

Kent County Board of Appeals

TELEPHONE 410-778-7475

Kent County Government Center
400 High Street
Chestertown, Maryland 21620

FACSIMILE 410-810-2932

County Commissioners Hearing Room MEETING TO BE HELD VIRTUALLY via CONFERENCE CALL

COVID-19 Special Announcement Regarding Meeting Attendance

In response to the State of Emergency, individuals must refrain from attending meetings. Board of Appeals meetings are live streamed, and citizens may call in with questions when the Chair opens the floor for comment.

To access the Kent County conference bridge service off site:

1. Call 410-810-2213.
2. Enter PIN number **55266** when prompted.
3. Announce yourself to the group. Please mute your phone / device until the Chair opens the floor for comment.

Visit the County's website at <https://www.kentcounty.com> for the most up to date information regarding County Government operations.

AGENDA

Monday, June 15, 2020
7:00 p.m.

APPLICATIONS FOR REVIEW:

20-20 John E. and Susan M. Rutkowski – Buffer Variance
22086 Harrington Park Road - Fifth Election District – Zoned Critical Area Residential “CAR”

APPLICANT OR REPRESENTATIVE MUST BE PRESENT

APPLICANTS ARRIVING MORE THAN 10 MINUTES AFTER THE SCHEDULED HEARING WILL NOT BE HEARD AND WILL BE RESCHEDULED AT THE APPLICANT’S EXPENSE.

Meetings are conducted in Open Session unless otherwise indicated. All or part of the Board of Appeals meetings can be held in closed session under the authority of the MD Open Meetings Law by vote of the members. Breaks are at the call of the Chairman. Meetings are subject to audio and video recordings.

Please note that times listed on the agenda are only estimates; however, projects will not be reviewed prior to their scheduled time. Applicants will be given the time necessary to assure full public participation and a fair and complete review of all projects. Therefore, the time each application is heard may be later than the time indicated on the agenda. Items on this agenda are subject to change due to cancellation of projects.

Other business without assigned times may be discussed during the course of this meeting as time allows.



Kent County Planning Commission

TELEPHONE 410-778-7475

Kent County Government Center
400 High Street
Chestertown, Maryland 21620

FACSIMILE 410-810-2932

June 8, 2020

Dr. Al Townshend
Kent County Board of Appeals
400 High Street
Chestertown, MD 21620

RE: John and Susan Rutkowski – Buffer Variance
Tax Map 55, Parcel 38

Dear Dr. Townshend:

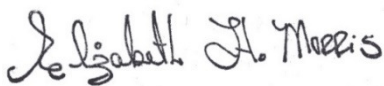
At its June 4, 2020, meeting, the Kent County Planning Commission reviewed the application of John and Susan Rutkowski requesting a variance to allow a 20-foot section of privacy fence to be located within the 100-foot Critical Area Buffer. The applicants are proposing a 50-foot long fence beginning 80 feet from the shoreline to provide privacy from an adjacent public landing. The property is located at 22085 Harrington Park Road in the Fifth Election District and is zoned Critical Area Residential.

The Commission opined that strict application of the regulations created an unwarranted hardship that is not shared by other properties in the same vicinity. Furthermore, the need for a variance was not caused by the applicant's actions. The applicants have attempted to use a "living fence," but because of the soils and brackish water, they have been unable to keep it alive. After discussion and consideration of the applicant's testimony, the Commission voted to make a favorable recommendation for the buffer variance to allow 20 feet of fence within the 100-foot Critical Area Buffer. The Commission's recommendation was based on the following findings of fact:

- Granting a variance will not cause a substantial detriment to neighboring properties nor will it change the character of the neighborhood and district.
- The granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat.
- The request represents a minimal disturbance to the buffer.
- The Critical Area Commission does not oppose the granting of the variance and the application is consistent with the general spirit and intent of the Land Use Ordinance.
- The granting of the variance does not confer any special privileges that would be denied to other similar lands and uses.
- The reasonable use of the entire property was considered.

If the Board is inclined to grant approval, the Planning Commission recommends that mitigation be set at a ratio of 1:1 for removal of existing vegetation and that the areas be planted with native cultivars approved by the Department of Planning, Housing, and Zoning during building permit review.

Sincerely,
Kent County Planning Commission



Elizabeth H. Morris
Chairman

cc: John and Susan Rutkowski

Larry Hogan
Governor
Boyd K. Rutherford
Lt. Governor



Charles C. Deegan
Chairman
Katherine Charbonneau
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
dnr.maryland.gov/criticalarea/

May 28, 2020

Dr. Albert Townshend
Chairman of the Board of Appeals
Kent County
Department of Planning, Housing and Zoning
400 High Street
Chestertown, Maryland 21620

Re: **John and Susan Rutkowski
Buffer Variance Request (20-20)
22086 Harrington Park Road
(TM 55, P 38)**

Dear Dr. Townshend:

Thank you for submitting information regarding the project referenced above for review and comment. The applicant proposes to construct a privacy fence in the Buffer, approximately 80 feet from the shoreline, to replace a dying vegetated privacy screen. The proposed fence is 50 feet in length, of which 20 will be in the Buffer, with five-inch footers and a six-inch gap at the bottom. The property is 0.4 acres and designated as Critical Area Residential (CAR) a Limited Development Area (LDA). It is currently improved with a single family dwelling, driveway, two sheds and a pier.

We do not oppose the variance request. Should the Buffer disturbance lead to tree clearing, mitigation at a 1:1 ratio is required and the applicant shall provide a Buffer Management Plan to the County which includes species, size, spacing and schedule of plantings for review and approval.

Thank you for the opportunity to review and provide comments. Please include this letter in your file and submit it as part of the record for the variance. Please notify the Commission of the decision made in this case. If you have any questions or concerns, please contact me at (410) 260-3479.

Sincerely,

A handwritten signature in cursive script that reads "Alexandra DeWeese".

Alexandra DeWeese
Natural Resources Planner

File: KC 205-20

PRELIMINARY STAFF REPORT

To: Kent County Board of Appeals
Subject: John and Susan Rutkowski
Buffer Variance
Date: June 9, 2020

Description of Proposal

The applicants wish to install a 50-foot long privacy fence beginning 80 feet from the shoreline. The 0.441-acre property is located on Harrington Park Road in the Fifth Election District adjacent to a public landing. The fence will be 8-foot long panels with the end posts set in concrete. The end posts will overlap but have a 4-inch gap between them. The panels will have 6 inches of clearance off the ground. The property is improved with a single-family dwelling and a small shed and is zoned Critical Area Residential, "CAR." The surrounding area is characterized by single-family residential development.

BUFFER VARIANCE

Relevant Issues

I. Area, Height, Width and Yard Requirements

- A. *Applicable Law:* Article V, Section 5.5 of the Kent County Land Use Ordinance requires the minimum yard:

Front	50 ft
Side	15 ft
Rear	30 ft
Waterfront	Minimum 100 ft buffer*

Fence height Ornamental – Side and Rear – 8 feet

- B. *Staff and TAC Comments:* A variance is required to place 20 feet of fence within the buffer.

II. Buffer Requirements

- A. *Comprehensive Plan:* "Maintain, enforce, and if necessary, strengthen regulations for floodplains and buffers." (Page 86)

- B. *Applicable Law:* Article V, Section 5.7.B.3.a of the Kent County Land Use Ordinance addresses development in the buffer:

- i. Development activities, including structures, roads, parking areas, and other impervious surfaces, mining, and related activities, or septic systems shall not be permitted within the minimum 100-foot buffer. This restriction does not apply to water-dependent facilities that meet the criteria set forth below.
- ii. New or expanded development activities may be permitted in the minimum

100-foot buffer, provided:

- a) The use is water dependent.
- b) The project meets a recognized private right or public need.
- c) Adverse effects on water quality and fish, plant, or wildlife habitats are minimized.
- d) In so far as possible, non-water dependent structures or operations associated with water dependent projects or activities are located outside the minimum 100-foot buffer.

C. *Staff and Comments:* The applicants have applied for a variance to construct 20 feet of their proposed 50-foot fence within the buffer. The fence will be along the property line and will provide the applicants some privacy from users of the adjacent public landing. The Land Use Ordinance specifies that fences are structures within the definition of “structure,” and structures are not permitted in the buffer.

III. Variance

A. *Applicable Law:* Article IX Section 2.2 of the Kent County Land Use Ordinance authorizes the Board of Appeals to grant variances from the yard (front, side, or rear), height, bulk, parking, loading, shoreline cliff, 15% slope, pier length, impervious surface, stream protection corridor, and buffer requirements so as to relieve practical difficulties or other injustices arising out of the strict application of the provisions of this Ordinance.

Such granting of a variance shall comply, as nearly as possible, in every respect to the spirit, intent, and purpose of this Ordinance.

In the Critical Area, for a variance of 15% slope, impervious surface, or buffer requirements, it being the purpose of this provision to authorize the granting of variation only for reasons of demonstrable and exceptional unwarranted hardship as distinguished from variations sought by applicants for purposes or reasons of convenience, profit, or caprice.

In order to grant a variance, the Board of Appeals must find all of the following:

- a. That the variance will not cause a substantial detriment to adjacent or neighboring property.
- b. That the variance will not change the character of the neighborhood or district.
- c. That the variance is consistent with the Comprehensive Plan and the general intent of this Ordinance.
- d. That the practical difficulty or other injustice was caused by the following:
 - i. Some unusual characteristic of size or shape of the property.
 - ii. Extraordinary topographical or other condition of the property.
 - iii. The use or development of property immediately adjacent to the property, except that this criterion shall not apply in the Critical Area.

- e. That the practical difficulty or other injustice was not caused by the applicant's own actions.
- f. That within the Critical Area for variances of 15% slope, impervious surface, or buffer requirements:
 - i. The granting of a variance will be in harmony with the general spirit and intent of the Critical Area Law and the regulations adopted by Kent County.
 - ii. That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat.
 - iii. That the application for a variance will be made in writing with a copy provided to the Critical Area Commission.
 - iv. That the strict application of the Ordinance would produce an unwarranted hardship.
 - v. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
 - vi. The authorization of such variance will not be a substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.
 - vii. That a literal interpretation of this Ordinance deprives the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of Kent County.
 - viii. That the granting of a variance will not confer upon an applicant any special privilege that would be denied by this Ordinance to other lands or structures.
 - ix. Due to special features of a site, or special conditions or circumstances peculiar to the applicant's land or structure, a literal enforcement of this Ordinance would result in unwarranted hardship to the applicant.
 - x. The Board of Appeals finds that the applicant has satisfied each one of the variance provisions.
 - xi. Without the variance, the applicant would be deprived of a use of land or a structure permitted to others in accordance with the provisions of the critical area program.
- g. In considering an application for a variance, the Board shall consider the reasonable use of the entire parcel or lot for which the variance is requested.
- h. In considering an application for a variance, the Board of Appeals shall presume that the specific development activity in the Critical Area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of this Ordinance and the Critical Area Law.
- i. The Board may consider the cause of the variance request and if the variance request is the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed.

B. *Staff and TAC Comments:* It is staff's opinion that granting a variance will not cause a substantial detriment to neighboring properties or change the character of the neighborhood or district. The dwelling is approximately 13 feet from the property

line which is adjacent to the parking area for users of the public landing. The house across Harrington Park Road from the applicant has a fence adjacent to the parking area that runs all the way to the shoreline. This fence appears to pre-date the Critical Area Buffer requirements. The applicant has tried to maintain a living fence, but due to the nature of the property, he has had to replace the plantings more than once. Some of the evergreens need to be replaced again, and the applicant would prefer to install a fence. The evergreens will be removed and the hardwood trees, which are mixed in with the evergreens, will remain.

The proposed intrusion in the 100-foot buffer is minimal and adjacency to the public landing creates special conditions that are shared by only one other property owner, who has a fence. Furthermore, the Critical Area Commission does not regulate fences without footers in the Buffer and does not oppose the variance request. Although this fence has footers, the applicant has attempted to be sensitive to the environment by raising the panels 6 inches off of the ground and using 8-foot long sections that will be staggered. Water and wildlife should be able to pass under or through the fence.

Staff Recommendation: Staff recommends granting the variance with conditions for mitigation. If the board is inclined to grant approval, staff recommends that mitigation be set at a ratio of 1:1 for removal of the existing vegetation and that the areas of mitigation be planted with native cultivars. A Critical Area Forest Clearing Plan and a Buffer Management Plan shall be approved by the Department of Planning, Housing, and Zoning during building permit review.

BOARD OF APPEALS APPLICATION

Kent County Department of Planning, Housing and Zoning
Kent County Government Center
400 High Street • Chestertown, MD 21620
410-778-7475 (phone) • 410-810-2932 (fax)

IN THE MATTER OF THE APPLICATION OF:
(Name, Address and Telephone Number of Applicant)

JOHN & SUSAN RUTKOWSKI
22086 HARRINGTON PARK RD
ROCK HALL, MARYLAND 21661
Email: HEAVLYHALL@YAHOO.COM

For Office Use Only:
Case Number/Date Filed:
Filed by:
Applicant:
Planning Commission:
Date of Hearing:
Parties Notified:
Notice in Paper:
Property Posted:

TO THE KENT COUNTY BOARD OF APPEALS: In accordance with Article Section
of the Kent County Zoning Ordinance, as amended, request is hereby made for:

Appealing Decision of Kent County Zoning Administrator Variance
Special Exception Non-conforming Use

DESCRIPTION OF PROPERTY INVOLVED:

Located on: (Name of Road, etc.) HARRINGTON PARK ROAD

In the Election District of Kent County.

Size of lot or parcel of Land:
Map: 55 Parcel: 38 Lot #: Deed Ref:

List buildings already on property: HOME - 2 SHEDS

If subdivision, indicate lot and block number: N/A

If there is a homeowners association, give name and address of association: N/A

PRESENT ZONING OF PROPERTY:

DESCRIPTION OF RELIEF REQUESTED: (List here in detail what you wish to do with property that requires the Appeal Hearing.)

If appealing decision of Zoning Administrator, list date of their decision:

Present owner(s) of property: JOHN & SUSAN RUTKOWSKI Telephone: 410-639-9952

If Applicant is not owner, please indicate your interest in this property: N/A

Has property involved ever been subject to a previous application? NO

If so, please give Application Number and Date: N/A

PLEASE FILL IN BELOW, OR ATTACH HERETO, A SKETCH OF THIS PROPERTY.
List all property measurements and dimensions of any buildings already on the property.

Put distances between present buildings or proposed buildings and property lines.

NAMES OF ADJOINING PROPERTY OWNERS:

Owner(s) on the North: JOHN S. HUBACHER

Owner(s) on the South: RON BUTLER

Owner(s) to the East: N/A

Owner(s) to the West: ELWOOD MERCHANT

Homeowners Association, name and address, if applicable: N/A

BY SIGNING THIS APPLICATION I GRANT MEMBERS AND ALTERNATE OF THE BOARD OF ZONING APPEALS THE RIGHT TO ENTER ONTO THE PROPERTY FOR THE PURPOSE OF VIEWING THE SITE OF THE APPLICATION OR APPEAL.

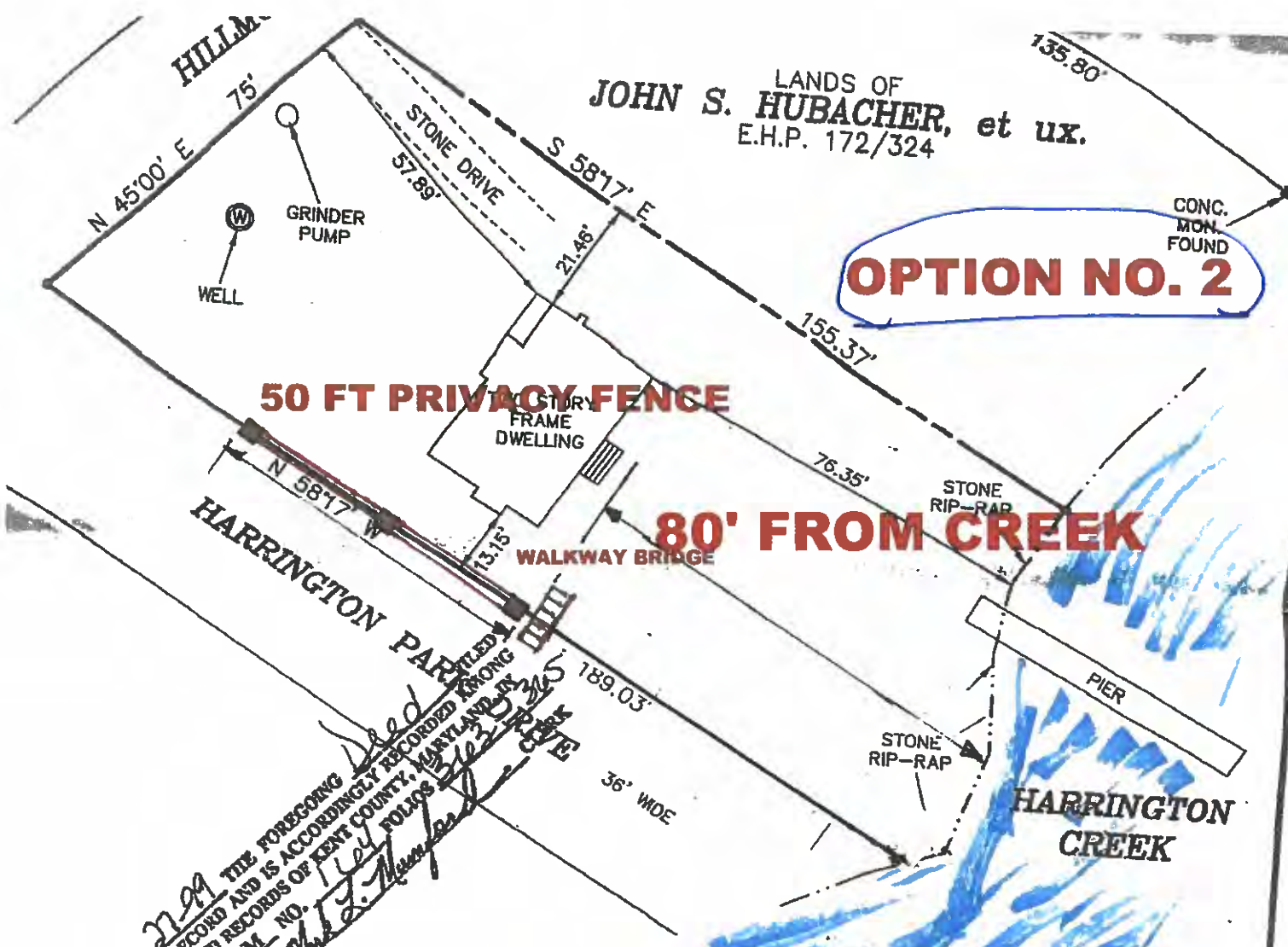
John Gutowski
Signature of Owner/Applicant/Agent or Attorney

04/21/2020
Date

Please file this form at 400 High Street, Chestertown, MD 21620 accompanied by **\$350.00** filing fee made payable to the Board of Appeals. If you have any questions, contact Clerk at 410-778-7467.

NOTICE: Neither the Board of Appeals or the Planning Office is required to make out this Application. Application should be filled in by applicant or its agent. If the Planning Office assists you, they cannot be held responsible for its contents.

Applicants arriving more than 10 minutes after the scheduled hearing will not be heard and will be re-scheduled at the applicant's expense.



LANDS OF
JOHN S. HUBACHER, et ux.
 E.H.P. 172/324

OPTION NO. 2

50 FT PRIVACY FENCE

80' FROM CREEK

Deed
 THE FOREGOING
 FOR RECORD AND IS ACCORDINGLY RECORDED AMONG
 THE LAND RECORDS OF KENT COUNTY, MARYLAND IN
 LIBER. MEM. NO. *1144* FOLIO *262*
John S. Hubacher

NOTES:
 FOR DEED REFERENCE SEE, E.H.P. 53/60.
 FOR PLAT REFERENCE SEE, W.H.G. 10-605.
 PROPERTY ADDRESS = 22086 HARRINGTON PARK DRIVE,
 ROCK HALL, MARYLAND 21661



THIS IS TO CERTIFY THAT TO THE BEST OF MY KNOWLEDGE
 AND BELIEF THE IMPROVEMENTS INDICATED HEREON ARE
 LOCATED AS SHOWN. THIS IS NOT A PROPERTY LINE SURVEY.

Michael A. Scott
 REGISTERED SURVEYOR

LOCATION DRAWING
 ON THE LANDS OF
JOHN & SUSAN RUTKOWSKI
 FIFTH ELECTION DISTRICT, KENT COUNTY,
 MARYLAND

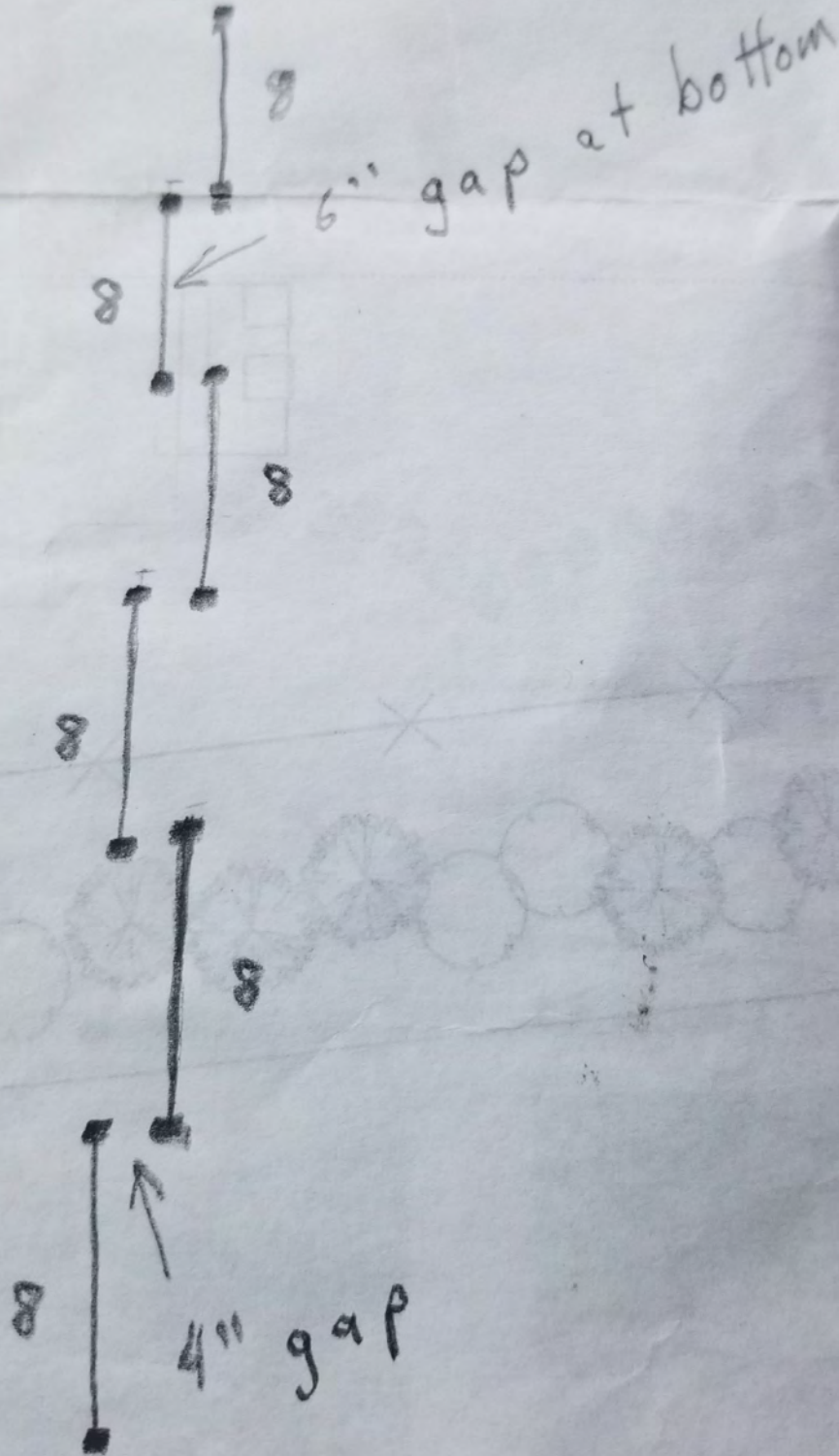
MICHAEL A SCOTT INC.
 207 MAPLE AVENUE CHESTEROWN, MD 21620 (410) 778-2310

DRAWN BY SCHRADER
 SCALE 1"=30'
 DATE 11-13-98
 JOB NO. 1657
 FOLDER K-516

John and Susan Rutkowski
22086 Harrington Park Road



5"x5" Posts set in concrete



12:41  64°



Neighbor's Fence



Proposed Fence



