IN THE MATTER OF	*	BEFORE THE
PETITION FOR SPECIAL	*	ZONING COMMISSIONER
EXCEPTION AND VARIANCE	*	OF BALTIMORE COUNTY
PAUL AND MARGERY SHRIVER	*	Case No. 89-361XA

MEMORANDUM OF LAW IN OPPOSITION TO
GRANTING OF PETITIONS

PAUL AND MARGERY SHRIVER (Petitioners), residents of 7105 Sheffield Road, a home in the heart of the Stoneleigh residential community, have petitioned to allow a dog kennel use of that home. In order to accomplish such a use the Petitioners must also circumvent the mandated 200 foot setback.

FACTS

Petitioners operate from their residence The Sheffield Pugs, a breading and show dog operation that has, according to Mrs. Shriver, at least 9 to 12 and sometimes as many as 16 adult dogs at any given time at her home (this does not take into consideration puppies.) The dogs stay in the basement of the home or are outside in the back yard. According to Mrs. Shriver's testimony, the dogs urinate and defecate outdoors. The property is 135 feet deep and 65 feet wide. At least sixteen (16) residential properties are within 200 feet of the property. Petitioners' use of the property as a dog kennel encompasses not only the structure but the outdoor back yard as well.

While some witnesses testify to not observing rats on the property, others have emphatically testified that they have observed rats. Petitioners' engineering expert, Mr. Lee, stated that if he had evidence that the present Sheffield Pugs operation attracted rats that he might change his opinion testimony that the present use would not be detrimental to the health, safety or general welfare of the locality. Mr. Wiedefeld, a pest and rodent control expert testified that rats will be attracted, for food, to animal feces, such as the dog feces in Petitioners' back yard. The

IN THE MATTER OF THE	*	BEFORE THE
PETITION FOR SPECIAL	*	ZONING COMMISSIONER
EXCEPTION AND VARIANCE	*	OF BALTIMORE COUNTY
7105 Sheffield Road	*	Case No.: 89-361XA
PAUL AND MARGERY SHRIVER, PETITIONERS	*	
	*	

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

MEMORANDUM OF LAW

NOW COMES PAUL and MARGERY SHRIVER, Petitioners, by S. Eric DiNenna, DiNenna, Mann & Breschi, in support of their Petition for Special Exception and Variance, wishes to set forth this Memorandum.

Your Petitioners purchased the subject property in 1959 in the Stoneleigh area of Baltimore County. Because of her interest in Pug show dogs, Mrs. Shriver began breeding and showing dogs at pedigree shows. She has continuously, for a period of twenty-eight (28) years, minimum breeded and has shown dogs at various shows, having on the subject property, approximately nine to twelve dogs at any one time. The Commissioner should take note that these dogs are very small in size and do not make any loud noises barks. Counsel for the protestant Community Association indicates that she sometimes had as many as sixteen (16) adult dogs, but this is an overstatement. The dogs are housed in the Shriver home and are let out periodically in the rear of the residence, but normally in numbers less than the full number of nine to twelve at one time.

MICROFILMED

LAW OFFICES
J. SHAWN ALCARESE
SUITE 700
207 E. REDWOOD ST.
BALTIMORE, MARYLAND 21202
TELEPHONE 301-685-4558

April 24, 1989

RECEIVED
APR 25 1989
ZONING OFFICE

J. Robert Haines
Zoning Commissioner for
Baltimore County
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Case No. 89-361-XA
Shriver Special Exception

Dear Commissioner Haines:

Please accept this as an update on the status of the above matter.

Following Mr. DiNenna's letter to me of March 30, 1989, a copy of which you should have received, I spoke to Mr. DiNenna once, on April 4, 1989. At that time certain conditions were conveyed to Mr. DiNenna for resolution of this matter. Since that date the only subsequent contact has been via a copy of Mr. DiNenna's April 10, 1989 letter to you. On behalf of the protestants, we therefore request your decision.

Thank you for your cooperation.

Very truly yours,

J. Shawn Alcarese

cc: S. Eric DiNenna, Esquire
Barry Miller/Beverly Brandon
Robert and Charlotte Smith

DiNENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DiNENNA, P.A.
JAMES L. MANN, JR., P.A.
GEORGE A. BRESCHI, P.A.

GERALDINE A. KLAUBER
FRANCIS X. BORGERDING

SUITE 600
MERCANTILE-TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

(301) 296-6820
TELEFAX (301) 296-6884

January 25, 1989

RECEIVED
JAN 26 1989
ZONING OFFICE

J. Robert Haines
Zoning Commissioner
for Baltimore County
111 Chesapeake Avenue
County Office Building
Towson, Maryland 21204

RE: Petitioner/Shriver
7105 Sheffield Road Item 276

Dear Mr. Commissioner:

As you might be aware from the Petition filed concerning the above-captioned matter, I represent the property owners for a Special Exception for a kennel.

This matter is now before the District Court of Maryland and has been recently postponed until March 29, 1989, at 1:30 p.m., pending the hearing before you.

I have consent of your counsel, Tim Kotroco, for the postponement recently acquired.

Accordingly, I would respectfully request that you schedule this matter well in advance of March 29, 1989, so that the District Court, upon hearing before the Court, can make a disposition of this matter.

Thank you for your cooperation.

Very truly yours,

S. ERIC DiNENNA

SED:cjc
cc: Timothy Kotroco, Esquire
Mr. and Mrs. Paul Shriver

MICROFILMED

Please File in Case File

DiNENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DiNENNA, P.A.
JAMES L. MANN, JR., P.A.
GEORGE A. BRESCHI, P.A.

GERALDINE A. KLAUBER
FRANCIS X. BORGERDING

SUITE 600
MERCANTILE-TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

(301) 296-6820
TELEFAX (301) 296-6884

March 30, 1989

Shawn Alcarese, Esquire
207 E. Redwood Street
Suite 700
Baltimore, Maryland 21202

RE: Shriver/Special Exception and
Variance Request
7105 Sheffield Road

Dear Shawn:

Following the hearing before the Zoning Commissioner, I have given much thought to the request of Mr. and Mrs. Shriver.

I think it would be to everyone's advantage if you and the members of the Board of Directors of your client and organization, along with my client, can sit down and discuss this matter more intelligently and not under the emotions and pressure of a hearing.

Accordingly, would you please be so kind as to discuss this matter with the members of your organization and contact me immediately as to whether or not it would be to everyone's advantage to sit down and discuss it.

Thank you for your cooperation.

Very truly yours,

S. ERIC DiNENNA

RECEIVED
APR 3 1989
ZONING OFFICE

SED:cjc
cc: Mr. and Mrs. Shriver
J. Robert Haines, Zoning Commissioner

MICROFILMED

DiNENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DiNENNA, P.A.
JAMES L. MANN, JR., P.A.
GEORGE A. BRESCHI, P.A.

GERALDINE A. KLAUBER
FRANCIS X. BORGERDING

SUITE 600
MERCANTILE-TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

(301) 296-6820
TELEFAX (301) 296-6884

April 10, 1989

J. Robert Haines
Zoning Commissioner for
Baltimore County
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: Case No.: 89-361-XA
Shriver Special Exception

Dear Commissioner Haines:

I am in receipt of Mr. Alcarese's memorandum on behalf of the protestants concerning the above-captioned matter.

We have been discussing a possible settlement of our differences and I would respectfully request that you grant me an extension to submit a memorandum if the negotiations and discussions break down.

Thank you for your cooperation.

Very truly yours,

S. ERIC DiNENNA

SED:cjc
cc: J. Shawn Alcarese, Esquire
Mr. and Mrs. Paul Shriver

Please Note New Mailing Address:

DiNenna, Mann & Breschi
P.O. Box 10508
Towson, Maryland 21285-0508

MICROFILMED

Clar

DiNENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DiNENNA, P.A.
JAMES L. MANN, JR., P.A.
GEORGE A. BRESCHI, P.A.

GERALDINE A. KLAUBER
FRANCIS X. BORGERDING, JR.

P.O. BOX 10508
TOWSON, MARYLAND 21285-0508

SUITE 600
MERCANTILE-TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

(301) 296-6820
TELEFAX (301) 296-6884

October 18, 1989

J. Robert Haines
Zoning Commissioner for
Baltimore County
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: Petition for Special Exception
Case No.: 89-361-XA
Paul Shriver, et ux./Petitioner

Dear Mr. Haines:

I am in receipt of your correspondence of October 9, 1989 to the Baltimore County Board of Appeals advising them that an appeal had been filed by me as counsel for the Petitioner as to the "Special Exception portion only" of this matter.

I wish to set the record straight that an appeal was not taken from your decision to grant the Special Exception but only from several restrictions that you imposed as a result of granting the special exception.

Accordingly, the only thing before the County Board of Appeals will be our Appeal with reference to your several restrictions.

If you have any questions concerning this, please contact me.

Very truly yours,

S. ERIC DiNENNA

SED:cjc
cc: Board of Appeals
J. Shawn Alcarese, Esquire
Mr. and Mrs. Paul Shriver

RECEIVED
OCT 19 1989
ZONING OFFICE

MICROFILMED

HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401-1991

MICHAEL GISRIEL
9TH LEGISLATIVE DISTRICT
BALTIMORE COUNTY

WAYS AND MEANS COMMITTEE

HOUSE CHAIRMAN
INVESTIGATIONS COMMITTEE

ANNAPOLIS OFFICE:
308 HOUSE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401-1991
PHONE 841-3359

DISTRICT OFFICE:
817 WELLINGTON RD.
BALTIMORE, MARYLAND 21212

March 2, 1989

RECEIVED
MAR 6 1989
ZONING OFFICE

J. Robert Haines
Zoning Commissioner
Baltimore County
Office of Planning & Zoning
Towson, Maryland 21204

Dear Mr. Haines,

I have been notified by my community association president that there will be a zoning hearing on the property at 7105 Sheffield Road. Although I am not taking a position on this issue I would like to be kept informed of the case and its outcome. Please send me all copies pertaining to this case.

Thank you for your attention to this matter.

Very truly yours,

Michael Gisriel

MG/ca

MICROFILMED

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

August 31, 1989

Dennis F. Rasmussen
County Executive

S. Eric DiNenna, Esquire
409 Washington Avenue, Suite 600
Towson, Maryland 21204

RE: PETITION FOR ZONING VARIANCE
E/S Sheffield Road, 265' +/- N of the c/l of Chumleigh Road
(7105 Sheffield Road)
8th Election District - 4th Councilmanic District
Paul Shriver, et ux - Petitioners
Case No. 89-361-XA

Dear Mr. DiNenna:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petitions for Special Exception and Zoning Variance have been granted in accordance with the attached Order.

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 Ms. Charlotte Radcliffe at 887-3391.

Very truly yours,

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner
for Baltimore County

JRH:bjs

cc: J. Shawn Alcarese
807 Wellington Road, Baltimore, Md. 21212

All Protestants

People's Counsel

File

PETITION FOR SPECIAL EXCEPTION

#276

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 89-361-XA

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for a Dog (Hobby) Kennel

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

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

Contract Purchaser:
(Type or Print Name)
Signature
Address
City and State

Legal Owner(s):
Paul Shriver
(Type or Print Name)
Paul B. Shriver
Signature
Margery Shriver
(Type or Print Name)
Margery Shriver
Signature

MAP ___
E.D. ___
DATE ___
200 ___
1000 ___
DP ___

Attorney for Petitioner:
S. Eric DiNenna
(Type or Print Name)
Signature
409 Washington Ave., Suite 600
Address
Towson, Maryland 21204
City and State
Attorney's Telephone No.: 296-6820

7105 Sheffield Road
Address Phone No.
Baltimore, MD 21212
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted
S. Eric DiNenna
Name
409 Washington Ave., Suite 600
Address Phone No.

ORDER RECEIVED FOR FILING
Date 2/21/89
By [signature]

ORDERED By The Zoning Commissioner of Baltimore County, this 18th day of January, 1989, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 10th day of March, 1989, at 11:30 o'clock A.M.

J. Robert Haines
Zoning Commissioner of Baltimore County.

Z.C.O.—No. 1 (over)

PETITION FOR ZONING VARIANCE

#276

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 89-361-XA

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 421.1 to permit set back as follows:
1) Front yard of 29 ft. in lieu of 200'; 2) 6' & 13' sideyards in lieu of 200'; 3) 73' rear yard in lieu of 200'.

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

1) Size of property
2) Long term use
3) Such other and further reasons to be presented at time of hearing.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

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

Contract Purchaser:
(Type or Print Name)
Signature
Address
City and State

Legal Owner(s):
Paul Shriver
(Type or Print Name)
Paul B. Shriver
Signature
Margery Shriver
(Type or Print Name)
Margery Shriver
Signature

Attorney for Petitioner:
S. Eric DiNenna
(Type or Print Name)
Signature
409 Washington Ave., Suite 600
Address
Towson, Maryland 21204
City and State
Attorney's Telephone No.: 296-6820

7105 Sheffield Road
Address Phone No.
Baltimore, MD 21212
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted
S. Eric DiNenna, Esq.
Name
409 Washington Ave., Suite 600
Address 296-6820 Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 18th day of January, 1989, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 10th day of March, 1989, at 11:30 o'clock A.M.

J. Robert Haines
Zoning Commissioner of Baltimore County.

(over)

ESTIMATED LENGTH OF HEARING [illegible] HR.
AVAILABLE FOR HEARING
MON./TUES./WED. - NEXT TWO MONTHS
ALL ✓ OTHER
REVIEWED BY: [signature] DATE 1-4-89

#276

Paul Lee, P.E.

Paul Lee Engineering Inc.
304 W. Pennsylvania Ave.
Towson, Maryland 21204
301-821-5941

DESCRIPTION

#7105 SHEFFIELD ROAD

9th ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND

Beginning for the same at a point located on the east side of Sheffield Road, said point also being located 265 feet northerly from the center of Chumleigh Road; thence binding on the east side of Sheffield Road, (1) Northerly - 65 feet, thence leaving said east side of Sheffield Road, (2) Easterly - 135 feet, (3) Southerly - 65 feet and (4) Westerly - 135 feet to the point of beginning.

Containing 8,775 s.f. (0.20 acres) of land more or less.

STATE OF MARYLAND
PAUL LEE
No. 4047
REGISTERED
PROFESSIONAL ENGINEER

J.O. 88-070
12-12-88

Engineers — Surveyors — Site Planners

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

89-361-XA

District 9th Date of Posting 2/21/89
Posted for: Special Exception & Variance
Petitioner: Paul Shriver, et ux
Location of property: E/S Sheffield Rd, 265' N/Chumleigh Rd
7105 Sheffield Rd.
Location of Signs: Facing Sheffield Rd, approx. 10' Fr. roadway, on property of Petitioner
Remarks:
Posted by [signature] Date of return: 2/24/89
Signature
Number of Signs: 2

CERTIFICATE OF PUBLICATION

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:

Petitions for Special Exception and Zoning Variance
Case number: 89-361-XA
E/S Sheffield Road, 265' ± N of Chumleigh Road
7105 Sheffield Road
9th Election District
4th Councilmanic
Petitioner(s):
Paul Shriver, et ux
Hearing Date: Friday, Mar. 10, 1989 at 11:30 a.m.

Special Exception: A Dog (Hobby) Kennel. Variance: to permit setback as follows: (1) front yard of 29 ft. in lieu of 200 ft.; (2) 6 ft. and 13 ft. side yards in lieu of 200 ft.; and (3) 73 ft. rear yard in lieu of 200 ft.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. ROBERT HAINES
Zoning Commissioner of Baltimore County
2/352 Feb. 23.

TOWSON, MD., Feb 23, 1989

[THIS IS TO CERTIFY], that the annexed advertisement was [published in THE TOWSON TIM]ES, a weekly newspaper published in [Towson, Baltimore County], Md., once in each of 1 successive [weeks, the first publication] appearing on Feb 23, 1989.

TOWSON TIMES,

S. Zeke Orlan
Publisher

PO 09785
reg M25454
price $133.96

89-361-XA

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Your petition has been received and accepted for filing this 18th day of January, 1989.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER

Petitioner Paul Shriver, et ux
Petitioner's Attorney S. Eric DiNenna

Received by: James E. Dyer
Chairman, Zoning Plans Advisory Committee

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353

J. Robert Haines
Zoning Commissioner

Date: 3-6-89

Dennis F. Rasmussen
County Executive

Mr. & Mrs. Paul Shriver
7105 Sheffield Road
Baltimore, Maryland 21212

Re: Petitions for Special Exception and Zoning Variance
CASE NUMBER: 89-361-XA
E/S Sheffield Road, 265'± N c/l Chumleigh Road
7105 Sheffield Road
9th Election District-4th Councilmanic
Petitioner(s): Paul Shriver, et ux
HEARING SCHEDULED: FRIDAY, MARCH 10, 1989 at 11:30 a.m.

Dear Mr. & Mrs. Shriver:

Please be advised that $163.96 is due for advertising and posting of the above-referenced property. All fees must be paid prior to the hearing. Do not remove the sign and post set(s) from the property from the time it is posted by this office until the day of the hearing itself.

THIS FEE MUST BE PAID AND THE ZONING SIGN(S) AND POST(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Please make your check payable to Baltimore County, Maryland and bring it along with the sign(s) and post(s) to the Zoning Office, County Office Building, Room 111, Towson, Maryland 21204 fifteen (15) minutes before your hearing is scheduled to begin.

Please note that should you fail to return the sign and post set(s), there will be an additional $25.00 added to the above fee for each set not returned.

Very truly yours,

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner of
Baltimore County

JRH:gs
cc: S. Eric DiNenna, Esq.
File

CERTIFICATE OF PUBLICATION

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petitions for Special Exception and Zoning Variance
Case Number: 89-361-XA
E/S Sheffield Road, 265 ± N of Chumleigh Road
7105 Sheffield Road
9th Election District -
4th Councilmanic
Petitioner(s):
Paul Shriver, et ux
Hearing Date: Friday, March 10, 1989 at 11:30 a.m.

Special Exception: A Dog (Hobby) Kennel.
Variance to permit setback as follows: (1) front yard of 29 ft. in lieu of 200 ft.; (2) 6 ft. and 13 ft. side yards in lieu of 200 ft.; and (3) 73 ft. rear yard in lieu of 200 ft.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. ROBERT HAINES
Zoning Commissioner of Baltimore County
2/352 Feb. 23.

TOWSON, MD., Feb 23, 1989

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on Feb 23, 1989.

THE JEFFERSONIAN,

S. Zeke Orlan
Publisher

PO 09785
reg M25454
price $133.96

#89-361-XA
E/S Sheffield Rd., 265'+/- N of the c/l of Chumleigh Rd. (7105 Sheffield Rd.)
PAUL SHRIVER, ET UX
8th District
Appealed: 10/2/89

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 059805

DATE 1-4-89 ACCOUNT R-01-615-000

AMOUNT $ 200.00

Item #276

RECEIVED FROM: Mr. & Mrs. Shriver

FOR: Commercial SpEx + Variance filing fees

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT

No. 068196

DATE 7/10/89 ACCOUNT R-01-615-000

AMOUNT $ 163.96

RECEIVED FROM: Paul L. Shriver, et ux

FOR: P.A. 89-361-XA

B B C23*****16396:a 8102F

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
494-3353

J. Robert Haines
Zoning Commissioner

February 8, 1989

Dennis F. Rasmussen
County Executive

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petitions for Special Exception and Zoning Variance
CASE NUMBER: 89-361-XA
E/S Sheffield Road, 265'± N c/1 Chumleigh Road
7105 Sheffield Road
8th Election District-4th Councilmanic
Petitioner(s): Paul Shriver, et ux
HEARING SCHEDULED: FRIDAY, MARCH 10, 1989 at 11:30 a.m.

Special Exception: A Dog (Hobby) Kennel.
Variance to permit setback as follows: (1) front yard of 29 ft. in lieu of 200 ft.; (2) 6 ft. and 13 ft. side yards in lieu of 200 ft.; and (3) 73 ft. rear yard in lieu of 200 ft.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. Robert Haines

J. ROBERT HAINES
Zoning Commissioner of
Baltimore County

cc: Mr. & Mrs. Paul Shriver
S. Eric DiNenna, Esq.
File

BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

COUNTY OFFICE BLDG.
111 W. Chesapeake Ave.
Towson, Maryland 21204

oOo

MEMBERS
Bureau of Engineering
Department of Traffic Engineering
State Roads Commission
Bureau of Fire Prevention
Health Department
Project Planning
Building Department
Board of Education
Zoning Administration
Industrial Development

February 27, 1989

S. Eric DiNenna, Esquire
409 Washington Avenue, Suite 600
Towson, MD 21204

RE: Item No. 276, Case No. 89-361-XA
Petitioner: Paul Shriver, et ux
Petition for Special Exception and Zoning Variance

Dear Mr. DiNenna:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

IT WOULD BE APPRECIATED IF YOU WOULD RETURN YOUR WRITTEN COMMENTS TO MY OFFICE, ATTENTION JULIE WINIARSKI. IF YOU HAVEANY QUESTIONS REGARDING THIS, PLEASE CONTACT HER AT 887-3391.

Very truly yours,
James E. Dyer/jw
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:jw

Enclosures

Baltimore County
Fire Department
Towson, Maryland 21204-2586
494-4500

Paul H. Reincke
Chief

January 13, 1989

Dennis F. Rasmussen
County Executive

J. Robert Haines, Zoning Commissioner
Office of Planning & Zoning
Baltimore County Office Building
Towson, Maryland 21204

Re: Property Owner: Paul Shirver, et ux

Location: 7105 Sheffield Road

Item No.: 276 Zoning Agenda: Meeting of 1/17/89

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

( ) 1. Fire hydrants for the referenced property are required and shall be located at intervals or ____ feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.

( ) 2. A second means of vehicle access is required for the site.

( ) 3. The vehicle dead end condition shown at ____________________
EXCEEDS the maximum allowed by the Fire Department.

( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

( ) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.

( ) 6. Site plans are approved, as drawn.

(X) 7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: Capt Joseph Kelly 1-16-89
Planning Group
Special Inspection Division

NOTED & APPROVED: John F. O'Neill
Fire Prevention Bureau

/jl

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Zoning Advisory Committee DATE: January 24, 1989

FROM: Robert W. Bowling, P.E.

RE: Meeting of January 17, 1989

The Developers Engineering Division has reviewed the zoning items for the subject meeting. We have no comments for Items 272, and 276.

For Item 273, Frederick Wayne Winkler property, the required minimum parking space length is 16 1/2 feet with overhang space available.

Robert W. Bowling
ROBERT W. BOWLING, P.E., Chief
Developers Engineering Division

RWB:s

Encls.

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

October 9, 1989

Dennis F. Rasmussen
County Executive

Baltimore County Board of Appeals
County Office Building, Room 315
Towson, Maryland 21204

RE: Petition for Special Exception (and Variance)
E/S Sheffield Road, 265' +/- N of the c/1 of Chumleigh Road
(7105 Sheffield Road)
8th Election District, 4th Councilmanic District
PAUL SHRIVER, ET UX - Petitioner
Case No. 89-361-XA

Dear Board:

Please be advised that an appeal of the Special Exception portion only of above-referenced case was filed in this office on October 2, 1989 by S. Eric DiNenna, attorney on behalf of the Petitioner. All materials relative to the case are being forwarded herewith.

Please notify all parties to the case of the date and time of the appeal hearing when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,
J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner

JRH:cer

Enclosures

cc: Paul and Margery Shriver, 7105 Sheffield Rd., Balto., MD 21212

S. Eric DiNenna, Esquire - DiNenna, Mann & Breschi
409 Washington Avenue, Suite 600, Towson, MD 21204

Oscar Moritz, Jr., 7103 Sheffield Rd., Balto., MD 21212

Terry Shriver, 2009 Indianhead Rd., Towson, MD 21204

Appeal Cover Letter - Case No. 89-361-XA
Paul Shriver, et ux - Petitioner
October 9, 1989
Page 2

Rebecca Tansil, 17703 Sunswept Lane, Parkton, MD 21120

Ralph and Charlotte Peters, 7106 Sheffield Rd., Balto., MD 21212

Jeanne Ward, 7111 Sheffield Rd., Baltimore, MD 21212

Edward Sybert, 7107 Sheffield Road, Baltimore, MD 21212

Kathleen Bates, 7104 Sheffield Road, Baltimore, MD 21212

Beth Spedalere, 525 Allegheny Avenue, Towson, MD 21204

Theresa Weller, 7113 Sheffield Road, Baltimore, MD 21212

William and Sandra Fastie, 7110 Sheffield Road, Balto., MD 21212

J. Shawn Alcarese, Esquire
Suite 700, 207 E. Redwood Street, Baltimore, MD 21202

Shelley, Robert, Charlotte, Jay and Robin Smith
7104 Oxford Road, Baltimore, MD 21212

Beverly Brandon, 7105 Oxford Road, Baltimore, MD 21212

Barry Miller, 7109 Oxford Road, Baltimore, MD 21212

Eugenie Foster & A. S. Boccuto, 7105 Wardman Road, Balto., MD 21212

Wendy Frank, 7115 Bristol Road, Baltimore, MD 21212

Chessy Spence, 7107 Bristol Road, Baltimore, MD 21212

Ann Hickman, 7117 Bristol Road, Baltimore, MD 21212

Olivia J. Caraluzzi, 7101 Oxford Road, Baltimore, MD 21212

Carolyn Whittington, 601 Kingston Road, Baltimore, MD 21212

Marjorie Pilachowski, 901 Greenleigh Road, Baltimore, MD 21212

Maynard Harp, 605 Kingston Road, Baltimore, MD 21212

Charles Whittington, 601 Kingston Road, Baltimore, MD 21212

Ann Schaufele, 805 Chumleigh Road, Baltimore, MD 21212

Appeal Cover Letter - Case No. 89-361-XA
Paul Shriver, et ux - Petitioner
October 9, 1989
Page 3

Sharon McIntire, 910 Wellington Road, Baltimore, MD 21212

Robert and Deborah Slingluff, 7006 Bristol Road, Balto., MD 21212

Jim Wiedefeld, Jr., 1517 York Road, Lutherville, MD 21093

Douglas and Mary Parvis, 7011 Copeleigh Road, Baltimore, MD 21212

People's Counsel of Baltimore County
Rm. 304, County Office Bldg., Towson, Md. 21204

File

APPEAL

Petition for Special Exception (and Variance)
E/S Sheffield Road, 265' +/- N of the c/l of Chumleigh Road
(7105 Sheffield Road)
8th Election District - 4th Councilmanic District
PAUL SHRIVER, ET UX - Petitioner
Case No. 89-361-XA

Petition for Special Exception ✓

Description of Property ✓

Certificate of Posting ✓

Certificate of Publication ✓

Entry of Appearance of People's Counsel (None submitted)

Zoning Plans Advisory Committee Comments ✓

Director of Planning & Zoning Comments ✓

Memorandum of Law ✓

Memorandum in Opposition ✓

Petitioner's Exhibits:
1. Plat to accompany Petition ✓
2. through 10 - Letters of Support from neighbors on Sheffield Road ✓
11. Photographs of the Shriver's lot ✓
12A, 12B, 12C - Photographs of show dogs ✓
13. & 14. - Letters of Support from neighbors on Sheffield Road ✓

Protestant's Exhibits:
1. Drawing of streets in the Stoneleigh area ✓
2. Photographs of dogs on Shriver's lot ✓
3. through 7 - Letters of Opposition from neighbors on Sheffield Road ✓

Zoning Commissioner's Order dated August 31, 1989 (Granted with restrictions) ✓

Zoning Commissioner's Amended Order dated September 13, 1989 (Amended to delete Restriction No. 6 and to modify Restriction No. 2) ✓

Notice of Appeal for Special Exception portion only received October 2, 1989 from S. Eric DiNenna, attorney on behalf of the Petitioners. ✓

cc: Paul and Margery Shriver, 7105 Sheffield Rd., Balto., MD 21212

* S. Eric DiNenna, Esquire - DiNenna, Mann & Breschi
409 Washington Avenue, Suite 600, Towson, MD 21204

Oscar Moritz, Jr., 7103 Sheffield Rd., Balto., MD 21212

Terry Shriver, 2009 Indianhead Rd., Towson, MD 21204

Rebecca Tansil, 17003 Sunswept Lane, Parkton, MD 21120

Ralph and Charlotte Peters, 7106 Sheffield Rd., Balto., MD 21212

Jeanne Ward, 7111 Sheffield Rd., Baltimore, MD 21212

Edward Sybert, 7107 Sheffield Road, Baltimore, MD 21212

Kathleen Bates, 7104 Sheffield Road, Baltimore, MD 21212

Beth Spedalere, 525 Allegheny Avenue, Towson, MD 21204

Theresa Weller, 7113 Sheffield Road, Baltimore, MD 21212

William and Sandra Fastie, 7110 Sheffield Road, Balto., MD 21212

J. Shawn Alcarese, Esquire
Suite 700, 207 E. Redwood Street, Baltimore, MD 21202

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Wendy Frank, 7115 Bristol Road, Baltimore, MD 21212

Chessy Spence, 7107 Bristol Road, Baltimore, MD 21212

Ann Hickman, 7117 Bristol Road, Baltimore, MD 21212

Olivia J. Caraluzzi, 7101 Oxford Road, Baltimore, MD 21212

Carolyn Whittington, 601 Kingston Road, Baltimore, MD 21212

Marjorie Pilachowski, 901 Greenleigh Road, Baltimore, MD 21212

Meynard Harp, 605 Kingston Road, Baltimore, MD 21212

Charles Whittington, 601 Kingston Road, Baltimore, MD 21212

Ann Schaufele, 805 Chumleigh Road, Baltimore, MD 21212

Sharon McIntire, 910 Wellington Road, Baltimore, MD 21212

Robert and Deborah Slingluff, 7006 Bristol Road, Balto., MD 21212

Jim Wiedefeld, Jr., 1517 York Road, Lutherville, MD 21093

Douglas and Mary Parvis, 7011 Copeleigh Road, Baltimore, MD 21212

People's Counsel, Rm. 304, County Office Bldg., Towson, Md. 21204

File

Request Notification: P. David Fields, Director of Planning & Zoning
Patrick Keller, Office of Planning & Zoning
J. Robert Haines, Zoning Commissioner
Ann M. Nastarowicz, Deputy Zoning Commissioner
James E. Dyer, Zoning Supervisor
Docket Clerk

PAUL SHRIVER, ET UX
E/s Sheffield Rd., 265' ± N of c/l of Chumleigh Rd. (7105 Sheffield Rd.

89-361-XA
8th Election District
4th Councilmanic District

SE -Dog (hobby) kennel

January 18, 1989	Petition filed by S. Eric DiNenna, Esquire on behalf of Mr. & Mrs. Paul Shriver for a Special Exception for dog (hobby) kennel.
August 31	Z.C.'s Order GRANTING Petition with restrictions.
September 13	Z.C.'s Amended Order deleting restriction no. 6 and modifying restriction no. 2.
October 2, 1989	Order for Appeal filed by S. Eric DiNenna, Esquire on behalf of the Petitioners, Mr. and Mrs. Paul Shriver.
May 8, 1990	Hearing before the Board of Appeals.
May 25	Opinion and Order of the Board GRANTING the Petition with restrictions.
June 25, 1990	Order for Appeal filed in the Circuit Court for Baltimore County by J. Shawn Alcarese, Esquire on behalf of Mr. and Mrs. Robert Smith, et al, Protestants.
July 5, 1990	Petition to accompany appeal filed in the Circuit Court by Mr. Alcarese.
June 26, 1990	Certificate of Notice sent to interested parties.
July 24, 1990	Transcript of testimony filed.
July 24, 1990	Record of Proceedings filed in the Circuit Court for Baltimore County.
November 7	Order of the CCt from the bench REMANDING case to C.B. of A.
November 14	Notice in Banc Review filed in CCt by S. Eric DiNenna, Esquire.
January 7, 1991	Order of the CCt,BCo REMANDING Case to C.B. A. (Cahill)
April 12	In Banc Review Memorandum Opinion and Order of the CCt,BCo REVERSING original Order to REMAND to C.B. of A. (Howe, Hinkel & DeWaters).

89-361-XA

2/24/89 Called 821-1534 to speak with Mr. Smith - he was unavailable. His wife took message, which she read back to me.

I advised that it was necessary for him to forward a written postponement request to this office, together with documentation as to his prior committment. Also that he would have to copy in DiNenna and Kotroco. Said request should be directed to Ann's attention.

I repeated several times, that even with a written request, the possibility of the case going forward on the assigned date still remain. I advised that after reciept of his request and discussions with the other parties involved, a decision would be made and he would be advised.

Gwen

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

Dennis F. Rasmussen
County Executive

March 16, 1989

Mrs. Marjorie M. Quigley
7110 Oxford Road
Baltimore, Maryland 21212

RE: Case #89-361XA
Petition for Special Exception and Variance
Mr. and Mrs. Paul Shriver

Dear Mrs. Quigley:

I am in receipt of your letter of March 13, 1989 concerning the above captioned matter. Please be advised that I have included your letter in the case file.

Baltimore County does not have a Zoning Board. The authority over zoning decisions for Special Exceptions and Variances rest with the Zoning Commissioner. Every citizen is entitled to the right to request relief like a Special Exception from the Zoning Commissioner. It is unnecessary cynicism to challenge the right to make a request and have a hearing , no matter how much you disagree with the request.

Your statements and innuendoes concerning my professionalism simply does not warrant a civilized response. If you wish to testify in this matter, I will provide the opportunity for citizen input during the hearing on March 17, 1989.

Very truly yours,

J. Robert Haines
Zoning Commissioner

JRH:mmn
cc: S. Eric DiNenna, Esquire, 409 Washington Ave, Suite 600, Towson, Md. 21204
Mr. J. Shawn Alcarese, 807 Wellington Road, Baltimore, Md. 21212
Mr. Barry Miller, 7105 Oxford Road, Baltimore, Maryland 21212

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

Dennis F. Rasmussen
County Executive

April 17, 1989

S. Eric DiNenna, Esquire
P.O. Box 10508
Towson, Maryland 21285-0508

RE: Petitions for Special Exception and Variance
E/S Sheffield Road, 265' N of the c/l of Chumleigh Road
(7105 Sheffield Road)
8th Election District - 4th Councilmanic District
Case No. 89-361-XA

Dear Mr. DiNenna:

In response to your letter dated April 10, 1989 requesting additional time to resolve any differences between your client and the Protestants in the above-captioned matter, please be advised that you have an extension until April 24, 1989 at which time I will expect notice from you as to the status of this matter.

Very truly yours,

J. ROBERT HAINES
Zoning Commissioner
for Baltimore County

JRH:bjs

cc: File
J. Shawn Alcarese, Esquire
807 Wellington Road
Baltimore, Md. 21212

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines, Zoning Commissioner
Date: March 9, 1989

FROM: Pat Keller, Deputy Director, Office of Planning and Zoning

SUBJECT: Paul Shriver, Zoning Petition No. 89-361-XA

The number of dogs should be limited since the yard is 73' x 65' and the homes are 20'± apart. Five or six dogs may be reasonable; a large facility of 15 or 20 may be very undesirable. The height of the fence should be determined.

PK/sf

RECEIVED
MAR 10 1989
ZONING OFFICE

CPS-008

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

June 26, 1990

S. Eric DiNenna, Esquire
DiNenna, Mann & Breschi
P.O. Box 10508
Towson, Maryland 21285-0508

Re: Case No. 89-361-XA (Paul Shriver, et ux)

Dear Mr. DiNenna:

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda Lee M. Kuszmaul
LindaLee M. Kuszmaul
Legal Secretary

Enclosure

cc: Mr. and Mrs. Paul Shriver
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, County Attorney

4/12/91 - Circuit Court Ruling REVERSING
original Circuit Court , AND to C.B.A. (Howe, Dewaters & Minkel)

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX., FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD 265' +/- NORTH OF THE CENTER LINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD), 8th ELECTION DISTRICT, 4th COUNCILMANIC DISTRICT	:	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY Case No. 90 CG 2543

82|143

IN BANC REVIEW
MEMORANDUM OPINION AND ORDER

In this in banc review, we are called upon to interpret Section 603 of the Baltimore County Code to ascertain the extent to which the County Board of Appeals shall conduct a de novo hearing on an appeal from a decision of the county zoning commissioner.

The pertinent facts of this case are not in dispute. After a complaint against them was filed with the Baltimore County Office of Zoning and Planning, the Appellants (Paul and Margery Shriver) filed an application with said zoning office for a special exception to permit the operation of a "dog kennel" on their property located at 7105 Sheffield Road, Baltimore, Maryland 21212. In addition, Appellants requested variances for certain front, side and rear yard set-backs. These requests were precipitated by Appellant Margery Shriver's hobby for breeding and showing Pug dogs, a hobby she claimed to have professionally pursued for the past twenty-six years.

A hearing on Appellants' petition was conducted before Baltimore County Zoning Commissioner J. Robert Haines on March

FILED APR 12 1991

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL GENERAL

DOCKET 82 PAGE 143 CASE NO. 90CG2543 CATEGORY APPEAL

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX. FOR A SPECIAL Exception AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' + /- NORTH OF THE CENTER LINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT

ROBERT and CHARLOTTE SMITH, Protestants

ATTORNEYS

J. Shawn Alcarese
Jensen, Morrow & Hassani, P.A.
Suite 606
22 West Pennsylvania Avenue
Towson, MD (04) 339-7313
(Atty. for Protestants)

S. Eric DiNenna
DiNenna, Mann & Breschi
409 Washington Ave, Ste 600 (4)
296-6820
Petitioners/Appellees

CIVIL ASSIGNMENT

89-361-XA

(1) June 25, 1990 - Protestants Notice of Appeal from the Opinion and Order of the County Board of Appeals of Baltimore County fd.

(2) June 26,1990- Certificate of Notice, fd.

(3) July 5,1990 - Protestants and Appellants' Petition on Appeal, fd.

(4) July 6, 1990 - App of S. Eric DiNenna for the Petitioners/Appellee's Motion to Dismiss Appeal, Memorandum, Request for Hearing and Exhibits fd.

(5) July 16, 1990 - Line entering Robert and Charlotte Smith as Protestants and Appellants fd.

(6) July 16, 1990 - App of J. Shawn Alcarese for the Protestants, ROBERT and CHARLOTTE SMITH and Same Day Response to Motion to Dismiss fd.

(7) July 24,1990 - Transcript of Record, fd.

(8) July 24,1990 - Notice of filing of record, fd.

(9) Aug. 6, 1990 - Pltff's Response to Line fd.

(10) Aug 10, 1990 - Protestants and Appellants Motion to Strike and Supplemental Response to Motion to Dismiss w/ Memorandum fd.

(11) Aug. 17, 1990 - Appellants Memorandum fd.

(12) Sept. 17,1990- Appellee's Memorandum, fd.

(13) Sept. 20,1990 - Appellants' Reply to Memorandum, fd.

COSTS	90CG2543
CV GEN	
CV CLK	80.00
B LRY	10.00
POST	2.00
CKCHECK TL	92.00

#85666 C001 R02 T15:2
06/25/9

82 143 90CG2543

DiNENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DiNENNA, P.A.
JAMES L. MANN, JR., P.A.
GEORGE A. BRESCHI, P.A.

GERALDINE A. KLAUBER
FRANCIS X. BORGERDING, JR.

SUITE 600
MERCANTILE-TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

(301) 296-6820
TELEFAX (301) 296-6884

November 14, 1990

Clerk
Circuit Court for Baltimore County
County Courts Building
P. O. Box 6754
Towson, Maryland 21285-6754

RE: In the Matter of the Application of Paul Shriver, et ux for a Special Exception, etc.
Case No.: 90-CG-2543

Dear Clerk:

Enclosed herewith for filing please find the Notice in Banc Review regarding the above-captioned matter. Thank you.

Thank you.

Very truly yours,

/s/

S. ERIC DiNENNA

SED:bjk
Enclosure
cc: Shawn Alcarese, Esquire
Arnold G. Foreman, Chairman

RECEIVED
COUNTY BOARD OF APPEALS
90 NOV 16 PM 5:47

89-361-XA Paul Shriver, et ux
1/7/91 - Written Order confirming REMAND to the Board of Appeals stated on the record 11/7/90.
Notice in Banc Review filed in CCt,BCo on 11/14/90 - awaiting ruling.

IN THE MATTER OF SHRIVER	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY CASE NO. 90-CG-2543

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

ORDER

The attached transcript of the Court's ruling from the bench on November 7, 1990 is hereby incorporated into this Order as the decision of this Court in accordance with Maryland Rule B13.

January 7, 1991

Robert E. Cahill, Sr.
ROBERT E. CAHILL, SR., JUDGE

cc: Board of Appeals
Eric DiNenna, Esq.
Shawn Alcarese, Esq.

RECEIVED
91 JAN -9 AM 11:27
COUNTY BOARD OF APPEALS

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' ± NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8th ELECTION DISTRICT 4th COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY CASE NO.: 90-CG-2543
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	

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

NOTICE IN BANC REVIEW

By Paul Shriver and Margery Shriver, Defendants.

Clerk:

Enter a review by court in banc of the judgment entered in this case on November 7, 1990.

/s/
S. ERIC DiNENNA
DiNENNA, MANN & BRESCHI
409 Washington Avenue, Suite 600
Towson, Maryland 21204
(301) 296-6820

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT on this 14th day of November, 1990, a copy of the aforegoing Notice in Banc Review was mailed, postage prepaid to Shawn Alcarese, Esquire, Jensen, Morrow and Hassani, P.A., 22 W. Pennsylvania Avenue, Suite 606, Towson, Maryland 21204, counsel for Plaintiffs and Arnold G. Foreman, Chairman, c/o County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

/s/
S. ERIC DiNENNA

(The following is the Court's opinion in the matter of Shriver vs. Smith, 90-CG-2543, as given on November 7, 1990:)

THE COURT: The Court has, I believe, adequately reviewed the memoranda filed in connection with this appeal. To start at the end, the Court is satisfied that the action of the Board in refusing to comment, even comment on the granting of this special exception or restrictions other than two and four, and refusing to comment, though it wasn't said in that fashion in the opinion on the variances, acted arbitrarily under the circumstances. Therefore, this Court will in a few moments explain why it is remanding the case to the Board for further proceedings. I think the Court could have given strong consideration to the failure of the protestants to note a cross appeal from the action of the Zoning Commissioner. However, I agree with the argument of the protestants that they were entitled to rely upon the zoning regulation which provided an appeal from the Zoning Commissioner to the Board of Appeals is de novo.

I am persuaded by the language of Judge Alpert in his opinion in the case cited by the protestants in their memorandum. I can't remember the name of the case off the top of my head, Mr. Alcarese.

MR. ALCARESE: Boehm, B-O-E-H-M.

THE COURT: The Boehm case. That that language of his, it seems to the Court to be uniquely applicable to the facts before it on this appeal. A de novo appeal, regardless of whether it be from a finding of an administrative officer,

---

DiNENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DiNENNA, P.A.
JAMES L. MANN, JR., P.A.
GEORGE A. BRESCHI, P.A.

GERALDINE A. KLAUBER
FRANCIS X. BORGERDING, JR.

SUITE 600
MERCANTILE-TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

(301) 296-6820
TELEFAX (301) 296-6884

September 10, 1990

Clerk
Circuit Court for
Baltimore County
Court House
Towson, Maryland 21204

RE: In The Matter Of The Application of Paul Shriver, et ux.
Case No.: 82/143/90-CG-2543

Dear Madam Clerk:

Enclosed herewith for filing please find the Memorandum of Appellees. Thank you for your cooperation.

Very truly yours,

Geraldine A. Klauber
GERALDINE A. KLAUBER

GAK:cjc
Enclosure
cc: J. Shawn Alcarese, Esquire
County Board of Appeals

RECEIVED
COUNTY BOARD OF APPEALS
90 SEP 17 PM 12:10

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX. FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' +/- NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY Case No.: 82/143/90-CG-2543
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	

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

MEMORANDUM OF APPELLEES

Appellees, Paul Shriver, et ux., by and through their attorneys, S. Eric DiNenna and DiNenna, Mann & Breschi, pursuant to Maryland Rule B-12 of the Maryland Rules of Civil Procedure, file this Memorandum of Law in response to Appellant's Appeal and state:

Facts:

Appellees are property owners of the subject property known as 7105 Sheffield Road, which consists of 8,775 square feet and is zoned DR 5.5. Appellees purchased the property in 1959 and have pursued their hobby of breeding pug dogs since 1961. (T - p. 20). Since 1961 no complaints were filed regarding Appellees pursuit of their hobby until the alleged Appellants, Robert and Charlotte Smith, filed a complaint with the Baltimore County authorities approximately 2-1/2 years ago.

Appellees applied for Special Exception to permit a dog kennel on the property and variance to permit a front yard set back of 29 feet, side yard set back of 6 feet and 13 feet and a

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX. FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' +\- NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	Case No. 82/143/90-CG-2543

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

REPLY MEMORANDUM TO RESPONSE

TO MOTION TO STRIKE AND MOTION TO DISMISS

Paul Shriver, et ux., Petitioners/Defendants, have responded to Respondents/Plaintiffs' Motion to Strike and Motion to Dismiss by alleging ther are no content requirements mandated for the required Memorandum. Additionally, Petitioners/Defendants have filed, approximately two (2) weeks out of time, the required number of copies of their Memorandum.

Petitioners/Defendants, on November 14, 1990, sought In Banc Review of Judge Cahill's November 7, 1990 ruling as their form of appealing that ruling. Pursuant to that request, this Court sent out notice dated November 19, 1990, specifically advising, (c) that the provisions of Maryland Rule of Civil Procedure, Rule 2-551, are applicable to the review sought, (2) that the provisions of Rule 2-551 must be complied with, and (3)

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8th ELECTION DISTRICT 4th COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	CASE NO.: 90-CG-2543

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

MEMORANDUM OF PAUL SHRIVER, ET UX., PETITIONERS/DEFENDANTS ON IN BANC REVIEW

The facts of this action so far as are necessary for determination of the legal question presented, are as ollows:

This is a zoning matter wherein the Defendants/Petitioners requested a special exception to permit a dog kennel on the subject property and variances to permit a front yard setback of 29 feet; side yard setbacks of six feet and thirteen feet; rear yard setback of seventy-three feet, all in lieu of the required 200 feet.

A hearing on this matter was held before The Honorable J. Robert Haines, Zoning Commissioner for Baltimore County, on March 10, 1989 and continued on March 17, 1989. After review and consideration of the evidence and testimony presented on behalf of both Petitioners and the Protestants, the Commissioner found that the proposed use would be conducted without any detriment to the surrounding community and that the requirements of Section 502.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) had been met. By Opinion and Order dated August 31,

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8th ELECTION DISTRICT 4th COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	CASE NO.: 90-CG-2543

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

RESPONSE TO MOTION TO DISMISS

Paul Shriver and Margery Shriver, Defendants and Appellants herein, by and through their attorneys, S. Eric DiNenna and DiNenna, Mann & Breschi, respond to Plaintiff's/Appellee's Motion to Dismiss the In Banc Review, and state:

1. That this Honorable Court has jurisdiction to review in banc the Order of the Court entered on November 7, 1990 as the Defendants/Appellants properly reserved this matter for review in accordance with Maryland Rules 2-551 and 2-517.

WHEREFORE, Defendants/Appellants pray that the Plaintiff's/Appellee's Motion to Dismiss the In Banc Review be denied.

/S/

S. ERIC DINENNA
DINENNA, MANN & BRESCHI
409 Washington Avenue, Suite 600
Towson, Maryland 21204
(301) 296-6820
Attorneys for Defendants/Appellants

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8th ELECTION DISTRICT 4th COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	CASE NO.: 90-CG-2543

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

MEMORANDUM IN SUPPORT OF THE RESPONSE TO THE MOTION TO DISMISS

FACTS

Appellants, Paul and Margery Shriver, applied for a Special Exception to permit a dog kennel on their property and variances regarding the side and front yard setbacks. The Zoning Commissioner granted the Special Exception and Variances subject to certain restrictions concerning the operation of the kennel. Appellants took an appeal to the Board of Appeals as to certain restrictions only. Appellee then filed an appeal to the Circuit Court on the grounds that the Board improperly reviewed only those issues raised on appeal. The Honorable Judge Robert Cahill ruled that the appeal before the Board was de novo and that the entire matter had to be heard anew, including the portions not appealed from. Judge Cahill remanded the matter back to the Board for further findings.

The Appellants reserved this issue for in banc review, properly filed a notice for review and Appellees have now filed a Motion to Dismiss.

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX. FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' +/- NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	Case No. 90-CG-2543

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

MOTION TO DISMISS

ROBERT and CHARLOTTE SMITH, Plaintiffs and Appellees herein, the Notice In Banc Review filed by Defendants and Appellants herein be dismissed, and for reasons say:

1. That there is no jurisdiction for this Court to convene an in banc review as Defendants/Appellants herein, Paul and Margery Shriver, failed to timely reserve this matter for such review.

WHEREFORE, Plaintiffs/Appellees pray that the Defendants/Apepllants' Notice In Banc Review be dismissed.

J. SHAWN ALCARESE
Jensen, Morrow & Hassani, P.A.
Suite 606
22 West Pennsylvania Avenue
Towson, Maryland 21204
(301) 339-7313
Attorney for Plaintiffs/Appellees

90 NOV 20 PM 12:03

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX. FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' +/- NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	Case No. 90-CG-2543

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

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

I. FACTS

Defendants and Appellants herein, Paul and Margery Shriver, desirous of establishing a dog kennel in the heart of the residential community of Stoneleigh, applied for zoning special exception and variances. Following a hearing before the Zoning Commissioner of Baltimore County, Defendants/Appellants appealed to the County Board of Appeals. The Board of Appeals, at Defendants/Appellants' urging, failed and refused to consider the matter de novo as mandated by law, but rather considered and revised only those portions of the matter that counsel for Defendants/Appellants' requested them to consider. On appeal to the Circuit Court for Baltimore County, Judge Cahill, on November 7, 1990, ruled that any consideration by the Board of Appeals is de novo and that the entire matter must be heard anew,

90 NOV 20 PM 12:03

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX. FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' +\- NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	Case No. 82/143/90-CG-2543

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

MOTION TO STRIKE AND SUPPLEMENTAL RESPONSE TO MOTION TO DISMISS

Portestants and Appellants herein, by J. Shawn Alcarese, pursuant to Maryland Rules of Civil Procedure, Rules 2-322 and 2-341(a), moves to strike the Response to Line filed by Paul Shriver, et ux., and further answers their Motion to Dismiss and for reasons says:

1. That Protestants herein timely filed a Notice of Appeal in the above-captioned matter.
2. That named Plaintiffs herein, Robert and Charlotte Smith, et al., were recorded in the Office of the Board of Appeals of Baltimore County as the named Plaintiffs and Appellants herein.
3. That Petitioners/Appellees, and their counsel of record, S. Eric DiNenna, were notified of the named Plaintiffs/Appellants by mailing on June 26, 1990.

90 AUG -7 AM 11:07
RECEIVED
COUNTY BOARD OF APPEALS

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX. FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' +\- NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	Case No. 82/143/90-CG-2543

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

MEMORANDUM OF POINTS AND AUTHORITIES

1. Maryland Rule of Civil Procedure, Rule T-322;
2. Maryland Rule of Civil Procedure, Rule 2-341;
3. Francois v. Alberti Van & Storage Co., Inc., 285 Md. App. 663 (1979);
4. Town of Somerst v. Board, 245 Md. 52 (1966);
5. Board of County Commissioners v. Kines, 239 Md. 119 (1965);
6. Hertelendy v. Montgomery County Board of Appeals, 245 Md. 554 (1967).

J. Shawn Alcarese
Jensen, Morrow & Hassani, P.A.
Suite 606
22 West Pennsylvania Avenue
Towson, Maryland 21204
(301) 339-7313
Attorney for All Protestants

90 AUG -7 AM 11:07
RECEIVED
COUNTY BOARD OF APPEALS

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' + NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	CG Doc. No. 82 Folio No. 143 File No. 90-CG-2543
ZONING CASE NO. 89-361-XA		

* * * * * * * * *

PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Arnold G. Foreman, Lynn B. Moreland, and Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case herewith return the record of proceedings had in the above entitled matter, consisting of the following certified copies or original papers on file in the Office of the Zoning Commissioner and the Board of Appeals of Baltimore County:

No. R-89-361-XA

January 18, 1989	Petition filed by S. Eric DiNenna, Esquire on behalf of Mr. & Mrs. Paul Shriver for a Special Exception for dog (hobby) kennel.
February 23	Publication in newspaper.
February 21	Certificate of Posting of property.
February 27	Comments of Baltimore County Zoning Plans Advisory Committee.
March 10	Hearing held on Petition by the Zoning Commissioner.

COUNTY BOARD OF APPEALS
90 JUL 13 AM 11:55

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX. FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' +\- NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	Case No. 82/143/90-CG-2543

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

RESPONSE TO MOTION TO DISMISS

Robert and Charlotte Smith, Protestants, in the above styled cause by J. Shawn Alcarese, hereby respond to Petitioners/Appellees Motion to Dismiss Appeal as follows:

1. That following the opinion and order of the Board of Appeals for Baltimore County in the above case, the case was appealed to the Circuit Court of Baltimore County with Robert and Charlotte Smith thereafter noted as the named Protestants, Appellants and Plaintiffs; and

2. That Petitioners/Appellees, and their counsel of record, S. Eric DiNenna, were given notice by the County Board of Appeals of the appeal, by mailing on June 26, 1990. Such notice in fact notified all parties to the proceedings of the appeal and of Robert and Charlotte Smith being the Protestants/Appellants/Plaintiffs; and

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX. FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' +\- NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	Case No. 82/143/90-CG-2543

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

LINE

Mr. Clerk:

Please amend the Notice of Appeal in the above styled cause to note Protestants and Appellants as Robert and Charlotte Smith.

J. Shawn Alcarese

Jensen, Morrow & Hassani,
Suite 606
22 West Pennsylvania Avenue
Towson, Maryland 21204
(301) 339-7313

Attorney for All Protestants

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX. FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' +\- NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	Case No. 82/143/90-CG-2543

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

PETITION ON APPEAL

Protestants and Appellants herein, by J. Shawn Alcarese, having heretofore timely filed a Notice of Appeal from the Opinion and Order of the County Board of Appeals of Baltimore County (the "Board") of May 25, 1990, files this Petition required by Maryland Rules of Civil Procedure, Rule B2(e) as follows:

1. Protestants specifically appeal from those portions of the Opinion and Order of the Board dated May 25, 1990 wherein:

A. The Board restricted its considerations only to arguments on the restrictions appealed by Mrs. Shriver and thereby affirmatively made "...no comment on the granting of the special exception or other restrictions imposed in the Zoning Commissioner's decision and Order." (p. 4), and;

B. The Board found the restriction of the number of dogs permitted by the Zoning Commissioner to be unreasonable; and

RECEIVED
COUNTY BOARD OF APPEALS
90 JUL -9 PM 2:39

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

June 26, 1990

S. Eric DiNenna, Esquire
DiNenna, Mann & Breschi
P.O. Box 10508
Towson, Maryland 21285-0508

Re: Case No. 89-361-XA (Paul Shriver, et ux)

Dear Mr. DiNenna:

Notice is hereby given, in accordance with the Rules of Procedure of the Court of Appeals of Maryland, that an appeal has been taken to the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda Lee M Kuszmaul
LindaLee M. Kuszmaul
Legal Secretary

Enclosure

cc: Mr. and Mrs. Paul Shriver
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, County Attorney

County Board of Appeals of Baltimore County
COUNTY OFFICE BUILDING, ROOM 315
111 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
(301) 887-3180

June 26, 1990

J. Shawn Alcarese, Esquire
Jensen, Morrow & Hassani, P.A.
22 W. Pennsylvania Avenue
Suite 606
Towson, Maryland 21204

Re: Case No. 89-361-XA (Paul Shriver, et ux)

Dear Mr. Alcarese:

In accordance with Rule B-7(a) of the Rules of Procedure of the Court of Appeals of Maryland, the County Board of Appeals is required to submit the record of proceedings of the appeal which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within thirty days.

The cost of the transcript of the record must be paid by you. In addition, the cost incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court not later than thirty days from the date of any petition you file in Court, in accordance with Rule B-7(a).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Linda Lee M Kuszmaul
LindaLee M. Kuszmaul
Legal Secretary

Enclosure

cc: Mr. and Mrs. Robert Smith, et al

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' + NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	CG Doc. No. 82 Folio No. 143 File No. 90-CG-2543

* * * * * * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Arnold G. Foreman, Lynn B. Moreland, and Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, J. Shawn Alcarese, Esquire, Jensen, Morrow & Hassani, P.A., 22 W. Pennsylvania Avenue, Suite 606, Towson, Maryland 21204, Counsel for Plaintiffs; Mr. and Mrs. Robert Smith, et al, 7104 Oxford Road, Baltimore, Maryland 21212, Plaintiffs; S. Eric DiNenna, Esquire, DiNenna, Mann & Breschi, P.O. Box 10508, Towson, Maryland 21285-0508, Counsel for Defendants; Mr. and Mrs. Paul Shriver, 7105 Sheffield Road, Baltimore, Maryland 21212, Defendants; and Arnold G. Foreman, Esquire, c/o County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake

Form CA4

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland 21285-6754

Irene Summers — 887-2660
Civil Assignment Commissioner

Kathy Rushton — 887-2660
Jury Assignments—Civil
General Settlement Conferences

Margo Tyler — 887-2661
Non-Jury Assignments—Civil
Special Settlement Conferences

August 1, 1990

TO:

J. Shawn Alcarese, Esq.
S. Eric DiNenna, Esq.
County Board of Appeals
Arnold Jablon, Esq.

RECEIVED
COUNTY BOARD OF APPEALS
90 AUG -2 PM 1:05

RE: Non-Jury - 90-CG-2543 IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX. VS. ROBERT SMITH ET.AL.

HEARING DATE: WEDNESDAY, NOVEMBER 7, 1990 @ 9:30 A.M.

ON THE FOLLOWING: Appeals: 2 Hours

Please see the below notations.

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to conform calendars. Claim of not receiving notice will not constitute reason for postponement.

If the above Hearing Date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS PRIOR TO 30 DAYS OF TRIAL should be directed to the attention of Irene Summers. POSTPONEMENTS WITHIN 30 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments-Joyce Grimm-887-3497.

SETTLEMENTS: If a settlement if reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

89-361-XA Paul Shriver, et ux
1/7/91 - Written Order confirming REMAND to
the Board of Appeals stated on the record 11/7/90.
Notice in Banc Review filed in CCt,BCo on 11/14/90 - awaiting ruling.

1-9-91

IN THE MATTER OF SHRIVER	*	IN THE CIRCUIT COURT
	*	FOR BALTIMORE COUNTY
	*	CASE NO. 90-CG-2543

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

ORDER

The attached transcript of the Court's ruling from the bench on November 7, 1990 is hereby incorporated into this Order as the decision of this Court in accordance with Maryland Rule B13.

January 7, 1991

Robert E. Cahill, Sr.
ROBERT E. CAHILL, SR., JUDGE

cc: ✓Board of Appeals
Eric DiNenna, Esq.
Shawn Alcarese, Esq.

91 JAN -9 AM 11:27
COUNTY BOARD OF APPEALS RECEIVED

(The following is the Court's opinion in the matter of Shriver vs. Smith, 90-CG-2543, as given on November 7, 1990:)

THE COURT: The Court has, I believe, adequately reviewed the memoranda filed in connection with this appeal. To start at the end, the Court is satisfied that the action of the Board in refusing to comment, even comment on the granting of this special exception or restrictions other than two and four, and refusing to comment, though it wasn't said in that fashion in the opinion on the variances, acted arbitrarily under the circumstances. Therefore, this Court will in a few moments explain why it is remanding the case to the Board for further proceedings. I think the Court could have given strong consideration to the failure of the protestants to note a cross appeal from the action of the Zoning Commissioner. However, I agree with the argument of the protestants that they were entitled to rely upon the zoning regulation which provided an appeal from the Zoning Commissioner to the Board of Appeals is de novo.

I am persuaded by the language of Judge Alpert in his opinion in the case cited by the protestants in their memorandum. I can't remember the name of the case off the top of my head, Mr. Alcarese.

MR. ALCARESE: Boehm, B-O-E-H-M.

THE COURT: The Boehm case. That that language of his, it seems to the Court to be uniquely applicable to the facts before it on this appeal. A de novo appeal, regardless of whether it be from a finding of an administrative officer,

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a de novo appeal is a retrial of the entire matter on the merits, and not just a retrial of the entire matter, but a consideration of the appellant body, in this case the Board of Appeals, of everything that was decided below by the, in this instance, Zoning Commissioner.

The Board of Appeals is uniquely qualified,and that is the reason for its existence, to consider this type of matter and all of its ramifications and reach a decision which not only informs the parties but others, third parties, and the citizens of this County as to what to expect from the Board of Appeals in comparable matters. Unfortunately, you couldn't do that in this case even if you wanted to because if you went to the decision of the Board of Appeals you would find that the Board of Appeals refused to comment on two very important aspects or what appears to be very important aspects of this dispute, namely the variance and special exceptions.

There was no requirement that I can find in the zoning regulations or elsewhere the a cross appeal be filed. And once the appeal was filed, though Mr. Dinenna had every right to try to persuade the Board to focus on several aspects nonetheless at that point in time I believe it became the Board's responsibility to consider the entire matter and every aspect of it and come to a new decision in a de novo hearing which would touch upon all bases. Their failure to do that, in this Court's opinion, makes their action arbitrary and therefore reversible by this Court in some fashion.

The memorandum of the protestants indicates that

certain evidence was not presented, on a tactical basis or whatever, by the property owner and by Mrs. Shriver. There is reference to expert testimony which was not offered. This Court would like to limit the further expense in this matter to the extent that it is capable of doing so. Therefore, in remanding the case it will be remanded under Maryland Rule B 13 to the Baltimore County Board of Appeals with instructions to reconsider the matter based upon the evidence produced at the prior hearing before the Board and all of that evidence which has fortunately been reduced to a transcript and supplementing that evidence by any additional evidence which is necessary in this instance from the standpoint of, in the first instance of the property owner since it is her appeal and she has the burden. Mr. Dinenna therefore as her attorney would have the right to make a decision as to what, if any, additional evidence other than what is in the transcript he would wish to offer to the Board so that the Board would be able to reach a complete decision in this case concerning the correctness or incorrectness of the Zoning Commissioner's decision.

By the same token, it would follow that the protestants would have the right to offer additional testimony which I would suggest to the Board of Appeals ought not to be cumulative of testimony previously offered, but ought to be additional testimony without restrictions on either side to argue that it is or is not, so that the Board could then take the transcript of the prior proceeding and accept it as filed on the remanded hearing and accept such further testimony as they may need to reach a conclusion as to the matter that

was presented first before the Zoning Commissoner and then before them in a de novo fashion.

I do not have the right or inclination to specificall limit what the Board of Appeals ought to consider in addition to the evidence represented in the transcript of the May 8, 1990 hearing.

I simply wish to point out that the remand is for that purpose and for the purpose of the Board of Appeals making a total decision in this case which would encompass all issues that were argued before the Zoning Commissioner and indeed any new issues which might be raised by the party.

MR. DINENNA: Thank you, your Honor.

MR. ALCARESE: Thank you.

MR. DINENNA: Your Honor, for purposes of information the opinion that, I assume, I think has to be prepared and signed and the order must be an order signed by you. And for the reason --

THE COURT: I don't know whether the opinion has to be signed, the oral opinion.

MR. DINENNA: I think the opinion --

THE COURT: I have no problem with it being written up.

MR. DINENNA: The Court can review it and sign it as its order.

THE COURT: I will sign it as my order after I have the opportunity to review it to see that I made no misspellings as I spoke.

MR. DINENNA: I am sure you didn't, your Honor.

THE COURT: Thank you. I will do that as quickly as I can.

(Conclusion.)

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX. FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' +\- NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	* * * * * *	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY Case No. 82/143/90-CG-2543

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

REPLY MEMORANDUM TO RESPONSE

TO MOTION TO STRIKE AND MOTION TO DISMISS

Paul Shriver, et ux., Petitioners/Defendants, have responded to Respondents/Plaintiffs' Motion to Strike and Motion to Dismiss by alleging there are no content requirements mandated for the required Memorandum. Additionally, Petitioners/Defendants have filed, approximately two (2) weeks out of time, the required number of copies of their Memorandum.

Petitioners/Defendants, on November 14, 1990, sought In Banc Review of Judge Cahill's November 7, 1990 ruling as their form of appealing that ruling. Pursuant to that request, this Court sent out notice dated November 19, 1990, specifically advising, (c) that the provisions of Maryland Rule of Civil Procedure, Rule 2-551, are applicable to the review sought, (2) that the provisions of Rule 2-551 must be complied with, and (3)

MICROFILMED

notifying specifically the number of copies of Memorandum that must be filed.

Rule 2-551(c) clearly states that the party seeking review shall file four (4) copies of their Memorandum "...stating concisely the questions presented, any acts necessary to decide them, and supporting argument." Despite Petitioners/Defendants' assertion to the contrary, Rule 2-551(c) addresses the form and content of the required Memorandum. Petitioners/Defendants wish this panel to ignore the form and content language of Rule 2-551(C) and accept their Memorandum as sufficient. Yet Petitioner/Defendants' Memorandum fails to state, concisely or otherwise, what questions for review this panel is to address. Rule 2-551(c) by and large is confined to having Petitioners/Defendants formulate the questions for review, with the relevant facts and arguments posed and presented to support the questions. Certainly this is the crux of the review Petitioners/Defendants have requested. Petitioners/Defendants, though, wish to ignore posing any questions for this panel to review and then wish to persuade that they are not necessary. What then are Respondents/Plaintiffs to respond to or dispute and what is the panel to decide?

While proceedings before a Court In Banc tend to be informal, it is still a procedure in lieu of appeal that takes on the quasi nature of an appeal. As such, it should be noted that in an appeal to the one of the State's Appeals Courts, pursuant to

Form CA4

CIRCUIT COURT FOR BALTIMORE COUNTY
ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 Bosley Avenue
P.O. Box 6754
Towson, Maryland 21285-6754

Irene Summers — 887-2660
Civil Assignment Commissioner

Kathy Rushton — 887-2660
Jury Assignments—Civil
General Settlement Confers. Jos

Margo Tyler — 887-2661
Non-Jury Assignments—Civil
Special Settlement Conferences

TO:

October 4, 1990

J. Shawn Alcarese, Esq.

NOTE: MOTIONS WILL BE HEARD MORNING OF TRIAL

S. Eric DiNenna, Esq.

County Board of Appeals

Arnold Jablon, ESq.

RECEIVED
COUNTY BOARD OF APPEALS
90 OCT 11 AM 11:06

RE: NON JURY 90-CG-2543 IN THE MATTER OF PAUL SERIVER, ET UX

HEARING DATE: WEDNESDAY, NOVEMBER 7, 1990 @ 9:30 A.M. CORRECTED NOTICE

ON THE FOLLOWING: ALL OPEN MOTIONS.

Please see the below notations.

UPON RECEIPT OF THIS NOTICE: Counsel shall contact each other immediately to conform calendars. Claim of not receiving notice will not constitute reason for postponement.

If the above Hearing Date is not agreeable to any counsel, a request for a postponement MUST BE MADE IN WRITING to the Assignment Office AS SOON AS POSSIBLE, with a copy to all counsel involved. POSTPONEMENTS PRIOR TO 30 DAYS OF TRIAL should be directed to the attention of Irene Summers. POSTPONEMENTS WITHIN 30 DAYS OF TRIAL must be made to the attention of the Director of Central Assignments-Joyce Grimes-887-3497.

SETTLEMENTS: If a settlement if reached prior to the hearing date, the Assignment Office must be notified immediately. All settlements must be put on the record if no order of satisfaction is filed prior to trial.

DiNENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DiNENNA, P.A.
JAMES L. MANN, JR., P.A.
GEORGE A. BRESCHI, P.A.

GERALDINE A. KLAUBER
FRANCIS X. BORGERDING, JR.

P.O. BOX 10508
TOWSON, MARYLAND 21285-0508

SUITE 600
MERCANTILE-TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

(301) 296-6820
TELEFAX (301) 296-6884

RECEIVED
OCT 2 1989
ZONING OFFICE

October 2, 1989

Zoning Commissioner for
Baltimore County
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: Case No.: 89-361-XA
Petitioners: Paul Shriver, et ux
My File No.: 88-78

Dear Mr. Commissioner:

Enclosed herewith please find the Appeal from certain restrictions entered by you as per the above-captioned matter.

Very truly yours,

S. ERIC DiNENNA

SED:bk
Enclosure
cc: J. Shawn Alcarese, Esquire
People's Counsel
Mr. and Mrs. Paul Shriver

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND VARIANCE
E/S Sheffield Road, 265' +/- N of the c/l of Chumleigh Road (7105 Sheffield Road)
8th Election District
Paul Shriver, et ux
Petitioners
Case No.: 89-361-XA

* BEFORE THE
* COUNTY BOARD OF APPEALS
* FOR
* BALTIMORE COUNTY

* * * * * * * * *

ORDER OF APPEAL

Mr. Commissioner:

Please enter an appeal to the County Board of Appeals from the restrictions contained in the Opinion and Order dated August 31, 1989 and as amended on September 3, 1989, as follows: Restriction Number 2 and Restriction Number 4, only.

This appeal is being entered on behalf of Paul and Margery Shriver, 7105 Sheffield Road, Baltimore, Maryland 21212.

S. ERIC DiNENNA
DiNENNA, MANN & BRESCHI
409 Washington Avenue, Suite 600
Towson, Maryland 21204
(301) 296-6820
Attorneys for Petitioners,
Paul Shriver, et ux.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 1st day of October, 1989, a copy of the aforegoing Order of Appeal was mailed, postage prepaid to J. Shawn Alcarese, Esquire, 207 E. Redwood Street, Baltimore, Maryland 21202 and to People's Counsel for Baltimore County, Courthouse, Towson, Maryland 21204.

S. ERIC DiNENNA

DiNENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DiNENNA, P.A.
JAMES L. MANN, JR., P.A.
GEORGE A. BRESCHI, P.A.

GERALDINE A. KLAUBER
FRANCIS X. BORGERDING

SUITE 600
MERCANTILE-TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

(301) 296-6820
TELEFAX (301) 296-6884

April 25, 1989

Zoning Commissioner for
Baltimore County
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: Shriver/Petitioners
Case No.: 89-361XA

Dear Mr. Commissioner:

As per your request, enclosed herewith please find the Memorandum of Law.

Thank you for your cooperation.

Very truly yours,

S. ERIC DiNENNA

SED:cjc
Enclosure
cc: Mr. and Mrs. Paul Shriver
J. Shawn Alcarese, Esquire

RECEIVED
APR 25 1989
ZONING OFFICE

IN THE MATTER OF THE
PETITION FOR SPECIAL
EXCEPTION AND VARIANCE
7105 Sheffield Road
PAUL AND MARGERY SHRIVER,
PETITIONERS

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No.: 89-361XA

* * * * * * * * * * *

MEMORANDUM OF LAW

NOW COMES PAUL and MARGERY SHRIVER, Petitioners, by S. Eric DiNenna, DiNenna, Mann & Breschi, in support of their Petition for Special Exception and Variance, wishes to set forth this Memorandum.

Your Petitioners purchased the subject property in 1959 in the Stoneleigh area of Baltimore County. Because of her interest in Pug show dogs, Mrs. Shriver began breeding and showing dogs at pedigree shows. She has continuously, for a period of twenty-eight (28) years, minimum breeded and has shown dogs at various shows, having on the subject property, approximately nine to twelve dogs at any one time. The Commissioner should take note that these dogs are very small in size and do not make any loud noises barks. Counsel for the protestant Community Association indicates that she sometimes had as many as sixteen (16) adult dogs, but this is an overstatement. The dogs are housed in the Shriver home and are let out periodically in the rear of the residence, but normally in numbers less than the full number of nine to twelve at one time.

LAW OFFICES
J. SHAWN ALCARESE
SUITE 700
207 E. REDWOOD ST.
BALTIMORE, MARYLAND 21202
TELEPHONE 301-685-4558

April 3, 1989

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Towson, Maryland 21204

Re: Case #89-361XA
Shriver Special Exception and Variance

Dear Mr. Haines:

Enclosed herewith please find Memorandum in Opposition to the granting of the above-captioned requested Petitions.

Very truly yours,

J. Shawn Alcarese

JSA/mlw
enclosure
cc: Barry Miller and Beverly Brandon
Robert and Charlotte Smith
S. Eric DiNenna, Esquire

IN THE MATTER OF
PETITION FOR SPECIAL
EXCEPTION AND VARIANCE
PAUL AND MARGERY SHRIVER

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 89-361XA

MEMORANDUM OF LAW IN OPPOSITION TO
GRANTING OF PETITIONS

PAUL AND MARGERY SHRIVER (Petitioners), residents of 7105 Sheffield Road, a home in the heart of the Stoneleigh residential community, have petitioned to allow a dog kennel use of that home. In order to accomplish such a use the Petitioners must also circumvent the mandated 200 foot setback.

FACTS

Petitioners operate from their residence The Sheffield Pugs, a breading and show dog operation that has, according to Mrs. Shriver, at least 9 to 12 and sometimes as many as 16 adult dogs at any given time at her home (this does not take into consideration puppies.) The dogs stay in the basement of the home or are outside in the back yard. According to Mrs. Shriver's testimony, the dogs urinate and defecate outdoors. The property is 135 feet deep and 65 feet wide. At least sixteen (16) residential properties are within 200 feet of the property. Petitioners' use of the property as a dog kennel encompasses not only the structure but the outdoor back yard as well.

While some witnesses testify to not observing rats on the property, others have emphatically testified that they have observed rats. Petitioners' engineering expert, Mr. Lee, stated that if he had evidence that the present Sheffield Pugs operation attracted rats that he might change his opinion testimony that the present use would not be detrimental to the health, safety or general welfare of the locality. Mr. Wiedefeld, a pest and rodent control expert testified that rats will be attracted, for food, to animal feces, such as the dog feces in Petitioners' back yard. The

---

LAW OFFICES
J. SHAWN ALCARESE
SUITE 700
207 E. REDWOOD ST.
BALTIMORE, MARYLAND 21202
TELEPHONE 301-685-4558

April 24, 1989

RECEIVED
APR 25 1989
ZONING OFFICE

J. Robert Haines
Zoning Commissioner for
Baltimore County
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: Case No. 89-361-XA
Shriver Special Exception

Dear Commissioner Haines:

Please accept this as an update on the status of the above matter.

Following Mr. DiNenna's letter to me of March 30, 1989, a copy of which you should have received, I spoke to Mr. DiNenna once, on April 4, 1989. At that time certain conditions were conveyed to Mr. DiNenna for resolution of this matter. Since that date the only subsequent contact has been via a copy of Mr. DiNenna's April 18, 1989 letter to you. On behalf of the protestants, we therefore request your decision.

Thank you for your cooperation.

Very truly yours,

J. Shawn Alcarese

cc: S. Eric DiNenna, Esquire
Barry Miller/Beverly Brandon
Robert and Charlotte Smith

DiNENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DiNENNA, P.A.
JAMES L. MANN, JR., P.A.
GEORGE A. BRESCHI, P.A.

GERALDINE A. KLAUBER
FRANCIS X. BORGERDING

SUITE 600
MERCANTILE-TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

(301) 296-6820
TELEFAX (301) 296-6884

April 10, 1989

J. Robert Haines
Zoning Commissioner for
Baltimore County
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: Case No.: 89-361-XA
Shriver Special Exception

Dear Commissioner Haines:

I am in receipt of Mr. Alcarese's memorandum on behalf of the protestants concerning the above-captioned matter.

We have been discussing a possible settlement of our differences and I would respectfully request that you grant me an extension to submit a memorandum if the negotiations and discussions break down.

Thank you for your cooperation.

Very truly yours,

S. ERIC DiNENNA

SED:cjc
cc: J. Shawn Alcarese, Esquire
Mr. and Mrs. Paul Shriver

Please Note New Mailing Address:

DiNenna, Mann & Breschi
P.O. Box 10508
Towson, Maryland 21285-0508

Please File in Case File

DiNENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DiNENNA, P.A.
JAMES L. MANN, JR., P.A.
GEORGE A. BRESCHI, P.A.

GERALDINE A. KLAUBER
FRANCIS X. BORGERDING

SUITE 600
MERCANTILE-TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

(301) 296-6820
TELEFAX (301) 296-6884

March 30, 1989

Shawn Alcarese, Esquire
207 E. Redwood Street
Suite 700
Baltimore, Maryland 21202

RE: Shriver/Special Exception and
Variance Request
7105 Sheffield Road

Dear Shawn:

Following the hearing before the Zoning Commissioner, I have given much thought to the request of Mr. and Mrs. Shriver.

I think it would be to everyone's advantage if you and the members of the Board of Directors of your client and organization, along with my client, can sit down and discuss this matter more intelligently and not under the emotions and pressure of a hearing.

Accordingly, would you please be so kind as to discuss this matter with the members of your organization and contact me immediately as to whether or not it would be to everyone's advantage to sit down and discuss it.

Thank you for your cooperation.

Very truly yours,

S. ERIC DiNENNA

RECEIVED
APR 3 1989
ZONING OFFICE

SED:cjc
cc: Mr. and Mrs. Shriver
J. Robert Haines, Zoning Commissioner

HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401-1991

MICHAEL GISRIEL
8TH LEGISLATIVE DISTRICT
BALTIMORE COUNTY

WAYS AND MEANS COMMITTEE

HOUSE OVERSIGHT
INVESTIGATIONS COMMITTEE

ANNAPOLIS OFFICE:
308 HOUSE OFFICE BUILDING
ANNAPOLIS, MARYLAND 21401-1991
PHONE 841-3359

DISTRICT OFFICE:
817 WELLINGTON ROAD
BALTIMORE, MARYLAND 21212

March 2, 1989

RECEIVED
MAR 6 1989
ZONING OFFICE

J. Robert Haines
Zoning Commissioner
Baltimore County
Office of Planning & Zoning
Towson, Maryland 21204

Dear Mr. Haines,

I have been notified by my community association president that there will be a zoning hearing on the property at 7105 Sheffield Road. Although I am not taking a position on this issue I would like to be kept informed of the case and its outcome. Please send me all copies pertaining to this case.

Thank you for your attention to this matter.

Very truly yours,

Michael Gisriel

MG/ca

Stoneleigh Community Association, Inc.
Baltimore, Maryland 21212

89-361-A

March 3, 1989

RECEIVED
MAR 6 1989
ZONING OFFICE

Commissioner
Zoning Office of Baltimore County
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Item #276
7105 Sheffield Road
Hearing Date: 3/18/88 @11:30 a.m.

Mr. Commissioner:

The owners of the above-captioned property, located in the residential community of Stoneleigh, have applied for zoning variance and special exceptions to operate a dog kennel in their home. As is evidenced by the Petition For Variance, the "kennel" will be located, if approved, within six (6) feet of one residential property, thirteen (13) feet of another residential property and within the proscribed two hundred (200) feet of quite a number of other residential properties.

The Board of Governors of The Stoneleigh Community Association, on behalf of the residents of Stoneleigh, would like to go on record as opposing any governmentally sanctioned establishment of a dog kennel in the heart of our residential community. We believe, and therefore assert, that there is no basis in law or fact for which the variance and special exception could be granted.

Very truly yours,

Steve Close
President

SC/mlw
cc: Del. Michael Gisriel

DiNENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DiNENNA, P.A.
JAMES L. MANN, JR., P.A.
GEORGE A. BRESCHI, P.A.

GERALDINE A. KLAUBER
FRANCIS X. BORGERDING

SUITE 600
MERCANTILE-TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

(301) 296-6820
TELEFAX (301) 296-6884

January 25, 1989

RECEIVED
JAN 26 1989
ZONING OFFICE

J. Robert Haines
Zoning Commissioner
for Baltimore County
111 Chesapeake Avenue
County Office Building
Towson, Maryland 21204

RE: Petitioner/Shriver
7105 Sheffield Road

Item 276

Dear Mr. Commissioner:

As you might be aware from the Petition filed concerning the above-captioned matter, I represent the property owners for a Special Exception for a kennel.

This matter is now before the District Court of Maryland and has been recently postponed until March 29, 1989, at 1:30 p.m., pending the hearing before you.

I have consent of your counsel, Tim Kotroco, for the postponement recently acquired.

Accordingly, I would respectfully request that you schedule this matter well in advance of March 29, 1989, so that the District Court, upon hearing before the Court, can make a disposition of this matter.

Thank you for your cooperation.

Very truly yours,

S. ERIC DiNENNA

SED:cjc
cc: Timothy Kotroco, Esquire
Mr. and Mrs. Paul Shriver

Char

DiNENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DiNENNA, P.A.
JAMES L. MANN, JR., P.A.
GEORGE A. BRESCHI, P.A.

GERALDINE A. KLAUBER
FRANCIS X. BORGERDING, JR.

P.O. BOX 10508
TOWSON, MARYLAND 21285-0508

SUITE 600
MERCANTILE-TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

(301) 296-6820
TELEFAX (301) 296-6884

October 18, 1989

J. Robert Haines
Zoning Commissioner for
Baltimore County
111 W. Chesapeake Avenue
Towson, Maryland 21204

RE: Petition for Special Exception
Case No.: 89-361-XA
Paul Shriver, et ux./Petitioner

Dear Mr. Haines:

I am in receipt of your correspondence of October 9, 1989 to the Baltimore County Board of Appeals advising them that an appeal had been filed by me as counsel for the Petitioner as to the "Special Exception portion only" of this matter.

I wish to set the record straight that an appeal was not taken from your decision to grant the Special Exception but only from several restrictions that you imposed as a result of granting the special exception.

Accordingly, the only thing before the County Board of Appeals will be our Appeal with reference to your several restrictions.

If you have any questions concerning this, please contact me.

Very truly yours,

S. ERIC DiNENNA

SED:cjc
cc: Board of Appeals
J. Shawn Alcarese, Esquire
Mr. and Mrs. Paul Shriver

RECEIVED
OCT 19 1989
ZONING OFFICE

7110 Oxford Road
Baltimore, Maryland 21212

March 13, 1989

RECEIVED
MAR 15 1989
ZONING OFFICE

Mr. J. Robert Haines, Zoning Commissioner
111 W. Chesapeake Avenue
Towson, Maryland 21204

To Whom It May Concern:

It is hard to believe that letters have been written by neighbors living next door to Mrs. Paul Shriver stating that neither barking nor odor from her multitude of dogs at 7105 Sheffield Road have bothered them.

Dr. Quigley and I have lived on Oxford Road in Stoneleigh for twenty years. Even though we live at the opposite end of Oxford Road from the Sheffield Road address, we have had to listen to the ruckus of the dogs year in and year out. When one dog barks, they ALL BARK! Neighbors farther away than we are have had to tolerate this noise as well. It is unfathonable that people surrounding this home have not complained long, long ago.

It is inconceivable that the Baltimore County zoning board could even consider allowing a kennel permit in a quiet, closely joined community such as Stoneleigh. What next--chickens, ducks and baby lambs? None of those could begin to make the racket of the magnitude of these dogs.

It is my understanding that Mrs. Shriver possibly is receiving special consideration through her attorney, due to a personal friendship. If, indeed, this is the case, or could be construed as the case, then as a Baltimore County citizen I implore you, and/or others involved, from participating in the judgement of this case. Certainly you would never tolerate such blatant disregard if this situation were in your community.

It would be appreciated if you would give this matter further impartial consideration and in accordance with the taxpayers of Stoneleigh.

Sincerely,

Marjorie M. Quigley

Case #89361XA
Item 276

Ruth Guiernot McElvany
6403 Crestwood Road, Idlewylde
Baltimore, Maryland 21239
1-301-377-8751

File

April 10, 1989

Dear Commissioner Haines:

Please rule in favor of Mr. and Mrs. Paul Shriver of 7105 Sheffield Road, Stoneleigh. (Their immediate neighbors, eighteen families are not against them.) They have had dogs for at least thirty years at this location and have caused no trouble. Allow this case to remain as an exception to the law as long as the Shrivers live and have their dogs. At their deaths, the problem will be at an end. Please try to have some compassion and feeling towards residents in our county. I pray you will be given the wisdom of Solomon in handling this case.

Thank you.

Yours truly,

Ruth Guiernot McElvany

File

W. Kingston Road
Baltimore, Md 21212
March 10, 1989

Baltimore County Zoning Office
Baltimore County Administrative Bldg.
111 West Chesapeake Ave
Baltimore, Maryland 21204

RECEIVED
MAR 14 1989
ZONING OFFICE

To Whom it May Concern:

As a thirty year resident of Stoneleigh I find the zoning request of Paul and Margery Shriver ridiculous. Stoneleigh is a quiet, residential, neighborhood not a dog kennel. Stoneleigh has never been a kennel community and it would be a real shame for you to encourage that. Keeping

89-361XA

PLEASE PRINT CLEARLY — PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Paul Lee	504 W. Penna Ave 21204
Oscar Moistopp	7103 Sheffield Rd. 21212
Perry Shriver	2009 Indianwood Rd 21204
Rebecca Stanek	17003 Jenkins Ln
Charlotte H. Otto	7106 Sheffield Rd 21212
Jeanne H. Hurd	7111 Sheffield Rd. 21212
Edward J. Aylward	7107 Sheffield Road
Ralph E. Otto	7106 Sheffield Road 21212
Kathleen K. Bates	7104 Sheffield Road 21212
Beth Spedalere	525 Allegheny Ave 21204
Theresa Weller	7113 Sheffield Rd 21212
WILLIAM H FASTIE	7110 SHEFFIELD RD 21212
SANDRA FASTIE	7110 SHEFFIELD RD. 21212
PAUL L. SHRIVER	7105 SHEFFIELD RD 21212

89-361XA

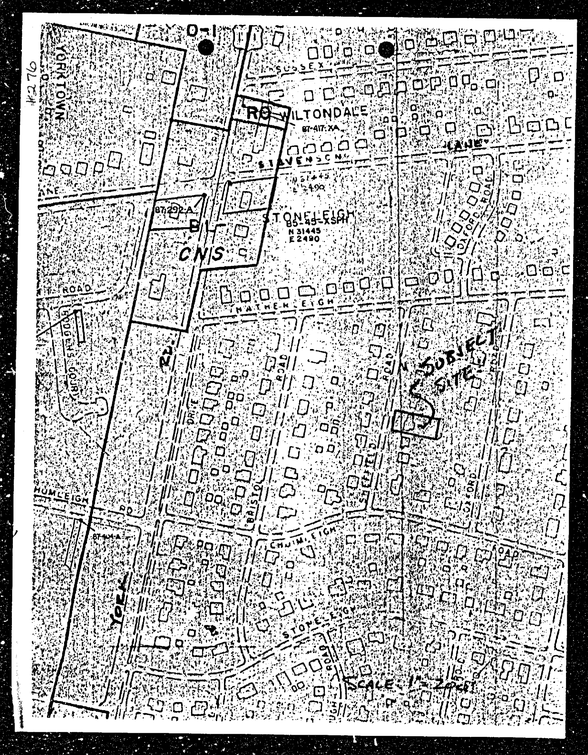
PLEASE PRINT CLEARLY — PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
J. Shalon Moarese ✓	802 Wellington Rd 21212
Shelley Smith	7104 Oxford Rd 21212
Robert E. Smith ✓	7104 Oxford Rd 21212
Charlotte Offenhartz	7104 OXFORD RD 21212
JAY SMITH	7104 OXFORD RD 21212
Robin Smith	7104 Oxford Rd 21212
Beverly Brandon	7105 Oxford Rd. 21212
Barry Miller ✓	7109 OXFORD RD 21212
Eugenie Jowler	7105 Wardman RD 21212
Wendy Frank	7115 Bristol Rd. 21212
Gary Spence	7107 Bristol RD 21212
Ann Nickman	7117 Bristol Rd. 21212
Olive J. Cardenas	7101 Oxford Rd. 21212
Ed Rucciuto	7105 Oxford Rd 21212
Carolyn Arlettington	601 Kingston Rd 21212
Harold Dinnis Jr.	901 Greenleigh Rd 21212

IMPORTANT MESSAGE
FOR Dm A
DATE 2/24 TIME 10:40 A.M. P.M.
WHILE YOU WERE OUT
M Robert Smith
OF 7104 Oxford Rd 21212
PHONE NO. 821-1534

TELEPHONED		PLEASE CALL	
CALLED TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		RUSH	
Re: 89-361-XA		RETURNED YOUR CALL	

MESSAGE wants case postponed wishing to pay additional advertising charges.
Notice Violation Case coming up on 3/29/89
SIGNED



PETITIONER'S EXHIBIT 2

Robert H. Dyer, Jr.
L. Paige Marvel
7109 Sheffield Road
Baltimore, Maryland
21212

Baltimore County Zoning Commission
County Office Building
Towson, Maryland 21204

Re: Paul L. and Margery Shriver

Dear Commissioners:

We are neighbors of Paul L. and Margery Shriver. Our home is located on the same side of Sheffield Road as the Shriver property and is the second house to the north of the Shriver property. Looking south from our backyard and from the deck on the back of our house, we can see directly in the backyard of Mr. and Mrs. Shriver. We can also see directly into the backyard of the people who live directly behind the Shrivers whom we understand have complained about the Shriver's pug dogs.

We moved into our present home in the Stoneleigh neighborhood in October 1982. When we moved in, we became aware of the fact that Mr. and Mrs. Shriver owned and bred purebred pug dogs. As new neighbors living only two doors away whose privacy and quiet could have been adversely affected by the Shriver's dogs, we were very interested to find out what the dogs and their method of care were like. Over the years that we have been in the neighborhood, we have learned that not only are the Shrivers good and considerate neighbors, their dogs and the manner in which they are cared for raise no concerns whatsoever on our part. The dogs even when they are outside in the Shriver's yard do not disturb us in the least. This is true even when we are outside in our yard or on our deck at the same time. In fact, the dogs are substantially less intrusive than the sometimes incredible noise caused by the complaining neighbors and their kids when they are outside in their yard. Several kids and their big wheels rolling down their driveway can and do generate a considerable amount of disruption to neighbors like us who would like to enjoy a little peace and quiet while in our yard or on our deck. We have not complained to date because, within reason, noise generated by kids and animals are an integral part of living in a neighborhood like Stoneleigh. However, you should be aware that, from our perspective, if it were a choice between the Shrivers and their dogs and the complaining neighbors who live behind the Shrivers, we would strongly prefer the Shrivers and their dogs; they are quiet and considerate neighbors and have never disturbed us in all the years we have been in the neighborhood.

We support Mr. and Mrs. Shriver's application. We do not

March 8, 1989

To whom it may concern:

We have resided at 7104 Sheffield Road for 26 years, in proximity to the house occupied by the Shrivers at 7105 Sheffield Road. At no time during this period have we, in any way, been annoyed or disturbed by their dogs. In fact, rarely have the dogs made us aware of their existence.

Kathleen K. Bates
KATHLEEN K. BATES

Lloyd M. Bates
LLOYD M. BATES Sc.D

PETITIONER'S EXHIBIT 3

March 8, 1989

To Whom it may concern:

I, the undersigned, as a resident of 7104 Oxford Road, from 1967 to 1983, had a common property boundary with Paul and Margery Shriver. I was aware of the number of dogs housed there, and declare that they were no more of a disturbance than many other dogs which were allowed to roam the neighborhood.

The owners were concerned with the effect of the dogs on their neighbors and took precautions to minimize their impact. I found the Shriver's to be cooperative and friendly, and testify that the presence of the dogs was only minimally inconvenient to me and my family.

signed: Frank J. Verde
date: March 9, 1989

PETITIONER'S EXHIBIT 4

89-361XA

Stoneleigh Community Association, Inc.
Baltimore, Maryland 21212

March 3, 1989

RECEIVED
MAR 6 1989
ZONING OFFICE

Commissioner
Zoning Office of Baltimore County
County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Item #276
7105 Sheffield Road
Hearing Date: 3/10/88 @11:30 a.m.

Mr. Commissioner:

The owners of the above-captioned property, located in the residential community of Stoneleigh, have applied for zoning variance and special exceptions to operate a dog kennel in their home. As is evidenced by the Petition For Variance, the "kennel" will be located, if approved, within six (6) feet of one residential property, thirteen (13) feet of another residential property and within the proscribed two hundred (200) feet of quite a number of other residential properties.

The Board of Governors of The Stoneleigh Community Association, on behalf of the residents of Stoneleigh, would like to go on record as opposing any governmentally sanctioned establishment of a dog kennel in the heart of our residential community. We believe, and therefore assert, that there is no basis in law or fact for which the variance and special exception could be granted.

Very truly yours,

Steve Close

Steve Close
President

SC/mlw
cc: Del. Michael Gisriel

7110 Oxford Road
Baltimore, Maryland 21212

March 13, 1989

RECEIVED
MAR 15 1989
ZONING OFFICE

Mr. J. Robert Haines, Zoning Commissioner
111 W. Cheasapeake Avenue
Towson, Maryland 21204

To Whom It May Concern:

It is hard to believe that letters have been written by neighbors living next door to Mrs. Paul Shriver stating that neither barking nor odor from her multitude of dogs at 7105 Sheffield Road have bothered them.

Dr. Quigley and I have lived on Oxford Road in Stoneleigh for twenty years. Even though we live at the opposite end of Oxford Road from the Sheffield Road address, we have had to listen to the ruckus of the dogs year in and year out. When one dog barks, they ALL BARK! Neighbors farther away than we are have had to tolerate this noise as well. It is unfathonable that people surrounding this home have not complained long, long ago.

It is inconceivable that the Baltimore County zoning board could even consider allowing a kennel permit in a quiet, closely joined community such as Stoneleigh. What next--chickens, ducks and baby lambs? None of those could begin to make the racket of the magnitude of these dogs.

It is my understanding that Mrs. Shriver possibly is receiving special consideration through her attorney, due to a personal friendship. If, indeed, this is the case, or could be construed as the case, then as a Baltimore County citizen I implore you, and/or others involved, from participating in the judgement of this case. Certainly you would never tolerate such blatant disregard if this situation were in your community.

It would be appreciated if you would give this matter further impartial consideration and in accordance with the taxpayers of Stoneleigh.

Sincerely,

Marjorie M. Quigley

Marjorie M. Quigley

Case #89361XA
Item 276

Ruth Guiseppe McElvany
6403 Crestwood Road, Idlewylde
Baltimore, Maryland 21239
1-301-377-8751

File

April 10, 1989

Dear Commissioner Haines:

Please rule in favor of Mr. and Mrs. Paul Shriver of 7105 Sheffield Road, Stoneleigh. (Their immediate neighbors, eighteen families, are not against them.) They have had dogs for at least thirty years at this location and have caused no trouble. Allow this case to remain as an exception to the law as long as the Shrivers live and have their dogs. At their deaths, the problem will be at an end. Please try to have some compassion and feeling towards residents in our county. I pray you will be given the wisdom of Solomon in handling this case.

Thank you.

Yours truly,

Ruth Guiseppe McElvany

File

604 Kensington Road
Baltimore, Md 21212
March 10, 1989

Baltimore County Zoning Office
Baltimore County Courthouse
111 West Chesapeake Ave
Baltimore, Maryland 21204

RECEIVED
MAR 14 1989
ZONING OFFICE

To Whom It May Concern:

As a thirty year resident of Stoneleigh I find the re-zoning request of Paul and Margery Shriver ridiculous. Stoneleigh is a quiet, residential neighborhood not a dog kennel. Stoneleigh has never been a business community and it would be a real shame for you to encourage that. Keeping

MICROFILMED

89-361XA

PLEASE PRINT CLEARLY — PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Paul Lee	304 W. Pennsylvania Ave 21204
Grant Moriarty Jr.	7103 Sheffield Rd. 21212
Gerry Shriver	2009 Indianhead Rd 21204
Margaret Tenable	1700 3 Jemsingh Ford
Charlotte H. Potter	7106 Sheffield Rd 21212
Eamon M. Ward	7111 Sheffield Rd. 21212
Edward D. Aylward	7107 Sheffield Road
Joseph C. Potter	7106 Sheffield Road 21212
Kathleen H. Bates	7104 Sheffield Road 21212
Bill Spitalnik	505 Allegheny Ave 21204
Theresa Weller	7113 Sheffield Rd 21212
William H. Fastie	7110 Sheffield Rd 21212
Sandra Fastie	7110 Sheffield Rd. 21212
Paul L. Shriver	7105 Sheffield Rd 21212

MICROFILMED

89-361XA

PLEASE PRINT CLEARLY — PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
J. Sharon McCarese (McCarese)	802 Wellington Rd 21212
Shelley Smith	7104 Oxford Rd 21212
Robert H. Smith	7104 Oxford Rd 21212
Charlotte McSmith	7104 Oxford Rd 21212
JAY Smith	7104 Oxford Rd 21212
Robin Smith	7104 Oxford Rd 21212
Beverly Brandon	7105 Oxford Rd. 21212
Barry Miller	7109 Oxford Rd 21212
Eugenie Foster	7105 Wardman Rd 21212
Wendy Frank	7115 Bristol Rd. 21212
Cheryl Spence	7117 Bristol Rd 21212
Ann Hickman	7117 Bristol Rd. 21212
Diane G. Casellizzi	7101 Oxford Rd. 21212
A. J. Ruocuto	7105 Oxford Rd 21212
Carolyn Whittington	601 Kensington Rd. 21212
Hazmie Pilarchowski	901 Greenleigh Rd 21212

MICROFILMED

IMPORTANT MESSAGE
FOR: JMA
DATE 2/24 TIME 10:40 A.M. P.M.
WHILE YOU WERE OUT
M Robert Smith
OF 7104 Oxford Rd 21212
PHONE NO. 821-1534

TELEPHONED	PLEASE CALL	
CALLED TO SEE YOU	WILL CALL AGAIN	
WANTS TO SEE YOU	RUSH	
Re: 89-361-XA	RETURNED YOUR CALL	

MESSAGE: wants case postponed willing to pay additional ad & posting charges. Notes Violation Case coming upon 3/29/89
SIGNED: JMA

89-361XA

2nd Day Additional

PLEASE PRINT CLEARLY — PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Margaret E. Harp	605 Kensington Rd. 21212
Charles L. Whittington	601 Kensington Rd 21212
Dan R. Schaefele	805 Churchleigh Rd 21212
Sharon M. McCarese	810 Wellington Rd. 21212
Robert H. Smith	7104 Bristol Rd 21212
JAMES WIEDEFELD JR	Wilkinson Pest Termite Exterminating 21234
BARRY L. MILLER	7109 OXFORD ROAD STONELEIGH RD
Mary L. Davis	7011 Copeleigh Rd.
Douglas Davis	7011 Copeleigh Rd.
Wilhelmina Sleighoff	7004 Bristol Rd.

MICROFILMED

PETITIONER'S EXHIBIT 2

Robert H. Dyer, Jr.
L. Paige Marvel
7109 Sheffield Road
Baltimore, Maryland
21212

Baltimore County Zoning Commission
County Office Building
Towson, Maryland 21204

Re: Paul L. and Margery Shriver

Dear Commissioners:

We are neighbors of Paul L. and Margery Shriver. Our home is located on the same side of Sheffield Road as the Shriver property and is the second house to the north of the Shriver property. Looking south from our backyard and from the deck on the back of our house, we can see directly in the backyard of Mr. and Mrs. Shriver. We can also see directly into the backyard of the people who live directly behind the Shrivers whom we understand have complained about the Shriver's pug dogs.

We moved into our present home in the Stoneleigh neighborhood in October 1982. When we moved in, we became aware of the fact that Mr. and Mrs. Shriver owned and bred purebred pug dogs. As new neighbors living only two doors away whose privacy and quiet could have been adversely affected by the Shriver's dogs, we were very interested to find out what the dogs and their method of care were like. Over the years that we have been in the neighborhood, we have learned that not only are the Shrivers good and considerate neighbors, their dogs and the manner in which they are cared for raise no concerns whatsoever on our part. The dogs even when they are outside in the Shriver's yard do not disturb us in the least. This is true even when we are outside in our yard or on our deck at the same time. In fact, the dogs are substantially less intrusive than the sometimes incredible noise caused by the complaining neighbors and their kids when they are outside in their yard. Several kids and their big wheels rolling down their driveway can and do generate a considerable amount of disruption to neighbors like us who would like to enjoy a little peace and quiet while in our yard or on our deck. We have not complained to date because, within reason, noise generated by kids and animals are an integral part of living in a neighborhood like Stoneleigh. However, you should be aware that, from our perspective, if it were a choice between the Shrivers and their dogs and the complaining neighbors who live behind the Shrivers, we would strongly prefer the Shrivers and their dogs. They are quiet and considerate neighbors and have never disturbed us in all the years we have been in the neighborhood.

MICROFILMED

We support Mr. and Mrs. Shriver's application. We do not

PETITIONER'S EXHIBIT

Ernest E. Cooke Jr.
7108 Sheffield Road
Baltimore, Maryland 21212

To Whom It May Concern.

For thirty years I have lived in the Stoneleigh area and on the same street as the Shrivers.

During that time the Shrivers have raised show dogs. I have never been bothered or offended by these animals. I would never object for them to have a Hobby Kennel License.

Sincerely,
Virginia S. Cooke

March 6 1989

RALPH E. PETERS
7106 SHEFFIELD ROAD
BALTIMORE, MARYLAND 21212

JULY 25, 1988

TO WHOM IT MAY CONCERN:

I am a resident of the Stoneleigh Community and have lived at 7106 Sheffield Road since August 1958.

Paul & Margery Shriver have been our neighbors since 1959 & have kept pug dogs at their house since about 1961. At no time since have these dogs ever caused any concern, noise, odor or bother to me and my family or, to my knowledge, to any of our neighbors. These dogs have never been allowed out of their fenced backyard.

I have always felt comfortable in the fact that, had these dogs been any bother to us, Margery Shriver would have been most responsive to any complaint that might have been made by me & my family or by any of our neighbors.

Ralph E. Peters

PETITIONER'S EXHIBIT 7

March 8, 1989

TO WHOM IT MAY CONCERN:

We have been neighbors of the Shrivers for over twenty years, and during that time have found Margery and Paul to be extremely responsible and caring in all things pertaining to their home and the community of Stoneleigh in which they live.

As neighbors and friends, we have always been aware of the dogs they own. However, unless you were informed of the presence of the dogs, you might never know of their existence.

The dogs are rarely seen outside of the yard; they are kept in a very private and structured way. If and when the dogs bark, they are quieted immediately, and their play time outside is extremely brief.

The area in which these dogs are kept is clean and cared for in a meticulous fashion.

The dogs have never been a cause of inconvenience or nuisance to anyone in our neighborhood.

The residents of Sheffield Road are very fortunate in having the Shrivers among their neighbors.

Sincerely yours,
Frederick E. Winter
Frederick E. Winter
Lois W. Winter
Lois W. Winter

7101 Sheffield Road
Baltimore, Maryland 21212

PETITIONER'S EXHIBIT 8

SUBJECT: ZONING

7108 Sheffield Road
Baltimore, Maryland 21212
March 8, 1989

To Whom It May Concern:

Re: Hobby Kennel
7105 Sheffield Road
Mr. and Mrs. Paul L. Shriver

As residents of Sheffield Road for the past 15 years, directly across the street from the Shriver's house, we can honestly say there has never been one instance when we have been bothered by barking dogs or have even known dogs existed across the street.

The Shriver's have always been considerate and caring neighbors who we personally feel should be permitted to enjoy their hobby in their Sheffield Road home.

If the main issue is whether the existance of a kennel will create a neighborhood disturbance the answer in our opinion is an unequivocal NO.

If we can be of any further assistance we can be reached at 821-5896 in the evening or 821-8100 during the day.

Sincerely,
Judith A. Deakins
Judith A. Deakins

Robert T. Deakins
Robert T. Deakins

JAD:RTD:jad

PETITIONER'S EXHIBIT 9

JAMES P. WELLER, D.D.S.
204 E. JOPPA ROAD SUITE L-10
HAMPTON HOUSE APARTMENTS
TOWSON, MARYLAND 21204
OFFICE: 828-1575 HOME: 321-8567

TO WHOM IT MAY CONCERN,

I HAVE BEEN A RESIDENT ON SHEFFIELD RD FOR 16 YRS, AND A MEMBER OF THE STONELEIGH COMMUNITY ASS. FOR THE SAME AMOUNT OF TIME. MY HOME IS FOUR DOORS AWAY FROM THE SHRIVER HOME. I HAVE NEVER HEARD ANY COMPLAINTS ABOUT THESE SHRIVER'S HOBBY FROM ANY NEIGHBORS AND IN FACT FIND IT VERY EXCITING TO KNOW A PERSON WHO IS NATIONALLY KNOWN AS A FINE DOG BREEDER.

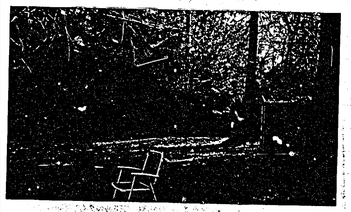
MY CHILDREN HAVE BEEN TO THE SHRIVER HOUSE MANY TIMES TO PLAY WITH THE DOGS & WITH PUPPIES BEING BORN. SHE HAS BEEN AVAILABLE AT ANY TIME TO HELP US WITH OUR DOG & WITH MANY OF THE OTHER DOGS ON THE BLOCK.

I SAW NO OBJECTION WHATSOEVER TO A CHANGE IN ZONING TO ALLOW HER TO KEEP HER HOBBY OF 30 YRS.

DR James P. Weller

PETITIONER'S EXHIBIT 10

Petitioner Exhibits 11



A

B

C

P.E. #13A

P.E. #13B

P.E. #12

March 16, 1989

To Whom It May Concern,

I was in court last Friday, but I am unable to attend the zoning hearing on March 17. I have lived at 7111 Sheffield Road since March 17, 1939 and have probably lived here longer than any other neighbor on Oxford or Sheffield Roads. I have known the Shrivers since they moved here almost thirty years ago. They and their dogs are very, very nice neighbors and are a great asset to the street.

I live three houses from the Shrivers and never hear the dogs and only see them when I talk with the Shrivers or one of their immediate neighbors. The Smith children make far more noise than the dogs. The Shriver dogs never run in the street. If I did not already know it, I would never know that the Shrivers had dogs.

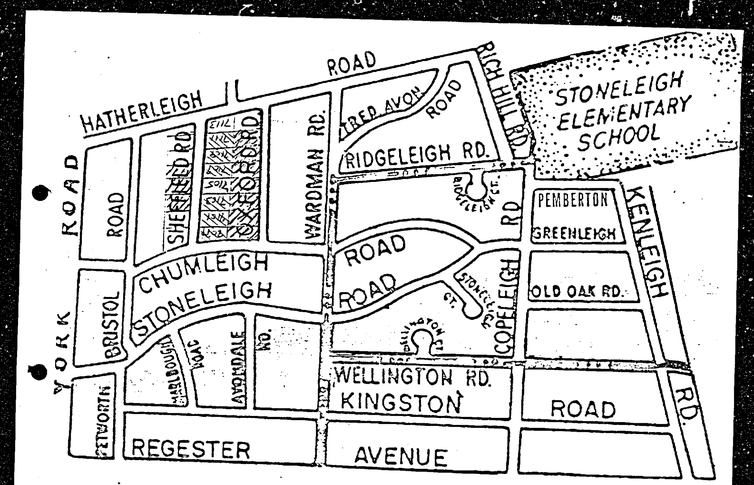
When my family moved here in 1939, three families had kennel operations on Oxford Road. Irish setters were raised at 7110 Oxford, minks were raised at 7108 Oxford, and Pomeranians were raised at 7109 Oxford. The last continued into the Sixties, after the zoning laws came into effect. I can remember the family who lived at Oxford and Litherleigh always complaining to my late husband about the Pomeranians and the mess. Unlike these people, the Shrivers raise their dogs strictly as a hobby and for the enjoyment of it. The dogs pose no threat to either street involved. The Smith family on Oxford Road have no reason to complain about the Shriver dogs.

Sincerely yours,

Jeanne H. Ward

Jeanne H. Ward
(Mrs. William E Ward)

PETITIONER'S EXHIBIT 13



PROTESTANT'S EXHIBIT 1

March 16, 1989

To whom it may concern:

I have lived on Sheffield Road from 1956 until 1964 and from 1967 to the present time. During the intervening years, I was very often at my grandfather's house (where I have and now live). I grew up with the Shriver children and am very familiar with the family and their dogs. During the thirty-two years I have lived at 711 Sheffield Road, the Shriver dogs have never presented any problems to any of the neighbors.

Most of the time, the dogs are kept inside. They are usually outside only in the late afternoon. There is none of the constant barking that I hear from other dogs in the neighborhood. They are much quieter than the Smith children (of whom I and other neighbors complain about).

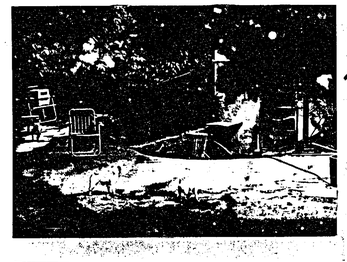
The yard is fenced and the dogs are never allowed to run loose. I can never remember any of the Shriver dogs running loose in the street. I wish I could say this about other dogs around here. The Smith children running in the street and ignoring traffic presents more of a hazard and community nuisance than do these dogs. In addition to a wire fence around the yard there is a stockade-type fence across the back. The only way anybody in the Smith household would see or notice the dogs would be stand on a ladder and look over the fence.

Around the neighborhood, the Smiths have insinuated that dog feces from the Shriver dogs has produced a bad smell in the neighborhood and attracted rats. Neither is true. There is very lit le mess in the yard from the dogs. When I was younger, I played in the yard with the Shriver children. Now the grandchildren and others on the street play in this yard. Such would not be the case if the yard was littered with as much mess from the dogs as the Smiths try to have people believe. I have never noticed any smell from the Shriver yard. I have also never seen any rats or know of any neighbor on Oxford or Sheffield Roads who have seen any rats. According to articles in past issues of the community newsletter, the minor problem with rats is due to people not handling their trash properly.

Raising and showing dogs is strictly a hobby with the Shrivers, unlike several commercial enterprises which existed in Stoneleigh. On Oxford Road alone there have been three commercial kennels that I remember or have heard about when I was younger. One was still in existence after

PETITIONER'S EXHIBIT 14

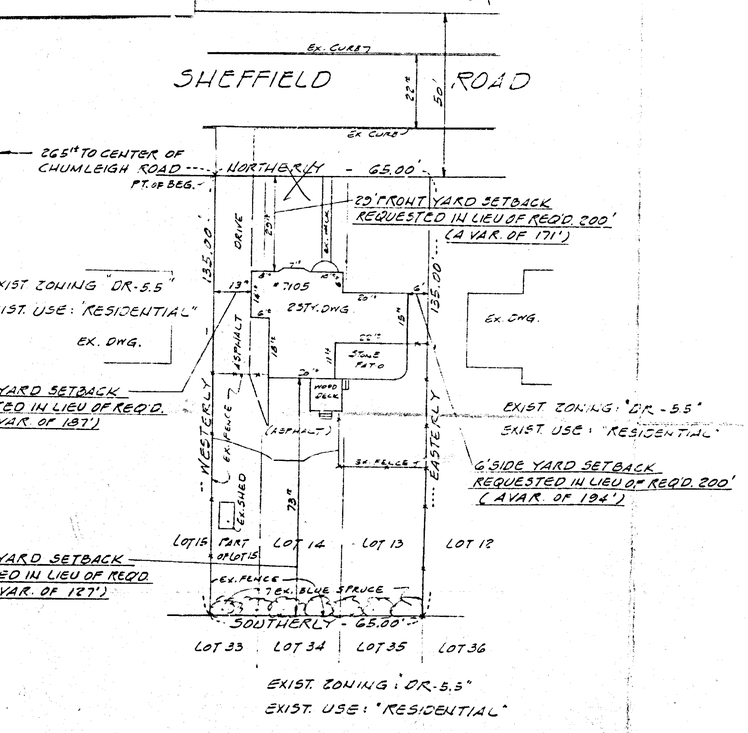
PROTESTANT'S EXHIBIT 2



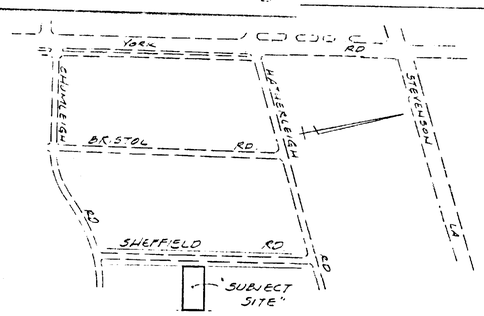
A

B

EXIST ZONING: "DR-5.5"
EXIST. USE: "RESIDENTIAL"



EXIST. ZONING: "DR-5.5"
EXIST. USE: "RESIDENTIAL"



LOCATION PLAN
SCALE: 1" = 200'

GENERAL NOTES

1. AREA OF PROPERTY = 8,775 S.F. (0.20 AC.)
2. EXISTING ZONING OF PROPERTY = "DR 5.5"
3. EXISTING USE OF PROPERTY = "RESIDENTIAL"
4. PROPOSED ZONING OF PROPERTY = "DR 5.5"
5. PROPOSED USE OF PROPERTY = "RESIDENTIAL & DOG KENNEL"
6. TOTAL AREA FOR KENNEL USE:
   A. BUILDING AREA & RUNS = 1100 SF + 3900 SF = 5,000 SF
7. REQUIRED OFF-STREET PARKING = 0
8. PETITIONER IS REQUESTING A SPECIAL EXCEPTION TO PERMIT A DOG (HOBBY) KENNEL IN A "DR 5.5" ZONE.
9. PETITIONER REQUESTING A VARIANCE TO SECTION 421.1 OF THE ZONING REGULATIONS TO PERMIT THE FOLLOWING:
   A. 23' FRONT SETBACK IN LIEU OF REQUIRED 200' (A VAR. OF 177')
   B. 6' & 13' SIDE YARD SETBACKS IN LIEU OF REQ'D. 200' (A VAR. OF 194' & 187')
   C. 73' REAR YARD SETBACK IN LIEU OF REQ'D. 200' (A VAR. OF 127')
10. PROPERTY SERVED BY PUBLIC UTILITIES.

J Sigler

PLAT TO ACCOMPANY PETITION FOR

SPECIAL EXCEPTION & YARD VARIANCES

#7105 SHEFFIELD ROAD

#276

ELECT DIST 9 — BALTIMORE CO., MD.
SCALE: 1" = 20' — DEC. 1988

PAUL LEE ENGINEERING, INC.
304 W. PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204

88-070

Maryland Rule of Civil Procedure, Rule 8-602(a), if the style and content of a brief is not complied with, the appeal may be dismissed. Likewise, Rule 2-322(e) provides that if Petitioners/Defendants' Memorandum is not in compliance with Rule 2-551(c), it may be stricken.

Petitioners/ Defendants' Memorandum should be stricken for failure to file their requisite number of copies (to which they were specifically notified by this Court's November 19, 1990 notice) and for failure to conform to mandated content requirements. Whil Petitioners/ Defendants' attempt to cure the number of copies deficiency approximately two (2) weeks late, they claim they have no requirement to state the questions that Respondents/Plaintiffs are to dispute and that this panel is to review and decide. Once Petitioners/Defendants' Memorandum is stricken, pursuant to Rule 2-551(g), their requested review should be dismissed.

Respectfully submitted,

J. SHAWN ALCARESE

Jensen, Morrow & Hassani, P.A.
Suite 606
22 West Pennsylvania Avenue
Towson, Maryland 21204
(301) 339-7313

Attorney for
Respondents/Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of January, 1991, a true and correct copy of the foregoing Reply to Response to Motion to Strike and Dismiss was mailed to:

S. Eric DiNenna
DiNenna, Mann & Breschi
409 Washington Avenue, Suite 600
Towson, MD 21204

Arnold G. Foreman, Chairman
County Board of Appeals
Room 315, County Office Building
111 Ch sapeake Avenue
Towson, MD 21204

J. SHAWN ALCARESE

12-6-90

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8th ELECTION DISTRICT 4th COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY CASE NO.: 90-CG-2543
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	

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

MEMORANDUM OF PAUL SHRIVER, ET UX., PETITIONERS/DEFENDANTS ON IN BANC REVIEW

The facts of this action so far as are necessary for determination of the legal question presented, are as follows:

This is a zoning matter wherein the Defendants/Petitioners requested a special exception to permit a dog kennel on the subject property and variances to permit a front yard setback of 29 feet; side yard setbacks of six feet and thirteen feet; rear yard setback of seventy-three feet, all in lieu of the required 100 feet.

A hearing on this matter was held before The Honorable J. Robert Haines, Zoning Commissioner for Baltimore County, on March 10, 1989 and continued on March 17, 1989. After review and consideration of the evidence and testimony presented on behalf of both Petitioners and the Protestants, the Commissioner found that the proposed use would be conducted without any detriment to the surrounding community and that the requirements of Section 502.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) had been met. By Opinion and Order dated August 31,

MICROFILMED

1989, the Commissioner granted a request for relief with six restrictions pertaining to the operation of the kennel (see attachment A). These restrictions were modified by Amended Order dated September 13, 1989 (see attachment B).

On October 2, 1989, Petitioners/Defendants filed an Appeal to the County Board of Appeals as to the special exception portion of the Zoning Commissioner's Order and Amendment thereto, specifically as to the reasonableness of the Zoning Commissioner's restrictions numbers 2 and 4 (see attachment C).

The Board heard the case in its entirety, taking testimony from both sides, but limited the issues to those specified in Petitioners' Appeal. The Board made no comment on the granting of the special exception or the other restrictions imposed by the Zoning Commissioner's Decision and Order. Based upon the evidence presented, the Board, by Opinion and Order dated May 25, 1990, vacated restrictions numbers 2 and 4 and imposed certain other restrictions upon Petitioners' operation of the kennel. (See attachment D).

On June 25, 1990, Protestants filed an Appeal from the Board's Decision to the Circuit Court for Baltimore County on the grounds that the Board erred as a matter of law in limiting its review to those issues noted in Petitioners' Appeal and failing to rule on the propriety of the granting of Petitioners' request for special exception and variance.

Upon review of the Memorandum submitted by the parties and oral argument, on November 7, 1990, The Honorable Robert Cahill found that the Board's hearing was a de novo hearing and

therefore consideration should have been given to the propriety of the granting of the special exception and variances. Judge Cahill remanded the matter back to the Board for further findings. Petitioners/Defendants' counsel argued to the contrary asserting that the issue of the special exception and variances were not before the Board and thus preserved for in banc review the issue of what matters were encompassed in the Boards de novo hearing.

ARGUMENT

Protestants/Plaintiffs argue that the appeal before the Board of Appeals is a de novo appeal and therefore the matter is tried anew as if no issues had been decided. Petitioners relied upon the Court of Special Appeals' Decision of Boehm v. Anne Arundel County, 54 Md. App. 497, 459 A.2d 590 (1983). In Boehm v. Anne Arundel County, the Court had before it an appeal from the Zoning Board's reversal of the Zoning Office's granting of a non-conforming use for a landfill. This case is distinguishable from the case at hand because the entire matter, the granting of the non-conforming use, was at issue on appeal before the Board. Appellants contended that the Board's review was improper as it failed to give deference to the Zoning Office's decision granting the non-conforming use. In addressing this issue, the Court noted that pursuant to the Anne Arundel County Charter, Section 602(a) and 602(d) appeals relating to zoning "shall be heard in the first instance by the Zoning Hearing Office and on appeal, de novo, by the County Board of Appeals." Section 603 of the Anne Arundel County charter provided in

pertinent part that: "Any decision by the County Board of Appeals shall be made after notice and hearing de novo upon the issues before said Board " (Emphasis added). The Court found that the de novo hearing constituted an entirely new hearing at which time all aspects of the case should be heard anew on the issue of the non-conforming use and the Board was not bound by the earlier decision of the Zoning Office in that regard.

Plaintiffs relied upon 2 Am. Jur. 2d, Administrative Law, Section 698 (1962) and its exposition on de novo review. Within that text, the scope of de novo reviews is qualified as follows:

> A trial de novo or de novo hearing of the matter under "review" may be new and different from the trial or hearing before the administrative agency in respect of one or more, or all of the following: evidence heard or facts considered, especially where the administrative agency did not afford a hearing; issues raised; findings made...."
> (emphasis added)

Quoted in Boehm v. Anne Arundel County, 54 Md. App. 497, 508 (1983).

In the case sub judice, pursuant to Baltimore County Zoning Regulations, Section 502.2, the Zoning Commissioner or the Board of Zoning Appeals is authorized to impose such "conditions, restrictions, regulations, as may be deemed necessary and advisable for the protection of surrounding neighboring properties."

The Baltimore County's Charter Section 603 governing the rules of practice and procedure for the County Board of Appeals and as included as Appendix C of the Baltimore County Zoning Regulations Section 603, similar to the Anne Arundel County Charter states that "all decisions by the County Board of

Appeals shall be made after notice and opportunity for a hearing de novo upon the issues before said Board."

Petitioners/Defendants took exception to the restrictions imposed by the Baltimore County Zoning Commissioner pursuant to Section 502.2 of the Regulations and filed an Appeal as to reasonableness of those restrictions. The Appellate review by the County Board of Appeals then becomes a matter de novo, whereby an entirely new hearing is held upon those issues raised.

The language of the Baltimore County charter is clear that only those issues raised on appeal are tried de novo. Neither Petitioners nor Respondents raised the issue of the propriety of the granting of the special exception and variances and therefore it was outside of the Board's authority to make such a determination.

Where only part of the decision rendered by the tribunal below is appealed from, the scope of appellate review is ordinarily limited to that point and is not extended to that part not opposed from 5 Am Jur 2d. Appeal & Error, Section 23. It is not incumbent upon the Petitioners to prove again that which has already been approved and which has not been challenged on appeal.

The Court errred in ruling otherwise and in remanding the matter back to the County Board of Appeals for further hearing.

WHEREFORE, Petitioners/Defendants pray that this Honorable Court affirm the Board's decision as it was based on substantial evidence and that there is no grounds for reversal.

/S/
S. ERIC DINENNA, P.A.

Points and Authorities

1. Boehm v. Anne Arundel County, 54 Md. App 497, 459 A.2d 590 (1983)
2. 2 Am. Jur. 2d. Administrative Law, Section 698 (1962)
3. Baltimore County Zoning Regulations, Section 502.2
4. Baltimore County Zoning Regulations, Section 603, Appendix C
5. 5 Am. Jur. 2d. Appeal and Error, Section 23 (1962)

/S/
S. ERIC DINENNA, P.A.
409 Washington Avenue
Suite 600
Towson, Maryland 21204
(301) 296-6820

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 6th day of December, 1990, a copy of the aforegoing Memorandum of Paul Shriver, et ux., Petitioners/Defendants on in Banc Review was mailed, postage prepaid, to J. Shawn Alcarese, Esquire, Jensen, Morrow & Hassani, P.A., Suite 606, 22 West Pennsylvania Avenue, Towson, Maryland 21204, attorneys for Plaintiffs/Appellees and the County Board of Appeals, Room 315, County Office Building, 111 Chesapeake Avenue, Towson, Maryland 21204.

/S/
S. ERIC DINENNA, P.A.

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8th ELECTION DISTRICT 4th COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY CASE NO.: 90-CG-2543
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	

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

MEMORANDUM IN SUPPORT OF THE RESPONSE TO THE MOTION TO DISMISS

FACTS

Appellants, Paul and Margery Shriver, applied for a Special Exception to permit a dog kennel on their property and variances regarding the side and front yard setbacks. The Zoning Commissioner granted the Special Exception and Variances subject to certain restrictions concerning the operation of the kennel. Appellants took an appeal to the Board of Appeals as to certain restrictions only. Appellee then filed an appeal to the Circuit Court on the grounds that the Board improperly reviewed only those issues raised on appeal. The Honorable Judge Robert Cahill ruled that the appeal before the Board was de novo and that the entire matter had to be heard anew, including the portions not appealed from. Judge Cahill remanded the matter back to the Board for further findings.

The Appellants reserved this issue for in banc review, properly filed a notice for review and Appellees have now filed a Motion to Dismiss.

ARGUMENT

The requirement of proceeding by exception was imposed as a condition for reservation of points for consideration in banc, by former Rule 510(b). However, the Rules Committee of Maryland revised Rule 510 so that the procedure for taking an in banc appeal would closely parallel the procedure for taking an appeal to the Court of Special Appeals. Rule 2-551 now provides in pertinent part:

> When review by a Court in banc is permitted by the Maryland Constitution, a party may have a judgment or determination of any point or question reviewed by a Court in banc by filing a notice for in banc review. Issues are reserved for in banc review by making an objection in the manner set forth in Rules 2-517 and 2-520.

This Rule essentially does away with the necessity of making exceptions in order to preserve the issue for in banc review. Montgomery County v. McNeece, 311 Md. 184, 533 A.2d 671 (1987). The Court of Appeals has suggested that any duly noted objection would be the equivalent of the reservation referred to in Article IV, Section 22 of the Maryland Constitution. Washabaugh v. Washabaugh, 285 Md. 393, 399 n.6, 404 A.2d 1027, 1030 n.6 (1979). Rule 2-517(d) of the Maryland Rules of Procedure governing the method for making objections provides that a formal exception to a ruling or order of the Court is not necessary.

The issue before Judge Cahill on November 7, 1990 was the scope of the de novo review from the decision of the Board of Appeals. Counsel for Appellants argued vehemently in opposition

to Appellee's counsels legal contentions that the scope of the de novo appeal included all of the issues of the matter, even those not mentioned in the Petition on Appeal. Appellants made it known on the record that they were in opposition to and disagreed with the Judges determination. Appellant has properly reserved the issue for in banc review as required by Article IV, Section 22 of the Maryland Constitution.

WHEREFORE, Appellants respectfully request that the Motion to Dismiss be denied.

/S/
S. ERIC DINENNA
DINENNA, MANN & BRESCHI
409 Washington Avenue, Suite 600
Towson, Maryland 21204
(301) 296-6820
Attorneys for Defendants/Appellants

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 4 day of December, 1990, a copy of the foregoing Memorandum in Support of the Response to the Motion to Dismiss was mailed, postage prepaid to J. Shawn Alcarese, Esquire, Jensen, Morrow & Hassani, P.A., Suite 606, 22 West Pennsylvania Avenue, Towson, Maryland 21204, attorneys for Plaintiffs/Appellees and the County Board of Appeals, Room 315, County Office Building, 111 Chesapeake Avenue, Towson, Maryland 21204.

/S/
S. ERIC DINENNA

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8th ELECTION DISTRICT 4th COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY CASE NO.: 90-CG-2543
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	

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

RESPONSE TO MOTION TO DISMISS

Paul Shriver and Margery Shriver, Defendants and Appellants herein, by and through their attorneys, S. Eric DiNenna and DiNenna, Mann & Breschi, respond to Plaintiff's/Appellee's Motion to Dismiss the In Banc Review, and state:

1. That this Honorable Court has jurisdiction to review in banc the Order of the Court entered on November 7, 1990 as the Defendants/Appellants properly reserved this matter for review in accordance with Maryland Rules 2-551 and 2-517.

WHEREFORE, Defendants/Appellants pray that the Plaintiff's/Appellee's Motion to Dismiss the In Banc Review be denied.

/S/
S. ERIC DINENNA
DINENNA, MANN & BRESCHI
409 Washington Avenue, Suite 600
Towson, Maryland 21204
(301) 296-6820
Attorneys for Defendants/Appellants

MICROFILMED

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 4 day of December, 1990, a copy of the aforegoing Response to Motion to Dismiss was mailed, postage prepaid, to J. Shawn Alcarese, Esquire, Jensen, Morrow & Hassani, P.A., Suite 606, 22 West Pennsylvania Avenue, Towson, Maryland 21204, attorneys for Plaintiffs/Appellees and the County Board of Appeals, Room 315, County Office Building, 111 Chesapeake Avenue, Towson, Maryland 21204.

/S/
S. ERIC DINENNA

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX. FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' +/- NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	Case No. 90-CG-2543

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

MOTION TO DISMISS

ROBERT and CHARLOTTE SMITH, Plaintiffs and Appellees herein, the Notice In Banc Review filed by Defendants and Appellants herein be dismissed, and for reasons say:

1. That there is no jurisdiction for this Court to convene an in banc review as Defendants/Appellants herein, Paul and Margery Shriver, failed to timely reserve this matter for such review.

WHEREFORE, Plaintiffs/Appellees pray that the Defendants/Apepllants' Notice In Banc Review be dismissed.

J. SHAWN ALCARESE
Jensen, Morrow & Hassani, P.A.
Suite 606
22 West Pennsylvania Avenue
Towson, Maryland 21204
(301) 339-7313
Attorney for Plaintiffs/Appellees

90 NOV 28 PM 12:03
MICROFILMED

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27 day of November, 1990, a true and correct copy of the foregoing Motion to Dismiss was mailed to:

S. Eric DiNenna
DiNenna, Mann & Breschi
409 Washington Avenue, Suite 600
Towson, MD 21204

Arnold G. Foreman, Chairman
County Board of Appeals
Room 315, County Office Building
111 Chesapeake Avenue
Towson, MD 21204

J. SHAWN ALCARESE

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX. FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' +/- NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	Case No. 90-CG-2543

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

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

I. FACTS

Defendants and Appellants herein, Paul and Margery Shriver, desirous of establishing a dog kennel in the heart of the residential community of Stoneleigh, applied for zoning special exception and variances. Following a hearing before the Zoning Commissioner of Baltimore County, Defendants/Appellants appealed to the County Board of Appeals. The Board of Appeals, at Defendants/Appellants' urging, failed and refused to consider the matter de novo as mandated by law, but rather considered and revised only those portions of the matter that counsel for Defendants/Appellants' requested them to consider. On appeal to the Circuit Court for Baltimore County, Judge Cahill, on November 7, 1990, ruled that any consideration by the Board of Appeals is de novo and that the entire matter must be heard anew,

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as if for the first time, and reversed and remanded this matter to that administrative body.

Defendants/Appellants made no effort whatsoever to reserve, on the record, on November 7, 1990, the question or point for this tribunal to consider, as is required by the Maryland Constitution.

II. ARGUMENT

The Constitution of Maryland, Art. IV § 22, provides in its entirety:

Section 22. Reservation of points or questions for consideration by court en banc.

Where any Term is held, or trial conducted by less than the whole number of said Circuit Court judges, upon the decision or determination of any point, or question by the Court, it shall be competent to the party against whom the ruling or decision is made, upon motion, to have the point, or question reserved for the consideration of the three Judges of the Circuit, who shall constitute a court en banc for such purpose; and the motion for such reservation shall be entered of record, during the sitting, at which such decision may be made; and the several Circuit Courts shall regulate, by rules, the mode and manner of presenting such points, or questions to the court en banc, and the decision of the said Court en banc shall be the effective decision in the premises, and conclusive, as against the party, at whose motion said points, or questions were reserved; but such decision en banc shall not preclude the right of Appeal, or writ of error to the adverse party, in those cases, civil or criminal, in which appeal, or writ of error to the court of Appeals may be allowed by Law. The right of having questions reserved shall not, however, apply to trials of Appeals from judgments of the District Court, nor to criminal cases below the grade of felony, except when the punishment is confinement in the Penitentiary; and this Section shall

be subject to such provisions as may hereafter be made by Law. (1977, ch 681, ratified Nov. 7, 1978.)

By the clear terms of the above constitutional provision, the point or question the Defendants/Appellants' wish to have this tribunal consider must have been reserved for consideration of the three Judges of the Circuit "...during the sitting, at which such decision may be made;..."

The first case in Maryland to address what was meant by "during the sitting" was Costigin v. Bond, 65 Md 122, 3 A. 28 (1886), which held that sitting meant the day on which the trial court rendered the questioned ruling. That case has been followed by Sheeler v. Handelman, 212 Md 152, 129 A.2d 78 (1957) which held that the Baltimore County Circuit Court did not have power to sit as a court en banc under § 22 of the State Constitution because, inter alia, no motion for reservation of points or questions was entered on the day of the rulings of the adverse decision, citing Costigin, supra. That case was then followed by State Roads Commission v. Smith, 224 Md 537, 168 A.2d 705 (1961), which, in citing the above two cases, held that where a party failed to reserve a point or question for determination by the court en banc during the day on which the adverse ruling was made, the en banc court was without jurisdiction. The case of Washabaugh v. Washabaugh, 285 Md 393, 404 A.2d 1027 (1979), citing the above cases, also acknowledged that Art. IV, § 22 of the Maryland Constitution required a reservation of points or questions on the record during the day during

which the Circuit Court renders its determination. Finally, Judge Eldridge, in a concurring opinion in Montgomery County v. McNeece, 311 Md 194, 533 A.2d 671 (1987), noted that the pertinent language of Art IV, §22 of the Maryland Constitution is that a motion for reservation of the points or questions for consideration by a court sitting en banc be made during the sitting at which such decision is made and that the Costigin interpretation of §22 has been consistently recognized and adhered to by the General Assembly and the Court of Appeals.

While Defendants/Appellants' may have filed their "notice" for en banc review within the ten (10) day period as provided by Md.R.Civ.P. Rule 2.551(b), they failed to preserve the jurisdiction of the court to sit as a court en banc by failing to properly reserve the matter, on November 7, 1990, as required by the Constitution of Maryland, Art IV, §22.

Respectfully submitted,

J. SHAWN ALCARESE
Jensen, Morrow & Hassani, P.A.
Suite 606
22 West Pennsylvania Avenue
Towson, Maryland 21204
(301) 339-7313

Attorney for Plaintiffs/Appellees

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17 day of November, 1990, a true and correct copy of the foregoing Memorandum in Support of Motion to Dismiss was mailed to:

S. Eric DiNenna
DiNenna, Mann & Breschi
409 Washington Avenue, Suite 600
Towson, MD 21204

Arnold G. Foreman, Chairman
County Board of Appeals
Room 315, County Office Building
111 Chesapeake Avenue
Towson, MD 21204

J. SHAWN ALCARESE

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265'± NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8th ELECTION DISTRICT 4th COUNCILMANIC DISTRICT	*	IN THE
	*	CIRCUIT COURT
	*	FOR
	*	BALTIMORE COUNTY
	*	CASE NO.: 90-CG-2543
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	

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

NOTICE IN BANC REVIEW

By Paul Shriver and Margery Shriver, Defendants.

Clerk:

Enter a review by court in banc of the judgment entered in this case on November 7, 1990.

S. ERIC DINENNA
DINENNA, MANN & BRESCHI
409 Washington Avenue, Suite 600
Towson, Maryland 21204
(301) 296-6820

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT on this 16 day of November, 1990, a copy of the aforegoing Notice in Banc Review was mailed, postage prepaid to Shawn Alcarese, Esquire, Jensen, Morrow and Hassani, P.A., 22 W. Pennsylvania Avenue, Suite 606, Towson, Maryland 21204, counsel for Plaintiffs and Arnold G. Foreman, Chairman, c/o County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

S. ERIC DINENNA

MICROFILMED

DiNENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DiNENNA, P.A.
JAMES L. MANN, III., P.A.
GEORGE A. BRESCHI, P.A.

GERALDINE A. KLAUBER
FRANCIS X. BORGERDING, JR.

SUITE 600
MERCANTILE-TOWSON BUILDING
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

(301) 296-6820
TELEFAX (301) 296-6884

November 14, 1990

Clerk
Circuit Court for Baltimore County
County Courts Building
P. O. Box 6754
Towson, Maryland 21285-6754

RE: In the Matter of the Application of Paul Shriver, et ux for a Special Exception, etc.
Case No.: 90-CG-2543

Dear Clerk:

Enclosed herewith for filing please find the Notice in Banc Review regarding the above-captioned matter. Thank you.

Thank you.

Very truly yours,

S. ERIC DiNENNA

SED:bjk
Enclosure
cc: Shawn Alcarese, Esquire
Arnold G. Foreman, Chairman

RECEIVED
COUNTY BOARD OF APPEALS
90 NOV 16 PM 5:47

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IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX. FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' +/- NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	IN THE
	*	CIRCUIT COURT
	*	FOR
	*	BALTIMORE COUNTY
	*	Case No.: 82/143/90-CG-2543
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	

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

MEMORANDUM OF APPELLEES

Appellees, Paul Shriver, et ux., by and through their attorneys, S. Eric DiNenna and DiNenna, Mann & Breschi, pursuant to Maryland Rule B-12 of the Maryland Rules of Civil Procedure, file this Memorandum of Law in response to Appellant's Appeal and state:

Facts:

Appellees are property owners of the subject property known as 7105 Sheffield Road, which consists of 8,775 square feet and is zoned DR 5.5. Appellees purchased the property in 1959 and have pursued their hobby of breeding pug dogs since 1961. (T - p. 20). Since 1961 no complaints were filed regarding Appellees pursuit of their hobby until the alleged Appellants, Robert and Charlotte Smith, filed a complaint with the Baltimore County authorities approximately 2-1/2 years ago.

Appellees applied for Special Exception to permit a dog kennel on the property and variance to permit a front yard set back of 29 feet, side yard set back of 6 feet and 13 feet and a

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rear yard set back of 73 feet in lieu of the required 200 feet. On October 31, 1989, the Zoning Commissioner for Baltimore County granted the Special Exception and granted variances subject to certain restrictions. By Amended Order of September 13, 1989 two of the restrictions were merged as Restriction No. 2. (Order of 10/31/89 and Amended Order of 3/13/89 attached hereto as Exhibits 1 and 1a and made a part hereof).

Appellees appealed two of the imposed restrictions, specifically Restriction No. 2 which limited Appellees to five (5) pug dogs and one (1) household pet with Appellees having until January 1, 1991 to reduce the number of dogs to five (5). Appellees also appealed Restriction No. 4 which prohibits the Appellees from having more than three (3) dogs outside on the premises at any one time. Protestants did not file an appeal as to the granting of the variance or the imposed restrictions.

On May 8, 1990, the County Board of Appeals of Baltimore County held a hearing de novo to decide the reasonableness of the restrictions imposed by the Zoning Commissioner. The Board made no comment on the granting of the special exception or the other restrictions which were not appealed. Based upon the evidence presented, the Board vacated restrictions number 2 and 4 and imposed new restrictions which limited the operation of the kennel to ten (10) adult Pug dogs and one household pet and further restricted the number of dogs allowed outside at any one time to six (6).

Appellees have been breeding Pug dogs for over 29 years and Mrs. Shriver is one of the leading breeders in the country. (T

- p. 19). Mrs. Shriver's breeding and showing of these dogs is strictly a hobby and is in no way a commercial pursuit. (T - p.20) No other dogs are boarded or kenneled on the property and many of the dogs are either kept by the Shrivers for breeding purposes or are given away. (T - p.35)

The Pug is a very small dog which prefers to remain in doors. (T - p. 22) Appellees, of course, do let the dogs out in the yard in order to exercise and defecate, but attend to the dogs and immediately clean-up after them. (T - p. 41) Neighbors of the Appellees, including one man who has lived there for 42 years, testified that the smell and noise created by the dogs was slight and nothing out of the ordinary. (T - p. 65-66; T - p. 63-64) Three of the Appellee's immediate neighbors testified that they did not feel that the breeding operation had presented or would present a detriment to the health, safety and general welfare of the neighboring community.

Argument

Appellants contend that the Board of Appeals erred as a matter of law in restricting its consideration to the restrictions from which Appellees took the Appeal. Appellants assert that since the Appeal before the Board was "de novo" the Board must hear all aspects of the case again and render a decision regarding the granting of the Special Exception and variances. However, the scope of appellate review is generally limited to matters complained of or points raised in the appeal. Where only part of the decision rendered by the tribunal below was appealed from, the scope of appellate review is ordinarily

limited to that point and is not extended to that part not appealed from. 5 Am. Jur. 2d. Appeal and Error, Section 23. The only issues open for review in an appellate Court are those mentioned in the requested Appeal Order. Carter v. State, 286 Md. 629 (1979) Even a review de novo is confined to that part of the case to which the decision appealed from refers. The de novo hearing is in contrast to a hearing on the record and parties are free to introduce new evidence in testimony at the appeal. Therefore, the Board was only concerned with the issues of the two (2) restrictions and the reasonableness of the terms contained therein. The Board was not required to find that the Appellees/Petitioners had met their burden of proof for the granting of a Special Exception and Variance. If the alleged Appellants had felt that the Appellees/Petitioners had failed to meet their burden of proof to allow the granting of a Special Exception and variance, then the alleged Appellants could have filed an Appeal on those particular issues from the Zoning Commissioner's Order of 10/31/89 but they chose not to do so.

Appellants also contend that the Board, in granting the Special Exception and variance as described and limited, created, a zoning classification not authorized by law. However, as the Board did not consider or rule upon the appropriateness of the granting of the Special Exception and variance, but only the imposed restrictions, this issue is not before this Court. If Appellants had wished to raise the issue of the legality of the granting of the Special Exception and variance, this should have been raised by Appellants on Appeal to the Board of Appeals.

Only questions which were tried and decided in the lower court will be considered on appeal. Casey v. Baltimore, 262 Md. 491 (1971).

In judicial review of the Zoning Board's decision, the question before the Court is generally whether or not the action of the Board is arbitrary and discriminatory or fairly debatable. Stratakis v. Beauchamp, 268 Md. 643 (1973). In order to justify the reversal of an administrative board's decision, the record of the proceedings must show that its action was unsupported by competent, material and substantial evidence. Prince George's County v. Meininger, 264 Md. 148 (1972). The most explicit definition of "substantial evidence" is found in the case of Board of County Commissioners of Prince George's County v. Oak Hill Farms, Inc., 232 Md. 274, 280 (1963), in which the Court stated:

> ...substantial evidence has been held to mean more than a scintilla and with such evidence as a reasonable mind might accept as adequate to support a conclusion... and enough to justify if the trial were to a jury, or refusal to direct a verdict..."

Furthermore, "fairly debatable" can be defined as testimony from which a reasonable mind could come to a different conclusion. In such a matter, the Court will not substitute a judgment for that of an administrative body. Eger v. Stone, 253 Md. 33 (1969).

Appellants contend to the Board's granting the special exception with the modified restrictions was unreasonable, arbitrary, capricious and against the weight of the evidence as to the adverse affect of the health, safety and general welfare

of the surrounding residential community. However, on appeal before the Board, ample testimony was offered to substantiate that the restrictions limiting number of dogs on the property to five (5) was an unreasonable restriction to be placed upon a breeding operation such as the one conducted by appellees. Dr. Sooy, veterinarian and breeder for approximately fifteen (15) years, testified on behalf of the Appellees that a typical number of dogs necessary for a similar breeding operation is approximately 12 to 16 dogs and that the majority of breeding operations comparable to Appellee's were conducted out of the breeder's home. (T - p. 52) Familiar with Appellees' property and the surrounding community, Dr. Sooy testified that in his opinion the existence of 12 to 16 pug dogs on the Appellees' property would not have an adverse effect upon the surrounding residential neighborhood. (T - p. 47)

Appellees presented further testimony before the Board from various neighbors that the existence of the approximately 16 to 24 dogs on the Appellees' property over the years had not been what they considered to be a detriment to the community's health, safety and general welfare. (T - p. 55-57; 63-65)

Pursuant to Baltimore County Zoning Regulations Section 502.2 the Zoning Commissioner or the Board of Zoning Appeals is authorized to impose such "conditions, restrictions, regulations as may be deemed necessary and advisable for the protection of surrounding neighboring properties." Based upon the evidence presented, the Board was authorized to affirm the imposition of the restriction and modify them so as to adequately protect the

environment of the surrounding community without unduly burdening the Appellees.

WHEREFORE, the Board had substantial evidence before it and was not arbitrary and capricious in its finding that the restrictions imposed placed an unreasonable burden upon appellees' breeding operation which had been in existence for over 29 years without any prior difficulties or complaints regarding its operation.

S. ERIC DINENNA
DINENNA, MANN & BRESCHI
409 Washington Avenue, Ste. 600
Towson, Maryland 21204
Attorney for Appellees

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 13 day of September, 1990, a copy of the aforegoing Memorandum of Appellees was mailed, postage prepaid to J. Shawn Alcarese, Esquire, Jensen, Morrow & Hassani, P.A., Suite 606, 22 W. Pennsylvania Avenue, Towson, Maryland 21204; County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

S. ERIC DINENNA

DINENNA, MANN & BRESCHI
ATTORNEYS AT LAW

S. ERIC DINENNA, P.A.
JAMES L. MANN, JR., P.A.
GEORGE A. BRESCHI, P.A.

GERALDINE A. KLAUBER
FRANCIS X. BORGERDING, JR.

SUITE 600
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409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204

(301) 296-6820
TELEFAX (301) 296-6884

September 10, 1990

Clerk
Circuit Court for
Baltimore County
Court House
Towson, Maryland 21204

RE: In The Matter Of The Application
of Paul Shriver, et ux.
Case No.: 82/143/90-CG-2543

Dear Madam Clerk:

Enclosed herewith for filing please find the Memorandum of Appellees. Thank you for your cooperation.

Very truly yours,

GERALDINE A. KLAUBER

GAK:cjc
Enclosure
cc: J. Shawn Alcarese, Esquire
County Board of Appeals

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IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX. FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' +\- NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	IN THE
	*	CIRCUIT COURT
	*	FOR
	*	BALTIMORE COUNTY
	*	Case No. 82/143/90-CG-2543
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	

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

MOTION TO STRIKE AND SUPPLEMENTAL
RESPONSE TO MOTION TO DISMISS

Portestants and Appellants herein, by J. Shawn Alcarese, pursuant to Maryland Rules of Civil Procedure, Rules 2-322 and 2-341(a), moves to strike the Response to Line filed by Paul Shriver, et ux., and further answers their Motion to Dismiss and for reasons says:

1. That Protestants herein timely filed a Notice of Appeal in the above-captioned matter.
2. That named Plaintiffs herein, Robert and Charlotte Smith, et al., were recorded in the Office of the Board of Appeals of Baltimore County as the named Plaintiffs and Appellants herein.
3. That Petitioners/Appellees, and their counsel of record, S. Eric DiNenna, were notified of the named Plaintiffs/Appellants by mailing on June 26, 1990.

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4. That despite this, Petitioners/Appellees seek to dismiss this Appeal based on minor irregularities in the manner of filing.
5. That an Amendment to the pleadings to correct the misnomer was filed with the Court on or about July 12, 1990.
6. That pursuant to Maryland Rules of Civil Procedure, Rule 2-341(a), any Motion to Strike such an Amendment to the pleadings must be made within fifteen (15) days after service of the amendment.
7. That Petitioners/Appellees have not timely complied with Rule 2-341(a) in that, even given the three days mailing time permitted by the Rules of Procedure, Petitioners/Appellees were required to file their Motion to Strike the Amendment on or before July 31, 1990.
8. That Petitioners/Appellees' "Response to Line" was beyond the period afforded by law for the filing of such pleadings.
9. That Petitioners/Appellees' original Motion to Dismiss is without merit in that technical irregularities cannot be made the basis for depriving persons of their opportunity to assert legal rights where, as here, other parties have not been prejudiced. Town of Somerset v. Board, 245 Md. 52 (1966); Board of County Commissioners v. Kines, 239 Md. 119 (1965); Hertelendy v. Montgomery County Board of Appeals, 245 Md. 554 (1967).

10. That Petitioners/Appellees' grounds for dismissing the Appeal are based solely on minor technical irregularities which in no way prejudice them. Protestants/Appellants knew from the prior two administrative proceedings in this matter of the identity and arguments of the named Protestants as well as from the time the Appeal was filed as to who the named Protestants/Appellants were.

Petitioners/Appellees have not been prejudiced in any way by the minor technical irregularities here, nor have they claim 1 any such prejudice.

WHEREFORE, Plaintiffs/Appellants request Petitioners/Appellees' Response to Line be stricken and/or not received and that the.. Motion to Dismiss be denied.

(4
J. Shawn Alcarese

Jensen, Morrow & Hassani,P.A.
Suite 606
22 West Pennsylvania Avenue
Towson, Maryland 21204
(301) 339-7313

Attorney for All Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6 day of August, 1990, a copy of the aforegoing Motion To Strike and Supplemental Response to Motion to Dismiss was mailed to the County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, MD 21204; S. Eric DiNenna, Esquire, 409 Washington Avenue, Suite 600, Towson, MD 21285-0508; Arnold G. Forman, Esquire, c/o County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

(4
J. Shawn Alcarese

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX. FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' +\- NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	Case No. 82/143/90-CG-2543

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

MEMORANDUM OF POINTS AND AUTHORITIES

1. Maryland Rule of Civil Procedure, Rule T-322;
2. Maryland Rule of Civil Procedure, Rule 2-341;
3. Francois v. Alberti Van & Storage Co., Inc., 285 Md. App. 663 (1979);
4. Town of Somerst v. Board, 245 Md. 52 (1966);
5. Board of County Commissioners v. Kines, 239 Md. 119 (1965);
6. Hertelendy v. Montgomery County Board of Appeals, 245 Md. 554 (1967).

(4
J. Shawn Alcarese

Jensen, Morrow & Hassani,P.A.
Suite 606
22 West Pennsylvania Avenue
Towson, Maryland 21204
(301) 339-7313

Attorney for All Protestants

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RECEIVED
COUNTY BOARD OF APPEALS
90 AUG -7 AM 11:07

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6 day of August, 1990, a copy of the aforegoing Memorandum of Points and Authorities was mailed to the County Board of Appeals, Room 315, Countv Office Building, 111 W. Chesapeake Avenue, Towson, MD 21204; S. Eric DiNenna, Esquire, 409 Washington Avenue, Suite 600, Towson, MD 21285-0508; Arnold G. Forman, Esquire, c/o County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

(4
J. Shawn Alcarese

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' +\- NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	CG Doc. No. 82
	*	Folio No. 143
	*	File No. 90-CG-2543
ZONING CASE NO. 89-361-XA	*	* * * * * *

* * * * *

PROCEEDINGS BEFORE THE ZONING COMMISSIONER AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Arnold G. Foreman, Lynn B. Moreland, and Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, and in answer to the Order for Appeal directed against them in this case, herewith return the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Office of the Zoning Commissioner and the Board of Appeals of Baltimore County:

No. R-89-361-XA

January 18, 1989	Petition filed by S. Eric DiNenna, Esquire on behalf of Mr. & Mrs. Paul Shriver for a Special Exception for dog (hobby) kennel.
February 23	Publication in newspaper.
February 21	Certificate of Posting of property.
February 27	Comments of Baltimore County Zoning Plans Advisory Committee.
March 10	Hearing held on Petition by the Zoning Commissioner.

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Paul Shriver, et ux, File No. 90-CG-2543
Case No. 89-361-XA

August 31, 1989	Order of the Zoning Commissioner GRANTING Petition with restrictions.
September 13	Amended Order of the Zoning Commissioner to delete restriction no. 6 and modify restriction no. 2.
October 2	Notice of Appeal received from S. Eric DiNenna, Esquire, Counsel for Petitioners.
May 8	Hearing before the Board of Appeals.
May 25	Opinion and Order of the Board GRANTING the Petition with restrictions.
June 25, 1990	Order for Appeal filed in the Circuit Court for Baltimore County by J. Shawn Alcarese, Esquire on behalf of Mr. and Mrs. Robert Smith, et al, Protestants.
July 5	Petition to accompany appeal filed in the Circuit Court by Mr. Alcarese.
June 26	Certificate of Notice sent to interested parties.
July 24	Transcript of testimony filed.
	Petitioners' Exhibit No. 1A-K (photos of rear yard, front yard, patio, rear of house, interior room with 3 pug dogs and neighboring homes)
	" " " 2A-C (photos of dog & handler at "Group Placing" Bryn Mawr, "Group Placing" Catactin, and "Toy Group" Kennesaw)
	Protestants' Exhibit No. 1-Plat of Stoneleigh
	" " " 2-A-E (photos of pups & terrior in yard)
	" " " 3 -List of Protestants' proffering witnesses (2 pgs.)
July 24	Record of Proceedings filed in the Circuit Court for Baltimore County.

Paul Shriver, et ux, File No. 90-CG-2543
Case No. 89-361-XA

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

Respectfully submitted,

Kathleen C. Bianco
~~Lindalee M. Kuszmaul, Legal Secretary~~,
County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Ave.,
Towson, Maryland 21204 (301) 887-3180

cc: J. Shawn Alcarese, Esquire
Mr. and Mrs. Robert Smith, et al
S. Eric DiNenna, Esquire
Mr. and Mrs. Paul Shriver

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IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX. FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' +\- NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	Case No. 82/143/90-CG-2543

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

RESPONSE TO MOTION TO DISMISS

Robert and Charlotte Smith, Protestants, in the above styled cause by J. Shawn Alcarese, hereby respond to Petitioners/Appellees Motion to Dismiss Appeal as follows:

1. That following the opinion and order of the Board of Appeals for Baltimore County in the above case, the case was appealed to the Circuit Court of Baltimore County with Robert and Charlotte Smith thereafter noted as the named Protestants, Appellants and Plaintiffs; and

2. That Petitioners/Appellees, and their counsel of record, S. Eric DiNenna, were given notice by the County Board of Appeals of the appeal, by mailing on June 26, 1990. Such notice in fact notified all parties to the proceedings of the appeal and of Robert and Charlotte Smith being the Protestants/Appellants/Plaintiffs; and

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3. That Petitioners/Appellees Motion to Dismiss was not mailed until July 5, 1990, nine (9) days after the Notice of Appeal was sent to Appellees and their counsel; and

4. That Robert and Charlotte Smith are real persons, were parties before the administrative body, are adjacent property owners to the Appellees, and are aggrieved by the decision appealed from.

WHERFORE, Appellants request, Appellees Motion to Dismiss be denied.

JS

J. Shawn Alcarese

Jensen, Morrow & Hassani,
Suite 606
22 West Pennsylvania Avenue
Towson, Maryland 21204
(301) 339-7313

Attorney for All Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12 day of July, 1990, a copy of the aforegoing Petition for Appeal was mailed to the County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, MD 21204; S. Eric DiNenna, Esquire, P.O. Box 10508, Towson, MD 21285-0508; Arnold G. Forman, Esquire, c/o County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

JS

J. Shawn Alcarese

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX. FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' +\- NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	Case No. 82/143/90-CG-2543

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

LINE

Mr. Clerk:

Please amend the Notice of Appeal in the above styled cause to note Protestants and Appellants as Robert and Charlotte Smith.

JS

J. Shawn Alcarese

Jensen, Morrow & Hassani,
Suite 606
22 West Pennsylvania Avenue
Towson, Maryland 21204
(301) 339-7313

Attorney for All Protestants

MICROFILMED

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12 day of July, 1990, a copy of the aforegoing Line was mailed to the County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, MD 21204; S. Eric DiNenna, Esquire, P.O. Box 10508, Towson, MD 21285-0508; Arnold G. Forman, Esquire, c/o County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

JS

J. Shawn Alcarese

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX. FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' +\- NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	Case No. 82/143/90-CG-2543

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

PETITION ON APPEAL

Protestants and Appellants herein, by J. Shawn Alcarese, having heretofore timely filed a Notice of Appeal from the Opinion and Order of the County Board of Appeals of Baltimore County (the "Board") of May 25, 1990, files this Petition required by Maryland Rules of Civil Procedure, Rule B2(e) as follows:

1. Protestants specifically appeal from those portions of the Opinion and Order of the Board dated May 25, 1990 wherein:

A. The Board restricted its considerations only to arguments on the restrictions appealed by Mrs. Shriver and thereby affirmatively made "...no comment on the granting of the special exception or other restrictions imposed in the Zoning Commissioner's decision and Order." (p. 4), and;

B. The Board found the restriction of the number of dogs permitted by the Zoning Commissioner to be unreasonable; and

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C. That the Zoning Commissioner's restriction on the number of dogs permitted outdoors at one time; imposed an unreasonable hardship on the Petitioners; and

D. The Board's ordered restriction nos. 1 and 2 in their entirety and the second (2nd) sentence of restriction no. 3.

2. The error(s) committed by the Board are as follows:

A. The creation, without legal authority or precedent, of "...a private, non-commercial dog kennel..." for the benefit of Petitioners; and

B. The failure of the Board to rule on the propriety of the granting of Petitioners' request for special exceptions and variance at the de novo Board hearing; and

C. That the decision of the Board in its entirety and the expanded parameters ordered by it specifically in association with the number of dogs permitted on the premises and permitted outdoors at any time was arbitrary, capricious, unreasonable and directly against the weight of the evidence in relation to the adverse effect upon the health and general welfare of the surrounding residential community; and

D. That the decisions of the Board was made without reasonable consideration to the character of the surrounding area and its suitability for the particular use granted and nonconformity of the use in association with the area.

3. That the relief sought, by Protestants is the denial of Petitioners (herein Appellee's) request, for Special Exception and variance and/or, if granted, restrictions imposed that are more in harmony with the residential nature of the community which do not adversely impact on the health and general welfare of the community.

JS

J. Shawn Alcarese

Jensen, Morrow & Hassani,P.A.
Suite 606
22 West Pennsylvania Avenue
Towson, Maryland 21204
(301) 339-7313

Attorney for All Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5 day of July, 1990, a copy of the aforegoing Petition for Appeal was mailed to the County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, MD 21204; S. Eric DiNenna, Esquire, P.O. Box 10508, Towson, MD 21285-0508; Arnold G. Forman, Esquire, c/o County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

JS

J. Shawn Alcarese

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' + NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	IN THE CIRCUIT COURT FOR BALTIMORE COUNTY
ROBERT AND CHARLOTTE SMITH, ET AL, PLAINTIFFS	*	CG Doc. No. 82
	*	Folio No. 143
	*	File No. 90-CG-2543

* * * * * * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule B-2(d) of the Maryland Rules of Procedure, Arnold G. Foreman, Lynn B. Moreland, and Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, have given notice by mail of the filing of the appeal to the representative of every party to the proceeding before it; namely, J. Shawn Alcarese, Esquire, Jensen, Morrow & Hassani, P.A., 22 W. Pennsylvania Avenue, Suite 606, Towson, Maryland 21204, Counsel for Plaintiffs; Mr. and Mrs. Robert Smith, et al, 7104 Oxford Road, Baltimore, Maryland 21212, Plaintiffs; S. Eric DiNenna, Esquire, DiNenna, Mann & Breschi, P.O. Box 10508, Towson, Maryland 21285-0508, Counsel for Defendants; Mr. and Mrs. Paul Shriver, 7105 Sheffield Road, Baltimore, Maryland 21212, Defendants; and Arnold G. Foreman, Esquire, c/o County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake

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Avenue, Towson, Maryland 21204, a copy of which Notice is attached hereto and prayed that it may be made a part hereof.

Linda Lee M. Kuszmaul
LindaLee M. Kuszmaul, Legal Secretary,
County Board of Appeals, Room 315, County
Office Building, 111 W. Chesapeake Avenue,
Towson, Maryland 21204 (301) 887-3180

I HEREBY CERTIFY that a copy of the aforegoing Certificate of Notice has been mailed to J. Shawn Alcarese, Esquire, Jensen, Morrow & Hassani, P.A., 22 W. Pennsylvania Avenue, Suite 606, Towson, Maryland 21204, Counsel for Plaintiffs; Mr. and Mrs. Robert Smith, et al, 7104 Oxford Road, Baltimore, Maryland 21212, Plaintiffs; S. Eric DiNenna, Esquire, DiNenna, Mann & Breschi, P.O. Box 10508, Towson, Maryland 21285-0508, Counsel for Defendants; Mr. and Mrs. Paul Shriver, 7105 Sheffield Road, Baltimore, Maryland 21212, Defendants; and Arnold G. Foreman, Esquire, c/o County Board of Appeals, Room 315, County Office Building, 111 W. Chesapeake Avenue, Towson, Maryland 21204 on this 26th day of June, 1990.

Linda Lee M. Kuszmaul
LindaLee M. Kuszmaul, Legal Secretary,
County Board of Appeals, Room 315, County
Office Building, 111 W. Chesapeake Avenue,
Towson, Maryland 21204 (301) 887-3180

March 8, 1987

To whom it may concern:

We have resided at 7104 Sheffield Road for 26 years, in proximity to the house occupied by the Shrivers at 7105 Sheffield Road. At no time during this period have we, in any way, been annoyed or disturbed by their dogs. In fact, rarely have the dogs made us aware of their existence.

Kathleen R. Bates
KATHLEEN R. BATES

Lloyd M. Bates
LLOYD M. BATES Sc.D

PETITIONER'S EXHIBIT 3

March 8, 1989

To Whom it may concern:

I, the undersigned, as a resident of 7104 Oxford Road, from 1967 to 1983, had a common property boundary with Paul and Margery Shriver. I was aware of the number of dogs housed there, and declare that they were no more of a disturbance than many other dogs which were allowed to roam the neighborhood.

The owners were concerned with the effect of the dogs on their neighbors and took precautions to minimize their impact. I found the Shriver's to be cooperative and friendly, and testify that the presence of the dogs was only minimally inconvenient to me and my family.

signed: Earl Werle
date: March 9, 1987

PETITIONER'S EXHIBIT 4

Mr. Ernest E. Cooke Jr.
7106 Oxford Road
Baltimore, Maryland 21212

To Whom It May Concern.

For thirty years I have lived in the Stoneleigh area and on the same street as the Shriver.

During that time the Shrivers have raised show dogs. I have never been bothered or offended by these animals. I would never object for them to have a Hobby Kennel License.

Sincerely
Virginia S. Cooke

March 6 1989

MICROFILMED

RALPH E. PETERS
7106 SHEFFIELD ROAD
BALTIMORE, MARYLAND 21212

JULY 25, 1988

To Whom It May Concern:

I am a resident of the Stoneleigh Community and have lived at 7106 Sheffield Road since August 1958.

Paul & Margery Shriver have been our neighbors since 1959 & have kept pug dogs at their house since about 1961. At no time since have these dogs ever caused any concern, noise, odor or bother to me and my family or, to my knowledge, to any of our neighbors. These dogs have never been allowed out of their fenced backyard.

I have always felt comfortable in the fact that, had these dogs been any bother to us, Margery Shriver would have been most responsive to any complaint that might have been made by me & my family or by any of our neighbors.

Ralph E. Peters

MICROFILMED PETITIONER'S EXHIBIT 7

March 8, 1989

TO WHOM IT MAY CONCERN:

We have been neighbors of the Shrivers for over twenty years, and during that time have found Margery and Paul to be extremely responsible and caring in all things pertaining to their home and the community of Stoneleigh in which they live.

As neighbors and friends, we have always been aware of the dogs they own. However, unless you were informed of the presence of the dogs, you might never know of their existence.

The dogs are rarely seen outside of the yard; they are kept in a very private and structured way. If and when the dogs bark, they are quieted immediately, and their play time outside is extremely brief.

The area in which these dogs are kept is clean and cared for in a meticulous fashion.

The dogs have never been a cause of inconvenience or nuisance to anyone in our neighborhood.

The residents of Sheffield Road are very fortunate in having the Shrivers among their neighbors.

Sincerely yours,
Frederick E. Winter
Frederick E. Winter
Lois W. Winter
Lois W. Winter

7101 Sheffield Road
Baltimore, Maryland 21212

PETITIONER'S EXHIBIT 8

SUBJECT: ZONING

7107 Sheffield Road
Baltimore, Maryland 21212
March 8, 1989

To Whom It May Concern:

Re: Hobby Kennel
7105 Sheffield Road
Mr. and Mrs. Paul L. Shriver

As residents of Sheffield Road for the past 15 years, directly across the street from the Shriver's house, we can honestly say there has never been one instance when we have been bothered by barking dogs or have even known dogs existed across the street.

The Shriver's have always been considerate and caring neighbors who we personally feel should be permitted to enjoy their hobby in their Sheffield Road home.

If the main issue is whether the existance of a kennel will create a neighborhood disturbance the answer in our opinion is an unequivocal NO.

If we can be of any further assistance we can be reached at 821-5896 in the evening or 821-8100 during the day.

Sincerely,
Judith A. Deakins
Judith A. Deakins

Robert T. Deakins
Robert T. Deakins

JAD:RTD:jad

PETITIONER'S EXHIBIT 9

JAMES P. WELLER, D.D.S.
204 E. JOPPA ROAD SUITE L-10
HAMPTON HOUSE APARTMENTS
TOWSON, MARYLAND 21204
OFFICE: 828-1675 HOME: 321-8567

To whom it may concern,

I have been a resident on Sheffield Rd for 10 yrs, and a member of the Stoneleigh Community Ass. for the same amount of time; my home is four doors away from the Shriver Home. I have never heard any complaints about the Shriver's hobby from any neighbors and in fact find it very exciting to know a person who is nationally known as a first class breeder.

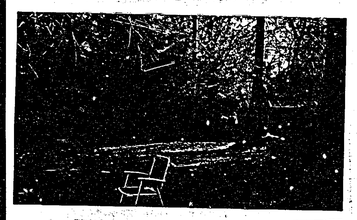
My children have been to the Shriver house many times to play with the dogs & watch puppies being born. She has been available at any time to help us with our dog & with many of the other dogs on the block.

I see no exception whatsoever to a change in zoning to allow them to keep their hobby or so yrs

DR James P. Weller

PETITIONER'S EXHIBIT 10

Petitioner Exhibits 11



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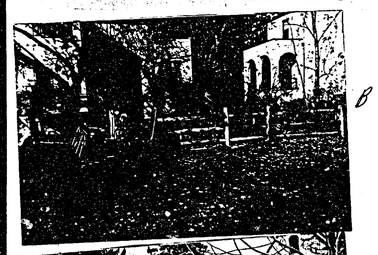

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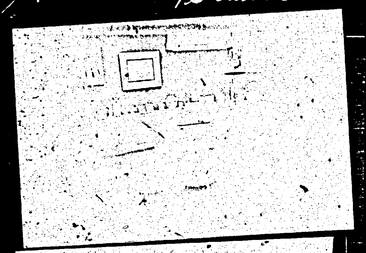
Petitioners Exhibit 11



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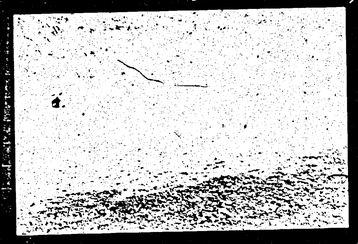
Petitioners Exhibit 11



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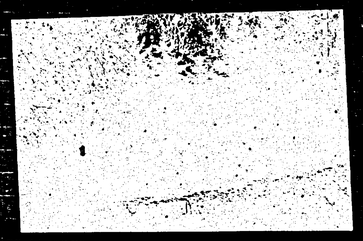

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P.E. #12A

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P.E. #12B

MICROFILMED

P.E. #12C

MICROFILMED

March 16, 1989

To Whom It May Concern,

I was in court last Friday, but I am unable to attend the zoning hearing on March 17. I have lived at 7111 Sheffield Road since March 17, 1939 and have probably lived here longer than any other neighbor on Oxford or Sheffield Roads. I have known the Shrivers since they moved here almost thirty years ago. They and their dogs are very, very nice neighbors and are a great asset to the street.

I live three houses from the Shrivers and never hear the dogs and only see them when I talk with the Shrivers or one of their immediate neighbors. The Smith children make far more noise than the dogs. The Shriver dogs never run in the street. If I did not already know it, I would never know that the Shrivers had dogs.

When my family moved here in 1939, three families had kennel oprations on Oxford Road. Irish setters were raised at 7110 Oxford, minks were raised at 7108 Oxford, and Pomeranians were raised at 7109 Oxford. The last continued into the Sixties, after the zoning laws came into effect. I can remember the family who lived at Oxford and Hatherleigh always complaining to my late husband about the Pomeranians and the mess. Unlike these, people, the Shrivers raise their dogs strictly as a hobby and for the enjoyment of it. The dogs pose no threat to either street involved. The Smith family on Oxford Road have no reason to complain about the Shriver dogs.

Sincerely yours,

Jeanne H. Ward

Jeanne H. Ward
(Mrs. William E Ward)

PETITIONER'S
EXHIBIT 13

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185, 186, 304 A.2d 826 (1973); Bd. of Medical Examiners v. Steward, 207 Md. 108, 113 A.2d 426 (1955); Shuey v. Stoner, 47 Md. 167 (1877); Md. Cts. & Jud. Proc. Code Ann., Section 12-302 (d) (1989).

When a review by a court in banc is permitted by the Maryland Constitution, the procedural requirements for obtaining an in banc review are contained in Md. Rule 2-551. Rule 2-551 (b) requires notice for in banc review to be filed within ten days after entry of judgment. Rule 2-551 (c) requires that, within thirty days after the filing of the notice for in banc review, the party seeking review must file four copies of a memorandum. The memorandum must concisely state the questions presented, any facts necessary to decide them, and supporting argument.

After reviewing the pleadings in this case, it is the opinion of this panel that the Appellant has complied with the requirements of Rule 2-551. Appellants' memorandum was timely filed and contains all the information necessary under Md. Rule 2-551 (c). In addition, Appellants properly reserved the issue for in banc review in accordance with Md. Rule 2-551 (a) by making it known, at the time Judge Cahill's ruling was made and sought, of the action they desired the Court to take. See Md. Rule 2-517 (c). Accordingly, Appellees' Motion to Dismiss (paper no. 15) and Motion to Strike (paper no. 18) are denied.

Turning now to the issue presented, the disagreement between the parties concerning the scope of an appeal to the

County Board of Appeals stems from differing interpretations of Section 603, which states (in pertinent part) as follows:

> " * * * All decisions of the county board of appeals shall be made after notice and opportunity of hearing upon the issues before said board. All hearings held by the board shall be heard de novo, unless otherwise provided by legislative act of the County Council, and shall be open to the public. * * * "

Baltimore Co., Md. Code, Section 603 (1988/89 Supp.)

This section, as above cited, was approved by the voters of Baltimore County on November 7, 1978 and became effective on December 8, 1978. Prior to this amendment, the pertinent portion of Section 603 read as follows:

> " * * * All decisions by the county board of appeals shall be made after notice and opportunity for hearing de novo upon the issues before said board. * * * "

Baltimore Co., Md. Code, Section 603 (1978).

Efforts by this panel to obtain committee notes or other memoranda explaining the purpose for the change in Section 603 have proved futile. On the face of the two sections, there is no substantial change between present Section 603 and former Section 603. Accordingly, it is the opinion of this panel that any difference in the two sections is purely one of semantics and organization, and not one of substance.

In advancing their arguments on appeal, counsel for both parties relied heavily on the 1982 case of Boehm v. Anne

Arundel County, 54 Md.App. 497, 459 A.2d 590 (1982), cert. denied, 297 Md. 108 (1983). In Boehm, the Anne Arundel County Office of Planning and Zoning issued an administrative decision granting a nonconforming use to Appellant Boehm with certain conditions and restrictions. Boehm had applied for recognition of a nonconforming use on approximately 198 acres of his property. The administrative decision granted the nonconforming use for only 18.8 out of the 198 acres requested. Neither party was satisfied with this decision; accordingly, both parties filed an appeal to the Anne Arundel County Board of Appeals. After hearing extensive testimony and argument, the County Board of Appeals declared the administration decision to be null and void and denied Boehm the nonconforming use he had requested.

Boehm appealed the decision of the County Board of Appeals to the Circuit Court for Anne Arundel County who affirmed the decision of the Board of Appeals. Boehm then appealed to the Court of Special Appeals, asserting that the County Board of Appeals erred in not giving great deference to the decision of the Zoning Office. The Court of Special Appeals disagreed. Judge Alpert (speaking for the Court) stated:

> As such, unless otherwise limited by statute or court rule, a de novo hearing is an entirely new hearing at which time all aspects of the case should be heard anew as if no decision had been previously rendered. Thus, the Board of Appeals may consider the decision of the Zoning Office in any light it desires but it is not bound by the earlier decision in its de novo review. The de novo

> hearing, which is in actuality the first formal hearing on the issue, purges any potential errors from the earlier decision of the Zoning Office.

Boehm v. Anne Arundel Co., 54 Md.App. at 511.

Based upon the above statement by the Court of Special Appeals, it would appear at first glance that the Boehm case is dispositive of the issue presently before this panel. However (as it often occurs) such is not the case. The facts of the Boehm case can be significantly distinguished from the facts of the present case. In Boehm, both parties appealed the decision of the Zoning Office concerning the nonconforming use. The protestants appealed the grant of the nonconforming use itself, in any form; Appellant Boehm appealed the grant to only 18.8 of his 198 acres. By doing so, both parties clearly placed the issue of the nonconforming use properly before the Board. Accordingly, it was incumbent upon the parties to present their respective cases de novo before the Board of Appeals.

Such is not the case with the Shrivers' appeal to the Baltimore County Board of Appeals. Appellants' Order of Appeal clearly stated that they wished to appeal restriction numbers two and four only. Appellants' counsel could not have been more specific in alerting the County Board of Appeals and the Appellees to the issues raised in their appeal. In addition, common sense dictates clearly that the Appellants did not desire to appeal the granting of the special exception and variances they had requested and successfully obtained.

In their arguments and memoranda submitted to this panel (as well as to the Honorable Robert E. Cahill, Sr.), counsel for both parties failed to invite the Court's attention to the 1970 Maryland Court of Appeals case of Daihl v. County Bd. of Appeals, 258 Md. 157, 265 A.2d 227 (1970), which is directly dispositive of the issue before this panel. In Daihl, the landowner petitioned the Baltimore County zoning office for reclassification of two parcels from residential R-6 to industrial M-L zoning. The landowner also requested that certain set-off and area restrictions on the parcels be relaxed. The Deputy Zoning Commissioner granted the reclassification for one of the two parcels, along with the requested variances; however, he denied reclassification as to the second parcel. Shortly therafter, protestants filed an appeal to the County Board of Appeals for Baltimore County. The landowner did not file a cross appeal. The protestants' appeal stated as follows:

> "Please note an Appeal from the portions of said Order granting the requested rezoning and variances to the Board of Appeals of Baltimore County on behalf of Earl S. Jones, et al., residents and protestants."

Daihl v. County Bd. of Appeals, 258 Md. at 161.

At the hearing before the County Board of Appeals, testimony was taken concerning the rezoning of both parcels of land. In its decision, the Board held that both properties should be classified industrial M-L and granted the requested variances. An appeal was filed to the Circuit Court for

Baltimore County which affirmed the decision of the County Board of Appeals.

On appeal to the Court of Appeals, the decision of the Circuit Court was affirmed in part and reversed in part. In Daihl, the section providing for de novo hearings on appeal stated as follows:

> " * * * All decisions of the County Board of Appeals shall be made after notice and opportunity for hearing de novo upon the issues before said Board. * * *"

Baltimore Co., Md. Code, Section 501.3.

Section 501.3 is identical to former Section 603 and by obvious implication, to present Section 603. In interpreting Section 501.3, the Court in Daihl found it significant that Section 501.3 referred to "issues" and did not use the term "decision." As the Court stated, the term "issue" connotes a matter which lends itself to a separate finding or separate holding. Daihl v. County Bd. of Appeals, 258 Md. at 162. Based on this differentiation, the Court determined that the term de novo, as used in Section 501.3, meant that on appeal there shall be a de novo hearing on those issues which have been appealed and not on every matter covered in the original application for reclassification. See id. at 162. In so holding, the Court stated:

> In the absence of any precedent to guide us, we think the more sensible interpretetion of the meaning of the scope of a de novo hearing as used in relation to an appeal heard by the County Board of Appeals, from a decision of the Zoning Commissioner, is

> that it is restricted to the specific issue or issues resolved by the Commissioner from which an appeal has been taken. By exclusion, this may not encompass all issues which may have been resolved by the Commissioner in his decision, when more than one issue is involved. We think it consonant with the concept of appeal, that it be coextensive with those issues concerning which the moving party or parties feel aggrieved. We are also buttressed in our reasoning on this matter by the knowledge that such hearings are adversary in nature and are ofttimes complicated. Furthermore, we are of the strong belief that an orderly procedural disposition of these matters requires specificity of the adverse ruling concerning which the aggrieved party seeks review.

Daihl v. County Bd. of Appeals, 258 Md. at 163-164.

The Court of Appeals also noted that it would not make any sense that the protestants would appeal from any portion of the Deputy Commissioner's decision concerning the denial of classification for the second parcel for the simple reason that the issue was resolved in their favor. See id. at 161. The same is true of the present case. It defies common sense to conclude that the Appellants would want to appeal those portions of the decision of the Zoning Commissioner that were favorable to them; specifically, the special exception and the variances.

In addition, Article III, Section 22-32 of the Baltimore County Code provides that any person(s) aggrieved or feeling aggrieved by any decision of the zoning commissioner has a right to appeal to the County Board of Appeals. Thus, Section 22-32 confers no right upon the Appellants to appeal those portions of the Zoning Commissioner's decision which are

favorable to them. Accordingly, it was incumbent upon the opposing party (if aggrieved) to file an appeal or a cross appeal. Appellees had every opportunity to file such an appeal and chose not to do so. Appellees' confessed reliance on Section 603's pronouncement that all hearings on appeal before the County Board of Appeals shall be heard de novo is misplaced, especially in light of the Daihl decision.

Because the issues of the special exception and the variances were not raised in the Appellants' appeal, we find no error in the Board's reliance upon the findings of the zoning commissioner as to these issues. As stated in Boehm, the County Board of Appeals may consider the decision of the zoning commissioner in any light it desires. As such, the fact that the Board considered the decision of the zoning commissioner on the issues not appealed in a favorable light does not, in the opinion of this panel, constitute error.

Accordingly, it is the opinion of this panel that the decision of the Circuit Court for Baltimore County dated November 7, 1990 and the Order of said Court dated January 8, 1991 reversing the decision of the County Board of Appeals and remanding the case to the County Board of Appeals is hereby REVERSED.

Barbara Kerr Howe
Chairperson

Edward A. Dewaters, Jr.

J. William Hinkel

Clerk to Notify.

Dated: April 10, 1991

March 16, 1989

To whom it may concern:

I have lived on Sheffield Road from 1956 until 1964 and from 1967 to the present time. During the intervening years, I was very often at my grandfather's house (where I have and now live). I grew up with the Shriver children and am very familiar with the family and their dogs. During the thirty-two years I have lived at 711 Sheffield Road, the Shriver dogs have never presented any problems to any of the neighbors.

Most of the time, the dogs are kept inside. They are usually outside only in the late afternoon. There is none of the constant barking that I hear from other dogs in the neighborhood. They are much quieter than the Smith children (of whom I and other neighbors complain about).

The yard is fenced and the dogs are never allowed to run loose. I can never remember any of the Shriver dogs running loose in the street I wish I could say this about other dogs around here. The Smith children running in the street and jeopardizing traffic presents more of a hazard and community nuisance than do these dogs. In addition to a wire fence around the yard there is a stockade-type fence across the back. The only way anybody in the Smith household would see or notice the dogs would be stand on a ladder and look over the fence.

Around the neighborhood, the Smiths have insinuated that dog feces from the Shriver dogs has produced a bad smell in the neighborhood and attracted rats. Neither is true. There is very little mess in the yard from the dogs. When I was younger, I played in the yard with the Shriver children. Now the grandchildren and others on the street play in this yard. Such would not be the case if the yard was littered with as much mess from the dogs as the Smiths try to have people believe. I have never noticed any smell from the Shriver yard. I have also never seen any rats or know of any neighbor on Oxford or Sheffield Roads who have seen any rats. According to articles in past issues of the community newsletter, the minor problem with rats is due to people not handling their trash properly.

Raising and showing dogs is strictly a hobby with the Shrivers, unlike several commercial enterprises which existed in Stoneleigh. On Oxford Road alone there have been three commercial kennels that I remember or have heard about when I was younger. One was still in existence after

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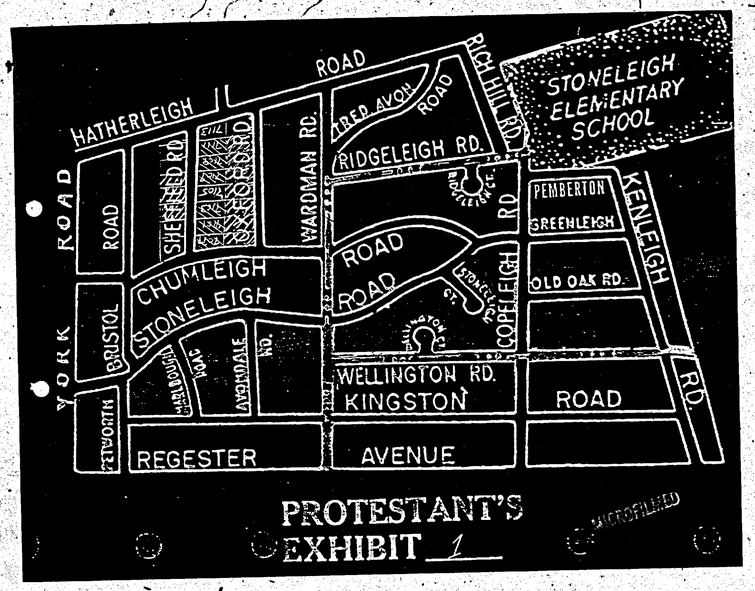
PETITIONER'S EXHIBIT 14



PROTESTANT'S EXHIBIT 1

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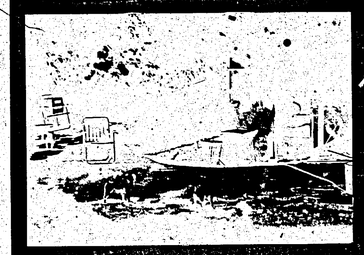
PROTESTANT'S EXHIBIT 2



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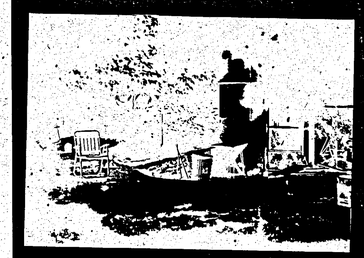

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PROTESTANT'S EXHIBIT 2

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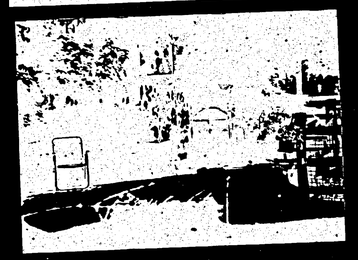

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PROTESTANT'S EXHIBIT 2

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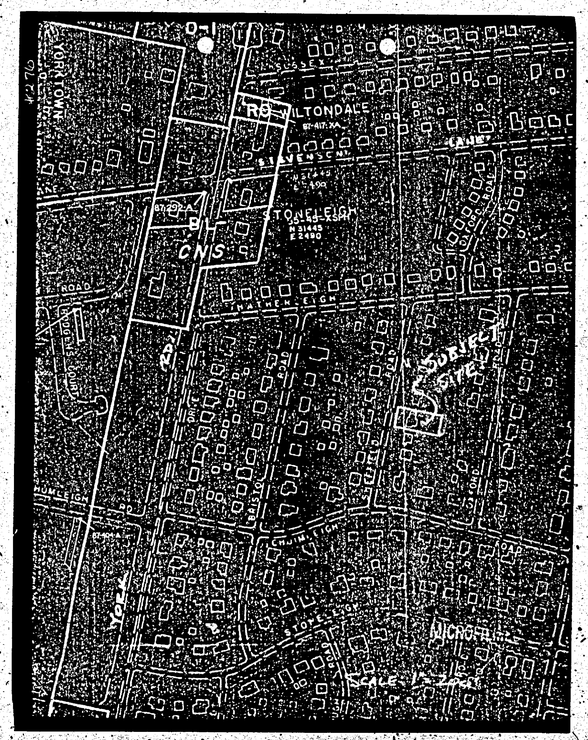

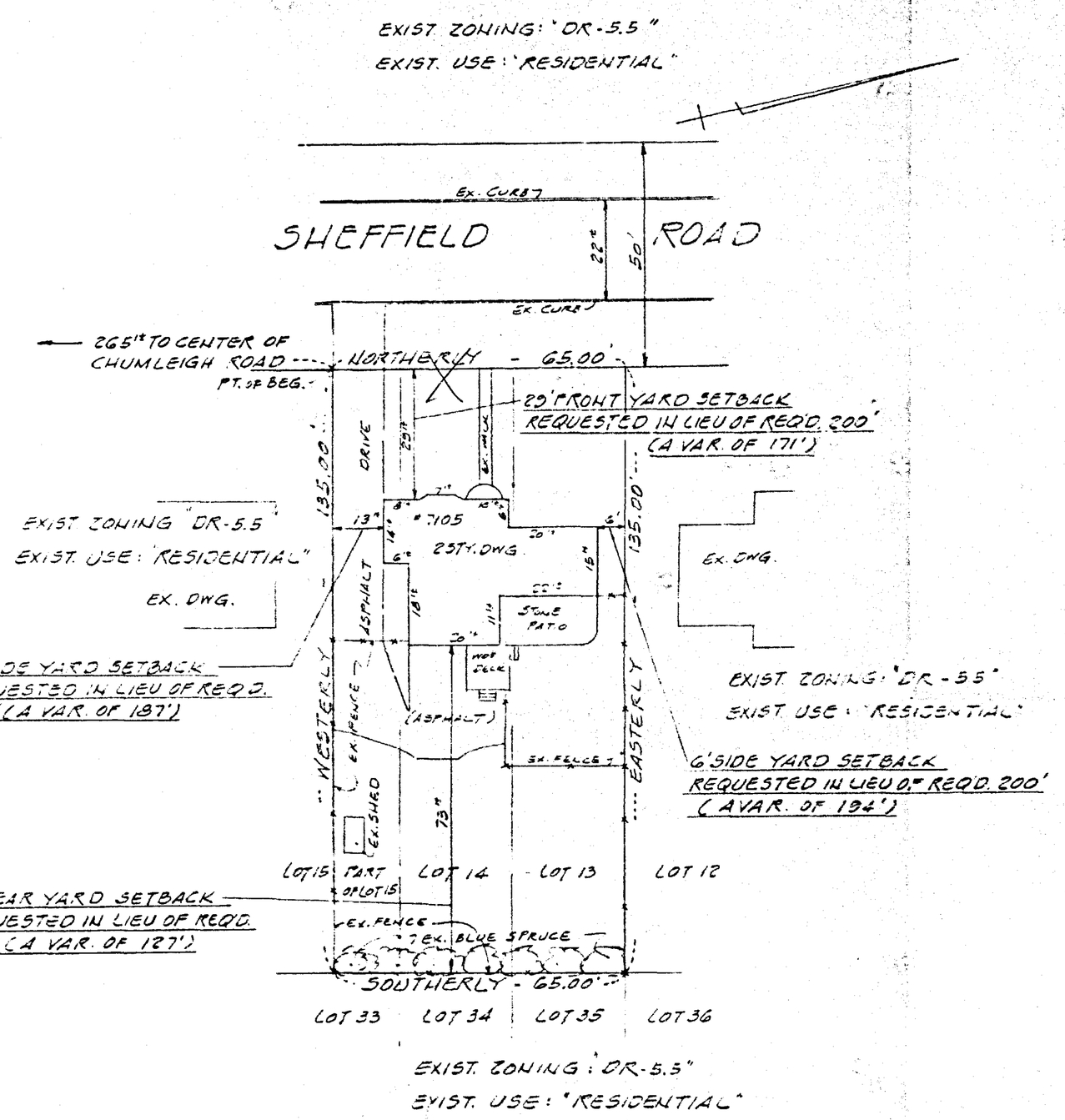

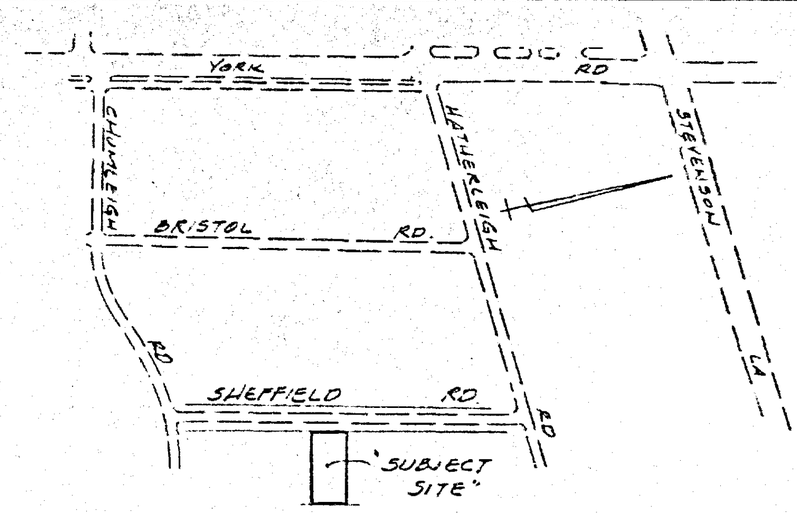

LOCATION PLAN
SCALE: 1" = 200'

GENERAL NOTES

1. AREA OF PROPERTY = 8,775 S.F.± (0.20 AC.±)
2. EXISTING ZONING OF PROPERTY = "DR 5.5"
3. EXISTING USE OF PROPERTY = "RESIDENTIAL
4. PROPOSED ZONING OF PROPERTY = "DR5.5"
5. PROPOSED USE OF PROPERTY = "RESIDENTIAL & DOG KENNEL"
6. TOTAL AREA FOR KENNEL USE:
   A. BUILDING AREA & RUNS = 1100 SF± + 3900 SF± = 5,000 SF±
7. REQUIRED OFF-STREET PARKING = 0
8. PETITIONER IS REQUESTING A SPECIAL EXCEPTION TO PERMIT A DOG (HOBBY) KENNEL IN A "DR 5.5" ZONE.
9. PETITIONER REQUESTING A VARIANCE TO SECTION 421.1 OF THE ZONING REGULATIONS TO PERMIT THE FOLLOWING:
   A. 29' FRONT SETBACK IN LIEU OF REQUIRED 200' (A VAR. OF 171')
   B. 6' & 13' SIDE YARD SETBACKS IN LIEU OF REQ'D. 200' (A VAR. OF 194' & 187')
   C. 73' REAR YARD SETBACK IN LIEU OF REQ'D. 200' (A VAR. OF 127')
10. PROPERTY SERVED BY PUBLIC UTILITIES.

J Sigps

PLAT TO ACCOMPANY PETITION FOR

SPECIAL EXCEPTION & YARD VARIANCES

#7105 SHEFFIELD ROAD

#276

ELECT. DIST 9 — BALTIMORE CO., MD

SCALE: 1" = 20' — DEC. 1988

MICROFILMED

PAUL LEE ENGINEERING, INC.
304 W. PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204

STATE OF MARYLAND — PAUL LEE — PROFESSIONAL ENGINEER

88-070

IN THE MATTER OF THE APPLICATION OF PAUL SHRIVER, ET UX FOR A SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE EAST SIDE SHEFFIELD ROAD, 265' +/- NORTH OF THE CENTERLINE OF CHUMLEIGH ROAD (7105 SHEFFIELD ROAD) 8th ELECTION DISTRICT 4th COUNCILMANIC DISTRICT : BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 89-361-XA

: :

OPINION

This case comes before the Board on an appeal from a decision of the Zoning Commissioner dated August 31, 1989, granting Appellants' Petition with restrictions, and a subsequent Amended Order, dated September 13, 1989. Appellants were represented by S. Eric DiNenna, Esquire; Protestants were represented by J. Shawn Alcarese, Esquire. The case was heard this day in its entirety.

In opening, Mr. DiNenna restricted Appellants' case to appeals of the Zoning Commissioner's restrictions designated #2 (as amended) and #4 in his Opinion and Order. Mr. Alcarese argued that his clients, the Stoneleigh Community Association, opposed both the granting of the special exception for a "hobby kennel" and the variances granted by the Zoning Commissioner. The Board ruled that the matter before it is restricted to issues specified in the Petitioner's appeal.

Margaret Shriver, 7105 Sheffield Road, testified that she and her family had resided at the subject site for more than 30 years and that she had been breeding purebred Pug dogs there for 29 years. The animals are raised for show and sale purposes; there are 12 to 17 dogs on the subject site at any given time. She further testified that the dogs are kept indoors and let out into the back yard for exercise and to relieve themselves. Mrs. Shriver further testified that she accompanies the dogs when they are out of doors and that she cleans the yard immediately after each outing. In addition, Mrs. Shriver told the

Board that the raising of her dogs was a personal hobby, not a commercial venture, and that she had received no complaints related to this activity until early 1989.

Mrs. Shriver is appealing the Zoning Commissioner's Restriction #2 on the basis that his ordered reduction of the number of Pug dogs permitted on the site to 5 would severely reduce, if not totally cripple, the quality of her breeding program which is the keystone of her hobby. On Restriction #4, Mrs. Shriver testified that the limitation of three dogs permitted outside at one time was unreasonable, as the dogs are quite small, are always accompanied when outdoors, and she cleans the yard immediately after each outdoor session. No grooming or boarding of dogs takes place on site and there are no outdoor runs now constructed or planned.

Dr. Thomas E. Sooy, a veterinarian and professional dog breeder, testified on behalf of the Appellants. Dr. Sooy affirmed that Restriction #2 (the reduction to five Pug dogs on site) would, indeed, destroy the integrity of Mrs. Shriver's breeding program. As a veterinarian, he also opined that Mrs. Shriver's Pug dogs presented no threat to the health, safety or general welfare of the Stoneleigh community.

Mrs. Terry Weller of 7113 Sheffield Road testified on behalf of the Appellants. Mrs. Weller supports the testimony of Mrs. Shriver and, as a neighbor of 10 years' standing, has no complaints about the Shrivers' hobby kennel. She told the Board that she feels Mrs. Shriver has the environment totally under control through her maintenance work and the stockade fence constructed around the back yard.

Mr. Edward Sybert, 7107 Sheffield Road, testified that he has known the Shrivers since they moved into the Stoneleigh community. He supports their appeal.

Mr. Oscar L. Moritz, 7103 Sheffield Road, also testified on behalf of the Appellants. As their next-door neighbor for 31 years, he has no objection to the Shrivers continuing their current practices.

Dr. Robert Smith, 7104 Oxford Road, initiated testimony on behalf of the Protestants. Dr. Smith testified that his children's sleep is disturbed by the Shrivers' dogs and that odors emanating from the Shrivers' yard directly behind his property force his family to keep their windows closed at all times. He further testified that he is convinced that Mrs. Shriver's breeding operation is that of a commercial kennel and not an appropriate use for residential land.

Charlotte Smith, 7104 Oxford Road (Dr. Smith's wife) testified that five to eight Pug dogs are let out in the Shrivers' yard about three times each day. She told the Board that the dogs are not always accompanied and that their barking disturbs her family's sleep and telephone conversations from time to time. She has seen, on one occasion, a rat in the Shrivers' yard and notices odors from the property both outside and inside her own home. Mrs. Smith told the Board that the Shrivers' stockade fence does not restrict the noise or odor caused by the dogs.

Mr. Ennis Quigley, 7110 Oxford Road, testified that he was aware of "a lot of dogs" on the Shrivers' property because he has heard "loud barking."

Robert Slingluff, 7006 Bristol Road, added his belief that the Shrivers are operating a "kennel business" not appropriate to a residential area.

Sharon Walker, president of the Stoneleigh Community Association, and a resident for 12 years, testified for the Protestants. Representing the organization, Ms. Walker related its concern for maintaining the residential integrity of the community and its opposition to "any special exceptions." As an individual she has the same concerns.

The Board, in restricting its considerations to arguments on the restrictions appealed by Mrs. Shriver, makes no comment on the granting of the special exception or other restrictions imposed in the Zoning Commissioner's decision and Order. It takes note that according to testimony offered Mrs. Shriver has been conducting the breeding operation in her home for 29 years without prior legal action by any individual or group.

On Restriction #2 amended ("The special exception granted herein is limited to a private, non-commercial dog kennel for Petitioners, only, and is further limited to five (5) Pug dogs and one (1) household pet dog which is not a Pug dog. Petitioners shall have until January 1, 1991 to reduce the Pug dog population to the five (5) permitted."), the Board feels this restriction is unreasonable. It would severely restrict, if not end, Mrs. Shriver's long-standing hobby, and would create an unreasonable burden on her. The Board will so order.

On Restriction #4 ("There shall be no outdoor pens established for the dogs. There shall be no more than three (3) dogs permitted to be outside at any one time."), the Board also finds the second portion of this restriction imposes unreasonable hardship on the Appellant, and will so order.

ORDER

It is therefore this 25th day of May, 1990 by the County Board of Appeals of Baltimore County ORDERED that restrictions imposed by the Zoning Commissioner in his Opinion and Order of August 31, 1989, amended -- specifically Restrictions #2 and #4 --be and the same are VACATED. The following restrictions are hereby imposed on the Appellants:

1. All other restrictions and rulings in the above-captioned decision by the Zoning Commissioner shall stand.

2. The special exception granted is limited to a private, non-commercial dog kennel for Petitioners, only, and is further limited to ten (10) adult (above the age of 6 months) Pug dogs and one (1) household pet which is not a Pug dog.

3. There shall be no outdoor pens established for the dogs. There shall be no more than six (6) dogs permitted to be outside at any one time.

4. The dogs will be permitted outside only between the hours of 7:00 a.m. and 11:00 p.m., and will be accompanied by Appellants or an adult agent of Appellants while outside.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Arnold G. Foreman, Acting Chairman

Lynn B. Moreland

Harry E. Buchheister, Jr.

ORDER RECEIVED FOR FILING
Date 9/13/89
By

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND VARIANCE - E/S Sheffield Road, 265'+/- N of the c/l of Chumleigh Road (7105 Sheffield Road) 8th Election District 4th Councilmanic District * BEFORE THE * ZONING COMMISSIONER * OF BALTIMORE COUNTY * Case No. 89-361-XA

Paul Shriver, et ux
Petitioners *

* * * * * * * * * * *

AMENDED ORDER

WHEREAS, the Petitioners requested a special exception for a dog kennel on the subject property and variances in accordance with the plan submitted and identified as Petitioner's Exhibit 1;

WHEREAS, by Order dated August 31, 1989, the relief requested was granted, subject to restrictions;

WHEREAS, Restriction Nos. 2 and 6 were somewhat confusing and required clarification;

IT IS ORDERED by the Zoning Commissioner for Baltimore County this 13th day of September, 1989 that the Order issued August 31, 1989 be and the same is hereby AMENDED to delete Restriction No. 6; and,

IT IS FURTHER ORDERED that Restriction No. 2 of said Order be and the same is hereby modified to read as follows:

2) The special exception granted herein is limited to a private, non-commercial dog kennel for Petitioners, only, and is further limited to five (5) Pug dogs and one (1) household pet dog which is not a Pug dog. Petitioners shall have until January 1, 1991 to reduce the Pug dog population to the five (5) permitted.

J. ROBERT HAINES
Zoning Commissioner
for Baltimore County

JRH:bjs
cc: S. Eric DiNenna, Esquire
J. Shawn Alcarese, Esquire
All Protestants
People's Counsel; File

ORDER RECEIVED FOR FILING
Date 8/31/89
By

IN RE: PETITIONS FOR SPECIAL EXCEPTION AND VARIANCE - E/S Sheffield Road, 265'+/- N of the c/l of Chumleigh Road (7105 Sheffield Road) 8th Election District 4th Councilmanic District * BEFORE THE * ZONING COMMISSIONER * OF BALTIMORE COUNTY * Case No. 89-361-XA

Paul Shriver, et ux
Petitioners *

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special exception to permit a dog kennel on the subject property and variances to permit a front yard setback of 29 feet; side yard setbacks of 6 feet and 13 feet; and a rear yard setback of 73 feet, all in lieu of the required 200 feet, as more particularly described in Petitioner's Exhibit 1.

The Petitioners, by Paul Shriver, appeared, testified, and were represented by S. Eric DiNenna, Esquire. Also appearing on behalf of the Petitions were: Oscar Moritz, Jr., Terry Shriver, Rebecca Tansil, Ralph and Charlotte Peters, Jeanne Ward, Edward Sybert, Kathleen Bates, Beth Spedalere, Theresa Weller, and William and Sandra Fastie, all immediately adjoining neighbors and property owners. The following individuals appeared as Protestants in the matter and were represented by J. Shawn Alcarese, Esquire: Shelley, Robert, Charlotte, Jay and Robin Smith; Beverly Brandon, Barry Miller, Eugenie Foster, Wendy Frank, Chessy Spence, Ann Hickman, Olivia J. Caraluzzi, A. S. Boccuto, Carolyn Whittington, and Marjorie Pilachowski, all residents of the area.

Due to the number of persons appearing on both sides at the first hearing and the time constraints of the docket for that day, the hearing was continued to March 17, 1989 to provide adequate time for both sides to present their case.

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At the hearing held on March 17, 1989, the following additional residents appeared as Protestants: Maynard Harp, Charles Whittington, Ann Schaufele, Sharon McIntire, Robert and Deborah Slingluff, Jim Wiedefeld, Jr., Barry Miller, and Douglas and Mary Parvis.

Testimony indicated that the subject property, known as 7105 Sheffield Road, consists of 8,775 sq.ft. zoned D.R. 5.5, and is improved with a two-story single family dwelling which was purchased by Petitioners in 1959. Testimony indicated that some time thereafter, Mrs. Shriver developed a hobby for breeding and showing Pug dogs and has professionally pursued this hobby for the past 28 years. As a result of a complaint filed with the Zoning Office, Petitioners were advised to file the instant Petitions to obtain permission to continue breeding Pug show dogs on the subject property.

Testimony indicated that there are generally approximately 9 to 12 dogs on the subject property. Said dogs are housed within the family dwelling and are let out periodically in the rear of the property, but not all dogs at one time. Mrs. Shriver testified that no other dogs are boarded or kenneled on the premises and that no traffic is generated from her use of the property as a kennel. She testified she has no commercial vehicles but has a van which she uses to transport her dogs to various shows throughout the state.

Many residents of the area, including the Shrivers' two immediately adjoining neighbors on either side of the subject property, and neighbors across the street and on the same block as Petitioners' property, testified in favor of the relief requested in the special exception. Testimony indicated that in their opinion, these dogs were not a nuisance and the Petitioners' use of the property as a kennel has not created any

detriment to the health, safety or general welfare of the community. Several letters from area residents were submitted evidencing their support of Petitioners' request.

The Protestants are generally opposed to the use of the subject property as a kennel. The Protestants testified they believe that as a result of such use of the property, rats have been attracted to the area, and in fact, one has been observed tunneling into the Petitioners' rear yard. Dr. Smith, the abutting rear yard property owner, testified to the threat of disease and/or injury that the presence of dog feces and rats present. Dr. Smith further testified that the noise and odor generated by the dogs has resulted in his family being precluded from socializing outdoors on at least three occasions.

The parties have spent a great deal of energy arguing the proper legal standard to be applied to this special exception. The Petitioners contend that the appropriate standard to be used in determining whether a requested special exception use ha an adverse affect and, therefore, should be denied is whether there are facts and circumstances which show that the particular use proposed at the particular location proposed would have any adverse affects above and beyond that inherently associated with such a special exception use irrespective of its location within the zone. Schultz v. Pritts, 291 Md. 1. The Baltimore County Council has determined that a kennel is permitted in a D.R. 5.5 zone unless it is shown that such use at a particular location would adversely affect the surrounding uses. Petitioners further contend that the use of the subject property as a kennel has been successful for the past 28 years without a complaint nor any problems. They therefore believe the kennel's continuous

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By Kathi Schulman

operation meets the special exception requirements and that there is no violation of Section 502.1 of the B.C.Z.R.

The Protestants argue that the B.C.Z.R. recognizes there are some uses of property that "...are inherently so objectionable as to make extra regulations and controls advisable..." Petitioners' requested use of their property as a dog kennel is one of the uses recognized as being inherently so objectionable. According to Section 1B02.1 of the B.C.Z.R., dog kennels are permitted as of right only in D.R. 1 zones, by special exception in D.R. 2, D.R. 3.5 and D.R. 5.5 zones, and are prohbitibed entirely in D.R. 10.5 and D.R. 16 zones. Regardless of permitted uses in residential areas, according to Section 421.1 "...No part of any such use shall be located within 200 feet of the nearest property line." Clearly the 200-foot setback was mandated because of the recognized inherently objectionable characteristics and nature of a dog kennel operation.

Further, the Protestants argue that Section 502.1 requires that the Zoning Commissioner make a factual finding that the use for which a special exception is sought not be detrimental to the health, safety, or general welfare of the locality involved. The Protestants contend that to grant the petitions requested, specific reasons and bases must be cited to support a finding that Petitioners' use will not be detrimental to the health, safety and general welfare of the locality. Kennerly v. Baltimore City, 247 Md. 601, 607 (1967). The Protestants further contend that, particularly from the evidence presented, no such reasons or bases can be cited because none were presented, nor could they have been. They believe the testimony and evidence clearly demonstrates the noise, smell and attraction to rats are not only offensive to human senses and activities, but are a threat to the health and safety of the area residents

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By Kathi Schulman

because of the real possibility of disease, injury and infection posed by presence of rats and dog feces.

The Protestants' position concerning the relief requested is most clearly stated in the words of their Counsel: "The Petitioners argue that the present zoning prohibition against their dog kennel operation and the 200-foot setback from residential properties presents an unnecessary hardship upon them. The hardship is not peculiar to the property, but rather is claimed to be a hardship to Mrs. Shriver because she wishes to operate her dog kennel from her home. Petitioners admit, all witnesses agree, and it is totally uncontested that the request for a special exception in this instance is solely for Petitioners' convenience and that the circumstances creating the claimed "hardship" are self-created. Special exceptions and variances cannot be granted for the mere convenience to the owner, City of Baltimore v. Polakoff, 233 Md. 1 (1963); Kennerly v. M.C.C., supra; Carney v. City of Baltimore, 201 Md. 130 (1953); Gleason v. Keswick Imp. Ass'n., 197 Md. 46 (1951), nor will they be granted if such difficulties or unnecessary hardships are the result of applicants' own actions. Salisbury Bd. of Zoning Appeals v. Bounds, 240 Md. 547 (1965); Pem Const. Co. v. City of Baltimore, 233 Md. 372 (1964)."

I don't believe this line of case law is controlling for a special exception, pursuant to Sections 502.1 and .2 of the B.C.Z.R. The law in Baltimore County is clearly controlled by the holding found in Schultz v. Pritts, 432 A.2d, 1319 (1987).

The issue in the special exception is whether or not the requirements of Section 502 of the Baltimore County Zoning Regulations (B.C.Z.R.) have been successfully met by the Petitioner. The cases clearly establish that "...the appropriate standard to be used in determining whether a

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requested special exception use would have an adverse effect and therefore should be denied, is whether there are facts and circumstances that show the particular use proposed at the particular location would have any adverse effect above and beyond those inherently associated with such a special exception use, irrespective of its location within the zone." Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 at 1327 (1981).

The Court went on to say in Schultz that,

> "...the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal." (at page 1325)

The Petitioner must only show to the satisfaction of the Zoning Commissioner that the proposed use would be conducted without real detriment to the community to meet his burden. See, Turner v. Harmond, 270 Md. 41, 310 A.2d 543 (1973). When the Petitioner produces credible and probative evidence on all of the specific issues established by Section 502.1, then a special exception should be granted. In fact, the Petitioner has shown that the proposed use would be conducted without real detriment to the community and would not adversely affect the public good.

There is clearly no requirement that a special exception only be granted when there is a finding of a hardship. Special exception uses are

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conditionally approved uses that are permitted unless there is proof that the use, in this instance, the kennel, will be detrimental to the health, safety or general welfare of the community. I have rarely seen a case involving a special exception use that does not involve the convenience of the Petitioner. Most special exceptions, such as community centers and professional offices in the home, are not established because there is a hardship, but for the convenience of the Petitioner. In fact, there is no evidence in the record to show that the proposed use at the location described in Petitioner's Exhibit 1 has any adverse impact above and beyond that inherently associated with a special exception for a kennel, irrespective of its location in Baltimore County within the D.R. 5.5 zone as required by the Schultz test.

It is clear that the B.C.Z.R. permits the use proposed in a D.R. 5.5 zone by special exception. It is equally clear that the proposed use would not be detrimental to the primary uses in the vicinity. Therefore, it must be determined if the conditions as delineated in Section 502.1 are satisfied.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1 of the B.C.Z.R. In the opinion of the Zoning Commissioner, the Petitioner has shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The 20-plus year history of the use of the property proves that there has never been a problem in the past. Most of the long-term neighbors have not known of the existence of the dog kennel operation over the years. There is no evidence that this kennel has caused a negative impact as delineated in Section 502. There

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was a discussion of a rat and that the presence of the dogs attracted the rat to the site. This fact, in and of itself, is not the controlling factor in determining the special exception. This problem can and will be addressed by imposing limitations and restrictions upon the kennel use. The facts and circumstances do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse verse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. Schultz v. Pritts, 432 A.2d 1319 (1981).

The proposed use will not be detrimental to the health, safety, or general welfare of the locality and is consistent with the purposes of the property's zoning classification.

After reviewing all of the testimony and evidence presented, in the opinion of the Zoning Commissioner, the relief requested in the Petition for Special Exception should be granted with certain restrictions as more fully described below.

The Petitioners argue that Section 421 of the B.C.Z.R., adopted pursuant to Council Bill No. 85 in 1967, states, in relevant part, that:

> "Where an animal boarding place or kennel is allowed in a residential zone, either as a Special Exception or as a permitted use, no part of such use shall be located within 200 feet of the nearest property line"...

may be variranced, pursuant to Section 307.1 of the B.C.Z.R.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

> 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a

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> permitted purpose or render conformance unnecessarily burdensome;
>
> 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
>
> 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

It is clear from the testimony that if the variance is granted, such use as proposed would not be contrary to the spirit of the B.C.Z.R. and would not result in substantial detriment to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons given above, the relief requested in the Petitions for Special Exception and Zoning Variance should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 31st day of August, 1989 that the Petition for Special Exception to permit a dog kennel on the subject property and the Petition for Zoning Variances to permit a front yard setback of 29 feet; side yard setbacks of 6 feet and 13 feet; and a rear yard setback of 73 feet, all in lieu of the required 200 feet, as more particularly described in Petitioner's Exhibit 1, be and are hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted:

> 1) The Petitioners are hereby made aware that proceeding at this time with the continued use of the property as a kennel is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is

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> reversed, the Petitioners would be required to cease operation of the dog kennel and be responsible for bringing the property into compliance with the B.C.Z.R.
>
> 2) The special exception granted herein is limited to a private, non-commercial dog kennel for Petitioners, only, and is further limited to five (5) Pug dogs and one (1) household pet dog which is not a Pug dog.
>
> 3) The special exception granted herein is limited to Petitioners only. In the event the property is sold, transferred or leased, the Petitioners and/or future property owners/lessees shall not inherit the special exception use granted herein. Such use as a kennel shall cease immediately upon the sale, transfer or lease of the subject property.
>
> 4) There shall be no outdoor pens established for the dogs. There shall be no more than three (3) dogs permitted to be outside at any one time.
>
> 5) There shall be no commercial boarding or grooming of dogs on the premises.
>
> 6) All remaining Pug dogs over the five (5) permitted must be removed from the subject property on or before January 1, 1991.

JRH:bjs

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner
for Baltimore County

ORDER RECEIVED FOR FILING
Date 8/31/89
By Kathi Schulman