



Zoning Department
Bath Township

Exhibit: 2

Case#: 11-26 Date: 9/20/2011



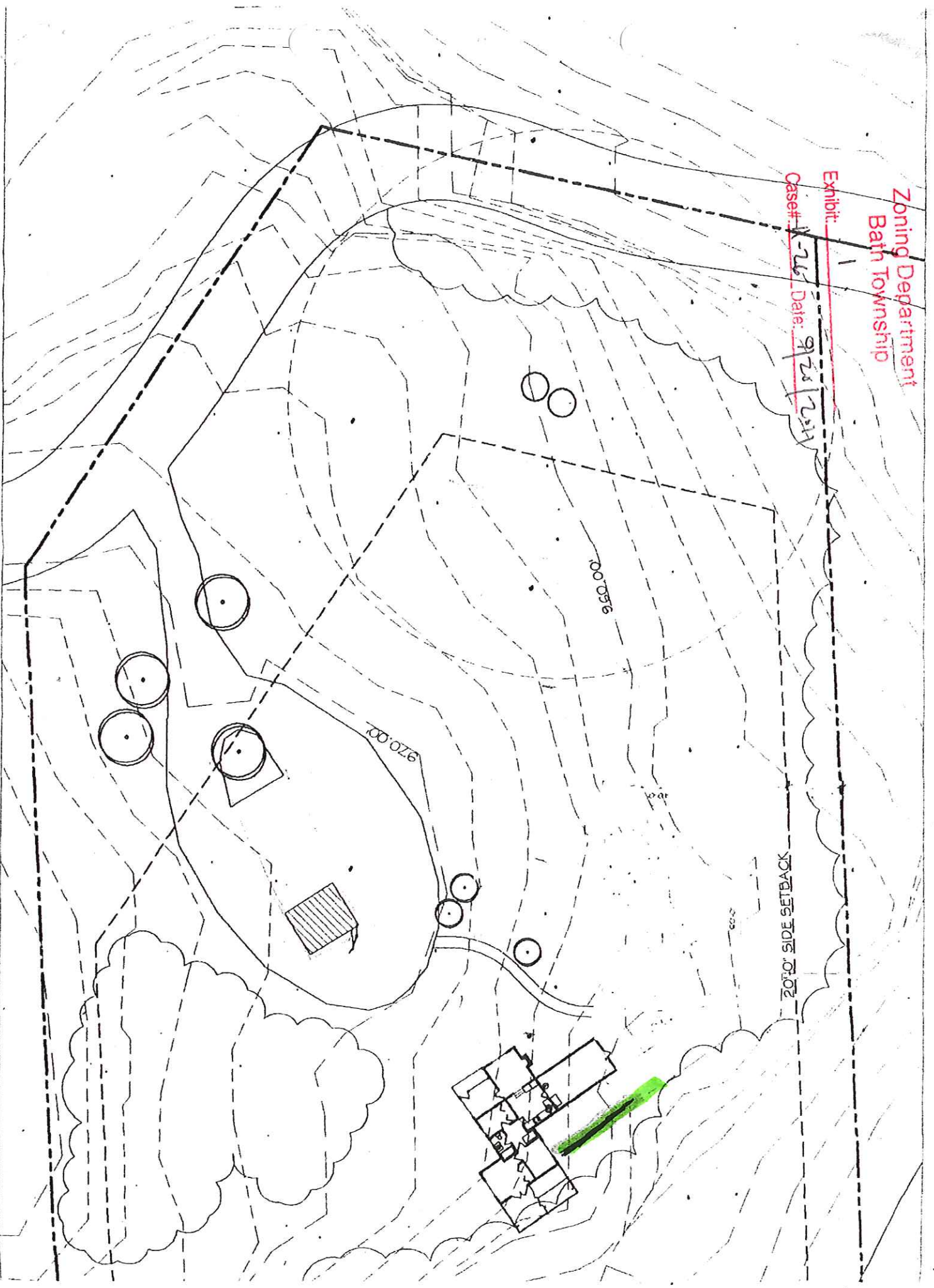
11-26 Ex 1 9/20/2011

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BOLIANTZ CONSTRUCTION, INC.

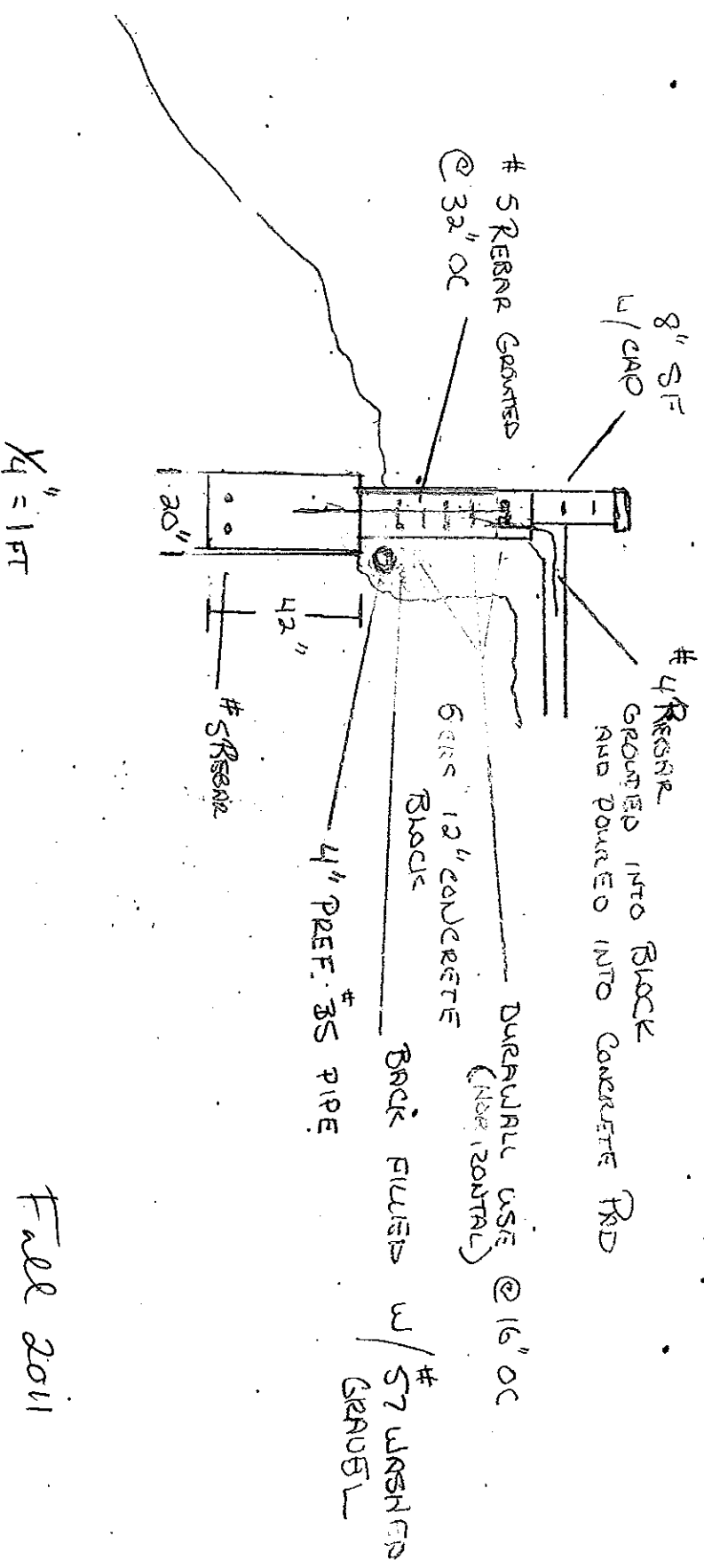
PO BOX 344
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Free Estimates

ENSEDALE KENDUELS

55 LF BLOCK WALL



Fall 2011

BOARD OF ZONING APPEALS
September 20, 2011

MEMBERS PRESENT: Chairman, Steven Bell, Betty Eastman, Michael Mack, Jeff Kerr, Leslie Kreeger, Zoning Administrator William Funk and Deputy Zoning Inspector Martha Ferch. Linda Hastings and David Landis were excused.

CASE NO. 11-26 – Nancy L. Secrist, 1814 N. Revere Road requesting Conditional Use approval per Article IV, Section 412 for steep slopes to construct a retaining wall. Property is located at 1814 N. Revere Road in the R-2 Residential district. – R-2

Chairman swore public in and legal notice was read into record.

Mrs. Secrist, applicant, passed out photos of property where the retaining wall is needed. She would like to build a retaining wall structure next to the chain link fence to stabilize the top where the slope begins and create a nicer look vs. just gravel area. The retaining wall will go along the chain link fence area for about 30 feet and the fence will remain and be anchored to retaining wall. The Chairman asked if the Board encourage you to build the type of fencing that would abate noise? Chairman indicated that there are some issues of noise in the area and anything you could do to abate this noise with a certain type of fencing would be helpful. Applicant agreed to substitute solid fencing for noise if required. Board asked if there would be additional reinforcements for the retaining wall? Applicant stated that there will be fasteners from the retaining wall and attached to the chain link fencing. Board stated that sketches submitted shows no reinforcement, would you be willing to have an engineered plan done for the retaining wall? Applicant stated that they can do something that will be engineered and sketches were not done by an engineer but he does a great deal of concrete work. Board asked what is the bottom grade to the slab height at top of retaining wall? She stated that it is two to three courses tall from the top to start of slope and ending with a 42" footer. Board stated that the footer should be proportionate to the height of the wall. Should be an upside down T for the footer and it should be an engineered footer design. How long is the retaining wall? About 30' long along the course of the chain link fence. Board asked what type of clearing will you do to get equipment in? The fencing is modular and would be just clearing the gravel area and but she doesn't want to clear any trees. Chairman marked in **Exhibit 1** as the drawing and photos of site as **Exhibit 2**.

Mr. Bob Lang, 3047 W. Bath Road, stated that if a sound fence is erected, could it be longer so the possibility of fence would not bounce the noise toward his house. Footer length would need to be deeper and he would like to have the fence extended to keep noise from his property.

Mr. Don Corbett, 3139 W. Bath Road, he has objection to putting more animals there. The noises are extreme from morning to night and he is against expanding the kennel for boarding of animals.

Applicant stated that the capacity of kennel on the side shown has six runs and she would not change the capacity of the kennel. This would also be a security type of fencing for the animals. They are insured for 70 animals and they have had as low as three and as high as 60+ at times.

Becky Corbett, 3139 W. Bath Road, she is also opposed to any more animals at this facility. They have filed Police reports of the noise disturbance numerous times and nothing has been done to alleviate the noise from the animals. She is in favor of a sound barrier fence for the retaining wall.

Bob Klein, 3163 W. Bath Road, he is concerned about the noise and would like to have the retaining wall longer. Dogs are barking first thing in the morning and they bark constantly. At about 20 dogs, the noise is deafening. Don't want any more dogs to be added. How could they monitor how many dogs are being boarded there? Township should be aware of the business they are conducting and he does not want a longer run for the dogs.

Mr. Doug Schiesswohl, 1844 N. Revere Road, lives to the north, he has four dogs and he doesn't have noise issues with the applicant. He lives close to the bank of the ravine and would like an engineered plan for the retaining wall so it would not disturb or alter the drainage from the slope.

Mr. Konstand, asked applicant if she is aware of the noise related to her operation of the kennel. Does the noise become an issue if the dogs are outside or inside?

Applicant stated when the dogs are outside. They open the doors every two hour intervals from 7:00 am until 9:00 pm and the dogs are let out during these times. The latest they are out is at 9:30 pm and this procedure takes place seven days a week.

Mr. Konstand asked if you have a license?

Applicant stated that it is not required. They have a permit from Summit County and insurance for the kennel. They have a garage to house some of the dogs.

Chairman said that the Board has the right to ask these questions and he asks that there be a continuance to this hearing in order to have an engineered wall plan and would applicant be willing to meet with Mr. Funk.

Applicant stated that she is willing to ask the Board for a continuance on her case for one month.

The hearing was closed with no further information or questions by applicant or citizens.

RESOLUTION

Mr. Bell moved to table this case to October. Mr. Kerr seconded. Vote was 5-0 to table.

Discussion by the Board

Chairman outlined the issues to discuss as follows: need a set of drawings from an engineer that is stamped and sealed by him; address potential fixes to the noise issues; address the drainage issues; impact of construction on the riparian setback; also include a restoration plan after construction. Since there is a noise issue and applicant is asking for a Conditional Use, it does give the right for the Board to add conditions as to what type of fencing and information from applicant on the number of animals kept there and also to make a cap limit for the number of animals being kept there. Part of the approval would be a formal approval for the dogs to be outside and propose six days a week and on Sundays a limited hours for dogs to be outside. It would also be a good idea to look at the entire area of the site and create a site plan of where the dogs are housed both inside and outside and in what buildings, and that a census of the number of dogs be taken. It was suggest to plant tall vegetation to act as a sound wall and this would help with the slope stabilization.

Mr. Klein stated that the applicant said the dogs are out in the morning and for a couple of hours but the noise is all the time and the dogs are very loud. Sound barrier created by a wall would be enhanced at 70' distance and it seems like they would get more noise with a wall.

Mrs. Corbett, the sound is heard even with the windows closed inside. The sound is continuous for 12-14 hours and there has been no response from applicant on the noise. Noise is heard by neighbors far away. She is asking for applicant to be considerate to the neighbors.

Mr. Lang stated that he doesn't know where they came up with the figure of 70 dogs and want to make sure that she is not allowed to do an increase with the existing (60) dogs there. Garage was built but not for a kennel and there are dog runs inside this structure. She has been increasing her business. She has also added a dog walk around her property. This kennel started out as a breeding of dogs.

Mr. Konstand stated that this may be an agricultural activity that may be hard to control by the township. There is a potential suit by the neighbors for a private nuisance, even if there would be an agricultural exemption. Is boarding an agricultural use? Animal husbandry is an agricultural exemption. There was a legal opinion done by Browse and McDowell on this and needs to be reviewed and updated to see what the status of boarding dogs is.

Mr. Lang would like to see the legal opinion on this. There is a distinction between boarding and breeding.

Chairman stated to let the applicant know of the extended conversation after applicant left and they are welcome to listen to the tape or get copies of the minutes and the Chair encourages this.

