

IN RE: PETITION FOR ZONING VARIANCE
 E/S Hamilton Avenue,
 51.75' SW of 33rd Street
 (5902 Hamilton Avenue)
 14th Election District
 7th Councilmanic District

BEFORE THE
 DEPUTY ZONING COMMISSIONER
 OF BALTIMORE COUNTY
 Case No. 89-192-A

Robert C. Berry, et ux
 Petitioners

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a variance to permit a buildable lot with a minimum width of 50 feet in lieu of the required 55 feet, for a proposed single family dwelling in accordance with Petitioner's Exhibit 1.

The Petitioners, by Michael E. Marino, Esquire, appeared and testified. Also appearing on behalf of the Petition was Anthony J. Mierzwicki, President, Emerald Development Corporation, Contract Purchaser of the subject property, and Leonard Bohager, a registered professional land surveyor with McKay and Associates. Eugene Stacharowski, the adjoining property owner, appeared as an interested party.

Testimony indicated that the subject property, known as 5902 Hamilton Avenue and zoned D.R. 5.5, was purchased by the Emerald Development Corporation in September 1988. Mr. Bohager testified that the property, which is also known as Lot No. 124 of the Rosedale Farms subdivision, is the original lot as laid out in the 1920 subdivision plans recorded in the Baltimore County Land Records. Testimony presented indicated that over 90% of the lots in the development are 50 feet wide and developed with single family dwellings. The property in question is currently vacant. The Petitioners propose to construct a Ryland modular ranch style home, in accordance with Petitioner's Exhibit 3, that will comply with the front, side and rear yard setback requirements. Petitioners argued that

to deny the requested variance would result in practical difficulty in rendering the lot undevelopable. Further testimony indicated that the granting of the variance will not result in any detriment to the health, safety, or general welfare of the community. After reviewing the proposed plans, Mr. Stacharowski indicated he had no objection to the request.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

It is clear from the testimony that if the variance is granted, such use as proposed would not be contrary to the spirit of the B.C.Z.R. and would not result in substantial detriment to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and for the reasons given above, a variance requested should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 7th day of December, 1988 that the Petition for

Zoning Variance to permit a buildable lot with a minimum width of 50 feet in lieu of the required 55 feet, for a proposed single family dwelling in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however to the following restrictions, which are conditions precedent to the relief granted:

- 1) The Petitioner may apply for his building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at his own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.
- 2) Petitioner shall not request any future front, rear or side yard setbacks for the subject property.
- 3) Petitioner shall construct on the property the Ryland modular ranch home as depicted in Petitioner's Exhibit 3.

A. M. Nastarowicz
 ANN M. NASTAROWICZ
 Deputy Zoning Commissioner
 for Baltimore County

AMN:bjs

ORDER RECEIVED FOR FILING
 Date 12/10/88
 By [Signature]

ORDER RECEIVED FOR FILING
 Date 12/10/88
 By [Signature]

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

December 7, 1988

Michael E. Marino, Esquire
 10 E. Baltimore Street
 Baltimore, Maryland 21202

RE: PETITION FOR ZONING VARIANCE
 F/S Hamilton Avenue, 51.75' SW of 33rd Street
 (5902 Hamilton Avenue)
 14th Election District - 7th Councilmanic District
 Robert C. Berry, et ux - Petitioners
 Case No. 89-192-A

Dear Mr. Marino:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Zoning Variance has been granted in accordance with the attached order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 494-3391.

Very truly yours,

A. M. Nastarowicz
 ANN M. NASTAROWICZ
 Deputy Zoning Commissioner
 for Baltimore County

AMN:bjs

cc: Mr. Eugene Stacharowski
 5904 Hamilton Avenue, Baltimore, Md. 21237

Mr. Anthony J. Mierzwicki, President
 Emerald Development Corporation
 16 Oakridge Court, Lutherville, Md. 21093

People's Counsel
 File



Dennis F. Berman
 County Executive

PETITION FOR ZONING VARIANCE
 TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 11B02.3.C.1. To allow a buildable lot with a minimum width of 50 ft. in lieu of the required 55 ft.

- 1) The single family proposed is 28ft. wide which provides for side yard setbacks is within accordance to Baltimore County Code.
- 2) Subject property and entire subdivision is residential and without requested variance, subject property is not capable of being developed, there by creating practical difficulty or hardship with regard to development.
- 3) The granting of this variance will not result in injury to public health, safety or welfare.

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

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

Legal Owner(s):
 Evelyn E. Berry
 Signature: *Evelyn E. Berry*

Robert C. Berry
 (Type or Print Name)
 Signature: *Robert C. Berry*

Keith A. Randlett
 6539 CORNER RD. 866-5923
 Address
 BALTO. MD. 21237
 City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted:
 Name: Keith A. Randlett
 Address: 6539 Corner Rd.
 Phone No. 866-5923

Name: _____
 Address: _____
 Phone No. _____

RECEIVED
 BALTIMORE COUNTY, MARYLAND
 OFFICE OF PLANNING & ZONING
 14th ELECTION DISTRICT
 7th COUNCILMANIC DISTRICT
 DATE: 12-10-88
 BY: [Signature]

MCKEE & ASSOCIATES, INC.

Engineering - Surveying - Real Estate Development

SHAWAN PLACE, 5 SHAWAN ROAD HUNT VALLEY, MARYLAND 21030
 Telephone: (301) 252-5820

August 10, 1988

DESCRIPTION OF
 5904 HAMILTON AVENUE
 14TH ELECTION DISTRICT
 BALTIMORE COUNTY, MARYLAND

Beginning at a point on the east side of Hamilton Avenue, 51.75 feet south of the south side of 33rd Street. Being Lot 124 of the plat of Rosedale Farms, as recorded among the land records of Baltimore County in Plat Book 5, page 61.



CERTIFICATE OF PUBLICATION

TOWSON, MD., November 3, 1988

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Nov 3, 1988.

THE JEFFERSONIAN,

S. Zabe Orban
 Publisher

PO 05760
 reg M20596
 case 89-192-A
 price \$41.25

NOTICE OF HEARING
 The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the proposed variance at Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland on the following date:
 Date: Tuesday, Nov. 29, 1988 at 2:00 p.m.
 Location: Room 106, 111 W. Chesapeake Avenue, Towson, Maryland 21286.
 The purpose of the hearing is to receive testimony from interested parties and to make a decision on the proposed variance.
 In the event that the Petitioner is granted a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, consider any request for a stay of the issuance of said permit during the period for good cause shown. Such request must be in writing and received in the office by the date of the hearing set above or presented at the hearing.
 J. ROBERT HAINES
 Zoning Commissioner of Baltimore County
 11278 Nov. 2, 1988

CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY
 Towson, Maryland

District: 14th Date of Posting: 11/11/88
 Posted for: Variance
 Petitioner: Robert C. Berry, et ux
 Location of property: E/S Hamilton Ave., 51.75' SW of 33rd St
 5902 Hamilton Ave.
 Location of Sign: Facing Hamilton Ave. across rd. from lawn on property of Petitioner
 Remarks: _____
 Posted by: [Signature] Date of return: 11/11/88
 Number of Signs: 1

CERTIFICATE OF PUBLICATION

OFFICE OF
 Dundalk Eagle

4 N. Center Place
 P. O. Box 8936
 Dundalk, Md. 21222

November 3, 1988

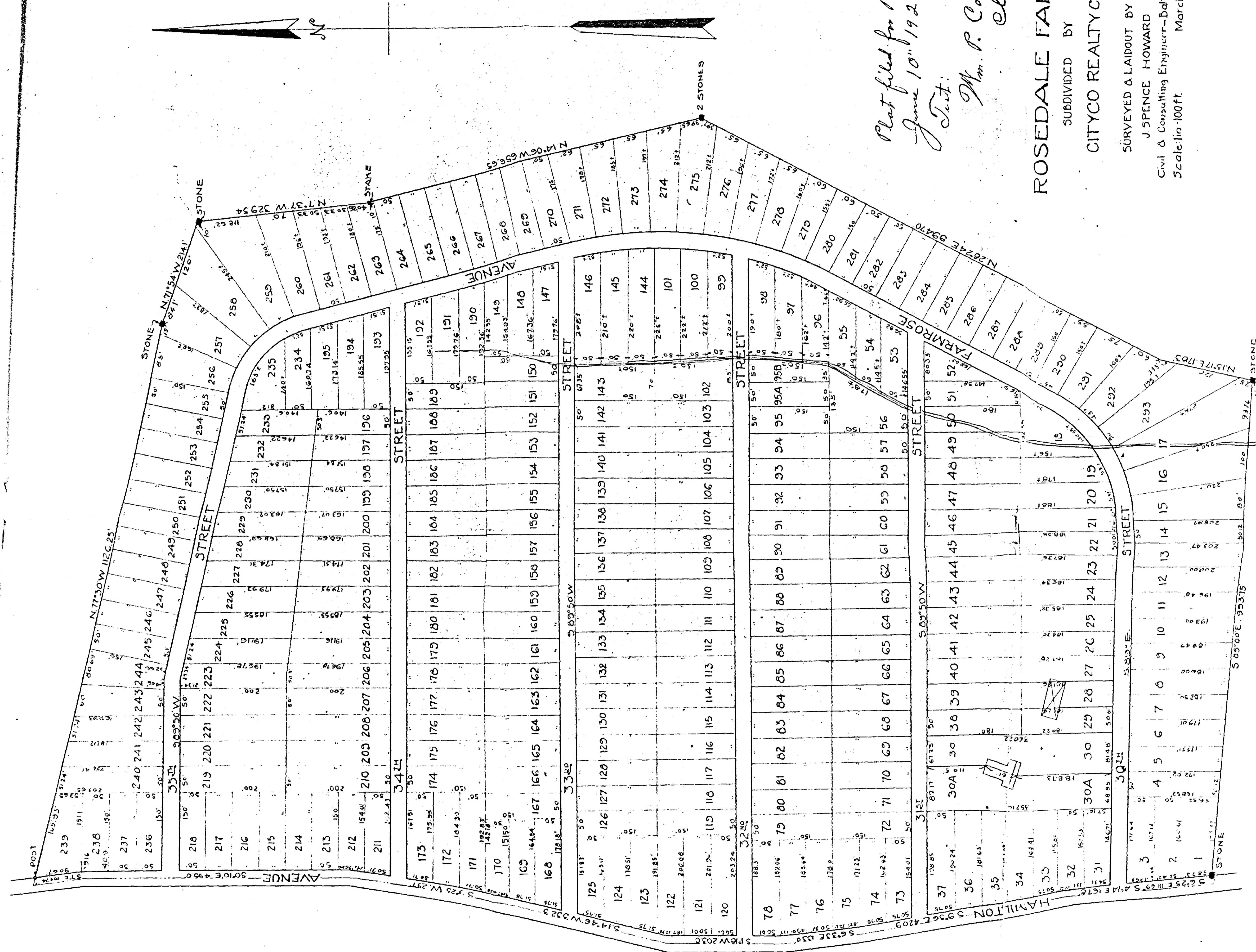
THIS IS TO CERTIFY, that the annexed advertisement of J. Robert Haines in the matter of Zoning Hearings - Case #89-192-A - P.O. #05759 - Reg. #H20388 - 87 was published in The Dundalk Eagle a weekly newspaper published in Baltimore County, Maryland, once a week for one week before the 4th day of November 1988; that is to say, the same was inserted in the issues of Nov. 3, 1988

Kimbel Publication, Inc.
 per Publisher.

By [Signature]

ESTIMATED LENGTH OF HEARING: 15 MIN. + 1HR.
 AVAILABLE FOR HEARING: MON./TUES./WED. - NEXT TWO MONTHS (over)
 ALL CT'S
 REVIEWED BY: [Signature] DATE: 12-10-88

W.P.C. No 5 ~ 61



Plat filed for Record
June 10th 1920

Test:
Wm. P. Cole
Clerk

ROSEDALE FARMS
SUBDIVIDED BY
CITYCO REALTY CO.

SURVEYED & LAYOUT BY
J SPENCE HOWARD
Civil & Consulting Engineer - Balto Md
Scale: 1/4" = 100 ft. March, 1920.

PLATTOWNERS
EXHIBIT 2

12-5-20