

IN RE: PETITION FOR SPECIAL HEARING
S/S Rose Avenue, 367' E of
Annapolis Road
(2815 Rose Avenue) and,
S/S Rose Avenue, 493' E of
Annapolis Road
(2817 Rose Avenue)
13th Election District
1st Councilmanic District
Benjamin F. Raney, et ux
Petitioners

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special hearing to approve the nonconforming use of 2815 and 2817 Rose Avenue as two apartments and four apartments, respectively, in accordance with that depicted in Petitioner's Exhibit 1.

The Petitioners, by Benjamin F. Raney, appeared, testified and were represented by Donald P. Mazor, Esquire. Also appearing on behalf of the Petition was William F. Eline, Contract Purchaser. There were no Protestants.

Testimony indicated that the subject properties, known as 2815 and 2817 Rose Avenue, consist of 0.70 and 0.67 acres, more or less, respectively, zoned D.R. 5.5 and each is improved with a multi-family dwelling. Petitioner testified he purchased the two properties in 1982 from the estate of Conrad Unger. Mr. Raney testified that at the time of purchase, the building at 2815 Rose Avenue was used as a two-family dwelling with one apartment wholly contained on the first floor and a second apartment occupying part of the first floor as well as the entire second floor. Both apartments have two exterior entrances. Testimony indicated that 2815 has been occupied continuously and without interruption as a two apartment dwelling since his purchase, except for the change of tenants.

Mr. Raney further testified that at the time of his purchase of 2817 Rose Avenue, the dwelling contained four apartments, two on the first floor and two on the second floor. Mr. Raney testified that the apartments have been occupied continuously and without interruption since his purchase of the properties except for a change in tenants. To further support his request, Petitioner submitted a letter dated June 30, 1988 from Lore E. Walter, Broker, and John W. Walter, Insurance Agent, with Col-Mar Insurance and Realty Company, indicating they have personal knowledge of 2815 Rose Avenue being used as a two family dwelling and 2817 Rose Avenue being used as four apartments for more than 40 years. The Walters indicated that Mr. Unger, original owner, lived in one of the apartments at 2815 Rose Avenue with his daughter, Mae Hardesty residing in the second apartment. Further, that Mr. Unger and a builder named Crandall designed and completed the building known as 2817 Rose Avenue as a four apartment dwelling. At the end of the hearing, Petitioners were given the opportunity to supplement the record to prove the continued and uninterrupted use of the two properties as two and four apartments respectively prior to Petitioners' purchase of the property in 1982.

Subsequent to the hearing, affidavits were received from Mr. Unger's daughter, Mae Hardesty, and Mark Cox. Ms. Hardesty indicated that 2815 Rose Avenue was built in the 1920s as a single family dwelling and converted to a two-family dwelling in 1939. She further indicated that 2817 Rose Avenue was built during World War II and converted to a four apartment dwelling unit. Ms. Hardesty's familiarity with the property is unquestioned as she lived at 2815 Rose Avenue from 1939 to 1979.

- 2 -

Zoning came officially to Baltimore County on January 2, 1945, when, pursuant to previous authorization by the General Assembly, the County Commissioners adopted a comprehensive set of zoning regulations.

The Commissioners were first authorized to adopt comprehensive planning and zoning regulations in 1939 (Laws of Maryland, 1939, ch. 715). At the next biennial session of the General Assembly, this authorization was repealed, and a new authorization was enacted (Laws of Md., 1941, ch. 247). Before any such regulations were issued, the Legislature authorized the Commissioners to make special exceptions to the regulations (Laws of Md., 1943, ch. 877). The first regulations were adopted and took effect on January 2, 1945. See Kahl v. Cons. Gas Elec. Light. and Pwr. Co., 191 Md. 249, 254, 60 A.2d 754 (1948); Calhoun v. County Board of Appeals, 262 Md. 265, 277 A.2d 589 (1971).

Section II of those regulations created seven zones, four being residential, one commercial, and two industrial. See McKemy v. Baltimore County, Md., 39 Md. App. 257, 385 A.2d 96 (1978).

Those original regulations provided for nonconforming uses. The statute read as follows:

"A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue, provided, however, upon any change from such nonconforming use to a conforming use, or any attempt to change from such nonconforming use to a different nonconforming use or any discontinuance of such nonconforming use for a period of one year, or in case a nonconforming structure shall be damaged by fire or otherwise to the extent of seventy-five (75%) percent of its value, the right to continue to resume such nonconforming use shall terminate, provided, however, that any such lawful nonconforming use may be extended or enlarged to an extent not more than once again the area of the land used in the original nonconforming use." Section XI, 1945, B.C.Z.R.

- 3 -

Baltimore County adopted a new set of comprehensive zoning regulations on March 30, 1955. The issue of nonconforming uses are dealt with in Section 104 of those regulations. The Section then read:

"104.1 - A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue; 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, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75%) percent of its replacement cost at the time of such loss, 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 or land shall hereafter be extended more than 25% of the ground floor area of buildings so used."

Section 104.1 was changed to its current language on March 15, 1976 by Bill No. 18-76. The current effective regulation reads as follows:

"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, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75%) percent of its replacement cost at the time of such loss, 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. (B.C.Z.R., 1955; Bill No. 18, 1976)"

On August 4, 1980, the current language found in Section 104.2 was added to the B.C.Z.R. by Bill No. 167-80. This regulation placed an exception upon the general nonconforming rule for Special Exception office buildings. The second reads as follows:

"Exception. Any contrary provision of these regulations notwithstanding, an office building that was authorized by grant of a special exception and that

- 4 -

becomes damaged to any extent or destroyed by casualty may be fully restored in accordance with the terms of the special exception. (Bill No. 167, 1980)"

As with all non-conforming use cases, the first task is to determine what lawful non-conforming use existed on the subject property prior to January 2, 1945, the effective date of the adoption of the Zoning Regulations and the controlling date for the beginning of zoning.

The second principle 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. See McKemy v. Baltimore County, Md., 39 Md. App. 257, 385 A.2d 96 (1978). In this instance there has been no change.

After due consideration of the testimony and evidence presented, it appears a nonconforming use of the subject properties exists. In the opinion of the Deputy Zoning Commissioner, the dwelling units on the properties known as 2815 and 2817 Rose Avenue have been used continuously and without interruption as two apartments and four apartments, respectively, since prior to the effective date of the zoning regulations.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the Petition for Special Hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 14th day of December, 1989 that the Petition for Special Hearing to approve the nonconforming use of the subject properties known as 2815 and 2817 Rose Avenue as a two apartment dwelling unit and a

four apartment dwelling unit, respectively, be and is hereby GRANTED, subject, however, to the following restriction:

1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and is responsible for returning, said property to its original condition.

AMN:bjs

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

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 map attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 50.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve

the non-conforming use of 2 apartments in
2815 Rose St.

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 the granting of this Petition, and further agree to and are to be bound by the zoning regulations and resolutions 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

114 S. 4th St.
Baltimore, Md. 21208

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DONALD P. MAZOR
ATTORNEY AT LAW
115 BLADE AVENUE, SUITE 1
BALTIMORE, MARYLAND 21204
TELEPHONE 456-9115

November 30, 1989

Baltimore County Zoning Commissioner
Office of Planning and Zoning
Towson, Maryland 21204

Attention: Ann Nastarowicz, Deputy Zoning Commissioner

Re: 2815 and 2817 Rose Avenue
Case Nos: 90-127-SPH and
90-128-SPH

Dear Ms. Nastarowicz:

Pursuant to our telephone conversations concerning the above captioned cases, enclosed herewith are two Affidavits, one signed by Mae Hardesty, daughter of Conrad Unger, and Mark Cox, individually and as Personal Representative of the Estate of Burton Unger and Clara Unger.

You will note that these Affidavits indicate the usage of these dwellings for many years, and at least as early as World War II.

Please advise if this is sufficient to grant the special exception requested by my client, Mr. and Mrs. Benjamin Raney.

Thank you for your prompt attention and response to this matter.

Very truly yours,

Donald P. Mazor

DPM:mg1
Enc.

c/c Mr. Benjamin F. Raney
6900 Glen Ridge Circle
Glen Burnie, Maryland 21061

115 BLADE AVENUE, SUITE 1
BALTIMORE, MARYLAND 21204

RECEIVED
DEC 1 1989

ZONING OFFICE

AFFIDAVIT

STATE OF MARYLAND, COUNTY OF Baltimore, to wit:

I HEREBY CERTIFY, That on this 28th day of November, 1989, before me, the subscriber, a Notary Public of the State of Maryland in and for the County aforesaid, personally appeared MAE HARDESTY, daughter of CONRAD UNGER, who represents as follows:

I am the daughter of CONRAD UNGER who was previously the owner of properties in Baltimore County, known as Nos. 2815 and 2817 Rose Avenue. I lived in No. 2815 Rose Avenue from year 1934 until I moved therefrom in 1979. Said property was originally built as a two-family dwelling, which was converted to a four-family dwelling in 1939, and I resided there with my father. I also have personal knowledge that property No. 2817 Rose Avenue was constructed during World War II as a three-family dwelling with three separate apartments. Both properties were constructed by my father, Conrad Unger. As far as I know, and to the best of my knowledge, information and belief, said properties have been used as a two-family dwelling for No. 2815 Rose Avenue and a four-family dwelling for 2817 Rose Avenue from the time of their construction up until the present time.

AS WITNESS my hand and Notarial Seal this 28th day of November, 1989.

My commission expires July 1, 1990.

Mae Hardesty
MAE HARDESTY, Affiant
726 Faircastle Avenue
Severna Park, Maryland 21141
987-9869

AFFIDAVIT

STATE OF MARYLAND, COUNTY OF Baltimore, TO WIT:

I HEREBY CERTIFY, that on this 30th day of October, 1989, before me, the subscriber, a Notary Public of the State of Maryland in and for the County aforesaid, personally appeared MARK COX who represents as follows:

I am the personal representative of the estate of Burton Unger and Clara Unger who previously owned property in Baltimore City known as No. 2815 and 2817 Rose Avenue. I am a family member and I have personal knowledge that these two properties were built during World War II and were occupied by my family members until same were sold. These properties were always used as a two family dwelling for No. 2815 Rose Avenue and a four family dwelling for 2817 Rose Avenue. The properties were used in that fashion until same were sold to Benjamin F. Raney and Vivien I. Raney, his wife, by members of the Unger family.

AS WITNESS My hand and notarial seal this 30th day of October, 1989.

Mark Cox
Notary Public

My commission expires: July 11, 1990

Mark Cox, Individually and as
Personal Representative of the
Estate of Burton Unger and
Clara Unger, Deceased
Affiant



Col-Mar Insurance and Realty
4624 Annapolis Road, Suite 100, Annapolis, MD 21410-2027
7553 Ridge Road, Hanover, Md. 21076 859-4158

June 30, 1988

TO WHOM IT MAY CONCERN:

From personal knowledge, the undersigned hereby advise that 2815 Rose Avenue, Baltimore County, Maryland, has been a two-family residence and 2817 Rose Avenue, Baltimore County, Maryland has been a four family residence, both for a period of MORE THAN 40 YEARS.

Mr. and Mrs. Conrad Unger lived in one apartment in 2815 Rose Avenue, and their daughter, Mrs. Mae Hardesty and her family lived in the second apartment.

With regards to 2817 Rose Avenue- Mr. Conrad Unger and a builder named Crandall designed and completed the building as a four apartment dwelling.

John W. Walter, Insurance Agent

ALL FORMS OF INSURANCE -
REAL ESTATE - MORTGAGES - INVESTMENTS

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

ADDRESS

Donald P. Mazor, Attorney
William F. Raney, Affiant
B.F. Jones, Affiant
114 Slide Rd. Baltimore, MD 21227
1800 Park Ave. Baltimore, MD 21204
1900 New Design Dr. MD 21061

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

90-127-SPH

District: 13th Date of Posting: September 30, 1989
Posted for: Special Hearing
Petitioner: Benjamin F. Raney, et al.
Location of property: 2815 Rose Avenue, 367' E. of Annapolis Road.
Location of Sign: In front of 2815 Rose Avenue
Remarks: I.J. Anate
Posted by: I.J. Anate Date of return: September 29, 1989
Number of Signs: 1

CERTIFICATE OF PUBLICATION

THIS IS TO CERTIFY, that the annexed advertisement was published in the ARBUSUS TIMES, a weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Sept 7, 1989.

THE JEFFERSONIAN
ARBUSUS TIMES

S. Zebe Orlan
Publisher

PG 163/0

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

DATE 9/12/89

Mr. & Mrs. Benjamin F. Raney
1324 S. Charles Street
Baltimore, Maryland 21203

Re: Petition for Special Hearing
CASE NUMBER: 90-127-SPH
35 Rose Avenue, 367' E of Annapolis Road
2815 Rose Avenue
13th Election District - 1st Councilmanic
Petitioner(s): Benjamin F. Raney, et ux
HEARING SCHEDULED: FRIDAY, OCTOBER 6, 1989 at 2:00 p.m.

Dear Mr. & Mrs. Raney:

Please be advised that \$36.27 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please make your check payable to Baltimore County, Maryland. Bring the check and the sign & post set(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland fifteen (15) minutes before your hearing is scheduled to begin.

Be advised that should you fail to appear at the hearing and post set(s), there will be a fee for each such set.

BALTIMORE COUNTY, MARYLAND
OFFICE OF FINANCE - REVENUE DIVISION
MISCELLANEOUS CASH RECEIPT
DATE 10/16/89 ACCOUNT R-01-615-000
AMOUNT \$ 36.27
FOR Benjamin F. Raney
PAID 10/16/89 Using 90-127-SPH
B 005*****06272 50625
VALIDATION OR SIGNATURE OF CARRIER
FEE: 100% YELLOW-GREEN

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

August 21, 1989

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 103 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Special Hearing
CASE NUMBER: 90-127-SPH
35 Rose Avenue, 367' E of Annapolis Road
2815 Rose Avenue
13th Election District - 1st Councilmanic
Petitioner(s): Benjamin F. Raney, et ux
HEARING SCHEDULED: FRIDAY, OCTOBER 6, 1989 at 2:00 p.m.

Special Hearing: The non-conforming use of 2 apartments in 2815 Rose Avenue.

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
BALTIMORE COUNTY, MARYLAND

cc: Mr. & Mrs. Raney
Donald P. Mazor, Esq.
File

FILED
(Individual Form)
FILE No.

USE 6455 159

This Deed, made this 22 day of November, 1982, by and between

WILBUR UNGER, MAE HARDESTY, BURTON UNGER, CLARA CONRAD UNGER and SHELLEY ALTEEN LAMPLUGH

in the State of Maryland, of the first part, Grantor(s), and

BENJAMIN F. RANEY and VIVIEN I. RANEY, his wife

of the second part, Grantee(s).

Witnesseth, that in consideration of the sum of Five Dollars and other good and valuable

considerations, the receipt whereof is hereby acknowledged, the said party(ies) of the first part do(ies)

grant and convey unto the said party(ies) of the second part

his or her (or their) heirs and assigns, in fee simple, all that (those) lot(s) or parcel(s) of ground

situate in Baltimore County, State of Maryland, and described as follows:

2815 Rose Avenue

Being also part of that property which by deed dated February 11, 1982 and

recorded among the land records of Baltimore County in Liber 5781 Folio 915 was

granted and conveyed by Lawrence Bushworth, trustee, to Merrill F. Unger (deceased

and October 14, 1980), Burton F. Unger, May A. Hardesty, aka, Mae A. Hardesty, and

Wilbur F. Unger.

Being also a part of that property which by deed from Pearl C. Unger, personal

representative of Merrill Unger, Estate, filed in Anne Arundel County, Maryland, and

recorded among the land records of Baltimore County, in Book EXK, JR., Liber 49,

Property filed among the land records of Baltimore County in Book EXK, JR., Liber 49,

Folio 101.

Saving and excepting from this deed that portion known as 2807 Rose Avenue, consisting

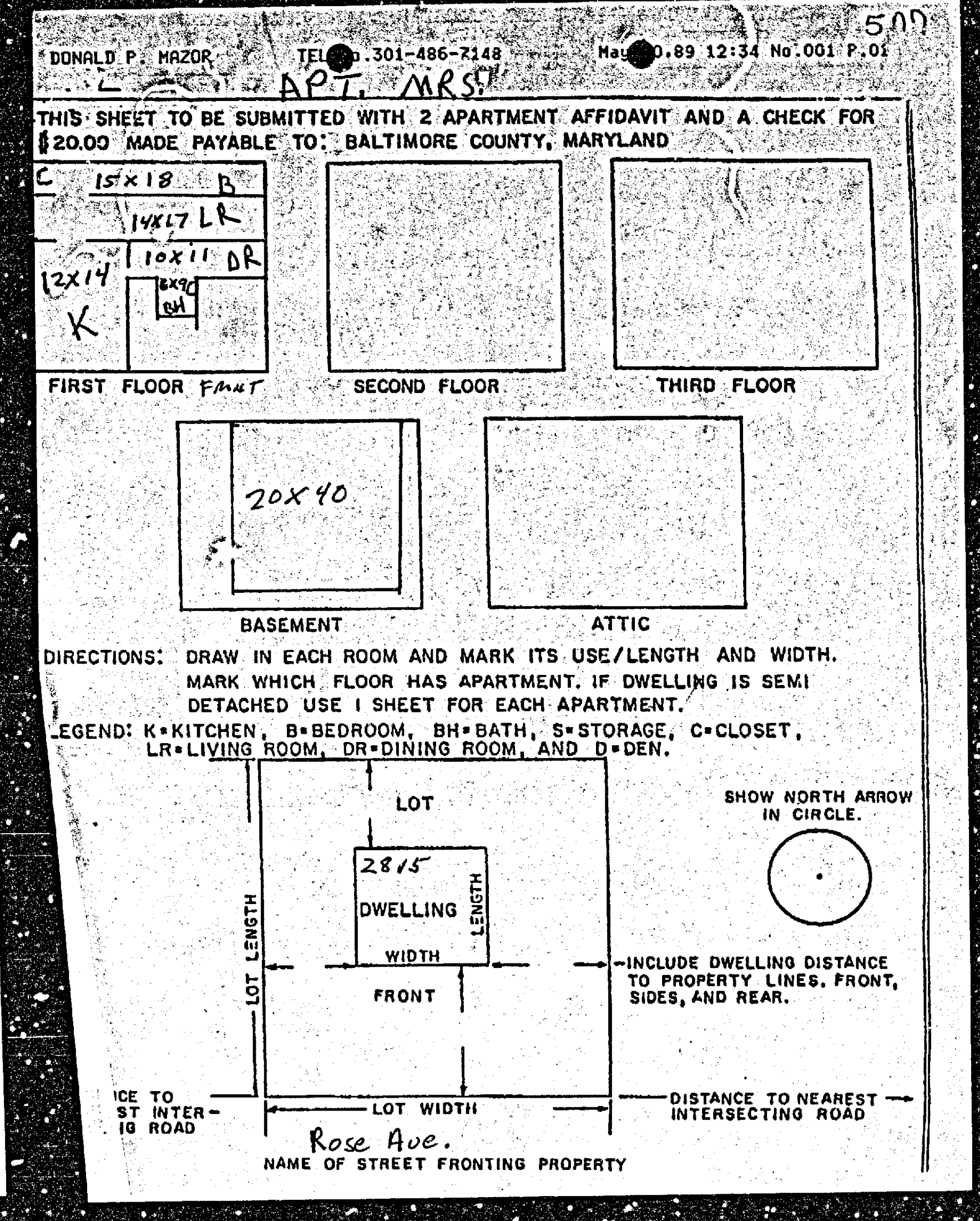
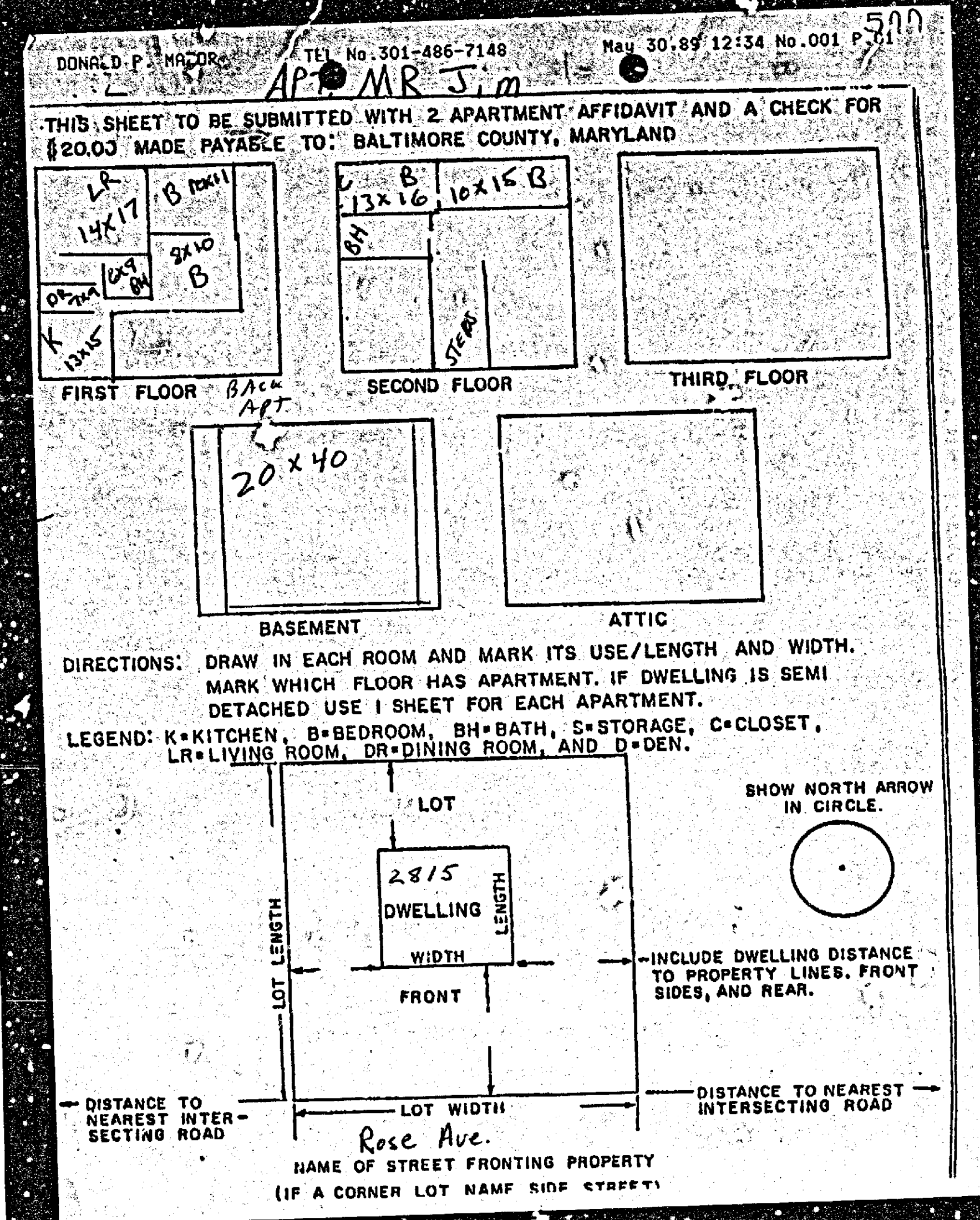
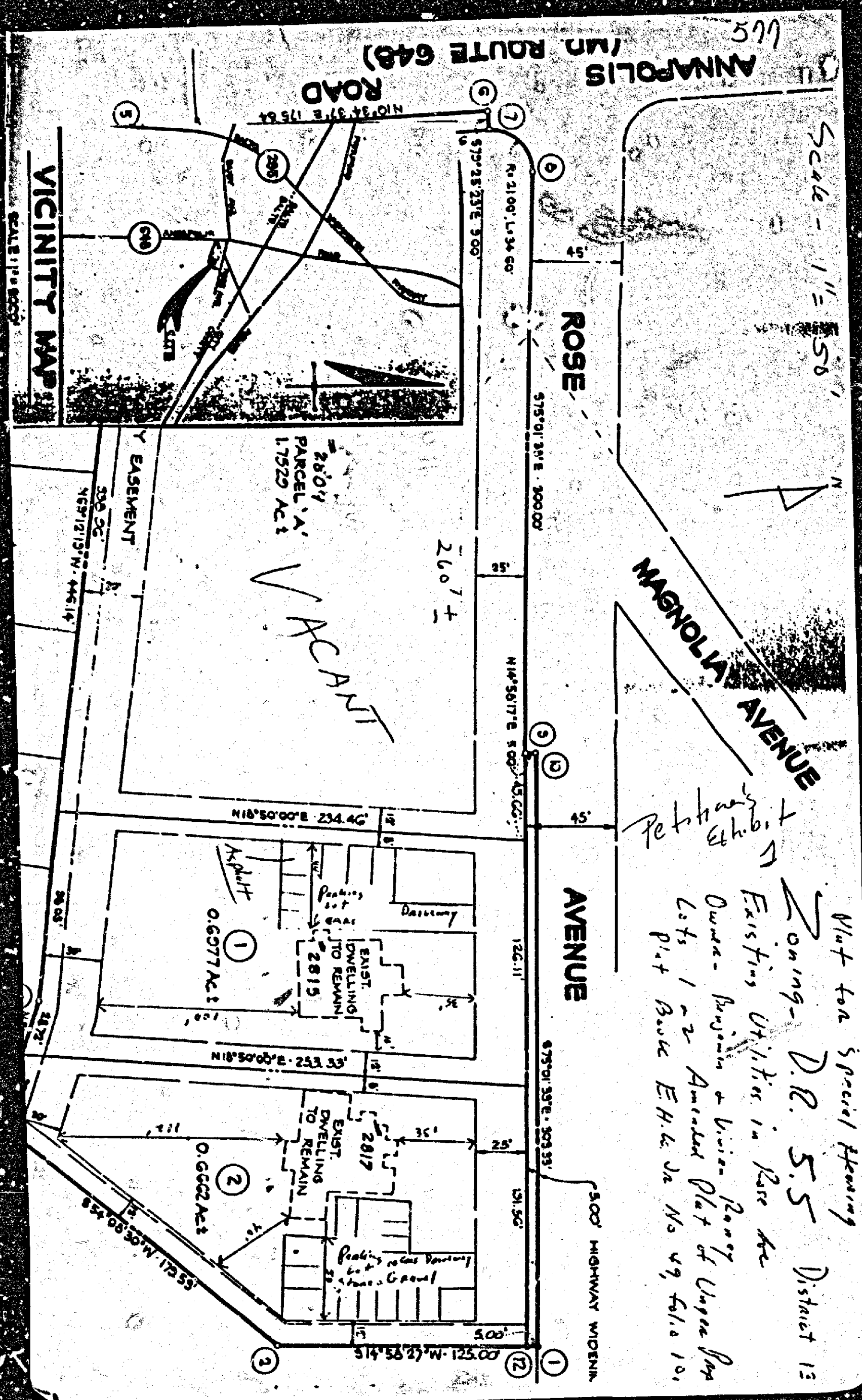
of 1.7525 acres more particularly described in a plat titled Amended Plat of Unger

Property filed among the land records of Baltimore County in Book EXK, JR., Liber 49,

Folio 101.

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE
SIGNATURE DATE 10/16/89

STATE OF MARYLAND
ASSessor & TAXATION
10/16/89
DATE



OCT 6, 1989

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines, Zoning Commissioner
DATE: September 29, 1989

FROM: Pat Keller, Deputy Director, Office of Planning and Zoning
SUBJECT: Benjamin F. Raney, et ux, Item 577, Zoning Petition No. 90-127

The petitioner requests a Special Hearing to approve the non-conforming use of 2 apartments at 2815 Rose Street.

In reference to this request, staff offers no comment.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3211.

PK/JL/pat

10/2/89 REC. LATE -> MAILED OUT

Baltimore County
Fire Department
800 York Road
Towson, Maryland 21204-2596
(301) 887-4500

Paul H. Robinson
Chief

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

RE: Property Owner: BENJAMIN F. RANEY
Location: 2815 ROSE AVENUE
Item No.: 577 Zoning Agenda: JULY 11, 1989

Gentlemen:

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

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", 1988 edition prior to occupancy.

REVIEWER: [Signature] Noted and Approved: [Signature]
Special Inspection Division Fire Prevention Bureau

JK/KEK

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21204
(301) 887-3554

RECEIVED
AUG 3 1989
ZONING OFFICE

July 31, 1989

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, MD 21204

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 515, 574, 575, 576, 577, 578, 579, 580, 581, and 582.

Very truly yours,
[Signature]
Michael S. Flanigan
Traffic Engineer Associate II

MSF/lab

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Benjamin F. Raney, et ux
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Testimony indicated that the subject properties, known as 2815 and 2817 Rose Avenue, consist of 0.70 and 0.67 acres, more or less, respectively, zoned D.R. 5.5 and each is improved with a multi-family dwelling. Petitioner testified he purchased the two properties in 1982 from the estate of Conrad Unger. Mr. Raney testified that at the time of purchase, the building at 2815 Rose Avenue was used as a two family dwelling with one apartment wholly contained on the first floor and a second apartment occupying part of the first floor as well as the entire second floor. Both apartments have two exterior entrances. Testimony indicated that 2815 has been occupied continuously and without interruption as a two apartment dwelling since his purchase, except for the change of tenants.

Mr. Raney further testified that at the time of his purchase of 2817 Rose Avenue, the dwelling contained four apartments, two on the first floor and two on the second floor. Mr. Raney testified that the apartments have been occupied continuously and without interruption since his purchase of the properties except for a change in tenants. To further support his request, Petitioner submitted a letter dated June 30, 1988 from Lore E. Walter, Broker, and John W. Walter, Insurance Agent, with Col-Mar Insurance and Realty Company, indicating they have personal knowledge of 2815 Rose Avenue being used as a two family dwelling and 2817 Rose Avenue being used as four apartments for more than 40 years. The Walters indicated that Mr. Unger, original owner, lived in one of the apartments at 2815 Rose Avenue with his daughter, Mae Hardesty residing in the second apartment. Further, that Mr. Unger and a builder named Crandall designed and completed the building known as 2817 Rose Avenue as a four apartment dwelling. At the end of the hearing, Petitioners were given the opportunity to supplement the record to prove the continued and uninterrupted use of the two properties as two and four apartments respectively prior to Petitioners' purchase of the property in 1982.

Subsequent to the hearing, affidavits were received from Mr. Unger's daughter, Mae Hardesty, and Mark Cox. Ms. Hardesty indicated that 2815 Rose Avenue was built in the 1920s as a single family dwelling and converted to a two-family dwelling in 1939. She further indicated that 2817 Rose Avenue was built during World War II and converted to a four apartment dwelling unit. Ms. Hardesty's familiarity with the property is unquestioned as she lived at 2815 Rose Avenue from 1939 to 1979.

- 2 -

Zoning came officially to Baltimore County on January 2, 1945, when, pursuant to previous authorization by the General Assembly, the County Commissioners adopted a comprehensive set of zoning regulations.

The Commissioners were first authorized to adopt comprehensive planning and zoning regulations in 1939 (Laws of Maryland, 1939, ch. 715). At the next biennial session of the General Assembly, this authorization was repealed, and a new authorization was enacted (Laws of Md., 1941, ch. 247). Before any such regulations were issued, the Legislature authorized the Commissioners to make special exceptions to the regulations (Laws of Md., 1943, ch. 877). The first regulations were adopted and took effect on January 2, 1945. See Kahl v. Cons. Gas Elec. Light. and Pwr. Co., 191 Md. 249, 254, 60 A.2d 754 (1948); Calhoun v. County Board of Appeals, 262 Md. 265, 277 A.2d 589 (1971).

Section II of those regulations created seven zones, four being residential, one commercial, and two industrial. See McKemy v. Baltimore County, Md., 39 Md. App. 257, 385 A.2d 96 (1978).

Those original regulations provided for nonconforming uses. The statute read as follows:

"A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue, provided, however, upon any change from such nonconforming use to a conforming use, or any attempt to change from such nonconforming use to a different nonconforming use or any discontinuance of such nonconforming use for a period of one year, or in case a nonconforming structure shall be damaged by fire or otherwise to the extent of seventy-five (75%) percent of its value, the right to continue to resume such nonconforming use shall terminate, provided, however, that any such lawful nonconforming use may be extended or enlarged to an extent not more than once again the area of the land used in the original nonconforming use." Section XI, 1945, B.C.Z.R.

Baltimore County adopted a new set of comprehensive zoning regulations on March 30, 1955. The issue of nonconforming uses are dealt with in Section 104 of those regulations. The Section then reads:

"104.1 - A lawful nonconforming use existing on the effective date of the adoption of these regulations may continue; 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, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75%) percent of its replacement cost at the time of such loss, 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 or land shall hereafter be extended more than 25% of the ground floor area of buildings so used."

Section 104.1 was changed to its current language on March 15, 1976 by Bill No. 18-76. The current effective regulation reads as follows:

"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, or in case any nonconforming business or manufacturing structure shall be damaged by fire or other casualty to the extent of seventy-five (75%) percent of its replacement cost at the time of such loss, 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. (B.C.Z.R., 1955; Bill No. 18, 1976)"

On August 4, 1980, the current language found in Section 104.2 was added to the B.C.Z.R. by Bill No. 167-80. This regulation placed an exception upon the general nonconforming rule for Special Exception office buildings. The second reads as follows:

"Exception. Any contrary provision of these regulations notwithstanding, an office building that was authorized by grant of a special exception and that

- 4 -

become damaged to any extent or destroyed by casualty may be fully restored in accordance with the terms of the special exception. (Bill No. 167, 1980)"

As with all non-conforming use cases, the first task is to determine what lawful non-conforming use existed on the subject property prior to January 2, 1945, the effective date of the adoption of the Zoning Regulations and the controlling date for the beginning of zoning.

The second principle 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 non-conforming 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 non-conforming. See McKemy v. Baltimore County, Md., 39 Md. App. 257, 385 A.2d 96 (1978). In this instance there has been no change.

After due consideration of the testimony and evidence presented, it appears a nonconforming use of the subject properties exists. In the opinion of the Deputy Zoning Commissioner, the dwelling units on the properties known as 2815 and 2817 Rose Avenue have been used continuously and without interruption as two apartments and four apartments, respectively, since prior to the effective date of the zoning regulations.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the Petition for Special Hearing should be granted.

WHEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 14th day of December, 1989 that the Petition for Special Hearing to approve the nonconforming use of the subject properties known as 2815 and 2817 Rose Avenue as a two apartment dwelling unit and a

four apartment dwelling unit, respectively, be and is hereby GRANTED, subject, however, to the following restriction:

1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County

AMN:bjs

PETITION FOR SPECIAL HEARING TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 90-128-SPH

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 following non-conforming use of 4 Apartments at 2817 Rose St.

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 the reversal of this Petition, and further agree to and are to be bound by the zoning regulations and regulations 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: N/A
(Type or Print Name)

Signature: Benjamin F. Raney

Address: 1324 S. Charles St. 659-1720
City and State: Baltimore, MD 21208

Legal Owner(s): Benjamin F. Raney
(Type or Print Name)

Signature: Benjamin F. Raney

Address: 114 Slade Avenue
City and State: Baltimore, Maryland 21208

Attorney for Petitioner: Donald P. Mazor
(Type or Print Name)

Signature: Donald P. Mazor

Address: 114 Slade Ave.
City and State: Baltimore, MD 21208

Attorney's Telephone No.: 486-0115

ORDERED By The Zoning Commissioner of Baltimore County, this 12 day of July, 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 6th day of October, 1989, at 2 o'clock P.M.

J. Robert Finney
Zoning Commissioner of Baltimore County

Zoning Description

Beginning at a point on the south side of Rose Ave. at the distance of 493 ft. East of Annapolis Road thence running East 131.56 ft. thence South 14° 51' 27" W 125 ft. thence S 54° 00' 30" W 179.53 ft. thence North 37 ft. thence N 18° 50' 00" E 253.33 ft. to the point of beginning; containing a 6662 sq. ft. Also known as 2817 Rose Ave. in the 13th Election District.

518

DEED, made this 22 day of December, 1982, by and between BENJAMIN F. RANEY and VIVIAN E. RANEY, his wife, of the State of Maryland, of the first part, Grantor(s), and of the second part, Grantee(s).

Witness, that in consideration of the sum of Five Dollars and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said party(ies) of the first part do(s) grant and convey unto the said party(ies) of the second part:

2817 Rose Avenue, Baltimore County, State of Maryland, and described as follows:

Being also part of that property which by deed dated February 11, 1982 and recorded among the Land Records of Baltimore County in Liber 5782, Folio 915, was granted and conveyed by Lawrence Bartholomew, Trustee, to Merrill F. Unger (deceased October 18, 1980), Burton F. Unger, May A. Hardesty, aka, Mae A. Hardesty, and Wilber H. Unger.

Being also a part of that property which by deed from Pearl C. Unger, personal representative of Merrill Unger, Estate filed in Anne Arundel County under estate number 19563, having departed life on October 14, 1980, and recorded among the land records of Baltimore County in Liber 6437, page 792, conveying Merrill Unger's interest in the within property to Shelley A. Unger Lamplough, daughter, aka, Shelly Lamplough, and Clark Conrad Unger, son.

Being that property known as 2817 Rose Avenue, consisting of 0.6662 acres, lot 2, and more particularly described in a plat titled Amended Plat of Unger Property, recorded among the Land Records of Baltimore County in Book EKH, JR., Liber 49, Folio 101.

Being and excepting from this deed that portion known as 2809 Rose Avenue, consisting of 1.1223 acres more particularly described in a plat titled Amended Plat of Unger Property filed among the Land Records of Baltimore County in Book EKH, JR., Liber 49, Folio 101.

AGRICULTURAL TRANSFER TAX NOT APPLICABLE DATE 4/1/83

STATE DEPARTMENT OF ASSESSMENTS & TAXATION DATE 4/1/83

3251 Magnolia Avenue
Baltimore, Maryland 21227
October 2, 1989

Baltimore County Zoning Commission
Towson, Maryland

RECEIVED
OCT 4 1989
ZONING OFFICE

Re: 2817 Rose Avenue
Case # 90-128-SPH
Benjamin F. Raney

Dear Mr. Haines,

I am writing about the above referenced case because we will not allow me to attend the hearing scheduled for October 6, 1989.

While I am basically opposed to the idea of re-zoning these buildings, it is sort of a part accompli. They have been zoned out pretty much since I have lived here. I know that some of the tenants have lived there for a number of years and would hate to think that anything that I have said would have been cause for them to re-locate. To zone that property for apartments is out of character of the immediate neighborhood but so be it.

My main concern has been and will continue to be the failure of Mr. Raney to realize his responsibilities as a property owner in this community. One has only to look at the property now to see a dead tree in the front yard. I can open detail that was dug 2 years ago to give a sprinkler system, high weeds along the property line, etc. I am sure that there may be other violations in the past, neighbors have had to complain about high weeds, a commercial dumpster placed on the property and various other things I know that in the case of the dumpster it took Mr. Raney several months to cooperate with the county authorities.

I would ask that these comments be considered when making your determination. As I have said, I have no basic problem with the re-zoning. My concern is that an absentee landlord will be elected who has no concern of this neighborhood. If he is reminded of his responsibilities and feels that he can live up to them, then fine. In advance - thank you for allowing me to voice my concerns by mail. If possible, please have someone from your office notify me of the disposition.

Sincerely yours,
Robert J. Sedgwick

P.S. - The thought just occurred that there may be an attempt to re-zone for more than the current apartments. I would most definitely be opposed to that.

518

DEED, made this 22 day of December, 1982, by and between BENJAMIN F. RANEY and VIVIAN E. RANEY, his wife, of the State of Maryland, of the first part, Grantor(s), and of the second part, Grantee(s).

Witness, that in consideration of the sum of Five Dollars and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said party(ies) of the first part do(s) grant and convey unto the said party(ies) of the second part:

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Being and excepting from this deed that portion known as 2809 Rose Avenue, consisting of 1.1223 acres more particularly described in a plat titled Amended Plat of Unger Property filed among the Land Records of Baltimore County in Book EKH, JR., Liber 49, Folio 101.

AGRICULTURAL TRANSFER TAX NOT APPLICABLE DATE 4/1/83

STATE DEPARTMENT OF ASSESSMENTS & TAXATION DATE 4/1/83

CERTIFICATE OF PUBLICATION

Sept 7, 1989

THIS IS TO CERTIFY, that the annexed advertisement was published in the ARBUTUS TIMES, a weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Sept 7, 1989.

THE JEFFERSONIAN
ARBUTUS TIMES

S. Zife Olson
Publisher

P016309
reg M34183
ca 90-128-SPH
price \$ 61.27

CERTIFICATE OF POSTING

90-128-SPH

ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 13th

Posted for: Special Hearing

Petitioner: Benjamin F. Raney, et al.

Location of property: 2817 Rose Avenue, 433' E of Annapolis Road

Location of Sign: In front of 2817 Rose Avenue

Remarks:

Posted by: S.J. Brata

Date of return: September 29, 1989

Number of Signs: 1

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

DATE

Mr. & Mrs. Benjamin F. Raney
1324 S. Charles Street
Baltimore, Maryland 21202

Re: Petition for Special Hearing
CASE NUMBER: 90-128-SPH
2817 Rose Avenue
13th Election District - 1st Councilmanic
Petitioner(s): Benjamin F. Raney, et al.
HEARING SCHEDULED: FRIDAY, OCTOBER 6, 1989 at 2:00 p.m.

Dear Mr. & Mrs. Raney:

Please be advised that \$ is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please make your check payable to Baltimore County, Maryland. Bring the check and the sign & post set(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland fifteen (15) minutes before your hearing is scheduled to begin.

Be advised that should you fail to return the sign & post set(s), there will be an additional \$50.00 added to the above amount for each such set not returned.

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

DATE 10/4/89 ACCOUNT R-01-615-000

AMOUNT \$ 86.27

Benjamin F. Raney

PAID for 10/4/89 hearing 90-128-SPH

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

August 21, 1989

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 108 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Special Hearing
CASE NUMBER: 90-128-SPH
2817 Rose Avenue, 433' E of Annapolis Road
2817 Rose Avenue
13th Election District - 1st Councilmanic
Petitioner(s): Benjamin F. Raney, et al.
HEARING SCHEDULED: FRIDAY, OCTOBER 6, 1989 at 2:00 p.m.

Special Hearings The non-conforming use of 4 apartments in 2817 Rose Avenue.

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
J. ROBERT HAINES
ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND

JRH:gs
cc: Mr. & Mrs. Raney
Donald P. Mazor, Esq.
File

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3353

J. Robert Haines
Zoning Commissioner

June 27, 1989

Donald P. Mazor, Esquire
114 Slade Avenue
Suite #1
Baltimore, MD 21208

RE: Petitions for Special Hearing
Item Numbers 577 and 578
2815 & 2817 Rose Avenue
13th Election District

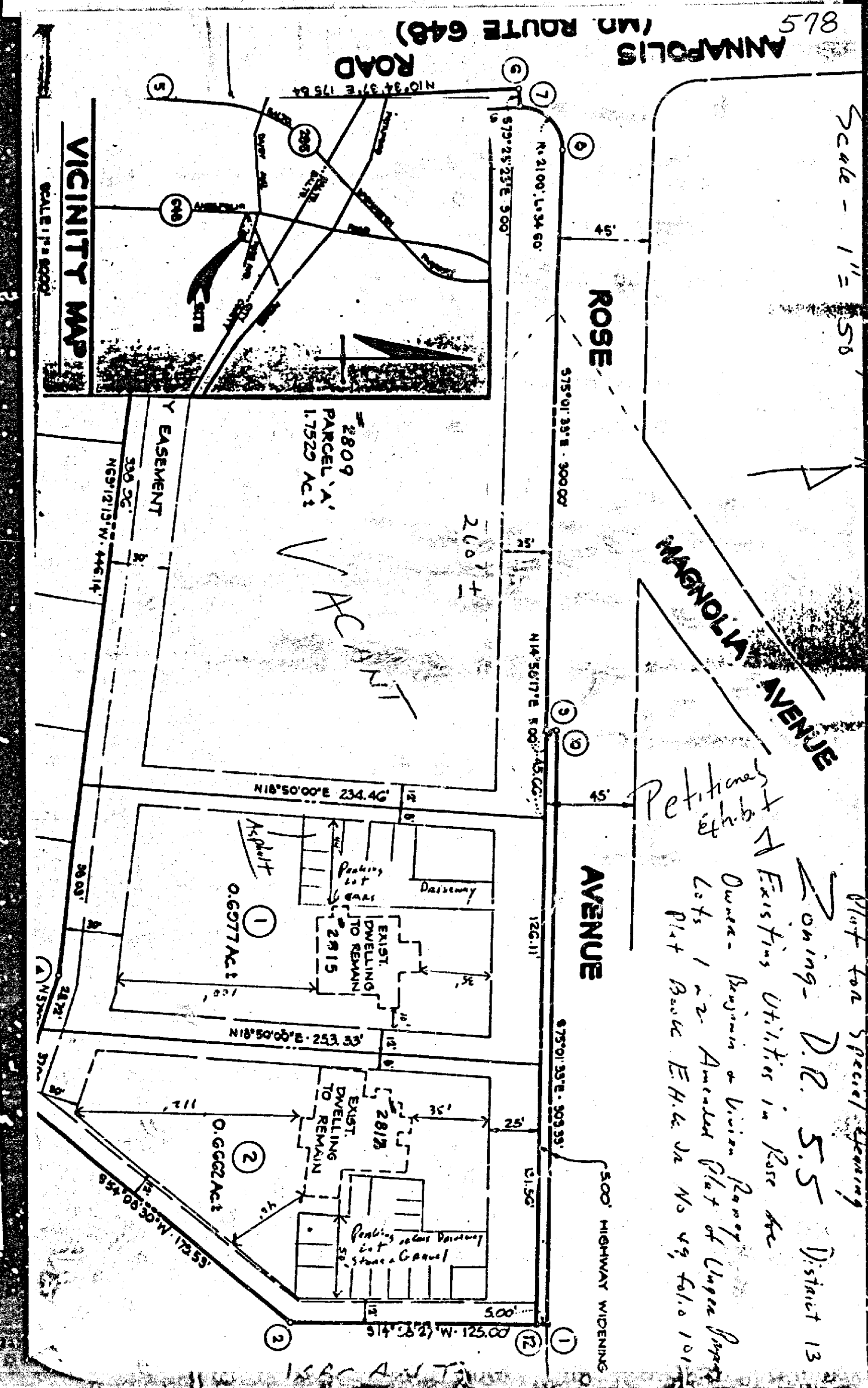
Dear Mr. Mazor:

I am in receipt of your letter dated June 21 and the zoning petition forms, revised site plans, floor plans and deeds for 2815 and 2817 Rose Avenue, as well as your check in the amount of \$200.00. Enclosed is your receipt for the filing fees. In approximately six weeks you will receive a letter from the Zoning Commissioner's office, which will state the date, time and location of your client's zoning hearings.

If you have any questions, please do not hesitate to call me at 887-3391.

Very truly yours,
John J. Sullivan, Jr.
Planning & Zoning Associate III

JJS:ecj
Enclosure



DONALD P. MAZOR TEL No. 301-486-7148 May 30, 89 12:34 No. 001 P. 01 578

APT. DONALD KIESTER

THIS SHEET TO BE SUBMITTED WITH 2 APARTMENT AFFIDAVIT AND A CHECK FOR \$20.00 MADE PAYABLE TO: BALTIMORE COUNTY, MARYLAND

FIRST FLOOR SECOND FLOOR THIRD FLOOR

BASEMENT ATTIC

DIRECTIONS: DRAW IN EACH ROOM AND MARK ITS USE/LENGTH AND WIDTH. MARK WHICH FLOOR HAS APARTMENT. IF DWELLING IS SEMI DETACHED USE 1 SHEET FOR EACH APARTMENT.

LEGEND: K-KITCHEN, B-BEDROOM, BH-BATH, S-STORAGE, C-CLOSET, LR-LIVING ROOM, DR-DINING ROOM, AND D-DEN.

LOT 2817 DWELLING

SHOW NORTH ARROW IN CIRCLE.

INCLUDE DWELLING DISTANCE TO PROPERTY LINES, FRONT, SIDES, AND REAR.

LOT LENGTH LOT WIDTH

Distance to NEAREST INTERSECTING ROAD

Rose Ave.

NAME OF STREET FRONTING PROPERTY

DONALD P. MAZOR TEL No. 301-486-7148 May 30, 89 12:34 No. 001 P. 01 578

APT. NANCY DIXON

THIS SHEET TO BE SUBMITTED WITH 2 APARTMENT AFFIDAVIT AND A CHECK FOR \$20.00 MADE PAYABLE TO: BALTIMORE COUNTY, MARYLAND

FIRST FLOOR SECOND FLOOR THIRD FLOOR

BASEMENT ATTIC

DIRECTIONS: DRAW IN EACH ROOM AND MARK ITS USE/LENGTH AND WIDTH. MARK WHICH FLOOR HAS APARTMENT. IF DWELLING IS SEMI DETACHED USE 1 SHEET FOR EACH APARTMENT.

LEGEND: K-KITCHEN, B-BEDROOM, BH-BATH, S-STORAGE, C-CLOSET, LR-LIVING ROOM, DR-DINING ROOM, AND D-DEN.

LOT 2817 DWELLING

SHOW NORTH ARROW IN CIRCLE.

INCLUDE DWELLING DISTANCE TO PROPERTY LINES, FRONT, SIDES, AND REAR.

LOT LENGTH LOT WIDTH

Distance to NEAREST INTERSECTING ROAD

Rose Ave.

NAME OF STREET FRONTING PROPERTY

DONALD P. MAZOR TEL No. 301-486-7148 May 30, 89 12:34 No. 001 P. 01 578

APT. SANDRA BYRD

THIS SHEET TO BE SUBMITTED WITH 2 APARTMENT AFFIDAVIT AND A CHECK FOR \$20.00 MADE PAYABLE TO: BALTIMORE COUNTY, MARYLAND

FIRST FLOOR SECOND FLOOR THIRD FLOOR

BASEMENT ATTIC

DIRECTIONS: DRAW IN EACH ROOM AND MARK ITS USE/LENGTH AND WIDTH. MARK WHICH FLOOR HAS APARTMENT. IF DWELLING IS SEMI DETACHED USE 1 SHEET FOR EACH APARTMENT.

LEGEND: K-KITCHEN, B-BEDROOM, BH-BATH, S-STORAGE, C-CLOSET, LR-LIVING ROOM, DR-DINING ROOM, AND D-DEN.

LOT 2817 DWELLING

SHOW NORTH ARROW IN CIRCLE.

INCLUDE DWELLING DISTANCE TO PROPERTY LINES, FRONT, SIDES, AND REAR.

LOT LENGTH LOT WIDTH

Distance to NEAREST INTERSECTING ROAD

Rose Ave.

NAME OF STREET FRONTING PROPERTY

DONALD P. MAZOR TEL No. 301-486-7148 May 30, 89 12:34 No. 001 P. 01 578

APT. DONNA SHORT

THIS SHEET TO BE SUBMITTED WITH 2 APARTMENT AFFIDAVIT AND A CHECK FOR \$20.00 MADE PAYABLE TO: BALTIMORE COUNTY, MARYLAND

FIRST FLOOR SECOND FLOOR THIRD FLOOR

BASEMENT ATTIC

DIRECTIONS: DRAW IN EACH ROOM AND MARK ITS USE/LENGTH AND WIDTH. MARK WHICH FLOOR HAS APARTMENT. IF DWELLING IS SEMI DETACHED USE 1 SHEET FOR EACH APARTMENT.

LEGEND: K-KITCHEN, B-BEDROOM, BH-BATH, S-STORAGE, C-CLOSET, LR-LIVING ROOM, DR-DINING ROOM, AND D-DEN.

LOT 2817 DWELLING

SHOW NORTH ARROW IN CIRCLE.

INCLUDE DWELLING DISTANCE TO PROPERTY LINES, FRONT, SIDES, AND REAR.

LOT LENGTH LOT WIDTH

Distance to NEAREST INTERSECTING ROAD

Rose Ave.

NAME OF STREET FRONTING PROPERTY

Baltimore County
Fire Department
800 York Road
Towson, Maryland 21204-2586
(301) 887-4500
Paul H. Reincke
Chief

JULY 19, 1989

J. Robert Haines
Zoning Commissioner
Office of Planning and Zoning
Baltimore County Office Building
Towson, MD 21204

RE: Property Owner: BENJAMIN F. RANEY
Location: 2817 ROSE AVENUE
Item No.: 578 Zoning Agenda: JULY 11, 1989

Gentlemen:

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

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", 1988 edition prior to occupancy.

REVIEWER: [Signature] Noted and Approved [Signature]
Planning Group Fire Prevention Bureau
Special Inspection Division

JK/KEK

Baltimore County
Department of Public Works
Bureau of Traffic Engineering
Courts Building, Suite 405
Towson, Maryland 21204
(301) 887-3554

RECEIVED
AUG 3 1989
ZONING OFFICE

July 31, 1989

Mr. J. Robert Haines
Zoning Commissioner
County Office Building
Towson, MD 21204

Dear Mr. Haines:

The Bureau of Traffic Engineering has no comments for items number 515, 574, 575, 576, 577, 578, 579, 580, 581, and 582.

Very truly yours,
[Signature]
Michael S. Flanagan
Traffic Engineer Associate II

MSP/lab

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines
Zoning Commissioner

DATE: September 29, 1989

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: Benjamin F. Raney, et ux, Item 578
Zoning Petition No. 90-128

The petitioner requests a Special Hearing to approve the non-conforming use of 2 apartments at 2817 Rose Street.

In reference to this request, staff offers no comment.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3211.

PK/JL/pat

OCT 2 - Rec LATE - MAILED COMMENTS