



KEVIN KAMENETZ
County Executive

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

April 25, 2016

Raymond M. Atkins, Jr., Esq.
The Parsonage
410 Delaware Avenue
Towson, Maryland 21285

RECEIVED

APR 25 2016

BALTIMORE COUNTY
BOARD OF APPEALS

RE: **APPEAL TO BOARD OF APPEALS**
Case Nos. 2016-0165-A
Location: 13 Ryan Frost Way

Dear Mr. Atkins:

Please be advised that an appeal of the above-referenced case was filed in this Office on April 21, 2016. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals ("Board").

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "L. Stahl", is written over a horizontal line.

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS/sln

c: Baltimore County Board of Appeals
Peter Max Zimmerman, People's Counsel for Baltimore County
Robert Kuhl, 15 Ryan Frost Way, Baltimore, Maryland 21221
Tracy and Ryne Laxton, 13 Ryan Frost Way, Essex, Maryland 21221



Board of Appeals of Baltimore County

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

October 28, 2016

Raymond M. Atkins, Jr., Esquire
The Parsonage
410 Delaware Avenue
Towson, Maryland 21286

Tracy and Ryne Laxton
13 Ryan Frost Way
Essex, Maryland 21221

RE: *In the Matter of: Tracy and Ryne Laxton*
Case No.: 16-165-A

Dear Messrs. Atkins and Laxton:

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,

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

Krysundra "Sunny" Cannington
Administrator

KLC/tam
Enclosure
Duplicate Original Cover Letter

- c: Robert G. and Pamela Laverne Kuhl
Office of People's Counsel
Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Lionel van Dommelen, Chief of Code Enforcement/PAI
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 MATTER OF:
TRACY AND RYNE LAXTON
PETITIONERS FOR VARIANCE
ON THE PROPERTY KNOWN AS
13 RYAN FROST WAY
15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

* BEFORE THE
* BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* Case No. 16-165-A

* * * * *

OPINION

This matter comes to the Baltimore County Board of Appeals (the "Board") as an appeal of the Administrative Law Judge's (ALJ) Opinion and Order issued on March 23, 2016 following a hearing on Petitioner's Request for a Variance. In particular, Petitioners requested variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) § 427.1.B.1 to permit a 6 ft. high privacy fence in the rear and side yard of the property which adjoins the front yard of an existing residence in lieu of the permitted 3.5 ft. fence. The Board of Appeals conducted a *de novo* hearing on August 3, 2016 and then publically deliberated on September 7, 2016. Petitioners appeared *pro se*. Protestants were represented by Raymond M. Atkins, Esquire.

By way of background, the subject property is approximately 6,250 square feet and is zoned DR 3.5. The property is improved with a single family dwelling which Petitioners purchased in 2014. Petitioners have a small child and wished to enclose their yard for privacy and safety. Petitioners testified they went to the County zoning and permits offices and were issued a permit for a fence 6 ft. in height in October 2015. The fence was constructed shortly thereafter, and within a month Petitioners were issued a zoning violation notice citing B.C.Z.R. § 427, which provides a height limit of 42" for any fence in the rear of a single family dwelling that adjoins the front yard of another single family dwelling.

In order to obtain a variance in this instance, Petitioner first would have to prove the uniqueness of the property and then that such uniqueness results in practical difficulty. See Cromwell v. Ward, 102 Md. App. 691, 703-722; 651 A.2d 424, 430-440 (1995). The uniqueness element requires that the subject property have an inherent characteristic not shared by other properties in the area, such as: 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. Id., at 710-11; 651 A.2d at 433-34, citing North v. St. Mary's County, 99 Md. App. 502, 514-15; 638 A. 2d 1175 (1994). On the other hand, the uniqueness cannot be caused by improvements upon the property or a neighboring property. Id. at 710; 651 A.2d at 433-34. It is clear from the evidence presented before this Board that the Petitioners have not illustrated the necessary factors found in Cromwell. No evidence was presented which would establish the subject property as unique, and without a finding of "uniqueness", the Board does not consider the issue of "practical difficulty or hardship."

Although it is clear that grounds for variance relief do not exist in this case, the issue of whether the County is estopped from citing the Petitioners for a code violation stemming from the County's erroneous granting of the permit, still exists. It is undisputed that the Petitioners sought and were granted a permit, and in reliance upon that permit they purchased materials and constructed the fence at issue. The Petitioners and the ALJ, in his March 23, 2016 Opinion cite *Permanent Financial v. Montgomery County*, 308 Md. 239 (1986) as support of the argument that the Petitioners shall not be penalized for the County's obvious error. In *Permanent Financial*, a developer obtained a permit from the County to construct a four story commercial office building, with a fifth story "penthouse." The zoning regulation contained a height limitation of 35 feet, although it also provided that any non-inhabitable structures (i.e., a spire) may extend up to 8 feet

beyond the height limitation. The developer constructed the building 43 feet high, believing that 8 feet of that total would be attributable to a non-inhabitable space. The County initially agreed, although it later issued a violation notice alleging the building exceeded the height requirements. The Court in held the County was estopped from enforcing the height limitation because the developer constructed the building in reliance upon the County's interpretation of the regulation, after receiving from the County a building permit, and in accordance with the plans approved by the County.

In light of *Marzullo v. Kahl*, 366 Md. 158, 194-99 (2001) which held that such instances where estoppel is found, there must exist some level of ambiguity in the relevant regulation at issue, the Board finds the facts in the case at bar distinguishable from the facts in *Permanent Financial*. In *Permanent Financial*, the regulation at issue was found to be ambiguous and had been interpreted in conflicting ways in the past. In the case at bar, the code requirement at issue is more clear-cut - (B.C.Z.R.) § 427.1.B.1 requires the fence at issue to be no more than 42." It can be interpreted in no other way and is not ambiguous.

Under Maryland law, variance requests are to be granted sparingly and only under exceptional circumstances. *Trinity*, 407 Md. at 79; 962 A.2d at 419 (citation omitted). Such circumstances are not supported by the evidence presented by the Petitioners. Additionally, the Board finds that in light of the holding in *Marzullo v. Kahl*, 366 Md. 158, 194-99 (2001), that the County is not estopped from code enforcement actions in this matter, whether they choose to do so, is not within the discretion of this Board.

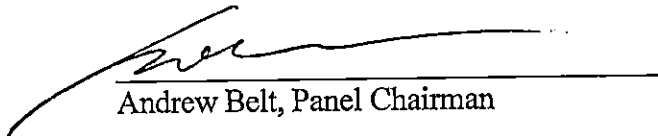
ORDER

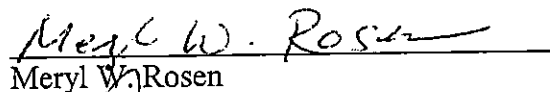
THEREFORE, ON THIS 28th day of October, 2016, by the Board of Appeals of Baltimore County, it is hereby:

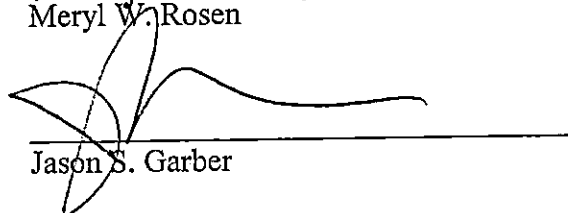
ORDERED that Petitioners requested variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) § 427.1.B.1 to permit a 6 ft. high privacy fence in the rear and side yard of the property which adjoins the front yard of an existing residence in lieu of the permitted 3.5 ft. fence is hereby **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**


Andrew Belt, Panel Chairman


Meryl W. Rosen


Jason S. Garber

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Tracy and Ryne Laxton 16-165-A

DATE: September 7, 2016

BOARD/PANEL: Andrew M. Belt, Panel Chairman
Meryl W. Rosen
Jason S. Garber

RECORDED BY: Sunny Cannington/Administrator

PURPOSE: To deliberate the following:

1. Petition for Variance relief from B.C.Z.R. § 427.1.B.1. to permit a 6 ft. high privacy fence in the rear and side yard of the property which adjoins the front yard of an existing residence in lieu of the permitted 3.5 ft. fence.
2. Is the property unique pursuant to the conditions set forth in Cromwell vs. Ward?
3. If the property is unique pursuant to the conditions set forth in Cromwell vs. Ward; will failure to grant the Variance present a practical difficulty or unusual hardship on the property owner?

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board briefly reviewed the history of this matter. The ALJ determined there was not uniqueness but since the County provided the building permit for the fence and the owners relied on that permit and built the fence, the County cannot later come back and say the owners could not build the fence.
- The Board discussed that the Petitioners appeared pro se. The Petitioners did not meet the required uniqueness standard in Cromwell. The Board discussed that while it is a hardship, the possible removal of the fence is not what the Court of Appeals intended when laying out the standards of hardship.
- The Board discussed the Permanent Financial v. Montgomery County case that the ALJ relied on. The Board determined this case law does not apply to this matter. In the Permanent case, the law at issue was ambiguous and had been interpreted and applied differently in similar situations. In this matter, the height allowances are unambiguous.
- The Board determined that they cannot keep the County from enforcing the fence height requirements. The Board determined that the County erred in giving the owners the building permit and it is for the County to determine the best course of action now. It is also up to the owners to determine if there is any recourse against the County.
- As for the estoppel argument, the Board determined it would apply against the County, not the owners.

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

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

Respectfully Submitted,

Sunny Cannington
Sunny Cannington



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

August 5, 2016

NOTICE OF PUBLIC DELIBERATION

IN THE MATTER OF: Tracy and Ryne Laxton
13 Ryan Frost Way
16-165-A 15th Election District; 7th Councilmanic District

Re: Petition for Variance relief from B.C.Z.R. § 427.1.B.1. to permit a 6 ft. high privacy fence in the rear and side yard of the property which adjoins the front yard of an existing residence in lieu of the permitted 3.5 ft. fence.

This matter having been heard and concluded on August 3, 2016, a public deliberation has been scheduled for the following:

DATE AND TIME: WEDNESDAY, SEPTEMBER 7, 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

c: Petitioners/Legal Owners

: Tracy and Ryne Laxton

Counsel for Protestants
Protestants

: Raymond M. Atkins, Jr., Esquire
: Robert and Pamela Laconne Kuhl

Office of People's Counsel
Arnold Jablon, Director/PAI
Nancy West, Assistant County Attorney

Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Michael Field, County Attorney, Office of Law



Board of Appeals of Baltimore County

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

June 8, 2016

NOTICE OF POSTPONEMENT AND REASSIGNMENT ON THE RECORD APPEAL

IN THE MATTER OF: Tracy and Ryne Laxton
13 Ryan Frost Way
16-165-A 15th Election District; 7th Councilmanic District

Re: Petition for Variance relief from B.C.Z.R. § 427.1.B.1. to permit a 6 ft. high privacy fence in the rear and side yard of the property which adjoins the front yard of an existing residence in lieu of the permitted 3.5 ft. fence.

This matter was assigned for Tuesday, July 26, 2016 and has been postponed. It has been

REASSIGNED FOR: WEDNESDAY, AUGUST 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. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- 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.

NEW! Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.

NEW! Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington, Administrator

c: Petitioners/Legal Owners : Tracy and Ryne Laxton

Counsel for Protestants : Raymond M. Atkins, Jr., Esquire
Protestants : Robert and Pamela Laconne Kuhl

Office of People's Counsel
Arnold Jablon, Director/PAI
Lionel van Dommelen, Chief of Code Enforcement/PAI
Michael Field, County Attorney, Office of Law

Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney



Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

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

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

July 18, 2016

HAND-DELIVERED

Maureen E. Murphy, Chair
County Board of Appeals of Baltimore County
The Jefferson Building
105 West Chesapeake Avenue, Suite 203
Towson, MD 21204



Re: Ryan & Tracey Laxton
13 Ryan Frost Way
Case No.: 2016-165-A
Hearing date: August 3, 2016

Dear Chair Murphy,

This appeal comes to the County Board of Appeals upon appeal by Robert and Pamela Kuhl of Administrative Law Judge John Beverungen's March 23, 2016 Order. The Order is unusual. ALJ Beverungen denied Tracy and Ryan Laxton's petition for variance for a 6 foot (72 inches) high wooden fence (above the maximum 42 inches per BCZR Sec. 427). But he also ordered "...that Baltimore County be estopped from claiming the fence at issue exceeds the height limitation set forth in the BCZR and/or Building Code." Because of the public interest in the estoppel issue generally, we believe it is necessary and appropriate to provide our perspective.

The genesis of the case was a building permit issued by the County issued to the Laxtons; the construction of the fence; the ensuing complaint apparently by the Kuhls; a County correction notice, and ultimately the Laxtons' petition for this variance.

The key legal issue revolves around the matter of "equitable estoppel" applied against the government, and effectively the public. There is no genuine dispute that the building permit was issued contrary to the BCZR 427 zoning height limit. Nevertheless, ALJ Beverungen held the County "estopped" from enforcing the law. Having had experience with the law of estoppel, we must respectfully disagree with ALJ Beverungen.

Generally speaking, the principle of "equitable estoppel," which may apply in private situations where a party leads another unfairly to rely on a fact or proposition, does not apply

against the government. The essential reason is that all citizens are on notice as to the law, and also that to allow such "estoppel" could lead not only to the ratification of bureaucratic negligence but also to evasion of the law.

Landmark cases include Lipsitz v. Parr 164 Md. 222 (1933), Town of Berwyn Heights v. Rogers 228 Md. 271 (1962), and City of Hagerstown v. Longmeadow Shopping Center 264 Md. 481 (1972). Our most recent reported case is Marzullo v. Kahl 366 Md. 158, 194-99 (2001), involving a reptile facility building permit for a reptile facility which was not a permitted use in the applicable zone. In rejecting the estoppel claim, the Court discussed the above cases. The relevant excerpt is attached.

Judge Beverungen relied on Permanent Financial Corp. v. Montgomery County 308 Md. 239 (1986). This case is distinguishable and unusual. The Court applied and limited estoppel to a situation where the relevant statute was ambiguous and the permittee relied on a longstanding written interpretation which, though incorrect, was not unreasonable.

As in Marzullo, which distinguished Permanent Financial, there is nothing ambiguous about BCZR Sec. 427. The fence height is limited to 42 inches in the absence of a variance. Therefore, estoppel does not apply against the county. Furthermore, it is doubtful that estoppel could plausibly extend to the Kuhls, who as members of the public had no involvement in the issuance of the permit.

As to the height variance, we do not perceive anything in the record so far to justify it. A personal desire or need does not qualify. BCZR Sec. 307.1. See Cromwell v. Ward 102 Md. App. 691 (1995), denying a height variance for an accessory building. This Board also recently decided the Folio case, denying an accessory building front yard setback variance, where the reasons were personal. Case No. 14-185-A.

Thank you for your consideration.

Respectfully submitted,



Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ/rmw

cc: Tracy and Ryan Laxton
Raymond Atkins, Esq.



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 13 Ryan Frost Way Essex MD 21221 which is presently zoned _____
 Deed References: 34945/06442 10 Digit Tax Account # 2200006307
 Property Owner(s) Printed Name(s) Tracy Laxton

(SELECT THE HEARING(S) BY MARKING ☒ AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

2. a Special Exception under the Zoning Regulations of Baltimore County to use the herein described property for

3. ☒ a Variance from Section(s) 427.1.B.1 OF BCZR TO PERMIT A 6 FEET HIGH PRIVACY FENCE IN THE REAR AND SIDE YARD OF THE PROPERTY WHICH ADJOINS THE FRONT YARD OF AN EXISTING RESIDENCE.

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:
 (Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

Previously installed fence with issued permit # B892419 being contested by neighbor. The fence was installed on 10/17/2015

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

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

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

Contract Purchaser/Lessee:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Attorney for Petitioner:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Tracy Laxton , Rhyme Laxton
 Name #1 - Type or Print Name #2 - Type or Print

Tracy Laxton , [Signature]
 Signature #1 Signature #2

13 Ryan Frost Way Essex MD
 Mailing Address City State

21221 , 484-432-7882 , Blaxton@hotmail.com
 Zip Code Telephone # Email Address

Representative to be contacted:

Name - Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

CASE NUMBER 2016-0165-A Filing Date 1/15/16 Do Not Schedule Dates: _____ Reviewer AT

ZONING PROPERTY DESCRIPTION FOR: 13 Ryan Frist Way. Essex Md. 21221

Beginning at a point on the north side of Ryan Frost Way which is 50' ft R/W wide at the distance of 105' ft southeast of the centerline of improved intersection street, Russel Frost Court which is 50' ft R/W wide.

Being lot 13 in the subdivision Cape may Landing as recorded in the Baltimore County Plat Book #63, Folio 4, containing 8,139' sq ft. Located in the 15th Election District and the 7th Council District.

2016-0165-A

**BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM**



TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: February 10, 2016

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 16-165

INFORMATION:

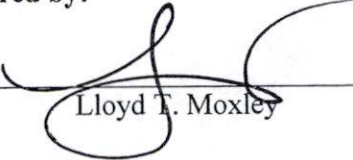
Property Address: 13 Ryan Frost Way
Petitioner: Tracy Laxton, Ryne Laxton
Zoning: DR 3.5
Requested Action: Variance

The Department of Planning has reviewed the petition for a variance to permit a 6 foot high privacy fence in the rear and side yard of the property which adjoins the front yard of an existing residence. A site visit was conducted on February 2, 2016.

Department of Planning has no comment on granting the petitioned zoning relief.

For further information concerning the matters stated herein, please contact Krystle Patchak at 410-887-3480.

Prepared by:



Lloyd T. Moxley

Division Chief:



Kathy Schlabach

AVA/KS/LTM/ka

c: Tracy Laxton, Ryne Laxton
Office of the Administrative Hearings
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 13 Ryan Frost Way, Essex MD 21221 which is presently zoned _____
Deed References: 34945/06442 10 Digit Tax Account # 2200006307
Property Owner(s) Printed Name(s) Tracy Laxton

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Contract Purchaser/Lessee:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Attorney for Petitioner:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Name #1 - Type or Print

Name #2 - Type or Print

Signature #1

Signature #2

Mailing Address

City

State

Zip Code

Telephone #

Email Address

Representative to be contacted:

Name - Type or Print

Signature

Mailing Address

City

State

Zip Code

Telephone #

Email Address

CASE NUMBER 2016-0165-A Filing Date 1/15/16 Do Not Schedule Dates: _____

Reviewer AT

REV. 10/4/11

ZONING PROPERTY DESCRIPTION FOR: 13 Ryan Frist Way. Essex Md. 21221

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2016-0165-A

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No. **134661**

Date: **1/15/16**

Fund	Dept	Unit	Sub Unit	Rev	Sub	Obj	Sub Obj	Dept Obj	BS Acct	Amount
				Source/	Rev/					
001	806	0000		6150						\$ 75

Total: **\$ 75**

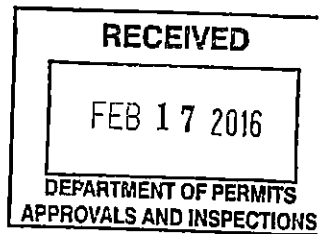
Rec From: **TRACY LAXTON**
 For: **13 RYAN FROST WAY**
2016-0165-A

DISTRIBUTION

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
 PLEASE PRESS HARD!!!!

**CASHIER'S
 VALIDATION**

**BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM**



TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: February 10, 2016

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 16-165

INFORMATION:

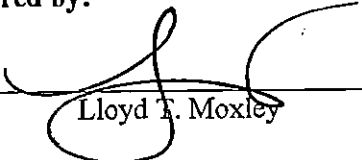
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Zoning: DR 3.5
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For further information concerning the matters stated herein, please contact Krystle Patchak at 410-887-3480.

Prepared by:



Lloyd T. Moxley

Division Chief:



Kathy Schlabach

AVA/KS/LTM/ka

c: Tracy Laxton, Ryne Laxton
Office of the Administrative Hearings
People's Counsel for Baltimore County

TO: PATUXENT PUBLISHING COMPANY
Tuesday, March 1, 2016 Issue - Jeffersonian

Please forward billing to:
Tracy Laxton
13 Ryan Frost Way
Essex, MD 21221

484-432-7882

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: 2016-0165-A

13 Ryan Frost Way
N/s Ryan Frost Way, 105 NE of centerline of Russel Frost Cour
15th Election District – 7th Councilmanic District
Legal Owners: Tracy & Ryne Laxton

Variance to permit a 6 ft. high privacy fence in the rear and side yard of the property which adjoins the front yard of an existing residence in lieu of the permitted 3.5 ft. fence.

Hearing: Monday, March 21, 2016 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 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.

DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS

ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:

Item Number or Case Number: 2016-0165-A

Petitioner: TRACY LAXTON

Address or Location: 13 RYAN FROST WAY, ESSEX MD 21221

PLEASE FORWARD ADVERTISING BILL TO:

Name: Tracy Laxton

Address: 13 Ryan Frost way, Essex MD 21221

Telephone Number: 484-432-7882

TO: PATUXENT PUBLISHING COMPANY
Tuesday, March 1, 2016 Issue - Jeffersonian

Please forward billing to:
Tracy Laxton
13 Ryan Frost Way
Essex, MD 21221

484-432-7882

NOTICE OF ZONING HEARING

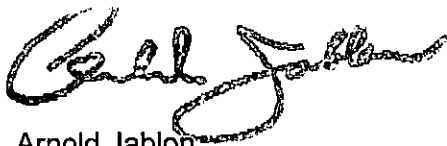
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Telephone Number: 484-432-7882

*161 2. Whether the Court of Special Appeals erred in failing to give deference to the expertise of the County Board of Appeals in applying the BCZR pursuant to *Board of Physician v. Banks*, 354 Md. 59, 729 A.2d 376 (1999) as suggested by Judge Karwacki in his Dissenting Opinion[7]

Respondent presented two questions in his Conditional Cross Petition for our review:

1. Has the landowner acquired a vested right, pursuant to either the common law or local ordinance, to use the property to raise, breed and keep reptiles or snakes?
2. Is the County estopped from preventing the use of the property to raise, breed and keep snakes or reptiles?

We hold that the Circuit Court and the Court of Special Appeals failed to afford the findings of the Board of Appeals the proper deference when those courts held that the raising, breeding, and keeping of "177 snakes and reptiles was a 'farm' under the Baltimore County Zoning Regulations. Respondent's business was a use which is prohibited in an R.C.4 zone. We also hold that respondent has not acquired a vested right to conduct his business on the property and that the County is not estopped from preventing the use of the property to raise, breed, and keep snakes and reptiles.

I. Facts

In 1991, respondent purchased a parcel of land to use as his residence. When respondent moved into the residence he used part of the residence to engage in his hobby of herpetology.¹ Specifically, respondent was engaged in the raising and breeding of pythons and boas.² Respondent's hobby eventually grew into a business and to accommodate its growth and to provide a proper facility for the care of the snakes, respondent *162 started to examine the feasibility of constructing a separate building on the same parcel of land for the purpose of breeding, raising, and selling snakes.

In July of 1994, respondent applied to the Baltimore County Department of Permits and Licenses for a "Holding Facility/Kennel/Wild Life" animal license for the purpose of breeding and research of boas and pythons in his residence. The Department of Permits and Licenses issued this license to respondent.

In 1994, respondent presented to the Department of Zoning and Development Management (hereinafter Department of Zoning)³ a building plan and a site plan which included the proposed use and site for the new building. The parcel of land upon which respondent's residence was located and upon which respondent wanted to construct the building to use as a facility for the breeding and raising of the snakes was zoned R.C.4. An R.C.4 zone limits development to protect critical watersheds⁴ and permits as of right, among other uses, a one-family detached dwelling and farms.⁵ The Department of Zoning requested that the Baltimore County Agricultural *163 Land Preservation Advisory Board (hereinafter Advisory Board) review respondent's intended use and advise the Department of Zoning as to whether respondent's intended use qualified as a farm which was allowed by right in an R.C.4 *172 zone.⁶ At an April 12, 1995 meeting, the Advisory Board found that the building used for the breeding, raising, and sale of snakes qualified as a farm.⁷

The Department of Zoning then submitted respondent's request to construct a building to the Development Review Committee. The Development Review Committee granted respondent a limited exception under section 28-171(a)(7) of the Baltimore County Code, which provides for a limited exception to the public hearing process for "[t]he construction of residential accessory structures or minor commercial structures." In a November 25, 1996 letter from the Department of Zoning, respondent was told of the limited exception and that he could proceed with his building permit application.

*164 In January of 1997, respondent requested a building permit from the Department of Zoning for a 5,000 square foot reptile barn. This permit was approved on February 14, 1997. A second permit was issued on March 27, 1997 which allowed respondent to double the square footage of the barn by adding a basement level instead of a crawl space.⁸ Respondent contracted in January of 1997 with Advanced Building Structures for the construction of the outer shell⁹ of the reptile barn. Advanced Building Structures started construction on the outer shell on February 28, 1997 and finished the construction on April 26, 1997. At this point, the barn did not have a roof, windows, or siding. The barn was just a shell, with only a concrete floor and no interior walls. William Yost, a project manager for Advanced Building Structures, stated at the hearing before the Board of Appeals that the barn was 45% completed when the outer shell was finished at the end of April, 1997.

At the beginning of April of 1997, petitioner, Mrs. Marzullo, an adjoining property owner to respondent's property, and other neighbors contacted Mr. Carl Richards, a Supervisor in Zoning Review for the Department of Zoning, regarding the construction activities they observed on respondent's property. On April 16, 1997, Mr. Richards sent a letter to respondent that advised respondent as to the complaints from the neighbors about the permit *173 that was issued for his reptile barn. The letter also stated that a petition for a special hearing for an interpretation as to whether a particular parcel is being used appropriately can be filed by any citizen. While such a petition had not actually been filed, Mr. Richards was advising respondent of the possibility.

On April 25, 1997, petitioners filed an appeal from the issuance of the second permit, which allowed for the construction of the basement in the reptile barn. This appeal was *165 dismissed by the Board of Appeals because, at the time, the Baltimore County Code only provided for an appeal by the applicant after a denial of a building permit.

On April 29, 1997, petitioners filed a Petition for Special Hearing under section 500.7 of the BCZR. Section 500.7 states that:

"The said Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall, in his discretion, be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals as hereinafter provided. The power given hereunder shall include the right of any interested person to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any purported nonconforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these regulations." [Emphasis added.]

The petition stated that it was filed to determine "whether or not the Zoning Commissioner should approve in an RC 4 Zone, the use of the site for the breeding, raising and selling of reptiles."

On September 22, 1997, a hearing was held before the Zoning Commissioner of Baltimore County (hereinafter Zoning Commissioner) on the Petition for Special Hearing. In his Findings of Fact and Conclusions of Law, the Zoning Commissioner stated that the issue was whether respondent's use of the property qualified as a farm under the BCZR. If the use qualified as a farm, then it is a use by right and if the use was not as a farm, then it was not permitted, even by special exception. Section 101 of the BCZR defines a "Farm" as:

"FARM—Three acres or more of land, and any improvements thereon, used primarily for commercial agriculture,¹⁰¹ *166 as defined in these regulations, or for residential and associated agricultural uses. The term does not include the following uses as defined in these regulations: limited-acreage wholesale flower farms, riding stables, landscape service, firewood operations and horticultural nursery businesses."

Respondent's property was more than three acres, so the Zoning Commissioner stated that the issue as to whether this was a farm was whether the property was being used for commercial agriculture. Section 101 of the BCZR defines "Commercial Agriculture" as:

"AGRICULTURE, COMMERCIAL—The use of land, including ancillary structures and buildings, to cultivate plants or raise or keep animals for income, provided that the land also qualifies for farm or agricultural use assessment pursuant to *174 Section 8-209 of the Tax-Property Article of the Annotated Code of Maryland, as amended. Commercial agriculture includes the production of field crops, dairying, pasturage agriculture, horticulture, floriculture, aquaculture, apiculture, viticulture, forestry, animal and poultry husbandry, horse breeding and horse training and also includes ancillary activities such as processing, packing, storing, financing, managing, marketing or distributing, provided that any such activity shall be secondary to the principal agricultural operations."

The Zoning Commissioner determined that respondent was engaging in commercial agriculture by raising and keeping snakes for income. Therefore, he also determined that respondent's property was being used as a farm and he could continue with the use as it was a use permitted by right. Petitioners filed an appeal of the Zoning Commissioner's findings to the Board of Appeals.

Over the course of two days, a hearing was held before the Board of Appeals. The Board of Appeals issued an Opinion *167 on November 30, 1998, which stated that "the use of the subject site for the breeding, raising, and selling of reptiles is not permissible in the R.C.4

zone." The Board of Appeals found that respondent had not satisfied the definition of "Commercial Agriculture." The Board of Appeals stated that:

"Terms such as 'animal,' 'animal husbandry,' and 'domestic animal' need to rest interpretively on an ordinarily accepted definition as stated above. The Board does not disagree with the Zoning Commissioner or the Petitioner's analysis that a snake is an 'animal.' Testimony is uncontradicted that Kahl 'raises, breeds, keeps and markets' these animals (snakes). Is this practice, however, 'commercial agriculture'; and, further, is it the practice of 'animal husbandry?' 'Commercial agriculture' is defined under Section 101 [of the BCZR]. Webster's defines 'animal husbandry' as: '... A branch of agriculture concerned with the production and care of domestic animals ...; the scientific study of the problems of animal production.' A 'domestic animal' may include '... any of the various animals ... which have been domesticated by man so as to live and breed in a tame condition.' Webster defines 'domestic' as '... relating to the household or family ... connected with the supply, service, activities of the household and private residences ...; suited to the physical livability of a private dwelling.' And 'domestic' means to 'bring into a degree of conformity and comfortable accommodation ... to subject to control and service of man.'

Having heard the testimony and a review of the various exhibits and evidence, this Board has concluded that the Property Owner's use of the R.C. zoned land is an improper use, and hence illegal under present statutory law....

In reaching its decision, the Board has also given weight to the definitions assigned to significant terms which have been the subject of the various briefs submitted by Counsel. The first defect in the Property Owner's case is one involving 'the use of land' as it appears in the BCZR 'Farm' definition.... There was more than sufficient testimony and "168 evidence produced at the hearing that Mr. Kahl's reptile activities are not land-based or oriented. He does not employ the use of land (fields, forest, streams), nor is there any other crop, growth, production or animal raised primarily for food or fiber that even stretching [the] interpretation is for the "175 benefit or extension of agriculture. The facts of the case clearly demonstrate that the raising, breeding, and marketing of the Boas and Pythons do not require the use of the land in an agricultural sense. The subject snakes are only outside of the subject building when 'sunning.' They are not dependent on the land or otherwise use the land, agriculturally, on which the building is situated. They exist almost exclusively within the constructed building and are not land dependent." [Emphasis added.]

The Board of Appeals then found that respondent also had not satisfied the definition of "Commercial Agriculture" because the land must qualify for farm or agricultural use assessment and respondent's property was assessed residential by the Department of Assessments and Taxation.

The Board of Appeals also found that respondent's activities did not satisfy the requirement of 'animal husbandry.' The Board of Appeals stated that:

"Exploring the matter further as to whether or not Mr. Kahl's activities include 'animal husbandry,' the Board also concludes that snakes are 'animals.' The Board also acknowledges that Mr. Kahl raises, breeds and sells animals (snakes). Animal husbandry, however, deals with the production and care of domestic animals. The question is one of whether or not Boas and Pythons are to be considered as 'domestic animals.' The term 'domestic' has previously been expounded in this opinion. Significantly, back in July 1994, Mr. Kahl applied for and received a permit for a 'holding facility/kennel/wild life animal license' naming the Peter Kahl Reptiles, Inc., as the facility (his residence) for the purpose of 'research and breeding' valid from July 1, 1994 through June 30, 1995. Article I, Section 6-1 'Definitions' defines 'Wild Animal' as:

' "169 'Any animal of a species that in its natural life is wild, dangerous, or ferocious and, though it may be trained and domesticated by the owner, will remain dangerous to the public at large.'

A 'farm animal' is defined as:

'Any animal being maintained for the production of food, food products, and fiber.'

Clearly, the Property Owner back in 1994 did not believe his operation fit the definition of a 'farm animal' facility, but rather one of a 'holding facility' ... requiring the use of a wild animal license." Mr. Kahl vividly described his attempts to demonstrate how Boas and Pythons could be domesticated. Yet, if left unattended and not fed on a regular and systematic basis, they are aggressive and will seek out food and prey by scent. What contemplates food or prey is anyone's guess, but one must conclude that they must [be] 'considered] dangerous by nature of their size and capacity of constriction and causing death to prey. By definition, domestic animals cannot include any wild animal. While opinions may vary, the Board concludes that in ordinary parlance as well as by the dictionary the word 'domestic' means relating to the home or household and the word 'domesticated' means made domestic or converted to domestic use.

This Board, while recognizing Mr. Kahl's efforts to breed snakes as domesticated, does not agree that they fit the definition as viewed by the members of this Board or the general public. While the Board has concluded that Mr. Kahl's activities are an improper use in R.C.4 zone, it is the conclusion of the Board that present zoning classifications do permit such usage as a pet shop defined "170 under Section 101 as 'a person or establishment that sells and/or offers to sell animals, whether as an owner, agent or on consignment, to the general public,' which permits the marketing of pets; and BCZR Section 270 provides appropriate Zones where animal boarding places (Class A and Class B) are permitted. While not a use permitted by right or special exception in an R.C.4 zone, they are permitted by special exception in "170 R.C.2 zone by way of Bill 178-79, and 'animal boarding place' (Class B) is allowed by special exception, additionally, in D.R.1, D.R.2, D.R.3.5 and B.M. zones, as well as by right in B.R., M.L. and M.H. zones—but specifically prohibited in R.C.4, R.C.5, R.C.20, R.C.50, R.A., R.A.E.1 and 2, B.L. and M.L.R. zones. There are, therefore, ample locations for this type of commercial activity which is engaged in by Mr. Kahl. The present location, however, is not one of them." [Emphasis added.]

The Board of Appeals then addressed the last issue raised by respondent which was equitable estoppel. The Board of Appeals found that it lacked jurisdiction to resolve the issue; nevertheless, the Board of Appeals opined that based on the facts of the case and the relevant case law, respondent would not be entitled to equitable estoppel. Respondent filed a petition for judicial review of the decision of the Board of Appeals in the Circuit Court for Baltimore County.

After a hearing was held on November 10, 1999, the Circuit Court issued an Opinion and Order on November 16, 1999. The Circuit Court reversed the decision of the Board of Appeals. The Board of Appeals had determined that respondent could conduct his business in a zone that allows animal boarding places or pet shops. The Circuit Court determined that these were not appropriate zones for respondent's business and that respondent was engaged in commercial agriculture on a farm, so he could conduct his business in an R.C.4 zone as a matter of right. The Circuit Court then determined that petitioners should be estopped from challenging respondent's use of the land. The Circuit Court stated that, "[a] somewhere in the three years between initially contacting the Department of Permits and Development Management and prior to receiving notice of the special hearing, Kahl was justified in relying upon the approvals he had received from Baltimore County."

Petitioners filed an appeal to the Court of Special Appeals. The Court of Special Appeals held that respondent's facility is a farm as a matter of law. The Court of Special Appeals also held that respondent is not required to have his land assessed "171 agricultural, respondent's property must merely qualify for the agricultural use assessment. In conclusion, the Court of Special Appeals, remanding the action to the Board of Appeals, stated that:

"In conclusion, we hold that appellee's [respondent's] snake facility is a place that uses the land to breed and raise animals for income, pursuant to the plain language of BCZR section 101. On remand, the Board must decide if appellee would qualify for the agricultural use assessment pursuant to section 8-209 of the Tax-Property Article, if appellee were to apply."

Petitioners then filed a Petition for Writ of Certiorari to this Court and respondent filed a Conditional Cross Petition for Writ of Certiorari. We granted both petitions.

II. Discussion

A. Standard of Review

1

In *Board of Physician Quality Assurance v. Banks*, 354 Md. 59, 729 A.2d 376 (1999), we examined an appellate court's role in reviewing an administrative "177 agency. Judge Eldridge, writing for the Court, stated that:

"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, 650 A.2d at 230. See also *Code* (1994, 1995 Repl. Vol.): § 10-222(h) of the State Government Article; *District Council v. Brandywine*, 350 Md. 339, 349, 711 A.2d 1346, 1350-1351 (1998); *Catoonsville Nursing v. Loveman*, 349 Md. 560, 568-569, 709 A.2d 749, 753 (1998).

In applying the substantial evidence test, a reviewing court decides "whether a reasoning mind reasonably could have reached the factual conclusion the agency reached." "172 *Bulluck v. Pelham Wood Apts.*, 263 Md. 505, 512, 390 A.2d 1119, 1123 (1978). See *Anderson v. Dept of Public Safety*, 330 Md. 167, 213, 623 A.2d 198, 210 (1993). 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, 698, 575 A.2d 324, 329 (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." *CBS v. Comptroller*, supra, 319 Md. at 698, 575 A.2d at 329, quoting *Ramsay, Scarlett & Co. v. Comptroller*, 302 Md. 825, 834-835, 450 A.2d 1296, 1301 (1985). See *Catoonsville Nursing v. Loveman*, supra, 349 Md. at 569, 709 A.2d at 753 ("final agency decisions 'are prima facie correct and carry with them the presumption of validity').

Despite some unfortunate language that has crept into a few of our opinions, a court's task on review is not to "substitute its judgment for the expertise of those persons who constitute the administrative agency." "173 *United Parcel v. People's Counsel*, supra, 336 Md. at 576-577, 650 A.2d at 230, quoting *Bulluck v. Pelham Woods Apts.*, supra, 263 Md. at 513, 390 A.2d at 1124. Even with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency. Thus, an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts. *Lussier v. Md. Racing Commission*, 343 Md. 681, 690-697, 684 A.2d 804, 811-812 (1996), and cases there cited; *McCullough v. Witmer*, 314 Md. 602, 612, 552 A.2d 881, 888 (1989) ("The interpretation of a statute by those officials charged with administering the statute is ... entitled to weight"). Furthermore, the expertise of the agency in its own field should be respected. *Fogle v. H & G Restaurant*, 337 Md. 441, 455, 654 A.2d 449, 456 (1995); *Christ [ex rel. Christ] v. Department of Natural Resources*, 335 Md. 427, 445, 644 A.2d 34, 42 (1994) (legislative delegations of authority to "173 administrative agencies will often include the authority to make 'significant discretionary policy determinations'; *Id.* of *Ed. For Dorchester Co. v. Hubbard*, 305 Md. 774, 792, 506 A.2d 625, 634 (1986) ("application of the State Board of Education's expertise would clearly be desirable before a court attempts to resolve the legal issues").

Id. at 87-89, 729 A.2d at 390-91 (footnotes omitted). In the case *sub judice*, the facts "178 of the case are not in dispute; however, the Board of Appeals' interpretation and application of the BCZR is in dispute. As stated in *Banks*, even though the decision of the Board of Appeals was based on the law, its expertise should be taken into consideration and its decision should be afforded appropriate deference in our analysis of whether it was "premiered upon an erroneous conclusion of law." "171 *Banks*, 354 Md. at 68, 729 A.2d at 380, quoting from *United Parcel Service, Inc. v. People's Counsel for Baltimore County*, 336 Md. 569, 577, 650 A.2d 226, 230 (1994).

Respondent contends that the appropriate standard of review is the substituted judgment standard. Respondent states that the decision of the Board of Appeals is not due any deference. Among other cases, respondent cites *Montgomery County v. Buckman*, 333 Md. 516, 635 A.2d 448 (1994) for the proposition that "[t]he agency's resolution of the legal question is not due deference...." We do not find the language in *Buckman* to support the proposition that the decision of an administrative agency is not due any deference.

B. Commercial Agriculture

Petitioners contend that the Court of Special Appeals erred by failing to give the proper deference to the decision of the Board of Appeals and by substituting its judgment for that of

"174 the Board of Appeals in construing the BCZR. We agree with petitioners that the Court of Special Appeals did not properly defer to the presumed expertise of the Board of Appeals in interpreting the BCZR. Moreover, there was substantial evidence to support its findings and its conclusions.

The question before the Board of Appeals was whether respondent's business qualified as commercial agriculture under the definition of farm. If his business qualified as commercial agriculture then he would be able to conduct his business because a farm is a use permitted as of right in an R.C.4 zone. The Board of Appeals determined that respondent had not satisfied the definition of commercial agriculture, "175 because respondent was not using the land for the raising of animals. The Board of Appeals stated that "the raising, breeding, and marketing of the Boas and Pythons do not require the use of the land in an agricultural sense." The Board of Appeals also determined that respondent had not satisfied the definition of commercial agriculture because respondent's business was not animal husbandry as it was intended in the definition of "179 commercial agriculture. The Board of Appeals found that respondent's snakes were wild animals as supported by respondent's application for the holding facility/kennel/wild life animal license in 1994 for his residence and as supported by the definitions of wild animal and domestic animal. The Board of Appeals determined that animal husbandry concerned domestic animals and that the "175 snakes bred by respondent do not fit the definition of domestic animals.

We commence our analysis of the relevant aspects of the BCZR by attempting to ascertain the intent of the legislative body, in this case the County Council of Baltimore County. In *State v. Bell*, 351 Md. 709, 720 A.2d 311 (1998), we stated that:

"We have said that '[t]he cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature.' *Oaks v. Connor*, 339 Md. 24, 35, 660 A.2d 423, 429 (1995). Legislative intent must be sought first in the actual language of the statute. *Mariott Employees Fed. Credit Union v. Motor Vehicle Admin.*, 348 Md. 437, 444-45, 697 A.2d 455, 458 (1997); *Stanford v. Maryland Police Training & Correctional Comm'n*, 346 Md. 374, 380, 697 A.2d 424, 427 (1997) (quoting *Tidewater/Havre de Grace, Inc. v. Mayor [and City Council] of Havre de Grace*, 337 Md. 338, 344, 653 A.2d 463, 472 (1995)); *Coburn v. Coburn*, 342 Md. 244, 256, 674 A.2d 951, 957 (1996); *Romin v. Flax*, 340 Md. 690, 693, 668 A.2d 12 (1995); *Oaks*, 339 Md. at 35, 660 A.2d at 429; *Mauzy v. Hornbeck*, 285 Md. 84, 92, 400 A.2d 1091, 1096 (1979); *Board of Supervisors v. Weiss*, 217 Md. 133, 135, 141 A.2d 734, 738 (1958). Where the statutory language is plain and free from ambiguity, and expresses a definite and simple meaning, courts normally do not look beyond the words of the statute to determine legislative intent. *Mariott Employees*, 346 Md. at 445, 697 A.2d at 458; *Kaczorowski v. Mayor [and City Council] of Baltimore*, 309 Md. 505, 515, 525 A.2d 628, 633 (1987); *Hunt v. Montgomery County*, 248 Md. 403, 414, 237 A.2d 35, 41 (1968).

This Court recently stated that 'statutory language is not read in isolation, but 'in light of the full context in which [it] appear[s], and in light of external manifestations of intent or general purpose available through other evidence.'" *Stanford v. Maryland Police Training & Correctional Comm'n*, 346 Md. 374, 380, 697 A.2d 424, 427 (1997) (alterations in "176 original) (quoting *Cunningham v. State*, 318 Md. 182, 185, 567 A.2d 126, 127 (1989)). To this end,

[w]hen we pursue the context of statutory language, we are not limited to the words of the statute as they are printed.... We may and often must consider other 'external manifestations' or 'persuasive evidence,' including a bill's title and function paragraphs, amendments that occurred as it passed through the legislature, its relationship to earlier and subsequent legislation, and other material that fairly bears on the fundamental issue of legislative purpose or goal, which becomes the context within which we read the particular language before us in a given case.

... [I]n *State v. One 1983 Chevrolet Van*, 309 Md. 327, 524 A.2d 51 (1987), ... [a]lthough we did not describe any of the statutes involved in that case as ambiguous or uncertain, we did search for legislative purpose or meaning-what Judge Orth, writing for the Court, described as 'the legislative scheme.' ["180 *Id.* at 344-45, 524 A.2d at 59. We identified that scheme or purpose after an extensive review of the context of Ch. 549, Acts of 1984, which had effected major changes in Art. 27, § 297. That context included, among other things, a bill request form, prior legislation, a legislative committee report, a bill title, related statutes and amendments to the bill. See also *Ogryns v. James*, 309

v. Board of Zoning Appeals, 177 Md. 428, 9 A.2d 747 (1939), established as one of the tests for determining the existence of a nonconforming use "is whether such use was known in the neighborhood."

254 Md. at 255-56, 255 A.2d at 404.

In *Rockville Fuel & Feed Co. v. Gaithersburg*, 298 Md. 117, 291 A.2d 672 (1972), we said that "[s]uch a 'vested right' could only result when a lawful permit was obtained and the owner, in good faith, has proceeded with such construction under it as will advise the public that the owner has made a substantial beginning to construct the building and commit the use of the land to the permission granted." *Id.* at 127, 291 A.2d at 677; see also *County Council for Montgomery County v. District Land Corp.*, 274 Md. 691, 337 A.2d 712 (1975)."

Id. at 312-13, 823 A.2d at 1303-04 (alteration in original); see *Sycamore Realty Co., Inc. v. People's Counsel of Baltimore County*, 344 Md. 57, 67, 684 A.2d 1331, 1336 (1996).

In the case *sub judice*, respondent obtained a permit and completed substantial construction, however, he is not entitled to have a vested right because there has been no change, applicable to his case, in the zoning law itself and the permit was improperly issued. When respondent obtained his permit and started construction, the BCZR was the same as when petitioners filed for a hearing before the Zoning Commissioner. The Zoning Commissioner and later the Board of Appeals were not making a subsequent change to the BCZR, they were just interpreting the BCZR as it was already enacted. Based on the decision **190 of the Board of Appeals that we are affirming, respondent's permit was not a lawful permit because he could not lawfully conduct his business in an R.C.4 zone.

6 **194 Respondent did not satisfy the first prong because his permit was not proper. Additionally, he was not being subjected to a subsequent change in the zoning regulations. Generally, in the absence of bad faith on the part of the remitting official, applicants for permits involving interpretation accept the afforded interpretation at their risk. Therefore, respondent has not obtained a vested right to conduct his business on the property.

D. EQUITABLE ESTOPPEL

7 We examined the doctrine of equitable estoppel and its application against a municipality in *Inlet Associates v. Assateague House Condominium Association*, 313 Md. 413, 545 A.2d 1296 (1988), when we stated that:

"There is no settled rule in this country as to when, and under what circumstances, equitable estoppel is available against a municipal corporation. *Permanent Fin. Corp. v. Montgomery Cty.*, 308 Md. 239, 518 A.2d 123 (1986). Our cases have continually applied the definition of equitable estoppel set forth in 3 J. Pomeroy, *Equity Jurisprudence* § 804 (5th ed. 1941) as follows:

"Equitable estoppel is the effect of the voluntary conduct of a party whereby he is absolutely precluded, both at law and in equity, from asserting rights which might have otherwise existed, either of property, or contract or of remedy, as against another person who has in good faith relied upon such conduct, and has been led thereby to change his position for the worse and who on his part acquires some corresponding right, either of property, of contract, or of remedy."

Unlike *Permanent Fin.*, the present case does not turn on the ambiguity vel non of a county ordinance which was subject to two reasonable interpretations. Rather, we are now considering whether a municipality may be estopped when its city council, in clear violation of a fundamental charter requirement that it act by ordinance, with all the "195 deliberate safeguards attendant upon the legislative process, purports to bind the municipality through passage of a simple resolution which is neither subject to executive approval nor veto nor the public right of referendum. Of course, no principle is better settled than that persons dealing with a municipality are bound to take notice of limitations upon its charter powers. See *City of Hagerstown [v. Long Meadow Shopping Center]*, *supra*, 284 Md. [481] at 493, 287 A.2d 242; *Hanna v. Bd. of Ed. of Wicomico Co.*, 200 Md. 49, 57, 87 A.2d 848 (1952); *Gontrum v. [Mayor and] City [Council] of Baltimore*, 182 Md. 370, 375, 35 A.2d 128 (1944 [1943]). Consequently, "[e]veryone dealing with officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority." *Lipsitz v. Parr*, *supra*,

164 Md. [222] at 228, 164 A. 743. See also *Berklyn Heights*, *supra*, 228 Md. at 279, 179 A.2d 712. Therefore, the doctrine of equitable estoppel "cannot be ... invoked to defeat the municipality in the enforcement of its ordinances, because of an error or mistake committed by one of its officers or agents which has been relied on by the third party to his detriment." *Lipsitz*, 164 Md. at 228, 164 A. 743. In the same vein, McQuillin, **191 *supra*, § 29-104c states that estoppel cannot make lawful a municipal action which is beyond the scope of its power to act or is not executed in compliance with mandatory conditions prescribed in the charter. In other words, the doctrine of equitable estoppel cannot be invoked to defeat a municipality's required adherence to the provisions of its charter simply because of reliance upon erroneous advice given by an official in excess of his authority. See *[Mayor and] City [Council] of Baltimore v. Crane*, *supra*, 277 Md. [198] at 206, 352 A.2d 786. When, as here, it is a patent violation of one of the most fundamental provisions of a municipal charter—that its legislative body, when required to act in a legislative capacity, do so only by "196 ordinance—it cannot matter that a party relies upon erroneous official advice to its detriment."

Id. at 434-37, 545 A.2d at 1307-08 (alteration in original).

Respondent contends that Baltimore County should be estopped from preventing him from using his property to raise, breed, and keep reptiles and snakes. Respondent states that it would be "fundamentally unfair" to not allow him to use the property for his business after he obtained permit approval and had substantially constructed the reptile barn before he knew the petitioners might file for a special hearing. Respondent contends that he relied on the permit approval to order materials and enter into a contract for construction.

In *Lipsitz v. Parr*, 164 Md. 222, 164 A. 743 (1933), Mr. Lipsitz brought a proceeding against Mr. Parr, the buildings engineer of the Mayor and City Council of Baltimore City, and the named members of the board of zoning appeals. Mr. Lipsitz had obtained a permit to construct a building to manufacture ice. The permit granted Mr. Lipsitz permission to construct the building and the permit carried an indorsement that the use of the land was in conformity with the provisions of the zoning ordinance. The land upon which the ice factory was to be constructed was actually in a zone where an ice factory was prohibited. Mr. Lipsitz was notified by letter that the permit was revoked and annulled as being in violation of the law and as having been issued by a mistake of a clerk. Mr. Lipsitz had already leased the premises to a tenant for a term of five years and had started construction on the building. Mr. Lipsitz alleged that the municipality was barred from denying his right to use the premises as an ice factory by estoppel.

The Court held that the doctrine of estoppel did not apply because a municipality is not estopped from enforcing its zoning regulations when a permit had been issued by mistake by its officer or agent. The Court held that:

"A municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act "197 be in violation of law. Paragraph 31 of the ordinance forbade the officials of the municipality to grant the permit which the plaintiff asked and obtained; and paragraph 41 made it a misdemeanor for the plaintiff to use his premises as a factory to make ice as the invalid permit purported to empower.

If the provision of the ordinance be constitutional, it was therefore unlawful for the officers and agents of the municipality to grant the permit, and it would be unlawful for the licensee to do what the purporting permit apparently sanctioned. A permit thus issued without the official power to grant does not, under any principle of estoppel, prevent **192 the permit from being unlawful nor from being denounced by the municipality because of its illegality. In the issuance of permits pursuant to the ordinance at bar, the municipality was not acting in any proprietary capacity nor in the exercise of its contractual powers, but in the discharge of a governmental function through its public officers of limited authority, and the doctrine of equitable estoppel cannot be here invoked to defeat the municipality in the enforcement of this ordinances, because of an error or mistake committed by one of its officers or agents which has been relied on by the third party to his detriment. Every one dealing with the officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.

So, even where a municipality has the power, but has done nothing, to ratify or sanction the unauthorized act of its officer or agent, it is not estopped by the unauthorized or

wrongful act of its officer or agent in issuing a permit that is forbidden by the explicit terms of an ordinance.

It follows that, because the ordinance prohibited the use of the premises in question for the making of ice by artificial methods, any permit issued would be void, and the person who received the permit would derive no benefit, and whatever he might do in pursuance of this permission would be "198 at his own risk and loss, unless the prohibition itself were void."

Id., at 227-28, 164 A. at 745-46 (citations omitted) (emphasis added).

In *Town of Berwyn Heights v. Rogers*, 228 Md. 271, 179 A.2d 712 (1962), Philip Rogers, a home builder, began construction of a residence in Berwyn Heights. Mr. Rogers had not started construction until he had received building permits from both the county's building inspectors and the Town of Berwyn Heights¹⁹ inspectors. The construction was in compliance with the permits; however, the Town of Berwyn Heights concluded that a mistake had been made in the issuance of the permits so that the residence was being built in violation of a zoning ordinance. The Town of Berwyn Heights filed suit to enjoin the construction of Mr. Rogers.

Mr. Rogers alleged that the Town of Berwyn Heights was estopped from filing suit because it and the county had issued Mr. Rogers building permits, and Mr. Rogers had expended substantial amounts of money in partially constructing the residence. The Court held that

"Some authorities hold that the principle of estoppel does not apply against a city, but the majority rule is to the effect that the doctrine of estoppel in pais is applied to municipal, as well as to private, corporations and individuals, at least where the acts of its officers are within the scope of their authority and justice and right requires that the public be estopped. And it has been held that municipalities may be estopped by reason of the issuance of permits. However, the cases and text-writers very generally state that a municipality is not estopped to set up the illegality of a permit. And the issuance of an illegal permit creates no vested rights in the permittee. *We have held above that the permits issued to the appellee were in violation of the zoning ordinance; consequently, they were unlawful and "199 did not estop the appellant [the Town of "199 Berwyn Heights] from prosecuting this suit."*

Id., at 279-80, 179 A.2d at 716 (citations omitted) (emphasis added).¹⁹

While we are sympathetic to the plight in which respondent has found himself, we hold that the county is not estopped from enforcing the BCZR as it was applied by the Board of Appeals. We have held, generally, that permits that have been issued that are in violation of the zoning ordinances are unlawful and cannot be grounds for estopping a municipality from the enforcement of the ordinance. We stated in *Lipsitz* that "the doctrine of equitable estoppel cannot be here invoked to defeat the municipality in the enforcement of its ordinances, because of an error or mistake committed by one of its officers or agents which has been relied on by the third party to his detriment." *Lipsitz*, 164 Md. at 227, 164 A. at 748.

III. Conclusion

We hold that the Court of Special Appeals failed to give appropriate deference to the expertise of the Board of Appeals in interpreting the BCZR. Furthermore, there was substantial evidence in the record to support the findings made by the Board of Appeals and the decision made by the Board of Appeals was not based on an erroneous conclusion of law. The Board of Appeals properly found that respondent's business does not satisfy the definition of "commercial agriculture," because respondent was not involved in the use of the "200 land or in animal husbandry. Also, it was not the intent of the County Council when enacting the definition of "commercial agriculture" to include activities like the breeding, raising, and selling of reptiles. Therefore, respondent's business does not satisfy the definition of "farm" and respondent is unable to conduct his business in an R.C.4 zone.

Respondent is not entitled to a vested right to use his property to raise, breed, and keep reptiles and snakes. Because we have held that respondent's business is not a use allowed in an R.C.4 zone, respondent cannot satisfy the first prong of vested rights jurisprudence because his permit was never properly issued. The permit was in violation of the BCZR. Respondent also is not entitled to a vested right because the concept of vested rights generally protects a party from a subsequent change to a zoning ordinance after construction under a valid permit has commenced. In the case at bar, there was not a subsequent change in the BCZR; there was only an interpretation of a statutory provision that existed at the time the alleged right vested, which interpretation was not contrary to any

prior interpretation by the BCZR of that provision or local common practice and usage regarding the provision.

We also hold that Baltimore County is not estopped from preventing respondent from using his property to conduct his business by enforcing the BCZR as it was interpreted by the Board of Appeals. Respondent knew, or should have known, "194 that the permit obtained was not proper when it was issued; it cannot be grounds for estopping Baltimore County from enforcing the BCZR.

JUDGMENT OF THE COURT OF SPECIAL APPEALS REVERSED; CASE REMANDED TO THAT COURT WITH INSTRUCTIONS TO REVERSE THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AND TO REMAND THE CASE TO THE CIRCUIT COURT FOR BALTIMORE COUNTY WITH DIRECTIONS TO AFFIRM THE DECISION OF THE BOARD OF APPEALS FOR BALTIMORE COUNTY; "201 COSTS IN THIS COURT AND IN THE COURT OF SPECIAL APPEALS TO BE PAID BY RESPONDENT.

All Citations

366 Md. 158, 783 A.2d 159

Footnotes

- 1 Herpetology is defined as "the branch of zoology dealing with reptiles and amphibians." *The Random House Dictionary of the English Language* 668 (Jess Stein ed., The Unabridged Edition, Random House 1983).
- 2 Both boas and pythons are members of the family *Boidae* and are large non-venomous snakes that kill their prey by constriction.
- 3 In 1995, the Department of Zoning and Development Management became the Department of Permits and Development Management.
- 4 Section 1A03.1 of the Baltimore County Zoning Regulations (hereinafter BCZR) provides that:

"The County Council finds that major, high-quality sources of water supply for the entire Baltimore Metropolitan Area and for other neighboring jurisdictions lie within Baltimore County and that continuing development in the critical watersheds of those water supply sources is causing increased pollution and sedimentation in the impoundments, resulting in increasing water treatment costs and decreasing water storage capacity. The R.C.4 zoning classification and its regulations are established to provide for the protection of the water supplies of metropolitan Baltimore and neighboring jurisdictions by preventing contamination through unsuitable types or levels of development in their watersheds."
- 5 Section 1A03.3 of the BCZR provides that:

"A. Uses permitted as of right. The following uses, only are permitted as of right in R.C.4 Zones:

1. Dwellings, one-family detached.

2. Farms and limited-acreage wholesale flower farms...."
- 6 In the inter-office correspondence from the Department of Zoning to the Advisory Board, the Director of the Department of Zoning stated that:

"This office is officially requesting verification of the legitimacy of a farm use on the referenced property. In the judgement of the Director and/or the Zoning Commissioner, in consideration of your findings, a special hearing may be required before the Zoning Commissioner prior to any zoning approvals."

7

The Baltimore County Agricultural Land Preservation Advisory Board's opinion was advisory; the opinion did not have any authority. Section 14-451 of the Baltimore County Code states that:

"Sec. 14-451. Agricultural land preservation advisory board; created; duties and responsibilities; membership; terms of office.

(c) *Duties and responsibilities.* The agricultural preservation advisory board shall be vested with and shall possess all the powers and duties in this article specified and also all powers necessary to properly carry out fully and factually, the provisions of this article. In addition to those duties prescribed by state law, the board shall:

(5) Review and make recommendations to the office of zoning administration and development management on zoning regulation proposals that relate to agricultural uses such as tenant buildings, farmer's roadside stands and other agricultural issues as the need arises."

In this particular case, the basement, it can be argued, was nevertheless a crawl space.

The outer shell of the reptile barn was from the footings up to the roofline.

The Random House Dictionary of the English Language 29 (Jess Stein ed., The Unabridged Edition, Random House 1983) provides that agriculture is: "1. the science or art of cultivating land in the raising of crops; tillage; husbandry; farming. 2. the production of crops, livestock, or poultry. 3. agronomy."

In Baltimore County, since at least 1978, the Board of Appeals has been charged with "all the functions and duties relating to zoning [appeals] described in Article 25A of the Annotated Code of Maryland." Baltimore County Charter, § 602(a). As such, its presumed expertise in interpreting the BCZR, developed over the ensuing years, is what gives weight to appropriate deference in our analysis of its legal reasoning in this matter.

As stated, *supra*, commercial agriculture is defined in section 101 of the BCZR as:

"AGRICULTURE, COMMERCIAL—The use of land, including ancillary structures and buildings, to cultivate plants or raise or keep animals for income, provided that the land also qualifies for farm or agricultural use assessment pursuant to Section 8-209 of the Tax-Property Article of the Annotated Code of Maryland, as amended. Commercial agriculture includes the production of field crops, dairying, pasturage agriculture, horticulture, floriculture, aquaculture, apiculture, viticulture, forestry, animal and poultry husbandry, horse breeding and horse training and also includes ancillary activities such as processing, packing, storing, financing, managing, marketing or distributing, provided that any such activity shall be secondary to the principal agricultural operations." [Emphasis added.]

The livestock, fowl, and poultry listed in the livestock ratio table were horses, burros, cattle, sheep, goats, pigs, ponies, miniature horses, chickens, ducks, geese, pigeons, pheasant, and quail. Snakes were not listed as an animal that would be on a farmette and would need to be included in a ratio table to help control animal waste pollution.

The definition of commercial agriculture, stated *supra*, explicitly states that aquaculture and poultry husbandry are included as commercial agriculture. The definition does not state that the raising, breeding, and selling of snakes—snake husbandry—is included as commercial agriculture.

The Town of Berwyn Heights was, and remains, a municipal corporation.

There have been cases where we have granted equitable estoppel against a municipality; however, they are distinguishable from the case at bar. In *Permanent Financial Corp. v. Montgomery County*, 308 Md. 239, 518 A.2d 123 (1986), a builder sought to estop the county from asserting that the top floor of a building exceeded a height control imposed by local zoning ordinances. We held that the county was estopped because the builder had designed and constructed the building in reliance on the building permits and the counties long-standing and reasonable interpretation as to how a building's height should be calculated. The record in the case at bar does not indicate any long-standing practice in Baltimore County to include snakes as farm animals or the raising and breeding of snakes as commercial agriculture. To the extent there is any such evidence, it is to the contrary.

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RESPONSE 11/1/2016

Law Office of
RAYMOND M. ATKINS, JR.
The Parsonage
410 Delaware Avenue
Towson, Maryland 21286

Telephone: (410) 321-7117



Fax: (410) 821-9245

June 1, 2016

Board of Appeals of Baltimore County
Jefferson Building / Second floor, Suite 203
105 West Chesapeake Avenue
Towson, Md. 21204

IN THE MATTER OF: Tracy and Ryne Laxton
13 Ryan Frost Way
16-165-A / Case No: 2016-0165-A
15th Election District; 7th Councilmanic District

Dear Madam/Sir:

Please be advised that this office represents Robert and Pamela Laconne Kuhl in the Appeal for the Petition for Variance Relief in the above referenced case. Please accept this as my request for a postponement of the Board of Appeals Hearing scheduled for Tuesday, June 26, 2016, at 10:00 am located at 105 West Chesapeake Avenue in the Jefferson Building, Second Floor Suite 206, Room #2. I have a previously scheduled Family vacation at my summer home in Ocean City, Maryland.

Please be so kind as to have your staff contact my office to confirm a few dates in order to avoid any further postponements. My full vacation schedule is listed below for reference:

June 8 - June 25, 2016 – Summer Vacation at his Home in Ocean City, Maryland
July 16 - July 30, 2016 – Summer Vacation at his Home in Ocean City, Maryland
August 20 – August 27, 2016 – Summer Vacation at his Home in Ocean City, Maryland

If you should have any questions, please do not hesitate to contact me. Thank you in advance for your consideration and attention to this matter.

Sincerely,

Raymond M. Atkins Jr.
Raymond M. Atkins, Jr.

CC: Petitioners / Tracy and Ryne Laxton
Protestants / Robert and Pamela Laconne Kuhl



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 8, 2016

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Tracy and Ryne Laxton
13 Ryan Frost Way
16-165-A 15th Election District; 7th Councilmanic District

Re: Petition for Variance relief from B.C.Z.R. § 427.1.B.1. to permit a 6 ft. high privacy fence in the rear and side yard of the property which adjoins the front yard of an existing residence in lieu of the permitted 3.5 ft. fence.

3/23/16 Opinion and Order of the Administrative Law Judge wherein the Petition for Variance was DENIED; and it was further ORDERED that Baltimore County shall be estopped from claiming the fence at issue exceeds the height limitation set forth in the B.C.Z.R. and/or Building Code.

ASSIGNED FOR: **TUESDAY, JULY 26, 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. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- 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.

NEW! Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.

NEW! Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington, Administrator

c: Petitioners/Legal Owners	: Tracy and Ryne Laxton
Counsel for Protestants	: Raymond M. Atkins, Jr., Esquire
Protestants	: Robert and Pamela Laconne Kuhl

Office of People's Counsel
Arnold Jablon, Director/PAI
Lionel van Dommelen, Chief of Code Enforcement/PAI
Michael Field, County Attorney, Office of Law

Lawrence M. Stahl, Managing Administrative Law Judge
Andrea Van Arsdale, Director/Department of Planning
Nancy West, Assistant County Attorney



KEVIN KAMENETZ
County Executive

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

April 25, 2016

Raymond M. Atkins, Jr., Esq.
The Parsonage
410 Delaware Avenue
Towson, Maryland 21285



RE: **APPEAL TO BOARD OF APPEALS**
Case Nos. 2016-0165-A
Location: 13 Ryan Frost Way

Dear Mr. Atkins:

Please be advised that an appeal of the above-referenced case was filed in this Office on April 21, 2016. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals ("Board").

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "L. Stahl", written over the word "Sincerely,".

LAWRENCE M. STAHL
Managing Administrative Law Judge
for Baltimore County

LMS/sln

c: Baltimore County Board of Appeals
Peter Max Zimmerman, People's Counsel for Baltimore County
Robert Kuhl, 15 Ryan Frost Way, Baltimore, Maryland 21221
Tracy and Ryne Laxton, 13 Ryan Frost Way, Essex, Maryland 21221

IN RE: PETITION FOR VARIANCE
(13 Ryan Frost Way)
15th Election District
7th Council District
Tracy & Ryan Laxton
Legal Owners

Petitioners

RECEIVED

APR 21 2016

* BEFORE THE OFFICE
* OF ADMINISTRATIVE
HEARINGS FOR
BALTIMORE COUNTY

OFFICE OF ADMINISTRATIVE HEARINGS
Case No: 2016-0165-A

* * * * *

NOTICE OF APPEAL

This matter having come before the Office of Administrative Hearing for Baltimore County as a Petition For Variance on behalf of Tracy and Ryan Laxton, Appellees;

On behalf of Robert G. and Pamela Lavonne Kuhl, Appellants, and being the owners of the adjoining property, files this Appeal, and for cause states the following:

FACTUAL BACKGROUND

The Appellants own real property fronted by of the Appellees on a cul de sac; and the Appellants achieve ingress and egress to their property by way of an easement along the side property line of the Appellees; Therefore, the front yard is the back yard of the Appelles .

That the Appellants raised an objection to the placement of a six foot wooden privacy fence by the Appelles and the variance they requested from B.C.Z. R. §427, which provides a height limit of 42 inches for any fence in the rear of a single family dwelling that adjoins the front yard of another single family dwelling.

That Administrative Law Judge John E. Beverungen, **DENIED** the variance for a 6 foot high privacy fence in the rear and side yard of the property which adjoins the front yard of the existing residence (e.g. the Appellants)

1. Prohibiting Baltimore County from enforcing the denial of the variance of B.C.Z.R. §427 et seq., and/or the building code on the Appellee's property.
2. That the fence placed completely around the rear of the Appellees property is 6 feet tall, in clear violation of B.C.Z.R §427 et seq.

3. That the effect of the violation of B.C.Z.R. §427 et seq, by the Appellees to the Appellants is that it visually obstructs their view from their property which faces directly at the volatile 6 foot fence and that the structure violates their right to the free flow of natural air.

4. Additionally, The volatile 6 foot fence visually obstructs the Appellants from being able to look down the sidewalk for pedestrians and children, of which there are many in this cul de seq, on bicycles and walking on the sidewalk.

5. The purpose of the code statute is to prevent the installation of the obstructionistic fencing not only visually but also it physically obstructs the free flow of air.

6. Furthermore, the Appellees claim the need for the 6 foot high fence for the purpose of addressing the safety of a young child, which would easily be fulfilled by the placement of a conforming 42 inch fence as permitted by B.C.Z.R. §427, unless the child was not being properly supervised. Therefore that claim is meritless.

7. The effect of the placement of the 6 foot tall volatile fence directly in front of the front door of the Appellants by the Appellees and all the way up their entrance to their home is outrageous and certainly not permissible given it's impact on the Appellants.

WHEREFORE, The Appellants hereby requests this Honorable Court:

1. Order the continued denial of the Appellee's requested variance of B.C.Z.R. §427 et seq;

2. Order the enforcement of the 42 inch fence height limitation on the Appellee's residence; and

3. For such other and further relief as the nature of their cause may require.



Raymond M. Atkins, Jr., Esq.
The Parsonage
410 Delaware Avenue
Towson, Maryland 21286
410-321-7117

Counsel for the Appellants

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of April, 2016 the Notice To Appeal was hand-delivered to the Office of Administrative Hearings, 105 W. Chesapeake Avenue, Suite 103, Towson, Md. 21204 and a copy was sent to:

Tracy Laxton
Ryne Laxton
13 Ryan Frost Way
Essex, Md. 21221

Appellees



Raymond M. Atkins, Jr., Esq.
The Parsonage
410 Delaware Avenue
Towson, Maryland 21286
410-321-7117

Counsel for the Appellants



KEVIN KAMENETZ
County Executive

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

March 23, 2016

Tracy and Ryne Laxton
13 Ryan Frost Way
Essex, Maryland 21221

RE: Petition for Variance
Case No. 2016-0165-A
Property: 13 Ryan Frost Way

Dear Petitioners:

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 County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,


JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB: sln
Enclosure

c: Robert Kuhl, 15 Ryan Frost Way, Baltimore, Maryland 21221

IN RE: PETITION FOR VARIANCE

(13 Ryan Frost Way)

15th Election District

7th Council District

Tracy & Ryne Laxton

Legal Owners

Petitioners

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BEFORE THE OFFICE

OF ADMINISTRATIVE

HEARINGS FOR

BALTIMORE COUNTY

CASE NO. 2016-0165-A

* * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for Baltimore County as a Petition for Variance on behalf of Tracy and Ryan Laxton, legal owners of the subject property ("Petitioners"). Petitioners are requesting Variance relief from the Baltimore County Zoning Regulations (B.C.Z.R.) §427.1.B.1 to permit a 6 ft. high privacy fence in the rear and side yard of the property which adjoins the front yard of an existing residence in lieu of the permitted 3.5 ft. fence. A site plan was marked as Petitioners' Exhibit 1.

Tracy and Ryne Laxton appeared in support of the Petition. An adjoining neighbor attended the hearing and opposed the request. The Petition was advertised and posted as required by the B.C.Z.R. No substantive Zoning Advisory Committee (ZAC) comments were received.

The subject property is approximately 6,250 square feet and is zoned DR 3.5. The property is improved with a single family dwelling which Petitioners purchased in 2014. Petitioners have a young child, and they wanted to enclose their yard for privacy and safety. They visited the county zoning and permits offices and were issued in October 2015 a permit for a fence 6 ft. in height. The fence was constructed shortly thereafter, and within a month Petitioners were issued a zoning violation notice citing (among other things) B.C.Z.R. §427, which provides a height limit of 42" for any fence in the rear of a single family dwelling that adjoins the front yard of another

ORDER RECEIVED FOR FILING

Date

3/23/16

By

Den

single family dwelling.

A variance request involves a two-step process, summarized as follows:

- (1) It must be shown the property is unique in a manner which makes it unlike surrounding properties, and that uniqueness or peculiarity must necessitate variance relief; and
- (2) If variance relief is denied, Petitioner will experience a practical difficulty or hardship.

Cromwell v. Ward, 102 Md. App. 691 (1995).

Petitioners have not met this test. No evidence was presented which would establish the subject property is unique, and under Maryland law variances should be granted “sparingly” and “only under exceptional circumstances.” *Cromwell*, 102 Md. App. at 703.

But that is not the end of the story. I believe Baltimore County should be estopped from denying the validity of the fence permit which it issued to Petitioners on or about October 13, 2015. Petitioners sought and were granted a permit, and in reliance upon that permit they purchased materials and constructed the fence. No evidence was presented to show that such reliance was not reasonable, and Petitioners incurred significant expense to install the fence.

A similar case was considered by Maryland’s highest court in *Permanent Financial v. Montgomery County*, 308 Md. 239 (1986). In *Permanent Financial*, a developer obtained a permit from the county to construct a four story commercial office building, with a fifth story “penthouse” that would mainly house mechanical equipment. The zoning regulation contained a height limitation of 35 feet, although it also provided that any non-inhabitable structures (i.e., a spire) may extend up to 8 feet beyond the height limitation. The developer constructed the building 43 feet high, believing that 8 feet of that total would be attributable to a non-inhabitable space (i.e., a fifth-floor penthouse). The County initially agreed, although it later issued a violation notice alleging the building exceeded the height requirements. The primary dispute was whether the

ORDER RECEIVED FOR FILING

Date 3/23/16
By Sen

penthouse constituted un-inhabitable space. The court held the County was estopped from enforcing the height limitation because the developer constructed the building in reliance upon the County's interpretation of the regulation, after receiving from the County a building permit, and in accordance with the plans approved by the County.

I believe the facts in this case are at least as compelling as those in *Permanent Financial*. Indeed, that case involved a sophisticated developer whom one would assume would have some proficiency in interpreting zoning and building regulations. The same cannot be said for Petitioners, who are young first-time home buyers. Petitioners constructed the fence in reliance upon the permit issued by the County, and I believe it would be inequitable at this juncture to require the fence to be removed.

THEREFORE, IT IS ORDERED, this 23rd day of **March, 2016**, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations ("B.C.Z.R.") §427.1.B.1 to permit a 6 ft. high privacy fence in the rear and side yard of the property which adjoins the front yard of an existing residence in lieu of the permitted 3.5 ft. fence, be and is hereby DENIED.

IT IS FURTHER ORDERED that Baltimore County shall be estopped from claiming the fence at issue exceeds the height limitation set forth in the B.C.Z.R. and/or Building Code.

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 3/23/16

By Den



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 13 Ryan Frost Way, Essex MD 21221 which is presently zoned _____
Deed References: 34945 / 06442 10 Digit Tax Account # 2200006307
Property Owner(s) Printed Name(s) Tracy Laxton

(SELECT THE HEARING(S) BY MARKING ☒ AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. ☐ a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

2. ☐ a Special Exception under the Zoning Regulations of Baltimore County to use the herein described property for

3. ☒ a Variance from Section(s) 427.1.B.1 OF BCZR TO PERMIT A 6 FEET HIGH PRIVACY FENCE IN THE REAR AND SIDE YARD OF THE PROPERTY WHICH ADJOINS THE FRONT YARD OF AN EXISTING RESIDENCE

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons:
(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)

Previously installed fence with issued permit # B892419 being contested by neighbor. The fence was installed on 10/17/2015.

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

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

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

Contract Purchaser/Lessee:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Attorney for Petitioner:

Name- Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Name #1 - Type or Print

Signature #1

Mailing Address City State

Zip Code Telephone # Email Address

Name #2 - Type or Print

Signature #2

Representative to be contacted:

Name - Type or Print

Signature

Mailing Address City State

Zip Code Telephone # Email Address

CASE NUMBER 2016-0165-A Filing Date 1/15/16

Do Not Schedule Dates: _____ Reviewer AT

427.1.B.1.

ZONING PROPERTY DESCRIPTION FOR: 13 Ryan Frist Way. Essex Md. 21221

Beginning at a point on the north side of Ryan Frost Way which is 50' ft R/W wide at the distance of 105' ft southeast of the centerline of improved intersection street, Russel Frost Court which is 50' ft R/W wide.

Being lot 13 in the subdivision Cape may Landing as recorded in the Baltimore County Plat Book #63, Folio 4, containing 8,139' sq ft. Located in the 15th Election District and the 7th Council District.

2016-0165-A



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
*Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections*

February 1, 2016

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: 2016-0165-A

13 Ryan Frost Way
N/s Ryan Frost Way, 105 NE of centerline of Russel Frost Cour
15th Election District – 7th Councilmanic District
Legal Owners: Tracy & Ryne Laxton

Variance to permit a 6 ft. high privacy fence in the rear and side yard of the property which adjoins the front yard of an existing residence in lieu of the permitted 3.5 ft. fence.

Hearing: Monday, March 21, 2016 at 2:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

A handwritten signature in dark ink, appearing to read "Arnold Jablon", is written over a horizontal line.

Arnold Jablon
Director

AJ:kl

C: Tracy & Ryne Laxton, 13 Ryan Frost Way, Essex 21221

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, MARCH 1, 2016**
- (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.



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 3992920

Sold To:

Tracy Laxton - CU00522029
13 Ryan Frost Way
Essex, MD 21221-1646

Bill To:

Tracy Laxton - CU00522029
13 Ryan Frost Way
Essex, MD 21221-1646

Was published in "Jeffersonian", "Bi-Weekly", a newspaper printed and published in Baltimore County on the following dates:

Mar 01, 2016

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: # 2016-0165-A
13 Ryan Frost Way
N/s Ryan Frost Way, 105 NE of centerline of Russel Frost Court
15th Election District - 7th Councilmanic District
Legal Owner(s) Tracy & Ryne Laxton

Variance: to permit a 6 ft. high privacy fence in the rear and side yard of the property which adjoins the front yard of an existing residence in lieu of the permitted 3.5 ft. fence.

Hearing: Monday, March 21, 2016 at 2:30 p.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204.

ARNOLD IABLON, 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 3/602 Mar. 1 3992920

The Baltimore Sun Media Group

By *S. Wilkinson*
Legal Advertising

CERTIFICATE OF POSTING

2016-0165-A

RE: Case No.: _____

Petitioner/Developer: _____

Tracy & Ryne Laxton

March 21, 2016

Date of Hearing/Closing: _____

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

Attn: 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: _____

13 Ryan Frost Way

February 28, 2016

The sign(s) were posted on _____
(Month, Day, Year)



Sincerely,

February 28 2016

(Signature of Sign Poster)

(Date)

SSG Robert Black

(Print Name)

1508 Leslie Road

(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)

PLEASE PRINT CLEARLY

CASE NAME

CASE NUMBER 2016-0165-A

DATE 3-21-16

PETITIONER'S SIGN-IN SHEET

[illegible]

CASE NAME

CASE NUMBER

DATE 3-21-16

20K-G165A

3-21-16

ADDRESS

CITY, STATE, ZIP

E - MAIL

[illegible]



KEVIN KAMENETZ
County Executive

ARNOLD JABLON
*Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections*

March 17, 2016

Tracy & Ryne Laxton
13 Ryan Frost Way
Essex MD 21221

RE: Case Number 2016-0165 A, Address: 13 Ryan Frost Way

To Whom It May Concern:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on January 15, 2016. This letter is not an approval, but only a **NOTIFICATION**.

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

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

Very truly yours,

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

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: jaw

Enclosures

c: People's Counsel



Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Pete K. Rahn, Secretary
Gregory C. Johnson, P.E., Administrator

Date: 1/27/16

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

RE: Baltimore County
Item No. 2016-0165-A
Variance
Tracy & Ryan Laxton
13 Ryan Frost Way

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. 2016-0165-A.

Should you have any questions regarding this matter, please contact Mr. Richard Zeller at 410-229-2332 or 1-866-998-0367 (in Maryland only) extension 2332, or by email at (rzeller@sha.state.md.us).

Sincerely,

David W. Peake
Metropolitan District Engineer – District 4
Baltimore & Harford Counties

DWP/RAZ

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: February 10, 2016

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 16-165

RECEIVED

FEB 16 2016

INFORMATION:

Property Address: 13 Ryan Frost Way
Petitioner: Tracy Laxton, Ryne Laxton
Zoning: DR 3.5
Requested Action: Variance

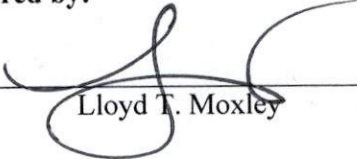
OFFICE OF ADMINISTRATIVE HEARINGS

The Department of Planning has reviewed the petition for a variance to permit a 6 foot high privacy fence in the rear and side yard of the property which adjoins the front yard of an existing residence. A site visit was conducted on February 2, 2016.

Department of Planning has no comment on granting the petitioned zoning relief.

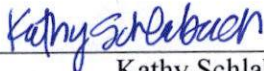
For further information concerning the matters stated herein, please contact Krystle Patchak at 410-887-3480.

Prepared by:



Lloyd T. Moxley

Division Chief:



Kathy Schlabach

AVA/KS/LTM/ka

c: Tracy Laxton, Ryne Laxton
Office of the Administrative Hearings
People's Counsel for Baltimore County

3-21-16
2:30 PM

BALTIMORE COUNTY, MARYLAND

RECEIVED

Inter-Office Correspondence

FEB 04 2016

OFFICE OF ADMINISTRATIVE HEARINGS



TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and
Sustainability (EPS) - Development Coordination

DATE: February 4, 2016

SUBJECT: DEPS Comment for Zoning Item # 2016-0165-A
Address 13 Ryan Frost Way
(Laxton Property)

Zoning Advisory Committee Meeting of February 1, 2016.

X The Department of Environmental Protection and Sustainability has no
comment on the above-referenced zoning item.

Reviewer: Steve Ford Date: 02-04-2016

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections
DATE: February 4, 2016

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

SUBJECT: Zoning Advisory Committee Meeting
For February 1, 2016
Item No. 2016-0165, 0166, 0167, 0168, 0169 and 0171

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

DAK:CEN
cc:file

G:\DevPlanRev\ZAC -No Comments\ZAC02012016.doc

RE: PETITION FOR VARIANCE
13 Ryan Frost Way; N/S Ryan Frost Way,
105' NE of c/line Russell Frost Court
15th Election & 7th Councilmanic Districts
Legal Owner(s): Tracy & Ryan Laxton
Petitioner(s)

* BEFORE THE OFFICE
* OF ADMINISTRATIVE
* HEARINGS FOR
* BALTIMORE COUNTY
* 2016-165-A

* * * * *

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

RECEIVED

JAN 29 2016

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of January, 2016, a copy of the foregoing Entry of Appearance was mailed to Tracy & Ryan Laxton, 13 Ryan Frost Way, Essex, Maryland 21221, Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Permits, Approvals, and Inspections
Code Inspections & Enforcement
County Office Building, Rm. 213
111 West Chesapeake Ave
Towson, Maryland 21204
www.baltimorecountymd.gov/Agencies/permits/



Code Enforcement 410-887-3351
Electrical Inspection 410-887-3960
Plumbing Inspection 410-887-3620
Building Inspection 410-887-3953

CODE ENFORCEMENT CORRECTION NOTICE

ROACH TRACY A
13 RYAN FROST WAY
BALTIMORE, MD 21221-1646

CASE NUMBER	PROP.TAX ID
CC1512763	2200006307
VIOLATION ADDRESS	
13 RYAN FROST WAY ESSEX, MD 21221-1646	

DID UNLAWFULLY VIOLATE THE FOLLOWING BALTIMORE COUNTY CODES AND/OR REGULATIONS:

County Codes/Regulations	Inspector's Comments
Other Violation(s)	BCC 18-2-601 an issued permit does not certify that the fence will be in compliance. Permit (B 892419) was not issued with correct information. Fence obstructs view of neighboring drivers at intersection of street and alley way. Fence is current 6 feet in height. BCZR 102.5 on a corner lot no fence or other obstruction to vision is permitted higher than three feet within 15 feet of a street and alley. BCZR 427 Residential fences in side or rear yard which adjoins a residential front yard - fence may not exceed 42".

Failure to comply with this correction notice, may result in a **\$200.00** fine/penalty per day, per violation pursuant to BCC: 1-2-217; 32-3-602 and/or the County sending a contractor to correct the violation(s) at your expense. Call the inspector for more information and details.

COMPLIANCE DATE: 12/23/2015	INSPECTOR NAME: Phillip Mills
	ISSUED DATE: 11/23/2015

IMPORTANT INFORMATION TO THE PERSON'S CHARGED

- It is important that you read this document carefully, as it charges you with the commission of a crime.
- If you fail to correct the violations noted by the date dictated, a citation may be issued, and a trial scheduled at which you may be penalized by a fine, imprisonment, or both.
- If the County is required to bring your property into compliance, all costs and fines shall become a lien and shall be collectible in the manner provided for collection of real estate taxes; or may be collected in the same manner as any civil money judgment or debt collected.
- A lawyer can give important assistance to you:
 - on how to correct the violation(s) in order to avoid trial or
 - at trial, if you failed to correct the violation(s) noted. Assistance may be provided to determine whether there are any defenses to the charges against you or any circumstances helpful to you that should be brought to the trial. A lawyer can help you by developing and presenting information, which could effect how you correct the violation(s).
- A conviction for each violation will subject you to potential fines of \$200, \$500, \$1000 per day per violation, depending on the violation, or 90 days in jail, or both Baltimore County Code section 1-2-217 and 32-3-602.
- It is your responsibility to obtain any required permit(s) to correct the cited violation(s). All repairs must be in accordance with applicable laws, Code of Baltimore County Regulations, and standards.
- Upon correction of these violation(s), contact the inspector for re-inspection. If you have any questions contact the inspector promptly.

2016-0165-A

Street Entrance
→ N2 6ft



N4
501

Neighbor 1



Neighbor 2

Neigh 1

(Front)



Neighbor 1

(Joining
Front
Fence)





Neighbor 2
(Front)

Across Front



Neighbor 2
(Side)



Neighbor 3
5' ft Fence

Parallel driveway
+ Joining Front
Yard.



Cul de sac
(side)

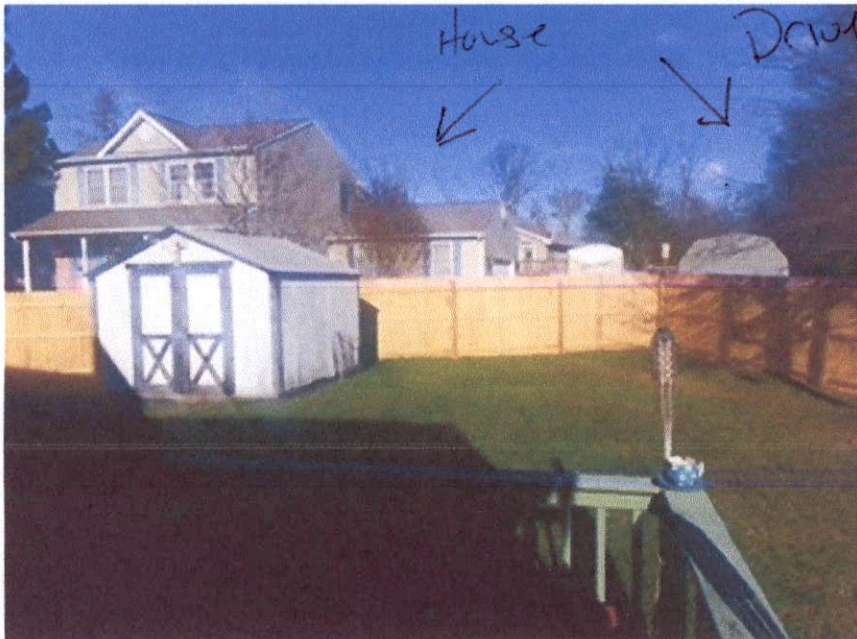


House
(side)





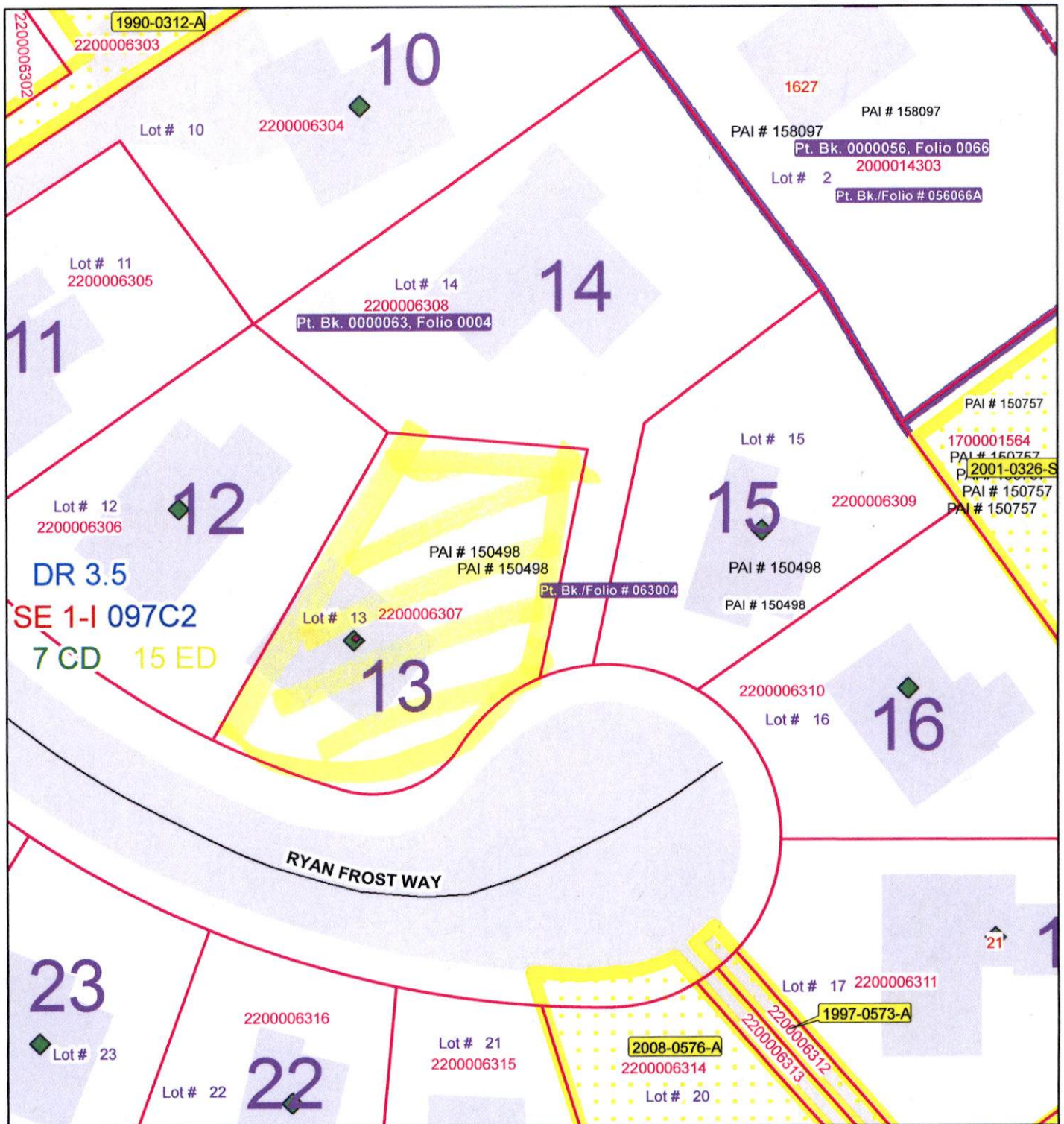
Neighbor Front



Bar



13 Ryan Frost Way



Publication Date: 12/21/2015



Publication Agency: Permits, Approvals & Inspections
Projection/Datum: Maryland State Plane,
FIPS 1900, NAD 1983/91 HARN, US Foot



0 10 20 40 60 80 Feet

1 inch = 40 feet

2016-0165-A

13 Ryan Frost Way



Publication Date: 12/21/2015



Publication Agency: Permits, Approvals & Inspections
Projection/Datum: Maryland State Plane,
FIPS 1900, NAD 1983/91 HARN, US Foot

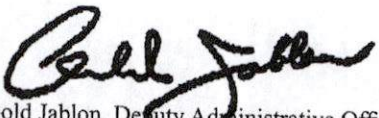


0 10 20 40 60 80 Feet

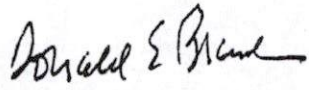
1 inch = 40 feet

2016-0165-A

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS, APPROVALS, AND INSPECTIONS


Arnold Jablon, Deputy Administrative Officer
& Director




Donald E Brand, Building Engineer

BUILDING PERMIT

PERMIT #: B892419 CONTROL #: F- DIST: 15 PREC: 01
DATE ISSUED: 10/13/2015 TAX ACCOUNT #: 2200006307 CLASS: 04

PLANS: CONST PLOT R PLAT DATA ELEC PLUM
LOCATION: 13 RYAN FROST WAY
SUBDIVISION: CAPE MAY LANDING

OWNERS INFORMATION
NAME: TRACY ROACH
ADDR:

TENANT: HOME OWNER
CONTR:
ENGR:
SELLR:
WORK: ERECT 270LF, 6' HIGH WOOD FENCE
AROUND REAR OF PROPERTY
FEE 20.00

BLDG. CODE:
RESIDENTIAL CATEGORY:

OWNERSHIP:

PROPOSED USE: SFD & FENCE
EXISTING USE:

TYPE OF IMPRV:
USE:
FOUNDATION:
SEWAGE:

BASEMENT:
WATER:

LOT SIZE AND SETBACKS

SIZE: 0000.00 X 0000.00
FRONT STREET:
SIDE STREET:
FRONT SETB: NC
SIDE SETB: 0/0
SIDE STR SETB: 0/0
REAR SETB: NC

Petitioner
CBA Exhibit

1A

PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES



**BUILDING PERMIT PROCESSING
CASH SLIP RECEIPT**

NO. **A**

721891

BALTIMORE COUNTY
DEPARTMENT OF PERMITS, APPROVALS & INSPECTIONS
COUNTY OFFICE BUILDING, ROOM 100
111 W. CHESAPEAKE AVENUE
TOWSON MD 21204
410-887-3900

PRIV RECEIPT

BUSINESS ACTUAL TIME 10/13/2015 10/13/2015 12:52:09

REG 4504 WALKIN ROTH RNS

RECEIPT # 683499 10/13/2015

Dept 2 209 BUILDING PERMIT WORK I

DOCUMENT # 4721861

Receipt For \$20.00

1.00 OK \$20.00 CA

Baltimore County, Maryland

OFFICE OF FINANCE USE ONLY

APPLICANT Kline, L. Allen

ADDRESS

ZIP CODE

CHECK ITEM	ITEMS	PAY CODE	G/L ACCOUNT NUMBER	FEE
	ABANDONED WATER METER APPLICATION	200	231-2874	
	APPEAL PROCESS FEE	204	001-806-0000-6150	
	BUILDING PERMIT APPLICATION	209	001-806-0000-2510	20.00
	CHANGE OF OCCUPANCY	210	001-806-0000-2520	
	COUNTY FINANCING APPLICATION	211	030-806-0000-7040	
	ELECTRICAL ADMINISTRATIVE BOARD EXAM FEE	212	001-806-0000-6090	
	ELECTRICAL ADMINISTRATIVE BOARD LICENSE	213	001-806-0000-2210	
	ELECTRICAL PERMIT	214	001-806-0000-2600	
	FIRE HYDRANT METER	217	231-806-0000-6180	
	FIRE INSPECTION	246	001-806-0000-6019	
	GAS PERMIT APPLICATION	220	001-806-0000-2420	
	MASTER'S FEE	249	001-806-0000-6135	
	PERCOLATION TEST	224	001-806-0000-6750	
	PHOENIX WATER CHARGE	248	030-806-0000-6133	
	PLUMBING BOARD LICENSE	225	001-806-0000-2220	
	PLUMBING PERMIT APPLICATION	226	001-806-0000-6220	
	SEPTIC TANK PERMIT	228	001-806-0000-2430	
	SEWER PROPERTY CONNECTION APPLICATION	229	231-806-0000-6051	
	SEWER SERVICE CHARGE, PRORATED	230	030-806-0000-6012	
	SEWER SYSTEM CHARGE	231	231-806-0000-6141	
	STORM DRAIN CONNECTION	233	001-806-0000-2440	
	SUB-SOIL DRAIN INSTALLATION	234	001-806-0000-6220	
	WASTEWATER DISCHARGE PERMIT	240	030-806-0000-2630	
	WATER DISTRIBUTION	241	030-806-0000-6043	
	WATER METER APPLICATION	242	231-806-0000-6060	
	WATER METER FEE	243	231-2874	
	WATER SURCHARGE	244	231-806-0000-6151	
	WATER SYSTEM CHARGE	245	231-806-0000-6151	
	HOME BUILDERS GUARANTY FUND	255	001-3010	

CHECK/MONEY ORDER PAYABLE TO BALTIMORE COUNTY, MARYLAND

TOTAL

20.00

DESCRIPTION AB-11

PREPARER'S NAME

DATE

10/13/15

THIS IS NOT A PERMIT OR LICENSE AND DOES NOT AUTHORIZE CONSTRUCTION OF ANY KIND.
NO BUILDING, PLUMBING, OR ELECTRICAL PERMIT FEE IS REFUNDABLE.

C H E C K L I S T

<u>Comment Received</u>	<u>Department</u>	<u>Support/Oppose/ Conditions/ Comments/ No Comment</u>
<u>2/4</u>	DEVELOPMENT PLANS REVIEW (if not received, date e-mail sent _____)	<u>N/C</u>
<u>2/4</u>	DEPS (if not received, date e-mail sent _____)	<u>N/C</u>
_____	FIRE DEPARTMENT	_____
<u>2/10</u>	PLANNING (if not received, date e-mail sent _____)	<u>N/C</u>
<u>1/27</u>	STATE HIGHWAY ADMINISTRATION	<u>no obj</u>
_____	TRAFFIC ENGINEERING	_____
_____	COMMUNITY ASSOCIATION	_____
_____	ADJACENT PROPERTY OWNERS	_____
ZONING VIOLATION	(Case No. <u>CC1512763</u>)	
PRIOR ZONING	(Case No. _____)	
NEWSPAPER ADVERTISEMENT	Date: <u>3-1-16</u>	
SIGN POSTING	Date: <u>2-28-16</u> by <u>SSG Black</u>	
PEOPLE'S COUNSEL APPEARANCE	Yes ☒ No ☐	
PEOPLE'S COUNSEL COMMENT LETTER	Yes ☐ No ☐	

Comments, if any: _____

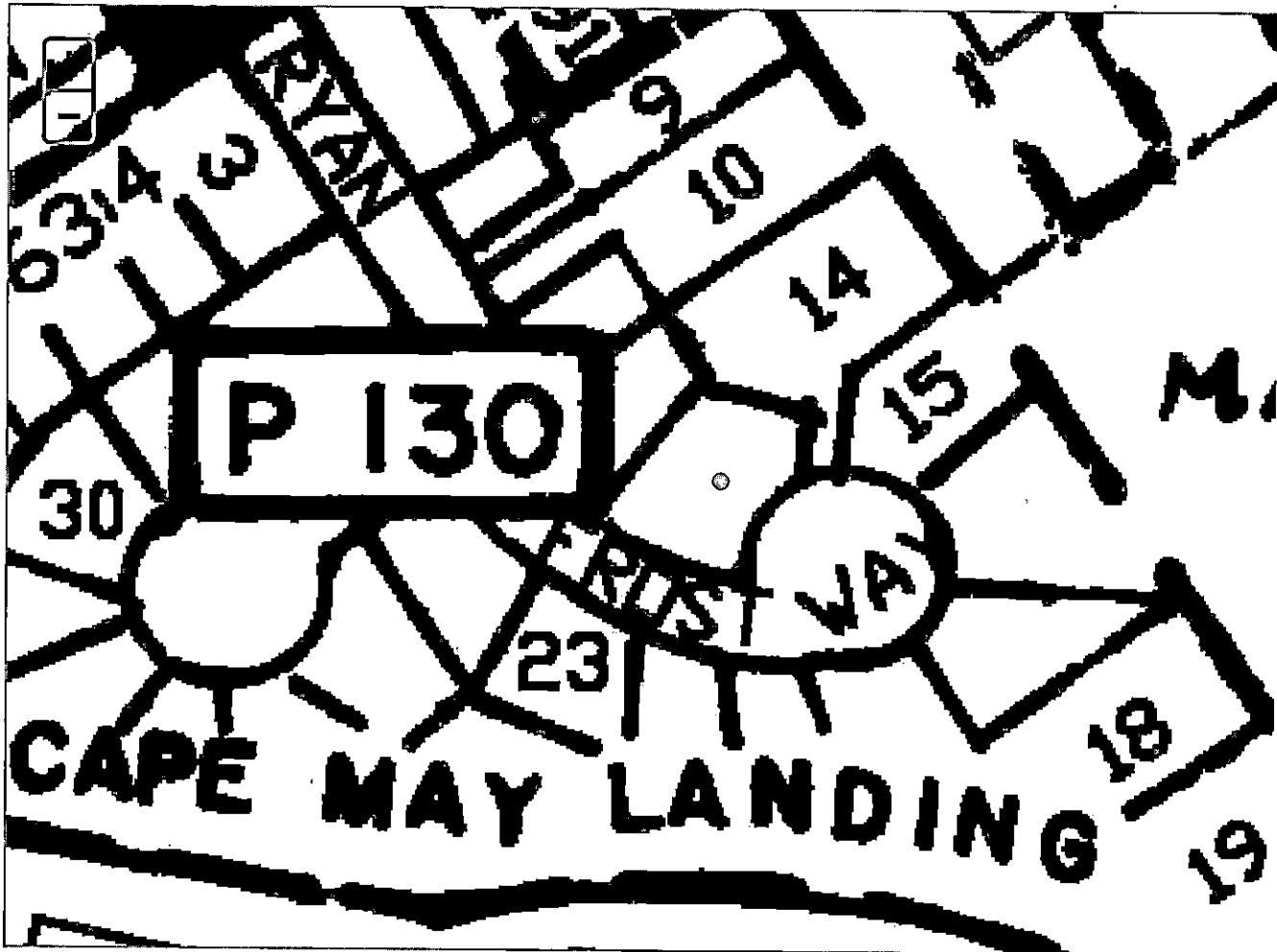
Real Property Data Search (w3)

Guide to searching the database

Search Result for BALTIMORE COUNTY

View Map		View GroundRent Redemption		View GroundRent Registration	
Account Identifier:		District - 15 Account Number - 2200006307			
Owner Information					
Owner Name:		ROACH TRACY A		Use:	RESIDENTIAL
Mailing Address:		13 RYAN FROST WAY BALTIMORE MD 21221-1646		Principal Residence:	YES
				Deed Reference:	/34945/ 00442
Location & Structure Information					
Premises Address:		13 RYAN FROST WAY 0-0000		Legal Description:	.1868 AC 13 RYAN FROST WAY CAPE MAY LANDING
Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section: Block: Lot: Assessment Year: Plat No: Plat Ref:
0097	0018	0130		0000	13 2015 0063/0004
Special Tax Areas:			Town: NONE		
			Ad Valorem:		
			Tax Class:		
Primary Structure Built		Above Grade Enclosed Area		Finished Basement Area	
1997		2,114 SF		8,139 SF	
Property Land Area		County Use			
8,139 SF		04			
Stories	Basement	Type	Exterior	Full/Half Bath	Garage Last Major Renovation
2	NO	SPLIT LEVEL	SIDING	2 full/ 1 half	
Value Information					
Base Value		Value As of 01/01/2015		Phase-in Assessments As of 07/01/2015 As of 07/01/2016	
Land:		77,200		77,200	
Improvements		149,800		157,900	
Total:		227,000		235,100 229,700 232,400	
Preferential Land:		0		0	
Transfer Information					
Seller: BROWN.HERBERT ROBERT		Date: 05/08/2014		Price: \$208,000	
Type: NON-ARMS LENGTH OTHER		Deed1: /34945/ 00442		Deed2:	
Seller: FROST BROTHERS DEVELOPMENT CORP		Date: 05/14/1997		Price: \$37,900	
Type: ARMS LENGTH VACANT		Deed1: /12177/ 00660		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 09/11/2014					

Baltimore County

New Search (<http://sdat.dat.maryland.gov/RealProperty>)District: **15** Account Number: **2200006307**

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.

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>).

APPEAL

**Petition for Variance
(13 Ryan Frost Way)
15th Election District – 7th Councilmanic District
*Legal Owners: Tracy & Ryne Laxton***

Case No. 2016-0165-A

Petition for Variance Hearing (January 15, 2016)

Zoning Description of Property

Notice of Zoning Hearing (February 1, 2016)

Certificate of Publication (March 1, 2016)

Certificate of Posting (February 28, 2016) SSG Robert Black

Entry of Appearance by People's Counsel – January 29, 2016

Petitioner(s) Sign-in Sheet – One

Citizen(s) Sign-in Sheet – One

Zoning Advisory Committee Comments

Petitioner(s) Exhibits - none

Protestants' Exhibits – none

Miscellaneous (Not Marked as Exhibits)- Code Enforcement Correction Notice, Pictures

Administrative Law Judge Order and Letter (DENIED – March 23, 2016)

Notice of Appeal –Raymond M. Atkins, Esq. (April 21, 2016)

Board of Appeals

Case No: 16-165A

Case Name: Tracy + Ryan Laxton

Exhibit List

Party: Tracy + Ryan Coxton
Petitioners

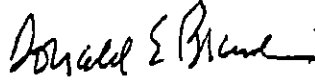
Date: 8/3/16

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BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS, APPROVALS, AND INSPECTIONS


Arnold Jablon, Deputy Administrative Officer
& Director




Donald E Brand, Building Engineer

BUILDING PERMIT

PERMIT #: B892419 CONTROL #: F-
DATE ISSUED: 10/13/2015 TAX ACCOUNT #: 2200006307 DIST: 15 PREC: 01
CLASS: 04
PLANS: CONST PLOT R PLAT DATA ELEC PLUM
LOCATION: 13 RYAN FROST WAY
SUBDIVISION: CAPE MAY LANDING

OWNERS INFORMATION
NAME: TRACY ROACH
ADDR:

TENANT: HOME OWNER
CONTR:
ENGNR:
SELLR:
WORK: ERECT 270LF, 6' HIGH WOOD FENCE
AROUND REAR OF PROPERTY
FEE 20.00

BLDG. CODE:
RESIDENTIAL CATEGORY:

OWNERSHIP:

PROPOSED USE: SFD & FENCE
EXISTING USE:

TYPE OF IMPRV:
USE:
FOUNDATION:
SEWAGE:

BASEMENT:
WATER:

LOT SIZE AND SETBACKS

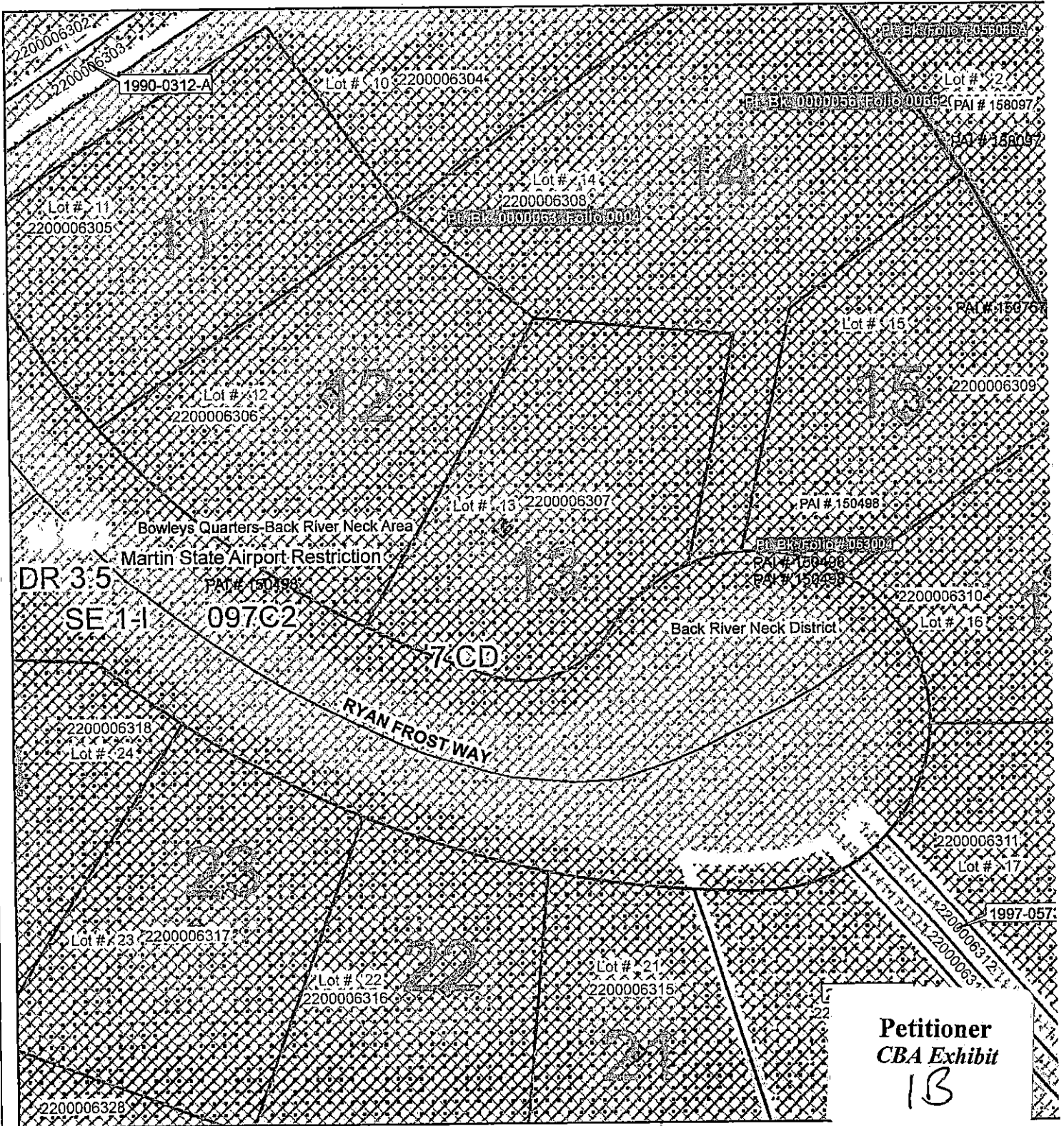
SIZE: 0000.00 X 0000.00
FRONT STREET:
SIDE STREET:
FRONT SETB: NC
SIDE SETB: 0/0
SIDE STR SETB: 0/0
REAR SETB: NC

Petitioner
CBA Exhibit

1A

PLEASE REFER TO PERMIT NUMBER WHEN MAKING INQUIRIES

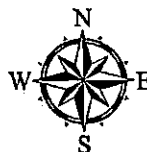
13 Ryan Frost Way,



Publication Date: 1/11/2016



Publication Agency: Permits, Approvals & Inspections
Projection/Datum: Maryland State Plane,
FIPS 1900, NAD 1983/91 HARN, US Foot



0 10 20 40 60 80 Feet

1 inch = 40 feet

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor



Pete K. Rahn, Secretary
Gregory C. Johnson, P.E., Administrator

Date: 1/27/16

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

RE: Baltimore County
Item No. 2016-0165-A
Variance
Tracy & Ryan Laxton
13 Ryan Frost Way

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. 2016-0165-A.

Should you have any questions regarding this matter, please contact Mr. Richard Zeller at 410-229-2332 or 1-866-998-0367 (in Maryland only) extension 2332, or by email at (rzeller@sha.state.md.us).

Sincerely,

A handwritten signature in black ink, appearing to read "David W. Peake".

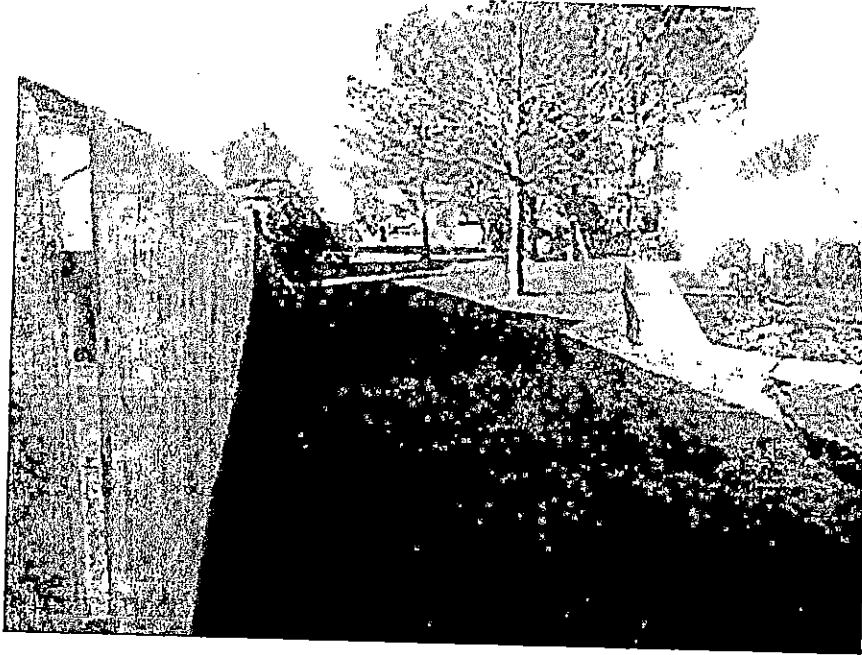
David W. Peake
Metropolitan District Engineer – District 4
Baltimore & Harford Counties

DWP/RAZ

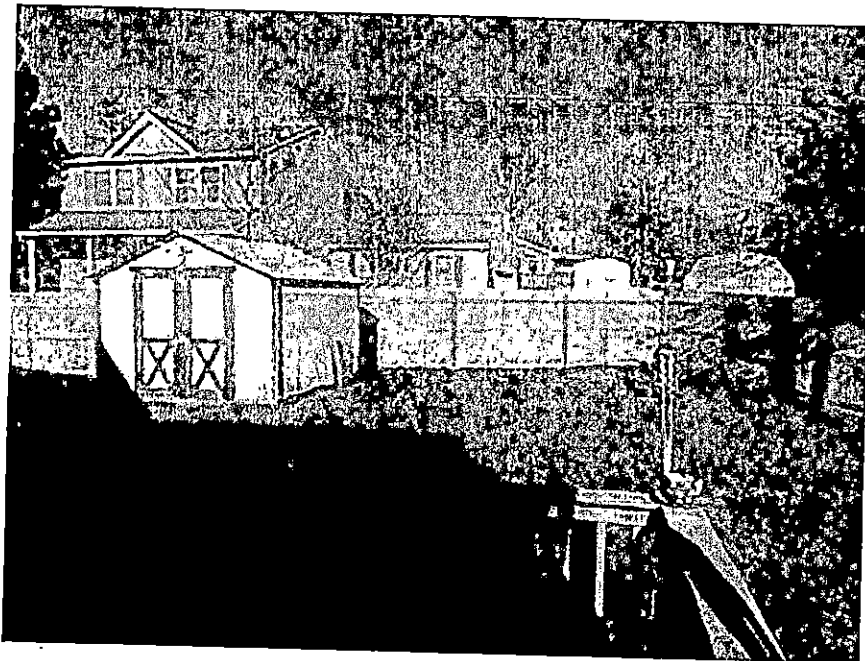
My telephone number/toll-free number is _____
Maryland Relay Service for Impaired Hearing or Speech 1-800-735-2258 Statewide Toll-Free
Street Address: 320 West Warren Road • Hunt Valley, Maryland 21030 • Phone 410-229-2300 or 1-866-998-0367 • Fax 301-527-4690
www.roads.maryland.gov

Petitioner
CBA Exhibit

1C



1



2

Petition for Variance He

Zoning Description of P

Notice of Zoning Hearin

Certificate of Publication

Certificate of Posting (F

Entry of Appearance by

Petitioner(s) Sign-in She

Citizen(s) Sign-in Sheet

Zoning Advisory Comm

Petitioner(s) Exhibits -

Protestants' Exhibits -

Miscellaneous (Not Mar

Administrative Law Jud

Notice of Appeal -Rayn



1



2

Petitioner
CBA Exhibit

10



3



4



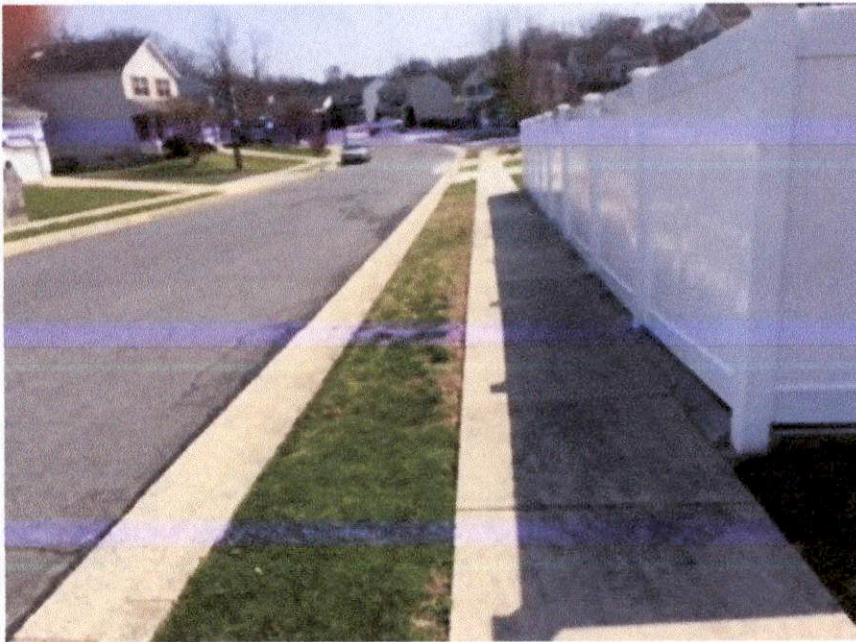
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12

Board of Appeals

Case No: 16-165A

Case Name: Tracy + Ryan Laxton

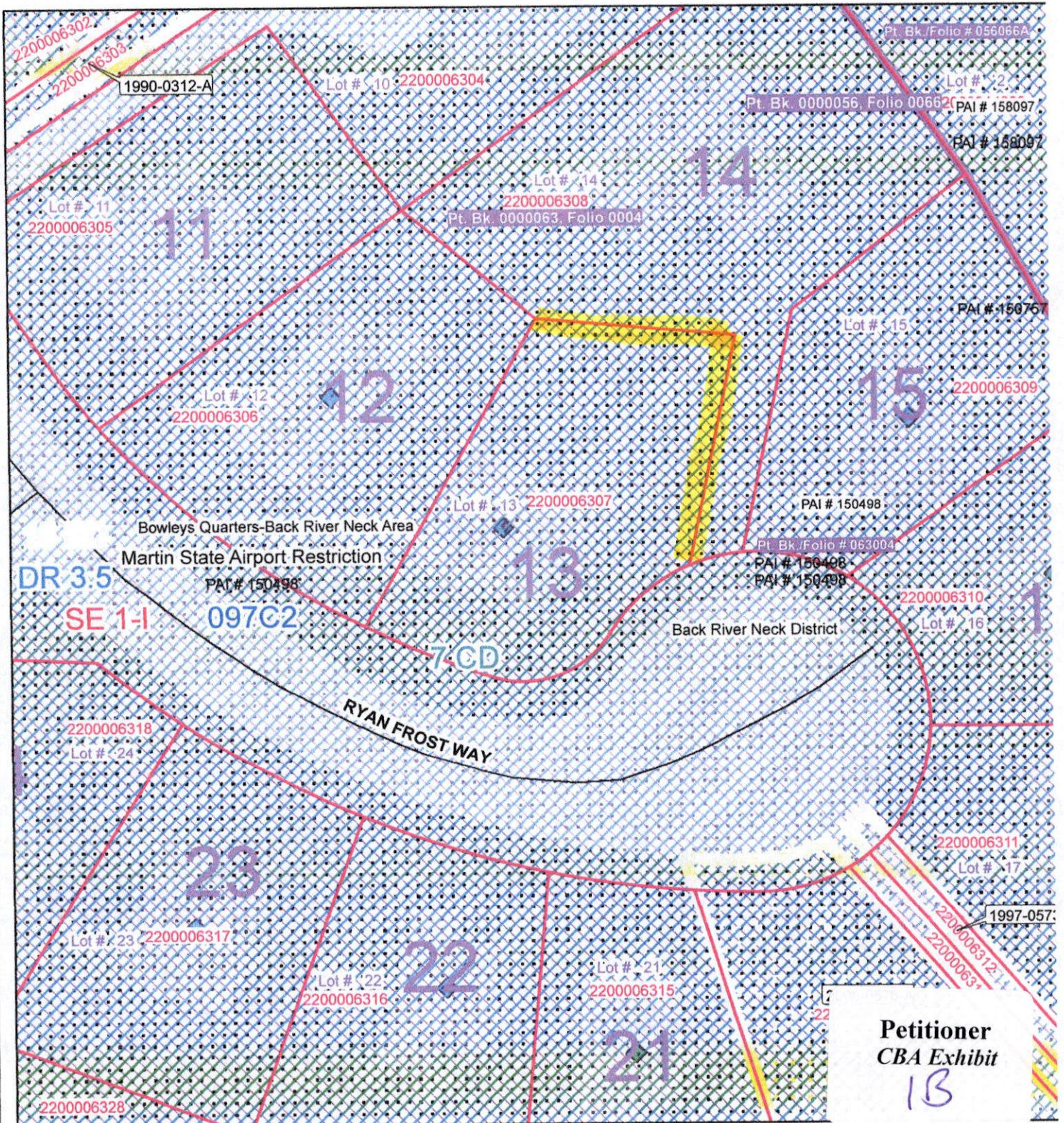
Exhibit List

Party: Tracy + Ryan Linton
PETITIONERS

Date: 8/3/16

[illegible]

13 Ryan Frost Way



Publication Date: 1/11/2016



Publication Agency: Permits, Approvals & Inspections
Projection/Datum: Maryland State Plane,
FIPS 1900, NAD 1983/91 HARN, US Foot



0 10 20 40 60 80 Feet

1 inch = 40 feet

Larry Hogan, *Governor*
Boyd K. Rutherford, *Lt. Governor*



Pete K. Rahn, *Secretary*
Gregory C. Johnson, P.E., *Administrator*

Date: 1/27/16

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

RE: Baltimore County
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David W. Peake
Metropolitan District Engineer – District 4
Baltimore & Harford Counties

DWP/RAZ

My telephone number/toll-free number is _____

Maryland Relay Service for Impaired Hearing or Speech 1-800-735-2258 Statewide Toll-Free

Street Address: 320 West Warren Road • Hunt Valley, Maryland 21030 • Phone 410-229-2300 or 1-866-998-0367 • Fax 301-527-4690

www.roads.maryland.gov

Petitioner
CBA Exhibit

1C

Building Inspections

Glenn Berry, Building Chief

County Office Building

111 West Chesapeake Avenue, Room G21

Towson, Maryland 21204

Phone: 410-887-3953

Fax: 410-887-8081

Email: gberry@baltimorecountymd.gov

Office Hours: Monday through Friday, 7:30 a.m. to 3:30 p.m.

Primary Functions

The Bureau of Building Inspections, which includes Sediment Control Enforcement and Inspection, is a division of the Department of Permits, Approvals and Inspections and is tasked with conducting required inspections on all new and remodeled residential and commercial building projects for compliance with all applicable codes. Sediment Control oversees active construction sites for proper grading, sediment and erosion control compliance, and investigates drainage complaints.

- Inspect work performed to ensure conformity with all current building codes
- Investigate building complaints (PDF)
- Interact with contractors, engineers, and property owners to answer code compliance questions
- Sediment control

Building Codes

Baltimore County Building Code

- County Council Bill No. 40-15 (PDF) (adopted July 1, 2015)

Building codes used by Baltimore County are (adopted July 2015):

- International Building Code, 2015 Edition
- International Residential Code, 2015 Edition

Building Permit Requirements

Building Permits are required for the following:

- Accessory structures (sheds, garages, gazebos, etc.) over 120 square feet
- All accessory structures located in Flood Zone A or located in historic districts
- Garages and carports attached to single family dwellings
- Above ground swimming pools over 250 square feet with water depth of 24 inches or more
- All in-ground pools: a 48 inch safety barrier with self latching, self closing gates is required
- Retaining walls over 36 inches: engineered drawings are required for over 48 inches
- Fences over 42 inches in height
- Decks greater than 16 inches above the lowest grade and exceeds 120 square feet
- Wood stoves, pellet stoves, and fireplaces
- Additions and structural modifications to existing dwellings
- Enclosing of open porches and decks
- Basement excavations
- Change of use of structure

Protestant
CBA Exhibit

3

- Razing permits
- Grading over 5,000 square feet
- Alterations to historic houses

Downspouts are to be discharged at a distance of not less than eight feet from any property line measured along the path of flow.

Two layers of shingles can be put on a roof (a permit is not required).

Windows and doors may be replaced without a building permit, provided no structural changes to the frame are required.

If you have further questions or would like more information in regards to whether a permit is required for your project, call Building Inspections at 410-887-3953.

[Return to top](#)

Inspection Connection

To schedule, reschedule, cancel or inquire about an inspection call 410-887-4638 or go to [Inspection Connection](#) and follow the prompts.

1. You will need your permit number.
2. You will need a three-digit inspection code number (provided on the web site or by calling the above number).

[Return to top](#)

Accessory Structures

Accessory structures (Sheds, garages, etc) requirements:

- Must be located in the rear yard behind the rear foundation wall line
- Must occupy no more than 40 percent of the yard
- Must be located two and a half feet from the side and rear property lines
- If there is an alley, there must be a minimum setback of 15 feet from the centerline.
- There is a height limitation of 15 feet
- If located on a corner lot, the structure must be situated in the half of the lot furthest from the side street
- If it is larger than 400 square feet, it requires frost-line footings

Construction drawings are not required for additions or alterations up to 600 square feet and may be waived by the Building Inspection Bureau if in excess of 600 square feet, which would be determined when building application is filed.

[Return to top](#)

Decks

- [Deck Construction Guidelines \(PDF\)](#)

[Return to top](#)

Fences

Fence requirements:

- On a corner lot, no fence or other obstruction to vision is permitted higher than three feet within 25 feet of the corner of the two streets, 15 feet of a street and alley and 10 feet of two alleys.
- A residential fence in a side or rear yard which adjoins a residential front yard, cannot exceed 42 inches if it is setback 0 to 10 feet, 48 inches if setback is 10 to 20 feet, 60 inches if setback is 20 to 30 feet, and if setback is over 30 feet, there is no height limit. Required pool fences and houses more than 200 feet apart are exceptions.
- Fences enclosing in-ground pools must be 48 inches high with a self-closing, self-latching gate.

If a fence is erected within an easement and is required to be removed, it is done at the owner's expense.

For more information concerning picket spacing, chain-link application, etc., contact [Building Plans Review](#) at 410-887-3987.

[Return to top](#)

Basement and Clubrooms

To build a clubroom in an unfinished basement, a permit is not required, provided no structural changes are made to the foundation walls and supports. However, plumbing and electrical permits are required for plumbing or electrical work.

If a bedroom is added in a basement, a permit is required and it must have an approved egress window or door to the exterior.

[Return to top](#)

Building Design Requirements

The following building design requirements apply in Baltimore County:

- Footing depth is a minimum of 30 inches
- Minimum snow load is 30 pounds per square foot
- Design wind speed is 75 miles per hour
- Design wind pressure is 14.4 pounds per square foot
- Flood protection elevation is 7.7 feet (Back River and South) and 8.5 feet (North of Back River) NAVD88
- [Building Thermal Envelope One Story Additions 600 Square Feet or Less \(PDF\)](#)

[Return to top](#)

Roofing Repairs, Re-roofing, and Siding

The International Residential Code (IRC) Section R907 requires that when re-roofing or replacing shingles, Section R905.1.2 Ice Barrier and R905.2.8.5 Drip Edge shall be installed when replacing shingles on an existing roof.

- The code also includes any step flashing or normal flashing be replaced.
- The only exception to this is that if an existing roof already has an ice barrier membrane that is adhered to the roof deck, it can remain in place and covered with an additional layer of ice barrier membrane in accordance with Section R905.

In addition, the same applies to siding. When replacing siding, a Water-Resistance Barrier is to be installed as required by Section R703.1.1 (Tyvek is a specific type of barrier that is widely used);

- However, other non-proprietary materials are also acceptable to meet this requirement, before siding is installed.

- Flashing is to be installed around all windows and doors and shall extend to the surface of the exterior wall finish or to the water-resistive barrier for subsequent drainage.

Roof Repairs

- A building permit is required to undertake roof repairs if 50 percent or more of the sheathing or deck is being replaced. See Part 112.1.3 of the Baltimore County Building Code, [Bill 40-15](#) (PDF).

[Return to top](#)

Other Information

Public Information Act (PIA) Request

- [Building Inspections PIA Request Form](#) (PDF)
- [Building Inspections PIA Request Fee Schedule](#) (PDF)

For [Flood Plain regulations](#), building or renovating in a waterfront or stream area, contact [Building Plans Review](#) at 410-887-3987.

For [Zoning Regulations](#) call 410-887-3391, Monday through Friday, from 8 a.m. to 4 p.m.

For sediment run-off from construction sites call [Sediment Control](#) at 410-887-3226 between 7:30 a.m. and 3:30 p.m.

[Maryland Home Improvement Commission](#) (MHIC) can be contacted concerning MHIC licenses for contractors by calling 410-230-6309, Monday through Friday, between 8 a.m. and 4 p.m.

[Return to top](#)

Revised February 29, 2016

Board of Appeals

Case No: 16-165A

Case Name: Torrey & Ryan Laxon

Exhibit List

Party: PROTESTANTS

Date: 8/3/16

[illegible]



Protestant
CBA Exhibit

20



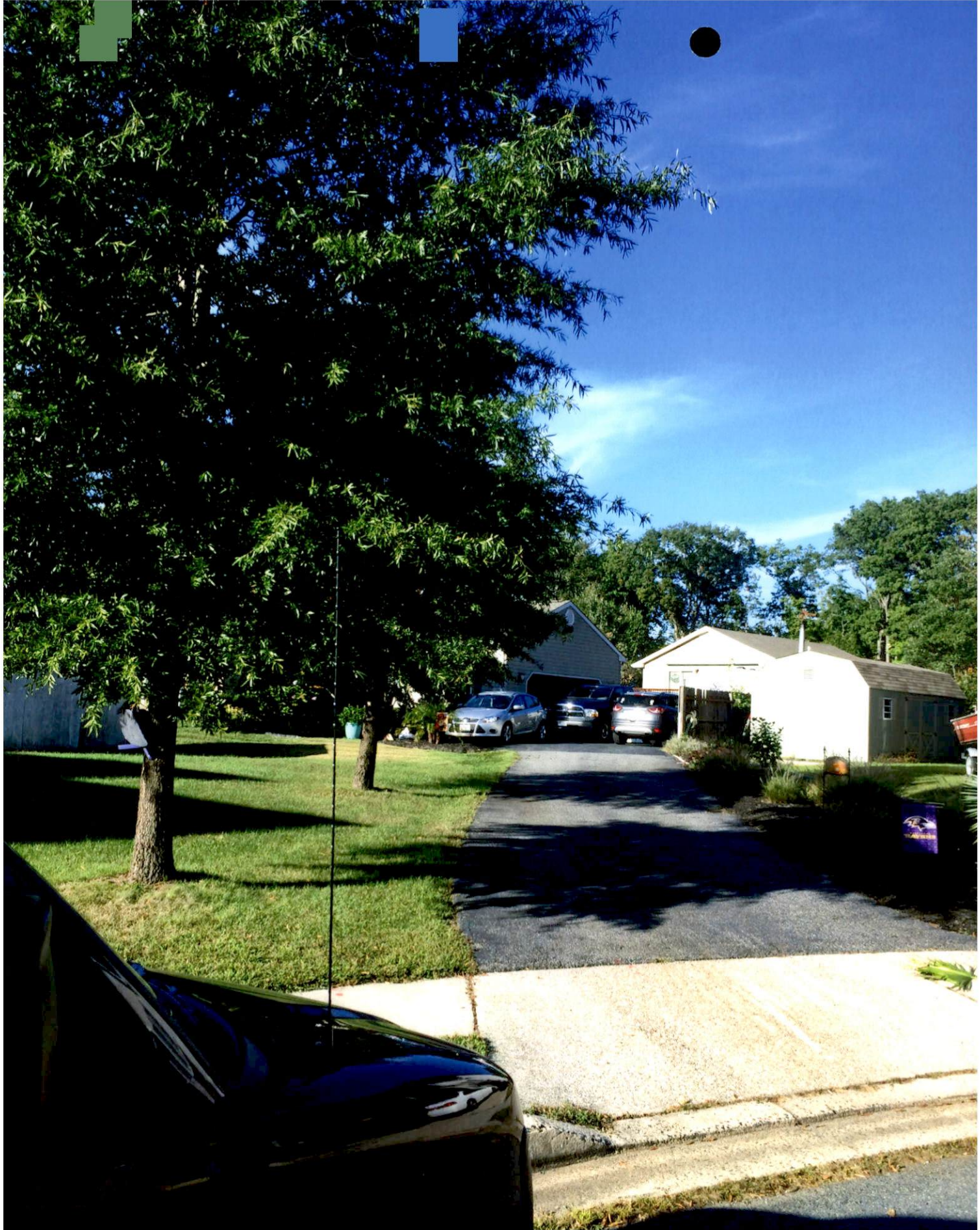
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Protestant
CBA Exhibit

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Protestant
CBA Exhibit

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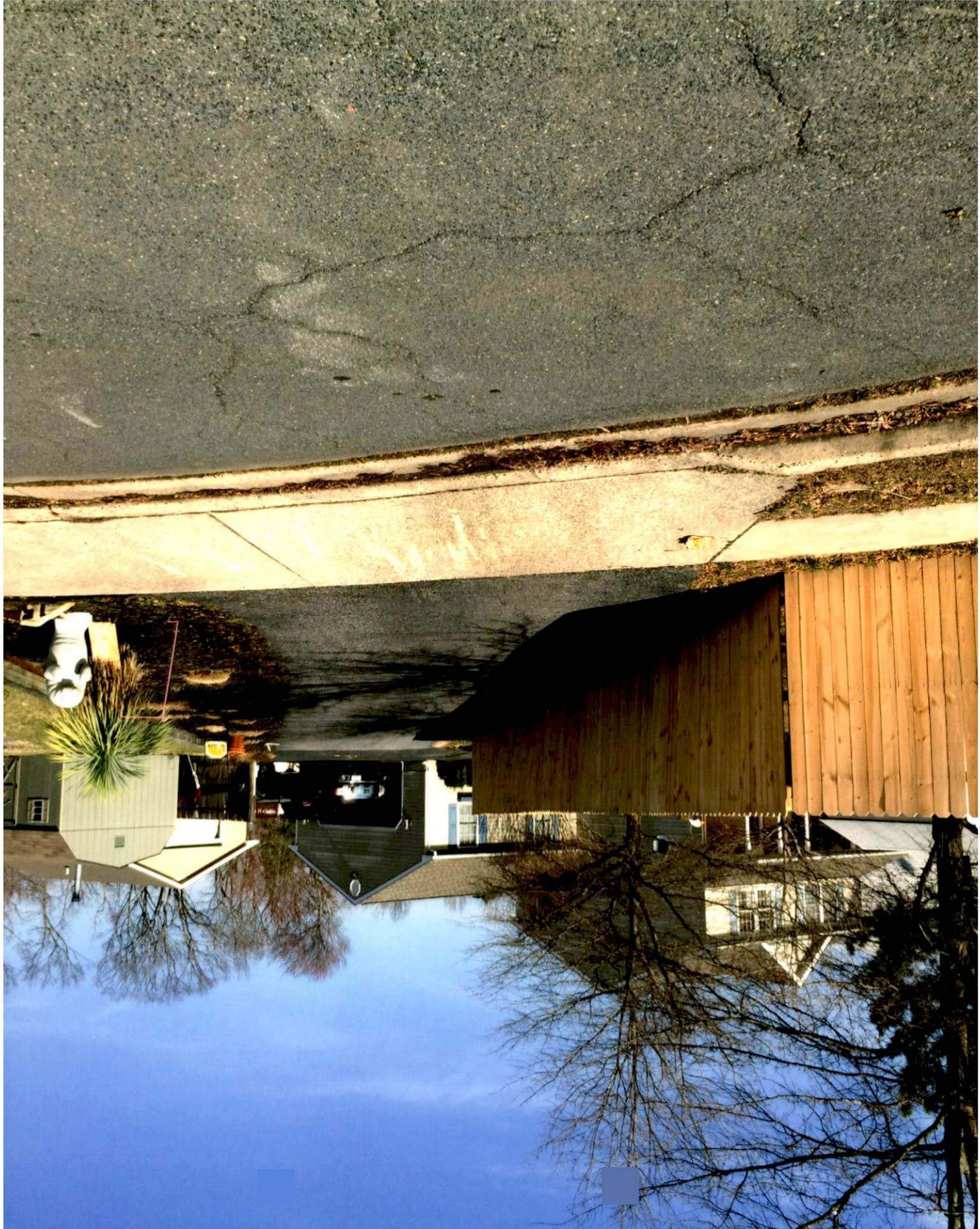
Protestant
CBA Exhibit

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Protestant
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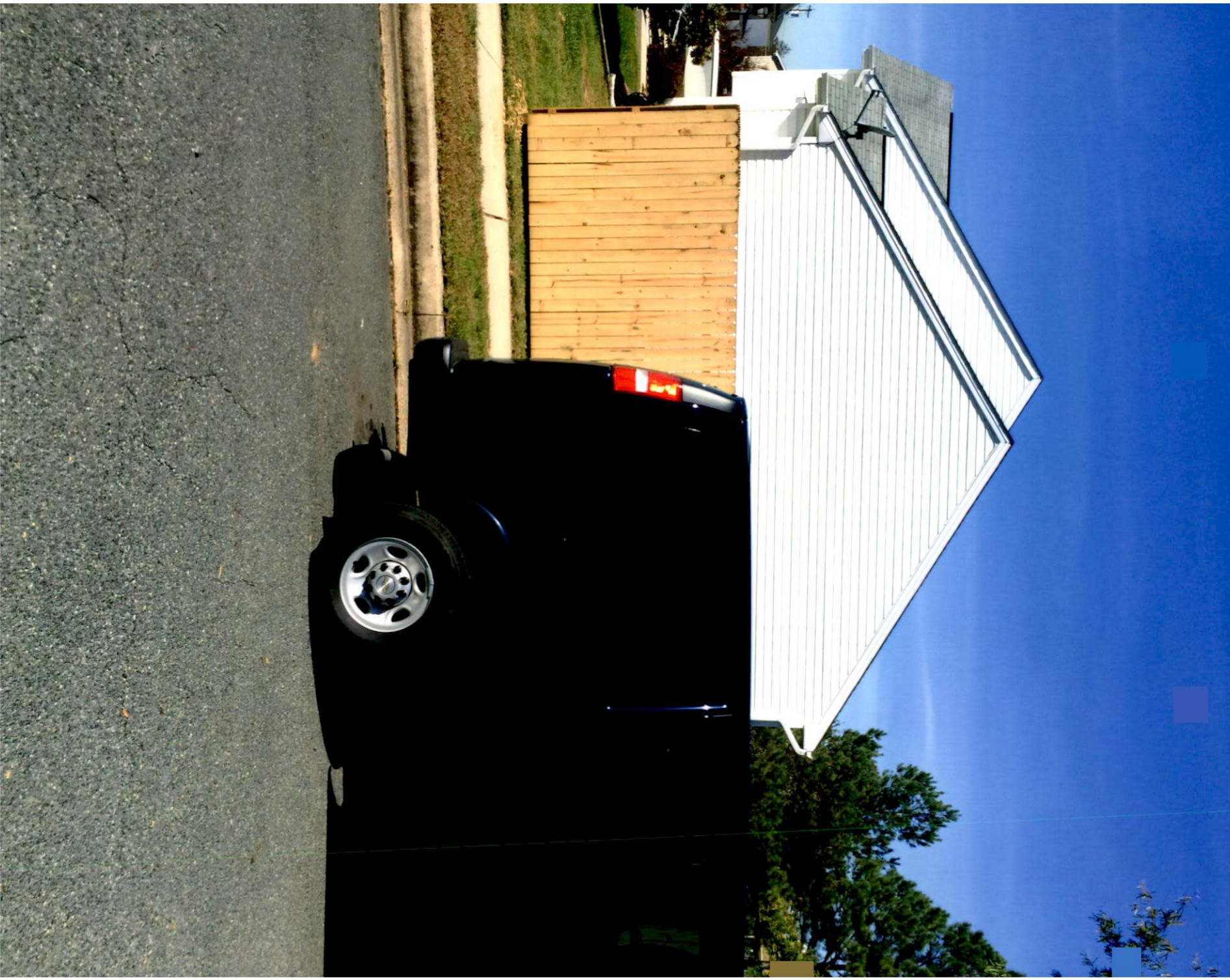
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CBA Exhibit

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Protestant
CBA Exhibit

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Protestant
CBA Exhibit

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Protestant
CBA Exhibit

1K



Protestant
CBA Exhibit

12



APPLICATION FOR FENCE PERMIT
BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF PERMITS, APPROVALS & INSPECTIONS
111 WEST CHESAPEAKE AVENUE
TOWSON, MD 21204

Permit No.

B892419

Receipt No.

A721861

Fee Paid

\$120.00

Make checks payable to Baltimore County, Maryland --- PERMIT FEES ARE NON-REFUNDABLE

Tax Account # 22 00 006 307 Zone DR 3.5

Type or print in ink:

Work Site Address 13 Ryan Frost Way Essex MD 21221

Election District

1544

Owner's Name

Tracy Laxton

Phone No.

443-613-5285

Mailing Address

13 Ryan Frost Way Essex MD 21221

Owner's Agent

Phone No.

COMPLETE SKETCH BELOW OR ATTACH A PLAN THAT CLEARLY SHOWS:

Property line dimensions, easements, existing buildings, road names, and location of alleys.

Proposed fence, total length 270', height 6', and type Wood.

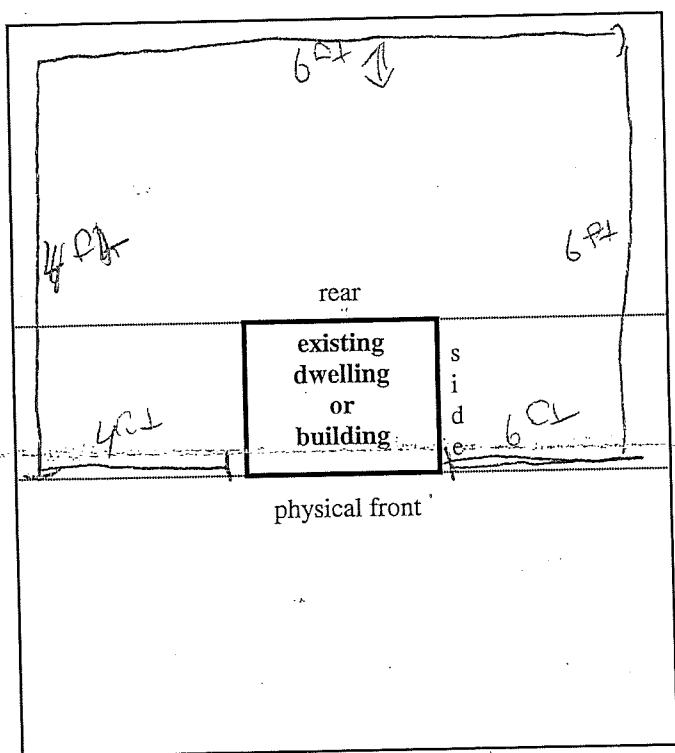
Property line setbacks: front 0', sides 0', and 0', and rear 0'.

Property use SFO. Rear/Side yard abuts adjoining front yard: Yes ☐ No ☒

Corner Lot: Yes ☐ No ☒

Historic District: Yes ☐ No ☒

SITE PLAN



Road Name

Ryan Frost

FENCE REGULATIONS

Permit required for fences over 42 inches high (measured vertical to ground, even if fence is placed on top of wall). Fences erected within easement must be removed at owner's expense, if required.

Building Code, Part 122:

122.1 - Residential Fences -- Maximum height of 42 inches in front yard as determined by BCZR and 6 feet in side and rear yards at the property line. Maximum height of 10 feet in side and rear yards, provided set back 2 feet for vertical foot over 6 feet.

122.2 - Commercial Fences -- Maximum height of 12 feet. Building's Engineer may approve higher fence for dangerous, hazardous, or athletic field. Electric and barbed wire fences are only permitted for the retention of livestock and when not a safety hazard to the public. No pointed projections less than 4 feet high. Barbed wire retarding material may be on top of fence that is at least 6 feet, 9 inches high.

Zoning Code (BCZR) (access easements cannot be fenced)

102.5 - Corner Lot -- No fence or other obstruction to vision is permitted higher than 3 feet within 25 feet of a corner of two streets, 15 feet of a street and alley, and 10 feet of two alleys.

427 - Residential Fences in side or rear yard which adjoins residential front yard (setback and maximum height) - fence may not exceed 42" if situated within 10 feet of the adjoining front yard property line, with the exception of 48" pool fence and houses more than 200 feet apart.

Special Fence Regulations: Exist for Historic Properties, the Honeygo Overlay District, RC5, RC6, RC7 and RC8 Zones.

Fence Waivers - Sec. 122.4: All requests for a waiver of heights over 42" in front yard must be submitted to the Building Engineer. Waiver requests require posting and may require a public hearing if height is contested. Contested front yard waiver hearings are held before the Building Engineer. If a zoning variance and fence waiver are required, both hearings shall be before the Zoning Commissioner.

County Code, Section 18-2-601, Obstruction of Drivers' View at Intersection.

Corner Lots: The County Code does not allow a fence on a corner lot to obstruct the vision of drivers as they reach an intersection. If a sight problem is noted later, the property owner will be required to move the fence. To be safe, contact Traffic Engineering at 410-887-3554 for a free site inspection before you build the fence. An issued permit does NOT certify that the fence will be in compliance.

OWNER/AGENT CERTIFICATION

I have carefully read the above regulations and hereby certify that the proposed fence will be located on private property, and NOT within the 100-year floodplain, will not violate the codes, and that the information supplied is true, complete, and correct.

Applicant Signature

Date

Print or Type Name

PAI APPROVAL (FOR FENCE ONLY) Authority under Section 500.4, BCZR

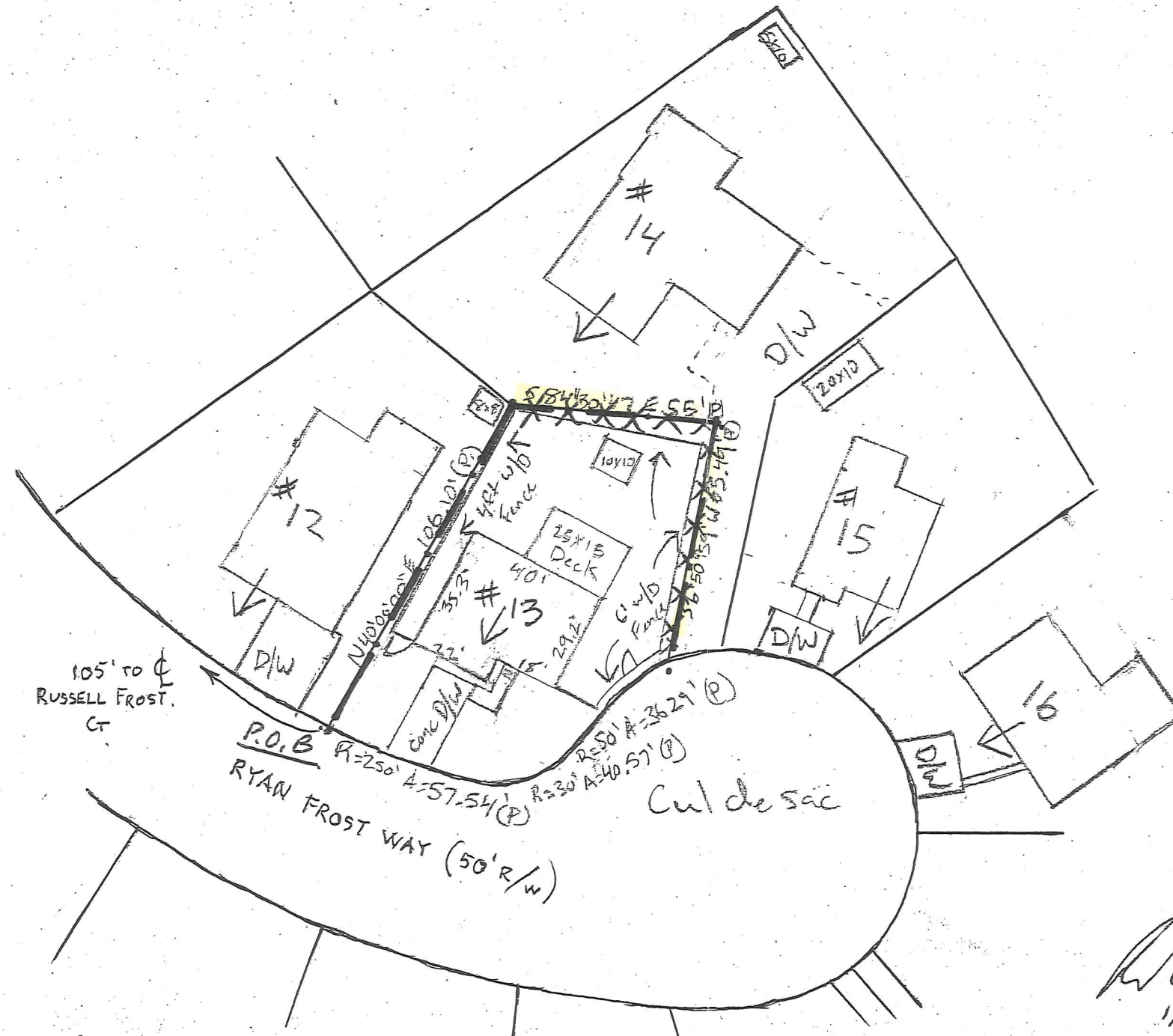
Approval Signature

Print Initials

Date

APPLICANT - KEEP THIS COPY FOR YOUR PERMANENT RECORDS

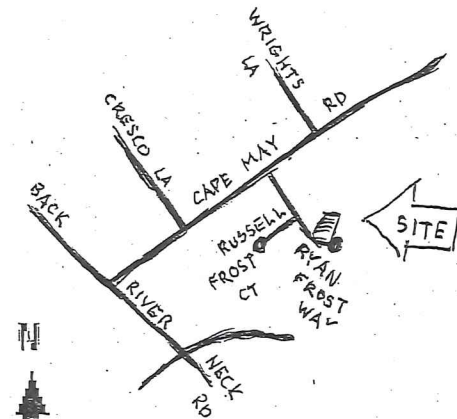
ZONING HEARING PLAN FOR VARIANCE ☒ FOR SPECIAL HEARING _____ (MARK TYPE REQUESTED WITH X)
ADDRESS 13 Ryan Frost Way OWNER(S) NAME(S) Tracy Laxton / Ryne Laxton
SUBDIVISION NAME Cape May Landing LOT # 13 BLOCK # _____ SECTION # _____
PLAT BOOK # 63 FOLIO # 4 10 DIGIT TAX # 22 00 006 307 DEED REF. # 349 45 / 00 44 2



PLAN DRAWN BY Ryne Laxton

DATE 01/15/2015 SCALE: 1 INCH = 40 FEET

SITE VICINITY MAP



MAP IS NOT TO SCALE

ZONING MAP# 097C2

SITE ZONED DR 3.5

ELECTION DISTRICT 15th

COUNCIL DISTRICT 7th

LOT AREA ACREAGE _____

OR SQUARE FEET 8139

HISTORIC? No

IN CBCA? No

IN FLOOD PLAIN? No

UTILITIES? MARK WITH X

WATER IS:

PUBLIC ☒ PRIVATE _____

SEWER IS:

PUBLIC ☒ PRIVATE _____

PRIOR HEARING? _____

IF SO GIVE CASE NUMBER

AND ORDER RESULT BELOW

N/A

VIOLATION CASE INFO:

CITATION # CC 1512763

2016-0165-A