

Roger Lee Fink  
Attorney at Law  
7680 Carley Drive  
Port Tobacco, Maryland 20677  
(301) 934-1399  
Email: rogerfink1@hotmail.com

---

2/19/13

BY HAND DELIVERY

Carol Everett, Clerk  
Board of Appeals  
La Plata, Maryland

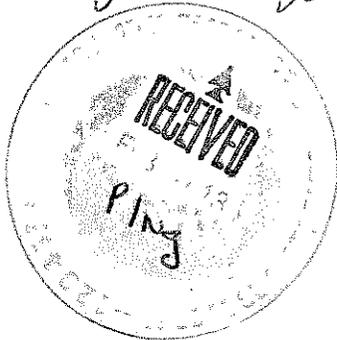
RE: Board of Appeals No. 1299

Dear Madam Clerk:

Enclosed please find Supplemental  
Written Testimony in Board of Appeals Docket  
No. 1299 submitted to the record in this  
case. Your anticipated professional attention  
is greatly appreciated.

Best wishes,

Roger Lee Fink  
Attorney for Opponents



Supplemental Written Testimony

in Board of Appeals Docket No. 1299

This supplemental written testimony is necessary to complete my presentation to the Board of Appeals because time limitations imposed by the Board prevented the completion of testimony during the hearing. As a preliminary matter I want to emphasize that none of my clients question the Applicant's professional skills and ability as a butcher or harbor any personal animosity toward the Applicants as neighbors in their residential neighborhood. Their opposition is directed to the substantial harm imposed on the health, safety and welfare of their residential community by the continuing operation of an intense commercial activity within that community.

Referring to my oral testimony presented at the hearing, this case is all about location. The mere fact that the Applicants require three requested, and in my opinion four, variances from the minimum requirements for this special exception exemplifies the inappropriateness of this proposed special exception use. Clearly, the adverse effects of this proposed use at the proposed ten acre location on a private right-of-way in a residential neighborhood are above and beyond the adverse effects of this use if located elsewhere within the 164,062 acre AC zoning district. This case is all about location and this Board is required to undertake that analysis and make that determination. Moreover, the opponents to this request do not bear a burden to dissuade this Board that the proposed location is inappropriate. The burdens of production and persuasion lie solely with the Applicants.

The County's Office of Planning has gone to great lengths to bolster the Applicants' burden of proof in its 30 page Report to the Board of Appeals by presenting arguments to persuade this Board to grant the special exception and associated variances request. Because the Applicants rely almost exclusively on that Report, incorporating it at the hearing as their principal case, it is necessary to review the purported findings and conclusions contained in the Report.

Special Exception 1299

Most notably absent from the Report is any mention, let alone any discussion or analysis, of the locational standard enunciated in Shultz v. Pritts by the Maryland Court of Appeals. That absence notwithstanding Staff's discussion of the specific required criteria for this special exception implicitly illustrates just how far this Board must travel from the plain and unambiguous provisions of the zoning ordinance in order to grant this special exception use at the proposed location.

Not being able to find any evidence that the use will be detrimental to or endanger the public health, safety and general welfare the Staff Report discusses only the Applicant's ability to comply with federal and State slaughterhouse operation regulations. Their federal and State guidelines have nothing to do with the County's land use zoning regulations and are, this, largely irrelevant to this Board's review. What is relevant, however, is the detriment and danger to the residents on Petzold Drive, a private residential use-in-common easement, if this easement continues to be overburdened by a public commercial use. The testimony of many neighbors along this private right-of-way constitutes substantial evidence that the use will be detrimental to or endanger the public health, safety and general welfare.

The use is a permissible use in the AC zone only if it meets the minimum requirements for such a special exception use, which it doesn't. The necessity of numerous variances to the minimum requirements to render this use permissible is tantamount to asking this Board to grant a use variance, i.e., a variance to the zoning regulations' use criteria which is beyond this Board's authority to grant.

The Staff Report and, thus, the Applicants' case, entirely ignores the issue of the public commercial use of the residential use private right-of-way in discussing whether the use will be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood. Substantial evidence in the record submitted by the opponents supports a finding that it would be detrimental.

The proposed special exception site not having direct access to a collector or arterial road is a significant factual and legal issue in this case. This special exception minimum requirement is not an area or bulk requirement. Consequently, a variance to completely remove this minimum use requirement would be the equivalent of a legislative act in rewriting the zoning ordinance to eliminate a minimum use requirement unrelated to area or bulk site development requirements. There are obvious reasons for this provision which the chief legislative body determined and enacted to be a necessary requirement for slaughterhouse operation. The proper forum for this legislative change is the legislature, not in the quasi-judicial forum provided by this Board.

The subject property is barely over half of the required minimum site area of 20 acres. Staff's discussion of the property's contiguity with land burdened by conservation of easements is irrelevant to the property's inability to meet this minimum requirement. Again, this Board is being asked to amend the zoning ordinance to remove this minimum requirement.

The zoning ordinance prohibits the construction or establishment of any slaughterhouse within one mile of any neighborhood of 20 lots or more in which the average density is one dwelling unit per five acres or more. A 37 lot neighborhood having average density of 6.4 acres per dwelling unit is located less than a half mile away from the subject property. Staff amends this zoning ordinance requirement and concludes this requirement doesn't apply by measuring the distance by road from the subject property located a mile back the private right-of-way to the neighborhood entrance two-tenths of a mile from Petzhold Drive, instead of the linear distance of the neighborhood from the subject property. Proximity in land use and zoning is measured by linear distance. If some other method of measurement was intended, such as road distance, then the legislative body would have specifically and expressly stated that intent. Accordingly, the applicant fails to satisfy this criterion and would need to be granted yet a fourth variance from the minimum requirements of the zoning ordinance in order to lawfully conduct its commercial operation.

The status of Petzhold Drive as a private residential limited use<sup>✓</sup>-in-common right of way is not recognized by Staff's analysis of objectionable traffic impact and adequate ingress and egress. The posting of speed limits and warning signs is a meaningless act if legally unenforceable. Petzhold Drive is not a County road, so the County has no jurisdiction to enforce any restrictions on its use. Using the Applicant's own figures, which the opponents contend are vastly understated, the five month busy season for deer processing (which does not include cattle, hogs or goats) yields 1,200 vehicle trips on Petzhold Drive with a volume in excess of 5,000 deer. This is clearly an intensive commercial use of Petzhold Drive with substantial traffic impact and inadequate ingress and egress with no mechanism for control and enforcement over the commercial use.

Petzhold Drive is a private use road. At the hearing counsel for the Applicant opined that Petzhold Drive was a public use road by virtue of the owner's statement of dedication on the plat creating the Petzhold residential subdivision. Maryland case law is clear that such declarations are merely offers to dedicate which are not effective until accepted by the County. The County has not accepted this offer of dedication and Petzhold Drive remains in the private ownership of the successors-in-interest to the original subdivider. As a caveat to the County, this could all change if the County undertakes some action, such as the County granting its approval for a public commercial use of Petzhold Drive, which would evidence an official acceptance of the owner's offer of dedication. The cost and liability for the County to improve and maintain Petzhold Drive as a County road would be enormous.

Staff's emphasis of the Tri-County Council of Southern Maryland Agricultural Development Commission priorities to show consistency with the County Comprehensive Plan is wholly irrelevant. The Tri-County Council is not the County's legislative body and has no authority over land use regulations in the County. The Zoning Ordinance implements the County's Comprehensive Plan and the failure to

satisfy four minimum use requirements in the Ordinance for this use at the proposed location illustrates its inconsistency with the Plan.

Requiring as it does four variances to conform to the applicable regulations of the zone in which it is located and to the special requirements established for the specific use show this proposed use to be the wrong use at the wrong location. The adverse effects of this use at the location proposed are clearly above and beyond these adverse effects of such a use if located elsewhere in the AC zone.

### Variances

The authority of the Board of Appeals to grant variances is limited to specific parcels of property which are characterized by exceptional narrowness, shallowness or shape or exceptional topographical conditions or other extraordinary situations or conditions. This authority can not be used to change the permitted use of land under the guise of a variance. The subject parcel of property is not characterized by exceptional narrowness, shallowness or shape or exceptional topographical conditions or other extraordinary situations or conditions. Accordingly, the Board's authority to grant the requested variances to permit this use should stop here. Nevertheless, the Planning Staff Report goes to great lengths to lure this Board into granting a proposed use for this parcel which does not meet the minimum requirements of the zoning ordinance in order to be permitted use under the guise of a variance.

As to all three variance requests there are simply no extraordinary conditions or circumstances regarding the subject property to justify the variances. To the extent that there are, and I believe there are not, any such conditions or circumstances are self-created or self-imposed. The Applicants purchased a residential lot in a residential subdivision too small for the proposed use without direct access to a collector or arterial road. They started their commercial business anyway, without the necessary zoning approval, and have operated this business for ten years. The only hardship that compliance with the land use regulations that everyone else in the County has to comply with is the financial hardship of having to operate their business at an appropriate location where they can comply with the regulations. Financial hardship is not the type of hardship that can justify the elimination of minimum zoning requirements regulations. So much of the Staff Report analysis is speculative and irrelevant to this application that I will not burden this Board with further rebuttal of its findings and conclusions. In spite of the efforts in the Staff Report to rationalize and support the Applicant's requests, the Applicant has not met, and I submit can not meet, its burden of proof in this important matter that this use at this location satisfies the principles and standards which the law imposes on the facts presented in this land use case.

In closing, I want to again emphasize that the opposition to the application is not personal. It's all about location. None of the opponents want to see the applicant put out of business. As neighbors they hope this business can thrive and grow – just not at this location. The demonstrated support of the farming, hunting and non-profit community for the Applicant's business indicates that he has established a large and loyal client base to support his operation at an appropriate business location. Moreover, the Applicant's ten year operation without the associated overhead of a commercial site should have provided the Applicant with ample opportunity to accumulate sufficient capital to expand to an appropriate location. With over 164,000 acres of land zoned AC in Charles County, relocating this business to a site that meets the minimum requirements for this use without the adverse effects on neighboring properties above and beyond the inherent adverse effects of such a use <sup>at</sup> a different location is merely the next step forward for this successful business enterprise to bring itself into compliance with the law. Accordingly, this application for a special exception should be denied.

Respectfully submitted,



Roger Lee Fink

Attorney Represented <sup>at</sup> for Seven Resident Property Owners on Petzhold Drive.

February 19<sup>th</sup> 2013

Dear Carrol Everett:

Enclosed are ~~ten~~ <sup>11</sup> letters to be included in the Board of Appeals Docket #: 1299 today - to be considered by the BOA members before their determination on February 26<sup>th</sup>.

These letters were written by concerned neighbors on Petzold Drive in Waldorf Maryland.

Enclosed Letters are titled:

1. Blevins last Plea for relocation of Petzold Drive Slaughterhouse
2. Robinson Last Plea to the BOA
3. Request to deny Illegal Slaughterhouse-Petzold Drive
4. Estes Final Plea to the BOA
5. An indication of the tensions on Petzold Drive
6. Dear BOA please relocate illegal slaughterhouse on Petzold Drive
7. BOA testimony rebuttal
8. Disappointing conduct at the BOA meetings
9. Proposed use has greater adverse effects Re: Illegal Slaughterhouse Petzold Drive
10. Dear BOA members letter 2-13-13

11. Swellings

Carrol, Thank you for all of your hard work throughout this process

Have a Fantastic week.

To the Charles County Board of Appeals:

This is a request to deny the application by Richard and Carol Turner to continue operating their slaughterhouse on Petzold Drive, Waldorf, Md. Our lawyer gave you all the legalities of this matter. We do not feel a slaughterhouse fits in a residential neighborhood.

You are aware of all the issues surrounding this appeal and our case as it pertains to our safety and general well-being of the neighborhood. We also know that Senator Middleton had another private meeting with several state delegates including Sally Jameson (former member and chairperson of the Charles County Zoning Board of Appeals). The Senator told the Maryland Independent in an article written by Paul Warner that he thinks the slaughterhouse "is in a bad location, given that the neighborhood dates back to a time when gravel roads were used in the county." Now one of the attending delegates told us that the Senator was supporting the slaughterhouse.

Add to that the completely biased findings and recommendations by the zoning office and it would lead one to believe that there is unethical conduct that might qualify as criminal conduct being practiced by county and state officials.

The Turners were given restrictions and directions to follow by Judge Wells in a court hearing on October 24, 2012 which they have ignored and have repeatedly violated the terms of the order. We can prove they have violated at least two of the directives. The county is aware of this and yet they do nothing to enforce the judge's orders. If the Turners are granted the variances they seek, there is no doubt that they will NOT adhere to the restrictions and specific guidelines set forth. This has been made perfectly clear in the past.

This case is not about good people doing a service for the people of Charles County or feeding the poor as was heard in testimony given at the appeals hearing on February 12, 2012. None of the testimony given in favor of the slaughterhouse addressed the law. The law is clear and the reasons to deny the variances are equally clear. 1. The Turners do not have direct access to a collector or arterial road. His hundreds of customers must travel past all homes a minimum of four times for each animal delivered. 2. No slaughterhouse shall be constructed or established within one mile of any neighborhood of twenty lots or more in which the average density is one dwelling unit per five acres or more. This neighborhood is much denser than that as several homes are built on approximately three acres, not five, so they are closer together. In addition, Wetherburn subdivision abuts property on Petzold Drive with approximately 37 homes on much smaller lots clearly putting more than twenty homes within a mile of the slaughterhouse as the crow flies.

In addition, the guidelines for granting special variances were written to protect the residents of this county. The guidelines state that "the Board of Appeals shall grant a special exception when, from a preponderance of the evidence of record, the proposed use:

will not be detrimental to or endanger the public health, safety and general welfare." Based on the facts given, a variance for a slaughterhouse in a residential neighborhood will most definitely be detrimental to and endanger the public health, safety and general welfare of our community as was

testified by all of those against the slaughterhouse who actually live in this neighborhood at the February 12<sup>th</sup> meeting.

will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties of the general neighborhood . We who live on Petzold Drive can no longer enjoy our country setting due to the many speeding vehicles going to the back of the property. The gravel road had been destroyed. The value of my home has dropped not only due to the housing market crash but also because of the gravel road and having a slaughterhouse at the end of the road will not help the marketability of my home when I decide to sell.

will cause no objectionable impact from traffic, noise, type of physical activity, fumes, odors, dust or glare. Well this one should be self-explanatory. We have complained for years about the objectionable impact the slaughterhouse traffic creates. If the slaughterhouse processes 1000 deer per season, not to mention the other animals processed, this will translate into 4000 trips up and down our road and past our homes by his customers. I did not buy this property in 1988 to live on a main road or a freeway.

will provide adequate ingress and egress and be so designed as to minimize traffic congestion in the public streets. This is not possible since there is only one way in and one way out of Petzold Drive.

In summary, the decision has to be made based entirely on the law not on the contributions to the county by the individuals applying for the variance.

Sincerely,

Faye Stinehart and Ray Johnston  
13975 Petzold Drive  
Waldorf, Maryland 20601

To the members of Charles County Board of Appeals members:

I am writing you in reference to the meeting held on February 12<sup>th</sup> regarding the slaughterhouse variances on Petzold Drive. We are longtime residents with huge concerns.

We don't think the real problems were addressed at the meeting. There were an abundance of character witnesses for the Turners and a lot of praise for how clean and well kept their business is, how much they feed the poor of the county (and get paid to do so) and last but not least the road. NONE OF THIS - HAS NOT ONE THING TO DO WITH THE VARIANCES THEY'RE REQUESTING.

What wasn't addressed is that no matter what the conditions of the road are at present, it is and always has been intended as a residential right of way. NOT for COMMERCIAL USE which will produce much more wear, tear and maintenance. We along with other neighbors have kept up the road for many years before the Turners ever moved to the area. It was different then, we didn't have folks driving through the grass making deep ruts with their large four wheel drive vehicles so we couldn't even mow the grass, or making vulgar sign when asked to slow down. Living 35 feet off the road you become a witness to the abuse of it.

We don't understand how the county has in the past skirted around EVERY zoning regulation that they put in place to protect others to grant ONE to operate an illegal business on a private road.

We have a full service butcher (Dixons) 2.5 miles from our house. Dixons is Located off a public road. We have a deer processing farm less than ½ mile from our house. This farm is also located off a public road. I find it hard to believe that the Turners didn't know they were operating an illegal business. I'm sure it just got away from them as it grew and it has now out grown this neighborhood and threatens it's safety and the peaceful enjoyment of its' residents. Not to mention it has and will continue to drop the value of our properties.

We read in the zoning regulations on page 422 Section H:

The Board of Appeals shall grant a special exception when from a preponderance of the evidence of record, the proposed use:

1. Will not be detrimental to or endanger the public health, safety and general welfare
3. Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood.
5. Will cause no objectionable impact from traffic, noise, type of physical activity, fumes, dust or glare.
7. Will provide ingress and egress and be so designed as to minimize traffic congestion in the public streets
9. Conforms to the applicable regulations of the zone in which it is located and to the special requirements for the specific use.

How can you say that the neighborhood should help the Turners business by repairing the road for his customers while our property values drop (not everyone wants to live on the same road as a slaughterhouse) and we aren't able to use said road to ride bikes or walk dogs anymore because of speeding traffic with large trailers.

Since the slaughterhouse meets none of the requirements now and has no way of doing so in the future how can this even be a consideration? If there is a possible need for a

slaughterhouse and or livestock processor there are already at least four processors within a five mile radius of our neighborhood. Rick Turners only entrance and exit for his slaughterhouse is through a private road maintained by the neighborhood.

We can't see how any variances can be granted without trampling on our rights. It would truly be favoritism against the neighborhood. To make an exception for one that threatens others is not the way the County Government was meant to operate.

Thank you for your consideration in this matter:

Rick and Georgia Blevins

14025 Petzold Drive

Waldorf, Md

20601

Dear Board of Appeals members:

I would like to first Thank You for your time the other evening in listening to ours concerns in regards to the Slaughterhouse off the private road of Petzold Drive.

I have some grave concerns that many of the comments made by those in favor of this request come from citizens who do not live on Petzold Drive. No matter what they say, they do not live on the farm and their homes and property are not being affected by this request. Mr. Webber who testified for the Turners does not even have permission to use Petzold Drive, his property has ingress and egress through the Weatherburn Subdivision so he has no right to any comment about the road that he is using illegally. Therefore I resentfully request that their testimony should not be considered relevant to the concerns of road safety and maintenance.

I also feel you should know that many of the statements made by individuals testifying for Mr. Turner where lying about information. Mr. Elbert's comments about how any of the family's contesting the appeal had something to do with the exceptions that have been granted in the past approving the sale of property on Petzold Farms, and that we benefited from those sales. I nor has anyone that I know of ever gone before the board requesting exceptions for property sale. The lands were sold by Martha Robinson and Erica Blevins and I know I never received any funds for any sale that took place. Martha is now in a nursing home with Alzheimer's and knows nothing or no one. And Erica Blevins has been dead for some time. A property owner has the right to sell their property. This fault lies in the County permitting all of the building back here on Petzold Farms.

I personally have no problem with the Turner's themselves, but what started out as a hobby of deer processing has grown into a business that cannot be supported by the road his customers must travel. Mr. Turner should have done this process legally and he would not have spent money doing all of the barn renovations prior to trying to get approval. I still do not understand how he commits acts of infractions over and over not just with the zoning board but with Charles County running an illegal business period and yet he is being pictured as the innocent victim instead of the criminal that he is.

I did not bring this up the other evening, but as it is in a part of the appeals documents submitted by the Planning Commission I would like to know how this parcel can be considered a part of the Charles

County Comprehensive Plan from the Tobacco Growers Buyout. Mr. Turner never grew tobacco on this parcel and neither did anyone else. This Comprehensive Plan was put into place to help the farmers of tobacco growing land to convert their land they grew tobacco on into some other source of income. I am not sure if Mr. Turner even grew tobacco before and why did he not convert that land as that was what the program was designed to do. So I also respectfully request that this information be removed from the equation of relevant reasons for allowing this request.

And there were many comments made of how Mr. Turner maintained the road which of course is not the truth. Mr. Turner did help work on the road as has everyone else who lives on the road. The fact that Mr. Turner has equipment that most of the rest of us do not has helped all of us occasionally in the past. If having Rick Turner help maintain our road means we have to live with an Illegal slaughterhouse in our neighborhood than we are not interested. Many of us have hand shelved gravel, dirt and asphalt grindings into holes on this road. This road has been around a long time. The issue before the Board of Appeals is not the road.

When my husband and I moved onto the property in 1987 the road was just barely big enough for two cars to pass and still is not in some sections. Over the year many people have helped maintain the road some have made it better some have made it worse, but always with good intention and never using it as a means of holding people hostage. Many people worked on this road long before either Mr. Turner or Mr. Elbert moved onto the road.

Part of the biggest problem we have now is people like Mr. Elbert and his wife, and Mrs. Penkert, the Birds, Mr. Isner who have complained the loudest about the condition of the road. Yet when they bought the property they knew it was a dirt road if they did not want to live on a dirt road they should have bought elsewhere. They all have an ulterior motive in this appeal they want the county to pave the road. But we have no interest in this, we live here because we like living on what used to be a quiet private country road. This was a quiet place to be before the Turners moved in. We want our community back.

There is also one more person who lives on the road who you have not heard from and that would be my nephew Shawn Thompson. He depends on a handicap bus to come and pick him up every day. When the road becomes too bad the bus will not go up to his house. It is important to all of us that the road gets only the people who live here driving the road- not all of the hunters and retailers of livestock in Charles County.

Again: Thank you for your time and please help us. Hubert & Donna Robinson

Dear Board of Appeals Members:

First I would like to say thank you to the board for listening to our concerns. Second I THINK IT WAS VERY RUDE AND DISRESPECTFUL to the Board of Appeals when people were clapping and making remarks that were rude.

I would like to add that Mr. Turner knew the laws on owning a slaughterhouse before he built his. There are 2 other slaughterhouses within 2 or 3 miles from his slaughter house. Turner is related by marriage to the Dixons slaughterhouse which is one of the two slaughterhouses. He knew what the laws and requirements were before he got started.

Mr. Elbert stated that we profited on the sale of various parcels of land from here. Not one of the families contesting Mr. Turners Slaughterhouse RECEIVED ANY PAYMENT OR PROFITED OF ANY KIND OF SALES. Actually four of the seven families contesting the slaughterhouse did not live here when the land was sold. Mr. Eisner claimed we profited from Monthly horse shows, again no one contesting the slaughterhouse RECEIVED ANY PROFIT OR GIFTS of any kind. Most of the families living here were immediate family except for Mr. and Mrs. Eisner and he was fine with it at the time, his wife also owned and boarded her horse here at the farm.

Mr. Turner has not always cared for the road he has not lived here long enough to say he is the only one who cared for the road. All of the families at the end of Petzold Drive kept this road repaired. My husband and I are now in our 70's and are unable to keep up with the repairs on Petzold Drive. Now there are many more repairs needed on the road because of all of the traffic.

Mrs. Turner stated that her son is the youngest child in this development. That is not true. We all have children, grandchildren and great grandchildren that live here from time to time. I have 10 grandchildren and 3 great grandchildren which are 2 years old that I watch a lot. I am afraid to let them play in my front yard because of the traffic. My house is within 50 ft. of the dirt road.

George and Kay Estes (13995 Petzold Drive)

Dear Board of Appeals Members:

I just wanted to give you a small indication of the tensions here on Petzold Drive since the County cited Rick Turner for having an Illegal Slaughterhouse.

At the February 12<sup>th</sup> Board of Appeals hearing Carol Turner gave a last plea at the end of the proceedings and stated to the board under oath "We have never done anything to disrespect our neighbors". Here are some examples of how the neighbors are being continually disrespected:

One of the neighbors got tired of yelling at a particular white truck that flew up and down our road daily. We assumed that the owner of the white truck worked for Turner as much as he flew up and down the road. This neighbor followed the white truck up to Turners this particular day and told the owner of the white truck to stop speeding. Later that afternoon when Turner found out instead of saying to the guy "Could you please slow down"? Turner showed up at the neighbors' house with the Cops never mentioning that the neighbor had confronted the guy about speeding. Turner told the Cops that the neighbor was harassing the guy in the white truck. Strong words were spilled.

After that the whole Turner family took it upon themselves to speed up and down Petzold Drive every time they drove by just to be spiteful. Rick Turners daughter Katie Turner is especially bad about speeding on the road and she is old enough to know better. One afternoon Katie Turner was driving down to the end of the road to pick up her little brother from the bus stop. Two different neighbors yelled at her to slow down and Katie flipped them the bird on the way down and again on the way back. Later that afternoon one of the neighbors received a notice from Charles County Sheriffs' department that Rick Turner had told Katie to go file a complaint (stated on the report) with the Police department that she feared for her life. Neighbors went to court and the judge dismissed the case telling Katie Turner that he doubted that she feared for her life if she flipped the neighbors off twice and that she needed to stop instigating. Rick Turner did not even show up at court to support his daughter in an endeavor that he himself had instigated.

One of the neighbors tried to slow down a truck that had sped up the road to Turners when it was on its' way back. When the neighbor tried to flag the truck down to slow him-down the truck literally gunned it and the neighbor had to jump into the bushes in order not to get hit. Then the truck slammed on the brakes and was rummaging for something in his truck and sped away when other neighbors came out to see what all the commotion was about. The Charles County Sheriffs' Department was called out here again to document.

It was suggested to the neighbors to create speed bumps to help cut down on the speeding from Rick Turners customers by the Charles County Sheriffs' department. What a mess. The neighbors trying to create the speed bumps out of millings were in the process of creating the speed bumps, had put up a large orange sign that said "BUMP" before the first bump. Mind you they were no road workers and were making an effort but the original bumps were too high at first. While they were working on the speed bumps Paul Elbert's college age daughter flew over them, got in a huff, got out of her car screaming she was going to sue... Paul Elbert's wife Ellen and Kim Penkert were next to go over the bumps too fast, stopped had a fit and called the cops. Let me ask you if you see a big sign that says

"BUMP", three men working with rakes and a man in a bob-cat working in the middle of the road do you think you might slow down? No one else had any trouble driving over the speed bumps, even those owners with lower vehicles.

It got worse after that, right in front of our face and every evening Rick Turner, Carol Turner, Katie Turner, Katie Turners boyfriend Kim Penkert's husband would spin tire on the speed bumps trying to ruin them. After about a week or two-the day one of the road owners left for vacation Paul Elbert, Mr. Mori and Rick Gacek had a procession of two tractors and bulldozed the speed bumps. Paul Elbert had contacted a lawyer Stephen Scott who wrote them a letter saying that the speed bumps impeded their "use and enjoyment" of the Public road and that they were only installed to keep the dust down. Scott told them that they had permission to bulldoze and sue for damages. One of the neighbors contacted Stephen Scott's office the following morning and informed Scott that this was NOT a public road and informed them about the excessive speeding and traffic from the Illegal Slaughterhouse and that he did not have the right to give the neighbors permission to bulldoze the speed bumps. No mention of that law suit was ever heard about again.

There was a dispute about the width of the road as to how it is mentioned in property owner's deeds after the speed bump incident. One of the road owners had the county come out who measured the road at certain points and put in writing that the road may not be altered or widened unless completely brought up to county specifications. A 50ft width on this road would tear up established lawns, shrubs, trees and landscaping that lines neighbors' property up and down the road. All neighbors on Petzold Drive have easement (use of the existing road as is, not the entire 50ft).

All of these cases ended up in favor of the neighbors and can easily be verified by the Charles County Sheriffs' Department. None of these - and more instances - never would have happened if Rick Turner was not operating an Illegal Slaughterhouse in our neighborhood.

Ever since the issue about the road width the Turners turn- around in the grass at the end of the road and drive through grass where neighbors mow and maintain yard, tearing it up. They also drive in the grass along the edge of neighbors yards tearing up what is maintained yards. Our children are also being targeted at school with taunting as to which side they are on. It's not fair. Carol Turner was also quoted at the BOA meeting on February 12 saying "If the road is so dangerous why let your children play on it". We all chose to purchase out here on the farm because IT WAS safe for our Children before the Turners started operating their Illegal Slaughterhouse.

We have tried to make peace, make right and make do for years, nothing is working and it's getting worse around here every day. Just remember the jeering and rude comments at the BOA meeting on February 12<sup>th</sup> from Turners supporters as a small indicator of the daily stress and tension that all of the neighbors here on Petzold Drive are under. Your home is supposed to be a safe refuge where you can relax; this is not the case here on Petzold Drive anymore.

Rick Turner also owns a landscaping business hence the reason for not asking for operating hours during the end of June and July.

We Plead with the Board of Appeals members to follow the law and restore our neighborhood to a peaceful place to call home as it was prior to Rick Turners Illegal Slaughterhouse opening.

Dear Charles County Board Members:

I have lived on Petzold Dr. since 1996. I nor any of the other neighbors opposing this "Slaughter House" argue the testimonies or support(given by his clientell and non-residence) whether Rick and Carol Turner are running a possibly needed buisness for the community. **That has never been the issue.** The issue is the **effect** the excessive traffic has caused on the neighbors, especially those who live at the beginning of Petzold Dr. hence the reason why commercial buisnesses are required by county ordiances to have **arterial or direct road access.** Every customer brings the product to the "Slaughter House" to be processed (in then out). A week later return for pick-up (in then out). There are four trips made by every client. I have documented on camera approximately **seven thousand** pictures in a four month period. That equates to five to six times the amount which live on Petzold Dr. and Elizabeth Dr. (if two vehicles/two trips are allowed per house every day). This number of vehicles, heavy trucks with trailers, cattle trucks, waste removal etc.. is **absolutely unacceptable.** I have seen the damage caused to the road by excessive traffic and commercial vehicles. Per the testimonies given to you on the evening of February 12<sup>th</sup> , Mr. Turner **was** (prior to being sited from the county) making an effort to help maintain the road. I personally have contributed money several times for millings and gas to Mr. Turner and on an annual basis when Mr. Mori was maintaining the road.

We have made multiple attempts (unlike the testimonies during the appeal) pleading with Rick and Carol to advise their customers to slow down. It would be virtiually impossible for the Turners to do so anyway with this amount of buisness.

A sign limiting the hours of operation posted at the place of buisness (at the end of the road) does not eliminate customer traffic or slow down traffic.

This is a private road and cannot be policed by charles county authorities. It is **unfair and unjust** to expect the neighbors to confront the speeding traffic and hunters (who in some cases may be armed). There have been dozens of confrontations already and tensions are high. It is my fear that if this continues, it is only a matter of time, not if, before someones temper will cause them to do something everyone will regret. I am an avid sportsman and hunter. ***The last thing we need is a another tragedy in our country (and the negative publicty on sportsman from the media that would follow).***

***Many successful businesses are started at home in a apartment, kitchen, garage or barn and outgrow it. It is time for Rick and Carol Turner to realize their success and relocate their buisness to an area (properly zoned) where their buisness can continue to prosper and not negatively affect the rights of others.***

Thank You for your consideration:  
Concerned resident of Petzold Drive

Dear Charles County Board of Appeals Members:

I am writing to you to rebut testimony given on behalf of Rick Turner and his Illegal Slaughterhouse on Petzold Drive.

It seemed that every testimony given to Support Rick and Carol Turner only mentioned Rick and Carol Turners personal character and the road condition of Petzold Drive. Neither one of those were relevant to the issue that Rick Turner has an Illegal Slaughterhouse on Petzold Drive in a residential neighborhood. No one who gave testimony for the Turners had anything relevant to say that proved why an Illegal Slaughterhouse should be allowed to operate in a residential neighborhood on a private road.

Almost every single person giving support for the Turners made part of their mention about the poor condition of Petzold Drive. The condition of Petzold Drive is not the issue here. Petzold Drive has not always been in a state of disrepair. In October 2011 when Charles County sited Rick Turner for having an Illegal Slaughterhouse without the proper permits and license the neighbors had had enough. We were no longer going to put our hard earned money and effort to maintain Petzold Drive for the abundance of Rick Turners Customers. Rick Turner has purchased millings in years past on three different occasions and grated a bit around that time, but immediately quit when he realized the extent to which the neighbors disapproved of his Illegal Slaughterhouse. There were quite a few neighbors who contributed money to Turner for gas and millings at that time also. We do not want Rick Turner to maintain Petzold Drive or to operate an Illegal Slaughterhouse on Petzold Drive.

Testimony rebuttal for Turners and support of the Turners:

- Rick Turner lied when he stated that he complied with the mandated Court Order given by Judge Gregory Wells on October 24<sup>th</sup>. We have submitted proof. Turner was also lying when he said that speeding was our only concern. "Safety for our Children and Neighbors are our first concern and he knows it". Rick Turner lied when he was asked if the planning staffs report was correct, he knows that there are more than 16 houses on this road for a start among many other incorrect findings.
- William Webber- 13880 Petzold Drive: William and Brenda Webber own the most land on Petzold Drive as far as I know 30+ acres. Their log cabin is set far back from Petzold Drive in the woods. They also have another right-of-way through the development Wetherburn which they choose to use on a daily basis therefore they do not see the daily disruptions from Rick Turners business as we that live closer to the front do.
- Mr. Barns a Charles County 4H representative says that we want Charles County to own our road. "We do not"
- Barbara Hayward - 15701 Br. Bowling Rd. does not live on Petzold Drive and gave only character witness that is not relevant.

- Bryan Reed - 6580 Davens Court LaPlata does not live on Petzold Drive and gave only character witness that was not relevant.
- Kim Penkert - 13790 Petzold Drive - Rick Turners adjoining neighbor has only been here around two years and does not understand the scope of what is going on. She does not see the traffic fly up and down the road because she is at the end of Petzold Drive. She miss-quoted the number of children who reside here and called the picture taking of homes on Petzold Drive for documentation "Pornography" No one took any pictures of any children while documenting the amount of houses on this road that the planning staff incorrectly quoted. The Penkerts sided with the Turners when the speed bumps were constructed and Kim objected to them along with the Turners.
- Paul Elbert has his own agenda he has always wanted the County to take over this road and pave it. He lives way in the back on Elizabeth Drive. Paul Elbert has taken over the grading since we ceased and is further destroying this road. He has completely scraped off the crown, dumps big boulders (which I have pictures of) rocks and sticks in a potholes to fill them. Paul's continued scraping does nothing but loosen the gravel making it even more impossible to stop short on this road if someone had to. Turner and Elbert have never gotten along and the summer of 2011 were ready to kill each other over Turners dog chasing Elbert's chickens. Paul Elbert knew that the speed bumps were going in and thought they were a good idea until after the fact when his wife objected Paul started siding with Turner.
- Tim Reeves: testimony irrelevant does not live here and mentioned "Its time they pay for the road" This is not a road issue
- James & Denise Bird - 4315 Elizabeth Drive: They only moved here in 2008 and were indifferent about anything until the Charles County Sherriff's Department suggested we install speed bumps. The Birds were opposed to the speed bumps and took sides with the Turners after that, not to mention the location of their house in the back on the off street of Elizabeth Drive does not see as much impact from the Slaughterhouse traffic.
- Peter ? - 3426 Williamsburg road: Peter does not live on Petzold Drive and character witness is irrelevant.
- Jeffery Delwarte: Used to live in the old original farmhouse that is now owned by the Penkert family, there again character witness is irrelevant.
- Terry Isner - 13825 Petzold Drive: Mr. Isner's testimony about what happened here on the farm years and years ago with horses is irrelevant. Mr. Isner leaves early for work every morning,

returns home and goes out most evenings not seeing the impact of Turners Slaughterhouse on our neighborhood.

- Mike Roberts - 7122 Leonardtown Road Hughesville: does not live here on this road, character witness is irrelevant and the fact that Turner processes deer that feed the hungry for payment is just more proof that he is running a Commercial business in a residential neighborhood.
- Carol Turner - 13800 Petzold Drive: Carol Turner saying that she did not understand what this was all about and had wished that someone had just said something to her was a lie. I personally have asked her to PLEASE do something about the speeding of her customers on this road time and time again and again and again... and was given the response of : "I cannot control my customers, what do you want me to do about it"? Even when I asked her as a Mother. "Would you let your young son ride his bicycle in front of my house"? The reply that I got from Carol Turner was again, "What do you want me to do about it, stand in front of your house and tell them to slow down"? Carol also got up at the end with their attorney Steven Cain showing a 1982/1984 Boundary map claiming that Petzold Drive is a public road. The Owners Dedication on that Plat does not say that Petzold Drive is a Public right of way. There are legal specifics that would have had to have been taken to make Petzold Drive a Public right of way that were never taken.

A Petition in Support of Rick Turners Slaughterhouse has been at Fred's Sporting Goods for a long time collecting a tremendous amount of signatures. A book full of signatures supporting the Slaughterhouse is only further evidence that a well - supported Commercial Slaughterhouse does not belong in a residential neighborhood. Any business person who has grown a business to a certain extent only to have restrictions on it for limited business would never be satisfied until the business was reestablished to its former size. We wish that Rick Turner would be a sensible businessman and take the established clientele and relocate to an area where his business can thrive and grow to its' fullest potential.

Dear Charles County Board of Appeals Members:

I first have to write a letter to you expressing my concerns as a Mother and a Homeowner here on Petzold Drive then will follow it up with a letter with my concerns as to why an Illegal Slaughterhouse should be forced to relocate on the grounds that the USE requires so many variances (some that were disregarded by Charles County Planning staff) which is not legal in itself.

Both Board of Appeals meetings regarding Rick Turners Illegal Slaughterhouse on Petzold Drive have been disappointing from a professional view. At the first Board of Appeals meeting on October 23<sup>rd</sup> Frederick Mower was adamant that at NO time was anyone to speak to any of the Board members before or after session. Directly after the meeting Paul Elbert, Rick Turner and Carol Turner spoke at length with Frederick Mower in the assembly room and in the lobby of the Government building.

During the BOA meeting on October 23<sup>rd</sup> and February 12<sup>th</sup> there was loud cheering, clapping for support and jeering against opposition. Are not BOA meetings official quasi-judicial proceedings? Is this the type of behavior that is allowed? This type of behavior can sway board members thoughts on positions and should not be allowed.

I had never met or seen Frederick Mower prior to the first BOA meeting on October 23<sup>rd</sup>. On October 23<sup>rd</sup> the first BOA was to classify Rick Turners business. Frederick Mower stated to Rick Turner "You do not want me to classify your business as a Slaughterhouse because a Slaughterhouse is a Commercial business and a commercial business is NOT allowed in a residential area". Yet, at the end of the meeting Frederick Mower reprimanded Matthew P. Clagett the Associate County Attorney, "Don't you dare let the Judge close down this mans' business tomorrow in District Court, I am not in the business of closing small business". Proof had been already submitted that Mr. Turner was operating an Illegal Slaughterhouse that was self-created and yet Frederick Mower was making demands on a Judge's decision?

Additionally at the second BOA proceedings on February 12<sup>th</sup> Frederick Mower ceased the Attorney Roger Fink that the Neighbors on Petzold Drive had hired and paid to represent them against the slaughterhouse. How is that fair? The Planning staffs report was so Pro-The Slaughterhouse and not objective yet the Planning staff gave an extended report. Also, Steven Cain Mr. Turners attorney was allowed to speak at length at least three different times. It is not fair that the Neighbors had to pay for representation that did not get a chance to complete testimony on their behalf. If that was not bad enough Frederick Mower questioned a Neighbor Kim Penkert who is Rick Turners direct neighbor asking her "How many children live on Petzold Drive"? First, Kim gave an incorrect answer which was mentioned in the brief rebutting the Planning Staff's report. Second, by Frederick Mower asking how many children live on Petzold Drive he is insinuating that the life of just a few would not be relevant. As a parent that was very disturbing. Frederick Mower has not shown himself to be a fair or impartial board chairman or member and should be reprimanded. Frederick Mowers obvious favoritism will be brought to the attention of the State's Ethic Committee.

We hope that in light of obvious favoritism displayed by Frederick Mower and the Planning Staffs report that the Current Board of Appeals members will make a lawful decision.

Thank you for your consideration. The Neighbors of Petzold Drive

Dear Board of Appeals Members:

The neighbors of Petzold Drive feel that the burden of Proof has fallen on us in proving that the proposed use of Rick Turners Illegal Slaughterhouse has greater ADVERSE effects on Petzold Drive than if it were located in another area where it is legally zoned for.

Quoting the case from 1978 of "Shultz VS. Pritz":

The request has to be denied by law when the proposed Use has greater adverse effects.

We feel that the below mentioned issues are unique and prove greater adverse effects.

- Security and safety issue:
- Charles County approved the Building of Rick Turners house in 1999 after Laws changed in 1992 stating that a private road could have no more than 5 houses on it.
- No Direct access to a collector or arterial road
- Petzold Drive is a Privately owned road
- Residential Neighborhood
- We are zoned A/C Agriculture Conservation not Commercial ( A Slaughterhouse is a commercial business which accepts payment for services rendered on site )
- No slaughterhouse shall be constructed or established within one mile of any neighborhood of 20 lots or more in which the average density is one dwelling unit per five acres or more. ( There are at least 62 houses within a mile of Turners Slaughterhouse )
- Rick Turners' house was one of the last houses built on Petzold Drive in 1999. Turner was very aware that the road was private and needed access.
- Turner started his business without the proper licensing and permits
- If Variances were granted, there is no way to enforce them because this is a private road
- Mandated Court orders were not followed, neither would variances be followed
- Turners property is land locked by Zekiah swamp one of the largest protected wetlands east of the Mississippi. There are conservation concerns with all of the blood and waste being washed down the drain into Turners septic system.
- In 1992 there was a BOA meeting listed in state archives as File # 818R. Location CW/16/01/080, a request from So. MD. Sand & Gravel to strip mine the property which now belongs to Turner. The request was denied siting that it would be detrimental to the neighborhood and the small narrow dirt road could not handle the traffic.
- Speeding-a posted 10 mph speed sign is ignored and will not be adhered to by customers in a hurry to drop off their deer, cattle or pork.
- Each product brought to the business requires 4 trips, bring the product in and leave a week later pick-up product and leave.

- **Restricted Business hours:** Time restrictions posted by the court for the Turners Slaughterhouse does not keep people from driving down the road and then realizing they are closed. A sign posted at the road would yet be 'ANOTHER VARIANCE' needed to operate a commercial business in our residential neighborhood. We have documented pictures to state that traffic from the Slaughterhouse comes at all hours, Sundays and Federal Holidays.
- The Planning staffs report to the BOA did not show any of the houses on Petzold Drive noting that the area is a Low density rural area. There are 21 houses on Petzold Drive
- (b) Traffic shall not exceed three customers or deliveries per day and will not create an increase in traffic patterns normally associated with a residential community. Page 19 from Charles County zoning section on Cottage Industry
- Slaughterhouse is self -imposed and self- created
- Zoning page 427. Section #4: That the variance request is not based upon conditions or circumstances which are self-created or self-imposed. Mr. Turner self-created and self-imposed this need for exception and variances on himself when he willingly and knowingly started operating an Illegal Slaughterhouse in 2002 without any permits or license.

Dear Board of Appeals Members:

Thank you for taking the time to hear our case last night February 12<sup>th</sup> regarding the Illegal Slaughterhouse on Petzold Drive.

Thank you also for taking the time to consider this letter which points out incorrect and missed items in the Report by the Charles County Planning staff to the Board of Appeals regarding the Illegal Slaughterhouse on Petzold Drive in Waldorf.

I am going to start by pointing out the discrepancies:

On the front page under the section "BACKGROUND"

The Turners purchased the subject property in 1999. This property known as Petzold Drive subdivision was to have NO more homes built on it. The private narrow dirt road was not zoned for anymore lots. This falls on the Planning commission who approved the building on Turners lot at the time. The Turners always knew of their intent to establish their slaughterhouse.

In October 2011 (follows to pg. 2 of planning staffs report) Rick Turner was sent a violation letter from a County Inspector for operating a slaughterhouse facility WITHOUT A PERMIT OR COUNTY AUTHORIZATION. The Slaughterhouse should have been closed at this time. A meeting to discuss the issue in November 2011 was requested by Rick Turner which was attended by Rick Turner, USDA inspector and County staff ( I was told by Reed Faasen that Mac Middleton was the listed County staff, et al. that attended) Rick Turner and Mac Middleton are associated by family marriage. A 90 day stay on enforcement of action was granted to allow Mr. Turner to continue to operate. Would a different ILLEGAL business without permits or license be allowed to continue to operate while the Department could research the issue?

Extension after extension has been granted to Mr. Turner to allow him to continue to operate his illegal business while the BOA had their first meeting to classify the butcher shop as a "Slaughterhouse" on October 23<sup>rd</sup> 2012. The following morning on October 24<sup>th</sup> the issue was brought before Judge Gregory Wells who mandated specific restrictions for Mr. Turner's business. (restrictions were not followed, proof and repeated requests to enforce the injunction were ignored).

On October 23<sup>rd</sup> the BOA allowed Mr. Turner to apply for exception and variances to come into compliance noting at the time only 2 variances. There are several variances needed to operate this type of business in an AC Zone.

Discrepancies on page 4.

*The Board of Appeals shall grant a special exception when, from a preponderance of the evidence record, the proposed use:*

*(1) Will not be detrimental to or endanger the public health, safety, and general welfare.*

*Staff Analysis: Staff does not find any evidence that the use will endanger public health, safety and general welfare as this use is compelled to follow state and United States Department of Agriculture (USDA) regulations.*

The staff goes on to mention food safety issues not the direct daily impact on the residence of Petzold Drive ...

This proposed use of an Illegal Slaughterhouse on a Privately owned narrow dirt road is **detrimental** because our children are not safe in their own neighborhood anymore nor have they been for years. I have been dealing with speeding trucks, cattle trucks, trailers, commercial vehicles racing down our private road since my children were toddlers. It is not safe for them to take a bike ride, jog, or take a walk. I have had to run to their aid and yell at speeding trucks and commercial vehicles way too many times. My children have been yelled and cussed at by speeding drivers who are invading our private road. We homeowners who work hard to provide a safe place for their families chose to live out here on what used to be a quiet private road.

**Endanger the Public Health:** Our neighbors and children are endangered daily. None of the neighbors wanted to raise their families in an Industrial Park like St. Charles. Every day strangers fly up and down this road to patron Rick Turners' slaughterhouse whom would otherwise not be here violating our privacy. 99% of the neighbors were here before Rick Turner willingly and knowingly started operating his Illegal Slaughterhouse. We do not want strangers running up and down the road daily endangering our children and leaving us open to theft and vandalism from strangers.

**Safety, and general welfare:** Your laws concerning commercial business were put into place for a reason. At the first BOA meeting on October 23<sup>rd</sup> 2012, Frederick Mower said as they were classifying Rick Turners business "You do not want me to classify you as a Slaughterhouse because a Slaughterhouse is a Commercial business and a Commercial business is not allowed in a Residential neighborhood". We plead with the Charles County Board of Appeals to follow their own laws. Rick Turner provides a service on site for services rendered. This is a commercial business on a Private road, which means ANY and ALL enforcement to any stipulations put on Rick Turners Slaughterhouse would fall on us residents to enforce. Charles County sheriffs department cannot enforce any speeding on a private road. Rick Turner has not followed any Court Ordered restrictions so far concerning business hours of operation and will not do so in the future because doing so would hurt his business. Applying restricted business hours does nothing to protect our children especially all summer long when they are out of school playing outside every day. How is it fair for Charles County to impose restrictions on Rick Turners Slaughterhouse for us to enforce. The tensions are already so high here that the dreaded thought of what might happen is just a question of when not if...

Last night during our second BOA meeting on February 12<sup>th</sup> Frederick Mower asked a neighbor "Kim Penkert" how many children reside on our road. Kim's answer of 7 was incorrect and how could Frederick Mower ask the question of "How Many children reside on Petzold Drive"? suggesting that the

amount of children living on the road to date is relevant. Is not the life of one child precious enough that Charles County should do the right thing and follow their own established laws?

There are at least 10 children that live on Petzold Drive as their primary residence who are of school age or younger. You also have to take into consideration there are children that live here every other weekend with divorced parents, there are grandchildren that are cared for during the day by grandparents while the parents work and there are almost 20 grandchildren that visit here regularly spending extended time with grandparents especially during the weekends, holidays and summer.

The safety of our Children and grandchildren that is being endangered daily by Rick Turners Slaughterhouse has always been our primary concern.

*Planning Staffs Report pg. 4 Section 2. "Is a permissible use in the zone".*

*Staff Analysis: The subject property is zoned Agricultural Conservation (AC) and the use is permitted by Special Exception in the AC zone.*

**The proposed use should NOT be granted in an established residential neighborhood. In order for the USE to be granted as an exception too many variances have to also be considered therefore- CHANGING THE USE- which is not permissible under the law.**

*(3) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood.*

*Staff Analysis: The Applicants stated they have been operating their business since 2002 and that the business' location is in a peaceful, rural area. They stated properties within their neighborhood have been bought and sold at competitive prices comparable to similar homes in their district.*

A letter attesting to the fact that a Slaughterhouse on the same road as a residential subdivision is detrimental to the surrounding property values has already been submitted to the BOA. This confirms the fact that a Slaughterhouse in our neighborhood lowers our property value. The neighbors can obtain many more letters from successful local realtors if it would help. Please put yourselves in our position and pretend you live here and have put your blood, sweat and financial resources into your home. Now pretend you want to move and you have to put your "for sale sign" right next to the Slaughterhouse business sign, or pretend you are in the market for a home for you and your family. Would you choose to purchase the home with a Slaughterhouse as a neighbor?

*Planning Staff report-Page 4-5 Section 3 continued:*

*During the Planning staff's site visit on December 21, 2012, the business appeared to be clean and confined to a single barn structure. Staff did not observe evidence that the use would be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood.*

Read the above statement and see how standing in the empty barn would not seem to be detrimental to the use: This above observation is not considering how the neighbors are affected daily. Just being a Slaughterhouse in a residential neighborhood is detrimental to the use, peaceful enjoyment, and economic value or development of surrounding properties or the general neighborhood as previously mentioned above.

I am not going to argue any of the site plan requirements on the planning staffs report from page 5 because we are requesting the relocation of Rick Turners Illegal Slaughterhouse.

*Planning Staff report page 6. Section (7) The site must have direct access to a collector or arterial road.*

*Staff Analysis: The Applicant stated they are not on an arterial or collector road, and have a deeded 50 foot private right-of-way. They have applied for a variance to this requirement.*

Every single customer of Rick Turners has to make at least four trips up and down our private narrow dirt road. Up to drop off, back to leave, back up to pick up and back down to leave... With Rick Turners Illegal Slaughterhouse being at the end of our road all of his customers cause constant daily disruptions. Petzold Drive has a 50 foot private right-of-way as noted on the deed as a 50 foot right of way to be used in common with others. Everyone also has easement rights- that means that you as a homeowner have use of the existing road AS IS, not the entire 50ft width. This road has never been 50ft wide nor will it be. A width of 50ft. damages well established, trees, landscaping and yards that homeowners have established since their properties were built. This means common use for the residence who live here, not to operate a Commercial Slaughterhouse business.

**How can Charles County approve a variance for an Illegal Slaughterhouse to have direct access to a collector or arterial road by way of a privately owned road? How can Charles County give a variance to and for something that is not theirs to give.**

*Planning Staff report page 7. Section B. Minimum site area. A minimum of 20 acres is required for a slaughterhouse operation. If the slaughterhouse includes a feedlot, a minimum of 100 acres is required.*

*Staff Analysis: The subject property is 10.14 acres. However, the property is contiguous with 582 acres of land protected by perpetual conservation easements.*

*These conservation properties surround the subject property to the north, south and west and are predominantly forested. These properties provide expansive wooded buffers to the subject property. The operation does not include a feedlot. The Applicants have applied for a variance to the lot size requirement.*

A variance as described by Charles county zoning regulations is supposed to be narrow or shallow. Requiring an additional 10+ acres for Mr. Turners Slaughterhouse is not a narrow or shallow is a concern with all of the disposable waste being washed down his septic system. Granting this variance is permitting the Board to change the permitted use of the land which is not allowed.

Planning Staff report page 7. Section C.

*No slaughterhouses shall be constructed or established within one mile of any neighborhood of 20 lots or more in which the average density is one dwelling unit per five acres or more.*

*Staff Analysis: The subdivision known as Wetherburn is approximately .5 linear miles away from the Turners' property and approximately 1.2 miles by road. There are a total of 37 lots within this subdivision plus significant open space and forest conservation associated with and surrounding the subdivision which yields an average density less than one dwelling unit per five acres (237 acres / 37 units = 6.4 acres).*

*Therefore, this requirement does not apply.*

Charles County Planning staff **miscounted** the homes on Petzold Drive and it's off street of Elizabeth Drive stating that there are only **16 homes** on Petzold Drive. Earlier letters from neighbors mentioned only 19 houses on Petzold Drive till they were actually counted and catalogued. The law states that no slaughterhouse shall be constructed or established within one mile of any neighborhood of 20 lots or more ... as stated above. There are **21 homes** on Petzold Drive, Elizabeth Drive (an off street of Petzold Drive) including one at the very end of Petzold Drive facing Dr. Samuel Mudd house road. That in itself is enough to consider this variance. You also have to take into consideration that the Planning staff incorrectly computed the density of the development Wetherburn because the developers of Wetherburn instead of selling the lots of 3-5 acres as they were zoned for gave each individual homeowner in Wetherburn a smaller lot to build on and their extra land deeded in the form of a portion of a community lot in the back of Wetherburn. Therefore changing the density computed. Wetherburn should be included in the home count also making well **over 62 homes** well within a mile of Rick Turners property. These specifics have been sent in an earlier letter with the homes being numbered to correlate with attached pictures along with the names of residence and their addresses.

*Planning Staffs Report page 8. Section (5) Will cause no objectionable impact from traffic, noise, type of physical activity, fumes, odors, dust or glare.*

There is a big objection from the impact of traffic, noise, type of physical activity, fumes, odors, dust or glare. The planning staffs analysis was that specific business hours on the part of the Turners due to a mandated court order would help. As earlier mentioned and noted in a separate letter of concern Mr. Turner consistently violated the mandated court order. With this being a private road we have NO way to enforce any speeding or restrictions on Rick Turners business. Customers continue to travel up and down our private road no matter the time or day. **The size of Rick Turners Illegal slaughterhouse was severely understated at the BOA hearing and on the Planning Staffs report.** Even the specifications for a Cottage industry specify you may not have more than three deliveries a day as pasted below from Charles County zoning laws:

#### ZONING REGULATIONS

19 Updated 2010

**(b) Traffic shall not exceed three customers or deliveries per day and will not create an increase in traffic patterns normally associated with a residential community.**

Any parking required is to be limited to off-street gravel or paved parking, on the permit holder's property.

**(c) Employees are limited to members of the immediate family who reside in the dwelling.** Another relevant point

**(d) Applications for home occupation permits will be approved or disapproved by the Zoning Officer based on the criteria of this subsection.**

**(e) All business activities associated with the conduct of a home occupation shall be conducted entirely within those portions of the principal dwelling that are approved for the home occupation use. All materials, equipment, supplies, and inventory associated with the home occupation shall be stored within the principal dwelling. A home occupation shall not involve the production or improper disposal of any hazardous, toxic, or carcinogenic materials or waste. [Added 12-4-2006 by Bill No. 2006-13.1]**

The deer season prior to Rick Turner being sited violations, Rick and Carol Turner boasted about processing over a thousand deer and the neighbors can attest to the traffic on Petzold Drive being like MattawomanBeantown Road during rush hour. That does not include the traffic from large Cattle trailers bringing in 6 cows at a time on top of pork and goat being hauled in to process. A primarily cash business such as his might not note the expanse either.

The fumes, odors and dust that are intolerable are from the excessive daily traffic flying up and down the road.

*Planning Staffs report page 9. Section (7) Will provide adequate ingress and egress and be so designed as to minimize traffic congestion in the public streets.*

*Staff Analysis: The Applicants state they have adjusted their business hours to adequately decrease the ingress and egress of traffic to a minimum, especially during*

*school bus schedules and Sundays. The Applicants emphasize that safety is a top priority because they are operating their business and also have their home on Petzold Drive. The Applicants state their busiest times are from September 15 – January 15, when they average five customers per day. They state that the food banks usually pick up between 15 and 20 deer at a time. The Applicants state during other times of the year they average three customers per day.*

Staff analysis repeats the same response for this section as they did on page 8. Section 5

We have to respond to the Turners response that they emphasize that safety is a top priority because they are operating their business and also have a home on Petzold Drive.

We cannot express the **multiple** times we ourselves and most neighbors begged and pleaded with the Turners to do something about the speeding of their customers since 2003 when business started picking up. I was told by Rick Turner "That's what a dirt road is for, to tear it up..." , "I cannot control my customers", What do you want me to do about it"? Carol Turner told me "It's not my problem, what do you want me to do about it"? "What do you want me to do, come stand in front of your house and tell them to slow down, they don't speed up at my house"? Turners live up at the end of the road they have to slow down by then. You are asking private residents to daily police a commercial business.

*Planning staffs report page 9. Section (8)*

*Is in accordance with the objectives of the Charles County Comprehensive Plan.*

The planning staff mentions a need for livestock processing facilities and the Tobacco Buy- out program. To our knowledge Rick Turner has never been a tobacco farmer and he has never been a crop farmer here on Petzold Drive.

No one denies the possibility of the need for livestock processing facilities. They just DO NOT belong in a residential neighborhood without collector or arterial access. You should also have a letter noting that Rick Turners Slaughterhouse is not a rarity in our area, there are at least 4 local processers within five miles of Rick Turners Slaughterhouse and ALL OF THEM have direct access to a collector or arterial road and do not have more than 20 homes within a mile of them.

*Planning staffs report page 9. Section (9)*

*Conforms to the applicable regulations of the zone in which it is located and to the special requirements established for the specific use.*

*Staff Analysis: According to the Charles County Zoning Ordinance, slaughterhouses are permitted in the Agricultural Conservation (AC) zone with a Special Exception.*

Granting a Special Exception to Rick Turner to legalize his Slaughterhouse is not permissible under Charles County zoning laws because requiring so many variances changes the USE therefore it is not permissible.

*Planning Staff report page 10.*

*Board Authorization – Variances*

*The Board is authorized to grant variances under Article XIII, §297-416 of the Zoning Ordinance. The following is an excerpt from §297-416 which outlines the findings and criteria to be used by the Board, which has been annotated with the staff findings.*

*The Board is authorized to grant variances from the strict application of these regulations when, by reason of exceptional narrowness, shallowness or shape of specific parcels of property or by reason of exceptional topographical conditions or other extraordinary situations or conditions of specific parcels of property, the strict application of the regulations of this chapter would result in peculiar and unusual practical difficulties to, or exceptional or undue hardship upon, the owner of said property. However, the Board of Appeals shall not grant variances that will substantially impair the intent, purpose and integrity of this chapter. This provision shall not be construed to permit the Board, under the guise of a variance, **to change the permitted use of land.***

There are at least 4 major variances to consider in Rick Turners request.

- Granting an additional 10+ acres is not a small, narrow or shallow request
- Relocating the barn is not feasible
- The County should not be able to tell a private road owner that he has to open up his private residential road to a commercial business
- You cannot change the fact that there are 21 homes on, off (Elizabeth Drive an off street of Petzold Drive) and at the end of Petzold Drive and a total of at least 62 homes within a mile of Rick Turners Slaughterhouse

Granting this many variances changes the proposed USE and is not permissible under Charles County Zoning laws.

*Planning staffs report bottom of page 10.*

*Variance 1 – Minimum Lot Size of 20 acres*

*In addition to those general findings required above, variance requests shall not be granted unless the following criteria are met:*

*(1) That special conditions or circumstances exist that are unique to the subject property or structure and that a strict enforcement of the provisions of this chapter would result in unwarranted hardship which is not generally shared by owners of property in the same land use classification.*

The planning staffs analysis and response to this criteria repeats response from page 7. Section B.

Any unwarranted hardship by the Turners not receiving exception and variances would be self-imposed. Mr. Turner self-established this need by opening a Commercial Slaughterhouse without the proper permits, license or permission. Other livestock processors in the near vicinity have direct collector or arterial access and do not have so many home surrounding them. To our knowledge all have the appropriate acreage also.

*(2) That strict enforcement of the provisions of this chapter would deprive the property owner of rights commonly shared by other owners of property in the area.*

*Staff Analysis: The Applicants state if variances are not granted, they would be deprived of their property rights as slaughterhouses are permissible in their land use zone, Agricultural Conservation.*

*Denial of the lot size variance may deprive rights to the applicant that are commonly shared by owners of like property or businesses, if other property owners who do not have 20 acres for a slaughterhouse are granted variances for similar requests.*

As described above, other local livestock processors already meet all of the proper requirements. The specific requirement of having 20 acres for a Slaughterhouse was put into law for a reason: example-to avoid problems like this one.

*(3) That the granting of a variance will not confer upon an applicant any special privilege*

that would be denied to other owners of like property and/or structures within the same zone/land use classification.

**Staff Analysis:** There are few slaughterhouse facilities located in Southern Maryland. The lot size variance being requested may confer rights to the applicant that are denied to owners of like property or businesses, if other property owners who cannot meet conditions of the lot size for a slaughterhouse are denied variances for similar requests.

Even the Planning staff mentions that granting this variance may confer rights (special privilege) to the Turners if granted that are denied to owners of like property or business.

*Planning staffs report page 11. Section (4)*

*That the variance request is not based upon conditions or circumstances which are self-created or self-imposed.*

**Staff Analysis:** Slaughterhouse became an allowed permissible use under conditions with a Special Exception in 1992 as a result of the major zoning ordinance amendment associated with the onset of the Charles County Comprehensive Plan. Prior to 1992, slaughterhouses were excluded as a permissible use in the R-3 (Rural-Agricultural) zone. The conditions for slaughterhouses are the same today as outlined in 1992, including the requirement for a minimum of a 20 acre parcel. The subject property has been 10.14 acres since May 1975 as found in a plat of subdivision as recorded in the Land Records of Charles County at Plat Book 22, page 114. However, the need for the lot size variance may be based on self-created or self-imposed conditions or circumstances in light of both its necessity to legitimize the ongoing property use and the Applicants' decision to run a slaughterhouse business operation after their purchase of the property.

Rick Turners request for exception and variance is solely based upon conditions and circumstances that were self-created and self-imposed by choosing to establish and illegal Slaughterhouse without the proper permission, permits or license. The above criteria cannot be met therefore variances are not permissible.

*Planning staffs report page 12. Section (6)*

*That the proposed variance is consistent with the Charles County Comprehensive Plan.*

*Staff Analysis: The proposed use is a permitted use and within the AC zone. Staff did not find any evidence to suggest the proposed variance for lot size is inconsistent with the Charles County Comprehensive Plan. Further elaboration regarding the Comprehensive Plan can be found on page 9 of this report.*

The proposed variance for lot size is inconsistent with the Charles County Comprehensive Plan because it would allow a Commercial business to operate within a residential subdivision requiring so many variances that it would change the proposed USE.

*Planning staff reports page 13. Bottom section:*

*Variance 3 – Arterial or collector road*

*In addition to those general findings required above, variance requests shall not be granted unless the following criteria are met:*

*(1) That special conditions or circumstances exist that are unique to the subject property or structure and that a strict enforcement of the provisions of this chapter would result in unwarranted hardship which is not generally shared by owners of property in the same land use classification.*

*Staff Analysis: Petzold Drive, where the subject property is located, is a unique Private Drive which existed before the establishment of the subject lot and is unusually lengthy compared to other private rights-of-way. The current Zoning Ordinance allows five single family dwelling lots on private drives. However, Petzold Drive currently has 16 lots, some of which were subdivided before the five lot limit was established, and some as a result of interfamily transfers and/or variances issued for additional lots added to the private drive.*

Documents have been introduced to prove that there are 21 houses on Petzold Drive including the one at the front end facing Dr. Samuel Mudd and the 6 that are on Elizabeth Drive which is an off street of

Petzold Drive. Also other Livestock processing plants in the local vicinity have direct collector and arterial access.

*Planning staffs report page 14 Section (2)*

*That strict enforcement of the provisions of this chapter would deprive the property owner of rights commonly shared by other owners of property in the area.*

*Staff Analysis: The Applicants state if variances are not granted, they would be deprived of their property rights as slaughterhouses are permissible in their land use zone, Agricultural Conservation.*

*Denial of the variance for direct access to a collector or arterial road may deprive rights to the applicant that are commonly shared by owners of like property or businesses, if other property owners who cannot meet the requirement of direct access to a collector or arterial road for a slaughterhouse are granted variances for similar requests.*

Other noted like businesses have direct access and are not on private roads that they do not own.

*Planning staffs report page 14 Section (3)*

*That the granting of a variance will not confer upon an applicant any special privilege that would be denied to other owners of like property and/or structures within the same zone/land use classification.*

*Staff Analysis: There are few slaughterhouse facilities located in Southern Maryland. Since this use is rare, it is difficult to determine if granting a variance for having direct access to an arterial or collector would confer special privileges.*

This use is not rare in our area as other noted letters have proved and we do agree that granting a variance for having direct access to an arterial or collector road WOULD CONFER SPECIAL PRIVILEGES that the owner of the private road does not wish to grant.

Planning staff report page 14. Section (4)

That the variance request is not based upon conditions or circumstances which are self-created or self-imposed.

Staff Analysis: The Applicants were aware that the location of their property required access via a Private Drive when their business was established; however, **the length of the road and extent to which the number of lots exceeds the allowable amount under the Zoning Ordinance, currently five lots, is not self-imposed. The variance request may be based on conditions or circumstances that are self-created or self-imposed in light of its necessity to legitimize the ongoing property use**

Quoting staff:

**“ the length of the road and extent to which the number of lots exceeds the allowable amount under the Zoning Ordinance, currently five lots, is not self-imposed.”**

The planning staff is admitting that there are more houses on this road than should be allowed under the zoning ordinance therefore-Since Rick Turners house was one of the last ones built on this road-that the county allowed to be built-You want the residence of Petzold Drive that were here first to daily suffer for ANOTHER one of Charles County mistakes. If Charles County zoning had followed their own laws in the past by not allowing Rick Turner to build his house on a road that was already at its' quota of residence we would not be here fighting this additional injustice.

**The Variance request for road access is SELF-CREATED AND SELF-IMPOSED because Mr. Turner was fully aware that he was establishing a commercial business in a residential subdivision without permission.**

*Planning staff report page 14. Section (5)*

*That greater profitability ability or lack of knowledge of the restrictions shall not be considered as sufficient justification for a variance.*

*Staff Analysis: The Applicants state they are not claiming greater profitability or lack of knowledge as reasons for their variance requests. The Applicants acknowledge they understand the nature of the variances they are requesting, and state that applying for these variances will allow them to continue operating their business, as well as help local livestock*

**farmers along with supplying food to needy families in the tri-county area**

Allowing Mr. Turner to apply for these variances is wrong because it changes the proposed USE.

Mr. Turner gets PAID for services rendered on site to help local livestock farmers.

Mr. Turner gets PAID for services rendered on site to supply food to needy families.

Mr. Turner does not give food to needy families. Hunters donate deer- Mr. Turner gets paid from organizations to process said deer giving them a small discount of up to 20% of his regular fees. Getting paid for services rendered on site is a Commercial business that is not allowed in a private residential subdivision.

Planning staff report top of page 15

*Staff did not find any evidence to suggest the proposed variances are inconsistent with the Charles County Comprehensive Plan. Further elaboration regarding Comprehensive Plan consistency can be found on page 9 of this report.*

The proposed variances cannot be consistent with the Charles County Comprehensive plan because Mr. Turner does not qualify to apply from all of the above mentioned violations. The comprehensive plan was not designed to allow commercial business to operate in a manner that would endanger its' residence.

#### **PLANNING DIVISION RECOMMENDATIONS**

*The Planning division staff finds that the applicant has met or justified compliance **with most of** the criteria for approval, and therefore recommends the following Conditions of Approval, for the purposes of adequately and completely addressing the requirements of the Zoning Ordinance:*

**The planning staffs report is supposed to be a report of findings, they are NOT supposed to make recommendations!**

*1. The approval of Special Exception Docket #1299 for a Slaughterhouse is granted from the date of this Order and shall be effective for a period of five (5) years. After five (5) years, the Applicant may request an extension/modification to the Special Exception from the Board of Appeals.*

**Is he Board going to continue to allow an illegal commercial business to operate on our private residential road and endanger its' residence for another five years only to have something tragic happen?**

*2. The Applicants shall continue to operate only during posted hours: Monday – Friday from 9am–2pm and 5pm–8pm, Saturday from 10am–7pm, closed on Sundays and government holidays.*

**Proof has been submitted of non-compliance on a mandated court order. Placing specific business hours will not work, will not be followed on the part of the Turners and will force further tension and animosity in our neighborhood. It is not the neighbors job to police a commercial business in our neighborhood.**

*3. The Applicants shall ensure the 15mph speed limit sign and the “Children at Play” sign remain posted at all times:*

**A sign does not and will not ensure speed limits are followed or help keep our children safe.**

*4. As stated in their application, the Applicants shall operate from the second week of August each calendar year until the second week of June the following calendar year.*

**Again, any restrictions in the past have not been complied with, who is going to enforce them?**

*5. The applicants shall operate the business on their property utilizing only the structure that has been converted to a slaughterhouse currently and shall not expand to other structures.*

**Allow Mr. Turners business to operate and it will continue to grow as it has in the past and additional structures will be needed...**

*6. The applicant should strive to keep Petzold Drive in a good state of maintenance and repair by having performed, from time to time, grading of the gravel surface and pothole filling.*

**The neighbors of Petzold Drive ceased road repair when Mr. Turner was cited from zoning for operating an illegal business. Most of the neighbors regularly put in resources for road maintenance and repairs. We will not put our hard earned money to repairing and maintaining our road for Rick Turners customers to destroy. We do not want Rick Turner to maintain the road or to operate his illegal slaughterhouse on our private dirt road.**

The Map on page 19 clearly defines Petzold Drive as a "Subdivision".

The map on page 20 of the Planning staffs report outlines the Protected Wetlands of Zekiah swamp which is the largest protected wetlands east of the Mississippi. This should be a EPA and Septic Bill concern because Mr. Turner washes livestock waste into his septic system and refused EPA inspectors onto his property last year for and inspection when suspected covering of carcasses in the wetlands was discovered.

Pictures on Page 23-30 of the Planning Staff's report do NOT show ANY of the residential homes on Petzold Drive or Elizabeth Drive (Petzold Drive's off street). Between specific wording in the planning staff's report calling Petzold Drive a "low density rural area" and not showing pictures of any of the homes one would be led to believe that Mr. Turners' property was out in the middle of nowhere.

Thank You for taking the time to reevaluate the Planning Staff's report from the discrepancies noted in this letter.

Our intention has always been to ensure the safety of our children and neighbors. Relocating Mr. Turners Slaughterhouse to an area where it is properly zoned for would help Mr. Turner realize the full potential of his business and reinstate the safety and welfare of our neighborhood.

Thank You for your consideration:

The neighbors of Petzold Drive

Dear Charles County Board of Appeal Members,

The illegal slaughterhouse should NOT be allowed to operate in a residential neighborhood on a private road. Petzold Drive has always been in need of road repair because it is a dirt road. We feel that because of the higher volume of traffic and excessive speed caused by the slaughterhouse that the road conditions has become worse. Rick Turner used to maintain the road for a while but stopped in the year 2010 roughly. My wife and I do not want an illegal slaughterhouse on Petzold Drive to operate. We would like for him to stay in business although we feel that a thriving full-fledged business that has a lot of traffic should not be in this residential area. The rural area that Petzold Drive is in was very peaceful.

Sincerely,

Mr. & Mrs. Snellings