15-235-SPHA

IN THE MATTER OF	*	**IN THE**
CATHERINE H. ROBINSON	*	**CIRCUIT COURT**
	*	**FOR**
	*	**BALTIMORE COUNTY**
	*	**Case No. 03-C-17-003467**

* * * * * * * * * * *

ORDER

On July 18, 2017, Petitioner, Catherine H. Robinson, through her attorney, Michelle Dickinson, Esquire, filed a Memorandum of Law in Support of Petition for Judicial Review (Paper 17000). On August 16, 2017, Citizen-Protestants, Andrew and Noreen Krause ("Protestants"), through their attorney, G. Macy Nelson, Esquire, filed an Answering Memorandum of Protestants (Paper 22000). This matter was set in for a hearing before this Court on October 11, 2017.

For the reasons set forth in Memorandum Opinion, it is this 25th day of January, 2018 by the Circuit Court for Baltimore County hereby:

ORDERED, that the Board of Appeals' denial of the Petitioner's request for variance in the above captioned matter is AFFIRMED.

Mickey J. Norman, Judge
Circuit Court for Baltimore County

Clerk, please docket only. Copies have been provided to:

Michelle Dickinson, Esquire, 10440 Little Patuxent Parkway, Suite 300, Columbia, Maryland 21044
G. Macy Nelson, Esquire, 401 Washington Avenue, Suite 803, Towson, Maryland 21204
Court File

IN THE MATTER OF	*	**IN THE**
CATHERINE H. ROBINSON	*	**CIRCUIT COURT**
	*	**FOR**
	*	**BALTIMORE COUNTY**
	*	**Case No. 03-C-17-003467**

* * * * * * * * * * *

ORDER

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CATHERINE H. ROBINSON	*	**CIRCUIT COURT**
	*	**FOR**
	*	**BALTIMORE COUNTY**
	*	**Case No. 03-C-17-003467**

* * * * * * * * * * *

MEMORANDUM OPINION

On July 18, 2017, Petitioner, Catherine H. Robinson, through her attorney, Michelle Dickinson, Esquire, filed a Memorandum of Law in Support of Petition for Judicial Review (Paper 17000). On August 16, 2017, Citizen-Protestants, Andrew and Noreen Krause ("Protestants"), through their attorney, G. Macy Nelson, Esquire, filed an Answering Memorandum of Protestants (Paper 22000). Petitioner's Reply to Protestants' Answering Memorandum was filed on September 5, 2017 (Paper 22001). This matter was set in for a hearing before this Court on October 11, 2017.

BACKGROUND

The Petitioner owns and resides on a 5.4 acre R.C. - zoned property in Northern Baltimore County. The subject property, 1012 Far Out Lane, is a rural, wooded area in Sparks, Maryland. Currently nine dogs reside at the subject property. The R.C.2 zone allows for three dogs or less to reside on the property; more than

three dogs constitutes a kennel.[1] Protestants own and reside on the property abutting the subject property. On December 18, 2014, Administrative Law Judge Beverungen ("ALJ") granted Petitioner's Petition for a Special Exception for a private kennel within a 200 foot setback ("December 2014 Order"). Protestants claim that they did not appeal the ALJ's Special Exception ruling because they believed the kennel would not have an adverse impact on them. Once the Petitioner took steps to comply with the special exception, she discovered that the area where she initially sought to build a kennel was deemed 'unbuildable' due to environmental issues. The Petitioner also states, that due to the topography of her property, she is unable to build a kennel that complies with the requirements of the special exception on any other area of her property. Apparently, for those reasons, the Petitioner did not secure the necessary building permits in the time prescribed in the December 2014 Order.

Because the Petitioner believed that she could not comply with the December 2014 Order, she filed a Petition for Special Hearing requesting that the ALJ amend the December 2014 Order, and permit a private kennel within 15 feet of the nearest property line by using her dwelling and the outside area, secured by an underground electric fence, for the kennel. Protestants opposed the requested variance, arguing that the variance would adversely affect their ability to use and enjoy their property. In particular, Protestants claim that the presence of nine dogs so close to the property

[1] Baltimore County Zoning Regulations (BCZR) defines a 'private kennel' as "any building, structure, or land, or any portion thereof, including a dwelling, that is used, intended to be used, or arranged." (B.C.Z.R. 1A01.2.C.2)

line devaluates the property, creates noise complaints due to barking, and results in pollution due to run off waste from the dogs that prevents swimming in the pond on Protestants' property. On at least two occasions, since January 2016, a dog from the Petitioner's kennel trespassed onto the Protestants' property, and fought with the Protestants' dogs; resulting in a veterinarian bill of $250.

Following a hearing on the Petitioner's request for a variance, the ALJ modified the December 2104 Order and, with some minor specific conditions of no importance to the issues before this Court, granted the variance in an Order of October 9, 2015 ("October 2015 Order"). The Protestants appealed the October 2015 Order to the Board of Appeals, which conducted a de novo appeal on April 19-20, 2016. In an Order of September 22, 2016, the Board of Appeals denied the Petitioner's request for a variance.

On October 20, 2016, the Petitioner filed a Motion for Reconsideration of the Boards' September 22, 2016 Order. In an Opinion and Order of March 10, 2017, the Board denied the Petitioner's Motion for Reconsideration.

On April 17, 2017, the Petitioner filed a Petition for Judicial Review (Paper 1000) requesting a judicial review of the Opinion and Order on Motion for Reconsideration dated March 10, 2017 and the Opinion and Order dated September 22, 2016. The Protestants' filed a Response on April 19, 2017 (Paper 1001).

On June 5, 2017, the Petitioner, asserting that she; ". . . is likely to Succeed on the Merits of Her Appeal," filed a Motion to Stay Enforcement of the Administrative

Decision Pending Appeal (Paper 3000). The Petitioner also filed a Memorandum in Support of the Motion to Stay Enforcement of the Administrative Decision Pending Appeal.

On June 27, 2017, the Protestants filed an Opposition to Motion to Stay Enforcement of Administrative Decision Pending Appeal (Paper 3001).

In an Order dated June 30, 2017, and docketed by the Clerk of the Circuit Court for Baltimore County on July 6, 2017, the Honorable Robert Cahill ("J. Cahill") denied the Petitioner's Motion to Stay Enforcement of the Administrative Decision Pending Appeal. In the meantime, on July 5, 2017, the Petitioner filed a Reply to Opposition to Motion to Stay Enforcement of the Administrative Decision Pending Appeal. In that Motion, the Petitioner requested a hearing.

On July 12, 2017, the Petitioner filed a Motion for Reconsideration of J Cahill's ruling denying the Petitioner's Motion to Stay Enforcement of the Administrative Decision Pending Appeal (Paper 16000).

On July 18, 2017, the Petitioner filed a Memorandum of Law in Support of Petition for Judicial Review (Paper 17000).

On July 28, 2017, the Protestants' filed an opposition to Motion for Reconsideration (Paper 16001).

The Petitioner's Motion for Reconsideration of the Court's Order Denying the Motion to Stay Enforcement of the Administrative Decision Pending Appeal was denied by J. Cahill on August 8, 2017 (Paper 16000 A). In spite of that Order, the

Petitioner continued to violate the zoning regulations by having more than three dogs on the subject property.

On August 16, 2017, the Protestants' filed an Answering Memorandum (Paper 22000). Not to be outdone, on September 5, 2017, the Petitioner filed a Reply to Protestants' Answering Memorandum (Paper 22001).

On October 11, 2017, the Parties, represented by counsel, appeared before the Court and presented argument on the Petitioner's Request for Judicial Review.

ISSUES

Petitioner's Memorandum in support of the Motion to Stay Enforcement of the Administrative Decision Pending Appeal, filed on June 5, 2017, presented three arguments:

A. The Board's Ruling That The Variance Must Be Denied As A Substantial Deviation From BCZR § 421.1 Is Contrary To The Fact And Clearly Erroneous.

B. The Board's Ruling That Ms. Robinson's Petition Is Barred By Failure To Appeal, Res Judicata, And Collateral Estoppel Is Contrary To Fact And Clearly Erroneous.

C. The Board's Ruling That Ms. Robinson Has Not Proved Practical Difficulty And Has Self-Imposed Any Hardship Is Contrary To Fact And Clearly Erroneous.

The Petitioner's Memorandum of Law in Support of Petition for Judicial Review, filed on July 18, 2017, presented the following questions for consideration:

1. Did the Board of Appeals err when it determined that Ms. Robinson had not proved practical difficulty and that any hardship was self-imposed?

2. Did the Board of Appeals err when it determined that the variance relief sought by Ms. Robinson was such a substantial deviation from BCZR 421.1's setback requirement that it must be denied?

3. Did the Board of Appeals err when it determined that Ms. Robinson's petition for a variance was barred by her failure to appeal the special exception Order, res judicata, or collateral estoppel?

The Protestants' Answering Memorandum, filed on August 16, 2017, seems to be responding to the arguments set forth in the both the Petitioner's Memorandum in support of the Motion to Stay Enforcement of the Administrative Decision Pending Appeal, and Petitioner's Memorandum of Law in Support of Petition for Judicial Review.

The Protestants' Answering Memorandum (Paper 22000) presents the following issues which have been set forth herein verbatim:

1. Whether the doctrine of res judicata bars Petitioner's application for a variance of the setback requirement of 200 feet because the December 2015 Order determined that the setback must be 200 feet and the Petitioner did not appeal that decision.

2. Whether substantial evidence supports the Board's finding that Petitioner's application to reduce the setback requirement for the kennel from 200 to 15 feet violated the rule in *Alviani v. Dixon* 365 Md. 95 (2001) *that* "the granting of the variances may not so alter the criteria for the granting of the special exception so that the criteria of the special exception would be swallowed by the variance…"

3. Whether the Petitioner proved that BCZR section 421.1 disproportionately impacted her.

4. Whether substantial evidence supports the Board's finding that the Petitioner did not prove a practical difficulty.

   A. Whether there are other permitted uses for the Subject Property.

B. Whether substantial evidence supports the Board's finding that Petitioner failed to prove that she had a substantial and urgent need for the variance and the variance was not merely for her convenience.

C. Whether substantial evidence supports the Board's finding that the Petitioner imposed on herself any difficulty.

D. Whether substantial evidence supports the Board's finding that the Petitioner failed to prove that the granting of the variance would do substantial justice to nearby property owners.

The Petitioner's Reply to Protestants' Answering Memorandum (Paper 22001) presents the following issues, which have been set forth herein:

I. Standard of Review

II. The Board Erroneously Ruled that Res Judicata and Collateral Estoppel Bar Ms. Robinson's Variance Petition.

III. The Board's Interpretation and Application of *Alviani v. Dixon* is Erroneous and its Finding is not Supported by Substantial Evidence.

IV. Ms. Robinson Proved that her Property is "Unique".

V. The Board's Ruling that Ms. Robinson has not proved practical difficulty is arbitrary, capricious and contrary to law.

a. Protestants' purported "no other permitted uses" Standard is not the law.

b. The Board did not find that Ms. Robinson failed to prove a substantial and urgent need for the variance.

c. The Board erroneously ruled that any practical difficulty was self-imposed.

d. The Board erroneously ruled that Ms. Robinson failed to prove that the variance would do substantial justice to neighbors.

DISCUSSION

I. Standard of Review

Citing *Angelini v. Harford County*, the Protestants suggest that the standard of review is "even more deferential" when an agency disapproves an application for a variance. *Angelini v. Harford County* 144 Md. App. 369, 378 (2002). The Petitioner correctly points out that the Protestants' reliance on *Angelini* is misplaced.

In *Angelini*, Judge Moylan, employing allegorical reference to Lewis Carrol's *Through the Looking Glass*, among other analysis, discussed the distinction between the burdens of production versus the burden of persuasion. The Court of Special Appeals held that an administrative agency enjoys some deference with respect to the interpretation of a law or regulation with which the agency has "special expertise." *Angelini v. Harford County* 144 Md. App. 369, 378 (2002). Writing for the Court Judge Moylan explained:

> The critical agency determination in this case was not a finding of fact. Neither was it a ruling of law in the more common sense, although it was more like the latter than like the former. It was, rather, the agency's interpretation of a law or regulation with respect to which the agency has a special expertise. When such an interpretation is under review, judicial deference is called for. *Id.* at 373.

In the matter before this Court, there is no law or regulation about which the Board of Appeals has special expertise that would, even if warranted, necessitate this Court to deviate from the required standard of review.

The Court of Appeals extensively discussed the role of a court in reviewing an adjudicatory decision of an administrative agency. *Maryland Aviation Administration v. Noland,* 386 Md. 556 (2005), Citing *Board of Physician Quality Assurance v. Banks,* 354 Md. 59, 67–69, (1999). That Court explained that:

> "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 and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.' *United Parcel,* 336 Md. at 577. (Code reference omitted).

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, (1978). A reviewing court should defer to the agency's fact-finding and drawing of inferences if they are supported by the record. *CBS v. Comptroller,* 319 Md. 687 (1990). 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.' *Id.* at 698.

In zoning matters, courts have,

> [C]onsistently held that on judicial review of decisions granting or denying special exceptions, the correct test to be applied is whether the issue before the administrative body is 'fairly debatable,' that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions... [and the court will not substitute] judgment for that of the administrative body, unless its action is shown to be arbitrary, capricious or illegal. *Sembly v. County Bd. of Appeals,* 269 Md. 177, 182, 304 A.2d 814, 818 (1973).

In reviewing the matter sub judice, this Court shall give due deference to the Board of Appeals' findings of fact and carefully scrutinize any conclusions of law in the application of the facts.

II. Res Judicata and Collateral Estoppel do not bar Petitioner's Application for a variance.

Protestants argue that Petitioner's Application for a variance should be barred under the doctrine of res judicata. Res judicata bars litigation of the same matter with respect not only to the legal claims or issues decided in the case but also as to all matters, which could have been litigated in the first suit. *Alvey v. Alvey*, 225 Md. 386, 290, 171 A.2d 92, 94 (1961). The Petitioner's request for variance was not litigated in the special exception proceeding because the necessity of the variance was not known. At the time of the hearing in which the Petitioner sought the special exception, the Petitioner believed that she could comply with BCZR 421.1 because she has sufficient acreage within her property to erect a separate kennel structure. Only after the Petitioner hired a professional surveyor and landscape contractor did she discover that she was unable to abide by the ALJ's December 2014 ruling because environmental restrictions related to the configuration of her property prohibited the building of a separate kennel structure. The ALJ presumably granted the special exception, in part, because the Petitioner believed that she could comply with the requested special exception. Presumably, that ruling was acceptable to the Protestants because they did not appeal that decision.

Petitioner also states that res judicata may not prevent a second hearing on a previously decided matter where there is a substantial change in circumstances. *Seminary Galleria LLC v. Dulaney Valley Impr. Assn. Inc., 192 Md. App. 719, 734 (2010); Jack v. Foster Branch Homeowner's assn. No, Inc.*, 53 Md. App. 323, 33 (1982). Here, there is a substantial change in circumstances. At the time the December 2014 Order granting the special exception was entered, neither Party knew that the Petitioner would be unable to comply with the directive of the December 2014 Order. It was not until the Petitioner attempted to comply with that Order that she learned that environmental limitations regarding the subject property prohibited her from complying with that Order. That new information is a substantial change in circumstances.

Collateral estoppel applies only where the identical issue sought to be re-litigated was actually determined in the earlier proceeding. *Reid v. State*, 119 Md. App. 129, 137 (1998). The Petition for a special exception for a private kennel within a 200 foot setback was heard and considered by Administrative Law Judge Beverungen. The Order granting that request was signed on December 18, 2014. The request for variance was not discussed or considered by the ALJ because at that time the Petitioner believed she could comply with the Order granting the special exception. The issue concerning the variance was not previously considered during the hearing on the Petitioner's request for special exception. Neither collateral estoppel nor res judicata bar Petitioner's application for a variance.

III. Petitioner's application to reduce the setback requirement for the kennel from 200 feet to 15 feet does not violate the rule in *Alviani v. Dixon* 365 Md. 95 (2001).

Protestants argue that "the granting of the variances may not so alter the criteria for the granting of the special exception so that the criteria of the special exception would be swallowed by the variance..." *Alviani v. Dixon*, 365 Md. 95 (2001). According to the Protestants, the variance, if approved, would swallow the special exception by substantially altering the criteria from 200 feet to 15 feet. *In Alviani,* the Court held that the "Board had the authority to grant a special exception with variances when the Anne Arundel County Code precluded variances from being applied to some sections of the code and the special exception section was not one of those included sections." *Alviani v. Dixon*, 365 Md. 95 (2001). The Board, in *Alviani,* determined that the variances would not alter the essential character of the area and that *the variances would not impair the use or development of the adjacent properties* [emphasis added]. Under Article 3, Section 2-107 of the Anne Arundel County Code, governing Standards for Granting [a] Variance, there must be a determination that "because of certain unique physical conditions...there is no reasonable possibility of developing the lot in strict conformance with this article; *or* that because of exceptional circumstances...the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship." The court summarized that "where the facts and circumstances indicate that the particular special exception use and location proposed would cause an adverse effect upon adjoining and surrounding properties unique and

different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone, the application should be denied." *Alviani v. Dixon*, 365 Md. 95 (2001). [2]

This reading of *Alviani* indicates that if there is an adverse effect on the neighboring properties then the variance should be denied. *Id.* at 113. In sub judice, the Protestants claim that that granting the variance will adversely affect their use of their property. However, the Protestants have failed to introduce evidence to support that claim. The Board and Protestant's reliance on *Alviani* is misplaced.

IV. While Petitioner proved that her property is unique, she did not prove that the uniqueness causes a disproportionate impact under BCZR 421.1.

An application for a variance must prove the following three elements: (1) the property is unique [already assumed in this case], (2) the uniqueness causes the disproportionate impact of the ordinance, and (3) the disproportionate impact of the ordinance results in a practical difficulty.

The Petitioner is disproportionately impacted by the uniqueness of her property. There are seven properties that are large enough near the subject property that, absent a variance, would be unable to construct a kennel. (TT. 4/19/16, pgs. 159-160 and TT. 4/20/16, pg. 41). At the Hearing for Judicial Review on October 11, 2017, Petitioner's counsel argued that it was not simply the size of the parcel of land,

[2] Article 3, Section 2-107(c) of the Anne Arundel County Code states that a variance may not be granted under (a) or (b) unless Board finds (1) the variance is necessary to afford relief, (2) granting will not (i) alter the essential character of the neighborhood or district in which the lot is located.

but also the position of the 100 year old house that creates the unique situation, and the need for a variance. While seven neighboring properties may be large enough to build a separate dog kennel structure on their property, as Protestants state, this is not the only issue that the Petitioner faces. The place on subject property with enough space to build a kennel is unbuildable, and the Petitioner's house where she wishes to continue housing the dogs is within 15 feet of the neighboring property. The issue is not whether the Petitioner's property is large enough, but that there are other factors, like the position of her house, that prevent the Petitioner from constructing a dog kennel that complies with the special exception. The Petitioner has shown that these unique aspects of her property cause a disproportionate impact that is not shared by the neighboring properties. However, as further set forth herein, the Petitioner did not prove a practical difficulty.

V. Board correctly found that Petitioner did not prove a practical difficulty.

The practical difficulty standard is determined by four things: (1) there is no permitted use for the subject property, (2) the need for the variance is substantial and urgent and not merely for the convenience of the applicant, (3) any difficulty is not self-imposed and (4) the grant of the variance would do substantial justice to nearby property owners. The Petitioner did not prove a practical difficulty for the following reasons:

a. Strict compliance with BCZR 421.1 would not unreasonably prevent the Petitioner from using the property for a permitted purpose or be unnecessarily burdensome.

The subject property is the Petitioner's primary residence, and between 1994 and 2000, she lived there without the need for a kennel. This illustrates that she is able to reasonably use the subject property without a variance. In this case, there are, as Protestants suggest, other uses for the subject property besides a kennel (Paper 22000).[3] Strict compliance would not unreasonably prevent the Petitioner from using the property for a permitted purpose. Petitioner asserts that conformity to BCZR 421.1's restrictions would be unnecessarily burdensome without a variance. BCZR 421.1 is not preventing her from keeping dogs on the property; it simply limits the number of dogs allowed. The Petitioner chose to bring nine dogs onto the property. Thus, she imposed upon herself the circumstances, which now cause her to seek the variance.

b. The Board correctly found that Petitioner failed to prove that she had a substantial and urgent need for the variance, and that the variance was not merely for her own convenience.

The Board found that Petitioner did not prove a substantial and urgent need for variance, but rather, a need based on her convenience. In response, the Petitioner asserted that without a variance she cannot use the property as a private kennel to continue to rescue dogs. The Petitioner argues that by rescuing dogs, she is fulfilling a

[3] Protestants state (as examples) that she can have up to three dogs, farm the land, keep horses, and operate a farmer's roadside stand.

need within the community. While she makes this claim, there is no testimony or other evidence that having a kennel to rescue dogs is fulfilling a community need. Petitioner argues that "a variance is warranted if the applicable zoning restriction when applied to the property in the setting of its environment is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership." *Muller v. People's Counsel for Baltimore County*, 177 Md. App. 43, 70 (2007). The Petitioner's assertion that rescuing dogs positively impacts the community is subjective. She fails to present evidence that the need for the variance is *substantial* and *urgent*. She states that the dogs are unadoptable and impossible to rehome, but there is no corroborating evidence presented to support that claim. Furthermore, the applicable zoning restriction, which limits the number of dogs allowed to live on the property, is not interfering with a basic right of private ownership. The Petitioner has failed to show that the Board of Appeals' denial of her request for variance was arbitrary and capricious.

c. **The Board correctly found that the Petitioner's hardship was self-created.**

Self-created hardship requires an affirmative action, exclusively by a property owner or his predecessor in title that is itself the sole reason for the need for the variance. *See Ad + Soil, Inc. v. County Commn. Queen Anne's County,* 307 Md. 307, 312, 339-40 (1986).

Ad + Soil, Inc. operated a sludge storage and distribution facility located in Queen Anne's County, Maryland. A Zoning Ordinance imposed certain setback requirements upon sewage sludge storage and distribution facilities. The record contained uncontroverted testimony that Ad + Soil's facilities failed to comply with the required setbacks, and in order to obtain a conditional use permit, it was necessary for Ad + Soil to obtain variances from these setback requirements. The Queen Anne's County Board of Appeals ruled,

> [T]hat the sludge storage facilities being applied for could easily be located on that property so as to comply with all of the setback requirements of the Queen Anne's County Zoning Ordinance. The only extraordinary circumstances which would seem to exist in this case are self inflicted and a result of [Ad + Soil's] construction of the facilities on the site without conforming to the Ordinance's required setbacks. *Id.* At 316.

In that case, the Court upheld the Board's decision to deny the variances, "concluding that Ad + Soil's 'hardship' was self-inflicted...that it was not the result of exceptional or extraordinary characteristics of the land itself and, therefore, not the kind of hardship cognizable under the Zoning Ordinance." *Ad + Soil, Inc. v. County Commn. Queen Anne's County,* 307 Md. 307, 312, 339-40 (1986). The Court agreed with the Board, that the only hardships facing Ad + Soil were of its own making.

Similarly, the Petitioner's need for a variance is self- imposed. The Petitioner knew that the number of dogs she brought onto the subject property was in excess of the zoning restrictions. She chose to ignore the zoning restrictions. Because she could not comply with the special exceptions Order, she now seeks a variance. Both the request

for special exception and the request for variance are because she, like Ad + Soil, Inc., created the circumstance, which necessitated the need to request a variance.

The Petitioner argues that (1) BCZR 421.1's 200 foot setback requirement prevents her from using her house, and (2) she cannot build a kennel structure in the special exception area because of wetland/topography and BCZR 400.1's requirement that accessory structures be built in the rear of the house. In short, the Petitioner is arguing that the practical difficulty is imposed by the property, not imposed by her own making. Topography and the placement of the house may not be a self-inflicted or a self-created hardship, but the necessity of the variance is self-imposed. It was the Petitioner's decision to bring a number of dogs onto her property in excess of county code regulations. There would be no need for a variance or a special exception if not for the Petitioner's decision to house more than three dogs.

d. The Board did not erroneously rule that Petitioner failed to prove that the variance would do substantial justice to neighbors.

The Petitioner failed to prove that the variance would do substantial justice to nearby property owners. Petitioner acknowledged at the hearing before this Court that there is no evidence in record that the community supports the variance, only that neighbors have attended previous hearings on the matter. The Petitioner asserts that while the Protestants made complaints about the dogs, there is no testimony or evidence presented at the hearing indicating that neighbors, other than the Protestants, have made similar complaints, or that excessive barking complaints have

been made. While this is true, it is the Petitioner's burden, not the Protestant's, to prove that the granting of the variance would do substantial justice to nearby property owners. "Generally speaking, property owners are not entitled to zoning changes automatically just because nobody opposes them." *See Angelini* at 377, citing *Pollard's Towing, Inc. v. Berman's,* 137 Md. App. 277, 289–90, (2001).

Petitioner also argues that the variance would allow her to continue to serve the community by caring for animals. She states that she has great community support, but there is no evidence in the record that supports this assertion. The Petitioner fails to prove that the granting of the variance would do substantial justice to nearby property owners.

CONCLUSION

For the reasons set forth herein, the Board of Appeals' ruling denying the Petitioner's request for variance and the Board's ruling denying the Petitioner's Motion for Reconsideration shall be upheld, and the Petitioner's request for variance is denied.

Mickey J. Norman, Judge
Circuit Court for Baltimore County
January 25, 2018

Clerk, please docket only. Copies have been provided to:

Michelle Dickinson, Esquire, 10440 Little Patuxent Parkway, Suite 300, Columbia, Maryland 21044
G. Macy Nelson, Esquire, 401 Washington Avenue, Suite 803, Towson, Maryland 21204
Court File

PETITION OF: CATHERINE H. ROBINSON	*	IN THE
	*	CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE OPINION OF THE BOARD OF APPEALS OF BALTIMORE COUNTY	*	FOR
	*	BALTIMORE COUNTY
IN THE MATTER OF: CATHERINE H. ROBINSON FOR PROPERTY LOCATED AT 2012 FAR OUT LANE	*	CASE NO. 03-C-17-003467
5TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	
	*	
BOARD OF APPEALS CASE NO.: 15-235-SPHA	*	

* * * * * * * * * * * * * * *

ORDER

It is this 8th day of August, 2017 by the Circuit Court for Baltimore County,

ORDERED that the Petitioner's Motion for Reconsideration of this Court's Order Denying Motion to Stay Enforcement of Administration Decision Pending Appeal be, and is hereby, denied.

JUDGE

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

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

Case Number: 03-C-17-003467 AA
Administrative Agency : 15235SPHA
C I V I L

In the Matter of Catherine H Robinson

Notice

Pursuant to Maryland Rule 7-206(f), you are advised that the Record of Proceedings was filed on the 2nd day of August, 2017.

Julie L. Ensor

Julie L. Ensor
Clerk of the Circuit Court, per EMH

Date issued: 08/03/17

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

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

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

Case Number: 03-C-17-003467 AA
Administrative Agency : 15235SPHA
C I V I L

In the Matter of Catherine H Robinson

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 19th day of June, 2017.

Julie L. Ensor

Julie L. Ensor
Clerk of the Circuit Court, per MD

Date issued: 06/19/17

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

RECEIVED
JUN 21 2017
BALTIMORE COUNTY
BOARD OF APPEALS

Record was filed 6/9/2017

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULIN

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

Assignment Date: 06/14/17

Board Of Appeals Of Baltimore County
105 West Chesapeake Ave S
Towson MD 21204

Case Title: In the Matter of Catherine H Robinson
Case No: 03-C-17-003467 AA

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: the DCM Office at (410) 887-3233. **You must notify the DCM Office within 15 days of the receipt of this Order as to any conflicts with the following dates:**

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 06/
2. All Motions (excluding Motions in Limine) are due by..... 09/
3. TRIAL DATE is..... 10/
   Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned; 1/2 HOUR ADMINISTRATIVE APPEAL

Honorable Kathleen Gallogly
Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship o
All requests for postponement must be submitted in writing with a copy to all counsel/parties involved. All
postponement must be approved by the Judge.

Settlement Conference (Room 507): All counsel and their clients MUST attend the settlement conference in
representatives MUST attend this conference in person as well. Failure to attend may result in sanction
hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [
information.)

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

Voluntary Dismissal: Per Md. Rule 2-506, after an answer or motion for summary judgment is fi
without leave of court by filing a stipulation of dismissal signed by all parties who have ap
shall be filed with the Clerk's Office. Also, unless otherwise provided by stipulation or o
responsible for all costs of the action.

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

Camera Phones Prohibited: Pursuant to Md. Rule 16-109 b.3., **cameras and recording equi**
and adjacent hallways. This means that camera cell phones should not be brought with

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

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

Case Number: 03-C-17-003467 AA
Administrative Agency : 15235SPHA
C I V I L

In the Matter of Catherine H Robinson

You are hereby notified that upon Request for Appeal (Record), this case was transferred to the CIRCUIT COURT FOR BALTIMORE COUNTY
Entered on: 13th day of June, 2017.

Pursuant to Maryland Rule 7-113(d)(1), appellant shall file a memorandum in opposition to the decision of the District Court within 30 days after the date the appeal was entered on the docket or as otherwise ordered by the court. The appellee may file a response within 15 days after service of the appellant's memorandum, but in no event later than five days before the date of argument, if argument has been scheduled.

Julie L. Ensor

Julie L. Ensor
Clerk of the Circuit Court, per_____

Date issued: 06/13/17

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

RECEIVED
JUN 15 2017
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE CIRCUIT COURT FOR
BALTIMORE COUNTY, MARYLAND

PETITION OF CATHERINE H. ROBINSON
2012 Far Out Lane
Sparks, Maryland 21152

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

IN THE CASE OF *Catherine H. Robinson*
Case No.: 15-235-SPHA

Case No. 03-C-17-003467

[PROPOSED] ORDER

Upon consideration of Petitioner's Motion to Stay Enforcement of Administrative Decision Pending Appeal, and any opposition to the motion, it is this 30th day of June, 2017, **ORDERED:** DENIED

1. That the Motion is [redacted]

[redacted]

Judge, Circuit Court for Baltimore County

RECEIVED
JUL 10 2017
BALTIMORE COUNTY
BOARD OF APPEALS

True Copy Test
JULIE L. ENSOR, Clerk
Per _____
Assistant Clerk

FILED JUL 06 2017

Board of Appeals of Baltimore County

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

June 9, 2017

VIA HAND-DELIVERY
Civil Clerk
Circuit Court for Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

RE: In the matter of: Catherine H. Robinson
Civil Action No.: 03-C-17-003467
Board of Appeals Case No.: 15-235-SPHA

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. If you have any questions, please do not hesitate to contact me.

Very truly yours,

Tammy A. McDiarmid

Tammy A. McDiarmid
Legal Secretary

Enclosures

c: Michelle J. Dickinson, Esquire
G. Macy Nelson, Esquire
Catherine H. Robinson
Andrew and Noreen Krause
Anita Krause
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF:
CATHERINE H. ROBINSON *

FOR JUDICIAL REVIEW OF THE OPINION OF * CIVIL ACTION
THE BOARD OF APPEALS NO. : 03-C-17-003467
OF BALTIMORE COUNTY *
JEFFERSON BUILDING – ROOM 203
105 W. CHESAPEAKE AVENUE *
TOWSON, MARYLAND 21204
*
IN THE MATTER OF:
CATHERINE H. ROBINSON *
FOR PROPERTY LOCATED AT
2012 FAR OUT LANE *

5TH ELECTION DISTRICT *
3RD COUNCILMANIC DISTRICT
*
BOARD OF APPEALS CASE NO.: 15-235-SPHA

* * * * * * * * * * * *

FILED
2017 JUN -9 AM 11:37
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

April 23, 2015	Petition for Special Hearing to request the Administrative Law Judge to amend the December 18, 2014 Order granting a Special Exception for a private kennel in Case No. 2015-0092-X as shown and indicated on the site plan filed in this case, and Petition for Variance from Section 421.1, BCZR to permit a private kennel in a RC-2 zone to be located within 15

	feet of the nearest property line in lieu of the required 200 feet, filed by Michelle J. Dickinson, Esquire on behalf of Catherine H. Robinson.
May 4, 2015	Entry of Appearance filed by People's Counsel for Baltimore County.
May 11, 2015	Notice of Zoning Hearing
May 19, 2015	Certificate of Publication in newspaper
May 21, 2015	Certificate of Posting
June 9, 2015	Letter to the Office of Administrative Hearings from G. Macy Nelson, Esquire requesting a postponement.
June 10, 2015	Letter to the Office of Administrative Hearings from Michelle J. Dickinson, Esquire objecting to the postponement request as Petitioner won't be able to comply with ALJ Beverungen's December 18, 2014 Order.
June 10, 2015	E-mail to counsel from ALJ Beverungen granting the postponement request, and extending the date for compliance until 30 days after the final order is issued, unless order specifies otherwise.
June 10, 2015	Memorandum to Office of Zoning Review from the Office of Administrative Hearings regarding rescheduling hearing.
June 18, 2015	New Notice of Zoning Hearing
July 30, 2015	Certificate of Posting
August 6, 2015	Certificate of Publication in newspaper
August 20, 2015	ZAC Comments
September 23, 2015	Hearing held before the Office of Administrative Hearings.
October 2, 2015	Memorandum of Law filed by Michelle J. Dickinson, Esquire on behalf of Catherine H. Robinson, Petitioner.
October 5, 2015	Memorandum filed by G. Macy Nelson, Esquire on behalf of Noreen and Andrew Krause, Protestants.

October 9, 2015	Opinion and Order issued by the Administrative Law Judge wherein the Petition for Special Hearing, and the Petition for Variance were GRANTED, with conditions.
November 4, 2015	Notice of Appeal filed by G. Macy Nelson, Esquire on behalf of Andrew Krause and Noreen Krause, Protestants.
November 6, 2015	Appeal received by the Board.
November 23, 2015	Notice of Assignment issued by the Board.
December 1, 2015	Letter to Board from Michelle J. Dickinson, Esquire requesting a postponement.
December 4, 2015	Notice of Postponement issued by the Board.
December 4, 2015	Letter to Michelle J. Dickinson, Esquire from the Board offering new dates.
January 11, 2016	Notice of Assignment issued by the Board.
April 19, 2016	Board convened for a Hearing, Day 1.
April 20, 2016	Board convened for a Hearing, Day 2.

Exhibits submitted at Hearings before the Board of Appeals:

Petitioner's Exhibit No.

1 – January 2014 Mid-Atlantic Magazine article about Catherine Robinson.
2 – 11 photographs of several different dogs
3 – Letters of Support for Ms. Robinson (NOT ADMITTED)
4 – Photographs of property, 4-1 thru 4-46
5 – Flash drive with video showing the topography of the property
6 – Site Plan
7 – Map showing several parcels of land near the subject property
8 – Map marked with colored pens showing the subject property and several parcels of land
9 – Table Identifying Each Map Parcel by Number – sorted by acreage

Protestants' Exhibit No.

1 – Map with highlight
2 – Marked-up Site Plan (replica of Petitioner's Exhibit)
3 – Photos (14, 32, 34, 33, 31, 42, 1, 20)
4 – Arial photograph My Neighborhood Map showing the subject property (125)
5 – My Neighborhood Map printed 4/14/2016
6 – My Neighborhood Map arial view of 1916 Akehurst Road printed 4/1/2016
7 – My Neighborhood Map 1940 Akehurst Road (Krause) printed 4/1/2016
8 – Photographs of Krause house and pond (8-1) (8-2)
9 – Table Identifying Each Map Parcel by Number – Sorted by Parcel Acreage (associated with Protestants' Exhibit 4)
10 – My Neighborhood Map printed 4/14/2016 (Exhibit 5) marked in orange as definition of neighborhood.
11 – My Neighborhood Map printed 4/1/2016 showing (#24) 16310 Yeoho Road
12 – Photographs of (#24) 16310 Yeoho Road
13 – My Neighborhood Map printed 4/1/2016 (#212) 2009 Stringtown Road
14 – Photograph (#212) 2009 Stringtown Road
15 – My Neighborhood Map (#212) 2009 Stringtown Road and (#281) 2317 Stringtown Road, printed 4/2/2016
16 – My Neighborhood Map (#281) 2317 Stringtown Road printed 4/1/2016
17 – Photograph of (#281) 2317 Stringtown Road
18 – My Neighborhood Map (#275) 15710 Falls Road, printed 4/1/2016)
19 – Photographs (3) of (#275) 15710 Falls Road
20 – My Neighborhood Map (#277) 15630 Falls Road, printed 4/1/2016
21 – Table Identifying Each Map Parcel by Number – Sorted by Parcel Number
22 – Site Plan – marked in colors
23 – Chart showing the distance from the Subject Property to neighboring parcels

May 25, 2016 — Memorandum of Law filed by Michelle J. Dickinson, Esquire on behalf of Catherine H. Robinson.

May 25, 2016 — Memorandum of Citizen-Protestants filed by G. Macy Nelson, Esquire.

June 21, 2016	Board convened for Public Deliberation.
September 22, 2016	Opinion and Order issued by the Board wherein the Petition for Special Hearing to Amend the December 18, 2014 Order and the accompanying request for variance relief were DENIED.
October 20, 2016	Motion for Reconsideration filed by Michelle J. Dickinson, Esquire on behalf of Catherine H. Robinson, Petitioner/Appellant.
November 7, 2016	Citizen-Protestants' Opposition to Petitioner's Motion for Reconsideration filed by G. Macy Nelson, Esquire.
November 16, 2016	Public Deliberation held on Motion for Reconsideration and Opposition thereto.
March 10, 2017	Opinion and Order on Motion for Reconsideration issued by the Board wherein the Motion was DENIED.
April 7, 2017	Petition for Judicial Review filed in the Circuit Court for Baltimore County by Michelle J. Dickinson, Esquire on behalf of Catherine H. Robinson, Petitioner/Appellant.
April 12, 2017	Copy of Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals.
April 14, 2017	Certificate of Compliance sent to all parties and interested persons.
April 19, 2017	Response to Petition for Judicial Review filed by G. Macy Nelson, Esquire on behalf of Andrew and Noreen Krause, Protestants.
June 9, 2017	Transcript of testimony filed.
June 9, 2017	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
appealsboard@baltimorecountymd.gov

c: Michelle J. Dickinson, Esquire
G. Macy Nelson, Esquire
Catherine H. Robinson
Andrew and Noreen Krause
Anita Krause
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

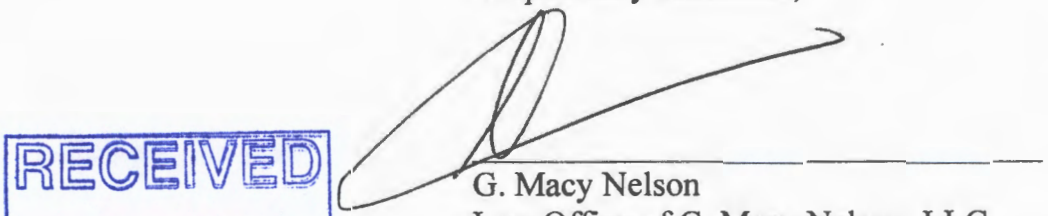
PETITION OF: CATHERINE H. ROBINSON	*	IN THE
	*	CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE OPINION OF THE BOARD OF APPEALS OF BALTIMORE COUNTY	*	FOR
	*	BALTIMORE COUNTY
IN THE MATTER OF: CATHERINE H. ROBINSON FOR PROPERTY LOCATED AT 2012 FAR OUT LANE	*	CASE NO. 03-C-17-003467
5TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	
	*	
BOARD OF APPEALS CASE NO.: 15-235-SPHA	*	

* * * * * * * * * * * * * * *

RESPONSE TO PETITION FOR JUDICIAL REVIEW BY CATHERINE H. ROBINSON

Andrew and Noreen Krause, by their attorney, G. Macy Nelson, file this response to the Petition for Judicial Review by Catherine H. Robinson pursuant to Maryland Rule 7-204(a) and state that they intend to participate in the action for judicial review.

Respectfully submitted,



G. Macy Nelson
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204
(410) 296-8166
Counsel for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of April, 2017, a copy of the foregoing Response to Petition for Judicial Review of Catherine H. Robinson was mailed, first class, postage prepaid, to:

Michelle J. Dickinson, Esquire
Law Office of Michelle J. Dickinson, LLC
10440 Little Patuxent Parkway, Suite 300
Columbia, Maryland 21044
Counsel for Petitioner

Board of Appeals of Baltimore County
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204
Administrative Agency

G. Macy Nelson, Esquire

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF:
CATHERINE H. ROBINSON *

FOR JUDICIAL REVIEW OF THE OPINION OF * CIVIL ACTION
THE BOARD OF APPEALS NO. : 03-C-17-003467
OF BALTIMORE COUNTY *
JEFFERSON BUILDING – ROOM 203
105 W. CHESAPEAKE AVENUE *
TOWSON, MARYLAND 21204
*
IN THE MATTER OF:
CATHERINE H. ROBINSON *
FOR PROPERTY LOCATED AT
2012 FAR OUT LANE *

5TH ELECTION DISTRICT *
3RD COUNCILMANIC DISTRICT
*
BOARD OF APPEALS CASE NO.: 15-235-SPHA

* * * * * * * * * * * *

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:

Michelle J. Dickinson, Esquire
Law Office of Michelle J. Dickinson, LLC
10440 Little Patuxent Pkwy., Suite 300
Columbia, MD 21044

G. Macy Nelson, Esquire
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, MD 21204

Catherine H. Robinson
2012 Far Out Lane
Sparks, MD 21152

Andrew and Noreen Krause
1940 Akehurst Road
Sparks, MD 21152

Anita Krause
3801 Schaper Drive, Apt. 1113
Randallstown, MD 21133

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

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

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

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

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

Michael E. 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 14th day of April, 2017 a copy of the foregoing Certificate of Compliance has been mailed to the individuals listed above.

Tammy A. McDiarmid

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
appealsboard@baltimorecountymd.gov

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 14, 2017

Michelle J. Dickinson, Esquire
Law Office of Michelle J. Dickinson, LLC
10440 Little Patuxent Pkwy., Suite 300
Columbia, Maryland 21044

G. Macy Nelson, Esquire
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204

RE: Petition for Judicial Review
Circuit Court Case No.: 03-C-17-003467
In the Matter of: Catherine H. Robinson
Board of Appeals Case No.: 15-235-SPHA

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules that a Petition for Judicial Review was filed on April 7, 2017 by Michelle H. Dickinson, Esquire on behalf of Catherine H. Robinson, 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. The transcripts have already been provided by Counsel. Additional copies can be purchased from the Board of Appeals in accordance with the County's copying policy.

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

Very truly yours,

Tammy A. McDiarmid
Legal Secretary

Duplicate Original Cover Letter
Enclosure

c: Catherine H. Robinson
Andrew and Noreen Krause
Anita Krause
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer and Director/PAI
Nancy W. West, Assistant County Attorney/Office of Law
Michael E. 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

April 14, 2017

Michelle J. Dickinson, Esquire
Law Office of Michelle J. Dickinson, LLC
10440 Little Patuxent Pkwy., Suite 300
Columbia, Maryland 21044

G. Macy Nelson, Esquire
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204

RE: Petition for Judicial Review
Circuit Court Case No.: 03-C-17-003467
In the Matter of: Catherine H. Robinson
Board of Appeals Case No.: 15-235-SPHA

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules that a Petition for Judicial Review was filed on April 7, 2017 by Michelle H. Dickinson, Esquire on behalf of Catherine H. Robinson, in the Circuit Court for Baltimore County from the decision of the County Board of

15-235-SPHA

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

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

RECEIVED
JUN 20 2017
BALTIMORE COUNTY
BOARD OF APPEALS

Board Of Appeals Of Baltimore County
105 West Chesapeake Ave S
Towson MD 21204

Assignment Date: 06/14/17

Case Title: In the Matter of Catherine H Robinson
Case No: 03-C-17-003467 AA

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: the DCM Office at (410) 887-3233.
You must notify the DCM Office within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 06/29/17
(excluding Motions in Limine) are due by..... 09/01/17

c: Catherine H. Robinson
Andrew and Noreen Krause
Anita Krause
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer and Director/PAI
Nancy W. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY	*	
	*	
PETITION OF: CATHERINE H. ROBINSON	*	
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-17-003467
	*	
IN THE MATTER OF: CATHERINE H. ROBINSON FOR PROPERTY LOCATED AT 2012 FAR OUT LANE	*	
	*	
5TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	
	*	
BOARD OF APPEALS CASE NO.: 15-235-SPHA		

* * * * * * * * * * * *

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:

Michelle J. Dickinson, Esquire
Law Office of Michelle J. Dickinson, LLC
10440 Little Patuxent Pkwy., Suite 300
Columbia, MD 21044

G. Macy Nelson, Esquire
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, MD 21204

Catherine H. Robinson
2012 Far Out Lane
Sparks, MD 21152

Andrew and Noreen Krause
1940 Akehurst Road
Sparks, MD 21152

Anita Krause
3801 Schaper Drive, Apt. 1113
Randallstown, MD 21133

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

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

Arnold Jablon, Deputy Administrative Officer
Director of Permits, Approvals and Inspections
County Office Building
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Towson, MD 21204

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

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

Michael E. 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 14th day of April, 2017 a copy of the foregoing Certificate of Compliance has been mailed to the individuals listed above.

Tammy A. McDiarmid

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
appealsboard@baltimorecountymd.gov

IN THE CIRCUIT COURT FOR
BALTIMORE COUNTY, MARYLAND

PETITION OF CATHERINE H. ROBINSON
2012 Far Out Lane
Sparks, Maryland 21152

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

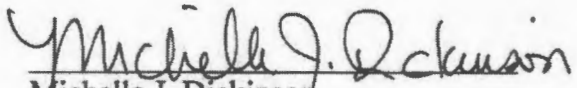
IN THE CASE OF *Catherine H. Robinson*
Case No.: 15-235-SPHA

Case No. C-17-3467

PETITION FOR JUDICIAL REVIEW

Petitioner, Catherine H. Robinson, by her undersigned counsel and pursuant to Maryland Rule 7-202, hereby requests judicial review of the Opinion and Order on Motion for Reconsideration dated March 10, 2017 and the Opinion and Order dated September 22, 2016 issued by the Board of Appeals of Baltimore County in the Case of Catherine H. Robinson, Case No. 15-235-SPHA, to which Petitioner was a party.

Respectfully submitted,



Michelle J. Dickinson

Law Office of Michelle J. Dickinson, LLC
10440 Little Patuxent Pkwy, Ste 300
Columbia, Maryland 21044
(410) 740-5630
michelle@dickinson-law.com

Attorney for Catherine H. Robinson

IN THE MATTER OF CATHERINE H. ROBINSON 2102 Far Out Lane Sparks Glencoe, Maryland 21152	*	BEFORE THE
	*	BOARD OF APPEALS
	*	OF
E/S Far Out Lane, approx. 1,475 ft. SW of Akehurst Road	*	BALTIMORE COUNTY
	*	Case No. 15 -235-SPHA

* * * * * * * * * * *

OPINION AND ORDER ON MOTION FOR RECONSIDERATION

This case comes to the Board on a Motion for Reconsideration filed by Petitioner on October 20, 2016 as a result of this Board's denial of the Petitioner's requested relief as set forth in our Opinion and Order dated September 22, 2016. The Petitioner was represented by Michelle J. Dickinson, Esquire. The Citizen-Protestants were represented by G. Macy Nelson, Esquire.

On November 16, 2016, this Board held a deliberation and denies the Motion for the reasons set forth below.

Discussion

In support of our decision to deny the Petitioner's Motion for Reconsideration, we incorporate herein, in its entirety, our Opinion and Order dated September 22, 2016.

1. Variance Relief Sought is a Substantial Deviation from §421.1 of the BCZR.

The Petitioner seeks to maintain the status quo and seeks variance relief that is a substantial deviation from the special exception permitted in §421.1 of the BCZR[1]. Currently, the Petitioner owns ten (10) dogs; three (3) of which she considers her pets. These dogs are housed within her private residence at the Subject Property (the "Family Dwelling"). The Petitioner seeks a variance

[1] By her own admission, the Petitioner could not comply with Section 421.1 of the BCZR or the December 2014 Order; therefore she sought a modification of the December 2104 Order, which granted the Special Exception, and a variance.

for a 15-foot setback, in lieu of 200-feet buffer, to separate the Subject Property from the property owned by her next door neighbors, the Krauses[2].

Pursuant to BCZR, Section§ 101.1 of the Baltimore County Zoning Regulations ("BCZR"), the character and number of dogs situated at the Subject Property constitute a Private Kennel. A Private Kennel is permitted in a R.C.2 Zone pursuant to Section 421.1 of the BCZR. Section 421.1 of the BCZR states that:

> "If an animal boarding place or private kennel is allowed in a residential zone, either as a special exception or as a permitted use, any part of the use, including but not limited to exercise areas, septic systems, dog runs and parking areas, may not be located within 200 feet of the nearest property line."

Further, Section 421.5 of the BCZR states that:

> "In granting any special exception under this section, the Zoning Commissioner may impose additional conditions or restrictions, such as increasing buffers, requiring odor, noise, or animal waste disposal mitigation, and setting limits on the number and breeds of dogs, to ensure that the proposed use will not be detrimental to the health, safety, or general welfare of the surrounding area."

In *Alviani v. Dixon*, 365 Md. 95, 775 A.2d 1234, 1242 (2001), the Court held that a special exception with variances may be granted by a zoning agency when the applicable code contains provisions excluding certain areas of the code from being subject to variance relief, but does not exclude the section covering the relevant special exception from being modified by variances. *Alviani v. Dixon*, 775 A. 2d at 1242.

In *Alviani,* the Court held that:

> "....in certain circumstances, a zoning body may grant a special exception together with area variances to what otherwise would be specific standards or requirements applicable to such special exception. The special exception, however, must be in a section of the local code for which variances are not excluded. Moreover, the granting of the variances may not so substantially alter the criteria for the granting of the special exception so that the criteria of the special exception would be

[2] Although the Petitioner has only applied for 15-foot setback in her variance request, there is no request for a variance for the Family dwelling which is a central part of the Private Kennel. Portion of the Family Dwelling are well within the 200-foot setback required by §421.1 of the BCZR. In fact, it is difficult to see how the Subject Property, without the use of a separate structure to house the dogs, could qualify as a Private Kennel pursuant to Section 421.1 of the BCZR.

> swallowed by the variance to the extent that the special exception would not be a use that was contemplated in the comprehensive zoning scheme in respect to any particular special exception". *Alviani v. Dixon*, 775 A. 2d at 1246-47.

Clearly, there is nothing in the legislative scheme of Section 421.1 of the BCZR that states variances are excluded. As such, there is no bar to the Board's granting the Petitioner a special exception and the variance relief because the legislature prohibited such a request as there is no prohibition stated in the applicable zoning section. However, the variance requested by the Petitioner is a substantial deviation from terms and conditions set forth in Section 421.1 of the BCZR. The Petitioner is seeking a variance of 15 feet in lieu of 200 feet which reduces the area standard of the special exception by 93%. In addition, Section 421.1 of the BCZR requires that every part of the Private Kennel and any part of the use, including but not limited to exercise areas, septic systems, dog runs and parking areas, may not be located within 200 feet of the nearest property line. Obviously, a substantial portion of the Family Dwelling, which by the Petitioner's definition is a part of Private Kennel, does not meet the 200-foot setback requirement established by Section 421.1 of the BCZR.

Under these circumstances, the Petitioner's particular layout her Private Kennel is a substantial deviation from the area standards for such a kennel in a R.C.2. Zone. It is the opinion of the Board that County Council carefully considered the enactment of Section 421.1 BCZR to "ensure that the proposed use will not be detrimental to the health, safety, or general welfare of the surrounding area" when it required that property used as a Private Kennel or .... "Any part of the use, including but not limited to exercise areas, septic systems, dog runs and parking areas, may not be located within 200 feet of the nearest property line".

At the hearing, the Petitioner's neighbors vehemently complained about the problems of noise, sanitation and safety created by the dogs. The Petitioner's proposed layout of her Private

Kennel[3] will be detrimental to the surrounding area without a setback sufficient to prevent the dogs from interfering with the quiet enjoyment of their homes. It is unlikely that the County Council could not have intended or envisioned that a Private Kennel, as proposed by the Petitioner, would be permitted on the Subject Property.

For these reasons the Petitioner's Motion for Reconsideration of her petition for a special exception under §421.1 of the BCZR and the variance relief is denied.

2. Petitioner's Motion to Reconsider Board's Ruling on Res Judicata and Collateral Estoppel.

In our Opinion dated September 22, 2016, we held that the Petitioner, *in conjunction with* the Special Exception relief, should have requested any and all variances that she needed to satisfy BCZR, §421.1 to prevent *res judicata* and/or collateral estoppel principles from precluding the instant case. (Board Opinion, pp. 9-13).

Indeed, the ALJ in his December 18, 2014 Special Exception Opinion and Order, pointed out that variance relief was not sought by the Petitioner. (ALJ Opinion 12/18/14, p.4). In her Motion for Reconsideration, the Petitioner admits that she failed to seek the variances that were needed for the very same dog kennel that she was requesting by Special Exception.

Petitioner contends that the *res judicata* principle requiring all matters which could have been litigated in the Special Exception case do not apply to her variance request because she "did not know compliance [with the setbacks] was an impossibility and thus had no reason to seek a variance." (Motion for Reconsideration, p. 8). She claims that her lack of knowledge was 'evidence of a substantial change in circumstances' between the time of the Special Exception hearing and the time of the Variance hearing. She believes that *Seminary Galleria, LLC v. Dulaney Valley Improvement Assn.*, 192 Md. App. 719, 734, (2010) supports her cause. We do not agree.

[3] The testimony from the Petitioner is that the layout of the Private Kennel already exists and that the purpose of the variance petition is to maintain the "Status Quo".

First, the Petitioner here should have known about all setbacks which were needed *prior to filing for* Special Exception relief. Consequently, in accordance with *Alvey v. Alvey*, 225 Md. 386, 390 (1961) and *Jack v. Foster Branch Homeowner's Assn. No. 1, Inc.*, 53 Md. App. 325, 332 (1982), *res judicata* applies to "all matters which, with propriety, could have been litigated in the first suit." All the material facts in the variance case are exactly the same as they were in the Special Exception hearing; no fact was different, no fact had changed. The house, the topography, the property boundaries, any environmental issues, the number of dogs, the request for a dog kennel, the neighborhood and Baltimore County laws relating to special exceptions and variances, were all the same between the Special Exception hearing and the variance hearing. If environmental issues existed, those issues were present at the time of the Special Exception hearing. There are no new environmental issues.

The Petitioner believes that since she did not 'discover' the environmental issues, and since both uniqueness and practical difficulty were not proven at the Special Exception hearing, she is entitled to another hearing for the same dog kennel. However, as we previously wrote, the Court of Appeals in *Deleon v Slear*, 328 Md. 569, 589 (1992) held that 'a claim' is defined as "a group or aggregate of operative facts giving ground or occasion for judicial action as distinguished from the narrow concept of a 'cause of action.'" The *Deleon* Court held that a 'claim' is viewed "in factual terms...regardless of the number of substantive theories, or variant forms of relief flowing from those theories, that may be available to the plaintiff; regardless of the number of primary rights that may have been invaded; and regardless of the variations in the evidence needed to support the theories or rights." *Id.* at 589-590,

Contrary to the Petitioner's argument, "a substantial change in circumstances" as discussed in *Seminary Galleria,* must involve a change in the neighborhood or the law or some other material

fact that did not exist at the time of the first hearing; not lack of knowledge or failure to file for all requested relief the first time. As applied here, the Court in *Seminary* said:

> With reasonable diligence, Seminary could have discovered and asserted in support of the original 2003 filing its current argument that the Galleria needs more parking spaces in order to comply with the requirements the County adopted in 1986. Seminary's failure to accurately and contemporaneously survey the Galleria in connection with its first application to approve the additional spaces is not a reason to consider a second application seeking the same relief.

Id. at 995 A.2d 1081. Thus, this Board finds that the holdings in *Seminary, Alvey, Foster Branch HOA* and *Deleon* support our decision.

Said another way, the Petitioner wanted a dog kennel for her Property but never investigated whether the proposed structure for the kennel could be located in the only spot on her Property which met the BCZR §421 setbacks. If the Property had environmental issues, she should not only have known about those issues (as they pertain to the location of the outside kennel) *in advance of* the Special Exception hearing, but she should have raised those issues at the Special Exception hearing. Upon request, the ALJ *may have* continued the hearing to permit a variance Petition to be filed.

As in *Seminary*, had she done even the minimal due diligence as to the *alleged* environmental conditions on her own Property which she claims prevent her from constructing any outside kennel, then she should have requested, at the Special Exception hearing, that her home be used as the kennel along with the Special Exception relief. Again, this would have involved requesting a continuance so that a Petition for Variance could be filed. As we see it, the request for variance is not a collateral issue. Rather, it is central to the Special Exception request for use of the Property as a kennel under BCZR §421.

The Petitioner has the burden of proof as to the requested relief - not the ALJ or the Protestants. The Petitioner's perception about the Protestants and ALJ's lack of knowledge about

alleged environmental concerns affecting her Property, is not relevant. This is nothing more than a bald, self-serving assertion made by the Petitioner.

Second, assuming arguendo that, prior to filing for the Special Exception relief, she did not know about the §421 setbacks, (or did not plan out the location of the kennel on her Property prior to appearing at the Special Exception hearing) the ALJ, in his Special Exception Order, *informed her* that she would need a garage or other structure for the kennel which met the setbacks. Therefore, in December of 2014, when she read the Special Exception Order, the ALJ *gave her notice that the setbacks BCZR §421 were applicable* and that while a 'private kennel" is defined to include a "dwelling," her home did not satisfy the necessary setbacks. (ALJ Opinion, 12/18/14, p. 4).

Within 30 days of the Special Exception Order, she could have filed a Petition for Variance and a Motion for Reconsideration/Stay with the ALJ requesting that the case be stayed and request that the variance case be heard before the ALJ. (BCZR, Appendix G, Rule 4k). If the ALJ denied the Motion for Reconsideration/Stay, she could have appealed the case to this Board, *de novo*, with the Petition for Variance already having been filed. At that stage, there would not have been facts already adjudicated because the case would have been subject to appeal.

Accordingly, the reason for appealing the Special Exception Order is to prevent the ALJ's finding - that 'the Petitioner's dwelling can [not] satisfy the necessary setback' for a private kennel – from becoming a final, adjudicated fact. (ALJ Opinion, 12/18/14). As we previously stated in our September 22, 2016 Opinion and Order, all facts contained within the Special Exception Order have been adjudicated and we cannot relitigate those facts.

Another important reason to appeal the Special Exception Order is to prevent the required condition to build an outside structure before August 30, 2015 - along with an outside dog fence

which was not to be built within 200 feet of the nearest property line - from becoming an unappealable condition with specific time deadlines. The ALJ wrote:

> Petitioner shall on or before June 30, 2015 secure necessary permits and commence construction of any building to be used for housing the dogs in compliance with B.C.Z.R. §421.1, which structure must be completed on or before August 30, 2015. The outside areas used for exercise and/or dog runs may not be located within 200 feet of the nearest property line, as required by B.C.Z.R. §421.1.

(ALJ Opinion 12/18/14).

Consequently, in December of 2014, when she read the condition to build an outside kennel within the setbacks of her Property and realized that she could not comply, she should have filed a Motion for Reconsideration/Stay along with a Petition for Variance with the ALJ and/or appealed the case to this Board.

In essence, if we are to believe her argument, the condition in the ALJ's Order can be ignored; indeed, she did ignore it. The Petitioner installed an electric fence within 15 feet of the Property line in direct violation of the condition. Other than vague hearsay-type statements at our hearing by her landscaper, Noah Price, as to his alleged conversations with County representatives, there was no evidence that a permit for the structure was denied by the County or other evidence from the County as to environmental issues affecting the location of the kennel.

In her Motion for Reconsideration, Petitioner relies on *Stacy v. Montgomery County*, 239 Md. 189 (1965) and *Zengerle v. Board of County Commissioners for Frederick County*, 262 Md. 1 (1971). We find both cases consistent with our ruling.

In *Stacy*, a special exception order was granted by the County Board of Appeals for Montgomery County. *While the Order was on appeal*, the Applicant "discovered that he needed a variance since his building was less than the required 25 feet from the Stacy's side yard property lines..." *Id.* at 191. The Petitioner then "filed another application with the Board requesting a variance from the 25 foot setback restriction." *Id.*

In *Stacy,* it was unclear to the Board at the variance hearing whether the exact footage as shown on the Plat previously submitted to the Board at the Special Exception hearing, showed a distance of 25 feet which would have obviated the need for a variance. *Id.* at 192. The Applicant, after filing for the variance, had the property resurveyed. The Board, in the variance case, described the re-survey of the property as a 'surveyor's nightmare' because there were several different courses for measuring one of the Property lines. The Board indicated that this was a 'technical violation of the 25-foot setback'. *Id.* at 192-193.

Unlike the Applicant in *Stacy*, the Petitioner here did not file a Petition for Variance while a Special Exception was on appeal. Further, unlike the re-survey in *Stacy* and the conflicting measurements casting doubt on whether a variance was needed, there were no new facts in the Petitioner's case here that did not exist at the time the Special Exception case was heard.

Similarly, in *Zengerle v. Board of County Com'rs for Frederick County*, 262 Md. 1 (1971), during the course of four hearings days before the Board of County Commissioners for Frederick County, it was discovered that a variance would be needed to satisfy the request for conditional use permit. *Id.* at 9. This discovery occurred as a result of the Board's interpretation of County Zoning Regulation, Section 40-67, that no conditional use for a landfill could have been granted within 1,000 feet from the boundary line of an adjacent property occupied by a dwelling. *Id.* The Board then proceeded to grant a variance along with a conditional use permit at the end of the hearing (without a formal application for variance having been filed). *Id.*

After the variance was appealed, the case was remanded to the Board for the specific purpose of providing full notice opportunity to the Protestants to be heard in connection with the variance issue, specifically, the opportunity to cross examine the County Engineer. *Id.* at 9-10. The record in *Zengerle* reflected that, even though the Board granted a variance without a formal application having been filed, the Court of Appeals found that the Protestants, at the first remand

hearing, did not object to the lack of an application and also had opportunity at that hearing to ask their witnesses about the variance. *Id.* at 20. Moreover, the remand informed all parties of the nature of the remand hearings and that the county was seeking an area variance. *Id.*

As to the issue of collateral estoppel preventing re-litigation of the ALJ's finding that the Petitioner's home did not meet the BCZR §421 setbacks and therefore could not be used as the kennel, we find that the Petitioner has asked this Board to address that very same issue here. *Batson v. Shifflett*, 325 Md. 684, 701 (1992).

In the case cited by Petitioner, *Reid v. State*, 119 Md. App. 129, 135 (1998), there was no transcript of what was actually litigated before the ALJ, only hand written notes of the ALJ. Because the record was sparse, the Court in *Reid* held that the ALJ did not decide the 'ultimate fact' that the appellant there claimed to have been decided, i.e. "the appellant 'was not driving or attempting to drive' on the day in question." *Id.* 135-136. Here, the ALJ's Special Exception Opinion and Order made clear that the 'ultimate issue' was adjudicated. Thus, we find that *Reid* is not applicable to the facts here.

For these reasons, the Petitioner's Motion for Reconsideration is denied.

3. Petitioner Cannot Prove Practical Difficulty and Has Self-Imposed Any Hardship.

The Board also concluded that the Petitioner's request for variance relief fails on its merits. Nothing presented by the Petitioner in her Motion for Reconsideration prompts the Board to change its decision.

The well-established general rule is "the authority to grant a variance should be exercised sparingly and only under exceptional circumstances." *Trinity Assembly of God of Baltimore City v. People's Counsel*, 407 Md. 53, 79; 962 A.2d 404, 419 (2008), citing *Cromwell v. Ward*, 102 Md. App. 691, 703; 651 A.2d 424, 430 (1995). In Baltimore County, variances from height and area regulations may be granted "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[4] or unreasonable hardship." BCZR §307.1. Furthermore, "any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare." *Id.*

The Board previously concluded that the property was unique once the focus was directed to the proper boundaries that formed the neighborhood for comparison. Petitioner, obviously, does not take issue with the Board's findings as to the definition of what boundaries form the neighborhood at issue or the determination that the property was unique that followed. Rather, Petitioner challenges the conclusion that Petitioner had not proved that there was practical difficulty and that, in any event, any hardship was self-imposed.

To obtain variance relief Petitioner must prove practical difficulty, which requires sufficient evidence regarding:

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

Trinity Assembly, 407 Md. at 83-84; 962 A.2d at 422.

[4] Because the changes to the character of the neighborhood are considered less drastic with area variances than with use variances, the less stringent "practical difficulties" standard applies to area variances, while the "undue hardship" standard applies to use variances. *Montgomery County v. Rotwein*, 169 Md. App. 716; 906 A.2d 959 (2006).

Petitioner first argues that the substantial justice element is satisfied. In support, Petitioner urges that the setback requirement is not eviscerated, as stated in the Board's September 22, 2016 Opinion and Order. Petitioner asserts that the Board "based its decision on the fact that Ms. Robinson sought a variance to reduce the setback requirement from 200 feet to 15 feet on her entire property." (Pet. Motion, p. 1). Petitioner notes that the present and proposed kennel is 15 feet from the property only at one point, but also as much as 107 feet and 145 feet at other points. (Pet. Motion, p. 10, fn. 4).

The Board, however, did not find for Respondent based on a misunderstanding of or an erroneous conclusion regarding the present and proposed setback, as suggested by Petitioner. The Board understood that the present and proposed kennel was not designed to be 15 feet from the property line for the entirety of the kennel or the entirety of the Robinson property. What Petitioner comes to Court with (that is, what is there at present) and proposes to keep, is a kennel that is as close as 15 feet from the property line.

BCZR §421.1, however, requires a 200-foot setback. Much of the kennel's present and proposed setbacks are under the 200 feet required. Moreover, a sizable portion of the dog run/kennel boundary, not simply one point, has substantially deviated from the 200 foot requirement. This substantial deviation, for the most part, runs roughly adjacent to the Krauses' property. (Pet. Ex. 6). The closest point to the Krauses' property appears from the record, particularly Petitioner's Exhibit 6 and based on the requested variance up to 15 feet, to be slightly more than 15 feet. Therefore, the 15-foot point certainly illustrates the most extreme example, but there are multiple points, areas and/or sections in which Petitioner requests extraordinary deviation from the required 200 feet. Petitioner may consider preserving the status quo as justice for Ms. Robinson, but as the Board previously concluded and now reiterate, a kennel requiring that amount

of deviation is not substantial justice for the surrounding and neighboring properties, particularly, the Krauses.

It is important to note that the kennel is allowed in an RC-2 zone by special exception BCZR §1A01.2(C)(2) and that Petitioner had her request for a special exception granted (Case No. 2015-0092-X) but with the imposition of conditions, including, dog runs not to be within 200 feet of the nearest property line. (See, December 18, 2014 Order). Petitioner seeks an amendment of the December 18, 2014 Order and a variance of that condition. It is obvious that the County Council, when enacting BCZR § 421.1, wanted to require some significant measure of protection for neighbors adjacent to a private kennel, and to that end, required a 200 foot setback. The Board is specifically required to account for that purpose in reaching its decision. Substantial deviation for significant portions of the dog run/kennel boundary, including as little as 15 feet, fails to effectuate the spirit of BCZR §421.1. Moreover, credible evidence from Respondent's expert was presented at the hearing that a dog run without such a stark deviation from the setback requirement was a possible alternative, but it would require the dogs to have access to the front of Ms. Robinson's house, something she does not want to sacrifice.

On that point, Petitioner takes issue with the Board's determination that any hardship claimed is also self-imposed. (Pet. Mot., at p. 11-12). In support, Petitioner directs focus on the concept that, under Maryland law, "self-created hardship is created by the property owner not by the property itself." (*Id.*, at p. 12, citing *Richard Roeser Prof. Builder, Inc. v. Anne Arundel County*, 368 Md. 294, 298 (2002)[5]). Petitioner then attributes all issues to the physical conditions of her property.

The Board recognized, however, that while the conditions of Ms. Robinson's property causes certain complications, Petitioner's insistence on restricting the dogs from using the front

[5] The Board's September 22, 2016 Opinion & Order cited the same case for the general principle.

room of her house requires the dogs to exit the house through the rear, and therefore, toward the Krauses' property and well within the 200 feet setback requirement. If, on the other hand, the dogs were able to go outside via the front door and the dog run boundary moved accordingly, such a substantial deviation from the setback requirement would be unnecessary. In other words, if Petitioner allows the dogs to enter/exit via the front door, Petitioner would not need a variance up to as little as 15 feet and also a continuing substantial deviation in the area close to the Krauses' property line. The Board did not find that Ms. Robinson was compelled to use the rear of her house. Rather, the Board found that Petitioner voluntarily chose to limit her options to using the rear of the house.

What Petitioner seeks is insulation from her choice and to do so, attributes that decision to the topography and other physical conditions. The Board did not and does not blur the lines between her choice and the limitations presented by the physical conditions. The Board did not find or conclude that Petitioner is responsible for the topography or other physical conditions. The Board, however, held Petitioner accountable for her voluntary choice to restrict the dogs' entry and exit to the rear of the house, which in turn is what causes the need for the more extreme portions of the requested setback variance.

The Board also understood that the placement of a secondary structure in front of her residence was somewhat limited by Petitioner's property's physical conditions. However, Petitioner primarily attributed her complete inability to build that structure to a conversation between Petitioner's landscaper and a County representative, where the representative conveyed to the landscaper that the County would not allow a structure to be built in front of the primary residence. It should be noted that the Board found that the evidence on that point was wanting. There were no written requests or correspondence or submission of plans from Petitioner to the County. There were no written determinations by the County on this point.

To be clear, this is not a matter of a credibility determination as to whether the discussion occurred or the substance of the conversation. Rather, it is a finding by the Board that a conversation, accepting the content as reported, is not tantamount to a formal determination by the County regarding whether a structure could or could not be built. Moreover, the record reflects that Petitioner did not submit a plan to the County regarding any proposed structure. Therefore, Petitioner was not necessarily precluded by the County from attempting to build a structure in the front of her residence. A fair question arises as to why Petitioner did not make any serious attempt to submit such plans or why Petitioner did not seek a variance to permit a separate structure in front of her residence. The possibility of availing herself of this option was foreclosed by Petitioner, not the County, and not her property.

Even accepting *arguendo* the inability to build a structure in front of her residence, as noted above, Petitioner still could use the front of her house for the dogs to enter and exit and not the rear. This choice is wholly independent of whether she is restricted from building a separate kennel structure. This choice has nothing to do with topography or the other physical conditions. At no time did the Board find that strict compliance with the setback requirements was mandated in this case. What the Board found was that the *at present and as proposed* dog run/kennel boundary, particularly the section adjacent to the Krauses' property, did not satisfy the criteria for practical difficulty to justify approval of the variance request. Relatedly, the Board also found that the difficulty claimed by Petitioner arises from Petitioner's voluntary choice.

Because Petitioner refuses to consider any option that involves the dogs entering and exiting from any location other than the rear of the home, Petitioner has created her own hardship and exacerbated the existing difficulty created by the physical conditions of the property. If Petitioner is unwilling to sacrifice the front room of her house for the dogs' use, it neither can be substantial justice to the Krauses if protective measures (the required setback) are significantly

compromised to give effect to that voluntary choice, nor would such a radical departure be within the spirit of the regulation.

As set forth in the Board's September 22, 2016 Opinion and Order, the Board is only authorized to grant variance relief if the requested variance is in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare. BCZR §307.1. For the reasons set forth throughout this Opinion and the September 22, 2016 Opinion and Order, the Board finds that variance request is not only not in harmony, it is in fact incongruous with the spirit and intent of the regulations at issue and cannot afford relief without injury to public health, safety and general welfare.

In light of the above, Petitioner's Motion for Reconsideration, and underlying request for amendment to the December 18, 2014 Order, and related request for variance relief, are denied.

THEREFORE, IT IS THIS 10th day of March, 2017, by the Board of Appeals of Baltimore County,

ORDERED that the Motion for Reconsideration be and the same 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
OF BALTIMORE COUNTY

Maureen E. Murphy, Panel Chairman

Benfred B. Alston

Jason S. Garber

Board of Appeals of Baltimore County

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March 10, 2017

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RE: *In the Matter of: Catherine H. Robinson*
Case No.: 15-235-SPHA

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order on Motion for Reconsideration 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: Catherine H. Robinson
Scott Lindgren/Gerhold, Cross & Etzel, Ltd.
J. Lawrence Hosmer/Environmental Resources Mgmt.
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer, and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law
Andrew and Noreen Krause
Anita Krause
Kawana Swank
Anne Cornell
Ann Merryman
Noah Price

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Catherine H. Robinson 15-235-SPHA

DATE: November 16, 2016

BOARD/PANEL: Maureen E. Murphy, Panel Chairman
Benfred B. Alston
Jason S. Garber

RECORDED BY: Tammy A. McDiarmid, Legal Secretary

PURPOSE: To deliberate the following:

Motion for Reconsideration filed by Michelle J. Dickinson, Esquire on behalf of Catherine H. Robinson; and Citizen-Protestants' Opposition to Petitioner's Motion for Reconsideration filed by G. Macy Nelson, Esquire.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board reviewed the Petitioner's Motion for Reconsideration and the three issues raised in the Motion.
- The first issue was that the variance is not a substantial deviation to BCZR § 421.1. Zoning regulations require a 200' setback from the property line for a kennel. The Petitioner argues that the 15' setback request is not for the entire property, but only a portion. The Board noted that the 15' setback is at the most extreme point, and there are other impacts to the setback. The Board finds that the request is a substantial deviation to the 200' setback.
- The next issue raised was that the variance petition is not barred by res judicata. The Petitioner argues that she was not aware of the environmental features to her property and therefore could not seek a variance at the time of the special hearing request. The Board finds that it is the responsibility of the Petitioner to know the characteristics of their property prior to requesting any relief. The Board also found that the parties, the property, the request, and the facts of the case are the same as were in first Petition heard by ALJ.
- The final issue involves self-imposed hardship. The Board noted that Petitioner wants to keep all factors as they were prior to requesting any zoning relief and does not want to be inconvenienced. Any hardship imposed here is self-created in that the Petitioner wants the house to be the kennel and wants the dogs to come and go as they did prior to her zoning Petitions being filed.

DECISION BY THE BOARD MEMBERS:

The Board finds that although they believe the Petitioner is providing a needed and honorable service, it cannot deviate from the law. There have been no facts or laws which have changed since the Board Hearing that would warrant changing the decision.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY the Petitioner's Motion for Reconsideration.

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,

Tammy A. McDiarmid

IN RE: 2012 Far Out Lane Southside of Far Out Lane, 1475 ft. southwest of Akehurst Road	*	BEFORE THE BALTIMORE COUNTY
5th Election District 11th Councilmanic District	*	BOARD OF APPEALS
	*	CASE NO. 2015-0235-SPHA
Legal owner: Catherine Robinson	*	

* * * * * * * * * * * * * * *

Citizen-Protestants' Opposition to Petitioner's Motion for Reconsideration

Argument

The Board should deny the Motion for Reconsideration because there is no new relevant case law or statute; there was no fraud, mistake or irregularity in the conduct of the hearing; and the Board's opinion was consistent with what the Board decided during its deliberations.

"[A] Motion [for Reconsideration] should only be necessary when there has been substantive new case law or enactment of a statute not previously available, which would clearly merit modification of a Board's previous decision." *In the Matter of: TTV Properties, III*, Case No.: CBA-14-039 and CBA-15-011. A successful movant for reconsideration must also present evidence of "fraud, mistake or irregularity in the conduct of the hearing." *In the Matter of Paragon Outlets White Marsh, LLC PUD*, Case No.: CBA 15-005. Thus, the Board "will not re-visit its decision upon a Motion for Reconsideration based upon an assertion that the ruling was incorrect." *In the Matter of Ralph Seekford, Jr.* Case No.: CBA 14-025. But the Board may grant a motion for reconsideration if the written opinion differs from what the Board decided during its oral deliberation. *In the Matter of James Dimick, Jr,* et al., CBA 14-223-X.

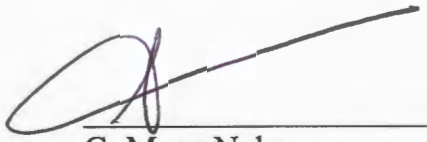
Notwithstanding this law, the Applicant asks the Board to reconsider its disapproval of the variance because she believes the Board erred. The Applicant stated throughout her memorandum that the Board based its decision on an "erroneous interpretation of the law" or that the decision was "clearly erroneous." (Memorandum at pp. 1, 2, 5 and 10). But the rule is that the Board does "not re-visit its decision upon a Motion for Reconsideration based upon an assertion that the ruling was incorrect." *In the Matter of Ralph Seekford, Jr.* Case No.: CBA 14-025. In any event, the Board correctly denied the variance because the Petitioner sought a variance to permit a substantial deviation from § 421.1 of the BCZR; the Petitioner's requested relief is barred by her failure to appeal and by res judicata/collateral estoppel; and Petitioner cannot prove practical difficulty and has self-imposed any hardship.

Furthermore, the Petitioner presented no evidence that "there has been substantive new case law or enactment of a statute not previously available." Indeed, no such evidence exists. Petitioner presented no evidence that there was "fraud, mistake or irregularity in the conduct of the hearing." None exists. Finally, the Board's written decision was consistent with the decision it reached during its deliberations.

Conclusion

For all of these reasons, the Board should deny the Petitioner's Motion for Reconsideration.

Respectfully submitted,

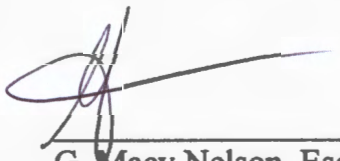


G. Macy Nelson
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204
(410) 296-8166
Attorney for Citizen-Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of November, 2016, a copy of the foregoing Opposition to Petitioner's Motion for Reconsideration was mailed, first class, postage prepaid, to:

Michelle J. Dickinson, Esquire
Law Office of Michelle J. Dickinson, LLC
10440 Little Patuxent Parkway, Suite 300
Columbia, Maryland 21044
Counsel for Applicant



G. Macy Nelson, Esquire

Board of Appeals of Baltimore County

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SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
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October 27, 2016

NOTICE OF DELIBERATION
MOTION FOR RECONSIDERATION

IN THE MATTER OF: Catherine H. Robinson
E/s Far Out Lane, approx. 1,475 ft SW of c/l of Akehurst Road
15-235-SPHA 2012 Far Out Lane
5th Election District; 3rd Councilmanic District

Having concluded this matter on June 21, 2016, the Order was issued by the Board on September 22, 2016. A Motion for Reconsideration was filed on October 20, 2016. The matter has been scheduled for a public deliberation on the following

DATE AND TIME: WEDNESDAY, NOVEMBER 16, 2016 at 9:30 a.m.

LOCATION : Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

NOTE: PUBLIC DELIBERATIONS ARE OPEN WORK SESSIONS WHICH ALLOW THE PUBLIC TO WITNESS THE DECISION-MAKING PROCESS. ATTENDANCE IS NOT REQUIRED AND PARTICIPATION IS NOT ALLOWED. A WRITTEN OPINION AND/OR 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

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c: Counsel for Petitioner : Michelle J. Dickinson, Esquire
Petitioner : Catherine Robinson

Counsel for Protestants/Appellants : G. Macy Nelson, Esquire
Protestants/Appellants : Andrew and Noreen Krause, Anita Krause

Scott Lindgren/Gerhold, Cross & Etzel
Kawana Swank Anne Cornell
Office of People's Counsel
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney

J. Lawrence Hosmer/ERM
Ann Merryman Noah Price
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Michael Field, County Attorney, Office of Law

IN THE MATTER OF	*	BEFORE THE
CATHERINE H. ROBINSON	*	BOARD OF APPEALS
E/s Far Out Lane, approx. 1,475 feet SW	*	OF BALTIMORE COUNTY
of c/l of Akehurst Road	*	
2012 Far Out Lane	*	**Case No. 15-235-SPHA**
5th Election District	*	
3rd Councilmanic District	*	

* * * * * * * * * *

MOTION FOR RECONSIDERATION

Petitioner Catherine H. Robinson, by her counsel and pursuant to Baltimore County Board of Appeals Rule 10, submits this Motion for Reconsideration of the Opinion issued by the Baltimore County Board of Appeals (the "Board") denying Ms. Robinson's Petition for a Special Hearing and Variance from the setback requirements of BCZR § 421.1, previously granted by Administrative Law Judge John E. Beverungen.

ARGUMENT

A. The Board's Ruling That The Variance Must Be Denied As A Substantial Deviation From BCZR § 421.1 Is Contrary To Fact And Clearly Erroneous

In its Opinion, the Board ruled that the variance relief sought by Ms. Robinson was such a substantial deviation from BCZR § 421.1's minimum setback requirement that it must be denied. The Board based its decision on facts not supported by the record and an erroneous interpretation of the law.

As a threshold matter, the Board based its decision on the fact that Ms. Robinson sought a variance to reduce the setback requirement from 200 feet to 15 feet on her entire property - a 93% reduction in the area standards for a private kennel. This is incorrect. While, as explained below, such a variance would not be contrary to the law, the Board's factual predicate is inaccurate. Ms. Robinson did not seek a variance to reduce the minimum setback requirement to 15 feet on her entire property. Indeed, the site plan she submitted with her Petition for a Special Hearing and Variance indicates that the variance request is "to allow a private kennel to be located as little as 15 feet to the property line in lieu of the required 200 feet." See Pet. Exh. 6, emphasis added. The

proposed private kennel area is identified on the site plan by "xx-x-xx-x" marks, which were highlighted in yellow at the hearing, and the notation "PROPOSED MODIFIED KENNEL." Id. The area is kidney shaped, covers less than half the property, and comes within 15 feet of the property line at only one point by Ms. Robinson's friend and neighbor's property, Judith R. Levenson, who attended every hearing in support of Ms. Robinson's petition. Id. The remainder of the irregularly-shaped area necessarily varies in distance from 15 feet at one point to as much as 145 feet from the property line at another point (i.e., only a 27.5% reduction in the area standards of BCZR § 421.1). Indeed, approximately half of the private kennel area requires a 50% or less reduction in the area standards. A reduction of 93% is only required at one single point. The Board's decision thus is contrary to the undisputed facts in evidence.

Further, the Board's decision on this point is based on an erroneous interpretation of the law. The Board relies on Alviani v. Dixon, 365 Md. 95 (2001),[1] for the proposition that a property owner may obtain a variance from a special exception requirement, such as Section 421.1's minimum setback requirement, only where the variance slightly modifies that requirement. The Alviani court did not so hold. The Alviani court focused on whether the variances at issue would "so substantially alter the criteria for the granting of the special exception so that the criteria…would be swallowed by the variance to the extent that the special exception would not be a use that was contemplated in the comprehensive zoning scheme in respect to any particular special exception." *Id.* at 121 (emphasis added). The court held that the two variances were permissible because they "did not enable a special exception use to be granted that would be outside of the scope of the special exception provisions of the general zoning scheme for that area." *Id.* While the court noted that the variances sought in that case only slightly modified the specific area standards, the court did

[1] While the Board enumerates three factual grounds for distinguishing Alviani, the first two grounds are similarities (e.g., both legislative schemes permit variances; no evidence of adverse effects associated with the underlying special exception use).

[2] Note that while the Board indicated in its Opinion that Ms. Robinson failed to comply with the

not hold that only a slight modification was permissible or that "substantial deviation" from a special exception requirement must be barred as a matter of law, as the Board suggests. Further, the court did not address or set a limit as to the degree or percentage of modification permissible – an exercise the Board has undertaken in its Opinion.

The appropriate inquiry, as set out in Alviani, is whether the variance from a special exception requirement would so change the nature of the special exception that it would become a use not contemplated by the zoning scheme. The actual variance sought by Ms. Robinson does not so substantially alter the criteria for a private kennel that the special exception would become a use not contemplated by the zoning scheme. Indeed, the minimum setback is but one of the requirements for a private kennel special exception (e.g., there must be more than three dogs; the dogs must be kept for specific purposes; the use may not be a pet shop; the dogs may not be for farm use; the use may not be detrimental to the primary agricultural uses in its vicinity, etc.). Had Ms. Robinson sought to modify the criteria for a private kennel to allow her to have more than four elephants rather than dogs, that arguably would constitute a substantial alteration of the criteria such that the resulting use would not be contemplated by the zoning scheme. The requested reduction in the minimum setback requirement of BCZR § 421.1 requested here would simply extend the boundaries of the private kennel area, which would allow Ms. Robinson to use her home as a private kennel - a permissible use - nothing more.

Even if Ms. Robinson had requested a variance of 15 feet from the property line on her entire property, as the Board concluded, or 0 feet from the property line, such a variance would not be precluded by Alviani, as it would not change the nature of the use (i.e., permit a use that was not contemplated in the comprehensive zoning scheme). Indeed, Baltimore County has a long history of granting variances to permit substantial or even total reductions in the minimum setback requirements of BCZR § 421. See e.g., In re Petition for Special Exception and Variance (9405

Flagstone Drive), Case No. 2013-0252-XA (ALJ Beverungen) (granting variance from BCZR § 421.1 to permit animal boarding place within 0 feet of nearest property line); In re Petitions for Special Hearing, Special Excption and Variance (67 Main Street), Case No. 2009-0051-SPHXA (Deputy Zoning Commissioner Bostwick) (granting variance from BCZR § 421.2 to permit animal boarding place within 0 feet of nearest property line); In re Petitions for Special Exception and Variance (309 Wye Road), Case No. 05-268-XA (Zoning Commissioner Wiseman) (granting variance from BCZR § 421.1 to permit private kennel within 0 feet of nearest property line); Petition for Special Hearing and Variance (1501-1575 Merritt Boulevard), Case No. 95-421-SPHA (Deputy Zoning Commissioner Kotroco) (granting variance from BCZR § 421.2 to permit pet shop within 130 feet from residential zone in lieu of 200 feet); see also, In re Petition for Variance (300 Garrison Forest Road), Case No. 95-492-A (Zoning Commissioner Schmidt) granting variance from BCZR § 1B01.2.C.1.a to permit 40 foot setback in lieu of required 100 foot setback and 15 foot setback in lieu of 80 foot setback); Zengerle v. Board of County Commissioners for Frederick County, 262 Md. 1 (1971) (granting variance to permit reduction in 200-foot setback requirement for landfill in area that, like here, was irregularly shaped and varied from 25 feet to 50 feet from the property line at certain points). Clearly, there is strong precedent for this County and others in Maryland reducing and even eliminating through variances the minimum setback requirements of special exceptions to enable property owners to enjoy a permissible use. The Board's decision thus is arbitrary and not supported by the facts or the law.

Further, the variance does not, as the Board suggests (Op. at fn. 6), substantially limit BCZR § 421.5. BCZR § 421.5 provides that the County may impose additional restrictions on a special exception. In the special exception Order, Judge Beverungen imposed restrictions on the number of dogs and the duration of the special exception. Judge Beverungen also provided a deadline for Ms. Robinson to comply with BCZR § 421.1 by obtaining permits, building a structure and fencing the

kennel area, which is actually a timing extension, not a restriction.[2] The variance sought here, and granted by Judge Beverungen, does not eliminate any restrictions imposed by Judge Beverungen. It modifies the special exception by expanding the area of the private kennel and presumptively eliminates the timing extension for compliance because with the variance, no separate structure is needed. The variance thus does not limit the County's ability to impose restrictions on a special exception. Clearly, Judge Beverungen did not find his ability to impose additional restrictions pursuant to BCZR § 421.5 substantially limited, as he granted both the special exception and the variance. Indeed, Judge Beverungen characterized the variance as an issue of "housekeeping."

B. The Board's Ruling That Ms. Robinson's Petition Is Barred By Failure To Appeal, Res Judicata, And Collateral Estoppel Is Contrary To Fact And Clearly Erroneous

1. An Appeal of the Special Exception Order Would Have Been Futile

The Board suggests that since compliance with BCZR § 421.1 was an impossibility, Ms. Robinson's only option was to appeal the special exception Order, as the Board would conduct a *de novo* review on appeal. The Board's review, however, necessarily would be limited to the relief sought in the underlying petition - for a special exception for a private kennel, not a variance from BCZR § 421.1. It is well-settled that while the Board's review is de novo, the Board may not consider an original petition for a variance that was not sought in the original proceeding. See, e.g., Halle Companies v. Crofton Civic Ass'n, 339 Md. 131, 143 (1995) ("The Anne Arundel County Board of Appeals may not entertain a truly original petition for variance or special exception, but it may review the actions of the administrative hearing officer and take any action which that officer

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[2] Note that while the Board indicated in its Opinion that Ms. Robinson failed to comply with the terms and conditions of the special exception Order by obtaining building permits and building a structure, this also is incorrect. By email dated June 10, 2015, Judge Beverungen extended the deadline for compliance until 30 days after the final order was issued in the variance case, unless that order specified otherwise. See Exhibit A. It is undisputed that Ms. Robinson attempted in good faith to comply with BCZR § 421.1 and only sought a variance after Baltimore County advised that compliance was an impossibility.

could have taken in the original proceeding."). Accordingly, any appeal of the special exception Opinion would have been futile.

The Board further suggests that Ms. Robinson should have appealed Judge Beverungen's finding of fact in the special exception Opinion that Ms. Robinson's home could not be used as the private kennel because it is within 200 feet of the property line. There is no dispute that Ms. Robinson's house is located within 200 feet of the property line and that so long as BCZR § 421.1 applied, she could not use it as the private kennel. Thus, an appeal of this finding of fact would properly have been denied. Further, to the extent that fact arguably was even "litigated" in the special exception hearing, Ms. Robinson does not seek in her variance petition to relitigate this fact. She simply seeks a variance from BCZR § 421.1's minimum setback requirement, which necessarily prevents her from using her home as part of the private kennel.

The Board characterizes Ms. Robinson's filing of a petition for a special hearing and variance as an "end-run-around" an appeal of the special exception Order. It is undisputed that Ms. Robinson intended to comply with BCZR § 421.1 and that neither she, the Protestants, nor Judge Beverungen knew that environmental issues and BCZR § 401.1 would make compliance impossible. If Ms. Robinson had known, she would have sought a variance when she sought the special exception. To suggest that Ms. Robinson was somehow gaming the system by filing a petition for special hearing and variance instead of an appeal of the special exception Order is belied by the fact that an appeal would be futile, as explained above, but also is contrary to the undisputed evidence of Ms. Robinson's conduct and character in this case. Ms. Robinson did not seek a special exception in response to any complaint or citation from the County or Animal Control. She voluntarily sought to legitimize the admirable work she and Ms. Swank have been doing for years in her home - rescuing dogs from imminent death, nursing them back to health in a loving home environment, and endeavoring to find them forever homes – by obtaining a special

exception for a private kennel. Indeed, appealing the special exception Order and requesting that the Board essentially grant a variance in that proceeding without Ms. Robinson filing a petition, providing public notice, and an opportunity to be heard would have been more akin to an "end-run-around" Baltimore County's variance procedures – which no doubt would have drawn strenuous objections from the Protestants.

2. Res Judicata Does Not Bar Ms. Robinson's Variance Petition

The Board ruled that Ms. Robinson's variance petition was barred by res judicata. The principle of res judicata provides that "a judgment between the same parties and their privies is a final bar to any other suit upon the same cause of action, and is conclusive not only as to all matters that have been decided in the original suit, but as to all matter which with propriety could have been litigated in the first suit...." Seminary Galleria, LLC v. Dulaney Valley Improvement Assn., Inc., 192 Md. App. 719, 734 (2010). In the special exception hearing, Ms. Robinson sought "a Special Exception under the Zoning Regulations of Baltimore County to use the herein described property for a private kennel (not commercial) in an RC2 Zone." Ms. Robinson did not request a variance, and the parties did not litigate any variance as part of the special exception hearing.[3] Indeed, in the special exception Opinion, Judge Beverungen noted that BCZR § 421.1 applied, that Ms. Robinson did not seek a variance, and he provided Ms. Robinson with eight months to comply with BCZR § 421.1 by building a structure for the dogs. All parties and Judge Beverungen believed she could comply with BCZR § 421.1, as she had ample property that was 200 feet from the property line for a kennel structure and doggy exercise areas. Accordingly, the variance was not litigated in the special exception hearing and thus does not constitute the "same cause of action."

The Board defines the issue litigated at the special exception hearing as whether a kennel

[3] Despite the Board's assertion that Ms. Robinson "should have sought relief for any and all variances she needed to satisfy BCZR § 421.1," along with her special exception petition, it is undisputed that she did not seek a variance because she did not know compliance would be an impossibility.

can be operated at the property within the minimum setback requirement of BCZR § 421.1. While Judge Beverungen necessarily addressed the private kennel requirements, including compliance with BCZR § 421.1 based on the size and shape of the parcel (i.e, whether the acreage and shape of the property was sufficient for a dog kennel and exercise areas 200 feet from the property lines), a different issue is presented by the variance petition. The issue in the variance petition is whether Ms. Robinson's property is unique and whether she will suffer a practical difficulty if BCZR § 421.1 is strictly applied. While the evidence of practical difficulty includes the newly discovered and undisputed fact that Ms. Robinson's property has environmental issues that prevent her from building a kennel structure along with BCZR § 401.1's prohibitions, these issues were not known or addressed in the special exception hearing.

Further, while the doctrine of res judicata may also bar a matter that could have been litigated in the first suit, the variance petition does not fall into this category. Baltimore County requires the filing of a petition for a variance, public notice, and a hearing before a variance may be granted – none of which had been done at the time of the special exception hearing because Ms. Robinson did not know compliance was an impossibility and thus had no reason to seek a variance. Indeed, it is well-settled law in Maryland that where the need for a variance is determined after a special exception, a property owner may thereafter obtain a variance. Stacy v. Montgomery County, 239 Md. 189, 192-93 (1965) (affirming grant of variance from 25 foot setback requirement where property owner determined need after obtaining special exception for child care use); Zengerle v. Board of County Commissioners for Frederick County, 262 Md. 1 (1971) (affirming grant of variance from 200-foot setback where property owner determined need after obtaining special exception for sanitary landfill use). Accordingly, the variance could not have been litigated in the special exception hearing and res judicata does not constitute a final bar to the variance petition.

Even if, contrary to fact, the variance issue could have been or had been litigated as part of the special exception hearing, it is well-settled that res judicata may not prevent a second hearing on a previously decided matter where there is evidence of a substantial change in circumstances. Seminary Galleria, LLC v. Dulaney Valley Improvement Assn., Inc., 192 Md. App. 719, 734 (2010); Jack v. Foster Branch Homeowner's Assn. No. 1, Inc., 53 Md. App. 325, 33 (1982). The Board suggests that the facts have not changed in that the house still does not meet the minimum setback requirements. While that fact remains the same, the material facts relevant to the variance petition have changed. At the time of the hearing, all parties and Judge Beverungen believed Ms. Robinson could comply with BCZR § 421.1 by constructing a kennel structure 200 feet from the property line, as she has sufficient acreage within that area. The special exception Opinion was issued on December 18, 2014. A year-round kennel structure with water, electricity, and a new underground fence would be difficult to build in the winter months. In acknowledgement of this fact, Judge Beverungen gave Ms. Robinson eight months to comply with BCZR § 421.1 by obtaining necessary permits and constructing a kennel structure for the dogs. Ms. Robinson hired her landscaper, Noah Price, to obtain permits and construct the kennel. Upon inquiry, the County advised Mr. Price, however, that he could not build a kennel in the required location because of environmental issues unique to Ms. Robinson's property and because BCZR § 401.1 prohibited accessory structures in front of a house. This was a material and substantial change in circumstances.

The Belvedere Baptist Church of Baltimore, Case No. 15-004-SPH, relied upon by the Board is distinguishable. In that case, the church sought to modify a restriction on the number of children who could be served at a childcare center pursuant to a special exception the church had obtained a year earlier. The Board ruled that the request was barred by the doctrine of res judicata because the issue of the number of children had been litigated at the special exception hearing and

there had been no material change in facts since the original hearing. Here, the issue of Ms. Robinson's inability to build a kennel structure because of environmental issues and BCZR § 401.1 was not even known, let alone litigated, in the earlier hearing. Accordingly, Ms. Robinson's variance petition was not barred by res judicata.

3. Collateral Estoppel Does Not Bar Ms. Robinson's Variance Petition

The Board further suggests, without analysis, that Ms. Robinson's variance is precluded by the principle of collateral estoppel. Collateral estoppel may only be applied to bar a claim where "the identical issue sought to be relitigated was actually determined in the earlier proceeding." Reid v. State, 119 Md. App. 129, 137 (1998). As explained above, the issues of uniqueness and practical difficulty were never raised or otherwise litigated in the special exception hearing. Accordingly, collateral estoppel does not preclude Ms. Robinson's variance petition.

C. The Board's Ruling That Ms. Robinson Has Not Proved Practical Difficulty And Has Self-Imposed Any Hardship Is Contrary To Fact And Clearly Erroneous

The Board properly ruled that Ms. Robinson's property is unique as compared to other properties in the relevant neighborhood. The Board also properly ruled that the circumstances or conditions that make the property unique also prevent the property from being able to strictly comply with BCZR § 421.1's minimum setback requirement for a private kennel. The Board, however, ruled that Ms. Robinson failed to satisfy the practical difficulty requirement. This is incorrect.

First, the Board ruled that the variance petition, which it erroneously characterizes as seeking to "eviscerate the setback regulation for private kennels,"[4] does not do substantial justice to

[4] As explained above, the Board's characterization of the variance request is inaccurate, as Ms. Robinson seeks only a variance of "as little as" 15 feet from the property line at one point and as much as 107 feet and 145 feet at other points.

other property owners in the district.[5] The Board contends that the variance would eliminate the condition of a separate structure and dog runs included in the special exception Opinion "for the protection of surrounding and neighboring properties." The Board concludes that removal of these conditions cannot constitute justice to other property owners. This is incorrect. As a threshold matter, not all of the enumerated conditions in the special exception Opinion were "for the protection of surrounding and neighboring properties." Building a separate kennel structure and dog runs within eight months was not a condition imposed for the protection of surrounding and neighboring properties – as they benefit from neither the separate structure/runs nor the timing extension, which actually was for Ms. Robinson's benefit. So any modification of these conditions would not do any injustice to the neighbors. Indeed, the variance would do substantial justice to neighbors as it permits the dogs to continue to live inside Ms. Robinson's home where they spend the majority of their days lounging and where Ms. Robinson can restrict their access to the outside and bring them in promptly if they bark, as she has done religiously since the special exception Opinion was issued. Without the variance, the dogs would live outside in a kennel with dog runs where they would have unfettered access both day and night to the outside and where they would be more likely to notice and bark at wildlife or Mr. Krause, should he continue to skulk around the perimeter of Ms. Robinson's property in the middle of the night. Further, the variance permits Ms. Robinson to continue to provide a necessary service at her own expense to the community at large, as she selflessly rescues and cares for unwanted and injured dogs in a time where shelters are overrun with strays that are a drain on government and community resources. Accordingly, the variance does do substantial justice.

Second, the Board suggests that any hardship caused by strict compliance with BCZR §

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[5] Notably, only one neighbor opposed the special exception or the variance. The majority of Ms. Robinson's other neighbors came out en masse at the special exception hearing, the variance hearing and the appeal hearing to show their support.

421.1 was self-imposed by Ms. Robinson. While the Board acknowledges that Ms. Robinson can only enjoy the special exception if a variance from the setback requirements is granted such that the dogs can live in her home, the Board suggests that Ms. Robinson's refusal to consider alternatives to the status quo suggests that she has created the hardship. This is factually and legally incorrect.

It is well-settled law in Maryland that a self-created hardship is created by the property owner not by the property itself. Richard Roeser Prof. Builder, Inc. v. Anne Arundel County, 368 Md. 294, 298 (2002) ("The topography and placement of the property is not a self-inflicted or self-created hardship..."). "Traditionally, self-created hardship requires an affirmative action, exclusively by a property owner or his predecessor in title, that is itself the sole reason for the need for the variance." Stansbury v. Jones, 372 Md. 172, 198 (2002). Maryland law defines a self-created hardship as follows:

> Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions of the zoning ordinance, hardship arises which is capable of being relieved through the grant of a variance. The restrictions of the ordinance, taken in conjunction with the unique circumstances affecting the property must be the proximate cause of the hardship. If the peculiar circumstances which render the property incapable of being used in accordance with the restrictions contained in the ordinance have been themselves caused or created by the property owner or his predecessor in title, the essential basis of a variance, i.e., that the hardship be caused *solely* through the manner of operation of the ordinance upon the particular property, is lacking. In such case, a variance will not be granted; the hardship, arising as a result of the act of the owner or his predecessor will be regarded as having been self-created, barring relief. This rule is simple and of general application in the several states. There is a uniform application of the rule in those cases in which there has been an act on the part of the property owner or his predecessor which has physically so affected the property as to create a unique circumstance or which in itself created either a practical difficulty or hardship in conforming to the restrictions of the ordinance.

Chesapeake Bay Foundation, Inc. v. DCW Dutchship Island, LLC, 439 Md. 588, 622 (2014) (citations omitted). In Ad + Soil, Inc. v. County Commissioners of Queen Anne's County, 307 Md. 307, 312, (1986), for example, property owners had enough land to comply with setback requirements under the zoning ordinance for operating a sewage disposal business. They chose to

set up their business, however, without complying with the setback requirements and without applying for zoning approval from county authorities. Thereafter, the property owners sought variances from these requirements arguing that strict compliance would pose a practical difficulty (e.g., they would have to move their operation). The court held that the property owners' hardship was not caused by some peculiar condition of the land but was self-inflicted by the owner's setting up their business in violation of the setback requirements when they could have complied. Id. at 339–40. Here, it is undisputed that Ms. Robinson will suffer a practical difficulty (indeed, actually an undue hardship) if she must strictly comply with BCZR § 421.1 because the unique combination of characteristics of her property prevent her from building a kennel structure 200 feet from the property line. She has done nothing to create the practical difficulty – it was caused solely by the unique characteristics of the property.

Ms. Robinson did not, as the Board suggests, refuse to consider other alternatives. It is undisputed, however, that the only alternative suggested at the hearing would create unnecessary difficulties for Ms. Robinson without providing any benefit at all to the neighbors. The Board concedes and the undisputed testimony of Protestant's expert supports that the only way for Ms. Robinson to enjoy the private kennel special exception is for the dogs to live in her house and have access to the outside therefrom. The Board also concedes that a variance is absolutely necessary as the entire house is located less than 200 feet from the property line due to the topography of the property. While, Protestant's expert, Mr. Doak, suggested a variance limiting the private kennel to the existing special exception area, the house, and the property in between comprised mostly of flagstone patio, he conceded that this would only be possible if Ms. Robinson were to change her living arrangements to give all 11 dogs[6] access to her front rooms, which have always been off-

[6] Since the hearing, Poncho the 14-year old, deaf Chihuahua passed away. Ms. Robinson has ten dogs now – five of which are seniors, at ten or more years old.

limits to protect Ms. Robinson's nice floors.[7] See Pet. Exh. 8 (proposed reduced variance area outlined in pink); Tr. (Day 2) at 86:24-87:4; 94:3-14. Most importantly, Mr. Doak further conceded that his proposal would not actually have any positive impact on Protestants' noise and environmental concerns (already addressed and debunked in the special exception hearing and to which the Board gave no credence). In fact, he admitted that rather than reducing noise, his proposed reduced variance area would almost completely eliminate the dogs' access to the side of the house that buffers the sound of the dogs when outside.[8] *See* Pet. Exh. 8 (orange line denoting sound between Ms. Robinson's house and Protestants' house; area of property where sound currently is buffered by Ms. Robinson's house in green; area where sound would be buffered by house with reduced variance area shaded in orange); Hearing Tr. (Day 2) 93:8-95:11. Further, restricting the dogs to the property in front of Ms. Robinson's house would not address any of the Protestant's environmental/runoff concerns (also debunked in the special exception hearing), as the dogs would continue to use the bathroom the same number of times a day and would be required to do so closer to the Protestant's property. Hearing Tr. (Day 2) 96:21-99:5. Essentially, Mr. Doak conceded that nothing positive would be accomplished – certainly nothing effecting the health, safety or general welfare – by reducing the variance area requested. Indeed, the Board even held that there was "little evidence to support [Protestant's] contention" that the dogs pose noise problems and "no evidence that the adverse effects are…'greater at the Subject Property than they would generally be elsewhere within the areas of the County that also are zoned R.C.2." Op. at 7.

---

[7] Mr. Doak also suggested that his proposed reduced variance area might be extended to include the kitchen door, but then conceded that the dogs could not traverse the steep retaining walls or steps immediately outside the kitchen door, such that this would not be a viable option. Hearing Tr. (Day 2) 85:14-86:18.

[8] Mr. Doak further suggested that reducing the area of the variance would move the dogs farther away from the neighbor closest to Ms. Robinson's driveway, Ms. Levinson; however, Mr. Doak acknowledged that Ms. Levinson attended the hearing in support of Ms. Robinson, such that this was not a valid concern. Hearing Tr. (Day 2) 87:5-88:6.

Accordingly, the Board's ruling is arbitrary and contrary to the undisputed facts and law.

CONCLUSION

For the foregoing reasons, the Board should reconsider its August 21, 2016 Opinion and grant the requested variance from the 200-foot setback requirement of BCZR § 421.1 and permit Ms. Robinson to use her house and the outside area currently confined by an underground electric fence as depicted on the site plan for her private (not commercial) kennel.

Respectfully submitted,

Michelle J. Dickinson
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Columbia, Maryland 21044
(410) 740-5630
michelle@dickinson-law.com
Counsel for Catherine H. Robinson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of October, 2016, a copy of the foregoing Motion for Reconsideration was delivered via regular mail, postage prepaid to:

G. Macy Nelson
Law Office of G. Macy Nelson, LLC
401 Washington Ave.
Suite 803
Towson, MD 21204

Counsel for Andy and Noreen Krause

Michelle J. Dickinson

Exhibit A

Gmail by Google

Michelle Dickinson <michelle@dickinson-law.com>

2015-0235

1 message

John E. Beverungen <jbeverungen@baltimorecountymd.gov> Wed, Jun 10, 2015 at 12:24 PM
To: "info@dickinson-law.com" <info@dickinson-law.com>, "'G. Macy Nelson' (gmacynelson@gmacynelson.com)" <gmacynelson@gmacynelson.com>
Cc: Debra Wiley <dwiley@baltimorecountymd.gov>, Sherry Nuffer <snuffer@baltimorecountymd.gov>, Kristen L Lewis <klewis@baltimorecountymd.gov>

Counsel,

I am in receipt of Mr. Nelson's request for postponement, which will be granted. I am mindful of the concerns articulated in Ms. Dickinson's letter regarding the dates set forth for compliance in the prior Order dated 12-18-2014. As a condition of granting the postponement request, I will extend the date for compliance until 30 days after the final order is issued in the above case, unless that order specifies otherwise.

The zoning file will be returned to Ms. Lewis, and I would request that 2+ hours be allocated for the rescheduled hearing. Counsel should confer and contact Ms. Lewis to reschedule this case.

John Beverungen

ALJ

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Board of Appeals of Baltimore County

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September 22, 2016

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G. Macy Nelson, Esquire
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204

RE: *In the Matter of: Catherine H. Robinson*
Case No.: 15-235-SPHA

Dear Counsel:

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,

Sunny Cannington Hann

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: Catherine H. Robinson
Scott Lindgren/Gerhold, Cross & Etzel, Ltd.
J. Lawrence Hosmer/Environmental Resources Mgmt.
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer, and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law
Andrew and Noreen Krause
Anita Krause
Kawana Swank
Anne Cornell
Ann Merryman
Noah Price

Board of Appeals of Baltimore County

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September 22, 2016

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Very truly yours,

Sunny Cannington

Krysundra "Sunny" Cannington
Administrator

KLC/tam
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c: Catherine H. Robinson
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Michael E. Field, County Attorney/Office of Law
Andrew and Noreen Krause
Anita Krause
Kawana Swank
Anne Cornell
Ann Merryman
Noah Price

IN THE MATTER OF CATHERINE H. ROBINSON 2012 Far Out Lane Sparks Glencoe, Maryland 21152 E/S Far Out Lane, approx. 1,475 ft. SW of Akehurst Road	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY Case No.: 15-235-SPHA

* * * * * * * * * * *

OPINION

This case comes to the Board from a de *novo* appeal of a final Opinion and Order dated October 9, 2015 (the "October 2015 Order"), issued by Administrative Law Judge John E. Beverungen (the "ALJ") in which Petitions for a Special Hearing and Variance filed by Catherine H. Robinson (the "Petitioner") that requested a modification of a prior Administrative Order and area relief pursuant to a variance were granted. In particular, the Petitioner has sought variance relief to permit a private kennel to be located within 15 feet of nearest property line instead of the required 200 feet and in doing so, an amendment to the December 18, 2014 Order granting a Special Exception allowing her to operate a private kennel on her property with certain conditions.

The hearing before this Board was held on April 19, 2016 and April 20, 2016. The Petitioner was represented by Michelle J. Dickinson, Esquire. The Citizen-Protestants were represented by G. Macy Nelson, Esquire.

Procedural Background Facts

The Petitioner is the legal owner of 2012 Far Out Lane, Sparks-Glencoe, Maryland (the "Subject Property"). Kawana Swank ("Ms. Swank") and her son (the "Swanks") reside with the Petitioner at the Subject Property. The Subject Property is approximately 5.4 acres and is zoned R.C.2 (R.C.2-Agricultural-Zone). The Subject Property is improved with a single family dwelling

that was constructed in 1921. The family dwelling is approximately 2,700 square feet and is located in northern Baltimore County.

The Petitioner has kept more than three dogs at the Subject Property for several years. The Petitioner currently keeps eleven (11) dogs on the Subject Property. The dogs reside with her inside the family dwelling. The Petitioner and the Swanks take care of the dogs. The Petitioner considers three of the dogs her pets and she allows those dogs to sleep in her bedroom. These dogs are either too old, or infirm, and may die soon, while the remaining seven dogs, which are not considered Ms. Robinson's pets, are kept with the hope that they will be adopted. The remaining seven dogs sleep in Ms. Swank's bedroom in the basement. All of these dogs stay in designated areas in parts of the family dwelling.

Mr. and Mrs. Krause (the "Krauses"), whose property is adjacent to northwest of the Subject Property, complained to the Petitioner about the dogs' barking, among other concerns. As a result, the Petitioner planted vegetative buffers and relocated an underground invisible dog fence, which at one location is at least 15 feet from the Krauses' property line, to minimize the impact upon them.

In 2014, the Petitioner sought approval for a private kennel in a RC-2 zone. Prior to the hearing, Zoning Advisory Committee comments were received, with the only substantive comments coming from the Department of Planning (DOP), who did not oppose the relief and wrote that the proposed use would not be detrimental to the surrounding community.

As part of the hearing on the original Petition, the Krauses identified four concerns of theirs: noise, sanitation, safety and the adverse impact upon property values. Following the hearing, on December 18, 2014, the ALJ issued an Opinion and Order granting a Special Exception to the Petitioner pursuant to Section 421.1 of the Baltimore County Zoning Regulations ("BCZR")

to allow her to operate a private kennel at the Subject Property subject to the following conditions for the "protection of surrounding and neighboring properties":

> The relief granted herein shall be subject to the following:
>
> 1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at her own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
>
> 2. Petitioner may keep on the premises at any one time no more than ten (10) dogs. To the extent Petitioner now has more than 10 dogs, she shall be permitted to keep such dogs until such time as they are adopted or die, but must thereafter have no more than 10 dogs on the property.
>
> 3. The special exception granted herein will terminate automatically if and when Ms. Robinson and/or Kawana Swank no longer own or reside at the subject premises.
>
> 4. Petitioner shall on or before June 30, 2015 secure necessary permits and commence construction of any building to be used for housing the dogs in compliance with B.C.Z.R. § 421.1, which structure must be completed on or before August 30, 2015. The outside areas used for exercise and/or dog runs may not be located within 200 feet of the nearest property line, as required by B.C.Z.R. §421.1. This outside area must also be fully enclosed by a fence or underground electric fence to contain the dogs on Petitioner's property.

Neither party appealed the December 18, 2014 Opinion and Order (the "December 2014 Order").

The Petitioner did not comply with the terms and conditions of the December 2014 Order, in that no permits were secured by June 30, 2015 and no structure was built to house the dogs. Due to the severe topography, springs, and location of the house on her property, the Petitioner believed that she could not build a structure for the dogs subject to the 200 feet setback from the property line because her landscaper was reportedly advised that Baltimore County (the "County") would not issue a permit to build a structure that would be located in front of the family dwelling.

Also, there was also a concern about a spring that runs through the Subject Property in the area where the structure would be built. According to her landscaper, it would be unlikely that the County would approve the location of the structure due to possible environmental concerns affecting the spring.

In lieu of compliance with the December 2014 Order, the Petitioner filed the subject Petition for Special Hearing requesting that the ALJ amend the earlier Order so that the Petitioner would not be required to build a separate structure to house the dogs, and in addition, grant variance relief from BCZR § 421.1 to permit a private kennel in a R.C.2 zone to be located within 15 feet of the nearest property line instead of the required 200 feet. In short, the Petitioner sought to allow her to continue to use her house and the outside area already secured by an underground electric fence for the kennel -- essentially, to maintain the status quo.

Following a hearing on the subject Petition, the ALJ, in the October 2015 Order, modified the December 2014 Order such that a separate structure for the dogs was no longer required and the variance was granted subject to the condition that the dogs must not be allowed outside of the house when no one is at home, and the "doggie door" must remain closed/locked when the Petitioner or other occupants are not home. The Krauses appealed the October 2015 Order.

Discussion

1. Variance Relief Sought is a Substantial Deviation from §421.1 of the BCZR.

The facts show that the Petitioner and the Swanks own at least ten (10) dogs, only three (3) of which are considered pets of the Petitioner. All dogs are housed within the Petitioner's private residence at the Subject Property (the "Family Dwelling"). Pursuant to BCZR §101.1, the character and number of dogs situated at the Subject Property constitute a "private kennel."[1] A

[1] Section 101.1 of the BCZR (Private Kennel) Any building, structure, or land, or any portion thereof, including a dwelling, that is used, intended to be used, or arranged for the housing of more than three dogs, not including

private kennel is permitted in a R.C.2 Zone by special exception[2]. To operate as a Private Kennel in a R.C.2 Zone, §421.1 of the BCZR states:

> If an animal boarding place or *private kennel* is allowed in a residential zone, either as a special exception or as a permitted use, any part of the use, including but not limited to exercise areas, septic systems, dog runs and parking areas, may not be located within 200 feet of the nearest property line.

Further, BCZR §421.5 states:

> In granting any special exception under this section, the Zoning Commissioner may impose additional conditions or restrictions, such as increasing buffers, requiring odor, noise, or animal waste disposal mitigation, and setting limits on the number and breeds of dogs, to ensure that the proposed use will not be detrimental to the health, safety, or general welfare of the surrounding area.

By her own admission, the Petitioner could not comply with BCZR §421.1 or the December 2014 Order; therefore she sought a modification of the December 2014 Order, which granted the Special Exception, and a variance.

In *Alviani v. Dixon*, 365 Md. 95, 775 A.2d 1234, 1242 (2001), the Court held that a special exception with variances may be granted by a zoning agency when the applicable code contains provisions excluding certain areas of the code from being subject to variance relief, but does not exclude the section covering the relevant special exception from being modified by variances.

The Respondents in *Alviani* sought a special exception to construct an Automotive Service Station in Anne Arundel County as well as two (2) variances from the setback requirements for a service station. In particular, the first variance requested a 143 foot setback in lieu of the 150 foot

---

puppies less than four months old, for the purposes of show, hunting, practice tracking, field or obedience trials, or as pets. A private kennel does not include a pet shop or dogs accessory to a farm use.

[2] § 1A01.1. (C) (2) of the BCZR (General provisions). Uses permitted by special exception. The following uses, only, may be permitted by special exception in any R.C.2 Zone, provided that in each case the hearing authority empowered to hear the petition finds that the use would not be detrimental to the primary agricultural uses in its vicinity; and, in the case of any use permitted under Item 29, further provided that the hearing authority finds that the use would support the primary agricultural use in its vicinity and would not itself be situated on land more appropriately used for primary agricultural uses: (2) Animal boarding places (regardless of class), commercial kennels, private kennels, veterinarians' offices or veterinarians (see Section 421).

setback and the second variance requested a 25 foot setback in lieu of the 35 foot setback, as required by the Anne Arundel County Zoning Regulations.

The Court in *Alviani* pointed out that it has frequently expressed the applicable standards for judicial review of the grant or denial of a special exception use and stated that:

> "[T]he special exception use is a part of the comprehensive zoning plan sharing the presumption that the special exception is in the interest of the general welfare, and therefore valid. The valid use expressed in the special exception grants the administrative board a limited authority to allow the enumerated uses which the legislature has determined to be permissible *absent any fact or circumstance negating the presumption*. The duties given to the administrative board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan". Id at 775 A. 2d at 1244. Also see, *People's Counsel For Baltimore County, et al v. Loyola College In Maryland*, 406 Md. 54, 956 A.2d 166 (2008).

In a further evaluation of the variances of 143 feet and 25 feet (in lieu of 150 feet and 35 feet), the Court in *Alviani* determined that the Respondents had substantially satisfied the criteria for granting the special exception because granting of those variance did not cause adverse effects upon the neighborhood or allow a use for a parcel of land that was outside of the general provisions of the general zoning plan. (*Id.* at 1246 – 47). The Court added that the two variances requested did not change the objectives of the Code to make the special exception satisfy certain criteria; the variances only allowed a slight modification that still enabled the special exception to fall into the comprehensive zoning scheme of that area. (*Id.*). The variance procedure there did not change the essential nature of the special exception use sought by the Respondents. (*Id.* at 1247). As a result, the Board in *Alvani* did not err as a matter of law by granting the two minor variances that enabled the Respondents to satisfy the criteria for the granting of a special exception. (*Id.*).

Finally, the Court in *Alviani* held that:

> "....in certain circumstances, a zoning body may grant a special exception together with area variances to what otherwise would be specific standards or requirements

> applicable to such special exception. The special exception, however, must be in a section of the local code for which variances are not excluded. Moreover, the granting of the variances may not so substantially alter the criteria for the granting of the special exception so that the criteria of the special exception would be swallowed by the variance to the extent that the special exception would not be a use that was contemplated in the comprehensive zoning scheme in respect to any particular special exception".

Id.

While the facts of this case are similar to the facts recited in *Alviani*, that case is distinguishable. First, there is nothing in the legislative scheme of Section 421.1 of the BCZR that states variances are excluded. As such, there is no bar to this Board's granting the Petitioner a special exception and variance relief as there is no prohibition stated in the applicable zoning section.

Second, although the Krauses have complained about the potential problems of noise, sanitation, safety and the adverse impact the dogs will have on their property values, there is very little evidence to support their contention. However, and more importantly, there is no evidence that the adverse effects are above and beyond, or as the Court pointed out in *People's Counsel v. Loyola*, supra, the adverse effects of the associated use created by the special exception are "greater at the Subject Property than they would generally be elsewhere within the areas of the County that are also zoned R.C.2."[3]

Third, assuming arguendo, that the characteristics of the Subject Property are unique and the Petitioner can demonstrate that a failure to grant the variance would create an undue hardship that she did not create herself[4], the Board must still evaluate whether the granting of the variance

[3] See, *People's Counsel For Baltimore County, et al v. Loyola College In Maryland,* 956 A.2d 198, in which the Court held that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.
[4] This proposition has been (or will be) discussed in detail in this Opinion.

would substantially alter the criteria for the granting of the special exception, so that the criteria of the special exception would be swallowed up by the variance to the extent that the special exception would not be a use that was contemplated in the comprehensive zoning scheme. (*Id.* at 1246-47).

Section 421.1 of the BCZR states that: "If an animal boarding place or private kennel is allowed in a residential zone, either as a special exception or as a permitted use, any part of the use, including but not limited to exercise areas, septic systems, dog runs and parking areas, may not be located within 200 feet of the nearest property line." The Petitioner has asked for variance of 15 feet in lieu of the required 200 feet. The primary purpose of this request is to permit the Petitioner to continue to use family dwelling as a shelter for the dogs, to allow the dogs to continue to roam in the rear of the family dwelling by using an underground invisible fence, which is approximately fifteen (15) feet from the Krauses' property line[5]. In short, the Petitioner wants to maintain the status quo.

The variance requested by the Petitioner is a substantial deviation from terms and conditions set forth in Section 421.1 of the BCZR. In *Alviani*, the Court noted that the requested variances only slightly modified the specific area standards for the special. (*Id.* at 1249). Those variances, 143 feet in lieu of 150 feet and 25 feet in lieu of 35 feet, only reduced the area standards by 5% and 29% respectively. Here, the Petitioner is asking for a variance of 15 feet in lieu of 200 feet which reduces the area standard of the special exception by 93%.[6] The granting of the variance under these circumstances is a substantial deviation from the area standards for a private kennel in

[5] It should be pointed out that in addition to the fence, the family dwelling, which is an integral part of the private kennel, also requires that a variance be granted to have use of it for housing the dogs.
[6] Also, in addition to the 200 foot setback, Section 421.5 of the BCZR will be substantially limited if the Petitioner's special exception and variance are granted.

a R.C.2. Zone and, we find that the legislature could not have intended that a private kennel as proposed here on the Subject Property, be allowed.

For these reasons the Petitioner's request for a special exception under §421.1 of the BCZR and the variance relief should be denied.

2. Petitioner's Requested Relief is barred by Failure to Appeal and Res Judicata/Collateral Estoppel.

In the alternative, the Petitioner's request for relief should also be denied because the Petitioner failed to appeal the December 2014 Order. The Petitioner here admits, and the Protestants through their expert agreed, that the condition in the December 18, 2014 Order to build a structure for the dogs within the area of the Property which meets the 200' setback as required in BCZR, §421.1, could not be met.

Accordingly, the Petitioner's option upon receipt of that Order was to appeal it to this Board. That appeal would then have been heard *de novo*. Instead, the Petitioner waited 4 months and filed another Petition for Special hearing and Variance relief on April 23, 2015 requesting to amend the Special Exception condition. We find that the filing of the instant Petition was an end-run-around the appeal that was never filed.

In addition, with regard to the Petition for Special Exception as originally filed, the Petitioner also should have sought relief for any and all variances that she needed to satisfy BCZR, §421.1. The ALJ in his December 18, 2014 Order pointed out that variance relief was not sought by her. (ALJ Opinion, p.4). Consequently, while this Board would not consider the ALJ's October 9, 2015 Opinion which was appealed as this case is *de novo*, we must accept all facts as determined by the ALJ in the December 2014 Order because it is a final decision.

On this point we note that the ALJ, while recognizing that a dwelling can be utilized for a private kennel under BCZR, §421.1, made a finding of fact in his December 18, 2014 Opinion and Order that the Petitioner's dwelling as set forth on the site plan she presented, "can [not] satisfy the necessary setback." (*Id.*). He further wrote: "As such a garage or other structure would need to be constructed for housing the dogs, or at least any dogs in excess of three which can be kept in the home." (*Id.*). Thus, the issue of using the dwelling as the 'kennel' was already decided by the ALJ and his findings are binding on this Board when considering the issues here. The Petitioner's failure to appeal and have the ALJ's previous findings of fact overturned, binds the Petitioner to the facts previously adjudicated.

By seeking to amend the December 2014 Order in the instant Petition, Petitioner seeks to relitigate issues and facts that have been decided by the ALJ and not appealed. The doctrine of *res judicata* bars litigation of the same matter with respect not only to the legal claims or issues decided in the case but also as to all matters which could have been litigated in the first suit. The Court of Appeals in *Alvey v. Alvey*, 225 Md. 386, 390, 171 A.2d 92, 94 (1961) said:

> The doctrine of *res judicata* is that a judgment between the same parties and their privies is a final bar to any other suit upon the same cause of action, and is conclusive, not only as to all matters which with propriety ***could have been decided in the original suit, but as to all matters which with propriety could have been litigated in the first suit,....***

(emphasis added).

Applying *Alvey* here, it is clear to this Board -- as it was to the ALJ in December of 2014 -- that the Petitioner should have sought variance relief along with the first Petition for Special Exception. The facts here are exactly as they were in December of 2014. The dwelling still does not meet the setback requirements of BCZR §421.1. This Board declines to give the Petitioner a second chance to request variance relief which should have been previously requested.

In *Seminary Galleria v. Dulaney Valley Improvement Ass'n,* 192 Md. App. 719, 995 A.2d 1068 (2010), the Court of Special Appeals held that "a judgment on the merits in a previous suit between the same parties or their privies precludes a second suit predicated upon the same cause of action." The Court in *Seminary Galleria* confirmed that this Board need not hear the facts before determining whether the doctrine of *res judicata* applies. *Id.*, at 734, 995 A.2d at 1077. The Court also stated that *res judicata* is applicable to administrative proceedings. *Id.*, 995 A.2d at 1078.

Citing *Batson v. Shiflett*, 325 Md. 684, 701 (1992), the Court in *Seminary* said that the test for determining whether an administrative agency's ruling is entitled to preclusive effect is as follows:

> Whether an administrative agency's declaration should be given preclusive effect hinges on three factors: (1) whether the agency was acting in a judicial capacity; (2) whether the issue presented to the reviewing court was actually litigated before the agency; and (3) whether its resolution was necessary to the agency's decision.

Id., 995 A.2d at 1078.

The ALJ's final December 18, 2014 Order meets this test. (1) The ALJ was acting in a judicial capacity by a conducting hearing on the Petition for Special Exception, where evidence was presented, and rulings were made on disputed legal issues; (2) The issue of whether a kennel can be operated at the Property within the requirements of BCZR §421.1 was actually litigated and a condition to build a dog structure was imposed; and (3) the ALJ's Order of December 18, 2014 was necessary for a resolution of the kennel issue.

Under *Deleon v. Slear*, 328 Md. 569, 616 A.2d 380 (1992), the Court of Appeals made clear that in determining whether claims are the same for the purposes of *res judicata*, the Court has in the past applied "same evidence test." However, the *Deleon* Court acknowledged that the concept of "claim" is broad and that "claim" is defined as a "group or aggregate of operative facts

giving ground or occasion for judicial action, as distinguished from the narrow concept of a 'cause of action.'" Id. at 589-90, 616 A.2d at 389-90. The *Deleon* Court, citing *Kent County Bd. of Educ. v. Bilbrough*, 309 Md. 487, 525 A.2d 232 (1987), emphasized that the most recent test for determining when two claims or causes of action are the same for purposes of *res judicata* is the "transaction" test as set forth in §24 of the Restatement (Second) of Judgments. *Deleon*, at 589, 616 A.2d at 390.

The Court of Appeals in *Bilbrough*, recited with emphasis Restatement (Second) of Judgments describing the transaction test as follows:

> The present trend is to see [a] claim in factual terms and to make it coterminous with the transaction regardless of the number of substantive theories, or variant forms of relief flowing from those theories, that may be available to the plaintiff; regardless of the number of primary rights that may have been invaded; and regardless of the variations in the evidence needed to support the theories or rights. The transaction is the basis of the litigative unit or entity which may not be split.

Id. at 497-498, 525 A.2d at 237-38; *Deleon*, at 589-90, 616 A.2d at 390.

Specifically, with respect to whether the claims are the same here, the *Deleon* Court reviewed the facts to see whether they "are related in time, space, origin or motivation." *Id.* at 590, 616 A.2d at 390. As applied to the instant case, the same parties are involved here as have been involved in litigation which led to the December 18, 2014 Opinion. We further find that, the same piece of property has been involved as well as the same zoning issue with respect to whether a private kennel should be permitted on the Property.

We also cite our previous holding in *The Belvedere Baptist Church of Baltimore*, Case No. 15-004-SPH, wherein we declined to approve a request to amend a restriction in a previous ALJ Order involving the property at issue. We applied the doctrine of *res judicata* in that case and found that there was not a substantial change in circumstances and fact between the first case and

the second case to warrant the requested relief. Specifically, we found that: "there was no substantial change to the property, the neighborhood or the facts that would lead to a contrary result upon relitigation, particularly in the relatively short time span between the decisions." (Board Opinion, p.8). We find that the facts of this case fit squarely within the relief requested in that case.

In the event that a court on appeal would find that the doctrine of *res judicata* is not a bar to this suit, we would further find that the doctrine of collateral estoppel or issue preclusion prevents relitigation of the same issues already decided by the ALJ and not appealed by the Petitioner.

For these reasons, the requested relief should be denied.

3. Petitioner Cannot Prove Practical Difficulty and Has Self-Imposed Any Hardship.

Leaving aside the issues raised above, the Board also concludes that the Petitioner's request for variance relief fails on its merits.

As is well established, the general rule is "the authority to grant a variance should be exercised sparingly and only under exceptional circumstances." *Trinity Assembly of God of Baltimore City v. People's Counsel*, 407 Md. 53, 79; 962 A.2d 404, 419 (2008), citing *Cromwell v. Ward*, 102 Md. App. 691, 703; 651 A.2d 424, 430 (1995). In Baltimore County, variances from height and area regulations may be granted "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[7] or unreasonable hardship." BCZR §307.1. Furthermore, "any such variance

[7] Because the changes to the character of the neighborhood are considered less drastic with area variances than with use variances, the less stringent "practical difficulties" standard applies to area variances, while the "undue hardship" standard applies to use variances. *Montgomery County v. Rotwein*, 169 Md. App. 716; 906 A.2d 959 (2006).

shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare." *Id.*

The "special circumstances or conditions [that] exist that are peculiar to the land or structure," commonly referred to as a subject property's "uniqueness," do not include within its scope the extent of improvements upon the property. *North v. St. Mary's County*, 99 Md. App. 502, 514; 638 A.2d 1175, 1181 (1994). Rather, the property's uniqueness, for zoning purposes, "requires that the subject property have an inherent characteristic not shared by other properties in the area," such as the property's "shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) ort other similar restrictions." *Id.*

Much of the evidence presented in this case concerned whether or not the Subject Property was unique. The Petitioner's theory here was not that one feature was unique when compared to surrounding properties, but that a specific combination of characteristics on the Subject Property resulted in practical difficulty and that such combination of characteristics was not shared by other properties in the area. Petitioner identified the following features as forming that combination: three steep, sloping sides that create a drainage basin (the "bowl"); a stream at the center of the property that discharges at the bottom of the bowl; and natural springs on the slopes of the bowl that create a wetlands area in the center of the bowl. The only buildable area of the property, according to Petitioner, is located at the rear of the parcel, within 200 feet of the rear property line (where the existing dwelling is located), which would require that any separate structure for a private kennel be built at the front of the house.

A large subset of the evidence regarding uniqueness focused upon defining "other properties in the area" or more generally, the neighborhood. The Petitioner presented evidence that the neighborhood consisted of approximately 24 properties (Petitioner's Exhibit No. 7). Protestants presented evidence that the neighborhood could be up to 40 square miles, but in any event their expert ultimately narrowed the focus on five square miles, consisting of 281 properties.

There is little guidance from case law or other legal authority that helps define a neighborhood for variance relief purposes. In defining what the "other properties in the area" or "neighborhood" is in a particular variance case, common sense dictates that any analysis start with those with the same zoning designation, in this case properties that are zoned R.C.2, as it is the requirements brought on by the zoning regulations that give rise to special exception and variance petitions.

To be clear, the zoning classification of a particular property is not dispositive of whether a property is within a neighborhood for comparison in this context. There are numerous examples throughout the County of adjacent residential properties and/or commercial properties that may have different zoning designations and yet such properties may be within a defined neighborhood. Therefore, in addition to zoning designation, proximity is an important factor.

Moreover, other information and criteria may factor into an analysis of this issue, including but not limited to: natural boundaries, such as roads (and to some degree the type of road) and water courses; residential areas that identify as a neighborhood; a homeowner's or community association's boundaries; and administrative or political boundaries.[8] While the zoning

[8] While such information could be used, the context of the case dictates the relevance of a particular factor. In this case, information concerning zoning designation, proximity, and roads was presented and such information was more than sufficient for the Board to make determination. Moreover, information relating to, e.g. an administrative boundary as evidence of the same would not have changed the Board's opinion in light of the zoning designation and proximity factors.

designation and proximity are of primary focus, any and/or all of these other features may be useful to help identify "other properties in the area" for variance relief comparison purposes. In short, common sense will prevail.

In this case, the properties identified as the neighborhood by Petitioner's expert are all within the R.C.2 zone. Most of the properties are adjacent to the Subject Property or are adjacent to the ones immediately adjacent to the Subject Property. All such properties are to the west of Yeoho Road, on or to the south of Abell Road, on or north of Far Out Lane.

As noted by Petitioner's counsel, Protestants' five-square mile neighborhood included properties zoned R.C.4, R.C.5, and R.C.8 as well as commercial districts, none of which are adjacent to the Subject Property or even adjacent to the properties adjacent to the Subject Property. There is little utility of comparing the Petitioner's property to those properties within, e.g., an R.C.4 zone when R.C.4 properties cannot have private kennels by special exception (BCZR §1A03.3) and no such R.C.4 zoned property is within reasonable proximity to the Subject Property. While it would be arguable whether other properties on nearby streets, e.g. Stockton Lane (immediately to the south of Far Out Lane), Tracey Road (immediately to the north of Abell Road) and/or other properties on roads within reasonable proximity, could be within the neighborhood, Protestants identified I-83, Falls Road, Mt. Carmel and Belfast Roads as the natural boundaries, but also included properties just beyond those borders for comparison as well. Protestants' scope of the "neighborhood" far exceeds that which is reasonable in this case. This Board concludes that the Petitioner's reasoning and definition of neighborhood, in this context, is correct.

Both parties agree that out of the 24 properties in the "neighborhood," only Parcel No. 183 (as per Petitioner's Ex. 7, the same as Parcel # 95 on Protestants' Ex. 4 and Ex. 9) and Parcel No. 186 (as per Petitioner's Ex. 7, the same as Parcel # 101 on Protestants' Ex. 4 and Ex. 9) could

qualify for comparison with the Subject Property. Both parcels have streams, steep slopes and a house built on relatively flat ground, like the Subject Property. The Petitioner contends: the steep slopes do not form a "bowl" like the slopes on the Subject Property; that the streams do not discharge into the bottom of the "bowl;" and there are no natural springs that help create a wetlands area. In addition, the two parcels are larger and do not have the same limitation of the only buildable area being located at the rear of the property, within 200 feet of the property line.

In the end, there are similar features among these three parcels. There is at least some evidence that the other parcels may not be so restricted in using their property in an analogous manner if desired. While a close call, it is the combination of the features on the Subject Property that constitutes the "circumstances or conditions" that are particular to the Subject Property to make it unique in this context and in this context only. Moreover, such circumstances or conditions prevent the Subject Property from being able to strictly comply with the Baltimore County Zoning Regulations at issue.

Nevertheless, the Petitioner is not entitled to variance relief. The second prong for variance relief Petitioner must satisfy is that of practical difficulty. To establish practical difficulty, the Petitioner must prove:

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

Trinity Assembly, 407 Md. at 83-84; 962 A.2d at 422.

The Petitioner cannot satisfy the elements of practical difficulty.

As noted above, the Petitioner seeks to preserve the status quo. Doing so, however, would simply eviscerate the setback regulation for private kennels. In that circumstance, the requested variance fails to do justice in any meaningful way, other than for the Petitioner and the Swanks, let alone "substantial justice" to other property owners in the district. The ALJ noted in the December 2014 Order that conditions were imposed for the "protection of surrounding and neighboring properties," including that of a separate structure and maintaining a 200 foot setback of exercise/dog runs from the property line. (December 18, 2014 ALJ Order, p. 7-8). The facts at issue in December 2014 that justified the imposition of those conditions as part of the December 2014 Order have not changed. Removal of those conditions cannot constitute justice when such conditions were deemed necessary when originally imposed.

Moreover, this Board concludes that any hardship caused by strict compliance in this case is self-imposed. The Petitioner wants to use a portion of her house as the kennel. The portion of the house she uses and wishes to continue to use requires the dogs to enter/exit the house at the rear of the house and well within 200 feet of the property line. If the dogs were to use the front of the house, the dogs would be farther away from the property line. However, the Petitioner has not allowed the dogs on the hardwood floors located in the front of the house. The Petitioner does not want the dogs to track mud and/or dirt through the front of the house, nor does the Petitioner want the carpets or floors ruined. The electric fence is only required in its present location if the dogs are restricted to entering and exiting from the garage/rear of the house. Therefore, if the dogs were allowed to use the front of the house, the electric fence could be moved so that the setback is not reduced as much as 92.5% (from 200 feet to 15 feet). While the house may be within the required 200' setback, being inside within that distance helps alleviate noise issues and to whatever amount

in front of the exterior of the house that is still within the setback, it is still substantially farther away than 15 feet and has the house itself to act as a noise barrier to some degree.

The Petitioner's refusal to consider alternatives, including particularly that of the dogs using the front door and front of the house, yields one conclusion, that Petitioner's hardship is self-imposed.[9] Therefore, the Petitioner has not satisfied the elements required to prove practical difficulty. Further, the Board finds that, irrespective of practical difficulty, the Board is only authorized to grant variance relief if the requested variance is in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare. BCZR §307.1. For the reasons set forth throughout this Opinion, the Board finds that variance request is not only not in harmony, it is in fact incongruous with the spirit and intent of the regulations at issue and cannot afford relief without injury to public health, safety and general welfare.

While the Board appreciates the lofty cause championed by the Petitioner that underlies the requests addressed herein, the Board is compelled to follow the applicable law and specific regulations. The Petitioner has not and cannot meet her burden to obtain the requested variance relief or to amend the December 2014 Order.

For the foregoing reasons, Petitioner's petition to amend the December 2014 Order and variance request are denied.

[9]Practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted. See, e.g. *Richard Roeser Prof'l Builder, Inc. v. Anne Arundel Cty.*, 368 Md. 294, 316; 793 A.2d 545, 559 (2002); *Cromwell v. Ward*, 102 Md. App. 691; 651 A.2d 424 (1995). Even if it can be said here that the Petitioner did not create the hardship that precludes a separate structure in the front of the house, to which the Board concludes there is insufficient evidence in support such a finding, the Petitioner nevertheless has taken steps to exacerbate the hardship claimed with respect to the setback requirements. As such, the request for relief must fail as the Petitioner has still caused the circumstances that, from Petitioner's view, require a variance of the setback requirements, namely, the garage/rear entrance and exit for the dogs and the related placement of the electric fence.

ORDER

THEREFORE, IT IS THIS 22nd day of September, 2016, by the Board of Appeals of Baltimore County,

ORDERED that the Petition for a Special Hearing to Amend the December 18, 2014 Order and the accompanying request for variance relief are, both, **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
OF BALTIMORE COUNTY

Maureen Murphy, Chairman

Benfred B. Alston

Jason S. Garber

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

September 1, 2016

Mr. Andrew Krause
1940 Akehurst Road
Sparks, Maryland 21152

Re: In the Mater of: *Catherine H. Robinson*
Case No.: 15-235-SPHA

Dear Mr. Krause:

In accordance with your request, enclosed please find a copy of the Minutes of Deliberation in the above-referenced matter. A copy of the full Opinion and Order will be mailed to you upon issuance.

If you have any questions, please let us know.

Sincerely,

Tammy A. McDiarmid
Legal Secretary

tam

Enclosure

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

15-235-SPHA

IN THE MATTER OF: Catherine H. Robinson

DATE: June 21, 2016

BOARD/PANEL: Maureen E. Murphy, Panel Chairman
Wendell H. Grier
Jason S. Garber

BOARD/PANEL CLERK: Tammy A. McDiarmid, Legal Secretary

To deliberate the following:

Petition for Special Hearing to request the Administrative Law Judge to amend the November 18, 2014 order granting a Special Exception for a private kennel in case number 15-092-X as shown and indicated on the site plan; and

Petition for Variance from Section 421.1 of the BCZR to permit a private kennel in a RC-zone to be located within 15 feet of the nearest property line in lieu of the required 200 feet.

THE BOARD MEMBERS DISCUSSED THE FOLLOWING:

BACKGROUND/FINDINGS

- The Board reviewed the history of this matter.
- This case was by heard and granted by the Administrative Law Judge ("ALJ"). The Protestants' appealed the decision to the Board of Appeals. The Board held a *de novo* hearing, and there were two days of testimony.
- In 2014 the Petitioner requested, and was granted, a special exception to operate a private kennel with no more than 10 dogs. Conditions were attached to that Opinion including the requirement to build an outside structure for the dogs to sleep in, and that the outside dog areas be located 200' from the nearest property line. The Opinion of the ALJ contained Findings of Fact, and was not appealed.
- The Petitioner has owned her home for about 20 years and has 3 dogs. Approximately 15 years later she took on a tenant and at that time additional dogs came into the home. The Petitioner rescues dogs and cares for them until she can find a good home which isn't always easy as dogs are older or have health problems.
- The Petitioner now requests an amendment to the Special Exception, and also requests a Variance to setback requirements.
- Bruce Doak presented expert testimony on behalf of the Petitioner that a structure cannot be as conditioned by the 2014 Order due to the existence of wetlands. No evidence was presented from Baltimore County that the structure could not be built in the front yard, or that Petitioner applied for a permit and was denied.
- Petitioner would like to keep the status quo as it has been for 10 years and does not want the outside structure. There was testimony that 3 of the dogs sleep in the Petitioner's home and the remaining dogs sleep in the basement on individual dog beds.
- There is an electronic fence on the property that the Petitioner wishes to leave in location, which does not comply with the previous Order.

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DECISION BY

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LAW OFFICE OF
G. MACY NELSON, LLC

G. MACY NELSON
DAVID S. LYNCH

SUITE 803
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TOWSON, MARYLAND 21204
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TELEPHONE: (410) 296-8166
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May 25, 2016

Hand-Delivered

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

Re: Petitions for Special Hearing and Variance
(2012 Far Out Lane)
5th Election District
3rd Council District
Catherine H. Robinson, Petitioner
Case No.: 2015-0235-SPHA

Dear Sir/Madam:

Enclosed please find an original and three copies of Memorandum of Citizen-Protestants for filing in the above case.

Thank you.

Very truly yours,

G. Macy Nelson

GMN:ldr
Enclosure
cc: Michelle J. Dickinson, Esquire

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

October 9, 2015

Michelle J. Dickinson, Esq.
10440 Little Patuxent Pkwy., Suite 300
Columbia, Maryland 21044

G. Macy Nelson, Esq.
401 Washington Avenue, Suite 803
Towson, Maryland 21204

RE: Petition for Special Hearing and Variance
Property: 2012 Far Out Lane
Case No. 2015-0235-SPHA

Dear Counsel:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the Baltimore County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Baltimore County Office of Administrative Hearings at 410-887-3868.

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

IN RE: 2012 Far Out Lane Southside of Far Out Lane, 1475 ft. southwest of Akehurst Road	*	BEFORE THE BALTIMORE COUNTY
5th Election District 11th Councilmanic District	*	BOARD OF APPEALS
	*	CASE NO. 2015-0235-SPHA
Legal owner: Catherine Robinson	*	

* * * * * * * * * * * * * * *

MEMORANDUM OF CITIZEN-PROTESTANTS

Statement of the Case

On December 18, 2014, the Administrative Law Judge ("ALJ") granted Catherine H. Robinson ("Applicant") a special exception for a private kennel on R.C. 2 zoned land. Baltimore County Zoning Regulations ("BCZR") section 421.1 requires that any part of a kennel be at least 200 feet from any property line. The Citizen-Protestants reside on property bordering the Applicant's property. The Citizen-Protestants did not appeal the original Special Exception ruling to permit the kennel with the 200-foot setback because they were prepared to live with what they assumed would be a kennel regulated and built to protect the stream to their pond and reduce noise whereby the Applicant's house stood between the Citizen-Protestants' residence and up to eleven barking dogs. Moreover, the kennel structure would also have provided an appropriate space for dogs to be housed when unsupervised for extended periods of time instead of enabling the dogs to go in and out of the Applicant's residence at will.

On April 23, 2015, the Applicant filed a request for a Special Hearing pursuant to BCZR section 500.7 to amend the December 18, 2014 Order granting the Special Exception for a private kennel and a request for a variance to permit a private kennel in as R.C. 2 zone within fifteen feet of the nearest property line in lieu of the required two hundred feet. The Baltimore County Board of Appeals ("Board") conducted a *de novo* hearing on April 19 and 20, 2016.

Facts

This case concerns 5.4 acres of R.C.2-zoned land located at 2012 Far Out Lane in northern Baltimore County ("Subject Property"). The Subject Property includes a house that was built in 1920 ("House"). (Testimony of Applicant).

The Applicant purchased the Subject Property in approximately 1994. In approximately 1999 or 2000, the Applicant began fostering dogs The Applicant is now caring for eleven dogs which she rescued. *See* Applicant's Exhibit 2 (photographs of each dog).The Applicant also rescues horses. (Testimony of Applicant).

The Applicant proposes that the kennel include all of her property up to within fifteen feet of the property line and her House. Citizen-Protestants, who since 2005 have resided on land bordering the northwest side of the Subject Property, oppose the variance. Citizen-Protestants also own land on the east side of the Subject Property. The dogs currently only have ingress to, and egress from, the rear of the House, which faces the property of the Citizen-Protestants. The dogs also have the ability to be within approximately fifteen feet of the Citizen-Protestants' property.

The lowest elevation of the Subject Property is roughly its center portion at the rear of the property away from Far Out Lane. A stream originates near the center of the Subject Property and flows in a northwesterly direction towards to the one acre pond on the land owned by Citizen-Protestants. (Protestants' Exhibit 7). The portion of the Subject Property that satisfies the two hundred foot setback requirement is in the area of the springs that generate water for the stream.

The Applicant did not explore the possibility of buying a property large enough to provide more options for a kennel without a variance. The Applicant's landscaper, Noah Price, was told by an unidentified employee of Baltimore County that the Applicant could not build a kennel between the front of the House and Far Out Lane (Testimony of Applicant) despite the facts that there are already two existing buildings in her front yard (a detached garage and a spring house).

The parties presented evidence regarding the Subject Property's neighborhood. The Applicant's expert witness, Scott Lindgren, described two possible neighborhoods. The first has the following borders: Akehurst Road on the north and Far Out Lane on the south ("Neighborhood I"). *See* Exhibit 7. Neighborhood I includes seventeen parcels.

Mr. Lindgren's second neighborhood has the following borders: Abell Lane on the northwest; Yeoho Road on the northeastern border; and Stringtown Road on the south. ("Neighborhood II"). Neighborhood II includes approximately thirty-five parcels.

Mr. Doak described a larger neighborhood ("Neighborhood III"). Neighborhood III has the following borders: Mount Carmel is the northern border; Route 83 is the eastern border; Belfast is the southern border; Falls Road is generally the western border.

Neighborhood III is 4.4 miles by 3.4 miles. Virtually all of Neighborhood III is zoned R.C. 2. The land uses are similar throughout Neighborhood III. Mr. Doak reviewed 281 parcels within Neighborhood III in a subset area of only 1.8 x 3 miles. *See* Exhibit 4.

Questions Presented

1. Whether the Applicant is operating a "private kennel" or "domestic animal sanctuary."

If the Applicant is operating a "private kennel"-

2. Whether the Subject Property has unique characteristics as compared to other properties in the neighborhood.

3. Whether the Subject Property's unique characteristics, if any, cause the zoning provision to impact the Subject Property disproportionately.

4. Whether a practical difficulty and/or unreasonable hardship for the Applicant resulted from the disproportionate impact of the ordinance.

5. Whether the Board can allow a lesser relaxation of the setback requirements than the Applicant applied for that would give substantial relief to the Applicant and be more consistent with justice to the Citizen-Protestants.

Summary Applicable Law

The BCZR defines two uses that are relevant to this legal debate. First, a "domestic animal sanctuary" is:

> Any building, structure, or land, or any portion thereof, that is used or intended to be used for the shelter and care of dogs and cats that have been abandoned, neglected, or abused by prior owners. Such facility must be operated by an organization qualified as a nonprofit under Section 501(c)(3) of Title 26 of the United States Code. The organization must facilitate at least 50 animal adoptions per year, and no services will be provided beyond those intended to serve the needs of the animals in the facility. The facility will be accessible to the public for the limited purpose of placing the animals in acceptable home environments. The

> establishment of such a facility shall not preclude the use of the land for residential or agricultural purposes.
> [Bill No. 20-2010]

BCZR § 1.101.1. A "domestic animal sanctuary" is permitted by right in the R.C. 2 zone "if located on or within property that is greater than 7.5 acres in size." BCZR § 1.1A01.2B(14). The BCZR prohibit a "domestic animal sanctuary" on the Subject Property because it is 5.4 acres.

Second, a "private kennel" is:

> Any building, structure, or land, or any portion thereof, including a dwelling, that is used, intended to be used, or arranged for the housing of more than three dogs, not including puppies less than four months old, for the purposes of show, hunting, practice tracking, field or obedience trials, or as pets. A private kennel does not include a pet shop or dogs accessory to a farm use.

BCZR § 1.101.1. A "private kennel" is permitted by special exception in the R.C. 2 zone. BCZR § 1.1A01.2C(2). But no part of the private kennel may "be located within 200 feet of the nearest property line…" BCZR § 421.2.

The Applicant assumes that the proposed use is a private kennel and has applied for a variance to permit a private kennel in as R.C. 2 zone within fifteen feet of the nearest property line in lieu of the required two hundred feet. "The burden of showing facts to justify ... [a] variance rests upon the applicant[.]"*Easter v. Mayor of Baltimore,* 195 Md. 395, 400 (1950).

BCZR section 307.1 grants the Board of Appeals ("Board") authority to grant a variance from the zoning regulations in limited circumstances. The appellate jurisprudence interpreting BCZR section 307.1 is well developed. *See Cromwell v. Ward,*

102 Md. App. 691 (1995); *Umerley v. People's Counsel for Baltimore Cnty.*, 108 Md. App. 497, *cert. denied* 342 Md. 584 (1996); and *Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore Cnty.*, 407 Md. 53 (2008). The Board's jurisprudence is also well developed. *See In the Matter of: Richard M. Folio*, Case No.: 14-185-A.

Cromwell emphasizes that a variance gives a landowner "authority ... to use his property in a manner forbidden ..., while a[] [special] exception allows him to put his property to a use which the enactment expressly permits." *Id.*, 102 Md. App. at 700 (internal quotation marks omitted). Consequently, "[t]he general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. *Id.* at 703. Indeed, there are "few reported Maryland appellate cases approving of a variance." *Id.* at 707. Regarding one such case, *Cromwell* noted that "[t]he Court, seem[ed] to acknowledge that it was making a detour from Maryland variance law. *Id.* at 708.

Cromwell provides a roadmap for the analysis of an application for a variance:

> The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is - in and of itself - unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.,* a determination of whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness, exists.

> Further consideration must then be given to the general purposes of the zoning ordinance.

Id. at 694-95. "These general rules are recognized by BCZR 307.1." *Umerley*, 108 Md. at 506.

Subsequent cases have illuminated these principles. *Trinity* explains:

> To be "unique," a property must "have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, sub-surface 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." *Lewis v. Dept. of Natural Resources,* 377 Md. 382, 434 (2003) (italics omitted) (quoting *North v. St. Mary's County,* 99 Md. App. 502, 514, (1994)).

407 Md. at 81. The location of an existing structure, or house, cannot satisfy the uniqueness requirement. *North,* 99 Md. App. at 514 ("the 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property").

The Applicant's obligation to prove uniqueness requires the Board to define the neighborhood. Maryland's land use jurisprudence addresses the principle of a neighborhood in special exception, rezoning, and variance cases.[1] In a variance case, an

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[1] On April 22, 2016, the Court of Appeals granted certiorari on two issues related to the neighborhood in a special exception case arising out of Baltimore County:

> 1) Does Maryland's special exception jurisprudence require the Baltimore County Board of Appeals to define the boundaries of the neighborhood of the proposed special exception before approving that special exception? If so, did the Board of Appeals' opinion satisfied Maryland's minimum requirements for articulating the facts found regarding the neighborhood's boundaries? 2) Did CSA err in holding that the Applicant met its burden of proof, as articulated by the concurring opinion in *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54 (2008)?

Attar v. DMS Tollgate , Case No. 12, September Term, 2016.

applicant must prove that the subject property has characteristics that prevent the operation of the proposed use without a variance no other property in the neighborhood possesses. *Trinity*, 407 Md. at 81. ("To be 'unique,' a property must "have an inherent characteristic not shared by other properties in the area....").

A neighborhood is a defined area that is distinct from the larger community, or "general public." The concept of a neighborhood is flexible and its definition depends on the circumstances of each case. *Woodlawn Area Citizens Ass'n v. Bd. of County Comm'rs for Prince George's County*, 241 Md. 187, 198-99 (1966). A neighborhood "will vary according to the geographic location involved." *Montgomery v. Bd. of County Comm'rs for Prince George's County*, 263 Md. 1, 5 (1971). "[T]he neighborhood in any area must be an area which reasonably constitutes the immediate environs of the subject property." *Clayman v. Prince George's County*, 266 Md. 409, 418 (1972). Recognizing the flexible relationship between the location of a particular use and its surroundings, the courts have held that "in a rural or semirural area, the neighborhood is going to be larger and more fluid than in a city or suburban area." *Montgomery*, 263 Md. at 5 (citing *Hardesty v. Dunphy*, 259 Md. 718, 724-725 (1970)). In the same way that streets, highways, or other substantial physical barriers may define the boundaries between different zoning classifications, they may also be used to evaluate the geographic confines of a neighborhood. *Brown v. Wimpress*, 250 Md. 200, 205 (1968).

There is an important corollary to the uniqueness rule. The uniqueness must be the cause of the "the disproportionate impact of the ordinance." *Cromwell* at 694-95. Thus, Board "must ... determine whether an unreasonable hardship results from the

disproportionate impact of the ordinance." *Umerley v. People's Counsel for Baltimore Cty.*, 108 Md. App. 497, 506 (1996). In other words, the Applicant must first prove that every property in the neighborhood may have a kennel without a variance. Then, the Applicant must prove that she cannot have a kennel due to the unique characteristic of the Subject Property.

If the zoning tribunal determines that an applicant failed to prove the required uniqueness, the tribunal must deny the application. If the tribunal finds that an applicant proved uniqueness, it must evaluate "whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness, exists." *Cromwell* at 695.

BCZR section 307.1 identifies both the "practical difficulty" and the "unreasonable hardship" standards. The Court of Special Appeals has explained the difference:

> The determination of which standard to apply, "practical difficulties" or "undue hardship," rests on which of two types of variances is being requested: "area variances" or "use variances." Area variances are variances "from area, height, density, setback, or sideline restrictions, such as a variance from the distance required between buildings." *Anderson v. Bd. of Appeals, Town of Chesapeake Beach,* 22 Md. App. 28, 37 (1974). Use variances "permit[ ] a use other than that permitted in the particular district by the ordinance, such as a variance for an office or commercial use in a zone restricted to residential uses." *Id.* at 38. Because the changes to the character of the neighborhood are considered less drastic with area variances than with use variances, the less stringent "practical difficulties" standard applies to area variances, while the "undue hardship" standard applies to use variances. *See Loyola Fed. Savs. & Loan Ass'n v. Buschman,* 227 Md. 243, 249 (1961).

Montgomery Cnty. v. Rotwein, 169 Md. App. 716, 728-29 (2006).

Citizen-Protestants suggest that the Board apply the less rigorous practical difficulty standard here. The "practical difficulty" standard requires the applicant to prove that the need for the variance is substantial and urgent and not merely for the convenience of the applicant. *Carney v. City of Baltimore*, 201 Md. 130, 137 (1952).

Trinity reviewed the rules governing the "practical difficulty prong of the Zoning Code's variance standards":

> With respect to the practical difficulty prong of the Zoning Code's variance standards, the Board applied the factors that this Court articulated in *McLean v. Soley,* 270 Md. 208 (1973). In *McLean* we adopted, from Professor Rathkopf's treatise, a three-part inquiry to guide local zoning authorities in determining whether a landowner established this element:
>
> > 1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
> >
> > 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
> >
> > 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured. (citations omitted). The Board's use of the *McLean* test was not error. (citations omitted).

407 Md. at 83-84.

Whether an applicant for a variance is allowed to use his/her property for any purpose is relevant to the practical difficulty analysis. *Montgomery County v. Rotwein*,

169 Md. App. 716 (2006) examined a request for an area variance and stated, "the pertinent inquiry with respect to economic loss is whether 'it is impossible to secure a reasonable return from or to make a reasonable use of such property.'" *Id.* at 733 (citing *Marino v. City of Balt.*, 215 Md. 206, 218 (1957)). *Rotwein* concluded that the applicant had not demonstrated that "unless her application [for an area variance] is granted, it will be 'impossible [for her] to make reasonable use of her property.'" *Id.*

Finally, a self-imposed or self-inflicted hardship do not satisfy the requirement of a practical difficulty:

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

Cromwell, 102 Md. App. at 722.

Finally, if an applicant proves that the property is unique and that the applicant will suffer from a practical difficulty, the zoning tribunal must evaluate "whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners." *Trinity,* 407 Md. at 84.

ARGUMENT

I. The Board of Appeals should disapprove the application to amend the special exception because the Applicant is operating a "domestic animal sanctuary," which is not permitted by right or by special exception on R.C. 2 land totaling less than 7.5 acres.

The Applicant described a use that is more like a "domestic animal sanctuary" than a "private kennel." The dogs were not for "show, hunting, practice tracking, field or obedience trials." The Applicant testified, and the Board should find, that she rescued the dogs and was trying to find them a good home. Her secondary purpose was to keep the dogs as pets until she found a good home for them.

Citizen-Protestants urge the Board to conclude that the Applicant is operating a "domestic animal sanctuary. The Board should disapprove the applications because the Subject Property is 5.4 acres and BCZR section 1.1A01.2B(14) requires a minimum of 7.5 acres for a "domestic animal sanctuary."

II. The Board should deny the application for a variance because the Applicant failed to prove that the Subject Property has unique characteristics as compared to other properties in the neighborhood.

The Subject Property's size, topography, spring and stream are not unique characteristics as compared to other properties in the neighborhood, no matter what boundaries the Board selects for the neighborhood.

The Applicant's expert witness, Scott Lindgren, characterized the Subject Property as having the shape of a "bowl." Mr. Lindgren asserted that the Subject Property possessed a combination of characteristics that no other property in the neighborhood possessed. In contrast, Citizen-Protestants' expert witness, Bruce Doak, testified that the Subject Property possessed characteristics - steep slopes, a stream, and a house constructed on relatively flat ground – that other properties in the neighborhood possessed.

The Applicant failed to prove that the Subject Property is unique. If Neighborhoods I or II are the relevant neighborhood, the Applicant has failed to prove uniqueness because both Parcel 183 (Citizen-Protestants' property) and Parcel 186 also have a water course, steep slopes and a house built on relatively flat ground.[2] If Neighborhood III is the relevant neighborhood, the Applicant has failed to prove uniqueness because seven parcels in Neighborhood III, like the Subject Property, have steep slopes, a water course, and a house constructed on relatively flat ground: Parcel 101 (Citizen-Protestants' Exhibit 6); Parcel 95 (Citizen-Protestants' Exhibits 7-8); Parcel 24 (Citizen-Protestants' Exhibit 11); Parcel 212 (Citizen-Protestants' Exhibits 13-14); Parcel 281 (Citizen-Protestants' Exhibits 15-16); Parcel 275 (Citizen-Protestants' Exhibits 18-19); Parcel 277 (Citizen-Protestants' Exhibit 20).

Citizen-Protestants urge the Board to deny the application for a variance because the Applicant failed to prove that the Subject Property has unique characteristics as compared to other properties in the neighborhood.

III. The Board should deny the application for a variance because the alleged unique "bowl" shape in conjunction with steep slopes and a water course is not the cause of any "disproportionate impact of the ordinance."

The only evidence is that many, if not most, of the properties in the neighborhood are, for a variety of reasons, unable to construct a kennel without variance. The main reason most properties cannot build a kennel without a variance is the size of the parcel.

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[2] Citizen-Protestants cite the parcel numbers from Applicants' Exhibit 7. These parcels are designated as Parcels 95 and 101 on Citizen-Protestants' Exhibit 4.

The parties agreed that the smallest property that could theoretically comply with the two hundred foot set back requirement is a square of 400 feet by 400 feet, or approximately 3.7 acres. (Testimony of Lindgren, Doak). Some parcels larger than 3.7 acres cannot have a kennel due to their shape.

The Applicant failed to prove that the zoning ordinance disproportionately impacts her. It does not matter whether the Board defines the neighborhood as Neighborhood I, Neighborhood II, or Neighborhood III. Neighborhood I has seventeen parcels. Mr. Lindgren testified that ten of the seventeen parcels, including the Subject Property, could not have a kennel without a variance because they were either too small or had the wrong shape.

Neighborhood II includes approximately 35 parcels. At least 13 parcels (Parcels 117, 118, 119, 100, 104, 102, 112, 111, 103, 105, 106, 107 and 108) are smaller than 3.7 acres and, therefore, could not have a kennel without a variance. (Citizen-Protestants' Exhibits 4, 9).

Neighborhood III includes 281 parcels. 156 of the 281 parcels are smaller than 3.7 acres and therefore could not have a kennel without a variance. There are additional parcels in Neighborhood III that, due to their shape, cannot satisfy the setback requirement for a kennel without a variance. (Testimony of Doak).

Citizen-Protestants urge the Board to deny the application for a variance because the alleged unique "bowl" shape in conjunction with steep slopes and a water course is not the cause of any "disproportionate impact of the ordinance." Moreover, the alleged unique "bowl" shape is merely a swale manifestation of the steep slopes.

IV. The Applicant has failed to prove that she will suffer a practical difficulty if she must comply with setback requirement.

The Board should disapprove the variance because the Applicant failed to prove practical difficulty for three separate reasons: the applicable law allows her to use the Subject Property in other permitted ways; the Applicant's need for kennel is not urgent; and the Applicant's alleged hardship was self-created.

The Board should disapprove the variance because the Applicant has options for by-right uses on the Subject Property. *Trinity*, 407 Md. at 83-84 (noting that variance might be appropriate if the owner could use the land for no permitted use).The Applicant lived in the House without the need for a kennel between 1994, when she purchased the Subject Property, and 1999 or 2000, when she began fostering dogs. That fact proves that she is able to reasonably use the Subject Property without a variance. She can use the Subject Property in other permitted ways, too. She can have up to three dogs. She can farm the land. She can keep horses there. She can operate a farmer's roadside stand, farmstead creamery and a home office. *See* BCZR 1A01.2B for list of uses permitted by right.

The Applicant failed to prove that the need for the variance is substantial and urgent, and not merely for her convenience. *Carney v. City of Baltimore*, 201 Md. 130, 137 (1952). Her stated purpose was to live with the dogs while she sought a good home for them. The Applicant testified that there is a "no-kill" shelter that would accept the dogs and provide a home for them without any risk that the dogs would be euthanized. But the Applicant prefers not to send the dogs to the "no-kill" shelter. Instead, she prefers

to live with the dogs in the House. Such a desire does not rise to the level of an urgent need.

Finally, any difficulty the Applicant faces regarding her ability to keep eleven dogs was self-imposed or self-inflicted. *Cromwell*, 102 Md. App. at 722 ("practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted"). The Applicant lived Subject Property between 1994 and approximately 2000 before she started fostering dogs. The Applicant created her own hardship when she increased the population of foster dogs to a number greater than three.

Citizen-Protestants urge the Board to deny the application for a variance because the Applicant has failed to prove that she will suffer a practical difficulty if she must comply with setback requirement.

V. This Board should disapprove the variance because the Applicant requested a far greater relaxation of the setback requirements that was necessary to give her substantial relief and be consistent with justice to the Citizen-Protestants.

Citizen-Protestants urge the Board to reject the variance because the Applicants failed to satisfy the requirements for a variance. Alternatively, the Board should disapprove the variance because the Applicant requested a far greater relaxation of the setback requirements than was necessary to give her substantial relief and be consistent with justice to the Citizen-Protestants.

Chairwoman Murphy instructed counsel to address (1) whether Maryland law required the Applicant to seek the smallest possible variance that would serve the Applicant's purposes and (2) whether the Board has the legal authority to grant a variance that is smaller than the Applicant requested.

Maryland law requires the Applicant to seek the smallest possible variance that would serve the Applicant's purposes. A zoning tribunal must evaluate "whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners." *Trinity*, 407 Md. at 84. *Accord* BCZR section 307.1 (Board may grant a variance "in such manner as to grant relief without injury to public health, safety and general welfare.").

The Board should disapprove the application because the Applicant seeks a variance that is far greater than is necessary to grant substantial relief to the Applicant. BCZR section 421.2 prohibits a kennel "within 200 feet of the nearest property line..." Nevertheless, the Applicant seeks a variance for all of the Subject Property except that portion of the Subject Property that is within fifteen feet of the property line. Bruce Doak described the footprint of a smaller variance, which would require the dogs to have ingress and egress from at least one of two doors at the front of the House facing Far Out Lane. Applicant's exhibits 4-17. The Applicant's witnesses opposed this suggestion on the grounds that it would require the dogs to go in a room with nice hard wood floors where the dogs are not now permitted.

The Board does have the discretion to modify the variance the Applicant seeks both in terms of the parameters of the variance itself as well as the discretion to add other restrictions on the configuration and operation of the kennel. *Cf In the Matter of the Application of Glen L. Durst, et ux, for a Special Exception fora Private Breeding Kennel*, Baltimore County Board of Appeals, No. 84-54-X. In *Durst*, the Board imposed the following restrictions on a kennel:

ORDER

For the reasons set forth in the foregoing Opinion, it is this 24th day of April, 1984, by the County Board of Appeals, ORDERED that the special exception for a Private Breeding Kennel petitioned for, be and the same is hereby GRANTED, subject to the following restrictions:

1. That the proposed kennel building be no bigger than 28' x 80' – as shown on Petitioner's Exhibit #1, and that it be orientated in the same manner as shown.

2. That the Petitioners shall totally enclose the proposed kennel, and that all dogs be kept inside this enclosure from dark until 7:00 a.m. to reduce the possibility of noise during normal sleeping hours.

3. That the kennel be allowed to be placed 205 feet from the southern property line instead of the 225 feet now shown.

4. That the kennel itself be insulated and soundproofed to the best possible degree, and that it be appropriately landscaped and maintained in order to obtain the maximum reduction of noise emanating from the kennel.

5. That the Private Breeding Kennel be just that, and that the kennel be used only for the breeding and care of Chow dogs. No other dogs are to be boarded at this site.

6. That the special exception herein granted is for a "Private Breeding Kennel" as opposed to a normal "boarding" kennel.

In the Matter of the Application of Glen L. Durst, et ux, for a Special Exception fora Private Breeding Kennel, Baltimore County Board of Appeals, No,-54-X, attached as Attachment 1.

V.1. Any variance relaxation granted by the Board to the Applicant should also be accompanied by fair and just restrictive relief to the Citizen-Protestants.

A proposal that might be the minimum necessary to grant substantial relief to the Citizen-Protestants would be a kennel that includes the entire House and an outdoor dog run that measures 40 feet by 100 feet which includes the following restrictions:

1. The dog run shall be located in the area shown in green on Attachment 2 at least 50 feet from the stream (shown in in blue).

2. The dog run shall be privacy-fenced at least 5 feet high to prevent dog escapes and further dampen noise.

3. Access to the dog run shall be restricted solely to the westernmost front door.

    a. To protect the Applicant's hardwood floors, an alternative door could be constructed in the Kitchen in the area circled in Attachment 3 (Applicant's Exhibit 2) requiring that the outdoor corridor diagramed in yellow on Attachment 2 be fenced and connected to the dog run.

    b. In no event shall the dogs be permitted ingress/egress from the back doors and garage facing the Citizen-Protestants' property except to permit their transportation to and from Applicant's property.

    c. Doggy-doors or other mechanical means enabling dogs to go outside without human supervision shall not be permitted.

4. The Applicant shall keep the dogs inside the House from 9:00 p.m. until 7 a.m. to reduce the possibility of noise during normal sleeping hours.

5. The dogs shall not be allowed outside without human supervision.

6. Dog feces shall be removed and sanitarily disposed daily.

Full arguments for the proposed restrictions are handicapped by the Board's prohibition on harm evidence which Citizen-Protestants shall respect. Nevertheless,

careful analysis of the evidence that was allowed should be sufficient to justify the restrictions as follows:

Argument for restrictions on the size and location of the outdoor dog run:

In seeking restrictive relief for the Citizen-Protestants, it was established that the Variance, if relaxed, should be the minimum necessary to provide reasonable relief to the Applicant. While Citizen-Protestants will not presume to set the minimum Kennel area, urging that none be allowed, it is reasonable to expect that the maximum area should NOT exceed the area that would originally have been allowed by the 200 foot setbacks had the need for a variance not existed in the first place. The area within this 200 foot setback area is 9650 square feet and is shown in Attachment 2 outlined in red. Moreover, allowing the Applicant's home as a *de facto* part of the kennel already provides almost 5200 square feet - over half of the original setback area (from SDAT records of above-ground area of 2696 sq. ft. + 2000 sq. ft. basement + 500 sq. ft. for garage – all accessible to dogs as per testimony except for front room with hardwood floors.) Given the indoor area already available to the dogs in the home, the maximum allowable outdoor area should be no more than about 4000 square feet.

Citizen-Protestants would actually prefer to reduce the area further based on the opinion of the Applicant's own Counsel when cross-examining Bruce Doak pertaining to Parcel 101 (on Citizen-Protestants Exhibit 6). During that examination, Counsel for the Applicant pointed out that said parcel would "permit a 15" x 71" feet dog run attached to the home" and described that area as "more than enough for an outdoor dog run". Yet

that area is only 1065 square feet, about one-quarter that proposed by the Citizen-Protestants, and less than 1/200th of the over 220,000 square feet (>5 acres) sought by the Applicant.

Argument for other proposed restrictions:

It should be clear from Citizen-Protestants' Exhibit 7 that Applicant's land topography and that of the Citizen-Protestants that the alleged "Bowl" shape resembles an amphitheater aimed at the Citizen-Protestants' home and tenant apartments. As such, it is reasonable to deduce that this topography tends to focus, echo, and amplify barking noise at the Citizen-Protestants and their tenants. As Bruce Doak testified, putting the outdoor part of the Kennel in the front yard in the sound-shadow of the Applicant's house would reduce this problem not only because the dogs will be much further from the Citizen-Protestants home but because the Applicant's house will absorb the noise and reflect it away from the Citizen-Protestants. Proposed privacy fencing of the dog run would clearly reduce noise further as well as prevent dog escapes.

The topography also obviously acts to drain all water runoff to the stream beginning on the Applicant's property feeding the 1 acre pond where the Citizen-Protestants and their tenants desire to swim and fish. As the Applicant and her landscaper Noah Price testified, dog feces is picked up only twice per week. By common sense it is reasonable to question how effectively that can be done on over 5 acres with the terrain and vegetation evidenced at the Hearing, especially when considering the unpredictable nature of precipitation.

Conclusion

For all of these reasons, Citizen-Protestants urge the Board to disapprove the variance.

Respectfully submitted,

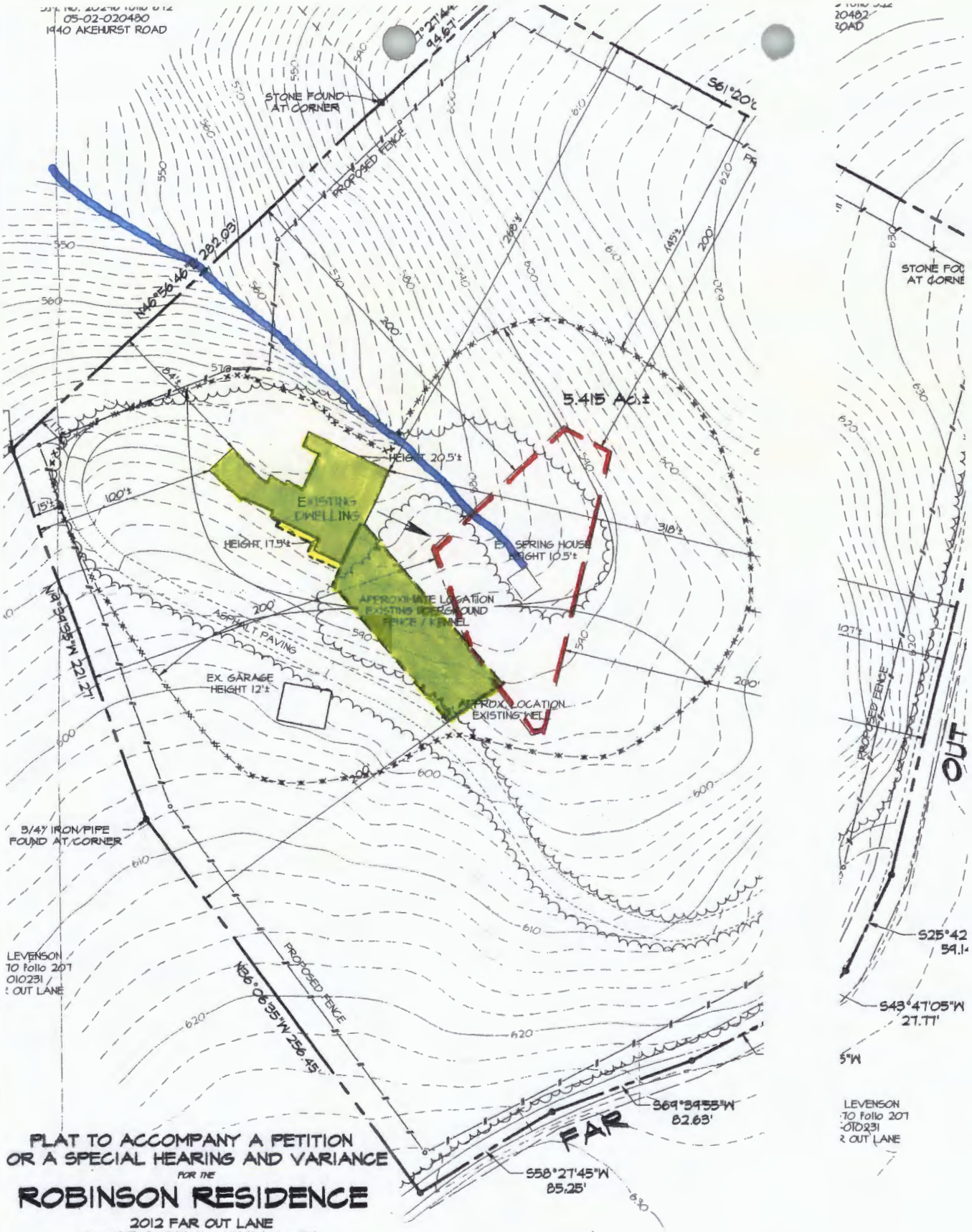
G. Macy Nelson
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204
(410) 296-8166
Attorney for Citizen-Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of May, 2016, a copy of the foregoing Memorandum of Citizen-Protestants was mailed, first class, postage prepaid, to:

Michelle J. Dickinson, Esquire
Law Office of Michelle J. Dickinson, LLC
10440 Little Patuxent Parkway, Suite 300
Columbia, Maryland 21044
Counsel for Applicant

G. Macy Nelson, Esquire



PLAT TO ACCOMPANY A PETITION
OR A SPECIAL HEARING AND VARIANCE
FOR THE

ROBINSON RESIDENCE

2012 FAR OUT LANE
Deed Ref: S.M. No. 10141 Folio 153
Tax Account No.: 05-14-010280
Zoned: RC 2; GIS Tile 027B2
Tax Map 0027; Grid 0015; Parcel 0182
5th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

GERHOLD, CROSS & ETZEL, LTD
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
PH: (410)823-4470 FAX: (410)823-4473

DATE: 8/27/14 SCALE: 1" = 50'

Diagram 1

(Modified from Original Plat Exhibit from Petitioner)

Actual Scale is 1" = 75.4'

because this Diagram is 65% of the size of the Original (where 1" = 50')

ATTACHMENT 2

ATTACHMENT 3

IN THE MATTER OF	*	BEFORE THE
CATHERINE H. ROBINSON	*	BOARD OF APPEALS
E/s Far Out Lane, approx. 1,475 feet SW	*	OF BALTIMORE COUNTY
of c/l of Akehurst Road	*	
2012 Far Out Lane	*	**Case No. 15-235-SPHA**
5th Election District	*	
3rd Councilmanic District	*	

* * * * * * * * * *

MEMORANDUM OF LAW

Petitioner Catherine H. Robinson, by her counsel, submits this Memorandum of Law in opposition to Andrew and Noreen Krause's ("Protestants") Appeal of the Variance from the setback requirements of B.C.Z.R. 421.1 granted by Judge Beverungen.

I. FACTS

A. Ms. Robinson's Dog Rescue

Catherine "Holly" Robinson has lived at 2012 Far Out Lane for over 20 years in a house built in 1920. Ms. Robinson, a well-known Pimlico race horse trainer, and her long-time friend and housemate, Kawana Swank, an emergency room nurse, have been rescuing dogs for over ten years – selflessly providing a necessary service to the community. While their intention was to address the dogs' immediate health and training needs and then find new homes for the dogs, they learned over time that older dogs and those with serious health issues often are difficult, if not impossible, to place. By 2014, Ms. Robinson and Ms. Swank found themselves with 12 dogs - from Poncho, a 14-year old deaf Chihuahua, to Cassie, a tumor-covered, crooked-legged old dog.[1]

B. The Special Exception

In 2014, in an effort to bring their long-time philanthropic endeavor into compliance with the B.C.Z.R., Ms. Robinson sought a special exception for a private (not commercial) kennel to permit her to have more than three dogs on her property. On December 18, 2014, after a hearing, Judge Beverungen granted a special exception for a private kennel with certain conditions (the

[1] As of the Variance Appeal hearing, they had 11 dogs, as they had found one dog a good home.

"Special Exception"). Specifically, once Ms. Robinson's total number of dogs, by either death or adoption, was reduced to ten, Ms. Robinson could have no more than ten dogs on her property. Further, Ms. Robinson was required to comply with B.C.Z.R. 421.1's requirement that any private kennel be located more than 200 feet from the nearest property line. Andrew and Noreen Krause ("Protestants"), whose property borders Ms. Robinson's property on the northwestern/rear side but whose home is approximately 350 feet through the woods and across a pond, raised noise and environmental concerns at the Special Exception hearing. Protestants, however, did not appeal Judge Beverungen's decision.

C. Ms. Robinson's Efforts to Comply with the Special Exception

Ms. Robinson's dogs are members of her family – her children. They live in the house with Ms. Robinson, Ms. Swank, and Ms. Swank's 14-year-old son. While there are certain rooms at the front of the house that the dogs do not have access to in order to avoid damaging her refinished hardwood floors and carpet, the dogs spend much of the day inside lounging on doggy beds in her large tile-floored kitchen or in the basement on the linoleum. *See* Petitioner's Exhibit ("Pet. Exh.") 2 (photographs of dogs in kitchen); *see also*, Appeal Hearing Transcript ("Tr.") attached hereto as Exhibit A (Days 1 and 2 separated by slipsheets), at (Day 2) 11:15-20, 25:8-18. All of the dogs sleep in the house at night, and three of the dogs sleep in Ms. Robinson's bed. Tr. (Day 1) 37:1-9. The other dogs sleep in Ms. Swank's bedroom in the basement. Tr. (Day 2) 12:8-13:16. There is no outside kennel structure.[2]

To further address the Protestants' concerns raised at the Special Exception hearing, Ms.

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[2] While there had been a shed behind Ms. Robinson's house close to the rear property line, which Ms. Robinson referred to as a "kennel", it has been replaced by a swim spa. Ms. Robinson referred to it as a kennel because she had on occasion years ago used it to hold a new dog before introducing it to the others. (Day 2) Tr. 31:5-23. Prior to its removal, it was used to store lawnmowers, tools, etc., which are now stored in the separate garage structure to the south of the house. *See*, Pet. Exh. 4-1, 4-13, 4-43, 4-45 (swim spa photos); Tr. (Day 1) 102:3-103:16.

Robinson installed a tall privacy fence on the northwest/rear side of her property between the property line and the parking pad and a portion of the driveway. Tr. (Day 1) 31:4-15; *see also,* Pet. Exh. 4-43, 4-44, 4-45 (privacy fence photos). She enclosed the rest of the property with a split rail and wire fence with an electric wire running at the top of the split rail. Pet. Exh. 4-45, 4-46 (split rail fence photos); *see also*, Pet. Exh. 5 (video).

Ms. Robinson's entire house is located less than 200 feet from the northwestern/rear property line. *Id.* The area on Ms. Robinson's property that is 200 feet or more from the nearest property line is an irregularly shaped area in front of Ms. Robinson's house (the "Special Exception Area"). Pet. Exh. 6 (site plan). It is denoted by dashed lines on the site plan. *Id.* In order to comply with the Special Exception and B.C.Z.R. 421.1, Ms. Robinson thus was required to construct a separate kennel structure for the dogs to live in year-round and to locate their outside doggy exercise areas within the Special Exception Area.

While the Special Exception Area is large enough for a separate kennel structure and doggy exercise area, Ms. Robinson soon learned that she could not comply with B.C.Z.R. 421.1. The unusually severe topography, more fully described below, prevented her from building a kennel structure within the Special Exception Area for two reasons. First, B.C.Z.R. 400.1 requires accessory structures to be located in the rear. Noah Price, of Price Landscaping, testified that Baltimore County would not issue permits to build the year-round kennel structure because it would be located in front of the house in violation of B.C.Z.R. 400.1. Tr. (Day 1) 31:16-25; Tr. (Day 1) 93:10-95:14.

Second, the Special Exception Area is located in a wetlands area with a stream running through it. Baltimore County thus would not issue permits because of environmental issues as well. Tr. (Day 1) 93:10-95:14. Indeed, it is undisputed that Ms. Robinson cannot build a kennel structure in the Special Exception Area, as Protestants' expert, Mr. Doak, testified at the Appeal Hearing that

Baltimore County and DEPS would not approve the construction of a structure large enough to house the dogs within the Special Exception Area. Tr. (Day 2) 84:25-85:4.

D. The Variance

Since Ms. Robinson could not build a kennel structure, she sought a variance from B.C.Z.R. 421.1's requirement that any private kennel be located 200 feet from the nearest property line. Specifically, Ms. Robinson sought a variance to permit her to continue to use as the private kennel the portion of her property surrounded by an underground invisible fence, which includes her house – essentially, to maintain the status quo of the past 10+ years.

The invisible fence is denoted on the site plan by double x's separated by hash marks ("xx-xx-xx-xx"), which were highlighted in yellow at the hearing before the Board of Appeals. *See* Pet. Exh. 6. The underground fence forms a continuous kidney-shaped loop from the northern side of Ms. Robinson's house, around the rear parking pad, along a portion of the driveway long enough to allow the dogs to safely access the front yard to do their "business", around a portion of the front yard and then back around to the north side of the house. *Id.* Due to the location of the driveway and the dogs' need to use it to access the front yard, the invisible fence comes as close as 15 feet from the property line near the western corner of the property. *Id.*

The invisible fenced area necessarily includes the parking pad behind the house and approximately half the length of the driveway because the dogs can only exit the house through doors located at the rear (northwest/rear side) of the house onto the parking pad and through the attached garage onto the driveway using a ramp. *See, e.g.*, Pet. Exh. 5 (video); Tr. (Day 2) 10:12-12:4. Due to the severe terrain of the property, the dogs can only safely access the yard, which is in front of Ms. Robinson's house, by walking up the relatively gentler slope of the driveway on this steeply sloped property. *See, e.g., id.;* Pet. Exh. 4-6, 4-10 (garage photos), 4-44 (driveway photo); 4-7 (front yard photo); Tr. (Day 2) 10:12-12:4. There is no door on the north side of the house. Tr.

(Day 2) 16:10-13; Pet. Exh. 4-19 (north side photo, also showing portion of parking pad). While there is a door in the kitchen on the southwest side of the house, the slope outside the kitchen door is so steep that the dogs would have to scale high retaining walls or navigate multiple sets of steep steps to get to the yard. *See, e.g.,* Pet. Exh. 5 (video); Pet. Exh. 4-16 (retaining wall/stairs photo); 4-18 (slope from side driveway down to front of house photo); Tr. (Day 2) 10:20-11:14. This would be impossible for many of the old and infirm dogs, even in good weather. *See* Pet. Exh. 5 (video); Tr. (Day 2) 10:20-11:14. There also are doors that lead to the patio in front (east side) of the house (designated by an arrow on the site plan), but the dogs are not permitted in those front rooms to protect the refinished hardwood and carpet floors in those rooms. *See* Pet. Exh. 5 (video); Pet. Exh. 4-17, 4-4 (front house photos); Tr. (Day 2) 11:15-20. Accordingly, the dogs must have access to the parking pad and driveway within the existing invisible fence area. Tr. (Day 2) 11:21-12:4.

In advance of the variance hearing, the Department of Planning initially recommended a 100-foot setback as a compromise to address the noise concerns raised by the Protestants at the Special Exception hearing. After observing that that the dogs could not exit the house except through the rear and up the driveway and that Ms. Robinson had installed a tall privacy fence behind her parking pad and rear portion of her driveway to address the Protestant's noise concerns, the Department of Planning revised its recommendation to approve the variance for a 15-foot setback. The Department of Planning's initial and revised recommendations are a part of the original Variance file.

After a two-day evidentiary hearing, during which Protestants, who were represented by counsel, were permitted to testify and introduce evidence regarding noise and environmental concerns, Judge Beverungen granted the variance to permit Ms. Robinson to maintain the status quo. Judge Beverungen required as a condition that the dogs be kept in the house when no one is home, which they have done.

E. The Variance Appeal

Protestants appealed Judge Beverungen's decision granting the variance. On April 19 and 20, 2016, the Board of Appeals held a *de novo* hearing during which Ms. Robinson, Ms. Swank, professional landscaper Noah Price, and expert witness Scott Lindgren testified in support of the variance. Bruce Doak testified as an expert on behalf of Protestants. Many of Ms. Robinson's neighbors attended the hearing in support of the variance. The Board heard testimony and evidence on the issue of the uniqueness of Ms. Robinson's property and the resulting disproportionate impact of B.C.Z.R. 421.1 on her property.

1. The Subject Property

The physical characteristics of Ms. Robinson's property are undisputed. Ms. Robinson's property is located at 2012 Far Out Lane in Sparks, Maryland. Her property is pentagonal in shape and approximately 5.4 acres. Pet. Exh. 6 (site plan). It is rural and zoned RC-2 (Agricultural). *Id.* Unlike other properties in the area, however, the topography of Ms. Robinson's property is unusually severe. Scott Lindgren, an expert in zoning, development, and surveying, testified that Ms. Robinson's property has three topographically-steep slopes - at the front/east side and northeast and southeast sides - which create a drainage basin with a discharge at the bottom of the resulting "bowl". Natural springs daylight on the slopes of the "bowl", creating a wetlands area in the center of the "bowl". As such, the only buildable area in the center of the property is located at the rear of the parcel, within 200 feet from the rear property line. *See* Pet. Exhs. 6 (site plan) and 5 (video); Tr. (Day 1) 143-144. Mr. Doak, Protestants' expert, agreed that due to these physical characteristics of Ms. Robinson's property, she could not construct a kennel structure within the Special Exception Area. Tr. (Day 2) 84:25-85:4 and 122:2-8.

2. Other Properties In The Neighborhood

Mr. Lindgren compared Ms. Robinson's property to the other properties in the surrounding

neighborhood. Mr. Lindgren defined the surrounding neighborhood to include 24 properties located on Far Out Lane, Akehurst Road, Abell Lane and Yeoho Road, to which he attributed a "village feel". *See* Pet. Exh. 7 (neighborhood site plan); Tr. (Day 1) at 145:21-146:18. Mr. Lindgren compared Ms. Robinson's property to each of the other properties in the neighborhood and pointed out how in his expert opinion Ms. Robinson's property was different. *See generally,* Tr. (Day 1) 146:24-157:24. Mr. Lindgren testified that in his expert opinion no other property in the neighborhood has the same combination of characteristics as Ms. Robinson's property – that Ms. Robinson's property is unique. Tr. (Day 1) at 155:20-157:24. Specifically, not one other property in the neighborhood has the combination of (1) sufficient acreage to accommodate a private kennel without a variance (3.6 acres); (2) three topographically-steep sloping sides creating a drainage basin with a discharge at the bottom of the resulting "bowl", (3) a stream through the center of the property discharging at the bottom of the "bowl", (4) natural springs daylighting on the slopes of the "bowl", creating a wetlands area in the center of the "bowl", and (5) the only buildable area of the property being located at the back and within 200 feet of the back property line necessitating the building of a separate structure for the private kennel and in front of the house. *See* Pet. Exh. 7; Tr. (Day 1) 146:19-157:24. *See also,* Chart attached hereto as Exhibit B, summarizing Mr. Lindgren's testimony regarding each property in the surrounding neighborhood.

By contrast, Mr. Doak compared Ms. Robinson's property to other properties in a "neighborhood" that spanned over 40 square miles and included properties ranging from .03 acres to almost 150 acres and properties with various zoning including RC-2, RC-4, RC-5, RC-8, and commercial properties. Hearing Tr. (Day 2) 102:21-24; *see also* Protestants' Exhibit ("Prot. Exh.") 10 (map of 40 square mile "neighborhood"). While Mr. Doak ultimately narrowed his analysis to a 5+ square mile portion of the "neighborhood", he admitted that none of the 281 properties in that "neighborhood" had the same combination of characteristics as Ms. Robinson's property –

essentially, that her property is unique. *See* Pet. Exh. 9 (Mr. Doak's list of 281 properties, each of which Mr. Doak marked out in pink to show they do not have the same characteristics as Ms. Robinson's property); *see also,* Chart attached hereto as Exhibit C summarizing Mr. Doak's testimony regarding seven "neighborhood" properties, which he compared to Ms. Robinson's property; Tr. (Day 2) 125:25-151:9.

Mr. Doak suggested that the Board "split the baby" and grant Ms. Robinson a variance to use a much smaller portion of her property for the private kennel than she was originally granted and has used for the past 10+ years. Specifically, he suggested limiting the private kennel to the Special Exception Area, the house, and the property in between comprised mostly of flagstone patio. *See* Pet. Exh. 8 (proposed reduced variance area outlined in pink); Tr. (Day 2) at 94:3-14. Mr. Doak conceded that this would only be possible if Ms. Robinson were to change her living arrangements to give all 11 dogs access to her front rooms, which have always been off-limits to protect Ms. Robinson's nice floors.[3] Hearing Tr. (Day 2) 86:24-87:4. Mr. Doak further conceded that his proposal would not actually have any positive impact on Protestants' noise and environmental concerns (already addressed in the Special Exception hearing). He admitted that his proposed reduced variance area would not reduce any noise but instead would almost completely eliminate the dogs' access to the side of the house that buffers the sound of the dogs when outside.[4] *See* Pet. Exh. 8 (orange line denoting sound between Ms. Robinson's house and Protestants' house; area of property where sound currently is buffered by Ms. Robinson's house in green; area where

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[3] Mr. Doak also suggested that his proposed reduced variance area might be extended to include the kitchen door, but then conceded that the dogs could not traverse the steep retaining walls or steps immediately outside the kitchen door, such that this would not be a viable option. Hearing Tr. (Day 2) 85:14-86:18.

[4] Mr. Doak further suggested that reducing the area of the variance would move the dogs farther away from the neighbor closest to Ms. Robinson's driveway, Ms. Levinson; however, Mr. Doak acknowledged that Ms. Levinson attended the hearing in support of Ms. Robinson, such that this was not a valid concern. Hearing Tr. (Day 2) 87:5-88:6.

sound would be buffered by house with reduced variance area shaded in orange); Hearing Tr. (Day 2) 93:8-95:11. Further, Mr. Doak conceded that restricting the dogs to the property in front of Ms. Robinson's house would not address any environmental/runoff concerns, as the 11 dogs would continue to use the bathroom the same number of times a day and would be required to do so closer to the Protestant's property. Hearing Tr. (Day 2) 96:21-99:5. Essentially, Mr. Doak conceded that nothing positive would be accomplished – certainly nothing effecting the health, safety or general welfare – by reducing the variance area.

II. ARGUMENT

B.C.Z.R. 307.1 establishes a two-step process for granting area variances. As explained in Cromwell v. Ward, 102 Md. App. 691 (1995), and its progeny, an "area" variance should be granted where: (1) the property is unique or different from other neighboring properties; and (2) the petitioner will experience a practical difficulty if the variance is denied. Ms. Robinson's property thus must be "unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property." Cromwell v. Ward, 102 Md. App. 691, 694-95 (1995); *see also* Mueller v. People's Counsel for Baltimore County, 177 Md.App. 43, 70 (2007); Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore Cty., 178 Md. App. 232, 242, *aff'd,* 407 Md. 53 (2008). Ms. Robinson's property has met this test.

A. Ms. Robinson's Property Is Unique.

1. Mr. Lindgren Properly Defined Ms. Robinson's "Neighborhood"

To determine whether Ms. Robinson's property is unique, the Board must compare Ms. Robinson's property to other properties in the surrounding neighborhood. Ms. Robinson is not aware of any caselaw specifically defining the term "neighborhood". Indeed, courts have defined "neighborhood" in only vague and varying terms. *See e.g.,* Cromwell v. Ward, 102 Md. App. at

707-08 (referring to both "surrounding properties" and "adjoining property"); Riffin v. People's Counsel for Baltimore Cty., 137 Md. App. 90, 98, 767 (2001) ("other properties in the area").

While not specifically defined by B.C.Z.R. 307.1 or caselaw, it is beyond reasonable dispute that to be relevant to the uniqueness analysis, properties must be located in the same general vicinity and share some similar characteristics such as zoning or use such that they would readily be recognized as a neighborhood. Ms. Robinson's expert witness, Mr. Lindgren, testified that the relevant neighborhood was the village-like area in which Ms. Robinson's property is situated, consisting of 24 properties on Far Out Lane, Akehurst Road, Abell Lane, and Yeoho Road which share the same zoning and similar uses. This is the appropriate neighborhood in which to conduct the uniqueness analysis.

Protestant's expert witness, Mr. Doak, testified that so long as an area was bounded in some way, such as by roadways or natural waterways, and shared some commonalities, any sized area could constitute a neighborhood. In fact, Mr. Doak initially testified that the relevant neighborhood was a 40+ square mile area, based on the area being bounded by the major roadways of I-83, Falls Road, Mt. Carmel and Belfast Roads. Prot. Exh. 10 (large map); Tr. (Day 2) 103:21-24.

Mr. Doak testified that he ultimately focused on seven properties in an over-five square mile subset portion of the "neighborhood". Tr. (Day 2) 115:3-12. Two of the properties were addressed by Mr. Lindgren as part of the "neighborhood". (Note - Parcels #95 and #101 on Prot. Exh. 4 are the same as P.183 and P. 186 on Pet. Exh. 7). Mr. Doak admitted, however, that two of the other properties he identified were so far away from Ms. Robinson's house that they were not even located in his larger 40-square mile "neighborhood". *See* Prot. Exh. 4; Tr. (Day 2) 106:2-13. Specifically, Parcels #275 and #277 are beyond Falls Road. *Id.* Parcel #281 is so far away it required a separate map. *See* Prot. Exh. 15. Properties in Mr. Doak's "neighborhood" further included various zoning, from commercial to RC-2, RC-4, RC-5, and RC-8. Mr. Doak's seemingly

boundless "neighborhood" of unrelated properties is far outside the bounds of reasonableness and should be disregarded, and Mr. Lindgren's "neighborhood" should be the adopted.

Indeed, even if the Board were to adopt Mr. Doak's view that the neighborhood should be bound by major roadways and/or waterways, the nearest such boundaries are Black Rock Run, Stringtown Road, Yeoho Road, and Tracy's Road. *See* Prot. Exh. 4. Expanding the "neighborhood" to those boundaries would not change the proper analysis, as none of the properties identified by Mr. Doak other than #95 and #101, which all parties agree are within the neighborhood, are located within those natural boundaries. Accordingly, properties #212, #277, #275, #281, and #24 are not properly within the neighborhood and should be disregarded.

2. Ms. Robinson's Property Is Unique As Compared To Other Properties In Her Neighborhood

The characteristics of Ms. Robinson's property are undisputed. While Ms. Robinson's property has sufficient acreage and shape to accommodate a private kennel without a variance (3.6 acres or more), the site is comprised of three topographically-steep sloping sides creating a drainage basin with a discharge at the bottom of the resulting "bowl". Further a stream runs through the center of the property discharging at the bottom of the "bowl", and natural springs daylight on the slopes of the "bowl" creating a wetlands area in the center of the "bowl". Finally, the only buildable area of the property is located at the rear of the parcel, within 200 feet of the rear property line, necessitating the building of a separate structure for the private kennel in the front of the house.

Not one other property in Ms. Robinson's neighborhood has the equivalent combination of characteristics/development constraints. Mr. Lindgren painstakingly testified about each of the properties in the neighborhood and concluded that in his expert opinion, Ms. Robinson's property was unique. The Chart attached as Exhibit B clearly identifies the differences. Indeed, Protestants' expert, Mr. Doak, admitted that none of the properties in the neighborhood, as defined by Mr. Lindgren, share the same characteristics as Ms. Robinson's property. While Mr. Doak identified

P.186 and P.183 (Protestants' #101 and #95) as possible similar properties, he conceded that P. 186 and P.183, which is more than three times the size of Ms. Robinson's property, are not comprised of three topographically-steep sloping sides creating a drainage basin with a discharge at the bottom of the resulting "bowl". Further, while P.186 and P.183 have streams, they do not have a stream running through the center of the property discharging into the bottom of the bowl or natural springs daylighting on the slopes of a bowl and creating a wetlands area. And, neither property has the limitation of the only buildable area being located at the rear of the parcel, within 200 feet of the rear property line, such that a separate structure would have to be built for a private kennel in front of the house. Indeed, P.183, which is Protestants' property, has a large area that is 200 feet off the property line and which contains multiple dwellings. Further, a substantial portion of the house on P.186 is located 200 feet off the property line. Accordingly, Ms. Robinson's property is unique as compared to the other properties in her neighborhood.

It is telling that Protestants felt compelled to stretch the definition of "neighborhood" to an area of 40-square miles in an effort to prove that Ms. Robinson's property is not unique. Even then, Protestants were unable to identify a single parcel that shared the unique combination of characteristics of Ms. Robinson's property. While Protestants' definition of "neighborhood" is patently improper, it is undisputed that the five additional properties Protestants identified outside the relevant neighborhood admittedly do not share the same combination of characteristics of Ms. Robinson's property. Specifically, Parcels #24, #281, and #275 are too narrow and # 212 does not have sufficient acreage to accommodate a private kennel without a variance. Further, none of the five properties has three topographically-steep sloping sides creating a drainage basin with a discharge at the bottom of the resulting "bowl". They do not have a stream running through the center of the property discharging into the bottom of the bowl or natural springs daylighting on the slopes of a bowl and creating a wetlands area. And, not one of those properties has the limitation

of the only buildable area being located at the rear of the parcel, within 200 feet of the rear property line, such that a separate structure would have to be built for a private kennel in front of the house. Accordingly, Ms. Robinson's property is unique even as compared to the 281 properties reviewed by Protestants. *See* Pet. Exh. 9 (where Mr. Doak crossed out all 281 properties on list because they do not have the same characteristics as Ms. Robinson's property).

B. Ms. Robinson's Property Is Disproportionately Impacted By B.C.Z.R. 421.1 Due to Its Uniqueness

The uniqueness of Ms. Robinson's property causes B.C.Z.R. 421.1 to impact disproportionately upon her property as compared to other properties in the neighborhood. Ms. Robinson's property has sufficient acreage and shape to accommodate a private kennel 200 feet from the closest property line and, indeed, she obtained a Special Exception to enjoy this permitted use. Unlike the other properties in her neighborhood that have sufficient acreage and shape, however, B.C.Z.R. 421.1's requirement that the private kennel be located 200 feet off the property line prohibits Ms. Robinson from using her property as a private kennel at all. Specifically, due to the peculiar topography of Ms. Robinson's property described herein, her entire house necessarily is located closer than 200 feet from the property line and thus B.Z.C.R. 421.1 prohibits her from using any portion of her house as the private kennel. Instead, she must build a separate structure for the dogs at the center of the property – in front of her house. B.C.Z.R. 401.1, however, prohibits accessory structures in the front of the house and further it is undisputed that Baltimore County and DEPS would not approve such a structure because it would have to be located in a marshy wetlands area at the bottom of the bowl created by three topographically-steep sloping sides on her property, which no other property in the neighborhood has. Accordingly, Ms. Robinson is disproportionately impacted by B.C.Z.R. 421.1 and would suffer a practical difficulty without the area variance as

granted by Judge Beverungen,[5] as she will be unable to use her property for a permitted purpose – a private kennel.[6]

C. The Board Should Approve the Variance for the Entire Area Requested

Protestants contend that the Board of Appeals must limit any variance to the minimum area necessary to accomplish the property owner's goal. Protestants thus contend that the Board should limit Ms. Robinson's variance to the Special Exception area, the house, and the flagstone patio in between.

While it appears the Board has power to modify a variance upon appeal, *see* Halle Co. v. Crofton Civic Assn., 339 Md. 131, 140-41 (1995), Ms. Robinson is aware of no applicable law, regulation or caselaw supporting Protestants' position that variances in *Baltimore County* must be limited to the minimum area necessary. Indeed, B.C.Z.R. 307.1, contains no such language. B.C.Z.R. 307.1 provides:

> The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require

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[5] An "area" variance seeks relief from height, area, setback or property line restrictions. The practical difficulty standard applies to area variances. *Anderson v. Bd. of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28 (1974).

[6] Further, without a variance, Ms. Robinson must get rid of (and possibly euthanize) eight of her dogs. While that may not technically constitute a "practical difficulty", it certainly would be a horrific fate for the innocent dogs and their loving owners, including a fourteen year old boy, Kaden, who consider them family.

> public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification.[1] Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance.

Compare Anne Arundel County Code, Article 3, Section 2-107(c)(1) (variance in critical area must be "the minimum variance necessary to afford relief"); Montgomery County Zoning Ordinance § 59-G-3.1 (Montgomery County variance must be "the minimum reasonably necessary to overcome [certain] exceptional conditions"). Indeed, Mr. Doak testified that while he encourages clients seeking a variance to request the minimum area needed, he does so in order to avoid objections, not because of any legal requirement. Baltimore County specifically did not include language requiring a minimum variance in its regulations, and such a requirement should not be imposed on Ms. Robinson in this case.

Further, reducing the area of Ms. Robinson's private kennel would be detrimental to Ms. Robinson and would serve no beneficial purpose to the neighborhood or even Protestants. Indeed, Protestants' proposed reduced kennel area would pose an insurmountable hardship on Ms. Robinson and her dogs, while providing no real benefit to the Protestants or the community. First, if the variance area were reduced, the dogs would have no way of exiting Ms. Robinson's house. The only doors that would be available would be at the front of the house. With the exception of three of the dogs at bedtime, Ms. Robinson's 11 dogs do not have access to the front rooms of her home. Certainly, she should not be compelled to allow 11 dogs to track dirt and mud through her bedroom and ruin her carpet or refinished hardwood floors where to do so would not address any health, safety or welfare concern.

Mr. Doak's reason for limiting the variance area to the house and a small portion of the front yard was to reduce barking noise traveling to Protestant's house and to reduce doggy waste runoff onto Protestants' property. This is not a proper basis for limiting Ms. Robinson's variance area.

Indeed, while Ms. Robinson strongly disputes Protestants' suggestions that there is any noise or environmental issue, and Judge Beverungen agreed in the Special Exception hearing, it is undisputed that the proposed reduction in variance area would actually provide less sound buffering by the house, as the dogs would be more in line with Protestants' house if confined to the front yard. Further, it is undisputed that confining the dogs to proposed reduced area would have no positive impact on runoff.

Indeed, Ms. Robinson did request the minimum area necessary. While she could have requested a variance to use her entire 5+ acres as a private kennel, she did not. She requested that the private kennel be limited to an area that comes as close as 15 feet from the nearest property line but indicated in the site plan that the dogs would continue to be confined within the area surrounded by the underground electric fence which includes her home.

Granting of a variance in this case would be in strict harmony with the spirit and intent of the Baltimore County Zoning Regulations and can be accomplished without injury to the public health, safety or general welfare. Accordingly, Ms. Robinson respectfully requests that the Board of Appeals affirm Judge Beverungen's decision granting a variance from the 200-foot setback requirement of B.C.Z.R. 421.1 and permit her to use her house and the outside area currently confined by an underground electric fence, which is no less than 15 feet from the nearest property line as depicted on the site plan, for her private (not commercial) kennel.

Respectfully submitted,

Michelle J. Dickinson
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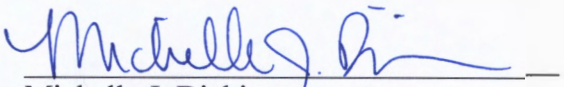
michelle@dickinson-law.com
Counsel for Catherine H. Robinson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of May, 2016, a copy of the foregoing Memorandum of Law was delivered via regular mail, postage prepaid to:

G. Macy Nelson
Law Office of G. Macy Nelson, LLC
401 Washington Ave.
Suite 803
Towson, MD 21204

Counsel for Andy and Noreen Krause



Michelle J. Dickinson

Board of Appeals of Baltimore County

JEFFERSON BUILDING
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TOWSON, MARYLAND, 21204
410-887-3180
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April 27, 2016

NOTICE OF PUBLIC DELIBERATION

IN THE MATTER OF: Catherine H. Robinson
E/s Far Out Lane, approx. 1,475 ft SW of c/l of Akehurst Road
15-235-SPHA 2012 Far Out Lane
5th Election District; 3rd Councilmanic District

Re: Petition for Special Hearing requesting the Administrative Law Judge to amend the December 18, 2014 Order granting a Special Exception for a private kennel in case number 15-092-X as shown and indicated on the site plan, and Petition for Variance from Section 421.1 of the BCZR to permit a private kennel in a RC-2 zone to be located within 15 feet of the nearest property line in lieu of the required 200 feet.

10/9/15 Opinion and Order of Administrative Law Judge wherein the Petition for Special Hearing was GRANTED; and Petition for Variance was GRANTED with the condition that the dogs must not be allowed outside of the house when no one is home. The "doggie door" must therefore remain closed/locked when Petitioner or other occupants are not home.

This matter having been heard April 19, 2016 and concluded on April 20, 2016, a public deliberation has been scheduled for the following:

DATE AND TIME: **TUESDAY, JUNE 21, 2016 at 9:30 a.m.**

LOCATION: Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

NOTE: Closing briefs are due on **Wednesday, May 25, 2016 by 3:00 p.m.**
(Original and three [3] copies)

NOTE: PUBLIC DELIBERATIONS ARE OPEN WORK SESSIONS WHICH ALLOW THE PUBLIC TO WITNESS THE DECISION-MAKING PROCESS. ATTENDANCE IS NOT REQUIRED AND PARTICIPATION IS NOT ALLOWED. A WRITTEN OPINION AND/OR 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

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c: Counsel for Petitioner : Michelle J. Dickinson, Esquire
Petitioner : Catherine Robinson

Counsel for Protestants/Appellants : G. Macy Nelson, Esquire
Protestants/Appellants : Andrew and Noreen Krause, Anita Krause

Scott Lindgren/Gerhold, Cross & Etzel
Kawana Swank Anne Cornell
Office of People's Counsel
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney

J. Lawrence Hosmer/ERM
Ann Merryman Noah Price
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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April 22, 2016

Michelle J. Dickinson, Esquire
Law Office of Michelle J. Dickinson, LLC
10440 Little Patuxent Parkway, Suite 300
Columbia, Maryland 21044

Re: In the Matter of: Catherine Robinson
Case No.: 15-235-SPHA

Dear Ms. Dickinson:

I am in receipt of your request for 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 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,

Tammy A. McDiarmid

Tammy A. 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 Leary

From: Tammy McDiarmid, Legal Secretary

Date: April 21, 2016

Re: In the matter of: Catherine Robinson
Case No.: 15-235-SPHA

Enclosed are the recordings from the above referenced case. The Board members who sat on this case are Maureen E. Murphy, Chairman; Benfred B. Alston, took exhibits; and Jason S. Garber, operated CourtSmart. We estimate 8 – 8-1/2 hours of testimony over the two days. As mentioned previously, the hearing was not stopped on Day 2 during breaks and lunch.

I have enclosed a copy of the Address list for your convenience. Michael J. Dickinson, Esquire represented the Petitioner; and G. Macy Nelson, Esquire, appeared on behalf of Andrew Krause, Noreen Krause, and Anita Krause, Protestants/Appellants.

Ms. Dickinson is requesting the transcript of the hearings and is responsible for the cost. Please contact her upon receipt with an estimated cost, required deposit, and due date. Her contact information is below.

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

Thank you,

Tammy

Tammy McDiarmid

Michelle J. Dickinson, Esquire
10440 Little Patuxent Parkway, Suite 300
Columbia, MD 21044
(410) 740-5630
michelle@dickinson-law.com

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 11, 2016

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Catherine H. Robinson
E/s Far Out Lane, approx. 1,475 ft SW of c/l of Akehurst Road
15-235-SPHA 2012 Far Out Lane
5th Election District; 3rd Councilmanic District

Re: Petition for Special Hearing requesting the Administrative Law Judge to amend the December 18, 2014 Order granting a Special Exception for a private kennel in case number 15-092-X as shown and indicated on the site plan, and Petition for Variance from Section 421.1 of the BCZR to permit a private kennel in a RC-2 zone to be located within 15 feet of the nearest property line in lieu of the required 200 feet.

10/9/15 Opinion and Order of Administrative Law Judge wherein the Petition for Special Hearing was GRANTED; and Petition for Variance was GRANTED with the condition that the dogs must not be allowed outside of the house when no one is home. The "doggie door" must therefore remain closed/locked when Petitioner or other occupants are not home.

ASSIGNED FOR: TUESDAY, APRIL 19, 2016 AT 10:00 A.M. – Day 1 and WEDNESDAY, APRIL 20, 2016 AT 10 A.M. – Day 2

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: Counsel for Petitioner : Michelle J. Dickinson, Esquire
Petitioner : Catherine Robinson

Counsel for Protestants/Appellants : G. Macy Nelson, Esquire
Protestants/Appellants : Andrew and Noreen Krause, Anita Krause

Scott Lindgren/Gerhold, Cross & Etzel
Kawana Swank Anne Cornell
Office of People's Counsel
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney

J. Lawrence Hosmer/ERM
Ann Merryman Noah Price
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Michael Field, County Attorney, Office of Law

Krysundra Cannington

From: Michelle Dickinson <michelle@dickinson-law.com>
Sent: Friday, January 08, 2016 1:44 PM
To: Krysundra Cannington
Cc: G. Macy Nelson
Subject: Re: Catherine Robinson 15-235-SPHA

Thanks very much, Sunny.
Best,
Michelle

Michelle J. Dickinson

410.740.5630 Office
443.280.4257 Cell
866.211.2673 Fax
michelle@dickinson-law.com

10440 Little Patuxent Pkwy.
Suite 300
Columbia, MD 21044
www.dickinson-law.com

On Fri, Jan 8, 2016 at 1:42 PM, Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

> Counsel,
>
> It appears April 19 and 20 are the agreed dates. I have already checked the dates with the Board members and will issue the Notice as soon as possible.

Krysundra Cannington

From: Krysundra Cannington
Sent: Friday, January 08, 2016 1:43 PM
To: 'G. Macy Nelson'; Michelle Dickinson
Subject: RE: Catherine Robinson 15-235-SPHA

Counsel,

It appears April 19 and 20 are the agreed dates. I have already checked the dates with the Board members and will issue the Notice as soon as possible.

Please do not hesitate to contact me with any questions.

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

From: G. Macy Nelson [mailto:gmacynelson@gmacynelson.com]
Sent: Friday, January 08, 2016 11:56 AM
To: Michelle Dickinson <michelle@dickinson-law.com>; Krysundra Cannington <kcannington@baltimorecountymd.gov>
Subject: RE: Catherine Robinson 15-235-SPHA

Sunny,

We are available April 5, 6, 7, 12, 13, 14, 19, 20, 26, 27, and 28. April 21 is tough for me because I have a circuit court case that day.

-Macy Nelson

G. Macy Nelson
401 Washington Avenue, Suite 803

Towson, Maryland 21204
410-296-8166, ex. 290
Fax 410-825-0670
Mobile 443-326-8749
Email gmacynelson@gmacynelson.com
www.gmacynelson.com

From: Michelle Dickinson [mailto:michelle@dickinson-law.com]
Sent: Friday, January 08, 2016 9:51 AM
To: Krysundra Cannington
Cc: G. Macy Nelson
Subject: Re: Catherine Robinson 15-235-SPHA

Sunny,
We are available April 19, 20 and 21. Thank you for your assistance with this matter.
Best,
Michelle

Michelle J. Dickinson

410.740.5630 Office
443.280.4257 Cell
866.211.2673 Fax
michelle@dickinson-law.com

10440 Little Patuxent Pkwy.
Suite 300
Columbia, MD 21044
www.dickinson-law.com

On Wed, Jan 6, 2016 at 8:04 AM, Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

Counsel,

Despite all my efforts, I am still unable to match a panel for any combination of two days on which you and your clients are available in February or March. At this time, I put forward dates in April. Please be advised I am checking these dates with the Board members simultaneously. Presently the entire month of April is available on our docket. We generally hold hearings on Tuesdays, Wednesdays, and Thursdays therefore, April 5, 6, 7, 12, 13, 14, 19, 20, 21, 26, 27, and 28, are currently available.

I apologize for the inconvenience to you and your clients.

Thank you for your continued cooperation in scheduling this matter.

Sunny

Krysundra "Sunny" Cannington

Administrator

Board of Appeals of Baltimore County

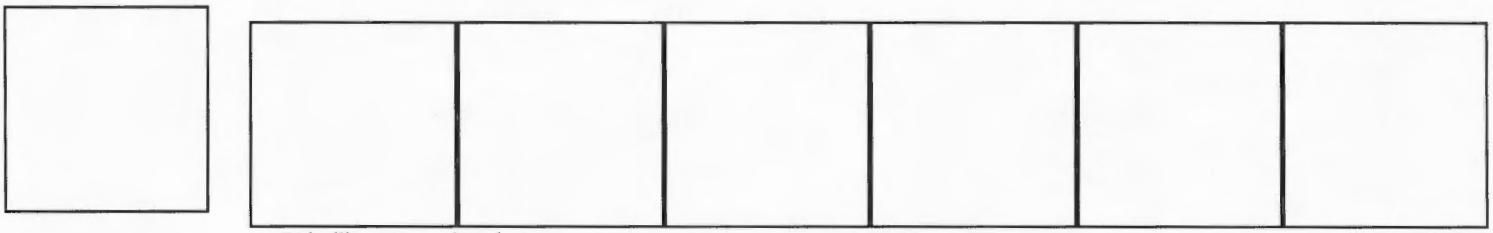
The Jefferson Building, Suite 203

105 W. Chesapeake Avenue

Towson, MD 21204

Phone: 410-887-3180

Fax: 410-887-3182



www.baltimorecountymd.gov

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Fax 410-825-0670
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Email gmacynelson@gmacynelson.com
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Towson, MD 21204

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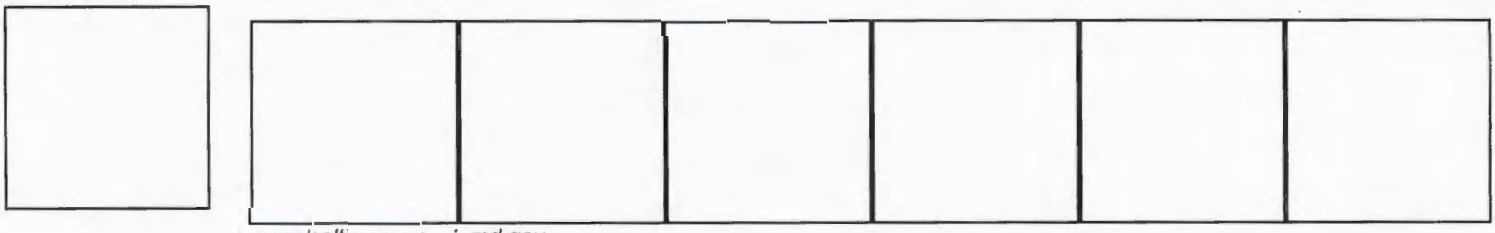
Fax: 410-887-3182

Confidentiality Statement

This electronic mail transmission contains confidential information belonging to the sender which is legally privileged and confidential. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action based on the contents of this electronic mail transmission is strictly prohibited. If you have received this electronic mail transmission in error, please immediately notify the sender.

CONNECT WITH BALTIMORE COUNTY



www.baltimorecountymd.gov

Krysundra Cannington

From: Michelle Dickinson <michelle@dickinson-law.com>
Sent: Friday, January 08, 2016 9:51 AM
To: Krysundra Cannington
Cc: Nelson, G. Macy
Subject: Re: Catherine Robinson 15-235-SPHA

Sunny,
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Best,
Michelle

Michelle J. Dickinson

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443.280.4257 Cell
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Sunny

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Towson, MD 21204

Phone: 410-887-3180

Fax: 410-887-3182

CONNECT WITH BALTIMORE COUNTY

www.baltimorecountymd.gov

Krysundra Cannington

From: Michelle Dickinson <michelle@dickinson-law.com>
Sent: Wednesday, January 06, 2016 2:19 PM
To: Krysundra Cannington; 'G. Macy Nelson' (gmacynelson@gmacynelson.com)
Subject: Re: Catherine Robinson 15-235-SPHA

Thank you for your email, Sunny. We will check those dates and get back with you promptly.
Best,
Michelle

Michelle J. Dickinson

410.740.5630 Office
443.280.4257 Cell
866.211.2673 Fax
michelle@dickinson-law.com

10440 Little Patuxent Pkwy.
Suite 300
Columbia, MD 21044
www.dickinson-law.com

On Wed, Jan 6, 2016 at 8:04 AM, Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

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>
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I apologize for the inconvenience to you and your clients.

Thank you for your continued cooperation in scheduling this matter.

Sunny

Krysundra "Sunny" Cannington

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Towson, MD 21204

Phone: 410-887-3180

Fax: 410-887-3182

CONNECT WITH BALTIMORE COUNTY

www.baltimorecountymd.gov

Krysundra Cannington

From: Krysundra Cannington
Sent: Wednesday, January 06, 2016 8:05 AM
To: Nelson, G. Macy; michelle@dickinson-law.com
Subject: Catherine Robinson 15-235-SPHA

Counsel,

Despite all my efforts, I am still unable to match a panel for any combination of two days on which you and your clients are available in February or March. At this time, I put forward dates in April. Please be advised I am checking these dates with the Board members simultaneously. Presently the entire month of April is available on our docket. We generally hold hearings on Tuesdays, Wednesdays, and Thursdays therefore, April 5, 6, 7, 12, 13, 14, 19, 20, 21, 26, 27, and 28, are currently available.

I apologize for the inconvenience to you and your clients.

Thank you for your continued cooperation in scheduling this matter.

Sunny

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Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

Krysundra Cannington

From: G. Macy Nelson <gmacynelson@gmacynelson.com>
Sent: Monday, January 04, 2016 5:26 PM
To: Michelle Dickinson; Krysundra Cannington
Subject: RE: Catherine Robinson 15-235-SPHA

HI,

My clients and I are available March 15, 16, 17, 29, and 31.

-Macy Nelson

G. Macy Nelson
401 Washington Avenue, Suite 803
Towson, Maryland 21204
410-296-8166, ex. 290
Fax 410-825-0670
Mobile 443-326-8749
Email gmacynelson@gmacynelson.com
www.gmacynelson.com

From: Michelle Dickinson [mailto:michelle@dickinson-law.com]
Sent: Monday, January 04, 2016 12:45 PM
To: Krysundra Cannington
Cc: G. Macy Nelson
Subject: Re: Catherine Robinson 15-235-SPHA

Sunny,
Ms. Robinson is available for the Board of Appeals hearing on February 23 and 25 or March 8, 10, 15, 16, 17, 29, and 31. We would prefer the hearing dates to be consecutive or close together, if possible. Please let me know if you need additional information. Thank you for your assistance with this matter.
Happy new year!
Michelle

Michelle J. Dickinson

410.740.5630 Office
443.280.4257 Cell
866.211.2673 Fax
michelle@dickinson-law.com

10440 Little Patuxent Pkwy.
Suite 300
Columbia, MD 21044

www.dickinson-law.com

On Wed, Dec 23, 2015 at 1:08 PM, Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

Counsel,

First, I understand if you are not able to respond immediately given the holidays occurring this week and next.

Per my conversation with Mr. Nelson, and as previously expressed, there are some scheduling issues with the February and March dates. However, if we were to schedule two fairly close dates the same panel should be available for both.

I currently have the following dates available on the Board's docket:

February 2, 9, 16, 18, 25,

March 1,3,8,10, 15, 16, 17, 29, and 31, 2016

While I believe we reviewed all the February dates previously, I kindly request that you double check them with your clients/witnesses while reviewing the March dates. In the meantime, I will continue to hold February 23rd.

Please do not hesitate to contact me with any questions.

Happy Holidays!

Sunny

Krysundra "Sunny" Cannington

Administrator

Board of Appeals of Baltimore County

410-887-3180

From: Michelle Dickinson [mailto:michelle@dickinson-law.com]
Sent: Thursday, December 17, 2015 2:50 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Nelson, G. Macy <gmacynelson@gmacynelson.com>
Subject: Re: Catherine Robinson 15-235-SPHA

Sunny,

We would prefer the second day of the hearing to be as soon as possible but we can be available on any of the proposed dates.

Thank you,

Michelle

On Dec 14, 2015, at 10:40 AM, Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

> Good morning Counsel,
>
> This email is to confirm that the above referenced matter will be set for hearing on Tuesday, February 23, 2016, as agreed. Additionally, it has been requested that a second hearing date be scheduled in the event this matter is not completed. At this time, the following dates are available on the Board's docket:
>
> March 8, 15, 17, and 22.

Please advise which of these dates work best for you and your clients.

Once the second date has been selected, I will send a Notice of Reassignment with both hearing dates.

Thank you for your prompt attention to this matter.

Sunny

Krysundra "Sunny" Cannington

Administrator

Board of Appeals of Baltimore County

The Jefferson Building, Suite 203

105 W. Chesapeake Avenue

Towson, MD 21204

Phone: 410-887-3180

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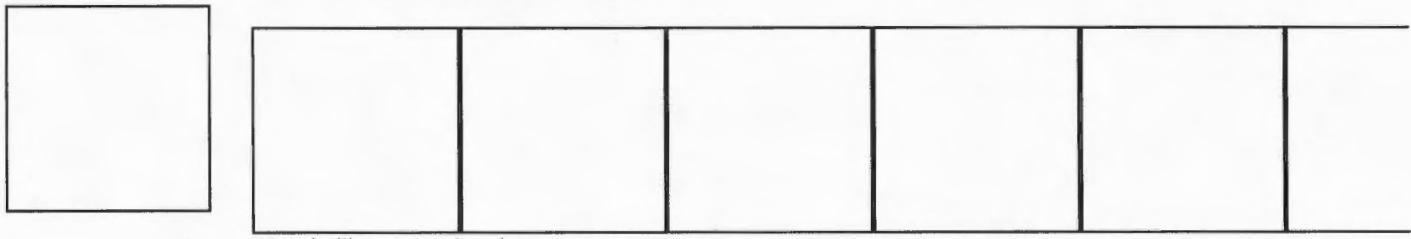
CONNECT WITH BALTIMORE COUNTY



www.baltimorecountymd.gov

Krysundra Cannington

From: Michelle Dickinson <michelle@dickinson-law.com>
Sent: Monday, January 04, 2016 12:45 PM
To: Krysundra Cannington
Cc: Nelson, G. Macy
Subject: Re: Catherine Robinson 15-235-SPHA

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Happy new year!
Michelle

Michelle J. Dickinson

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Counsel,

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March 1,3,8,10, 15, 16, 17, 29, and 31, 2016

While I believe we reviewed all the February dates previously, I kindly request that you double check them with your clients/witnesses while reviewing the March dates. In the meantime, I will continue to hold February 23rd.

Please do not hesitate to contact me with any questions.

Happy Holidays!

Sunny

Krysundra "Sunny" Cannington

Administrator

Board of Appeals of Baltimore County

410-887-3180

From: Michelle Dickinson [mailto:michelle@dickinson-law.com]
Sent: Thursday, December 17, 2015 2:50 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Nelson, G. Macy <gmacynelson@gmacynelson.com>
Subject: Re: Catherine Robinson 15-235-SPHA

Sunny,

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Thank you,

Michelle

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>
> Thank you for your prompt attention to this matter.
>
> Sunny

Krysundra "Sunny" Cannington

Administrator

Board of Appeals of Baltimore County

The Jefferson Building, Suite 203

105 W. Chesapeake Avenue

Towson, MD 21204

Phone: 410-887-3180

Fax: 410-887-3182

Confidentiality Statement

Krysundra Cannington

From: Michelle Dickinson <michelle@dickinson-law.com>
Sent: Wednesday, December 23, 2015 3:18 PM
To: Krysundra Cannington
Cc: Nelson, G. Macy
Subject: Re: Catherine Robinson 15-235-SPHA

Sunny,
Thank you for your email. I will contact my client about these dates. I will be on vacation starting tomorrow, but will try my best to circle back as soon as possible.
Happy holidays,
Michelle

Michelle J. Dickinson

410.740.5630 Office
443.280.4257 Cell
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Please do not hesitate to contact me with any questions.

Happy Holidays!

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Krysundra "Sunny" Cannington

Administrator

Board of Appeals of Baltimore County

410-887-3180

From: Michelle Dickinson [mailto:michelle@dickinson-law.com]
Sent: Thursday, December 17, 2015 2:50 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Nelson, G. Macy <gmacynelson@gmacynelson.com>
Subject: Re: Catherine Robinson 15-235-SPHA

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>
> Sunny

Krysundra "Sunny" Cannington

Administrator

Board of Appeals of Baltimore County

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105 W. Chesapeake Avenue

Towson, MD 21204

Phone: 410-887-3180

Fax: 410-887-3182

Confidentiality Statement

Krysundra Cannington

From: Krysundra Cannington
Sent: Wednesday, December 23, 2015 1:09 PM
To: 'Michelle Dickinson'; Nelson, G. Macy
Subject: RE: Catherine Robinson 15-235-SPHA

Counsel,

First, I understand if you are not able to respond immediately given the holidays occurring this week and next.

Per my conversation with Mr. Nelson, and as previously expressed, there are some scheduling issues with the February and March dates. However, if we were to schedule two fairly close dates the same panel should be available for both.

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Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

Krysundra Cannington

From: Krysundra Cannington
Sent: Wednesday, December 23, 2015 11:08 AM
To: 'Michelle Dickinson'
Cc: Nelson, G. Macy
Subject: RE: Catherine Robinson 15-235-SPHA

Counsel,

It appears some of the Board members have some scheduling issues in March. The combination of Board members available on February 23rd are not available on the dates offered in March.

I kindly request that you check your availability on the following dates in February? February 2, 9, 16, 18, and 25, 2016. All hearings scheduled before the Board begin at 10 a.m. unless otherwise agreed.

Thank you for your attention and cooperation.

Happy Holidays!

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

From: Michelle Dickinson [mailto:michelle@dickinson-law.com]
Sent: Thursday, December 17, 2015 2:50 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Nelson, G. Macy <gmacynelson@gmacynelson.com>
Subject: Re: Catherine Robinson 15-235-SPHA

Sunny,
We would prefer the second day of the hearing to be as soon as possible but we can be available on any of the proposed dates.

Thank you,
Michelle

On Dec 14, 2015, at 10:40 AM, Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

> Good morning Counsel,
>
> This email is to confirm that the above referenced matter will be set for hearing on Tuesday, February 23, 2016, as agreed. Additionally, it has been requested that a second hearing date be scheduled in the event this matter is not completed. At this time, the following dates are available on the Board's docket:
>
> March 8, 15, 17, and 22.
>
> Please advise which of these dates work best for you and your clients.
>
> Once the second date has been selected, I will send a Notice of Reassignment with both hearing dates.
>
> Thank you for your prompt attention to this matter.
>
> Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

Krysundra Cannington

From: Michelle Dickinson <michelle@dickinson-law.com>
Sent: Thursday, December 17, 2015 2:50 PM
To: Krysundra Cannington
Cc: Nelson, G. Macy
Subject: Re: Catherine Robinson 15-235-SPHA

Sunny,
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Michelle

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> Sunny
>
> Krysundra "Sunny" Cannington
> Administrator
> Board of Appeals of Baltimore County
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> 105 W. Chesapeake Avenue
> Towson, MD 21204
> Phone: 410-887-3180
> Fax: 410-887-3182
>
>

Krysundra Cannington

From: Krysundra Cannington
Sent: Monday, December 14, 2015 10:41 AM
To: 'michelle@dickinson-law.com'; Nelson, G. Macy
Subject: Catherine Robinson 15-235-SPHA

Good morning Counsel,

This email is to confirm that the above referenced matter will be set for hearing on Tuesday, February 23, 2016, as agreed. Additionally, it has been requested that a second hearing date be scheduled in the event this matter is not completed. At this time, the following dates are available on the Board's docket:

March 8, 15, 17, and 22.

Please advise which of these dates work best for you and your clients.

Once the second date has been selected, I will send a Notice of Reassignment with both hearing dates.

Thank you for your prompt attention to this matter.

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

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Board of Appeals of Baltimore County

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Return Service Requested

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180 ADMIRAL COCHRANE DR STE 400
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21401$7397 C041

Board of Appeals of Baltimore County

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

December 4, 2015

Michelle J. Dickinson, Esquire
10440 Little Patuxent Parkway, Suite 300
Columbia, MD 21044

Re: In the matter of Catherine Robinson
Case No: 15-235-SPHA

Dear Ms. Dickinson:

We are in receipt of your request for postponement dated December 1, 2015. This letter is to advise you that your request for postponement of the hearing scheduled for Wednesday, February 3, 2015 has been granted. A Notice of postponement is enclosed.

In order to schedule a hearing before the Board of Appeals, without conflict; I am providing dates currently available on the docket. The Board sits on Tuesday, Wednesday and Thursday of each week. The following dates open for assignment:

Thursday, February 18, 2016 at 10:00;
Tuesday, February 23, 2016 at 10:00; and
Tuesday, March 1, 2016 at 10:00

Please contact this office upon receipt of this letter to confirm availability. The Notice of Assignment will be issued to all parties at the time an agreeable date is established.

Thanking you in advance for your time and cooperation in this matter. Should you have any questions, please call me at 410-887-3180.

Very truly yours,

Sunny Cannington

Krysundra "Sunny" Cannington
Administrator

cc: G. Macy Nelson, Esquire

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 4, 2015

NOTICE OF POSTPONEMENT

IN THE MATTER OF: Catherine H. Robinson
E/s Far Out Lane, approx. 1,475 ft SW of c/l of Akehurst Road
15-235-SPHA 2012 Far Out Lane
5th Election District; 3rd Councilmanic District

This matter was assigned for Wednesday, February 3, 2016 and has been postponed. It will be rescheduled to a later date.

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: Counsel for Petitioner : Michelle J. Dickinson, Esquire
Petitioner : Catherine Robinson

Counsel for Protestants/Appellants : G. Macy Nelson, Esquire
Protestants/Appellants : Andrew and Noreen Krause, Anita Krause

Scott Lindgren/Gerhold, Cross & Etzel
Kawana Swank
Ann Merryman
Office of People's Counsel
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney

J. Lawrence Hosmer/ERM
Anne Cornell
Noah Price
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Michael Field, County Attorney, Office of Law

MJD Law Office of
Michelle J. Dickinson, LLC

10440 Little Patuxent Parkway, Suite 300
Columbia, Maryland 21044
410.740.5630 T
866.211.2673 F

December 1, 2015

VIA FACSIMILE

Krysundra Cannington
Administrator, Board of Appeals of Baltimore County
105 W. Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Case No. 15-235-SPHA

Dear Ms. Cannington:

My firm represents Catherine Robinson regarding Andrew and Noreen Krause's appeal of the variance granted by the Honorable John E. Beverungen permitting Ms. Robinson's private kennel to be located within 15 feet of the nearest property line in lieu of the required 200 feet. We are in receipt of the Notice of Assignment scheduling the hearing for February 3, 2016 at 10:00 a.m. We respectfully request a postponement of the hearing to accommodate a scheduling conflict. Specifically, I am scheduled to appear telephonically on February 3, 2016 for a discovery compliance conference with Judge Charles E. Ramos' clerk in the case captioned, *Credit Suisse Securities (USA), LLC v. Gladstone Business Loan, LLC*, Index No. 6512527/2015, in the Supreme Court of the State of New York: Commercial Division. Thank you in advance for your consideration of this matter.

Very truly yours,

Michelle J. Dickinson

cc: G. Macy Nelson, Esq.

Krysundra Cannington

From: Baltimore County Faxcom System <Faxcom@baltimorecountymd.gov>
Sent: Tuesday, December 01, 2015 9:35 AM
To: Appeals Board
Subject: Fax Received From: 18662112673
Attachments: 4412120115.PDF

This message was sent via the Baltimore County Government Faxcom fax System.

-------Fax Reception Report-------
Result: All pages received OK
Pages Received:002
Received: 12/01/15 09:33
Connect Time: 00068
Sender TSID: michelle@dickinson-l
From: 18662112673
Destination DID: 4108873182

Your fax is attached as a PDF image.

FACSIMILE TRANSMISSION

To: +14108873182

From: Michelle Dickinson
Law Office of Michelle J. Dic
10440 Little Patuxent Parkw
Columbia
MD 21044

Phone:
Fax Phone: +14108873182

Phone: +1 (443) 280-4257
Fax Phone: (866) 211-2673

Note:
Ms. Cannington, Please see attached correspondence from the LawOffice of Michelle J. Dickinson.

Date: 12/01/2015

Pages: 2

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 23, 2015

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Catherine H. Robinson
E/s Far Out Lane, approx. 1,475 ft SW of c/l of Akehurst Road
15-235-SPHA 2012 Far Out Lane
5th Election District; 3rd Councilmanic District

Re: Petition for Special Hearing requesting the Administrative Law Judge to amend the December 18, 2014 Order granting a Special Exception for a private kennel in case number 15-092-X as shown and indicated on the site plan, and Petition for Variance from Section 421.1 of the BCZR to permit a private kennel in a RC-2 zone to be located within 15 feet of the nearest property line in lieu of the required 200 feet.

10/9/15 Opinion and Order of Administrative Law Judge wherein the Petition for Special Hearing was GRANTED; and Petition for Variance was GRANTED with the condition that the dogs must not be allowed outside of the house when no one is home. The "doggie door" must therefore remain closed/locked when Petitioner or other occupants are not home.

ASSIGNED FOR: WEDNESDAY, FEBRUARY 3, 2016 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: Counsel for Petitioner : Michelle J. Dickinson, Esquire
Petitioner : Catherine Robinson

Counsel for Protestants/Appellants : G. Macy Nelson, Esquire
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Scott Lindgren/Gerhold, Cross & Etzel
Kawana Swank
Ann Merryman
Office of People's Counsel
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney
J. Lawrence Hosmer/ERM
Anne Cornell
Noah Price
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Michael Field, County Attorney, Office of Law

IN RE: 2012 Far Out Lane Southside of Far Out Lane, 1475 ft. southwest of Akehurst Road	*	BEFORE THE ADMINISTRATIVE LAW JUDGE
5th Election District 11th Councilmanic District	*	FOR
	*	BALTIMORE COUNTY
Legal owner: Catherine Robinson	*	CASE NO. 2015-0235-SPHA

* * * * * * * * * * * * * * *

MEMORANDUM

Facts

Catherine H. Robinson ("Robinson") owns approximately five acres at 2012 Far Out Lane, Sparks, MD ("Subject Property"). The Subject Property borders property owned by Noreen and Andrew Krause ("Protestants"). Robinson has eleven dogs living in her house with access to portions of the Subject Property. A spring on the Subject Property feeds a stream that drains to a pond on the Krause property.

Baltimore County Zoning Regulation ("BCZR") section 421.1 prohibits kennels including "exercise areas, septic systems, dog runs and parking areas" "within 200 feet of the nearest property line." The Subject Property contains approximately 12,000 square feet of land located more than 200 feet from any property line. (Testimony of S. Lindgren). Nevertheless, Robinson seeks a variance to allow a kennel within fifteen feet of the property line which separates her property from Protestants' property. Footnote 2 of Robinson's memorandum states that the Department of Planning "revised their recommendation to approve the variance with a 15-foot setback." Protestants are not aware of such a revision. The file contains a comment dated May 6, 2015 from Dennis Kennedy. That comment addresses "evergreen screening" and the type of fencing. The comment did not recommend approval of the variance.

The Subject Property has the same characteristics as other properties in the vicinity. *See* Applicant's Exhibit 8 and Protestants' Exhibits 3, 5 and 6. Other nearby

properties are approximately five acres or less. Robinson's surveyor, S. Lindgren, identified five lots in the vicinity that are too small to meet the requirement for a setback of 200 feet for a kennel. The Subject Property and other parcels in the vicinity have similar topography, springs and drainage swales. (Testimony of A. Krause, L. Hosmer, and S. Lindgren). And both the Subject Property and two nearby properties have the shape of a "bowl." (Testimony of S. Lindgren).

The dogs are loud at certain times and quiet at other times. Certain triggers – a moving car, a pedestrian, a wild animal – cause the dogs to "get into" an episode of protracted and loud barking. The dogs have access to a portion of the stream that drains to the Krauses' pond. Protestants presented evidence that the kennel at the Subject Property harmed them in two ways. The barking dogs on the Robinson property interfere with the Krauses' and their tenants' use and enjoyment of the Krause property. Dog waste also contaminates both the stream that flows from the Subject Property to their pond and the pond itself. The contamination of the pond caused them to stop using the pond for recreational purposes.

Robinson did not apply for a permit to construct a kennel in the 12,000 square feet of her property that satisfied the setback requirement. Her landscaper, Noah Price, III, testified that he thought the County would not allow a kennel there. But Robinson's witnesses admitted that Robinson did not seek a variance of any regulation that might address a structure in front of the house. Other witnesses for Robinson suggested that the presence of the spring might limit in some way Robinson's ability to construct a kennel within the 12,000 square feet that satisfied the setback requirement. But the only evidence is that Robinson made no effort to discuss this concern with DEPS. Finally, Robinson and her witnesses admitted that she made no effort to purchase another parcel of land that was large enough to allow the construction of a kennel.

Summary of Law

BCZR section 307.1 grants the Administrative Law Judge ("ALJ") authority to grant a variance from the zoning regulations in limited circumstances. The appellate jurisprudence interpreting BCZR section 307.1 is well developed. *See Cromwell v. Ward*,

102 Md. App. 691 (1995); *Umerley v. People's Counsel for Baltimore Cnty.*, 108 Md. App. 497, *cert. denied* 342 Md. 584 (1996); and *Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore Cnty.*, 407 Md. 53 (2008).

Cromwell emphasizes that a "variance is authority ... to use his property in a manner forbidden ..., while a[] [special] exception allows him to put his property to a use which the enactment expressly permits." *Id.*, 102 Md. App. at 700 (internal quotation marks omitted). Consequently, "[t]he general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. *Id.* at 703.

Cromwell provides a roadmap for the analysis of an application for a variance:

> The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is-in and of itself-unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.,* a determination of whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness, exists. Further consideration must then be given to the general purposes of the zoning ordinance.

Id. at 694-95. "These general rules are recognized by BCZR 307.1." *Umerley*, 108 Md. at 506.

Trinity explains:

> To be "unique," a property must "have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, sub-surface 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." *Lewis v. Dept. of Natural Resources,* 377 Md. 382, 434 (2003) (italics omitted) (quoting *North v. St. Mary's County,* 99 Md. App. 502, 514, (1994)).

407 Md. at 81. *North* also makes clear that, "[i]n the zoning context the 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property." 99 Md. App. at 514.

Finally, it is not enough for an applicant to prove uniqueness and practical difficulty or unreasonable hardship. An applicant must also prove that the variance, if granted, will not cause "injury to public health, safety and general welfare." BCZR § 307.1.

Argument

The ALJ should disapprove the application for a variance for three separate reasons. Each reason by itself is an independent basis to deny the application. First, Robinson failed to satisfy the uniqueness requirement. This requirement mandates that the ALJ to compare the characteristics of the Subject Property with other properties in the vicinity. The Subject Property is similar to other properties in the vicinity in every material way including size and topographic and hydrologic features. Robinson appears to argue that the location of the house near the back of the property in the base of the "bowl" is evidence of the requisite uniqueness. The "bowl" on the Subject Property is not unique. Robinson's own expert witness, S. Lindgren, described two other properties that had similar "bowls." Even assuming no other parcels have houses in similar locations in a "bowl", that alleged characteristic is not evidence of uniqueness. The rule is that, "the 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property." *North*, 99 Md. App. at 514. Robinson's failure to prove that the Subject Property is unique ends the inquiry.

Second, Robinson failed to prove practical difficulty and/or unreasonable hardship. The only evidence was that she failed to apply for a permit to construct a kennel within the 12,000 square feet of her property that were more than 200 feet from any property line. She also failed to investigate whether she could purchase additional land for a kennel. Furthermore, she has reasonable use of her property without the ALJ granting her a variance for a kennel.

Third, Robinson failed to prove that the proposed kennel will not cause "injury to public health, safety and general welfare," as required by BCZR section 307.1. The only evidence is that the barking dogs adversely affect the general welfare of the Protestants. Furthermore, the variance, if approved, will injure the public health because the dog waste contaminates the stream on the Subject Property which, in turn, contaminates the pond on the Krause property. That contamination makes the pond unsafe for swimming and fishing.

Respectfully submitted,

G. Macy Nelson
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204
(410) 296-8166
gmacynelson@gmacynelson.com
Attorney for Andrew and Noreen Krause

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of October, 2015, a copy of the foregoing Memorandum was mailed first-class, postage prepaid, to:

Michelle J. Dickinson, Esquire
10440 Little Patuxent Parkway, Suite 300
Columbia, Maryland 21044
Attorney for Catherine Robinson

G. Macy Nelson

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(2012 Far Out Lane)	*	OFFICE OF
5th Election District	*	ADMINISTRATIVE HEARINGS
3rd Councilman District	*	FOR BALTIMORE COUNTY
Catherine H. Robinson	*	
Legal Owner/Petitioner	*	**Case No. 2015-0092-X**

* * * * * * * * *

MEMORANDUM OF LAW

Petitioner Catherine H. Robinson, by her counsel and pursuant to Baltimore County Zoning Regulation ("B.C.Z.R.") 307.1, submits this Memorandum of Law in support of her Petition for a Variance from the setback requirements of B.C.Z.R. 421.1. On December 18, 2014, this Court granted a special exception for a private kennel in an R.C. 2 (Agricultural) zone for Ms. Robinson to continue to rescue and care for up to 10 dogs as she has for many years. Since Ms. Robinson's house is located less than 200 feet from the nearest property line, the special exception requires Ms. Robinson to construct a separate kennel structure for the dogs and locate outside exercise areas more than 200 feet from the nearest property line, in accordance with B.C.Z.R. 421.1.[1]

Although she has sufficient acreage, due to the severe topography, springs, and location of the house on her property, Ms. Robinson has learned that she cannot build a kennel in the area that is more than 200 feet from the property line, in accordance with B.C.Z.R. 421.1. First, the permissible area is located in front of Ms. Robinson's house, and B.C.Z.R. 400.1 requires accessory structures to be in the rear. Noah Price, of Price Landscaping, testified that Baltimore County advised him that it would not issue permits to build the kennel because it would be located in front of the house. Second, a spring runs through the area where the kennel would be constructed. Baltimore County thus advised Mr. Price that environmental issues also would prohibit construction. Scott Lindgren, a zoning expert and professional surveyor, and Larry Hosmer, a civil and geotechnical engineering expert, both confirmed that MDE would not likely approve construction of a kennel near the spring due to environmental concerns. Ms. Robinson thus can only keep her dogs and enjoy the special exception if they are allowed to live in her house.

The dogs must exit the house through the rear, as they cannot navigate the steep terrain and steps immediately in front of the house, *see* Exh. 6 (video), or access the door that leads to the front

[1] The special exception permits Ms. Robinson to keep three of her now-eleven dogs in her home.

patio from inside. Once outside, the dogs must walk up the driveway past the tall retaining walls to access the front yard. A tall wooden privacy fence and a stand of mature evergreen trees run along the driveway at the back of the property to act as a sound buffer. The underground electric fence runs along the outer edge of the driveway and comes within 15 feet of the property line near the back corner of the property.[2] Accordingly, Ms. Robinson seeks a variance from the setback requirements of B.C.Z.R. 421.1 to allow her to continue to use her house and the outside area already secured by an underground electric fence for the kennel – essentially, to maintain the status quo.[3]

Under *Cromwell v. Ward*, 102 Md. App. 691 (1995), and its progeny, an area variance should be granted where: (1) the property is unique; and (2) the petitioner will experience a practical difficulty if the variance is denied. Ms. Robinson has met this test. Experts Mr. Lindgren and Mr. Hosmer, as well as Mr. Price, testified that Ms. Robinson's property has severe steep slopes at the front and two sides, which create a bowl effect on the entire property. *See* Exh. 2 (site plan) and 6 (video). Her property is a drainage basin for surrounding properties and a discharge point for underground springs. As a result of the severe topography, drainage, and springs, the house necessarily was constructed in 1920 in the flattest and driest location, which is at the very back of her property, less than 200 feet from the property line. No other property in the area has the same combination of characteristics. Although two properties in the area have "bowls," their slopes are not nearly as steep and do not encompass the entire property, like Ms. Robinson's. Further, neither of those properties has a house located at the back of the property. It is undisputed that no other property in the area has the severe topography combined with natural springs and an existing house necessarily located less than 200 feet from the back of the property, preventing the permissible use of the property as a private kennel. The property's uniqueness causes B.C.Z.R. 421.1 to have a

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[2] The Department of Planning initially recommended a 100-foot setback to address the Krauses' noise concerns until they observed that the dogs could not exit the house except through the rear and up the driveway and that Ms. Robinson had installed a privacy fence as an additional sound buffer. They revised their recommendation to approve the variance with a 15-foot setback.

[3] The status quo differs from December 2014 in that Ms. Robinson has spent considerable amounts of money constructing privacy and perimeter fencing to address the concerns of neighbors, Andy and Noreen Krause, regarding noise and dogs escaping the electric fence.

disproportionate impact.

If the area variance is denied, Ms. Robinson will experience a practical difficulty,[4] as she will be unable to use her property for a permitted purpose – a private kennel, for which this Court granted a special exception. More importantly, if the variance is denied, Ms. Robinson must get rid of eight of her dogs. Ms. Robinson testified that most of the dogs are not adoptable because they are old or in bad health. Ms. Robinson thus would have no choice but to euthanize most of her dogs. That would not only be a "practical difficulty" but a horrific fate for the innocent dogs and their loving owners, including a fourteen year old boy, Kaden, who consider them family.

The Krauses, who live on approximately 30 wooded acres behind Ms. Robinson, have expressed concerns regarding noise and the effect of the dogs on their pond. Mr. Krause complained that the dogs bark loudly much of the time. His testimony was contradicted by every other witness, including his own wife. Indeed, Mrs. Krause admitted that dog barking is only occasionally a problem and that her own dogs' barking often wakes her up. Further, Ms. Robinson and Ms. Swank testified that the dogs are kept in the house throughout the night until approximately 5:30 a.m. and left in the house alone for no more than a few hours on any given day. When the dogs bark, however, Ms. Robinson, Ms. Swank or her son, Kaden, bring them inside. The Krauses admitted that other dogs in the neighborhood bark and that they cannot always tell whether they are hearing Ms. Robinson's or other neighbors' dogs. The video introduced by the Krauses as evidence of the sound on their property shows that whoever's dogs were barking in the distance only barked for approximately a minute and then were quiet.[5] This is consistent with the testimony of Ms. Robinson, Ms. Swank, their neighbors, and their landscaper that the dogs bark when a car or animal comes by (or Mr. Krause antagonizes them), but they stop after no more than a few minutes.[6] If the

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[4] An "area" variance seeks relief from height, area, setback or property line restrictions. The practical difficulty standard applies to area variances. *Anderson v. Bd. of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28 (1974).

[5] The Krauses' second video shows Ms. Robinson's dogs barking at Mr. Krause as he drives his golf cart along her fence, as one would expect dogs to do. It also shows Kaden quieting the dogs.

[6] *See* Exh. 6 (video of typically quiet dogs on Ms. Robinson's property); Exh. 3 (letters from neighbor and house guests indicating that dogs are well-behaved). By contrast, 2014 affidavits introduced by the Krauses suggest only that the dogs could be heard barking at times, *albeit*, before the privacy fence was installed.

The Krauses admitted that they have no evidence that Ms. Robinson's dogs are responsible for E. coli in any of the water samples, including the samples from the spring that begins on Ms. Robinson's property. Mr. Krause testified that dogs do not relieve themselves in water, and that there are many species of animals in the woods that could be responsible for the E. coli. Further, the electric fence limits the dogs' access to a small segment of the spring, which is dry much of the year. And, the dog waste is picked up regularly and placed in a doggy septic system to avoid environmental concerns. Mr. Krause testified that milkshake-like silty water coming from the spring into his pond is a concern, but silt comes from soil erosion, and Ms. Robinson's property, as seen in the video and photos, is highly vegetative. Any milkshake water likely is from erosion on the 150-feet of the Krauses' property leading down to their pond, not the dogs.[7] Accordingly, there is no credible evidence that the dogs are contaminating the pond or that a variance, which will only maintain the status quo, will have any adverse effect on the Krauses or their pond.

Granting of a variance in this case would be in strict harmony with the spirit and intent of the Baltimore County Zoning Regulations and can be accomplished without injury to the public health, safety or general welfare. Accordingly, Ms. Robinson respectfully requests that this Court grant a variance from the 200-foot setback requirement of B.C.Z.R. 421.1 and permit her to use her house and the outside area currently confined by an underground electric fence, which is within 15 feet of the nearest property line as depicted on the site plan, for her private (not commercial) kennel.

Respectfully submitted,

Michelle J. Dickinson
Law Office of Michelle J. Dickinson, LLC
10440 Little Patuxent Pkwy, Ste. 300
Columbia, Maryland 21044
(410) 740-5630
michelle@dickinson-law.com
Counsel for Catherine H. Robinson

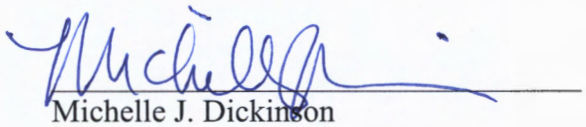
[7] Mr. Krause also testified that they had to purchase an expensive aerator to address a long-term algae problem caused by stagnant water in the pond, but this has nothing to do with dogs or E. coli.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of October, 2015, a copy of the foregoing Memorandum of Law was delivered via regular mail, postage prepaid to:

G. Macy Nelson
Law Office of G. Macy Nelson, LLC
401 Washington Ave.
Suite 803
Towson, MD 21204

Counsel for Andy and Noreen Krause



Michelle J. Dickinson

PLEASE PRINT CLEARLY

CASE NAME _____
CASE NUMBER 2015-235-SI
DATE 9-23-15

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
SCOTT LINDGREN	GERHOLD, CROSS & ETZEL, LTD 320 E. TOWSON TOWN BLVD SUITE 100	TOWSON, MD 21286	slindgren@gcelimited.com
J. LAURENCE HOSMER	ERM. STE 400, 200 Hebb Terrace	Prince Georges, MD 21401	LARRY.HOSMER@ERM.com
ANNE CORNELL	2000 FAR OUT LN 21152	SPARKS MD 21152	bloomersinc@gmail.com
Ann Merryman	1300 Cold Bottom 21152		merrymanmgmt.com
Noah S Pl &	2518 NEW PARK RD	NEW PARK, PA.	
Kawana Swank	2012 Far Out Ln Sparks, MD	21152	Slewofflags22@aol.com

PLEASE PRINT CLEARLY

CASE NAME _____
CASE NUMBER 2015-0235-SPHA
DATE 9-23-15

CITIZEN'S SIGN - IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E - MAIL
Andrew Krause	1940 Akehurst Rd	Sparks, MD 21152	akrause@comcast.ca
Anita Krause	3801 Schaper Dr Apt 113	Randallstown, MD	
Noreen Krause	1940 Akehurst Rd.	Sparks MD 21152	krausesc@comcast.net
Kawana Swank	2012 Far Outln	Sparks, MD 21152	slewofflags22@aol.com

Debra Wiley

From: Debra Wiley
Sent: Monday, September 21, 2015 11:46 AM
To: G. Macy Nelson Esq. (GMacyNelson@gmacynelson.com)
Subject: Case No. 2015-0235-SPHA
Attachments: 20150921114838384.pdf

Mr. Nelson,

Per your request.

-----Original Message-----
From: adminhearingscpr@baltimorecountymd.gov [mailto:adminhearingscpr@baltimorecountymd.gov]
Sent: Monday, September 21, 2015 11:49 AM
To: Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: Admin Hearings Copier

This E-mail was sent from "RNP002673903BB1" (MP 3054).

Scan Date: 09.21.2015 11:48:38 (-0400)
Queries to: adminhearingscpr@baltimorecountymd.gov

KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits, Approvals & Inspections

August 20, 2015

Catherine H Robinson
2012 Far Out Lane
Sparks MD 21152

RE: Case Number: 2015-0235 SPHA, Address: 2012 Far Out Lane

Dear Ms. Robinson:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on April 23, 2015. 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,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: jaw

Enclosures

c: People's Counsel
Michelle J Dickinson, Esquire, 10440 Little Patuxent Parkway, Suite 300, Columbia MD 21044

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: August 10, 2015

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: 2012 Far Out Lane

INFORMATION:

Item Number: 15-235

Petitioner: Catherine H. Robinson

Zoning: RC 2

Requested Action: Special Hearing, Variance

SUMMARY OF REFINED RECOMMENDATIONS:

A meeting held July 17, 2015 between the Department of Planning (Department) and the Petitioner to include her legal counsel indicated substantial material changes have occurred to the subject property since the Department issued its recommendations of May 11, 2015. A revised site plan dated August 6, 2015 and received by this Department on August 7, 2015 documents those changes. The Department notes the existence of a new opaque privacy fence at the northwest tract boundary with substantial vegetative screening and a new screen fence with gates enclosing the majority of the subject property.

The Department has no objection to granting the Petition for Special Hearing to amend the Administrative Law Judge's order in Zoning Case 2015-0092 and Petition for Variance to permit a private kennel in a residential zone to be located within 15 feet of the nearest property line in lieu of the required 200 feet conditioned upon the following:

- Limit the Special Exception use to the extent of the existing underground fence/modified kennel as shown on the aforementioned revised site plan. Any future structure associated with the private kennel shall be located within this area.
- Conditions 2 and 3 in the Administrative Law Judge's Opinion and Order granted on December 18, 2014 in zoning case number 2015-0092-X should remain in place.

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

Division Chief: Kathy Schlabach

AVA/KS
C: Carmela Iacovelli

S:\Planning\Dev Rev\ZAC\ZACs 2015\15-235refined.docx

John E. Beverungen

From: Jeanette Tansey
Sent: Friday, June 12, 2015 9:25 AM
To: John E. Beverungen
Cc: michelle@dickinson-law.com
Subject: Case 2015-0235 Robinson Residence

Good morning, John – I met with the attorney on the above case and she had pictures of the site and explanation of the operation and meaning of the use of the fencing. As such, please change my comment as sent from Dennis Kennedy on May 6 to simply approve the proposed plan. Thank you.

Jeanette M. S. Tansey, R.L.A.
Project Manager, Baltimore County
Permits, Approvals & Inspections
Development Plans Review
111 W. Chesapeake Ave., Room 119
Towson, MD 21204

410-887-3751
jtansey@baltimorecountymd.gov

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

DATE: May 6, 2015

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

SUBJECT: Zoning Advisory Committee Meeting
For May 4, 2015
Item No. 2015-0235

The Bureau of Development Plans Review has reviewed the subject zoning item and we have the following comment.

Although the surrounding properties are large lots, if approved, evergreen screening outside of the proposed fence should be required. Fencing shall be opaque or solid.

* * * * *

DAK: CEN
cc:file

ZAC-ITEM NO 15-0235-05042015.doc

Larry Hogan, *Governor*
Boyd Rutherford, *Lt. Governor*

SHA State Highway Administration
Maryland Department of Transportation

Pete K. Rahn, *Secretary*

Date: 4/30/15

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

RE: Baltimore County
Item No 2015-0235-SPHA
Special Hearing Variance
Catherine H. Robinson
2012 For Dent Lane

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. 2015-0235-SPHA

Should you have any questions regarding this matter, please contact Mr. Richard Zeller at 410-545-5598 or 1-800-876-4742 (in Maryland only) extension 5598, or by email at (rzeller@sha.state.md.us).

Sincerely,

Steven D. Foster, Chief/
Development Manager
Access Management Division

SDF/raz

THE BALTIMORE SUN MEDIA GROUP

501 N. Calvert St., P.O. Box 1377
Baltimore, Maryland 21278-0001
tel: 410/332-6000
800/829-8000

WE HEREBY CERTIFY, that the annexed advertisement of Order No 3468500

Sold To:
Catherine Robinson - CU00393832
2012 Far Out Ln
Sparks Glencoe,MD 21152

Bill To:
Catherine Robinson - CU00393832
2012 Far Out Ln
Sparks Glencoe,MD 21152

Was published in "Jeffersonian", "Bi-Weekly", a newspaper printed and published in Baltimore County on the following dates:

Aug 06, 2015

The Baltimore Sun Media Group

By S. Wilkins

Legal Advertising

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: # 2015-0235-SPHA
2012 Far Out Lane
Southside of Far Out Lane, 1475 ft. southwest of Akehurst Road
5th Election District - 3rd Councilmanic District
Legal Owner(s) Catherine Robinson

Special Hearing: to request the Administrative Law Judge to amend the December 18, 2014 order granting a Special Exception for a private kennel in case 2015-0092-X as shown and indicated on the site plan filed in this case. Variance to permit a private kennel in an RC-2 zone to be located within 15ft. of the nearest property line in lieu of the required 200 ft.
Hearing: Wednesday, August 26, 2015 at 1:30 p.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.

8/002 August 6 3468500

Bruce Doak Consulting, LLC
3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-4906
bdoak@bruceedoakconsulting.com

CERTIFICATE OF POSTING

July 30, 2015, 2015

Re:
Zoning Case No. 2015-0235-SPHA
Petitioner / Owner: Catherine Robinson
Date of Hearing: August 26, 2015

Baltimore County Department of Permits, Approvals & Inspections
County Office Building
111 West Chesapeake Avenue, Room 111
111 West Chesapeake Avenue Towson, MD 21204

Attention: Kristen Lewis

Ladies and Gentlemen,

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at **2012 Far Out Lane**.

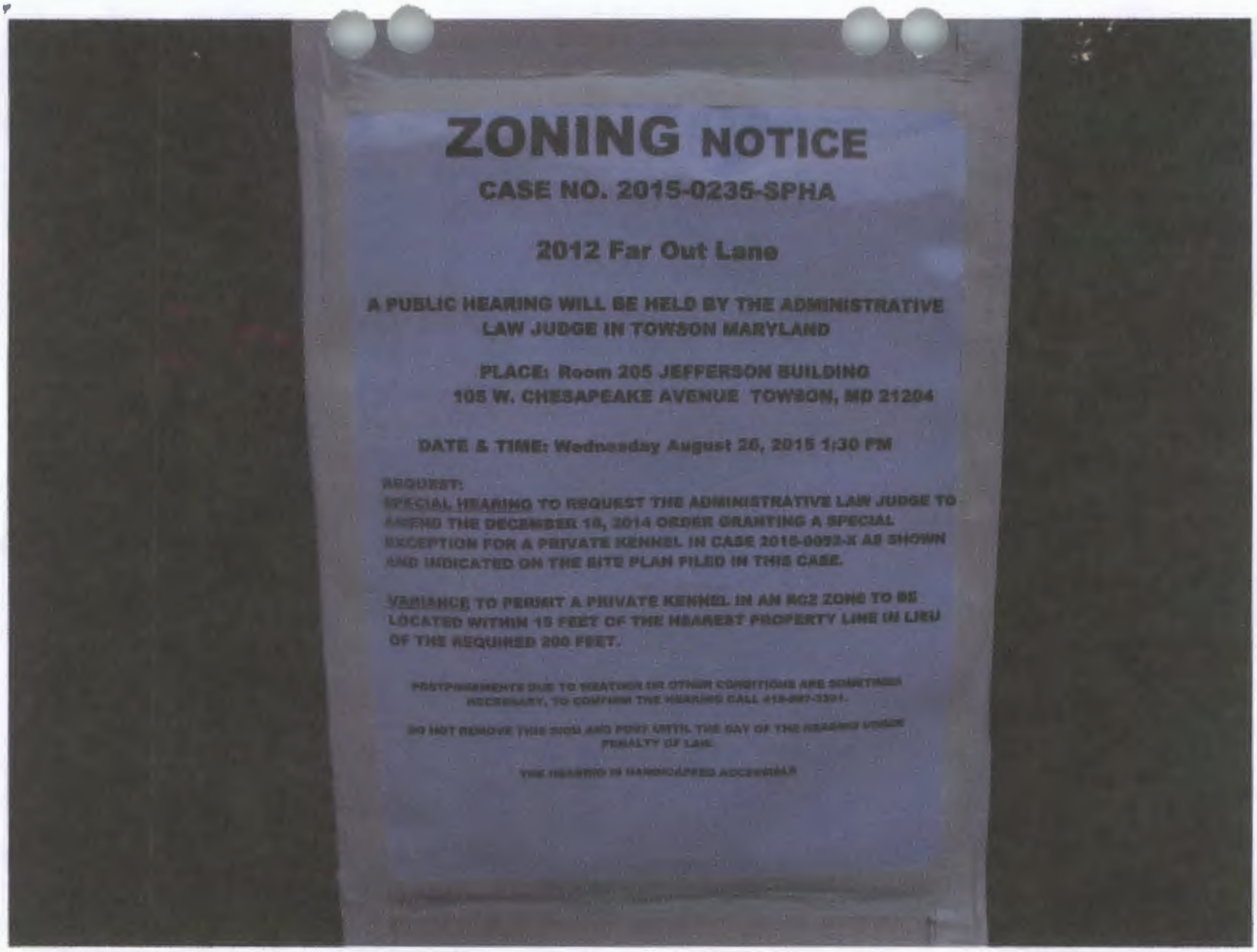
The sign(s) were posted on **July 29, 2015**.

Sincerely,

Bruce E. Doak
MD Property Line Surveyor #531

See the attached sheet(s) for the photos of the posted sign(s)

Land Use Expert and Surveyor


ZONING NOTICE
CASE NO. 2015-0235-SPHA
2012 Far Out Lane
A PUBLIC HEARING WILL BE HELD BY THE ADMINISTRATIVE LAW JUDGE IN TOWSON MARYLAND
PLACE: Room 205 JEFFERSON BUILDING
105 W. CHESAPEAKE AVENUE TOWSON, MD 21204
DATE & TIME: Wednesday August 26, 2015 1:30 PM
REQUEST:
SPECIAL HEARING TO REQUEST THE ADMINISTRATIVE LAW JUDGE TO AMEND THE DECEMBER 18, 2014 ORDER GRANTING A SPECIAL EXCEPTION FOR A PRIVATE KENNEL IN CASE 2015-0093-X AS SHOWN AND INDICATED ON THE SITE PLAN FILED IN THIS CASE.
VARIANCE TO PERMIT A PRIVATE KENNEL IN AN RC2 ZONE TO BE LOCATED WITHIN 15 FEET OF THE NEAREST PROPERTY LINE IN LIEU OF THE REQUIRED 200 FEET.
POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY. TO CONFIRM THE HEARING CALL 410-887-3391.
DO NOT REMOVE THIS SIGN AND POST UNTIL THE DAY OF THE HEARING UNDER PENALTY OF LAW.
THE HEARING IS HANDICAPPED ACCESSIBLE


ZONING NOTICE
CASE NO. 2015-0235-SPHA
2012 Far Out Lane

KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

June 18, 2015

NEW 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: 2015-0235-SPHA
2012 Far Out Lane
Southside of Far out Lane, 1475 ft. southwest of Akehurst Road
5th Election District – 3rd Councilmanic District
Legal Owners: Catherine Robinson

Special Hearing to request the Administrative Law Judge to amend the December 18, 2014 order granting a Special Exception for a private kennel in case 2015-0092-X as shown and indicated on the site plan filed in this case. **Variance** to permit a private kennel in an RC-2 zone to be located within 15 ft. of the nearest property line in lieu of the required 200 ft.

Hearing: Wednesday, August 26, 2015 at 1:30 p.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director

AJ:kl

C: Michelle Dickinson, 10440 Little Patuxent Parkway, Ste. 300, Columbia 21044
Catherine Robinson, 2012 Far Out Lane, Sparks 21152
Macy Nelson, 401 Washington Avenue, Ste. 803, Towson 21204

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY THURSDAY, AUGUST 6, 2015**
(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.

MEMORANDUM

TO: Kristen Lewis
Office of Zoning Review

FROM: Debbie Wiley
Office of Administrative Hearings

DATE: June 10, 2015

SUBJECT: Case No. 2015-0235-SPHA – 2012 Far Out Lane
Hearing: June 16, 2015 @ 2:30 PM

As you are aware, the above-referenced case was scheduled to come before Judge Beverungen on Tuesday, June 16, 2015 at 2:30 PM, in Room 205 of the Jefferson Building. On June 9th and 10th, postponement requests were received and granted by Judge Beverungen on June10th. In his email, Judge Beverungen stated:

> "I am in receipt of Mr. Nelson's request for postponement, which will be granted. I am mindful of the concerns articulated in Ms. Dickinson's letter regarding the dates set forth for compliance in the prior Order dated 12-18-2014. As a condition of granting the postponement request, I will extend the date for compliance until 30 days after the final order is issued in the above case, unless that order specifies otherwise.
>
> The zoning file will be returned to Ms. Lewis, and I would request that 2+ hours be allocated for the rescheduled hearing. Counsel should confer and contact Ms. Lewis to reschedule this case."

This matter is now being returned to you for rescheduling and processing. Thanks.

c: File

Debra Wiley

From: John E. Beverungen
Sent: Wednesday, June 10, 2015 12:25 PM
To: info@dickinson-law.com; 'G. Macy Nelson' (gmacynelson@gmacynelson.com)
Cc: Debra Wiley; Sherry Nuffer; Kristen L Lewis
Subject: 2015-0235

Counsel,

I am in receipt of Mr. Nelson's request for postponement, which will be granted. I am mindful of the concerns articulated in Ms. Dickinson's letter regarding the dates set forth for compliance in the prior Order dated 12-18-2014. As a condition of granting the postponement request, I will extend the date for compliance until 30 days after the final order is issued in the above case, unless that order specifies otherwise.

The zoning file will be returned to Ms. Lewis, and I would request that 2+ hours be allocated for the rescheduled hearing. Counsel should confer and contact Ms. Lewis to reschedule this case.

John Beverungen
ALJ

MJD Law Office of Michelle J. Dickinson, LLC

40 Little Patuxent Parkway, Suite 300
Columbia, Maryland 21044
410.740.5630 T
866.211.2673 F

June 10, 2015

VIA HAND-DELIVERY

Clerk, Office of Administrative Hearings
105 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Case No. 2015-0235

Dear Clerk:

My firm represents Catherine Robinson in her request to amend the special exception for a private kennel by way of a variance from the 200-foot setback requirement of BCZR 421.1. I write in response to the request by Andy and Noreen Krause that the Office of Administrative Hearings postpone the hearing scheduled for June 16, 2015.

Although we always endeavor to consent to extensions as a professional courtesy, we respectfully object to a postponement in this case, as the hearing must take place on June 16, 2015 for Ms. Robinson to comply with Judge Beverungen's December 18, 2014 Order. In granting the special exception, Judge Beverungen ordered that the private kennel be located 200 feet from all property lines and that Ms. Robinson obtain all permits to construct any kennel structure by June 30, 2015. Due to the fact that Ms. Robinson's home is located at the back of her 5-acre property, any kennel structure necessarily would have to be constructed in front of her house. Baltimore County, however, denied Ms. Robinson's permit request because Baltimore County regulations prohibit structures in front of homes. Ms. Robinson thus cannot comply with the Order unless the Court modifies the special exception to expand the kennel area to include her home, which is less than 200 feet from the property line, and the outside area already enclosed by the electric fence. If the hearing is postponed, Ms. Robinson will be in violation of the Order. Indeed, even a short postponement will not suffice because counsel will be traveling starting June 19, 2014.

The Krauses have not suggested that they will be prejudiced by the current hearing date. Indeed, the property has been posted since May 20th and the Krause's have been aware of the hearing since at least June 3rd, when they contacted us about the hearing.

Very truly yours,

Michelle J. Dickinson

Cc: G. Macy Nelson (via email)

Debra Wiley

From: Michelle Dickinson <michelle@dickinson-law.com>
Sent: Wednesday, June 10, 2015 1:05 PM
To: John E. Beverungen
Cc: info@dickinson-law.com; 'G. Macy Nelson' (gmacynelson@gmacynelson.com); Debra Wiley; Sherry Nuffer; Kristen L Lewis
Subject: Re: 2015-0235

Thank you very much, Your Honor. We will confer and contact Ms. Lewis.
Respectfully,
Michelle Dickinson

On Jun 10, 2015, at 12:24 PM, John E. Beverungen <jbeverungen@baltimorecountymd.gov> wrote:

> Counsel,
>
> I am in receipt of Mr. Nelson's request for postponement, which will be granted. I am mindful of the concerns articulated in Ms. Dickinson's letter regarding the dates set forth for compliance in the prior Order dated 12-18-2014. As a condition of granting the postponement request, I will extend the date for compliance until 30 days after the final order is issued in the above case, unless that order specifies otherwise.
>
> The zoning file will be returned to Ms. Lewis, and I would request that 2+ hours be allocated for the rescheduled hearing. Counsel should confer and contact Ms. Lewis to reschedule this case.
>
> John Beverungen
> ALJ
>
> **CONNECT WITH BALTIMORE COUNTY**
>
> 
>
> 
> *When you think Baltimore County, think, www.baltimorecountymd.gov*

JB
12-1-14

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(2012 Far Out Lane)		
5th Election District	*	OFFICE OF
3rd Councilman District		
Catherine H. Robinson	*	ADMINISTRATIVE HEARINGS
Legal Owner		
Petitioner	*	FOR BALTIMORE COUNTY
	*	**Case No. 2015-0092-X**

* * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Special Exception filed for property located at 2012 Far Out Lane. The Petition was filed on behalf of the legal owner of the subject property, Catherine H. Robinson. The Petition seeks approval for a private kennel (not commercial) in an R.C. 2 zone. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner's Exhibit No. 1.

Appearing at the hearing in support of the requests was Catherine H. Robinson. Michelle J. Dickinson, Esquire represented the Petitioner. Andrew and Noreen Krause (neighbors) attended the hearing and opposed the petition. The Petition was advertised and posted as required by the B.C.Z.R.

Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The only substantive comment was from the Department of Planning (DOP), dated November 12, 2014. That agency did not oppose the relief, and opined that the kennel use would not be detrimental to the surrounding community.

The subject property is approximately 5.4 acres and is zoned R.C.2. The property is improved with a large single family dwelling (approximately 2,700 square feet) constructed in 1921,

and is located in a rural setting in northern Baltimore County. The Petitioner is a horse trainer who also operates what under the B.C.Z.R. is a "private kennel," which essentially means that "more than three dogs" are kept on the premises. A private kennel is permitted in an R.C. 2 zone (B.C.Z.R. §1A01.2.C.2) by special exception, hence the petition filed in the above case.

Petitioner appears to concede she is operating a kennel, although a credible argument could be made she is not. The definition of "private kennel" includes a structure where more than three dogs are kept "for the purposes of show, hunting, practice tracking, field or obedience trials, or as pets." As noted below, Petitioner considers only three of the dogs to be her "pets"; the remainder are being fostered or kept for adoption, and it could be argued they are therefore not "pets."

Ms. Robinson testified that she owns 3-4 dogs that she considers her pets, 2-3 elderly dogs that are too old and/or infirm for adoption (she indicated these dogs would likely die in the near future while living with her, and in that sense she equated it to an animal hospice) as well as several other dogs that she keeps or fosters awaiting adoption. Though she initially stated that she would like to keep as many as 12 dogs on the property, she later testified that while she enjoys good health, she is getting older and "does not really want 12 dogs."

Ms. Robinson works at Pimlico race track, and is gone from home between the hours of 5:30 a.m.-10:00 a.m. Kawana Swank and her son also reside with the Petitioner, and Ms. Swank works in a hospital E.R. three days a week from 7 a.m.-7 p.m. Ms. Robinson testified she considers her operation to be a rescue-type organization, and she said her adoptions (for which no fee is charged) are done by word-of-mouth, and that she does not have any signs or advertisements in connection with the kennel. The Petitioner testified she has been operating the "kennel" at the subject property for several years, and counsel introduced a recent edition of Mid-Atlantic Thoroughbred magazine,

featuring Ms. Robinson on the cover in recognition of (among other things) her animal rescue service.

Ms. Robinson acknowledged she has received complaints from one neighbor regarding barking, and on those occasions she planted vegetative buffers and relocated the "invisible dog fence" to minimize the impact upon the Krauses. Mr. and Mrs. Krause both indicated they are extremely fond of the Petitioner, and stated she has always been responsive to their concerns. Even so, the Krauses identified four potential problems with the kennel: noise, sanitation, safety and negative impact upon property values.

Following the hearing, both parties submitted lengthy papers outlining various arguments and counter-arguments regarding the case. It is apparent that things have deteriorated since the date of the hearing, and there is a great deal of mistrust and animosity between the parties. I am of course required to decide this case based on the law and the evidence, although it is unfortunate to see neighbors at odds with each other.

The Krauses have raised in their post-hearing submission several issues that are not germane to the resolution of this case. There is some dispute concerning the location of a septic system, a portion of which is allegedly on the Krause's property. This is a private civil matter, and the OAH has no authority to resolve issues of title or boundary disputes. The Krauses also seek to compel the production of certain documents, but the only mechanism for doing so would be a subpoena, which would have been required to be served at least five business days prior to the hearing. Zoning Commissioner's Rules, Rule 4C. Likewise, issues pertaining to construction without permits, or violations of County environmental regulations, cannot be resolved in a zoning hearing. Instead, the Departments of Environmental Protection and Sustainability and Permits, Approvals and Inspections both have code enforcement officials who will, upon receiving a complaint, conduct a

site visit and inspection to determine if violations exist. Hearings concerning such alleged violations are conducted before a different ALJ, outside of the zoning context.

The neighbors also contend that B.C.Z.R. § 421.1 applies in this case, and I concur. That regulation concerns "...kennels in residential zones." Under the B.C.Z.R (§101.1), a "residential zone" includes a "zone classified as R.C." While an applicant can seek variance relief with respect to the requirements set forth in B.C.Z.R. § 421, such a petition was not filed in this case. As such, that regulation is applicable, and imposes certain setback requirements that will be discussed in the Order which follows. Most significantly, a "private kennel" is defined to include a "dwelling," and it does not appear based on the scaled site plan (Petitioner's Ex. No. 1) that Petitioner's dwelling can satisfy the necessary setback. As such a garage or other structure would need to be constructed for housing the dogs, or at least any dogs in excess of three which can be kept in the home.

Special Exception Law in Maryland

A use permitted by special exception (here, a private kennel) is presumed under the law to be in the public interest, and to defeat such a petition an opponent must establish that the inherent adverse effects associated with the use would be greater at the proposed location than at other similar zones throughout the County. People's Counsel for Baltimore County v. Loyola College, 406 Md. 54 (2008). Stated more eloquently, the court in Schultz stated the applicable test in this fashion:

> We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

Schultz v. Pritts, 291 Md. 1, 22-23 (1981).

The neighbors expressed concern with noise, sanitation, safety and property values. These are the types of inherent adverse effects that the legislature anticipated when it allowed kennels (even commercial kennels) in the R.C.2 zone by special exception. Indeed, most uses for which a special exception is required are regarded as "potentially troublesome because of noise, traffic, congestion...." Montgomery County v. Butler, 417 Md. 271, 297 (2010). Any kennel with ten or more dogs will raise concerns for noise, sanitation, safety and property values, regardless of where that kennel is located in the R.C.2 zone.

In the case of commercial kennels (and unlike the private kennel requested herein) many more dogs are kept on site and their owners will come and go dropping off and retrieving their pets. Such businesses, which are also permitted by special exception in the R.C.2 zone, would generate a large volume of traffic and much more noise than would the modest operation proposed by the Petitioner. In any event, I believe--and no evidence to the contrary was presented--that a private kennel with twelve or fewer dogs would generate the exact same noise, sanitation, safety and property value impacts at any R.C.2-zoned property as it would at the present site. As shown in the photographs admitted as Petitioner's Ex. No. 4, the subject property is located in a rural, wooded, sparsely populated setting. This site provides at least as much seclusion as would other five acre parcels in the R.C.2 zone.

In my opinion, the concerns identified by the Protestants are inherent in the operation of a private kennel, and are of the sort which were contemplated by the County Council when it permitted the use by special exception. Dogs will bark, and there was no evidence presented which would indicate that Petitioner's dogs bark more frequently or louder than typical dogs. There was no testimony presented that the dogs bark "continuously" or late at night. As explained at the hearing,

Baltimore County law defines as a "nuisance animal" any animal that "excessively make disturbing noises." Baltimore County Code (B.C.C.) § 12-3-109(a)(3). This prohibition is enforced by the Baltimore County Department of Health and the Animal Hearing Board, not the Office of Administrative Hearings (OAH).

As such, a distinction must be drawn between dogs that bark (i.e., all dogs) and those that bark so much they become a "nuisance." Courts that have considered similarly worded statutes recognize that it is impossible to define with precision what is "excessive barking," as well as the impracticality of requiring animal control officers to carry decibel meters to "scientifically test the loudness of a yip, yowl or bark." City of Belfield v. Kilkenny, 729 N.W.2d 120 (N.D. 2007).

Without in any way diminishing the concerns expressed by the neighbors, it is at the same time true that life in a rural, bucolic area like this brings with it certain inconveniences that must be borne by homeowners. In Baltimore County, R.C.2 is the only zone expressly declared to be "Agricultural." B.C.Z.R. §1A01. Large and loud farm equipment, fertilizers, manure and chemicals being sprayed on fields, and noisy roosters and other farm animals are all facts of life in a rural, agricultural setting. Based on the testimony and evidence in this case, I do not believe that it could be reasonably argued Petitioner's dogs "excessively make disturbing noises." While the Krauses have complained about Petitioner's dogs, there was no testimony or evidence presented at the hearing indicating that other neighbors have made similar complaints, and there is no evidence that excessive barking complaints have been made to the County Department of Health. Comparing the facts in this case with those from other cases in sister states is instructive on this point.

In Van Deusen v. Seavey, 53 P.3rd 596, 599 (Alaska 2002), the property owner conducted a tour business with 75 sled dogs that barked incessantly, which the court found to be in violation of the applicable ordinance. In Broadcom West Co. v. Best, 889 N.Y.S.2d 881 (2009), the court held

a tenant could be evicted based on "constant dog barking." In Dobbs v. Wiggins, 929 N.E.2d 30 (Ill. 2010), the court found a kennel with "69 barking dogs" to be a private nuisance. In that case, neighbors testified that "the barking was constant, day and night" and "there was never any extended period of time in which they completely quit barking." Id. In Patterson v. City of Richmond, 576 S.E.2d 759, 761 (Va. 2003), the court found that "excessive barking" was established by testimony that the owner's five dogs were outside on many occasions barking constantly "for three or four hours." While dog barking can no doubt be disruptive and impacts one's ability to enjoy her home, the level of disturbance experienced by the neighbors here falls well short of that identified in the above cases.

With regard to sanitation, the Petitioner testified she installed on her property a "doggie septic" system, and she employs a groundskeeper who routinely removes the dog waste. Thus, there is no reason to believe that unsanitary conditions will prevail, much less that the potential for such an impact would be greater here than at other R.C.2 parcels. Mr. Krause indicated his dogs were attacked some time ago by another dog which may have belonged to the Petitioner, but no other evidence was presented to establish that the kennel would present a safety concern for the community. In addition, the Petitioner testified she will not keep as a pet or for adoption any dog that is aggressive. Similarly, though the Krauses stated they feared their property value would decline, no cognizable evidence was presented on this point.

After reviewing the evidence and testimony, I do not believe the Protestants have presented sufficient evidence to rebut the presumption under Maryland law, and the petition will be granted. I will impose conditions in the Order which follows, as permitted under B.C.Z.R. §502.2, for the "protection of surrounding and neighboring properties."

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this **18th** day of December, 2014, that the Petition for Special Exception to use the herein described property for a private kennel (not commercial) in an R.C. 2 zone, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at her own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.

2. Petitioner may keep on the premises at any one time no more than ten (10) dogs. To the extent Petitioner now has more than 10 dogs, she shall be permitted to keep such dogs until such time as they are adopted or die, but must thereafter have no more than 10 dogs on the property.

3. The special exception granted herein will terminate automatically if and when Ms. Robinson and/or Kawana Swank no longer own or reside at the subject premises.

4. Petitioner shall on or before June 30, 2015 secure necessary permits and commence construction of any building to be used for housing the dogs in compliance with B.C.Z.R. § 421.1, which structure must be completed on or before August 30, 2015. The outside areas used for exercise and/or dog runs may not be located within 200 feet of the nearest property line, as required by B.C.Z.R. §421.1. This outside area must also be fully enclosed by a fence or underground electric fence to contain the dogs on Petitioner's property.

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

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

6/9/15
To KL - ~~Etter~~ this should w/in 5 days
J (H), Etter re to Bdg's call Debbie & find out -

LAW OFFICE OF
G. MACY NELSON, LLC

G. MACY NELSON
DAVID S. LYNCH

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
www.gmacynelson.com

TELEPHONE: (410) 296-8166
FACSIMILE: (410) 825-0670

June 9, 2015

Hand-Delivered

Office of Administrative Hearings
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Application for Variance
Property: 2012 Far Out Lane
Case No.: 2015-0235

Dear Clerk:

Andrew and Noreen Krause, 1940 Akehurst Road, Sparks, Maryland 21152, engaged me to represent them in their opposition to the application for a variance regarding 2012 Far Out Lane. I understand that your office has scheduled a hearing for June 16, 2015.

I write to request a brief postponement of the hearing date to allow me to obtain a copy of the file and prepare for the hearing.

I understand that Michelle J. Dickinson is counsel for the applicant, so I am forwarding a copy of this letter to her.

Very truly yours,

G. Macy Nelson

GMN:ldr
cc: Michelle J. Dickinson, Esquire

B E. Doak Consulting, LLC
3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-4906
bdoak@bruceedoakconsulting.com

CERTIFICATE OF POSTING

May 21, 2015

Re:
Zoning Case No. 2015-0235-SPHA
Petitioner / Owner: Catherine Robinson
Date of Hearing: June 16, 2015

Baltimore County Department of Permits, Approvals & Inspections
County Office Building
111 West Chesapeake Avenue, Room 111
111 West Chesapeake Avenue Towson, MD 21204

Attention: Kristen Lewis

Ladies and Gentlemen,

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at **2012 Far Out Lane**.

The sign(s) were posted on **May 20, 2015**.

Sincerely,

Bruce E. Doak
MD Property Line Surveyor #531

See the attached sheet(s) for the photos of the posted sign(s)

Land Use Expert and Surveyor


ZONING NOTICE
CASE NO. 2015-0235-SPHA
2012 Far Out Lane
A PUBLIC HEARING WILL BE HELD BY THE ADMINISTRATIVE LAW JUDGE IN TOWSON MARYLAND
PLACE: Room 205 JEFFERSON BUILDING
105 W. CHESAPEAKE AVENUE TOWSON, MD 21204
DATE & TIME: Tuesday June 16, 2015 2:30 PM
REQUEST:
SPECIAL HEARING TO REQUEST THE ADMINISTRATIVE LAW JUDGE TO AMEND THE DECEMBER 18, 2014 ORDER GRANTING A SPECIAL EXCEPTION FOR A PRIVATE KENNEL IN CASE 2015-0092-X AS SHOWN AND INDICATED ON THE SITE PLAN FILED IN THIS CASE.
VARIANCE TO PERMIT A PRIVATE KENNEL IN AN RC2 ZONE TO BE LOCATED WITHIN 15 FEET OF THE NEAREST PROPERTY LINE IN LIEU OF THE REQUIRED 200 FEET.
POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY. TO CONFIRM THE HEARING CALL 410-887-3391.
DO NOT REMOVE THIS SIGN AND POST UNTIL THE DAY OF THE
PENALTY OF LAW.
THE HEARING IS HANDICAPPED ACCESSIBLE


ZONING NOTICE
CASE NO. 2015-0235-SPHA
2012 Far Out Lane

THE BALTIMORE SUN MEDIA GROUP

501 N. Calvert St., P.O. Box 1377
Baltimore, Maryland 21278-0001
tel: 410/332-6000
800/829-8000

WE HEREBY CERTIFY, that the annexed advertisement of Order No 3289569

Sold To:
Catherine Robinson - CU00393832
2012 Far Out Ln
Sparks Glencoe,MD 21152

Bill To:
Catherine Robinson - CU00393832
2012 Far Out Ln
Sparks Glencoe,MD 21152

Was published in "Jeffersonian", "Bi-Weekly", a newspaper printed and published in Baltimore County on the following dates:

May 19, 2015

The Baltimore Sun Media Group

By S. Wilkinson

Legal Advertising

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: # 2015-0235-SPHA
2012 Far Out Lane
Southwide of Far Out Lane, 1475 ft. southwest of Akehurst Road
5th Election District - 3rd Councilmanic District
Legal Owner(s) Catherine Robinson

Special Hearing to request the Administrative Law Judge to amend the December 18, 2014 order granting a Special Exception for a private kennel in case 2015-0092-X as shown and indicated on the site plan filed in this case. Variance to permit a private kennel in an RC-2 zone to be located within 15 ft. of the nearest property line in lieu of the required 200 ft.

Hearing: Tuesday, June 16, 2015 at 2:30 p.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 5/800 May 19 3289569

KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits, Approvals & Inspections

May 11, 2015

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: 2015-0235-SPHA
2012 Far Out Lane
Southside of Far out Lane, 1475 ft. southwest of Akehurst Road
5th Election District – 3rd Councilmanic District
Legal Owners: Catherine Robinson

Special Hearing to request the Administrative Law Judge to amend the December 18, 2014 order granting a Special Exception for a private kennel in case 2015-0092-X as shown and indicated on the site plan filed in this case. **Variance** to permit a private kennel in an RC-2 zone to be located within 15 ft. of the nearest property line in lieu of the required 200 ft.

Hearing: Tuesday, June 16, 2015 at 2:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director

AJ:kl

C: Michelle Dickinson, 10440 Little Patuxent Parkway, Ste. 300, Columbia 21044
Catherine Robinson, 2012 Far Out Lane, Sparks 21152

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, MAY 20, 2015**
(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.

RE:	PETITION FOR SPECIAL HEARING AND VARIANCE 2012 Far Out Lane; E/S Far Out Lane, 1475' SW of c/line Akehurst Road 5th Election & 3rd Councilmanic Districts Legal Owner(s): Catherine H. Robinson Petitioner(s)	*	BEFORE THE OFFICE OF ADMINSTRATIVE HEARINGS FOR BALTIMORE COUNTY 2015-235-SPHA

* * * * * * * * * * * * *

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.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RECEIVED
MAY 04 2015

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 4th day of May, 2015, a copy of the foregoing Entry of Appearance was mailed to Michelle Dickinson, Esquire, 10440 Little Patuxent Parkway, Suite 300, Columbia, Maryland 21044, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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 2012 Far Out Lane, Sparks, MD 21152 **which is presently zoned** RC-2

Deed References: S.M. No. 1014; folio 155 10 Digit Tax Account # 05-14-010230

Property Owner(s) Printed Name(s) Catherine H. Robinson

(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.__X_ **a Special Hearing** to request the Administrative Law Judge to amend the December 18, 2014 order granting a Special Exception for a private kennel in case 2015-0092-X as shown and indicated on the site plan filed in this case.

2.__ **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

_ 3.__X___ **a Varianc** from Section 421.1, BCZR to permit a private kennel in a RC-2 zone to be located within 15 ft. of the nearest property line in lieu of the required 200 ft.

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

Legal Owners (Petitioners):

Catherine H. Robinson /
Name #1 – Type or Print Name #2 – Type or Print

Catherine H Robinson
Signature #1 Signature # 2

2012 Far Out Lane, Sparks, Maryland
Mailing Address City State

21152 / 410-979-7539 / catherinestoley@aol.com
Zip Code Telephone # Email Address

Attorney for Petitioner:

Michelle J. Dickinson, Esq.
Name- Type or Print

Michelle J. Dickinson
Signature

10440 Little Patuxent Pkwy, Ste 300, Columbia, Maryland
Mailing Address City State

21044 / 410-740-5630 / michelle@dickinson-law.com
Zip Code Telephone # Email Address

Representative to be contacted:

Michelle J. Dickinson, Esq.
Name – Type or Print

Michelle J. Dickinson
Signature

10440 Little Patuxent Pkwy, Ste 300, Columbia, Maryland
Mailing Address City State

21044 410-740-5630 /michelle@dickinson-law.com
Zip Code Telephone # Email Address

CASE NUMBER 2015-0235-SPHA **Filing Date** 4/27/15 **Do Not Schedule Dates:** _____ **Reviewer** sh

ORDER RECEIVED FOR FILING
Date 10-9-15
By sln

REV 10/4/11

Gerhold, Cross & Etzel, Ltd.
Registered Professional Land Surveyors • Established 1906
Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

August 28, 2014

ZONING PROPERTY DESCRIPTION FOR
2012 FAR OUT LANE

Beginning at a point on the east side of Far Out Lane, which is 20 feet wide, at the distance of 1,475 feet, more or less, southwest of the centerline of Akehurst Road, and running in or near the paving of Far Out Lane, the six following courses and distances, (1) South 13 degrees 25 minutes 25 seconds West 345.41 feet, (2) South 25 degrees 42 minutes 55 seconds West 59.14 feet, (3) South 43 degrees 47 minutes 05 seconds West 27.77 feet, (4) South 62 degrees 10 minutes 45 seconds West 70.02 feet, (5) South 69 degrees 39 minutes 55 seconds West 82.63 feet, and, (6) South 58 degrees 27 minutes 45 seconds West 85.25 feet, thence leaving Far Out Lane and running, (7) North 36 degrees 06 minutes 35 seconds West 256.45 feet, (8) North 19 degrees 39 minutes 35 seconds West 221.27 feet, (9) North 46 degrees 56 minutes 46 seconds East 282.03 feet, (10) North 47 degrees 27 minutes 44 seconds East 94.67 feet, (11) South 61 degrees 20 minutes 01 seconds East 309.06 feet, and, (12) South 61 degrees 22 minutes 45 seconds East 17.86 feet to the place of beginning, 5.415 acres of land, more or less, located in the 5th Election District and 3rd Council District.

License expires/renews 2/26/15

#0235

IN THE MATTER OF:

CATHERINE ROBINSON
CASE NUMBER: 15-235-SPHA

Hearing Date: April 19, 2016

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:

MAUREEN E. MURPHY, CHAIRMAN

BENFRED B. ALSTON, BOARD

JASON S. GARBER, BOARD

PRESENT ON BEHALF OF THE PARTIES:

ON BEHALF OF THE APPELLEES/PETITIONER:

MICHELLE J. DICKINSON, ESQUIRE

ON BEHALF OF THE APPELLANTS/PROTESTANTS:

G. MACY NELSON, ESQUIRE

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

TABLE OF CONTENTS

(ON RECORD - 10:04:40 AM)

CHAIR: Okay. Good morning, everyone. We're here in the matter of Catherine H. Robinson, Far Out Lane, near Akehurst Road, if I said that right, 2012 Far Out Lane. This is case number 15-235-SPHA. It's a Petition for Special Hearing to amend a previous Order of the Administrative Law Judge, which had granted a special exception for a private kennel and this is a Petition for Variance to permit private kennel in the RC-2 zone to be located within fifteen feet of the nearest property line in lieu of the required two hundred feet. The special hearing was granted below with some conditions and that was on October 9th, 2015. Let's have counsel for the record identify themselves.

MR. NELSON: Normally the applicant goes first. Macy Nelson on behalf of the Citizens/Protestants, Andrew and Noreen Krause who are adjacent landowners to the Applicant's property.

CHAIR: All right.

MS. DICKINSON: Good morning, Your Honor.

CHAIR: Good morning.

MS. DICKINSON: Michelle Dickinson for the property owner, Catherine Holly Robinson. Ms. Robinson, as you may note, just had surgery last week and so she is in a wheelchair.

CHAIR: All right. Which she probably won't, if she's testifying, she probably won't be able to come up here then.

MS. DICKINSON: We can scoot her around.

CHAIR: All right. Yeah, so you want to, do you want to speak up, everyone, because there are microphones in the room and everything is being tape recorded so just keep your voices up. So this is, I guess it's opening. If you'd like to make an opening statement, if not, we can get right to the evidence. Anyone, are you interested in doing that?

MS. DICKINSON: I am, Your Honor.

CHAIR: All right, go ahead.

MS. DICKINSON: As --

CHAIR: Petitioner. Yeah, you're the Petitioner because it is a de novo hearing for the variance case so go ahead.

MS. DICKINSON: Your Honor, as it is a de novo case, will as the Petitioner go first?

CHAIR: That's right.

MS. DICKINSON: Okay. Thank you, Your Honor. Your Honor, after a two-day evidentiary hearing, Judge Beverungen got it right. He granted Ms. Robinson's request or Petition for Variance from the Regulation 421.1, specifically the requirements of a two hundred foot set off for any private kennel. He, he described this as a housekeeping matter, which we believe is appropriate. Ms. Robinson had already obtained a special exception in order to continue to foster and care for unwanted dogs. She has eleven dogs in her property, they all

IN THE MATTER OF:

CATHERINE ROBINSON
CASE NUMBER: 15-235-SPHA

Hearing Date: April 20, 2016

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 09:30 AM.

PANEL PRESIDING:

MAUREEN E. MURPHY, CHAIRMAN

BENFRED B. ALSTON, BOARD

JASON S. GARBER, BOARD

PRESENT ON BEHALF OF THE PARTIES:

ON BEHALF OF THE APPELLEES/PETITIONER:

MICHELLE J. DICKINSON, ESQUIRE

ON BEHALF OF THE APPELLANTS/PROTESTANTS:

G. MACY NELSON, ESQUIRE

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

TABLE OF CONTENTS

(ON RECORD - 09:38:03 AM)

CHAIR: Okay. Good morning, everyone. We're here in the matter of Catherine H. Robinson, day two, case number 15-235-SPHA and we're continuing the case in regard to the Petition for variance, area variance for a private kennel. We were in the Petitioner's case when we left off yesterday and I, the Petitioner was going to decide whether or not they were finished or you had more to put on, so.

MS. DICKINSON: Thank you, Your Honor. Good morning to all three of you. We actually have one witness who is going to be very short and then we will close our case for today.

CHAIR: Sounds good. Okay.

MS. DICKINSON: May I call her?

CHAIR: Sure.

MS. DICKINSON: Thank you, Your Honor. I'd like to call to the stand Kawana Swank.

BOARD: Thank you. Do you swear and affirm under the penalties of perjury, that the testimony you are about to give is true and correct to the best of your knowledge and belief?

MS. SWANK: I do.

BOARD: Please state your name?

MS. SWANK: Kawana Swank.

BOARD: Can you please spell your first and last name?

MS. SWANK: K-A-W-A-N-A, last name Swank, S-W-A-N-K.

Board of Appeals

Case No: 15-235 SPHA Case Name: CATHERINE H. ROBINSON

Exhibit List

Party: ~~Property Owner~~ / Petitioner Date: 4-19-16

Exhibit No:	Description:
✓ 1	January 2014 Mid Atlantic Magazine article about Catherine Robinson
✓ 2	10 photographs of several different dogs
3	Not admitted to evidence Letter of Support for Ms Robinson
✓ 4	photographs of Property 4-1 thru 4-46
✓ 5	Petition Exhibit FLASH DRIVE video showing the Topography of the Property
✓ 6	site Plan
KC 4/19/16 ✓ 7	Map prepared by showing several Parcels of Land near the subject property
✓ 8	(Petitioner) Map (exhibit 7) marked with colored pens showing the subject Property and shows several parcels of land
	VERIFIED BY KC DATE: 4/21/16

Board of Appeals

Case No: 15-235-SPHA Case Name: CATHERINE ROBINSON

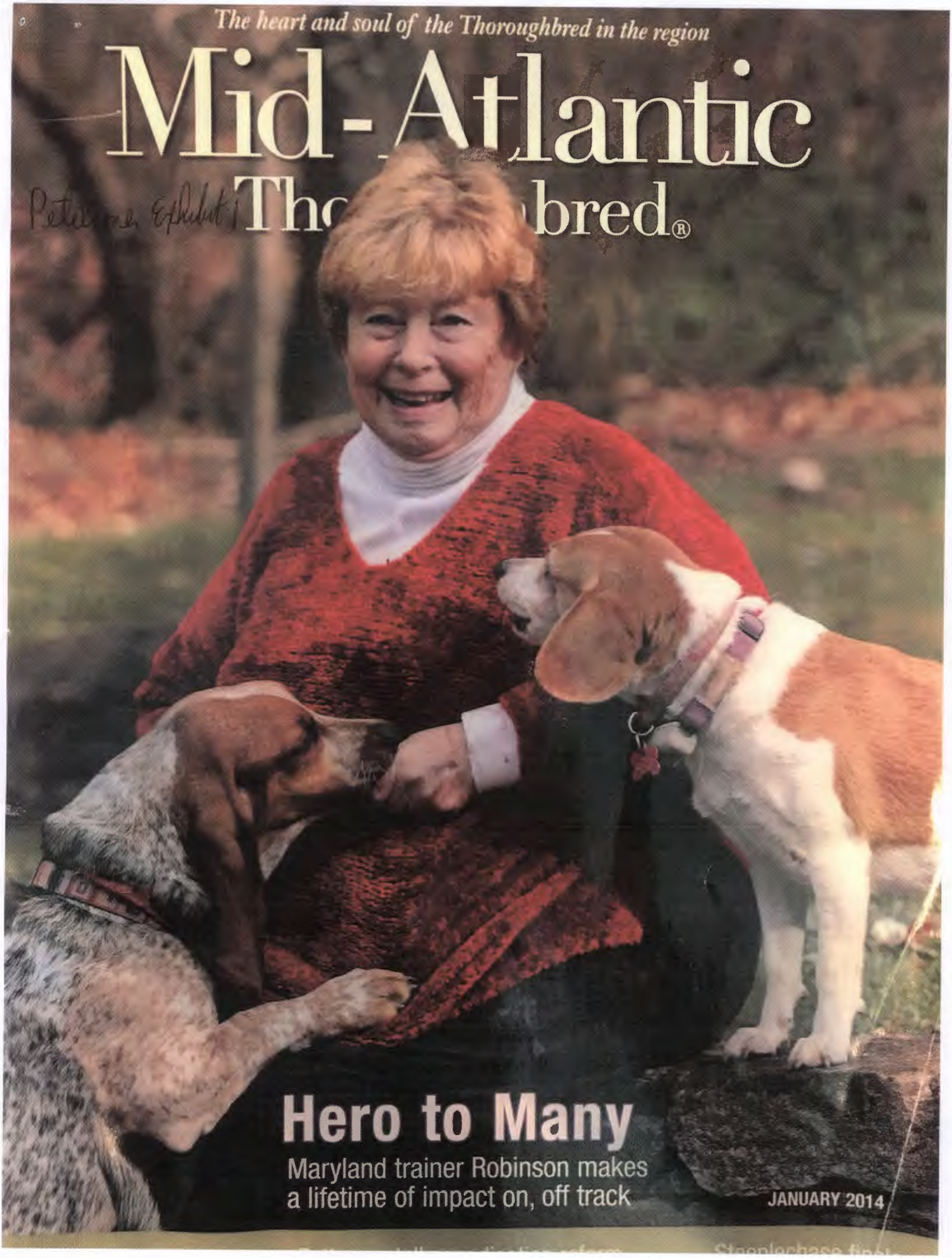
Exhibit List

Party: Property Owner/Petitioner Date: 4-20-16

Exhibit No:	Description:
✓ 9	Table identifying each Parcel by Number - Sorted by acreage
	VERIFIED BY KC DATE: 4/21/16

The heart and soul of the Thoroughbred in the region

Mid-Atlantic Thoroughbred®



Hero to Many

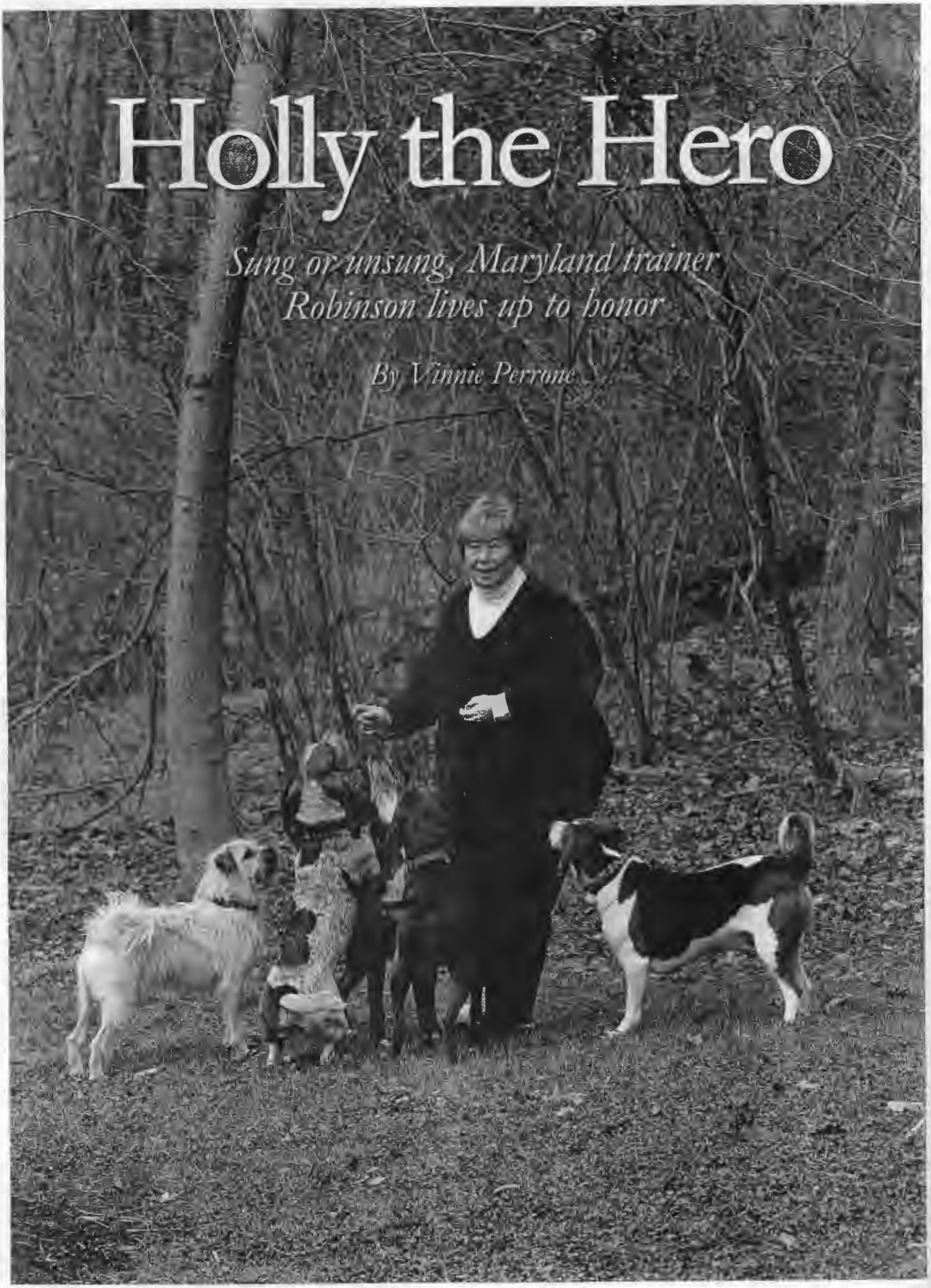
Maryland trainer Robinson makes a lifetime of impact on, off track

JANUARY 2014

Holly the Hero

Sung or unsung, Maryland trainer Robinson lives up to honor

By Vinnie Perrone



LYDIA A. WILLIAMS

Presenting the first Joe Kelly Unsung Hero Award last October, Maryland Million directors implicitly established these precedents for choosing a winning nominee . . . The recipient should contribute readily to the state racing community, and cuss liberally, and learn to train from storied horsemen, and offer sanctuary to human strangers or any needy beast except snakes, and yell, and serve as one-person racetrack recycler, and drive a transport for doomed dogs, and squander a college education, and effect a viable training program others mocked, and care for horses racing and retired, and needle anyone without exception, and engage quiet acts of generosity, and host a baby shower that degenerates into an arm-wrestling fray for drunken women.

"I've never been so shocked in my whole life," 62-year-old Holly Robinson said not about the shower. About winning the Unsung Hero.

Her friends spoke no such wonder. Regarding Holly, stroke by textured stroke, they sketched a vivid rose born of nature: inviting and full of color, inspiring and full of thorns.

"Anybody that really knows her knows how much she does for other people," racing secretary Georganne Hale said in her Laurel Park office. "Even with her horses. When her horses retire, she always makes sure she finds a great home for 'em . . . where they're gonna be used in another capacity, like foxhunting. They're not just gonna sit there like a lawn ornament.

"But then she calls me last week, and she goes, 'Where do you get facials?' And I told her. And she goes, 'Oh. Who do you use?' And I said, 'I think they're all pretty good.' She goes, 'I just wanna make sure I don't use the person you do, because it certainly hasn't helped you.'"

"She used to call me all sorts of names, and she always used a lot of profanity," jockey Rosie Napravnik said by phone the day she shipped into New Orleans for the Fair Grounds meet. "But, honestly, she's hilarious, and I don't think her wit ever hurt anybody's feelings 'cause she is such a great person and everybody loves her."

"She doesn't get a lot of (training) opportunities; but, when she does, she gets the best out of a horse," said Ann Merryman, who launched a novel farm-and-track training partnership with Robinson more than a decade back. "She's the most unique individual. She has probably the greatest sense of humor of anybody you've met, even though half the stuff she says to people you could never print. But she's just so compassionate, and she thinks, when she's helping people so much, that she's doing absolutely nothing. Like when she took Rosie in."

An assistant then to Robinson, Jazz Napravnik tried hard to brace her kid sister for Holly's isms. Rosie, then 16 and itching to race-ride, had left New Jersey for summer work galloping horses for Dickie Small. The only catch: She needed a place to live. Jazz knew whom to ask.

Introductions took place in Robinson's tackroom, then at Pimlico. The exchange was a wink to Holly's bluntness.

Rosie: "The first thing that Holly did was, she stuck out her hand and she said, 'Hi. I don't like girl riders and I don't like bug riders! Nice to meet you.'"

A three-month trial became an 18-month spree. Embracing her new life in Maryland, Rosie enrolled at Hereford High in Parkton. Robinson, her de facto guardian, drove Rosie to school every weekday after training and, when Rosie later needed make-up credits, three times a week to night school in Essex. After a second absence brought Rosie an expulsion notice from Hereford, Robinson wrote a compelling appeal that quashed it.

Rosie got her high-school degree and her jockey's license and quickly rode her way to racing's upper class. On Far Out Lane in Sparks, Md., Robinson's household was diminished but not depleted: Rescue dogs, hounds mostly, still populate the place, and Kawana Swank and son Kaden keep residence in the basement. Kaden, an infant when they moved in, is 12.

"It was a crazy time, and I wouldn't have been able to accomplish so many of the things that I was able to accomplish if I hadn't had someone like Holly going out of her way for me absolutely for no reason other than she could and she wanted to," Rosie said. "She was whatever I needed her to be. When I needed her to be a parent, she was a parent. When I needed her to be a best friend, she was a best friend. She would leave me alone and let me figure things out on my own, and if I needed somebody to figure it out for me, she would do that."

"Rosie was an incredible girl," Robinson said. "I think my pet peeves are the people that say what I've done for Rosie made her the person she is. Let me tell you somethin': That little girl had what it takes, and you very seldom see it. What I did for her helped her a little bit. What Dickie did for her helped her a little bit. And she went on. But let's just say I didn't give her a place to live; let's say she had to live in a tackroom. She was still gonna be what she is. We made it easier for her, but she had that drive."

Young Catherine Holland Robinson, called Holly, never quite squared school and horses, a truth linked to the piney wonder of Camp Illahee in the North Carolina Blue Ridge. William Holland Robinson, a tobacco wholesaler called Holland, and Agnes Withers Robinson, a homemaker called Agnes, had sent their third and youngest daughter to the girls' Christian summer camp in the late 1950s. Illahee meant heavenly world to the Cherokee, and to 6-year-old Holly.

"After ridin', you're supposed to go to arts and crafts, and then you go swim and do this and that," Robinson said, North Carolina still spicing her words. "And after the second day . . . I just skipped all the classes. And after riding, I would go hang out at the creek and look at the horses. And finally somebody came up to me and said, 'No need for you to be sittin' in that ditch. Come on up.' And, I mean, I was just in love. And basically I've been hooked on 'em ever since."

Eventually, the Robinsons bought 12-year-old Holly a pony, Newsprint, origin unknown—"part Quarter Horse, part Lord-knows-what" as Holly put it—on the condition she improve her schoolwork. Newsprint didn't adapt well to jumps, but Holly cleared enough scholastic hurdles to land enrollment at Averett College in Danville, Va.

"They must have had a payoff to take me, 'cause I was sort of a deadbeat," she said. "But I got nominated for hall counselor of my dorm. Not one person

JIM MCCUE

Sweet potatoes are a key ingredient in the feed buckets around Holly Robinson's barn.

returned the next year, OK? I was a real leader."

Fearing dismissal before sophomore term began, Robinson found a new field of study at the Morven Park Equestrian Center in Leesburg, Va., where Olympic silver medalist Jimmy Wofford offered instruction on three-day eventing. At Morven, two men helped clear the brush to her career path: Stanley Greene Sr., who confirmed that Robinson belonged in a racing stable, and Norman Funk, who steered her to Hall of Fame steeplechase trainer Mikey Smithwick.

By then, the early 1970s, a trend was emerging: Holly Robinson had a way to find the heart of the action, and the action of the heart. She took residence on the Smithwick farm in Hydes, Md., became fast friends with brothers Speedy and Roger Smithwick and, before long, accepted Olympic equestrian Kathy Kusner's offer for a working sabbatical with the French Olympic team at Chantilly.

Robinson flashed to afternoon gallops over the mythic course, the shadows lengthening, and said, "That's sorta like a dream."

For six months she studied under Brazilian-born show-riding star Nelson Pessoa, rich for the experience but mindful of the plan. "I did not go there to learn to be a show rider; just for the experience of workin' around another place," she said. "I wanted to train racehorses."

A working stint at The Curragh in Ireland proved less thrilling. "Big fields," Robinson said. "I couldn't say I was disappointed, but it was just so different than what I thought it'd be. I just thought, 'The Curragh – that's a long walk home.'"

Back stateside, she returned to the Smithwicks and continued living there even after accepting a job with trainer Tom Voss. "Tom and I got along really well," she said. "It's hard to get along really well with Tom."

The stints with Voss and Smithwick only confirmed her career arc.

"When I was in France, they weren't Thoroughbreds; they were these big ol' crosses. They were gi-normous horses. They had good runners, and they got over the jumps. But I'm sayin', there's a Thoroughbred for everybody. There's one out there just waitin' for you. They're athletic. They're smart. I love Thoroughbreds because you sit there, and you go through the routine, and you teach 'em somethin', and they get it. Whereas a lot of these warmbloods, every day, over and over and over again – they're not very smart. And I found that on the French Olympic team."

Robinson worked for Voss a few years, then another two after she became godmother to Tom and Mimi's son, Sam. But the flat track beckoned ever louder, and she answered the call in the early 1980s as assistant to Augustin Stable trainer Joe Clancy Sr.

Each working gig burnished her portfolio, professional and personal. Like Smithwick and Voss, Clancy entrusted Robinson with more than horses; she routinely looked after young sons Joe Jr. and Sean, editor and principal writer of *Mid-Atlantic Thoroughbred.*

"Did they tell you the story about the fair?" she asked. "OK, I'm workin' for their father, and we have an apartment near Timonium. So I took Sean and Joe over to the fair. And I don't know how old they were; they were young. Arranged to meet 'em at a time and place. They're not there. They're nowhere. So I figured, 'This is it. I've lost the kids. Pedophiles have taken 'em.' I'm almost in tears. My life's over. The children are dead.

"And then they come out of nowhere, laughin'. I ripped 'em. I told Sean, I said, 'You just wait: When your kids give you the slip, you tell me you won't be the same way.' You know somethin'? When you finally see 'em, you're so gratified to see 'em. But then it turns into anger, and you wanna kill 'em.

You're gonna kill 'em because you found 'em alive."

The kids lived to tell that, and other, stories. Joe Clancy Sr. won the 1984 Federico Tesio Stakes with Fourmatt, and Robinson soon celebrated another score. Roger Attfield, who managed one of the most fashionable racing stables on the Canadian flat, had hired her as assistant.

"The first time I walked into that barn, I'd never seen so many crooked-legged horses my whole life, and they were Vice Regents," she said. "And we had all those Canadian-breds. . . and they were short cannon-boned, crooked. But I learned a whole lot. And never, never discount Roger, OK? If you have seen him run a horse, and you say, 'This just doesn't suit,' it's in there for a reason. I think he can make chicken salad out of chicken sh--."

Managing Attfield's U.S. strings, Robinson finally had her hands on flat-running royalty: $2 million earners With Approval, and Izvestia; Talkin Man, Play the King.

For 15 years she drove through the sport's upper reaches, until the endless road show brought a downshift.

"The last year that I was with (Attfield), we did the Chicago thing. And so we'd go from Florida to Keeneland, Keeneland to Churchill, Churchill to Arlington, Arlington back to Keeneland, Churchill, Florida. And it had just been long enough."

In the late 1990s, Robinson took her wit, ways and wisdom back to Maryland and launched a stable steeped in laughter and steady productivity. For each of the ensuing 15 years, her horses have won six to 19 races and $120,000 to $270,000 in purses.

Between asides and quips and offbeat tales, Robinson said she draws from her teachers in her everyday work. Exhibit A stood down the wall in her Laurel Park office/tackroom, where saddle towels and girth covers and assorted bandages were meticulously rolled and meticulously stowed on wooden shelves.

"I learned that from Roger," she said of the orderly display.

Verbally, less-orderly displays ran loose. Behind the green metal office door with a dog-eared poster of a mutt and the word ADOPT, assistant Sonja Aleksic returned Robinson's playful barbs and sometimes prompted them. As for what her boss does especially well, Aleksic said in Serbian-English, "Probably yelling."

"True," Robinson parried, "but I've never hit anybody."

Then, with barely a pause, "Did you hear about Sonja's shower? We invited everybody, and they were all makin' plans to leave early because baby showers are boring. So we started out with a few little games, and then Sonja, who can't even drink, brings out this Serbian white lightning–grain alcohol. So, the next thing I know, the games are to the side, and then the girls were arm wrestlin'. . .

"Well, they all stayed late, and then left and said, 'If you have a baby shower again, I'm comin' to it.'"

DANA WIMPFHEIMER (2)

Back in the day, trainer Holly Robinson worked on the steeplechase circuit for trainers Mikey Smithwick and Tom Voss including plenty of time on horseback (left) and tightening girths (at the Fair Hill Races).

In Robinson's Laurel office, on the wall above her desk, amid a sea of win photos and a wood carving that read, "The more people I meet, the more I like my dogs," a silver digital square registered 85 degrees and the wrong time.

"It's not right most of the time," she said. "It changes time, and I really like it because I can confuse people."

Robinson opened the door and yelled out. "LOUIS!"

"Yes," came the soft reply from stablehand Luis Garcia, a few feet away.

Then quieter. "Will you hand out a sweet potato or two?"

"OK."

Each of her 15 horses gets a raw, whole sweet potato daily, she said, which boosts vitamin intake and appetite.

"Now, (trainer) Jessie Campitelli cooks 'em. I don't cook 'em–since I don't cook for myself."

She's in the "big barn" at Laurel, the deluxe stable Izzy Cohen built some 20 years ago. "I didn't wanna come in," Robinson said. "Of course, as soon as I moved in here, the roof flies off of it. 'So do me some favors Georganne, OK?'"

For more playful, off-color brushes with racing secretary Hale, consider this:

"I'm sittin' out there talkin' one day . . . and there's this green bird on that paddock fence out there with all these blackbirds," Robinson said. "So I said, 'Get that bird.'"

Before long, she said, foreman Enrique Lopez caught and delivered it.

"He put it in a box, and I gave it to the kid (Kaden Swank) for a birthday present. And so the bird was living at my house. And that b---- Georganne wanted me to pay Magna for it because it was a Magna bird."

Then Hale got going.

"Holly and her two sisters always went on family vacations to unbelievable islands and stuff," she said. "I met one of her sisters, and she said, 'You need to come on vacation with us.' And I said, 'Sure.' So then Holly says, 'That's real nice–tryin' to get into my family.' I said, 'Damn right–I wanna be that fourth sister 'cause you all get to go places.'

"So then I drove with her to go visit her dad when he was in assisted living in North Carolina. It was hotter than hell–a hundred-some degrees when we get there. And she goes, 'Where you goin'?' And I go, 'Well, I'm gonna come inside.' She says, 'No. I'm already stuck with you every vacation. You're not meetin' my father.' I said, 'Well, can't I come inside?' She goes, 'Noooooo. And get me outta the will because you schmoozed in, like you did

Hero of the sideshows

We weren't that young, OK? I was 18, headed to college in a few weeks. Sean was 13. It was the Maryland State Fair, not Greenmount Avenue. And we were fine, no matter what Holly Robinson says.

Our version of the story, and we're sticking to it, goes like this:

Holly was working for our father at Timonium in the summer of 1983, back when the track still ran a full summer meet. She was the assistant, and ran the shed down at the end–just beyond King Leatherbury, around the back from Mike Goswell, at the opposite end of Ann Merryman and next to Greg Bowman. There were a dozen or so horses, flat and steepelechase, 2-year-olds and older. The human crew included Holly, Lonnie, Two-Hour Lou, Every Other Day Ray and a few others. Georganne Hale was an exercise rider for Merryman. Spoon was there, and Shaky, Monroe and Crazy Sam with the machete. What a summer. We won races, lost races, ate egg and cheese sandwiches every day, walked "through the hole," laughed, lived and learned. We also made some extra cash renting out the foxhunters' vacuum cleaner we brought from the farm.

But I digress. We (Holly, Sean and I) went to the fair one night for entertainment. We ate dinner, we rode a few rides, walked through the log home carved from a single tree. Eventually, Sean and I wanted to go to the side shows–headless woman, wolf boy, strong man, pygmy tribe, world's largest bull and all the rest. Holly wouldn't go. I can still hear her, "If you think I'm going to see some HEADLESS WOMAN you're crazy. No thank you." So Holly waited outside the tent. The freaks were freaky, but we weren't scarred. After seeing them all, we exited the tent, and Holly was nowhere to be found. Gone. We looked around a bit and, coming up empty, we walked to my car–maybe we got ice cream, I don't know–and drove back to the apartment where we stayed. I can't remember if we got home first or she was already there but either way she was mad. Madder than a cat with its tail caught in a wringer washer or something like that. She yelled, screamed, cussed, hollered, tossed in several "Your dad made me responsible for you!" exclamations and went to bed. She was still mad the next day at the barn and pretty much every day the rest of the summer.

Actually, she's still mad. To this day, every time we see her she makes sure we know how she feels.

It's been 30 years since that summer. Some of the players are long gone (I miss Lonnie every day). Georganne became the racing secretary. Sean and I write for this magazine. Holly went to Canada and back, but is still doing her thing–caring for horses, dogs and humans, playing mother hen to the rest of us and making sure we're in line.

She won the first Joe Kelly Unsung Hero Award in 2013 because of that spirit and attitude. She was never unsung to me, but she's a hero because she gives a darn, whether you're trying to make it as a kid jockey, needing a place to live, looking for a home or just hoping to get your horse to the races.

No matter what your status, Holly will help. Just don't try to take her to the sideshows at the fair.

–Joe Clancy

with my sisters? You are not meetin' my father.' I said, 'Come on, Holly.' She goes, 'No. Absolutely not.' She wouldn't let me come into the air conditioning. I had to walk the neighborhood.

"She has a big heart, but basically she is a witch."

With regard to training, Robinson has sought the company of others in creative ways. As the 2000s dawned with less-desirable results, she and fellow trainer Merryman, longtime friends, effected a partnership: They would essentially pool their horses, Holly training at the racetrack and Ann at the family farm, Orebanks, in Sparks. They combined resources but kept their clients separate.

"We call it our condo training," Merryman said. "I was like, 'Holly, let's just throw these outfits together.' She was starvin' at one end of the (Pimlico) shed, and I was starving at the other. . . Furthermore it's another pair of eyes on everything. Everybody has assistants; so I'm her assistant, and she's my assistant. You know, it's worked for us."

"We were both on the edge, whether we were gonna make it or not, and we had a handful of horses between the two of us," Robinson said. "And we have different ways of doin' things. I say right; she says left. She's open to all ideas; I'm pretty much a very black-and-white person (her stable colors). . . She has made me a little better, and I think I've made her better, even though she says I'm more military than she is."

Speedy Smithwick joined the cooperative, adding a Virginia outlet and boosting the horse pool to nearly 40. Smithwick trains at the family's Sunny Bank Farm in Middleburg.

"It works out great for everybody," Robinson said. "They keep their family farms goin', and I'm at the racetrack. . . I enjoy the socializin' that goes on at the racetrack. I just keep it simple."

Part of that simplicity means hauling rescue dogs every month or so. The Society for the Prevention of Cruelty to Animals takes dogs from North Carolina kill shelters, places them, and uses a relay of volunteers to drive up the coast to New Jersey. Robinson typically picks up two to a dozen rescues in Catonsville, Md., and ferries them to Wilmington, Del.

"It's really funny, because I'm more of a disciplinarian with the horses than I am with the dogs," she said. "And I think that's because, in our business, we can't become emotionally attached to the horses."

But the line to those and other emotional attachments seems to smudge easily. When she accepted the Unsung Hero Award in October, Robinson donated the $1,000 cash prize to a fund for another trainer's exercise rider, Jose Villegas, badly injured in a spill. Then, at the silent auction, she proffered high bid on a six-day trip to Africa for two and gave it to Kawana and Kaden Swank.

"Don't think it's some great act of generosity," she said. "If I'm goin' to Africa, I'm goin' for 60 days, not six."

As for other selfish acts, Robinson single-handedly recycles cans and bottles from the Laurel/Pimlico racing office.

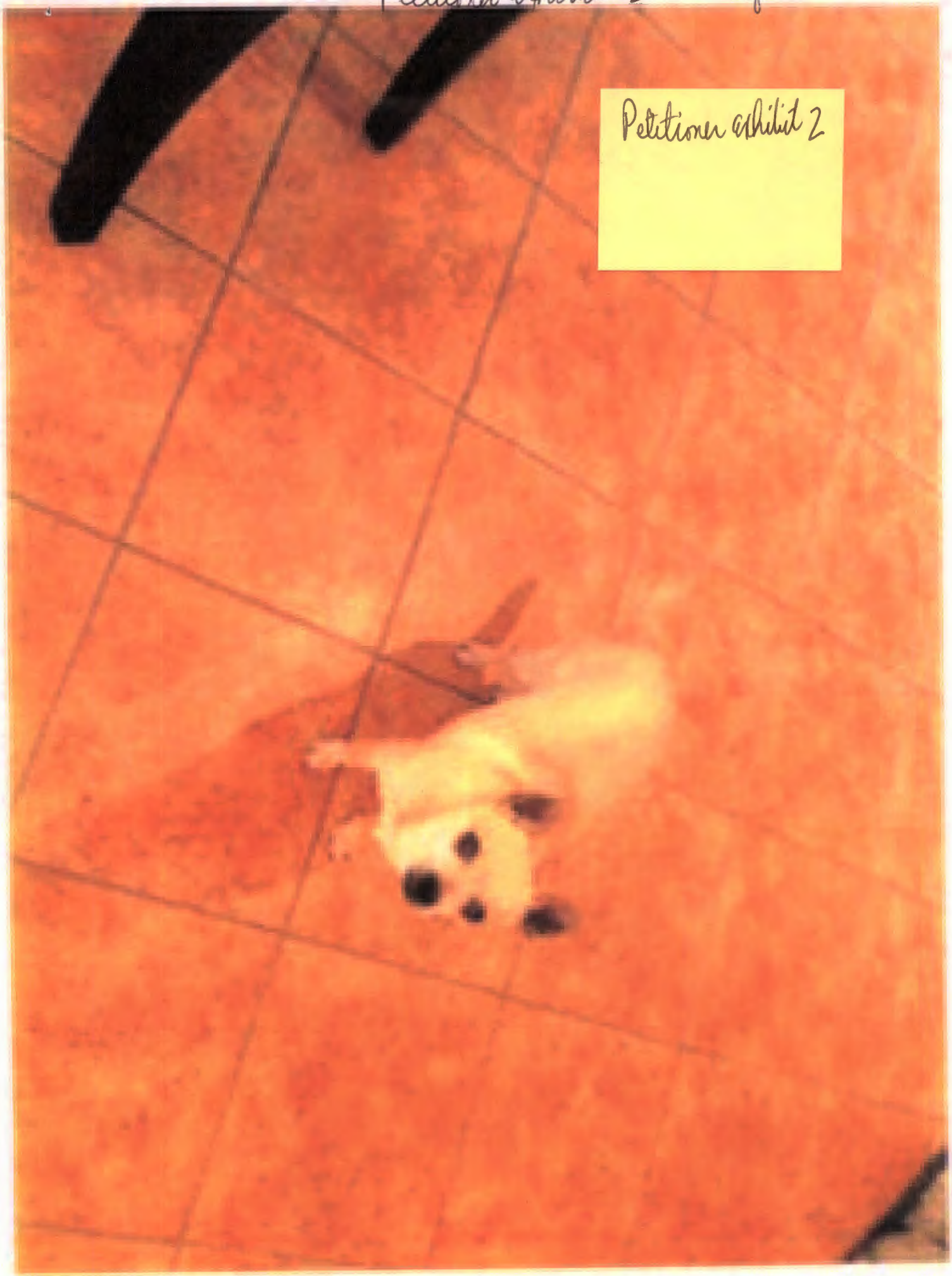
"I got sort of fanatical about it," she said. "It's too bad we don't recycle. It's just so bad. When everybody's bitchin' about the environment, I sit there and say, 'You're the ones with kids. I'm recyclin' for your kids.'"

It underscores her mantra. "To me, it comes down to this," she said. "Don't hurt the animals and don't hurt children."

The verbal archer looked off, far off, to a Maryland State Fair 30 years past, and shot one more arrow from a teeming quiver.

"When you see Sean (Clancy)," she said, "tell him I hope he lost his kids at the fair." ✹

Petitioner exhibit 2 1 of 11



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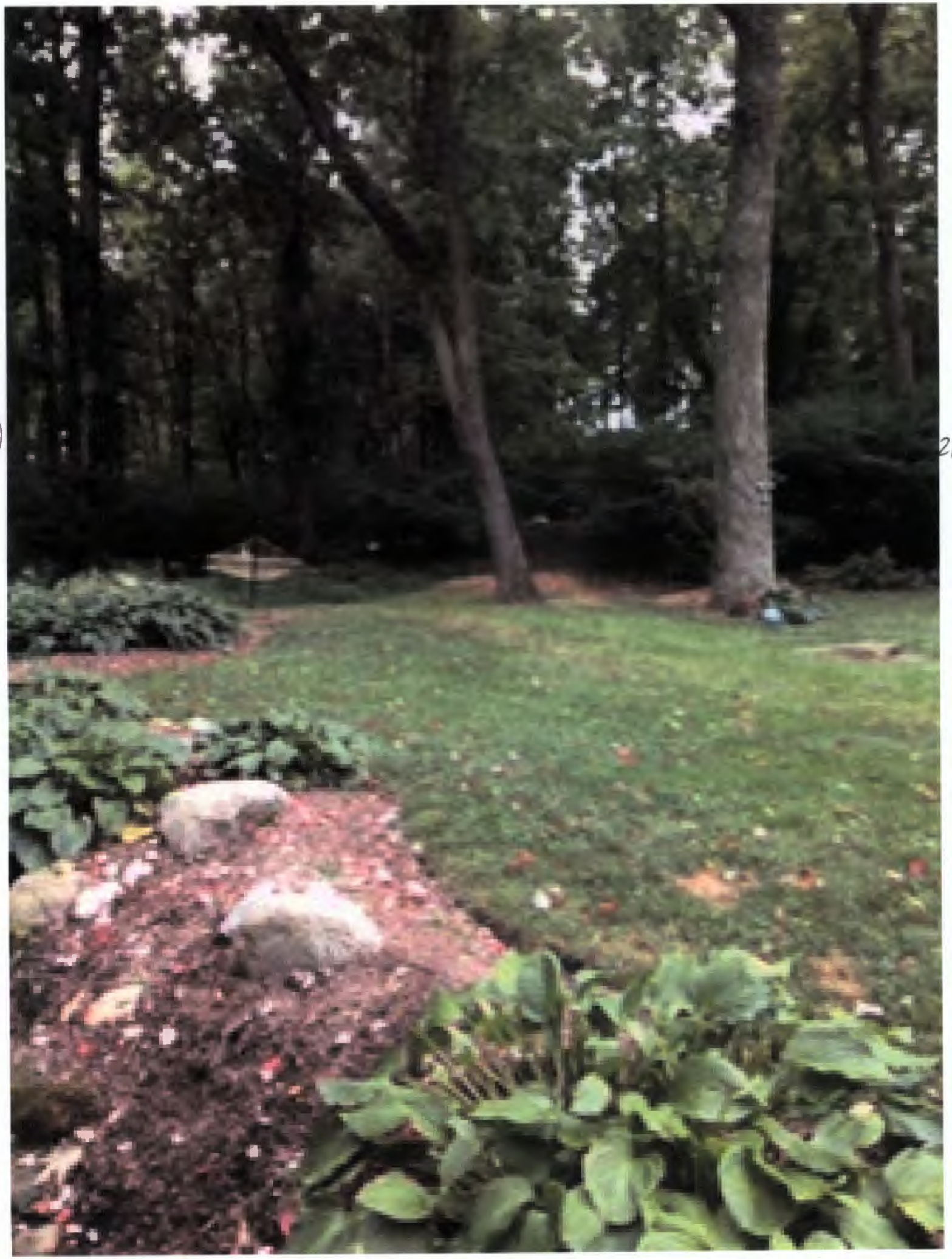

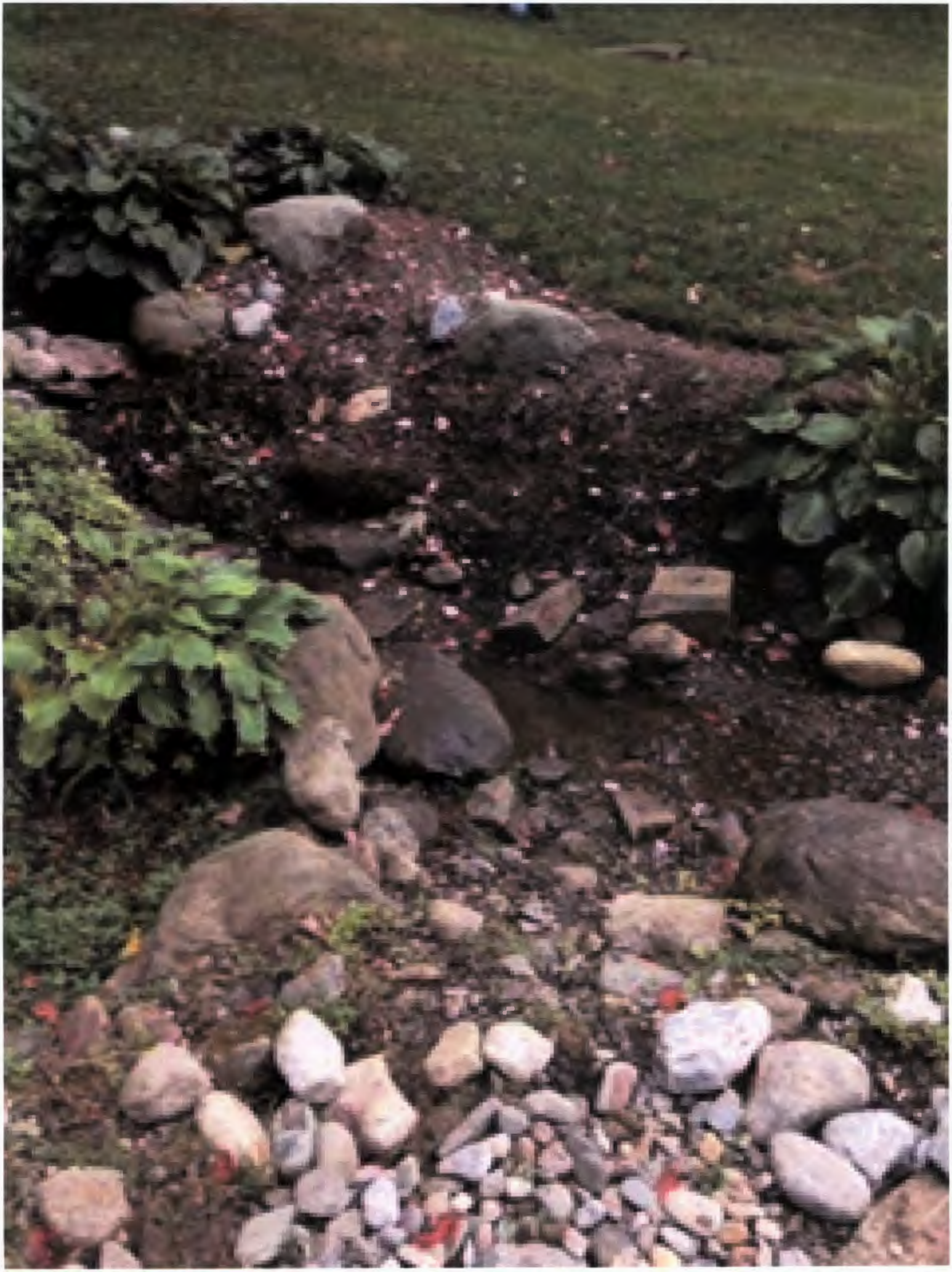

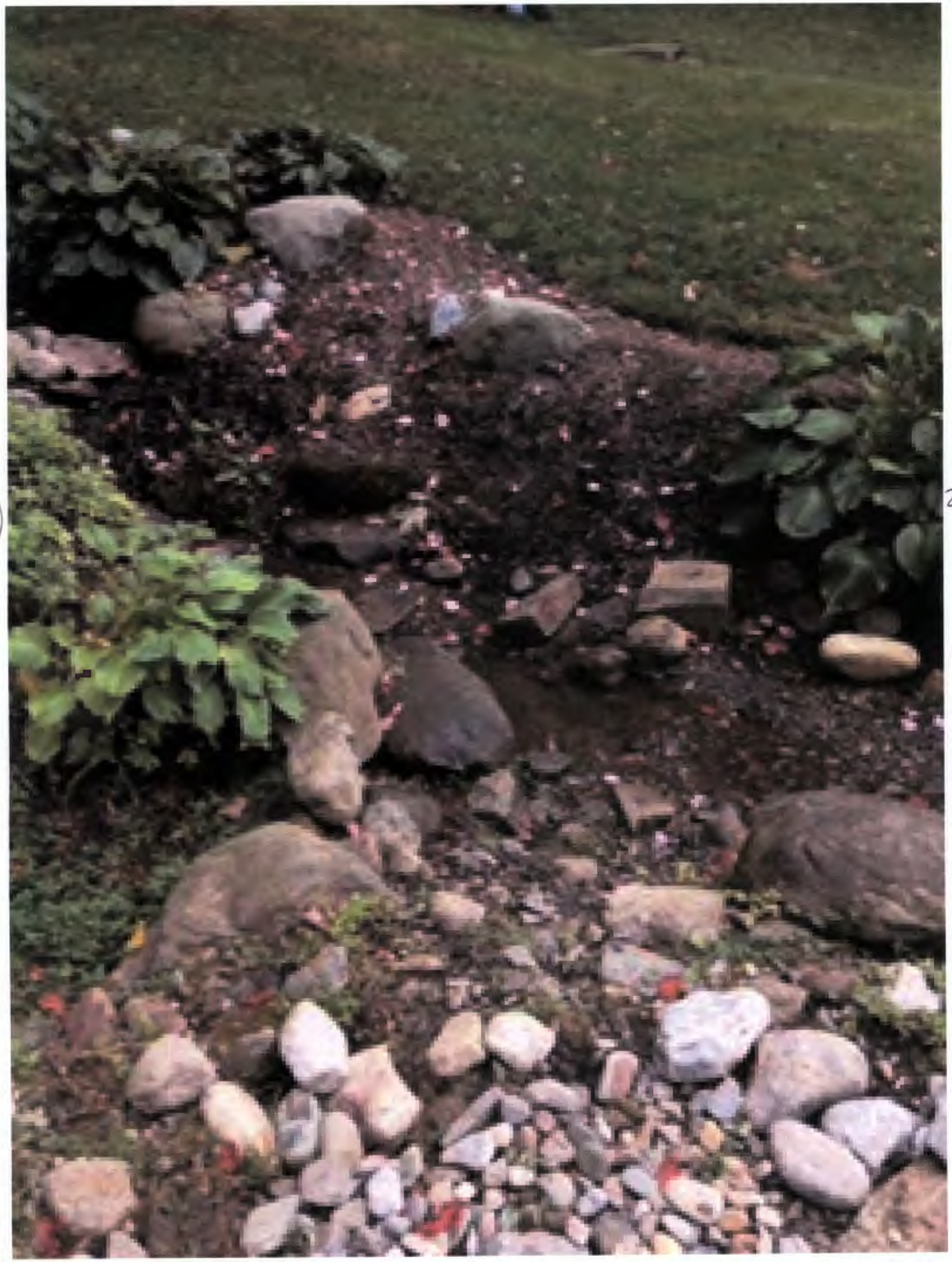

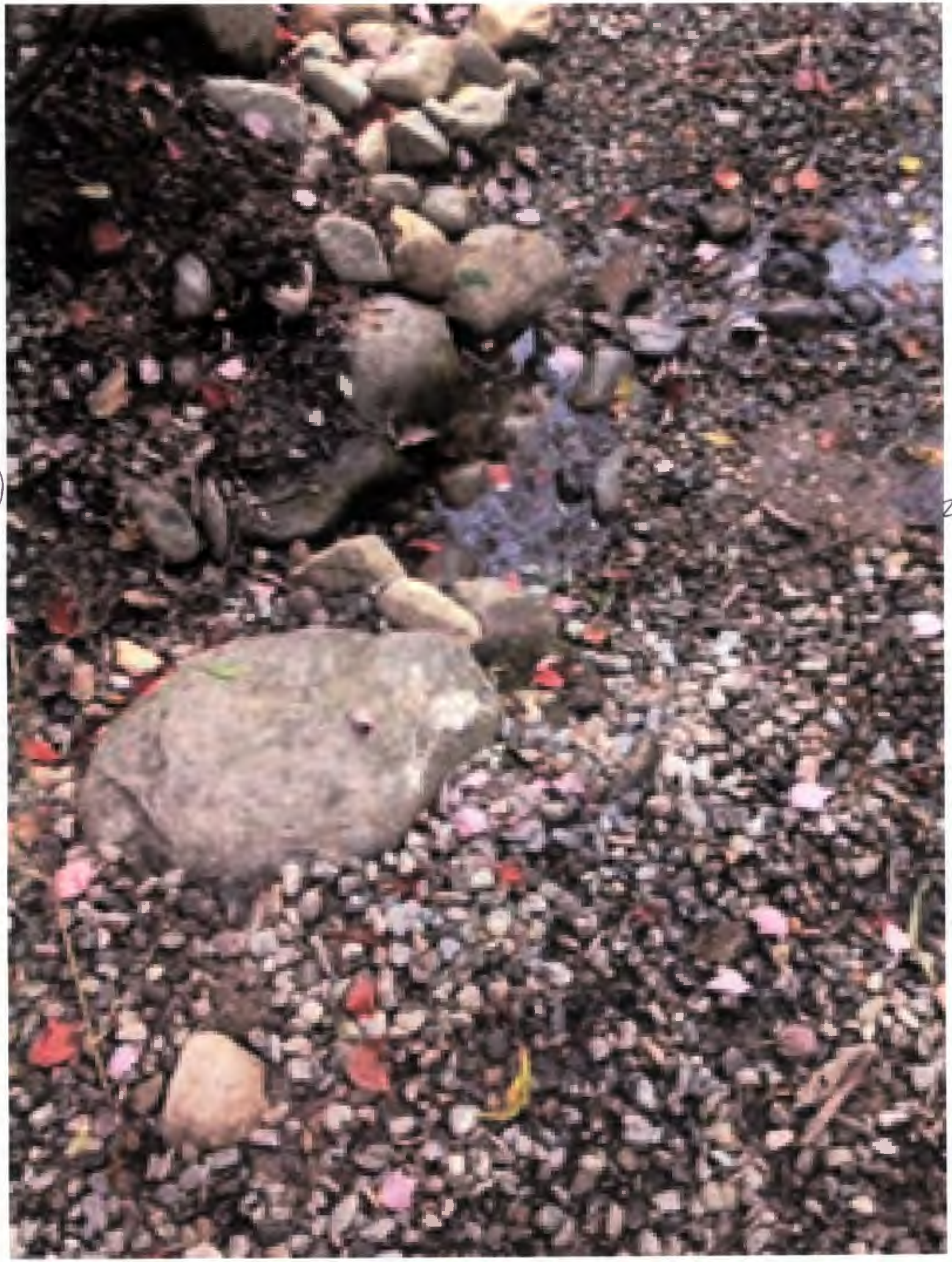

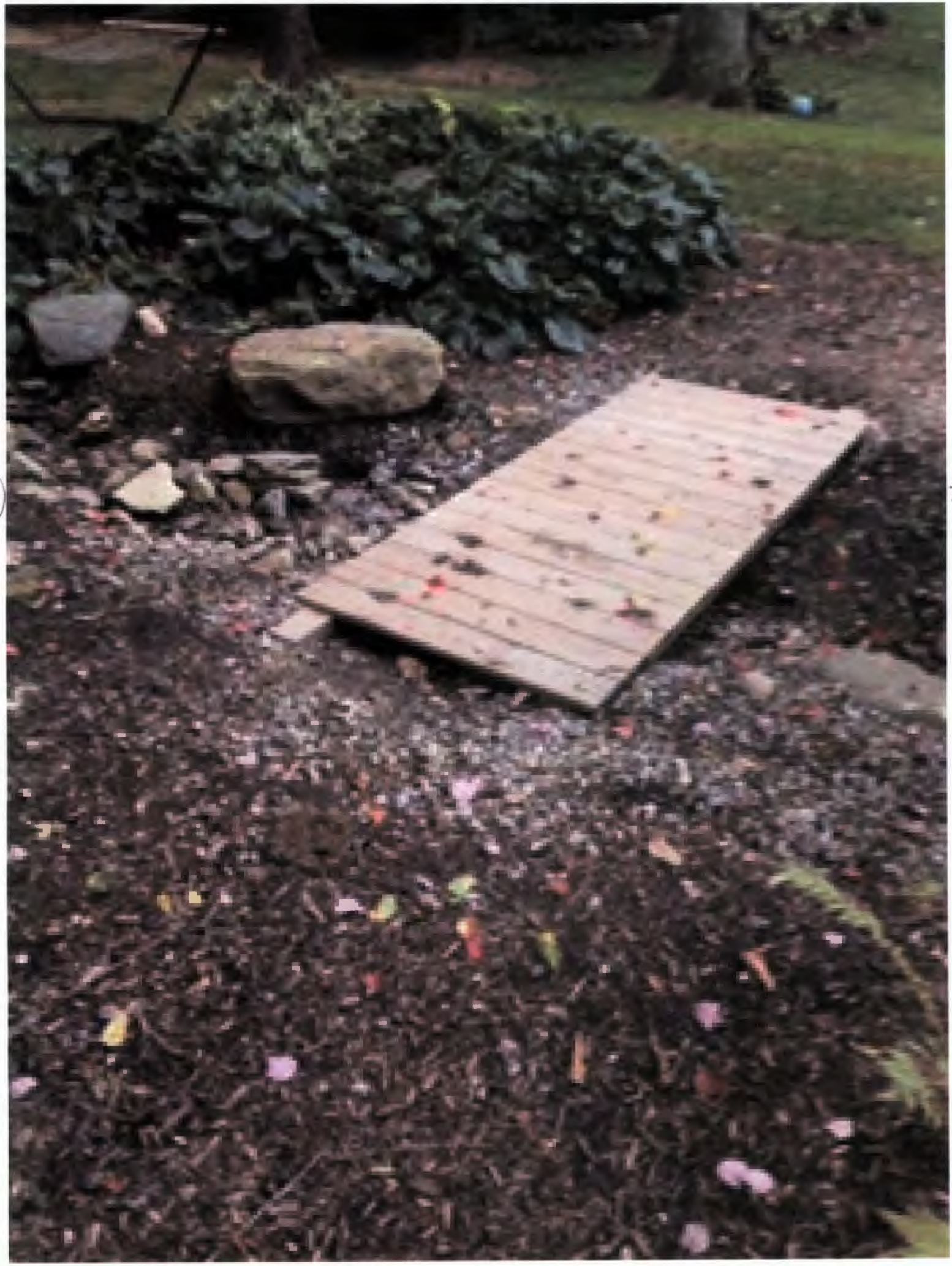

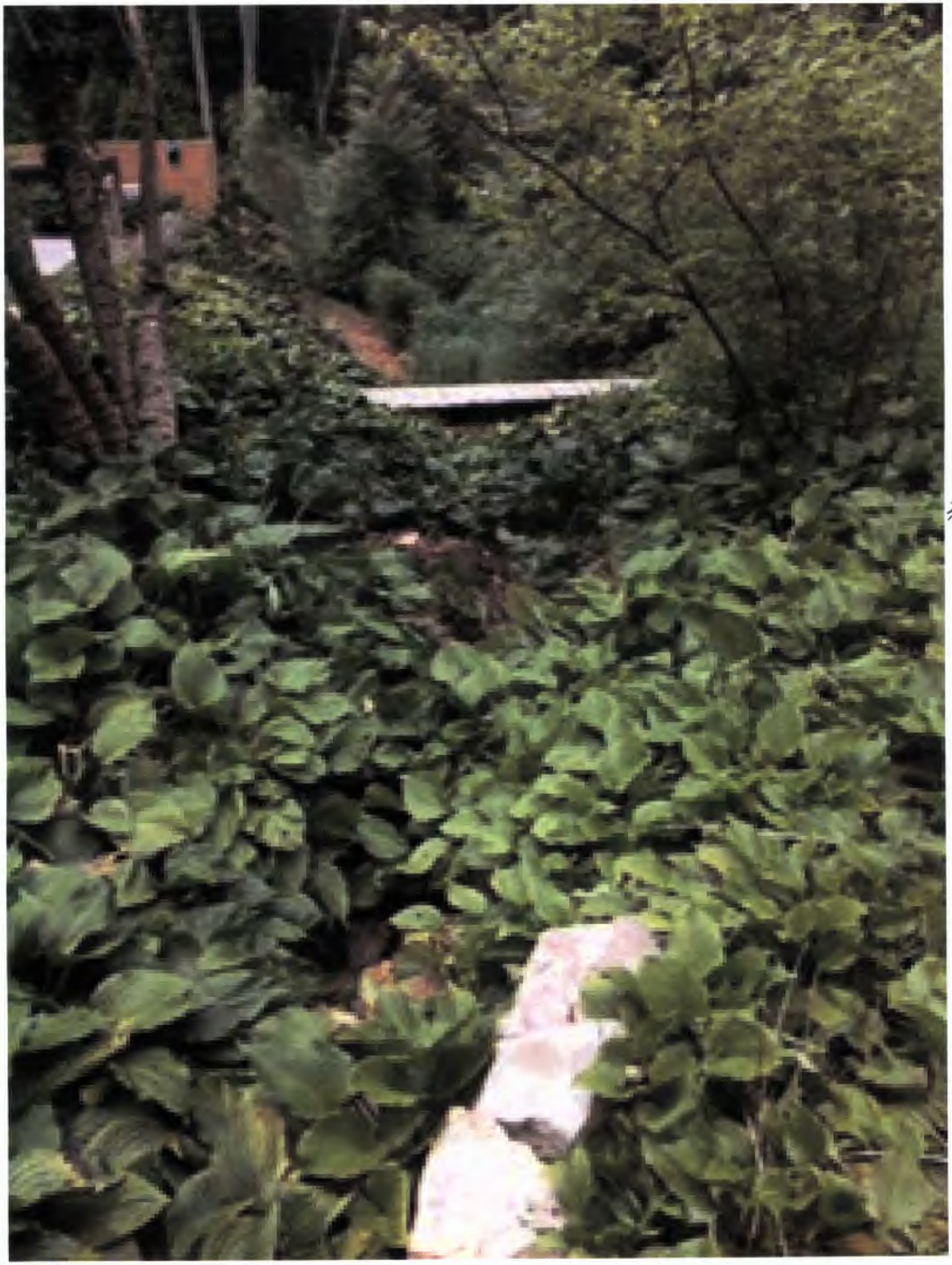

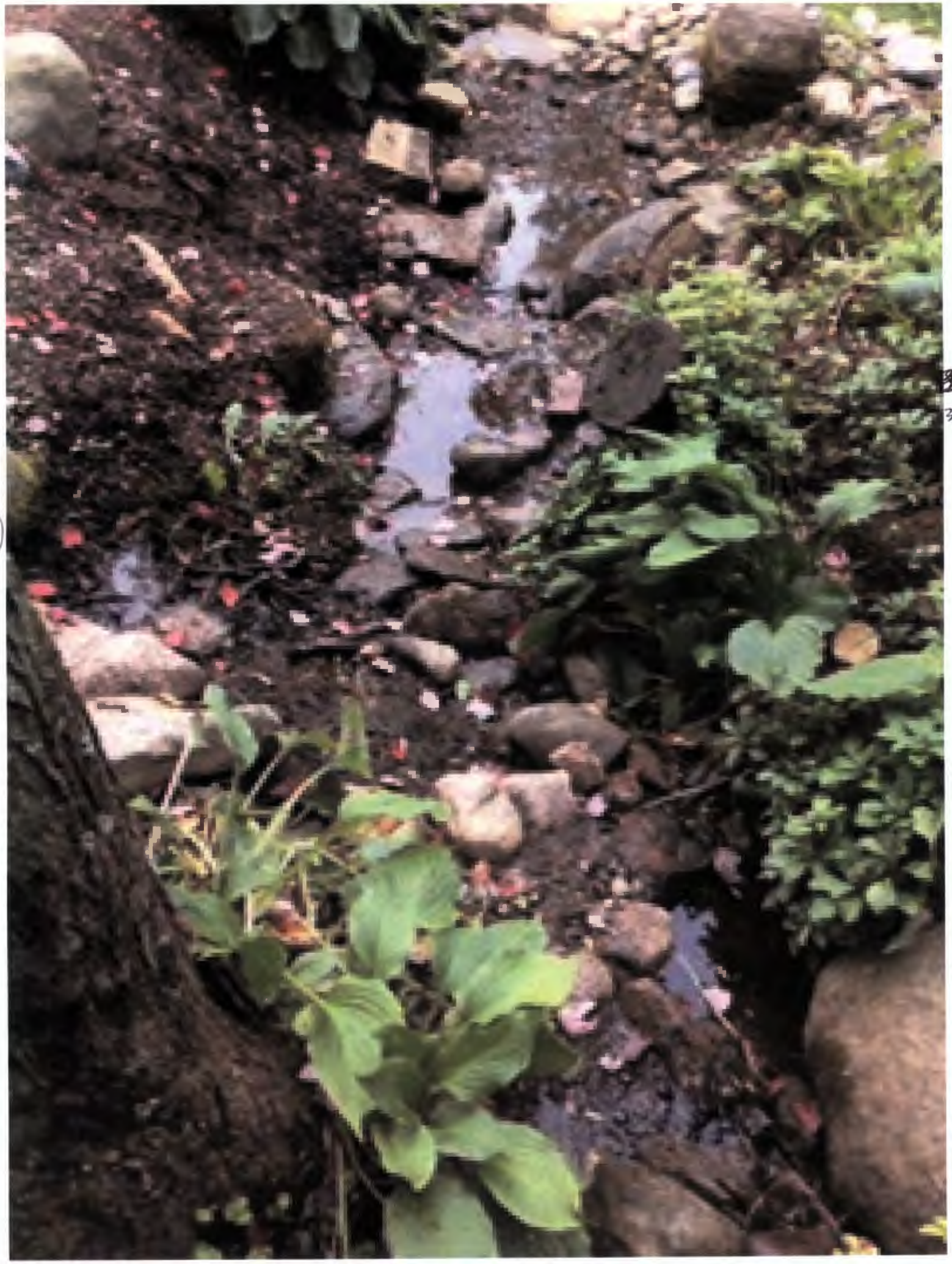

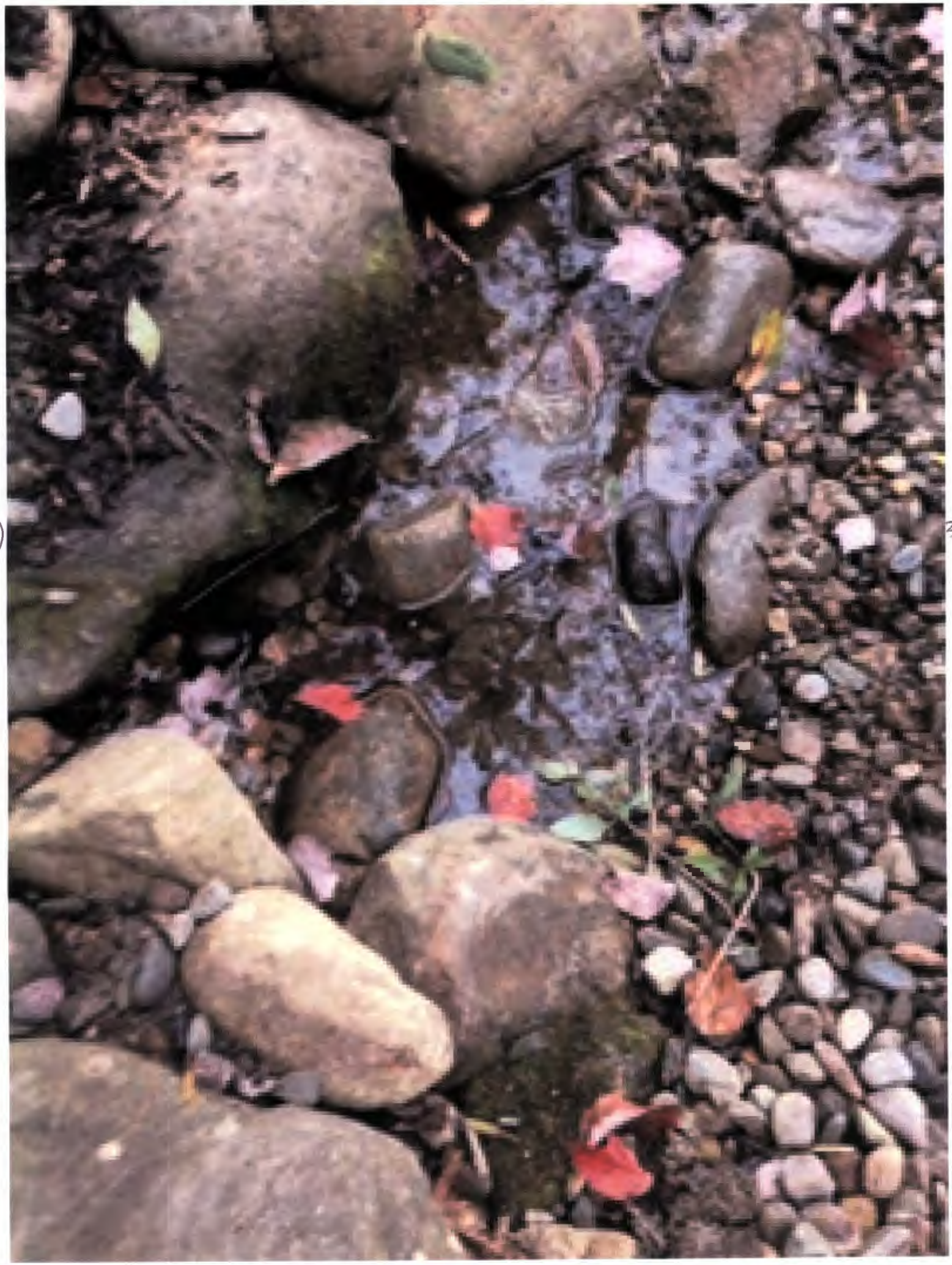

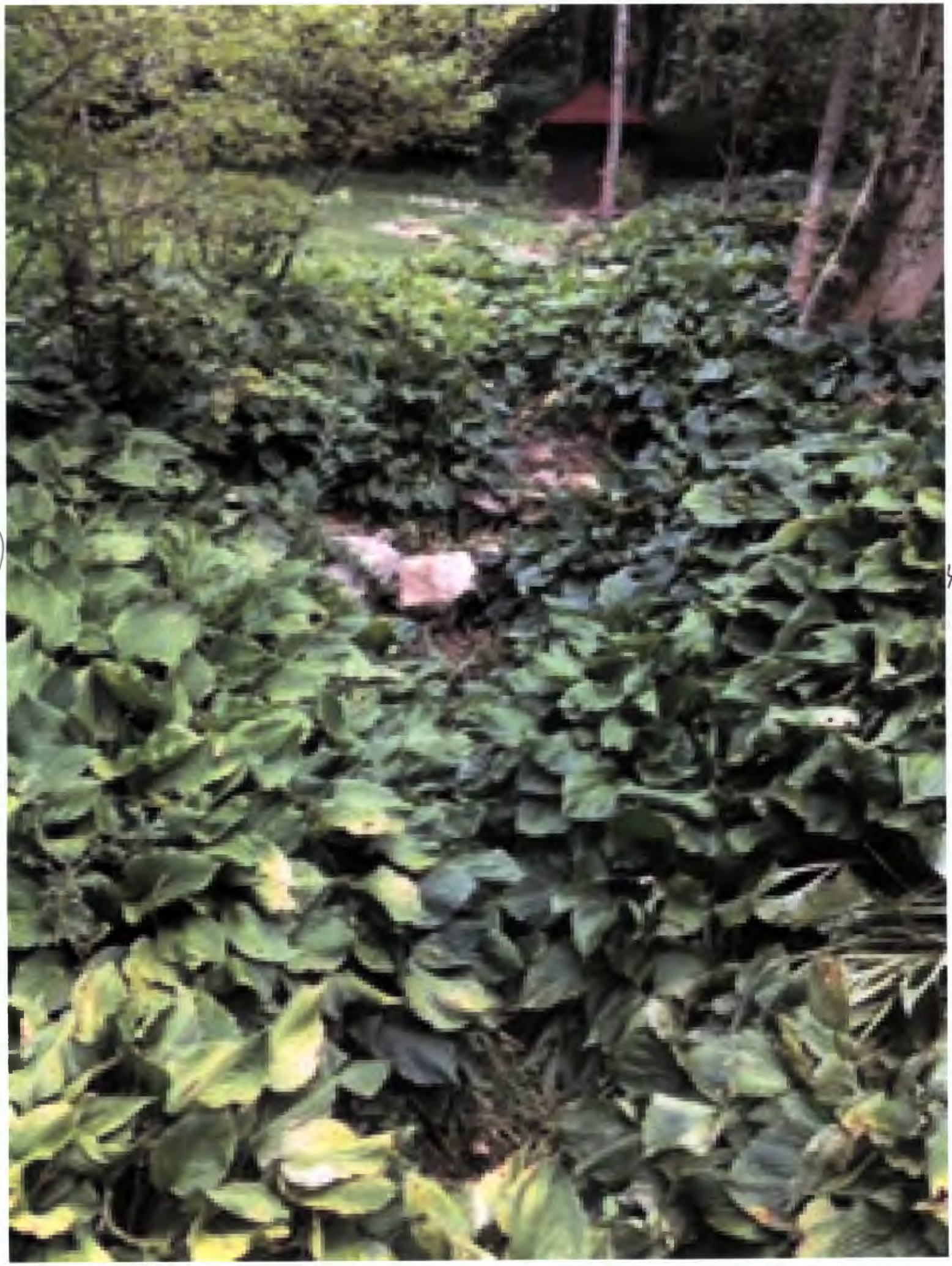

Pet Boot 9

Table Identifying Each Map Parcel by Number – Sorted by Parcel Acreage

(Numbered Parcel Map is 2.69 miles x 1.81 miles = 4.88 square miles)

#	Parcel #	Owner	TAX ID #	Address	Acres
1	65	?	?	?	?
2	84	?	"Not Located"	?	?
3	120	?	?	?	?
4	222	?	?	?	?
5	45	?	2500001571	Conservation Easement	?
6	47	?	2500001573	Conservation Easement	?
7	88	Kees Sherry	1700005110	Traceys Rd	0.03
8	196	Ziegler David W Ziegler Sarah A	1600014697	2109 Stringtown Rd	0.14
9	206	Beasley Walter Scott	0511057025	Stringtown Rd	0.18
10	235	Schmid Robert J Elder Robert J	0519071451	Falls Rd	0.21
11	208	Gencel Stephen P Gencel Joan M	2200020742	Stringtown Rd	0.21
12	199	Fendlay Alvin M Fendlay Edna M	0506010080	2105 Stringtown Rd	0.30
13	200	Bolgiano John Trustee Bolgiano Patricia R Trustee	0514000153	2103 Stringtown Rd	0.33
14	274	Waller Sallie M	1700008494	Falls Rd	0.40
15	253	Gearhart John M Gearhart Hilda G	1700004264	Falls Rd	0.43
16	38	Bell Dorothea H	0508001050	16307 Yeoho Rd	0.46
17	241	Murphy Edward D Murphy Patricia A	0520030570	16020 Falls Rd	0.46
18	39	Diven Robert B Diven Diane H	0508065580	16303 Yeoho Rd	0.47
19	4	Steckel Luke	2300003015	Benson Mill Rd	0.47
20	35	Ogburn Vivian J	0523050860	16317 Yeoho Rd	0.48
21	36	Zepp Gregory A Zepp Glenda L	0504066110	16313 Yeoho Rd	0.49
22	202	Mahoney Annette Goodman Nicholas	0514000152	2037 Stringtown Rd	0.50
23	197	Ziegler David W Ziegler Sarah A	0516000125	2109 Stringtown Rd	0.50
24	191	Irwin David J Irwin Lynn A	0501099500	2142 Stringtown Rd	0.52
25	209	Gencel Stephen P Gencel Joan M	0506060600	2035 Stringtown Rd	0.52
26	198	Dalgarno Bradley	0520030050	2107 Stringtown Rd	0.54
27	254	Gearhart John M Gearhart Hilda G	1700004263	15914 Falls Rd	0.56
28	60	Harold George E Harold Carolyn F	0508001291	Yeoho Rd	0.60
29	201	Mileto Scott A Mileto Jennifer L	1700013658	2101 Stringtown Rd	0.65
30	59	Harold George E Harold Carolyn F	0508001290	2206 Traceys Rd	0.68
31	177	Haun Edwin James Haun Lauren Michelle	0808081530	15807 Yeoho Rd	0.70
32	11	McNelis Niall McNellis Rebecca	0506020100	2321 Benson Mill Rd	0.71
33	205	Beasley Walter Scott	0511057075	Stringtown Rd	0.72
34	68	Walker Andrea E Walker Chris	0508030585	16301 Yeoho Rd	0.735
35	37	DeVille Eric Allan Arthur-William Ellis Richard	0504020160	16309 Yeoho Rd	0.78
36	176	Smith Mabel Louise	0819053881	15809 Yeoho Rd	0.78
37	34	Garrett Donald A Garrett Janet W	0507000200	16321 Yeoho Rd	0.80
38	111	Walker Bradford L	2200007506	16106 Yeoho Rd	0.82
39	193	Johnston Shari L	0502085680	2125 Stringtown Rd	0.85
40	167	McCleary Thomas	2400002235	Duncan Hill Rd	0.86
41	18	Foster Richard M	0514010210	2312 Benson Mill Rd	0.92
42	75	Benzak Michael J Benzak Whitney C	0501033076	16206 Yeoho Rd	1.00
43	5	Dixon Ruth Miriam	0504035085	2501 Benson Mill Rd	1.00
44	31	Hackler Lester W	0520066300	2200 Benson Mill Rd	1.00

45	61	Coverdale Joseph H Coverdale Mary L	0520080054	2200 Traceys Rd	1.00
46	146	Curtis Ethel B	0803077350	1615 Cold Bottom Rd	1.00
47	91	Price Rustin E Price Deborah A	2000014697	2315 Traceys Rd	1.00
48	242	Brocato Carl Brocato Patricia	2200027629	16024 Falls Rd	1.00
49	46	Moyer Constantina	2500001572	16315 Yeoho Rd	1.00
50	257	Tegeler William V Tegeler Mary J	0520025025	15920 Falls Rd	1.04
51	130	Grunwell Nancy Marie Grunwell Marshall A	0516000345	1800 Stringtown Rd	1.10
52	54	Lee Sang K Lee Youn	2400003125	2218 Traceys Rd	1.13
53	14	Corson Jay Kenneth	1700001391	2315 Benson Mill Rd	1.15
54	230	McCormack Keith N Reiss McCormack Randi	0502020061	Benson Mill Rd	1.17
55	143	Janik Peter T Janik Deborah C	2200010710	1635 Cold Bottom Rd	1.18
56	10	Krayenvenger Jeffrey D Kravenvenger Natalie K	0523015280	2325 Benson Mill Rd	1.25
57	172	Poulos David G Poulos Holly K	0819039830	15808 Yeoho Rd	1.25
58	16	Tarsel Emily	0505088035	2314 Benson Mill Rd	1.27
59	9	McNamara Micael Thomas McNamara Margaret B	2400012377	2335 Benson Mill Rd	1.30
60	262	Waller Sallie M	1600005047	15813 Falls Rd	1.31
61	147	Hoover Herbert L	0808065027	1525 Cold Bottom Rd	1.33
62	106	Atticks Kevin Michael Atticks Andrea Hirsch	2300008593	1950 Far Out Ln	1.33
63	256	Harris Leroy N Jr Harris Diana	2400004495	15910 Falls Rd	1.34
64	58	DiPasquale Santo DiPasquale Lisa	2400002421	2217 Traceys Rd	1.37
65	119	Albrecht Matthew G Kaszak Ashley N	0502065380	2135 Abell Ln	1.38
66	247	Bitzer Milton G Bitzer Eleanor R	0519039100	16006 Falls Rd	1.39
67	248	Corradetti Anthony A Corradetti Julie A	0508055190	16008 Falls Rd	1.45
68	260	Finniss Cory Michael Mulhearn Vanessa Nicole	1600004008	15902 Falls Rd	1.45
69	273	Basignani Lawrence B Basignani Heidi	2500009753	15714 Falls Rd	1.45
70	261	O'Brien Darren Patrick O'Brien Tracy	2000000116	Falls Rd	1.46
71	267	Mentzer Benjamin D Basignani-Mentzer Elena M	2500009754	15728 Falls Rd	1.46
72	266	Taylor Griffen N Basignani Marisa I	2500009755	15726 Falls Rd	1.47
73	80	Baltimore Gas & Electric Co	0502000666	Benson Mill Rd	1.50
74	243	Murphy Patricia A Thompson James David	2300007178	16016 Falls Rd	1.50
75	134	Lamb Bruce Christopher Trustee	0812001700	1641 Cold Bottom Rd	1.52
76	76	Karwacki Rodger S Karwacki Karen M	2000000149	16200 Yeoho Rd	1.52
77	159	Byers Bradley S Phillips Mary Carol	0512020025	2001 Stringtown Rd	1.56
78	207	Beasley Walter Scott	0511057050	2033 Stringtown Rd	1.64
79	250	Kyger Iris P	0511089010	16012 Falls Rd	1.66
80	71	Wirtz Mary Pearl	0523050700	16226 Yeoho Rd	1.67
81	171	Powell Robert L Powell Joan L	0816062200	15813 Yeoho Rd	1.68
82	133	Velez Francis J Velez Roseann	2500012162	Stringtown Rd	1.68
83	152	Kremzner Mary Enns Margaret	1700014429	15633 Falls Rd	1.69
84	118	Currey Shane B Currey Jennifer M Trustees	0516090060	2201 Abell Ln	1.70
85	43	McKee David Hunter McKee Carol F	2200009419	Benson Mill Rd	1.70
86	128	Stouffer Laura A	0518047280	1810 Stringtown Rd	1.72
87	67	Payami Sepideh	0523050576	2121 Traceys Rd	1.72
88	246	Kyger Iris P	0519090050	16012 Falls Rd	1.73
89	30	Gardner Wayne T Gardner Judith T	2200017932	2201 Benson Mill Rd	1.74
90	135	Lamb Bruce Christopher Trustee	2500009011	13835 Yeoho Rd	1.76
91	137	Sampson Adam Sampson Katherine	2300012378	15825 Yeoho Rd	1.77
92	17	Cassidy Charles L Cassidy Janet A	0503000490	16410 Yeoho Rd	1.80

93	157	Biggs Linda	0503023300	2007 Stringtown Rd	1.80
94	107	Offutt J Frederick C Jr Offutt Roberta E	2100004534	Akehurst Rd	1.82
95	164	Owens Diana F	0502085600	1801 Stringtown Rd	1.89
96	103	Lewis H Thomas Lewis Darlene M	2200007505	16102 Yeoho Rd	1.92
97	70	Wirtz Mary Pearl	0523050578	Yeoho Rd	1.93
98	110	Blaumanis Otis Rudolph	0502047120	16201 Yeoho Rd	1.99
99	33	Watriss Paula Trustee	0505061075	16329 Yeoho Rd	2.00
100	98	Strucko Robert Strucko Debra M	1700004026	2011 Abell Ln	2.00
101	41	Fitchett F Maxine Mays Lisa B	1700013152	2105 Benson Mill Rd	2.00
102	42	McKee David Hunter McKee Carol F	1700013153	2101 Benson Mill Rd	2.00
103	278	Stellman Peter B	1900014286	3040 Black Rock Rd	2.00
104	183	Sweeney John A	2000007544	15710 Yeoho Road	2.01
105	105	Cornell Anne Lundvall	2300008592	2000 Far Out Ln	2.06
106	136	Burke Tommy D Burke Barbara A	1600009844	15827 Yeoho Rd	2.10
107	56	Daily Gregory Daily Sharon	2400003124	2220 Traceys Rd	2.10
108	190	Becker Peter J Becker Kathleen D	0502000460	2144 Stringtown Rd	2.13
109	148	Price Bryan S Sr Price Holly A Hughes	1900013555	1509 Cold Bottom Rd	2.16
110	249	Whitaker Edward J Whitaker Kathleen D	0523035300	16010 Falls Rd	2.21
111	69	Vasold Barrett M Vasold Genie K	2400001259	16234 Yeoho Rd	2.30
112	93	Waas Erich P	2400001691	2114 Abell Ln	2.34
113	212	Tiralla John A Tiralla Ada	1700012424	2009 Stringtown Rd	2.35
114	72	Shoul Thomas Shoul Winifred B	0519032630	16220 Yeoho Rd	2.38
115	173	Richardson Michael Scott	0819061530	15800 Yeoho Rd	2.38
116	108	Mayo George 6th Mowell-Mayo Mary Jane	2100004533	16060 Yeoho Rd	2.38
117	19	Kamps Jack G Jr Kamps Elizabeth B	2200013999	16400 Yeoho Rd	2.50
118	8	Morrill Todd L Morrill Karen C	2500002492	2401 Benson Mill Rd	2.50
119	89	Kees Family LLC	0511015331	2323 Traceys Rd	2.52
120	112	Stevens Lois A Trustee	2400001383	16110 Yeoho Rd	2.53
121	182	Giuliano Mark E Raab Cathy L	2000007545	15712 Yeoho Rd	2.56
122	25	Varner Hugh H Varner Ruth E	2000010988	2220 Benson Mill Rd	2.56
123	13	Decker William T Decker Susan E	2400012378	2333 Benson Mill Rd	2.57
124	63	Kincaid James I Kincaid Elizabeth R	2000007059	2130 Traceys Rd	2.61
125	129	Fox Michael B Grover Kimberly A	0502085590	1806 Stringtown Rd	2.62
126	55	Evans Joseph L Pray Nedda	1600012195	2224 Traceys Rd	2.66
127	27	Bartenfelder Steven E Bartenfelder Leslie	2200015936	2205 Benson Mill Rd	2.69
128	23	Taylor William R Taylor Susan G	1600012189	16322 Yeoho Rd	2.72
129	29	Simon Dennis Simon Paula A	1600012187	16312 Yeoho Rd	2.75
130	244	Murphy Patricia A Murphy Edward D	0512020210	16018 Falls Rd	2.76
131	66	Wirtz Vernon Willis Jr Wirtz Susan E Twigg	2000007060	2100 Traceys Rd	2.76
132	28	Buckwalter H Scott	1600012188	16316 Yeoho Rd	2.77
133	165	Madden John P Madden Janice L	2100014141	1795 Stringtown Rd	2.84
134	26	Chenoweth George Edward III Chenoweth Emily Ann	1800012039	2210 Benson Mill Rd	2.86
135	224	Beck Jonathan A Cohen Donna Ann	1600012505	3000 Benson Mill Rd	2.93
136	7	Morrill Todd L Morrill Karen C	1600002446	2407 Benson Mill Rd	2.98
137	211	Gregg William Melvin Jr Gregg Sherry Ann	1600012085	15448 Duncan Hill Rd	3.00
138	228	McLewee Robert W McLewee Mary E	1700007423	2810 Benson Mill Rd	3.00
139	271	Beren Joel Jeffrey Trustee Beren Anna Irene Trustee	1800004836	15732 Falls Rd	3.00
140	237	Rambert Travis D Rambert Shawanda R THIS IS DUPLICATED FOR #238	2200027585	16025 Falls Rd	3.00

141	238	Rambert Travis D Rambert Shawanda R THIS IS DUPLICATED FOR #237	2200027585	16025 Falls Rd	3.00
142	117	Danielczyk Steven C Danielczyk Maria D	2200028633	2207 Abell Ln	3.00
143	12	Tucker Saint George Brooke Tucker Pamela H	2500002493	2403 Benson Mill Rd	3.00
144	210	Howard Donald S Jr Howard Janice B	1600012086	15450 Duncan Hill Rd	3.01
145	144	Maynes David Maynes Raquel Foglia	2200010711	1637 Cold Bottom Rd	3.01
146	99	Capozzi Daniel J 3rd Capozzi Joanne C	0519007320	16116 Yeoho Rd	3.03
147	138	Schofield Russell P Schofield Tina M	2400009180	15823 Yeoho Rd	3.08
148	139	Jupitz Steven R Webb Erin	2400009181	15821 Yeoho Rd	3.08
149	160	Gunder Frederick E Gunder Shirley Patricia	2000001121	1926a Stringtown Rd	3.15
150	174	Butler Louis T Brogan Theresa G	2000007547	15716 Yeoho Rd	3.16
151	236	Molnar George J	0519039070	16026 Falls Rd	3.22
152	220	Wilson Jeffry J Richard Janet L	1600012506	3008 Benson Mill Rd	3.24
153	156	Harvey R Dixon Jr Harvey Janet Hardie	0512040160	2004 Stringtown Rd	3.25
154	178	McMurtrie Bridgid A	2000007540	15801 Yeoho Rd	3.31
155	195	Marzullo Kelly M Marzullo Christopher S	2400001322	2117 Stringtown Rd	3.34
156	151	Monaco Tammie Jean	1700014428	15635 Falls Rd	3.44
157	1	Sheran D Smith Inter Vivos Trust	2300003014	16301 Dubbs Rd	3.49
158	163	Hocheder John B	2000005073	1813 Stringtown Rd	3.63
159	180	Wolgamott James R Lang Henry John	2000007541	15717 Yeoho Rd	3.63
160	255	Kirchner William L Kirchner Linda V	0506010110	15908 Falls Rd	3.67
161	62	Kelley Tawanna Y Kelley Sean V	1600012192	16308 Yeoho Rd	3.73
162	221	Arnold Nathan Arnold Amanda	1600012521	3006 Benson Mill Rd	3.73
163	175	Sendak Michael J Sendak Janice B	2000007546	15714 Yeoho Rd	3.82
164	15	Franceschi Kristin Helena Ranum Franceschi Harve Julien	1600009594	2313 Benson Mill Rd	3.84 5.00
165	132	Velez Francis J Velez Roseann	2500012163	Stringtown Rd	3.90
166	102	Bolt Stanley E Bolt Wanda C	0502057491	Akehurst Rd	3.99
167	73	Boyce John C G Jr	0502020025	16214 Yeoho Rd	4.00
168	258	Arbogast Brenda Lee Arbogast David/Gill Deborah Ann	0503077050	15900 Falls Rd	4.00
169	204	Franklin George C 3rd Franklin Katherine A	0516090070	2011 Stringtown Rd	4.00
170	100	Mansfield Thomas S Mansfield Deborah Beste	1900011515	1936 Akehurst Rd	4.00
171	170	Travers Thomas S Jr Travers Sarah J	2500004342	15815 Yeoho Rd	4.04
172	145	Hoover Harry A 2nd Hoover Susan	0808065026	1617 Cold Bottom Rd	4.05
173	184	Breidenbaugh Arnold L Jr Breidenbaugh Ellen M	1700003300	15629 Falls Rd	4.13
174	24	Joan Lefalvie LLC	1600012191	16310 Yeoho Rd	4.15
175	158	Schwab David M	0507058490	1928 Stringtown Rd	4.29
176	203	Pedone Michael T	2000010488	2029 Stringtown Rd	4.37
177	40	Ensor Charles E Jr Ensor Mary Ann	2200022129	2119 Benson Mill Rd	4.39
178	239	Gurevich Robert L Sanfilippo Jo Anne	2200027584	16027 Falls Rd	4.53
179	22	Kamps Harriet E	1600008198	16405 Yeoho Rd	4.57
180	234	Schmid Robert J	0519071450	3003 Benson Mill Rd	4.60
181	96	Conanan Orlando B Conanan Bella D	2000000150	16120 Yeoho Rd	4.64
182	226	Hoover Brinton H Hoover Linda H	2200003041	Benson Mill Rd	4.77
183	252	Waller Sallie M	2500013257	Falls Rd	4.91
184	124	Elberfeld Sherry M	0505061320	2101 Far Out Ln	5.00
185	240	Cofiell Walter G Cofiell Winona D	1600008119	16001 Falls Rd	5.02
186	32	Duff Elizabeth George	0520080072	2125 Benson Mill Rd	5.14
187	2	Cassidy Charles L Rusins Judith Buck ET AL	1700010075	Benson Mill Rd	5.15

276	186	Palmer Preservation LLC	0516000610	15603 Falls Rd	105.22
277	79	Goetze Spaulding A Goetze Cynthia B	1900009023	1522 Cold Bottom Rd	109.66
278	50	Curtmill LLC	2300003012	2725 Benson Mill Rd	113.85
279	215	Harvest Investment Group LLC	2400002285	15651 Duncan Hill Rd	130.94
280	189	Montague Alex Montague Caroline	2000009394	2234 Stringtown Rd	139.43
281	78	Thomas F McMullan Iii Revocable Trust	2100003875	1620 Cold Bottom Rd	146.65

Protestant exhibit 9

Table Identifying Each Map Parcel by Number – Sorted by Parcel Acreage

(Numbered Parcel Map is 2.69 miles x 1.81 miles = 4.88 square miles)

#	Parcel #	Owner	TAX ID #	Address	Acres
1	65	?	?	?	?
2	84	?	"Not Located"	?	?
3	120	?	?	?	?
4	222	?	?	?	?
5	45	?	2500001571	Conservation Easement	?
6	47	?	2500001573	Conservation Easement	?
7	88	Kees Sherry	1700005110	Traceys Rd	0.03
8	196	Ziegler David W Ziegler Sarah A	1600014697	2109 Stringtown Rd	0.14
9	206	Beasley Walter Scott	0511057025	Stringtown Rd	0.18
10	235	Schmid Robert J Elder Robert J	0519071451	Falls Rd	0.21
11	208	Gencel Stephen P Gencel Joan M	2200020742	Stringtown Rd	0.21
12	199	Fendlay Alvin M Fendlay Edna M	0506010080	2105 Stringtown Rd	0.30
13	200	Bolgiano John Trustee Bolgiano Patricia R Trustee	0514000153	2103 Stringtown Rd	0.33
14	274	Waller Sallie M	1700008494	Falls Rd	0.40
15	253	Gearhart John M Gearhart Hilda G	1700004264	Falls Rd	0.43
16	38	Bell Dorothea H	0508001050	16307 Yeoho Rd	0.46
17	241	Murphy Edward D Murphy Patricia A	0520030570	16020 Falls Rd	0.46
18	39	Diven Robert B Diven Diane H	0508065580	16303 Yeoho Rd	0.47
19	4	Steckel Luke	2300003015	Benson Mill Rd	0.47
20	35	Ogburn Vivian J	0523050860	16317 Yeoho Rd	0.48
21	36	Zepp Gregory A Zepp Glenda L	0504066110	16313 Yeoho Rd	0.49
22	202	Mahoney Annette Goodman Nicholas	0514000152	2037 Stringtown Rd	0.50
23	197	Ziegler David W Ziegler Sarah A	0516000125	2109 Stringtown Rd	0.50
24	191	Irwin David J Irwin Lynn A	0501099500	2142 Stringtown Rd	0.52
25	209	Gencel Stephen P Gencel Joan M	0506060600	2035 Stringtown Rd	0.52
26	198	Dalgarno Bradley	0520030050	2107 Stringtown Rd	0.54
27	254	Gearhart John M Gearhart Hilda G	1700004263	15914 Falls Rd	0.56
28	60	Harold George E Harold Carolyn F	0508001291	Yeoho Rd	0.60
29	201	Mileto Scott A Mileto Jennifer L	1700013658	2101 Stringtown Rd	0.65
30	59	Harold George E Harold Carolyn F	0508001290	2206 Traceys Rd	0.68
31	177	Haun Edwin James Haun Lauren Michelle	0808081530	15807 Yeoho Rd	0.70
32	11	McNelis Niall McNellis Rebecca	0506020100	2321 Benson Mill Rd	0.71
33	205	Beasley Walter Scott	0511057075	Stringtown Rd	0.72
34	68	Walker Andrea E Walker Chris	0508030585	16301 Yeoho Rd	0.735
35	37	DeVille Eric Allan Arthur-William Ellis Richard	0504020160	16309 Yeoho Rd	0.78
36	176	Smith Mabel Louise	0819053881	15809 Yeoho Rd	0.78
37	34	Garrett Donald A Garrett Janet W	0507000200	16321 Yeoho Rd	0.80
38	111	Walker Bradford L	2200007506	16106 Yeoho Rd	0.82
39	193	Johnston Shari L	0502085680	2125 Stringtown Rd	0.85
40	167	McCleary Thomas	2400002235	Duncan Hill Rd	0.86
41	18	Foster Richard M	0514010210	2312 Benson Mill Rd	0.92
42	75	Benzak Michael J Benzak Whitney C	0501033076	16206 Yeoho Rd	1.00
43	5	Dixon Ruth Miriam	0504035085	2501 Benson Mill Rd	1.00
44	31	Hackler Lester W	0520066300	2200 Benson Mill Rd	1.00

45	61	Coverdale Joseph H Coverdale Mary L	0520080054	2200 Traceys Rd	1.00
46	146	Curtis Ethel B	0803077350	1615 Cold Bottom Rd	1.00
47	91	Price Rustin E Price Deborah A	2000014697	2315 Traceys Rd	1.00
48	242	Brocato Carl Brocato Patricia	2200027629	16024 Falls Rd	1.00
49	46	Moyer Constantina	2500001572	16315 Yeoho Rd	1.00
50	257	Tegeler William V Tegeler Mary J	0520025025	15920 Falls Rd	1.04
51	130	Grunwell Nancy Marie Grunwell Marshall A	0516000345	1800 Stringtown Rd	1.10
52	54	Lee Sang K Lee Youn	2400003125	2218 Traceys Rd	1.13
53	14	Corson Jay Kenneth	1700001391	2315 Benson Mill Rd	1.15
54	230	McCormack Keith N Reiss McCormack Randi	0502020061	Benson Mill Rd	1.17
55	143	Janik Peter T Janik Deborah C	2200010710	1635 Cold Bottom Rd	1.18
56	10	Krayenvenger Jeffrey D Kravenvenger Natalie K	0523015280	2325 Benson Mill Rd	1.25
57	172	Poulos David G Poulos Holly K	0819039830	15808 Yeoho Rd	1.25
58	16	Tarsel Emily	0505088035	2314 Benson Mill Rd	1.27
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62	106	Atticks Kevin Michael Atticks Andrea Hirsch	2300008593	1950 Far Out Ln	1.33
63	256	Harris Leroy N Jr Harris Diana	2400004495	15910 Falls Rd	1.34
64	58	DiPasquale Santo DiPasquale Lisa	2400002421	2217 Traceys Rd	1.37
65	119	Albrecht Matthew G Kaszak Ashley N	0502065380	2135 Abell Ln	1.38
66	247	Bitzer Milton G Bitzer Eleanor R	0519039100	16006 Falls Rd	1.39
67	248	Corradetti Anthony A Corradetti Julie A	0508055190	16008 Falls Rd	1.45
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94	107	Offutt J Frederick C Jr Offutt Roberta E	2100004534	Akehurst Rd	1.82
95	164	Owens Diana F	0502085600	1801 Stringtown Rd	1.89
96	103	Lewis H Thomas Lewis Darlene M	2200007505	16102 Yeoho Rd	1.92
97	70	Wirtz Mary Pearl	0523050578	Yeoho Rd	1.93
98	110	Blaumanis Otis Rudolph	0502047120	16201 Yeoho Rd	1.99
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100	98	Strucko Robert Strucko Debra M	1700004026	2011 Abell Ln	2.00
101	41	Fitchett F Maxine Mays Lisa B	1700013152	2105 Benson Mill Rd	2.00
102	42	McKee David Hunter McKee Carol F	1700013153	2101 Benson Mill Rd	2.00
103	278	Stellman Peter B	1900014286	3040 Black Rock Rd	2.00
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113	212	Tiralla John A Tiralla Ada	1700012424	2009 Stringtown Rd	2.35
114	72	Shoul Thomas Shoul Winifred B	0519032630	16220 Yeoho Rd	2.38
115	173	Richardson Michael Scott	0819061530	15800 Yeoho Rd	2.38
116	108	Mayo George 6th Mowell-Mayo Mary Jane	2100004533	16060 Yeoho Rd	2.38
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121	182	Giuliano Mark E Raab Cathy L	2000007545	15712 Yeoho Rd	2.56
122	25	Varner Hugh H Varner Ruth E	2000010988	2220 Benson Mill Rd	2.56
123	13	Decker William T Decker Susan E	2400012378	2333 Benson Mill Rd	2.57
124	63	Kincaid James I Kincaid Elizabeth R	2000007059	2130 Traceys Rd	2.61
125	129	Fox Michael B Grover Kimberly A	0502085590	1806 Stringtown Rd	2.62
126	55	Evans Joseph L Pray Nedda	1600012195	2224 Traceys Rd	2.66
127	27	Bartenfelder Steven E Bartenfelder Leslie	2200015936	2205 Benson Mill Rd	2.69
128	23	Taylor William R Taylor Susan G	1600012189	16322 Yeoho Rd	2.72
129	29	Simon Dennis Simon Paula A	1600012187	16312 Yeoho Rd	2.75
130	244	Murphy Patricia A Murphy Edward D	0512020210	16018 Falls Rd	2.76
131	66	Wirtz Vernon Willis Jr Wirtz Susan E Twigg	2000007060	2100 Traceys Rd	2.76
132	28	Buckwalter H Scott	1600012188	16316 Yeoho Rd	2.77
133	165	Madden John P Madden Janice L	2100014141	1795 Stringtown Rd	2.84
134	26	Chenoweth George Edward III Chenoweth Emily Ann	1800012039	2210 Benson Mill Rd	2.86
135	224	Beck Jonathan A Cohen Donna Ann	1600012505	3000 Benson Mill Rd	2.93
136	7	Morrill Todd L Morrill Karen C	1600002446	2407 Benson Mill Rd	2.98
137	211	Gregg William Melvin Jr Gregg Sherry Ann	1600012085	15448 Duncan Hill Rd	3.00
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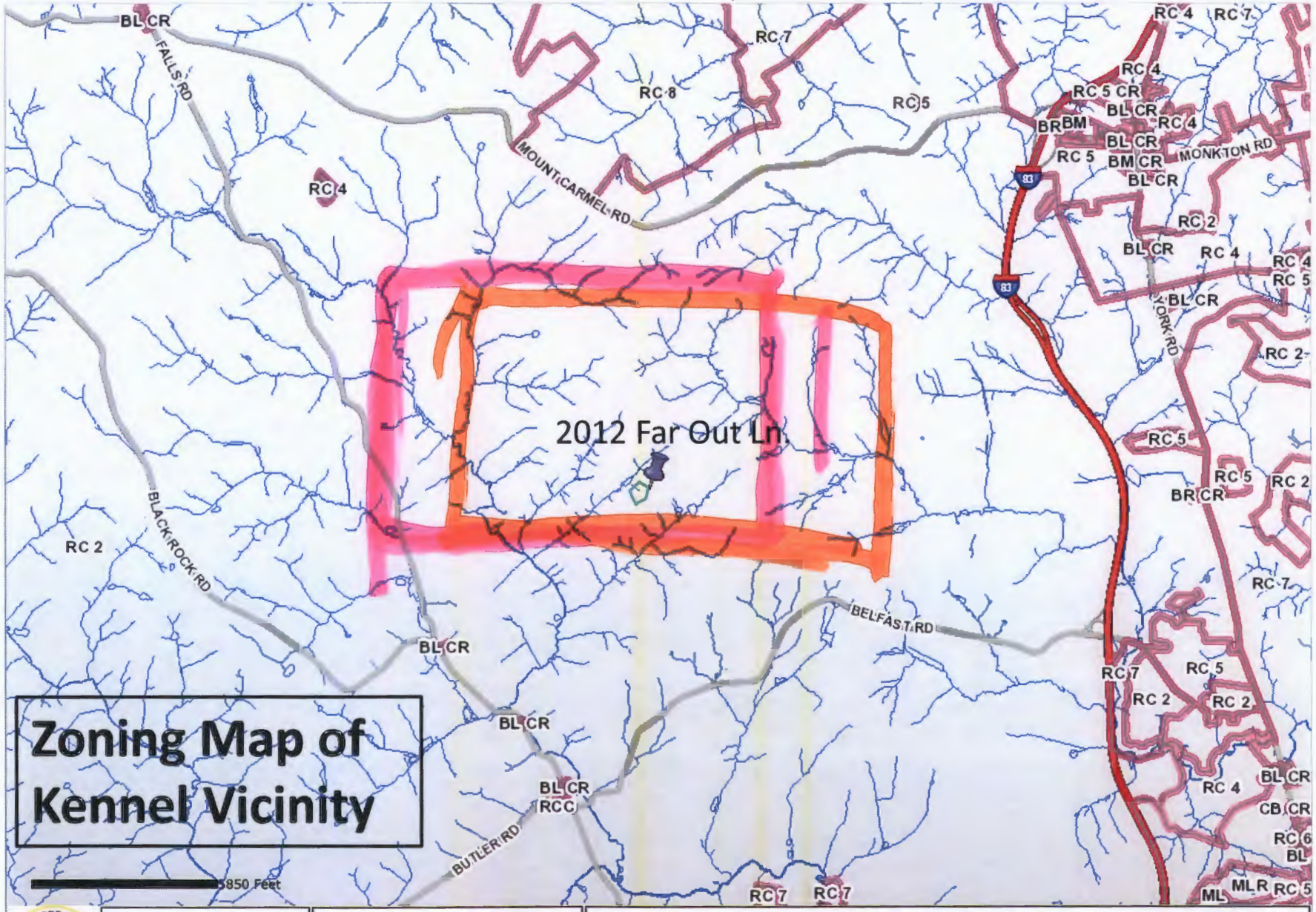
143	12	Tucker Saint George Brooke Tucker Pamela H	2500002493	2403 Benson Mill Rd	3.00
144	210	Howard Donald S Jr Howard Janice B	1600012086	15450 Duncan Hill Rd	3.01
145	144	Maynes David Maynes Raquel Foglia	2200010711	1637 Cold Bottom Rd	3.01
146	99	Capozzi Daniel J 3rd Capozzi Joanne C	0519007320	16116 Yeoho Rd	3.03
147	138	Schofield Russell P Schofield Tina M	2400009180	15823 Yeoho Rd	3.08
148	139	Jupitz Steven R Webb Erin	2400009181	15821 Yeoho Rd	3.08
149	160	Gunder Frederick E Gunder Shirley Patricia	2000001121	1926a Stringtown Rd	3.15
150	174	Butler Louis T Brogan Theresa G	2000007547	15716 Yeoho Rd	3.16
151	236	Molnar George J	0519039070	16026 Falls Rd	3.22
152	220	Wilson Jeffry J Richard Janet L	1600012506	3008 Benson Mill Rd	3.24
153	156	Harvey R Dixon Jr Harvey Janet Hardie	0512040160	2004 Stringtown Rd	3.25
154	178	McMurtrie Bridgid A	2000007540	15801 Yeoho Rd	3.31
155	195	Marzullo Kelly M Marzullo Christopher S	2400001322	2117 Stringtown Rd	3.34
156	151	Monaco Tammie Jean	1700014428	15635 Falls Rd	3.44
157	1	Sheran D Smith Inter Vivos Trust	2300003014	16301 Dubbs Rd	3.49
158	163	Hocheder John B	2000005073	1813 Stringtown Rd	3.63
159	180	Wolgamott James R Lang Henry John	2000007541	15717 Yeoho Rd	3.63
160	255	Kirchner William L Kirchner Linda V	0506010110	15908 Falls Rd	3.67
161	62	Kelley Tawanna Y Kelley Sean V	1600012192	16308 Yeoho Rd	3.73
162	221	Arnold Nathan Arnold Amanda	1600012521	3006 Benson Mill Rd	3.73
163	175	Sendak Michael J Sendak Janice B	2000007546	15714 Yeoho Rd	3.82
164	15	Franceschi Kristin Helena Ranum Franceschi Harve Julien	1600009594	2313 Benson Mill Rd	3.84 5.00
165	132	Velez Francis J Velez Roseann	2500012163	Stringtown Rd	3.90
166	102	Bolt Stanley E Bolt Wanda C	0502057491	Akehurst Rd	3.99
167	73	Boyce John C G Jr	0502020025	16214 Yeoho Rd	4.00
168	258	Arbogast Brenda Lee Arbogast David/Gill Deborah Ann	0503077050	15900 Falls Rd	4.00
169	204	Franklin George C 3rd Franklin Katherine A	0516090070	2011 Stringtown Rd	4.00
170	100	Mansfield Thomas S Mansfield Deborah Beste	1900011515	1936 Akehurst Rd	4.00
171	170	Travers Thomas S Jr Travers Sarah J	2500004342	15815 Yeoho Rd	4.04
172	145	Hoover Harry A 2nd Hoover Susan	0808065026	1617 Cold Bottom Rd	4.05
173	184	Breidenbaugh Arnold L Jr Breidenbaugh Ellen M	1700003300	15629 Falls Rd	4.13
174	24	Joan Lefaivre LLC	1600012191	16310 Yeoho Rd	4.15
175	158	Schwab David M	0507058490	1928 Stringtown Rd	4.29
176	203	Pedone Michael T	2000010488	2029 Stringtown Rd	4.37
177	40	Ensor Charles E Jr Ensor Mary Ann	2200022129	2119 Benson Mill Rd	4.39
178	239	Gurevich Robert L Sanfilippo Jo Anne	2200027584	16027 Falls Rd	4.53
179	22	Kamps Harriet E	1600008198	16405 Yeoho Rd	4.57
180	234	Schmid Robert J	0519071450	3003 Benson Mill Rd	4.60
181	96	Conanan Orlando B Conanan Bella D	2000000150	16120 Yeoho Rd	4.64
182	226	Hoover Brinton H Hoover Linda H	2200003041	Benson Mill Rd	4.77
183	252	Waller Sallie M	2500013257	Falls Rd	4.91
184	124	Elberfeld Sherry M	0505061320	2101 Far Out Ln	5.00
185	240	Cofiell Walter G Cofiell Winona D	1600008119	16001 Falls Rd	5.02
186	32	Duff Elizabeth George	0520080072	2125 Benson Mill Rd	5.14
187	2	Cassidy Charles L Rusins Judith Buck ET AL	1700010075	Benson Mill Rd	5.15

188	21	Vinzant Malcolm Graham 3rd Vinzant Jean Marie	1600012190	16326 Yeoho Rd	5.21
189	125	Robinson Catherine H	0514010230	2012 Far Out Ln	5.42
190	281	Alterwitz Steven A Alterwitz Jennifer R	0501033100	2317 Stringtown Rd	5.43
191	233	Lohse Henry Arnold Lohse Isolde	1600008050	15909 Falls Rd	5.43
192	104	Rongione David M Rongione Sarah J	0513014500	2002 Farout Ln	5.45
193	149	Elliott C Gregory	2500010020	Falls Rd	5.52
194	20	Franco Joseph 3rd Franco Donna Maria	2200015930	16334 Yeoho Rd	5.66
195	263	Basignani Marilyn E Basignani Bertero L Trustees	0519007228	Falls Rd	5.87
196	82	Zavodny Richard J Zavodny Christine M	1800002902	15915 Falls Rd	5.92
197	140	Kaszak Karen H Kaszak Joseph M THIS IS DUPLICATED FOR #141	1600006489	15819 Yeoho Rd	5.97
198	141	Kaszak Karen H Kaszak Joseph M THIS IS DUPLICATED FOR #140	1600006489	15819 Yeoho Rd	5.97
199	251	Oler Robert W Oler Tara B	2300008221	15917 Falls Rd	6.12
200	126	Flying J Ranch LLC	0502020482	Wsr Yeoho R Rer 2700 Ft 5200 Nw Stringtown Rd	6.34
201	53	Bowden Timothy Richard Bowden Monica Eng	1600012193	2210 Traceys Rd	6.49
202	264	O'Brien Darren P Chalmers Tracy A	2200026656	15906 Falls Rd	6.54
203	97	Zelinsky John P Zelinsky Elizabeth A	0511035210	2021 Abell Ln	6.60
204	179	Garner Anthony V Garner Dina M	2100010852	15721 Yeoho Rd	6.68
205	275	Watriss Paula Trustee	0501089060	15710 Falls Rd	6.98
206	92	Currey Charles B Currey Carol A	2400001690	2112 Abell Ln	7.41
207	127	Vinatier Julie Graham Christopher Mitchell	2000001122	1926 Stringtown Rd	7.58
208	169	Huber Nancy Vinroe	1800000378	15751 Duncan Hill Rd	7.69
209	194	Hollock Stephen Hollock Sommer	2400001321	2119 Stringtown Rd	7.83
210	270	Basignani Bertero L Basignani Lawrence B	0506020360	15734 Falls Rd	7.85
211	185	Mabell LLC	0505061100	15615 Falls Rd	8.30
212	131	Duncan Hill LLC	0508065511	Stringtown Rd	8.33
213	101	Bolt Stanley E Bolt Wanda C	0502057490	1916 Akehurst Rd	8.52
214	216	Bond Frank	2300010210	Yeoho Rd	8.68
215	74	Hagerty Ann F Boyce John C G Jr	2400005082	16214 Yeoho Rd	8.68
216	231	Gerstmyer W Randall Gerstmyer Nancy J	2300004305	2823 Benson Mill Rd	8.83
217	121	Beste Pond Farm LLC	0502020483	Ses Yeoho R 2000ft NW Stringtown Rd	9.49
218	81	Bramwell Samuel McClure Curran Trisha Lynn	0508065470	2801 Benson Mill Rd	10.12
219	6	Safi Elizabeth Clark Safi Faiz	0506000101	2411 Benson Mill Rd	10.31
220	52	Schweizer Cheryl H	1600012194	2212 Traceys Rd	10.44
221	279	Harrison Michael J Harrison Ann Elizabeth THIS IS DUPLICATED FOR #280	1700008579	3016 Black Rock Rd	10.46
222	280	Harrison Michael J Harrison Ann Elizabeth THIS IS DUPLICATED FOR #279	1700008579	3016 Black Rock Rd	10.46
223	232	Bristor Charles Edwin Trustee	2100008219	2825 Benson Mill Rd	10.82
224	162	Hocheder John Boehm	0508065460	1901 Stringtown Rd	10.92
225	245	Lee Dorothy R	0512020175	15928 Falls Rd	11.30
226	268	Harrison Michael J Harrison Ann Elizabeth	1600002064	15730 Falls Rd	11.54
227	161	Schneider Edna M	0508000375	1903 Stringtown Rd	12.44
228	225	Hoover Brinton H Hoover Linda H	0508065520	16211 Falls Rd	12.63
229	272	Basignani Marilyn E Basignani Bertero L Trustees	1800004835	15722 Falls Rd	14.51
230	83	Ligeti LLC	2500013256	Falls Rd	15.06

231	187	Palmer Preservation LLC	1600014635	15603 Falls Rd	16.00
232	95	Beste Pond Farm LLC	0502020480	1940 Akehurst Rd	16.09
233	181	Green Daniel H Sobel Tamara S	2000007542	15709 Yeoho Rd	16.44
234	259	Menchey Calvin Ross Menchey Margaret M	2500012244	Falls Rd	16.49
235	214	Schneider Edna M	0508000377	Duncan Hill Rd	17.00
236	115	Elliott Roger L Elliott Margaret T	1800014042	15817 Falls Rd	17.45
237	122	Levenson Judith R Trustee THIS IS DUPLICATED FOR #123	0514010231	2007 Far Out Ln	18.02
238	123	Levenson Judith R Trustee THIS IS DUPLICATED FOR #122	0514010231	2007 Far Out Ln	18.02
239	86	Waller Sallee M	1800014921	15813 Falls Rd	20.04
240	168	Velez Francis J	2500010539	15801 Duncan Hill Rd	20.17
241	64	Wirtz Vernon W Jr	0523050575	Yeoho Rd	20.35
242	142	Hershfield Jonathan M Hershfield Shannon L	1600006269	Yeoho Rd	20.76
243	265	Basignani Marilyn E Basignani Bertero L Trustees	1600002067	15722 Falls Rd	20.97
244	85	Eichorn Emil Eichorn Helen K	1600008079	Falls Rd	21.51
245	113	Menchey Calvin Ross Menchey Margaret M	2500012245	Falls Rd	23.29
246	192	Irwin David J Irwin Lynn A	1900014561	Stringtown Rd	25.43
247	229	Dixon Miriam	2300003011	2724 Benson Mill Rd	27.60
248	94	Mabell LLC	0504065050	2221 Abell Ln	28.40
249	219	Hoover Lydia P Trustee	2000005053	Falls Rd	30.14
250	114	Elliott Roger L	1600005049	15815 Falls Rd	33.83
251	48	Bart Polly T	0507015240	16626 Cedar Grove Rd	34.13
252	49	Hall Samuel F Hall Donald R	0508000575	16600 Cedar Grove Rd	34.36
253	51	Kees Family LLC	0502035027	2318 Traceys Rd	34.56
254	213	Schneider Edna M	0508000376	Duncan Hill Rd	35.25
255	166	McCleary Thomas	2400002234	15650 Duncan Hill Rd	37.78
256	150	Waller Sallie M	1600005048	Falls Rd	39.34
257	188	Curtmill LLC	2200022135	Falls Rd	40.25
258	276	Black Rock Group LLC THIS IS DUPLICATED FOR #277	1900014287	15630 Falls Rd	41.55
259	277	Black Rock Group LLC THIS IS DUPLICATED FOR #276	1900014287	15630 Falls Rd	41.55
260	57	Roberts Michelle S	0523050577	2311 Traceys Rd	41.81
261	153	Mabell LLC	0512000191	Yeoho Rd	45.24
262	227	Gemmill Mary C Etal Fisher Michael Gemmill	0507015210	2808 Benson Mill Rd	46.71
263	155	Irwin David J Irwin Lynn A	0514010050	2030 Stringtown Rd	46.77
264	269	Willowdale Farm Associates	1600002066	Black Rock Rd	54.30
265	116	Lbf Butler LLC	0506020225	Falls Rd	57.00
266	87	Curtmill LLC	1800014043	Falls Rd	63.39
267	77	McHugh Stacey Noakes McHugh Robert R	0514065210	16213 Yeoho Rd	68.09
268	90	Kees Family LLC	0511015330	2323 Traceys Rd	68.38
269	217	Bond Shelda Trustee Bond Frank Trustee	2000006845	1540 Belfast Rd	69.89
270	3	Cassidy Charles L Rusins Judith Buck ET AL	1700010074	Yeoho Rd	74.79
271	154	Elberfeld Harrold Talley Elberfeld Sherry M	0512000190	2121 Akehurst Rd	75.81
272	44	Cold Bottom Farms Inc	0523050450	2111 Benson Mill Rd	77.70
273	223	Wolfe Linda M	2200002045	3103 Benson Mill Rd	92.48
274	218	Hoover Lydia P Trustee	0514040075	Falls Rd	93.68
275	109	Stringtown Road LLC	2300007179	16028 Yeoho Rd	96.94

276	186	Palmer Preservation LLC	0516000610	15603 Falls Rd	105.22
277	79	Goetze Spaulding A Goetze Cynthia B	1900009023	1522 Cold Bottom Rd	109.66
278	50	Curtmill LLC	2300003012	2725 Benson Mill Rd	113.85
279	215	Harvest Investment Group LLC	2400002285	15651 Duncan Hill Rd	130.94
280	189	Montague Alex Montague Caroline	2000009394	2234 Stringtown Rd	139.43
281	78	Thomas F McMullan Iii Revocable Trust	2100003875	1620 Cold Bottom Rd	146.65

Protestant's # 10



Protestant exhibit 12

#24: 16310 Yeoho Rd. 4.15 acres

Protestant exhibit 14

#212: 2009 Stringtown Rd. 2.35 acres

Protestant exhibit 17

#281: 2317 Stringtown Rd. 5.43 acres

Protestant exhibit 19

#275: 15710 Falls Rd. 6.98 acres

Board of Appeals

Case No: 15-235 Case Name: CATHERINE H. ROBINSON

Exhibit List

Party: Protestant Date: 4-19-16

Exhibit No:	Description:
✓ 1	MAP
KC 4/19/16 ✓ 2	Marked up Site Plan (Replica of Petitioner's exhibit)
✓ 3	4/ Photos 14, 32, 34, 33, 31, 42, 1, 20
✓ 4	aerial Photograph "My Neighborhood Map" showing the ~~suject~~ subject property (125) ~~Marked by~~ admitted 4-20-16 ~~Not Entered~~
4-20 ✓ 5	Protestant Exhibit 5 - My Neighborhood Map printed 4/14/2016
4-20 ✓ 6	My Neighborhood Map aerial view of 1916 akehurst Rd dated 4-1-2016
4-20 ✓ 7	My Neighborhood Map. 1940 akehurst Rd (Krause) dated 4-1-2016
4-20 ✓ 8	photographs of Krousehouse, Road (8-1) (8-2)
4-20 ✓ 9	Table Identifying Each parcel by number ~~ster~~ associated with Protestant Exhibit 4 Sorted by Acerage
4-20 ✓ 10	My neighborhood Map dated 4/14/2016 [exhibit 5] marked as in Orange as definition of neighborhood
4-20 ✓ 11	#24 My neighborhood Map dated 4-1-2016 showing 16310 Yeoho Road
4-20 ✓ 12	Photograph of #24 16310 Yeoho Road
KC 4/21/16	VERIFIED BY _____ DATE: _____

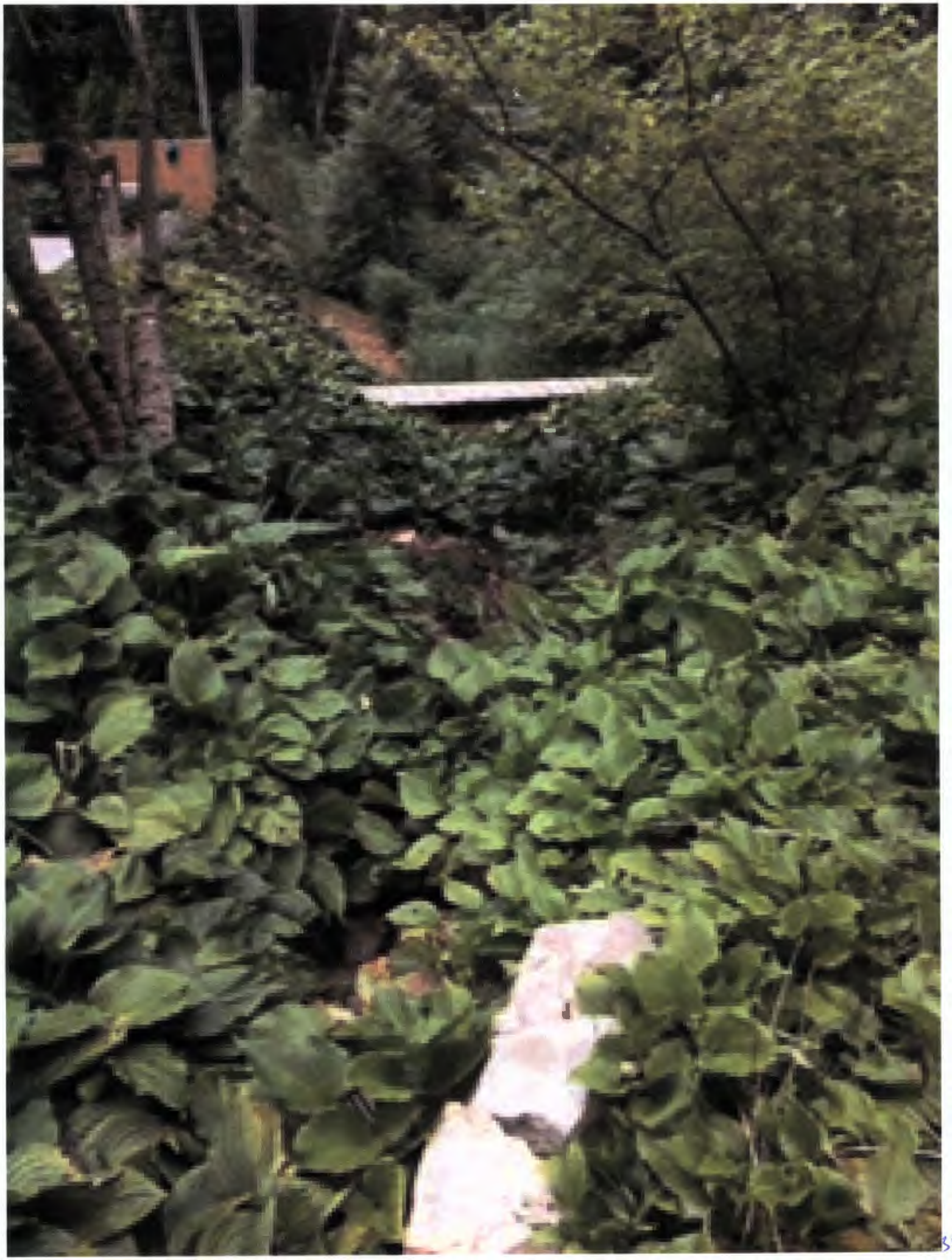
Board of Appeals

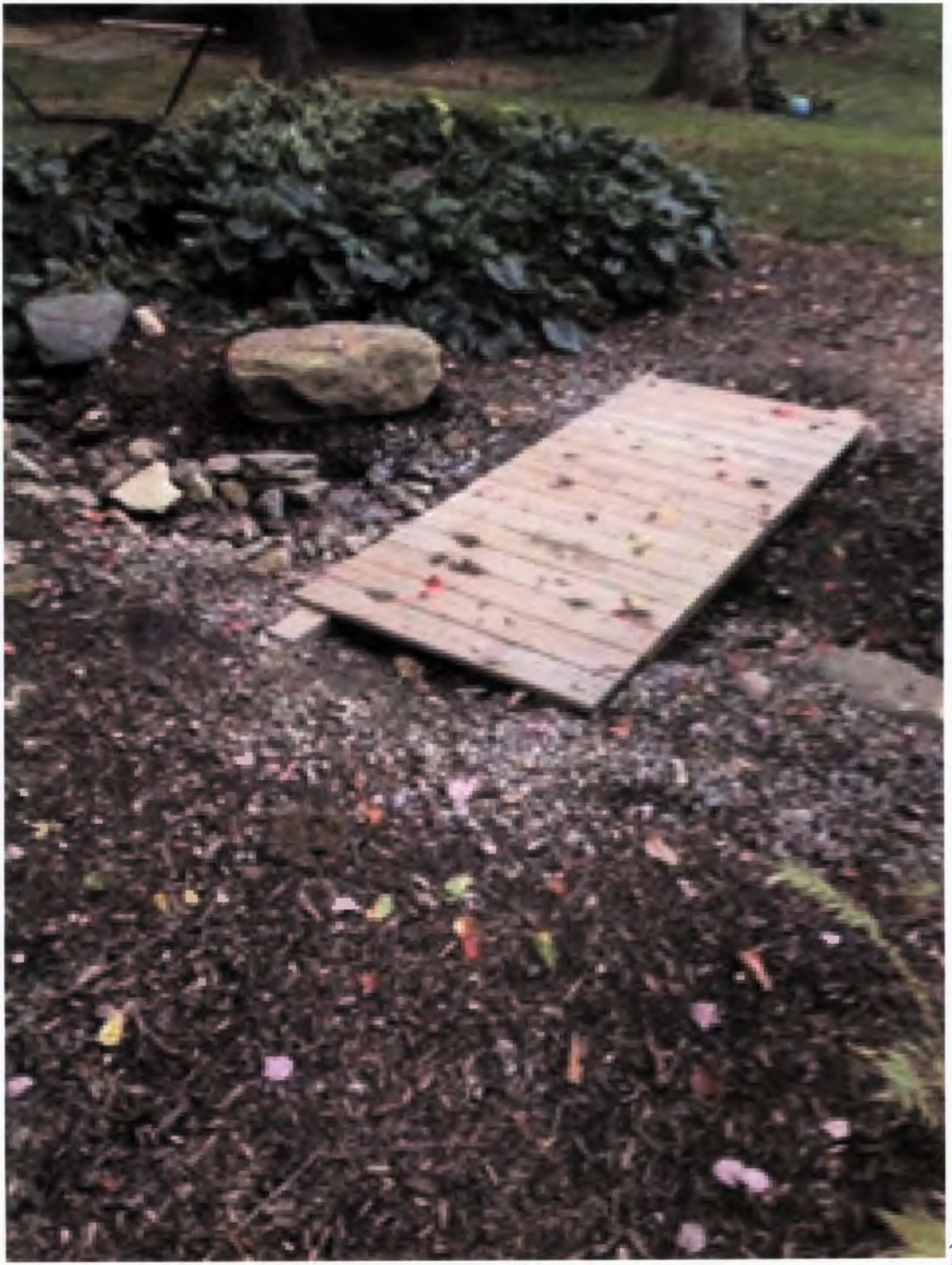
Case No: 15-235 Case Name: CATHERINE ROBINSON

Exhibit List

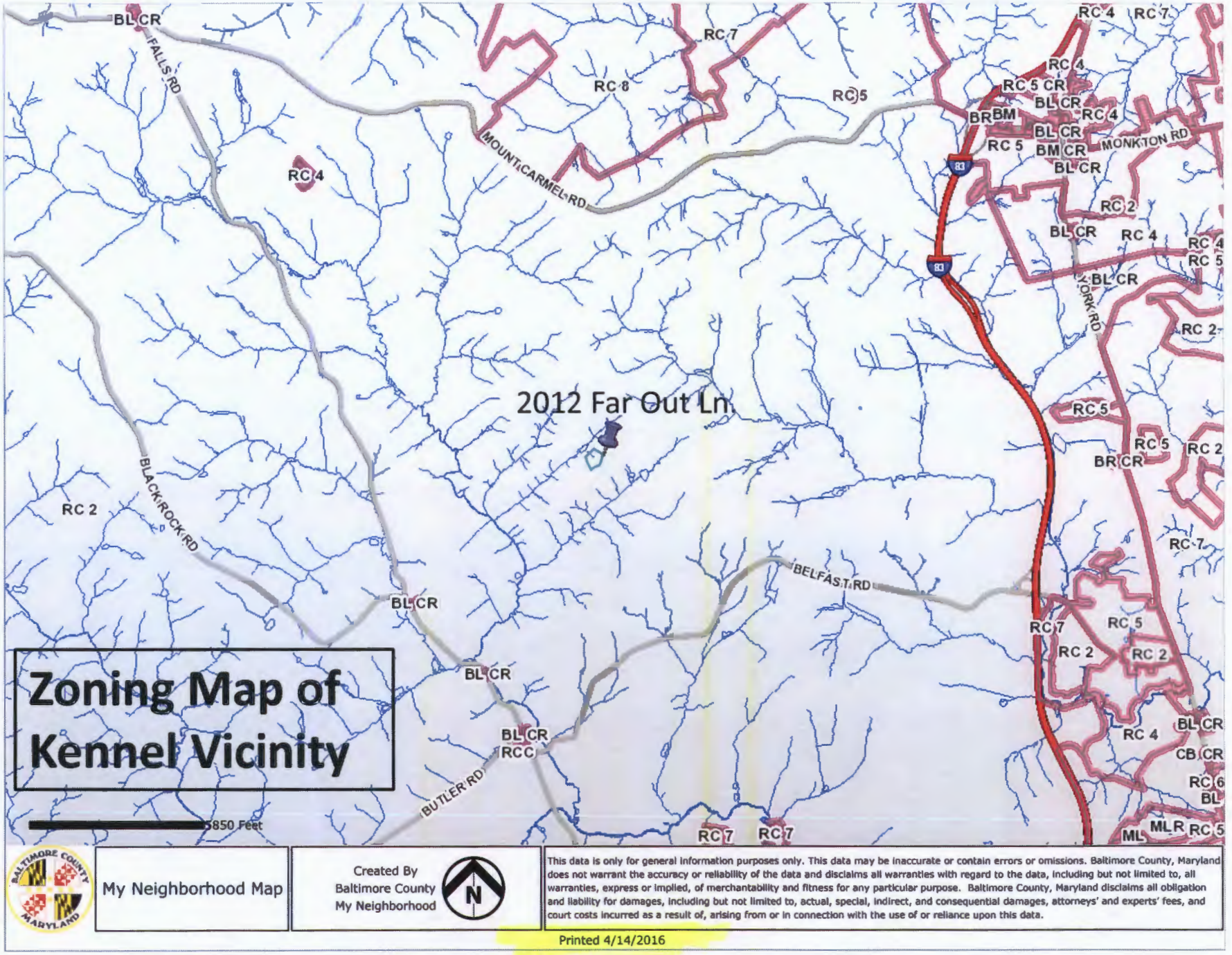
Party: Protestant Date: 4-20-2016

Exhibit No:	Description:
✓ 13	My Neighborhood Map date 4-1-2016 (#212) 2009 Stringtown Road
✓ 14	photograph (212) 2009 Stringtown Road (
✓ 15	My Neighborhood Map (212) 2009 Stringtown Road AND (281) 2317 Stringtown Road (Map dated 4-2-2016)
✓ 16	My Neighborhood (281) dated April, 2016 2317 Stringtown Road
✓ 17	photograph of 2317 Stringtown Road
✓ 18	My Neighborhood Map date 4-1-2016 #275 15710 Falls Road
✓ 19	Photographs (3) of #275 15710 Falls Road
✓ 20	My neighborhood Map dated 4/1/2016 #277 15630 Falls Road
✓ 21	Table identifying each Map parcel by number/ sorted by parcel Number
✓ 22	Marked Site Plan - marked in Colors
✓ 23	Chart that shows the distance from Subject Property to Neighboring Parcels
	VERIFIED BY RC DATE: 4/21/16





Protestant Exhibit 5



Protestant exhibit 8 - 182

8-1

#95: 1940 Akehurst Rd. 16.09 acres

#95: 1940 Akehurst Rd. 16.09 acres

Protestant Exhibit 21

Table Identifying Each Map Parcel by Number – Sorted by Parcel Number

(Numbered Parcel Map is 2.69 miles x 1.81 miles = 4.88 square miles)

#	Owner	TAX ID NUMBER	Address	Acres
1	Sheran D Smith Inter Vivos Trust	2300003014	16301 Dubbs Rd	3.49
2	Cassidy Charles L Rusins Judith Buck ET AL	1700010075	Benson Mill Rd	5.15
3	Cassidy Charles L Rusins Judith Buck ET AL	1700010074	Yeoho Rd	74.79
4	Steckel Luke	2300003015	Benson Mill Rd	0.47
5	Dixon Ruth Miriam	0504035085	2501 Benson Mill Rd	1.00
6	Safi Elizabeth Clark Safi Faiz	0506000101	2411 Benson Mill Rd	10.31
7	Morrill Todd L Morrill Karen C	1600002446	2407 Benson Mill Rd	2.98
8	Morrill Todd L Morrill Karen C	2500002492	2401 Benson Mill Rd	2.50
9	McNamara Micael Thomas McNamara Margaret B	2400012377	2335 Benson Mill Rd	1.30
10	Krayenvenger Jeffrey D Kravenvenger Natalie K	0523015280	2325 Benson Mill Rd	1.25
11	McNelis Niall McNellis Rebecca	0506020100	2321 Benson Mill Rd	0.71
12	Tucker Saint George Brooke Tucker Pamela H	2500002493	2403 Benson Mill Rd	3.00
13	Decker William T Decker Susan E	2400012378	2333 Benson Mill Rd	2.57
14	Corson Jay Kenneth	1700001391	2315 Benson Mill Rd	1.15
15	Franceschi Kristin Helena Ranum Franceschi Harve Julien	1600009594	2313 Benson Mill Rd	3.84 5.00
16	Tarsel Emily	0505088035	2314 Benson Mill Rd	1.27
17	Cassidy Charles L Cassidy Janet A	0503000490	16410 Yeoho Rd	1.80
18	Foster Richard M	0514010210	2312 Benson Mill Rd	0.92
19	Kamps Jack G Jr Kamps Elizabeth B	2200013999	16400 Yeoho Rd	2.50
20	Franco Joseph 3rd Franco Donna Maria	2200015930	16334 Yeoho Rd	5.66
21	Vinzant Malcolm Graham 3rd Vinzant Jean Marie	1600012190	16326 Yeoho Rd	5.21
22	Kamps Harriet E	1600008198	16405 Yeoho Rd	4.57
23	Taylor William R Taylor Susan G	1600012189	16322 Yeoho Rd	2.72
24	Joan Lefaivre LLC	1600012191	16310 Yeoho Rd	4.15
25	Varner Hugh H Varner Ruth E	2000010988	2220 Benson Mill Rd	2.56
26	Chenoweth George Edward III Chenoweth Emily Ann	1800012039	2210 Benson Mill Rd	2.86
27	Bartenfelder Steven E Bartenfelder Leslie	2200015936	2205 Benson Mill Rd	2.69
28	Buckwalter H Scott	1600012188	16316 Yeoho Rd	2.77
29	Simon Dennis Simon Paula A	1600012187	16312 Yeoho Rd	2.75
30	Gardner Wayne T Gardner Judith T	2200017932	2201 Benson Mill Rd	1.74
31	Hackler Lester W	0520066300	2200 Benson Mill Rd	1.00
32	Duff Elizabeth George	0520080072	2125 Benson Mill Rd	5.14
33	Watriss Paula Trustee	0505061075	16329 Yeoho Rd	2.00
34	Garrett Donald A Garrett Janet W	0507000200	16321 Yeoho Rd	0.80
35	Ogburn Vivian J	0523050860	16317 Yeoho Rd	0.48
36	Zepp Gregory A Zepp Glenda L	0504066110	16313 Yeoho Rd	0.49
37	DeVille Eric Allan Arthur-William Ellis Richard	0504020160	16309 Yeoho Rd	0.78
38	Bell Dorothea H	0508001050	16307 Yeoho Rd	0.46
39	Diven Robert B Diven Diane H	0508065580	16303 Yeoho Rd	0.47
40	Ensor Charles E Jr Ensor Mary Ann	2200022129	2119 Benson Mill Rd	4.39
41	Fitchett F Maxine Mays Lisa B	1700013152	2105 Benson Mill Rd	2.00
42	McKee David Hunter McKee Carol F	1700013153	2101 Benson Mill Rd	2.00
43	McKee David Hunter McKee Carol F	2200009419	Benson Mill Rd	1.70
44	Cold Bottom Farms Inc	0523050450	2111 Benson Mill Rd	77.70

45	?	2500001571	Conservation Easement	?
46	Moyer Constantina	2500001572	16315 Yeoho Rd	1.00
47	?	2500001573	Conservation Easement	?
48	Bart Polly T	0507015240	16626 Cedar Grove Rd	34.13
49	Hall Samuel F Hall Donald R	0508000575	16600 Cedar Grove Rd	34.36
50	Curtmill LLC	2300003012	2725 Benson Mill Rd	113.85
51	Kees Family LLC	0502035027	2318 Traceys Rd	34.56
52	Schweizer Cheryl H	1600012194	2212 Traceys Rd	10.44
53	Bowden Timothy Richard Bowden Monica Eng	1600012193	2210 Traceys Rd	6.49
54	Lee Sang K Lee Youn	2400003125	2218 Traceys Rd	1.13
55	Evans Joseph L Pray Nedda	1600012195	2224 Traceys Rd	2.66
56	Daily Gregory Daily Sharon	2400003124	2220 Traceys Rd	2.10
57	Roberts Michelle S	0523050577	2311 Traceys Rd	41.81
58	DiPasquale Santo DiPasquale Lisa	2400002421	2217 Traceys Rd	1.37
59	Harold George E Harold Carolyn F	0508001290	2206 Traceys Rd	0.68
60	Harold George E Harold Carolyn F	0508001291	Yeoho Rd	0.60
61	Coverdale Joseph H Coverdale Mary L	0520080054	2200 Traceys Rd	1.00
62	Kelley Tawanna Y Kelley Sean V	1600012192	16308 Yeoho Rd	3.73
63	Kincaid James I Kincaid Elizabeth R	2000007059	2130 Traceys Rd	2.61
64	Wirtz Vernon W Jr	0523050575	Yeoho Rd	20.35
65	?	?	?	?
66	Wirtz Vernon Willis Jr Wirtz Susan E Twigg	2000007060	2100 Traceys Rd	2.76
67	Payami Sepideh	0523050576	2121 Traceys Rd	1.72
68	Walker Andrea E Walker Chris	0508030585	16301 Yeoho Rd	0.735
69	Vasold Barrett M Vasold Genie K	2400001259	16234 Yeoho Rd	2.30
70	Wirtz Mary Pearl	0523050578	Yeoho Rd	1.93
71	Wirtz Mary Pearl	0523050700	16226 Yeoho Rd	1.67
72	Shoul Thomas Shoul Winifred B	0519032630	16220 Yeoho Rd	2.38
73	Boyce John C G Jr	0502020025	16214 Yeoho Rd	4.00
74	Hagerty Ann F Boyce John C G Jr	2400005082	16214 Yeoho Rd	8.68
75	Benzak Michael J Benzak Whitney C	0501033076	16206 Yeoho Rd	1.00
76	Karwacki Rodger S Karwacki Karen M	2000000149	16200 Yeoho Rd	1.52
77	McHugh Stacey Noakes McHugh Robert R	0514065210	16213 Yeoho Rd	68.09
78	Thomas F McMullan Iii Revocable Trust	2100003875	1620 Cold Bottom Rd	146.65
79	Goetze Spaulding A Goetze Cynthia B	1900009023	1522 Cold Bottom Rd	109.66
80	Baltimore Gas & Electric Co	0502000666	Benson Mill Rd	1.50
81	Bramwell Samuel McClure Curran Trisha Lynn	0508065470	2801 Benson Mill Rd	10.12
82	Zavodny Richard J Zavodny Christine M	1800002902	15915 Falls Rd	5.92
83	Ligeti LLC	2500013256	Falls Rd	15.06
84	?	"Not Located"	?	?
85	Eichorn Emil Eichorn Helen K	1600008079	Falls Rd	21.51
86	Waller Sallee M	1800014921	15813 Falls Rd	20.04
87	Curtmill LLC	1800014043	Falls Rd	63.39
88	Kees Sherry	1700005110	Traceys Rd	0.03
89	Kees Family LLC	0511015331	2323 Traceys Rd	2.52
90	Kees Family LLC	0511015330	2323 Traceys Rd	68.38
91	Price Rustin E Price Deborah A	2000014697	2315 Traceys Rd	1.00
92	Currey Charles B Currey Carol A	2400001690	2112 Abell Ln	7.41
93	Waas Erich P	2400001691	2114 Abell Ln	2.34

94	Mabell LLC	0504065050	2221 Abell Ln	28.40
95	Beste Pond Farm LLC	0502020480	1940 Akehurst Rd	16.09
96	Conanan Orlando B Conanan Bella D	2000000150	16120 Yeoho Rd	4.64
97	Zelinsky John P Zelinsky Elizabeth A	0511035210	2021 Abell Ln	6.60
98	Strucko Robert Strucko Debra M	1700004026	2011 Abell Ln	2.00
99	Capozzi Daniel J 3rd Capozzi Joanne C	0519007320	16116 Yeoho Rd	3.03
100	Mansfield Thomas S Mansfield Deborah Beste	1900011515	1936 Akehurst Rd	4.00
101	Bolt Stanley E Bolt Wanda C	0502057490	1916 Akehurst Rd	8.52
102	Bolt Stanley E Bolt Wanda C	0502057491	Akehurst Rd	3.99
103	Lewis H Thomas Lewis Darlene M	2200007505	16102 Yeoho Rd	1.92
104	Rongione David M Rongione Sarah J	0513014500	2002 Farout Ln	5.45
105	Cornell Anne Lundvall	2300008592	2000 Far Out Ln	2.06
106	Atticks Kevin Michael Atticks Andrea Hirsch	2300008593	1950 Far Out Ln	1.33
107	Offutt J Frederick C Jr Offutt Roberta E	2100004534	Akehurst Rd	1.82
108	Mayo George 6th Mowell-Mayo Mary Jane	2100004533	16060 Yeoho Rd	2.38
109	Stringtown Road LLC	2300007179	16028 Yeoho Rd	96.94
110	Blaumanis Otis Rudolph	0502047120	16201 Yeoho Rd	1.99
111	Walker Bradford L	2200007506	16106 Yeoho Rd	0.82
112	Stevens Lois A Trustee	2400001383	16110 Yeoho Rd	2.53
113	Menchey Calvin Ross Menchey Margaret M	2500012245	Falls Rd	23.29
114	Elliott Roger L	1600005049	15815 Falls Rd	33.83
115	Elliott Roger L Elliott Margaret T	1800014042	15817 Falls Rd	17.45
116	Lbf Butler LLC	0506020225	Falls Rd	57.00
117	Danielczyk Steven C Danielczyk Maria D	2200028633	2207 Abell Ln	3.00
118	Currey Shane B Currey Jennifer M Trustees	0516090060	2201 Abell Ln	1.70
119	Albrecht Matthew G Kaszak Ashley N	0502065380	2135 Abell Ln	1.38
120	?	?	?	?
121	Beste Pond Farm LLC	0502020483	Ses Yeoho Rd 2000ft Nw Stringtown Rd	9.49
122	Levenson Judith R Trustee THIS IS DUPLICATED FOR #123	0514010231	2007 Far Out Ln	18.02
123	Levenson Judith R Trustee THIS IS DUPLICATED FOR #122	0514010231	2007 Far Out Ln	18.02
124	Elberfeld Sherry M	0505061320	2101 Far Out Ln	5.00
125	Robinson Catherine H	0514010230	2012 Far Out Ln	5.42
126	Flying J Ranch LLC	0502020482	Wsr Yeoho R Rer 2700 Ft 5200 Nw Stringtown Rd	6.34
127	Vinatier Julie Graham Christopher Mitchell	2000001122	1926 Stringtown Rd	7.58
128	Stouffer Laura A	0518047280	1810 Stringtown Rd	1.72
129	Fox Michael B Grover Kimberly A	0502085590	1806 Stringtown Rd	2.62
130	Grunwell Nancy Marie Grunwell Marshall A	0516000345	1800 Stringtown Rd	1.10
131	Duncan Hill LLC	0508065511	Stringtown Rd	8.33
132	Velez Francis J Velez Roseann	2500012163	Stringtown Rd	3.90
133	Velez Francis J Velez Roseann	2500012162	Stringtown Rd	1.68
134	Lamb Bruce Christopher Trustee	0812001700	1641 Cold Bottom Rd	1.52
135	Lamb Bruce Christopher Trustee	2500009011	13835 Yeoho Rd	1.76
136	Burke Tommy D Burke Barbara A	1600009844	15827 Yeoho Rd	2.10

137	Sampson Adam Sampson Katherine	2300012378	15825 Yeoho Rd	1.77
138	Schofield Russell P Schofield Tina M	2400009180	15823 Yeoho Rd	3.08
139	Jupitz Steven R Webb Erin	2400009181	15821 Yeoho Rd	3.08
140	Kaszak Karen H Kaszak Joseph M THIS IS DUPLICATED FOR #141	1600006489	15819 Yeoho Rd	5.97
141	Kaszak Karen H Kaszak Joseph M THIS IS DUPLICATED FOR #140	1600006489	15819 Yeoho Rd	5.97
142	Hershfield Jonathan M Hershfield Shannon L	1600006269	Yeoho Rd	20.76
143	Janik Peter T Janik Deborah C	2200010710	1635 Cold Bottom Rd	1.18
144	Maynes David Maynes Raquel Foglia	2200010711	1637 Cold Bottom Rd	3.01
145	Hoover Harry A 2nd Hoover Susan	0808065026	1617 Cold Bottom Rd	4.05
146	Curtis Ethel B	0803077350	1615 Cold Bottom Rd	1.00
147	Hoover Herbert L	0808065027	1525 Cold Bottom Rd	1.33
148	Price Bryan S Sr Price Holly A Hughes	1900013555	1509 Cold Bottom Rd	2.16
149	Elliott C Gregory	2500010020	Falls Rd	5.52
150	Waller Sallie M	1600005048	Falls Rd	39.34
151	Monaco Tammie Jean	1700014428	15635 Falls Rd	3.44
152	Kremzner Mary Enns Margaret	1700014429	15633 Falls Rd	1.69
153	Mabell LLC	0512000191	Yeoho Rd	45.24
154	Elberfeld Harrold Talley Elberfeld Sherry M	0512000190	2121 Akehurst Rd	75.81
155	Irwin David J Irwin Lynn A	0514010050	2030 Stringtown Rd	46.77
156	Harvey R Dixon Jr Harvey Janet Hardie	0512040160	2004 Stringtown Rd	3.25
157	Biggs Linda	0503023300	2007 Stringtown Rd	1.80
158	Schwab David M	0507058490	1928 Stringtown Rd	4.29
159	Byers Bradley S Phillips Mary Carol	0512020025	2001 Stringtown Rd	1.56
160	Gunder Frederick E Gunder Shirley Patricia	2000001121	1926a Stringtown Rd	3.15
161	Schneider Edna M	0508000375	1903 Stringtown Rd	12.44
162	Hocheder John Boehm	0508065460	1901 Stringtown Rd	10.92
163	Hocheder John B	2000005073	1813 Stringtown Rd	3.63
164	Owens Diana F	0502085600	1801 Stringtown Rd	1.89
165	Madden John P Madden Janice L	2100014141	1795 Stringtown Rd	2.84
166	McCleary Thomas	2400002234	15650 Duncan Hill Rd	37.78
167	McCleary Thomas	2400002235	Duncan Hill Rd	0.86
168	Velez Francis J	2500010539	15801 Duncan Hill Rd	20.17
169	Huber Nancy Vinroe	1800000378	15751 Duncan Hill Rd	7.69
170	Travers Thomas S Jr Travers Sarah J	2500004342	15815 Yeoho Rd	4.04
171	Powell Robert L Powell Joan L	0816062200	15813 Yeoho Rd	1.68
172	Poulos David G Poulos Holly K	0819039830	15808 Yeoho Rd	1.25
173	Richardson Michael Scott	0819061530	15800 Yeoho Rd	2.38
174	Butler Louis T Brogan Theresa G	2000007547	15716 Yeoho Rd	3.16
175	Sendak Michael J Sendak Janice B	2000007546	15714 Yeoho Rd	3.82
176	Smith Mabel Louise	0819053881	15809 Yeoho Rd	0.78
177	Haun Edwin James Haun Lauren Michelle	0808081530	15807 Yeoho Rd	0.70
178	McMurtrie Bridgid A	2000007540	15801 Yeoho Rd	3.31
179	Garner Anthony V Garner Dina M	2100010852	15721 Yeoho Rd	6.68
180	Wolgamott James R Lang Henry John	2000007541	15717 Yeoho Rd	3.63
181	Green Daniel H Sobel Tamara S	2000007542	15709 Yeoho Rd	16.44
182	Giuliano Mark E Raab Cathy L	2000007545	15712 Yeoho Rd	2.56

183	Sweeney John A	2000007544	15710 Yeoho Road	2.01
184	Breidenbaugh Arnold L Jr Breidenbaugh Ellen M	1700003300	15629 Falls Rd	4.13
185	Mabell LLC	0505061100	15615 Falls Rd	8.30
186	Palmer Preservation LLC	0516000610	15603 Falls Rd	105.22
187	Palmer Preservation LLC	1600014635	15603 Falls Rd	16.00
188	Curtmill LLC	2200022135	Falls Rd	40.25
189	Montague Alex Montague Caroline	2000009394	2234 Stringtown Rd	139.43
190	Becker Peter J Becker Kathleen D	0502000460	2144 Stringtown Rd	2.13
191	Irwin David J Irwin Lynn A	0501099500	2142 Stringtown Rd	0.52
192	Irwin David J Irwin Lynn A	1900014561	Stringtown Rd	25.43
193	Johnston Shari L	0502085680	2125 Stringtown Rd	0.85
194	Hollock Stephen Hollock Sommer	2400001321	2119 Stringtown Rd	7.83
195	Marzullo Kelly M Marzullo Christopher S	2400001322	2117 Stringtown Rd	3.34
196	Ziegler David W Ziegler Sarah A	1600014697	2109 Stringtown Rd	0.14
197	Ziegler David W Ziegler Sarah A	0516000125	2109 Stringtown Rd	0.50
198	Dalgarno Bradley	0520030050	2107 Stringtown Rd	0.54
199	Fendlay Alvin M Fendlay Edna M	0506010080	2105 Stringtown Rd	0.30
200	Bolgiano John Trustee Bolgiano Patricia R Trustee	0514000153	2103 Stringtown Rd	0.33
201	Mileto Scott A Mileto Jennifer L	1700013658	2101 Stringtown Rd	0.65
202	Mahoney Annette Goodman Nicholas	0514000152	2037 Stringtown Rd	0.50
203	Pedone Michael T	2000010488	2029 Stringtown Rd	4.37
204	Franklin George C 3rd Franklin Katherine A	0516090070	2011 Stringtown Rd	4.00
205	Beasley Walter Scott	0511057075	Stringtown Rd	0.72
206	Beasley Walter Scott	0511057025	Stringtown Rd	0.18
207	Beasley Walter Scott	0511057050	2033 Stringtown Rd	1.64
208	Gencel Stephen P Gencel Joan M	2200020742	Stringtown Rd	0.21
209	Gencel Stephen P Gencel Joan M	0506060600	2035 Stringtown Rd	0.52
210	Howard Donald S Jr Howard Janice B	1600012086	15450 Duncan Hill Rd	3.01
211	Gregg William Melvin Jr Gregg Sherry Ann	1600012085	15448 Duncan Hill Rd	3.00
212	Tiralla John A Tiralla Ada	1700012424	2009 Stringtown Rd	2.35
213	Schneider Edna M	0508000376	Duncan Hill Rd	35.25
214	Schneider Edna M	0508000377	Duncan Hill Rd	17.00
215	Harvest Investment Group LLC	2400002285	15651 Duncan Hill Rd	130.94
216	Bond Frank	2300010210	Yeoho Rd	8.68
217	Bond Shelda Trustee Bond Frank Trustee	2000006845	1540 Belfast Rd	69.89
218	Hoover Lydia P Trustee	0514040075	Falls Rd	93.68
219	Hoover Lydia P Trustee	2000005053	Falls Rd	30.14
220	Wilson Jeffry J Richard Janet L	1600012506	3008 Benson Mill Rd	3.24
221	Arnold Nathan Arnold Amanda	1600012521	3006 Benson Mill Rd	3.73
222	?	?	?	?
223	Wolfe Linda M	2200002045	3103 Benson Mill Rd	92.48
224	Beck Jonathan A Cohen Donna Ann	1600012505	3000 Benson Mill Rd	2.93
225	Hoover Brinton H Hoover Linda H	0508065520	16211 Falls Rd	12.63
226	Hoover Brinton H Hoover Linda H	2200003041	Benson Mill Rd	4.77
227	Gemmill Mary C Etal Fisher Michael Gemmill	0507015210	2808 Benson Mill Rd	46.71
228	McLewee Robert W McLewee Mary E	1700007423	2810 Benson Mill Rd	3.00
229	Dixon Miriam	2300003011	2724 Benson Mill Rd	27.60
230	McCormack Keith N Reiss McCormack Randi	0502020061	Benson Mill Rd	1.17
231	Gerstmyer W Randall Gerstmyer Nancy J	2300004305	2823 Benson Mill Rd	8.83

232	Bristor Charles Edwin Trustee	2100008219	2825 Benson Mill Rd	10.82
233	Lohse Henry Arnold Lohse Isolde	1600008050	15909 Falls Rd	5.43
234	Schmid Robert J	0519071450	3003 Benson Mill Rd	4.60
235	Schmid Robert J Elder Robert J	0519071451	Falls Rd	0.21
236	Molnar George J	0519039070	16026 Falls Rd	3.22
237	Rambert Travis D Rambert Shawanda R THIS IS DUPLICATED FOR #238	2200027585	16025 Falls Rd	3.00
238	Rambert Travis D Rambert Shawanda R THIS IS DUPLICATED FOR #237	2200027585	16025 Falls Rd	3.00
239	Gurevich Robert L Sanfilippo Jo Anne	2200027584	16027 Falls Rd	4.53
240	Cofiell Walter G Cofiell Winona D	1600008119	16001 Falls Rd	5.02
241	Murphy Edward D Murphy Patricia A	0520030570	16020 Falls Rd	0.46
242	Brocato Carl Brocato Patricia	2200027629	16024 Falls Rd	1.00
243	Murphy Patricia A Thompson James David	2300007178	16016 Falls Rd	1.50
244	Murphy Patricia A Murphy Edward D	0512020210	16018 Falls Rd	2.76
245	Lee Dorothy R	0512020175	15928 Falls Rd	11.30
246	Kyger Iris P	0519090050	16012 Falls Rd	1.73
247	Bitzer Milton G Bitzer Eleanor R	0519039100	16006 Falls Rd	1.39
248	Corradetti Anthony A Corradetti Julie A	0508055190	16008 Falls Rd	1.45
249	Whitaker Edward J Whitaker Kathleen D	0523035300	16010 Falls Rd	2.21
250	Kyger Iris P	0511089010	16012 Falls Rd	1.66
251	Oler Robert W Oler Tara B	2300008221	15917 Falls Rd	6.12
252	Waller Sallie M	2500013257	Falls Rd	4.91
253	Gearhart John M Gearhart Hilda G	1700004264	Falls Rd	0.43
254	Gearhart John M Gearhart Hilda G	1700004263	15914 Falls Rd	0.56
255	Kirchner William L Kirchner Linda V	0506010110	15908 Falls Rd	3.67
256	Harris Leroy N Jr Harris Diana	2400004495	15910 Falls Rd	1.34
257	Tegeler William V Tegeler Mary J	0520025025	15920 Falls Rd	1.04
258	Arbogast Brenda Lee Arbogast David/Gill Deborah Ann	0503077050	15900 Falls Rd	4.00
259	Menchey Calvin Ross Menchey Margaret M	2500012244	Falls Rd	16.49
260	Finniss Cory Michael Mulhearn Vanessa Nicole	1600004008	15902 Falls Rd	1.45
261	O'Brien Darren Patrick O'Brien Tracy	2000000116	Falls Rd	1.46
262	Waller Sallie M	1600005047	15813 Falls Rd	1.31
263	Basignani Marilyn E Basignani Bertero L Trustees	0519007228	Falls Rd	5.87
264	O'Brien Darren P Chalmers Tracy A	2200026656	15906 Falls Rd	6.54
265	Basignani Marilyn E Basignani Bertero L Trustees	1600002067	15722 Falls Rd	20.97
266	Taylor Griffen N Basignani Marisa I	2500009755	15726 Falls Rd	1.47
267	Mentzer Benjamin D Basignani-Mentzer Elena M	2500009754	15728 Falls Rd	1.46
268	Harrison Michael J Harrison Ann Elizabeth	1600002064	15730 Falls Rd	11.54
269	Willowdale Farm Associates	1600002066	Black Rock Rd	54.30
270	Basignani Bertero L Basignani Lawrence B	0506020360	15734 Falls Rd	7.85
271	Beren Joel Jeffrey Trustee Beren Anna Irene Trustee	1800004836	15732 Falls Rd	3.00
272	Basignani Marilyn E Basignani Bertero L Trustees	1800004835	15722 Falls Rd	14.51
273	Basignani Lawrence B Basignani Heidi	2500009753	15714 Falls Rd	1.45
274	Waller Sallie M	1700008494	Falls Rd	0.40
275	Watriss Paula Trustee	0501089060	15710 Falls Rd	6.98
276	Black Rock Group LLC THIS IS DUPLICATED FOR #277	1900014287	15630 Falls Rd	41.55

277	Black Rock Group LLC THIS IS DUPLICATED FOR #276	1900014287	15630 Falls Rd	41.55
278	Stellman Peter B	1900014286	3040 Black Rock Rd	2.00
279	Harrison Michael J Harrison Ann Elizabeth THIS IS DUPLICATED FOR #280	1700008579	3016 Black Rock Rd	10.46
280	Harrison Michael J Harrison Ann Elizabeth THIS IS DUPLICATED FOR #279	1700008579	3016 Black Rock Rd	10.46
281	Alterwitz Steven A Alterwitz Jennifer R	0501033100	2317 Stringtown Rd	5.43

Protestant exhibit 23

Distances from Robinson Property (Parcel 125) to Other Neighborhood Parcels

Parcel #	Distance From Robinson Parcel	
	Feet	Miles
24	3,645	0.69
212	1,646	0.31
281	5041	0.95
275	7,294	1.38
101	823	0.16
277	7,294	1.38
95	0	0

Case No.: 2015-0235-SPHA

Exhibit Sheet

10-9-15

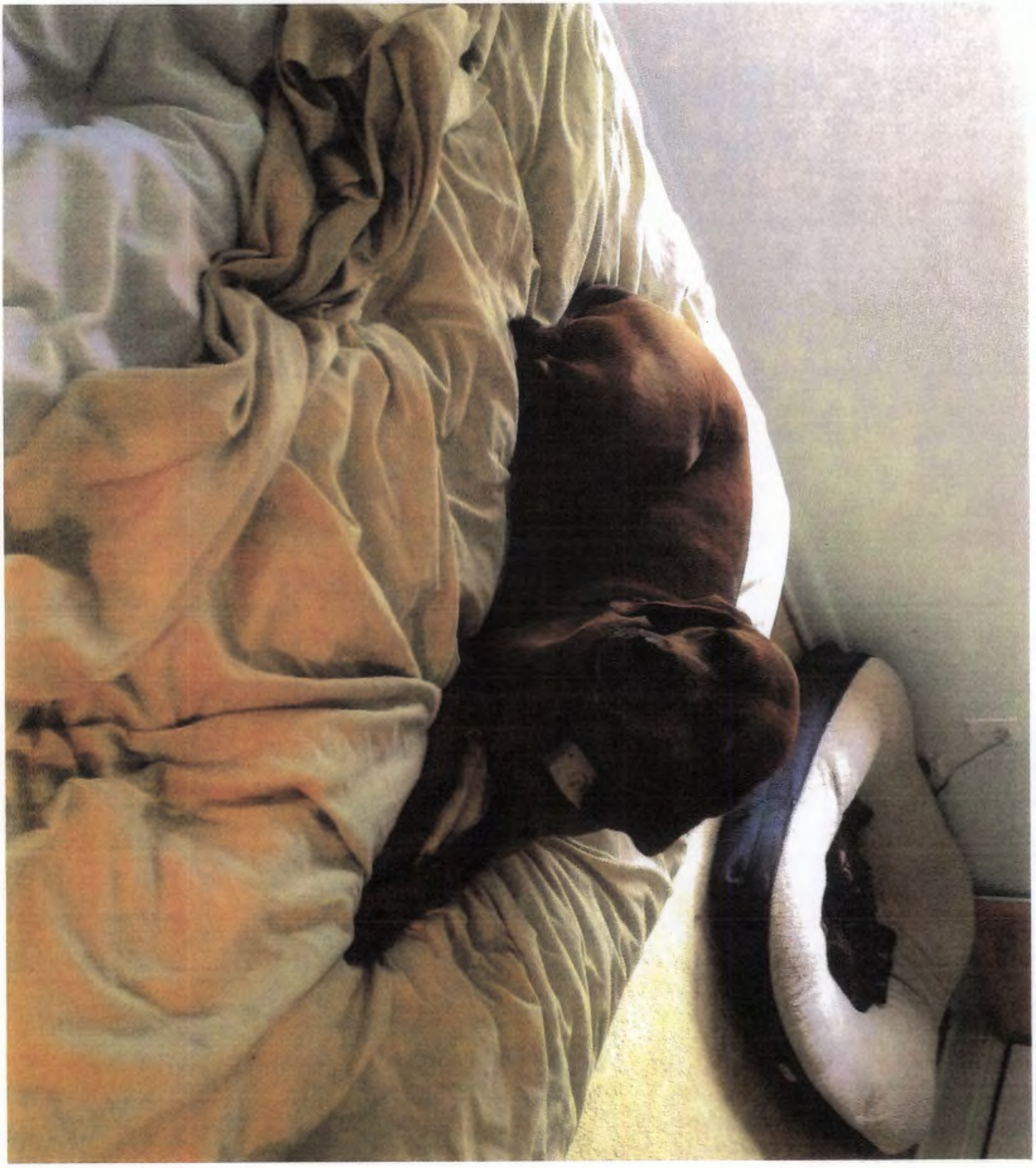
	Petitioner/Developer	Protestant
No. 1	Photos of dogs owned by Petitioner	Email from A. Krause 2-27-2015
No. 2	Site plan	Photo of dogs in "drainage way"
No. 3	Letters of support	Aerial photo w/ topo
No. 4	Photos of site	Jen Walsh E-mail 6-2-2015
No. 5	Photos showing fencing at property	Aerial photo
No. 6	2 videos of site on computer thumb drive	Aerial topo map
No. 7	Hosmer C.V.	photo of house
No. 8	Aerial photo	DVD - "Kennel Noise"
No. 9	Series of photos of "stream"	Photo - dog in stream
No. 10	COMAR section	Photo - pond
No. 11		Photo-pond
No. 12		Aerial exhibit - sample locations

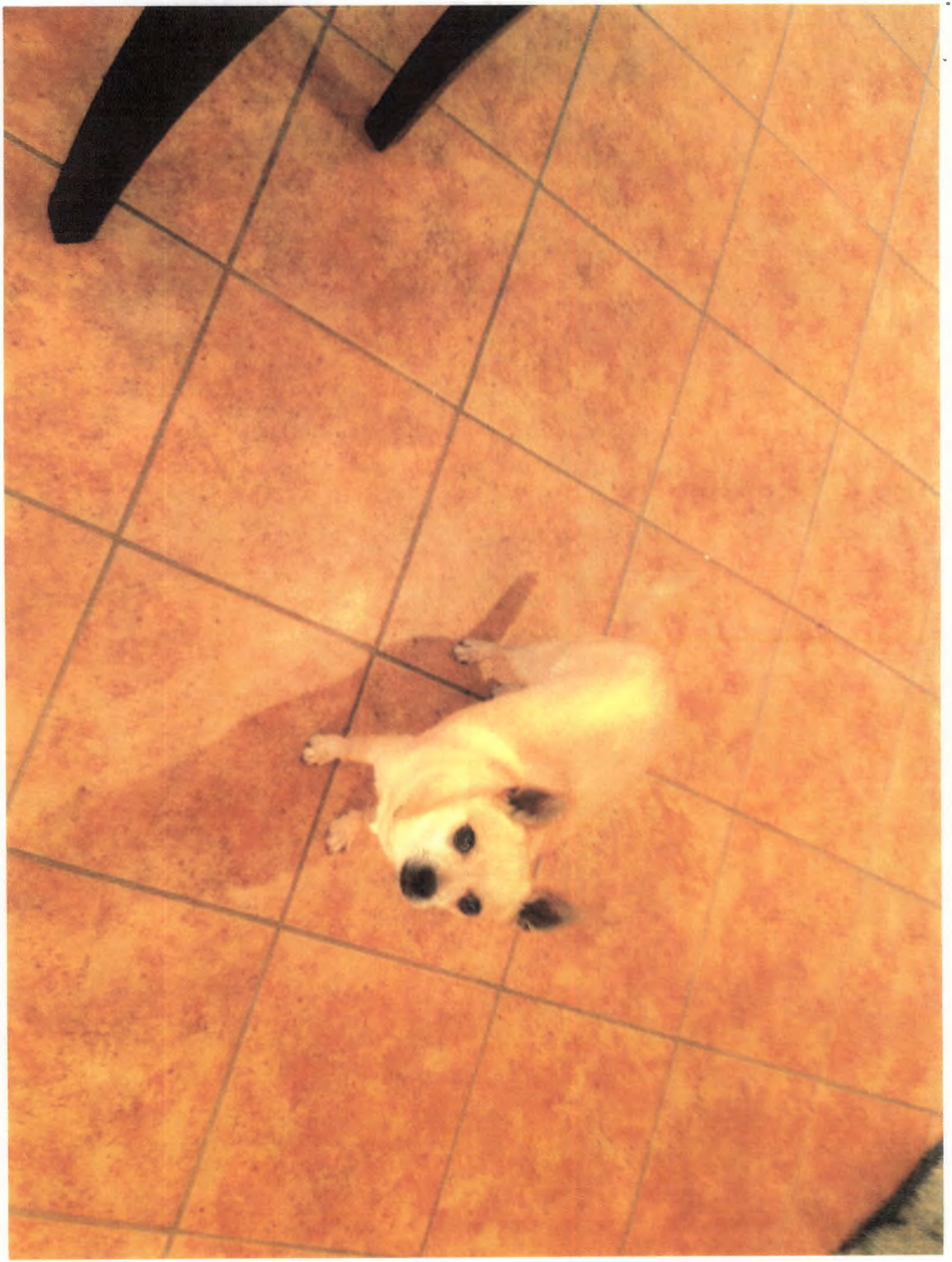
Case No.: 2015-0235-SPHA

Exhibit Sheet - Continued

	Petitioner/Developer	Protestants
No. 13		EnviroChem Lab results
No. 14		~~"Krause Property E. Coli chart"~~ not admitted
No. 15		EPA water contamination standards
No. 16		Letters from neighbors
No. 17		
No. 18		
No. 19		
No. 20		
No. 21		
No. 22		
No. 23		
No. 24		


PETITIONER'S
EXHIBIT NO. 1





August 26, 2015

To Whom It May Concern:

We are writing to support the variance request for Catherine Robinson.

We have resided on Far Out Lane since 2005, and have known Ms. Robinson since the day we moved in. She has been a supportive, responsive and kind neighbor, and has gone out of her way to assist with neighborhood issues.

Regarding Ms. Robinson's dogs, we are supportive of her request to keep her dogs. Yes, we hear them—they're dogs and they bark. We hear every dog in the neighborhood. However, Ms. Robinson has been much more responsive than other neighbors in the rare instance that the dogs cause an annoyance.

The variance request is for a kennel on the property…which, essentially, is a request for the status quo. We support Ms. Robinson's ability to maintain the number of dogs she currently owns.

Sincerely,

Kevin Atticks
1950 Far Out Lane
Sparks, MD 21152

PETITIONER'S

EXHIBIT NO. 3

Gmail by Google

Michelle Dickinson <michelle@dickinson-law.com>

Fwd:

1 message

catherinestoley@aol.com <catherinestoley@aol.com> Tue, Aug 25, 2015 at 9:16 AM
To: Michelle Dickinson <michelle@dickinson-law.com>

Sent from my iPhone

Begin forwarded message:

> **From:** Tracy Attfield <tracylore@gmail.com>
> **Date:** August 24, 2015 at 4:53:02 PM EDT
> **To:** "catherinestoley@aol.com" <catherinestoley@aol.com>
>
> To Whom It May Concern,
> For 15 years Catherine Robinson was a loyal employee of ours. Her duties included the care of multimillion dollar racehorses and overseeing the employees that cared for them. She has a very good understanding of animals and what it takes to look after them.
> Over the past 20 years, I have spent many nights at Catherine's home, visiting on my way from New York to Florida and back again. I have always brought my 6 pound terrier who is welcomed into the group of dogs and was never threatened by any of her dogs. All of her dogs are very well behaved, each sleeping in their own beds at night. They have never caused any disturbance nor have I ever heard them throughout the night.
> Because of her generosity and goodwill, many dogs that would have seen euthanized are saved and new homes have been found for them. Catherine goes above and beyond to help 'man's best friend'.
> Most Sincerely,
> Tracy L. Attfield
> President and Owner of TLore Management Services for the Thoroughbred Industry
>
> Sent from my iPad

From: **catherinestoley@aol.com**
Subject: Fwd: Sorry this is so late!!!!
Date: August 26, 2015 at 3:20 AM
To: Michelle J. Dickinson michelle@dickinson-law.com

Sent from my iPhone

Begin forwarded message:

> **From:** Rosie <arnap6905@aol.com>
> **Date:** August 25, 2015 at 10:33:06 PM EDT
> **To:** Catherine Robinson <catherinestoley@aol.com>
> **Subject: Sorry this is so late!!!!**
>
> To whom it may concern:
>
> My name is Rosie Napravnik. I would like to express my full support of Catherine "Holly"

Robinson and her dogs. I lived with Holly and her multiple dogs for over a year and in that time I have seen first hand that all of the dogs were always very well behaved and socialized. Holly has provided a secure and loving home to many dogs in need. She is a compassionate and generous person who goes above and beyond her call of duty to help animals. With the controlled and nourishing environment provided by Holly, her dogs grow into happy, secure and independent animals. The dogs have never caused any trouble for anyone but continue to thrive in under her care.

Very sincerely,

Rosie Napravnik

From: **catherinestoley@aol.com**
Subject: Fwd: Sorry this is so late!!!!
Date: August 26, 2015 at 3:20 AM
To: Michelle J. Dickinson michelle@dickinson-law.com

Sent from my iPhone

Begin forwarded message:

> **From:** Rosie <arnap6905@aol.com>
> **Date:** August 25, 2015 at 10:33:06 PM EDT
> **To:** Catherine Robinson <catherinestoley@aol.com>
> **Subject: Sorry this is so late!!!!**
>
> To whom it may concern:
>
> My name is Rosie Napravnik. I would like to express my full support of Catherine "Holly"

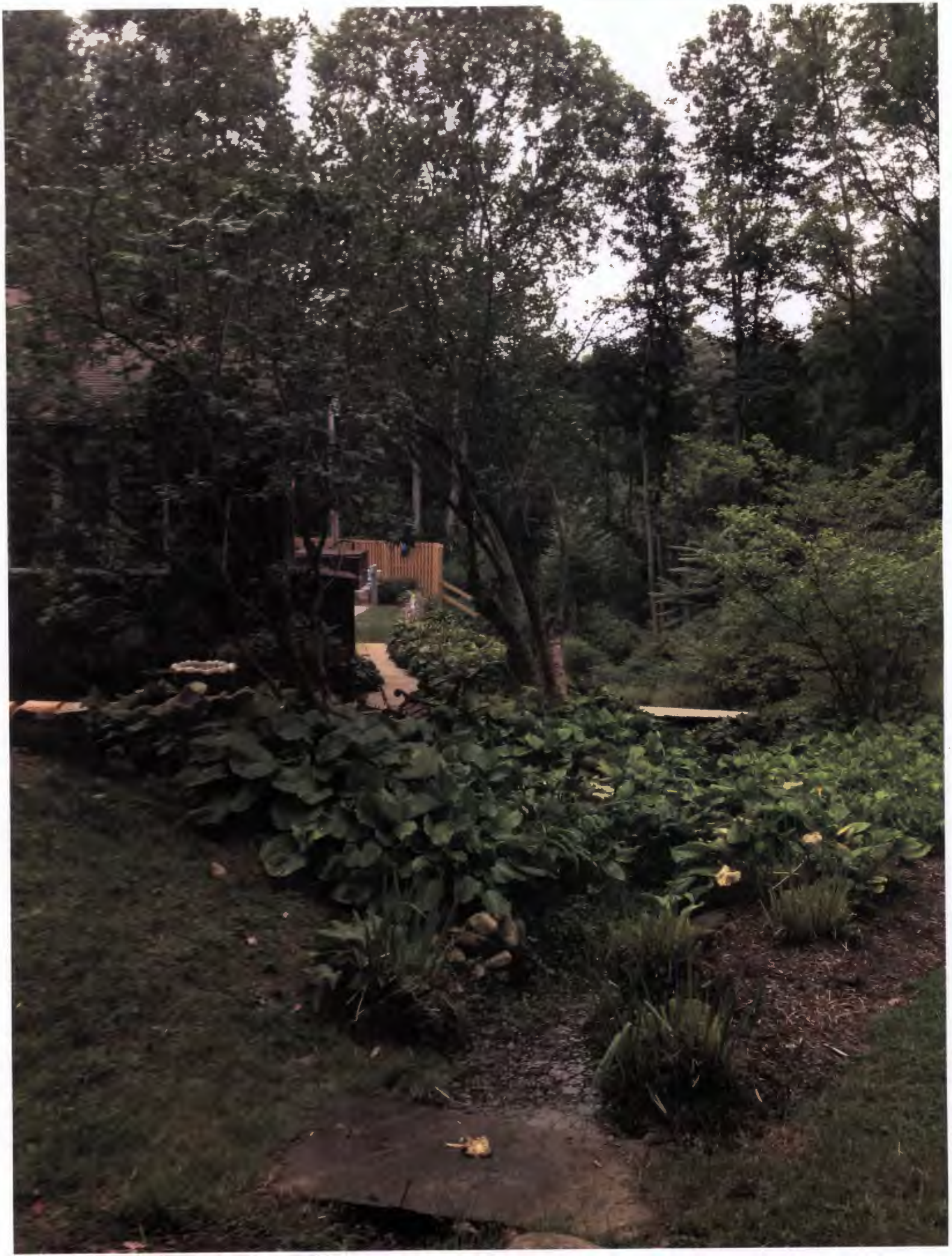
Robinson and her dogs. I lived with Holly and her multiple dogs for over a year and in that time I have seen first hand that all of the dogs were always very well behaved and socialized. Holly has provided a secure and loving home to many dogs in need. She is a compassionate and generous person who goes above and beyond her call of duty to help animals. With the controlled and nourishing environment provided by Holly, her dogs grow into happy, secure and independent animals. The dogs have never caused any trouble for anyone but continue to thrive in under her care.

Very sincerely,

Rosie Napravnik

PETITIONER'S

EXHIBIT NO. 4



PETITIONER'S

EXHIBIT NO. 5

J. Lawrence Hosmer, P.E.

Senior Partner and Consultant

Mr. Hosmer is a Senior Partner and Consultant in the ERM Annapolis, Maryland, USA office. He has served as technical staff, Project Manager or Project Director on hundreds of waste management and environmental projects across the spectrum of project types, sizes and requirements. He has 45 years of experience as a civil and geotechnical engineer and has contributed to over 300 land disposal projects, over 60 CERCLA RI/FS's and RD/RA's, and more than 20 RCRA Part B and RFI/CMS projects. His "hands-on" technical capabilities include study, design and construction control phase activities, including virtually all phases of geotechnical investigations for the mining, petrochemical, nuclear and fossil-fueled power, manufacturing, municipal and other governmental and commercial facilities.

Mr. Hosmer's career has centered on the investigation and remediation of past land disposal facilities; the site selection, study and design of new land disposal and other waste management facilities; and assistance in the negotiation of environmental permits at all levels of government. Beyond engineering and construction, Mr. Hosmer has conducted waste management planning and economic studies, waste-to-energy and landfill-gas reuse feasibility studies, and the full range of planning and engineering for wastewater sludge management. For the mining industry he has been involved in waste by-product study, design and construction for aggregate and limestone; copper, nickel and zinc; vanadium; phosphate; and coal mining operations throughout the United States providing waste pile, pond and mine closure and remediation; tailings dam design and remediation; waste rock facility design; and deep mine stability analysis and closure.

Mr. Hosmer's career has required the management of a multiplicity of highly specialized disciplines and the coordination of numerous concurrent tasks. Issues confronted have involved the mitigation of complex technical/political issues and critical management activities, achieving "fast-track" project and construction schedules, and managing routine human and financial resources on multiple projects.

Mr. Hosmer has provided expert testimony and litigation services primarily related to the study, design, closure and re-use of prior land disposal facilities. These activities have addressed regulatory issues, engineering design practice, construction techniques, performance prediction and cost estimation. Associated with these types of projects are parallel services in the evaluation of failure mechanisms for a variety of primarily geotechnical and waste management-related failures. These sites have been throughout the United States and internationally.

Professional Registrations

- Professional Engineer in the States of Maryland, New Jersey, Pennsylvania, and Virginia

Fields of Competence

- Master Planning/Siting
- Alternatives/Feasibility Studies
- Civil and Geotechnical Engineering
- Waste Management
- Conceptual and Final Design
  - Land Disposal Facilities
  - Closure and Remediation
  - Containment Systems
  - Facilities Engineering
- Construction Management
- Program Management

Credentials

- Masters of Civil/Geotechnical Engineering, University of Illinois, 1972
- Bachelors of Civil/Geotechnical Engineering, Lehigh University, 1970

Publications/Presentations

- Hosmer, J.L. "Sanitary Landfill Site Selection, Evaluation and Design." A Continuing Education Course offered by the American Public Works Association.

PETITIONER'S

EXHIBIT NO. 7

- Hosmer, J.L. "Sanitary Landfill Closure and Re-Design: A Case History," Governmental Refuse Collection and Disposal Association, 1982.
- Hosmer, J.L. "Design Considerations for Solid Waste Disposal Systems," Virginia Department of Health, Division of Solid and Hazardous Waste Management.
- Hosmer, J.L. "Advances in Sanitary Landfill Design and Technologies," Governmental Refuse Collection and Disposal Association, 1983.
- Hosmer, J.L. "Ground-Water Protection at Landfill Sites: Leachate Management System Design Consideration," Governmental Refuse Collection and Disposal Association, 1985.
- Hosmer, J.L. "The Role of the Consulting Engineer in Hazardous and Industrial Management for Municipal Government," Maryland Hazardous Waste Facilities Siting Board, 1985.
- Hosmer, J.L. "Landfill Gas Management: Landfill Gas Control Considerations," Governmental Refuse Collection and Disposal Association, 1986.
- Hosmer, J.L., L.M. Piper. "Minimization of Environmental Problems: Best Management Practices," Long Island Business Forum, 1989.
- Hosmer, J.L., J.D. Mayfield. "Evaluation of Containment Technologies as a Method for Site Remediation," Institute of Gas Technology, 1990.
- Quillen, D.S., J.M. Dant, and J.L Hosmer, P.E. "Performance-Based Landfill Liner System Design," First Annual Landfill Symposium, Solid Waste Association of North America, 1996.

Key Projects

Solid and Hazardous Waste Management

Mr. Hosmer currently serves as a Project Manager and Project Director on assignments primarily related to solid and hazardous waste management. Throughout his career, his activities have centered on the investigation and remediation of past land disposal facilities; the site selection, study and design of new land disposal and other waste management facilities; and assistance in the negotiation of environmental permits at all levels of government. Beyond engineering design, Mr. Hosmer has also conducted waste management planning and economic studies, waste-to-energy and landfill-gas reuse feasibility studies, and the full range of planning and engineering for wastewater sludge management.

Mr. Hosmer recently has been involved in multiple sites incorporating ex-situ or in-situ stabilization as a remedial technology. Two sites in North Carolina have included the conduct of investigations, treatability studies, design, and construction management for the ex-situ solidification/stabilization of metals-contaminated soils, one from electroplating sludge lagoons and another from a battery crushing and disposal operation. Both of these sites were listed on the CERCLA-NPL. Studies have also been conducted for applying this technology to the remediation of ex-situ soils at a CERCLA site in New York where the re-use concept will be a retail shopping center. In-situ applications have been explored and applied at several additional sites, including a laboratory-chemical landfill in North Carolina where in-situ volatilization will precede solidification/stabilization, a 1-acre coal-tar lagoon in Minnesota where a stream diversion was mandated to prevent surface-water contamination, and the subsurface soils beneath a building in Pennsylvania to address prior metals-working releases. An on-going project is the closure of 11 acid sludge pits filled with petroleum refining wastes using various techniques driven by the pit configuration and sludge characteristics. Stabilization has also been evaluated for MGP and sludge management sites. A variety of construction techniques, pug mill mixing through injection, and reagent-types, such as Portland cement, bentonite, CKD, TSP-MgO, lime, ash, and proprietary chemicals, have been applied.

Another innovative technology recently applied is phyto-remediation for both the extraction of shallow leachate in the subsurface, and to form a cap over closed landfills. This concept is based on the liquid uptake capability of vegetation, particularly hybrid trees, to prevent infiltration and extract leachate. This technology is being applied at CERCLA sites which are closed municipal landfills in Maryland and Ohio, and has potential applications elsewhere. Two demonstration projects have been developed, one in Long Island, New York and the other in upstate New York, to directly compare the performance of Subtitle D equivalent caps with a phyto cover system, and to evaluate the effects on landfill gas management systems. The data from these studies will be used to refine the design principles.

Containment technologies have been a significant part in Mr. Hosmer's experience, including slurry wall containments of two operating municipal landfills in Indiana, a prior coal-tar lagoon in Pennsylvania, and a large petroleum sludge lagoon in New Jersey. A slurry wall to a depth of 80 feet was recently designed and installed along a major river in Oregon to prevent discharges from a Superfund site to the river. In addition, other types of containment projects have included a combination jet-grout/steel sheet-pile wall in Virginia; a shallow soil mixed wall in West Virginia to prevent a 250,000-gallon sulfuric acid spill from reaching the Ohio River; and steel sheet or synthetic membrane panel walls at sites in Indiana and West Virginia.

Mr. Hosmer has also been involved in the conceptualization, analysis and implementation of a variety of re-use opportunities for closed and/or remediated land disposal facilities. While most closed landfills are returned to an "open space concept," which includes passive utilization for recreational uses or non-use, the active redevelopment of closed landfills permits the efficient use of potentially valuable properties. Landfills for which Mr. Hosmer has developed re-use concepts for active and passive use include natural habitat for wildlife, a statuary park, multiple golf courses, active recreational parks, amphitheaters and other recreational pursuits; commercial development for re-use as air freight terminals, retail, warehousing and office space; and, development of a hazardous waste recycling center. In addition, large-scale developments such as condominium and hotel complexes, office buildings and other high-density uses have been evaluated, although not implemented to date. In general, the sites have been placed into the best and highest use for the property. Complex integration of the re-use-planning concept with the design details of the closure/remedial components is critical to the success of these efforts.

Failure analyses have been conducted principally associated with waste management facilities but also with instability precipitated by civil works and environmental remediation construction. Certain of these projects have been associated with litigation as a result of such failures. Most recent of these analyses have been an assessment of the causes of failure at a municipal waste landfill where the new phase of a landfill constructed over a prior closed landfill (i.e., piggyback) slid suddenly in a massive slide that destroyed the new liner and closure systems and transferred 750,00 cubic yards of waste downslope. Another on-going site evaluation addresses the containment of brine in large evaporation ponds over a salt flat for a mine operation where instability in the materials of construction and foundation have been adversely affected by solutioning and development of cavities inducing failures in the containment system and interior liner systems. Similar types of failures have been investigated through a variety of forensic means including observation, field investigative studies, and design and construction analyses, over Mr. Hosmer's career.

Specific solid waste management projects include the following:

<u>Pits, Ponds and Lagoons</u>

- Performed investigative studies, designs and construction oversight using neutralization/solidification/stabilization (NSS) of a series of acid pits serving a refinery near Philadelphia, Pennsylvania. These pits, 11 in all, contained acid sludges that evolved over the life of the refinery, and are being closed in sequence, each consisting of several acres in areal extent and up to about 30 feet in depth. Differing waste characteristics and configurations lead to alternative designs for each pit, of which the third is in construction. An initial pit was also subjected to closure using a light-weight capping system as an alternative for demonstration purposes; the performance results of this effort led to the NSS alternative approach.
- Performed several land-based, municipal/industrial sludge management facilities projects, including a 6-acre sludge lagoon siting and design in Prince George's County, Maryland; an assessment of land disposal regulations and development of technical limitations for ordinances to control sludge disposal in King George County, Virginia; the conceptual design of the expansion of a sludge landfill to serve the Trinity River Authority 100-mgd wastewater treatment facilities in Dallas, Texas; the remediation of existing sludge lagoons serving two of the wastewater treatment facilities for the City of Philadelphia; the investigation of the suitability of land-applied sludge in the cover of a landfill under closure in Baltimore County, Maryland; and the design of sludge management tanks for a facility in New Jersey.
- Performed the Project Director role for the removal of paint-contaminated river bottoms from Green Bay

in Wisconsin, and the separation and disposal of the materials. Construction of the in-bay containments and subaqueous excavation, to a level that meets sediment standards and the restoration of the bay provided the challenges at this site. A similar river sediment excavation project was encountered in Minnesota where geotextiles floated into position and submerged were used to contain contaminated sediments prior to "capping" with clean soil and restoration of the water surface.

- Conducted failure analyses for a synthetic membrane-lined wastewater treatment lagoon for a chemical manufacturer in Hopewell, Virginia. Subsequent activities included development of conceptual and final designs for the reconstruction of the facility and return to service. A similar analysis was performed at a brine water storage pond in Texas that was experiencing slope stability and uplift failures during construction of an expansion. A re-design of the system maintained operational capacity, facility integrity and long-term use.

Landfills

- Project Director for the development of the siting, investigation and design documents for a rubble landfill in Anne Arundel County, Maryland within an operating sand and gravel mining pit. The state-mandated permit documents were developed and because of intense public pressures, a RCRA-compliant facility evolved that was permitted for construction in 2014. The facility is under construction with final design and construction oversight being provided concurrently. Modifications to the floor elevation are being sought during the final design to reflect a greater waste capacity using a reduced separation distance, an underdrain system, and accounting for suppression of the groundwater beneath the landfill. The facility will continue to be mined while the landfill operates, and recyclables will be extracted from the incoming waste to reduce volume. The facility footprint is presently at approximately 72 acres and a capacity projection of approximately 7.5 million cubic yards of airspace. A former unlined rubble landfill at the same facility is also being evaluated for remediation purposes.
- Landfill Expert and Director for the remediation of a former municipal landfill in Hawaii that has been experiencing a subsurface fire for many years. The fire has resulted in leachate releases through the unlined walls and floor of the landfill into lava tubes exiting in the Pacific Ocean, with potentially negative ecological effects. In addition, atmospheric releases from the facility are impacting downwind police and educational facilities. The client has received a USEPA-Region 9 grant to evaluate solutions and to mitigate the subsurface fire and releases. The work plan is complete and the implementation on-going.
- Project Director for the expansion of an existing municipal ashfill/balefill facility in Portland, Maine that receives the ash from an incinerator serving 31 host communities. The project entailed assistance with permitting an interim vertical expansion over the existing facility until the lateral expansion can be evaluated from a siting perspective, designed, permitted and implemented. The project elicited a high level of regulatory and public involvement and incorporated state-of the-art design and environmental features to address the soft marine soils serving as a foundation, the surrounding wetland habitat and the proximity to a productive aquifer system. The expansion site and concept, as well as the vertical expansion have been approved under the new Maine solid waste regulations, and design is underway to meet a 2003 start-up goal.
- Technical oversight for the upgrading of an approximate 7,500 ton-per-day private landfill in Gary, Indiana to Best Available Technology standards. This facility disposed municipal solid waste for over 30 years, and thus required the retrofitting of leachate, gas and groundwater control systems to achieve the minimum environmental standards to receive an operating permit. The project consisted of preparing the permit documents for the facility in a short, six-week period and, because of public opposition, involved public participation programs as well as expert testimony for legal proceedings.
- Project Manager on a unique project assignment in Puerto Rico involving the expansion and upgrading of an open-dump within a 140-meter deep sinkhole in a mountainous terrain to the first permitted Subtitle D landfill on the island. The complex design included multiple synthetic membrane liners "hung" from vertical rock walls in the sinkhole, leachate collection and recirculation, gas extraction and re-use, and ultimate closure. This program had to proceed while the existing landfill remained in operation. The remoteness of the site and significant advances in

technology provided a challenge to the implementation.

- Project Manager for the evaluation of the technical and economic value of on and off-site solid waste disposal options for a heavy manufacturing industry in Ohio, and subsequently prepared a Permit-to-Install for the on-site industrial landfill to Best Available Technology standards. The final 125-year landfill included not only state-of-the-art leachate and gas management systems, and liner/cover systems, but also groundwater extraction systems for remediation of prior waste disposal activities. A final closure plan for the facility was subsequently prepared to address interim operations issues. Design and construction management services were also provided.
- Project Manager for the design of the closure of a CKD landfill in Kansas where an innovative clay/CKD combination barrier layer was incorporated into the cap. This waste beneficial re-use significantly reduced cost without affecting performance, and served as a standard for future closures. Leachate collection and re-use in the cement-mixing plant was also a cost-effective measure. At the same facility, interim closure plans, designs and implementation have been achieved for two former CKD disposal areas that were experiencing leakage and a potential for contamination of the surface-water exiting the site. Various cutoff technologies cover systems and leachate extraction methods were implemented. An on-going project is the development of an operations plan and re-design of the operating industrial landfill to assure environmental compliance. Other CKD pile designs and closures have been provided to plants in Texas and Pennsylvania, which have been challenges because of limited space, continuing operating requirements, and steep slopes.
- Directed the preparation of permitting documents for a landfill expansion and upgrade for a municipal solid waste landfill to serve the Town of Barnstable, Massachusetts on Cape Cod. The facility consisted of an existing recycling and disposal operation with expansion potential until the year 2010.
- Investigated and evaluated liner and leachate management systems for a proposed 500-acre mine tailings disposal facility in upper Wisconsin for an international minerals company. As a result of the magnitude of the project, sensitive environmental issues were involved in the negotiation of the master permits. Similar activities have been performed for open-pit phosphates mine in North Carolina, a vanadium mine in Arkansas, and numerous coal mine facilities.
- Managed three municipal landfill closure projects in Kentucky at prior disposal facilities located in karst terrain. These facility designs were complicated by difficult geologic settings, proximity to watercourses and parks, and waste streams that had included no only municipal waste, but incinerator ash, wastewater sludges, and industrial wastes. One of these landfills was configured for re-development as an industrial park after closure. These facilities included cover system and leachate extraction management systems design.
- Provided technical oversight and directed the permitting, design, quality control and construction inspection assistance of a new regional solid waste landfill to serve three Eastern Shore counties in Maryland. The leachate system includes collection and storage in a covered lagoon, with subsequent recirculation through the waste as a treatment process. Ultimately, the polished liquid effluent is discharged to the municipal treatment works for final disposal. In addition, a public convenience area was designed for the proposed landfill expansion. Because of the location of the site in an environmentally sensitive coastal zone, multiple leachate and gas-management systems were incorporated. The financing of this project was through the sale of bonds for which the technical support for the prospectus was provided. Construction is complete and the facility operating; permitting and community relations issues were significant at the site because of environmental issues.
- Performed the Project Director role for the closure of a captive, steel-making sludge landfill in Ohio, and the permitting and design of a replacement landfill that meets current residual waste requirements in that State. These projects involved the preparation of closure plans and Permits-to-Install; engineering design and construction documents; and construction management. The facilities neighbored a nature conservancy.
- Managed the investigation of landfill gas and the assessment of mitigation alternatives for a closed municipal solid waste landfill in Harford County, Maryland. This facility, which received both municipal and industrial, predominately TCE, waste is bounded by residential development toward which the gas migrated. A second phase of this

project investigated the off-site migration of aqueous-phase contaminants and included a remediation plan. The conceptual and final design for the vapor and fluid phase extraction and treatment systems were developed "fast-track;" construction was performed turnkey to expedite the implementation schedule, resulting in a savings to the client of $1,300,000, the abatement of a potential lawsuit, and the restoration of neighboring properties to beneficial use (residential development).

- Served as Project Manager for the study, permitting, and design of the closure of an existing landfill and development of a new 2,000 ton-per-day facility for Virginia Beach, Virginia, including projects which involved landfill gas recovery and reuse, water-quality assessment, comprehensive monitoring programs, leachate collection and treatment system design, and operations management. The facility will operate receiving both municipal solid waste and solid waste-fueled power ash and residue, through the year 2015. This site required the evaluation of potential wetlands for the expansion area, mitigative actions and permitting before the facility permit documents and design could be initiated. The permit documents and the facility design were developed to comply with RCRA Subtitle D requirements.

  Other subsequent assignments for Virginia Beach included a water-quality investigation of a completed landfill to assess leachate generation; a water-quality assessment of a borrow pit lake previously subjected to uncontrolled waste disposal; study, design and implementation of a ground/surface-water treatment pond for borrow pit stormwater prior to discharge; and the evaluation of stream remediation alternatives for prior sediment discharges from the landfill borrow pit.
- Conducted the study, permitting, and design of a 100 ton-per-day sanitary landfill for Loudoun County, Virginia, which involved an evaluation of environmental endangerment created by past disposal practices. At another County site, provided technical review, litigation support and expert testimony for the County to effect the proper closure and mitigation of future hazard from a 2,500 ton-per-day commercial debris landfill.
- Directed the evaluations of two new landfill sites for the implementation of individual debris landfills in two Maryland counties. These studies included the development of Phase I siting documents for the state and zoning hearing support. At another mineral extraction site the permit documents and design were prepared for a regional debris landfill; this site also included construction materials recycling and contaminated soil incineration as part of the overall disposal facility. Value engineering for an additional debris landfill was conducted to evaluate permittability, technical standards, and wetlands issues, and testimony was prepared for establishing excavation limits and system component designs.
- Managed the siting, permitting and future design of two private municipal solid waste landfills in Maryland. One of these could be developed at a mineral extraction site in an environmentally sensitive area, and the other integrated with a brick manufacturing operation utilizing clay borrow pit.
- Conducted new landfill site selection studies for a replacement 20-year municipal landfill to serve the City of Chesapeake, Virginia; a new, 20-year municipal landfill for Bartholomew County, Indiana; and a captive industrial facility in Wisconsin. These three studies involved county-wide technical, economic and socio-political evaluations to identify candidate sites after the establishment of appropriate siting criteria. The Chesapeake, Virginia and Bartholomew County, Indiana studies additionally involved significant community relations support activities. In a similar assignment, technical oversight and consultation was provided for the siting and development of the East Contra Costa County Sanitary Landfill near San Francisco, California.
- Performed the site selection, evaluation, conceptual design and permitting of a replacement 1,400 ton-per-day landfill for Montgomery County, Maryland. This $3,000,000 project required a peak multi-disciplinary staffing level of 300 individuals concurrently performing activities at four multiple sites utilizing six (6) subcontractors to achieve a six-month schedule mandated by a State of Maryland Emergency Health Order. The facility site selected was subsequently designed and initiated operations in conjunction with a solid waste transfer station designed as a separate project.
- Directed the preparation of an economic comparison of sites within West Virginia and Maryland to establish a new landfill to receive paper-manufacturing waste. The study was intended for management decision-making of the most cost-effective solution to disposing 85 tons-per-day of

process waste within previous coal strip mining areas. Permitting and design of the facility proceeded, after selection of the Maryland site; the facility meets all Maryland and RCRA Subtitle D requirements for a sanitary landfill. Similar evaluations and design have previously been completed at two different facilities in Virginia for additional landfills to receive pulp and paper process waste.

- Managed landfill closure projects at numerous solid waste facilities, including the preparation of closure plans, negotiation of the final consent order, design and construction oversight. Two steel-making waste landfills in West Virginia, a medical waste incinerator landfill in Crownsville, Maryland, a debris landfill/surface mine in Anne Arundel County, Maryland, a former domestic/agricultural waste disposal area in Anne Arundel County, Maryland, a commercial landfill in Elkhart, Indiana and an oil refinery in Oklahoma are examples of projects performed to-date. Expert testimony in support of litigation has been provided at several of these installations.
- Provided expert testimony in various aspects of the remediation of solid waste, hazardous waste and construction/demolition debris landfills, including the leachate and gas systems at solid/hazardous waste landfills subject to CERCLA remediation in Massachusetts and Vermont; the potential for releases and options for closure of a municipal construction/demolition landfill in New York; landfill gas remediation at a landfill in Connecticut and a condominium complex constructed over a landfill in California; the evaluation of the potential for releases from a construction/demolition debris landfill in Indiana; and, construction claims during remediation/closure of landfills in New York and New Jersey. These activities included field data acquisition, suitable analysis of the site and remedies, assessments of alternatives, and participation in depositions, hearings and court trials.

CERCLA Program/State Superfund

Since the inception of CERCLA in 1978, Mr. Hosmer has been involved in the conduct of all phases of CERCLA-mandated remediations for both the federal and state governments, and for potentially responsible parties (PRP). His primary area of participation has been prior land disposal facilities, such as the following specific examples:

- Currently performing the Project Coordinator and Project Director roles for a Superfund site at a 270-acre location in Baltimore, Maryland. The site consists of an aggregation of 8 former industrial/municipal landfills under different ownership within a highly urban environment. The site represents the first site in USEPA-Region 3 conducted under the Superfund Alternatives Sites (SAS) Program, which includes Re-Use Assessments in concert with the RI/FS. The location of the site is at the downstream discharge of the major drainageway serving the City of Baltimore, and includes in-filled marshes and former wetlands. Ecological factors are the primary driver for the remedy which will include addressing any resource injuries through a Cooperative Agreement with the Natural Resource Trustees. Further, the site is being evaluated for a renewable energy (solar farm) re-use project as part of an integrated restoration/re-use concept. The RI/FS is complete for the site, a Record of Decision issued, and an ASAOC for the RD/RA is being negotiated. The remedy consists of free product extraction, soil capping, stream stabilization, wetlands treatment of leachate along with PRB interception, and restoration of forested and riverine habitat. The remedy NPV cost is expected at about $60 million.
- Representing a large public electric utility on the Technical Committee of a PRP Group for a PCB-driven Superfund site in Maryland along the Back River in Baltimore. The site was a former land disposal site that is located in a primarily residential area and once was a low-lying habitat consisting of mudflats and marshland. The RI/FS is underway for this site.
- Performed project management for CERCLA-mandated Feasibility Studies at a partially-operating chemical facility in southern Ohio; an operating aluminum reduction facility in southern Ohio; and closed municipal/industrial landfills in eastern Pennsylvania; western Tennessee, Harford County and Cumberland, Maryland; and Kent County, Delaware. Similar activities have included project management for major CERCLA-mandated remedial studies at three sites in New Jersey, two sites in California, and one site each in Delaware, Virginia, and Utah. Each of these projects represents a national priority list site; numerous other remediation projects

have been accomplished for state-specified programs and other non-NPL sites.

- Served as the Engineer-of-Record and Project Director for the performance of an RD at an NPL-listed municipal/commercial waste landfill in Indianapolis, Indiana. The remedy included containment slurry wall, groundwater and leachate collection/treatment systems, and capping at a 60-acre landfill that had received both solid and hazardous wastes. Through an alternative RAP approved by USEPA-Region V, a significant cost savings of over $10,000,000 to the PRP Group was realized. Litigation support was also provided to enable the PRP Group to successfully terminate operations at the site in order to minimize remediation costs.
- Directed the evaluation, design and construction oversight of an NPL-listed industrial landfill in Tennessee that consisted of RCRA and non-RCRA wastes above steep slopes leading to environmentally sensitive surface-waters. The waste consisted of paint sludges and metalworking wastes. A conventional closure system was installed which incorporated multiple barrier systems to efficiently address each waste-type area. At a companion landfill, a phyto cover system was explored due to the small pockets of waste interspersed with the overgrown and treed terrain.
- Directed the development of remedial strategies and negotiation with the USEPA-Region III and Commonwealth of Virginia for the completion of design and implementation of the remedy at a battery-breaking NPL site in Richmond, Virginia. The assumption of responsibility by the PRPs, the redesign of the USEPA/USACE remedy, which included lead-contaminated soil removal, stabilization and off-site disposal, and remedy privatization resulted in a $10,000,000 cost savings to the PRP Group. The site was also remediated on a "fast-track" basis to be completed ahead of the USEPA-mandated schedule.
- Conducted the remediation of an aluminum reduction facility in Oregon with 23 individual waste units, including landfill, surface lagoons, waste piles and process discharges, which had created ground- and surface-water contamination. Because of the multiplicity of units remediated at this operating facility, and a short deadline for the remediation, the final design and construction were performed on a "fast-track" basis. An alternative approach to the RCRA cap designs, a waiver for two major contaminants, and an innovative groundwater treatment system resulted from extensive USEPA-Region X negotiations, and yielded a 50 percent savings in the remedy cost.
- Coordinated a multi-disciplined consultant team for the development of an alternative RAP for a former municipal/industrial landfill in southern New Jersey. Preparation of the alternative plan, negotiation with USEPA-Region II and potential litigation were conducted to alter the USEPA-prepared remediation, which included on-site containment, flushing of the waste pile, extraction and on-site treatment of leachate, and incineration of contaminated soils.
- Performed Project Director and Engineer-of-Record duties for the RD/RA of a municipal/industrial landfill in New York. The pre-design studies primarily focused on the quantity, quality and migration pathway for landfill gases and development of an appropriate landfill cover system. Wetlands and shallow groundwater use in the area contributed to the sensitivity of this facility closure and remediation.
- Managed the remediation of a closed sanitary landfill in Baltimore County, Maryland that had received municipal and commercial waste over a 25-year period. Groundwater contamination resulted in a Maryland Consent Order to effectively remediate the facility and prevent future contamination. Field investigations, design of the closure system and the ground- and surface-water collection/extraction systems, and construction management have been completed to-date; leachate extraction and on-site treatment systems, hydraulic barrier systems and capping of the remainder of the site are currently under evaluation. A unique use of bedrock-incised streams as the leachate collection system and a stream interception facility for treatment prior to site release resulted in a significant cost saving. Activities were performed on a "fast-track" basis to meet deadlines mandated by the Consent Order.
- Provided technical review and oversight for the closure and remediation of a captive industrial landfill in Wisconsin that had previously been the subject of an RI/FS. The facility was programmed for continued operation for three additional years, and conversion to a park reuse after closure; the closure contours and attendant facilities were therefore tailored to meet reuse requirements while complying with state solid waste closure requirements.

- Managed a PRP-driven CERCLA site project in which a shadow HRS scoring was performed for an urban municipal/industrial landfill in the vicinity of the Chesapeake Bay to address concerns as to the validity of the potential NPL listing. This project required negotiations with the State of Maryland and the USEPA to assess the potential risk of the site and guide an effective resolution outside of the CERCLA process. Brownfields programs were also explored as a mechanism to effectively remediate and re-use the site; a decision on the course-of-action is currently pending.

RCRA Pre-RFA/RFI/CMS/CMI/Closure/Permitting

Similar activities have been conducted under the federal and state RCRA programs, and other environmental regulations to control property transfers. Specific projects in this area include the following:

- Prepared six RCRA Part B permit applications, and subsequently conducted environmental assessments, conceptual and final design and construction inspection for the Hawkins Point Hazardous Waste Landfill in Baltimore, Maryland. These land disposal units were dedicated to receive chrome ore tailings waste from a chromium processing industry in Baltimore, and general hazardous waste from Maryland industry. The facility was one of the first final RCRA permits for a hazardous waste landfill issued in the United States.
- Assisted in the permitting and design of a captive RCRA-permitted hazardous waste landfill in Pennsylvania to receive stabilized electroplating sludges. The facility met all state requirements, and when permitted, was the first such facility in Pennsylvania. Subsequent assignments at this facility included the closure and remediation of four land disposal facilities and two (2) process lagoons. The closure plan for one of the land disposal facilities included consideration of siting a hazardous waste recycling structure over the completed cap system. These projects included regulatory assistance, permitting, and design services.
- Conducted CMS projects under RCRA at a chemical manufacturing facility in West Virginia, an automobile parts manufacturing facility in Ohio, an automobile parts distribution center in West Virginia, and a chemical solvent reclaiming facility in North Carolina. Each of these projects involved the development, evaluation and selection of cost-effective remedies to prior releases from an operating facility.
- Directed the development and implementation of a closure plan for an interim status storage pad at a hydrocarbon research facility in Illinois. The project included development of a remedial strategy, risk assessment to modify clean-up goals, plans and specifications for implementation, construction management and closure certification. The modifications to the clean-up goals resulted in cost savings in excess of $500,000.
- Managed land disposal closure projects at numerous facilities, including the preparation of closure plans, negotiation of the final consent order, design and construction oversight. Two lagoons at the U.S. Coast Guard Base in Elizabeth City, North Carolina, seven wood treating basins in North Carolina, a closed electroplating sludge lagoon in Maine, a prior RCRA waste storage area in Pennsylvania, and a former manufactured gas utility site with landfill in Maryland are examples of projects performed to-date.
- Served as Project Manager for the $100 million decommissioning and remediation of a chromium core processing facility on the Patapsco River in Baltimore, Maryland, including assessments of deep hydraulic barriers, marine bulkheads, cap/closure technologies and reuse potential. Modeling of the containment and biodegradation studies for chromium reduction was conducted to identify appropriate cost-reducing in-situ technologies.
- Investigated groundwater contamination effects from an abandoned industrial disposal site for hazardous materials in southeastern Pennsylvania. A comprehensive monitoring system was established to detect the heavy metals potentially discharging from the site. Remedial action included the excavation and off-site disposal of the waste and surrounding contaminated soil.

Site Remediation

Mr. Hosmer has conducted numerous remediation projects, primarily in response to prior land disposal practices, under voluntary clean-up programs or other non-regulatory initiatives; several of these projects include the following:

- Project Director for the evaluation of berm and containment floor failures at a lithium extraction mine in the high plains of Argentina. The salt flats have been eroded and solutioned causing the deterioration

of the soil berms and floor of the multiple, hundred-acre ponds forming the evaporation facilities to concentrate the brine. Forensic studies were conducted to assess the causes of the failures, and the design of remedies is on-going. The five most significant ponds will be upgraded with raised berms and expansion over the next two years as a means to continue operations while avoiding salt harvesting in the ponds.

- Directed the remediation of four Manufactured Gas Plant (MGP) sites in New Jersey for two utilities. These remediations were conducted under federal and state lead programs, and consisted of site delineation and evaluations, remedy selection and regulatory approval, design and implementation. Because of the proximity of these types of facilities to in-town locations and waterways, both public involvement and environmental issues were paramount in the selection of remedies. The remedies generally included contamination removal, soil capping, stream sediment excavation and channel replacement, groundwater extraction and treatment, and various monitoring programs. Several portions of these sites have/will be returned to productive community or private use. At another MGP site in Salisbury, Maryland, investigated and conceptually designed a remedy that included limited soils removal and a vapor extraction system in addition to a groundwater recovery and treatment system. Other coal tar or manufactured gas facilities include remediation of abandoned sites in Virginia and New Jersey, and the remediation of a prior site in Maryland that is currently used for other utility services. These sites considered in-situ technologies that would permit site reuse and mitigate wetland destruction issues, as well as conventional removal, containment and extraction methods.
- Directed the investigation, design and remediation of prior MGP operations and on-site disposal at an operating generating station in New York City. The remediation was driven by a Consent Order for historical activities at the site, as well as a requirement for expansion of the operating station. This remedy includes soil/waste removal, utilities relocation and groundwater management. Other activities at the site have included drainage analyses, SPCC Plan preparation, and closure planning for a major operating tank farm.
- Conducted numerous remediation engineering projects, such as the conceptual and final design of a sludge lagoon excavation and closure project for a manufacturing facility in Maine, a groundwater extraction and treatment system for an electronics manufacturing facility in Annapolis, Maryland, a groundwater/diesel fuel recovery and treatment system at a utility power station in Baltimore, Maryland, and a diesel fuel recovery and groundwater treatment system at a pulp and paper mill in Virginia. These projects involved the evaluation of the most appropriate extraction systems, the development of the treatment process, and final design and contract documents preparation for implementation.
- Managed several environmental audits of commercial/industrial property in preparation for financing property transfers in Delaware, Maryland, Pennsylvania and Virginia. These projects included field and laboratory assessments of the air, water, and soil media for potential past contamination, and development of on-site or off-site remedial actions.
- Provided engineering support to the evaluation and design of remedies for several large terminal sites contaminated by prior hydrocarbon releases, including the application of aboveground biodegradation of soils, the design of lined secondary containments for product storage tanks, site remediation at a decommissioned refinery divided by a ship canal, and design and start-up of a terminal loading area off-gas flare. These projects extended from New England to the Midwest.
- Provided on-site inspection of two bulk fuel terminals in Maryland, and technical oversight and Engineer-of-Record certification for the development of SPCC Contingency Plans. These efforts were a segment of a large project to prepare over 20, oil spill response plans at oil terminals throughout the eastern United States in response to the Oil Pollution Act of 1990. In addition, participated in a Project Director role on stormwater management planning and SPCC Contingency Plan development for multiple power-generation utilities in New York, and a cement-manufacturing plant in Kansas.
- Managed the remedial design of a groundwater recovery and treatment system for TCE contamination at a U.S. Air Force Base in Willow Grove, Pennsylvania. The project included investigation of the nature and extent of contamination, development and implementation of the remediation, and conceptual and final design documents preparation.
- Directed the investigation, design and construction oversight of the closure for two industrial landfills in

New York under a voluntary action. One landfill was consolidated into the other, which was subsequently capped with a soil cover. Flood protection gates were installed to prevent the neighboring lake outlet from inundating the completed site during the 100-year storm event. The site was returned to use as a part of a park and trail along the scenic outlet.

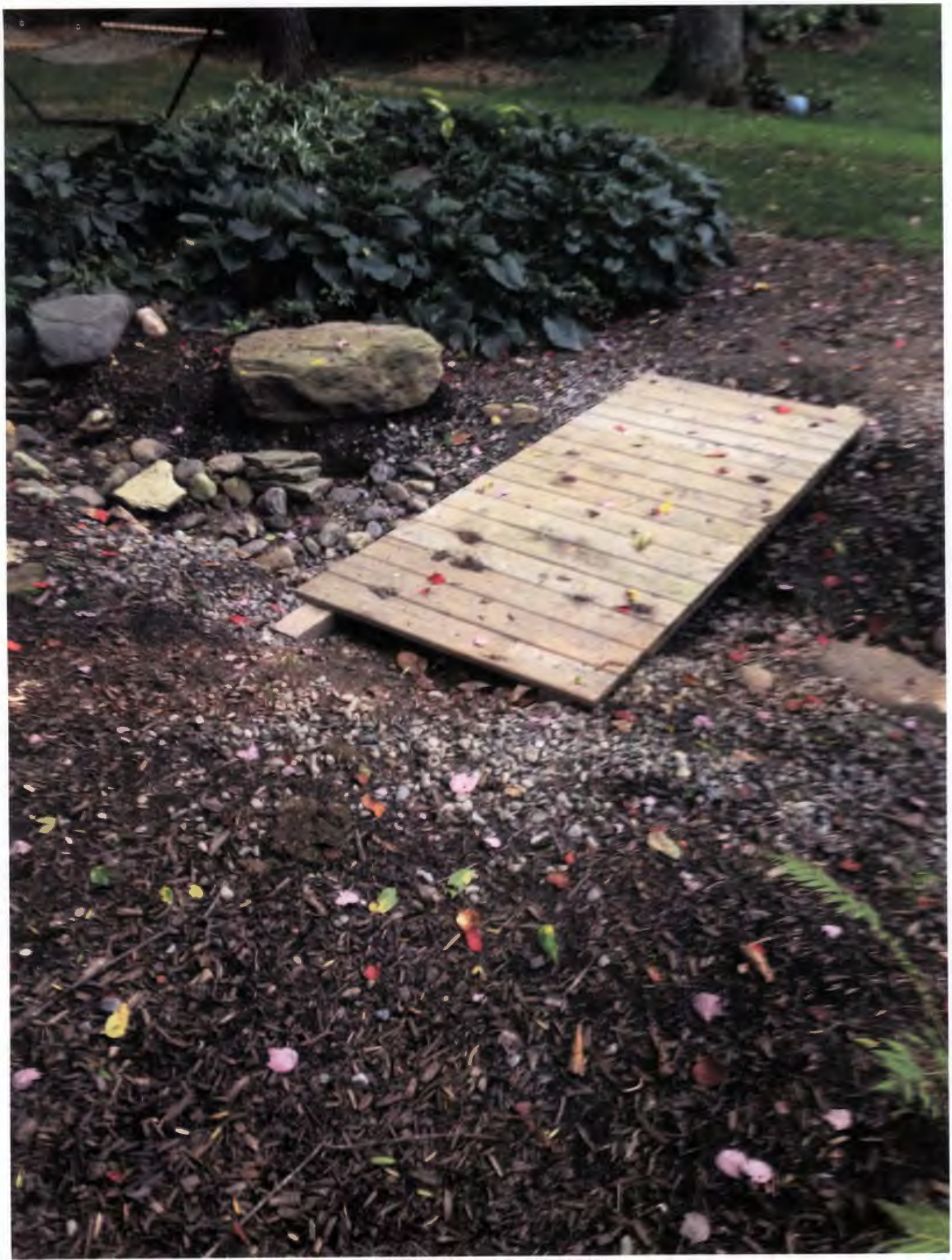
Engineering Planning, Analysis, and Design

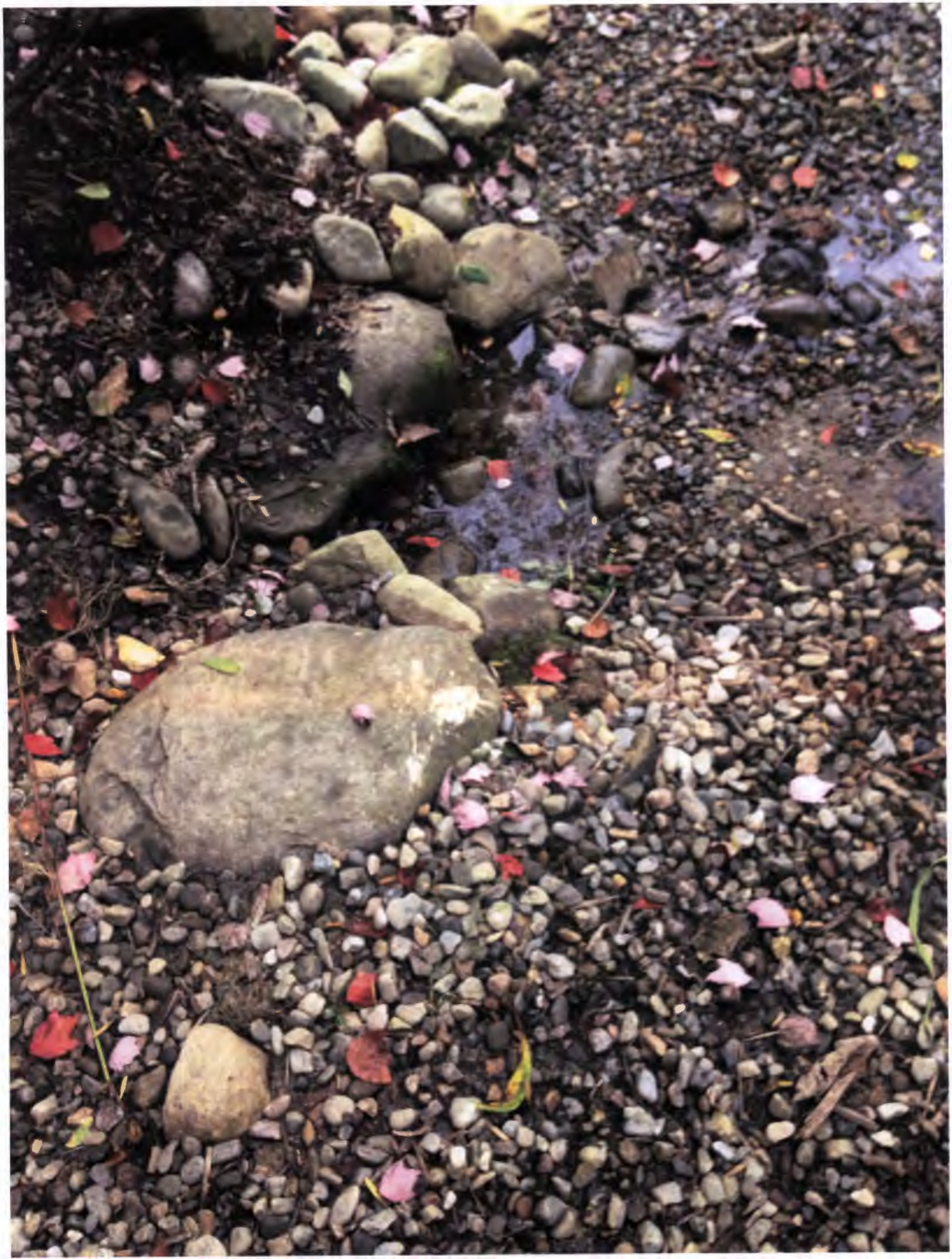
Mr. Hosmer has served as Project Manager or Project Director on numerous projects in virtually all phases of geotechnical investigations for petrochemical, nuclear and fossil-fueled power, mining, manufacturing, municipal and other governmental and commercial facilities. Responsibilities on these projects have spanned a broad range: from field engineering on small industrial projects through Preliminary Safety Analysis Report investigations for two nuclear power plants, and subsequent analytical engineering and project management on both small studies and large, multi-disciplined investigations. Through this career, Mr. Hosmer has performed over 100 geotechnical and foundation investigations addressing bearing capacity, settlement, slope stability, earth pressures, static and dynamic stability and earthwork operations to specify soil/rock parameters and design/construction criteria. In this area, Mr. Hosmer has performed geotechnical engineering for a range of projects, including the study and design for a water supply reservoir and dam for the Washington Suburban Sanitary Commission, a suburban Maryland utility; a tidal flood control facility for Fairfax County, Virginia; a potential condominium complex in Rhode Island at the site of a former tank farm; foundation design for a tank farm in New Jersey, and the evaluation of potential barrier/slurry wall options for a deep containment in a chemical manufacturing site remedy.

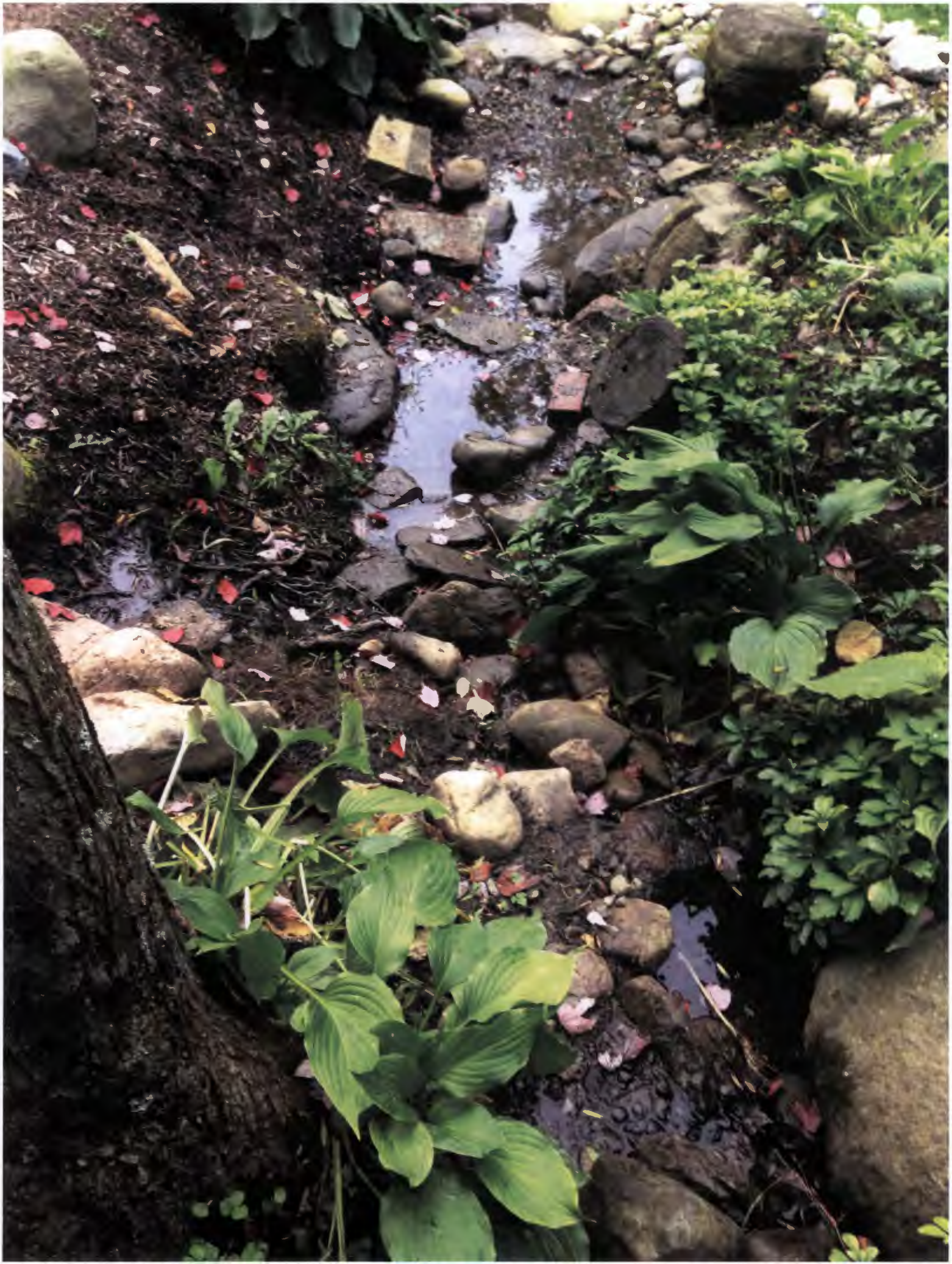
Civil and environmental design projects have also been conducted, including project management for planning and development; examples include two projects for Automatic Flight Service Stations at general aviation airports which involved complete site development, alternatives studies and planning, and conceptual design of the structures and support facilities. Other civil works projects have included the investigation of glazing design and construction in the restoration of a security facility for the Colonial Williamsburg Facility in Williamsburg, Virginia, and the investigation of glazing deficiencies at the University of Virginia Law Library in Charlottesville, Virginia. Recent civil projects have also included an energy utility system study for the Children's Hospital National Medical Center in Washington, D.C., an evaluation of stormwater management alternatives for the U.S. Marine Corps Headquarters at Henderson Hall in Arlington, Virginia, an several maintenance and improvement projects at The George Washington University in Washington, D.C., including the rehabilitation of a residence hall, boiler replacement and security systems design and installation, and stormwater infiltration studies and remediation. In addition, for Montgomery County, Maryland, performance as the Project Manager for the planning and design of 1.8 miles of the Fairland Road Improvement Project and Project Engineer for the study, design and construction management of a 2,980 ton-per-day solid waste transfer station.

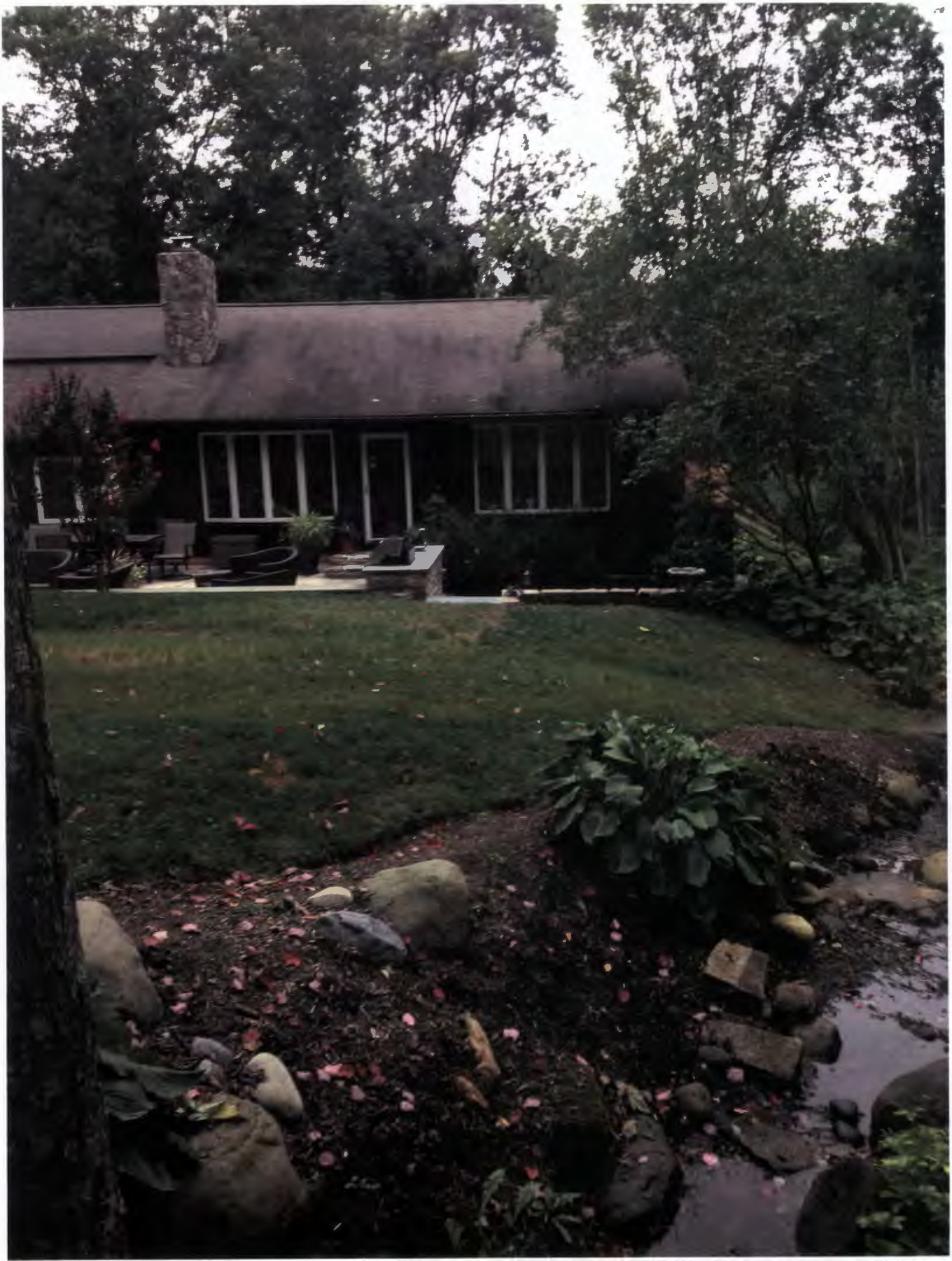
PETITIONER'S

EXHIBIT NO. 9









26.08.02.03-3

.03-3 Water Quality Criteria Specific to Designated Uses.

A. Criteria for Class I Waters — Water Contact Recreation and Protection of Nontidal Warmwater Aquatic Life.

(1) Bacteriological.

(a) Table 1. Bacteria Indicator Criteria for Frequency of Use.

Steady State Geometric Mean Indicator Density		Single Sample Maximum Allowable Density			
Indicator	All Areas	Frequent Full Body Contact Recreation (Upper 75% CL)	Moderately Frequent Full Body Contact Recreation (Upper 82% CL)	Occasional Full Body Contact Recreation (Upper 90% CL)	Infrequent Full Body Contact Recreation (Upper 95% CL)
Freshwater (Either apply)					
Enterococci	33	61	78	107	151
E. coli	126	235	298	410	576
Marine water					
Enterococci	35	104	158	275	500

CL = confidence level

All numbers are counts per 100 milliliters

(b) In freshwater for E. coli, the following formula is used to calculate the upper 75 percent confidence interval for single sample maximum allowable density: antilog[(log 126) + 0.675 * log(SD)].

(c) In freshwater for enterococci, the following formula is used to calculate the upper 75 percent confidence interval for single sample maximum allowable density: antilog[(log 33) + 0.675 * log(SD)], where log(SD) is the standard deviation of the log transformed E. coli or enterococci data. If the site data are insufficient to establish a log standard deviation, then 0.4 is used as the log standard deviation for both indicators. At the default log standard deviation, the values are 235 for E. coli and 61 for enterococci.

(d) In saltwater, for enterococci, the following formula is used to calculate the upper 75 percent confidence interval for single sample maximum allowable density: antilog[(log 35) + 0.675 * log(SD)], where log(SD) is the standard deviation of the log transformed enterococci data. If the site data are insufficient to establish a log standard deviation, then 0.7 is used as the log standard deviation. At the default log standard deviation, the value is 104.

(e) Confidence Level Factors.

(i) The factors in Table 2 are used in the formulas in this subsection to calculate the appropriate confidence limits when site-specific standard deviations are used.

(ii) Table 2.

Confidence Level	Factor
75%	0.675
82%	0.935

Pet. #10

or harmful organisms in sufficient quantities to constitute a public health hazard in the use of waters for shellfish harvesting. A public health hazard for the consumption of raw shellfish will be presumed:

(a) If the most probable number (MPN) of fecal coliform organisms exceeds a median concentration of 14 MPN per 100 milliliters;

(b) If more than 10 percent of samples taken exceed 43 MPN per 100 milliliters for a 5-tube decimal dilution test or 49 per 100 milliliters for a 3-tube decimal dilution test; or

(c) Except when a sanitary survey approved by the Department of the Environment discloses no significant health hazard, §C(1)(a) and (b) do not apply and a public health hazard from the consumption of shellfish will not be presumed.

(2) Classification of Class II Waters for Harvesting.

(a) Approved classification means that the median fecal coliform MPN of at least 30 water sample results taken over a 3-year period to incorporate inter-annual variability does not exceed 14 per 100 milliliters; and:

(i) In areas affected by point source discharges, not more than 10 percent of the samples exceed an MPN of 43 per 100 milliliters for a five tube decimal dilution test or 49 MPN per 100 milliliters for a three tube decimal dilution test; or

(ii) In other areas, the 90th percentile of water sample results does not exceed an MPN of 43 per 100 milliliters for a five tube decimal dilution test or 49 MPN per 100 milliliters for a three tube decimal dilution test.

(b) Conditionally approved classification means that the Department has determined that under certain conditions an area is restricted, but when not restricted, meets the conditions for the approved classification.

(c) Restricted classification means that the median fecal coliform MPN of at least 30 water sample results taken over a 3-year period does not exceed 88 per 100 milliliters or that the Department has determined that a public health hazard exists; and:

(i) In areas affected by point source discharges, not more than 10 percent of the samples exceed an MPN of 260 per 100 milliliters for a five tube decimal dilution test or 300 MPN per 100 milliliters for a three tube decimal dilution test; or

(ii) In other areas, the 90th percentile of water sample results does not exceed an MPN of 260 per 100 milliliters for a five tube decimal dilution test or 300 MPN per 100 milliliter for a three tube decimal dilution test.

(d) Prohibited classification means that the fecal coliform values exceed those required for the restricted classification or is an area designated by the Department as a closed safety zone adjacent to a sewage treatment facility outfall or is an area closed due to a known pollution source.

(3) Temperature — same as Class I waters.

(4) pH — same as Class I waters.

(5) Turbidity — same as Class I waters.

(6) Color — same as Class I waters.

(7) Toxic Substance Criteria. All toxic substance criteria to protect:

(a) Estuarine or salt water aquatic organisms apply in accordance with the requirements of Regulation .03-1B; and

(b) The wholesomeness of fish for human consumption apply.

(8) Dissolved Oxygen Criteria for Class II Waters.

(a) This criteria is the same as for Class I waters, except for the Chesapeake Bay mainstem and associated tidal tributary subcategories.

(b) Seasonal and Migratory Fish Spawning and Nursery Subcategory. The dissolved oxygen concentrations in areas designated as migratory spawning and nursery seasonal use shall be:

(iii) For the dissolved oxygen criteria restoration variance for Lower Chester River Mesohaline (CHSMH) seasonal deep-channel refuge subcategory, not lower for dissolved oxygen in segment CHSMH than the stated criteria for the seasonal deep-channel refuge use for more than 16 percent spatially and temporally (in combination), from June 1 to September 30;

(iv) For the dissolved oxygen criteria restoration variance for Eastern Bay Mesohaline (EASMH) seasonal deep-channel refuge subcategory, not lower for dissolved oxygen in segment EASMH than the stated criteria for the seasonal deep-channel refuge use for more than 2 percent spatially and temporally (in combination), from June 1 to September 30; and

(v) The same as for the open-water fish and shellfish subcategory from October 1 to May 31.

(g) Implementation of the Dissolved Oxygen Water Quality Standard. The attainment of the dissolved oxygen criteria that apply to the Chesapeake Bay and tidally influenced tributary waters shall be determined using the guidelines established in the U.S. Environmental Protection Agency publications "Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and its Tidal Tributaries (EPA 903-R-03-002), Chapter III", "Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and its Tidal Tributaries (EPA 903-R-03-002), Chapter III", "Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and its Tidal Tributaries—2004 Addendum (EPA 903-R-04-005) Chapter V", "Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and its Tidal Tributaries—2007 Addendum (EPA 903-R-07-003), Chapter IV", "Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries — 2008 Technical Support for Criteria Assessment Protocols Addendum (EPA 903-R-08-001), Chapter III", and "Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries — 2010 Technical Support for Criteria Assessment Protocols Addendum (EPA 903-R-10-002), Chapters II and III", which are incorporated by reference.

(h) Restoration Variance. The percentage of allowable exceedance for restoration variances is based on water quality modeling and incorporates the best available data and assumptions. The restoration variances are temporary, and will be reviewed at a minimum every three years, as required by the Clean Water Act and EPA regulations. The variances may be modified based on new data or assumptions incorporated into the water quality model.

(9) Water Clarity Criteria for Seasonal Shallow-Water Submerged Aquatic Vegetation Subcategory.

(a) Water Clarity Criteria Measurement. A Bay segment has attained the shallow water designated use if:

(i) Submerged aquatic vegetation (SAV) acreage meets or exceeds the SAV acreage restoration goal in Table 2 of this regulation;

(ii) The shallow-water acreage that meets or exceeds the water clarity criterion expressed in Secchi depth equivalence from Table 1 of this regulation at the segment specific application depth specified in Regulation .08 of this chapter (excluding SAV no grow zones) is 2.5 times greater than the SAV Acreage Restoration Goal from Table 2 of this regulation; or

(iii) A combination of the actual SAV acreage attained and meeting the applicable water clarity criteria in an additional, unvegetated shallow water surface area equals 2.5 times the remaining SAV acreage necessary to meet the segment's restoration goal.

(a-1) If none of §C(9)(a)(i), (ii), or (iii) applies, the segment has not attained the water clarity designated use.

(b) Table 1. Numerical Water Clarity Criteria (in Secchi Depth Equivalents) for General Application to Shallow Water Aquatic Vegetation Bay Grass Designated Use (Application Depths Given in 0.5 Meter Attainment Intervals[1]).

		Water Clarity Criteria as Secchi Depth (meters)				
Salinity Regime	Water Clarity Criteria as Percent Light through Water	Water Clarity Criteria Application Depths (meters)				Seasonal Application
		0.5	1.0	1.5	2.0	
		Secchi Depth Equivalents for Criteria Application Depth				
Tidal Fresh	13%	0.4	0.7	1.1	1.4	April 1 to October 1

Patapsco River Mesohaline	PATMH	389	1.0 meters
Magothy River Mesohaline	MAGMH	579	1.0 meters
Severn River Mesohaline	SEVMH	455	1.0 meters
South River Mesohaline	SOUMH	479	1.0 meters
Rhode River Mesohaline	RHDMH	60	0.5 meters
West River Mesohaline	WSTMH	238	0.5 meters
Upper Patuxent River Tidal Fresh	PAXTF	205	0.5 meters
Middle Patuxent River Oligohaline	PAXOH	115	0.5 meters
Lower Patuxent River Mesohaline	PAXMH1	1,459	2.0 meters
Lower Patuxent River Mesohaline	PAXMH2	172	0.5 meters
Lower Patuxent River Mesohaline	PAXMH4	1	0.5 meters
Lower Patuxent River Mesohaline	PAXMH5	2	0.5 meters
Lower Potomac River Tidal Fresh	POTTF	2,142[2]	2.0 meters
Piscataway Creek Tidal Fresh	PISTF	789	2.0 meters
Mattawoman Creek Tidal Fresh	MATTF	792	1.0 meters
Lower Potomac River Oligohaline	POTOH1	1,387[2]	2.0 meters
Lower Potomac River Oligohaline	POTOH2	262	1.0 meters
Lower Potomac River Oligohaline	POTOH3	1,153	1.0 meters
Lower Potomac River Mesohaline	POTMH	7,088[2]	1.0 meters
Upper Chesapeake Bay	CB2OH	705	0.5 meters
Upper Central Chesapeake Bay	CB3MH	1,370	0.5 meters
Middle Central Chesapeake Bay	CB4MH	2,533	2.0 meters
Lower Central Chesapeake Bay	CB5MH	8,270[2]	2.0 meters

[1] The segments West Branch Patuxent River (WBRTF-application depth = 0.5 meters), and Lower Patuxent River Mesohaline Subsegments 3 and 6 (PAXMH3 & PAXMH6-application depths = 0.5 meters), and the Anacostia River Tidal Fresh (ANATF-application depth = 0.5 meters) are not listed above because the SAV Restoration goal for each segment is 0 acres, based on no historical mapped SAV and because the available bathymetry data is too limited to allow for a calculation of an SAV restoration acreage goal using the method described in the U.S. Environmental Protection Agency publication "Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and its tidal Tributaries—2007 Addendum (EPA 903-R-07-003)". These segments have been assigned a water clarity criteria and application depth. Attainment of the shallow-water designated use will be determined using the method outlined in §C(9)(a)(iii) and (e) of this regulation.

[2]Maryland portion of the segment.

(d) SAV No Grow Zones. Certain Chesapeake Bay segments contain areas designated as shallow water use that are not suitable for growth of submerged aquatic vegetation due to natural conditions and permanent physical alterations. Tables V-1 and Figures V-1 to V-12 in the 2004 U.S. Environmental Protection Agency publication "Technical Support Document for Identification of Chesapeake Bay Designated Uses and Attainability — 2004 Addendum (EPA 903-R-04-006)", which is incorporated by reference, indicate the SAV No Grow Zones. The segments Upper Choptank River (CHOTF), Upper Nanticoke River (NANTD), Upper Pocomoke River (POCTF), and Middle Pocomoke River Oligohaline (POCOH) are entirely SAV no grow zones, therefore, the shallow-water designated use does not apply to these segments.

(e) Implementation. The attainment of the water clarity criteria that apply to the seasonal shallow-water submerged aquatic vegetation use subcategory in the Chesapeake Bay and tidally influenced tributary waters will be determined using the guidelines documented within the U.S. Environmental Protection Agency publications "Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and its Tidal Tributaries (EPA 903-R-03-002)", "Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and its Tidal Tributaries — 2004 Addendum (EPA 903-R-04-005)", "Ambient Water Quality Criteria for Dissolved

(a) Fresh water aquatic organisms apply; and

(b) The wholesomeness of fish for human consumption apply.

E. Criteria for Class III-P Waters — Nontidal Cold Water and Public Water Supplies.

(1) Exception. Authorized operation of the Little Seneca Creek Dam means that all operational activities permitted are met under the conditions of a dam operating permit issued by the Department of Natural Resources under Natural Resources Article, §§8-801—8-814, Annotated Code of Maryland, and COMAR 08.05.03. Injury resulting from the authorized operation of Little Seneca Creek Dam to the Class III natural trout fishery recognized in the stream use designation assigned to Little Seneca Creek in Regulation .08 of this chapter is not considered a violation of this chapter.

(2) The following criteria apply:

(a) The criteria for Class III waters in §D(1)—(7); and

(b) All toxic substance criteria to protect:

(i) Fresh water aquatic organisms; and

(ii) Public water supplies and the wholesomeness of fish for human consumption.

F. Criteria for Class IV Waters — Recreational Trout Waters.

(1) Bacteriological — same as Class I waters.

(2) Dissolved oxygen — same as Class I waters.

(3) Temperature.

(a) The maximum temperature outside the mixing zone determined in accordance with Regulation .05 of this chapter or COMAR 26.08.03.03—.05 may not exceed 75°F (23.9°C) or the ambient temperature of the surface waters, whichever is greater.

(b) Ambient temperature — Same as Class I.

(c) A thermal barrier that adversely affects salmonid fish may not be established.

(d) It is the policy of the State that riparian forest buffer adjacent to Class IV waters shall be retained whenever possible to maintain the temperatures essential to meeting this criterion.

(4) pH — same as Class I waters.

(5) Turbidity — same as Class I waters.

(6) Color — same as for Class I waters.

(7) Toxic Substance Criteria. All toxic substance criteria to protect:

(a) Fresh water aquatic organisms apply; and

(b) The wholesomeness of fish for human consumption apply.

G. Criteria for Class IV-P Waters — Recreational Trout Waters and Public Water Supplies. The following criteria apply:

(1) The criteria for Class IV waters in §F(1)—(6); and

(2) Toxic Substance Criteria. All toxic substance criteria to protect:

(a) Fresh water aquatic organisms, and

(b) Public water supplies and the wholesomeness of fish for human consumption.

Andy Krause

From: Andy Krause <akrause@comcast.net>
Sent: Friday, February 27, 2015 1:40 PM
To: 'Michelle Dickinson'
Cc: 'Catherine Robinson'; 'slewofflags22@aol.com'; 'David Sellman'
Subject: RE: Resolving Septic and Noise Issues

Michelle,

Thank you for the prompt reply. I know Blevins, have used them in the past, and respect them. Nevertheless, as I stated earlier, we do not want contractors not responsible to us working on our property without our supervision and control. We want to be notified when the work is to be performed so that we can assure the work is done properly and there is no future risk of leaching into the existing mis-placed trench. Any plans or documents pertaining to the work going forward would also be appreciated. We recently checked with the County and saw no septic permit submission or approval with Blevins – do you know when this will be (or was) filed? If we can be assured the work is satisfactory then there should be no reason for us to pursue reimbursement for additional expenses we may incur as they should be minimal or non-existent.

All we really need to see are pictures of the cutoff of the old trench after excavation with an adequate barrier to prevent leaching into it from the rest of the septic field. I can easily remove the pipe myself but I have been advised to leave it to monitor leaching in the event your client's septic field were to fail in the future.

If your client changes her mind and would prefer an easement, let me know. Otherwise, I assume her Blevins contract must be irreversible as this would now seem to be a needless waste of money and destruction of the driveway. Just so you know, I didn't reply to your earlier offer sooner because I was advised by Macy Nelson not to engage in such discussions while the kennel issues were pending and then after the appeal period ended, it took time to gather the necessary information to fully evaluate the situation. In any case, we are satisfied with your client's current plans provided that they are carried out properly and we have the opportunity to inspect, which we can easily do from the vantage point of our property if you let us know when the work will take place.

Regarding dog noise, do you know when the privacy fence is to be installed and can you provide any idea if/when the kennel structures set forth in Judge's decision will be constructed? Obviously, if these measures are taken and they solve the problems both my family and all our tenants will be most appreciative and there need be no cause for further complaint. I will be happy to also convey this information to my tenants but a prompt timeline that you feel confident can be met should be provided if you seek our patience, or in lieu of that, perhaps some assurance of interim measures to keep the noise under control as discussed in my previous email. If the noise problem can be solved by the time weather warms to the point where it is normal to leave windows open much of the day then everything should be fine. Please advise.

Regards,
Andy

From: Michelle Dickinson [mailto:michelle@dickinson-law.com]
Sent: Friday, February 27, 2015 12:25 PM
To: Anita Krause
Cc: Catherine Robinson; slewofflags22@aol.com; David Sellman
Subject: Re: Resolving Septic and Noise Issues

Andy,

PROTESTANT'S
EXHIBIT NO. 1

I am in receipt of your February 26, 2015 email. I refer you to the attached December 9, 2014 email, wherein I advised Mr. Sellman that a portion of Ms. Robinson's absorption trench was unintentionally installed beneath your property along with an observation pipe in January 2007 (not 21 years ago). We offered to have a new trench installed on Ms. Robinson's property and have the observation pipe removed from your property at Ms. Robinson's expense. Since we did not hear from you, Ms. Robinson hired Blevins Septic Service to disconnect the existing trench and install a new trench on her property. If you would like Blevins to remove the observation pipe at the same time, please so advise.

Once that work is complete, Ms. Robinson will install a privacy fence which we expect will address any noise concerns and Ms. Robinson's privacy concerns.

Best,
Michelle

Michelle J. Dickinson

410.740.5630 Office
443.280.4257 Cell
866.211.2673 Fax
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10440 Little Patuxent Pkwy.
Suite 300
Columbia, MD 21044
www.dickinson-law.com

On Thu, Feb 26, 2015 at 3:42 PM, Andy Krause <akrause@comcast.net> wrote:

Hi Holly,

We wanted to wait until some time had passed and dust had settled (e.g., the Kennel Exception is settled and appeal deadline is passed) before returning to several outstanding issues of mutual concern. Our hope is that we can find a way to move forward more civilly and productively without having to involve lawyers at every turn. But if you prefer otherwise, you may direct Ms. Dickinson to respond to me and I will re-engage our attorney, David Sellman, who is copied on this email, when I see fit.

We have two issues we need to address; the septic issue and dog noise issues going forward. I will begin with the Septic Issue.

First, there are some facts you should know. Despite Ms. Dickinson's claims to the contrary, she never provided Mr. Sellman with the documents he requested. However, in the meantime, we have obtained them on our own and have also talked extensively with Mr. Harris of Harris Septic who did your septic repair in 2006/7 and submitted the paperwork to Baltimore County. He also sent us some additional documentation we requested especially given the paucity and low quality of information on record with the County. Just so you know, I wanted you to be aware of some things Mr. Harris told us – some of which contradict what Ms. Dickinson previously told Mr. Sellman:

1. Ms. Dickinson had claimed that the "observation pipe" had been there at least 21 years, since before you purchased the property, and that Mr. Harris had only "replaced it" (Mr. Sellman thinks this was to try to establish a claim of Adverse Possession). Mr. Harris informed us the pipe was new and was only installed because of then-recent code changes that required said observation pipe. If there is any record anywhere of any part of the septic field or any piping being on or within 10 feet our property line prior to Mr. Harris's work, we were unable to find it and Mr. Harris was unaware of it.

2. Mr. Harris (as well as our own septic contractor) told us the terrain sloping and soils combined with County codes would make this a "major job" and necessitate moving the septic trench under a significant portion of your driveway as there is nowhere else to put it that will comply with County code. Mr. Harris told us he had informed you that his charge to move the trench and pipe would be $4500 not including the cost to dig up and replace the driveway and other landscaping (apparently there is another company/person named Price involved with that). This septic relocation would also put you or future owners at risk of having to dig up the driveway again when the septic system inevitably required future repair or replacement.

According to Ms. Dickinson, you have already offered to move your septic system and take on these expenses and risks. We are now prepared to accept this offer with the caveat that neither you nor your contractors shall trespass on our property to effect reparations unless under the direct supervision of our own septic contractor on our land (and we so informed Mr. Harris as well). Alternatively, if you are not willing to permit supervision on our land, we will have our own contractor effect reparations on our side of the property line removing the pipe and installing a clay barrier to prevent leaching from the deactivated trench (Mr. Harris told me his current quote does not involve removing the mis-placed trench but merely connects a new one to bypass it). This could (preferably) be done in contemporaneous coordination with Harris's reparation. We would expect you to reimburse us for the cost of our contractor in either case. Our septic contractor also informed us that if we have him do the reparation and you do not provide access from your property to do so the costs of hand-digging and bringing up all supplies up the steep hillside by hand could exceed $2000 depending on various conditions he cannot assess from surface inspection alone.

In good faith, we are willing to consider an alternative that would enable you to keep the septic system as is. We would be willing to grant an easement at a cost and risk to you that are less than you now face. We would also be willing to grant, under such easement, your right to keep certain trees and landscaping you planted which also appear to be on our property and enable you to maintain and expand them if you wish in a mutually beneficial manner. As an additional sign of good faith, we would also be willing to remove the "No Trespassing" signs that we installed on our property line

near your driveway facing your home and agree not to add more. If we could come to amicable terms on these issues we would accept that as good evidence that those signs were no longer necessary so close to your home.

You are free to make or request an easement proposal in this regard or, otherwise, inform us when and how you intend to effect relocation of your septic trench and pipe in accordance with the conditions above. We realize the work cannot be done until after Spring thaw but time is of the essence now in coming to an agreement.

Next, we need to address the noise issue concerning your dogs, not only for us but for our tenants who continue to complain and worry as the better weather of Spring will soon be upon us, as unbelievable as that may seem right now. It seems to us and our tenants that the noise problems have gotten worse since the deadline for appeal has passed (especially in the early morning between 4 – 5AM). Prior to that, things had been much better and we had noticed that the dogs did not use the doggy doors at will most of the time and that you had dog sitters during the day when you and Kawana were absent which I now longer see. We would like to find a mutually agreeable and amicable way to work with you to reduce this problem. If you doubt your dog's noise is as big a problem as we say it is, then we would be willing to have you visit our home and apartment area (in our presence – please do not trespass alone) under conditions where your dogs frequently bark. Kawana may be better suited for this since she is not hard of hearing. Alternatively, or in addition, we can take further videos and recordings of the incidences so that you can identify the primary barkers – if you think you can identify a ringleader (we're not so sure it can be confined to just a few dogs but we'll work with you as best we can). We just need to know what plans and measures you are willing to implement to contain the problem, in stages if necessary, and then be able to see you are promptly following through to make them work.

We realize that Judge Beverungen gave you until August to build your kennel, assuming it can be built given other County Code restrictions. However, we cannot accept this as an excuse for the dogs to be noisy in the interim (or afterwards). If we can't find a way to work together constructively then you leave us and our tenants no further choice but to begin reporting the excessive noise to authorities and take whatever other measures that may be required. We all deserve to live in peace. In the past, we had asked our tenants not to complain directly and that we would handle it. In this we were delinquent, to our regret. We had a recent meeting and they are no longer bound by this understanding. If I can't show them any evidence the problem is being dealt with productively I can assure you they will not hesitate to report the noise going forward. We hope to avoid this if we can seek adequate improvement with you.

Again, we hope that we can turn the tide to a less contentious level. We hope you can see in the letter we are trying to offer constructive solutions and our willingness to cooperate. The rest is up to you.

Regards,

Andy


PROTESTANT'S
EXHIBIT NO. 2

PROTESTANT'S

EXHIBIT NO. 3

From: Jen Walsh [mailto:walsh.jennifer.s@gmail.com]
Sent: Tuesday, June 02, 2015 8:33 PM
To: Andy Krause
Subject: Dogs on Far Out Ln

Hi Andy,

Tara and I wanted to follow up in writing on our brief discussion last week. While we agree that the kennel noise has been significantly improved, it continues to be excessive to the point that we are often awoke before 5AM and Eden must still be isolated from the still too common outbursts of barking at unpredictable times. I don't feel like we should have to live with our windows closed necessitating we also spend far more on A/C.

Before we renewed our leases you assured us you would take care of this problem. You've told us about your neighbor's efforts but I'm not sure the privacy fence did much. As you conceded, most of the noise problem that went away may have simply resulted from the vet removing her kennel (or does she keep her dogs inside now?) and you couldn't promise us that was permanent.

While we both love your farm and would like to stay in a peaceful environment, this email is to serve notice that we will have to move if the problem is not remedied soon. As you requested, we have always brought our problems to you, rather than authorities, and so we feel this is your responsibility.

We both appreciate your efforts and hope you understand.

Best,

Jen and Tara

--
Best,
Jennifer Walsh
443-676-2299

PROTESTANT'S
EXHIBIT NO. 4

Krause Property Line 2

Created By
Baltimore County
My Neighborhood

Printed 8/19/2015

Pet 5

Plot 6


Select A Property
Imagery
Data Layers
ASHBURN RD
354 Feet
^ Legend/Display More Data

Screenshot taken 8/23/2015

Prof. 9

12/16/2014 Kennel Stream during light rain

Prof. 10

Pollution plume from Kennel stream during rain on 9/10/2015

Prof. 11

Water Quality Sampling Map for 1940 Akehurst Rd. Sparks, MD 21152

- Map was made using maps and resources at http://myneighborhood.baltimorecountymd.gov/

Prots. 12

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

FINAL REPORT OF ANALYSIS

G. Macy Nelson
401 Washington Avenue
Suite 803
Towson, MD 21204

PROJECT NAME: Krauss
REPORT DATE: 08/04/2015
REPORT NBR: 150804145625

LAB#: E040632-01 SAMPLE ID: #1 1940 Akehurst SAMPLER- C Alban
LOCATION: Stream by House
DATE SAMPLED: 07/27/2015 TIME SAMPLED: 7/27/2015 11:50
DATE RECEIVED: 07/27/2015 TIME RECEIVED: 12:22
DELIVERED BY: Colin Alban RECEIVED BY: Ginny Shelley
COMMENTS:

	ANALYSIS	METHOD	ANALYSIS DATE/TIME	BY	RESULT		Qual	REPORTING LIMIT
MICROBIOLOGY by Enviro-Chem								
$	E. Coli	SM 9223B	07/27/15 13:45	VPS	435	MPN/100 mL		1.00
WET CHEMISTRY by Enviro-Chem								
$	Ammonia Nitrogen	EPA 350.1	08/01/15 14:31	SES	0.60	mg/L		0.20
#	Nitrate (as N)	EPA 300.0	07/27/15 17:30	EJF	1.4	mg/L		0.2

Profs_13

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

FINAL REPORT OF ANALYSIS

G. Macy Nelson
401 Washington Avenue
Suite 803
Towson, MD 21204

PROJECT NAME: Krauss
REPORT DATE: 08/04/2015
REPORT NBR: 150804145625

LAB#: E040632-02 SAMPLE ID: #2 1940 Axehurst SAMPLER- C Alban
LOCATION: Stream by Neighbor
DATE SAMPLED: 07/27/2015 TIME SAMPLED: 7/27/2015 11:55
DATE RECEIVED: 07/27/2015 TIME RECEIVED: 12:22
DELIVERED BY: Colin Alban RECEIVED BY: Ginny Shelley
COMMENTS:

	ANALYSIS	METHOD	ANALYSIS DATE/TIME	BY	RESULT		Qual	REPORTING LIMIT
MICROBIOLOGY by Enviro-Chem								
$	E. Coli	SM 9223B	07/27/15 13:45	VPS	>2420	MPN/100 mL		1.00
WET CHEMISTRY by Enviro-Chem								
$	Ammonia Nitrogen	EPA 350.1	08/01/15 14:37	SES	< 0.20	mg/L		0.20
#	Nitrate (as N)	EPA 300.0	07/27/15 17:48	EJF	2.0	mg/L		0.2

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

FINAL REPORT OF ANALYSIS

G. Macy Nelson
401 Washington Avenue
Suite 803
Towson, MD 21204

PROJECT NAME: Krauss
REPORT DATE: 08/04/2015
REPORT NBR: 150804145625

LAB#: E040632-03 SAMPLE ID: #3 1940 Akehurst SAMPLER- C Alban
LOCATION: Pond
DATE SAMPLED: 07/27/2015 TIME SAMPLED: 7/27/2015 12:00
DATE RECEIVED: 07/27/2015 TIME RECEIVED: 12:22
DELIVERED BY: Colin Alban RECEIVED BY: Ginny Shelley
COMMENTS:

	ANALYSIS	METHOD	ANALYSIS DATE/TIME	BY	RESULT		Qual	REPORTING LIMIT
MICROBIOLOGY by Enviro-Chem								
$	E. Coli	SM 9223B	07/27/15 13:45	VPS	11.0	MPN/100 mL		1.00
WET CHEMISTRY by Enviro-Chem								
$	Ammonia Nitrogen	EPA 350.1	08/01/15 14:38	SES	< 0.20	mg/L		0.20
#	Nitrate (as N)	EPA 300.0	07/27/15 18:05	EJF	0.7	mg/L		0.2

Stephen E. Shelley
Stephen Shelley
Laboratory Director

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

Certifications

Qualifier(s)

>2420>2420

# - State of Maryland Certfication	#192
* - NELAP Certification	68-04873
! - VELAP Certification	460255
$ - Not a certified Analyte	

QUALITY CONTROL SUMMARY

REPORT NBR: 150804145625

Enviro-Chem

Analyte QC Type	Sample Source	Date Prep'd	Date Analyzed	Result	MRL	Units	Spike Level	Source Result	% REC	% REC Limits	RPD	RPD Limit
Batch B5G0289												
Nitrate (as N)												
Duplicate	E040635-01	07/27/2015	07/27/2015	3	0.2	mg/L		3			0.00	20
Duplicate	E040626-01	07/27/2015	07/27/2015	<0.2	0.2	mg/L		ND				20
LCS		07/27/2015	07/27/2015	2	0.2	mg/L	2.00		96.6	90-110		
Matrix Spike	E040626-01	07/27/2015	07/27/2015	2	0.2	mg/L	2.00	ND	98.9	80-120		
Matrix Spike	E040635-01	07/27/2015	07/27/2015	5	0.2	mg/L	2.00	3	97.8	80-120		
Batch B5G0321												
Ammonia Nitrogen												
Blank		07/29/2015	08/01/2015	<0.20	0.20	mg/L						
Duplicate	E040632-01	07/29/2015	08/01/2015	<0.20	0.20	mg/L		0.60				20
LCS		07/29/2015	08/01/2015	1.86	0.20	mg/L	2.00		93.0	90-110		
Matrix Spike	E040632-01	07/29/2015	08/01/2015	1.86	0.20	mg/L	2.00	0.60	62.7*	90-110		

* - Indicates Recovery/RPD failed Criteria.

NC - Indicates Duplicate Result or Sample Duplicate Result < 4 * Method reporting limit

Sample Chain of Custody

Enviro-Chem Laboratories, Inc. | **47 Loveton Circle, Suite K** | **Sparks, MD 21152**

Client: Andy Krauss | Phone No.: 410-472-2853 | ECL Log in Batch Number | Page of

Project Manager: | Fax No.:

Sampler: | Email:

Project Name: 1940 Alkehurst Rd | Project Number:

P.O.Number:

Preservative Key: A = Nitric Acid, pH <2; B = Sulfuric Acid, pH <2; C = NaOH, pH >12; E = Thiosulfate; Zn = Zinc Acetate; D = None, Chilled; X = Other

Enviro-Chem Lab No.	Sample Identification (As it is to appear on report)	Date Sampled	Time Sampled	Matrix	No. of Containers	Sample Type C = Comp. G = Grab	Preservative: E. Coli	Nitrate	Ammonia	Remarks
40632-01	#1	7/27	1150	W	3		X	X	X	Stream by House (for control)
40632-02	#2	7/27	1155	W	3		X	X	X	Stream by neighbor
40632-03	#3	7/27	1200	W	3		X	X	X	Pond

Collected / Relinquished By	Date	Time	Received By	Deliverables Required	# Coolers	Seal
C. Allen	7/27/15	1222			1	
Relinquished By	Date	Time	Received By	Due Date	Ice Present	Temp
					Y	16.1
Relinquished By	Date	Time	Received By	Turnaround Requested: STD / 1-Day / Other	Rush?	
Relinquished By	Date	Time	Received By	Special instructions, Comments:		

COC/Labels match (Y) N | # of Samples 3 | # of Bottles 9 | Explain any "NO" answers for NH3

Bottles intact/appropriate (Y) N | Preserved correctly (Y) (N) NA | Preservative added at Lab (Y) N NA

Completed by VB

ECL Doc I (05/29/12)

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

FINAL REPORT OF ANALYSIS

G. Macy Nelson
401 Washington Avenue
Towson, MD 21204

PROJECT NAME: [none]
REPORT DATE: 08/04/2015
REPORT NBR: 150804145935

LAB#: E040645-01 SAMPLE ID: #1
LOCATION: Stream by House
DATE SAMPLED: 07/28/2015 TIME SAMPLED: 10:39AM SAMPLER- C Alban
DATE RECEIVED: 07/28/2015 TIME RECEIVED: 11:08AM
DELIVERED BY: Colin Alban RECEIVED BY: Stephen Shelley

COMMENTS:

COMMENTS:

	ANALYSIS	METHOD	ANALYSIS DATE/TIME	BY	RESULT	Qual	REPORTING LIMIT
Microbiology by Enviro-Chem							
$	E. Coli	SM 9223B	07/28/15 11:50	SES	105 MPN/100 mL		1.00
Wet Chemistry by Enviro-Chem							
$	Ammonia Nitrogen	EPA 350.1	08/01/15 14:40	SES	< 0.20 mg/L		0.20
#	Nitrate (as N)	EPA 300.0	07/28/15 15:46	EJF	1.3 mg/L		0.2

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

FINAL REPORT OF ANALYSIS

G. Macy Nelson
401 Washington Avenue
Towson, MD 21204

PROJECT NAME: [none]
REPORT DATE: 08/04/2015
REPORT NBR: 150804145935

LAB#: E040645-02 SAMPLE ID: #2
LOCATION: Stream by Neighbor
DATE SAMPLED: 07/28/2015 TIME SAMPLED: 10:44AM SAMPLER- C Alban
DATE RECEIVED: 07/28/2015 TIME RECEIVED: 11:08AM
DELIVERED BY: Colin Alban RECEIVED BY: Stephen Shelley

COMMENTS:

COMMENTS:

	ANALYSIS	METHOD	ANALYSIS DATE/TIME	BY	RESULT	Qual	REPORTING LIMIT
Microbiology by Enviro-Chem							
$	E. Coli	SM 9223B	07/28/15 11:50	SES	>2420 MPN/100 mL		1.00
Wet Chemistry by Enviro-Chem							
S	Ammonia Nitrogen	EPA 350.1	08/01/15 14:42	SES	< 0.20 mg/L		0.20
#	Nitrate (as N)	EPA 300.0	07/28/15 16:04	EJF	2.1 mg/L		0.2

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

FINAL REPORT OF ANALYSIS

G. Macy Nelson
401 Washington Avenue
Towson, MD 21204

PROJECT NAME: [none]
REPORT DATE: 08/04/2015
REPORT NBR: 150804145935

LAB#: E040645-03 SAMPLE ID: #3
LOCATION: Pond
DATE SAMPLED: 07/28/2015 TIME SAMPLED: 10:50AM SAMPLER- C Alban
DATE RECEIVED: 07/28/2015 TIME RECEIVED: 11:08AM
DELIVERED BY: Colin Alban RECEIVED BY: Stephen Shelley

COMMENTS:

COMMENTS:

	ANALYSIS	METHOD	ANALYSIS DATE/TIME	BY	RESULT	Qual	REPORTING LIMIT
Microbiology by Enviro-Chem							
$	E. Coli	SM 9223B	07/28/15 11:50	SES	14.4 MPN/100 mL		1.00
Wet Chemistry by Enviro-Chem							
$	Ammonia Nitrogen	EPA 350.1	08/01/15 14:43	SES	< 0.20 mg/L		0.20
#	Nitrate (as N)	EPA 300.0	07/28/15 16:22	EJF	0.7 mg/L		0.2

Stephen E. Shelley

Stephen Shelley
Laboratory Director

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

Certifications

#192	# - State of Maryland Certfication
68-04873	* - NELAP Certification
460255	! - VELAP Certification

\# Indicates a MD certified Analyte

* Indicates a NELAP certified Analyte

! Indicates a VELAP certified Analyte

$ Not a certified Analyte

Qualifier(s)

>2420>2420

QUALITY CONTROL SUMMARY

REPORT NBR: 150804145935

Enviro-Chem

Analyte / QC Type	Sample Source	Date Prep'd	Date Analyzed	Result	MRL	Units	Spike Level	Source Result	% REC	% REC Limits	RPD	RPD Limit
Batch B5G0301												
Nitrate (as N)												
Duplicate	E040642-01	07/28/2015	07/28/2015	2	0.2	mg/L		2			2.52	20
LCS		07/28/2015	07/28/2015	2	0.2	mg/L	2.00		96.0	90-110		
Matrix Spike	E040642-01	07/28/2015	07/28/2015	4	0.2	mg/L	2.00	2	98.6	80-120		
Batch B5G0321												
Ammonia Nitrogen												
Blank		07/29/2015	08/01/2015	<0.20	0.20	mg/L						
Duplicate	E040632-01	07/29/2015	08/01/2015	<0.20	0.20	mg/L		0.60				20
LCS		07/29/2015	08/01/2015	1.86	0.20	mg/L	2.00		93.0	90-110		
Matrix Spike	E040632-01	07/29/2015	08/01/2015	1.86	0.20	mg/L	2.00	0.60	62.7*	90-110		

* - Indicates Recovery/RPD failed Criteria.

NC - Indicates Duplicate Result or Sample Duplicate Result < 4 * Method reporting limit

Sample Chain of Custody

Enviro-Chem Laboratories, Inc. | **47 Loveton Circle, Suite K** | **Sparks, MD 21152**

Client: G Macy Nelson ESQ Phone No.:

Project Manager: Fax No.:

Sampler: Email:

Project Name: Project Number:

P.O.Number:

ECL Log in Batch Number: Page of

Preservative Key:
A = Nitric Acid, pH <2
B = Sulfuric Acid, pH <2
C = NaOH, pH >12
E = Thiosulfate
Zn = Zinc Acetate
D = None, Chilled
X = Other

Enviro-Chem Lab No.	Sample Identification (As it is to appear on report)	Date Sampled	Time Sampled	Matrix	No. of Containers	Sample Type C = Comp. G = Grab	Preservative	E	D	B						Remarks
							E. Coli	Nitrate	Ammonia							
E040645-01	#1	7/28	1039	W	3	G	x	x	x							Stream by House
E040645-02	#2	7/28	1044	W	3	G	x	x	x							Stream by Neighbor
E040645-03	#3	7/28	1050	W	3	G	x	x	x							Pond

Collected / Relinquished By: Cmac C-Albu	Date: 7/28	Time: 1105	Received By: Tyler E Stelly	Deliverables Required
Relinquished By	Date	Time	Received By	Due Date
Relinquished By	Date	Time	Received By	Turnaround Requested: STD / 1-Day / Other; Rush?
Relinquished By	Date	Time	Received By	Special instructions, Comments:

# of Coolers: 1 Seal:

Ice Present: Y Temp: 4.7

COC/Labels match: (Y) N # of Samples: 3 # of Bottles: 9

Bottles intact/appropriate: (Y) N Preserved correctly: (Y) N NA

Explain any "NO" answers

Preservative added at Lab: Y N NA

Completed by

ECL Doc 1 (05/29/12)

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

FINAL REPORT OF ANALYSIS

G. Macy Nelson
401 Washington Avenue
Suite 803
Towson, MD 21204

PROJECT NAME: 1940 Akehurst
REPORT DATE: 08/24/2015
REPORT NBR: 150824141524

LAB#: E040975-01 SAMPLE ID: Pond SAMPLER- C Alban
LOCATION:
DATE SAMPLED: 08/14/2015 TIME SAMPLED: 8/14/2015 11:19
DATE RECEIVED: 08/14/2015 TIME RECEIVED: 11:48
DELIVERED BY: Colin Alban RECEIVED BY: Ginny Shelley
COMMENTS: Revision of report 150818170532 to correct sample collection times.

ANALYSIS	METHOD	ANALYSIS DATE/TIME	BY	RESULT	Qual	REPORTING LIMIT
MICROBIOLOGY by Enviro-Chem						
$ E. Coli	SM 9223B	08/14/15 16:45	SES	435 MPN/100 mL		1.00

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

FINAL REPORT OF ANALYSIS

G. Macy Nelson
401 Washington Avenue
Suite 803
Towson, MD 21204

PROJECT NAME: 1940 Akehurst
REPORT DATE: 08/24/2015
REPORT NBR: 150824141524

LAB#: E040975-02 SAMPLE ID: Stream 1 SAMPLER- C Alban
LOCATION:
DATE SAMPLED: 08/14/2015 TIME SAMPLED: 8/14/2015 11:27
DATE RECEIVED: 08/14/2015 TIME RECEIVED: 11:48
DELIVERED BY: Colin Alban RECEIVED BY: Ginny Shelley
COMMENTS: Revision of report 150818170532 to correct sample collection times.

ANALYSIS	METHOD	ANALYSIS DATE/TIME	BY	RESULT	Qual	REPORTING LIMIT
MICROBIOLOGY by Enviro-Chem						
$ E. Coli	SM 9223B	08/14/15 16:45	SES	73.3 MPN/100 mL		1.00

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

FINAL REPORT OF ANALYSIS

G. Macy Nelson
401 Washington Avenue
Suite 803
Towson, MD 21204

PROJECT NAME: 1940 Akehurst
REPORT DATE: 08/24/2015
REPORT NBR: 150824141524

LAB#: E040975-03 SAMPLE ID: Stream 2 SAMPLER- C Alban
LOCATION:
DATE SAMPLED: 08/14/2015 TIME SAMPLED: 8/14/2015 11:31
DATE RECEIVED: 08/14/2015 TIME RECEIVED: 11:48
DELIVERED BY: Colin Alban RECEIVED BY: Ginny Shelley
COMMENTS: Revision of report 150818170532 to correct sample collection times.

ANALYSIS	METHOD	ANALYSIS DATE/TIME	BY	RESULT	Qual	REPORTING LIMIT
MICROBIOLOGY by Enviro-Chem						
$ E. Coli	SM 9223B	08/14/15 16:45	SES	435 MPN/100 mL		1.00

Stephen E. Shelley

Stephen Shelley
Laboratory Director

ENVIRO-CHEM
LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-7112

Certifications

Qualifier(s)

# - State of Maryland Certfication	#192
* - NELAP Certification	68-04873
! - VELAP Certification	460255
$ - Not a certified Analyte	

Sample Chain of Custody

Enviro-Chem Laboratories, Inc. | **47 Loveton Circle, Suite K** | **Sparks, MD 21152**

Client: Andy Krause | Phone No.: 410 472 2857 | ECL Log in Batch Number | Page of

Project Manager: | Fax No.:

Sampler: | Email:

Project Name: 1940 Akehurst | Project Number:

P.O.Number:

Preservative Key: A = Nitric Acid, pH <2; B = Sulfuric Acid, pH <2; C = NaOH, pH >12; E = Thiosulfate; Zn = Zinc Acetate; D = None, Chilled; X = Other

Enviro-Chem Lab No.	Sample Identification (As it is to appear on report)	Date Sampled	Time Sampled	Matrix	No. of Containers	Sample Type C = Comp. G = Grab	Preservative	Bact.	Remarks
E040975-01	Pond	8/14/15	119					X	Pond side away from House near neighbor runoff stream
E040975-02	Stream #1	8/14/15	1127					X	Runoff stream from neighbor
E040975-03	Stream #2	8/14/15	1131					X	From smaller pond on property

Collected / Relinquished By	Date	Time	Received By	Deliverables Required	# Coolers	Seal
C. Allen	8/14/15	1148			1	
Relinquished By	Date	Time	Received By	Due Date	Ice Present	Temp
					Y	8.0
Relinquished By	Date	Time	Received By	Turnaround Requested	Rush?	
				STD / 1-Day / Other		
Relinquished By	Date	Time	Received By	Special instructions, Comments:		

COC/Labels match: Y N | # of Samples 3 | # of Bottles 3 | Explain any "NO" answers

Bottles intact/appropriate: Y N | Preserved correctly Y N NA | Preservative added at Lab Y N NA

Completed by

ECL Doc: 1 (05/29/12)

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

FINAL REPORT OF ANALYSIS

G. Macy Nelson
401 Washington Avenue
Suite 803
Towson, MD 21204

PROJECT NAME: 082015
REPORT DATE: 08/24/2015
REPORT NBR: 150824141223

LAB#: E041061-01 SAMPLE ID: Stream 1 SAMPLER- C Alban
LOCATION: Owner's smaller pond
DATE SAMPLED: 08/20/2015 TIME SAMPLED: 8/20/2015 15:01
DATE RECEIVED: 08/20/2015 TIME RECEIVED: 15:35
DELIVERED BY: Colin Alban RECEIVED BY: Ginny Shelley
COMMENTS:

ANALYSIS	METHOD	ANALYSIS DATE/TIME	BY	RESULT		Qual	REPORTING LIMIT
MICROBIOLOGY by Enviro-Chem							
$ E. Coli	SM 9223B	08/20/15 16:45	VPS	>2420	MPN/100 mL		1.00

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

FINAL REPORT OF ANALYSIS

G. Macy Nelson
401 Washington Avenue
Suite 803
Towson, MD 21204

PROJECT NAME: 082015
REPORT DATE: 08/24/2015
REPORT NBR: 150824141223

LAB#: E041061-02 SAMPLE ID: Pond SAMPLER- C Alban
LOCATION: Neighbor side by stream inflow
DATE SAMPLED: 08/20/2015 TIME SAMPLED: 8/20/2015 15:04
DATE RECEIVED: 08/20/2015 TIME RECEIVED: 15:35
DELIVERED BY: Colin Alban RECEIVED BY: Ginny Shelley
COMMENTS:

ANALYSIS	METHOD	ANALYSIS DATE/TIME	BY	RESULT		Qual	REPORTING LIMIT
MICROBIOLOGY by Enviro-Chem							
$ E. Coli	SM 9223B	08/20/15 16:45	VPS	>2420	MPN/100 mL		1.00

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

FINAL REPORT OF ANALYSIS

G. Macy Nelson
401 Washington Avenue
Suite 803
Towson, MD 21204

PROJECT NAME: 082015
REPORT DATE: 08/24/2015
REPORT NBR: 150824141223

LAB#: E041061-03 SAMPLE ID: Stream 2 SAMPLER- C Alban
LOCATION: Near neighbor fence
DATE SAMPLED: 08/20/2015 TIME SAMPLED: 8/20/2015 15:11
DATE RECEIVED: 08/20/2015 TIME RECEIVED: 15:35
DELIVERED BY: Colin Alban RECEIVED BY: Ginny Shelley
COMMENTS:

ANALYSIS	METHOD	ANALYSIS DATE/TIME	BY	RESULT		Qual	REPORTING LIMIT
MICROBIOLOGY by Enviro-Chem							
$ E. Coli	SM 9223B	08/20/15 16:45	VPS	68700	MPN/100 mL		100

Stephen E. Shelley
Stephen Shelley
Laboratory Director

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

Certifications

Qualifier(s)

>2420>2420

# - State of Maryland Certfication	#192
* - NELAP Certification	68-04873
! - VELAP Certification	460255
$ - Not a certified Analyte	

Sample Chain of Custody

Enviro-Chem Laboratories, Inc. **47 Loveton Circle, Suite K** **Sparks, MD 21152**

Client: Andy Krauss Phone No.:

Project Manager: Macy Nelson Fax No.:

Sampler: Email:

Project Name: Project Number:

P.O.Number:

ECL Log in Batch Number

Page of

Preservative Key:
A = Nitric Acid, pH <2
B = Sulfuric Acid, pH <2
C = NaOH, pH >12
E = Thiosulfate
Zn = Zinc Acetate
D = None, Chilled
X = Other

Enviro-Chem Lab No.	Sample Identification (As it is to appear on report)	Date Sampled	Time Sampled	Matrix	No. of Containers	Sample Type C = Comp. G = Grab	Preservative Bact.	Remarks
41061-01	Stream #1	5/20/15	1501	W	1	G	X	Frog Own smaller Pond
41061-02	Pond	5/20/15	1504	W	1	G	X	Neighbor side by Stream inflow
41061-03	Stream #2	5/20/15	1511	W	1	G	X	Near neighbor fence

Collected / Relinquished By	Date	Time	Received By	Deliverables Required	# Coolers	Seal
C.Alban	5/20/15	1535			1	
Relinquished By	Date	Time	Received By	Due Date	Ice Present	Temp
					Y	15.0
Relinquished By	Date	Time	Received By	Turnaround Requested	Rush?	
				STD / 1-Day / Other		
Relinquished By	Date	Time	Received By	Special instructions, Comments:		

COC/Labels match (Y) N # of Samples 3 # of Bottles 3

Bottles intact/appropriate (Y) N Preserved correctly (Y) N NA

Explain any "NO" answers

Preservative added at Lab Y N NA

Completed by

ECL Doc 1 (05/29/12)

Krause Property E Coli Water Contamination Tests

performed by Enviro-Chem Laboratories, Inc. 47 Loveton Circle, Suite K, Sparks, MD 21152

E Coli Test Date	Days Since Last Rain (Inches)	Inches of rain w/in 24 hrs before test	E Coli in MPN/100ml			
			Kennel Stream	Control Stream	Pond (House Side)	Pond (Kennel Side)
07/27/2015	5 (0.03^)	0	>2420	435	11	---
07/28/2015	1 (0.53^)	0.53^	>2420	105	14.4	---
08/14/2015	2 (0.09^)	0	435	73.3	---	435
08/20/2015	1 (0.51	0.51	68700*	>2420?	---	>2420

*Test was diluted by 100x to prevent overscale

^ Rain measurements were taken from the National Climatic Data Center for Carroll County Regional Jack B Poage Field (KDMW) (nearest weather station). If not marked, rain was measured on site

? This test says the sample was taken in "own small pond" in chain of custody, not Stream 1 like all the other tests. This may be a problem rendering this test invalid. I did not video this test and did not witness it and I have been unable to confirm whether the test sample was taken in one of the 2 small ponds near the driveway or in the pond-like pool near the end of the stream opening to the pond. Given the times between tests (travel time) was relatively short compared to travel times between pond and stream #1 in earlier tests suggests this test was taken near the mouth of the main pond. If this test was taken near the Stream 1 mouth to the pond, or worse, at the peninsula, then water from the kennel stream could easily have mixed with this sample because the water is wide and turbulent there .

Quantitative Pond and Stream Specifications:

Pond Area:	0.92 acres
Average Estimated Depth:	less than 5 feet (use 5 feet for calculations below)
Approximate Water Volume:	4.6 acre-ft = 200376 cu. ft. = 1498917 gallons ≈ 1500000 gallons
Pond Outflow:	40 gal/minute (measured 8/15/2015 at end of outflow pipe)
Control Stream Flow:	31 gal/minute (measured 8/15/2015 at waterfall)
Kennel Stream Flow:	6.2 gal/minute (measured 8/15/2015 at 20 feet south of culvert)
Control Stream Length:	2296 feet (includes all branches)
Kennel Stream Length:	260 feet (from spring house to test sampling point); 410 feet (from spring house to pond)

Maximum Theoretical Exchange Rate = 1500000/(40 * 60 * 24) = 26 days

PROTESTANT'S
NOT ADMITTED
EXHIBIT NO. 14

(not admitted)
Prot. 14

Water Contamination Standards

From EPA 2012 Recreational Water Quality Criteria (EPA-820-F-12-061): The waterbody GM should not be greater than the selected GM magnitude in any 30-day interval. There should not be greater than a ten percent excursion frequency of the selected STV magnitude in the same 30-day interval. "

CRITERIA ELEMENTS	**Recommendation 1** Estimated Illness Rate 36/1,000		**Recommendation 2** Estimated Illness Rate 32/1,000	
Indicator	GM (cfu/100 mL)	STV (cfu/100 mL)	GM (cfu/100 mL)	STV (cfu/100 mL)
Enterococci (marine & fresh)	35	130	30	110
E. coli (fresh)	126	410	100	320

Also" "EPA-823-R-03-008 revised June 2003, see http://water.epa.gov/type/oceb/beaches/local_index.cfm). This EPA recreational water quality standard requires less than 126 MPN (or CFU) of generic *E. coli* per 100 ml water."

(Canadian) Water Quality Criteria for Microbiological Indicators (Updated August 7, 2001)

" The fecal coliform level for primary-contact recreation in fresh and marine waters should not exceed a geometric mean of 200/100 mL in 5 samples taken in a 30-day period. This is the CCREM Guideline."

Water Use	**Escherichia coli**	**Enterococci**	**Pseudomonas aeruginosa**	**Fecal coliforms**
Raw Drinking Water - no treatment	0/100 mL	0/100 mL	0/100 mL	0/100 mL
Livestock - general livestock use	200/100 mL maximum	50/100 mL maximum	None applicable	200/100 mL maximum
Irrigation - crops eaten raw	less than or equal to 77/100 mL geometric mean	less than or equal to 20/100 mL geometric mean	None applicable	less than or equal to 200/100 mL geometric mean
Recreation - secondary contact - crustacean harvesting	less than or equal to 385/100 mL geometric mean	less than or equal to 100/100 mL geometric mean	less than or equal to 10/100 mL 75th percentile	None applicable
Recreation - primary contact	less than or equal to 77/100 mL geometric mean	less than or equal to 20/100 mL geometric mean	less than or equal to 2/100 mL 75th percentile	less than or equal to 200/100 mL geometric mean

Prof. 15

Prots. # 16

AFFIDAVIT

Name: Jennifer Susan Walsh

Address: 2121 Abell Lane, Apt B
Sparks, MD 21152

I, Jennifer Walsh, do swear or affirm:

1. I am a current resident of 2121 Abell Lane, Apt B, Sparks, MD 21152. I have lived at this address since April 1, 2013 (735/mo + utilities, now 755) with my five year old daughter named Eden Evelyn Walsh. Our lease names Beste Pond Farm LLC as Owner of this property, which is owned and managed By Andy and Noreen Krause.

2. My unit looks out from the side of a ridge, over the valley on which Andy and Noreen Krause reside, and up the adjacent ridge on which Petitioner's property sits, at 2012 Far Out Lane.

3. I am a single mother.

4. My daughter has a rare and profoundly disabling genetic disorder called Rett Syndrome. She requires maximum care for all aspects of daily life, as she is unable to speak, unable to use her hands in a meaningful fashion, self-feed, or participate in her own self-care in any way. She also suffers from seizures, abnormal breathing patterns, and major problems of the gastrointestinal system that include being predominantly tube-fed. Miraculously she is still able to walk.

5. I work part time at a local Nursery & Garden center doing plant care and nursery duties to make ends meet, as is seasonally appropriate.

6. What attracted me to Beste Pond Farm as a place to raise my daughter was the opportunity to live a simpler, more fulfilling life at a slower pace. I saw the opportunity to live off the land through large-scale gardening, foraging, and fishing in the pond adjacent to the Krause's residence, all of which significantly promote my feelings of well-being. Being able to address my needs in this way has profoundly affected my ability to keep my daughter present and engaged. I find a lot of solace in the quiet of the woods, and felt that I could best face the extraordinary challenges of raising a child with such a profound disability, while also staying in a very reasonable distance from Johns Hopkins hospital, where Eden receives the bulk of her care. It was also important to me that she have the freedom to move about on her own

terms. While I am always near her, I thought that I would feel comfortable allowing her more space to explore, to boost her feelings of independence.

7. Andy and Noreen genuinely felt much of what I've listed above, and agreed that I needed to be here with Eden, even though they knew that I would be a bit of a liability with our very limited finances and the unpredictability of Eden's disorder. Still, they allowed me to rent this apartment. They both feel great affection towards my daughter and have been very attentive to our needs, above and beyond what is legally required of them, all of which is outlined in our lease.

8. Immediately after moving in, I noticed the dogs barking. Many nights I will sit out on my steps to enjoy some quiet, fresh air, and clear skies after a physically and mentally exhausting day. The first time I heard them, I was genuinely alarmed. The way the sound bounces back and forth and amplifies between the ridges is amazing. At times it gets so loud with the barking that it sounds like there are dozens of them surrounding you. That was my experience the first time I heard it. I ran upstairs, frightened that it would still be audible in Eden's bedroom, and unfortunately it was. She awoke and it took quite a bit of time to get her back down to sleep.

9. In that first week, I mentioned it to Andy and he told me about the Petitioner and her dogs, that he was really sorry that it happened, that it was an ongoing issue, and that they planned to speak with the Petitioner as soon as things settled down for them. They asked that I not complain directly to the Petitioner, as she was a very nice lady and had seemed willing to work with them in the past. This happened in the final months of their house being built. I knew of the significant hardships that the Krauses were facing at that time in their family life as well, so I respected their wishes and left it in their hands. Upon realizing that this was not a problem that was going to go away, I saved money in order to buy a pricey white noise machine to play in my daughter's bedroom all night, every night, to cancel out the sound of the barking. Which we still do to this day.

10. The most recent time that I noted how incredibly loud the barking was, was just last week, on Tuesday, December 2. I was working in my garage at about 9:00pm, after Eden had gone to bed. Even with a pretty significant downpour at that time, I was still able to hear the dogs.

11. During the warmer months, Eden and I spend a lot of time outside. Along with our neighbors, Seth and Laura Carlson and their two children, Beckett (7) and Penny (4), we put out tables and chairs and work on our various projects that we often do together, while our children play. On many occasions we have had to grab our

children to protect them because of a strange dog approaching from the ridge below.

12. In trying to give Eden a sense of independence, I used to let her wander around the area of the barns, within reason. I have had to sprint to her on more than one occasion, to protect her when dogs approach, as she is completely unable to defend herself from any kind of an attack.

13. One of the amenities that attracted me to Beste Pond Farm was the use of the pond at the Krause's residence for recreational activities. After learning of the large amount of dogs upslope from the pond, and subsequent conversations with former tenant Pat Keating, I, to this date, have yet to swim in the water, out of concern for the potential of unsanitary runoff from the Petitioner's property. I have also been hesitant to eat any of the fish that I have caught from that pond for the same reason. Any time I have gone down to the pond to fish, if the dogs are out, the barking becomes downright deafening to the point that I generally won't stay for longer than 30 minutes.

14. In closing, I just want to say that the level of noise that the dogs create has definitely had an impact on my quality of life. Had I known ahead of time that this was going to be an issue, I may have chosen another place for me and my daughter to live.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

Jennifer Walsh

12/10/14
Date

Affidavit

Seth and Laura Carlson

2121 Abell Lane, Apt. C

Sparks, MD 21152

December 10, 2014

1. We are tenants at 2121 Abell Ln., Apt. C, Sparks MD 21152 since July 6, 2013 (rent = $1225/mo + utilities) owned by Beste Pond Farm, LLC (BPF) owned and managed by Andy and Noreen Krause situated on the valley ridge across from the Petitioner's property on 2012 Far Out Ln.

2. Seth Carlson works as a Graphic Design Manager and Laura works as an Accountant.

3. We chose to live in this apartment primarily for the benefit of the surrounding amenities and for our children to have a rural setting in which to be raised. The school system was one of the main reasons we desired to move into the apartment. We recently went through a short sale of our house and are trying to rebuild our financial situation, and in due time plan on purchasing a primary or vacation property. We are very much outside people. We enjoy hiking, biking, and gardening as well as playing with our children. Our son is extremely athletic and is outside every day for the warmer months. Our employment was also a draw to the area seeing as we both work in the Hunt Valley/Sparks area.

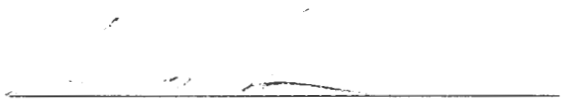
4. We noticed the dog barking right away as the sound seems to echo off the ridge and is consistent daily. We noticed that they are louder in the morning and evening hours and seems to go on for anywhere from 25-60 minutes at time. This noise would then set off a chain of other dogs in the area to howl back and forth. There are particular breeds of dogs that are louder than others and it seems they are part of the grouping located at 2012 Far Out Lane.

   There were other instances when we were either fishing or swimming in and around the pond that we noticed a considerable amount of noise coming from the same location, and at times our laughing would cause the dogs to bark towards our direction and make it even louder.

   There were two instances this past summer and spring (2014) that I encountered two dogs on the property at 2121 Abell Lane. One morning I exited the apartment and surprised two dogs that I had never seen before. I was not sure of the intent of the animals other than sniffing around the area. I yelled at them and they ran off, but I am not sure what would have happened if I had not surprised them and in turn they might have surprised me. The other instance involved my son while playing outside, and he was approached by a dog that neither of us recognized. Again we yelled and it ran off. In both instances the dogs ran down the hill towards Far Out Ln.

   As I have stated earlier that we enjoy spending time outside and almost every day we walk to get our mail out of the mailbox and on one particular day decided to take a hike up Far Out Lane to investigate what was located there. As we approached 2012 Far Out Lane, we were charged by a gaggle of dogs and both children were a bit shaken by the event. We turned and exited the area hastily, and we have avoided walking down Far Out Lane since.

Seth Carlson



Laura Carlson

GENERAL AFFIDAVIT

STATE OF MARYLAND

COUNTY OF BALTIMORE

PERSONALLY came and appeared before me, the undersigned Notary, the within named Thomas Mansfield, who is a resident of Baltimore County, State of Maryland, and makes this his statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

I, Thomas Mansfield, swear or affirm that I have witnessed a noise nuisance that has increased over the years coming from 2012 Far Out Lane. I have lived at this residence, 1936 Akehurst Rd., for 27 years. I live in a rural area and have very little personal contact with my neighbors. I have not complained in the past because I do not like to make "waves" and I am generally non-confrontational. I am also concerned about the increased barking frenzy and the lowering of my property value by this disturbance. On several occasions, while hunting on Andy Krause's property, with permission, I have witnessed Holly Robinson's dogs running through Andy Krause's property. I have also been awaken, in the summer, while my windows are open, by dogs barking and howling. I am concerned that the posting for Ms. Robinson's hearing was not posted in an area where the neighbors could see it. I was only made aware of this by Andy Krause.

DATED this the 9 day of 12, 2014

Signature of Affiant

SWORN to subscribed before me, this 3rd day of [illegible], 20[illegible]

NOTARY PUBLIC

My Commission Expires:

MELINDA R. SATSON
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires July 22, 2016

Affidavit

Name: La Kerry Dawson
Address: 5513 East Ave., Baltimore MD 21206

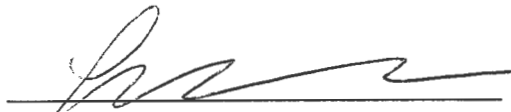
I, La Kerry Dawson swear or affirm:

I have known Noreen Krause since 2011. We are co-workers at Johns Hopkins HealthCare. I supervise community health workers at JHHC and Noreen is a trainer in our department. I do not supervise her and she does not supervise me.

During the summer of 2013 I went to see Noreen Krause at her place of residence, 1940 Akehurst Rd., for me and my daughter to swim in the pond and feed the fish. My daughter has special needs and I was delighted that Noreen would allow to this therapeutic experience, where she will be able to just enjoy nature and not worry about being different. As soon as we walked over to the pond you could hear the dogs barking from the property on the other side of the pond. The animal continual incessant barking could be heard during the day into the late afternoon. The barking gave my daughter some anxiety making the experience less enjoyable.

Further affiant saith not.
I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

La Kerry Dawson — 12/08/2014



name

12-08-2014

date

APPEAL

Petitions for Special Hearing and Variance
(2012 Far Out Lane)
5th Election District – 3rd Councilmanic District
***Legal Owner*: Catherine H. Robinson**
Case No. 2015-0235-SPHA

Petition for Zoning Hearing (April 23, 2015)

Zoning Description of Property

Notice of Zoning Hearing (June 18, 2015 for August 26, 2015 hearing)
(May 11, 2015 for June 16, 2015 hearing-postponed)

Certificate of Publication (August 6, 2015)
(May 19, 2015)

Certificate of Posting (July 29, 2015) Bruce E. Doak
(May 20, 2015) Bruce E. Doak

Entry of Appearance by People's Counsel (May 4, 2015)

Petitioner(s) Sign-in Sheet – One
Citizen(s) Sign-in Sheet – One

Zoning Advisory Committee Comments

Petitioner(s) Exhibits -

1. Photos of dogs owned by Petitioner
2. Site plan
3. Letters of support
4. Photos of site
5. Photos showing fencing at property
6. 2 videos of site on computer thumb drive
7. Hosmer C.V.
8. Aerial Photo
9. Series of photos of "stream"
10. COMAR Section

Protestants' Exhibits –

1. Email from A-Krause 2-27-2015
2. Photo of dogs in "drainage way"
3. Aerial photo w/topo
4. Jen Walsh E-mail 6-2-2015
5. Aerial Photo
6. Aerial topo map
7. Photo of house
8. DVD- "Kennel Noise"
9. Photo- dog in stream
10. Photo-pond
11. Photo-pond
12. Aerial exhibit- sample locations
13. Enviro Chem lab results
14. Not Admitted
15. EPA water contamination standards
16. Letters from neighbors

Miscellaneous (Not Marked as Exhibits)

Administrative Law Judge Order and Letter (Granted on October 9, 2015)

Notice of Appeal –November 4, 2015- G. Macy Nelson, LLC

2015-0235

BESTE POND FARM, LLC
S.M. No. 20296 folio 672
05-02-020480
1940 AKEHURST ROAD

AT CORNER

N47°27'44"E
94.67'

STONE FOUND
AT CORNER

S61°20'

PROPOSED FENCE

282.03'

N46°56'46"E

268'±

145'±

200'

5.415 Ac.±

84'±

HEIGHT 20.5'±

100'±

15'±

EXISTING
DWELLING

HEIGHT 17.5'±

318'±

EX. SPRING HOUSE
HEIGHT 10.5'±

APPROXIMATE LOCATION
EXISTING UDERGROUND
FENCE / KENNEL

200'

ASPHALT PAVING

N43°53'54"W 221.27'

EX. GARAGE
HEIGHT 12'±

APPROX. LOCATION
EXISTING WELL

3/4" IRON PIPE
FOUND AT CORNER

PROPOSED FENCE

N36°06'35"W 256.45'

S69°39'55"W
82.63'

FAR

S58°27'45"W
85.25'

RANCH, LLC
folio 552
20482
ROAD

STONE FOUN
AT CORNER

OUT

S25°42'5
59.14'

S43°47'
27.77'

5"W

LEVENSON
370 folio 207
-010231
R OUT LANE

L. LEVENSON
370 folio 207
-010231
R OUT LANE

PLAT TO ACCOMPANY A PETITION FOR A SPECIAL HEARING AND VARIANCE

FOR THE

ROBINSON RESIDENCE

2012 FAR OUT LANE
Deed Ref: S.M. No. 10141 folio 153
Tax Account No.: 05-14-010230
Zoned: RC 2; GIS Tile 027B2
Tax Map 0027; Grid 0015; Parcel 0182
5th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

GERHOLD, CROSS & ETZEL, LTD
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
PH: (410)823-4470 FAX: (410)823-4473

DATE: 8/27/14 | SCALE: 1" = 50'

Diagram 1

(Modified from Original Plat Exhibit from Petitioner)

Actual Scale is 1" = 50'

because this Diagram is 65% of the size of the Original (where 1" = 50')

ATTACHMENT 2

BESTE POND FARM, LLC
S.M. No. 20296 folio 672
05-02-020480
1940 AKEHURST ROAD

AT CORNER

N47°27'44"E
94.67'

STONE FOUND
AT CORNER

PROPOSED FENCE

S61°20'

PR

N46°56'46"E 282.03'

5.415 Ac.±

268'±

145'±

200'

HEIGHT 20.5'±

EXISTING
DWELLING

HEIGHT 17.5'±

EX. SPRING HOUSE
HEIGHT 10.5'±

318'±

APPROXIMATE LOCATION
EXISTING UDERGROUND
FENCE / KENNEL

ASPHALT PAVING

EX. GARAGE
HEIGHT 12'±

APPROX. LOCATION
EXISTING WELL

84'±

15'±

100'±

N19°23'35"W 221.27'

3/4" IRON PIPE
FOUND AT CORNER

PROPOSED FENCE

N36°06'35"W 256.45'

S69°39'55"W
82.63'

S58°27'45"W
85.25'

FAR

RANCH, LLC
2 folio 552
20482
ROAD

STONE FOUN
AT CORNER

PROPOSED FENCE

OUT

107'±

S25°42'5
59.14'

S43°47'
27.77'

5"W

LEVENSON
70 folio 207
-010231
R OUT LANE

. LEVENSON
370 folio 207
4-010231
AR OUT LANE

PLAT TO ACCOMPANY A PETITION
FOR A SPECIAL HEARING AND VARIANCE
FOR THE

ROBINSON RESIDENCE

2012 FAR OUT LANE
Deed Ref: S.M. No. 10141 folio 153
Tax Account No.: 05-14-010230
Zoned: RC 2; GIS Tile 027B2
Tax Map 0027; Grid 0015; Parcel 0182
5th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
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PH: (410)823-4470 FAX: (410)823-4473

DATE: 8/27/14 | SCALE: 1" = 50'

Diagram 1

(Modified from Original Plat Exhibit from Petitioner)

Actual Scale is 1" = 50'

because this Diagram is 65% of the size of the Original (where 1" = 50')

ATTACHMENT 2

IN THE MATTER OF THE APPLICATION OF GLEN L. DURST, ET UX FOR SPECIAL EXCEPTION FOR A PRIVATE BREEDING KENNEL S/S BRANDY SPRINGS RD. 60' W. C/L OF MASEMORE RD. & N/S MT. CARMEL RD. 430' E. C/L OF SUNSWEPT LANE 7th DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY NO. 84-54-X

: :

OPINION

This case comes before the Board on appeal from a decision of the Zoning Commissioner granting the requested special exception for a private breeding kennel and imposing certain restrictions thereon. The case was heard on February 14, 1984, in its entirety. The subject property is located on the south side of Brandy Springs Road 60 feet west of the centerline of Masemore Road and on the north side of Mt. Carmel Road 430 feet east of the centerline of Sunswept Lane, in the Seventh Election District of Baltimore County.

Mr. William Ulrich, land surveyor, testified that he prepared the plat for this site which was entered into evidence as Petitioner's Exhibit #1. He described the details portrayed on this exhibit to the Board. He noted the access to the proposed kennel would be via a paved lane off Mt. Carmel Road. He also noted the distance to the nearest residence to be some 500 feet± and to those on Flickerwood Road to be in excess of 1,000 feet. He noted the topography of the land as portrayed on Petitioner's Exhibit #3, which indicates the proposed site to be some 30 feet lower in elevation than Mt. Carmel Road. In closing his testimony, he noted that the land adjacent to the subject site is either wooded or pasture, the topography tending to discourage any tillage farming.

Mrs. Barbara Durst, property owner and Petitioner, then testified. Her testimony was that she has had the existing kennel for some twelve years and that it is a boarding kennel. A boarding kennel accepts any and all type dogs, and provides care for them for indeterminate periods. She also breeds and shows Chow dogs. Her success in breeding Chow dogs in the existing facility has been very poor since Chow dogs, especially puppies, are very susceptible to many diseases from other animals being boarded at this facility, hence, this request to be allowed a separate breeding facility. Mrs. Durst submitted as Petitioner's Exhibit #4-a thru #4-f a series of Facilities Inspection Reports conducted by an Animal Control Warden from April 4, 1979 thru

March 23, 1982. The number of dogs at the facility during these inspections ranged from 40 to 100 dogs, and in each and every inspection the facility was rated excellent.

Dr. William Shortall, veterinarian, testified that he does the veterinary work for this existing kennel, either on site or at his facility, the Padonia Veterinarian Hospital. He is of the opinion that the existing kennel is a very good one. He also confirmed the health problems with Chow puppies at this facility, noting an especially severe loss in the years 1979 and 1980, since which time breeding operations have been severely curtailed. He recommended separate breeding facilities as being normal for the breeding of Chow dogs.

Mr. Glenn Durst, property owner and Petitioner, testified that the kennel is operated solely by his wife. He described the proposed breeding kennel as being built of concrete block with wire fence covered runs. The building is to be air-conditioned with an office and an apartment on the upper level, in which he and his wife hope to reside. The new kennel would be underground in the side of a hill and would not be visible from any road. He also asked that he be allowed to move the kennel from 225 feet from the south property line to 205 feet from this line in order to utilize the existing topography and achieve this underground effect to the north. Mr. Durst noted that his land is not really suitable for farming, it being very erosive and wet, and stated that so far he has planted 7-8,000 white pine trees on the property.

Ms. Joyce Carlstrom, 1120 Mt. Carmel Road, a 13 year resident, testified she had no objection to the proposed breeding kennel. She stated that unconfined neighborhood pet dogs create a bigger nuisance than the existing kennel. The Board takes note that Ms. Carlstrom is the nearest neighbor to the proposed site to testify. Her testimony concluded Petitioner's case.

Mrs. Cynthia McCullough, 17008 Sunswept Lane, testified in opposition to the new kennel noting that the proposed location would be some 400 to 500 feet from her residence and she was certain that the barking of the dogs, particularly at night, would be audible to her. Mrs. Reita Erler, 16938 Flickerwood Road, also opposed the proposed kennel. (Note: She did not know just how far her home was from the proposed kennel but a scale on Petitioner's Exhibit #3 indicates it to be some 1400 to 1600 feet). She testified she hears the dogs barking from the existing kennel, day and night, and in fact kept a record of same which was entered as People's Counsel's Exhibit #2. Mrs. Erler also testified that she had made no complaints to anyone about this noise.

Mr. Fred Gunther, 16923 Flickerwood Road, also testified in opposition to the proposed kennel. (Note: His home is the same approximate distance as Mrs. Erler's home). Mr. Gunther testified that he lived at 1114 Mt. Carmel Road while his present home was being erected, and said that he could hear the dogs from the existing kennel at this location. He also made no complaints to anyone, this being only a temporary residence. He stated that he can hear the dogs in the summertime from his present home.

Ms. Maxine Myers, 1310 Mt. Carmel Road, testified that she hears the dogs barking almost daily, the situation being worse in the summertime, and noted that the proposed kennel would be relatively the same distance from her residence as the existing one. Rebecca Tansil, 17003 Sunswept Lane, has a kennel, by special exception, at this location. She breeds poodles and has a fancier's license. She objects to the proposed kennel because it represents increased commercialization in the area.

Mrs. Virginia Deardorff, 16924 Flickerwood Road, testified that she and her husband are developers of the properties along Flickerwood Road and fears that the additional kennel would detract from the area. She testified that there are twenty-five homesites in this area and that so far twelve houses have been erected. Mr. Donald Wirtz, 17002 Sunswept Lane, also testified in opposition to the new kennel because of the noise which is apt to be generated. This concluded Protestants case.

After reviewing all of the testimony and evidence presented, it appears that the special exception applied for by Petitioners should be granted. There was no substantive testimony that the proposed use would decrease property values in the area. A comparison of the testimony and evidence as it pertains to §502.1 indicates that the proposal meets all these prerequisites. The basic objection from the Protestants is to the noise that may result from the granting of this request. The Baltimore County Zoning Regulations clearly permit this land use by special exception in the R.C. 2 zone. Noise and dogs go hand in hand, and since the Council allowed this use in a rural zoning designation; i.e., R.C. 2, it must be considered normal rural noise as are tractors, cattle and other animals, etc., unless the noise can be proved to be unnatural, unusual or excessive. We have inspection notices from Baltimore County officials stating that the existing kennel is an "excellent" one, and the Board has no reason to believe that the proposed kennel will be anything less. It is, therefore, the opinion of this Board that the petition for a special exception for a breeding kennel should be granted and

will so order, subject to restrictions.

ORDER

For the reasons set forth in the aforegoing Opinion, it is this 24th day of April , 1984, by the County Board of Appeals, ORDERED that the special exception for a Private Breeding Kennel petitioned for, be and the same is hereby GRANTED, subject to the following restrictions:

1. That the proposed kennel building be no bigger than 28' x 80' - as shown on Petitioner's Exhibit #1, and that it be orientated in the same manner as shown.

2. That the Petitioners shall totally enclose the proposed kennel, and that all dogs be kept inside this enclosure from dark until 7:00 a.m. to reduce the possibility of noise during normal sleeping hours.

3. That the kennel be allowed to be placed 205 feet from the southern property line instead of the 225 feet now shown.

4. That the kennel itself be insulated and soundproofed to the best possible degree, and that it be appropriately landscaped and maintained in order to obtain the maximum reduction of noise eminating from the kennel.

5. That the Private Breeding Kennel be just that, and that the kennel be used only for the breeding and care of Chow dogs. No other dogs are to be boarded at this site.

6. That the special exception herein granted is for a "Private Breeding Kennel" as opposed to a normal "boarding" kennel.

Any appeal from this decision must be in accordance with Rules B-1 thru B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

LeRoy B. Spurrier

Patricia Phipps
Patricia Phipps

Lot # 1
1936
050205749
0504065050
Lot # 1
1900011515
ABELL LN
0513014500
AKEHURST RD
2121
0502020480
0502065380
AKEHURST
1940
0502020482
RC 2
163'
100'
2012
0514010230
OUT
0502020483
0514010231
FAR OUT LN
0505061320
0512000190

PETITIONER'S

EXHIBIT NO. 8

PLOTS PLANS' EX # 22

MARYLAND COORDINATE SYSTEM
NAD83(1991)

BESTE POND FARM, LLC
S.M. No. 20296 folio 672
05-02-020480
1940 AKEHURST ROAD

THE FLYING J. RANCH, LLC
S.M. No. 20680 folio 552
05-02-020482
YEOHO ROAD

STONE FOUND AT CORNER

N47°27'44"E 94.67'

S61°20'01"E 309.06'

STONE FOUND AT CORNER

N46°56'46"E 282.05'

NEW 3.5' WOOD FENCE WITH WIRE

STONE FOUND AT CORNER

ZONING POINT OF BEGINNING 1,475'± FROM ℄ OF AKEHURST ROAD

S61°22'45"E 17.86'

1" IRON PIPE FOUND N88°58'11"W 0.16' FROM CORNER

20' WIDE RIGHT OF WAY FOR INGRESS & EGRESS

NEW ALTERNATE BOARD PRIVACY FENCE

HEIGHT 6.8'

HEIGHT 8'

HEIGHT 5.75'

HEIGHT 4.5'

HEIGHT 3.5'

5.415 Ac.±

EXISTING DWELLING

HEIGHT 17.5'±

HEIGHT 20.5'±

EX. SPRING HOUSE HEIGHT 10.5'±

APPROXIMATE LOCATION EXISTING UNDERGROUND FENCE / PROPOSED MODIFIED KENNEL

ASPHALT PAVING

EX. GARAGE HEIGHT 12'±

APPROX. LOCATION EXISTING WELL

EX. BARN

LANE

OUT

FAR

N19°59'35"W 221.27'

3/4" IRON PIPE FOUND AT CORNER

NEW 3.5' WOOD FENCE WITH WIRE

N66°06'55"W 256.45'

S25°42'55"W 59.14'

S43°47'05"W 27.77'

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S58°27'45"W 85.25'

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JUDITH R. LEVENSON
S.M. No. 17810 folio 207
05-14-010231
2007 FAR OUT LANE

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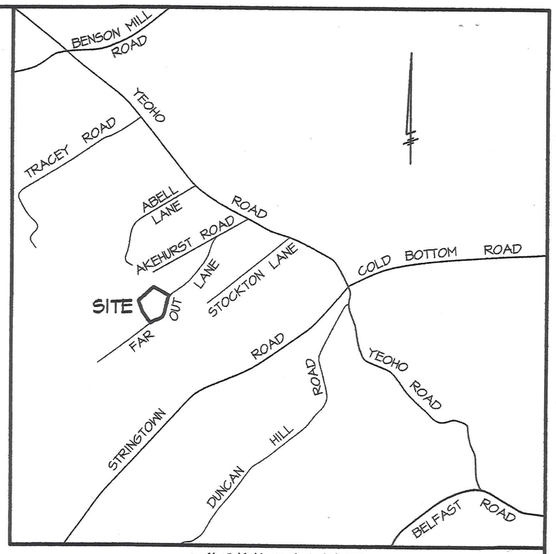

VICINITY MAP
1" = 2000'

GENERAL NOTES

1. THE BOUNDARY SHOWN HEREON IS FROM A SURVEY BY GERHOLD, CROSS & ETZEL, LTD..
2. THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILE 027B2.
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   WATERSHED: LOCH RAVEN RESERVOIR SUBSHED: BLACKROCK RUN
   SCHOOL DISTRICT: ELEMENTARY - FIFTH DISTRICT; MIDDLE - HEREFORD; HIGH - HEREFORD
   A.D.C. MAP & GRID: 11 G-3
4. THE PROPERTY IS NOT UNDER ANY ACTIVE ZONING VIOLATION.
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7. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
8. THE SUBJECT PROPERTY IS NOT WITHIN A 100 YEAR FLOOD PLAIN.
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THE SPECIAL EXCEPTION GRANTED WILL TERMINATE AUTOMATICALLY IF AND WHEN Ms. ROBINSON AND/OR KAWANA SWANK NO LONGER OWN OR RESIDE AT THE PREMISES.

PETITIONER SHALL ON OR BREFORE JUNE 30, 2015 SECURE NECESSARY PERMITS AND COMMENCE CONSTRUCTION OF ANY BUILDING TO BE USED FOR HOUSING THE DOGS IN COMPLIANCE WITH B.C.C.R. 421.1, WHICH STRUCTURE MUST BE COMPLETED ON OR BEFORE AUGUST 30, 2015. THE OUTSIDE AREAS USED FOR EXERCISE AND/OR DOG RUNS MAY NOT BE LOCATED WITHIN 200 FEET OF THE NEAREST PROPERTY LINE, AS REQUIRED BY B.C.Z.R. 421.1. THIS OUTSIDE AREA MUST ALSO BE FULLY ENCLOSED BY A FENCE OR UNDERGROUND ELECTRIC FENCE TO CONTAIN THE DOGS ON THE PETITIONER'S PROPERTY.

SPECIAL HEARING REQUEST:

TO AMEND THE PREVIOUSLY GRANTED SPECIAL EXCEPTION FOR A PRIVATE KENNEL

VARIANCE REQUEST:

SECTION 421.1 B.C.Z.R.: TO ALLOW A PRIVATE KENNEL TO BE LOCATED AS LITTLE AS 15 FEET TO THE PROPERTY LINE IN LIEU OF THE REQUIRED 200 FEET

OWNER\DEVELOPER

CATHERINE H. ROBINSON
2012 FAR OUT LANE
SPARKS, MD 21152
410-979-7539

PLAT TO ACCOMPANY A PETITION FOR A SPECIAL HEARING AND VARIANCE

FOR THE

ROBINSON RESIDENCE

2012 FAR OUT LANE
Deed Ref: S.M. No. 10141 folio 153
Tax Account No.: 05-14-010230
Zoned: RC 2; GIS Tile 027B2
Tax Map 0027; Grid 0015; Parcel 0182
5th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

STATE OF MARYLAND
SCOTT ALAN LINDGREN
No. 21081
PROFESSIONAL LAND SURVEYOR
8/6/15

#2

LICENSE EXPIRES/RENEWS 2/26/17

EXISTING FENCES ADDED: 08/06/15
REVISED: 04/22/15
REVISED: 10/20/14

GERHOLD, CROSS & ETZEL, LTD
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
PH: (410)823-4470 FAX: (410)823-4473

DATE: 8/27/14 | SCALE: 1" = 50'

EX #6

Protestant Exhibit 20

My Neighborhood Map

Created By
Baltimore County
My Neighborhood

Printed 4/1/2016

Exhibit 18

Protestant Group

My Neighborhood Map

Created By
Baltimore County
My Neighborhood

Printed 4/1/2016

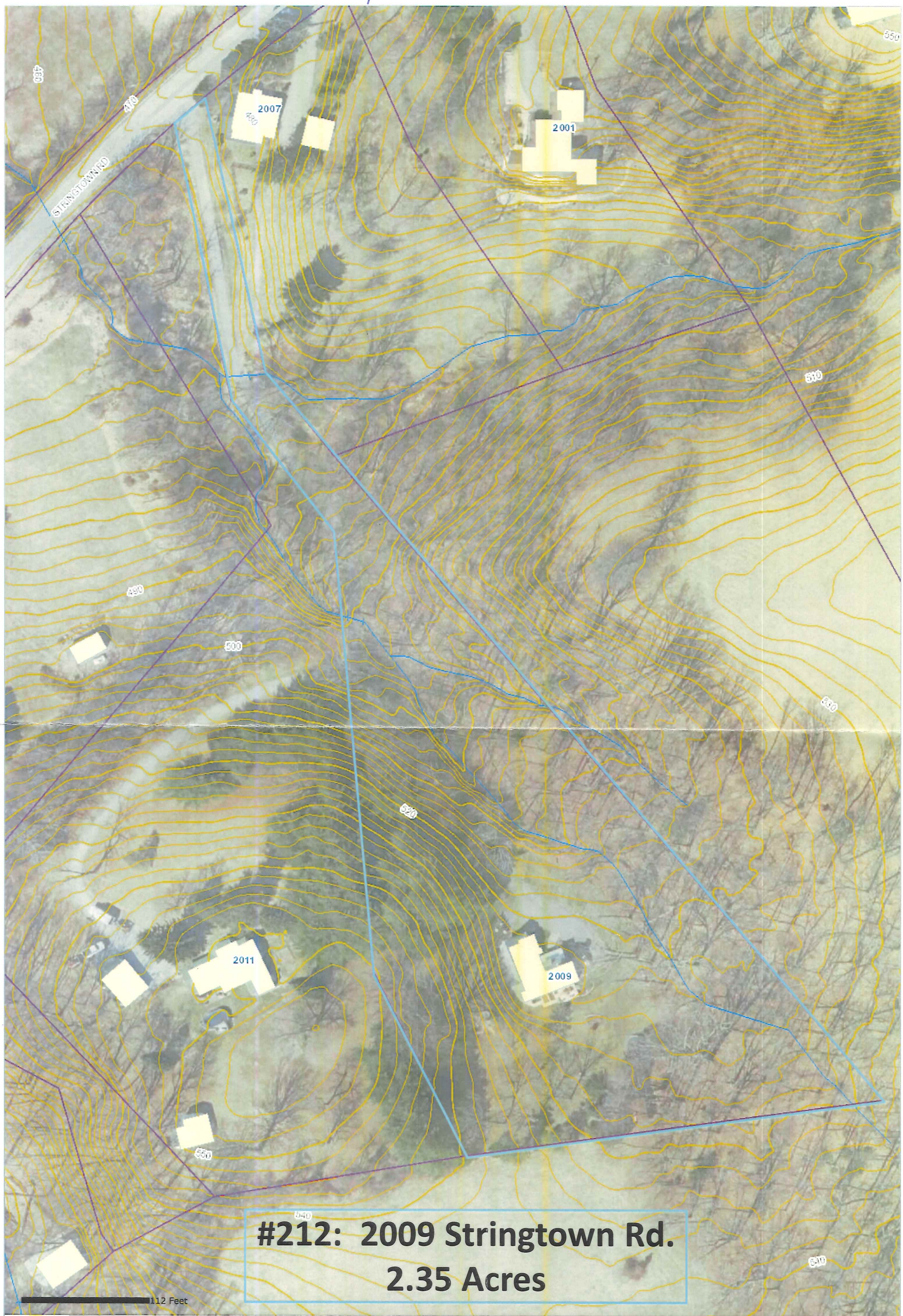
Protestant exhibit #16

My Neighborhood Map

Created By
Baltimore County
My Neighborhood

Printed 4/1/2016

Protestant exhibit 13



#212: 2009 Stringtown Rd.
2.35 Acres

My Neighborhood Map

Created By
Baltimore County
My Neighborhood

Printed 4/1/2016

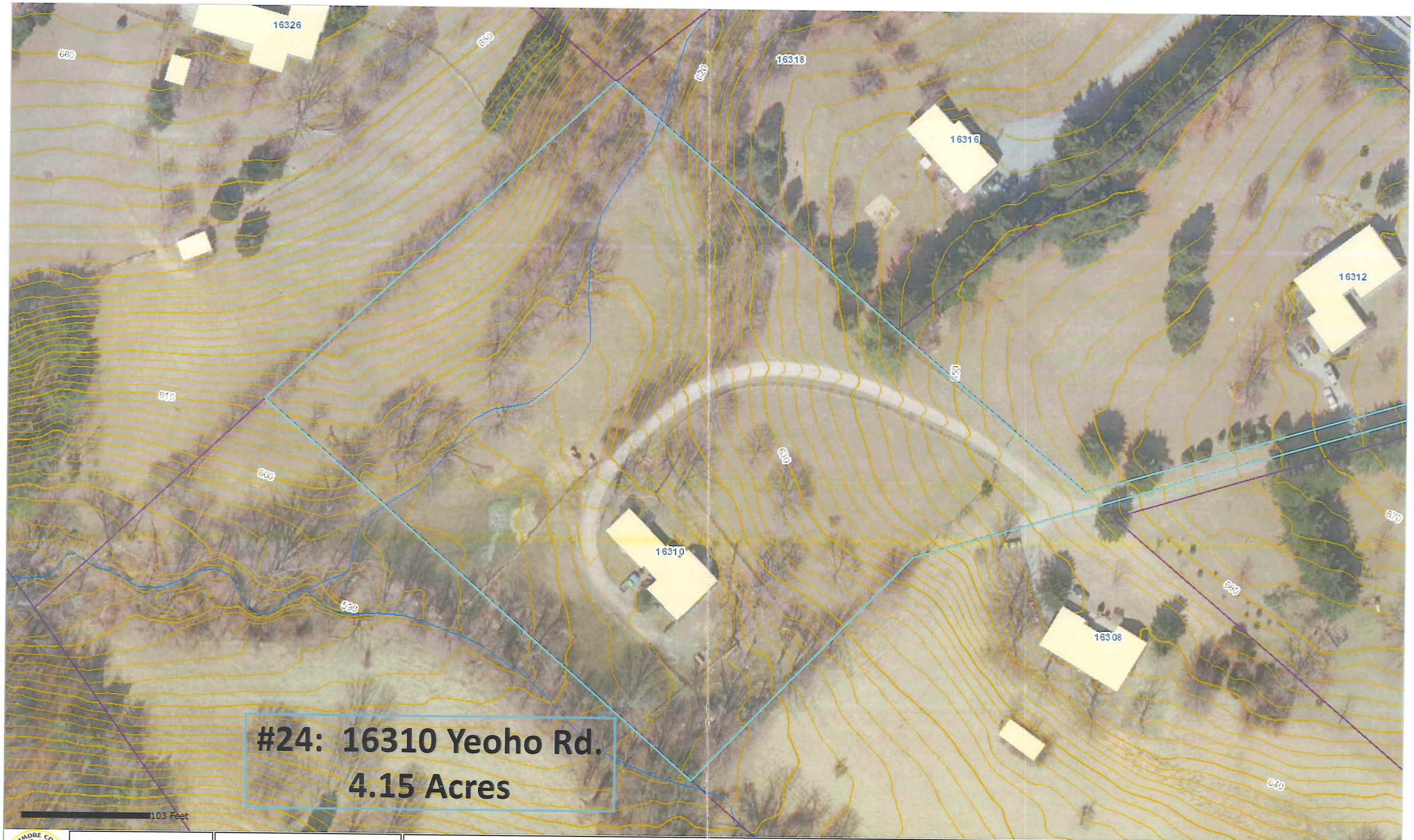
Protestant Ephelit #15

My Neighborhood Map

Created By
Baltimore County
My Neighborhood

Printed 4/2/2016

Protestant Exhibit 11



My Neighborhood Map

Created By
Baltimore County
My Neighborhood

Printed 4/1/2016

Protestant exhibit 7

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.

Printed 4/1/2016

Protestant exhibit 6

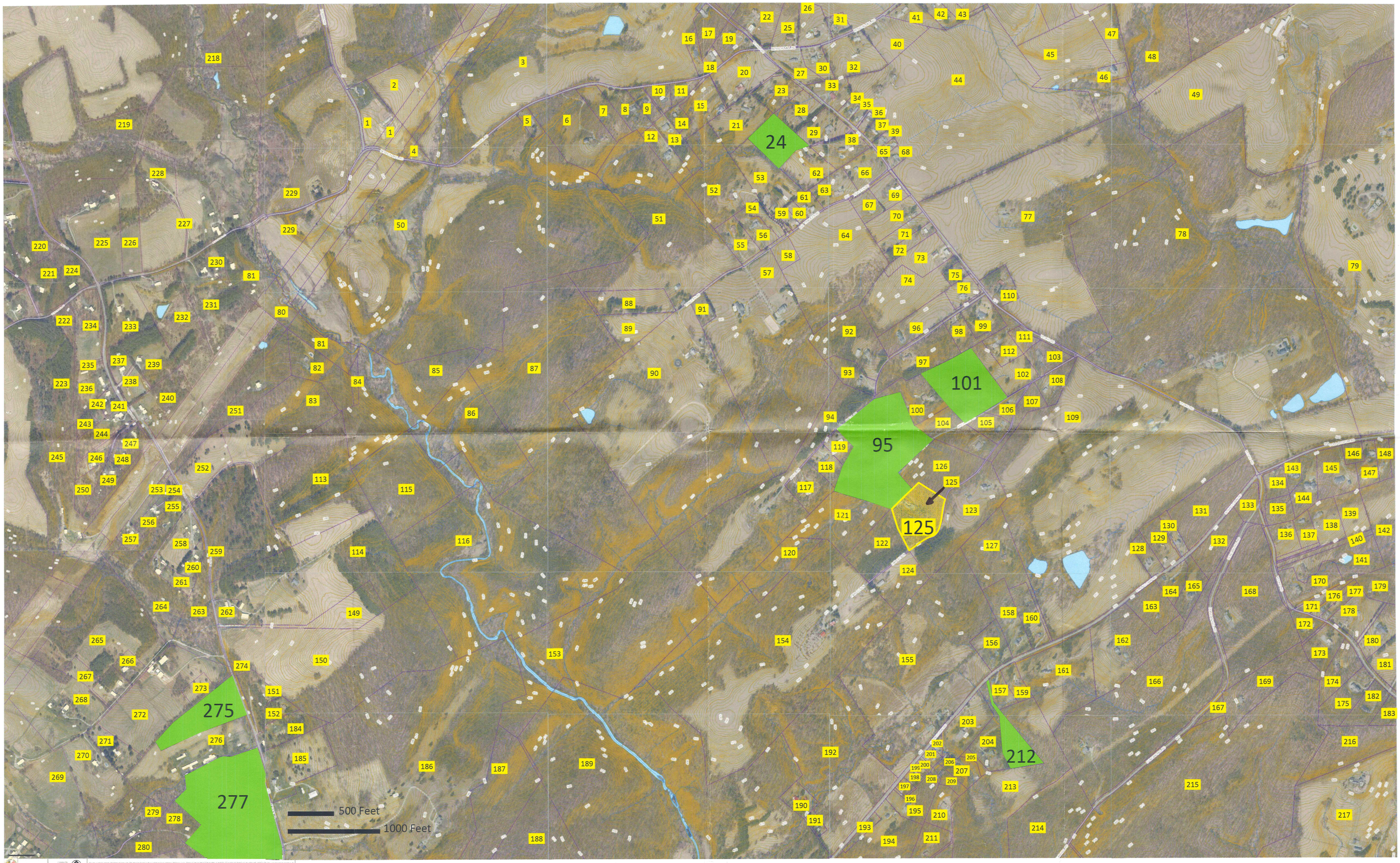
#101: 1916 Akehurst Rd.
8.52 Acres

My Neighborhood Map

Created By
Baltimore County
My Neighborhood

Printed 4/1/2016

PROTESTANT EX #4



PROTESTANTS' Ex #1

870,000 FT 76°45'00" Joins Map 6 880,000 FT 76°42'30" MAP 11

A B C D E F G H J K

1 2 3 4 5 6 7 8 9 10 11 12 13 15

630,000 FT

39°32'30" Joins Map 12

620,000 FT

MDGRID 610,000 FT

870,000 FT 76°45'00" Joins Map 17 MDGRID 880,000 FT 76°42'30"

0-20500

© ALEXANDRIA DRAFTING CO.

ZION RD
16400
DUBBS RD
YEOHO
16400
RD
CEDAR GROVE RD
BENSON
2400
MILL
YEOHO
Buffalo
BEREAN
2800
RD
16200
MILL
3000
TRACEYS
RD
RD
ABELL LA
GOOSE FARM RD
HALL
Creek
BENSON
FALLS
Black Rock
AKEHURST RD
STOCKTON LA
BOTTOM RD
Indian Run
OUT
LA
16000
COLD
1600
1800
RD
YEOHO
STRINGTOWN
HILL
RD
RD
16500
Basignani Winery
25
DUNCAN
COOPERSTOWN
21152
ROAD
15400
15000
RD
IPEARCES
LA
ROAD
88
Falls Road Chapel
STRINGTOWN
2400
BELFAST
TANYARD
Black Rock
Butler Co 49
Butler
21023
15000
2300
JOYCE LA
WESTERN
LA
BUTLER
Rock Run
15200
RUN RD
1700
WESTERN
GERBER LA
RUN
14500
CUBA
1500
RD
128
2400
ROAD
FALLS Run
SNOW HILL RD
BUTLER
RD
WORTHINGTON MANOR
DR
Pleasant Hill Chapel
EVERGREEN
HEIGHTS
PKWY
WORTHINGTON
Western Run
GADD RD
25
21030
PINE HILL FARMS
MILLER RD
14400
PINE HILL FARMS LA
14300
BROOK FARM CT
WESTERN RUN
CUBA
Gough
NICHOLSONS MANOR
BRETT MANOR CT
GARDINER RD
GREEN
RD
MANTUA
MILL
MANTUA
Deadman Run
RD
ROAD
WORCESTER LA
RD
Geist Meeting House
GEIST RD
14000

PROTESTANTS' #2

MARYLAND COORDINATE SYSTEM
NAD83(1991)

BESTE POND FARM, LLC
S.M. No. 20296 folio 672
05-02-020480
1940 AKEHURST ROAD

THE FLYING J. RANCH, LLC
S.M. No. 20680 folio 552
05-02-020482
YEOHO ROAD

BESTE POND FARM, LLC
S.M. No. 20296 folio 672
05-02-020483
YEOHO ROAD

JUDITH R. LEVENSON
S.M. No. 17870 folio 207
05-14-010231
2007 FAR OUT LANE

OLD Kennel

BLDGS

Lawn mower bridge

Fence gate

STONE FOUND AT CORNER

N47°27'44"E 94.67'

S61°20'01"E 309.06'

NEW 3.5' WOOD FENCE WITH WIRE

ZONING POINT OF BEGINNING
1,475'± FROM ℄ OF AKEHURST ROAD

S61°22'45"E 17.86'

1" IRON PIPE FOUND N88°58'11"W 0.16' FROM CORNER

20' WIDE RIGHT OF WAY FOR INGRESS & EGRESS

N46°56'46"E 282.03'

NEW ALTERNATE BOARD PRIVACY FENCE

HEIGHT 6.8'

HEIGHT 8'

HEIGHT 5.75'

HEIGHT 4.5'

HEIGHT 3.5'

5.415 Ac.±

EXISTING DWELLING

HEIGHT 17.5'±

HEIGHT 20.5'±

Stone base

EX. SPRING HOUSE HEIGHT 10.5'±

APPROXIMATE LOCATION EXISTING UNDERGROUND FENCE / PROPOSED MODIFIED KENNEL

ASPHALT PAVING

EX. GARAGE HEIGHT 12'±

APPROX. LOCATION EXISTING WELL

N19°39'35"W 221.27'

3/4" IRON PIPE FOUND AT CORNER

NEW 3.5' WOOD FENCE WITH WIRE

N56°06'55"W 256.45'

S69°39'55"W 82.63'

S58°27'45"W 85.25'

S25°42'55"W 59.14'

S43°47'05"W 27.77'

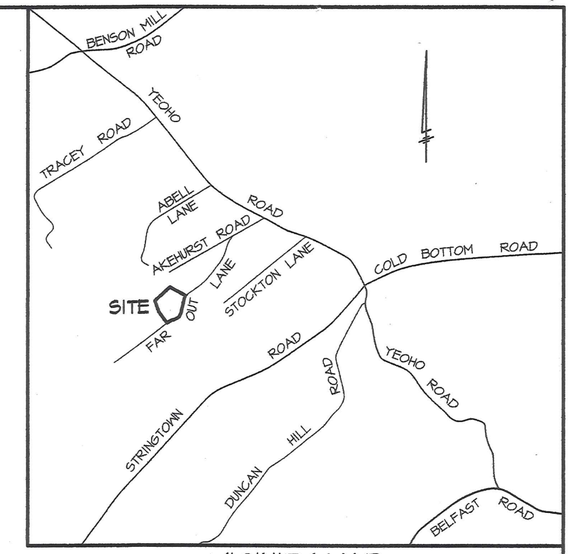
S62°10'45"W 70.02'

S13°25'25"W 345.47'

FAR OUT LANE

EX. BARN

GATE



VICINITY MAP
1" = 2000'

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OWNER\DEVELOPER

CATHERINE H. ROBINSON
2012 FAR OUT LANE
SPARKS, MD 21152
410-979-7539

PLAT TO ACCOMPANY A PETITION FOR A SPECIAL HEARING AND VARIANCE

FOR THE

ROBINSON RESIDENCE

2012 FAR OUT LANE
Deed Ref: S.M. No. 10141 folio 153
Tax Account No.: 05-14-010230
Zoned: RC 2; GIS Tile 027B2
Tax Map 0027; Grid 0015; Parcel 0182
5th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

STATE OF MARYLAND
SCOTT ALAN LINDGREN
No. 21087
PROFESSIONAL LAND SURVEYOR
8/6/15

LICENSE EXPIRES/RENEWS 2/26/17

EXISTING FENCES ADDED: 08/06/15
REVISED: 04/22/15
REVISED: 10/20/14

GERHOLD, CROSS & ETZEL, LTD
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
PH: (410)823-4470 FAX: (410)823-4473

DATE: 8/27/14 | SCALE: 1" = 50'

Petitioner exhibit 6

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STONE FOUND AT CORNER

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HEIGHT 10.5'±

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HEIGHT 12'±

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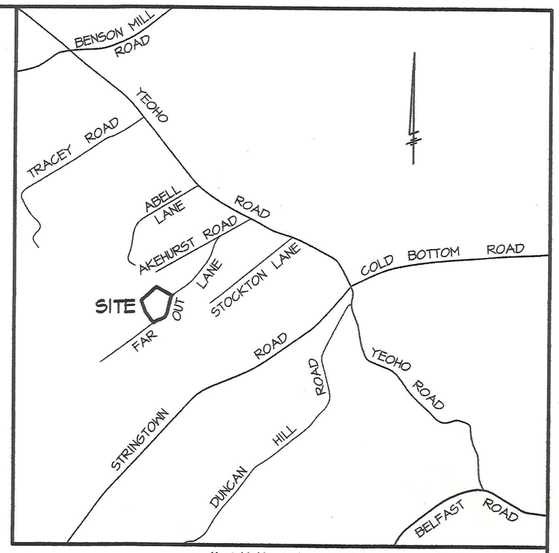
20' WIDE RIGHT OF WAY FOR INGRESS & EGRESS

LANE

OUT

FAR

GATE



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TO AMEND THE PREVIOUSLY GRANTED SPECIAL EXCEPTION FOR A PRIVATE KENNEL

VARIANCE REQUEST:

SECTION 421.1 B.C.Z.R.: TO ALLOW A PRIVATE KENNEL TO BE LOCATED AS LITTLE AS 15 FEET TO THE PROPERTY LINE IN LIEU OF THE REQUIRED 200 FEET

OWNER\DEVELOPER

CATHERINE H. ROBINSON
2012 FAR OUT LANE
SPARKS, MD 21152
410-979-7539

PLAT TO ACCOMPANY A PETITION FOR A SPECIAL HEARING AND VARIANCE

FOR THE

ROBINSON RESIDENCE

2012 FAR OUT LANE
Deed Ref: S.M. No. 10141 folio 153
Tax Account No.: 05-14-010230
Zoned: RC 2; GIS Tile 027B2
Tax Map 0027; Grid 0015; Parcel 0182
5th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

STATE OF MARYLAND
SCOTT ALAN LINDBERG
No. 21081
PROFESSIONAL LAND SURVEYOR
8/6/15

LICENSE EXPIRES/RENEWS 2/26/17

EXISTING FENCES ADDED: 08/06/15
REVISED: 04/22/15
REVISED: 10/20/14

GERHOLD, CROSS & ETZEL, LTD
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
PH: (410)823-4470 FAX: (410)823-4473

DATE: 8/27/14 | SCALE: 1" = 50'

Scale: 1"=100' Date: APRIL 5, 2016

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REVISION	DATE	COMPUTED:	DRAWN:	CHECKED:	FILE: X:\R\Robinson Par Out Lane\Zoning\SISIOOscale.prc

Pet 8

BALTIMORE COUNTY GIS

ABELL LANE ROAD

P 189 P 21 P 190

P 179 P 180 P 148 P 281 P 186 P 211 P 313

P 183

AKEHURST

P 187 P 32

P 199 P 31 P 342 ROAD

P 197 P 170 P 306 P 33

LANE

P 42B

OUT

FAR

P 42A

P 191

Petition Exhibit 8

App # 7

Scale: 1"=100' Date: APRIL 5, 2016

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REVISION	DATE	COMPUTED:	DRAWN:	CHECKED:	FILE:X:\R\Robinson For Out Lane\Zoning\BIG100scale.prc

MARYLAND COORDINATE SYSTEM
NAD83(1991)

BESTE POND FARM, LLC
S.M. No. 20296 folio 672
05-02-020480
1940 AKEHURST ROAD

THE FLYING J. RANCH, LLC
S.M. No. 20680 folio 552
05-02-020482
YEOHO ROAD

STONE FOUND AT CORNER

N47°27'44"E 94.67'

S61°20'01"E 309.06'

NEW 3.5' WOOD FENCE WITH WIRE

STONE FOUND AT CORNER

ZONING POINT OF BEGINNING 1475'± FROM & OF AKEHURST ROAD

S61°22'45"E 17.86'

1" IRON PIPE FOUND N88°58'11"W 0.16' FROM CORNER

N46°36'46"E 282.03'

NEW ALTERNATE BOARD PRIVACY FENCE

HEIGHT 6.8'

HEIGHT 8'

HEIGHT 5.75'

HEIGHT 4.5'

STONE FOUND AT CORNER

5.415 Ac.±

20' WIDE RIGHT OF WAY FOR INGRESS & EGRESS

HEIGHT 3.5'

HEIGHT 20.5'±

EXISTING DWELLING

HEIGHT 17.5'±

EX. SPRING HOUSE HEIGHT 10.5'±

BESTE POND FARM, LLC
S.M. No. 20296 folio 672
05-02-020483
YEOHO ROAD

APPROXIMATE LOCATION EXISTING UNDERGROUND FENCE / PROPOSED MODIFIED KENNEL

ASPHALT PAVING

EX. GARAGE HEIGHT 12'±

APPROX. LOCATION EXISTING WELL

N36°36'46"E 212.27'

3/4" IRON PIPE FOUND AT CORNER

NEW 3.5' WOOD FENCE WITH WIRE

JUDITH R. LEVENSON
S.M. No. 17870 folio 207
05-14-010231
2007 FAR OUT LANE

N36°06'35"W 256.45'

NEW 3.5' WOOD FENCE WITH WIRE

S25°42'55"W 59.14'

S43°47'05"W 27.77'

S62°10'45"W 70.02'

S69°39'55"W 82.63'

S58°27'45"W 85.25'

JUDITH R. LEVENSON
S.M. No. 17870 folio 207
05-14-010231
2007 FAR OUT LANE

NEW 3.5' WOOD FENCE WITH WIRE

S13°25'54"W 345.41'

LANE

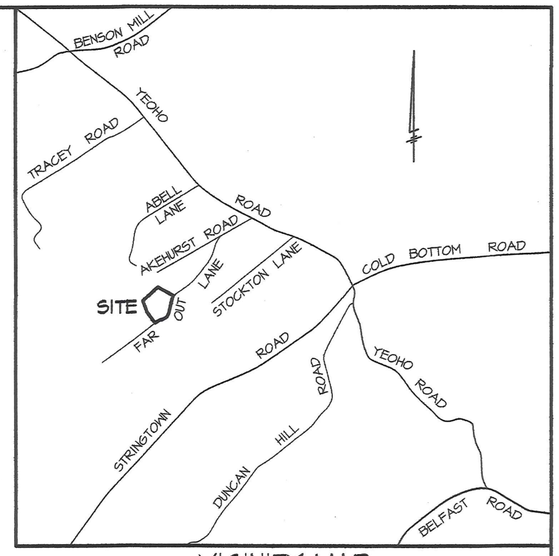
OUT

FAR

GATE

EX. BARN

PETITIONER'S
EXHIBIT NO. 2



VICINITY MAP
1" = 2000'

GENERAL NOTES

1. THE BOUNDARY SHOWN HEREON IS FROM A SURVEY BY GERHOLD, CROSS & ETZEL, LTD..
2. THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILE 027B2.
3. CENSUS TRACT: 40500 REGIONAL PLANNING DISTRICT: 302
   WATERSHED: LOCH RAVEN RESERVOIR SUBSHED: BLACKROCK RUN
   SCHOOL DISTRICT: ELEMENTARY - FIFTH DISTRICT; MIDDLE - HEREFORD; HIGH - HEREFORD
   A.D.C. MAP & GRID: 11 G-3
4. THE PROPERTY IS NOT UNDER ANY ACTIVE ZONING VIOLATION.
5. THE SUBJECT PROPERTY IS NOT HISTORIC. THE SUBJECT PROPERTY IS WITHIN THE WESTERN RUN - BELFAST NATIONAL REGISTER HISTORIC DISTRICT.
6. THERE ARE NO KNOWN UNDERGROUND FUEL STORAGE TANKS ON THE SUBJECT PROPERTY.
7. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
8. THE SUBJECT PROPERTY IS NOT WITHIN A 100 YEAR FLOOD PLAIN.
9. THE PROPERTY IS SERVED BY A PRIVATE WELL AND SEPTIC SYSTEM.

PRIOR ZONING HEARING, CASE No. 2015-0092-X:

ORDER DATED DECEMBER 18, 2014 GRANTED THE USE OF THE PROPERTY FOR A PRIVATE KENNEL. SUBJECT TO THE FOLLOWING CONDITIONS:
PETITIONER MAY KEEP ON THE PREMISES AT ANY ONE TIME NO MORE THAN 10 DOGS;

THE SPECIAL EXCEPTION GRANTED WILL TERMINATE AUTOMATICALLY IF AND WHEN Ms. ROBINSON AND/OR KAWANA SWANK NO LONGER OWN OR RESIDE AT THE PREMISES.

PETITIONER SHALL ON OR BREFORE JUNE 30, 2015 SECURE NECESSARY PERMITS AND COMMENCE CONSTRUCTION OF ANY BUILDING TO BE USED FOR HOUSING THE DOGS IN COMPLIANCE WITH B.Z.C.R. 421.1, WHICH STRUCTURE MUST BE COMPLETED ON OR BEFORE AUGUST 30, 2015. THE OUTSIDE AREAS USED FOR EXERCISE AND/OR DOG RUNS MAY NOT BE LOCATED WITHIN 200 FEET OF THE NEAREST PROPERTY LINE, AS REQUIRED BY B.C.Z.R. 421.1. THIS OUTSIDE AREA MUST ALSO BE FULLY ENCLOSED BY A FENCE OR UNDERGROUND ELECTRIC FENCE TO CONTAIN THE DOGS ON THE PETITIONER'S PROPERTY.

SPECIAL HEARING REQUEST:

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DATE: 8/27/14 | SCALE: 1" = 50'

Exhibit A

DAY 1

IN THE MATTER OF:

CATHERINE ROBINSON
CASE NUMBER: 15-235-SPHA

Hearing Date: April 19, 2016

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:

MAUREEN E. MURPHY, CHAIRMAN

BENFRED B. ALSTON, BOARD

JASON S. GARBER, BOARD

PRESENT ON BEHALF OF THE PARTIES:

ON BEHALF OF THE APPELLEES/PETITIONER:

MICHELLE J. DICKINSON, ESQUIRE

ON BEHALF OF THE APPELLANTS/PROTESTANTS:

G. MACY NELSON, ESQUIRE

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

do and be legal. I wanted to, to, to be, I wanted to be legal and I don't think I really knew what I was but, you know, maybe I was legal but I didn't know and I wanted to pursue that.

MS. DICKINSON: Okay and once you got the special exception, what did you do in order to try to comply with the Court's Order?

MS. ROBINSON: I put in a privacy fence, I put in another fence that goes around my property. I, has, I also have an electric fence that goes around the property inside the wooden fence further back, further in and we, there was a kennel there that was, we call it a kennel, we kept all the lawn mowers in it, but we took that down because it was too close to Mr. Krause's property and we put a swim spa there so we took down any structures that might have been an eye sore for him.

MS. DICKINSON: Now, the, the special exception required that your, your private kennel be located two hundred feet off the property line so what did you do in order to try to comply with that?

MS. ROBINSON: Noah, my landscaper and I discussed it, and he went to Baltimore County and applied, tried to apply for a, a permit to build a kennel and they didn't even let him get through the front door, no way, where it was had to be and he went with all the plat and the, the drawings and everything and said no.

CHAIR: All right and then they go outside and I guess and use the yard or?

MS. ROBINSON: They go outside and use the yard and they're within the, the electric fence and that's it. They're not, at night time, they're, I have to get up very early because I train race horses, I have to be up early so therefore my dogs, we go to bed early. That house is shut down and we, the dogs go to their different rooms, wherever they sleep, and they go to bed.

CHAIR: Okay and what about dog waste, how are you dealing with that?

MS. ROBINSON: Waste, I have a doggie septic system in place where you put the, the septic in there and Noah Price, who is my landscaper, put that in and his man come through several times a week to put the dog waste away, to rake it up.

BOARD: And what is this septic system again? You say some men come in and rake up the dog waste?

MS. ROBINSON: Yeah, and put it in --

BOARD: But a septic system, is it like a septic system for normal houses? I mean, I'm not, I'm trying to understand what it (inaudible).

MS. ROBINSON: I am too. I saw him and it's something that you put in, the waste in, the, the septic system and it goes in there and they have something that the enzymes or something that dissolves it.

you need a guard rail?

MR. PRICE: Yeah, if you went off that turn, coming down, the drive is pretty steep right through there, so you're going to, if you went off the turn, you would need a guard rail to stop you from continuing into the woods.

MS. DICKINSON: So a few more questions for you, Mr. Price, and we don't need the projector on any longer. If you would like to see better with the lights.

CHAIR: Okay.

MS. DICKINSON: You, Mr. Price, you heard Ms. Robinson testify about trying to put a kennel structure in that private kennel area as it now, well, as it stood before she got the variance. What was your role in any of that?

MR. PRICE: I had my guys go down and measure out two hundred feet off the, each, off each side of the property line and we flagged off a square which was two hundred feet off each property line, which was basically right in the front where the springhouse is and the drainage ditch and everything. I went down on 12, 12/8 of '14 to, I mean, I, excuse me, I went down on 12/11 of '14 to see about getting a permit or find out whether the existing kennel where the swim spa is now, was permitted and, anyway, at that time, is when I spoke to the, the people in, in permits about being able to put a kennel in the front yard and I was cut short, basically told that a kennel cannot be, any structure can, in Baltimore County,

cannot be built in the front yard. So that was the extent of, you know, my involvement with trying on, on, on that.

MS. DICKINSON: Now, did you talk with anybody there in Baltimore County about the topography or the wetlands issue or any of that?

MR. PRICE: Well, in, in amongst our con --

MR. NELSON: Ms. Chair, may I be heard? Madam Chair?

CHAIR: All right.

MR. NELSON: I'm thinking hearsay. I don't know what the Chair's preference is on hearsay. I understand the various schools of thought but this is hearsay on a, an important issue, I respectfully suggest. Could they do it? He's going to say, I'm guessing, I was told by some unknown person that I couldn't. So --

CHAIR: Well, the question was asked whether he spoke with someone about topography and wetland issues as opposed to what did the person say. So we're not going to hear what the person said in Baltimore County, but the question was proper in that, did you speak with someone? He was there, he can testify. Did he speak with someone? Did he? Yes, and then that's it. Go ahead. Overruled.

MS. DICKINSON: Thank you, Your Honor. So did you speak with anybody about the topography or environmental issues on the property?

MR. PRICE: Yes, I did. I mean, in amongst the, you

know, our conversations with the --

MR. NELSON: Object.

CHAIR: Okay. You're not to tell us about what someone said, you're just telling us about what you did.

MR. PRICE: Yes, I asked him about getting a permit to put a kennel in the front and I was --

MR. NELSON: I object.

CHAIR: Okay. Go ahead, sir. Overruled.

MR. PRICE: Basically told that --

CHAIR: Well, you can't tell us what you were told.

MR. PRICE: Well --

CHAIR: That was it.

MS. DICKINSON: Were you able to obtain a permit?

MR. PRICE: No.

CHAIR: Okay.

MS. DICKINSON: Okay, all right. Your Honor, at this point I have no further questions for this witness.

CHAIR: Sir, let me ask you. You say you measured two hundred feet off the property line, right?

MR. PRICE: Yes.

CHAIR: So you've got a five acre or so parcel, right? And so you measured two hundred feet off of the entire boundary, all the way around?

MR. PRICE: All the way around.

CHAIR: Isn't there, is there anywhere else that

MR. PRICE: I don't know.

BOARD: Okay.

BOARD: And if I can jump in, did I understand correctly that prior to it being a swim spa, it was a shed of some type?

MR. PRICE: Shed, it was just a --

BOARD: And that shed was being used for the dogs?

MR. PRICE: No, the, the, the existing shed was basically a metal, it had a roof, open sides.

BOARD: Oh, okay, (inaudible) metal roof.

MR. PRICE: Yeah, and she was just using it for storage, no dogs.

BOARD: Okay.

MR. PRICE: It was, I don't, I mean, it may have been used for one dog or whatever back in the day but as long as I've been there, it was for nothing but storage.

BOARD: The dimensions have been roughly the same?

MR. PRICE: Yes, nothing changed. The concrete slab, the, the swim spa is on, is, was the size of the, the existing structure that was there.

MS. DICKINSON: And, Mr. Price --

BOARD: And in any event, sorry, in any event, that's within the two hun, that's within two hundred feet of the property line?

MR. PRICE: Yes, yeah. That, that existing kennel

would have been, I'm going to say roughly thirty-five to forty feet, if that, off, off, off of the rear property line.

BOARD: So when you say the where, that's where the (inaudible) when you say existing kennel, what are you referring to by existing kennel?

MR. PRICE: Well, the, the, the structure that was there.

BOARD: Okay. So the structure that was there before became the swim spa, is about thirty-five to forty feet from the property line?

MR. PRICE: Yeah, yeah, yeah.

MS. DICKINSON: So what is closer, the house or the, the swim spa, which used to be a structure from the property line?

MR. PRICE: The swim, swim spa is closer to the, to the property line than the house.

MS. DICKINSON: Okay. Can you point out where the swim, where the house is first on this plat?

MR. PRICE: The house is here.

CHAIR: Why don't you, why don't you indicate for the record what, what it says on the plat?

MR. PRICE: It says existing dwelling.

MS. DICKINSON: And where is the, in relation to the existing dwelling, where is the privacy fence, the eight foot or so privacy fence?

MS. DICKINSON: And then what is, how would, and that's the area that you've already described, is that correct?

MR. LINDGREN: Yes.

MS. DICKINSON: The sort of marshy area?

MR. LINDGREN: Um hm.

MS. DICKINSON: Okay and, and so how many sides does this bowl have?

MR. LINDGREN: Three, one to, it's a, how do I describe it.

MS. DICKINSON: If you'd like to get up and point to it, that might be easier.

MR. LINDGREN: This portion slopes from the north east corner of the property down towards the center. The south west corner, or southernmost corner, falls towards the springhouse and the point where the driveway meets Far Out Lane falls towards the springhouse and the slopes come from the north east and south west, converging in the middle of the property to the swale that goes in a north westerly direction.

MS. DICKINSON: And do you know how steep those slopes are, each one of those three that you just pointed out?

MR. LINDGREN: I have no measured them. I believe this one is about a thirteen percent slope and that's probably the gentlest slope on the property. Some of these over here are probably in the fifteen to sixteen percent range.

CHAIR: Well, if you haven't measured them, then how

do you know that?

MR. LINDGREN: Just looking at the, how close together the contour intervals are.

MS. DICKINSON: And what about in the front of the property where the out is for Far Out Lane?

MR. LINDGREN: Do you mean opposite the existing barn on the property across the street and --

MS. DICKINSON: Yes, but on her property, yes, going (inaudible) --

MR. LINDGREN: On her property, it falls off pretty quickly from the road in that area.

MS. DICKINSON: And, and is that denoted by the, the lines being closer together?

MR. LINDGREN: Yes.

MS. DICKINSON: Okay and so if, is it more than a fifteen percent, in your opinion, slope there?

MR. LINDGREN: Probably. I have not measured it.

MS. DICKINSON: Okay. Have you had the opportunity to look at the topography of other properties in the area?

MR. LINDGREN: Not setting foot on the properties, but I have looked at some of the County information that is available on the internet, County GIS, my neighborhood.

MS. DICKINSON: Okay and have you prepared an exhibit of that area?

MR. LINDGREN: I have.

MS. DICKINSON: Okay. Is it over here? I have one for each of you.

CHAIR: Oh, okay.

MS. DICKINSON: Or you can just have one, whatever you would prefer.

CHAIR: I'll take three.

MS. DICKINSON: (inaudible).

(RUSTLING OF PAPER - CANNOT HEAR WHAT IS BEING SAID)

MS. DICKINSON: We tried to make it as awkward as possible.

CHAIR: There's no easy way. We're trying to be quiet so the microphone, we have three microphones up here, and that they're not going to hear this. We can do what we can do. Go ahead.

BOARD: We can start the questioning, yeah, once everyone is situated with the, with the maps, just so it's, the noise doesn't get, doesn't drown out the question and answers.

CHAIR: All right.

BOARD: We're all good?

CHAIR: Go ahead, go ahead.

MS. DICKINSON: Thank you, Your Honor. Mr. Lindgren, can you identify what has been marked as Petitioner's Exhibit 7, please?

MR. LINDGREN: This is a plan I prepared utilizing the Baltimore County GIS digital information and the numbers

and P's are the parcel numbers from Maryland State Department of Taxation's website.

MS. DICKINSON: And which property on this Exhibit 7 is Ms. Robinson's property?

MR. LINDGREN: The one outlined in the bolder lines.

MS. DICKINSON: Okay and the little dotted line area that's on her property, what is that?

MR. LINDGREN: The triangular, trapezoid or whatever, that is the area that meets the two-hundred-foot setback requirement.

MS. DICKINSON: Okay, thank you. Now, why did you choose this area, this neighborhood, to compare to Ms. Robinson's property?

MR. LINDGREN: I looked at this because this is kind of the character of the Akehurst Lane, Far Out Lane area, you know, you expand out, there's some larger properties, there's some smaller properties, there's some large farms. This kind of almost creates like a little village feel in this area.

MS. DICKINSON: Okay. What I would like you to do is I'd like to walk through these parcels with you and have you compare each parcel to Ms. Robinson's, if that pleases the Court?

CHAIR: (inaudible).

MS. DICKINSON: So what if we start at the top with the P-148. How does that property compare to Ms. Robinson's

property?

MR. LINDGREN: It's smaller, it's more rectangularly shaped, there's no stream or wetland on the property and it has no area that would meet the two-hundred-foot setback requirement.

MS. DICKINSON: Okay and what about the next, the next parcel, P-180?

MR. LINDGREN: That one is smaller. Again, according to the GIS, does not have a stream on it, does not have an area that would meet the two-hundred-foot setback.

MS. DICKINSON: Okay and what about, and I'm sorry, but do either P-148 or P-180 have the bowl effect encompassing the property?

MR. LINDGREN: No.

MS. DICKINSON: And what about P-179, how does that compare to Ms. Robinson's property?

MR. LINDGREN: That was even smaller yet, no streams, consistent slope, no area to meet the setback requirement.

MS. DICKINSON: When you say consistent slope, that rules out the bowl effect, is that correct?

MR. LINDGREN: Yes, it's more of a even.

MS. DICKINSON: And, and so then P-183, can you compare that to Ms. Robinson's property, please?

MR. LINDGREN: It's considerably larger, it has a, I would consider, a large pond on it. It does have some streams

running through it. It has, I believe, I've, I've never set foot on the property so I believe there's a house with a couple of outbuildings, a large area that would meet the requirement of a two-hundred-foot setback for a kennel.

MS. DICKINSON: And does that, what, how is that denoted, the two hundred foot offset?

MR. LINDGREN: The short dashed lines that almost mirror the property lines within, that's the area that meets the two-hundred-foot setback.

MS. DICKINSON: And does this property, the P-183, does it have that sort of bowl effect that we see on Ms. Robinson's property?

MR. LINDGREN: No.

MS. DICKINSON: Okay and do you know whose property that is?

MR. LINDGREN: I do not. The, I believe the, from my recollection when I was looking at the tax records, that's owned in a corporation. I don't know who the entities of that corporation are.

MS. DICKINSON: Okay. When you look at P-281, how does that compare with Ms. Robinson's property?

MR. LINDGREN: Similarly sized but with the shape, it does not have an area that meets the two-hundred-foot setback requirement. If I could get up and look closer? There's, there --

BOARD: Sir, please turn when you're testifying.

CHAIR: Yeah, just keep your voice up because it's, the recording is trying to pick up.

MR. LINDGREN: Sorry. There's no bowl effect on the property.

MS. DICKINSON: And can you tell if there is a stream or a water source on that property?

MR. LINDGREN: GIS shows a stream starting on 183, whether that is actually further uphill or not, I don't know, I'm at the mercy of the GIS information but it is possible that a stream may start further to the north.

MS. DICKINSON: But there's nothing on this map that suggests that that's the case, correct?

MR. LINDGREN: No.

MS. DICKINSON: And you're not aware of anything that suggests that?

MR. LINDGREN: I have not set foot on the property so I don't know.

MS. DICKINSON: Okay. Looking up at the top, P-189, can you compare that property to Ms. Robinson's property, please?

MR. LINDGREN: It's a little bit larger in size but it is wider and less deep. It does not have any area that meets the two-hundred-foot setback, no bowl effect.

MS. DICKINSON: Okay and, thank you, and then P-21,

can you compare that to Ms. Robinson's property, please?

MR. LINDGREN: Smaller, no bowl effect, does not have an area that meets the two-hundred-foot setback.

MS. DICKINSON: And what about P-190, how does that compare to Ms. Robinson's property?

MR. LINDGREN: It's a little bit smaller, it's rectangularly shaped, does not have a bowl, does not have an area that meets the two-hundred-foot setback.

MS. DICKINSON: Okay and then P-313, which is all the way over on the right.

MR. LINDGREN: Um hm.

MS. DICKINSON: Can you compare that to Ms. Robinson's property, please?

MR. LINDGREN: That's considerably smaller, no bowl effect, no area that meets the setback requirements.

MS. DICKINSON: Okay and what about P-211, how does that compare to Ms. Robinson's property?

MR. LINDGREN: It's smaller, it, area where the house is located is a rectangular shape, it does appear to have a triangular piece up along the road, which I have no idea why it's there. But it does not appear to have a stream, doesn't have a bowl effect and does not have an area that meets the setback requirement.

MS. DICKINSON: Okay and P-32, going down on the right now and sort of swinging around, can you compare that to

Ms. Robinson's property, please?

MR. LINDGREN: Smaller in size, does not have a bowl effect, it cannot meet the setback requirement, does not appear to have a stream or wetland on it.

MS. DICKINSON: Okay and P-187, which looks like does not have a house on it, but how does that compare to Ms. Robinson's property?

MR. NELSON: What number, I'm sorry?

MS. DICKINSON: 187.

BOARD: Could I ask to?

MS. DICKINSON: Yes?

BOARD: Where your map is?

MS. DICKINSON: Do I have the, my apologies.

BOARD: I, I just want to make sure that the microphone is not underneath.

MS. DICKINSON: Yes.

BOARD: Thanks.

MS. DICKINSON: It was. My apologies.

BOARD: That's okay.

MR. LINDGREN: It does not appear to have a house on it, at least at the time that the County GIS information was generated. A stream does appear to begin on the property. Does not have an area that would meet the setback requirement for a kennel.

MS. DICKINSON: And is there, does it have that whole

bowl effect, P-187?

MR. LINDGREN: I mean, it doesn't appear to me that it does.

MS. DICKINSON: Okay and then moving on to P-186, how does that property compare to Ms. Robinson's property?

MR. LINDGREN: It's larger, it has a larger area that would meet the setback requirement. It has an area that could be utilized for a private kennel in the rear yard.

MS. DICKINSON: Okay and does that property have the bowl effect on the whole property?

MR. LINDGREN: I would say that it doesn't.

MS. DICKINSON: Okay and then we're going to jump back, if, if it pleases the Court, to P-3, 33, on the right hand side, down at the bottom, the P-33.

MR. LINDGREN: That one is triangularly shaped, it's smaller in size, does not appear to have a stream, does not have an area that meets the two-hundred-foot setback requirement.

MS. DICKINSON: Okay and can you compare P-306 to Ms. Robinson's property, please?

MR. LINDGREN: That one, at least when this GIS was generated, was prepared, was vacant. It's very oddly shaped, does not have an area that meets the setback requirement, does not appear to have a stream or a bowl effect.

MS. DICKINSON: Okay and P-342, can you compare that

to Ms. Robinson's property, please?

MR. LINDGREN: It's triangularly shaped, it's considerably smaller, does not have an area that meets the setback requirement, does not have a bowl effect.

MS. DICKINSON: And what about P-170, would you compare that, please?

MR. LINDGREN: Smaller in size, no area that meets the setback requirement, does not have a bowl effect, does not appear to have streams or wetlands.

MS. DICKINSON: And I believe that brings us to P-31, can you compare that, please?

MR. LINDGREN: I believe that was similarly sized but it is long and narrow, has a stream in the back on it, what appears to be on the opposite side of Akehurst Road, does not have an area on the property that would meet the setback requirement, does not have the bowl effect.

MS. DICKINSON: Okay and then we're at P-197, which is next door to Ms. Robinson's property. Can you compare that to Ms. Robinson's property, please?

MR. LINDGREN: I believe that one is vacant.

MS. DICKINSON: Okay.

MR. LINDGREN: It has a stream that starts at the north east corner and flows onto Parcel 183 but does not have the bowl effect encompassing the entire property. It does have an area that meets the setback requirement but since it is

vacant, a house could be constructed that a kennel could be placed in the rear yard.

MS. DICKINSON: Okay and coming down to P-42-A down at the bottom, would you compare that to Ms. Robinson's property, please?

MR. LINDGREN: It's larger in size, it does not have the bowl effect, it does not appear to have any streams or wetlands on the property.

MS. DICKINSON: Okay and P-191, would you compare that to Ms. Robinson's property, please?

MR. LINDGREN: It's a little bit smaller, does not have the bowl effect, it does not have an area that meets the setback requirement and doesn't appear to have any streams or wetlands.

MS. DICKINSON: Okay and P-42-B, which is to the left as we're looking at the map, from Ms. Robinson's property?

MR. LINDGREN: Yes, that was vacant as well, I believe, does not have the bowl effect, does not appear to have any streams or wetlands. It does have a small area that could meet the two-hundred-foot setback requirement but since it is vacant, a house could be constructed that the area for the kennel could be placed in the rear yard.

MS. DICKINSON: Okay and I think that leaves one, which is P-199, which is directly above P-42-B.

MR. LINDGREN: Yes, I'm not sure who owns that one,

that one appears to be landlocked, unless it's owned by one of the adjacent owners. It has a stream running through the property but does not have the bowl effect, appears to be a little bit larger and does have an area that meets the two-hundred-foot setback requirement, but since it is vacant, if a house is constructed there, it could utilize that, it's to be in the rear yard.

MS. DICKINSON: I believe we've hit all the properties, is that right, in this neighborhood?

MR. LINDGREN: I think we have, yes.

MR. NELSON: I missed one. What parcel did you address, please, between 42-A and 42-B, what's that?

MS. DICKINSON: 191.

MR. NELSON: 191, thank you.

MS. DICKINSON: Which was in the bottom left hand corner.

MR. NELSON: I see it, yeah.

MS. DICKINSON: Okay.

MR. NELSON: Thank you.

MS. DICKINSON: Mr. Lindgren, having looked at all of the properties in the neighborhood with the GIS and compared them to Ms. Robinson's property, which you've actually testified that you've been on more than one time, are you aware of any other properties in this neighborhood that have the same combination of issues that Ms. Robinson's property has?

MR. LINDGREN: Not that I'm aware of.

MS. DICKINSON: And when I say combination of issues, I mean the issues that we have just gone over with respect to these properties, the bowl effect, the stream or wetlands area, the steep terrain, am I missing anything? The ability to put the --

MR. LINDGREN: The ability to put a kennel in the rear yard.

MS. DICKINSON: Okay and so those are the factors that you looked at?

MR. LINDGREN: Yes.

MS. DICKINSON: And you don't see any other property in this neighborhood that has the same combination of issues, is that correct?

MR. LINDGREN: No.

MS. DICKINSON: Okay. Your Honor, may I take one moment, please?

CHAIR: Sure.

MS. DICKINSON: Thank you very much. Thank you, Your Honor.

CHAIR: Is that all the questions you have?

MS. DICKINSON: I have just one or two more.

CHAIR: Oh, sure.

MS. DICKINSON: Thank you. Mr. Lindgren, when we talk about the bowl effect, can, can you describe what, just to

make sure that we're all on the same page as to what the bowl effect is on Ms. Robinson's property? What, can you describe the terrain?

MR. LINDGREN: Right, if you're standing at the point where the stream exits the property on the north side and look to the south, out towards Far Out Lane, you would actually see almost being encompassed by the grade of the land, almost creating what you would appear to be standing in the center of a bowl and trying to look out.

MS. DICKINSON: And so those, the land that, when you're standing there, the land that is in front of you and to your left and to your right --

MR. LINDGREN: As you go to the left, to the right and in front of you, it all rises fairly steeply.

MS. DICKINSON: And how does that effect sort of the buildability, if that is a word, of her property?

MR. LINDGREN: Well, it's extremely difficult to build on steep slopes, the stream bisecting the property, EPS would have required setbacks from a stream or wetland, really not a good place on the property to build anything.

MS. DICKINSON: Okay and, and did you see any other property here that had that bowl effect as the entire, encompassing the entire property?

MR. LINDGREN: No, I did not.

MS. DICKINSON: Okay. Thank you, Your Honor. At

Day 2

IN THE MATTER OF:

CATHERINE ROBINSON
CASE NUMBER: 15-235-SPHA

Hearing Date: April 20, 2016

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 09:30 AM.

PANEL PRESIDING:

MAUREEN E. MURPHY, CHAIRMAN

BENFRED B. ALSTON, BOARD

JASON S. GARBER, BOARD

PRESENT ON BEHALF OF THE PARTIES:

ON BEHALF OF THE APPELLEES/PETITIONER:

MICHELLE J. DICKINSON, ESQUIRE

ON BEHALF OF THE APPELLANTS/PROTESTANTS:

G. MACY NELSON, ESQUIRE

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

MS. DICKINSON: Okay. Do you park cars back there?

MS. SWANK: Yes, we do.

MS. DICKINSON: Okay and then there's already been testimony that this area that wraps around where it says asphalt paving all the way up to the front of the property that that is your driveway, is that correct?

MS. SWANK: Correct.

MS. DICKINSON: Okay. So am I correct that the underground fence actually hugs the back side of the driveway behind the house?

MS. SWANK: Yes, it does.

MS. DICKINSON: Okay and so when the dogs come out the back of the house, how do they get to the area to use the grass for what they do?

MS. SWANK: They can either come through the garage door and come down the ramp or they can come out the dog door, which is on that side of the house.

MS. DICKINSON: This back side?

MS. SWANK: Yes.

MS. DICKINSON: Okay. Now, we saw a picture and actually on the video, we saw a video that showed some very steep steps that were wood and sort of a concrete it looked like and, and they were embedded in a retaining wall. Did you see that?

MS. SWANK: Yes.

MS. DICKINSON: Okay. Now, is that on this, this side of the house?

MS. SWANK: Yes, it is.

MS. DICKINSON: Okay and, and so could the dogs, if, if Mr. Nelson's or the Pet, the Protestant's idea were to be followed and the dogs were no longer allowed to come out the back or the garage, could they come out that side door and come up those steps?

MS. SWANK: It would be difficult in, if there were any type of weather because the steps go straight up, that's the side with the retaining wall, the steps go straight up so if there was any kind of weather or if it's an aged dog, which most of our, we don't have any really young dogs, it would be difficult.

MS. DICKINSON: Okay and, and so, but there is a whole front side to this house, correct? Why couldn't they come out the front side of the house?

MS. SWANK: Because those are the rooms that they're, they don't have access to. We have hardwood floors that are refinished, we don't allow the dogs in there.

MS. DICKINSON: Okay. So is it your testimony that the only way for the dogs to safely get out of the house is through the garage and the back door?

MS. SWANK: Correct.

MS. DICKINSON: And if we were to nip in, or reduce

this area of the, the, the variance, or the special exception, excuse me, so that the dogs could only be at the front of the house, could they get out of the house?

MS. SWANK: No, no.

MS. DICKINSON: Thank you. Your Honor, I will turn the witness over to opposing counsel.

CHAIR: All right. Cross, Mr. Nelson?

MR. NELSON: Okay. Ms. Swank, thank you for that information. The rooms that are in the front of the house, you say have hardwood floors?

MS. SWANK: Correct.

MR. NELSON: Okay and you don't want the dogs on the hardwood floors for what reason?

MS. SWANK: The, the floors are refinished, they're, they would scratch the floors.

MR. NELSON: Okay.

MS. SWANK: And those are rooms that we've never let the dogs in.

MR. NELSON: Right, so these are rooms for people with nice hardwood floors?

MS. SWANK: Correct.

MR. NELSON: All right and because you want to reserve those rooms for people and preserve the finish on the floors, you want to have the dogs go out the back of the house?

MS. SWANK: In the existing, the dog door.

MR. NELSON: Okay.

MS. SWANK: And out the garage with the ramp.

MR. NELSON: Okay. Now, those rooms are for people but three rooms, three of the dogs sleep in Ms. Robinson's bedroom, do they not?

MS. SWANK: Correct.

MR. NELSON: How many dogs sleep in your bedroom?

MS. SWANK: Let me think. Eight dogs.

MR. NELSON: In your bedroom?

MS. SWANK: Correct.

MR. NELSON: So none in Kaden's?

MS. SWANK: Correct.

MR. NELSON: Now, with respect to the finish on the floor, let me ask this question. Downstairs where the dogs are, what's the floor?

MS. SWANK: It's linoleum.

MR. NELSON: All right. But you could put a carpet on the hardwood floors, could you not, in the front to protect them from the claws?

MS. SWANK: I guess you could.

MR. NELSON: But you don't want to?

MS. SWANK: Correct.

MR. NELSON: But you like the aesthetics of the beautiful floor?

MS. SWANK: Correct.

MS. SWANK: There is a door there.

CHAIR: Okay. Is there any other doors on that side of the house?

MS. SWANK: No.

CHAIR: There's a little jut out right to the front of the house, do you see, move your finger over to the right a little bit, there's a jut out. What is that? Is that a window or is that just --

MS. SWANK: That's, no, that's Holly's bedroom.

CHAIR: Okay. Okay. The other side of the house, which is the north side, you see the arrow, the north side, is there any door over there?

MS. SWANK: There are no doors on that side.

CHAIR: Okay. Okay and in the front of the house, we, we were looking at the pictures yesterday that were presented and let me just show you four, do you have 4-17?

BOARD: Sure.

CHAIR: Yeah, there we go. So, again, just, I'm going to hand you Exhibit 4-17, Petitioner's 4-17. Is that the front of the house?

MS. SWANK: That, that's what I consider the front of the house and I think that's, does this arrow indicate front?

CHAIR: It does.

MS. SWANK: Yes.

CHAIR: So that's the front?

MS. SWANK: The dogs couldn't get to the area with the septic. There, there's one that's, it would be very close, it's right off the end of Holly's room. If you came directly off of there, I guess that one would be considered out of the area. The one up here inside the driveway just off the corner of the garage would be inside the area that they're talking, they're proposing.

MS. DICKINSON: Where do the dogs hang out when you're at the house?

MS. SWANK: The dogs usually want to be with us. If we're, if I'm outside, they'll be outside. If I go in the house, they'll want to be in the house with us. They just, they hang around with us.

MS. DICKINSON: And where do you spend most of your time when you're at the house?

MS. SWANK: My room is downstairs so --

MS. DICKINSON: Downstairs in the basement?

MS. SWANK: In the basement, yes.

MS. DICKINSON: Okay.

BOARD: Let me ask one thing. Hy, hypothetically, since the structure that was supposed to be built pursuant to this Order, number four, if the structure had been built then, then the septic systems would have been outside of the area, except for two --

MS. SWANK: If the structure was built in the middle

CHAIR: Well, I, it's all right, because I asked the question. I apologize, I, I've expanded the scope because I asked the question so we'll let you follow-up.

MS. DICKINSON: I'll be quick.

CHAIR: And then we'll let you follow-up, Mr. Nelson.

MS. DICKINSON: But what was that structure used for? It's been called the kennel, it's been called a shed, and I think it got a little confusing.

MS. SWANK: It, it was used as storage by us. It was a good place to put all of our rakes and shovels and things of that nature.

MS. DICKINSON: So why was it ever referred to as a kennel?

MS. SWANK: Because you could have, you could have used it as a kennel. Our dogs, we're, we're trying to get them out of that, you know, that's our whole goal, to get them out of that life so, you know, we didn't use it as a kennel.

MS. DICKINSON: Did you ever use it as a holding place when you had a new dog?

MS. SWANK: We had used it as a holding place maybe overnight, the first night that they got there, until we could introduce them to our dogs, but no, it wasn't used, you know, beyond that scope.

MS. DICKINSON: Okay. Thank you, Your Honor.

CHAIR: All right. Any questions, Mr. Nelson?

a size.

MR. DOAK: If you would build something less, ten by ten, which would be a shed, you wouldn't even have to have a permit. So in terms --

MS. DICKINSON: Right, but ten by ten isn't big enough for --

MR. DOAK: No, ma'am, that's right.

MS. DICKINSON: -- that many dogs, correct?

MR. DOAK: That's correct.

MS. DICKINSON: And, and so is it your testimony today that, that the dog, that, that Ms. Robinson could not build a dog kennel to house that many dogs in what is right now the special exception area outlined in, outlined in blue on Protestant's Exhibit 22 because of the wetlands?

MR. DOAK: She could utilize the garage as a kennel.

MS. DICKINSON: The garage that is all the way on the --

MR. DOAK: Yes, ma'am. You asked me if, if she could have a building in, within the blue.

MS. DICKINSON: Well, I'm sorry, I'm talking about within the --

MR. DOAK: Oh, I'm sorry.

MS. DICKINSON: -- two hundred foot set off area.

MR. DOAK: No, she could not.

MS. DICKINSON: Okay. She could not, so that the

record is clear, because I muffed it up really badly, is your testimony that Ms. Robinson cannot build a kennel structure to house all of her dogs within the two hundred foot set off area?

MR. DOAK: No, ma'am, she cannot.

MS. DICKINSON: Okay, thank you. And so what you are proposing is that she be allowed to use the house and then an extended portion outside of the two hundred foot setoff area so that they can get from the house to that grassy area, correct?

MR. DOAK: She has the right to use the two hundred foot setoff offset area already.

MS. DICKINSON: Um hm.

MR. DOAK: And it would be everything in addition which is outlined in green.

MS. DICKINSON: Okay. How are the dogs getting out of the house?

MR. DOAK: They can come out the front if, if she would make it possible. Or we could expand that just a little bit so they could walk around the edge of the house.

MS. DICKINSON: Okay. So, now you heard the testimony, I believe, of Ms. Swank that, and you saw the video yesterday, correct?

MR. DOAK: I did.

MS. DICKINSON: Okay and so you, and, and you also read these maps much easier than I do, don't you?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: And so is it correct that on the sort of the west, south west side of the house, this long side, that there is a steep hill or a slope?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay and, and is that where the retaining wall is?

MR. DOAK: It is.

MS. DICKINSON: All right and the steep steps, isn't that correct?

MR. DOAK: And the steep steps.

MS. DICKINSON: Okay.

MR. DOAK: Yep.

MS. DICKINSON: And, and so where would you propose that the dogs get to this area that you have created for a smaller variance if they are not allowed in those front rooms, which is the current case?

MR. DOAK: Well, I don't know how to do it other than utilize the, the front entrance.

MS. DICKINSON: Okay. But you --

MR. DOAK: Or, or, or her, I was, the testimony was that there was also a, a door in her room so we would have to work that out, but my, my, my testimony is that she could do it if possible and that's all I was trying to show.

MS. DICKINSON: So I think what you're saying is that it is physically possible for the dogs to go into the area that

you propose if Ms. Robinson changed her living arrangements and allowed the dogs to go in the front rooms where they are not currently allowed.

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay and what is the reason for reducing this area?

MR. DOAK: First place, if I remember correctly, and I can look it up, 307 requires, Section 307 requires that when applying for a variance, that you do have to think about welfare of the neighbors, the health, wealth and safety so in turn, I'm trying to find an area that would allow her to still have the dogs in an area that she's already utilizing but then may be able to get them away from Mr. Krause's property or the other adjoining property, that's all I was trying to do.

MS. DICKINSON: What other adjourning property are you talking about?

MR. DOAK: This property.

MS. DICKINSON: Now, who is this property owned by?

MR. DOAK: Mr. Lindgren has this as Mr. Levinson.

MS. DICKINSON: Okay. It's actually Ms. Levinson, Judy Levinson.

MR. DOAK: Ms. Levinson, I apologize.

MS. DICKINSON: Have you spoken with Ms. Levinson?

MR. DOAK: Oh, no, ma'am, no, ma'am.

MS. DICKINSON: Okay. You notice which side of the

room she's sitting on, right?

MR. DOAK: She's on the bride's side.

MS. DICKINSON: The bride's side, right, okay and so are you aware of any concerns that Ms. Levinson has with the dogs being in the current configuration?

MR. DOAK: No, ma'am.

MS. DICKINSON: Okay.

MR. NELSON: Object to relevance.

CHAIR: Overruled.

MS. DICKINSON: Okay and, and so this whole entire side here of property and I am looking at the south west side of Ms. Robinson's house, that property is owned by her neighbor, Ms., Ms. Levinson?

MR. DOAK: That's correct.

MR. NELSON: I'm sorry, is the Levinson house there or is it somewhere else?

CHAIR: Well, I don't think it's time for you to ask questions.

MR. NELSON: Well, I object because there was, I object --

CHAIR: You can ask, why don't you, why don't you, okay, why don't you ask questions on re, re-direct?

MR. NELSON: Well, it was an objection because the question had a premise in that there was a house there and I object to that premise.

you very much.

CHAIR: Would you like to?

MS. DICKINSON: Yes. So I will mark this as Petitioner's Exhibit --

BOARD: I'll tell you in a second.

MS. DICKINSON: Thank you.

BOARD: That would be eight.

MS. DICKINSON: Thank you very much, Your Honor. Just on the issue of noise, and you have your trusty pens, thank you. If I may use one of your pens here. I am going to draw a line from Mr. Krause's house to Ms. Robinson's house. Does this orange line that I just drew on Petitioner's Exhibit 8, does that accurately reflect sort of the line of noise so to say, so to speak, from Mr. Krause's house to Ms. Robinson's house?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay and, and so why don't you come up here, if you will, please and use your green pen and draw the areas that would, would be behind Ms. Robinson's house in relation to Mr. Krause's house.

MR. DOAK: What did we say this was, what exhibit?

BOARD: That's Petitioner number eight.

MS. DICKINSON: That's Petitioner's Exhibit 8.

MR. DOAK: Eight. Petitioner's eight, I am drawing lines extending from the footprint of Petitioner's house in a

direction away from Mr. Krause's house that shows the area that would be most buffered by the house itself.

MS. DICKINSON: Okay and before you sit down, if, if you will, please, using what you have colored in on Protestant's Exhibit 22, if you will simply outline the area of what you propose to be the variance, I, I would appreciate that.

MR. DOAK: The whole kennel area.

MS. DICKINSON: The whole kennel area.

MR. DOAK: Okay.

MS. DICKINSON: Including, as you testified, including the house.

MR. DOAK: Petitioner's eight, I am outlining in pink my proposed area for the kennel.

MS. DICKINSON: And then, how about if you use my, well, actually, I'll do it for you. I am going to color in that area in orange that would be protected from sound by your proposed smaller variance, do you see that?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: It's not a lot of area, is it?

MR. DOAK: It is not.

MS. DICKINSON: Okay and, and in fact, isn't that area the porch, with the flagstone on it?

MR. DOAK: Yes. Yes, it is.

MS. DICKINSON: Okay and so, certainly, the dogs are

probably not going to be using the restroom, we hope, on that flagstone, correct?

MR. DOAK: Yes.

MS. DICKINSON: Okay. Vanna White I am not. In comparing Protestant's Exhibit 22, which has the outline in blue of the area where the dogs can be right now under the current existing variance, to what you have proposed, isn't there much more area in the current, the existing variance area that protects the Krauses from noise then there is in your proposed area, your proposed variance?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: So what's another reason why you propose to reduce the area of the variance that's been requested by Ms. Robinson?

MR. DOAK: Also runoff into the Krause's property.

MS. DICKINSON: Okay. Explain that for me, please.

MR. DOAK: Runoff?

MS. DICKINSON: How, how is your, your smaller variance area going to provide a less amount of runoff to the Krause's property than what we have right now?

MR. DOAK: There's a long, longer distance from what I'm proposing here.

CHAIR: You want to keep your voice up.

MR. DOAK: There's a longer distance, larger distance from here to here then there would be the fifteen feet that

you're asking for.

MS. DICKINSON: Okay. So let me, let's talk about that for a second. Now, you heard testimony that this portion right here at the back of the house is the garage, correct?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: And you also heard testimony today, in fact, that much of this back area is asphalt, right?

MR. DOAK: Asphalt.

MS. DICKINSON: And, and then this area behind the house that comes up and around and it says asphalt paving is asphalt paving and a driveway, correct?

MR. DOAK: Yes.

MS. DICKINSON: Okay and, and there has not been any testimony that the, the dogs use the bathroom on the asphalt or on the driveway, correct?

MR. DOAK: No, ma'am.

MS. DICKINSON: Okay. But what you're suggesting is that, well, let me back up for a second. Is it the waste, is that what you're worried about for the runoff?

MR. DOAK: It's a combination of things.

MS. DICKINSON: What else besides waste, dog waste? What's in the runoff that, that is suggesting to you that it would be better to reduce the area of the variance?

MR. DOAK: The area in blue is not needed. The whole area in blue is not needed for the requirement of her dogs.

MS. DICKINSON: Okay. But wait a minute, what you testified to was that you were concerned about runoff. That your --

MR. DOAK: That was one thing.

MS. DICKINSON: That your proposal would reduce the amount of runoff.

MR. DOAK: Right.

MS. DICKINSON: What in the runoff are you concerned about other than dog waste? Because the dog waste is going to stay the same, right? I mean, the dog, there are eleven dogs and they're going to, excuse me, but go to the bathroom the same amount of times whether they go here --

MR. DOAK: In the same, but not in the same place.

MS. DICKINSON: Well, would you rather go, them go in the same place?

MR. DOAK: Away from the adjoining properties, yes ma'am.

MS. DICKINSON: So you'd rather put them in the wetlands where the waste is going to go into the, into the land and, and, as opposed to over here where it has less opportunity to get to the Krause's house, is that right?

MR. DOAK: That wasn't direct comparison before. It was, the whole area in blue compared to the area that I have proposed. That was the comparison we were working with.

MS. DICKINSON: So we're, you're worried about this

grassy area here, is that right?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay and we know that this is all paved.

CHAIR: The record is not going to reflect what you're saying.

MS. DICKINSON: I'm sorry. You're worried about the grassy area that is, is encompassed on three sides by the driveway, is that right?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay and then you are concerned about the area beyond the wetlands area that is a little more wooded, is that right?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: But isn't that farther away from your client's property than the area you're proposing?

MR. DOAK: Um hm.

MS. DICKINSON: And so isn't it going to be --

BOARD: I'm sorry, was that a yes or a no?

MR. DOAK: Yes, it is.

BOARD: Thank you.

MS. DICKINSON: Isn't it going to be deluded more before --

MR. DOAK: It is.

MS. DICKINSON: It is?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. Is, so other than this runoff issue, what else are you concerned about that makes you want to reduce the area of the variance?

MR. DOAK: We'll go with those at the moment.

MS. DICKINSON: Okay. All right. I'm going to give you your pen back.

MR. DOAK: Thank you.

MS. DICKINSON: Okay. Mr. Doak, you testified, you provided this Protestant's Exhibit 5, correct? Do you have all of the exhibits?

MR. DOAK: No, ma'am.

MS. DICKINSON: And I'm going to start from the beginning, if that makes it easier. I'll probably go pretty much in order. So if you want to re-order them, maybe we'll take just a second, if that's okay?

CHAIR: No, that's fine. Go ahead. Protestant's 5?

BOARD: You have five?

MS. DICKINSON: You do not have it?

MR. DOAK: No, ma'am. Thank you.

MS. DICKINSON: Thank you, Your Honor. I believe you testified that when you began your analysis Protestant 5 was, shows the, the neighborhood that you defined for this project, is that right?

MR. DOAK: Yes, ma'am.

MR. DOAK: Yes, ma'am. Yes, ma'am.

MS. DICKINSON: Okay. So, when, I'm sorry, but when we are looking at the neighborhood as you defined it in your testimony for Protestant's Exhibit 10 and you testified that it was hemmed in on the west side by Falls Road, that's not accurate, is it?

MR. DOAK: No, ma'am.

CHAIR: You want to just speak up, Mr. Doak?

MR. DOAK: No, it is not accurate.

CHAIR: No, it's not accurate.

MS. DICKINSON: So your neighborhood actually goes farther than Falls Road?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: And so what defines your neighborhood?

MR. DOAK: The roads that I told you was initially where I started my search.

MS. DICKINSON: So you wrote or drew on Protestant's Exhibit 10 an orange box, correct?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: And what was that supposed to depict, roughly?

MR. DOAK: A very approximation of the Protestant's Exhibit 7.

MS. DICKINSON: Okay. But it doesn't, does it?

Petitioner's nine, correct?

MR. DOAK: Yes.

MS. DICKINSON: Okay and as I understand this document, it covers a 4.88 square mile area, is that right?

MR. DOAK: Correct.

MS. DICKINSON: Okay and this area is the smaller area, the sort of subset that you, area that you created as a neighborhood, right?

MR. DOAK: Yes, ma'am. Yes, ma'am.

MS. DICKINSON: After you originally had the forty-one mile area, area neighborhood, right?

MR. DOAK: Um hm, yes.

MS. DICKINSON: All right and so I believe that you testified that the first, first one hundred sixty of these properties are not actually large enough to meet the two hundred foot setback requirement of 421.1 for a private kennel, is that correct?

MR. DOAK: I amended it because the first four does not have any information.

MS. DICKINSON: Sure.

MR. DOAK: So it was one hundred fifty-six.

MS. DICKINSON: Sure, okay. But, but if we're just looking at the, the line numbers.

MR. DOAK: Yes, ma'am.

MS. DICKINSON: All the way up through --

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. Ms. Robinson, without a variance, would have to build an actual structure to go in that two hundred foot setback area, correct?

MR. DOAK: That's correct.

MS. DICKINSON: Okay and you've already testified she can't do that because of the DEPS problems, right?

MR. DOAK: That's correct.

MS. DICKINSON: Okay. All right. So what we are looking for with respect to these other properties is another property that has that, well, first of all, we're, we are trying to establish that the property is unique because of those characteristics, correct?

MR. DOAK: Yes.

MS. DICKINSON: And what you are trying to establish for your client is that it is not unique, right?

MR. DOAK: That's correct.

MS. DICKINSON: Okay and in order to do so, you had to find a piece of property that was roughly the same size as hers, right?

MR. DOAK: Um hm.

MS. DICKINSON: Okay. That was zoned R --

BOARD: I'm sorry, was that a yes or a no?

MR. DOAK: Yes, I'm sorry.

BOARD: No problem.

we have to show?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. So let's look first at this 101 and I believe with respect to 101 there was only one exhibit, is that correct? There was Protestant's Exhibit 6.

MR. NELSON: I'm prepared to clarify that.

MS. DICKINSON: Sure, thank you.

MR. NELSON: There's one exhibit related to parcel 101 and that's Protestant's Exhibit 6.

MS. DICKINSON: Yes, that's what I just said. Thank you. Okay, great.

CHAIR: We have it.

MS. DICKINSON: Okay, thank you. Do you have it?

MR. DOAK: No, ma'am.

MS. DICKINSON: You don't?

MR. DOAK: No.

MS. DICKINSON: Thank you.

MR. NELSON: Here, I have an extra copy. I'll give to the witness.

BOARD: Why don't we use the one that's been marked? That's 1916 Akehurst Road, number 101?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Yes.

MR. DOAK: Yes.

MS. DICKINSON: Now, let's just quickly go through

these properties. Your first property is 101, which is actually a property that Mr. Lindgren looked at, correct?

MR. DOAK: Yes.

MS. DICKINSON: Okay and he testified about that property, didn't he?

MR. DOAK: Yes.

MS. DICKINSON: Okay and property 101, it is three acres larger than Ms. Robinson's, right?

MR. DOAK: It is.

MS. DICKINSON: So it has three more buildable acres than Ms. Robinson's property does, correct?

MR. DOAK: Correct.

MS. DICKINSON: Okay.

MR. DOAK: No, let me, can I rephrase that? Take the word buildable, because I, I can't tell you how many more buildable acres is, that has a lot of requirements to be able to determine that. But it has, in size, it's three more acres larger.

MS. DICKINSON: Okay. Not quite twice as large as Ms. Robinson's property? About two-thirds as large?

MR. DOAK: Correct.

MS. DICKINSON: Okay. Now, that property is a different shape from Ms. Robinson's, is it not?

MR. DOAK: Similar but it doesn't have as many sides.

MS. DICKINSON: So it's not the same shape, is it?

MR. DOAK: You'll never find one the same shape.

MS. DICKINSON: Okay. But, but the property that is P-186, I'm sorry, 101, is essentially a square?

MR. DOAK: Rectangle.

MS. DICKINSON: A rectangle, okay.

MR. DOAK: Yes, ma'am.

MS. DICKINSON: And Ms. Robinson's is maybe a polygon and, a pentagon, would you agree?

MR. DOAK: I, I would agree.

MS. DICKINSON: Okay. Does this property 101 have natural springs popping up?

MR. DOAK: Yes, ma'am, it does.

MS. DICKINSON: It does and where are those?

MR. DOAK: There's a drainage swale that goes around the pond and then in turn, it also, there's a swale that water travels down through here and then comes around and then into the pond as well.

MS. DICKINSON: Did you go on this property?

MR. DOAK: I've been on it before.

MS. DICKINSON: When did you go on it?

MR. DOAK: A few years back.

MS. DICKINSON: Did you go on it for the purpose of, of this case?

MR. DOAK: No, ma'am.

MS. DICKINSON: Okay. Why were you on the property?

MR. DOAK: I was looking at it as to wells and septics on this property.

MS. DICKINSON: Okay and is that a man made pond?

MR. DOAK: I don't know, ma'am.

MS. DICKINSON: Okay. Now, this property is interesting because there was much talk yesterday about where the back of the house was, do you remember that?

MR. DOAK: I sure do.

MS. DICKINSON: And where you could build a kennel, right?

MR. DOAK: Yes.

MS. DICKINSON: But isn't it true that part of the house is located within that two hundred foot off, setback area?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: So presumably, that part of the house could be used for the private kennel for the dogs to sleep, correct?

MR. DOAK: That's correct.

MS. DICKINSON: And, and if they did sleep there, we wouldn't need to build any sort of kennel structure or a run, would we?

MR. DOAK: No, ma'am.

MS. DICKINSON: And, so the dogs then would be free to hang out, so to speak, when they weren't in the house, in

this whole entire area of the property, isn't that right?

MR. DOAK: It is right.

MS. DICKINSON: Okay.

CHAIR: It is or it isn't?

MR. DOAK: It is.

CHAIR: It is, okay. Thank you.

MS. DICKINSON: And, and so in that respect, this house is not the same as ours, or this property is not the same as the subject property, is it?

MR. DOAK: In that respect, no, ma'am.

MS. DICKINSON: Okay and so with Ms. Robinson's property, when you're standing at the front here on Far Out Lane you testified that you looked down a steep hill, steep embankment and then the property comes in from both sides to this low area that is sort of a marshy wetlands, right?

MR. DOAK: Yes.

MS. DICKINSON: Okay. Now, when you look at this property here, which is on Akehurst, 186, that's, it's not the same, is it?

MR. DOAK: No, ma'am.

MS. DICKINSON: You don't stand at Akehurst and look down a, a big steep hill and have, have this bowl effect with the two sides coming into a wetlands in the back, do you?

MR. DOAK: Standing at the road, no. But you still have the steep slopes this direction, coming from the north to

south, north east to south west you do, and then you also have it from the, in this direction right here, from the pond towards the house that way so it's not the same configuration but it has the slopes that make a drainage swale similar to hers, but not exactly the same.

MS. DICKINSON: Just on this little top right hand corner of the property is where you're seeing three --

MR. DOAK: Yes, ma'am.

MS. DICKINSON: -- slopes coming in?

MR. DOAK: Right.

MS. DICKINSON: Okay. So, so we understand, to the extent, is your testimony that there is a bowl on this property, 186?

MR. DOAK: No, ma'am.

MS. DICKINSON: No.

MR. DOAK: No.

MS. DICKINSON: So there is no bowl on 186?

MR. DOAK: Correct.

MS. DICKINSON: Okay. Just to be clear, the configuration of the, the, the combination of, of characteristics on Ms. Robinson's property prevent her from building a kennel structure here in this two hundred foot setback area, right?

MR. DOAK: It does.

MS. DICKINSON: Okay and, and we don't have that same

case on this property, do we? And I'm looking at P-186.

MR. DOAK: I must be confused. Is she going to build or is she not going to build?

MS. DICKINSON: I have to ask the questions.

MR. DOAK: Okay. It is, it is not the same.

MS. DICKINSON: It is not the same.

MR. DOAK: No, ma'am.

MS. DICKINSON: In fact, the setoff area, or setback area on 186 is much larger, almost twice, oh, almost three times as large than Ms. Robinson's, correct?

MR. DOAK: I don't understand that.

MS. DICKINSON: The area that is outlined in --

MR. DOAK: The area that has the ability as a matter of right to have a kennel is larger, yes, ma'am.

MS. DICKINSON: It is, it's almost twice, right?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: It's more than twice.

MR. DOAK: I --

MS. DICKINSON: About twice?

MR. DOAK: We'll go for that.

MS. DICKINSON: Okay. And so what, this is 186 on your, if you look at nine, Protestant's and Petitioner's 9.

BOARD: You need nine?

MR. DOAK: I do, I'm sorry.

BOARD: That's your nine.

MR. DOAK: Thank you.

BOARD: Sure.

MS. DICKINSON: Where is that property? On what page is that property on Protestant's Exhibit 9? I see, it's, so it's 213 on page five and then it says 101 and it's green. Do you see that, Mr. Doak?

MR. DOAK: I'm sorry?

MS. DICKINSON: If you look on page five of Petitioner's and Protestant's Exhibit 9.

MR. DOAK: It is.

MS. DICKINSON: And you see the Bolt property, which is in green? Do you see that?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay and it says 213, then it says 101?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Now, we've established that this property has different characteristics from Ms. Robinson's property in that it doesn't have the bowl and, and we won't repeat all of your testimony but would you take your pink pen, please, and mark through 2, the line 213, please?

MR. DOAK: You want me to do it on the (inaudible)?

BOARD: Yeah, are you going to admit your copy?

MS. DICKINSON: It, no, he has the copy that he's writing on. No, this is just his, the extra (inaudible).

MR. DOAK: (inaudible) back the official copy and I'm using hers (inaudible).

MS. DICKINSON: That's what it, yes.

BOARD: Okay.

MS. DICKINSON: I'm sorry, we changed the number of that, didn't we?

MR. DOAK: Yes.

MS. DICKINSON: And that's why I've confused things.

BOARD: No, no, it's still nine. Yours is nine and this is nine but you can, it --

MS. DICKINSON: Yes --

MR. DOAK: But this will be something different when it's all said and done.

BOARD: That's right. So we can stick with Petitioner's Exhibit 9.

MS. DICKINSON: Yes, thank you. My apologies.

BOARD: Okay.

MS. DICKINSON: Okay. So if you'll just take that, that pink marker and just mark through 2013, please, line 2013.

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Thank you. The next property that you testified was number 95, which is Protestant's Exhibit 7 and Protestant's Exhibit 8-1 and 8-2. Would you look at those exhibits, please? And that is the Krauses' property, if that's helpful. So you're looking for Protestant's Exhibit 7, Mr.

Doak?

MR. DOAK: Yes, ma'am. No, I found it, it's on page six.

MS. DICKINSON: No, no, no, it looks like this.

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. Are you looking at Protestant's Exhibit 7 now?

MR. DOAK: I am.

MS. DICKINSON: Great, thank you. Okay. Now, this is the Krause property, correct?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay and this is a, a large piece of property, correct?

MR. DOAK: It is.

MS. DICKINSON: 16.09 acres?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. So, so, right, right off the top, it is more than three, or about three times the size of Ms. Robinson's property, right?

MR. DOAK: It is.

MS. DICKINSON: Okay. Much larger.

MR. DOAK: Three times.

MS. DICKINSON: Okay. Now, you testified that it is similar but a little different, I think is what you said?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay and, and you testified that it does not have a bowl, correct?

MR. DOAK: It does not have a bowl.

MS. DICKINSON: Okay and so again, when we look at Ms. Robinson's property, standing from the front and looking at the back, there are, there is this bowl effect where the house could only be located at the back of the property, correct? I'm sorry, you have --

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay and when we look at the, the Krauses' property, this 95, well, it looks like they have a lot of areas to build houses, don't they? Because they have one, two, three, four housing structures, isn't that right?

MR. DOAK: I wasn't comparing places to build houses, I was comparing places that were already built.

MS. DICKINSON: Okay. Okay.

MR. DOAK: And my criteria was constraints by the slopes and by the, by the swale or the drainage, or the water course.

MS. DICKINSON: Okay. But will you agree with me that the Krauses' property, although interesting, is, does not share the same characteristics as, combination of characteristics as Ms. Robinson's?

MR. DOAK: Other than the, a bowl, which really I don't feel makes a difference on her variance request, I don't

see that it is different. Once again, the house that I'm pointing to, not the other, or not the rest of the property, is constrained by steep slopes.

MS. DICKINSON: But, but the standard isn't that one house, right? They have four houses with different families living on that property, isn't that correct?

MR. DOAK: The standard is that you're trying to prove uniqueness for your property.

MS. DICKINSON: Yes.

MR. DOAK: Okay and you're trying to do it by the positioning of your house in relationship to steep slopes and a water course. Okay? That's what I've done here and that's what I've done with each of these.

MS. DICKINSON: Okay. The property that we're looking at here, the Krauses' property, has a, if you look at Petitioner's Exhibit 8, has a significantly large area where a private kennel could be located under the regs, isn't that right?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. I mean, it's almost half the property, would you agree?

MR. DOAK: It won't be half by the time you take out, it might be a quarter of it, but, yes, ma'am. A third, a quarter --

MS. DICKINSON: Much larger than Ms. Robinson's?

MR. DOAK: Oh, yes, ma'am.

MS. DICKINSON: Okay. Protestant's Exhibit 8-2, the picture, the second picture, the second, actually the bottom picture on that page, did you take that picture?

MR. DOAK: No, ma'am.

MS. DICKINSON: Who took the picture?

MR. DOAK: Mr. Krause did.

MS. DICKINSON: Did he take all of these pictures?

MR. DOAK: Yes, of that group he did, yes, ma'am.

MS. DICKINSON: Okay and have you been on his property?

MR. DOAK: Yes, a number of times.

MS. DICKINSON: Okay and, and up there at the top of that picture, what is that, do you know?

MR. DOAK: I don't know off, I, I remember the picture very well but I don't know.

MS. DICKINSON: Okay. Okay. Moving on to Exhibit, Protestant's Exhibit 11, which is, it's, it's 16310 Yoho Road, number 24.

BOARD: Do you have that?

MR. DOAK: I do.

CHAIR: Ms. Dickinson, I'm wondering --

MS. DICKINSON: I'm sorry.

CHAIR: -- if there's any good breaking point for a lunch break --

MS. DICKINSON: Would you like to break now? I'm one of those people that can go forever and I don't even notice, so I apologize.

CHAIR: Well, I do too, I do too.

MS. DICKINSON: It could be 5:00, I would never know.

MR. NELSON: I would.

CHAIR: They probably need, we probably just, we, again --

MS. DICKINSON: This is a fine breaking point, if you would like to break at this point because --

CHAIR: And I know, we, I wanted to do it after, we wanted to do it after the witness was finished, but if you have more time, we don't want to rush you through to get --

BOARD: How much more time are you going to need with Mr. Doaks, approximately?

MS. DICKINSON: Twenty-five minutes, maybe.

CHAIR: Okay, yeah --

MS. DICKINSON: I mean, I just need to go through these properties.

CHAIR: I understand. No, you do what you need to. You need to cross examine. How many more witnesses do you have? Any more?

MR. NELSON: I'm trying to articulate is this thought that when we finish this witness I was going to proffer what I have in my mind (inaudible) so I guess I think what you're

asking from me then is now.

CHAIR: I'm just trying to see about housekeeping, whether we need another day.

MR. NELSON: Right, so, all right, but so, then I'll just address the (inaudible). We believe under 307.1 of the variance, that, that you do look at the harm issue. The Chair indicated yesterday that the Chair interpreted that section differently and I'm not seeking to rehash that point. But I had intended to elicit my client's, testimony from my clients on the harm issue with respect to the barking, with respect to the runoff and the safety issue of the dogs (inaudible) property and to me, I thought to myself, well, we're going to have a legal discussion and the Chair will make a ruling as to whether the Chair thinks that's part of this case or not. So depending on how the Chair rules on that, that affects what we do. I'll just note, just parenthetically, that, that, that the examination today sort of addressed those issues, the barking, the buffering by the house and so on, you know, so there's that issue. But in addition to that, we, we intended to call Ms. Krause simply to say that the Krauses oppose the variance. They didn't oppose the special exception because they thought they were protected with a two hundred foot setback and then she was going to address the practical difficulty issue. We have evidence about facilities, institutions, that will commit in Maryland to house a dog, the jargon is no kill kennel, I

think there are forty odd of them in, in the state alone. So that goes to practical difficulty. So the real central question is how the Chair rules on this evidentiary point about the, the damage.

CHAIR: Well, why don't we do this? Let's take, let's take twenty minutes. Can (inaudible) eat something in twenty minutes? How's that sound?

MS. DICKINSON: Certainly, Your Honor, that's fine.

CHAIR: Does that work?

MS. DICKINSON: Thank you.

CHAIR: Is that too short for you, Mr. Nelson?

MR. NELSON: No, because I have a sandwich ready, I, I can do it. I don't know what my client --

CHAIR: You're like me (inaudible).

MR. NELSON: Yeah, I can do it in twenty.

CHAIR: I was just trying to move it along because, I mean, it may be that we just need to, some housekeeping issues here. Let's do that. Let's take twenty minutes and then come back and we'll finish up with Mr. Doak.

MS. DICKINSON: Okay. Thank you, Your Honor.

CHAIR: Okay. 1:30.

MR. NELSON: Are you okay for food for twenty minutes, you're all set? (inaudible).

(RECORDING PAUSED - 01:06:37 PM)

(ON RECORD - 01:47:42 PM)

CHAIR: We didn't make the twenty minutes.

BOARD: No.

CHAIR: I think everybody needed a break. Back on the record, after lunch and we were in, we were having the cross examination of Mr. Doak and just, just so, you know, for housekeeping purposes, we, we did take, just the Board did take really good notes of when he was testifying about the characteristics and all that so to the extent that can help you shorten your cross at all.

MS. DICKINSON: You would like me to nip, nip it in a little bit.

CHAIR: We, we, not to rush you through it. You have to do your job for your client, we just, but we did take notes every time he talked about a property and went through the pictures, (inaudible), did take some time so just to let you know that. But go right ahead.

MS. DICKINSON: Thank you. Okay.

CHAIR: Just, okay.

MS. DICKINSON: Thank you, Your Honor. Mr. Doak, I believe when we took the recess we were getting ready to look at Protestant's Exhibit 11, which is parcel number 24 (inaudible), do you have that in front of you?

MR. DOAK: Yes, ma'am, I do.

MS. DICKINSON: And that is an aerial photograph. And in addition to that, there is Protestant's exhibit number

twelve, which has two pictures, two of the three pictures on that page are of that house as well, is that correct?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. Now, well, we can move by actually this property very quickly, can't we? Because this property is not actually wide enough for a, the two hundred foot setback, is it?

MR. DOAK: No, ma'am.

MS. DICKINSON: Okay, all right.

CHAIR: You have to speak up, Mr. Doak. Go ahead.

MR. DOAK: No, ma'am.

CHAIR: Thank you, sir.

MS. DICKINSON: Because it's not four hundred feet across, is it?

MR. DOAK: It is not.

MS. DICKINSON: Okay and I believe you already testified that there's no, the topography is different because there's not that sort of bowl with the steep slopes on this particular property, correct?

MR. DOAK: There is no bowl on that property.

MS. DICKINSON: Okay. And, and so, some quick housekeeping, if you will turn to Petitioner's Exhibit 9, which is the copy of the table that you have been marking in pink for me, do you see that?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. So I, I believe that if you look at page four of that, you will see in green parcel number 24?

MR. DOAK: Yes.

MS. DICKINSON: And, and you've given it the, the line number 174, do you see that?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. Would you put a pink line through that, please? And, and in fact, let's make it easier. Would you just put an X through the whole rest of that page because you've identified, you've looked at all these properties and determined that none of them have the same char, combination of characteristics as Ms. Robinson's property, correct?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. So go ahead and just X out the whole page, please.

MR. DOAK: In respect to, in respect to what, let me ask that?

MS. DICKINSON: What you're testifying about, which is the, the, the slopes, the slopes, the drainage basin.

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Yes, okay.

MR. DOAK: Then, then you're correct.

MS. DICKINSON: The size, they don't have the same

size of the property, etcetera, okay. So moving on to page five of that same document. Just for housekeeping sake, if you could mark through line 188, which is all the way up at the top, please? Because that is another property that you've already ruled out as being the same as Ms. Robinson's, correct?

MR. DOAK: Is different than hers.

MS. DICKINSON: Yes, thank you.

MR. DOAK: Yes.

MS. DICKINSON: Thank you. Okay and then one more housekeeping item, if I may. On page six, you already testified about this and I meant to ask you to mark through line item 232, which is that property number 95, which you testified does not have the same combination of characteristics as Ms. Robinson's property.

MR. DOAK: No, the only thing I said it didn't have was a bowl.

MS. DICKINSON: Right, so it does not have the same combination of characteristics as Ms. Robinson's property, correct?

MR. DOAK: If we're saying the same thing, the only thing is it doesn't have the bowl.

MS. DICKINSON: Yes, okay. Now, we can move along. Thank you. Please look at Protestant's Exhibit 13. And that is another aerial photograph that has 212 down at the bottom, 2009 Stringtown Road. Again, this is another easy one, isn't

it? Because it's actually not even big enough to have that two hundred foot setoff area, is it?

MR. DOAK: No, ma'am, but that wasn't my comparison of these properties.

MS. DICKINSON: Well, certainly --

MR. DOAK: None of these, none of these properties had the same cri, was that criteria of this, whether it could have a dog kennel on it. These were to prove that there was, there was, your property was not unique as to way of slopes, water courses and a house being built within the drainage area, within the swale. That was what this was about. It had nothing to do with whether a kennel could be built on the property or not.

MS. DICKINSON: Well, if that's the case, then why did you testify at the beginning of the, of your testimony today when on direct that the first one hundred sixty were irrelevant to our analysis based on size?

MR. DOAK: The --

MS. DICKINSON: That was the testimony that was elicited by opposing counsel, correct?

MR. DOAK: The, the question was, if you had a perfect square of a property and it had one point on it that you could place it, a kennel, what would be that size and I said 3.68 acres or we, and we rounded it up to 3.7 and he said, so what you're telling me is that no property under 3.7 acres

can have a kennel on it without a variance similar to this. That was the testimony and I said that's correct. So what you're now getting into is something that none of these were looked at and you had me keep crossing these out, but I didn't look at the shape on these as to whether a kennel could fit, only, only the water course, the steepness of slopes and the construction of a home in the water course.

MS. DICKINSON: So you forgot to look at whether a private kennel could actually fit on the property based on size?

MR. DOAK: That, that wasn't --

MS. DICKINSON: Or you weren't asked to do that?

MR. DOAK: I was not asked to do that.

MS. DICKINSON: Okay. I understand, okay. But you will agree with me, strike that, sorry. Looking at Exhibit, Protestant's Exhibit 15, it is an aerial, it says 281 down at the bottom, 2317 Stringtown Road, 5.43 acres. Do you see that?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. Now, I believe that this is the, the property that you described as a bull's eye, that it was very similar to the subject property, is that right?

MR. DOAK: This is the exhibit we used to show the relationship to that property, to that large map. There's another exhibit we used that's more focused on it.

MS. DICKINSON: Sure, and we'll get to that in a

second.

MR. DOAK: Okay.

MS. DICKINSON: But am I correct in, in my question?

MR. DOAK: That, yes.

MS. DICKINSON: Yes.

MR. DOAK: Yes, ma'am, it is.

MS. DICKINSON: Okay. All right and, and so, now this property here, this 281, is more than a mile from Ms. Robinson's house, is that right?

MR. DOAK: I'd have to go back to that chart that I put together.

MS. DICKINSON: Okay and it is on the other side of Stringtown Road?

MR. DOAK: It is on the other side, yes, ma'am.

MS. DICKINSON: Okay.

MR. DOAK: On the south side.

MS. DICKINSON: All right and, in fact, it's so far down that map that from 2012 I'm looking at Protestant's Exhibit 4, 2012 is, lot 2012 is down towards the bottom, it's so far down Stringtown Road that it's not even on that, that neighborhood map of yours, correct?

MR. DOAK: That's correct.

MS. DICKINSON: Okay. So you had to go pretty far to get what you call a bull's eye, didn't you?

MR. DOAK: Define pretty far.

MS. DICKINSON: That's fair enough. All right. Let's look at Protestant's Exhibit 16, please, which actually has the property on it. Now, this property is similar to the last property that we talked about in that while it may have enough acreage, four hundred times four hundred gets you to a certain number of acres, 3.7 I think you said.

MR. DOAK: Yes, ma'am.

MS. DICKINSON: To get a dot in the middle that is two hundred feet off the property line, it's actually too narrow for you to have a four hundred foot setback from all property lines, correct?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay.

MR. DOAK: It would require a variance.

MS. DICKINSON: But that's not the case in our, with our prop, the subject property, right? It's large enough?

MR. DOAK: If you put it in the area that's allowed within two hundred feet, yes, ma'am.

MS. DICKINSON: Um hm, yes, okay. Now, if we move to Protestant's Exhibit 18. This is an aerial photo, another aerial photograph with 275 down at the bottom, 6.98 acres, and this is on Falls Road, correct?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. And again, this is another parcel of property, while it has a lot of acreage in it, it is

not wide enough to have a two hundred foot setback in it, is it?

MR. DOAK: No, ma'am.

MS. DICKINSON: Okay. It's long and narrow?

MR. DOAK: Correct.

MS. DICKINSON: And you already testified that it doesn't have a bowl?

MR. DOAK: It does not have a bowl.

MS. DICKINSON: Okay. And so if you will turn back to Petitioner's Exhibit 9, please? Turn to page five. Now, if you'll take your pink pen, please, I believe you can mark out line 190, which is parcel 281. And you can mark out, sounds like you're already doing it, line 205, which is parcel 275, which you've testified about. And I believe you already have line 213 marked out already, is that correct?

MR. DOAK: That's correct.

MS. DICKINSON: All right. So if you will, now the other properties that are not highlighted in green, with the exception of the subject property, which is yellow, you can mark all of those out, isn't that right?

MR. DOAK: Yes.

MS. DICKINSON: Okay. So if you'll go ahead and do that, please, we're just about finished up here. You let me know when you're done.

MR. DOAK: I'm done.

MS. DICKINSON: Oh, thank you. All right. So let's look at this last exhibit here, which is Protestant's Exhibit 20, please, 277, 15630 Falls Road, forty, wow, 41.55 acres. And that is on the west side of Falls Road, is that correct?

MR. DOAK: I don't have that one but, yes, ma'am, it is.

MS. DICKINSON: Oh, you don't, okay.

BOARD: What do you need? Which one?

MS. DICKINSON: This is Protestant's Exhibit 20.

MR. DOAK: I think Mr. Nelson has mine. Thank you, sir.

MS. DICKINSON: Now, this parcel of property is approximately eight times larger than Ms. Robinson's property, correct?

MR. DOAK: Correct.

MS. DICKINSON: Okay. So it's not similar in respect to size, is it?

MR. DOAK: No, ma'am.

MS. DICKINSON: And it's about a mile and a half away from her property, is that correct?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. And I think you already testified that it doesn't have a bowl, right?

MR. DOAK: It does not.

MS. DICKINSON: Okay, so it doesn't have the three

steep slopes going into a, or creating a drainage basin, correct?

MR. DOAK: It does not.

MS. DICKINSON: Okay. And so why don't you go ahead and mark that out on, on your, I think it's page six of Petitioner's Exhibit 9, please? And then it looks like you can mark out the rest of that page and the last page seven and we'll be done with that exhibit. I have no further questions at this time. Thank you, Your Honor.

CHAIR: Thank you.

BOARD: One housekeeping matter (inaudible).

MS. DICKINSON: Oh, I'm sorry, thank you.

BOARD: Yeah, just put all your exhibits in that you're (inaudible).

MS. DICKINSON: So we have --

BOARD: And your table that you were just using, that Mr. Doak --

MS. DICKINSON: We will put this back into evidence.

BOARD: Right.

MS. DICKINSON: And then if I, if I may ask you, is this the one that you were writing on?

MR. DOAK: No, ma'am.

MS. DICKINSON: No. Thank you very much. So we'll, we will move into evidence Petitioner's Exhibit 9, please, with the handwriting on it.

Exhibit B

Comparison of Properties in Ms. Robinson's Neighborhood

Property (Parcel # on Pet. Exh. 7)	Sufficient acreage (3.6 acres) & shape for private kennel without variance	Similar size (approx. 5 acres)	3 steep sloping sides creating drainage basin with discharge at bottom of resulting "bowl"	Natural springs daylighting on slopes of "bowl" creating wetlands area in center of "bowl"	Stream through center of property discharging at bottom of "bowl"	Only buildable area located in rear, w/i 200 ft. of property line, necessitating separate structure for private kennel in front of house
Ms. Robinson's Property	✔	✔	✔	✔	✔	✔
P.148	X	X	X	X	X	X
P.180	X	X	X	X	X	X
P.179	X	X	X	X	X	X
P.183 (Protestants' Property)	✔	X (16+)	X	X	X*	X
P.281	X	✔	X	X	X	X
P.189	X	✔	X	X	X	X
P.21	X	X	X	X	X	X
P.190	X	X	X	X	X	X
P.313	X	X	X	X	X	X
P.211	X	X	X	X	X	X
P.32	X	X	X	X	X	X
P.187	X	X	X	X	X*	X
P.186	✔	X	X	X	X*	X
P.33	X	X	X	X	X	X
P.306	X	X	X	X	X	X
P.342	X	X	X	X	X	X
P.170	X	X	X	X	X	X
P.31	X	✔	X	X	X*	X

P.197	✔	✔	X	X	X*	X
P.42A	✔	X	X	X	X	X
P.191	X	✔	X	X	X	X
P.42B	✔	✔	X	X	X	X
P.199	✔	✔	X	X	X*	X

*Note – While these properties have streams, none has a stream running through the center of the property that discharges at the bottom of a "bowl".

Exhibit C

Comparison of Properties in "Neighborhood" Selected by Protestants

Property (Parcel # on Prot. Exh. 4)	**Sufficient acreage (3.6 acres) & shape for private kennel without variance**	**Similar size (approx. 5 acres)**	**3 steep sloping sides creating drainage basin with discharge at bottom of resulting "bowl"**	**Natural springs daylighting on slopes of "bowl" creating wetlands area in center of "bowl"**	**Stream through center of property discharging at bottom of "bowl"**	**Only buildable area located in rear, w/i 200 ft. of property line, necessitating separate structure for private kennel in front of house**
Ms. Robinson's Property	✔	✔	✔	✔	✔	✔
#101 (same as P.186 on Exh. A)	✔	X	X	X	X*	X
#95 (same as P.183 on Exh. A – Protestants' Property)	✔	X (16+ acres)	X	X	X*	X
#24	X (too narrow)	✔	X	X	X*	X
#212	X (too small)	X	X	X	X*	X
#281	X (too narrow)	✔	X	X	X*	X
#275	X (too narrow)	✔	X	X	X*	X
#277	✔	X (41+ acres)	X	X	X*	X

*Note – While these properties have streams, none has a stream running through the center of the property that discharges at the bottom of a "bowl".

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

November 6, 2015

Michelle J. Dickinson, Esq.
10440 Little Patuxent Pkwy., Suite 300
Columbia, Maryland 21044

G. Macy Nelson, Esq.
401 Washington Avenue, Suite 803
Towson, Maryland 21204

RE: **APPEAL TO BOARD OF APPEALS**
Case No. 2015-0235-SPHA
Location: 2012 Far Out Lane

Dear Counsel:

Please be advised that an appeal of the above-referenced case was filed in this Office on November 4, 2015. 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,

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS/sln

c: Baltimore County Board of Appeals
People's Counsel for Baltimore County

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. 133627

Date: 11/4/15

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				530.00

Total: 530.00

Rec From: G. Macy Nelson, Esq

For: 2012 Far Out Lane CK#16736
2015-0235-SPHA

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
PLEASE PRESS HARD!!!!

CASHIER'S VALIDATION

LAW OFFICE OF
G. MACY NELSON, LLC

G. MACY NELSON
DAVID S. LYNCH

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
www.gmacynelson.com

TELEPHONE: (410) 296-8166
FACSIMILE: (410) 825-0670

RECEIVED
NOV 04 2015
OFFICE OF ADMINISTRATIVE HEARINGS

November 4, 2015

Hand-Delivered

Arnold Jablon, Director
Department of Permits, Approvals
and Inspections
County Office Building
111 W. Chesapeake Ave., Suite 105
Towson, Maryland, 21204

Hon. John Beverungen
The Office of Administrative Hearings
Jefferson Building, Suite 103
105 W. Chesapeake Avenue
Towson, Maryland, 21204

Re: Petitions for Special Hearing and Variance
(2012 Far Out Lane)
5th Election District
3rd Council District
Catherine H. Robinson, Petitioner
Case No.: 2015-0235-SPHA

Dear Director Jablon and Judge Beverungen:

I represent Andrew Krause and Noreen Krause, 1940 Akehurst Road, Sparks Glencoe, Maryland 21152, who were protestants in the above-captioned case. My clients appeal the Administrative Law Judge's decision dated October 9, 2015 to grant the Petitions for Special Hearing and Variance. I have attached a copy of the Opinion as Exhibit A.

I have attached a check made payable to Baltimore County, Maryland, in the amount of $530.00 ($265.00 for the Special Hearing, $265.00 for the Variance). This is to confirm that it is not necessary to include a check for $90.00 for posting.

Very truly yours,

G. Macy Nelson

GMN:ldr
Enclosures

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

October 9, 2015

Michelle J. Dickinson, Esq.
10440 Little Patuxent Pkwy., Suite 300
Columbia, Maryland 21044

G. Macy Nelson, Esq.
401 Washington Avenue, Suite 803
Towson, Maryland 21204

RE: Petition for Special Hearing and Variance
Property: 2012 Far Out Lane
Case No. 2015-0235-SPHA

Dear Counsel:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the Baltimore County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Baltimore County Office of Administrative Hearings at 410-887-3868.

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

IN RE: **PETITIONS FOR SPECIAL HEARING AND VARIANCE**	*	BEFORE THE
(2012 Far Out Lane)	*	OFFICE OF
5th Election District		
3rd Council District	*	ADMINISTRATIVE HEARINGS
Catherine H. Robinson		
Petitioner	*	FOR BALTIMORE COUNTY
	*	**Case No. 2015-0235-SPHA**

* * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of the legal owner. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to amend the December 18, 2014 Order granting a Special Exception for a private kennel in Case No.: 2015-0092-X as shown and indicated on the site plan filed in this case. In addition, a Petition for Variance pursuant to B.C.Z.R. § 421.1 was filed to permit a private kennel in a RC 2 zone to be located within 15 ft. of the nearest property line in lieu of the required 200 ft. A site plan was marked and accepted into evidence as Petitioner's Exhibit 2.

Appearing at the public hearing in support of the requests was owner Catherine Robinson and several neighbors. Michelle J. Dickinson, Esq. represented the Petitioner. Andrew and Noreen Krause, represented by G. Macy Nelson, Esq., opposed the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were submitted by the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR). Neither agency objected to the requests, although the DOP recommended certain conditions for inclusion in the final order.

ORDER RECEIVED FOR FILING
Date 10-9-15
By Ken

PETITION FOR SPECIAL HEARING

As noted at the hearing, the petition for special hearing essentially involves a matter of "housekeeping." That is, the request is to amend the previous Order in Case 2015-0092-X (which granted a special exception for the operation of a private kennel on the property) in accordance with the terms of the Order in this case. As such, the petition will be granted, although the petition for variance (discussed below) is the substantive issue that must first be considered.

VARIANCE

Several witnesses testified in Petitioner's case, the first being owner Catherine Robinson, who has lived at the property for over 22 years. Ms. Robinson explained she has at the present time 11 dogs, and she presented photos of each. Petitioner's Ex. 1. She also testified she constructed in the last year a new privacy fence designed to reduce the noise associated with the barking dogs. Petitioner's Ex. 5. Ms. Robinson testified she has not since December 2014 (around the time of the special exception hearing in Case # 2015-0092-X) received any complaints from her neighbors other than an e-mail sent by Andrew Krause, which was admitted as Protestants' Ex. 1. Ms. Robinson explained that if the variance was denied, she would have to relinquish or euthanize at least 6 of her dogs, which she said would be devastating. On cross-examination, the witness agreed that the topography of her property was somewhat typical of other properties found in northern Baltimore County, and that she did not attempt to buy additional land on which to construct the proposed kennel.

The next witness was Noah Price, a landscape contractor with over 30 years of experience. Mr. Price testified that he has been hired by Ms. Robinson to construct fencing, mow grass and perform landscaping work generally. He also noted that he is at the property at least once a week (sometimes more frequently) and also cleans up dog waste, which is then deposited into a specially designed septic system for animal waste, where it is treated with certain chemicals to safely dispose

of the feces. Mr. Price testified Baltimore County officials informed him that a kennel could not be constructed in the front of Ms. Robinson's home (as required by the previous order), since accessory buildings were only permitted in rear yards. The witness testified that while working at Petitioner's property in recent weeks he could hear (but not see, due to vegetation) children jumping into and swimming in the pond/lake situated on the Krause property.

On cross-examination, Mr. Price advised he secured a permit to construct the fences at the property. He also acknowledged that the dogs have access to about a 60' linear portion of the drainage way or ditch that runs through the site, and a photo was admitted showing dogs drinking out of the "stream." Protestants' Ex. 2. Mr. Price also conceded that the dogs do bark on occasion, and said they can "get into it" when visitors or motor vehicles come down the driveway. He testified that the dogs do not bark continuously, and that they would bark for no more than 5 minutes on any such occasion.

The next witness in petitioner's case was James Hosmer, P.E. Mr. Hosmer, who was accepted as an expert, is a licensed professional engineer with over 45 years of experience. His CV was admitted as Petitioner's Ex. 7. Mr. Hosmer explained that he visited the site and also examined USGS maps and online databases to investigate the prominent features and aspects of the property. Mr. Hosmer testified that a drainage swale bisects the property, and runs from the southeast to the northwest. He explained that there is high ground along the perimeter of the site, and that the house (constructed in or about 1920) was located on a flat part of the lot. The witness stated that there are also several spring heads on the property, as well as steep slopes of 2:1 ratio. While the witness advised that the topography of the site was typical for the Piedmont zone, he stressed that the subject property serves as a collection point or conduit for surface waters flowing through the area. Mr. Hosmer opined that the foregoing factors impose a combination of restrictions on Petitioner's ability to use her property.

On cross examination the witness stated that the springs on the property were a constraint, and he opined that the drainage way may be characterized as an "intermittent stream," but not a "stream." Mr. Hosmer conceded steep slopes also existed at other properties in the vicinity, but he added that the relatively small size of petitioner's property, when coupled with the factors identified in his direct testimony, caused the restrictions to be more "pronounced" on the Petitioner's property.

Kiwanna Swank, who lives at the subject property with her teenage son, was the next witness in the case. She stated Ms. Robinson has always had dogs, and that while they do bark when visitors come to the property, they settle down and stop barking within 2 minutes. Ms. Swank testified she is a nurse and works three 12-hour shifts per week. On cross examination she testified that the house has a "doggie door" which lets the dogs come in and out of the house without being escorted. She also stated that there is an approximately 3 hour period between her shifts and when Ms. Robinson leaves for work that the dogs may be left unattended.

Several of Petitioners' neighbors testified, and they each spoke well of Ms. Robinson and supported her zoning request. They noted Petitioner is an extremely giving and kind person who considers the dogs to be her children. Ms. Levinson, a veterinarian who lives adjacent to Petitioner, testified that of course the dogs bark, but that it is not excessive and she sleeps with her windows open and is not disturbed by the dogs. She also stated that Petitioner performs a valuable service to the community by adopting and recuing from "kill shelters" elderly and/or medically infirm dogs that might otherwise not find a home.

Andrew Krause, whose property is adjacent to Petitioner's, was the first witness in Protestants' case. He testified that he and his wife own 3 parcels of land in the vicinity, and that there are steep slopes on his property. He agreed that the fencing installed by Petitioner in the last year has helped with the level of noise, but stated that the dogs often incite one another into a

cacophony of barking. The witness also testified that he maintains several rental units on his properties, and that each of his tenants has complained about dog noise, including current tenant Jen Walsh. Ms Walsh sent to Mr. Krause an email dated June 2, 2015 (Protestants' Ex. 4) wherein she advised that the dog barking was "excessive."

Mr. Krause also testified he has concerns about the pond on his property, and fears that runoff and animal waste from Petitioner's property may be creating an environmental hazard. He stated he has advised his tenants and family not to swim in the pond, and he presented the results of a series of tests conducted by EnviroChem, which appear to show elevated levels of E. coli in samples taken from several points near the pond and the stream which flows through Petitioner's property down to the Krause property. Protestants' Ex. 13. Other than these lab results and Mr. Krause's lay testimony, no further evidence was presented concerning the nature and/or severity of the alleged environmental conditions effecting the pond.

Noreen Krause was the next witness in Protestants' case, and she echoed most of the same concerns identified by her husband Andrew. She advised the dog noise has "waxed and waned" over the last several years, and testified that the barking often wakes her up at 5 a.m. She stated that she cannot sit outside and work, and that the barking was "by far" the biggest source of disruptive noise which negatively impacts the enjoyment of her home.

The Petitioner next presented two rebuttal witnesses. Surveyor Scott Lindgren (whose firm prepared the site plan) testified that Petitioner cannot construct a kennel building in her front yard within the required 200 ft. setback as shown on the site plan, as that would require a variance under B.C.Z.R. §400.1. Mr. Lindgren testified that Petitioner's property was unique in that it had slopes and topographical changes creating a drainage "bowl." On cross examination the witness conceded that one or two other properties in the area had similar "bowls," although he did not believe those

slopes were as steep as those found on the subject property, nor did they impact the front yard area to the same degree as Petitioner's property.

James Hosmer was recalled as the final witness in the case. Mr. Hosmer's testimony focused on the lab results presented by Mr. Krause. While Mr. Hosmer agreed the results were "credible" and prepared by a reputable firm, he did not believe those results had much value in determining the cause and/or extent of any environmental problems with the pond. He noted that the samples taken were of surface water, which has a high degree of "variability." That means, according to Mr. Hosmer, that a particular value for E. coli (for example) may be observed in one test, whereas a completely different result could be obtained within a matter of minutes, due to the transient nature of surface water. He noted the E. coli results in the tests varied greatly, and he does not believe it is possible to link the water quality of the Krause's pond with the Petitioner's dogs, especially in a rural setting. He further noted that the stream which traverses the Petitioner's property constitutes just a small percentage (perhaps as much as 6%) of the overall drainage area basin flowing into the pond.

Petitioner's request seeks a reduction of the 200 ft. setback requirement contained in B.C.Z.R. §421.1. As such, this is known as an "area" variance, which is one which concerns the height, lot area and setback requirements (collectively referred to as a zone's "bulk regulations"). Protestants contend the request involves a "use variance," but I do not believe that argument has merit. A use variance permits a use other than that permitted in the zone; i.e., a commercial use in a residential zone. Anderson v. Board of Appeals, 22 Md. App. 28, 38 (1974). Here, the private kennel is permitted in the R.C. 2 zone by special exception, which under Maryland law is a presumptively acceptable use. People's Counsel for Baltimore County v. Loyola College in Md., 406 Md. 54 (2008).

ORDER RECEIVED FOR FILING
Date 10-9-15
By DLM

Under Maryland law, the burden of proof to obtain an area variance is less than that required for a use variance. Anderson, 22 Md. App. at 39. The Anderson court noted the "lesser burden is permitted because the impact of an area variance is viewed as being much less drastic than that of a use variance." Id. A use variance is presumed to change the characteristics of a zone, while an area variance does not. Id. A petitioner need only establish a "practical difficulty" for an area variance, as opposed to an "undue hardship" which must be shown for a use variance. Id. Indeed, B.C.Z.R. §307 sets forth the requirements in the disjunctive, which entitles a petitioner to satisfy the lesser "practical difficulty" standard. McClean v. Soley, 270 Md. 208 (1973).

The McClean case is especially apropos in this matter. That case involved an apartment complex in Towson, and the developer was seeking a variance to reduce certain side yard setback requirements imposed by the B.C.Z.R. As here, only one neighbor objected to the request, and he contended that (like the Protestants here) the reduced setback would reduce his privacy and the enjoyment of his home which was adjacent to the proposed apartment complex. Id. at 209.

The developer sought the variance so that he could preserve certain mature tress which existed on site. The court noted that "in a word, therefore, this dispute is over trees." Id. at 210. The neighbor did not believe the asserted reason was sufficient to justify variance relief, and argued "I think I am more important than the tree." Id. at 210. The court granted the side yard setback variance so that "trees could be preserved," with only a slight detriment to the neighbor. While the court acknowledged it was a "close case," and the intermediate appellate court in Cromwell v. Ward opined the holding was somewhat of an aberration, it is nonetheless valid law from Maryland's highest court.

In this case, the Petitioner makes the variance request so that she can continue to provide shelter and care of the 11 dogs she owns. In my opinion, this is at least as significant a public interest and/or practical difficulty as that asserted by the developer in Soley. The denial of relief

would mean that the dogs would have to be relinquished or euthanized, which I believe constitutes a "practical difficulty" (and as likely, an "undue hardship"). As noted by petitioner's neighbors, Ms. Robinson provides a valuable public function in housing and caring for these animals, many or all of which would have been euthanized by the "kill shelters" from where they were obtained, and are too old and/or infirm to arouse much interest among families for adoption.

To obtain variance relief requires a showing that:

(1) The property is unique; and
(2) If variance relief is denied, petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

Petitioner has met this test. The property is unique, based upon the testimony of professional engineer James Hosmer and surveyor Scott Lindgren. While other properties may have steep slopes and resemble a "bowl," none are as small as the subject property, nor are the slopes as steep. In addition, as noted by both experts, the steep slopes here encompass nearly all of the property, which is not the case with surrounding properties.

In addition to the factors identified by the experts (Messrs. Hosmer and Lindgren, as set forth above) I also believe the shape of the property lends to its uniqueness. The subject property is of irregular dimensions; almost pentagonal in shape. Neighboring properties, as shown on the aerial photos and maps submitted (Petitioner's Ex. 8; Protestants' Ex. 3) are not similarly shaped, and are in most instances larger as well. This aspect of uniqueness directly relates to the need for variance relief, in that the size and shape of the parcel make it extremely difficult to comply with the 200 ft. setback requirement. The site plan (Petitioner's Ex. 2) contains an area identified by dashed lines that represents the "building envelope" wherein the kennel could be constructed in compliance with the 200 ft. setback requirement. The area is not only small, but it is irregularly shaped, to the point of being useless. As a consequence, the Petitioner, if a variance is not granted,

will be unable to use her property for a permitted purpose.

If the B.C.Z.R. were strictly interpreted, Petitioner would experience a practical difficulty, given that her dogs would need to be relinquished or euthanized. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of County agency opposition and the support of the great majority of the neighborhood.

THEREFORE, IT IS ORDERED this 9th day of October, **2015**, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R) to amend the December 18, 2014 Order granting a Special Exception for a private kennel in Case No. 2015-0092-X, as shown and indicated on the site plan (Exhibit 2) admitted in this case, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to B.C.Z.R. §421.1 to permit a private kennel in a RC 2 zone to be located within 15 ft. of the nearest property line in lieu of the required 200 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at her own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.

2. The dogs must not be allowed outside of the house when no one is home. The "doggie door" must therefore remain closed/locked when Petitioner or other occupants of the subject property are not at home.

ORDER RECEIVED FOR FILING
Date 10-9-15
By

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

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln

ORDER RECEIVED FOR FILING
Date 10-9-15
By sln

15-235-SPHA

IN THE MATTER OF	*	**IN THE**
CATHERINE H. ROBINSON	*	**CIRCUIT COURT**
	*	**FOR**
	*	**BALTIMORE COUNTY**
	*	**Case No. 03-C-17-003467**

* * * * * * * * * * *

ORDER

On July 18, 2017, Petitioner, Catherine H. Robinson, through her attorney, Michelle Dickinson, Esquire, filed a Memorandum of Law in Support of Petition for Judicial Review (Paper 17000). On August 16, 2017, Citizen-Protestants, Andrew and Noreen Krause ("Protestants"), through their attorney, G. Macy Nelson, Esquire, filed an Answering Memorandum of Protestants (Paper 22000). This matter was set in for a hearing before this Court on October 11, 2017.

For the reasons set forth in Memorandum Opinion, it is this 25th day of January, 2018 by the Circuit Court for Baltimore County hereby:

ORDERED, that the Board of Appeals' denial of the Petitioner's request for variance in the above captioned matter is AFFIRMED.

Mickey J. Norman, Judge
Circuit Court for Baltimore County

Clerk, please docket only. Copies have been provided to:

Michelle Dickinson, Esquire, 10440 Little Patuxent Parkway, Suite 300, Columbia, Maryland 21044
G. Macy Nelson, Esquire, 401 Washington Avenue, Suite 803, Towson, Maryland 21204
Court File

IN THE MATTER OF	*	**IN THE**
CATHERINE H. ROBINSON	*	**CIRCUIT COURT**
	*	**FOR**
	*	**BALTIMORE COUNTY**
	*	**Case No. 03-C-17-003467**

* * * * * * * * * * *

MEMORANDUM OPINION

On July 18, 2017, Petitioner, Catherine H. Robinson, through her attorney, Michelle Dickinson, Esquire, filed a Memorandum of Law in Support of Petition for Judicial Review (Paper 17000). On August 16, 2017, Citizen-Protestants, Andrew and Noreen Krause ("Protestants"), through their attorney, G. Macy Nelson, Esquire, filed an Answering Memorandum of Protestants (Paper 22000). Petitioner's Reply to Protestants' Answering Memorandum was filed on September 5, 2017 (Paper 22001). This matter was set in for a hearing before this Court on October 11, 2017.

BACKGROUND

The Petitioner owns and resides on a 5.4 acre R.C. - zoned property in Northern Baltimore County. The subject property, 1012 Far Out Lane, is a rural, wooded area in Sparks, Maryland. Currently nine dogs reside at the subject property. The R.C.2 zone allows for three dogs or less to reside on the property; more than

three dogs constitutes a kennel.[1] Protestants own and reside on the property abutting the subject property. On December 18, 2014, Administrative Law Judge Beverungen ("ALJ") granted Petitioner's Petition for a Special Exception for a private kennel within a 200 foot setback ("December 2014 Order"). Protestants claim that they did not appeal the ALJ's Special Exception ruling because they believed the kennel would not have an adverse impact on them. Once the Petitioner took steps to comply with the special exception, she discovered that the area where she initially sought to build a kennel was deemed 'unbuildable' due to environmental issues. The Petitioner also states, that due to the topography of her property, she is unable to build a kennel that complies with the requirements of the special exception on any other area of her property. Apparently, for those reasons, the Petitioner did not secure the necessary building permits in the time prescribed in the December 2014 Order.

Because the Petitioner believed that she could not comply with the December 2014 Order, she filed a Petition for Special Hearing requesting that the ALJ amend the December 2014 Order, and permit a private kennel within 15 feet of the nearest property line by using her dwelling and the outside area, secured by an underground electric fence, for the kennel. Protestants opposed the requested variance, arguing that the variance would adversely affect their ability to use and enjoy their property. In particular, Protestants claim that the presence of nine dogs so close to the property

[1] Baltimore County Zoning Regulations (BCZR) defines a 'private kennel' as "any building, structure, or land, or any portion thereof, including a dwelling, that is used, intended to be used, or arranged." (B.C.Z.R. 1A01.2.C.2)

line devaluates the property, creates noise complaints due to barking, and results in pollution due to run off waste from the dogs that prevents swimming in the pond on Protestants' property. On at least two occasions, since January 2016, a dog from the Petitioner's kennel trespassed onto the Protestants' property, and fought with the Protestants' dogs; resulting in a veterinarian bill of $250.

Following a hearing on the Petitioner's request for a variance, the ALJ modified the December 2104 Order and, with some minor specific conditions of no importance to the issues before this Court, granted the variance in an Order of October 9, 2015 ("October 2015 Order"). The Protestants appealed the October 2015 Order to the Board of Appeals, which conducted a de novo appeal on April 19-20, 2016. In an Order of September 22, 2016, the Board of Appeals denied the Petitioner's request for a variance.

On October 20, 2016, the Petitioner filed a Motion for Reconsideration of the Boards' September 22, 2016 Order. In an Opinion and Order of March 10, 2017, the Board denied the Petitioner's Motion for Reconsideration.

On April 17, 2017, the Petitioner filed a Petition for Judicial Review (Paper 1000) requesting a judicial review of the Opinion and Order on Motion for Reconsideration dated March 10, 2017 and the Opinion and Order dated September 22, 2016. The Protestants' filed a Response on April 19, 2017 (Paper 1001).

On June 5, 2017, the Petitioner, asserting that she; ". . . is likely to Succeed on the Merits of Her Appeal," filed a Motion to Stay Enforcement of the Administrative

Decision Pending Appeal (Paper 3000). The Petitioner also filed a Memorandum in Support of the Motion to Stay Enforcement of the Administrative Decision Pending Appeal.

On June 27, 2017, the Protestants filed an Opposition to Motion to Stay Enforcement of Administrative Decision Pending Appeal (Paper 3001).

In an Order dated June 30, 2017, and docketed by the Clerk of the Circuit Court for Baltimore County on July 6, 2017, the Honorable Robert Cahill ("J. Cahill") denied the Petitioner's Motion to Stay Enforcement of the Administrative Decision Pending Appeal. In the meantime, on July 5, 2017, the Petitioner filed a Reply to Opposition to Motion to Stay Enforcement of the Administrative Decision Pending Appeal. In that Motion, the Petitioner requested a hearing.

On July 12, 2017, the Petitioner filed a Motion for Reconsideration of J Cahill's ruling denying the Petitioner's Motion to Stay Enforcement of the Administrative Decision Pending Appeal (Paper 16000).

On July 18, 2017, the Petitioner filed a Memorandum of Law in Support of Petition for Judicial Review (Paper 17000).

On July 28, 2017, the Protestants' filed an opposition to Motion for Reconsideration (Paper 16001).

The Petitioner's Motion for Reconsideration of the Court's Order Denying the Motion to Stay Enforcement of the Administrative Decision Pending Appeal was denied by J. Cahill on August 8, 2017 (Paper 16000 A). In spite of that Order, the

Petitioner continued to violate the zoning regulations by having more than three dogs on the subject property.

On August 16, 2017, the Protestants' filed an Answering Memorandum (Paper 22000). Not to be outdone, on September 5, 2017, the Petitioner filed a Reply to Protestants' Answering Memorandum (Paper 22001).

On October 11, 2017, the Parties, represented by counsel, appeared before the Court and presented argument on the Petitioner's Request for Judicial Review.

ISSUES

Petitioner's Memorandum in support of the Motion to Stay Enforcement of the Administrative Decision Pending Appeal, filed on June 5, 2017, presented three arguments:

A. The Board's Ruling That The Variance Must Be Denied As A Substantial Deviation From BCZR § 421.1 Is Contrary To The Fact And Clearly Erroneous.

B. The Board's Ruling That Ms. Robinson's Petition Is Barred By Failure To Appeal, Res Judicata, And Collateral Estoppel Is Contrary To Fact And Clearly Erroneous.

C. The Board's Ruling That Ms. Robinson Has Not Proved Practical Difficulty And Has Self-Imposed Any Hardship Is Contrary To Fact And Clearly Erroneous.

The Petitioner's Memorandum of Law in Support of Petition for Judicial Review, filed on July 18, 2017, presented the following questions for consideration:

1. Did the Board of Appeals err when it determined that Ms. Robinson had not proved practical difficulty and that any hardship was self-imposed?

2. Did the Board of Appeals err when it determined that the variance relief sought by Ms. Robinson was such a substantial deviation from BCZR 421.1's setback requirement that it must be denied?

3. Did the Board of Appeals err when it determined that Ms. Robinson's petition for a variance was barred by her failure to appeal the special exception Order, res judicata, or collateral estoppel?

The Protestants' Answering Memorandum, filed on August 16, 2017, seems to be responding to the arguments set forth in the both the Petitioner's Memorandum in support of the Motion to Stay Enforcement of the Administrative Decision Pending Appeal, and Petitioner's Memorandum of Law in Support of Petition for Judicial Review.

The Protestants' Answering Memorandum (Paper 22000) presents the following issues which have been set forth herein verbatim:

1. Whether the doctrine of res judicata bars Petitioner's application for a variance of the setback requirement of 200 feet because the December 2015 Order determined that the setback must be 200 feet and the Petitioner did not appeal that decision.

2. Whether substantial evidence supports the Board's finding that Petitioner's application to reduce the setback requirement for the kennel from 200 to 15 feet violated the rule in *Alviani v. Dixon* 365 Md. 95 (2001) *that* "the granting of the variances may not so alter the criteria for the granting of the special exception so that the criteria of the special exception would be swallowed by the variance…"

3. Whether the Petitioner proved that BCZR section 421.1 disproportionately impacted her.

4. Whether substantial evidence supports the Board's finding that the Petitioner did not prove a practical difficulty.

   A. Whether there are other permitted uses for the Subject Property.

B. Whether substantial evidence supports the Board's finding that Petitioner failed to prove that she had a substantial and urgent need for the variance and the variance was not merely for her convenience.

C. Whether substantial evidence supports the Board's finding that the Petitioner imposed on herself any difficulty.

D. Whether substantial evidence supports the Board's finding that the Petitioner failed to prove that the granting of the variance would do substantial justice to nearby property owners.

The Petitioner's Reply to Protestants' Answering Memorandum (Paper 22001) presents the following issues, which have been set forth herein:

I. Standard of Review

II. The Board Erroneously Ruled that Res Judicata and Collateral Estoppel Bar Ms. Robinson's Variance Petition.

III. The Board's Interpretation and Application of *Alviani v. Dixon* is Erroneous and its Finding is not Supported by Substantial Evidence.

IV. Ms. Robinson Proved that her Property is "Unique".

V. The Board's Ruling that Ms. Robinson has not proved practical difficulty is arbitrary, capricious and contrary to law.

a. Protestants' purported "no other permitted uses" Standard is not the law.

b. The Board did not find that Ms. Robinson failed to prove a substantial and urgent need for the variance.

c. The Board erroneously ruled that any practical difficulty was self-imposed.

d. The Board erroneously ruled that Ms. Robinson failed to prove that the variance would do substantial justice to neighbors.

DISCUSSION

I. Standard of Review

Citing *Angelini v. Harford County*, the Protestants suggest that the standard of review is "even more deferential" when an agency disapproves an application for a variance. *Angelini v. Harford County* 144 Md. App. 369, 378 (2002). The Petitioner correctly points out that the Protestants' reliance on *Angelini* is misplaced.

In *Angelini*, Judge Moylan, employing allegorical reference to Lewis Carrol's *Through the Looking Glass*, among other analysis, discussed the distinction between the burdens of production versus the burden of persuasion. The Court of Special Appeals held that an administrative agency enjoys some deference with respect to the interpretation of a law or regulation with which the agency has "special expertise." *Angelini v. Harford County* 144 Md. App. 369, 378 (2002). Writing for the Court Judge Moylan explained:

> The critical agency determination in this case was not a finding of fact. Neither was it a ruling of law in the more common sense, although it was more like the latter than like the former. It was, rather, the agency's interpretation of a law or regulation with respect to which the agency has a special expertise. When such an interpretation is under review, judicial deference is called for. *Id.* at 373.

In the matter before this Court, there is no law or regulation about which the Board of Appeals has special expertise that would, even if warranted, necessitate this Court to deviate from the required standard of review.

The Court of Appeals extensively discussed the role of a court in reviewing an adjudicatory decision of an administrative agency. *Maryland Aviation Administration v. Noland,* 386 Md. 556 (2005), Citing *Board of Physician Quality Assurance v. Banks,* 354 Md. 59, 67–69, (1999). That Court explained that:

> "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 and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law.' *United Parcel,* 336 Md. at 577. (Code reference omitted).

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, (1978). A reviewing court should defer to the agency's fact-finding and drawing of inferences if they are supported by the record. *CBS v. Comptroller,* 319 Md. 687 (1990). 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.' *Id.* at 698.

In zoning matters, courts have,

> [C]onsistently held that on judicial review of decisions granting or denying special exceptions, the correct test to be applied is whether the issue before the administrative body is 'fairly debatable,' that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions… [and the court will not substitute] judgment for that of the administrative body, unless its action is shown to be arbitrary, capricious or illegal. *Sembly v. County Bd. of Appeals,* 269 Md. 177, 182, 304 A.2d 814, 818 (1973).

In reviewing the matter sub judice, this Court shall give due deference to the Board of Appeals' findings of fact and carefully scrutinize any conclusions of law in the application of the facts.

II. Res Judicata and Collateral Estoppel do not bar Petitioner's Application for a variance.

Protestants argue that Petitioner's Application for a variance should be barred under the doctrine of res judicata. Res judicata bars litigation of the same matter with respect not only to the legal claims or issues decided in the case but also as to all matters, which could have been litigated in the first suit. *Alvey v. Alvey*, 225 Md. 386, 290, 171 A.2d 92, 94 (1961). The Petitioner's request for variance was not litigated in the special exception proceeding because the necessity of the variance was not known. At the time of the hearing in which the Petitioner sought the special exception, the Petitioner believed that she could comply with BCZR 421.1 because she has sufficient acreage within her property to erect a separate kennel structure. Only after the Petitioner hired a professional surveyor and landscape contractor did she discover that she was unable to abide by the ALJ's December 2014 ruling because environmental restrictions related to the configuration of her property prohibited the building of a separate kennel structure. The ALJ presumably granted the special exception, in part, because the Petitioner believed that she could comply with the requested special exception. Presumably, that ruling was acceptable to the Protestants because they did not appeal that decision.

Petitioner also states that res judicata may not prevent a second hearing on a previously decided matter where there is a substantial change in circumstances. *Seminary Galleria LLC v. Dulaney Valley Impr. Assn. Inc., 192 Md. App. 719, 734 (2010); Jack v. Foster Branch Homeowner's assn. No, Inc.*, 53 Md. App. 323, 33 (1982). Here, there is a substantial change in circumstances. At the time the December 2014 Order granting the special exception was entered, neither Party knew that the Petitioner would be unable to comply with the directive of the December 2014 Order. It was not until the Petitioner attempted to comply with that Order that she learned that environmental limitations regarding the subject property prohibited her from complying with that Order. That new information is a substantial change in circumstances.

Collateral estoppel applies only where the identical issue sought to be re-litigated was actually determined in the earlier proceeding. *Reid v. State*, 119 Md. App. 129, 137 (1998). The Petition for a special exception for a private kennel within a 200 foot setback was heard and considered by Administrative Law Judge Beverungen. The Order granting that request was signed on December 18, 2014. The request for variance was not discussed or considered by the ALJ because at that time the Petitioner believed she could comply with the Order granting the special exception. The issue concerning the variance was not previously considered during the hearing on the Petitioner's request for special exception. Neither collateral estoppel nor res judicata bar Petitioner's application for a variance.

III. Petitioner's application to reduce the setback requirement for the kennel from 200 feet to 15 feet does not violate the rule in *Alviani v. Dixon* 365 Md. 95 (2001).

Protestants argue that "the granting of the variances may not so alter the criteria for the granting of the special exception so that the criteria of the special exception would be swallowed by the variance..." *Alviani v. Dixon*, 365 Md. 95 (2001). According to the Protestants, the variance, if approved, would swallow the special exception by substantially altering the criteria from 200 feet to 15 feet. *In Alviani,* the Court held that the "Board had the authority to grant a special exception with variances when the Anne Arundel County Code precluded variances from being applied to some sections of the code and the special exception section was not one of those included sections." *Alviani v. Dixon*, 365 Md. 95 (2001). The Board, in *Alviani,* determined that the variances would not alter the essential character of the area and that *the variances would not impair the use or development of the adjacent properties* [emphasis added]. Under Article 3, Section 2-107 of the Anne Arundel County Code, governing Standards for Granting [a] Variance, there must be a determination that "because of certain unique physical conditions...there is no reasonable possibility of developing the lot in strict conformance with this article; *or* that because of exceptional circumstances...the grant of a variance is necessary to avoid practical difficulties or unnecessary hardship." The court summarized that "where the facts and circumstances indicate that the particular special exception use and location proposed would cause an adverse effect upon adjoining and surrounding properties unique and

different, in kind or degree, than that inherently associated with such a use regardless of its location within the zone, the application should be denied." *Alviani v. Dixon*, 365 Md. 95 (2001). [2]

This reading of *Alviani* indicates that if there is an adverse effect on the neighboring properties then the variance should be denied. *Id.* at 113. In sub judice, the Protestants claim that that granting the variance will adversely affect their use of their property. However, the Protestants have failed to introduce evidence to support that claim. The Board and Protestant's reliance on *Alviani* is misplaced.

IV. While Petitioner proved that her property is unique, she did not prove that the uniqueness causes a disproportionate impact under BCZR 421.1.

An application for a variance must prove the following three elements: (1) the property is unique [already assumed in this case], (2) the uniqueness causes the disproportionate impact of the ordinance, and (3) the disproportionate impact of the ordinance results in a practical difficulty.

The Petitioner is disproportionately impacted by the uniqueness of her property. There are seven properties that are large enough near the subject property that, absent a variance, would be unable to construct a kennel. (TT. 4/19/16, pgs. 159-160 and TT. 4/20/16, pg. 41). At the Hearing for Judicial Review on October 11, 2017, Petitioner's counsel argued that it was not simply the size of the parcel of land,

[2] Article 3, Section 2-107(c) of the Anne Arundel County Code states that a variance may not be granted under (a) or (b) unless Board finds (1) the variance is necessary to afford relief, (2) granting will not (i) alter the essential character of the neighborhood or district in which the lot is located.

but also the position of the 100 year old house that creates the unique situation, and the need for a variance. While seven neighboring properties may be large enough to build a separate dog kennel structure on their property, as Protestants state, this is not the only issue that the Petitioner faces. The place on subject property with enough space to build a kennel is unbuildable, and the Petitioner's house where she wishes to continue housing the dogs is within 15 feet of the neighboring property. The issue is not whether the Petitioner's property is large enough, but that there are other factors, like the position of her house, that prevent the Petitioner from constructing a dog kennel that complies with the special exception. The Petitioner has shown that these unique aspects of her property cause a disproportionate impact that is not shared by the neighboring properties. However, as further set forth herein, the Petitioner did not prove a practical difficulty.

V. Board correctly found that Petitioner did not prove a practical difficulty.

The practical difficulty standard is determined by four things: (1) there is no permitted use for the subject property, (2) the need for the variance is substantial and urgent and not merely for the convenience of the applicant, (3) any difficulty is not self-imposed and (4) the grant of the variance would do substantial justice to nearby property owners. The Petitioner did not prove a practical difficulty for the following reasons:

a. Strict compliance with BCZR 421.1 would not unreasonably prevent the Petitioner from using the property for a permitted purpose or be unnecessarily burdensome.

The subject property is the Petitioner's primary residence, and between 1994 and 2000, she lived there without the need for a kennel. This illustrates that she is able to reasonably use the subject property without a variance. In this case, there are, as Protestants suggest, other uses for the subject property besides a kennel (Paper 22000).[3] Strict compliance would not unreasonably prevent the Petitioner from using the property for a permitted purpose. Petitioner asserts that conformity to BCZR 421.1's restrictions would be unnecessarily burdensome without a variance. BCZR 421.1 is not preventing her from keeping dogs on the property; it simply limits the number of dogs allowed. The Petitioner chose to bring nine dogs onto the property. Thus, she imposed upon herself the circumstances, which now cause her to seek the variance.

b. The Board correctly found that Petitioner failed to prove that she had a substantial and urgent need for the variance, and that the variance was not merely for her own convenience.

The Board found that Petitioner did not prove a substantial and urgent need for variance, but rather, a need based on her convenience. In response, the Petitioner asserted that without a variance she cannot use the property as a private kennel to continue to rescue dogs. The Petitioner argues that by rescuing dogs, she is fulfilling a

[3] Protestants state (as examples) that she can have up to three dogs, farm the land, keep horses, and operate a farmer's roadside stand.

need within the community. While she makes this claim, there is no testimony or other evidence that having a kennel to rescue dogs is fulfilling a community need. Petitioner argues that "a variance is warranted if the applicable zoning restriction when applied to the property in the setting of its environment is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership." *Muller v. People's Counsel for Baltimore County*, 177 Md. App. 43, 70 (2007). The Petitioner's assertion that rescuing dogs positively impacts the community is subjective. She fails to present evidence that the need for the variance is *substantial* and *urgent*. She states that the dogs are unadoptable and impossible to rehome, but there is no corroborating evidence presented to support that claim. Furthermore, the applicable zoning restriction, which limits the number of dogs allowed to live on the property, is not interfering with a basic right of private ownership. The Petitioner has failed to show that the Board of Appeals' denial of her request for variance was arbitrary and capricious.

c. **The Board correctly found that the Petitioner's hardship was self-created.**

Self-created hardship requires an affirmative action, exclusively by a property owner or his predecessor in title that is itself the sole reason for the need for the variance. *See Ad + Soil, Inc. v. County Commn. Queen Anne's County,* 307 Md. 307, 312, 339-40 (1986).

Ad + Soil, Inc. operated a sludge storage and distribution facility located in Queen Anne's County, Maryland. A Zoning Ordinance imposed certain setback requirements upon sewage sludge storage and distribution facilities. The record contained uncontroverted testimony that Ad + Soil's facilities failed to comply with the required setbacks, and in order to obtain a conditional use permit, it was necessary for Ad + Soil to obtain variances from these setback requirements. The Queen Anne's County Board of Appeals ruled,

> [T]hat the sludge storage facilities being applied for could easily be located on that property so as to comply with all of the setback requirements of the Queen Anne's County Zoning Ordinance. The only extraordinary circumstances which would seem to exist in this case are self inflicted and a result of [Ad + Soil's] construction of the facilities on the site without conforming to the Ordinance's required setbacks. *Id.* At 316.

In that case, the Court upheld the Board's decision to deny the variances, "concluding that Ad + Soil's 'hardship' was self-inflicted…that it was not the result of exceptional or extraordinary characteristics of the land itself and, therefore, not the kind of hardship cognizable under the Zoning Ordinance." *Ad + Soil, Inc. v. County Commn. Queen Anne's County,* 307 Md. 307, 312, 339-40 (1986). The Court agreed with the Board, that the only hardships facing Ad + Soil were of its own making.

Similarly, the Petitioner's need for a variance is self- imposed. The Petitioner knew that the number of dogs she brought onto the subject property was in excess of the zoning restrictions. She chose to ignore the zoning restrictions. Because she could not comply with the special exceptions Order, she now seeks a variance. Both the request

for special exception and the request for variance are because she, like Ad + Soil, Inc., created the circumstance, which necessitated the need to request a variance.

The Petitioner argues that (1) BCZR 421.1's 200 foot setback requirement prevents her from using her house, and (2) she cannot build a kennel structure in the special exception area because of wetland/topography and BCZR 400.1's requirement that accessory structures be built in the rear of the house. In short, the Petitioner is arguing that the practical difficulty is imposed by the property, not imposed by her own making. Topography and the placement of the house may not be a self-inflicted or a self-created hardship, but the necessity of the variance is self-imposed. It was the Petitioner's decision to bring a number of dogs onto her property in excess of county code regulations. There would be no need for a variance or a special exception if not for the Petitioner's decision to house more than three dogs.

d. The Board did not erroneously rule that Petitioner failed to prove that the variance would do substantial justice to neighbors.

The Petitioner failed to prove that the variance would do substantial justice to nearby property owners. Petitioner acknowledged at the hearing before this Court that there is no evidence in record that the community supports the variance, only that neighbors have attended previous hearings on the matter. The Petitioner asserts that while the Protestants made complaints about the dogs, there is no testimony or evidence presented at the hearing indicating that neighbors, other than the Protestants, have made similar complaints, or that excessive barking complaints have

been made. While this is true, it is the Petitioner's burden, not the Protestant's, to prove that the granting of the variance would do substantial justice to nearby property owners. "Generally speaking, property owners are not entitled to zoning changes automatically just because nobody opposes them." *See Angelini* at 377, citing *Pollard's Towing, Inc. v. Berman's,* 137 Md. App. 277, 289–90, (2001).

Petitioner also argues that the variance would allow her to continue to serve the community by caring for animals. She states that she has great community support, but there is no evidence in the record that supports this assertion. The Petitioner fails to prove that the granting of the variance would do substantial justice to nearby property owners.

CONCLUSION

For the reasons set forth herein, the Board of Appeals' ruling denying the Petitioner's request for variance and the Board's ruling denying the Petitioner's Motion for Reconsideration shall be upheld, and the Petitioner's request for variance is denied.

Mickey J. Norman, Judge
Circuit Court for Baltimore County
January 25, 2018

Clerk, please docket only. Copies have been provided to:

Michelle Dickinson, Esquire, 10440 Little Patuxent Parkway, Suite 300, Columbia, Maryland 21044
G. Macy Nelson, Esquire, 401 Washington Avenue, Suite 803, Towson, Maryland 21204
Court File

PETITION OF: CATHERINE H. ROBINSON	*	IN THE
	*	CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE OPINION OF THE BOARD OF APPEALS OF BALTIMORE COUNTY	*	FOR
	*	BALTIMORE COUNTY
IN THE MATTER OF: CATHERINE H. ROBINSON FOR PROPERTY LOCATED AT 2012 FAR OUT LANE	*	CASE NO. 03-C-17-003467
5TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	
	*	
BOARD OF APPEALS CASE NO.: 15-235-SPHA	*	

* * * * * * * * * * * * * * *

ORDER

It is this 8th day of August, 2017 by the Circuit Court for Baltimore County,

ORDERED that the Petitioner's Motion for Reconsideration of this Court's Order Denying Motion to Stay Enforcement of Administration Decision Pending Appeal be, and is hereby, denied.

JUDGE

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

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

Case Number: 03-C-17-003467 AA
Administrative Agency : 15235SPHA
C I V I L

In the Matter of Catherine H Robinson

Notice

Pursuant to Maryland Rule 7-206(f), you are advised that the Record of Proceedings was filed on the 2nd day of August, 2017.

Julie L. Ensor

Julie L. Ensor
Clerk of the Circuit Court, per EMH

Date issued: 08/03/17

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

IN THE CIRCUIT COURT FOR
BALTIMORE COUNTY, MARYLAND

PETITION OF CATHERINE H. ROBINSON
2012 Far Out Lane
Sparks, Maryland 21152

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

IN THE CASE OF *Catherine H. Robinson*
Case No.: 15-235-SPHA

Case No. 03-C-17-003467

[PROPOSED] ORDER

Upon consideration of Petitioner's Motion to Stay Enforcement of Administrative Decision Pending Appeal, and any opposition to the motion, it is this 30th day of June, 2017, **ORDERED:** DENIED

1. That the Motion is [redacted]

[redacted]

Judge, Circuit Court for Baltimore County

RECEIVED
JUL 10 2017
BALTIMORE COUNTY
BOARD OF APPEALS

True Copy Test
JULIE L. ENSOR, Clerk
Per _____
Assistant Clerk

FILED JUL 06 2017

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

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

Case Number: 03-C-17-003467 AA
Administrative Agency : 15235SPHA
C I V I L

In the Matter of Catherine H Robinson

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 19th day of June, 2017.

Julie L. Ensor

Julie L. Ensor
Clerk of the Circuit Court, per MD

Date issued: 06/19/17

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

RECEIVED
JUN 21 2017
BALTIMORE COUNTY
BOARD OF APPEALS

Record was filed 6/9/2017

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULIN

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

Assignment Date: 06/14/17

Board Of Appeals Of Baltimore County
105 West Chesapeake Ave S
Towson MD 21204

Case Title: In the Matter of Catherine H Robinson
Case No: 03-C-17-003467 AA

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: the DCM Office at (410) 887-3233. **You must notify the DCM Office within 15 days of the receipt of this Order as to any conflicts with the following dates:**

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 06/
2. All Motions (excluding Motions in Limine) are due by..... 09/
3. TRIAL DATE is..... 10/
   Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned; 1/2 HOUR ADMINISTRATIVE APPEAL

Honorable Kathleen Gallogly
Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship o
All requests for postponement must be submitted in writing with a copy to all counsel/parties involved. All
postponement must be approved by the Judge.

Settlement Conference (Room 507): All counsel and their clients MUST attend the settlement conference in
representatives MUST attend this conference in person as well. Failure to attend may result in sanction
hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [
information.)

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

Voluntary Dismissal: Per Md. Rule 2-506, after an answer or motion for summary judgment is fi
without leave of court by filing a stipulation of dismissal signed by all parties who have ap
shall be filed with the Clerk's Office. Also, unless otherwise provided by stipulation or o
responsible for all costs of the action.

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

Camera Phones Prohibited: Pursuant to Md. Rule 16-109 b.3., **cameras and recording equi**
and adjacent hallways. This means that camera cell phones should not be brought with

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

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

Case Number: 03-C-17-003467 AA
Administrative Agency : 15235SPHA
C I V I L

In the Matter of Catherine H Robinson

You are hereby notified that upon Request for Appeal (Record), this case was transferred to the CIRCUIT COURT FOR BALTIMORE COUNTY
Entered on: 13th day of June, 2017.

Pursuant to Maryland Rule 7-113(d)(1), appellant shall file a memorandum in opposition to the decision of the District Court within 30 days after the date the appeal was entered on the docket or as otherwise ordered by the court. The appellee may file a response within 15 days after service of the appellant's memorandum, but in no event later than five days before the date of argument, if argument has been scheduled.

Julie L. Ensor

Julie L. Ensor
Clerk of the Circuit Court, per_____

Date issued: 06/13/17

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

RECEIVED
JUN 15 2017
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF:
CATHERINE H. ROBINSON *

FOR JUDICIAL REVIEW OF THE OPINION OF * CIVIL ACTION
THE BOARD OF APPEALS NO. : 03-C-17-003467
OF BALTIMORE COUNTY *
JEFFERSON BUILDING – ROOM 203
105 W. CHESAPEAKE AVENUE *
TOWSON, MARYLAND 21204
*
IN THE MATTER OF:
CATHERINE H. ROBINSON *
FOR PROPERTY LOCATED AT
2012 FAR OUT LANE *

5TH ELECTION DISTRICT *
3RD COUNCILMANIC DISTRICT
*
BOARD OF APPEALS CASE NO.: 15-235-SPHA

* * * * * * * * * * * *

FILED
2017 JUN -9 AM 11:37
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

April 23, 2015	Petition for Special Hearing to request the Administrative Law Judge to amend the December 18, 2014 Order granting a Special Exception for a private kennel in Case No. 2015-0092-X as shown and indicated on the site plan filed in this case, and Petition for Variance from Section 421.1, BCZR to permit a private kennel in a RC-2 zone to be located within 15

	feet of the nearest property line in lieu of the required 200 feet, filed by Michelle J. Dickinson, Esquire on behalf of Catherine H. Robinson.
May 4, 2015	Entry of Appearance filed by People's Counsel for Baltimore County.
May 11, 2015	Notice of Zoning Hearing
May 19, 2015	Certificate of Publication in newspaper
May 21, 2015	Certificate of Posting
June 9, 2015	Letter to the Office of Administrative Hearings from G. Macy Nelson, Esquire requesting a postponement.
June 10, 2015	Letter to the Office of Administrative Hearings from Michelle J. Dickinson, Esquire objecting to the postponement request as Petitioner won't be able to comply with ALJ Beverungen's December 18, 2014 Order.
June 10, 2015	E-mail to counsel from ALJ Beverungen granting the postponement request, and extending the date for compliance until 30 days after the final order is issued, unless order specifies otherwise.
June 10, 2015	Memorandum to Office of Zoning Review from the Office of Administrative Hearings regarding rescheduling hearing.
June 18, 2015	New Notice of Zoning Hearing
July 30, 2015	Certificate of Posting
August 6, 2015	Certificate of Publication in newspaper
August 20, 2015	ZAC Comments
September 23, 2015	Hearing held before the Office of Administrative Hearings.
October 2, 2015	Memorandum of Law filed by Michelle J. Dickinson, Esquire on behalf of Catherine H. Robinson, Petitioner.
October 5, 2015	Memorandum filed by G. Macy Nelson, Esquire on behalf of Noreen and Andrew Krause, Protestants.

October 9, 2015	Opinion and Order issued by the Administrative Law Judge wherein the Petition for Special Hearing, and the Petition for Variance were GRANTED, with conditions.
November 4, 2015	Notice of Appeal filed by G. Macy Nelson, Esquire on behalf of Andrew Krause and Noreen Krause, Protestants.
November 6, 2015	Appeal received by the Board.
November 23, 2015	Notice of Assignment issued by the Board.
December 1, 2015	Letter to Board from Michelle J. Dickinson, Esquire requesting a postponement.
December 4, 2015	Notice of Postponement issued by the Board.
December 4, 2015	Letter to Michelle J. Dickinson, Esquire from the Board offering new dates.
January 11, 2016	Notice of Assignment issued by the Board.
April 19, 2016	Board convened for a Hearing, Day 1.
April 20, 2016	Board convened for a Hearing, Day 2.

Exhibits submitted at Hearings before the Board of Appeals:

Petitioner's Exhibit No.

1 – January 2014 Mid-Atlantic Magazine article about Catherine Robinson.
2 – 11 photographs of several different dogs
3 – Letters of Support for Ms. Robinson (NOT ADMITTED)
4 – Photographs of property, 4-1 thru 4-46
5 – Flash drive with video showing the topography of the property
6 – Site Plan
7 – Map showing several parcels of land near the subject property
8 – Map marked with colored pens showing the subject property and several parcels of land
9 – Table Identifying Each Map Parcel by Number – sorted by acreage

Protestants' Exhibit No.

1 – Map with highlight
2 – Marked-up Site Plan (replica of Petitioner's Exhibit)
3 – Photos (14, 32, 34, 33, 31, 42, 1, 20)
4 – Arial photograph My Neighborhood Map showing the subject property (125)
5 – My Neighborhood Map printed 4/14/2016
6 – My Neighborhood Map arial view of 1916 Akehurst Road printed 4/1/2016
7 – My Neighborhood Map 1940 Akehurst Road (Krause) printed 4/1/2016
8 – Photographs of Krause house and pond (8-1) (8-2)
9 – Table Identifying Each Map Parcel by Number – Sorted by Parcel Acreage (associated with Protestants' Exhibit 4)
10 – My Neighborhood Map printed 4/14/2016 (Exhibit 5) marked in orange as definition of neighborhood.
11 – My Neighborhood Map printed 4/1/2016 showing (#24) 16310 Yeoho Road
12 – Photographs of (#24) 16310 Yeoho Road
13 – My Neighborhood Map printed 4/1/2016 (#212) 2009 Stringtown Road
14 – Photograph (#212) 2009 Stringtown Road
15 – My Neighborhood Map (#212) 2009 Stringtown Road and (#281) 2317 Stringtown Road, printed 4/2/2016
16 – My Neighborhood Map (#281) 2317 Stringtown Road printed 4/1/2016
17 – Photograph of (#281) 2317 Stringtown Road
18 – My Neighborhood Map (#275) 15710 Falls Road, printed 4/1/2016)
19 – Photographs (3) of (#275) 15710 Falls Road
20 – My Neighborhood Map (#277) 15630 Falls Road, printed 4/1/2016
21 – Table Identifying Each Map Parcel by Number – Sorted by Parcel Number
22 – Site Plan – marked in colors
23 – Chart showing the distance from the Subject Property to neighboring parcels

May 25, 2016 — Memorandum of Law filed by Michelle J. Dickinson, Esquire on behalf of Catherine H. Robinson.

May 25, 2016 — Memorandum of Citizen-Protestants filed by G. Macy Nelson, Esquire.

June 21, 2016	Board convened for Public Deliberation.
September 22, 2016	Opinion and Order issued by the Board wherein the Petition for Special Hearing to Amend the December 18, 2014 Order and the accompanying request for variance relief were DENIED.
October 20, 2016	Motion for Reconsideration filed by Michelle J. Dickinson, Esquire on behalf of Catherine H. Robinson, Petitioner/Appellant.
November 7, 2016	Citizen-Protestants' Opposition to Petitioner's Motion for Reconsideration filed by G. Macy Nelson, Esquire.
November 16, 2016	Public Deliberation held on Motion for Reconsideration and Opposition thereto.
March 10, 2017	Opinion and Order on Motion for Reconsideration issued by the Board wherein the Motion was DENIED.
April 7, 2017	Petition for Judicial Review filed in the Circuit Court for Baltimore County by Michelle J. Dickinson, Esquire on behalf of Catherine H. Robinson, Petitioner/Appellant.
April 12, 2017	Copy of Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals.
April 14, 2017	Certificate of Compliance sent to all parties and interested persons.
April 19, 2017	Response to Petition for Judicial Review filed by G. Macy Nelson, Esquire on behalf of Andrew and Noreen Krause, Protestants.
June 9, 2017	Transcript of testimony filed.
June 9, 2017	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
appealsboard@baltimorecountymd.gov

c: Michelle J. Dickinson, Esquire
G. Macy Nelson, Esquire
Catherine H. Robinson
Andrew and Noreen Krause
Anita Krause
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. 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

June 9, 2017

VIA HAND-DELIVERY
Civil Clerk
Circuit Court for Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

RE: In the matter of: Catherine H. Robinson
Civil Action No.: 03-C-17-003467
Board of Appeals Case No.: 15-235-SPHA

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. If you have any questions, please do not hesitate to contact me.

Very truly yours,

Tammy A. McDiarmid

Tammy A. McDiarmid
Legal Secretary

Enclosures

c: Michelle J. Dickinson, Esquire
G. Macy Nelson, Esquire
Catherine H. Robinson
Andrew and Noreen Krause
Anita Krause
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

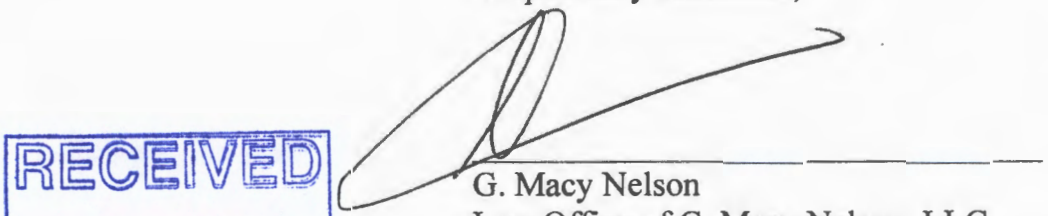
PETITION OF: CATHERINE H. ROBINSON	*	IN THE
	*	CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE OPINION OF THE BOARD OF APPEALS OF BALTIMORE COUNTY	*	FOR
	*	BALTIMORE COUNTY
IN THE MATTER OF: CATHERINE H. ROBINSON FOR PROPERTY LOCATED AT 2012 FAR OUT LANE	*	CASE NO. 03-C-17-003467
5TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	
	*	
BOARD OF APPEALS CASE NO.: 15-235-SPHA	*	

* * * * * * * * * * * * * * *

RESPONSE TO PETITION FOR JUDICIAL REVIEW BY CATHERINE H. ROBINSON

Andrew and Noreen Krause, by their attorney, G. Macy Nelson, file this response to the Petition for Judicial Review by Catherine H. Robinson pursuant to Maryland Rule 7-204(a) and state that they intend to participate in the action for judicial review.

Respectfully submitted,



G. Macy Nelson
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204
(410) 296-8166
Counsel for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of April, 2017, a copy of the foregoing Response to Petition for Judicial Review of Catherine H. Robinson was mailed, first class, postage prepaid, to:

Michelle J. Dickinson, Esquire
Law Office of Michelle J. Dickinson, LLC
10440 Little Patuxent Parkway, Suite 300
Columbia, Maryland 21044
Counsel for Petitioner

Board of Appeals of Baltimore County
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204
Administrative Agency

G. Macy Nelson, Esquire

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF:
CATHERINE H. ROBINSON *

FOR JUDICIAL REVIEW OF THE OPINION OF * CIVIL ACTION
THE BOARD OF APPEALS NO. : 03-C-17-003467
OF BALTIMORE COUNTY *
JEFFERSON BUILDING – ROOM 203
105 W. CHESAPEAKE AVENUE *
TOWSON, MARYLAND 21204
*
IN THE MATTER OF:
CATHERINE H. ROBINSON *
FOR PROPERTY LOCATED AT
2012 FAR OUT LANE *

5TH ELECTION DISTRICT *
3RD COUNCILMANIC DISTRICT
*
BOARD OF APPEALS CASE NO.: 15-235-SPHA

* * * * * * * * * * * *

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:

Michelle J. Dickinson, Esquire
Law Office of Michelle J. Dickinson, LLC
10440 Little Patuxent Pkwy., Suite 300
Columbia, MD 21044

G. Macy Nelson, Esquire
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, MD 21204

Catherine H. Robinson
2012 Far Out Lane
Sparks, MD 21152

Andrew and Noreen Krause
1940 Akehurst Road
Sparks, MD 21152

Anita Krause
3801 Schaper Drive, Apt. 1113
Randallstown, MD 21133

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

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

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

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

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

Michael E. 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 14th day of April, 2017 a copy of the foregoing Certificate of Compliance has been mailed to the individuals listed above.

Tammy A. McDiarmid

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
appealsboard@baltimorecountymd.gov

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 14, 2017

Michelle J. Dickinson, Esquire
Law Office of Michelle J. Dickinson, LLC
10440 Little Patuxent Pkwy., Suite 300
Columbia, Maryland 21044

G. Macy Nelson, Esquire
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204

RE: Petition for Judicial Review
Circuit Court Case No.: 03-C-17-003467
In the Matter of: Catherine H. Robinson
Board of Appeals Case No.: 15-235-SPHA

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules that a Petition for Judicial Review was filed on April 7, 2017 by Michelle H. Dickinson, Esquire on behalf of Catherine H. Robinson, 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. The transcripts have already been provided by Counsel. Additional copies can be purchased from the Board of Appeals in accordance with the County's copying policy.

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

Very truly yours,

Tammy A. McDiarmid
Legal Secretary

Duplicate Original Cover Letter
Enclosure

c: Catherine H. Robinson
Andrew and Noreen Krause
Anita Krause
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer and Director/PAI
Nancy W. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY	*	
	*	
PETITION OF: CATHERINE H. ROBINSON	*	
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-17-003467
	*	
IN THE MATTER OF: CATHERINE H. ROBINSON FOR PROPERTY LOCATED AT 2012 FAR OUT LANE	*	
	*	
5TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	
	*	
BOARD OF APPEALS CASE NO.: 15-235-SPHA		

* * * * * * * * * * * *

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:

Michelle J. Dickinson, Esquire
Law Office of Michelle J. Dickinson, LLC
10440 Little Patuxent Pkwy., Suite 300
Columbia, MD 21044

G. Macy Nelson, Esquire
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, MD 21204

Catherine H. Robinson
2012 Far Out Lane
Sparks, MD 21152

Andrew and Noreen Krause
1940 Akehurst Road
Sparks, MD 21152

c: Catherine H. Robinson
Andrew and Noreen Krause
Anita Krause
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer and Director/PAI
Nancy W. West, Assistant County Attorney/Office of Law
Michael E. 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

April 14, 2017

Michelle J. Dickinson, Esquire
Law Office of Michelle J. Dickinson, LLC
10440 Little Patuxent Pkwy., Suite 300
Columbia, Maryland 21044

G. Macy Nelson, Esquire
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204

RE: Petition for Judicial Review
Circuit Court Case No.: 03-C-17-003467
In the Matter of: Catherine H. Robinson
Board of Appeals Case No.: 15-235-SPHA

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules that a Petition for Judicial Review was filed on April 7, 2017 by Michelle H. Dickinson, Esquire on behalf of Catherine H. Robinson, in the Circuit Court for Baltimore County from the decision of the County Board of

15-235-SPHA

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

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

RECEIVED
JUN 20 2017
BALTIMORE COUNTY
BOARD OF APPEALS

Board Of Appeals Of Baltimore County
105 West Chesapeake Ave S
Towson MD 21204

Assignment Date: 06/14/17

Case Title: In the Matter of Catherine H Robinson
Case No: 03-C-17-003467 AA

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: the DCM Office at (410) 887-3233.
You must notify the DCM Office within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 06/29/17
(excluding Motions in Limine) are due by..... 09/01/17

Anita Krause
3801 Schaper Drive, Apt. 1113
Randallstown, MD 21133

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

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

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

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

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

Michael E. 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 14th day of April, 2017 a copy of the foregoing Certificate of Compliance has been mailed to the individuals listed above.

Tammy A. McDiarmid

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
appealsboard@baltimorecountymd.gov

IN THE CIRCUIT COURT FOR
BALTIMORE COUNTY, MARYLAND

PETITION OF CATHERINE H. ROBINSON
2012 Far Out Lane
Sparks, Maryland 21152

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

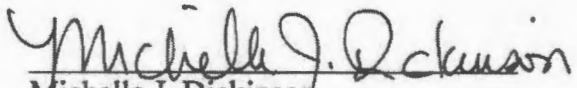
IN THE CASE OF *Catherine H. Robinson*
Case No.: 15-235-SPHA

Case No. C-17-3467

PETITION FOR JUDICIAL REVIEW

Petitioner, Catherine H. Robinson, by her undersigned counsel and pursuant to Maryland Rule 7-202, hereby requests judicial review of the Opinion and Order on Motion for Reconsideration dated March 10, 2017 and the Opinion and Order dated September 22, 2016 issued by the Board of Appeals of Baltimore County in the Case of Catherine H. Robinson, Case No. 15-235-SPHA, to which Petitioner was a party.

Respectfully submitted,



Michelle J. Dickinson

Law Office of Michelle J. Dickinson, LLC
10440 Little Patuxent Pkwy, Ste 300
Columbia, Maryland 21044
(410) 740-5630
michelle@dickinson-law.com

Attorney for Catherine H. Robinson

Board of Appeals of Baltimore County

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

March 10, 2017

Michelle J. Dickinson, Esquire
Law Office of Michelle J. Dickinson, LLC
10440 Little Patuxent Pkwy., Suite 300
Columbia, Maryland 21044

G. Macy Nelson, Esquire
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204

RE: *In the Matter of: Catherine H. Robinson*
Case No.: 15-235-SPHA

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order on Motion for Reconsideration 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: Catherine H. Robinson
Scott Lindgren/Gerhold, Cross & Etzel, Ltd.
J. Lawrence Hosmer/Environmental Resources Mgmt.
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
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Anita Krause
Kawana Swank
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IN THE MATTER OF CATHERINE H. ROBINSON 2102 Far Out Lane Sparks Glencoe, Maryland 21152 E/S Far Out Lane, approx. 1,475 ft. SW of Akehurst Road	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 15 -235-SPHA

* * * * * * * * * * *

OPINION AND ORDER ON MOTION FOR RECONSIDERATION

This case comes to the Board on a Motion for Reconsideration filed by Petitioner on October 20, 2016 as a result of this Board's denial of the Petitioner's requested relief as set forth in our Opinion and Order dated September 22, 2016. The Petitioner was represented by Michelle J. Dickinson, Esquire. The Citizen-Protestants were represented by G. Macy Nelson, Esquire.

On November 16, 2016, this Board held a deliberation and denies the Motion for the reasons set forth below.

Discussion

In support of our decision to deny the Petitioner's Motion for Reconsideration, we incorporate herein, in its entirety, our Opinion and Order dated September 22, 2016.

1. Variance Relief Sought is a Substantial Deviation from §421.1 of the BCZR.

The Petitioner seeks to maintain the status quo and seeks variance relief that is a substantial deviation from the special exception permitted in §421.1 of the BCZR[1]. Currently, the Petitioner owns ten (10) dogs; three (3) of which she considers her pets. These dogs are housed within her private residence at the Subject Property (the "Family Dwelling"). The Petitioner seeks a variance

[1] By her own admission, the Petitioner could not comply with Section 421.1 of the BCZR or the December 2014 Order; therefore she sought a modification of the December 2104 Order, which granted the Special Exception, and a variance.

for a 15-foot setback, in lieu of 200-feet buffer, to separate the Subject Property from the property owned by her next door neighbors, the Krauses[2].

Pursuant to BCZR, Section§ 101.1 of the Baltimore County Zoning Regulations ("BCZR"), the character and number of dogs situated at the Subject Property constitute a Private Kennel. A Private Kennel is permitted in a R.C.2 Zone pursuant to Section 421.1 of the BCZR. Section 421.1 of the BCZR states that:

> "If an animal boarding place or private kennel is allowed in a residential zone, either as a special exception or as a permitted use, any part of the use, including but not limited to exercise areas, septic systems, dog runs and parking areas, may not be located within 200 feet of the nearest property line."

Further, Section 421.5 of the BCZR states that:

> "In granting any special exception under this section, the Zoning Commissioner may impose additional conditions or restrictions, such as increasing buffers, requiring odor, noise, or animal waste disposal mitigation, and setting limits on the number and breeds of dogs, to ensure that the proposed use will not be detrimental to the health, safety, or general welfare of the surrounding area."

In *Alviani v. Dixon*, 365 Md. 95, 775 A.2d 1234, 1242 (2001), the Court held that a special exception with variances may be granted by a zoning agency when the applicable code contains provisions excluding certain areas of the code from being subject to variance relief, but does not exclude the section covering the relevant special exception from being modified by variances. *Alviani v. Dixon*, 775 A. 2d at 1242.

In *Alviani,* the Court held that:

> "....in certain circumstances, a zoning body may grant a special exception together with area variances to what otherwise would be specific standards or requirements applicable to such special exception. The special exception, however, must be in a section of the local code for which variances are not excluded. Moreover, the granting of the variances may not so substantially alter the criteria for the granting of the special exception so that the criteria of the special exception would be

[2] Although the Petitioner has only applied for 15-foot setback in her variance request, there is no request for a variance for the Family dwelling which is a central part of the Private Kennel. Portion of the Family Dwelling are well within the 200-foot setback required by §421.1 of the BCZR. In fact, it is difficult to see how the Subject Property, without the use of a separate structure to house the dogs, could qualify as a Private Kennel pursuant to Section 421.1 of the BCZR.

> swallowed by the variance to the extent that the special exception would not be a use that was contemplated in the comprehensive zoning scheme in respect to any particular special exception". *Alviani v. Dixon*, 775 A. 2d at 1246-47.

Clearly, there is nothing in the legislative scheme of Section 421.1 of the BCZR that states variances are excluded. As such, there is no bar to the Board's granting the Petitioner a special exception and the variance relief because the legislature prohibited such a request as there is no prohibition stated in the applicable zoning section. However, the variance requested by the Petitioner is a substantial deviation from terms and conditions set forth in Section 421.1 of the BCZR. The Petitioner is seeking a variance of 15 feet in lieu of 200 feet which reduces the area standard of the special exception by 93%. In addition, Section 421.1 of the BCZR requires that every part of the Private Kennel and any part of the use, including but not limited to exercise areas, septic systems, dog runs and parking areas, may not be located within 200 feet of the nearest property line. Obviously, a substantial portion of the Family Dwelling, which by the Petitioner's definition is a part of Private Kennel, does not meet the 200-foot setback requirement established by Section 421.1 of the BCZR.

Under these circumstances, the Petitioner's particular layout her Private Kennel is a substantial deviation from the area standards for such a kennel in a R.C.2. Zone. It is the opinion of the Board that County Council carefully considered the enactment of Section 421.1 BCZR to "ensure that the proposed use will not be detrimental to the health, safety, or general welfare of the surrounding area" when it required that property used as a Private Kennel or .... "Any part of the use, including but not limited to exercise areas, septic systems, dog runs and parking areas, may not be located within 200 feet of the nearest property line".

At the hearing, the Petitioner's neighbors vehemently complained about the problems of noise, sanitation and safety created by the dogs. The Petitioner's proposed layout of her Private

Kennel[3] will be detrimental to the surrounding area without a setback sufficient to prevent the dogs from interfering with the quiet enjoyment of their homes. It is unlikely that the County Council could not have intended or envisioned that a Private Kennel, as proposed by the Petitioner, would be permitted on the Subject Property.

For these reasons the Petitioner's Motion for Reconsideration of her petition for a special exception under §421.1 of the BCZR and the variance relief is denied.

2. Petitioner's Motion to Reconsider Board's Ruling on Res Judicata and Collateral Estoppel.

In our Opinion dated September 22, 2016, we held that the Petitioner, *in conjunction with* the Special Exception relief, should have requested any and all variances that she needed to satisfy BCZR, §421.1 to prevent *res judicata* and/or collateral estoppel principles from precluding the instant case. (Board Opinion, pp. 9-13).

Indeed, the ALJ in his December 18, 2014 Special Exception Opinion and Order, pointed out that variance relief was not sought by the Petitioner. (ALJ Opinion 12/18/14, p.4). In her Motion for Reconsideration, the Petitioner admits that she failed to seek the variances that were needed for the very same dog kennel that she was requesting by Special Exception.

Petitioner contends that the *res judicata* principle requiring all matters which could have been litigated in the Special Exception case do not apply to her variance request because she "did not know compliance [with the setbacks] was an impossibility and thus had no reason to seek a variance." (Motion for Reconsideration, p. 8). She claims that her lack of knowledge was 'evidence of a substantial change in circumstances' between the time of the Special Exception hearing and the time of the Variance hearing. She believes that *Seminary Galleria, LLC v. Dulaney Valley Improvement Assn.*, 192 Md. App. 719, 734, (2010) supports her cause. We do not agree.

[3] The testimony from the Petitioner is that the layout of the Private Kennel already exists and that the purpose of the variance petition is to maintain the "Status Quo".

First, the Petitioner here should have known about all setbacks which were needed *prior to filing for* Special Exception relief. Consequently, in accordance with *Alvey v. Alvey*, 225 Md. 386, 390 (1961) and *Jack v. Foster Branch Homeowner's Assn. No. 1, Inc.*, 53 Md. App. 325, 332 (1982), *res judicata* applies to "all matters which, with propriety, could have been litigated in the first suit." All the material facts in the variance case are exactly the same as they were in the Special Exception hearing; no fact was different, no fact had changed. The house, the topography, the property boundaries, any environmental issues, the number of dogs, the request for a dog kennel, the neighborhood and Baltimore County laws relating to special exceptions and variances, were all the same between the Special Exception hearing and the variance hearing. If environmental issues existed, those issues were present at the time of the Special Exception hearing. There are no new environmental issues.

The Petitioner believes that since she did not 'discover' the environmental issues, and since both uniqueness and practical difficulty were not proven at the Special Exception hearing, she is entitled to another hearing for the same dog kennel. However, as we previously wrote, the Court of Appeals in *Deleon v Slear*, 328 Md. 569, 589 (1992) held that 'a claim' is defined as "a group or aggregate of operative facts giving ground or occasion for judicial action as distinguished from the narrow concept of a 'cause of action.'" The *Deleon* Court held that a 'claim' is viewed "in factual terms…regardless of the number of substantive theories, or variant forms of relief flowing from those theories, that may be available to the plaintiff; regardless of the number of primary rights that may have been invaded; and regardless of the variations in the evidence needed to support the theories or rights." *Id.* at 589-590,

Contrary to the Petitioner's argument, "a substantial change in circumstances" as discussed in *Seminary Galleria,* must involve a change in the neighborhood or the law or some other material

fact that did not exist at the time of the first hearing; not lack of knowledge or failure to file for all requested relief the first time. As applied here, the Court in *Seminary* said:

> With reasonable diligence, Seminary could have discovered and asserted in support of the original 2003 filing its current argument that the Galleria needs more parking spaces in order to comply with the requirements the County adopted in 1986. Seminary's failure to accurately and contemporaneously survey the Galleria in connection with its first application to approve the additional spaces is not a reason to consider a second application seeking the same relief.

Id. at 995 A.2d 1081. Thus, this Board finds that the holdings in *Seminary, Alvey, Foster Branch HOA* and *Deleon* support our decision.

Said another way, the Petitioner wanted a dog kennel for her Property but never investigated whether the proposed structure for the kennel could be located in the only spot on her Property which met the BCZR §421 setbacks. If the Property had environmental issues, she should not only have known about those issues (as they pertain to the location of the outside kennel) *in advance of* the Special Exception hearing, but she should have raised those issues at the Special Exception hearing. Upon request, the ALJ *may have* continued the hearing to permit a variance Petition to be filed.

As in *Seminary*, had she done even the minimal due diligence as to the *alleged* environmental conditions on her own Property which she claims prevent her from constructing any outside kennel, then she should have requested, at the Special Exception hearing, that her home be used as the kennel along with the Special Exception relief. Again, this would have involved requesting a continuance so that a Petition for Variance could be filed. As we see it, the request for variance is not a collateral issue. Rather, it is central to the Special Exception request for use of the Property as a kennel under BCZR §421.

The Petitioner has the burden of proof as to the requested relief - not the ALJ or the Protestants. The Petitioner's perception about the Protestants and ALJ's lack of knowledge about

alleged environmental concerns affecting her Property, is not relevant. This is nothing more than a bald, self-serving assertion made by the Petitioner.

Second, assuming arguendo that, prior to filing for the Special Exception relief, she did not know about the §421 setbacks, (or did not plan out the location of the kennel on her Property prior to appearing at the Special Exception hearing) the ALJ, in his Special Exception Order, *informed her* that she would need a garage or other structure for the kennel which met the setbacks. Therefore, in December of 2014, when she read the Special Exception Order, the ALJ *gave her notice that the setbacks BCZR §421 were applicable* and that while a 'private kennel" is defined to include a "dwelling," her home did not satisfy the necessary setbacks. (ALJ Opinion, 12/18/14, p. 4).

Within 30 days of the Special Exception Order, she could have filed a Petition for Variance and a Motion for Reconsideration/Stay with the ALJ requesting that the case be stayed and request that the variance case be heard before the ALJ. (BCZR, Appendix G, Rule 4k). If the ALJ denied the Motion for Reconsideration/Stay, she could have appealed the case to this Board, *de novo*, with the Petition for Variance already having been filed. At that stage, there would not have been facts already adjudicated because the case would have been subject to appeal.

Accordingly, the reason for appealing the Special Exception Order is to prevent the ALJ's finding - that 'the Petitioner's dwelling can [not] satisfy the necessary setback' for a private kennel – from becoming a final, adjudicated fact. (ALJ Opinion, 12/18/14). As we previously stated in our September 22, 2016 Opinion and Order, all facts contained within the Special Exception Order have been adjudicated and we cannot relitigate those facts.

Another important reason to appeal the Special Exception Order is to prevent the required condition to build an outside structure before August 30, 2015 - along with an outside dog fence

which was not to be built within 200 feet of the nearest property line - from becoming an unappealable condition with specific time deadlines. The ALJ wrote:

> Petitioner shall on or before June 30, 2015 secure necessary permits and commence construction of any building to be used for housing the dogs in compliance with B.C.Z.R. §421.1, which structure must be completed on or before August 30, 2015. The outside areas used for exercise and/or dog runs may not be located within 200 feet of the nearest property line, as required by B.C.Z.R. §421.1.

(ALJ Opinion 12/18/14).

Consequently, in December of 2014, when she read the condition to build an outside kennel within the setbacks of her Property and realized that she could not comply, she should have filed a Motion for Reconsideration/Stay along with a Petition for Variance with the ALJ and/or appealed the case to this Board.

In essence, if we are to believe her argument, the condition in the ALJ's Order can be ignored; indeed, she did ignore it. The Petitioner installed an electric fence within 15 feet of the Property line in direct violation of the condition. Other than vague hearsay-type statements at our hearing by her landscaper, Noah Price, as to his alleged conversations with County representatives, there was no evidence that a permit for the structure was denied by the County or other evidence from the County as to environmental issues affecting the location of the kennel.

In her Motion for Reconsideration, Petitioner relies on *Stacy v. Montgomery County*, 239 Md. 189 (1965) and *Zengerle v. Board of County Commissioners for Frederick County*, 262 Md. 1 (1971). We find both cases consistent with our ruling.

In *Stacy*, a special exception order was granted by the County Board of Appeals for Montgomery County. *While the Order was on appeal*, the Applicant "discovered that he needed a variance since his building was less than the required 25 feet from the Stacy's side yard property lines..." *Id.* at 191. The Petitioner then "filed another application with the Board requesting a variance from the 25 foot setback restriction." *Id.*

In *Stacy,* it was unclear to the Board at the variance hearing whether the exact footage as shown on the Plat previously submitted to the Board at the Special Exception hearing, showed a distance of 25 feet which would have obviated the need for a variance. *Id.* at 192. The Applicant, after filing for the variance, had the property resurveyed. The Board, in the variance case, described the re-survey of the property as a 'surveyor's nightmare' because there were several different courses for measuring one of the Property lines. The Board indicated that this was a 'technical violation of the 25-foot setback'. *Id.* at 192-193.

Unlike the Applicant in *Stacy*, the Petitioner here did not file a Petition for Variance while a Special Exception was on appeal. Further, unlike the re-survey in *Stacy* and the conflicting measurements casting doubt on whether a variance was needed, there were no new facts in the Petitioner's case here that did not exist at the time the Special Exception case was heard.

Similarly, in *Zengerle v. Board of County Com'rs for Frederick County*, 262 Md. 1 (1971), during the course of four hearings days before the Board of County Commissioners for Frederick County, it was discovered that a variance would be needed to satisfy the request for conditional use permit. *Id.* at 9. This discovery occurred as a result of the Board's interpretation of County Zoning Regulation, Section 40-67, that no conditional use for a landfill could have been granted within 1,000 feet from the boundary line of an adjacent property occupied by a dwelling. *Id.* The Board then proceeded to grant a variance along with a conditional use permit at the end of the hearing (without a formal application for variance having been filed). *Id.*

After the variance was appealed, the case was remanded to the Board for the specific purpose of providing full notice opportunity to the Protestants to be heard in connection with the variance issue, specifically, the opportunity to cross examine the County Engineer. *Id.* at 9-10. The record in *Zengerle* reflected that, even though the Board granted a variance without a formal application having been filed, the Court of Appeals found that the Protestants, at the first remand

hearing, did not object to the lack of an application and also had opportunity at that hearing to ask their witnesses about the variance. *Id.* at 20. Moreover, the remand informed all parties of the nature of the remand hearings and that the county was seeking an area variance. *Id.*

As to the issue of collateral estoppel preventing re-litigation of the ALJ's finding that the Petitioner's home did not meet the BCZR §421 setbacks and therefore could not be used as the kennel, we find that the Petitioner has asked this Board to address that very same issue here. *Batson v. Shifflett*, 325 Md. 684, 701 (1992).

In the case cited by Petitioner, *Reid v. State*, 119 Md. App. 129, 135 (1998), there was no transcript of what was actually litigated before the ALJ, only hand written notes of the ALJ. Because the record was sparse, the Court in *Reid* held that the ALJ did not decide the 'ultimate fact' that the appellant there claimed to have been decided, i.e. "the appellant 'was not driving or attempting to drive' on the day in question." *Id.* 135-136. Here, the ALJ's Special Exception Opinion and Order made clear that the 'ultimate issue' was adjudicated. Thus, we find that *Reid* is not applicable to the facts here.

For these reasons, the Petitioner's Motion for Reconsideration is denied.

3. Petitioner Cannot Prove Practical Difficulty and Has Self-Imposed Any Hardship.

The Board also concluded that the Petitioner's request for variance relief fails on its merits. Nothing presented by the Petitioner in her Motion for Reconsideration prompts the Board to change its decision.

The well-established general rule is "the authority to grant a variance should be exercised sparingly and only under exceptional circumstances." *Trinity Assembly of God of Baltimore City v. People's Counsel*, 407 Md. 53, 79; 962 A.2d 404, 419 (2008) citing *Cromwell v. Ward*, 102 Md. App. 691, 703; 651 A.2d 424, 430 (1995). In Baltimore County, variances from height and area regulations may be granted "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[4] or unreasonable hardship." BCZR §307.1. Furthermore, "any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare." *Id.*

The Board previously concluded that the property was unique once the focus was directed to the proper boundaries that formed the neighborhood for comparison. Petitioner, obviously, does not take issue with the Board's findings as to the definition of what boundaries form the neighborhood at issue or the determination that the property was unique that followed. Rather, Petitioner challenges the conclusion that Petitioner had not proved that there was practical difficulty and that, in any event, any hardship was self-imposed.

To obtain variance relief Petitioner must prove practical difficulty, which requires sufficient evidence regarding:

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

Trinity Assembly, 407 Md. at 83-84; 962 A.2d at 422.

[4] Because the changes to the character of the neighborhood are considered less drastic with area variances than with use variances, the less stringent "practical difficulties" standard applies to area variances, while the "undue hardship" standard applies to use variances. *Montgomery County v. Rotwein*, 169 Md. App. 716; 906 A.2d 959 (2006).

Petitioner first argues that the substantial justice element is satisfied. In support, Petitioner urges that the setback requirement is not eviscerated, as stated in the Board's September 22, 2016 Opinion and Order. Petitioner asserts that the Board "based its decision on the fact that Ms. Robinson sought a variance to reduce the setback requirement from 200 feet to 15 feet on her entire property." (Pet. Motion, p. 1). Petitioner notes that the present and proposed kennel is 15 feet from the property only at one point, but also as much as 107 feet and 145 feet at other points. (Pet. Motion, p. 10, fn. 4).

The Board, however, did not find for Respondent based on a misunderstanding of or an erroneous conclusion regarding the present and proposed setback, as suggested by Petitioner. The Board understood that the present and proposed kennel was not designed to be 15 feet from the property line for the entirety of the kennel or the entirety of the Robinson property. What Petitioner comes to Court with (that is, what is there at present) and proposes to keep, is a kennel that is as close as 15 feet from the property line.

BCZR §421.1, however, requires a 200-foot setback. Much of the kennel's present and proposed setbacks are under the 200 feet required. Moreover, a sizable portion of the dog run/kennel boundary, not simply one point, has substantially deviated from the 200 foot requirement. This substantial deviation, for the most part, runs roughly adjacent to the Krauses' property. (Pet. Ex. 6). The closest point to the Krauses' property appears from the record, particularly Petitioner's Exhibit 6 and based on the requested variance up to 15 feet, to be slightly more than 15 feet. Therefore, the 15-foot point certainly illustrates the most extreme example, but there are multiple points, areas and/or sections in which Petitioner requests extraordinary deviation from the required 200 feet. Petitioner may consider preserving the status quo as justice for Ms. Robinson, but as the Board previously concluded and now reiterate, a kennel requiring that amount

of deviation is not substantial justice for the surrounding and neighboring properties, particularly, the Krauses.

It is important to note that the kennel is allowed in an RC-2 zone by special exception BCZR §1A01.2(C)(2) and that Petitioner had her request for a special exception granted (Case No. 2015-0092-X) but with the imposition of conditions, including, dog runs not to be within 200 feet of the nearest property line. (See, December 18, 2014 Order). Petitioner seeks an amendment of the December 18, 2014 Order and a variance of that condition. It is obvious that the County Council, when enacting BCZR § 421.1, wanted to require some significant measure of protection for neighbors adjacent to a private kennel, and to that end, required a 200 foot setback. The Board is specifically required to account for that purpose in reaching its decision. Substantial deviation for significant portions of the dog run/kennel boundary, including as little as 15 feet, fails to effectuate the spirit of BCZR §421.1. Moreover, credible evidence from Respondent's expert was presented at the hearing that a dog run without such a stark deviation from the setback requirement was a possible alternative, but it would require the dogs to have access to the front of Ms. Robinson's house, something she does not want to sacrifice.

On that point, Petitioner takes issue with the Board's determination that any hardship claimed is also self-imposed. (Pet. Mot., at p. 11-12). In support, Petitioner directs focus on the concept that, under Maryland law, "self-created hardship is created by the property owner not by the property itself." (*Id.*, at p. 12, citing *Richard Roeser Prof. Builder, Inc. v. Anne Arundel County*, 368 Md. 294, 298 (2002)[5]). Petitioner then attributes all issues to the physical conditions of her property.

The Board recognized, however, that while the conditions of Ms. Robinson's property causes certain complications, Petitioner's insistence on restricting the dogs from using the front

[5] The Board's September 22, 2016 Opinion & Order cited the same case for the general principle.

room of her house requires the dogs to exit the house through the rear, and therefore, toward the Krauses' property and well within the 200 feet setback requirement. If, on the other hand, the dogs were able to go outside via the front door and the dog run boundary moved accordingly, such a substantial deviation from the setback requirement would be unnecessary. In other words, if Petitioner allows the dogs to enter/exit via the front door, Petitioner would not need a variance up to as little as 15 feet and also a continuing substantial deviation in the area close to the Krauses' property line. The Board did not find that Ms. Robinson was compelled to use the rear of her house. Rather, the Board found that Petitioner voluntarily chose to limit her options to using the rear of the house.

What Petitioner seeks is insulation from her choice and to do so, attributes that decision to the topography and other physical conditions. The Board did not and does not blur the lines between her choice and the limitations presented by the physical conditions. The Board did not find or conclude that Petitioner is responsible for the topography or other physical conditions. The Board, however, held Petitioner accountable for her voluntary choice to restrict the dogs' entry and exit to the rear of the house, which in turn is what causes the need for the more extreme portions of the requested setback variance.

The Board also understood that the placement of a secondary structure in front of her residence was somewhat limited by Petitioner's property's physical conditions. However, Petitioner primarily attributed her complete inability to build that structure to a conversation between Petitioner's landscaper and a County representative, where the representative conveyed to the landscaper that the County would not allow a structure to be built in front of the primary residence. It should be noted that the Board found that the evidence on that point was wanting. There were no written requests or correspondence or submission of plans from Petitioner to the County. There were no written determinations by the County on this point.

To be clear, this is not a matter of a credibility determination as to whether the discussion occurred or the substance of the conversation. Rather, it is a finding by the Board that a conversation, accepting the content as reported, is not tantamount to a formal determination by the County regarding whether a structure could or could not be built. Moreover, the record reflects that Petitioner did not submit a plan to the County regarding any proposed structure. Therefore, Petitioner was not necessarily precluded by the County from attempting to build a structure in the front of her residence. A fair question arises as to why Petitioner did not make any serious attempt to submit such plans or why Petitioner did not seek a variance to permit a separate structure in front of her residence. The possibility of availing herself of this option was foreclosed by Petitioner, not the County, and not her property.

Even accepting *arguendo* the inability to build a structure in front of her residence, as noted above, Petitioner still could use the front of her house for the dogs to enter and exit and not the rear. This choice is wholly independent of whether she is restricted from building a separate kennel structure. This choice has nothing to do with topography or the other physical conditions. At no time did the Board find that strict compliance with the setback requirements was mandated in this case. What the Board found was that the *at present and as proposed* dog run/kennel boundary, particularly the section adjacent to the Krauses' property, did not satisfy the criteria for practical difficulty to justify approval of the variance request. Relatedly, the Board also found that the difficulty claimed by Petitioner arises from Petitioner's voluntary choice.

Because Petitioner refuses to consider any option that involves the dogs entering and exiting from any location other than the rear of the home, Petitioner has created her own hardship and exacerbated the existing difficulty created by the physical conditions of the property. If Petitioner is unwilling to sacrifice the front room of her house for the dogs' use, it neither can be substantial justice to the Krauses if protective measures (the required setback) are significantly

compromised to give effect to that voluntary choice, nor would such a radical departure be within the spirit of the regulation.

As set forth in the Board's September 22, 2016 Opinion and Order, the Board is only authorized to grant variance relief if the requested variance is in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare. BCZR §307.1. For the reasons set forth throughout this Opinion and the September 22, 2016 Opinion and Order, the Board finds that variance request is not only not in harmony, it is in fact incongruous with the spirit and intent of the regulations at issue and cannot afford relief without injury to public health, safety and general welfare.

In light of the above, Petitioner's Motion for Reconsideration, and underlying request for amendment to the December 18, 2014 Order, and related request for variance relief, are denied.

THEREFORE, IT IS THIS 10th day of March, 2017, by the Board of Appeals of Baltimore County,

ORDERED that the Motion for Reconsideration be and the same 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
OF BALTIMORE COUNTY

Maureen E. Murphy, Panel Chairman

Benfred B. Alston

Jason S. Garber

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Catherine H. Robinson 15-235-SPHA

DATE: November 16, 2016

BOARD/PANEL: Maureen E. Murphy, Panel Chairman
Benfred B. Alston
Jason S. Garber

RECORDED BY: Tammy A. McDiarmid, Legal Secretary

PURPOSE: To deliberate the following:

Motion for Reconsideration filed by Michelle J. Dickinson, Esquire on behalf of Catherine H. Robinson; and Citizen-Protestants' Opposition to Petitioner's Motion for Reconsideration filed by G. Macy Nelson, Esquire.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board reviewed the Petitioner's Motion for Reconsideration and the three issues raised in the Motion.
- The first issue was that the variance is not a substantial deviation to BCZR § 421.1. Zoning regulations require a 200' setback from the property line for a kennel. The Petitioner argues that the 15' setback request is not for the entire property, but only a portion. The Board noted that the 15' setback is at the most extreme point, and there are other impacts to the setback. The Board finds that the request is a substantial deviation to the 200' setback.
- The next issue raised was that the variance petition is not barred by res judicata. The Petitioner argues that she was not aware of the environmental features to her property and therefore could not seek a variance at the time of the special hearing request. The Board finds that it is the responsibility of the Petitioner to know the characteristics of their property prior to requesting any relief. The Board also found that the parties, the property, the request, and the facts of the case are the same as were in first Petition heard by ALJ.
- The final issue involves self-imposed hardship. The Board noted that Petitioner wants to keep all factors as they were prior to requesting any zoning relief and does not want to be inconvenienced. Any hardship imposed here is self-created in that the Petitioner wants the house to be the kennel and wants the dogs to come and go as they did prior to her zoning Petitions being filed.

DECISION BY THE BOARD MEMBERS:

The Board finds that although they believe the Petitioner is providing a needed and honorable service, it cannot deviate from the law. There have been no facts or laws which have changed since the Board Hearing that would warrant changing the decision.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY the Petitioner's Motion for Reconsideration.

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,

Tammy A. McDiarmid

IN RE: 2012 Far Out Lane Southside of Far Out Lane, 1475 ft. southwest of Akehurst Road	*	BEFORE THE BALTIMORE COUNTY
5th Election District 11th Councilmanic District	*	BOARD OF APPEALS
	*	CASE NO. 2015-0235-SPHA
Legal owner: Catherine Robinson	*	

* * * * * * * * * * * * * * *

Citizen-Protestants' Opposition to Petitioner's Motion for Reconsideration

Argument

The Board should deny the Motion for Reconsideration because there is no new relevant case law or statute; there was no fraud, mistake or irregularity in the conduct of the hearing; and the Board's opinion was consistent with what the Board decided during its deliberations.

"[A] Motion [for Reconsideration] should only be necessary when there has been substantive new case law or enactment of a statute not previously available, which would clearly merit modification of a Board's previous decision." *In the Matter of: TTV Properties, III*, Case No.: CBA-14-039 and CBA-15-011. A successful movant for reconsideration must also present evidence of "fraud, mistake or irregularity in the conduct of the hearing." *In the Matter of Paragon Outlets White Marsh, LLC PUD*, Case No.: CBA 15-005. Thus, the Board "will not re-visit its decision upon a Motion for Reconsideration based upon an assertion that the ruling was incorrect." *In the Matter of Ralph Seekford, Jr.* Case No.: CBA 14-025. But the Board may grant a motion for reconsideration if the written opinion differs from what the Board decided during its oral deliberation. *In the Matter of James Dimick, Jr,* et al., CBA 14-223-X.

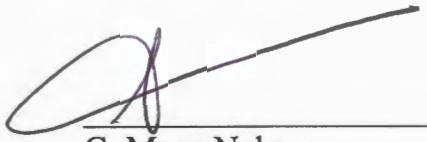
Notwithstanding this law, the Applicant asks the Board to reconsider its disapproval of the variance because she believes the Board erred. The Applicant stated throughout her memorandum that the Board based its decision on an "erroneous interpretation of the law" or that the decision was "clearly erroneous." (Memorandum at pp. 1, 2, 5 and 10). But the rule is that the Board does "not re-visit its decision upon a Motion for Reconsideration based upon an assertion that the ruling was incorrect." *In the Matter of Ralph Seekford, Jr.* Case No.: CBA 14-025. In any event, the Board correctly denied the variance because the Petitioner sought a variance to permit a substantial deviation from § 421.1 of the BCZR; the Petitioner's requested relief is barred by her failure to appeal and by res judicata/collateral estoppel; and Petitioner cannot prove practical difficulty and has self-imposed any hardship.

Furthermore, the Petitioner presented no evidence that "there has been substantive new case law or enactment of a statute not previously available." Indeed, no such evidence exists. Petitioner presented no evidence that there was "fraud, mistake or irregularity in the conduct of the hearing." None exists. Finally, the Board's written decision was consistent with the decision it reached during its deliberations.

Conclusion

For all of these reasons, the Board should deny the Petitioner's Motion for Reconsideration.

Respectfully submitted,



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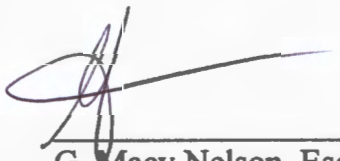
Attorney for Citizen-Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of November, 2016, a copy of the foregoing Opposition to Petitioner's Motion for Reconsideration was mailed, first class, postage prepaid, to:

Michelle J. Dickinson, Esquire
Law Office of Michelle J. Dickinson, LLC
10440 Little Patuxent Parkway, Suite 300
Columbia, Maryland 21044
Counsel for Applicant



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October 27, 2016

NOTICE OF DELIBERATION
MOTION FOR RECONSIDERATION

IN THE MATTER OF: Catherine H. Robinson
E/s Far Out Lane, approx. 1,475 ft SW of c/l of Akehurst Road
15-235-SPHA 2012 Far Out Lane
5th Election District; 3rd Councilmanic District

Having concluded this matter on June 21, 2016, the Order was issued by the Board on September 22, 2016. A Motion for Reconsideration was filed on October 20, 2016. The matter has been scheduled for a public deliberation on the following

DATE AND TIME: WEDNESDAY, NOVEMBER 16, 2016 at 9:30 a.m.

LOCATION : Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

NOTE: PUBLIC DELIBERATIONS ARE OPEN WORK SESSIONS WHICH ALLOW THE PUBLIC TO WITNESS THE DECISION-MAKING PROCESS. ATTENDANCE IS NOT REQUIRED AND PARTICIPATION IS NOT ALLOWED. A WRITTEN OPINION AND/OR 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

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c: Counsel for Petitioner : Michelle J. Dickinson, Esquire
Petitioner : Catherine Robinson

Counsel for Protestants/Appellants : G. Macy Nelson, Esquire
Protestants/Appellants : Andrew and Noreen Krause, Anita Krause

Scott Lindgren/Gerhold, Cross & Etzel
Kawana Swank Anne Cornell
Office of People's Counsel
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney

J. Lawrence Hosmer/ERM
Ann Merryman Noah Price
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Michael Field, County Attorney, Office of Law

IN THE MATTER OF	*	BEFORE THE
CATHERINE H. ROBINSON	*	BOARD OF APPEALS
E/s Far Out Lane, approx. 1,475 feet SW	*	OF BALTIMORE COUNTY
of c/l of Akehurst Road	*	
2012 Far Out Lane	*	**Case No. 15-235-SPHA**
5th Election District	*	
3rd Councilmanic District	*	

* * * * * * * * * *

MOTION FOR RECONSIDERATION

Petitioner Catherine H. Robinson, by her counsel and pursuant to Baltimore County Board of Appeals Rule 10, submits this Motion for Reconsideration of the Opinion issued by the Baltimore County Board of Appeals (the "Board") denying Ms. Robinson's Petition for a Special Hearing and Variance from the setback requirements of BCZR § 421.1, previously granted by Administrative Law Judge John E. Beverungen.

ARGUMENT

A. The Board's Ruling That The Variance Must Be Denied As A Substantial Deviation From BCZR § 421.1 Is Contrary To Fact And Clearly Erroneous

In its Opinion, the Board ruled that the variance relief sought by Ms. Robinson was such a substantial deviation from BCZR § 421.1's minimum setback requirement that it must be denied. The Board based its decision on facts not supported by the record and an erroneous interpretation of the law.

As a threshold matter, the Board based its decision on the fact that Ms. Robinson sought a variance to reduce the setback requirement from 200 feet to 15 feet on her entire property - a 93% reduction in the area standards for a private kennel. This is incorrect. While, as explained below, such a variance would not be contrary to the law, the Board's factual predicate is inaccurate. Ms. Robinson did not seek a variance to reduce the minimum setback requirement to 15 feet on her entire property. Indeed, the site plan she submitted with her Petition for a Special Hearing and Variance indicates that the variance request is "to allow a private kennel to be located as little as 15 feet to the property line in lieu of the required 200 feet." See Pet. Exh. 6, emphasis added. The

proposed private kennel area is identified on the site plan by "xx-x-xx-x" marks, which were highlighted in yellow at the hearing, and the notation "PROPOSED MODIFIED KENNEL." Id. The area is kidney shaped, covers less than half the property, and comes within 15 feet of the property line at only one point by Ms. Robinson's friend and neighbor's property, Judith R. Levenson, who attended every hearing in support of Ms. Robinson's petition. Id. The remainder of the irregularly-shaped area necessarily varies in distance from 15 feet at one point to as much as 145 feet from the property line at another point (i.e., only a 27.5% reduction in the area standards of BCZR § 421.1). Indeed, approximately half of the private kennel area requires a 50% or less reduction in the area standards. A reduction of 93% is only required at one single point. The Board's decision thus is contrary to the undisputed facts in evidence.

Further, the Board's decision on this point is based on an erroneous interpretation of the law. The Board relies on Alviani v. Dixon, 365 Md. 95 (2001),[1] for the proposition that a property owner may obtain a variance from a special exception requirement, such as Section 421.1's minimum setback requirement, only where the variance slightly modifies that requirement. The Alviani court did not so hold. The Alviani court focused on whether the variances at issue would "so substantially alter the criteria for the granting of the special exception so that the criteria…would be swallowed by the variance to the extent that the special exception would not be a use that was contemplated in the comprehensive zoning scheme in respect to any particular special exception." *Id.* at 121 (emphasis added). The court held that the two variances were permissible because they "did not enable a special exception use to be granted that would be outside of the scope of the special exception provisions of the general zoning scheme for that area." *Id.* While the court noted that the variances sought in that case only slightly modified the specific area standards, the court did

[1] While the Board enumerates three factual grounds for distinguishing Alviani, the first two grounds are similarities (e.g., both legislative schemes permit variances; no evidence of adverse effects associated with the underlying special exception use).

[2] Note that while the Board indicated in its Opinion that Ms. Robinson failed to comply with the

not hold that only a slight modification was permissible or that "substantial deviation" from a special exception requirement must be barred as a matter of law, as the Board suggests. Further, the court did not address or set a limit as to the degree or percentage of modification permissible – an exercise the Board has undertaken in its Opinion.

The appropriate inquiry, as set out in Alviani, is whether the variance from a special exception requirement would so change the nature of the special exception that it would become a use not contemplated by the zoning scheme. The actual variance sought by Ms. Robinson does not so substantially alter the criteria for a private kennel that the special exception would become a use not contemplated by the zoning scheme. Indeed, the minimum setback is but one of the requirements for a private kennel special exception (e.g., there must be more than three dogs; the dogs must be kept for specific purposes; the use may not be a pet shop; the dogs may not be for farm use; the use may not be detrimental to the primary agricultural uses in its vicinity, etc.). Had Ms. Robinson sought to modify the criteria for a private kennel to allow her to have more than four elephants rather than dogs, that arguably would constitute a substantial alteration of the criteria such that the resulting use would not be contemplated by the zoning scheme. The requested reduction in the minimum setback requirement of BCZR § 421.1 requested here would simply extend the boundaries of the private kennel area, which would allow Ms. Robinson to use her home as a private kennel - a permissible use - nothing more.

Even if Ms. Robinson had requested a variance of 15 feet from the property line on her entire property, as the Board concluded, or 0 feet from the property line, such a variance would not be precluded by Alviani, as it would not change the nature of the use (i.e., permit a use that was not contemplated in the comprehensive zoning scheme). Indeed, Baltimore County has a long history of granting variances to permit substantial or even total reductions in the minimum setback requirements of BCZR § 421. See e.g., In re Petition for Special Exception and Variance (9405

Flagstone Drive), Case No. 2013-0252-XA (ALJ Beverungen) (granting variance from BCZR § 421.1 to permit animal boarding place within 0 feet of nearest property line); In re Petitions for Special Hearing, Special Excption and Variance (67 Main Street), Case No. 2009-0051-SPHXA (Deputy Zoning Commissioner Bostwick) (granting variance from BCZR § 421.2 to permit animal boarding place within 0 feet of nearest property line); In re Petitions for Special Exception and Variance (309 Wye Road), Case No. 05-268-XA (Zoning Commissioner Wiseman) (granting variance from BCZR § 421.1 to permit private kennel within 0 feet of nearest property line); Petition for Special Hearing and Variance (1501-1575 Merritt Boulevard), Case No. 95-421-SPHA (Deputy Zoning Commissioner Kotroco) (granting variance from BCZR § 421.2 to permit pet shop within 130 feet from residential zone in lieu of 200 feet); see also, In re Petition for Variance (300 Garrison Forest Road), Case No. 95-492-A (Zoning Commissioner Schmidt) granting variance from BCZR § 1B01.2.C.1.a to permit 40 foot setback in lieu of required 100 foot setback and 15 foot setback in lieu of 80 foot setback); Zengerle v. Board of County Commissioners for Frederick County, 262 Md. 1 (1971) (granting variance to permit reduction in 200-foot setback requirement for landfill in area that, like here, was irregularly shaped and varied from 25 feet to 50 feet from the property line at certain points). Clearly, there is strong precedent for this County and others in Maryland reducing and even eliminating through variances the minimum setback requirements of special exceptions to enable property owners to enjoy a permissible use. The Board's decision thus is arbitrary and not supported by the facts or the law.

Further, the variance does not, as the Board suggests (Op. at fn. 6), substantially limit BCZR § 421.5. BCZR § 421.5 provides that the County may impose additional restrictions on a special exception. In the special exception Order, Judge Beverungen imposed restrictions on the number of dogs and the duration of the special exception. Judge Beverungen also provided a deadline for Ms. Robinson to comply with BCZR § 421.1 by obtaining permits, building a structure and fencing the

kennel area, which is actually a timing extension, not a restriction.[2] The variance sought here, and granted by Judge Beverungen, does not eliminate any restrictions imposed by Judge Beverungen. It modifies the special exception by expanding the area of the private kennel and presumptively eliminates the timing extension for compliance because with the variance, no separate structure is needed. The variance thus does not limit the County's ability to impose restrictions on a special exception. Clearly, Judge Beverungen did not find his ability to impose additional restrictions pursuant to BCZR § 421.5 substantially limited, as he granted both the special exception and the variance. Indeed, Judge Beverungen characterized the variance as an issue of "housekeeping."

B. The Board's Ruling That Ms. Robinson's Petition Is Barred By Failure To Appeal, Res Judicata, And Collateral Estoppel Is Contrary To Fact And Clearly Erroneous

1. An Appeal of the Special Exception Order Would Have Been Futile

The Board suggests that since compliance with BCZR § 421.1 was an impossibility, Ms. Robinson's only option was to appeal the special exception Order, as the Board would conduct a *de novo* review on appeal. The Board's review, however, necessarily would be limited to the relief sought in the underlying petition - for a special exception for a private kennel, not a variance from BCZR § 421.1. It is well-settled that while the Board's review is de novo, the Board may not consider an original petition for a variance that was not sought in the original proceeding. See, e.g., Halle Companies v. Crofton Civic Ass'n, 339 Md. 131, 143 (1995) ("The Anne Arundel County Board of Appeals may not entertain a truly original petition for variance or special exception, but it may review the actions of the administrative hearing officer and take any action which that officer

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[2] Note that while the Board indicated in its Opinion that Ms. Robinson failed to comply with the terms and conditions of the special exception Order by obtaining building permits and building a structure, this also is incorrect. By email dated June 10, 2015, Judge Beverungen extended the deadline for compliance until 30 days after the final order was issued in the variance case, unless that order specified otherwise. See Exhibit A. It is undisputed that Ms. Robinson attempted in good faith to comply with BCZR § 421.1 and only sought a variance after Baltimore County advised that compliance was an impossibility.

could have taken in the original proceeding."). Accordingly, any appeal of the special exception Opinion would have been futile.

The Board further suggests that Ms. Robinson should have appealed Judge Beverungen's finding of fact in the special exception Opinion that Ms. Robinson's home could not be used as the private kennel because it is within 200 feet of the property line. There is no dispute that Ms. Robinson's house is located within 200 feet of the property line and that so long as BCZR § 421.1 applied, she could not use it as the private kennel. Thus, an appeal of this finding of fact would properly have been denied. Further, to the extent that fact arguably was even "litigated" in the special exception hearing, Ms. Robinson does not seek in her variance petition to relitigate this fact. She simply seeks a variance from BCZR § 421.1's minimum setback requirement, which necessarily prevents her from using her home as part of the private kennel.

The Board characterizes Ms. Robinson's filing of a petition for a special hearing and variance as an "end-run-around" an appeal of the special exception Order. It is undisputed that Ms. Robinson intended to comply with BCZR § 421.1 and that neither she, the Protestants, nor Judge Beverungen knew that environmental issues and BCZR § 401.1 would make compliance impossible. If Ms. Robinson had known, she would have sought a variance when she sought the special exception. To suggest that Ms. Robinson was somehow gaming the system by filing a petition for special hearing and variance instead of an appeal of the special exception Order is belied by the fact that an appeal would be futile, as explained above, but also is contrary to the undisputed evidence of Ms. Robinson's conduct and character in this case. Ms. Robinson did not seek a special exception in response to any complaint or citation from the County or Animal Control. She voluntarily sought to legitimize the admirable work she and Ms. Swank have been doing for years in her home - rescuing dogs from imminent death, nursing them back to health in a loving home environment, and endeavoring to find them forever homes – by obtaining a special

exception for a private kennel. Indeed, appealing the special exception Order and requesting that the Board essentially grant a variance in that proceeding without Ms. Robinson filing a petition, providing public notice, and an opportunity to be heard would have been more akin to an "end-run-around" Baltimore County's variance procedures – which no doubt would have drawn strenuous objections from the Protestants.

2. Res Judicata Does Not Bar Ms. Robinson's Variance Petition

The Board ruled that Ms. Robinson's variance petition was barred by res judicata. The principle of res judicata provides that "a judgment between the same parties and their privies is a final bar to any other suit upon the same cause of action, and is conclusive not only as to all matters that have been decided in the original suit, but as to all matter which with propriety could have been litigated in the first suit...." Seminary Galleria, LLC v. Dulaney Valley Improvement Assn., Inc., 192 Md. App. 719, 734 (2010). In the special exception hearing, Ms. Robinson sought "a Special Exception under the Zoning Regulations of Baltimore County to use the herein described property for a private kennel (not commercial) in an RC2 Zone." Ms. Robinson did not request a variance, and the parties did not litigate any variance as part of the special exception hearing.[3] Indeed, in the special exception Opinion, Judge Beverungen noted that BCZR § 421.1 applied, that Ms. Robinson did not seek a variance, and he provided Ms. Robinson with eight months to comply with BCZR § 421.1 by building a structure for the dogs. All parties and Judge Beverungen believed she could comply with BCZR § 421.1, as she had ample property that was 200 feet from the property line for a kennel structure and doggy exercise areas. Accordingly, the variance was not litigated in the special exception hearing and thus does not constitute the "same cause of action."

The Board defines the issue litigated at the special exception hearing as whether a kennel

[3] Despite the Board's assertion that Ms. Robinson "should have sought relief for any and all variances she needed to satisfy BCZR § 421.1," along with her special exception petition, it is undisputed that she did not seek a variance because she did not know compliance would be an impossibility.

can be operated at the property within the minimum setback requirement of BCZR § 421.1. While Judge Beverungen necessarily addressed the private kennel requirements, including compliance with BCZR § 421.1 based on the size and shape of the parcel (i.e, whether the acreage and shape of the property was sufficient for a dog kennel and exercise areas 200 feet from the property lines), a different issue is presented by the variance petition. The issue in the variance petition is whether Ms. Robinson's property is unique and whether she will suffer a practical difficulty if BCZR § 421.1 is strictly applied. While the evidence of practical difficulty includes the newly discovered and undisputed fact that Ms. Robinson's property has environmental issues that prevent her from building a kennel structure along with BCZR § 401.1's prohibitions, these issues were not known or addressed in the special exception hearing.

Further, while the doctrine of res judicata may also bar a matter that could have been litigated in the first suit, the variance petition does not fall into this category. Baltimore County requires the filing of a petition for a variance, public notice, and a hearing before a variance may be granted – none of which had been done at the time of the special exception hearing because Ms. Robinson did not know compliance was an impossibility and thus had no reason to seek a variance. Indeed, it is well-settled law in Maryland that where the need for a variance is determined after a special exception, a property owner may thereafter obtain a variance. Stacy v. Montgomery County, 239 Md. 189, 192-93 (1965) (affirming grant of variance from 25 foot setback requirement where property owner determined need after obtaining special exception for child care use); Zengerle v. Board of County Commissioners for Frederick County, 262 Md. 1 (1971) (affirming grant of variance from 200-foot setback where property owner determined need after obtaining special exception for sanitary landfill use). Accordingly, the variance could not have been litigated in the special exception hearing and res judicata does not constitute a final bar to the variance petition.

Even if, contrary to fact, the variance issue could have been or had been litigated as part of the special exception hearing, it is well-settled that res judicata may not prevent a second hearing on a previously decided matter where there is evidence of a substantial change in circumstances. Seminary Galleria, LLC v. Dulaney Valley Improvement Assn., Inc., 192 Md. App. 719, 734 (2010); Jack v. Foster Branch Homeowner's Assn. No. 1, Inc., 53 Md. App. 325, 33 (1982). The Board suggests that the facts have not changed in that the house still does not meet the minimum setback requirements. While that fact remains the same, the material facts relevant to the variance petition have changed. At the time of the hearing, all parties and Judge Beverungen believed Ms. Robinson could comply with BCZR § 421.1 by constructing a kennel structure 200 feet from the property line, as she has sufficient acreage within that area. The special exception Opinion was issued on December 18, 2014. A year-round kennel structure with water, electricity, and a new underground fence would be difficult to build in the winter months. In acknowledgement of this fact, Judge Beverungen gave Ms. Robinson eight months to comply with BCZR § 421.1 by obtaining necessary permits and constructing a kennel structure for the dogs. Ms. Robinson hired her landscaper, Noah Price, to obtain permits and construct the kennel. Upon inquiry, the County advised Mr. Price, however, that he could not build a kennel in the required location because of environmental issues unique to Ms. Robinson's property and because BCZR § 401.1 prohibited accessory structures in front of a house. This was a material and substantial change in circumstances.

The Belvedere Baptist Church of Baltimore, Case No. 15-004-SPH, relied upon by the Board is distinguishable. In that case, the church sought to modify a restriction on the number of children who could be served at a childcare center pursuant to a special exception the church had obtained a year earlier. The Board ruled that the request was barred by the doctrine of res judicata because the issue of the number of children had been litigated at the special exception hearing and

there had been no material change in facts since the original hearing. Here, the issue of Ms. Robinson's inability to build a kennel structure because of environmental issues and BCZR § 401.1 was not even known, let alone litigated, in the earlier hearing. Accordingly, Ms. Robinson's variance petition was not barred by res judicata.

3. Collateral Estoppel Does Not Bar Ms. Robinson's Variance Petition

The Board further suggests, without analysis, that Ms. Robinson's variance is precluded by the principle of collateral estoppel. Collateral estoppel may only be applied to bar a claim where "the identical issue sought to be relitigated was actually determined in the earlier proceeding." Reid v. State, 119 Md. App. 129, 137 (1998). As explained above, the issues of uniqueness and practical difficulty were never raised or otherwise litigated in the special exception hearing. Accordingly, collateral estoppel does not preclude Ms. Robinson's variance petition.

C. The Board's Ruling That Ms. Robinson Has Not Proved Practical Difficulty And Has Self-Imposed Any Hardship Is Contrary To Fact And Clearly Erroneous

The Board properly ruled that Ms. Robinson's property is unique as compared to other properties in the relevant neighborhood. The Board also properly ruled that the circumstances or conditions that make the property unique also prevent the property from being able to strictly comply with BCZR § 421.1's minimum setback requirement for a private kennel. The Board, however, ruled that Ms. Robinson failed to satisfy the practical difficulty requirement. This is incorrect.

First, the Board ruled that the variance petition, which it erroneously characterizes as seeking to "eviscerate the setback regulation for private kennels,"[4] does not do substantial justice to

[4] As explained above, the Board's characterization of the variance request is inaccurate, as Ms. Robinson seeks only a variance of "as little as" 15 feet from the property line at one point and as much as 107 feet and 145 feet at other points.

other property owners in the district.[5] The Board contends that the variance would eliminate the condition of a separate structure and dog runs included in the special exception Opinion "for the protection of surrounding and neighboring properties." The Board concludes that removal of these conditions cannot constitute justice to other property owners. This is incorrect. As a threshold matter, not all of the enumerated conditions in the special exception Opinion were "for the protection of surrounding and neighboring properties." Building a separate kennel structure and dog runs within eight months was not a condition imposed for the protection of surrounding and neighboring properties – as they benefit from neither the separate structure/runs nor the timing extension, which actually was for Ms. Robinson's benefit. So any modification of these conditions would not do any injustice to the neighbors. Indeed, the variance would do substantial justice to neighbors as it permits the dogs to continue to live inside Ms. Robinson's home where they spend the majority of their days lounging and where Ms. Robinson can restrict their access to the outside and bring them in promptly if they bark, as she has done religiously since the special exception Opinion was issued. Without the variance, the dogs would live outside in a kennel with dog runs where they would have unfettered access both day and night to the outside and where they would be more likely to notice and bark at wildlife or Mr. Krause, should he continue to skulk around the perimeter of Ms. Robinson's property in the middle of the night. Further, the variance permits Ms. Robinson to continue to provide a necessary service at her own expense to the community at large, as she selflessly rescues and cares for unwanted and injured dogs in a time where shelters are overrun with strays that are a drain on government and community resources. Accordingly, the variance does do substantial justice.

Second, the Board suggests that any hardship caused by strict compliance with BCZR §

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[5] Notably, only one neighbor opposed the special exception or the variance. The majority of Ms. Robinson's other neighbors came out en masse at the special exception hearing, the variance hearing and the appeal hearing to show their support.

421.1 was self-imposed by Ms. Robinson. While the Board acknowledges that Ms. Robinson can only enjoy the special exception if a variance from the setback requirements is granted such that the dogs can live in her home, the Board suggests that Ms. Robinson's refusal to consider alternatives to the status quo suggests that she has created the hardship. This is factually and legally incorrect.

It is well-settled law in Maryland that a self-created hardship is created by the property owner not by the property itself. Richard Roeser Prof. Builder, Inc. v. Anne Arundel County, 368 Md. 294, 298 (2002) ("The topography and placement of the property is not a self-inflicted or self-created hardship..."). "Traditionally, self-created hardship requires an affirmative action, exclusively by a property owner or his predecessor in title, that is itself the sole reason for the need for the variance." Stansbury v. Jones, 372 Md. 172, 198 (2002). Maryland law defines a self-created hardship as follows:

> Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions of the zoning ordinance, hardship arises which is capable of being relieved through the grant of a variance. The restrictions of the ordinance, taken in conjunction with the unique circumstances affecting the property must be the proximate cause of the hardship. If the peculiar circumstances which render the property incapable of being used in accordance with the restrictions contained in the ordinance have been themselves caused or created by the property owner or his predecessor in title, the essential basis of a variance, i.e., that the hardship be caused *solely* through the manner of operation of the ordinance upon the particular property, is lacking. In such case, a variance will not be granted; the hardship, arising as a result of the act of the owner or his predecessor will be regarded as having been self-created, barring relief. This rule is simple and of general application in the several states. There is a uniform application of the rule in those cases in which there has been an act on the part of the property owner or his predecessor which has physically so affected the property as to create a unique circumstance or which in itself created either a practical difficulty or hardship in conforming to the restrictions of the ordinance.

Chesapeake Bay Foundation, Inc. v. DCW Dutchship Island, LLC, 439 Md. 588, 622 (2014) (citations omitted). In Ad + Soil, Inc. v. County Commissioners of Queen Anne's County, 307 Md. 307, 312, (1986), for example, property owners had enough land to comply with setback requirements under the zoning ordinance for operating a sewage disposal business. They chose to

set up their business, however, without complying with the setback requirements and without applying for zoning approval from county authorities. Thereafter, the property owners sought variances from these requirements arguing that strict compliance would pose a practical difficulty (e.g., they would have to move their operation). The court held that the property owners' hardship was not caused by some peculiar condition of the land but was self-inflicted by the owner's setting up their business in violation of the setback requirements when they could have complied. Id. at 339–40. Here, it is undisputed that Ms. Robinson will suffer a practical difficulty (indeed, actually an undue hardship) if she must strictly comply with BCZR § 421.1 because the unique combination of characteristics of her property prevent her from building a kennel structure 200 feet from the property line. She has done nothing to create the practical difficulty – it was caused solely by the unique characteristics of the property.

Ms. Robinson did not, as the Board suggests, refuse to consider other alternatives. It is undisputed, however, that the only alternative suggested at the hearing would create unnecessary difficulties for Ms. Robinson without providing any benefit at all to the neighbors. The Board concedes and the undisputed testimony of Protestant's expert supports that the only way for Ms. Robinson to enjoy the private kennel special exception is for the dogs to live in her house and have access to the outside therefrom. The Board also concedes that a variance is absolutely necessary as the entire house is located less than 200 feet from the property line due to the topography of the property. While, Protestant's expert, Mr. Doak, suggested a variance limiting the private kennel to the existing special exception area, the house, and the property in between comprised mostly of flagstone patio, he conceded that this would only be possible if Ms. Robinson were to change her living arrangements to give all 11 dogs[6] access to her front rooms, which have always been off-

[6] Since the hearing, Poncho the 14-year old, deaf Chihuahua passed away. Ms. Robinson has ten dogs now – five of which are seniors, at ten or more years old.

limits to protect Ms. Robinson's nice floors.[7] See Pet. Exh. 8 (proposed reduced variance area outlined in pink); Tr. (Day 2) at 86:24-87:4; 94:3-14. Most importantly, Mr. Doak further conceded that his proposal would not actually have any positive impact on Protestants' noise and environmental concerns (already addressed and debunked in the special exception hearing and to which the Board gave no credence). In fact, he admitted that rather than reducing noise, his proposed reduced variance area would almost completely eliminate the dogs' access to the side of the house that buffers the sound of the dogs when outside.[8] *See* Pet. Exh. 8 (orange line denoting sound between Ms. Robinson's house and Protestants' house; area of property where sound currently is buffered by Ms. Robinson's house in green; area where sound would be buffered by house with reduced variance area shaded in orange); Hearing Tr. (Day 2) 93:8-95:11. Further, restricting the dogs to the property in front of Ms. Robinson's house would not address any of the Protestant's environmental/runoff concerns (also debunked in the special exception hearing), as the dogs would continue to use the bathroom the same number of times a day and would be required to do so closer to the Protestant's property. Hearing Tr. (Day 2) 96:21-99:5. Essentially, Mr. Doak conceded that nothing positive would be accomplished – certainly nothing effecting the health, safety or general welfare – by reducing the variance area requested. Indeed, the Board even held that there was "little evidence to support [Protestant's] contention" that the dogs pose noise problems and "no evidence that the adverse effects are…'greater at the Subject Property than they would generally be elsewhere within the areas of the County that also are zoned R.C.2." Op. at 7.

---

[7] Mr. Doak also suggested that his proposed reduced variance area might be extended to include the kitchen door, but then conceded that the dogs could not traverse the steep retaining walls or steps immediately outside the kitchen door, such that this would not be a viable option. Hearing Tr. (Day 2) 85:14-86:18.

[8] Mr. Doak further suggested that reducing the area of the variance would move the dogs farther away from the neighbor closest to Ms. Robinson's driveway, Ms. Levinson; however, Mr. Doak acknowledged that Ms. Levinson attended the hearing in support of Ms. Robinson, such that this was not a valid concern. Hearing Tr. (Day 2) 87:5-88:6.

Accordingly, the Board's ruling is arbitrary and contrary to the undisputed facts and law.

CONCLUSION

For the foregoing reasons, the Board should reconsider its August 21, 2016 Opinion and grant the requested variance from the 200-foot setback requirement of BCZR § 421.1 and permit Ms. Robinson to use her house and the outside area currently confined by an underground electric fence as depicted on the site plan for her private (not commercial) kennel.

Respectfully submitted,

Michelle J. Dickinson
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(410) 740-5630
michelle@dickinson-law.com
Counsel for Catherine H. Robinson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of October, 2016, a copy of the foregoing Motion for Reconsideration was delivered via regular mail, postage prepaid to:

G. Macy Nelson
Law Office of G. Macy Nelson, LLC
401 Washington Ave.
Suite 803
Towson, MD 21204

Counsel for Andy and Noreen Krause

Michelle J. Dickinson

Exhibit A

Gmail by Google

Michelle Dickinson <michelle@dickinson-law.com>

2015-0235

1 message

John E. Beverungen <jbeverungen@baltimorecountymd.gov> Wed, Jun 10, 2015 at 12:24 PM
To: "info@dickinson-law.com" <info@dickinson-law.com>, "'G. Macy Nelson' (gmacynelson@gmacynelson.com)" <gmacynelson@gmacynelson.com>
Cc: Debra Wiley <dwiley@baltimorecountymd.gov>, Sherry Nuffer <snuffer@baltimorecountymd.gov>, Kristen L Lewis <klewis@baltimorecountymd.gov>

Counsel,

I am in receipt of Mr. Nelson's request for postponement, which will be granted. I am mindful of the concerns articulated in Ms. Dickinson's letter regarding the dates set forth for compliance in the prior Order dated 12-18-2014. As a condition of granting the postponement request, I will extend the date for compliance until 30 days after the final order is issued in the above case, unless that order specifies otherwise.

The zoning file will be returned to Ms. Lewis, and I would request that 2+ hours be allocated for the rescheduled hearing. Counsel should confer and contact Ms. Lewis to reschedule this case.

John Beverungen

ALJ

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Board of Appeals of Baltimore County

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September 22, 2016

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Towson, Maryland 21204

RE: *In the Matter of: Catherine H. Robinson*
Case No.: 15-235-SPHA

Dear Counsel:

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,

Sunny Cannington Hann

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

c: Catherine H. Robinson
Scott Lindgren/Gerhold, Cross & Etzel, Ltd.
J. Lawrence Hosmer/Environmental Resources Mgmt.
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Deputy Administrative Officer, and Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law
Andrew and Noreen Krause
Anita Krause
Kawana Swank
Anne Cornell
Ann Merryman
Noah Price

IN THE MATTER OF CATHERINE H. ROBINSON 2012 Far Out Lane Sparks Glencoe, Maryland 21152 E/S Far Out Lane, approx. 1,475 ft. SW of Akehurst Road	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY Case No.: 15-235-SPHA

* * * * * * * * * * *

OPINION

This case comes to the Board from a d*e novo* appeal of a final Opinion and Order dated October 9, 2015 (the "October 2015 Order"), issued by Administrative Law Judge John E. Beverungen (the "ALJ") in which Petitions for a Special Hearing and Variance filed by Catherine H. Robinson (the "Petitioner") that requested a modification of a prior Administrative Order and area relief pursuant to a variance were granted. In particular, the Petitioner has sought variance relief to permit a private kennel to be located within 15 feet of nearest property line instead of the required 200 feet and in doing so, an amendment to the December 18, 2014 Order granting a Special Exception allowing her to operate a private kennel on her property with certain conditions.

The hearing before this Board was held on April 19, 2016 and April 20, 2016. The Petitioner was represented by Michelle J. Dickinson, Esquire. The Citizen-Protestants were represented by G. Macy Nelson, Esquire.

Procedural Background Facts

The Petitioner is the legal owner of 2012 Far Out Lane, Sparks-Glencoe, Maryland (the "Subject Property"). Kawana Swank ("Ms. Swank") and her son (the "Swanks") reside with the Petitioner at the Subject Property. The Subject Property is approximately 5.4 acres and is zoned R.C.2 (R.C.2-Agricultural-Zone). The Subject Property is improved with a single family dwelling

that was constructed in 1921. The family dwelling is approximately 2,700 square feet and is located in northern Baltimore County.

The Petitioner has kept more than three dogs at the Subject Property for several years. The Petitioner currently keeps eleven (11) dogs on the Subject Property. The dogs reside with her inside the family dwelling. The Petitioner and the Swanks take care of the dogs. The Petitioner considers three of the dogs her pets and she allows those dogs to sleep in her bedroom. These dogs are either too old, or infirm, and may die soon, while the remaining seven dogs, which are not considered Ms. Robinson's pets, are kept with the hope that they will be adopted. The remaining seven dogs sleep in Ms. Swank's bedroom in the basement. All of these dogs stay in designated areas in parts of the family dwelling.

Mr. and Mrs. Krause (the "Krauses"), whose property is adjacent to northwest of the Subject Property, complained to the Petitioner about the dogs' barking, among other concerns. As a result, the Petitioner planted vegetative buffers and relocated an underground invisible dog fence, which at one location is at least 15 feet from the Krauses' property line, to minimize the impact upon them.

In 2014, the Petitioner sought approval for a private kennel in a RC-2 zone. Prior to the hearing, Zoning Advisory Committee comments were received, with the only substantive comments coming from the Department of Planning (DOP), who did not oppose the relief and wrote that the proposed use would not be detrimental to the surrounding community.

As part of the hearing on the original Petition, the Krauses identified four concerns of theirs: noise, sanitation, safety and the adverse impact upon property values. Following the hearing, on December 18, 2014, the ALJ issued an Opinion and Order granting a Special Exception to the Petitioner pursuant to Section 421.1 of the Baltimore County Zoning Regulations ("BCZR")

to allow her to operate a private kennel at the Subject Property subject to the following conditions for the "protection of surrounding and neighboring properties":

> The relief granted herein shall be subject to the following:
>
> 1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at her own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.
>
> 2. Petitioner may keep on the premises at any one time no more than ten (10) dogs. To the extent Petitioner now has more than 10 dogs, she shall be permitted to keep such dogs until such time as they are adopted or die, but must thereafter have no more than 10 dogs on the property.
>
> 3. The special exception granted herein will terminate automatically if and when Ms. Robinson and/or Kawana Swank no longer own or reside at the subject premises.
>
> 4. Petitioner shall on or before June 30, 2015 secure necessary permits and commence construction of any building to be used for housing the dogs in compliance with B.C.Z.R. § 421.1, which structure must be completed on or before August 30, 2015. The outside areas used for exercise and/or dog runs may not be located within 200 feet of the nearest property line, as required by B.C.Z.R. §421.1. This outside area must also be fully enclosed by a fence or underground electric fence to contain the dogs on Petitioner's property.

Neither party appealed the December 18, 2014 Opinion and Order (the "December 2014 Order").

The Petitioner did not comply with the terms and conditions of the December 2014 Order, in that no permits were secured by June 30, 2015 and no structure was built to house the dogs. Due to the severe topography, springs, and location of the house on her property, the Petitioner believed that she could not build a structure for the dogs subject to the 200 feet setback from the property line because her landscaper was reportedly advised that Baltimore County (the "County") would not issue a permit to build a structure that would be located in front of the family dwelling.

Also, there was also a concern about a spring that runs through the Subject Property in the area where the structure would be built. According to her landscaper, it would be unlikely that the County would approve the location of the structure due to possible environmental concerns affecting the spring.

In lieu of compliance with the December 2014 Order, the Petitioner filed the subject Petition for Special Hearing requesting that the ALJ amend the earlier Order so that the Petitioner would not be required to build a separate structure to house the dogs, and in addition, grant variance relief from BCZR § 421.1 to permit a private kennel in a R.C.2 zone to be located within 15 feet of the nearest property line instead of the required 200 feet. In short, the Petitioner sought to allow her to continue to use her house and the outside area already secured by an underground electric fence for the kennel -- essentially, to maintain the status quo.

Following a hearing on the subject Petition, the ALJ, in the October 2015 Order, modified the December 2014 Order such that a separate structure for the dogs was no longer required and the variance was granted subject to the condition that the dogs must not be allowed outside of the house when no one is at home, and the "doggie door" must remain closed/locked when the Petitioner or other occupants are not home. The Krauses appealed the October 2015 Order.

Discussion

1. Variance Relief Sought is a Substantial Deviation from §421.1 of the BCZR.

The facts show that the Petitioner and the Swanks own at least ten (10) dogs, only three (3) of which are considered pets of the Petitioner. All dogs are housed within the Petitioner's private residence at the Subject Property (the "Family Dwelling"). Pursuant to BCZR §101.1, the character and number of dogs situated at the Subject Property constitute a "private kennel."[1] A

[1] Section 101.1 of the BCZR (Private Kennel) Any building, structure, or land, or any portion thereof, including a dwelling, that is used, intended to be used, or arranged for the housing of more than three dogs, not including

private kennel is permitted in a R.C.2 Zone by special exception[2]. To operate as a Private Kennel in a R.C.2 Zone, §421.1 of the BCZR states:

> If an animal boarding place or *private kennel* is allowed in a residential zone, either as a special exception or as a permitted use, any part of the use, including but not limited to exercise areas, septic systems, dog runs and parking areas, may not be located within 200 feet of the nearest property line.

Further, BCZR §421.5 states:

> In granting any special exception under this section, the Zoning Commissioner may impose additional conditions or restrictions, such as increasing buffers, requiring odor, noise, or animal waste disposal mitigation, and setting limits on the number and breeds of dogs, to ensure that the proposed use will not be detrimental to the health, safety, or general welfare of the surrounding area.

By her own admission, the Petitioner could not comply with BCZR §421.1 or the December 2014 Order; therefore she sought a modification of the December 2014 Order, which granted the Special Exception, and a variance.

In *Alviani v. Dixon*, 365 Md. 95, 775 A.2d 1234, 1242 (2001), the Court held that a special exception with variances may be granted by a zoning agency when the applicable code contains provisions excluding certain areas of the code from being subject to variance relief, but does not exclude the section covering the relevant special exception from being modified by variances.

The Respondents in *Alviani* sought a special exception to construct an Automotive Service Station in Anne Arundel County as well as two (2) variances from the setback requirements for a service station. In particular, the first variance requested a 143 foot setback in lieu of the 150 foot

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puppies less than four months old, for the purposes of show, hunting, practice tracking, field or obedience trials, or as pets. A private kennel does not include a pet shop or dogs accessory to a farm use.

[2] § 1A01.1. (C) (2) of the BCZR (General provisions). Uses permitted by special exception. The following uses, only, may be permitted by special exception in any R.C.2 Zone, provided that in each case the hearing authority empowered to hear the petition finds that the use would not be detrimental to the primary agricultural uses in its vicinity; and, in the case of any use permitted under Item 29, further provided that the hearing authority finds that the use would support the primary agricultural use in its vicinity and would not itself be situated on land more appropriately used for primary agricultural uses: (2) Animal boarding places (regardless of class), commercial kennels, private kennels, veterinarians' offices or veterinarians (see Section 421).

setback and the second variance requested a 25 foot setback in lieu of the 35 foot setback, as required by the Anne Arundel County Zoning Regulations.

The Court in *Alviani* pointed out that it has frequently expressed the applicable standards for judicial review of the grant or denial of a special exception use and stated that:

> "[T]he special exception use is a part of the comprehensive zoning plan sharing the presumption that the special exception is in the interest of the general welfare, and therefore valid. The valid use expressed in the special exception grants the administrative board a limited authority to allow the enumerated uses which the legislature has determined to be permissible *absent any fact or circumstance negating the presumption*. The duties given to the administrative board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan". Id at 775 A. 2d at 1244. Also see, *People's Counsel For Baltimore County, et al v. Loyola College In Maryland*, 406 Md. 54, 956 A.2d 166 (2008).

In a further evaluation of the variances of 143 feet and 25 feet (in lieu of 150 feet and 35 feet), the Court in *Alviani* determined that the Respondents had substantially satisfied the criteria for granting the special exception because granting of those variance did not cause adverse effects upon the neighborhood or allow a use for a parcel of land that was outside of the general provisions of the general zoning plan. (*Id.* at 1246 – 47). The Court added that the two variances requested did not change the objectives of the Code to make the special exception satisfy certain criteria; the variances only allowed a slight modification that still enabled the special exception to fall into the comprehensive zoning scheme of that area. (*Id.*). The variance procedure there did not change the essential nature of the special exception use sought by the Respondents. (*Id.* at 1247). As a result, the Board in *Alvani* did not err as a matter of law by granting the two minor variances that enabled the Respondents to satisfy the criteria for the granting of a special exception. (*Id.*).

Finally, the Court in *Alviani* held that:

> "....in certain circumstances, a zoning body may grant a special exception together with area variances to what otherwise would be specific standards or requirements

> applicable to such special exception. The special exception, however, must be in a section of the local code for which variances are not excluded. Moreover, the granting of the variances may not so substantially alter the criteria for the granting of the special exception so that the criteria of the special exception would be swallowed by the variance to the extent that the special exception would not be a use that was contemplated in the comprehensive zoning scheme in respect to any particular special exception".

Id.

While the facts of this case are similar to the facts recited in *Alviani*, that case is distinguishable. First, there is nothing in the legislative scheme of Section 421.1 of the BCZR that states variances are excluded. As such, there is no bar to this Board's granting the Petitioner a special exception and variance relief as there is no prohibition stated in the applicable zoning section.

Second, although the Krauses have complained about the potential problems of noise, sanitation, safety and the adverse impact the dogs will have on their property values, there is very little evidence to support their contention. However, and more importantly, there is no evidence that the adverse effects are above and beyond, or as the Court pointed out in *People's Counsel v. Loyola*, supra, the adverse effects of the associated use created by the special exception are "greater at the Subject Property than they would generally be elsewhere within the areas of the County that are also zoned R.C.2."[3]

Third, assuming arguendo, that the characteristics of the Subject Property are unique and the Petitioner can demonstrate that a failure to grant the variance would create an undue hardship that she did not create herself[4], the Board must still evaluate whether the granting of the variance

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[3] See, *People's Counsel For Baltimore County, et al v. Loyola College In Maryland,* 956 A.2d 198, in which the Court held that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

[4] This proposition has been (or will be) discussed in detail in this Opinion.

would substantially alter the criteria for the granting of the special exception, so that the criteria of the special exception would be swallowed up by the variance to the extent that the special exception would not be a use that was contemplated in the comprehensive zoning scheme. (*Id.* at 1246-47).

Section 421.1 of the BCZR states that: "If an animal boarding place or private kennel is allowed in a residential zone, either as a special exception or as a permitted use, any part of the use, including but not limited to exercise areas, septic systems, dog runs and parking areas, may not be located within 200 feet of the nearest property line." The Petitioner has asked for variance of 15 feet in lieu of the required 200 feet. The primary purpose of this request is to permit the Petitioner to continue to use family dwelling as a shelter for the dogs, to allow the dogs to continue to roam in the rear of the family dwelling by using an underground invisible fence, which is approximately fifteen (15) feet from the Krauses' property line[5]. In short, the Petitioner wants to maintain the status quo.

The variance requested by the Petitioner is a substantial deviation from terms and conditions set forth in Section 421.1 of the BCZR. In *Alviani*, the Court noted that the requested variances only slightly modified the specific area standards for the special. (*Id.* at 1249). Those variances, 143 feet in lieu of 150 feet and 25 feet in lieu of 35 feet, only reduced the area standards by 5% and 29% respectively. Here, the Petitioner is asking for a variance of 15 feet in lieu of 200 feet which reduces the area standard of the special exception by 93%.[6] The granting of the variance under these circumstances is a substantial deviation from the area standards for a private kennel in

[5] It should be pointed out that in addition to the fence, the family dwelling, which is an integral part of the private kennel, also requires that a variance be granted to have use of it for housing the dogs.
[6] Also, in addition to the 200 foot setback, Section 421.5 of the BCZR will be substantially limited if the Petitioner's special exception and variance are granted.

a R.C.2. Zone and, we find that the legislature could not have intended that a private kennel as proposed here on the Subject Property, be allowed.

For these reasons the Petitioner's request for a special exception under §421.1 of the BCZR and the variance relief should be denied.

2. Petitioner's Requested Relief is barred by Failure to Appeal and Res Judicata/Collateral Estoppel.

In the alternative, the Petitioner's request for relief should also be denied because the Petitioner failed to appeal the December 2014 Order. The Petitioner here admits, and the Protestants through their expert agreed, that the condition in the December 18, 2014 Order to build a structure for the dogs within the area of the Property which meets the 200' setback as required in BCZR, §421.1, could not be met.

Accordingly, the Petitioner's option upon receipt of that Order was to appeal it to this Board. That appeal would then have been heard *de novo*. Instead, the Petitioner waited 4 months and filed another Petition for Special hearing and Variance relief on April 23, 2015 requesting to amend the Special Exception condition. We find that the filing of the instant Petition was an end-run-around the appeal that was never filed.

In addition, with regard to the Petition for Special Exception as originally filed, the Petitioner also should have sought relief for any and all variances that she needed to satisfy BCZR, §421.1. The ALJ in his December 18, 2014 Order pointed out that variance relief was not sought by her. (ALJ Opinion, p.4). Consequently, while this Board would not consider the ALJ's October 9, 2015 Opinion which was appealed as this case is *de novo*, we must accept all facts as determined by the ALJ in the December 2014 Order because it is a final decision.

On this point we note that the ALJ, while recognizing that a dwelling can be utilized for a private kennel under BCZR, §421.1, made a finding of fact in his December 18, 2014 Opinion and Order that the Petitioner's dwelling as set forth on the site plan she presented, "can [not] satisfy the necessary setback." (*Id.*). He further wrote: "As such a garage or other structure would need to be constructed for housing the dogs, or at least any dogs in excess of three which can be kept in the home." (*Id.*). Thus, the issue of using the dwelling as the 'kennel' was already decided by the ALJ and his findings are binding on this Board when considering the issues here. The Petitioner's failure to appeal and have the ALJ's previous findings of fact overturned, binds the Petitioner to the facts previously adjudicated.

By seeking to amend the December 2014 Order in the instant Petition, Petitioner seeks to relitigate issues and facts that have been decided by the ALJ and not appealed. The doctrine of *res judicata* bars litigation of the same matter with respect not only to the legal claims or issues decided in the case but also as to all matters which could have been litigated in the first suit. The Court of Appeals in *Alvey v. Alvey*, 225 Md. 386, 390, 171 A.2d 92, 94 (1961) said:

> The doctrine of *res judicata* is that a judgment between the same parties and their privies is a final bar to any other suit upon the same cause of action, and is conclusive, not only as to all matters which with propriety ***could have been decided in the original suit, but as to all matters which with propriety could have been litigated in the first suit,***....

(emphasis added).

Applying *Alvey* here, it is clear to this Board -- as it was to the ALJ in December of 2014 -- that the Petitioner should have sought variance relief along with the first Petition for Special Exception. The facts here are exactly as they were in December of 2014. The dwelling still does not meet the setback requirements of BCZR §421.1. This Board declines to give the Petitioner a second chance to request variance relief which should have been previously requested.

In *Seminary Galleria v. Dulaney Valley Improvement Ass'n,* 192 Md. App. 719, 995 A.2d 1068 (2010), the Court of Special Appeals held that "a judgment on the merits in a previous suit between the same parties or their privies precludes a second suit predicated upon the same cause of action." The Court in *Seminary Galleria* confirmed that this Board need not hear the facts before determining whether the doctrine of *res judicata* applies. *Id.*, at 734, 995 A.2d at 1077. The Court also stated that *res judicata* is applicable to administrative proceedings. *Id.*, 995 A.2d at 1078.

Citing *Batson v. Shiflett*, 325 Md. 684, 701 (1992), the Court in *Seminary* said that the test for determining whether an administrative agency's ruling is entitled to preclusive effect is as follows:

> Whether an administrative agency's declaration should be given preclusive effect hinges on three factors: (1) whether the agency was acting in a judicial capacity; (2) whether the issue presented to the reviewing court was actually litigated before the agency; and (3) whether its resolution was necessary to the agency's decision.

Id., 995 A.2d at 1078.

The ALJ's final December 18, 2014 Order meets this test. (1) The ALJ was acting in a judicial capacity by a conducting hearing on the Petition for Special Exception, where evidence was presented, and rulings were made on disputed legal issues; (2) The issue of whether a kennel can be operated at the Property within the requirements of BCZR §421.1 was actually litigated and a condition to build a dog structure was imposed; and (3) the ALJ's Order of December 18, 2014 was necessary for a resolution of the kennel issue.

Under *Deleon v. Slear*, 328 Md. 569, 616 A.2d 380 (1992), the Court of Appeals made clear that in determining whether claims are the same for the purposes of *res judicata*, the Court has in the past applied "same evidence test." However, the *Deleon* Court acknowledged that the concept of "claim" is broad and that "claim" is defined as a "group or aggregate of operative facts

giving ground or occasion for judicial action, as distinguished from the narrow concept of a 'cause of action.'" Id. at 589-90, 616 A.2d at 389-90. The *Deleon* Court, citing *Kent County Bd. of Educ. v. Bilbrough*, 309 Md. 487, 525 A.2d 232 (1987), emphasized that the most recent test for determining when two claims or causes of action are the same for purposes of *res judicata* is the "transaction" test as set forth in §24 of the Restatement (Second) of Judgments. Deleon, at 589, 616 A.2d at 390.

The Court of Appeals in *Bilbrough*, recited with emphasis Restatement (Second) of Judgments describing the transaction test as follows:

> The present trend is to see [a] claim in factual terms and to make it coterminous with the transaction regardless of the number of substantive theories, or variant forms of relief flowing from those theories, that may be available to the plaintiff; regardless of the number of primary rights that may have been invaded; and regardless of the variations in the evidence needed to support the theories or rights. The transaction is the basis of the litigative unit or entity which may not be split.

Id. at 497-498, 525 A.2d at 237-38; *Deleon*, at 589-90, 616 A.2d at 390.

Specifically, with respect to whether the claims are the same here, the *Deleon* Court reviewed the facts to see whether they "are related in time, space, origin or motivation." *Id.* at 590, 616 A.2d at 390. As applied to the instant case, the same parties are involved here as have been involved in litigation which led to the December 18, 2014 Opinion. We further find that, the same piece of property has been involved as well as the same zoning issue with respect to whether a private kennel should be permitted on the Property.

We also cite our previous holding in *The Belvedere Baptist Church of Baltimore*, Case No. 15-004-SPH, wherein we declined to approve a request to amend a restriction in a previous ALJ Order involving the property at issue. We applied the doctrine of *res judicata* in that case and found that there was not a substantial change in circumstances and fact between the first case and

the second case to warrant the requested relief. Specifically, we found that: "there was no substantial change to the property, the neighborhood or the facts that would lead to a contrary result upon relitigation, particularly in the relatively short time span between the decisions." (Board Opinion, p.8). We find that the facts of this case fit squarely within the relief requested in that case.

In the event that a court on appeal would find that the doctrine of *res judicata* is not a bar to this suit, we would further find that the doctrine of collateral estoppel or issue preclusion prevents relitigation of the same issues already decided by the ALJ and not appealed by the Petitioner.

For these reasons, the requested relief should be denied.

3. Petitioner Cannot Prove Practical Difficulty and Has Self-Imposed Any Hardship.

Leaving aside the issues raised above, the Board also concludes that the Petitioner's request for variance relief fails on its merits.

As is well established, the general rule is "the authority to grant a variance should be exercised sparingly and only under exceptional circumstances." *Trinity Assembly of God of Baltimore City v. People's Counsel*, 407 Md. 53, 79; 962 A.2d 404, 419 (2008), citing *Cromwell v. Ward*, 102 Md. App. 691, 703; 651 A.2d 424, 430 (1995). In Baltimore County, variances from height and area regulations may be granted "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[7] or unreasonable hardship." BCZR §307.1. Furthermore, "any such variance

[7] Because the changes to the character of the neighborhood are considered less drastic with area variances than with use variances, the less stringent "practical difficulties" standard applies to area variances, while the "undue hardship" standard applies to use variances. *Montgomery County v. Rotwein*, 169 Md. App. 716; 906 A.2d 959 (2006).

shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare." *Id.*

The "special circumstances or conditions [that] exist that are peculiar to the land or structure," commonly referred to as a subject property's "uniqueness," do not include within its scope the extent of improvements upon the property. *North v. St. Mary's County*, 99 Md. App. 502, 514; 638 A.2d 1175, 1181 (1994). Rather, the property's uniqueness, for zoning purposes, "requires that the subject property have an inherent characteristic not shared by other properties in the area," such as the property's "shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) ort other similar restrictions." *Id.*

Much of the evidence presented in this case concerned whether or not the Subject Property was unique. The Petitioner's theory here was not that one feature was unique when compared to surrounding properties, but that a specific combination of characteristics on the Subject Property resulted in practical difficulty and that such combination of characteristics was not shared by other properties in the area. Petitioner identified the following features as forming that combination: three steep, sloping sides that create a drainage basin (the "bowl"); a stream at the center of the property that discharges at the bottom of the bowl; and natural springs on the slopes of the bowl that create a wetlands area in the center of the bowl. The only buildable area of the property, according to Petitioner, is located at the rear of the parcel, within 200 feet of the rear property line (where the existing dwelling is located), which would require that any separate structure for a private kennel be built at the front of the house.

A large subset of the evidence regarding uniqueness focused upon defining "other properties in the area" or more generally, the neighborhood. The Petitioner presented evidence that the neighborhood consisted of approximately 24 properties (Petitioner's Exhibit No. 7). Protestants presented evidence that the neighborhood could be up to 40 square miles, but in any event their expert ultimately narrowed the focus on five square miles, consisting of 281 properties.

There is little guidance from case law or other legal authority that helps define a neighborhood for variance relief purposes. In defining what the "other properties in the area" or "neighborhood" is in a particular variance case, common sense dictates that any analysis start with those with the same zoning designation, in this case properties that are zoned R.C.2, as it is the requirements brought on by the zoning regulations that give rise to special exception and variance petitions.

To be clear, the zoning classification of a particular property is not dispositive of whether a property is within a neighborhood for comparison in this context. There are numerous examples throughout the County of adjacent residential properties and/or commercial properties that may have different zoning designations and yet such properties may be within a defined neighborhood. Therefore, in addition to zoning designation, proximity is an important factor.

Moreover, other information and criteria may factor into an analysis of this issue, including but not limited to: natural boundaries, such as roads (and to some degree the type of road) and water courses; residential areas that identify as a neighborhood; a homeowner's or community association's boundaries; and administrative or political boundaries.[8] While the zoning

[8] While such information could be used, the context of the case dictates the relevance of a particular factor. In this case, information concerning zoning designation, proximity, and roads was presented and such information was more than sufficient for the Board to make determination. Moreover, information relating to, e.g. an administrative boundary as evidence of the same would not have changed the Board's opinion in light of the zoning designation and proximity factors.

designation and proximity are of primary focus, any and/or all of these other features may be useful to help identify "other properties in the area" for variance relief comparison purposes. In short, common sense will prevail.

In this case, the properties identified as the neighborhood by Petitioner's expert are all within the R.C.2 zone. Most of the properties are adjacent to the Subject Property or are adjacent to the ones immediately adjacent to the Subject Property. All such properties are to the west of Yeoho Road, on or to the south of Abell Road, on or north of Far Out Lane.

As noted by Petitioner's counsel, Protestants' five-square mile neighborhood included properties zoned R.C.4, R.C.5, and R.C.8 as well as commercial districts, none of which are adjacent to the Subject Property or even adjacent to the properties adjacent to the Subject Property. There is little utility of comparing the Petitioner's property to those properties within, e.g., an R.C.4 zone when R.C.4 properties cannot have private kennels by special exception (BCZR §1A03.3) and no such R.C.4 zoned property is within reasonable proximity to the Subject Property. While it would be arguable whether other properties on nearby streets, e.g. Stockton Lane (immediately to the south of Far Out Lane), Tracey Road (immediately to the north of Abell Road) and/or other properties on roads within reasonable proximity, could be within the neighborhood, Protestants identified I-83, Falls Road, Mt. Carmel and Belfast Roads as the natural boundaries, but also included properties just beyond those borders for comparison as well. Protestants' scope of the "neighborhood" far exceeds that which is reasonable in this case. This Board concludes that the Petitioner's reasoning and definition of neighborhood, in this context, is correct.

Both parties agree that out of the 24 properties in the "neighborhood," only Parcel No. 183 (as per Petitioner's Ex. 7, the same as Parcel # 95 on Protestants' Ex. 4 and Ex. 9) and Parcel No. 186 (as per Petitioner's Ex. 7, the same as Parcel # 101 on Protestants' Ex. 4 and Ex. 9) could

qualify for comparison with the Subject Property. Both parcels have streams, steep slopes and a house built on relatively flat ground, like the Subject Property. The Petitioner contends: the steep slopes do not form a "bowl" like the slopes on the Subject Property; that the streams do not discharge into the bottom of the "bowl;" and there are no natural springs that help create a wetlands area. In addition, the two parcels are larger and do not have the same limitation of the only buildable area being located at the rear of the property, within 200 feet of the property line.

In the end, there are similar features among these three parcels. There is at least some evidence that the other parcels may not be so restricted in using their property in an analogous manner if desired. While a close call, it is the combination of the features on the Subject Property that constitutes the "circumstances or conditions" that are particular to the Subject Property to make it unique in this context and in this context only. Moreover, such circumstances or conditions prevent the Subject Property from being able to strictly comply with the Baltimore County Zoning Regulations at issue.

Nevertheless, the Petitioner is not entitled to variance relief. The second prong for variance relief Petitioner must satisfy is that of practical difficulty. To establish practical difficulty, the Petitioner must prove:

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

Trinity Assembly, 407 Md. at 83-84; 962 A.2d at 422.

The Petitioner cannot satisfy the elements of practical difficulty.

As noted above, the Petitioner seeks to preserve the status quo. Doing so, however, would simply eviscerate the setback regulation for private kennels. In that circumstance, the requested variance fails to do justice in any meaningful way, other than for the Petitioner and the Swanks, let alone "substantial justice" to other property owners in the district. The ALJ noted in the December 2014 Order that conditions were imposed for the "protection of surrounding and neighboring properties," including that of a separate structure and maintaining a 200 foot setback of exercise/dog runs from the property line. (December 18, 2014 ALJ Order, p. 7-8). The facts at issue in December 2014 that justified the imposition of those conditions as part of the December 2014 Order have not changed. Removal of those conditions cannot constitute justice when such conditions were deemed necessary when originally imposed.

Moreover, this Board concludes that any hardship caused by strict compliance in this case is self-imposed. The Petitioner wants to use a portion of her house as the kennel. The portion of the house she uses and wishes to continue to use requires the dogs to enter/exit the house at the rear of the house and well within 200 feet of the property line. If the dogs were to use the front of the house, the dogs would be farther away from the property line. However, the Petitioner has not allowed the dogs on the hardwood floors located in the front of the house. The Petitioner does not want the dogs to track mud and/or dirt through the front of the house, nor does the Petitioner want the carpets or floors ruined. The electric fence is only required in its present location if the dogs are restricted to entering and exiting from the garage/rear of the house. Therefore, if the dogs were allowed to use the front of the house, the electric fence could be moved so that the setback is not reduced as much as 92.5% (from 200 feet to 15 feet). While the house may be within the required 200' setback, being inside within that distance helps alleviate noise issues and to whatever amount

in front of the exterior of the house that is still within the setback, it is still substantially farther away than 15 feet and has the house itself to act as a noise barrier to some degree.

The Petitioner's refusal to consider alternatives, including particularly that of the dogs using the front door and front of the house, yields one conclusion, that Petitioner's hardship is self-imposed.[9] Therefore, the Petitioner has not satisfied the elements required to prove practical difficulty. Further, the Board finds that, irrespective of practical difficulty, the Board is only authorized to grant variance relief if the requested variance is in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare. BCZR §307.1. For the reasons set forth throughout this Opinion, the Board finds that variance request is not only not in harmony, it is in fact incongruous with the spirit and intent of the regulations at issue and cannot afford relief without injury to public health, safety and general welfare.

While the Board appreciates the lofty cause championed by the Petitioner that underlies the requests addressed herein, the Board is compelled to follow the applicable law and specific regulations. The Petitioner has not and cannot meet her burden to obtain the requested variance relief or to amend the December 2014 Order.

For the foregoing reasons, Petitioner's petition to amend the December 2014 Order and variance request are denied.

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[9]Practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted. See, e.g. *Richard Roeser Prof'l Builder, Inc. v. Anne Arundel Cty.*, 368 Md. 294, 316; 793 A.2d 545, 559 (2002); *Cromwell v. Ward*, 102 Md. App. 691; 651 A.2d 424 (1995). Even if it can be said here that the Petitioner did not create the hardship that precludes a separate structure in the front of the house, to which the Board concludes there is insufficient evidence in support such a finding, the Petitioner nevertheless has taken steps to exacerbate the hardship claimed with respect to the setback requirements. As such, the request for relief must fail as the Petitioner has still caused the circumstances that, from Petitioner's view, require a variance of the setback requirements, namely, the garage/rear entrance and exit for the dogs and the related placement of the electric fence.

ORDER

THEREFORE, IT IS THIS 22nd day of September, 2016, by the Board of Appeals of Baltimore County,

ORDERED that the Petition for a Special Hearing to Amend the December 18, 2014 Order and the accompanying request for variance relief are, both, **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
OF BALTIMORE COUNTY

Maureen Murphy, Chairman

Benfred B. Alston

Benfred B. Alston

Jason S. Garber

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

September 1, 2016

Mr. Andrew Krause
1940 Akehurst Road
Sparks, Maryland 21152

Re: In the Mater of: *Catherine H. Robinson*
Case No.: 15-235-SPHA

Dear Mr. Krause:

In accordance with your request, enclosed please find a copy of the Minutes of Deliberation in the above-referenced matter. A copy of the full Opinion and Order will be mailed to you upon issuance.

If you have any questions, please let us know.

Sincerely,

Tammy A. McDiarmid
Legal Secretary

tam

Enclosure

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

15-235-SPHA

IN THE MATTER OF: Catherine H. Robinson

DATE: June 21, 2016

BOARD/PANEL: Maureen E. Murphy, Panel Chairman
Wendell H. Grier
Jason S. Garber

BOARD/PANEL CLERK: Tammy A. McDiarmid, Legal Secretary

To deliberate the following:

Petition for Special Hearing to request the Administrative Law Judge to amend the November 18, 2014 order granting a Special Exception for a private kennel in case number 15-092-X as shown and indicated on the site plan; and

Petition for Variance from Section 421.1 of the BCZR to permit a private kennel in a RC-zone to be located within 15 feet of the nearest property line in lieu of the required 200 feet.

THE BOARD MEMBERS DISCUSSED THE FOLLOWING:

BACKGROUND/FINDINGS

- The Board reviewed the history of this matter.
- This case was by heard and granted by the Administrative Law Judge ("ALJ"). The Protestants' appealed the decision to the Board of Appeals. The Board held a *de novo* hearing, and there were two days of testimony.
- In 2014 the Petitioner requested, and was granted, a special exception to operate a private kennel with no more than 10 dogs. Conditions were attached to that Opinion including the requirement to build an outside structure for the dogs to sleep in, and that the outside dog areas be located 200' from the nearest property line. The Opinion of the ALJ contained Findings of Fact, and was not appealed.
- The Petitioner has owned her home for about 20 years and has 3 dogs. Approximately 15 years later she took on a tenant and at that time additional dogs came into the home. The Petitioner rescues dogs and cares for them until she can find a good home which isn't always easy as dogs are older or have health problems.
- The Petitioner now requests an amendment to the Special Exception, and also requests a Variance to setback requirements.
- Bruce Doak presented expert testimony on behalf of the Petitioner that a structure cannot be as conditioned by the 2014 Order due to the existence of wetlands. No evidence was presented from Baltimore County that the structure could not be built in the front yard, or that Petitioner applied for a permit and was denied.
- Petitioner would like to keep the status quo as it has been for 10 years and does not want the outside structure. There was testimony that 3 of the dogs sleep in the Petitioner's home and the remaining dogs sleep in the basement on individual dog beds.
- There is an electronic fence on the property that the Petitioner wishes to leave in location, which does not comply with the previous Order.

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DECISION BY

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LAW OFFICE OF
G. MACY NELSON, LLC

G. MACY NELSON
DAVID S. LYNCH

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May 25, 2016

Hand-Delivered

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

Re: Petitions for Special Hearing and Variance
(2012 Far Out Lane)
5th Election District
3rd Council District
Catherine H. Robinson, Petitioner
Case No.: 2015-0235-SPHA

Dear Sir/Madam:

Enclosed please find an original and three copies of Memorandum of Citizen-Protestants for filing in the above case.

Thank you.

Very truly yours,

G. Macy Nelson

GMN:ldr
Enclosure
cc: Michelle J. Dickinson, Esquire

IN RE: 2012 Far Out Lane Southside of Far Out Lane, 1475 ft. southwest of Akehurst Road	*	BEFORE THE BALTIMORE COUNTY
5th Election District 11th Councilmanic District	*	BOARD OF APPEALS
	*	CASE NO. 2015-0235-SPHA
Legal owner: Catherine Robinson	*	

* * * * * * * * * * * * * * *

MEMORANDUM OF CITIZEN-PROTESTANTS

Statement of the Case

On December 18, 2014, the Administrative Law Judge ("ALJ") granted Catherine H. Robinson ("Applicant") a special exception for a private kennel on R.C. 2 zoned land. Baltimore County Zoning Regulations ("BCZR") section 421.1 requires that any part of a kennel be at least 200 feet from any property line. The Citizen-Protestants reside on property bordering the Applicant's property. The Citizen-Protestants did not appeal the original Special Exception ruling to permit the kennel with the 200-foot setback because they were prepared to live with what they assumed would be a kennel regulated and built to protect the stream to their pond and reduce noise whereby the Applicant's house stood between the Citizen-Protestants' residence and up to eleven barking dogs. Moreover, the kennel structure would also have provided an appropriate space for dogs to be housed when unsupervised for extended periods of time instead of enabling the dogs to go in and out of the Applicant's residence at will.

On April 23, 2015, the Applicant filed a request for a Special Hearing pursuant to BCZR section 500.7 to amend the December 18, 2014 Order granting the Special Exception for a private kennel and a request for a variance to permit a private kennel in as R.C. 2 zone within fifteen feet of the nearest property line in lieu of the required two hundred feet. The Baltimore County Board of Appeals ("Board") conducted a *de novo* hearing on April 19 and 20, 2016.

Facts

This case concerns 5.4 acres of R.C.2-zoned land located at 2012 Far Out Lane in northern Baltimore County ("Subject Property"). The Subject Property includes a house that was built in 1920 ("House"). (Testimony of Applicant).

The Applicant purchased the Subject Property in approximately 1994. In approximately 1999 or 2000, the Applicant began fostering dogs The Applicant is now caring for eleven dogs which she rescued. *See* Applicant's Exhibit 2 (photographs of each dog).The Applicant also rescues horses. (Testimony of Applicant).

The Applicant proposes that the kennel include all of her property up to within fifteen feet of the property line and her House. Citizen-Protestants, who since 2005 have resided on land bordering the northwest side of the Subject Property, oppose the variance. Citizen-Protestants also own land on the east side of the Subject Property. The dogs currently only have ingress to, and egress from, the rear of the House, which faces the property of the Citizen-Protestants. The dogs also have the ability to be within approximately fifteen feet of the Citizen-Protestants' property.

The lowest elevation of the Subject Property is roughly its center portion at the rear of the property away from Far Out Lane. A stream originates near the center of the Subject Property and flows in a northwesterly direction towards to the one acre pond on the land owned by Citizen-Protestants. (Protestants' Exhibit 7). The portion of the Subject Property that satisfies the two hundred foot setback requirement is in the area of the springs that generate water for the stream.

The Applicant did not explore the possibility of buying a property large enough to provide more options for a kennel without a variance. The Applicant's landscaper, Noah Price, was told by an unidentified employee of Baltimore County that the Applicant could not build a kennel between the front of the House and Far Out Lane (Testimony of Applicant) despite the facts that there are already two existing buildings in her front yard (a detached garage and a spring house).

The parties presented evidence regarding the Subject Property's neighborhood. The Applicant's expert witness, Scott Lindgren, described two possible neighborhoods. The first has the following borders: Akehurst Road on the north and Far Out Lane on the south ("Neighborhood I"). *See* Exhibit 7. Neighborhood I includes seventeen parcels.

Mr. Lindgren's second neighborhood has the following borders: Abell Lane on the northwest; Yeoho Road on the northeastern border; and Stringtown Road on the south. ("Neighborhood II"). Neighborhood II includes approximately thirty-five parcels.

Mr. Doak described a larger neighborhood ("Neighborhood III"). Neighborhood III has the following borders: Mount Carmel is the northern border; Route 83 is the eastern border; Belfast is the southern border; Falls Road is generally the western border.

Neighborhood III is 4.4 miles by 3.4 miles. Virtually all of Neighborhood III is zoned R.C. 2. The land uses are similar throughout Neighborhood III. Mr. Doak reviewed 281 parcels within Neighborhood III in a subset area of only 1.8 x 3 miles. *See* Exhibit 4.

Questions Presented

1. Whether the Applicant is operating a "private kennel" or "domestic animal sanctuary."

If the Applicant is operating a "private kennel"-

2. Whether the Subject Property has unique characteristics as compared to other properties in the neighborhood.

3. Whether the Subject Property's unique characteristics, if any, cause the zoning provision to impact the Subject Property disproportionately.

4. Whether a practical difficulty and/or unreasonable hardship for the Applicant resulted from the disproportionate impact of the ordinance.

5. Whether the Board can allow a lesser relaxation of the setback requirements than the Applicant applied for that would give substantial relief to the Applicant and be more consistent with justice to the Citizen-Protestants.

Summary Applicable Law

The BCZR defines two uses that are relevant to this legal debate. First, a "domestic animal sanctuary" is:

> Any building, structure, or land, or any portion thereof, that is used or intended to be used for the shelter and care of dogs and cats that have been abandoned, neglected, or abused by prior owners. Such facility must be operated by an organization qualified as a nonprofit under Section 501(c)(3) of Title 26 of the United States Code. The organization must facilitate at least 50 animal adoptions per year, and no services will be provided beyond those intended to serve the needs of the animals in the facility. The facility will be accessible to the public for the limited purpose of placing the animals in acceptable home environments. The

> establishment of such a facility shall not preclude the use of the land for residential or agricultural purposes.
> [Bill No. 20-2010]

BCZR § 1.101.1. A "domestic animal sanctuary" is permitted by right in the R.C. 2 zone "if located on or within property that is greater than 7.5 acres in size." BCZR § 1.1A01.2B(14). The BCZR prohibit a "domestic animal sanctuary" on the Subject Property because it is 5.4 acres.

Second, a "private kennel" is:

> Any building, structure, or land, or any portion thereof, including a dwelling, that is used, intended to be used, or arranged for the housing of more than three dogs, not including puppies less than four months old, for the purposes of show, hunting, practice tracking, field or obedience trials, or as pets. A private kennel does not include a pet shop or dogs accessory to a farm use.

BCZR § 1.101.1. A "private kennel" is permitted by special exception in the R.C. 2 zone. BCZR § 1.1A01.2C(2). But no part of the private kennel may "be located within 200 feet of the nearest property line…" BCZR § 421.2.

The Applicant assumes that the proposed use is a private kennel and has applied for a variance to permit a private kennel in as R.C. 2 zone within fifteen feet of the nearest property line in lieu of the required two hundred feet. "The burden of showing facts to justify ... [a] variance rests upon the applicant[.]"*Easter v. Mayor of Baltimore,* 195 Md. 395, 400 (1950).

BCZR section 307.1 grants the Board of Appeals ("Board") authority to grant a variance from the zoning regulations in limited circumstances. The appellate jurisprudence interpreting BCZR section 307.1 is well developed. *See Cromwell v. Ward,*

102 Md. App. 691 (1995); *Umerley v. People's Counsel for Baltimore Cnty.*, 108 Md. App. 497, *cert. denied* 342 Md. 584 (1996); and *Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore Cnty.*, 407 Md. 53 (2008). The Board's jurisprudence is also well developed. *See In the Matter of: Richard M. Folio*, Case No.: 14-185-A.

Cromwell emphasizes that a variance gives a landowner "authority ... to use his property in a manner forbidden ..., while a[] [special] exception allows him to put his property to a use which the enactment expressly permits." *Id.*, 102 Md. App. at 700 (internal quotation marks omitted). Consequently, "[t]he general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. *Id.* at 703. Indeed, there are "few reported Maryland appellate cases approving of a variance." *Id.* at 707. Regarding one such case, *Cromwell* noted that "[t]he Court, seem[ed] to acknowledge that it was making a detour from Maryland variance law. *Id.* at 708.

Cromwell provides a roadmap for the analysis of an application for a variance:

> The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is - in and of itself - unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.,* a determination of whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness, exists.

> Further consideration must then be given to the general purposes of the zoning ordinance.

Id. at 694-95. "These general rules are recognized by BCZR 307.1." *Umerley*, 108 Md. at 506.

Subsequent cases have illuminated these principles. *Trinity* explains:

> To be "unique," a property must "have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, sub-surface 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." *Lewis v. Dept. of Natural Resources,* 377 Md. 382, 434 (2003) (italics omitted) (quoting *North v. St. Mary's County,* 99 Md. App. 502, 514, (1994)).

407 Md. at 81. The location of an existing structure, or house, cannot satisfy the uniqueness requirement. *North,* 99 Md. App. at 514 ("the 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property").

The Applicant's obligation to prove uniqueness requires the Board to define the neighborhood. Maryland's land use jurisprudence addresses the principle of a neighborhood in special exception, rezoning, and variance cases.[1] In a variance case, an

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[1] On April 22, 2016, the Court of Appeals granted certiorari on two issues related to the neighborhood in a special exception case arising out of Baltimore County:

> 1) Does Maryland's special exception jurisprudence require the Baltimore County Board of Appeals to define the boundaries of the neighborhood of the proposed special exception before approving that special exception? If so, did the Board of Appeals' opinion satisfied Maryland's minimum requirements for articulating the facts found regarding the neighborhood's boundaries? 2) Did CSA err in holding that the Applicant met its burden of proof, as articulated by the concurring opinion in *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54 (2008)?

Attar v. DMS Tollgate , Case No. 12, September Term, 2016.

applicant must prove that the subject property has characteristics that prevent the operation of the proposed use without a variance no other property in the neighborhood possesses. *Trinity*, 407 Md. at 81. ("To be 'unique,' a property must "have an inherent characteristic not shared by other properties in the area....").

A neighborhood is a defined area that is distinct from the larger community, or "general public." The concept of a neighborhood is flexible and its definition depends on the circumstances of each case. *Woodlawn Area Citizens Ass'n v. Bd. of County Comm'rs for Prince George's County*, 241 Md. 187, 198-99 (1966). A neighborhood "will vary according to the geographic location involved." *Montgomery v. Bd. of County Comm'rs for Prince George's County*, 263 Md. 1, 5 (1971). "[T]he neighborhood in any area must be an area which reasonably constitutes the immediate environs of the subject property." *Clayman v. Prince George's County*, 266 Md. 409, 418 (1972). Recognizing the flexible relationship between the location of a particular use and its surroundings, the courts have held that "in a rural or semirural area, the neighborhood is going to be larger and more fluid than in a city or suburban area." *Montgomery*, 263 Md. at 5 (citing *Hardesty v. Dunphy*, 259 Md. 718, 724-725 (1970)). In the same way that streets, highways, or other substantial physical barriers may define the boundaries between different zoning classifications, they may also be used to evaluate the geographic confines of a neighborhood. *Brown v. Wimpress*, 250 Md. 200, 205 (1968).

There is an important corollary to the uniqueness rule. The uniqueness must be the cause of the "the disproportionate impact of the ordinance." *Cromwell* at 694-95. Thus, Board "must ... determine whether an unreasonable hardship results from the

disproportionate impact of the ordinance." *Umerley v. People's Counsel for Baltimore Cty.*, 108 Md. App. 497, 506 (1996). In other words, the Applicant must first prove that every property in the neighborhood may have a kennel without a variance. Then, the Applicant must prove that she cannot have a kennel due to the unique characteristic of the Subject Property.

If the zoning tribunal determines that an applicant failed to prove the required uniqueness, the tribunal must deny the application. If the tribunal finds that an applicant proved uniqueness, it must evaluate "whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness, exists." *Cromwell* at 695.

BCZR section 307.1 identifies both the "practical difficulty" and the "unreasonable hardship" standards. The Court of Special Appeals has explained the difference:

> The determination of which standard to apply, "practical difficulties" or "undue hardship," rests on which of two types of variances is being requested: "area variances" or "use variances." Area variances are variances "from area, height, density, setback, or sideline restrictions, such as a variance from the distance required between buildings." *Anderson v. Bd. of Appeals, Town of Chesapeake Beach,* 22 Md. App. 28, 37 (1974). Use variances "permit[ ] a use other than that permitted in the particular district by the ordinance, such as a variance for an office or commercial use in a zone restricted to residential uses." *Id.* at 38. Because the changes to the character of the neighborhood are considered less drastic with area variances than with use variances, the less stringent "practical difficulties" standard applies to area variances, while the "undue hardship" standard applies to use variances. *See Loyola Fed. Savs. & Loan Ass'n v. Buschman,* 227 Md. 243, 249 (1961).

Montgomery Cnty. v. Rotwein, 169 Md. App. 716, 728-29 (2006).

Citizen-Protestants suggest that the Board apply the less rigorous practical difficulty standard here. The "practical difficulty" standard requires the applicant to prove that the need for the variance is substantial and urgent and not merely for the convenience of the applicant. *Carney v. City of Baltimore*, 201 Md. 130, 137 (1952).

Trinity reviewed the rules governing the "practical difficulty prong of the Zoning Code's variance standards":

> With respect to the practical difficulty prong of the Zoning Code's variance standards, the Board applied the factors that this Court articulated in *McLean v. Soley,* 270 Md. 208 (1973). In *McLean* we adopted, from Professor Rathkopf's treatise, a three-part inquiry to guide local zoning authorities in determining whether a landowner established this element:
>
> > 1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
> >
> > 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
> >
> > 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured. (citations omitted). The Board's use of the *McLean* test was not error. (citations omitted).

407 Md. at 83-84.

Whether an applicant for a variance is allowed to use his/her property for any purpose is relevant to the practical difficulty analysis. *Montgomery County v. Rotwein*,

169 Md. App. 716 (2006) examined a request for an area variance and stated, "the pertinent inquiry with respect to economic loss is whether 'it is impossible to secure a reasonable return from or to make a reasonable use of such property.'" *Id.* at 733 (citing *Marino v. City of Balt.*, 215 Md. 206, 218 (1957)). *Rotwein* concluded that the applicant had not demonstrated that "unless her application [for an area variance] is granted, it will be 'impossible [for her] to make reasonable use of her property.'" *Id.*

Finally, a self-imposed or self-inflicted hardship do not satisfy the requirement of a practical difficulty:

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

Cromwell, 102 Md. App. at 722.

Finally, if an applicant proves that the property is unique and that the applicant will suffer from a practical difficulty, the zoning tribunal must evaluate "whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners." *Trinity,* 407 Md. at 84.

ARGUMENT

I. The Board of Appeals should disapprove the application to amend the special exception because the Applicant is operating a "domestic animal sanctuary," which is not permitted by right or by special exception on R.C. 2 land totaling less than 7.5 acres.

The Applicant described a use that is more like a "domestic animal sanctuary" than a "private kennel." The dogs were not for "show, hunting, practice tracking, field or obedience trials." The Applicant testified, and the Board should find, that she rescued the dogs and was trying to find them a good home. Her secondary purpose was to keep the dogs as pets until she found a good home for them.

Citizen-Protestants urge the Board to conclude that the Applicant is operating a "domestic animal sanctuary. The Board should disapprove the applications because the Subject Property is 5.4 acres and BCZR section 1.1A01.2B(14) requires a minimum of 7.5 acres for a "domestic animal sanctuary."

II. The Board should deny the application for a variance because the Applicant failed to prove that the Subject Property has unique characteristics as compared to other properties in the neighborhood.

The Subject Property's size, topography, spring and stream are not unique characteristics as compared to other properties in the neighborhood, no matter what boundaries the Board selects for the neighborhood.

The Applicant's expert witness, Scott Lindgren, characterized the Subject Property as having the shape of a "bowl." Mr. Lindgren asserted that the Subject Property possessed a combination of characteristics that no other property in the neighborhood possessed. In contrast, Citizen-Protestants' expert witness, Bruce Doak, testified that the Subject Property possessed characteristics - steep slopes, a stream, and a house constructed on relatively flat ground – that other properties in the neighborhood possessed.

The Applicant failed to prove that the Subject Property is unique. If Neighborhoods I or II are the relevant neighborhood, the Applicant has failed to prove uniqueness because both Parcel 183 (Citizen-Protestants' property) and Parcel 186 also have a water course, steep slopes and a house built on relatively flat ground.[2] If Neighborhood III is the relevant neighborhood, the Applicant has failed to prove uniqueness because seven parcels in Neighborhood III, like the Subject Property, have steep slopes, a water course, and a house constructed on relatively flat ground: Parcel 101 (Citizen-Protestants' Exhibit 6); Parcel 95 (Citizen-Protestants' Exhibits 7-8); Parcel 24 (Citizen-Protestants' Exhibit 11); Parcel 212 (Citizen-Protestants' Exhibits 13-14); Parcel 281 (Citizen-Protestants' Exhibits 15-16); Parcel 275 (Citizen-Protestants' Exhibits 18-19); Parcel 277 (Citizen-Protestants' Exhibit 20).

Citizen-Protestants urge the Board to deny the application for a variance because the Applicant failed to prove that the Subject Property has unique characteristics as compared to other properties in the neighborhood.

III. The Board should deny the application for a variance because the alleged unique "bowl" shape in conjunction with steep slopes and a water course is not the cause of any "disproportionate impact of the ordinance."

The only evidence is that many, if not most, of the properties in the neighborhood are, for a variety of reasons, unable to construct a kennel without variance. The main reason most properties cannot build a kennel without a variance is the size of the parcel.

---

[2] Citizen-Protestants cite the parcel numbers from Applicants' Exhibit 7. These parcels are designated as Parcels 95 and 101 on Citizen-Protestants' Exhibit 4.

The parties agreed that the smallest property that could theoretically comply with the two hundred foot set back requirement is a square of 400 feet by 400 feet, or approximately 3.7 acres. (Testimony of Lindgren, Doak). Some parcels larger than 3.7 acres cannot have a kennel due to their shape.

The Applicant failed to prove that the zoning ordinance disproportionately impacts her. It does not matter whether the Board defines the neighborhood as Neighborhood I, Neighborhood II, or Neighborhood III. Neighborhood I has seventeen parcels. Mr. Lindgren testified that ten of the seventeen parcels, including the Subject Property, could not have a kennel without a variance because they were either too small or had the wrong shape.

Neighborhood II includes approximately 35 parcels. At least 13 parcels (Parcels 117, 118, 119, 100, 104, 102, 112, 111, 103, 105, 106, 107 and 108) are smaller than 3.7 acres and, therefore, could not have a kennel without a variance. (Citizen-Protestants' Exhibits 4, 9).

Neighborhood III includes 281 parcels. 156 of the 281 parcels are smaller than 3.7 acres and therefore could not have a kennel without a variance. There are additional parcels in Neighborhood III that, due to their shape, cannot satisfy the setback requirement for a kennel without a variance. (Testimony of Doak).

Citizen-Protestants urge the Board to deny the application for a variance because the alleged unique "bowl" shape in conjunction with steep slopes and a water course is not the cause of any "disproportionate impact of the ordinance." Moreover, the alleged unique "bowl" shape is merely a swale manifestation of the steep slopes.

IV. The Applicant has failed to prove that she will suffer a practical difficulty if she must comply with setback requirement.

The Board should disapprove the variance because the Applicant failed to prove practical difficulty for three separate reasons: the applicable law allows her to use the Subject Property in other permitted ways; the Applicant's need for kennel is not urgent; and the Applicant's alleged hardship was self-created.

The Board should disapprove the variance because the Applicant has options for by-right uses on the Subject Property. *Trinity*, 407 Md. at 83-84 (noting that variance might be appropriate if the owner could use the land for no permitted use).The Applicant lived in the House without the need for a kennel between 1994, when she purchased the Subject Property, and 1999 or 2000, when she began fostering dogs. That fact proves that she is able to reasonably use the Subject Property without a variance. She can use the Subject Property in other permitted ways, too. She can have up to three dogs. She can farm the land. She can keep horses there. She can operate a farmer's roadside stand, farmstead creamery and a home office. *See* BCZR 1A01.2B for list of uses permitted by right.

The Applicant failed to prove that the need for the variance is substantial and urgent, and not merely for her convenience. *Carney v. City of Baltimore*, 201 Md. 130, 137 (1952). Her stated purpose was to live with the dogs while she sought a good home for them. The Applicant testified that there is a "no-kill" shelter that would accept the dogs and provide a home for them without any risk that the dogs would be euthanized. But the Applicant prefers not to send the dogs to the "no-kill" shelter. Instead, she prefers

to live with the dogs in the House. Such a desire does not rise to the level of an urgent need.

Finally, any difficulty the Applicant faces regarding her ability to keep eleven dogs was self-imposed or self-inflicted. *Cromwell*, 102 Md. App. at 722 ("practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted"). The Applicant lived Subject Property between 1994 and approximately 2000 before she started fostering dogs. The Applicant created her own hardship when she increased the population of foster dogs to a number greater than three.

Citizen-Protestants urge the Board to deny the application for a variance because the Applicant has failed to prove that she will suffer a practical difficulty if she must comply with setback requirement.

V. This Board should disapprove the variance because the Applicant requested a far greater relaxation of the setback requirements that was necessary to give her substantial relief and be consistent with justice to the Citizen-Protestants.

Citizen-Protestants urge the Board to reject the variance because the Applicants failed to satisfy the requirements for a variance. Alternatively, the Board should disapprove the variance because the Applicant requested a far greater relaxation of the setback requirements than was necessary to give her substantial relief and be consistent with justice to the Citizen-Protestants.

Chairwoman Murphy instructed counsel to address (1) whether Maryland law required the Applicant to seek the smallest possible variance that would serve the Applicant's purposes and (2) whether the Board has the legal authority to grant a variance that is smaller than the Applicant requested.

Maryland law requires the Applicant to seek the smallest possible variance that would serve the Applicant's purposes. A zoning tribunal must evaluate "whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners." *Trinity*, 407 Md. at 84. *Accord* BCZR section 307.1 (Board may grant a variance "in such manner as to grant relief without injury to public health, safety and general welfare.").

The Board should disapprove the application because the Applicant seeks a variance that is far greater than is necessary to grant substantial relief to the Applicant. BCZR section 421.2 prohibits a kennel "within 200 feet of the nearest property line..." Nevertheless, the Applicant seeks a variance for all of the Subject Property except that portion of the Subject Property that is within fifteen feet of the property line. Bruce Doak described the footprint of a smaller variance, which would require the dogs to have ingress and egress from at least one of two doors at the front of the House facing Far Out Lane. Applicant's exhibits 4-17. The Applicant's witnesses opposed this suggestion on the grounds that it would require the dogs to go in a room with nice hard wood floors where the dogs are not now permitted.

The Board does have the discretion to modify the variance the Applicant seeks both in terms of the parameters of the variance itself as well as the discretion to add other restrictions on the configuration and operation of the kennel. *Cf In the Matter of the Application of Glen L. Durst, et ux, for a Special Exception fora Private Breeding Kennel*, Baltimore County Board of Appeals, No. 84-54-X. In *Durst*, the Board imposed the following restrictions on a kennel:

ORDER

For the reasons set forth in the foregoing Opinion, it is this 24th day of April, 1984, by the County Board of Appeals, ORDERED that the special exception for a Private Breeding Kennel petitioned for, be and the same is hereby GRANTED, subject to the following restrictions:

1. That the proposed kennel building be no bigger than 28' x 80' – as shown on Petitioner's Exhibit #1, and that it be orientated in the same manner as shown.

2. That the Petitioners shall totally enclose the proposed kennel, and that all dogs be kept inside this enclosure from dark until 7:00 a.m. to reduce the possibility of noise during normal sleeping hours.

3. That the kennel be allowed to be placed 205 feet from the southern property line instead of the 225 feet now shown.

4. That the kennel itself be insulated and soundproofed to the best possible degree, and that it be appropriately landscaped and maintained in order to obtain the maximum reduction of noise emanating from the kennel.

5. That the Private Breeding Kennel be just that, and that the kennel be used only for the breeding and care of Chow dogs. No other dogs are to be boarded at this site.

6. That the special exception herein granted is for a "Private Breeding Kennel" as opposed to a normal "boarding" kennel.

In the Matter of the Application of Glen L. Durst, et ux, for a Special Exception fora Private Breeding Kennel, Baltimore County Board of Appeals, No,-54-X, attached as Attachment 1.

V.1. Any variance relaxation granted by the Board to the Applicant should also be accompanied by fair and just restrictive relief to the Citizen-Protestants.

A proposal that might be the minimum necessary to grant substantial relief to the Citizen-Protestants would be a kennel that includes the entire House and an outdoor dog run that measures 40 feet by 100 feet which includes the following restrictions:

1. The dog run shall be located in the area shown in green on Attachment 2 at least 50 feet from the stream (shown in in blue).

2. The dog run shall be privacy-fenced at least 5 feet high to prevent dog escapes and further dampen noise.

3. Access to the dog run shall be restricted solely to the westernmost front door.

    a. To protect the Applicant's hardwood floors, an alternative door could be constructed in the Kitchen in the area circled in Attachment 3 (Applicant's Exhibit 2) requiring that the outdoor corridor diagramed in yellow on Attachment 2 be fenced and connected to the dog run.

    b. In no event shall the dogs be permitted ingress/egress from the back doors and garage facing the Citizen-Protestants' property except to permit their transportation to and from Applicant's property.

    c. Doggy-doors or other mechanical means enabling dogs to go outside without human supervision shall not be permitted.

4. The Applicant shall keep the dogs inside the House from 9:00 p.m. until 7 a.m. to reduce the possibility of noise during normal sleeping hours.

5. The dogs shall not be allowed outside without human supervision.

6. Dog feces shall be removed and sanitarily disposed daily.

Full arguments for the proposed restrictions are handicapped by the Board's prohibition on harm evidence which Citizen-Protestants shall respect. Nevertheless,

careful analysis of the evidence that was allowed should be sufficient to justify the restrictions as follows:

Argument for restrictions on the size and location of the outdoor dog run:

In seeking restrictive relief for the Citizen-Protestants, it was established that the Variance, if relaxed, should be the minimum necessary to provide reasonable relief to the Applicant. While Citizen-Protestants will not presume to set the minimum Kennel area, urging that none be allowed, it is reasonable to expect that the maximum area should NOT exceed the area that would originally have been allowed by the 200 foot setbacks had the need for a variance not existed in the first place. The area within this 200 foot setback area is 9650 square feet and is shown in Attachment 2 outlined in red. Moreover, allowing the Applicant's home as a *de facto* part of the kennel already provides almost 5200 square feet - over half of the original setback area (from SDAT records of above-ground area of 2696 sq. ft. + 2000 sq. ft. basement + 500 sq. ft. for garage – all accessible to dogs as per testimony except for front room with hardwood floors.) Given the indoor area already available to the dogs in the home, the maximum allowable outdoor area should be no more than about 4000 square feet.

Citizen-Protestants would actually prefer to reduce the area further based on the opinion of the Applicant's own Counsel when cross-examining Bruce Doak pertaining to Parcel 101 (on Citizen-Protestants Exhibit 6). During that examination, Counsel for the Applicant pointed out that said parcel would "permit a 15" x 71" feet dog run attached to the home" and described that area as "more than enough for an outdoor dog run". Yet

that area is only 1065 square feet, about one-quarter that proposed by the Citizen-Protestants, and less than 1/200th of the over 220,000 square feet (>5 acres) sought by the Applicant.

Argument for other proposed restrictions:

It should be clear from Citizen-Protestants' Exhibit 7 that Applicant's land topography and that of the Citizen-Protestants that the alleged "Bowl" shape resembles an amphitheater aimed at the Citizen-Protestants' home and tenant apartments. As such, it is reasonable to deduce that this topography tends to focus, echo, and amplify barking noise at the Citizen-Protestants and their tenants. As Bruce Doak testified, putting the outdoor part of the Kennel in the front yard in the sound-shadow of the Applicant's house would reduce this problem not only because the dogs will be much further from the Citizen-Protestants home but because the Applicant's house will absorb the noise and reflect it away from the Citizen-Protestants. Proposed privacy fencing of the dog run would clearly reduce noise further as well as prevent dog escapes.

The topography also obviously acts to drain all water runoff to the stream beginning on the Applicant's property feeding the 1 acre pond where the Citizen-Protestants and their tenants desire to swim and fish. As the Applicant and her landscaper Noah Price testified, dog feces is picked up only twice per week. By common sense it is reasonable to question how effectively that can be done on over 5 acres with the terrain and vegetation evidenced at the Hearing, especially when considering the unpredictable nature of precipitation.

Conclusion

For all of these reasons, Citizen-Protestants urge the Board to disapprove the variance.

Respectfully submitted,

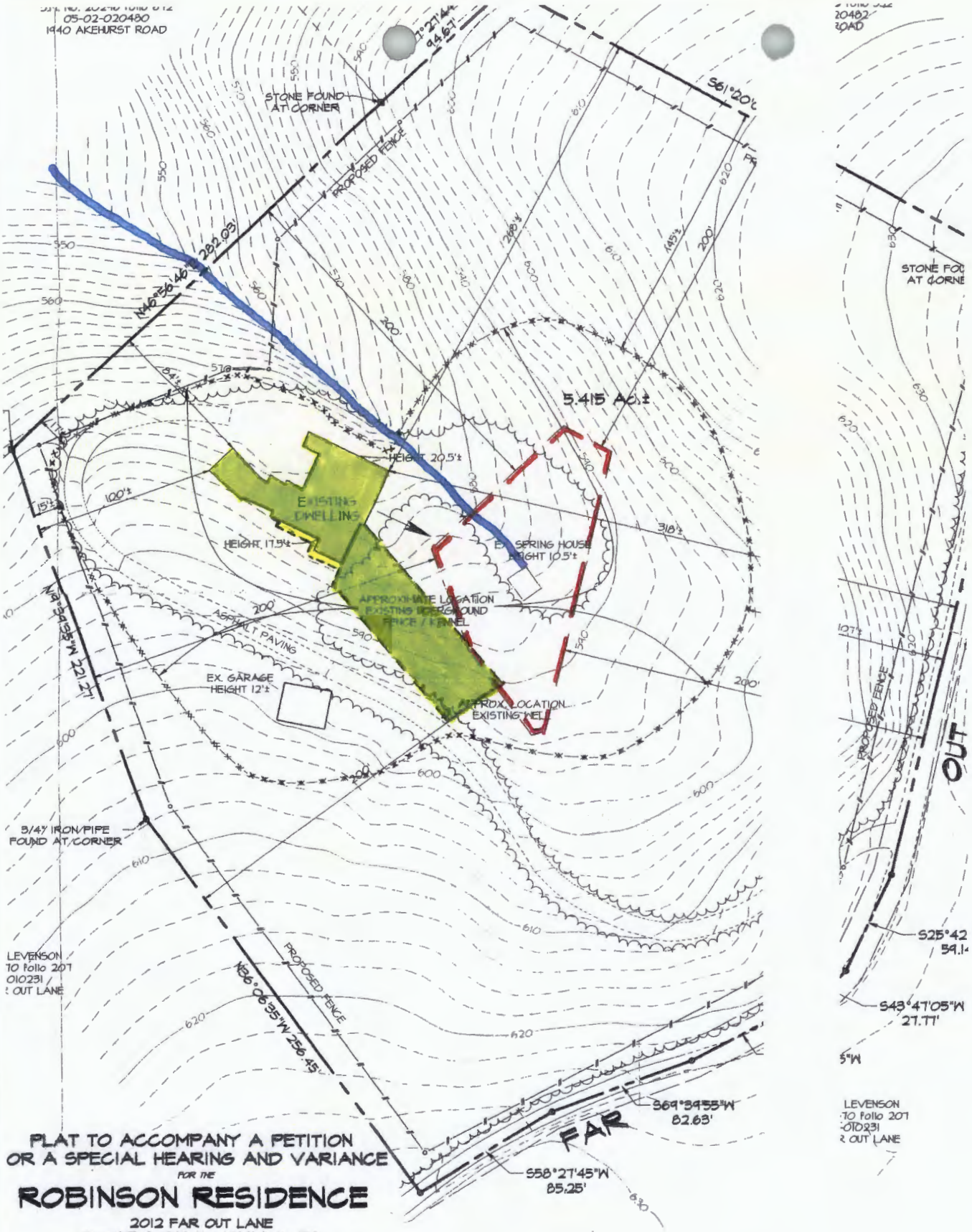
G. Macy Nelson
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204
(410) 296-8166
Attorney for Citizen-Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of May, 2016, a copy of the foregoing Memorandum of Citizen-Protestants was mailed, first class, postage prepaid, to:

Michelle J. Dickinson, Esquire
Law Office of Michelle J. Dickinson, LLC
10440 Little Patuxent Parkway, Suite 300
Columbia, Maryland 21044
Counsel for Applicant

G. Macy Nelson, Esquire



PLAT TO ACCOMPANY A PETITION
OR A SPECIAL HEARING AND VARIANCE
FOR THE

ROBINSON RESIDENCE

2012 FAR OUT LANE
Deed Ref: S.M. No. 10141 Folio 153
Tax Account No.: 05-14-010280
Zoned: RC 2; GIS Tile 027B2
Tax Map 0027; Grid 0015; Parcel 0182
5th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

GERHOLD, CROSS & ETZEL, LTD
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
PH: (410)823-4470 FAX: (410)823-4473

DATE: 8/27/14 SCALE: 1" = 50'

Diagram 1

(Modified from Original Plat Exhibit from Petitioner)

Actual Scale is 1" = 75.4'

because this Diagram is 65% of the size of the Original (where 1" = 50')

ATTACHMENT 2

ATTACHMENT 3

IN THE MATTER OF	*	BEFORE THE
CATHERINE H. ROBINSON	*	BOARD OF APPEALS
E/s Far Out Lane, approx. 1,475 feet SW	*	OF BALTIMORE COUNTY
of c/l of Akehurst Road	*	
2012 Far Out Lane	*	**Case No. 15-235-SPHA**
5th Election District	*	
3rd Councilmanic District	*	

* * * * * * * * * *

MEMORANDUM OF LAW

Petitioner Catherine H. Robinson, by her counsel, submits this Memorandum of Law in opposition to Andrew and Noreen Krause's ("Protestants") Appeal of the Variance from the setback requirements of B.C.Z.R. 421.1 granted by Judge Beverungen.

I. FACTS

A. Ms. Robinson's Dog Rescue

Catherine "Holly" Robinson has lived at 2012 Far Out Lane for over 20 years in a house built in 1920. Ms. Robinson, a well-known Pimlico race horse trainer, and her long-time friend and housemate, Kawana Swank, an emergency room nurse, have been rescuing dogs for over ten years – selflessly providing a necessary service to the community. While their intention was to address the dogs' immediate health and training needs and then find new homes for the dogs, they learned over time that older dogs and those with serious health issues often are difficult, if not impossible, to place. By 2014, Ms. Robinson and Ms. Swank found themselves with 12 dogs - from Poncho, a 14-year old deaf Chihuahua, to Cassie, a tumor-covered, crooked-legged old dog.[1]

B. The Special Exception

In 2014, in an effort to bring their long-time philanthropic endeavor into compliance with the B.C.Z.R., Ms. Robinson sought a special exception for a private (not commercial) kennel to permit her to have more than three dogs on her property. On December 18, 2014, after a hearing, Judge Beverungen granted a special exception for a private kennel with certain conditions (the

[1] As of the Variance Appeal hearing, they had 11 dogs, as they had found one dog a good home.

"Special Exception"). Specifically, once Ms. Robinson's total number of dogs, by either death or adoption, was reduced to ten, Ms. Robinson could have no more than ten dogs on her property. Further, Ms. Robinson was required to comply with B.C.Z.R. 421.1's requirement that any private kennel be located more than 200 feet from the nearest property line. Andrew and Noreen Krause ("Protestants"), whose property borders Ms. Robinson's property on the northwestern/rear side but whose home is approximately 350 feet through the woods and across a pond, raised noise and environmental concerns at the Special Exception hearing. Protestants, however, did not appeal Judge Beverungen's decision.

C. Ms. Robinson's Efforts to Comply with the Special Exception

Ms. Robinson's dogs are members of her family – her children. They live in the house with Ms. Robinson, Ms. Swank, and Ms. Swank's 14-year-old son. While there are certain rooms at the front of the house that the dogs do not have access to in order to avoid damaging her refinished hardwood floors and carpet, the dogs spend much of the day inside lounging on doggy beds in her large tile-floored kitchen or in the basement on the linoleum. *See* Petitioner's Exhibit ("Pet. Exh.") 2 (photographs of dogs in kitchen); *see also*, Appeal Hearing Transcript ("Tr.") attached hereto as Exhibit A (Days 1 and 2 separated by slipsheets), at (Day 2) 11:15-20, 25:8-18. All of the dogs sleep in the house at night, and three of the dogs sleep in Ms. Robinson's bed. Tr. (Day 1) 37:1-9. The other dogs sleep in Ms. Swank's bedroom in the basement. Tr. (Day 2) 12:8-13:16. There is no outside kennel structure.[2]

To further address the Protestants' concerns raised at the Special Exception hearing, Ms.

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[2] While there had been a shed behind Ms. Robinson's house close to the rear property line, which Ms. Robinson referred to as a "kennel", it has been replaced by a swim spa. Ms. Robinson referred to it as a kennel because she had on occasion years ago used it to hold a new dog before introducing it to the others. (Day 2) Tr. 31:5-23. Prior to its removal, it was used to store lawnmowers, tools, etc., which are now stored in the separate garage structure to the south of the house. *See*, Pet. Exh. 4-1, 4-13, 4-43, 4-45 (swim spa photos); Tr. (Day 1) 102:3-103:16.

Robinson installed a tall privacy fence on the northwest/rear side of her property between the property line and the parking pad and a portion of the driveway. Tr. (Day 1) 31:4-15; *see also,* Pet. Exh. 4-43, 4-44, 4-45 (privacy fence photos). She enclosed the rest of the property with a split rail and wire fence with an electric wire running at the top of the split rail. Pet. Exh. 4-45, 4-46 (split rail fence photos); *see also*, Pet. Exh. 5 (video).

Ms. Robinson's entire house is located less than 200 feet from the northwestern/rear property line. *Id.* The area on Ms. Robinson's property that is 200 feet or more from the nearest property line is an irregularly shaped area in front of Ms. Robinson's house (the "Special Exception Area"). Pet. Exh. 6 (site plan). It is denoted by dashed lines on the site plan. *Id.* In order to comply with the Special Exception and B.C.Z.R. 421.1, Ms. Robinson thus was required to construct a separate kennel structure for the dogs to live in year-round and to locate their outside doggy exercise areas within the Special Exception Area.

While the Special Exception Area is large enough for a separate kennel structure and doggy exercise area, Ms. Robinson soon learned that she could not comply with B.C.Z.R. 421.1. The unusually severe topography, more fully described below, prevented her from building a kennel structure within the Special Exception Area for two reasons. First, B.C.Z.R. 400.1 requires accessory structures to be located in the rear. Noah Price, of Price Landscaping, testified that Baltimore County would not issue permits to build the year-round kennel structure because it would be located in front of the house in violation of B.C.Z.R. 400.1. Tr. (Day 1) 31:16-25; Tr. (Day 1) 93:10-95:14.

Second, the Special Exception Area is located in a wetlands area with a stream running through it. Baltimore County thus would not issue permits because of environmental issues as well. Tr. (Day 1) 93:10-95:14. Indeed, it is undisputed that Ms. Robinson cannot build a kennel structure in the Special Exception Area, as Protestants' expert, Mr. Doak, testified at the Appeal Hearing that

Baltimore County and DEPS would not approve the construction of a structure large enough to house the dogs within the Special Exception Area. Tr. (Day 2) 84:25-85:4.

D. The Variance

Since Ms. Robinson could not build a kennel structure, she sought a variance from B.C.Z.R. 421.1's requirement that any private kennel be located 200 feet from the nearest property line. Specifically, Ms. Robinson sought a variance to permit her to continue to use as the private kennel the portion of her property surrounded by an underground invisible fence, which includes her house – essentially, to maintain the status quo of the past 10+ years.

The invisible fence is denoted on the site plan by double x's separated by hash marks ("xx-xx-xx-xx"), which were highlighted in yellow at the hearing before the Board of Appeals. *See* Pet. Exh. 6. The underground fence forms a continuous kidney-shaped loop from the northern side of Ms. Robinson's house, around the rear parking pad, along a portion of the driveway long enough to allow the dogs to safely access the front yard to do their "business", around a portion of the front yard and then back around to the north side of the house. *Id.* Due to the location of the driveway and the dogs' need to use it to access the front yard, the invisible fence comes as close as 15 feet from the property line near the western corner of the property. *Id.*

The invisible fenced area necessarily includes the parking pad behind the house and approximately half the length of the driveway because the dogs can only exit the house through doors located at the rear (northwest/rear side) of the house onto the parking pad and through the attached garage onto the driveway using a ramp. *See, e.g.*, Pet. Exh. 5 (video); Tr. (Day 2) 10:12-12:4. Due to the severe terrain of the property, the dogs can only safely access the yard, which is in front of Ms. Robinson's house, by walking up the relatively gentler slope of the driveway on this steeply sloped property. *See, e.g., id.;* Pet. Exh. 4-6, 4-10 (garage photos), 4-44 (driveway photo); 4-7 (front yard photo); Tr. (Day 2) 10:12-12:4. There is no door on the north side of the house. Tr.

(Day 2) 16:10-13; Pet. Exh. 4-19 (north side photo, also showing portion of parking pad). While there is a door in the kitchen on the southwest side of the house, the slope outside the kitchen door is so steep that the dogs would have to scale high retaining walls or navigate multiple sets of steep steps to get to the yard. *See, e.g.,* Pet. Exh. 5 (video); Pet. Exh. 4-16 (retaining wall/stairs photo); 4-18 (slope from side driveway down to front of house photo); Tr. (Day 2) 10:20-11:14. This would be impossible for many of the old and infirm dogs, even in good weather. *See* Pet. Exh. 5 (video); Tr. (Day 2) 10:20-11:14. There also are doors that lead to the patio in front (east side) of the house (designated by an arrow on the site plan), but the dogs are not permitted in those front rooms to protect the refinished hardwood and carpet floors in those rooms. *See* Pet. Exh. 5 (video); Pet. Exh. 4-17, 4-4 (front house photos); Tr. (Day 2) 11:15-20. Accordingly, the dogs must have access to the parking pad and driveway within the existing invisible fence area. Tr. (Day 2) 11:21-12:4.

In advance of the variance hearing, the Department of Planning initially recommended a 100-foot setback as a compromise to address the noise concerns raised by the Protestants at the Special Exception hearing. After observing that that the dogs could not exit the house except through the rear and up the driveway and that Ms. Robinson had installed a tall privacy fence behind her parking pad and rear portion of her driveway to address the Protestant's noise concerns, the Department of Planning revised its recommendation to approve the variance for a 15-foot setback. The Department of Planning's initial and revised recommendations are a part of the original Variance file.

After a two-day evidentiary hearing, during which Protestants, who were represented by counsel, were permitted to testify and introduce evidence regarding noise and environmental concerns, Judge Beverungen granted the variance to permit Ms. Robinson to maintain the status quo. Judge Beverungen required as a condition that the dogs be kept in the house when no one is home, which they have done.

E. The Variance Appeal

Protestants appealed Judge Beverungen's decision granting the variance. On April 19 and 20, 2016, the Board of Appeals held a *de novo* hearing during which Ms. Robinson, Ms. Swank, professional landscaper Noah Price, and expert witness Scott Lindgren testified in support of the variance. Bruce Doak testified as an expert on behalf of Protestants. Many of Ms. Robinson's neighbors attended the hearing in support of the variance. The Board heard testimony and evidence on the issue of the uniqueness of Ms. Robinson's property and the resulting disproportionate impact of B.C.Z.R. 421.1 on her property.

1. The Subject Property

The physical characteristics of Ms. Robinson's property are undisputed. Ms. Robinson's property is located at 2012 Far Out Lane in Sparks, Maryland. Her property is pentagonal in shape and approximately 5.4 acres. Pet. Exh. 6 (site plan). It is rural and zoned RC-2 (Agricultural). *Id.* Unlike other properties in the area, however, the topography of Ms. Robinson's property is unusually severe. Scott Lindgren, an expert in zoning, development, and surveying, testified that Ms. Robinson's property has three topographically-steep slopes - at the front/east side and northeast and southeast sides - which create a drainage basin with a discharge at the bottom of the resulting "bowl". Natural springs daylight on the slopes of the "bowl", creating a wetlands area in the center of the "bowl". As such, the only buildable area in the center of the property is located at the rear of the parcel, within 200 feet from the rear property line. *See* Pet. Exhs. 6 (site plan) and 5 (video); Tr. (Day 1) 143-144. Mr. Doak, Protestants' expert, agreed that due to these physical characteristics of Ms. Robinson's property, she could not construct a kennel structure within the Special Exception Area. Tr. (Day 2) 84:25-85:4 and 122:2-8.

2. Other Properties In The Neighborhood

Mr. Lindgren compared Ms. Robinson's property to the other properties in the surrounding

neighborhood. Mr. Lindgren defined the surrounding neighborhood to include 24 properties located on Far Out Lane, Akehurst Road, Abell Lane and Yeoho Road, to which he attributed a "village feel". *See* Pet. Exh. 7 (neighborhood site plan); Tr. (Day 1) at 145:21-146:18. Mr. Lindgren compared Ms. Robinson's property to each of the other properties in the neighborhood and pointed out how in his expert opinion Ms. Robinson's property was different. *See generally,* Tr. (Day 1) 146:24-157:24. Mr. Lindgren testified that in his expert opinion no other property in the neighborhood has the same combination of characteristics as Ms. Robinson's property – that Ms. Robinson's property is unique. Tr. (Day 1) at 155:20-157:24. Specifically, not one other property in the neighborhood has the combination of (1) sufficient acreage to accommodate a private kennel without a variance (3.6 acres); (2) three topographically-steep sloping sides creating a drainage basin with a discharge at the bottom of the resulting "bowl", (3) a stream through the center of the property discharging at the bottom of the "bowl", (4) natural springs daylighting on the slopes of the "bowl", creating a wetlands area in the center of the "bowl", and (5) the only buildable area of the property being located at the back and within 200 feet of the back property line necessitating the building of a separate structure for the private kennel and in front of the house. *See* Pet. Exh. 7; Tr. (Day 1) 146:19-157:24. *See also,* Chart attached hereto as Exhibit B, summarizing Mr. Lindgren's testimony regarding each property in the surrounding neighborhood.

By contrast, Mr. Doak compared Ms. Robinson's property to other properties in a "neighborhood" that spanned over 40 square miles and included properties ranging from .03 acres to almost 150 acres and properties with various zoning including RC-2, RC-4, RC-5, RC-8, and commercial properties. Hearing Tr. (Day 2) 102:21-24; *see also* Protestants' Exhibit ("Prot. Exh.") 10 (map of 40 square mile "neighborhood"). While Mr. Doak ultimately narrowed his analysis to a 5+ square mile portion of the "neighborhood", he admitted that none of the 281 properties in that "neighborhood" had the same combination of characteristics as Ms. Robinson's property –

essentially, that her property is unique. *See* Pet. Exh. 9 (Mr. Doak's list of 281 properties, each of which Mr. Doak marked out in pink to show they do not have the same characteristics as Ms. Robinson's property); *see also,* Chart attached hereto as Exhibit C summarizing Mr. Doak's testimony regarding seven "neighborhood" properties, which he compared to Ms. Robinson's property; Tr. (Day 2) 125:25-151:9.

Mr. Doak suggested that the Board "split the baby" and grant Ms. Robinson a variance to use a much smaller portion of her property for the private kennel than she was originally granted and has used for the past 10+ years. Specifically, he suggested limiting the private kennel to the Special Exception Area, the house, and the property in between comprised mostly of flagstone patio. *See* Pet. Exh. 8 (proposed reduced variance area outlined in pink); Tr. (Day 2) at 94:3-14. Mr. Doak conceded that this would only be possible if Ms. Robinson were to change her living arrangements to give all 11 dogs access to her front rooms, which have always been off-limits to protect Ms. Robinson's nice floors.[3] Hearing Tr. (Day 2) 86:24-87:4. Mr. Doak further conceded that his proposal would not actually have any positive impact on Protestants' noise and environmental concerns (already addressed in the Special Exception hearing). He admitted that his proposed reduced variance area would not reduce any noise but instead would almost completely eliminate the dogs' access to the side of the house that buffers the sound of the dogs when outside.[4] *See* Pet. Exh. 8 (orange line denoting sound between Ms. Robinson's house and Protestants' house; area of property where sound currently is buffered by Ms. Robinson's house in green; area where

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[3] Mr. Doak also suggested that his proposed reduced variance area might be extended to include the kitchen door, but then conceded that the dogs could not traverse the steep retaining walls or steps immediately outside the kitchen door, such that this would not be a viable option. Hearing Tr. (Day 2) 85:14-86:18.

[4] Mr. Doak further suggested that reducing the area of the variance would move the dogs farther away from the neighbor closest to Ms. Robinson's driveway, Ms. Levinson; however, Mr. Doak acknowledged that Ms. Levinson attended the hearing in support of Ms. Robinson, such that this was not a valid concern. Hearing Tr. (Day 2) 87:5-88:6.

sound would be buffered by house with reduced variance area shaded in orange); Hearing Tr. (Day 2) 93:8-95:11. Further, Mr. Doak conceded that restricting the dogs to the property in front of Ms. Robinson's house would not address any environmental/runoff concerns, as the 11 dogs would continue to use the bathroom the same number of times a day and would be required to do so closer to the Protestant's property. Hearing Tr. (Day 2) 96:21-99:5. Essentially, Mr. Doak conceded that nothing positive would be accomplished – certainly nothing effecting the health, safety or general welfare – by reducing the variance area.

II. ARGUMENT

B.C.Z.R. 307.1 establishes a two-step process for granting area variances. As explained in Cromwell v. Ward, 102 Md. App. 691 (1995), and its progeny, an "area" variance should be granted where: (1) the property is unique or different from other neighboring properties; and (2) the petitioner will experience a practical difficulty if the variance is denied. Ms. Robinson's property thus must be "unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property." Cromwell v. Ward, 102 Md. App. 691, 694-95 (1995); *see also* Mueller v. People's Counsel for Baltimore County, 177 Md.App. 43, 70 (2007); Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore Cty., 178 Md. App. 232, 242, *aff'd,* 407 Md. 53 (2008). Ms. Robinson's property has met this test.

A. Ms. Robinson's Property Is Unique.

1. Mr. Lindgren Properly Defined Ms. Robinson's "Neighborhood"

To determine whether Ms. Robinson's property is unique, the Board must compare Ms. Robinson's property to other properties in the surrounding neighborhood. Ms. Robinson is not aware of any caselaw specifically defining the term "neighborhood". Indeed, courts have defined "neighborhood" in only vague and varying terms. *See e.g.,* Cromwell v. Ward, 102 Md. App. at

707-08 (referring to both "surrounding properties" and "adjoining property"); Riffin v. People's Counsel for Baltimore Cty., 137 Md. App. 90, 98, 767 (2001) ("other properties in the area").

While not specifically defined by B.C.Z.R. 307.1 or caselaw, it is beyond reasonable dispute that to be relevant to the uniqueness analysis, properties must be located in the same general vicinity and share some similar characteristics such as zoning or use such that they would readily be recognized as a neighborhood. Ms. Robinson's expert witness, Mr. Lindgren, testified that the relevant neighborhood was the village-like area in which Ms. Robinson's property is situated, consisting of 24 properties on Far Out Lane, Akehurst Road, Abell Lane, and Yeoho Road which share the same zoning and similar uses. This is the appropriate neighborhood in which to conduct the uniqueness analysis.

Protestant's expert witness, Mr. Doak, testified that so long as an area was bounded in some way, such as by roadways or natural waterways, and shared some commonalities, any sized area could constitute a neighborhood. In fact, Mr. Doak initially testified that the relevant neighborhood was a 40+ square mile area, based on the area being bounded by the major roadways of I-83, Falls Road, Mt. Carmel and Belfast Roads. Prot. Exh. 10 (large map); Tr. (Day 2) 103:21-24.

Mr. Doak testified that he ultimately focused on seven properties in an over-five square mile subset portion of the "neighborhood". Tr. (Day 2) 115:3-12. Two of the properties were addressed by Mr. Lindgren as part of the "neighborhood". (Note - Parcels #95 and #101 on Prot. Exh. 4 are the same as P.183 and P. 186 on Pet. Exh. 7). Mr. Doak admitted, however, that two of the other properties he identified were so far away from Ms. Robinson's house that they were not even located in his larger 40-square mile "neighborhood". *See* Prot. Exh. 4; Tr. (Day 2) 106:2-13. Specifically, Parcels #275 and #277 are beyond Falls Road. *Id.* Parcel #281 is so far away it required a separate map. *See* Prot. Exh. 15. Properties in Mr. Doak's "neighborhood" further included various zoning, from commercial to RC-2, RC-4, RC-5, and RC-8. Mr. Doak's seemingly

boundless "neighborhood" of unrelated properties is far outside the bounds of reasonableness and should be disregarded, and Mr. Lindgren's "neighborhood" should be the adopted.

Indeed, even if the Board were to adopt Mr. Doak's view that the neighborhood should be bound by major roadways and/or waterways, the nearest such boundaries are Black Rock Run, Stringtown Road, Yeoho Road, and Tracy's Road. *See* Prot. Exh. 4. Expanding the "neighborhood" to those boundaries would not change the proper analysis, as none of the properties identified by Mr. Doak other than #95 and #101, which all parties agree are within the neighborhood, are located within those natural boundaries. Accordingly, properties #212, #277, #275, #281, and #24 are not properly within the neighborhood and should be disregarded.

2. Ms. Robinson's Property Is Unique As Compared To Other Properties In Her Neighborhood

The characteristics of Ms. Robinson's property are undisputed. While Ms. Robinson's property has sufficient acreage and shape to accommodate a private kennel without a variance (3.6 acres or more), the site is comprised of three topographically-steep sloping sides creating a drainage basin with a discharge at the bottom of the resulting "bowl". Further a stream runs through the center of the property discharging at the bottom of the "bowl", and natural springs daylight on the slopes of the "bowl" creating a wetlands area in the center of the "bowl". Finally, the only buildable area of the property is located at the rear of the parcel, within 200 feet of the rear property line, necessitating the building of a separate structure for the private kennel in the front of the house.

Not one other property in Ms. Robinson's neighborhood has the equivalent combination of characteristics/development constraints. Mr. Lindgren painstakingly testified about each of the properties in the neighborhood and concluded that in his expert opinion, Ms. Robinson's property was unique. The Chart attached as Exhibit B clearly identifies the differences. Indeed, Protestants' expert, Mr. Doak, admitted that none of the properties in the neighborhood, as defined by Mr. Lindgren, share the same characteristics as Ms. Robinson's property. While Mr. Doak identified

P.186 and P.183 (Protestants' #101 and #95) as possible similar properties, he conceded that P. 186 and P.183, which is more than three times the size of Ms. Robinson's property, are not comprised of three topographically-steep sloping sides creating a drainage basin with a discharge at the bottom of the resulting "bowl". Further, while P.186 and P.183 have streams, they do not have a stream running through the center of the property discharging into the bottom of the bowl or natural springs daylighting on the slopes of a bowl and creating a wetlands area. And, neither property has the limitation of the only buildable area being located at the rear of the parcel, within 200 feet of the rear property line, such that a separate structure would have to be built for a private kennel in front of the house. Indeed, P.183, which is Protestants' property, has a large area that is 200 feet off the property line and which contains multiple dwellings. Further, a substantial portion of the house on P.186 is located 200 feet off the property line. Accordingly, Ms. Robinson's property is unique as compared to the other properties in her neighborhood.

It is telling that Protestants felt compelled to stretch the definition of "neighborhood" to an area of 40-square miles in an effort to prove that Ms. Robinson's property is not unique. Even then, Protestants were unable to identify a single parcel that shared the unique combination of characteristics of Ms. Robinson's property. While Protestants' definition of "neighborhood" is patently improper, it is undisputed that the five additional properties Protestants identified outside the relevant neighborhood admittedly do not share the same combination of characteristics of Ms. Robinson's property. Specifically, Parcels #24, #281, and #275 are too narrow and # 212 does not have sufficient acreage to accommodate a private kennel without a variance. Further, none of the five properties has three topographically-steep sloping sides creating a drainage basin with a discharge at the bottom of the resulting "bowl". They do not have a stream running through the center of the property discharging into the bottom of the bowl or natural springs daylighting on the slopes of a bowl and creating a wetlands area. And, not one of those properties has the limitation

of the only buildable area being located at the rear of the parcel, within 200 feet of the rear property line, such that a separate structure would have to be built for a private kennel in front of the house. Accordingly, Ms. Robinson's property is unique even as compared to the 281 properties reviewed by Protestants. *See* Pet. Exh. 9 (where Mr. Doak crossed out all 281 properties on list because they do not have the same characteristics as Ms. Robinson's property).

B. Ms. Robinson's Property Is Disproportionately Impacted By B.C.Z.R. 421.1 Due to Its Uniqueness

The uniqueness of Ms. Robinson's property causes B.C.Z.R. 421.1 to impact disproportionately upon her property as compared to other properties in the neighborhood. Ms. Robinson's property has sufficient acreage and shape to accommodate a private kennel 200 feet from the closest property line and, indeed, she obtained a Special Exception to enjoy this permitted use. Unlike the other properties in her neighborhood that have sufficient acreage and shape, however, B.C.Z.R. 421.1's requirement that the private kennel be located 200 feet off the property line prohibits Ms. Robinson from using her property as a private kennel at all. Specifically, due to the peculiar topography of Ms. Robinson's property described herein, her entire house necessarily is located closer than 200 feet from the property line and thus B.Z.C.R. 421.1 prohibits her from using any portion of her house as the private kennel. Instead, she must build a separate structure for the dogs at the center of the property – in front of her house. B.C.Z.R. 401.1, however, prohibits accessory structures in the front of the house and further it is undisputed that Baltimore County and DEPS would not approve such a structure because it would have to be located in a marshy wetlands area at the bottom of the bowl created by three topographically-steep sloping sides on her property, which no other property in the neighborhood has. Accordingly, Ms. Robinson is disproportionately impacted by B.C.Z.R. 421.1 and would suffer a practical difficulty without the area variance as

granted by Judge Beverungen,[5] as she will be unable to use her property for a permitted purpose – a private kennel.[6]

C. The Board Should Approve the Variance for the Entire Area Requested

Protestants contend that the Board of Appeals must limit any variance to the minimum area necessary to accomplish the property owner's goal. Protestants thus contend that the Board should limit Ms. Robinson's variance to the Special Exception area, the house, and the flagstone patio in between.

While it appears the Board has power to modify a variance upon appeal, *see* Halle Co. v. Crofton Civic Assn., 339 Md. 131, 140-41 (1995), Ms. Robinson is aware of no applicable law, regulation or caselaw supporting Protestants' position that variances in *Baltimore County* must be limited to the minimum area necessary. Indeed, B.C.Z.R. 307.1, contains no such language. B.C.Z.R. 307.1 provides:

> The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require

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[5] An "area" variance seeks relief from height, area, setback or property line restrictions. The practical difficulty standard applies to area variances. *Anderson v. Bd. of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28 (1974).

[6] Further, without a variance, Ms. Robinson must get rid of (and possibly euthanize) eight of her dogs. While that may not technically constitute a "practical difficulty", it certainly would be a horrific fate for the innocent dogs and their loving owners, including a fourteen year old boy, Kaden, who consider them family.

> public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification.[1] Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance.

Compare Anne Arundel County Code, Article 3, Section 2-107(c)(1) (variance in critical area must be "the minimum variance necessary to afford relief"); Montgomery County Zoning Ordinance § 59-G-3.1 (Montgomery County variance must be "the minimum reasonably necessary to overcome [certain] exceptional conditions"). Indeed, Mr. Doak testified that while he encourages clients seeking a variance to request the minimum area needed, he does so in order to avoid objections, not because of any legal requirement. Baltimore County specifically did not include language requiring a minimum variance in its regulations, and such a requirement should not be imposed on Ms. Robinson in this case.

Further, reducing the area of Ms. Robinson's private kennel would be detrimental to Ms. Robinson and would serve no beneficial purpose to the neighborhood or even Protestants. Indeed, Protestants' proposed reduced kennel area would pose an insurmountable hardship on Ms. Robinson and her dogs, while providing no real benefit to the Protestants or the community. First, if the variance area were reduced, the dogs would have no way of exiting Ms. Robinson's house. The only doors that would be available would be at the front of the house. With the exception of three of the dogs at bedtime, Ms. Robinson's 11 dogs do not have access to the front rooms of her home. Certainly, she should not be compelled to allow 11 dogs to track dirt and mud through her bedroom and ruin her carpet or refinished hardwood floors where to do so would not address any health, safety or welfare concern.

Mr. Doak's reason for limiting the variance area to the house and a small portion of the front yard was to reduce barking noise traveling to Protestant's house and to reduce doggy waste runoff onto Protestants' property. This is not a proper basis for limiting Ms. Robinson's variance area.

Indeed, while Ms. Robinson strongly disputes Protestants' suggestions that there is any noise or environmental issue, and Judge Beverungen agreed in the Special Exception hearing, it is undisputed that the proposed reduction in variance area would actually provide less sound buffering by the house, as the dogs would be more in line with Protestants' house if confined to the front yard. Further, it is undisputed that confining the dogs to proposed reduced area would have no positive impact on runoff.

Indeed, Ms. Robinson did request the minimum area necessary. While she could have requested a variance to use her entire 5+ acres as a private kennel, she did not. She requested that the private kennel be limited to an area that comes as close as 15 feet from the nearest property line but indicated in the site plan that the dogs would continue to be confined within the area surrounded by the underground electric fence which includes her home.

Granting of a variance in this case would be in strict harmony with the spirit and intent of the Baltimore County Zoning Regulations and can be accomplished without injury to the public health, safety or general welfare. Accordingly, Ms. Robinson respectfully requests that the Board of Appeals affirm Judge Beverungen's decision granting a variance from the 200-foot setback requirement of B.C.Z.R. 421.1 and permit her to use her house and the outside area currently confined by an underground electric fence, which is no less than 15 feet from the nearest property line as depicted on the site plan, for her private (not commercial) kennel.

Respectfully submitted,

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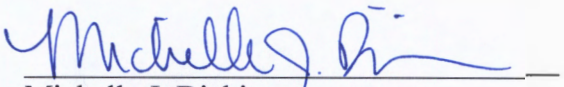
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of May, 2016, a copy of the foregoing Memorandum of Law was delivered via regular mail, postage prepaid to:

G. Macy Nelson
Law Office of G. Macy Nelson, LLC
401 Washington Ave.
Suite 803
Towson, MD 21204

Counsel for Andy and Noreen Krause



Michelle J. Dickinson

Exhibit A

DAY 1

IN THE MATTER OF:

CATHERINE ROBINSON
CASE NUMBER: 15-235-SPHA

Hearing Date: April 19, 2016

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:

MAUREEN E. MURPHY, CHAIRMAN

BENFRED B. ALSTON, BOARD

JASON S. GARBER, BOARD

PRESENT ON BEHALF OF THE PARTIES:

ON BEHALF OF THE APPELLEES/PETITIONER:

MICHELLE J. DICKINSON, ESQUIRE

ON BEHALF OF THE APPELLANTS/PROTESTANTS:

G. MACY NELSON, ESQUIRE

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

do and be legal. I wanted to, to, to be, I wanted to be legal and I don't think I really knew what I was but, you know, maybe I was legal but I didn't know and I wanted to pursue that.

MS. DICKINSON: Okay and once you got the special exception, what did you do in order to try to comply with the Court's Order?

MS. ROBINSON: I put in a privacy fence, I put in another fence that goes around my property. I, has, I also have an electric fence that goes around the property inside the wooden fence further back, further in and we, there was a kennel there that was, we call it a kennel, we kept all the lawn mowers in it, but we took that down because it was too close to Mr. Krause's property and we put a swim spa there so we took down any structures that might have been an eye sore for him.

MS. DICKINSON: Now, the, the special exception required that your, your private kennel be located two hundred feet off the property line so what did you do in order to try to comply with that?

MS. ROBINSON: Noah, my landscaper and I discussed it, and he went to Baltimore County and applied, tried to apply for a, a permit to build a kennel and they didn't even let him get through the front door, no way, where it was had to be and he went with all the plat and the, the drawings and everything and said no.

CHAIR: All right and then they go outside and I guess and use the yard or?

MS. ROBINSON: They go outside and use the yard and they're within the, the electric fence and that's it. They're not, at night time, they're, I have to get up very early because I train race horses, I have to be up early so therefore my dogs, we go to bed early. That house is shut down and we, the dogs go to their different rooms, wherever they sleep, and they go to bed.

CHAIR: Okay and what about dog waste, how are you dealing with that?

MS. ROBINSON: Waste, I have a doggie septic system in place where you put the, the septic in there and Noah Price, who is my landscaper, put that in and his man come through several times a week to put the dog waste away, to rake it up.

BOARD: And what is this septic system again? You say some men come in and rake up the dog waste?

MS. ROBINSON: Yeah, and put it in --

BOARD: But a septic system, is it like a septic system for normal houses? I mean, I'm not, I'm trying to understand what it (inaudible).

MS. ROBINSON: I am too. I saw him and it's something that you put in, the waste in, the, the septic system and it goes in there and they have something that the enzymes or something that dissolves it.

you need a guard rail?

MR. PRICE: Yeah, if you went off that turn, coming down, the drive is pretty steep right through there, so you're going to, if you went off the turn, you would need a guard rail to stop you from continuing into the woods.

MS. DICKINSON: So a few more questions for you, Mr. Price, and we don't need the projector on any longer. If you would like to see better with the lights.

CHAIR: Okay.

MS. DICKINSON: You, Mr. Price, you heard Ms. Robinson testify about trying to put a kennel structure in that private kennel area as it now, well, as it stood before she got the variance. What was your role in any of that?

MR. PRICE: I had my guys go down and measure out two hundred feet off the, each, off each side of the property line and we flagged off a square which was two hundred feet off each property line, which was basically right in the front where the springhouse is and the drainage ditch and everything. I went down on 12, 12/8 of '14 to, I mean, I, excuse me, I went down on 12/11 of '14 to see about getting a permit or find out whether the existing kennel where the swim spa is now, was permitted and, anyway, at that time, is when I spoke to the, the people in, in permits about being able to put a kennel in the front yard and I was cut short, basically told that a kennel cannot be, any structure can, in Baltimore County,

cannot be built in the front yard. So that was the extent of, you know, my involvement with trying on, on, on that.

MS. DICKINSON: Now, did you talk with anybody there in Baltimore County about the topography or the wetlands issue or any of that?

MR. PRICE: Well, in, in amongst our con --

MR. NELSON: Ms. Chair, may I be heard? Madam Chair?

CHAIR: All right.

MR. NELSON: I'm thinking hearsay. I don't know what the Chair's preference is on hearsay. I understand the various schools of thought but this is hearsay on a, an important issue, I respectfully suggest. Could they do it? He's going to say, I'm guessing, I was told by some unknown person that I couldn't. So --

CHAIR: Well, the question was asked whether he spoke with someone about topography and wetland issues as opposed to what did the person say. So we're not going to hear what the person said in Baltimore County, but the question was proper in that, did you speak with someone? He was there, he can testify. Did he speak with someone? Did he? Yes, and then that's it. Go ahead. Overruled.

MS. DICKINSON: Thank you, Your Honor. So did you speak with anybody about the topography or environmental issues on the property?

MR. PRICE: Yes, I did. I mean, in amongst the, you

know, our conversations with the --

MR. NELSON: Object.

CHAIR: Okay. You're not to tell us about what someone said, you're just telling us about what you did.

MR. PRICE: Yes, I asked him about getting a permit to put a kennel in the front and I was --

MR. NELSON: I object.

CHAIR: Okay. Go ahead, sir. Overruled.

MR. PRICE: Basically told that --

CHAIR: Well, you can't tell us what you were told.

MR. PRICE: Well --

CHAIR: That was it.

MS. DICKINSON: Were you able to obtain a permit?

MR. PRICE: No.

CHAIR: Okay.

MS. DICKINSON: Okay, all right. Your Honor, at this point I have no further questions for this witness.

CHAIR: Sir, let me ask you. You say you measured two hundred feet off the property line, right?

MR. PRICE: Yes.

CHAIR: So you've got a five acre or so parcel, right? And so you measured two hundred feet off of the entire boundary, all the way around?

MR. PRICE: All the way around.

CHAIR: Isn't there, is there anywhere else that

MR. PRICE: I don't know.

BOARD: Okay.

BOARD: And if I can jump in, did I understand correctly that prior to it being a swim spa, it was a shed of some type?

MR. PRICE: Shed, it was just a --

BOARD: And that shed was being used for the dogs?

MR. PRICE: No, the, the, the existing shed was basically a metal, it had a roof, open sides.

BOARD: Oh, okay, (inaudible) metal roof.

MR. PRICE: Yeah, and she was just using it for storage, no dogs.

BOARD: Okay.

MR. PRICE: It was, I don't, I mean, it may have been used for one dog or whatever back in the day but as long as I've been there, it was for nothing but storage.

BOARD: The dimensions have been roughly the same?

MR. PRICE: Yes, nothing changed. The concrete slab, the, the swim spa is on, is, was the size of the, the existing structure that was there.

MS. DICKINSON: And, Mr. Price --

BOARD: And in any event, sorry, in any event, that's within the two hun, that's within two hundred feet of the property line?

MR. PRICE: Yes, yeah. That, that existing kennel

would have been, I'm going to say roughly thirty-five to forty feet, if that, off, off, off of the rear property line.

BOARD: So when you say the where, that's where the (inaudible) when you say existing kennel, what are you referring to by existing kennel?

MR. PRICE: Well, the, the, the structure that was there.

BOARD: Okay. So the structure that was there before became the swim spa, is about thirty-five to forty feet from the property line?

MR. PRICE: Yeah, yeah, yeah.

MS. DICKINSON: So what is closer, the house or the, the swim spa, which used to be a structure from the property line?

MR. PRICE: The swim, swim spa is closer to the, to the property line than the house.

MS. DICKINSON: Okay. Can you point out where the swim, where the house is first on this plat?

MR. PRICE: The house is here.

CHAIR: Why don't you, why don't you indicate for the record what, what it says on the plat?

MR. PRICE: It says existing dwelling.

MS. DICKINSON: And where is the, in relation to the existing dwelling, where is the privacy fence, the eight foot or so privacy fence?

MS. DICKINSON: And then what is, how would, and that's the area that you've already described, is that correct?

MR. LINDGREN: Yes.

MS. DICKINSON: The sort of marshy area?

MR. LINDGREN: Um hm.

MS. DICKINSON: Okay and, and so how many sides does this bowl have?

MR. LINDGREN: Three, one to, it's a, how do I describe it.

MS. DICKINSON: If you'd like to get up and point to it, that might be easier.

MR. LINDGREN: This portion slopes from the north east corner of the property down towards the center. The south west corner, or southernmost corner, falls towards the springhouse and the point where the driveway meets Far Out Lane falls towards the springhouse and the slopes come from the north east and south west, converging in the middle of the property to the swale that goes in a north westerly direction.

MS. DICKINSON: And do you know how steep those slopes are, each one of those three that you just pointed out?

MR. LINDGREN: I have no measured them. I believe this one is about a thirteen percent slope and that's probably the gentlest slope on the property. Some of these over here are probably in the fifteen to sixteen percent range.

CHAIR: Well, if you haven't measured them, then how

do you know that?

MR. LINDGREN: Just looking at the, how close together the contour intervals are.

MS. DICKINSON: And what about in the front of the property where the out is for Far Out Lane?

MR. LINDGREN: Do you mean opposite the existing barn on the property across the street and --

MS. DICKINSON: Yes, but on her property, yes, going (inaudible) --

MR. LINDGREN: On her property, it falls off pretty quickly from the road in that area.

MS. DICKINSON: And, and is that denoted by the, the lines being closer together?

MR. LINDGREN: Yes.

MS. DICKINSON: Okay and so if, is it more than a fifteen percent, in your opinion, slope there?

MR. LINDGREN: Probably. I have not measured it.

MS. DICKINSON: Okay. Have you had the opportunity to look at the topography of other properties in the area?

MR. LINDGREN: Not setting foot on the properties, but I have looked at some of the County information that is available on the internet, County GIS, my neighborhood.

MS. DICKINSON: Okay and have you prepared an exhibit of that area?

MR. LINDGREN: I have.

MS. DICKINSON: Okay. Is it over here? I have one for each of you.

CHAIR: Oh, okay.

MS. DICKINSON: Or you can just have one, whatever you would prefer.

CHAIR: I'll take three.

MS. DICKINSON: (inaudible).

(RUSTLING OF PAPER - CANNOT HEAR WHAT IS BEING SAID)

MS. DICKINSON: We tried to make it as awkward as possible.

CHAIR: There's no easy way. We're trying to be quiet so the microphone, we have three microphones up here, and that they're not going to hear this. We can do what we can do. Go ahead.

BOARD: We can start the questioning, yeah, once everyone is situated with the, with the maps, just so it's, the noise doesn't get, doesn't drown out the question and answers.

CHAIR: All right.

BOARD: We're all good?

CHAIR: Go ahead, go ahead.

MS. DICKINSON: Thank you, Your Honor. Mr. Lindgren, can you identify what has been marked as Petitioner's Exhibit 7, please?

MR. LINDGREN: This is a plan I prepared utilizing the Baltimore County GIS digital information and the numbers

and P's are the parcel numbers from Maryland State Department of Taxation's website.

MS. DICKINSON: And which property on this Exhibit 7 is Ms. Robinson's property?

MR. LINDGREN: The one outlined in the bolder lines.

MS. DICKINSON: Okay and the little dotted line area that's on her property, what is that?

MR. LINDGREN: The triangular, trapezoid or whatever, that is the area that meets the two-hundred-foot setback requirement.

MS. DICKINSON: Okay, thank you. Now, why did you choose this area, this neighborhood, to compare to Ms. Robinson's property?

MR. LINDGREN: I looked at this because this is kind of the character of the Akehurst Lane, Far Out Lane area, you know, you expand out, there's some larger properties, there's some smaller properties, there's some large farms. This kind of almost creates like a little village feel in this area.

MS. DICKINSON: Okay. What I would like you to do is I'd like to walk through these parcels with you and have you compare each parcel to Ms. Robinson's, if that pleases the Court?

CHAIR: (inaudible).

MS. DICKINSON: So what if we start at the top with the P-148. How does that property compare to Ms. Robinson's

property?

MR. LINDGREN: It's smaller, it's more rectangularly shaped, there's no stream or wetland on the property and it has no area that would meet the two-hundred-foot setback requirement.

MS. DICKINSON: Okay and what about the next, the next parcel, P-180?

MR. LINDGREN: That one is smaller. Again, according to the GIS, does not have a stream on it, does not have an area that would meet the two-hundred-foot setback.

MS. DICKINSON: Okay and what about, and I'm sorry, but do either P-148 or P-180 have the bowl effect encompassing the property?

MR. LINDGREN: No.

MS. DICKINSON: And what about P-179, how does that compare to Ms. Robinson's property?

MR. LINDGREN: That was even smaller yet, no streams, consistent slope, no area to meet the setback requirement.

MS. DICKINSON: When you say consistent slope, that rules out the bowl effect, is that correct?

MR. LINDGREN: Yes, it's more of a even.

MS. DICKINSON: And, and so then P-183, can you compare that to Ms. Robinson's property, please?

MR. LINDGREN: It's considerably larger, it has a, I would consider, a large pond on it. It does have some streams

running through it. It has, I believe, I've, I've never set foot on the property so I believe there's a house with a couple of outbuildings, a large area that would meet the requirement of a two-hundred-foot setback for a kennel.

MS. DICKINSON: And does that, what, how is that denoted, the two hundred foot offset?

MR. LINDGREN: The short dashed lines that almost mirror the property lines within, that's the area that meets the two-hundred-foot setback.

MS. DICKINSON: And does this property, the P-183, does it have that sort of bowl effect that we see on Ms. Robinson's property?

MR. LINDGREN: No.

MS. DICKINSON: Okay and do you know whose property that is?

MR. LINDGREN: I do not. The, I believe the, from my recollection when I was looking at the tax records, that's owned in a corporation. I don't know who the entities of that corporation are.

MS. DICKINSON: Okay. When you look at P-281, how does that compare with Ms. Robinson's property?

MR. LINDGREN: Similarly sized but with the shape, it does not have an area that meets the two-hundred-foot setback requirement. If I could get up and look closer? There's, there --

BOARD: Sir, please turn when you're testifying.

CHAIR: Yeah, just keep your voice up because it's, the recording is trying to pick up.

MR. LINDGREN: Sorry. There's no bowl effect on the property.

MS. DICKINSON: And can you tell if there is a stream or a water source on that property?

MR. LINDGREN: GIS shows a stream starting on 183, whether that is actually further uphill or not, I don't know, I'm at the mercy of the GIS information but it is possible that a stream may start further to the north.

MS. DICKINSON: But there's nothing on this map that suggests that that's the case, correct?

MR. LINDGREN: No.

MS. DICKINSON: And you're not aware of anything that suggests that?

MR. LINDGREN: I have not set foot on the property so I don't know.

MS. DICKINSON: Okay. Looking up at the top, P-189, can you compare that property to Ms. Robinson's property, please?

MR. LINDGREN: It's a little bit larger in size but it is wider and less deep. It does not have any area that meets the two-hundred-foot setback, no bowl effect.

MS. DICKINSON: Okay and, thank you, and then P-21,

can you compare that to Ms. Robinson's property, please?

MR. LINDGREN: Smaller, no bowl effect, does not have an area that meets the two-hundred-foot setback.

MS. DICKINSON: And what about P-190, how does that compare to Ms. Robinson's property?

MR. LINDGREN: It's a little bit smaller, it's rectangularly shaped, does not have a bowl, does not have an area that meets the two-hundred-foot setback.

MS. DICKINSON: Okay and then P-313, which is all the way over on the right.

MR. LINDGREN: Um hm.

MS. DICKINSON: Can you compare that to Ms. Robinson's property, please?

MR. LINDGREN: That's considerably smaller, no bowl effect, no area that meets the setback requirements.

MS. DICKINSON: Okay and what about P-211, how does that compare to Ms. Robinson's property?

MR. LINDGREN: It's smaller, it, area where the house is located is a rectangular shape, it does appear to have a triangular piece up along the road, which I have no idea why it's there. But it does not appear to have a stream, doesn't have a bowl effect and does not have an area that meets the setback requirement.

MS. DICKINSON: Okay and P-32, going down on the right now and sort of swinging around, can you compare that to

Ms. Robinson's property, please?

MR. LINDGREN: Smaller in size, does not have a bowl effect, it cannot meet the setback requirement, does not appear to have a stream or wetland on it.

MS. DICKINSON: Okay and P-187, which looks like does not have a house on it, but how does that compare to Ms. Robinson's property?

MR. NELSON: What number, I'm sorry?

MS. DICKINSON: 187.

BOARD: Could I ask to?

MS. DICKINSON: Yes?

BOARD: Where your map is?

MS. DICKINSON: Do I have the, my apologies.

BOARD: I, I just want to make sure that the microphone is not underneath.

MS. DICKINSON: Yes.

BOARD: Thanks.

MS. DICKINSON: It was. My apologies.

BOARD: That's okay.

MR. LINDGREN: It does not appear to have a house on it, at least at the time that the County GIS information was generated. A stream does appear to begin on the property. Does not have an area that would meet the setback requirement for a kennel.

MS. DICKINSON: And is there, does it have that whole

bowl effect, P-187?

MR. LINDGREN: I mean, it doesn't appear to me that it does.

MS. DICKINSON: Okay and then moving on to P-186, how does that property compare to Ms. Robinson's property?

MR. LINDGREN: It's larger, it has a larger area that would meet the setback requirement. It has an area that could be utilized for a private kennel in the rear yard.

MS. DICKINSON: Okay and does that property have the bowl effect on the whole property?

MR. LINDGREN: I would say that it doesn't.

MS. DICKINSON: Okay and then we're going to jump back, if, if it pleases the Court, to P-3, 33, on the right hand side, down at the bottom, the P-33.

MR. LINDGREN: That one is triangularly shaped, it's smaller in size, does not appear to have a stream, does not have an area that meets the two-hundred-foot setback requirement.

MS. DICKINSON: Okay and can you compare P-306 to Ms. Robinson's property, please?

MR. LINDGREN: That one, at least when this GIS was generated, was prepared, was vacant. It's very oddly shaped, does not have an area that meets the setback requirement, does not appear to have a stream or a bowl effect.

MS. DICKINSON: Okay and P-342, can you compare that

to Ms. Robinson's property, please?

MR. LINDGREN: It's triangularly shaped, it's considerably smaller, does not have an area that meets the setback requirement, does not have a bowl effect.

MS. DICKINSON: And what about P-170, would you compare that, please?

MR. LINDGREN: Smaller in size, no area that meets the setback requirement, does not have a bowl effect, does not appear to have streams or wetlands.

MS. DICKINSON: And I believe that brings us to P-31, can you compare that, please?

MR. LINDGREN: I believe that was similarly sized but it is long and narrow, has a stream in the back on it, what appears to be on the opposite side of Akehurst Road, does not have an area on the property that would meet the setback requirement, does not have the bowl effect.

MS. DICKINSON: Okay and then we're at P-197, which is next door to Ms. Robinson's property. Can you compare that to Ms. Robinson's property, please?

MR. LINDGREN: I believe that one is vacant.

MS. DICKINSON: Okay.

MR. LINDGREN: It has a stream that starts at the north east corner and flows onto Parcel 183 but does not have the bowl effect encompassing the entire property. It does have an area that meets the setback requirement but since it is

vacant, a house could be constructed that a kennel could be placed in the rear yard.

MS. DICKINSON: Okay and coming down to P-42-A down at the bottom, would you compare that to Ms. Robinson's property, please?

MR. LINDGREN: It's larger in size, it does not have the bowl effect, it does not appear to have any streams or wetlands on the property.

MS. DICKINSON: Okay and P-191, would you compare that to Ms. Robinson's property, please?

MR. LINDGREN: It's a little bit smaller, does not have the bowl effect, it does not have an area that meets the setback requirement and doesn't appear to have any streams or wetlands.

MS. DICKINSON: Okay and P-42-B, which is to the left as we're looking at the map, from Ms. Robinson's property?

MR. LINDGREN: Yes, that was vacant as well, I believe, does not have the bowl effect, does not appear to have any streams or wetlands. It does have a small area that could meet the two-hundred-foot setback requirement but since it is vacant, a house could be constructed that the area for the kennel could be placed in the rear yard.

MS. DICKINSON: Okay and I think that leaves one, which is P-199, which is directly above P-42-B.

MR. LINDGREN: Yes, I'm not sure who owns that one,

that one appears to be landlocked, unless it's owned by one of the adjacent owners. It has a stream running through the property but does not have the bowl effect, appears to be a little bit larger and does have an area that meets the two-hundred-foot setback requirement, but since it is vacant, if a house is constructed there, it could utilize that, it's to be in the rear yard.

MS. DICKINSON: I believe we've hit all the properties, is that right, in this neighborhood?

MR. LINDGREN: I think we have, yes.

MR. NELSON: I missed one. What parcel did you address, please, between 42-A and 42-B, what's that?

MS. DICKINSON: 191.

MR. NELSON: 191, thank you.

MS. DICKINSON: Which was in the bottom left hand corner.

MR. NELSON: I see it, yeah.

MS. DICKINSON: Okay.

MR. NELSON: Thank you.

MS. DICKINSON: Mr. Lindgren, having looked at all of the properties in the neighborhood with the GIS and compared them to Ms. Robinson's property, which you've actually testified that you've been on more than one time, are you aware of any other properties in this neighborhood that have the same combination of issues that Ms. Robinson's property has?

MR. LINDGREN: Not that I'm aware of.

MS. DICKINSON: And when I say combination of issues, I mean the issues that we have just gone over with respect to these properties, the bowl effect, the stream or wetlands area, the steep terrain, am I missing anything? The ability to put the --

MR. LINDGREN: The ability to put a kennel in the rear yard.

MS. DICKINSON: Okay and so those are the factors that you looked at?

MR. LINDGREN: Yes.

MS. DICKINSON: And you don't see any other property in this neighborhood that has the same combination of issues, is that correct?

MR. LINDGREN: No.

MS. DICKINSON: Okay. Your Honor, may I take one moment, please?

CHAIR: Sure.

MS. DICKINSON: Thank you very much. Thank you, Your Honor.

CHAIR: Is that all the questions you have?

MS. DICKINSON: I have just one or two more.

CHAIR: Oh, sure.

MS. DICKINSON: Thank you. Mr. Lindgren, when we talk about the bowl effect, can, can you describe what, just to

make sure that we're all on the same page as to what the bowl effect is on Ms. Robinson's property? What, can you describe the terrain?

MR. LINDGREN: Right, if you're standing at the point where the stream exits the property on the north side and look to the south, out towards Far Out Lane, you would actually see almost being encompassed by the grade of the land, almost creating what you would appear to be standing in the center of a bowl and trying to look out.

MS. DICKINSON: And so those, the land that, when you're standing there, the land that is in front of you and to your left and to your right --

MR. LINDGREN: As you go to the left, to the right and in front of you, it all rises fairly steeply.

MS. DICKINSON: And how does that effect sort of the buildability, if that is a word, of her property?

MR. LINDGREN: Well, it's extremely difficult to build on steep slopes, the stream bisecting the property, EPS would have required setbacks from a stream or wetland, really not a good place on the property to build anything.

MS. DICKINSON: Okay and, and did you see any other property here that had that bowl effect as the entire, encompassing the entire property?

MR. LINDGREN: No, I did not.

MS. DICKINSON: Okay. Thank you, Your Honor. At

Day 2

IN THE MATTER OF:

CATHERINE ROBINSON
CASE NUMBER: 15-235-SPHA

Hearing Date: April 20, 2016

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 09:30 AM.

PANEL PRESIDING:

MAUREEN E. MURPHY, CHAIRMAN

BENFRED B. ALSTON, BOARD

JASON S. GARBER, BOARD

PRESENT ON BEHALF OF THE PARTIES:

ON BEHALF OF THE APPELLEES/PETITIONER:

MICHELLE J. DICKINSON, ESQUIRE

ON BEHALF OF THE APPELLANTS/PROTESTANTS:

G. MACY NELSON, ESQUIRE

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

MS. DICKINSON: Okay. Do you park cars back there?

MS. SWANK: Yes, we do.

MS. DICKINSON: Okay and then there's already been testimony that this area that wraps around where it says asphalt paving all the way up to the front of the property that that is your driveway, is that correct?

MS. SWANK: Correct.

MS. DICKINSON: Okay. So am I correct that the underground fence actually hugs the back side of the driveway behind the house?

MS. SWANK: Yes, it does.

MS. DICKINSON: Okay and so when the dogs come out the back of the house, how do they get to the area to use the grass for what they do?

MS. SWANK: They can either come through the garage door and come down the ramp or they can come out the dog door, which is on that side of the house.

MS. DICKINSON: This back side?

MS. SWANK: Yes.

MS. DICKINSON: Okay. Now, we saw a picture and actually on the video, we saw a video that showed some very steep steps that were wood and sort of a concrete it looked like and, and they were embedded in a retaining wall. Did you see that?

MS. SWANK: Yes.

MS. DICKINSON: Okay. Now, is that on this, this side of the house?

MS. SWANK: Yes, it is.

MS. DICKINSON: Okay and, and so could the dogs, if, if Mr. Nelson's or the Pet, the Protestant's idea were to be followed and the dogs were no longer allowed to come out the back or the garage, could they come out that side door and come up those steps?

MS. SWANK: It would be difficult in, if there were any type of weather because the steps go straight up, that's the side with the retaining wall, the steps go straight up so if there was any kind of weather or if it's an aged dog, which most of our, we don't have any really young dogs, it would be difficult.

MS. DICKINSON: Okay and, and so, but there is a whole front side to this house, correct? Why couldn't they come out the front side of the house?

MS. SWANK: Because those are the rooms that they're, they don't have access to. We have hardwood floors that are refinished, we don't allow the dogs in there.

MS. DICKINSON: Okay. So is it your testimony that the only way for the dogs to safely get out of the house is through the garage and the back door?

MS. SWANK: Correct.

MS. DICKINSON: And if we were to nip in, or reduce

this area of the, the, the variance, or the special exception, excuse me, so that the dogs could only be at the front of the house, could they get out of the house?

MS. SWANK: No, no.

MS. DICKINSON: Thank you. Your Honor, I will turn the witness over to opposing counsel.

CHAIR: All right. Cross, Mr. Nelson?

MR. NELSON: Okay. Ms. Swank, thank you for that information. The rooms that are in the front of the house, you say have hardwood floors?

MS. SWANK: Correct.

MR. NELSON: Okay and you don't want the dogs on the hardwood floors for what reason?

MS. SWANK: The, the floors are refinished, they're, they would scratch the floors.

MR. NELSON: Okay.

MS. SWANK: And those are rooms that we've never let the dogs in.

MR. NELSON: Right, so these are rooms for people with nice hardwood floors?

MS. SWANK: Correct.

MR. NELSON: All right and because you want to reserve those rooms for people and preserve the finish on the floors, you want to have the dogs go out the back of the house?

MS. SWANK: In the existing, the dog door.

MR. NELSON: Okay.

MS. SWANK: And out the garage with the ramp.

MR. NELSON: Okay. Now, those rooms are for people but three rooms, three of the dogs sleep in Ms. Robinson's bedroom, do they not?

MS. SWANK: Correct.

MR. NELSON: How many dogs sleep in your bedroom?

MS. SWANK: Let me think. Eight dogs.

MR. NELSON: In your bedroom?

MS. SWANK: Correct.

MR. NELSON: So none in Kaden's?

MS. SWANK: Correct.

MR. NELSON: Now, with respect to the finish on the floor, let me ask this question. Downstairs where the dogs are, what's the floor?

MS. SWANK: It's linoleum.

MR. NELSON: All right. But you could put a carpet on the hardwood floors, could you not, in the front to protect them from the claws?

MS. SWANK: I guess you could.

MR. NELSON: But you don't want to?

MS. SWANK: Correct.

MR. NELSON: But you like the aesthetics of the beautiful floor?

MS. SWANK: Correct.

MS. SWANK: There is a door there.

CHAIR: Okay. Is there any other doors on that side of the house?

MS. SWANK: No.

CHAIR: There's a little jut out right to the front of the house, do you see, move your finger over to the right a little bit, there's a jut out. What is that? Is that a window or is that just --

MS. SWANK: That's, no, that's Holly's bedroom.

CHAIR: Okay. Okay. The other side of the house, which is the north side, you see the arrow, the north side, is there any door over there?

MS. SWANK: There are no doors on that side.

CHAIR: Okay. Okay and in the front of the house, we, we were looking at the pictures yesterday that were presented and let me just show you four, do you have 4-17?

BOARD: Sure.

CHAIR: Yeah, there we go. So, again, just, I'm going to hand you Exhibit 4-17, Petitioner's 4-17. Is that the front of the house?

MS. SWANK: That, that's what I consider the front of the house and I think that's, does this arrow indicate front?

CHAIR: It does.

MS. SWANK: Yes.

CHAIR: So that's the front?

MS. SWANK: The dogs couldn't get to the area with the septic. There, there's one that's, it would be very close, it's right off the end of Holly's room. If you came directly off of there, I guess that one would be considered out of the area. The one up here inside the driveway just off the corner of the garage would be inside the area that they're talking, they're proposing.

MS. DICKINSON: Where do the dogs hang out when you're at the house?

MS. SWANK: The dogs usually want to be with us. If we're, if I'm outside, they'll be outside. If I go in the house, they'll want to be in the house with us. They just, they hang around with us.

MS. DICKINSON: And where do you spend most of your time when you're at the house?

MS. SWANK: My room is downstairs so --

MS. DICKINSON: Downstairs in the basement?

MS. SWANK: In the basement, yes.

MS. DICKINSON: Okay.

BOARD: Let me ask one thing. Hy, hypothetically, since the structure that was supposed to be built pursuant to this Order, number four, if the structure had been built then, then the septic systems would have been outside of the area, except for two --

MS. SWANK: If the structure was built in the middle

CHAIR: Well, I, it's all right, because I asked the question. I apologize, I, I've expanded the scope because I asked the question so we'll let you follow-up.

MS. DICKINSON: I'll be quick.

CHAIR: And then we'll let you follow-up, Mr. Nelson.

MS. DICKINSON: But what was that structure used for? It's been called the kennel, it's been called a shed, and I think it got a little confusing.

MS. SWANK: It, it was used as storage by us. It was a good place to put all of our rakes and shovels and things of that nature.

MS. DICKINSON: So why was it ever referred to as a kennel?

MS. SWANK: Because you could have, you could have used it as a kennel. Our dogs, we're, we're trying to get them out of that, you know, that's our whole goal, to get them out of that life so, you know, we didn't use it as a kennel.

MS. DICKINSON: Did you ever use it as a holding place when you had a new dog?

MS. SWANK: We had used it as a holding place maybe overnight, the first night that they got there, until we could introduce them to our dogs, but no, it wasn't used, you know, beyond that scope.

MS. DICKINSON: Okay. Thank you, Your Honor.

CHAIR: All right. Any questions, Mr. Nelson?

a size.

MR. DOAK: If you would build something less, ten by ten, which would be a shed, you wouldn't even have to have a permit. So in terms --

MS. DICKINSON: Right, but ten by ten isn't big enough for --

MR. DOAK: No, ma'am, that's right.

MS. DICKINSON: -- that many dogs, correct?

MR. DOAK: That's correct.

MS. DICKINSON: And, and so is it your testimony today that, that the dog, that, that Ms. Robinson could not build a dog kennel to house that many dogs in what is right now the special exception area outlined in, outlined in blue on Protestant's Exhibit 22 because of the wetlands?

MR. DOAK: She could utilize the garage as a kennel.

MS. DICKINSON: The garage that is all the way on the --

MR. DOAK: Yes, ma'am. You asked me if, if she could have a building in, within the blue.

MS. DICKINSON: Well, I'm sorry, I'm talking about within the --

MR. DOAK: Oh, I'm sorry.

MS. DICKINSON: -- two hundred foot set off area.

MR. DOAK: No, she could not.

MS. DICKINSON: Okay. She could not, so that the

record is clear, because I muffed it up really badly, is your testimony that Ms. Robinson cannot build a kennel structure to house all of her dogs within the two hundred foot set off area?

MR. DOAK: No, ma'am, she cannot.

MS. DICKINSON: Okay, thank you. And so what you are proposing is that she be allowed to use the house and then an extended portion outside of the two hundred foot setoff area so that they can get from the house to that grassy area, correct?

MR. DOAK: She has the right to use the two hundred foot setoff offset area already.

MS. DICKINSON: Um hm.

MR. DOAK: And it would be everything in addition which is outlined in green.

MS. DICKINSON: Okay. How are the dogs getting out of the house?

MR. DOAK: They can come out the front if, if she would make it possible. Or we could expand that just a little bit so they could walk around the edge of the house.

MS. DICKINSON: Okay. So, now you heard the testimony, I believe, of Ms. Swank that, and you saw the video yesterday, correct?

MR. DOAK: I did.

MS. DICKINSON: Okay and so you, and, and you also read these maps much easier than I do, don't you?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: And so is it correct that on the sort of the west, south west side of the house, this long side, that there is a steep hill or a slope?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay and, and is that where the retaining wall is?

MR. DOAK: It is.

MS. DICKINSON: All right and the steep steps, isn't that correct?

MR. DOAK: And the steep steps.

MS. DICKINSON: Okay.

MR. DOAK: Yep.

MS. DICKINSON: And, and so where would you propose that the dogs get to this area that you have created for a smaller variance if they are not allowed in those front rooms, which is the current case?

MR. DOAK: Well, I don't know how to do it other than utilize the, the front entrance.

MS. DICKINSON: Okay. But you --

MR. DOAK: Or, or, or her, I was, the testimony was that there was also a, a door in her room so we would have to work that out, but my, my, my testimony is that she could do it if possible and that's all I was trying to show.

MS. DICKINSON: So I think what you're saying is that it is physically possible for the dogs to go into the area that

you propose if Ms. Robinson changed her living arrangements and allowed the dogs to go in the front rooms where they are not currently allowed.

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay and what is the reason for reducing this area?

MR. DOAK: First place, if I remember correctly, and I can look it up, 307 requires, Section 307 requires that when applying for a variance, that you do have to think about welfare of the neighbors, the health, wealth and safety so in turn, I'm trying to find an area that would allow her to still have the dogs in an area that she's already utilizing but then may be able to get them away from Mr. Krause's property or the other adjoining property, that's all I was trying to do.

MS. DICKINSON: What other adjourning property are you talking about?

MR. DOAK: This property.

MS. DICKINSON: Now, who is this property owned by?

MR. DOAK: Mr. Lindgren has this as Mr. Levinson.

MS. DICKINSON: Okay. It's actually Ms. Levinson, Judy Levinson.

MR. DOAK: Ms. Levinson, I apologize.

MS. DICKINSON: Have you spoken with Ms. Levinson?

MR. DOAK: Oh, no, ma'am, no, ma'am.

MS. DICKINSON: Okay. You notice which side of the

room she's sitting on, right?

MR. DOAK: She's on the bride's side.

MS. DICKINSON: The bride's side, right, okay and so are you aware of any concerns that Ms. Levinson has with the dogs being in the current configuration?

MR. DOAK: No, ma'am.

MS. DICKINSON: Okay.

MR. NELSON: Object to relevance.

CHAIR: Overruled.

MS. DICKINSON: Okay and, and so this whole entire side here of property and I am looking at the south west side of Ms. Robinson's house, that property is owned by her neighbor, Ms., Ms. Levinson?

MR. DOAK: That's correct.

MR. NELSON: I'm sorry, is the Levinson house there or is it somewhere else?

CHAIR: Well, I don't think it's time for you to ask questions.

MR. NELSON: Well, I object because there was, I object --

CHAIR: You can ask, why don't you, why don't you, okay, why don't you ask questions on re, re-direct?

MR. NELSON: Well, it was an objection because the question had a premise in that there was a house there and I object to that premise.

you very much.

CHAIR: Would you like to?

MS. DICKINSON: Yes. So I will mark this as Petitioner's Exhibit --

BOARD: I'll tell you in a second.

MS. DICKINSON: Thank you.

BOARD: That would be eight.

MS. DICKINSON: Thank you very much, Your Honor. Just on the issue of noise, and you have your trusty pens, thank you. If I may use one of your pens here. I am going to draw a line from Mr. Krause's house to Ms. Robinson's house. Does this orange line that I just drew on Petitioner's Exhibit 8, does that accurately reflect sort of the line of noise so to say, so to speak, from Mr. Krause's house to Ms. Robinson's house?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay and, and so why don't you come up here, if you will, please and use your green pen and draw the areas that would, would be behind Ms. Robinson's house in relation to Mr. Krause's house.

MR. DOAK: What did we say this was, what exhibit?

BOARD: That's Petitioner number eight.

MS. DICKINSON: That's Petitioner's Exhibit 8.

MR. DOAK: Eight. Petitioner's eight, I am drawing lines extending from the footprint of Petitioner's house in a

direction away from Mr. Krause's house that shows the area that would be most buffered by the house itself.

MS. DICKINSON: Okay and before you sit down, if, if you will, please, using what you have colored in on Protestant's Exhibit 22, if you will simply outline the area of what you propose to be the variance, I, I would appreciate that.

MR. DOAK: The whole kennel area.

MS. DICKINSON: The whole kennel area.

MR. DOAK: Okay.

MS. DICKINSON: Including, as you testified, including the house.

MR. DOAK: Petitioner's eight, I am outlining in pink my proposed area for the kennel.

MS. DICKINSON: And then, how about if you use my, well, actually, I'll do it for you. I am going to color in that area in orange that would be protected from sound by your proposed smaller variance, do you see that?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: It's not a lot of area, is it?

MR. DOAK: It is not.

MS. DICKINSON: Okay and, and in fact, isn't that area the porch, with the flagstone on it?

MR. DOAK: Yes. Yes, it is.

MS. DICKINSON: Okay and so, certainly, the dogs are

probably not going to be using the restroom, we hope, on that flagstone, correct?

MR. DOAK: Yes.

MS. DICKINSON: Okay. Vanna White I am not. In comparing Protestant's Exhibit 22, which has the outline in blue of the area where the dogs can be right now under the current existing variance, to what you have proposed, isn't there much more area in the current, the existing variance area that protects the Krauses from noise then there is in your proposed area, your proposed variance?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: So what's another reason why you propose to reduce the area of the variance that's been requested by Ms. Robinson?

MR. DOAK: Also runoff into the Krause's property.

MS. DICKINSON: Okay. Explain that for me, please.

MR. DOAK: Runoff?

MS. DICKINSON: How, how is your, your smaller variance area going to provide a less amount of runoff to the Krause's property than what we have right now?

MR. DOAK: There's a long, longer distance from what I'm proposing here.

CHAIR: You want to keep your voice up.

MR. DOAK: There's a longer distance, larger distance from here to here then there would be the fifteen feet that

you're asking for.

MS. DICKINSON: Okay. So let me, let's talk about that for a second. Now, you heard testimony that this portion right here at the back of the house is the garage, correct?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: And you also heard testimony today, in fact, that much of this back area is asphalt, right?

MR. DOAK: Asphalt.

MS. DICKINSON: And, and then this area behind the house that comes up and around and it says asphalt paving is asphalt paving and a driveway, correct?

MR. DOAK: Yes.

MS. DICKINSON: Okay and, and there has not been any testimony that the, the dogs use the bathroom on the asphalt or on the driveway, correct?

MR. DOAK: No, ma'am.

MS. DICKINSON: Okay. But what you're suggesting is that, well, let me back up for a second. Is it the waste, is that what you're worried about for the runoff?

MR. DOAK: It's a combination of things.

MS. DICKINSON: What else besides waste, dog waste? What's in the runoff that, that is suggesting to you that it would be better to reduce the area of the variance?

MR. DOAK: The area in blue is not needed. The whole area in blue is not needed for the requirement of her dogs.

MS. DICKINSON: Okay. But wait a minute, what you testified to was that you were concerned about runoff. That your --

MR. DOAK: That was one thing.

MS. DICKINSON: That your proposal would reduce the amount of runoff.

MR. DOAK: Right.

MS. DICKINSON: What in the runoff are you concerned about other than dog waste? Because the dog waste is going to stay the same, right? I mean, the dog, there are eleven dogs and they're going to, excuse me, but go to the bathroom the same amount of times whether they go here --

MR. DOAK: In the same, but not in the same place.

MS. DICKINSON: Well, would you rather go, them go in the same place?

MR. DOAK: Away from the adjoining properties, yes ma'am.

MS. DICKINSON: So you'd rather put them in the wetlands where the waste is going to go into the, into the land and, and, as opposed to over here where it has less opportunity to get to the Krause's house, is that right?

MR. DOAK: That wasn't direct comparison before. It was, the whole area in blue compared to the area that I have proposed. That was the comparison we were working with.

MS. DICKINSON: So we're, you're worried about this

grassy area here, is that right?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay and we know that this is all paved.

CHAIR: The record is not going to reflect what you're saying.

MS. DICKINSON: I'm sorry. You're worried about the grassy area that is, is encompassed on three sides by the driveway, is that right?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay and then you are concerned about the area beyond the wetlands area that is a little more wooded, is that right?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: But isn't that farther away from your client's property than the area you're proposing?

MR. DOAK: Um hm.

MS. DICKINSON: And so isn't it going to be --

BOARD: I'm sorry, was that a yes or a no?

MR. DOAK: Yes, it is.

BOARD: Thank you.

MS. DICKINSON: Isn't it going to be deluded more before --

MR. DOAK: It is.

MS. DICKINSON: It is?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. Is, so other than this runoff issue, what else are you concerned about that makes you want to reduce the area of the variance?

MR. DOAK: We'll go with those at the moment.

MS. DICKINSON: Okay. All right. I'm going to give you your pen back.

MR. DOAK: Thank you.

MS. DICKINSON: Okay. Mr. Doak, you testified, you provided this Protestant's Exhibit 5, correct? Do you have all of the exhibits?

MR. DOAK: No, ma'am.

MS. DICKINSON: And I'm going to start from the beginning, if that makes it easier. I'll probably go pretty much in order. So if you want to re-order them, maybe we'll take just a second, if that's okay?

CHAIR: No, that's fine. Go ahead. Protestant's 5?

BOARD: You have five?

MS. DICKINSON: You do not have it?

MR. DOAK: No, ma'am. Thank you.

MS. DICKINSON: Thank you, Your Honor. I believe you testified that when you began your analysis Protestant 5 was, shows the, the neighborhood that you defined for this project, is that right?

MR. DOAK: Yes, ma'am.

MR. DOAK: Yes, ma'am. Yes, ma'am.

MS. DICKINSON: Okay. So, when, I'm sorry, but when we are looking at the neighborhood as you defined it in your testimony for Protestant's Exhibit 10 and you testified that it was hemmed in on the west side by Falls Road, that's not accurate, is it?

MR. DOAK: No, ma'am.

CHAIR: You want to just speak up, Mr. Doak?

MR. DOAK: No, it is not accurate.

CHAIR: No, it's not accurate.

MS. DICKINSON: So your neighborhood actually goes farther than Falls Road?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: And so what defines your neighborhood?

MR. DOAK: The roads that I told you was initially where I started my search.

MS. DICKINSON: So you wrote or drew on Protestant's Exhibit 10 an orange box, correct?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: And what was that supposed to depict, roughly?

MR. DOAK: A very approximation of the Protestant's Exhibit 7.

MS. DICKINSON: Okay. But it doesn't, does it?

Petitioner's nine, correct?

MR. DOAK: Yes.

MS. DICKINSON: Okay and as I understand this document, it covers a 4.88 square mile area, is that right?

MR. DOAK: Correct.

MS. DICKINSON: Okay and this area is the smaller area, the sort of subset that you, area that you created as a neighborhood, right?

MR. DOAK: Yes, ma'am. Yes, ma'am.

MS. DICKINSON: After you originally had the forty-one mile area, area neighborhood, right?

MR. DOAK: Um hm, yes.

MS. DICKINSON: All right and so I believe that you testified that the first, first one hundred sixty of these properties are not actually large enough to meet the two hundred foot setback requirement of 421.1 for a private kennel, is that correct?

MR. DOAK: I amended it because the first four does not have any information.

MS. DICKINSON: Sure.

MR. DOAK: So it was one hundred fifty-six.

MS. DICKINSON: Sure, okay. But, but if we're just looking at the, the line numbers.

MR. DOAK: Yes, ma'am.

MS. DICKINSON: All the way up through --

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. Ms. Robinson, without a variance, would have to build an actual structure to go in that two hundred foot setback area, correct?

MR. DOAK: That's correct.

MS. DICKINSON: Okay and you've already testified she can't do that because of the DEPS problems, right?

MR. DOAK: That's correct.

MS. DICKINSON: Okay. All right. So what we are looking for with respect to these other properties is another property that has that, well, first of all, we're, we are trying to establish that the property is unique because of those characteristics, correct?

MR. DOAK: Yes.

MS. DICKINSON: And what you are trying to establish for your client is that it is not unique, right?

MR. DOAK: That's correct.

MS. DICKINSON: Okay and in order to do so, you had to find a piece of property that was roughly the same size as hers, right?

MR. DOAK: Um hm.

MS. DICKINSON: Okay. That was zoned R --

BOARD: I'm sorry, was that a yes or a no?

MR. DOAK: Yes, I'm sorry.

BOARD: No problem.

we have to show?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. So let's look first at this 101 and I believe with respect to 101 there was only one exhibit, is that correct? There was Protestant's Exhibit 6.

MR. NELSON: I'm prepared to clarify that.

MS. DICKINSON: Sure, thank you.

MR. NELSON: There's one exhibit related to parcel 101 and that's Protestant's Exhibit 6.

MS. DICKINSON: Yes, that's what I just said. Thank you. Okay, great.

CHAIR: We have it.

MS. DICKINSON: Okay, thank you. Do you have it?

MR. DOAK: No, ma'am.

MS. DICKINSON: You don't?

MR. DOAK: No.

MS. DICKINSON: Thank you.

MR. NELSON: Here, I have an extra copy. I'll give to the witness.

BOARD: Why don't we use the one that's been marked? That's 1916 Akehurst Road, number 101?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Yes.

MR. DOAK: Yes.

MS. DICKINSON: Now, let's just quickly go through

these properties. Your first property is 101, which is actually a property that Mr. Lindgren looked at, correct?

MR. DOAK: Yes.

MS. DICKINSON: Okay and he testified about that property, didn't he?

MR. DOAK: Yes.

MS. DICKINSON: Okay and property 101, it is three acres larger than Ms. Robinson's, right?

MR. DOAK: It is.

MS. DICKINSON: So it has three more buildable acres than Ms. Robinson's property does, correct?

MR. DOAK: Correct.

MS. DICKINSON: Okay.

MR. DOAK: No, let me, can I rephrase that? Take the word buildable, because I, I can't tell you how many more buildable acres is, that has a lot of requirements to be able to determine that. But it has, in size, it's three more acres larger.

MS. DICKINSON: Okay. Not quite twice as large as Ms. Robinson's property? About two-thirds as large?

MR. DOAK: Correct.

MS. DICKINSON: Okay. Now, that property is a different shape from Ms. Robinson's, is it not?

MR. DOAK: Similar but it doesn't have as many sides.

MS. DICKINSON: So it's not the same shape, is it?

MR. DOAK: You'll never find one the same shape.

MS. DICKINSON: Okay. But, but the property that is P-186, I'm sorry, 101, is essentially a square?

MR. DOAK: Rectangle.

MS. DICKINSON: A rectangle, okay.

MR. DOAK: Yes, ma'am.

MS. DICKINSON: And Ms. Robinson's is maybe a polygon and, a pentagon, would you agree?

MR. DOAK: I, I would agree.

MS. DICKINSON: Okay. Does this property 101 have natural springs popping up?

MR. DOAK: Yes, ma'am, it does.

MS. DICKINSON: It does and where are those?

MR. DOAK: There's a drainage swale that goes around the pond and then in turn, it also, there's a swale that water travels down through here and then comes around and then into the pond as well.

MS. DICKINSON: Did you go on this property?

MR. DOAK: I've been on it before.

MS. DICKINSON: When did you go on it?

MR. DOAK: A few years back.

MS. DICKINSON: Did you go on it for the purpose of, of this case?

MR. DOAK: No, ma'am.

MS. DICKINSON: Okay. Why were you on the property?

MR. DOAK: I was looking at it as to wells and septics on this property.

MS. DICKINSON: Okay and is that a man made pond?

MR. DOAK: I don't know, ma'am.

MS. DICKINSON: Okay. Now, this property is interesting because there was much talk yesterday about where the back of the house was, do you remember that?

MR. DOAK: I sure do.

MS. DICKINSON: And where you could build a kennel, right?

MR. DOAK: Yes.

MS. DICKINSON: But isn't it true that part of the house is located within that two hundred foot off, setback area?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: So presumably, that part of the house could be used for the private kennel for the dogs to sleep, correct?

MR. DOAK: That's correct.

MS. DICKINSON: And, and if they did sleep there, we wouldn't need to build any sort of kennel structure or a run, would we?

MR. DOAK: No, ma'am.

MS. DICKINSON: And, so the dogs then would be free to hang out, so to speak, when they weren't in the house, in

this whole entire area of the property, isn't that right?

MR. DOAK: It is right.

MS. DICKINSON: Okay.

CHAIR: It is or it isn't?

MR. DOAK: It is.

CHAIR: It is, okay. Thank you.

MS. DICKINSON: And, and so in that respect, this house is not the same as ours, or this property is not the same as the subject property, is it?

MR. DOAK: In that respect, no, ma'am.

MS. DICKINSON: Okay and so with Ms. Robinson's property, when you're standing at the front here on Far Out Lane you testified that you looked down a steep hill, steep embankment and then the property comes in from both sides to this low area that is sort of a marshy wetlands, right?

MR. DOAK: Yes.

MS. DICKINSON: Okay. Now, when you look at this property here, which is on Akehurst, 186, that's, it's not the same, is it?

MR. DOAK: No, ma'am.

MS. DICKINSON: You don't stand at Akehurst and look down a, a big steep hill and have, have this bowl effect with the two sides coming into a wetlands in the back, do you?

MR. DOAK: Standing at the road, no. But you still have the steep slopes this direction, coming from the north to

south, north east to south west you do, and then you also have it from the, in this direction right here, from the pond towards the house that way so it's not the same configuration but it has the slopes that make a drainage swale similar to hers, but not exactly the same.

MS. DICKINSON: Just on this little top right hand corner of the property is where you're seeing three --

MR. DOAK: Yes, ma'am.

MS. DICKINSON: -- slopes coming in?

MR. DOAK: Right.

MS. DICKINSON: Okay. So, so we understand, to the extent, is your testimony that there is a bowl on this property, 186?

MR. DOAK: No, ma'am.

MS. DICKINSON: No.

MR. DOAK: No.

MS. DICKINSON: So there is no bowl on 186?

MR. DOAK: Correct.

MS. DICKINSON: Okay. Just to be clear, the configuration of the, the, the combination of, of characteristics on Ms. Robinson's property prevent her from building a kennel structure here in this two hundred foot setback area, right?

MR. DOAK: It does.

MS. DICKINSON: Okay and, and we don't have that same

case on this property, do we? And I'm looking at P-186.

MR. DOAK: I must be confused. Is she going to build or is she not going to build?

MS. DICKINSON: I have to ask the questions.

MR. DOAK: Okay. It is, it is not the same.

MS. DICKINSON: It is not the same.

MR. DOAK: No, ma'am.

MS. DICKINSON: In fact, the setoff area, or setback area on 186 is much larger, almost twice, oh, almost three times as large than Ms. Robinson's, correct?

MR. DOAK: I don't understand that.

MS. DICKINSON: The area that is outlined in --

MR. DOAK: The area that has the ability as a matter of right to have a kennel is larger, yes, ma'am.

MS. DICKINSON: It is, it's almost twice, right?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: It's more than twice.

MR. DOAK: I --

MS. DICKINSON: About twice?

MR. DOAK: We'll go for that.

MS. DICKINSON: Okay. And so what, this is 186 on your, if you look at nine, Protestant's and Petitioner's 9.

BOARD: You need nine?

MR. DOAK: I do, I'm sorry.

BOARD: That's your nine.

MR. DOAK: Thank you.

BOARD: Sure.

MS. DICKINSON: Where is that property? On what page is that property on Protestant's Exhibit 9? I see, it's, so it's 213 on page five and then it says 101 and it's green. Do you see that, Mr. Doak?

MR. DOAK: I'm sorry?

MS. DICKINSON: If you look on page five of Petitioner's and Protestant's Exhibit 9.

MR. DOAK: It is.

MS. DICKINSON: And you see the Bolt property, which is in green? Do you see that?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay and it says 213, then it says 101?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Now, we've established that this property has different characteristics from Ms. Robinson's property in that it doesn't have the bowl and, and we won't repeat all of your testimony but would you take your pink pen, please, and mark through 2, the line 213, please?

MR. DOAK: You want me to do it on the (inaudible)?

BOARD: Yeah, are you going to admit your copy?

MS. DICKINSON: It, no, he has the copy that he's writing on. No, this is just his, the extra (inaudible).

MR. DOAK: (inaudible) back the official copy and I'm using hers (inaudible).

MS. DICKINSON: That's what it, yes.

BOARD: Okay.

MS. DICKINSON: I'm sorry, we changed the number of that, didn't we?

MR. DOAK: Yes.

MS. DICKINSON: And that's why I've confused things.

BOARD: No, no, it's still nine. Yours is nine and this is nine but you can, it --

MS. DICKINSON: Yes --

MR. DOAK: But this will be something different when it's all said and done.

BOARD: That's right. So we can stick with Petitioner's Exhibit 9.

MS. DICKINSON: Yes, thank you. My apologies.

BOARD: Okay.

MS. DICKINSON: Okay. So if you'll just take that, that pink marker and just mark through 2013, please, line 2013.

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Thank you. The next property that you testified was number 95, which is Protestant's Exhibit 7 and Protestant's Exhibit 8-1 and 8-2. Would you look at those exhibits, please? And that is the Krauses' property, if that's helpful. So you're looking for Protestant's Exhibit 7, Mr.

Doak?

MR. DOAK: Yes, ma'am. No, I found it, it's on page six.

MS. DICKINSON: No, no, no, it looks like this.

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. Are you looking at Protestant's Exhibit 7 now?

MR. DOAK: I am.

MS. DICKINSON: Great, thank you. Okay. Now, this is the Krause property, correct?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay and this is a, a large piece of property, correct?

MR. DOAK: It is.

MS. DICKINSON: 16.09 acres?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. So, so, right, right off the top, it is more than three, or about three times the size of Ms. Robinson's property, right?

MR. DOAK: It is.

MS. DICKINSON: Okay. Much larger.

MR. DOAK: Three times.

MS. DICKINSON: Okay. Now, you testified that it is similar but a little different, I think is what you said?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay and, and you testified that it does not have a bowl, correct?

MR. DOAK: It does not have a bowl.

MS. DICKINSON: Okay and so again, when we look at Ms. Robinson's property, standing from the front and looking at the back, there are, there is this bowl effect where the house could only be located at the back of the property, correct? I'm sorry, you have --

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay and when we look at the, the Krauses' property, this 95, well, it looks like they have a lot of areas to build houses, don't they? Because they have one, two, three, four housing structures, isn't that right?

MR. DOAK: I wasn't comparing places to build houses, I was comparing places that were already built.

MS. DICKINSON: Okay. Okay.

MR. DOAK: And my criteria was constraints by the slopes and by the, by the swale or the drainage, or the water course.

MS. DICKINSON: Okay. But will you agree with me that the Krauses' property, although interesting, is, does not share the same characteristics as, combination of characteristics as Ms. Robinson's?

MR. DOAK: Other than the, a bowl, which really I don't feel makes a difference on her variance request, I don't

see that it is different. Once again, the house that I'm pointing to, not the other, or not the rest of the property, is constrained by steep slopes.

MS. DICKINSON: But, but the standard isn't that one house, right? They have four houses with different families living on that property, isn't that correct?

MR. DOAK: The standard is that you're trying to prove uniqueness for your property.

MS. DICKINSON: Yes.

MR. DOAK: Okay and you're trying to do it by the positioning of your house in relationship to steep slopes and a water course. Okay? That's what I've done here and that's what I've done with each of these.

MS. DICKINSON: Okay. The property that we're looking at here, the Krauses' property, has a, if you look at Petitioner's Exhibit 8, has a significantly large area where a private kennel could be located under the regs, isn't that right?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. I mean, it's almost half the property, would you agree?

MR. DOAK: It won't be half by the time you take out, it might be a quarter of it, but, yes, ma'am. A third, a quarter --

MS. DICKINSON: Much larger than Ms. Robinson's?

MR. DOAK: Oh, yes, ma'am.

MS. DICKINSON: Okay. Protestant's Exhibit 8-2, the picture, the second picture, the second, actually the bottom picture on that page, did you take that picture?

MR. DOAK: No, ma'am.

MS. DICKINSON: Who took the picture?

MR. DOAK: Mr. Krause did.

MS. DICKINSON: Did he take all of these pictures?

MR. DOAK: Yes, of that group he did, yes, ma'am.

MS. DICKINSON: Okay and have you been on his property?

MR. DOAK: Yes, a number of times.

MS. DICKINSON: Okay and, and up there at the top of that picture, what is that, do you know?

MR. DOAK: I don't know off, I, I remember the picture very well but I don't know.

MS. DICKINSON: Okay. Okay. Moving on to Exhibit, Protestant's Exhibit 11, which is, it's, it's 16310 Yoho Road, number 24.

BOARD: Do you have that?

MR. DOAK: I do.

CHAIR: Ms. Dickinson, I'm wondering --

MS. DICKINSON: I'm sorry.

CHAIR: -- if there's any good breaking point for a lunch break --

MS. DICKINSON: Would you like to break now? I'm one of those people that can go forever and I don't even notice, so I apologize.

CHAIR: Well, I do too, I do too.

MS. DICKINSON: It could be 5:00, I would never know.

MR. NELSON: I would.

CHAIR: They probably need, we probably just, we, again --

MS. DICKINSON: This is a fine breaking point, if you would like to break at this point because --

CHAIR: And I know, we, I wanted to do it after, we wanted to do it after the witness was finished, but if you have more time, we don't want to rush you through to get --

BOARD: How much more time are you going to need with Mr. Doaks, approximately?

MS. DICKINSON: Twenty-five minutes, maybe.

CHAIR: Okay, yeah --

MS. DICKINSON: I mean, I just need to go through these properties.

CHAIR: I understand. No, you do what you need to. You need to cross examine. How many more witnesses do you have? Any more?

MR. NELSON: I'm trying to articulate is this thought that when we finish this witness I was going to proffer what I have in my mind (inaudible) so I guess I think what you're

asking from me then is now.

CHAIR: I'm just trying to see about housekeeping, whether we need another day.

MR. NELSON: Right, so, all right, but so, then I'll just address the (inaudible). We believe under 307.1 of the variance, that, that you do look at the harm issue. The Chair indicated yesterday that the Chair interpreted that section differently and I'm not seeking to rehash that point. But I had intended to elicit my client's, testimony from my clients on the harm issue with respect to the barking, with respect to the runoff and the safety issue of the dogs (inaudible) property and to me, I thought to myself, well, we're going to have a legal discussion and the Chair will make a ruling as to whether the Chair thinks that's part of this case or not. So depending on how the Chair rules on that, that affects what we do. I'll just note, just parenthetically, that, that, that the examination today sort of addressed those issues, the barking, the buffering by the house and so on, you know, so there's that issue. But in addition to that, we, we intended to call Ms. Krause simply to say that the Krauses oppose the variance. They didn't oppose the special exception because they thought they were protected with a two hundred foot setback and then she was going to address the practical difficulty issue. We have evidence about facilities, institutions, that will commit in Maryland to house a dog, the jargon is no kill kennel, I

think there are forty odd of them in, in the state alone. So that goes to practical difficulty. So the real central question is how the Chair rules on this evidentiary point about the, the damage.

CHAIR: Well, why don't we do this? Let's take, let's take twenty minutes. Can (inaudible) eat something in twenty minutes? How's that sound?

MS. DICKINSON: Certainly, Your Honor, that's fine.

CHAIR: Does that work?

MS. DICKINSON: Thank you.

CHAIR: Is that too short for you, Mr. Nelson?

MR. NELSON: No, because I have a sandwich ready, I, I can do it. I don't know what my client --

CHAIR: You're like me (inaudible).

MR. NELSON: Yeah, I can do it in twenty.

CHAIR: I was just trying to move it along because, I mean, it may be that we just need to, some housekeeping issues here. Let's do that. Let's take twenty minutes and then come back and we'll finish up with Mr. Doak.

MS. DICKINSON: Okay. Thank you, Your Honor.

CHAIR: Okay. 1:30.

MR. NELSON: Are you okay for food for twenty minutes, you're all set? (inaudible).

(RECORDING PAUSED - 01:06:37 PM)

(ON RECORD - 01:47:42 PM)

CHAIR: We didn't make the twenty minutes.

BOARD: No.

CHAIR: I think everybody needed a break. Back on the record, after lunch and we were in, we were having the cross examination of Mr. Doak and just, just so, you know, for housekeeping purposes, we, we did take, just the Board did take really good notes of when he was testifying about the characteristics and all that so to the extent that can help you shorten your cross at all.

MS. DICKINSON: You would like me to nip, nip it in a little bit.

CHAIR: We, we, not to rush you through it. You have to do your job for your client, we just, but we did take notes every time he talked about a property and went through the pictures, (inaudible), did take some time so just to let you know that. But go right ahead.

MS. DICKINSON: Thank you. Okay.

CHAIR: Just, okay.

MS. DICKINSON: Thank you, Your Honor. Mr. Doak, I believe when we took the recess we were getting ready to look at Protestant's Exhibit 11, which is parcel number 24 (inaudible), do you have that in front of you?

MR. DOAK: Yes, ma'am, I do.

MS. DICKINSON: And that is an aerial photograph. And in addition to that, there is Protestant's exhibit number

twelve, which has two pictures, two of the three pictures on that page are of that house as well, is that correct?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. Now, well, we can move by actually this property very quickly, can't we? Because this property is not actually wide enough for a, the two hundred foot setback, is it?

MR. DOAK: No, ma'am.

MS. DICKINSON: Okay, all right.

CHAIR: You have to speak up, Mr. Doak. Go ahead.

MR. DOAK: No, ma'am.

CHAIR: Thank you, sir.

MS. DICKINSON: Because it's not four hundred feet across, is it?

MR. DOAK: It is not.

MS. DICKINSON: Okay and I believe you already testified that there's no, the topography is different because there's not that sort of bowl with the steep slopes on this particular property, correct?

MR. DOAK: There is no bowl on that property.

MS. DICKINSON: Okay. And, and so, some quick housekeeping, if you will turn to Petitioner's Exhibit 9, which is the copy of the table that you have been marking in pink for me, do you see that?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. So I, I believe that if you look at page four of that, you will see in green parcel number 24?

MR. DOAK: Yes.

MS. DICKINSON: And, and you've given it the, the line number 174, do you see that?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. Would you put a pink line through that, please? And, and in fact, let's make it easier. Would you just put an X through the whole rest of that page because you've identified, you've looked at all these properties and determined that none of them have the same char, combination of characteristics as Ms. Robinson's property, correct?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. So go ahead and just X out the whole page, please.

MR. DOAK: In respect to, in respect to what, let me ask that?

MS. DICKINSON: What you're testifying about, which is the, the, the slopes, the slopes, the drainage basin.

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Yes, okay.

MR. DOAK: Then, then you're correct.

MS. DICKINSON: The size, they don't have the same

size of the property, etcetera, okay. So moving on to page five of that same document. Just for housekeeping sake, if you could mark through line 188, which is all the way up at the top, please? Because that is another property that you've already ruled out as being the same as Ms. Robinson's, correct?

MR. DOAK: Is different than hers.

MS. DICKINSON: Yes, thank you.

MR. DOAK: Yes.

MS. DICKINSON: Thank you. Okay and then one more housekeeping item, if I may. On page six, you already testified about this and I meant to ask you to mark through line item 232, which is that property number 95, which you testified does not have the same combination of characteristics as Ms. Robinson's property.

MR. DOAK: No, the only thing I said it didn't have was a bowl.

MS. DICKINSON: Right, so it does not have the same combination of characteristics as Ms. Robinson's property, correct?

MR. DOAK: If we're saying the same thing, the only thing is it doesn't have the bowl.

MS. DICKINSON: Yes, okay. Now, we can move along. Thank you. Please look at Protestant's Exhibit 13. And that is another aerial photograph that has 212 down at the bottom, 2009 Stringtown Road. Again, this is another easy one, isn't

it? Because it's actually not even big enough to have that two hundred foot setoff area, is it?

MR. DOAK: No, ma'am, but that wasn't my comparison of these properties.

MS. DICKINSON: Well, certainly --

MR. DOAK: None of these, none of these properties had the same cri, was that criteria of this, whether it could have a dog kennel on it. These were to prove that there was, there was, your property was not unique as to way of slopes, water courses and a house being built within the drainage area, within the swale. That was what this was about. It had nothing to do with whether a kennel could be built on the property or not.

MS. DICKINSON: Well, if that's the case, then why did you testify at the beginning of the, of your testimony today when on direct that the first one hundred sixty were irrelevant to our analysis based on size?

MR. DOAK: The --

MS. DICKINSON: That was the testimony that was elicited by opposing counsel, correct?

MR. DOAK: The, the question was, if you had a perfect square of a property and it had one point on it that you could place it, a kennel, what would be that size and I said 3.68 acres or we, and we rounded it up to 3.7 and he said, so what you're telling me is that no property under 3.7 acres

can have a kennel on it without a variance similar to this. That was the testimony and I said that's correct. So what you're now getting into is something that none of these were looked at and you had me keep crossing these out, but I didn't look at the shape on these as to whether a kennel could fit, only, only the water course, the steepness of slopes and the construction of a home in the water course.

MS. DICKINSON: So you forgot to look at whether a private kennel could actually fit on the property based on size?

MR. DOAK: That, that wasn't --

MS. DICKINSON: Or you weren't asked to do that?

MR. DOAK: I was not asked to do that.

MS. DICKINSON: Okay. I understand, okay. But you will agree with me, strike that, sorry. Looking at Exhibit, Protestant's Exhibit 15, it is an aerial, it says 281 down at the bottom, 2317 Stringtown Road, 5.43 acres. Do you see that?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. Now, I believe that this is the, the property that you described as a bull's eye, that it was very similar to the subject property, is that right?

MR. DOAK: This is the exhibit we used to show the relationship to that property, to that large map. There's another exhibit we used that's more focused on it.

MS. DICKINSON: Sure, and we'll get to that in a

second.

MR. DOAK: Okay.

MS. DICKINSON: But am I correct in, in my question?

MR. DOAK: That, yes.

MS. DICKINSON: Yes.

MR. DOAK: Yes, ma'am, it is.

MS. DICKINSON: Okay. All right and, and so, now this property here, this 281, is more than a mile from Ms. Robinson's house, is that right?

MR. DOAK: I'd have to go back to that chart that I put together.

MS. DICKINSON: Okay and it is on the other side of Stringtown Road?

MR. DOAK: It is on the other side, yes, ma'am.

MS. DICKINSON: Okay.

MR. DOAK: On the south side.

MS. DICKINSON: All right and, in fact, it's so far down that map that from 2012 I'm looking at Protestant's Exhibit 4, 2012 is, lot 2012 is down towards the bottom, it's so far down Stringtown Road that it's not even on that, that neighborhood map of yours, correct?

MR. DOAK: That's correct.

MS. DICKINSON: Okay. So you had to go pretty far to get what you call a bull's eye, didn't you?

MR. DOAK: Define pretty far.

MS. DICKINSON: That's fair enough. All right. Let's look at Protestant's Exhibit 16, please, which actually has the property on it. Now, this property is similar to the last property that we talked about in that while it may have enough acreage, four hundred times four hundred gets you to a certain number of acres, 3.7 I think you said.

MR. DOAK: Yes, ma'am.

MS. DICKINSON: To get a dot in the middle that is two hundred feet off the property line, it's actually too narrow for you to have a four hundred foot setback from all property lines, correct?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay.

MR. DOAK: It would require a variance.

MS. DICKINSON: But that's not the case in our, with our prop, the subject property, right? It's large enough?

MR. DOAK: If you put it in the area that's allowed within two hundred feet, yes, ma'am.

MS. DICKINSON: Um hm, yes, okay. Now, if we move to Protestant's Exhibit 18. This is an aerial photo, another aerial photograph with 275 down at the bottom, 6.98 acres, and this is on Falls Road, correct?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. And again, this is another parcel of property, while it has a lot of acreage in it, it is

not wide enough to have a two hundred foot setback in it, is it?

MR. DOAK: No, ma'am.

MS. DICKINSON: Okay. It's long and narrow?

MR. DOAK: Correct.

MS. DICKINSON: And you already testified that it doesn't have a bowl?

MR. DOAK: It does not have a bowl.

MS. DICKINSON: Okay. And so if you will turn back to Petitioner's Exhibit 9, please? Turn to page five. Now, if you'll take your pink pen, please, I believe you can mark out line 190, which is parcel 281. And you can mark out, sounds like you're already doing it, line 205, which is parcel 275, which you've testified about. And I believe you already have line 213 marked out already, is that correct?

MR. DOAK: That's correct.

MS. DICKINSON: All right. So if you will, now the other properties that are not highlighted in green, with the exception of the subject property, which is yellow, you can mark all of those out, isn't that right?

MR. DOAK: Yes.

MS. DICKINSON: Okay. So if you'll go ahead and do that, please, we're just about finished up here. You let me know when you're done.

MR. DOAK: I'm done.

MS. DICKINSON: Oh, thank you. All right. So let's look at this last exhibit here, which is Protestant's Exhibit 20, please, 277, 15630 Falls Road, forty, wow, 41.55 acres. And that is on the west side of Falls Road, is that correct?

MR. DOAK: I don't have that one but, yes, ma'am, it is.

MS. DICKINSON: Oh, you don't, okay.

BOARD: What do you need? Which one?

MS. DICKINSON: This is Protestant's Exhibit 20.

MR. DOAK: I think Mr. Nelson has mine. Thank you, sir.

MS. DICKINSON: Now, this parcel of property is approximately eight times larger than Ms. Robinson's property, correct?

MR. DOAK: Correct.

MS. DICKINSON: Okay. So it's not similar in respect to size, is it?

MR. DOAK: No, ma'am.

MS. DICKINSON: And it's about a mile and a half away from her property, is that correct?

MR. DOAK: Yes, ma'am.

MS. DICKINSON: Okay. And I think you already testified that it doesn't have a bowl, right?

MR. DOAK: It does not.

MS. DICKINSON: Okay, so it doesn't have the three

steep slopes going into a, or creating a drainage basin, correct?

MR. DOAK: It does not.

MS. DICKINSON: Okay. And so why don't you go ahead and mark that out on, on your, I think it's page six of Petitioner's Exhibit 9, please? And then it looks like you can mark out the rest of that page and the last page seven and we'll be done with that exhibit. I have no further questions at this time. Thank you, Your Honor.

CHAIR: Thank you.

BOARD: One housekeeping matter (inaudible).

MS. DICKINSON: Oh, I'm sorry, thank you.

BOARD: Yeah, just put all your exhibits in that you're (inaudible).

MS. DICKINSON: So we have --

BOARD: And your table that you were just using, that Mr. Doak --

MS. DICKINSON: We will put this back into evidence.

BOARD: Right.

MS. DICKINSON: And then if I, if I may ask you, is this the one that you were writing on?

MR. DOAK: No, ma'am.

MS. DICKINSON: No. Thank you very much. So we'll, we will move into evidence Petitioner's Exhibit 9, please, with the handwriting on it.

Exhibit B

Comparison of Properties in Ms. Robinson's Neighborhood

Property (Parcel # on Pet. Exh. 7)	Sufficient acreage (3.6 acres) & shape for private kennel without variance	Similar size (approx. 5 acres)	3 steep sloping sides creating drainage basin with discharge at bottom of resulting "bowl"	Natural springs daylighting on slopes of "bowl" creating wetlands area in center of "bowl"	Stream through center of property discharging at bottom of "bowl"	Only buildable area located in rear, w/i 200 ft. of property line, necessitating separate structure for private kennel in front of house
Ms. Robinson's Property	✔	✔	✔	✔	✔	✔
P.148	X	X	X	X	X	X
P.180	X	X	X	X	X	X
P.179	X	X	X	X	X	X
P.183 (Protestants' Property)	✔	X (16+)	X	X	X*	X
P.281	X	✔	X	X	X	X
P.189	X	✔	X	X	X	X
P.21	X	X	X	X	X	X
P.190	X	X	X	X	X	X
P.313	X	X	X	X	X	X
P.211	X	X	X	X	X	X
P.32	X	X	X	X	X	X
P.187	X	X	X	X	X*	X
P.186	✔	X	X	X	X*	X
P.33	X	X	X	X	X	X
P.306	X	X	X	X	X	X
P.342	X	X	X	X	X	X
P.170	X	X	X	X	X	X
P.31	X	✔	X	X	X*	X

P.197	✔	✔	X	X	X*	X
P.42A	✔	X	X	X	X	X
P.191	X	✔	X	X	X	X
P.42B	✔	✔	X	X	X	X
P.199	✔	✔	X	X	X*	X

*Note – While these properties have streams, none has a stream running through the center of the property that discharges at the bottom of a "bowl".

Exhibit C

Comparison of Properties in "Neighborhood" Selected by Protestants

Property (Parcel # on Prot. Exh. 4)	**Sufficient acreage (3.6 acres) & shape for private kennel without variance**	**Similar size (approx. 5 acres)**	**3 steep sloping sides creating drainage basin with discharge at bottom of resulting "bowl"**	**Natural springs daylighting on slopes of "bowl" creating wetlands area in center of "bowl"**	**Stream through center of property discharging at bottom of "bowl"**	**Only buildable area located in rear, w/i 200 ft. of property line, necessitating separate structure for private kennel in front of house**
Ms. Robinson's Property	✔	✔	✔	✔	✔	✔
#101 (same as P.186 on Exh. A)	✔	X	X	X	X*	X
#95 (same as P.183 on Exh. A – Protestants' Property)	✔	X (16+ acres)	X	X	X*	X
#24	X (too narrow)	✔	X	X	X*	X
#212	X (too small)	X	X	X	X*	X
#281	X (too narrow)	✔	X	X	X*	X
#275	X (too narrow)	✔	X	X	X*	X
#277	✔	X (41+ acres)	X	X	X*	X

*Note – While these properties have streams, none has a stream running through the center of the property that discharges at the bottom of a "bowl".

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

November 6, 2015

Michelle J. Dickinson, Esq.
10440 Little Patuxent Pkwy., Suite 300
Columbia, Maryland 21044

G. Macy Nelson, Esq.
401 Washington Avenue, Suite 803
Towson, Maryland 21204

RE: **APPEAL TO BOARD OF APPEALS**
Case No. 2015-0235-SPHA
Location: 2012 Far Out Lane

Dear Counsel:

Please be advised that an appeal of the above-referenced case was filed in this Office on November 4, 2015. 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,

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS/sln

c: Baltimore County Board of Appeals
People's Counsel for Baltimore County

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. 133627

Date: 11/4/15

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				530.00

Total: 530.00

Rec From: G. Macy Nelson, Esq

For: 2012 Far Out Lane CK#16736
2015-0235-SPHA

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www.gmacynelson.com

TELEPHONE: (410) 296-8166
FACSIMILE: (410) 825-0670

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OFFICE OF ADMINISTRATIVE HEARINGS

November 4, 2015

Hand-Delivered

Arnold Jablon, Director
Department of Permits, Approvals
and Inspections
County Office Building
111 W. Chesapeake Ave., Suite 105
Towson, Maryland, 21204

Hon. John Beverungen
The Office of Administrative Hearings
Jefferson Building, Suite 103
105 W. Chesapeake Avenue
Towson, Maryland, 21204

Re: Petitions for Special Hearing and Variance
(2012 Far Out Lane)
5th Election District
3rd Council District
Catherine H. Robinson, Petitioner
Case No.: 2015-0235-SPHA

Dear Director Jablon and Judge Beverungen:

I represent Andrew Krause and Noreen Krause, 1940 Akehurst Road, Sparks Glencoe, Maryland 21152, who were protestants in the above-captioned case. My clients appeal the Administrative Law Judge's decision dated October 9, 2015 to grant the Petitions for Special Hearing and Variance. I have attached a copy of the Opinion as Exhibit A.

I have attached a check made payable to Baltimore County, Maryland, in the amount of $530.00 ($265.00 for the Special Hearing, $265.00 for the Variance). This is to confirm that it is not necessary to include a check for $90.00 for posting.

Very truly yours,

G. Macy Nelson

GMN:ldr
Enclosures

IN RE: **PETITIONS FOR SPECIAL HEARING AND VARIANCE** (2012 Far Out Lane) 5th Election District 3rd Council District Catherine H. Robinson Petitioner	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY
	*	**Case No. 2015-0235-SPHA**

* * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of the legal owner. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to amend the December 18, 2014 Order granting a Special Exception for a private kennel in Case No.: 2015-0092-X as shown and indicated on the site plan filed in this case. In addition, a Petition for Variance pursuant to B.C.Z.R. § 421.1 was filed to permit a private kennel in a RC 2 zone to be located within 15 ft. of the nearest property line in lieu of the required 200 ft. A site plan was marked and accepted into evidence as Petitioner's Exhibit 2.

Appearing at the public hearing in support of the requests was owner Catherine Robinson and several neighbors. Michelle J. Dickinson, Esq. represented the Petitioner. Andrew and Noreen Krause, represented by G. Macy Nelson, Esq., opposed the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were submitted by the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR). Neither agency objected to the requests, although the DOP recommended certain conditions for inclusion in the final order.

of the feces. Mr. Price testified Baltimore County officials informed him that a kennel could not be constructed in the front of Ms. Robinson's home (as required by the previous order), since accessory buildings were only permitted in rear yards. The witness testified that while working at Petitioner's property in recent weeks he could hear (but not see, due to vegetation) children jumping into and swimming in the pond/lake situated on the Krause property.

On cross-examination, Mr. Price advised he secured a permit to construct the fences at the property. He also acknowledged that the dogs have access to about a 60' linear portion of the drainage way or ditch that runs through the site, and a photo was admitted showing dogs drinking out of the "stream." Protestants' Ex. 2. Mr. Price also conceded that the dogs do bark on occasion, and said they can "get into it" when visitors or motor vehicles come down the driveway. He testified that the dogs do not bark continuously, and that they would bark for no more than 5 minutes on any such occasion.

The next witness in petitioner's case was James Hosmer, P.E. Mr. Hosmer, who was accepted as an expert, is a licensed professional engineer with over 45 years of experience. His CV was admitted as Petitioner's Ex. 7. Mr. Hosmer explained that he visited the site and also examined USGS maps and online databases to investigate the prominent features and aspects of the property. Mr. Hosmer testified that a drainage swale bisects the property, and runs from the southeast to the northwest. He explained that there is high ground along the perimeter of the site, and that the house (constructed in or about 1920) was located on a flat part of the lot. The witness stated that there are also several spring heads on the property, as well as steep slopes of 2:1 ratio. While the witness advised that the topography of the site was typical for the Piedmont zone, he stressed that the subject property serves as a collection point or conduit for surface waters flowing through the area. Mr. Hosmer opined that the foregoing factors impose a combination of restrictions on Petitioner's ability to use her property.

cacophony of barking. The witness also testified that he maintains several rental units on his properties, and that each of his tenants has complained about dog noise, including current tenant Jen Walsh. Ms Walsh sent to Mr. Krause an email dated June 2, 2015 (Protestants' Ex. 4) wherein she advised that the dog barking was "excessive."

Mr. Krause also testified he has concerns about the pond on his property, and fears that runoff and animal waste from Petitioner's property may be creating an environmental hazard. He stated he has advised his tenants and family not to swim in the pond, and he presented the results of a series of tests conducted by EnviroChem, which appear to show elevated levels of E. coli in samples taken from several points near the pond and the stream which flows through Petitioner's property down to the Krause property. Protestants' Ex. 13. Other than these lab results and Mr. Krause's lay testimony, no further evidence was presented concerning the nature and/or severity of the alleged environmental conditions effecting the pond.

Noreen Krause was the next witness in Protestants' case, and she echoed most of the same concerns identified by her husband Andrew. She advised the dog noise has "waxed and waned" over the last several years, and testified that the barking often wakes her up at 5 a.m. She stated that she cannot sit outside and work, and that the barking was "by far" the biggest source of disruptive noise which negatively impacts the enjoyment of her home.

The Petitioner next presented two rebuttal witnesses. Surveyor Scott Lindgren (whose firm prepared the site plan) testified that Petitioner cannot construct a kennel building in her front yard within the required 200 ft. setback as shown on the site plan, as that would require a variance under B.C.Z.R. §400.1. Mr. Lindgren testified that Petitioner's property was unique in that it had slopes and topographical changes creating a drainage "bowl." On cross examination the witness conceded that one or two other properties in the area had similar "bowls," although he did not believe those

Under Maryland law, the burden of proof to obtain an area variance is less than that required for a use variance. Anderson, 22 Md. App. at 39. The Anderson court noted the "lesser burden is permitted because the impact of an area variance is viewed as being much less drastic than that of a use variance." Id. A use variance is presumed to change the characteristics of a zone, while an area variance does not. Id. A petitioner need only establish a "practical difficulty" for an area variance, as opposed to an "undue hardship" which must be shown for a use variance. Id. Indeed, B.C.Z.R. §307 sets forth the requirements in the disjunctive, which entitles a petitioner to satisfy the lesser "practical difficulty" standard. McClean v. Soley, 270 Md. 208 (1973).

The McClean case is especially apropos in this matter. That case involved an apartment complex in Towson, and the developer was seeking a variance to reduce certain side yard setback requirements imposed by the B.C.Z.R. As here, only one neighbor objected to the request, and he contended that (like the Protestants here) the reduced setback would reduce his privacy and the enjoyment of his home which was adjacent to the proposed apartment complex. Id. at 209.

The developer sought the variance so that he could preserve certain mature tress which existed on site. The court noted that "in a word, therefore, this dispute is over trees." Id. at 210. The neighbor did not believe the asserted reason was sufficient to justify variance relief, and argued "I think I am more important than the tree." Id. at 210. The court granted the side yard setback variance so that "trees could be preserved," with only a slight detriment to the neighbor. While the court acknowledged it was a "close case," and the intermediate appellate court in Cromwell v. Ward opined the holding was somewhat of an aberration, it is nonetheless valid law from Maryland's highest court.

In this case, the Petitioner makes the variance request so that she can continue to provide shelter and care of the 11 dogs she owns. In my opinion, this is at least as significant a public interest and/or practical difficulty as that asserted by the developer in Soley. The denial of relief

will be unable to use her property for a permitted purpose.

If the B.C.Z.R. were strictly interpreted, Petitioner would experience a practical difficulty, given that her dogs would need to be relinquished or euthanized. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of County agency opposition and the support of the great majority of the neighborhood.

THEREFORE, IT IS ORDERED this 9th day of October, **2015**, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R) to amend the December 18, 2014 Order granting a Special Exception for a private kennel in Case No. 2015-0092-X, as shown and indicated on the site plan (Exhibit 2) admitted in this case, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to B.C.Z.R. §421.1 to permit a private kennel in a RC 2 zone to be located within 15 ft. of the nearest property line in lieu of the required 200 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at her own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.

2. The dogs must not be allowed outside of the house when no one is home. The "doggie door" must therefore remain closed/locked when Petitioner or other occupants of the subject property are not at home.

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 27, 2016

NOTICE OF PUBLIC DELIBERATION

IN THE MATTER OF: Catherine H. Robinson
E/s Far Out Lane, approx. 1,475 ft SW of c/l of Akehurst Road
15-235-SPHA 2012 Far Out Lane
5th Election District; 3rd Councilmanic District

Re: Petition for Special Hearing requesting the Administrative Law Judge to amend the December 18, 2014 Order granting a Special Exception for a private kennel in case number 15-092-X as shown and indicated on the site plan, and Petition for Variance from Section 421.1 of the BCZR to permit a private kennel in a RC-2 zone to be located within 15 feet of the nearest property line in lieu of the required 200 feet.

10/9/15 Opinion and Order of Administrative Law Judge wherein the Petition for Special Hearing was GRANTED; and Petition for Variance was GRANTED with the condition that the dogs must not be allowed outside of the house when no one is home. The "doggie door" must therefore remain closed/locked when Petitioner or other occupants are not home.

This matter having been heard April 19, 2016 and concluded on April 20, 2016, a public deliberation has been scheduled for the following:

DATE AND TIME: **TUESDAY, JUNE 21, 2016 at 9:30 a.m.**

LOCATION: Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

NOTE: Closing briefs are due on **Wednesday, May 25, 2016 by 3:00 p.m.**
(Original and three [3] copies)

NOTE: PUBLIC DELIBERATIONS ARE OPEN WORK SESSIONS WHICH ALLOW THE PUBLIC TO WITNESS THE DECISION-MAKING PROCESS. ATTENDANCE IS NOT REQUIRED AND PARTICIPATION IS NOT ALLOWED. A WRITTEN OPINION AND/OR 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: Counsel for Petitioner : Michelle J. Dickinson, Esquire
Petitioner : Catherine Robinson

Counsel for Protestants/Appellants : G. Macy Nelson, Esquire
Protestants/Appellants : Andrew and Noreen Krause, Anita Krause

Scott Lindgren/Gerhold, Cross & Etzel
Kawana Swank Anne Cornell
Office of People's Counsel
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney

J. Lawrence Hosmer/ERM
Ann Merryman Noah Price
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

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

April 22, 2016

Michelle J. Dickinson, Esquire
Law Office of Michelle J. Dickinson, LLC
10440 Little Patuxent Parkway, Suite 300
Columbia, Maryland 21044

Re: In the Matter of: Catherine Robinson
Case No.: 15-235-SPHA

Dear Ms. Dickinson:

I am in receipt of your request for 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 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,

Tammy A. McDiarmid

Tammy A. 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 Leary

From: Tammy McDiarmid, Legal Secretary

Date: April 21, 2016

Re: In the matter of: Catherine Robinson
Case No.: 15-235-SPHA

Enclosed are the recordings from the above referenced case. The Board members who sat on this case are Maureen E. Murphy, Chairman; Benfred B. Alston, took exhibits; and Jason S. Garber, operated CourtSmart. We estimate 8 – 8-1/2 hours of testimony over the two days. As mentioned previously, the hearing was not stopped on Day 2 during breaks and lunch.

I have enclosed a copy of the Address list for your convenience. Michael J. Dickinson, Esquire represented the Petitioner; and G. Macy Nelson, Esquire, appeared on behalf of Andrew Krause, Noreen Krause, and Anita Krause, Protestants/Appellants.

Ms. Dickinson is requesting the transcript of the hearings and is responsible for the cost. Please contact her upon receipt with an estimated cost, required deposit, and due date. Her contact information is below.

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

Thank you,

Tammy

Tammy McDiarmid

Michelle J. Dickinson, Esquire
10440 Little Patuxent Parkway, Suite 300
Columbia, MD 21044
(410) 740-5630
michelle@dickinson-law.com

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 11, 2016

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Catherine H. Robinson
E/s Far Out Lane, approx. 1,475 ft SW of c/l of Akehurst Road
15-235-SPHA 2012 Far Out Lane
5th Election District; 3rd Councilmanic District

Re: Petition for Special Hearing requesting the Administrative Law Judge to amend the December 18, 2014 Order granting a Special Exception for a private kennel in case number 15-092-X as shown and indicated on the site plan, and Petition for Variance from Section 421.1 of the BCZR to permit a private kennel in a RC-2 zone to be located within 15 feet of the nearest property line in lieu of the required 200 feet.

10/9/15 Opinion and Order of Administrative Law Judge wherein the Petition for Special Hearing was GRANTED; and Petition for Variance was GRANTED with the condition that the dogs must not be allowed outside of the house when no one is home. The "doggie door" must therefore remain closed/locked when Petitioner or other occupants are not home.

ASSIGNED FOR: TUESDAY, APRIL 19, 2016 AT 10:00 A.M. – Day 1 and WEDNESDAY, APRIL 20, 2016 AT 10 A.M. – Day 2

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: Counsel for Petitioner : Michelle J. Dickinson, Esquire
Petitioner : Catherine Robinson

Counsel for Protestants/Appellants : G. Macy Nelson, Esquire
Protestants/Appellants : Andrew and Noreen Krause, Anita Krause

Scott Lindgren/Gerhold, Cross & Etzel
Kawana Swank Anne Cornell
Office of People's Counsel
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney

J. Lawrence Hosmer/ERM
Ann Merryman Noah Price
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Michael Field, County Attorney, Office of Law

Krysundra Cannington

From: Michelle Dickinson <michelle@dickinson-law.com>
Sent: Friday, January 08, 2016 1:44 PM
To: Krysundra Cannington
Cc: G. Macy Nelson
Subject: Re: Catherine Robinson 15-235-SPHA

Thanks very much, Sunny.
Best,
Michelle

Michelle J. Dickinson

410.740.5630 Office
443.280.4257 Cell
866.211.2673 Fax
michelle@dickinson-law.com

10440 Little Patuxent Pkwy.
Suite 300
Columbia, MD 21044
www.dickinson-law.com

On Fri, Jan 8, 2016 at 1:42 PM, Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

> Counsel,
>
> It appears April 19 and 20 are the agreed dates. I have already checked the dates with the Board members and will issue the Notice as soon as possible.

Krysundra Cannington

From: Krysundra Cannington
Sent: Friday, January 08, 2016 1:43 PM
To: 'G. Macy Nelson'; Michelle Dickinson
Subject: RE: Catherine Robinson 15-235-SPHA

Counsel,

It appears April 19 and 20 are the agreed dates. I have already checked the dates with the Board members and will issue the Notice as soon as possible.

Please do not hesitate to contact me with any questions.

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

From: G. Macy Nelson [mailto:gmacynelson@gmacynelson.com]
Sent: Friday, January 08, 2016 11:56 AM
To: Michelle Dickinson <michelle@dickinson-law.com>; Krysundra Cannington <kcannington@baltimorecountymd.gov>
Subject: RE: Catherine Robinson 15-235-SPHA

Sunny,

We are available April 5, 6, 7, 12, 13, 14, 19, 20, 26, 27, and 28. April 21 is tough for me because I have a circuit court case that day.

-Macy Nelson

G. Macy Nelson
401 Washington Avenue, Suite 803

Towson, Maryland 21204
410-296-8166, ex. 290
Fax 410-825-0670
Mobile 443-326-8749
Email gmacynelson@gmacynelson.com
www.gmacynelson.com

From: Michelle Dickinson [mailto:michelle@dickinson-law.com]
Sent: Friday, January 08, 2016 9:51 AM
To: Krysundra Cannington
Cc: G. Macy Nelson
Subject: Re: Catherine Robinson 15-235-SPHA

Sunny,
We are available April 19, 20 and 21. Thank you for your assistance with this matter.
Best,
Michelle

Michelle J. Dickinson

410.740.5630 Office
443.280.4257 Cell
866.211.2673 Fax
michelle@dickinson-law.com

10440 Little Patuxent Pkwy.
Suite 300
Columbia, MD 21044
www.dickinson-law.com

On Wed, Jan 6, 2016 at 8:04 AM, Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

Counsel,

Despite all my efforts, I am still unable to match a panel for any combination of two days on which you and your clients are available in February or March. At this time, I put forward dates in April. Please be advised I am checking these dates with the Board members simultaneously. Presently the entire month of April is available on our docket. We generally hold hearings on Tuesdays, Wednesdays, and Thursdays therefore, April 5, 6, 7, 12, 13, 14, 19, 20, 21, 26, 27, and 28, are currently available.

I apologize for the inconvenience to you and your clients.

Thank you for your continued cooperation in scheduling this matter.

Sunny

Krysundra "Sunny" Cannington

Administrator

Board of Appeals of Baltimore County

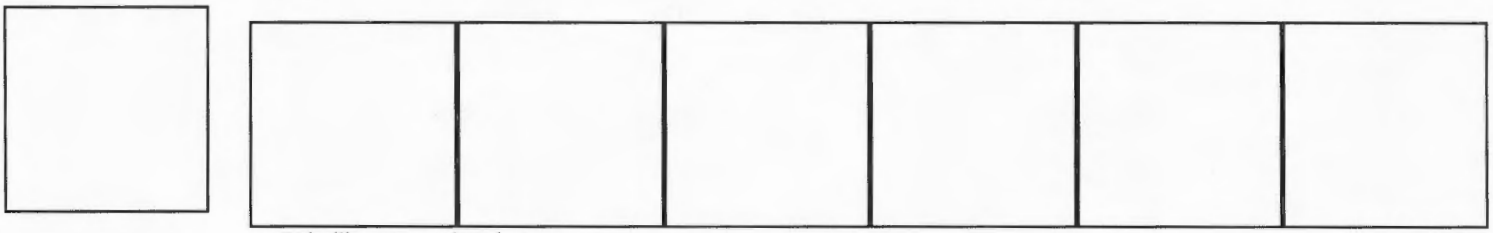
The Jefferson Building, Suite 203

105 W. Chesapeake Avenue

Towson, MD 21204

Phone: 410-887-3180

Fax: 410-887-3182



www.baltimorecountymd.gov

Krysundra Cannington

From: G. Macy Nelson <gmacynelson@gmacynelson.com>
Sent: Friday, January 08, 2016 11:56 AM
To: Michelle Dickinson; Krysundra Cannington
Subject: RE: Catherine Robinson 15-235-SPHA

Sunny,

We are available April 5, 6, 7, 12, 13, 14, 19, 20, 26, 27, and 28. April 21 is tough for me because I have a circuit court case that day.

-Macy Nelson

G. Macy Nelson
401 Washington Avenue, Suite 803
Towson, Maryland 21204
410-296-8166, ex. 290
Fax 410-825-0670
Mobile 443-326-8749
Email gmacynelson@gmacynelson.com
www.gmacynelson.com

From: Michelle Dickinson [mailto:michelle@dickinson-law.com]
Sent: Friday, January 08, 2016 9:51 AM
To: Krysundra Cannington
Cc: G. Macy Nelson
Subject: Re: Catherine Robinson 15-235-SPHA

Sunny,
We are available April 19, 20 and 21. Thank you for your assistance with this matter.
Best,
Michelle

Michelle J. Dickinson

410.740.5630 Office
443.280.4257 Cell
866.211.2673 Fax
michelle@dickinson-law.com

10440 Little Patuxent Pkwy.
Suite 300

Columbia, MD 21044
www.dickinson-law.com

On Wed, Jan 6, 2016 at 8:04 AM, Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

Counsel,

Despite all my efforts, I am still unable to match a panel for any combination of two days on which you and your clients are available in February or March. At this time, I put forward dates in April. Please be advised I am checking these dates with the Board members simultaneously. Presently the entire month of April is available on our docket. We generally hold hearings on Tuesdays, Wednesdays, and Thursdays therefore, April 5, 6, 7, 12, 13, 14, 19, 20, 21, 26, 27, and 28, are currently available.

I apologize for the inconvenience to you and your clients.

Thank you for your continued cooperation in scheduling this matter.

Sunny

Krysundra "Sunny" Cannington

Administrator

Board of Appeals of Baltimore County

The Jefferson Building, Suite 203

105 W. Chesapeake Avenue

Towson, MD 21204

Phone: 410-887-3180

Fax: 410-887-3182

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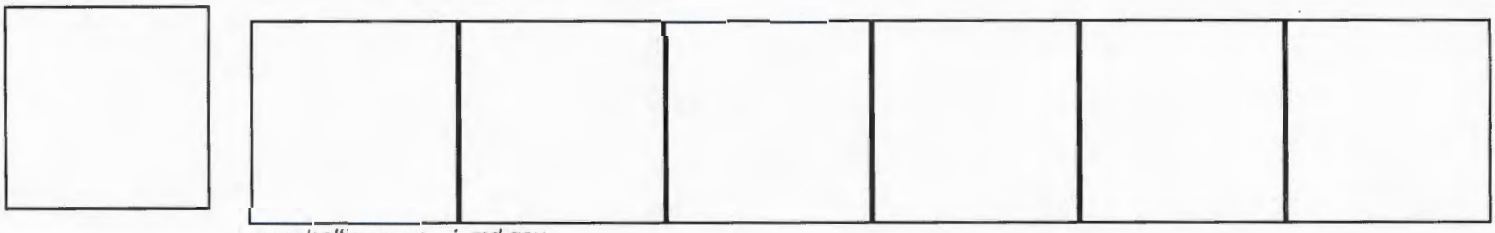

www.baltimorecountymd.gov

Krysundra Cannington

From: Michelle Dickinson <michelle@dickinson-law.com>
Sent: Friday, January 08, 2016 9:51 AM
To: Krysundra Cannington
Cc: Nelson, G. Macy
Subject: Re: Catherine Robinson 15-235-SPHA

Sunny,
We are available April 19, 20 and 21. Thank you for your assistance with this matter.
Best,
Michelle

Michelle J. Dickinson

410.740.5630 Office
443.280.4257 Cell
866.211.2673 Fax
michelle@dickinson-law.com

10440 Little Patuxent Pkwy.
Suite 300
Columbia, MD 21044
www.dickinson-law.com

On Wed, Jan 6, 2016 at 8:04 AM, Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

> Counsel,
>
> Despite all my efforts, I am still unable to match a panel for any combination of two days on which you and your clients are available in February or March. At this time, I put forward dates in April. Please be advised I

am checking these dates with the Board members simultaneously. Presently the entire month of April is available on our docket. We generally hold hearings on Tuesdays, Wednesdays, and Thursdays therefore, April 5, 6, 7, 12, 13, 14, 19, 20, 21, 26, 27, and 28, are currently available.

I apologize for the inconvenience to you and your clients.

Thank you for your continued cooperation in scheduling this matter.

Sunny

Krysundra "Sunny" Cannington

Administrator

Board of Appeals of Baltimore County

The Jefferson Building, Suite 203

105 W. Chesapeake Avenue

Towson, MD 21204

Phone: 410-887-3180

Fax: 410-887-3182

CONNECT WITH BALTIMORE COUNTY

www.baltimorecountymd.gov

Krysundra Cannington

From: Michelle Dickinson <michelle@dickinson-law.com>
Sent: Wednesday, January 06, 2016 2:19 PM
To: Krysundra Cannington; 'G. Macy Nelson' (gmacynelson@gmacynelson.com)
Subject: Re: Catherine Robinson 15-235-SPHA

Thank you for your email, Sunny. We will check those dates and get back with you promptly.
Best,
Michelle

Michelle J. Dickinson

410.740.5630 Office
443.280.4257 Cell
866.211.2673 Fax
michelle@dickinson-law.com

10440 Little Patuxent Pkwy.
Suite 300
Columbia, MD 21044
www.dickinson-law.com

On Wed, Jan 6, 2016 at 8:04 AM, Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

> Counsel,
>
> Despite all my efforts, I am still unable to match a panel for any combination of two days on which you and your clients are available in February or March. At this time, I put forward dates in April. Please be advised I am checking these dates with the Board members simultaneously. Presently the entire month of April is

available on our docket. We generally hold hearings on Tuesdays, Wednesdays, and Thursdays therefore, April 5, 6, 7, 12, 13, 14, 19, 20, 21, 26, 27, and 28, are currently available.

I apologize for the inconvenience to you and your clients.

Thank you for your continued cooperation in scheduling this matter.

Sunny

Krysundra "Sunny" Cannington

Administrator

Board of Appeals of Baltimore County

The Jefferson Building, Suite 203

105 W. Chesapeake Avenue

Towson, MD 21204

Phone: 410-887-3180

Fax: 410-887-3182

CONNECT WITH BALTIMORE COUNTY

www.baltimorecountymd.gov

Krysundra Cannington

From: Krysundra Cannington
Sent: Wednesday, January 06, 2016 8:05 AM
To: Nelson, G. Macy; michelle@dickinson-law.com
Subject: Catherine Robinson 15-235-SPHA

Counsel,

Despite all my efforts, I am still unable to match a panel for any combination of two days on which you and your clients are available in February or March. At this time, I put forward dates in April. Please be advised I am checking these dates with the Board members simultaneously. Presently the entire month of April is available on our docket. We generally hold hearings on Tuesdays, Wednesdays, and Thursdays therefore, April 5, 6, 7, 12, 13, 14, 19, 20, 21, 26, 27, and 28, are currently available.

I apologize for the inconvenience to you and your clients.

Thank you for your continued cooperation in scheduling this matter.

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

Krysundra Cannington

From: G. Macy Nelson <gmacynelson@gmacynelson.com>
Sent: Monday, January 04, 2016 5:26 PM
To: Michelle Dickinson; Krysundra Cannington
Subject: RE: Catherine Robinson 15-235-SPHA

HI,

My clients and I are available March 15, 16, 17, 29, and 31.

-Macy Nelson

G. Macy Nelson
401 Washington Avenue, Suite 803
Towson, Maryland 21204
410-296-8166, ex. 290
Fax 410-825-0670
Mobile 443-326-8749
Email gmacynelson@gmacynelson.com
www.gmacynelson.com

From: Michelle Dickinson [mailto:michelle@dickinson-law.com]
Sent: Monday, January 04, 2016 12:45 PM
To: Krysundra Cannington
Cc: G. Macy Nelson
Subject: Re: Catherine Robinson 15-235-SPHA

Sunny,
Ms. Robinson is available for the Board of Appeals hearing on February 23 and 25 or March 8, 10, 15, 16, 17, 29, and 31. We would prefer the hearing dates to be consecutive or close together, if possible. Please let me know if you need additional information. Thank you for your assistance with this matter.
Happy new year!
Michelle

Michelle J. Dickinson

410.740.5630 Office
443.280.4257 Cell
866.211.2673 Fax
michelle@dickinson-law.com

10440 Little Patuxent Pkwy.
Suite 300
Columbia, MD 21044

www.dickinson-law.com

On Wed, Dec 23, 2015 at 1:08 PM, Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

Counsel,

First, I understand if you are not able to respond immediately given the holidays occurring this week and next.

Per my conversation with Mr. Nelson, and as previously expressed, there are some scheduling issues with the February and March dates. However, if we were to schedule two fairly close dates the same panel should be available for both.

I currently have the following dates available on the Board's docket:

February 2, 9, 16, 18, 25,

March 1,3,8,10, 15, 16, 17, 29, and 31, 2016

While I believe we reviewed all the February dates previously, I kindly request that you double check them with your clients/witnesses while reviewing the March dates. In the meantime, I will continue to hold February 23rd.

Please do not hesitate to contact me with any questions.

Happy Holidays!

Sunny

Krysundra "Sunny" Cannington

Administrator

Board of Appeals of Baltimore County

410-887-3180

From: Michelle Dickinson [mailto:michelle@dickinson-law.com]
Sent: Thursday, December 17, 2015 2:50 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Nelson, G. Macy <gmacynelson@gmacynelson.com>
Subject: Re: Catherine Robinson 15-235-SPHA

Sunny,

We would prefer the second day of the hearing to be as soon as possible but we can be available on any of the proposed dates.

Thank you,

Michelle

On Dec 14, 2015, at 10:40 AM, Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

> Good morning Counsel,
>
> This email is to confirm that the above referenced matter will be set for hearing on Tuesday, February 23, 2016, as agreed. Additionally, it has been requested that a second hearing date be scheduled in the event this matter is not completed. At this time, the following dates are available on the Board's docket:
>
> March 8, 15, 17, and 22.

Please advise which of these dates work best for you and your clients.

Once the second date has been selected, I will send a Notice of Reassignment with both hearing dates.

Thank you for your prompt attention to this matter.

Sunny

Krysundra "Sunny" Cannington

Administrator

Board of Appeals of Baltimore County

The Jefferson Building, Suite 203

105 W. Chesapeake Avenue

Towson, MD 21204

Phone: 410-887-3180

Fax: 410-887-3182

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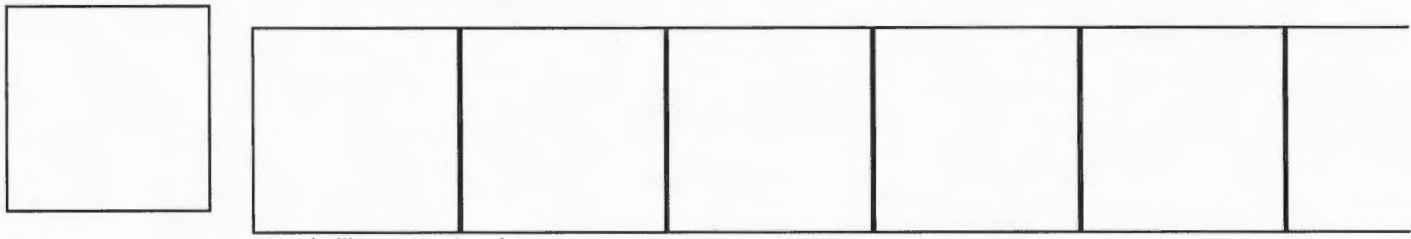

www.baltimorecountymd.gov

Krysundra Cannington

From: Michelle Dickinson <michelle@dickinson-law.com>
Sent: Monday, January 04, 2016 12:45 PM
To: Krysundra Cannington
Cc: Nelson, G. Macy
Subject: Re: Catherine Robinson 15-235-SPHA

Sunny,
Ms. Robinson is available for the Board of Appeals hearing on February 23 and 25 or March 8, 10, 15, 16, 17, 29, and 31. We would prefer the hearing dates to be consecutive or close together, if possible. Please let me know if you need additional information. Thank you for your assistance with this matter.
Happy new year!
Michelle

Michelle J. Dickinson

410.740.5630 Office
443.280.4257 Cell
866.211.2673 Fax
michelle@dickinson-law.com

10440 Little Patuxent Pkwy.
Suite 300
Columbia, MD 21044
www.dickinson-law.com

On Wed, Dec 23, 2015 at 1:08 PM, Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

Counsel,

First, I understand if you are not able to respond immediately given the holidays occurring this week and next.

Per my conversation with Mr. Nelson, and as previously expressed, there are some scheduling issues with the February and March dates. However, if we were to schedule two fairly close dates the same panel should be available for both.

I currently have the following dates available on the Board's docket:

February 2, 9, 16, 18, 25,

March 1,3,8,10, 15, 16, 17, 29, and 31, 2016

While I believe we reviewed all the February dates previously, I kindly request that you double check them with your clients/witnesses while reviewing the March dates. In the meantime, I will continue to hold February 23rd.

Please do not hesitate to contact me with any questions.

Happy Holidays!

Sunny

Krysundra "Sunny" Cannington

Administrator

Board of Appeals of Baltimore County

410-887-3180

From: Michelle Dickinson [mailto:michelle@dickinson-law.com]
Sent: Thursday, December 17, 2015 2:50 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Nelson, G. Macy <gmacynelson@gmacynelson.com>
Subject: Re: Catherine Robinson 15-235-SPHA

Sunny,

We would prefer the second day of the hearing to be as soon as possible but we can be available on any of the proposed dates.

Thank you,

Michelle

On Dec 14, 2015, at 10:40 AM, Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

> Good morning Counsel,
>
> This email is to confirm that the above referenced matter will be set for hearing on Tuesday, February 23, 2016, as agreed. Additionally, it has been requested that a second hearing date be scheduled in the event this matter is not completed. At this time, the following dates are available on the Board's docket:
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> March 8, 15, 17, and 22.
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> Please advise which of these dates work best for you and your clients.
>
> Once the second date has been selected, I will send a Notice of Reassignment with both hearing dates.
>
> Thank you for your prompt attention to this matter.
>
> Sunny

Krysundra "Sunny" Cannington

Administrator

Board of Appeals of Baltimore County

The Jefferson Building, Suite 203

105 W. Chesapeake Avenue

Towson, MD 21204

Phone: 410-887-3180

Fax: 410-887-3182

Confidentiality Statement

Krysundra Cannington

From: Michelle Dickinson <michelle@dickinson-law.com>
Sent: Wednesday, December 23, 2015 3:18 PM
To: Krysundra Cannington
Cc: Nelson, G. Macy
Subject: Re: Catherine Robinson 15-235-SPHA

Sunny,
Thank you for your email. I will contact my client about these dates. I will be on vacation starting tomorrow, but will try my best to circle back as soon as possible.
Happy holidays,
Michelle

Michelle J. Dickinson

410.740.5630 Office
443.280.4257 Cell
866.211.2673 Fax
michelle@dickinson-law.com

10440 Little Patuxent Pkwy.
Suite 300
Columbia, MD 21044
www.dickinson-law.com

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Per my conversation with Mr. Nelson, and as previously expressed, there are some scheduling issues with the February and March dates. However, if we were to schedule two fairly close dates the same panel should be available for both.

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February 2, 9, 16, 18, 25,

March 1,3,8,10, 15, 16, 17, 29, and 31, 2016

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Please do not hesitate to contact me with any questions.

Happy Holidays!

Sunny

Krysundra "Sunny" Cannington

Administrator

Board of Appeals of Baltimore County

410-887-3180

From: Michelle Dickinson [mailto:michelle@dickinson-law.com]
Sent: Thursday, December 17, 2015 2:50 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Nelson, G. Macy <gmacynelson@gmacynelson.com>
Subject: Re: Catherine Robinson 15-235-SPHA

Sunny,

We would prefer the second day of the hearing to be as soon as possible but we can be available on any of the proposed dates.

Thank you,

Michelle

On Dec 14, 2015, at 10:40 AM, Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

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> Thank you for your prompt attention to this matter.
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> Sunny

Krysundra "Sunny" Cannington

Administrator

Board of Appeals of Baltimore County

The Jefferson Building, Suite 203

105 W. Chesapeake Avenue

Towson, MD 21204

Phone: 410-887-3180

Fax: 410-887-3182

Confidentiality Statement

Krysundra Cannington

From: Krysundra Cannington
Sent: Wednesday, December 23, 2015 1:09 PM
To: 'Michelle Dickinson'; Nelson, G. Macy
Subject: RE: Catherine Robinson 15-235-SPHA

Counsel,

First, I understand if you are not able to respond immediately given the holidays occurring this week and next.

Per my conversation with Mr. Nelson, and as previously expressed, there are some scheduling issues with the February and March dates. However, if we were to schedule two fairly close dates the same panel should be available for both.

I currently have the following dates available on the Board's docket:
February 2, 9, 16, 18, 25,
March 1,3,8,10, 15, 16, 17, 29, and 31, 2016

While I believe we reviewed all the February dates previously, I kindly request that you double check them with your clients/witnesses while reviewing the March dates. In the meantime, I will continue to hold February 23rd.

Please do not hesitate to contact me with any questions.

Happy Holidays!

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
410-887-3180

From: Michelle Dickinson [mailto:michelle@dickinson-law.com]
Sent: Thursday, December 17, 2015 2:50 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Nelson, G. Macy <gmacynelson@gmacynelson.com>
Subject: Re: Catherine Robinson 15-235-SPHA

Sunny,
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Thank you,
Michelle

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Please advise which of these dates work best for you and your clients.

Once the second date has been selected, I will send a Notice of Reassignment with both hearing dates.

Thank you for your prompt attention to this matter.

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

Krysundra Cannington

From: Krysundra Cannington
Sent: Wednesday, December 23, 2015 11:08 AM
To: 'Michelle Dickinson'
Cc: Nelson, G. Macy
Subject: RE: Catherine Robinson 15-235-SPHA

Counsel,

It appears some of the Board members have some scheduling issues in March. The combination of Board members available on February 23rd are not available on the dates offered in March.

I kindly request that you check your availability on the following dates in February? February 2, 9, 16, 18, and 25, 2016. All hearings scheduled before the Board begin at 10 a.m. unless otherwise agreed.

Thank you for your attention and cooperation.

Happy Holidays!

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

From: Michelle Dickinson [mailto:michelle@dickinson-law.com]
Sent: Thursday, December 17, 2015 2:50 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Nelson, G. Macy <gmacynelson@gmacynelson.com>
Subject: Re: Catherine Robinson 15-235-SPHA

Sunny,
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Thank you,
Michelle

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Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

Krysundra Cannington

From: Michelle Dickinson <michelle@dickinson-law.com>
Sent: Thursday, December 17, 2015 2:50 PM
To: Krysundra Cannington
Cc: Nelson, G. Macy
Subject: Re: Catherine Robinson 15-235-SPHA

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> Thank you for your prompt attention to this matter.
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> Sunny
>
> Krysundra "Sunny" Cannington
> Administrator
> Board of Appeals of Baltimore County
> The Jefferson Building, Suite 203
> 105 W. Chesapeake Avenue
> Towson, MD 21204
> Phone: 410-887-3180
> Fax: 410-887-3182
>
>

Krysundra Cannington

From: Krysundra Cannington
Sent: Monday, December 14, 2015 10:41 AM
To: 'michelle@dickinson-law.com'; Nelson, G. Macy
Subject: Catherine Robinson 15-235-SPHA

Good morning Counsel,

This email is to confirm that the above referenced matter will be set for hearing on Tuesday, February 23, 2016, as agreed. Additionally, it has been requested that a second hearing date be scheduled in the event this matter is not completed. At this time, the following dates are available on the Board's docket:

March 8, 15, 17, and 22.

Please advise which of these dates work best for you and your clients.

Once the second date has been selected, I will send a Notice of Reassignment with both hearing dates.

Thank you for your prompt attention to this matter.

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

12/05/15 BALTIMORE MD 21212 FIRST CLASS

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204

Return Service Requested

15-235-SPHA
12/19/15 Withdrawn
Signed / request
J

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DEC 17 2015
BALTIMORE COUNTY
BOARD OF APPEALS

Hasler
12/05/2015
US POSTAGE $000.39-1

FIRST-CLASS MAIL
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ZIP 21204
011D12603654

J. Lawrence Hosmer
ERM
200 Harry
Suite 400
Annapolis

* 212 NOE 1560C15C0112/16/15
RETURN TO SENDER
:ENVIRONMENTAL RESOURCES MANAGEMENT
180 ADMIRAL COCHRANE DR STE 400
ANNAPOLIS MD 21401-8400

RETURN TO SENDER

21204@4711
214
21401$7397 C041

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 4, 2015

Michelle J. Dickinson, Esquire
10440 Little Patuxent Parkway, Suite 300
Columbia, MD 21044

Re: In the matter of Catherine Robinson
Case No: 15-235-SPHA

Dear Ms. Dickinson:

We are in receipt of your request for postponement dated December 1, 2015. This letter is to advise you that your request for postponement of the hearing scheduled for Wednesday, February 3, 2015 has been granted. A Notice of postponement is enclosed.

In order to schedule a hearing before the Board of Appeals, without conflict; I am providing dates currently available on the docket. The Board sits on Tuesday, Wednesday and Thursday of each week. The following dates open for assignment:

Thursday, February 18, 2016 at 10:00;
Tuesday, February 23, 2016 at 10:00; and
Tuesday, March 1, 2016 at 10:00

Please contact this office upon receipt of this letter to confirm availability. The Notice of Assignment will be issued to all parties at the time an agreeable date is established.

Thanking you in advance for your time and cooperation in this matter. Should you have any questions, please call me at 410-887-3180.

Very truly yours,

Sunny Cannington

Krysundra "Sunny" Cannington
Administrator

cc: G. Macy Nelson, Esquire

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 4, 2015

NOTICE OF POSTPONEMENT

IN THE MATTER OF: Catherine H. Robinson
E/s Far Out Lane, approx. 1,475 ft SW of c/l of Akehurst Road
15-235-SPHA 2012 Far Out Lane
5th Election District; 3rd Councilmanic District

This matter was assigned for Wednesday, February 3, 2016 and has been postponed. It will be rescheduled to a later date.

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: Counsel for Petitioner : Michelle J. Dickinson, Esquire
Petitioner : Catherine Robinson

Counsel for Protestants/Appellants : G. Macy Nelson, Esquire
Protestants/Appellants : Andrew and Noreen Krause, Anita Krause

Scott Lindgren/Gerhold, Cross & Etzel
Kawana Swank
Ann Merryman
Office of People's Counsel
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney

J. Lawrence Hosmer/ERM
Anne Cornell
Noah Price
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Michael Field, County Attorney, Office of Law

MJD Law Office of
Michelle J. Dickinson, LLC

10440 Little Patuxent Parkway, Suite 300
Columbia, Maryland 21044
410.740.5630 T
866.211.2673 F

December 1, 2015

VIA FACSIMILE

Krysundra Cannington
Administrator, Board of Appeals of Baltimore County
105 W. Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Case No. 15-235-SPHA

Dear Ms. Cannington:

My firm represents Catherine Robinson regarding Andrew and Noreen Krause's appeal of the variance granted by the Honorable John E. Beverungen permitting Ms. Robinson's private kennel to be located within 15 feet of the nearest property line in lieu of the required 200 feet. We are in receipt of the Notice of Assignment scheduling the hearing for February 3, 2016 at 10:00 a.m. We respectfully request a postponement of the hearing to accommodate a scheduling conflict. Specifically, I am scheduled to appear telephonically on February 3, 2016 for a discovery compliance conference with Judge Charles E. Ramos' clerk in the case captioned, *Credit Suisse Securities (USA), LLC v. Gladstone Business Loan, LLC*, Index No. 6512527/2015, in the Supreme Court of the State of New York: Commercial Division. Thank you in advance for your consideration of this matter.

Very truly yours,

Michelle J. Dickinson

cc: G. Macy Nelson, Esq.

Krysundra Cannington

From: Baltimore County Faxcom System <Faxcom@baltimorecountymd.gov>
Sent: Tuesday, December 01, 2015 9:35 AM
To: Appeals Board
Subject: Fax Received From: 18662112673
Attachments: 4412120115.PDF

This message was sent via the Baltimore County Government Faxcom fax System.

-------Fax Reception Report-------
Result: All pages received OK
Pages Received:002
Received: 12/01/15 09:33
Connect Time: 00068
Sender TSID: michelle@dickinson-l
From: 18662112673
Destination DID: 4108873182

Your fax is attached as a PDF image.

FACSIMILE TRANSMISSION

To: +14108873182

From: Michelle Dickinson
Law Office of Michelle J. Dic
10440 Little Patuxent Parkw
Columbia
MD 21044

Phone:
Fax Phone: +14108873182

Phone: +1 (443) 280-4257
Fax Phone: (866) 211-2673

Note:
Ms. Cannington, Please see attached correspondence from the LawOffice of Michelle J. Dickinson.

Date: 12/01/2015

Pages: 2

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 23, 2015

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Catherine H. Robinson
E/s Far Out Lane, approx. 1,475 ft SW of c/l of Akehurst Road
15-235-SPHA 2012 Far Out Lane
5th Election District; 3rd Councilmanic District

Re: Petition for Special Hearing requesting the Administrative Law Judge to amend the December 18, 2014 Order granting a Special Exception for a private kennel in case number 15-092-X as shown and indicated on the site plan, and Petition for Variance from Section 421.1 of the BCZR to permit a private kennel in a RC-2 zone to be located within 15 feet of the nearest property line in lieu of the required 200 feet.

10/9/15 Opinion and Order of Administrative Law Judge wherein the Petition for Special Hearing was GRANTED; and Petition for Variance was GRANTED with the condition that the dogs must not be allowed outside of the house when no one is home. The "doggie door" must therefore remain closed/locked when Petitioner or other occupants are not home.

ASSIGNED FOR: WEDNESDAY, FEBRUARY 3, 2016 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: Counsel for Petitioner : Michelle J. Dickinson, Esquire
Petitioner : Catherine Robinson

Counsel for Protestants/Appellants : G. Macy Nelson, Esquire
Protestants/Appellants : Andrew and Noreen Krause, Anita Krause

Scott Lindgren/Gerhold, Cross & Etzel
Kawana Swank
Ann Merryman
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Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney
J. Lawrence Hosmer/ERM
Anne Cornell
Noah Price
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

October 9, 2015

Michelle J. Dickinson, Esq.
10440 Little Patuxent Pkwy., Suite 300
Columbia, Maryland 21044

G. Macy Nelson, Esq.
401 Washington Avenue, Suite 803
Towson, Maryland 21204

RE: Petition for Special Hearing and Variance
Property: 2012 Far Out Lane
Case No. 2015-0235-SPHA

Dear Counsel:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the Baltimore County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Baltimore County Office of Administrative Hearings at 410-887-3868.

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

IN RE: **PETITIONS FOR SPECIAL HEARING AND VARIANCE** (2012 Far Out Lane) 5th Election District 3rd Council District Catherine H. Robinson Petitioner	*	BEFORE THE
	*	OFFICE OF
	*	ADMINISTRATIVE HEARINGS
	*	FOR BALTIMORE COUNTY
	*	**Case No. 2015-0235-SPHA**

* * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of Petitions for Special Hearing and Variance filed on behalf of the legal owner. The Special Hearing was filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R.") to amend the December 18, 2014 Order granting a Special Exception for a private kennel in Case No.: 2015-0092-X as shown and indicated on the site plan filed in this case. In addition, a Petition for Variance pursuant to B.C.Z.R. § 421.1 was filed to permit a private kennel in a RC 2 zone to be located within 15 ft. of the nearest property line in lieu of the required 200 ft. A site plan was marked and accepted into evidence as Petitioner's Exhibit 2.

Appearing at the public hearing in support of the requests was owner Catherine Robinson and several neighbors. Michelle J. Dickinson, Esq. represented the Petitioner. Andrew and Noreen Krause, represented by G. Macy Nelson, Esq., opposed the requests. The Petition was advertised and posted as required by the Baltimore County Zoning Regulations. Substantive Zoning Advisory Committee (ZAC) comments were submitted by the Department of Planning (DOP) and the Bureau of Development Plans Review (DPR). Neither agency objected to the requests, although the DOP recommended certain conditions for inclusion in the final order.

PETITION FOR SPECIAL HEARING

As noted at the hearing, the petition for special hearing essentially involves a matter of "housekeeping." That is, the request is to amend the previous Order in Case 2015-0092-X (which granted a special exception for the operation of a private kennel on the property) in accordance with the terms of the Order in this case. As such, the petition will be granted, although the petition for variance (discussed below) is the substantive issue that must first be considered.

VARIANCE

Several witnesses testified in Petitioner's case, the first being owner Catherine Robinson, who has lived at the property for over 22 years. Ms. Robinson explained she has at the present time 11 dogs, and she presented photos of each. Petitioner's Ex. 1. She also testified she constructed in the last year a new privacy fence designed to reduce the noise associated with the barking dogs. Petitioner's Ex. 5. Ms. Robinson testified she has not since December 2014 (around the time of the special exception hearing in Case # 2015-0092-X) received any complaints from her neighbors other than an e-mail sent by Andrew Krause, which was admitted as Protestants' Ex. 1. Ms. Robinson explained that if the variance was denied, she would have to relinquish or euthanize at least 6 of her dogs, which she said would be devastating. On cross-examination, the witness agreed that the topography of her property was somewhat typical of other properties found in northern Baltimore County, and that she did not attempt to buy additional land on which to construct the proposed kennel.

The next witness was Noah Price, a landscape contractor with over 30 years of experience. Mr. Price testified that he has been hired by Ms. Robinson to construct fencing, mow grass and perform landscaping work generally. He also noted that he is at the property at least once a week (sometimes more frequently) and also cleans up dog waste, which is then deposited into a specially designed septic system for animal waste, where it is treated with certain chemicals to safely dispose

of the feces. Mr. Price testified Baltimore County officials informed him that a kennel could not be constructed in the front of Ms. Robinson's home (as required by the previous order), since accessory buildings were only permitted in rear yards. The witness testified that while working at Petitioner's property in recent weeks he could hear (but not see, due to vegetation) children jumping into and swimming in the pond/lake situated on the Krause property.

On cross-examination, Mr. Price advised he secured a permit to construct the fences at the property. He also acknowledged that the dogs have access to about a 60' linear portion of the drainage way or ditch that runs through the site, and a photo was admitted showing dogs drinking out of the "stream." Protestants' Ex. 2. Mr. Price also conceded that the dogs do bark on occasion, and said they can "get into it" when visitors or motor vehicles come down the driveway. He testified that the dogs do not bark continuously, and that they would bark for no more than 5 minutes on any such occasion.

The next witness in petitioner's case was James Hosmer, P.E. Mr. Hosmer, who was accepted as an expert, is a licensed professional engineer with over 45 years of experience. His CV was admitted as Petitioner's Ex. 7. Mr. Hosmer explained that he visited the site and also examined USGS maps and online databases to investigate the prominent features and aspects of the property. Mr. Hosmer testified that a drainage swale bisects the property, and runs from the southeast to the northwest. He explained that there is high ground along the perimeter of the site, and that the house (constructed in or about 1920) was located on a flat part of the lot. The witness stated that there are also several spring heads on the property, as well as steep slopes of 2:1 ratio. While the witness advised that the topography of the site was typical for the Piedmont zone, he stressed that the subject property serves as a collection point or conduit for surface waters flowing through the area. Mr. Hosmer opined that the foregoing factors impose a combination of restrictions on Petitioner's ability to use her property.

On cross examination the witness stated that the springs on the property were a constraint, and he opined that the drainage way may be characterized as an "intermittent stream," but not a "stream." Mr. Hosmer conceded steep slopes also existed at other properties in the vicinity, but he added that the relatively small size of petitioner's property, when coupled with the factors identified in his direct testimony, caused the restrictions to be more "pronounced" on the Petitioner's property.

Kiwanna Swank, who lives at the subject property with her teenage son, was the next witness in the case. She stated Ms. Robinson has always had dogs, and that while they do bark when visitors come to the property, they settle down and stop barking within 2 minutes. Ms. Swank testified she is a nurse and works three 12-hour shifts per week. On cross examination she testified that the house has a "doggie door" which lets the dogs come in and out of the house without being escorted. She also stated that there is an approximately 3 hour period between her shifts and when Ms. Robinson leaves for work that the dogs may be left unattended.

Several of Petitioners' neighbors testified, and they each spoke well of Ms. Robinson and supported her zoning request. They noted Petitioner is an extremely giving and kind person who considers the dogs to be her children. Ms. Levinson, a veterinarian who lives adjacent to Petitioner, testified that of course the dogs bark, but that it is not excessive and she sleeps with her windows open and is not disturbed by the dogs. She also stated that Petitioner performs a valuable service to the community by adopting and recuing from "kill shelters" elderly and/or medically infirm dogs that might otherwise not find a home.

Andrew Krause, whose property is adjacent to Petitioner's, was the first witness in Protestants' case. He testified that he and his wife own 3 parcels of land in the vicinity, and that there are steep slopes on his property. He agreed that the fencing installed by Petitioner in the last year has helped with the level of noise, but stated that the dogs often incite one another into a

Under Maryland law, the burden of proof to obtain an area variance is less than that required for a use variance. Anderson, 22 Md. App. at 39. The Anderson court noted the "lesser burden is permitted because the impact of an area variance is viewed as being much less drastic than that of a use variance." Id. A use variance is presumed to change the characteristics of a zone, while an area variance does not. Id. A petitioner need only establish a "practical difficulty" for an area variance, as opposed to an "undue hardship" which must be shown for a use variance. Id. Indeed, B.C.Z.R. §307 sets forth the requirements in the disjunctive, which entitles a petitioner to satisfy the lesser "practical difficulty" standard. McClean v. Soley, 270 Md. 208 (1973).

The McClean case is especially apropos in this matter. That case involved an apartment complex in Towson, and the developer was seeking a variance to reduce certain side yard setback requirements imposed by the B.C.Z.R. As here, only one neighbor objected to the request, and he contended that (like the Protestants here) the reduced setback would reduce his privacy and the enjoyment of his home which was adjacent to the proposed apartment complex. Id. at 209.

The developer sought the variance so that he could preserve certain mature tress which existed on site. The court noted that "in a word, therefore, this dispute is over trees." Id. at 210. The neighbor did not believe the asserted reason was sufficient to justify variance relief, and argued "I think I am more important than the tree." Id. at 210. The court granted the side yard setback variance so that "trees could be preserved," with only a slight detriment to the neighbor. While the court acknowledged it was a "close case," and the intermediate appellate court in Cromwell v. Ward opined the holding was somewhat of an aberration, it is nonetheless valid law from Maryland's highest court.

In this case, the Petitioner makes the variance request so that she can continue to provide shelter and care of the 11 dogs she owns. In my opinion, this is at least as significant a public interest and/or practical difficulty as that asserted by the developer in Soley. The denial of relief

would mean that the dogs would have to be relinquished or euthanized, which I believe constitutes a "practical difficulty" (and as likely, an "undue hardship"). As noted by petitioner's neighbors, Ms. Robinson provides a valuable public function in housing and caring for these animals, many or all of which would have been euthanized by the "kill shelters" from where they were obtained, and are too old and/or infirm to arouse much interest among families for adoption.

To obtain variance relief requires a showing that:

(1) The property is unique; and
(2) If variance relief is denied, petitioner will experience a practical difficulty or hardship.

Trinity Assembly of God v. People's Counsel, 407 Md. 53, 80 (2008).

Petitioner has met this test. The property is unique, based upon the testimony of professional engineer James Hosmer and surveyor Scott Lindgren. While other properties may have steep slopes and resemble a "bowl," none are as small as the subject property, nor are the slopes as steep. In addition, as noted by both experts, the steep slopes here encompass nearly all of the property, which is not the case with surrounding properties.

In addition to the factors identified by the experts (Messrs. Hosmer and Lindgren, as set forth above) I also believe the shape of the property lends to its uniqueness. The subject property is of irregular dimensions; almost pentagonal in shape. Neighboring properties, as shown on the aerial photos and maps submitted (Petitioner's Ex. 8; Protestants' Ex. 3) are not similarly shaped, and are in most instances larger as well. This aspect of uniqueness directly relates to the need for variance relief, in that the size and shape of the parcel make it extremely difficult to comply with the 200 ft. setback requirement. The site plan (Petitioner's Ex. 2) contains an area identified by dashed lines that represents the "building envelope" wherein the kennel could be constructed in compliance with the 200 ft. setback requirement. The area is not only small, but it is irregularly shaped, to the point of being useless. As a consequence, the Petitioner, if a variance is not granted,

will be unable to use her property for a permitted purpose.

If the B.C.Z.R. were strictly interpreted, Petitioner would experience a practical difficulty, given that her dogs would need to be relinquished or euthanized. Finally, I find that the variance can be granted in harmony with the spirit and intent of the B.C.Z.R., and in such manner as to grant relief without injury to the public health, safety, and general welfare. This is demonstrated by the lack of County agency opposition and the support of the great majority of the neighborhood.

THEREFORE, IT IS ORDERED this 9th day of October, **2015**, by this Administrative Law Judge, that the Petition for Special Hearing filed pursuant to § 500.7 of the Baltimore County Zoning Regulations ("B.C.Z.R) to amend the December 18, 2014 Order granting a Special Exception for a private kennel in Case No. 2015-0092-X, as shown and indicated on the site plan (Exhibit 2) admitted in this case, be and is hereby GRANTED.

IT IS FURTHER ORDERED that the Petition for Variance pursuant to B.C.Z.R. §421.1 to permit a private kennel in a RC 2 zone to be located within 15 ft. of the nearest property line in lieu of the required 200 ft., be and is hereby GRANTED.

The relief granted herein shall be subject to and conditioned upon the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at her own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.

2. The dogs must not be allowed outside of the house when no one is home. The "doggie door" must therefore remain closed/locked when Petitioner or other occupants of the subject property are not at home.

ORDER RECEIVED FOR FILING
Date 10-9-15
By Slm

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

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln

ORDER RECEIVED FOR FILING
Date 10-9-15
By sln

IN RE: 2012 Far Out Lane Southside of Far Out Lane, 1475 ft. southwest of Akehurst Road	*	BEFORE THE ADMINISTRATIVE LAW JUDGE
5th Election District 11th Councilmanic District	*	FOR
	*	BALTIMORE COUNTY
Legal owner: Catherine Robinson	*	CASE NO. 2015-0235-SPHA

* * * * * * * * * * * * * * *

MEMORANDUM

Facts

Catherine H. Robinson ("Robinson") owns approximately five acres at 2012 Far Out Lane, Sparks, MD ("Subject Property"). The Subject Property borders property owned by Noreen and Andrew Krause ("Protestants"). Robinson has eleven dogs living in her house with access to portions of the Subject Property. A spring on the Subject Property feeds a stream that drains to a pond on the Krause property.

Baltimore County Zoning Regulation ("BCZR") section 421.1 prohibits kennels including "exercise areas, septic systems, dog runs and parking areas" "within 200 feet of the nearest property line." The Subject Property contains approximately 12,000 square feet of land located more than 200 feet from any property line. (Testimony of S. Lindgren). Nevertheless, Robinson seeks a variance to allow a kennel within fifteen feet of the property line which separates her property from Protestants' property. Footnote 2 of Robinson's memorandum states that the Department of Planning "revised their recommendation to approve the variance with a 15-foot setback." Protestants are not aware of such a revision. The file contains a comment dated May 6, 2015 from Dennis Kennedy. That comment addresses "evergreen screening" and the type of fencing. The comment did not recommend approval of the variance.

The Subject Property has the same characteristics as other properties in the vicinity. *See* Applicant's Exhibit 8 and Protestants' Exhibits 3, 5 and 6. Other nearby

properties are approximately five acres or less. Robinson's surveyor, S. Lindgren, identified five lots in the vicinity that are too small to meet the requirement for a setback of 200 feet for a kennel. The Subject Property and other parcels in the vicinity have similar topography, springs and drainage swales. (Testimony of A. Krause, L. Hosmer, and S. Lindgren). And both the Subject Property and two nearby properties have the shape of a "bowl." (Testimony of S. Lindgren).

The dogs are loud at certain times and quiet at other times. Certain triggers – a moving car, a pedestrian, a wild animal – cause the dogs to "get into" an episode of protracted and loud barking. The dogs have access to a portion of the stream that drains to the Krauses' pond. Protestants presented evidence that the kennel at the Subject Property harmed them in two ways. The barking dogs on the Robinson property interfere with the Krauses' and their tenants' use and enjoyment of the Krause property. Dog waste also contaminates both the stream that flows from the Subject Property to their pond and the pond itself. The contamination of the pond caused them to stop using the pond for recreational purposes.

Robinson did not apply for a permit to construct a kennel in the 12,000 square feet of her property that satisfied the setback requirement. Her landscaper, Noah Price, III, testified that he thought the County would not allow a kennel there. But Robinson's witnesses admitted that Robinson did not seek a variance of any regulation that might address a structure in front of the house. Other witnesses for Robinson suggested that the presence of the spring might limit in some way Robinson's ability to construct a kennel within the 12,000 square feet that satisfied the setback requirement. But the only evidence is that Robinson made no effort to discuss this concern with DEPS. Finally, Robinson and her witnesses admitted that she made no effort to purchase another parcel of land that was large enough to allow the construction of a kennel.

Summary of Law

BCZR section 307.1 grants the Administrative Law Judge ("ALJ") authority to grant a variance from the zoning regulations in limited circumstances. The appellate jurisprudence interpreting BCZR section 307.1 is well developed. *See Cromwell v. Ward*,

102 Md. App. 691 (1995); *Umerley v. People's Counsel for Baltimore Cnty.*, 108 Md. App. 497, *cert. denied* 342 Md. 584 (1996); and *Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore Cnty.*, 407 Md. 53 (2008).

Cromwell emphasizes that a "variance is authority ... to use his property in a manner forbidden ..., while a[] [special] exception allows him to put his property to a use which the enactment expressly permits." *Id.*, 102 Md. App. at 700 (internal quotation marks omitted). Consequently, "[t]he general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. *Id.* at 703.

Cromwell provides a roadmap for the analysis of an application for a variance:

> The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is-in and of itself-unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.,* a determination of whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness, exists. Further consideration must then be given to the general purposes of the zoning ordinance.

Id. at 694-95. "These general rules are recognized by BCZR 307.1." *Umerley*, 108 Md. at 506.

Trinity explains:

> To be "unique," a property must "have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, sub-surface 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." *Lewis v. Dept. of Natural Resources,* 377 Md. 382, 434 (2003) (italics omitted) (quoting *North v. St. Mary's County,* 99 Md. App. 502, 514, (1994)).

407 Md. at 81. *North* also makes clear that, "[i]n the zoning context the 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property." 99 Md. App. at 514.

Finally, it is not enough for an applicant to prove uniqueness and practical difficulty or unreasonable hardship. An applicant must also prove that the variance, if granted, will not cause "injury to public health, safety and general welfare." BCZR § 307.1.

Argument

The ALJ should disapprove the application for a variance for three separate reasons. Each reason by itself is an independent basis to deny the application. First, Robinson failed to satisfy the uniqueness requirement. This requirement mandates that the ALJ to compare the characteristics of the Subject Property with other properties in the vicinity. The Subject Property is similar to other properties in the vicinity in every material way including size and topographic and hydrologic features. Robinson appears to argue that the location of the house near the back of the property in the base of the "bowl" is evidence of the requisite uniqueness. The "bowl" on the Subject Property is not unique. Robinson's own expert witness, S. Lindgren, described two other properties that had similar "bowls." Even assuming no other parcels have houses in similar locations in a "bowl", that alleged characteristic is not evidence of uniqueness. The rule is that, "the 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property." *North*, 99 Md. App. at 514. Robinson's failure to prove that the Subject Property is unique ends the inquiry.

Second, Robinson failed to prove practical difficulty and/or unreasonable hardship. The only evidence was that she failed to apply for a permit to construct a kennel within the 12,000 square feet of her property that were more than 200 feet from any property line. She also failed to investigate whether she could purchase additional land for a kennel. Furthermore, she has reasonable use of her property without the ALJ granting her a variance for a kennel.

Third, Robinson failed to prove that the proposed kennel will not cause "injury to public health, safety and general welfare," as required by BCZR section 307.1. The only evidence is that the barking dogs adversely affect the general welfare of the Protestants. Furthermore, the variance, if approved, will injure the public health because the dog waste contaminates the stream on the Subject Property which, in turn, contaminates the pond on the Krause property. That contamination makes the pond unsafe for swimming and fishing.

Respectfully submitted,

G. Macy Nelson
Law Office of G. Macy Nelson, LLC
401 Washington Avenue, Suite 803
Towson, Maryland 21204
(410) 296-8166
gmacynelson@gmacynelson.com
Attorney for Andrew and Noreen Krause

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of October, 2015, a copy of the foregoing Memorandum was mailed first-class, postage prepaid, to:

Michelle J. Dickinson, Esquire
10440 Little Patuxent Parkway, Suite 300
Columbia, Maryland 21044
Attorney for Catherine Robinson

G. Macy Nelson

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
(2012 Far Out Lane)	*	OFFICE OF
5th Election District	*	ADMINISTRATIVE HEARINGS
3rd Councilman District	*	FOR BALTIMORE COUNTY
Catherine H. Robinson	*	
Legal Owner/Petitioner	*	**Case No. 2015-0092-X**

* * * * * * * * *

MEMORANDUM OF LAW

Petitioner Catherine H. Robinson, by her counsel and pursuant to Baltimore County Zoning Regulation ("B.C.Z.R.") 307.1, submits this Memorandum of Law in support of her Petition for a Variance from the setback requirements of B.C.Z.R. 421.1. On December 18, 2014, this Court granted a special exception for a private kennel in an R.C. 2 (Agricultural) zone for Ms. Robinson to continue to rescue and care for up to 10 dogs as she has for many years. Since Ms. Robinson's house is located less than 200 feet from the nearest property line, the special exception requires Ms. Robinson to construct a separate kennel structure for the dogs and locate outside exercise areas more than 200 feet from the nearest property line, in accordance with B.C.Z.R. 421.1.[1]

Although she has sufficient acreage, due to the severe topography, springs, and location of the house on her property, Ms. Robinson has learned that she cannot build a kennel in the area that is more than 200 feet from the property line, in accordance with B.C.Z.R. 421.1. First, the permissible area is located in front of Ms. Robinson's house, and B.C.Z.R. 400.1 requires accessory structures to be in the rear. Noah Price, of Price Landscaping, testified that Baltimore County advised him that it would not issue permits to build the kennel because it would be located in front of the house. Second, a spring runs through the area where the kennel would be constructed. Baltimore County thus advised Mr. Price that environmental issues also would prohibit construction. Scott Lindgren, a zoning expert and professional surveyor, and Larry Hosmer, a civil and geotechnical engineering expert, both confirmed that MDE would not likely approve construction of a kennel near the spring due to environmental concerns. Ms. Robinson thus can only keep her dogs and enjoy the special exception if they are allowed to live in her house.

The dogs must exit the house through the rear, as they cannot navigate the steep terrain and steps immediately in front of the house, *see* Exh. 6 (video), or access the door that leads to the front

[1] The special exception permits Ms. Robinson to keep three of her now-eleven dogs in her home.

patio from inside. Once outside, the dogs must walk up the driveway past the tall retaining walls to access the front yard. A tall wooden privacy fence and a stand of mature evergreen trees run along the driveway at the back of the property to act as a sound buffer. The underground electric fence runs along the outer edge of the driveway and comes within 15 feet of the property line near the back corner of the property.[2] Accordingly, Ms. Robinson seeks a variance from the setback requirements of B.C.Z.R. 421.1 to allow her to continue to use her house and the outside area already secured by an underground electric fence for the kennel – essentially, to maintain the status quo.[3]

Under *Cromwell v. Ward*, 102 Md. App. 691 (1995), and its progeny, an area variance should be granted where: (1) the property is unique; and (2) the petitioner will experience a practical difficulty if the variance is denied. Ms. Robinson has met this test. Experts Mr. Lindgren and Mr. Hosmer, as well as Mr. Price, testified that Ms. Robinson's property has severe steep slopes at the front and two sides, which create a bowl effect on the entire property. *See* Exh. 2 (site plan) and 6 (video). Her property is a drainage basin for surrounding properties and a discharge point for underground springs. As a result of the severe topography, drainage, and springs, the house necessarily was constructed in 1920 in the flattest and driest location, which is at the very back of her property, less than 200 feet from the property line. No other property in the area has the same combination of characteristics. Although two properties in the area have "bowls," their slopes are not nearly as steep and do not encompass the entire property, like Ms. Robinson's. Further, neither of those properties has a house located at the back of the property. It is undisputed that no other property in the area has the severe topography combined with natural springs and an existing house necessarily located less than 200 feet from the back of the property, preventing the permissible use of the property as a private kennel. The property's uniqueness causes B.C.Z.R. 421.1 to have a

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[2] The Department of Planning initially recommended a 100-foot setback to address the Krauses' noise concerns until they observed that the dogs could not exit the house except through the rear and up the driveway and that Ms. Robinson had installed a privacy fence as an additional sound buffer. They revised their recommendation to approve the variance with a 15-foot setback.

[3] The status quo differs from December 2014 in that Ms. Robinson has spent considerable amounts of money constructing privacy and perimeter fencing to address the concerns of neighbors, Andy and Noreen Krause, regarding noise and dogs escaping the electric fence.

disproportionate impact.

If the area variance is denied, Ms. Robinson will experience a practical difficulty,[4] as she will be unable to use her property for a permitted purpose – a private kennel, for which this Court granted a special exception. More importantly, if the variance is denied, Ms. Robinson must get rid of eight of her dogs. Ms. Robinson testified that most of the dogs are not adoptable because they are old or in bad health. Ms. Robinson thus would have no choice but to euthanize most of her dogs. That would not only be a "practical difficulty" but a horrific fate for the innocent dogs and their loving owners, including a fourteen year old boy, Kaden, who consider them family.

The Krauses, who live on approximately 30 wooded acres behind Ms. Robinson, have expressed concerns regarding noise and the effect of the dogs on their pond. Mr. Krause complained that the dogs bark loudly much of the time. His testimony was contradicted by every other witness, including his own wife. Indeed, Mrs. Krause admitted that dog barking is only occasionally a problem and that her own dogs' barking often wakes her up. Further, Ms. Robinson and Ms. Swank testified that the dogs are kept in the house throughout the night until approximately 5:30 a.m. and left in the house alone for no more than a few hours on any given day. When the dogs bark, however, Ms. Robinson, Ms. Swank or her son, Kaden, bring them inside. The Krauses admitted that other dogs in the neighborhood bark and that they cannot always tell whether they are hearing Ms. Robinson's or other neighbors' dogs. The video introduced by the Krauses as evidence of the sound on their property shows that whoever's dogs were barking in the distance only barked for approximately a minute and then were quiet.[5] This is consistent with the testimony of Ms. Robinson, Ms. Swank, their neighbors, and their landscaper that the dogs bark when a car or animal comes by (or Mr. Krause antagonizes them), but they stop after no more than a few minutes.[6] If the

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[4] An "area" variance seeks relief from height, area, setback or property line restrictions. The practical difficulty standard applies to area variances. *Anderson v. Bd. of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28 (1974).

[5] The Krauses' second video shows Ms. Robinson's dogs barking at Mr. Krause as he drives his golf cart along her fence, as one would expect dogs to do. It also shows Kaden quieting the dogs.

[6] *See* Exh. 6 (video of typically quiet dogs on Ms. Robinson's property); Exh. 3 (letters from neighbor and house guests indicating that dogs are well-behaved). By contrast, 2014 affidavits introduced by the Krauses suggest only that the dogs could be heard barking at times, *albeit*, before the privacy fence was installed.

The Krauses admitted that they have no evidence that Ms. Robinson's dogs are responsible for E. coli in any of the water samples, including the samples from the spring that begins on Ms. Robinson's property. Mr. Krause testified that dogs do not relieve themselves in water, and that there are many species of animals in the woods that could be responsible for the E. coli. Further, the electric fence limits the dogs' access to a small segment of the spring, which is dry much of the year. And, the dog waste is picked up regularly and placed in a doggy septic system to avoid environmental concerns. Mr. Krause testified that milkshake-like silty water coming from the spring into his pond is a concern, but silt comes from soil erosion, and Ms. Robinson's property, as seen in the video and photos, is highly vegetative. Any milkshake water likely is from erosion on the 150-feet of the Krauses' property leading down to their pond, not the dogs.[7] Accordingly, there is no credible evidence that the dogs are contaminating the pond or that a variance, which will only maintain the status quo, will have any adverse effect on the Krauses or their pond.

Granting of a variance in this case would be in strict harmony with the spirit and intent of the Baltimore County Zoning Regulations and can be accomplished without injury to the public health, safety or general welfare. Accordingly, Ms. Robinson respectfully requests that this Court grant a variance from the 200-foot setback requirement of B.C.Z.R. 421.1 and permit her to use her house and the outside area currently confined by an underground electric fence, which is within 15 feet of the nearest property line as depicted on the site plan, for her private (not commercial) kennel.

Respectfully submitted,

Michelle J. Dickinson
Law Office of Michelle J. Dickinson, LLC
10440 Little Patuxent Pkwy, Ste. 300
Columbia, Maryland 21044
(410) 740-5630
michelle@dickinson-law.com
Counsel for Catherine H. Robinson

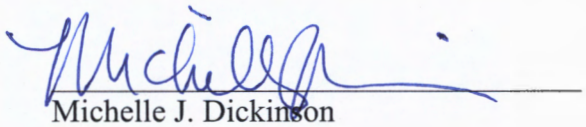
[7] Mr. Krause also testified that they had to purchase an expensive aerator to address a long-term algae problem caused by stagnant water in the pond, but this has nothing to do with dogs or E. coli.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of October, 2015, a copy of the foregoing Memorandum of Law was delivered via regular mail, postage prepaid to:

G. Macy Nelson
Law Office of G. Macy Nelson, LLC
401 Washington Ave.
Suite 803
Towson, MD 21204

Counsel for Andy and Noreen Krause



Michelle J. Dickinson

PLEASE PRINT CLEARLY

CASE NAME _____
CASE NUMBER 2015-235-SI
DATE 9-23-15

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
SCOTT LINDGREN	GERHOLD, CROSS & ETZEL, LTD 320 E. TOWSON TOWN BLVD SUITE 100	TOWSON, MD 21286	slindgren@gcelimited.com
J. LAURENCE HOSMER	ERM. STE 400, 200 Hebb Terrace	Prince Georges, MD 21401	LARRY.HOSMER@ERM.com
ANNE CORNELL	2000 FAR OUT LN 21152	SPARKS MD 21152	bloomersinc@gmail.com
Ann Merryman	1300 Cold Bottom 21152		merrymanmgmt.com
Noah S Pl &	2518 NEW PARK RD	NEW PARK, PA.	
Kawana Swank	2012 Far Out Ln Sparks, MD	21152	Slewofflags22@aol.com

PLEASE PRINT CLEARLY

CASE NAME _____
CASE NUMBER 2015-0235-SPHA
DATE 9-23-15

CITIZEN'S SIGN - IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E - MAIL
Andrew Krause	1940 Akehurst Rd	Sparks, MD 21152	akrause@comcast.ca
Anita Krause	3801 Schaper Dr Apt 113	Randallstown, MD	
Noreen Krause	1940 Akehurst Rd.	Sparks MD 21152	krausesc@comcast.net
Kawana Swank	2012 Far Outln	Sparks, MD 21152	slewofflags22@aol.com

Debra Wiley

From: Debra Wiley
Sent: Monday, September 21, 2015 11:46 AM
To: G. Macy Nelson Esq. (GMacyNelson@gmacynelson.com)
Subject: Case No. 2015-0235-SPHA
Attachments: 20150921114838384.pdf

Mr. Nelson,

Per your request.

-----Original Message-----
From: adminhearingscpr@baltimorecountymd.gov [mailto:adminhearingscpr@baltimorecountymd.gov]
Sent: Monday, September 21, 2015 11:49 AM
To: Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: Admin Hearings Copier

This E-mail was sent from "RNP002673903BB1" (MP 3054).

Scan Date: 09.21.2015 11:48:38 (-0400)
Queries to: adminhearingscpr@baltimorecountymd.gov

KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits, Approvals & Inspections

August 20, 2015

Catherine H Robinson
2012 Far Out Lane
Sparks MD 21152

RE: Case Number: 2015-0235 SPHA, Address: 2012 Far Out Lane

Dear Ms. Robinson:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on April 23, 2015. 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,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: jaw

Enclosures

c: People's Counsel
Michelle J Dickinson, Esquire, 10440 Little Patuxent Parkway, Suite 300, Columbia MD 21044

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: August 10, 2015

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: 2012 Far Out Lane

INFORMATION:

Item Number: 15-235

Petitioner: Catherine H. Robinson

Zoning: RC 2

Requested Action: Special Hearing, Variance

SUMMARY OF REFINED RECOMMENDATIONS:

A meeting held July 17, 2015 between the Department of Planning (Department) and the Petitioner to include her legal counsel indicated substantial material changes have occurred to the subject property since the Department issued its recommendations of May 11, 2015. A revised site plan dated August 6, 2015 and received by this Department on August 7, 2015 documents those changes. The Department notes the existence of a new opaque privacy fence at the northwest tract boundary with substantial vegetative screening and a new screen fence with gates enclosing the majority of the subject property.

The Department has no objection to granting the Petition for Special Hearing to amend the Administrative Law Judge's order in Zoning Case 2015-0092 and Petition for Variance to permit a private kennel in a residential zone to be located within 15 feet of the nearest property line in lieu of the required 200 feet conditioned upon the following:

- Limit the Special Exception use to the extent of the existing underground fence/modified kennel as shown on the aforementioned revised site plan. Any future structure associated with the private kennel shall be located within this area.
- Conditions 2 and 3 in the Administrative Law Judge's Opinion and Order granted on December 18, 2014 in zoning case number 2015-0092-X should remain in place.

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

Division Chief: Kathy Schlabach

AVA/KS
C: Carmela Iacovelli

S:\Planning\Dev Rev\ZAC\ZACs 2015\15-235refined.docx

John E. Beverungen

From: Jeanette Tansey
Sent: Friday, June 12, 2015 9:25 AM
To: John E. Beverungen
Cc: michelle@dickinson-law.com
Subject: Case 2015-0235 Robinson Residence

Good morning, John – I met with the attorney on the above case and she had pictures of the site and explanation of the operation and meaning of the use of the fencing. As such, please change my comment as sent from Dennis Kennedy on May 6 to simply approve the proposed plan. Thank you.

Jeanette M. S. Tansey, R.L.A.
Project Manager, Baltimore County
Permits, Approvals & Inspections
Development Plans Review
111 W. Chesapeake Ave., Room 119
Towson, MD 21204

410-887-3751
jtansey@baltimorecountymd.gov

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

DATE: May 6, 2015

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

SUBJECT: Zoning Advisory Committee Meeting
For May 4, 2015
Item No. 2015-0235

The Bureau of Development Plans Review has reviewed the subject zoning item and we have the following comment.

Although the surrounding properties are large lots, if approved, evergreen screening outside of the proposed fence should be required. Fencing shall be opaque or solid.

* * * * *

DAK: CEN
cc:file

ZAC-ITEM NO 15-0235-05042015.doc

Larry Hogan, *Governor*
Boyd Rutherford, *Lt. Governor*

SHA State Highway Administration
Maryland Department of Transportation

Pete K. Rahn, *Secretary*

Date: 4/30/15

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

RE: Baltimore County
Item No 2015-0235-SPHA
Special Hearing Variance
Catherine H. Robinson
2012 For Dent Lane

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. 2015-0235-SPHA

Should you have any questions regarding this matter, please contact Mr. Richard Zeller at 410-545-5598 or 1-800-876-4742 (in Maryland only) extension 5598, or by email at (rzeller@sha.state.md.us).

Sincerely,

Steven D. Foster, Chief/
Development Manager
Access Management Division

SDF/raz

THE BALTIMORE SUN MEDIA GROUP

501 N. Calvert St., P.O. Box 1377
Baltimore, Maryland 21278-0001
tel: 410/332-6000
800/829-8000

WE HEREBY CERTIFY, that the annexed advertisement of Order No 3468500

Sold To:
Catherine Robinson - CU00393832
2012 Far Out Ln
Sparks Glencoe,MD 21152

Bill To:
Catherine Robinson - CU00393832
2012 Far Out Ln
Sparks Glencoe,MD 21152

Was published in "Jeffersonian", "Bi-Weekly", a newspaper printed and published in Baltimore County on the following dates:

Aug 06, 2015

The Baltimore Sun Media Group

By S. Wilkins

Legal Advertising

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: # 2015-0235-SPHA
2012 Far Out Lane
Southside of Far Out Lane, 1475 ft. southwest of Akehurst Road
5th Election District - 3rd Councilmanic District
Legal Owner(s) Catherine Robinson

Special Hearing: to request the Administrative Law Judge to amend the December 18, 2014 order granting a Special Exception for a private kennel in case 2015-0092-X as shown and indicated on the site plan filed in this case. Variance to permit a private kennel in an RC-2 zone to be located within 15ft. of the nearest property line in lieu of the required 200 ft.
Hearing: Wednesday, August 26, 2015 at 1:30 p.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.

8/002 August 6 3468500

Bruce Doak Consulting, LLC
3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-4906
bdoak@bruceedoakconsulting.com

CERTIFICATE OF POSTING

July 30, 2015, 2015

Re:
Zoning Case No. 2015-0235-SPHA
Petitioner / Owner: Catherine Robinson
Date of Hearing: August 26, 2015

Baltimore County Department of Permits, Approvals & Inspections
County Office Building
111 West Chesapeake Avenue, Room 111
111 West Chesapeake Avenue Towson, MD 21204

Attention: Kristen Lewis

Ladies and Gentlemen,

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at **2012 Far Out Lane**.

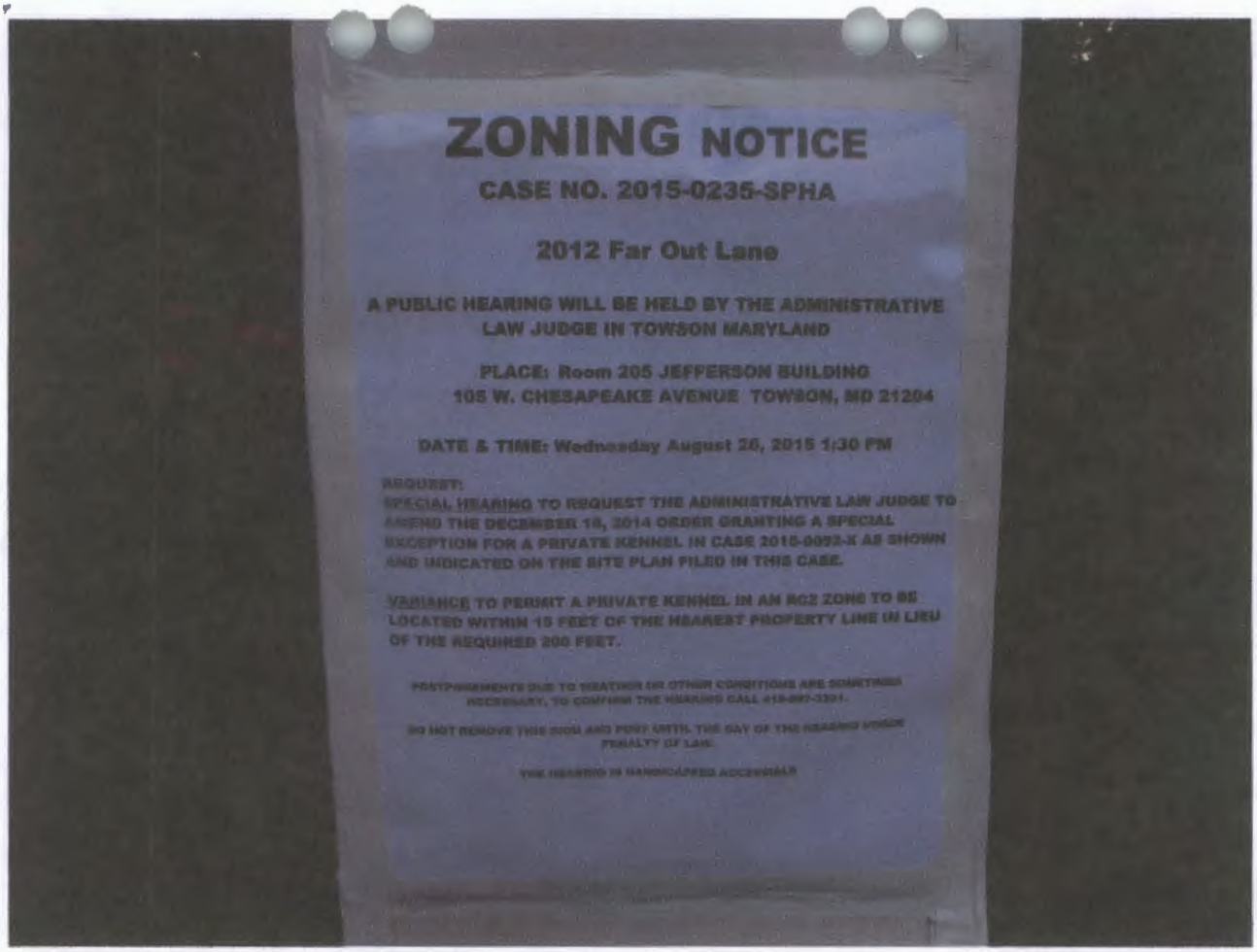
The sign(s) were posted on **July 29, 2015**.

Sincerely,

Bruce E. Doak
MD Property Line Surveyor #531

See the attached sheet(s) for the photos of the posted sign(s)

Land Use Expert and Surveyor


ZONING NOTICE
CASE NO. 2015-0235-SPHA
2012 Far Out Lane
A PUBLIC HEARING WILL BE HELD BY THE ADMINISTRATIVE LAW JUDGE IN TOWSON MARYLAND
PLACE: Room 205 JEFFERSON BUILDING
105 W. CHESAPEAKE AVENUE TOWSON, MD 21204
DATE & TIME: Wednesday August 26, 2015 1:30 PM
REQUEST:
SPECIAL HEARING TO REQUEST THE ADMINISTRATIVE LAW JUDGE TO AMEND THE DECEMBER 18, 2014 ORDER GRANTING A SPECIAL EXCEPTION FOR A PRIVATE KENNEL IN CASE 2015-0093-X AS SHOWN AND INDICATED ON THE SITE PLAN FILED IN THIS CASE.
VARIANCE TO PERMIT A PRIVATE KENNEL IN AN RC2 ZONE TO BE LOCATED WITHIN 15 FEET OF THE NEAREST PROPERTY LINE IN LIEU OF THE REQUIRED 200 FEET.
POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY. TO CONFIRM THE HEARING CALL 410-887-3391.
DO NOT REMOVE THIS SIGN AND POST UNTIL THE DAY OF THE HEARING UNDER PENALTY OF LAW.
THE HEARING IS HANDICAPPED ACCESSIBLE


ZONING NOTICE
CASE NO. 2015-0235-SPHA
2012 Far Out Lane

KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

June 18, 2015

NEW 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: 2015-0235-SPHA
2012 Far Out Lane
Southside of Far out Lane, 1475 ft. southwest of Akehurst Road
5th Election District – 3rd Councilmanic District
Legal Owners: Catherine Robinson

Special Hearing to request the Administrative Law Judge to amend the December 18, 2014 order granting a Special Exception for a private kennel in case 2015-0092-X as shown and indicated on the site plan filed in this case. **Variance** to permit a private kennel in an RC-2 zone to be located within 15 ft. of the nearest property line in lieu of the required 200 ft.

Hearing: Wednesday, August 26, 2015 at 1:30 p.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director

AJ:kl

C: Michelle Dickinson, 10440 Little Patuxent Parkway, Ste. 300, Columbia 21044
Catherine Robinson, 2012 Far Out Lane, Sparks 21152
Macy Nelson, 401 Washington Avenue, Ste. 803, Towson 21204

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY THURSDAY, AUGUST 6, 2015**
(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.

MEMORANDUM

TO: Kristen Lewis
Office of Zoning Review

FROM: Debbie Wiley
Office of Administrative Hearings

DATE: June 10, 2015

SUBJECT: Case No. 2015-0235-SPHA – 2012 Far Out Lane
Hearing: June 16, 2015 @ 2:30 PM

As you are aware, the above-referenced case was scheduled to come before Judge Beverungen on Tuesday, June 16, 2015 at 2:30 PM, in Room 205 of the Jefferson Building. On June 9th and 10th, postponement requests were received and granted by Judge Beverungen on June10th. In his email, Judge Beverungen stated:

> "I am in receipt of Mr. Nelson's request for postponement, which will be granted. I am mindful of the concerns articulated in Ms. Dickinson's letter regarding the dates set forth for compliance in the prior Order dated 12-18-2014. As a condition of granting the postponement request, I will extend the date for compliance until 30 days after the final order is issued in the above case, unless that order specifies otherwise.
>
> The zoning file will be returned to Ms. Lewis, and I would request that 2+ hours be allocated for the rescheduled hearing. Counsel should confer and contact Ms. Lewis to reschedule this case."

This matter is now being returned to you for rescheduling and processing. Thanks.

c: File

Debra Wiley

From: John E. Beverungen
Sent: Wednesday, June 10, 2015 12:25 PM
To: info@dickinson-law.com; 'G. Macy Nelson' (gmacynelson@gmacynelson.com)
Cc: Debra Wiley; Sherry Nuffer; Kristen L Lewis
Subject: 2015-0235

Counsel,

I am in receipt of Mr. Nelson's request for postponement, which will be granted. I am mindful of the concerns articulated in Ms. Dickinson's letter regarding the dates set forth for compliance in the prior Order dated 12-18-2014. As a condition of granting the postponement request, I will extend the date for compliance until 30 days after the final order is issued in the above case, unless that order specifies otherwise.

The zoning file will be returned to Ms. Lewis, and I would request that 2+ hours be allocated for the rescheduled hearing. Counsel should confer and contact Ms. Lewis to reschedule this case.

John Beverungen
ALJ

MJD Law Office of Michelle J. Dickinson, LLC

40 Little Patuxent Parkway, Suite 300
Columbia, Maryland 21044
410.740.5630 T
866.211.2673 F

June 10, 2015

VIA HAND-DELIVERY

Clerk, Office of Administrative Hearings
105 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Case No. 2015-0235

Dear Clerk:

My firm represents Catherine Robinson in her request to amend the special exception for a private kennel by way of a variance from the 200-foot setback requirement of BCZR 421.1. I write in response to the request by Andy and Noreen Krause that the Office of Administrative Hearings postpone the hearing scheduled for June 16, 2015.

Although we always endeavor to consent to extensions as a professional courtesy, we respectfully object to a postponement in this case, as the hearing must take place on June 16, 2015 for Ms. Robinson to comply with Judge Beverungen's December 18, 2014 Order. In granting the special exception, Judge Beverungen ordered that the private kennel be located 200 feet from all property lines and that Ms. Robinson obtain all permits to construct any kennel structure by June 30, 2015. Due to the fact that Ms. Robinson's home is located at the back of her 5-acre property, any kennel structure necessarily would have to be constructed in front of her house. Baltimore County, however, denied Ms. Robinson's permit request because Baltimore County regulations prohibit structures in front of homes. Ms. Robinson thus cannot comply with the Order unless the Court modifies the special exception to expand the kennel area to include her home, which is less than 200 feet from the property line, and the outside area already enclosed by the electric fence. If the hearing is postponed, Ms. Robinson will be in violation of the Order. Indeed, even a short postponement will not suffice because counsel will be traveling starting June 19, 2014.

The Krauses have not suggested that they will be prejudiced by the current hearing date. Indeed, the property has been posted since May 20th and the Krause's have been aware of the hearing since at least June 3rd, when they contacted us about the hearing.

Very truly yours,

Michelle J. Dickinson

Cc: G. Macy Nelson (via email)

Debra Wiley

From: Michelle Dickinson <michelle@dickinson-law.com>
Sent: Wednesday, June 10, 2015 1:05 PM
To: John E. Beverungen
Cc: info@dickinson-law.com; 'G. Macy Nelson' (gmacynelson@gmacynelson.com); Debra Wiley; Sherry Nuffer; Kristen L Lewis
Subject: Re: 2015-0235

Thank you very much, Your Honor. We will confer and contact Ms. Lewis.
Respectfully,
Michelle Dickinson

On Jun 10, 2015, at 12:24 PM, John E. Beverungen <jbeverungen@baltimorecountymd.gov> wrote:

> Counsel,
>
> I am in receipt of Mr. Nelson's request for postponement, which will be granted. I am mindful of the concerns articulated in Ms. Dickinson's letter regarding the dates set forth for compliance in the prior Order dated 12-18-2014. As a condition of granting the postponement request, I will extend the date for compliance until 30 days after the final order is issued in the above case, unless that order specifies otherwise.
>
> The zoning file will be returned to Ms. Lewis, and I would request that 2+ hours be allocated for the rescheduled hearing. Counsel should confer and contact Ms. Lewis to reschedule this case.
>
> John Beverungen
> ALJ
>
> **CONNECT WITH BALTIMORE COUNTY**
>
> 
>
> 
> *When you think Baltimore County, think, www.baltimorecountymd.gov*

JB
12-1-14

IN RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
(2012 Far Out Lane)		
5th Election District	*	OFFICE OF
3rd Councilman District		
Catherine H. Robinson	*	ADMINISTRATIVE HEARINGS
Legal Owner		
Petitioner	*	FOR BALTIMORE COUNTY
	*	**Case No. 2015-0092-X**

* * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Special Exception filed for property located at 2012 Far Out Lane. The Petition was filed on behalf of the legal owner of the subject property, Catherine H. Robinson. The Petition seeks approval for a private kennel (not commercial) in an R.C. 2 zone. The subject property and requested relief are more fully described on the site plan which was marked and accepted into evidence as Petitioner's Exhibit No. 1.

Appearing at the hearing in support of the requests was Catherine H. Robinson. Michelle J. Dickinson, Esquire represented the Petitioner. Andrew and Noreen Krause (neighbors) attended the hearing and opposed the petition. The Petition was advertised and posted as required by the B.C.Z.R.

Zoning Advisory Committee (ZAC) comments were received and are made part of the record of this case. The only substantive comment was from the Department of Planning (DOP), dated November 12, 2014. That agency did not oppose the relief, and opined that the kennel use would not be detrimental to the surrounding community.

The subject property is approximately 5.4 acres and is zoned R.C.2. The property is improved with a large single family dwelling (approximately 2,700 square feet) constructed in 1921,

and is located in a rural setting in northern Baltimore County. The Petitioner is a horse trainer who also operates what under the B.C.Z.R. is a "private kennel," which essentially means that "more than three dogs" are kept on the premises. A private kennel is permitted in an R.C. 2 zone (B.C.Z.R. §1A01.2.C.2) by special exception, hence the petition filed in the above case.

Petitioner appears to concede she is operating a kennel, although a credible argument could be made she is not. The definition of "private kennel" includes a structure where more than three dogs are kept "for the purposes of show, hunting, practice tracking, field or obedience trials, or as pets." As noted below, Petitioner considers only three of the dogs to be her "pets"; the remainder are being fostered or kept for adoption, and it could be argued they are therefore not "pets."

Ms. Robinson testified that she owns 3-4 dogs that she considers her pets, 2-3 elderly dogs that are too old and/or infirm for adoption (she indicated these dogs would likely die in the near future while living with her, and in that sense she equated it to an animal hospice) as well as several other dogs that she keeps or fosters awaiting adoption. Though she initially stated that she would like to keep as many as 12 dogs on the property, she later testified that while she enjoys good health, she is getting older and "does not really want 12 dogs."

Ms. Robinson works at Pimlico race track, and is gone from home between the hours of 5:30 a.m.-10:00 a.m. Kawana Swank and her son also reside with the Petitioner, and Ms. Swank works in a hospital E.R. three days a week from 7 a.m.-7 p.m. Ms. Robinson testified she considers her operation to be a rescue-type organization, and she said her adoptions (for which no fee is charged) are done by word-of-mouth, and that she does not have any signs or advertisements in connection with the kennel. The Petitioner testified she has been operating the "kennel" at the subject property for several years, and counsel introduced a recent edition of Mid-Atlantic Thoroughbred magazine,

featuring Ms. Robinson on the cover in recognition of (among other things) her animal rescue service.

Ms. Robinson acknowledged she has received complaints from one neighbor regarding barking, and on those occasions she planted vegetative buffers and relocated the "invisible dog fence" to minimize the impact upon the Krauses. Mr. and Mrs. Krause both indicated they are extremely fond of the Petitioner, and stated she has always been responsive to their concerns. Even so, the Krauses identified four potential problems with the kennel: noise, sanitation, safety and negative impact upon property values.

Following the hearing, both parties submitted lengthy papers outlining various arguments and counter-arguments regarding the case. It is apparent that things have deteriorated since the date of the hearing, and there is a great deal of mistrust and animosity between the parties. I am of course required to decide this case based on the law and the evidence, although it is unfortunate to see neighbors at odds with each other.

The Krauses have raised in their post-hearing submission several issues that are not germane to the resolution of this case. There is some dispute concerning the location of a septic system, a portion of which is allegedly on the Krause's property. This is a private civil matter, and the OAH has no authority to resolve issues of title or boundary disputes. The Krauses also seek to compel the production of certain documents, but the only mechanism for doing so would be a subpoena, which would have been required to be served at least five business days prior to the hearing. Zoning Commissioner's Rules, Rule 4C. Likewise, issues pertaining to construction without permits, or violations of County environmental regulations, cannot be resolved in a zoning hearing. Instead, the Departments of Environmental Protection and Sustainability and Permits, Approvals and Inspections both have code enforcement officials who will, upon receiving a complaint, conduct a

site visit and inspection to determine if violations exist. Hearings concerning such alleged violations are conducted before a different ALJ, outside of the zoning context.

The neighbors also contend that B.C.Z.R. § 421.1 applies in this case, and I concur. That regulation concerns "...kennels in residential zones." Under the B.C.Z.R (§101.1), a "residential zone" includes a "zone classified as R.C." While an applicant can seek variance relief with respect to the requirements set forth in B.C.Z.R. § 421, such a petition was not filed in this case. As such, that regulation is applicable, and imposes certain setback requirements that will be discussed in the Order which follows. Most significantly, a "private kennel" is defined to include a "dwelling," and it does not appear based on the scaled site plan (Petitioner's Ex. No. 1) that Petitioner's dwelling can satisfy the necessary setback. As such a garage or other structure would need to be constructed for housing the dogs, or at least any dogs in excess of three which can be kept in the home.

Special Exception Law in Maryland

A use permitted by special exception (here, a private kennel) is presumed under the law to be in the public interest, and to defeat such a petition an opponent must establish that the inherent adverse effects associated with the use would be greater at the proposed location than at other similar zones throughout the County. People's Counsel for Baltimore County v. Loyola College, 406 Md. 54 (2008). Stated more eloquently, the court in Schultz stated the applicable test in this fashion:

> We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

Schultz v. Pritts, 291 Md. 1, 22-23 (1981).

The neighbors expressed concern with noise, sanitation, safety and property values. These are the types of inherent adverse effects that the legislature anticipated when it allowed kennels (even commercial kennels) in the R.C.2 zone by special exception. Indeed, most uses for which a special exception is required are regarded as "potentially troublesome because of noise, traffic, congestion...." Montgomery County v. Butler, 417 Md. 271, 297 (2010). Any kennel with ten or more dogs will raise concerns for noise, sanitation, safety and property values, regardless of where that kennel is located in the R.C.2 zone.

In the case of commercial kennels (and unlike the private kennel requested herein) many more dogs are kept on site and their owners will come and go dropping off and retrieving their pets. Such businesses, which are also permitted by special exception in the R.C.2 zone, would generate a large volume of traffic and much more noise than would the modest operation proposed by the Petitioner. In any event, I believe--and no evidence to the contrary was presented--that a private kennel with twelve or fewer dogs would generate the exact same noise, sanitation, safety and property value impacts at any R.C.2-zoned property as it would at the present site. As shown in the photographs admitted as Petitioner's Ex. No. 4, the subject property is located in a rural, wooded, sparsely populated setting. This site provides at least as much seclusion as would other five acre parcels in the R.C.2 zone.

In my opinion, the concerns identified by the Protestants are inherent in the operation of a private kennel, and are of the sort which were contemplated by the County Council when it permitted the use by special exception. Dogs will bark, and there was no evidence presented which would indicate that Petitioner's dogs bark more frequently or louder than typical dogs. There was no testimony presented that the dogs bark "continuously" or late at night. As explained at the hearing,

Baltimore County law defines as a "nuisance animal" any animal that "excessively make disturbing noises." Baltimore County Code (B.C.C.) § 12-3-109(a)(3). This prohibition is enforced by the Baltimore County Department of Health and the Animal Hearing Board, not the Office of Administrative Hearings (OAH).

As such, a distinction must be drawn between dogs that bark (i.e., all dogs) and those that bark so much they become a "nuisance." Courts that have considered similarly worded statutes recognize that it is impossible to define with precision what is "excessive barking," as well as the impracticality of requiring animal control officers to carry decibel meters to "scientifically test the loudness of a yip, yowl or bark." City of Belfield v. Kilkenny, 729 N.W.2d 120 (N.D. 2007).

Without in any way diminishing the concerns expressed by the neighbors, it is at the same time true that life in a rural, bucolic area like this brings with it certain inconveniences that must be borne by homeowners. In Baltimore County, R.C.2 is the only zone expressly declared to be "Agricultural." B.C.Z.R. §1A01. Large and loud farm equipment, fertilizers, manure and chemicals being sprayed on fields, and noisy roosters and other farm animals are all facts of life in a rural, agricultural setting. Based on the testimony and evidence in this case, I do not believe that it could be reasonably argued Petitioner's dogs "excessively make disturbing noises." While the Krauses have complained about Petitioner's dogs, there was no testimony or evidence presented at the hearing indicating that other neighbors have made similar complaints, and there is no evidence that excessive barking complaints have been made to the County Department of Health. Comparing the facts in this case with those from other cases in sister states is instructive on this point.

In Van Deusen v. Seavey, 53 P.3rd 596, 599 (Alaska 2002), the property owner conducted a tour business with 75 sled dogs that barked incessantly, which the court found to be in violation of the applicable ordinance. In Broadcom West Co. v. Best, 889 N.Y.S.2d 881 (2009), the court held

a tenant could be evicted based on "constant dog barking." In Dobbs v. Wiggins, 929 N.E.2d 30 (Ill. 2010), the court found a kennel with "69 barking dogs" to be a private nuisance. In that case, neighbors testified that "the barking was constant, day and night" and "there was never any extended period of time in which they completely quit barking." Id. In Patterson v. City of Richmond, 576 S.E.2d 759, 761 (Va. 2003), the court found that "excessive barking" was established by testimony that the owner's five dogs were outside on many occasions barking constantly "for three or four hours." While dog barking can no doubt be disruptive and impacts one's ability to enjoy her home, the level of disturbance experienced by the neighbors here falls well short of that identified in the above cases.

With regard to sanitation, the Petitioner testified she installed on her property a "doggie septic" system, and she employs a groundskeeper who routinely removes the dog waste. Thus, there is no reason to believe that unsanitary conditions will prevail, much less that the potential for such an impact would be greater here than at other R.C.2 parcels. Mr. Krause indicated his dogs were attacked some time ago by another dog which may have belonged to the Petitioner, but no other evidence was presented to establish that the kennel would present a safety concern for the community. In addition, the Petitioner testified she will not keep as a pet or for adoption any dog that is aggressive. Similarly, though the Krauses stated they feared their property value would decline, no cognizable evidence was presented on this point.

After reviewing the evidence and testimony, I do not believe the Protestants have presented sufficient evidence to rebut the presumption under Maryland law, and the petition will be granted. I will impose conditions in the Order which follows, as permitted under B.C.Z.R. §502.2, for the "protection of surrounding and neighboring properties."

THEREFORE, IT IS ORDERED by the Administrative Law Judge for Baltimore County, this **18th** day of December, 2014, that the Petition for Special Exception to use the herein described property for a private kennel (not commercial) in an R.C. 2 zone, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioner is hereby made aware that proceeding at this time is at her own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioner would be required to return the subject property to its original condition.

2. Petitioner may keep on the premises at any one time no more than ten (10) dogs. To the extent Petitioner now has more than 10 dogs, she shall be permitted to keep such dogs until such time as they are adopted or die, but must thereafter have no more than 10 dogs on the property.

3. The special exception granted herein will terminate automatically if and when Ms. Robinson and/or Kawana Swank no longer own or reside at the subject premises.

4. Petitioner shall on or before June 30, 2015 secure necessary permits and commence construction of any building to be used for housing the dogs in compliance with B.C.Z.R. § 421.1, which structure must be completed on or before August 30, 2015. The outside areas used for exercise and/or dog runs may not be located within 200 feet of the nearest property line, as required by B.C.Z.R. §421.1. This outside area must also be fully enclosed by a fence or underground electric fence to contain the dogs on Petitioner's property.

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

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

6/9/15
To KL - ~~Etter~~ this should w/in 5 days
J (H), Etter re to Bdg's call Debbie & find out -

LAW OFFICE OF
G. MACY NELSON, LLC

G. MACY NELSON
DAVID S. LYNCH

SUITE 803
401 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
www.gmacynelson.com

TELEPHONE: (410) 296-8166
FACSIMILE: (410) 825-0670

June 9, 2015

Hand-Delivered

Office of Administrative Hearings
105 W. Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Application for Variance
Property: 2012 Far Out Lane
Case No.: 2015-0235

Dear Clerk:

Andrew and Noreen Krause, 1940 Akehurst Road, Sparks, Maryland 21152, engaged me to represent them in their opposition to the application for a variance regarding 2012 Far Out Lane. I understand that your office has scheduled a hearing for June 16, 2015.

I write to request a brief postponement of the hearing date to allow me to obtain a copy of the file and prepare for the hearing.

I understand that Michelle J. Dickinson is counsel for the applicant, so I am forwarding a copy of this letter to her.

Very truly yours,

G. Macy Nelson

GMN:ldr
cc: Michelle J. Dickinson, Esquire

B E. Doak Consulting, LLC
3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-4906
bdoak@bruceedoakconsulting.com

CERTIFICATE OF POSTING

May 21, 2015

Re:
Zoning Case No. 2015-0235-SPHA
Petitioner / Owner: Catherine Robinson
Date of Hearing: June 16, 2015

Baltimore County Department of Permits, Approvals & Inspections
County Office Building
111 West Chesapeake Avenue, Room 111
111 West Chesapeake Avenue Towson, MD 21204

Attention: Kristen Lewis

Ladies and Gentlemen,

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at **2012 Far Out Lane**.

The sign(s) were posted on **May 20, 2015**.

Sincerely,

Bruce E. Doak
MD Property Line Surveyor #531

See the attached sheet(s) for the photos of the posted sign(s)

Land Use Expert and Surveyor


ZONING NOTICE
CASE NO. 2015-0235-SPHA
2012 Far Out Lane
A PUBLIC HEARING WILL BE HELD BY THE ADMINISTRATIVE LAW JUDGE IN TOWSON MARYLAND
PLACE: Room 205 JEFFERSON BUILDING
105 W. CHESAPEAKE AVENUE TOWSON, MD 21204
DATE & TIME: Tuesday June 16, 2015 2:30 PM
REQUEST:
SPECIAL HEARING TO REQUEST THE ADMINISTRATIVE LAW JUDGE TO AMEND THE DECEMBER 18, 2014 ORDER GRANTING A SPECIAL EXCEPTION FOR A PRIVATE KENNEL IN CASE 2015-0092-X AS SHOWN AND INDICATED ON THE SITE PLAN FILED IN THIS CASE.
VARIANCE TO PERMIT A PRIVATE KENNEL IN AN RC2 ZONE TO BE LOCATED WITHIN 15 FEET OF THE NEAREST PROPERTY LINE IN LIEU OF THE REQUIRED 200 FEET.
POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY. TO CONFIRM THE HEARING CALL 410-887-3391.
DO NOT REMOVE THIS SIGN AND POST UNTIL THE DAY OF THE
PENALTY OF LAW.
THE HEARING IS HANDICAPPED ACCESSIBLE


ZONING NOTICE
CASE NO. 2015-0235-SPHA
2012 Far Out Lane

THE BALTIMORE SUN MEDIA GROUP

501 N. Calvert St., P.O. Box 1377
Baltimore, Maryland 21278-0001
tel: 410/332-6000
800/829-8000

WE HEREBY CERTIFY, that the annexed advertisement of Order No 3289569

Sold To:
Catherine Robinson - CU00393832
2012 Far Out Ln
Sparks Glencoe,MD 21152

Bill To:
Catherine Robinson - CU00393832
2012 Far Out Ln
Sparks Glencoe,MD 21152

Was published in "Jeffersonian", "Bi-Weekly", a newspaper printed and published in Baltimore County on the following dates:

May 19, 2015

The Baltimore Sun Media Group

By S. Wilkinson

Legal Advertising

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: # 2015-0235-SPHA
2012 Far Out Lane
Southwide of Far Out Lane, 1475 ft. southwest of Akehurst Road
5th Election District - 3rd Councilmanic District
Legal Owner(s) Catherine Robinson

Special Hearing to request the Administrative Law Judge to amend the December 18, 2014 order granting a Special Exception for a private kennel in case 2015-0092-X as shown and indicated on the site plan filed in this case. Variance to permit a private kennel in an RC-2 zone to be located within 15 ft. of the nearest property line in lieu of the required 200 ft.

Hearing: Tuesday, June 16, 2015 at 2:30 p.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 5/800 May 19 3289569

KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits, Approvals & Inspections

May 11, 2015

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: 2015-0235-SPHA
2012 Far Out Lane
Southside of Far out Lane, 1475 ft. southwest of Akehurst Road
5th Election District – 3rd Councilmanic District
Legal Owners: Catherine Robinson

Special Hearing to request the Administrative Law Judge to amend the December 18, 2014 order granting a Special Exception for a private kennel in case 2015-0092-X as shown and indicated on the site plan filed in this case. **Variance** to permit a private kennel in an RC-2 zone to be located within 15 ft. of the nearest property line in lieu of the required 200 ft.

Hearing: Tuesday, June 16, 2015 at 2:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director

AJ:kl

C: Michelle Dickinson, 10440 Little Patuxent Parkway, Ste. 300, Columbia 21044
Catherine Robinson, 2012 Far Out Lane, Sparks 21152

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, MAY 20, 2015**
(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.

RE:	PETITION FOR SPECIAL HEARING AND VARIANCE 2012 Far Out Lane; E/S Far Out Lane, 1475' SW of c/line Akehurst Road 5th Election & 3rd Councilmanic Districts Legal Owner(s): Catherine H. Robinson Petitioner(s)	*	BEFORE THE OFFICE OF ADMINSTRATIVE HEARINGS FOR BALTIMORE COUNTY 2015-235-SPHA

* * * * * * * * * * * * *

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.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

RECEIVED
MAY 04 2015

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 4th day of May, 2015, a copy of the foregoing Entry of Appearance was mailed to Michelle Dickinson, Esquire, 10440 Little Patuxent Parkway, Suite 300, Columbia, Maryland 21044, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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 2012 Far Out Lane, Sparks, MD 21152 **which is presently zoned** RC-2

Deed References: S.M. No. 1014; folio 155 10 Digit Tax Account # 05-14-010230

Property Owner(s) Printed Name(s) Catherine H. Robinson

(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.__X_ **a Special Hearing** to request the Administrative Law Judge to amend the December 18, 2014 order granting a Special Exception for a private kennel in case 2015-0092-X as shown and indicated on the site plan filed in this case.

2.__ **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

_ 3.__X___ **a Varianc** from Section 421.1, BCZR to permit a private kennel in a RC-2 zone to be located within 15 ft. of the nearest property line in lieu of the required 200 ft.

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

Legal Owners (Petitioners):

Catherine H. Robinson /
Name #1 – Type or Print Name #2 – Type or Print

Catherine H Robinson
Signature #1 Signature # 2

2012 Far Out Lane, Sparks, Maryland
Mailing Address City State

21152 / 410-979-7539 / catherinestoley@aol.com
Zip Code Telephone # Email Address

Attorney for Petitioner:

Michelle J. Dickinson, Esq.
Name- Type or Print

Michelle J. Dickinson
Signature

10440 Little Patuxent Pkwy, Ste 300, Columbia, Maryland
Mailing Address City State

21044 / 410-740-5630 / michelle@dickinson-law.com
Zip Code Telephone # Email Address

Representative to be contacted:

Michelle J. Dickinson, Esq.
Name – Type or Print

Michelle J. Dickinson
Signature

10440 Little Patuxent Pkwy, Ste 300, Columbia, Maryland
Mailing Address City State

21044 410-740-5630 /michelle@dickinson-law.com
Zip Code Telephone # Email Address

CASE NUMBER 2015-0235-SPHA **Filing Date** 4/27/15 **Do Not Schedule Dates:** _____ **Reviewer** sh

ORDER RECEIVED FOR FILING
Date 10-9-15
By sln

REV 10/4/11

Gerhold, Cross & Etzel, Ltd.
Registered Professional Land Surveyors • Established 1906
Suite 100 • 320 East Towsontown Boulevard • Towson, Maryland 21286
Phone: (410) 823-4470 • Fax: (410) 823-4473 • www.gcelimited.com

August 28, 2014

ZONING PROPERTY DESCRIPTION FOR
2012 FAR OUT LANE

Beginning at a point on the east side of Far Out Lane, which is 20 feet wide, at the distance of 1,475 feet, more or less, southwest of the centerline of Akehurst Road, and running in or near the paving of Far Out Lane, the six following courses and distances, (1) South 13 degrees 25 minutes 25 seconds West 345.41 feet, (2) South 25 degrees 42 minutes 55 seconds West 59.14 feet, (3) South 43 degrees 47 minutes 05 seconds West 27.77 feet, (4) South 62 degrees 10 minutes 45 seconds West 70.02 feet, (5) South 69 degrees 39 minutes 55 seconds West 82.63 feet, and, (6) South 58 degrees 27 minutes 45 seconds West 85.25 feet, thence leaving Far Out Lane and running, (7) North 36 degrees 06 minutes 35 seconds West 256.45 feet, (8) North 19 degrees 39 minutes 35 seconds West 221.27 feet, (9) North 46 degrees 56 minutes 46 seconds East 282.03 feet, (10) North 47 degrees 27 minutes 44 seconds East 94.67 feet, (11) South 61 degrees 20 minutes 01 seconds East 309.06 feet, and, (12) South 61 degrees 22 minutes 45 seconds East 17.86 feet to the place of beginning, 5.415 acres of land, more or less, located in the 5th Election District and 3rd Council District.

License expires/renews 2/26/15

#0235

IN THE MATTER OF:

CATHERINE ROBINSON
CASE NUMBER: 15-235-SPHA

Hearing Date: April 19, 2016

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:

MAUREEN E. MURPHY, CHAIRMAN

BENFRED B. ALSTON, BOARD

JASON S. GARBER, BOARD

PRESENT ON BEHALF OF THE PARTIES:

ON BEHALF OF THE APPELLEES/PETITIONER:

MICHELLE J. DICKINSON, ESQUIRE

ON BEHALF OF THE APPELLANTS/PROTESTANTS:

G. MACY NELSON, ESQUIRE

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

TABLE OF CONTENTS

(ON RECORD - 10:04:40 AM)

CHAIR: Okay. Good morning, everyone. We're here in the matter of Catherine H. Robinson, Far Out Lane, near Akehurst Road, if I said that right, 2012 Far Out Lane. This is case number 15-235-SPHA. It's a Petition for Special Hearing to amend a previous Order of the Administrative Law Judge, which had granted a special exception for a private kennel and this is a Petition for Variance to permit private kennel in the RC-2 zone to be located within fifteen feet of the nearest property line in lieu of the required two hundred feet. The special hearing was granted below with some conditions and that was on October 9th, 2015. Let's have counsel for the record identify themselves.

MR. NELSON: Normally the applicant goes first. Macy Nelson on behalf of the Citizens/Protestants, Andrew and Noreen Krause who are adjacent landowners to the Applicant's property.

CHAIR: All right.

MS. DICKINSON: Good morning, Your Honor.

CHAIR: Good morning.

MS. DICKINSON: Michelle Dickinson for the property owner, Catherine Holly Robinson. Ms. Robinson, as you may note, just had surgery last week and so she is in a wheelchair.

CHAIR: All right. Which she probably won't, if she's testifying, she probably won't be able to come up here then.

MS. DICKINSON: We can scoot her around.

CHAIR: All right. Yeah, so you want to, do you want to speak up, everyone, because there are microphones in the room and everything is being tape recorded so just keep your voices up. So this is, I guess it's opening. If you'd like to make an opening statement, if not, we can get right to the evidence. Anyone, are you interested in doing that?

MS. DICKINSON: I am, Your Honor.

CHAIR: All right, go ahead.

MS. DICKINSON: As --

CHAIR: Petitioner. Yeah, you're the Petitioner because it is a de novo hearing for the variance case so go ahead.

MS. DICKINSON: Your Honor, as it is a de novo case, will as the Petitioner go first?

CHAIR: That's right.

MS. DICKINSON: Okay. Thank you, Your Honor. Your Honor, after a two-day evidentiary hearing, Judge Beverungen got it right. He granted Ms. Robinson's request or Petition for Variance from the Regulation 421.1, specifically the requirements of a two hundred foot set off for any private kennel. He, he described this as a housekeeping matter, which we believe is appropriate. Ms. Robinson had already obtained a special exception in order to continue to foster and care for unwanted dogs. She has eleven dogs in her property, they all

IN THE MATTER OF:

CATHERINE ROBINSON
CASE NUMBER: 15-235-SPHA

Hearing Date: April 20, 2016

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 09:30 AM.

PANEL PRESIDING:

MAUREEN E. MURPHY, CHAIRMAN

BENFRED B. ALSTON, BOARD

JASON S. GARBER, BOARD

PRESENT ON BEHALF OF THE PARTIES:

ON BEHALF OF THE APPELLEES/PETITIONER:

MICHELLE J. DICKINSON, ESQUIRE

ON BEHALF OF THE APPELLANTS/PROTESTANTS:

G. MACY NELSON, ESQUIRE

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

TABLE OF CONTENTS

(ON RECORD - 09:38:03 AM)

CHAIR: Okay. Good morning, everyone. We're here in the matter of Catherine H. Robinson, day two, case number 15-235-SPHA and we're continuing the case in regard to the Petition for variance, area variance for a private kennel. We were in the Petitioner's case when we left off yesterday and I, the Petitioner was going to decide whether or not they were finished or you had more to put on, so.

MS. DICKINSON: Thank you, Your Honor. Good morning to all three of you. We actually have one witness who is going to be very short and then we will close our case for today.

CHAIR: Sounds good. Okay.

MS. DICKINSON: May I call her?

CHAIR: Sure.

MS. DICKINSON: Thank you, Your Honor. I'd like to call to the stand Kawana Swank.

BOARD: Thank you. Do you swear and affirm under the penalties of perjury, that the testimony you are about to give is true and correct to the best of your knowledge and belief?

MS. SWANK: I do.

BOARD: Please state your name?

MS. SWANK: Kawana Swank.

BOARD: Can you please spell your first and last name?

MS. SWANK: K-A-W-A-N-A, last name Swank, S-W-A-N-K.

Board of Appeals

Case No: 15-235 SPHA Case Name: CATHERINE H. ROBINSON

Exhibit List

Party: ~~Property Owner~~ / Petitioner Date: 4-19-16

Exhibit No:	Description:
✓ 1	January 2014 Mid Atlantic Magazine article about Catherine Robinson
✓ 2	10 photographs of several different dogs
3	Not admitted to evidence Letter of Support for Ms Robinson
✓ 4	photographs of Property 4-1 thru 4-46
✓ 5	Petition Exhibit FLASH DRIVE video showing the Topography of the Property
✓ 6	site Plan
KC 4/19/16 ✓ 7	Map prepared by showing several Parcels of Land near the subject property
✓ 8	(Petitioner) Map (exhibit 7) marked with colored pens showing the subject Property and shows several parcels of land
	VERIFIED BY KC DATE: 4/21/16

Board of Appeals

Case No: 15-235-SPHA Case Name: CATHERINE ROBINSON

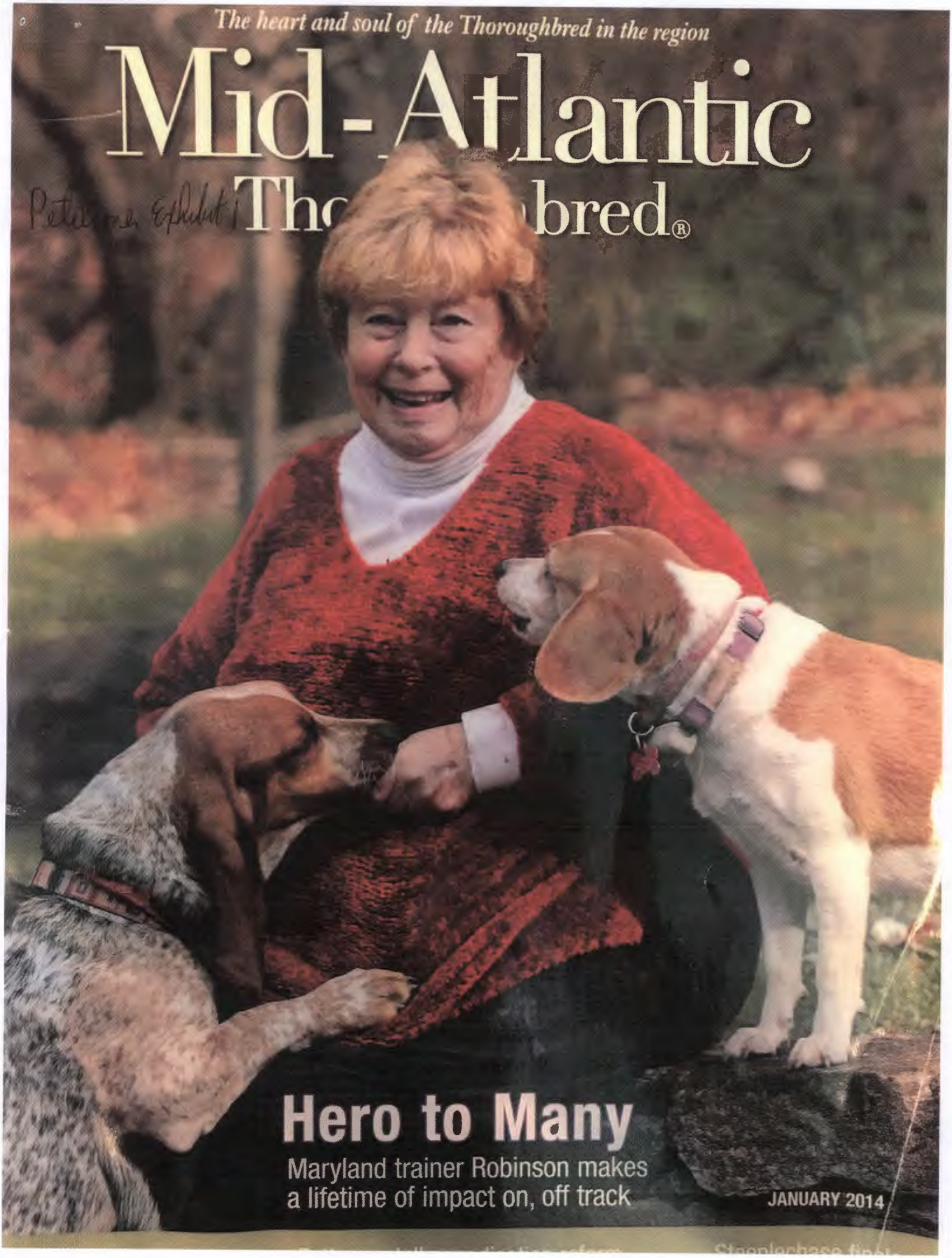
Exhibit List

Party: Property Owner/Petitioner Date: 4-20-16

Exhibit No:	Description:
✓ 9	Table identifying each Parcel by Number - Sorted by acreage
	VERIFIED BY KC DATE: 4/21/16

The heart and soul of the Thoroughbred in the region

Mid-Atlantic Thoroughbred®



Hero to Many

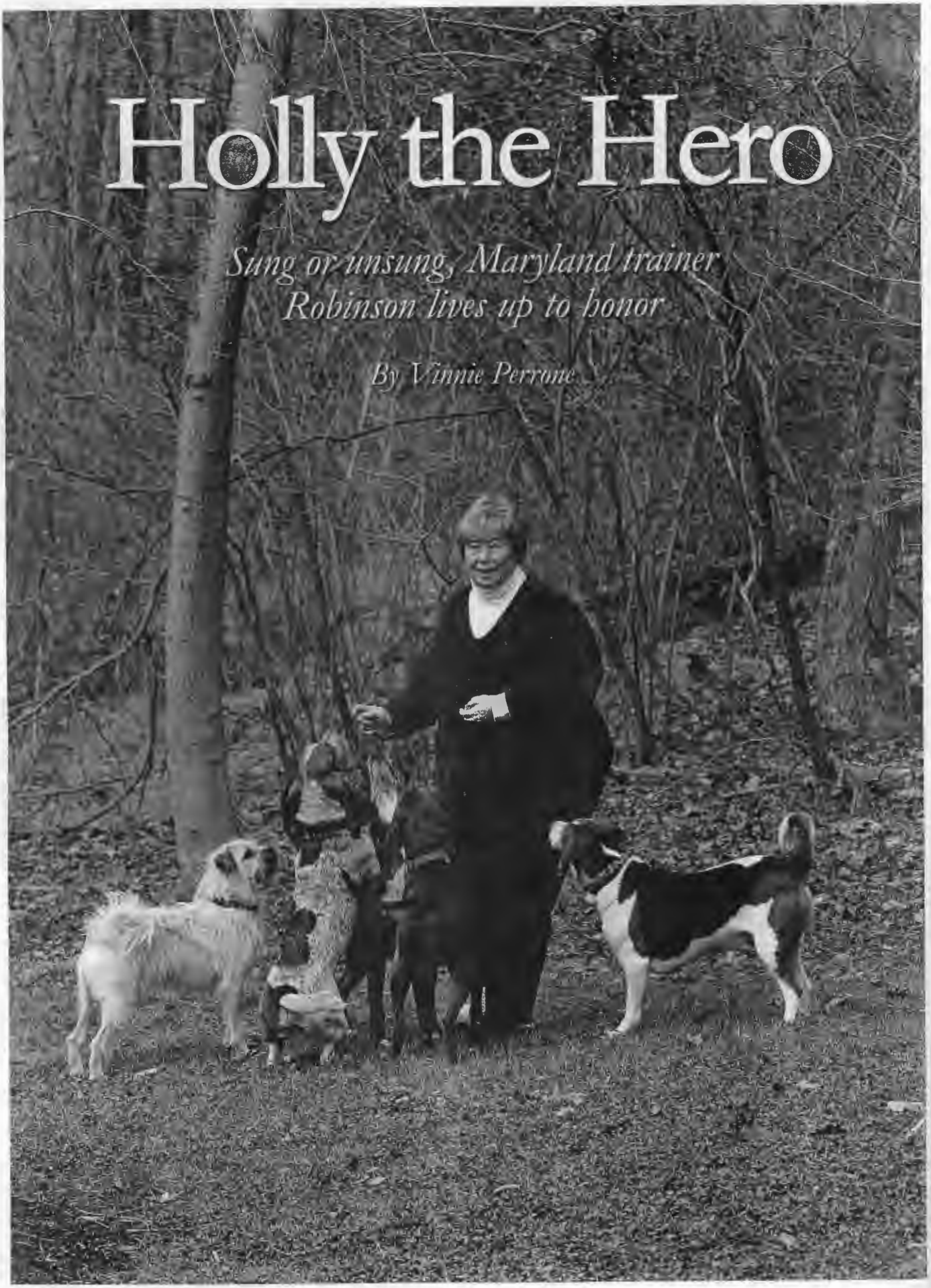
Maryland trainer Robinson makes a lifetime of impact on, off track

JANUARY 2014

Holly the Hero

Sung or unsung, Maryland trainer Robinson lives up to honor

By Vinnie Perrone



LYDIA A. WILLIAMS

Presenting the first Joe Kelly Unsung Hero Award last October, Maryland Million directors implicitly established these precedents for choosing a winning nominee . . . The recipient should contribute readily to the state racing community, and cuss liberally, and learn to train from storied horsemen, and offer sanctuary to human strangers or any needy beast except snakes, and yell, and serve as one-person racetrack recycler, and drive a transport for doomed dogs, and squander a college education, and effect a viable training program others mocked, and care for horses racing and retired, and needle anyone without exception, and engage quiet acts of generosity, and host a baby shower that degenerates into an arm-wrestling fray for drunken women.

"I've never been so shocked in my whole life," 62-year-old Holly Robinson said not about the shower. About winning the Unsung Hero.

Her friends spoke no such wonder. Regarding Holly, stroke by textured stroke, they sketched a vivid rose born of nature: inviting and full of color, inspiring and full of thorns.

"Anybody that really knows her knows how much she does for other people," racing secretary Georganne Hale said in her Laurel Park office. "Even with her horses. When her horses retire, she always makes sure she finds a great home for 'em . . . where they're gonna be used in another capacity, like foxhunting. They're not just gonna sit there like a lawn ornament.

"But then she calls me last week, and she goes, 'Where do you get facials?' And I told her. And she goes, 'Oh. Who do you use?' And I said, 'I think they're all pretty good.' She goes, 'I just wanna make sure I don't use the person you do, because it certainly hasn't helped you.'"

"She used to call me all sorts of names, and she always used a lot of profanity," jockey Rosie Napravnik said by phone the day she shipped into New Orleans for the Fair Grounds meet. "But, honestly, she's hilarious, and I don't think her wit ever hurt anybody's feelings 'cause she is such a great person and everybody loves her."

"She doesn't get a lot of (training) opportunities; but, when she does, she gets the best out of a horse," said Ann Merryman, who launched a novel farm-and-track training partnership with Robinson more than a decade back. "She's the most unique individual. She has probably the greatest sense of humor of anybody you've met, even though half the stuff she says to people you could never print. But she's just so compassionate, and she thinks, when she's helping people so much, that she's doing absolutely nothing. Like when she took Rosie in."

An assistant then to Robinson, Jazz Napravnik tried hard to brace her kid sister for Holly's isms. Rosie, then 16 and itching to race-ride, had left New Jersey for summer work galloping horses for Dickie Small. The only catch: She needed a place to live. Jazz knew whom to ask.

Introductions took place in Robinson's tackroom, then at Pimlico. The exchange was a wink to Holly's bluntness.

Rosie: "The first thing that Holly did was, she stuck out her hand and she said, 'Hi. I don't like girl riders and I don't like bug riders! Nice to meet you.'"

A three-month trial became an 18-month spree. Embracing her new life in Maryland, Rosie enrolled at Hereford High in Parkton. Robinson, her de facto guardian, drove Rosie to school every weekday after training and, when Rosie later needed make-up credits, three times a week to night school in Essex. After a second absence brought Rosie an expulsion notice from Hereford, Robinson wrote a compelling appeal that quashed it.

Rosie got her high-school degree and her jockey's license and quickly rode her way to racing's upper class. On Far Out Lane in Sparks, Md., Robinson's household was diminished but not depleted: Rescue dogs, hounds mostly, still populate the place, and Kawana Swank and son Kaden keep residence in the basement. Kaden, an infant when they moved in, is 12.

"It was a crazy time, and I wouldn't have been able to accomplish so many of the things that I was able to accomplish if I hadn't had someone like Holly going out of her way for me absolutely for no reason other than she could and she wanted to," Rosie said. "She was whatever I needed her to be. When I needed her to be a parent, she was a parent. When I needed her to be a best friend, she was a best friend. She would leave me alone and let me figure things out on my own, and if I needed somebody to figure it out for me, she would do that."

"Rosie was an incredible girl," Robinson said. "I think my pet peeves are the people that say what I've done for Rosie made her the person she is. Let me tell you somethin': That little girl had what it takes, and you very seldom see it. What I did for her helped her a little bit. What Dickie did for her helped her a little bit. And she went on. But let's just say I didn't give her a place to live; let's say she had to live in a tackroom. She was still gonna be what she is. We made it easier for her, but she had that drive."

Young Catherine Holland Robinson, called Holly, never quite squared school and horses, a truth linked to the piney wonder of Camp Illahee in the North Carolina Blue Ridge. William Holland Robinson, a tobacco wholesaler called Holland, and Agnes Withers Robinson, a homemaker called Agnes, had sent their third and youngest daughter to the girls' Christian summer camp in the late 1950s. Illahee meant heavenly world to the Cherokee, and to 6-year-old Holly.

"After ridin', you're supposed to go to arts and crafts, and then you go swim and do this and that," Robinson said, North Carolina still spicing her words. "And after the second day . . . I just skipped all the classes. And after riding, I would go hang out at the creek and look at the horses. And finally somebody came up to me and said, 'No need for you to be sittin' in that ditch. Come on up.' And, I mean, I was just in love. And basically I've been hooked on 'em ever since."

Eventually, the Robinsons bought 12-year-old Holly a pony, Newsprint, origin unknown—"part Quarter Horse, part Lord-knows-what" as Holly put it—on the condition she improve her schoolwork. Newsprint didn't adapt well to jumps, but Holly cleared enough scholastic hurdles to land enrollment at Averett College in Danville, Va.

"They must have had a payoff to take me, 'cause I was sort of a deadbeat," she said. "But I got nominated for hall counselor of my dorm. Not one person

JIM MCCUE

Sweet potatoes are a key ingredient in the feed buckets around Holly Robinson's barn.

returned the next year, OK? I was a real leader."

Fearing dismissal before sophomore term began, Robinson found a new field of study at the Morven Park Equestrian Center in Leesburg, Va., where Olympic silver medalist Jimmy Wofford offered instruction on three-day eventing. At Morven, two men helped clear the brush to her career path: Stanley Greene Sr., who confirmed that Robinson belonged in a racing stable, and Norman Funk, who steered her to Hall of Fame steeplechase trainer Mikey Smithwick.

By then, the early 1970s, a trend was emerging: Holly Robinson had a way to find the heart of the action, and the action of the heart. She took residence on the Smithwick farm in Hydes, Md., became fast friends with brothers Speedy and Roger Smithwick and, before long, accepted Olympic equestrian Kathy Kusner's offer for a working sabbatical with the French Olympic team at Chantilly.

Robinson flashed to afternoon gallops over the mythic course, the shadows lengthening, and said, "That's sorta like a dream."

For six months she studied under Brazilian-born show-riding star Nelson Pessoa, rich for the experience but mindful of the plan. "I did not go there to learn to be a show rider; just for the experience of workin' around another place," she said. "I wanted to train racehorses."

A working stint at The Curragh in Ireland proved less thrilling. "Big fields," Robinson said. "I couldn't say I was disappointed, but it was just so different than what I thought it'd be. I just thought, 'The Curragh – that's a long walk home.'"

Back stateside, she returned to the Smithwicks and continued living there even after accepting a job with trainer Tom Voss. "Tom and I got along really well," she said. "It's hard to get along really well with Tom."

The stints with Voss and Smithwick only confirmed her career arc.

"When I was in France, they weren't Thoroughbreds; they were these big ol' crosses. They were gi-normous horses. They had good runners, and they got over the jumps. But I'm sayin', there's a Thoroughbred for everybody. There's one out there just waitin' for you. They're athletic. They're smart. I love Thoroughbreds because you sit there, and you go through the routine, and you teach 'em somethin', and they get it. Whereas a lot of these warmbloods, every day, over and over and over again – they're not very smart. And I found that on the French Olympic team."

Robinson worked for Voss a few years, then another two after she became godmother to Tom and Mimi's son, Sam. But the flat track beckoned ever louder, and she answered the call in the early 1980s as assistant to Augustin Stable trainer Joe Clancy Sr.

Each working gig burnished her portfolio, professional and personal. Like Smithwick and Voss, Clancy entrusted Robinson with more than horses; she routinely looked after young sons Joe Jr. and Sean, editor and principal writer of *Mid-Atlantic Thoroughbred.*

"Did they tell you the story about the fair?" she asked. "OK, I'm workin' for their father, and we have an apartment near Timonium. So I took Sean and Joe over to the fair. And I don't know how old they were; they were young. Arranged to meet 'em at a time and place. They're not there. They're nowhere. So I figured, 'This is it. I've lost the kids. Pedophiles have taken 'em.' I'm almost in tears. My life's over. The children are dead.

"And then they come out of nowhere, laughin'. I ripped 'em. I told Sean, I said, 'You just wait: When your kids give you the slip, you tell me you won't be the same way.' You know somethin'? When you finally see 'em, you're so gratified to see 'em. But then it turns into anger, and you wanna kill 'em.

You're gonna kill 'em because you found 'em alive."

The kids lived to tell that, and other, stories. Joe Clancy Sr. won the 1984 Federico Tesio Stakes with Fourmatt, and Robinson soon celebrated another score. Roger Attfield, who managed one of the most fashionable racing stables on the Canadian flat, had hired her as assistant.

"The first time I walked into that barn, I'd never seen so many crooked-legged horses my whole life, and they were Vice Regents," she said. "And we had all those Canadian-breds. . . and they were short cannon-boned, crooked. But I learned a whole lot. And never, never discount Roger, OK? If you have seen him run a horse, and you say, 'This just doesn't suit,' it's in there for a reason. I think he can make chicken salad out of chicken sh--."

Managing Attfield's U.S. strings, Robinson finally had her hands on flat-running royalty: $2 million earners With Approval, and Izvestia; Talkin Man, Play the King.

For 15 years she drove through the sport's upper reaches, until the endless road show brought a downshift.

"The last year that I was with (Attfield), we did the Chicago thing. And so we'd go from Florida to Keeneland, Keeneland to Churchill, Churchill to Arlington, Arlington back to Keeneland, Churchill, Florida. And it had just been long enough."

In the late 1990s, Robinson took her wit, ways and wisdom back to Maryland and launched a stable steeped in laughter and steady productivity. For each of the ensuing 15 years, her horses have won six to 19 races and $120,000 to $270,000 in purses.

Between asides and quips and offbeat tales, Robinson said she draws from her teachers in her everyday work. Exhibit A stood down the wall in her Laurel Park office/tackroom, where saddle towels and girth covers and assorted bandages were meticulously rolled and meticulously stowed on wooden shelves.

"I learned that from Roger," she said of the orderly display.

Verbally, less-orderly displays ran loose. Behind the green metal office door with a dog-eared poster of a mutt and the word ADOPT, assistant Sonja Aleksic returned Robinson's playful barbs and sometimes prompted them. As for what her boss does especially well, Aleksic said in Serbian-English, "Probably yelling."

"True," Robinson parried, "but I've never hit anybody."

Then, with barely a pause, "Did you hear about Sonja's shower? We invited everybody, and they were all makin' plans to leave early because baby showers are boring. So we started out with a few little games, and then Sonja, who can't even drink, brings out this Serbian white lightning–grain alcohol. So, the next thing I know, the games are to the side, and then the girls were arm wrestlin'. . .

"Well, they all stayed late, and then left and said, 'If you have a baby shower again, I'm comin' to it.'"

DANA WIMPFHEIMER (2)

Back in the day, trainer Holly Robinson worked on the steeplechase circuit for trainers Mikey Smithwick and Tom Voss including plenty of time on horseback (left) and tightening girths (at the Fair Hill Races).

In Robinson's Laurel office, on the wall above her desk, amid a sea of win photos and a wood carving that read, "The more people I meet, the more I like my dogs," a silver digital square registered 85 degrees and the wrong time.

"It's not right most of the time," she said. "It changes time, and I really like it because I can confuse people."

Robinson opened the door and yelled out. "LOUIS!"

"Yes," came the soft reply from stablehand Luis Garcia, a few feet away.

Then quieter. "Will you hand out a sweet potato or two?"

"OK."

Each of her 15 horses gets a raw, whole sweet potato daily, she said, which boosts vitamin intake and appetite.

"Now, (trainer) Jessie Campitelli cooks 'em. I don't cook 'em–since I don't cook for myself."

She's in the "big barn" at Laurel, the deluxe stable Izzy Cohen built some 20 years ago. "I didn't wanna come in," Robinson said. "Of course, as soon as I moved in here, the roof flies off of it. 'So do me some favors Georganne, OK?'"

For more playful, off-color brushes with racing secretary Hale, consider this:

"I'm sittin' out there talkin' one day . . . and there's this green bird on that paddock fence out there with all these blackbirds," Robinson said. "So I said, 'Get that bird.'"

Before long, she said, foreman Enrique Lopez caught and delivered it.

"He put it in a box, and I gave it to the kid (Kaden Swank) for a birthday present. And so the bird was living at my house. And that b---- Georganne wanted me to pay Magna for it because it was a Magna bird."

Then Hale got going.

"Holly and her two sisters always went on family vacations to unbelievable islands and stuff," she said. "I met one of her sisters, and she said, 'You need to come on vacation with us.' And I said, 'Sure.' So then Holly says, 'That's real nice–tryin' to get into my family.' I said, 'Damn right–I wanna be that fourth sister 'cause you all get to go places.'

"So then I drove with her to go visit her dad when he was in assisted living in North Carolina. It was hotter than hell–a hundred-some degrees when we get there. And she goes, 'Where you goin'?' And I go, 'Well, I'm gonna come inside.' She says, 'No. I'm already stuck with you every vacation. You're not meetin' my father.' I said, 'Well, can't I come inside?' She goes, 'Noooooo. And get me outta the will because you schmoozed in, like you did

Hero of the sideshows

We weren't that young, OK? I was 18, headed to college in a few weeks. Sean was 13. It was the Maryland State Fair, not Greenmount Avenue. And we were fine, no matter what Holly Robinson says.

Our version of the story, and we're sticking to it, goes like this:

Holly was working for our father at Timonium in the summer of 1983, back when the track still ran a full summer meet. She was the assistant, and ran the shed down at the end–just beyond King Leatherbury, around the back from Mike Goswell, at the opposite end of Ann Merryman and next to Greg Bowman. There were a dozen or so horses, flat and steepelechase, 2-year-olds and older. The human crew included Holly, Lonnie, Two-Hour Lou, Every Other Day Ray and a few others. Georganne Hale was an exercise rider for Merryman. Spoon was there, and Shaky, Monroe and Crazy Sam with the machete. What a summer. We won races, lost races, ate egg and cheese sandwiches every day, walked "through the hole," laughed, lived and learned. We also made some extra cash renting out the foxhunters' vacuum cleaner we brought from the farm.

But I digress. We (Holly, Sean and I) went to the fair one night for entertainment. We ate dinner, we rode a few rides, walked through the log home carved from a single tree. Eventually, Sean and I wanted to go to the side shows–headless woman, wolf boy, strong man, pygmy tribe, world's largest bull and all the rest. Holly wouldn't go. I can still hear her, "If you think I'm going to see some HEADLESS WOMAN you're crazy. No thank you." So Holly waited outside the tent. The freaks were freaky, but we weren't scarred. After seeing them all, we exited the tent, and Holly was nowhere to be found. Gone. We looked around a bit and, coming up empty, we walked to my car–maybe we got ice cream, I don't know–and drove back to the apartment where we stayed. I can't remember if we got home first or she was already there but either way she was mad. Madder than a cat with its tail caught in a wringer washer or something like that. She yelled, screamed, cussed, hollered, tossed in several "Your dad made me responsible for you!" exclamations and went to bed. She was still mad the next day at the barn and pretty much every day the rest of the summer.

Actually, she's still mad. To this day, every time we see her she makes sure we know how she feels.

It's been 30 years since that summer. Some of the players are long gone (I miss Lonnie every day). Georganne became the racing secretary. Sean and I write for this magazine. Holly went to Canada and back, but is still doing her thing–caring for horses, dogs and humans, playing mother hen to the rest of us and making sure we're in line.

She won the first Joe Kelly Unsung Hero Award in 2013 because of that spirit and attitude. She was never unsung to me, but she's a hero because she gives a darn, whether you're trying to make it as a kid jockey, needing a place to live, looking for a home or just hoping to get your horse to the races.

No matter what your status, Holly will help. Just don't try to take her to the sideshows at the fair.

–Joe Clancy

with my sisters? You are not meetin' my father.' I said, 'Come on, Holly.' She goes, 'No. Absolutely not.' She wouldn't let me come into the air conditioning. I had to walk the neighborhood.

"She has a big heart, but basically she is a witch."

With regard to training, Robinson has sought the company of others in creative ways. As the 2000s dawned with less-desirable results, she and fellow trainer Merryman, longtime friends, effected a partnership: They would essentially pool their horses, Holly training at the racetrack and Ann at the family farm, Orebanks, in Sparks. They combined resources but kept their clients separate.

"We call it our condo training," Merryman said. "I was like, 'Holly, let's just throw these outfits together.' She was starvin' at one end of the (Pimlico) shed, and I was starving at the other. . . Furthermore it's another pair of eyes on everything. Everybody has assistants; so I'm her assistant, and she's my assistant. You know, it's worked for us."

"We were both on the edge, whether we were gonna make it or not, and we had a handful of horses between the two of us," Robinson said. "And we have different ways of doin' things. I say right; she says left. She's open to all ideas; I'm pretty much a very black-and-white person (her stable colors). . . She has made me a little better, and I think I've made her better, even though she says I'm more military than she is."

Speedy Smithwick joined the cooperative, adding a Virginia outlet and boosting the horse pool to nearly 40. Smithwick trains at the family's Sunny Bank Farm in Middleburg.

"It works out great for everybody," Robinson said. "They keep their family farms goin', and I'm at the racetrack. . . I enjoy the socializin' that goes on at the racetrack. I just keep it simple."

Part of that simplicity means hauling rescue dogs every month or so. The Society for the Prevention of Cruelty to Animals takes dogs from North Carolina kill shelters, places them, and uses a relay of volunteers to drive up the coast to New Jersey. Robinson typically picks up two to a dozen rescues in Catonsville, Md., and ferries them to Wilmington, Del.

"It's really funny, because I'm more of a disciplinarian with the horses than I am with the dogs," she said. "And I think that's because, in our business, we can't become emotionally attached to the horses."

But the line to those and other emotional attachments seems to smudge easily. When she accepted the Unsung Hero Award in October, Robinson donated the $1,000 cash prize to a fund for another trainer's exercise rider, Jose Villegas, badly injured in a spill. Then, at the silent auction, she proffered high bid on a six-day trip to Africa for two and gave it to Kawana and Kaden Swank.

"Don't think it's some great act of generosity," she said. "If I'm goin' to Africa, I'm goin' for 60 days, not six."

As for other selfish acts, Robinson single-handedly recycles cans and bottles from the Laurel/Pimlico racing office.

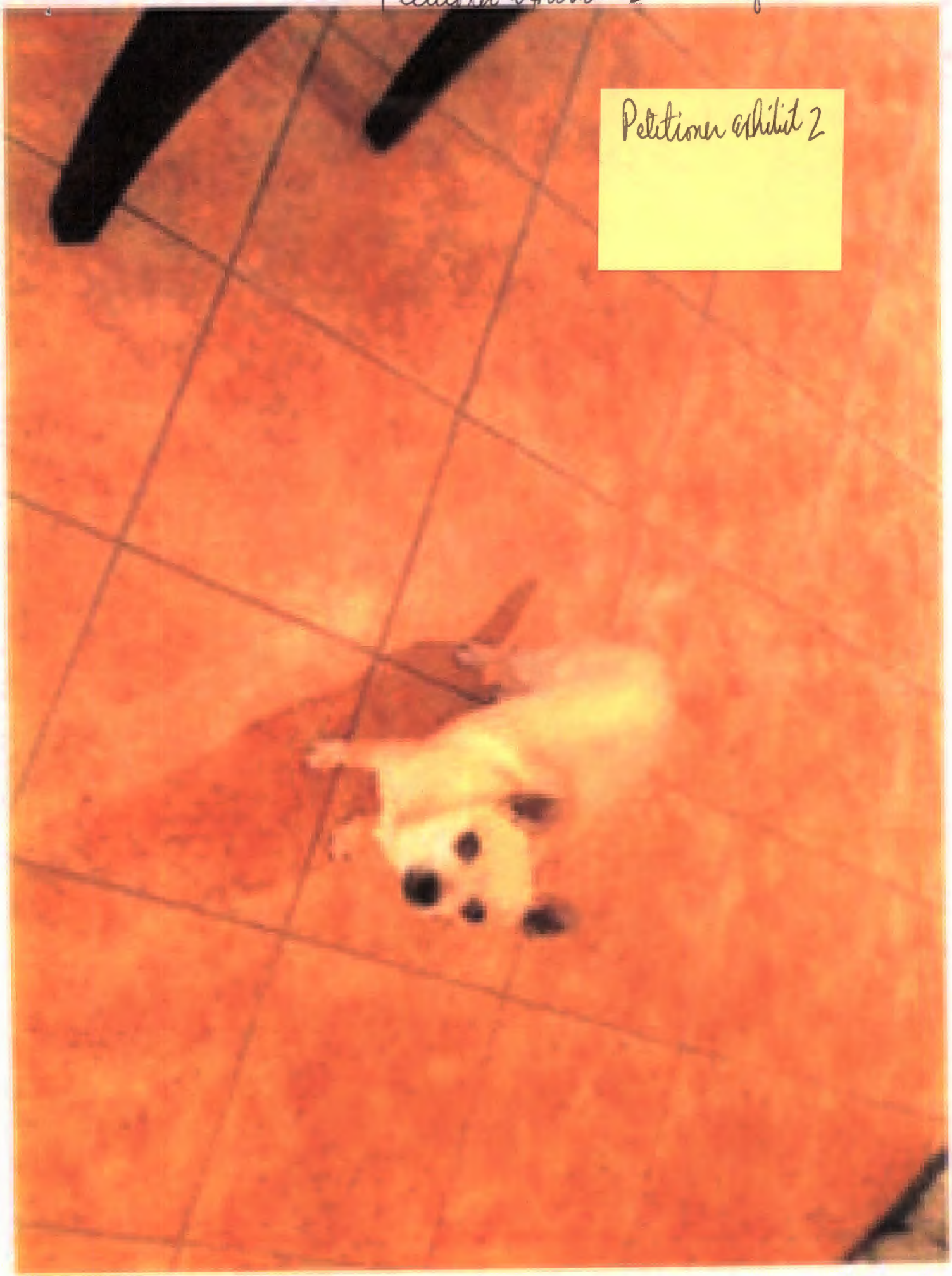
"I got sort of fanatical about it," she said. "It's too bad we don't recycle. It's just so bad. When everybody's bitchin' about the environment, I sit there and say, 'You're the ones with kids. I'm recyclin' for your kids.'"

It underscores her mantra. "To me, it comes down to this," she said. "Don't hurt the animals and don't hurt children."

The verbal archer looked off, far off, to a Maryland State Fair 30 years past, and shot one more arrow from a teeming quiver.

"When you see Sean (Clancy)," she said, "tell him I hope he lost his kids at the fair." ✹

Petitioner exhibit 2 1 of 11



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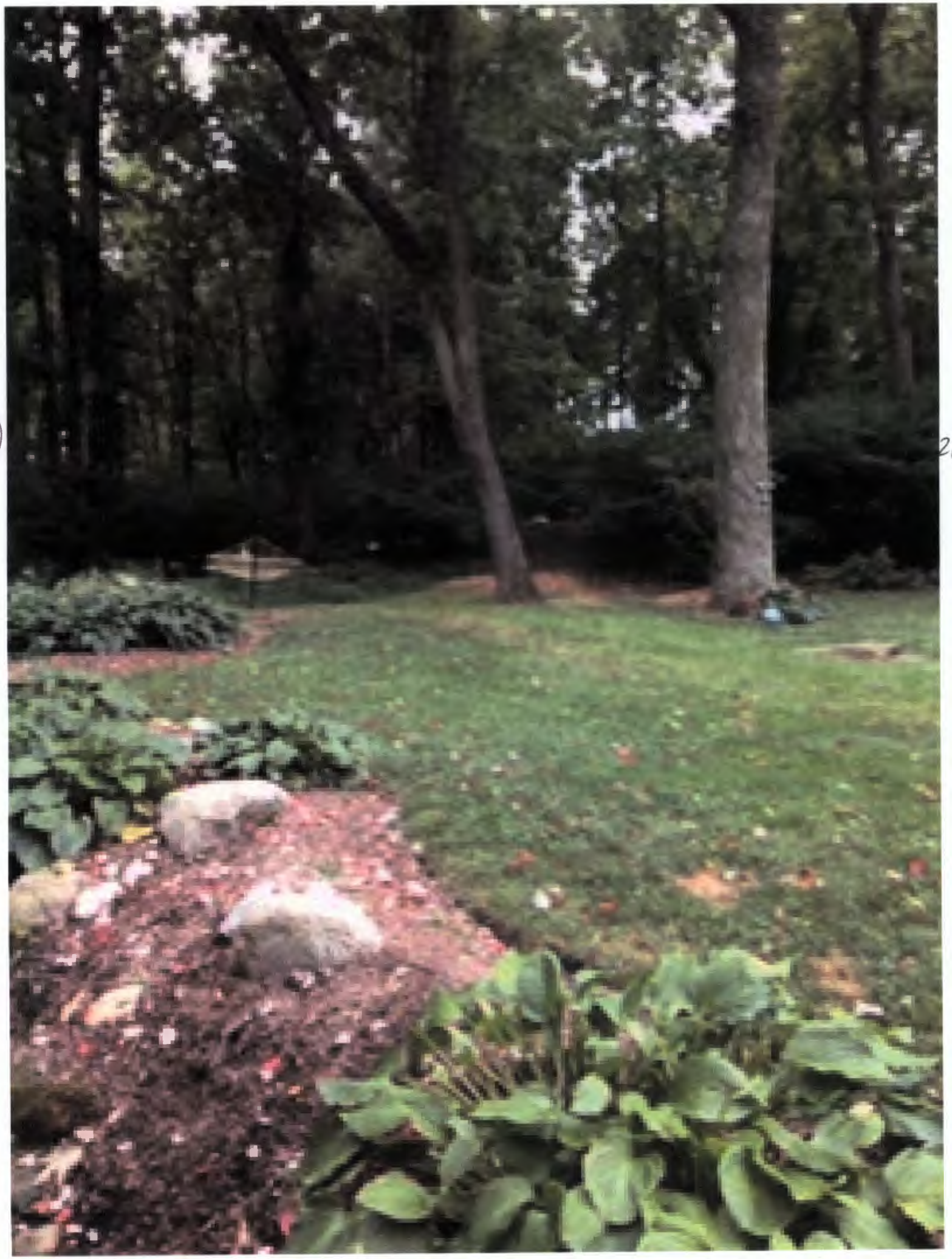
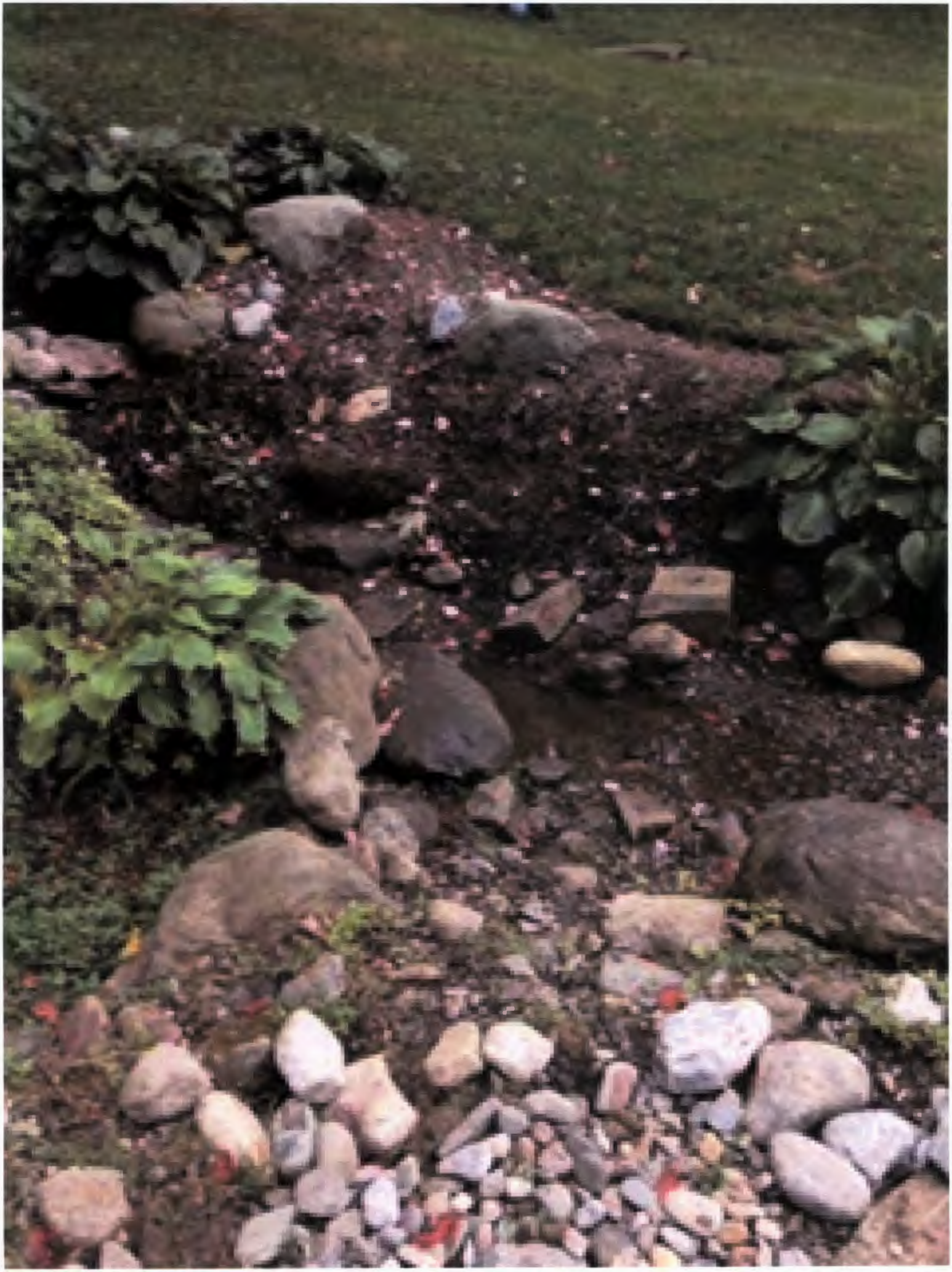
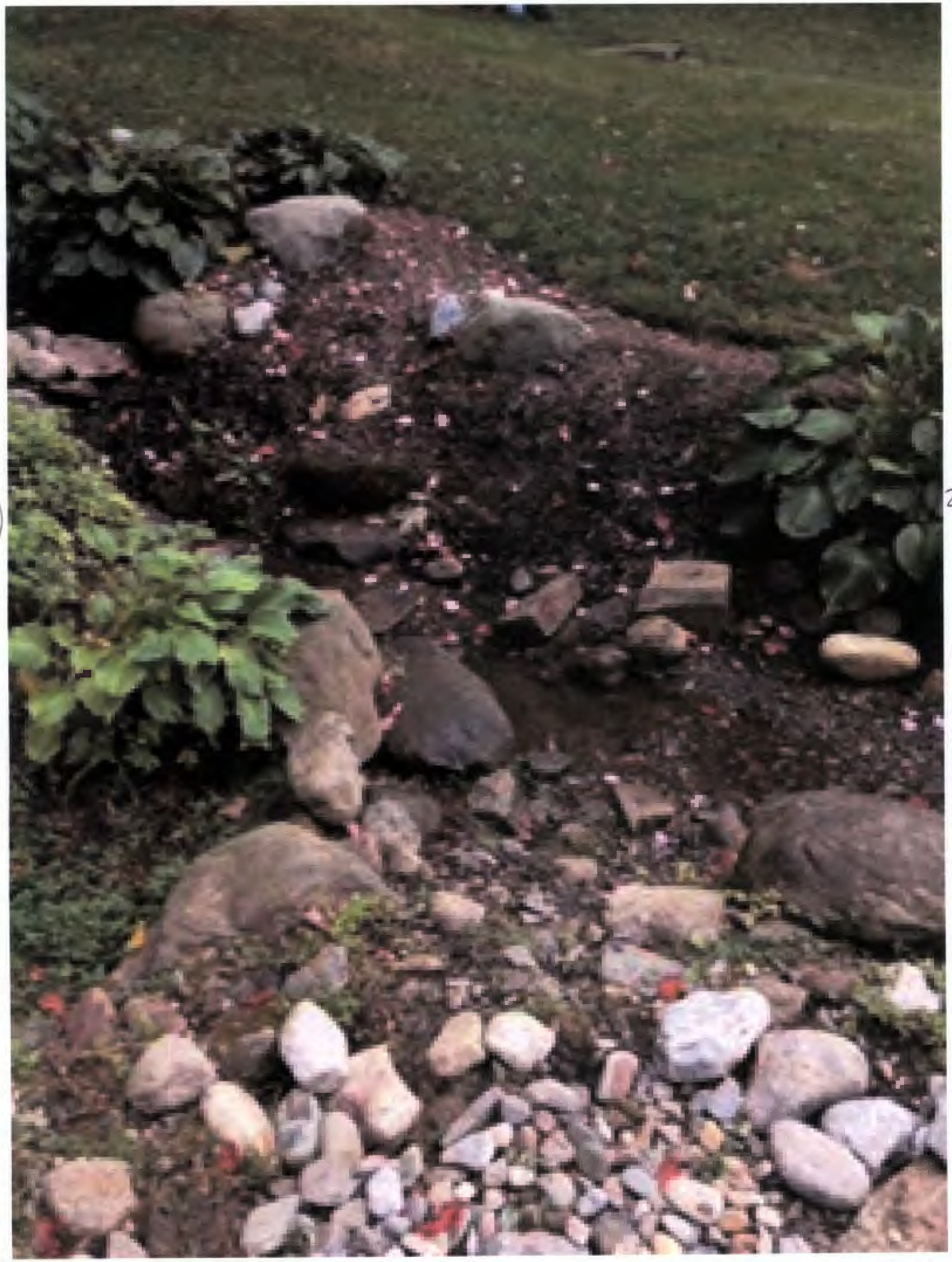
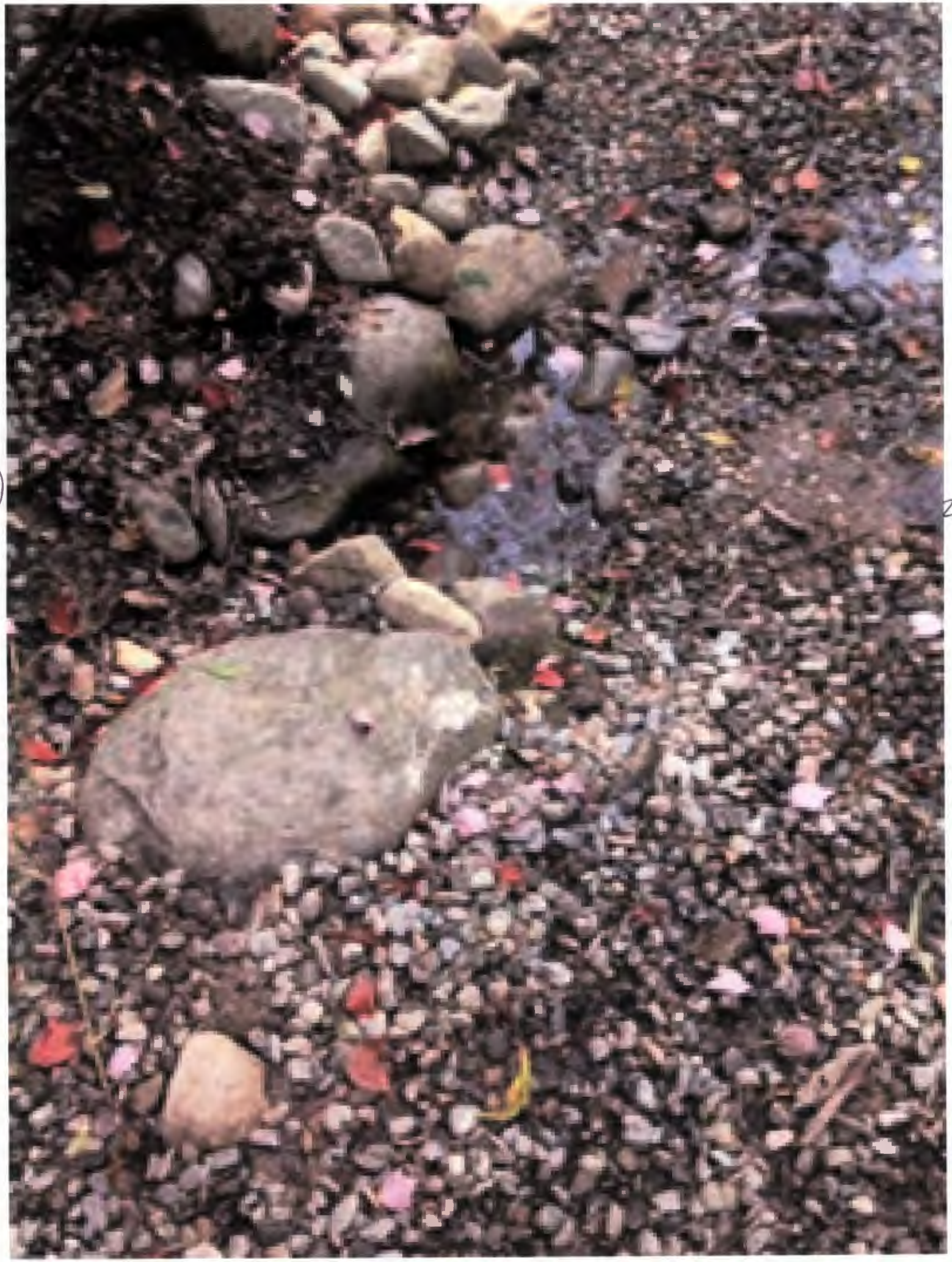
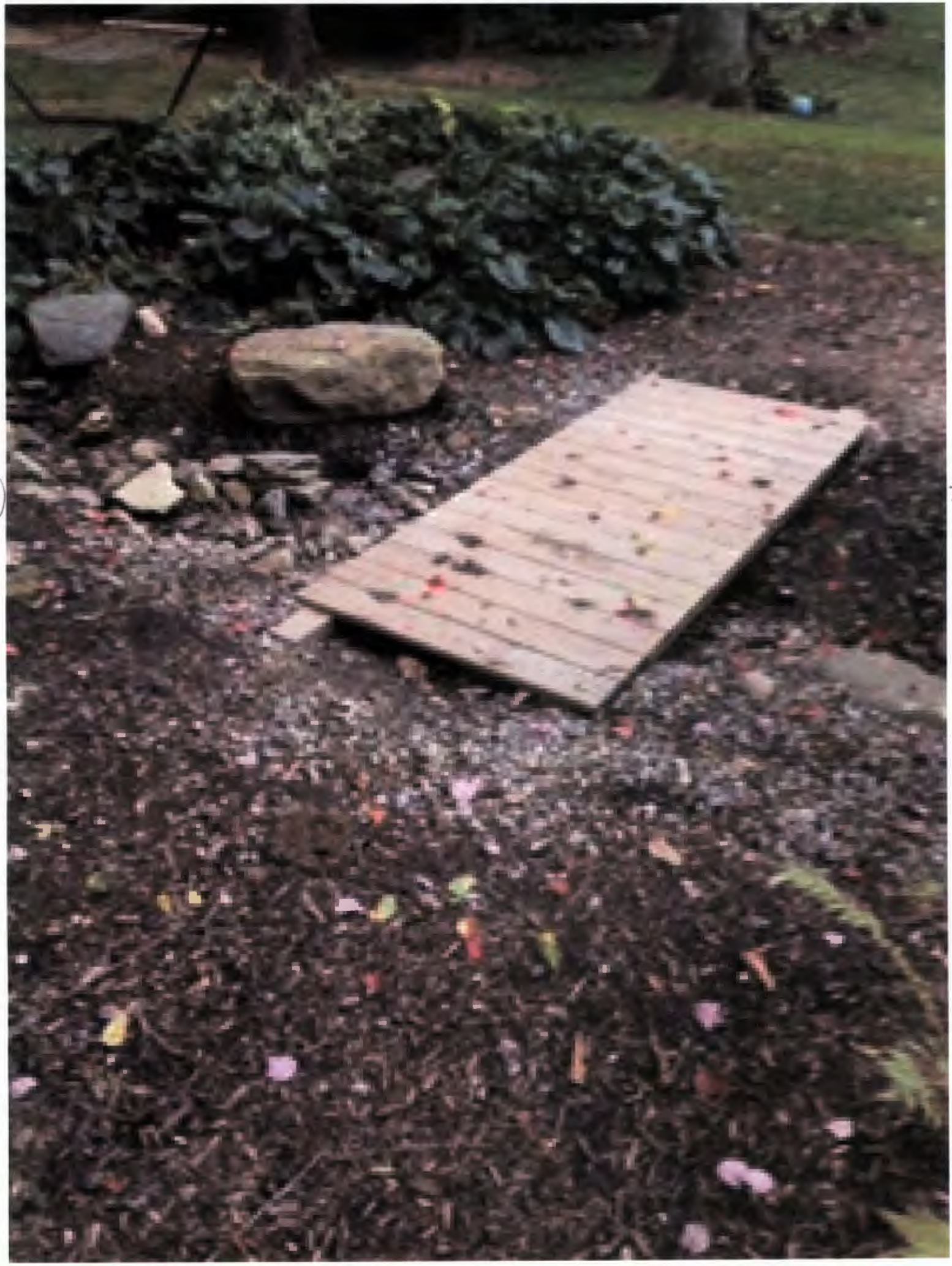
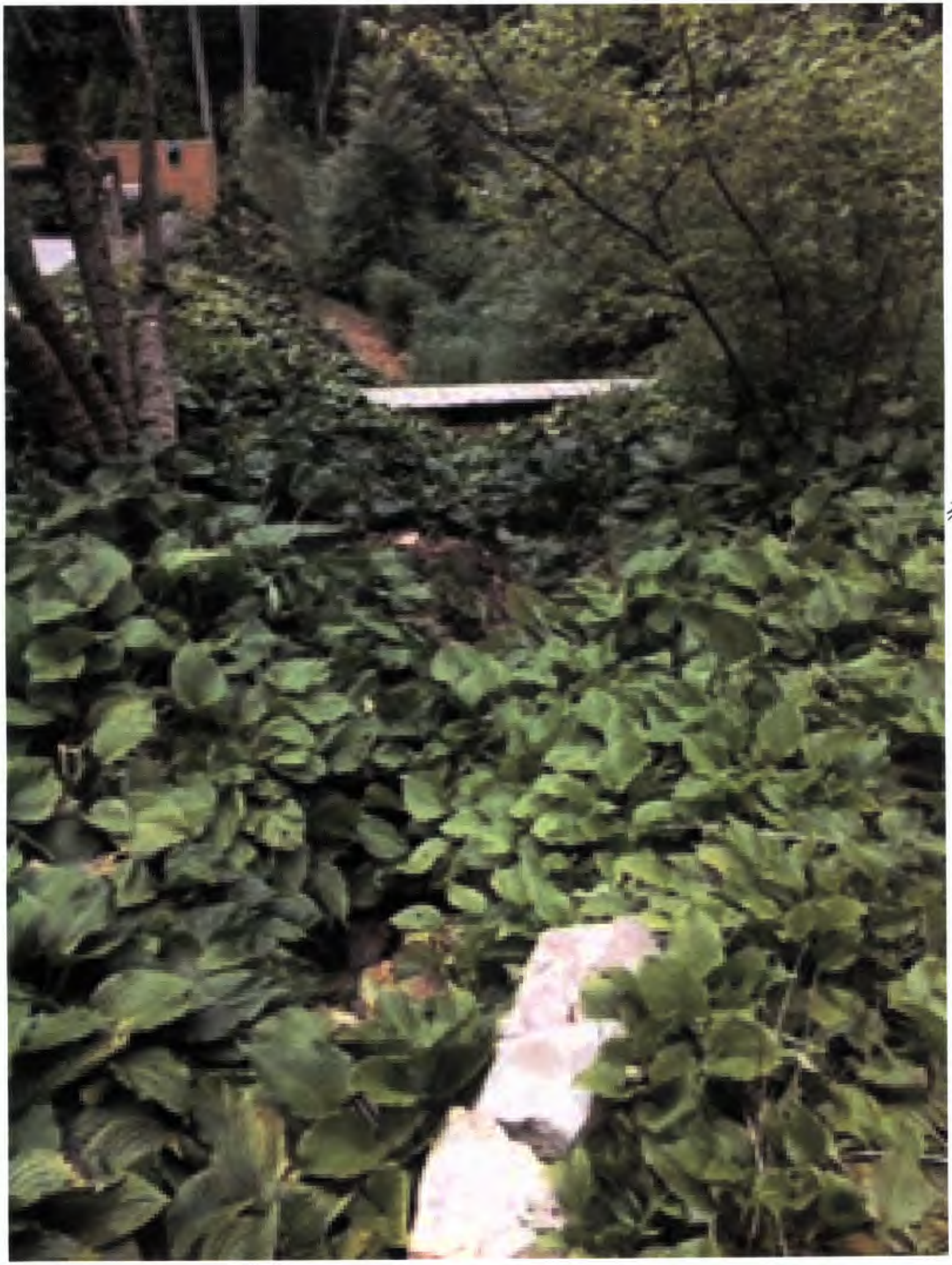


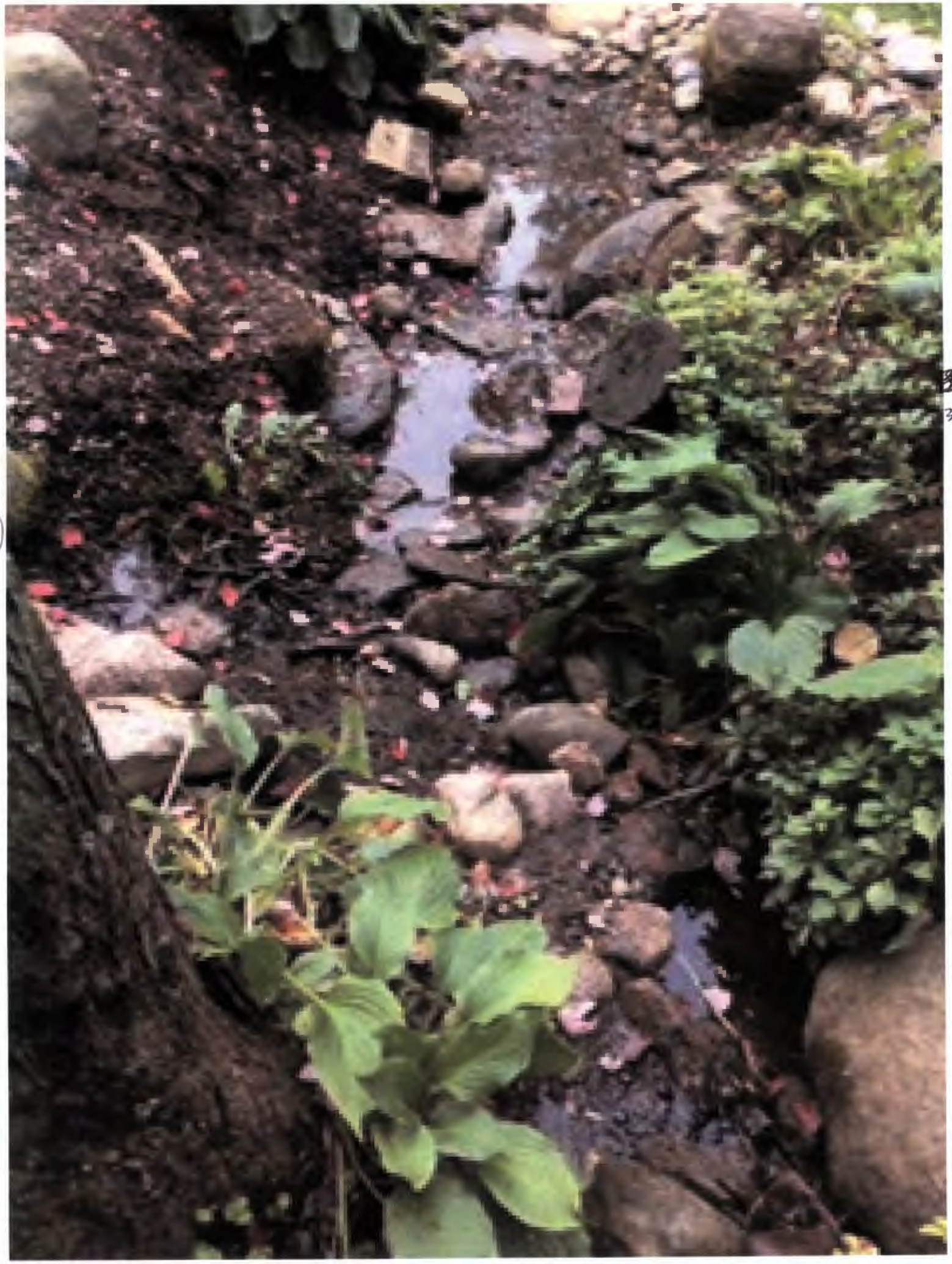


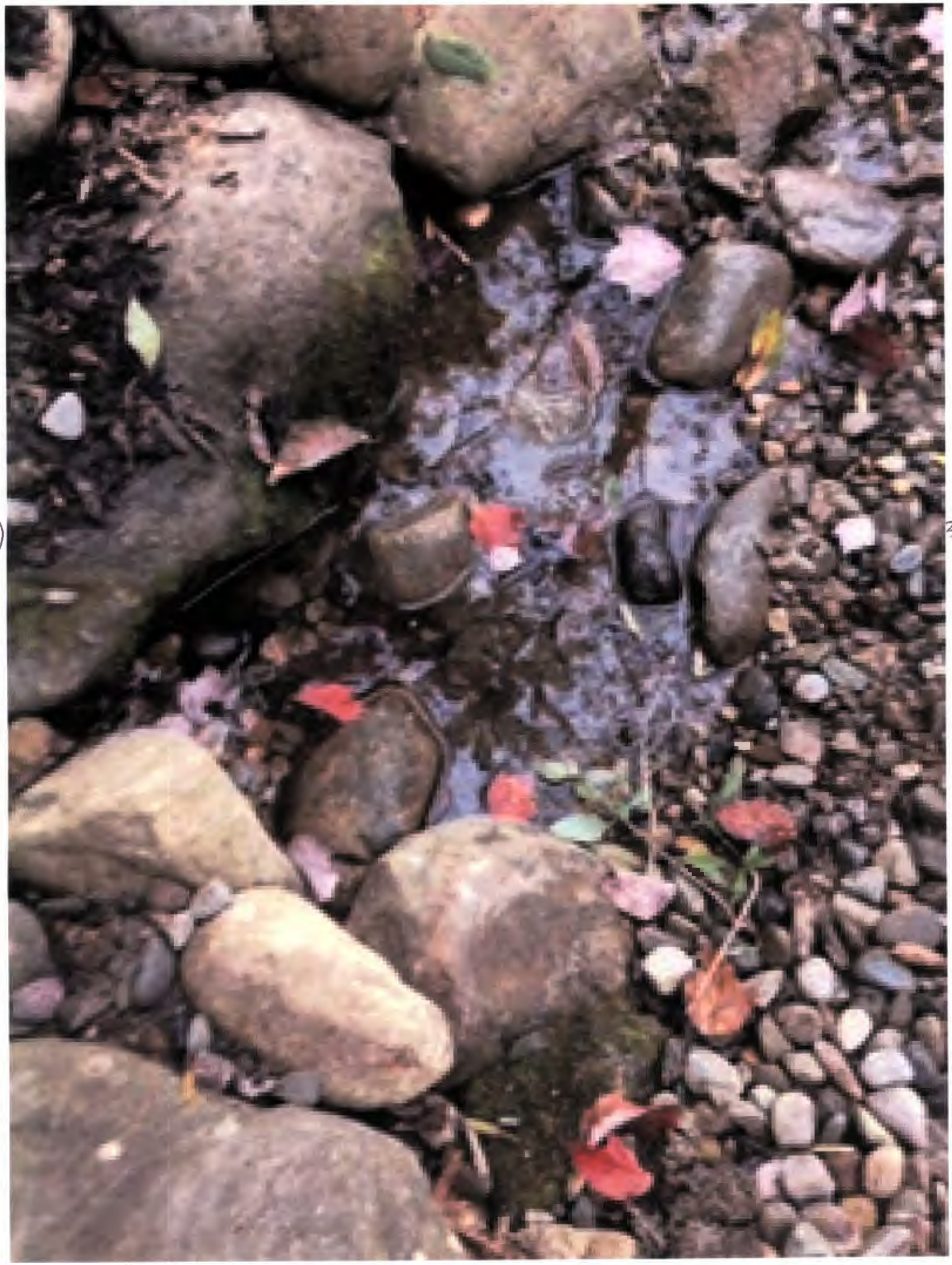


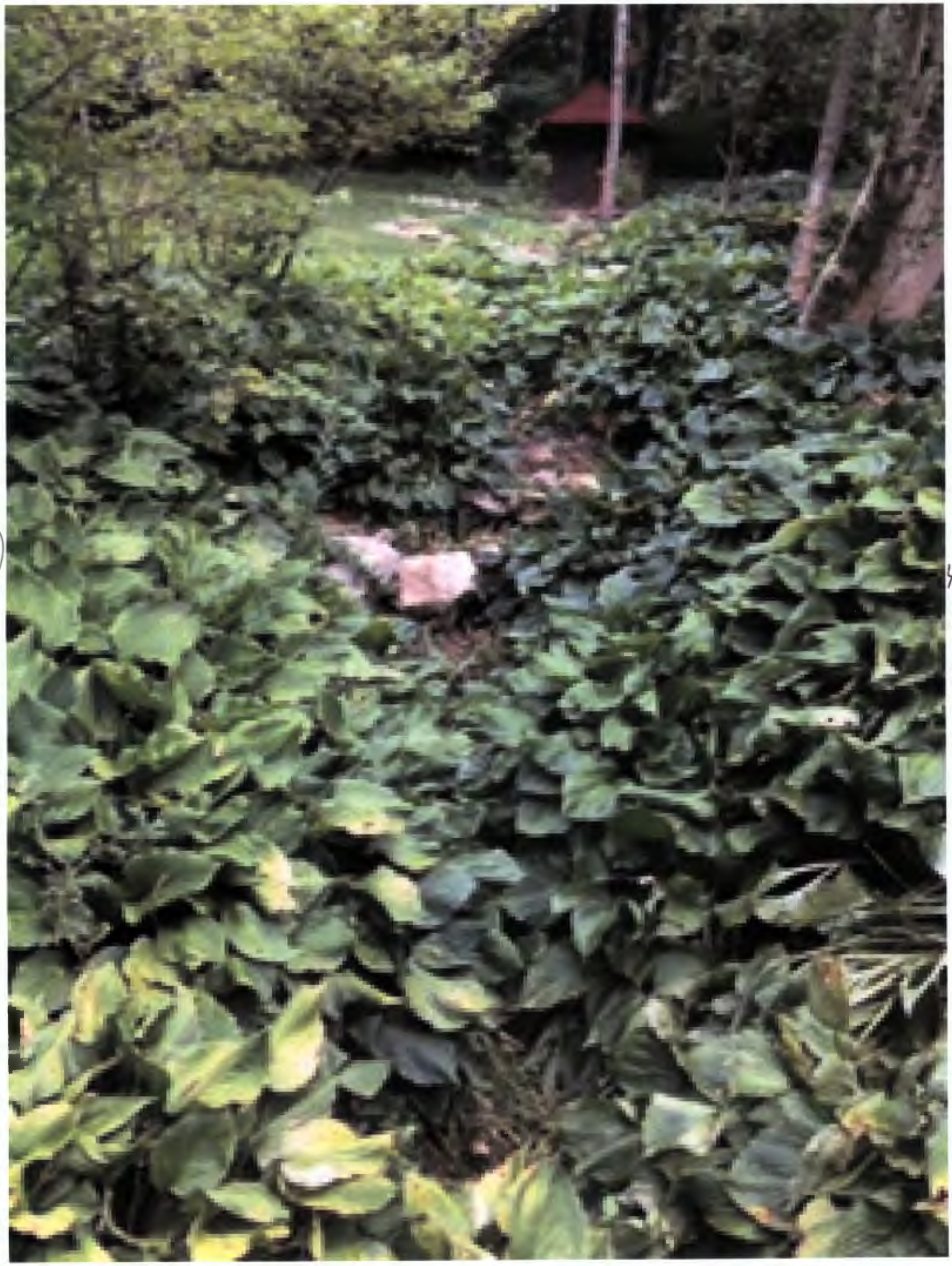












Pet Boot 9

Table Identifying Each Map Parcel by Number – Sorted by Parcel Acreage

(Numbered Parcel Map is 2.69 miles x 1.81 miles = 4.88 square miles)

#	Parcel #	Owner	TAX ID #	Address	Acres
1	65	?	?	?	?
2	84	?	"Not Located"	?	?
3	120	?	?	?	?
4	222	?	?	?	?
5	45	?	2500001571	Conservation Easement	?
6	47	?	2500001573	Conservation Easement	?
7	88	Kees Sherry	1700005110	Traceys Rd	0.03
8	196	Ziegler David W Ziegler Sarah A	1600014697	2109 Stringtown Rd	0.14
9	206	Beasley Walter Scott	0511057025	Stringtown Rd	0.18
10	235	Schmid Robert J Elder Robert J	0519071451	Falls Rd	0.21
11	208	Gencel Stephen P Gencel Joan M	2200020742	Stringtown Rd	0.21
12	199	Fendlay Alvin M Fendlay Edna M	0506010080	2105 Stringtown Rd	0.30
13	200	Bolgiano John Trustee Bolgiano Patricia R Trustee	0514000153	2103 Stringtown Rd	0.33
14	274	Waller Sallie M	1700008494	Falls Rd	0.40
15	253	Gearhart John M Gearhart Hilda G	1700004264	Falls Rd	0.43
16	38	Bell Dorothea H	0508001050	16307 Yeoho Rd	0.46
17	241	Murphy Edward D Murphy Patricia A	0520030570	16020 Falls Rd	0.46
18	39	Diven Robert B Diven Diane H	0508065580	16303 Yeoho Rd	0.47
19	4	Steckel Luke	2300003015	Benson Mill Rd	0.47
20	35	Ogburn Vivian J	0523050860	16317 Yeoho Rd	0.48
21	36	Zepp Gregory A Zepp Glenda L	0504066110	16313 Yeoho Rd	0.49
22	202	Mahoney Annette Goodman Nicholas	0514000152	2037 Stringtown Rd	0.50
23	197	Ziegler David W Ziegler Sarah A	0516000125	2109 Stringtown Rd	0.50
24	191	Irwin David J Irwin Lynn A	0501099500	2142 Stringtown Rd	0.52
25	209	Gencel Stephen P Gencel Joan M	0506060600	2035 Stringtown Rd	0.52
26	198	Dalgarno Bradley	0520030050	2107 Stringtown Rd	0.54
27	254	Gearhart John M Gearhart Hilda G	1700004263	15914 Falls Rd	0.56
28	60	Harold George E Harold Carolyn F	0508001291	Yeoho Rd	0.60
29	201	Mileto Scott A Mileto Jennifer L	1700013658	2101 Stringtown Rd	0.65
30	59	Harold George E Harold Carolyn F	0508001290	2206 Traceys Rd	0.68
31	177	Haun Edwin James Haun Lauren Michelle	0808081530	15807 Yeoho Rd	0.70
32	11	McNelis Niall McNellis Rebecca	0506020100	2321 Benson Mill Rd	0.71
33	205	Beasley Walter Scott	0511057075	Stringtown Rd	0.72
34	68	Walker Andrea E Walker Chris	0508030585	16301 Yeoho Rd	0.735
35	37	DeVille Eric Allan Arthur-William Ellis Richard	0504020160	16309 Yeoho Rd	0.78
36	176	Smith Mabel Louise	0819053881	15809 Yeoho Rd	0.78
37	34	Garrett Donald A Garrett Janet W	0507000200	16321 Yeoho Rd	0.80
38	111	Walker Bradford L	2200007506	16106 Yeoho Rd	0.82
39	193	Johnston Shari L	0502085680	2125 Stringtown Rd	0.85
40	167	McCleary Thomas	2400002235	Duncan Hill Rd	0.86
41	18	Foster Richard M	0514010210	2312 Benson Mill Rd	0.92
42	75	Benzak Michael J Benzak Whitney C	0501033076	16206 Yeoho Rd	1.00
43	5	Dixon Ruth Miriam	0504035085	2501 Benson Mill Rd	1.00
44	31	Hackler Lester W	0520066300	2200 Benson Mill Rd	1.00

45	61	Coverdale Joseph H Coverdale Mary L	0520080054	2200 Traceys Rd	1.00
46	146	Curtis Ethel B	0803077350	1615 Cold Bottom Rd	1.00
47	91	Price Rustin E Price Deborah A	2000014697	2315 Traceys Rd	1.00
48	242	Brocato Carl Brocato Patricia	2200027629	16024 Falls Rd	1.00
49	46	Moyer Constantina	2500001572	16315 Yeoho Rd	1.00
50	257	Tegeler William V Tegeler Mary J	0520025025	15920 Falls Rd	1.04
51	130	Grunwell Nancy Marie Grunwell Marshall A	0516000345	1800 Stringtown Rd	1.10
52	54	Lee Sang K Lee Youn	2400003125	2218 Traceys Rd	1.13
53	14	Corson Jay Kenneth	1700001391	2315 Benson Mill Rd	1.15
54	230	McCormack Keith N Reiss McCormack Randi	0502020061	Benson Mill Rd	1.17
55	143	Janik Peter T Janik Deborah C	2200010710	1635 Cold Bottom Rd	1.18
56	10	Krayenvenger Jeffrey D Kravenvenger Natalie K	0523015280	2325 Benson Mill Rd	1.25
57	172	Poulos David G Poulos Holly K	0819039830	15808 Yeoho Rd	1.25
58	16	Tarsel Emily	0505088035	2314 Benson Mill Rd	1.27
59	9	McNamara Micael Thomas McNamara Margaret B	2400012377	2335 Benson Mill Rd	1.30
60	262	Waller Sallie M	1600005047	15813 Falls Rd	1.31
61	147	Hoover Herbert L	0808065027	1525 Cold Bottom Rd	1.33
62	106	Atticks Kevin Michael Atticks Andrea Hirsch	2300008593	1950 Far Out Ln	1.33
63	256	Harris Leroy N Jr Harris Diana	2400004495	15910 Falls Rd	1.34
64	58	DiPasquale Santo DiPasquale Lisa	2400002421	2217 Traceys Rd	1.37
65	119	Albrecht Matthew G Kaszak Ashley N	0502065380	2135 Abell Ln	1.38
66	247	Bitzer Milton G Bitzer Eleanor R	0519039100	16006 Falls Rd	1.39
67	248	Corradetti Anthony A Corradetti Julie A	0508055190	16008 Falls Rd	1.45
68	260	Finniss Cory Michael Mulhearn Vanessa Nicole	1600004008	15902 Falls Rd	1.45
69	273	Basignani Lawrence B Basignani Heidi	2500009753	15714 Falls Rd	1.45
70	261	O'Brien Darren Patrick O'Brien Tracy	2000000116	Falls Rd	1.46
71	267	Mentzer Benjamin D Basignani-Mentzer Elena M	2500009754	15728 Falls Rd	1.46
72	266	Taylor Griffen N Basignani Marisa I	2500009755	15726 Falls Rd	1.47
73	80	Baltimore Gas & Electric Co	0502000666	Benson Mill Rd	1.50
74	243	Murphy Patricia A Thompson James David	2300007178	16016 Falls Rd	1.50
75	134	Lamb Bruce Christopher Trustee	0812001700	1641 Cold Bottom Rd	1.52
76	76	Karwacki Rodger S Karwacki Karen M	2000000149	16200 Yeoho Rd	1.52
77	159	Byers Bradley S Phillips Mary Carol	0512020025	2001 Stringtown Rd	1.56
78	207	Beasley Walter Scott	0511057050	2033 Stringtown Rd	1.64
79	250	Kyger Iris P	0511089010	16012 Falls Rd	1.66
80	71	Wirtz Mary Pearl	0523050700	16226 Yeoho Rd	1.67
81	171	Powell Robert L Powell Joan L	0816062200	15813 Yeoho Rd	1.68
82	133	Velez Francis J Velez Roseann	2500012162	Stringtown Rd	1.68
83	152	Kremzner Mary Enns Margaret	1700014429	15633 Falls Rd	1.69
84	118	Currey Shane B Currey Jennifer M Trustees	0516090060	2201 Abell Ln	1.70
85	43	McKee David Hunter McKee Carol F	2200009419	Benson Mill Rd	1.70
86	128	Stouffer Laura A	0518047280	1810 Stringtown Rd	1.72
87	67	Payami Sepideh	0523050576	2121 Traceys Rd	1.72
88	246	Kyger Iris P	0519090050	16012 Falls Rd	1.73
89	30	Gardner Wayne T Gardner Judith T	2200017932	2201 Benson Mill Rd	1.74
90	135	Lamb Bruce Christopher Trustee	2500009011	13835 Yeoho Rd	1.76
91	137	Sampson Adam Sampson Katherine	2300012378	15825 Yeoho Rd	1.77
92	17	Cassidy Charles L Cassidy Janet A	0503000490	16410 Yeoho Rd	1.80

93	157	Biggs Linda	0503023300	2007 Stringtown Rd	1.80
94	107	Offutt J Frederick C Jr Offutt Roberta E	2100004534	Akehurst Rd	1.82
95	164	Owens Diana F	0502085600	1801 Stringtown Rd	1.89
96	103	Lewis H Thomas Lewis Darlene M	2200007505	16102 Yeoho Rd	1.92
97	70	Wirtz Mary Pearl	0523050578	Yeoho Rd	1.93
98	110	Blaumanis Otis Rudolph	0502047120	16201 Yeoho Rd	1.99
99	33	Watriss Paula Trustee	0505061075	16329 Yeoho Rd	2.00
100	98	Strucko Robert Strucko Debra M	1700004026	2011 Abell Ln	2.00
101	41	Fitchett F Maxine Mays Lisa B	1700013152	2105 Benson Mill Rd	2.00
102	42	McKee David Hunter McKee Carol F	1700013153	2101 Benson Mill Rd	2.00
103	278	Stellman Peter B	1900014286	3040 Black Rock Rd	2.00
104	183	Sweeney John A	2000007544	15710 Yeoho Road	2.01
105	105	Cornell Anne Lundvall	2300008592	2000 Far Out Ln	2.06
106	136	Burke Tommy D Burke Barbara A	1600009844	15827 Yeoho Rd	2.10
107	56	Daily Gregory Daily Sharon	2400003124	2220 Traceys Rd	2.10
108	190	Becker Peter J Becker Kathleen D	0502000460	2144 Stringtown Rd	2.13
109	148	Price Bryan S Sr Price Holly A Hughes	1900013555	1509 Cold Bottom Rd	2.16
110	249	Whitaker Edward J Whitaker Kathleen D	0523035300	16010 Falls Rd	2.21
111	69	Vasold Barrett M Vasold Genie K	2400001259	16234 Yeoho Rd	2.30
112	93	Waas Erich P	2400001691	2114 Abell Ln	2.34
113	212	Tiralla John A Tiralla Ada	1700012424	2009 Stringtown Rd	2.35
114	72	Shoul Thomas Shoul Winifred B	0519032630	16220 Yeoho Rd	2.38
115	173	Richardson Michael Scott	0819061530	15800 Yeoho Rd	2.38
116	108	Mayo George 6th Mowell-Mayo Mary Jane	2100004533	16060 Yeoho Rd	2.38
117	19	Kamps Jack G Jr Kamps Elizabeth B	2200013999	16400 Yeoho Rd	2.50
118	8	Morrill Todd L Morrill Karen C	2500002492	2401 Benson Mill Rd	2.50
119	89	Kees Family LLC	0511015331	2323 Traceys Rd	2.52
120	112	Stevens Lois A Trustee	2400001383	16110 Yeoho Rd	2.53
121	182	Giuliano Mark E Raab Cathy L	2000007545	15712 Yeoho Rd	2.56
122	25	Varner Hugh H Varner Ruth E	2000010988	2220 Benson Mill Rd	2.56
123	13	Decker William T Decker Susan E	2400012378	2333 Benson Mill Rd	2.57
124	63	Kincaid James I Kincaid Elizabeth R	2000007059	2130 Traceys Rd	2.61
125	129	Fox Michael B Grover Kimberly A	0502085590	1806 Stringtown Rd	2.62
126	55	Evans Joseph L Pray Nedda	1600012195	2224 Traceys Rd	2.66
127	27	Bartenfelder Steven E Bartenfelder Leslie	2200015936	2205 Benson Mill Rd	2.69
128	23	Taylor William R Taylor Susan G	1600012189	16322 Yeoho Rd	2.72
129	29	Simon Dennis Simon Paula A	1600012187	16312 Yeoho Rd	2.75
130	244	Murphy Patricia A Murphy Edward D	0512020210	16018 Falls Rd	2.76
131	66	Wirtz Vernon Willis Jr Wirtz Susan E Twigg	2000007060	2100 Traceys Rd	2.76
132	28	Buckwalter H Scott	1600012188	16316 Yeoho Rd	2.77
133	165	Madden John P Madden Janice L	2100014141	1795 Stringtown Rd	2.84
134	26	Chenoweth George Edward III Chenoweth Emily Ann	1800012039	2210 Benson Mill Rd	2.86
135	224	Beck Jonathan A Cohen Donna Ann	1600012505	3000 Benson Mill Rd	2.93
136	7	Morrill Todd L Morrill Karen C	1600002446	2407 Benson Mill Rd	2.98
137	211	Gregg William Melvin Jr Gregg Sherry Ann	1600012085	15448 Duncan Hill Rd	3.00
138	228	McLewee Robert W McLewee Mary E	1700007423	2810 Benson Mill Rd	3.00
139	271	Beren Joel Jeffrey Trustee Beren Anna Irene Trustee	1800004836	15732 Falls Rd	3.00
140	237	Rambert Travis D Rambert Shawanda R THIS IS DUPLICATED FOR #238	2200027585	16025 Falls Rd	3.00

141	238	Rambert Travis D Rambert Shawanda R THIS IS DUPLICATED FOR #237	2200027585	16025 Falls Rd	3.00
142	117	Danielczyk Steven C Danielczyk Maria D	2200028633	2207 Abell Ln	3.00
143	12	Tucker Saint George Brooke Tucker Pamela H	2500002493	2403 Benson Mill Rd	3.00
144	210	Howard Donald S Jr Howard Janice B	1600012086	15450 Duncan Hill Rd	3.01
145	144	Maynes David Maynes Raquel Foglia	2200010711	1637 Cold Bottom Rd	3.01
146	99	Capozzi Daniel J 3rd Capozzi Joanne C	0519007320	16116 Yeoho Rd	3.03
147	138	Schofield Russell P Schofield Tina M	2400009180	15823 Yeoho Rd	3.08
148	139	Jupitz Steven R Webb Erin	2400009181	15821 Yeoho Rd	3.08
149	160	Gunder Frederick E Gunder Shirley Patricia	2000001121	1926a Stringtown Rd	3.15
150	174	Butler Louis T Brogan Theresa G	2000007547	15716 Yeoho Rd	3.16
151	236	Molnar George J	0519039070	16026 Falls Rd	3.22
152	220	Wilson Jeffry J Richard Janet L	1600012506	3008 Benson Mill Rd	3.24
153	156	Harvey R Dixon Jr Harvey Janet Hardie	0512040160	2004 Stringtown Rd	3.25
154	178	McMurtrie Bridgid A	2000007540	15801 Yeoho Rd	3.31
155	195	Marzullo Kelly M Marzullo Christopher S	2400001322	2117 Stringtown Rd	3.34
156	151	Monaco Tammie Jean	1700014428	15635 Falls Rd	3.44
157	1	Sheran D Smith Inter Vivos Trust	2300003014	16301 Dubbs Rd	3.49
158	163	Hocheder John B	2000005073	1813 Stringtown Rd	3.63
159	180	Wolgamott James R Lang Henry John	2000007541	15717 Yeoho Rd	3.63
160	255	Kirchner William L Kirchner Linda V	0506010110	15908 Falls Rd	3.67
161	62	Kelley Tawanna Y Kelley Sean V	1600012192	16308 Yeoho Rd	3.73
162	221	Arnold Nathan Arnold Amanda	1600012521	3006 Benson Mill Rd	3.73
163	175	Sendak Michael J Sendak Janice B	2000007546	15714 Yeoho Rd	3.82
164	15	Franceschi Kristin Helena Ranum Franceschi Harve Julien	1600009594	2313 Benson Mill Rd	3.84 5.00
165	132	Velez Francis J Velez Roseann	2500012163	Stringtown Rd	3.90
166	102	Bolt Stanley E Bolt Wanda C	0502057491	Akehurst Rd	3.99
167	73	Boyce John C G Jr	0502020025	16214 Yeoho Rd	4.00
168	258	Arbogast Brenda Lee Arbogast David/Gill Deborah Ann	0503077050	15900 Falls Rd	4.00
169	204	Franklin George C 3rd Franklin Katherine A	0516090070	2011 Stringtown Rd	4.00
170	100	Mansfield Thomas S Mansfield Deborah Beste	1900011515	1936 Akehurst Rd	4.00
171	170	Travers Thomas S Jr Travers Sarah J	2500004342	15815 Yeoho Rd	4.04
172	145	Hoover Harry A 2nd Hoover Susan	0808065026	1617 Cold Bottom Rd	4.05
173	184	Breidenbaugh Arnold L Jr Breidenbaugh Ellen M	1700003300	15629 Falls Rd	4.13
174	24	Joan Lefalvie LLC	1600012191	16310 Yeoho Rd	4.15
175	158	Schwab David M	0507058490	1928 Stringtown Rd	4.29
176	203	Pedone Michael T	2000010488	2029 Stringtown Rd	4.37
177	40	Ensor Charles E Jr Ensor Mary Ann	2200022129	2119 Benson Mill Rd	4.39
178	239	Gurevich Robert L Sanfilippo Jo Anne	2200027584	16027 Falls Rd	4.53
179	22	Kamps Harriet E	1600008198	16405 Yeoho Rd	4.57
180	234	Schmid Robert J	0519071450	3003 Benson Mill Rd	4.60
181	96	Conanan Orlando B Conanan Bella D	2000000150	16120 Yeoho Rd	4.64
182	226	Hoover Brinton H Hoover Linda H	2200003041	Benson Mill Rd	4.77
183	252	Waller Sallie M	2500013257	Falls Rd	4.91
184	124	Elberfeld Sherry M	0505061320	2101 Far Out Ln	5.00
185	240	Cofiell Walter G Cofiell Winona D	1600008119	16001 Falls Rd	5.02
186	32	Duff Elizabeth George	0520080072	2125 Benson Mill Rd	5.14
187	2	Cassidy Charles L Rusins Judith Buck ET AL	1700010075	Benson Mill Rd	5.15

276	186	Palmer Preservation LLC	0516000610	15603 Falls Rd	105.22
277	79	Goetze Spaulding A Goetze Cynthia B	1900009023	1522 Cold Bottom Rd	109.66
278	50	Curtmill LLC	2300003012	2725 Benson Mill Rd	113.85
279	215	Harvest Investment Group LLC	2400002285	15651 Duncan Hill Rd	130.94
280	189	Montague Alex Montague Caroline	2000009394	2234 Stringtown Rd	139.43
281	78	Thomas F McMullan Iii Revocable Trust	2100003875	1620 Cold Bottom Rd	146.65

Protestant exhibit 9

Table Identifying Each Map Parcel by Number – Sorted by Parcel Acreage

(Numbered Parcel Map is 2.69 miles x 1.81 miles = 4.88 square miles)

#	Parcel #	Owner	TAX ID #	Address	Acres
1	65	?	?	?	?
2	84	?	"Not Located"	?	?
3	120	?	?	?	?
4	222	?	?	?	?
5	45	?	2500001571	Conservation Easement	?
6	47	?	2500001573	Conservation Easement	?
7	88	Kees Sherry	1700005110	Traceys Rd	0.03
8	196	Ziegler David W Ziegler Sarah A	1600014697	2109 Stringtown Rd	0.14
9	206	Beasley Walter Scott	0511057025	Stringtown Rd	0.18
10	235	Schmid Robert J Elder Robert J	0519071451	Falls Rd	0.21
11	208	Gencel Stephen P Gencel Joan M	2200020742	Stringtown Rd	0.21
12	199	Fendlay Alvin M Fendlay Edna M	0506010080	2105 Stringtown Rd	0.30
13	200	Bolgiano John Trustee Bolgiano Patricia R Trustee	0514000153	2103 Stringtown Rd	0.33
14	274	Waller Sallie M	1700008494	Falls Rd	0.40
15	253	Gearhart John M Gearhart Hilda G	1700004264	Falls Rd	0.43
16	38	Bell Dorothea H	0508001050	16307 Yeoho Rd	0.46
17	241	Murphy Edward D Murphy Patricia A	0520030570	16020 Falls Rd	0.46
18	39	Diven Robert B Diven Diane H	0508065580	16303 Yeoho Rd	0.47
19	4	Steckel Luke	2300003015	Benson Mill Rd	0.47
20	35	Ogburn Vivian J	0523050860	16317 Yeoho Rd	0.48
21	36	Zepp Gregory A Zepp Glenda L	0504066110	16313 Yeoho Rd	0.49
22	202	Mahoney Annette Goodman Nicholas	0514000152	2037 Stringtown Rd	0.50
23	197	Ziegler David W Ziegler Sarah A	0516000125	2109 Stringtown Rd	0.50
24	191	Irwin David J Irwin Lynn A	0501099500	2142 Stringtown Rd	0.52
25	209	Gencel Stephen P Gencel Joan M	0506060600	2035 Stringtown Rd	0.52
26	198	Dalgarno Bradley	0520030050	2107 Stringtown Rd	0.54
27	254	Gearhart John M Gearhart Hilda G	1700004263	15914 Falls Rd	0.56
28	60	Harold George E Harold Carolyn F	0508001291	Yeoho Rd	0.60
29	201	Mileto Scott A Mileto Jennifer L	1700013658	2101 Stringtown Rd	0.65
30	59	Harold George E Harold Carolyn F	0508001290	2206 Traceys Rd	0.68
31	177	Haun Edwin James Haun Lauren Michelle	0808081530	15807 Yeoho Rd	0.70
32	11	McNelis Niall McNellis Rebecca	0506020100	2321 Benson Mill Rd	0.71
33	205	Beasley Walter Scott	0511057075	Stringtown Rd	0.72
34	68	Walker Andrea E Walker Chris	0508030585	16301 Yeoho Rd	0.735
35	37	DeVille Eric Allan Arthur-William Ellis Richard	0504020160	16309 Yeoho Rd	0.78
36	176	Smith Mabel Louise	0819053881	15809 Yeoho Rd	0.78
37	34	Garrett Donald A Garrett Janet W	0507000200	16321 Yeoho Rd	0.80
38	111	Walker Bradford L	2200007506	16106 Yeoho Rd	0.82
39	193	Johnston Shari L	0502085680	2125 Stringtown Rd	0.85
40	167	McCleary Thomas	2400002235	Duncan Hill Rd	0.86
41	18	Foster Richard M	0514010210	2312 Benson Mill Rd	0.92
42	75	Benzak Michael J Benzak Whitney C	0501033076	16206 Yeoho Rd	1.00
43	5	Dixon Ruth Miriam	0504035085	2501 Benson Mill Rd	1.00
44	31	Hackler Lester W	0520066300	2200 Benson Mill Rd	1.00

45	61	Coverdale Joseph H Coverdale Mary L	0520080054	2200 Traceys Rd	1.00
46	146	Curtis Ethel B	0803077350	1615 Cold Bottom Rd	1.00
47	91	Price Rustin E Price Deborah A	2000014697	2315 Traceys Rd	1.00
48	242	Brocato Carl Brocato Patricia	2200027629	16024 Falls Rd	1.00
49	46	Moyer Constantina	2500001572	16315 Yeoho Rd	1.00
50	257	Tegeler William V Tegeler Mary J	0520025025	15920 Falls Rd	1.04
51	130	Grunwell Nancy Marie Grunwell Marshall A	0516000345	1800 Stringtown Rd	1.10
52	54	Lee Sang K Lee Youn	2400003125	2218 Traceys Rd	1.13
53	14	Corson Jay Kenneth	1700001391	2315 Benson Mill Rd	1.15
54	230	McCormack Keith N Reiss McCormack Randi	0502020061	Benson Mill Rd	1.17
55	143	Janik Peter T Janik Deborah C	2200010710	1635 Cold Bottom Rd	1.18
56	10	Krayenvenger Jeffrey D Kravenvenger Natalie K	0523015280	2325 Benson Mill Rd	1.25
57	172	Poulos David G Poulos Holly K	0819039830	15808 Yeoho Rd	1.25
58	16	Tarsel Emily	0505088035	2314 Benson Mill Rd	1.27
59	9	McNamara Micael Thomas McNamara Margaret B	2400012377	2335 Benson Mill Rd	1.30
60	262	Waller Sallie M	1600005047	15813 Falls Rd	1.31
61	147	Hoover Herbert L	0808065027	1525 Cold Bottom Rd	1.33
62	106	Atticks Kevin Michael Atticks Andrea Hirsch	2300008593	1950 Far Out Ln	1.33
63	256	Harris Leroy N Jr Harris Diana	2400004495	15910 Falls Rd	1.34
64	58	DiPasquale Santo DiPasquale Lisa	2400002421	2217 Traceys Rd	1.37
65	119	Albrecht Matthew G Kaszak Ashley N	0502065380	2135 Abell Ln	1.38
66	247	Bitzer Milton G Bitzer Eleanor R	0519039100	16006 Falls Rd	1.39
67	248	Corradetti Anthony A Corradetti Julie A	0508055190	16008 Falls Rd	1.45
68	260	Finniss Cory Michael Mulhearn Vanessa Nicole	1600004008	15902 Falls Rd	1.45
69	273	Basignani Lawrence B Basignani Heidi	2500009753	15714 Falls Rd	1.45
70	261	O'Brien Darren Patrick O'Brien Tracy	2000000116	Falls Rd	1.46
71	267	Mentzer Benjamin D Basignani-Mentzer Elena M	2500009754	15728 Falls Rd	1.46
72	266	Taylor Griffen N Basignani Marisa I	2500009755	15726 Falls Rd	1.47
73	80	Baltimore Gas & Electric Co	0502000666	Benson Mill Rd	1.50
74	243	Murphy Patricia A Thompson James David	2300007178	16016 Falls Rd	1.50
75	134	Lamb Bruce Christopher Trustee	0812001700	1641 Cold Bottom Rd	1.52
76	76	Karwacki Rodger S Karwacki Karen M	2000000149	16200 Yeoho Rd	1.52
77	159	Byers Bradley S Phillips Mary Carol	0512020025	2001 Stringtown Rd	1.56
78	207	Beasley Walter Scott	0511057050	2033 Stringtown Rd	1.64
79	250	Kyger Iris P	0511089010	16012 Falls Rd	1.66
80	71	Wirtz Mary Pearl	0523050700	16226 Yeoho Rd	1.67
81	171	Powell Robert L Powell Joan L	0816062200	15813 Yeoho Rd	1.68
82	133	Velez Francis J Velez Roseann	2500012162	Stringtown Rd	1.68
83	152	Kremzner Mary Enns Margaret	1700014429	15633 Falls Rd	1.69
84	118	Currey Shane B Currey Jennifer M Trustees	0516090060	2201 Abell Ln	1.70
85	43	McKee David Hunter McKee Carol F	2200009419	Benson Mill Rd	1.70
86	128	Stouffer Laura A	0518047280	1810 Stringtown Rd	1.72
87	67	Payami Sepideh	0523050576	2121 Traceys Rd	1.72
88	246	Kyger Iris P	0519090050	16012 Falls Rd	1.73
89	30	Gardner Wayne T Gardner Judith T	2200017932	2201 Benson Mill Rd	1.74
90	135	Lamb Bruce Christopher Trustee	2500009011	13835 Yeoho Rd	1.76
91	137	Sampson Adam Sampson Katherine	2300012378	15825 Yeoho Rd	1.77
92	17	Cassidy Charles L Cassidy Janet A	0503000490	16410 Yeoho Rd	1.80

93	157	Biggs Linda	0503023300	2007 Stringtown Rd	1.80
94	107	Offutt J Frederick C Jr Offutt Roberta E	2100004534	Akehurst Rd	1.82
95	164	Owens Diana F	0502085600	1801 Stringtown Rd	1.89
96	103	Lewis H Thomas Lewis Darlene M	2200007505	16102 Yeoho Rd	1.92
97	70	Wirtz Mary Pearl	0523050578	Yeoho Rd	1.93
98	110	Blaumanis Otis Rudolph	0502047120	16201 Yeoho Rd	1.99
99	33	Watriss Paula Trustee	0505061075	16329 Yeoho Rd	2.00
100	98	Strucko Robert Strucko Debra M	1700004026	2011 Abell Ln	2.00
101	41	Fitchett F Maxine Mays Lisa B	1700013152	2105 Benson Mill Rd	2.00
102	42	McKee David Hunter McKee Carol F	1700013153	2101 Benson Mill Rd	2.00
103	278	Stellman Peter B	1900014286	3040 Black Rock Rd	2.00
104	183	Sweeney John A	2000007544	15710 Yeoho Road	2.01
105	105	Cornell Anne Lundvall	2300008592	2000 Far Out Ln	2.06
106	136	Burke Tommy D Burke Barbara A	1600009844	15827 Yeoho Rd	2.10
107	56	Daily Gregory Daily Sharon	2400003124	2220 Traceys Rd	2.10
108	190	Becker Peter J Becker Kathleen D	0502000460	2144 Stringtown Rd	2.13
109	148	Price Bryan S Sr Price Holly A Hughes	1900013555	1509 Cold Bottom Rd	2.16
110	249	Whitaker Edward J Whitaker Kathleen D	0523035300	16010 Falls Rd	2.21
111	69	Vasold Barrett M Vasold Genie K	2400001259	16234 Yeoho Rd	2.30
112	93	Waas Erich P	2400001691	2114 Abell Ln	2.34
113	212	Tiralla John A Tiralla Ada	1700012424	2009 Stringtown Rd	2.35
114	72	Shoul Thomas Shoul Winifred B	0519032630	16220 Yeoho Rd	2.38
115	173	Richardson Michael Scott	0819061530	15800 Yeoho Rd	2.38
116	108	Mayo George 6th Mowell-Mayo Mary Jane	2100004533	16060 Yeoho Rd	2.38
117	19	Kamps Jack G Jr Kamps Elizabeth B	2200013999	16400 Yeoho Rd	2.50
118	8	Morrill Todd L Morrill Karen C	2500002492	2401 Benson Mill Rd	2.50
119	89	Kees Family LLC	0511015331	2323 Traceys Rd	2.52
120	112	Stevens Lois A Trustee	2400001383	16110 Yeoho Rd	2.53
121	182	Giuliano Mark E Raab Cathy L	2000007545	15712 Yeoho Rd	2.56
122	25	Varner Hugh H Varner Ruth E	2000010988	2220 Benson Mill Rd	2.56
123	13	Decker William T Decker Susan E	2400012378	2333 Benson Mill Rd	2.57
124	63	Kincaid James I Kincaid Elizabeth R	2000007059	2130 Traceys Rd	2.61
125	129	Fox Michael B Grover Kimberly A	0502085590	1806 Stringtown Rd	2.62
126	55	Evans Joseph L Pray Nedda	1600012195	2224 Traceys Rd	2.66
127	27	Bartenfelder Steven E Bartenfelder Leslie	2200015936	2205 Benson Mill Rd	2.69
128	23	Taylor William R Taylor Susan G	1600012189	16322 Yeoho Rd	2.72
129	29	Simon Dennis Simon Paula A	1600012187	16312 Yeoho Rd	2.75
130	244	Murphy Patricia A Murphy Edward D	0512020210	16018 Falls Rd	2.76
131	66	Wirtz Vernon Willis Jr Wirtz Susan E Twigg	2000007060	2100 Traceys Rd	2.76
132	28	Buckwalter H Scott	1600012188	16316 Yeoho Rd	2.77
133	165	Madden John P Madden Janice L	2100014141	1795 Stringtown Rd	2.84
134	26	Chenoweth George Edward III Chenoweth Emily Ann	1800012039	2210 Benson Mill Rd	2.86
135	224	Beck Jonathan A Cohen Donna Ann	1600012505	3000 Benson Mill Rd	2.93
136	7	Morrill Todd L Morrill Karen C	1600002446	2407 Benson Mill Rd	2.98
137	211	Gregg William Melvin Jr Gregg Sherry Ann	1600012085	15448 Duncan Hill Rd	3.00
138	228	McLewee Robert W McLewee Mary E	1700007423	2810 Benson Mill Rd	3.00
139	271	Beren Joel Jeffrey Trustee Beren Anna Irene Trustee	1800004836	15732 Falls Rd	3.00
140	237	Rambert Travis D Rambert Shawanda R THIS IS DUPLICATED FOR #238	2200027585	16025 Falls Rd	3.00

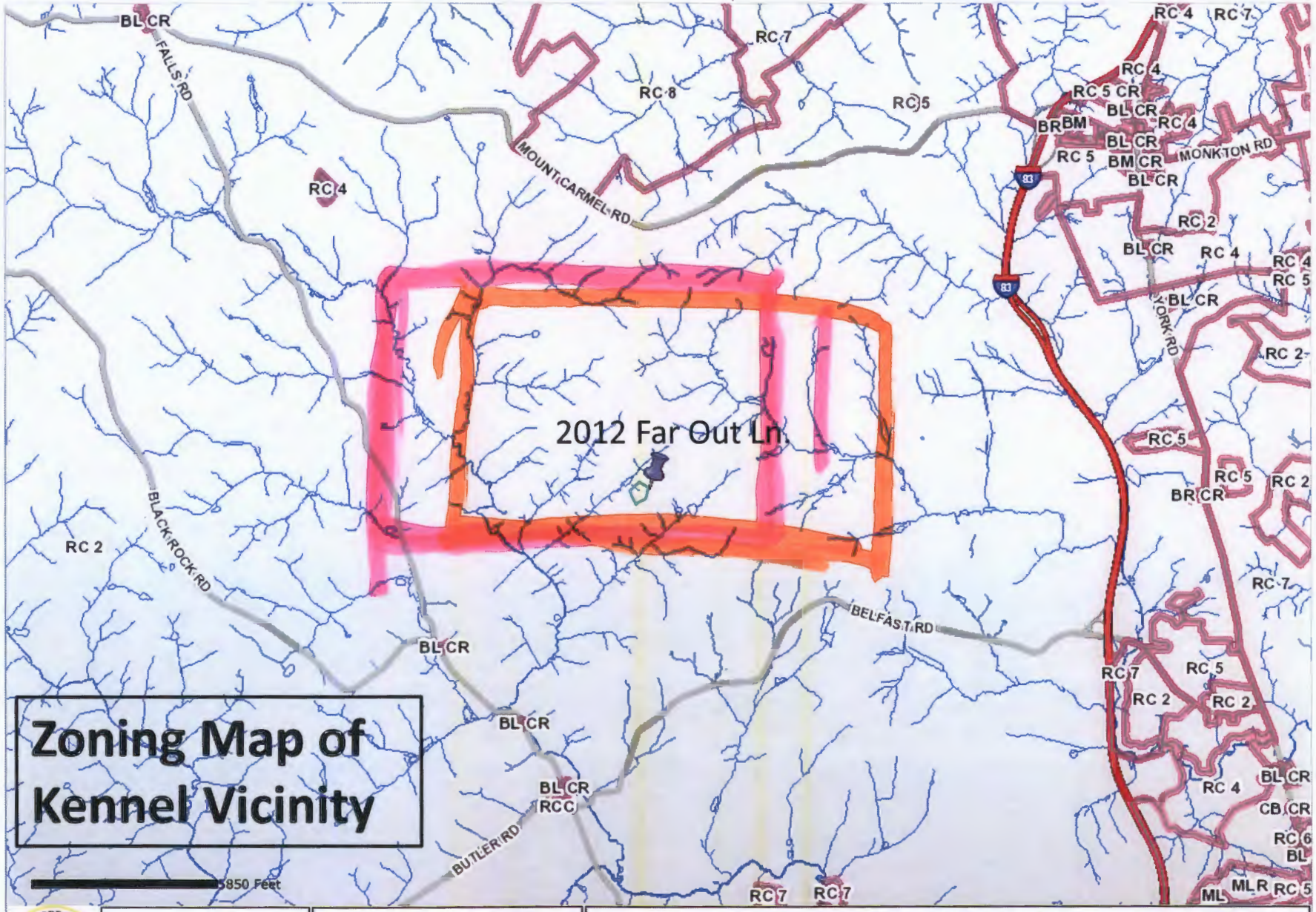
141	238	Rambert Travis D Rambert Shawanda R THIS IS DUPLICATED FOR #237	2200027585	16025 Falls Rd	3.00
142	117	Danielczyk Steven C Danielczyk Maria D	2200028633	2207 Abell Ln	3.00
143	12	Tucker Saint George Brooke Tucker Pamela H	2500002493	2403 Benson Mill Rd	3.00
144	210	Howard Donald S Jr Howard Janice B	1600012086	15450 Duncan Hill Rd	3.01
145	144	Maynes David Maynes Raquel Foglia	2200010711	1637 Cold Bottom Rd	3.01
146	99	Capozzi Daniel J 3rd Capozzi Joanne C	0519007320	16116 Yeoho Rd	3.03
147	138	Schofield Russell P Schofield Tina M	2400009180	15823 Yeoho Rd	3.08
148	139	Jupitz Steven R Webb Erin	2400009181	15821 Yeoho Rd	3.08
149	160	Gunder Frederick E Gunder Shirley Patricia	2000001121	1926a Stringtown Rd	3.15
150	174	Butler Louis T Brogan Theresa G	2000007547	15716 Yeoho Rd	3.16
151	236	Molnar George J	0519039070	16026 Falls Rd	3.22
152	220	Wilson Jeffry J Richard Janet L	1600012506	3008 Benson Mill Rd	3.24
153	156	Harvey R Dixon Jr Harvey Janet Hardie	0512040160	2004 Stringtown Rd	3.25
154	178	McMurtrie Bridgid A	2000007540	15801 Yeoho Rd	3.31
155	195	Marzullo Kelly M Marzullo Christopher S	2400001322	2117 Stringtown Rd	3.34
156	151	Monaco Tammie Jean	1700014428	15635 Falls Rd	3.44
157	1	Sheran D Smith Inter Vivos Trust	2300003014	16301 Dubbs Rd	3.49
158	163	Hocheder John B	2000005073	1813 Stringtown Rd	3.63
159	180	Wolgamott James R Lang Henry John	2000007541	15717 Yeoho Rd	3.63
160	255	Kirchner William L Kirchner Linda V	0506010110	15908 Falls Rd	3.67
161	62	Kelley Tawanna Y Kelley Sean V	1600012192	16308 Yeoho Rd	3.73
162	221	Arnold Nathan Arnold Amanda	1600012521	3006 Benson Mill Rd	3.73
163	175	Sendak Michael J Sendak Janice B	2000007546	15714 Yeoho Rd	3.82
164	15	Franceschi Kristin Helena Ranum Franceschi Harve Julien	1600009594	2313 Benson Mill Rd	3.84 5.00
165	132	Velez Francis J Velez Roseann	2500012163	Stringtown Rd	3.90
166	102	Bolt Stanley E Bolt Wanda C	0502057491	Akehurst Rd	3.99
167	73	Boyce John C G Jr	0502020025	16214 Yeoho Rd	4.00
168	258	Arbogast Brenda Lee Arbogast David/Gill Deborah Ann	0503077050	15900 Falls Rd	4.00
169	204	Franklin George C 3rd Franklin Katherine A	0516090070	2011 Stringtown Rd	4.00
170	100	Mansfield Thomas S Mansfield Deborah Beste	1900011515	1936 Akehurst Rd	4.00
171	170	Travers Thomas S Jr Travers Sarah J	2500004342	15815 Yeoho Rd	4.04
172	145	Hoover Harry A 2nd Hoover Susan	0808065026	1617 Cold Bottom Rd	4.05
173	184	Breidenbaugh Arnold L Jr Breidenbaugh Ellen M	1700003300	15629 Falls Rd	4.13
174	24	Joan Lefaivre LLC	1600012191	16310 Yeoho Rd	4.15
175	158	Schwab David M	0507058490	1928 Stringtown Rd	4.29
176	203	Pedone Michael T	2000010488	2029 Stringtown Rd	4.37
177	40	Ensor Charles E Jr Ensor Mary Ann	2200022129	2119 Benson Mill Rd	4.39
178	239	Gurevich Robert L Sanfilippo Jo Anne	2200027584	16027 Falls Rd	4.53
179	22	Kamps Harriet E	1600008198	16405 Yeoho Rd	4.57
180	234	Schmid Robert J	0519071450	3003 Benson Mill Rd	4.60
181	96	Conanan Orlando B Conanan Bella D	2000000150	16120 Yeoho Rd	4.64
182	226	Hoover Brinton H Hoover Linda H	2200003041	Benson Mill Rd	4.77
183	252	Waller Sallie M	2500013257	Falls Rd	4.91
184	124	Elberfeld Sherry M	0505061320	2101 Far Out Ln	5.00
185	240	Cofiell Walter G Cofiell Winona D	1600008119	16001 Falls Rd	5.02
186	32	Duff Elizabeth George	0520080072	2125 Benson Mill Rd	5.14
187	2	Cassidy Charles L Rusins Judith Buck ET AL	1700010075	Benson Mill Rd	5.15

188	21	Vinzant Malcolm Graham 3rd Vinzant Jean Marie	1600012190	16326 Yeoho Rd	5.21
189	125	Robinson Catherine H	0514010230	2012 Far Out Ln	5.42
190	281	Alterwitz Steven A Alterwitz Jennifer R	0501033100	2317 Stringtown Rd	5.43
191	233	Lohse Henry Arnold Lohse Isolde	1600008050	15909 Falls Rd	5.43
192	104	Rongione David M Rongione Sarah J	0513014500	2002 Farout Ln	5.45
193	149	Elliott C Gregory	2500010020	Falls Rd	5.52
194	20	Franco Joseph 3rd Franco Donna Maria	2200015930	16334 Yeoho Rd	5.66
195	263	Basignani Marilyn E Basignani Bertero L Trustees	0519007228	Falls Rd	5.87
196	82	Zavodny Richard J Zavodny Christine M	1800002902	15915 Falls Rd	5.92
197	140	Kaszak Karen H Kaszak Joseph M THIS IS DUPLICATED FOR #141	1600006489	15819 Yeoho Rd	5.97
198	141	Kaszak Karen H Kaszak Joseph M THIS IS DUPLICATED FOR #140	1600006489	15819 Yeoho Rd	5.97
199	251	Oler Robert W Oler Tara B	2300008221	15917 Falls Rd	6.12
200	126	Flying J Ranch LLC	0502020482	Wsr Yeoho R Rer 2700 Ft 5200 Nw Stringtown Rd	6.34
201	53	Bowden Timothy Richard Bowden Monica Eng	1600012193	2210 Traceys Rd	6.49
202	264	O'Brien Darren P Chalmers Tracy A	2200026656	15906 Falls Rd	6.54
203	97	Zelinsky John P Zelinsky Elizabeth A	0511035210	2021 Abell Ln	6.60
204	179	Garner Anthony V Garner Dina M	2100010852	15721 Yeoho Rd	6.68
205	275	Watriss Paula Trustee	0501089060	15710 Falls Rd	6.98
206	92	Currey Charles B Currey Carol A	2400001690	2112 Abell Ln	7.41
207	127	Vinatier Julie Graham Christopher Mitchell	2000001122	1926 Stringtown Rd	7.58
208	169	Huber Nancy Vinroe	1800000378	15751 Duncan Hill Rd	7.69
209	194	Hollock Stephen Hollock Sommer	2400001321	2119 Stringtown Rd	7.83
210	270	Basignani Bertero L Basignani Lawrence B	0506020360	15734 Falls Rd	7.85
211	185	Mabell LLC	0505061100	15615 Falls Rd	8.30
212	131	Duncan Hill LLC	0508065511	Stringtown Rd	8.33
213	101	Bolt Stanley E Bolt Wanda C	0502057490	1916 Akehurst Rd	8.52
214	216	Bond Frank	2300010210	Yeoho Rd	8.68
215	74	Hagerty Ann F Boyce John C G Jr	2400005082	16214 Yeoho Rd	8.68
216	231	Gerstmyer W Randall Gerstmyer Nancy J	2300004305	2823 Benson Mill Rd	8.83
217	121	Beste Pond Farm LLC	0502020483	Ses Yeoho R 2000ft NW Stringtown Rd	9.49
218	81	Bramwell Samuel McClure Curran Trisha Lynn	0508065470	2801 Benson Mill Rd	10.12
219	6	Safi Elizabeth Clark Safi Faiz	0506000101	2411 Benson Mill Rd	10.31
220	52	Schweizer Cheryl H	1600012194	2212 Traceys Rd	10.44
221	279	Harrison Michael J Harrison Ann Elizabeth THIS IS DUPLICATED FOR #280	1700008579	3016 Black Rock Rd	10.46
222	280	Harrison Michael J Harrison Ann Elizabeth THIS IS DUPLICATED FOR #279	1700008579	3016 Black Rock Rd	10.46
223	232	Bristor Charles Edwin Trustee	2100008219	2825 Benson Mill Rd	10.82
224	162	Hocheder John Boehm	0508065460	1901 Stringtown Rd	10.92
225	245	Lee Dorothy R	0512020175	15928 Falls Rd	11.30
226	268	Harrison Michael J Harrison Ann Elizabeth	1600002064	15730 Falls Rd	11.54
227	161	Schneider Edna M	0508000375	1903 Stringtown Rd	12.44
228	225	Hoover Brinton H Hoover Linda H	0508065520	16211 Falls Rd	12.63
229	272	Basignani Marilyn E Basignani Bertero L Trustees	1800004835	15722 Falls Rd	14.51
230	83	Ligeti LLC	2500013256	Falls Rd	15.06

231	187	Palmer Preservation LLC	1600014635	15603 Falls Rd	16.00
232	95	Beste Pond Farm LLC	0502020480	1940 Akehurst Rd	16.09
233	181	Green Daniel H Sobel Tamara S	2000007542	15709 Yeoho Rd	16.44
234	259	Menchey Calvin Ross Menchey Margaret M	2500012244	Falls Rd	16.49
235	214	Schneider Edna M	0508000377	Duncan Hill Rd	17.00
236	115	Elliott Roger L Elliott Margaret T	1800014042	15817 Falls Rd	17.45
237	122	Levenson Judith R Trustee THIS IS DUPLICATED FOR #123	0514010231	2007 Far Out Ln	18.02
238	123	Levenson Judith R Trustee THIS IS DUPLICATED FOR #122	0514010231	2007 Far Out Ln	18.02
239	86	Waller Sallee M	1800014921	15813 Falls Rd	20.04
240	168	Velez Francis J	2500010539	15801 Duncan Hill Rd	20.17
241	64	Wirtz Vernon W Jr	0523050575	Yeoho Rd	20.35
242	142	Hershfield Jonathan M Hershfield Shannon L	1600006269	Yeoho Rd	20.76
243	265	Basignani Marilyn E Basignani Bertero L Trustees	1600002067	15722 Falls Rd	20.97
244	85	Eichorn Emil Eichorn Helen K	1600008079	Falls Rd	21.51
245	113	Menchey Calvin Ross Menchey Margaret M	2500012245	Falls Rd	23.29
246	192	Irwin David J Irwin Lynn A	1900014561	Stringtown Rd	25.43
247	229	Dixon Miriam	2300003011	2724 Benson Mill Rd	27.60
248	94	Mabell LLC	0504065050	2221 Abell Ln	28.40
249	219	Hoover Lydia P Trustee	2000005053	Falls Rd	30.14
250	114	Elliott Roger L	1600005049	15815 Falls Rd	33.83
251	48	Bart Polly T	0507015240	16626 Cedar Grove Rd	34.13
252	49	Hall Samuel F Hall Donald R	0508000575	16600 Cedar Grove Rd	34.36
253	51	Kees Family LLC	0502035027	2318 Traceys Rd	34.56
254	213	Schneider Edna M	0508000376	Duncan Hill Rd	35.25
255	166	McCleary Thomas	2400002234	15650 Duncan Hill Rd	37.78
256	150	Waller Sallie M	1600005048	Falls Rd	39.34
257	188	Curtmill LLC	2200022135	Falls Rd	40.25
258	276	Black Rock Group LLC THIS IS DUPLICATED FOR #277	1900014287	15630 Falls Rd	41.55
259	277	Black Rock Group LLC THIS IS DUPLICATED FOR #276	1900014287	15630 Falls Rd	41.55
260	57	Roberts Michelle S	0523050577	2311 Traceys Rd	41.81
261	153	Mabell LLC	0512000191	Yeoho Rd	45.24
262	227	Gemmill Mary C Etal Fisher Michael Gemmill	0507015210	2808 Benson Mill Rd	46.71
263	155	Irwin David J Irwin Lynn A	0514010050	2030 Stringtown Rd	46.77
264	269	Willowdale Farm Associates	1600002066	Black Rock Rd	54.30
265	116	Lbf Butler LLC	0506020225	Falls Rd	57.00
266	87	Curtmill LLC	1800014043	Falls Rd	63.39
267	77	McHugh Stacey Noakes McHugh Robert R	0514065210	16213 Yeoho Rd	68.09
268	90	Kees Family LLC	0511015330	2323 Traceys Rd	68.38
269	217	Bond Shelda Trustee Bond Frank Trustee	2000006845	1540 Belfast Rd	69.89
270	3	Cassidy Charles L Rusins Judith Buck ET AL	1700010074	Yeoho Rd	74.79
271	154	Elberfeld Harrold Talley Elberfeld Sherry M	0512000190	2121 Akehurst Rd	75.81
272	44	Cold Bottom Farms Inc	0523050450	2111 Benson Mill Rd	77.70
273	223	Wolfe Linda M	2200002045	3103 Benson Mill Rd	92.48
274	218	Hoover Lydia P Trustee	0514040075	Falls Rd	93.68
275	109	Stringtown Road LLC	2300007179	16028 Yeoho Rd	96.94

276	186	Palmer Preservation LLC	0516000610	15603 Falls Rd	105.22
277	79	Goetze Spaulding A Goetze Cynthia B	1900009023	1522 Cold Bottom Rd	109.66
278	50	Curtmill LLC	2300003012	2725 Benson Mill Rd	113.85
279	215	Harvest Investment Group LLC	2400002285	15651 Duncan Hill Rd	130.94
280	189	Montague Alex Montague Caroline	2000009394	2234 Stringtown Rd	139.43
281	78	Thomas F McMullan Iii Revocable Trust	2100003875	1620 Cold Bottom Rd	146.65

Protestant's # 10



Protestant exhibit 12

#24: 16310 Yeoho Rd. 4.15 acres

Protestant exhibit 14

#212: 2009 Stringtown Rd. 2.35 acres

Protestant exhibit 17

#281: 2317 Stringtown Rd. 5.43 acres

Protestant exhibit 19

#275: 15710 Falls Rd. 6.98 acres

Board of Appeals

Case No: 15-235 Case Name: CATHERINE H. ROBINSON

Exhibit List

Party: Protestant Date: 4-19-16

Exhibit No:	Description:
✓ 1	MAP
KC 4/19/16 ✓ 2	Marked up Site Plan (Replica of Petitioner's exhibit)
✓ 3	4/ Photos 14, 32, 34, 33, 31, 42, 1, 20
✓ 4	aerial Photograph "My Neighborhood Map" showing the ~~suject~~ subject property (125) ~~Marked by~~ admitted 4-20-16 ~~Not Entered~~
4-20 ✓ 5	Protestant Exhibit 5 - My Neighborhood Map printed 4/14/2016
4-20 ✓ 6	My Neighborhood Map aerial view of 1916 akehurst Rd dated 4-1-2016
4-20 ✓ 7	My Neighborhood Map. 1940 akehurst Rd (Krause) dated 4-1-2016
4-20 ✓ 8	photographs of Krousehouse, Road (8-1) (8-2)
4-20 ✓ 9	Table Identifying Each parcel by number ~~ster~~ associated with Protestant Exhibit 4 Sorted by Acerage
4-20 ✓ 10	My neighborhood Map dated 4/14/2016 [exhibit 5] marked as in Orange as definition of neighborhood
4-20 ✓ 11	#24 My neighborhood Map dated 4-1-2016 showing 16310 Yeoho Road
4-20 ✓ 12	Photograph of #24 16310 Yeoho Road
KC 4/21/16	VERIFIED BY _____ DATE: _____

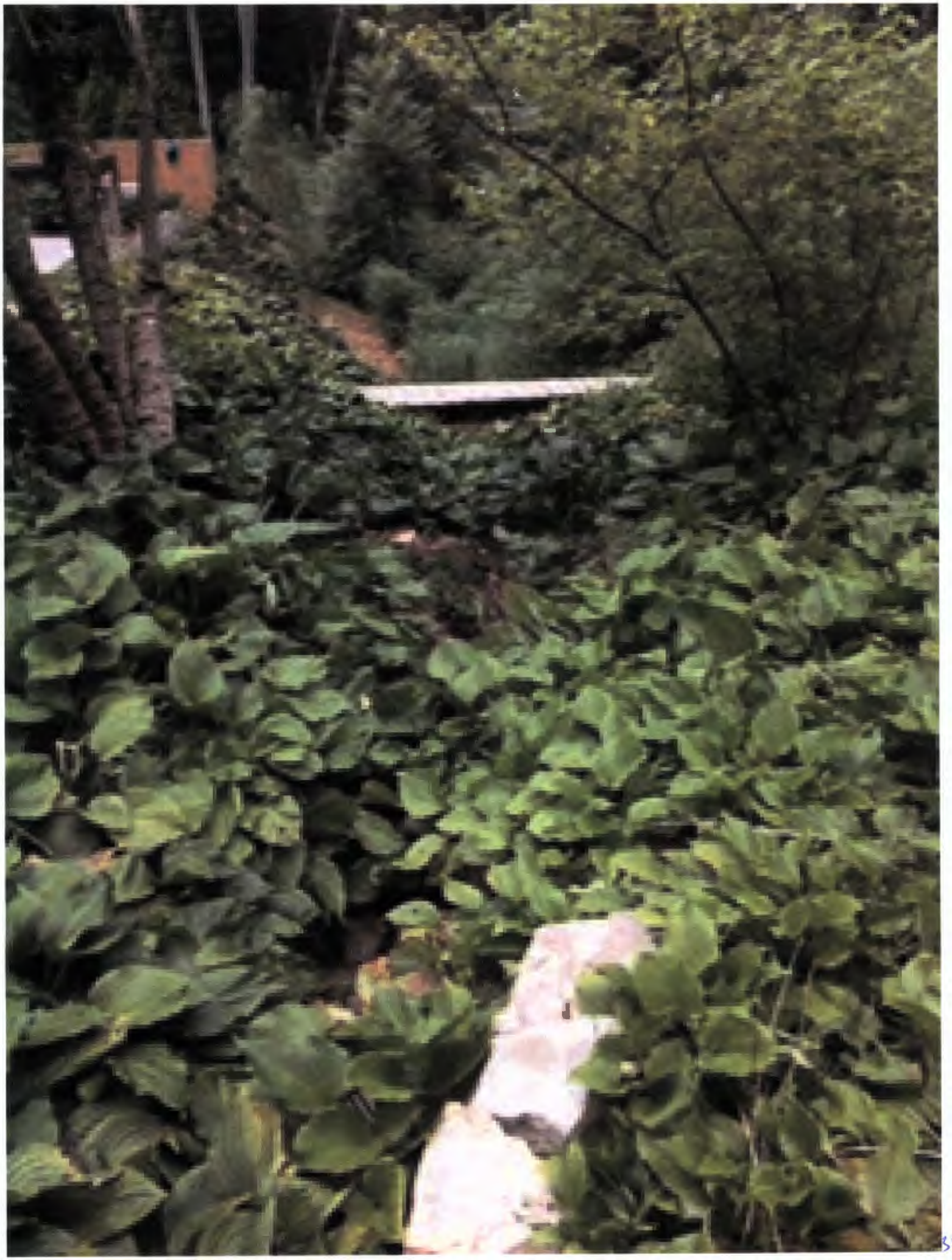
Board of Appeals

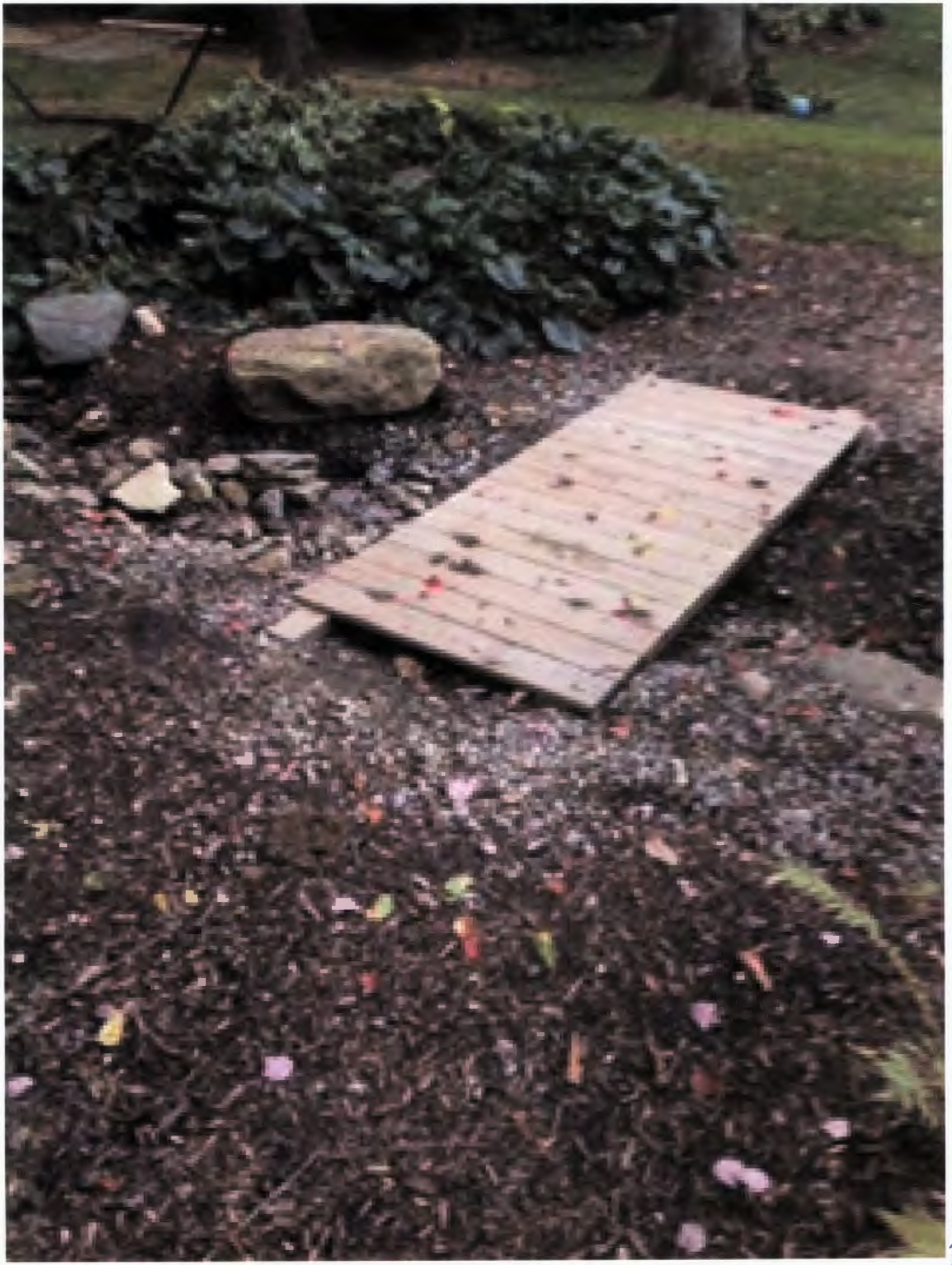
Case No: 15-235 Case Name: CATHERINE ROBINSON

Exhibit List

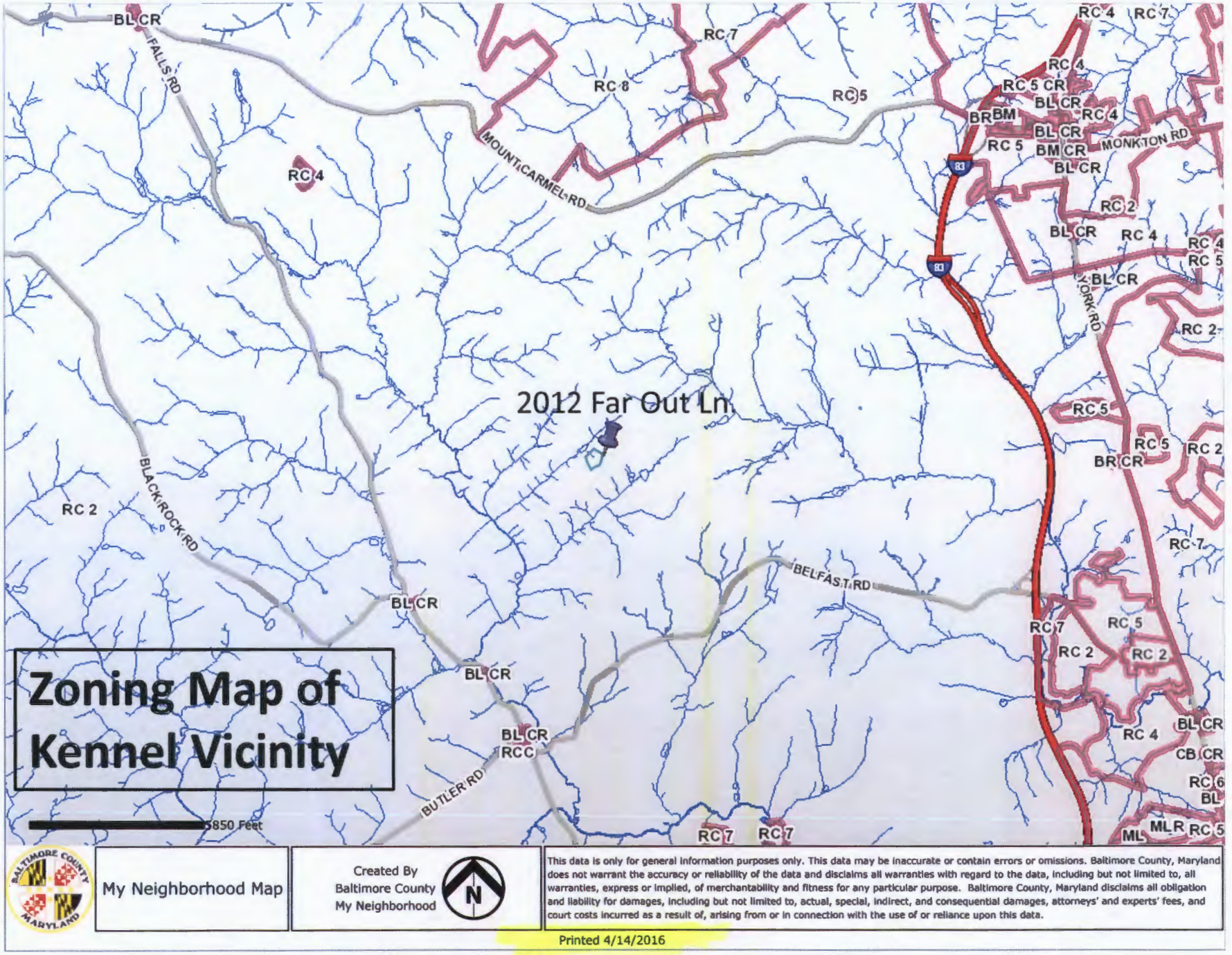
Party: Protestant Date: 4-20-2016

Exhibit No:	Description:
✓ 13	My Neighborhood Map date 4-1-2016 (#212) 2009 Stringtown Road
✓ 14	photograph (212) 2009 Stringtown Road (
✓ 15	My Neighborhood Map (212) 2009 Stringtown Road AND (281) 2317 Stringtown Road (Map dated 4-2-2016)
✓ 16	My Neighborhood (281) dated April, 2016 2317 Stringtown Road
✓ 17	photograph of 2317 Stringtown Road
✓ 18	My Neighborhood Map date 4-1-2016 #275 15710 Falls Road
✓ 19	Photographs (3) of #275 15710 Falls Road
✓ 20	My neighborhood Map dated 4/1/2016 #277 15630 Falls Road
✓ 21	Table identifying each Map parcel by number/ sorted by parcel Number
✓ 22	Marked Site Plan - marked in Colors
✓ 23	Chart that shows the distance from Subject Property to Neighboring Parcels
	VERIFIED BY RC DATE: 4/21/16





Protestant Exhibit 5



Protestant exhibit 8 - 182

8-1

#95: 1940 Akehurst Rd. 16.09 acres

#95: 1940 Akehurst Rd. 16.09 acres

Protestant Exhibit 21

Table Identifying Each Map Parcel by Number – Sorted by Parcel Number

(Numbered Parcel Map is 2.69 miles x 1.81 miles = 4.88 square miles)

#	Owner	TAX ID NUMBER	Address	Acres
1	Sheran D Smith Inter Vivos Trust	2300003014	16301 Dubbs Rd	3.49
2	Cassidy Charles L Rusins Judith Buck ET AL	1700010075	Benson Mill Rd	5.15
3	Cassidy Charles L Rusins Judith Buck ET AL	1700010074	Yeoho Rd	74.79
4	Steckel Luke	2300003015	Benson Mill Rd	0.47
5	Dixon Ruth Miriam	0504035085	2501 Benson Mill Rd	1.00
6	Safi Elizabeth Clark Safi Faiz	0506000101	2411 Benson Mill Rd	10.31
7	Morrill Todd L Morrill Karen C	1600002446	2407 Benson Mill Rd	2.98
8	Morrill Todd L Morrill Karen C	2500002492	2401 Benson Mill Rd	2.50
9	McNamara Micael Thomas McNamara Margaret B	2400012377	2335 Benson Mill Rd	1.30
10	Krayenvenger Jeffrey D Kravenvenger Natalie K	0523015280	2325 Benson Mill Rd	1.25
11	McNelis Niall McNellis Rebecca	0506020100	2321 Benson Mill Rd	0.71
12	Tucker Saint George Brooke Tucker Pamela H	2500002493	2403 Benson Mill Rd	3.00
13	Decker William T Decker Susan E	2400012378	2333 Benson Mill Rd	2.57
14	Corson Jay Kenneth	1700001391	2315 Benson Mill Rd	1.15
15	Franceschi Kristin Helena Ranum Franceschi Harve Julien	1600009594	2313 Benson Mill Rd	3.84 5.00
16	Tarsel Emily	0505088035	2314 Benson Mill Rd	1.27
17	Cassidy Charles L Cassidy Janet A	0503000490	16410 Yeoho Rd	1.80
18	Foster Richard M	0514010210	2312 Benson Mill Rd	0.92
19	Kamps Jack G Jr Kamps Elizabeth B	2200013999	16400 Yeoho Rd	2.50
20	Franco Joseph 3rd Franco Donna Maria	2200015930	16334 Yeoho Rd	5.66
21	Vinzant Malcolm Graham 3rd Vinzant Jean Marie	1600012190	16326 Yeoho Rd	5.21
22	Kamps Harriet E	1600008198	16405 Yeoho Rd	4.57
23	Taylor William R Taylor Susan G	1600012189	16322 Yeoho Rd	2.72
24	Joan Lefaivre LLC	1600012191	16310 Yeoho Rd	4.15
25	Varner Hugh H Varner Ruth E	2000010988	2220 Benson Mill Rd	2.56
26	Chenoweth George Edward III Chenoweth Emily Ann	1800012039	2210 Benson Mill Rd	2.86
27	Bartenfelder Steven E Bartenfelder Leslie	2200015936	2205 Benson Mill Rd	2.69
28	Buckwalter H Scott	1600012188	16316 Yeoho Rd	2.77
29	Simon Dennis Simon Paula A	1600012187	16312 Yeoho Rd	2.75
30	Gardner Wayne T Gardner Judith T	2200017932	2201 Benson Mill Rd	1.74
31	Hackler Lester W	0520066300	2200 Benson Mill Rd	1.00
32	Duff Elizabeth George	0520080072	2125 Benson Mill Rd	5.14
33	Watriss Paula Trustee	0505061075	16329 Yeoho Rd	2.00
34	Garrett Donald A Garrett Janet W	0507000200	16321 Yeoho Rd	0.80
35	Ogburn Vivian J	0523050860	16317 Yeoho Rd	0.48
36	Zepp Gregory A Zepp Glenda L	0504066110	16313 Yeoho Rd	0.49
37	DeVille Eric Allan Arthur-William Ellis Richard	0504020160	16309 Yeoho Rd	0.78
38	Bell Dorothea H	0508001050	16307 Yeoho Rd	0.46
39	Diven Robert B Diven Diane H	0508065580	16303 Yeoho Rd	0.47
40	Ensor Charles E Jr Ensor Mary Ann	2200022129	2119 Benson Mill Rd	4.39
41	Fitchett F Maxine Mays Lisa B	1700013152	2105 Benson Mill Rd	2.00
42	McKee David Hunter McKee Carol F	1700013153	2101 Benson Mill Rd	2.00
43	McKee David Hunter McKee Carol F	2200009419	Benson Mill Rd	1.70
44	Cold Bottom Farms Inc	0523050450	2111 Benson Mill Rd	77.70

45	?	2500001571	Conservation Easement	?
46	Moyer Constantina	2500001572	16315 Yeoho Rd	1.00
47	?	2500001573	Conservation Easement	?
48	Bart Polly T	0507015240	16626 Cedar Grove Rd	34.13
49	Hall Samuel F Hall Donald R	0508000575	16600 Cedar Grove Rd	34.36
50	Curtmill LLC	2300003012	2725 Benson Mill Rd	113.85
51	Kees Family LLC	0502035027	2318 Traceys Rd	34.56
52	Schweizer Cheryl H	1600012194	2212 Traceys Rd	10.44
53	Bowden Timothy Richard Bowden Monica Eng	1600012193	2210 Traceys Rd	6.49
54	Lee Sang K Lee Youn	2400003125	2218 Traceys Rd	1.13
55	Evans Joseph L Pray Nedda	1600012195	2224 Traceys Rd	2.66
56	Daily Gregory Daily Sharon	2400003124	2220 Traceys Rd	2.10
57	Roberts Michelle S	0523050577	2311 Traceys Rd	41.81
58	DiPasquale Santo DiPasquale Lisa	2400002421	2217 Traceys Rd	1.37
59	Harold George E Harold Carolyn F	0508001290	2206 Traceys Rd	0.68
60	Harold George E Harold Carolyn F	0508001291	Yeoho Rd	0.60
61	Coverdale Joseph H Coverdale Mary L	0520080054	2200 Traceys Rd	1.00
62	Kelley Tawanna Y Kelley Sean V	1600012192	16308 Yeoho Rd	3.73
63	Kincaid James I Kincaid Elizabeth R	2000007059	2130 Traceys Rd	2.61
64	Wirtz Vernon W Jr	0523050575	Yeoho Rd	20.35
65	?	?	?	?
66	Wirtz Vernon Willis Jr Wirtz Susan E Twigg	2000007060	2100 Traceys Rd	2.76
67	Payami Sepideh	0523050576	2121 Traceys Rd	1.72
68	Walker Andrea E Walker Chris	0508030585	16301 Yeoho Rd	0.735
69	Vasold Barrett M Vasold Genie K	2400001259	16234 Yeoho Rd	2.30
70	Wirtz Mary Pearl	0523050578	Yeoho Rd	1.93
71	Wirtz Mary Pearl	0523050700	16226 Yeoho Rd	1.67
72	Shoul Thomas Shoul Winifred B	0519032630	16220 Yeoho Rd	2.38
73	Boyce John C G Jr	0502020025	16214 Yeoho Rd	4.00
74	Hagerty Ann F Boyce John C G Jr	2400005082	16214 Yeoho Rd	8.68
75	Benzak Michael J Benzak Whitney C	0501033076	16206 Yeoho Rd	1.00
76	Karwacki Rodger S Karwacki Karen M	2000000149	16200 Yeoho Rd	1.52
77	McHugh Stacey Noakes McHugh Robert R	0514065210	16213 Yeoho Rd	68.09
78	Thomas F McMullan Iii Revocable Trust	2100003875	1620 Cold Bottom Rd	146.65
79	Goetze Spaulding A Goetze Cynthia B	1900009023	1522 Cold Bottom Rd	109.66
80	Baltimore Gas & Electric Co	0502000666	Benson Mill Rd	1.50
81	Bramwell Samuel McClure Curran Trisha Lynn	0508065470	2801 Benson Mill Rd	10.12
82	Zavodny Richard J Zavodny Christine M	1800002902	15915 Falls Rd	5.92
83	Ligeti LLC	2500013256	Falls Rd	15.06
84	?	"Not Located"	?	?
85	Eichorn Emil Eichorn Helen K	1600008079	Falls Rd	21.51
86	Waller Sallee M	1800014921	15813 Falls Rd	20.04
87	Curtmill LLC	1800014043	Falls Rd	63.39
88	Kees Sherry	1700005110	Traceys Rd	0.03
89	Kees Family LLC	0511015331	2323 Traceys Rd	2.52
90	Kees Family LLC	0511015330	2323 Traceys Rd	68.38
91	Price Rustin E Price Deborah A	2000014697	2315 Traceys Rd	1.00
92	Currey Charles B Currey Carol A	2400001690	2112 Abell Ln	7.41
93	Waas Erich P	2400001691	2114 Abell Ln	2.34

94	Mabell LLC	0504065050	2221 Abell Ln	28.40
95	Beste Pond Farm LLC	0502020480	1940 Akehurst Rd	16.09
96	Conanan Orlando B Conanan Bella D	2000000150	16120 Yeoho Rd	4.64
97	Zelinsky John P Zelinsky Elizabeth A	0511035210	2021 Abell Ln	6.60
98	Strucko Robert Strucko Debra M	1700004026	2011 Abell Ln	2.00
99	Capozzi Daniel J 3rd Capozzi Joanne C	0519007320	16116 Yeoho Rd	3.03
100	Mansfield Thomas S Mansfield Deborah Beste	1900011515	1936 Akehurst Rd	4.00
101	Bolt Stanley E Bolt Wanda C	0502057490	1916 Akehurst Rd	8.52
102	Bolt Stanley E Bolt Wanda C	0502057491	Akehurst Rd	3.99
103	Lewis H Thomas Lewis Darlene M	2200007505	16102 Yeoho Rd	1.92
104	Rongione David M Rongione Sarah J	0513014500	2002 Farout Ln	5.45
105	Cornell Anne Lundvall	2300008592	2000 Far Out Ln	2.06
106	Atticks Kevin Michael Atticks Andrea Hirsch	2300008593	1950 Far Out Ln	1.33
107	Offutt J Frederick C Jr Offutt Roberta E	2100004534	Akehurst Rd	1.82
108	Mayo George 6th Mowell-Mayo Mary Jane	2100004533	16060 Yeoho Rd	2.38
109	Stringtown Road LLC	2300007179	16028 Yeoho Rd	96.94
110	Blaumanis Otis Rudolph	0502047120	16201 Yeoho Rd	1.99
111	Walker Bradford L	2200007506	16106 Yeoho Rd	0.82
112	Stevens Lois A Trustee	2400001383	16110 Yeoho Rd	2.53
113	Menchey Calvin Ross Menchey Margaret M	2500012245	Falls Rd	23.29
114	Elliott Roger L	1600005049	15815 Falls Rd	33.83
115	Elliott Roger L Elliott Margaret T	1800014042	15817 Falls Rd	17.45
116	Lbf Butler LLC	0506020225	Falls Rd	57.00
117	Danielczyk Steven C Danielczyk Maria D	2200028633	2207 Abell Ln	3.00
118	Currey Shane B Currey Jennifer M Trustees	0516090060	2201 Abell Ln	1.70
119	Albrecht Matthew G Kaszak Ashley N	0502065380	2135 Abell Ln	1.38
120	?	?	?	?
121	Beste Pond Farm LLC	0502020483	Ses Yeoho Rd 2000ft Nw Stringtown Rd	9.49
122	Levenson Judith R Trustee THIS IS DUPLICATED FOR #123	0514010231	2007 Far Out Ln	18.02
123	Levenson Judith R Trustee THIS IS DUPLICATED FOR #122	0514010231	2007 Far Out Ln	18.02
124	Elberfeld Sherry M	0505061320	2101 Far Out Ln	5.00
125	Robinson Catherine H	0514010230	2012 Far Out Ln	5.42
126	Flying J Ranch LLC	0502020482	Wsr Yeoho R Rer 2700 Ft 5200 Nw Stringtown Rd	6.34
127	Vinatier Julie Graham Christopher Mitchell	2000001122	1926 Stringtown Rd	7.58
128	Stouffer Laura A	0518047280	1810 Stringtown Rd	1.72
129	Fox Michael B Grover Kimberly A	0502085590	1806 Stringtown Rd	2.62
130	Grunwell Nancy Marie Grunwell Marshall A	0516000345	1800 Stringtown Rd	1.10
131	Duncan Hill LLC	0508065511	Stringtown Rd	8.33
132	Velez Francis J Velez Roseann	2500012163	Stringtown Rd	3.90
133	Velez Francis J Velez Roseann	2500012162	Stringtown Rd	1.68
134	Lamb Bruce Christopher Trustee	0812001700	1641 Cold Bottom Rd	1.52
135	Lamb Bruce Christopher Trustee	2500009011	13835 Yeoho Rd	1.76
136	Burke Tommy D Burke Barbara A	1600009844	15827 Yeoho Rd	2.10

137	Sampson Adam Sampson Katherine	2300012378	15825 Yeoho Rd	1.77
138	Schofield Russell P Schofield Tina M	2400009180	15823 Yeoho Rd	3.08
139	Jupitz Steven R Webb Erin	2400009181	15821 Yeoho Rd	3.08
140	Kaszak Karen H Kaszak Joseph M THIS IS DUPLICATED FOR #141	1600006489	15819 Yeoho Rd	5.97
141	Kaszak Karen H Kaszak Joseph M THIS IS DUPLICATED FOR #140	1600006489	15819 Yeoho Rd	5.97
142	Hershfield Jonathan M Hershfield Shannon L	1600006269	Yeoho Rd	20.76
143	Janik Peter T Janik Deborah C	2200010710	1635 Cold Bottom Rd	1.18
144	Maynes David Maynes Raquel Foglia	2200010711	1637 Cold Bottom Rd	3.01
145	Hoover Harry A 2nd Hoover Susan	0808065026	1617 Cold Bottom Rd	4.05
146	Curtis Ethel B	0803077350	1615 Cold Bottom Rd	1.00
147	Hoover Herbert L	0808065027	1525 Cold Bottom Rd	1.33
148	Price Bryan S Sr Price Holly A Hughes	1900013555	1509 Cold Bottom Rd	2.16
149	Elliott C Gregory	2500010020	Falls Rd	5.52
150	Waller Sallie M	1600005048	Falls Rd	39.34
151	Monaco Tammie Jean	1700014428	15635 Falls Rd	3.44
152	Kremzner Mary Enns Margaret	1700014429	15633 Falls Rd	1.69
153	Mabell LLC	0512000191	Yeoho Rd	45.24
154	Elberfeld Harrold Talley Elberfeld Sherry M	0512000190	2121 Akehurst Rd	75.81
155	Irwin David J Irwin Lynn A	0514010050	2030 Stringtown Rd	46.77
156	Harvey R Dixon Jr Harvey Janet Hardie	0512040160	2004 Stringtown Rd	3.25
157	Biggs Linda	0503023300	2007 Stringtown Rd	1.80
158	Schwab David M	0507058490	1928 Stringtown Rd	4.29
159	Byers Bradley S Phillips Mary Carol	0512020025	2001 Stringtown Rd	1.56
160	Gunder Frederick E Gunder Shirley Patricia	2000001121	1926a Stringtown Rd	3.15
161	Schneider Edna M	0508000375	1903 Stringtown Rd	12.44
162	Hocheder John Boehm	0508065460	1901 Stringtown Rd	10.92
163	Hocheder John B	2000005073	1813 Stringtown Rd	3.63
164	Owens Diana F	0502085600	1801 Stringtown Rd	1.89
165	Madden John P Madden Janice L	2100014141	1795 Stringtown Rd	2.84
166	McCleary Thomas	2400002234	15650 Duncan Hill Rd	37.78
167	McCleary Thomas	2400002235	Duncan Hill Rd	0.86
168	Velez Francis J	2500010539	15801 Duncan Hill Rd	20.17
169	Huber Nancy Vinroe	1800000378	15751 Duncan Hill Rd	7.69
170	Travers Thomas S Jr Travers Sarah J	2500004342	15815 Yeoho Rd	4.04
171	Powell Robert L Powell Joan L	0816062200	15813 Yeoho Rd	1.68
172	Poulos David G Poulos Holly K	0819039830	15808 Yeoho Rd	1.25
173	Richardson Michael Scott	0819061530	15800 Yeoho Rd	2.38
174	Butler Louis T Brogan Theresa G	2000007547	15716 Yeoho Rd	3.16
175	Sendak Michael J Sendak Janice B	2000007546	15714 Yeoho Rd	3.82
176	Smith Mabel Louise	0819053881	15809 Yeoho Rd	0.78
177	Haun Edwin James Haun Lauren Michelle	0808081530	15807 Yeoho Rd	0.70
178	McMurtrie Bridgid A	2000007540	15801 Yeoho Rd	3.31
179	Garner Anthony V Garner Dina M	2100010852	15721 Yeoho Rd	6.68
180	Wolgamott James R Lang Henry John	2000007541	15717 Yeoho Rd	3.63
181	Green Daniel H Sobel Tamara S	2000007542	15709 Yeoho Rd	16.44
182	Giuliano Mark E Raab Cathy L	2000007545	15712 Yeoho Rd	2.56

183	Sweeney John A	2000007544	15710 Yeoho Road	2.01
184	Breidenbaugh Arnold L Jr Breidenbaugh Ellen M	1700003300	15629 Falls Rd	4.13
185	Mabell LLC	0505061100	15615 Falls Rd	8.30
186	Palmer Preservation LLC	0516000610	15603 Falls Rd	105.22
187	Palmer Preservation LLC	1600014635	15603 Falls Rd	16.00
188	Curtmill LLC	2200022135	Falls Rd	40.25
189	Montague Alex Montague Caroline	2000009394	2234 Stringtown Rd	139.43
190	Becker Peter J Becker Kathleen D	0502000460	2144 Stringtown Rd	2.13
191	Irwin David J Irwin Lynn A	0501099500	2142 Stringtown Rd	0.52
192	Irwin David J Irwin Lynn A	1900014561	Stringtown Rd	25.43
193	Johnston Shari L	0502085680	2125 Stringtown Rd	0.85
194	Hollock Stephen Hollock Sommer	2400001321	2119 Stringtown Rd	7.83
195	Marzullo Kelly M Marzullo Christopher S	2400001322	2117 Stringtown Rd	3.34
196	Ziegler David W Ziegler Sarah A	1600014697	2109 Stringtown Rd	0.14
197	Ziegler David W Ziegler Sarah A	0516000125	2109 Stringtown Rd	0.50
198	Dalgarno Bradley	0520030050	2107 Stringtown Rd	0.54
199	Fendlay Alvin M Fendlay Edna M	0506010080	2105 Stringtown Rd	0.30
200	Bolgiano John Trustee Bolgiano Patricia R Trustee	0514000153	2103 Stringtown Rd	0.33
201	Mileto Scott A Mileto Jennifer L	1700013658	2101 Stringtown Rd	0.65
202	Mahoney Annette Goodman Nicholas	0514000152	2037 Stringtown Rd	0.50
203	Pedone Michael T	2000010488	2029 Stringtown Rd	4.37
204	Franklin George C 3rd Franklin Katherine A	0516090070	2011 Stringtown Rd	4.00
205	Beasley Walter Scott	0511057075	Stringtown Rd	0.72
206	Beasley Walter Scott	0511057025	Stringtown Rd	0.18
207	Beasley Walter Scott	0511057050	2033 Stringtown Rd	1.64
208	Gencel Stephen P Gencel Joan M	2200020742	Stringtown Rd	0.21
209	Gencel Stephen P Gencel Joan M	0506060600	2035 Stringtown Rd	0.52
210	Howard Donald S Jr Howard Janice B	1600012086	15450 Duncan Hill Rd	3.01
211	Gregg William Melvin Jr Gregg Sherry Ann	1600012085	15448 Duncan Hill Rd	3.00
212	Tiralla John A Tiralla Ada	1700012424	2009 Stringtown Rd	2.35
213	Schneider Edna M	0508000376	Duncan Hill Rd	35.25
214	Schneider Edna M	0508000377	Duncan Hill Rd	17.00
215	Harvest Investment Group LLC	2400002285	15651 Duncan Hill Rd	130.94
216	Bond Frank	2300010210	Yeoho Rd	8.68
217	Bond Shelda Trustee Bond Frank Trustee	2000006845	1540 Belfast Rd	69.89
218	Hoover Lydia P Trustee	0514040075	Falls Rd	93.68
219	Hoover Lydia P Trustee	2000005053	Falls Rd	30.14
220	Wilson Jeffry J Richard Janet L	1600012506	3008 Benson Mill Rd	3.24
221	Arnold Nathan Arnold Amanda	1600012521	3006 Benson Mill Rd	3.73
222	?	?	?	?
223	Wolfe Linda M	2200002045	3103 Benson Mill Rd	92.48
224	Beck Jonathan A Cohen Donna Ann	1600012505	3000 Benson Mill Rd	2.93
225	Hoover Brinton H Hoover Linda H	0508065520	16211 Falls Rd	12.63
226	Hoover Brinton H Hoover Linda H	2200003041	Benson Mill Rd	4.77
227	Gemmill Mary C Etal Fisher Michael Gemmill	0507015210	2808 Benson Mill Rd	46.71
228	McLewee Robert W McLewee Mary E	1700007423	2810 Benson Mill Rd	3.00
229	Dixon Miriam	2300003011	2724 Benson Mill Rd	27.60
230	McCormack Keith N Reiss McCormack Randi	0502020061	Benson Mill Rd	1.17
231	Gerstmyer W Randall Gerstmyer Nancy J	2300004305	2823 Benson Mill Rd	8.83

232	Bristor Charles Edwin Trustee	2100008219	2825 Benson Mill Rd	10.82
233	Lohse Henry Arnold Lohse Isolde	1600008050	15909 Falls Rd	5.43
234	Schmid Robert J	0519071450	3003 Benson Mill Rd	4.60
235	Schmid Robert J Elder Robert J	0519071451	Falls Rd	0.21
236	Molnar George J	0519039070	16026 Falls Rd	3.22
237	Rambert Travis D Rambert Shawanda R THIS IS DUPLICATED FOR #238	2200027585	16025 Falls Rd	3.00
238	Rambert Travis D Rambert Shawanda R THIS IS DUPLICATED FOR #237	2200027585	16025 Falls Rd	3.00
239	Gurevich Robert L Sanfilippo Jo Anne	2200027584	16027 Falls Rd	4.53
240	Cofiell Walter G Cofiell Winona D	1600008119	16001 Falls Rd	5.02
241	Murphy Edward D Murphy Patricia A	0520030570	16020 Falls Rd	0.46
242	Brocato Carl Brocato Patricia	2200027629	16024 Falls Rd	1.00
243	Murphy Patricia A Thompson James David	2300007178	16016 Falls Rd	1.50
244	Murphy Patricia A Murphy Edward D	0512020210	16018 Falls Rd	2.76
245	Lee Dorothy R	0512020175	15928 Falls Rd	11.30
246	Kyger Iris P	0519090050	16012 Falls Rd	1.73
247	Bitzer Milton G Bitzer Eleanor R	0519039100	16006 Falls Rd	1.39
248	Corradetti Anthony A Corradetti Julie A	0508055190	16008 Falls Rd	1.45
249	Whitaker Edward J Whitaker Kathleen D	0523035300	16010 Falls Rd	2.21
250	Kyger Iris P	0511089010	16012 Falls Rd	1.66
251	Oler Robert W Oler Tara B	2300008221	15917 Falls Rd	6.12
252	Waller Sallie M	2500013257	Falls Rd	4.91
253	Gearhart John M Gearhart Hilda G	1700004264	Falls Rd	0.43
254	Gearhart John M Gearhart Hilda G	1700004263	15914 Falls Rd	0.56
255	Kirchner William L Kirchner Linda V	0506010110	15908 Falls Rd	3.67
256	Harris Leroy N Jr Harris Diana	2400004495	15910 Falls Rd	1.34
257	Tegeler William V Tegeler Mary J	0520025025	15920 Falls Rd	1.04
258	Arbogast Brenda Lee Arbogast David/Gill Deborah Ann	0503077050	15900 Falls Rd	4.00
259	Menchey Calvin Ross Menchey Margaret M	2500012244	Falls Rd	16.49
260	Finniss Cory Michael Mulhearn Vanessa Nicole	1600004008	15902 Falls Rd	1.45
261	O'Brien Darren Patrick O'Brien Tracy	2000000116	Falls Rd	1.46
262	Waller Sallie M	1600005047	15813 Falls Rd	1.31
263	Basignani Marilyn E Basignani Bertero L Trustees	0519007228	Falls Rd	5.87
264	O'Brien Darren P Chalmers Tracy A	2200026656	15906 Falls Rd	6.54
265	Basignani Marilyn E Basignani Bertero L Trustees	1600002067	15722 Falls Rd	20.97
266	Taylor Griffen N Basignani Marisa I	2500009755	15726 Falls Rd	1.47
267	Mentzer Benjamin D Basignani-Mentzer Elena M	2500009754	15728 Falls Rd	1.46
268	Harrison Michael J Harrison Ann Elizabeth	1600002064	15730 Falls Rd	11.54
269	Willowdale Farm Associates	1600002066	Black Rock Rd	54.30
270	Basignani Bertero L Basignani Lawrence B	0506020360	15734 Falls Rd	7.85
271	Beren Joel Jeffrey Trustee Beren Anna Irene Trustee	1800004836	15732 Falls Rd	3.00
272	Basignani Marilyn E Basignani Bertero L Trustees	1800004835	15722 Falls Rd	14.51
273	Basignani Lawrence B Basignani Heidi	2500009753	15714 Falls Rd	1.45
274	Waller Sallie M	1700008494	Falls Rd	0.40
275	Watriss Paula Trustee	0501089060	15710 Falls Rd	6.98
276	Black Rock Group LLC THIS IS DUPLICATED FOR #277	1900014287	15630 Falls Rd	41.55

277	Black Rock Group LLC THIS IS DUPLICATED FOR #276	1900014287	15630 Falls Rd	41.55
278	Stellman Peter B	1900014286	3040 Black Rock Rd	2.00
279	Harrison Michael J Harrison Ann Elizabeth THIS IS DUPLICATED FOR #280	1700008579	3016 Black Rock Rd	10.46
280	Harrison Michael J Harrison Ann Elizabeth THIS IS DUPLICATED FOR #279	1700008579	3016 Black Rock Rd	10.46
281	Alterwitz Steven A Alterwitz Jennifer R	0501033100	2317 Stringtown Rd	5.43

Protestant exhibit 23

Distances from Robinson Property (Parcel 125) to Other Neighborhood Parcels

Parcel #	Distance From Robinson Parcel	
	Feet	Miles
24	3,645	0.69
212	1,646	0.31
281	5041	0.95
275	7,294	1.38
101	823	0.16
277	7,294	1.38
95	0	0

Case No.: 2015-0235-SPHA

Exhibit Sheet

10-9-15

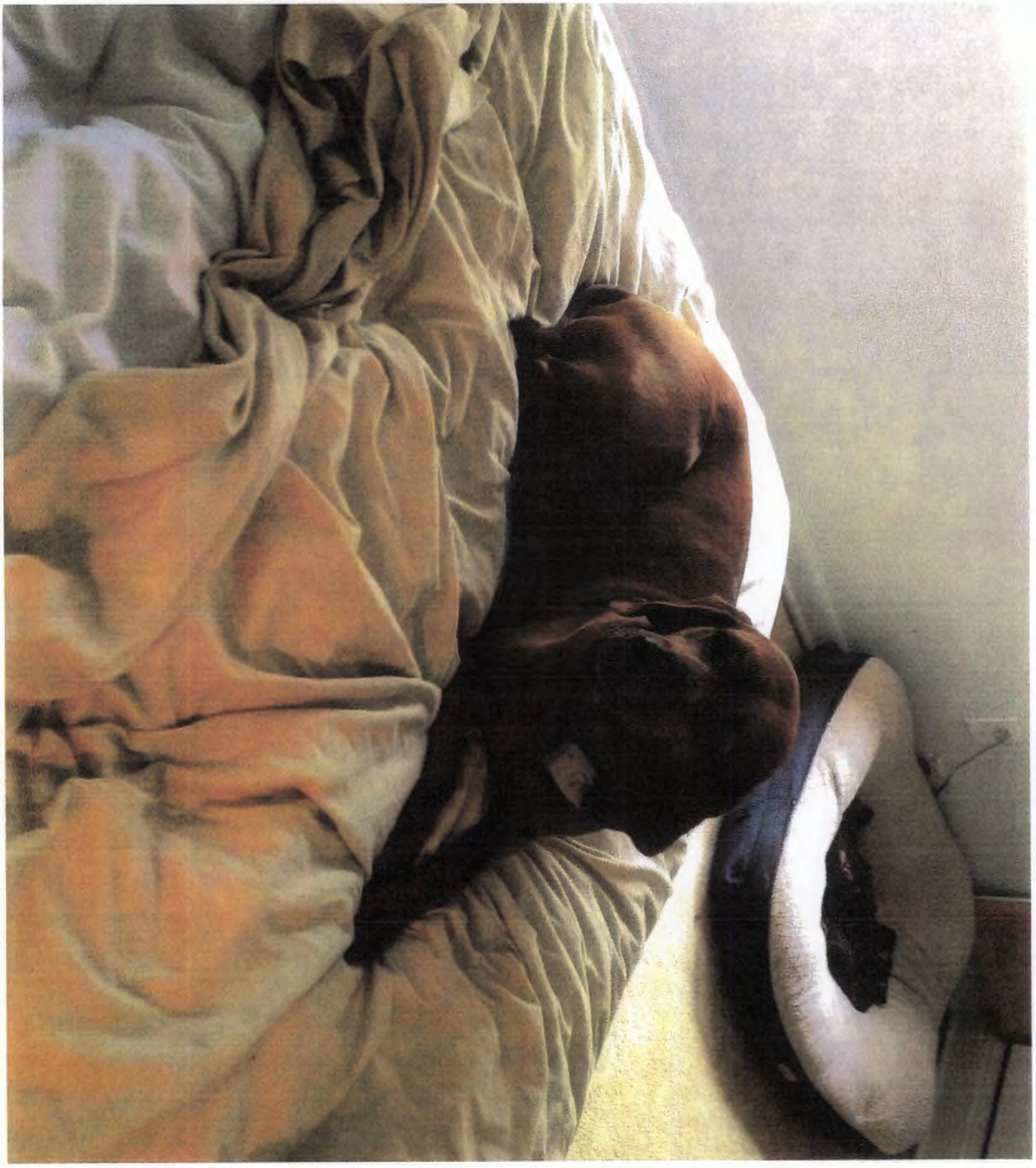
	Petitioner/Developer	Protestant
No. 1	Photos of dogs owned by Petitioner	Email from A. Krause 2-27-2015
No. 2	Site plan	Photo of dogs in "drainage way"
No. 3	Letters of support	Aerial photo w/ topo
No. 4	Photos of site	Jen Walsh E-mail 6-2-2015
No. 5	Photos showing fencing at property	Aerial photo
No. 6	2 videos of site on computer thumb drive	Aerial topo map
No. 7	Hosmer C.V.	photo of house
No. 8	Aerial photo	DVD - "Kennel Noise"
No. 9	Series of photos of "stream"	Photo - dog in stream
No. 10	COMAR section	Photo - pond
No. 11		Photo-pond
No. 12		Aerial exhibit - sample locations

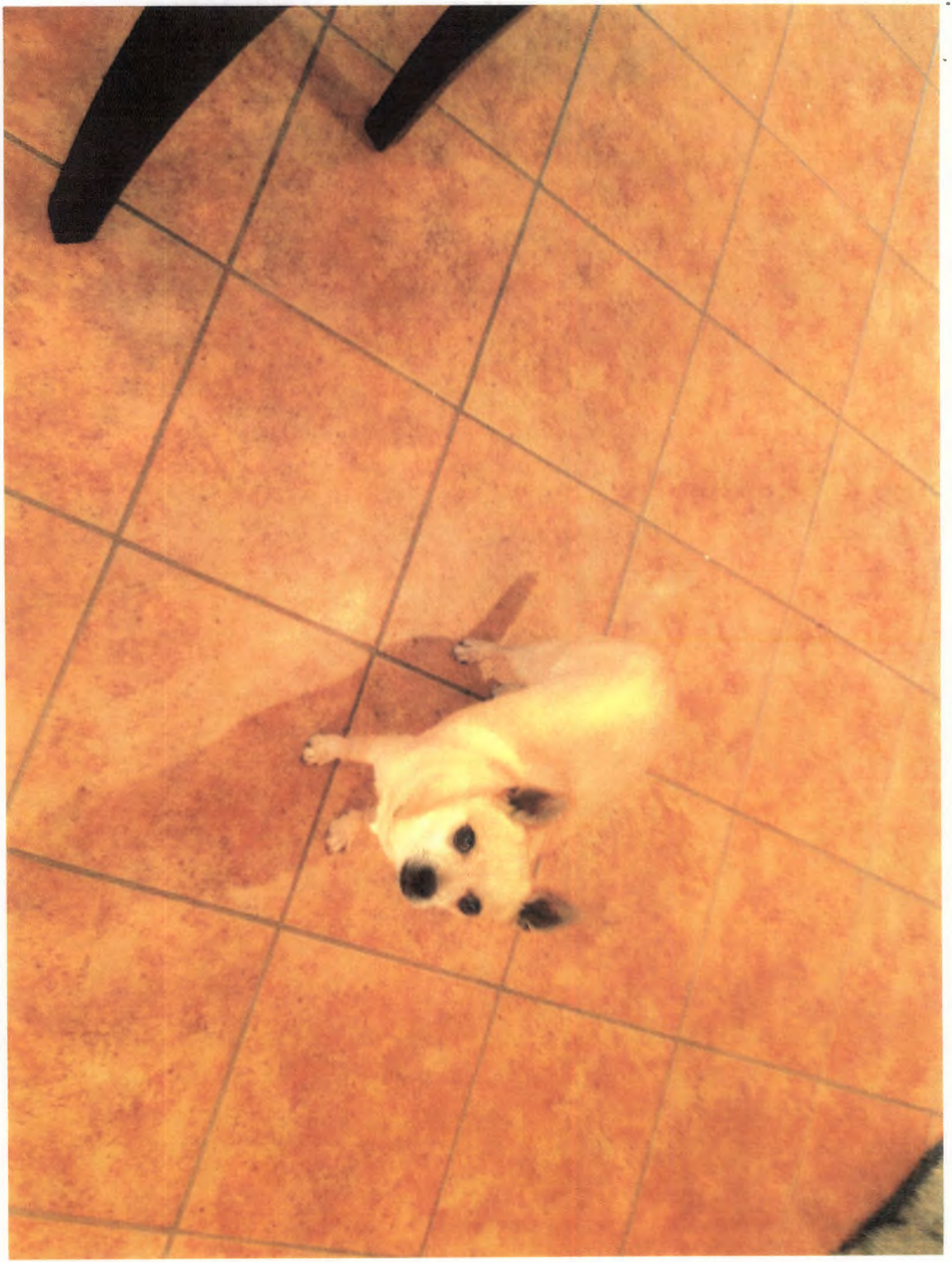
Case No.: 2015-0235-SPHA

Exhibit Sheet - Continued

	Petitioner/Developer	Protestants
No. 13		EnviroChem Lab results
No. 14		~~"Krause Property E. Coli chart"~~ not admitted
No. 15		EPA water contamination standards
No. 16		Letters from neighbors
No. 17		
No. 18		
No. 19		
No. 20		
No. 21		
No. 22		
No. 23		
No. 24		


PETITIONER'S
EXHIBIT NO. 1





August 26, 2015

To Whom It May Concern:

We are writing to support the variance request for Catherine Robinson.

We have resided on Far Out Lane since 2005, and have known Ms. Robinson since the day we moved in. She has been a supportive, responsive and kind neighbor, and has gone out of her way to assist with neighborhood issues.

Regarding Ms. Robinson's dogs, we are supportive of her request to keep her dogs. Yes, we hear them—they're dogs and they bark. We hear every dog in the neighborhood. However, Ms. Robinson has been much more responsive than other neighbors in the rare instance that the dogs cause an annoyance.

The variance request is for a kennel on the property…which, essentially, is a request for the status quo. We support Ms. Robinson's ability to maintain the number of dogs she currently owns.

Sincerely,

Kevin Atticks
1950 Far Out Lane
Sparks, MD 21152

PETITIONER'S

EXHIBIT NO. 3

Gmail by Google

Michelle Dickinson <michelle@dickinson-law.com>

Fwd:

1 message

catherinestoley@aol.com <catherinestoley@aol.com> Tue, Aug 25, 2015 at 9:16 AM
To: Michelle Dickinson <michelle@dickinson-law.com>

Sent from my iPhone

Begin forwarded message:

> **From:** Tracy Attfield <tracylore@gmail.com>
> **Date:** August 24, 2015 at 4:53:02 PM EDT
> **To:** "catherinestoley@aol.com" <catherinestoley@aol.com>
>
> To Whom It May Concern,
> For 15 years Catherine Robinson was a loyal employee of ours. Her duties included the care of multimillion dollar racehorses and overseeing the employees that cared for them. She has a very good understanding of animals and what it takes to look after them.
> Over the past 20 years, I have spent many nights at Catherine's home, visiting on my way from New York to Florida and back again. I have always brought my 6 pound terrier who is welcomed into the group of dogs and was never threatened by any of her dogs. All of her dogs are very well behaved, each sleeping in their own beds at night. They have never caused any disturbance nor have I ever heard them throughout the night.
> Because of her generosity and goodwill, many dogs that would have seen euthanized are saved and new homes have been found for them. Catherine goes above and beyond to help 'man's best friend'.
> Most Sincerely,
> Tracy L. Attfield
> President and Owner of TLore Management Services for the Thoroughbred Industry
>
> Sent from my iPad

From: **catherinestoley@aol.com**
Subject: Fwd: Sorry this is so late!!!!
Date: August 26, 2015 at 3:20 AM
To: Michelle J. Dickinson michelle@dickinson-law.com

Sent from my iPhone

Begin forwarded message:

> **From:** Rosie <arnap6905@aol.com>
> **Date:** August 25, 2015 at 10:33:06 PM EDT
> **To:** Catherine Robinson <catherinestoley@aol.com>
> **Subject: Sorry this is so late!!!!**
>
> To whom it may concern:
>
> My name is Rosie Napravnik. I would like to express my full support of Catherine "Holly"

Robinson and her dogs. I lived with Holly and her multiple dogs for over a year and in that time I have seen first hand that all of the dogs were always very well behaved and socialized. Holly has provided a secure and loving home to many dogs in need. She is a compassionate and generous person who goes above and beyond her call of duty to help animals. With the controlled and nourishing environment provided by Holly, her dogs grow into happy, secure and independent animals. The dogs have never caused any trouble for anyone but continue to thrive in under her care.

Very sincerely,

Rosie Napravnik

From: **catherinestoley@aol.com**
Subject: Fwd: Sorry this is so late!!!!
Date: August 26, 2015 at 3:20 AM
To: Michelle J. Dickinson michelle@dickinson-law.com

Sent from my iPhone

Begin forwarded message:

> **From:** Rosie <arnap6905@aol.com>
> **Date:** August 25, 2015 at 10:33:06 PM EDT
> **To:** Catherine Robinson <catherinestoley@aol.com>
> **Subject: Sorry this is so late!!!!**
>
> To whom it may concern:
>
> My name is Rosie Napravnik. I would like to express my full support of Catherine "Holly"

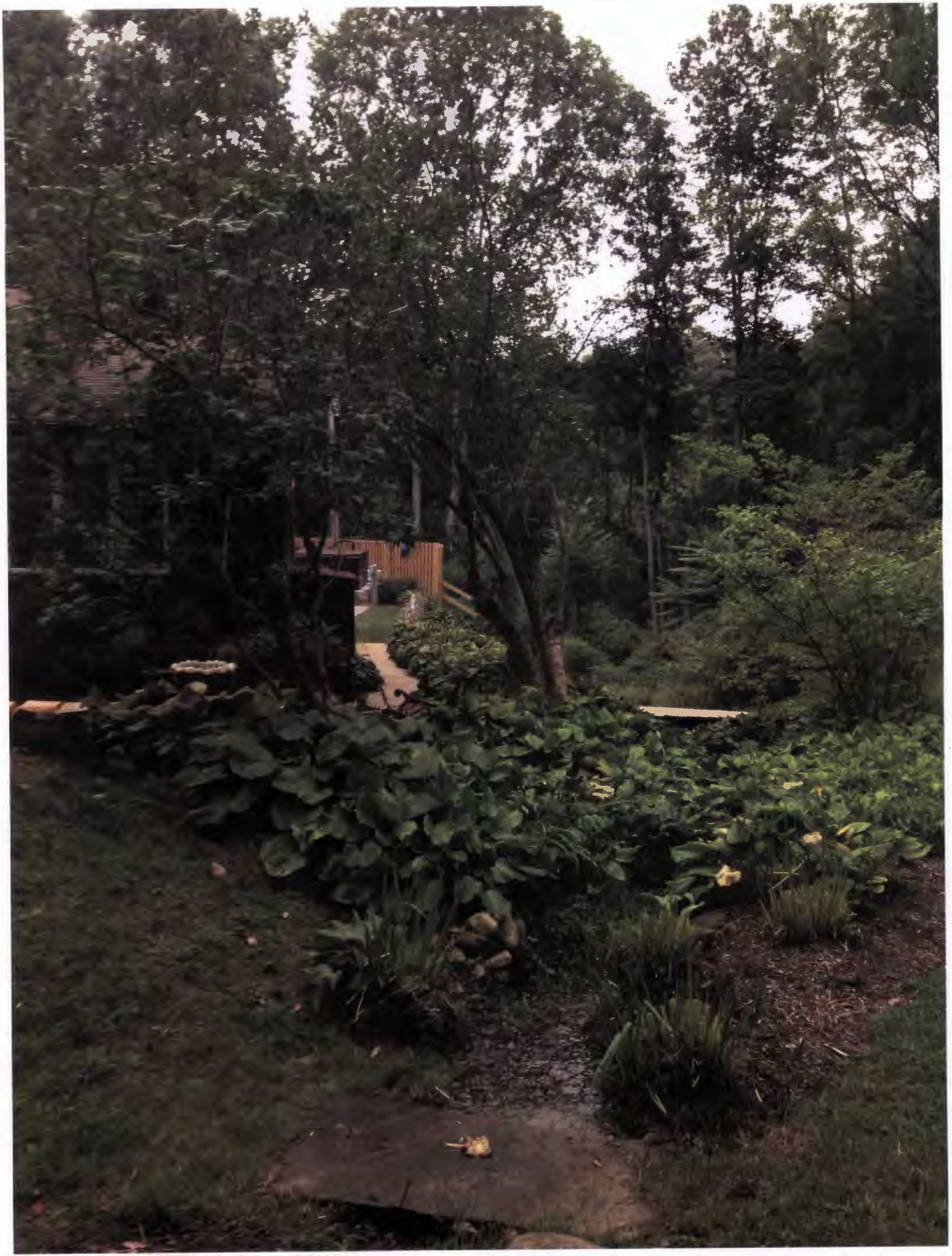
Robinson and her dogs. I lived with Holly and her multiple dogs for over a year and in that time I have seen first hand that all of the dogs were always very well behaved and socialized. Holly has provided a secure and loving home to many dogs in need. She is a compassionate and generous person who goes above and beyond her call of duty to help animals. With the controlled and nourishing environment provided by Holly, her dogs grow into happy, secure and independent animals. The dogs have never caused any trouble for anyone but continue to thrive in under her care.

Very sincerely,

Rosie Napravnik

PETITIONER'S

EXHIBIT NO. 4



PETITIONER'S

EXHIBIT NO. 5

J. Lawrence Hosmer, P.E.

Senior Partner and Consultant

Mr. Hosmer is a Senior Partner and Consultant in the ERM Annapolis, Maryland, USA office. He has served as technical staff, Project Manager or Project Director on hundreds of waste management and environmental projects across the spectrum of project types, sizes and requirements. He has 45 years of experience as a civil and geotechnical engineer and has contributed to over 300 land disposal projects, over 60 CERCLA RI/FS's and RD/RA's, and more than 20 RCRA Part B and RFI/CMS projects. His "hands-on" technical capabilities include study, design and construction control phase activities, including virtually all phases of geotechnical investigations for the mining, petrochemical, nuclear and fossil-fueled power, manufacturing, municipal and other governmental and commercial facilities.

Mr. Hosmer's career has centered on the investigation and remediation of past land disposal facilities; the site selection, study and design of new land disposal and other waste management facilities; and assistance in the negotiation of environmental permits at all levels of government. Beyond engineering and construction, Mr. Hosmer has conducted waste management planning and economic studies, waste-to-energy and landfill-gas reuse feasibility studies, and the full range of planning and engineering for wastewater sludge management. For the mining industry he has been involved in waste by-product study, design and construction for aggregate and limestone; copper, nickel and zinc; vanadium; phosphate; and coal mining operations throughout the United States providing waste pile, pond and mine closure and remediation; tailings dam design and remediation; waste rock facility design; and deep mine stability analysis and closure.

Mr. Hosmer's career has required the management of a multiplicity of highly specialized disciplines and the coordination of numerous concurrent tasks. Issues confronted have involved the mitigation of complex technical/political issues and critical management activities, achieving "fast-track" project and construction schedules, and managing routine human and financial resources on multiple projects.

Mr. Hosmer has provided expert testimony and litigation services primarily related to the study, design, closure and re-use of prior land disposal facilities. These activities have addressed regulatory issues, engineering design practice, construction techniques, performance prediction and cost estimation. Associated with these types of projects are parallel services in the evaluation of failure mechanisms for a variety of primarily geotechnical and waste management-related failures. These sites have been throughout the United States and internationally.

Professional Registrations

- Professional Engineer in the States of Maryland, New Jersey, Pennsylvania, and Virginia

Fields of Competence

- Master Planning/Siting
- Alternatives/Feasibility Studies
- Civil and Geotechnical Engineering
- Waste Management
- Conceptual and Final Design
  - Land Disposal Facilities
  - Closure and Remediation
  - Containment Systems
  - Facilities Engineering
- Construction Management
- Program Management

Credentials

- Masters of Civil/Geotechnical Engineering, University of Illinois, 1972
- Bachelors of Civil/Geotechnical Engineering, Lehigh University, 1970

Publications/Presentations

- Hosmer, J.L. "Sanitary Landfill Site Selection, Evaluation and Design." A Continuing Education Course offered by the American Public Works Association.

PETITIONER'S

EXHIBIT NO. 7

- Hosmer, J.L. "Sanitary Landfill Closure and Re-Design: A Case History," Governmental Refuse Collection and Disposal Association, 1982.
- Hosmer, J.L. "Design Considerations for Solid Waste Disposal Systems," Virginia Department of Health, Division of Solid and Hazardous Waste Management.
- Hosmer, J.L. "Advances in Sanitary Landfill Design and Technologies," Governmental Refuse Collection and Disposal Association, 1983.
- Hosmer, J.L. "Ground-Water Protection at Landfill Sites: Leachate Management System Design Consideration," Governmental Refuse Collection and Disposal Association, 1985.
- Hosmer, J.L. "The Role of the Consulting Engineer in Hazardous and Industrial Management for Municipal Government," Maryland Hazardous Waste Facilities Siting Board, 1985.
- Hosmer, J.L. "Landfill Gas Management: Landfill Gas Control Considerations," Governmental Refuse Collection and Disposal Association, 1986.
- Hosmer, J.L., L.M. Piper. "Minimization of Environmental Problems: Best Management Practices," Long Island Business Forum, 1989.
- Hosmer, J.L., J.D. Mayfield. "Evaluation of Containment Technologies as a Method for Site Remediation," Institute of Gas Technology, 1990.
- Quillen, D.S., J.M. Dant, and J.L Hosmer, P.E. "Performance-Based Landfill Liner System Design," First Annual Landfill Symposium, Solid Waste Association of North America, 1996.

Key Projects

Solid and Hazardous Waste Management

Mr. Hosmer currently serves as a Project Manager and Project Director on assignments primarily related to solid and hazardous waste management. Throughout his career, his activities have centered on the investigation and remediation of past land disposal facilities; the site selection, study and design of new land disposal and other waste management facilities; and assistance in the negotiation of environmental permits at all levels of government. Beyond engineering design, Mr. Hosmer has also conducted waste management planning and economic studies, waste-to-energy and landfill-gas reuse feasibility studies, and the full range of planning and engineering for wastewater sludge management.

Mr. Hosmer recently has been involved in multiple sites incorporating ex-situ or in-situ stabilization as a remedial technology. Two sites in North Carolina have included the conduct of investigations, treatability studies, design, and construction management for the ex-situ solidification/stabilization of metals-contaminated soils, one from electroplating sludge lagoons and another from a battery crushing and disposal operation. Both of these sites were listed on the CERCLA-NPL. Studies have also been conducted for applying this technology to the remediation of ex-situ soils at a CERCLA site in New York where the re-use concept will be a retail shopping center. In-situ applications have been explored and applied at several additional sites, including a laboratory-chemical landfill in North Carolina where in-situ volatilization will precede solidification/stabilization, a 1-acre coal-tar lagoon in Minnesota where a stream diversion was mandated to prevent surface-water contamination, and the subsurface soils beneath a building in Pennsylvania to address prior metals-working releases. An on-going project is the closure of 11 acid sludge pits filled with petroleum refining wastes using various techniques driven by the pit configuration and sludge characteristics. Stabilization has also been evaluated for MGP and sludge management sites. A variety of construction techniques, pug mill mixing through injection, and reagent-types, such as Portland cement, bentonite, CKD, TSP-MgO, lime, ash, and proprietary chemicals, have been applied.

Another innovative technology recently applied is phyto-remediation for both the extraction of shallow leachate in the subsurface, and to form a cap over closed landfills. This concept is based on the liquid uptake capability of vegetation, particularly hybrid trees, to prevent infiltration and extract leachate. This technology is being applied at CERCLA sites which are closed municipal landfills in Maryland and Ohio, and has potential applications elsewhere. Two demonstration projects have been developed, one in Long Island, New York and the other in upstate New York, to directly compare the performance of Subtitle D equivalent caps with a phyto cover system, and to evaluate the effects on landfill gas management systems. The data from these studies will be used to refine the design principles.

Containment technologies have been a significant part in Mr. Hosmer's experience, including slurry wall containments of two operating municipal landfills in Indiana, a prior coal-tar lagoon in Pennsylvania, and a large petroleum sludge lagoon in New Jersey. A slurry wall to a depth of 80 feet was recently designed and installed along a major river in Oregon to prevent discharges from a Superfund site to the river. In addition, other types of containment projects have included a combination jet-grout/steel sheet-pile wall in Virginia; a shallow soil mixed wall in West Virginia to prevent a 250,000-gallon sulfuric acid spill from reaching the Ohio River; and steel sheet or synthetic membrane panel walls at sites in Indiana and West Virginia.

Mr. Hosmer has also been involved in the conceptualization, analysis and implementation of a variety of re-use opportunities for closed and/or remediated land disposal facilities. While most closed landfills are returned to an "open space concept," which includes passive utilization for recreational uses or non-use, the active redevelopment of closed landfills permits the efficient use of potentially valuable properties. Landfills for which Mr. Hosmer has developed re-use concepts for active and passive use include natural habitat for wildlife, a statuary park, multiple golf courses, active recreational parks, amphitheaters and other recreational pursuits; commercial development for re-use as air freight terminals, retail, warehousing and office space; and, development of a hazardous waste recycling center. In addition, large-scale developments such as condominium and hotel complexes, office buildings and other high-density uses have been evaluated, although not implemented to date. In general, the sites have been placed into the best and highest use for the property. Complex integration of the re-use-planning concept with the design details of the closure/remedial components is critical to the success of these efforts.

Failure analyses have been conducted principally associated with waste management facilities but also with instability precipitated by civil works and environmental remediation construction. Certain of these projects have been associated with litigation as a result of such failures. Most recent of these analyses have been an assessment of the causes of failure at a municipal waste landfill where the new phase of a landfill constructed over a prior closed landfill (i.e., piggyback) slid suddenly in a massive slide that destroyed the new liner and closure systems and transferred 750,00 cubic yards of waste downslope. Another on-going site evaluation addresses the containment of brine in large evaporation ponds over a salt flat for a mine operation where instability in the materials of construction and foundation have been adversely affected by solutioning and development of cavities inducing failures in the containment system and interior liner systems. Similar types of failures have been investigated through a variety of forensic means including observation, field investigative studies, and design and construction analyses, over Mr. Hosmer's career.

Specific solid waste management projects include the following:

<u>Pits, Ponds and Lagoons</u>

- Performed investigative studies, designs and construction oversight using neutralization/solidification/stabilization (NSS) of a series of acid pits serving a refinery near Philadelphia, Pennsylvania. These pits, 11 in all, contained acid sludges that evolved over the life of the refinery, and are being closed in sequence, each consisting of several acres in areal extent and up to about 30 feet in depth. Differing waste characteristics and configurations lead to alternative designs for each pit, of which the third is in construction. An initial pit was also subjected to closure using a light-weight capping system as an alternative for demonstration purposes; the performance results of this effort led to the NSS alternative approach.
- Performed several land-based, municipal/industrial sludge management facilities projects, including a 6-acre sludge lagoon siting and design in Prince George's County, Maryland; an assessment of land disposal regulations and development of technical limitations for ordinances to control sludge disposal in King George County, Virginia; the conceptual design of the expansion of a sludge landfill to serve the Trinity River Authority 100-mgd wastewater treatment facilities in Dallas, Texas; the remediation of existing sludge lagoons serving two of the wastewater treatment facilities for the City of Philadelphia; the investigation of the suitability of land-applied sludge in the cover of a landfill under closure in Baltimore County, Maryland; and the design of sludge management tanks for a facility in New Jersey.
- Performed the Project Director role for the removal of paint-contaminated river bottoms from Green Bay

in Wisconsin, and the separation and disposal of the materials. Construction of the in-bay containments and subaqueous excavation, to a level that meets sediment standards and the restoration of the bay provided the challenges at this site. A similar river sediment excavation project was encountered in Minnesota where geotextiles floated into position and submerged were used to contain contaminated sediments prior to "capping" with clean soil and restoration of the water surface.

- Conducted failure analyses for a synthetic membrane-lined wastewater treatment lagoon for a chemical manufacturer in Hopewell, Virginia. Subsequent activities included development of conceptual and final designs for the reconstruction of the facility and return to service. A similar analysis was performed at a brine water storage pond in Texas that was experiencing slope stability and uplift failures during construction of an expansion. A re-design of the system maintained operational capacity, facility integrity and long-term use.

Landfills

- Project Director for the development of the siting, investigation and design documents for a rubble landfill in Anne Arundel County, Maryland within an operating sand and gravel mining pit. The state-mandated permit documents were developed and because of intense public pressures, a RCRA-compliant facility evolved that was permitted for construction in 2014. The facility is under construction with final design and construction oversight being provided concurrently. Modifications to the floor elevation are being sought during the final design to reflect a greater waste capacity using a reduced separation distance, an underdrain system, and accounting for suppression of the groundwater beneath the landfill. The facility will continue to be mined while the landfill operates, and recyclables will be extracted from the incoming waste to reduce volume. The facility footprint is presently at approximately 72 acres and a capacity projection of approximately 7.5 million cubic yards of airspace. A former unlined rubble landfill at the same facility is also being evaluated for remediation purposes.
- Landfill Expert and Director for the remediation of a former municipal landfill in Hawaii that has been experiencing a subsurface fire for many years. The fire has resulted in leachate releases through the unlined walls and floor of the landfill into lava tubes exiting in the Pacific Ocean, with potentially negative ecological effects. In addition, atmospheric releases from the facility are impacting downwind police and educational facilities. The client has received a USEPA-Region 9 grant to evaluate solutions and to mitigate the subsurface fire and releases. The work plan is complete and the implementation on-going.
- Project Director for the expansion of an existing municipal ashfill/balefill facility in Portland, Maine that receives the ash from an incinerator serving 31 host communities. The project entailed assistance with permitting an interim vertical expansion over the existing facility until the lateral expansion can be evaluated from a siting perspective, designed, permitted and implemented. The project elicited a high level of regulatory and public involvement and incorporated state-of the-art design and environmental features to address the soft marine soils serving as a foundation, the surrounding wetland habitat and the proximity to a productive aquifer system. The expansion site and concept, as well as the vertical expansion have been approved under the new Maine solid waste regulations, and design is underway to meet a 2003 start-up goal.
- Technical oversight for the upgrading of an approximate 7,500 ton-per-day private landfill in Gary, Indiana to Best Available Technology standards. This facility disposed municipal solid waste for over 30 years, and thus required the retrofitting of leachate, gas and groundwater control systems to achieve the minimum environmental standards to receive an operating permit. The project consisted of preparing the permit documents for the facility in a short, six-week period and, because of public opposition, involved public participation programs as well as expert testimony for legal proceedings.
- Project Manager on a unique project assignment in Puerto Rico involving the expansion and upgrading of an open-dump within a 140-meter deep sinkhole in a mountainous terrain to the first permitted Subtitle D landfill on the island. The complex design included multiple synthetic membrane liners "hung" from vertical rock walls in the sinkhole, leachate collection and recirculation, gas extraction and re-use, and ultimate closure. This program had to proceed while the existing landfill remained in operation. The remoteness of the site and significant advances in

technology provided a challenge to the implementation.

- Project Manager for the evaluation of the technical and economic value of on and off-site solid waste disposal options for a heavy manufacturing industry in Ohio, and subsequently prepared a Permit-to-Install for the on-site industrial landfill to Best Available Technology standards. The final 125-year landfill included not only state-of-the-art leachate and gas management systems, and liner/cover systems, but also groundwater extraction systems for remediation of prior waste disposal activities. A final closure plan for the facility was subsequently prepared to address interim operations issues. Design and construction management services were also provided.
- Project Manager for the design of the closure of a CKD landfill in Kansas where an innovative clay/CKD combination barrier layer was incorporated into the cap. This waste beneficial re-use significantly reduced cost without affecting performance, and served as a standard for future closures. Leachate collection and re-use in the cement-mixing plant was also a cost-effective measure. At the same facility, interim closure plans, designs and implementation have been achieved for two former CKD disposal areas that were experiencing leakage and a potential for contamination of the surface-water exiting the site. Various cutoff technologies cover systems and leachate extraction methods were implemented. An on-going project is the development of an operations plan and re-design of the operating industrial landfill to assure environmental compliance. Other CKD pile designs and closures have been provided to plants in Texas and Pennsylvania, which have been challenges because of limited space, continuing operating requirements, and steep slopes.
- Directed the preparation of permitting documents for a landfill expansion and upgrade for a municipal solid waste landfill to serve the Town of Barnstable, Massachusetts on Cape Cod. The facility consisted of an existing recycling and disposal operation with expansion potential until the year 2010.
- Investigated and evaluated liner and leachate management systems for a proposed 500-acre mine tailings disposal facility in upper Wisconsin for an international minerals company. As a result of the magnitude of the project, sensitive environmental issues were involved in the negotiation of the master permits. Similar activities have been performed for open-pit phosphates mine in North Carolina, a vanadium mine in Arkansas, and numerous coal mine facilities.
- Managed three municipal landfill closure projects in Kentucky at prior disposal facilities located in karst terrain. These facility designs were complicated by difficult geologic settings, proximity to watercourses and parks, and waste streams that had included no only municipal waste, but incinerator ash, wastewater sludges, and industrial wastes. One of these landfills was configured for re-development as an industrial park after closure. These facilities included cover system and leachate extraction management systems design.
- Provided technical oversight and directed the permitting, design, quality control and construction inspection assistance of a new regional solid waste landfill to serve three Eastern Shore counties in Maryland. The leachate system includes collection and storage in a covered lagoon, with subsequent recirculation through the waste as a treatment process. Ultimately, the polished liquid effluent is discharged to the municipal treatment works for final disposal. In addition, a public convenience area was designed for the proposed landfill expansion. Because of the location of the site in an environmentally sensitive coastal zone, multiple leachate and gas-management systems were incorporated. The financing of this project was through the sale of bonds for which the technical support for the prospectus was provided. Construction is complete and the facility operating; permitting and community relations issues were significant at the site because of environmental issues.
- Performed the Project Director role for the closure of a captive, steel-making sludge landfill in Ohio, and the permitting and design of a replacement landfill that meets current residual waste requirements in that State. These projects involved the preparation of closure plans and Permits-to-Install; engineering design and construction documents; and construction management. The facilities neighbored a nature conservancy.
- Managed the investigation of landfill gas and the assessment of mitigation alternatives for a closed municipal solid waste landfill in Harford County, Maryland. This facility, which received both municipal and industrial, predominately TCE, waste is bounded by residential development toward which the gas migrated. A second phase of this

project investigated the off-site migration of aqueous-phase contaminants and included a remediation plan. The conceptual and final design for the vapor and fluid phase extraction and treatment systems were developed "fast-track;" construction was performed turnkey to expedite the implementation schedule, resulting in a savings to the client of $1,300,000, the abatement of a potential lawsuit, and the restoration of neighboring properties to beneficial use (residential development).

- Served as Project Manager for the study, permitting, and design of the closure of an existing landfill and development of a new 2,000 ton-per-day facility for Virginia Beach, Virginia, including projects which involved landfill gas recovery and reuse, water-quality assessment, comprehensive monitoring programs, leachate collection and treatment system design, and operations management. The facility will operate receiving both municipal solid waste and solid waste-fueled power ash and residue, through the year 2015. This site required the evaluation of potential wetlands for the expansion area, mitigative actions and permitting before the facility permit documents and design could be initiated. The permit documents and the facility design were developed to comply with RCRA Subtitle D requirements.

  Other subsequent assignments for Virginia Beach included a water-quality investigation of a completed landfill to assess leachate generation; a water-quality assessment of a borrow pit lake previously subjected to uncontrolled waste disposal; study, design and implementation of a ground/surface-water treatment pond for borrow pit stormwater prior to discharge; and the evaluation of stream remediation alternatives for prior sediment discharges from the landfill borrow pit.
- Conducted the study, permitting, and design of a 100 ton-per-day sanitary landfill for Loudoun County, Virginia, which involved an evaluation of environmental endangerment created by past disposal practices. At another County site, provided technical review, litigation support and expert testimony for the County to effect the proper closure and mitigation of future hazard from a 2,500 ton-per-day commercial debris landfill.
- Directed the evaluations of two new landfill sites for the implementation of individual debris landfills in two Maryland counties. These studies included the development of Phase I siting documents for the state and zoning hearing support. At another mineral extraction site the permit documents and design were prepared for a regional debris landfill; this site also included construction materials recycling and contaminated soil incineration as part of the overall disposal facility. Value engineering for an additional debris landfill was conducted to evaluate permittability, technical standards, and wetlands issues, and testimony was prepared for establishing excavation limits and system component designs.
- Managed the siting, permitting and future design of two private municipal solid waste landfills in Maryland. One of these could be developed at a mineral extraction site in an environmentally sensitive area, and the other integrated with a brick manufacturing operation utilizing clay borrow pit.
- Conducted new landfill site selection studies for a replacement 20-year municipal landfill to serve the City of Chesapeake, Virginia; a new, 20-year municipal landfill for Bartholomew County, Indiana; and a captive industrial facility in Wisconsin. These three studies involved county-wide technical, economic and socio-political evaluations to identify candidate sites after the establishment of appropriate siting criteria. The Chesapeake, Virginia and Bartholomew County, Indiana studies additionally involved significant community relations support activities. In a similar assignment, technical oversight and consultation was provided for the siting and development of the East Contra Costa County Sanitary Landfill near San Francisco, California.
- Performed the site selection, evaluation, conceptual design and permitting of a replacement 1,400 ton-per-day landfill for Montgomery County, Maryland. This $3,000,000 project required a peak multi-disciplinary staffing level of 300 individuals concurrently performing activities at four multiple sites utilizing six (6) subcontractors to achieve a six-month schedule mandated by a State of Maryland Emergency Health Order. The facility site selected was subsequently designed and initiated operations in conjunction with a solid waste transfer station designed as a separate project.
- Directed the preparation of an economic comparison of sites within West Virginia and Maryland to establish a new landfill to receive paper-manufacturing waste. The study was intended for management decision-making of the most cost-effective solution to disposing 85 tons-per-day of

process waste within previous coal strip mining areas. Permitting and design of the facility proceeded, after selection of the Maryland site; the facility meets all Maryland and RCRA Subtitle D requirements for a sanitary landfill. Similar evaluations and design have previously been completed at two different facilities in Virginia for additional landfills to receive pulp and paper process waste.

- Managed landfill closure projects at numerous solid waste facilities, including the preparation of closure plans, negotiation of the final consent order, design and construction oversight. Two steel-making waste landfills in West Virginia, a medical waste incinerator landfill in Crownsville, Maryland, a debris landfill/surface mine in Anne Arundel County, Maryland, a former domestic/agricultural waste disposal area in Anne Arundel County, Maryland, a commercial landfill in Elkhart, Indiana and an oil refinery in Oklahoma are examples of projects performed to-date. Expert testimony in support of litigation has been provided at several of these installations.
- Provided expert testimony in various aspects of the remediation of solid waste, hazardous waste and construction/demolition debris landfills, including the leachate and gas systems at solid/hazardous waste landfills subject to CERCLA remediation in Massachusetts and Vermont; the potential for releases and options for closure of a municipal construction/demolition landfill in New York; landfill gas remediation at a landfill in Connecticut and a condominium complex constructed over a landfill in California; the evaluation of the potential for releases from a construction/demolition debris landfill in Indiana; and, construction claims during remediation/closure of landfills in New York and New Jersey. These activities included field data acquisition, suitable analysis of the site and remedies, assessments of alternatives, and participation in depositions, hearings and court trials.

CERCLA Program/State Superfund

Since the inception of CERCLA in 1978, Mr. Hosmer has been involved in the conduct of all phases of CERCLA-mandated remediations for both the federal and state governments, and for potentially responsible parties (PRP). His primary area of participation has been prior land disposal facilities, such as the following specific examples:

- Currently performing the Project Coordinator and Project Director roles for a Superfund site at a 270-acre location in Baltimore, Maryland. The site consists of an aggregation of 8 former industrial/municipal landfills under different ownership within a highly urban environment. The site represents the first site in USEPA-Region 3 conducted under the Superfund Alternatives Sites (SAS) Program, which includes Re-Use Assessments in concert with the RI/FS. The location of the site is at the downstream discharge of the major drainageway serving the City of Baltimore, and includes in-filled marshes and former wetlands. Ecological factors are the primary driver for the remedy which will include addressing any resource injuries through a Cooperative Agreement with the Natural Resource Trustees. Further, the site is being evaluated for a renewable energy (solar farm) re-use project as part of an integrated restoration/re-use concept. The RI/FS is complete for the site, a Record of Decision issued, and an ASAOC for the RD/RA is being negotiated. The remedy consists of free product extraction, soil capping, stream stabilization, wetlands treatment of leachate along with PRB interception, and restoration of forested and riverine habitat. The remedy NPV cost is expected at about $60 million.
- Representing a large public electric utility on the Technical Committee of a PRP Group for a PCB-driven Superfund site in Maryland along the Back River in Baltimore. The site was a former land disposal site that is located in a primarily residential area and once was a low-lying habitat consisting of mudflats and marshland. The RI/FS is underway for this site.
- Performed project management for CERCLA-mandated Feasibility Studies at a partially-operating chemical facility in southern Ohio; an operating aluminum reduction facility in southern Ohio; and closed municipal/industrial landfills in eastern Pennsylvania; western Tennessee, Harford County and Cumberland, Maryland; and Kent County, Delaware. Similar activities have included project management for major CERCLA-mandated remedial studies at three sites in New Jersey, two sites in California, and one site each in Delaware, Virginia, and Utah. Each of these projects represents a national priority list site; numerous other remediation projects

have been accomplished for state-specified programs and other non-NPL sites.

- Served as the Engineer-of-Record and Project Director for the performance of an RD at an NPL-listed municipal/commercial waste landfill in Indianapolis, Indiana. The remedy included containment slurry wall, groundwater and leachate collection/treatment systems, and capping at a 60-acre landfill that had received both solid and hazardous wastes. Through an alternative RAP approved by USEPA-Region V, a significant cost savings of over $10,000,000 to the PRP Group was realized. Litigation support was also provided to enable the PRP Group to successfully terminate operations at the site in order to minimize remediation costs.
- Directed the evaluation, design and construction oversight of an NPL-listed industrial landfill in Tennessee that consisted of RCRA and non-RCRA wastes above steep slopes leading to environmentally sensitive surface-waters. The waste consisted of paint sludges and metalworking wastes. A conventional closure system was installed which incorporated multiple barrier systems to efficiently address each waste-type area. At a companion landfill, a phyto cover system was explored due to the small pockets of waste interspersed with the overgrown and treed terrain.
- Directed the development of remedial strategies and negotiation with the USEPA-Region III and Commonwealth of Virginia for the completion of design and implementation of the remedy at a battery-breaking NPL site in Richmond, Virginia. The assumption of responsibility by the PRPs, the redesign of the USEPA/USACE remedy, which included lead-contaminated soil removal, stabilization and off-site disposal, and remedy privatization resulted in a $10,000,000 cost savings to the PRP Group. The site was also remediated on a "fast-track" basis to be completed ahead of the USEPA-mandated schedule.
- Conducted the remediation of an aluminum reduction facility in Oregon with 23 individual waste units, including landfill, surface lagoons, waste piles and process discharges, which had created ground- and surface-water contamination. Because of the multiplicity of units remediated at this operating facility, and a short deadline for the remediation, the final design and construction were performed on a "fast-track" basis. An alternative approach to the RCRA cap designs, a waiver for two major contaminants, and an innovative groundwater treatment system resulted from extensive USEPA-Region X negotiations, and yielded a 50 percent savings in the remedy cost.
- Coordinated a multi-disciplined consultant team for the development of an alternative RAP for a former municipal/industrial landfill in southern New Jersey. Preparation of the alternative plan, negotiation with USEPA-Region II and potential litigation were conducted to alter the USEPA-prepared remediation, which included on-site containment, flushing of the waste pile, extraction and on-site treatment of leachate, and incineration of contaminated soils.
- Performed Project Director and Engineer-of-Record duties for the RD/RA of a municipal/industrial landfill in New York. The pre-design studies primarily focused on the quantity, quality and migration pathway for landfill gases and development of an appropriate landfill cover system. Wetlands and shallow groundwater use in the area contributed to the sensitivity of this facility closure and remediation.
- Managed the remediation of a closed sanitary landfill in Baltimore County, Maryland that had received municipal and commercial waste over a 25-year period. Groundwater contamination resulted in a Maryland Consent Order to effectively remediate the facility and prevent future contamination. Field investigations, design of the closure system and the ground- and surface-water collection/extraction systems, and construction management have been completed to-date; leachate extraction and on-site treatment systems, hydraulic barrier systems and capping of the remainder of the site are currently under evaluation. A unique use of bedrock-incised streams as the leachate collection system and a stream interception facility for treatment prior to site release resulted in a significant cost saving. Activities were performed on a "fast-track" basis to meet deadlines mandated by the Consent Order.
- Provided technical review and oversight for the closure and remediation of a captive industrial landfill in Wisconsin that had previously been the subject of an RI/FS. The facility was programmed for continued operation for three additional years, and conversion to a park reuse after closure; the closure contours and attendant facilities were therefore tailored to meet reuse requirements while complying with state solid waste closure requirements.

- Managed a PRP-driven CERCLA site project in which a shadow HRS scoring was performed for an urban municipal/industrial landfill in the vicinity of the Chesapeake Bay to address concerns as to the validity of the potential NPL listing. This project required negotiations with the State of Maryland and the USEPA to assess the potential risk of the site and guide an effective resolution outside of the CERCLA process. Brownfields programs were also explored as a mechanism to effectively remediate and re-use the site; a decision on the course-of-action is currently pending.

RCRA Pre-RFA/RFI/CMS/CMI/Closure/Permitting

Similar activities have been conducted under the federal and state RCRA programs, and other environmental regulations to control property transfers. Specific projects in this area include the following:

- Prepared six RCRA Part B permit applications, and subsequently conducted environmental assessments, conceptual and final design and construction inspection for the Hawkins Point Hazardous Waste Landfill in Baltimore, Maryland. These land disposal units were dedicated to receive chrome ore tailings waste from a chromium processing industry in Baltimore, and general hazardous waste from Maryland industry. The facility was one of the first final RCRA permits for a hazardous waste landfill issued in the United States.
- Assisted in the permitting and design of a captive RCRA-permitted hazardous waste landfill in Pennsylvania to receive stabilized electroplating sludges. The facility met all state requirements, and when permitted, was the first such facility in Pennsylvania. Subsequent assignments at this facility included the closure and remediation of four land disposal facilities and two (2) process lagoons. The closure plan for one of the land disposal facilities included consideration of siting a hazardous waste recycling structure over the completed cap system. These projects included regulatory assistance, permitting, and design services.
- Conducted CMS projects under RCRA at a chemical manufacturing facility in West Virginia, an automobile parts manufacturing facility in Ohio, an automobile parts distribution center in West Virginia, and a chemical solvent reclaiming facility in North Carolina. Each of these projects involved the development, evaluation and selection of cost-effective remedies to prior releases from an operating facility.
- Directed the development and implementation of a closure plan for an interim status storage pad at a hydrocarbon research facility in Illinois. The project included development of a remedial strategy, risk assessment to modify clean-up goals, plans and specifications for implementation, construction management and closure certification. The modifications to the clean-up goals resulted in cost savings in excess of $500,000.
- Managed land disposal closure projects at numerous facilities, including the preparation of closure plans, negotiation of the final consent order, design and construction oversight. Two lagoons at the U.S. Coast Guard Base in Elizabeth City, North Carolina, seven wood treating basins in North Carolina, a closed electroplating sludge lagoon in Maine, a prior RCRA waste storage area in Pennsylvania, and a former manufactured gas utility site with landfill in Maryland are examples of projects performed to-date.
- Served as Project Manager for the $100 million decommissioning and remediation of a chromium core processing facility on the Patapsco River in Baltimore, Maryland, including assessments of deep hydraulic barriers, marine bulkheads, cap/closure technologies and reuse potential. Modeling of the containment and biodegradation studies for chromium reduction was conducted to identify appropriate cost-reducing in-situ technologies.
- Investigated groundwater contamination effects from an abandoned industrial disposal site for hazardous materials in southeastern Pennsylvania. A comprehensive monitoring system was established to detect the heavy metals potentially discharging from the site. Remedial action included the excavation and off-site disposal of the waste and surrounding contaminated soil.

Site Remediation

Mr. Hosmer has conducted numerous remediation projects, primarily in response to prior land disposal practices, under voluntary clean-up programs or other non-regulatory initiatives; several of these projects include the following:

- Project Director for the evaluation of berm and containment floor failures at a lithium extraction mine in the high plains of Argentina. The salt flats have been eroded and solutioned causing the deterioration

of the soil berms and floor of the multiple, hundred-acre ponds forming the evaporation facilities to concentrate the brine. Forensic studies were conducted to assess the causes of the failures, and the design of remedies is on-going. The five most significant ponds will be upgraded with raised berms and expansion over the next two years as a means to continue operations while avoiding salt harvesting in the ponds.

- Directed the remediation of four Manufactured Gas Plant (MGP) sites in New Jersey for two utilities. These remediations were conducted under federal and state lead programs, and consisted of site delineation and evaluations, remedy selection and regulatory approval, design and implementation. Because of the proximity of these types of facilities to in-town locations and waterways, both public involvement and environmental issues were paramount in the selection of remedies. The remedies generally included contamination removal, soil capping, stream sediment excavation and channel replacement, groundwater extraction and treatment, and various monitoring programs. Several portions of these sites have/will be returned to productive community or private use. At another MGP site in Salisbury, Maryland, investigated and conceptually designed a remedy that included limited soils removal and a vapor extraction system in addition to a groundwater recovery and treatment system. Other coal tar or manufactured gas facilities include remediation of abandoned sites in Virginia and New Jersey, and the remediation of a prior site in Maryland that is currently used for other utility services. These sites considered in-situ technologies that would permit site reuse and mitigate wetland destruction issues, as well as conventional removal, containment and extraction methods.
- Directed the investigation, design and remediation of prior MGP operations and on-site disposal at an operating generating station in New York City. The remediation was driven by a Consent Order for historical activities at the site, as well as a requirement for expansion of the operating station. This remedy includes soil/waste removal, utilities relocation and groundwater management. Other activities at the site have included drainage analyses, SPCC Plan preparation, and closure planning for a major operating tank farm.
- Conducted numerous remediation engineering projects, such as the conceptual and final design of a sludge lagoon excavation and closure project for a manufacturing facility in Maine, a groundwater extraction and treatment system for an electronics manufacturing facility in Annapolis, Maryland, a groundwater/diesel fuel recovery and treatment system at a utility power station in Baltimore, Maryland, and a diesel fuel recovery and groundwater treatment system at a pulp and paper mill in Virginia. These projects involved the evaluation of the most appropriate extraction systems, the development of the treatment process, and final design and contract documents preparation for implementation.
- Managed several environmental audits of commercial/industrial property in preparation for financing property transfers in Delaware, Maryland, Pennsylvania and Virginia. These projects included field and laboratory assessments of the air, water, and soil media for potential past contamination, and development of on-site or off-site remedial actions.
- Provided engineering support to the evaluation and design of remedies for several large terminal sites contaminated by prior hydrocarbon releases, including the application of aboveground biodegradation of soils, the design of lined secondary containments for product storage tanks, site remediation at a decommissioned refinery divided by a ship canal, and design and start-up of a terminal loading area off-gas flare. These projects extended from New England to the Midwest.
- Provided on-site inspection of two bulk fuel terminals in Maryland, and technical oversight and Engineer-of-Record certification for the development of SPCC Contingency Plans. These efforts were a segment of a large project to prepare over 20, oil spill response plans at oil terminals throughout the eastern United States in response to the Oil Pollution Act of 1990. In addition, participated in a Project Director role on stormwater management planning and SPCC Contingency Plan development for multiple power-generation utilities in New York, and a cement-manufacturing plant in Kansas.
- Managed the remedial design of a groundwater recovery and treatment system for TCE contamination at a U.S. Air Force Base in Willow Grove, Pennsylvania. The project included investigation of the nature and extent of contamination, development and implementation of the remediation, and conceptual and final design documents preparation.
- Directed the investigation, design and construction oversight of the closure for two industrial landfills in

New York under a voluntary action. One landfill was consolidated into the other, which was subsequently capped with a soil cover. Flood protection gates were installed to prevent the neighboring lake outlet from inundating the completed site during the 100-year storm event. The site was returned to use as a part of a park and trail along the scenic outlet.

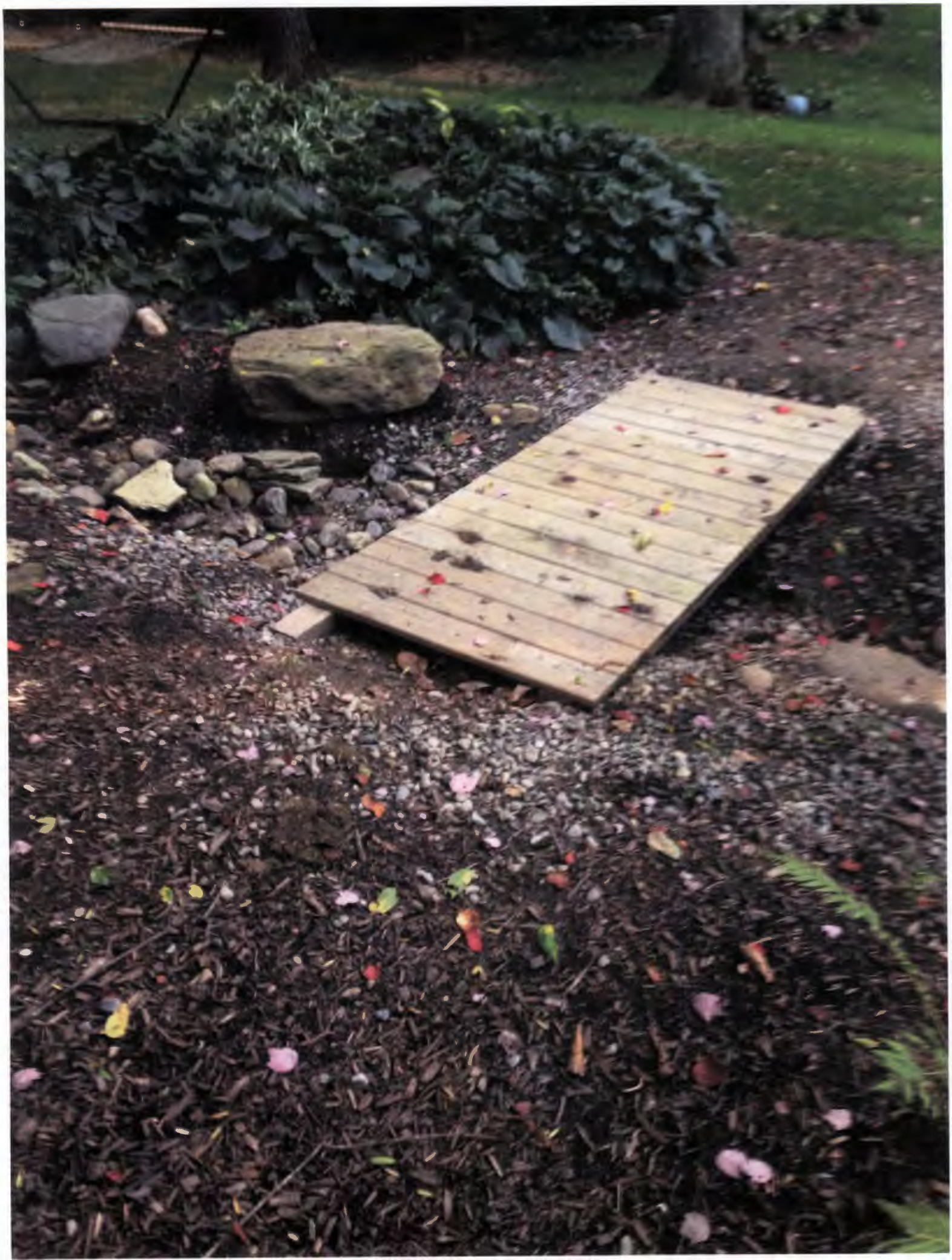
Engineering Planning, Analysis, and Design

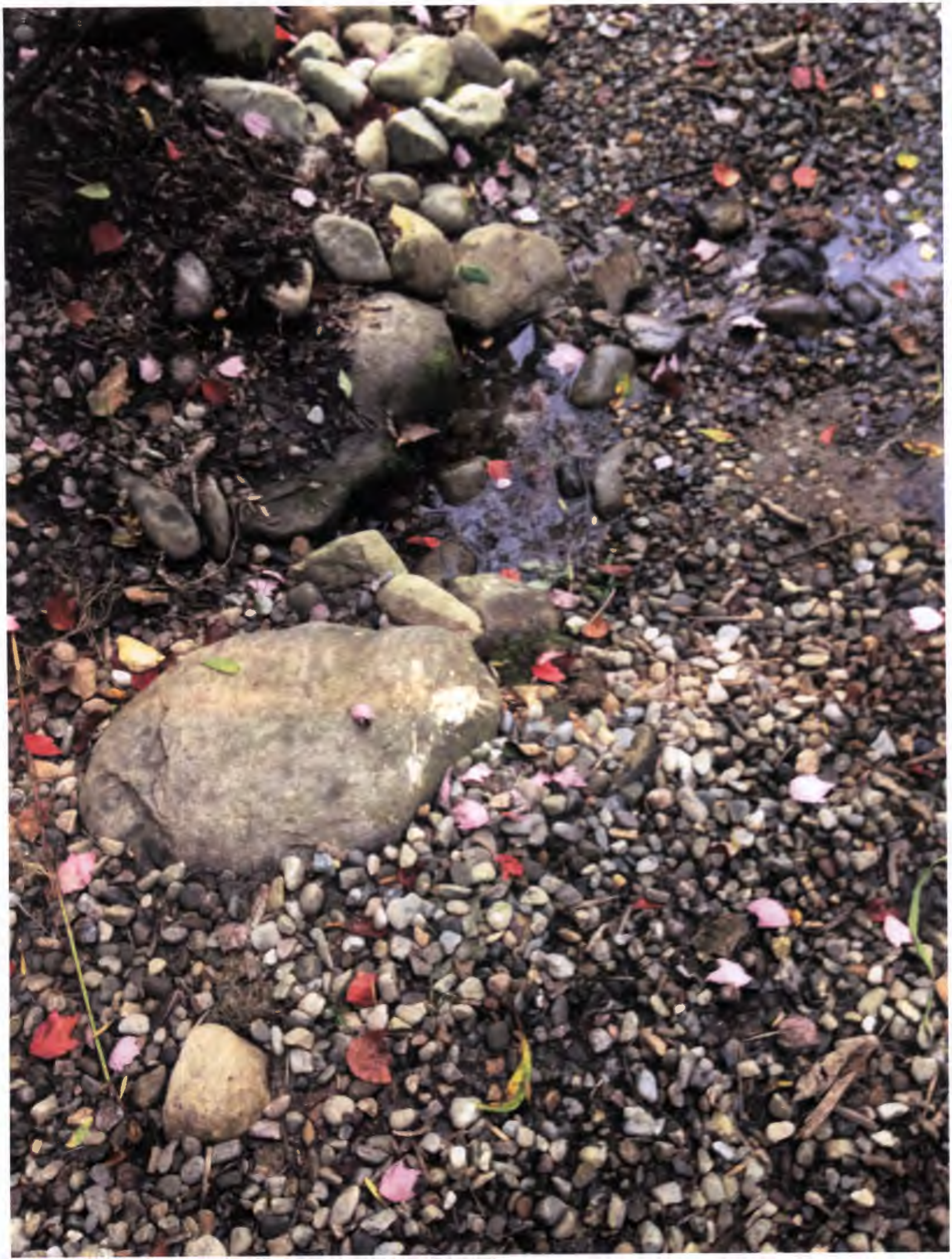
Mr. Hosmer has served as Project Manager or Project Director on numerous projects in virtually all phases of geotechnical investigations for petrochemical, nuclear and fossil-fueled power, mining, manufacturing, municipal and other governmental and commercial facilities. Responsibilities on these projects have spanned a broad range: from field engineering on small industrial projects through Preliminary Safety Analysis Report investigations for two nuclear power plants, and subsequent analytical engineering and project management on both small studies and large, multi-disciplined investigations. Through this career, Mr. Hosmer has performed over 100 geotechnical and foundation investigations addressing bearing capacity, settlement, slope stability, earth pressures, static and dynamic stability and earthwork operations to specify soil/rock parameters and design/construction criteria. In this area, Mr. Hosmer has performed geotechnical engineering for a range of projects, including the study and design for a water supply reservoir and dam for the Washington Suburban Sanitary Commission, a suburban Maryland utility; a tidal flood control facility for Fairfax County, Virginia; a potential condominium complex in Rhode Island at the site of a former tank farm; foundation design for a tank farm in New Jersey, and the evaluation of potential barrier/slurry wall options for a deep containment in a chemical manufacturing site remedy.

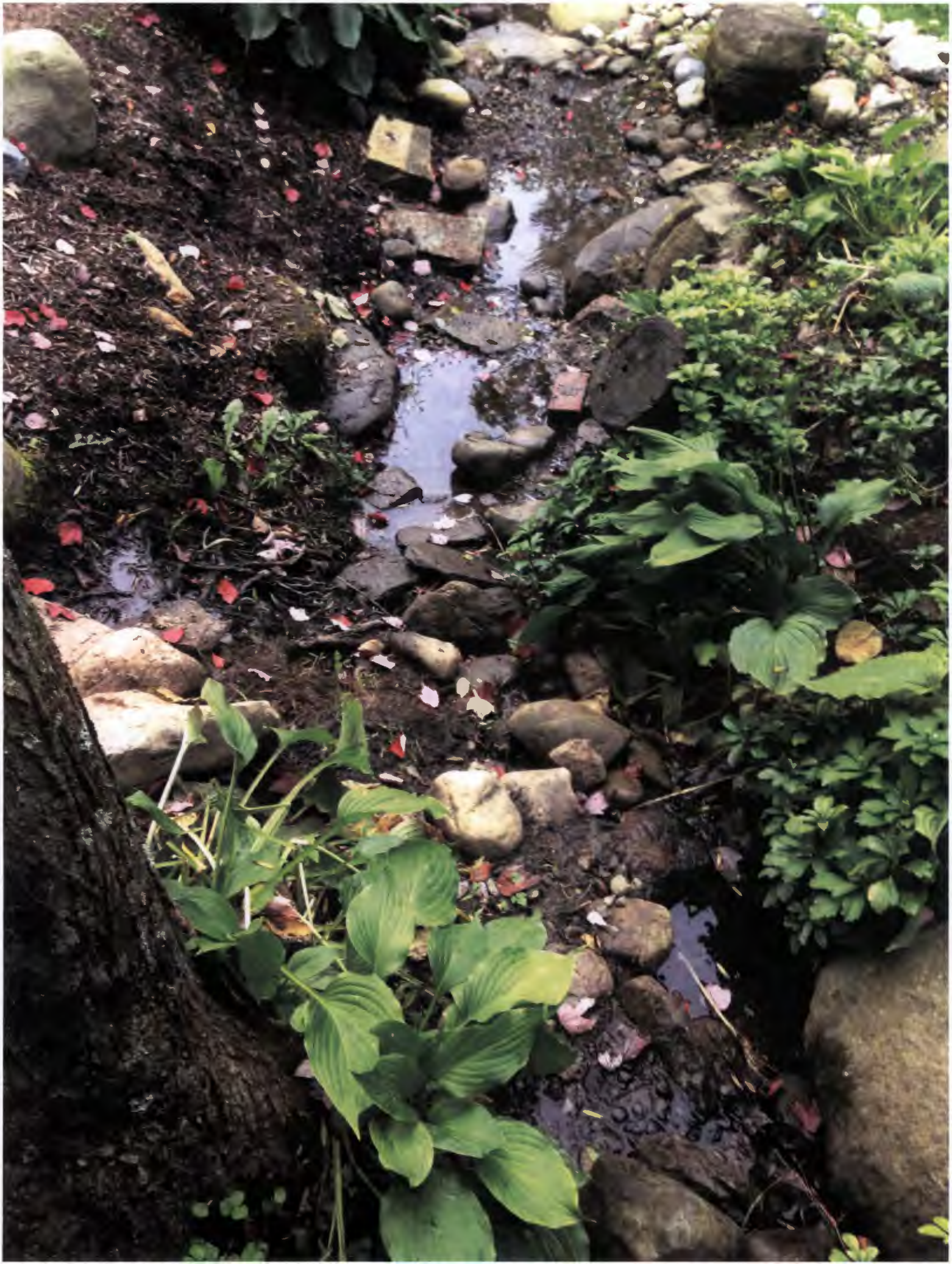
Civil and environmental design projects have also been conducted, including project management for planning and development; examples include two projects for Automatic Flight Service Stations at general aviation airports which involved complete site development, alternatives studies and planning, and conceptual design of the structures and support facilities. Other civil works projects have included the investigation of glazing design and construction in the restoration of a security facility for the Colonial Williamsburg Facility in Williamsburg, Virginia, and the investigation of glazing deficiencies at the University of Virginia Law Library in Charlottesville, Virginia. Recent civil projects have also included an energy utility system study for the Children's Hospital National Medical Center in Washington, D.C., an evaluation of stormwater management alternatives for the U.S. Marine Corps Headquarters at Henderson Hall in Arlington, Virginia, an several maintenance and improvement projects at The George Washington University in Washington, D.C., including the rehabilitation of a residence hall, boiler replacement and security systems design and installation, and stormwater infiltration studies and remediation. In addition, for Montgomery County, Maryland, performance as the Project Manager for the planning and design of 1.8 miles of the Fairland Road Improvement Project and Project Engineer for the study, design and construction management of a 2,980 ton-per-day solid waste transfer station.

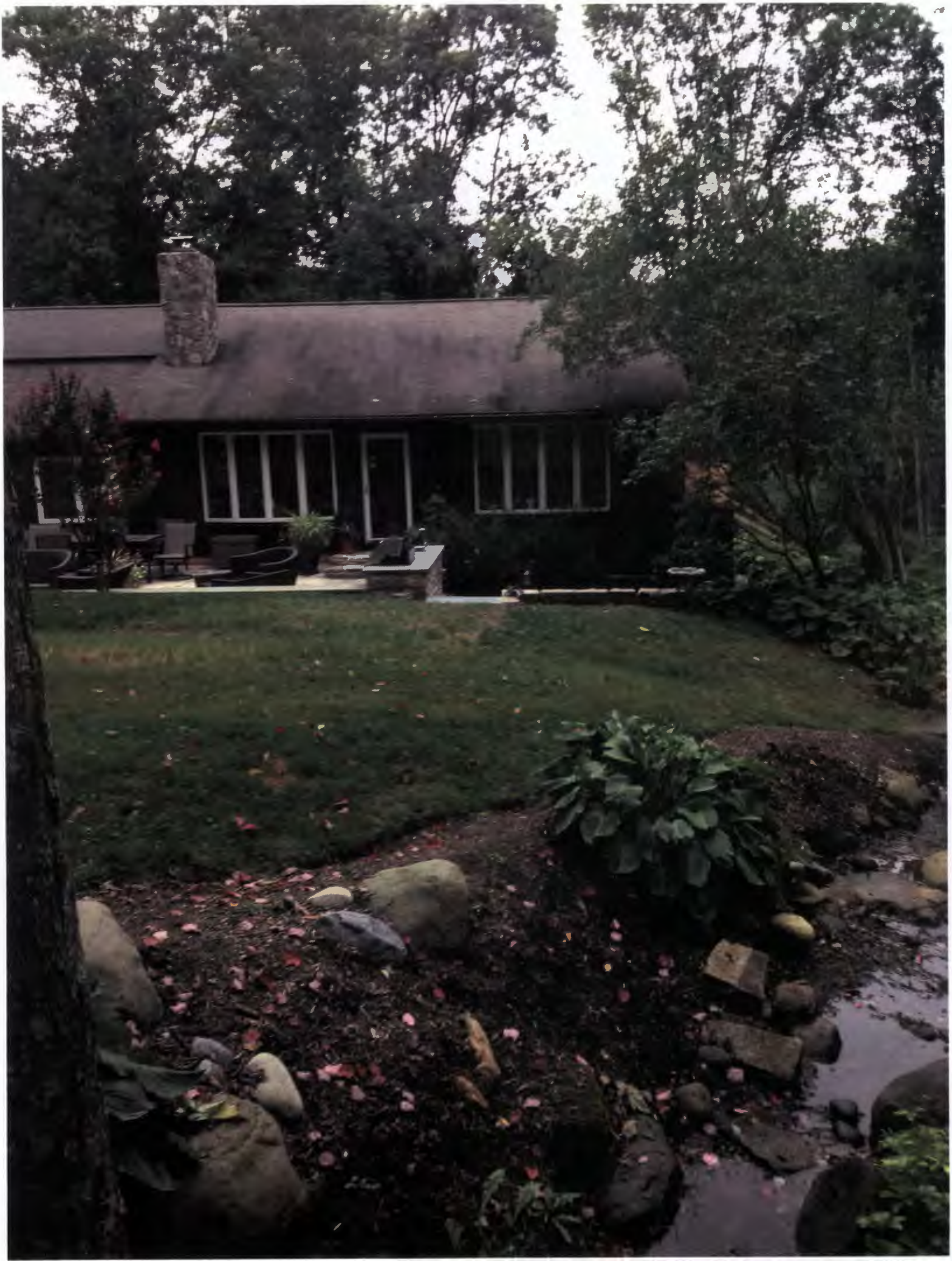
PETITIONER'S

EXHIBIT NO. 9









26.08.02.03-3

.03-3 Water Quality Criteria Specific to Designated Uses.

A. Criteria for Class I Waters — Water Contact Recreation and Protection of Nontidal Warmwater Aquatic Life.

(1) Bacteriological.

(a) Table 1. Bacteria Indicator Criteria for Frequency of Use.

Steady State Geometric Mean Indicator Density		Single Sample Maximum Allowable Density			
Indicator	All Areas	Frequent Full Body Contact Recreation (Upper 75% CL)	Moderately Frequent Full Body Contact Recreation (Upper 82% CL)	Occasional Full Body Contact Recreation (Upper 90% CL)	Infrequent Full Body Contact Recreation (Upper 95% CL)
Freshwater (Either apply)					
Enterococci	33	61	78	107	151
E. coli	126	235	298	410	576
Marine water					
Enterococci	35	104	158	275	500

CL = confidence level

All numbers are counts per 100 milliliters

(b) In freshwater for E. coli, the following formula is used to calculate the upper 75 percent confidence interval for single sample maximum allowable density: antilog[(log 126) + 0.675 * log(SD)].

(c) In freshwater for enterococci, the following formula is used to calculate the upper 75 percent confidence interval for single sample maximum allowable density: antilog[(log 33) + 0.675 * log(SD)], where log(SD) is the standard deviation of the log transformed E. coli or enterococci data. If the site data are insufficient to establish a log standard deviation, then 0.4 is used as the log standard deviation for both indicators. At the default log standard deviation, the values are 235 for E. coli and 61 for enterococci.

(d) In saltwater, for enterococci, the following formula is used to calculate the upper 75 percent confidence interval for single sample maximum allowable density: antilog[(log 35) + 0.675 * log(SD)], where log(SD) is the standard deviation of the log transformed enterococci data. If the site data are insufficient to establish a log standard deviation, then 0.7 is used as the log standard deviation. At the default log standard deviation, the value is 104.

(e) Confidence Level Factors.

(i) The factors in Table 2 are used in the formulas in this subsection to calculate the appropriate confidence limits when site-specific standard deviations are used.

(ii) Table 2.

Confidence Level	Factor
75%	0.675
82%	0.935

Pet. #10

or harmful organisms in sufficient quantities to constitute a public health hazard in the use of waters for shellfish harvesting. A public health hazard for the consumption of raw shellfish will be presumed:

(a) If the most probable number (MPN) of fecal coliform organisms exceeds a median concentration of 14 MPN per 100 milliliters;

(b) If more than 10 percent of samples taken exceed 43 MPN per 100 milliliters for a 5-tube decimal dilution test or 49 per 100 milliliters for a 3-tube decimal dilution test; or

(c) Except when a sanitary survey approved by the Department of the Environment discloses no significant health hazard, §C(1)(a) and (b) do not apply and a public health hazard from the consumption of shellfish will not be presumed.

(2) Classification of Class II Waters for Harvesting.

(a) Approved classification means that the median fecal coliform MPN of at least 30 water sample results taken over a 3-year period to incorporate inter-annual variability does not exceed 14 per 100 milliliters; and:

(i) In areas affected by point source discharges, not more than 10 percent of the samples exceed an MPN of 43 per 100 milliliters for a five tube decimal dilution test or 49 MPN per 100 milliliters for a three tube decimal dilution test; or

(ii) In other areas, the 90th percentile of water sample results does not exceed an MPN of 43 per 100 milliliters for a five tube decimal dilution test or 49 MPN per 100 milliliters for a three tube decimal dilution test.

(b) Conditionally approved classification means that the Department has determined that under certain conditions an area is restricted, but when not restricted, meets the conditions for the approved classification.

(c) Restricted classification means that the median fecal coliform MPN of at least 30 water sample results taken over a 3-year period does not exceed 88 per 100 milliliters or that the Department has determined that a public health hazard exists; and:

(i) In areas affected by point source discharges, not more than 10 percent of the samples exceed an MPN of 260 per 100 milliliters for a five tube decimal dilution test or 300 MPN per 100 milliliters for a three tube decimal dilution test; or

(ii) In other areas, the 90th percentile of water sample results does not exceed an MPN of 260 per 100 milliliters for a five tube decimal dilution test or 300 MPN per 100 milliliter for a three tube decimal dilution test.

(d) Prohibited classification means that the fecal coliform values exceed those required for the restricted classification or is an area designated by the Department as a closed safety zone adjacent to a sewage treatment facility outfall or is an area closed due to a known pollution source.

(3) Temperature — same as Class I waters.

(4) pH — same as Class I waters.

(5) Turbidity — same as Class I waters.

(6) Color — same as Class I waters.

(7) Toxic Substance Criteria. All toxic substance criteria to protect:

(a) Estuarine or salt water aquatic organisms apply in accordance with the requirements of Regulation .03-1B; and

(b) The wholesomeness of fish for human consumption apply.

(8) Dissolved Oxygen Criteria for Class II Waters.

(a) This criteria is the same as for Class I waters, except for the Chesapeake Bay mainstem and associated tidal tributary subcategories.

(b) Seasonal and Migratory Fish Spawning and Nursery Subcategory. The dissolved oxygen concentrations in areas designated as migratory spawning and nursery seasonal use shall be:

(iii) For the dissolved oxygen criteria restoration variance for Lower Chester River Mesohaline (CHSMH) seasonal deep-channel refuge subcategory, not lower for dissolved oxygen in segment CHSMH than the stated criteria for the seasonal deep-channel refuge use for more than 16 percent spatially and temporally (in combination), from June 1 to September 30;

(iv) For the dissolved oxygen criteria restoration variance for Eastern Bay Mesohaline (EASMH) seasonal deep-channel refuge subcategory, not lower for dissolved oxygen in segment EASMH than the stated criteria for the seasonal deep-channel refuge use for more than 2 percent spatially and temporally (in combination), from June 1 to September 30; and

(v) The same as for the open-water fish and shellfish subcategory from October 1 to May 31.

(g) Implementation of the Dissolved Oxygen Water Quality Standard. The attainment of the dissolved oxygen criteria that apply to the Chesapeake Bay and tidally influenced tributary waters shall be determined using the guidelines established in the U.S. Environmental Protection Agency publications "Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and its Tidal Tributaries (EPA 903-R-03-002), Chapter III", "Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and its Tidal Tributaries (EPA 903-R-03-002), Chapter III", "Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and its Tidal Tributaries—2004 Addendum (EPA 903-R-04-005) Chapter V", "Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and its Tidal Tributaries—2007 Addendum (EPA 903-R-07-003), Chapter IV", "Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries — 2008 Technical Support for Criteria Assessment Protocols Addendum (EPA 903-R-08-001), Chapter III", and "Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries — 2010 Technical Support for Criteria Assessment Protocols Addendum (EPA 903-R-10-002), Chapters II and III", which are incorporated by reference.

(h) Restoration Variance. The percentage of allowable exceedance for restoration variances is based on water quality modeling and incorporates the best available data and assumptions. The restoration variances are temporary, and will be reviewed at a minimum every three years, as required by the Clean Water Act and EPA regulations. The variances may be modified based on new data or assumptions incorporated into the water quality model.

(9) Water Clarity Criteria for Seasonal Shallow-Water Submerged Aquatic Vegetation Subcategory.

(a) Water Clarity Criteria Measurement. A Bay segment has attained the shallow water designated use if:

(i) Submerged aquatic vegetation (SAV) acreage meets or exceeds the SAV acreage restoration goal in Table 2 of this regulation;

(ii) The shallow-water acreage that meets or exceeds the water clarity criterion expressed in Secchi depth equivalence from Table 1 of this regulation at the segment specific application depth specified in Regulation .08 of this chapter (excluding SAV no grow zones) is 2.5 times greater than the SAV Acreage Restoration Goal from Table 2 of this regulation; or

(iii) A combination of the actual SAV acreage attained and meeting the applicable water clarity criteria in an additional, unvegetated shallow water surface area equals 2.5 times the remaining SAV acreage necessary to meet the segment's restoration goal.

(a-1) If none of §C(9)(a)(i), (ii), or (iii) applies, the segment has not attained the water clarity designated use.

(b) Table 1. Numerical Water Clarity Criteria (in Secchi Depth Equivalents) for General Application to Shallow Water Aquatic Vegetation Bay Grass Designated Use (Application Depths Given in 0.5 Meter Attainment Intervals[1]).

		Water Clarity Criteria as Secchi Depth (meters)				
Salinity Regime	Water Clarity Criteria as Percent Light through Water	Water Clarity Criteria Application Depths (meters)				Seasonal Application
		0.5	1.0	1.5	2.0	
		Secchi Depth Equivalents for Criteria Application Depth				
Tidal Fresh	13%	0.4	0.7	1.1	1.4	April 1 to October 1

Patapsco River Mesohaline	PATMH	389	1.0 meters
Magothy River Mesohaline	MAGMH	579	1.0 meters
Severn River Mesohaline	SEVMH	455	1.0 meters
South River Mesohaline	SOUMH	479	1.0 meters
Rhode River Mesohaline	RHDMH	60	0.5 meters
West River Mesohaline	WSTMH	238	0.5 meters
Upper Patuxent River Tidal Fresh	PAXTF	205	0.5 meters
Middle Patuxent River Oligohaline	PAXOH	115	0.5 meters
Lower Patuxent River Mesohaline	PAXMH1	1,459	2.0 meters
Lower Patuxent River Mesohaline	PAXMH2	172	0.5 meters
Lower Patuxent River Mesohaline	PAXMH4	1	0.5 meters
Lower Patuxent River Mesohaline	PAXMH5	2	0.5 meters
Lower Potomac River Tidal Fresh	POTTF	2,142[2]	2.0 meters
Piscataway Creek Tidal Fresh	PISTF	789	2.0 meters
Mattawoman Creek Tidal Fresh	MATTF	792	1.0 meters
Lower Potomac River Oligohaline	POTOH1	1,387[2]	2.0 meters
Lower Potomac River Oligohaline	POTOH2	262	1.0 meters
Lower Potomac River Oligohaline	POTOH3	1,153	1.0 meters
Lower Potomac River Mesohaline	POTMH	7,088[2]	1.0 meters
Upper Chesapeake Bay	CB2OH	705	0.5 meters
Upper Central Chesapeake Bay	CB3MH	1,370	0.5 meters
Middle Central Chesapeake Bay	CB4MH	2,533	2.0 meters
Lower Central Chesapeake Bay	CB5MH	8,270[2]	2.0 meters

[1] The segments West Branch Patuxent River (WBRTF-application depth = 0.5 meters), and Lower Patuxent River Mesohaline Subsegments 3 and 6 (PAXMH3 & PAXMH6-application depths = 0.5 meters), and the Anacostia River Tidal Fresh (ANATF-application depth = 0.5 meters) are not listed above because the SAV Restoration goal for each segment is 0 acres, based on no historical mapped SAV and because the available bathymetry data is too limited to allow for a calculation of an SAV restoration acreage goal using the method described in the U.S. Environmental Protection Agency publication "Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and its tidal Tributaries—2007 Addendum (EPA 903-R-07-003)". These segments have been assigned a water clarity criteria and application depth. Attainment of the shallow-water designated use will be determined using the method outlined in §C(9)(a)(iii) and (e) of this regulation.

[2]Maryland portion of the segment.

(d) SAV No Grow Zones. Certain Chesapeake Bay segments contain areas designated as shallow water use that are not suitable for growth of submerged aquatic vegetation due to natural conditions and permanent physical alterations. Tables V-1 and Figures V-1 to V-12 in the 2004 U.S. Environmental Protection Agency publication "Technical Support Document for Identification of Chesapeake Bay Designated Uses and Attainability — 2004 Addendum (EPA 903-R-04-006)", which is incorporated by reference, indicate the SAV No Grow Zones. The segments Upper Choptank River (CHOTF), Upper Nanticoke River (NANTD), Upper Pocomoke River (POCTF), and Middle Pocomoke River Oligohaline (POCOH) are entirely SAV no grow zones, therefore, the shallow-water designated use does not apply to these segments.

(e) Implementation. The attainment of the water clarity criteria that apply to the seasonal shallow-water submerged aquatic vegetation use subcategory in the Chesapeake Bay and tidally influenced tributary waters will be determined using the guidelines documented within the U.S. Environmental Protection Agency publications "Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and its Tidal Tributaries (EPA 903-R-03-002)", "Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and its Tidal Tributaries — 2004 Addendum (EPA 903-R-04-005)", "Ambient Water Quality Criteria for Dissolved

(a) Fresh water aquatic organisms apply; and

(b) The wholesomeness of fish for human consumption apply.

E. Criteria for Class III-P Waters — Nontidal Cold Water and Public Water Supplies.

(1) Exception. Authorized operation of the Little Seneca Creek Dam means that all operational activities permitted are met under the conditions of a dam operating permit issued by the Department of Natural Resources under Natural Resources Article, §§8-801—8-814, Annotated Code of Maryland, and COMAR 08.05.03. Injury resulting from the authorized operation of Little Seneca Creek Dam to the Class III natural trout fishery recognized in the stream use designation assigned to Little Seneca Creek in Regulation .08 of this chapter is not considered a violation of this chapter.

(2) The following criteria apply:

(a) The criteria for Class III waters in §D(1)—(7); and

(b) All toxic substance criteria to protect:

(i) Fresh water aquatic organisms; and

(ii) Public water supplies and the wholesomeness of fish for human consumption.

F. Criteria for Class IV Waters — Recreational Trout Waters.

(1) Bacteriological — same as Class I waters.

(2) Dissolved oxygen — same as Class I waters.

(3) Temperature.

(a) The maximum temperature outside the mixing zone determined in accordance with Regulation .05 of this chapter or COMAR 26.08.03.03—.05 may not exceed 75°F (23.9°C) or the ambient temperature of the surface waters, whichever is greater.

(b) Ambient temperature — Same as Class I.

(c) A thermal barrier that adversely affects salmonid fish may not be established.

(d) It is the policy of the State that riparian forest buffer adjacent to Class IV waters shall be retained whenever possible to maintain the temperatures essential to meeting this criterion.

(4) pH — same as Class I waters.

(5) Turbidity — same as Class I waters.

(6) Color — same as for Class I waters.

(7) Toxic Substance Criteria. All toxic substance criteria to protect:

(a) Fresh water aquatic organisms apply; and

(b) The wholesomeness of fish for human consumption apply.

G. Criteria for Class IV-P Waters — Recreational Trout Waters and Public Water Supplies. The following criteria apply:

(1) The criteria for Class IV waters in §F(1)—(6); and

(2) Toxic Substance Criteria. All toxic substance criteria to protect:

(a) Fresh water aquatic organisms, and

(b) Public water supplies and the wholesomeness of fish for human consumption.

Andy Krause

From: Andy Krause <akrause@comcast.net>
Sent: Friday, February 27, 2015 1:40 PM
To: 'Michelle Dickinson'
Cc: 'Catherine Robinson'; 'slewofflags22@aol.com'; 'David Sellman'
Subject: RE: Resolving Septic and Noise Issues

Michelle,

Thank you for the prompt reply. I know Blevins, have used them in the past, and respect them. Nevertheless, as I stated earlier, we do not want contractors not responsible to us working on our property without our supervision and control. We want to be notified when the work is to be performed so that we can assure the work is done properly and there is no future risk of leaching into the existing mis-placed trench. Any plans or documents pertaining to the work going forward would also be appreciated. We recently checked with the County and saw no septic permit submission or approval with Blevins – do you know when this will be (or was) filed? If we can be assured the work is satisfactory then there should be no reason for us to pursue reimbursement for additional expenses we may incur as they should be minimal or non-existent.

All we really need to see are pictures of the cutoff of the old trench after excavation with an adequate barrier to prevent leaching into it from the rest of the septic field. I can easily remove the pipe myself but I have been advised to leave it to monitor leaching in the event your client's septic field were to fail in the future.

If your client changes her mind and would prefer an easement, let me know. Otherwise, I assume her Blevins contract must be irreversible as this would now seem to be a needless waste of money and destruction of the driveway. Just so you know, I didn't reply to your earlier offer sooner because I was advised by Macy Nelson not to engage in such discussions while the kennel issues were pending and then after the appeal period ended, it took time to gather the necessary information to fully evaluate the situation. In any case, we are satisfied with your client's current plans provided that they are carried out properly and we have the opportunity to inspect, which we can easily do from the vantage point of our property if you let us know when the work will take place.

Regarding dog noise, do you know when the privacy fence is to be installed and can you provide any idea if/when the kennel structures set forth in Judge's decision will be constructed? Obviously, if these measures are taken and they solve the problems both my family and all our tenants will be most appreciative and there need be no cause for further complaint. I will be happy to also convey this information to my tenants but a prompt timeline that you feel confident can be met should be provided if you seek our patience, or in lieu of that, perhaps some assurance of interim measures to keep the noise under control as discussed in my previous email. If the noise problem can be solved by the time weather warms to the point where it is normal to leave windows open much of the day then everything should be fine. Please advise.

Regards,
Andy

From: Michelle Dickinson [mailto:michelle@dickinson-law.com]
Sent: Friday, February 27, 2015 12:25 PM
To: Anita Krause
Cc: Catherine Robinson; slewofflags22@aol.com; David Sellman
Subject: Re: Resolving Septic and Noise Issues

Andy,

PROTESTANT'S
EXHIBIT NO. 1

I am in receipt of your February 26, 2015 email. I refer you to the attached December 9, 2014 email, wherein I advised Mr. Sellman that a portion of Ms. Robinson's absorption trench was unintentionally installed beneath your property along with an observation pipe in January 2007 (not 21 years ago). We offered to have a new trench installed on Ms. Robinson's property and have the observation pipe removed from your property at Ms. Robinson's expense. Since we did not hear from you, Ms. Robinson hired Blevins Septic Service to disconnect the existing trench and install a new trench on her property. If you would like Blevins to remove the observation pipe at the same time, please so advise.

Once that work is complete, Ms. Robinson will install a privacy fence which we expect will address any noise concerns and Ms. Robinson's privacy concerns.

Best,
Michelle

Michelle J. Dickinson

410.740.5630 Office
443.280.4257 Cell
866.211.2673 Fax
michelle@dickinson-law.com

10440 Little Patuxent Pkwy.
Suite 300
Columbia, MD 21044
www.dickinson-law.com

On Thu, Feb 26, 2015 at 3:42 PM, Andy Krause <akrause@comcast.net> wrote:

Hi Holly,

We wanted to wait until some time had passed and dust had settled (e.g., the Kennel Exception is settled and appeal deadline is passed) before returning to several outstanding issues of mutual concern. Our hope is that we can find a way to move forward more civilly and productively without having to involve lawyers at every turn. But if you prefer otherwise, you may direct Ms. Dickinson to respond to me and I will re-engage our attorney, David Sellman, who is copied on this email, when I see fit.

We have two issues we need to address; the septic issue and dog noise issues going forward. I will begin with the Septic Issue.

First, there are some facts you should know. Despite Ms. Dickinson's claims to the contrary, she never provided Mr. Sellman with the documents he requested. However, in the meantime, we have obtained them on our own and have also talked extensively with Mr. Harris of Harris Septic who did your septic repair in 2006/7 and submitted the paperwork to Baltimore County. He also sent us some additional documentation we requested especially given the paucity and low quality of information on record with the County. Just so you know, I wanted you to be aware of some things Mr. Harris told us – some of which contradict what Ms. Dickinson previously told Mr. Sellman:

1. Ms. Dickinson had claimed that the "observation pipe" had been there at least 21 years, since before you purchased the property, and that Mr. Harris had only "replaced it" (Mr. Sellman thinks this was to try to establish a claim of Adverse Possession). Mr. Harris informed us the pipe was new and was only installed because of then-recent code changes that required said observation pipe. If there is any record anywhere of any part of the septic field or any piping being on or within 10 feet our property line prior to Mr. Harris's work, we were unable to find it and Mr. Harris was unaware of it.

2. Mr. Harris (as well as our own septic contractor) told us the terrain sloping and soils combined with County codes would make this a "major job" and necessitate moving the septic trench under a significant portion of your driveway as there is nowhere else to put it that will comply with County code. Mr. Harris told us he had informed you that his charge to move the trench and pipe would be $4500 not including the cost to dig up and replace the driveway and other landscaping (apparently there is another company/person named Price involved with that). This septic relocation would also put you or future owners at risk of having to dig up the driveway again when the septic system inevitably required future repair or replacement.

According to Ms. Dickinson, you have already offered to move your septic system and take on these expenses and risks. We are now prepared to accept this offer with the caveat that neither you nor your contractors shall trespass on our property to effect reparations unless under the direct supervision of our own septic contractor on our land (and we so informed Mr. Harris as well). Alternatively, if you are not willing to permit supervision on our land, we will have our own contractor effect reparations on our side of the property line removing the pipe and installing a clay barrier to prevent leaching from the deactivated trench (Mr. Harris told me his current quote does not involve removing the mis-placed trench but merely connects a new one to bypass it). This could (preferably) be done in contemporaneous coordination with Harris's reparation. We would expect you to reimburse us for the cost of our contractor in either case. Our septic contractor also informed us that if we have him do the reparation and you do not provide access from your property to do so the costs of hand-digging and bringing up all supplies up the steep hillside by hand could exceed $2000 depending on various conditions he cannot assess from surface inspection alone.

In good faith, we are willing to consider an alternative that would enable you to keep the septic system as is. We would be willing to grant an easement at a cost and risk to you that are less than you now face. We would also be willing to grant, under such easement, your right to keep certain trees and landscaping you planted which also appear to be on our property and enable you to maintain and expand them if you wish in a mutually beneficial manner. As an additional sign of good faith, we would also be willing to remove the "No Trespassing" signs that we installed on our property line

near your driveway facing your home and agree not to add more. If we could come to amicable terms on these issues we would accept that as good evidence that those signs were no longer necessary so close to your home.

You are free to make or request an easement proposal in this regard or, otherwise, inform us when and how you intend to effect relocation of your septic trench and pipe in accordance with the conditions above. We realize the work cannot be done until after Spring thaw but time is of the essence now in coming to an agreement.

Next, we need to address the noise issue concerning your dogs, not only for us but for our tenants who continue to complain and worry as the better weather of Spring will soon be upon us, as unbelievable as that may seem right now. It seems to us and our tenants that the noise problems have gotten worse since the deadline for appeal has passed (especially in the early morning between 4 – 5AM). Prior to that, things had been much better and we had noticed that the dogs did not use the doggy doors at will most of the time and that you had dog sitters during the day when you and Kawana were absent which I now longer see. We would like to find a mutually agreeable and amicable way to work with you to reduce this problem. If you doubt your dog's noise is as big a problem as we say it is, then we would be willing to have you visit our home and apartment area (in our presence – please do not trespass alone) under conditions where your dogs frequently bark. Kawana may be better suited for this since she is not hard of hearing. Alternatively, or in addition, we can take further videos and recordings of the incidences so that you can identify the primary barkers – if you think you can identify a ringleader (we're not so sure it can be confined to just a few dogs but we'll work with you as best we can). We just need to know what plans and measures you are willing to implement to contain the problem, in stages if necessary, and then be able to see you are promptly following through to make them work.

We realize that Judge Beverungen gave you until August to build your kennel, assuming it can be built given other County Code restrictions. However, we cannot accept this as an excuse for the dogs to be noisy in the interim (or afterwards). If we can't find a way to work together constructively then you leave us and our tenants no further choice but to begin reporting the excessive noise to authorities and take whatever other measures that may be required. We all deserve to live in peace. In the past, we had asked our tenants not to complain directly and that we would handle it. In this we were delinquent, to our regret. We had a recent meeting and they are no longer bound by this understanding. If I can't show them any evidence the problem is being dealt with productively I can assure you they will not hesitate to report the noise going forward. We hope to avoid this if we can seek adequate improvement with you.

Again, we hope that we can turn the tide to a less contentious level. We hope you can see in the letter we are trying to offer constructive solutions and our willingness to cooperate. The rest is up to you.

Regards,

Andy


PROTESTANT'S
EXHIBIT NO. 2

PROTESTANT'S

EXHIBIT NO. 3

From: Jen Walsh [mailto:walsh.jennifer.s@gmail.com]
Sent: Tuesday, June 02, 2015 8:33 PM
To: Andy Krause
Subject: Dogs on Far Out Ln

Hi Andy,

Tara and I wanted to follow up in writing on our brief discussion last week. While we agree that the kennel noise has been significantly improved, it continues to be excessive to the point that we are often awoke before 5AM and Eden must still be isolated from the still too common outbursts of barking at unpredictable times. I don't feel like we should have to live with our windows closed necessitating we also spend far more on A/C.

Before we renewed our leases you assured us you would take care of this problem. You've told us about your neighbor's efforts but I'm not sure the privacy fence did much. As you conceded, most of the noise problem that went away may have simply resulted from the vet removing her kennel (or does she keep her dogs inside now?) and you couldn't promise us that was permanent.

While we both love your farm and would like to stay in a peaceful environment, this email is to serve notice that we will have to move if the problem is not remedied soon. As you requested, we have always brought our problems to you, rather than authorities, and so we feel this is your responsibility.

We both appreciate your efforts and hope you understand.

Best,

Jen and Tara

--
Best,
Jennifer Walsh
443-676-2299

PROTESTANT'S
EXHIBIT NO. 4

Krause Property Line 2

Created By
Baltimore County
My Neighborhood

Printed 8/19/2015

Pet 5

Plot 6


Select A Property
Imagery
Data Layers
ASHBURN RD
354 Feet
^ Legend/Display More Data

Screenshot taken 8/23/2015

Prof. 9

12/16/2014 Kennel Stream during light rain

Prof. 10

Pollution plume from Kennel stream during rain on 9/10/2015

Prof. 11

Water Quality Sampling Map for 1940 Akehurst Rd. Sparks, MD 21152

- Map was made using maps and resources at http://myneighborhood.baltimorecountymd.gov/

Prots. 12

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

FINAL REPORT OF ANALYSIS

G. Macy Nelson
401 Washington Avenue
Suite 803
Towson, MD 21204

PROJECT NAME: Krauss
REPORT DATE: 08/04/2015
REPORT NBR: 150804145625

LAB#: E040632-01 SAMPLE ID: #1 1940 Akehurst SAMPLER- C Alban
LOCATION: Stream by House
DATE SAMPLED: 07/27/2015 TIME SAMPLED: 7/27/2015 11:50
DATE RECEIVED: 07/27/2015 TIME RECEIVED: 12:22
DELIVERED BY: Colin Alban RECEIVED BY: Ginny Shelley
COMMENTS:

	ANALYSIS	METHOD	ANALYSIS DATE/TIME	BY	RESULT		Qual	REPORTING LIMIT
MICROBIOLOGY by Enviro-Chem								
$	E. Coli	SM 9223B	07/27/15 13:45	VPS	435	MPN/100 mL		1.00
WET CHEMISTRY by Enviro-Chem								
$	Ammonia Nitrogen	EPA 350.1	08/01/15 14:31	SES	0.60	mg/L		0.20
#	Nitrate (as N)	EPA 300.0	07/27/15 17:30	EJF	1.4	mg/L		0.2

Profs_13

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

FINAL REPORT OF ANALYSIS

G. Macy Nelson
401 Washington Avenue
Suite 803
Towson, MD 21204

PROJECT NAME: Krauss
REPORT DATE: 08/04/2015
REPORT NBR: 150804145625

LAB#: E040632-02 SAMPLE ID: #2 1940 Axehurst SAMPLER- C Alban
LOCATION: Stream by Neighbor
DATE SAMPLED: 07/27/2015 TIME SAMPLED: 7/27/2015 11:55
DATE RECEIVED: 07/27/2015 TIME RECEIVED: 12:22
DELIVERED BY: Colin Alban RECEIVED BY: Ginny Shelley
COMMENTS:

	ANALYSIS	METHOD	ANALYSIS DATE/TIME	BY	RESULT		Qual	REPORTING LIMIT
MICROBIOLOGY by Enviro-Chem								
$	E. Coli	SM 9223B	07/27/15 13:45	VPS	>2420	MPN/100 mL		1.00
WET CHEMISTRY by Enviro-Chem								
$	Ammonia Nitrogen	EPA 350.1	08/01/15 14:37	SES	< 0.20	mg/L		0.20
#	Nitrate (as N)	EPA 300.0	07/27/15 17:48	EJF	2.0	mg/L		0.2

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

FINAL REPORT OF ANALYSIS

G. Macy Nelson
401 Washington Avenue
Suite 803
Towson, MD 21204

PROJECT NAME: Krauss
REPORT DATE: 08/04/2015
REPORT NBR: 150804145625

LAB#: E040632-03 SAMPLE ID: #3 1940 Akehurst SAMPLER- C Alban
LOCATION: Pond
DATE SAMPLED: 07/27/2015 TIME SAMPLED: 7/27/2015 12:00
DATE RECEIVED: 07/27/2015 TIME RECEIVED: 12:22
DELIVERED BY: Colin Alban RECEIVED BY: Ginny Shelley
COMMENTS:

	ANALYSIS	METHOD	ANALYSIS DATE/TIME	BY	RESULT		Qual	REPORTING LIMIT
MICROBIOLOGY by Enviro-Chem								
$	E. Coli	SM 9223B	07/27/15 13:45	VPS	11.0	MPN/100 mL		1.00
WET CHEMISTRY by Enviro-Chem								
$	Ammonia Nitrogen	EPA 350.1	08/01/15 14:38	SES	< 0.20	mg/L		0.20
#	Nitrate (as N)	EPA 300.0	07/27/15 18:05	EJF	0.7	mg/L		0.2

Stephen E. Shelley
Stephen Shelley
Laboratory Director

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

Certifications

Qualifier(s)

>2420>2420

# - State of Maryland Certfication	#192
* - NELAP Certification	68-04873
! - VELAP Certification	460255
$ - Not a certified Analyte	

QUALITY CONTROL SUMMARY

REPORT NBR: 150804145625

Enviro-Chem

Analyte QC Type	Sample Source	Date Prep'd	Date Analyzed	Result	MRL	Units	Spike Level	Source Result	% REC	% REC Limits	RPD	RPD Limit
Batch B5G0289												
Nitrate (as N)												
Duplicate	E040635-01	07/27/2015	07/27/2015	3	0.2	mg/L		3			0.00	20
Duplicate	E040626-01	07/27/2015	07/27/2015	<0.2	0.2	mg/L		ND				20
LCS		07/27/2015	07/27/2015	2	0.2	mg/L	2.00		96.6	90-110		
Matrix Spike	E040626-01	07/27/2015	07/27/2015	2	0.2	mg/L	2.00	ND	98.9	80-120		
Matrix Spike	E040635-01	07/27/2015	07/27/2015	5	0.2	mg/L	2.00	3	97.8	80-120		
Batch B5G0321												
Ammonia Nitrogen												
Blank		07/29/2015	08/01/2015	<0.20	0.20	mg/L						
Duplicate	E040632-01	07/29/2015	08/01/2015	<0.20	0.20	mg/L		0.60				20
LCS		07/29/2015	08/01/2015	1.86	0.20	mg/L	2.00		93.0	90-110		
Matrix Spike	E040632-01	07/29/2015	08/01/2015	1.86	0.20	mg/L	2.00	0.60	62.7*	90-110		

* - Indicates Recovery/RPD failed Criteria.

NC - Indicates Duplicate Result or Sample Duplicate Result < 4 * Method reporting limit

Sample Chain of Custody

Enviro-Chem Laboratories, Inc. | **47 Loveton Circle, Suite K** | **Sparks, MD 21152**

Client: Andy Krauss | Phone No.: 410-472-2853 | ECL Log in Batch Number | Page of

Project Manager: | Fax No.:

Sampler: | Email:

Project Name: 1940 Alkehurst Rd | Project Number:

P.O.Number:

Preservative Key: A = Nitric Acid, pH <2; B = Sulfuric Acid, pH <2; C = NaOH, pH >12; E = Thiosulfate; Zn = Zinc Acetate; D = None, Chilled; X = Other

Enviro-Chem Lab No.	Sample Identification (As it is to appear on report)	Date Sampled	Time Sampled	Matrix	No. of Containers	Sample Type C = Comp. G = Grab	Preservative: E. Coli	Nitrate	Ammonia	Remarks
40632-01	#1	7/27	1150	W	3		X	X	X	Stream by House (for control)
40632-02	#2	7/27	1155	W	3		X	X	X	Stream by neighbor
40632-03	#3	7/27	1200	W	3		X	X	X	Pond

Collected / Relinquished By	Date	Time	Received By	Deliverables Required	# Coolers	Seal
C. Allen	7/27/15	1222			1	
Relinquished By	Date	Time	Received By	Due Date	Ice Present	Temp
					Y	16.1
Relinquished By	Date	Time	Received By	Turnaround Requested: STD / 1-Day / Other	Rush?	
Relinquished By	Date	Time	Received By	Special instructions, Comments:		

COC/Labels match (Y) N | # of Samples 3 | # of Bottles 9 | Explain any "NO" answers for NH3

Bottles intact/appropriate (Y) N | Preserved correctly (Y) (N) NA | Preservative added at Lab (Y) N NA

Completed by VB

ECL Doc I (05/29/12)

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

FINAL REPORT OF ANALYSIS

G. Macy Nelson
401 Washington Avenue
Towson, MD 21204

PROJECT NAME: [none]
REPORT DATE: 08/04/2015
REPORT NBR: 150804145935

LAB#: E040645-01 SAMPLE ID: #1
LOCATION: Stream by House
DATE SAMPLED: 07/28/2015 TIME SAMPLED: 10:39AM SAMPLER- C Alban
DATE RECEIVED: 07/28/2015 TIME RECEIVED: 11:08AM
DELIVERED BY: Colin Alban RECEIVED BY: Stephen Shelley

COMMENTS:

COMMENTS:

	ANALYSIS	METHOD	ANALYSIS DATE/TIME	BY	RESULT	Qual	REPORTING LIMIT
Microbiology by Enviro-Chem							
$	E. Coli	SM 9223B	07/28/15 11:50	SES	105 MPN/100 mL		1.00
Wet Chemistry by Enviro-Chem							
$	Ammonia Nitrogen	EPA 350.1	08/01/15 14:40	SES	< 0.20 mg/L		0.20
#	Nitrate (as N)	EPA 300.0	07/28/15 15:46	EJF	1.3 mg/L		0.2

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

FINAL REPORT OF ANALYSIS

G. Macy Nelson
401 Washington Avenue
Towson, MD 21204

PROJECT NAME: [none]
REPORT DATE: 08/04/2015
REPORT NBR: 150804145935

LAB#: E040645-02 SAMPLE ID: #2
LOCATION: Stream by Neighbor
DATE SAMPLED: 07/28/2015 TIME SAMPLED: 10:44AM SAMPLER- C Alban
DATE RECEIVED: 07/28/2015 TIME RECEIVED: 11:08AM
DELIVERED BY: Colin Alban RECEIVED BY: Stephen Shelley

COMMENTS:

COMMENTS:

	ANALYSIS	METHOD	ANALYSIS DATE/TIME	BY	RESULT	Qual	REPORTING LIMIT
Microbiology by Enviro-Chem							
$	E. Coli	SM 9223B	07/28/15 11:50	SES	>2420 MPN/100 mL		1.00
Wet Chemistry by Enviro-Chem							
S	Ammonia Nitrogen	EPA 350.1	08/01/15 14:42	SES	< 0.20 mg/L		0.20
#	Nitrate (as N)	EPA 300.0	07/28/15 16:04	EJF	2.1 mg/L		0.2

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

FINAL REPORT OF ANALYSIS

G. Macy Nelson
401 Washington Avenue
Towson, MD 21204

PROJECT NAME: [none]
REPORT DATE: 08/04/2015
REPORT NBR: 150804145935

LAB#: E040645-03 SAMPLE ID: #3
LOCATION: Pond
DATE SAMPLED: 07/28/2015 TIME SAMPLED: 10:50AM SAMPLER- C Alban
DATE RECEIVED: 07/28/2015 TIME RECEIVED: 11:08AM
DELIVERED BY: Colin Alban RECEIVED BY: Stephen Shelley

COMMENTS:

COMMENTS:

	ANALYSIS	METHOD	ANALYSIS DATE/TIME	BY	RESULT	Qual	REPORTING LIMIT
Microbiology by Enviro-Chem							
$	E. Coli	SM 9223B	07/28/15 11:50	SES	14.4 MPN/100 mL		1.00
Wet Chemistry by Enviro-Chem							
$	Ammonia Nitrogen	EPA 350.1	08/01/15 14:43	SES	< 0.20 mg/L		0.20
#	Nitrate (as N)	EPA 300.0	07/28/15 16:22	EJF	0.7 mg/L		0.2

Stephen E. Shelley

Stephen Shelley
Laboratory Director

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

Certifications

#192	# - State of Maryland Certfication
68-04873	* - NELAP Certification
460255	! - VELAP Certification

\# Indicates a MD certified Analyte

* Indicates a NELAP certified Analyte

! Indicates a VELAP certified Analyte

$ Not a certified Analyte

Qualifier(s)

>2420>2420

QUALITY CONTROL SUMMARY

REPORT NBR: 150804145935

Enviro-Chem

Analyte / QC Type	Sample Source	Date Prep'd	Date Analyzed	Result	MRL	Units	Spike Level	Source Result	% REC	% REC Limits	RPD	RPD Limit
Batch B5G0301												
Nitrate (as N)												
Duplicate	E040642-01	07/28/2015	07/28/2015	2	0.2	mg/L		2			2.52	20
LCS		07/28/2015	07/28/2015	2	0.2	mg/L	2.00		96.0	90-110		
Matrix Spike	E040642-01	07/28/2015	07/28/2015	4	0.2	mg/L	2.00	2	98.6	80-120		
Batch B5G0321												
Ammonia Nitrogen												
Blank		07/29/2015	08/01/2015	<0.20	0.20	mg/L						
Duplicate	E040632-01	07/29/2015	08/01/2015	<0.20	0.20	mg/L		0.60				20
LCS		07/29/2015	08/01/2015	1.86	0.20	mg/L	2.00		93.0	90-110		
Matrix Spike	E040632-01	07/29/2015	08/01/2015	1.86	0.20	mg/L	2.00	0.60	62.7*	90-110		

* - Indicates Recovery/RPD failed Criteria.

NC - Indicates Duplicate Result or Sample Duplicate Result < 4 * Method reporting limit

Sample Chain of Custody

Enviro-Chem Laboratories, Inc. | **47 Loveton Circle, Suite K** | **Sparks, MD 21152**

Client: G Macy Nelson ESQ Phone No.:

Project Manager: Fax No.:

Sampler: Email:

Project Name: Project Number:

P.O.Number:

ECL Log in Batch Number: Page of

Preservative Key:
A = Nitric Acid, pH <2
B = Sulfuric Acid, pH <2
C = NaOH, pH >12
E = Thiosulfate
Zn = Zinc Acetate
D = None, Chilled
X = Other

Enviro-Chem Lab No.	Sample Identification (As it is to appear on report)	Date Sampled	Time Sampled	Matrix	No. of Containers	Sample Type C = Comp. G = Grab	Preservative	E	D	B						Remarks
							E. Coli	Nitrate	Ammonia							
E040645-01	#1	7/28	1039	W	3	G	x	x	x							Stream by House
E040645-02	#2	7/28	1044	W	3	G	x	x	x							Stream by Neighbor
E040645-03	#3	7/28	1050	W	3	G	x	x	x							Pond

Collected / Relinquished By: Cmac C-Albu	Date: 7/28	Time: 1105	Received By: Tyler E Stelly	Deliverables Required
Relinquished By	Date	Time	Received By	Due Date
Relinquished By	Date	Time	Received By	Turnaround Requested: STD / 1-Day / Other; Rush?
Relinquished By	Date	Time	Received By	Special instructions, Comments:

# of Coolers: 1 Seal:

Ice Present: Y Temp: 4.7

COC/Labels match: (Y) N # of Samples: 3 # of Bottles: 9

Bottles intact/appropriate: (Y) N Preserved correctly: (Y) N NA

Explain any "NO" answers

Preservative added at Lab: Y N NA

Completed by

ECL Doc 1 (05/29/12)

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

FINAL REPORT OF ANALYSIS

G. Macy Nelson
401 Washington Avenue
Suite 803
Towson, MD 21204

PROJECT NAME: 1940 Akehurst
REPORT DATE: 08/24/2015
REPORT NBR: 150824141524

LAB#: E040975-01 SAMPLE ID: Pond SAMPLER- C Alban
LOCATION:
DATE SAMPLED: 08/14/2015 TIME SAMPLED: 8/14/2015 11:19
DATE RECEIVED: 08/14/2015 TIME RECEIVED: 11:48
DELIVERED BY: Colin Alban RECEIVED BY: Ginny Shelley
COMMENTS: Revision of report 150818170532 to correct sample collection times.

ANALYSIS	METHOD	ANALYSIS DATE/TIME	BY	RESULT	Qual	REPORTING LIMIT
MICROBIOLOGY by Enviro-Chem						
$ E. Coli	SM 9223B	08/14/15 16:45	SES	435 MPN/100 mL		1.00

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

FINAL REPORT OF ANALYSIS

G. Macy Nelson
401 Washington Avenue
Suite 803
Towson, MD 21204

PROJECT NAME: 1940 Akehurst
REPORT DATE: 08/24/2015
REPORT NBR: 150824141524

LAB#: E040975-02 SAMPLE ID: Stream 1 SAMPLER- C Alban
LOCATION:
DATE SAMPLED: 08/14/2015 TIME SAMPLED: 8/14/2015 11:27
DATE RECEIVED: 08/14/2015 TIME RECEIVED: 11:48
DELIVERED BY: Colin Alban RECEIVED BY: Ginny Shelley
COMMENTS: Revision of report 150818170532 to correct sample collection times.

ANALYSIS	METHOD	ANALYSIS DATE/TIME	BY	RESULT	Qual	REPORTING LIMIT
MICROBIOLOGY by Enviro-Chem						
$ E. Coli	SM 9223B	08/14/15 16:45	SES	73.3 MPN/100 mL		1.00

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

FINAL REPORT OF ANALYSIS

G. Macy Nelson
401 Washington Avenue
Suite 803
Towson, MD 21204

PROJECT NAME: 1940 Akehurst
REPORT DATE: 08/24/2015
REPORT NBR: 150824141524

LAB#: E040975-03 SAMPLE ID: Stream 2 SAMPLER- C Alban
LOCATION:
DATE SAMPLED: 08/14/2015 TIME SAMPLED: 8/14/2015 11:31
DATE RECEIVED: 08/14/2015 TIME RECEIVED: 11:48
DELIVERED BY: Colin Alban RECEIVED BY: Ginny Shelley
COMMENTS: Revision of report 150818170532 to correct sample collection times.

ANALYSIS	METHOD	ANALYSIS DATE/TIME	BY	RESULT	Qual	REPORTING LIMIT
MICROBIOLOGY by Enviro-Chem						
$ E. Coli	SM 9223B	08/14/15 16:45	SES	435 MPN/100 mL		1.00

Stephen E. Shelley

Stephen Shelley
Laboratory Director

ENVIRO-CHEM
LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-7112

Certifications

Qualifier(s)

# - State of Maryland Certfication	#192
* - NELAP Certification	68-04873
! - VELAP Certification	460255
$ - Not a certified Analyte	

Sample Chain of Custody

Enviro-Chem Laboratories, Inc. | **47 Loveton Circle, Suite K** | **Sparks, MD 21152**

Client: Andy Krause | Phone No.: 410 472 2857 | ECL Log in Batch Number | Page of

Project Manager: | Fax No.:

Sampler: | Email:

Project Name: 1940 Akehurst | Project Number:

P.O.Number:

Preservative Key: A = Nitric Acid, pH <2; B = Sulfuric Acid, pH <2; C = NaOH, pH >12; E = Thiosulfate; Zn = Zinc Acetate; D = None, Chilled; X = Other

Enviro-Chem Lab No.	Sample Identification (As it is to appear on report)	Date Sampled	Time Sampled	Matrix	No. of Containers	Sample Type C = Comp. G = Grab	Preservative	Bact.	Remarks
E040975-01	Pond	8/14/15	119					X	Pond side away from House near neighbor runoff stream
E040975-02	Stream #1	8/14/15	1127					X	Runoff stream from neighbor
E040975-03	Stream #2	8/14/15	1131					X	From smaller pond on property

Collected / Relinquished By	Date	Time	Received By	Deliverables Required	# Coolers	Seal
C. Allen	8/14/15	1148			1	
Relinquished By	Date	Time	Received By	Due Date	Ice Present	Temp
					Y	8.0
Relinquished By	Date	Time	Received By	Turnaround Requested	Rush?	
				STD / 1-Day / Other		
Relinquished By	Date	Time	Received By	Special instructions, Comments:		

COC/Labels match: Y N | # of Samples 3 | # of Bottles 3 | Explain any "NO" answers

Bottles intact/appropriate: Y N | Preserved correctly Y N NA | Preservative added at Lab Y N NA

Completed by

ECL Doc: 1 (05/29/12)

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

FINAL REPORT OF ANALYSIS

G. Macy Nelson
401 Washington Avenue
Suite 803
Towson, MD 21204

PROJECT NAME: 082015
REPORT DATE: 08/24/2015
REPORT NBR: 150824141223

LAB#: E041061-01 SAMPLE ID: Stream 1 SAMPLER- C Alban
LOCATION: Owner's smaller pond
DATE SAMPLED: 08/20/2015 TIME SAMPLED: 8/20/2015 15:01
DATE RECEIVED: 08/20/2015 TIME RECEIVED: 15:35
DELIVERED BY: Colin Alban RECEIVED BY: Ginny Shelley
COMMENTS:

ANALYSIS	METHOD	ANALYSIS DATE/TIME	BY	RESULT		Qual	REPORTING LIMIT
MICROBIOLOGY by Enviro-Chem							
$ E. Coli	SM 9223B	08/20/15 16:45	VPS	>2420	MPN/100 mL		1.00

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

FINAL REPORT OF ANALYSIS

G. Macy Nelson
401 Washington Avenue
Suite 803
Towson, MD 21204

PROJECT NAME: 082015
REPORT DATE: 08/24/2015
REPORT NBR: 150824141223

LAB#: E041061-02 SAMPLE ID: Pond SAMPLER- C Alban
LOCATION: Neighbor side by stream inflow
DATE SAMPLED: 08/20/2015 TIME SAMPLED: 8/20/2015 15:04
DATE RECEIVED: 08/20/2015 TIME RECEIVED: 15:35
DELIVERED BY: Colin Alban RECEIVED BY: Ginny Shelley
COMMENTS:

ANALYSIS	METHOD	ANALYSIS DATE/TIME	BY	RESULT		Qual	REPORTING LIMIT
MICROBIOLOGY by Enviro-Chem							
$ E. Coli	SM 9223B	08/20/15 16:45	VPS	>2420	MPN/100 mL		1.00

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

FINAL REPORT OF ANALYSIS

G. Macy Nelson
401 Washington Avenue
Suite 803
Towson, MD 21204

PROJECT NAME: 082015
REPORT DATE: 08/24/2015
REPORT NBR: 150824141223

LAB#: E041061-03 SAMPLE ID: Stream 2 SAMPLER- C Alban
LOCATION: Near neighbor fence
DATE SAMPLED: 08/20/2015 TIME SAMPLED: 8/20/2015 15:11
DATE RECEIVED: 08/20/2015 TIME RECEIVED: 15:35
DELIVERED BY: Colin Alban RECEIVED BY: Ginny Shelley
COMMENTS:

ANALYSIS	METHOD	ANALYSIS DATE/TIME	BY	RESULT		Qual	REPORTING LIMIT
MICROBIOLOGY by Enviro-Chem							
$ E. Coli	SM 9223B	08/20/15 16:45	VPS	68700	MPN/100 mL		100

Stephen E. Shelley
Stephen Shelley
Laboratory Director

ENVIRO-CHEM LABORATORIES, INC.

47 Loveton Circle, Suite K • Sparks, Maryland 21152 410-472-1112

Certifications

Qualifier(s)

>2420>2420

# - State of Maryland Certfication	#192
* - NELAP Certification	68-04873
! - VELAP Certification	460255
$ - Not a certified Analyte	

Sample Chain of Custody

Enviro-Chem Laboratories, Inc. **47 Loveton Circle, Suite K** **Sparks, MD 21152**

Client: Andy Krauss Phone No.:

Project Manager: Macy Nelson Fax No.:

Sampler: Email:

Project Name: Project Number:

P.O.Number:

ECL Log in Batch Number

Page of

Preservative Key:
A = Nitric Acid, pH <2
B = Sulfuric Acid, pH <2
C = NaOH, pH >12
E = Thiosulfate
Zn = Zinc Acetate
D = None, Chilled
X = Other

Enviro-Chem Lab No.	Sample Identification (As it is to appear on report)	Date Sampled	Time Sampled	Matrix	No. of Containers	Sample Type C = Comp. G = Grab	Preservative Bact.	Remarks
41061-01	Stream #1	5/20/15	1501	W	1	G	X	Frog Own smaller Pond
41061-02	Pond	5/20/15	1504	W	1	G	X	Neighbor side by Stream inflow
41061-03	Stream #2	5/20/15	1511	W	1	G	X	Near neighbor fence

Collected / Relinquished By	Date	Time	Received By	Deliverables Required	# Coolers	Seal
C.Alban	5/20/15	1535			1	
Relinquished By	Date	Time	Received By	Due Date	Ice Present	Temp
					Y	15.0
Relinquished By	Date	Time	Received By	Turnaround Requested	Rush?	
				STD / 1-Day / Other		
Relinquished By	Date	Time	Received By	Special instructions, Comments:		

COC/Labels match (Y) N # of Samples 3 # of Bottles 3

Bottles intact/appropriate (Y) N Preserved correctly (Y) N NA

Explain any "NO" answers

Preservative added at Lab Y N NA

Completed by

ECL Doc 1 (05/29/12)

Krause Property E Coli Water Contamination Tests

performed by Enviro-Chem Laboratories, Inc. 47 Loveton Circle, Suite K, Sparks, MD 21152

E Coli Test Date	Days Since Last Rain (Inches)	Inches of rain w/in 24 hrs before test	E Coli in MPN/100ml			
			Kennel Stream	Control Stream	Pond (House Side)	Pond (Kennel Side)
07/27/2015	5 (0.03^)	0	>2420	435	11	---
07/28/2015	1 (0.53^)	0.53^	>2420	105	14.4	---
08/14/2015	2 (0.09^)	0	435	73.3	---	435
08/20/2015	1 (0.51	0.51	68700*	>2420?	---	>2420

*Test was diluted by 100x to prevent overscale

^ Rain measurements were taken from the National Climatic Data Center for Carroll County Regional Jack B Poage Field (KDMW) (nearest weather station). If not marked, rain was measured on site

? This test says the sample was taken in "own small pond" in chain of custody, not Stream 1 like all the other tests. This may be a problem rendering this test invalid. I did not video this test and did not witness it and I have been unable to confirm whether the test sample was taken in one of the 2 small ponds near the driveway or in the pond-like pool near the end of the stream opening to the pond. Given the times between tests (travel time) was relatively short compared to travel times between pond and stream #1 in earlier tests suggests this test was taken near the mouth of the main pond. If this test was taken near the Stream 1 mouth to the pond, or worse, at the peninsula, then water from the kennel stream could easily have mixed with this sample because the water is wide and turbulent there .

Quantitative Pond and Stream Specifications:

Pond Area:	0.92 acres
Average Estimated Depth:	less than 5 feet (use 5 feet for calculations below)
Approximate Water Volume:	4.6 acre-ft = 200376 cu. ft. = 1498917 gallons ≈ 1500000 gallons
Pond Outflow:	40 gal/minute (measured 8/15/2015 at end of outflow pipe)
Control Stream Flow:	31 gal/minute (measured 8/15/2015 at waterfall)
Kennel Stream Flow:	6.2 gal/minute (measured 8/15/2015 at 20 feet south of culvert)
Control Stream Length:	2296 feet (includes all branches)
Kennel Stream Length:	260 feet (from spring house to test sampling point); 410 feet (from spring house to pond)

Maximum Theoretical Exchange Rate = 1500000/(40 * 60 * 24) = 26 days

PROTESTANT'S
NOT ADMITTED
EXHIBIT NO. 14

(not admitted)
Prot. 14

Water Contamination Standards

From EPA 2012 Recreational Water Quality Criteria (EPA-820-F-12-061): The waterbody GM should not be greater than the selected GM magnitude in any 30-day interval. There should not be greater than a ten percent excursion frequency of the selected STV magnitude in the same 30-day interval. "

CRITERIA ELEMENTS	**Recommendation 1** Estimated Illness Rate 36/1,000		**Recommendation 2** Estimated Illness Rate 32/1,000	
Indicator	GM (cfu/100 mL)	STV (cfu/100 mL)	GM (cfu/100 mL)	STV (cfu/100 mL)
Enterococci (marine & fresh)	35	130	30	110
E. coli (fresh)	126	410	100	320

Also" "EPA-823-R-03-008 revised June 2003, see http://water.epa.gov/type/oceb/beaches/local_index.cfm). This EPA recreational water quality standard requires less than 126 MPN (or CFU) of generic *E. coli* per 100 ml water."

(Canadian) Water Quality Criteria for Microbiological Indicators (Updated August 7, 2001)

" The fecal coliform level for primary-contact recreation in fresh and marine waters should not exceed a geometric mean of 200/100 mL in 5 samples taken in a 30-day period. This is the CCREM Guideline."

Water Use	**Escherichia coli**	**Enterococci**	**Pseudomonas aeruginosa**	**Fecal coliforms**
Raw Drinking Water - no treatment	0/100 mL	0/100 mL	0/100 mL	0/100 mL
Livestock - general livestock use	200/100 mL maximum	50/100 mL maximum	None applicable	200/100 mL maximum
Irrigation - crops eaten raw	less than or equal to 77/100 mL geometric mean	less than or equal to 20/100 mL geometric mean	None applicable	less than or equal to 200/100 mL geometric mean
Recreation - secondary contact - crustacean harvesting	less than or equal to 385/100 mL geometric mean	less than or equal to 100/100 mL geometric mean	less than or equal to 10/100 mL 75th percentile	None applicable
Recreation - primary contact	less than or equal to 77/100 mL geometric mean	less than or equal to 20/100 mL geometric mean	less than or equal to 2/100 mL 75th percentile	less than or equal to 200/100 mL geometric mean

Prof. 15

Prots. # 16

AFFIDAVIT

Name: Jennifer Susan Walsh

Address: 2121 Abell Lane, Apt B
Sparks, MD 21152

I, Jennifer Walsh, do swear or affirm:

1. I am a current resident of 2121 Abell Lane, Apt B, Sparks, MD 21152. I have lived at this address since April 1, 2013 (735/mo + utilities, now 755) with my five year old daughter named Eden Evelyn Walsh. Our lease names Beste Pond Farm LLC as Owner of this property, which is owned and managed By Andy and Noreen Krause.

2. My unit looks out from the side of a ridge, over the valley on which Andy and Noreen Krause reside, and up the adjacent ridge on which Petitioner's property sits, at 2012 Far Out Lane.

3. I am a single mother.

4. My daughter has a rare and profoundly disabling genetic disorder called Rett Syndrome. She requires maximum care for all aspects of daily life, as she is unable to speak, unable to use her hands in a meaningful fashion, self-feed, or participate in her own self-care in any way. She also suffers from seizures, abnormal breathing patterns, and major problems of the gastrointestinal system that include being predominantly tube-fed. Miraculously she is still able to walk.

5. I work part time at a local Nursery & Garden center doing plant care and nursery duties to make ends meet, as is seasonally appropriate.

6. What attracted me to Beste Pond Farm as a place to raise my daughter was the opportunity to live a simpler, more fulfilling life at a slower pace. I saw the opportunity to live off the land through large-scale gardening, foraging, and fishing in the pond adjacent to the Krause's residence, all of which significantly promote my feelings of well-being. Being able to address my needs in this way has profoundly affected my ability to keep my daughter present and engaged. I find a lot of solace in the quiet of the woods, and felt that I could best face the extraordinary challenges of raising a child with such a profound disability, while also staying in a very reasonable distance from Johns Hopkins hospital, where Eden receives the bulk of her care. It was also important to me that she have the freedom to move about on her own

terms. While I am always near her, I thought that I would feel comfortable allowing her more space to explore, to boost her feelings of independence.

7. Andy and Noreen genuinely felt much of what I've listed above, and agreed that I needed to be here with Eden, even though they knew that I would be a bit of a liability with our very limited finances and the unpredictability of Eden's disorder. Still, they allowed me to rent this apartment. They both feel great affection towards my daughter and have been very attentive to our needs, above and beyond what is legally required of them, all of which is outlined in our lease.

8. Immediately after moving in, I noticed the dogs barking. Many nights I will sit out on my steps to enjoy some quiet, fresh air, and clear skies after a physically and mentally exhausting day. The first time I heard them, I was genuinely alarmed. The way the sound bounces back and forth and amplifies between the ridges is amazing. At times it gets so loud with the barking that it sounds like there are dozens of them surrounding you. That was my experience the first time I heard it. I ran upstairs, frightened that it would still be audible in Eden's bedroom, and unfortunately it was. She awoke and it took quite a bit of time to get her back down to sleep.

9. In that first week, I mentioned it to Andy and he told me about the Petitioner and her dogs, that he was really sorry that it happened, that it was an ongoing issue, and that they planned to speak with the Petitioner as soon as things settled down for them. They asked that I not complain directly to the Petitioner, as she was a very nice lady and had seemed willing to work with them in the past. This happened in the final months of their house being built. I knew of the significant hardships that the Krauses were facing at that time in their family life as well, so I respected their wishes and left it in their hands. Upon realizing that this was not a problem that was going to go away, I saved money in order to buy a pricey white noise machine to play in my daughter's bedroom all night, every night, to cancel out the sound of the barking. Which we still do to this day.

10. The most recent time that I noted how incredibly loud the barking was, was just last week, on Tuesday, December 2. I was working in my garage at about 9:00pm, after Eden had gone to bed. Even with a pretty significant downpour at that time, I was still able to hear the dogs.

11. During the warmer months, Eden and I spend a lot of time outside. Along with our neighbors, Seth and Laura Carlson and their two children, Beckett (7) and Penny (4), we put out tables and chairs and work on our various projects that we often do together, while our children play. On many occasions we have had to grab our

children to protect them because of a strange dog approaching from the ridge below.

12. In trying to give Eden a sense of independence, I used to let her wander around the area of the barns, within reason. I have had to sprint to her on more than one occasion, to protect her when dogs approach, as she is completely unable to defend herself from any kind of an attack.

13. One of the amenities that attracted me to Beste Pond Farm was the use of the pond at the Krause's residence for recreational activities. After learning of the large amount of dogs upslope from the pond, and subsequent conversations with former tenant Pat Keating, I, to this date, have yet to swim in the water, out of concern for the potential of unsanitary runoff from the Petitioner's property. I have also been hesitant to eat any of the fish that I have caught from that pond for the same reason. Any time I have gone down to the pond to fish, if the dogs are out, the barking becomes downright deafening to the point that I generally won't stay for longer than 30 minutes.

14. In closing, I just want to say that the level of noise that the dogs create has definitely had an impact on my quality of life. Had I known ahead of time that this was going to be an issue, I may have chosen another place for me and my daughter to live.

I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

Jennifer Walsh

12/10/14
Date

Affidavit

Seth and Laura Carlson

2121 Abell Lane, Apt. C

Sparks, MD 21152

December 10, 2014

1. We are tenants at 2121 Abell Ln., Apt. C, Sparks MD 21152 since July 6, 2013 (rent = $1225/mo + utilities) owned by Beste Pond Farm, LLC (BPF) owned and managed by Andy and Noreen Krause situated on the valley ridge across from the Petitioner's property on 2012 Far Out Ln.

2. Seth Carlson works as a Graphic Design Manager and Laura works as an Accountant.

3. We chose to live in this apartment primarily for the benefit of the surrounding amenities and for our children to have a rural setting in which to be raised. The school system was one of the main reasons we desired to move into the apartment. We recently went through a short sale of our house and are trying to rebuild our financial situation, and in due time plan on purchasing a primary or vacation property. We are very much outside people. We enjoy hiking, biking, and gardening as well as playing with our children. Our son is extremely athletic and is outside every day for the warmer months. Our employment was also a draw to the area seeing as we both work in the Hunt Valley/Sparks area.

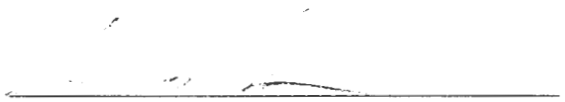
4. We noticed the dog barking right away as the sound seems to echo off the ridge and is consistent daily. We noticed that they are louder in the morning and evening hours and seems to go on for anywhere from 25-60 minutes at time. This noise would then set off a chain of other dogs in the area to howl back and forth. There are particular breeds of dogs that are louder than others and it seems they are part of the grouping located at 2012 Far Out Lane.

   There were other instances when we were either fishing or swimming in and around the pond that we noticed a considerable amount of noise coming from the same location, and at times our laughing would cause the dogs to bark towards our direction and make it even louder.

   There were two instances this past summer and spring (2014) that I encountered two dogs on the property at 2121 Abell Lane. One morning I exited the apartment and surprised two dogs that I had never seen before. I was not sure of the intent of the animals other than sniffing around the area. I yelled at them and they ran off, but I am not sure what would have happened if I had not surprised them and in turn they might have surprised me. The other instance involved my son while playing outside, and he was approached by a dog that neither of us recognized. Again we yelled and it ran off. In both instances the dogs ran down the hill towards Far Out Ln.

   As I have stated earlier that we enjoy spending time outside and almost every day we walk to get our mail out of the mailbox and on one particular day decided to take a hike up Far Out Lane to investigate what was located there. As we approached 2012 Far Out Lane, we were charged by a gaggle of dogs and both children were a bit shaken by the event. We turned and exited the area hastily, and we have avoided walking down Far Out Lane since.

Seth Carlson



Laura Carlson

GENERAL AFFIDAVIT

STATE OF MARYLAND

COUNTY OF BALTIMORE

PERSONALLY came and appeared before me, the undersigned Notary, the within named Thomas Mansfield, who is a resident of Baltimore County, State of Maryland, and makes this his statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge:

I, Thomas Mansfield, swear or affirm that I have witnessed a noise nuisance that has increased over the years coming from 2012 Far Out Lane. I have lived at this residence, 1936 Akehurst Rd., for 27 years. I live in a rural area and have very little personal contact with my neighbors. I have not complained in the past because I do not like to make "waves" and I am generally non-confrontational. I am also concerned about the increased barking frenzy and the lowering of my property value by this disturbance. On several occasions, while hunting on Andy Krause's property, with permission, I have witnessed Holly Robinson's dogs running through Andy Krause's property. I have also been awaken, in the summer, while my windows are open, by dogs barking and howling. I am concerned that the posting for Ms. Robinson's hearing was not posted in an area where the neighbors could see it. I was only made aware of this by Andy Krause.

DATED this the 9 day of 12, 2014

Signature of Affiant

SWORN to subscribed before me, this 3rd day of [illegible], 20[illegible]

NOTARY PUBLIC

My Commission Expires:

MELINDA R. SATSON
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires July 22, 2016

Affidavit

Name: La Kerry Dawson
Address: 5513 East Ave., Baltimore MD 21206

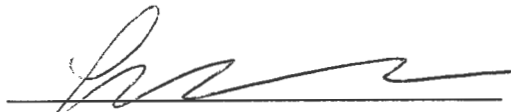
I, La Kerry Dawson swear or affirm:

I have known Noreen Krause since 2011. We are co-workers at Johns Hopkins HealthCare. I supervise community health workers at JHHC and Noreen is a trainer in our department. I do not supervise her and she does not supervise me.

During the summer of 2013 I went to see Noreen Krause at her place of residence, 1940 Akehurst Rd., for me and my daughter to swim in the pond and feed the fish. My daughter has special needs and I was delighted that Noreen would allow to this therapeutic experience, where she will be able to just enjoy nature and not worry about being different. As soon as we walked over to the pond you could hear the dogs barking from the property on the other side of the pond. The animal continual incessant barking could be heard during the day into the late afternoon. The barking gave my daughter some anxiety making the experience less enjoyable.

Further affiant saith not.
I SWEAR OR AFFIRM THAT THE ABOVE AND FOREGOING REPRESENTATIONS ARE TRUE AND CORRECT TO THE BEST OF MY INFORMATION, KNOWLEDGE, AND BELIEF.

La Kerry Dawson — 12/08/2014



name

12-08-2014

date

IN THE MATTER OF THE APPLICATION OF GLEN L. DURST, ET UX FOR SPECIAL EXCEPTION FOR A PRIVATE BREEDING KENNEL S/S BRANDY SPRINGS RD. 60' W. C/L OF MASEMORE RD. & N/S MT. CARMEL RD. 430' E. C/L OF SUNSWEPT LANE 7th DISTRICT	:	BEFORE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY NO. 84-54-X

: :

OPINION

This case comes before the Board on appeal from a decision of the Zoning Commissioner granting the requested special exception for a private breeding kennel and imposing certain restrictions thereon. The case was heard on February 14, 1984, in its entirety. The subject property is located on the south side of Brandy Springs Road 60 feet west of the centerline of Masemore Road and on the north side of Mt. Carmel Road 430 feet east of the centerline of Sunswept Lane, in the Seventh Election District of Baltimore County.

Mr. William Ulrich, land surveyor, testified that he prepared the plat for this site which was entered into evidence as Petitioner's Exhibit #1. He described the details portrayed on this exhibit to the Board. He noted the access to the proposed kennel would be via a paved lane off Mt. Carmel Road. He also noted the distance to the nearest residence to be some 500 feet± and to those on Flickerwood Road to be in excess of 1,000 feet. He noted the topography of the land as portrayed on Petitioner's Exhibit #3, which indicates the proposed site to be some 30 feet lower in elevation than Mt. Carmel Road. In closing his testimony, he noted that the land adjacent to the subject site is either wooded or pasture, the topography tending to discourage any tillage farming.

Mrs. Barbara Durst, property owner and Petitioner, then testified. Her testimony was that she has had the existing kennel for some twelve years and that it is a boarding kennel. A boarding kennel accepts any and all type dogs, and provides care for them for indeterminate periods. She also breeds and shows Chow dogs. Her success in breeding Chow dogs in the existing facility has been very poor since Chow dogs, especially puppies, are very susceptible to many diseases from other animals being boarded at this facility, hence, this request to be allowed a separate breeding facility. Mrs. Durst submitted as Petitioner's Exhibit #4-a thru #4-f a series of Facilities Inspection Reports conducted by an Animal Control Warden from April 4, 1979 thru

March 23, 1982. The number of dogs at the facility during these inspections ranged from 40 to 100 dogs, and in each and every inspection the facility was rated excellent.

Dr. William Shortall, veterinarian, testified that he does the veterinary work for this existing kennel, either on site or at his facility, the Padonia Veterinarian Hospital. He is of the opinion that the existing kennel is a very good one. He also confirmed the health problems with Chow puppies at this facility, noting an especially severe loss in the years 1979 and 1980, since which time breeding operations have been severely curtailed. He recommended separate breeding facilities as being normal for the breeding of Chow dogs.

Mr. Glenn Durst, property owner and Petitioner, testified that the kennel is operated solely by his wife. He described the proposed breeding kennel as being built of concrete block with wire fence covered runs. The building is to be air-conditioned with an office and an apartment on the upper level, in which he and his wife hope to reside. The new kennel would be underground in the side of a hill and would not be visible from any road. He also asked that he be allowed to move the kennel from 225 feet from the south property line to 205 feet from this line in order to utilize the existing topography and achieve this underground effect to the north. Mr. Durst noted that his land is not really suitable for farming, it being very erosive and wet, and stated that so far he has planted 7-8,000 white pine trees on the property.

Ms. Joyce Carlstrom, 1120 Mt. Carmel Road, a 13 year resident, testified she had no objection to the proposed breeding kennel. She stated that unconfined neighborhood pet dogs create a bigger nuisance than the existing kennel. The Board takes note that Ms. Carlstrom is the nearest neighbor to the proposed site to testify. Her testimony concluded Petitioner's case.

Mrs. Cynthia McCullough, 17008 Sunswept Lane, testified in opposition to the new kennel noting that the proposed location would be some 400 to 500 feet from her residence and she was certain that the barking of the dogs, particularly at night, would be audible to her. Mrs. Reita Erler, 16938 Flickerwood Road, also opposed the proposed kennel. (Note: She did not know just how far her home was from the proposed kennel but a scale on Petitioner's Exhibit #3 indicates it to be some 1400 to 1600 feet). She testified she hears the dogs barking from the existing kennel, day and night, and in fact kept a record of same which was entered as People's Counsel's Exhibit #2. Mrs. Erler also testified that she had made no complaints to anyone about this noise.

Mr. Fred Gunther, 16923 Flickerwood Road, also testified in opposition to the proposed kennel. (Note: His home is the same approximate distance as Mrs. Erler's home). Mr. Gunther testified that he lived at 1114 Mt. Carmel Road while his present home was being erected, and said that he could hear the dogs from the existing kennel at this location. He also made no complaints to anyone, this being only a temporary residence. He stated that he can hear the dogs in the summertime from his present home.

Ms. Maxine Myers, 1310 Mt. Carmel Road, testified that she hears the dogs barking almost daily, the situation being worse in the summertime, and noted that the proposed kennel would be relatively the same distance from her residence as the existing one. Rebecca Tansil, 17003 Sunswept Lane, has a kennel, by special exception, at this location. She breeds poodles and has a fancier's license. She objects to the proposed kennel because it represents increased commercialization in the area.

Mrs. Virginia Deardorff, 16924 Flickerwood Road, testified that she and her husband are developers of the properties along Flickerwood Road and fears that the additional kennel would detract from the area. She testified that there are twenty-five homesites in this area and that so far twelve houses have been erected. Mr. Donald Wirtz, 17002 Sunswept Lane, also testified in opposition to the new kennel because of the noise which is apt to be generated. This concluded Protestants case.

After reviewing all of the testimony and evidence presented, it appears that the special exception applied for by Petitioners should be granted. There was no substantive testimony that the proposed use would decrease property values in the area. A comparison of the testimony and evidence as it pertains to §502.1 indicates that the proposal meets all these prerequisites. The basic objection from the Protestants is to the noise that may result from the granting of this request. The Baltimore County Zoning Regulations clearly permit this land use by special exception in the R.C. 2 zone. Noise and dogs go hand in hand, and since the Council allowed this use in a rural zoning designation; i.e., R.C. 2, it must be considered normal rural noise as are tractors, cattle and other animals, etc., unless the noise can be proved to be unnatural, unusual or excessive. We have inspection notices from Baltimore County officials stating that the existing kennel is an "excellent" one, and the Board has no reason to believe that the proposed kennel will be anything less. It is, therefore, the opinion of this Board that the petition for a special exception for a breeding kennel should be granted and

will so order, subject to restrictions.

ORDER

For the reasons set forth in the aforegoing Opinion, it is this 24th day of April , 1984, by the County Board of Appeals, ORDERED that the special exception for a Private Breeding Kennel petitioned for, be and the same is hereby GRANTED, subject to the following restrictions:

1. That the proposed kennel building be no bigger than 28' x 80' - as shown on Petitioner's Exhibit #1, and that it be orientated in the same manner as shown.

2. That the Petitioners shall totally enclose the proposed kennel, and that all dogs be kept inside this enclosure from dark until 7:00 a.m. to reduce the possibility of noise during normal sleeping hours.

3. That the kennel be allowed to be placed 205 feet from the southern property line instead of the 225 feet now shown.

4. That the kennel itself be insulated and soundproofed to the best possible degree, and that it be appropriately landscaped and maintained in order to obtain the maximum reduction of noise eminating from the kennel.

5. That the Private Breeding Kennel be just that, and that the kennel be used only for the breeding and care of Chow dogs. No other dogs are to be boarded at this site.

6. That the special exception herein granted is for a "Private Breeding Kennel" as opposed to a normal "boarding" kennel.

Any appeal from this decision must be in accordance with Rules B-1 thru B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

LeRoy B. Spurrier

Patricia Phipps
Patricia Phipps

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

November 6, 2015

Michelle J. Dickinson, Esq.
10440 Little Patuxent Pkwy., Suite 300
Columbia, Maryland 21044

G. Macy Nelson, Esq.
401 Washington Avenue, Suite 803
Towson, Maryland 21204

RE: **APPEAL TO BOARD OF APPEALS**
Case No. 2015-0235-SPHA
Location: 2012 Far Out Lane

Dear Counsel:

Please be advised that an appeal of the above-referenced case was filed in this Office on November 4, 2015. 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,

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS/sln

c: Baltimore County Board of Appeals
People's Counsel for Baltimore County

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 2012 Far Out Lane, Sparks, MD 21152 **which is presently zoned** RC-2

Deed References: S.M. No. 1014; folio 155 10 Digit Tax Account # 05-14-010230

Property Owner(s) Printed Name(s) Catherine H. Robinson

(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. __X_ **a Special Hearing** to request the Administrative Law Judge to amend the December 18, 2014 order granting a Special Exception for a private kennel in case 2015-0092-X as shown and indicated on the site plan filed in this case.

2. __ **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

_ 3. __X___ **a Variance** from Section 421.1, BCZR to permit a private kennel in a RC-2 zone to be located within 15 ft. of the nearest property line in lieu of the required 200 ft.

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

Legal Owners (Petitioners):

Catherine H. Robinson /
Name #1 – Type or Print Name #2 – Type or Print

Catherine H Robinson
Signature #1 Signature # 2

2012 Far Out Lane, Sparks, Maryland
Mailing Address City State

21152 / 410-979-7539 / catherinestoley@aol.com
Zip Code Telephone # Email Address

Attorney for Petitioner:

Michelle J. Dickinson, Esq.
Name - Type or Print

Michelle J. Dickinson
Signature

10440 Little Patuxent Pkwy, Ste 300, Columbia, Maryland
Mailing Address City State

21044 / 410-740-5630 / michelle@dickinson-law.com
Zip Code Telephone # Email Address

Representative to be contacted:

Michelle J. Dickinson, Esq.
Name – Type or Print

Michelle J. Dickinson
Signature

10440 Little Patuxent Pkwy, Ste 300, Columbia, Maryland
Mailing Address City State

21044 410-740-5630 /michelle@dickinson-law.com
Zip Code Telephone # Email Address

CASE NUMBER 2015-0275-SPHA **Filing Date** 4/23/15 **Do Not Schedule Dates:** _____ **Reviewer** JH

ORDER RECEIVED FOR FILING
Date 10-9-15
By DEN

REV. 10/4/11

Gerhold, Cross & Etzel, Ltd.
Registered Professional Land Surveyors • Established 1906

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

August 28, 2014

ZONING PROPERTY DESCRIPTION FOR 2012 FAR OUT LANE

Beginning at a point on the east side of Far Out Lane, which is 20 feet wide, at the distance of 1,475 feet, more or less, southwest of the centerline of Akehurst Road, and running in or near the paving of Far Out Lane, the six following courses and distances, (1) South 13 degrees 25 minutes 25 seconds West 345.41 feet, (2) South 25 degrees 42 minutes 55 seconds West 59.14 feet, (3) South 43 degrees 47 minutes 05 seconds West 27.77 feet, (4) South 62 degrees 10 minutes 45 seconds West 70.02 feet, (5) South 69 degrees 39 minutes 55 seconds West 82.63 feet, and, (6) South 58 degrees 27 minutes 45 seconds West 85.25 feet, thence leaving Far Out Lane and running, (7) North 36 degrees 06 minutes 35 seconds West 256.45 feet, (8) North 19 degrees 39 minutes 35 seconds West 221.27 feet, (9) North 46 degrees 56 minutes 46 seconds East 282.03 feet, (10) North 47 degrees 27 minutes 44 seconds East 94.67 feet, (11) South 61 degrees 20 minutes 01 seconds East 309.06 feet, and, (12) South 61 degrees 22 minutes 45 seconds East 17.86 feet to the place of beginning, 5.415 acres of land, more or less, located in the 5th Election District and 3rd Council District.

License expires/renews 2/26/15

#0235

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. 121454

Date: 4/23/15

Fund	Dept	Unit	Sub Unit	Rev. Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				$ 150.00 CK

Total: $ 150.00

Rec From: Catherine Robinson

For: Special Hearing & Variance

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
PLEASE PRESS HARD!!!!

CASHIER'S VALIDATION

PAID RECEIPT
BUSINESS ACTUAL TIME
4/23/2015 4/23/2015 10:26:07
REC MSDA WILKIN GAIL SAM
RECEIPT # 643332 4/23/2015
Dept 5 328 ZONING VERIFICATION
NO. 121454
Recpt Tot $150.00
$.00 CK $150.00 CA
Baltimore County, Maryland

CK # 2015-0225-SPHA

CASE NO. 2015-0235-SPHA

CHECKLIST

Comment Received	Department	Support/Oppose/ Conditions/ Comments/ No Comment
5/6	DEVELOPMENT PLANS REVIEW (if not received, date e-mail sent _____)	C
_____	DEPS (if not received, date e-mail sent _____)	_____
_____	FIRE DEPARTMENT	_____
5/11	PLANNING (if not received, date e-mail sent _____)	C
4/30	STATE HIGHWAY ADMINISTRATION	NO Objs
_____	TRAFFIC ENGINEERING	_____
_____	COMMUNITY ASSOCIATION	_____
_____	ADJACENT PROPERTY OWNERS	_____

ZONING VIOLATION (Case No. _____)

PRIOR ZONING (Case No. 2015-0092-X)

NEWSPAPER ADVERTISEMENT Date: 8/6/15

SIGN POSTING Date: 7/29/15 by Doak

PEOPLE'S COUNSEL APPEARANCE Yes ☑ No ☐

PEOPLE'S COUNSEL COMMENT LETTER Yes ☐ No ☐

Comments, if any: _____

Real Property Data Search (w4) Guide to searching the database

Search Result for BALTIMORE COUNTY

View Map View GroundRent Redemption View GroundRent Registration

Account Identifier: **District - 05 Account Number - 0514010230**

Owner Information

Owner Name:	ROBINSON CATHERINE H	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	2012 FAR OUT LN SPARKS MD 21152-9694	**Deed Reference:**	/10141/ 00153

Location & Structure Information

Premises Address:	2012 FAROUT LN 0-0000	**Legal Description:**	5.416 AC WS AKEHURST RD 3600 W STRINGTOWN RD

Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0027	0015	0182		0000				2014	Plat Ref:

Special Tax Areas: **Town:** NONE
Ad Valorem:
Tax Class:

Primary Structure Built	Above Grade Enclosed Area	Finished Basement Area	Property Land Area	County Use
1921	2,696 SF		5.4100 AC	04

Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation
1	YES	STANDARD UNIT	WOOD SHINGLE	3 full	1Att/1Det	

Value Information

	Base Value	Value As of 01/01/2014	Phase-in Assessments As of 07/01/2015	As of 07/01/2016
Land:	149,100	134,200		
Improvements	174,500	173,000		
Total:	323,600	307,200	307,200	307,200
Preferential Land:	0			0

Transfer Information

Seller: NELSON EVELYN J	**Date:** 11/15/1993	**Price:** $122,500
Type: ARMS LENGTH IMPROVED	**Deed1:** /10141/ 00153	**Deed2:**
Seller: POHMER ALBERT E	**Date:** 06/08/1962	**Price:** $10,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /03999/ 00309	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2015	07/01/2016
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Tax Exempt: **Special Tax Recapture:**
Exempt Class: NONE

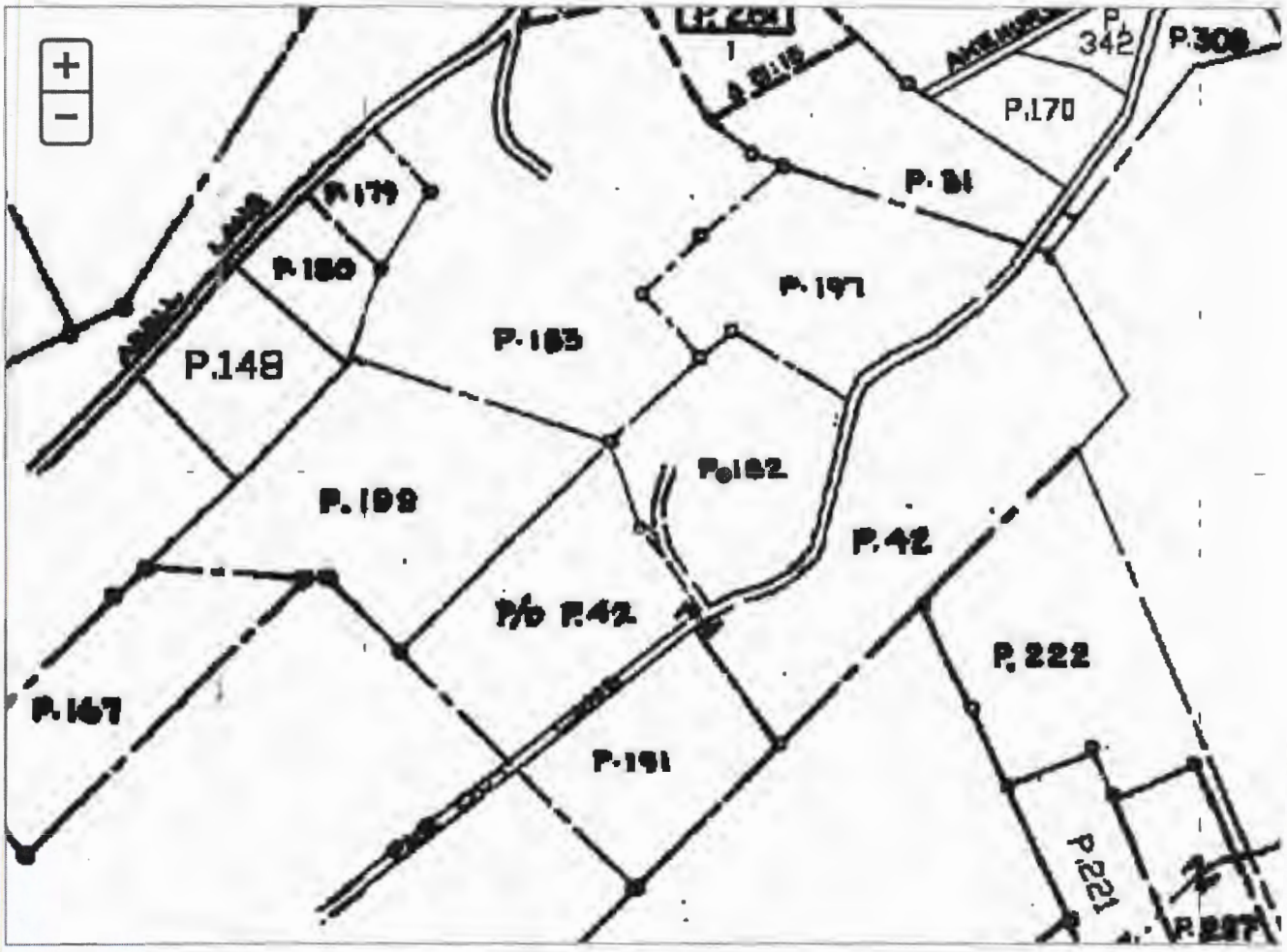
Homestead Application Information

Homestead Application Status: Approved 08/07/2009

Baltimore County

New Search (http://sdat.dat.maryland.gov/RealProperty)

District: **05** Account Number: **0514010230**



The information shown on this map has been compiled from deed descriptions and plats and is not a property survey. The map should not be used for legal descriptions. Users noting errors are urged to notify the Maryland Department of Planning Mapping, 301 W. Preston Street, Baltimore MD 21201.

If a plat for a property is needed, contact the local Land Records office where the property is located. Plats are also available online through the Maryland State Archives at **www.plats.net (http://www.plats.net)**.

Property maps provided courtesy of the Maryland Department of Planning ©2011.

For more information on electronic mapping applications, visit the Maryland Department of Planning web site at **www.mdp.state.md.us/OurProducts/OurProducts.shtml (http://www.mdp.state.md.us/OurProducts/OurProducts.shtml)**.

(http://mgsweb05.mdp.state.md.us/website/mosp/)

Loading... Please Wait. Loading... Please Wait. -->

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: August 10, 2015

FROM: Andrea Van Arsdale
Director, Department of Planning

RECEIVED
AUG 26 2015
OFFICE OF ADMINISTRATIVE HEARINGS

SUBJECT: 2012 Far Out Lane

INFORMATION:

Item Number: 15-235

Petitioner: Catherine H. Robinson

Zoning: RC 2

Requested Action: Special Hearing, Variance

SUMMARY OF REFINED RECOMMENDATIONS:

A meeting held July 17, 2015 between the Department of Planning (Department) and the Petitioner to include her legal counsel indicated substantial material changes have occurred to the subject property since the Department issued its recommendations of May 11, 2015. A revised site plan dated August 6, 2015 and received by this Department on August 7, 2015 documents those changes. The Department notes the existence of a new opaque privacy fence at the northwest tract boundary with substantial vegetative screening and a new screen fence with gates enclosing the majority of the subject property.

The Department has no objection to granting the Petition for Special Hearing to amend the Administrative Law Judge's order in Zoning Case 2015-0092 and Petition for Variance to permit a private kennel in a residential zone to be located within 15 feet of the nearest property line in lieu of the required 200 feet conditioned upon the following:

- Limit the Special Exception use to the extent of the existing underground fence/modified kennel as shown on the aforementioned revised site plan. Any future structure associated with the private kennel shall be located within this area.
- Conditions 2 and 3 in the Administrative Law Judge's Opinion and Order granted on December 18, 2014 in zoning case number 2015-0092-X should remain in place.

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

Division Chief: Kathy Schlabach

AVA/KS
C: Carmela Iacovelli

S:\Planning\Dev Rev\ZAC\ZACs 2015\15-235refined.docx

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: May 11, 2015

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: 2012 Far Out Lane

INFORMATION:

Item Number: 15-235

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SUMMARY OF RECOMMENDATIONS:

The Department of Planning has reviewed the Petition for Special Hearing to amend the Administrative Law Judge's order in Zoning Case 2015-0092 and Petition for Variance to permit a private kennel in a residential zone to be located within 15 feet of the nearest property line in lieu of the required 200 feet.

The Department of Planning has no objection to granting the petitioned relief conditioned upon the following:

- Relocate the boundary of the invisible dog fence / dog run as identified in Zoning Case 2015-0092 to a location no less than 100 feet from the nearest property line and retain the wooded area between the property lines and private kennel.
- Limit the Special Exception use to the relocated dog run and the existing dwelling. Any future structure associated with the private kennel shall be located within this area.

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

Division Chief: _____
AVA/KS

6-16
P.P

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: May 11, 2015

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: 2012 Far Out Lane

RECEIVED
MAY 14 2015
OFFICE OF ADMINISTRATIVE HEARINGS

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S:\Planning\Dev Rev\ZAC\ZACs 2015\15-235.docx

5/20/15
10CR

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Division Chief: Kathy Schlabach
AVA/KS

John E. Beverungen

From: Jeanette Tansey
Sent: Friday, June 12, 2015 9:25 AM
To: John E. Beverungen
Cc: michelle@dickinson-law.com
Subject: Case 2015-0235 Robinson Residence

Good morning, John – I met with the attorney on the above case and she had pictures of the site and explanation of the operation and meaning of the use of the fencing. As such, please change my comment as sent from Dennis Kennedy on May 6 to simply approve the proposed plan. Thank you.

Jeanette M. S. Tansey, R.L.A.
Project Manager, Baltimore County
Permits, Approvals & Inspections
Development Plans Review
111 W. Chesapeake Ave., Room 119
Towson, MD 21204

410-887-3751
jtansey@baltimorecountymd.gov

TO: PATUXENT PUBLISHING COMPANY
Thursday, August 6, 2015 Issue - Jeffersonian

Please forward billing to:
Catherine Robinson 410-979-7539
2012 Far Out Lane
Sparks, MD 21152

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: 2015-0235-SPHA
2012 Far Out Lane
Southside of Far out Lane, 1475 ft. southwest of Akehurst Road
5th Election District – 3rd Councilmanic District
Legal Owners: Catherine Robinson

Special Hearing to request the Administrative Law Judge to amend the December 18, 2014 order granting a Special Exception for a private kennel in case 2015-0092-X as shown and indicated on the site plan filed in this case. **Variance** to permit a private kennel in an RC-2 zone to be located within 15 ft. of the nearest property line in lieu of the required 200 ft.

Hearing: Wednesday, August 26, 2015 at 1:30 p.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.

TO: PATUXENT PUBLISHING COMPANY
Tuesday, May 19, 2015 Issue - Jeffersonian

Please forward billing to:
Catherine Robinson 410-979-7539
2012 Far Out Lane
Sparks, MD 21152

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Southside of Far out Lane, 1475 ft. southwest of Akehurst Road
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Hearing: Tuesday, June 16, 2015 at 2:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director of Permits, Approvals and Inspections for Baltimore County

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DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE

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 legal owner/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 legal owner/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:

Case Number: 2015-0235-SPHA

Property Address: 2012 Far Out Lane, Sparks, Maryland 21152

Property Description: _____

_____

Legal Owners (Petitioners): Catherine H. Robinson

Contract Purchaser/Lessee: _____

PLEASE FORWARD ADVERTISING BILL TO:

Name: Catherine H. Robinson

Company/Firm (if applicable): _____

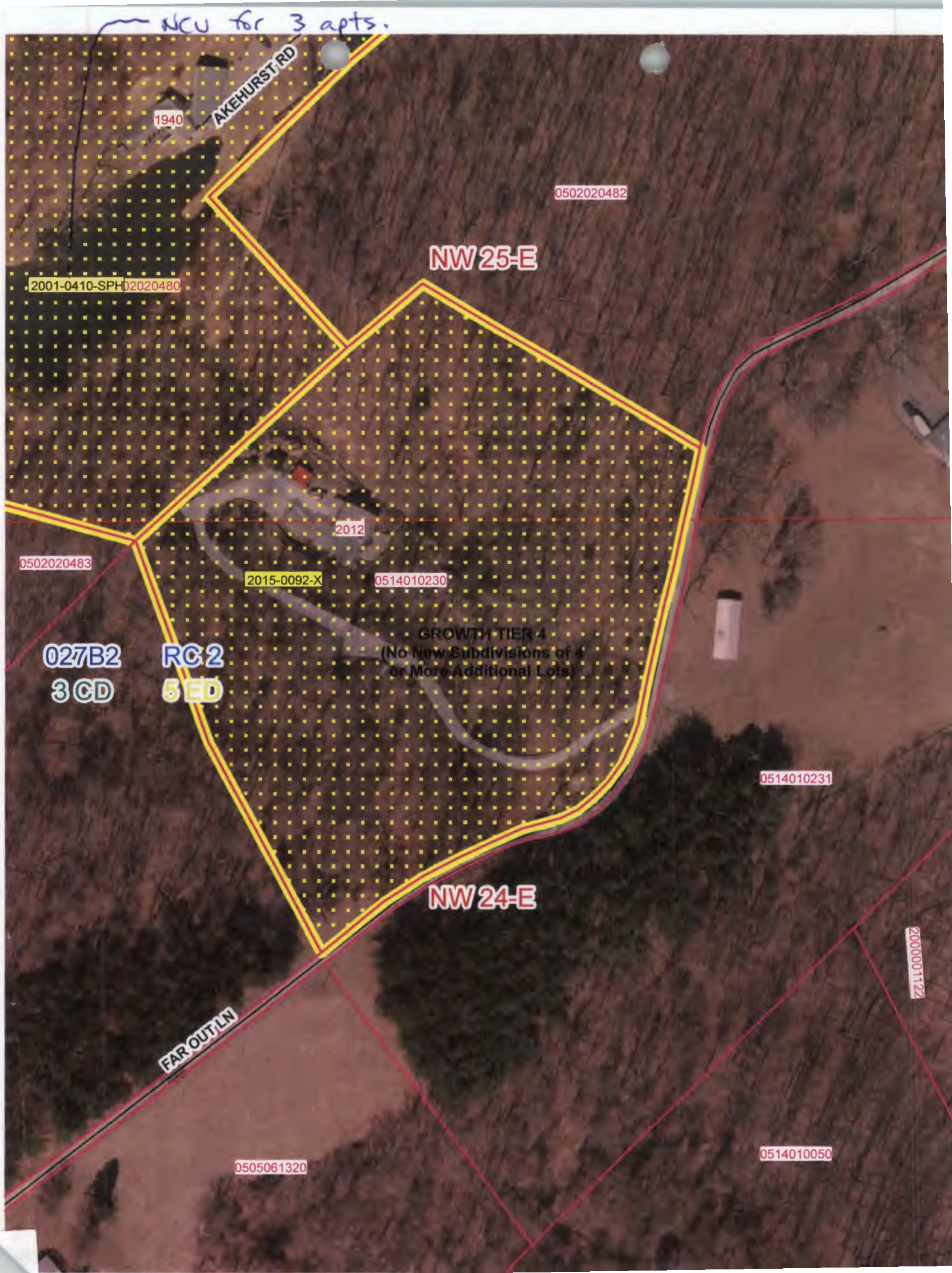
Address: 2012 Far Out Lane

Sparks, Maryland 21152

_____

Telephone Number: 410-979-7539

Revised 5/20/2014


NCU for 3 apts.
AKEHURST RD
1940
0502020482
NW 25-E
2001-0410-SPH02020480
2012
0502020483
2015-0092-X
0514010230
GROWTH TIER 4
(No New Subdivisions of 4
or More Additional Lots)
027B2
3 CD
RC 2
5 ED
0514010231
NW 24-E
2000001122
FAR OUT LN
0505061320
0514010050

MARYLAND COORDINATE SYSTEM
NAD83(1991)

BESTE POND FARM, LLC
S.M. No. 20296 folio 672
05-02-020480
1940 AKEHURST ROAD

THE FLYING J. RANCH, LLC
S.M. No. 20680 folio 552
05-02-020482
YEOHO ROAD

STONE FOUND AT CORNER

N41°27'44"E 44.67'

STONE FOUND AT CORNER

PROPOSED FENCE

S61°20'01"E 309.06'

PROPOSED FENCE

STONE FOUND AT CORNER

ZONING POINT OF BEGINNING 1475'± FROM ℄ OF AKEHURST ROAD

S61°22'45"E 17.86'

1" IRON PIPE FOUND N88°58'11"W 0.16' FROM CORNER

N46°36'46"E 282.03'

268'±

145'±

200'

5.415 Ac.±

20' WIDE RIGHT OF WAY FOR INGRESS & EGRESS

LANE

STONE FOUND AT CORNER

BESTE/POND FARM, LLC
S.M. No. 20296/folio 672
05-02-020483
YEOHO ROAD

84'±

15'±

100'±

HEIGHT 20.5'±

EXISTING DWELLING

HEIGHT 17.5'±

EX. SPRING HOUSE HEIGHT 10.5'±

318'±

S15°25'W 345.41'

N19°59'59"W 221.27'

APPROXIMATE LOCATION EXISTING UDERGROUND FENCE / KENNEL

200'

ASPHALT PAVING

EX. GARAGE HEIGHT 12'±

APPROX LOCATION EXISTING WELL

107'±

200'

PROPOSED FENCE

OUT

EX. BARN

3/4" IRON PIPE FOUND AT CORNER

JUDITH R. LEVENSON
S.M. No. 17870 folio 207
05-14-010231 /
2007 FAR OUT LANE

PROPOSED FENCE

N36°06'55"W 256.45'

S25°42'55"W 59.14'

S43°47'05"W 27.77'

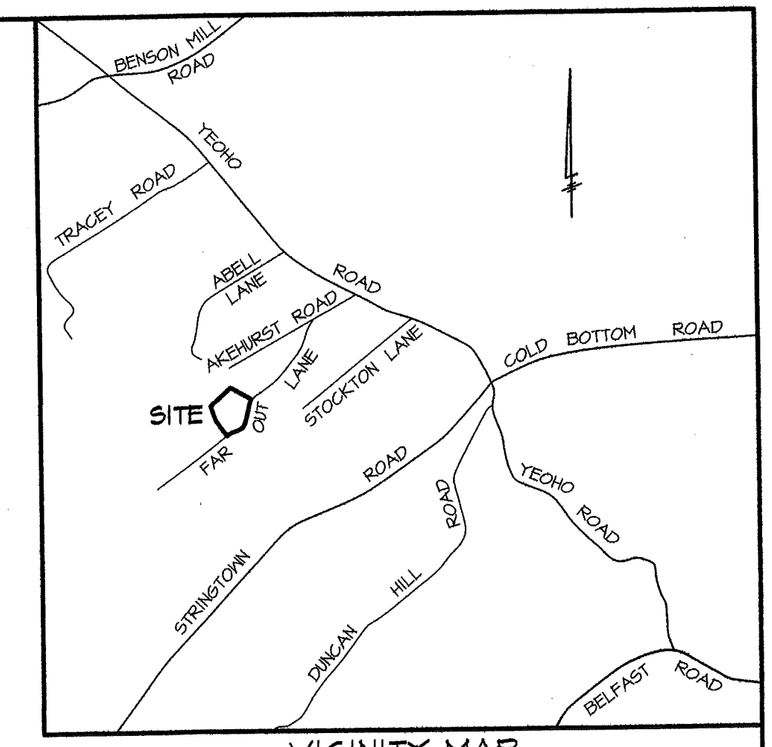
S62°10'45"W 70.02'

JUDITH R. LEVENSON
S.M. No. 17870 folio 207
05-14-010231
2007 FAR OUT LANE

S69°39'55"W 82.63'

FAR

S58°27'45"W 85.25'



VICINITY MAP
1" = 2000'

GENERAL NOTES

1. THE BOUNDARY SHOWN HEREON IS FROM A SURVEY BY GERHOLD, CROSS & ETZEL, LTD..
2. THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILE 027B2.
3. CENSUS TRACT: 40500 REGIONAL PLANNING DISTRICT: 302
   WATERSHED: LOCH RAVEN RESERVOIR SUBSHED: BLACKROCK RUN
   SCHOOL DISTRICT: ELEMENTARY - FIFTH DISTRICT; MIDDLE - HEREFORD; HIGH - HEREFORD
   A.D.C. MAP & GRID: 11 G-3
4. THE PROPERTY IS NOT UNDER ANY ACTIVE ZONING VIOLATION.
5. THE SUBJECT PROPERTY IS NOT HISTORIC. THE SUBJECT PROPERTY IS WITHIN THE WESTERN RUN - BELFAST NATIONAL REGISTER HISTORIC DISTRICT.
6. THERE ARE NO KNOWN UNDERGROUND FUEL STORAGE TANKS ON THE SUBJECT PROPERTY.
7. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
8. THE SUBJECT PROPERTY IS NOT WITHIN A 100 YEAR FLOOD PLAIN.
9. THE PROPERTY IS SERVED BY A PRIVATE WELL AND SEPTIC SYSTEM.

PRIOR ZONING HEARING, CASE No. 2015-0092-X:

ORDER DATED DECEMBER 18, 2014 GRANTED THE USE OF THE PROPERTY FOR A PRIVATE KENNEL. SUBJECT TO THE FOLLOWING CONDITIONS:
PETITIONER MAY KEEP ON THE PREMISES AT ANY ONE TIME NO MORE THAN 10 DOGS;

THE SPECIAL EXCEPTION GRANTED WILL TERMINATE AUTOMATICALLY IF AND WHEN Ms. ROBINSON AND/OR KAWANA SWANK NO LONGER OWN OR RESIDE AT THE PREMISES.

PETITIONER SHALL ON OR BREFORE JUNE 30, 2015 SECURE NECESSARY PERMITS AND COMMENCE CONSTRUCTION OF ANY BUILDING TO BE USED FOR HOUSING THE DOGS IN COMPLIANCE WITH B.Z.C.R. 421.1, WHICH STRUCTURE MUST BE COMPLETED ON OR BEFORE AUGUST 30, 2015. THE OUTSIDE AREAS USED FOR EXERCISE AND/OR DOG RUNS MAY NOT BE LOCATED WITHIN 200 FEET OF THE NEAREST PROPERTY LINE, AS REQUIRED BY B.C.Z.R. 421.1. THIS OUTSIDE AREA MUST ALSO BE FULLY ENCLOSED BY A FENCE OR UNDERGROUND ELECTRIC FENCE TO CONTAIN THE DOGS ON THE PETITIONER'S PROPERTY.

SPECIAL HEARING REQUEST:

TO AMEND THE PREVIOUSLY GRANTED SPECIAL EXCEPTION FOR A PRIVATE KENNEL

VARIANCE REQUEST:

SECTION 421.1 B.C.Z.R.: TO ALLOW A PRIVATE KENNEL TO BE LOCATED AS LITTLE AS 15 FEET TO THE PROPERTY LINE IN LIEU OF THE REQUIRED 200 FEET

OWNER\DEVELOPER

CATHERINE H. ROBINSON
2012 FAR OUT LANE
SPARKS, MD 21152
410-979-7539

PLAT TO ACCOMPANY A PETITION FOR A SPECIAL HEARING AND VARIANCE

FOR THE

ROBINSON RESIDENCE

2012 FAR OUT LANE
Deed Ref: S.M. No. 10141 folio 153
Tax Account No.: 05-14-010230
Zoned: RC 2; GIS Tile 027B2
Tax Map 0027; Grid 0015; Parcel 0182
5th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

STATE OF MARYLAND
SCOTT ALAN LINDGREN
No. 21081
PROFESSIONAL LAND SURVEYOR
4/23/15

LICENSE EXPIRES/RENEWS 2/26/17

REVISED: 04/22/15
REVISED: 10/20/14

GERHOLD, CROSS & ETZEL, LTD
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
PH: (410)823-4470 FAX: (410)823-4473

DATE: 8/27/14 | SCALE: 1" = 50'

#0235

MARYLAND COORDINATE SYSTEM
NAD83(1991)

BESTE POND FARM, LLC
S.M. No. 20296 folio 672
05-02-020480
1940 AKEHURST ROAD

THE FLYING J. RANCH, LLC
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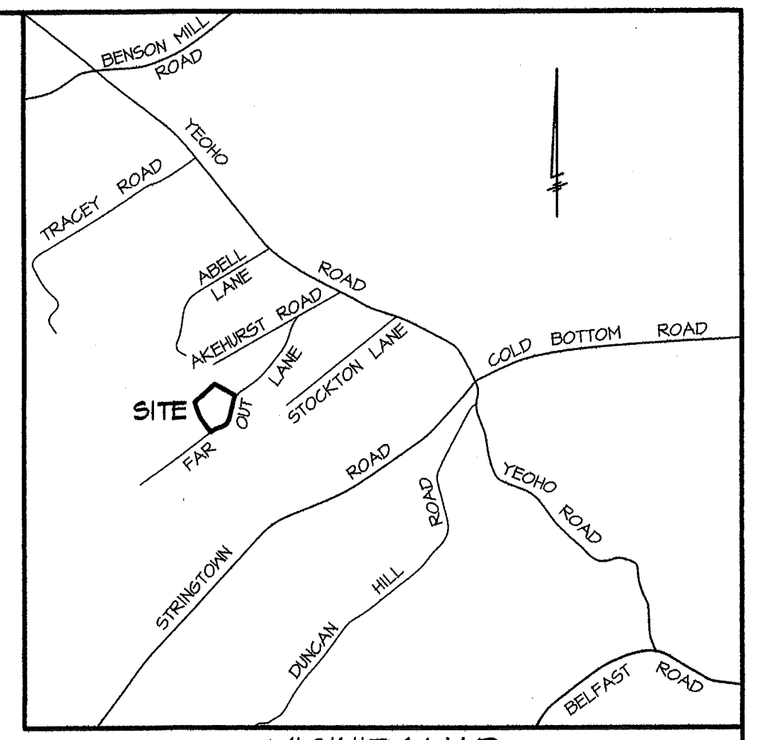

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PH: (410)823-4470 FAX: (410)823-4473

DATE: 8/27/14 | SCALE: 1" = 50'

4E235

APPEAL

Petitions for Special Hearing and Variance
(2012 Far Out Lane)
5th Election District – 3rd Councilmanic District
***Legal Owner*: Catherine H. Robinson**
Case No. 2015-0235-SPHA

Petition for Zoning Hearing (April 23, 2015)

Zoning Description of Property

Notice of Zoning Hearing (June 18, 2015 for August 26, 2015 hearing)
(May 11, 2015 for June 16, 2015 hearing-postponed)

Certificate of Publication (August 6, 2015)
(May 19, 2015)

Certificate of Posting (July 29, 2015) Bruce E. Doak
(May 20, 2015) Bruce E. Doak

Entry of Appearance by People's Counsel (May 4, 2015)

Petitioner(s) Sign-in Sheet – One
Citizen(s) Sign-in Sheet – One

Zoning Advisory Committee Comments

Petitioner(s) Exhibits -

1. Photos of dogs owned by Petitioner
2. Site plan
3. Letters of support
4. Photos of site
5. Photos showing fencing at property
6. 2 videos of site on computer thumb drive
7. Hosmer C.V.
8. Aerial Photo
9. Series of photos of "stream"
10. COMAR Section

Protestants' Exhibits –

1. Email from A-Krause 2-27-2015
2. Photo of dogs in "drainage way"
3. Aerial photo w/topo
4. Jen Walsh E-mail 6-2-2015
5. Aerial Photo
6. Aerial topo map
7. Photo of house
8. DVD- "Kennel Noise"
9. Photo- dog in stream
10. Photo-pond
11. Photo-pond
12. Aerial exhibit- sample locations
13. Enviro Chem lab results
14. Not Admitted
15. EPA water contamination standards
16. Letters from neighbors

Miscellaneous (Not Marked as Exhibits)

Administrative Law Judge Order and Letter (Granted on October 9, 2015)

Notice of Appeal –November 4, 2015- G. Macy Nelson, LLC

APPEAL

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(2012 Far Out Lane)
5th Election District – 3rd Councilmanic District
***Legal Owner*: Catherine H. Robinson**
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2015-0235

BESTE POND FARM, LLC
S.M. No. 20296 folio 672
05-02-020480
1940 AKEHURST ROAD

AT CORNER

N47°27'44"E
94.67'

STONE FOUND
AT CORNER

S61°20'

PROPOSED FENCE

282.03'

N46°56'46"E

268'±

145'±

200'

5.415 Ac.±

84'±

HEIGHT 20.5'±

100'±

15'±

EXISTING
DWELLING

HEIGHT 17.5'±

318'±

EX. SPRING HOUSE
HEIGHT 10.5'±

APPROXIMATE LOCATION
EXISTING UDERGROUND
FENCE / KENNEL

200'

ASPHALT PAVING

N43°53'54"W 221.27'

EX. GARAGE
HEIGHT 12'±

APPROX. LOCATION
EXISTING WELL

3/4" IRON PIPE
FOUND AT CORNER

PROPOSED FENCE

N36°06'35"W 256.45'

S69°39'55"W
82.63'

FAR

S58°27'45"W
85.25'

RANCH, LLC
folio 552
20482
ROAD

STONE FOUN
AT CORNER

OUT

S25°42'5
59.14'

S43°47'
27.77'

5"W

LEVENSON
370 folio 207
-010231
R OUT LANE

L. LEVENSON
370 folio 207
-010231
R OUT LANE

PLAT TO ACCOMPANY A PETITION FOR A SPECIAL HEARING AND VARIANCE

FOR THE

ROBINSON RESIDENCE

2012 FAR OUT LANE
Deed Ref: S.M. No. 10141 folio 153
Tax Account No.: 05-14-010230
Zoned: RC 2; GIS Tile 027B2
Tax Map 0027; Grid 0015; Parcel 0182
5th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

GERHOLD, CROSS & ETZEL, LTD
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
PH: (410)823-4470 FAX: (410)823-4473

DATE: 8/27/14 | SCALE: 1" = 50'

Diagram 1

(Modified from Original Plat Exhibit from Petitioner)

Actual Scale is 1" = 50'

because this Diagram is 65% of the size of the Original (where 1" = 50')

ATTACHMENT 2

BESTE POND FARM, LLC
S.M. No. 20296 folio 672
05-02-020480
1940 AKEHURST ROAD

AT CORNER

N47°27'44"E
94.67'

STONE FOUND
AT CORNER

PROPOSED FENCE

S61°20'

PR

N46°56'46"E 282.03'

5.415 Ac.±

268'±

145'±

200'

HEIGHT 20.5'±

EXISTING
DWELLING

HEIGHT 17.5'±

EX. SPRING HOUSE
HEIGHT 10.5'±

318'±

APPROXIMATE LOCATION
EXISTING UDERGROUND
FENCE / KENNEL

ASPHALT PAVING

EX. GARAGE
HEIGHT 12'±

APPROX. LOCATION
EXISTING WELL

84'±

15'±

100'±

N19°23'35"W 221.27'

3/4" IRON PIPE
FOUND AT CORNER

PROPOSED FENCE

N36°06'35"W 256.45'

S69°39'55"W
82.63'

S58°27'45"W
85.25'

FAR

RANCH, LLC
2 folio 552
20482
ROAD

STONE FOUN
AT CORNER

PROPOSED FENCE

OUT

107'±

S25°42'5
59.14'

S43°47'
27.77'

5"W

LEVENSON
70 folio 207
-010231
R OUT LANE

. LEVENSON
370 folio 207
4-010231
AR OUT LANE

PLAT TO ACCOMPANY A PETITION
FOR A SPECIAL HEARING AND VARIANCE
FOR THE

ROBINSON RESIDENCE

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ATTACHMENT 2

Lot # 1
1936
050205749
0504065050
Lot # 1
1900011515
ABELL LN
0513014500
AKEHURST RD
2121
0502020480
0502065380
AKEHURST
1940
0502020482
RC 2
163'
100'
2012
0514010230
OUT
0502020483
0514010231
FAR OUT LN
0505061320
0512000190

PETITIONER'S

EXHIBIT NO. 8

PLOTS PLANS' EX # 22

MARYLAND COORDINATE SYSTEM
NAD83(1991)

BESTE POND FARM, LLC
S.M. No. 20296 folio 672
05-02-020480
1940 AKEHURST ROAD

THE FLYING J. RANCH, LLC
S.M. No. 20680 folio 552
05-02-020482
YEOHO ROAD

STONE FOUND AT CORNER

N47°27'44"E 94.67'

S61°20'01"E 309.06'

STONE FOUND AT CORNER

N46°56'46"E 282.05'

NEW 3.5' WOOD FENCE WITH WIRE

STONE FOUND AT CORNER

ZONING POINT OF BEGINNING 1,475'± FROM ℄ OF AKEHURST ROAD

S61°22'45"E 17.86'

1" IRON PIPE FOUND N88°58'11"W 0.16' FROM CORNER

20' WIDE RIGHT OF WAY FOR INGRESS & EGRESS

NEW ALTERNATE BOARD PRIVACY FENCE

HEIGHT 6.8'

HEIGHT 8'

HEIGHT 5.75'

HEIGHT 4.5'

HEIGHT 3.5'

5.415 Ac.±

EXISTING DWELLING

HEIGHT 17.5'±

HEIGHT 20.5'±

EX. SPRING HOUSE HEIGHT 10.5'±

APPROXIMATE LOCATION EXISTING UNDERGROUND FENCE / PROPOSED MODIFIED KENNEL

ASPHALT PAVING

EX. GARAGE HEIGHT 12'±

APPROX. LOCATION EXISTING WELL

EX. BARN

LANE

OUT

FAR

N19°59'35"W 221.27'

3/4" IRON PIPE FOUND AT CORNER

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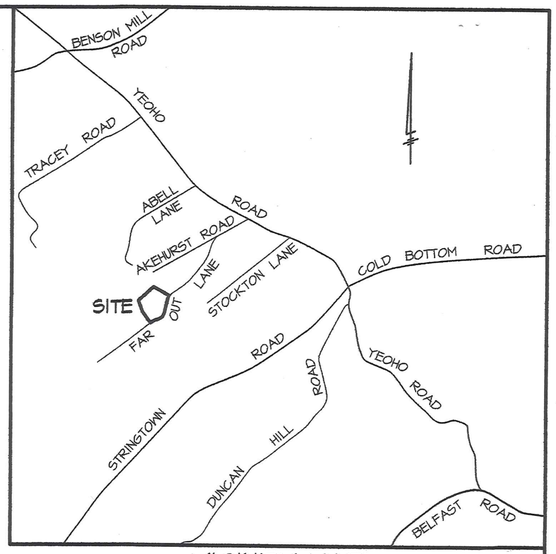
S58°27'45"W 85.25'

BESTE POND FARM, LLC
S.M. No. 20296 folio 672
05-02-020483
YEOHO ROAD

JUDITH R. LEVENSON
S.M. No. 17810 folio 207
05-14-010231
2007 FAR OUT LANE

JUDITH R. LEVENSON
S.M. No. 17810 folio 207
05-14-010231
2007 FAR OUT LANE



VICINITY MAP
1" = 2000'

GENERAL NOTES

1. THE BOUNDARY SHOWN HEREON IS FROM A SURVEY BY GERHOLD, CROSS & ETZEL, LTD..
2. THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILE 027B2.
3. CENSUS TRACT: 40500 REGIONAL PLANNING DISTRICT: 302
   WATERSHED: LOCH RAVEN RESERVOIR SUBSHED: BLACKROCK RUN
   SCHOOL DISTRICT: ELEMENTARY - FIFTH DISTRICT; MIDDLE - HEREFORD; HIGH - HEREFORD
   A.D.C. MAP & GRID: 11 G-3
4. THE PROPERTY IS NOT UNDER ANY ACTIVE ZONING VIOLATION.
5. THE SUBJECT PROPERTY IS NOT HISTORIC. THE SUBJECT PROPERTY IS WITHIN THE WESTERN RUN - BELFAST NATIONAL REGISTER HISTORIC DISTRICT.
6. THERE ARE NO KNOWN UNDERGROUND FUEL STORAGE TANKS ON THE SUBJECT PROPERTY.
7. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
8. THE SUBJECT PROPERTY IS NOT WITHIN A 100 YEAR FLOOD PLAIN.
9. THE PROPERTY IS SERVED BY A PRIVATE WELL AND SEPTIC SYSTEM.

PRIOR ZONING HEARING, CASE No. 2015-0092-X:

ORDER DATED DECEMBER 18, 2014 GRANTED THE USE OF THE PROPERTY FOR A PRIVATE KENNEL. SUBJECT TO THE FOLLOWING CONDITIONS:
PETITIONER MAY KEEP ON THE PREMISES AT ANY ONE TIME NO MORE THAN 10 DOGS;

THE SPECIAL EXCEPTION GRANTED WILL TERMINATE AUTOMATICALLY IF AND WHEN Ms. ROBINSON AND/OR KAWANA SWANK NO LONGER OWN OR RESIDE AT THE PREMISES.

PETITIONER SHALL ON OR BREFORE JUNE 30, 2015 SECURE NECESSARY PERMITS AND COMMENCE CONSTRUCTION OF ANY BUILDING TO BE USED FOR HOUSING THE DOGS IN COMPLIANCE WITH B.C.C.R. 421.1, WHICH STRUCTURE MUST BE COMPLETED ON OR BEFORE AUGUST 30, 2015. THE OUTSIDE AREAS USED FOR EXERCISE AND/OR DOG RUNS MAY NOT BE LOCATED WITHIN 200 FEET OF THE NEAREST PROPERTY LINE, AS REQUIRED BY B.C.Z.R. 421.1. THIS OUTSIDE AREA MUST ALSO BE FULLY ENCLOSED BY A FENCE OR UNDERGROUND ELECTRIC FENCE TO CONTAIN THE DOGS ON THE PETITIONER'S PROPERTY.

SPECIAL HEARING REQUEST:

TO AMEND THE PREVIOUSLY GRANTED SPECIAL EXCEPTION FOR A PRIVATE KENNEL

VARIANCE REQUEST:

SECTION 421.1 B.C.Z.R.: TO ALLOW A PRIVATE KENNEL TO BE LOCATED AS LITTLE AS 15 FEET TO THE PROPERTY LINE IN LIEU OF THE REQUIRED 200 FEET

OWNER\DEVELOPER

CATHERINE H. ROBINSON
2012 FAR OUT LANE
SPARKS, MD 21152
410-979-7539

PLAT TO ACCOMPANY A PETITION FOR A SPECIAL HEARING AND VARIANCE

FOR THE

ROBINSON RESIDENCE

2012 FAR OUT LANE
Deed Ref: S.M. No. 10141 folio 153
Tax Account No.: 05-14-010230
Zoned: RC 2; GIS Tile 027B2
Tax Map 0027; Grid 0015; Parcel 0182
5th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

STATE OF MARYLAND
SCOTT ALAN LINDGREN
No. 21081
PROFESSIONAL LAND SURVEYOR
8/6/15

#2

LICENSE EXPIRES/RENEWS 2/26/17

EXISTING FENCES ADDED: 08/06/15
REVISED: 04/22/15
REVISED: 10/20/14

GERHOLD, CROSS & ETZEL, LTD
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
PH: (410)823-4470 FAX: (410)823-4473

DATE: 8/27/14 | SCALE: 1" = 50'

EX #6

Protestant Exhibit 20

My Neighborhood Map

Created By
Baltimore County
My Neighborhood

Printed 4/1/2016

Exhibit 18

Protestant Group

My Neighborhood Map

Created By
Baltimore County
My Neighborhood

Printed 4/1/2016

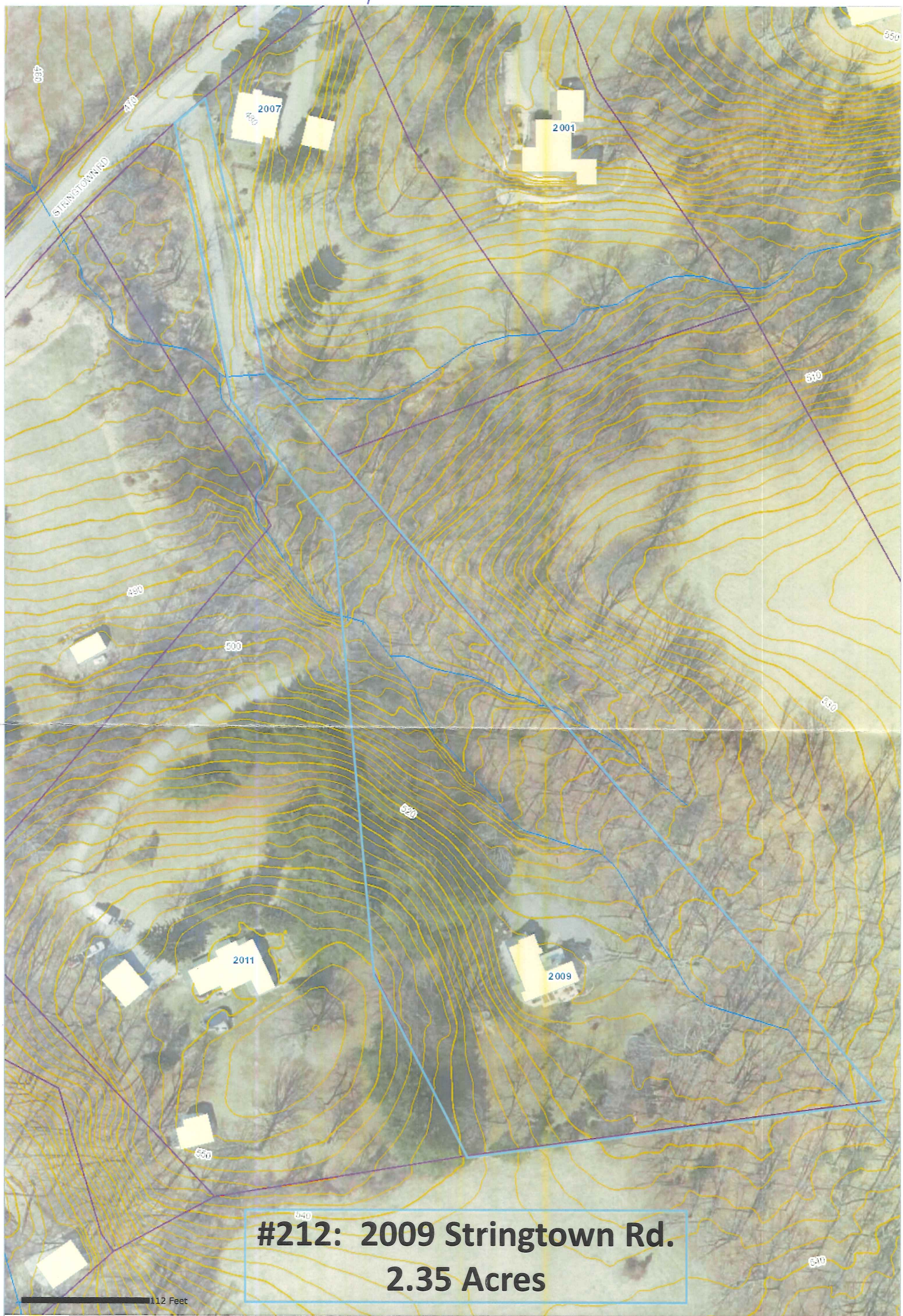
Protestant exhibit #16

My Neighborhood Map

Created By
Baltimore County
My Neighborhood

Printed 4/1/2016

Protestant exhibit 13



#212: 2009 Stringtown Rd.
2.35 Acres

My Neighborhood Map

Created By
Baltimore County
My Neighborhood

Printed 4/1/2016

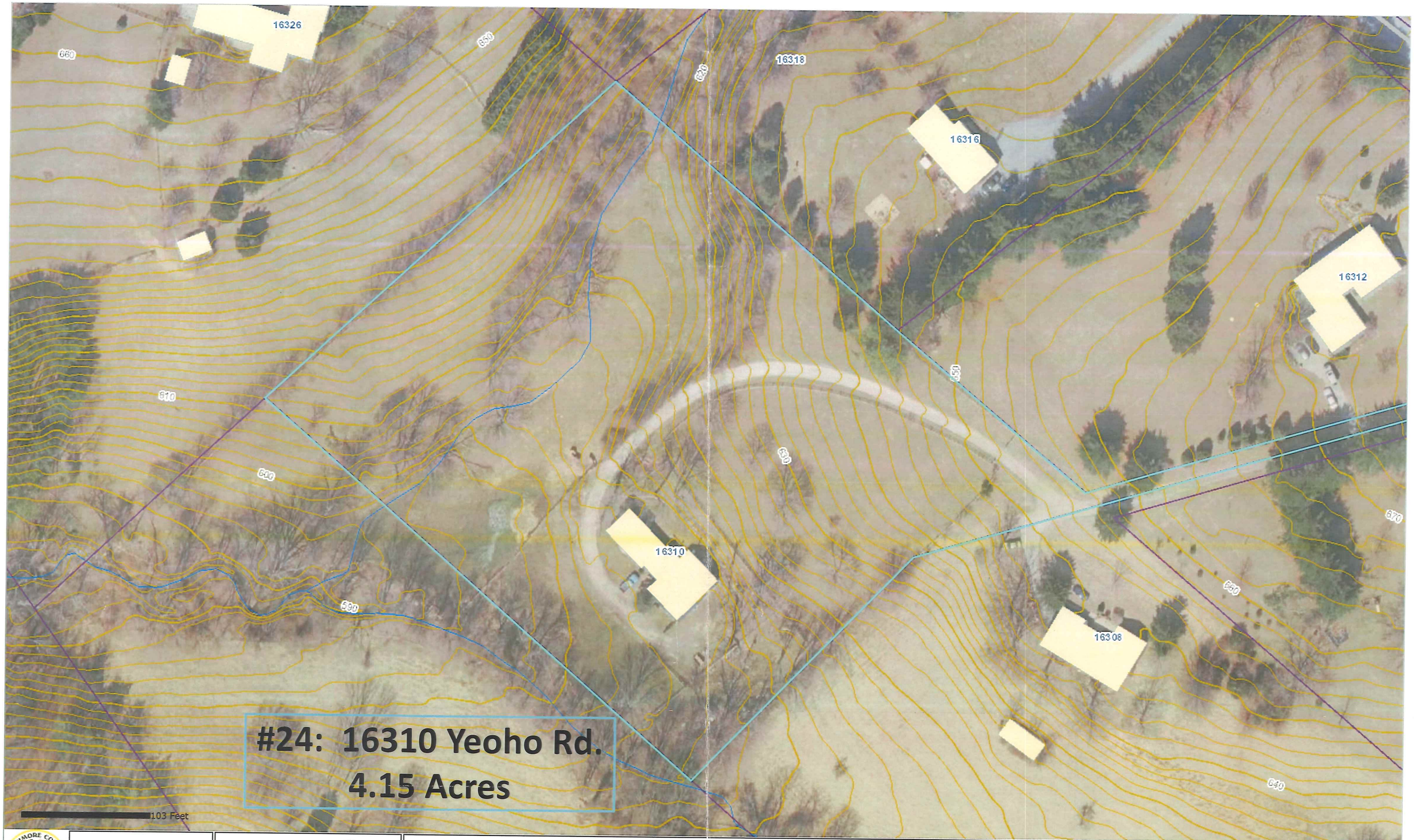
Protestant Ephelit #15

My Neighborhood Map

Created By
Baltimore County
My Neighborhood

Printed 4/2/2016

Protestant Exhibit 11



My Neighborhood Map

Created By
Baltimore County
My Neighborhood

Printed 4/1/2016

Protestant exhibit 7

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.

Printed 4/1/2016

Protestant exhibit 6

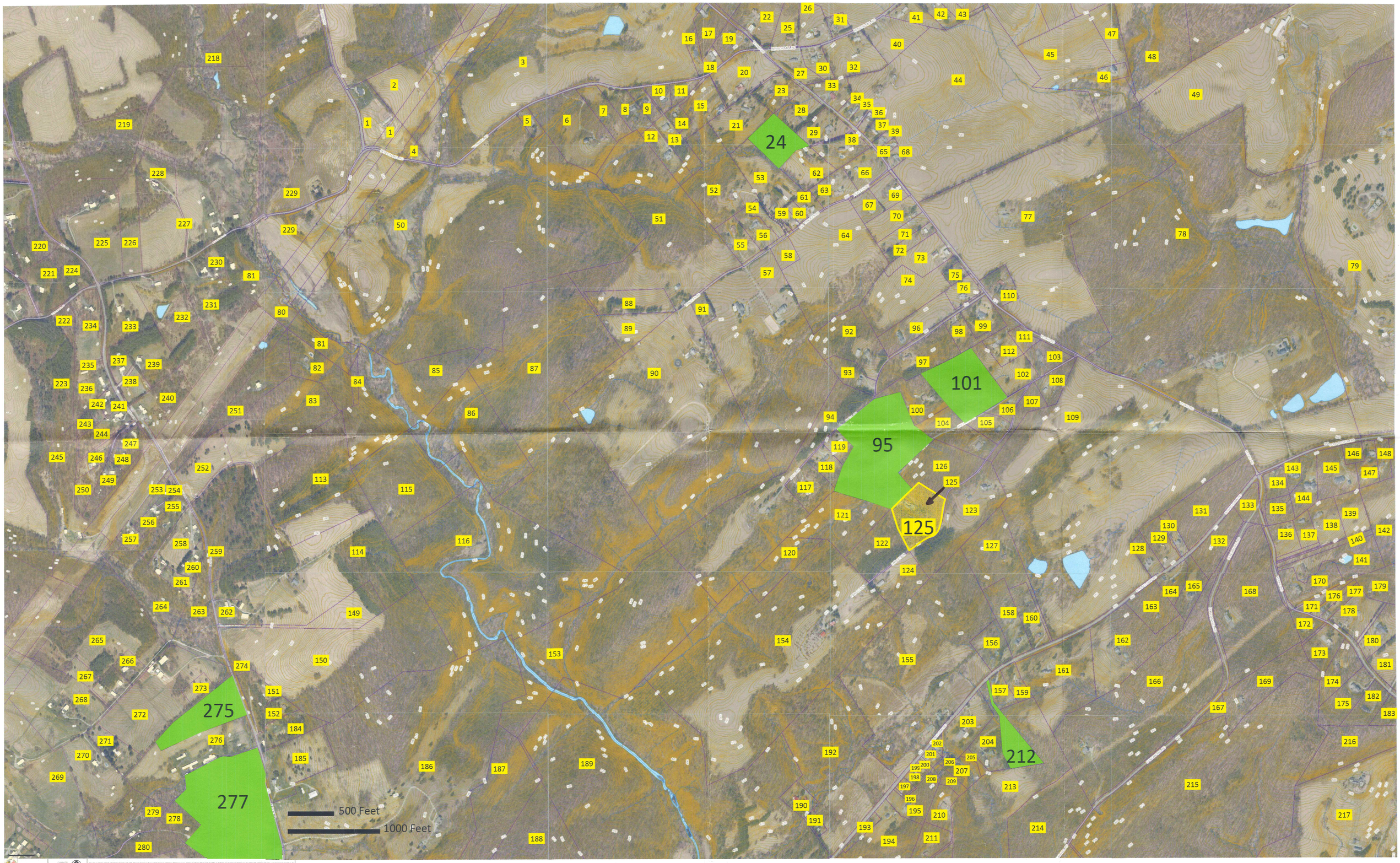
#101: 1916 Akehurst Rd.
8.52 Acres

My Neighborhood Map

Created By
Baltimore County
My Neighborhood

Printed 4/1/2016

PROTESTANT EX #4



PROTESTANTS' Ex #1

870,000 FT 76°45'00" Joins Map 6 880,000 FT 76°42'30" MAP 11

A B C D E F G H J K

1 2 3 4 5 6 7 8 9 10 11 12 13 15

630,000 FT

39°32'30" Joins Map 12

620,000 FT

MDGRID 610,000 FT

870,000 FT 76°45'00" Joins Map 17 MDGRID 880,000 FT 76°42'30"

0-20500

© ALEXANDRIA DRAFTING CO.

ZION RD
16400
DUBBS RD
YEOHO
16400
RD
CEDAR GROVE RD
BENSON
2400
MILL
YEOHO
Buffalo
BEREAN
2800
RD
16200
MILL
3000
TRACEYS
RD
RD
ABELL LA
GOOSE FARM RD
HALL
Creek
BENSON
FALLS
Black Rock
AKEHURST RD
STOCKTON LA
BOTTOM RD
Indian Run
OUT
LA
16000
COLD
1600
1800
RD
YEOHO
STRINGTOWN
HILL
RD
RD
16500
Basignani Winery
25
DUNCAN
COOPERSTOWN
21152
ROAD
15400
15000
RD
IPEARCES
LA
ROAD
88
Falls Road Chapel
STRINGTOWN
2400
BELFAST
TANYARD
Black Rock
Butler Co 49
Butler
21023
15000
2300
JOYCE LA
WESTERN
LA
BUTLER
Rock Run
15200
RUN RD
1700
WESTERN
GERBER LA
RUN
14500
CUBA
1500
RD
128
2400
ROAD
FALLS Run
SNOW HILL RD
BUTLER
RD
WORTHINGTON MANOR
DR
Pleasant Hill Chapel
EVERGREEN
HEIGHTS
PKWY
WORTHINGTON
Western Run
GADD RD
25
21030
PINE HILL FARMS
MILLER RD
14400
PINE HILL FARMS LA
14300
BROOK FARM CT
WESTERN RUN
CUBA
Gough
NICHOLSONS MANOR
BRETT MANOR CT
GARDINER RD
GREEN
RD
MANTUA
MILL
MANTUA
Deadman Run
RD
ROAD
WORCESTER LA
RD
Geist Meeting House
GEIST RD
14000

PROTESTANTS' #2

MARYLAND COORDINATE SYSTEM
NAD83(1991)

BESTE POND FARM, LLC
S.M. No. 20296 folio 672
05-02-020480
1940 AKEHURST ROAD

THE FLYING J. RANCH, LLC
S.M. No. 20680 folio 552
05-02-020482
YEOHO ROAD

BESTE POND FARM, LLC
S.M. No. 20296 folio 672
05-02-020483
YEOHO ROAD

JUDITH R. LEVENSON
S.M. No. 17870 folio 207
05-14-010231
2007 FAR OUT LANE

OLD Kennel

BLDGS

Lawn mower bridge

Fence gate

STONE FOUND AT CORNER

N47°27'44"E 94.67'

S61°20'01"E 309.06'

NEW 3.5' WOOD FENCE WITH WIRE

ZONING POINT OF BEGINNING
1,475'± FROM ℄ OF AKEHURST ROAD

S61°22'45"E 17.86'

1" IRON PIPE FOUND N88°58'11"W 0.16' FROM CORNER

20' WIDE RIGHT OF WAY FOR INGRESS & EGRESS

N46°56'46"E 282.03'

NEW ALTERNATE BOARD PRIVACY FENCE

HEIGHT 6.8'

HEIGHT 8'

HEIGHT 5.75'

HEIGHT 4.5'

HEIGHT 3.5'

5.415 Ac.±

EXISTING DWELLING

HEIGHT 17.5'±

HEIGHT 20.5'±

Stone base

EX. SPRING HOUSE HEIGHT 10.5'±

APPROXIMATE LOCATION EXISTING UNDERGROUND FENCE / PROPOSED MODIFIED KENNEL

ASPHALT PAVING

EX. GARAGE HEIGHT 12'±

APPROX. LOCATION EXISTING WELL

N19°39'35"W 221.27'

3/4" IRON PIPE FOUND AT CORNER

NEW 3.5' WOOD FENCE WITH WIRE

N56°06'55"W 256.45'

S69°39'55"W 82.63'

S58°27'45"W 85.25'

S25°42'55"W 59.14'

S43°47'05"W 27.77'

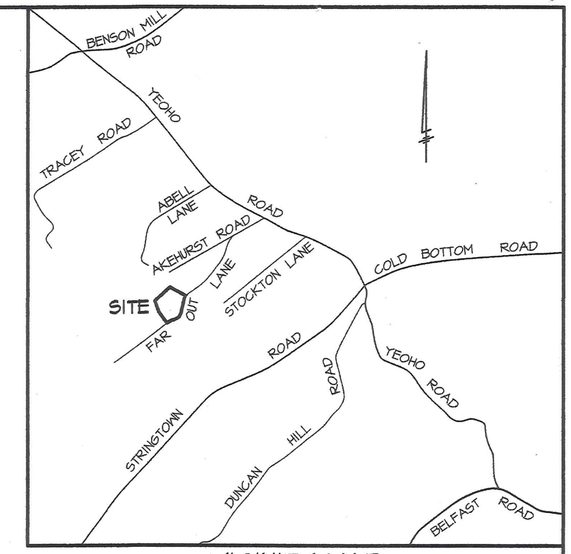
S62°10'45"W 70.02'

S13°25'25"W 345.47'

FAR OUT LANE

EX. BARN

GATE



VICINITY MAP
1" = 2000'

GENERAL NOTES

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2. THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILE 027B2.
3. CENSUS TRACT: 40500 REGIONAL PLANNING DISTRICT: 302
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OWNER\DEVELOPER

CATHERINE H. ROBINSON
2012 FAR OUT LANE
SPARKS, MD 21152
410-979-7539

PLAT TO ACCOMPANY A PETITION FOR A SPECIAL HEARING AND VARIANCE

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BALTIMORE COUNTY, MARYLAND

STATE OF MARYLAND
SCOTT ALAN LINDGREN
No. 21087
PROFESSIONAL LAND SURVEYOR
8/6/15

LICENSE EXPIRES/RENEWS 2/26/17

EXISTING FENCES ADDED: 08/06/15
REVISED: 04/22/15
REVISED: 10/20/14

GERHOLD, CROSS & ETZEL, LTD
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
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Towson, Maryland 21286
PH: (410)823-4470 FAX: (410)823-4473

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Petitioner exhibit 6

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YEOHO ROAD

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05-14-010231
2007 FAR OUT LANE

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5.415 Ac.±

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HEIGHT 5.75'
HEIGHT 8'
HEIGHT 4.5'
HEIGHT 3.5'
HEIGHT 20.5'±

EXISTING DWELLING
HEIGHT 17.5'±

EX. SPRING HOUSE
HEIGHT 10.5'±

EX. GARAGE
HEIGHT 12'±

EX. BARN

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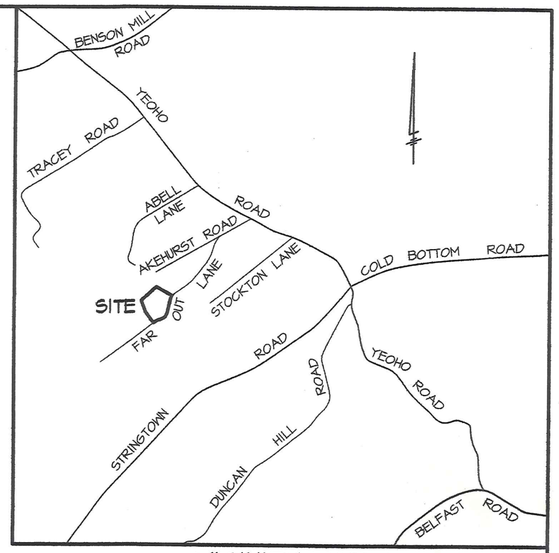
20' WIDE RIGHT OF WAY FOR INGRESS & EGRESS

LANE

OUT

FAR

GATE



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   WATERSHED: LOCH RAVEN RESERVOIR SUBSHED: BLACKROCK RUN
   SCHOOL DISTRICT: ELEMENTARY - FIFTH DISTRICT; MIDDLE - HEREFORD; HIGH - HEREFORD
   A.D.C. MAP & GRID: II G-3
4. THE PROPERTY IS NOT UNDER ANY ACTIVE ZONING VIOLATION.
5. THE SUBJECT PROPERTY IS NOT HISTORIC. THE SUBJECT PROPERTY IS WITHIN THE WESTERN RUN - BELFAST NATIONAL REGISTER HISTORIC DISTRICT.
6. THERE ARE NO KNOWN UNDERGROUND FUEL STORAGE TANKS ON THE SUBJECT PROPERTY.
7. THE SUBJECT PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA.
8. THE SUBJECT PROPERTY IS NOT WITHIN A 100 YEAR FLOOD PLAIN.
9. THE PROPERTY IS SERVED BY A PRIVATE WELL AND SEPTIC SYSTEM.

PRIOR ZONING HEARING, CASE No. 2015-0092-X:

ORDER DATED DECEMBER 18, 2014 GRANTED THE USE OF THE PROPERTY FOR A PRIVATE KENNEL. SUBJECT TO THE FOLLOWING CONDITIONS:
PETITIONER MAY KEEP ON THE PREMISES AT ANY ONE TIME NO MORE THAN 10 DOGS;

THE SPECIAL EXCEPTION GRANTED WILL TERMINATE AUTOMATICALLY IF AND WHEN Ms. ROBINSON AND/OR KAWANA SWANK NO LONGER OWN OR RESIDE AT THE PREMISES.

PETITIONER SHALL ON OR BREFORE JUNE 30, 2015 SECURE NECESSARY PERMITS AND COMMENCE CONSTRUCTION OF ANY BUILDING TO BE USED FOR HOUSING THE DOGS IN COMPLIANCE WITH B.C.C.R. 421.1, WHICH STRUCTURE MUST BE COMPLETED ON OR BEFORE AUGUST 30, 2015. THE OUTSIDE AREAS USED FOR EXERCISE AND/OR DOG RUNS MAY NOT BE LOCATED WITHIN 200 FEET OF THE NEAREST PROPERTY LINE, AS REQUIRED BY B.C.Z.R. 421.1. THIS OUTSIDE AREA MUST ALSO BE FULLY ENCLOSED BY A FENCE OR UNDERGROUND ELECTRIC FENCE TO CONTAIN THE DOGS ON THE PETITIONER'S PROPERTY.

SPECIAL HEARING REQUEST:

TO AMEND THE PREVIOUSLY GRANTED SPECIAL EXCEPTION FOR A PRIVATE KENNEL

VARIANCE REQUEST:

SECTION 421.1 B.C.Z.R.: TO ALLOW A PRIVATE KENNEL TO BE LOCATED AS LITTLE AS 15 FEET TO THE PROPERTY LINE IN LIEU OF THE REQUIRED 200 FEET

OWNER\DEVELOPER

CATHERINE H. ROBINSON
2012 FAR OUT LANE
SPARKS, MD 21152
410-979-7539

PLAT TO ACCOMPANY A PETITION FOR A SPECIAL HEARING AND VARIANCE

FOR THE

ROBINSON RESIDENCE

2012 FAR OUT LANE
Deed Ref: S.M. No. 10141 folio 153
Tax Account No.: 05-14-010230
Zoned: RC 2; GIS Tile 027B2
Tax Map 0027; Grid 0015; Parcel 0182
5th ELECTION DISTRICT
3rd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

STATE OF MARYLAND
SCOTT ALAN LINDBERG
No. 21081
PROFESSIONAL LAND SURVEYOR
8/6/15

LICENSE EXPIRES/RENEWS 2/26/17

EXISTING FENCES ADDED: 08/06/15
REVISED: 04/22/15
REVISED: 10/20/14

GERHOLD, CROSS & ETZEL, LTD
REGISTERED PROFESSIONAL LAND SURVEYORS
Suite 100
320 East Towsontown Boulevard
Towson, Maryland 21286
PH: (410)823-4470 FAX: (410)823-4473

DATE: 8/27/14 | SCALE: 1" = 50'

Scale: 1"=100' Date: APRIL 5, 2016

GERHOLD, CROSS & ETZEL, LTD.
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320 East Towsontown Boulevard
Towson, Maryland 21286
(410) 823-4470

REVISION	DATE	COMPUTED:	DRAWN:	CHECKED:	FILE: X:\R\Robinson Par Out Lane\Zoning\SISIOOscale.prc

Pet 8

BALTIMORE COUNTY GIS

ABELL LANE ROAD

P 189 P 21 P 190

P 179 P 180 P 148 P 281 P 186 P 211 P 313

P 183

AKEHURST

P 187 P 32

P 199 P 31 P 342 ROAD

P 197 P 170 P 306 P 33

LANE

P 42B

OUT

FAR

P 42A

P 191

Petition Exhibit 8

App # 7

Scale: 1"=100' Date: APRIL 5, 2016

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MARYLAND COORDINATE SYSTEM
NAD83(1991)

BESTE POND FARM, LLC
S.M. No. 20296 folio 672
05-02-020480
1940 AKEHURST ROAD

THE FLYING J. RANCH, LLC
S.M. No. 20680 folio 552
05-02-020482
YEOHO ROAD

STONE FOUND AT CORNER

N47°27'44"E 94.67'

S61°20'01"E 309.06'

NEW 3.5' WOOD FENCE WITH WIRE

STONE FOUND AT CORNER

ZONING POINT OF BEGINNING 1475'± FROM & OF AKEHURST ROAD

S61°22'45"E 17.86'

1" IRON PIPE FOUND N88°58'11"W 0.16' FROM CORNER

N46°36'46"E 282.03'

NEW ALTERNATE BOARD PRIVACY FENCE

HEIGHT 6.8'

HEIGHT 8'

HEIGHT 5.75'

HEIGHT 4.5'

STONE FOUND AT CORNER

5.415 Ac.±

20' WIDE RIGHT OF WAY FOR INGRESS & EGRESS

HEIGHT 3.5'

HEIGHT 20.5'±

EXISTING DWELLING

HEIGHT 17.5'±

EX. SPRING HOUSE HEIGHT 10.5'±

BESTE POND FARM, LLC
S.M. No. 20296 folio 672
05-02-020483
YEOHO ROAD

APPROXIMATE LOCATION EXISTING UNDERGROUND FENCE / PROPOSED MODIFIED KENNEL

ASPHALT PAVING

EX. GARAGE HEIGHT 12'±

APPROX. LOCATION EXISTING WELL

N36°36'46"E 212.27'

3/4" IRON PIPE FOUND AT CORNER

NEW 3.5' WOOD FENCE WITH WIRE

JUDITH R. LEVENSON
S.M. No. 17870 folio 207
05-14-010231
2007 FAR OUT LANE

N36°06'35"W 256.45'

NEW 3.5' WOOD FENCE WITH WIRE

S25°42'55"W 59.14'

S43°47'05"W 27.77'

S62°10'45"W 70.02'

S69°39'55"W 82.63'

S58°27'45"W 85.25'

JUDITH R. LEVENSON
S.M. No. 17870 folio 207
05-14-010231
2007 FAR OUT LANE

NEW 3.5' WOOD FENCE WITH WIRE

S13°25'54"W 345.41'

LANE

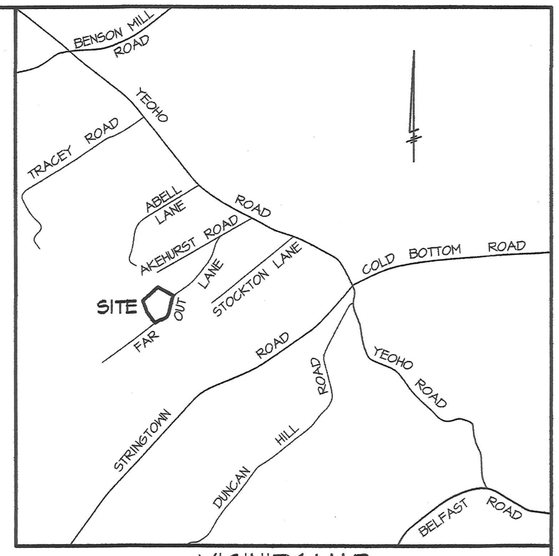
OUT

FAR

GATE

EX. BARN

PETITIONER'S
EXHIBIT NO. 2



VICINITY MAP
1" = 2000'

GENERAL NOTES

1. THE BOUNDARY SHOWN HEREON IS FROM A SURVEY BY GERHOLD, CROSS & ETZEL, LTD..
2. THE TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TILE 027B2.
3. CENSUS TRACT: 40500 REGIONAL PLANNING DISTRICT: 302
   WATERSHED: LOCH RAVEN RESERVOIR SUBSHED: BLACKROCK RUN
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