MEMORANDUM

DATE:

May 9, 2019

TO:

Zoning Review Office

FROM:

Office of Administrative Hearings

RE:

Case No. 2019-0258-A- Appeal Period Expired

The appeal period for the above-referenced case expired on May 8, 2019. There being no appeal filed, the subject file is ready for return to the Zoning Review Office and is placed in the 'pick up box.'

c: Case File

Office of Administrative Hearings

IN RE: PETITION FOR ADMIN. VARIANCE * BEFORE THE

(8201 Selwin Court

14th Election District * OFFICE OF ADMINISTRATIVE

5th Council District

Michael & Anna S. Kobus * HEARINGS FOR

Petitioners

* BALTIMORE COUNTY

* CASE NO. 2019-0258-A

* * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings ("OAH") for Baltimore County for consideration of a Petition for Administrative Variance filed by the legal owners of the property, Michael and Anna S. Kobus ("Petitioners"). The Petitioners are requesting Variance relief pursuant to § 400.1 of the Baltimore County Zoning Regulations ("BCZR") to permit an in-ground swimming pool in the side yard in lieu of the required rear yard, and to amend the previously approved site plan for Case No. 2004-0109-A. The subject property and requested relief is more fully depicted on the site plan that was marked and accepted into evidence as Petitioners' Exhibit 1.

The Zoning Advisory Committee ("ZAC") comments were received and are made part of the record of this case. A ZAC comment was received from the Bureau of Development Plans Review ("DPR") dated March 29, 2019, indicating that the existing forest conservation and forest buffer easement is not shown correctly on the site plan submitted and will need to be properly reflected.

The Petitioners having filed a Petition for Administrative Variance and the subject property having been posted on March 17, 2019, and there being no request for a public hearing, a decision shall be rendered based upon the documentation presented.

ORDER RE	CEIVED FOR FILING	
Date	4-8-19	
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The Petitioners have filed the supporting affidavits as required by § 32-3-303 of the Baltimore County Code ("BCC"). Based upon the information available, there is no evidence in the file to indicate that the requested variance would adversely affect the health, safety or general welfare of the public and should therefore be granted. In the opinion of the Administrative Law Judge, the information, photographs, and affidavits submitted provide sufficient facts that comply with the requirements of § 307.1 of the BCZR. Furthermore, strict compliance with the BCZR would result in practical difficulty and/or unreasonable hardship upon the Petitioners.

Pursuant to the posting of the property and the provisions of both the BCC and BCZR, and for the reasons given above, the requested variance should be granted.

THEREFORE, IT IS ORDERED, this 8th day of April, 2019, by the Administrative Law Judge for Baltimore County, that the Petition for Variance seeking relief from § 400.1 of the Baltimore County Zoning Regulations ("BCZR"), to permit an in-ground swimming pool in the side yard in lieu of the required rear yard, and to amend the previously approved site plan for Case No. 2004-0109-A, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

- Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.
- Petitioners must comply with the DPR ZAC comment, dated March 29, 2019; a copy of which is attached hereto and made a part hereof.

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

Administrative Law Judge for

Baltimore County

JOHN E. BEVERUNGEN

JERDARDER RECEIVED FOR FILING

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

DATE: March 29, 2019

TO:

Michael Mohler, Acting Director

Department of Permits, Approvals

And Inspections

FROM:

Vishnu Desai, Supervisor

Bureau of Development Plans Review

SUBJECT:

Zoning Advisory Committee Meeting

For March 18, 2019 Item No. 2019-0258-A

The Bureau of Development Plans Review has reviewed the subject zoning items and we have the following comments.

It has been noticed that the record plat (71/124) shows an existing forest conservation and forest buffer easement in the rear of the property near the proposed pool. The easement is not shown correctly on the plan submitted. The proposed pool is to be built near the easement boundary shown on the plat. The plan must show the proper easement boundary

VKD: cen

ORDEF	RECEIVED	POR	FILING

Date	4-8-19	
Bv	\otimes	



ADMINISTRATIVE ZONING PETITION

FOR ADMINISTRATIVE VARIANCE - OR - ADMINISTRATIVE SPECIAL HEARING To be filed with the Department of Permits, Approvals and Inspections To the Office of Administrative Hearings for Baltimore County for the property located at: Address 8201 SELWIN Ct. BALTO, MD. 21237 Currently zoned D.R. - 5.5 16324 1 625 10 Digit Tax Account # 2 3 0 0 0 0 8 0 9 6 Deed Reference ANNA KOBUS Owner(s) Printed Name(s) MICHAEL KOBUS (SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION(S) AND ADDING THE PETITION REQUEST) For Administrative Variances, the Affidavit on the reverse of this Petition form must be completed and notarized. The undersigned, who own and occupy the property situate in Baltimore County and which is described in the plan/plat attached hereto and made a part hereof, hereby petition for an: 1. M ADMINISTRATIVE VARIANCE from Section(s) 400.1 BCZR To permit an in-ground swimming pool in the side yord in lies of the required reer yerd. And to amont the previously approved site slow for case 2004-0109-0 site plan for case 2004-0109-a of the zoning regulations of Baltimore County, to the zoning law of Baltimore County ADMINISTRATIVE SPECIAL HEARING to approve a waiver pursuant to Section 32-4-107(b) of the Baltimore County Code: (indicate type of work in this space: i.e., to raze, alter or construct addition to building) of the Baltimore County Code, to the development law of Baltimore County. Property is to be posted and advertised as prescribed by the zoning regulations. If we agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County. Owner(s)/Petitioner(s): MICHAEL KOBUS, ANNA KOBUS
Name#1-Type or Print
Name#2-Type or Print Name #1 - Type or Print Michael Hobris 8201 SELWIN CT. BALTO. Attorney for Owner(s)/Petitioner(s): Representative to be contacted: PRECENER OR FILING MICHAEL KOBUS Signature

8201 SELWIN CT. BALTO. MD.

Mailing Address City State Name-Type or Print Name - Type or Print Signature City State Telephone# Zip Code Email Address **Email Address** A PUBLIC HEARING having been formally demanded and/or found to be required, it is ordered by the Office of Administrative Hearings for Baltimore County, this day of required by the zoning regulations of Baltimore County. that the subject matter of this petition be set for a public hearing, advertised, and re-posted as

Administrative Law Judge for Baltimore County

CASE NUMBER 2019-0258- Filling Date 3/5/19 Estimated Posting Date 3/7/19 Reviewer

Affidavit in Support Administrative Variance (THIS AFFIDAVIT IS NOT REQUIRED FOR AN HISTORIC ADMINISTRATIVE SPECIAL HEARING)

The undersigned hereby affirms under the penalties of perjury and upon personal knowledge to the Administrative Law Judge for Baltimore County, that the information herein given is true and correct and that the undersigned is/are competent to testify in the event that a public hearing is scheduled in the future with regard thereto. In addition, the undersigned hereby affirms that the property is not the subject of an active Code Enforcement case and that the residential property described below is owned and occupied by the undersigned.

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Name-Print or Type		Nar	ne-Print or Type	7000
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he Affiant(s) herein, personally known or			me as such Affiai	nt(s)
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JENNIFER M. HAMILTON NOTARY PUBLIC	My Co	minission Expires		

NOTARY PUBLIC
BALTIMORE COUNTY
MARYLAND
My Commission Expires 04-05-2020

REV. 5/5/2016

Zoning Description for 8201 Selwin Ct., Balto., Md., 21237

Beginning at a point on the east side of Selwin Ct., which is 50 ft. wide at the distance of 132 ft. south of the center line of the nearest improved intersecting street, Camrose Ct., which is 50 ft. wide. Being Lot # 86, Section 1, Plat 2 in the subdivision Maple Ridge, as recorded in Balto. Co. Plat Book # 71, Folio #124, containing 12,632 square feet of acres. Also known as 8201 Selwin Ct. and located in the 14 election district, 6 Councilmanic District.

BALTIMORE COUNTY DEPAI DENT OF PERMITS, APPROVALS DE INSPECTIONS ZÓNING REVIEW OFFICE

ADMINISTRATIVE VARIANCE INFORMATION SHEET AND DATES

Case Number 2019- 0258 -A Address \$20/56LWIN CT.
Planes Planes Print Your Name
Filling Date: 3/5/19 Posting Date: 3/17/19 Closing Date: 4/11
Any contact made with this office regarding the status of the administrative variance should be through the contact person (planner) using the case number.
1. POSTING/COST: The petitioner must use one of the sign posters on the approved list and the petitioner is responsible for all printing/posting costs. Any reposting must be done only by one of the sign posters on the approved list and the petitioner is again responsible for all associated costs. The zoning notice sign must be visible on the property on or before the posting date noted above. It should remain there through the closing date.
2. <u>DEADLINE:</u> The closing date is the deadline for a neighbor (occupant or owner) within 1,000 feet to file a formal request for a public hearing. Please understand that even if there is no formal request for a public hearing, the process is not complete on the closing date.
3. ORDER: After the closing date, the file will be reviewed by the Administrative Law Judge. The judge may: (a) grant the requested relief; (b) deny the requested relief; or (c) order that the matter be set in for a public hearing. If all County/State agencies' comments are received, you will receive written notification as to whether the petition has been granted, denied, or will proceed to a public hearing. This decision is usually made within 10 days of the closing date. The written order will be mailed to you by First Class mail.
4: POSSIBLE PUBLIC HEARING AND REPOSTING: In cases that must go to a public hearing (whether due to a neighbor's formal request or by order of the Administrative Law Judge), notification will be forwarded to you. The sign on the property must be changed giving notice of the hearing date, time and location. As when the sign was originally posted, certification of this change and a photograph of the altered sign must be forwarded to this office.
(Detach Along Dotted Line)
Petitioner: This Part of the Form is for the Sign Poster Only
USE THE ADMINISTRATIVE VARIANCE SIGN FORMAT
Case Number 2019- 0258 -A Address 8201 SELWIN ST.
Petitioner's Name Michael Kabuo Telephone 410-882-516
Posting Date: 3 (17/19 Closing Date: 4/1/19
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amend the previously approved site plan for ease
2004-0109-4
Revised 6/30/2019

CERTIFICATE OF POSTING

	RE: Case No.	2019-0258- A
	Petitioner:	Michael Kobus
	Closing Date: _	4/1/19
Baltimore County Department of		
Permits, Approvals and Inspections		
Room 111, County Office Building		
111 W. Chesapeake Ave.		
Towson, Md. 21204		
This letter is to confirm, under pena	alties of perjury, t	hat the necessary sign(s)
were posted conspicuously on the p	property located a	t
8201 Selwin Court 1 of	2 (Front NW side	of property)
8201 Selwin Court 2 of	2 (Front SE side o	f property)
	on	3/17/19
	Sincerely	,
	Rich	ard E. Hoffman
	904	Dellwood Drive
	Fal	ston, Md. 21047
		(443) 243-7360

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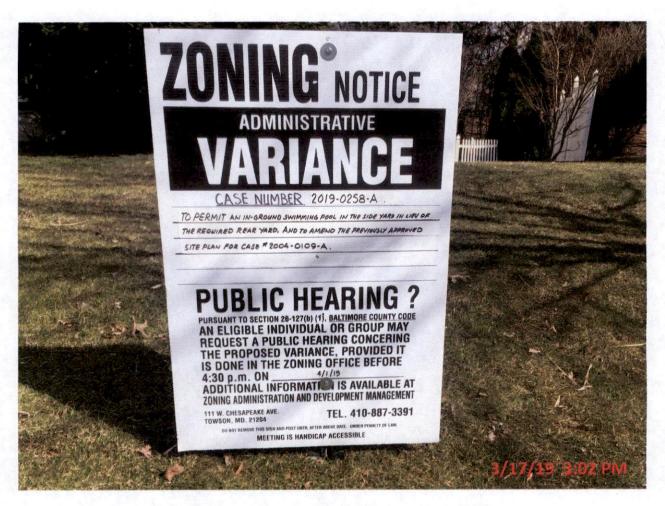
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Certificate of Posting

Case No 2019-0258-A



8201 Selwin Court - 2 of 2 (Front-SE side of property)

Richard E. Hoffman

904 Dellwood Drive

Fallston, Md. 21047

443-243-7360

Certificate of Posting Case No 2019-0258-A



8201 Selwin Court - 1 of 2 (Front-NW side of property)

Richard E. Hoffman

904 Dellwood Drive

Fallston, Md. 21047

443-243-7360

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JOHN A. OLSZEWSKI, JR. County Executive

MICHAEL MOHLER, Director Department of Permits, Approvals & Inspections

April 2, 2019

Michael & Anna Kobus 8201 Selwin Ct Baltimore MD 21237

RE: Case Number: 2019-0258-A, 8201 Selwin Ct

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 March 5, 2019. This letter is not an approval, but only a **NOTIFICATION**.

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

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

Very truly yours,

W. Carl Richards, Jr. Supervisor, Zoning Review

WCR/kl

Enclosures

c: People's Counsel

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

DATE: March 29, 2019

TO:

Michael Mohler, Acting Director

Department of Permits, Approvals

And Inspections

FROM:

Vishnu Desai, Supervisor

Bureau of Development Plans Review

SUBJECT:

Zoning Advisory Committee Meeting

For March 18, 2019 Item No. 2019-0258-A

The Bureau of Development Plans Review has reviewed the subject zoning items and we have the following comments.

It has been noticed that the record plat (71/124) shows an existing forest conservation and forest buffer easement in the rear of the property near the proposed pool. The easement is not shown correctly on the plan submitted. The proposed pool is to be built near the easement boundary shown on the plat. The plan must show the proper easement boundary

VKD: cen cc: file

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence





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:

May 7, 2019

SUBJECT:

DEPS Comment for Zoning Item

2019-0258-A

Address

8201 Selwing Court

(Kobus Property)

Zoning Advisory Committee Meeting of March 18, 2019.

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

1. There is a Forest Buffer and Forest Conservation Easement (FBFCE) in the rear of this property. The property owners are mowing part of the FBFCE which is a violation of the County's Forest Buffer and Forest Conservation regulations. Please note, EIR will hold any permit applications on this property until the Forest Buffer and Forest Conservation violation is corrected.

Reviewer:

Gris Batchelder

1 230853 1127 35 N 10-73

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CHECKLIST

Comment Received	<u>Department</u>		Support/Oppose/ Conditions/ Comments/ No Comment
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5-17	DEPS (if not received, date e-mail sent		eid afoul 6 rout
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	PLANNING (if not received, date e-mail sent)	
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	COMMUNITY ASSOCIATION		
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SIGN POSTING (2"	Date:		by
PEOPLE'S COUNSE	EL APPEARANCE Yes EL COMMENT LETTER Yes	□ No □ □ No □	
Comments, if any: _			

Real Property Data Search

Search Result for BALTIMORE COUNTY

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Homestead Application Status: Appเป็นอน 05/25/2010

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application

Date:

(AV) 4-1

ZAC AGENDA

Case Number: 2019-0258-A Reviewer: Jun Fernando
Existng Use: RESIDENTIAL Proposed Use: RESIDENTIAL

Type: ADMINISTRATIVE VARIANCE

Legal Owner: Michael Kobus & Anna Kobus

Contract Purchaser: No Contract Purchaser was set.

Critical Area: No Flood Plain: No Historic: No Election Dist: 14 Council Dist: 5

Property Address: 8201 SELWING CT

Location: East side of Selwin Ct at the distance of 132 feet south of the center line of Camrose Court.

Existing Zoning: DR 5.5

Area: 12,632

Proposed Zoning:

ADMINISTRATIVE VARIANCE:

To permit and in ground swimming pool in the side yard in lieu of the required rear yard, and to amend the previously

approved site plan for case 2004-0109-A.

Attorney: Not Available Prior Zoning Cases: None Concurrent Cases: None Violation Cases: None Closing Date: 04/01/2019

Miscellaneous Notes:

IN RE: PETITION FOR VARIANCE E/S of Selwin Court, 132' S centerline of Camrose Court 14th Election District 6th Councilmanic District (8201 Selwin Court)

> Anna & Michael Kobus Petitioners

BEFORE THE

DEPUTY ZONING COMMISSIONER .

OF BALTIMORE COUNTY

CASE NO. 04-109-A

ORDER ON MOTION TO CLARIFY REVISED ORDER

WHEREAS, this matter originally came before this Deputy Zoning Commissioner as a Petition for Variance filed by the legal owners of the subject property, Anne and Michael Kobus. The variance relief was requested from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an above ground swimming pool in the side yard in lieu of the required rear yard. After public hearings held on this matter (October 25, 2003 & December 9, 2003), the variance request was granted by Order dated December 18, 2003 subject to three conditions relating to landscaping/vegetative screening. On January 16, 2004, the Petitioners' neighbors, Mr. & Mrs. LaVoie, filed a Motion for Reconsideration which was accepted by this office after correspondence by the parties. On March 31, 2004, this Commission clarified its prior order regarding screening between the Kobus and LaVoie properties in the area of the Kobus pool.

WHEREAS, on April 26, 2004, Mr. and Mrs LaVoie filed a Motion to Clarify Revised Order; and

WHEREAS, in response to the Motion for Reconsideration of the Revised Order, this Office received a letter from Mr. & Mrs. Kobus responding to Motion to Clarify Revised Order on April 19, 2004. A meeting was held with Mr. & Mrs. Kobus, Mr. & Mrs. LaVoie, Avery Harden, Landscape Architect for Baltimore County and the undersigned Deputy Zoning

Commissioner on June 17, 2004 to review various options, screening designs and property considerations. Subsequently, Mr. & Mrs. LaVoie declined to have any plantings on their property (one of the options) as shown by their letter dated June 21, 2004.

Findings of Fact and Conclusions of Law

In the Order on Motion for Reconsideration, I ordered that the screening between the Kobus pool and LaVoie property line be accomplished wholly on the Kobus property in accord with the first option noted by Avery Harden, Baltimore County Landscape Architect, in his January 21, 2004 memorandum. While this was not the best technical option to accomplish the screening, the better design (option three) would erect the screening partially on the LaVoie's property. This was truly an imposition that could only be accomplished if the LaVoie's gave their consent.

The LaVoie's Motion to Clarify Revised Order asked, in pertinent part, to clarify details of option three. Of particular concern was whether the screening would be professionally done. At the June 17th meeting, Mr. Kobus indicated that he wanted to purchase/install the plantings himself. Mr. Harden pointed out that the third option was designed professionally by him personally and he committed to inspect the finished product to be sure all followed his design. However, he believed that Mr. Kobus could install the plantings which otherwise would greatly increase cost to Mr. & Mrs. Kobus. However, after due consideration, the LaVoie's decided not to allow option three on their property.

Consequently, I can only deny the LaVoie's Motion to Clarify Revised Order. By this decision, my Order of March 31, 2004 continues in force requiring Mr. & Mrs. Kobus to install screening on their property according to option one, as shown in Mr. Harden's letter dated January 21, 2004.

THEREFORE, IT IS ORDERED, this <u>38</u> day of June, 2004, by the Deputy Zoning Commissioner for Baltimore County, that Protestants' Motion to Clarify Revised Order, be and is hereby DENIED.

All provisions of the December 18, 2003 Order and this Commissioner's Order of March 31, 2004 herein shall continue with full force and effect; and

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

JOHN V. MURPHY

DEPUTY ZONING COMMISSIONER

FOR BALTIMORE COUNTY

JVM:raj

3-31-04

IN RE: PETITION FOR VARIANCE
E/S of Selwin Court, 132' S
centerline of Camrose Court
14th Election District
6th Councilmanic District
(8201 Selwin Court)

Anna & Michael Kobus

Petitioners

BEFORE THE

DEPUTY ZONING COMMISSIONER

OF BALTIMORE COUNTY

CASE NO. 04-109-A

* * * * * * * * *

ORDER ON MOTION TO CLARIFY OR FOR RECONSIDERATION.

WHEREAS, this matter came before this Deputy Zoning Commissioner as a Petition for Variance filed by the legal owners of the subject property, Anne & Michael Kobus. The variance relief was requested from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an above ground swimming pool in the side yard in lieu of the required rear yard. After public hearings held on this matter (October 25, 2003 & December 9, 2003), the variance request was granted by Order dated December 18, 2003 subject to three conditions relating to landscaping/vegetative screening.

WHEREAS, on January 16, 2004, the Petitioners' neighbors, Mr. & Mrs. LaVoie, filed a Motion for Reconsideration which was accepted by this office after correspondence by the parties; and

WHEREAS, in response to the Motion for Reconsideration, the following correspondence has been received by this office:

A.	Motion for Reconsideration filed by Mr. & Mrs. LaVoie to DZC Order	1/16/04
В.	Letter to Mr. & Mrs. Kobus re: motion for reconsideration	1/21/04
C.	Inter-office correspondence from Avery Harden, Landscape Architect	
	re: 3 potential buffer design scenarios	1/21/04
D.	Letter to Mr. & Mrs. LaVoie re: Avery Harden's recommendations w/	
	copies to Mr. & Mrs. Kobus & A. Harden	1/27/04
E.	Letter from Mr. & Mrs. Kobus responding to motion for reconsideration	
	filed by Mr. & Mrs. LaVoie	2/1/04
F.	Fax from Ed Quinn, community assoc. president	2/4/04
G.	Letter from Mr. & Mrs. LaVoie to DZC Murphy in response to his letter	
	of 1/16/04	2/6/04

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H.	Letter from Mr. & Mrs. LaVoie to DZC Murphy re: Kobus' response	
	letter to their motion for reconsideration	2/26/04
I.	Letter from Mr. & Mrs. Kobus re: clarification of screening for front of	
	their pool	2/28/04
J.	Letter from Mr. & Mrs, Kobus re: letter from Mr. & Mrs. LaVoie	3/14/04
K.	Fax to DZC Murphy from Mr. & Mrs. LaVoie re: location of Kobus pool	
	too close to their property line in order to maximize sun exposure, etc.	3/22/04

Applicable Law

Appendix G, Rule 4 K

K. Motion for reconsideration. A party may file a motion for reconsideration of an order issued by the Zoning Commissioner. Such a motion must be made in writing, within 30 days of the date of the original order. The motion must state, with specificity, the grounds and reasons for the request. The filing of a motion for reconsideration shall stay all further proceedings in the matter, including the time limits/deadlines for the filing of an appeal. The Zoning Commissioner shall rule on the motion within 30 days from the date which the motion is accepted for filing. A ruling by the Zoning Commissioner on the motion for reconsideration shall be considered the final decision in accordance with Section 26-209 or 26-132 of the Baltimore County Code. At his discretion, the Zoning Commissioner may convene a hearing to receive testimony and/or argument on the motion. Each party shall be limited to that which is the subject matter of the motion.

Findings of Fact and Conclusions of Law

The LaVoie's request for reconsideration is clouded by the survey results of JMT Engineers which is in conflict with Petitioners' Exhibit No. 1. The JMT drawing shows that the Kobus' surround is only 1.88 feet from the common property boundary while the Kobus sketch shows 4 ft. available. Again, the JMT drawing shows the pool itself is 5 ft. from the common boundary while the Kobus sketch gives 6 ft. for this dimension. This is important because any vegetative screening would have to be planted between the common boundary and the surround/pool. Both sketches were submitted to Avery Harden, the County's Landscape Architect, who quite reasonably proposed different screening schemes depending on which sketch one believes. So this issue has to be resolved.

I have no legal power (no jurisdiction) to determine the legal boundaries between properties.

That is the exclusive jurisdiction of the Circuit Court for Baltimore County. I do have the power to resolve disputes of fact which affect zoning decisions and that I will attempt to do. To start, I note

that both sketches are hearsay evidence in which the author of these documents has not been subject to examination. Also, I note that this is a new subdivision and, therefore, the meets and bounds description of the subdivision lots should not be at all difficult to determine unlike some boundaries which have ancient points of description.

When I attempt to resolve such disputes I first look for those things on which they agree. Both have approximately the same distance from the pool edge to the property line. One gives 5 ft. while the other gives 6 ft. So there is little dispute here. I will assume the Kobus figure for the sake of what follows. The Kobus sketch shows 4 ft. to the property line or said another way there is approximately 2 ft. between the edge of the pool and the inside edge of the surround. There is then 4 ft. between the inside edge of the surround and the property line according to the Petitioners. This space was found to be sufficient by Mr. Harden, to erect an opaque fence and reasonable plantings. Please note the LaVoie's have not given permission to erect better screening on their property and I have no jurisdiction or inclination to impose this burden on them.

Therefore, I will clarify my December 18, 2003 Order such that the first option given in Avery Harden's memo dated January 21, 2004, a copy of which is attached hereto and made a part hereof, be implemented. The vegetative screening and opaque fence described therein shall be erected by the Petitioners on their property at their expense. However, the reference point to start construction shall not be the property line, which is in dispute but the outside edge of the pool. Using the Kobus figures, the Petitioners are allowed 2 ft. between the outside edge of the pool and the inside of the surround. The fence and plantings shall be contained within the outside edge of the surround and a distance of 5 ft. from the edge of the pool. By doing so, neither fence nor plantings will be placed upon the LaVoie property according to both the JMT drawing and the Kobus' drawing. This means that instead of 4 ft. in which to erect the fence and plantings as

reviewed by Mr. Harden, there will be only 3 ft. for the fence and plantings. However, Mr. Harden

indicates his first option will work sufficiently with a minimum of 3 ft.

I realize that by ordering the above, if the Kobus dimensions are not correct, the Petitioners

may well find that they have to reconstruct a substantial part of their surround to provide adequate

room for the screening and fence. This could mean having the retaining wall rebuilt along a chord,

which guarantees at least 3 ft. of earth in which to do the plantings and erect the fence. If the

Kobus' figures are correct, there should be no expense to them other than the cost of the fence and

plantings.

THEREFORE, IT IS ORDERED, this 3 | day of March, 2004, by the Deputy Zoning

Commissioner for Baltimore County, that Protestants' Motion for Reconsideration, be and is hereby

DENIED. All provisions of the December 18, 2003 Order not clarified herein shall continue with

full force and effect; and

IT IS FURTHER ORDERED, that this Commissioner's Order of December 18, 2003 is

clarified such that the Petitioners shall erect a vegetative and fence screening as described as the

first option in Avery Harden's January 21, 2004 memo attached hereto as follows:

1. The fence to be installed and the plantings shall be made at Petitioners' expense and on the Petitioners' property in a strip of land which shall be a minimum of 3 ft. wide which is located 2 ft. from the outside edge of the Petitioners' pool at the point on the pool

nearest the boundary between the Petitioners' and LaVoie properties.

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

JOHNÝV. MURPHY

DEPUTY ZONING COMMISSIONER

FOR BALTIMORE COUNTY

JVM:raj

4

12-18-03

IN RE: PETITION FOR VARIANCE
E/S of Selwin Court, 132' S
centerline of Camrose Court
14th Election District
6th Councilmanic District
(8201 Selwin Court)

Anna & Michael Kobus

Petitioners

* BEFORE THE

* DEPUTY ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* CASE NO. 04-109-A

* * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Variance filed by the legal owners of the subject property, Anna and Michael Kobus. The Petitioners are requesting variance relief for property located at 8201 Selwin Court, in the eastern area of Baltimore County. Variance relief is requested from Section 400.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit an above ground swimming pool in the side yard in lieu of the required rear yard.

The property was posted with Notice of Hearing on September 30, 2003, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on September 30, 2003 to notify any interested persons of the scheduled hearing date.

Applicable Law

Section 307 of the B.C.Z.R. – *Variances*.

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

Jn/15

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

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: ZAC comments were received from the Office of Planning dated October 15, 2003 requesting the variance be denied, a copy of which is attached hereto and made a part hereof. These comments were received on the day of but after the hearing. As a result, the Petitioners were notified of the comment and selected to have the case reconvened on December 9, 2003.

Interested Persons

Appearing at the October 15, 2003 hearing on behalf of the variance request were Anna and Michael Kobus the Petitioners. At the December 9, 2003 hearing, Denise Kellner and Alec Karnezis appeared for the Petitioners. Debbie and Dennis LaVoie and Cheryl Atkas appeared in opposition to the variance request on both hearing days. Finally, David Pinning, Office of Planning and Errol Ecker, Department of Permits and Development Management testified on December 9, 2003. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

Testimony and evidence indicated that the property is improved by a single-family dwelling and the above ground swimming pool, which is the subject of this variance request. The Petitioners constructed the pool without a permit and were issued a stop work order by the County. By way of background, the property is in a new subdivision that has had a series of complaints lodged by the homeowners against the builder relating to various problems. The homeowners want the builder to complete the subdivision and correct the problems they found once they began living in their

homes. Among the problems was the fact that the subject lot and the adjacent LaVoie lot were subject to water coming onto their properties from the surrounding area that did not drain off properly.

The Petitioner wanted to erect an above ground swimming pool for his family. There was a dispute as to whether he tried to obtain a permit, and whether the County misled him in that regard. In any case, he constructed the pool in the side yard near the LaVoie property line. Had he constructed the pool in the rear yard a variance would not have been required. The Petitioner testified that he considered erecting the pool in the rear yard but that the area is subject to flooding. In support of this contention, he submitted several photographs of the rear yard during heavy precipitation (Petitioner's Exhibit No. 2A (summer rain) & Petitioner's Exhibit Nos. 2B-2F (construction of the surround for the pool and the yard after a snowstorm). Silt runoff from the neighborhood is shown by brown coloration. Also see Petitioner's Exhibit No. 3 - Photographs. Based upon his personal analysis of the flooding conditions of the rear yard, the Petitioner constructed the pool in the side yard nearest the LaVoie residence. See Petitioner's Exhibit No. 2C, which shows the proximity to the LaVoie home and the central issue in this case. According to the plat, Petitioner's Exhibit No. 1, the pool itself is 6 ft. from the LaVoie property line and the surround is 4 ft. from the line. This plat also shows the pool 13 ft. from the Petitioner's home. The Petitioners contend that the pool and safety fence are barely visible from the public street due to the sloping topography of the property at that location. The Petitioners also contend that the LaVoie's were asked for permission prior to erecting the pool and they gave their permission. The permission issue was hotly contested by the LaVoie's.

The LaVoie's contend that they never agreed to placing the pool in the side yard near their property line, and that the Petitioner could have and should have located the pool in the Petitioners' rear yard like all the other pools in the neighborhood. They emphasize that the Petitioners had no

permit, and even though they told him he needed a permit, the Petitioner rushed ahead without proper authorization. They further contend that the Petitioner also failed to get homeowner association permission to build the pool in the side yard. Finally, they see the pool from their home and they are convinced its presence will lessen the value of their home. See Protestant's photographs of the pool from the LaVoie home.

As mentioned above, the case was continued to allow the Petitioners to reply to the comment from the Planning Office which first recommended that the swimming pool be removed and secondly that the pool be screened from the neighbor's home and the street. In support of the Office of Planning's position, David Pinning, Area Planner, testified that he had been to the site several times. In his opinion, there was no reason why the Petitioners could not locate the pool in their rear yard. In fact, he testified that he disagreed with the "fall back" position the Office of Planning had taken on screening. He was adamant that the pool should be removed.

On cross-examination, Mr. Pinning admitted that he was unaware of any water problem in the rear yard of the Petitioners' property, nor was he aware that a forest buffer easement existed in the rear yard approximately 35 feet from the Petitioners' home. He was not aware of the forest buffer because the builder had "feathered" the slope of the land in the buffer area to encourage water to flow toward the drain. Consequently, it was not apparent where the buildable area of the rear yard ended. Still skeptical, Mr. Pinning opined that even considering the above, professional drawings to confirm the actual buildable area should be required of the Petitioners before allowing the variance.

Errol Ecker, Supervisor of County Building Inspections, testified that he was also familiar with the site, found that the Petitioners had failed to get a permit, and had issued a stop work order to the Petitioners which required removing the swimming pool. However, after speaking to the Petitioners and reviewing photographs of the drainage problem, he disagreed with the order to

remove the pool. He testified that there was no reasonable place in the rear yard to locate the pool that would not interfere with the drainage of this property and a large portion of the subdivision. He further opined that the County had recently relaxed its regulations for the number of drains a developer must provide which perhaps could have captured water that was causing the Petitioners such problem. However, under newer regulations the County had opted for more water going back into the ground and less drain inlets. A consequence of this change is as now seen in the Petitioners' rear yard where slow gradual drainage is the order of the day. Again, Mr. Ecker noted that the Petitioners could not under any circumstances invade the forest buffer area to erect the pool in the rear yard.

Both the Petitioners and the protestants reiterated their strongly held opposite opinions in regard to the location of the present above ground swimming pool, the likelihood that the Petitioners will build an in ground pool, and the reason the present swimming pool is located in the side yard. In regard to the last point, the protestants contend that the pool is located near their property line to maximize the sun exposure at that location. Alec Karnezis, a neighbor and officer of the Maple Ridge Community Association, spoke as an individual and not for the association. He testified that he had personally observed the flood of water in the Petitioners' rear yard during a thunderstorm, that the did not believe a permit was required for this type of pool and generally favored granting the variance. Denise Kellner, a nearby property owner, testified that she also was aware of water problems in the Petitioners' rear yard, that the pool is not visible from the public road and the pool the Petitioners built was well done compared to all the other pools in the neighborhood.

Findings of fact and conclusions of law

I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Specifically, I find that there is a demonstrated water

drainage problem in the Petitioners' rear yard and that a pool located there would interfere with the drainage not only from this property but also from the community at large. I further find that the forest buffer, which apparently is not at all evident, is only 35 ft. away from the Petitioners' home severely restricting the location of any pool in the rear yard. I find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. There simply is no other place than the side yard to locate the pool.

Much more problematic is the requirement that such variance shall be granted only if in strict harmony with the spirit and intent of said regulations, and only in such manner as to grant relief without injury to the public health, safety and general welfare. The impact on the LaVoie residence is obvious. The LaVoie's reasonably do not want to look upon the pool, which is so close to their home. What is particularly troublesome is the fact that the Petitioners located the swimming pool within a few feet of the property line and 13 ft. from their own home. If the Petitioners were considerate of their neighbors, they surely would have located the pool closer to their own home. As the protestant's claim, perhaps the Petitioners were more concerned about locating the swimming pool in the sunshine than their neighbors' feelings. The only way to ameliorate the impact on the LaVoie's is either to move the pool toward the Petitioners' home (but not into the rear yard), or to screen the pool with an evergreen barrier. This latter is made difficult because of the very narrow area left by the Petitioners between the surround and the property line limits. The only screening that can take place is probably one row of trees. One thing is certain. The LaVoie's should not have to use their land to locate screening material. Secondly, no privacy fence will do the job of screening the pool from the protestant's home and particularly their deck.

While I have seriously considered granting the variance to allow the pool in the side yard, but requiring the Petitioners to move the pool toward their home, on balance I find that proper screening along the LaVoie property line should be sufficient to reduce the impact on the

protestant's property. Fortunately, the County has a landscape architect that can hopefully direct an effective planting of such material and spacing so that the impact on the LaVoie's will be minimized.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the Petitioners, I find that the Petitioners' variance request should be granted with conditions as set forth below.

THEREFORE, IT IS ORDERED, this day of December, 2003, by this Deputy Zoning Commissioner, that the Petitioners' request for variance from Section 400.1 of the B.C.Z.R., to permit an above ground swimming pool in the side yard in lieu of the required rear yard, be and is hereby GRANTED subject to the following conditions:

- 1. The Petitioners shall prepare and submit a landscape plan to the County, at their expense, which incorporates evergreen vegetative components to effectively screen their pool from the property line they share with the LaVoie's.
- 2. The landscape plan shall be submitted to Avery Harden, Landscape Architect for Baltimore County, within 30 days of the date of this Order. The Petitioners shall follow his direction in this regard.
- 3. That if effective vegetative screening is impractical, the Petitioners shall move the pool and surround toward the Petitioners' home in the side yard until sufficient distance is provided to allow an effective vegetative screening.

IT IS FURTHER ORDERED, that any appeal of this decision must be made within thirty (30) days of the date of this Order.

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER

FOR BALTIMORE COUNTY

JVM:raj

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

DATE: October 15, 2003

TO:

Timothy M. Kotroco, Director

Department of Permits and Development Management

FROM:

Arnold F. 'Pat' Keller, III

Director, Office of Planning

SUBJECT:

8201 Selwin Court

INFORMATION:

Item Number:

04-109

Petitioner:

Michael Kobus

Zoning:

DR 3.5

Requested Action: Petition for a variance to permit an above ground pool in the side yard instead of the required rear yard.

SUMMARY OF RECOMMENDATIONS:

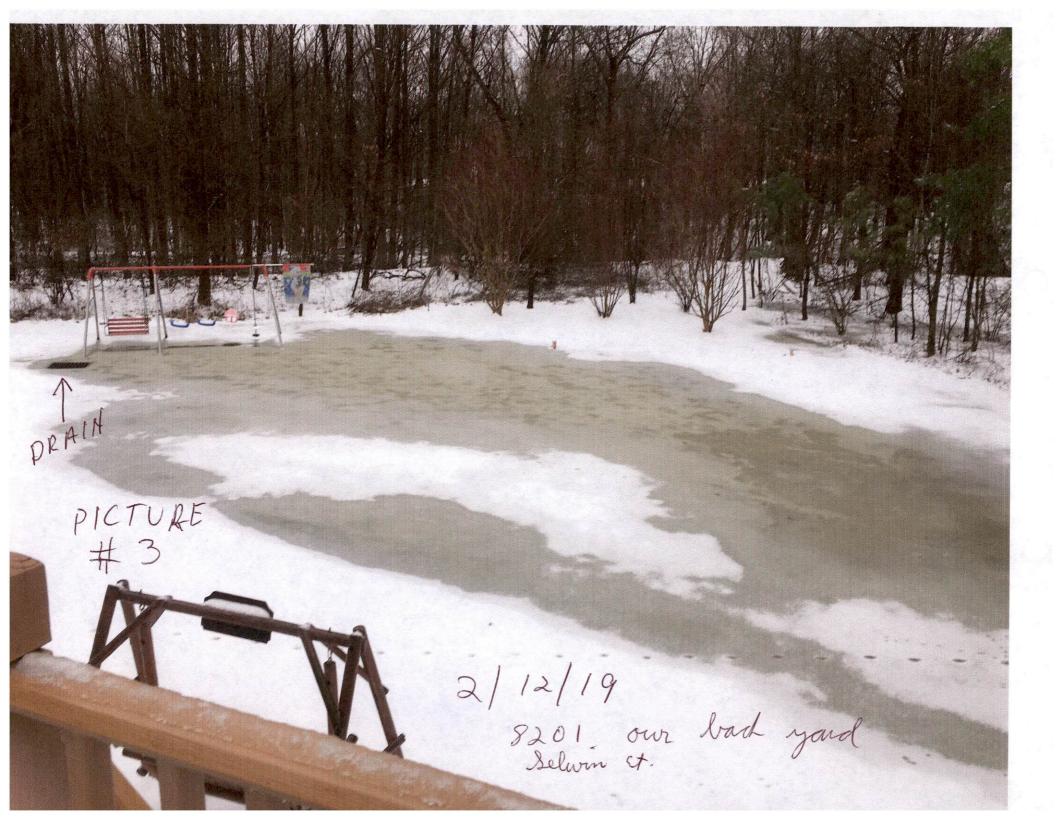
The Office of Planning does not support the variance to place a pool in the side yard as opposed to the rear yard of the property. If the pool is placed in the side yard, it should be located behind the front plane of the residence and fenced/landscaped with an opaque screen so that no portion of the pool or its associated components will be seen from the public right of way.

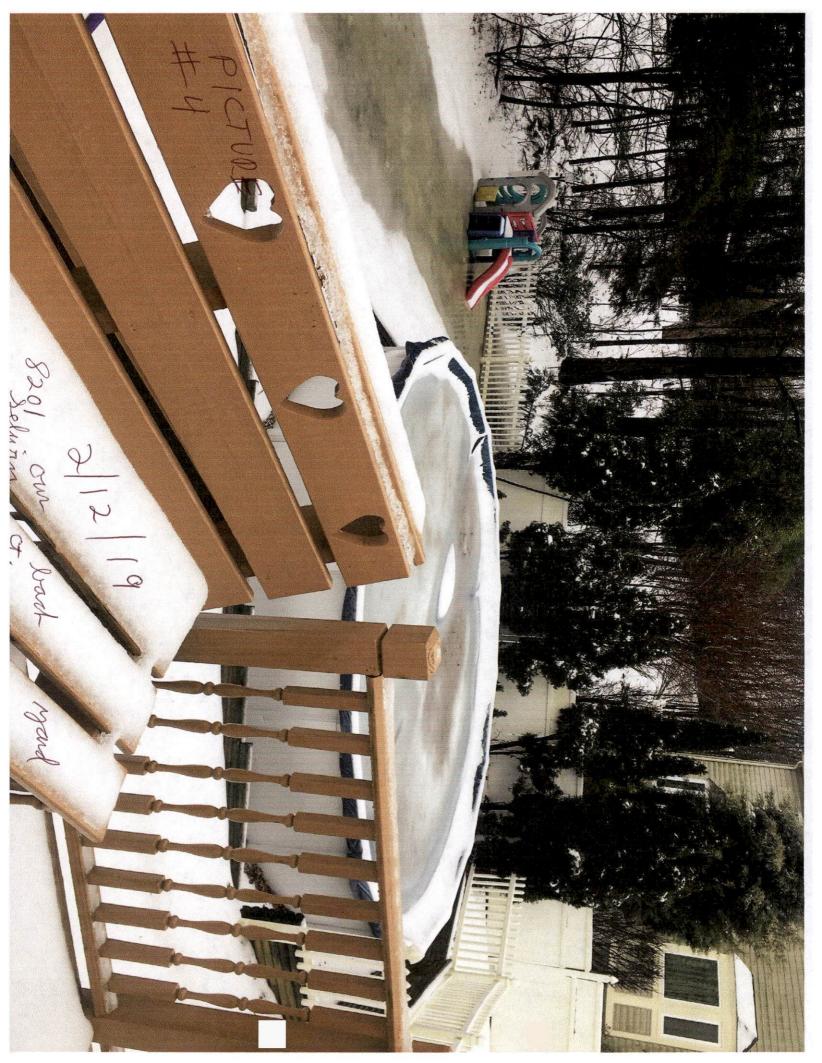
Section Chief:

AFK/LL

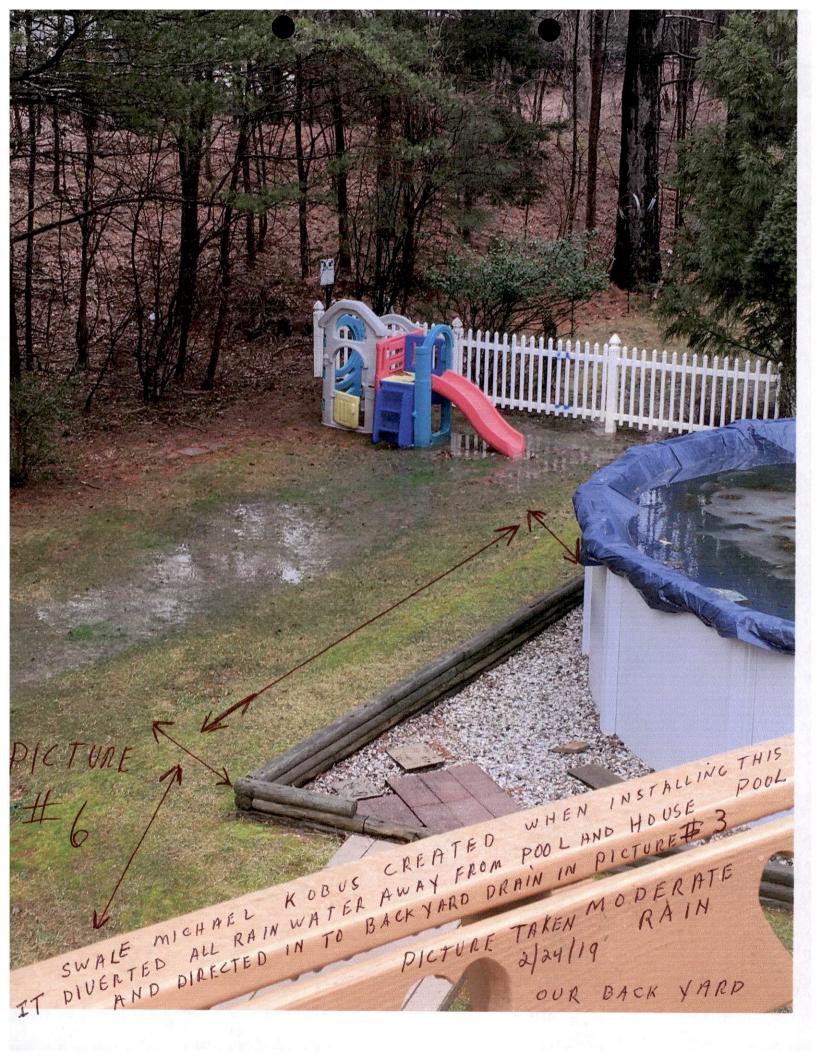








PICTURE 8201 Selwin Ct. from our back windows 2/12/19





8201 Selvin et.
om back yard
PICTURE
#7

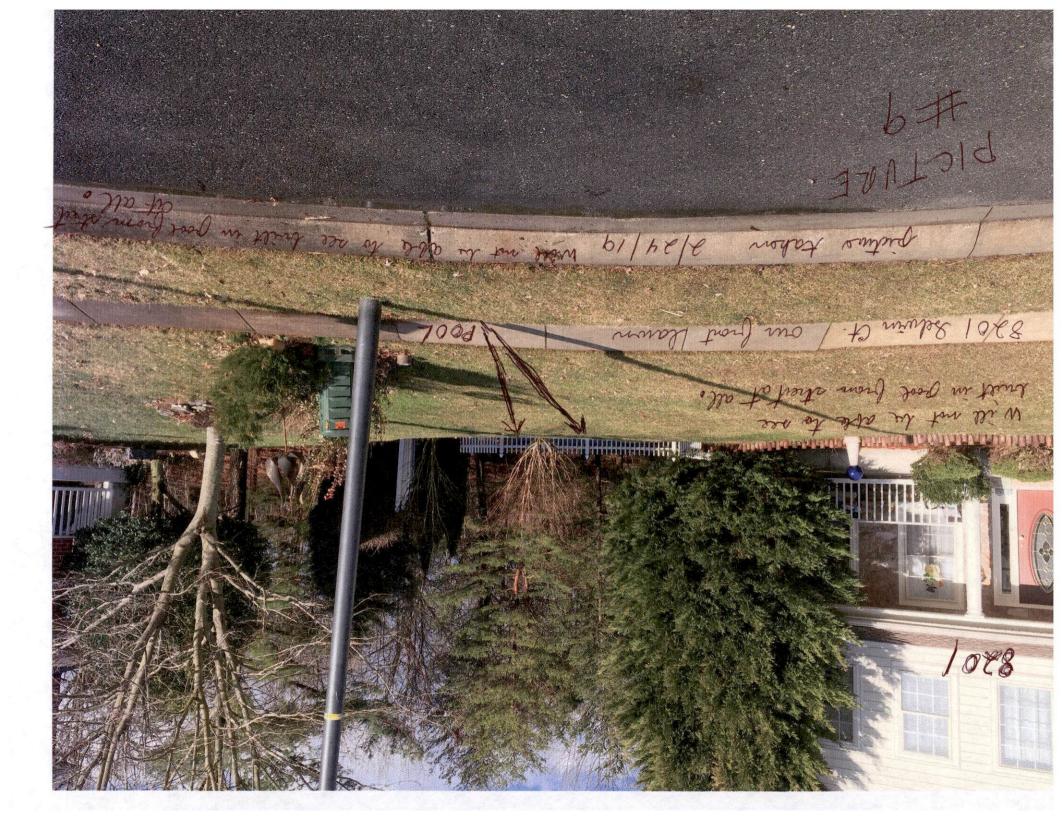
picture taken

4 2/24/19

moderate rain

gR 📨 😅 🐪 🤲 <equation-block> 🎜 🖫 🖫 (4)) 2/24/2019





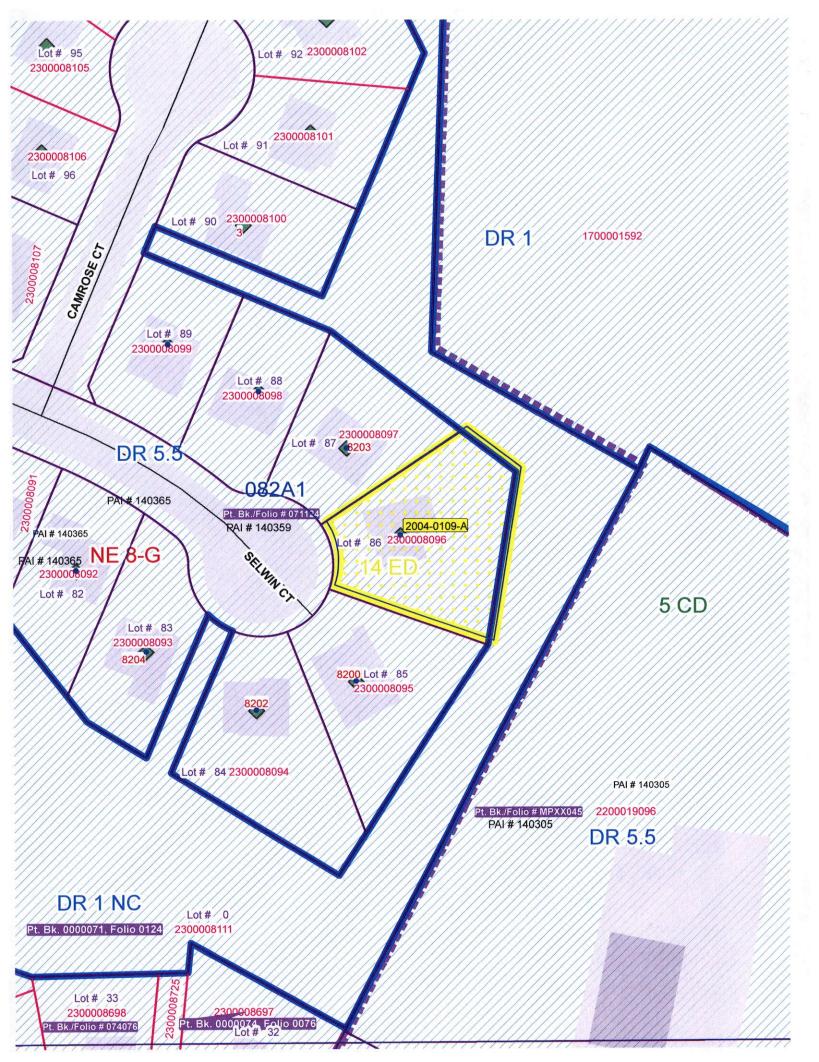




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ZONING HEARING PLAN FOR VARIANCE FOR SPECIAL HEARING (MARK TYPE REQUESTED WITH X)	SHE VICHNIT WHE
ADDRESS 8201 Selwin C+ OWNER(S) NAME(S) Michael + Anna Kobus	Below Rd 43
SUBDIVISION NAME Maple Ridge LOT# 86 BLOCK # NA SECTION # 1 #2	Be 191 43
PLAT BOOK # 7 FOLIO # 124 10 DIGIT TAX # 23 00 00 8096 DEED REF. # 16324/ 625	
NOTE, WATER STARTS	Bucks School house
20 FT. BEFORE LAST	Na /
POUNDATION AND ENDS	
TOUR DATION	MAPIS NOTTOSCALE ZONING MAP# 082.4
	SITE ZONED DR 5.5
Selwin Charles to Storm drain	ELECTION DISTRICT 14
Delwin Storm drain	COUNCIL DISTRICT 5
forest buffer	LOT AREA ACREAGE # 29
	OR SQUARE FEET 12, 63 2
PROPOSED INC. PROPOSED	HISTORIC? NO
PROPOSED INGROUND	IN CBCA 7 NO
	UTILITIES? MARK WITH X
14' x 28'	WATER IS:
	PUBLIC Y PRIVATE
16' X 28	R. Wel D dillores A.M.
	PUBLICY_PRIVATE
Note Conco	PRIOR HEARING? WES
way execution	IF SO GIVE CASE NUMBER
De per programa	AND ORDER RESULT BELOW
N N	NO- 64-109 A
line from	No Of TOTAL
N PLAN DRAWN BY Anna Kobus DATE Alay 19 SCALE: 1 INCH = 50 FEET	
	VIOLATION CASE INFO:
2019-0258-A Pot Edg-1	NA.

DITE SHOULD WARD

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