC
County Use 04		
Stories 1.500000	Basement NO	Type STANDARD UNIT
Exterior FRAME	Full/Half Bath 1 full/ 1 half	Garage
Last Major Renovation		
Value Information		
	Base Value	Value
		As of 01/01/2011
Land:	270,000	270,000
Improvements	118,900	118,900
Total:	388,900	388,900
Preferential Land:	0	
Phase-in Assessments		
	As of 07/01/2013	As of 07/01/2014
Transfer Information		
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Exemption Information		
Partial Exempt Assessments:	Class	07/01/2013
County:	000	0.00
State:	000	0.00
Municipal:	000	0.00
Tax Exempt:	Special Tax Recapture:	
Exempt Class:	NONE	
Homestead Application Information		
Homestead Application Status: Denied		

New Search (<http://sdat.resiusa.org/RealProperty>)

A detailed plat map of a portion of Section 36, Township 44N, Range 130E. The map shows various land parcels with owner names and acreage. The map includes roads like P122, P121, P120, P119, P118, P117, P116, P115, P114, P113, P112, P111, P110, P109, P108, P107, P106, P105, P104, P103, P102, P101, P100, P99, P98, P97, P96, P95, P94, P93, P92, P91, P90, P89, P88, P87, P86, P85, P84, P83, P82, P81, P80, P79, P78, P77, P76, P75, P74, P73, P72, P71, P70, P69, P68, P67, P66, P65, P64, P63, P62, P61, P60, P59, P58, P57, P56, P55, P54, P53, P52, P51, P50, P49, P48, P47, P46, P45, P44, P43, P42, P41, P40, P39, P38, P37, P36, P35, P34, P33, P32, P31, P30, P29, P28, P27, P26, P25, P24, P23, P22, P21, P20, P19, P18, P17, P16, P15, P14, P13, P12, P11, P10, P9, P8, P7, P6, P5, P4, P3, P2, P1. The map also shows the locations of the Red Fox Fields A44 130 and the Sherwood Hills A44 130. The map is a black and white line drawing with various labels and numbers.

Order the **TAX MAP** [click here...](#)

(<http://imsweb05.mdp.state.md.us/website/mosp/>)





My Neighborhood Map

Created By
Baltimore County
My Neighborhood



This data is only for general information purposes only. This data may be inaccurate or contain errors or omissions. Baltimore County, Maryland does not warrant the accuracy or reliability of the data and disclaims all warranties with regard to the data, including but not limited to, all warranties, express or implied, of merchantability and fitness for any particular purpose. Baltimore County, Maryland disclaims all obligation and liability for damages, including but not limited to, actual, special, indirect, and consequential damages, attorneys' and experts' fees, and court costs incurred as a result of, arising from or in connection with the use of or reliance upon this data.

Code Enforcement Inspection Pictures

Date: 07-26-2013

Location: 11019 Gateview Road

Picture	Zone
A 1-4	14
B 1-4	14
C 1-4	14
D 1-4	14
E 1-4	13
F 1-4	13
G 1-4	13
H 1-4	14
I 1-4	14
J 1-4	18
K 1-4	18
L 1-4	18
M 1-4	11
N 1-4	10/11
O 1-4	12/19
P 1-4	12
Q 1-4	12/19
R 1-4	10
S 1-4	10
T 1-4	10/11
U 1-2	18





(C)



(D)



(E)



07 26 2013 12 21



07 26 2013 12 21



07 26 2013 12 20



07 26 2013 12 21

7

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②



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④















①



②



③



④





①



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07.26.2013 12:34



07.26.2013 12:35



07.26.2013 12:38



07.26.2013 12:39



07.26.2013 12:36



07.26.2013 12:36





1



2



4



5



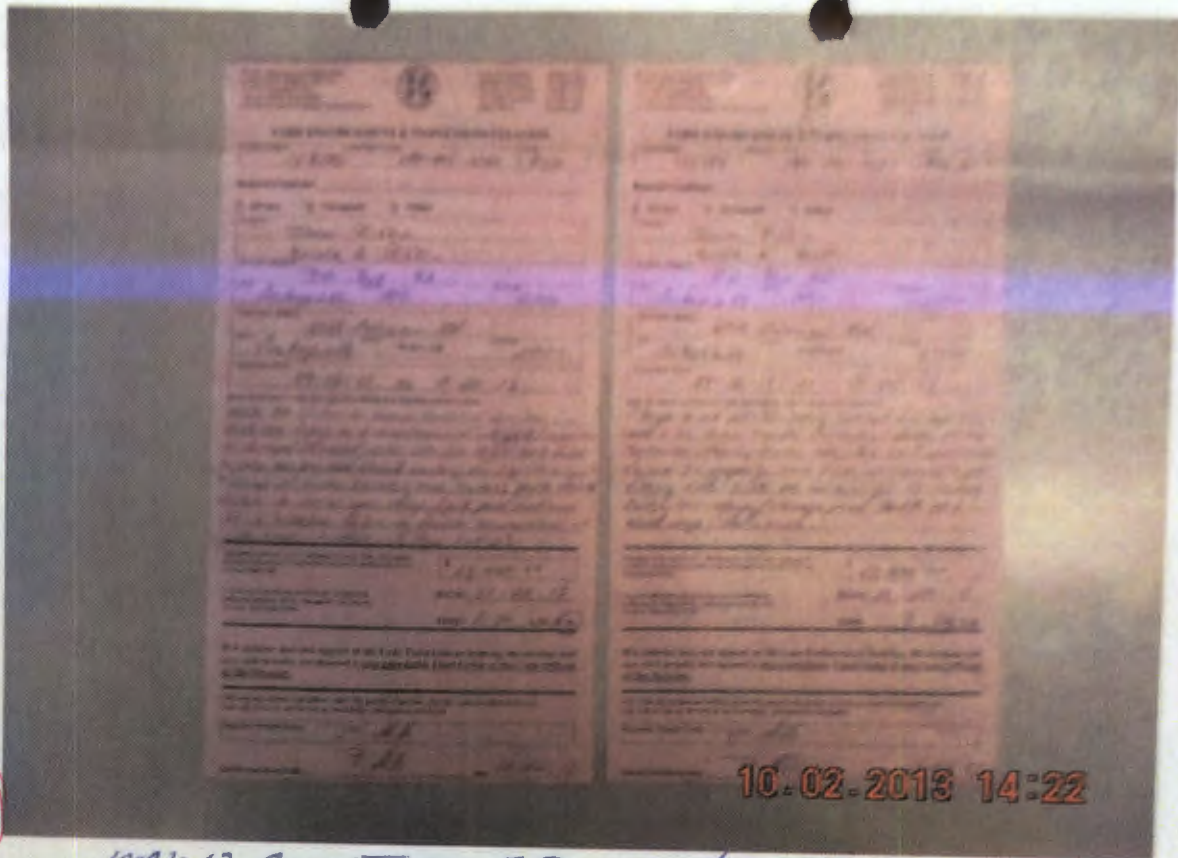
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07.26.2013 12:39



10-02-13 Owner James P. Fin stopped by office to pick up citations

7-1-



EX 6 A-F

Code Enforcement Inspection Pictures

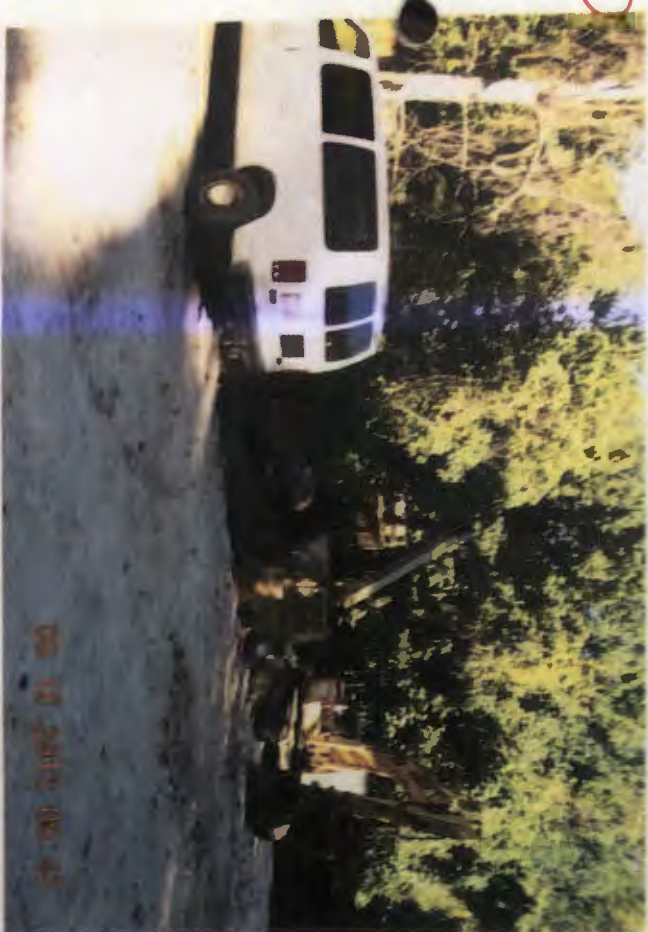
Date: 09-16-2013

Location: 11019 Gateview Road

Picture	Zone
A 1-4	23
B 1-4	17
C 1-4	18
D 1-4	13
E 1-4	14
F 1-4	14















Google earth

feet
meters



EX 7



pm2

From: People's Counsel
To: Duvall, David
CC: Richards, Carl
Date: 11/12/2013 1:10 PM
Subject: James & Karole Riffin Case No. 2014-094-SPH

EX8

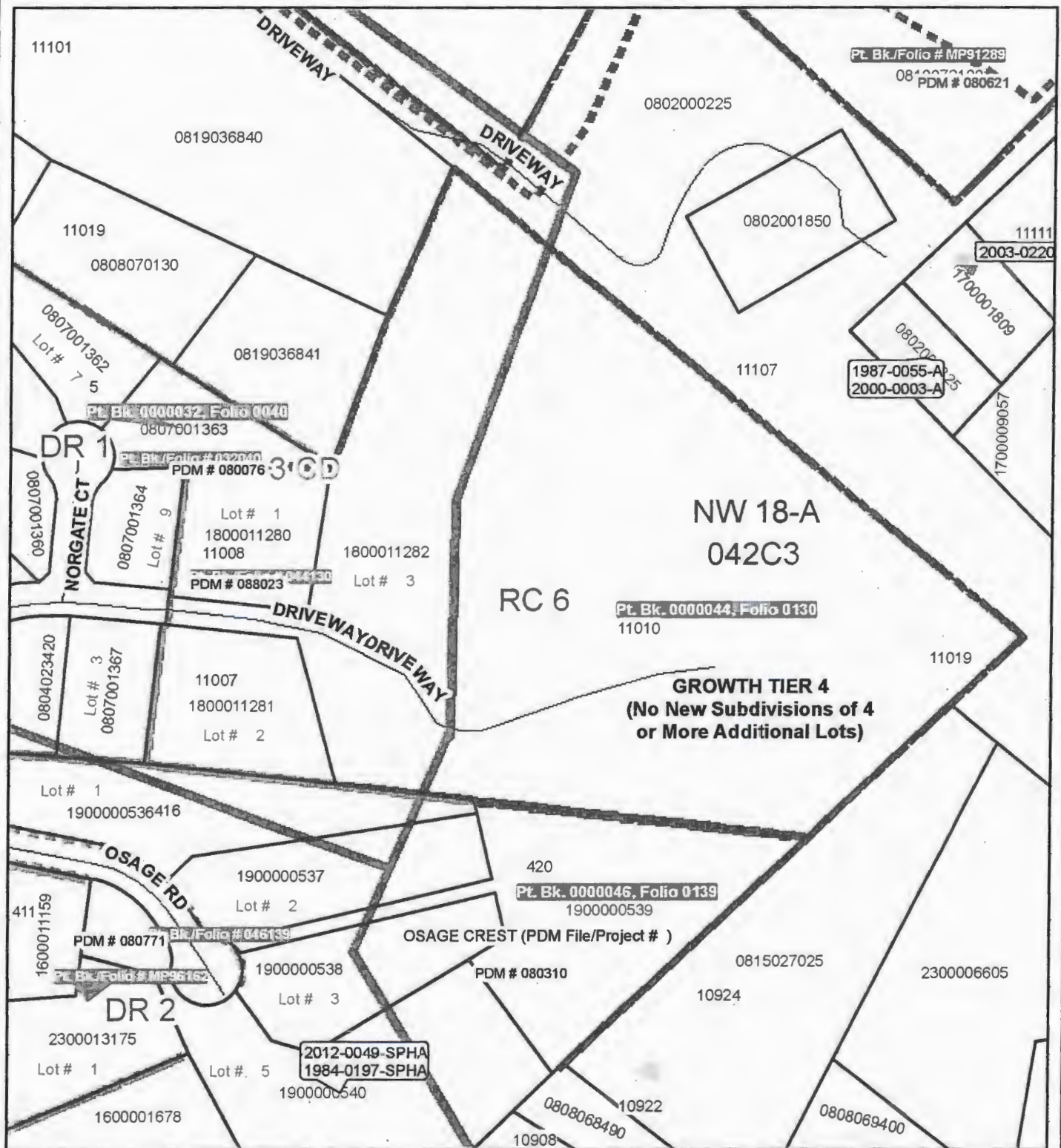
Mr. Duvall,

Our office would like the zoning history with maps for 11019 Gateview Road. The property owner is James & Karole Riffin. The tax account number is 1800011282. If you need further information, please let me know.

Please forward the history to our mailstop # 4204.

Rebecca M. Wheatley
Legal Secretary
Office of the People's Counsel for Baltimore County
410-887-2188 Phone
410-823-4236 Fax

11019 Gateview Road



Publication Date: 11/12/2013



Publication Agency: Permits, Approvals & Inspections
Projection/Datum: Maryland State Plane,
FIPS 1900, NAD 1983/91 HARN, US Foot



0 50 100 200 300 400 Feet

1 inch = 200 feet

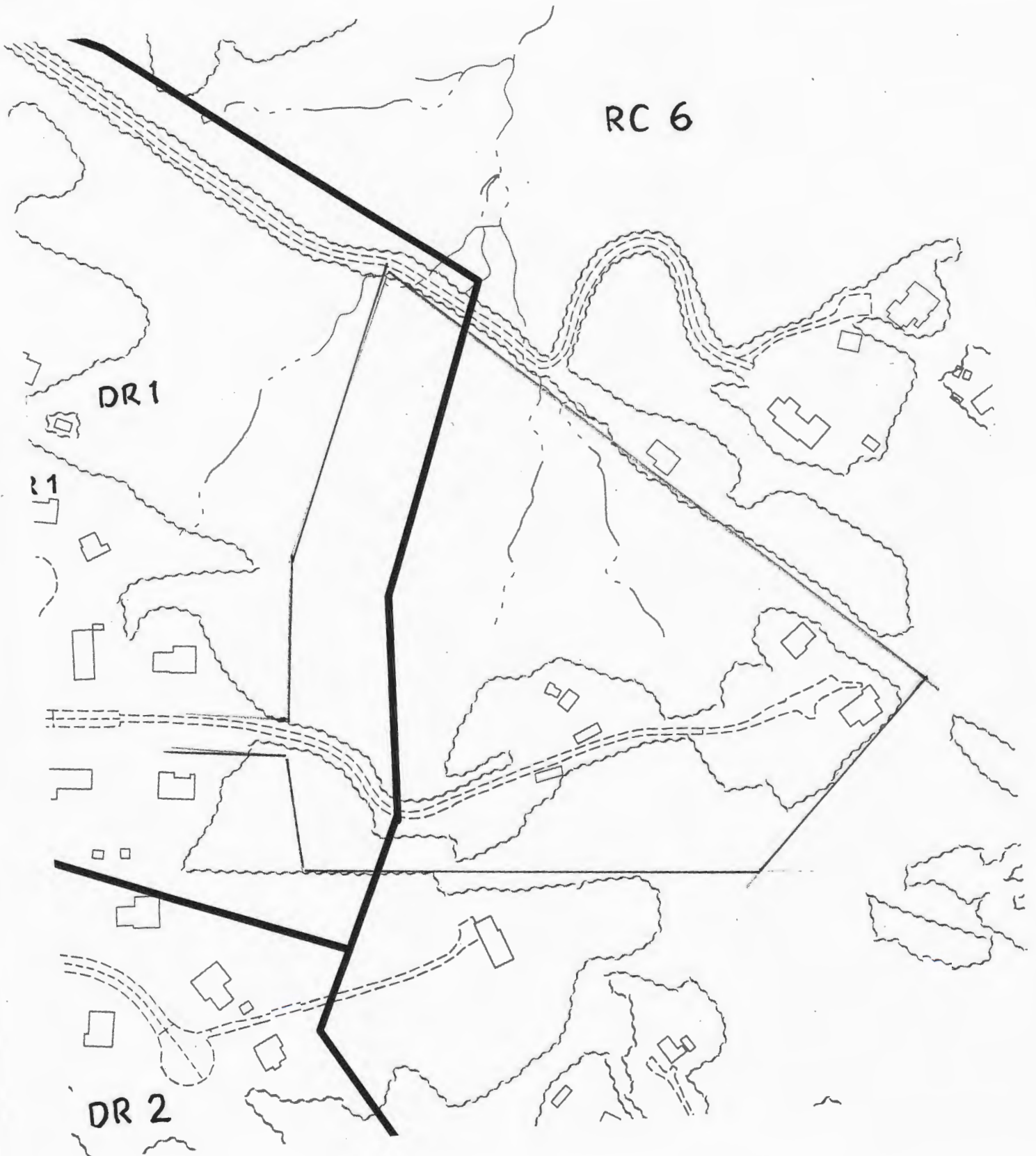
2008 MAP

RC 6

DR 1

R1

DR 2

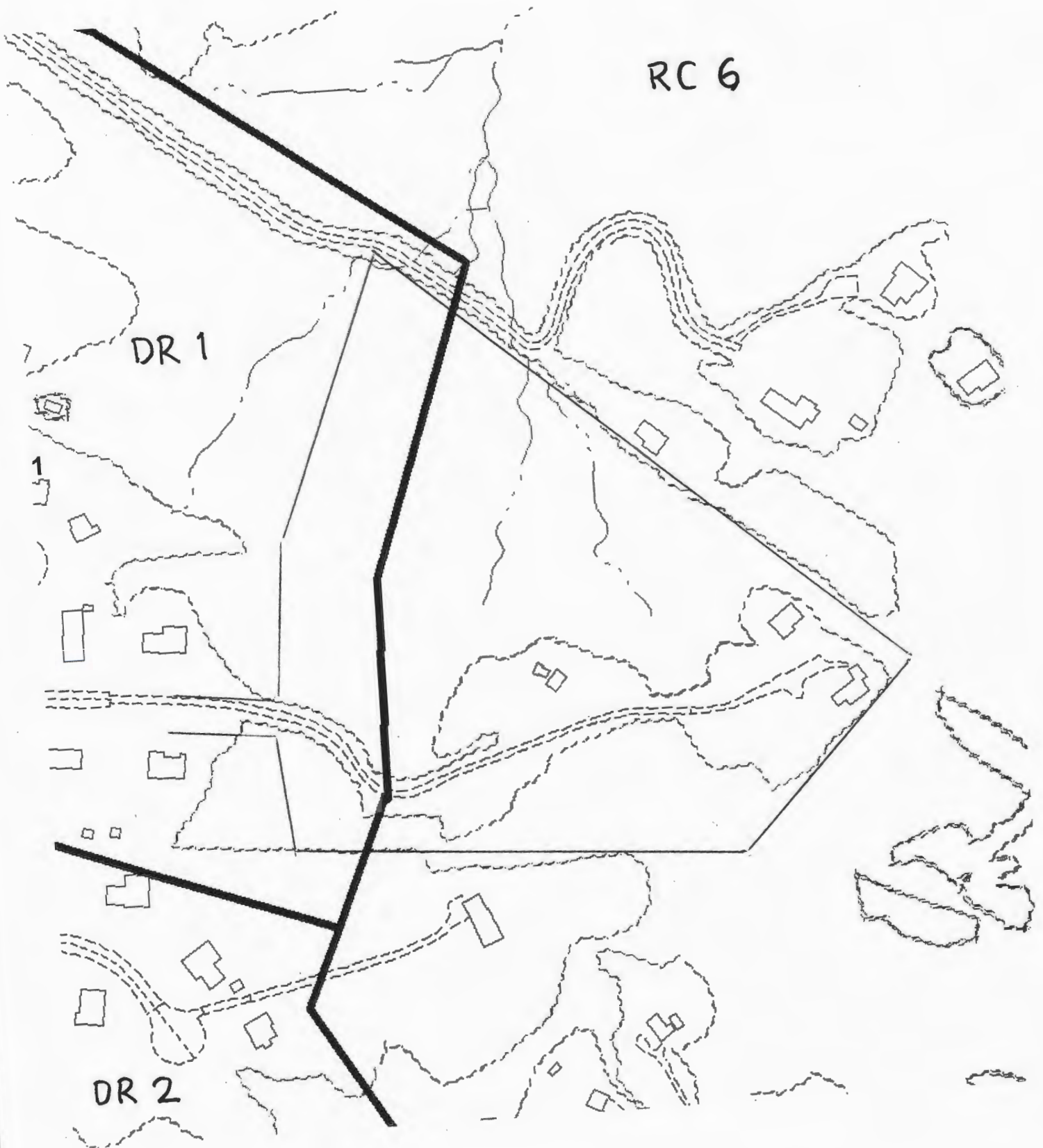


2004 MAP

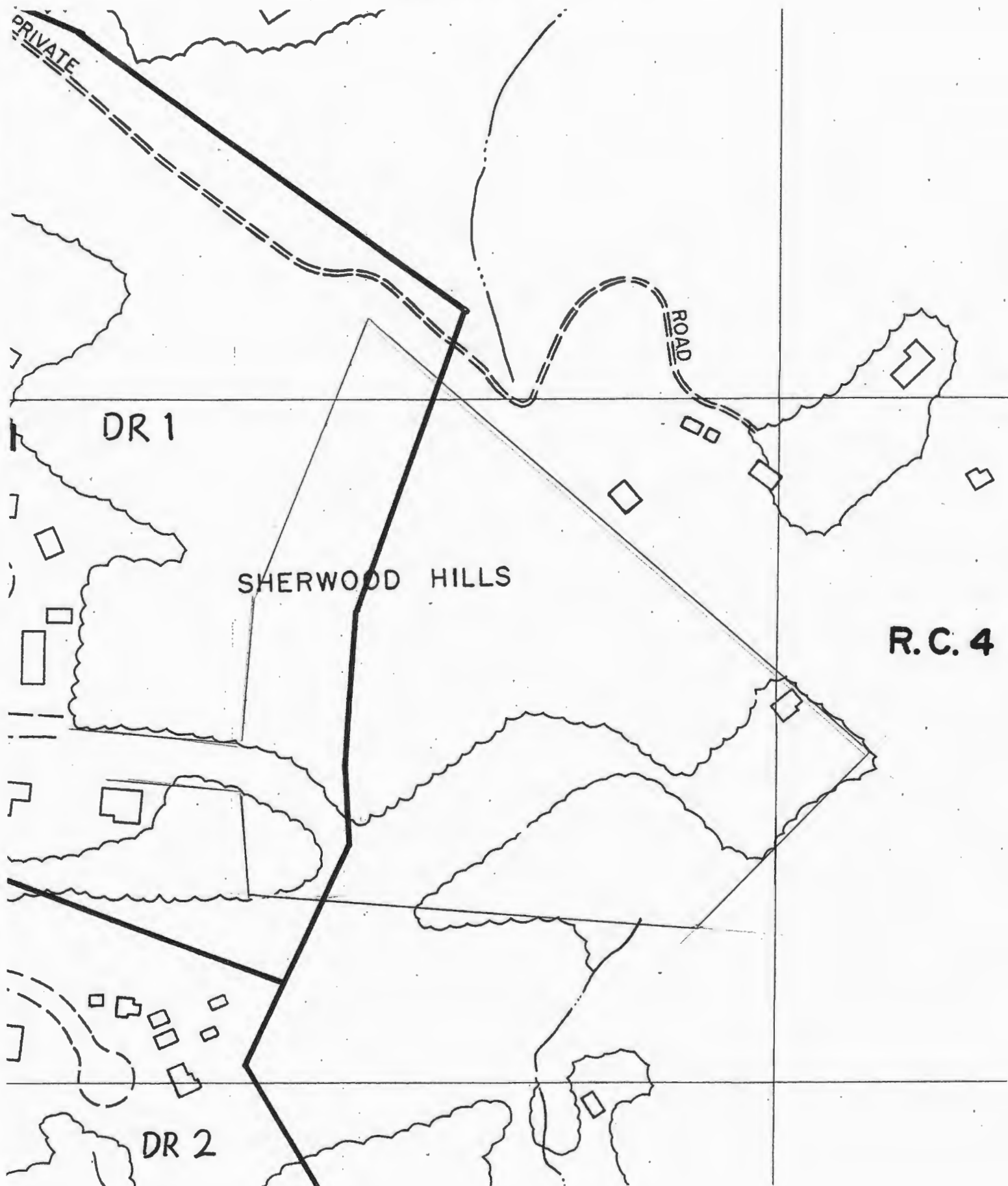
RC 6

DR 1

DR 2



2000 MAP



1996 MAP

D.R. 1

SHERWOOD HILLS

R.C. 4

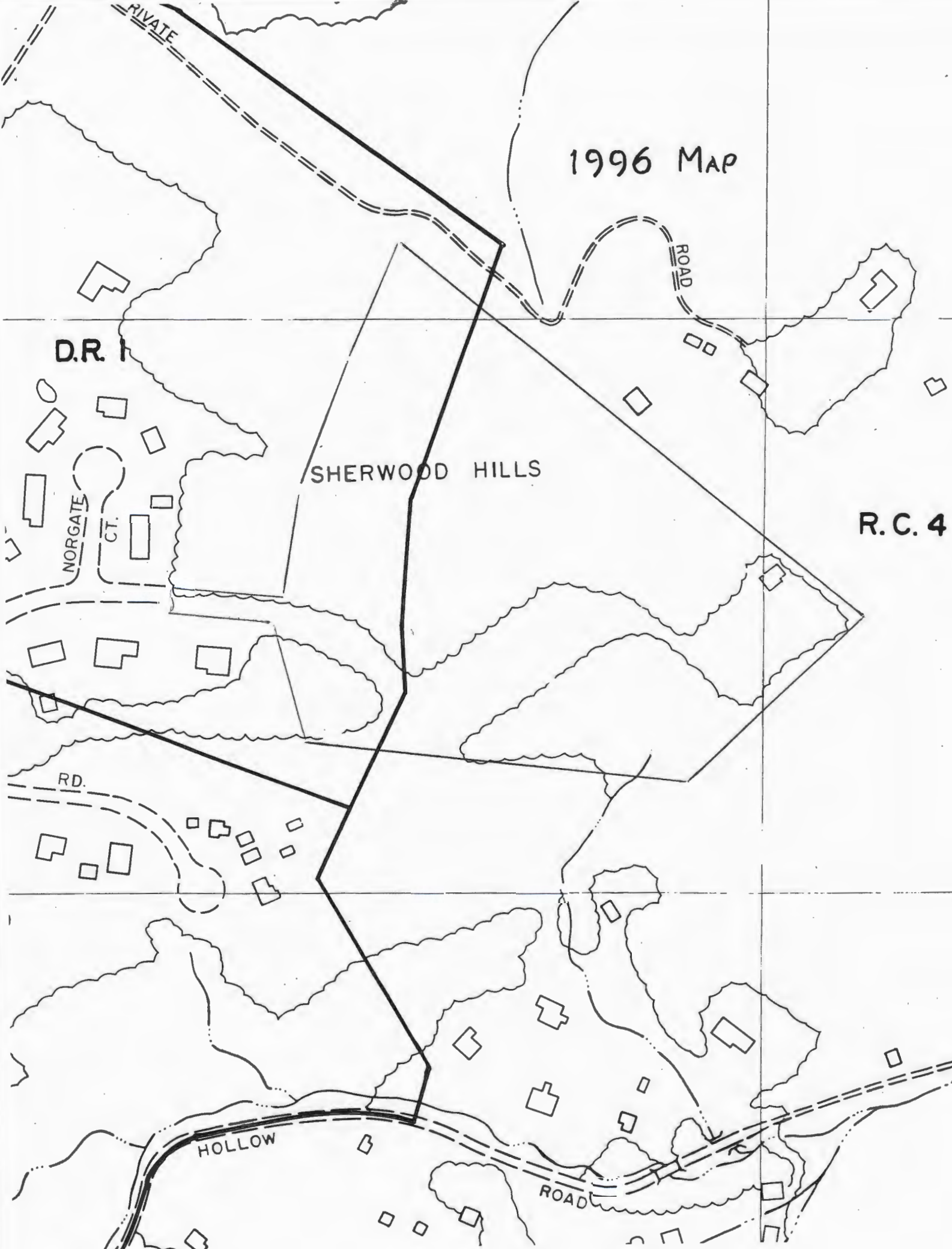
NORGATE CT.

RD.

HOLLOW

ROAD

ROAD



1992 MAP

D.R. 1

SHERWOOD HILLS

R.C. 4

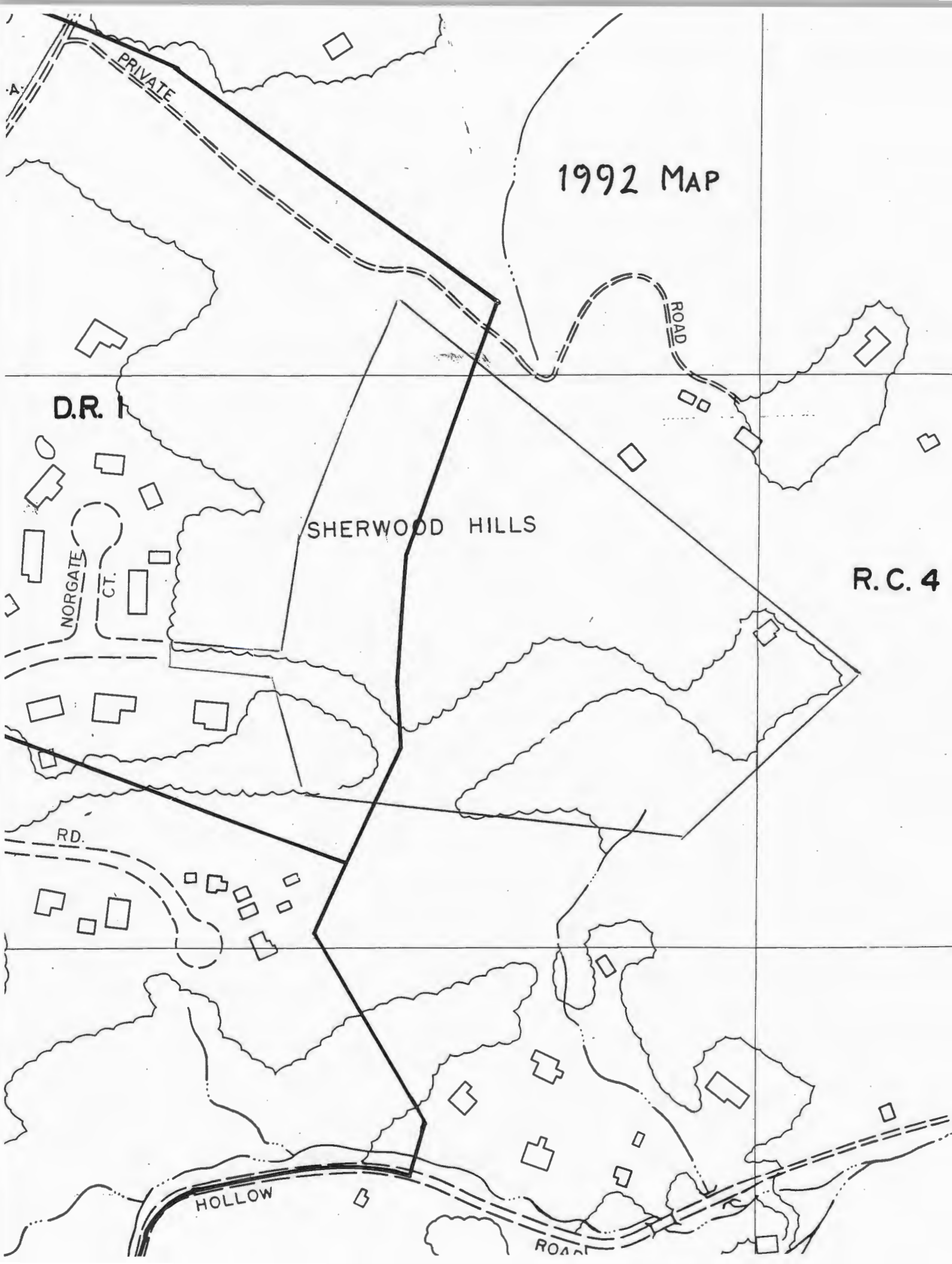
NORGATE CT.

RD.

HOLLOW

ROAD

ROAD

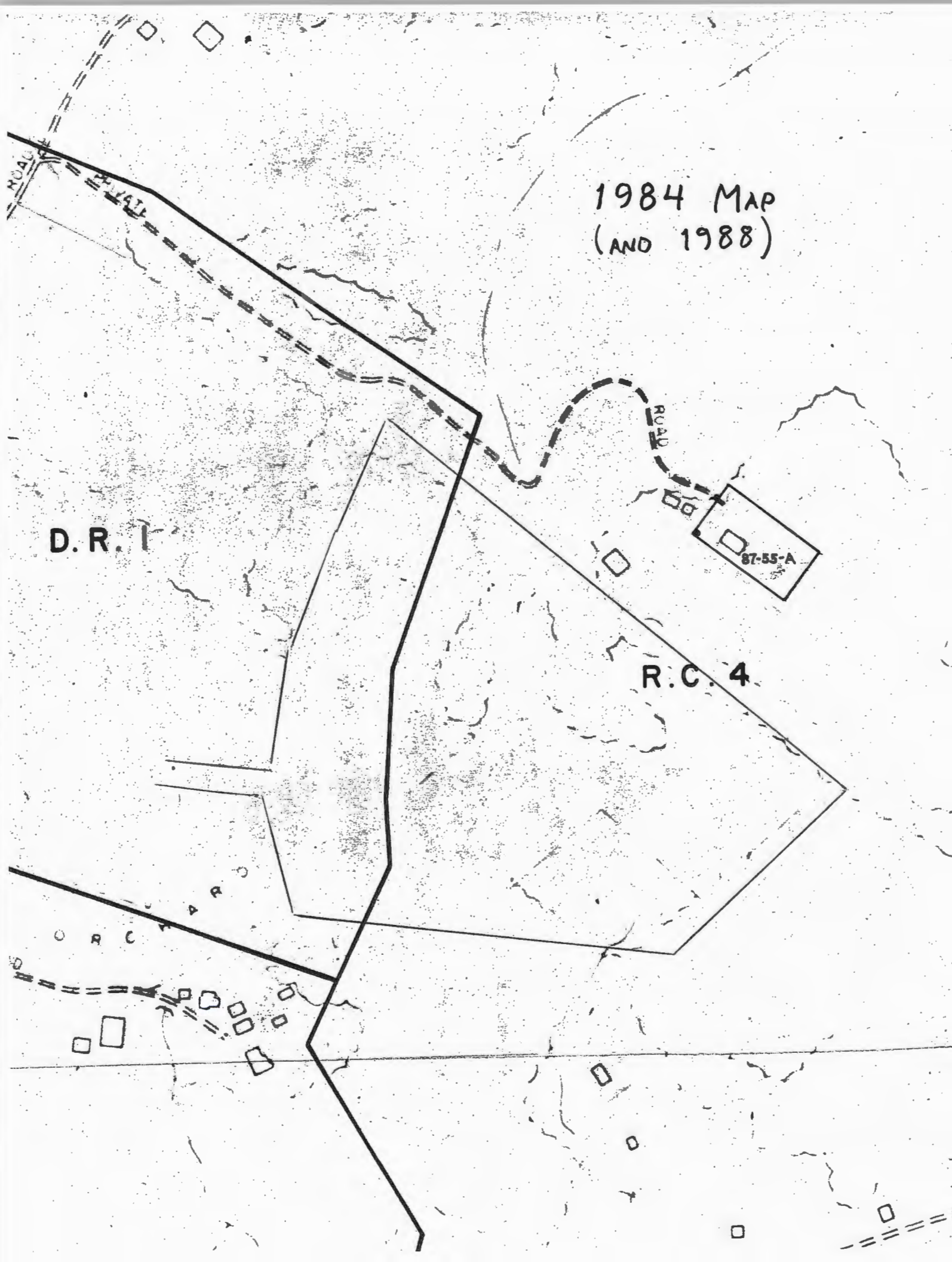


1984 MAP
(AND 1988)

D.R. 1

R.C. 4

87-55-A

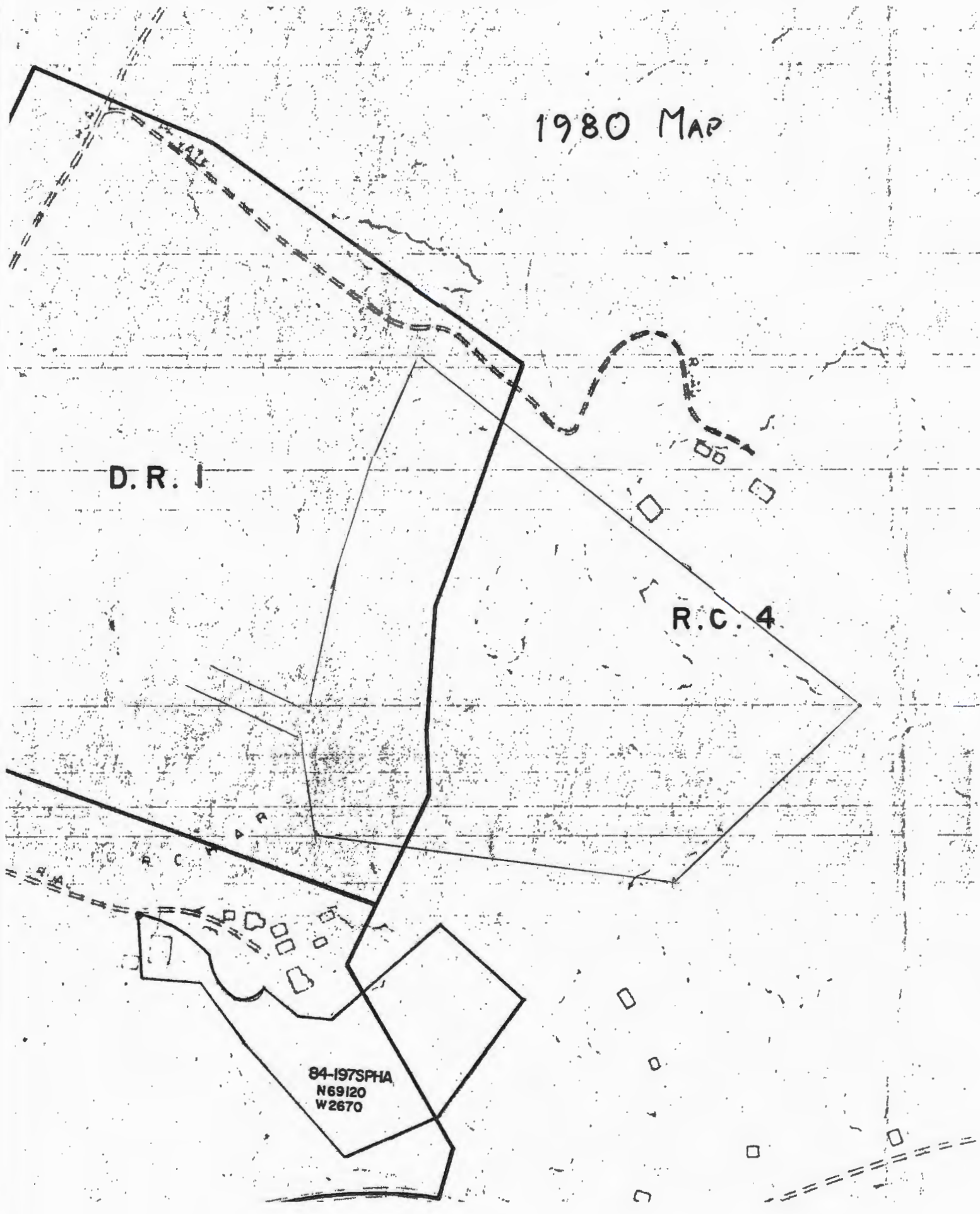


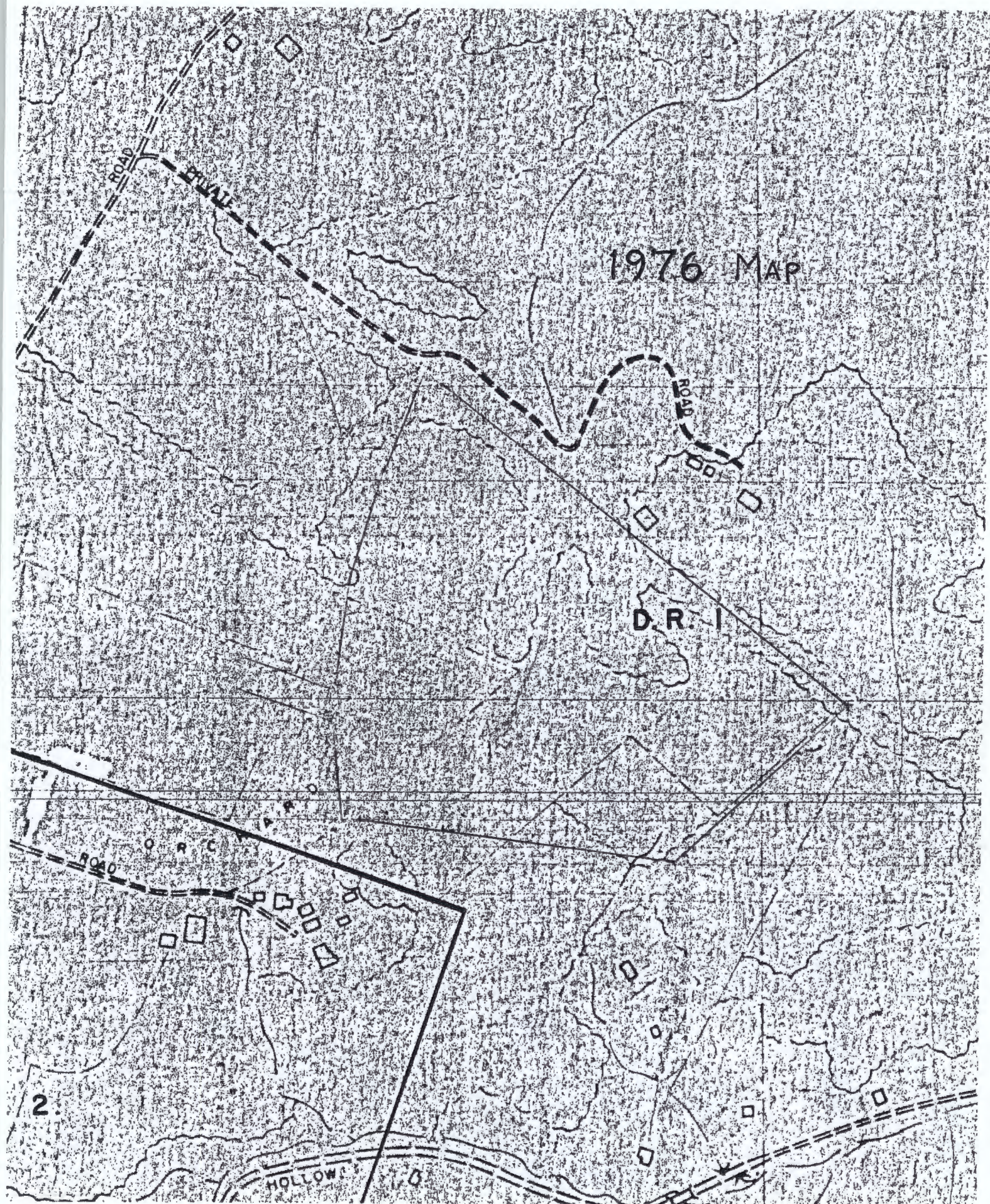
1980 MAP

D.R. I

R.C. 4

84-197SPHA
N69120
W2670





1971 MAP

2-224-A

ROAD

PRIVATE

03-220-A

87-55-A
00-003-A

D. R. I

O R C H A R D

84-1975PHA

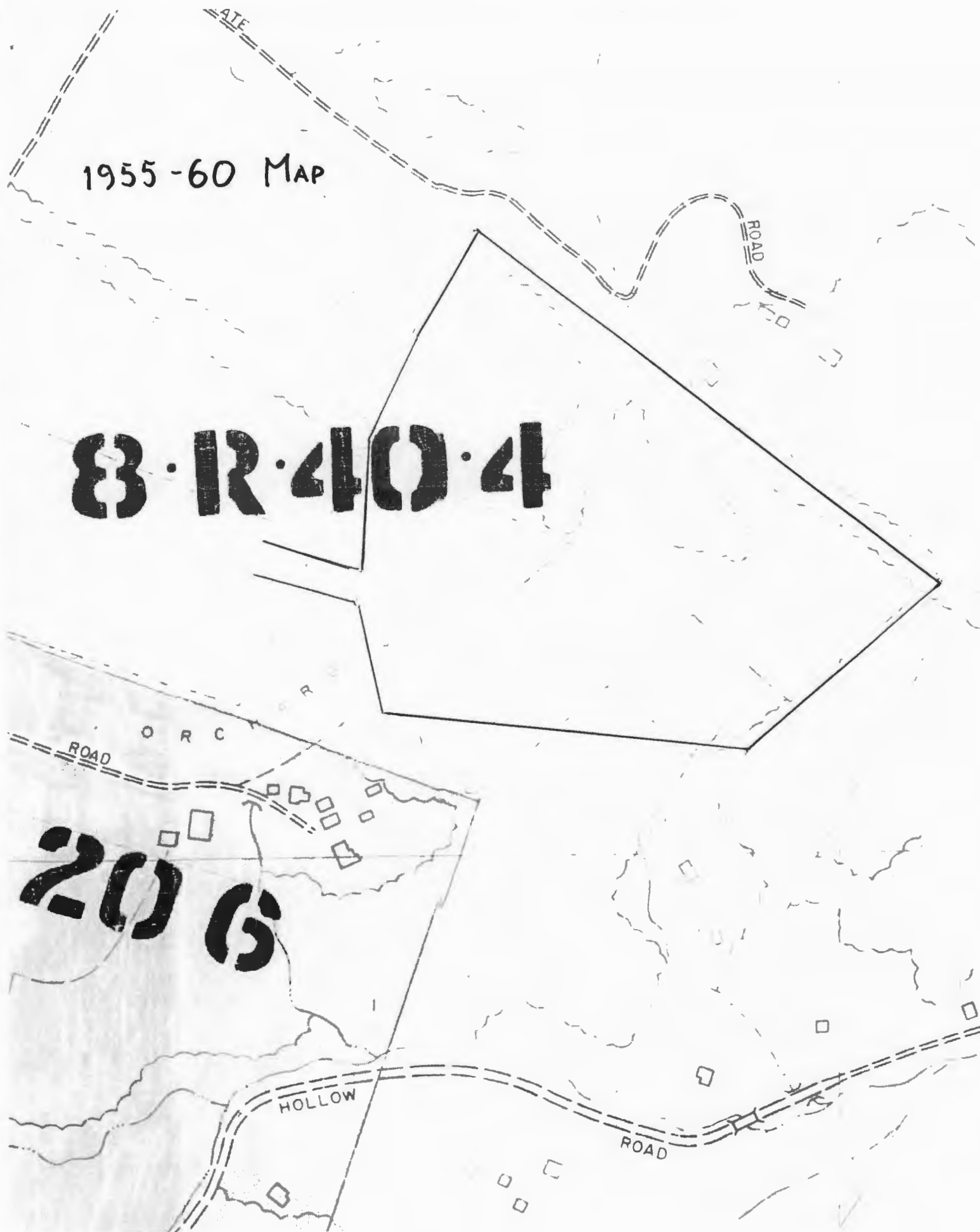
ROAD

1570'
170'

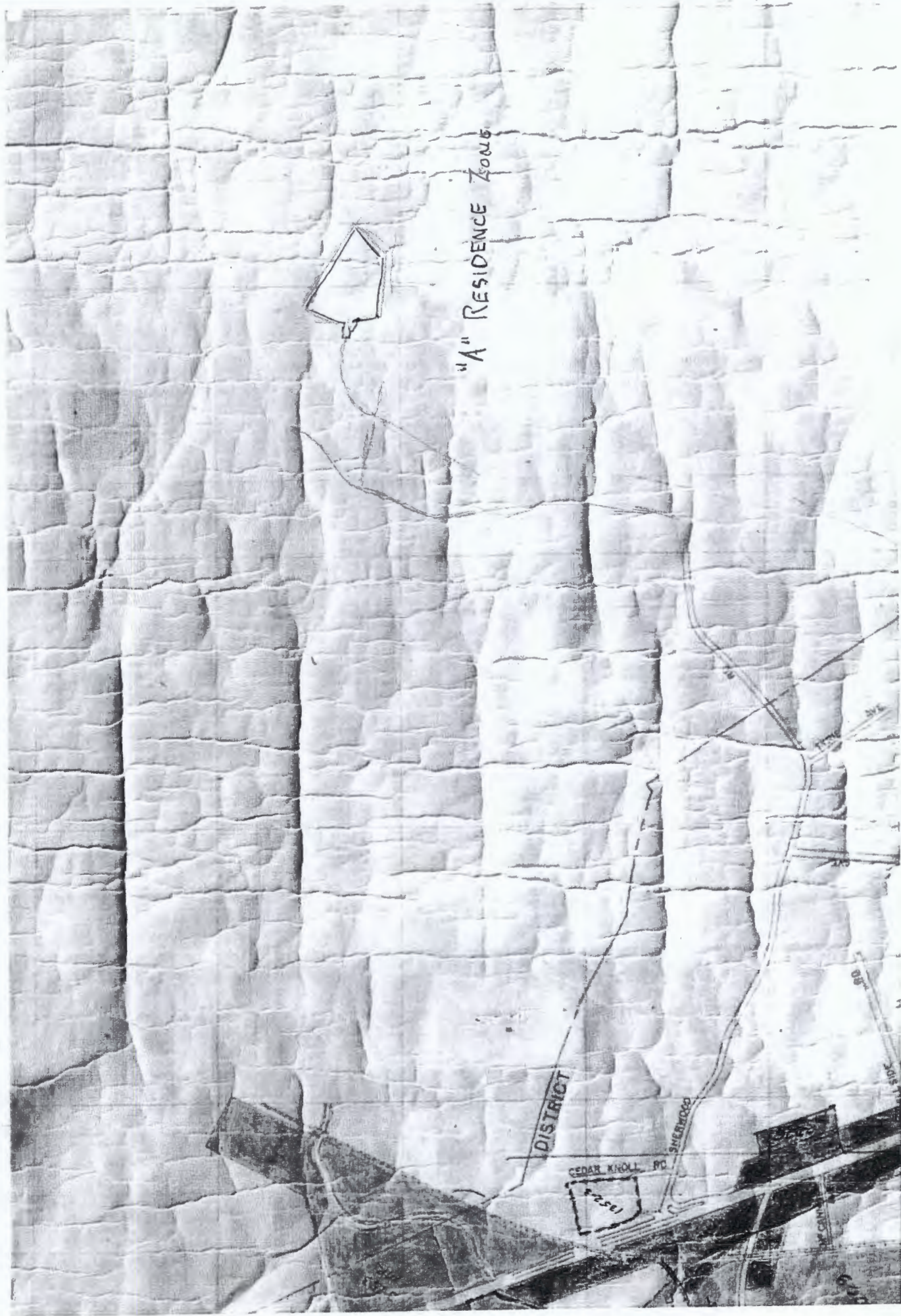
1955-60 MAP

8·R·40·4

206



1945 MAP



8TH DISTRICT

"B"

1945

SCALE

LEGEND

-  — "A" RESIDENCE ZONE - R. 4.
-  — "B" RESIDENCE ZONE - R. 4.
-  — "C" RESIDENCE ZONE - R. 4.
-  — "D" RESIDENCE ZONE - R. 6.
-  — "E" COMMERCIAL ZONE - B. L.
-  — "F" INDUSTRIAL ZONE - M. L.

Code Enforcement Inspection Pictures

Date: 09-16-2013

Location: 11019 Gateview Road

Picture	Zone
A 1-4	23
B 1-4	17
C 1-4	18
D 1-4	13
E 1-4	14
F 1-4	14



B

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②



③



④













© 2014 Google

© 2014 Google

Google earth

Google earth

feet
meters

100

50



Code Enforcement Inspection Pictures

Date: 07-26-2013

Location: 11019 Gateview Road

Picture	Zone
A 1-4	14
B 1-4	14
C 1-4	14
D 1-4	14
E 1-4	13
F 1-4	13
G 1-4	13
H 1-4	14
I 1-4	14
J 1-4	18
K 1-4	18
L 1-4	18
M 1-4	11
N 1-4	10/11
O 1-4	12/19
P 1-4	12
Q 1-4	12/19
R 1-4	10
S 1-4	10
T 1-4	10/11
U 1-2	18



1



3



2



4



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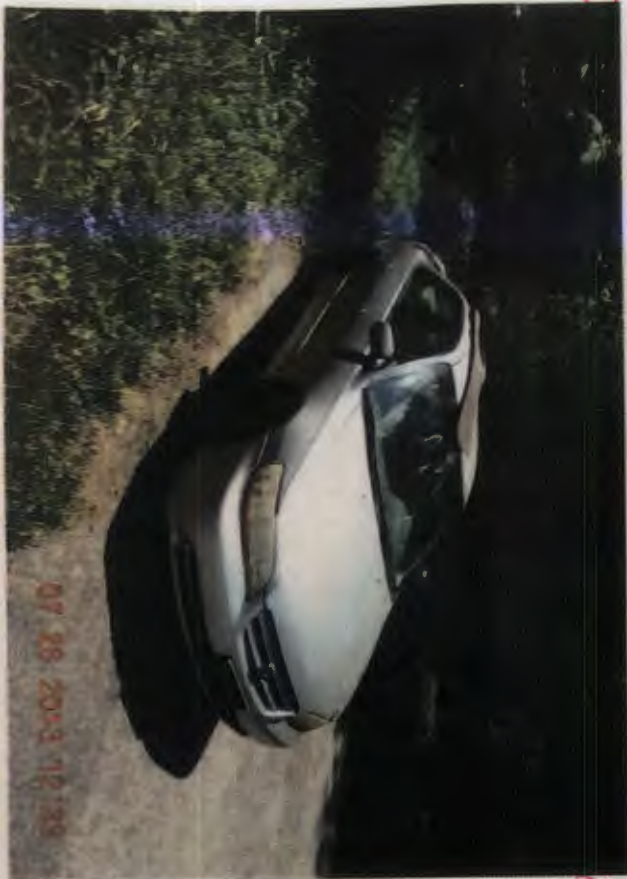
③



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①



②



③



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①



②



③



④

07-25-2005 12:30



1



2



3



4







07.26.2013 12:34



07.26.2013 12:35



07.26.2013 12:35



07.26.2013 12:35







1



2



3



4



①



②



07.26.2013 12:39



8

10-02-13 Owner James P. Pfin stopped by office to pick up Citations

Fol-



1

Case No.: 2014-0094-SPH

Exhibit Sheet

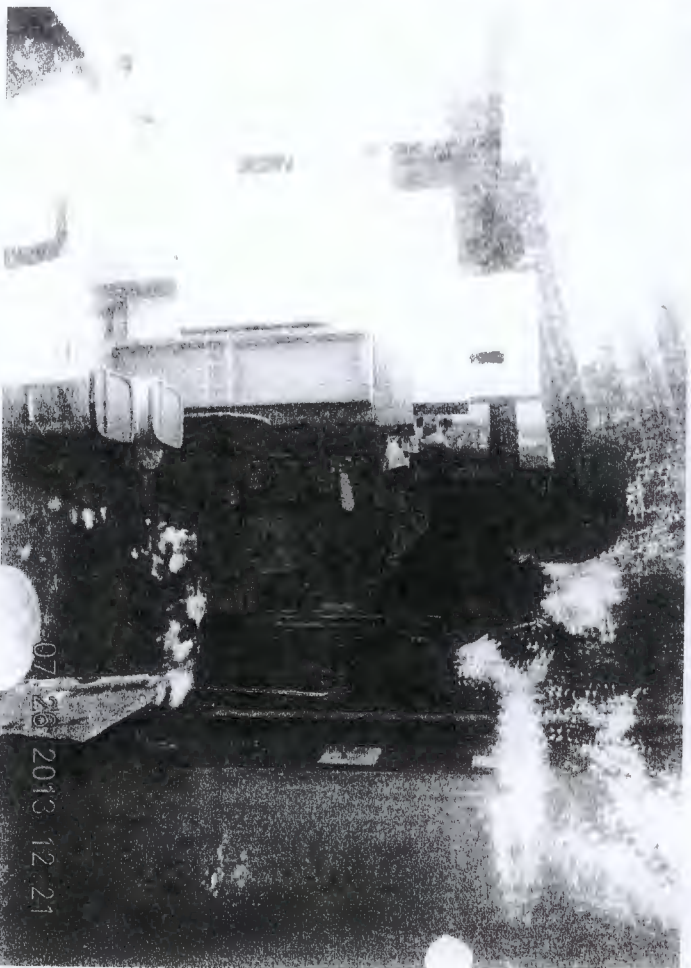
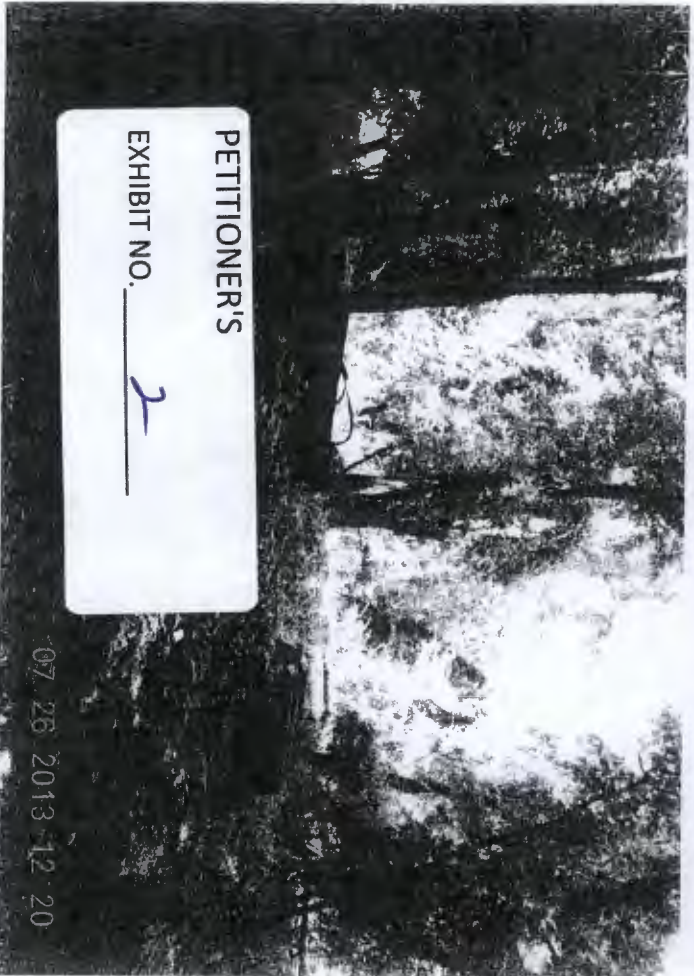
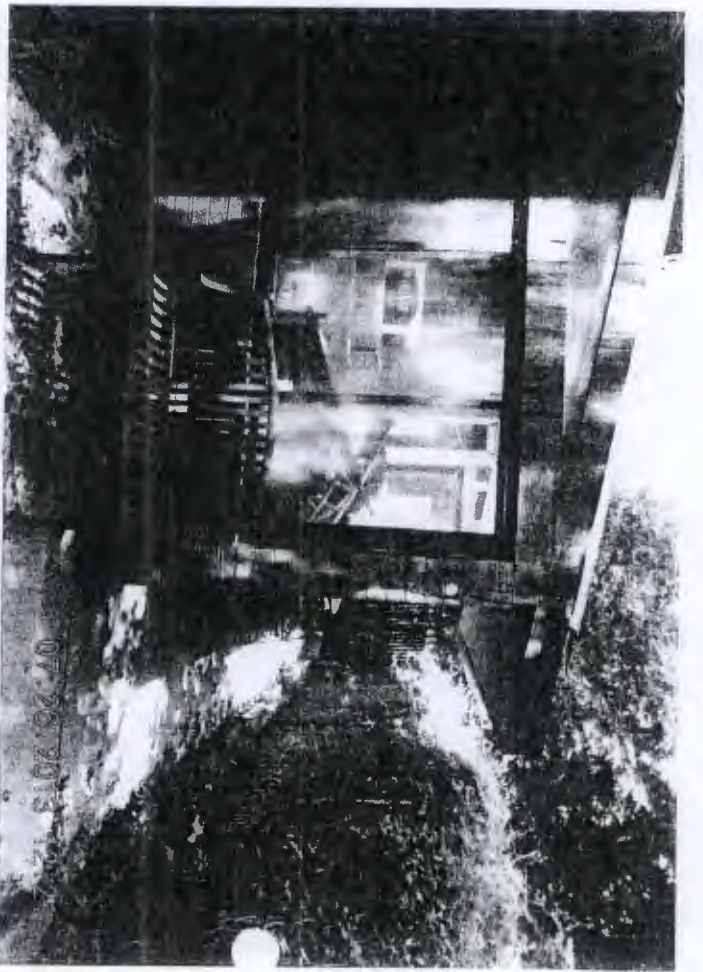
Petitioner/Developer

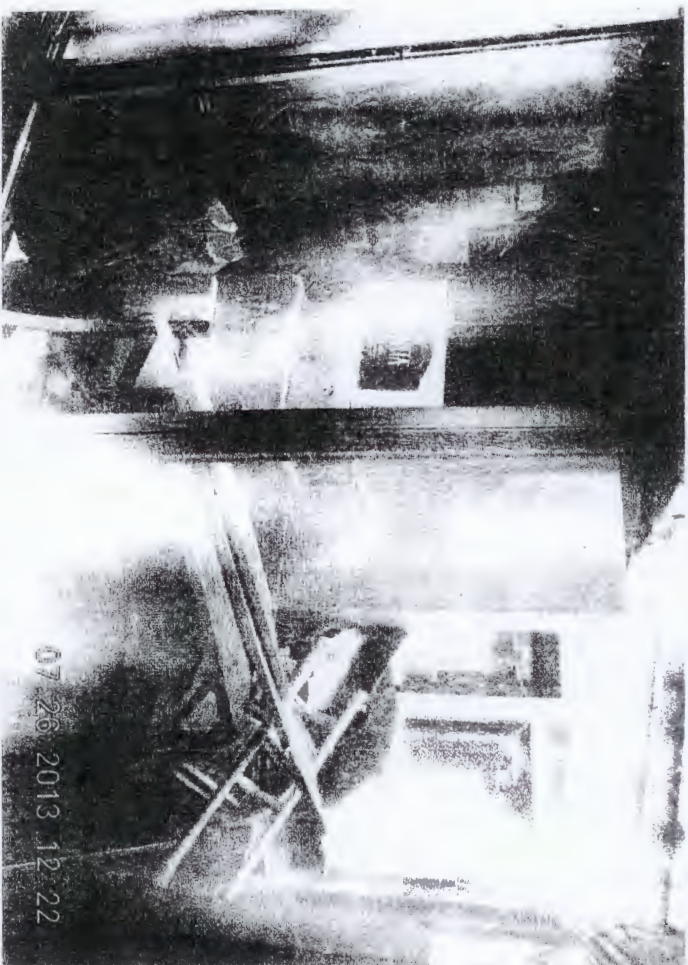
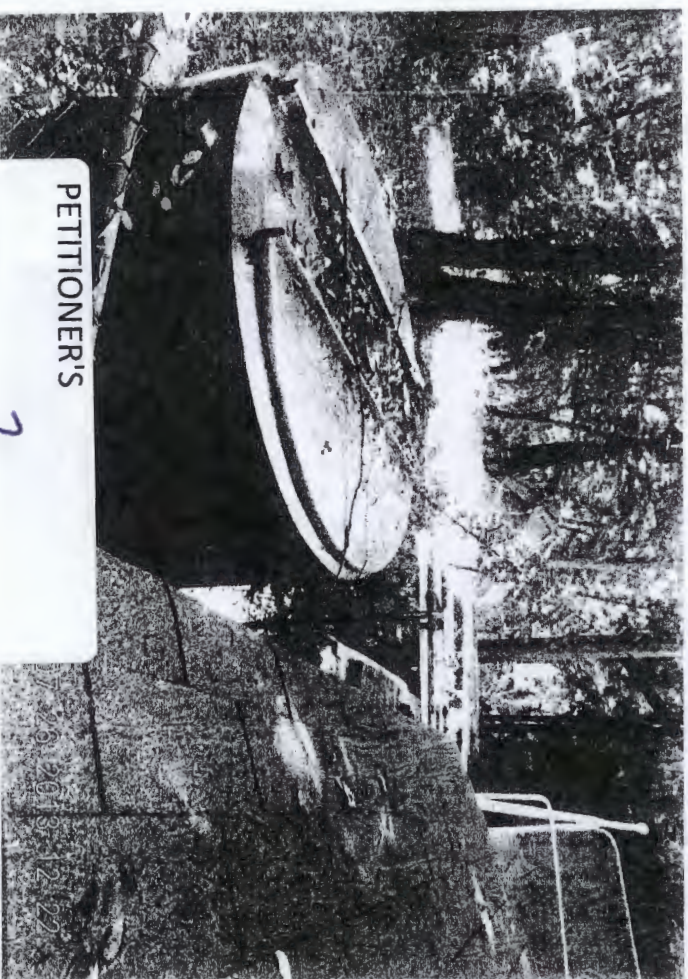
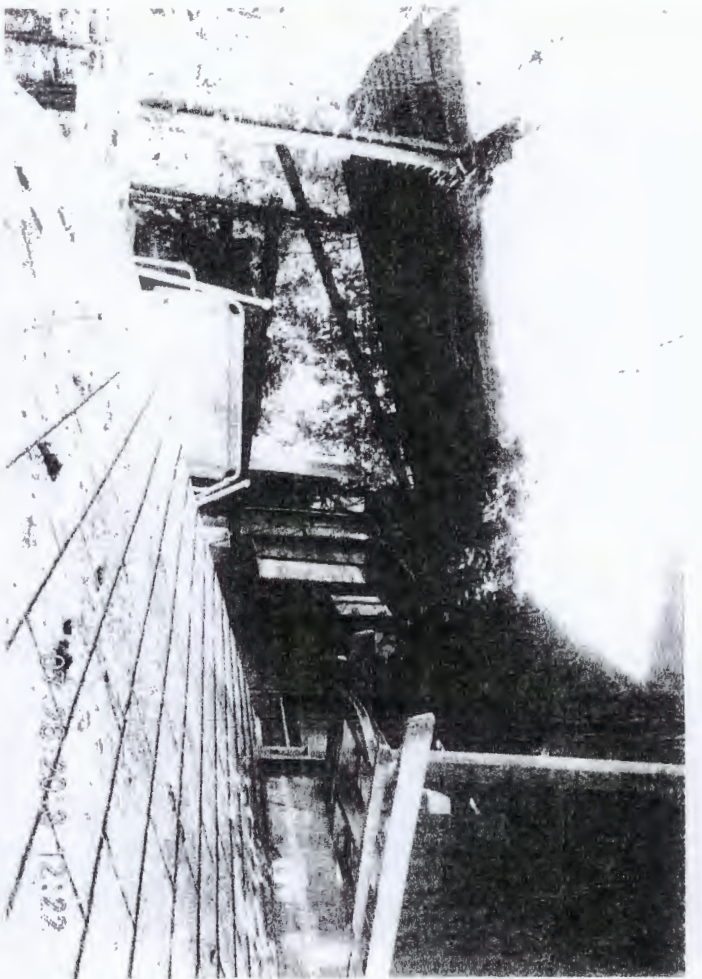
Protestants

DW
1-27-14

DW 1-7-14

No. 1	Md. Dept. of Planning Map	
No. 2	B+W Photos	
No. 3	B+W Photos	
No. 4	Affidavits	
No. 5		
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		





PETITIONER'S

EXHIBIT NO. _____

3

07-26-2013 12:22

07-26-2013 12:22

AFFIDAVIT

p. 389
c-6

My name is: Jeanine Petzold & Lissel Petzold
(Print your name)

I am the property owner of: 10915 Gateview Rd
(Write your street address)

I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

I do not object to any of Mr. Riffin's activities on his property. None of his equipment is visible. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.

Lissel Petzold.
(Signature)

Jeanine Petzold.

PETITIONER'S

EXHIBIT NO. 4

Mr. Jim Riffin

11019 Gateview Road

Cockeysville, MD 20130

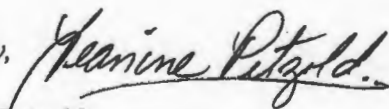
12/18/13

Dear Mr. Riffin:

First and foremost my Mother and I would like to thank you so much for plowing our driveway when it snows (10915 Gateview Rd). We didn't know who was cleaning it but I wanted to find you to thank you as it is a tremendous help to us. As I am my Mother's caregiver and my time is very limited between working and taking care of my 85 year old Mother, your kindness is a huge help and is very much appreciated. Our neighbor Mr. Tom Shepard would plow our driveway until he passed away; he was such a good Man and now you have come along to help us out. Thank you for your time, effort and kindness. I'm sure all our other neighbors will agree with me that we appreciate you greatly. My parents moved into this neighborhood 40 years ago in the summer of 1973. Over these past four decades my family has been living here and the neighborhood has changed a lot. Today there are more elderly people living here than young families. There are so many widows, especially on this side of Gateview Road. Another neighbor of mine is also a caregiver to his wife, so you see, you are a blessing to so many.

I am appalled to hear that someone is complaining about your equipment and your generosity! After all we are in the county and not in the city. When you clean our driveway I don't even hear you out there because if I did, I would have immediately come out to thank you. In regards to seeing your equipment on your property, it cannot be seen as I have driven past your home recently and could not find anything to complain about. Certainly you have my full support in keeping your equipment on your property as I do not see it as an eyesore or any other way to complain about it. If there is any way that I can be of help, please let me know.

Sincerely,


Jeanine Petzold

10915 Gateview Road

Cockeysville, MD 21020

Phone: (410) 628-1195

AFFIDAVIT

p-379
#1

My name is Heath Elliott.

I am the property owner of 11008 Gateview Road, Cockeysville, MD.

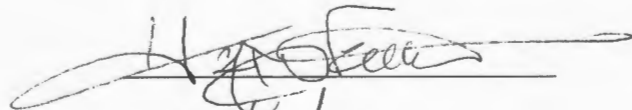
I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

I do not object to any of Mr. Riffin's activities on his property. While some of his equipment is visible from my property, I do not object to his equipment being on his property. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.


12/19/2013

AFFIDAVIT

My name is: DAVID W. BAKER
(Print your name)

P-379
#2

I am the property owner of: 11007 GATEVIEW RD.
(Write your street address)

I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

I do not object to any of Mr. Riffin's activities on his property. None of his equipment is visible. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.

David W. Baker
(Signature)

AFFIDAVIT

P.389
B-3

My name is: SHIREEN GONZAGA
(Print your name)

I am the property owner of: 11005 GATEVIEW RD, COCKEYSVILLE
(Write your street address) MD 21030

I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

I do not object to any of Mr. Riffin's activities on his property. None of his equipment is visible. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.

Shireen P. Gonzaga
(Signature)

AFFIDAVIT 10 Dec 2013

P. 389
A-2

My name is: Anthony J. Anastasi

**I am the property owner of: 11000 Gateview Rd.
Cockeysville, MD 21030**

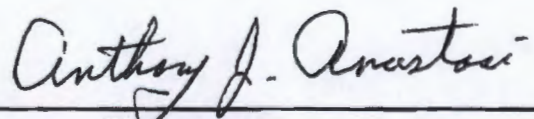
I am a Senior citizen and am competent to make this affidavit.

I am in support of Mr. Riffin in Case # 2014-2014-0094 SPH

I do not object to Mr. Riffin's activities on his property. His equipment is not visible to me because his property is approximately 3 Acres away from mine. I do not recall hearing any noise from his property.

I rarely see Mr. Riffin except from a distance when he appears after a snow storm and plows out my driveway and many other driveways in the neighborhood. He seems to enjoy plowing the streets for us while Baltimore County is busy on the major roads beyond our community. I really appreciate his kindness in removing all that snow and thank him for doing that job.

I understand that under the penalties of perjury that the above information is true and correct to the best of my abilities.



Signature

AFFIDAVIT

My name is: MARSHA J. PARHAM
(Print your name)

I am the property owner of: 11001 Gateview Road
(Write your street address)

I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

I do not object to any of Mr. Riffin's activities on his property. None of his equipment is visible. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.

Marsha J. Parham
(Signature)

p-389
e-5

AFFIDAVIT

My name is: Debbie Nicolette
(Print your name)

I am the property owner of: 10921 Gateview Rd, Cockeysville MD
(Write your street address) 21030

I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

I do not object to any of Mr. Riffin's activities on his property. None of his equipment is visible. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.

Debbie Nicolette
(Signature)

AFFIDAVIT

P-389
A-9

My name is: THOMAS KRAMER
(Print your name)

I am the property owner of: 1 NORFOLK CT. 21030
(Write your street address)

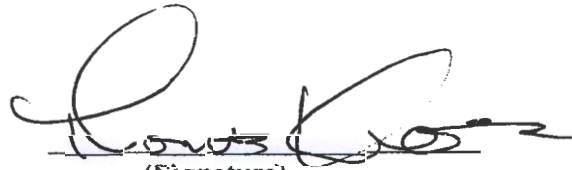
I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

I do not object to any of Mr. Riffin's activities on his property. None of his equipment is visible. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.


(Signature)

AFFIDAVIT

P.176

My name is: Bret Barrow
(Print your name)

I am the property owner of: 416 Osage Rd. 21030.
(Write your street address)

I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

I do not object to any of Mr. Riffin's activities on his property. None of his equipment is visible. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.


(Signature)

AFFIDAVIT

My name is: Britney (Scott) Harant
(Print your name)

I am the property owner of: 10921 Powers Ave.
(Write your street address)

I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

I do not object to any of Mr. Riffin's activities on his property. None of his equipment is visible. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.

Britney Harant
(Signature)

AFFIDAVIT

My name is: Anthony Buscemi
(Print your name)

I am the property owner of: 10811 Powers Ave.
(Write your street address)

I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

I do not object to any of Mr. Riffin's activities on his property. None of his equipment is visible. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.

Anthony Buscemi
(Signature)

AFFIDAVIT

My name is: Mary Jane Buscemi
(Print your name)

I am the property owner of: 10812 Powers Ave
(Write your street address)

I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

I do not object to any of Mr. Riffin's activities on his property. None of his equipment is visible. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.

Mary Jane Buscemi
(Signature)

AFFIDAVIT

My name is: Mike Kramer
(Print your name)

I am ~~the property owner~~ ^{A RESIDENT} of: Powers Ave
(Write your street address)

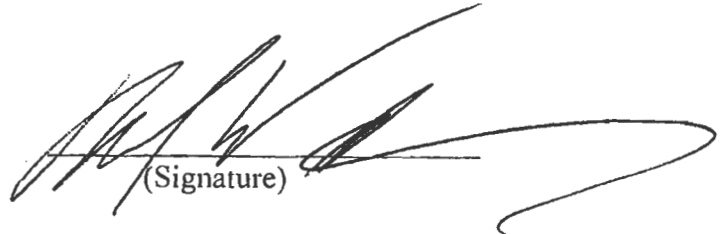
I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

I do not object to any of Mr. Riffin's activities on his property. None of his equipment is visible. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.


(Signature)

AFFIDAVIT

My name is: Loeri Burgess
(Print your name)

I am the property owner of: 10900 Powers Ave - Cockeysville
(Write your street address)

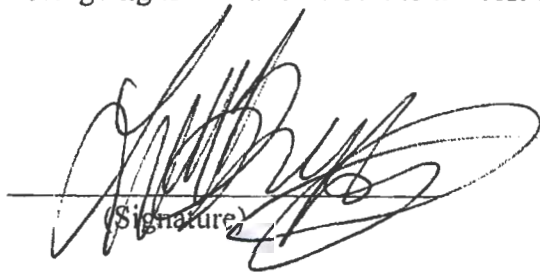
I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

I do not object to any of Mr. Riffin's activities on his property. None of his equipment is visible. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.


(Signature)

AFFIDAVIT

My name is: MARY RANDOLPH
(Print your name)

I am the property owner of: 10808 Power-ave
(Write your street address)

☒ I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

☒ I do not object to any of Mr. Riffin's activities on his property. None of his equipment is visible. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.

Robert Randolph
Mary Randolph
(Signature)

AFFIDAVIT

P.120

My name is: THOMAS REED
(Print your name)

I am the property owner of: 1109 POWERS AVE.
(Write your street address)

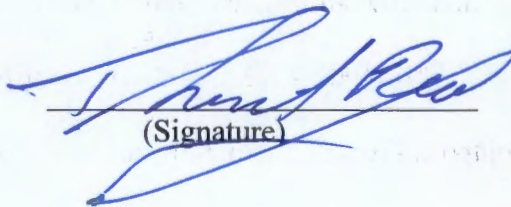
I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

I do not object to any of Mr. Riffin's activities on his property. None of his equipment is visible. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.


(Signature)

RECEIVED

JAN 02 2014

OFFICE OF ADMINISTRATIVE HEARINGS

AFFIDAVIT

p. 389
A-3

My name is: William E. Long.
(Print your name)

I am the property owner of: 11002 Gateview Rd. Cockeysville,
(Write your street address) md. 21030

I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

I do not object to any of Mr. Riffin's activities on his property. None of his equipment is visible. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.

William E. Long
(Signature)

AFFIDAVIT

P. 389
D-3

My name is: GARY GRILL
(Print your name)

I am the property owner of: 10922 Gateview Rd 21030
(Write your street address)

I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

I do not object to any of Mr. Riffin's activities on his property. None of his equipment is visible. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.

Gary Grill
(Signature)

AFFIDAVIT

p. 491

My name is: Jim Riffin
(Print your name)

I am the property owner of: 10815 Powers Ave.
(Write your street address)

I am over the age of 21. I am competent and authorized to make this Affidavit.

This Affidavit is made in support of Mr. Riffin in Case #: 2014-0094-SPH.

I do not object to any of Mr. Riffin's activities on his property. None of his equipment is visible. He rarely makes any noise.

Mr. Riffin uses some of his equipment to plow snow from driveways in our neighborhood. He does this gratis. He just shows up, plows a driveway, then leaves. He also plows the streets in our neighborhood when Baltimore County fails to plow the street.

I certify under the penalties of perjury that the foregoing is true and correct to the best of my personal knowledge.

Terry Mayne
Wanda Piotrowski
(Signature)

Thanks Jim
10815 Powers Ave

Terry Mayne
President



Dulaney Valley Assisted Living

5001 Carroll Manor Road
Baldwin, Maryland 21013

Phone: (410) 370-6288
Fax: (410) 252-2470
MayneTerry3@aol.com



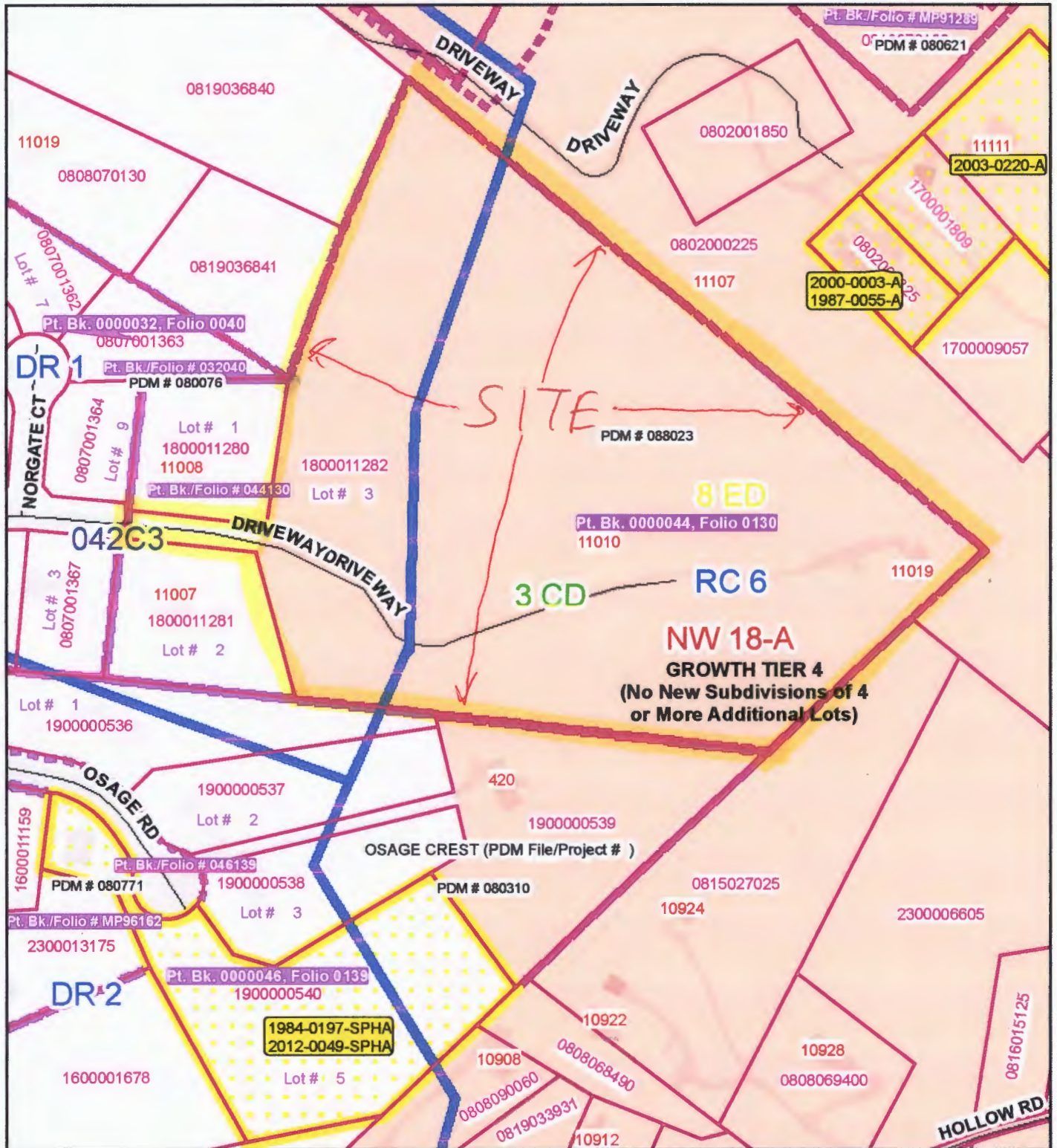
Real Property Data Search (w4)

[Search Help](#)

Search Result for BALTIMORE COUNTY

View Map	View GroundRent Redemption	View GroundRent Registration
Account Identifier: District - 08 Account Number - 1800011282		
Owner Information		
Owner Name:	RIFFIN JAMES RIFFIN KAROLE A PO BOX 42 COCKEYSVILLE MD 21030-0042	Use: RESIDENTIAL Principal Residence: YES Deed Reference: 1) 2)
Mailing Address:		
Location & Structure Information		
Premises Address:	11019 GATEVIEW RD 0-0000	Legal Description: 13.0 AC. RED FOX FIELDS
Map: 0042	Grid: 0024	Parcel: 0379
Sub District:	Subdivision: 0000	Section:
Block:	Lot: 3	Assessment Year: 2014
Plat No:	Plat Ref: 0044/ 0130	
Special Tax Areas:	Town:	Ad Valorem: NONE
Tax Class:		
Primary Structure Built	Above Grade Enclosed Area	Finished Basement Area
1976	1,560 SF	1.5200 AC
County Use	04	
Stories	Basement	Type
1.500000	NO	STANDARD UNIT
Exterior	Full/Half Bath	Garage
FRAME	1 full/ 1 half	
Last Major Renovation		
Value Information		
Base Value	Value	Phase-in Assessments
	As of	As of
	01/01/2011	07/01/2013
Land:	270,000	270,000
Improvements	118,900	118,900
Total:	388,900	388,900
Preferential Land:	0	
Transfer Information		
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Exemption Information		
Partial Exempt Assessments:	Class	07/01/2013
County:	000	0.00
State:	000	0.00
Municipal:	000	0.00
Tax Exempt:	Special Tax Recapture:	
Exempt Class:	NONE	
Homestead Application Information		
Homestead Application Status: Denied		

11019 Gateview Road



Publication Date: 10/15/2013



Publication Agency: Permits, Approvals & Inspections
Projection/Datum: Maryland State Plane,
FIPS 1900, NAD 1983/91 HARN, US Foot



0 50 100 200 300 400 Feet

1 inch = 200 feet

2014-0094-SPH

SPECIAL HEARING PLAN

Zoning hearing plan for Special Hearing.

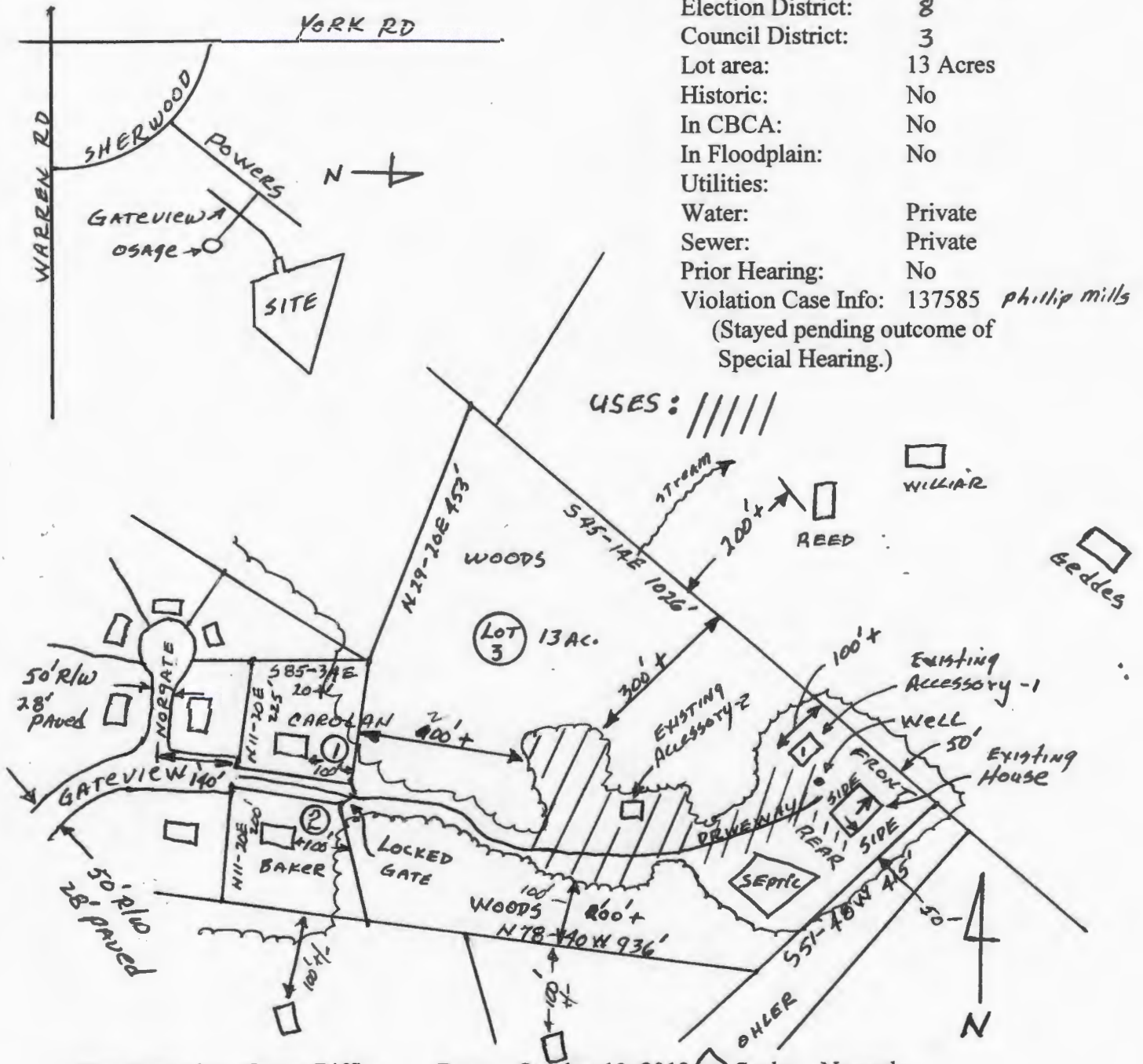
Address: 11019 Gateview Road Cockeysville, MD 21030 Owner: Karole & James Riffin

Subdivision Name: Red Fox Fields Lot: 3

Plat Book # 44 Folio # 130 Tax No.: 08-18-00-011282 Deed: Liber 5663 Folio 511

SITE VICINITY MAP
(Not to scale)

Zoning Map #: 042C3
Site Zoned: RC-6 /DR-1
Election District: 8
Council District: 3
Lot area: 13 Acres
Historic: No
In CBCA: No
In Floodplain: No
Utilities:
Water: Private
Sewer: Private
Prior Hearing: No
Violation Case Info: 137585 philip mills
(Stayed pending outcome of
Special Hearing.)



Plan drawn by: James Riffin

Date: October 12, 2013 Scale: No scale

2014-0094-SPH