BEST IMAGES POSSIBLE

THE FOLLOWING DOCUMENT OR DOCUMENTS WERE SCANNED AS RECEIVED AND CONTAINS THE BEST POSSIBLE IMAGE.

MICRO RECORDS COMPANY, INC
BALTIMORE, MARYLAND

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

IN THE MATTER OF THE
THE APPLICATION OF
RONALD F. JONES, ET UX
FOR A SPECIAL HEARING AND
VARIANCE ON PROPERTY LOCATED
ON THE NORTHEAST SIDE OF
CENTRAL AVENUE, 60 FEFT
SOUTHEAST OF GLYNDON AVENUE
(209 CENTRAL AVENUE
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 89-396-SPHA
*

* * * * * *

NOTICE OF DISMISSAL

MADAM CLERK:

Please dismiss the above case pursuant to Maryland 2-506. This case is an appeal filed pursuant to Md. Rules B-13, Administrative Agencies.

Respectfully submitted,

Nevett Steele, Jr.
211 Central Avenue
Glyndon, MD 21071
(301) 296-8164 (Work)
(301) 833-6564 (Home)

Elizabeth B. Steele (ns)
Elizabeth B. Steele
211 Central Avenue
Glyndon, MD 21071
(301) 833-6564 (Home)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of May, 1991, a copy of the foregoing Order for Appeal was mailed to Eleanor J.

Lipsitz, Esquire, 100 Church Lane, Baltimore, Maryland 21208; Charles B. Heyman, Esquire, Kaplan, Heyman, Greenberg, Engleman & Belgrad, P.A., Tenth Floor, Sun Life Bldg., 20 S. Charles Street, Baltimore, MD 21201; and Linda Kuszmaul, Board of Appeals, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

Nevett Steele, Jr.

IN THE MATTER OF THE
THE APPLICATION OF
THE HOMESTEAD GROUP, LTD. AND
RONALD F. JONES, ET UX FOR A
SPECIAL HEARING AND VARIANCE
ON PROPERTY LOCATED ON THE NORTH-
EAST SIDE OF CENTRAL AVENUE, 60
FEET SOUTHEAST OF GLYNDON AVENUE
(207 AND 209 CENTRAL AVENUE,
RESPECTIVELY)
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 89-16-SPHA AND
89-396-SPHA
*

* * * * * * * * * *

OPINION

These two cases 89-396-SPHA, Ronald F. Jones, et ux, and 89-16-SPHA, The Homestead Group, Ltd., come before this Board on appeal from a ruling of the Zoning Commissioner denying in part and granting in part said Petitions. These two cases consumed some five days of testimony and evidence.

It is important at the outset to establish just what issues the Board is confronted with. In 89-396-SPHA, the matter is whether or not the structure at 209 Central Avenue is in fact a nonconforming use for six apartments, a variance to permit side yard setbacks of 12 feet zero inches and 12 feet six inches in lieu of the required 20 foot setback for one side and 40 feet or 50 feet the sum of both sides and to permit a total lot width of 65 feet in lieu of the required 90 feet. In case 89-16-SPHA, the Petition is for the Board to find that lot 207 Central Avenue is totally separate from Lot 209 and is unencumbered by any use of 209 and to permit the erection of a building on a 65 foot lot (207) in lieu of the 70 foot lot width in a D.R.3.5 zone. The proposed building to be totally within the D.R.3.5 zoned area.

Counsel for the Petitioner in 89-396-SPHA made Motion to dismiss Protestants' appeal claiming that the required notice period before the Zoning Commissioner was not complied with and

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therefore this Board lacks jurisdiction to hear the case. The Board denied this Motion and assumed jurisdiction.

In light of the fact that much testimony and evidence to be received would be pertinent to both cases, it was decided to hear the cases in combination. At the conclusion of the second witness it became obvious that it was impractical to try these as combined cases and the decision was made to bifurcate the cases and hear case 89-396-SPHA first with the understanding that the testimony and evidence received from the first two witnesses could be applied to both cases.

Much of the testimony received in these five days of hearing was cumulative, was not on point, was alleged testimony, and was to some degree hearsay evidence which in an administrative hearing is permitted. The testimony of each witness will not be detailed in this opinion but let the record speak for itself.

A very brief encapsulation of each witness who testified and their position on the matter before the Board will be stated. Ronald Jones purchased the property known as 209 Central Avenue in June of 1988. It was his understanding that this was a six apartment building with 27 rooms and it was his intention to continue this use. Mr. Jones was aware that in March of 1988 the adjoining vacant lot known as 207 Central Avenue had been sold. Zelma Ensor, a real estate broker, testified as to her familiarity with the property at 209, testified that it had always been an apartment use, that it constituted no detriment to the health and welfare of the neighborhood, and that the house planned for construction on 207 would be nonobjectionable and the plans had

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been accepted by the Landmarks Commission. Aileen Singer testified that she owned Lots 209 and 207 Central Avenue since 1978. She testified as to the use of the property as six apartments, two on each floor, and that she sold it to Mr. Jones as a six apartment use. She alleged that she inquired from Baltimore County as to the feasibility to the separate sale of Lot 207 and received assurances that there was no problem. Cookie Stone, a real estate agent, testified that she handled the sale of 209 Central Avenue.

On July 24, 1990, testimony was taken from Mrs. Sue Susimehl who is 88 years old and resides in California. All proper parties were present for this telephone testimony. Mrs. Susimehl testified that she purchased the two lots in 1941 and that the building on 209 was in existence but was not converted to apartments. Beginning in 1941, she and her husband converted the building to six apartments complete with individual and separate electric meters, kitchens, baths, etc. Her husband, an electrical contractor, did most of the work and the plumbing work was done by a man named Zepp. As this conversion project was undertaken during World War II, plumbing and electrical supplies were scarce. It was Mrs. Susimehl's testimony that because of this scarcity, this conversion took several years but was completed in 1945. It was interesting to the Board to note that this 88 year old lady not only remembered the six apartments but the name of each renter in each apartment. She testified that she sold the property to a Mr. Redder in 1966. She testified that there were six parking spaces along the side of the house adjacent to 207 and that while 207 was used as a driveway it was just a dirt driveway. This concluded

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Mrs. Susimehl's testimony. This same day testimony was received from James E. Redder, a long time Glyndon resident. He testified that he purchased 209 and 207 in 1966 for an investment only and that he never lived there but that its use at that time was identical to what it was in 1945, six apartments. He testified that he sold the two lots in 1968 and that no further improvements had been made to the property. Testimony was then taken from Thaddeus Hense, an attorney who specializes in title searches. He testified that he did a title search of 209 as far back as 1926 and that 209 and 207 were always two separate recorded lots. Cookie Stone was recalled as the real estate agent involved int he sale and testified that in 1970, she listed the property as two parcels and another agent sold them and that she checked with Baltimore County to see if the parcels could be separated and was so assured. Colleen Thompson Chance, another real estate agent, testified that she listed the properties in December of 1987 and was assured by Baltimore County that they were two separate parcels. This concluded Petitioner's case in 89-396-SPHA. Protestants presented Carol Ann Wildesen, the real estate agent involved in the sale of 207. She testified that she checked the Land Records to see if these were separate parcels and found this to be true. It was her testimony that there was no question that this was a separate lot entitled to all the privileges attached thereto. Ronald Jones was recalled and testified that when he purchased 209, 207 had already been sold. Mark Laken, President of the Glyndon Community Association, entered their opposition to the granting of these two Petitions. Eleanor Taylor, a member of Historic Glyndon, Inc.,

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read into the record their position in opposition to the granting of these Petitions. She further testified that she was acquainted with the property at 209 which prior to 1940 was first a boarding house and then converted to multiple apartments. Nevitt Steele who lives at 211 Central Avenue, next door to 209, testified as to his opposition to the two Petitions. It was his contention that 207 had always been the parking lot for 209 and that if this property is bifurcated from 209 that the six unit apartment building would no longer be a nonconforming use. This concluded Protestants case in 89-396-SPHA. Testimony was then received in case 89-16-SPHA, The Homestead Group. The first witness from the Homestead Group was Audrey Fox, President of the Homestead Group - Builders. She testified that their business was the design of homes to suit specific sites and specific areas. She testified that the proposed home was approved by the Landmarks Commission and of their agreement to relocate the driveway from 207 to 209. She entered the plans for the proposed building and testified that the proposed house met with approval of both the Landmarks Commission and the National Historic Register. William F. Kirwin, a land planner, testified that this lot is 65 feet wide by some 390 feet deep and that the proposed house meets all the side yard requirements and the only variance needed is the lot width in D.R.3.5 requiring an area variance from 70 feet to the 65 feet as the lot exists. Aileen Singer was then called in this case. She testified that the two lots had always been separate. She further testified that she inquired from Baltimore County as to whether a residence could be built on 207 and as far as she knew there were no problems.

Colleen T. Chance, the real estate agent, testified she listed 207 and 209 Central Avenue as two listings and was assured by Baltimore County that these were separate and buildable lots. Cookie Stone, a real estate agent actually involved in the sale, testified that she sold 207 to the Homestead Group as a buildable lot. This was the last witness for the Petitioner. Protestants presented Eleanor Taylor who testified as a member of the Board of Historic Glyndon and indicated their opposition to the variance as to lot width. She testified that Glyndon Park was founded in 1887 as a vacation resort and that there were large open areas in front of these buildings. In addition to the Board's opposition, she testified to her personal opposition since the proposed house would severely reduce the open space now existing on these two lots. Charles Wells, a member of the Board of the Glyndon Community Association, voiced their objection to the variance and testified that it would change the character of the neighborhood. Nevitt Steele, the neighbor of 209 Central Avenue, testified to his opposition to the granting of the variance. He testified it was his opinion that 209 was already in violation and that to grant the variance would put both lots in violation. He also testified that he attended the April, 1988 Land Preservation Meeting, looked at the plans for 207 and voiced no objection at that time. This concluded Protestants testimony in case 89-16-SPHA. The Board will once again reiterate that the aforegoing encapsulation is in no way intended to portray the depth and detail of all the testimony which is a part of the case record.

Sometime prior to January 2, 1945, a structure was erected on lots 207 and 209. Since 1947, an apartment house consisting of at least four apartment units was maintained on lots 207 and 209. Since January 2, 1945 through 1988, a driveway and parking lot serving the building situated on lot 209 has been maintained on lot 207.

Notwithstanding the areas of agreement, several key facts remain in dispute. There is a genuine dispute as to whether an apartment dwelling was situated on lots 207 and 209 prior to January 2, 1945. Petitioners' Exhibit 3, an out of court statement not subject to cross-examination, indicates that property "consisting of house and lot at 209 Central Avenue" were purchased by Louis E. and Anita C. Susemihl on March 27, 1941. This statement further asserts that "upon settlement," the Susemihls "remodeled house into six apartments - two on each floor." Mr. Reter, who purchased lots 207 and 209 in 1965, recalls delivering groceries to the "apartment house" in the 1946 to 1947 time frame. Mr. Reter was born on October 24, 1931. Ms. Enzer testified that lots 207 and 209 were used for an apartment building since 1941. Mrs. Hammond testified that substantial improvements were made to the structure erected on lot 209 during the summer of 1947. Protestants' Exhibit 11, which consists of tax assessment records indicates that a dramatic increase in the assessed value of the improvements to lots 207 and 209 occurred in 1947.

The evidence presented before the Zoning Commissioner does not conclusively show that an apartment building with six units existed on January 2, 1945. The most likely scenario given the facts presented, is that the house was converted to an apartment house in 1947. This conversion was not consistent with the Baltimore County Zoning Regulations and effectively created an illegal apartment use. Since this use is illegal, the Petitioners' request for the Zoning Commissioner to determine that a legal nonconforming use exists should be denied.

Assuming, arguendo, that the Zoning Commissioner finds that a legal nonconforming use existed as of January 2, 1945, this use must be defined. Given the undisputed testimony, it is clear that any nonconforming apartment use included lots 207 and 209. The improvements to lot 207 (parking lot and driveway) were devoted to the apartment building situated on lot 209. In fact, the nonconforming use can only be defined as one parcel (lots 207 and 209) with improvements (apartment house, parking lot and driveway).

The erection of a single family dwelling on lot 207 is a change to another use. The nonconforming use encompasses the entire parcel of land. Employing a portion of this parcel for another legal use, a single family dwelling, is in violation of Section 104.1. When there is any change from a nonconforming use to any other use whatsoever, the right to continue or resume such nonconforming use shall terminate.

The factors set forth in McKemy also indicate that the proposed activity on lots 207 and 209 is not within the scope of the original nonconforming use. The proposed use, as a six unit apartment and single family dwelling, does not reflect the nature and purpose of the original nonconforming use. The original nonconforming use permitted a very large structure to fit into the ambiance and character of Historic Glyndon. The open space created by the landscaped areas of lot 207 diminished the impact of the oversized apartment building and provided an architectural scope to the large structure which was more in keeping with the expansive front yards and green spaces of Central Avenue.

The proposed use is different in character, nature and kind from the original nonconforming use. The original use was a single structure containing between four and six apartment units. The proposed use shall include the addition of a use permitted as a matter of right in a wholly new structure. The character of the parcel will change dramatically in that the land area dedicated to buildings will increase by almost two fold. The parking and driveway access previously situated on lot 207 is now cramped onto lot 209. Two driveway accesses are now required where only one was needed previously. The additional driveway access chops up the expansive lawn area which was consistent with the historic ambiance and especially open character of the community.

The proposed use will have a substantially different effect upon the neighborhood. The original use, although expansive in size and impact, was when placed in the context of

the total parcel, was more in keeping with the general character of the neighborhood. If the proposed single family dwelling is permitted on lot 207, there will be an overcrowding of the land and a degradation of the large lot, expansive open space, and pleasant landscaping and lawns previously associated with this portion of Central Avenue. Additionally, if all of the relief requested is granted, it will serve to encourage other owners to sell off adjacent "double lots," create additional variance requests, overcrowd Historic Glyndon and lead to the disintegration of the character of the community.

The proposed use is also a drastic enlargement or extension of the original nonconforming use. The relocation of the parking lot and driveway to lot 209 and proposed erection of a single family dwelling on lot 207 are an expansion, and not a mere intensification of the nonconforming use. See Odell v. City of Eagen, Young v. Board of Zoning Appeals, Muse v. Zoning Hearing Board, Jahnigen v. Staley, and Phillips v. Zoning Commissioner, supra.

The footprint of the existing apartment dwelling, including the front porch, equals 2,290 square feet. The footprint of the proposed single family dwelling is approximately 1,640 square feet. This represents a greater than 70 percent increase in the land area committed to structures. Section 104.1 only permits an extension of up to 25 percent of the ground floor area of buildings so used. This 70 percent extension of the ground floor area of the apartment building is clearly in violation of Section 104.1 and a drastic enlargement or extension

of the original nonconforming use. After reviewing the factors set forth in McKemy, it is clear that the proposed uses are not within the scope of the original nonconforming use. As such, the Zoning Commissioner should deny the Petition for Special Hearing to approve a multifamily apartment dwelling and lot at 209 Central Avenue as a legal nonconforming use for six apartment units.

(b) Conversion of Dwellings Pursuant to Section 402.

Section 402 permits the conversion of dwellings for residential uses. The dimensional requirements are set forth in a conversion table found on Page 4-3, BCZR. Protestants' Exhibit 7 is two letters which address, among other things, the application of Section 402 to the instant case. One letter, is from Messrs. Kellman and Dyer of the Office of Planning and Zoning to Ms. Coleen Thompson, Realtor for the Singers in the sale of lot 209 to the Joneses. The other portion of Protestants' Exhibit 7 is a letter from Messrs. Richards and Dyer to Mr. Steele. Both letters analyze the conversion of the existing improvements on lot 209 pursuant to the tables contained in Section 402. The conclusion reached by the zoning office is that only two units are allowed under County law.

Mr. Malmud, a land surveyor, testified on behalf of the Joneses that the conversion tables of Section 402 would permit a conversion to six units on lot 209. Mr. Malmud disagreed with the conclusions reached in Protestants' Exhibit 7 by the zoning office . Mr. Malmud did not offer any explanation for his disagreement with the zoning office opinions of Messrs. Dyer,

Richards and Kellman and did not present any calculations based upon Section 402 to show that six units were permitted. Further, Petitioners' Exhibit 7, the Plat to Accompany Zoning Petition for Special Hearing, indicates minimum frontage and lot area requirements. According to Mr. Malmud, 150 feet of frontage is required, while 65 feet is provided. Additionally, 28,500 square feet of lot area is provided, while 25,449 square feet is provided. Mr. Malmud could not indicate where these requirements are set forth in the Zoning Regulations. Nor does the Petition for Zoning Variance seek relief for the minimum lot area required as shown on the Petitioners' Exhibit 7.

The evidence clearly shows that only two apartment units are permitted pursuant to Section 402. The evidence also brings into question whether the lot area requirements as shown on Petitioners' Exhibit 7 have been met. A variance of this asserted lot area requirement has not been requested.

2. Petition for Zoning Variance (209)

The Petition for Zoning Variance seeks relief from the side yard and lot width requirements of the Zoning Regulations. Section 307 sets forth the test for the granting of any variance from the bulk regulations. Such variances should be granted only in cases where strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship. Furthermore, any such variance should be granted only if in strict harmony with the spirit and intent of the bulk regulations, and only in such manner as to grant relief without substantial injury to public health, safety and general welfare.

The need sufficient to justify a variance must be substantial and urgent and not merely for the Petitioners' convenience. McLean v. Soley, 270 Md. 208, 310 A.2d 783 (1973). A petitioner seeking a variance must exercise proper diligence in ascertaining zoning requirements prior to acquiring property in order to avoid a resultant hardship. If such diligence is not exercised, the hardship is self-created and the variance may be properly refused. Wilson v. Mayor and Commissioners of Town of Elkton, 35 Md. App. 417, 371 A.2d 443 (1977). If the grant of a variance would effect the aesthetic ambiance of the residences in the immediate area, such variance would be in disharmony with the spirit and intent of the Zoning Regulations. Daihl v. County Board of Appeals of Baltimore County, 258 Md. 157, 265 A.2d 227 (1970). The mere fact that a variance, if granted, would make the property more profitable is not a sufficient ground to justify the relaxation of bulk requirements. Easter v. Mayor and City Council of Baltimore, 195 Md. 395, 73 A.2d 491 (1950).

If the peculiar circumstances which render property incapable of meeting the zoning requirements have themselves been caused or created by the property owner or his predecessor in title, the essential basis of a variance is lacking. An act on the part of the property owner or his predecessor which has physically so affected the property as to create a unique circumstance or which in itself created either a practical difficulty or hardship in conforming to the restrictions of the Zoning Regulations bars relief. Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A.2d 810 (1965).

The undisputed testimony indicates that the Joneses went to settlement on June 24, 1988. It is also undisputed that prior to settlement, Mr. Steele conversed with the Joneses and their counsel regarding the potential zoning violations surrounding the proposed uses for lots 207 and 209. Protestants' Exhibit 10 is a letter sent to the Joneses' counsel prior to their settlement confirming the existence of these issues and concerns. The record is so filled with examples of notice to the Joneses' predecessor in title, the Singers, it is unnecessary to reiterate them in this memorandum. Suffice it to say that Mr. Steele placed the Singers on notice of the potential zoning problems associated with their proposed uses of lots 207 and 209 prior to the respective settlements for lots 207 and 209..

The variances requested must be denied based upon the doctrine of self-inflicted hardship. Had the Singers or the Joneses acted with reasonable diligence regarding lot 209, they would have either obtained written confirmation from the zoning office that the proposed use of lot 209 as a six unit apartment was consistent with the Zoning Regulations or had filed the appropriate petitions to confirm compliance. At best, the realtor for the Singers received oral information from a zoning technician the exact substance and basis for which is clearly in question. Because the Petitioner did not act diligently and inflicted the hardship from which it seeks relief, the variances requested must be denied.

B. 207 CENTRAL AVENUE

1. Petition For Special Hearing.

Assuming, arguendo, that the Petitioner is not barred by the doctrine of self-inflicted hardship, the only testimony offered regarding compliance with the requirements of Section 307 came from Mr. Malmud. Mr. Malmud testified that the important requirements of Section 307 have been met. However, he merely stated conclusions without supporting them by explanation or reference to the facts of the case.

Mr. Malmud's credibility and credentials as an expert witness were severely called into question during the hearing. Mr. Malmud was offered as a "surveyor." He was not offered as an expert in real estate appraisal, civil engineering or land planning. Additionally, Mr. Malmud had not even read the petitions for special hearing or zoning variance filed by his clients, the Joneses. Further, his superficial analysis of Section 402 and the zoning office's interpretation of same genuinely call into question Mr. Malmud's ability to interpret the Zoning Regulations.

The record contains grossly insufficient evidence to support the requirements of Section 307. The Petitioner, who clearly has the burden of proving practical difficulty or unreasonable hardship pursuant to the Zoning Regulations, has failed to offer any substantial evidence in support of its Petition for Zoning Variance. Since the Petitioner has failed to meet its burden under Section 307, the Petitions for Zoning Variance must be denied.

In Muse v. Zoning Hearing Board, 415 A.2d 1255 (Pa. Cmwlth., 1980), the Court approved a zoning board's expansion of a country club through the addition of tennis courts. In Pennsylvania law, structures may be erected on open land previously devoted to a nonconforming use, as a matter of right. The erection of structures upon land not previously so used, may only be accomplished by way of variance. In the Muse case, the Zoning Board approved the expansion of the country club without a variance.

In reviewing the Board's approval, the Muse Court indicated that the threshold question is whether the land on which the country club proposes to locate the tennis courts has been devoted to the country club's nonconforming use. After reviewing the evidence introduced regarding the use of the land in question, the Court agreed that the land upon which the tennis courts were to be erected had been devoted to the country club's nonconforming use. Since it had been properly devoted, the court agreed that the construction of the tennis courts was a natural expansion of the club's activity and should therefore be permitted.

In the instant case, there are a number of undisputed facts which can be identified. In the 19th century, lots 207 and 209 were subdivided pursuant to a recorded plat. In the late 19th century, lots 207 and 209 came under the same ownership. From that time until lots 207 and 209 were conveyed to the Homestead Group and the Joneses, respectively, they were always held under the same ownership and transferred by the same deed.

Petitioner would like to seek relief, it should file a new petition for special hearing which accurately describes the relief requested.

The Protestants are not opposed to the continued use of lots 207 and 209 as a nonconforming apartment use. The focus of the Protestants' concerns relate to the improvement of lot 207 with a single family dwelling. If the relief requested in the Petition for Special Hearing is granted, then the nonconforming apartment use must be terminated. Such an outcome would be unfair and unreasonable in light of the long history of the apartment use and its previous condition served by the parking lot and driveway on lot 207. Prior to the Singers' attempts to exact greater profits from the sale of their parcel, the neighbors did not assert that the apartment use was an illegal use and not in conformity with the nonconforming use requirements of the Zoning Regulations.

2. Petition For Zoning Variance.

The Homestead Group seeks relief from the lot width requirements of the Zoning Regulations. For all the reasons set forth in reference to the Petition for Zoning Variance filed by the Joneses, the zoning variance must be denied. The record clearly indicates that the Singers were put on notice by Mr. Steele of the zoning problems associated with their proposed transfer of lots 207 and 209. Portions of Mrs. Singer's testimony support the Protestants' assertion that the Homestead Group was likewise apprised of Mr. Steele's concerns.

or tracts in DR zones. This section must be viewed as a part of a whole. The whole includes Section 104 and the law governing nonconforming uses. The purpose of Section 1B02.3 was to provide lot owners with relief from the more stringent requirements of the Zoning Regulations where existing developments or subdivisions have occurred.

In the instant case, the owners of the structure now used as an apartment building have owned and operated lots 207 and 209 as one parcel for at least 45 years, and possibly as long as 100 years.

Additionally, Section 304 of the Zoning Regulations offers further guidance on the Petition for Variance as well as the Petition for Special Hearing. Section 304 permits the erection of a single family dwelling on an undersized lot provided the following requirements are met:

> A. That such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to adoption of these Regulations; and
>
> B. That all other requirements of the height and area regulations are complied with; and
>
> C. That the owner of the lot does not own sufficient adjoining land to conform substantially to the width and area requirements.

In the instant case, it appears that Section 304.A has been met. Section 304.B is subject to question. There has not been any testimony offered that all other requirements of the height and area regulations are being complied with. In particular, there has been no testimony offered regarding whether

Section 1B01.2.C1 or 2 regarding distances between separate buildings and distances related to windows, respectively, have been met. The Protestants hesitate to concede a point of law where the record does not reflect that the Petitioner has addressed a requirement of the Zoning Regulations.

Section 304.C has clearly not been met. The Singers, prior to the sale of lot 207 to the Homestead Group, did own substantial adjoining land which would permit substantial conformance to the width and area requirements of the Zoning Regulations. RM-15 and RM-16 of the Zoning Policy Manual provide guidance as to the requirements of Section 304 and 307. The six year rule described in RM-16, when applied to the current case, clearly shows that Section 304.C has not been met. Therefore, a variance is required pursuant to Section 307 from the lot width requirements of Section 1B02.3C1.

The policy of the Zoning Regulations as supported by Sections 104, 1B02.3 and 304, is to provide a land owner with a reasonable use of its property. These sections acknowledge the historical and legal changes that may adversely affect the productive use of land. However, public policy does not support an unnecessary extension of a nonconforming use and overcrowding of land with detrimental impacts upon the character and ambiance of an Historic District merely for the economic gain of the land owner. The nonconforming apartment use, if approved, will provide the land owner with a more than adequate and reasonable

use of its land consistent with the spirit and intent of the Zoning Regulations and the character and ambiance of Historic Glyndon.

CONCLUSIONS

The Singers and the Petitioners have created a situation where someone must lose. The Petitioners want the Zoning Commissioner to ignore the self-inflicted nature of their hardship and provide the relief requested. However, to do so would require that the Zoning Commissioner also ignore the substantial harm to the welfare of the Glyndon community. As all of the Protestants who testified indicated, the relief, if granted, would dramatically impact the character and ambiance of their historic community. The erection of a single family dwelling on lot 207 will overcrowd the land, conflict with the character and ambiance of Central Avenue and dramatically reduce the open space which has provided a proper setting for the imposing apartment structure. It is unfair to the Glyndon community and inconsistent with the spirit and intent of the Baltimore County Zoning Regulations and the law governing nonconforming uses to grant the relief requested. The Singers and the Petitioners have created a hardship and are now before you asking that that hardship be relieved from their shoulders and placed on the backs of the residents of Historic Glyndon. Requiring the neighborhood to bear the burden of the Petitioners' lack of diligence would not be an act of justice. It will only reinforce the irresponsible behavior of the Singers and the Petitioners. If any relief is to be granted, a nonconforming

apartment use on lots 207 and 209 should be granted and the Singers and Petitioners should be forced to solve their own problems.

Respectfully submitted,

G. Scott Barhight /sb
G. Scott Barhight

GSB:sb
cc: Nevett Steele, Jr., Esquire
Charles B. Heyman, Esquire
Eleanor J. Lipsitz, Esquire

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therefore this Board lacks jurisdiction to hear the case. The Board denied this Motion and assumed jurisdiction.

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Much of the testimony received in these five days of hearing was cumulative, was not on point, was alleged testimony, and was to some degree hearsay evidence which in an administrative hearing is permitted. The testimony of each witness will not be detailed in this opinion but let the record speak for itself.

A very brief encapsulation of each witness who testified and their position on the matter before the Board will be stated. Ronald Jones purchased the property known as 209 Central Avenue in June of 1988. It was his understanding that this was a six apartment building with 27 rooms and it was his intention to continue this use. Mr. Jones was aware that in March of 1988 the adjoining vacant lot known as 207 Central Avenue had been sold. Zelma Ensor, a real estate broker, testified as to her familiarity with the property at 209, testified that it had always been an apartment use, that it constituted no detriment to the health and welfare of the neighborhood, and that the house planned for construction on 207 would be nonobjectionable and the plans had

been accepted by the Landmarks Commission. Aileen Singer testified that she owned Lots 209 and 207 Central Avenue since 1978. She testified as to the use of the property as six apartments, two on each floor, and that she sold it to Mr. Jones as a six apartment use. She alleged that she inquired from Baltimore County as to the feasibility to the separate sale of Lot 207 and received assurances that there was no problem. Cookie Stone, a real estate agent, testified that she handled the sale of 209 Central Avenue.

On July 24, 1990, testimony was taken from Mrs. Sue Susimehl who is 88 years old and resides in California. All proper parties were present for this telephone testimony. Mrs. Susimehl testified that she purchased the two lots in 1941 and that the building on 209 was in existence but was not converted to apartments. Beginning in 1941, she and her husband converted the building to six apartments complete with individual and separate electric meters, kitchens, baths, etc. Her husband, an electrical contractor, did most of the work and the plumbing work was done by a man named Zepp. As this conversion project was undertaken during World War II, plumbing and electrical supplies were scarce. It was Mrs. Susimehl's testimony that because of this scarcity, this conversion took several years but was completed in 1945. It was interesting to the Board to note that this 88 year old lady not only remembered the six apartments but the name of each renter in each apartment. She testified that she sold the property to a Mr. Redder in 1966. She testified that there were six parking spaces along the side of the house adjacent to 207 and that while 207 was used as a driveway it was just a dirt driveway. This concluded

Mrs. Susimehl's testimony. This same day testimony was received from James E. Redder, a long time Glyndon resident. He testified that he purchased 209 and 207 in 1966 for an investment only and that he never lived there but that its use at that time was identical to what it was in 1945, six apartments. He testified that he sold the two lots in 1968 and that no further improvements had been made to the property. Testimony was then taken from Thaddeus Hense, an attorney who specializes in title searches. He testified that he did a title search of 209 as far back as 1926 and that 209 and 207 were always two separate recorded lots. Cookie Stone was recalled as the real estate agent involved int he sale and testified that in 1970, she listed the property as two parcels and another agent sold them and that she checked with Baltimore County to see if the parcels could be separated and was so assured. Colleen Thompson Chance, another real estate agent, testified that she listed the properties in December of 1987 and was assured by Baltimore County that they were two separate parcels. This concluded Petitioner's case in 89-396-SPHA. Protestants presented Carol Ann Wildesen, the real estate agent involved in the sale of 207. She testified that she checked the Land Records to see if these were separate parcels and found this to be true. It was her testimony that there was no question that this was a separate lot entitled to all the privileges attached thereto. Ronald Jones was recalled and testified that when he purchased 209, 207 had already been sold. Mark Laken, President of the Glyndon Community Association, entered their opposition to the granting of these two Petitions. Eleanor Taylor, a member of Historic Glyndon, Inc.,

read into the record their position in opposition to the granting of these Petitions. She further testified that she was acquainted with the property at 209 which prior to 1940 was first a boarding house and then converted to multiple apartments. Nevitt Steele who lives at 211 Central Avenue, next door to 209, testified as to his opposition to the two Petitions. It was his contention that 207 had always been the parking lot for 209 and that if this property is bifurcated from 209 that the six unit apartment building would no longer be a nonconforming use. This concluded Protestants case in 89-396-SPHA. Testimony was then received in case 89-16-SPHA, The Homestead Group. The first witness from the Homestead Group was Audrey Fox, President of the Homestead Group - Builders. She testified that their business was the design of homes to suit specific sites and specific areas. She testified that the proposed home was approved by the Landmarks Commission and of their agreement to relocate the driveway from 207 to 209. She entered the plans for the proposed building and testified that the proposed house met with approval of both the Landmarks Commission and the National Historic Register. William F. Kirwin, a land planner, testified that this lot is 65 feet wide by some 390 feet deep and that the proposed house meets all the side yard requirements and the only variance needed is the lot width in D.R.3.5 requiring an area variance from 70 feet to the 65 feet as the lot exists. Aileen Singer was then called in this case. She testified that the two lots had always been separate. She further testified that she inquired from Baltimore County as to whether a residence could be built on 207 and as far as she knew there were no problems.

Colleen T. Chance, the real estate agent, testified she listed 207 and 209 Central Avenue as two listings and was assured by Baltimore County that these were separate and buildable lots. Cookie Stone, a real estate agent actually involved in the sale, testified that she sold 207 to the Homestead Group as a buildable lot. This was the last witness for the Petitioner. Protestants presented Eleanor Taylor who testified as a member of the Board of Historic Glyndon and indicated their opposition to the variance as to lot width. She testified that Glyndon Park was founded in 1887 as a vacation resort and that there were large open areas in front of these buildings. In addition to the Board's opposition, she testified to her personal opposition since the proposed house would severely reduce the open space now existing on these two lots. Charles Wells, a member of the Board of the Glyndon Community Association, voiced their objection to the variance and testified that it would change the character of the neighborhood. Nevitt Steele, the neighbor of 209 Central Avenue, testified to his opposition to the granting of the variance. He testified it was his opinion that 209 was already in violation and that to grant the variance would put both lots in violation. He also testified that he attended the April, 1988 Land Preservation Meeting, looked at the plans for 207 and voiced no objection at that time. This concluded Protestants testimony in case 89-16-SPHA. The Board will once again reiterate that the aforegoing encapsulation is in no way intended to portray the depth and detail of all the testimony which is a part of the case record.

The Board in this Opinion will first address case 89-396-SPHA (Ronald F. Jones, et ux). From the plethora of testimony and evidence and allegations received some facts can be determined. It was uncontested that somewhere near the turn of the century a building of significant size was erected at 209 Central Avenue. There was uncontradicted testimony that this building was used at that time as a weekend country vacation spot for city residents. In 1941, Mr. and Mrs. Susimehl purchased the two lots and began the conversion of the building on 209 to six apartments. There was testimony that this six apartment use has continued up until the purchase of the site by Mr. Jones. Mrs. Susimehl testified that the lot at 207 did in fact contain an unpaved dirt driveway that was used for automobile access to 209. There was also testimony that parking for several vehicles was provided at the rear of 209. The Protestants claim that the use of this dirt driveway on 207 is vital to the nonconforming use of the property at 209. The Board will not find this so. While it is true that up until Mr. Jones's purchase the two lots were always conveyed as one sale but were always designated as two separate parcels, certainly the owners of an improved and an unimproved lot should be allowed the use of the unimproved lot in any incidental way they see fit. If 207 had been used as a garden to provide food for 209 would this then mean that 207 could never be anything but a garden as long as the structure on 209 existed. The use of the dirt driveway was a convenience to the owner of both lots and was an incidental use to the owner since he owned both lots. To rule that this incidental use by an owner perpetuates that use forever in conjunction with the legal

nonconforming use would appear to this Board to be arbitrary. The Board will further note in this Opinion that when Mr. Jones purchased the property at 209, he applied for and was granted the right to construct a driveway on 209. Mr. Steele, the neighbor at 211, complained because the driveway was to be constructed adjacent to his lot and that parking was to be provided in front of the structure on 209 and, as a result thereof, Mr. Jones relocated the driveway to the other side of the lot and provided the parking in the rear of the lot. There was testimony that during some of the time Aileen Singer owned the site she did not rent one of the first floor apartments but merely opened the connecting door between the two apartments and used them for a time for her own personal use. The Board will note that absolutely no changes were made in this nonrented apartment. It still retained its own meter system, its own kitchen, and its own bathroom. Section 104.1 provides that if a nonconforming use is abandoned or discontinued for a period of one year the right to continue or resume such nonconforming use shall terminate. Since no physical changes whatsoever were made in this nonrented apartment there is no evidence of intent to abandon and since there was no abandonment of this use the right to resume that use must exist.

After consideration of all the testimony and evidence and for all of the above reasons, the Board is of the opinion that the nonconforming use of the property at 209 Central Avenue as a six apartment dwelling should be affirmed and will so order. As to the requested variances on the property at 209 Central Avenue, the Board will note that the structure was built many many years prior

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

RONALD F. JONES and : Case No. 89-396-SPHA
SUZANNE LUSSIER-JONES, : NE/S Central Avenue, 125 SE
Appellants : Glyndon Avenue

APPELLANTS' BRIEF

Statement of Facts

The Appellants, Ronald F. Jones and Suzanne Lussier-Jones (hereinafter referred to as "Jones"), acquired title to property known as 209 Central Avenue, Glyndon, Maryland, on June 24, 1988. The property consists of a lot containing 25,545 square feet of land, more or less, and an existing structure, located in D.R. 2 and D.R. 3.5 zones. (See plats accompanying Appellants' petitions filed herein below). The structure has existed since before 1898. The building located at 209 Central Avenue has been operated as a boarding house and/or apartment house since, at least, the late 1800's.

209 Central Avenue and the adjacent lot known as 207 Central Avenue have been conveyed in one instrument, but as two separate lots, for at least sixty years. In March, 1988, the vacant lot known as 207 Central Avenue was sold by Aileen Singer (hereinafter referred to as "Singer") to the Homestead Group (hereinafter referred to as "Homestead"). 209 Central Avenue was

subsequently conveyed by Singer to Jones by deed dated June 24, 1988.

(The Zoning Commissioner found that 207 and 209 are and have been two separate lots. Appellants do not dispute that part of the commissioner's decision, but adopt that finding.)

Prior to conveying the vacant lot at 207 Central Avenue to Homestead, Singer relocated a driveway and parking lot which from time to time had been, and was then, situated on 207 Central Avenue and had been used for access to 209 Central Avenue and for parking. Singer obtained a building permit to construct the driveway and parking lot on 209 Central Avenue. (Photographs in evidence show that the construction of the driveway was accomplished by putting down a stone surface. No curb cut was necessary.) She complied with the recommendations and/or requests of the Baltimore County Landmarks Preservation Commission.

Appellants received Citation No. 89-038, Citation For Civil Zoning Violation, dated August 10, 1988, citing a violation of section 101; 402; 1b01.1A, the alleged violation being "use of property zoned D.R. 3.5 to commit the following:

> Apartment building located on residential property that lacks required lot area and minimum dimensional (width/side yard) standards. "

At trial of that matter, the County Solicitor agreed to enter a "stet.", provided Jones filed the appropriate petitions with the Zoning Commissioner. Jones filed their petition for special hearing and petition for variance. Hearings thereon were held before Zoning Commissioner J. Robert Haines. This appeal is taken from the decision of the Zoning Commissioner denying Jones' petition for special hearing and petition for variance.

Questions Presented

1. Was the hearing date scheduled by the Zoning Commissioner advertised for fifteen (15) days prior thereto so as to comply with the requisite notice provisions of the zoning regulations to properly bring the matter before the Zoning Commissioner and, subsequently, properly before this Board?

2. Does the operation of a six unit apartment building at 209 Central Avenue, Glyndon, Maryland qualify as a nonconforming use?

3. Should Appellants' request for a variance from section 402.1 of the Baltimore County Zoning Code to permit side yard setback of 12.0 feet and 12.6 feet in lieu of required 20 feet for one side and 40 feet and/or 50 feet for the sum of both side yard setbacks and to permit a lot width of 65 feet in lieu

of the required 90 feet or greater as may be determined be granted?

Argument

1. The hearing date scheduled by the Zoning Commissioner was not advertised for fifteen (15) days prior thereto and hence, did not comply with the requisite notice provisions of the zoning regulations. This matter was not properly before the Zoning Commissioner and, subsequently, this Board is without authority to entertain the matter.

Hearing of Appellants' two petitions was originally scheduled before the Zoning Commissioner for April 4, 1989. Prior to the commencement of that scheduled hearing, Appellants argued that the scheduled hearing was not in compliance with the provisions of Sec. 500.7 B.C.Z.R. which provides, in pertinent part:

> "the Zoning Commissioner shall schedule a public hearing for a date not less than 30 days after the petition is accepted for filing". (Emphasis supplied.)

The Zoning Commissioner, noting that the date on the notification that the Jones' petitions were accepted for filing was March 8, 1989, agreed that recited provision had not been met. At that time, April 4, 1989, the Commissioner rescheduled the hearing on Appellants' petitions for April 17, 1989. The property at 209 Central Avenue was then posted with a notice of the new, April 17, 1989 hearing date. Appellants contended then, and continue to contend, that the April 17, 1989 date and posting of the property with notice of that date did not conform with the provision of Sec. 500.7 B.C.Z.R. which provides:

> If the petition related to a specific property, notice of the time and place of the hearing shall be conspicuously posted on the property for a period of at least 15 days before the time of the hearing. (Emphasis supplied.)

Clearly posting the property at 209 Central Avenue on April 4, 1989 with notice of an April 17, 1989 hearing date does not comply with the B.C.Z.R. provision that such notice be posted for a "period of at least 15 days before the time of the hearing". Assuming the notice of the April 17, 1989 was posted on the same date that the Commissioner scheduled that date, i.e. at April 4, 1989, there was not 15 days notice. The hearing on April 17, 1989 was not properly before the Commissioner.

This matter, not properly before the Zoning Commissioner, is, therefore, not within the jurisdiction of this Board. See Cassidy et al. v. County Board of Appeals of Baltimore County et al., 218 Md. 418, 146 A2d 896 (1958). In that case, the Court of Appeals of Maryland reiterated the clear legal principle that "the failure of an administrative official or board to give a proper notice of a hearing, required by law, is fatal to the jurisdiction of the official or the board" (146 A2d 896, at 898). In Cassidy, as here, the issue evolved from hearing before the Zoning Commissioner of Baltimore County, and the subsequent hearing on appeal before the Board of Appeals, both administrative proceedings. (Appellant's reserved this issue in their memorandum to the Commissioner and raised it again prior to the commencement of the hearing before this Board. They have in no way waived the 15 days notice requirement of Sec. 500.7.) The Zoning Commissioner had no jurisdiction to hear

Appellants' petitions on April 17, 1989 because of the failure to meet the requirements of law for notice of a hearing for a "period of at least 15 days before the time of the hearing". (B.C.Z.R. 500.7) The administrative hearing before the Zoning Commissioner was improper. This Board is therefore without jurisdiction in this matter.

2. The operation of a six unit apartment building at 209 Central Avenue, Glyndon, Maryland is a nonconforming use.

The determination of a nonconforming is essentially two part. First, there must be a finding that a lawful use existed prior to the adoption of zoning regulations. (See Section 101, B.C.Z.R., 1955; Bill No. 18, 1976) Second, it must be shown that that use has continued without interruption or change. (See Section 104, B.C.Z.R., 1955, Bill 18, 1976) Also see McKemy v. Baltimore County, Md., 30 Md.App. 257, 385 A.2d 96 (1978).

January 2, 1945 marks the inception of the Baltimore County zoning regulations. The County Commissioners then adopted a comprehensive set of zoning regulations. McKemy supra, at 98; Kahl v. Cons. Gas El. Lt. & Pwr. Co., 191 Md. 249, 254, 60 A.2d 754 (1948); Calhoun v. County Bd. of Appeals, 262 Md. 265 277 A.2d 589 (1971). Section XI, 1945, B.C.Z.R. first provided for nonconforming uses. On March 30, 1955, the County Commissioners adopted a new set of comprehensive zoning regulations. See McKemy. Section 104 of those regulations dealt with nonconforming uses. Currently, Section 104.1, as adopted on March 15, 1976 by Bill No. 18-76, of the Baltimore County Zoning

Regulations provides for nonconforming uses. In pertinent part, Section 104.1 provides:

> "A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these Regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, . . . the right to continue or resume such nonconforming use shall terminate. . . ."

The evidence herein patently shows that 209 Central Avenue has been, and continues to be, operated as a multi-family (six unit apartment) dwelling since prior to the adoption of the original Baltimore County Zoning Regulations in January, 1945, without any change from that usage, and without any abandonment or discontinuance. The testimony of Anita Susemihl, Ronald Jones, James Reter, Zelma Ensor, Aileen Singer, Cookie Stone and Colleen Thompson Chance establish that 209 Central Avenue has been a boarding house and/or six unit apartment house for as long as anyone can remember, since, perhaps the 1890's; it has been a six unit apartment building since prior to January, 1945. None of Respondents' witnesses disputed Appellants' evidence that 209 Central Avenue has been operated as a boarding house or multi-family apartment house since well before the inception of zoning regulation for Baltimore County, hence, Appellants submit, the question of the existence of a legal nonconforming use is undisputed and not in issue.

Appellants produced evidence of the existence of six units at 209 Central Avenue since the early 1940's. Anita Susemihl testified that, in 1941, she and Louis Susemihl, her

late husband, acquired the property (then a boarding house) and converted it to six apartments. (Appellants' introduced photographs taken by Susemihl of 209 Central Avenue in 1941.) Mr. Susemihl did much of the conversion work himself. Mrs. Susemihl is not aware of any requirements for permits for the conversion nor does she remember any inspections being made by any county personnel during the time of the conversion. She was able to recall the names of many of the tenants. She stated that the conversion was undertaken shortly after she and her husband acquired the property and and completed before January, 1945. (She was not certain when the outside and balcony trim were finished but she stated that everything was completed by 1946.) Mrs. Susemihl was able to name several of the then tenants. She further stated that parking was against the side of the building closest to 207 Central Avenue. The driveway was unpaved. 207 Central Avenue was well wooded with many trees and underbrush. Mrs. Susemihl testified that she could think of no other use for the 27 room structure except the continuation of the six unit apartments and was at a loss to understand why the six units were being questioned now.

James Reter testified to the continuance of the six unit apartment building usage from the time of his childhood (he is in his sixties now) to the present time. His family bought a grocery store in Glyndon in 1945 and operated it for years. He remembers delivering grocery orders to various units in 209 in his youth, both in the company of his father and later on his own. He is not aware of any construction by the Susemihls during 1945 or thereafter. He has lived in the area for many years and is familiar with the property. He owned both 207 and 209 Central Avenue from 1966 until 1968. To his knowledge, the building has contained six apartments since at least 1945. Mr. Reter testified that he had planned to construct a separate resident on 207 Central Avenue and knew of no impediment to that development nor of any potential problem with regard to the operation of 209 Central Avenue as a six unit apartment building. A dirt driveway serviced the properties. The parking area was unpaved.

Zelma Ensor, an area resident and real estate broker, testified that she is and has been familiar with the Glyndon area. The apartment building at 209 Central Avenue has been there for as long as she can remember, at least 60 years. Her wedding reception in 1941 was held on Central Avenue. Her first child was born in 1946 while Mrs. Ensor lived on Central Avenue. Mrs. Ensor has been in 209 Central Avenue as early as the 1940's. It has always been a three story building with a center hall and with an apartment unit on either side of the hall on each floor. She further stated that the property and building was an asset to the community, filled a need and had no negative effect on the community.

Aileen Singer acquired the both 207 and 209 Central Avenue in 1978. She sold 207 to Homestead in March, 1988 and 209 to Jones in June, 1988. 209 Central Avenue contained six apartments, two on each of three floors. During her ownership, each of the six units had its separate gas meter, bath and kitchen. There was a time that she occupied both units on the first floor. That was accomplished by merely opening a door

between the units. No physical or structural changes were made. The first floor still had two gas meters, two bath and kitchen facilities. This did not, Appellants submit, constitute an abandonment or discontinuance of the nonconforming use. See Feldstein v. LaVale Zoning Board, 227 A.2d 713, 246 Md.204 (1967). At most this was a temporary abatement of the six unit use to five units. The maintenance of two separate facilities, temporarily combined, supports a finding of a temporary abatement. There is no clear indication of intention, action or inaction which is mandated to extinguish a nonconforming use. See Feldstein, supra, at 734.

In 1978 /9 Mrs. Singer made inquiries at the Baltimore County Zoning Office concerning 207 and 209 Central Avenue when she considered building a home on 207 Central. She was informed that such development would pose no problem. She made inquiries twice more prior to the sale of the lot at 207 Central Avenue. She learned of no necessity for both lots to remain together. Prior to her relocating the driveway and parking from 207 to 209, Mrs. Singer obtained a permit from Baltimore County and approval of Landmark Preservation. At no time during this process was there an interdiction in connection with the relocation of the driveway along the property line between 207 and 209 or relocation of the parking to the rear of 209 and behind the building. In fact, the parking area was located behind the structure in order to accommodate the neighboring home owners, Nevett and Betsy Steele, who objected to parking on the front of the lot at 209 Central Avenue.

Colleen Thompson Chance, a real estate agent who listed both properties for Mrs. Singer, testified that she made inquiries at the Baltimore County Zoning Office concerning the separation of 207 and 209 Central Avenue and was never told that the lots could not be separate and independent. She made inquiries about the continued use of 209 Central Avenue as a six unit apartment building and concluded that, at worst, a special hearing to recognize the non-conforming use would be necessary. She did not interpret the correspondence presented by Respondents between the Steeles and various community and county groups as anything more than Steeles asserting their opinions. (Nevett Steele, on cross examination by Appellants, could not point to any language which said that the the six units at 209 Central Avenue was illegal.) She testified that she would not have listed 209 as six units if she had firm information to the contrary. Although Nevett and Betsy Steele had indicated their unhappiness with the separation of 207 from 209 Central Avenue, Chance felt that they were unhappy neighbors. She testified that Mr. Steele informed her that he would do anything possible to prevent the separation sales of the two lots and that she interpreted the Steeles' subsequent actions as their efforts to advance their stated crusade. To her, the Steeles seemed to be casting around for any reason to prevent the separate sales to Homestead and Jones and the planned development of 207 Central Avenue and raised new objections each time a prior matter was resolved. She gave little credence to the Steeles' varying demands and positions. Indeed, Mr. Steele himself

testified that he did not "know the strength of his convictions" with regard to the applicable zoning for 209 Central Avenue.

Cookie Stone, the selling agent for 209 Central Avenue testified that she concurred Chance's interpretation of the zoning situation for 209 Central Avenue. She had had a listing earlier for 209 and was aware that it had been six units. She foresaw no problem other than a possible need to show the nonconforming use at a hearing.

Respondents introduced affidavits which they assert show the number of units contained in 209 Central Avenue. None of the affidavits were procured by Appellants or at their direction or by Respondents. There is no evidence that Appellants received the affidavits prior to settlement on 209 Central Avenue. In one instance, the existence of "four or more" units is mentioned, in another, six units. This does not contradict Appellants' position that there have been and are six units. While the remaining affidavits suggest the existence of four or five units, the preponderance of the evidence supports the continued use of the property as a six unit apartment building since prior to the inception of the Baltimore County Zoning Regulations. Mrs. Chance was notified that the nonconforming use could not be obtained by affidavit, but should properly be addressed by appropriate proceedings and hearings before the Zoning Commissioner. She did not believe that the six units at 209 Central Avenue was not a permitted use.

Respondents did not controvert the existence of the boarding house and/or apartment building at 209 Central Avenue before the adoption of the Baltimore County Zoning Regulations, nor did they successfully controvert the continued existence of six units at 209 Central Avenue during the critical period.

Respondents attempted to educe evidence to support their contention that the use of 209 Central Avenue has changed in such a manner to terminate the prior nonconforming use. Appellants urge that the evidence shows that the only changes in the use and operation of 209 Central Avenue since at least 1945 has been the relocation of the driveway and parking lot, from 207 Central Avenue to 209 Central Avenue. Further, applying the guidelines set out in McKemy v. Baltimore County, Maryland, 385 A.2d 96, 39 Md. App. 257 (1978), this is not a showing of any change of the nonconforming use which would terminate the right to continue the nonconforming, six unit apartment use already existing at 209 Central Avenue, since, at least, January 2, 1945.

McKemy, supra, at 104, clearly set forth the criteria to be applied in determining whether or not there has been a change in the use of the property which would serve to break the continued nature of the nonconforming use. These are:

> "(1) to what extent does the current use of these lots reflect the nature and purpose of the original non-conforming use;
> (2) is the current use merely a different manner of utilizing the original non-conforming use or does it constitute a use different in character, nature, and kind;
> (3) does the current use have a substantially different effect upon the neighborhood;

> (4) is the current use a 'drastic enlargement or extension' of the original non-conforming use."

Appellants presented large photographs showing 209 Central Avenue as it exists today and a small photograph showing the property when acquired by the Susemihls in 1941. A driveway runs parallel to and along the property line between 207 and 209 Central Avenue. No parking is visible from Central Avenue. The parking lot for 209 Central Avenue is located to the rear of the structure located thereon. The photographs show no change in the structure other than cosmetic improvements.

Evidence shows that the use of 209 Central Avenue as a multi-family dwelling has "changed" since the adoption of zoning regulations, if at all, only in the relocation of the driveway and parking lot on 209 Central Avenue. At various times, testimony indicates the driveway on 207 served both 207 and 209; at various times parking for 209 was on 209 and/or 207. The nonconforming use operating at 209 Central Avenue is the same six unit apartment building that has existed, and been in operation in the same manner, over the period of years predating the enactment of the Baltimore County Zoning Regulations to present. The location of the driveway and parking lot on 209 Central Avenue in no way changes the continuous operation of the six unit apartment building. It does not, in any way, reflect a different nature and purpose of use than existed prior to 1945. The driveway and parking lot are a part of the operation of the six units at 209 Central Avenue, not a new or different usage of the property. Indeed, the testimony of Mrs. Susemihl that 209 was used for parking. The drive way and parking represent no

difference in the basic use of the property. There is nothing about 209 Central Avenue to reflect anything but the nature and purpose of the original nonconforming use.

The current use reflects totally the nature and purpose of the original nonconforming use, a six unit dwelling. The property, as always, is being used as a six unit multi-family dwelling. The fact that the parking for the residents of 209 Central Avenue is now totally on that property and behind the building does not in any way reflect a new usage of the property. Parking and access are normal and established use associated with residents. This does not constitute a usage different in character, nature and kind than that which has long existed, i.e., a six unit multi-family dwelling. Usage has not changed from apartments to office, apartments to commercial or apartments to anything else.

The current use does not have a substantially different effect upon the neighborhood. The density of 209 Central Avenue has not changed since prior to zoning. The building has not changed in size, shape or character since the early 1940's. Its operation as a six unit multi-family dwelling has not changed. The location of the parking lot and driveway on the lot has not substantially changed the effect of the operation of 209 Central Avenue on the community. The operation of the apartment building had not undergone any substantial change since 1945, supporting Appellants position. The parking and driveway are not, Appellants reiterate, a change in the original use. The parking is now to the rear of the building on 209 Central Avenue. Parked vehicles are not visible from Central Avenue by

virtue of the very location of the lot behind the structure. If anything, this effects the community beneficially by limiting the visibility of parked vehicles. The location of both the driveway and the parking lot were approved by the Baltimore County Landmarks Preservation Commission and the work was done in compliance with a permit from Baltimore County. There was no showing of opposition by the community to the application or issuance of the permit.

Opposition to the continued nonconforming use and the granting of the requested variances is best represented by the position of the Glyndon Community Association, Inc. letter dated October 12, 1990 and introduced by Respondents. That letter states, in part:

> "[Glyndon residents] "appreciate the historic flavor of the community and are committed to maintaining and improving the beautiful Victorian houses and large lots on which they are situated. . . .[The Board] has voted unanimously to oppose this appeal until such time as the contiguous lot [207] can once again be used to support the parking lot and driveway requirements for a six unit facility."

Thus, the opposition is not to the nonconforming use of 209 Central Avenue, not to the "maintaining and improving the beautiful Victorian houses", but rather to the separate use of the lot at 207 Central Avenue. The community may well and properly object to what they perceive as the loss of open space at 207 Central Avenue, however the instant appeal of Jones is not the appropriate arena. There is no real showing of community resistance to the continued nonconforming use of 209, rather there is evidence of community dissatisfaction with the loss of the undeveloped lot. The opposition to development of 207 should

consideration in this appeal from decisions affecting

the current use of the property is

of the original usage. It

uch is permissible so

Phillips v.

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to the existing Zoning Regulations and that to deny the side yard variances or the 65 foot lot width in lieu of the required 70 feet would create extreme hardship since the only way this can be accomplished would be to tear the building down. The Board is therefore of the opinion that the requested variances should be granted and will so order.

The Board will next address in this Opinion case 89-16-SPHA (The Homestead Group, Ltd.). The Petition in 89-16-SPHA asks two things, that lot 207 be found an entity totally separate from lot 209 and be unencumbered by any use of 209 and to permit the erection of a building on a 65 foot lot (207) in lieu of the required 70 feet in the D.R.3.5 zoned area of the lot. After consideration of all the testimony and evidence and especially in light of the Board's finding in case 89-396-SPHA that the operation of 209 is a legal nonconforming use and that the two lots have always been separate deeded parcels, the Board will find as a fact that 207 is not encumbered by any use of 209 and is a buildable lot contingent on the granting of a five foot variance from the required 70 foot lot width to 65 feet. The Board of Appeals under Section 307.1 is given the power to grant an area variance where strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship. To deny this five foot variance would transfer a sizeable lot from a usable lot to an unusable lot and in the Board's opinion would result in unreasonable hardship and will therefore grant the requested variance.

ORDER

It is therefore this 12th day of April, 1991 by the County Board of Appeals of Baltimore County with reference to case 89-396-SPHA (Ronald F. Jones) **ORDERED** that the structure at 209 Central Avenue is in fact a nonconforming use for six apartments, that the variance to permit a side yard setback of 12 feet zero inches and 12 feet six inches in lieu of the required 20 foot setback for one side and 40 or 50 feet the sum of both sides and to permit a total lot width of 65 feet in lieu of the required 90 feet be and the same is hereby **GRANTED**.

IT IS FURTHER ORDERED that with reference to case 89-16-SPHA (The Homestead Group, Ltd.) that the property known as 207 Central Avenue be **GRANTED** the variance to permit construction on a 65 foot lot in lieu of the required 70 feet and that the property at 207 be declared an unencumbered property separate from 209 with the following restriction:

1) approval be obtained from the Landmarks Commission as to the format and style of the residence to be constructed so that it is in conformity to the community and not a detriment to the same.

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

William T. Hackett
William T. Hackett, Chairman

Harry E. Buchheister, Jr.
Harry E. Buchheister, Jr.

IN THE MATTER OF THE * BEFORE THE
THE APPLICATION OF
RONALD F. JONES, ET UX * COUNTY BOARD OF APPEALS
FOR A SPECIAL HEARING AND
VARIANCE ON PROPERTY LOCATED * OF
ON THE NORTHEAST SIDE OF CENTRAL
AVENUE, 60 FEET SOUTHEAST OF * BALTIMORE COUNTY
GLYNDON AVENUE (209 CENTRAL
AVENUE) * CASE NO. 89-396-SPHA
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT *

* * * * * * * * * *

DISSENTING OPINION

This case comes before the Board as a companion case of 89-16-SPHA (The Homestead Group, Ltd.). It is an appeal from an adverse decision of the Zoning Commissioner of Baltimore County. The Petitioner requests the approval of a multi-family apartment dwelling at 209 Central Avenue as a legal nonconforming use or as an alternative approve the existing improvements and lot pursuant to Baltimore County Zoning Regulations (BCZR) that apply to conversion of dwellings to apartment use. Also requested are several variances.

I agree with the Chairman that much of the testimony was not on point and was alleged testimony, but would add that much testimony was supported to a high degree by lapsed memories and poor judgment. I would disagree with the Chairman as to what anyone believed in this case. It is difficult for me to figure out what Mr. Jones and Mrs. Singer had in mind after being given notice of zoning problems from Mr. Steele, a neighbor and attorney.

As the Chairman did not detail the testimony, I also will let the record speak for itself.

A nonconforming use must be proved by the Petitioner. The County does not have to prove the nonconforming use does not exist.

A nonconforming use can be extinguished if there is a change

in the use or if the use stops for at least one year. Nonconforming uses are inherently incompatible with uses permitted in a zone. *Boyer v. Sembly*, 25 Md. App. 43. Nonconforming uses pose a threat to the success of zoning, limit the effectiveness of land controls, imperil the success of community plans and injure property values. The purpose of restrictions on nonconforming uses is to achieve the ultimate elimination of such uses through economic attrition and physical obsolescence. *County Council of Prince George's County v. E.L. Gardner, Inc.*, 293 Md. 259.

There was testimony as to the number of apartments in the building at 209 Central Avenue, that number being four, five or six apartments at various times.

The Zoning Commissioner of Baltimore County did not have testimony from Mrs. Susemihl who was the owner of the property when it was converted to the apartments. Mrs. Susemihl testified from the West Coast over the telephone. Mrs. Susemihl, who owned Lots 207 and 209 during the 1940's, could not conclusively testify that six apartments existed prior to January 2, 1945. She stated that the conversion to apartments was not completed until 1946 or 1947. Mrs. Susemihl also stated that the driveway and parking area for the apartment building were situated on Lot 207.

From additional testimony, it is my opinion that if I were to take a photograph of this use, prior to the sale of 207 Central Avenue, I would have a photograph of a large apartment building to one side of a 130' wide lot known as 209 Central Avenue, and on the other side of this 130' wide lot would be open space and a driveway to a parking pad covered with crusher run, known as 207 Central

Avenue.

In June of 1988, Ronald F. Jones purchased 209 Central Avenue from Mrs. Singer. If we now take another photograph of the use, we would see a very large apartment building with a driveway to the rear of the apartment building and an unimproved lot on the other 65' lot.

Baltimore County Zoning Regulations set forth the requirement for nonconforming uses. Section 104.1 states in part:

> A nonconforming use may continue except as otherwise specifically provided in these regulations provided that upon any change from such nonconforming use to any other use whatsoever, . . . , the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of building so used.

In *McKeny v. Baltimore County*, 39 Md. App. 257, the standard to determine if the present use is within the scope of a nonconforming use:

> 1) To what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use?
>
> 2) Is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature and kind?
>
> 3) Does the current use have a substantially different effect upon the neighborhood?
>
> 4) Is the current use a drastic enlargement or extension of the original nonconforming use?

In order to answer the above four questions let's look and compare the two photographs.

1) Clearly there has been a change from the original nonconforming use. A review of two photographs now shows an

unimproved lot at 207 Central Avenue which is not now supplying area to reduce the overall bulk of the building. In addition, parking areas are now behind 209 Central Avenue.

2) Yes there is a change in the use and that use is different in character, nature and kind. There have been very drastic changes in the use of 207 Central Avenue. The parking area and the supporting open space are not now located at 207 Central Avenue but are now all located on the 209 Central Avenue lot. The total legal density for the two lots is 5 units. Each lot would support 2.8 units. The new higher density that we would be left with if the Petitions are approved would far exceed the density for these lots. The building of the new house at 207 Central Avenue would nearly double the bulk of the lots.

3) Yes the current use has a substantially different effect on the neighborhood. The original use, although both expansive in size and impact, was more in keeping with the general character of the neighborhood. If 209 Central Avenue is granted a nonconforming use as a six apartment building and all of the supporting services that were provided on 207 Central Avenue are shifted to 209 Central Avenue, there will be an overcrowding of the land and a degradation of the large lot, expansive open space, and pleasant landscaping.

4) Yes this proposed use is a drastic enlargement or

extension of the original nonconforming use. The existing structure covers 2,290 square feet of land. The proposed single-family dwelling will cover about 1,600 square feet of land. This is about a 70% increase in the land area used for structures. The BCZR allows only a 25% increase. On the other hand if we take and separate the lots, we find that the supporting services as such shifted to 209 Central Avenue have a drastic enlargement of the density on 209 and reducing what little open space as there may have been on 209.

After reviewing all of the testimony, exhibits, Memoranda, and argument, I find that the use of the property has changed since at least June, 1988.

Therefore, it is my opinion that 209 Central Avenue is an illegal use and not a legal nonconforming use.

It is also my opinion that the Petitioner does not fall within the meaning of the spirit and intent of the BCZR that apply to the conversion of dwellings to apartment use. The issue of granting the variance should be moot at this time.

DATE: April 12, 1991

John G. Disney
John G. Disney

THE
COMMISSIONER
LTIMORE COUNTY
89-396-SPHA

OF LAW

Hearing to approve the
Central Avenue as a legal
that said lot (209) and
the B.C.Z.R. that apply to
a variance from Section
t and 12.6 feet in lieu of
or 50 feet for the sum of
mit a lot width of 65 feet
larly described on Peti-

eared, testified and was
following witnesses ap-
Hyman, Herbert Malmud, Rog-
pson, Keith F. Ronald, Au-
linger and Zelma Ensor.
ere represented by G. Scott
& Nevett Steele, Jr.,
n, Jeanne W. Hammond, Terry
rge and Jean Wroe, Gene
hy Swem, Sam E. Scruggs,

not be a consideration in this appeal from decisions affecting 209 Central Avenue.

Appellants urge that the current use of the property is not a drastic enlargement or extension of the original usage. It is at most a mere intensification and as such is permissible so long as the nature of use, as here, in not changed. Phillips v. Zoning Commissioner of Howard County, 255 Md. 102, 169 A.2d 410 (1961). As the Court recognized in Phillips, the determination of drastic enlargement or extension or mere intensification is to be made of the facts of each case. There is nothing in the instant case to show a change from one nonconforming use to another or a substitution of one nonconforming use for another. The property is still, as ever, a six unit multi-family dwelling. It has not been converted any different usage by the location of the parking lot and driveway serving, and a part of the operations of, the existing nonconforming use. The current usage contemplates only the continuation of that usage, nothing more. Appellants contend there is no evidence upon which to base a finding of drastic enlargement or extension.

3. Appellants' request for a variance from section 402.1 of the Baltimore County Zoning Code to permit side yard setback of 12.0 feet and 12.6 feet in lieu of required 20 feet for one side and 40 feet and/or 50 feet for the sum of both side yard setbacks and to permit a lot width of 65 feet in lieu of the required 90 feet or greater as may be determined should be granted.

The granting of a variance is not properly a popularity contest. Such determination is to be based upon judicial principles and zoning regulations. The proper criteria are:

a. whether strict compliance with the zoning regulations for Baltimore County result in practical difficulty or unreasonable hardship

b. whether the granting of a variance will result in substantial injury to public health, safety and general welfare;

c. whether the granting of the requested variance will be inharmonious with the spirit and intent of applicable zoning regulations; and

d. whether the hardship complained of, and which is the basis of Appellants request for variances self-inflicted.

[B.C.Z.R., 1955; Bills No. 87, 1961; No. 19, 1962; also see, Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A.2d 810 (1965).]

Obviously, if the current side yard setback and lot width requirements are applied to 209 Central Avenue practical difficulty and unreasonable hardship would result. The lot known as 209 Central Avenue exists and the structure, erected thereon in the 1890's exists. To try to squeeze the property and building into the limitations of current zoning requirements would be judicially unfair and physically impossible without the destruction of the building. The building was erected prior to any requirements imposed by zoning and must be allowed to continue in that form. It has not changed. There is no way to stretch the given land to accommodate the present zoning rules and regulations.

The granting of the requested variances will not result in any, much less, substantial injury to public health, safety and general welfare. There was no evidence to support any such injury at the hearing herein. At least one witness, Zelma Ensor, characterized 209 Central Avenue as an asset to the community. Not only is there absence of any such harm, but the granting of such variances merely recognizes the long existing situation with regard to lot size of 209 Central Avenue, the location of the building thereon. The community desires to maintain the Glyndon ambience and characteristics. This, Appellants urge, dictates that the requested and necessary variances be granted to permit the continued existence of the pre-1900 building. The existence and operation of the property are not injurious to the public health, safety or general welfare. There is no change in the density on 209 Central Avenue. The granting of the variance will not add any new demands, nor increase existing demands, on the community or community services.

There was no showing that the granting of the variances sought will be inharmonious with the spirit and intent of applicable zoning regulations. The gist of the zoning regulations for Baltimore County support appropriate use and re-use of large dwellings in residential zones. Even the conversion of the structure, if that were the case, would support the granting of the variances. (Respondents are resolute in their desire to maintain the ambiance of the Glyndon area. To grant the necessary variances for 209 Central Avenue is compatible, perhaps even required, to protect the very existence of the structure at 209 Central Avenue, a part of the ambience and history of Glyndon.)

The facts surrounding 209 Central Avenue clearly reflect that the criteria for granting a variance have been fully met.

Bounds, supra, would deny the granting of a variance, even where otherwise appropriate, if the circumstances requiring the variance have been created by the property owner or a predecessor in title. This, Appellants urge, is not the case in the instant situation.

Clearly the Appellants did nothing to cause the hardship complained of here. The evidence shows that Appellants had entered into a contract with Singer prior to any official notification of any possible zoning violations. (Again, Mr. Steele stated that he was not certain of the strength of his convictions with regard to the zoning applicable to 209 Central. If he, an attorney was not certain, why should lay people, as are the Jones, rely on his impression or position with regard to the zoning?)

The testimony further shows that Appellants had been assured that the property at 209 Central Avenue conformed with zoning regulations by the real estate people involved. The Appellants are not knowledgeable in real estate transactions. Ronald Jones testified that this was the first experience he or his wife had with zoning. The record shows that Jones previous real estate experience was the acquisition and sale of their family residences and the purchase of an Ocean City condominium. He testified that he had conversations with neighbors and was led to believe that no problem related to the continued operation of the 6 units, but rather with the proposed development of 207 Central Avenue. Appellants believed that the worst case scenario with regard to the zoning of 209 Central Avenue would be a requirement that they "grandfather" the six unit use or show that it had existed before the Zoning Regulations. It was not until the Appellants received a citation dated 8-10-88 that they were given official notice of any potential zoning problem. Jones had conversations with the Steeles which indicated to Jones that the Steeles' objections to 209 Central Avenue related to the location of the driveway and parking, which had been resolved, that Steeles' opposition was to the development of 207 Central Avenue, not to the continued nonconforming use of 209 Central Avenue. Singer had sold the adjoining lot in March, 1988. Between March and June, 1988, Appellants had communications with citizens of the area which led them to believe that 209 Central Avenue met zoning requirements. Jones have no expertise in real estate matters. They may have been naive in their acquisition of 209 Central Avenue, but that does not constitute the self-inflicted hardship referred to in Bounds, supra. Respondents attempt to make some value of the execution of the second contract of sale between Jones and Singer. Mr. Jones repeatedly said that it was upon assurances that the property would be considered a nonconforming use and knowledge of similar situations in the area that he and his wife went through with the purchase of the property.

There is ample evidence that predecessors in title made ample efforts to determine that 209 Central Avenue was a lot independent of and separate from 207 Central Avenue. Singer, who conveyed the property to the Appellants made inquiries of the Baltimore County Zoning office to determine whether 207 and 209 Central Avenue were so connected as to deny their separation. She was informed of no bar to the separate development of 207 Central Avenue nor to the continued operation of 6 units at 209 Central Avenue. She made three separate inquiries at different times. Chance made similar inquiries and reached similar conclusions. Stone concurred with Chance. Appellants submit that none of the correspondence with county offices and personnel which was introduced by Respondents states that six units are not a permitted use of 209 Central Avenue; rather, the correspondence indicates what procedures may be necessary to have the County "grant" a nonconforming use status to 209. James Reter, who owned both lots in the 1960's, testified that it was his intention to develop and sell 207 Central Avenue and had never known that that would not be possible.

Unlike the situation in Bounds, there was no cavalier delegation of responsibility for obtaining the necessary permits or information. There was no failure to get permits or to inspect the permit that was issued. Singer was granted a permit to construct a parking lot and driveway on 209 Central Avenue and which was to be used in conjunction with the operation of that property as a 6 unit apartment building. She made efforts to assure herself of the viability of the six units at 209 Central Avenue independent of 207 Central Avenue. At the time of settlement on 209 Central Avenue, in June, 1988, some three months after the transfer of 207 Central Avenue to Homestead there were no zoning violations outstanding on that property. It was not until well after Appellants' settlement on the property that they received any notification from any county official of a potential zoning problem. There is nil in this case to support an argument for self-inflicted hardship.

The testimony and evidence supports a finding that there was no self-inflicted hardship; that the granting of the variances will not be contrary to the spirit of the B.C.Z.R. nor result in substantial detriment to the public health, safety and general welfare. The granting will relieve a hardship due to unique circumstances which cannot be alleviated otherwise.

Conclusion

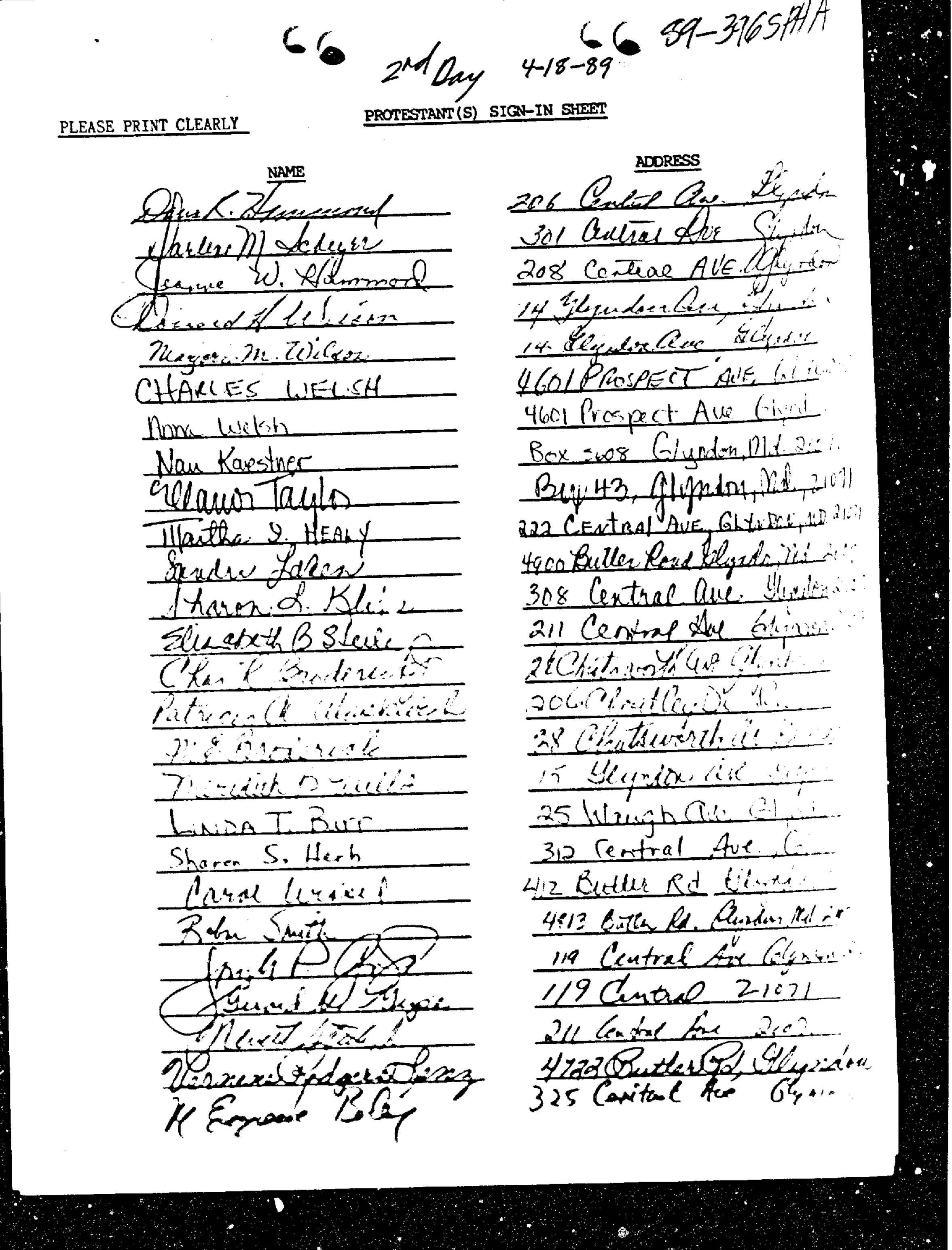
For the reasons stated, the decision of the Zoning Commissioner should be reversed and Appellants' petition for special hearing to recognize the legal, nonconforming use of 209 Central Avenue as a six unit apartment building and petition for variance should be granted.

Respectfully submitted,

Eleanor J. Lipsitz
ELEANOR J. LIPSITZ,
100 Church Lane
Baltimore, Maryland 21208
(301) 484-3050,
Attorney for Appellants

I hereby certify that a copy of the foregoing brief was mailed to Charles B. Heyman, Esquire, 10th Floor, Sun Life Building, 20 South Charles Street, Baltimore, Maryland 21201 and to G. Scott Barhight, Esquire, 300 Lafayette Building, 40 West Chesapeake Avenue, Towson, Maryland 21204, this 22nd day of January, 1991.

Eleanor J. Lipsitz
ELEANOR J. LIPSITZ,
Attorney for Appellants



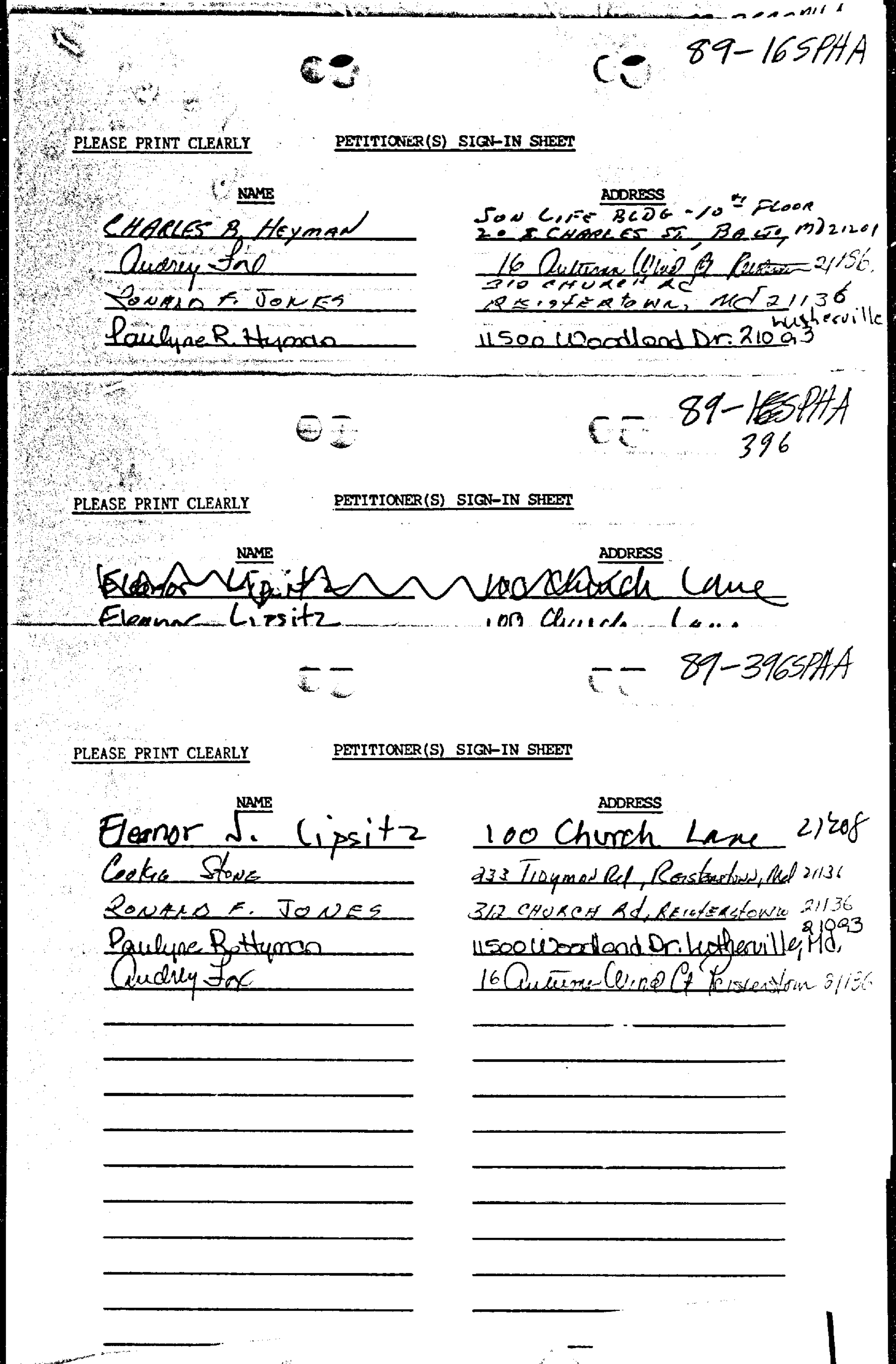
89-396SPHA

2nd Day 4-18-89

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
[illegible] K. Hammond	206 Central Ave. Glyndon
Darlene M. Scheyer	301 Central Ave Glyndon
Jeanne W. Hammond	208 Central AVE. Glyndon
[illegible] H. Wilson	14 Glyndon Ave, Glyndon
Marjorie M. Wilson	14 Glyndon Ave Glyndon
CHARLES WELSH	4601 PROSPECT AVE. Glyndon
Norma Welsh	4601 Prospect Ave Glyndon
Nan Kaestner	Box 208 Glyndon, Md.
Eleanor Taylor	Box 43, Glyndon, Md., 21071
Martha I. HEALY	222 CENTRAL AVE, GLYNDON, MD 21071
Sandra [illegible]	4900 Butler Road Glyndon Md
Sharon L. Kline	308 Central Ave. Glyndon
Elizabeth B Steele	211 Central Ave Glyndon
Chas C [illegible]	28 Chatsworth Ave Glyndon
Patricia A [illegible]	206 [illegible]
M E [illegible]	28 Chatsworth Ave
Meredith [illegible]	15 Glyndon Ave
LINDA T. BUTT	25 Waugh Ave. Glyndon
Sharon S. Herb	312 Central Ave. G
Carol [illegible]	412 Butler Rd Glyndon
Robin Smith	4913 Butler Rd. Glyndon Md
[illegible]	119 Central Ave Glyndon
[illegible]	119 Central 21071
[illegible]	211 Central Ave Glyndon
[illegible]	4722 Butler Rd, Glyndon
H Emerson [illegible]	325 Central Ave Glyndon



89-16SPHA

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
CHARLES B. HEYMAN	SUN LIFE BLDG - 10th FLOOR 20 S. CHARLES ST. BALTO, MD 21201
Audrey Fox	16 Autumn Wind Ct Reisterstown 21136
RONALD F. JONES	310 CHURCH RD REISTERSTOWN, MD 21136
Paulyne R. Hyman	11500 Woodland Dr. 21093 Lutherville

89-~~16~~SPHA 396

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

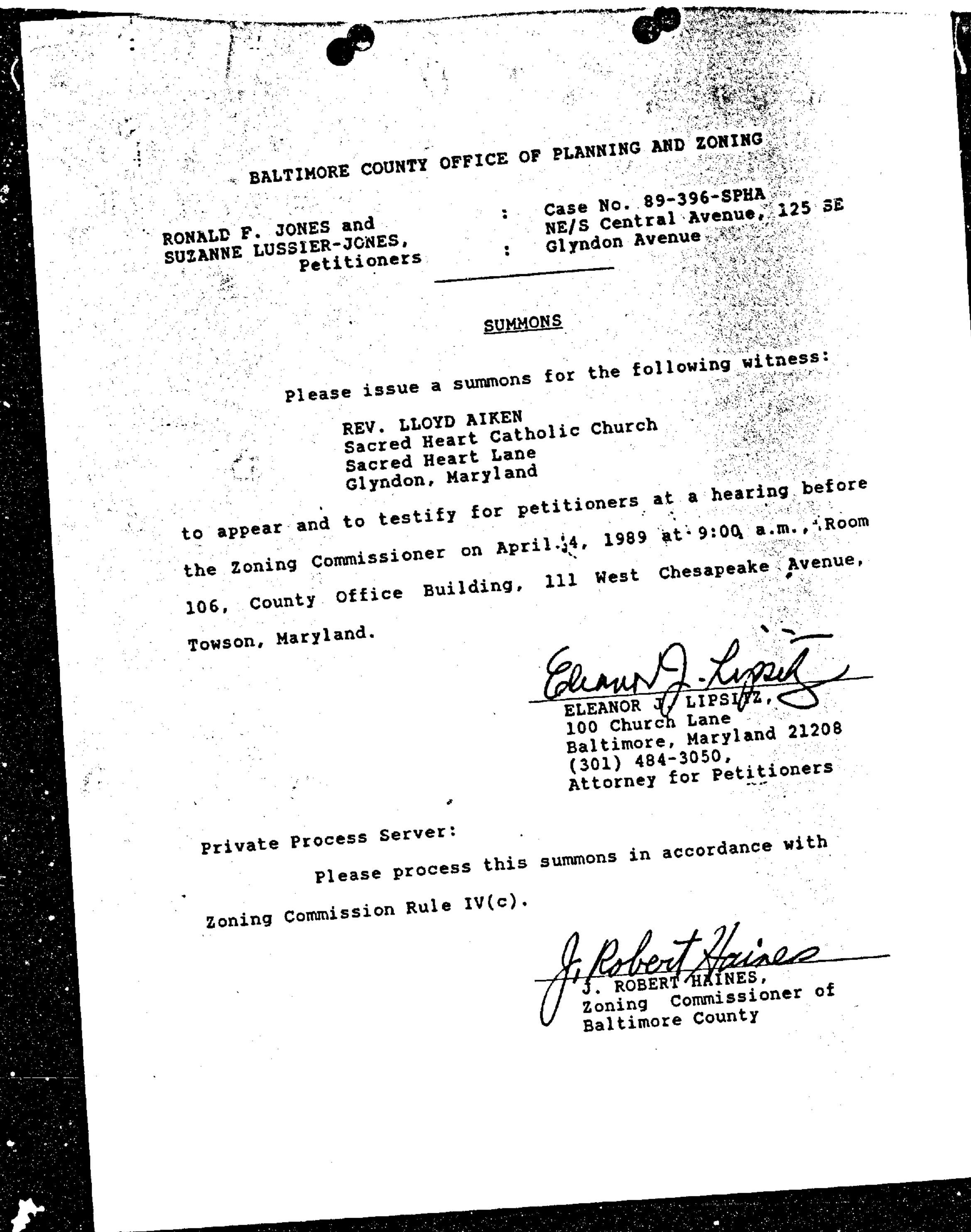
NAME	ADDRESS
Eleanor Lipsitz	100 Church Lane
Eleanor Lipsitz	100 Church Lane

89-396SPHA

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Eleanor J. Lipsitz	100 Church Lane 21208
Cookie Stone	233 [illegible] Rd, Reisterstown, Md 21136
RONALD F. JONES	312 CHURCH Rd, REISTERSTOWN 21136
Paulyne R. Hyman	11500 Woodland Dr. Lutherville, Md. 21093
Audrey Fox	16 Autumn Wind Ct Reisterstown 21136



BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

RONALD F. JONES and
SUZANNE LUSSIER-JONES,
Petitioners

: Case No. 89-396-SPHA
NE/S Central Avenue, 125 SE
: Glyndon Avenue

SUMMONS

Please issue a summons for the following witness:

REV. LLOYD AIKEN
Sacred Heart Catholic Church
Sacred Heart Lane
Glyndon, Maryland

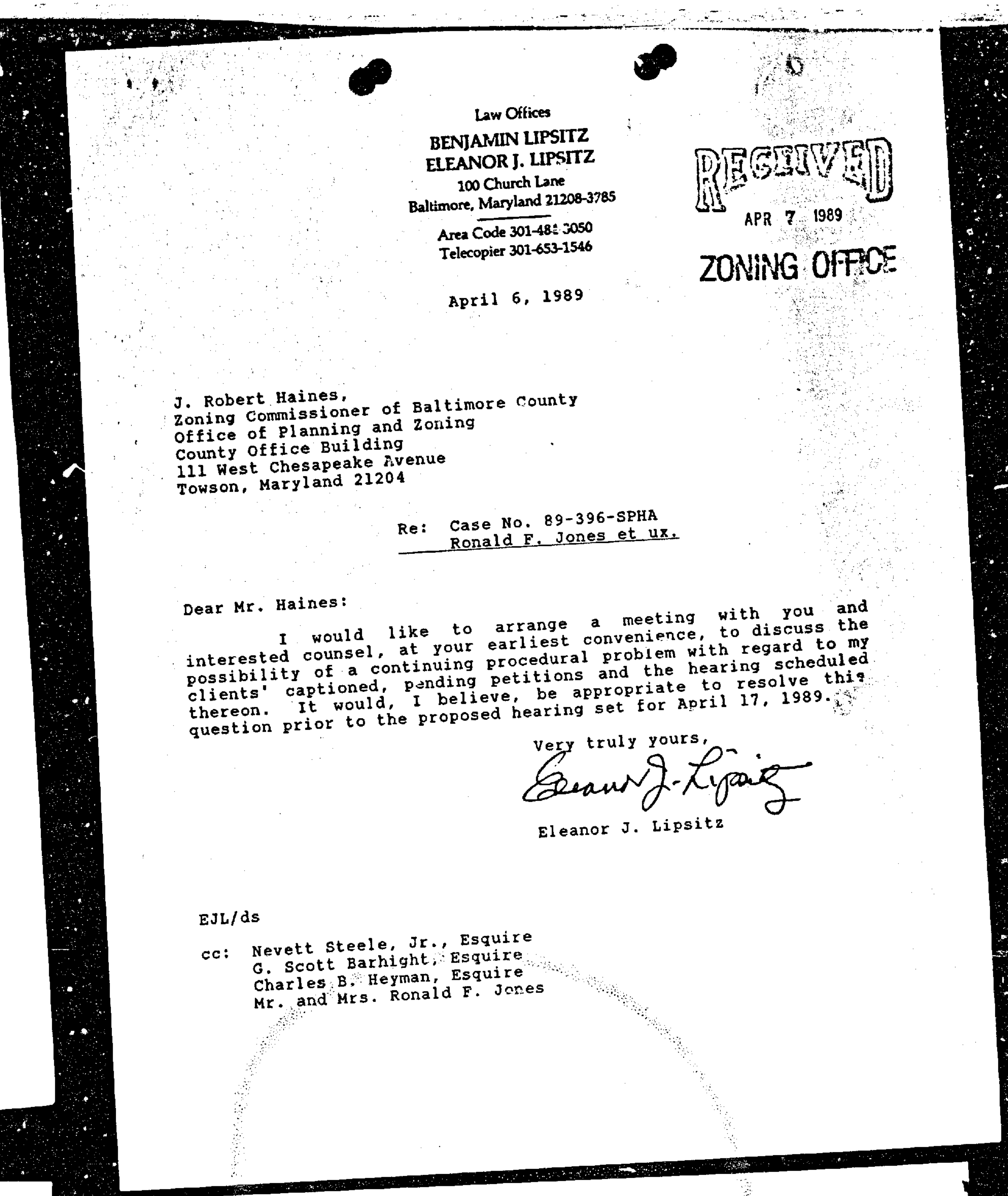
to appear and to testify for petitioners at a hearing before the Zoning Commissioner on April 14, 1989 at 9:00 a.m., Room 106, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland.

Eleanor J. Lipsitz
ELEANOR J. LIPSITZ,
100 Church Lane
Baltimore, Maryland 21208
(301) 484-3050,
Attorney for Petitioners

Private Process Server:

Please process this summons in accordance with Zoning Commission Rule IV(c).

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



Law Offices
BENJAMIN LIPSITZ
ELEANOR J. LIPSITZ
100 Church Lane
Baltimore, Maryland 21208-3785
Area Code 301-484-3050
Telecopier 301-653-1546

RECEIVED
APR 7 1989
ZONING OFFICE

April 6, 1989

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

Re: Case No. 89-396-SPHA
Ronald F. Jones et ux.

Dear Mr. Haines:

I would like to arrange a meeting with you and interested counsel, at your earliest convenience, to discuss the possibility of a continuing procedural problem with regard to my clients' captioned, pending petitions and the hearing scheduled thereon. It would, I believe, be appropriate to resolve this question prior to the proposed hearing set for April 17, 1989.

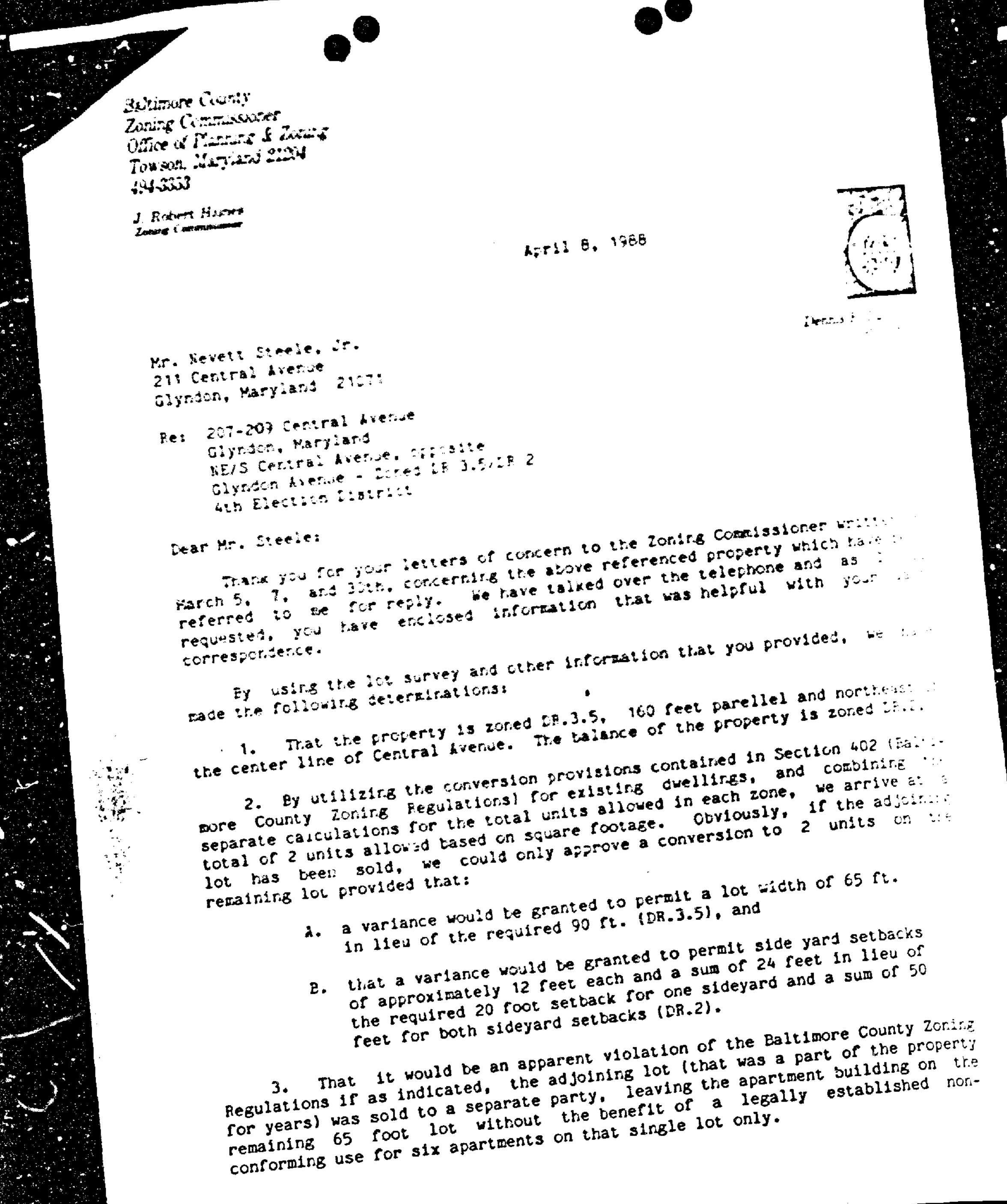
Very truly yours,

Eleanor J. Lipsitz

Eleanor J. Lipsitz

EJL/ds

cc: Nevett Steele, Jr., Esquire
G. Scott Barhight, Esquire
Charles B. Heyman, Esquire
Mr. and Mrs. Ronald F. Jones



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

J. Robert Haines
Zoning Commissioner

April 8, 1988

Mr. Nevett Steele, Jr.
211 Central Avenue
Glyndon, Maryland 21071

Re: 207-209 Central Avenue
Glyndon, Maryland
NE/S Central Avenue, Opposite
Glyndon Avenue - Zoned DR 3.5/DR 2
4th Election District

Dear Mr. Steele:

Thank you for your letters of concern to the Zoning Commissioner written March 5, 7, and 30th, concerning the above referenced property which have been referred to me for reply. We have talked over the telephone and as [illegible] requested, you have enclosed information that was helpful with your correspondence.

By using the lot survey and other information that you provided, we have made the following determinations:

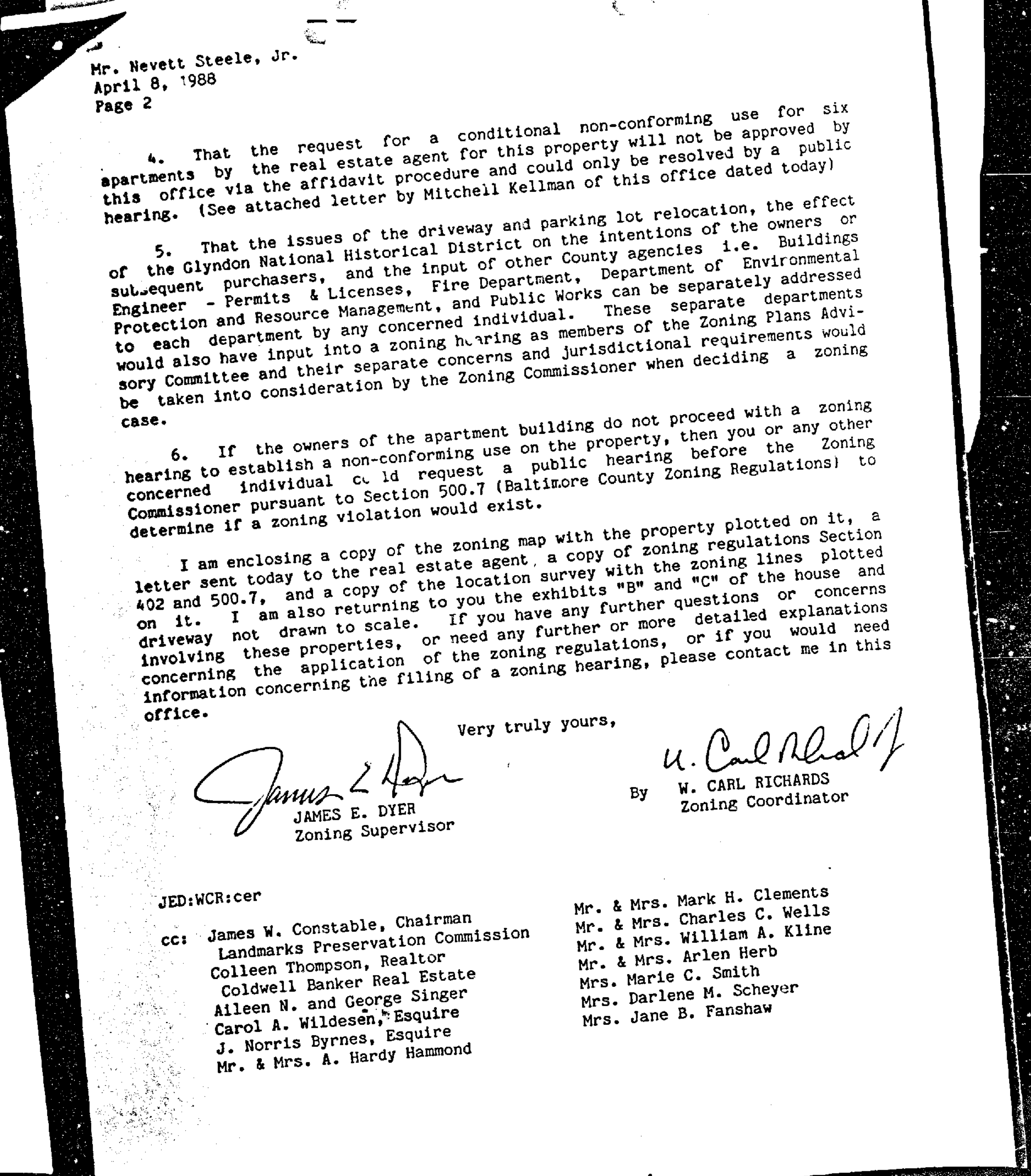
1. That the property is zoned DR.3.5, 160 feet parellel and northeast of the center line of Central Avenue. The balance of the property is zoned DR.2.

2. By utilizing the conversion provisions contained in Section 402 (Baltimore County Zoning Regulations) for existing dwellings, and combining the separate calculations for the total units allowed in each zone, we arrive at a total of 2 units allowed based on square footage. Obviously, if the adjoining lot has been sold, we could only approve a conversion to 2 units on the remaining lot provided that:

A. a variance would be granted to permit a lot width of 65 ft. in lieu of the required 90 ft. (DR.3.5), and

B. that a variance would be granted to permit side yard setbacks of approximately 12 feet each and a sum of 24 feet in lieu of the required 20 foot setback for one sideyard and a sum of 50 feet for both sideyard setbacks (DR.2).

3. That it would be an apparent violation of the Baltimore County Zoning Regulations if as indicated, the adjoining lot (that was a part of the property for years) was sold to a separate party, leaving the apartment building on the remaining 65 foot lot without the benefit of a legally established non-conforming use for six apartments on that single lot only.



Mr. Nevett Steele, Jr.
April 8, 1988
Page 2

4. That the request for a conditional non-conforming use for six apartments by the real estate agent for this property will not be approved by this office via the affidavit procedure and could only be resolved by a public hearing. (See attached letter by Mitchell Kellman of this office dated today)

5. That the issues of the driveway and parking lot relocation, the effect of the Glyndon National Historical District on the intentions of the owners or subsequent purchasers, and the input of other County agencies i.e. Buildings Engineer - Permits & Licenses, Fire Department, Department of Environmental Protection and Resource Management, and Public Works can be separately addressed to each department by any concerned individual. These separate departments would also have input into a zoning hearing as members of the Zoning Plans Advisory Committee and their separate concerns and jurisdictional requirements would be taken into consideration by the Zoning Commissioner when deciding a zoning case.

6. If the owners of the apartment building do not proceed with a zoning hearing to establish a non-conforming use on the property, then you or any other concerned individual could request a public hearing before the Zoning Commissioner pursuant to Section 500.7 (Baltimore County Zoning Regulations) to determine if a zoning violation would exist.

I am enclosing a copy of the zoning map with the property plotted on it, a letter sent today to the real estate agent, a copy of zoning regulations Section 402 and 500.7, and a copy of the location survey with the zoning lines plotted on it. I am also returning to you the exhibits "B" and "C" of the house and driveway not drawn to scale. If you have any further questions or concerns involving these properties, or need any further or more detailed explanations concerning the application of the zoning regulations, or if you would need information concerning the filing of a zoning hearing, please contact me in this office.

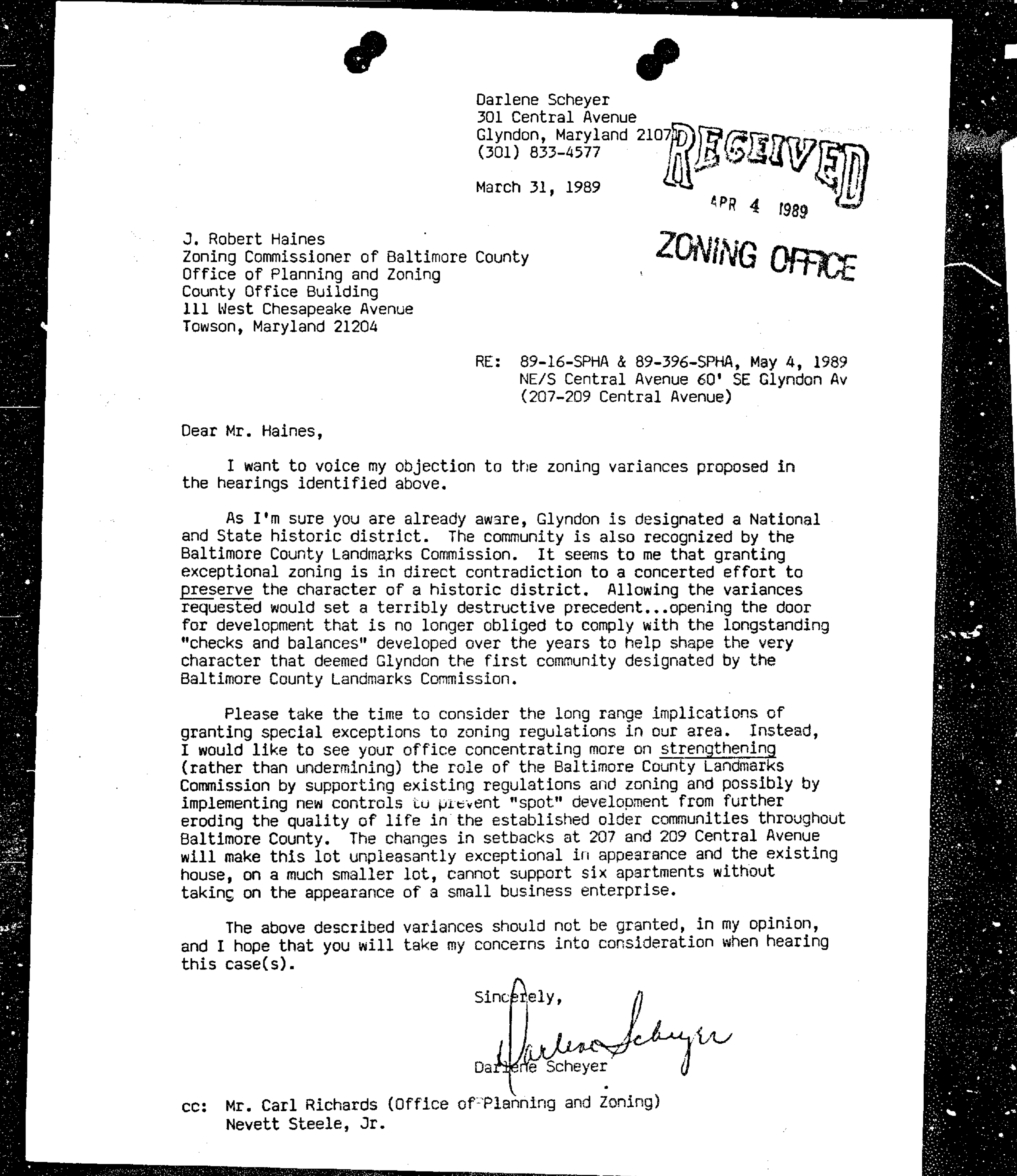
Very truly yours,

James E. Dyer
JAMES E. DYER
Zoning Supervisor

W. Carl Richards
By W. CARL RICHARDS
Zoning Coordinator

JED:WCR:cer

cc: James W. Constable, Chairman
Landmarks Preservation Commission
Colleen Thompson, Realtor
Coldwell Banker Real Estate
Aileen N. and George Singer
Carol A. Wildesen, Esquire
J. Norris Byrnes, Esquire
Mr. & Mrs. A. Hardy Hammond
Mr. & Mrs. Mark H. Clements
Mr. & Mrs. Charles C. Wells
Mr. & Mrs. William A. Kline
Mr. & Mrs. Arlen Herb
Mrs. Marie C. Smith
Mrs. Darlene M. Scheyer
Mrs. Jane B. Fanshaw



Darlene Scheyer
301 Central Avenue
Glyndon, Maryland 21071
(301) 833-4577

March 31, 1989

RECEIVED
APR 4 1989
ZONING OFFICE

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

RE: 89-16-SPHA & 89-396-SPHA, May 4, 1989
NE/S Central Avenue 60' SE Glyndon Av
(207-209 Central Avenue)

Dear Mr. Haines,

I want to voice my objection to the zoning variances proposed in the hearings identified above.

As I'm sure you are already aware, Glyndon is designated a National and State historic district. The community is also recognized by the Baltimore County Landmarks Commission. It seems to me that granting exceptional zoning is in direct contradiction to a concerted effort to preserve the character of a historic district. Allowing the variances requested would set a terribly destructive precedent...opening the door for development that is no longer obliged to comply with the longstanding "checks and balances" developed over the years to help shape the very character that deemed Glyndon the first community designated by the Baltimore County Landmarks Commission.

Please take the time to consider the long range implications of granting special exceptions to zoning regulations in our area. Instead, I would like to see your office concentrating more on strengthening (rather than undermining) the role of the Baltimore County Landmarks Commission by supporting existing regulations and zoning and possibly by implementing new controls to prevent "spot" development from further eroding the quality of life in the established older communities throughout Baltimore County. The changes in setbacks at 207 and 209 Central Avenue will make this lot unpleasantly exceptional in appearance and the existing house, on a much smaller lot, cannot support six apartments without taking on the appearance of a small business enterprise.

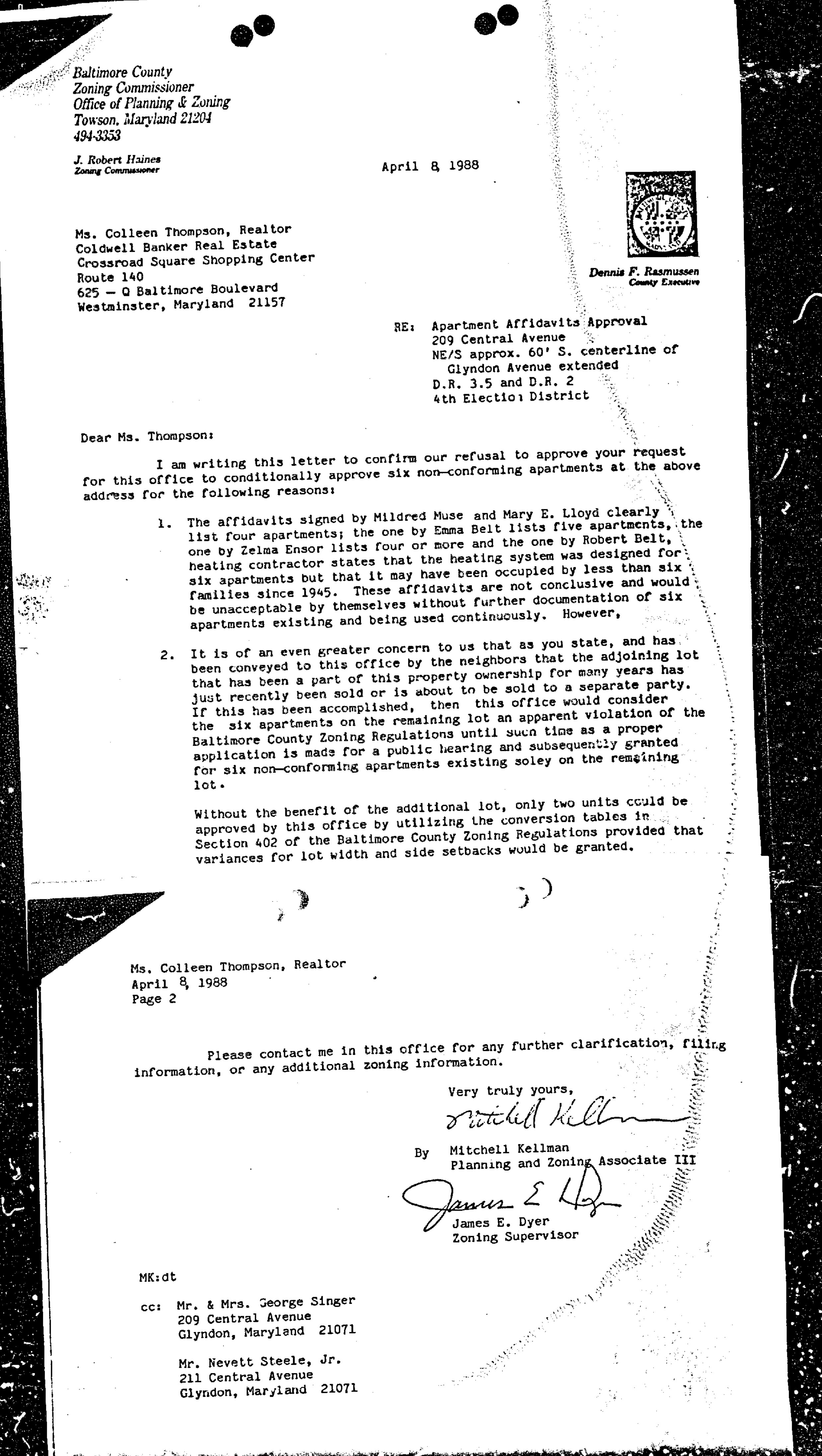
The above described variances should not be granted, in my opinion, and I hope that you will take my concerns into consideration when hearing this case(s).

Sincerely,

Darlene Scheyer

Darlene Scheyer

cc: Mr. Carl Richards (Office of Planning and Zoning)
Nevett Steele, Jr.



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

J. Robert Haines
Zoning Commissioner

Dennis F. Rasmussen
County Executive

April 8, 1988

Ms. Colleen Thompson, Realtor
Coldwell Banker Real Estate
Crossroad Square Shopping Center
Route 140
625 — Q Baltimore Boulevard
Westminster, Maryland 21157

RE: Apartment Affidavits Approval
209 Central Avenue
NE/S approx. 60' S. centerline of
Glyndon Avenue extended
D.R. 3.5 and D.R. 2
4th Election District

Dear Ms. Thompson:

I am writing this letter to confirm our refusal to approve your request for this office to conditionally approve six non-conforming apartments at the above address for the following reasons:

1. The affidavits signed by Mildred Muse and Mary E. Lloyd clearly list four apartments; the one by Emma Belt lists five apartments, the one by Zelma Ensor lists four or more and the one by Robert Belt, heating contractor states that the heating system was designed for six apartments but that it may have been occupied by less than six families since 1945. These affidavits are not conclusive and would be unacceptable by themselves without further documentation of six apartments existing and being used continuously. However,

2. It is of an even greater concern to us that as you state, and has been conveyed to this office by the neighbors that the adjoining lot that has been a part of this property ownership for many years has just recently been sold or is about to be sold to a separate party. If this has been accomplished, then this office would consider the six apartments on the remaining lot an apparent violation of the Baltimore County Zoning Regulations until such time as a proper application is made for a public hearing and subsequently granted for six non-conforming apartments existing soley on the remaining lot.

Without the benefit of the additional lot, only two units could be approved by this office by utilizing the conversion tables in Section 402 of the Baltimore County Zoning Regulations provided that variances for lot width and side setbacks would be granted.

Ms. Colleen Thompson, Realtor
April 8, 1988
Page 2

Please contact me in this office for any further clarification, filing information, or any additional zoning information.

Very truly yours,

Mitchell Kellman

By Mitchell Kellman
Planning and Zoning Associate III

James E. Dyer
James E. Dyer
Zoning Supervisor

MK:dt

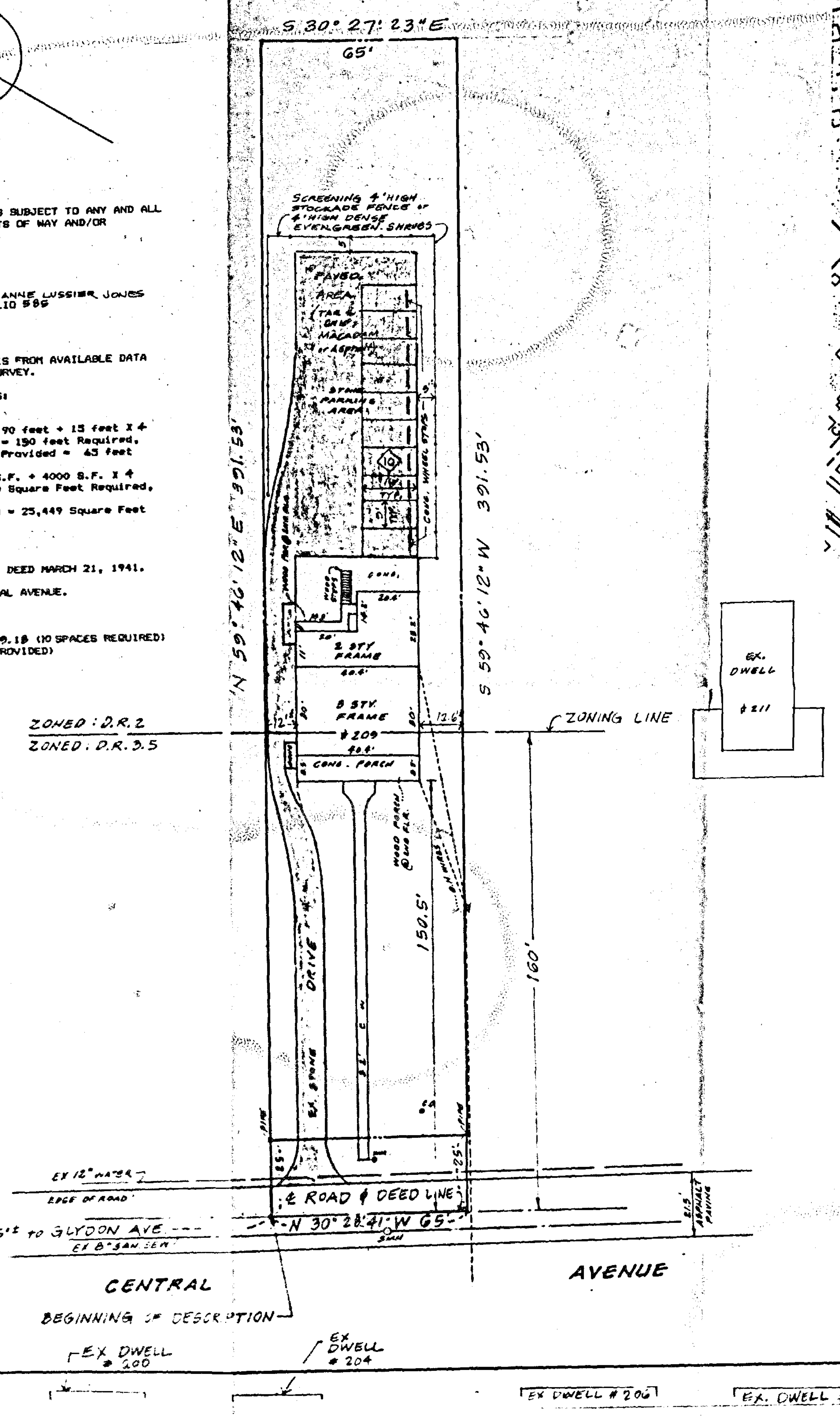
cc: Mr. & Mrs. George Singer
209 Central Avenue
Glyndon, Maryland 21071

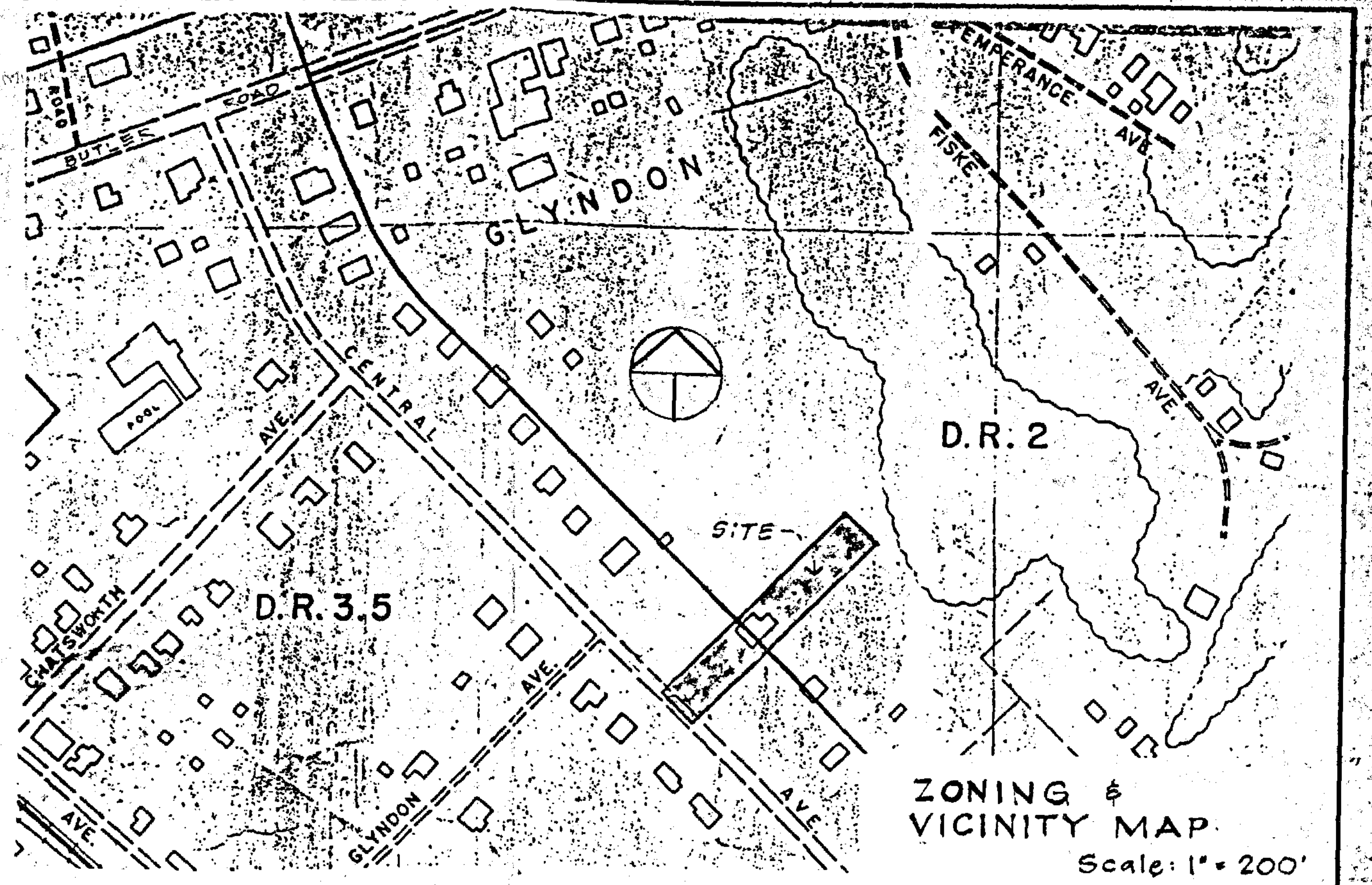
Mr. Nevett Steele, Jr.
211 Central Avenue
Glyndon, Maryland 21071

THE PROPERTY SHOWN HEREON IS SUBJECT TO ANY AND ALL AGREEMENTS, EASEMENTS, RIGHTS OF WAY AND/OR COVENANTS OF RECORD AND LAW.

NOTES

1. OWNER: RONALD F. JONES & SUZANNE LUSSIER JONES
   DEED REFERENCE: LIBER 7904, FOLIO 585
2. ZONING: D.R. 3.5 & D.R. 2
3. PROPERTY OUTLINE SHOWN HEREON IS FROM AVAILABLE DATA AND NOT FROM A PROPERTY LINE SURVEY.
4. SITE DATA FOR 6 APARTMENT UNITS:
   - A. Existing Zoning: D.R.3.5
   - B. Minimum Frontage Required: 90 feet + 15 feet X 4 = 150 feet Required, Provided = 65 feet
   - C. Lot Area Required: 12,500 S.F. + 4000 S.F. X 4 = 28,500 Square Feet Required, Provided = 25,449 Square Feet
5. THIS PROPERTY WAS SUBDIVIDED BY DEED MARCH 21, 1941.
6. PUBLIC UTILITIES EXIST IN CENTRAL AVENUE.
7. PARKING DATA:
   6 UNIT APARTMENT: 6 X 1.53 = 9.18 (10 SPACES REQUIRED) (10 SPACES PROVIDED)


S. 30° 27' 23" E
65'
SCREENING 4' HIGH STOCKADE FENCE or 4' HIGH DENSE EVERGREEN SHRUBS
PAVED AREA (TAR & CHIP, MACADAM or ASPHALT)
STONE PARKING AREA
10
CONC. WHEEL STOPS
CONC.
WOOD STEPS
2 STY FRAME
20.4'
2 STY. FRAME
#209
40.4'
CONC. PORCH
WOOD PORCH
N 59° 46' 12" E 391.53'
S 59° 46' 12" W 391.53'
12.6'
ZONED: D.R. 2
ZONED: D.R. 3.5
ZONING LINE
160'
150.5'
EX. DWELL #211
DRIVE
EX. STONE
EX 12" WATER
EDGE OF ROAD
℄ ROAD & DEED LINE
N 30° 28' 41" W 65'
--125'± TO GLYDON AVE---
EX 8" SAN SEW
CENTRAL
AVENUE
BEGINNING OF DESCRIPTION
EX DWELL #119
EX DWELL #200
EX DWELL #204
EX DWELL #206
EX. DWELL #208


BUTLER ROAD
TEMPERANCE AVE.
FISKE AVE.
GLYNDON
CENTRAL AVE.
CHATSWORTH AVE.
GLYNDON AVE.
D.R. 2
D.R. 3.5
SITE

ZONING & VICINITY MAP
Scale: 1" = 200'

PLAT TO ACCOMPANY ZONING PETITION FOR SPECIAL HEARING

#209 CENTRAL AVENUE
ELECTION DISTRICT 4
BALTIMORE COUNTY, MD.

SCALE: 1" = 30' DECEMBER 1988

prepared by:
H. MALMUD & ASSOCIATES, INC.
100 Church Lane
Baltimore, Maryland 21208

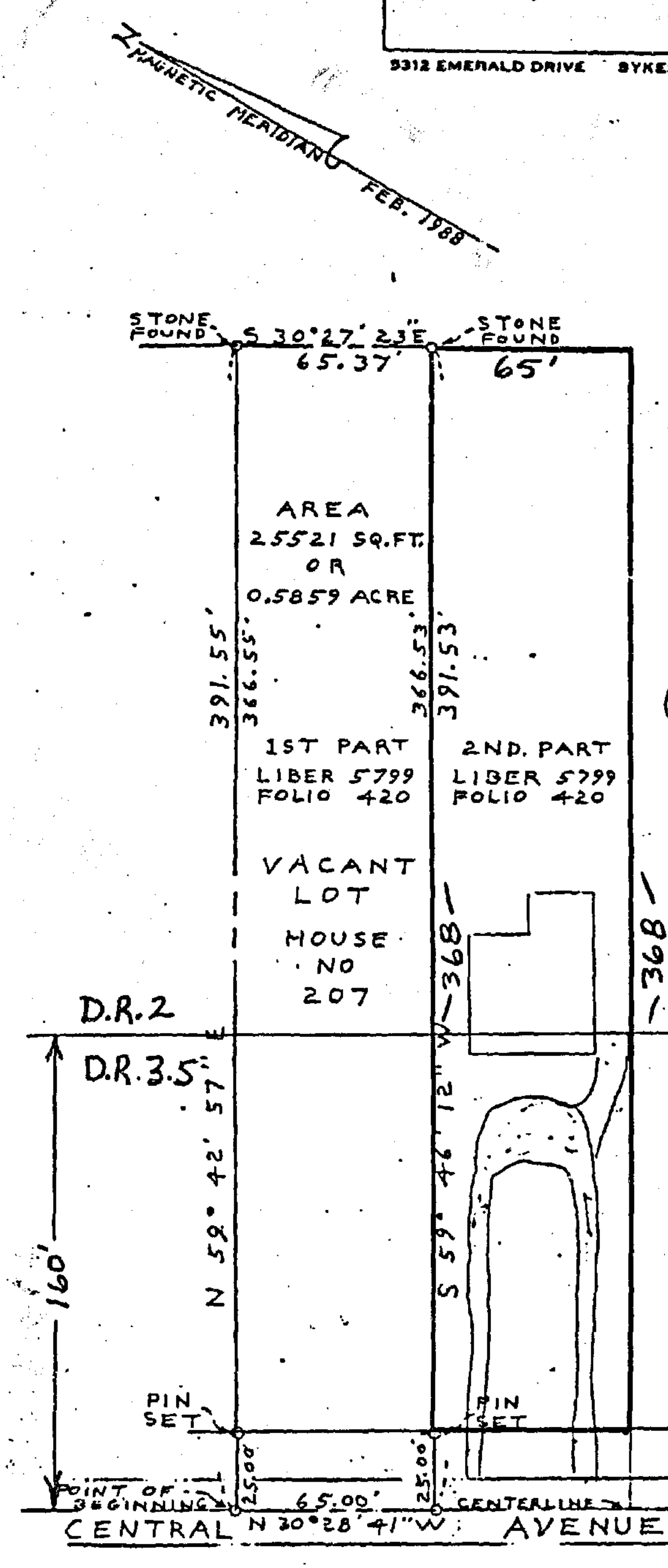
Telephone (301) 653-9511

8888

Hem #356

REVISED PLANS
MAR 30 1989

William E. Doyle
LAND SURVEYOR 8440
5312 EMERALD DRIVE SYKESVILLE, MARYLAND 21784 PHONE (301) 795-2310


MAGNETIC MERIDIAN FEB. 1988
STONE FOUND
S 30° 27' 23" E
65.37'
STONE FOUND
65'
AREA 25521 SQ.FT. OR 0.5859 ACRE
391.55'
366.55'
366.53'
391.53'
1ST PART LIBER 5799 FOLIO 420
2ND. PART LIBER 5799 FOLIO 420
VACANT LOT
HOUSE NO 207
368
368
D.R. 2
D.R. 3.5
N 59° 42' 57" E
S 59° 46' 12" W
160'
PIN SET
PIN SET
POINT OF BEGINNING
25.00'
25.00'
65.00'
CENTERLINE
CENTRAL N 30° 28' 41" W AVENUE

Total 65x368 = 23,920
(DR-2) 65x232 = 15,080
(DR 3.5) 65x136 = 8,840

TITLE REFERENCE
DEED DATED, SEPTEMBER 2, 1977
LIBER 5799, FOLIO 420
LOUIS A. BLADGETT et ux
TO
AILEEN N. SINGER
(1ST PART)

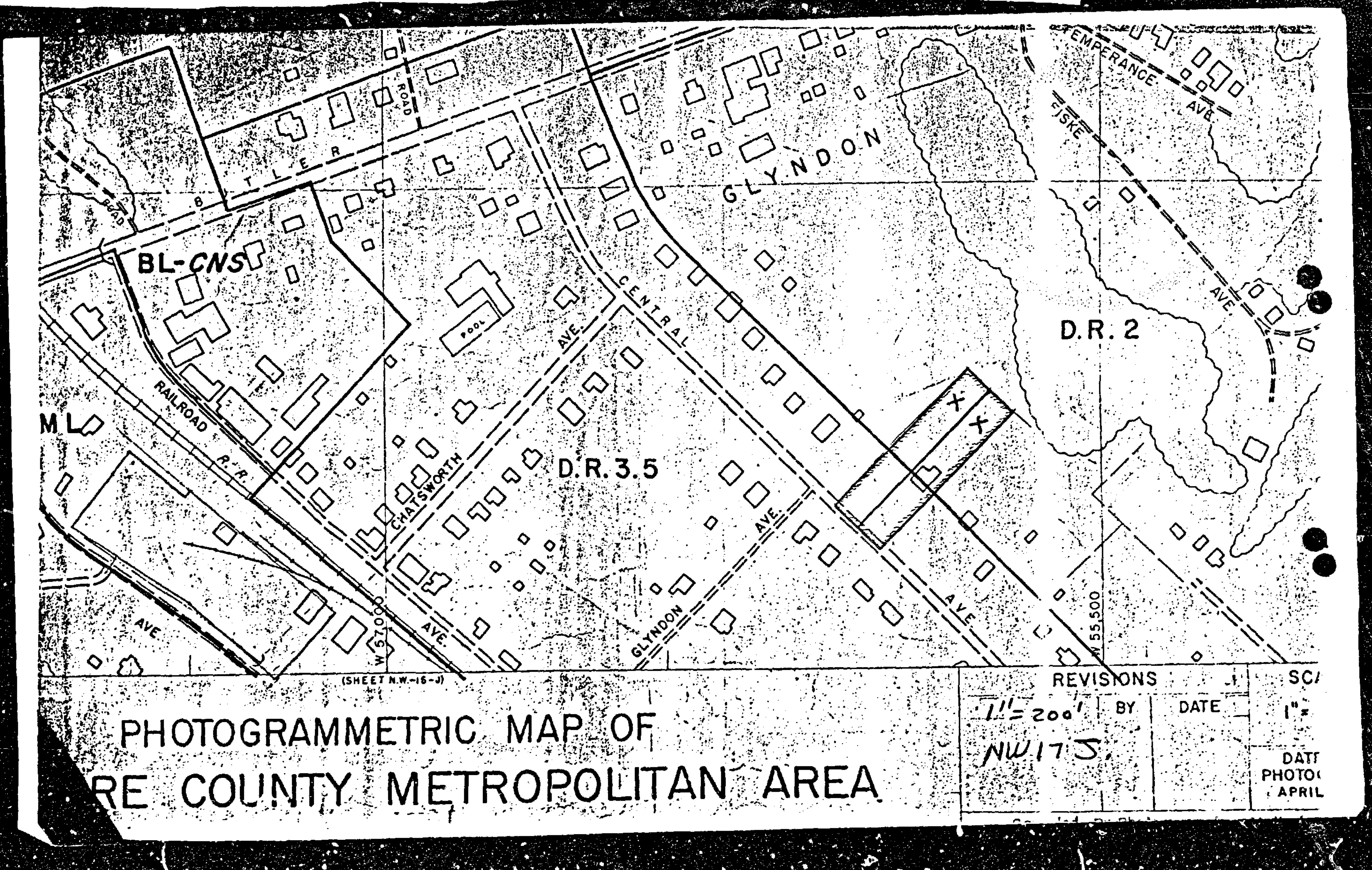
LOT SURVEY
207 CENTRAL AVENUE
PROPERTY OF,
AILEEN N. SINGER
TOWN OF GLYNDON
ELECTION DISTRICT 4
BALTIMORE COUNTY MD.
SCALE: 1" = 50'
DRAWN: FEBRUARY 12, 1988

WILLIAM E. DOYLE
REGISTERED
NO. 8440

EXHIBIT A

FILE NO. 223-6

William E. Doyle


BUTLER ROAD
TEMPERANCE AVE.
FISKE
GLYNDON
CENTRAL AVE.
BL-CNS
ML
RAILROAD R.R.
CHATSWORTH AVE.
WESTON AVE.
GLYNDON AVE.
D.R. 2
D.R. 3.5
POOL
(SHEET N.W.-16-J)
55,500

PHOTOGRAMMETRIC MAP OF
RE COUNTY METROPOLITAN AREA

REVISIONS	BY	DATE	SC
1" = 200'			1"
NW17 S			

DAT
PHOTO
APRIL

IN RE: PETITIONS FOR SPECIAL HEARING * BEFORE THE
AND ZONING VARIANCE
NES CentralAve.60' SE Glyndon* ZONING COMMISSIONER
Ave. (209 Central Avenue)
4th Election District * OF BALTIMORE COUNTY
3rd Councilmanic District
* CASE # 89-396-SPHA

Ronald F. Jones, et ux *
Petitioners

****

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a Special Hearing to approve the multi-family apartment dwelling and lot at 209 Central Avenue as a legal nonconforming use for six (6) apartment units or that said lot (209) and improvements conform to the spirit and intent of the B.C.Z.R. that apply to the conversion of dwellings for apartment use; and, a variance from Section 402.1 to permit a side yard setback of 12.0 feet and 12.6 feet in lieu of the required 20 feet for one side and 40 feet and/or 50 feet for the sum of both side yard setbacks and, a variance to permit a lot width of 65 feet in lieu of the required 90 feet, as more particularly described on Petitioners' Exhibit 7 in case No. 89-396-SPHA.

The Petitioner, Ronald F. Jones, appeared, testified and was represented by Eleanor J. Lipsitz, Esquire. The following witnesses appeared on behalf of the Petitioner: Pauline R. Hyman, Herbert Malmud, Registered Land Surveyor, Cookie Stone, Colleen Thompson, Keith E. Ronald, Audrey Fox, James E. Reter, George Singer, Aileen Singer and Zelma Ensor.

The following Protestants appeared and were represented by G. Scott Barhight, Esquire: Doris R. Hammond, Elizabeth B. & Nevett Steele, Jr., Sharon L. Kline, Jane Geipe, Marjorie M. Wilson, Jeanne W. Hammond, Terry Stanley, Martha Clements, Meredith B. Wells, George and Jean Wroe, Gene Bosley, Anna Welsh, Pat Beaver, Vernene Lenz, Kathy Swem, Sam E. Scruggs,

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Barbara Whitman, Ann and John M. O'Neill, Donald Wilson, Charles Welsh, Martha Healy, Charles and Mary Broderick, Sharon Herb, Sandy Laken, Nan Kaestner, M. Eugene Bosley, Darlene Scheyer, Marie C. Smith, Carol Wissel and Eleanor Taylor.

During the first hearing concerning case No. 89-16-SPHA, one of the Protestants, Nevett Steele, Jr., Esquire, represented himself and some of his neighbors. Mr. Steele generally presented objections on behalf of those Protestants. Later, the appearance of G. Scott Barhight, Esquire was entered on behalf of both Nevett Steele and all of the above listed Protestants.

The first hearing on this matter was held on April 4, 1989. A that time the Petitioner requested dismissal of this case and/or a postponement, because the hearing was less than 30 days from the date the Petition was received and accepted for filing on March 8, 1989. The hearing was rescheduled for April 17, 1989 to correct the 30 day notice issue.

The Petitioner has not and does not currently accept this corrective action by the Zoning Commissioner. Petitioner, Jones, does not believe he was afforded his legal rights. He does not suggest the complete remedy he is seeking, because a dismissal would only serve to cause a zoning violation to be brought on these same issues in the Maryland District Court. A postponement to allow the proper time to elapse is the only logical result.

There is no doubt that the Petitioners had notice of the hearings and that the additional thirteen (13) days added to the original twenty-seven (27) days complies with the requirements for notice. The Baltimore County Code, Section 22-26, requires a hearing not less than thirty (30) days after the date the Petition is accepted. The purpose of this law is to pro-

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vide notice and a chance to prepare and be heard. The Petitioner, clearly, had notice and presented a complete case.

This matter and zoning case #89-16-SPHA have a long and very interdependent history. The evidence, clearly, established that this matter was inter-related with the lot of land known as 207 Central Avenue. I most steadfastly believe that the issues raised by this Petitioner cannot properly be resolved without a review of the two lots, namely, 207 Central Avenue and 209 Central Avenue, concurrently. However, each case will have its own final resolution, decision and Order.

For this reason, I continued the hearing in case No. 89-16-SPHA to allow that Petitioner time to correct their request by filing an additional Petition for Special Hearing. I was also desirous of having the owners of 209 Central Avenue file Petitions for relief concerning the continued use of that property as an apartment house. Finally, I decided that the original and new Petitions for 207 Central Avenue and the relief requested herein for 209 Central Avenue would be heard at the same time as companion cases. Both cases were processed for hearing and the hearings were held on April 17, 1989 and April 28, 1989.

By the very nature of these cases, some of the facts that apply to one case also apply in the other. Likewise, some of the exhibits are marked for one case or another and some are marked for both cases. I will attempt to recount herein only that testimony and evidence necessary to the final resolution of these cases.

In order to establish the basic factual framework, I will reduce the testimony of most of the witnesses to as few printed words as possible.

The following information was provided by the Petitioner, Ronald F. Jones:

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The Petitioners, Ronald F. Jones and Suzanne Lussier-Jones, acquired title to property known as 209 Central Avenue, Glyndon, Maryland, the subject of the instant petition for special hearing and petition for variance on June 24, 1988. The property consists of a lot containing 25, 545 square feet of land, more or less, and an existing structure, located in D.R. 2 and D. R. 3.5 zones. The structure has existed since approximately 1898. (Petitioners' Exhibit 1 in case No. 89-396-SPHA). A notarized letter from Anita Susemihl (Petitioners' Exhibit 3 in case no. 89-396-SPHA) states that the conversion of the improvements to six (6) apartment units was undertaken after she and her husband acquired title to the property in March, 1941. There was no opportunity to cross-examine this very important witness. That 209 Central Avenue was subsequently conveyed by Aileen Singer to Ronald F. Jones and Suzanne Lussier-Jones by deed dated June 24, 1988.

Mr. Jones claims he had no knowledge of any problem with the use of 209 Central Avenue as or for an apartment house of six apartments. He states that he was told that Baltimore County authorized the use of the property as an apartment house. He says that the house has always been an apartment house, as far as he knows, and there is no other use of the property.

Testimony was taken from Mrs. Audrey Fox, President of Homestead Group, Ltd. (hereinafter called "Homestead"). Mrs. Fox testified that Homestead is a company engaged in the business of building houses and that it acquired the lot known as 207 Central Avenue for this purpose. Settlement occurred for said the lot on March 29, 1988, pursuant to a contract entered into on January 23, 1988. She stated the lot was represented as a buildable lot by the real estate agent and by the listing agreement. (Petitioner's Exhibit 6 in case 89-16-SPHA) Mrs. Fox said she was aware that

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207 Central Avenue was in a historic district and that plans for the dwelling to be erected on said lot had to be approved by the Landmark Preservation Commission ("LPC").

Mrs. Fox claims she went to the Zoning Office to apply for a window variance and, at that time, she was informed that a window variance was not necessary, but that the lot was undersized by 5 feet and that a variance was needed in order to build any house on 207 Central Avenue. An appointment was made to file the Petition for Zoning Variance which led to the original case No. 89-16-SPHA. Homestead continued to process plans for the proposed house, a Victorian style single-family dwelling, before LPC and approval was granted by LPC. (Petitioner's Exhibit 3 in 89-16-SPHA)

Mr. William Kirwin was called as an expert witness on behalf of Homestead and he testified that he has personally viewed 207 Central Avenue, the surrounding properties and neighborhood. That he is familiar with the Glyndon area. With regard to the variance for 207 Central Avenue, Mr. Kirwin testified that the granting of the variance and the development of the property as proposed would not do any substantial injury to the public health, safety or general welfare. In his opinion, there would be no adverse affects from an environmental standpoint. He believes that because the house is a single-family dwelling and there would be no overcrowding of the land; it would not tend to create traffic congestion or have any adverse affects as to air and noise pollution. Further, it was Mr. Kirwin's specific testimony that the variance, if granted, in his view, would not be inconsistent with the zoning or the spirit and intent of the zoning regulations.

Mr. Reter testified for the Petitioner concerning his ownership of 207 and 209 Central Avenue from 1965 to 1968. He also claims he visited the

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apartment house during 1946 and 1947. He claims there were six (6) apartments in the house at 209 Central Avenue when he was in the building.

The next witness called on behalf of Homestead was Colleen Thompson, the listing real estate agent. She testified that the lot was listed for sale as a buildable lot and that she personally investigated whether or not it was a buildable lot. Mrs. Thompson claims that she went to the Baltimore County Zoning Office with a copy of a plat and the deeds for 207 and 209 Central Avenue. She claims she advised the Zoning Office of the manner in which both lots were being used, and of the proposal to sell the vacant lot separately from the sale of the lot improved with the apartment building. Mrs. Thompson stated that she was advised that this could be done and there was no problem building on the unimproved lot. Mrs. Thompson further testified that the lot was represented to Homestead as a buildable lot and that at no time prior to or at settlement was Homestead ever advised that there was any question as to whether or not this lot could be improved. Mrs. Thompson further testified that prior to settlement for 207 Central Avenue, she never understood that there was any question with regard to building on that lot. It is her opinion that the only issue raised by the Protestants, as of that time, related to the use of the property known as 209 Central Avenue and, in particular, the number of apartment units that could be occupied on that property and the location of a new driveway on 209 Central Avenue.

Mrs. Thompson could not provide any evidence concerning the information she claims to have received from the Office of Zoning. She did not know who she talked to and she did not obtain written confirmation of the information she received. She also had no explanation about why she did not check her information more closely when she received the letter of

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April 8, 1989 from James E. Dyer and W. Carl Richards of the Baltimore County Office of Zoning to Nevett Steele, Jr., indicating there are problems with the lots known as 207-209 Central Avenue. See Protestants' Exhibit 7 in case No. 89-396-SPHA. Likewise, Mrs. Thompson had no answer why she took no action after receiving the April 8, 1988 letter from Mitchell Kellman and James E. Dyer of the Baltimore County Office of Zoning.

Mrs. Aileen Singer, the seller of 207 and 209 Central Avenue, testified that, prior to selling either of said lots, she had consulted the Baltimore County Zoning Office on two occasions regarding the sale of these lots as separate lots and the ability to build on lot 207. Mrs. Singer stated that, after reviewing the zoning maps and the situation with regard to the lots, she was advised that she could apply and obtain a building permit for lot 207. She claims she originally made such investigation because she thought she might want to build her home on the lot known as 207 Central Avenue.

Upon cross examination, Mrs. Singer could not provide any information concerning who she dealt with in the Office of Zoning, nor did she ever present any evidence of any of these meetings. In fact, she was very vague about who she spoke to, what facts were presented and what proof she provided to establish this alleged nonconforming use. It is nearly impossible to judge the legal and factual basis upon which the judgments, that were supposedly rendered granting authority to use the lots as claimed, were made.

Mrs. Singer did not respond to any of the letters written by Mr Steele concerning her property and the alleged legal problems. In fact, Mrs. Singer does not attempt to justify her lack of action after she admits she received the letters marked Protestants' Exhibits No. 2 and 3 in case No. 89-16-SPHA. Mrs. Singer does not deny that she was aware of the contents of

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Protestants' Exhibit No. 7 in case No. 89-396-SPHA addressed to her agent, Mrs. Thompson, and she offered no reason for not informing Homestead of any of these letters and she does not claim to have informed the Jones of any of these letters.

Whether or not Mrs. Thompson and/or Mrs. Singer were, as they claim, told by the Zoning Office that the vacant lot could be developed, is really not controlling of the relief requested herein. It has been established in Maryland, since virtually the advent of zoning, that an impermissible use not only must be denied, but also must be revoked where allowed by mistaken official action. In other words, the doctrine of estoppel does not operate to protect an illegal zoning use from permit revocation. Lipsitz v. Parr, 164 Md. 222, 743 (1933). See e.g., Park Shopping Center v. Lexington Park Theatre Co., 216 Md. 271, 139 A.2d 843 (1958).

Therefore, what they claim they were told is not the issue in light of the fact this is not a violation hearing. No punishment is envisioned in these cases, only the correct enforcement of the regulations. The Zoning Commissioner is not estopped from preventing the possible illegal development of these lots.

Continuing with a review of testimony and evidence, Mr. Herbert Malmud, a Registered Land Surveyor, testified for Petitioner, Ronald Jones. He stated that he believes the apartment house at 209 Central Avenue is a proper use, as provided by the within the B.C.Z.R. in the D.R. 3.5 zone. Mr. Malmud testified that, in his opinion, the single lot known as 209 Central Avenue was large enough to support the density of the six (6) apartments. Mr. Malmud listed certain calculations on Petitioner's Exhibit 7 in case No. 89-396-SPHA which do not make sense in light of the requirements listed in the B.C.Z.R. for the D.R. zone. He made no attempt to ex-

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plain his opinion or the basis for his calculations. It appears to me that there is no basis for Mr. Malmud's opinions and he is stating a position in support of a client with no realistic belief that it is true.

Mrs. Zelma Ensor also testified on behalf of Homestead. She is a Real Estate Broker with 31 years of experience in and around the Glyndon area. She is very active in the historic preservation of Glyndon. Mrs. Ensor was of the opinion that the proposed house at 207 Central Avenue would not harm the health, safety, or welfare; that the house was well-planned and, as situated on the lot, would have no adverse affect on the properties in the area, their values or the neighborhood, but, on the contrary, would have a good affect on the area and values of the property.

Mrs. Eleanor Taylor, past President and Member of the Board of Historic Glyndon, Incorporated, testified in opposition. Mrs. Taylor stated that a lot of time and effort was devoted to having Glyndon accepted by the LPC. Mrs. Taylor stated it was a protective measure because the objective of LPC is to try to have structures built that fit in architecturally and with the general appearance of the properties nearby. Mrs. Taylor acknowledged that the dwelling to be erected at 207 Central Avenue had been approved by the LPC and that the LPC would not have approved the plans if it did not feel that it was compatible with the present structures in the neighborhood. With regard to the width of the lot, Mrs. Taylor took the position that if the B.C.Z.R. require certain size lots, there should be no deviation therefrom under any circumstances. Mrs. Taylor basically felt that 207 Central Avenue ought to remain as a vacant lot to support 209 Central Avenue and the big house with all the apartments.

Mrs. Taylor also testified that many of the other small lots in the area are outside the official historical district. She does not believe

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the second house on lot 207 Central Avenue is correct and good for the community. She stated that she has been in the house at 209 Central Avenue many times and for years the first floor was used as one apartment, not two. The nonconforming use for six apartments was lost, in her opinion, when the first floor was used as one apartment and not two.

Mr. Donald H. Wilson testified in opposition to all of the relief requested in both cases. He believes the variances requested are improper and will lead to over use of the land. He went on to say that the parking in the area is very bad and the big house on 209 Central Avenue needs the land from both lots to support all the cars, people, dogs and activity.

Mr. Wilson said he thinks the large house on 209 Central Avenue needs the open space of 207 Central Avenue to permit the house to fit into the community. The area of the land is needed to support the area and bulk of the house. These are not separate lots for use purposes. He agreed with the other witnesses that the requirements of the B.C.Z.R. must be strictly enforced. He does not want any variances. Mr. Wilson also acknowledged, however, that he heard Mrs. Taylor's testimony and characterization of LPC and that he knew nothing about the plans and made his comments without any knowledge of what house was contemplated for the lot.

Mrs. Doris Hammond testified as a Protestant and she acknowledged that Historic Glyndon, Incorporated participated in the LPC meetings and that she was present as an observer at the LPC meetings at which the house to be erected on 207 Central Avenue was discussed. Mrs. Hammond voiced opposition to improvements being erected on 207 Central Avenue stating that she thought it ought to remain as a vacant lot as part of the use at 209 Central Avenue.

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Mrs. Hammond stated she has lived across the street from this apartment house at 209 Central Avenue, since 1947. She knows that the first floor has not always been used as two apartments. In fact, when the owners live on site, the first floor was used as one apartment only. The doors between the two areas open up to make one big apartment.

Mrs. Hammond also testified how 207 and 209 Central Avenue have always been used together. She told how the parking and driveway were on the vacant area and how the people used 207 Central Avenue as the yard area. There is no doubt in her mind that the land from both lots have been used over the years to support the activities and needs of all the residents in the apartment building.

Also testifying for the Protestants was Mark Laken, President of Glyndon Community Association. Mr. Laken acknowledged that he saw the plans and felt they were irrelevant. In his mind the issue was that Glyndon has a very special designation given by the United States and Baltimore County and should have a more strict zoning code, but at the very least, there should be no deviation from the strict requirements of the present zoning code. He, therefore, felt that without regard to any impact, if a lot does not comply, it should not be built upon. He agreed that if plans are approved by LPC, this would mean that the type of house is compatible with the Historic District of Glyndon.

One of the main Protestants was Nevett Steele, Esquire, who is also the author of several letters, marked Protestant's Exhibits 2 and 3 collectively in zoning case No. 89-16SPHA. Mr. Steele's testimony, clearly, shows that he was aware of the possible sale of these lots and he did not believe the sale was proper. The exact nature of his complaint and the issues he raised have changed in form and nature over time. However, the undisputed fact is the Singers, the original owners of both 207 and 209 Central Avenue, knew that Mr. Steele questioned the sale of the lots to separate and different owners.

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Mr. Steele testified he was concerned that, if various relief requested is permitted, the Victorian quality of the homes in the community will be disturbed. He stated that the purpose of LPC is to make sure the dwellings are compatible with the neighborhood. Mr. Steele testified he was not dissatisfied with the architecture or size of the proposed house, but in essence he feels that the lot at 207 Central Avenue should remain as a vacant lot joined together with 209 Central Avenue and the apartment house use thereon.

Mr. Steele's letter of February 26, 1988, marked Protestant's Exhibit 2 in case No. 89-16-SPHA, clearly raises issue with the proposed sale of the properties at 207 and 209 Central Avenue. In the first paragraph, of the letter, he raises the issue of sale of some area of land for a new house. In the second paragraph, there is a direct reference to the Baltimore County Zoning laws.

It is very interesting that Mr. and Mrs. Singer were also copied on the letters of March 5, 1988 and March 7, 1988 from Mr. Steele to the Baltimore County Zoning Commissioner, but Mrs. Singer found no need to take further action after receiving a copy of these letters. Also, Mrs. Singer received a copy of the March 30, 1988 letter from Mr. Steele to Carl Richards of the Baltimore County Zoning Office. All of these letters are found as part of Protestants' Exhibit 3 in case No. 89-16-SPHA. Mrs. Thompson and Mr. and Mrs. Singer both were mailed a copy of the nonconforming use denial letter from Mitchell Kellman, Zoning Associate, on April 8, 1988 which is marked Protestants' Exhibit 4 in case No. 89-16-SPHA.

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Clearly, the letters from Mr. Steele raise issue with the transfer of the vacant lot and the continuation of the nonconforming apartment house use. In fact, the April 8, 1988 letter to Mrs. Thompson from Mitchell Kellman and James E. Dyer refuses to approve the alleged six (6) apartment house as a nonconforming use.

Mrs. Singer never denied receiving these letters, nor does she attempt to explain why she did not take positive action to investigate the matter. Her only statements concerning the issues raised in all of these letters about her property was that she believed the letters were about the "other lot". She then returns to her testimony about her visits to the Baltimore County Zoning Office. Her handling of these potential problems makes no sense and, her testimony about the whole subject is totally unconvincing. She attempts to hide behind the statements she claims she received from the Zoning Office and then say the letters from Mr. Steele are unimportant.

Neither Mrs. Thompson nor Mrs. Singer offered any explanation why they did not take any action after they received the April 8, 1988 letter, which is marked Protestants Exhibit 4 in case No. 89-16-SPHA. They did not even attempt to inform Homestead, who had just purchased the lot at 207 Central Avenue, nor did they inform the Jones, who would not settle on 209 Central Avenue for another two (2) months.

In fact, Mrs. Singer received a letter of March 25, 1988 from John W. McGrain, (Petitioner's Exhibit No. 6 in case 89-396-SPHA) that approves the parking area for 209 Central Avenue behind the house. Petitioner Jones argues that this letter supports his right to continue to use the six (6) apartments. Of course, neither Mrs. Singer nor Mr. Jones ever followed up on the requirements set out in paragraph No. 3 of that letter. They never checked to confirm compliance with the ". . . zoning ordinance of Baltimore County. . . ".

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Likewise, Mrs. Singer claims she received a permit for the transfer of the parking area (Petitioner's Exhibit No. 5 in case 89-396-SPHA) and the ". . . County. . . ", therefore, approved the six apartment house use. This is an interesting argument, but totally unfounded in either fact or law. The facts are the permit is a grading permit that is not reviewed by the Office of Zoning. Legally, she was referred to Landmarks Preservation Commission, who warned her of her need to comply with zoning in the letter of March 25, 1988. See Petitioner's Exhibit No. 6 in case No. 89-396-SPHA. Mrs. Singer failed to respond to any of the warnings to comply with the B.C.Z.R.

The Petitioners, in both cases, rely heavily upon the testimony of Mrs. Thompson and Mrs. Singer. I understand the Petitioner's desire to have this reliance upon the alleged statements of the Zoning Office carry the weight of persuasion in these cases.

The Petitioner's problem is very simple. Mrs. Singer and Mrs. Thompson, as her agent, did not react in anything close to a reasonable manner. No reasonable person would have ignored the problems raised in all of the letters. Mrs. Thompson and Mrs. Singer very carefully protected Homestead by not informing them of the letters dated February 26, March 5, March 7 and April 8, 1988. In fact, the first three letters were received at least three (3) weeks before the Homestead settlement. It appears Mrs. Singer, also, did not inform Petitioner, Jones, of the problems they had been forewarned of on at least six (6) different occasions and they completed the sale even after they had received official word from Baltimore County that the house was not a nonconforming apartment house.

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There are certain underlying facts which are not in dispute and should be settled at this point. They are:

1. The parcels of land known as 207 and 209 Central Avenue have been for many years separately described lots. This has been true since prior to January 2, 1945.

2. During the time January 2, 1945 through and including March 28, 1988, the lots known as 207 and 209 Central Avenue have always been jointly owned. That 209 Central Avenue has been improved with a large building used as a multi-family dwelling unit for many years.

3. On March 28, 1988, Aileen N. Singer transferred 207 Central Avenue to Homestead Group, Ltd. (Protestant's Exhibit #1).

4. The land known as 207 Central Avenue is an unimproved lot except for the parking area, driveway and open space that, until March 28, 1988, serviced 209 Central Avenue for the past fifty (50) years, or so.

5. The Baltimore County Zoning Regulations (B.C.Z.R.) do not permit a multi-family, six (6) unit, apartment house to be located at 209 Central Avenue.

6. The lot known as 207 Central Avenue is too narrow to permit the construction of a single family home without a variance. All other area and set back requirements can be met by the proposal on Petitioner's Exhibit 4.

7. That Mrs. Singer decided to sell the two lots (207 and 209 Central Avenue) as two separate lots for two different uses and followed through on that decision on March 28, 1988.

The Protestants have argued that the relief requested herein cannot be granted if the two lots, 207 and 209 Central Avenue, are viewed as one parcel required to support the six apartments on 209 Central Avenue. This is true in a fashion, but this view of the case will not answer all of the issues before the Zoning Commissioner.

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Turning now to the legal decisions before the Zoning Commissioner, the proper place to begin is with the use of these lots prior to January 2, 1945, (The beginning of modern zoning in Baltimore County). All of the decisions concerning these lots are interrelated. There is no one answer to this case, but a series of decisions that begin on January 2, 1945. Therefore, the use of 207 Central Avenue is tied to the use of 209 Central Avenue, as the Protestants argue, but 209 Central Avenue does not totally control the use of 207 Central Avenue, as I will explain herein.

The reason for this format is very simple. When the two cases are viewed together, they raise several issues, namely, an alleged nonconforming use, the possible continuation of that use, after the removal of nearly fifty (50%) percent of the land area for a totally different and unrelated use, and a new single family home. The issue of the alleged nonconforming apartment house must be reviewed first.

The first principal to determine a nonconforming use as outlined in Section 104.1 of the B.C.Z.R. and as applied by McKemy v. Baltimore County, Maryland, 39 Md. App. 257, 385 A2d 96 (1978) is to determine whether or not there was a pre-existing lawful nonconforming use prior to January 2, 1945. This is both a factual decision and a legal decision.

Aileen Singer owned both lots and used them to support the apartment house. In this capacity, she was acting no different than every owner before her for many years. She owned what she believed was a valid apartment house at 209 Central Avenue and a vacant lot at 207 Central Avenue.

Prior to March 29, 1988, 207 and 209 Central Avenue were separately deeded lots, which were owned jointly from at least January 2, 1945. From

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January 2, 1945 until March 29, 1988, 207 Central Avenue was used as a parking lot driveway, open space and yard area for a very large old house known as 209 Central Avenue. It is clear the house at 209 Central Avenue has been an apartment house for many years. When exactly it became an apartment house is somewhat unclear, but the best evidence is that it was an apartment house prior to January 2, 1945. The number of units in the apartment house is debatable. All of the evidence collectively establishes that 207 and 209 Central Avenue have been, for many years, used as one parcel of ground with one use, namely, an apartment house. The open lot at 207 Central Avenue has always supported the apartment house.

Now, at first brush, this appears to be a nonconforming use apartment house and ends the review of these cases. The few facts listed above appear to comply with the requirements of Section 104.1, of the B.C.Z.R. for a nonconforming use. Section 104. says in pertinent part:

> "A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations; provided that upon any change from such nonconforming use to any other use whatsoever, . . ., the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of buildings so used."

Of course, Petitioner Jones in support of the case for 209 Central Avenue, Case No. 89-396-SPHA, claims the inquiry ends at this point; it does not. That type of review is too simplistic. Likewise, Petitioner, Homestead for 207 Central Avenue claims the separate lot is an individual lot and it is entitled to be used with no connection to the apartment house and 209 Central Avenue. Again, this is a simplistic view of the issues involved and an inappropriate review in this case. This type of review ignores some of the basic underlying principals of a nonconforming use, namely, that the area incorporated into the actual nonconforming use must be determined; that the area required to support the continuation of an alleged nonconforming use must remain consistent; that the scope of the use must be determined; that the extent of the alleged nonconforming use must be established; and many other factors that must be defined and determined to complete the inquiry.

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Continuing with a review of the alleged nonconforming use apartment house, the weight of the evidence has established an apartment house use for 207/209 Central Avenue. This nonconforming use, clearly, rests upon both 207 and 209 Central Avenue. The entire land area must be considered.

As to the issue of the number of units, the maximum claimed is six (6). There is no doubt that the first floor has been used as one apartment, at different points in time. Therefore, there have been lapses in the six (6) apartment use to a maximum of five (5) apartments. These lapses have lasted for several years. The Petitioners, Mr. and Mrs. Jones, in case no. 89-396-SPHA, argue, very fiercely, the point about the number of units.

Petitioner, Jones, argues that their evidence proves six (6) apartments. There are so many holes in this argument that I will not list them all in this opinion. However, a short list includes: no proof of the date of establishment of the six (6) apartments, no evidence at all concerning the years 1951 through 1963, and no evidence concerning continued use during the years 1969 through 1976.

Petitioner, Jones, claims to substantiate his case with the evidence of Mr. Reter and Mrs. Singer. Mr. Reter only testified to having been present in the house at 209 Central Avenue during 1946 and 1947; then, again, when he owned the building from 1965 through 1968. Mrs. Singer has no knowledge of the use of this property prior to 1976. She can prove nothing about its use during the 1940s, 1950s, 1960s or the early 1970s. This evidence simply does not meet the requirements of Section 104 of the B.C.Z.R. concerning continued use.

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There is no debate that the maximum number of units is five (5). There is evidence of a few as three (3) apartments. There is very strong evidence to suggest a reduction to three (3) or four (4) apartments for multi-year periods of time during the 1960s and/or 1970s. However, as I will explain below, the discussion about the number of units is moot and the proof of continued use is incomplete and fails to establish a nonconforming use. Petitioner, Jones, failed to meet his burden of proof for the alleged nonconforming apartment house.

It is important to keep in mind that the burden of proving a nonconforming use rests always with the Petitioner. This burden may not be shifted to the Protestants, as Mr. and Mrs. Jones have attempted to do, nor may it be shifted to Baltimore County, Maryland. The Petitioners claim that the witnesses for the Protestants failed to controvert the existence of the six (6) unit nonconforming apartment house. This is a total misplacement of legal burden by Jones. I will not accept the Petitioner's attempt to shift the burden of disproof upon the Protestants.

By definition, nonconforming uses are inherently incompatible with uses permitted in a zone. Boyce v. Sembly, 25 Md. App. 43, 334 A.2d 137 (1975). Nonconforming uses pose a threat to the success of zoning, limit the effectiveness of land use controls, imperil the success of community plans and injure property values. The purpose of restrictions on nonconforming uses is to achieve the ultimate elimination of such uses through economic attrition and physical obsolescence.

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Clearly, nonconforming uses are disfavored at law and are to be restricted. Furthermore, a nonconforming use is limited to the land on which the activity operates. If the activity is conducted within a building or structure this helps to define the use and to further limit the scope of the nonconforming use.

Petitioner, Jones, failed to prove a basis for the legal establishment of this apartment house as nonconforming use and he failed to prove a history of continuing use of a six (6) unit apartment house. The first principal, required by McKemy, supra, is not met by the weak evidence claimed for the nonconforming apartment house use prior to January 2, 1945 through March 29, 1988. I believe this nonconforming use must fail at this point and must, therefore, be rejected. However, for the purposes of argument, I will review the remaining principals of McKemy, supra, and review the remaining underlying legal principals raised by the parties.

Returning to the review of the nonconforming use, the inquiry now shifts to March 29, 1988 when Mrs. Singer transferred 207 Central Avenue to Homestead, a separate and unrelated buyer, for a distinct, different and unrelated use from the apartment house use at 209 Central Avenue. The inquiry then centers on the issues of change and/or lapses of the alleged nonconforming use.

As stated in McKemy v. Baltimore County, Maryland, 39 Md. App. 257, 385 A2d. 96 (1978), the second principal to be applied, as specified in Section 104.1, is whether or not there has been a change in the use of the subject property. A determination must be made as to whether or not the change is a different use and, therefore, breaks the continued nature of the nonconforming use. If the change in use is found to be different than the original use, the current use of the property shall not be considered nonconforming.

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The first part of this principal is a finding of whether or not there have been changes. I believe there have been changes. First, there has been a very drastic change in the use of 207 Central Avenue which was one-half of the land that always supported the apartment house use. That lot no longer supports the apartment house at 209 Central Avenue. The parking area and supporting open space, and yard space, is not located on 207 Central Avenue to diffuse or spread the apartment house use to a larger land area.

Secondly, the new house to be located at 207 Central Avenue will increase overall density for the total area of the original nonconforming use area which was originally both 207 and 209 Central Avenue.

Clearly, the total legal density for the two lots is five (5) units. Each lot has a separate density of 2.8 units which would only permit two (2) actual units per lot. What the Petitioners, jointly, want to establish on the total area would represent seven (7) density units (6 apartments and one house). There are only six (6) units currently and have been as few as five (5) units as recently as 1985. This new higher density would far exceed the density permitted for these lots, either jointly or severally.

Thirdly, the construction of a new house on 207 Central Avenue will nearly double the bulk of both lots. The new house will change the effect upon the community. The land area covered by improvements will also double. To claim as the Jones do that there is no change when density increases from five (5) to seven (7) units is to live with one's head in the sand. Density must be viewed as one of the hallmark considerations of impact upon the community. Density is the fundamental basis of residential zoning in Baltimore County. Furthermore, to claim that the additional house with the additional bulk and parking is not a change, is unacceptable. The parking was never before upon 209 Central Avenue.

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For all of the reasons listed above, including, but not limited to, the change in density, the change in parking, the loss of open space, the increase in overall density when the new house is built, and the change in special relationship between the old large house on two lots to the community; there is no other finding possible other than a change in use as envisioned by the McKemy, supra, standard. The new uses of the two lots is, clearly, different from the use on the two lots jointly for the past fifty (50) years.

I want to make it very clear that I believe Mrs. Singer had a right to transfer the lots to separate owners. The issue herein is the affect of her decision, not whether she had a right to make the decision to sell the lot. The owner of separately deeded lots has a right to sell them. However, the use of the lots is a zoning issue and will rightfully be determined by the Zoning Commissioner for Baltimore County.

When Mrs. Singer decided to sell 207 Central Avenue as a building lot, she was removing that land area and support services area from the apartment house. She is permitted to undertake this action, however, she is subjected to the consequences of that decision. The consequences of that decision is to change the nonconforming use apartment house into two new uses. One use is the old apartment house on a different land area with additional facilities and accessory uses, and the other use is the new single family house at 207 Central Avenue. Therefore, these new uses break the continuing nature of the alleged nonconforming use and the original use, therefore, terminates. As held in McKemy, supra; the current use of the property shall not be considered nonconforming.

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Now, turning to the final principal of Section 104.1 of the B.C.Z.R., as established in McKemy, supra.

When the claimed nonconforming use has changed, or expanded, then the Zoning Commissioner must determine whether or not the current use represents a permissible intensification of the original use or an actual change from the prior legal use. In order to decide whether or not the current activity is within the scope of the nonconforming use, the Zoning Commissioner should consider the following factors:

> "(a) To what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use;
>
> (b) Is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature and kind;
>
> (c) Does the current use have a substantially different effect upon the neighborhood;
>
> (d) Is the current use a 'drastic enlargement or extension' of the original nonconforming use?"

A review of these standards, clearly, evidence a change in density. The nature of the current nonconforming apartment house use now has twice the impact upon the land and community. The land area is one-half the original land area. The new use of an apartment house at 209 Central Avenue and a new house at 207 Central Avenue will have a substantially different impact upon the neighborhood. There is no way that the reduction in land area committed to the big house at 209 Central Avenue does not double the impact of that oversized and over density use upon the neighborhood.

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Using the factors set forth in McKemy,supra, also indicate that the proposed activity on lots 207 and 209 is not within the scope of the original nonconforming use. The proposed use, as a six (6) unit apartment house and single family dwelling, does not reflect the nature and purpose of the original nonconforming use. The original nonconforming use permitted a very large structure to fit into the ambiance and character of Historic Glyndon. The open space created by the landscaped areas of the lot at 207 diminished the impact of the oversized apartment building and provided an architectural scope to the large structure which was more in keeping with the expansive yards and green spaces of Central Avenue.

The proposed use is also a drastic enlargement of the original nonconforming use. The relocation of the parking lot and driveway on to lot 209 and proposed erection of a single family dwelling unit on lot 207 is an expansion, and not a mere intensification of the nonconforming use. See Odell v. City of Eagen, 348 N.W. 2d 792 (Minn.App. 1984), Young v. Board of Zoning Appeals, 307 N.Y.S. 2d 895 (1970), Muse v. Zoning Hearing Board, 415 A. 2d 1255 (Pa. Cmwlth., 1980), Jahnigen v. Staley, 245 Md. 130, 225 A. 2d 277 (1967) and Phillips v. Zoning Commissioner, 225 Md. 102, 169 A.2d 410 (1961).

The inquiry into the nonconforming use now ends with the following conclusions:

- the sale of 207 Central Avenue for a separate and different purpose from the 209 Central Avenue apartment house is proper, acceptable and legal.
- the use of 209 Central Avenue without the support of 207 Central Avenue does not meet the requirements of Section 104 of the B.C.Z.R., as applied by the principals set forth in McKemy, supra, for the continuation of a nonconforming use.

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-the change in the use of both 207 and 209 Central Avenue terminates the nonconforming use for the alleged six (6) unit apartment house and the right to continue that nonconforming use shall cease.

This completes the inquiry as to the use of the two lots and the status of the use of the apartment house.

Turning now to a determination as to the future use of 209 Central Avenue. The house may not be used as a six (6) unit apartment building. However, it may be used as a single family dwelling unit, as a matter of right.

The Petitioner has requested a variance from certain parts of Section 402 of the B.C.Z.R. Section 402 deals with the conversion of dwellings to apartments. The Petitioner's computations shown on Petitioner's Exhibit No. 7 in case No. 89-396-SPHA do not reflect an acceptable application of the requirements of Section 402 of the B.C.Z.R. Most of the area and bulk of this building is found within the D.R.2 zone and the Petitioner has used the D.R. 3.5 requirements. The area requirement is not met, the front yard requirement is not met, and the side yard requirements are not met.

The Petitioner has left open the possibility that variances may be required. I believe this property should be viewed for purposes of Section 402, as a D.R.2 zoned property which requires 125 feet of width of front yard, a lot area of 25,000 square feet and side yards of 20 and 50 feet. If variances were granted to lot width and side yard distances, this house could have two (2) apartment units. There is no variance requested for the lot area and the lot only contains 25,449 square feet and two units would require 25,000 square feet of lot area.

Section 307.1, Baltimore County Zoning Regulations (B.C.Z.R.) states that the Baltimore County Zoning Commissioner shall have the power to

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create variances from an area regulation where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship.

In reviewing the Petition, it must be kept in mind that "{t}he standard for granting a variance. . . is . . . whether strict compliance with the regulations would result in 'practical difficulty or unreasonable hardship'; and that it should be granted only if in strict harmony with the spirit and intent of the Zoning regulations; and only in such manner as to grant relief without substantial injury to the public health, safety and general welfare." McLean v. Soley, 270 Md. 208 (1973)

Clearly, the evidence shows that Petitioner, Jones, does not have enough land to meet the requirements for lot width. The proble is the sale of 207 Central Avenue to Homestead. This sale raises the issue of a self-created hardship by the Petitioner's predecessor in title, Mrs. Singer.

Variances should be granted only in cases where strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship. Variances should be granted only if in strict harmony with the spirit and intent of the bulk regulations, and only in such a manner as to grant relief without substantial injury to the public health, safety and general welfare.

The need sufficient to justify a variance must be substantial and urgent and not merely for the Petitioners' convenience. McLean v. Soley, 270 Md. 208, 310 A.2d 783 (1973). A Petitioner seeking a variance must exercise proper diligence in ascertaining zoning requirements prior to acquiring property in order to avoid a resultant hardship. If such diligence is not exercised, the hardship is self-created and the variance may be properly refused. Wilson v. Mayor and Commissioners of Town of

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Elkton, 35 Md. App. 417, 371 A.2d 443 (1977). If the grant of a variance would affect the aesthetic ambiance of the residences in the immediate area, such variance would be in disharmony with the spirit and intent of the Zoning Regulations. Daihl v. County Board of Appeals of Baltimore County, 258 Md. 157, 265 A.2d 227 (1970). The mere fact that a variance, if granted, would make the property more profitable is not sufficient ground to justify the relaxation of bulk requirements. Easter v. Mayor and City Council of Baltimore, 195 Md. 395, 73 A.2d 491 (1950).

If the peculiar circumstances which render property incapable of meeting the zoning requirements have themselves been caused or created by the property owner or his predecessor in title, the essential basis of a variance is lacking. An act on the part of the property owner, or his predecessor in title, which has physically so affected the property as to create a unique circumstance or which in itself created either a practical difficulty or hardship in conforming to the restrictions of the Zoning Regulations bars relief. Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A.2d 810 (1965).

The undisputed testimony indicates that Petitioner, Jones, went to settlement on June 24, 1988. It is also undisputed that prior to settlement, Mr. Steele conversed with the Petitioners and their counsel regarding the potential zoning violations surrounding the proposed uses for lots 207 and 209. Protestants' Exhibit 10, in case No. 89-396-SPHA, is a letter sent to the Jones' counsel prior to their settlement confirming the existence of these issues and concerns. The record is so filled with examples of notice to the Jones' predecessor in title, Mrs. Singers, it is unnecessary to reiterate them. See Protestants' Exhibit 4, 5, 6 and 7 in case No. 89-396-SPH.

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The variances requested must be denied based upon the doctrine of self-inflicted hardship. Had the Singers or Jones acted with reasonable diligence regarding lot 209, they would have either obtained written confirmation from the zoning office that the proposed use of lot 209 as a six (6) unit apartment was consistent with the Zoning Regulations or had filed the appropriate petitions to confirm compliance. At best, the realtor for the Singers received oral information from a zoning technician the exact substance and basis for which is, clearly, in question. The Petitioner did not act diligently and inflicted the hardship from which it seeks relief upon himself and, therefore, the variances requested must be denied.

The record contains grossly insufficient evidence to support the requirements of Section 307.1. The Petitioner who, clearly, has the burden of proving practical difficulty or unreasonable hardship, pursuant to the Zoning Regulations, has failed to offer any substantial evidence in support of its Petition for Zoning Variance. Since the Petitioner has failed to meet his burden, the Petition for Zoning Variance must be denied.

Pursuant to the advertisement, posting of the property and public hearing on the Petitions held, and for the reasons given above, the relief requested should be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County, this 24th day of Oct., 1989 that the Petition for Special Hearing to approve the use of six (6) unit apartment dwelling located at 209 Central Avenue as a legal nonconforming use be and is hereby DENIED; and,

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IT IS FURTHER ORDERED that the Petition for Zoning Variance to permit a lot width of 65 feet in lieu of the required 90 feet be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petition for Zoning Variance from Section 402.1 to permit a side yard setback of 12.0 feet and 12.6 feet in lieu of the required 20 feet for one side and 40 feet and/or 50 feet for the sum of both side yard setbacks be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petitioner shall permit, upon request and reasonable notice, a representative of the Zoning Enforcement Division to make an inspection of the subject property to insure compliance with this Order.

IT IS FURTHER ORDERED that the Petition for Special Hearing to approve the improvements at 209 Central Avenue as conforming to the spirit and intent of the B.C.Z.R., Section 402, for the conversion of dwellings to apartments be and is hereby DENIED.

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

JRH:mmn
cc: Peoples Counsel
cc: Petitioners
cc: Protestants

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Date 10/24/89
By

PETITION FOR SPECIAL HEARING

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 Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve the multi family apartment dwelling and lot at 209 Central Avenue as a legal nonconforming use for six (6) apartment units or that said lot (209) ~~and improvements conform to the spirit and intent of the B.C.Z.R.~~ that apply to the conversion of dwellings for apartment use.

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

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

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

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

Attorney for Petitioner:
Eleanor J. Lipsitz
(Type or Print Name)
Eleanor J. Lipsitz
Signature
100 Church Lane
Address
Baltimore, Maryland 21208
City and State
Attorney's Telephone No.: 484-3050

Legal Owner(s):
Ronald F. Jones
(Type or Print Name)
Ronald F. Jones
Signature
Suzanne Lussier-Jones
(Type or Print Name)
Signature
312 Church Road 833-2244
Address Phone No.
Reisterstown, Maryland 21136
City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted
Ronald F. Jones
Name
312 Church Road 833-2244
Address Phone No.

this ______ day
this petition be advertised, as
of general circulation through-
earing be had before the Zoning
Building in Towson, Baltimore
____, 19___, at _____ o'clock

obert Haines
mmissioner of Baltimore County.

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 085788
DATE [illegible] ACCOUNT [illegible]
AMOUNT $ [illegible]
RECEIVED FROM: [illegible]
FOR: 89-396-SPHA
B 813 [illegible]
VALIDATION OR SIGNATURE OF CASHIER
DISTRIBUTION WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

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Date
By

PETITION FOR ZONING VARIANCE

Item # 356
89-396-SPHA

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 402.1 to permit side yard setbacks of 12.0 ft. and 12.6 ft. in lieu of the required 20 ft. for one side and 40 ft. and/or 50 ft. for the sum of both side yard setbacks. Also to permit a lot width of 65 ft., in lieu of the required 90 ft. or greater as may be determined.

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

TO BE DETERMINED AT THE PUBLIC HEARING

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

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

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

Contract Purchaser:

Legal Owner(s):
Ones
Name)
sier-Jones
Name)
oad 833-2244
Phone No.
, Maryland 21136
phone number of legal owner, con-
representative to be contacted
es
312 Church Road 833-2244
Address Phone No.

MAP 17JNW
1D
E.D. 4
DATE 10/30/91
200 [illegible]
1000
DP

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
No. 065905
DATE 2-21-89 ACCOUNT R-01-615-000
AMOUNT $ 100.00
RECEIVED FROM: Eleanor J. Lipsitz ITEM #356
FOR: Petition Special Hearing
B B13 [illegible] UCR
VALIDATION OR SIGNATURE OF CASHIER
DISTRIBUTION WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

ORDERED By The Zoning Commissioner of Baltimore County, this 22nd ~~[illegible]~~ day of ~~March~~ Feb, 1989, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 4th day of April, 1989, at 9 o'clock A.M.

J. Robert Haines
Zoning Commissioner of Baltimore County.

(over)

H. MALMUD & ASSOCIATES, INC.
100 CHURCH LANE
BALTIMORE, MARYLAND 21208

TELEPHONE (301) 653-9511

356

ZONING DESCRIPTION
4th ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

Beginning at a point in the center of Central Avenue, 50 feet wide, at a distance of 125 feet, more or less, measured southeasterly from the center of Glyndon Avenue, thence leaving the center of Central Avenue and running the three (3) following courses and distances:

(1) North 59° 46' 12" East 391.53 feet;

(2) South 30° 27' 23" East 65.00 feet and

(3) South 59° 46' 12" West 391.53 feet to the center of Central Avenue, thence with Central Avenue:

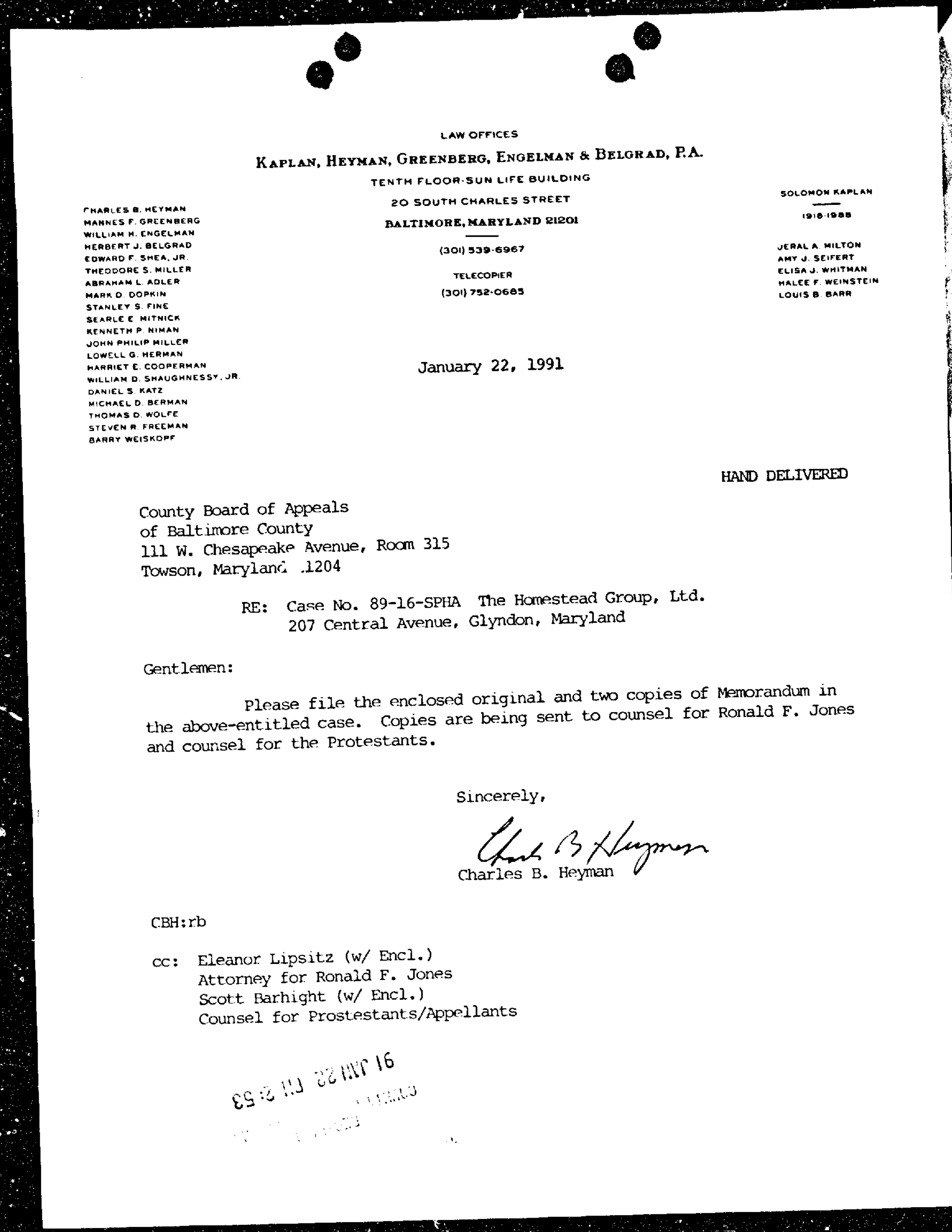
(4) North 30° 28' 41 West 65.00 feet to the place of beginning.

Containing 25449 square feet or 0.584 of an acre of land, more or less.

This description is intended for zoning purposes only and not for the conveyance of title.

Herbert Malmud
Registered Land Surveyor
Maryland # 7558
December 17, 1988

File: Central Des 209 D14



LAW OFFICES
KAPLAN, HEYMAN, GREENBERG, ENGELMAN & BELGRAD, P.A.
TENTH FLOOR-SUN LIFE BUILDING
20 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201
(301) 539-6967
TELECOPIER
(301) 752-0685

CHARLES B. HEYMAN
MANNES F. GREENBERG
WILLIAM H. ENGELMAN
HERBERT J. BELGRAD
EDWARD F. SHEA, JR.
THEODORE S. MILLER
ABRAHAM L. ADLER
MARK D. DOPKIN
STANLEY S. FINE
SEARLE E. MITNICK
KENNETH P. NIMAN
JOHN PHILIP MILLER
LOWELL G. HERMAN
HARRIET E. COOPERMAN
WILLIAM D. SHAUGHNESSY, JR.
DANIEL S. KATZ
MICHAEL D. BERMAN
THOMAS D. WOLFE
STEVEN R. FREEMAN
BARRY WEISKOPF

SOLOMON KAPLAN
1918-1988

JERAL A. MILTON
AMY J. SEIFERT
ELISA J. WHITMAN
HALEE F. WEINSTEIN
LOUIS B. BARR

January 22, 1991

HAND DELIVERED

County Board of Appeals
of Baltimore County
111 W. Chesapeake Avenue, Room 315
Towson, Maryland .1204

RE: Case No. 89-16-SPHA The Homestead Group, Ltd.
207 Central Avenue, Glyndon, Maryland

Gentlemen:

Please file the enclosed original and two copies of Memorandum in the above-entitled case. Copies are being sent to counsel for Ronald F. Jones and counsel for the Protestants.

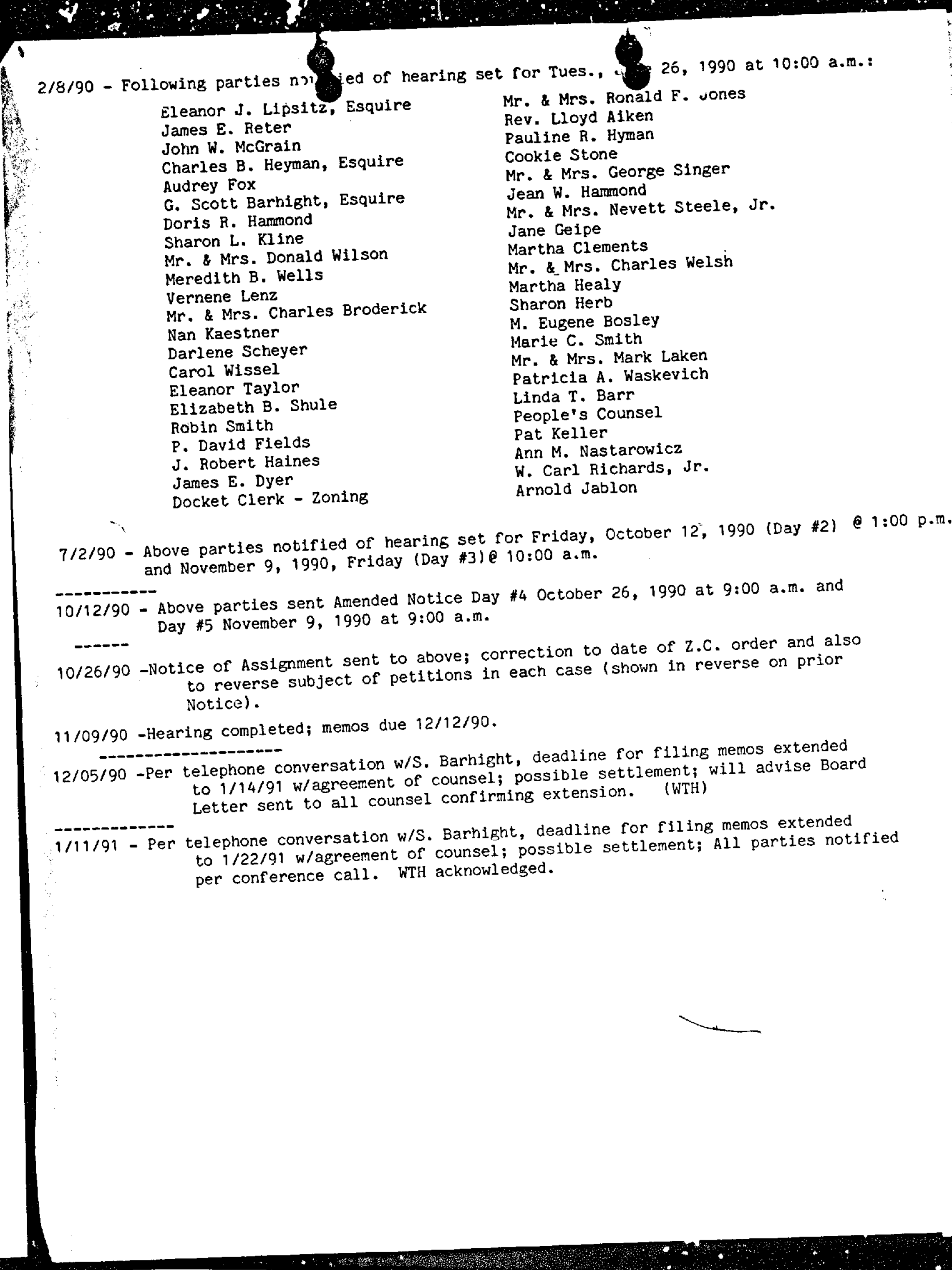
Sincerely,

Charles B. Heyman

CBH:rb

cc: Eleanor Lipsitz (w/ Encl.)
Attorney for Ronald F. Jones
Scott Barhight (w/ Encl.)
Counsel for Prostestants/Appellants

91 JAN 22 PM 2:53



2/8/90 - Following parties no[illegible]ied of hearing set for Tues., [illegible] 26, 1990 at 10:00 a.m.:

Eleanor J. Lipsitz, Esquire
James E. Reter
John W. McGrain
Charles B. Heyman, Esquire
Audrey Fox
G. Scott Barhight, Esquire
Doris R. Hammond
Sharon L. Kline
Mr. & Mrs. Donald Wilson
Meredith B. Wells
Vernene Lenz
Mr. & Mrs. Charles Broderick
Nan Kaestner
Darlene Scheyer
Carol Wissel
Eleanor Taylor
Elizabeth B. Shule
Robin Smith
P. David Fields
J. Robert Haines
James E. Dyer
Docket Clerk - Zoning
Mr. & Mrs. Ronald F. Jones
Rev. Lloyd Aiken
Pauline R. Hyman
Cookie Stone
Mr. & Mrs. George Singer
Jean W. Hammond
Mr. & Mrs. Nevett Steele, Jr.
Jane Geipe
Martha Clements
Mr. & Mrs. Charles Welsh
Martha Healy
Sharon Herb
M. Eugene Bosley
Marie C. Smith
Mr. & Mrs. Mark Laken
Patricia A. Waskevich
Linda T. Barr
People's Counsel
Pat Keller
Ann M. Nastarowicz
W. Carl Richards, Jr.
Arnold Jablon

7/2/90 - Above parties notified of hearing set for Friday, October 12, 1990 (Day #2) @ 1:00 p.m. and November 9, 1990, Friday (Day #3)@ 10:00 a.m.

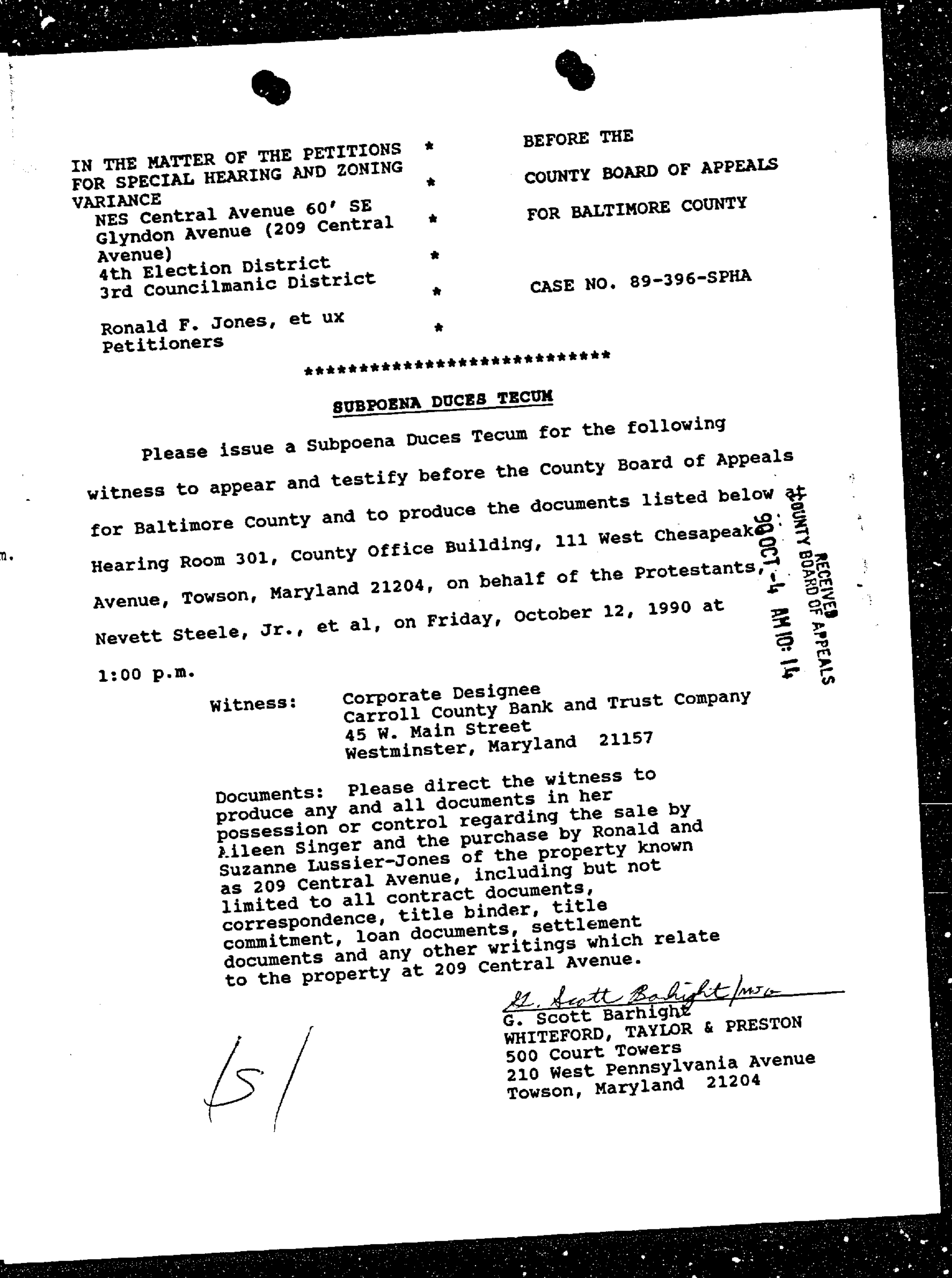
10/12/90 - Above parties sent Amended Notice Day #4 October 26, 1990 at 9:00 a.m. and Day #5 November 9, 1990 at 9:00 a.m.

10/26/90 -Notice of Assignment sent to above; correction to date of Z.C. order and also to reverse subject of petitions in each case (shown in reverse on prior Notice).

11/09/90 -Hearing completed; memos due 12/12/90.

12/05/90 -Per telephone conversation w/S. Barhight, deadline for filing memos extended to 1/14/91 w/agreement of counsel; possible settlement; will advise Board Letter sent to all counsel confirming extension. (WTH)

1/11/91 - Per telephone conversation w/S. Barhight, deadline for filing memos extended to 1/22/91 w/agreement of counsel; possible settlement; All parties notified per conference call. WTH acknowledged.



IN THE MATTER OF THE PETITIONS FOR SPECIAL HEARING AND ZONING VARIANCE
NES Central Avenue 60' SE Glyndon Avenue (209 Central Avenue)
4th Election District
3rd Councilmanic District

Ronald F. Jones, et ux
Petitioners

BEFORE THE
COUNTY BOARD OF APPEALS
FOR BALTIMORE COUNTY

CASE NO. 89-396-SPHA

****

SUBPOENA DUCES TECUM

Please issue a Subpoena Duces Tecum for the following witness to appear and testify before the County Board of Appeals for Baltimore County and to produce the documents listed below at Hearing Room 301, County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204, on behalf of the Protestants, Nevett Steele, Jr., et al, on Friday, October 12, 1990 at 1:00 p.m.

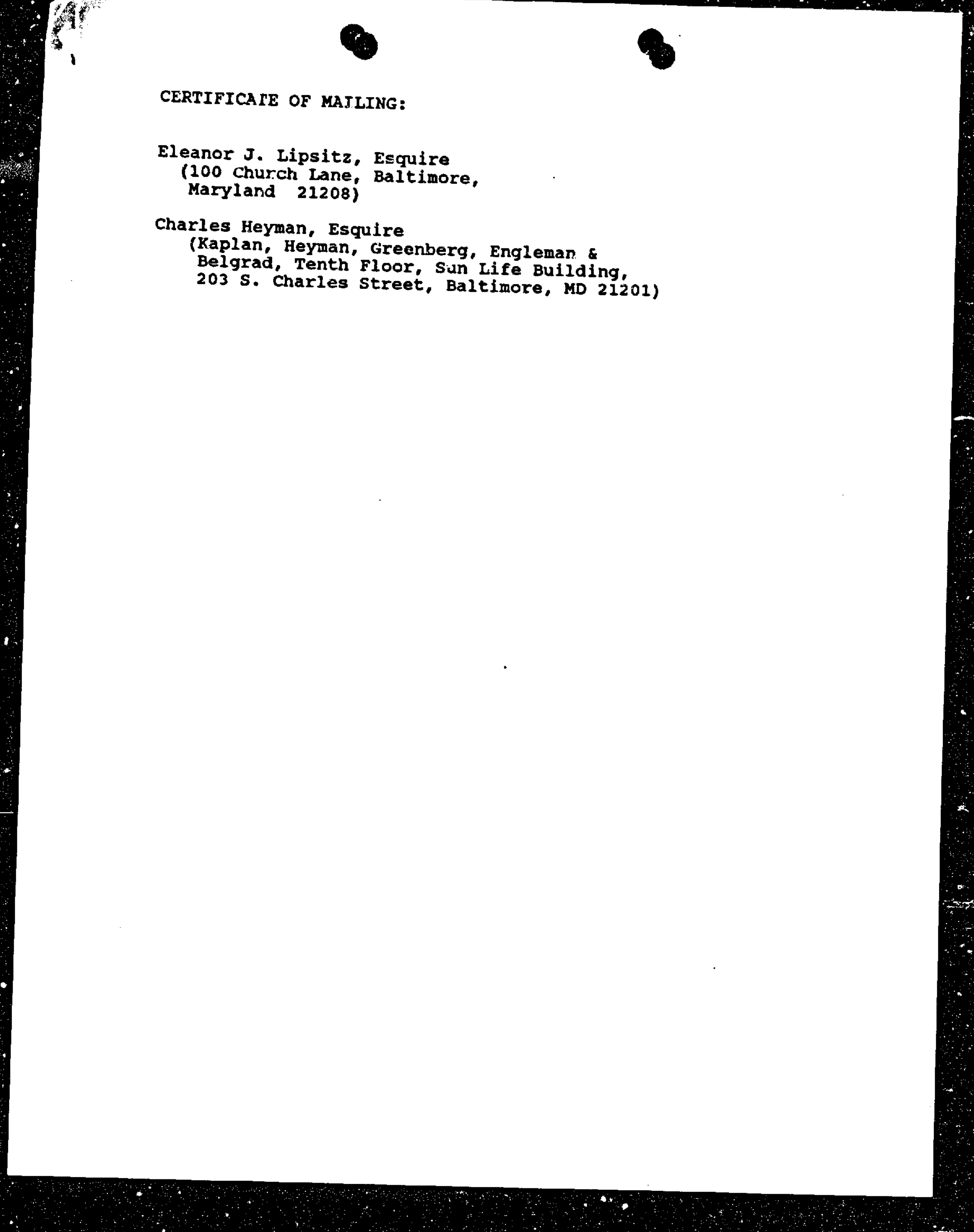
RECEIVED
COUNTY BOARD OF APPEALS
90 OCT -4 AM 10:14

Witness: Corporate Designee
Carroll County Bank and Trust Company
45 W. Main Street
Westminster, Maryland 21157

Documents: Please direct the witness to produce any and all documents in her possession or control regarding the sale by Aileen Singer and the purchase by Ronald and Suzanne Lussier-Jones of the property known as 209 Central Avenue, including but not limited to all contract documents, correspondence, title binder, title commitment, loan documents, settlement documents and any other writings which relate to the property at 209 Central Avenue.

G. Scott Barhight /mwa
G. Scott Barhight
WHITEFORD, TAYLOR & PRESTON
500 Court Towers
210 West Pennsylvania Avenue
Towson, Maryland 21204

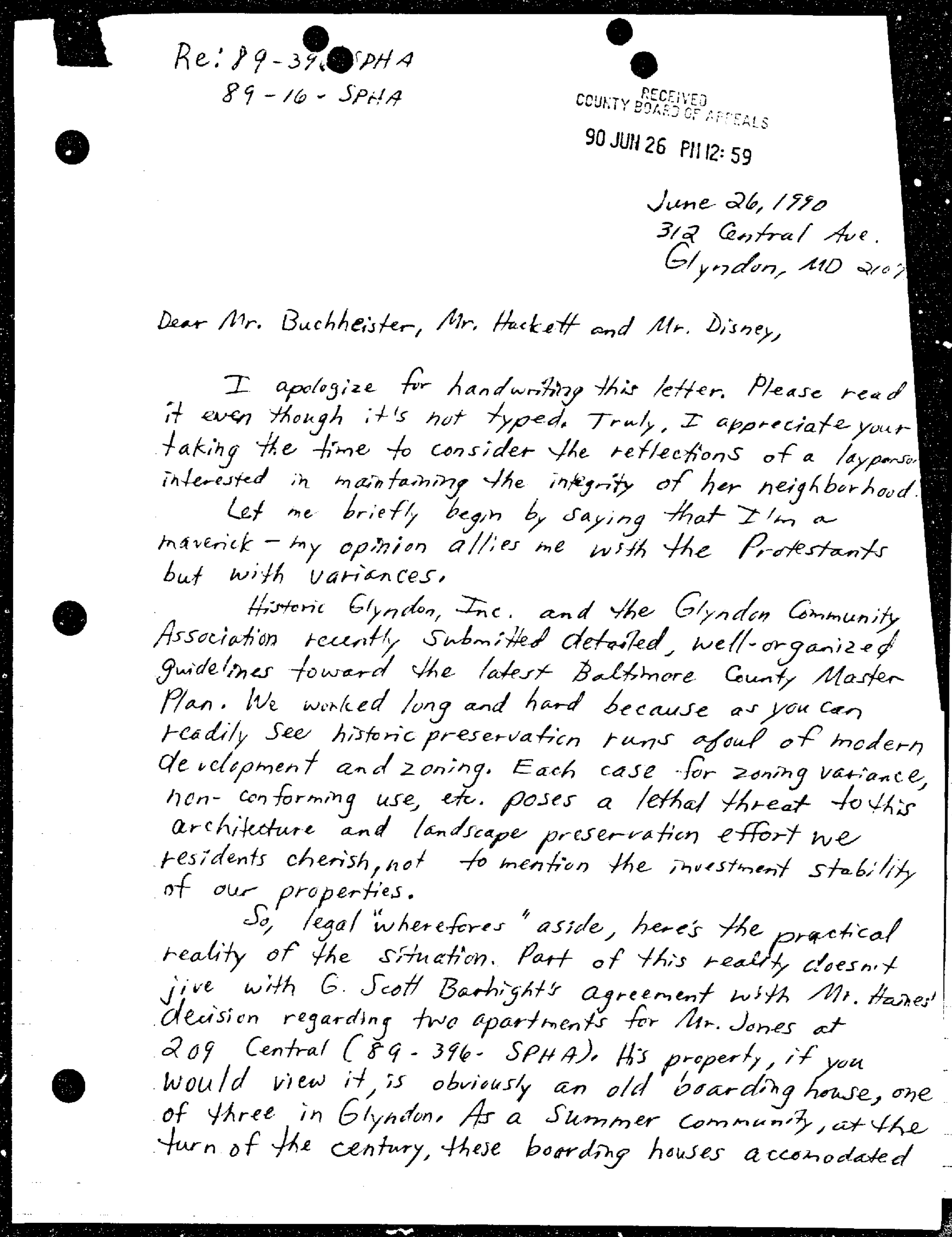
/s/



CERTIFICATE OF MAILING:

Eleanor J. Lipsitz, Esquire
(100 Church Lane, Baltimore,
Maryland 21208)

Charles Heyman, Esquire
(Kaplan, Heyman, Greenberg, Engleman &
Belgrad, Tenth Floor, Sun Life Building,
203 S. Charles Street, Baltimore, MD 21201)



Re: 89-39[illegible]SPHA
89-16-SPHA

RECEIVED
COUNTY BOARD OF APPEALS
90 JUN 26 PM 12:59

June 26, 1990
312 Central Ave.
Glyndon, MD 2107

Dear Mr. Buchheister, Mr. Hackett and Mr. Disney,

I apologize for handwriting this letter. Please read it even though it's not typed. Truly, I appreciate your taking the time to consider the reflections of a layperso interested in maintaining the integrity of her neighborhood.

Let me briefly begin by saying that I'm a maverick - my opinion allies me with the Protestants but with variances.

Historic Glyndon, Inc. and the Glyndon Community Association recently submitted detailed, well-organized guidelines toward the latest Baltimore County Master Plan. We worked long and hard because as you can readily see historic preservation runs afoul of modern development and zoning. Each case for zoning variance, non-conforming use, etc. poses a lethal threat to this architecture and landscape preservation effort we residents cherish, not to mention the investment stability of our properties.

So, legal "wherefores" aside, here's the practical reality of the situation. Part of this reality doesn't jive with G. Scott Barhight's agreement with Mr. Haines' decision regarding two apartments for Mr. Jones at 209 Central (89-396-SPHA). His property, if you would view it, is obviously an old boarding house, one of three in Glyndon. As a Summer community, at the turn of the century, these boarding houses accomodated

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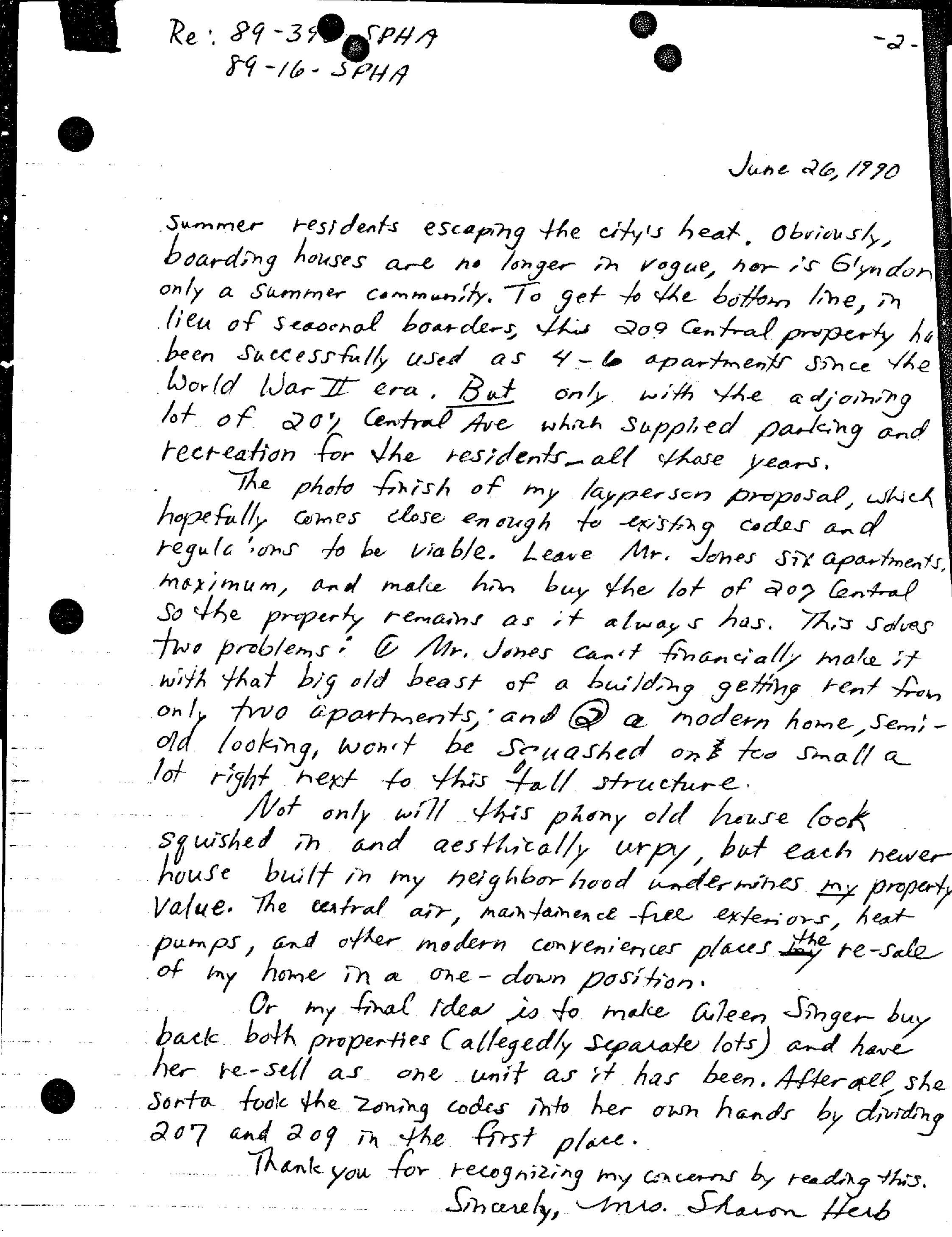


Re: 89-39[illegible] SPHA
89-16-SPHA

-2-

June 26, 1990

summer residents escaping the city's heat. Obviously, boarding houses are no longer in vogue, nor is Glyndon only a summer community. To get to the bottom line, in lieu of seasonal boarders, this 209 Central property ha been successfully used as 4-6 apartments since the World War II era. But only with the adjoining lot of 207 Central Ave which supplied parking and recreation for the residents - all those years.

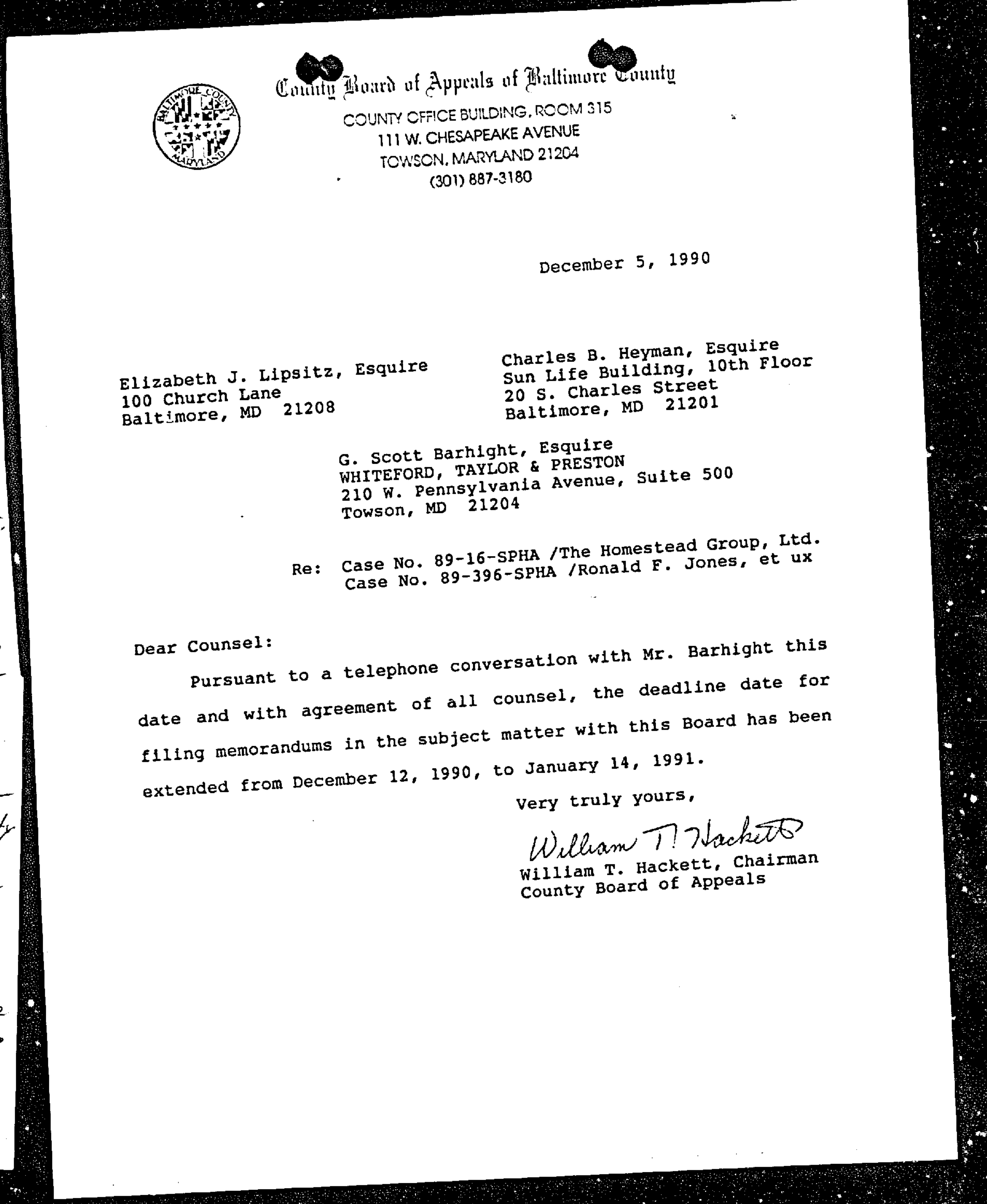
The photo finish of my layperson proposal, which hopefully comes close enough to existing codes and regulations to be viable. Leave Mr. Jones six apartments, maximum, and make him buy the lot of 207 Central so the property remains as it always has. This solves two problems: ① Mr. Jones can't financially make it with that big old beast of a building getting rent from only two apartments; and ② a modern home, semi-old looking, won't be squashed on too small a lot right next to this tall structure.

Not only will this phony old house look squished in and aesthtically ugly, but each newer house built in my neighborhood undermines my property value. The central air, maintenance-free exteriors, heat pumps, and other modern conveniences places ~~my~~ the re-sale of my home in a one-down position.

Or my final idea is to make Aileen Singer buy back both properties (allegedly separate lots) and have her re-sell as one unit as it has been. After all, she sorta took the zoning codes into her own hands by dividing 207 and 209 in the first place.

Thank you for recognizing my concerns by reading this.

Sincerely, Mrs. Sharon Herb



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

December 5, 1990

Elizabeth J. Lipsitz, Esquire
100 Church Lane
Baltimore, MD 21208

Charles B. Heyman, Esquire
Sun Life Building, 10th Floor
20 S. Charles Street
Baltimore, MD 21201

G. Scott Barhight, Esquire
WHITEFORD, TAYLOR & PRESTON
210 W. Pennsylvania Avenue, Suite 500
Towson, MD 21204

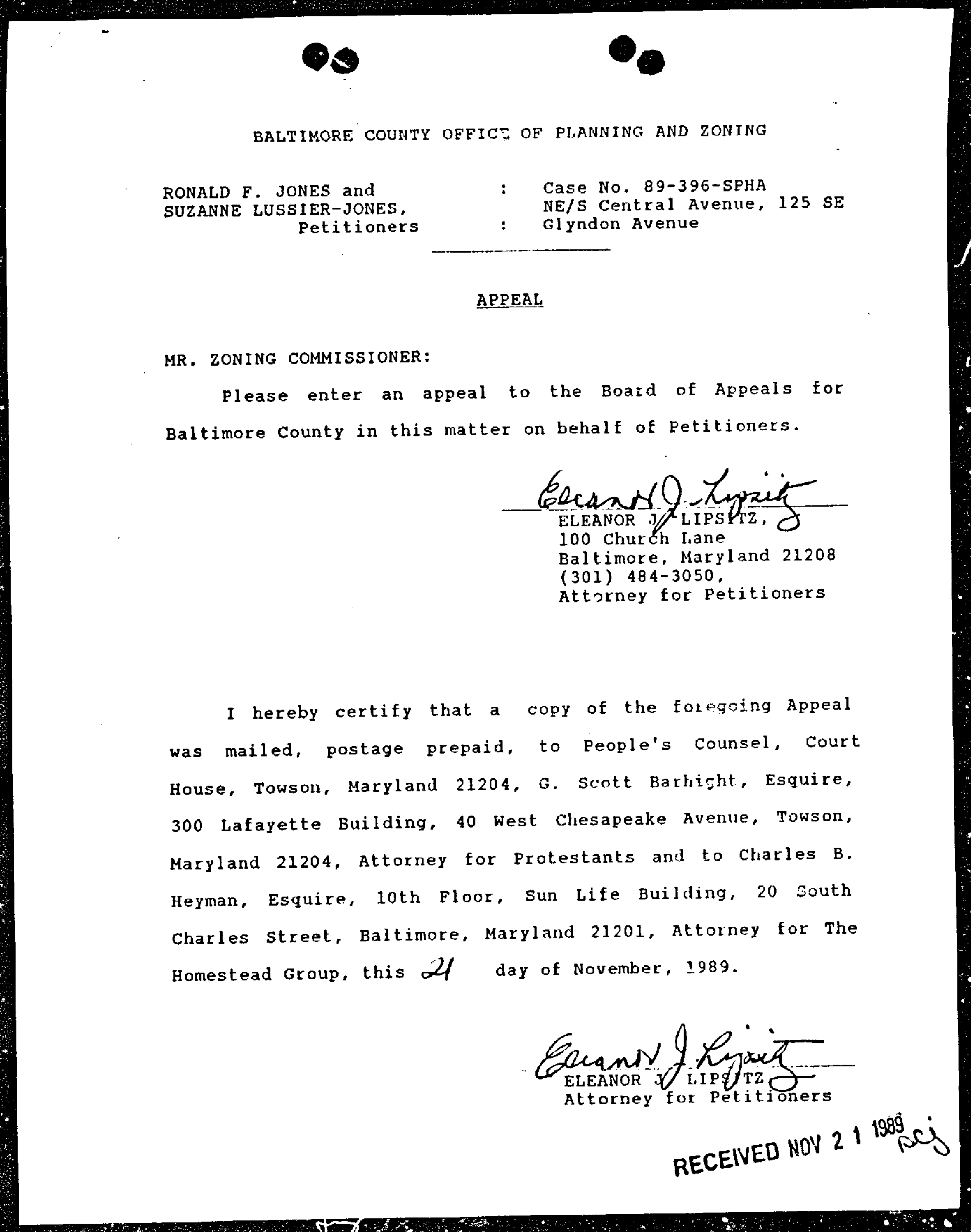
Re: Case No. 89-16-SPHA /The Homestead Group, Ltd.
Case No. 89-396-SPHA /Ronald F. Jones, et ux

Dear Counsel:

Pursuant to a telephone conversation with Mr. Barhight this date and with agreement of all counsel, the deadline date for filing memorandums in the subject matter with this Board has been extended from December 12, 1990, to January 14, 1991.

Very truly yours,

William T. Hackett
William T. Hackett, Chairman
County Board of Appeals



BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

RONALD F. JONES and
SUZANNE LUSSIER-JONES,
Petitioners

Case No. 89-396-SPHA
NE/S Central Avenue, 125 SE
Glyndon Avenue

APPEAL

MR. ZONING COMMISSIONER:

Please enter an appeal to the Board of Appeals for Baltimore County in this matter on behalf of Petitioners.

Eleanor J. Lipsitz
ELEANOR J. LIPSITZ,
100 Church Lane
Baltimore, Maryland 21208
(301) 484-3050,
Attorney for Petitioners

I hereby certify that a copy of the foregoing Appeal was mailed, postage prepaid, to People's Counsel, Court House, Towson, Maryland 21204, G. Scott Barhight, Esquire, 300 Lafayette Building, 40 West Chesapeake Avenue, Towson, Maryland 21204, Attorney for Protestants and to Charles B. Heyman, Esquire, 10th Floor, Sun Life Building, 20 South Charles Street, Baltimore, Maryland 21201, Attorney for The Homestead Group, this 21 day of November, 1989.

Eleanor J. Lipsitz
ELEANOR J. LIPSITZ
Attorney for Petitioners

RECEIVED NOV 21 1989 rcj

IN RE: PETITION FOR SPECIAL HEARING AND ZONING VARIANCES 207 Central Avenue	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 89-16-SPHA
The Homestead Group, Inc. Petitioner	*	

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

IN RE: PETITION FOR SPECIAL HEARING AND ZONING VARIANCES 209 Central Avenue	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 89-396-SPHA
Ronald F. Jones and Suzanne Lussier-Jones Petitioners	*	

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

PROTESTANTS' MEMORANDUM OF LAW

The Protestants, Nevett Steele, Jr., et al. (the "Protestants"), by their attorneys, G. Scott Barhight and Whiteford, Taylor & Preston, respectfully submit this memorandum regarding the above-captioned matters. This memorandum will set forth the Protestants' position as to each petition filed in both cases.

STATEMENT OF THE CASE

The Petitioners, the Homestead Group, Inc. ("Homestead") (Case No. 89-16-SPHA) and Ronald F. Jones and Suzanne Lussier-Jones (the "Joneses") (Case No. 89-396-SPHA) filed their respective Petitions before the Zoning Commissioner of Baltimore County. The cases were heard at the same time as companion cases. By Orders dated October 24, 1989, the Zoning

Commissioner denied the Petitions for Special Hearing and Variances in Case No. 89-396-SPHA and the Zoning Commissioner granted and denied portions of the Petition for Special Hearing and granted the Zoning Variance in Case No. 89-16-SPHA.

The Protestants appealed the Zoning Commissioner's Order in Case No. 89-16-SPHA to the County Board of Appeals of Baltimore County (the "Board"). The Joneses appealed the Zoning Commissioner's Order in Case No. 89-396 to the Board. After beginning its hearings on both cases in a consolidated fashion, the Board bifurcated the cases, hearing Case No. 89-396 first. The Board requested that the parties file Memorandum to support their respective positions.

A. CASE NO. 89-396, 209 CENTRAL AVENUE

1. Petition for Special Hearing.

The Petitioners in Case No. 89-396-SPHA, the Joneses, have requested that the Zoning Commissioner approve a multifamily apartment dwelling and lot at 209 Central Avenue as a legal nonconforming use for six apartment units. In the alternative, the Joneses' Petition requests that you approve the existing improvements and lot pursuant to the spirit and intent of the Baltimore County Zoning Regulations ("BCZR") that apply to the conversion of dwellings for apartment uses. For the purposes of this memorandum, it is assumed that the unnamed section relating to conversion of dwellings is Section 402.

(a) Nonconforming Use.

The Joneses seek an order approving the existing dwelling on the lot at 209 Central Avenue as a legal nonconforming use for six apartment units. The primary issues in determining whether a legal nonconforming use exists in the instant case are as follows:

(1) Whether Petitioner has met its burden of proof that a six unit apartment has been in existence since January 2, 1945; and

(2) Whether the relocation of the parking lot and driveway previously situated on lots 207 and 209 and the proposed erection of a single family dwelling on lot 207 has so changed the asserted nonconforming use such that it has been terminated.

The burden of proving the existence of a legal nonconforming use is on the Joneses, who lay claim to the use. Calhoun v. County Board of Appeals of Baltimore County, 262 Md. 265, 277 A.2d 589 (1971). By definition, nonconforming uses are inherently incompatible with uses permitted in a zone. Boyce v. Sembly, 25 Md. App. 43, 334 A.2d 137 (1975). Nonconforming uses pose a threat to the success of zoning, limit the effectiveness of land use controls, imperil the success of community plans and injure property values. The purpose of restrictions on nonconforming uses is to achieve the ultimate elimination of such uses through economic attrition and physical obsolescence. County Council of Prince George's County v. E.L. Gardner, Inc., 293 Md. 259, 443 A.2d 114 (1982). Therefore, nonconforming uses

should not be perpetuated any longer than necessary. Green v. Garrett, 192 Md. 52, 66 A.2d 412 (1949). Further, the spirit and intent of Zoning Regulations is to restrict rather than increase nonconforming uses. Phillips v. Zoning Commissioner, 225 Md. 102, 169 A.2d 410 (1961). As the above cases clearly indicate, the stated public policy is to severely limit nonconforming uses and bring about their eventual elimination.

The Baltimore County Zoning Regulations in Section 104 sets forth the requirements for nonconforming uses. Section 104.1 sets forth in pertinent part:

> A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations; provided that upon any change from such nonconforming use to any other use whatsoever, . . . , the right to continue or resume such nonconforming use shall terminate. No nonconforming building or structure and no nonconforming use of a building, structure, or parcel of land shall hereafter be extended more than 25% of the ground floor area of buildings so used.

In McKemy v. Baltimore County, 39 Md. App. 257, 385 A.2d 96 (1978), the Court of Appeals set forth the following factors to be considered in determining whether a current activity is within the scope of a nonconforming use:

(1) To what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use;

(2) Is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature and kind;

(3) Does the current use have a substantially different effect upon the neighborhood;

(4) Is the current use a "drastic enlargement or extension" of the original nonconforming use.

An intensification of a nonconforming use is generally permissible so long as the nature and character of the use is unchanged and substantially the same facilities are used. Phillips v. Zoning Commissioner, supra. However, an opportunity to intensify a nonconforming use does not confer on a land owner the right to subsequently change or add to that use a new and different one amounting to a drastic enlargement or extension of the prior existing use. Jahnigen v. Staley, 245 Md. 130, 225 A.2d 277 (1967). The general rule is that where there is a change from one nonconforming use to a new and different use, there is an extension of the use. Whereas, the more frequent present use of the property for the same or similar use is a lawful intensification and not an extension. Feldstein v. Lavale Zoning Board, 246 Md. 204, 227 A.2d 731 (1967).

In Odell v. City of Eagen, 348 N.W.2d 792 (Minn. App. 1984), the Court of Appeals of Minnesota reviewed a decision by the Eagen City Council denying appellant's application for preliminary plat approval based on the existence of a nonconforming garage. The City Council refused to approve the subdivision of a lot on which a nonconforming garage was situated, saying that the building in question "is currently a nonconforming use and to authorize a split of the lot . . . would cause an expansion of a nonconforming use . . . ." Id. at 796.

The Court disagreed with the definition of the garage as a nonconforming use. Instead, based upon the distinctions made in the zoning ordinance between nonconforming structures and uses, the Court determined that the garage was a nonconforming structure and that the failure of the garage to comply with bulk requirements was not a reasonable basis on which to deny the appellant's preliminary plat application. However, the City Council's reasoning does stand for the proposition that subdividing a parcel would cause an expansion rather than an intensification of a nonconforming use.

In Young v. Board of Zoning Appeals, 307 N.Y.S.2d 895 (1970), the Supreme Court of Nassau County reviewed an owner's right to sell off an unimproved portion of a plot of land on which a nonconforming structure was situated. The denial of a variance from rear yard and side wall requirements so that a building may be constructed on unimproved land was held to be improper. The Court reasoned that reduction of the size of the plot on which stands a building nonconforming as to height, setback and the like, does not affect the right to continue the nonconformance, so long as the size of the reduced plot is conforming. In the Young case, unimproved land which did not serve the nonconforming use was permitted to be parcelled off from a plot upon which a nonconforming building was situated, so long as the bulk regulations were met.

In Muse v. Zoning Hearing Board, 415 A.2d 1255 (Pa. Cmwlth., 1980), the Court approved a zoning board's expansion of a country club through the addition of tennis courts. In

Pennsylvania law, structures may be erected on open land previously devoted to a nonconforming use, as a matter of right. The erection of structures upon land not previously so used, may only be accomplished by way of variance. In the Muse case, the Zoning Board approved the expansion of the country club without a variance.

In reviewing the Board's approval, the Muse Court indicated that the threshold question is whether the land on which the country club proposes to locate the tennis courts has been devoted to the country club's nonconforming use. After reviewing the evidence introduced regarding the use of the land in question, the Court agreed that the land upon which the tennis courts were to be erected had been devoted to the country club's nonconforming use. Since it had been properly devoted, the court agreed that the construction of the tennis courts was a natural expansion of the club's activity and should therefore be permitted.

In the instant case, there are a number of undisputed facts which can be identified. Prior to the adoption of Zoning Regulations in Baltimore County, lots 207 and 209 were subdivided pursuant to a recorded plat. Lots 207 and 209 have always been conveyed as one tract, held under the same ownership and transferred by the same deed. Sometime prior to January 2, 1945, a structure was erected on lots 207 and 209. Since 1947, an apartment house consisting of at least four apartment units was

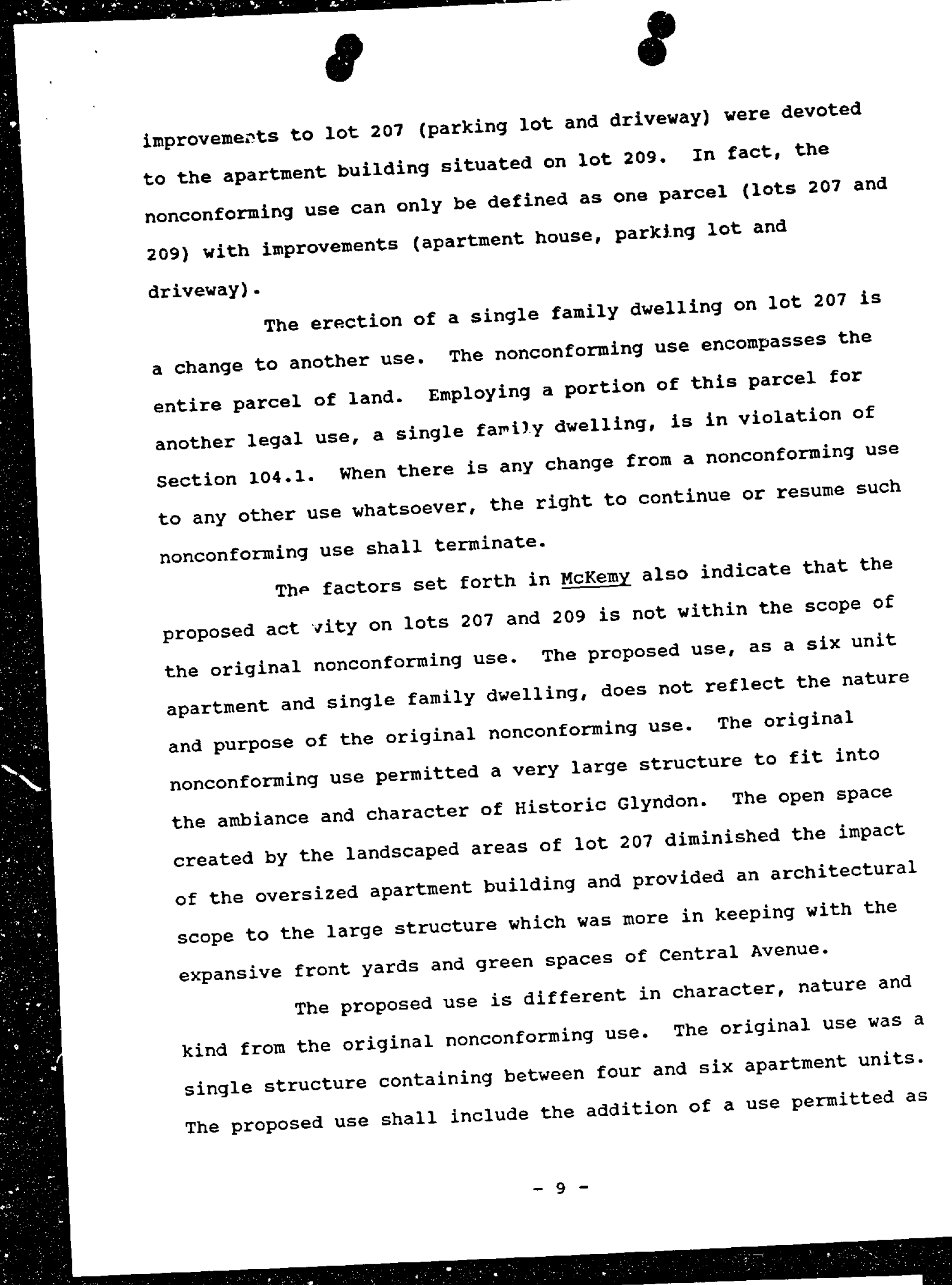
maintained on lots 207 and 209. Since January 2, 1945 through 1988, a driveway and parking lot serving the building situated on lot 209 has been maintained on lot 207.

The Petitioner's witnesses failed to provide sufficient evidence to support the existence of a nonconforming six unit apartment prior to January 2, 1945. Mrs. Ensor, who had only a passing familiarity with the apartment house testified that there were "at least four" units on the premises.

Mrs. Susemihl, who owned lots 207 and 209 during the 1940's could not conclusively testify that a six unit apartment was in existence by January 2, 1945. In fact, she stated that the conversion into the apartment units was not completed until 1946 or 1947. Mrs. Susemihl also stated that the driveway and parking area for the apartment were situated on lot 207.

The evidence presented before the Board does not conclusively show that an apartment building with six units existed on January 2, 1945. The most likely scenario given the facts presented, is that the house was converted to an apartment house in 1946 or 1947. This conversion was not consistent with the Baltimore County Zoning Regulations and effectively created an illegal apartment use. Since this use is illegal, the Petitioners' request for the Board to determine that a legal nonconforming use exists should be denied.

Assuming, arguendo, that the Board finds that a legal nonconforming use existed as of January 2, 1945, this use must be defined. Given the undisputed testimony, it is clear that any nonconforming apartment use included lots 207 and 209. The

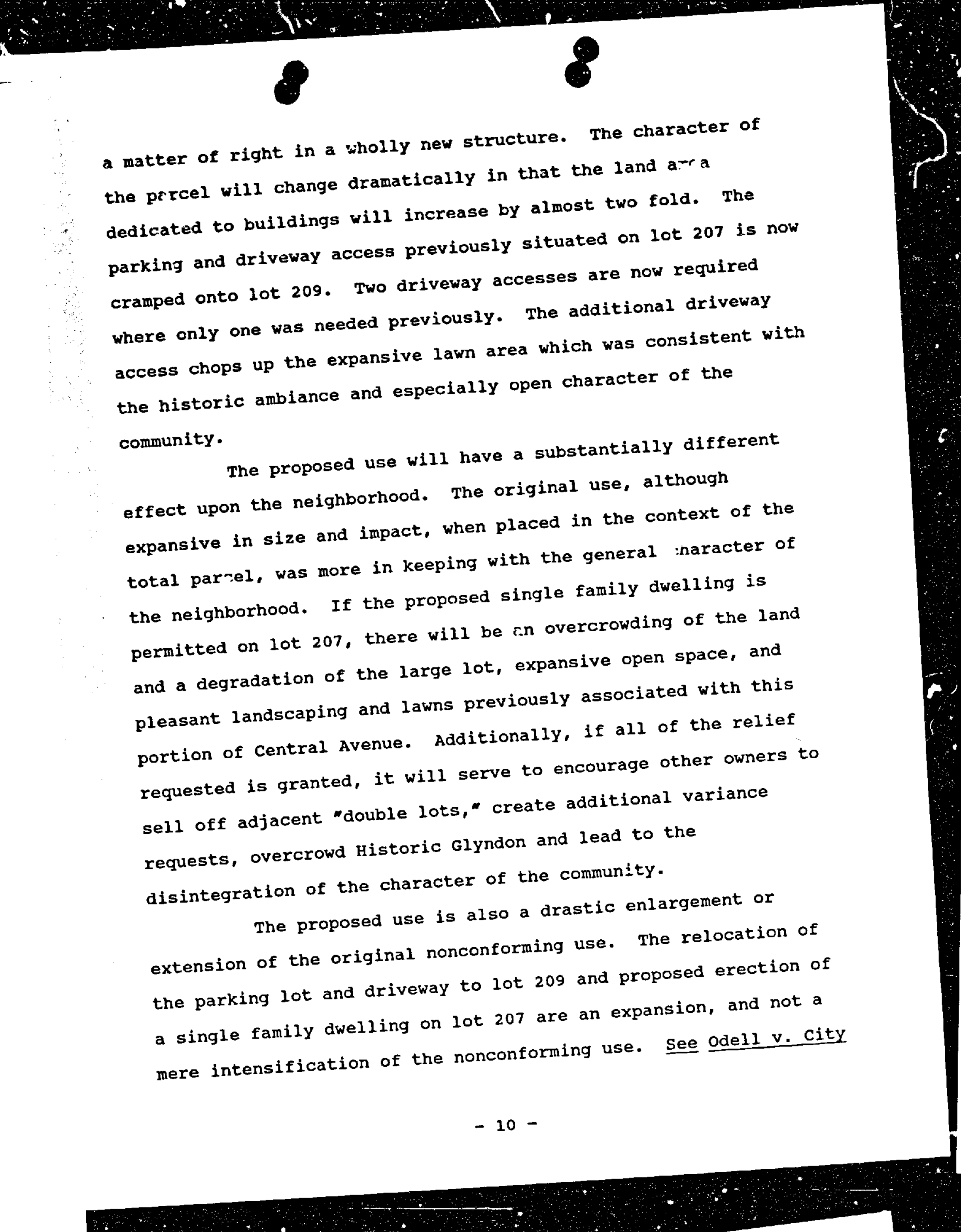


improvements to lot 207 (parking lot and driveway) were devoted to the apartment building situated on lot 209. In fact, the nonconforming use can only be defined as one parcel (lots 207 and 209) with improvements (apartment house, parking lot and driveway).

The erection of a single family dwelling on lot 207 is a change to another use. The nonconforming use encompasses the entire parcel of land. Employing a portion of this parcel for another legal use, a single family dwelling, is in violation of Section 104.1. When there is any change from a nonconforming use to any other use whatsoever, the right to continue or resume such nonconforming use shall terminate.

The factors set forth in McKemy also indicate that the proposed activity on lots 207 and 209 is not within the scope of the original nonconforming use. The proposed use, as a six unit apartment and single family dwelling, does not reflect the nature and purpose of the original nonconforming use. The original nonconforming use permitted a very large structure to fit into the ambiance and character of Historic Glyndon. The open space created by the landscaped areas of lot 207 diminished the impact of the oversized apartment building and provided an architectural scope to the large structure which was more in keeping with the expansive front yards and green spaces of Central Avenue.

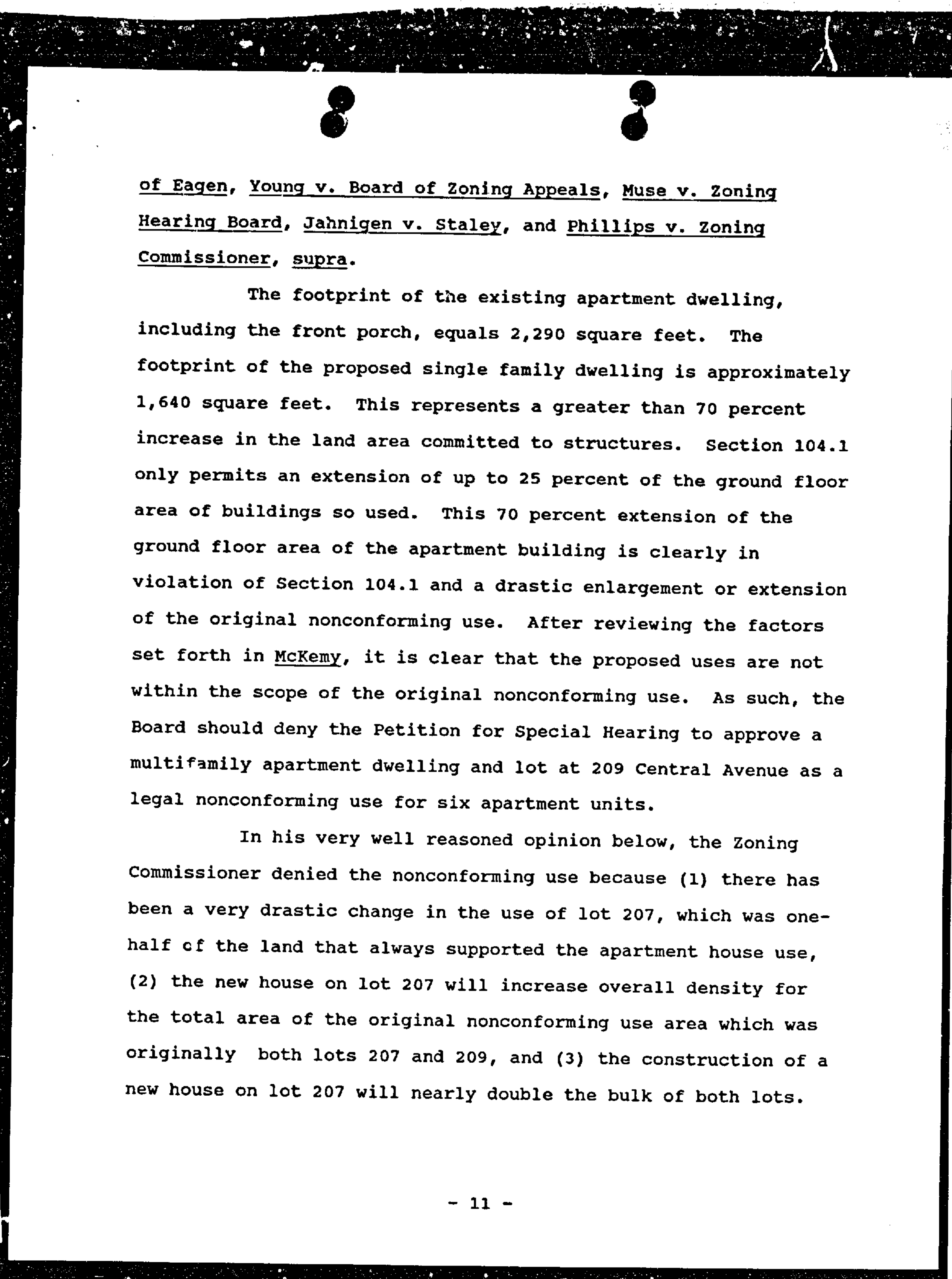
The proposed use is different in character, nature and kind from the original nonconforming use. The original use was a single structure containing between four and six apartment units. The proposed use shall include the addition of a use permitted as



a matter of right in a wholly new structure. The character of the parcel will change dramatically in that the land area dedicated to buildings will increase by almost two fold. The parking and driveway access previously situated on lot 207 is now cramped onto lot 209. Two driveway accesses are now required where only one was needed previously. The additional driveway access chops up the expansive lawn area which was consistent with the historic ambiance and especially open character of the community.

The proposed use will have a substantially different effect upon the neighborhood. The original use, although expansive in size and impact, when placed in the context of the total parcel, was more in keeping with the general character of the neighborhood. If the proposed single family dwelling is permitted on lot 207, there will be an overcrowding of the land and a degradation of the large lot, expansive open space, and pleasant landscaping and lawns previously associated with this portion of Central Avenue. Additionally, if all of the relief requested is granted, it will serve to encourage other owners to sell off adjacent "double lots," create additional variance requests, overcrowd Historic Glyndon and lead to the disintegration of the character of the community.

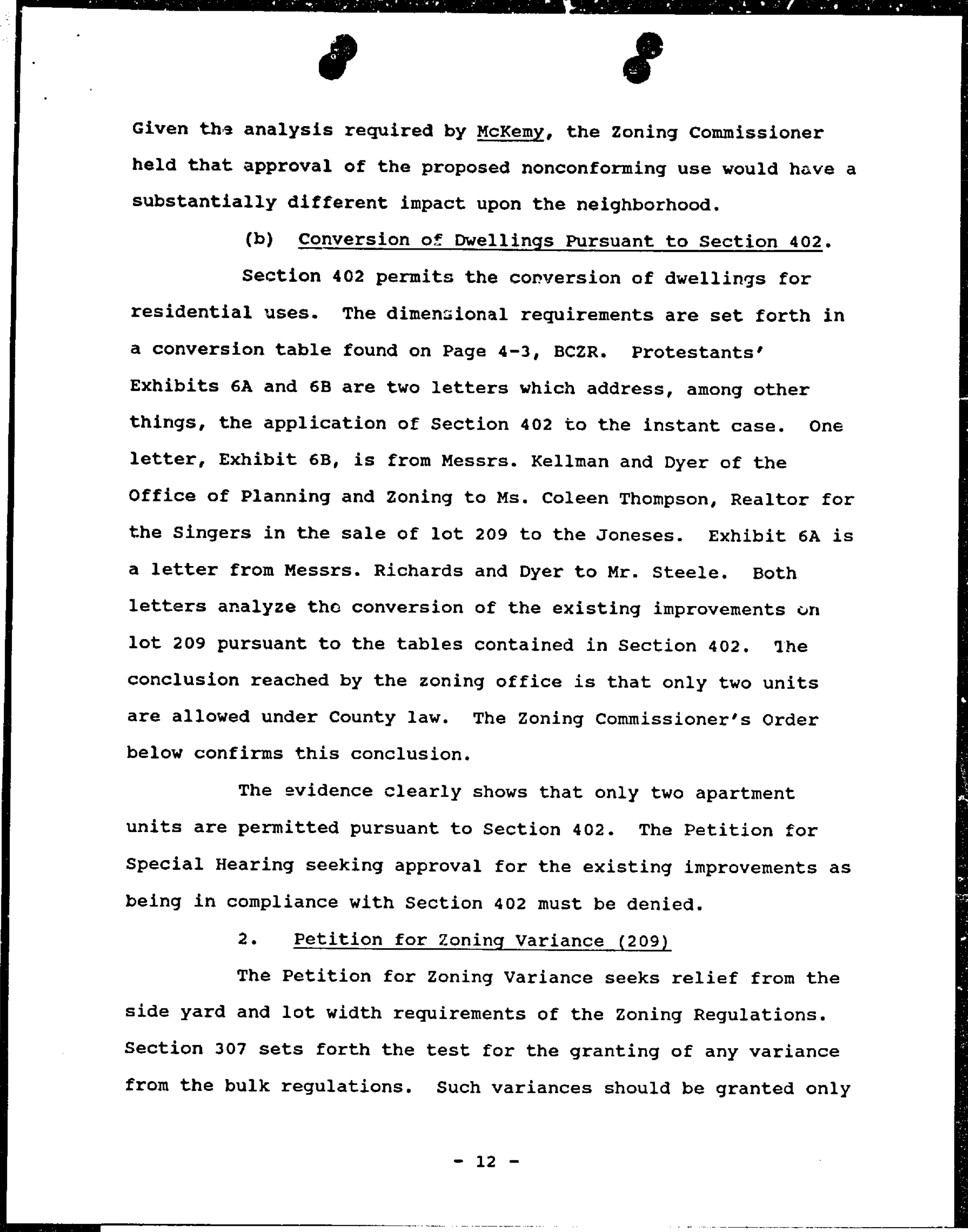
The proposed use is also a drastic enlargement or extension of the original nonconforming use. The relocation of the parking lot and driveway to lot 209 and proposed erection of a single family dwelling on lot 207 are an expansion, and not a mere intensification of the nonconforming use. See Odell v. City



of Eagen, Young v. Board of Zoning Appeals, Muse v. Zoning Hearing Board, Jahnigen v. Staley, and Phillips v. Zoning Commissioner, supra.

The footprint of the existing apartment dwelling, including the front porch, equals 2,290 square feet. The footprint of the proposed single family dwelling is approximately 1,640 square feet. This represents a greater than 70 percent increase in the land area committed to structures. Section 104.1 only permits an extension of up to 25 percent of the ground floor area of buildings so used. This 70 percent extension of the ground floor area of the apartment building is clearly in violation of Section 104.1 and a drastic enlargement or extension of the original nonconforming use. After reviewing the factors set forth in McKemy, it is clear that the proposed uses are not within the scope of the original nonconforming use. As such, the Board should deny the Petition for Special Hearing to approve a multifamily apartment dwelling and lot at 209 Central Avenue as a legal nonconforming use for six apartment units.

In his very well reasoned opinion below, the Zoning Commissioner denied the nonconforming use because (1) there has been a very drastic change in the use of lot 207, which was one-half of the land that always supported the apartment house use, (2) the new house on lot 207 will increase overall density for the total area of the original nonconforming use area which was originally both lots 207 and 209, and (3) the construction of a new house on lot 207 will nearly double the bulk of both lots.



Given the analysis required by McKemy, the Zoning Commissioner held that approval of the proposed nonconforming use would have a substantially different impact upon the neighborhood.

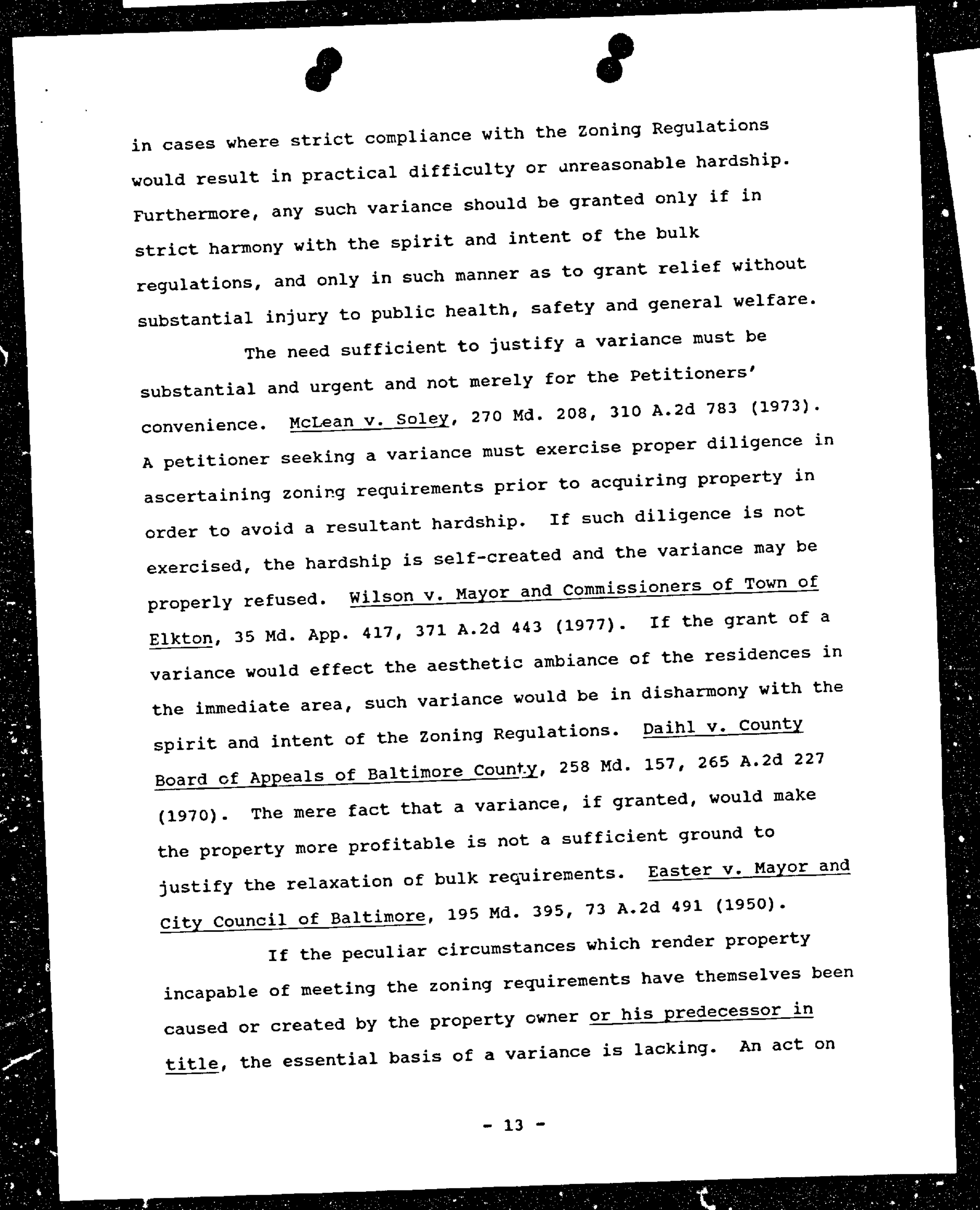
(b) Conversion of Dwellings Pursuant to Section 402.

Section 402 permits the conversion of dwellings for residential uses. The dimensional requirements are set forth in a conversion table found on Page 4-3, BCZR. Protestants' Exhibits 6A and 6B are two letters which address, among other things, the application of Section 402 to the instant case. One letter, Exhibit 6B, is from Messrs. Kellman and Dyer of the Office of Planning and Zoning to Ms. Coleen Thompson, Realtor for the Singers in the sale of lot 209 to the Joneses. Exhibit 6A is a letter from Messrs. Richards and Dyer to Mr. Steele. Both letters analyze the conversion of the existing improvements on lot 209 pursuant to the tables contained in Section 402. The conclusion reached by the zoning office is that only two units are allowed under County law. The Zoning Commissioner's Order below confirms this conclusion.

The evidence clearly shows that only two apartment units are permitted pursuant to Section 402. The Petition for Special Hearing seeking approval for the existing improvements as being in compliance with Section 402 must be denied.

2. Petition for Zoning Variance (209)

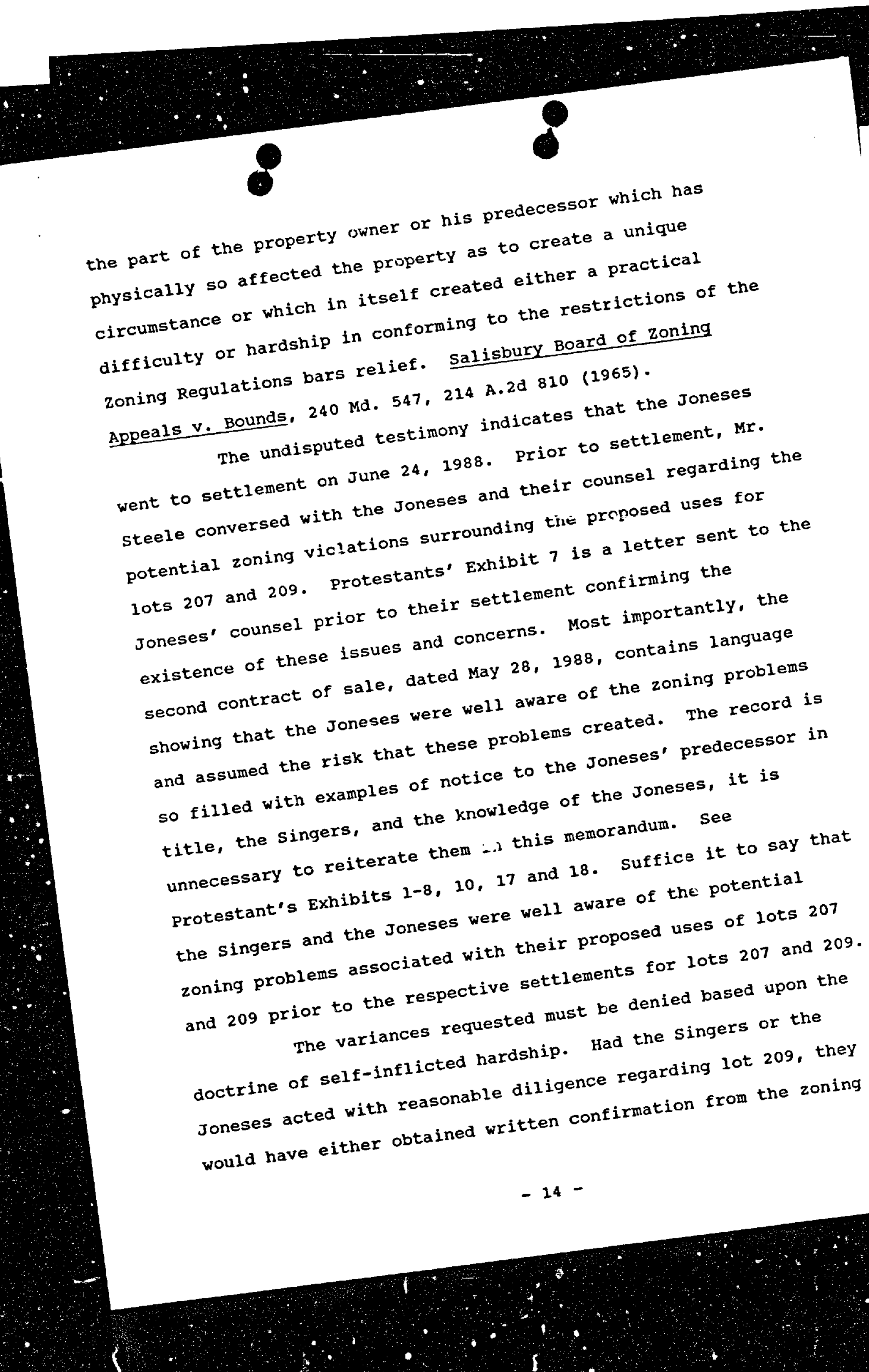
The Petition for Zoning Variance seeks relief from the side yard and lot width requirements of the Zoning Regulations. Section 307 sets forth the test for the granting of any variance from the bulk regulations. Such variances should be granted only



in cases where strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship. Furthermore, any such variance should be granted only if in strict harmony with the spirit and intent of the bulk regulations, and only in such manner as to grant relief without substantial injury to public health, safety and general welfare.

The need sufficient to justify a variance must be substantial and urgent and not merely for the Petitioners' convenience. McLean v. Soley, 270 Md. 208, 310 A.2d 783 (1973). A petitioner seeking a variance must exercise proper diligence in ascertaining zoning requirements prior to acquiring property in order to avoid a resultant hardship. If such diligence is not exercised, the hardship is self-created and the variance may be properly refused. Wilson v. Mayor and Commissioners of Town of Elkton, 35 Md. App. 417, 371 A.2d 443 (1977). If the grant of a variance would effect the aesthetic ambiance of the residences in the immediate area, such variance would be in disharmony with the spirit and intent of the Zoning Regulations. Daihl v. County Board of Appeals of Baltimore County, 258 Md. 157, 265 A.2d 227 (1970). The mere fact that a variance, if granted, would make the property more profitable is not a sufficient ground to justify the relaxation of bulk requirements. Easter v. Mayor and City Council of Baltimore, 195 Md. 395, 73 A.2d 491 (1950).

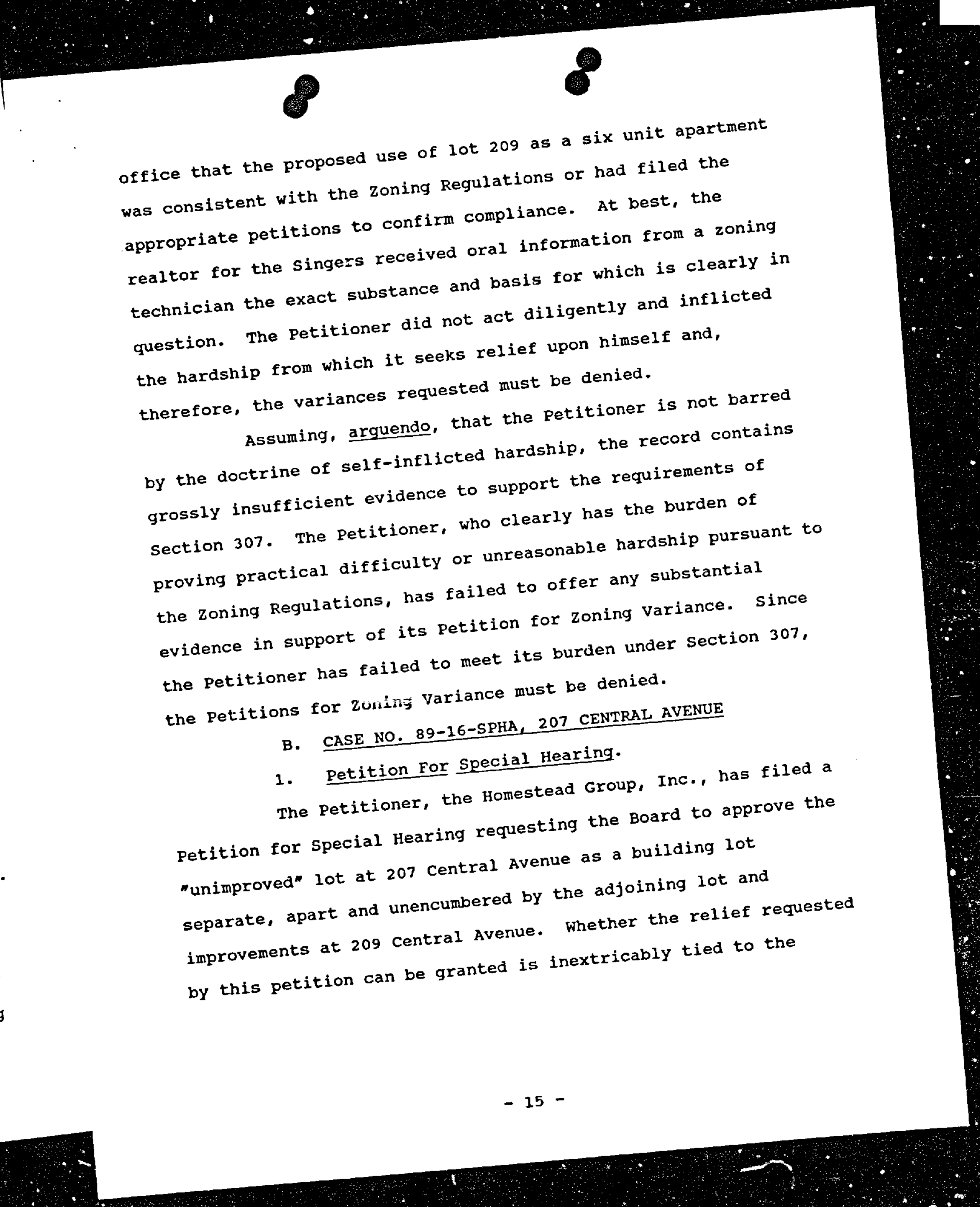
If the peculiar circumstances which render property incapable of meeting the zoning requirements have themselves been caused or created by the property owner or his predecessor in title, the essential basis of a variance is lacking. An act on



the part of the property owner or his predecessor which has physically so affected the property as to create a unique circumstance or which in itself created either a practical difficulty or hardship in conforming to the restrictions of the Zoning Regulations bars relief. Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A.2d 810 (1965).

The undisputed testimony indicates that the Joneses went to settlement on June 24, 1988. Prior to settlement, Mr. Steele conversed with the Joneses and their counsel regarding the potential zoning violations surrounding the proposed uses for lots 207 and 209. Protestants' Exhibit 7 is a letter sent to the Joneses' counsel prior to their settlement confirming the existence of these issues and concerns. Most importantly, the second contract of sale, dated May 28, 1988, contains language showing that the Joneses were well aware of the zoning problems and assumed the risk that these problems created. The record is so filled with examples of notice to the Joneses' predecessor in title, the Singers, and the knowledge of the Joneses, it is unnecessary to reiterate them in this memorandum. See Protestant's Exhibits 1-8, 10, 17 and 18. Suffice it to say that the Singers and the Joneses were well aware of the potential zoning problems associated with their proposed uses of lots 207 and 209 prior to the respective settlements for lots 207 and 209.

The variances requested must be denied based upon the doctrine of self-inflicted hardship. Had the Singers or the Joneses acted with reasonable diligence regarding lot 209, they would have either obtained written confirmation from the zoning



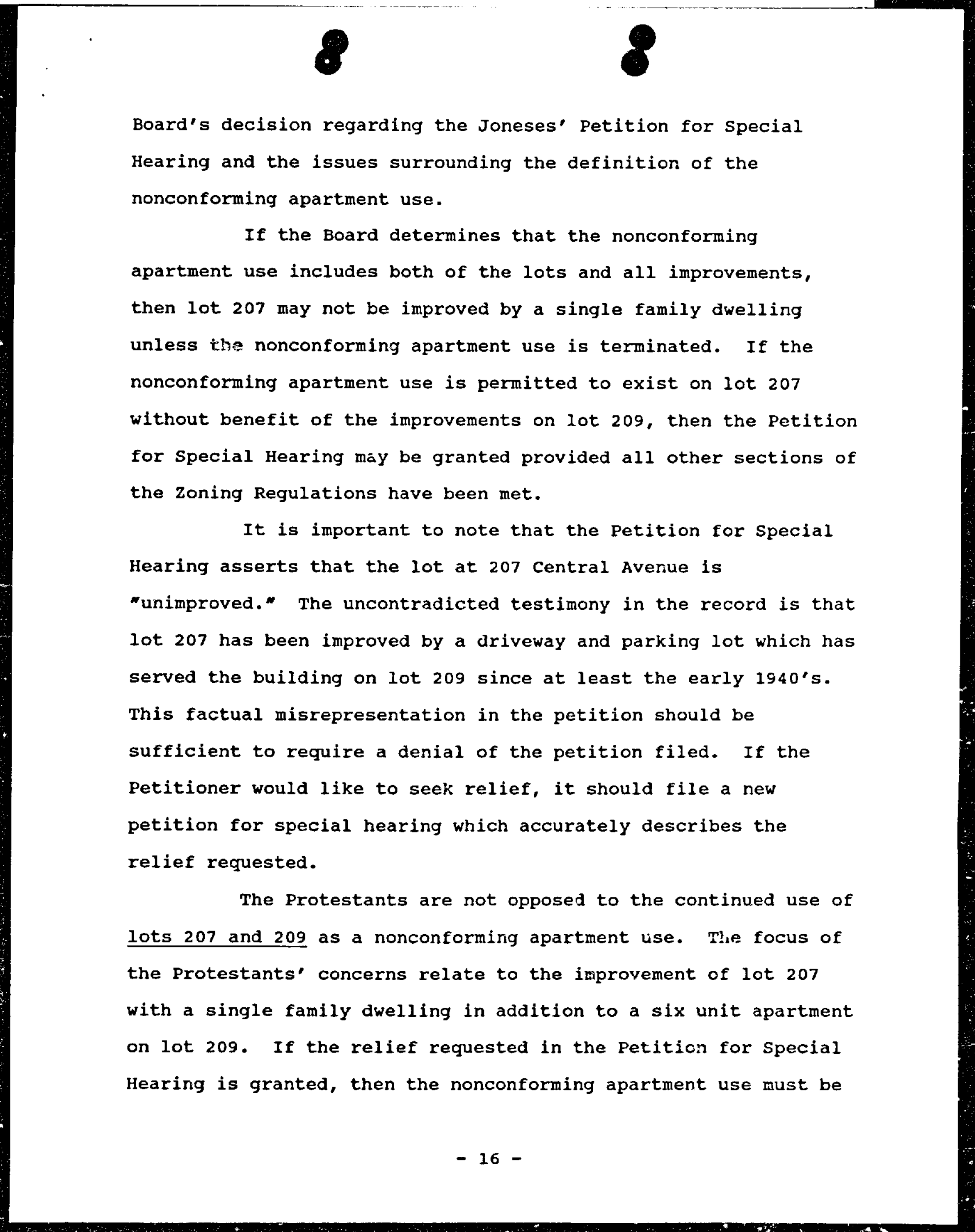
office that the proposed use of lot 209 as a six unit apartment was consistent with the Zoning Regulations or had filed the appropriate petitions to confirm compliance. At best, the realtor for the Singers received oral information from a zoning technician the exact substance and basis for which is clearly in question. The Petitioner did not act diligently and inflicted the hardship from which it seeks relief upon himself and, therefore, the variances requested must be denied.

Assuming, arguendo, that the Petitioner is not barred by the doctrine of self-inflicted hardship, the record contains grossly insufficient evidence to support the requirements of Section 307. The Petitioner, who clearly has the burden of proving practical difficulty or unreasonable hardship pursuant to the Zoning Regulations, has failed to offer any substantial evidence in support of its Petition for Zoning Variance. Since the Petitioner has failed to meet its burden under Section 307, the Petitions for Zoning Variance must be denied.

B. CASE NO. 89-16-SPHA, 207 CENTRAL AVENUE

1. Petition For Special Hearing.

The Petitioner, the Homestead Group, Inc., has filed a Petition for Special Hearing requesting the Board to approve the "unimproved" lot at 207 Central Avenue as a building lot separate, apart and unencumbered by the adjoining lot and improvements at 209 Central Avenue. Whether the relief requested by this petition can be granted is inextricably tied to the

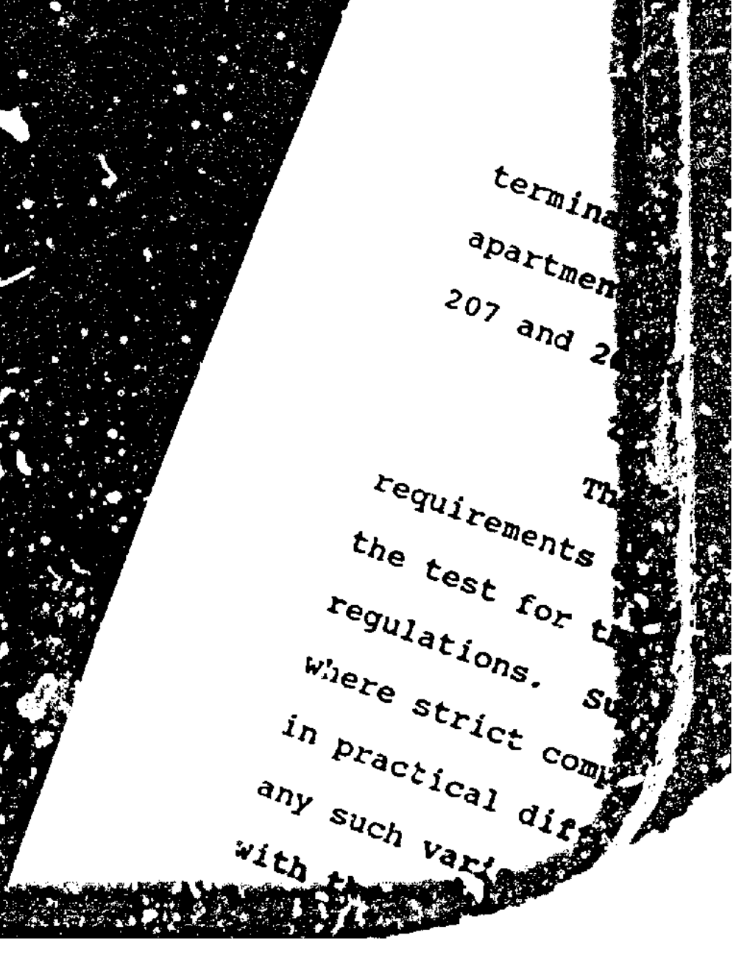


Board's decision regarding the Joneses' Petition for Special Hearing and the issues surrounding the definition of the nonconforming apartment use.

If the Board determines that the nonconforming apartment use includes both of the lots and all improvements, then lot 207 may not be improved by a single family dwelling unless the nonconforming apartment use is terminated. If the nonconforming apartment use is permitted to exist on lot 207 without benefit of the improvements on lot 209, then the Petition for Special Hearing may be granted provided all other sections of the Zoning Regulations have been met.

It is important to note that the Petition for Special Hearing asserts that the lot at 207 Central Avenue is "unimproved." The uncontradicted testimony in the record is that lot 207 has been improved by a driveway and parking lot which has served the building on lot 209 since at least the early 1940's. This factual misrepresentation in the petition should be sufficient to require a denial of the petition filed. If the Petitioner would like to seek relief, it should file a new petition for special hearing which accurately describes the relief requested.

The Protestants are not opposed to the continued use of lots 207 and 209 as a nonconforming apartment use. The focus of the Protestants' concerns relate to the improvement of lot 207 with a single family dwelling in addition to a six unit apartment on lot 209. If the relief requested in the Petition for Special Hearing is granted, then the nonconforming apartment use must be



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terminated. If the relief requested is denied, then the apartment building may be able to continue its operation on lots 207 and 209.

2. Petition For Zoning Variance.

The Homestead Group seeks relief from the lot width requirements of the Zoning Regulations. Section 307 sets forth the test for the granting of any variance from the bulk regulations. Such variances should be granted only in cases where strict compliance with the Zoning Regulations would result in practical difficulty or unreasonable hardship. Furthermore, any such variance should be granted only if in strict harmony with the spirit and intent of the bulk regulations, and only in such manner as to grant relief without substantial injury to public health, safety and general welfare.

The need sufficient to justify a variance must be substantial and urgent and not merely for the Petitioners' convenience. McLean v. Soley, 270 Md. 208, 310 A.2d 783 (1973). A petitioner seeking a variance must exercise proper diligence in ascertaining zoning requirements prior to acquiring property in order to avoid a resultant hardship. If such diligence is not exercised, the hardship is self-created and the variance may be properly refused. Wilson v. Mayor and Commissioners of Town of Elkton, 35 Md. App. 417, 371 A.2d 443 (1977). If the grant of a variance would effect the aesthetic ambiance of the residences in the immediate area, such variance would be in disharmony with the spirit and intent of the Zoning Regulations. Daihl v. County Board of Appeals of Baltimore County, 258 Md. 157, 265 A.2d 227

(1970). The mere fact that a variance, if granted, would make the property more profitable is not a sufficient ground to justify the relaxation of bulk requirements. Easter v. Mayor and City Council of Baltimore, 195 Md. 395, 73 A.2d 491 (1950).

If the peculiar circumstances which render property incapable of meeting the zoning requirements have themselves been caused or created by the property owner or his predecessor in title, the essential basis of a variance is lacking. An act on the part of the property owner or his predecessor which has physically so affected the property as to create a unique circumstance or which in itself created either a practical difficulty or hardship in conforming to the restrictions of the Zoning Regulations bars relief. Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A.2d 810 (1965).

The Homestead's petition for variance must fail, due to the doctrine of self-inflicted hardship. The doctrine applies not only because of the actions of the Singers (the Homestead's predecessor in title) but also because of the actions of Homestead.

Homestead settled on lot 207 on March 28, 1988. Prior to settlement, Mr. Steele put Homestead's predecessor on notice that there were numerous zoning problems associated with their proposed actions of selling lots 207 and 209 separately, of constructing a new dwelling on lot 207 and of continuing to operate an apartment house on lot 209. See Protestant's Exhibits

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1-3. The third sentence of the second paragraph of Protestant's Exhibit 1 specifically refers to violating the zoning requirements by constructing a dwelling on lot 207.

Prior to the settlement on March 28, 1988, the Singers had sufficient lands to construct a single family home without the need of any variances. Selling lot 207, without altering the lot lines so that a variance would not be necessary, inflicted the hardship upon themselves,. The lot width required could have been accomplished by resubdividing the property. However, the Singers greed blinded them to the problems and they sold lot 207 as a "buildable" lot, ignoring the lot width requirements and Mr. Steele's warnings.

Notwithstanding the unconscionable actions of the Singers, Homestead also failed to act diligently. Ms. Fox admitted that she failed to independently investigate the need for any variances on lot 207, as she had done on every other lot she has purchased. A simple letter to the Zoning Office would have confirmed that a variance was required for lot width. Ms. Fox claims that had she known a variance was required, she would not have purchased lot 207. However, she did not know a variance was required because she chose to accept the flimsy representations of the Singers and failed to take any steps to confirm the need for a variance on her own.

Ms. Fox's failure to investigate the need for a variance is in violation of the requirements of Wilson v. Elkton. A petitioner seeking a variance must exercise proper diligence in ascertaining zoning requirements prior to acquiring property in

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order to avoid a resultant hardship. Ms. Fox caused her own hardship. If she had contacted the Zoning Office or a competent zoning attorney, as she had done in every other purchase, she would have been warned of the variance. According to Ms. Fox, she would not have then purchased lot 207 and she would be free of the hardship that she has imposed upon herself.

Before the Zoning Commissioner, Homestead claimed relief under Section 304 of the Zoning Regulations. Section 304 permits the erection of a single family dwelling on an undersized lot provided the following requirements are met:

> A. That such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to adoption of these Regulations; and
>
> B. That all other requirements of the height and area regulations are complied with; and
>
> C. That the owner of the lot does not own sufficient adjoining land to conform substantially to the width and area requirements.

The previous debate surrounding this issue concerned bad faith and/or whether adjoining land is available. Section 304 does not apply because sufficient adjoining land was owned by Mrs. Singer prior to the sale to Homestead.

Section 304.C has clearly not been met. The Singers, prior to the sale of lot 207 to the Homestead Group, did own substantial adjoining land which would permit substantial conformance to the width and area requirements of the Zoning Regulations. RM-15 and RM-16 of the Zoning Policy Manual provide guidance as to the requirements of Section 304 and 307. The six

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year rule described in RM-16, when applied to the current case, clearly shows that Section 304.C has not been met. Therefore, a variance is required pursuant to Section 307 from the lot width requirements of Section 1B02.3.c.1.

CONCLUSIONS

The Singers and both Petitioners have created a situation where the neighborhood is being asked to suffer for their lack of diligence, mistakes and greed. The Petitioners want the Board to ignore the self-inflicted nature of their hardship and provide the relief requested. However, to do so would require that the Board also ignore the substantial harm to the welfare of the Glyndon community.

The Joneses have failed to meet their burden, as they also filed before the Zoning Commissioner, to prove the existence of a nonconforming six unit apartment. There is insufficient evidence to show that a six unit apartment existed prior to January 2, 1945. Further, the loss of lot 207 has so drastically altered the apartment use that any nonconforming status has been terminated.

As all of the Protestants who testified indicated, the construction of a single family home on lot 207 would dramatically impact the character and ambiance of their historic community. The erection of a single family dwelling on lot 207 will overcrowd the land, conflict with the character and ambiance of Central Avenue and dramatically reduce the open space which has provided a proper setting for the imposing apartment structure. It is unfair to the Glyndon community and

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inconsistent with the requirements of Maryland case law regarding variances to grant the relief requested. The Singers and the Homestead have created a hardship and are now before you asking that their self-inflicted hardship be lifted from their shoulders and placed on the backs of the residents of Historic Glyndon. Requiring the neighborhood to bear the burden of the Homestead's lack of diligence would not be an act of justice. It will only reinforce the irresponsible behavior of the Singers and the Petitioners.

Respectfully submitted,

G. Scott Barhight

GSB:sb
cc: Nevett Steele, Jr., Esquire
Charles B. Heyman, Esquire
Eleanor J. Lipsitz, Esquire

D.B.H.

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

HEARING ROOM -
Room 301, County Office Bldg.

July 2, 1990

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH BOARD RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

CASE NO. 89-16-SPHA — THE HOMESTEAD GROUP, LTD.
SPH-to improve unimproved lot; VAR-lot width
10/24/89 - Z.C.'s Order GRANTING in part; DENYING in part

AND

CASE NO. 89-396-SPHA — RONALD F. JONES, ET UX
SPH-nonconforming use apts.;
VAR-setbacks & lot widths
10/25/89 - Z.C.'s Order DENYING Petitions

(Day Nos. 2 and 3 from 6/26/90)

NE/s Central Avenue, 60' SE of Glyndon Avenue
(207 & 209 Central Avenue, respectively)
4th Election District; 3rd Councilmanic District

ASSIGNED FOR: FRIDAY, OCTOBER 12, 1990 at 1:00 p.m. and
FRIDAY, NOVEMBER 9, 1990 at 10:00 a.m.

cc: Eleanor J. Lipsitz, Esquire — Counsel for Mr. and Mrs. Jones
Charles B. Heyman, Esquire — Counsel for The Homestead Group, Ltd.
G. Scott Barhight, Esquire — Counsel for Protestants/Appellants
Audrey Fox, President - The Homestead Group, Ltd.
Mr. and Mrs. Ronald F. Jones
Mr. & Mrs. Nevett Steele, Jr.
Mr. & Mrs. Mark Laken
Ms. Sharon Kline
Terry Stanley
Mr. Eugene Bosley
Ms. Kathy Swem
Ms. Barbara Whitman
Ms. Darlene Scheyer
Ms. Carol Wissel
Ms. Sharon Herb
Ms. Doris Hammond
Ms. Jane Geipe
Mr. & Mrs. Don Wilson
Ms. Jean Hammond
Mr. & Mrs. Mark Clements
Mr. & Mrs. George Wroe
Mr. & Mrs. Charles Welsh
Ms. Vernene Lenz
Ms. Martha Healy
Ms. Eleanor Taylor
Ms. Nan Kaestner
Meredith B. Wells
Mr. & Mrs. John O'Neill
Mr. & Mrs. Charles Broderick
Ms. Marie C. Smith
Ms. Pauline R. Hyman
Ms. Cookie Stone
Mr. James E. Reter
Mr. & Mrs. George Singer
Rev. Lloyd Aiken
Mr. John W. McGrain
Ms. Patricia Waskevich
Ms. Elizabeth B. Shule
Ms. Linda T. Barr
Ms. Robin Smith
P. David Fields
Pat Keller
J. Robert Haines
Ann M. Nastarowicz
James E. Dyer
W. Carl Richards, Jr.
Docket Clerk - Zoning
Arnold Jablon, County Attorney

LindaLee M. Kuszmaul
Legal Secretary

CERTIFICATE OF POSTING

89-396-SPHA

ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 4 th Date of Posting January 6, 1990
Posted for: Appeal
Petitioner: Ronald F. Jones, et ux
Location of property: NE/S Central Ave., 60' SE Glyndon Ave. 209 Central Avenue
Location of Signs: In front of 209 Central Avenue
Remarks:
Posted by S. J. Arata (Signature) Date of return: January 14, 1990

MARYLAND HISTORICAL TRUST
INVENTORY NUMBER

PETITIONER'S EXHIBIT 1 89-396SPHA

DISTRICT 4 - continued

776 CAPLES HOUSE - Before 1898 - 211 Central Avenue. Shown [illegible] 1915 atlases as Frank D. Orrick's, father of present owner. House was called Cromwell Park. Victorian structure, frame with covering of clapboard and fish-scale shingles; gable roof, stone foundation. Former owner, at 1972 NR survey, Elizabeth O. Caples. Owner: Nevett Steele, Jr.

BA 777 BLADGETT HOUSE - Before 1898 - 209 Central Avenue. Shown in 1898 atlas as C. Montell's and in 1915 as A. Bailey's. Possibly designed as a boarding house. Frame and clapboard house in a stripped-down Italianate style, with shed roof, stone foundation. Bracketed cornice, two-storey high porch with slim posts. Owner: Louis A. Bladgett.

778 GEIPE HOUSE - Before 1898 - 119 Central Avenue. Shown in 1898 and 1915 atlases as G.Bellows house. Frame structure with wood shingle covering, built in Victorian Downing-Vaux cottage style with gable roof and stone foundation. Lancet windows sometimes in pairs. Owner: Joseph P. Geipe.

779 BELT HOUSE - Before 1898 - 117 Central Avenue. Shown in 1898 and 1915 atlases as G. Longnecker's. Victorian house in frame and wooden shingle with gable roof and stone foundation. Owner: Edward W. Belt.

780 BROADBENT HOUSE - Before 1898 - 115 Central Avenue. Shown in 1898 atlas as C.E. Montell's and in 1915 as J. Warfield's. Victorian house in frame and composition shingles, with gable roof and stone foundation. Owner: Scott A. Broadbent.

781 BOLLINGER HOUSE - Before 1915 - 111 Central Avenue. Shown as R. Stringer's in 1915 atlas. Frame, wood-shingled house in shingle style with gable roof and stone foundation. Small 2nd-storey windows. Owner: D. Howard Bollinger.

782 WHITE HOUSE - Before 1915 - 109 Central Avenue. Shown in 1915 atlas as J. Zouck's. Colonial revival house in frame and wood shingles with hip roof and stone foundation. Massive stone end chimney. Owner: Ellis S. White.

783 ROSE HOUSE - Before 1898 - 107 Central Avenue. Shown in 1898 atlas as W.G. Bishop's and in 1915 as Jacob Zouck's. Victorian house, frame and clapboard with gable roof and stone foundation. Owner: Everett Rose..

784 GRIFFITH HOUSE - Before 1898 - 11 Central Avenue. Shown in atlas of 1898 and 1915 as the J.J. Williams house. Small, low 1-½ storey frame and clapboard cottage in Victorian style with gable roof and stone foundation. Decorated with bargeboards. Owner: John J. Griffin.

October 26, 1988.

To Whom It May Concern-

This is to certify on March 27, 1941 Louis E. Susemihl and Anita C. Susemihl purchased property consisting of house and lot at 209 Central Ave. Glyndon. Md. from Mr Shirley of Reisterstown, Md.
Upon settlement of this property owners remodeled house into six apartments - two on each floor.
Owners sold this property in 1966 to Mr. Reter of Glyndon. Md.

Very Truly Yours,
Anita C. Susemihl

State of California)
)
County of Los Angeles) Acknowledgement

On October 27, 1988, before me, the undersigned officer, personally appeared Anita C. Susemihl, personally to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledge that the subscriber executed it.

Julie Parrick
Julie Parrick

OFFICIAL SEAL
JULIE PARRICK
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My comm. expires JUN 15, 1992

PETITIONER'S EXHIBIT 3 89-396SPHA

LIBER 4579 PAGE 334

Together with the buildings and improvements thereupon erected, made or being and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or anywise appertaining.

To Have and To Hold the said lot of ground and premises, above described and mentioned, and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said parties of the second part, as tenants by the entireties, their assigns and unto the survivor of them, his or her ~~xxxxx~~ heirs and assigns, in fee simple.

And the said parties of the first part hereby covenant that they have not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that they will warrant specially the property granted and that they will execute such further assurances of the same as may be requisite.

Witness the hands and seals of said grantors.

Test:
William E. Hammond
Louis E. Susemihl [SEAL]
Louis E. Susemihl
Anita D. Susemihl [SEAL]
Anita D. Susemihl

State of Maryland, Baltimore County to wit:

I Hereby Certify, That on this [illegible] day of February 1966, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore County personally appeared Louis E. Susemihl and Anita D. Susemihl, his wife known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged that [illegible] executed the same for the purposes therein contained, and in my presence signed and sealed the same.

In Witness Whereof, I hereunto set my hand and official seal.

William E. Hammond, Notary Public

My Commission expires:

WILLIAM E. HAMMOND NOTARY PUBLIC

Rec'd for record FEB 9 1966 at 10:4[illegible] M
[illegible] Elle T. Cosnell, Clerk
[illegible]
Receipt No. 32677 $

PETITIONER'S EXHIBIT 4 89-396SPHA

O'CONOR PIPER & FLYNN REALTORS

PROTESTANT'S EXHIBIT 1. 89-396SPHA

CONV

LIBER 5320
FOLIO 466
MLS # BL 1519064

Selling Office: OPF Reisterstown Phone: 833-2080
Selling Associate Cookie Stone 833-1543
Listing Office: Westminster Phone: 876-6440
Listing Associate Colleen Thompson 848-6467

THIS AGREEMENT OF SALE, made this 21st day of MARCH 19 88 between
(Name) Aileen Singer, Seller
(Address) 209 Central Avenue, Glyndon, Maryland 21071 and
(Name) Ronald F. Jones and Suzanne Lussier-Jones (his wife) Buyer
(Address) 312 Church Road, Reisterstown Maryland 21136

Witness that Seller does hereby bargain and sell unto Buyer, and Buyer does hereby purchase from Seller the following described fee simple/leasehold property, known as 209 Central Avenue, Glyndon Maryland 21071 lying in Baltimore City/County of State of Maryland; including improvements thereon and all rights and appurtenances thereto belonging or in anywise thereto appertaining.
AT and for the sum of Two Hundred and Twenty-Five Thousand DOLLARS ($ 225,000.00)
of which a deposit of One Thousand DOLLARS ($ 1,000.00)
In the form of check has been paid at the signing hereof, the receipt of which is hereby acknowledged, the balance to be paid as follows:
An additional sum of $ Four ($4,000.00) Dollars within 2 days from the date of contract, and the remaining balance of the purchase price will be paid to Seller in cash at settlement which shall be on May 20, 1988 or sooner by mutual agreement between the parties.

1. **GROUND RENT** (IF APPLICABLE): The Property is subject to an existing annual ground rent of $ N/A, as provided in a lease recorded among the Land Records of N/A City/County, Maryland. If said ground rent is not timely paid, the reversionary owner of the ground rent may bring an action of ejectment pursuant to Section 8-402 (c) of the Real Property Article, Annotated Code of Maryland. As a result of such ejectment action, the reversionary owner of the ground rent may be discharged from the lease and obtain title to the property in fee.

2. **FINANCING:** Buyer expressly agrees to apply for a conventional mortgage loan within seven (7) days from the date of contract, to provide all necessary papers and information required to complete processing of such application, and to otherwise diligently and in good faith take all necessary steps to secure a 30 year mortgage loan in the amount of $ 180,000.00 with initial interest thereon not to exceed 9.75 % per annum (this interest rate may be fixed, variable or graduated) and with a loan placement fee (or charge of a like nature) not exceeding in the aggregate 1 % of which Seller agrees to pay the first .50 % and Buyer agrees to pay the next .50 % if charged. Buyer agrees to promptly furnish a copy of such commitment to the Seller or Seller's agent. In the event Buyer [redacted] is unable to obtain a commitment for the aforementioned financing on or before May 3, 1988, through no lack of diligence or good faith on the Buyer's part, this Agreement shall be declared null and void and all monies on deposit shall be immediately returned to Buyer. Any action taken by Buyer after acceptance of this Agreement which is detrimental to qualifying the Buyer for financing shall give the Seller the right to declare the deposit forfeited. Buyer's mortgage application shall not contain a contingency for the sale of Buyer's property unless such contingency is also a part of this Agreement. Monthly payment to include principal and interest plus one-twelfth (1/12) of the annual real estate taxes, fire/casualty insurance, ground rent and private mortgage insurance (if any) and flood insurance if required.

3. **ALTERNATE FINANCING:** It is further understood and agreed should Buyer make application for financing through a lending institution or other source whereby the interest, terms of payment, or amount of loan differs from the financing conditions hereinbefore set forth, then upon notification to the Buyer from said lending institution or party that the financing as applied for has been approved and a loan commitment granted, the preceeding mortgage conditions of this agreement shall be deemed to have been fully satisfied and of no further effect, provided said differing mortgage terms do not increase closing costs to Seller or exceed the time allowed to secure the mortgage commitment as called for above.

4. **TERMITE CLAUSE:** Seller authorizes Buyer [redacted] to obtain, at Buyer's expense, a certificate from a licensed pest control company that the Property is free and clear of any visible termites and other wood boring insects. If any infestation or any damage is present, then the Property shall be treated at Seller's expense to correct any such infestation and any damage caused by any present or prior infestation shall be repaired at Seller's expense. In the event that the cost of the treatment and/or repairs called for above exceed 2% of the purchase price of the Agreement, then Seller shall have the option of withdrawing from this Agreement; however, if Buyer, at Buyer's option and expense, should choose to pay the cost of the treatment and/or repairs exceeding 2% then this Agreement shall remain in effect. All decisions regarding the above shall be made and communicated in writing to the other party within 10 days from the receipt of the inspection report. In the event this Agreement is voided under this provision, then all deposits hereunder shall be returned immediately to Buyer. The property subject to this provision shall be residential dwellings, and attached garages but shall not include outbuildings or fencing.

5. **INCLUSIONS:** Included in the purchase price shall be all fuel oil stored on the Property at time of settlement, if any, all permanently attached fixtures, and the number of installed operating smoke detectors required by law. The purchase price shall also include the following, as and if now installed in or on the premises: kitchen stove and oven, shades, screens, storm doors and windows, curtain rods, drapery hardware, awnings, trees and shrubbery, light fixtures, TV aerial, dishwasher, garbage disposal, central air conditioning and wall to wall carpeting. Also included shall be the following: All stoves and refrigerators now in the apartments, washer and dryer.
Excluded - some light fixtures, some drapes.

6. **SPECIAL CONDITIONS OR EXCLUSIONS:** Current Rental Agreements shall be given to buyer at time of settlement. Rental Adjustments shall be made between buyer and seller regarding the rented apartments at the time of settlement.

7. **ADJUSTMENT:** Homeowners association dues, ground rent, rent, and water rent shall be adjusted and apportioned as of the date of settlement, and all taxes, general or special and all other public or governmental charges or assessments against the Property which are or may be payable on an annual basis (including Metropolitan District, Sanitary Commission or other benefit charges, assessments, liens or encumbrances for sewer, water, paving, drainage or other public improvements, whether or not considered liens against the property, completed or commenced on or prior to the date hereof, or subsequent thereto), are to be adjusted and apportioned as of the date of settlement and are to be assumed and paid thereafter by Buyer, whether assessments have been levied or not as of date of settlement. Cost of all documentary stamps required by law, recordation tax and transfer tax, where required by law, shall be divided equally between the parties hereto. If the property sold hereunder is improved residential and shall be the initial (new) sale, Seller is required by law to disclose actual or estimated costs of deferred water and sewer charges and hereby agrees to do so by addendum attached hereto and made a part hereof.

8. **DEPOSIT AND FEES:** Seller recognizes Coldwell - Banker, Realtor, as the listing broker negotiating this Agreement, and agrees to pay said Realtor the brokerage fee for services rendered in the amount provided in the listing agreement between Seller and listing broker. These fees shall be deemed earned as of the date of the execution of this Agreement or the date of satisfaction of all contingencies herein stated, whichever shall last occur. Failure of Seller to perform hereunder shall not release Seller from liability for these fees. As a convenience to Seller and not as a limitation upon Seller's above-stated liability for these fees the party making settlement is hereby authorized and directed to deduct the aforesaid fees from the proceeds of sale and to pay the same to the Realtor. Deposit monies submitted herewith shall be held in escrow in accordance with the provisions of the Annotated Code of Maryland by the Listing Broker, and shall subsequently be distributed in accordance with this Agreement.

9. **ADDENDUMS:** There are attached hereto ~~one~~ Two ~~(1)~~ 2 Addendums which have been signed by the parties and are intended to be part of this Agreement and to be enforced as a part hereof.

AS
RFJ

"THE CONDITIONS ON THE REVERSE SIDE OF THIS AGREEMENT FORM A PART OF THIS AGREEMENT"

Security deposits now held by sellers shall be turned over to buyers at the time of settlement.
Sellers agree to install driveway and parking lot prior to settlement - see attached drawing.

Historic Glyndon Incorporated
Glyndon, Maryland 21071

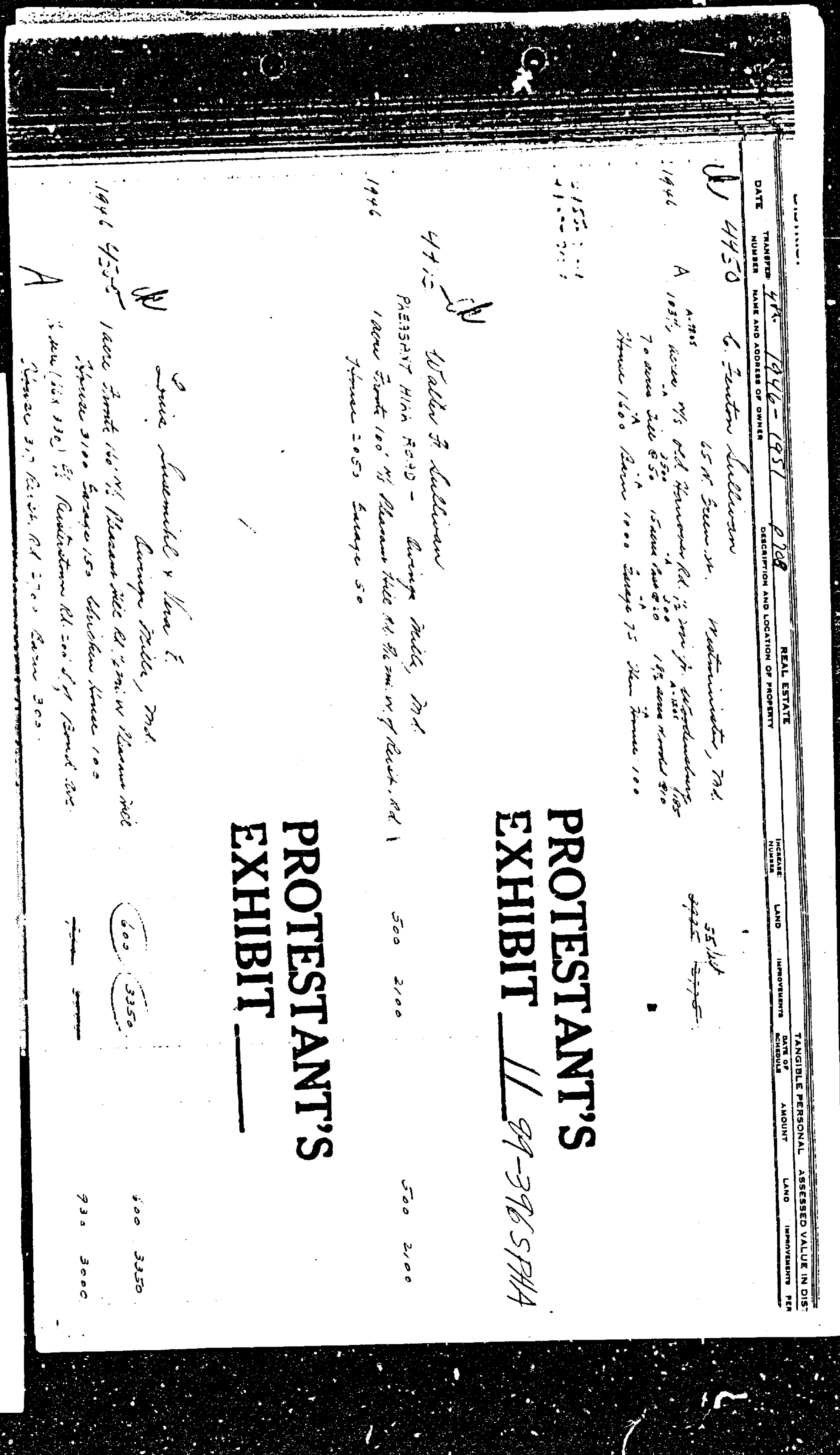
April 17, 1989

To whom it may concern

Eleanor Taylor is an ex-president and member ex-officio of Historic Glyndon Inc. She is authorized to speak on behalf of the Board of Directors at the zoning variance hearings on 207 and 209 Central Ave., Glyndon, Md.

Sincerely,
Arlen Herb
President

PROTESTANT'S EXHIBIT 2 89-396SPHA



PROTESTANT'S EXHIBIT 11 89-396SPHA

PROTESTANT'S EXHIBIT

PROTESTANT'S EXHIBIT 9 89-396 SPHA

April 3, 1989

The Honorable J. Robert Haines
Zoning Commissioner of Baltimore County
Office of Planning and Zoning
Towson, Maryland 21204

PROTESTANT'S EXHIBIT 5 89-16SPHA

Re: Case Number 89-16-SPHA
Case Number 89-396-SPHA

Dear Mr. Haines:

The community of Glyndon is justifiably proud of our lovely Victorian houses located on spacious lots on small, tree lined streets. Because of these features, Glyndon has been placed on the National Register of Historic Places and has the honor of being named as the very first historic district in all of Baltimore County. This combination of history and beauty has attracted a very special type of home owner to Glyndon. People who live or consider buying homes in Glyndon appreciate the historic flavor of the community and are committed to maintaining and improving the beautiful Victorian houses and large lots on which they are situated.

Central Avenue is the main residential street in Glyndon and contains many of the historic Victorian homes that have helped to make Glyndon special. The property in question is located right in the midst of many of Glyndon's most beautiful and historic properties.

The Board of Directors of the Glyndon Community Association has voted unanimously to oppose all of these proposed changes. The variances being requested would have a significantly negative impact on the nature of our community and the scale of residences and lots on Central Avenue.

Approving such changes could be seen as establishing precedent which could severely inhibit our ability to maintain that unique combination of history and tradition that is Glyndon.

O'CONOR PIPER & FLYNN REALTORS

Pet. Exh. #1

CONV

LIBER 5320
FOLIO 466
MLS # BL 1519064

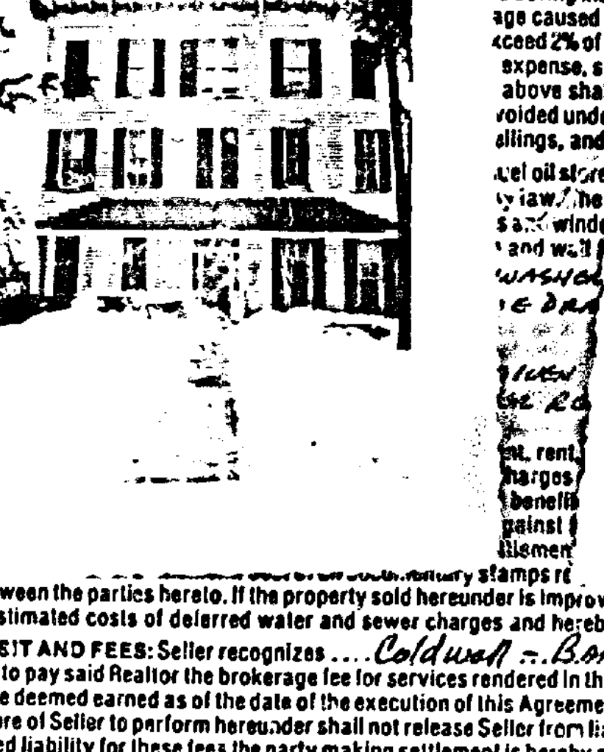
Selling Office: OPF Reisterstown Phone: 833-2080
Selling Associate Cookie Stone 833-1543
Listing Office: Westminster Phone: 876-6440
Listing Associate Colleen Thompson 848-6467

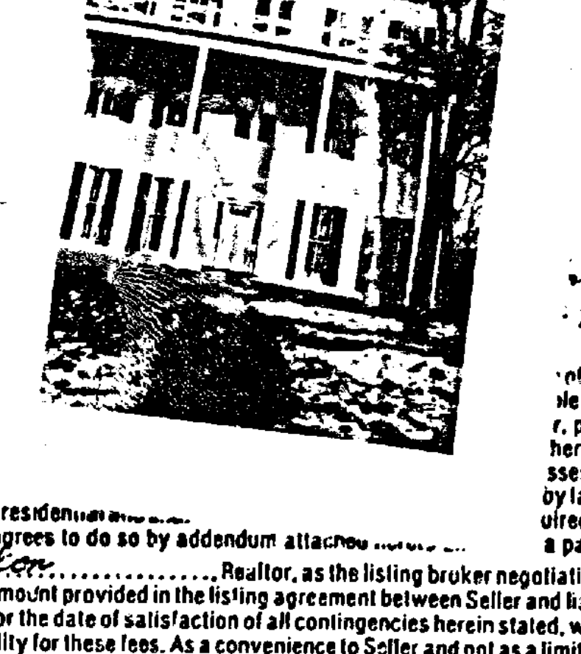
THIS AGREEMENT OF SALE, made this 21st day of MARCH 19 88 between
(Name) Aileen Singer, Seller
(Address) 209 Central Avenue, Glyndon, Maryland 21071 and
(Name) Ronald F. Jones and Suzanne Lussier-Jones (his wife) Buyer
(Address) 312 Church Road, Reisterstown Maryland 21136

Witness that Seller does hereby bargain and sell unto Buyer, and Buyer does hereby purchase from Seller the following described fee simple/leasehold property, known as 209 Central Avenue, Glyndon Maryland 21071 lying in Baltimore City/County of State of Maryland; including improvements thereon and all rights and appurtenances thereto belonging or in anywise thereto appertaining.
AT and for the sum of Two Hundred and Twenty-Five Thousand DOLLARS ($ 225,000.00)
of which a deposit of One Thousand DOLLARS ($ 1,000.00)
In the form of check has been paid at the signing hereof, the receipt of which is hereby acknowledged, the balance to be paid as follows:
An additional sum of $ Four ($4,000.00) Dollars within 2 days from the date of contract, and the remaining balance of the purchase price will be paid to Seller in cash at settlement which shall be on May 20, 1988 or sooner by mutual agreement between the parties.

1. GROUND RENT (IF APPLICABLE): The Property is subject to an existing annual ground rent of $ N/A, as provided in a lease recorded among the Land Records of N/A City/County, Maryland. If said ground rent is not timely paid, the reversionary owner of the ground rent may bring an action of ejectment pursuant to Section 8-402 (c) of the Real Property Article, Annotated Code of Maryland. As a result of such ejectment action, the reversionary owner of the ground rent may be discharged from the lease and obtain title to the property in fee.

2. FINANCING: Buyer expressly agrees to apply for a conventional mortgage loan within seven (7) days from the date of contract, to provide all necessary papers and information required to complete processing of such application, and to otherwise diligently and in good faith take all necessary steps to secure a 30 year mortgage loan in the amount of $ 180,000.00 with initial interest thereon not to exceed 9.75 % per annum (this interest rate may be fixed, variable or graduated) and with a loan placement fee (or charge of a like nature) not exceeding in the aggregate 1 % of which Seller agrees to pay the first .50 % and Buyer agrees to pay the next .50 % if charged. Buyer agrees to promptly furnish a copy of such commitment to the Seller or Seller's agent. In the event Buyer [redacted] is unable to obtain a commitment for the aforementioned financing on or before May 3, 1988, through no lack of diligence or good faith on the Buyer's part, this Agreement shall be declared null and void and all monies on deposit shall be immediately returned to Buyer. Any action taken by Buyer after acceptance of this Agreement which is detrimental to qualifying the Buyer for financing shall give the Seller the right to declare the deposit forfeited. Buyer's mortgage application shall not contain a contingency for the sale of Buyer's property unless such contingency is also a part of this Agreement. Monthly





8. DEPOSIT AND FEES: Seller recognizes Coldwell - Banker, Realtor, as the listing broker negotiating this Agreement, and agrees to pay said Realtor the brokerage fee for services rendered in the amount provided in the listing agreement between Seller and listing broker. These fees shall be deemed earned as of the date of the execution of this Agreement or the date of satisfaction of all contingencies herein stated, whichever shall last occur. Failure of Seller to perform hereunder shall not release Seller from liability for these fees. As a convenience to Seller and not as a limitation upon Seller's above-stated liability for these fees the party making settlement is hereby authorized and directed to deduct the aforesaid fees from the proceeds of sale and to pay the same to the Realtor. Deposit monies submitted herewith shall be held in escrow in accordance with the provisions of the Annotated Code of Maryland by the Listing Broker, and shall subsequently be distributed in accordance with this Agreement.

9. ADDENDUMS: There are attached hereto ~~one~~ Two ~~(1)~~ 2 Addendums which have been signed by the parties and are intended to be part of this Agreement and to be enforced as a part hereof.

"THE CONDITIONS ON THE REVERSE SIDE OF THIS AGREEMENT FORM A PART OF THIS AGREEMENT"

Security deposits now held by sellers shall be turned over to buyers at the time of settlement.

Pet. Exh #2

THIS DEED, made this 24th day of June, in the year nineteen hundred and eighty-eight, by and between AILEEN N. SINGER, Grantor, and RONALD F. JONES and SUZANNE LUSSIER-JONES, his wife, Grantees.

WITNESSETH, that for and in consideration of the sum of ONE HUNDRED NINETY THOUSAND DOLLARS ($190,000.00), and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant and convey unto the said Grantees, as tenants by the entireties, their assigns, the survivor of them, and the personal representatives and assigns of the survivor of them, forever in fee simple, all that lot or parcel of land situate on Central Avenue, in the Fourth Election District of Baltimore County, Maryland, and containing 25,545 square feet of land, more or less. The improvements thereon now being known as 209 Central Avenue.

BEING the second parcel of land conveyed unto the Grantor herein by deed from Louis A. Bladgett and Mary K. Bladgett, his wife, dated September 2, 1977, and recorded among the Land Records of Baltimore County, Maryland, in Liber E.H.K. Jr. No. 5799, folio 420 &c.

TOGETHER with the buildings and improvements thereon, and all and singular the rights, roads, ways, waters, privileges, appurtenances and advantages thereto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the above mentioned property unto the Grantees, as tenants by the entireties, their assigns, the survivor of them, and the personal representatives and assigns of the survivor of them, forever in fee simple.

AND the said Grantor hereby covenants that she has not done or suffered to be done any act, matter or thing whatsoever to encumber the property hereby conveyed; that she will warrant specially the property hereby granted; and that she will execute such other and further assurances of the same as may be requisite.

89-396SPHA

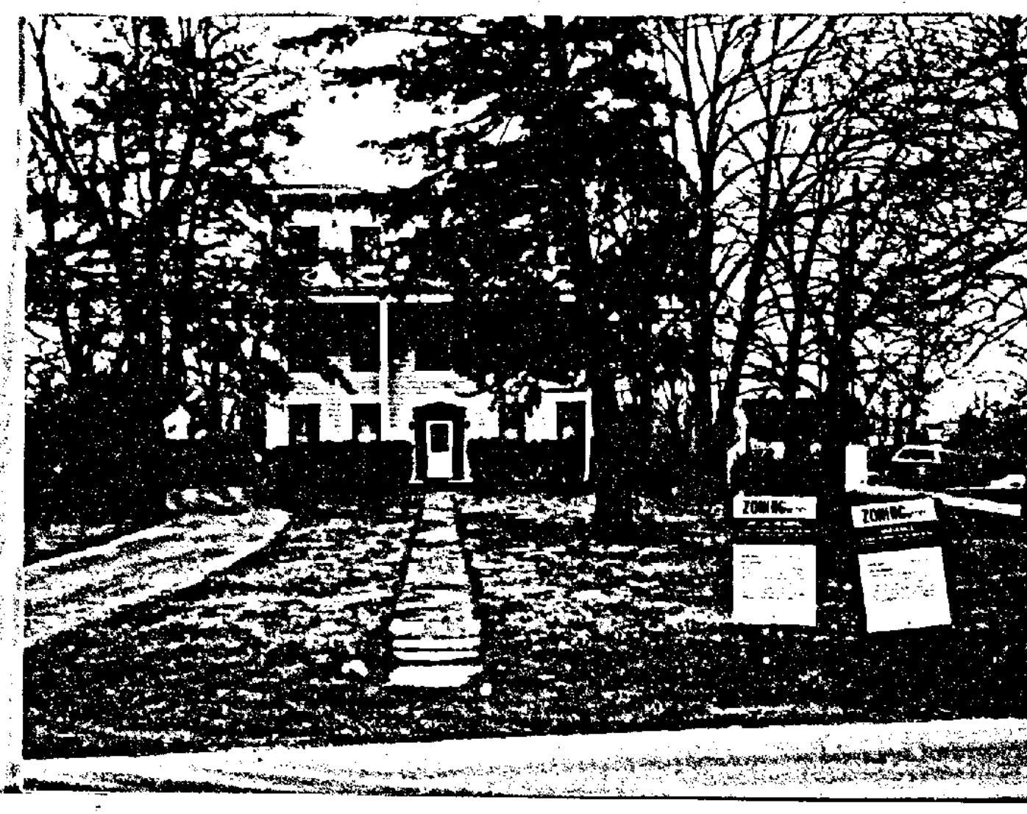
PETITIONER(S) EXHIBIT (2)

Spring 1989 —

Pet Exh #3

89-396SPHA

PETITIONER(S) EXHIBIT (2)



DP 3
1/79

Permit

County Executive
Dennis F. Rasmussen

NOTE: A SEPARATE PERMIT IS REQUIRED FOR ALL ELECTRICAL & PLUMBING WORK WHICH MUST BE DONE BY AN ELECTRICIAN OR PLUMBER LICENSED IN BALTIMORE COUNTY.

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
OFFICE OF THE BUILDING ENGINEER
TOWSON, MARYLAND 21204 CJB

PLOT PLANS: 5
TAX ACCOUNT NUMBER: 04-02-086570
ELEC: NO X
PLUMBING: NO X
MR

BUILDING ADDRESS: 209 CENTRAL AVE.
DATE ISSUED: APR 11 1988
OWNER'S NAME: AILEEN SINGER
BUILDING PERMIT NO: 101622
MAILING ADDRESS OF OWNER: 209 CENTRAL AVE. GLYNDON, MD 21071
CONTROL NO: GR
DISTRICT: 4
PRECINCT: 4
TENANT:
BUILDING CONTRACTOR: OWNER
ENGINEER OR ARCHITECT:
IF UNDER CONTRACT OF SALES GIVE SELLER'S NAME AND ADDRESS:
TRANSFER DESCRIPTION: E/S CENTRAL AVE. 100' S OF GLYNDON AVE.

A. TYPE OF IMPROVEMENT

1 ☐ NEW BUILDING CONSTRUCTION
2 ☐ ADDITION
3 ☐ ALTERATION
4 ☐ REPAIR
5 ☐ WRECKING (ENTER NO. UNITS DEDUCTED ____)
6 ☐ MOVING
7 ☒ OTHER GRADING

DESCRIBE PROPOSED WORK ☐ 1 AND 2 FAM. CODE 1984 ☒ BOCA CODE

GRADE LESS THAN 5,000 S.F. FOR RELOCATING DRIVEWAY; OK TO FILE: J.M.B.; THE BALTIMORE COUNTY LANDMARKS PRESERVATION COMMISSION REQUESTED THAT THIS APPLICATION BE MADE.
THIS PERMIT EXPIRES 2 YEARS FROM DATE ISSUED.

TYPE FOUNDATION: ☐ SLAB ☐ BLOCK ☐ CONCRETE
BASEMENT: ☐ FULL ☐ PARTIAL ☐ NONE

C. TYPE OF USE

RESIDENTIAL
01 ☐ ONE FAMILY
02 ☐ TWO FAMILY
03 ☐ THREE AND FOUR FAMILY
04 ☐ FIVE OR MORE FAMILY (ENTER NO. UNITS ____)
05 ☐ SWIMMING POOL
06 ☐ GARAGE
07 ☒ OTHER GRADING

NON-RESIDENTIAL
08 ☐ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09 ☐ CHURCH, OTHER RELIGIOUS BUILDING
10 ☐ FENCE (LENGTH ____ HEIGHT ____)
11 ☐ INDUSTRIAL, STORAGE BUILDING
12 ☐ PARKING GARAGE
13 ☐ SERVICE STATION, REPAIR GARAGE
14 ☐ HOSPITAL, INSTITUTIONAL, NURSING HOME
15 ☐ OFFICE, BANK, PROFESSIONAL
16 ☐ PUBLIC UTILITY
17 ☐ SCHOOL, COLLEGE, OTHER EDUCATIONAL
18 ☐ SIGN
19 ☐ STORE ☐ MERCANTILE ☐ RESTAURANT
SPECIFY TYPE ____
20 ☐ SWIMMING POOL (MD. HEALTH DEPT. APPR. REQ.)
21 ☐ TANK, TOWER
22 ☐ TRANSIENT HOTEL, MOTEL (NO. UNITS ____)
23 ☐ OTHER ____

CHECK APPROPRIATE CATEGORIES FOR RESIDENTIAL ONLY

B. OWNERSHIP
1 ☒ PRIVATELY OWNED 2 ☐ PUBLICLY OWNED

ESTIMATED COST OF MATERIAL & LABOR: $ 3,000 .00
24 PROPOSED USE(S): SAME & GRADING
EXISTING USE(S): SFD-DIVIDED INTO APTS.

THIS PERMIT MUST BE POSTED

SEE OTHER SIDE FOR INSPECTIONS

PETITIONER'S EXHIBIT 5 89-396SPHA

BCBA
Petitioners Ex 7

Nevett Steele, Jr.
211 Central Avenue
Glyndon, Maryland 21071

March 30, 1988

PROTESTANT'S EXHIBIT 6 89-396SPHA

HAND DELIVERED

Mr. Carl Richards
Office of Planning and Zoning
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: 207-209 Central Avenue
Glyndon, Maryland
Property of Aileen N. Singer

Dear Mr. Richards:

In accordance with our recent conversation I am enclosing a copy of a plat of the Singer's property and survey description which is marked as Exhibit A. I believe that this is a copy of the plat that was presented to the Landmark Preservation Commission at the hearing conducted on March 10, 1988 concerning the Singers' property. Using the scale indicated on the plat of one inch to fifty feet, it would appear to me that the distance between the Singer's building and the property line separating their property and our property is approximately twelve and a half feet.

Attached as Exhibit B is an outline of the Singer property, not drawn to scale, which outlines a proposed driveway between the Singer building and our driveway, ending in a parking lot behind the Singer building. This drawing although not drawn to scale seems to indicate that the distance between the building and the property line is perhaps a bit more than ten feet. Enclosed as Exhibit C is a drawing with a proposed horseshoe driveway/parking lot in the front lawn of the Singer property. Exhibits B and C were also presented at the Landmark Preservation Commission hearing of March 10, 1988.

I am also enclosing as Exhibit D a copy of the deed whereby Aileen N. Singer bought the lots identified as 207 and 209 Central Avenue from Mr. and Mrs. Badgett in 1977. The deed gives square footage information, as well as other references regarding the location and description of the property.

Protestant's Ex 5

Maryland Historical Trust Inventory Number

PETITIONER'S EXHIBIT 1 See Back 89-396SPHA

DISTRICT 4 – continued

776 CAPLES HOUSE – Before 1898 – 211 Central Avenue. Shown [redacted] 915 atlases as Frank D. Orrick's, father of present owner. House was called Cromwell Park. Victorian structure, frame with covering of clapboard and fish-scale shingles; gable roof, stone foundation. Former owner, at 1972 NR survey, Elizabeth O. Caples. Owner: Nevett Steele, Jr.

BA 777 BLADGETT HOUSE – Before 1898 – 209 Central Avenue. Shown in 1898 atlas as C. Montell's and in 1915 as A. Bailey's. Possibly designed as a boarding house. Frame and clapboard house in a stripped-down Italianate style, with shed roof, stone foundation. Bracketed cornice, two-storey high porch with slim posts. Owner: Louis A. Bladgett.

778 GEIPE HOUSE – Before 1898 – 119 Central Avenue. Shown in 1898 and 1915 atlases as G.Bellows house. Frame structure with wood shingle covering, built in Victorian Downing-Vaux cottage style with gable roof and stone foundation. Lancet windows sometimes in pairs. Owner: Joseph P. Geipe.

779 BELT HOUSE – Before 1898 – 117 Central Avenue. Shown in 1898 and 1915 atlases as G. Longnecker's. Victorian house in frame and wooden shingle with gable roof and stone foundation. Owner: Edward W. Belt.

780 BROADBENT HOUSE – Before 1898 – 115 Central Avenue. Shown in 1898 atlas as C.E. Montell's and in 1915 as J. Warfield's. Victorian house in frame and composition shingles, with gable roof and stone foundation. Owner: Scott A. Broadbent.

781 BOLLINGER HOUSE – Before 1915 – 111 Central Avenue. Shown as R. Stringer's in 1915 atlas. Frame, wood-shingled house in shingle style with gable roof and stone foundation. Small 2nd-storey windows. Owner: D. Howard Bollinger.

782 WHITE HOUSE – Before 1915 – 109 Central Avenue. Shown in 1915 atlas as J. Zouck's. Colonial revival house in frame and wood shingles with hip roof and stone foundation. Massive stone end chimney. Owner: Ellis S. White.

783 ROSE HOUSE – Before 1898 – 107 Central Avenue. Shown in 1898 atlas as W.G. Bishop's and in 1915 as Jacob Zouck's. Victorian house, frame and clapboard with gable roof and stone foundation. Owner: Everett Rose.

784 GRIFFITH HOUSE – Before 1898 – 11 Central Avenue. Shown in atlas of 1898 and 1915 as the J.J. Williams house. Small, low 1-½ storey frame and clapboard cottage in Victorian style with gable roof and stone foundation. Decorated with bargeboards. Owner: John J. Griffin.

Pet. Exh #5

Baltimore County
Office of Planning & Zoning
Towson, Maryland 21204
494-3211

P. David Fields
Director

Dennis F. Rasmussen
County Executive

March 25, 1988

Mrs. Aileen N. Singer
209 Central Avenue
Glyndon MD 21071

Dear Mrs. Singer,

The Baltimore County Landmarks Preservation Commission has reviewed your request for approval of a driveway on 209 Central Avenue. We will approve the drive on the following conditions:

1. The parking area should be in the rear of the existing apartment structure.

2. We prefer a drive that goes along the property line dividing 207 and 209 Central Avenue to the rear of the existing structure, that is, the side directly away from Central Avenue and then into the parking area. The drive is to be constructed so that the minimum number of trees is at risk, subject to the aforesaid location.

3. All other rules and regulations of the zoning ordinances of Baltimore County must be complied with.

Please call if you have any questions. (494-3521)

Sincerely,
John McGrain
John W. McGrain
Ex. Sect., Landmarks
Preservation Commission

cc: Mr. James W. Constable
Chairman, LPC

Mr. Ted Zaleski, Jr.,
Director, Department of
Permits and Licenses

PETITIONER'S EXHIBIT 6 89-396SPHA

BCBA
Petitioner's 6

AFFIDAVIT

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County, as follows:

That the information herein given is within the personal knowledge of the Affiant and Affiant is competent to testify thereto in the event that a public hearing is scheduled in the future with regard thereto.

PROTESTANT'S EXHIBIT 8. 89-396SPHA

Mary E Lloyd
AFFIANT (Handwritten Signature)

MARY E. LLOYd
AFFIANT (Printed Name)

Based upon your personal knowledge, please answer the following questions by indicating yes or no in the space provided:

1. Can you verify by this affidavit, and/or testify in Court if necessary, that the home located at 209 Central Avenue Glyndon, Maryland has been occupied as a 4 (two, three, etc.) apartment dwelling since May (month), 1942 (year)? yes (answer)

2. Can you also verify and testify, if necessary, that said apartments have been occupied by renters every year since May (month), 1942 (year)? yes (answer)

3. Will you realize any gain from the sale of this Property? ____ (answer)

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this 23rd day of March, 1988, before me, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared Mary E. Lloyd the Affiant herein, personally known or satisfactorily identified to me as such Affiant, and made oath in due form of law that the matters and facts hereinabove set forth are true and correct to the best of his/her knowledge and belief.

AS WITNESS may hand and Notarial Seal.

Donna M. Young
NOTARY PUBLIC

My Commission Expires:
July 1, 1990

BCBA
Protestant's Ex 4

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

J. Robert Haines
Zoning Commissioner

Dennis F. Rasmussen
County Executive

PROTESTANT'S EXHIBIT 4 89-16SPHA

April 8, 1988

PROTESTANT'S EXHIBIT 7 89-396SPHA

Mr. Nevett Steele, Jr.
211 Central Avenue
Glyndon, Maryland 21071

Re: 207-209 Central Avenue
Glyndon, Maryland
NE/S Central Avenue, opposite
Glyndon Avenue - Zoned DR 3.5/DR 2
4th Election District

Dear Mr. Steele:

Thank you for your letters of concern to the Zoning Commissioner written on March 5, 7, and 30th, concerning the above referenced property which have been referred to me for reply. We have talked over the telephone and as I had requested, you have enclosed information that was helpful with your last correspondence.

By using the lot survey and other information that you provided, we have made the following determinations:

1. That the property is zoned DR.3.5 160 feet parellel and northeast of the center line of Central Avenue. The balance of the property is zoned DR.2.

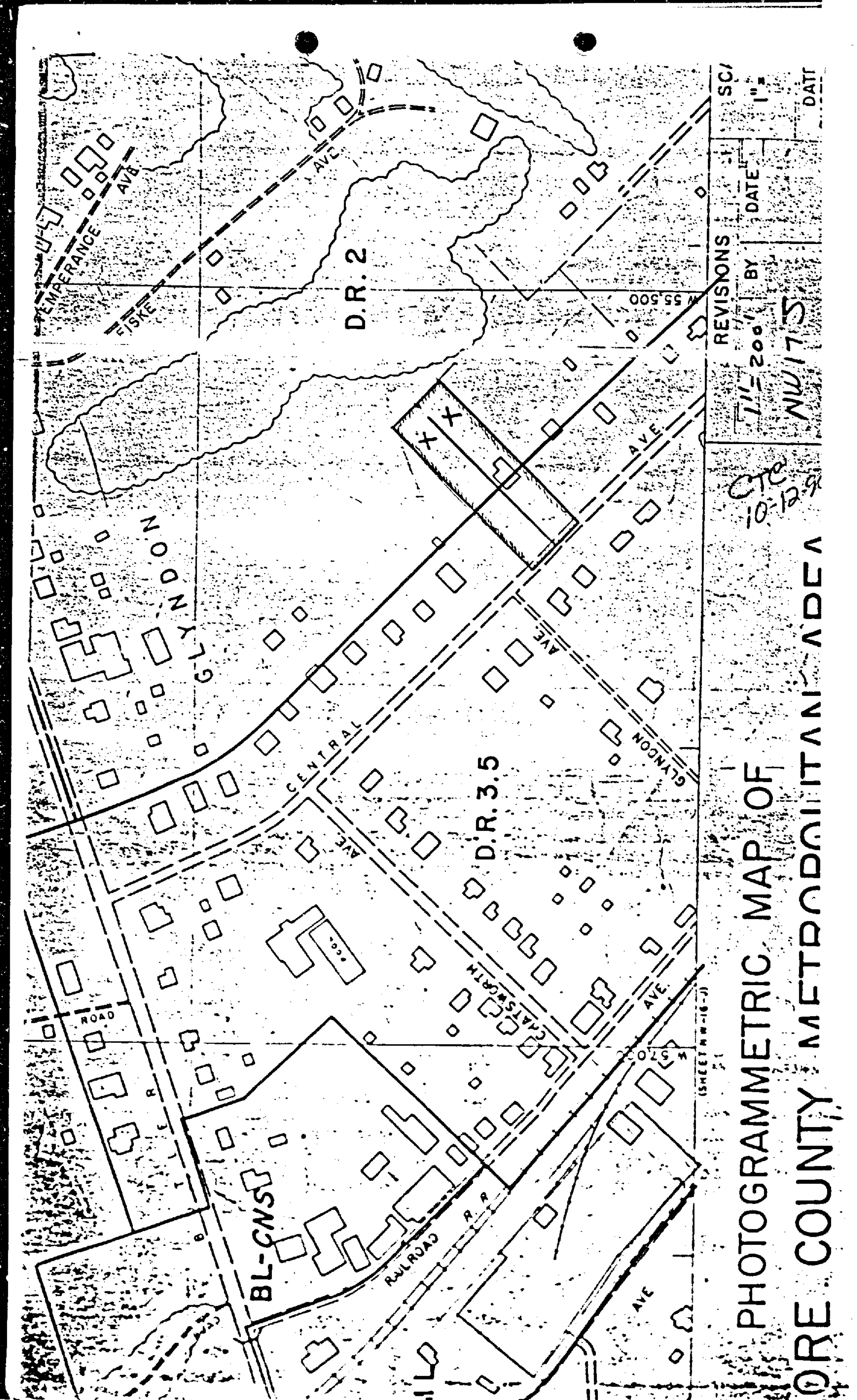
2. By utilizing the conversion provisions contained in Section 402 (Baltimore County Zoning Regulations) for existing dwellings, and combining the separate calculations for the total units allowed in each zone, we arrive at a total of 2 units allowed based on square footage. Obviously, if the adjoining lot has been sold, we could only approve a conversion to 2 units on the remaining lot provided that:

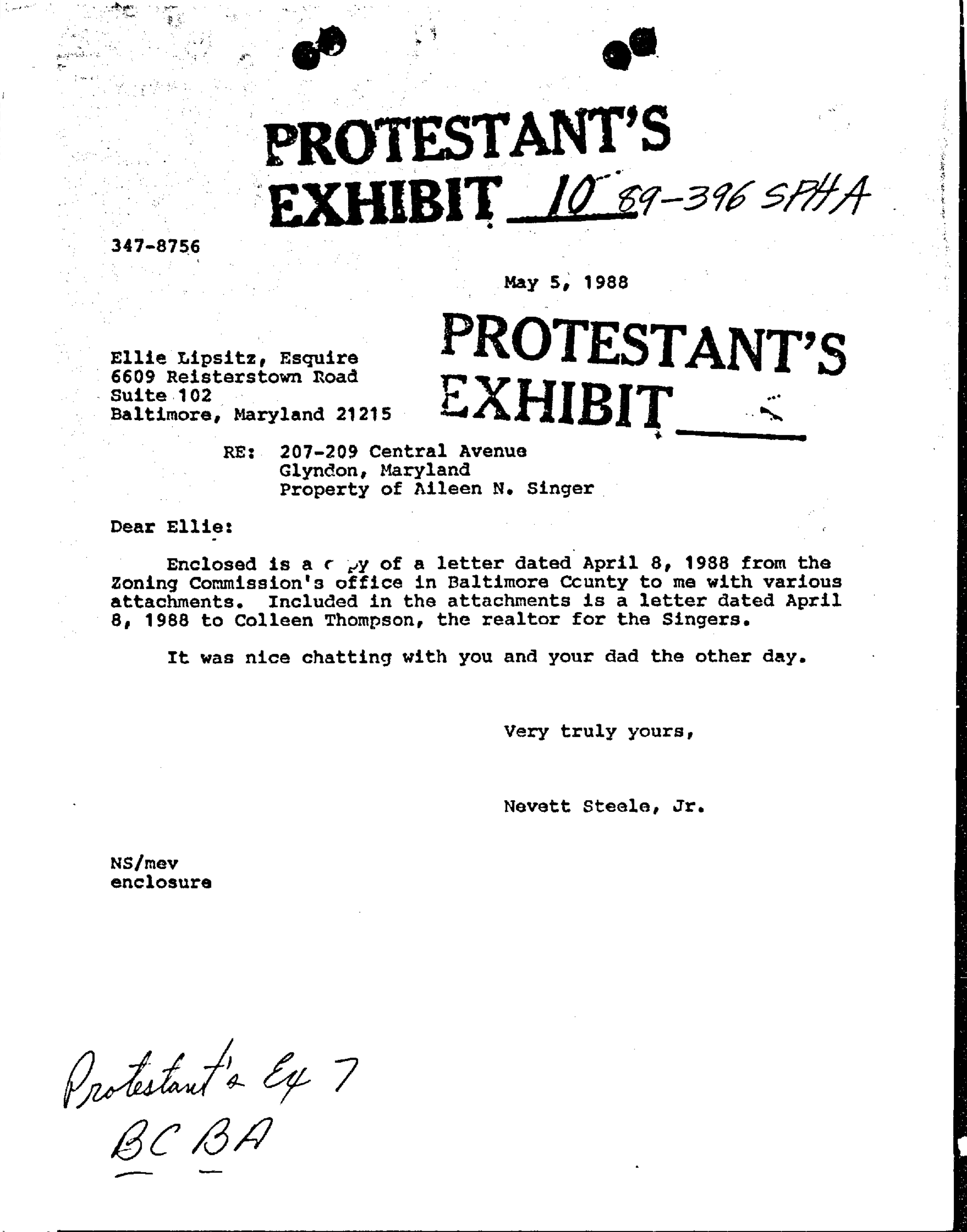
A. a variance would be granted to permit a lot width of 65 ft. in lieu of the required 90 ft. (DR.3.5), and

B. that a variance would be granted to permit side yard setbacks of approximately 12 feet each and a sum of 24 feet in lieu of the required 20 foot setback for one sideyard and a sum of 50 feet for both sideyard setbacks (DR.2).

3. That it would be an apparent violation of the Baltimore County Zoning Regulations if as indicated, the adjoining lot (that was a part of the property for years) was sold to a separate party, leaving the apartment building on the remaining 65 foot lot without the benefit of a legally established non-conforming use for six apartments on that single lot only.

Protestant's Ex 6A
BCBA





PROTESTANT'S EXHIBIT 10 89-396 SPHA

347-8756

May 5, 1988

PROTESTANT'S EXHIBIT

Ellie Lipsitz, Esquire
6609 Reisterstown Road
Suite 102
Baltimore, Maryland 21215

RE: 207-209 Central Avenue
Glyndon, Maryland
Property of Aileen N. Singer

Dear Ellie:

Enclosed is a copy of a letter dated April 8, 1988 from the Zoning Commission's office in Baltimore County to me with various attachments. Included in the attachments is a letter dated April 8, 1988 to Colleen Thompson, the realtor for the Singers.

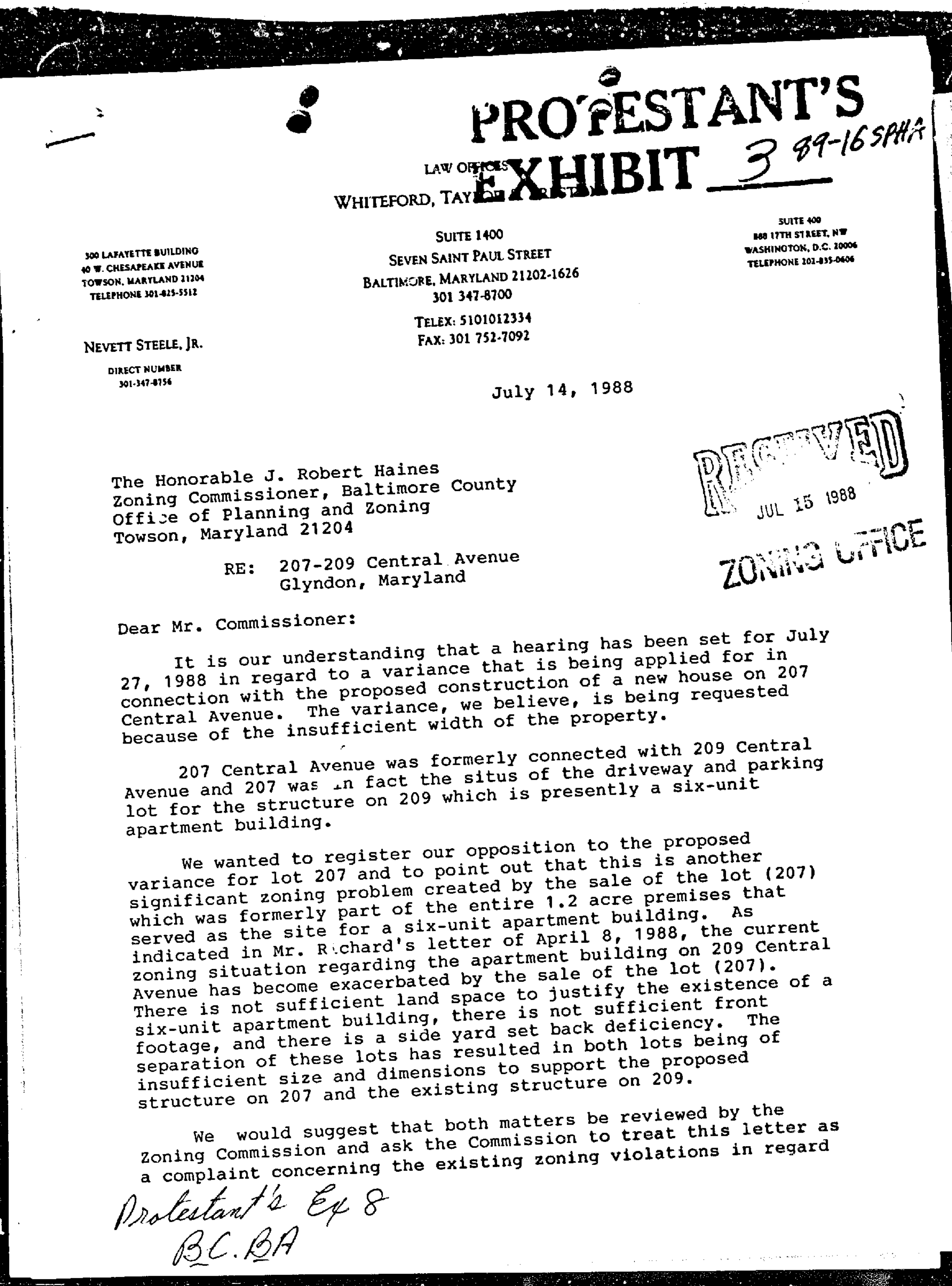
It was nice chatting with you and your dad the other day.

Very truly yours,

Nevett Steele, Jr.

NS/mev
enclosure

Protestant's Ex 7
BC BA



PROTESTANT'S EXHIBIT 3 89-16 SPHA

LAW OFFICES
WHITEFORD, TAY

300 LAFAYETTE BUILDING
40 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
TELEPHONE 301-825-5512

SUITE 1400
SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
301 347-8700
TELEX: 5101012334
FAX: 301 752-7092

SUITE 400
888 17TH STREET, NW
WASHINGTON, D.C. 20006
TELEPHONE 202-835-0606

NEVETT STEELE, JR.
DIRECT NUMBER
301-347-8756

July 14, 1988

RECEIVED
JUL 15 1988
ZONING OFFICE

The Honorable J. Robert Haines
Zoning Commissioner, Baltimore County
Office of Planning and Zoning
Towson, Maryland 21204

RE: 207-209 Central Avenue
Glyndon, Maryland

Dear Mr. Commissioner:

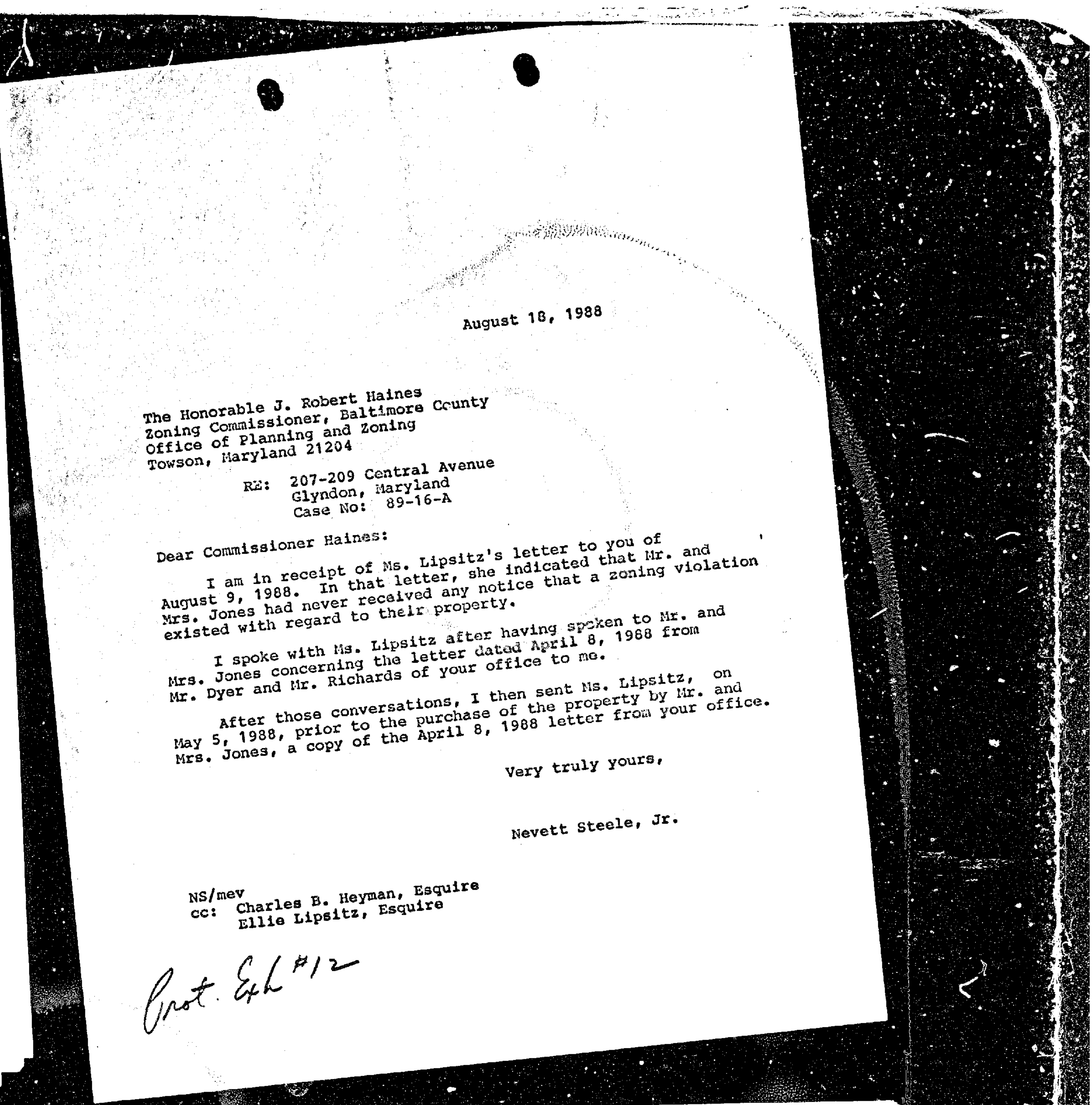
It is our understanding that a hearing has been set for July 27, 1988 in regard to a variance that is being applied for in connection with the proposed construction of a new house on 207 Central Avenue. The variance, we believe, is being requested because of the insufficient width of the property.

207 Central Avenue was formerly connected with 209 Central Avenue and 207 was in fact the situs of the driveway and parking lot for the structure on 209 which is presently a six-unit apartment building.

We wanted to register our opposition to the proposed variance for lot 207 and to point out that this is another significant zoning problem created by the sale of the lot (207) which was formerly part of the entire 1.2 acre premises that served as the site for a six-unit apartment building. As indicated in Mr. Richard's letter of April 8, 1988, the current zoning situation regarding the apartment building on 209 Central Avenue has become exacerbated by the sale of the lot (207). There is not sufficient land space to justify the existence of a six-unit apartment building, there is not sufficient front footage, and there is a side yard set back deficiency. The separation of these lots has resulted in both lots being of insufficient size and dimensions to support the proposed structure on 207 and the existing structure on 209.

We would suggest that both matters be reviewed by the Zoning Commission and ask the Commission to treat this letter as a complaint concerning the existing zoning violations in regard

Protestant's Ex 8
B.C.BA



August 18, 1988

The Honorable J. Robert Haines
Zoning Commissioner, Baltimore County
Office of Planning and Zoning
Towson, Maryland 21204

RE: 207-209 Central Avenue
Glyndon, Maryland
Case No: 89-16-A

Dear Commissioner Haines:

I am in receipt of Ms. Lipsitz's letter to you of August 9, 1988. In that letter, she indicated that Mr. and Mrs. Jones had never received any notice that a zoning violation existed with regard to their property.

I spoke with Ms. Lipsitz after having spoken to Mr. and Mrs. Jones concerning the letter dated April 8, 1988 from Mr. Dyer and Mr. Richards of your office to me.

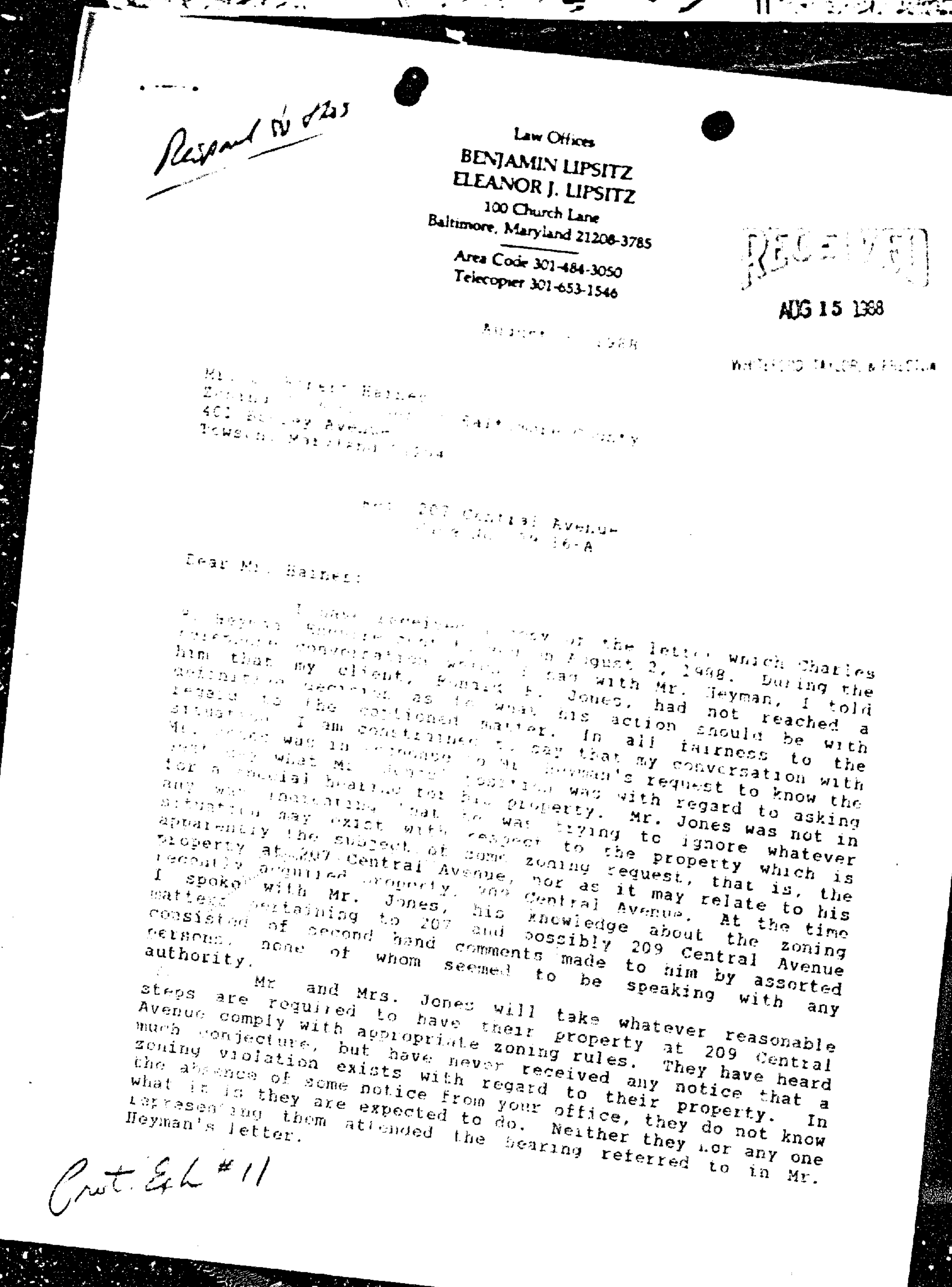
After those conversations, I then sent Ms. Lipsitz, on May 5, 1988, prior to the purchase of the property by Mr. and Mrs. Jones, a copy of the April 8, 1988 letter from your office.

Very truly yours,

Nevett Steele, Jr.

NS/mev
cc: Charles B. Heyman, Esquire
Ellie Lipsitz, Esquire

Prot. Exh #12



Respond to [illegible]

Law Offices
BENJAMIN LIPSITZ
ELEANOR J. LIPSITZ
100 Church Lane
Baltimore, Maryland 21208-3785
Area Code 301-484-3050
Telecopier 301-653-1546

RECEIVED
AUG 15 1988
WHITEFORD TAYLOR & PRESTON

August [illegible] 1988

Mr. [illegible] Haines
Zoning [illegible] Baltimore County
401 Bosley Avenue
Towson, Maryland [illegible]

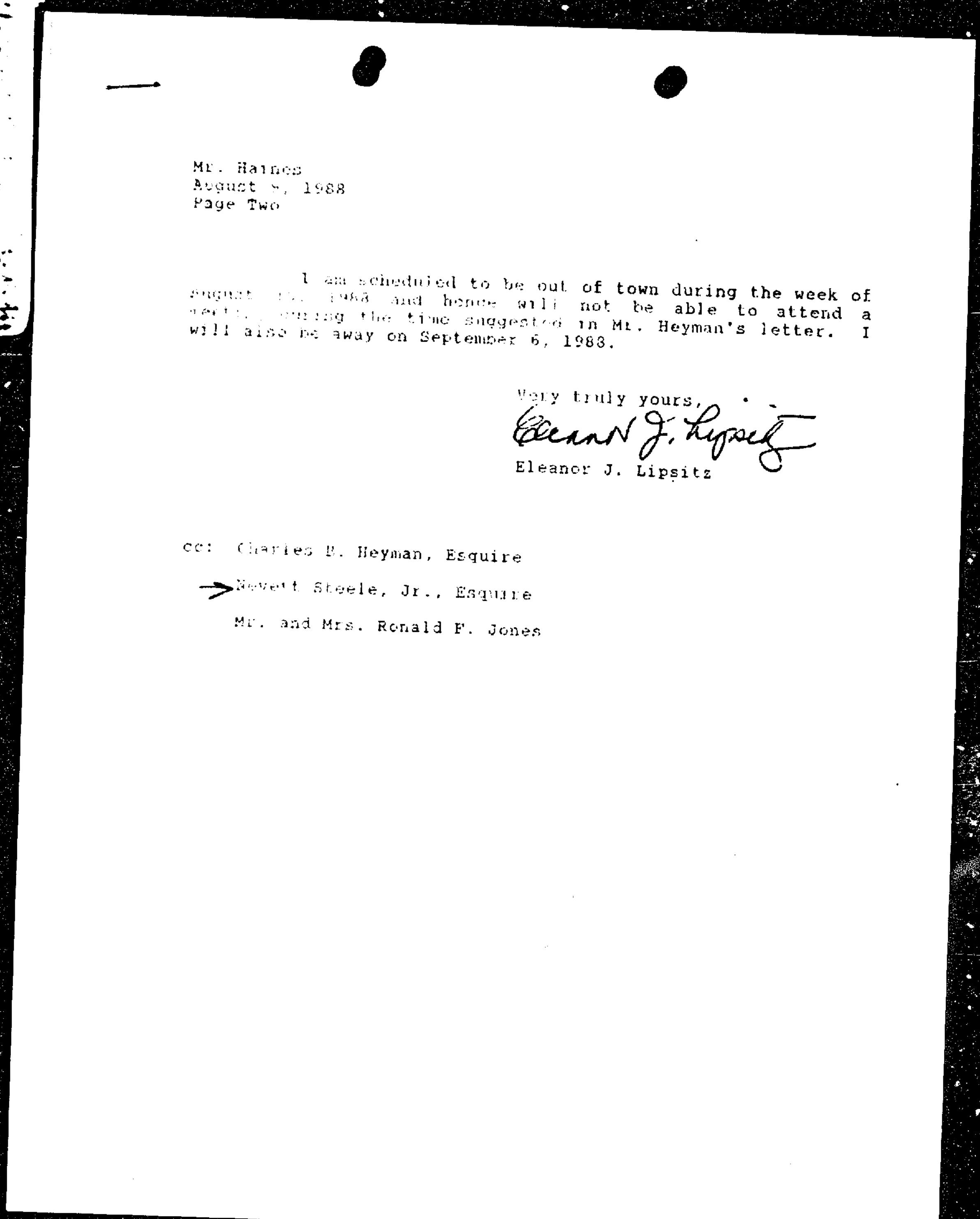
RE: 207 Central Avenue
[illegible] 16-A

Dear Mr. Haines:

I have received a copy of the letter which Charles B. Heyman, Esquire sent [illegible] on August 2, 1988. During the telephone conversation which I had with Mr. Heyman, I told him that my client, Ronald F. Jones, had not reached a definitive decision as to what his action should be with regard to the captioned matter. In all fairness to the situation, I am constrained to say that my conversation with Mr. Jones was in response to Mr. Heyman's request to know the [illegible] what Mr. Jones' position was with regard to asking for a special hearing for his property. Mr. Jones was not in any way indicating that he was trying to ignore whatever situation may exist with respect to the property which is apparently the subject of some zoning request, that is, the property at 207 Central Avenue, nor as it may relate to his recently acquired property, 209 Central Avenue. At the time I spoke with Mr. Jones, his knowledge about the zoning matters pertaining to 207 and possibly 209 Central Avenue consisted of second hand comments made to him by assorted persons, none of whom seemed to be speaking with any authority.

Mr. and Mrs. Jones will take whatever reasonable steps are required to have their property at 209 Central Avenue comply with appropriate zoning rules. They have heard much conjecture, but have never received any notice that a zoning violation exists with regard to their property. In the absence of some notice from your office, they do not know what it is they are expected to do. Neither they nor any one representing them attended the hearing referred to in Mr. Heyman's letter.

Prot. Exh #11

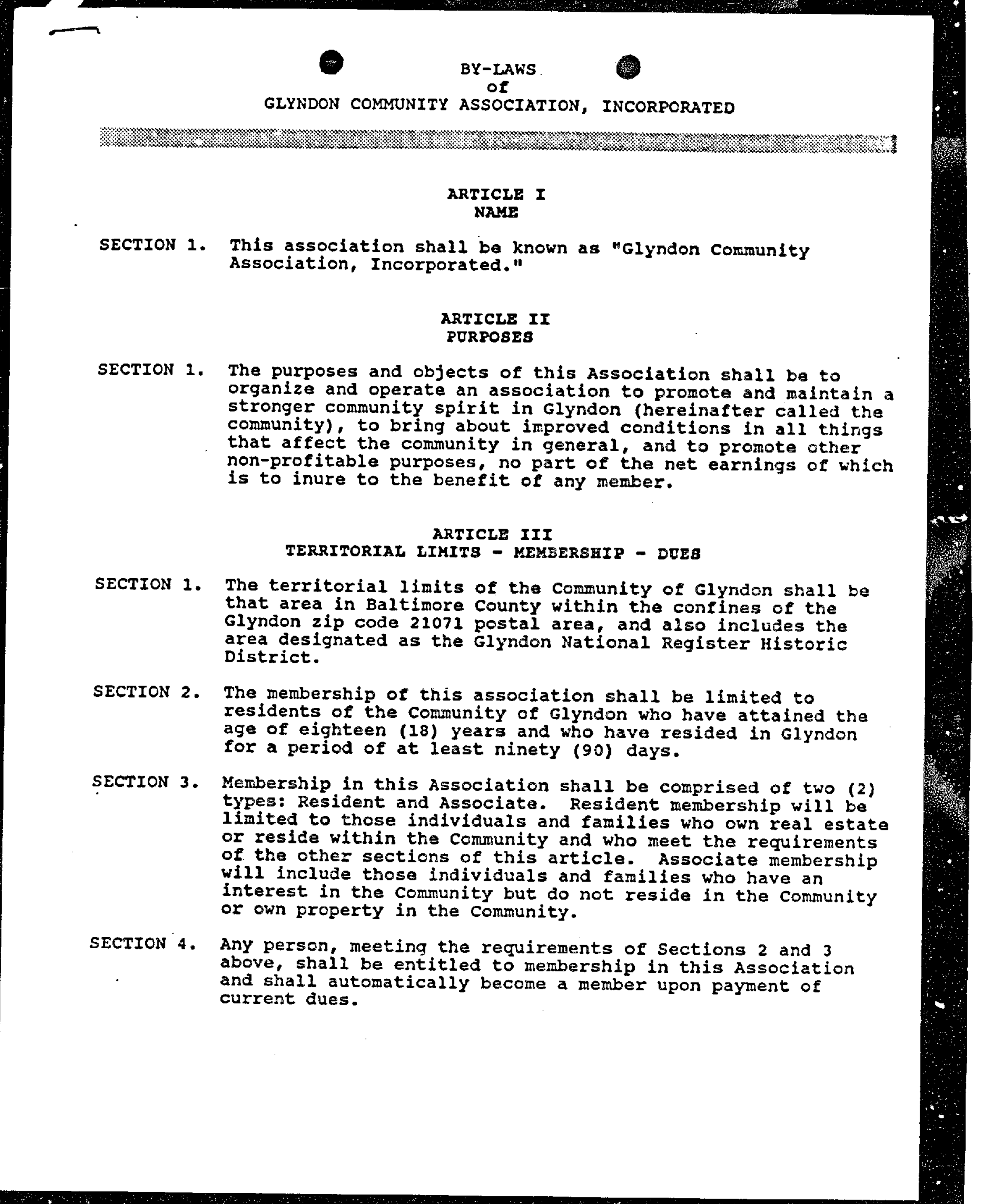


Mr. Haines
August 9, 1988
Page Two

I am scheduled to be out of town during the week of August [illegible] 1988 and hence will not be able to attend a hearing during the time suggested in Mr. Heyman's letter. I will also be away on September 6, 1988.

Very truly yours,
Eleanor J. Lipsitz
Eleanor J. Lipsitz

cc: Charles B. Heyman, Esquire
→ Nevett Steele, Jr., Esquire
Mr. and Mrs. Ronald F. Jones



BY-LAWS of GLYNDON COMMUNITY ASSOCIATION, INCORPORATED

ARTICLE I
NAME

SECTION 1. This association shall be known as "Glyndon Community Association, Incorporated."

ARTICLE II
PURPOSES

SECTION 1. The purposes and objects of this Association shall be to organize and operate an association to promote and maintain a stronger community spirit in Glyndon (hereinafter called the community), to bring about improved conditions in all things that affect the community in general, and to promote other non-profitable purposes, no part of the net earnings of which is to inure to the benefit of any member.

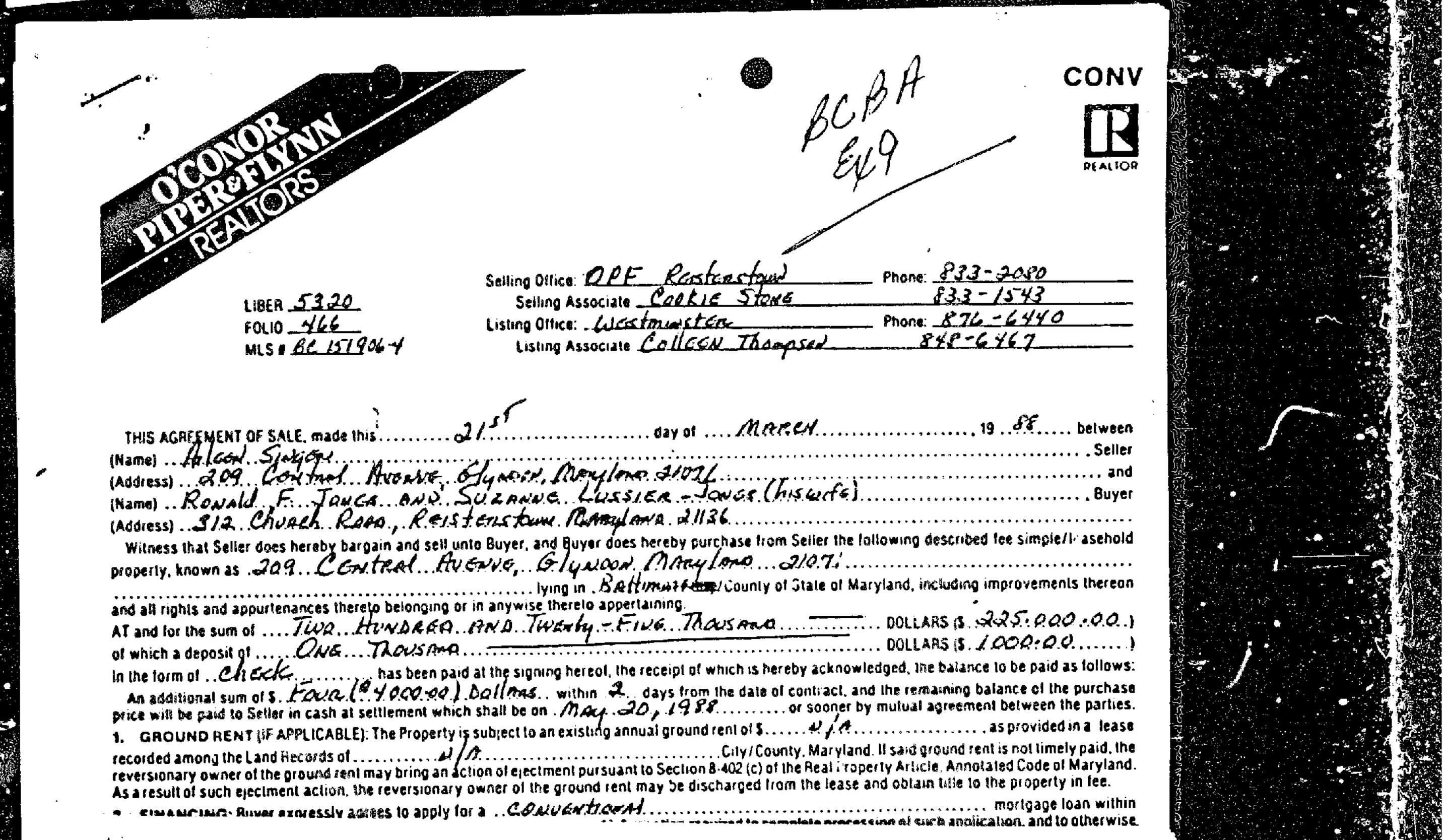
ARTICLE III
TERRITORIAL LIMITS - MEMBERSHIP - DUES

SECTION 1. The territorial limits of the Community of Glyndon shall be that area in Baltimore County within the confines of the Glyndon zip code 21071 postal area, and also includes the area designated as the Glyndon National Register Historic District.

SECTION 2. The membership of this association shall be limited to residents of the Community of Glyndon who have attained the age of eighteen (18) years and who have resided in Glyndon for a period of at least ninety (90) days.

SECTION 3. Membership in this Association shall be comprised of two (2) types: Resident and Associate. Resident membership will be limited to those individuals and families who own real estate or reside within the Community and who meet the requirements of the other sections of this article. Associate membership will include those individuals and families who have an interest in the Community but do not reside in the Community or own property in the Community.

SECTION 4. Any person, meeting the requirements of Sections 2 and 3 above, shall be entitled to membership in this Association and shall automatically become a member upon payment of current dues.



O'CONOR PIPER & FLYNN REALTORS

CONV
REALTOR

BCBA Ex 9

LIBER 5320
FOLIO 466
MLS # BC 151906-4

Selling Office: OPF Reisterstown Phone: 833-2080
Selling Associate Cookie Stone 833-1543
Listing Office: Westminster Phone: 876-6440
Listing Associate Colleen Thompson 848-6467

THIS AGREEMENT OF SALE, made this 21st day of March 19 88 between
(Name) Aileen Singer, Seller
(Address) 209 Central Avenue, Glyndon, Maryland 21071 and
(Name) Ronald F. Jones and Suzanne Lussier-Jones (his wife), Buyer
(Address) 312 Church Road, Reisterstown, Maryland 21136

Witness that Seller does hereby bargain and sell unto Buyer, and Buyer does hereby purchase from Seller the following described fee simple/leasehold property, known as 209 Central Avenue, Glyndon, Maryland 21071 lying in Baltimore City/County of State of Maryland, including improvements thereon and all rights and appurtenances thereto belonging or in anywise thereto appertaining.

AT and for the sum of Two Hundred and Twenty-Five Thousand DOLLARS ($ 225,000.00)
of which a deposit of One Thousand DOLLARS ($ 1000.00)
in the form of Check has been paid at the signing hereof, the receipt of which is hereby acknowledged, the balance to be paid as follows:

An additional sum of $ Four ($4000.00) Dollars within 2 days from the date of contract, and the remaining balance of the purchase price will be paid to Seller in cash at settlement which shall be on May 20, 1988 or sooner by mutual agreement between the parties.

1. GROUND RENT (IF APPLICABLE): The Property is subject to an existing annual ground rent of $ N/A as provided in a lease recorded among the Land Records of N/A City/County, Maryland. If said ground rent is not timely paid, the reversionary owner of the ground rent may bring an action of ejectment pursuant to Section 8-402 (c) of the Real Property Article, Annotated Code of Maryland. As a result of such ejectment action, the reversionary owner of the ground rent may be discharged from the lease and obtain title to the property in fee.

2. FINANCING: Buyer expressly agrees to apply for a conventional mortgage loan within

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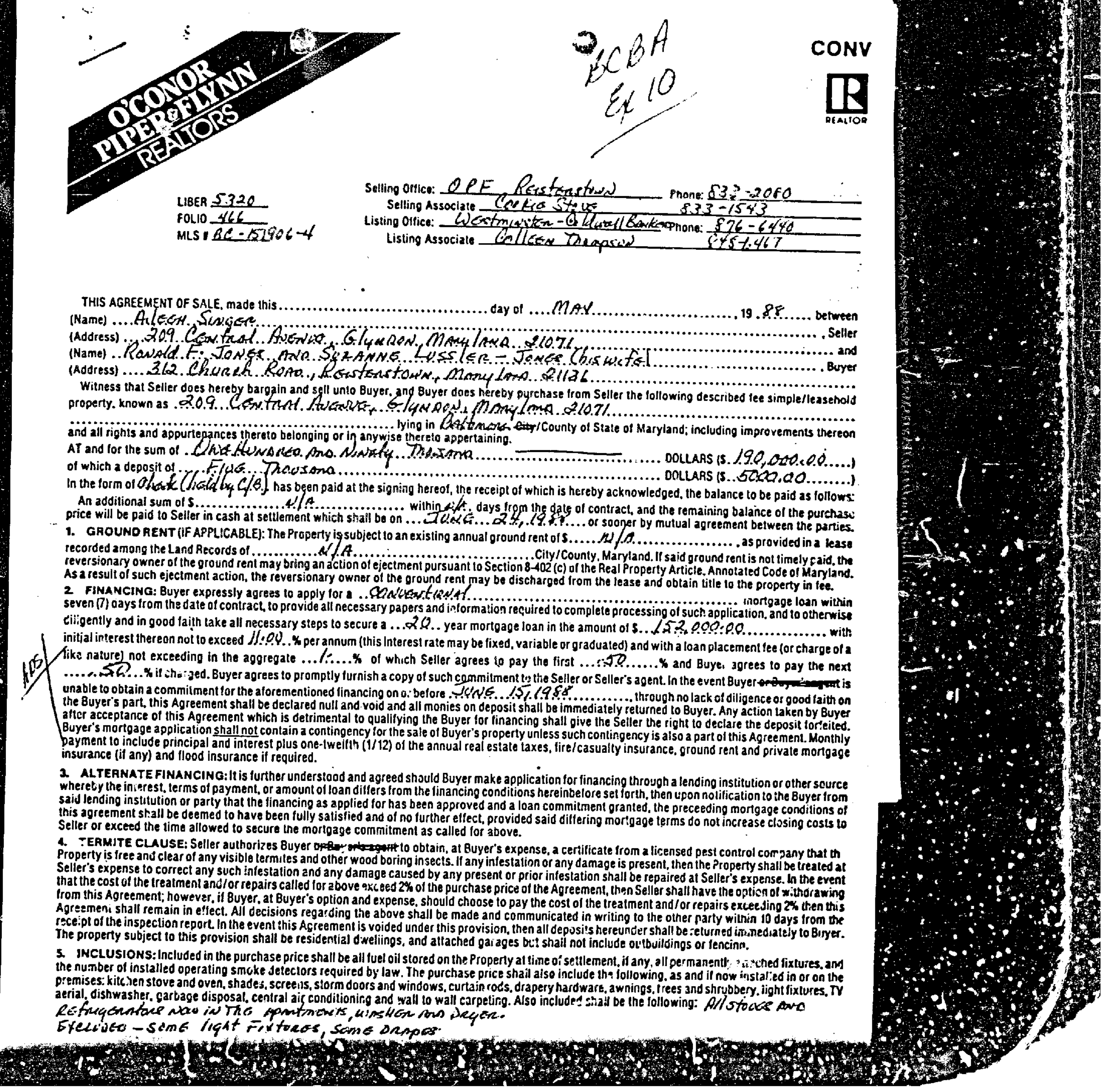

O'CONOR PIPER & FLYNN REALTORS

CONV
REALTOR

BCBA Ex 10

LIBER 5320
FOLIO 466
MLS # BC-151906-4

Selling Office: OPF Reisterstown Phone: 833-2080
Selling Associate Cookie Stone 833-1543
Listing Office: Westminster-Coldwell Banker Phone: 876-6440
Listing Associate Colleen Thompson 848-6467

THIS AGREEMENT OF SALE, made this day of May 19 88 between
(Name) Aileen Singer, Seller
(Address) 209 Central Avenue, Glyndon, Maryland 21071 and
(Name) Ronald F. Jones and Suzanne Lussier-Jones (his wife), Buyer
(Address) 312 Church Road, Reisterstown, Maryland 21136

Witness that Seller does hereby bargain and sell unto Buyer, and Buyer does hereby purchase from Seller the following described fee simple/leasehold property, known as 209 Central Avenue, Glyndon, Maryland 21071 lying in Baltimore ~~City~~/County of State of Maryland; including improvements thereon and all rights and appurtenances thereto belonging or in anywise thereto appertaining.

AT and for the sum of One Hundred and Ninety Thousand DOLLARS ($ 190,000.00)
of which a deposit of Five Thousand DOLLARS ($ 5000.00)
In the form of Check (held by C/B) has been paid at the signing hereof, the receipt of which is hereby acknowledged, the balance to be paid as follows:

An additional sum of $ N/A within N/A days from the date of contract, and the remaining balance of the purchase price will be paid to Seller in cash at settlement which shall be on June 24, 1988 or sooner by mutual agreement between the parties.

1. GROUND RENT (IF APPLICABLE): The Property is subject to an existing annual ground rent of $ N/A, as provided in a lease recorded among the Land Records of N/A City/County, Maryland. If said ground rent is not timely paid, the reversionary owner of the ground rent may bring an action of ejectment pursuant to Section 8-402 (c) of the Real Property Article, Annotated Code of Maryland. As a result of such ejectment action, the reversionary owner of the ground rent may be discharged from the lease and obtain title to the property in fee.

2. FINANCING: Buyer expressly agrees to apply for a conventional mortgage loan within seven (7) days from the date of contract, to provide all necessary papers and information required to complete processing of such application, and to otherwise diligently and in good faith take all necessary steps to secure a 20 year mortgage loan in the amount of $ 152,000.00 with initial interest thereon not to exceed 11.00 % per annum (this Interest rate may be fixed, variable or graduated) and with a loan placement fee (or charge of a like nature) not exceeding in the aggregate 1 % of which Seller agrees to pay the first 50 % and Buyer agrees to pay the next 50 % if charged. Buyer agrees to promptly furnish a copy of such commitment to the Seller or Seller's agent. In the event Buyer ~~or Buyer's agent~~ is unable to obtain a commitment for the aforementioned financing on or before June 15, 1988, through no lack of diligence or good faith on the Buyer's part, this Agreement shall be declared null and void and all monies on deposit shall be immediately returned to Buyer. Any action taken by Buyer after acceptance of this Agreement which is detrimental to qualifying the Buyer for financing shall give the Seller the right to declare the deposit forfeited. Buyer's mortgage application shall not contain a contingency for the sale of Buyer's property unless such contingency is also a part of this Agreement. Monthly payment to include principal and interest plus one-twelfth (1/12) of the annual real estate taxes, fire/casualty insurance, ground rent and private mortgage insurance (if any) and flood insurance if required.

3. ALTERNATE FINANCING: It is further understood and agreed should Buyer make application for financing through a lending institution or other source whereby the interest, terms of payment, or amount of loan differs from the financing conditions hereinbefore set forth, then upon notification to the Buyer from said lending institution or party that the financing as applied for has been approved and a loan commitment granted, the preceeding mortgage conditions of this agreement shall be deemed to have been fully satisfied and of no further effect, provided said differing mortgage terms do not increase closing costs to Seller or exceed the time allowed to secure the mortgage commitment as called for above.

4. TERMITE CLAUSE: Seller authorizes Buyer ~~or Buyer's agent~~ to obtain, at Buyer's expense, a certificate from a licensed pest control company that the Property is free and clear of any visible termites and other wood boring insects. If any infestation or any damage is present, then the Property shall be treated at Seller's expense to correct any such infestation and any damage caused by any present or prior infestation shall be repaired at Seller's expense. In the event that the cost of the treatment and/or repairs called for above exceed 2% of the purchase price of the Agreement, then Seller shall have the option of withdrawing from this Agreement; however, if Buyer, at Buyer's option and expense, should choose to pay the cost of the treatment and/or repairs exceeding 2% then this Agreement shall remain in effect. All decisions regarding the above shall be made and communicated in writing to the other party within 10 days from the receipt of the inspection report. In the event this Agreement is voided under this provision, then all deposits hereunder shall be returned immediately to Buyer. The property subject to this provision shall be residential dwellings, and attached garages but shall not include outbuildings or fencing.

5. INCLUSIONS: Included in the purchase price shall be all fuel oil stored on the Property at time of settlement, if any, all permanently attached fixtures, and the number of installed operating smoke detectors required by law. The purchase price shall also include the following, as and if now installed in or on the premises: kitchen stove and oven, shades, screens, storm doors and windows, curtain rods, drapery hardware, awnings, trees and shrubbery, light fixtures, TV aerial, dishwasher, garbage disposal, central air conditioning and wall to wall carpeting. Also included shall be the following: All stoves and Refrigerators now in the apartments, washer and dryer. Excluded - some light fixtures, some drapes

GLYNDON
COMMUNITY ASSOCIATION, INC. GLYNDON, MARYLAND 21071

Prot. Exh #14

October 12, 1990

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

Re: Case Number 89-396-SPHA

Dear Board:

The community of Glyndon is justifiably proud of our lovely Victorian houses located on spacious lots on small, tree lined streets. Because of these features, Glyndon has been placed on the National Register of Historic Places and has the honor of being r ed as the very first historic district in all of Baltimore County. This combination of history and beauty has attracted a very special type of home owner to Glyndon. People who live or consider buying homes in Glyndon appreciate the historic flavor of the community and are committed to maintaining and improving the beautiful Victorian houses and large lots on which they are situated.

Central Avenue is the main residential street in Glyndon and contains many of the historic Victorian homes that have helped to make Glyndon special. The property in question is located right in the midst of many of Glyndon's most beautiful and historic properties.

The Board of Directors of the Glyndon Community Association has voted unanimously to oppose this appeal until such time as the contiguous lot can once again be used to support the parking lot and driveway requirements for a six unit facility. The appeal being requested would have a significantly negative impact on the nature of our community and the scale of residences and lots on Central Avenue.

We urge you to support the dedicated and tireless work of hundreds of Glyndon residents and deny this appeal.

Sincerely,

GLYNDON COMMUNITY ASSOCIATION

Mark Laken
Mark Laken
President

Duly resolved by the Board of Directors on October 11, 1990.

Mark Laken
Mark Laken
President

Darlene M Scheyer
Darlene Scheyer
Secretary

Historic Glyndon Incorporated
Glyndon, Maryland 21071
October 23, 1990

Mr. J. Robert Haines
Zoning Commissioner of Baltimore County
Office of Planning and Zoning
111 W. Chesapeake Avenue
Towson, MD 21204

Dear Mr. Haines,

The board members of Historic Glyndon Inc. would like to express opposition to the granting of variances in case numbers 39-16-SPHA and 89-396-SPHA. We feel that allowiong these changes would set an undesirable precedent for the future in the Glyndon Historic District.

The importance of maintaining the historic integrity of our houses and properties in spirit and in fact is not taken lightly by those of us who have chosen to live here and should be recognized by our appointed and elected officials as well. Adding new homes to the community is not at issue but we feel in this instance the changes allowed by the proposed variances could encourage developers to seek out similar properties and further variances. A community of once stately homes and spacious lawns could be chopped into small lots of unsuitable dimensions.

National, State and County designations have been put in place in Glyndon to afford some protection for its unique character and we feel that local boards and commissions should do everything in their power to uphold the laws which grant these designations.

We hope for your much needed and appreciated support by not granting these variances.

Sincerely,

Ann B. O'Neill
Ann B. O'Neill, President
Historic Glyndon, Inc.

Prot. Exh #15

15

Historic Glyndon Incorporated
Glyndon, Maryland 21071
October 23, 1990

To Whom It May Concern:

Historic Glyndon Incorporated is an historic organization of 141 members. The territorial boundary of Historic Glyndon Incorporated, as stated in the by-laws, "shall be the community known as Glyndon, Maryland which shall be deemed to contain the areas known as "Emory Grove" and "St. Georges" and which shall be deemed to contain the property known as the "Sacred Heart Catholic Church on Sacred Heart Lane, Glyndon, Maryland."

The Board of Directors is authorized by the by-laws of the Corporation to conduct all business, including items related to zoning issues. The Board has resolved that Mrs. Eleanor Taylor is authorized to present our views with respect to cases 89-16-SPHA and 89-396-SPHA.

Sincerely,

Ann B. O'Neill
Mrs. Ann B. O'Neill, President

Lynne Maher
Mrs. Lynne Maher, Secretary

Prot. Exh #16

LAW OFFICES
LEVIN, GANN & HANKIN
A PROFESSIONAL ASSOCIATION
305 W. CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204
301-321-0600
FAX 301-296-2801

CALMAN A. LEVIN
STANFORD G. GANN*
ROBERT M. HANKIN
MELVIN A. STEINBERG
JULIUS W. LICHTER
SIDNEY WEIMAN
ROBERT L. PRELLER
ANDREW R. SANDLER
RANDOLPH C. KNEPPER
BRIAN I. FRANK
HOWARD L. ALDERMAN, JR.
STUART D. KAPLOW
JUDITH S. GANN+
MARC C. GANN*
*ALSO ADMITTED IN DC
+ALSO ADMITTED NEW YORK

ELLIS LEVIN (1893-1960)

BALTIMORE OFFICE
10 LIGHT STREET
BALTIMORE, MD 21202
301-539-3700
FAX 301-625-9050

CARROLL COUNTY OFFICE
1137 LIBERTY ROAD
SYKESVILLE, MD 21784
301-795-6600

April 4, 1988

Mr. & Mrs. George Singer, Sr.
209 Central Avenue
Glyndon, Maryland 21071

Re: 207 and 209 Central Avenue

Dear George and Aileen:

I thought that I would drop you a quick note to confirm our telephone conversation of the other day with respect to a possible zoning violation for a multiple family dwelling use of 209 Central Avenue.

As we discussed, such a utilization of the property would be a "nonconforming use" under the current zoning regulations, however, it may continue as a legal use, if it meets the requirements of Section 104.1 of those regulations. While I am not familiar with the details of your current difficulties, it appears clear that the outconveyance of 207 Central Avenue has served to exacerbate the situation.

While I am unclear as to the nature of the Zoning Office's current involvement with this matter, I can only assume that it was as a result of someone attempting to obtain a certificate of zoning compliance incident to your contract to sell the property. It is extremely unlikely that the involvement was as a result of a citizen complaint because such a complaint would have been referred to the local zoning inspector, Ms. Robin Clarke and not to Carl Richards. In any event, as you likely have a settlement date for your contract, all efforts should be made to resolve this matter informally and with due haste, (before any written responses are promulgated by the Zoning Office), as hearings before the Zoning Commissioner are now being scheduled some four months from now and violation hearings before the District Court are now being scheduled almost five months from now.

Assuming that your current difficulties are in securing a certificate of zoning compliance, you may be faced with the prospect of having the Zoning Commissioner validate your

Prot Exh #17

Mr. & Mrs. George Singer, Sr.
Page 2
April 4, 1988

nonconforming use, as you would not likely be able to obtain a "conversion" to five dwelling units with the remaining lot size. It is unclear however, what effect both the outconveyance of 207 Central Avenue and the zoning line that bisects the lot will have on the conversion calculation and should this become a dispute, these may be possible avenues to resolution of the larger problem.

In any event, from what you have told me about your current disputes and differences, I suspect that an amicable resolution will likely be possible. Should you have any further questions or should I need be of any assistance to you, please do not hesitate to give me a call.

Sincerely,

Stuart D. Kaplow

SDK/tbm

Prot. Exh #13

GLYNDON COMMUNITY ASSOCIATION
MINUTES
General Meeting, February 27, 1990

President Mark Laken called the meeting to order at 7:40 P.M. There were 55 members in attendance. The minutes of the November 28, 1989 general meeting were approved as read. The Treasurer's report (attached) was approved as read.

COMMITTEE REPORTS

Traffic -- the intersection of Butler Rd. & Rt. #30 was downgraded to a Class F intersection.

Zoning -- No report.

ROG -- No report.

Improvement -- No report.

Master Plan - No report.

Environment -- The former National Circuits property (Rts. 140 & 30) has been found to contain high levels of hazardous waste products. Clean-up evaluation is currently in progress, but the surrounding communities have been told that there is no need to panic.

It was reported that a storm water management pond near 350 Central Ave. has presented some problems for the residents there. The gentleman reported that children have been playing in the approximately 8 feet of water and that there was an anticipated mosquito problem. He has followed this up with numerous phone calls to the proper Balto. Co. agencies and is making a diligent effort to correct the problems.

OLD BUSINESS

207 - 209 Central Avenue...An appeal date has been set for June.

Glyndon Square Parking Exp....The Zoning Commissioner said he would take a personal look at the site prior to making a decision. To date no further has been heard.

State Highway Property...There has been no new information.

Glyndon Historical Sign...George Wroe will continue investigation into replacing the sign. Total replacement seems to be less expensive than repairing the damaged sign.

RONALD F. JONES, ET UX #89-396-SPHA

NE/s Central Ave., 60' SE Glyndon Ave. (209 Central Ave.)

4th Election District
3rd Councilmanic District

Petition filed by Eleanor J. Lipsitz, Esquire on behalf of Ronald F. Jones, et ux for a Special Hearing to approve the multi-family apartment dwelling and lot at 209 Central Avenue as a legal nonconforming use for six apartment units or that said lot (209) and improvements conform to the spirit and intent of the BCZR that apply to the conversion of dwellings for apartment use.

Petition filed by Eleanor J. Lipsitz, Esquire on behalf of Ronald F. Jones, et ux for Variances to permit side yard setbacks of 12 ft. and 12.6 ft. in lieu of the required 20 ft. for one side and 40 ft. and/or 50 ft. for the sum of both side yard setbacks. Also to permit a lot width of 65 ft. in lieu of the required 90 ft. or greater as may be determined.

March 15, 1989	Comments of Baltimore County Zoning Plans Advisory Committee.
March 17	Publication in newspaper.
March 17	Certificate of Posting of property.
April 4	Hearing held on Petition by the Zoning Commissioner.
June 2	Petitioner's Brief filed by Eleanor J. Lipsitz, Esquire.
	Protestants' Memorandum of Law filed by G. Scott Barhight, Esquire.
October 24	Order of the Zoning Commissioner DENYING Petitions for Special Hearing and Variances.
November 21	Notice of Appeal received from Eleanor J. Lipsitz, Esquire on behalf of Petitioner.
June 26, 1990	Hearing before the Board of Appeals.
July 24	Continued Hearing before the Board of Appeals (telephone testimony).
October 12	Continued Hearing before the Board of Appeals.
October 26	Concluded Hearing before the Board of Appeals.

RONALD F. JONES, ET UX #89-396-SPHA

NE/s Central Ave., 60' SE Glyndon Ave. (209 Central Ave.)

4th Election District
3rd Councilmanic District

January 22, 1991	Appellants' Brief filed by Eleanor J. Lipsitz, Esquire.
January 22	Protestants' Memorandum of Law filed by G. Scott Barhight, Esquire.
April 12	Opinion and Order of the Board GRANTING the Petitions for Special Hearing for nonconforming use and for requested Variances.
April 12	Dissenting Opinion by John G. Disney.
May 13	Order for Appeal filed in the Circuit Court for Baltimore County by Nevett Steele, Jr., et ux.
	Petition to accompany appeal filed in the Circuit Court for Baltimore County by Nevett Steele, Jr., et ux.
May 14	Certificate of Notice sent to interested parties.
	Transcript of testimony; Record of Proceedings filed in Circuit Court for Baltimore County.
May 22, 1991	Notice of Dismissal of appeal filed in CCt,BCo by Nevett Steele, Jr., Plaintiff/Appellant.
May 30	Above Notice of Dismissal stamped and filed by Clerk of the Court.

W. LEE THOMAS, P. A.
ATTORNEYS AT LAW
SUITE 3-4
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
TELEPHONE (301) 296-6777

W. LEE THOMAS
DAVID A. WILSON
KEITH E. RONALD
GAIL C. COOPER

TELECOPIER
(301) 821-8406

May 10, 1988

Mr. William E. Doyle
5312 Emerald Drive
Sykesville, MD 21784

Re: Aileen M. Singer, 207 Central Avenue
Your File: No. 223-6

Dear Mr. Doyle:

This office represents Mrs. Singer in her effort to establish a non-conforming use at the above-referenced property.

In order to file a Petition for Special Hearing with the Office of the Zoning Commissioner for Baltimore County, I shall need a plat. I understand that you have already prepared one, which certainly can serve as a start.

As you may know, however, Baltimore County requires certain specific information on each plat. A copy of their checklist is enclosed for your reference.

In addition to the information set forth therein, I would also request that you include the following information on the plat:

1) location of new driveway and parking lot on 209 Central Avenue;

2) location and description of existing trees, shrubs and other screening on south property line; and

3) location of dwelling and screening on adjacent property (211 Central Avenue) owned by Mr. Steele, the primary opponent to Mrs. Singer.

I would appreciate your prompt attention to this matter so that I may file the petition at the earliest possible date. Should you have any questions or if I may be of any assistance, please do not hesitate to contact me.

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

App
W/A

IN THE MATTER OF THE
THE APPLICATION OF
RONALD F. JONES, ET UX
FOR A SPECIAL HEARING AND
VARIANCE ON PROPERTY LOCATED
ON THE NORTHEAST SIDE OF
CENTRAL AVENUE, 60 FEET
SOUTHEAST OF GLYNDON AVENUE
(209 CENTRAL AVENUE
4TH ELECTION DISTRICT
3RD COUNCILMANIC DISTRICT

BEFORE THE
COUNTY BOARD OF APPEALS
OF
BALTIMORE COUNTY
CASE NO. 89-396-SPHA
91 CG 2061
94/90

* * * * * * *

NOTICE OF DISMISSAL

MADAM CLERK:

Please dismiss the above case pursuant to Maryland 2-506. This case is an appeal filed pursuant to Md. Rules B-13, Administrative Agencies.

91 JUN 24 AM 11:14

Respectfully submitted,

Nevett Steele, Jr.
211 Central Avenue
Glyndon, MD 21071
(301) 296-8164 (Work)
(301) 833-6564 (Home)

Elizabeth B. Steele (ns)
Elizabeth B. Steele
211 Central Avenue
Glyndon, MD 21071
(301) 833-6564 (Home)

PAID
MAY 29 1991
SUZANNE MENSH, CLERK
PER

FILED MAY 30 1991

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of May, 1991, a copy of the foregoing Order for Appeal was mailed to Eleanor J.

Case No. 89-396-SPHA

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District 4th
Date of Posting 4/5/89
Posted for Special Hearing & Zoning Variance
Petitioner Ronald F Jones et ux
Location of property NE/S Central Ave 125' SE Glyndon Ave
(209 Central Ave)
Location of Signs Front yard of subject property
Remarks:
Posted by Signature
Date of return:
Number of Signs: 2

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

#89-396-SPHA

District 4th
Date of Posting 3-17-89
Posted for Special Hearing & Zoning Variance
Petitioner Ronald F. Jones, et ux
Location of property NE/S Central Avenue, 125' SE Glyndon Ave –
209 Central Avenue
Location of Signs Front yard of subject property
Remarks:
Posted by Frank M. B. Meyle
Signature
Date of return:
Number of Signs: 2

Lipsitz, Esquire, 100 Church Lane, Baltimore, Maryland 21208; Charles B. Heyman, Esquire, Kaplan, Heyman, Greenberg, Engleman & Belgrad, P.A., Tenth Floor, Sun Life Bldg., 20 S. Charles Street, Baltimore, MD 21201; and Linda Kuszmaul, Board of Appeals, 111 W. Chesapeake Avenue, Towson, Maryland 21204.

Nevett Steele, Jr.

Baltimore County
Zoning Commisioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Account: R-001-6150
Number

Date

5-01-91

COPIES:
200 PHOTOCOPIES

C9100768 ✓

	QTY	PRICE
200 PHOTOCOPIES	49 X	$1.00
	TOTAL:	$49.00

Cashier Validation
Please Make Checks Payable To: Baltimore County
04A04#0124MICHRC
11:32AM05-01-91
$49.00

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

RONALD F. JONES and
SUZANNE LUSSIER-JONES,
Petitioners

: Case No. 89-396-SPHA
NE/S Central Avenue, 125 SE
: Glyndon Avenue

APPEAL

MR. ZONING COMMISSIONER:

Please enter an appeal to the Board of Appeals for Baltimore County in this matter on behalf of Petitioners.

Eleanor J. Lipsitz
ELEANOR J. LIPSITZ,
100 Church Lane
Baltimore, Maryland 21208
(301) 484-3050,
Attorney for Petitioners

Baltimore County
Zoning Commisioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

receipt

Account: R-001-6150
Number
№ 449

Date

	QTY	PRICE
APPEAL FEES		
140 - OF ALL OTHER ORDERS	2 X	$125.00
150 - POSTING SIGNS / ADVERTISING	1 X	$25.00
	TOTAL:	$275.00

LAST NAME OF OWNER: LIPSITZ
CASE # 89-396-SPHA

B B 079*****27500:a 272F
Please make checks payable to: Baltimore County
Cashier Validation:

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL GENERAL

DOCKET 94 PAGE 90 CASE NO. 91CG2061 CATEGORY APPEAL

	ATTORNEYS
IN THE MATTER OF THE THE APPLICATION OF RONALD F. JONES, ET UX FOR A SPECIAL HEARING AND VARIANCE ON PROPERTY LOCATED ON THE NORTHEAST SIDE OF CENTRAL AVENUE, 60 FEET SOUTHEAST OF GLYNDON AVENUE 209 CENTRAL AVENUE 4TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT > E	Nevett Steele, Jr Elizabeth B. Steele 211 Central Ave, Glyndon 21071 296-8164, 833 6564 <

(1) May 13, 1991 - Order from Appeal from the Opinion and Order of the Baltimore County Board of Appeals fd. (89-396-SPHA)

(2) May 14,1991 - Certificate of notice, fd.

~~PAID, SETTLED & SATISFIED~~
MAY 30 1991
DISMISSED ~~WITHOUT PREJUDICE~~
ORDER OF PLAINTIFF'S ATTY. FD.

COSTS

CV GEN 912061
CV CLK 10.00
CKCHECK TL 10.00

NOTICE OF HEARING

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

Petitions for Special Hearing and Zoning Variance
Case number: 89-396-SPHA
NE/S Central Avenue, 125' SE Glydon Avenue
(209 Central Avenue)
4th Election District
3rd Councilmanic
Petitioner(s):
Ronald F. Jones, et ux
Hearing Date: Tuesday, Apr. 4, 1989 at 9:00 a.m.

Special Hearing: Approval of the multi family apartment dwelling and lot at 209 Central Avenue as a legal nonconforming use for six (6) apartments units or that said lot (209) and improvements conform to the spirit and intent of the B.C.Z.R. that apply to the conversion of dwellings for apartment use. Variance to permit side yard setbacks of 12.0 ft. and 12.6 ft. in lieu of the required 20 ft. for one side and 40 ft. and/or 50 ft. for the sum of both side yard setbacks. Also to permit a lot width of 65 ft. in lieu of the required 90 ft. or greater as may be determined.

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

J. ROBERT HAINES
Zoning Commissioner of Baltimore County
Mar. 16.

CERTIFICATE OF PUBLICATION

TOWSON, MD., March 17, 1989

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 March 16, 1989.

THE JEFFERSONIAN,

S. Zeke Orlan
Publisher

PO 10818
req M 27075
price $97.32

NOTICE OF HEARING

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

Petitions for Special Hearing and Zoning Variance
Case number: 89-396-SPHA
NE/S Central Avenue, 125' SE Glydon Avenue
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4th Election District
3rd Councilmanic
Petitioner(s):
Ronald F. Jones, et ux
Hearing Date: Tuesday, Apr. 4, 1989 at 9:00 a.m.

Special Hearing: Approval of the multi family apartment dwelling and lot at 209 Central Avenue as a legal nonconforming use for six (6) apartments units or that said lot (209) and improvements conform to the spirit and intent of the B.C.Z.R. that apply to the conversion of dwellings for apartment use. Variance to permit side yard setbacks of 12.0 ft. and 12.6 ft. in lieu of the required 20 ft. for one side and 40 ft. and/or 50 ft. for the sum of both side yard setbacks. Also to permit a lot width of 65 ft. in lieu of the required 90 ft. or greater as may be [illegible] this Petition is [illegible] building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. ROBERT HAINES
Zoning Commissioner of Baltimore County
OJ/3/286 Mar. 16.

CERTIFICATE OF PUBLICATION

TOWSON, MD. March 16, 1989

THIS IS TO CERTIFY, that the annexed advertisement was published in the OWINGS MILLS TIMES, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on March 16, 1989.

OWINGS MILLS TIMES,

S. Zeke Orlan
Publisher

PO 10818
req M 27075
price 97.32

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

J. Robert Haines
Zoning Commissioner

Dennis F. Rasmussen
County Executive

Date: 3/20/89

Mr. & Mrs. Ronald F. Jones
312 Church Road
Reisterstown, Maryland 21136

Re: Petitions for Special Hearing and Zoning Variance
CASE NUMBER: 89-396-SPHA
NE/S Central Avenue, 125' SE Glydon Avenue
(209 Central Avenue)
4th Election District - 3rd Councilmanic
Petitioner(s): Ronald F. Jones, et ux
HEARING SCHEDULED: TUESDAY, ARPIL 4, 1989 at 9:00 a.m.

Dear Mr. & Mrs. Jones:

Please be advised that $127.32 is due for advertising and posting of the above-referenced property. All fees must be paid prior to the hearing. Do not remove the sign and post set(s) from the property from the time it is posted by this office until the day of the hearing itself.

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

... to Baltimore County, Maryland and bring ... office, County Office ... minutes before

... d post set(s), there ... r each set not

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... aines

... IES
... sioner of
... nty

cc: Eleanor J. Lipsitz, Esq.
File

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

No. 087588

DATE 4/4/89 ACCOUNT R-01-615-000
AMOUNT $ 127.32
RECEIVED FROM: Ronald Jones
FOR: P+A 4/4/89 hearing 89-396-SPH

B B C10*****12732:a 304%F

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

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

Paul H. Reincke
Chief

Dennis F. Rasmussen
County Executive

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

Re: Property Owner: Ronald F. Jones, et ux

Location: NE/S Central Avenue, 125' SE of Glyndon Avenue

Item No.: 356 Zoning Agenda: February 28, 1989

Gentlemen:

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

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

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

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

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

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

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

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

REVIEWER: Capt Joseph Kelly 3-17-89
Planning Group
Special Inspection Division

NOTED & APPROVED: Capt Wm J Brady Jr
Fire Prevention Bureau

89-396-SPH

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

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

Your petition has been received and accepted for filing this 6th day of March, 1989

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER

Petitioner Ronald F. Jones, et ux
Petitioner's Attorney Eleanor J. Lipsitz

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

BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING

RONALD F. JONES and : Case No. 89-396-SPHA
SUZANNE LUSSIER-JONES, NE/S Central Avenue, 125 SE
Petitioners : Glyndon Avenue

RECEIVED
JUN 2 1989
ZONING OFFICE

PETITIONERS' BRIEF

Statement of Facts

The petitioners, Ronald F. Jones and Suzanne Lussier-Jones, acquired title to property known as 209 Central Avenue, Glyndon, Maryland, the subject of the instant petiton for special hearing and petition for variance, on June 24, 1988. The property consists of a lot containing 25,545 square feet of land, more or less, and an existing structure, located in D.R. 2 and D.R. 3.5 zones. (See plats accompanying Petitioners' petitions filed herein). The structure has existed since before 1898. (Petitioners' Exhibit 1). The evidence shows that the building located at 209 Central Avenue has been operated as a boarding house and/or apartment house since, at least, the early 1900's. Even Protestant's Exhibit 8 indicates that prior to the enactment of the Baltimore County zoning regulations, 209 Central Avenue was operated as a multi-unit apartment building. A notarized letter from Anita Susemihl (Petitioner's Exhibit 3) states that the conversion of the improvements to six apartment units was undertaken after she and her husband acquired title to the property in March, 1941.

209 Central Avenue and the adjacent lot known as 207 Central Avenue have been conveyed in one instrument, but as two separate lots, for at least sixty years. In March, 1988, the vacant lot known as 207 Central Avenue was sold by Aileen Singer to the Homestead Group. (Protestants' Exhibit 1). 209 Central Avenue was subsequently conveyed by Aileen Singer to Ronald F. Jones and Suzanne Lussier-Jones by deed dated June 24, 1988. [The Zoning Commissioner, at the conclusion of the hearing herein, found that 207 and 209 are and have been two separate lots. Hence that issue is not addressed here.]

Prior to conveying the vacant lot at 207 Central Avenue, Singer relocated a driveway and parking lot from that lot to the lot known as 209 Central Avenue. Singer obtained a building permit (Petitioners' Exhibit 5) prior to locating the driveway and parking lot on 209 Central Avenue and met with the requests of the Baltimore County Landmarks Preservation Commission with regard to the location of both the driveway and the parking lot. (Petitioners' Exhibit 6).

Petitioners Jones received Citation No. 89-038, Citation For Civil Zoning Violation, dated August 10, 1988, citing a violation of section 101; 402; 1b01.1a, the alleged violation being "use of property zoned D.R. 3.5 to commit the following: Apartment building located on residential property that lacks required lot area and minimum dimensional (width/side yard) standards. " At trial of that matter, the County Solicitor agreed to enter a "stet.", provided the Joneses filed the appropriate petitions with the Zoning Commissioner. Hence, this matter comes before the Zoning Commissioner for hearing on petitioners' petition for special hearing and petition for variance.

Questions Presented

1. Does the operation of a six unit apartment building at 209 Central Avenue, Glyndon, Maryland qualify as a nonconforming use?

2. Should Petitioners' request for a variance from section 402.1 of the Baltimore County Zoning Code to permit side yard setback of 12.0 feet and 12.6 feet in lieu of required 20 feet for one side and 40 feet and/or 50 feet for the sum of both side yard setbacks and to permit a lot width of 65 feet in lieu of the required 90 feet or greater as may be determined be granted?

[Petitioners do not abandon the issue of the timeliness of the hearing on their petitions as raised prior to the presentation of their evidence. In deference to the direction of the Zoning Commissioners to address certain issues, this position is not specifically addressed. However, Petitioners do not relinquish their position that the hearing date was not properly advertised to afford the 15 days notice required by the zoning regulations.]

Argument

1. The operation of a six unit apartment building at 209 Central Avenue, Glyndon, Maryland qualifies as a nonconforming use.

The determination of a nonconforming is essentially two part. First, there must be a finding that a lawful use existed prior to the adoption of zoning regulations. (See Section 101, B.C.Z.R., 1955; Bill No. 18, 1976) Second, it must be shown that that use has continued without interruption or change. (See Section 104, B.C.Z.R., 1955, Bill 18, 1976) Also see McKemy v. Baltimore County, Md., 30 Md.App. 257, 385 A.2d 96 (1978).

January 2, 1945 marks the inception of the Baltimore County zoning regulations. The County Commissioners then adopted a comprehensive set of zoning regulations. McKemy supra, at 98; Kahl v. Cons. Gas El. Lt. & Pwr. Co., 191 Md. 249, 254, 60 A.2d 754 (1948); Calhoun v. County Bd. of Appeals, 262 Md. 265 277 A.2d 589 (1971). Section XI, 1945, B.C.Z.R. first provided for nonconforming uses. On March 30, 1955, the County Commissioners adopted a new set of comprehensive zoning regulations. See McKemy. Section 104 of those regulations dealt with nonconforming uses. Currently, Section 104.1, as adopted on March 15, 1976 by Bill No. 18-76, of the Baltimore County Zoning Regulations provides for nonconforming uses. In pertinent part, Section 104.1 provides:

> "A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these Regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, . . . the right to continue or resume such nonconforming use shall terminate. . . ."

Evidence produced at the special hearing herein patently shows that the structure at 209 Central Avenue has been, and continues to be, operated as a multi-family dwelling since prior to the adoption of the original Baltimore County Zoning Regulations in January, 1945. Even the testimony of Protestants' witnesses establishes such mutli-family use prior to 1945. 209 Central Avenue was known as a boarding house and/or apartment house since the childhood of not less than one 66 year old witness, which establishes such multi-family use prior to 1945. None of Protestants' witnesses disputed Petitioners' evidence that 209 Central Avenue has been operated as a boarding house or multifamily apartment house since well before the inception of zoning regulation for Baltimore County, hence, petitioners submit, the question of the existence of a legal nonconforming use is undisputed and not in issue.

Petitioners produced evidence, both written and testimonial, to substantiate the existence of six units at 209 Central Avenue since the early 1940's. In 1941 Louis and Anita Susemihl acquired the property and converted it to six apartments (Pet. Ex. 3). James Reter and Aileen Singer testified to the continuance of the apartment building usage from Mr. Reter's childhood (he is in his sixties now) to the present time.

Petitioners submit that no witness for the Protestants disputed the petitioners' evidence of six units. Protestants' witnesses, at best, could say that they were uncertain of the exact number of apartments in the building. None of them, from their personal knowledge, could successfully challenge the existence of six units. At best, Protestants' witnesses had been in some, but not all of the units in the building, and therefore, could not identify the actual number of units. Protestants' Exhibit 8 is not, Petitioners submit, conclusive evidence of the number of units in the building except as being not less than 4. Those affidavits assert, in two instances, the existence of 4 units, in one instance, the existence of "four or more" units, in another instance, 5 units and in the remaining instance, six units. The testimony of one of Protestants' witnesses, Mrs. Hammond, attempted to show that substantial improvements were made to 209 Central Avenue in the late 1940's. This testimony was vague at best. She testified that she had no actual knowledge of what was transpiring at 209 Central Avenue and had personally seen one delivery of materials there. The preponderance of the evidence supports Petitioners' position as to the continued use of the property as a six unit apartment building.

In summary, Protestants did not controvert the existence of the boarding house and/or apartment building at 209 Central Avenue before the adoption of the Baltimore County Zoning Regulations, nor did they successfully controvert the existence of six units at 209 Central Avenue.

There is evidence that Aileen Singer and her husband occupied two units on the first floor of the building. Testimony further shows that there were separate kitchen and bath facilities maintained for each unit. The occupancy of two units by a single family does not, Petitioners assert, constitute an abandonment or discontinuance of the nonconforming use. See Feldstein v. LaVale Zoning Board, 227 A.2d 713, 246 Md.204 (1967). At most this was a temporary abatement of the six unit use. The maintenance of two separate kitchen and bath facilities for the temporarily combined two units support the contention of a temporary abatement rather than being a clear indication of intention, action or inaction which is mandated to extinguish a nonconforming use. Id. at 734.

The evidence produced by Protestants at hearing of the instant petitions, at best, shows that the only changes in the use and operation of 209 Central Avenue since at least 1945 has been the location of the driveway and parking lot, formerly located on the lot known as 207 Central Avenue, on 209 Central Avenue. Petitioners urge that, applying the guidelines set out in McKemy v. Baltimore County, Maryland, 385 A.2d 96, 39 Md. App. 257 (1978), there has been no showing of any change of the nonconforming use to any other use so as to terminate the right to continue the nonconforming, six unit apartment use already existing at 209 Central Avenue.

McKemy, supra, at 104, clearly set forth the criteria to be applied in determining whether or not there has been a change in the use of the property which would serve to break the continued nature of the nonconforming use. These are:

> "(1) to what extent does the current use of these lots reflect the nature and purpose of the original non-conforming use;
> (2) is the current use merely a different manner of utilizing the original non-conforming use or does it constitute a use different in character, nature, and kind;
> (3) does the current use have a substantially different effect upon the neighborhood;
> (4) is the current use a 'drastic enlargement or extension' of the original non-conforming use."

Petitioners' Exhibit 2 shows 209 Central Avenue as it exists today. A driveway runs parallel to and along the property line between 207 and 209 Central Avenue. No parking is visible from Central Avenue. The parking lot for 209 Central Avenue is located to the rear of the structure located thereon. Evidence shows that the use of 209 Central Avenue as a multi-family dwelling has changed since the adoption of zoning regulations only in the locating of the driveway and parking lot on 209 Central Avenue. The nonconforming use operating at 209 Central Avenue is the same six unit apartment building that has existed, and been in operation in the same manner, over the period of years predating the enactment of the Baltimore County Zoning Regulations. The location of the driveway and parking lot on 209 Central Avenue in no way changes the continuous operation of the six unit apartment building. It does not, in any way, reflect a different nature and purpose of use than existed prior to 1945. The driveway and parking lot are an intimate part of the operation of the six units at 209 Central Avenue, not a new or different usage of the property; they represent no difference in the basic use of the property than existed prior to March, 1988. There has, thus, been no change in operation of the premises at 209 Central Avenue that reflects anything but the nature and purpose of the original nonconforming use.

The current use reflects totally the nature and purpose of the original nonconforming use. The property, as always, is being used as a multi-family dwelling. The fact that the parking for the residents of 209 Central Avenue is now on that property and behind the building does not in any way reflect a new usage of the property. This does not constitute a usage different in character, nature and kind than that which has long existed, i.e., a multi-family dwelling.

The current use does not have a substantially different effect upon the neighborhood. The building, as testimony of even Protestants's witnesses shows, has not changed in size, shape or character since the early 1940's. Its operation as a mutli-family dwelling has not changed. The location of the parking lot and driveway on the lot has not substantially changed the effect of the operation of 209 Central Avenue on the community. Some of Protestants' witnesses testified that the operation of the apartment building had not undergone any substantial change since 1945, supporting Petitioners position. A complaint relating to dust caused by crusher run surfacing of the

driveway go not to the effect of the usage but to the composition of the driveway surface, a condition which can be easily corrected and should not go to the issue of the nonconforming usage. The parking and driveway are not, Petitioners reiterate, a change in the original use. The parking is now to the rear of the building on 209 Central Avenue. Parked vehicles are not visible from Central Avenue by virtue of the very location of the lot behind the structure. If anything, this affects the community beneficially by limiting the visibility of parked vehicles. The location of both the driveway and the parking lot were approved by the Baltimore County Landmarks Preservation Commission (Petitioners' Exhibit 6) and the work done in compliance with a permit from Baltimore County (Petitioners' Exhibit 5). There was no showing of opposition by the community to the application or issuance of the permit.

Petitioners urge that the current use of the property is not a drastic enlargement or extension of the original usage. It is at most a mere intensification and as such is permissible so long as the nature of use, as here, in not changed. Phillips v. Zoning Commissioner of Howard County, 255 Md. 102, 169 A.2d 410 (1961). As the Court recognized in Phillips, the determination of drastic enlargement or extension or mere intensification is to be made of the facts of each case. There is nothing in the instant case to show a change from one nonconforming use to another or a substitution of one nonconforming use for another. The property is still, as ever, a multi-family dwelling. It has not been converted any different usage by the location of the

parking lot and driveway serving, and a part of the operations of, the existing nonconforming use. The current usage contemplates only the continuation of that usage, nothing more. Petitioners contend there is no evidence upon which to base a finding of drastic enlargement or extension.

2. Petitioners' request for a variance from section 402.1 of the Baltimore County Zoning Code to permit side yard setback of 12.0 feet and 12.6 feet in lieu of required 20 feet for one side and 40 feet and/or 50 feet for the sum of both side yard setbacks and to permit a lot width of 65 feet in lieu of the required 90 feet or greater as may be determined should be granted.

The granting of a variance is not properly a popularity contest. Such determination is to be based upon judicial principles and zoning regulations. The proper criteria are:

a. whether strict compliance with the zoning regulations for Baltimore County result in practical difficulty or unreasonable hardship

b. whether the granting of a variance will result in substantial injury to public health, safety and general welfare;

c. whether the granting of the requested variance will be inharmonious with the spirit and intent of applicable zoning regulations; and

d. whether the hardship complained of, and which is the basis of petitioners request for variances self-inflicted.

[B.C.Z.R., 1955; Bills No. 87, 1961; No. 19, 1962; also see, Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A.2d 810 (1965).]

Obviously, if the current side yard setback and lot width requirements are applied to 209 Central Avenue practical difficulty and unreasonable hardship would result. The lot known as 209 Central Avenue exists and the structure, erected thereon in the 1890's (Petitioners's Exhibit 1), exists. To try to squeeze the property and building into the limitations of current zoning requirements would be judicially unfair and physically impossible without the destruction of the building. The building was erected prior to any requirements imposed by zoning and must be allowed to continue in that form since it has not changed since prior to zoning. There is no way to stretch the given land to accommodate the present zoning rules and regulations.

The granting of the requested variances will not result in any, much less, substantial injury to public health, safety and general welfare. There was no evidence to support any such injury at the hearing herein. At least one witness, Zelma Ensor, characterized 209 Central Avenue as an asset to the community. Even Protestants witnesses, while not necessarily happy with the proposed development of the adjacent lot, identified no harm which would result to the community by the granting of the requested variances. In fact, again, the evidence shows not only the absence of any such harm, but the fact that the granting of such variances only recognizes the long existing situation with regard to lot size of 209 Central Avenue and the location of the

building thereon and that the existence and operation of the property are not injurious to the public health, safety or general welfare One complaint heard concerned dust caused by the new crusher run surface on the driveway. This concern can be addressed by using some other surface or other corrective methods to control the dust production. The discomfort complained of is caused not by the driveway and its location but by the material used. This can easily be rectified well short of denial of a variance.

There was no showing that the granting of the variances sought will be inharmonious with the spirit and intent of applicable zoning regulations. The gist of the zoning regulations for Baltimore County support appropriate use and re-use of large dwellings in residential zones. Even the conversion of the structure, if that were the case, would support the granting of the variances. (Protestants repeatedly referred to their desire to maintain the ambiance of the Gylndon area. To grant the necessary variances for 209 Central Avenue is compatible, perhaps even required, to protect the very existence of the structure at 209 Central Avenue.)

The facts surrounding 209 Central Avenue clearly reflect that the criteria for granting a variance have been fully met.

Bounds, supra, would deny the granting of a variance even where otherwise appropriate if the circumstances requiring the variance have been created by the property owner or a predecessor in title. This, Petitioners urge, is not the case in the instant situation.

Clearly the Petitioners did nothing to cause the hardship complained of here. The evidence shows that Petitioners had entered into a contract with Aileen Singer prior to any official notification of any possible zoning violations. The testimony offered further shows that Petitioners had been assured that the property at 209 Central Avenue conformed with zoning regulations. The Petitioners are not knowledgeable in real estate transactions. Ronald Jones testified that this was the first experience he or his wife had with zoning. He testified that he had conversations with neighbors and was led to believe that no problem related to the continued operation of the 6 units, but rather with the proposed development of 207 Central Avenue. It was not until the Petitioners received a citation dated 8-10-88 that they were made aware of any zoning problem. Mrs. Singer had sold the adjoining lot in March, 1988. Between March and June, 1988, Petitioners had verbal communications with citizens of the area which led them to believe that 209 Central Avenue met zoning requirements. The Joneses are not experience in real estate. They may have been naive in their acquisition of 209 Central Avenue, but that does not constitute the self-inflicted hardship referred to in

There is evidence that predecessors in title made efforts to determine that 209 Central Avenue was a lot independent of 207 Central Avenue in the event of separate ownership of the lots. Aileen Singer, who conveyed the property to the Petitioners, testified that on two occasions she approached the Baltimore County Zoning office to determine

whether 207 and 209 Central Avenue were so connected as to deny their separation. On both occasions, she was informed of no bar to the separate development of 207 Central Avenue nor to the continued operation of 6 units at 209 Central Avenue. James Reter, who owned both lots in the 1960's, testified that it was his intention to develop and sell 207 Central Avenue and had never known that that would not be possible.

Unlike the situation in Bounds, there was no cavalier delegation of responsibility for obtaining the necessary permits or information. There was no failure to get permits or to inspect the permit that was issued. In fact Singer was granted a permit for a parking lot and driveway (Petitioners Exhibit 5) located on 209 Central Avenue and used in conjunction with the operation of that property as a 6 unit apartment building. At the time of settlement on 209 Central Avenue, in June, 1988, some three months after the transfer of 207 Central Avenue to the Homestead Group, there were no zoning violations outstanding on that property. It was not until well after Petitioners' settlement on the property that they received any official notification of a potential zoning problem. The evidence shows no self-inflicted hardship any where in the chain of title.

The testimony and evidence supports a finding that there was no self-inflicted hardship; that the granting of the variances will not be contrary to the spirit of the B.C.R.Z. nor result in substantial detriment to the public health, safety and general welfare. The granting will relieve a hardship due to unique circumstances which cannot be alleviated otherwise.

Conclusion

For the reasons stated, Petitioners' petition for special hearing to recognize the legal, nonconforming use of 209 Central Avenue as a six unit apartment building and petition for variance should be granted.

Respectfully submitted,

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I hereby certify that a copy of the foregoing brief was mailed to Charles B. Heyman, Esquire, 10th Floor, Sun Life Building, 20 South Charles Street, Baltimore, Maryland 21201 and to G. Scott Barhight, Esquire, 300 Lafayette Building, 40 West Chesapeake Avenue, Towson, Maryland 21204, this 2nd day of June, 1989.

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