

4-28-93

|                                 |   |                         |
|---------------------------------|---|-------------------------|
| IN THE MATTER OF THE            | * | BEFORE THE              |
| THE APPLICATION OF              | * | COUNTY BOARD OF APPEALS |
| GEORGE BAKER                    | * |                         |
| FOR A SPECIAL HEARING ON        |   |                         |
| PROPERTY LOCATED ON THE NORTH-  | * | OF                      |
| EAST SIDE ARUNAH AVENUE, 300'   |   |                         |
| SOUTHEAST OF THE CENTERLINE     | * | BALTIMORE COUNTY        |
| MARYLAND AVE. (LOTS #31 & #32,  |   |                         |
| ARUNAH AVENUE /GUISE PROPERTY)* | * | CASE NO. 92-477-SPH     |
| 1ST ELECTION DISTRICT           |   |                         |
| 1ST COUNCILMANIC DISTRICT       | * |                         |

\* \* \* \* \*

### O P I N I O N

This case comes before the Board on appeal from a decision by the Zoning Commissioner granting a Petition for Special Hearing which denied construction on an undersized property consisting of less than the required 6,000 sq. ft. The site is approximately 5,280 sq. ft. in area and is zoned D.R. 5.5, located in the Catonsville Heights community of the First Councilmanic District of Baltimore County.

The plan of the property owner to develop a residential dwelling on the subject lot has moved through several hearings before the Zoning Commissioner in which petitions for setback variances were denied for this 40-foot property, but later granted by the County Board of Appeals (May 6, 1992). In those considerations, an area variance for a lot size of less than 6,000 sq. ft. and a lot width of 40 feet in lieu of the minimum of 55 feet were not a part of the deliberations by the Board of Appeals.

Adjacent property owner, George Baker, filed for a Special Hearing in opposition, contesting that the approval of variances from a side yard setback has an entirely different impact on neighboring properties than the impact of development of an undersized tract. Mr. Baker filed for a Special Hearing before the Zoning Commissioner requesting a decision of whether the property

of less than the 6,000 sq. ft. required in Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (BCZR) may be residentially developed. The Zoning Commissioner granted the Petition for Special Hearing, thereby prohibiting development of the site. An appeal of the Zoning Commissioner's decision (November 25, 1992) is the matter before this Board.

The subject property is a wooded are consisting of two lots, each with a 20-foot front, bounded on two sides by unimproved paper roads (Lafayette Avenue and Arunah Avenue) that provide a larger perspective of the lot size than the actual metes and bounds of the parcel.

Catonsville Heights was subdivided in or about 1920 into small parcels of 20 feet. The subject parcel, lots 31 and 32, was purchased by Ms. Guise's father in the 1920's, and inherited by her in 1950. The unimproved property has been assessed at a value of \$22,000.00 and has required tax payment by the owner for the past 42 years. With the requested area variance, along with the previously granted variances for setbacks, Ms. Guise intends to sell the property to others for eventual development.

An issue in this hearing is the practice of builders seeking infill lots in older neighborhoods for development. Many old subdivisions, such as Catonsville Heights, have narrow 20-foot vacant lots never to be built upon unless several can be combined to create a buildable parcel that meets the zoning regulations.

Testifying for the Appellant, Midge Stocksdales reviewed her survey of single-family dwellings built upon undersized lots within the D.R. 5.5 community. Testimony and photographic exhibits pointed to several properties of less than 6,000 sq. ft., as well



as houses on two lots of 40 feet in width. Some of the houses cited by Ms. Stocksdales were new, and others were older residences of Catonsville Heights recorded before the 1955 zoning law. Two houses on Arunah Avenue, the location of the subject parcel, received density variances, as well as several others built in different locales of Catonsville Heights in recent years. In response to People's Counsel, Ms. Stocksdales estimated that there were at least eight to ten vacant lots of 40 ft. x 120 ft.

People's Counsel contested that the development of small infill lots is an issue throughout Baltimore County, where the price of buildable lots is escalating and builders look for infill lots. If the lots are undersized, the developer then seeks variances to build so-called "shot-gun houses" that may not be in character with the neighborhood.

Testifying in opposition to the development of Ms. Guide's property. Richard Hauf reviewed his concern for the preservation of the character and nature of his neighborhood along Lafayette Avenue. He argued that the dimensions of his 80' x 120"+ property and those of his neighborhood containing large rancher-type dwellings will be adversely affected by a dwelling constructed on the subject parcel. Mr. Hauf also asserted that the prospect of a small house so built to utilize a dirt road was out of character with the style and values of residences on his street. He further recounted problems and expenses he has incurred controlling storm water runoff in a location that is not serviced by storm water drains. Although he has controlled his personal basement water problems, Mr. Hauf fears the water runoff consequences of clearing the subject parcel for development. He asserted that the zoning



law is adequate but must be enforced. Variances should not be granted to the detriment of existing houses. Mr. Hauf also bemoaned the fact that the County has done nothing in regard to storm drains and allows building without curbing on the streets.

George Baker, Petitioner in this case to deny the area density variance, testified to his purchase of several 20-foot lots to enlarge his property, and of his offer to purchase the Guise property. With a property of 120 ft. by 120 ft. immediately adjacent to the subject parcel, Mr. Baker objected because the undersized lot was incompatible as to square feet with his and other properties in the area. With no storm drains to capture water runoff and the likelihood of a crusher run connection to Lafayette Avenue, the prospect of a single-family dwelling was out of character. He contends that an open wooded lot holds some of the water that an improved lot will pass on.

At issue in this matter is whether a net area density variance request be granted. Variances may be granted where strict application of the zoning regulations would cause practical difficulty to the property owner. In order to prove practical difficulty for an area variance, a Petitioner must meet the following:

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



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

Testimony in this case is convincing that the property of Ms. Guise, initially acquired by her father in 1927, will be rendered useless if the requested variance is denied. Exhibits in the record showing the 20-foot lots along Arunah Avenue and testimony in this case reveal that any desire by Ms. Guise to purchase an additional lot to add to her two-lot parcel (31 & 32) is impossible as there is no lot available on the one side, and the 40-foot wide paper road (Lafayette Avenue) lies on the other. This is obviously a practical difficulty.

In reviewing this matter, it must also be kept in mind that "a variance should be granted only if in strict harmony with the spirit and intent of the zoning regulations; and only in such a manner as to grant relief without substantial injury to the public health, safety and general welfare." McLean v. Soley, 270 MD 208 (1973)

Section 307 (BCZR) requires that a variance cannot be granted unless a finding is made that there is no injury to public welfare. One of the issues centers on the fact that adjoining dwellings are on larger lots and that the subject property is too small in relation to others in the surrounding locale. However, the proposed 26 ft. by 60 ft. dwelling, with its previously granted side yard variances and the effects of a paper road never to be developed, provides the appearance of a property that is in harmony as to size and character with the neighborhood. By granting the area variance, there should be no injury to the public welfare on this point of objection by neighbors.

The problem of access to the site may be solved by a



comparison of situations with Ms. Guise's neighbor's residence on the paper street aspect of Arunah Avenue, which they use for ingress and egress to their residence. The same can be expected of the subject property in utilizing Lafayette Avenue, without creating any adverse effect to the neighbor's property.

The concern of neighbors with storm water runoff from a reasonably level parcel of land with a 3-degree fall is hardly a matter to keep the subject property owner from utilizing her property for future development. Water runoff is a fact of nature, but one that will be weighed carefully by agencies of Baltimore County in approving any permits for construction on this parcel. Protestations by residents of this neighborhood regarding a lack of storm drains are undoubtedly valid, but this Board does not perceive this an appropriate reason for denying the possible development of the subject site.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship would result if the relief requested for an area variance were not granted. The Board is satisfied that the granting of the requested variances would not result in a detriment to the public health, safety and general welfare of the surrounding community. The Board believes that it would be grossly unfair to deny the variances and that in doing so the Board would be preventing the property owner from the use of the property for a residential purpose to the approximate level and extent as the residential use experienced by other property owners in the community. To require the property owner to conform to the Section 1B02.3.C.1 of the BCZR as applied to this particular case would be to place an unnecessary



burden upon her.

O R D E R

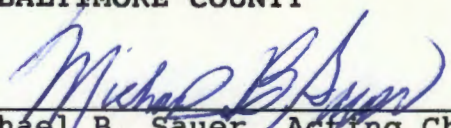
IT IS THEREFORE this 28th day of April, 1993 by the  
County Board of Appeals of Baltimore County

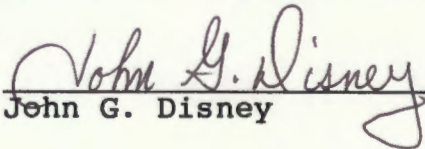
ORDERED that the Petition for Special Hearing prohibiting  
development of the herein described residential property known as  
lots #31 and #32 Arunah Avenue and consisting of less than the  
required 6,000 sq. ft. be and is hereby DENIED; and it is further

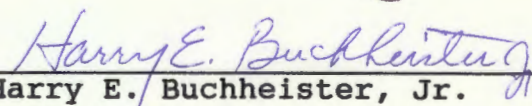
ORDERED that the request for zoning variance to permit a  
parcel of 5,280 sq. ft. in lieu of the required 6,000 sq. ft. and  
to permit a lot width of 40 feet in lieu of the required 55 feet,  
be and is hereby GRANTED.

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

  
\_\_\_\_\_  
Michael B. Sauer, Acting Chairman

  
\_\_\_\_\_  
John G. Disney

  
\_\_\_\_\_  
Harry E. Buchheister, Jr.





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

April 28, 1993

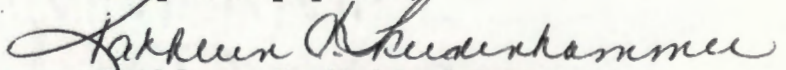
William T. Glasgow, Esquire  
REESE & CARNEY  
Suite 250, 10715 Charter Drive  
Columbia, MD 21044

RE: Case No. 92-477-SPH  
George Baker /Petitioner

Dear Mr. Glasgow:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Very truly yours,

  
Kathleen C. Weidenhammer  
Administrative Assistant

encl.

cc: Conwell F. Sapp, Esquire  
Ms. Lena Guise  
Mr. George Baker  
People's Counsel for Baltimore County  
P. David Fields  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr.  
Docket Clerk /Zoning  
Arnold Jablon, Director of  
Zoning Administration

**MICROFILMED**



12/1/92  
S

IN THE MATTER OF

\* BOARD OF APPEALS

LOT NOS. 31 &amp; 32

\* BALTIMORE COUNTY

ARUNAH AVENUE

\* SPH 92-477

\* \* \* \* \*

## APPEAL

Please enter an appeal in the above-captioned matter.

Conwell F. Sapp  
 Conwell F. Sapp  
 REESE AND CARNEY  
 10715 Charter Drive  
 Suite 200  
 Columbia, MD 21044  
 (410) 740-4600

William T. Glasgow  
 William T. Glasgow  
 10715 Charter Drive  
 Suite 250  
 Columbia, MD 21044  
 (410) 997-2298

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of December, 1992, a copy of the foregoing Appeal was mailed, postage prepaid, to Lawrence E. Schmidt, Zoning Commissioner, 400 Washington Avenue, Towson, MD 21204, Ms. Phyllis Cole Friedman, People's Counsel for Baltimore County, Room 47, Courthouse, 400 Washington Avenue, Towson, MD, 21204, Mr. Peter Max Zimmerman, Deputy People's Counsel, Room 47, Courthouse, 400 Washington Avenue, Towson, MD 21204 and Mr. George Baker, 405 LaFayette Avenue, Baltimore, MD 21228.

Conwell F. Sapp  
 Conwell F. Sapp

CFS\zoning\guise.app

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 DEC 7 1992

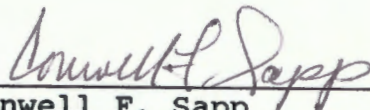
MICROFILMED

ZONING OFFICE



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 1992,  
a copy of the foregoing Appeal was mailed, postage prepaid, to  
George Baker, 405 Lafayette Avenue, Baltimore, MD 21229;  
Phyllis Friedman, Esquire, Peoples Counsel, Baltimore County  
Zoning Office, Courthouse, Towson, MD 21204 and Lawrence E.  
Schmidt, Zoning Commissioner, 400 Washington Avenue, Towson,  
MD 21204.

  
\_\_\_\_\_  
Conwell F. Sapp

\_\_\_\_\_  
William T. Glasgow

wtg\real\guise.lin  
C3a

**MICROFILMED**

11-24-92

IN RE: PETITION FOR SPECIAL HEARING \* BEFORE THE  
NE/S Arunah Ave., 300 ft. SE  
of c/l Maryland Avenue \* ZONING COMMISSIONER  
(Lots #31 & #32, Arunah Ave.) \*  
1st Election District \* OF BALTIMORE COUNTY  
1st Councilmanic District \*  
\* CASE # 92-477-SPH  
George Baker, Petitioner  
Lena Guise, Property Owner \*

\*\*\*\*\*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Consideration of the future use of the above captioned property comes before this office again for a third time. Although relatively small, the subject property has endured a lengthy zoning history as its owner seeks to develop the site. The subject property is known as lots Nos. 31 and 32 on Arunah Avenue in the Catonsville Heights section of Baltimore County. The pending Petition was filed by George Baker, a neighboring property owner. The subject site is owned by Lena Guise and is presently undeveloped. The site is approximately 5,280 sq. ft. in area and is zoned D.R.5.5.

The history of Mrs. Guise's plans to develop a single family dwelling on the subject lot is significant. During the Summer of 1991, the property owner decided to construct a 60 ft. deep by 26 ft. wide dwelling on the property. The resulting building envelope from this construction would provide a 7 ft. side yard setback on both sides of the property. Under Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), a 10 ft. side yard setback to adjoining residential property and 25 ft. setback to the abutting paper street must be maintained. The subject lot abuts a residential property to the east known as 804 Arunah Avenue. To the west, the site adjoins an unimproved paper street known as Lafayette Avenue. The improved portion of Lafayette Avenue actually ends near the northwest corner

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of the site. As a result of the property owner's inability to comply with the required setbacks, Mrs. Guise filed a Petition for Variance requesting relief from Section 1B02.3.C.1 of the B.C.Z.R., to allow 7 ft. side yard setbacks in lieu of what was required. That Petition came in for a public hearing before the Deputy Zoning Commissioner, Timothy M. Kotroco. Following the hearing, Mr. Kotroco denied the Petition by his Order dated October 8, 1991. Unsatisfied with this result, Mrs. Guise appealed Deputy Zoning Commissioner Kotroco's decision to the County Board of Appeals. After the Board's hearing, an opinion was issued granting the Petition on May 6, 1992. In that there has been no appeal from the Board's decision to the Circuit Court for Baltimore County, the Board's decision is final. Thus, Mrs. Guise has obtained a lawful variance from Section 1B02.3.C.1 of the B.C.Z.R. as it relates to 7 ft. side yard setbacks, in lieu of the required 10 ft. to a residential property and 25 ft. to the street.

Subsequent to the above litigation, Mr. Baker filed the instant Petition for Special Hearing. This Petition requests a determination of whether "The herein described property located in a D.R.5.5 zone and consisting of less than 6,000 sq. ft. may be residentially developed". That is, notwithstanding the Board's granting the variance as to the side yard setbacks, Mr. Baker seeks a determination as to whether the lot can be developed in view of the fact that the square foot area is less than the 6,000 sq. ft. required in Section 1B02.3.C.1 of the B.C.Z.R.

Mr. Baker's Petition was received by the Zoning Office and scheduled for hearing on July 27, 1992. At that time, a preliminary motion was raised by counsel for Mrs. Guise as to the propriety of the Petition for Special Hearing. Specifically, her counsel argued that litigation of this issue is barred by the doctrine of res judicata. Peoples Counsel and the neighboring

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property owners disagreed. Both sides submitted legal memorandums and by my Order of September 24, 1992, the property owner's Motion to Dismiss the Petition was denied. Mrs. Guise immediately filed an appeal from my ruling. That appeal came before the County Board of Appeals which, by its Order of November 9, 1992, dismissed the appeal. Apparently, the Board felt that my ruling was in the nature of an interlocutory Order and this case could not be appealed until a decision on the merits of Mr. Baker's Petition was rendered. Therefore, this case came in, again, for public hearing before the Zoning Commissioner on November 10, 1992.

A number of issues were raised at this public hearing which need be addressed. First, it was discovered at the public hearing that Mrs. Guise and her neighbors have still not presented all issues which need be resolved before any construction could occur on site. Specifically, although the side yard setback issues have been resolved, and the 5,280 sq. ft. in lieu of 6,000 sq. ft. area issue is pending, no Petition has been filed seeking relief from Section 1B02.3.C. of the B.C.Z.R., as it relates to minimum lot width. This section governs development standards for all property zoned D.R. For property zoned D.R.5.5, as is the subject lot, side yard setbacks of 10 ft. must be maintained, the lot area must be, at least, 6,000 sq. ft., and the lot must be a minimum of 55 ft. wide. In that the subject lot is only 40 ft. wide, a variance from this requirement is also necessary. Over Peoples Counsel's objection, I decided to include this issue in my deliberations for this case. I acknowledge that Mr. Baker did not amend his Petition for Special Hearing to include this issue that Mrs. Guise presently has no Petition before me to amend, and that the prior case did not raise this question. However, out of a sense of judicial economy, it seems appropriate to resolve all issues at this time. It would be improper to limit my inqui-

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ry in the present case only to the lot area requirement. This would leave open the possibility that the property owner, Mr. Baker, or another neighbor, could refile another Petition regarding this site. Frankly, three public hearings regarding this case are quite enough and considerations relevant to these issues are largely the same. Thus, my Order shall address the net lot area requirement as well as the lot width requirement.

Secondly, it is to be noted that evidence was produced at the public hearing that the property owner was originally notified that variances from the above three requirements were necessary. That is, a copy of the sample Petition for Variance, which was drafted by the Zoning Technician who originally accepted this case, was submitted into evidence. The wording of that Petition addresses the side yard setback requirements, the lot area requirement, and the lot width requirement. Thus, the property owner was aware at the time the original Petition was filed that relief from these three standards was necessary. It is unclear as to why Mrs. Guise's original Petition addressed only the side yard setback. Why a request for relief on all three requirements was not made is a mystery.

A third issue to be considered is the application of Section 304 of the B.C.Z.R. This section allows development of undersized lots in certain circumstances. Specifically, Section 304.1 (which was recently re-adopted under Bill No. 47-92, but has remained substantially the same as it relates to this case) allows development of undersized lots without obtaining a variance under certain circumstances. Three conditions are listed which permit development on undersized lots. They are, that the lot shall be part of a validly approved subdivision or been duly recorded prior to March 30, 1955; that all other requirements of the height and area regulations are

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complied with; and that the owner of the lot does not own sufficient or adjoining land to comply with the width and area requirements.

It is clear that Mrs. Guise may well meet two of these requirements. This subdivision is old and she testified that the property has been in her family for many years, well prior to the adoption of the comprehensive Baltimore County Zoning Regulations in 1955. Further, she does not own sufficient adjacent land to comply with the width and area requirements. However, she fails to comply with the third prong of the test presented in Section 304.1. Specifically, she cannot meet all other height and area requirements. Interpretation of the intent of this prong of the test offered in Section 304.1 previously came before the Board of Appeals in the matter of Harry Shuman, et al (case No. 89-85-A). Within the Board's decision, it was held that unless a property could comply with the height and area regulations of the B.C.Z.R., he/she may not exercise the privilege to develop conferred by Section 304. Further, compliance cannot be realized by obtaining a variance as to the height and area regulations. The opinion noted that a variance only confers validity on a plan which does not comply with the regulations. Therefore, the Board concluded that the petitioning for a variance from setback requirements renders the relief provided in Section 304 unavailable. Having participated in that opinion as a member of the Board, I believe that the conclusion reached therein remains controlling in this instance. Thus, I must hold that Mrs. Guise cannot develop the property, pursuant to Section 304 of the B.C.Z.R., in that she does not meet all other requirements of the height and area regulations contained within the B.C.Z.R., as evidenced by a previously approved Petition for Variance from the side yard setback requirements.

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By

M. Chovak



The fourth issue raised within the confines of this case is offered by Peoples Counsel. Essentially, Peoples Counsel argues that any lot area standard cannot be varied. As a basis for this position, Peoples Counsel avers that the 6,000 sq. ft. lot area requirement is akin to a density requirement. Noting that only height and dimensional requirements can be varied under law, Peoples Counsel suggests that a variance to the lot area requirement relates to a density standard and could, therefore, impermissibly permit a given tract of land to exceed its density.

Although the logic of Peoples Counsel's argument is followed, I do not believe their conclusion is proper. Clearly, the B.C.Z.R. allows the Zoning Commissioner with the authority to grant area variances. The lot area variance is akin to any other dimensional requirement, be it a side, rear or front yard setback, or height restriction. All of the standards found in Section 1B02.3.C.1, including minimum lot area, are to be applied to individual lots. In fact, the section is titled "Development Standards for small Lots or Tracts" (emphasis added) and the language used therein provides that the requirements listed shall be applied to a lot or a tract, as opposed to lots or tracts. That is, the standards are area and dimensional in scope and do not apply in the subdivision/ density calculation process. Clearly the drafters of the B.C.Z.R. intended to establish this section as guidelines for development of individual tracts. If this were not so, not only would the lot area restriction in Section 1B02.3.C.1 of the B.C.Z.R. be improper, but so would Section 304, as well. Thus, in my view, the argument of the Peoples Counsel in this respect must be rejected.

Having addressed these issues, attention is now turned to the fifth, and final, issue presented, namely, the merits of the pending Petition for Special Hearing. Actually, the decision rendered on this issue must be

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By

M. Gorch

received in the same light as would a Petition for Variance from the lot area and lot width requirements, if same had been filed by Mrs. Guise.

As to this issue, the positions of the parties are crystallized. On behalf of the property owner, testimony was received from Mrs. Guise, her daughter (Elizabeth Clark) and her realtor (Mudge Stocksdales). Collectively, these witnesses stated that the lot is unusable if the width and area requirements are not waived. They observed that the property is zoned residential, taxed as a residential parcel and development should, therefore, be permitted. Further, they noted that there are other houses in this community on substandard sized lots. These witnesses further aver that Mrs. Guise's neighbors use the property for their own benefit. Although probably true, this allegation has no bearing on the issue presented, but is for the courts to determine in a trespass case. In sum, the property owner and her witnesses believe that a denial of permission to build would leave this lot without value.

In opposition, testimony was received from two neighbors, Mr. George Baker and Mrs. Richard Hauf. Both witnesses testified that there are no houses on lots this small in the subdivision. Further, the properties which are immediately adjacent to the site are on larger lots. These witnesses believe that to permit development on the property would cause an adverse effect on their properties.

This case presents the classic dilemma faced in many variance cases. To deny permission to build would be to deprive Mrs. Guise a legitimate use of her lot. Indeed, under such a circumstance, its value would be reduced. Nonetheless, as Peoples Counsel appropriately noted, not every variance should be granted merely because to deny same would render a lot



undevelopable. If all variances were approved, the purposes of the area requirements would be defeated.

The law regarding variances is well settled. Section 307.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) states that the Baltimore County Zoning Commissioner and/or Deputy Zoning Commissioner shall have the power to grant 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 "the 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).

The question, therefore, is whether it was fairly debatable that the evidence shows strict compliance with the regulations would result in practical difficulty or unreasonable hardship.

After careful consideration of all of the evidence and testimony presented, I am persuaded that the Petition for Special Hearing should be granted and that permission to develop the site must be denied. I draw this conclusion well aware of Mrs. Guise's testimony as to the diminution of value of this lot. This factor was apparently persuasive to the Board of Appeals in the side yard setback case. Therein, the Board noted "To deny the requested variances would be to deny the property owner a reasonable use of her property and would render the site useless." Although this inference as to value may be drawn, it cannot be the sole consideration relied on. As

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11/25/92  
Mr. Gornik

stated earlier herein, if that were the case, every residentially zoned lot in Baltimore County could be developed, notwithstanding its size and configuration. In such a case, the provisions of Section 1B02.3.C.1 would be rendered worthless.

It is also to be noted that not only does the property owner need show "practical difficulty", but Section 307.1 of the B.C.Z.R. requires a second finding; namely, that a variance cannot be granted unless a finding is made that there is no injury to the public welfare. Two factors lead me to conclude that this test is not satisfied in the pending case. First, the adjoining dwellings are all on larger lots. Frankly, the property is too small and development thereon would be inconsistent with the surrounding locale. Secondly, and as importantly, proper access to the site is questionable. As noted, Lafayette Avenue, to the west, is a paper street. Arunah Avenue, to the south, is not paved at that portion thereof which abuts this property. Therefore, a serious question is presented as to whether vehicular access can even be provided. Even if same were allowed from the paved portioned of Lafayette Avenue to the northwest, the house would be oriented towards Mr. Baker's house at 405 Lafayette Avenue and would unquestionably cause an adverse effect to that lot. Thus, for these reasons, the special hearing shall be granted, so as to prohibit development of this site.

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

THEREFORE IT IS ORDERED by the Zoning Commissioner of Baltimore County this 25<sup>th</sup> day of November, 1992 that, pursuant to the Petition for Special Hearing, prohibiting development of the herein described residential property, known as lots Nos. 31 and 32, Arunah Avenue, located in a D.R.5.5 zone,

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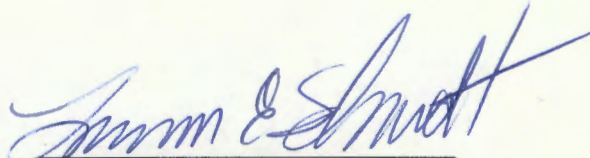
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and consisting of less than the required 6,000 sq. ft., required in Section 1B03.C.1 of the B.C.Z.R., be and is hereby GRANTED.

Any appeal from this decision must be taken in accordance with the applicable provisions set forth in Section 26-132 of the Baltimore County Code.



LAWRENCE E. SCHMIDT  
Zoning Commissioner for  
Baltimore County

LES:mmn

RECEIVED MAY 2 2 00 PM  
BALTIMORE COUNTY  
ZONING DEPARTMENT

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Date

By

11/25/92  
M. Shorah

MICROFILMED

Baltimore County Government  
Zoning Commissioner  
Office of Planning and Zoning



Suite 113 Courthouse  
400 Washington Avenue  
Towson, MD 21204

(410) 887-4386

November 24, 1992

Mr. George Baker  
405 Lafayette Avenue  
Baltimore, Maryland 21229

William T. Glasgow, Esquire  
10715 Charter Drive, Suite 250  
Columbia, Maryland 21044

RE: Petition for Special Hearing  
George Baker, Petitioner  
Lena Guise, Property Owner  
NE/S Arunah Avenue, 300 ft. SE of c/l Maryland Avenue  
Lots #31 and 32 Arunah Avenue

Gentlemen:

Enclosed please find a copy of the decision rendered in the above captioned matter. The Petition for Special Hearing has been granted.

In the event any party finds the decision rendered unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Appeals Clerk at 887-3391.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt", is written over the typed name.

LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:mmn  
encl.

cc: Mrs. Lena Guise  
3306 Strickland Street  
Baltimore, Maryland 21229

cc: Peoples Counsel

**MICROFILMED**



11-9-92

IN THE MATTER OF  
THE APPLICATION OF  
GEORGE BAKER /Petitioner  
FOR A SPECIAL HEARING ON PROPERTY  
LOCATED ON THE NORTHEAST SIDE  
ARUNAH AVENUE, 300' SOUTHEAST OF  
CENTERLINE MARYLAND AVENUE (LOTS  
#31 AND #32, ARUNAH AVENUE)  
1ST ELECTION DISTRICT  
1ST COUNCILMANIC DISTRICT

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* CASE NO. 92-477-SPH  
\*

\* \* \* \* \*

RULING ON PEOPLE'S COUNSEL'S MOTION TO DISMISS APPEAL

The Board has received a Motion to Dismiss Appeal filed by People's Counsel for Baltimore County and the Memorandum of Law in Opposition to Motion to Dismiss filed by Lena Guise, Property Owner, by and through her attorneys Conwell F. Sapp and William T. Glasgow, in the above-entitled matter.

Upon this Board's review and consideration of the foregoing Motion and Memorandum of Law in Opposition thereto,

IT IS HEREBY ORDERED by the County Board of Appeals of Baltimore County that said Motion to Dismiss Appeal filed herein by People's Counsel for Baltimore County be and the same is hereby GRANTED.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

William T. Hackett  
William T. Hackett, Chairman

Date: Nov. 9, 1992

MICROFILMED



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

November 9, 1992

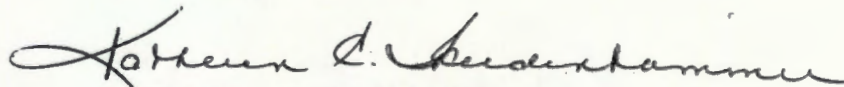
Phyllis Cole Friedman  
People's Counsel for Baltimore County  
Room 47, Old Courthouse  
400 Washington Avenue  
Towson, MD 21204

RE: Case No. 92-477-SPH  
George Baker/Petitioner

Dear Ms. Friedman:

Enclosed please find a copy of the Ruling on People's Counsel's Motion to Dismiss issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Very truly yours,

  
Kathleen C. Weidenhammer  
Administrative Assistant

encl.

cc: Conwell F. Sapp, Esquire  
William T. Glasgow, Esquire  
Mr. George Baker  
Ms. Lena Guise  
P. David Fields  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr.  
Docket Clerk - Zoning  
Arnold Jablon, Director of  
Zoning Administration  
Public Services

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11-6-92  
IN THE MATTER OF  
Lots Nos. 31 & 32  
of Arunah Avenue

\* BEFORE THE  
\* BALTIMORE COUNTY  
\* BOARD OF APPEALS  
\* Case No. 92-477-SPH  
92-30-A

\*\*\*\*\*

MEMORANDUM OF LAW  
IN OPPOSITION TO MOTION TO DISMISS

Facts

Lena Guise, property owner, filed a request for variances for Lots 31 and 32 on Arunah Avenue, Case No. 92-30-A before the Zoning Commissioner of Baltimore County. Such petition was denied. This decision was appealed and reversed by the Baltimore County Board of Appeals following a hearing. No appeal was taken to Circuit Court. Protestants in 92-30-A filed for a second hearing before the Zoning Commissioner on the same property concerning the legality of property owner developing a property of less than 6,000 square feet. Another hearing was granted and the case was re-numbered as 92-477. People's Counsel, although not a party in the first case, entered her appearance. The hearing was held on July 27th, 1992 before Zoning Commissioner Lawrence Schmidt. No evidence was taken but argument was heard on a preliminary Motion to Dismiss brought by the property owner. Commissioner Schmidt withheld decision and requested written submissions. Following submission of Memorandum of Law, Commissioner Schmidt on September 24, 1992, denied the Motion to Dismiss. Property Owner timely appealed

MICROFILMED

this denial to the Baltimore County Board of Appeals. Peoples Counsel filed a Motion to Dismiss the appeal and this Memorandum of Law is in response.

#### Argument

People's Counsel contends that the appeal of a Zoning Commissioner's denial of a Motion to Dismiss cannot be heard because the denial was not a final judgment. While it is true that the general rule is that an interlocutory order is not final, there are important exceptions.

The first exception is the collateral order doctrine. An immediate appeal is proper if four conditions are met; (1) the order must conclusively determine a disputed question, (2) the order must resolve an important issue, (3) the order must be separate from the merits of the case, (4) the order would be effectively unreviewable on appeal from final judgment.

The Motion to Dismiss was brought by Property Owner based on res judicata. Denial of the motion by the Zoning Commissioner conclusively determined the disputed right of protestants to a second hearing. The issue decided concerned the authority, jurisdiction, and right of the Zoning Commissioner to hold such a hearing when the decision of the Baltimore County Board of Appeals had not been appealed. This is surely an important issue. The merits of the case concern the standards necessary for the granting of property variances. The merits are separate and distinct from the procedural issues which are raised by res judicata. Res judicata is a defense which will be considered waived if not asserted immediately.



Friedenthal, Kane & Miller, Civil Procedure Hornbook, Series (1985) § 14.3. Will a full review be available after a second final judgment? A second final judgment is in itself an oxymoron. The property owner has a right to avoid the hearing set by the Zoning Commissioner entirely. The harm will have already occurred and will not be subject to correction through later review. Public Service Comm'n v. Patuxent Valley, 300 Md. 200, 477 A.2d 759 (1984).

When a tribunal exceeds its authority an immediate appeal will lie prior to a decision on the merits. Cohen v. Willett, 269 Md. 194, 304 A.2d 824 (1973). Flower World of America v. Whittington, 39 Md. App. 1987, 385 A.2d 85 (1978). The basis for the res judicata was that the Zoning Commissioner was without authority to hold a hearing on questions already settled at the administrative appellate level. This is a second exception to the final judgment rule.

The principles of res judicata, while related, are different from those of collateral estoppel. The Motion to Dismiss was based on res judicata, but the decision by the Zoning Commissioner denying the Motion was premised on collateral estoppel. The Zoning Commissioner erred in determining that the issue of side yard setbacks and lot size are not identical issues and as a consequence res judicata did not apply. The thrust of res judicata is not whether issues are identical but whether any claims which were brought or which could have been brought in the original action bar a subsequent action between the same parties on the same cause of action.



Thus, if a proceeding between parties involves the same cause of action as a previous proceeding between the same parties, the principle of res judicata applies and all matters actually litigated or that could have been litigated are conclusive in the subsequent proceeding. Alvey v. Alvey, 225 Md. 386, 390, 171 A.2d 92, 94 (1961); Snodgrass v. Stubbs, 192 Md. 287, 290-91, 64 A.2d 130, 132 (1949); State v. Brown, 64 Md. 199, 204, 1 A. 54, 56 (1885). If a proceeding between parties does not involve the same cause of action as a previous proceeding between the same parties, the principle of collateral estoppel applies, and only those facts or issues actually litigated in the previous action are conclusive in the subsequent proceeding. Bankers & Shippers Ins. Co. of New York, 287 Md. at 652, 415 A.2d at 284; MCP, Inc., 279 Md. at 33, 367 A.2d at 489; Prescott v. Coppage, 266 Md. 562, 570-73, 296 A.2d 150, 154-55 (1972). When the principle of collateral estoppel applies, facts or issues decided in the previous action are conclusive only if identical to facts or issues presented in the subsequent proceeding. MPC, Inc., 279 Md. at 35, 367 A.2d at 490; see Washington Suburban Sanitary Comm'n v. TKU Assocs., 281 Md. 1, 18-19, 376 A.2d 505, 514 (1977).

Protestants and People's Counsel are barred from raising the question of lot size because the opportunity was available to them and not used at the Board of Appeals hearing. Makall v. Zayre Corp., 293 Md. 291, 443 A.2d 98, 102 1982; see also, MCP Inc. v. Kenny, 279 Md. 29, 367 A.2d 486 (1977).

Res judicata is rigidly formal and works mechanically. It resolutely ignores the substantive merit of the judgment it enforces. Decisions that plainly are wrong and that would be reversed on appeal, were that route available, are valid final judgments for res judicata finality of decision and protection from harassment would be frustrated completely if a plaintiff could evade the doctrine simply by arguing that the original decision was wrong. Res judicata reflects the policy that sometimes



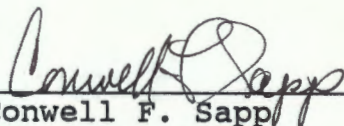
it is more important that a judgment be stable than that it be correct.

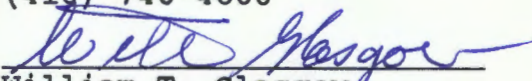
Friedenthal, Kane & Miller, Civil Procedure, Hornbook Series § 14.3 at 616. There is nothing which indicates that the Board of Appeals made an error and if such an error had been made Circuit Court was the property place to raise the question. Civil Procedures, Hornbook Series (1985) § 14.3.

A factor addressed by courts considering the appealability of interlocutory orders is the harm which will occur in the event the appeal is not heard. Property Owner had a buyer for her property which sale was based on the variance approval by the Baltimore County Board of Appeals. The approval was obtained May 6, 1992. It is now November of 1992 with a second hearing scheduled before the Zoning Commissioner on November 10, 1992. The sale may well be lost. In the event that the Zoning Commissioner denies the area variance another appeal will be necessary adding additional time and expense. Additional legal time, filing fees and transcript costs have already been incurred. The original variance petition was filed on November 7, 1991.

Whether time and money are immediate harm is an open question but surely the law should serve as a shield in the case of Lena Guise. This is vexatious litigation.

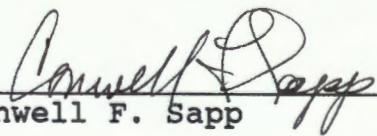
Respectfully submitted,

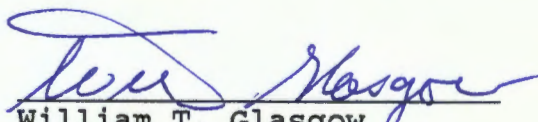
  
Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044  
(410) 740-4600

  
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6<sup>th</sup> day of November 1992, a copy of the foregoing Memorandum of Law in Opposition to Motion to Dismiss was sent first class mail, postage prepaid to George Baker, 405 Lafayette Avenue, Baltimore, Maryland and Phyllis Friedman, Esquire, Peoples Counsel, Baltimore County Zoning Office, Courthouse, Towson, MD 21204.

  
Conwell F. Sapp

  
William T. Glasgow

clb\cfs\litig\guise2.mol



17-6-92

IN THE MATTER OF  
Lots Nos. 31 & 32  
of Arunah Avenue

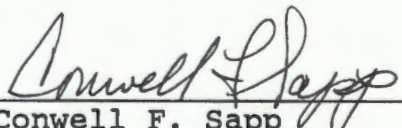
\* BEFORE THE  
\* BALTIMORE COUNTY  
\* BOARD OF APPEALS  
\* Case No. 92-477-SPH  
92-30-A

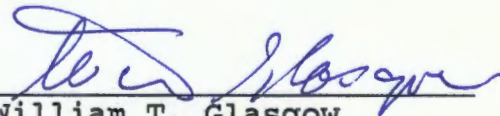
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MOTION TO DENY PEOPLE'S COUNSEL'S  
MOTION TO DISMISS

Lena Guise, Property Owner, by and through her attorneys  
Conwell F. Sapp and William T. Glasgow hereby moves to deny the  
Motion to Dismiss Appeal filed by People's Counsel in the above-  
referenced matter.

In support of this Motion, Property Owner submits the  
accompanying Memorandum of Law.

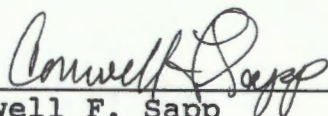
  
Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044  
(410) 740-4600

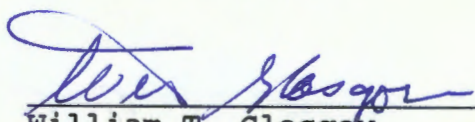
  
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6<sup>th</sup> day of November, 1992, a copy of the foregoing Motion to Deny People's Counsel's Motion to Appeal was sent first class mail, postage prepaid to George Baker, 405 Lafayette Avenue, Baltimore, Maryland and Phyllis Friedman, Esquire, Peoples Counsel, Baltimore County Zoning Office, Courthouse, Towson, MD 21204.

  
Conwell F. Sapp

  
William T. Glasgow

clb\cfs\litig\guise.mot



# REESE AND CARNEY

ATTORNEYS AT LAW

10715 CHARTER DRIVE

COLUMBIA, MARYLAND 21044

(410) 740-4600

WASHINGTON AREA

(301) 621-5255

BALTIMORE FAX (410) 730-7729

WASHINGTON FAX (301) 621-5273

OF COUNSEL

CHARLES A. REESE

255 N. WASHINGTON STREET  
SUITE 505

ROCKVILLE, MARYLAND 20850

(301) 762-6210

DAVID A. CARNEY  
DANIEL H. SCHERR  
DAVID C. HJORTSBERG  
LAURENCE B. RABER  
KEVIN J. KELEHAN  
JUDITH S. BRESLER  
JEFFREY A. KREW  
MICHAEL S. MOLINARO  
L. ROLAND STURM  
JOAN M. BECKER  
CONWELL F. SAPP  
BETH A. JACKSON  
SUSAN E. BEASLEY

November 6, 1992

Baltimore County  
Board of Appeals  
400 Washington Avenue  
Room 49  
Towson, Maryland 21204

ATTN: Ms. Weidenhammer

Dear Ms. Weidenhammer:

Re: In the Matter of Lots Nos. 31 & 32 of Arunah Avenue  
Case No. 92-477-SPH, 92-30-A

Enclosed please find for filing Motion to Deny People's Counsel's Motion to Dismiss and accompanying Memorandum of Law for the above-referenced matter.

Thank you for your anticipated cooperation.

Very truly yours,

REESE AND CARNEY



Conwell F. Sapp

CFS/djp

Enclosures

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11/06/92  
Leard  
CBA  
KWS

11-2-92

RE: PETITION FOR SPECIAL HEARING : BEFORE THE COUNTY BOARD  
NE/S ARUNAH AVE., 300' SE OF  
C/L MARYLAND AVE. : OF APPEALS  
(LOTS #31 & #32, ARUNAH AVE.)  
1ST ELECTION DISTRICT : OF BALTIMORE COUNTY  
1ST COUNCILMANIC DISTRICT : Case No. 92-477-SPH  
GEORGE BAKER, PETITIONER  
LENA GUISE, PROPERTY OWNER/ :  
APPELLANT

: : : : : :

MOTION TO DISMISS APPEAL

People's Counsel for Baltimore County hereby moves to dismiss the appeal of the Zoning Commissioner's Ruling on Preliminary Motion on the grounds that no final order has been issued by the Zoning Commissioner and that the matter is not ripe for appeal.

Phyllis Cole Friedman  
Phyllis Cole Friedman  
People's Counsel for Baltimore County

Peter Max Zimmerman  
Peter Max Zimmerman  
Deputy People's Counsel  
Room 47, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204  
(410) 887-2188

MEMORANDUM OF POINTS AND AUTHORITIES:

Even though this is an administrative appeal, the Board should adopt the same principles as the courts and require that an appeal only be allowed from a decision in which Appellants have no further judicial process available. See Verbal

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Corporation, et al. v. Hupfer, et al., Court of Special Appeals  
No. 1174, September Term, 1987, Per Curiam Opinion (1988).

If this position is not adhered to by the Board, it would enable Appellants to bypass the Zoning Commissioner's rulings entirely and would overburden the Board and not be within the spirit and intent of the administrative structure.

Further, for the reasons described in the attached memorandum filed by People's Counsel with the Zoning Commissioner, the substance of this matter should be addressed by the Zoning Commissioner.

Phyllis Cole Friedman  
Phyllis Cole Friedman

I HEREBY CERTIFY that on this 2nd day of November, 1992, a copy of the foregoing Motion to Dismiss Appeal was mailed to Conwell F. Sapp, Esquire, and William T. Glasgow, Esquire, Reese and Carney, 10715 Charter Drive, Suite 200, Columbia, MD 21044, Attorneys for Appellant; George Baker, 405 LaFayette Ave., Baltimore, MD 21228; and Lawrence E. Schmidt, Zoning Commissioner, Room 113, Courthouse, 400 Washington Ave., Towson, MD 21204.

Phyllis Cole Friedman  
Phyllis Cole Friedman

10-6-92

IN THE MATTER OF  
LOT NOS. 31 & 32  
ARUNAH AVENUE

\* BOARD OF APPEALS  
\* BALTIMORE COUNTY  
\* SPH 92-477

\* \* \* \* \*

PETITION FOR APPEAL

Lena Guise, Property Owner, by and through her attorneys Conwell F. Sapp and William T. Glasgow, files this Petition for Appeal from an order of the Zoning Commissioner denying Property Owner's Motion to Dismiss.

1. The Board of Appeals issued an opinion in Case No. 92-30-A dated May 6, 1992, in which it granted the Property Owner's requested variances for this property. Attached as Exhibit A.

2. After the time for appeal to Circuit Court had run, a neighbor, Petitioner George Baker brought a separate case before the Zoning Commissioner on a claim which concerned the fact that the lot was undersized which was assigned a new case number SPH 92-477.

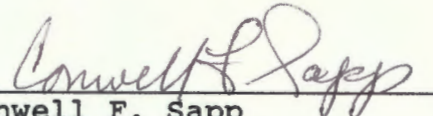
3. Property Owner brought a Motion to Dismiss attached as Exhibit B on the basis of res judicata. A Post-Hearing Memorandum was also filed, attached as Exhibit C.

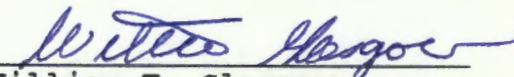
4. In a ruling dated September 24, 1992, the Zoning Commissioner denied such motion, attached as Exhibit D.

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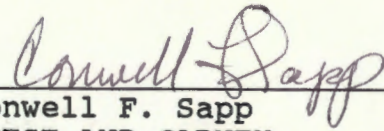
WHEREFORE, Property Owner appeals the denial of her Motion to Dismiss and respectfully requests a hearing on this matter.

  
Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044  
(410) 740-4600

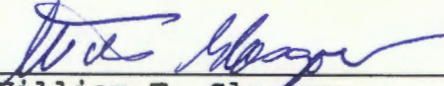
  
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this Oct day of Oct, 1992, a copy of the foregoing Petition for Appeal was sent first class mail, postage prepaid to George Baker, 405 Lafayette Avenue, Baltimore, MD 21229; Phyllis Friedman, Esquire, Peoples Counsel, Baltimore County Zoning Office, Courthouse, Towson, MD 21204 and Lawrence E. Schmidt, Zoning Commissioner, 400 Washington Avenue, Towson, MD 21204.



Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044  
(410) 740-4600



William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

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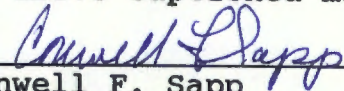
IN THE MATTER OF  
LOT NOS. 31 & 32  
ARUNAH AVENUE

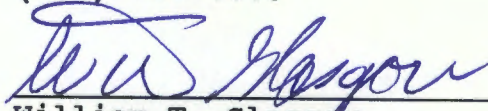
\* BOARD OF APPEALS  
\* BALTIMORE COUNTY  
\* SPH 92-477

\* \* \* \* \*

APPEAL

Please enter an appeal in the above-captioned matter.

  
Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044  
(410) 740-4600

  
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

MICROFILMED

9-24-92

IN RE: PETITION FOR SPECIAL HEARING \* BEFORE THE  
NE/S Arunah Ave., 300 ft. SE \*  
of c/l Maryland Avenue \* ZONING COMMISSIONER  
(Lots #31 & #32, Arunah Ave.) \*  
1st Election District \* OF BALTIMORE COUNTY  
1st Councilmanic District \*  
George Baker, Petitioner \* CASE # 92-477-SPH  
Lena Guise, Property Owner \*

\*\*\*\*\*  
RULING ON PRELIMINARY MOTION

The above captioned matter comes before the Zoning Commissioner as a Petition for Special Hearing for that property known as lots No. 31 and No. 32 on Arunah Avenue in the Catonsville Heights section of Baltimore County. The Petition was filed by George Baker, a neighbor of the subject site. The hearing for the Petition was scheduled on July 27, 1992. However, prior to presentation of any evidence and/or argument on the merits, counsel for the property owner moved to dismiss the Petition. Oral arguments and subsequent memorandums were offered by the parties. This ruling addresses only those issues raised within the Motion to Dismiss.

A brief history and overview of the subject property and its zoning history is in order. As noted, the subject site is comprised of 2 lots within the Catonsville Heights subdivision. The subject property is owned by Lena Guise. The property is approximately 5,280 sq. ft. in area and is zoned D.R.5.5. Under the provisions of Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), the minimum net lot area per dwelling unit in a D.R.5.5 zone is 6,000 sq. ft. Further, that section of the regulations provides that any such dwelling on a lot zoned D.R.5.5 must have a 10 ft. side yard setback.

During the summer of 1991, Ms. Guise apparently decided to construct a dwelling on the subject lot. A house approximately 60 ft. deep and 26 ft.

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wide was proposed. In that a building envelope of that size would result in only a 7 ft. side yard setback, Ms. Guise filed a Petition for Zoning Variance with this office. The Petition requested a variance from Section 1B02.3.C.1, "to permit a side yard setback of 7 ft. and a side street setback of 7 ft. in lieu of the required 10 ft. and 25 ft. respectively." The case came in for a hearing before Deputy Zoning Commissioner, Timothy M. Kotroco. Following a public hearing, the Deputy Zoning Commissioner denied the Petition by his Order dated October 8, 1991. Unsatisfied with this result, Ms. Guise appealed Deputy Zoning Commissioner Kotroco's decision to the County Board of Appeals. After a hearing, the Board overruled Deputy Zoning Commissioner Kotroco's opinion and granted the variance on May 6, 1992. There has been no appeal of the Board's decision to the Circuit Court for Baltimore County. Thus the Board's decision is final. Nonetheless, unhappy with this result, one of Ms. Guise's neighbor (Mr. Baker) filed a Petition for Special Hearing in the instant case. This Petition requests a determination of whether "the herein described property, located in a D.R.5.5 zone and consisting of less than the required 6,000 sq. ft. may be residentially developed." That is, notwithstanding the Board's ruling granting the variance as to side yard setbacks, Mr. Baker seeks a determination as to whether the lot can be developed in view of the fact that the square foot area of same is less than the required 6,000 sq. ft.

As indicated above, counsel for Ms. Guise appeared at the public hearing and raised objection to the propriety of the current Petition and hearing. Simply stated, Ms. Guise believes that this issue has been litigated and that the present Petition is barred from consideration by the doctrine of res judicata. Although the memorandum of the counsel representing Ms. Guise speaks for itself, it is to be noted that the primary thrust of same

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is that the Board's ruling was dispositive of this issue and relitigation of same is improper.

People's Counsel and the neighboring property owners disagree. They believe that the issues are different (side yard setback vs. net area requirement) and thus the case should be heard.

As indicated, People's Counsel and counsel for Ms. Guise both submitted legal memorandums setting forth their positions. It seems apparent that both sides recognize that Board of County Commissioners v. Racine, 24 Md. App. 435, 332 A.2d 306 (1975) is the leading case in Maryland on this issue. Racine stands for the general proposition that the doctrine of res judicata can be applicable to the decisions of an administrative body, i.e., in this case, the Zoning Commissioner and the Board of Appeals. The principals of res judicata are well settled. Basically, the doctrine provides that once a final judgment has been entered, relitigation of the cause of action and issues presented is improper. If it were not so, litigation would be endless and parties thereto would never have disputes and issues resolved. Clearly, the public policy rationale for the doctrine is justified.

As indicated, Racine discussed the application of the res judicata to administrative bodies. Noted the Court, "We recognize, as indeed we must, that an unreversed final decision by a Zoning Board, passed in the exercise of its discretion upon issues of fact or upon mixed issues of law in fact are fully binding upon parties to the cause and their privies as to all issues determined thereby." Racine supra, pg. 314. It is clear that a prior decision by the County Board of Appeals or Zoning Commissioner may bar relitigation of identical issues, notwithstanding that the prior decision may not have undergone judicial scrutiny on appeal. However, that having been said, the doctrine of res judicata is to be applied narrowly. Only if

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the issues are the same, should the doctrine be applied. This is clear from the Court's language in Racine where, in examining the facts of the case before it, the Court noted "In the subject case, it is uncontroverted that the issue presented is identical; the parties are identical." Racine supra, pg. 311. Later, quoting from McKinzie v. Baltimore and Ohio Railroad Co. 28 Md. 161 (1867), the Court noted "A judgment, to operate as an estoppel, must be upon the same subject matter and between the same parties." (emphasis added) Racine supra, pg. 313. Even Black's Law Dictionary, Fifth Edition, 1979, notes that the application of res judicata "requires identity in things sued for as well as identity of cause of action, of persons and parties to an action and of quality in persons for or against whom claim is made."

It is apparent from these citations that the identical issue must exist in order for the doctrine of res judicata to be applicable. Does such an identical issue in this case exist? The answer must be in the negative.

Specifically, although determination of the applicability of the same section of the B.C.Z.R. is requested, two distinct and different requirements are at issue in these cases. Specifically, in the prior case, Deputy Commissioner Kotroco and the Board of Appeals considered the propriety of a side yard setback. In the case before me, consideration of the lot area is the germane issue. Determination of whether a variance should be granted from either of these requirements may require consideration of different issues; e.g., impact of a variance from a side yard setback upon an adjacent property may be quite different from the impact on neighboring properties of development on an undersized tract.

Further, a variance from the square foot area requirement may or may not involve a side yard setback variance. For example, a lot may have an

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Date

9/24/92  
M. G. G. G.

By

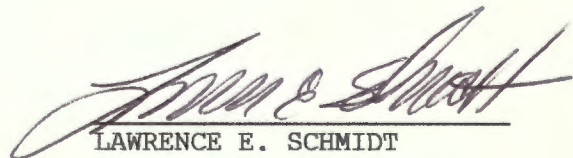
area in excess of 6,000 sq. ft., yet still require a side yard setback variance in order to be developed. The situation exists vice versa. That is, an undersized lot may not require any side yard setback variance.

Since these are the possibilities, I cannot conclude that the issues presented are identical. The Petitioner in the present case may present yet other considerations inapplicable to the initial case. Further, Ms. Guise's counsel's argument notwithstanding, it is clear that the County Board of Appeals did not resolve the undersized lot issue at the hearing before them. Although there are fleeting references to the lot size within the transcript, the previous variance case involved only the side yard setback issues. There is no evidence that the Board considered, much less ruled upon, whether construction would be proper on an undersized lot.

I also concur with Peoples Counsel's conclusion that it is the property owner's burden to seek relief from all applicable regulations. The direction of the Zoning Technician who accepted the first Petition notwithstanding, Ms. Guise is responsible for securing all variances necessary to develop. She did not request an area variance previously; and it was not granted. If it is now needed to develop, it must be obtained.

For the aforementioned reasons, I shall deny Ms. Guise's Motion to Dismiss. This case shall be set for hearing on the merits of the Petition in due course.

THEREFORE, it is this 24<sup>th</sup> day of Sept., 1992 Ordered that the Motion to Dismiss be and is hereby DENIED.

  
LAWRENCE E. SCHMIDT  
Zoning Commissioner for  
Baltimore County

LES:mmn

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Date

By

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Baltimore County Government  
Zoning Commissioner  
Office of Planning and Zoning



Suite 113 Courthouse  
400 Washington Avenue  
Towson, MD 21204

(410) 887-4386

September 23, 1992

William T. Glasgow, Esquire  
Suite 250  
10715 Charter Drive  
Columbia, Maryland 21044

RE: Ruling on Preliminary Motion  
Petition for Special Hearing  
Lots No 31 and 32, Arunah Avenue  
Lena Guise, Property Owner  
George Baker, Petitioner  
Case No. 92-477-SPH

Dear Mr. Glasgow:

Enclosed please find a copy of my Ruling on Preliminary Motion rendered in the above captioned matter.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt", is written over the typed name.

LAWRENCE E. SCHMIDT  
Zoning Commissioner

LES:mmn  
att.

cc: Mr. George Baker  
405 Lafayette Avenue  
Baltimore, Maryland 21228  
cc: Peoples Counsel  
Phyllis Friedman, Esquire  
cc: Ms. Lena Guise  
3306 Strickland Street  
Baltimore, Maryland 21229

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8-21-92

## MEMORANDUM OF LAW

The original variance petition filed by Property Owner was drafted with the aid of a Baltimore County Zoning technician because she was not represented by counsel at the time. The Property Owner explained what she intended and the wording was designed by the technician. Any deficiency in the petition is not an error of the Property Owner.

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timely filed with appropriate grounds. No other avenue is open to the parties.

"An Adjudicative determination by an administrative tribunal is conclusive under the rules of res judicata only insofar as the proceeding resulting in the determination entailed the essential elements of adjudication including: . . . (b) The right on behalf of the party to present evidence and legal argument in support of the party's contention and fair opportunity to rebut evidence and argument by opposing parties . . . ." Re-statement of Judgments § 83 (1982). Res judicata principles apply to administrative hearings as well as proceedings in court. George Baker as well as other neighbors in opposition have had two separate opportunities to be heard and cannot be permitted to come through a back door to do what cannot be done through the front door.

When the principles of res judicata are applied to a zoning decision, a second action on the same property is precluded unless there is a substantial difference in the neighborhood or change in circumstances, see generally, Chatham Corp. v. Beltram, 243 Md. 138, 220 A.2d 589 (1966) and Woodlawn Area Cit. Ass'n v. Bd. of Co. Comm., 241 Md. 187, 216 A.2d 149 (1966). In the case sub judice, the underlying assumptions and reasons are the same as those previously heard. The opposing neighbors are attempting to prevent Lena Guise from the lawful use of her property. Any reasons contended by petitioner should have been put forward at previous hearings simply to avoid this sort of duplicative argument.

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8-21-92

## POST HEARING MEMORANDUM OF LAW

### Facts

### Facts

### Facts

### Facts

### Facts



emphatic that res judicata does apply to administrative hearings. There are some administrative actions to which it does not apply such as some letter decisions by an agency but if there has been a hearing with each side able to present evidence res judicata applies. It applies even in hearings such as those held for individuals requesting Social Security benefits when there is, in fact, only one side. In this instance the protesting neighbors have twice had the hearing opportunity to hear and be heard. All issues regarding this property that could have been brought up at prior hearings should have been put forward. The underlying facts and assumptions of both cases are the same.

Peoples Counsel relies on Board of County Commissioner's v. Racine, 24 Md. App. 435 332 A.2d 306 (1975) for the premise that res judicata does not apply in a zoning case if an error of law has been made. This is incorrect on two levels. The most primary is that no illegality in the decision of the Board of Appeals can be shown. Secondly, the Court in Racine cited to work written by Professor Davis in 1958 to support its decision. Davis himself states that res judicata as it relates to administrative law was markedly changed by a Supreme Court decision in 1966 United States v. Utah Construction & Mining Company, 384 U.S. 394, 421-22 (1966). Davis in 1989 and the state of administrative law is markedly changed from 1958. The Davis quote cited by the Court in Racine was based on the 1942 Restatement of Judgments. The Restatement of Judgments was revised in 1982

as Restatement of Judgments 2d. Davis on res judicata explains the changing law.

What is happening is that the fundamentals summarized in the 1942 Restatement of Judgments are no longer followed. The Restatement of Judgments 2d (1982) is different in its fundamentals. What is more important is that the Supreme Court is signaling its general acceptance of the new fundamentals, of the new details, and of the new language. For instance, §27 of the Restatement of Judgments 2d states a general rule which is now law: "When an issue of fact or law is actually litigated and determined by a valid and final judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." Under §70 of the 1942 Restatement, a decision on a question of law was generally not binding in a subsequent action.

The Board of Appeals Decision was Legal and Final

People's Counsel presented a variety of legal theories which, while novel, are not persuasive. She postulated that variance allowing a reduction in the area of a particular property is in effect a change in the density requirements and the density change cannot be made by the Board of Appeals and is therefore illegal. The alchemy which changes an area requirement into a density classification is inexplicable. The authority used for many years by the Zoning Commissioner for area variances is clearly defined in §307.1 of the Baltimore County zoning regulations. Only one dwelling is proposed for this site. No violation is done to the purpose of the density requirements which were primarily designed to create better design in future subdivisions.

1B00.2 - Purpose. The D.R. zoning classification are established, pursuant to



the legislative findings set forth above, in order to:

- A. Foster a greater variety in housing types within future residential developments;
- B. Allow more feasible preservation of natural features and induce the reservation of ample and more suitably designed open spaces and parks, in order to better satisfy the needs of residents without economic disadvantage to developers;
- C. Allow greater flexibility in subdivision-development planning and provide for the inducement of more creative as well as more economic approaches to residential development, with the goal of desirable and distinctive identity and character of individual residential locales;
- D. Provide the means to satisfy differing housing-market requirements without rezoning, and thus without disruptive changes in density potential; and
- E. Provide for the application of residential zoning classifications in a manner more nearly in accord with comprehensive plans and comprehensive-planning goals.

The purpose and legislative intent was not to restrict an individual property owner so that she receives no economic benefit from a parcel of property which was subdivided in 1919 prior to any zoning regulations.

The same area as the subject property is listed on homes at 601 Maryland Avenue, 1006 Arunah Avenue, 501 Valkorn Road, 502A Dorchester Road and 521 Valkorn (new home). 6007 Montgomery Avenue was approved for construction last year. Case No. 91-245A for 5208 Carroll Place approved the same

variances in 1991. Any illegality on the part of the Zoning Commissioner or Board of Appeals is long standing. If such an act were illegal the recourse is through an appeal to Circuit Court and not a second hearing before the Zoning Commissioner.

Alternatively, People's Counsel suggested that the area requirement was overlooked by the Board of Appeals. Not only was this not overlooked but evidence was presented and considered by the Board and such approval was incorporated into their opinion. Direct reference in the opinion is made to the width of the lot, the proposed building envelope and the testimony of Midge Stocksdales regarding properties of a similar size in the immediate area. See Transcript, pp. 23 and 24, attached hereto as Exhibit A. Entered into evidence was a variance plat depicting the area of the property which was a part of the submission. Also submitted into evidence was the record of a variance granted for an identically sized property within two blocks of the subject property. See Transcript, pp. 13 and 14, attached hereto as Exhibit B.

The initial Petition for Zoning Variance which was prepared by a clerk/technician of the Zoning office in aid of the property owner was brought for a variance from regulations at 1B02.3.C.1 which states the minimum square footage for property and the set back requirements. The referenced regulations refer to both minimum area and set back. Both were considered by the Board of Appeals and



although the variance petition could have been more carefully drafted, the area of the property in question was considered by the Board.

#### Entry of People's Counsel

People's Counsel has the authority to appear on behalf of the public on any zoning matter which she deems involves the public interest. The People's Counsel also as an aggrieved party has the authority to bring an appeal. People's Counsel v. Williams, 45 Md. App. 617 415 A.2d 585 (1980). The authority, however, has limits. To appeal, a party must be aggrieved and be a party to the proceeding below. In the first case before the Zoning Commissioner regarding this property People's Counsel did not appear. At the Board of Appeals hearing she advised the protestants outside of the hearing room prior to the hearing but chose not to appear at the hearing itself. She, therefore, lacked the party status necessary to appeal. The belated entry into a second hearing may be because of the lack of party status for purposes of appeal in the first case.

A principle of res judicata precludes the entry of People's Counsel at this eleventh hour.

A judgment, to operate as an estoppel must be upon the same subject matter and between the same parties. The term 'parties', however, is not restricted to those who appear as plaintiff and defendant upon the record. It includes those who are directly interested in the subject matter of the suit, knew of its pendency, and had the right to control, and direct, or defend it. The law, in dispensing even-handed justice to all, has wisely taken care 'ut sit finis litium', and if matters, which have been once solemnly decided, could

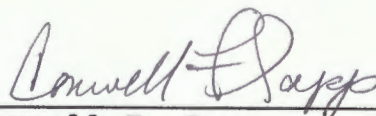
be again drawn into controversy, there would be no end of litigation and disputes. Mr. Greenleaf has happily said, 'justice requires that every cause be once fairly and impartially tried; but the public tranquility demands, that having been once so tried, all litigation of that question and between the same parties should be closed forever'." McKinzie v. B & O R.R., 28 Md. 161, at 174-5.

quoted in Board of County Commissioners v. Racine, 24 Md. 435, 332 A.2d 306 (1975). People's Counsel could have entered this case and raised whatever issues she considered pertinent earlier. By not doing so she is precluded from doing so later. It is patently unfair to the Petitioner to put her to the time and expense of resolving issues after the appeal time has passed which have already been the subject of a final judgment.

WHEREFORE, for the foregoing reasons Petitioner prays that case no. 92-477 be dismissed.

Respectfully submitted,

REESE AND CARNEY

  
Conwell F. Sapp  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044

  
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21<sup>st</sup> day of August, 1992, a copy of the foregoing Post Hearing Memorandum of Law was mailed, postage prepaid to George Baker, 405 Lafayette Avenue, Baltimore, Maryland and Phyllis Friedman, Esquire, People's Counsel, Baltimore County Zoning Office, Courthouse, Towson, Maryland 21204.

Conwell F. Sapp  
Conwell F. Sapp

clb\cfs\litig\guise.phm

6 1 A. Absolutely. Our office is just about four blocks  
2 away from there.

3 Q. How long have you been in this business?

4 A. Twelve years.

5 Q. Are you familiar generally with this Caton  
6 Industrial Heights area?

7 A. Very, very familiar. I have sold property there.  
8 Have listed property there.

9 Q. You have been working with Mrs. Guise?

10 A. For over, or just about two years now, trying to  
11 sell this property.

12 Q. Are you aware of other properties in the area of  
13 about this approximate size that have homes on them?

14 A. Yes. There are quite a few of them that have a  
15 40 foot lot that have been built on. Usually what they  
16 put on is a shotgun split by a builder, a 20 foot wide by  
17 32, or something similar to a townhouse. You could just  
18 take --

19 MR. DISNEY: Called a what?

20 THE WITNESS: Shotgun split.

21 Q. What's that? I am still having trouble with that

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## EXHIBIT A

6 1 one.

2 A. A shotgun split. It's basically what they build  
3 in order to give the buyer as much living space as they  
4 can in a limited amount of building space. They are 20  
5 foot wide. They are at least 36 to 40 feet long so that  
6 the buyer has the access to the square footage to live on  
7 a very small lot.

8 Q. And are there a variety of these?

9 A. There are.

10 Q. In that area?

11 A. Not only in Catonsville Heights, but Catonsville  
12 Manor. There are some right off Winters Lane, which is in  
13 the same general area, four or five blocks.

14 Q. Where this lot is also?

15 A. Yes. Not only built. Built and sold.

16 MS. SAPP: I have no further questions.

17 MR. DISNEY: This is basically put on a lot so  
18 they had the ten foot setback on either side?

19 THE WITNESS: Yes.

20 THE CHAIRMAN: Mr. Baker?

21 CROSS EXAMINATION

## EXHIBIT B

4           1           Calculating that, using the total envelope as one  
2           building, we wouldn't even have one-tenth of one CFS  
3           causing the runoff.

4           Q.     Can you identify these records?

5           A.     This looks like a petition for a zoning variance,  
6           notice of a hearing, and appears to be that the Deputy  
7           Zoning Commissioner -- I am trying to see if -- this is a  
8           petition passed by the Deputy Zoning Commissioner for a  
9           variance for a side yard and setback and I believe -- I am  
10          going to have to read it more -- permit a side yard  
11          setback in lieu of the 25 in accordance to the  
12          petitioner's exhibit. And petitioner's exhibit shows a --  
13          and this shows a house sitting on a similar -- two, 20  
14          foot lots in Catonsville Heights at the intersection of  
15          Delaware Place and -- I don't know how to pronounce it --  
16          Aruna Avenue -- Aruna Avenue. And this was in 1988, I  
17          believe.

18                MS. SAPP: If you would, once this has been  
19                submitted, I would ask that you take an official notice  
20                that this property is two blocks away.

21                THE CHAIRMAN: Petitioner's Exhibit No. 4 will be



## EXHIBIT B

4 1 a compilation of the associated findings of the Deputy  
2 Zoning Commissioner in 1988.

3 MR. DISNEY: Fourth of May. I am going to make a  
4 note on here. By the way, the copies are not very  
5 readable. That's Exhibit 4 consisting of two sheets with  
6 the case file of 894-A, date is 5-4-88, before the Zoning  
7 Commissioner, J. Robert Haines.

8 Q. Mr. Shockely, did you note on those records that  
9 you just identified whether that variance was granted in  
10 that case?

11 A. Yes. I read the order by the Zoning  
12 Commissioner. It was granted.

13 Q. And the property is similar in the same  
14 subdivision?

15 A. Same subdivision, same size lot, 40 feet. Two,  
16 20-foot lots of 40 feet.

17 Q. Would building on this property cause any sort of  
18 problems with the health, safety or general welfare of the  
19 public?

20 A. I just can't imagine. It's the end of the street.  
21 There's no certainly no health hazard. There's no harm to

# REESE AND CARNEY

ATTORNEYS AT LAW

10715 CHARTER DRIVE

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(410) 740-4600

WASHINGTON AREA

(301) 621-5255

BALTIMORE FAX (410) 730-7729

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OF COUNSEL

CHARLES A. REESE

255 N. WASHINGTON STREET  
SUITE 505

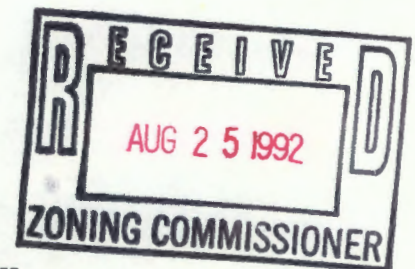
ROCKVILLE, MARYLAND 20850

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DAVID A. CARNEY  
DANIEL H. SCHERR  
DAVID C. HJORTSBERG  
LAURENCE B. RABER  
KEVIN J. KELEHAN  
JUDITH S. BRESLER  
JEFFREY A. KREW  
MICHAEL S. MOLINARO  
L. ROLAND STURM  
JOAN M. BECKER  
CONWELL F. SAPP  
BETH A. JACKSON  
SUSAN E. BEASLEY

August 21, 1992

Lawrence Schmidt  
Zoning Commissioner  
400 Washington Avenue  
Room 113  
Towson, MD 21204



Re: In the Matter of Lots Nos. 31 & 32  
of Arunah Avenue, Case No. 92-477-SPH

Dear Mr. Schmidt:

Please find enclosed for filing Post-Hearing Memorandum of  
Law for the above-referenced matter.

Very truly yours,

REESE AND CARNEY

Conwell F. Sapp

CFS/djp

Enclosure

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8-12-92



RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING  
NE/S Arunah Ave., 300' SE of : COMMISSIONER OF  
C/L Maryland Ave. :  
(Lots #31 & #32, Arunah Ave.) : BALTIMORE COUNTY  
1st Election District :  
1st Councilmanic District :  
GEORGE BAKER, Petitioner : Case No. 92-477-SPH  
LENA GUISE, Property Owner :  
:

: : : : : :

PEOPLE'S COUNSEL'S MEMORANDUM

People's Counsel files this memorandum in this matter in response to the request of the Zoning Commissioner.

The position of People's Counsel is that:

1. The doctrine of res judicata operates differently upon administrative cases which have ended without any judicial review. In such cases, as is the situation here, res judicata does not operate to preclude consideration of a mistake of law in the initial decision. In other words, "administrative res judicata" operates only to preclude challenge to factual findings, in the absence of a change in circumstances.

The leading case is Bd. of Co. Comm'rs v. Racine, 24 Md. App. 435, 332 A.2d 306 (1975). The property owner cites Chatham Corp. v. Beltram, 243 Md. 138, 220 A.2d 589 (1966), and Woodlawn Area Cit. Ass'n v. Bd. of Co. Comm., 241 Md. 187, 216 A.2d 149 (1966). But the critical difference in these two cases is that both involved initial cases which were reviewed in the courts. Therefore, the scope of preclusion was greater. Once a case undergoes judicial review, a party is precluded subsequently

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from raising legal theories which might have been raised in the first case. That is not the situation here.

2. The Commissioner cannot overlook the basic issue in this matter and that is whether issuing a permit at this time would be an illegal act in view of the fact that the lot in question has less than 6000 square feet.

3. The issue of the variance from the 6000 square feet area requirement was in any event never before the Zoning Commissioner or the County Board of Appeals when the first petition for variance filed by the property owner was heard by them. There was also no mention of it in the petition or the advertisement or posted notice.

The effect of this oversight prevented People's Counsel and the public at large from having notice of any such issue.

Res judicata requires that there be identity in issues as well as persons and parties to the action. In this case, there is thus a critical issue raised for the first time. Moreover, the protestants, who now appear as parties, were not in a position to go beyond the actual petition due to the fact that this was an administrative matter, governed by the property owner's petition.

4. Since no variance was asked for or granted, the following choices exist:

a.) Determine that a variance from the 6000 square feet required would amount to a density variance and



refuse to issue a permit. This could be done administratively or quasi-judicially in this hearing.

b.) Determine that such a variance could be but has not been granted and either:

1. Rule upon it in this hearing;
2. Dismiss this petition, but require the lot owner to file a separate petition for such a variance; or
3. Dismiss this petition and determine that the County has somehow been estopped from requiring this variance. This would be an illogical result since the burden to request sufficient variances always rests with the property owner. (See decision dated July 14, 1992 In the Matter of Red Roof Inns, Inc., Circuit Court No. 91-CV-6923, attached as Exhibit A.) The failure of protestants cannot estop the County which has the ultimate burden to issue or not issue a building permit.

5. Alternatively, if this petition is dismissed on some theory of res judicata without even addressing the substantive issue, it may suggest a permit can be issued without a variance from the 6000 square foot area requirement. Should a permit then be issued based on the vacuum created by this action, it will be in derogation of the Zoning Regulations and amount to an illegal act.

For the above discussed reasons, People's Counsel requests the Zoning Commissioner not dismiss the instant petition and, instead, in the interest of judicial and administrative economy,

rule upon a.) whether a variance from the 6000 square foot area requirement is a density variance; and if it is not, b.) whether it should be granted in this instance.

Respectfully submitted,

Phyllis Cole Friedman  
Phyllis Cole Friedman  
People's Counsel for Baltimore County

Peter Max Zimmerman  
Peter Max Zimmerman  
Deputy People's Counsel  
Room 47, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204  
(410) 887-2188

I HEREBY CERTIFY that on this 12<sup>th</sup> day of August, 1992,  
a copy of the foregoing People's Counsel's Memorandum was mailed  
to William T. Glasgow, Esquire, Suite 250, 10715 Charter Dr.,  
Columbia, MD 21044; and George Baker, 405 LaFayette Ave.,  
Baltimore, MD 21228.

Phyllis Cole Friedman  
Phyllis Cole Friedman



IN THE MATTER OF THE  
THE APPLICATION OF  
GEORGE BAKER

FOR A SPECIAL HEARING ON  
PROPERTY LOCATED ON THE NORTH-  
EAST SIDE ARUNAH AVENUE, 300'  
SOUTHEAST OF THE CENTERLINE  
MARYLAND AVE. (LOTS #31 & #32,  
ARUNAH AVENUE /GUISE PROPERTY)\*  
1ST ELECTION DISTRICT  
1ST COUNCILMANIC DISTRICT

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
OF  
BALTIMORE COUNTY  
CASE NO. 92-477-SPH

\* \* \* \* \*

O P I N I O N

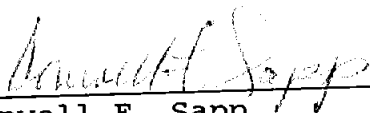
This case comes before the Board on appeal from a decision by the Zoning Commissioner granting a Petition for Special Hearing which denied construction on an undersized property consisting of less than the required 6,000 sq. ft. The site is approximately 5,280 sq. ft. in area and is zoned D.R. 5.5, located in the Catonsville Heights community of the First Councilmanic District of Baltimore County.

The plan of the property owner to develop a residential dwelling on the subject lot has moved through several hearings before the Zoning Commissioner in which petitions for setback variances were denied for this 40-foot property, but later granted by the County Board of Appeals (May 6, 1992). In those considerations, an area variance for a lot size of less than 6,000 sq. ft. and a lot width of 40 feet in lieu of the minimum of 55 feet were not a part of the deliberations by the Board of Appeals.

Adjacent property owner, George Baker, filed for a Special Hearing in opposition, contesting that the approval of variances from a side yard setback has an entirely different impact on neighboring properties than the impact of development of an undersized tract. Mr. Baker filed for a Special Hearing before the Zoning Commissioner requesting a decision of whether the property

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 1992,  
a copy of the foregoing Appeal was mailed, postage prepaid, to  
George Baker, 405 Lafayette Avenue, Baltimore, MD 21229;  
Phyllis Friedman, Esquire, Peoples Counsel, Baltimore County  
Zoning Office, Courthouse, Towson, MD 21204 and Lawrence E.  
Schmidt, Zoning Commissioner, 400 Washington Avenue, Towson,  
MD 21204.

  
Conwell F. Sapp

William T. Glasgow

wtg\real\guise.lin  
C3a

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Baltimore County Government  
Office of Zoning Administration  
and Development Management



111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

December 22, 1992

Baltimore County Board of Appeals  
Old Courthouse, Room 49  
400 Washington Avenue  
Towson, Maryland 21204

RE: Petition for Special Hearing  
NE/S Arunah Avenue, 300 ft. SE of c/1 Maryland Avenue  
(Lots #31 & #32, Arunah Avenue)  
1st Election District, 1st Councilmanic District  
GEORGE BAKER - Petitioner  
Case No. 92-477-SPH

RECEIVED  
COUNTY BOARD OF APPEALS  
22 DEC 23 PM 12:37

Dear Board:

Please be advised that an appeal of the above-referenced case was filed in this office on December 7, 1992 by Conwell F. Sapp and William T. Glasgow, attorneys on behalf of Lena Guise, property owner. All materials relative to the case are being forwarded herewith.

Please notify all parties to the case of the date and time of the appeal hearing when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

Arnold Jablon - Director  
Zoning Administration and  
Development Management

AJ:cer

Enclosures

cc: Lena Guise, 3306 Strickland Street, Baltimore MD 21229

William T. Glasgow and Conwell F. Sapp  
Reese and Carney 10715 Charter Drive, Ste 200, Columbia MD 21044

George Baker - 501 Lafayette Avenue, Baltimore MD 21228

People's Counsel, 400 Washington Avenue, Towson, MD 21204



Printed on Recycled Paper

APPEAL

Petition for Special Hearing  
NE/S Arunah Avenue, 300 ft. SE of c/1 Maryland Avenue  
(Lots #31 & #32, Arunah Avenue)  
1st Election District - 1st Councilmanic District  
GEORGE BAKER - PETITIONER  
LENA GUISE - PROPERTY OWNER  
Case No. 92-477-SPH

IN ADDITION TO THE MATERIALS PREVIOUSLY SUBMITTED ON OCTOBER 29, 1992  
IN REFERENCE TO THE ABOVE REFERENCED CASE, ENCLOSED ARE COPIES OF:

1. Zoning Commissioner's Order dated November 25, 1992 (Granted)
2. Notice of Appeal received on December 7, 1992 from Conwell F. Sapp and William T. Glasgow, attorneys on behalf of Lena Guise, property owner.

cc: Lena Guise, 3306 Strickland Street, Baltimore MD 21229

\* William T. Glasgow and Conwell F. Sapp  
Reese and Carney 10715 Charter Drive, Ste 200, Columbia MD 21044

George Baker - <sup>405</sup>~~501~~ Lafayette Avenue, Baltimore MD 21228

Request Notification: P. David Fields, Director of Planning & Zoning  
Patrick Keller, Office of Planning & Zoning  
Lawrence E. Schmidt, Zoning Commissioner  
Timothy M. Kotroco, Deputy Zoning Commissioner  
W. Carl Richards, Jr., Zoning Coordinator  
Docket Clerk  
Arnold Jablon, Director of ZADM  
Public Services

1C



Baltimore County Government  
Zoning Commissioner  
Office of Planning and Zoning



Suite 113 Courthouse  
400 Washington Avenue  
Towson, MD 21204

(410) 887-4386

June 30, 1992

William T. Glasgow, Esquire  
Suite 250  
10715 Charter Drive  
Columbia, Maryland 21044

RE: Case No. 92-477-SPH  
Petition for Special Hearing  
Lena Guise/George Baker, Petitioner and Adjoining Neighbor

Dear Mr. Glasgow:

This is in response to your letter dated June 22, 1992 regarding the above captioned matter.

I have reviewed the files relative to the subject property known as Lots No. 31 and 32 of Arunah Avenue in the Catonsville Heights subdivision of Baltimore County.

According to my records, you are indeed correct that a Petition for Zoning Variance was filed for this property within case No. 92-30-A. That Petition sought relief from the side yard setback requirements set forth in Section 1B02.3.C.1 of the Baltimore County Zoning Regulations. Specifically, relief was requested to permit a side yard setback of 7 ft. in lieu of the minimum required 10 ft. and a side street setback of 7 ft. in lieu of the required 25 ft. Following a public hearing, the Petition was denied by Order of Deputy Zoning Commissioner, Timothy M. Kotroco on October 8, 1991. The case was timely appealed to the Baltimore County Board of Appeals which reversed Mr. Kotroco's decision. By their Order of May 6, 1992, the Petition for Variance was granted. I note that there has not been an appeal from the Board of Appeals' decision.

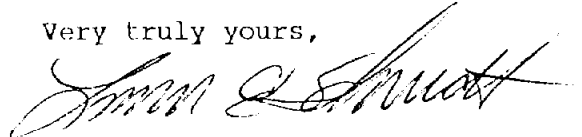
*W. T. Glasgow*

William T. Glasgow, Esquire  
Suite 250  
10715 Charter Drive  
Columbia, Maryland 21044  
page 2.....

Although the matter scheduled for hearing on July 27, 1992 relates to the same property, the issues are not the same. The matter scheduled before me on that date arises out of a Petition for Special Hearing filed by George Baker of 405 Lafayette Avenue. Mr. Baker is requesting an interpretation as to whether the subject lot may be developed notwithstanding the fact that it is less than the required 6,000 sq. ft. in area. Thus, although the issues are similar, they are not identical; in that the prior case dealt with setback requirements whereas the present matter relates to area requirements.

Under the circumstances, I am inclined to keep this matter on my docket and proceed with the hearing on July 27, 1992. I will, however, provide you with an opportunity to argue this matter further on the 27th by way of preliminary motion, if you deem it appropriate. However, based on my preliminary review, I believe that the case should proceed as scheduled.

Very truly yours,



Lawrence E. Schmidt

LES:mmn

cc: Phyllis Friedman, Esquire  
Peoples Counsel



Baltimore County Government  
County Executive's Office



Roger B. Hayden  
County Executive

400 Washington Avenue  
Towson, Maryland 21204  
887-2450

July 27, 1992

Mr. and Mrs. George Baker  
405 Lafayette Avenue  
Baltimore, Maryland 21228

RE: Case No. 92-<sup>477</sup>498-SPH (Item No. 510)  
Previous Case No. 92-30-A  
Lot Nos. 31 and 32, Arunah Avenue  
1st Election District

Dear Mr. and Mrs. Baker:

I am in receipt of your letter of July 18, 1992, concerning the above referenced matter.

As you know, a public hearing, wherein the petitioner requested a special hearing to determine whether the subject property, consisting of less than the required 6,000 square feet, may be residentially developed, was held on July 27, 1992, before the Zoning Commissioner. A decision has not been rendered at this time. However, a precedent would not be set if, in fact, the petition were granted. Each case stands on its own merits and in no way entitles other similar situations to occur without going through the required quasi-judicial hearing process. So that you may be apprised of the outcome of the hearing when it is rendered, I have asked that a copy of the decision be forwarded to you.

Although I cannot become involved in zoning issues, I do appreciate your concerns and want to assure you that they will be given every consideration prior to a decision being rendered.

Thank you for bringing your concerns to my attention.

Respectfully yours,

A handwritten signature in dark ink, appearing to read "R-BH/NVR", written over the typed name.

Roger B. Hayden  
County Executive

RBH/srl

c: Lawrence E. Schmidt, Zoning Commissioner ✓  
The Honorable Berchie L. Manley  
Arnold Jablon, Zoning Administrator





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

January 12, 1993

Ms. Lena Guise  
3306 Strickland Street  
Baltimore, MD 21229

Re: Case No. 92-477-SPH  
George Baker /Petitioner

Dear Ms. Guise:

The Board is in receipt of your letter dated January 3, 1993 regarding the above-referenced case.

The issue decided by this Board on May 6, 1992 in Case No. 92-30-A dealt with a Petition for Variance, and is separate and distinct from the appeal presently pending before the Board of Appeals in Case No. 92-477-SPH. In the instant case, a decision was rendered by the Zoning Commissioner on November 25, 1992, and an appeal filed thereto on December 7, 1992. Therefore, this matter will be scheduled for hearing with regard to the current and pending appeal.

When a hearing date has been assigned, notices will be sent to all parties.

Very truly yours,

A handwritten signature in cursive script that reads "William T. Hackett".

William T. Hackett, Chairman  
County Board of Appeals

cc: William T. Glasgow, Esquire  
Conwell F. Sapp, Esquire  
Mr. George Baker  
People's Counsel for Baltimore County





*Copier*

January 25, 1993

Mr. George Baker  
405 Lafayette Avenue  
Baltimore, MD 21228

Re: Case No. 92-477-SPH  
George Baker /Petitioner

Dear Mr. Baker:

The enclosed copy of this Board's January 12th correspondence to Ms. Lena Guise regarding the subject matter was returned to this office today as undeliverable.

Upon reviewing the file, I've discovered that we were given two different addresses for you. Therefore, I'm assuming that, since number 501 is not correct, your correct address is as shown.

I'm sorry for any inconvenience this delay may have caused you.

Very truly yours,

Kathleen C. Weidenhammer  
Administrative Assistant

*[Faint signature]*

Case No. 92-477-SPH

George Baker /Petitioner

Lena Guise /Property Owner/Appellant

---

11/02/92 -Motion to Dismiss Appeal filed by People's Counsel (no final order issued by Zoning Commissioner; not ripe for appeal; appeal taken from Zoning Commissioner's Ruling on Preliminary Motion, not final order.)

-----  
11/04/92 -Ltr from George Baker, Petitioner, objecting to appeal; premature to grant hearing on appeal of ruling.

---

11/06/92 -Memorandum of Law in Opposition to PC's Motion to Dismiss filed by C. Sapp, Esquire and W. Glasgow, Esquire, on behalf of property owner, Lena Guise.

---

11/09/92 -Board's Ruling on Motion to Dismiss --Motion GRANTED.

-----  
11/25/92 - Z.C.'s Order GRANTING Petition.

12/7/92 - Notice of appeal filed by Conwell F. Sapp and Wm. T. Glasgow, attorneys for Lena Guise, property owner.

---

1/06/93 -Ltr from Lena Guise regarding the appeal pending in this matter; response being prepared for signature by Chairman.



Baltimore County Government  
Office of Zoning Administration  
and Development Management



111 West Chesapeake Avenue  
Towson, MD 21204

July 14, 1994

(410) 887-3353

Richard Hauf  
404 Lafayette Avenue  
Baltimore, MD 21228

RE: Permit #B-173949  
Approved 11/23/93  
401 Lafayette Avenue  
(Catonsville Heights)  
1st Election District

Dear Mr. Hauf:

Your letter to Carl Richards, dated July 2 and received on July 6, has been referred to me for reply. This letter replies to your letter and subsequent telephone conversations with zoning office staff.

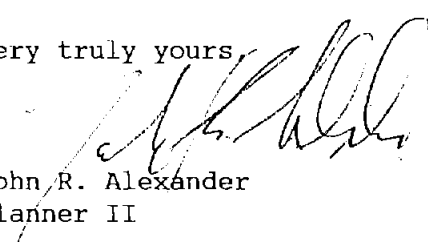
In response to our discussions with you, we have reviewed all zoning case files pertaining to this site (case #92-30-A and #92-477-SPH), as well as the subsequent appeals. After a thorough review of the files, we believe the permit was properly approved by this office.

You have questioned the permit approval without requiring certain road improvements. This office takes direction from Public Works prior to approving permits as was done with this permit prior to approval. This office has rechecked Public Works' original approval recommendation and David Thomas in that office has reconfirmed the original recommendation.

Should you continue to be concerned that the permit was issued improperly, it is your right to appeal to the Baltimore County Board of Appeals.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 887-3391 (FAX - 887-5708).

Very truly yours,

  
John R. Alexander  
Planner II

JRA:scj



Printed with Soybean Ink  
on Recycled Paper

WILLIAM T. GLASGOW  
ATTORNEY AT LAW

8333-92  
10/8/92  
S  
(301) 997-2298

SUITE 250  
10715 CHARTER DRIVE  
COLUMBIA, MARYLAND 21044

October 7, 1992

Charlotte Radcliffe, Secretary  
ZADM  
111 West Chesapeake  
Room 113  
Towson, MD 21204

Re: Lena Guise  
Case No. 92-477-SPH

Dear Ms. Radcliffe:

Please file the enclosed Appeal and Petition for Appeal in the above-referenced matter along with my check for \$210.00.

Very truly yours,

  
William T. Glasgow

WTG\kwb\C3a  
enclosure  
cc: Connie Sapp

RECEIVED  
OCT 8 1992  
ZONING OFFICE

enclosure 10/8/92

|                                     |   |                     |
|-------------------------------------|---|---------------------|
| IN RE: PETITION FOR SPECIAL HEARING | * | BEFORE THE          |
| NE/S Arunah Ave., 300 ft. SE        |   |                     |
| of c/l Maryland Avenue              | * | ZONING COMMISSIONER |
| (Lots #31 & #32, Arunah Ave.)       |   |                     |
| 1st Election District               | * | OF BALTIMORE COUNTY |
| 1st Councilmanic District           |   |                     |
|                                     | * | CASE # 92-477-SPH   |
| George Baker, Petitioner            |   |                     |
| Lena Guise, Property Owner          | * |                     |

\*\*\*\*\*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Consideration of the future use of the above captioned property comes before this office again for a third time. Although relatively small, the subject property has endured a lengthy zoning history as its owner seeks to develop the site. The subject property is known as lots Nos. 31 and 32 on Arunah Avenue in the Catonsville Heights section of Baltimore County. The pending Petition was filed by George Baker, a neighboring property owner. The subject site is owned by Lena Guise and is presently undeveloped. The site is approximately 5,280 sq. ft. in area and is zoned D.R.5.5.

The history of Mrs. Guise's plans to develop a single family dwelling on the subject lot is significant. During the Summer of 1991, the property owner decided to construct a 60 ft. deep by 26 ft. wide dwelling on the property. The resulting building envelope from this construction would provide a 7 ft. side yard setback on both sides of the property. Under Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), a 10 ft. side yard setback to adjoining residential property and 25 ft. setback to the abutting paper street must be maintained. The subject lot abuts a residential property to the east known as 804 Arunah Avenue. To the west, the site adjoins an unimproved paper street known as Lafayette Avenue. The improved portion of Lafayette Avenue actually ends near the northwest corner

ORDER RECEIVED FOR FILING  
 Date 11/25/92  
 By M. Horak



6/23/92  
G  
6497-92

WILLIAM T. GLASGOW

ATTORNEY AT LAW

(301) 997-2298

SUITE 250  
10715 CHARTER DRIVE  
COLUMBIA, MARYLAND 21044

June 22, 1992

The Honorable Lawrence E. Schmidt  
Zoning Commissioner of Baltimore County  
111 West Chesapeake Avenue  
Towson, MD 21204

Re: Case No. 92-477-SPH  
Hearing: July 27, 1992  
11 a.m.  
Room 118, Courthouse

Dear Commissioner Schmidt:

I am in receipt of a Notice of Hearing in the above-referenced case for the purpose of determining whether the property owned by Lena Guise consisting of less than the required 6,000 square feet may be residentially developed.

On April 23, 1992, a hearing was conducted before the County Board of Appeals for the purpose of requesting a variance because the lot was too small to meet the requirements for a house even though the property was zoned for residential construction. This was an appeal from a hearing before the Zoning Commissioner.

The County Board of Appeals ordered that the Petition for Variances for building set backs be granted. The neighbors were given 30 days to file an appeal to the Circuit Court and neglected to do so.

Mrs. Guise, who is 72 years old, has owned this property for 42 years and has paid taxes on it. Her father owned for a number of years prior to that and he paid taxes on it. The neighbors that object to the development of this property currently use the residential lot as a park with bike trails and picnic benches. The children in the neighboring houses use it as a play ground. Mrs. Guise needs to sell the property to make repairs to her present house.

The purpose of filing a Petition for a Variance was so that Mrs. Guise could get a building permit on a lot that consisted of less than 6,000 square feet. The variance was granted and the neighbors failed to file a proper appeal within sufficient time.

**MICROFILMED**

The Honorable Lawrence E. Schmidt  
June 18, 1992  
Page 2

The matter is now moot. It has been decided and is res judicata and under the light of collateral estoppel, the hearing should be cancelled since there was already a hearing and the same issues will be raised that were already approved by the County Board of Appeals.

A neighbor is merely trying to delay Mrs. Guise from the proper use of her property by refiling a petition on the same issues.

Based on these facts, I request that you rescind the hearing currently scheduled.

Very truly yours,



William T. Glasgow

WTG\kwb\C3a  
cc: Connie Sapp

RECEIVED

JUN 23 1992

ZONING OFFICE

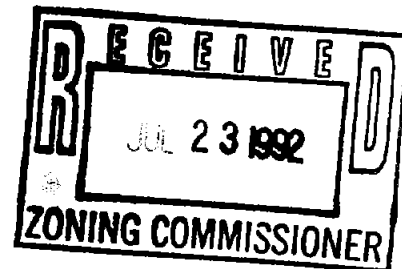
WILLIAM T. GLASGOW

ATTORNEY AT LAW

(301) 997-2298

SUITE 250  
10715 CHARTER DRIVE  
COLUMBIA, MARYLAND 21044

July 22, 1992



The Honorable Lawrence E. Schmidt  
Zoning Commissioner of Baltimore County  
Baltimore County Government  
Office of Planning and Zoning  
Suite 113 Courthouse  
400 Washington Avenue  
Towson, MD 21204

Re: Lena Guise  
Case No. 92-477-SPH

Dear Commissioner Schmidt:

Please find enclosed a Motion to Dismiss and accompanying  
Memorandum of Law in regard to the above-referenced matter.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'W. T. Glasgow', written over a horizontal line.

William T. Glasgow

WTG\kwb\C3a  
enclosure  
cc: Connie Sapp

*[Faint, illegible handwritten text]*



# REESE AND CARNEY

ATTORNEYS AT LAW

10715 CHARTER DRIVE

COLUMBIA, MARYLAND 21044

(410) 740-4600

WASHINGTON AREA

(301) 621-5255

BALTIMORE FAX (410) 730-7729

WASHINGTON FAX (301) 621-5273

OF COUNSEL

CHARLES A. REESE

255 N. WASHINGTON STREET

SUITE 505

ROCKVILLE, MARYLAND 20850

(301) 762-6210

DAVID A. CARNEY  
DANIEL H. SCHERR  
DAVID C. HJORTSBERG  
KEVIN J. KELEHAN  
JUDITH S. BRESLER  
LAURENCE B. RABER  
L. ROLAND STURM  
JEFFREY A. KREW  
JOAN M. BECKER  
MICHAEL S. MOLINARO  
CONWELL F. SAPP  
BETH A. JACKSON

December 3, 1992

Clerk  
Baltimore County Board of Appeals  
400 Washington Avenue, Room 49  
Towson, MD 21204

RE: Our File No. 42420/9001  
Lots 31 & 32, Arunah Avenue Zoning

Dear Clerk:

Mrs. Guise has been in the process of trying to obtain a variance for over a year now. She is in danger of losing her potential buyer for the property if this matter is not resolved soon. As a consequence, your prompt scheduling of this matter would be very much appreciated. If it is possible, we would be willing to take a hearing date on which someone else has cancelled so long as we have sufficient notice to get out subpoenas. Thank you for your cooperation.

Very truly yours,

REESE AND CARNEY



Conwell F. Sapp

CFS/mw  
enclosure: check

MICROFILMED

County Board of Appeals of Baltimore County  
Old Courthouse Room 49  
400 Washington Avenue  
Towson, Maryland 21204

November 2, 1992

RE: SPH92-477

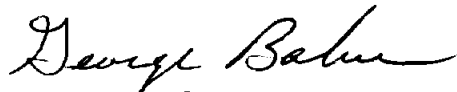
Gentlemen:

We are in receipt of petition letter dated October 7, 1992 from the law firm of William Glasgow directed to the Board of Appeals requesting a review of the Zoning Commissioner's decision denying their motion to dismiss a request for hearing pertaining to the issue of undersized lot.

We feel the Board of Appeals addressed very specific variance as stated in their second to last paragraph in their opinion dated May 5, 1992 in which they stated "ordered that the petition for variance of side yard setbacks is hereby granted" and made no mention of an area variance for undersize lot which we understand cannot be granted by either the Zoning Commissioner or Board of Appeals.

We have a November 10, 1992 hearing scheduled with the Zoning Commissioner. My neighbors and I feel this new issue should be addressed as it affects not only this particular lot but many other small lots in this old sub-division. Therefore, we feel that it would be premature to grant any hearing on this issue.

Very truly yours,



George Baker

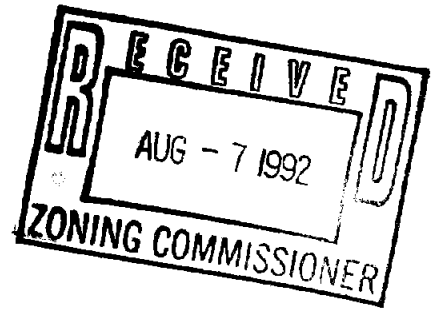
cc: Ms. Phyllis Friedman, Esquire  
Peoples Counsel

cc: Ms. Charlotte Radcliffe  
ZADM

RECEIVED  
COUNTY BOARD OF APPEALS  
NOV 11 4 57 PM '92

George Baker  
405 Lafayette Avenue  
Baltimore, Maryland 21228

The Honorable Lawrence E. Schmidt  
Baltimore County Zoning Commissioner  
Baltimore County Government  
Office of Zoning and Planning  
Suite 113 Courthouse  
400 Washington Avenue  
Towson, Maryland 21204  
July 30, 1992



Dear Commissioner Schmidt:

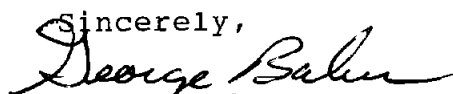
This letter is in reference to case #92-477-SPH. Although I run the risk of being repetitive, I feel I must bring to your attention several items pertinent to this case.

Regarding Mrs. Guise's attorney's motion to dismiss this case we feel that:

1. The Board of Appeals did not address the issue of area density because they were not requested to do so. They were very definite in the variances they granted.
2. If her attorney felt the Appeals Board had granted this along with other variances, why on June 5 did he file a new petition asking for the area variance.  
(I have enclosed a copy for your records)

We were not remiss in making a timely appeal. Upon advise from the law firm of Romadka, Gontrum, and Hennegan, we did not appeal the Board of Appeals ruling, but instead directed our appeal to the Zoning Commissioner as area density had not been considered. It was Mr. Gontrum's opinion that area density variances could not be granted without zoning reclassification.

Thank you in advance for your assistance.

Sincerely,  
  
George Baker

cc: Ms. Friedman

enclosure





July 18, 1992

The Honorable Roger Hayden  
The Old Court House  
400 Washington Avenue  
Towson, Maryland 21204

RE: ZONING CASE # 92-30A  
SEE ALSO # 92-477-SPH (Item 510)

Dear Mr. Hayden,

We are requesting your assistance regarding proposed construction in our neighborhood. We are opposed to the construction of a home which is scheduled to be built on a forty foot lot.

In 1991, the owner of the forty-foot lot, Mrs. Guise, requested closing of a portion of Lafayette Avenue (1st Election District) which was denied. A second hearing (Petition For Zoning Variance: N/S Arunah Avenue, 300' SE of Maryland Avenue) was held. This request was denied. Mrs. Guise, with the assistance of an attorney, appealed this ruling. She won the appeal. We, the undersigned, are in the process of appealing that decision.

We have researched zoning laws. John Gontrum, an attorney, explained that a forty foot lot will not meet **DR 5.5** requirements related to lot area. Mr. Gontrum informed us that the lots would have to be re-zoned to meet the requirement. A hearing has been scheduled for the twenty-seventh of July before the zoning commissioner to review the current status.

Lafayette Avenue is a dead end, unimproved street, with homes built on sixty foot and larger lots. If forty foot lots are allowed to be built upon, we feel that the area will suffer for it. All of us have invested substantial amounts of money in our homes. Several of the neighbors have had to invest money to prevent and protect their homes from water damage because of the lack of drainage in the area.

All of us enjoy living in this neighborhood. It is not crowded or boxed in. We have made an investment in this community and feel that we have the right to protect our investment.

Zoning laws were created so that **ALL** citizens would be protected. We are very

7/21/92  
GS  
to file - try me file  
6947-92

MICROFILMED

concerned that the zoning law will be overridden and our neighborhood as we know it will cease to exist.

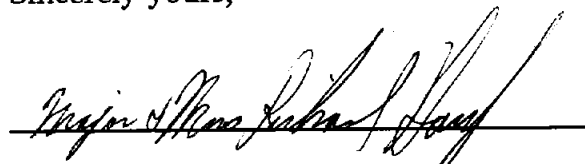
We believe the laws should be enforced. We are especially concerned because we have seen "shot gun houses" built in the vicinity. Presently, there are none on Lafayette Avenue. We wish to prevent any further construction in our area that will detract from the character of the neighborhood. We are requesting that you assist us in this matter.

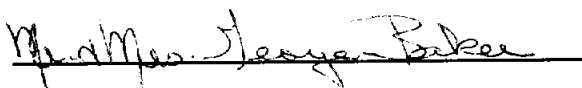
All of us work during the day and have had to take time off from work to come to these hearings. We do not have money to hire a lawyer and the council appointed, Phyllis Friedman, could not be at the last hearing. We understand that Ms. Friedman did what she could with her case load but we were left without active representation.

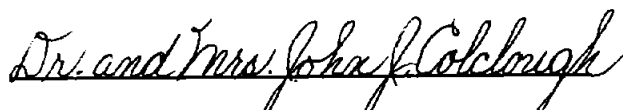
We also understand Mrs. Guise's situation. Several years ago a neighbor made an offer to Mrs. Guise to purchase the property but she declined. We do not want the land to be developed at all. The neighbors want to leave it with the trees intact so that our land will be protected from water damage and we will keep the integrity of the neighborhood. We would greatly appreciate your assistance in this matter. All of us need your help - we need an advocate.

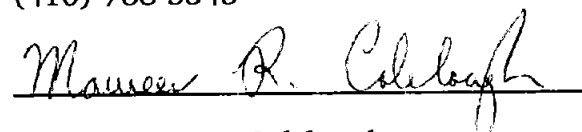
Please contact us with your response. We would welcome an opportunity to meet with you or send you any additional background information.

Sincerely yours,

  
Major and Mrs. Richard Hauf (Ret.)  
(410) 747-0398

  
Mr. and Mrs. George Baker  
(410) 788-5343

  
Dr. and Mrs. John J. Colclough  
(410) 747-0613

  
Ms. Maureen R. Colclough  
(410) 247-7178

cc: Council Woman Berchie Manley  
Arnold Jablon, Director of Planning and Zoning

encl.: Neighborhood Petition

**RECEIVED**

JUL 21 1992

**ZONING OFFICE**

We the undersigned residents being directly affected by any changes to Lafayette Ave., being an unimproved road, object to the closing of the 400 block of Lafayette Ave. for the following reasons:

1. The 400 block of Lafayette Ave. is already a dead end street.

2. Raynor Ave. is the only way into the 400 block of Lafayette Ave. at the present time. Raynor is not a through street. Therefore all homes on Lafayette Ave. will be limited to ingress and egress by this one unimproved road. This will add to the already limited access by emergency vehicles.

3. The residence could no longer use this dirt section of Lafayette Ave. for access to Edmondson Ave. leading to the bus line and school bus stops.

4. There is no storm drain system which has already caused an unresolved flood problem.

5. The county has already allowed developers to build and leave with no vested interest in the community.

|                     |                                     |
|---------------------|-------------------------------------|
| Catherine Hauf      | 404 Lafayette Ave. Balto. Md. 21228 |
| Richard Hauf        | 404 Lafayette Ave. 21228            |
| Joseph & Sha        | 410 LAFAYETTE AVE 21228             |
| Mary E. Sass        | 410 Lafayette Ave 21228             |
| Dave Baker          | 405 Lafayette Ave 21228             |
| Andree K. Korobayev | 405 Lafayette Ave 21228             |
| Sandra Baker        | 405 Lafayette Ave. 21228            |
| Maureen Colclough   | 804 Arunah Ave. 21228               |
| Betty M. Colclough  | 804 Arunah Ave. 21228               |



A. Ray Stuh

Frank Sosa

Frank Sosa Jr.

James Walker

402 LAFAYETTE AVE. CATONSVILLE, MD. 21228

409 LAFAYETTE AVE " " 21228

429 LAFAYETTE AVE " MD 21228

414 Lafayette Ave Catonsville MD 21228

Mr. & Mrs. Otis Outter 416 Lafayette Ave. Balto. Md. 21228

C. J. Freeman 418 Lafayette Ave Catonsville Md 21228

Richard L. Swinn 420 LAFAYETTE AVE Balto. MD 21228

Margery K. Griffin 421 Lafayette Ave. Catonsville Md. 21228

Stephen H. Velt 415 Lafayette Ave Catonsville Md 21228

Ernest Ambrose 412 Lafayette " "

Bonnie Ambrose 412 Lafayette " "

of the site. As a result of the property owner's inability to comply with the required setbacks, Mrs. Guise filed a Petition for Variance requesting relief from Section 1B02.3.C.1 of the B.C.Z.R., to allow 7 ft. side yard setbacks in lieu of what was required. That Petition came in for a public hearing before the Deputy Zoning Commissioner, Timothy M. Kotroco. Following the hearing, Mr. Kotroco denied the Petition by his Order dated October 8, 1991. Unsatisfied with this result, Mrs. Guise appealed Deputy Zoning Commissioner Kotroco's decision to the County Board of Appeals. After the Board's hearing, an opinion was issued granting the Petition on May 6, 1992. In that there has been no appeal from the Board's decision to the Circuit Court for Baltimore County, the Board's decision is final. Thus, Mrs. Guise has obtained a lawful variance from Section 1B02.3.C.1 of the B.C.Z.R. as it relates to 7 ft. side yard setbacks, in lieu of the required 10 ft. to a residential property and 25 ft. to the street.

Subsequent to the above litigation, Mr. Baker filed the instant Petition for Special Hearing. This Petition requests a determination of whether "The herein described property located in a D.R.5.5 zone and consisting of less than 6,000 sq. ft. may be residentially developed". That is, notwithstanding the Board's granting the variance as to the side yard setbacks, Mr. Baker seeks a determination as to whether the lot can be developed in view of the fact that the square foot area is less than the 6,000 sq. ft. required in Section 1B02.3.C.1 of the B.C.Z.R.

Mr. Baker's Petition was received by the Zoning Office and scheduled for hearing on July 27, 1992. At that time, a preliminary motion was raised by counsel for Mrs. Guise as to the propriety of the Petition for Special Hearing. Specifically, her counsel argued that litigation of this issue is barred by the doctrine of res judicata. Peoples Counsel and the neighboring

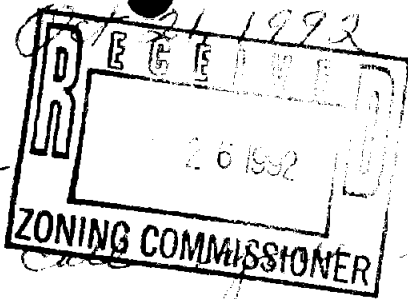
ORDER RECEIVED FOR FILING

Date

By

RECEIVED

OCT 22 1992



ZONING OFFICE  
Dear Mr. Lawrence & Schmidt

I tried several times to call  
I did not hear from you.

In Oct 1990 when we went for a hearing  
on Road Closing. Mr Huff and Mr Baker  
argued that if the paper road was closed  
How can a fire department get through in  
event of a fire. I argued that the paper road  
was a wooded area. I did not get any-  
where.

I wrote to Governor Scheffer sent him picture  
etc. to see if anything can be done.  
That Saturday one of his staff members called  
and explained that <sup>they</sup> only deal with the state.  
He told me to send all the information to  
Roger B Hayden. He was nice enough to  
write a letter for me. I received a call  
and Midge and I went to see a zoning  
board member. He draw out a map  
how much feet we had to be in order

---



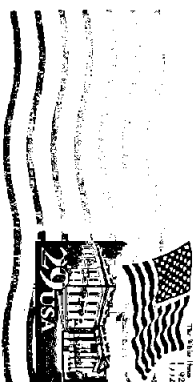
③

I appreciate any thing you can  
do for me in this matter

God bless you

Lena Guise

Gene Davis  
306 Stickland St  
Baltimore Md 21229



Attention  
Mr Lawrence L Schmidt  
c Lawrence  
L Schmidt

Mr Lawrence L Schmidt  
Young Commission  
111 West Chesapeake Ave  
Jowson Md 21204

# EXHIBIT B

IN THE MATTER OF  
Lots Nos. 31 & 32  
of Arunah Avenue

\* Case No. 92-477-SPH  
\* BALTIMORE COUNTY  
\* ZONING COMMISSIONER

\* \* \* \* \*

## MOTION TO DISMISS

Lena Guise, Property Owner, by and through her attorneys Conwell F. Sapp and William T. Glasgow, hereby moves that the Petition for Special Hearing filed by George Baker be dismissed and for reasons states:

1. Lena Guise filed, pro se, a petition for a setback variance from the area regulations of Baltimore County zoning regulations on or about November 7, 1991 in Case No. 92-30-A.

2. By Order dated October 8, 1991, such petition was denied by the Deputy Zoning Commissioner of Baltimore County.

3. Appearance of counsel was entered and an appeal was timely filed to the Baltimore County Board of Appeals.

4. By Order Dated May 6, 1992, following an evidentiary hearing, the petition for a variance was granted.

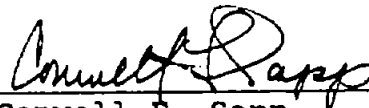
5. No appeal was made to the Circuit Court of Baltimore County as required by law for review of a Board of Appeals decision.

6. On or about June 15, 1992, a neighbor, George Baker, who attended and participated in the Board of Appeals hearing filed a petition with the Zoning Commissioner of Baltimore County requesting a hearing on whether the same property could be developed.

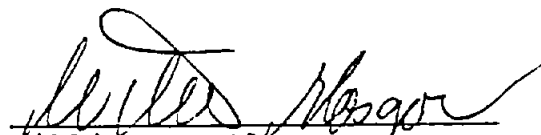


7. This issue was specifically adjudicated in the Board of Appeals hearing and consequently is res judicata.

WHEREFORE, Property Owner respectfully requests that this Petition be dismissed.



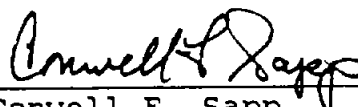
Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044  
(410) 740-4600



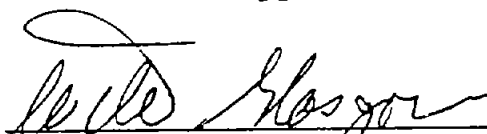
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of July, 1992, a copy of the foregoing Motion to Dismiss was sent first class mail, postage prepaid to George Baker, 405 Lafayette Avenue, Baltimore, Maryland and Phyllis Friedman, Esquire, Peoples Counsel, Baltimore County Zoning Office, Courthouse, Towson, Maryland 21204.



Conwell F. Sapp



William T. Glasgow

clb\cfs\litig\guise.mtd

timely filed with appropriate grounds. No other avenue is open to the parties.

"An Adjudicative determination by an administrative tribunal is conclusive under the rules of res judicata only insofar as the proceeding resulting in the determination entailed the essential elements of adjudication including: . . . (b) The right on behalf of the party to present evidence and legal argument in support of the party's contention and fair opportunity to rebut evidence and argument by opposing parties . . . ." Re-statement of Judgments § 83 (1982). Res judicata principles apply to administrative hearings as well as proceedings in court. George Baker as well as other neighbors in opposition have had two separate opportunities to be heard and cannot be permitted to come through a back door to do what cannot be done through the front door.

When the principles of res judicata are applied to a zoning decision, a second action on the same property is precluded unless there is a substantial difference in the neighborhood or change in circumstances, see generally, Chatham Corp. v. Beltram, 243 Md. 138, 220 A.2d 589 (1966) and Woodlawn Area Cit. Ass'n v. Bd. of Co. Comm., 241 Md. 187, 216 A.2d 149 (1966). In the case sub judice, the underlying assumptions and reasons are the same as those previously heard. The opposing neighbors are attempting to prevent Lena Guise from the lawful use of her property. Any reasons contended by petitioner should have been put forward at previous hearings simply to avoid this sort of duplicative argument.

IN THE MATTER  
Lots Nos. 31 & 32  
of Arunah Avenue

\* Case No. 92-477-SPH  
\* BALTIMORE COUNTY  
\* ZONING COMMISSIONER

\* \* \* \* \*

MEMORANDUM OF LAW

Parties are Precluded from  
Re-litigating the Same Issues

The original variance petition filed by Property Owner was drafted with the aid of a Baltimore County Zoning technician because she was not represented by counsel at the time. The Property Owner explained what she intended and the wording was designed by the technician. Any deficiency in the petition is not an error of the Property Owner.

The property and the parties are identical to those in the hearing before the Deputy Zoning Commissioner and the Board of Appeals in Case No. 92-30-A. The issue of the property size and its capability of development have been heard through the testimony of Midge Stockdale concerning other area homes on property of the exact same dimensions. Evidence was entered of other variances granted in the neighborhood on properties of the same size which were subsequently improved. Expert testimony was presented by an engineer concerning the suitability of the property for a residence and the appropriate siting of such residence. All of this evidence and testimony was appropriately weighed by the Board of Appeals and incorporated into its Decision and Order. This was a final decision in the matter and can be appealed to the Circuit Court of Baltimore County if



C

\* Case No. 92-477-SPH  
\* BALTIMORE COUNTY  
\* ZONING COMMISSIONER

★ ★ ★ ★ ★ ★ ★ ★

POST HEARING MEMORANDUM OF LAW

### Facts

Lena Guise, property owner, filed a request for variances for Lots 31 and 32 on Arunah Avenue, Case No. 92-30-A before the Zoning Commissioner of Baltimore County. Such petition was denied. This decision was appealed and reversed by the Baltimore County Board of Appeals following a hearing. No appeal was taken to Circuit Court. Protestants in 92-30A filed for a second hearing before the Zoning Commissioner on the same property concerning the legality of property owner developing a property of less than 6,000 square feet. Another hearing was granted and the case was renumbered as 92-477. People's Counsel, although not a party in the first case, entered her appearance. The hearing was held on July 27th, 1992 before Zoning Commissioner Lawrence Schmidt. No evidence was taken but argument was heard on a preliminary Motion to Dismiss brought by the property owner. Commissioner Schmidt withheld decision and requested written submissions.

## Principles of Res Judicata Apply to Administrative Hearings

Professor Kenneth Davis, the leading authority on administrative law, in his treatise on the subject is quite

# RECLAIMED

emphatic that res judicata does apply to administrative hearings. There are some administrative actions to which it does not apply such as some letter decisions by an agency but if there has been a hearing with each side able to present evidence res judicata applies. It applies even in hearings such as those held for individuals requesting Social Security benefits when there is, in fact, only one side. In this instance the protesting neighbors have twice had the hearing opportunity to hear and be heard. All issues regarding this property that could have been brought up at prior hearings should have been put forward. The underlying facts and assumptions of both cases are the same.

Peoples Counsel relies on Board of County Commissioner's v. Racine, 24 Md. App. 435 332 A.2d 306 (1975) for the premise that res judicata does not apply in a zoning case if an error of law has been made. This is incorrect on two levels. The most primary is that no illegality in the decision of the Board of Appeals can be shown. Secondly, the Court in Racine cited to work written by Professor Davis in 1958 to support its decision. Davis himself states that res judicata as it relates to administrative law was markedly changed by a Supreme Court decision in 1966 United States v. Utah Construction & Mining Company, 384 U.S. 394, 421-22 (1966). Davis in 1989 and the state of administrative law is markedly changed from 1958. The Davis quote cited by the Court in Racine was based on the 1942 Restatement of Judgments. The Restatement of Judgments was revised in 1982

as Restatement of Judgments 2d. Davis on res judicata explains the changing law.

What is happening is that the fundamentals summarized in the 1942 Restatement of Judgments are no longer followed. The Restatement of Judgments 2d (1982) is different in its fundamentals. What is more important is that the Supreme Court is signaling its general acceptance of the new fundamentals, of the new details, and of the new language. For instance, §27 of the Restatement of Judgments 2d states a general rule which is now law: "When an issue of fact or law is actually litigated and determined by a valid and final judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." Under §70 of the 1942 Restatement, a decision on a question of law was generally not binding in a subsequent action.

The Board of Appeals Decision was Legal and Final

People's Counsel presented a variety of legal theories which, while novel, are not persuasive. She postulated that variance allowing a reduction in the area of a particular property is in effect a change in the density requirements and the density change cannot be made by the Board of Appeals and is therefore illegal. The alchemy which changes an area requirement into a density classification is inexplicable. The authority used for many years by the Zoning Commissioner for area variances is clearly defined in §307.1 of the Baltimore County zoning regulations. Only one dwelling is proposed for this site. No violation is done to the purpose of the density requirements which were primarily designed to create better design in future subdivisions.

1B00.2 - Purpose. The D.R. zoning classification are established, pursuant to



property owners disagreed. Both sides submitted legal memorandums and by my Order of September 24, 1992, the property owner's Motion to Dismiss the Petition was denied. Mrs. Guise immediately filed an appeal from my ruling. That appeal came before the County Board of Appeals which, by its Order of November 9, 1992, dismissed the appeal. Apparently, the Board felt that my ruling was in the nature of an interlocutory Order and this case could not be appealed until a decision on the merits of Mr. Baker's Petition was rendered. Therefore, this case came in, again, for public hearing before the Zoning Commissioner on November 10, 1992,

A number of issues were raised at this public hearing which need be addressed. First, it was discovered at the public hearing that Mrs. Guise and her neighbors have still not presented all issues which need be resolved before any construction could occur on site. Specifically, although the side yard setback issues have been resolved, and the 5,280 sq. ft. in lieu of 6,000 sq. ft. area issue is pending, no Petition has been filed seeking relief from Section 1B02.3.C. of the B.C.Z.R., as it relates to minimum lot width. This section governs development standards for all property zoned D.R. For property zoned D.R.5.5, as is the subject lot, side yard setbacks of 10 ft. must be maintained, the lot area must be, at least, 6,000 sq. ft., and the lot must be a minimum of 55 ft. wide. In that the subject lot is only 40 ft. wide, a variance from this requirement is also necessary. Over Peoples Counsel's objection, I decided to include this issue in my deliberations for this case. I acknowledge that Mr. Baker did not amend his Petition for Special Hearing to include this issue that Mrs. Guise presently has no Petition before me to amend, and that the prior case did not raise this question. However, out of a sense of judicial economy, it seems appropriate to resolve all issues at this time. It would be improper to limit my inqui-

the legislative findings set forth above, in order to:

- A. Foster a greater variety in housing types within future residential developments;
- B. Allow more feasible preservation of natural features and induce the reservation of ample and more suitably designed open spaces and parks, in order to better satisfy the needs of residents without economic disadvantage to developers;
- C. Allow greater flexibility in subdivision-development planning and provide for the inducement of more creative as well as more economic approaches to residential development, with the goal of desirable and distinctive identity and character of individual residential locales;
- D. Provide the means to satisfy differing housing-market requirements without rezoning, and thus without disruptive changes in density potential; and
- E. Provide for the application of residential zoning classifications in a manner more nearly in accord with comprehensive plans and comprehensive-planning goals.

The purpose and legislative intent was not to restrict an individual property owner so that she receives no economic benefit from a parcel of property which was subdivided in 1919 prior to any zoning regulations.

The same area as the subject property is listed on homes at 601 Maryland Avenue, 1006 Arunah Avenue, 501 Valkorn Road, 502A Dorchester Road and 521 Valkorn (new home). 6007 Montgomery Avenue was approved for construction last year. Case No. 91-245A for 5208 Carroll Place approved the same

variances in 1991. Any illegality on the part of the Zoning Commissioner or Board of Appeals is long standing. If such an act were illegal the recourse is through an appeal to Circuit Court and not a second hearing before the Zoning Commissioner.

Alternatively, People's Counsel suggested that the area requirement was overlooked by the Board of Appeals. Not only was this not overlooked but evidence was presented and considered by the Board and such approval was incorporated into their opinion. Direct reference in the opinion is made to the width of the lot, the proposed building envelope and the testimony of Midge Stocksdales regarding properties of a similar size in the immediate area. See Transcript, pp. 23 and 24, attached hereto as Exhibit A. Entered into evidence was a variance plat depicting the area of the property which was a part of the submission. Also submitted into evidence was the record of a variance granted for an identically sized property within two blocks of the subject property. See Transcript, pp. 13 and 14, attached hereto as Exhibit B.

The initial Petition for Zoning Variance which was prepared by a clerk/technician of the Zoning office in aid of the property owner was brought for a variance from regulations at 1B02.3.C.1 which states the minimum square footage for property and the set back requirements. The referenced regulations refer to both minimum area and set back. Both were considered by the Board of Appeals and



although the variance petition could have been more carefully drafted, the area of the property in question was considered by the Board.

#### Entry of People's Counsel

People's Counsel has the authority to appear on behalf of the public on any zoning matter which she deems involves the public interest. The People's Counsel also as an aggrieved party has the authority to bring an appeal. People's Counsel v. Williams, 45 Md. App. 617 415 A.2d 585 (1980). The authority, however, has limits. To appeal, a party must be aggrieved and be a party to the proceeding below. In the first case before the Zoning Commissioner regarding this property People's Counsel did not appear. At the Board of Appeals hearing she advised the protestants outside of the hearing room prior to the hearing but chose not to appear at the hearing itself. She, therefore, lacked the party status necessary to appeal. The belated entry into a second hearing may be because of the lack of party status for purposes of appeal in the first case.

A principle of res judicata precludes the entry of People's Counsel at this eleventh hour.

A judgment, to operate as an estoppel must be upon the same subject matter and between the same parties. The term 'parties', however, is not restricted to those who appear as plaintiff and defendant upon the record. It includes those who are directly interested in the subject matter of the suit, knew of its pendency, and had the right to control, and direct, or defend it. The law, in dispensing even-handed justice to all, has wisely taken care 'ut sit finis litium', and if matters, which have been once solemnly decided, could

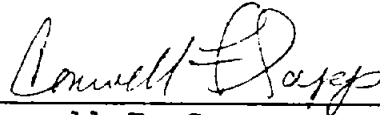
be again drawn into controversy, there would be no end of litigation and disputes. Mr. Greenleaf has happily said, 'justice requires that every cause be once fairly and impartially tried; but the public tranquility demands, that having been once so tried, all litigation of that question and between the same parties should be closed forever'." McKinzie v. B & O R.R., 28 Md. 161, at 174-5.

quoted in Board of County Commissioners v. Racine, 24 Md. 435, 332 A.2d 306 (1975). People's Counsel could have entered this case and raised whatever issues she considered pertinent earlier. By not doing so she is precluded from doing so later. It is patently unfair to the Petitioner to put her to the time and expense of resolving issues after the appeal time has passed which have already been the subject of a final judgment.

WHEREFORE, for the foregoing reasons Petitioner prays that case no. 92-477 be dismissed.

Respectfully submitted,

REESE AND CARNEY



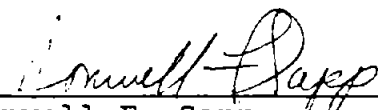
Conwell F. Sapp  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044



William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31<sup>st</sup> day of August, 1992, a copy of the foregoing Post Hearing Memorandum of Law was mailed, postage prepaid to George Baker, 405 Lafayette Avenue, Baltimore, Maryland and Phyllis Friedman, Esquire, People's Counsel, Baltimore County Zoning Office, Courthouse, Towson, Maryland 21204.

  
\_\_\_\_\_  
Conwell F. Sapp

clb\cfs\litig\guise.phm



## EXHIBIT A

6 1 A. Absolutely. Our office is just about four blocks  
2 away from there.

3 Q. How long have you been in this business?

4 A. Twelve years.

5 Q. Are you familiar generally with this Caton  
6 Industrial Heights area?

7 A. Very, very familiar. I have sold property there.  
8 Have listed property there.

9 Q. You have been working with Mrs. Guise?

10 A. For over, or just about two years now, trying to  
11 sell this property.

12 Q. Are you aware of other properties in the area of  
13 about this approximate size that have homes on them?

14 A. Yes. There are quite a few of them that have a  
15 40 foot lot that have been built on. Usually what they  
16 put on is a shotgun split by a builder, a 20 foot wide by  
17 32, or something similar to a townhouse. You could just  
18 take --

19 MR. DISNEY: Called a what?

20 THE WITNESS: Shotgun split.

21 Q. What's that? I am still having trouble with that

## EXHIBIT A

6 1 one.

2 A. A shotgun split. It's basically what they build  
3 in order to give the buyer as much living space as they  
4 can in a limited amount of building space. They are 20  
5 foot wide. They are at least 36 to 40 feet long so that  
6 the buyer has the access to the square footage to live on  
7 a very small lot.

8 Q. And are there a variety of these?

9 A. There are.

10 Q. In that area?

11 A. Not only in Catonsville Heights, but Catonsville  
12 Manor. There are some right off Winters Lane, which is in  
13 the same general area, four or five blocks.

14 Q. Where this lot is also?

15 A. Yes. Not only built. Built and sold.

16 MS. SAPP: I have no further questions.

17 MR. DISNEY: This is basically put on a lot so  
18 they had the ten foot setback on either side?

19 THE WITNESS: Yes.

20 THE CHAIRMAN: Mr. Baker?

21 CROSS EXAMINATION

## EXHIBIT B

4           1           Calculating that, using the total envelope as one  
2 building, we wouldn't even have one-tenth of one CFS  
3 causing the runoff.

4           Q.     Can you identify these records?

5           A.     This looks like a petition for a zoning variance,  
6 notice of a hearing, and appears to be that the Deputy  
7 Zoning Commissioner -- I am trying to see if -- this is a  
8 petition passed by the Deputy Zoning Commissioner for a  
9 variance for a side yard and setback and I believe -- I am  
10 going to have to read it more -- permit a side yard  
11 setback in lieu of the 25 in accordance to the  
12 petitioner's exhibit. And petitioner's exhibit shows a --  
13 and this shows a house sitting on a similar -- two, 20  
14 foot lots in Catonsville Heights at the intersection of  
15 Delaware Place and -- I don't know how to pronounce it --  
16 Aruna Avenue -- Aruna Avenue. And this was in 1988, I  
17 believe.

18           MS. SAPP: If you would, once 'this' has been  
19 submitted, I would ask that you take an official notice  
20 that this property is two blocks away.

21           THE CHAIRMAN: Petitioner's Exhibit No. 4 will be

## EXHIBIT B

4 1 a compilation of the associated findings of the Deputy  
2 Zoning Commissioner in 1988.

3 MR. DISNEY: Fourth of May. I am going to make a  
4 note on here. By the way, the copies are not very  
5 readable. That's Exhibit 4 consisting of two sheets with  
6 the case file of 894-A, date is 5-4-88, before the Zoning  
7 Commissioner, J. Robert Haines.

8 Q. Mr. Shockely, did you note on those records that  
9 you just identified whether that variance was granted in  
10 that case?

11 A. Yes. I read the order by the Zoning  
12 Commissioner. It was granted.

13 Q. And the property is similar in the same  
14 subdivision?

15 A. Same subdivision, same size lot, 40 feet. Two,  
16 20-foot lots of 40 feet.

17 Q. Would building on this property cause any sort of  
18 problems with the health, safety or general welfare of the  
19 public?

20 A. I just can't imagine. It's the end of the street.  
21 There's no certainly no health hazard. There's no harm to



# EXHIBIT D

|                                     |   |                     |
|-------------------------------------|---|---------------------|
| IN RE: PETITION FOR SPECIAL HEARING | * | BEFORE THE          |
| NE/S Arunah Ave., 300 ft. SE        |   |                     |
| of c/l Maryland Avenue              | * | ZONING COMMISSIONER |
| (Lots #31 & #32, Arunah Ave.)       |   |                     |
| 1st Election District               | * | OF BALTIMORE COUNTY |
| 1st Councilmanic District           |   |                     |
|                                     | * | CASE # 92-477-SPH   |
| George Baker, Petitioner            |   |                     |
| Lena Guise, Property Owner          | * |                     |

\*\*\*\*\*

## RULING ON PRELIMINARY MOTION

The above captioned matter comes before the Zoning Commissioner as a Petition for Special Hearing for that property known as lots No. 31 and No. 32 on Arunah Avenue in the Catonsville Heights section of Baltimore County. The Petition was filed by George Baker, a neighbor of the subject site. The hearing for the Petition was scheduled on July 27, 1992. However, prior to presentation of any evidence and/or argument on the merits, counsel for the property owner moved to dismiss the Petition. Oral arguments and subsequent memorandums were offered by the parties. This ruling addresses only those issues raised within the Motion to Dismiss.

A brief history and overview of the subject property and its zoning history is in order. As noted, the subject site is comprised of 2 lots within the Catonsville Heights subdivision. The subject property is owned by Lena Guise. The property is approximately 5,280 sq. ft. in area and is zoned D.R.5.5. Under the provisions of Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), the minimum net lot area per dwelling unit in a D.R.5.5 zone is 6,000 sq. ft. Further, that section of the regulations provides that any such dwelling on a lot zoned D.R.5.5 must have a 10 ft. side yard setback.

During the summer of 1991, Ms. Guise apparently decided to construct a dwelling on the subject lot. A house approximately 60 ft. deep and 26 ft.

ry in the present case only to the lot area requirement. This would leave open the possibility that the property owner, Mr. Baker, or another neighbor, could refile another Petition regarding this site. Frankly, three public hearings regarding this case are quite enough and considerations relevant to these issues are largely the same. Thus, my Order shall address the net lot area requirement as well as the lot width requirement.

Secondly, it is to be noted that evidence was produced at the public hearing that the property owner was originally notified that variances from the above three requirements were necessary. That is, a copy of the sample Petition for Variance, which was drafted by the Zoning Technician who originally accepted this case, was submitted into evidence. The wording of that Petition addresses the side yard setback requirements, the lot area requirement, and the lot width requirement. Thus, the property owner was aware at the time the original Petition was filed that relief from these three standards was necessary. It is unclear as to why Mrs. Guise's original Petition addressed only the side yard setback. Why a request for relief on all three requirements was not made is a mystery.

A third issue to be considered is the application of Section 304 of the B.C.Z.R. This section allows development of undersized lots in certain circumstances. Specifically, Section 304.1 (which was recently re-adopted under Bill No. 47-92, but has remained substantially the same as it relates to this case) allows development of undersized lots without obtaining a variance under certain circumstances. Three conditions are listed which permit development on undersized lots. They are, that the lot shall be part of a validly approved subdivision or been duly recorded prior to March 30, 1955; that all other requirements of the height and area regulations are

ORDER RECEIVED FOR FILING  
DATE 11/25/92  
BY [Signature]

[Signature]

wide was proposed. In that a building envelope of that size would result in only a 7 ft. side yard setback, Ms. Guise filed a Petition for Zoning Variance with this office. The Petition requested a variance from Section 1B02.3.C.1, "to permit a side yard setback of 7 ft. and a side street setback of 7 ft. in lieu of the required 10 ft. and 25 ft. respectively." The case came in for a hearing before Deputy Zoning Commissioner, Timothy M. Kotroco. Following a public hearing, the Deputy Zoning Commissioner denied the Petition by his Order dated October 8, 1991. Unsatisfied with this result, Ms. Guise appealed Deputy Zoning Commissioner Kotroco's decision to the County Board of Appeals. After a hearing, the Board overruled Deputy Zoning Commissioner Kotroco's opinion and granted the variance on May 6, 1992. There has been no appeal of the Board's decision to the Circuit Court for Baltimore County. Thus the Board's decision is final. Nonetheless, unhappy with this result, one of Ms. Guise's neighbor (Mr. Baker) filed a Petition for Special Hearing in the instant case. This Petition requests a determination of whether "the herein described property, located in a D.R.5.5 zone and consisting of less than the required 6,000 sq. ft. may be residentially developed." That is, notwithstanding the Board's ruling granting the variance as to side yard setbacks, Mr. Baker seeks a determination as to whether the lot can be developed in view of the fact that the square foot area of same is less than the required 6,000 sq. ft.

As indicated above, counsel for Ms. Guise appeared at the public hearing and raised objection to the propriety of the current Petition and hearing. Simply stated, Ms. Guise believes that this issue has been litigated and that the present Petition is barred from consideration by the doctrine of res judicata. Although the memorandum of the counsel representing Ms. Guise speaks for itself, it is to be noted that the primary thrust of same

the issues are the same, should the doctrine be applied. This is clear from the Court's language in Racine where, in examining the facts of the case before it, the Court noted "In the subject case, it is uncontroverted that the issue presented is identical; the parties are identical." Racine supra, pg. 311. Later, quoting from McKinzie v. Baltimore and Ohio Railroad Co. 28 Md. 161 (1867), the Court noted "A judgment, to operate as an estoppel, must be upon the same subject matter and between the same parties." (emphasis added) Racine supra, pg. 313. Even Black's Law Dictionary, Fifth Edition, 1979, notes that the application of res judicata "requires identity in things sued for as well as identity of cause of action, of persons and parties to an action and of quality in persons for or against whom claim is made."

It is apparent from these citations that the identical issue must exist in order for the doctrine of res judicata to be applicable. Does such an identical issue in this case exist? The answer must be in the negative.

Specifically, although determination of the applicability of the same section of the B.C.Z.R. is requested, two distinct and different requirements are at issue in these cases. Specifically, in the prior case, Deputy Commissioner Kotroco and the Board of Appeals considered the propriety of a side yard setback. In the case before me, consideration of the lot area is the germane issue. Determination of whether a variance should be granted from either of these requirements may require consideration of different issues; e.g., impact of a variance from a side yard setback upon an adjacent property may be quite different from the impact on neighboring properties of development on an undersized tract.

Further, a variance from the square foot area requirement may or may not involve a side yard setback variance. For example, a lot may have an



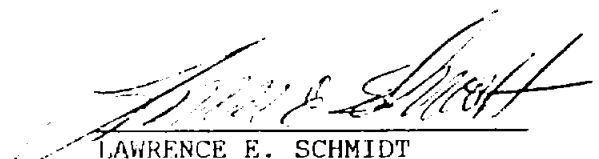
area in excess of 6,000 sq. ft., yet still require a side yard setback variance in order to be developed. The situation exists vice versa. That is, an undersized lot may not require any side yard setback variance.

Since these are the possibilities, I cannot conclude that the issues presented are identical. The Petitioner in the present case may present yet other considerations inapplicable to the initial case. Further, Ms. Guise's counsel's argument notwithstanding, it is clear that the County Board of Appeals did not resolve the undersized lot issue at the hearing before them. Although there are fleeting references to the lot size within the transcript, the previous variance case involved only the side yard setback issues. There is no evidence that the Board considered, much less ruled upon, whether construction would be proper on an undersized lot.

I also concur with Peoples Counsel's conclusion that it is the property owner's burden to seek relief from all applicable regulations. The direction of the Zoning Technician who accepted the first Petition notwithstanding, Ms. Guise is responsible for securing all variances necessary to develop. She did not request an area variance previously; and it was not granted. If it is now needed to develop, it must be obtained.

For the aforementioned reasons, I shall deny Ms. Guise's Motion to Dismiss. This case shall be set for hearing on the merits of the Petition in due course.

THEREFORE, it is this 27<sup>th</sup> day of Sept., 1992 Ordered that the Motion to Dismiss be and is hereby DENIED.

  
LAWRENCE E. SCHMIDT  
Zoning Commissioner for  
Baltimore County

LES:mmn

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1174  
September Term, 1987

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VERBAL CORPORATION ET AL.

v.

PAUL HUPFER ET AL.

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Moylan,  
Bloom,  
Pollitt,

JJ.

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Per Curiam

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Filed: March 24, 1988

Case No. CBA-87-106

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MAY 10 1988  
CLERK OF COURT

In January 1987, appellee Paul Hupfer, an interested citizen of Baltimore County, noticed that United Parcel Service (UPS)<sup>1</sup> was erecting a building in the Loveton Industrial Park (Loveton) in Baltimore County. Suspecting that the contemplated use of the structure would constitute a trucking facility, Hupfer made inquiries as to the zoning of the Loveton tract and purchased a copy of the Baltimore County Zoning Regulations. He learned (1) that Loveton was zoned "M.L." or "Manufacturing-Light," and (2) that a trucking facility is permitted only by special exception, which in turn requires a public hearing. Believing that UPS was building an illegal trucking facility in Loveton without the required hearing and exception, Hupfer expressed his concern in a letter to the Baltimore Zoning Commissioner.

The Zoning Commissioner's answer to Hupfer's letter stated in no uncertain terms that the UPS structure, which was to be used as a parcel distribution center, was a warehouse rather than a trucking facility, and that a warehouse is permitted as of right under M.L. zoning, requiring neither a hearing nor a special exception. Accordingly, a building permit had been granted to UPS without a hearing.

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<sup>1</sup>Verbal Corporation, the named appellant, is an affiliate of United Parcel Service. Throughout this opinion we will refer to appellant as UPS.

Instead of allaying Hupfer's concerns about an illegal trucking facility in Loveton, the Commissioner's letter heightened them. By a second letter addressed to the Commissioner, Hupfer "appealed" the Commissioner's original reply letter and requested an appeal hearing before the Baltimore County Board of Appeals. Hupfer was joined in this "appeal" by the Sparks-Glenco Community Association, the Sparks-Quaker Bottom Community, and the Alexander Crossing Home Owner Association, Inc.

UPS filed a motion to dismiss the appeal of Hupfer, et al., to the Baltimore County Board of Appeals (Board) for lack of jurisdiction. After a hearing on UPS's motion, the Board concluded that it did have jurisdiction, that Hupfer and the three community groups were appealing "...the underlying determination by Commissioner Jablon that the use proposed here was permitted as a matter of right," and that their appeal to the Board was timely. In a memorandum opinion, the Board determined that it would conduct a hearing on the merits of the appeal, reasoning that a remand to the Zoning Commissioner would be inappropriate because the Commissioner had previously determined the UPS structure to be a warehousing facility.

UPS, now joined by Baltimore County, appealed the Board's decision to the Circuit Court for Baltimore County. Hupfer, now joined by the People's Counsel for Baltimore County, moved to dismiss that appeal for lack of jurisdiction on the grounds that the Board's order was merely a non-final interlocutory



order. They also moved to dismiss Baltimore County "as a proper party to the appeal."

The Circuit Court for Baltimore County, after hearing arguments on the motion to dismiss, concluded that the Board's opinion was a non-final interlocutory order not subject to "immediate judicial review," and granted the motion of Hupfer and People's Counsel. UPS promptly appealed that decision to this Court. Hupfer and People's Counsel claim, inter alia, that the circuit court's decision, like the Board's decision before it, is a non-final, interlocutory and unappealable order. Prior to oral argument, we rejected that contention and denied appellee's motion to dismiss this appeal, because a decision by the circuit court denying its own authority to entertain an appeal to it, for any reason, is a final judgment. See, Houghton v. County Commissioners of Kent County, 307 Md. 216, 217 (1986); Mooring v. Kaufman, 297 Md. 342, 347-48 (1983). This is so because "the 'accepted test in determining finality' is whether '[t]he effect of the court's ruling was to put the plaintiff out of court and deny her the means of further prosecuting her case....'" Mooring v. Kaufman, 297 Md. at 347 (quoting McCormick v. St. Francis De Sales Church, 219 Md. 422, 426-27 (1959), and quoted in Houghton v. County Commissioners of Kent County, 307 Md. at 221). The cases recognizing the finality of orders which either dismiss or grant motions to dismiss are numerous. Bailey v. Woel, 302 Md. 38, 41 n.1 (1984); McSwain v. Tri-State Transportation, 301 Md. 363, 368 (1984); County Commissioners v. C. J. Langenfelder,

237 Md. 368, 372-73 (1965); McCormick v. Church, supra at 426-27 (1959); Miller v. Massachusetts Mutual Life Insurance Company, 183 Md. 19, 33-34 (1944).

Our holding that we have jurisdiction to entertain this appeal because the circuit court's dismissal constituted a final, appealable order will be of little comfort to UPS because we will affirm that order.

The circuit court correctly dismissed UPS's appeal to it because it lacked jurisdiction to entertain that appeal. Maryland Rule Bl.(a), which deals with appeals from administrative agencies, plainly states that Subtitle B applies "to the review of any final action of an administrative agency." It is clearly the law that:

[A] judgment or order of a court is final when it determines or concludes the rights of parties or when it denies the parties means of further prosecuting or defending their rights and interests in the subject matter of the proceeding. Schultz v. Pritts, 291 Md. 1, 5-6, 432 A.2d 1319, 1322 (1981); Fred W. Allnutt, Inc. v. Commissioner of Labor and Industry, 289 Md. 35, 40, 421 A.2d 1360, 1362-63 (1980).

Highfield Water Company v. Washington County Sanitary District, 295 Md. 410, 415 (1983). This rule applies with equal force to the orders of administrative agencies; the Court of Appeals in Maryland Commission on Human Relations v. Baltimore Gas & Electric Company, 296 Md. 46 (1983), held that "an administrative agency's action is final if it determines the rights of the parties and leaves nothing further for the agency to do." Id. at 57.

An order denying a motion to dismiss for lack of jurisdiction, in contrast to the grant of a motion to dismiss for lack of jurisdiction, is not a final order. In Eisel v. Howell, 220 Md. 584, 586 (1959) (quoted in Highfield Water Co., supra at 415), the Court of Appeals wrote:

The denial of a challenge to the jurisdiction does not settle or conclude the rights of any party or deny him the means of proceeding further. It settles nothing finally. An order which does none of these things is not appealable. Whenever a court makes a disposition or order, it does so on the basis that it has jurisdiction, and if its express announcement of that fact constituted an appealable order, it would be impossible for a court to proceed with the trial of any case in which its jurisdiction was challenged.

(Citations omitted).

Appellant's reliance on Baltimore County Charter § 604 is misplaced. Section 604 provides that "[w]ithin 30 days after any decision by the county board of appeals is rendered, any party to the proceeding who is aggrieved thereby may appeal...." (Emphasis added.) Although appellant claims that the words "any decision" indicate that appeals may be taken from non-final orders, it concedes, as it must, that this language cannot be taken literally. In the course of a hearing, for example, the Board may be called upon to make many "decisions" concerning admissibility of evidence or the order of procedure. Obviously, such decisions as those cannot be appealed. What appellant overlooks is that "any decision" must be construed to mean "any decision final in nature," because

until there is a final decision or order there can be no "aggrieved party," and hence no appeal.

The Court of Appeals defined "aggrieved party" in Bryniarski v. Montgomery County Board of Appeals, 247 Md. 137 (1967):

Generally speaking... a person aggrieved by the decision of a board of zoning appeals is one whose personal or property rights are adversely affected by the decision of the board.

Id. at 144 (emphasis added). The Court has noted that "[i]n determining status to appeal, the question is whether the property owner may reasonably be thought to be specially damaged if the application is approved." Id. at 145 (emphasis added) (citing Town of Somerset v. Montgomery County Board of Appeals, 245 Md. 52, 63 (1966)).

A non-final order by the Board cannot produce an "aggrieved party" because it does not adversely affect the personal or property rights of anyone. UPS is not now, and might never be, subject to a decision by the Board that adversely affects its property rights. Until such a decision is rendered, if ever, UPS cannot be an "aggrieved party" and hence can have no standing to appeal. UPS is unquestionably disappointed that it will be obliged to litigate, at some expense, the issue that it had hoped was foreclosed, but only the result of litigation, not the trouble and expense thereof, can produce an "aggrieved party."

Even if the Board's non-final judgment did adversely affect UPS, and thus make UPS an aggrieved party under § 604



received in the same light as would a Petition for Variance from the lot area and lot width requirements, if same had been filed by Mrs. Guise.

As to this issue, the positions of the parties are crystallized. On behalf of the property owner, testimony was received from Mrs. Guise, her daughter (Elizabeth Clark) and her realtor (Mudge Stocksdales). Collectively, these witnesses stated that the lot is unusable if the width and area requirements are not waived. They observed that the property is zoned residential, taxed as a residential parcel and development should, therefore, be permitted. Further, they noted that there are other houses in this community on substandard sized lots. These witnesses further aver that Mrs. Guise's neighbors use the property for their own benefit. Although probably true, this allegation has no bearing on the issue presented, but is for the courts to determine in a trespass case. In sum, the property owner and her witnesses believe that a denial of permission to build would leave this lot without value.

In opposition, testimony was received from two neighbors, Mr. George Baker and Mrs. Richard Hauf. Both witnesses testified that there are no houses on lots this small in the subdivision. Further, the properties which are immediately adjacent to the site are on larger lots. These witnesses believe that to permit development on the property would cause an adverse effect on their properties.

This case presents the classic dilemma faced in many variance cases. To deny permission to build would be to deprive Mrs. Guise a legitimate use of her lot. Indeed, under such a circumstance, its value would be reduced. Nonetheless, as Peoples Counsel appropriately noted, not every variance should be granted merely because to deny same would render a lot

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By Mr. M. M. M.

and give UPS standing to appeal, such standing would not confer jurisdiction on the circuit court to hear an appeal from a non-final order. Section 604 addresses standing, not jurisdiction. And as previously mentioned, Md. Rule B1.a provides that the rules governing appeals from administrative agencies applies "to any final action of an administrative agency," and it is firmly established by the Court of Appeals that administrative remedies must be exhausted before an administrative order may be appealed, supra.

Because the Board's denial of UPS's motion to dismiss amounted to a non-final administrative order, the circuit court had no jurisdiction to hear UPS's appeal. Its decision to that effect was proper, and we affirm it.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY  
APPELLANTS.

IN THE MATTER OF THE  
THE APPLICATION OF  
GEORGE BAKER

FOR A SPECIAL HEARING ON  
PROPERTY LOCATED ON THE NORTH-  
EAST SIDE ARUNAH AVENUE, 300'  
SOUTHEAST OF THE CENTERLINE  
MARYLAND AVE. (LOTS #31 & #32,  
ARUNAH AVENUE /GUISE PROPERTY)\*  
1ST ELECTION DISTRICT  
1ST COUNCILMANIC DISTRICT

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
OF  
BALTIMORE COUNTY  
CASE NO. 92-477-SPH

\* \* \* \* \*

O P I N I O N

This case comes before the Board on appeal from a decision by the Zoning Commissioner granting a Petition for Special Hearing which denied construction on an undersized property consisting of less than the required 6,000 sq. ft. The site is approximately 5,280 sq. ft. in area and is zoned D.R. 5.5, located in the Catonsville Heights community of the First Councilmanic District of Baltimore County.

The plan of the property owner to develop a residential dwelling on the subject lot has moved through several hearings before the Zoning Commissioner in which petitions for setback variances were denied for this 40-foot property, but later granted by the County Board of Appeals (May 6, 1992). In those considerations, an area variance for a lot size of less than 6,000 sq. ft. and a lot width of 40 feet in lieu of the minimum of 55 feet were not a part of the deliberations by the Board of Appeals.

Adjacent property owner, George Baker, filed for a Special Hearing in opposition, contesting that the approval of variances from a side yard setback has an entirely different impact on neighboring properties than the impact of development of an undersized tract. Mr. Baker filed for a Special Hearing before the Zoning Commissioner requesting a decision of whether the property

of less than the 6,000 sq. ft. required in Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (BCZR) may be residentially developed. The Zoning Commissioner granted the Petition for Special Hearing, thereby prohibiting development of the site. An appeal of the Zoning Commissioner's decision (November 25, 1992) is the matter before this Board.

The subject property is a wooded are consisting of two lots, each with a 20-foot front, bounded on two sides by unimproved paper roads (Lafayette Avenue and Arunah Avenue) that provide a larger perspective of the lot size than the actual metes and bounds of the parcel.

Catonsville Heights was subdivided in or about 1920 into small parcels of 20 feet. The subject parcel, lots 31 and 32, was purchased by Ms. Guise's father in the 1920's, and inherited by her in 1950. The unimproved property has been assessed at a value of \$22,000.00 and has required tax payment by the owner for the past 42 years. With the requested area variance, along with the previously granted variances for setbacks, Ms. Guise intends to sell the property to others for eventual development.

An issue in this hearing is the practice of builders seeking infill lots in older neighborhoods for development. Many old subdivisions, such as Catonsville Heights, have narrow 20-foot vacant lots never to be built upon unless several can be combined to create a buildable parcel that meets the zoning regulations.

Testifying for the Appellant, Midge Stocksdales reviewed her survey of single-family dwellings built upon undersized lots within the D.R. 5.5 community. Testimony and photographic exhibits pointed to several properties of less than 6,000 sq. ft., as well



as houses on two lots of 40 feet in width. Some of the houses cited by Ms. Stocksdales were new, and others were older residences of Catonsville Heights recorded before the 1955 zoning law. Two houses on Arunah Avenue, the location of the subject parcel, received density variances, as well as several others built in different locales of Catonsville Heights in recent years. In response to People's Counsel, Ms. Stocksdales estimated that there were at least eight to ten vacant lots of 40 ft. x 120 ft.

People's Counsel contested that the development of small infill lots is an issue throughout Baltimore County, where the price of buildable lots is escalating and builders look for infill lots. If the lots are undersized, the developer then seeks variances to build so-called "shot-gun houses" that may not be in character with the neighborhood.

Testifying in opposition to the development of Ms. Guide's property. Richard Hauf reviewed his concern for the preservation of the character and nature of his neighborhood along Lafayette Avenue. He argued that the dimensions of his 80' x 120"+ property and those of his neighborhood containing large rancher-type dwellings will be adversely affected by a dwelling constructed on the subject parcel. Mr. Hauf also asserted that the prospect of a small house so built to utilize a dirt road was out of character with the style and values of residences on his street. He further recounted problems and expenses he has incurred controlling storm water runoff in a location that is not serviced by storm water drains. Although he has controlled his personal basement water problems, Mr. Hauf fears the water runoff consequences of clearing the subject parcel for development. He asserted that the zoning

law is adequate but must be enforced. Variances should not be granted to the detriment of existing houses. Mr. Hauf also bemoaned the fact that the County has done nothing in regard to storm drains and allows building without curbing on the streets.

George Baker, Petitioner in this case to deny the area density variance, testified to his purchase of several 20-foot lots to enlarge his property, and of his offer to purchase the Guise property. With a property of 120 ft. by 120 ft. immediately adjacent to the subject parcel, Mr. Baker objected because the undersized lot was incompatible as to square feet with his and other properties in the area. With no storm drains to capture water runoff and the likelihood of a crusher run connection to Lafayette Avenue, the prospect of a single-family dwelling was out of character. He contends that an open wooded lot holds some of the water that an improved lot will pass on.

At issue in this matter is whether a net area density variance request be granted. Variances may be granted where strict application of the zoning regulations would cause practical difficulty to the property owner. In order to prove practical difficulty for an area variance, a Petitioner must meet the following:

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

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

Testimony in this case is convincing that the property of Ms. Guise, initially acquired by her father in 1927, will be rendered useless if the requested variance is denied. Exhibits in the record showing the 20-foot lots along Arunah Avenue and testimony in this case reveal that any desire by Ms. Guise to purchase an additional lot to add to her two-lot parcel (31 & 32) is impossible as there is no lot available on the one side, and the 40-foot wide paper road (Lafayette Avenue) lies on the other. This is obviously a practical difficulty.

In reviewing this matter, it must also be kept in mind that "a variance should be granted only if in strict harmony with the spirit and intent of the zoning regulations; and only in such a manner as to grant relief without substantial injury to the public health, safety and general welfare." McLean v. Soley, 270 MD 208 (1973)

Section 307 (BCZR) requires that a variance cannot be granted unless a finding is made that there is no injury to public welfare. One of the issues centers on the fact that adjoining dwellings are on larger lots and that the subject property is too small in relation to others in the surrounding locale. However, the proposed 26 ft. by 60 ft. dwelling, with its previously granted side yard variances and the effects of a paper road never to be developed, provides the appearance of a property that is in harmony as to size and character with the neighborhood. By granting the area variance, there should be no injury to the public welfare on this point of objection by neighbors.

The problem of access to the site may be solved by a

comparison of situations with Ms. Guise's neighbor's residence on the paper street aspect of Arunah Avenue, which they use for ingress and egress to their residence. The same can be expected of the subject property in utilizing Lafayette Avenue, without creating any adverse effect to the neighbor's property.

The concern of neighbors with storm water runoff from a reasonably level parcel of land with a 3-degree fall is hardly a matter to keep the subject property owner from utilizing her property for future development. Water runoff is a fact of nature, but one that will be weighed carefully by agencies of Baltimore County in approving any permits for construction on this parcel. Protestations by residents of this neighborhood regarding a lack of storm drains are undoubtedly valid, but this Board does not perceive this an appropriate reason for denying the possible development of the subject site.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship would result if the relief requested for an area variance were not granted. The Board is satisfied that the granting of the requested variances would not result in a detriment to the public health, safety and general welfare of the surrounding community. The Board believes that it would be grossly unfair to deny the variances and that in doing so the Board would be preventing the property owner from the use of the property for a residential purpose to the approximate level and extent as the residential use experienced by other property owners in the community. To require the property owner to conform to the Section 1B02.3.C.1 of the BCZR as applied to this particular case would be to place an unnecessary



burden upon her.

O R D E R

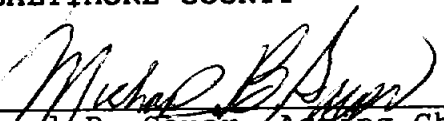
IT IS THEREFORE this 28th day of April, 1993 by the  
County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing prohibiting  
development of the herein described residential property known as  
lots #31 and #32 Arunah Avenue and consisting of less than the  
required 6,000 sq. ft. be and is hereby DENIED; and it is further

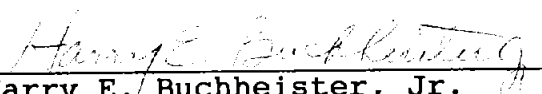
ORDERED that the request for zoning variance to permit a  
parcel of 5,280 sq. ft. in lieu of the required 6,000 sq. ft. and  
to permit a lot width of 40 feet in lieu of the required 55 feet,  
be and is hereby GRANTED.

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

  
\_\_\_\_\_  
Michael B. Sauer, Acting Chairman

  
\_\_\_\_\_  
John G. Disney

  
\_\_\_\_\_  
Harry E. Buchheister, Jr.



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

April 28, 1993

William T. Glasgow, Esquire  
REESE & CARNEY  
Suite 250, 10715 Charter Drive  
Columbia, MD 21044

RE: Case No. 92-477-SPH  
George Baker /Petitioner

Dear Mr. Glasgow:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Very truly yours,

*Kathleen C. Weidenhammer*  
Kathleen C. Weidenhammer  
Administrative Assistant

encl.

cc: Conwell F. Sapp, Esquire  
Ms. Lena Guise  
Mr. George Baker  
People's Counsel for Baltimore County  
P. David Fields  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr.  
Docket Clerk /Zoning  
Arnold Jablon, Director of  
Zoning Administration

MICROFILMED

12/7/92

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IN THE MATTER OF  
LOT NOS. 31 & 32  
ARUNAH AVENUE

\* BOARD OF APPEALS  
\* BALTIMORE COUNTY  
\* SPH 92-477

\* \* \* \* \*

APPEAL

Please enter an appeal in the above-captioned matter.

Conwell F. Sapp  
Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
Suite 200  
Columbia, MD 21044  
(410) 740-4600

William T. Glasgow  
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, MD 21044  
(410) 997-2298

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of December, 1992, a copy of the foregoing Appeal was mailed, postage prepaid, to Lawrence E. Schmidt, Zoning Commissioner, 400 Washington Avenue, Towson, MD 21204, Ms. Phyllis Cole Friedman, People's Counsel for Baltimore County, Room 47, Courthouse, 400 Washington Avenue, Towson, MD, 21204, Mr. Peter Max Zimmerman, Deputy People's Counsel, Room 47, Courthouse, 400 Washington Avenue, Towson, MD 21204 and Mr. George Baker, 405 LaFayette Avenue, Baltimore, MD 21228.

Conwell F. Sapp  
Conwell F. Sapp

CFS\zoning\guise.app

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ZONING OFFICE

undevelopable. If all variances were approved, the purposes of the area requirements would be defeated.

The law regarding variances is well settled. Section 307.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) states that the Baltimore County Zoning Commissioner and/or Deputy Zoning Commissioner shall have the power to grant 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 "the 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).

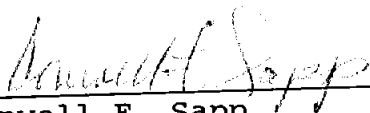
The question, therefore, is whether it was fairly debatable that the evidence shows strict compliance with the regulations would result in practical difficulty or unreasonable hardship.

After careful consideration of all of the evidence and testimony presented, I am persuaded that the Petition for Special Hearing should be granted and that permission to develop the site must be denied. I draw this conclusion well aware of Mrs. Guise's testimony as to the diminution of value of this lot. This factor was apparently persuasive to the Board of Appeals in the side yard setback case. Therein, the Board noted "To deny the requested variances would be to deny the property owner a reasonable use of her property and would render the site useless." Although this inference as to value may be drawn, it cannot be the sole consideration relied on. As



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this \_\_\_\_ day of \_\_\_\_\_, 1992,  
a copy of the foregoing Appeal was mailed, postage prepaid, to  
George Baker, 405 Lafayette Avenue, Baltimore, MD 21229;  
Phyllis Friedman, Esquire, Peoples Counsel, Baltimore County  
Zoning Office, Courthouse, Towson, MD 21204 and Lawrence E.  
Schmidt, Zoning Commissioner, 400 Washington Avenue, Towson,  
MD 21204.

  
Conwell F. Sapp

William T. Glasgow

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C3a

MICROFILMED

IN RE: PETITION FOR SPECIAL HEARING \* BEFORE THE  
NE/S Arunah Ave., 300 ft. SE  
of c/l Maryland Avenue \* ZONING COMMISSIONER  
(Lots #31 & #32, Arunah Ave.) \* OF BALTIMORE COUNTY  
1st Election District \*  
1st Councilmanic District \* CASE # 92-477-SPH  
George Baker, Petitioner  
Lena Guise, Property Owner \*

\*\*\*\*\*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Consideration of the future use of the above captioned property comes before this office again for a third time. Although relatively small, the subject property has endured a lengthy zoning history as its owner seeks to develop the site. The subject property is known as lots Nos. 31 and 32 on Arunah Avenue in the Catonsville Heights section of Baltimore County. The pending Petition was filed by George Baker, a neighboring property owner. The subject site is owned by Lena Guise and is presently undeveloped. The site is approximately 5,280 sq. ft. in area and is zoned D.R.5.5.

The history of Mrs. Guise's plans to develop a single family dwelling on the subject lot is significant. During the Summer of 1991, the property owner decided to construct a 60 ft. deep by 26 ft. wide dwelling on the property. The resulting building envelope from this construction would provide a 7 ft. side yard setback on both sides of the property. Under Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), a 10 ft. side yard setback to adjoining residential property and 25 ft. setback to the abutting paper street must be maintained. The subject lot abuts a residential property to the east known as 804 Arunah Avenue. To the west, the site adjoins an unimproved paper street known as Lafayette Avenue. The improved portion of Lafayette Avenue actually ends near the northwest corner

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By

M. Horak

of the site. As a result of the property owner's inability to comply with the required setbacks, Mrs. Guise filed a Petition for Variance requesting relief from Section 1B02.3.C.1 of the B.C.Z.R., to allow 7 ft. side yard setbacks in lieu of what was required. That Petition came in for a public hearing before the Deputy Zoning Commissioner, Timothy M. Kotroco. Following the hearing, Mr. Kotroco denied the Petition by his Order dated October 8, 1991. Unsatisfied with this result, Mrs. Guise appealed Deputy Zoning Commissioner Kotroco's decision to the County Board of Appeals. After the Board's hearing, an opinion was issued granting the Petition on May 6, 1992. In that there has been no appeal from the Board's decision to the Circuit Court for Baltimore County, the Board's decision is final. Thus, Mrs. Guise has obtained a lawful variance from Section 1B02.3.C.1 of the B.C.Z.R. as it relates to 7 ft. side yard setbacks, in lieu of the required 10 ft. to a residential property and 25 ft. to the street.

Subsequent to the above litigation, Mr. Baker filed the instant Petition for Special Hearing. This Petition requests a determination of whether "The herein described property located in a D.R.5.5 zone and consisting of less than 6,000 sq. ft. may be residentially developed". That is, notwithstanding the Board's granting the variance as to the side yard setbacks, Mr. Baker seeks a determination as to whether the lot can be developed in view of the fact that the square foot area is less than the 6,000 sq. ft. required in Section 1B02.3.C.1 of the B.C.Z.R.

Mr. Baker's Petition was received by the Zoning Office and scheduled for hearing on July 27, 1992. At that time, a preliminary motion was raised by counsel for Mrs. Guise as to the propriety of the Petition for Special Hearing. Specifically, her counsel argued that litigation of this issue is barred by the doctrine of res judicata. Peoples Counsel and the neighboring

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property owners disagreed. Both sides submitted legal memorandums and by my Order of September 24, 1992, the property owner's Motion to Dismiss the Petition was denied. Mrs. Guise immediately filed an appeal from my ruling. That appeal came before the County Board of Appeals which, by its Order of November 9, 1992, dismissed the appeal. Apparently, the Board felt that my ruling was in the nature of an interlocutory Order and this case could not be appealed until a decision on the merits of Mr. Baker's Petition was rendered. Therefore, this case came in, again, for public hearing before the Zoning Commissioner on November 10, 1992,

A number of issues were raised at this public hearing which need be addressed. First, it was discovered at the public hearing that Mrs. Guise and her neighbors have still not presented all issues which need be resolved before any construction could occur on site. Specifically, although the side yard setback issues have been resolved, and the 5,280 sq. ft. in lieu of 6,000 sq. ft. area issue is pending, no Petition has been filed seeking relief from Section 1B02.3.C. of the B.C.Z.R., as it relates to minimum lot width. This section governs development standards for all property zoned D.R. For property zoned D.R.5.5, as is the subject lot, side yard setbacks of 10 ft. must be maintained, the lot area must be, at least, 6,000 sq. ft., and the lot must be a minimum of 55 ft. wide. In that the subject lot is only 40 ft. wide, a variance from this requirement is also necessary. Over Peoples Counsel's objection, I decided to include this issue in my deliberations for this case. I acknowledge that Mr. Baker did not amend his Petition for Special Hearing to include this issue that Mrs. Guise presently has no Petition before me to amend, and that the prior case did not raise this question. However, out of a sense of judicial economy, it seems appropriate to resolve all issues at this time. It would be improper to limit my inqui-



ry in the present case only to the lot area requirement. This would leave open the possibility that the property owner, Mr. Baker, or another neighbor, could refile another Petition regarding this site. Frankly, three public hearings regarding this case are quite enough and considerations relevant to these issues are largely the same. Thus, my Order shall address the net lot area requirement as well as the lot width requirement.

Secondly, it is to be noted that evidence was produced at the public hearing that the property owner was originally notified that variances from the above three requirements were necessary. That is, a copy of the sample Petition for Variance, which was drafted by the Zoning Technician who originally accepted this case, was submitted into evidence. The wording of that Petition addresses the side yard setback requirements, the lot area requirement, and the lot width requirement. Thus, the property owner was aware at the time the original Petition was filed that relief from these three standards was necessary. It is unclear as to why Mrs. Guise's original Petition addressed only the side yard setback. Why a request for relief on all three requirements was not made is a mystery.

A third issue to be considered is the application of Section 304 of the B.C.Z.R. This section allows development of undersized lots in certain circumstances. Specifically, Section 304.1 (which was recently re-adopted under Bill No. 47-92, but has remained substantially the same as it relates to this case) allows development of undersized lots without obtaining a variance under certain circumstances. Three conditions are listed which permit development on undersized lots. They are, that the lot shall be part of a validly approved subdivision or been duly recorded prior to March 30, 1955; that all other requirements of the height and area regulations are

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DATE 11/25/92  
BY [Signature]

[Signature]

received in the same light as would a Petition for Variance from the lot area and lot width requirements, if same had been filed by Mrs. Guise.

As to this issue, the positions of the parties are crystallized. On behalf of the property owner, testimony was received from Mrs. Guise, her daughter (Elizabeth Clark) and her realtor (Mudge Stocksdales). Collectively, these witnesses stated that the lot is unusable if the width and area requirements are not waived. They observed that the property is zoned residential, taxed as a residential parcel and development should, therefore, be permitted. Further, they noted that there are other houses in this community on substandard sized lots. These witnesses further aver that Mrs. Guise's neighbors use the property for their own benefit. Although probably true, this allegation has no bearing on the issue presented, but is for the courts to determine in a trespass case. In sum, the property owner and her witnesses believe that a denial of permission to build would leave this lot without value.

In opposition, testimony was received from two neighbors, Mr. George Baker and Mrs. Richard Hauf. Both witnesses testified that there are no houses on lots this small in the subdivision. Further, the properties which are immediately adjacent to the site are on larger lots. These witnesses believe that to permit development on the property would cause an adverse effect on their properties.

This case presents the classic dilemma faced in many variance cases. To deny permission to build would be to deprive Mrs. Guise a legitimate use of her lot. Indeed, under such a circumstance, its value would be reduced. Nonetheless, as Peoples Counsel appropriately noted, not every variance should be granted merely because to deny same would render a lot

undevelopable. If all variances were approved, the purposes of the area requirements would be defeated.

The law regarding variances is well settled. Section 307.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) states that the Baltimore County Zoning Commissioner and/or Deputy Zoning Commissioner shall have the power to grant 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 "the 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).

The question, therefore, is whether it was fairly debatable that the evidence shows strict compliance with the regulations would result in practical difficulty or unreasonable hardship.

After careful consideration of all of the evidence and testimony presented, I am persuaded that the Petition for Special Hearing should be granted and that permission to develop the site must be denied. I draw this conclusion well aware of Mrs. Guise's testimony as to the diminution of value of this lot. This factor was apparently persuasive to the Board of Appeals in the side yard setback case. Therein, the Board noted "To deny the requested variances would be to deny the property owner a reasonable use of her property and would render the site useless." Although this inference as to value may be drawn, it cannot be the sole consideration relied on. As

stated earlier herein, if that were the case, every residentially zoned lot in Baltimore County could be developed, notwithstanding its size and configuration. In such a case, the provisions of Section 1B02.3.C.1 would be rendered worthless.

It is also to be noted that not only does the property owner need show "practical difficulty", but Section 307.1 of the B.C.Z.R. requires a second finding; namely, that a variance cannot be granted unless a finding is made that there is no injury to the public welfare. Two factors lead me to conclude that this test is not satisfied in the pending case. First, the adjoining dwellings are all on larger lots. Frankly, the property is too small and development thereon would be inconsistent with the surrounding locale. Secondly, and as importantly, proper access to the site is questionable. As noted, Lafayette Avenue, to the west, is a paper street. Arunah Avenue, to the south, is not paved at that portion thereof which abuts this property. Therefore, a serious question is presented as to whether vehicular access can even be provided. Even if same were allowed from the paved portion of Lafayette Avenue to the northwest, the house would be oriented towards Mr. Baker's house at 405 Lafayette Avenue and would unquestionably cause an adverse effect to that lot. Thus, for these reasons, the special hearing shall be granted, so as to prohibit development of this site.

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

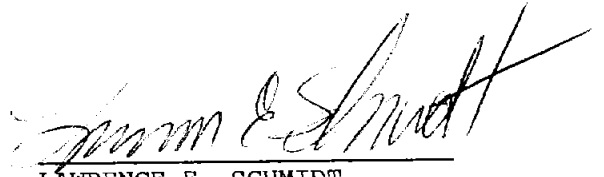
THEREFORE IT IS ORDERED by the Zoning Commissioner of Baltimore County this 25<sup>th</sup> day of November, 1992 that, pursuant to the Petition for Special Hearing, prohibiting development of the herein described residential property, known as lots Nos. 31 and 32, Arunah Avenue, located in a D.R.5.5 zone,

11/25/92  
Mr. Shorpe



and consisting of less than the required 6,000 sq. ft., required in Section 1B03.C.1 of the B.C.Z.R., be and is hereby GRANTED.

Any appeal from this decision must be taken in accordance with the applicable provisions set forth in Section 26-132 of the Baltimore County Code.



LAWRENCE E. SCHMIDT  
Zoning Commissioner for  
Baltimore County

LES:mmn

ORDER RECEIVED FOR FILING

Date

11/25/92

By

M. Shorah

Baltimore County Government  
Zoning Commissioner  
Office of Planning and Zoning



Suite 113 Courthouse  
400 Washington Avenue  
Towson, MD 21204

(410) 887-4386

November 24, 1992

Mr. George Baker  
405 Lafayette Avenue  
Baltimore, Maryland 21229

William T. Glasgow, Esquire  
10715 Charter Drive, Suite 250  
Columbia, Maryland 21044

RE: Petition for Special Hearing  
George Baker, Petitioner  
Lena Guise, Property Owner  
NE/S Arunah Avenue, 300 ft. SE of c/l Maryland Avenue  
Lots #31 and 32 Arunah Avenue

Gentlemen:

Enclosed please find a copy of the decision rendered in the above captioned matter. The Petition for Special Hearing has been granted.

In the event any party finds the decision rendered unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Appeals Clerk at 887-3391.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt", is written over the typed name.

LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:mmm  
encl.

cc: Mrs. Lena Guise  
3306 Strickland Street  
Baltimore, Maryland 21229

cc: Peoples Counsel

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stated earlier herein, if that were the case, every residentially zoned lot in Baltimore County could be developed, notwithstanding its size and configuration. In such a case, the provisions of Section 1B02.3.C.1 would be rendered worthless.

It is also to be noted that not only does the property owner need show "practical difficulty", but Section 307.1 of the B.C.Z.R. requires a second finding; namely, that a variance cannot be granted unless a finding is made that there is no injury to the public welfare. Two factors lead me to conclude that this test is not satisfied in the pending case. First, the adjoining dwellings are all on larger lots. Frankly, the property is too small and development thereon would be inconsistent with the surrounding locale. Secondly, and as importantly, proper access to the site is questionable. As noted, Lafayette Avenue, to the west, is a paper street. Arunah Avenue, to the south, is not paved at that portion thereof which abuts this property. Therefore, a serious question is presented as to whether vehicular access can even be provided. Even if same were allowed from the paved portion of Lafayette Avenue to the northwest, the house would be oriented towards Mr. Baker's house at 405 Lafayette Avenue and would unquestionably cause an adverse effect to that lot. Thus, for these reasons, the special hearing shall be granted, so as to prohibit development of this site.

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

THEREFORE IT IS ORDERED by the Zoning Commissioner of Baltimore County this 25<sup>th</sup> day of November, 1992 that, pursuant to the Petition for Special Hearing, prohibiting development of the herein described residential property, known as lots Nos. 31 and 32, Arunah Avenue, located in a D.R.5.5 zone,

11/25/92  
Mr. Shorpe

IN THE MATTER OF  
THE APPLICATION OF  
GEORGE BAKER /Petitioner  
FOR A SPECIAL HEARING ON PROPERTY  
LOCATED ON THE NORTHEAST SIDE  
ARUNAH AVENUE, 300' SOUTHEAST OF  
CENTERLINE MARYLAND AVENUE (LOTS  
#31 AND #32, ARUNAH AVENUE)  
1ST ELECTION DISTRICT  
1ST COUNCILMANIC DISTRICT

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* CASE NO. 92-477-SPH  
\*

\* \* \* \* \*

RULING ON PEOPLE'S COUNSEL'S MOTION TO DISMISS APPEAL

The Board has received a Motion to Dismiss Appeal filed by People's Counsel for Baltimore County and the Memorandum of Law in Opposition to Motion to Dismiss filed by Lena Guise, Property Owner, by and through her attorneys Conwell F. Sapp and William T. Glasgow, in the above-entitled matter.

Upon this Board's review and consideration of the foregoing Motion and Memorandum of Law in Opposition thereto,

IT IS HEREBY ORDERED by the County Board of Appeals of Baltimore County that said Motion to Dismiss Appeal filed herein by People's Counsel for Baltimore County be and the same is hereby GRANTED.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

  
William T. Hackett, Chairman

Date: Nov. 9, 1992



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

November 9, 1992

Phyllis Cole Friedman  
People's Counsel for Baltimore County  
Room 47, Old Courthouse  
400 Washington Avenue  
Towson, MD 21204

RE: Case No. 92-477-SPH  
George Baker/Petitioner

Dear Ms. Friedman:

Enclosed please find a copy of the Ruling on People's Counsel's Motion to Dismiss issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Very truly yours,

  
Kathleen C. Weidenhammer  
Administrative Assistant

encl.

cc: Conwell F. Sapp, Esquire  
William T. Glasgow, Esquire  
Mr. George Baker  
Ms. Lena Guise  
P. David Fields  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr.  
Docket Clerk - Zoning  
Arnold Jablon, Director of  
Zoning Administration  
Public Services





IN THE MATTER OF  
Lots Nos. 31 & 32  
of Arunah Avenue

\* BEFORE THE  
\* BALTIMORE COUNTY  
\* BOARD OF APPEALS  
\* Case No. 92-477-SPH  
92-30-A

\*\*\*\*\*

MEMORANDUM OF LAW  
IN OPPOSITION TO MOTION TO DISMISS

Facts

Lena Guise, property owner, filed a request for variances for Lots 31 and 32 on Arunah Avenue, Case No. 92-30-A before the Zoning Commissioner of Baltimore County. Such petition was denied. This decision was appealed and reversed by the Baltimore County Board of Appeals following a hearing. No appeal was taken to Circuit Court. Protestants in 92-30-A filed for a second hearing before the Zoning Commissioner on the same property concerning the legality of property owner developing a property of less than 6,000 square feet. Another hearing was granted and the case was re-numbered as 92-477. People's Counsel, although not a party in the first case, entered her appearance. The hearing was held on July 27th, 1992 before Zoning Commissioner Lawrence Schmidt. No evidence was taken but argument was heard on a preliminary Motion to Dismiss brought by the property owner. Commissioner Schmidt withheld decision and requested written submissions. Following submission of Memorandum of Law, Commissioner Schmidt on September 24, 1992, denied the Motion to Dismiss. Property Owner timely appealed

*Michael J. ...*

this denial to the Baltimore County Board of Appeals. Peoples Counsel filed a Motion to Dismiss the appeal and this Memorandum of Law is in response.

#### Argument

People's Counsel contends that the appeal of a Zoning Commissioner's denial of a Motion to Dismiss cannot be heard because the denial was not a final judgment. While it is true that the general rule is that an interlocutory order is not final, there are important exceptions.

The first exception is the collateral order doctrine. An immediate appeal is proper if four conditions are met; (1) the order must conclusively determine a disputed question, (2) the order must resolve an important issue, (3) the order must be separate from the merits of the case, (4) the order would be effectively unreviewable on appeal from final judgment.

The Motion to Dismiss was brought by Property Owner based on res judicata. Denial of the motion by the Zoning Commissioner conclusively determined the disputed right of protestants to a second hearing. The issue decided concerned the authority, jurisdiction, and right of the Zoning Commissioner to hold such a hearing when the decision of the Baltimore County Board of Appeals had not been appealed. This is surely an important issue. The merits of the case concern the standards necessary for the granting of property variances. The merits are separate and distinct from the procedural issues which are raised by res judicata. Res judicata is a defense which will be considered waived if not asserted immediately.

Friedenthal, Kane & Miller, Civil Procedure Hornbook, Series (1985) § 14.3. Will a full review be available after a second final judgment? A second final judgment is in itself an oxymoron. The property owner has a right to avoid the hearing set by the Zoning Commissioner entirely. The harm will have already occurred and will not be subject to correction through later review. Public Service Comm'n v. Patuxent Valley, 300 Md. 200, 477 A.2d 759 (1984).

When a tribunal exceeds its authority an immediate appeal will lie prior to a decision on the merits. Cohen v. Willett, 269 Md. 194, 304 A.2d 824 (1973). Flower World of America v. Whittington, 39 Md. App. 1987, 385 A.2d 85 (1978). The basis for the res judicata was that the Zoning Commissioner was without authority to hold a hearing on questions already settled at the administrative appellate level. This is a second exception to the final judgment rule.

The principles of res judicata, while related, are different from those of collateral estoppel. The Motion to Dismiss was based on res judicata, but the decision by the Zoning Commissioner denying the Motion was premised on collateral estoppel. The Zoning Commissioner erred in determining that the issue of side yard setbacks and lot size are not identical issues and as a consequence res judicata did not apply. The thrust of res judicata is not whether issues are identical but whether any claims which were brought or which could have been brought in the original action bar a subsequent action between the same parties on the same cause of action.

Thus, if a proceeding between parties involves the same cause of action as a previous proceeding between the same parties, the principle of res judicata applies and all matters actually litigated or that could have been litigated are conclusive in the subsequent proceeding. Alvey v. Alvey, 225 Md. 386, 390, 171 A.2d 92, 94 (1961); Snodgrass v. Stubbs, 192 Md. 287, 290-91, 64 A.2d 130, 132 (1949); State v. Brown, 64 Md. 199, 204, 1 A. 54, 56 (1885). If a proceeding between parties does not involve the same cause of action as a previous proceeding between the same parties, the principle of collateral estoppel applies, and only those facts or issues actually litigated in the previous action are conclusive in the subsequent proceeding. Bankers & Shippers Ins. Co. of New York, 287 Md. at 652, 415 A.2d at 284; MCP, Inc., 279 Md. at 33, 367 A.2d at 489; Prescott v. Coppage, 266 Md. 562, 570-73, 296 A.2d 150, 154-55 (1972). When the principle of collateral estoppel applies, facts or issues decided in the previous action are conclusive only if identical to facts or issues presented in the subsequent proceeding. MPC, Inc., 279 Md. at 35, 367 A.2d at 490; see Washington Suburban Sanitary Comm'n v. TKU Assocs., 281 Md. 1, 18-19, 376 A.2d 505, 514 (1977).

Protestants and People's Counsel are barred from raising the question of lot size because the opportunity was available to them and not used at the Board of Appeals hearing. Makall v. Zayre Corp., 293 Md. 291, 443 A.2d 98, 102 1982; see also, MCP Inc. v. Kenny, 279 Md. 29, 367 A.2d 486 (1977).

Res judicata is rigidly formal and works mechanically. It resolutely ignores the substantive merit of the judgment it enforces. Decisions that plainly are wrong and that would be reversed on appeal, were that route available, are valid final judgments for res judicata finality of decision and protection from harassment would be frustrated completely if a plaintiff could evade the doctrine simply by arguing that the original decision was wrong. Res judicata reflects the policy that sometimes

it is more important that a judgment be stable than that it be correct.

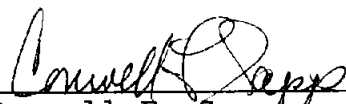
Friedenthal, Kane & Miller, Civil Procedure, Hornbook Series § 14.3 at 616. There is nothing which indicates that the Board of Appeals made an error and if such an error had been made Circuit Court was the property place to raise the question. Civil Procedures, Hornbook Series (1985) § 14.3.

A factor addressed by courts considering the appealability of interlocutory orders is the harm which will occur in the event the appeal is not heard. Property Owner had a buyer for her property which sale was based on the variance approval by the Baltimore County Board of Appeals. The approval was obtained May 6, 1992. It is now November of 1992 with a second hearing scheduled before the Zoning Commissioner on November 10, 1992. The sale may well be lost. In the event that the Zoning Commissioner denies the area variance another appeal will be necessary adding additional time and expense. Additional legal time, filing fees and transcript costs have already been incurred. The original variance petition was filed on November 7, 1991.

Whether time and money are immediate harm is an open question but surely the law should serve as a shield in the case of Lena Guise. This is vexatious litigation.

Respectfully submitted,

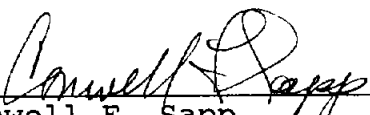


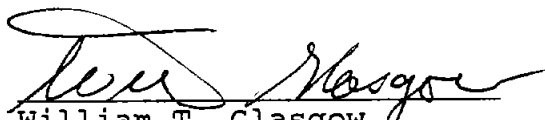
  
Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044  
(410) 740-4600

  
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6<sup>th</sup> day of November 1992, a copy of the foregoing Memorandum of Law in Opposition to Motion to Dismiss was sent first class mail, postage prepaid to George Baker, 405 Lafayette Avenue, Baltimore, Maryland and Phyllis Friedman, Esquire, Peoples Counsel, Baltimore County Zoning Office, Courthouse, Towson, MD 21204.

  
Conwell F. Sapp

  
William T. Glasgow

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IN THE MATTER OF  
Lots Nos. 31 & 32  
of Arunah Avenue

\* BEFORE THE  
\* BALTIMORE COUNTY  
\* BOARD OF APPEALS  
\* Case No. 92-477-SPH  
92-30-A

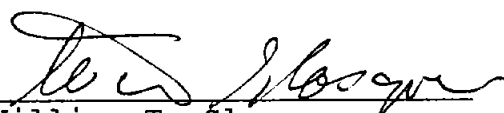
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MOTION TO DENY PEOPLE'S COUNSEL'S  
MOTION TO DISMISS

Lena Guise, Property Owner, by and through her attorneys  
Conwell F. Sapp and William T. Glasgow hereby moves to deny the  
Motion to Dismiss Appeal filed by People's Counsel in the above-  
referenced matter.

In support of this Motion, Property Owner submits the  
accompanying Memorandum of Law.

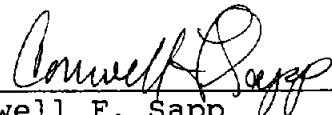
  
Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044  
(410) 740-4600

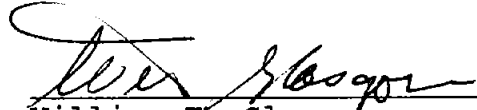
  
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

MICROFILMED

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6<sup>th</sup> day of November, 1992, a copy of the foregoing Motion to Deny People's Counsel's Motion to Appeal was sent first class mail, postage prepaid to George Baker, 405 Lafayette Avenue, Baltimore, Maryland and Phyllis Friedman, Esquire, Peoples Counsel, Baltimore County Zoning Office, Courthouse, Towson, MD 21204.

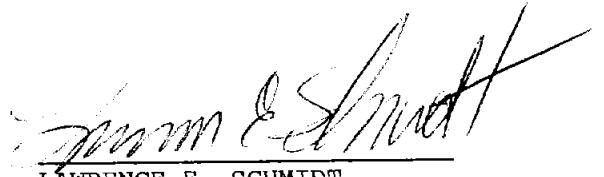
  
Conwell F. Sapp

  
William T. Glasgow

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and consisting of less than the required 6,000 sq. ft., required in Section 1B03.C.1 of the B.C.Z.R., be and is hereby GRANTED.

Any appeal from this decision must be taken in accordance with the applicable provisions set forth in Section 26-132 of the Baltimore County Code.



LAWRENCE E. SCHMIDT  
Zoning Commissioner for  
Baltimore County

LES:mmn

ORDER RECEIVED FOR FILING

Date

11/25/92

By

M. Shorah

# REESE AND CARNEY

DAVID A. CARNEY  
DANIEL H. SCHERR  
DAVID C. HJORTSBERG  
LAURENCE B. RABER  
KEVIN J. KELEHAN  
JUDITH S. BRESLER  
JEFFREY A. KREW  
MICHAEL S. MOLINARO  
L. ROLAND STURM  
JOAN M. BECKER  
CONWELL F. SAPP  
BETH A. JACKSON  
SUSAN E. BEASLEY

ATTORNEYS AT LAW  
10715 CHARTER DRIVE  
COLUMBIA, MARYLAND 21044  
\_\_\_\_\_  
(410) 740-4600  
WASHINGTON AREA  
(301) 621-5255  
\_\_\_\_\_  
BALTIMORE FAX (410) 730-7729  
WASHINGTON FAX (301) 621-5273

OF COUNSEL  
CHARLES A. REESE  
\_\_\_\_\_  
255 N. WASHINGTON STREET  
SUITE 505  
ROCKVILLE, MARYLAND 20850  
\_\_\_\_\_  
(301) 762-6210

November 6, 1992

Baltimore County  
Board of Appeals  
400 Washington Avenue  
Room 49  
Towson, Maryland 21204

ATTN: Ms. Weidenhammer

Dear Ms. Weidenhammer:

Re: In the Matter of Lots Nos. 31 & 32 of Arunah Avenue  
Case No. 92-477-SPH, 92-30-A

Enclosed please find for filing Motion to Deny People's Counsel's Motion to Dismiss and accompanying Memorandum of Law for the above-referenced matter.

Thank you for your anticipated cooperation.

Very truly yours,

REESE AND CARNEY



Conwell F. Sapp

CFS/djp

Enclosures

*RECEIVED*

*11/06/92*  
*CPA*  
*KAS*



RE: PETITION FOR SPECIAL HEARING : BEFORE THE COUNTY BOARD  
NE/S ARUNAH AVE., 300' SE OF  
C/L MARYLAND AVE. : OF APPEALS  
(LOTS #31 & #32, ARUNAH AVE.)  
1ST ELECTION DISTRICT : OF BALTIMORE COUNTY  
1ST COUNCILMANIC DISTRICT : Case No. 92-477-SPH  
GEORGE BAKER, PETITIONER  
LENA GUISE, PROPERTY OWNER/ :  
APPELLANT

: : : : : :

MOTION TO DISMISS APPEAL

People's Counsel for Baltimore County hereby moves to dismiss the appeal of the Zoning Commissioner's Ruling on Preliminary Motion on the grounds that no final order has been issued by the Zoning Commissioner and that the matter is not ripe for appeal.

Phyllis Cole Friedman  
Phyllis Cole Friedman  
People's Counsel for Baltimore County

Peter Max Zimmerman  
Peter Max Zimmerman  
Deputy People's Counsel  
Room 47, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204  
(410) 887-2188

MEMORANDUM OF POINTS AND AUTHORITIES:

Even though this is an administrative appeal, the Board should adopt the same principles as the courts and require that an appeal only be allowed from a decision in which Appellants have no further judicial process available. See Verbal

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Corporation, et al. v. Hupfer, et al., Court of Special Appeals  
No. 1174, September Term, 1987, Per Curiam Opinion (1988).

If this position is not adhered to by the Board, it would enable Appellants to bypass the Zoning Commissioner's rulings entirely and would overburden the Board and not be within the spirit and intent of the administrative structure.

Further, for the reasons described in the attached memorandum filed by People's Counsel with the Zoning Commissioner, the substance of this matter should be addressed by the Zoning Commissioner.

Phyllis Cole Friedman  
Phyllis Cole Friedman

I HEREBY CERTIFY that on this 2nd day of November, 1992, a copy of the foregoing Motion to Dismiss Appeal was mailed to Conwell F. Sapp, Esquire, and William T. Glasgow, Esquire, Reese and Carney, 10715 Charter Drive, Suite 200, Columbia, MD 21044, Attorneys for Appellant; George Baker, 405 LaFayette Ave., Baltimore, MD 21228; and Lawrence E. Schmidt, Zoning Commissioner, Room 113, Courthouse, 400 Washington Ave., Towson, MD 21204.

Phyllis Cole Friedman  
Phyllis Cole Friedman

IN THE MATTER OF  
LOT NOS. 31 & 32  
ARUNAH AVENUE

\* BOARD OF APPEALS  
\* BALTIMORE COUNTY  
\* SPH 92-477

\* \* \* \* \*

PETITION FOR APPEAL

Lena Guise, Property Owner, by and through her attorneys Conwell F. Sapp and William T. Glasgow, files this Petition for Appeal from an order of the Zoning Commissioner denying Property Owner's Motion to Dismiss.

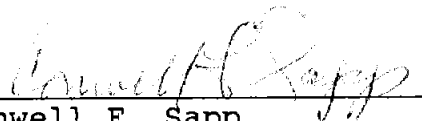
1. The Board of Appeals issued an opinion in Case No. 92-30-A dated May 6, 1992, in which it granted the Property Owner's requested variances for this property. Attached as Exhibit A.

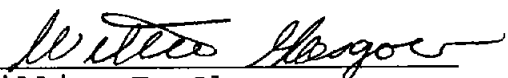
2. After the time for appeal to Circuit Court had run, a neighbor, Petitioner George Baker brought a separate case before the Zoning Commissioner on a claim which concerned the fact that the lot was undersized which was assigned a new case number SPH 92-477.

3. Property Owner brought a Motion to Dismiss attached as Exhibit B on the basis of res judicata. A Post-Hearing Memorandum was also filed, attached as Exhibit C.

4. In a ruling dated September 24, 1992, the Zoning Commissioner denied such motion, attached as Exhibit D.

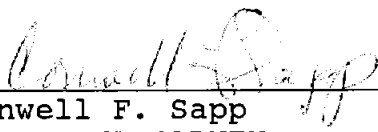
WHEREFORE, Property Owner appeals the denial of her Motion to Dismiss and respectfully requests a hearing on this matter.

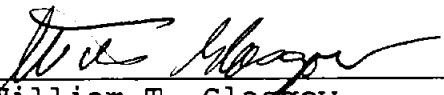
  
Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044  
(410) 740-4600

  
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of Oct, 1992, a copy of the foregoing Petition for Appeal was sent first class mail, postage prepaid to George Baker, 405 Lafayette Avenue, Baltimore, MD 21229; Phyllis Friedman, Esquire, Peoples Counsel, Baltimore County Zoning Office, Courthouse, Towson, MD 21204 and Lawrence E. Schmidt, Zoning Commissioner, 400 Washington Avenue, Towson, MD 21204.

  
Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
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clb\zoning\cfs\guise.app

*Continued*



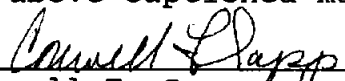
IN THE MATTER OF  
LOT NOS. 31 & 32  
ARUNAH AVENUE

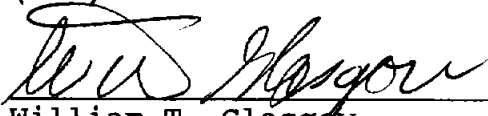
\* BOARD OF APPEALS  
\* BALTIMORE COUNTY  
\* SPH 92-477

\* \* \* \* \*

APPEAL

Please enter an appeal in the above-captioned matter.

  
Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044  
(410) 740-4600

  
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

*noted and filed*

|                                     |   |                     |
|-------------------------------------|---|---------------------|
| IN RE: PETITION FOR SPECIAL HEARING | * | BEFORE THE          |
| NE/S Arunah Ave., 300 ft. SE        |   |                     |
| of c/l Maryland Avenue              | * | ZONING COMMISSIONER |
| (Lots #31 & #32, Arunah Ave.)       |   |                     |
| 1st Election District               | * | OF BALTIMORE COUNTY |
| 1st Councilmanic District           |   |                     |
|                                     | * | CASE # 92-477-SPH   |
| George Baker, Petitioner            |   |                     |
| Lena Guise, Property Owner          | * |                     |

\*\*\*\*\*  
RULING ON PRELIMINARY MOTION

The above captioned matter comes before the Zoning Commissioner as a Petition for Special Hearing for that property known as lots No. 31 and No. 32 on Arunah Avenue in the Catonsville Heights section of Baltimore County. The Petition was filed by George Baker, a neighbor of the subject site. The hearing for the Petition was scheduled on July 27, 1992. However, prior to presentation of any evidence and/or argument on the merits, counsel for the property owner moved to dismiss the Petition. Oral arguments and subsequent memorandums were offered by the parties. This ruling addresses only those issues raised within the Motion to Dismiss.

A brief history and overview of the subject property and its zoning history is in order. As noted, the subject site is comprised of 2 lots within the Catonsville Heights subdivision. The subject property is owned by Lena Guise. The property is approximately 5,280 sq. ft. in area and is zoned D.R.5.5. Under the provisions of Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), the minimum net lot area per dwelling unit in a D.R.5.5 zone is 6,000 sq. ft. Further, that section of the regulations provides that any such dwelling on a lot zoned D.R.5.5 must have a 10 ft. side yard setback.

During the summer of 1991, Ms. Guise apparently decided to construct a dwelling on the subject lot. A house approximately 60 ft. deep and 26 ft.

ORDER RECEIVED FOR FILING

Date

By

9/24/92  
*[Signature]*

*[Faint stamp]*

wide was proposed. In that a building envelope of that size would result in only a 7 ft. side yard setback, Ms. Guise filed a Petition for Zoning Variance with this office. The Petition requested a variance from Section 1B02.3.C.1, "to permit a side yard setback of 7 ft. and a side street setback of 7 ft. in lieu of the required 10 ft. and 25 ft. respectively." The case came in for a hearing before Deputy Zoning Commissioner, Timothy M. Kotroco. Following a public hearing, the Deputy Zoning Commissioner denied the Petition by his Order dated October 8, 1991. Unsatisfied with this result, Ms. Guise appealed Deputy Zoning Commissioner Kotroco's decision to the County Board of Appeals. After a hearing, the Board overruled Deputy Zoning Commissioner Kotroco's opinion and granted the variance on May 6, 1992. There has been no appeal of the Board's decision to the Circuit Court for Baltimore County. Thus the Board's decision is final. Nonetheless, unhappy with this result, one of Ms. Guise's neighbor (Mr. Baker) filed a Petition for Special Hearing in the instant case. This Petition requests a determination of whether "the herein described property, located in a D.R.5.5 zone and consisting of less than the required 6,000 sq. ft. may be residentially developed." That is, notwithstanding the Board's ruling granting the variance as to side yard setbacks, Mr. Baker seeks a determination as to whether the lot can be developed in view of the fact that the square foot area of same is less than the required 6,000 sq. ft.

As indicated above, counsel for Ms. Guise appeared at the public hearing and raised objection to the propriety of the current Petition and hearing. Simply stated, Ms. Guise believes that this issue has been litigated and that the present Petition is barred from consideration by the doctrine of res judicata. Although the memorandum of the counsel representing Ms. Guise speaks for itself, it is to be noted that the primary thrust of same

is that the Board's ruling was dispositive of this issue and relitigation of same is improper.

People's Counsel and the neighboring property owners disagree. They believe that the issues are different (side yard setback vs. net area requirement) and thus the case should be heard.

As indicated, People's Counsel and counsel for Ms. Guise both submitted legal memorandums setting forth their positions. It seems apparent that both sides recognize that Board of County Commissioners v. Racine, 24 Md. App. 435, 332 A.2d 306 (1975) is the leading case in Maryland on this issue. Racine stands for the general proposition that the doctrine of res judicata can be applicable to the decisions of an administrative body, i.e., in this case, the Zoning Commissioner and the Board of Appeals. The principals of res judicata are well settled. Basically, the doctrine provides that once a final judgment has been entered, relitigation of the cause of action and issues presented is improper. If it were not so, litigation would be endless and parties thereto would never have disputes and issues resolved. Clearly, the public policy rationale for the doctrine is justified.

As indicated, Racine discussed the application of the res judicata to administrative bodies. Noted the Court, "We recognize, as indeed we must, that an unreversed final decision by a Zoning Board, passed in the exercise of its discretion upon issues of fact or upon mixed issues of law in fact are fully binding upon parties to the cause and their privies as to all issues determined thereby." Racine supra, pg. 314. It is clear that a prior decision by the County Board of Appeals or Zoning Commissioner may bar relitigation of identical issues, notwithstanding that the prior decision may not have undergone judicial scrutiny on appeal. However, that having been said, the doctrine of res judicata is to be applied narrowly. Only if

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Date

By

Baltimore County Government  
Zoning Commissioner  
Office of Planning and Zoning



Suite 113 Courthouse  
400 Washington Avenue  
Towson, MD 21204

(410) 887-4386

November 24, 1992

Mr. George Baker  
405 Lafayette Avenue  
Baltimore, Maryland 21229

William T. Glasgow, Esquire  
10715 Charter Drive, Suite 250  
Columbia, Maryland 21044

RE: Petition for Special Hearing  
George Baker, Petitioner  
Lena Guise, Property Owner  
NE/S Arunah Avenue, 300 ft. SE of c/l Maryland Avenue  
Lots #31 and 32 Arunah Avenue

Gentlemen:

Enclosed please find a copy of the decision rendered in the above captioned matter. The Petition for Special Hearing has been granted.

In the event any party finds the decision rendered unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Appeals Clerk at 887-3391.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Lawrence E. Schmidt", is written over the typed name.

LAWRENCE E. SCHMIDT  
Zoning Commissioner  
for Baltimore County

LES:mmm  
encl.

cc: Mrs. Lena Guise  
3306 Strickland Street  
Baltimore, Maryland 21229

cc: Peoples Counsel

**MICROFILMED**



the issues are the same, should the doctrine be applied. This is clear from the Court's language in Racine where, in examining the facts of the case before it, the Court noted "In the subject case, it is uncontroverted that the issue presented is identical; the parties are identical." Racine supra, pg. 311. Later, quoting from McKinzie v. Baltimore and Ohio Railroad Co. 28 Md. 161 (1867), the Court noted "A judgment, to operate as an estoppel, must be upon the same subject matter and between the same parties." (emphasis added) Racine supra, pg. 313. Even Black's Law Dictionary, Fifth Edition, 1979, notes that the application of res judicata "requires identity in things sued for as well as identity of cause of action, of persons and parties to an action and of quality in persons for or against whom claim is made."

It is apparent from these citations that the identical issue must exist in order for the doctrine of res judicata to be applicable. Does such an identical issue in this case exist? The answer must be in the negative.

Specifically, although determination of the applicability of the same section of the B.C.Z.R. is requested, two distinct and different requirements are at issue in these cases. Specifically, in the prior case, Deputy Commissioner Kotroco and the Board of Appeals considered the propriety of a side yard setback. In the case before me, consideration of the lot area is the germane issue. Determination of whether a variance should be granted from either of these requirements may require consideration of different issues; e.g., impact of a variance from a side yard setback upon an adjacent property may be quite different from the impact on neighboring properties of development on an undersized tract.

Further, a variance from the square foot area requirement may or may not involve a side yard setback variance. For example, a lot may have an

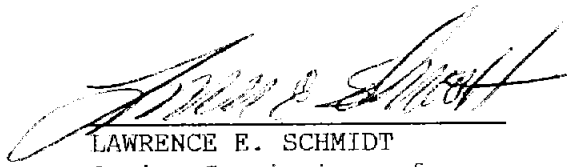
area in excess of 6,000 sq. ft., yet still require a side yard setback variance in order to be developed. The situation exists vice versa. That is, an undersized lot may not require any side yard setback variance.

Since these are the possibilities, I cannot conclude that the issues presented are identical. The Petitioner in the present case may present yet other considerations inapplicable to the initial case. Further, Ms. Guise's counsel's argument notwithstanding, it is clear that the County Board of Appeals did not resolve the undersized lot issue at the hearing before them. Although there are fleeting references to the lot size within the transcript, the previous variance case involved only the side yard setback issues. There is no evidence that the Board considered, much less ruled upon, whether construction would be proper on an undersized lot.

I also concur with Peoples Counsel's conclusion that it is the property owner's burden to seek relief from all applicable regulations. The direction of the Zoning Technician who accepted the first Petition notwithstanding, Ms. Guise is responsible for securing all variances necessary to develop. She did not request an area variance previously; and it was not granted. If it is now needed to develop, it must be obtained.

For the aforementioned reasons, I shall deny Ms. Guise's Motion to Dismiss. This case shall be set for hearing on the merits of the Petition in due course.

THEREFORE, it is this 24<sup>th</sup> day of Sept., 1992 Ordered that the Motion to Dismiss be and is hereby DENIED.

  
LAWRENCE E. SCHMIDT

Zoning Commissioner for  
Baltimore County

LES:mmn

Baltimore County Government  
Zoning Commissioner  
Office of Planning and Zoning



Suite 113 Courthouse  
400 Washington Avenue  
Towson, MD 21204

(410) 887-4386

September 23, 1992

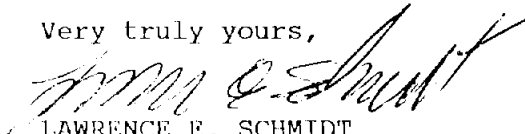
William T. Glasgow, Esquire  
Suite 250  
10715 Charter Drive  
Columbia, Maryland 21044

RE: Ruling on Preliminary Motion  
Petition for Special Hearing  
Lots No 31 and 32, Arunah Avenue  
Lena Guise, Property Owner  
George Baker, Petitioner  
Case No. 92-477-SPH

Dear Mr. Glasgow:

Enclosed please find a copy of my Ruling on Preliminary Motion rendered in the above captioned matter.

Very truly yours,

  
LAWRENCE E. SCHMIDT  
Zoning Commissioner

LES:mmn  
att.

cc: Mr. George Baker  
405 Lafayette Avenue  
Baltimore, Maryland 21228  
cc: Peoples Counsel  
Phyllis Friedman, Esquire  
cc: Ms. Lena Guise  
3306 Strickland Street  
Baltimore, Maryland 21229

**MICROFILMED**

IN THE MATTER OF  
Lots Nos. 31 & 32  
of Arunah Avenue

\* Case No. 92-477-SPH  
\* BALTIMORE COUNTY  
\* ZONING COMMISSIONER

\* \* \* \* \*

MEMORANDUM OF LAW

Parties are Precluded from  
Re-litigating the Same Issues

The original variance petition filed by Property Owner was drafted with the aid of a Baltimore County Zoning technician because she was not represented by counsel at the time. The Property Owner explained what she intended and the wording was designed by the technician. Any deficiency in the petition is not an error of the Property Owner.

The property and the parties are identical to those in the hearing before the Deputy Zoning Commissioner and the Board of Appeals in Case No. 92-30-A. The issue of the property size and its capability of development have been heard through the testimony of Midge Stockdale concerning other area homes on property of the exact same dimensions. Evidence was entered of other variances granted in the neighborhood on properties of the same size which were subsequently improved. Expert testimony was presented by an engineer concerning the suitability of the property for a residence and the appropriate siting of such residence. All of this evidence and testimony was appropriately weighed by the Board of Appeals and incorporated into its Decision and Order. This was a final decision in the matter and can be appealed to the Circuit Court of Baltimore County if



timely filed with appropriate grounds. No other avenue is open to the parties.

"An Adjudicative determination by an administrative tribunal is conclusive under the rules of res judicata only insofar as the proceeding resulting in the determination entailed the essential elements of adjudication including: . . . (b) The right on behalf of the party to present evidence and legal argument in support of the party's contention and fair opportunity to rebut evidence and argument by opposing parties . . . ." Re-statement of Judgments § 83 (1982). Res judicata principles apply to administrative hearings as well as proceedings in court. George Baker as well as other neighbors in opposition have had two separate opportunities to be heard and cannot be permitted to come through a back door to do what cannot be done through the front door.

When the principles of res judicata are applied to a zoning decision, a second action on the same property is precluded unless there is a substantial difference in the neighborhood or change in circumstances, see generally, Chatham Corp. v. Beltram, 243 Md. 138, 220 A.2d 589 (1966) and Woodlawn Area Cit. Ass'n v. Bd. of Co. Comm., 241 Md. 187, 216 A.2d 149 (1966). In the case sub judice, the underlying assumptions and reasons are the same as those previously heard. The opposing neighbors are attempting to prevent Lena Guise from the lawful use of her property. Any reasons contended by petitioner should have been put forward at previous hearings simply to avoid this sort of duplicative argument.

MICROFILMED



\* \* \* \* \*

# WELCOME

emphatic that res judicata does apply to administrative hearings. There are some administrative actions to which it does not apply such as some letter decisions by an agency but if there has been a hearing with each side able to present evidence res judicata applies. It applies even in hearings such as those held for individuals requesting Social Security benefits when there is, in fact, only one side. In this instance the protesting neighbors have twice had the hearing opportunity to hear and be heard. All issues regarding this property that could have been brought up at prior hearings should have been put forward. The underlying facts and assumptions of both cases are the same.

Peoples Counsel relies on Board of County Commissioner's v. Racine, 24 Md. App. 435 332 A.2d 306 (1975) for the premise that res judicata does not apply in a zoning case if an error of law has been made. This is incorrect on two levels. The most primary is that no illegality in the decision of the Board of Appeals can be shown. Secondly, the Court in Racine cited to work written by Professor Davis in 1958 to support its decision. Davis himself states that res judicata as it relates to administrative law was markedly changed by a Supreme Court decision in 1966 United States v. Utah Construction & Mining Company, 384 U.S. 394, 421-22 (1966). Davis in 1989 and the state of administrative law is markedly changed from 1958. The Davis quote cited by the Court in Racine was based on the 1942 Restatement of Judgments. The Restatement of Judgments was revised in 1982

as Restatement of Judgments 2d. Davis on res judicata explains the changing law.

What is happening is that the fundamentals summarized in the 1942 Restatement of Judgments are no longer followed. The Restatement of Judgments 2d (1982) is different in its fundamentals. What is more important is that the Supreme Court is signaling its general acceptance of the new fundamentals, of the new details, and of the new language. For instance, §27 of the Restatement of Judgments 2d states a general rule which is now law: "When an issue of fact or law is actually litigated and determined by a valid and final judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." Under §70 of the 1942 Restatement, a decision on a question of law was generally not binding in a subsequent action.

The Board of Appeals Decision was Legal and Final

People's Counsel presented a variety of legal theories which, while novel, are not persuasive. She postulated that variance allowing a reduction in the area of a particular property is in effect a change in the density requirements and the density change cannot be made by the Board of Appeals and is therefore illegal. The alchemy which changes an area requirement into a density classification is inexplicable. The authority used for many years by the Zoning Commissioner for area variances is clearly defined in §307.1 of the Baltimore County zoning regulations. Only one dwelling is proposed for this site. No violation is done to the purpose of the density requirements which were primarily designed to create better design in future subdivisions.

1B00.2 - Purpose. The D.R. zoning classification are established, pursuant to

the legislative findings set forth above, in order to:

- A. Foster a greater variety in housing types within future residential developments;
- B. Allow more feasible preservation of natural features and induce the reservation of ample and more suitably designed open spaces and parks, in order to better satisfy the needs of residents without economic disadvantage to developers;
- C. Allow greater flexibility in subdivision-development planning and provide for the inducement of more creative as well as more economic approaches to residential development, with the goal of desirable and distinctive identity and character of individual residential locales;
- D. Provide the means to satisfy differing housing-market requirements without rezoning, and thus without disruptive changes in density potential; and
- E. Provide for the application of residential zoning classifications in a manner more nearly in accord with comprehensive plans and comprehensive-planning goals.

The purpose and legislative intent was not to restrict an individual property owner so that she receives no economic benefit from a parcel of property which was subdivided in 1919 prior to any zoning regulations.

The same area as the subject property is listed on homes at 601 Maryland Avenue, 1006 Arunah Avenue, 501 Valkorn Road, 502A Dorchester Road and 521 Valkorn (new home). 6007 Montgomery Avenue was approved for construction last year. Case No. 91-245A for 5208 Carroll Place approved the same

variances in 1991. Any illegality on the part of the Zoning Commissioner or Board of Appeals is long standing. If such an act were illegal the recourse is through an appeal to Circuit Court and not a second hearing before the Zoning Commissioner.

Alternatively, People's Counsel suggested that the area requirement was overlooked by the Board of Appeals. Not only was this not overlooked but evidence was presented and considered by the Board and such approval was incorporated into their opinion. Direct reference in the opinion is made to the width of the lot, the proposed building envelope and the testimony of Midge Stocksdales regarding properties of a similar size in the immediate area. See Transcript, pp. 23 and 24, attached hereto as Exhibit A. Entered into evidence was a variance plat depicting the area of the property which was a part of the submission. Also submitted into evidence was the record of a variance granted for an identically sized property within two blocks of the subject property. See Transcript, pp. 13 and 14, attached hereto as Exhibit B.

The initial Petition for Zoning Variance which was prepared by a clerk/technician of the Zoning office in aid of the property owner was brought for a variance from regulations at 1B02.3.C.1 which states the minimum square footage for property and the set back requirements. The referenced regulations refer to both minimum area and set back. Both were considered by the Board of Appeals and



of less than the 6,000 sq. ft. required in Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (BCZR) may be residentially developed. The Zoning Commissioner granted the Petition for Special Hearing, thereby prohibiting development of the site. An appeal of the Zoning Commissioner's decision (November 25, 1992) is the matter before this Board.

The subject property is a wooded are consisting of two lots, each with a 20-foot front, bounded on two sides by unimproved paper roads (Lafayette Avenue and Arunah Avenue) that provide a larger perspective of the lot size than the actual metes and bounds of the parcel.

Catonsville Heights was subdivided in or about 1920 into small parcels of 20 feet. The subject parcel, lots 31 and 32, was purchased by Ms. Guise's father in the 1920's, and inherited by her in 1950. The unimproved property has been assessed at a value of \$22,000.00 and has required tax payment by the owner for the past 42 years. With the requested area variance, along with the previously granted variances for setbacks, Ms. Guise intends to sell the property to others for eventual development.

An issue in this hearing is the practice of builders seeking infill lots in older neighborhoods for development. Many old subdivisions, such as Catonsville Heights, have narrow 20-foot vacant lots never to be built upon unless several can be combined to create a buildable parcel that meets the zoning regulations.

Testifying for the Appellant, Midge Stocksdales reviewed her survey of single-family dwellings built upon undersized lots within the D.R. 5.5 community. Testimony and photographic exhibits pointed to several properties of less than 6,000 sq. ft., as well

IN THE MATTER OF  
THE APPLICATION OF  
GEORGE BAKER /Petitioner  
FOR A SPECIAL HEARING ON PROPERTY  
LOCATED ON THE NORTHEAST SIDE  
ARUNAH AVENUE, 300' SOUTHEAST OF  
CENTERLINE MARYLAND AVENUE (LOTS  
#31 AND #32, ARUNAH AVENUE)  
1ST ELECTION DISTRICT  
1ST COUNCILMANIC DISTRICT

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* CASE NO. 92-477-SPH  
\*

\* \* \* \* \*

RULING ON PEOPLE'S COUNSEL'S MOTION TO DISMISS APPEAL

The Board has received a Motion to Dismiss Appeal filed by People's Counsel for Baltimore County and the Memorandum of Law in Opposition to Motion to Dismiss filed by Lena Guise, Property Owner, by and through her attorneys Conwell F. Sapp and William T. Glasgow, in the above-entitled matter.

Upon this Board's review and consideration of the foregoing Motion and Memorandum of Law in Opposition thereto,

IT IS HEREBY ORDERED by the County Board of Appeals of Baltimore County that said Motion to Dismiss Appeal filed herein by People's Counsel for Baltimore County be and the same is hereby GRANTED.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

  
William T. Hackett, Chairman

Date: Nov. 9, 1992

although the variance petition could have been more carefully drafted, the area of the property in question was considered by the Board.

#### Entry of People's Counsel

People's Counsel has the authority to appear on behalf of the public on any zoning matter which she deems involves the public interest. The People's Counsel also as an aggrieved party has the authority to bring an appeal. People's Counsel v. Williams, 45 Md. App. 617 415 A.2d 585 (1980). The authority, however, has limits. To appeal, a party must be aggrieved and be a party to the proceeding below. In the first case before the Zoning Commissioner regarding this property People's Counsel did not appear. At the Board of Appeals hearing she advised the protestants outside of the hearing room prior to the hearing but chose not to appear at the hearing itself. She, therefore, lacked the party status necessary to appeal. The belated entry into a second hearing may be because of the lack of party status for purposes of appeal in the first case.

A principle of res judicata precludes the entry of People's Counsel at this eleventh hour.

A judgment, to operate as an estoppel must be upon the same subject matter and between the same parties. The term 'parties', however, is not restricted to those who appear as plaintiff and defendant upon the record. It includes those who are directly interested in the subject matter of the suit, knew of its pendency, and had the right to control, and direct, or defend it. The law, in dispensing even-handed justice to all, has wisely taken care 'ut sit finis litium', and if matters, which have been once solemnly decided, could

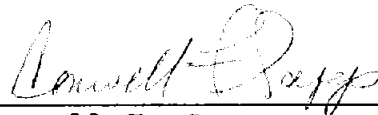
be again drawn into controversy, there would be no end of litigation and disputes. Mr. Greenleaf has happily said, 'justice requires that every cause be once fairly and impartially tried; but the public tranquility demands, that having been once so tried, all litigation of that question and between the same parties should be closed forever'." McKinzie v. B & O R.R., 28 Md. 161, at 174-5.

quoted in Board of County Commissioners v. Racine, 24 Md. 435, 332 A.2d 306 (1975). People's Counsel could have entered this case and raised whatever issues she considered pertinent earlier. By not doing so she is precluded from doing so later. It is patently unfair to the Petitioner to put her to the time and expense of resolving issues after the appeal time has passed which have already been the subject of a final judgment.

WHEREFORE, for the foregoing reasons Petitioner prays that case no. 92-477 be dismissed.

Respectfully submitted,

REESE AND CARNEY



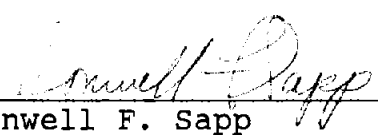
Conwell F. Sapp  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044



William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21<sup>st</sup> day of August, 1992, a copy of the foregoing Post Hearing Memorandum of Law was mailed, postage prepaid to George Baker, 405 Lafayette Avenue, Baltimore, Maryland and Phyllis Friedman, Esquire, People's Counsel, Baltimore County Zoning Office, Courthouse, Towson, Maryland 21204.

  
\_\_\_\_\_  
Conwell F. Sapp

clb\cfs\litig\guise.phm

## EXHIBIT A

6 1 A. Absolutely. Our office is just about four blocks  
2 away from there.

3 Q. How long have you been in this business?

4 A. Twelve years.

5 Q. Are you familiar generally with this Caton  
6 Industrial Heights area?

7 A. Very, very familiar. I have sold property there.  
8 Have listed property there.

9 Q. You have been working with Mrs. Guise?

10 A. For over, or just about two years now, trying to  
11 sell this property.

12 Q. Are you aware of other properties in the area of  
13 about this approximate size that have homes on them?

14 A. Yes. There are quite a few of them that have a  
15 40 foot lot that have been built on. Usually what they  
16 put on is a shotgun split by a builder, a 20 foot wide by  
17 32, or something similar to a townhouse. You could just  
18 take --

19 MR. DISNEY: Called a what?

20 THE WITNESS: Shotgun split.

21 Q. What's that? I am still having trouble with that

FILED



## EXHIBIT A

6 1 one.

2 A. A shotgun split. It's basically what they build  
3 in order to give the buyer as much living space as they  
4 can in a limited amount of building space. They are 20  
5 foot wide. They are at least 36 to 40 feet long so that  
6 the buyer has the access to the square footage to live on  
7 a very small lot.

8 Q. And are there a variety of these?

9 A. There are.

10 Q. In that area?

11 A. Not only in Catonsville Heights, but Catonsville  
12 Manor. There are some right off Winters Lane, which is in  
13 the same general area, four or five blocks.

14 Q. Where this lot is also?

15 A. Yes. Not only built. Built and sold.

16 MS. SAPP: I have no further questions.

17 MR. DISNEY: This is basically put on a lot so  
18 they had the ten foot setback on either side?

19 THE WITNESS: Yes.

20 THE CHAIRMAN: Mr. Baker?

21 CROSS EXAMINATION

## EXHIBIT B

4 1 Calculating that, using the total envelope as one  
2 building, we wouldn't even have one-tenth of one CFS  
3 causing the runoff.

4 Q. Can you identify these records?

5 A. This looks like a petition for a zoning variance,  
6 notice of a hearing, and appears to be that the Deputy  
7 Zoning Commissioner -- I am trying to see if -- this is a  
8 petition passed by the Deputy Zoning Commissioner for a  
9 variance for a side yard and setback and I believe -- I am  
10 going to have to read it more -- permit a side yard  
11 setback in lieu of the 25 in accordance to the  
12 petitioner's exhibit. And petitioner's exhibit shows a --  
13 and this shows a house sitting on a similar -- two, 20  
14 foot lots in Catonsville Heights at the intersection of  
15 Delaware Place and -- I don't know how to pronounce it --  
16 Aruna Avenue -- Aruna Avenue. And this was in 1988, I  
17 believe.

18 MS. SAPP: If you would, once this has been  
19 submitted, I would ask that you take an official notice  
20 that this property is two blocks away.

21 THE CHAIRMAN: Petitioner's Exhibit No. 4 will be

BOARD OF APPEALS

BOARD OF APPEALS

# REESE AND CARNEY

DAVID A. CARNEY  
DANIEL H. SCHERR  
DAVID C. HJORTSBERG  
LAURENCE B. RABER  
KEVIN J. KELEHAN  
JUDITH S. BRESLER  
JEFFREY A. KREW  
MICHAEL S. MOLINARO  
L. ROLAND STURM  
JOAN M. BECKER  
CONWELL F. SAPP  
BETH A. JACKSON  
SUSAN E. BEASLEY

ATTORNEYS AT LAW  
10715 CHARTER DRIVE

COLUMBIA, MARYLAND 21044

(410) 740-4600  
WASHINGTON AREA  
(301) 621-5255

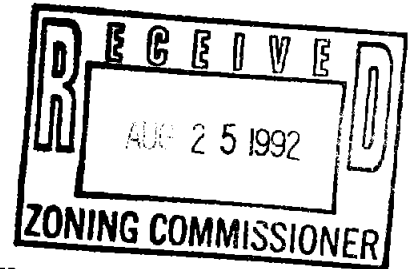
BALTIMORE FAX (410) 730-7729  
WASHINGTON FAX (301) 621-5273

OF COUNSEL  
CHARLES A. REESE

255 N. WASHINGTON STREET  
SUITE 505  
ROCKVILLE, MARYLAND 20850  
(301) 762-6210

August 21, 1992

Lawrence Schmidt  
Zoning Commissioner  
400 Washington Avenue  
Room 113  
Towson, MD 21204



Re: In the Matter of Lots Nos. 31 & 32  
of Arunah Avenue, Case No. 92-477-SPH

Dear Mr. Schmidt:

Please find enclosed for filing Post-Hearing Memorandum of Law for the above-referenced matter.

Very truly yours,

REESE AND CARNEY

*Conwell F. Sapp*  
Conwell F. Sapp

CFS/djp

Enclosure



from raising legal theories which might have been raised in the first case. That is not the situation here.

2. The Commissioner cannot overlook the basic issue in this matter and that is whether issuing a permit at this time would be an illegal act in view of the fact that the lot in question has less than 6000 square feet.

3. The issue of the variance from the 6000 square feet area requirement was in any event never before the Zoning Commissioner or the County Board of Appeals when the first petition for variance filed by the property owner was heard by them. There was also no mention of it in the petition or the advertisement or posted notice.

The effect of this oversight prevented People's Counsel and the public at large from having notice of any such issue.

Res judicata requires that there be identity in issues as well as persons and parties to the action. In this case, there is thus a critical issue raised for the first time. Moreover, the protestants, who now appear as parties, were not in a position to go beyond the actual petition due to the fact that this was an administrative matter, governed by the property owner's petition.

4. Since no variance was asked for or granted, the following choices exist:

a.) Determine that a variance from the 6000 square feet required would amount to a density variance and

refuse to issue a permit. This could be done administratively or quasi-judicially in this hearing.

b.) Determine that such a variance could be but has not been granted and either:

1. Rule upon it in this hearing;
2. Dismiss this petition, but require the lot owner to file a separate petition for such a variance; or
3. Dismiss this petition and determine that the County has somehow been estopped from requiring this variance. This would be an illogical result since the burden to request sufficient variances always rests with the property owner. (See decision dated July 14, 1992 In the Matter of Red Roof Inns, Inc., Circuit Court No. 91-CV-6923, attached as Exhibit A.) The failure of protestants cannot estop the County which has the ultimate burden to issue or not issue a building permit.

5. Alternatively, if this petition is dismissed on some theory of res judicata without even addressing the substantive issue, it may suggest a permit can be issued without a variance from the 6000 square foot area requirement. Should a permit then be issued based on the vacuum created by this action, it will be in derogation of the Zoning Regulations and amount to an illegal act.

For the above discussed reasons, People's Counsel requests the Zoning Commissioner not dismiss the instant petition and, instead, in the interest of judicial and administrative economy,





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

November 9, 1992

Phyllis Cole Friedman  
People's Counsel for Baltimore County  
Room 47, Old Courthouse  
400 Washington Avenue  
Towson, MD 21204

RE: Case No. 92-477-SPH  
George Baker/Petitioner

Dear Ms. Friedman:

Enclosed please find a copy of the Ruling on People's Counsel's Motion to Dismiss issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Very truly yours,

  
Kathleen C. Weidenhammer  
Administrative Assistant

encl.

cc: Conwell F. Sapp, Esquire  
William T. Glasgow, Esquire  
Mr. George Baker  
Ms. Lena Guise  
P. David Fields  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr.  
Docket Clerk - Zoning  
Arnold Jablon, Director of  
Zoning Administration  
Public Services



rule upon a.) whether a variance from the 6000 square foot area requirement is a density variance; and if it is not, b.) whether it should be granted in this instance.

Respectfully submitted,

Phyllis Cole Friedman  
Phyllis Cole Friedman  
People's Counsel for Baltimore County

Peter Max Zimmerman  
Peter Max Zimmerman  
Deputy People's Counsel  
Room 47, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204  
(410) 887-2188

I HEREBY CERTIFY that on this 12<sup>th</sup> day of August, 1992,  
a copy of the foregoing People's Counsel's Memorandum was mailed  
to William T. Glasgow, Esquire, Suite 250, 10715 Charter Dr.,  
Columbia, MD 21044; and George Baker, 405 LaFayette Ave.,  
Baltimore, MD 21228.

Phyllis Cole Friedman  
Phyllis Cole Friedman

PCF: ✓

PMZ: J

IN THE MATTER OF THE  
APPLICATION OF  
RED ROOF INNS, INC.  
FOR A VARIANCE ON PROPERTY  
LOCATED ON THE SOUTHWEST  
CORNER WEST TIMONIUM ROAD AND  
GREENSPRING DRIVE  
(111 WEST TIMONIUM ROAD  
8TH ELECTION DISTRICT  
4TH COUNCILMANIC DISTRICT

IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE COUNTY  
CASE NO. 91-CV-6923

MEMORANDUM OPINION AND ORDER

In connection with the construction of its motel at the intersection of Timonium Road and Greenspring Drive, Red Roof Inns, Inc. (Red Roof) asked the Zoning Commissioner (the Commissioner) to grant it variances from the Baltimore County Zoning Regulations relating to the size and number of signs which it could place on its property. (The Petition also sought permission to erect two satellite receiving dishes but the decision on that variance has nothing to do with this administrative appeal.) Specifically, Red Roof requested the Commissioner: "to permit one stationary free-standing sign with a face of 216 square feet at a height of 70 feet from grade level in lieu of the required 25 square feet per face at a height of 6 feet; one additional stationary free-standing entrance sign with surface faces of 24 square feet at a height of 12 feet above grade in lieu of the required 6 feet above grade; [and] two wall-mounted sign(s) with a total area of 150 square feet in lieu of the required 90 square feet." (Findings of Fact, p. 1.)

Exhibit A

Neighboring homeowners and the Hunt Ridge Community Association participated in the hearing as protestants and, presumably, People's Counsel presented their views.

The Commissioner granted the zoning variance needed to place larger signs on two of the outer walls of the main building. He also granted a variance for an "additional" freestanding entrance sign on the motel's only access road, but not with the dimensions sought in Red Roof's Petition. Instead, he reduced its size from the requested 24 square feet per face at a height of 12 feet above grade to 15 square feet and 10 feet. (Section 413.6(b) of the B.C.Z.R. provides that "one stationary freestanding business sign is permitted for each street to which a lot has direct vehicular access," but the sign's surface area may not exceed 25 square feet per face and no part of it may be more than 6 feet above the grade level of the access street or lot.)

The Commissioner's final sign ruling, with which the County's Board of Appeals (the Board) agreed, is the subject matter of this appeal. He denied Red Roof's request to substantially increase the size (25 to 216 square feet) and height (6 to 70 feet) of what Red Roof then was calling the "one stationary freestanding business sign" allowed under Section 413.6(b).

On December 7, 1990 Red Roof filed a non-specific notice of appeal to the Board. At the start of the de novo hearing on August 31, 1991, the Board Chairman asked counsel for Red Roof whether it was appealing all of the Commissioner's decisions on signage. Before

he could respond completely, People's Counsel took the position that all aspects of the Commissioner's decision were before the Board and she intended to argue that the Board should consider what sign variances were granted at least as being relevant to the issue of practical difficulty and undue hardship. She acknowledged, however, that no cross appeal had been filed because her office "would not have appealed from the signage that was granted." (Tr. p. 7) This procedural debate was resolved when the Board granted Red Roof's oral motion to dismiss all grounds for appeal other than the denial of the 70 foot sign - over the objection of People's Counsel and, presumably, the protestants. (Tr. p. 18-20)

Red Roof contends that the Board's decision denying the variance was arbitrary and capricious and in error because Red Roof produced substantial evidence to prove practical difficulty while the protestants offered no evidence which would render the question fairly debatable. Red Roof's written and oral arguments here place undue emphasis on the comparison between the quality of its evidence and that of the protestants. While both hearings obviously were adversarial, this Court knows of no burden upon the protestants to present a better case. A variance is not a matter of right; it is a matter of privilege and the one seeking it must show entitlement. Stated, another way, the petitioner's burden never shifts.

The role of this Court in reviewing the Board's decision is set forth in Md. Code Ann., Art. 25A, §5(U) (1990 Repl. Vol.) which

provides in pertinent part:

Any person aggrieved by the decision of the board... may appeal to the circuit court for the county which shall have power to affirm the decision of the board, or if such decision is not in accordance with law, to modify or reverse such decision, with or without remanding the case for rehearing as justice may require.

In Mortimer v. Howard Research, 83 Md. App. 432, at 441 (1990), the Court described the standard applicable to circuit court review of a zoning decision of a Board of Appeals.

In making a determination of whether the Board of Appeals decision is arbitrary, illegal or capricious, the reviewing court must decide whether the question before the agency was fairly debatable. ... An issue is fairly debatable if reasonable persons could have reached a different conclusion on the evidence and, if so, a reviewing court may not substitute its judgment for that of the administrative agency. ... The fairly debatable test is analogous to the clearly erroneous standard under Rule 8-131(c) and a decision is fairly debatable if it is supported by substantial evidence on the record taken as a whole.

See also, Art Wood vs. Wiseburg, 88 Md. App. 723 (1991).

Section 307.1 of the B.C.Z.R. provides that the Zoning Commissioner and the County Board of Appeals are empowered to grant variances from sign regulations:

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

[B.C.Z.R., 1955; Bill No. 107, 1963; No. 32, 1988.]



Since a variance as to signage is deemed to be an area variance as opposed to a use variance, "the standard of 'practical difficulty' applies, and the applicant is relieved of the burden of showing a taking in a constitutional sense, as is required under the 'undue hardship' standard". Anderson v. Board of Appeals, 22 Md. App. 28, 38-39 (1974). The Court of Appeals, in McLean v. Soley, 270 Md. 208, 214-215 (1973) recognized the following criteria for determining whether an applicant has established "practical difficulty":

- 1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

- 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

- 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

The Board, like the Commissioner, found that Red Roof failed to carry its burden of establishing practical difficulty or undue hardship. The Board's conclusion rested, in part, on the fact that the testimony clearly demonstrated that Red Roof wants the taller sign "principally for advertising purposes to attract motorists on Interstate 83 [and] to be able to compete with other motels in the area." (Opinion, p. 5-6) However, the Board then explained that its denial of the variance also was based upon its statutory duty to be

consistent and to consider the rights of all those who might be affected by the granting of a variance.

The Board has reviewed the site plan and the dimensions of the subject sign set out thereon, and finds that the subject sign is too large and obtrusive for the site. To permit a sign of this size and magnitude would clearly be contrary to the spirit of the Baltimore County Zoning Regulations concerning signs. The Board does not believe that the Petitioner would experience practical difficulty or undue hardship if the sign variance is denied. The Petitioner has already been granted variances for a free-standing entrance sign and two wall-mounted signs by the Zoning Commissioner in his Order dated November 8, 1990.

(Op. p. 6; emphasis supplied)

This Court is satisfied that the issue presented to the Board was fairly debatable. Therefore, the Board's decision should be, and it is, AFFIRMED.

DATE:

July 14, 1992

Robert E. Cahill, Jr.  
JUDGE

Copies sent to counsel.

\* Case No. 92-477-SPH  
\* BALTIMORE COUNTY  
\* ZONING COMMISSIONER

\* \* \* \* \*

**MOTION TO DISMISS**

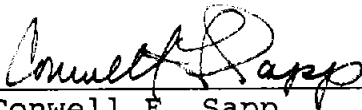
Lena Guise, Property Owner, by and through her attorneys  
Conwell F. Sapp and William T. Glasgow, hereby moves that the  
Petition for Special Hearing filed by George Baker be dismissed  
and for reasons states:

1. Lena Guise filed, pro se, a petition for a setback variance from the area regulations of Baltimore County zoning regulations on or about November 7, 1991 in Case No. 92-30-A.
2. By Order dated October 8, 1991, such petition was denied by the Deputy Zoning Commissioner of Baltimore County.
3. Appearance of counsel was entered and an appeal was timely filed to the Baltimore County Board of Appeals.
4. By Order Dated May 6, 1992, following an evidentiary hearing, the petition for a variance was granted.
5. No appeal was made to the Circuit Court of Baltimore County as required by law for review of a Board of Appeals decision.
6. On or about June 15, 1992, a neighbor, George Baker, who attended and participated in the Board of Appeals hearing filed a petition with the Zoning Commissioner of Baltimore County requesting a hearing on whether the same property could be developed.

MICROFILMED

7. This issue was specifically adjudicated in the Board of Appeals hearing and consequently is res judicata.

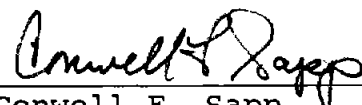
WHEREFORE, Property Owner respectfully requests that this Petition be dismissed.

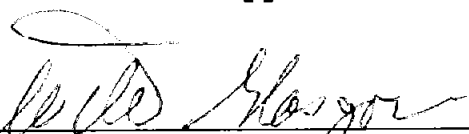
  
Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044  
(410) 740-4600

  
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

CERTIFICATE OF SERVICE

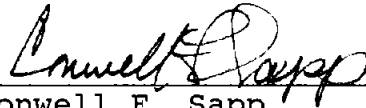
I HEREBY CERTIFY that on this 22nd day of July, 1992, a copy of the foregoing Motion to Dismiss was sent first class mail, postage prepaid to George Baker, 405 Lafayette Avenue, Baltimore, Maryland and Phyllis Friedman, Esquire, Peoples Counsel, Baltimore County Zoning Office, Courthouse, Towson, Maryland 21204.

  
Conwell F. Sapp

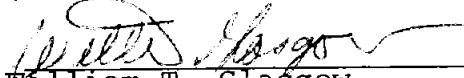
  
William T. Glasgow

clb\cfs\litig\guise.mtd

George Baker is collaterally estopped from any further petition. The law and basic fairness do not permit such action.



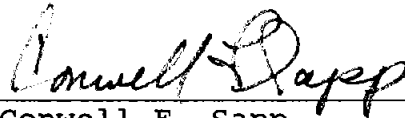
Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044  
(410) 740-4600



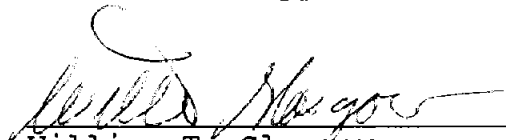
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of July, 1992, a copy of the foregoing Memorandum of Law was sent first class mail, postage prepaid to George Baker, 405 Lafayette Avenue, Baltimore, Maryland and Phyllis Friedman, Esquire, Peoples Counsel, Baltimore County Zoning Office, Courthouse, Towson, MD 21204.



Conwell F. Sapp



William T. Glasgow

clb\cfs\litig\guise.mol

IN THE MATTER OF  
Lots Nos. 31 & 32  
of Arunah Avenue

\* BEFORE THE  
\* BALTIMORE COUNTY  
\* BOARD OF APPEALS  
\* Case No. 92-477-SPH  
92-30-A

\*\*\*\*\*

MEMORANDUM OF LAW  
IN OPPOSITION TO MOTION TO DISMISS

Facts

Lena Guise, property owner, filed a request for variances for Lots 31 and 32 on Arunah Avenue, Case No. 92-30-A before the Zoning Commissioner of Baltimore County. Such petition was denied. This decision was appealed and reversed by the Baltimore County Board of Appeals following a hearing. No appeal was taken to Circuit Court. Protestants in 92-30-A filed for a second hearing before the Zoning Commissioner on the same property concerning the legality of property owner developing a property of less than 6,000 square feet. Another hearing was granted and the case was re-numbered as 92-477. People's Counsel, although not a party in the first case, entered her appearance. The hearing was held on July 27th, 1992 before Zoning Commissioner Lawrence Schmidt. No evidence was taken but argument was heard on a preliminary Motion to Dismiss brought by the property owner. Commissioner Schmidt withheld decision and requested written submissions. Following submission of Memorandum of Law, Commissioner Schmidt on September 24, 1992, denied the Motion to Dismiss. Property Owner timely appealed

*Michael J. ...*



6/19/92 6454-92 GS  
g

RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER  
NE/S Arunah Ave., 300' SE of C/L  
Maryland Ave. (Lots #31 & #32, : OF BALTIMORE COUNTY  
Arunah Ave.), 1st Election Dist.  
1st Councilmanic Dist. :

GEORGE BAKER, Petitioner : Case No. 92-477-SPH  
LENA GUISE, Property Owner  
:

: : : : : :

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Phyllis Cole Friedman

Phyllis Cole Friedman  
People's Counsel for Baltimore County

Peter Max Zimmerman

Peter Max Zimmerman  
Deputy People's Counsel  
Room 47, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204-4606  
(410) 887-2188

I HEREBY CERTIFY that on this 18th day of June, 1992,  
a copy of the foregoing Entry of Appearance was mailed to George Baker,  
405 LaFayette Ave., Baltimore, MD 21228; and Lena Guise, 3306 Strickland  
Road, Baltimore, MD 21229.

RECEIVED  
JUN 19 1992

Phyllis Cole Friedman

Phyllis Cole Friedman

ZONING OFFICE

MICROFILMED



# Petition for Special Hearing

92-477-SPH

## to the Zoning Commissioner of Baltimore County

for the property located at 1st Elect. Dist. 1st Councilmanic District  
N/S Howard Ave, 300' SE of Maryland Ave  
which is presently zoned DR 5.5

This Petition shall be filed with the Office of Zoning Administration & Development Management.

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 Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve.

The Herein described Property, LOCATED in A DR 5.5 ZONE AND CONSISTING OF less than the required 6,000 Sq. Ft., MAY BE RESIDENTIALLY DEVELOPED (SEE ZONING CASE 92-30-A & SUBSEQUENT APPEAL)

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

I, or we, agree to pay expenses of 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.

### ADJOINING OWNER

~~Contract Purchaser/Lessee~~

George Baker 788-5343  
(Type or Print Name)

George Baker  
Signature

405 Lafayette Ave  
Address

Baltimore MD 21228  
City State Zipcode

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

Phone No.

City

State

Zipcode

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.

Legal Owner(s):

LENA GUISE  
(Type or Print Name)

Signature

(Type or Print Name)

Signature

3306 STRICKLAND Rd. 945-4520  
Address Phone No.

BALTO MD 21229  
City State Zipcode

Name, Address and phone number of legal owner, contract purchaser or representative to be contacted.

George Baker  
Name

405 Lafayette Ave Baltimore 21228 788-5343  
Address Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates \_\_\_\_\_ Next Two Months

ALL \_\_\_\_\_ OTHER \_\_\_\_\_

REVIEWED BY: JCM DATE 6-4-92

#510



MICROFILMED



ZONING DESCRIPTION

24  
92-477-SPA  
~~92-50-A~~

Beginning at a point on the Northeasterly side of Arunah Avenue which is 40 feet wide at the distance of 300 feet Southeasterly of the centerline of the nearest improved intersecting street Maryland Avenue which is 40 feet wide. Being Lot 31 & Lot 32, Block 24, in the subdivision of Catonsville Heights as recorded in Baltimore County Plat Book # 6, Folio# 178, Containing 5320 square feet. Also know as Lot 31 & Lot 32 Arunah Avenue and located in the 1st Election District.

# 510

MICROFILMED

**CERTIFICATE OF POSTING**  
**ZONING DEPARTMENT OF BALTIMORE COUNTY**  
Towson, Maryland

92-477-SPH

District 1st Date of Posting 7-8-92  
Posted for: Special Hearing  
Petitioner: Lena Guise  
Location of property: NE/S of Arunah Avenue, 300' SE of the  
CLL of Maryland Avenue Lots 31 & 32 Arunah Avenue  
Location of Signs: NE side of Arunah Avenue in front of  
subject property  
Remarks: \_\_\_\_\_  
Posted by N. J. Arata Date of return: 7-10-92  
Signature  
Number of Signs: 1



# CERTIFICATE OF PUBLICATION

CASE: #92-477-SPH  
(Item 510)  
NE/S Arunah Avenue, 300'  
SE of c/I Maryland Avenue  
Lots # 31 and  
# 32 Arunah Avenue  
1st Election District  
1st Councilmanic  
Legal Owner(s):  
Lena Guise  
Petitioner(s):  
George Baker  
Hearing Date: Monday,  
July 27, 1992 at 11:00 a.m.  
in Rm. 118, Courthouse.

Special Hearing to determine  
whether the property, consisting  
of less than the required 6000 sq.  
ft., may be residentially de-  
veloped.

TOWSON, MD., June 18, 19 92

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 June 18, 19 92.

THE JEFFERSONIAN,

S. Zafe Orlov

Publisher

Microfilm

63-16



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

Date

6/05/92

PUBLIC HEARING FEES

030

ZONING ~~SPH~~

LAST NAME OF OWNER: GUISE

HS200510

PRICE

1 X \$50.00

TOTAL \$50.00

Account: R-001-6150  
Number

receipt

92-477-SPH

04A04#0017MICHRC

BA 002:31PM06-05-92

Please Make Checks Payable To: Baltimore County

Cashier Validation

\$50.00





Baltimore County  
Zoning Administration &  
Development Management  
111 West Chesapeake Avenue  
Towson, Maryland 21204

receipt

Receipt: BCC-6150

Number

92477

Date

12/13/92

GENERAL FEES

100.00

LOCAL AND ALL OTHER DUES

0.00

LAND-POSTING SIGNAGE & APPLICATIONS

100.00

100.00

TOTAL DUES OF CHURCH & STATE

MICROFILMED

RECEIVED

12/13/92

100.00

Please Make Checks Payable To: Baltimore County

Cashier Validation



Baltimore County  
Zoning Administration &  
Development Management  
111 West Chesapeake Avenue  
Towson, Maryland 21204

receipt

Account: R 001 6150

Number

92-477 SAH

Date

ADDITIONAL FEES

FOR ALL OTHER PROJECTS

FOR POSTING SIGN, A COVER LETTER, ETC.

FOR MORE OF THESE, SEE

MICROFILMED

16404400750HRC  
BA 000-37460 27 92

\$210.00

Please Make Checks Payable To: Baltimore County

Cashier Validation

Baltimore County Government  
Office of Zoning Administration  
and Development Management  
Office of Planning & Zoning



111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

DATE: 7-10-92

George Baker  
405 Lafayette Avenue  
Baltimore, Maryland 21228

RE:

CASE #92-477-SPH (Item 510)  
NE/S Arunah Avenue, 300' SE of c/l Maryland Avenue  
Lots #31 and #32 Arunah Avenue  
1st Election District - 1st Councilmanic  
Legal Owner(s): Lena Guise  
Petitioner(s): George Baker  
HEARING: MONDAY, JULY 27, 1992 at 11:00 a.m. in Rm. 118, Courthouse

Dear Petitioner(s):

Please be advised that \$ 63.16 is due for advertising and posting of the above captioned property and hearing date.

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 forward your check via return mail to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 109, Towson, Maryland 21204. Place the case number on the check and make same payable to Baltimore County, Maryland. In order to avoid delay of the issuance of proper credit and/or your Order, immediate attention to this matter is suggested.

A handwritten signature in black ink, appearing to read "Arnold Jablon".

ARNOLD JABLON  
DIRECTOR



Printed on Recycled Paper

Baltimore County Government  
Office of Zoning Administration  
and Development Management  
Office of Planning & Zoning



111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

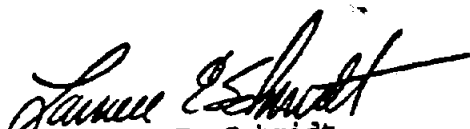
JUNE 11, 1992

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, 111 W. Chesapeake Avenue in Towson, Maryland 21204  
or  
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE #92-477-SPH (Item 510)  
NE/S Arunah Avenue, 300' SE of c/l Maryland Avenue  
Lots #31 and #32 Arunah Avenue  
1st Election District - 1st Councilmanic  
Legal Owner(s): Lena Guise  
Petitioner(s): George Baker  
HEARING: MONDAY, JULY 27, 1992 at 11:00 a.m. in Rm. 118, Courthouse

Special Hearing to determine whether the property, consisting of less than the required 6000 sq. ft., may be residentially developed.

  
Lawrence E. Schmidt

Zoning Commissioner of  
Baltimore County

cc: Lena Guise  
George Baker

NOTE: HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.

MICROFILMED



this denial to the Baltimore County Board of Appeals. Peoples Counsel filed a Motion to Dismiss the appeal and this Memorandum of Law is in response.

#### Argument

People's Counsel contends that the appeal of a Zoning Commissioner's denial of a Motion to Dismiss cannot be heard because the denial was not a final judgment. While it is true that the general rule is that an interlocutory order is not final, there are important exceptions.

The first exception is the collateral order doctrine. An immediate appeal is proper if four conditions are met; (1) the order must conclusively determine a disputed question, (2) the order must resolve an important issue, (3) the order must be separate from the merits of the case, (4) the order would be effectively unreviewable on appeal from final judgment.

The Motion to Dismiss was brought by Property Owner based on res judicata. Denial of the motion by the Zoning Commissioner conclusively determined the disputed right of protestants to a second hearing. The issue decided concerned the authority, jurisdiction, and right of the Zoning Commissioner to hold such a hearing when the decision of the Baltimore County Board of Appeals had not been appealed. This is surely an important issue. The merits of the case concern the standards necessary for the granting of property variances. The merits are separate and distinct from the procedural issues which are raised by res judicata. Res judicata is a defense which will be considered waived if not asserted immediately.

Baltimore County Government  
Office of Zoning Administration  
and Development Management  
Office of Planning & Zoning



111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

OCTOBER 6, 1992

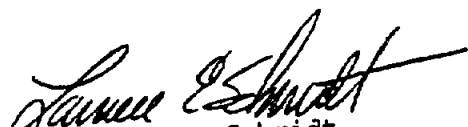
NOTICE OF REASSIGNMENT

CASE NUMBER(S): 92-477-SPH  
LEGAL OWNER LENA GUISE  
LOCATION: LOTS 31 and 32 ARUNAH AVENUE

HEARING OF THE ABOVE MATTER WILL TAKE PLACE AS FOLLOWS:

TUESDAY, NOVEMBER 10, 1992 at 2:00 p.m.

IN ROOM 118, OLD COURTHOUSE, 400 WASHINGTON AVENUE, TOWSON MD 21204.

  
Lawrence E. Schmidt

ZONING COMMISSIONER  
BALTIMORE COUNTY

cc: Lena Guise  
George Baker  
William T. Glasgow, Esq.  
Peoples Counsel



Printed on Recycled Paper





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

Hearing Room -  
Room 48, Old Courthouse  
400 Washington Avenue

January 13, 1993

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 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. 92-477-SPH

GEORGE BAKER /PETITIONER  
(Lena Guise Property)  
NE/s Arunah Avenue, 300' SE  
of c/l Maryland Avenue  
(Lots #31 & #32, Arunah Avenue)  
1st Election District  
1st Councilmanic District

SPH-lot size /less than 6,000  
sq. ft.; also lot width (40'  
in lieu of minimum 55')

11/25/92 - Z.C.'s Order GRANTING  
Petition.

ASSIGNED FOR:

THURSDAY, MARCH 18, 1993 AT 10:00 a.m.

|                                   |                           |
|-----------------------------------|---------------------------|
| cc: George Baker                  | Petitioner                |
| Lena Guise                        | Appellant /Property Owner |
| William T. Glasgow, Esquire       | Counsel for Appellant     |
| Conwell F. Sapp, Esquire          | " " "                     |
| People's Counsel for Balto. Co.   |                           |
| P. David Fields                   |                           |
| Lawrence E. Schmidt               |                           |
| Timothy M. Kotroco                |                           |
| W. Carl Richards, Jr.             |                           |
| Docket Clerk - Zoning             |                           |
| Arnold Jablon, Director of Zoning |                           |
| Administration                    |                           |

Kathleen C. Weidenhammer  
Administrative Assistant



1/13/93 - Following parties notified of hearing set for March 18,  
1993 at 10:00 a.m.:

George Baker  
Lena Guise  
William T. Glasgow, Esquire  
Conwell F. Sapp, Esquire  
People's Counsel for Balto. Co.  
P. David Fields  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr.  
Docket Clerk - Zoning  
Arnold Jablon, Director of Zoning  
Administration

**MICROFILMED**

NE/s Arunah Ave., 300' SE of c/1 Maryland Ave.  
(Lots #31 & 32, Arunah Avenue)

#92-477-SPH      GEORGE BAKER

Appealed: ~~10/8/92~~      1st Election District  
12/7/92

Baltimore County Government  
Office of Zoning Administration  
and Development Management  
Office of Planning & Zoning



West Chesapeake Avenue  
Baltimore, MD 21204

(410) 887-3353

July 6, 1992

Ms. Lena Guise  
3306 Strickland Road  
Baltimore, MD 21229

RE: Item No. 510, Case No. 92-477-SPH  
Petitioner: Lena Guise, et al  
Petition for Special Hearing

Dear Ms. Guise:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

The following comments are related only to the filing of future zoning petitions, and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by Zoning personnel.

**MICROFILMED**

Zoning Plans Advisory Committee Comments

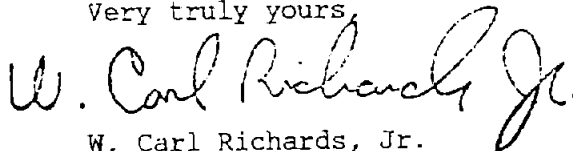
Date: July 6, 1992

Page 2

2) Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All petitions filed in this manner will be reviewed and commented on by Zoning personnel prior to the hearing. In the event that the petition has not been filed correctly, there is always a possibility that another hearing will be required or the Zoning Commissioner will deny the petition due to errors or incompleteness.

3) Attorneys, engineers and applicants who make appointments to file petitions on a regular basis and fail to keep the appointment without a 72 hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e. 72 hours, will result in the forfeiture loss of the filing fee.

Very truly yours,



W. Carl Richards, Jr.  
Zoning Coordinator

WCR:jw

Enclosures

cc: Mr. George Baker, 405 LayFayette Avenue, Baltimore, MD 21228

Baltimore County Government  
Office of Zoning Administration  
and Development Management  
Office of Planning & Zoning



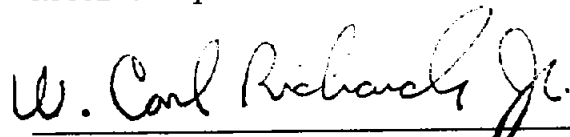
111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

Your petition has been received and accepted for filing this  
4th day of June, 1992

  
ARNOLD JABLON  
DIRECTOR

Received By:

  
Chairman,  
Zoning Plans Advisory Committee

Petitioner: Lena Guise, et al

Petitioner's Attorney:



Printed on Recycled Paper



BALTIMORE COUNTY, MARYLAND  
OFFICE OF PLANNING AND ZONING  
New Courts Bldg - 401 Bosley Avenue, Towson, MD 21204

MEMORANDUM

TO: Arnold Jablon, Director  
Zoning Administration & Development Management

FROM: Office of Planning and Zoning

DATE: June 19, 1992

SUBJECT: Guise Property

INFORMATION:

Item Number: 510

Petitioner: Lena Guise

Property Size: 0.12 acres, 5,280 square feet

Zoning: D.R. 5.5

Requested Action: Special Hearing

Hearing Date:       /      /      

SUMMARY OF RECOMMENDATIONS:

The petitioner is requesting a Special Hearing to seek approval for a building lot of 5,280 square feet in lieu of the required 6,000 square feet.

The Office of Planning and Zoning recommends APPROVAL of the petitioners request.

The Planning Office's area planner visited the site and indicates that there would be a sufficient setback to the east and west to allow a sense of separation between adjacent homes. Also there are other homes in the immediate area that are 20' to 26' wide built on two 20 foot wide lots. The proposed house would be compatible with the surrounding neighborhood. The area planner recommends that the house be oriented to the south.

Prepared by: Francis Morsey

Division Chief: \_\_\_\_\_

FM:rdn



7-13-92

510/ZAC1

Baltimore County Government  
Fire Department



700 East Joppa Road Suite 901  
Towson, MD 21204-5500

JUNE 12, 1992

(410) 887-4500

Arnold Jablon  
Director  
Zoning Administration and  
Development Management  
Baltimore County Office Building  
Towson, MD 21204

RE: Property Owner: LENA GUISE

Location: NE/S ARUNAH AVENUE, 300' SE OF CENTERLINE

Item No.: 510 (JCM) Zoning Agenda: JUNE 15, 1992

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.

7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: Capt. Jerry Guifer Noted and  
Planning Group Approved  
Special Inspection Division Fire Prevention Bureau

JP/KEK

RECEIVED

JUN 15 1992

ZONING OFFICE

92-30-4 9/26

BUREAU OF TRAFFIC ENGINEERING  
DEPARTMENT OF PUBLIC WORKS  
BALTIMORE COUNTY, MARYLAND

Date: August 30, 1991

TO: Mr. Arnold Jablon, Director  
Office of Zoning Administration  
and Development Management

FROM: Rahee J. Famili

SUBJECT: Z. A. C. Comments

Z. A. C. MEETING DATE: July 30, 1991

This office has no comments for item numbers 505,  
3, 9, 10, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 30 and 31.

*Rahee J. Famili*  
\_\_\_\_\_  
Rahee J. Famili  
Traffic Engineer II

RJF:bza

*Rec'd 9/4/91*

Friedenthal, Kane & Miller, Civil Procedure Hornbook, Series (1985) § 14.3. Will a full review be available after a second final judgment? A second final judgment is in itself an oxymoron. The property owner has a right to avoid the hearing set by the Zoning Commissioner entirely. The harm will have already occurred and will not be subject to correction through later review. Public Service Comm'n v. Patuxent Valley, 300 Md. 200, 477 A.2d 759 (1984).

When a tribunal exceeds its authority an immediate appeal will lie prior to a decision on the merits. Cohen v. Willett, 269 Md. 194, 304 A.2d 824 (1973). Flower World of America v. Whittington, 39 Md. App. 1987, 385 A.2d 85 (1978). The basis for the res judicata was that the Zoning Commissioner was without authority to hold a hearing on questions already settled at the administrative appellate level. This is a second exception to the final judgment rule.

The principles of res judicata, while related, are different from those of collateral estoppel. The Motion to Dismiss was based on res judicata, but the decision by the Zoning Commissioner denying the Motion was premised on collateral estoppel. The Zoning Commissioner erred in determining that the issue of side yard setbacks and lot size are not identical issues and as a consequence res judicata did not apply. The thrust of res judicata is not whether issues are identical but whether any claims which were brought or which could have been brought in the original action bar a subsequent action between the same parties on the same cause of action.

BALTIMORE COUNTY, MARYLAND  
I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Arnold Jablon, Director      DATE: August 1, 1991  
Zoning Administration and Development Management

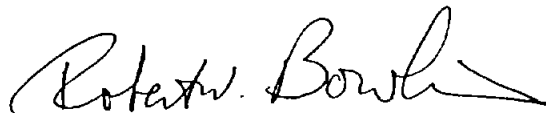
FROM: Robert W. Bowling, P.E.

RE: Zoning Advisory Committee Meeting  
for July 30, 1991

The Developers Engineering Division has reviewed the subject zoning items and we have no comments for Items 505, 3, 7, 9, 10, 17, 18, 19, 21, 22, 23, 24, 27, 30 and 31.

For Item 20, the extension of public water, sewer and paving may be required, prior to issuance of a building permit for this lot.

For Item 26, the previous County Review Group comments are still applicable.



ROBERT W. BOWLING, P.E., Chief  
Developers Engineering Division

RWB:s

Department of Recreation and Parks  
Development Review Committee Response Form  
Authorized signature \_\_\_\_\_

*Walter P. Kim*

Date *6/23/92*

Project Name  
File Number      Waiver Number      Zoning Issue      Meeting Date

Washington Homes, Inc

504

*6-15-92*

DED DEPRM RP STP TE

*No Comments* ✓

Aurelia Loveman For Joseph H. Loveman

505

DED DEPRM RP STP TE

*No Comments* ✓

Timothy W. And Carol Anne M. Frost

506

DED DEPRM RP STP TE

*No Comments* ✓

James G. And Brenda G. Thomas

507

DED DEPRM RP STP TE

*No Comments* ✓

James E. Bishop, Sr.

508

DED DEPRM RP STP TE

*No Comments* ✓

Victor E. And Sandra J. Fiorenza

509

DED DEPRM RP STP TE

*No Comments* ✓

Lena Guise

510

DED DEPRM RP STP TE

*No Comments* ✓

COUNT 7

FINAL TOTALS

COUNT 7

\*\*\* END OF REPORT \*\*\*

DPW/Traffic Engineering  
Development Review Committee Response Form  
Authorized signature \_\_\_\_\_

06/18/92

Date 6/22/92

*Raher j Family*

Project Name  
File Number      Waiver Number      Zoning Issue      Meeting Date

Stonegate at Patapsco (Azeal Property)  
90476      6-1-92  
ZON DED      TE (Waiting for developer to submit plans first)  
=====

COUNT 1

✓ Washington Homes, Inc      504      N/C ✓ 6-15-92  
DED DEPRM RP STP TE  
=====

✓ Aurelia Loveman For Joseph H. Loveman      505      N/C ✓  
DED DEPRM RP STP TE  
=====

✓ Timothy W. And Carol Anne M. Frost      506      N/C ✓  
DED DEPRM RP STP TE  
=====

✓ James B. And Brenda G. Thomas      507      N/C ✓  
DED DEPRM RP STP TE  
=====

✓ James E. Bishop, Sr.      508      N/C ✓  
DED DEPRM RP STP TE  
=====

✓ Victor E. And Sandra J. Fiorenza      509      N/C ✓  
DED DEPRM RP STP TE  
=====

✓ Lena Guise      510      N/C ✓  
DED DEPRM RP STP TE  
=====

COUNT 7

Howard W. Dawson, Sr.      503      N/C ✓ 6-8-92  
TE  
=====

COUNT 1

FINAL TOTALS  
COUNT 9

MICROFILMED



Department of Environmental Protection & Resource Management  
Development Review Committee Response Form  
Authorized signature \_\_\_\_\_

06/16/92

Date 6-22-92

*R. Bruce Kelly*

Project Name  
File Number      Waiver Number      Zoning Issue      Meeting Date

Lena Guise

510

NO COMMENTS  
6-15-92

DED DEPRM EF STP TE

COUNT 7

Keith M. And Patricia M. Lambert

496

In process  
6-6-92

DEPRM      TE

COUNT 1

Douglas R. Small

499

In process  
6-6-92

DEPRM      STP TE

COUNT 1

FINAL TOTALS

COUNT 14

\*\*\* END OF REPORT \*\*\*

11-11-92

6/22/92 6477-92  
TO DA

DPW/Developers Engineering Division (Public Services)  
Development Review Committee Response Form  
Authorized signature Dennis A. Kennedy

06/16/92

Date 6/22/92

Project Name  
File Number Waiver Number Zoning Issue Meeting Date

Stonegate at Patapsco (Azreal Property)  
90476 6-1-92  
ZON DED TE (Waiting for developer to submit plans first)

COUNT 1

✓ Washington Homes, Inc 504 6-15-92 NC  
DED DEPRM RP STP TE

✓ Aurelia Loveman For Joseph H. Loveman 505 NC  
DED DEPRM RP STP TE

Timothy W. And Carol Anne M. Frost 506 Comment  
DED DEPRM RP STP TE

James B. And Brenda G. Thomas 507 Comment  
DED DEPRM RP STP TE

/ James E. Bishop, Sr. 508 NC  
DED DEPRM RP STP TE

Victor E. And Sandra J. Fiorenza 509 Comment  
DED DEPRM RP STP TE

✓ Lena Guise 510 NC  
DED DEPRM RP STP TE

COUNT 7

FINAL TOTALS  
COUNT 8

\*\*\* END OF REPORT \*\*\*

BALTIMORE COUNTY, MARYLAND

Inter-office Correspondence

TO: Gwen Stephens  
Docket Clerk, Office of Zoning

DATE: September 24, 1992

FROM: Lawrence E. Schmidt  
Zoning Commissioner

SUBJECT: Case No. 92-477-SPH  
Petitioner: George Baker, Lena Guise, Property Owner

Please set the attached case back in for hearing, in accordance with my Ruling on Preliminary Motion. Advise George Baker, Lena Guise and her attorney, Glasgow, together with Peoples Counsel. It will not be necessary for Ms. Guise to pay for posting and advertising again. You do not have to post or advertise this case for the new hearing.

If you have any questions, call me.

LES:mmn  
att.

MICROFILMED

Baltimore County Government  
Office of Zoning Administration  
and Development Management  
Office of Planning & Zoning



111 West Chesapeake Avenue  
Towson, MD 21204

October 29, 1992

(410) 887-3353

Baltimore County Board of Appeals  
Old Courthouse, Room 49  
400 Washington Avenue  
Towson, Maryland 21204

RE: Petition for Special Hearing  
NE/S Arunah Avenue, 300 ft. SE of c/1 Maryland Avenue  
(Lots #31 & 32, Arunah Avenue)  
1st Election District, 1st Councilmanic District  
GEORGE BAKER - Petitioner  
Case No. 92-477-SPH (Property Owner's Motion to Dismiss)

Dear Board:

Please be advised that an appeal from an order of the Zoning Commissioner denying the Property Owner's Motion to Dismiss for the above referenced case was filed in this office on October 8, 1992 by William T. Glasgow, Attorney on behalf of the property owner, Lena Guise. All materials relative to the case are being forwarded herewith.

Please notify all parties to the case of the date and time of the appeal hearing when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,



Arnold Jablon - Director  
Zoning Administration and  
Development Management

AJ:cer

cc: Lena Guise - 3306 Strickland Street Baltimore, MD 21229

William T. Glasgow Esquire  
Suite 250 10715 Charter Drive, Columbia MD 21044

George Baker - 405 Lafayette Avenue Baltimore MD 21228

People's Counsel of Baltimore County  
Old Courthouse, 400 Washington Avenue, Towson, MD 21204

RECEIVED  
COUNTY BOARD OF APPEALS  
92 OCT 30 PM 5:16



APPEAL

Petition for Special Hearing  
NE/S Arunah Avenue, 300 ft. SE of c/1 Maryland Avenue  
(Lots #31 & 32, Arunah Avenue)  
1st Election District - 1st Councilmanic District  
(GEORGE BAKER - Petitioner)  
Case No. 92-477-SPH

Petition(s) for Special Hearing

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel (None submitted)

Zoning Plans Advisory Committee Comments

Director of Planning & Zoning Comments (Included with ZAC Comments)

Exhibit A: Opinion

Exhibit B: Motion to Dismiss

Exhibit C: Post Hearing Memorandum of Law

Exhibit D: Ruling on Preliminary Motion

People's Counsel's Memorandum dated July 14, 1992

Motion to Dismiss dated July 22, 1992

Memorandum of Law dated July 22, 1992

Post-Hearing Memorandum of Law dated August 21, 1992

Ruling on Preliminary Motion dated September 24, 1992

Notice of Appeal received October 8, 1992 from William T. Glasgow,  
Attorney on behalf of the property owner  
Petition for Appeal dated October 6, 1992

cc: Lena Guise - 3306 Strickland Street Baltimore, MD 21229

William T. Glasgow Esquire  
Suite 250 10715 Charter Drive, Columbia MD 21044

George Baker - 405 Lafayette Avenue Baltimore MD 21228

People's Counsel of Baltimore County  
Rm. 304, County Office Bldg., Towson, MD 21204

Request Notification: P. David Fields, Director of Planning & Zoning  
Patrick Keller, Office of Planning & Zoning  
Lawrence E. Schmidt, Zoning Commissioner  
Timothy M. Kotroco, Deputy Zoning Commissioner  
W. Carl Richards, Jr., Zoning Coordinator  
Docket Clerk  
Arnold Jablon, Director of ZADM  
Public Services

APPEAL

Petition for Special Hearing  
NE/S Arunah Avenue, 300 ft. SE of c/1 Maryland Avenue  
(Lots #31 & 32, Arunah Avenue)  
1st Election District - 1st Councilmanic District  
(GEORGE BAKER - Petitioner)  
Case No. 92-477-SPH

111 V  
Tows

- ✓ Petition(s) for Special Hearing
- ✓ Description of Property
- ✓ Certificate of Posting
- ✓ Certificate of Publication

Entry of Appearance of People's Counsel (None submitted)

- ✓ Zoning Plans Advisory Committee Comments
- ✓ Director of Planning & Zoning Comments (Included with ZAC Comments)
- ✓ Exhibit A: Opinion
- ✓ Exhibit B: Motion to Dismiss
- ✓ Exhibit C: Post Hearing Memorandum of Law
- ✓ Exhibit D: Ruling on Preliminary Motion
- ✓ People's Counsel's Memorandum dated July 14, 1992
- ✓ Motion to Dismiss dated July 22, 1992
- ✓ Memorandum of Law dated July 22, 1992
- ✓ Post-Hearing Memorandum of Law dated August 21, 1992
- ✓ Ruling on Preliminary Motion dated September 24, 1992 *Denying Motion to Dismiss*
- ✓ Notice of Appeal received October 8, 1992 from William T. Glasgow, Attorney on behalf of the property owner
- ✓ Petition for Appeal dated October 6, 1992

cc: Lena Guise - 3306 Strickland Street Baltimore, MD 21229

\*William T. Glasgow Esquire & Conwell F. Sapp, Esquire, Reese & Carney,  
Suite 250 10715 Charter Drive, Columbia MD 21044

George Baker - 405 Lafayette Avenue Baltimore MD 21228

People's Counsel of Baltimore County  
Rm. 304, County Office Bldg., Towson, MD 21204

Request Notification: P. David Fields, Director of Planning & Zoning  
Patrick Keller, Office of Planning & Zoning  
Lawrence E. Schmidt, Zoning Commissioner  
Timothy M. Kotroco, Deputy Zoning Commissioner  
W. Carl Richards, Jr., Zoning Coordinator  
Docket Clerk  
Arnold Jablon, Director of ZADM  
Public Services

*JE*

APPEAL

Petition for Special Hearing  
NE/S Arunah Avenue, 300 ft. SE of c/1 Maryland Avenue  
(Lots #31 & #32, Arunah Avenue)  
1st Election District - 1st Councilmanic District  
GEORGE BAKER - PETITIONER  
LENA GUISE - PROPERTY OWNER  
Case No. 92-477-SPH

IN ADDITION TO THE MATERIALS PREVIOUSLY SUBMITTED ON OCTOBER 29, 1992  
IN REFERENCE TO THE ABOVE REFERENCED CASE, ENCLOSED ARE COPIES OF:

1. Zoning Commissioner's Order dated November 25, 1992 (Granted)
2. Notice of Appeal received on December 7, 1992 from Conwell F. Sapp and William T. Glasgow, attorneys on behalf of Lena Guise, property owner.

cc: Lena Guise, 3306 Strickland Street, Baltimore MD 21229

William T. Glasgow and Conwell F. Sapp  
Reese and Carney 10715 Charter Drive, Ste 200, Columbia MD 21044

George Baker - 501 Lafayette Avenue, Baltimore MD 21228

Request Notification: P. David Fields, Director of Planning & Zoning  
Patrick Keller, Office of Planning & Zoning  
Lawrence E. Schmidt, Zoning Commissioner  
Timothy M. Kotroco, Deputy Zoning Commissioner  
W. Carl Richards, Jr., Zoning Coordinator  
Docket Clerk  
Arnold Jablon, Director of ZADM  
Public Services

MICROFILMED



Thus, if a proceeding between parties involves the same cause of action as a previous proceeding between the same parties, the principle of res judicata applies and all matters actually litigated or that could have been litigated are conclusive in the subsequent proceeding. Alvey v. Alvey, 225 Md. 386, 390, 171 A.2d 92, 94 (1961); Snodgrass v. Stubbs, 192 Md. 287, 290-91, 64 A.2d 130, 132 (1949); State v. Brown, 64 Md. 199, 204, 1 A. 54, 56 (1885). If a proceeding between parties does not involve the same cause of action as a previous proceeding between the same parties, the principle of collateral estoppel applies, and only those facts or issues actually litigated in the previous action are conclusive in the subsequent proceeding. Bankers & Shippers Ins. Co. of New York, 287 Md. at 652, 415 A.2d at 284; MCP, Inc., 279 Md. at 33, 367 A.2d at 489; Prescott v. Coppage, 266 Md. 562, 570-73, 296 A.2d 150, 154-55 (1972). When the principle of collateral estoppel applies, facts or issues decided in the previous action are conclusive only if identical to facts or issues presented in the subsequent proceeding. MPC, Inc., 279 Md. at 35, 367 A.2d at 490; see Washington Suburban Sanitary Comm'n v. TKU Assocs., 281 Md. 1, 18-19, 376 A.2d 505, 514 (1977).

Protestants and People's Counsel are barred from raising the question of lot size because the opportunity was available to them and not used at the Board of Appeals hearing. Makall v. Zayre Corp., 293 Md. 291, 443 A.2d 98, 102 1982; see also, MCP Inc. v. Kenny, 279 Md. 29, 367 A.2d 486 (1977).

Res judicata is rigidly formal and works mechanically. It resolutely ignores the substantive merit of the judgment it enforces. Decisions that plainly are wrong and that would be reversed on appeal, were that route available, are valid final judgments for res judicata finality of decision and protection from harassment would be frustrated completely if a plaintiff could evade the doctrine simply by arguing that the original decision was wrong. Res judicata reflects the policy that sometimes

Baltimore County Government  
Office of Zoning Administration  
and Development Management



111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

December 22, 1992

Baltimore County Board of Appeals  
Old Courthouse, Room 49  
400 Washington Avenue  
Towson, Maryland 21204

RE: Petition for Special Hearing  
NE/S Arunah Avenue, 300 ft. SE of c/1 Maryland Avenue  
(Lots #31 & #32, Arunah Avenue)  
1st Election District, 1st Councilmanic District  
GEORGE BAKER - Petitioner  
Case No. 92-477-SPH

RECEIVED  
COUNTY BOARD OF APPEALS  
22 DEC 23 PM 12:37

Dear Board:

Please be advised that an appeal of the above-referenced case was filed in this office on December 7, 1992 by Conwell F. Sapp and William T. Glasgow, attorneys on behalf of Lena Guise, property owner. All materials relative to the case are being forwarded herewith.

Please notify all parties to the case of the date and time of the appeal hearing when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

Arnold Jablon - Director  
Zoning Administration and  
Development Management

AJ:cer

Enclosures

cc: Lena Guise, 3306 Strickland Street, Baltimore MD 21229

William T. Glasgow and Conwell F. Sapp  
Reese and Carney 10715 Charter Drive, Ste 200, Columbia MD 21044

George Baker - 501 Lafayette Avenue, Baltimore MD 21228

People's Counsel, 400 Washington Avenue, Towson, MD 21204



Printed on Recycled Paper

APPEAL

Petition for Special Hearing  
NE/S Arunah Avenue, 300 ft. SE of c/1 Maryland Avenue  
(Lots #31 & #32, Arunah Avenue)  
1st Election District - 1st Councilmanic District  
GEORGE BAKER - PETITIONER  
LENA GUISE - PROPERTY OWNER  
Case No. 92-477-SPH

IN ADDITION TO THE MATERIALS PREVIOUSLY SUBMITTED ON OCTOBER 29, 1992  
IN REFERENCE TO THE ABOVE REFERENCED CASE, ENCLOSED ARE COPIES OF:

1. Zoning Commissioner's Order dated November 25, 1992 (Granted)
2. Notice of Appeal received on December 7, 1992 from Conwell F. Sapp and William T. Glasgow, attorneys on behalf of Lena Guise, property owner.

cc: Lena Guise, 3306 Strickland Street, Baltimore MD 21229

\* William T. Glasgow and Conwell F. Sapp  
Reese and Carney 10715 Charter Drive, Ste 200, Columbia MD 21044

George Baker - <sup>405</sup>~~501~~ Lafayette Avenue, Baltimore MD 21228

Request Notification: P. David Fields, Director of Planning & Zoning  
Patrick Keller, Office of Planning & Zoning  
Lawrence E. Schmidt, Zoning Commissioner  
Timothy M. Kotroco, Deputy Zoning Commissioner  
W. Carl Richards, Jr., Zoning Coordinator  
Docket Clerk  
Arnold Jablon, Director of ZADM  
Public Services

1C

Baltimore County Government  
Zoning Commissioner  
Office of Planning and Zoning



Suite 113 Courthouse  
400 Washington Avenue  
Towson, MD 21204

(410) 887-4386

June 30, 1992

William T. Glasgow, Esquire  
Suite 250  
10715 Charter Drive  
Columbia, Maryland 21044

RE: Case No. 92-477-SPH  
Petition for Special Hearing  
Lena Guise/George Baker, Petitioner and Adjoining Neighbor

Dear Mr. Glasgow:

This is in response to your letter dated June 22, 1992 regarding the above captioned matter.

I have reviewed the files relative to the subject property known as Lots No. 31 and 32 of Arunah Avenue in the Catonsville Heights subdivision of Baltimore County.

According to my records, you are indeed correct that a Petition for Zoning Variance was filed for this property within case No. 92-30-A. That Petition sought relief from the side yard setback requirements set forth in Section 1B02.3.C.1 of the Baltimore County Zoning Regulations. Specifically, relief was requested to permit a side yard setback of 7 ft. in lieu of the minimum required 10 ft. and a side street setback of 7 ft. in lieu of the required 25 ft. Following a public hearing, the Petition was denied by Order of Deputy Zoning Commissioner, Timothy M. Kotroco on October 8, 1991. The case was timely appealed to the Baltimore County Board of Appeals which reversed Mr. Kotroco's decision. By their Order of May 6, 1992, the Petition for Variance was granted. I note that there has not been an appeal from the Board of Appeals' decision.

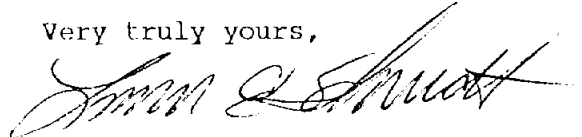
*W. T. Glasgow*

William T. Glasgow, Esquire  
Suite 250  
10715 Charter Drive  
Columbia, Maryland 21044  
page 2.....

Although the matter scheduled for hearing on July 27, 1992 relates to the same property, the issues are not the same. The matter scheduled before me on that date arises out of a Petition for Special Hearing filed by George Baker of 405 Lafayette Avenue. Mr. Baker is requesting an interpretation as to whether the subject lot may be developed notwithstanding the fact that it is less than the required 6,000 sq. ft. in area. Thus, although the issues are similar, they are not identical; in that the prior case dealt with setback requirements whereas the present matter relates to area requirements.

Under the circumstances, I am inclined to keep this matter on my docket and proceed with the hearing on July 27, 1992. I will, however, provide you with an opportunity to argue this matter further on the 27th by way of preliminary motion, if you deem it appropriate. However, based on my preliminary review, I believe that the case should proceed as scheduled.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lawrence E. Schmidt", written in dark ink.

Lawrence E. Schmidt

LES:mmn

cc: Phyllis Friedman, Esquire  
Peoples Counsel

Baltimore County Government  
County Executive's Office



Roger B. Hayden  
County Executive

400 Washington Avenue  
Towson, Maryland 21204  
887-2450

July 27, 1992

Mr. and Mrs. George Baker  
405 Lafayette Avenue  
Baltimore, Maryland 21228

RE: Case No. 92-<sup>477</sup>498-SPH (Item No. 510)  
Previous Case No. 92-30-A  
Lot Nos. 31 and 32, Arunah Avenue  
1st Election District

Dear Mr. and Mrs. Baker:

I am in receipt of your letter of July 18, 1992, concerning the above referenced matter.

As you know, a public hearing, wherein the petitioner requested a special hearing to determine whether the subject property, consisting of less than the required 6,000 square feet, may be residentially developed, was held on July 27, 1992, before the Zoning Commissioner. A decision has not been rendered at this time. However, a precedent would not be set if, in fact, the petition were granted. Each case stands on its own merits and in no way entitles other similar situations to occur without going through the required quasi-judicial hearing process. So that you may be apprised of the outcome of the hearing when it is rendered, I have asked that a copy of the decision be forwarded to you.

Although I cannot become involved in zoning issues, I do appreciate your concerns and want to assure you that they will be given every consideration prior to a decision being rendered.

Thank you for bringing your concerns to my attention.

Respectfully yours,

A handwritten signature in dark ink, appearing to read "R-BH/NVR", written over the typed name.

Roger B. Hayden  
County Executive

RBH/srl

c: Lawrence E. Schmidt, Zoning Commissioner ✓  
The Honorable Berchie L. Manley  
Arnold Jablon, Zoning Administrator





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

January 12, 1993

Ms. Lena Guise  
3306 Strickland Street  
Baltimore, MD 21229

Re: Case No. 92-477-SPH  
George Baker /Petitioner

Dear Ms. Guise:

The Board is in receipt of your letter dated January 3, 1993 regarding the above-referenced case.

The issue decided by this Board on May 6, 1992 in Case No. 92-30-A dealt with a Petition for Variance, and is separate and distinct from the appeal presently pending before the Board of Appeals in Case No. 92-477-SPH. In the instant case, a decision was rendered by the Zoning Commissioner on November 25, 1992, and an appeal filed thereto on December 7, 1992. Therefore, this matter will be scheduled for hearing with regard to the current and pending appeal.

When a hearing date has been assigned, notices will be sent to all parties.

Very truly yours,

A handwritten signature in cursive script that reads "William T. Hackett".

William T. Hackett, Chairman  
County Board of Appeals

cc: William T. Glasgow, Esquire  
Conwell F. Sapp, Esquire  
Mr. George Baker  
People's Counsel for Baltimore County

A faint, handwritten signature in cursive script, possibly reading "Lena Guise".





*Copier*

January 25, 1993

Mr. George Baker  
405 Lafayette Avenue  
Baltimore, MD 21228

Re: Case No. 92-477-SPH  
George Baker /Petitioner

Dear Mr. Baker:

The enclosed copy of this Board's January 12th correspondence to Ms. Lena Guise regarding the subject matter was returned to this office today as undeliverable.

Upon reviewing the file, I've discovered that we were given two different addresses for you. Therefore, I'm assuming that, since number 501 is not correct, your correct address is as shown.

I'm sorry for any inconvenience this delay may have caused you.

Very truly yours,

Kathleen C. Weidenhammer  
Administrative Assistant

*[Faint signature]*

Case No. 92-477-SPH

George Baker /Petitioner

Lena Guise /Property Owner/Appellant

---

11/02/92 -Motion to Dismiss Appeal filed by People's Counsel (no final order issued by Zoning Commissioner; not ripe for appeal; appeal taken from Zoning Commissioner's Ruling on Preliminary Motion, not final order.)

-----  
11/04/92 -Ltr from George Baker, Petitioner, objecting to appeal; premature to grant hearing on appeal of ruling.

---

11/06/92 -Memorandum of Law in Opposition to PC's Motion to Dismiss filed by C. Sapp, Esquire and W. Glasgow, Esquire, on behalf of property owner, Lena Guise.

---

11/09/92 -Board's Ruling on Motion to Dismiss --Motion GRANTED.

-----  
11/25/92 - Z.C.'s Order GRANTING Petition.

12/7/92 - Notice of appeal filed by Conwell F. Sapp and Wm. T. Glasgow, attorneys for Lena Guise, property owner.

---

1/06/93 -Ltr from Lena Guise regarding the appeal pending in this matter; response being prepared for signature by Chairman.

Baltimore County Government  
Office of Zoning Administration  
and Development Management



111 West Chesapeake Avenue  
Towson, MD 21204

July 14, 1994

(410) 887-3353

Richard Hauf  
404 Lafayette Avenue  
Baltimore, MD 21228

RE: Permit #B-173949  
Approved 11/23/93  
401 Lafayette Avenue  
(Catonsville Heights)  
1st Election District

Dear Mr. Hauf:

Your letter to Carl Richards, dated July 2 and received on July 6, has been referred to me for reply. This letter replies to your letter and subsequent telephone conversations with zoning office staff.

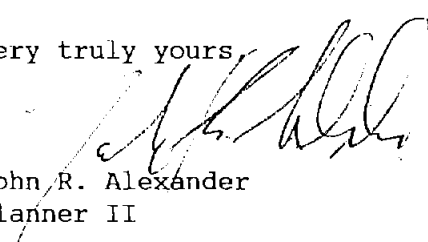
In response to our discussions with you, we have reviewed all zoning case files pertaining to this site (case #92-30-A and #92-477-SPH), as well as the subsequent appeals. After a thorough review of the files, we believe the permit was properly approved by this office.

You have questioned the permit approval without requiring certain road improvements. This office takes direction from Public Works prior to approving permits as was done with this permit prior to approval. This office has rechecked Public Works' original approval recommendation and David Thomas in that office has reconfirmed the original recommendation.

Should you continue to be concerned that the permit was issued improperly, it is your right to appeal to the Baltimore County Board of Appeals.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 887-3391 (FAX - 887-5708).

Very truly yours,

  
John R. Alexander  
Planner II

JRA:scj



Printed with Soybean Ink  
on Recycled Paper

WILLIAM T. GLASGOW  
ATTORNEY AT LAW

8333-92  
10/8/92  
S  
(301) 997-2298

SUITE 250  
10715 CHARTER DRIVE  
COLUMBIA, MARYLAND 21044

October 7, 1992

Charlotte Radcliffe, Secretary  
ZADM  
111 West Chesapeake  
Room 113  
Towson, MD 21204

Re: Lena Guise  
Case No. 92-477-SPH

Dear Ms. Radcliffe:

Please file the enclosed Appeal and Petition for Appeal in the above-referenced matter along with my check for \$210.00.

Very truly yours,

  
William T. Glasgow

WTG\kwb\C3a  
enclosure  
cc: Connie Sapp

RECEIVED  
OCT 8 1992  
ZONING OFFICE

enclosure 10/8/92

it is more important that a judgment be stable than that it be correct.

Friedenthal, Kane & Miller, Civil Procedure, Hornbook Series § 14.3 at 616. There is nothing which indicates that the Board of Appeals made an error and if such an error had been made Circuit Court was the property place to raise the question. Civil Procedures, Hornbook Series (1985) § 14.3.

A factor addressed by courts considering the appealability of interlocutory orders is the harm which will occur in the event the appeal is not heard. Property Owner had a buyer for her property which sale was based on the variance approval by the Baltimore County Board of Appeals. The approval was obtained May 6, 1992. It is now November of 1992 with a second hearing scheduled before the Zoning Commissioner on November 10, 1992. The sale may well be lost. In the event that the Zoning Commissioner denies the area variance another appeal will be necessary adding additional time and expense. Additional legal time, filing fees and transcript costs have already been incurred. The original variance petition was filed on November 7, 1991.

Whether time and money are immediate harm is an open question but surely the law should serve as a shield in the case of Lena Guise. This is vexatious litigation.

Respectfully submitted,

6/23/92  
G  
6497-92

WILLIAM T. GLASGOW

ATTORNEY AT LAW

(301) 997-2298

SUITE 250  
10715 CHARTER DRIVE  
COLUMBIA, MARYLAND 21044

June 22, 1992

The Honorable Lawrence E. Schmidt  
Zoning Commissioner of Baltimore County  
111 West Chesapeake Avenue  
Towson, MD 21204

Re: Case No. 92-477-SPH  
Hearing: July 27, 1992  
11 a.m.  
Room 118, Courthouse

Dear Commissioner Schmidt:

I am in receipt of a Notice of Hearing in the above-referenced case for the purpose of determining whether the property owned by Lena Guise consisting of less than the required 6,000 square feet may be residentially developed.

On April 23, 1992, a hearing was conducted before the County Board of Appeals for the purpose of requesting a variance because the lot was too small to meet the requirements for a house even though the property was zoned for residential construction. This was an appeal from a hearing before the Zoning Commissioner.

The County Board of Appeals ordered that the Petition for Variances for building set backs be granted. The neighbors were given 30 days to file an appeal to the Circuit Court and neglected to do so.

Mrs. Guise, who is 72 years old, has owned this property for 42 years and has paid taxes on it. Her father owned for a number of years prior to that and he paid taxes on it. The neighbors that object to the development of this property currently use the residential lot as a park with bike trails and picnic benches. The children in the neighboring houses use it as a play ground. Mrs. Guise needs to sell the property to make repairs to her present house.

The purpose of filing a Petition for a Variance was so that Mrs. Guise could get a building permit on a lot that consisted of less than 6,000 square feet. The variance was granted and the neighbors failed to file a proper appeal within sufficient time.

**MICROFILMED**

The Honorable Lawrence E. Schmidt  
June 18, 1992  
Page 2

The matter is now moot. It has been decided and is res judicata and under the light of collateral estoppel, the hearing should be cancelled since there was already a hearing and the same issues will be raised that were already approved by the County Board of Appeals.

A neighbor is merely trying to delay Mrs. Guise from the proper use of her property by refiling a petition on the same issues.

Based on these facts, I request that you rescind the hearing currently scheduled.

Very truly yours,



William T. Glasgow

WTG\kwb\C3a  
cc: Connie Sapp

RECEIVED  
JUN 23 1992

ZONING OFFICE



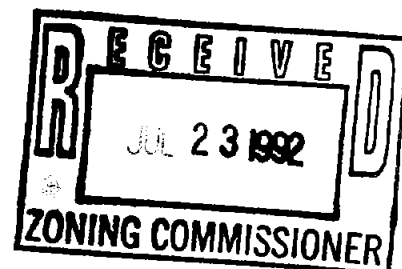
WILLIAM T. GLASGOW

ATTORNEY AT LAW

(301) 997-2298

SUITE 250  
10715 CHARTER DRIVE  
COLUMBIA, MARYLAND 21044

July 22, 1992



The Honorable Lawrence E. Schmidt  
Zoning Commissioner of Baltimore County  
Baltimore County Government  
Office of Planning and Zoning  
Suite 113 Courthouse  
400 Washington Avenue  
Towson, MD 21204

Re: Lena Guise  
Case No. 92-477-SPH

Dear Commissioner Schmidt:

Please find enclosed a Motion to Dismiss and accompanying  
Memorandum of Law in regard to the above-referenced matter.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'W. T. Glasgow', written over a horizontal line.

William T. Glasgow

WTG\kwb\C3a  
enclosure  
cc: Connie Sapp

*[Faint, illegible handwritten text]*

# REESE AND CARNEY

ATTORNEYS AT LAW

10715 CHARTER DRIVE

COLUMBIA, MARYLAND 21044

(410) 740-4600

WASHINGTON AREA

(301) 621-5255

BALTIMORE FAX (410) 730-7729

WASHINGTON FAX (301) 621-5273

OF COUNSEL

CHARLES A. REESE

255 N. WASHINGTON STREET  
SUITE 505  
ROCKVILLE, MARYLAND 20850

(301) 762-6210

DAVID A. CARNEY  
DANIEL H. SCHERR  
DAVID C. HJORTSBERG  
KEVIN J. KELEHAN  
JUDITH S. BRESLER  
LAURENCE B. RABER  
L. ROLAND STURM  
JEFFREY A. KREW  
JOAN M. BECKER  
MICHAEL S. MOLINARO  
CONWELL F. SAPP  
BETH A. JACKSON

December 3, 1992

Clerk  
Baltimore County Board of Appeals  
400 Washington Avenue, Room 49  
Towson, MD 21204

RE: Our File No. 42420/9001  
Lots 31 & 32, Arunah Avenue Zoning

Dear Clerk:

Mrs. Guise has been in the process of trying to obtain a variance for over a year now. She is in danger of losing her potential buyer for the property if this matter is not resolved soon. As a consequence, your prompt scheduling of this matter would be very much appreciated. If it is possible, we would be willing to take a hearing date on which someone else has cancelled so long as we have sufficient notice to get out subpoenas. Thank you for your cooperation.

Very truly yours,

REESE AND CARNEY



Conwell F. Sapp

CFS/mw

enclosure: check

MICROFILMED

County Board of Appeals of Baltimore County  
Old Courthouse Room 49  
400 Washington Avenue  
Towson, Maryland 21204

November 2, 1992

RE: SPH92-477

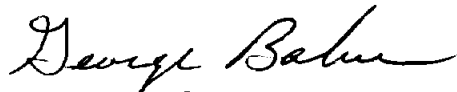
Gentlemen:

We are in receipt of petition letter dated October 7, 1992 from the law firm of William Glasgow directed to the Board of Appeals requesting a review of the Zoning Commissioner's decision denying their motion to dismiss a request for hearing pertaining to the issue of undersized lot.

We feel the Board of Appeals addressed very specific variance as stated in their second to last paragraph in their opinion dated May 5, 1992 in which they stated "ordered that the petition for variance of side yard setbacks is hereby granted" and made no mention of an area variance for undersize lot which we understand cannot be granted by either the Zoning Commissioner or Board of Appeals.

We have a November 10, 1992 hearing scheduled with the Zoning Commissioner. My neighbors and I feel this new issue should be addressed as it affects not only this particular lot but many other small lots in this old sub-division. Therefore, we feel that it would be premature to grant any hearing on this issue.

Very truly yours,



George Baker

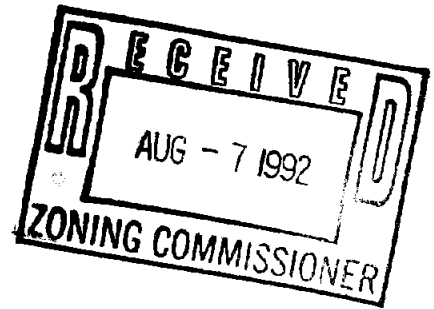
cc: Ms. Phyllis Friedman, Esquire  
Peoples Counsel

cc: Ms. Charlotte Radcliffe  
ZADM

RECEIVED  
COUNTY BOARD OF APPEALS  
NOV 11 4 57 PM '92

George Baker  
405 Lafayette Avenue  
Baltimore, Maryland 21228

The Honorable Lawrence E. Schmidt  
Baltimore County Zoning Commissioner  
Baltimore County Government  
Office of Zoning and Planning  
Suite 113 Courthouse  
400 Washington Avenue  
Towson, Maryland 21204  
July 30, 1992



Dear Commissioner Schmidt:

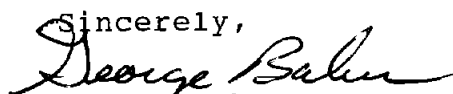
This letter is in reference to case #92-477-SPH. Although I run the risk of being repetitive, I feel I must bring to your attention several items pertinent to this case.

Regarding Mrs. Guise's attorney's motion to dismiss this case we feel that:

1. The Board of Appeals did not address the issue of area density because they were not requested to do so. They were very definite in the variances they granted.
2. If her attorney felt the Appeals Board had granted this along with other variances, why on June 5 did he file a new petition asking for the area variance.  
(I have enclosed a copy for your records)

We were not remiss in making a timely appeal. Upon advise from the law firm of Romadka, Gontrum, and Hennegan, we did not appeal the Board of Appeals ruling, but instead directed our appeal to the Zoning Commissioner as area density had not been considered. It was Mr. Gontrum's opinion that area density variances could not be granted without zoning reclassification.

Thank you in advance for your assistance.

Sincerely,  
  
George Baker

cc: Ms. Friedman

enclosure



July 18, 1992

The Honorable Roger Hayden  
The Old Court House  
400 Washington Avenue  
Towson, Maryland 21204

RE: ZONING CASE # 92-30A  
SEE ALSO # 92-477-SPH (Item 510)

Dear Mr. Hayden,

We are requesting your assistance regarding proposed construction in our neighborhood. We are opposed to the construction of a home which is scheduled to be built on a forty foot lot.

In 1991, the owner of the forty-foot lot, Mrs. Guise, requested closing of a portion of Lafayette Avenue (1st Election District) which was denied. A second hearing (Petition For Zoning Variance: N/S Arunah Avenue, 300' SE of Maryland Avenue) was held. This request was denied. Mrs. Guise, with the assistance of an attorney, appealed this ruling. She won the appeal. We, the undersigned, are in the process of appealing that decision.

We have researched zoning laws. John Gontrum, an attorney, explained that a forty foot lot will not meet **DR 5.5** requirements related to lot area. Mr. Gontrum informed us that the lots would have to be re-zoned to meet the requirement. A hearing has been scheduled for the twenty-seventh of July before the zoning commissioner to review the current status.

Lafayette Avenue is a dead end, unimproved street, with homes built on sixty foot and larger lots. If forty foot lots are allowed to be built upon, we feel that the area will suffer for it. All of us have invested substantial amounts of money in our homes. Several of the neighbors have had to invest money to prevent and protect their homes from water damage because of the lack of drainage in the area.

All of us enjoy living in this neighborhood. It is not crowded or boxed in. We have made an investment in this community and feel that we have the right to protect our investment.

Zoning laws were created so that **ALL** citizens would be protected. We are very

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GS  
to file - try me file  
6947-92

MICROFILMED

concerned that the zoning law will be overridden and our neighborhood as we know it will cease to exist.

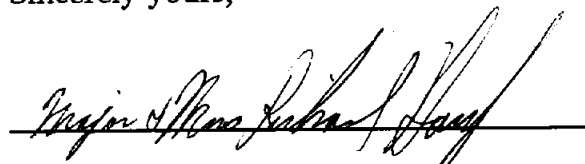
We believe the laws should be enforced. We are especially concerned because we have seen "shot gun houses" built in the vicinity. Presently, there are none on Lafayette Avenue. We wish to prevent any further construction in our area that will detract from the character of the neighborhood. We are requesting that you assist us in this matter.

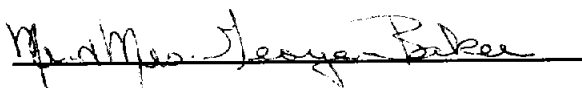
All of us work during the day and have had to take time off from work to come to these hearings. We do not have money to hire a lawyer and the council appointed, Phyllis Friedman, could not be at the last hearing. We understand that Ms. Friedman did what she could with her case load but we were left without active representation.

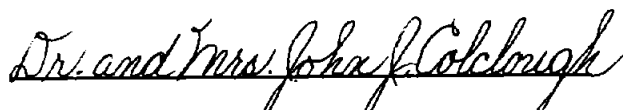
We also understand Mrs. Guise's situation. Several years ago a neighbor made an offer to Mrs. Guise to purchase the property but she declined. We do not want the land to be developed at all. The neighbors want to leave it with the trees intact so that our land will be protected from water damage and we will keep the integrity of the neighborhood. We would greatly appreciate your assistance in this matter. All of us need your help - we need an advocate.

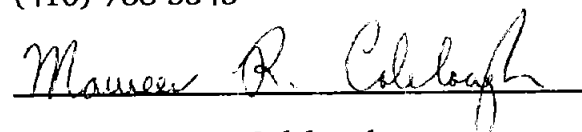
Please contact us with your response. We would welcome an opportunity to meet with you or send you any additional background information.

Sincerely yours,

  
Major and Mrs. Richard Hauf (Ret.)  
(410) 747-0398

  
Mr. and Mrs. George Baker  
(410) 788-5343

  
Dr. and Mrs. John J. Colclough  
(410) 747-0613

  
Ms. Maureen R. Colclough  
(410) 247-7178

cc: Council Woman Berchie Manley  
Arnold Jablon, Director of Planning and Zoning

encl.: Neighborhood Petition

**RECEIVED**

JUL 21 1992

**ZONING OFFICE**

We the undersigned residents being directly affected by any changes to Lafayette Ave., being an unimproved road, object to the closing of the 400 block of Lafayette Ave. for the following reasons:

1. The 400 block of Lafayette Ave. is already a dead end street.

2. Baynor Ave. is the only way into the 400 block of Lafayette Ave. at the present time. Baynor is not a through street. Therefore all homes on Lafayette Ave. will be limited to ingress and egress by this one unimproved road. This will add to the already limited access by emergency vehicles.

3. The residence could no longer use this dirt section of Lafayette Ave. for access to Edmondson Ave. leading to the bus line and school bus stops.

4. There is no storm drain system which has already caused an unresolved flood problem.

5. The county has already allowed developers to build and leave with no vested interest in the community.

|                     |                                     |
|---------------------|-------------------------------------|
| Catherine Hauf      | 404 Lafayette Ave. Balto. Md. 21228 |
| Richard Hauf        | 404 Lafayette Ave. 21228            |
| Joseph & Sha        | 410 LAFAYETTE AVE 21228             |
| Mary E. Sass        | 410 Lafayette Ave 21228             |
| Dave Baker          | 405 Lafayette Ave 21228             |
| Andree K. Korolajew | 405 Lafayette Ave 21228             |
| Sandra Baker        | 405 Lafayette Ave. 21228            |
| Maureen Colclough   | 804 Arunah Ave. 21228               |
| Betty M. Colclough  | 804 Arunah Ave. 21228               |



A. Ray Stuh

Frank Sosa

Frank Sosa Jr.

James Walker

402 LAFAYETTE AVE. CATONSVILLE, MD. 21228

409 LAFAYETTE AVE " " 21228

429 LAFAYETTE AVE " MD 21228

414 Lafayette Ave Catonsville MD 21228

Mr. & Mrs. Otis Outter 416 Lafayette Ave. Balto. Md. 21228

C. J. Freeman 418 Lafayette Ave Catonsville Md 21228

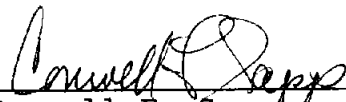
Richard L. Swinn 420 LAFAYETTE AVE Balto. MD 21228

Margery K. Griffin 421 Lafayette Ave. Catonsville Md. 21228

Stephen H. Velt 415 Lafayette Ave Catonsville Md 21228

Ernest Ambrose 412 Lafayette " "

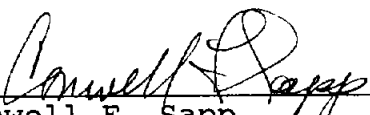
Bonnie Ambrose 412 Lafayette " "

  
Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044  
(410) 740-4600

  
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6<sup>th</sup> day of November 1992, a copy of the foregoing Memorandum of Law in Opposition to Motion to Dismiss was sent first class mail, postage prepaid to George Baker, 405 Lafayette Avenue, Baltimore, Maryland and Phyllis Friedman, Esquire, Peoples Counsel, Baltimore County Zoning Office, Courthouse, Towson, MD 21204.

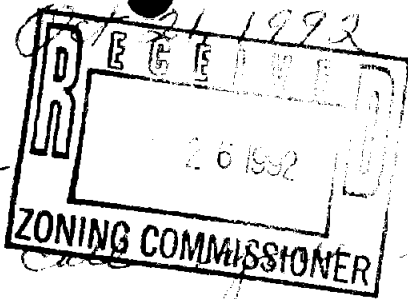
  
Conwell F. Sapp

  
William T. Glasgow

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RECEIVED

OCT 22 1992



ZONING OFFICE  
Dear Mr. Lawrence & Schmidt

I tried several times to call  
I did not hear from you.

In Oct 1990 when we went for a hearing  
on Road Closing. Mr. Huff and Mr. Baker  
argued that if the paper road was closed  
How can a fire department get through in  
event of a fire. I argued that the paper road  
was a wooded area. I did not get any-  
where.

I wrote to Governor Scheffer sent him picture  
etc. to see if anything can be done.  
That Saturday one of his staff members called  
and explained that <sup>they</sup> only deal with the state.  
He told me to send all the information to  
Roger B Hayden. He was nice enough to  
write a letter for me. I received a call  
and Midge and I went to see a zoning  
board member. He draw out a map  
how much feet we had to be in order

---

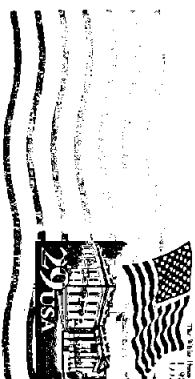
③

I appreciate any thing you can  
do for me in this matter

God bless you

Lena Guise

Gene Davis  
306 Stickland St  
Baltimore Md 21229



Attention  
Mr Lawrence L Schmidt  
c Lawrence  
L Schmidt

Mr Lawrence L Schmidt  
Young Commission  
111 West Chesapeake Ave  
Jowson Md 21204

# EXHIBIT B

IN THE MATTER OF  
Lots Nos. 31 & 32  
of Arunah Avenue

\* Case No. 92-477-SPH  
\* BALTIMORE COUNTY  
\* ZONING COMMISSIONER

\* \* \* \* \*

## MOTION TO DISMISS

Lena Guise, Property Owner, by and through her attorneys Conwell F. Sapp and William T. Glasgow, hereby moves that the Petition for Special Hearing filed by George Baker be dismissed and for reasons states:

1. Lena Guise filed, pro se, a petition for a setback variance from the area regulations of Baltimore County zoning regulations on or about November 7, 1991 in Case No. 92-30-A.

2. By Order dated October 8, 1991, such petition was denied by the Deputy Zoning Commissioner of Baltimore County.

3. Appearance of counsel was entered and an appeal was timely filed to the Baltimore County Board of Appeals.

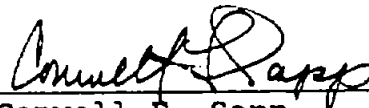
4. By Order Dated May 6, 1992, following an evidentiary hearing, the petition for a variance was granted.

5. No appeal was made to the Circuit Court of Baltimore County as required by law for review of a Board of Appeals decision.

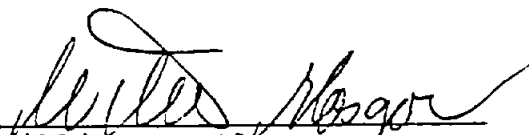
6. On or about June 15, 1992, a neighbor, George Baker, who attended and participated in the Board of Appeals hearing filed a petition with the Zoning Commissioner of Baltimore County requesting a hearing on whether the same property could be developed.

7. This issue was specifically adjudicated in the Board of Appeals hearing and consequently is res judicata.

WHEREFORE, Property Owner respectfully requests that this Petition be dismissed.



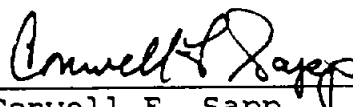
Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044  
(410) 740-4600



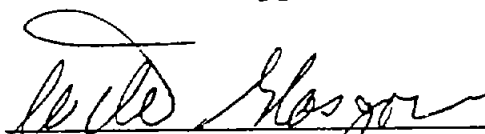
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of July, 1992, a copy of the foregoing Motion to Dismiss was sent first class mail, postage prepaid to George Baker, 405 Lafayette Avenue, Baltimore, Maryland and Phyllis Friedman, Esquire, Peoples Counsel, Baltimore County Zoning Office, Courthouse, Towson, Maryland 21204.



Conwell F. Sapp



William T. Glasgow

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timely filed with appropriate grounds. No other avenue is open to the parties.

"An Adjudicative determination by an administrative tribunal is conclusive under the rules of res judicata only insofar as the proceeding resulting in the determination entailed the essential elements of adjudication including: . . . (b) The right on behalf of the party to present evidence and legal argument in support of the party's contention and fair opportunity to rebut evidence and argument by opposing parties . . . ." Re-statement of Judgments § 83 (1982). Res judicata principles apply to administrative hearings as well as proceedings in court. George Baker as well as other neighbors in opposition have had two separate opportunities to be heard and cannot be permitted to come through a back door to do what cannot be done through the front door.

When the principles of res judicata are applied to a zoning decision, a second action on the same property is precluded unless there is a substantial difference in the neighborhood or change in circumstances, see generally, Chatham Corp. v. Beltram, 243 Md. 138, 220 A.2d 589 (1966) and Woodlawn Area Cit. Ass'n v. Bd. of Co. Comm., 241 Md. 187, 216 A.2d 149 (1966). In the case sub judice, the underlying assumptions and reasons are the same as those previously heard. The opposing neighbors are attempting to prevent Lena Guise from the lawful use of her property. Any reasons contended by petitioner should have been put forward at previous hearings simply to avoid this sort of duplicative argument.

IN THE MATTER  
Lots Nos. 31 & 32  
of Arunah Avenue

\* Case No. 92-477-SPH  
\* BALTIMORE COUNTY  
\* ZONING COMMISSIONER

\* \* \* \* \*

MEMORANDUM OF LAW

Parties are Precluded from  
Re-litigating the Same Issues

The original variance petition filed by Property Owner was drafted with the aid of a Baltimore County Zoning technician because she was not represented by counsel at the time. The Property Owner explained what she intended and the wording was designed by the technician. Any deficiency in the petition is not an error of the Property Owner.

The property and the parties are identical to those in the hearing before the Deputy Zoning Commissioner and the Board of Appeals in Case No. 92-30-A. The issue of the property size and its capability of development have been heard through the testimony of Midge Stockdale concerning other area homes on property of the exact same dimensions. Evidence was entered of other variances granted in the neighborhood on properties of the same size which were subsequently improved. Expert testimony was presented by an engineer concerning the suitability of the property for a residence and the appropriate siting of such residence. All of this evidence and testimony was appropriately weighed by the Board of Appeals and incorporated into its Decision and Order. This was a final decision in the matter and can be appealed to the Circuit Court of Baltimore County if

EXHIBIT C

IN THE MATTER OF  
Lots Nos. 31 & 32  
of Arunah Avenue

\* Case No. 92-477-SPH  
\* BALTIMORE COUNTY  
\* ZONING COMMISSIONER

★ ★ ★ ★ ★ ★ ★ ★

POST HEARING MEMORANDUM OF LAW

### Facts

Lena Guise, property owner, filed a request for variances for Lots 31 and 32 on Arunah Avenue, Case No. 92-30-A before the Zoning Commissioner of Baltimore County. Such petition was denied. This decision was appealed and reversed by the Baltimore County Board of Appeals following a hearing. No appeal was taken to Circuit Court. Protestants in 92-30A filed for a second hearing before the Zoning Commissioner on the same property concerning the legality of property owner developing a property of less than 6,000 square feet. Another hearing was granted and the case was renumbered as 92-477. People's Counsel, although not a party in the first case, entered her appearance. The hearing was held on July 27th, 1992 before Zoning Commissioner Lawrence Schmidt. No evidence was taken but argument was heard on a preliminary Motion to Dismiss brought by the property owner. Commissioner Schmidt withheld decision and requested written submissions.

## Principles of Res Judicata Apply to Administrative Hearings

Professor Kenneth Davis, the leading authority on administrative law, in his treatise on the subject is quite

# RECLAIMED

emphatic that res judicata does apply to administrative hearings. There are some administrative actions to which it does not apply such as some letter decisions by an agency but if there has been a hearing with each side able to present evidence res judicata applies. It applies even in hearings such as those held for individuals requesting Social Security benefits when there is, in fact, only one side. In this instance the protesting neighbors have twice had the hearing opportunity to hear and be heard. All issues regarding this property that could have been brought up at prior hearings should have been put forward. The underlying facts and assumptions of both cases are the same.

Peoples Counsel relies on Board of County Commissioner's v. Racine, 24 Md. App. 435 332 A.2d 306 (1975) for the premise that res judicata does not apply in a zoning case if an error of law has been made. This is incorrect on two levels. The most primary is that no illegality in the decision of the Board of Appeals can be shown. Secondly, the Court in Racine cited to work written by Professor Davis in 1958 to support its decision. Davis himself states that res judicata as it relates to administrative law was markedly changed by a Supreme Court decision in 1966 United States v. Utah Construction & Mining Company, 384 U.S. 394, 421-22 (1966). Davis in 1989 and the state of administrative law is markedly changed from 1958. The Davis quote cited by the Court in Racine was based on the 1942 Restatement of Judgments. The Restatement of Judgments was revised in 1982

as Restatement of Judgments 2d. Davis on res judicata explains the changing law.

What is happening is that the fundamentals summarized in the 1942 Restatement of Judgments are no longer followed. The Restatement of Judgments 2d (1982) is different in its fundamentals. What is more important is that the Supreme Court is signaling its general acceptance of the new fundamentals, of the new details, and of the new language. For instance, §27 of the Restatement of Judgments 2d states a general rule which is now law: "When an issue of fact or law is actually litigated and determined by a valid and final judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." Under §70 of the 1942 Restatement, a decision on a question of law was generally not binding in a subsequent action.

The Board of Appeals Decision was Legal and Final

People's Counsel presented a variety of legal theories which, while novel, are not persuasive. She postulated that variance allowing a reduction in the area of a particular property is in effect a change in the density requirements and the density change cannot be made by the Board of Appeals and is therefore illegal. The alchemy which changes an area requirement into a density classification is inexplicable. The authority used for many years by the Zoning Commissioner for area variances is clearly defined in §307.1 of the Baltimore County zoning regulations. Only one dwelling is proposed for this site. No violation is done to the purpose of the density requirements which were primarily designed to create better design in future subdivisions.

1B00.2 - Purpose. The D.R. zoning classification are established, pursuant to

IN THE MATTER OF  
Lots Nos. 31 & 32  
of Arunah Avenue

\* BEFORE THE  
\* BALTIMORE COUNTY  
\* BOARD OF APPEALS  
\* Case No. 92-477-SPH  
92-30-A

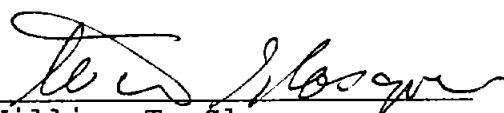
\*\*\*\*\*

MOTION TO DENY PEOPLE'S COUNSEL'S  
MOTION TO DISMISS

Lena Guise, Property Owner, by and through her attorneys  
Conwell F. Sapp and William T. Glasgow hereby moves to deny the  
Motion to Dismiss Appeal filed by People's Counsel in the above-  
referenced matter.

In support of this Motion, Property Owner submits the  
accompanying Memorandum of Law.

  
Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044  
(410) 740-4600

  
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

MICROFILMED

the legislative findings set forth above, in order to:

- A. Foster a greater variety in housing types within future residential developments;
- B. Allow more feasible preservation of natural features and induce the reservation of ample and more suitably designed open spaces and parks, in order to better satisfy the needs of residents without economic disadvantage to developers;
- C. Allow greater flexibility in subdivision-development planning and provide for the inducement of more creative as well as more economic approaches to residential development, with the goal of desirable and distinctive identity and character of individual residential locales;
- D. Provide the means to satisfy differing housing-market requirements without rezoning, and thus without disruptive changes in density potential; and
- E. Provide for the application of residential zoning classifications in a manner more nearly in accord with comprehensive plans and comprehensive-planning goals.

The purpose and legislative intent was not to restrict an individual property owner so that she receives no economic benefit from a parcel of property which was subdivided in 1919 prior to any zoning regulations.

The same area as the subject property is listed on homes at 601 Maryland Avenue, 1006 Arunah Avenue, 501 Valkorn Road, 502A Dorchester Road and 521 Valkorn (new home). 6007 Montgomery Avenue was approved for construction last year. Case No. 91-245A for 5208 Carroll Place approved the same



variances in 1991. Any illegality on the part of the Zoning Commissioner or Board of Appeals is long standing. If such an act were illegal the recourse is through an appeal to Circuit Court and not a second hearing before the Zoning Commissioner.

Alternatively, People's Counsel suggested that the area requirement was overlooked by the Board of Appeals. Not only was this not overlooked but evidence was presented and considered by the Board and such approval was incorporated into their opinion. Direct reference in the opinion is made to the width of the lot, the proposed building envelope and the testimony of Midge Stocksdales regarding properties of a similar size in the immediate area. See Transcript, pp. 23 and 24, attached hereto as Exhibit A. Entered into evidence was a variance plat depicting the area of the property which was a part of the submission. Also submitted into evidence was the record of a variance granted for an identically sized property within two blocks of the subject property. See Transcript, pp. 13 and 14, attached hereto as Exhibit B.

The initial Petition for Zoning Variance which was prepared by a clerk/technician of the Zoning office in aid of the property owner was brought for a variance from regulations at 1B02.3.C.1 which states the minimum square footage for property and the set back requirements. The referenced regulations refer to both minimum area and set back. Both were considered by the Board of Appeals and

although the variance petition could have been more carefully drafted, the area of the property in question was considered by the Board.

#### Entry of People's Counsel

People's Counsel has the authority to appear on behalf of the public on any zoning matter which she deems involves the public interest. The People's Counsel also as an aggrieved party has the authority to bring an appeal. People's Counsel v. Williams, 45 Md. App. 617 415 A.2d 585 (1980). The authority, however, has limits. To appeal, a party must be aggrieved and be a party to the proceeding below. In the first case before the Zoning Commissioner regarding this property People's Counsel did not appear. At the Board of Appeals hearing she advised the protestants outside of the hearing room prior to the hearing but chose not to appear at the hearing itself. She, therefore, lacked the party status necessary to appeal. The belated entry into a second hearing may be because of the lack of party status for purposes of appeal in the first case.

A principle of res judicata precludes the entry of People's Counsel at this eleventh hour.

A judgment, to operate as an estoppel must be upon the same subject matter and between the same parties. The term 'parties', however, is not restricted to those who appear as plaintiff and defendant upon the record. It includes those who are directly interested in the subject matter of the suit, knew of its pendency, and had the right to control, and direct, or defend it. The law, in dispensing even-handed justice to all, has wisely taken care 'ut sit finis litium', and if matters, which have been once solemnly decided, could

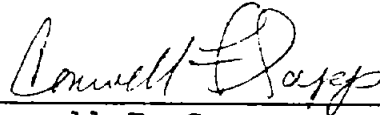
be again drawn into controversy, there would be no end of litigation and disputes. Mr. Greenleaf has happily said, 'justice requires that every cause be once fairly and impartially tried; but the public tranquility demands, that having been once so tried, all litigation of that question and between the same parties should be closed forever'." McKinzie v. B & O R.R., 28 Md. 161, at 174-5.

quoted in Board of County Commissioners v. Racine, 24 Md. 435, 332 A.2d 306 (1975). People's Counsel could have entered this case and raised whatever issues she considered pertinent earlier. By not doing so she is precluded from doing so later. It is patently unfair to the Petitioner to put her to the time and expense of resolving issues after the appeal time has passed which have already been the subject of a final judgment.

WHEREFORE, for the foregoing reasons Petitioner prays that case no. 92-477 be dismissed.

Respectfully submitted,

REESE AND CARNEY



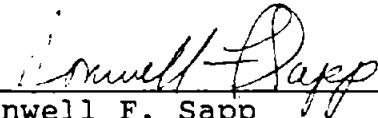
Conwell F. Sapp  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044



William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31<sup>st</sup> day of August, 1992, a copy of the foregoing Post Hearing Memorandum of Law was mailed, postage prepaid to George Baker, 405 Lafayette Avenue, Baltimore, Maryland and Phyllis Friedman, Esquire, People's Counsel, Baltimore County Zoning Office, Courthouse, Towson, Maryland 21204.

  
\_\_\_\_\_  
Conwell F. Sapp

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## EXHIBIT A

6 1 A. Absolutely. Our office is just about four blocks  
2 away from there.

3 Q. How long have you been in this business?

4 A. Twelve years.

5 Q. Are you familiar generally with this Caton  
6 Industrial Heights area?

7 A. Very, very familiar. I have sold property there.  
8 Have listed property there.

9 Q. You have been working with Mrs. Guise?

10 A. For over, or just about two years now, trying to  
11 sell this property.

12 Q. Are you aware of other properties in the area of  
13 about this approximate size that have homes on them?

14 A. Yes. There are quite a few of them that have a  
15 40 foot lot that have been built on. Usually what they  
16 put on is a shotgun split by a builder, a 20 foot wide by  
17 32, or something similar to a townhouse. You could just  
18 take --

19 MR. DISNEY: Called a what?

20 THE WITNESS: Shotgun split.

21 Q. What's that? I am still having trouble with that

## EXHIBIT A

6 1 one.

2 A. A shotgun split. It's basically what they build  
3 in order to give the buyer as much living space as they  
4 can in a limited amount of building space. They are 20  
5 foot wide. They are at least 36 to 40 feet long so that  
6 the buyer has the access to the square footage to live on  
7 a very small lot.

8 Q. And are there a variety of these?

9 A. There are.

10 Q. In that area?

11 A. Not only in Catonsville Heights, but Catonsville  
12 Manor. There are some right off Winters Lane, which is in  
13 the same general area, four or five blocks.

14 Q. Where this lot is also?

15 A. Yes. Not only built. Built and sold.

16 MS. SAPP: I have no further questions.

17 MR. DISNEY: This is basically put on a lot so  
18 they had the ten foot setback on either side?

19 THE WITNESS: Yes.

20 THE CHAIRMAN: Mr. Baker?

21 CROSS EXAMINATION

## EXHIBIT B

4           1           Calculating that, using the total envelope as one  
2 building, we wouldn't even have one-tenth of one CFS  
3 causing the runoff.

4           Q.     Can you identify these records?

5           A.     This looks like a petition for a zoning variance,  
6 notice of a hearing, and appears to be that the Deputy  
7 Zoning Commissioner -- I am trying to see if -- this is a  
8 petition passed by the Deputy Zoning Commissioner for a  
9 variance for a side yard and setback and I believe -- I am  
10 going to have to read it more -- permit a side yard  
11 setback in lieu of the 25 in accordance to the  
12 petitioner's exhibit. And petitioner's exhibit shows a --  
13 and this shows a house sitting on a similar -- two, 20  
14 foot lots in Catonsville Heights at the intersection of  
15 Delaware Place and -- I don't know how to pronounce it --  
16 Aruna Avenue -- Aruna Avenue. And this was in 1988, I  
17 believe.

18           MS. SAPP: If you would, once 'this' has been  
19 submitted, I would ask that you take an official notice  
20 that this property is two blocks away.

21           THE CHAIRMAN: Petitioner's Exhibit No. 4 will be

## EXHIBIT B

4 1 a compilation of the associated findings of the Deputy  
2 Zoning Commissioner in 1988.

3 MR. DISNEY: Fourth of May. I am going to make a  
4 note on here. By the way, the copies are not very  
5 readable. That's Exhibit 4 consisting of two sheets with  
6 the case file of 894-A, date is 5-4-88, before the Zoning  
7 Commissioner, J. Robert Haines.

8 Q. Mr. Shockely, did you note on those records that  
9 you just identified whether that variance was granted in  
10 that case?

11 A. Yes. I read the order by the Zoning  
12 Commissioner. It was granted.

13 Q. And the property is similar in the same  
14 subdivision?

15 A. Same subdivision, same size lot, 40 feet. Two,  
16 20-foot lots of 40 feet.

17 Q. Would building on this property cause any sort of  
18 problems with the health, safety or general welfare of the  
19 public?

20 A. I just can't imagine. It's the end of the street.  
21 There's no certainly no health hazard. There's no harm to



# EXHIBIT D

|                                     |   |                     |
|-------------------------------------|---|---------------------|
| IN RE: PETITION FOR SPECIAL HEARING | * | BEFORE THE          |
| NE/S Arunah Ave., 300 ft. SE        |   |                     |
| of c/l Maryland Avenue              | * | ZONING COMMISSIONER |
| (Lots #31 & #32, Arunah Ave.)       |   |                     |
| 1st Election District               | * | OF BALTIMORE COUNTY |
| 1st Councilmanic District           |   |                     |
|                                     | * | CASE # 92-477-SPH   |
| George Baker, Petitioner            |   |                     |
| Lena Guise, Property Owner          | * |                     |

\*\*\*\*\*

## RULING ON PRELIMINARY MOTION

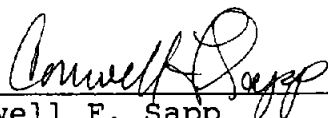
The above captioned matter comes before the Zoning Commissioner as a Petition for Special Hearing for that property known as lots No. 31 and No. 32 on Arunah Avenue in the Catonsville Heights section of Baltimore County. The Petition was filed by George Baker, a neighbor of the subject site. The hearing for the Petition was scheduled on July 27, 1992. However, prior to presentation of any evidence and/or argument on the merits, counsel for the property owner moved to dismiss the Petition. Oral arguments and subsequent memorandums were offered by the parties. This ruling addresses only those issues raised within the Motion to Dismiss.

A brief history and overview of the subject property and its zoning history is in order. As noted, the subject site is comprised of 2 lots within the Catonsville Heights subdivision. The subject property is owned by Lena Guise. The property is approximately 5,280 sq. ft. in area and is zoned D.R.5.5. Under the provisions of Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), the minimum net lot area per dwelling unit in a D.R.5.5 zone is 6,000 sq. ft. Further, that section of the regulations provides that any such dwelling on a lot zoned D.R.5.5 must have a 10 ft. side yard setback.

During the summer of 1991, Ms. Guise apparently decided to construct a dwelling on the subject lot. A house approximately 60 ft. deep and 26 ft.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6<sup>th</sup> day of November, 1992, a copy of the foregoing Motion to Deny People's Counsel's Motion to Appeal was sent first class mail, postage prepaid to George Baker, 405 Lafayette Avenue, Baltimore, Maryland and Phyllis Friedman, Esquire, Peoples Counsel, Baltimore County Zoning Office, Courthouse, Towson, MD 21204.

  
Conwell F. Sapp

  
William T. Glasgow

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wide was proposed. In that a building envelope of that size would result in only a 7 ft. side yard setback, Ms. Guise filed a Petition for Zoning Variance with this office. The Petition requested a variance from Section 1B02.3.C.1, "to permit a side yard setback of 7 ft. and a side street setback of 7 ft. in lieu of the required 10 ft. and 25 ft. respectively." The case came in for a hearing before Deputy Zoning Commissioner, Timothy M. Kotroco. Following a public hearing, the Deputy Zoning Commissioner denied the Petition by his Order dated October 8, 1991. Unsatisfied with this result, Ms. Guise appealed Deputy Zoning Commissioner Kotroco's decision to the County Board of Appeals. After a hearing, the Board overruled Deputy Zoning Commissioner Kotroco's opinion and granted the variance on May 6, 1992. There has been no appeal of the Board's decision to the Circuit Court for Baltimore County. Thus the Board's decision is final. Nonetheless, unhappy with this result, one of Ms. Guise's neighbor (Mr. Baker) filed a Petition for Special Hearing in the instant case. This Petition requests a determination of whether "the herein described property, located in a D.R.5.5 zone and consisting of less than the required 6,000 sq. ft. may be residentially developed." That is, notwithstanding the Board's ruling granting the variance as to side yard setbacks, Mr. Baker seeks a determination as to whether the lot can be developed in view of the fact that the square foot area of same is less than the required 6,000 sq. ft.

As indicated above, counsel for Ms. Guise appeared at the public hearing and raised objection to the propriety of the current Petition and hearing. Simply stated, Ms. Guise believes that this issue has been litigated and that the present Petition is barred from consideration by the doctrine of res judicata. Although the memorandum of the counsel representing Ms. Guise speaks for itself, it is to be noted that the primary thrust of same

the issues are the same, should the doctrine be applied. This is clear from the Court's language in Racine where, in examining the facts of the case before it, the Court noted "In the subject case, it is uncontroverted that the issue presented is identical; the parties are identical." Racine supra, pg. 311. Later, quoting from McKinzie v. Baltimore and Ohio Railroad Co. 28 Md. 161 (1867), the Court noted "A judgment, to operate as an estoppel, must be upon the same subject matter and between the same parties." (emphasis added) Racine supra, pg. 313. Even Black's Law Dictionary, Fifth Edition, 1979, notes that the application of res judicata "requires identity in things sued for as well as identity of cause of action, of persons and parties to an action and of quality in persons for or against whom claim is made."

It is apparent from these citations that the identical issue must exist in order for the doctrine of res judicata to be applicable. Does such an identical issue in this case exist? The answer must be in the negative.

Specifically, although determination of the applicability of the same section of the B.C.Z.R. is requested, two distinct and different requirements are at issue in these cases. Specifically, in the prior case, Deputy Commissioner Kotroco and the Board of Appeals considered the propriety of a side yard setback. In the case before me, consideration of the lot area is the germane issue. Determination of whether a variance should be granted from either of these requirements may require consideration of different issues; e.g., impact of a variance from a side yard setback upon an adjacent property may be quite different from the impact on neighboring properties of development on an undersized tract.

Further, a variance from the square foot area requirement may or may not involve a side yard setback variance. For example, a lot may have an

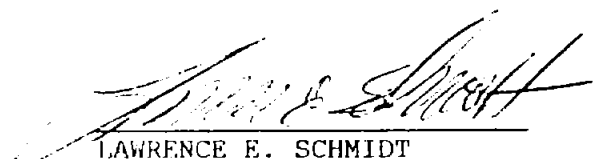
area in excess of 6,000 sq. ft., yet still require a side yard setback variance in order to be developed. The situation exists vice versa. That is, an undersized lot may not require any side yard setback variance.

Since these are the possibilities, I cannot conclude that the issues presented are identical. The Petitioner in the present case may present yet other considerations inapplicable to the initial case. Further, Ms. Guise's counsel's argument notwithstanding, it is clear that the County Board of Appeals did not resolve the undersized lot issue at the hearing before them. Although there are fleeting references to the lot size within the transcript, the previous variance case involved only the side yard setback issues. There is no evidence that the Board considered, much less ruled upon, whether construction would be proper on an undersized lot.

I also concur with Peoples Counsel's conclusion that it is the property owner's burden to seek relief from all applicable regulations. The direction of the Zoning Technician who accepted the first Petition notwithstanding, Ms. Guise is responsible for securing all variances necessary to develop. She did not request an area variance previously; and it was not granted. If it is now needed to develop, it must be obtained.

For the aforementioned reasons, I shall deny Ms. Guise's Motion to Dismiss. This case shall be set for hearing on the merits of the Petition in due course.

THEREFORE, it is this 27<sup>th</sup> day of Sept., 1992 Ordered that the Motion to Dismiss be and is hereby DENIED.

  
LAWRENCE E. SCHMIDT  
Zoning Commissioner for  
Baltimore County

LES:mmn

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1174  
September Term, 1987

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VERBAL CORPORATION ET AL.

v.

PAUL HUPFER ET AL.

---

Moylan,  
Bloom,  
Pollitt,

JJ.

---

Per Curiam

---

Filed: March 24, 1988

Case No. CBA-87-106

FILED  
MAY 10 1988  
CLERK OF COURT

In January 1987, appellee Paul Hupfer, an interested citizen of Baltimore County, noticed that United Parcel Service (UPS)<sup>1</sup> was erecting a building in the Loveton Industrial Park (Loveton) in Baltimore County. Suspecting that the contemplated use of the structure would constitute a trucking facility, Hupfer made inquiries as to the zoning of the Loveton tract and purchased a copy of the Baltimore County Zoning Regulations. He learned (1) that Loveton was zoned "M.L." or "Manufacturing-Light," and (2) that a trucking facility is permitted only by special exception, which in turn requires a public hearing. Believing that UPS was building an illegal trucking facility in Loveton without the required hearing and exception, Hupfer expressed his concern in a letter to the Baltimore Zoning Commissioner.

The Zoning Commissioner's answer to Hupfer's letter stated in no uncertain terms that the UPS structure, which was to be used as a parcel distribution center, was a warehouse rather than a trucking facility, and that a warehouse is permitted as of right under M.L. zoning, requiring neither a hearing nor a special exception. Accordingly, a building permit had been granted to UPS without a hearing.

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<sup>1</sup>Verbal Corporation, the named appellant, is an affiliate of United Parcel Service. Throughout this opinion we will refer to appellant as UPS.

Instead of allaying Hupfer's concerns about an illegal trucking facility in Loveton, the Commissioner's letter heightened them. By a second letter addressed to the Commissioner, Hupfer "appealed" the Commissioner's original reply letter and requested an appeal hearing before the Baltimore County Board of Appeals. Hupfer was joined in this "appeal" by the Sparks-Glenco Community Association, the Sparks-Quaker Bottom Community, and the Alexander Crossing Home Owner Association, Inc.

UPS filed a motion to dismiss the appeal of Hupfer, et al., to the Baltimore County Board of Appeals (Board) for lack of jurisdiction. After a hearing on UPS's motion, the Board concluded that it did have jurisdiction, that Hupfer and the three community groups were appealing "...the underlying determination by Commissioner Jablon that the use proposed here was permitted as a matter of right," and that their appeal to the Board was timely. In a memorandum opinion, the Board determined that it would conduct a hearing on the merits of the appeal, reasoning that a remand to the Zoning Commissioner would be inappropriate because the Commissioner had previously determined the UPS structure to be a warehousing facility.

UPS, now joined by Baltimore County, appealed the Board's decision to the Circuit Court for Baltimore County. Hupfer, now joined by the People's Counsel for Baltimore County, moved to dismiss that appeal for lack of jurisdiction on the grounds that the Board's order was merely a non-final interlocutory



order. They also moved to dismiss Baltimore County "as a proper party to the appeal."

The Circuit Court for Baltimore County, after hearing arguments on the motion to dismiss, concluded that the Board's opinion was a non-final interlocutory order not subject to "immediate judicial review," and granted the motion of Hupfer and People's Counsel. UPS promptly appealed that decision to this Court. Hupfer and People's Counsel claim, inter alia, that the circuit court's decision, like the Board's decision before it, is a non-final, interlocutory and unappealable order. Prior to oral argument, we rejected that contention and denied appellee's motion to dismiss this appeal, because a decision by the circuit court denying its own authority to entertain an appeal to it, for any reason, is a final judgment. See, Houghton v. County Commissioners of Kent County, 307 Md. 216, 217 (1986); Mooring v. Kaufman, 297 Md. 342, 347-48 (1983). This is so because "the 'accepted test in determining finality' is whether '[t]he effect of the court's ruling was to put the plaintiff out of court and deny her the means of further prosecuting her case....'" Mooring v. Kaufman, 297 Md. at 347 (quoting McCormick v. St. Francis De Sales Church, 219 Md. 422, 426-27 (1959), and quoted in Houghton v. County Commissioners of Kent County, 307 Md. at 221). The cases recognizing the finality of orders which either dismiss or grant motions to dismiss are numerous. Bailey v. Woel, 302 Md. 38, 41 n.1 (1984); McSwain v. Tri-State Transportation, 301 Md. 363, 368 (1984); County Commissioners v. C. J. Langenfelder,

237 Md. 368, 372-73 (1965); McCormick v. Church, supra at 426-27 (1959); Miller v. Massachusetts Mutual Life Insurance Company, 183 Md. 19, 33-34 (1944).

Our holding that we have jurisdiction to entertain this appeal because the circuit court's dismissal constituted a final, appealable order will be of little comfort to UPS because we will affirm that order.

The circuit court correctly dismissed UPS's appeal to it because it lacked jurisdiction to entertain that appeal. Maryland Rule Bl.(a), which deals with appeals from administrative agencies, plainly states that Subtitle B applies "to the review of any final action of an administrative agency." It is clearly the law that:

[A] judgment or order of a court is final when it determines or concludes the rights of parties or when it denies the parties means of further prosecuting or defending their rights and interests in the subject matter of the proceeding. Schultz v. Pritts, 291 Md. 1, 5-6, 432 A.2d 1319, 1322 (1981); Fred W. Allnutt, Inc. v. Commissioner of Labor and Industry, 289 Md. 35, 40, 421 A.2d 1360, 1362-63 (1980).

Highfield Water Company v. Washington County Sanitary District, 295 Md. 410, 415 (1983). This rule applies with equal force to the orders of administrative agencies; the Court of Appeals in Maryland Commission on Human Relations v. Baltimore Gas & Electric Company, 296 Md. 46 (1983), held that "an administrative agency's action is final if it determines the rights of the parties and leaves nothing further for the agency to do." Id. at 57.

An order denying a motion to dismiss for lack of jurisdiction, in contrast to the grant of a motion to dismiss for lack of jurisdiction, is not a final order. In Eisel v. Howell, 220 Md. 584, 586 (1959) (quoted in Highfield Water Co., supra at 415), the Court of Appeals wrote:

The denial of a challenge to the jurisdiction does not settle or conclude the rights of any party or deny him the means of proceeding further. It settles nothing finally. An order which does none of these things is not appealable. Whenever a court makes a disposition or order, it does so on the basis that it has jurisdiction, and if its express announcement of that fact constituted an appealable order, it would be impossible for a court to proceed with the trial of any case in which its jurisdiction was challenged.

(Citations omitted).

Appellant's reliance on Baltimore County Charter § 604 is misplaced. Section 604 provides that "[w]ithin 30 days after any decision by the county board of appeals is rendered, any party to the proceeding who is aggrieved thereby may appeal...." (Emphasis added.) Although appellant claims that the words "any decision" indicate that appeals may be taken from non-final orders, it concedes, as it must, that this language cannot be taken literally. In the course of a hearing, for example, the Board may be called upon to make many "decisions" concerning admissibility of evidence or the order of procedure. Obviously, such decisions as those cannot be appealed. What appellant overlooks is that "any decision" must be construed to mean "any decision final in nature," because

until there is a final decision or order there can be no "aggrieved party," and hence no appeal.

The Court of Appeals defined "aggrieved party" in Bryniarski v. Montgomery County Board of Appeals, 247 Md. 137 (1967):

Generally speaking... a person aggrieved by the decision of a board of zoning appeals is one whose personal or property rights are adversely affected by the decision of the board.

Id. at 144 (emphasis added). The Court has noted that "[i]n determining status to appeal, the question is whether the property owner may reasonably be thought to be specially damaged if the application is approved." Id. at 145 (emphasis added) (citing Town of Somerset v. Montgomery County Board of Appeals, 245 Md. 52, 63 (1966)).

A non-final order by the Board cannot produce an "aggrieved party" because it does not adversely affect the personal or property rights of anyone. UPS is not now, and might never be, subject to a decision by the Board that adversely affects its property rights. Until such a decision is rendered, if ever, UPS cannot be an "aggrieved party" and hence can have no standing to appeal. UPS is unquestionably disappointed that it will be obliged to litigate, at some expense, the issue that it had hoped was foreclosed, but only the result of litigation, not the trouble and expense thereof, can produce an "aggrieved party."

Even if the Board's non-final judgment did adversely affect UPS, and thus make UPS an aggrieved party under § 604

as houses on two lots of 40 feet in width. Some of the houses cited by Ms. Stocksdales were new, and others were older residences of Catonsville Heights recorded before the 1955 zoning law. Two houses on Arunah Avenue, the location of the subject parcel, received density variances, as well as several others built in different locales of Catonsville Heights in recent years. In response to People's Counsel, Ms. Stocksdales estimated that there were at least eight to ten vacant lots of 40 ft. x 120 ft.

People's Counsel contested that the development of small infill lots is an issue throughout Baltimore County, where the price of buildable lots is escalating and builders look for infill lots. If the lots are undersized, the developer then seeks variances to build so-called "shot-gun houses" that may not be in character with the neighborhood.

Testifying in opposition to the development of Ms. Guide's property. Richard Hauf reviewed his concern for the preservation of the character and nature of his neighborhood along Lafayette Avenue. He argued that the dimensions of his 80' x 120"+ property and those of his neighborhood containing large rancher-type dwellings will be adversely affected by a dwelling constructed on the subject parcel. Mr. Hauf also asserted that the prospect of a small house so built to utilize a dirt road was out of character with the style and values of residences on his street. He further recounted problems and expenses he has incurred controlling storm water runoff in a location that is not serviced by storm water drains. Although he has controlled his personal basement water problems, Mr. Hauf fears the water runoff consequences of clearing the subject parcel for development. He asserted that the zoning

# REESE AND CARNEY

DAVID A. CARNEY  
DANIEL H. SCHERR  
DAVID C. HJORTSBERG  
LAURENCE B. RABER  
KEVIN J. KELEHAN  
JUDITH S. BRESLER  
JEFFREY A. KREW  
MICHAEL S. MOLINARO  
L. ROLAND STURM  
JOAN M. BECKER  
CONWELL F. SAPP  
BETH A. JACKSON  
SUSAN E. BEASLEY

ATTORNEYS AT LAW  
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COLUMBIA, MARYLAND 21044  
(410) 740-4600  
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BALTIMORE FAX (410) 730-7729  
WASHINGTON FAX (301) 621-5273

OF COUNSEL  
CHARLES A. REESE  
255 N. WASHINGTON STREET  
SUITE 505  
ROCKVILLE, MARYLAND 20850  
(301) 762-6210

November 6, 1992

Baltimore County  
Board of Appeals  
400 Washington Avenue  
Room 49  
Towson, Maryland 21204

ATTN: Ms. Weidenhammer

Dear Ms. Weidenhammer:

Re: In the Matter of Lots Nos. 31 & 32 of Arunah Avenue  
Case No. 92-477-SPH, 92-30-A

Enclosed please find for filing Motion to Deny People's Counsel's Motion to Dismiss and accompanying Memorandum of Law for the above-referenced matter.

Thank you for your anticipated cooperation.

Very truly yours,

REESE AND CARNEY



Conwell F. Sapp

CFS/djp

Enclosures

*[Faint handwritten mark]*

*[Handwritten signature]* 11/06/92  
CBA  
KAS

and give UPS standing to appeal, such standing would not confer jurisdiction on the circuit court to hear an appeal from a non-final order. Section 604 addresses standing, not jurisdiction. And as previously mentioned, Md. Rule B1.a provides that the rules governing appeals from administrative agencies applies "to any final action of an administrative agency," and it is firmly established by the Court of Appeals that administrative remedies must be exhausted before an administrative order may be appealed, supra.

Because the Board's denial of UPS's motion to dismiss amounted to a non-final administrative order, the circuit court had no jurisdiction to hear UPS's appeal. Its decision to that effect was proper, and we affirm it.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY  
APPELLANTS.

RE: PETITION FOR SPECIAL HEARING : BEFORE THE COUNTY BOARD  
NE/S ARUNAH AVE., 300' SE OF  
C/L MARYLAND AVE. : OF APPEALS  
(LOTS #31 & #32, ARUNAH AVE.)  
1ST ELECTION DISTRICT : OF BALTIMORE COUNTY  
1ST COUNCILMANIC DISTRICT : Case No. 92-477-SPH  
GEORGE BAKER, PETITIONER  
LENA GUISE, PROPERTY OWNER/ :  
APPELLANT

: : : : : :

MOTION TO DISMISS APPEAL

People's Counsel for Baltimore County hereby moves to dismiss the appeal of the Zoning Commissioner's Ruling on Preliminary Motion on the grounds that no final order has been issued by the Zoning Commissioner and that the matter is not ripe for appeal.

Phyllis Cole Friedman  
Phyllis Cole Friedman  
People's Counsel for Baltimore County

Peter Max Zimmerman  
Peter Max Zimmerman  
Deputy People's Counsel  
Room 47, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204  
(410) 887-2188

MEMORANDUM OF POINTS AND AUTHORITIES:

Even though this is an administrative appeal, the Board should adopt the same principles as the courts and require that an appeal only be allowed from a decision in which Appellants have no further judicial process available. See Verbal

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Corporation, et al. v. Hupfer, et al., Court of Special Appeals  
No. 1174, September Term, 1987, Per Curiam Opinion (1988).

If this position is not adhered to by the Board, it would enable Appellants to bypass the Zoning Commissioner's rulings entirely and would overburden the Board and not be within the spirit and intent of the administrative structure.

Further, for the reasons described in the attached memorandum filed by People's Counsel with the Zoning Commissioner, the substance of this matter should be addressed by the Zoning Commissioner.

Phyllis Cole Friedman  
Phyllis Cole Friedman

I HEREBY CERTIFY that on this 2nd day of November, 1992, a copy of the foregoing Motion to Dismiss Appeal was mailed to Conwell F. Sapp, Esquire, and William T. Glasgow, Esquire, Reese and Carney, 10715 Charter Drive, Suite 200, Columbia, MD 21044, Attorneys for Appellant; George Baker, 405 LaFayette Ave., Baltimore, MD 21228; and Lawrence E. Schmidt, Zoning Commissioner, Room 113, Courthouse, 400 Washington Ave., Towson, MD 21204.

Phyllis Cole Friedman  
Phyllis Cole Friedman

IN THE MATTER OF  
LOT NOS. 31 & 32  
ARUNAH AVENUE

\* BOARD OF APPEALS  
\* BALTIMORE COUNTY  
\* SPH 92-477

\* \* \* \* \*

PETITION FOR APPEAL

Lena Guise, Property Owner, by and through her attorneys Conwell F. Sapp and William T. Glasgow, files this Petition for Appeal from an order of the Zoning Commissioner denying Property Owner's Motion to Dismiss.

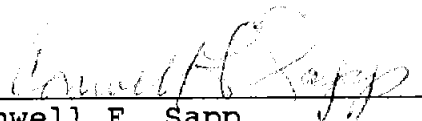
1. The Board of Appeals issued an opinion in Case No. 92-30-A dated May 6, 1992, in which it granted the Property Owner's requested variances for this property. Attached as Exhibit A.

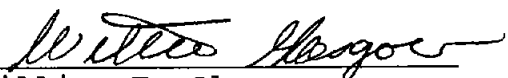
2. After the time for appeal to Circuit Court had run, a neighbor, Petitioner George Baker brought a separate case before the Zoning Commissioner on a claim which concerned the fact that the lot was undersized which was assigned a new case number SPH 92-477.

3. Property Owner brought a Motion to Dismiss attached as Exhibit B on the basis of res judicata. A Post-Hearing Memorandum was also filed, attached as Exhibit C.

4. In a ruling dated September 24, 1992, the Zoning Commissioner denied such motion, attached as Exhibit D.

WHEREFORE, Property Owner appeals the denial of her Motion to Dismiss and respectfully requests a hearing on this matter.

  
Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044  
(410) 740-4600

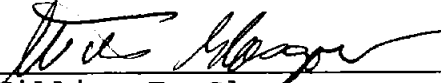
  
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of Oct, 1992, a copy of the foregoing Petition for Appeal was sent first class mail, postage prepaid to George Baker, 405 Lafayette Avenue, Baltimore, MD 21229; Phyllis Friedman, Esquire, Peoples Counsel, Baltimore County Zoning Office, Courthouse, Towson, MD 21204 and Lawrence E. Schmidt, Zoning Commissioner, 400 Washington Avenue, Towson, MD 21204.



Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044  
(410) 740-4600



William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

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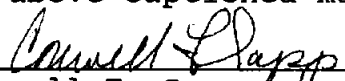
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LOT NOS. 31 & 32  
ARUNAH AVENUE

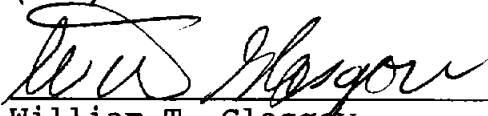
\* BOARD OF APPEALS  
\* BALTIMORE COUNTY  
\* SPH 92-477

\* \* \* \* \*

APPEAL

Please enter an appeal in the above-captioned matter.

  
Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044  
(410) 740-4600

  
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

*noted and filed*

|                                     |   |                     |
|-------------------------------------|---|---------------------|
| IN RE: PETITION FOR SPECIAL HEARING | * | BEFORE THE          |
| NE/S Arunah Ave., 300 ft. SE        |   |                     |
| of c/l Maryland Avenue              | * | ZONING COMMISSIONER |
| (Lots #31 & #32, Arunah Ave.)       |   |                     |
| 1st Election District               | * | OF BALTIMORE COUNTY |
| 1st Councilmanic District           |   |                     |
|                                     | * | CASE # 92-477-SPH   |
| George Baker, Petitioner            |   |                     |
| Lena Guise, Property Owner          | * |                     |

\*\*\*\*\*  
RULING ON PRELIMINARY MOTION

The above captioned matter comes before the Zoning Commissioner as a Petition for Special Hearing for that property known as lots No. 31 and No. 32 on Arunah Avenue in the Catonsville Heights section of Baltimore County. The Petition was filed by George Baker, a neighbor of the subject site. The hearing for the Petition was scheduled on July 27, 1992. However, prior to presentation of any evidence and/or argument on the merits, counsel for the property owner moved to dismiss the Petition. Oral arguments and subsequent memorandums were offered by the parties. This ruling addresses only those issues raised within the Motion to Dismiss.

A brief history and overview of the subject property and its zoning history is in order. As noted, the subject site is comprised of 2 lots within the Catonsville Heights subdivision. The subject property is owned by Lena Guise. The property is approximately 5,280 sq. ft. in area and is zoned D.R.5.5. Under the provisions of Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), the minimum net lot area per dwelling unit in a D.R.5.5 zone is 6,000 sq. ft. Further, that section of the regulations provides that any such dwelling on a lot zoned D.R.5.5 must have a 10 ft. side yard setback.

During the summer of 1991, Ms. Guise apparently decided to construct a dwelling on the subject lot. A house approximately 60 ft. deep and 26 ft.

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*[Signature]*

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wide was proposed. In that a building envelope of that size would result in only a 7 ft. side yard setback, Ms. Guise filed a Petition for Zoning Variance with this office. The Petition requested a variance from Section 1B02.3.C.1, "to permit a side yard setback of 7 ft. and a side street setback of 7 ft. in lieu of the required 10 ft. and 25 ft. respectively." The case came in for a hearing before Deputy Zoning Commissioner, Timothy M. Kotroco. Following a public hearing, the Deputy Zoning Commissioner denied the Petition by his Order dated October 8, 1991. Unsatisfied with this result, Ms. Guise appealed Deputy Zoning Commissioner Kotroco's decision to the County Board of Appeals. After a hearing, the Board overruled Deputy Zoning Commissioner Kotroco's opinion and granted the variance on May 6, 1992. There has been no appeal of the Board's decision to the Circuit Court for Baltimore County. Thus the Board's decision is final. Nonetheless, unhappy with this result, one of Ms. Guise's neighbor (Mr. Baker) filed a Petition for Special Hearing in the instant case. This Petition requests a determination of whether "the herein described property, located in a D.R.5.5 zone and consisting of less than the required 6,000 sq. ft. may be residentially developed." That is, notwithstanding the Board's ruling granting the variance as to side yard setbacks, Mr. Baker seeks a determination as to whether the lot can be developed in view of the fact that the square foot area of same is less than the required 6,000 sq. ft.

As indicated above, counsel for Ms. Guise appeared at the public hearing and raised objection to the propriety of the current Petition and hearing. Simply stated, Ms. Guise believes that this issue has been litigated and that the present Petition is barred from consideration by the doctrine of res judicata. Although the memorandum of the counsel representing Ms. Guise speaks for itself, it is to be noted that the primary thrust of same

is that the Board's ruling was dispositive of this issue and relitigation of same is improper.

People's Counsel and the neighboring property owners disagree. They believe that the issues are different (side yard setback vs. net area requirement) and thus the case should be heard.

As indicated, People's Counsel and counsel for Ms. Guise both submitted legal memorandums setting forth their positions. It seems apparent that both sides recognize that Board of County Commissioners v. Racine, 24 Md. App. 435, 332 A.2d 306 (1975) is the leading case in Maryland on this issue. Racine stands for the general proposition that the doctrine of res judicata can be applicable to the decisions of an administrative body, i.e., in this case, the Zoning Commissioner and the Board of Appeals. The principals of res judicata are well settled. Basically, the doctrine provides that once a final judgment has been entered, relitigation of the cause of action and issues presented is improper. If it were not so, litigation would be endless and parties thereto would never have disputes and issues resolved. Clearly, the public policy rationale for the doctrine is justified.

As indicated, Racine discussed the application of the res judicata to administrative bodies. Noted the Court, "We recognize, as indeed we must, that an unreversed final decision by a Zoning Board, passed in the exercise of its discretion upon issues of fact or upon mixed issues of law in fact are fully binding upon parties to the cause and their privies as to all issues determined thereby." Racine supra, pg. 314. It is clear that a prior decision by the County Board of Appeals or Zoning Commissioner may bar relitigation of identical issues, notwithstanding that the prior decision may not have undergone judicial scrutiny on appeal. However, that having been said, the doctrine of res judicata is to be applied narrowly. Only if

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law is adequate but must be enforced. Variances should not be granted to the detriment of existing houses. Mr. Hauf also bemoaned the fact that the County has done nothing in regard to storm drains and allows building without curbing on the streets.

George Baker, Petitioner in this case to deny the area density variance, testified to his purchase of several 20-foot lots to enlarge his property, and of his offer to purchase the Guise property. With a property of 120 ft. by 120 ft. immediately adjacent to the subject parcel, Mr. Baker objected because the undersized lot was incompatible as to square feet with his and other properties in the area. With no storm drains to capture water runoff and the likelihood of a crusher run connection to Lafayette Avenue, the prospect of a single-family dwelling was out of character. He contends that an open wooded lot holds some of the water that an improved lot will pass on.

At issue in this matter is whether a net area density variance request be granted. Variances may be granted where strict application of the zoning regulations would cause practical difficulty to the property owner. In order to prove practical difficulty for an area variance, a Petitioner must meet the following:

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

the issues are the same, should the doctrine be applied. This is clear from the Court's language in Racine where, in examining the facts of the case before it, the Court noted "In the subject case, it is uncontroverted that the issue presented is identical; the parties are identical." Racine supra, pg. 311. Later, quoting from McKinzie v. Baltimore and Ohio Railroad Co. 28 Md. 161 (1867), the Court noted "A judgment, to operate as an estoppel, must be upon the same subject matter and between the same parties." (emphasis added) Racine supra, pg. 313. Even Black's Law Dictionary, Fifth Edition, 1979, notes that the application of res judicata "requires identity in things sued for as well as identity of cause of action, of persons and parties to an action and of quality in persons for or against whom claim is made."

It is apparent from these citations that the identical issue must exist in order for the doctrine of res judicata to be applicable. Does such an identical issue in this case exist? The answer must be in the negative.

Specifically, although determination of the applicability of the same section of the B.C.Z.R. is requested, two distinct and different requirements are at issue in these cases. Specifically, in the prior case, Deputy Commissioner Kotroco and the Board of Appeals considered the propriety of a side yard setback. In the case before me, consideration of the lot area is the germane issue. Determination of whether a variance should be granted from either of these requirements may require consideration of different issues; e.g., impact of a variance from a side yard setback upon an adjacent property may be quite different from the impact on neighboring properties of development on an undersized tract.

Further, a variance from the square foot area requirement may or may not involve a side yard setback variance. For example, a lot may have an

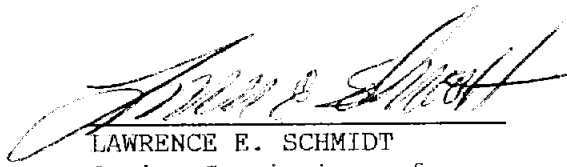
area in excess of 6,000 sq. ft., yet still require a side yard setback variance in order to be developed. The situation exists vice versa. That is, an undersized lot may not require any side yard setback variance.

Since these are the possibilities, I cannot conclude that the issues presented are identical. The Petitioner in the present case may present yet other considerations inapplicable to the initial case. Further, Ms. Guise's counsel's argument notwithstanding, it is clear that the County Board of Appeals did not resolve the undersized lot issue at the hearing before them. Although there are fleeting references to the lot size within the transcript, the previous variance case involved only the side yard setback issues. There is no evidence that the Board considered, much less ruled upon, whether construction would be proper on an undersized lot.

I also concur with Peoples Counsel's conclusion that it is the property owner's burden to seek relief from all applicable regulations. The direction of the Zoning Technician who accepted the first Petition notwithstanding, Ms. Guise is responsible for securing all variances necessary to develop. She did not request an area variance previously; and it was not granted. If it is now needed to develop, it must be obtained.

For the aforementioned reasons, I shall deny Ms. Guise's Motion to Dismiss. This case shall be set for hearing on the merits of the Petition in due course.

THEREFORE, it is this 24<sup>th</sup> day of Sept., 1992 Ordered that the Motion to Dismiss be and is hereby DENIED.

  
LAWRENCE E. SCHMIDT

Zoning Commissioner for  
Baltimore County

LES:mmn

Baltimore County Government  
Zoning Commissioner  
Office of Planning and Zoning



Suite 113 Courthouse  
400 Washington Avenue  
Towson, MD 21204

(410) 887-4386

September 23, 1992

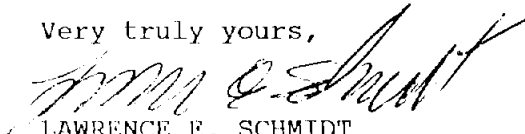
William T. Glasgow, Esquire  
Suite 250  
10715 Charter Drive  
Columbia, Maryland 21044

RE: Ruling on Preliminary Motion  
Petition for Special Hearing  
Lots No 31 and 32, Arunah Avenue  
Lena Guise, Property Owner  
George Baker, Petitioner  
Case No. 92-477-SPH

Dear Mr. Glasgow:

Enclosed please find a copy of my Ruling on Preliminary Motion rendered in the above captioned matter.

Very truly yours,

  
LAWRENCE E. SCHMIDT  
Zoning Commissioner

LES:mmn  
att.

cc: Mr. George Baker  
405 Lafayette Avenue  
Baltimore, Maryland 21228  
cc: Peoples Counsel  
Phyllis Friedman, Esquire  
cc: Ms. Lena Guise  
3306 Strickland Street  
Baltimore, Maryland 21229

MICROFILMED

IN THE MATTER OF  
Lots Nos. 31 & 32  
of Arunah Avenue

\* Case No. 92-477-SPH  
\* BALTIMORE COUNTY  
\* ZONING COMMISSIONER

\* \* \* \* \*

MEMORANDUM OF LAW

Parties are Precluded from  
Re-litigating the Same Issues

The original variance petition filed by Property Owner was drafted with the aid of a Baltimore County Zoning technician because she was not represented by counsel at the time. The Property Owner explained what she intended and the wording was designed by the technician. Any deficiency in the petition is not an error of the Property Owner.

The property and the parties are identical to those in the hearing before the Deputy Zoning Commissioner and the Board of Appeals in Case No. 92-30-A. The issue of the property size and its capability of development have been heard through the testimony of Midge Stockdale concerning other area homes on property of the exact same dimensions. Evidence was entered of other variances granted in the neighborhood on properties of the same size which were subsequently improved. Expert testimony was presented by an engineer concerning the suitability of the property for a residence and the appropriate siting of such residence. All of this evidence and testimony was appropriately weighed by the Board of Appeals and incorporated into its Decision and Order. This was a final decision in the matter and can be appealed to the Circuit Court of Baltimore County if



timely filed with appropriate grounds. No other avenue is open to the parties.

"An Adjudicative determination by an administrative tribunal is conclusive under the rules of res judicata only insofar as the proceeding resulting in the determination entailed the essential elements of adjudication including: . . . (b) The right on behalf of the party to present evidence and legal argument in support of the party's contention and fair opportunity to rebut evidence and argument by opposing parties . . . ." Re-statement of Judgments § 83 (1982). Res judicata principles apply to administrative hearings as well as proceedings in court. George Baker as well as other neighbors in opposition have had two separate opportunities to be heard and cannot be permitted to come through a back door to do what cannot be done through the front door.

When the principles of res judicata are applied to a zoning decision, a second action on the same property is precluded unless there is a substantial difference in the neighborhood or change in circumstances, see generally, Chatham Corp. v. Beltram, 243 Md. 138, 220 A.2d 589 (1966) and Woodlawn Area Cit. Ass'n v. Bd. of Co. Comm., 241 Md. 187, 216 A.2d 149 (1966). In the case sub judice, the underlying assumptions and reasons are the same as those previously heard. The opposing neighbors are attempting to prevent Lena Guise from the lawful use of her property. Any reasons contended by petitioner should have been put forward at previous hearings simply to avoid this sort of duplicative argument.

MICROFILMED



emphatic that res judicata does apply to administrative hearings. There are some administrative actions to which it does not apply such as some letter decisions by an agency but if there has been a hearing with each side able to present evidence res judicata applies. It applies even in hearings such as those held for individuals requesting Social Security benefits when there is, in fact, only one side. In this instance the protesting neighbors have twice had the hearing opportunity to hear and be heard. All issues regarding this property that could have been brought up at prior hearings should have been put forward. The underlying facts and assumptions of both cases are the same.

Peoples Counsel relies on Board of County Commissioner's v. Racine, 24 Md. App. 435 332 A.2d 306 (1975) for the premise that res judicata does not apply in a zoning case if an error of law has been made. This is incorrect on two levels. The most primary is that no illegality in the decision of the Board of Appeals can be shown. Secondly, the Court in Racine cited to work written by Professor Davis in 1958 to support its decision. Davis himself states that res judicata as it relates to administrative law was markedly changed by a Supreme Court decision in 1966 United States v. Utah Construction & Mining Company, 384 U.S. 394, 421-22 (1966). Davis in 1989 and the state of administrative law is markedly changed from 1958. The Davis quote cited by the Court in Racine was based on the 1942 Restatement of Judgments. The Restatement of Judgments was revised in 1982



as Restatement of Judgments 2d. Davis on res judicata explains the changing law.

What is happening is that the fundamentals summarized in the 1942 Restatement of Judgments are no longer followed. The Restatement of Judgments 2d (1982) is different in its fundamentals. What is more important is that the Supreme Court is signaling its general acceptance of the new fundamentals, of the new details, and of the new language. For instance, §27 of the Restatement of Judgments 2d states a general rule which is now law: "When an issue of fact or law is actually litigated and determined by a valid and final judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." Under §70 of the 1942 Restatement, a decision on a question of law was generally not binding in a subsequent action.

The Board of Appeals Decision was Legal and Final

People's Counsel presented a variety of legal theories which, while novel, are not persuasive. She postulated that variance allowing a reduction in the area of a particular property is in effect a change in the density requirements and the density change cannot be made by the Board of Appeals and is therefore illegal. The alchemy which changes an area requirement into a density classification is inexplicable. The authority used for many years by the Zoning Commissioner for area variances is clearly defined in §307.1 of the Baltimore County zoning regulations. Only one dwelling is proposed for this site. No violation is done to the purpose of the density requirements which were primarily designed to create better design in future subdivisions.

1B00.2 - Purpose. The D.R. zoning classification are established, pursuant to

the legislative findings set forth above, in order to:

- A. Foster a greater variety in housing types within future residential developments;
- B. Allow more feasible preservation of natural features and induce the reservation of ample and more suitably designed open spaces and parks, in order to better satisfy the needs of residents without economic disadvantage to developers;
- C. Allow greater flexibility in subdivision-development planning and provide for the inducement of more creative as well as more economic approaches to residential development, with the goal of desirable and distinctive identity and character of individual residential locales;
- D. Provide the means to satisfy differing housing-market requirements without rezoning, and thus without disruptive changes in density potential; and
- E. Provide for the application of residential zoning classifications in a manner more nearly in accord with comprehensive plans and comprehensive-planning goals.

The purpose and legislative intent was not to restrict an individual property owner so that she receives no economic benefit from a parcel of property which was subdivided in 1919 prior to any zoning regulations.

The same area as the subject property is listed on homes at 601 Maryland Avenue, 1006 Arunah Avenue, 501 Valkorn Road, 502A Dorchester Road and 521 Valkorn (new home). 6007 Montgomery Avenue was approved for construction last year. Case No. 91-245A for 5208 Carroll Place approved the same

variances in 1991. Any illegality on the part of the Zoning Commissioner or Board of Appeals is long standing. If such an act were illegal the recourse is through an appeal to Circuit Court and not a second hearing before the Zoning Commissioner.

Alternatively, People's Counsel suggested that the area requirement was overlooked by the Board of Appeals. Not only was this not overlooked but evidence was presented and considered by the Board and such approval was incorporated into their opinion. Direct reference in the opinion is made to the width of the lot, the proposed building envelope and the testimony of Midge Stocksdale regarding properties of a similar size in the immediate area. See Transcript, pp. 23 and 24, attached hereto as Exhibit A. Entered into evidence was a variance plat depicting the area of the property which was a part of the submission. Also submitted into evidence was the record of a variance granted for an identically sized property within two blocks of the subject property. See Transcript, pp. 13 and 14, attached hereto as Exhibit B.

The initial Petition for Zoning Variance which was prepared by a clerk/technician of the Zoning office in aid of the property owner was brought for a variance from regulations at 1B02.3.C.1 which states the minimum square footage for property and the set back requirements. The referenced regulations refer to both minimum area and set back. Both were considered by the Board of Appeals and

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

Testimony in this case is convincing that the property of Ms. Guise, initially acquired by her father in 1927, will be rendered useless if the requested variance is denied. Exhibits in the record showing the 20-foot lots along Arunah Avenue and testimony in this case reveal that any desire by Ms. Guise to purchase an additional lot to add to her two-lot parcel (31 & 32) is impossible as there is no lot available on the one side, and the 40-foot wide paper road (Lafayette Avenue) lies on the other. This is obviously a practical difficulty.

In reviewing this matter, it must also be kept in mind that "a variance should be granted only if in strict harmony with the spirit and intent of the zoning regulations; and only in such a manner as to grant relief without substantial injury to the public health, safety and general welfare." McLean v. Soley, 270 MD 208 (1973)

Section 307 (BCZR) requires that a variance cannot be granted unless a finding is made that there is no injury to public welfare. One of the issues centers on the fact that adjoining dwellings are on larger lots and that the subject property is too small in relation to others in the surrounding locale. However, the proposed 26 ft. by 60 ft. dwelling, with its previously granted side yard variances and the effects of a paper road never to be developed, provides the appearance of a property that is in harmony as to size and character with the neighborhood. By granting the area variance, there should be no injury to the public welfare on this point of objection by neighbors.

The problem of access to the site may be solved by a

although the variance petition could have been more carefully drafted, the area of the property in question was considered by the Board.

#### Entry of People's Counsel

People's Counsel has the authority to appear on behalf of the public on any zoning matter which she deems involves the public interest. The People's Counsel also as an aggrieved party has the authority to bring an appeal. People's Counsel v. Williams, 45 Md. App. 617 415 A.2d 585 (1980). The authority, however, has limits. To appeal, a party must be aggrieved and be a party to the proceeding below. In the first case before the Zoning Commissioner regarding this property People's Counsel did not appear. At the Board of Appeals hearing she advised the protestants outside of the hearing room prior to the hearing but chose not to appear at the hearing itself. She, therefore, lacked the party status necessary to appeal. The belated entry into a second hearing may be because of the lack of party status for purposes of appeal in the first case.

A principle of res judicata precludes the entry of People's Counsel at this eleventh hour.

A judgment, to operate as an estoppel must be upon the same subject matter and between the same parties. The term 'parties', however, is not restricted to those who appear as plaintiff and defendant upon the record. It includes those who are directly interested in the subject matter of the suit, knew of its pendency, and had the right to control, and direct, or defend it. The law, in dispensing even-handed justice to all, has wisely taken care 'ut sit finis litium', and if matters, which have been once solemnly decided, could

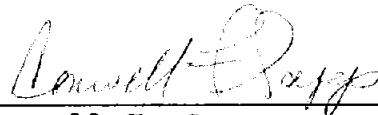
be again drawn into controversy, there would be no end of litigation and disputes. Mr. Greenleaf has happily said, 'justice requires that every cause be once fairly and impartially tried; but the public tranquility demands, that having been once so tried, all litigation of that question and between the same parties should be closed forever'." McKinzie v. B & O R.R., 28 Md. 161, at 174-5.

quoted in Board of County Commissioners v. Racine, 24 Md. 435, 332 A.2d 306 (1975). People's Counsel could have entered this case and raised whatever issues she considered pertinent earlier. By not doing so she is precluded from doing so later. It is patently unfair to the Petitioner to put her to the time and expense of resolving issues after the appeal time has passed which have already been the subject of a final judgment.

WHEREFORE, for the foregoing reasons Petitioner prays that case no. 92-477 be dismissed.

Respectfully submitted,

REESE AND CARNEY



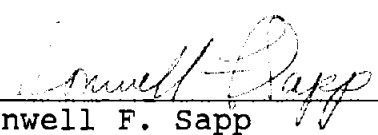
Conwell F. Sapp  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044



William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21<sup>st</sup> day of August, 1992, a copy of the foregoing Post Hearing Memorandum of Law was mailed, postage prepaid to George Baker, 405 Lafayette Avenue, Baltimore, Maryland and Phyllis Friedman, Esquire, People's Counsel, Baltimore County Zoning Office, Courthouse, Towson, Maryland 21204.

  
\_\_\_\_\_  
Conwell F. Sapp

clb\cfs\litig\guise.phm

## EXHIBIT A

6 1 A. Absolutely. Our office is just about four blocks  
2 away from there.

3 Q. How long have you been in this business?

4 A. Twelve years.

5 Q. Are you familiar generally with this Caton  
6 Industrial Heights area?

7 A. Very, very familiar. I have sold property there.  
8 Have listed property there.

9 Q. You have been working with Mrs. Guise?

10 A. For over, or just about two years now, trying to  
11 sell this property.

12 Q. Are you aware of other properties in the area of  
13 about this approximate size that have homes on them?

14 A. Yes. There are quite a few of them that have a  
15 40 foot lot that have been built on. Usually what they  
16 put on is a shotgun split by a builder, a 20 foot wide by  
17 32, or something similar to a townhouse. You could just  
18 take --

19 MR. DISNEY: Called a what?

20 THE WITNESS: Shotgun split.

21 Q. What's that? I am still having trouble with that

FILED



## EXHIBIT A

6  
1 one.

2 A. A shotgun split. It's basically what they build  
3 in order to give the buyer as much living space as they  
4 can in a limited amount of building space. They are 20  
5 foot wide. They are at least 36 to 40 feet long so that  
6 the buyer has the access to the square footage to live on  
7 a very small lot.

8 Q. And are there a variety of these?

9 A. There are.

10 Q. In that area?

11 A. Not only in Catonsville Heights, but Catonsville  
12 Manor. There are some right off Winters Lane, which is in  
13 the same general area, four or five blocks.

14 Q. Where this lot is also?

15 A. Yes. Not only built. Built and sold.

16 MS. SAPP: I have no further questions.

17 MR. DISNEY: This is basically put on a lot so  
18 they had the ten foot setback on either side?

19 THE WITNESS: Yes.

20 THE CHAIRMAN: Mr. Baker?

21 CROSS EXAMINATION

## EXHIBIT B

4 1 Calculating that, using the total envelope as one  
2 building, we wouldn't even have one-tenth of one CFS  
3 causing the runoff.

4 Q. Can you identify these records?

5 A. This looks like a petition for a zoning variance,  
6 notice of a hearing, and appears to be that the Deputy  
7 Zoning Commissioner -- I am trying to see if -- this is a  
8 petition passed by the Deputy Zoning Commissioner for a  
9 variance for a side yard and setback and I believe -- I am  
10 going to have to read it more -- permit a side yard  
11 setback in lieu of the 25 in accordance to the  
12 petitioner's exhibit. And petitioner's exhibit shows a --  
13 and this shows a house sitting on a similar -- two, 20  
14 foot lots in Catonsville Heights at the intersection of  
15 Delaware Place and -- I don't know how to pronounce it --  
16 Aruna Avenue -- Aruna Avenue. And this was in 1988, I  
17 believe.

18 MS. SAPP: If you would, once this has been  
19 submitted, I would ask that you take an official notice  
20 that this property is two blocks away.

21 THE CHAIRMAN: Petitioner's Exhibit No. 4 will be

BOARD OF APPEALS

BOARD OF APPEALS

# REESE AND CARNEY

DAVID A. CARNEY  
DANIEL H. SCHERR  
DAVID C. HJORTSBERG  
LAURENCE B. RABER  
KEVIN J. KELEHAN  
JUDITH S. BRESLER  
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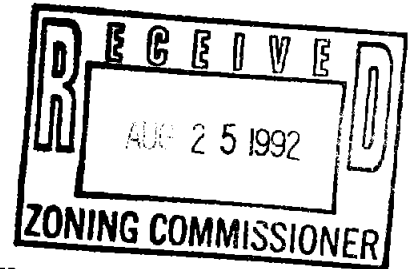
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OF COUNSEL  
CHARLES A. REESE

255 N. WASHINGTON STREET  
SUITE 505  
ROCKVILLE, MARYLAND 20850  
(301) 762-6210

August 21, 1992

Lawrence Schmidt  
Zoning Commissioner  
400 Washington Avenue  
Room 113  
Towson, MD 21204



Re: In the Matter of Lots Nos. 31 & 32  
of Arunah Avenue, Case No. 92-477-SPH

Dear Mr. Schmidt:

Please find enclosed for filing Post-Hearing Memorandum of Law for the above-referenced matter.

Very truly yours,

REESE AND CARNEY

*Conwell F. Sapp*  
Conwell F. Sapp

CFS/djp

Enclosure



from raising legal theories which might have been raised in the first case. That is not the situation here.

2. The Commissioner cannot overlook the basic issue in this matter and that is whether issuing a permit at this time would be an illegal act in view of the fact that the lot in question has less than 6000 square feet.

3. The issue of the variance from the 6000 square feet area requirement was in any event never before the Zoning Commissioner or the County Board of Appeals when the first petition for variance filed by the property owner was heard by them. There was also no mention of it in the petition or the advertisement or posted notice.

The effect of this oversight prevented People's Counsel and the public at large from having notice of any such issue.

Res judicata requires that there be identity in issues as well as persons and parties to the action. In this case, there is thus a critical issue raised for the first time. Moreover, the protestants, who now appear as parties, were not in a position to go beyond the actual petition due to the fact that this was an administrative matter, governed by the property owner's petition.

4. Since no variance was asked for or granted, the following choices exist:

a.) Determine that a variance from the 6000 square feet required would amount to a density variance and

refuse to issue a permit. This could be done administratively or quasi-judicially in this hearing.

b.) Determine that such a variance could be but has not been granted and either:

1. Rule upon it in this hearing;
2. Dismiss this petition, but require the lot owner to file a separate petition for such a variance; or
3. Dismiss this petition and determine that the County has somehow been estopped from requiring this variance. This would be an illogical result since the burden to request sufficient variances always rests with the property owner. (See decision dated July 14, 1992 In the Matter of Red Roof Inns, Inc., Circuit Court No. 91-CV-6923, attached as Exhibit A.) The failure of protestants cannot estop the County which has the ultimate burden to issue or not issue a building permit.

5. Alternatively, if this petition is dismissed on some theory of res judicata without even addressing the substantive issue, it may suggest a permit can be issued without a variance from the 6000 square foot area requirement. Should a permit then be issued based on the vacuum created by this action, it will be in derogation of the Zoning Regulations and amount to an illegal act.

For the above discussed reasons, People's Counsel requests the Zoning Commissioner not dismiss the instant petition and, instead, in the interest of judicial and administrative economy,

comparison of situations with Ms. Guise's neighbor's residence on the paper street aspect of Arunah Avenue, which they use for ingress and egress to their residence. The same can be expected of the subject property in utilizing Lafayette Avenue, without creating any adverse effect to the neighbor's property.

The concern of neighbors with storm water runoff from a reasonably level parcel of land with a 3-degree fall is hardly a matter to keep the subject property owner from utilizing her property for future development. Water runoff is a fact of nature, but one that will be weighed carefully by agencies of Baltimore County in approving any permits for construction on this parcel. Protestations by residents of this neighborhood regarding a lack of storm drains are undoubtedly valid, but this Board does not perceive this an appropriate reason for denying the possible development of the subject site.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship would result if the relief requested for an area variance were not granted. The Board is satisfied that the granting of the requested variances would not result in a detriment to the public health, safety and general welfare of the surrounding community. The Board believes that it would be grossly unfair to deny the variances and that in doing so the Board would be preventing the property owner from the use of the property for a residential purpose to the approximate level and extent as the residential use experienced by other property owners in the community. To require the property owner to conform to the Section 1B02.3.C.1 of the BCZR as applied to this particular case would be to place an unnecessary

rule upon a.) whether a variance from the 6000 square foot area requirement is a density variance; and if it is not, b.) whether it should be granted in this instance.

Respectfully submitted,

Phyllis Cole Friedman  
Phyllis Cole Friedman  
People's Counsel for Baltimore County

Peter Max Zimmerman  
Peter Max Zimmerman  
Deputy People's Counsel  
Room 47, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204  
(410) 887-2188

I HEREBY CERTIFY that on this 12<sup>th</sup> day of August, 1992,  
a copy of the foregoing People's Counsel's Memorandum was mailed  
to William T. Glasgow, Esquire, Suite 250, 10715 Charter Dr.,  
Columbia, MD 21044; and George Baker, 405 LaFayette Ave.,  
Baltimore, MD 21228.

Phyllis Cole Friedman  
Phyllis Cole Friedman



PCF: ✓  
PMZ: J

IN THE MATTER OF THE  
APPLICATION OF  
RED ROOF INNS, INC.  
FOR A VARIANCE ON PROPERTY  
LOCATED ON THE SOUTHWEST  
CORNER WEST TIMONIUM ROAD AND  
GREENSPRING DRIVE  
(111 WEST TIMONIUM ROAD  
8TH ELECTION DISTRICT  
4TH COUNCILMANIC DISTRICT

IN THE  
CIRCUIT COURT  
FOR  
BALTIMORE COUNTY  
CASE NO. 91-CV-6923



MEMORANDUM OPINION AND ORDER

In connection with the construction of its motel at the intersection of Timonium Road and Greenspring Drive, Red Roof Inns, Inc. (Red Roof) asked the Zoning Commissioner (the Commissioner) to grant it variances from the Baltimore County Zoning Regulations relating to the size and number of signs which it could place on its property. (The Petition also sought permission to erect two satellite receiving dishes but the decision on that variance has nothing to do with this administrative appeal.) Specifically, Red Roof requested the Commissioner: "to permit one stationary free-standing sign with a face of 216 square feet at a height of 70 feet from grade level in lieu of the required 25 square feet per face at a height of 6 feet; one additional stationary free-standing entrance sign with surface faces of 24 square feet at a height of 12 feet above grade in lieu of the required 6 feet above grade; [and] two wall-mounted sign(s) with a total area of 150 square feet in lieu of the required 90 square feet." (Findings of Fact, p. 1.)

Exhibit A

Neighboring homeowners and the Hunt Ridge Community Association participated in the hearing as protestants and, presumably, People's Counsel presented their views.

The Commissioner granted the zoning variance needed to place larger signs on two of the outer walls of the main building. He also granted a variance for an "additional" freestanding entrance sign on the motel's only access road, but not with the dimensions sought in Red Roof's Petition. Instead, he reduced its size from the requested 24 square feet per face at a height of 12 feet above grade to 15 square feet and 10 feet. (Section 413.6(b) of the B.C.Z.R. provides that "one stationary freestanding business sign is permitted for each street to which a lot has direct vehicular access," but the sign's surface area may not exceed 25 square feet per face and no part of it may be more than 6 feet above the grade level of the access street or lot.)

The Commissioner's final sign ruling, with which the County's Board of Appeals (the Board) agreed, is the subject matter of this appeal. He denied Red Roof's request to substantially increase the size (25 to 216 square feet) and height (6 to 70 feet) of what Red Roof then was calling the "one stationary freestanding business sign" allowed under Section 413.6(b).

On December 7, 1990 Red Roof filed a non-specific notice of appeal to the Board. At the start of the de novo hearing on August 31, 1991, the Board Chairman asked counsel for Red Roof whether it was appealing all of the Commissioner's decisions on signage. Before

he could respond completely, People's Counsel took the position that all aspects of the Commissioner's decision were before the Board and she intended to argue that the Board should consider what sign variances were granted at least as being relevant to the issue of practical difficulty and undue hardship. She acknowledged, however, that no cross appeal had been filed because her office "would not have appealed from the signage that was granted." (Tr. p. 7) This procedural debate was resolved when the Board granted Red Roof's oral motion to dismiss all grounds for appeal other than the denial of the 70 foot sign - over the objection of People's Counsel and, presumably, the protestants. (Tr. p. 18-20)

Red Roof contends that the Board's decision denying the variance was arbitrary and capricious and in error because Red Roof produced substantial evidence to prove practical difficulty while the protestants offered no evidence which would render the question fairly debatable. Red Roof's written and oral arguments here place undue emphasis on the comparison between the quality of its evidence and that of the protestants. While both hearings obviously were adversarial, this Court knows of no burden upon the protestants to present a better case. A variance is not a matter of right; it is a matter of privilege and the one seeking it must show entitlement. Stated, another way, the petitioner's burden never shifts.

The role of this Court in reviewing the Board's decision is set forth in Md. Code Ann., Art. 25A, §5(U) (1990 Repl. Vol.) which

provides in pertinent part:

Any person aggrieved by the decision of the board... may appeal to the circuit court for the county which shall have power to affirm the decision of the board, or if such decision is not in accordance with law, to modify or reverse such decision, with or without remanding the case for rehearing as justice may require.

In Mortimer v. Howard Research, 83 Md. App. 432, at 441 (1990), the Court described the standard applicable to circuit court review of a zoning decision of a Board of Appeals.

In making a determination of whether the Board of Appeals decision is arbitrary, illegal or capricious, the reviewing court must decide whether the question before the agency was fairly debatable. ... An issue is fairly debatable if reasonable persons could have reached a different conclusion on the evidence and, if so, a reviewing court may not substitute its judgment for that of the administrative agency. ... The fairly debatable test is analogous to the clearly erroneous standard under Rule 8-131(c) and a decision is fairly debatable if it is supported by substantial evidence on the record taken as a whole.

See also, Art Wood vs. Wiseburg, 88 Md. App. 723 (1991).

Section 307.1 of the B.C.Z.R. provides that the Zoning Commissioner and the County Board of Appeals are empowered to grant variances from sign regulations:

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

[B.C.Z.R., 1955; Bill No. 107, 1963; No. 32, 1988.]

Since a variance as to signage is deemed to be an area variance as opposed to a use variance, "the standard of 'practical difficulty' applies, and the applicant is relieved of the burden of showing a taking in a constitutional sense, as is required under the 'undue hardship' standard". Anderson v. Board of Appeals, 22 Md. App. 28, 38-39 (1974). The Court of Appeals, in McLean v. Soley, 270 Md. 208, 214-215 (1973) recognized the following criteria for determining whether an applicant has established "practical difficulty":

- 1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

- 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

- 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

The Board, like the Commissioner, found that Red Roof failed to carry its burden of establishing practical difficulty or undue hardship. The Board's conclusion rested, in part, on the fact that the testimony clearly demonstrated that Red Roof wants the taller sign "principally for advertising purposes to attract motorists on Interstate 83 [and] to be able to compete with other motels in the area." (Opinion, p. 5-6) However, the Board then explained that its denial of the variance also was based upon its statutory duty to be

consistent and to consider the rights of all those who might be affected by the granting of a variance.

The Board has reviewed the site plan and the dimensions of the subject sign set out thereon, and finds that the subject sign is too large and obtrusive for the site. To permit a sign of this size and magnitude would clearly be contrary to the spirit of the Baltimore County Zoning Regulations concerning signs. The Board does not believe that the Petitioner would experience practical difficulty or undue hardship if the sign variance is denied. The Petitioner has already been granted variances for a free-standing entrance sign and two wall-mounted signs by the Zoning Commissioner in his Order dated November 8, 1990.

(Op. p. 6; emphasis supplied)

This Court is satisfied that the issue presented to the Board was fairly debatable. Therefore, the Board's decision should be, and it is, AFFIRMED.

DATE:

July 14, 1992

Robert E. Cahill, Jr.  
JUDGE

Copies sent to counsel.

\* Case No. 92-477-SPH  
\* BALTIMORE COUNTY  
\* ZONING COMMISSIONER

\* \* \* \* \*

**MOTION TO DISMISS**

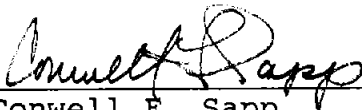
Lena Guise, Property Owner, by and through her attorneys  
Conwell F. Sapp and William T. Glasgow, hereby moves that the  
Petition for Special Hearing filed by George Baker be dismissed  
and for reasons states:

1. Lena Guise filed, pro se, a petition for a setback variance from the area regulations of Baltimore County zoning regulations on or about November 7, 1991 in Case No. 92-30-A.
2. By Order dated October 8, 1991, such petition was denied by the Deputy Zoning Commissioner of Baltimore County.
3. Appearance of counsel was entered and an appeal was timely filed to the Baltimore County Board of Appeals.
4. By Order Dated May 6, 1992, following an evidentiary hearing, the petition for a variance was granted.
5. No appeal was made to the Circuit Court of Baltimore County as required by law for review of a Board of Appeals decision.
6. On or about June 15, 1992, a neighbor, George Baker, who attended and participated in the Board of Appeals hearing filed a petition with the Zoning Commissioner of Baltimore County requesting a hearing on whether the same property could be developed.

MICROFILMED

7. This issue was specifically adjudicated in the Board of Appeals hearing and consequently is res judicata.

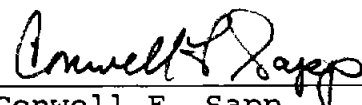
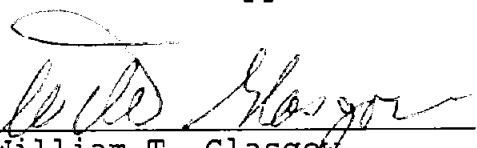
WHEREFORE, Property Owner respectfully requests that this Petition be dismissed.

  
Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044  
(410) 740-4600

  
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

CERTIFICATE OF SERVICE

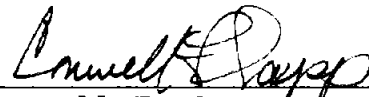
I HEREBY CERTIFY that on this 22nd day of July, 1992, a copy of the foregoing Motion to Dismiss was sent first class mail, postage prepaid to George Baker, 405 Lafayette Avenue, Baltimore, Maryland and Phyllis Friedman, Esquire, Peoples Counsel, Baltimore County Zoning Office, Courthouse, Towson, Maryland 21204.

  
Conwell F. Sapp  
  
William T. Glasgow

clb\cfs\litig\guise.mtd



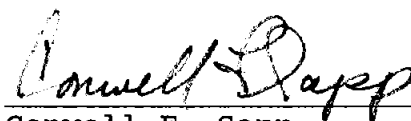
George Baker is collaterally estopped from any further petition. The law and basic fairness do not permit such action.

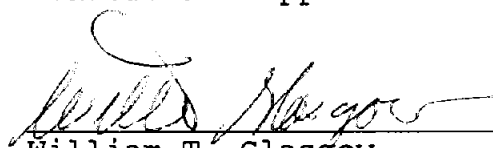
  
Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044  
(410) 740-4600

  
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of July, 1992, a copy of the foregoing Memorandum of Law was sent first class mail, postage prepaid to George Baker, 405 Lafayette Avenue, Baltimore, Maryland and Phyllis Friedman, Esquire, Peoples Counsel, Baltimore County Zoning Office, Courthouse, Towson, MD 21204.

  
Conwell F. Sapp

  
William T. Glasgow

clb\cfs\litig\guise.mol

burden upon her.

O R D E R

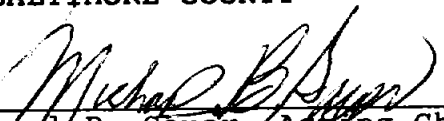
IT IS THEREFORE this 28th day of April, 1993 by the  
County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing prohibiting  
development of the herein described residential property known as  
lots #31 and #32 Arunah Avenue and consisting of less than the  
required 6,000 sq. ft. be and is hereby DENIED; and it is further

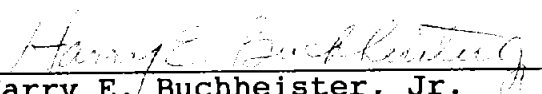
ORDERED that the request for zoning variance to permit a  
parcel of 5,280 sq. ft. in lieu of the required 6,000 sq. ft. and  
to permit a lot width of 40 feet in lieu of the required 55 feet,  
be and is hereby GRANTED.

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

  
\_\_\_\_\_  
Michael B. Sauer, Acting Chairman

  
\_\_\_\_\_  
John G. Disney

  
\_\_\_\_\_  
Harry E. Buchheister, Jr.

6/19/92 6454-92 GS  
g

RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER  
NE/S Arunah Ave., 300' SE of C/L  
Maryland Ave. (Lots #31 & #32, : OF BALTIMORE COUNTY  
Arunah Ave.), 1st Election Dist.  
1st Councilmanic Dist. :

GEORGE BAKER, Petitioner : Case No. 92-477-SPH  
LENA GUISE, Property Owner  
:

: : : : : :

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Phyllis Cole Friedman

Phyllis Cole Friedman  
People's Counsel for Baltimore County

Peter Max Zimmerman

Peter Max Zimmerman  
Deputy People's Counsel  
Room 47, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204-4606  
(410) 887-2188

I HEREBY CERTIFY that on this 18th day of June, 1992,  
a copy of the foregoing Entry of Appearance was mailed to George Baker,  
405 LaFayette Ave., Baltimore, MD 21228; and Lena Guise, 3306 Strickland  
Road, Baltimore, MD 21229.

RECEIVED  
JUN 19 1992

Phyllis Cole Friedman

Phyllis Cole Friedman

ZONING OFFICE

MICROFILMED



# Petition for Special Hearing

92-477-SPH

## to the Zoning Commissioner of Baltimore County

for the property located at 1st Elect. Dist. 1st Councilmanic District  
N/S Howard Ave, 300' SE of Maryland Ave  
which is presently zoned DR 5.5

This Petition shall be filed with the Office of Zoning Administration & Development Management.

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 Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve.

The Herein described  
Property, LOCATED in A  
DR 5.5 ZONE AND CONSISTING OF less  
than the required 6,000 Sq. Ft., MAY BE RESIDENTIALLY DEVELOPED.  
(SEE ZONING CASE 92-30-A & SUBSEQUENT APPEAL)

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

I, or we, agree to pay expenses of 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.

### ADJOINING OWNER

~~Contract Purchaser/Lessee~~

George Baker 788-5343  
(Type or Print Name)

George Baker  
Signature

405 Lafayette Ave  
Address

Baltimore MD 21228  
City State Zipcode

Attorney for Petitioner:

(Type or Print Name)

Signature

Address

Phone No.

City

State

Zipcode

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.

Legal Owner(s):

LENA GUISE  
(Type or Print Name)

Signature

(Type or Print Name)

Signature

3306 STRICKLAND Rd. 945-4520  
Address Phone No.

BALTO MD 21229  
City State Zipcode

Name, Address and phone number of legal owner, contract purchaser or representative to be contacted.

George Baker  
Name

405 Lafayette Ave Baltimore 21228 788-5343  
Address Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates Next Two Months

ALL OTHER

REVIEWED BY: JCM DATE 6-4-92

#510



MICROFILMED



ZONING DESCRIPTION

20  
92-477-SPA  
~~92-50-A~~

Beginning at a point on the Northeasterly side of Arunah Avenue which is 40 feet wide at the distance of 300 feet Southeasterly of the centerline of the nearest improved intersecting street Maryland Avenue which is 40 feet wide. Being Lot 31 & Lot 32, Block 24, in the subdivision of Catonsville Heights as recorded in Baltimore County Plat Book # 6, Folio# 178, Containing 5320 square feet. Also know as Lot 31 & Lot 32 Arunah Avenue and located in the 1st Election District.

# 510

MICROFILMED

**CERTIFICATE OF POSTING**  
**ZONING DEPARTMENT OF BALTIMORE COUNTY**  
Towson, Maryland

92-477-SPH

District 1st Date of Posting 7-8-92  
Posted for: Special Hearing  
Petitioner: Lena Guise  
Location of property: NE/S of Arunah Avenue, 300' SE of the  
CLL of Maryland Avenue Lots 31 & 32 Arunah Avenue  
Location of Signs: NE side of Arunah Avenue in front of  
subject property  
Remarks: \_\_\_\_\_  
Posted by N. J. Arata Date of return: 7-10-92  
Signature  
Number of Signs: 1



# CERTIFICATE OF PUBLICATION

CASE: #92-477-SPH  
(Item 510)  
NE/S Arunah Avenue, 300'  
SE of c/I Maryland Avenue  
Lots # 31 and  
# 32 Arunah Avenue  
1st Election District  
1st Councilmanic  
Legal Owner(s):  
Lena Guise  
Petitioner(s):  
George Baker  
Hearing Date: Monday,  
July 27, 1992 at 11:00 a.m.  
in Rm. 118, Courthouse.

Special Hearing to determine  
whether the property, consisting  
of less than the required 6000 sq.  
ft., may be residentially de-  
veloped.

TOWSON, MD., June 18, 19 92

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 June 18, 19 92.

THE JEFFERSONIAN,

S. Zafe Orlov

Publisher

Microfilm

63-16



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

Date

6/05/92

PUBLIC HEARING FEES

030

---ZONING FEE---SPH

LAST NAME OF OWNER: GUISE

HS200510

QTY PRICE

1 X \$50.00

TOTAL \$50.00

Cashier Validation

04A04#0017MICHRC

BA 002:31PM06-05-92

Please Make Checks Payable To: Baltimore County

\$50.00

receipt

Account: R-001-6150  
Number

92-477-SPH





Baltimore County  
Zoning Administration &  
Development Management  
111 West Chesapeake Avenue  
Towson, Maryland 21204

receipt

Report: B001-6150

Number

92477

Date

12/13/92

GENERAL FEES

100.00

LOCAL AND OTHER DUES

0.00

LAND-POSTING SIGNAGE & APPLICATIONS

100.00

100.00

TOTAL DUES OF OTHERS: \$0.00

MICROFILMED

RECEIVED

12/13/92

100.00

Please Make Checks Payable To: Baltimore County

Cashier Validation



Baltimore County  
Zoning Administration &  
Development Management  
111 West Chesapeake Avenue  
Towson, Maryland 21204

receipt

Account: R 001 6150

Number

92-477 SAH

Date

ADDITIONAL FEES

FOR ALL OTHER PROJECTS

POSTING SIGN, A COVER LETTER, ETC.

FOR MORE OF THESE, SEE

MICROFILMED

16404400750HRC  
BA 000-37410 27 92

\$210.00

Please Make Checks Payable To: Baltimore County

Cashier Validation

Baltimore County Government  
Office of Zoning Administration  
and Development Management  
Office of Planning & Zoning



111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

DATE: 7-10-92

George Baker  
405 Lafayette Avenue  
Baltimore, Maryland 21228

RE:

CASE #92-477-SPH (Item 510)  
NE/S Arunah Avenue, 300' SE of c/l Maryland Avenue  
Lots #31 and #32 Arunah Avenue  
1st Election District - 1st Councilmanic  
Legal Owner(s): Lena Guise  
Petitioner(s): George Baker  
HEARING: MONDAY, JULY 27, 1992 at 11:00 a.m. in Rm. 118, Courthouse

Dear Petitioner(s):

Please be advised that \$ 63.16 is due for advertising and posting of the above captioned property and hearing date.

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 forward your check via return mail to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 109, Towson, Maryland 21204. Place the case number on the check and make same payable to Baltimore County, Maryland. In order to avoid delay of the issuance of proper credit and/or your Order, immediate attention to this matter is suggested.

A handwritten signature in cursive script, appearing to read "Arnold Jablon".

ARNOLD JABLON  
DIRECTOR



Printed on Recycled Paper

Baltimore County Government  
Office of Zoning Administration  
and Development Management  
Office of Planning & Zoning



111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

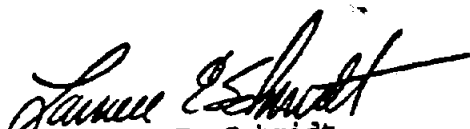
JUNE 11, 1992

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, 111 W. Chesapeake Avenue in Towson, Maryland 21204  
or  
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE #92-477-SPH (Item 510)  
NE/S Arunah Avenue, 300' SE of c/l Maryland Avenue  
Lots #31 and #32 Arunah Avenue  
1st Election District - 1st Councilmanic  
Legal Owner(s): Lena Guise  
Petitioner(s): George Baker  
HEARING: MONDAY, JULY 27, 1992 at 11:00 a.m. in Rm. 118, Courthouse

Special Hearing to determine whether the property, consisting of less than the required 6000 sq. ft., may be residentially developed.

  
Lawrence E. Schmidt

Zoning Commissioner of  
Baltimore County

cc: Lena Guise  
George Baker

NOTE: HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.

MICROFILMED





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

April 28, 1993

William T. Glasgow, Esquire  
REESE & CARNEY  
Suite 250, 10715 Charter Drive  
Columbia, MD 21044

RE: Case No. 92-477-SPH  
George Baker /Petitioner

Dear Mr. Glasgow:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Very truly yours,

*Kathleen C. Weidenhammer*  
Kathleen C. Weidenhammer  
Administrative Assistant

encl.

cc: Conwell F. Sapp, Esquire  
Ms. Lena Guise  
Mr. George Baker  
People's Counsel for Baltimore County  
P. David Fields  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr.  
Docket Clerk /Zoning  
Arnold Jablon, Director of  
Zoning Administration

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Baltimore County Government  
Office of Zoning Administration  
and Development Management  
Office of Planning & Zoning



111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

OCTOBER 6, 1992

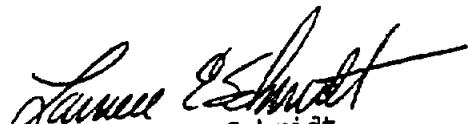
NOTICE OF REASSIGNMENT

CASE NUMBER(S): 92-477-SPH  
LEGAL OWNER LENA GUISE  
LOCATION: LOTS 31 and 32 ARUNAH AVENUE

HEARING OF THE ABOVE MATTER WILL TAKE PLACE AS FOLLOWS:

TUESDAY, NOVEMBER 10, 1992 at 2:00 p.m.

IN ROOM 118, OLD COURTHOUSE, 400 WASHINGTON AVENUE, TOWSON MD 21204.

  
Lawrence E. Schmidt

ZONING COMMISSIONER  
BALTIMORE COUNTY

cc: Lena Guise  
George Baker  
William T. Glasgow, Esq.  
Peoples Counsel



Printed on Recycled Paper



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

Hearing Room -  
Room 48, Old Courthouse  
400 Washington Avenue

January 13, 1993

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 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. 92-477-SPH

GEORGE BAKER /PETITIONER  
(Lena Guise Property)  
NE/s Arunah Avenue, 300' SE  
of c/l Maryland Avenue  
(Lots #31 & #32, Arunah Avenue)  
1st Election District  
1st Councilmanic District

SPH-lot size /less than 6,000  
sq. ft.; also lot width (40'  
in lieu of minimum 55')

11/25/92 - Z.C.'s Order GRANTING  
Petition.

ASSIGNED FOR:

THURSDAY, MARCH 18, 1993 AT 10:00 a.m.

|                                   |                           |
|-----------------------------------|---------------------------|
| cc: George Baker                  | Petitioner                |
| Lena Guise                        | Appellant /Property Owner |
| William T. Glasgow, Esquire       | Counsel for Appellant     |
| Conwell F. Sapp, Esquire          | " " "                     |
| People's Counsel for Balto. Co.   |                           |
| P. David Fields                   |                           |
| Lawrence E. Schmidt               |                           |
| Timothy M. Kotroco                |                           |
| W. Carl Richards, Jr.             |                           |
| Docket Clerk - Zoning             |                           |
| Arnold Jablon, Director of Zoning |                           |
| Administration                    |                           |

Kathleen C. Weidenhammer  
Administrative Assistant



1/13/93 - Following parties notified of hearing set for March 18,  
1993 at 10:00 a.m.:

George Baker  
Lena Guise  
William T. Glasgow, Esquire  
Conwell F. Sapp, Esquire  
People's Counsel for Balto. Co.  
P. David Fields  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr.  
Docket Clerk - Zoning  
Arnold Jablon, Director of Zoning  
Administration

**MICROFILMED**



NE/s Arunah Ave., 300' SE of c/1 Maryland Ave.  
(Lots #31 & 32, Arunah Avenue)

#92-477-SPH      GEORGE BAKER

Appealed: ~~10/8/92~~      1st Election District  
12/7/92

Baltimore County Government  
Office of Zoning Administration  
and Development Management  
Office of Planning & Zoning



West Chesapeake Avenue  
Baltimore, MD 21204

(410) 887-3353

July 6, 1992

Ms. Lena Guise  
3306 Strickland Road  
Baltimore, MD 21229

RE: Item No. 510, Case No. 92-477-SPH  
Petitioner: Lena Guise, et al  
Petition for Special Hearing

Dear Ms. Guise:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

The following comments are related only to the filing of future zoning petitions, and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by Zoning personnel.

**MICROFILMED**

Zoning Plans Advisory Committee Comments

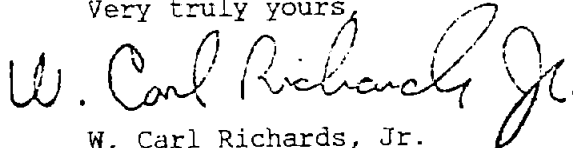
Date: July 6, 1992

Page 2

2) Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All petitions filed in this manner will be reviewed and commented on by Zoning personnel prior to the hearing. In the event that the petition has not been filed correctly, there is always a possibility that another hearing will be required or the Zoning Commissioner will deny the petition due to errors or incompleteness.

3) Attorneys, engineers and applicants who make appointments to file petitions on a regular basis and fail to keep the appointment without a 72 hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e. 72 hours, will result in the forfeiture loss of the filing fee.

Very truly yours,

A handwritten signature in cursive script that reads "W. Carl Richards, Jr." The signature is written in dark ink and is positioned above the printed name and title.

W. Carl Richards, Jr.  
Zoning Coordinator

WCR:jw

Enclosures

cc: Mr. George Baker, 405 LayFayette Avenue, Baltimore, MD 21228

Baltimore County Government  
Office of Zoning Administration  
and Development Management  
Office of Planning & Zoning



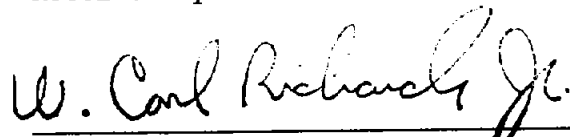
111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

Your petition has been received and accepted for filing this  
4th day of June, 1992

  
\_\_\_\_\_  
ARNOLD JABLON  
DIRECTOR

Received By:

  
\_\_\_\_\_  
Chairman,  
Zoning Plans Advisory Committee

Petitioner: Lena Guise, et al

Petitioner's Attorney:



Printed on Recycled Paper

BALTIMORE COUNTY, MARYLAND  
OFFICE OF PLANNING AND ZONING  
New Courts Bldg - 401 Bosley Avenue, Towson, MD 21204

MEMORANDUM

TO: Arnold Jablon, Director  
Zoning Administration & Development Management

FROM: Office of Planning and Zoning

DATE: June 19, 1992

SUBJECT: Guise Property

INFORMATION:

Item Number: 510

Petitioner: Lena Guise

Property Size: 0.12 acres, 5,280 square feet

Zoning: D.R. 5.5

Requested Action: Special Hearing

Hearing Date:       /      /      

SUMMARY OF RECOMMENDATIONS:

The petitioner is requesting a Special Hearing to seek approval for a building lot of 5,280 square feet in lieu of the required 6,000 square feet.

The Office of Planning and Zoning recommends APPROVAL of the petitioners request.

The Planning Office's area planner visited the site and indicates that there would be a sufficient setback to the east and west to allow a sense of separation between adjacent homes. Also there are other homes in the immediate area that are 20' to 26' wide built on two 20 foot wide lots. The proposed house would be compatible with the surrounding neighborhood. The area planner recommends that the house be oriented to the south.

Prepared by: Francis Morsey

Division Chief: \_\_\_\_\_

FM:rdn



510/ZAC1

Baltimore County Government  
Fire Department



700 East Joppa Road Suite 901  
Towson, MD 21204-5500

JUNE 12, 1992

(410) 887-4500

Arnold Jablon  
Director  
Zoning Administration and  
Development Management  
Baltimore County Office Building  
Towson, MD 21204

RE: Property Owner: LENA GUISE

Location: NE/S ARUNAH AVENUE, 300' SE OF CENTERLINE

Item No.: 510 (JCM) Zoning Agenda: JUNE 15, 1992

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.

7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: Capt. Jerry Guifer Noted and  
Planning Group Approved  
Special Inspection Division Fire Prevention Bureau

JP/KEK

RECEIVED

JUN 15 1992

ZONING OFFICE

92-30-4 9/26

BUREAU OF TRAFFIC ENGINEERING  
DEPARTMENT OF PUBLIC WORKS  
BALTIMORE COUNTY, MARYLAND

Date: August 30, 1991

TO: Mr. Arnold Jablon, Director  
Office of Zoning Administration  
and Development Management

FROM: Rahee J. Famili

SUBJECT: Z. A. C. Comments

Z. A. C. MEETING DATE: July 30, 1991

This office has no comments for item numbers 505,  
3, 9, 10, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 30 and 31.

*Rahee J. Famili*  
\_\_\_\_\_  
Rahee J. Famili  
Traffic Engineer II

RJF:bza

*Rec'd 9/4/91*

12/7/92

8

IN THE MATTER OF  
LOT NOS. 31 & 32  
ARUNAH AVENUE

\* BOARD OF APPEALS  
\* BALTIMORE COUNTY  
\* SPH 92-477

\* \* \* \* \*

APPEAL

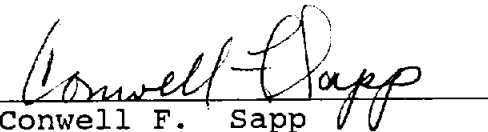
Please enter an appeal in the above-captioned matter.

  
Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
Suite 200  
Columbia, MD 21044  
(410) 740-4600

  
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, MD 21044  
(410) 997-2298

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of December, 1992, a copy of the foregoing Appeal was mailed, postage prepaid, to Lawrence E. Schmidt, Zoning Commissioner, 400 Washington Avenue, Towson, MD 21204, Ms. Phyllis Cole Friedman, People's Counsel for Baltimore County, Room 47, Courthouse, 400 Washington Avenue, Towson, MD, 21204, Mr. Peter Max Zimmerman, Deputy People's Counsel, Room 47, Courthouse, 400 Washington Avenue, Towson, MD 21204 and Mr. George Baker, 405 LaFayette Avenue, Baltimore, MD 21228.

  
Conwell F. Sapp

CFS\zoning\guise.app

RECEIVED

DEC 7 1992

ZONING OFFICE



BALTIMORE COUNTY, MARYLAND  
I N T E R O F F I C E C O R R E S P O N D E N C E

TO: Arnold Jablon, Director      DATE: August 1, 1991  
Zoning Administration and Development Management

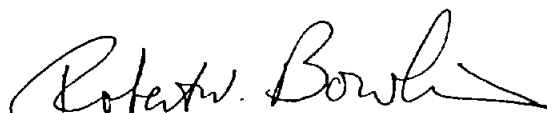
FROM: Robert W. Bowling, P.E.

RE: Zoning Advisory Committee Meeting  
for July 30, 1991

The Developers Engineering Division has reviewed the subject zoning items and we have no comments for Items 505, 3, 7, 9, 10, 17, 18, 19, 21, 22, 23, 24, 27, 30 and 31.

For Item 20, the extension of public water, sewer and paving may be required, prior to issuance of a building permit for this lot.

For Item 26, the previous County Review Group comments are still applicable.



ROBERT W. BOWLING, P.E., Chief  
Developers Engineering Division

RWB:s

Department of Recreation and Parks  
Development Review Committee Response Form  
Authorized signature \_\_\_\_\_

*Walter P. Kim*

Date *6/23/92*

Project Name  
File Number      Waiver Number      Zoning Issue      Meeting Date

Washington Homes, Inc

504

*6-15-92*

DED DEPRM RP STP TE

*No Comments* ✓

Aurelia Loveman For Joseph H. Loveman

505

DED DEPRM RP STP TE

*No Comments* ✓

Timothy W. And Carol Anne M. Frost

506

DED DEPRM RP STP TE

*No Comments* ✓

James G. And Brenda G. Thomas

507

DED DEPRM RP STP TE

*No Comments* ✓

James E. Bishop, Sr.

508

DED DEPRM RP STP TE

*No Comments* ✓

Victor E. And Sandra J. Fiorenza

509

DED DEPRM RP STP TE

*No Comments* ✓

Lena Guise

510

DED DEPRM RP STP TE

*No Comments* ✓

COUNT 7

FINAL TOTALS

COUNT 7

\*\*\* END OF REPORT \*\*\*

DPW/Traffic Engineering  
Development Review Committee Response Form  
Authorized signature \_\_\_\_\_

06/18/92

Date 6/22/92

*Raher j Family*

Project Name  
File Number      Waiver Number      Zoning Issue      Meeting Date

Stonegate at Patapsco (Azeal Property)  
90476      6-1-92  
ZON DED      TE (Waiting for developer to submit plans first)  
=====

COUNT 1

✓ Washington Homes, Inc      504      N/C ✓ 6-15-92  
DED DEPRM RP STP TE  
=====

✓ Aurelia Loveman For Joseph H. Loveman      505      N/C ✓  
DED DEPRM RP STP TE  
=====

✓ Timothy W. And Carol Anne M. Frost      506      N/C ✓  
DED DEPRM RP STP TE  
=====

✓ James B. And Brenda G. Thomas      507      N/C ✓  
DED DEPRM RP STP TE  
=====

✓ James E. Bishop, Sr.      508      N/C ✓  
DED DEPRM RP STP TE  
=====

✓ Victor E. And Sandra J. Fiorenza      509      N/C ✓  
DED DEPRM RP STP TE  
=====

✓ Lena Guise      510      N/C ✓  
DED DEPRM RP STP TE  
=====

COUNT 7

Howard W. Dawson, Sr.      503      N/C ✓ 6-8-92  
TE  
=====

COUNT 1

FINAL TOTALS  
COUNT 9

MICROFILMED

Department of Environmental Protection & Resource Management  
Development Review Committee Response Form  
Authorized signature \_\_\_\_\_

06/16/92

Date 6-22-92

*R. Bruce Kelly*

Project Name  
File Number      Waiver Number      Zoning Issue      Meeting Date

Lena Guise

510

NO COMMENTS  
6-15-92

DED DEPRM EF STP TE

COUNT 7

Keith M. And Patricia M. Lambert

496

In process  
6-6-92

DEPRM      TE

COUNT 1

Douglas R. Small

499

In process  
6-6-92

DEPRM      STP TE

COUNT 1

FINAL TOTALS

COUNT 14

\*\*\* END OF REPORT \*\*\*

11-11-92

6/22/92 6477-92  
TO DA

DPW/Developers Engineering Division (Public Services)  
Development Review Committee Response Form  
Authorized signature Dennis A. Kennedy

06/16/92

Date 6/22/92

Project Name  
File Number      Waiver Number      Zoning Issue      Meeting Date

Stonegate at Patapsco (Azreal Property)  
90476      6-1-92  
ZON DED      TE (Waiting for developer to submit plans first)

COUNT 1

✓ Washington Homes, Inc      504      6-15-92      NC  
DED DEPRM RP STP TE

✓ Aurelia Loveman For Joseph H. Loveman      505      NC  
DED DEPRM RP STP TE

Timothy W. And Carol Anne M. Frost      506      Comment  
DED DEPRM RP STP TE

James B. And Brenda G. Thomas      507      Comment  
DED DEPRM RP STP TE

/ James E. Bishop, Sr.      508      NC  
DED DEPRM RP STP TE

Victor E. And Sandra J. Fiorenza      509      Comment  
DED DEPRM RP STP TE

✓ Lena Guise      510      NC  
DED DEPRM RP STP TE

COUNT 7

FINAL TOTALS  
COUNT 8

\*\*\* END OF REPORT \*\*\*

BALTIMORE COUNTY, MARYLAND

Inter-office Correspondence

TO: Gwen Stephens  
Docket Clerk, Office of Zoning

DATE: September 24, 1992

FROM: Lawrence E. Schmidt  
Zoning Commissioner

SUBJECT: Case No. 92-477-SPH  
Petitioner: George Baker, Lena Guise, Property Owner

Please set the attached case back in for hearing, in accordance with my Ruling on Preliminary Motion. Advise George Baker, Lena Guise and her attorney, Glasgow, together with Peoples Counsel. It will not be necessary for Ms. Guise to pay for posting and advertising again. You do not have to post or advertise this case for the new hearing.

If you have any questions, call me.

LES:mmn  
att.

MICROFILMED

Baltimore County Government  
Office of Zoning Administration  
and Development Management  
Office of Planning & Zoning



111 West Chesapeake Avenue  
Towson, MD 21204

October 29, 1992

(410) 887-3353

Baltimore County Board of Appeals  
Old Courthouse, Room 49  
400 Washington Avenue  
Towson, Maryland 21204

RE: Petition for Special Hearing  
NE/S Arunah Avenue, 300 ft. SE of c/1 Maryland Avenue  
(Lots #31 & 32, Arunah Avenue)  
1st Election District, 1st Councilmanic District  
GEORGE BAKER - Petitioner  
Case No. 92-477-SPH (Property Owner's Motion to Dismiss)

Dear Board:

Please be advised that an appeal from an order of the Zoning Commissioner denying the Property Owner's Motion to Dismiss for the above referenced case was filed in this office on October 8, 1992 by William T. Glasgow, Attorney on behalf of the property owner, Lena Guise. All materials relative to the case are being forwarded herewith.

Please notify all parties to the case of the date and time of the appeal hearing when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,



Arnold Jablon - Director  
Zoning Administration and  
Development Management

AJ:cer

cc: Lena Guise - 3306 Strickland Street Baltimore, MD 21229

William T. Glasgow Esquire  
Suite 250 10715 Charter Drive, Columbia MD 21044

George Baker - 405 Lafayette Avenue Baltimore MD 21228

People's Counsel of Baltimore County  
Old Courthouse, 400 Washington Avenue, Towson, MD 21204

RECEIVED  
COUNTY BOARD OF APPEALS  
92 OCT 30 PM 5:16



Printed on Recycled Paper

APPEAL

Petition for Special Hearing  
NE/S Arunah Avenue, 300 ft. SE of c/1 Maryland Avenue  
(Lots #31 & 32, Arunah Avenue)  
1st Election District - 1st Councilmanic District  
(GEORGE BAKER - Petitioner)  
Case No. 92-477-SPH

Petition(s) for Special Hearing

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel (None submitted)

Zoning Plans Advisory Committee Comments

Director of Planning & Zoning Comments (Included with ZAC Comments)

Exhibit A: Opinion

Exhibit B: Motion to Dismiss

Exhibit C: Post Hearing Memorandum of Law

Exhibit D: Ruling on Preliminary Motion

People's Counsel's Memorandum dated July 14, 1992

Motion to Dismiss dated July 22, 1992

Memorandum of Law dated July 22, 1992

Post-Hearing Memorandum of Law dated August 21, 1992

Ruling on Preliminary Motion dated September 24, 1992

Notice of Appeal received October 8, 1992 from William T. Glasgow,  
Attorney on behalf of the property owner  
Petition for Appeal dated October 6, 1992

cc: Lena Guise - 3306 Strickland Street Baltimore, MD 21229

William T. Glasgow Esquire  
Suite 250 10715 Charter Drive, Columbia MD 21044

George Baker - 405 Lafayette Avenue Baltimore MD 21228

People's Counsel of Baltimore County  
Rm. 304, County Office Bldg., Towson, MD 21204

Request Notification: P. David Fields, Director of Planning & Zoning  
Patrick Keller, Office of Planning & Zoning  
Lawrence E. Schmidt, Zoning Commissioner  
Timothy M. Kotroco, Deputy Zoning Commissioner  
W. Carl Richards, Jr., Zoning Coordinator  
Docket Clerk  
Arnold Jablon, Director of ZADM  
Public Services



APPEAL

Petition for Special Hearing  
NE/S Arunah Avenue, 300 ft. SE of c/1 Maryland Avenue  
(Lots #31 & 32, Arunah Avenue)  
1st Election District - 1st Councilmanic District  
(GEORGE BAKER - Petitioner)  
Case No. 92-477-SPH

111 V  
Tows

- ✓ Petition(s) for Special Hearing
- ✓ Description of Property
- ✓ Certificate of Posting
- ✓ Certificate of Publication

Entry of Appearance of People's Counsel (None submitted)

- ✓ Zoning Plans Advisory Committee Comments
- ✓ Director of Planning & Zoning Comments (Included with ZAC Comments)
- ✓ Exhibit A: Opinion
- ✓ Exhibit B: Motion to Dismiss
- ✓ Exhibit C: Post Hearing Memorandum of Law
- ✓ Exhibit D: Ruling on Preliminary Motion
- ✓ People's Counsel's Memorandum dated July 14, 1992
- ✓ Motion to Dismiss dated July 22, 1992
- ✓ Memorandum of Law dated July 22, 1992
- ✓ Post-Hearing Memorandum of Law dated August 21, 1992
- ✓ Ruling on Preliminary Motion dated September 24, 1992 *Denying Motion to Dismiss*
- ✓ Notice of Appeal received October 8, 1992 from William T. Glasgow,  
Attorney on behalf of the property owner
- ✓ Petition for Appeal dated October 6, 1992

cc: Lena Guise - 3306 Strickland Street Baltimore, MD 21229

\*William T. Glasgow Esquire & Conwell F. Sapp, Esquire, Reese & Carney,  
Suite 250 10715 Charter Drive, Columbia MD 21044

George Baker - 405 Lafayette Avenue Baltimore MD 21228

People's Counsel of Baltimore County  
Rm. 304, County Office Bldg., Towson, MD 21204

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Docket Clerk  
Arnold Jablon, Director of ZADM  
Public Services

*JE*

APPEAL

Petition for Special Hearing  
NE/S Arunah Avenue, 300 ft. SE of c/1 Maryland Avenue  
(Lots #31 & #32, Arunah Avenue)  
1st Election District - 1st Councilmanic District  
GEORGE BAKER - PETITIONER  
LENA GUISE - PROPERTY OWNER  
Case No. 92-477-SPH

IN ADDITION TO THE MATERIALS PREVIOUSLY SUBMITTED ON OCTOBER 29, 1992  
IN REFERENCE TO THE ABOVE REFERENCED CASE, ENCLOSED ARE COPIES OF:

1. Zoning Commissioner's Order dated November 25, 1992 (Granted)
2. Notice of Appeal received on December 7, 1992 from Conwell F. Sapp and William T. Glasgow, attorneys on behalf of Lena Guise, property owner.

cc: Lena Guise, 3306 Strickland Street, Baltimore MD 21229

William T. Glasgow and Conwell F. Sapp  
Reese and Carney 10715 Charter Drive, Ste 200, Columbia MD 21044

George Baker - 501 Lafayette Avenue, Baltimore MD 21228

Request Notification: P. David Fields, Director of Planning & Zoning  
Patrick Keller, Office of Planning & Zoning  
Lawrence E. Schmidt, Zoning Commissioner  
Timothy M. Kotroco, Deputy Zoning Commissioner  
W. Carl Richards, Jr., Zoning Coordinator  
Docket Clerk  
Arnold Jablon, Director of ZADM  
Public Services

MICROFILMED

Jan 3, 1992

Dear Mr William T Hackett  
Chairman

I am Linda Guise who asked for a  
variances on lot 31 and 32 in Catonsville  
Height. case no 99-30A

You and Michael B Samr and John G. Denny  
approved the Variance on May 6, 1992.

That's if no one would appeal it after  
30 days.

Mr George Baker whom I am having so  
much trouble with, did appeal but,  
after finding out how much the fees  
to hire a lawyer he dropped it.

After 2 week later. He is starting the  
whole <sup>ball</sup> rolling again.

Mr William T Hackett can he do this  
if the case was closed:

Please let me know because he had  
me going two times and now I am

3/18/93 @ 10<sup>00</sup>

TIME: 15:02:22  
DATE: 12/22/93

AUTOMATED PERMIT TRACKING SYSTEM  
APPROVALS DETAIL SCREEN

PANEL BP1018M  
LAST UPDATE 12/22/93  
PLO 14:07:20

PERMIT #: B173949

| AGENCY   | DATE     | CODE | COMMENTS                        |
|----------|----------|------|---------------------------------|
| BLD PLAN | 08/24/93 | 01   | ALR                             |
| SEDI CTL | 12/22/93 | 01   | TR/ALS                          |
| ZONING   | 11/23/93 | 01   | JRA/RSK                         |
| PUB SERV | 11/17/93 | 01   | JRA OK PER PAT OKEEFE PUB WORKS |
| ENVRMNT  | 12/06/93 | 01   | WW/EIR-12/6MM/WW                |
| PERMITS  | 12/22/93 | 01   | OAS/MR                          |

01 THRU 09 INDICATES AN "APPROVAL" \*\* 10 THRU 99 INDICATES A "DISAPPROVAL"

ENTER - NEXT APPROVAL      PF4 - ISSUE PERMIT

CLEAR - MENU

PANEL BP1003M

TIME: 15:02:45      AUTOMATED PERMIT TRACKING SYSTEM      LAST UPDATE 11/22/93  
DATE: 07/15/94      GENERAL PERMIT APPLICATION DATA      PLM 14:26:57

PERMIT #: B173949      PROPERTY ADDRESS  
RECEIPT #: A199472      401      LAFAYETTE AVE  
CONTROL #: NR      SUBDIV: CATONSVILLE HEIGHTS  
XREF #: B173949      TAX ACCOUNT #: 0107830150      DISTRICT/PRECINCT 01      08  
OWNERS INFORMATION (LAST, FIRST)  
FEE 118.00      NAME: GUST, LENA

APPLIED: 08/23/93 NAME: AL RAYNER  
ISSUED: 12/22/93 COMPANY: RAY MORE BLDRS, INC.  
OCCPNY: ADDR1: 1618 SHUCKS RD.  
ADDR2: BEL AIR, MD. 21015  
INSPECTOR: OIR PHONE #: 494-2885 LICENSE #:  
NOTES: COP/RSK  
REVISED SITE PLANS PER JA/ZONING 11/22/93;KRA

PASSWORD :

ENTER - PERMIT DETAIL PF3 - INSPECTIONS PF7 - DELETE PF9 - SAVE  
PF2 - APPROVALS PF4 - ISSUE PERMIT PF8 - NEXT PERMIT PF10 - INQRY  
PANEL BP1004M  
TIME: 15:02:51 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 11/22/93  
DATE: 07/15/94 BUILDING DETAIL 1 PLT 14:27:25  
PERMIT # B173949 PLANS: CONST 2 PLOT 7 FLAT 0 DATA 0 EL 1 PL 1  
TENANT  
BUILDING CODE: 1 CONTR: RAYMORE BLDRS  
IMPRV 1 ENGR:   
USE 01 SELLR:   
FOUNDATION BASE WORK: CONSTRUCT A SFD WITH A PREFAB FIREPLACE.  
2 1 NO OUTSIDE PROJECTION OF CHIMNEY. 3 BEDRMS.  
CONSTRUC FUEL SEWAGE WATER 48X25X22=2352 SQ. FT. PER 92-477 SPH. BOARD  
2 3 1P 1P OF APPEALS.  
CENTRAL AIR 1  
ESTIMATED COST  
75,000.00 PROPOSED USE: SFD  
OWNERSHIP: 1 EXISTING USE: VACANT LOT  
RESIDENTIAL CAT: 1  
#EFF: #1BED: #2BED: #3BED: TOT BED: TOT APTS:  
1 FAMILY BEDROOMS: 3

PASSWORD:

ENTER - NEXT DETAIL PF2 - APPROVALS PF7 - PREV. SCREEN PF9 - SAVE  
PF4 - GENERAL PERMIT PF3 - INSPECTIONS PF8 - NEXT SCREEN CLEAR - MENU  
PANEL BP1005M  
TIME: 15:02:59 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 11/22/93  
DATE: 07/15/94 BUILDING DETAIL 2 PLT 14:27:25  
PERMIT #: B173949 BUILDING SIZE LOT SIZE AND SETBACKS  
FLOOR: 2352 SIZE: 5280 SQ. FT.  
WIDTH: 48' FRONT STREET:  
DEPTH: 25' SIDE STREET:  
HEIGHT: 22' FRONT SETB: 30  
STORIES: 1+BASE SIDE SETB: 7/8  
SIDE STR SETB:  
REAR SETB: 53  
LOT NOS: 31,32  
CORNER LOT: N  
ZONING INFORMATION  
DISTRICT: BLOCK: 2  
PETITION: SECTION:  
DATE: LIBER: 000  
MAP: FOLIO: 178  
CLASS: 04  
ASSESSMENTS  
LAND: 0022780.00  
IMPROVEMENTS: 0000000.00  
TOTAL ASS.:  
UNRECORDED

PLANNING INFORMATION  
MSTR PLAN AREA: SUBSEWER: CRIT AREA: PASSWORD:

ENTER - NEXT DETAIL PF2 - APPROVALS PF7 - PREV. SCREEN PF9 - SAVE  
PF4 - GENERAL PERMIT PF3 - INSPECTIONS PF8 - NEXT SCREEN CLEAR - MENU

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3/18/93 @ 10<sup>00</sup>

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DATE: 12/22/93

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APPROVALS DETAIL SCREEN

PANEL BP1018M  
LAST UPDATE 12/22/93  
PLO 14:07:20

PERMIT #: B173949

| AGENCY   | DATE     | CODE | COMMENTS                        |
|----------|----------|------|---------------------------------|
| BLD PLAN | 08/24/93 | 01   | ALR                             |
| SEDI CTL | 12/22/93 | 01   | TR/ALS                          |
| ZONING   | 11/23/93 | 01   | JRA/RSK                         |
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| ENVRMNT  | 12/06/93 | 01   | WW/EIR-12/6MM/WW                |
| PERMITS  | 12/22/93 | 01   | OAS/MR                          |

01 THRU 09 INDICATES AN "APPROVAL" \*\* 10 THRU 99 INDICATES A "DISAPPROVAL"

ENTER - NEXT APPROVAL      PF4 - ISSUE PERMIT

CLEAR - MENU

PANEL BP1003M

TIME: 15:02:45      AUTOMATED PERMIT TRACKING SYSTEM      LAST UPDATE 11/22/93  
DATE: 07/15/94      GENERAL PERMIT APPLICATION DATA      PLM 14:26:57

PERMIT #: B173949      PROPERTY ADDRESS  
RECEIPT #: A199472      401      LAFAYETTE AVE  
CONTROL #: NR      SUBDIV: CATONSVILLE HEIGHTS  
XREF #: B173949      TAX ACCOUNT #: 0107830150      DISTRICT/PRECINCT 01      08  
OWNERS INFORMATION (LAST, FIRST)  
FEE 118.00      NAME: GUST, LENA

NO FILM

PAID BY: AGENT

DATES  
 APPLIED: 08/23/93 NAME: AL RAYNER  
 ISSUED: 12/22/93 COMPANY: RAY MORE BLDRS, INC.  
 OCCPNCY: ADDR1: 1618 SHUCKS RD.  
 ADDR2: BEL AIR, MD. 21015  
 INSPECTOR: OIR PHONE #: 494-2885 L  
 NOTES: COP/RSK  
 REVISED SITE PLANS PER JA/ZONING 11/22/93;KRA

PASSWORD :

```
ENTER - PERMIT DETAIL    PF3 - INSPECTIONS      PF7 - DELETE           PF9 - SAVE
PF2 - APPROVALS          PF4 - ISSUE PERMIT     PF8 - NEXT PERMIT      PF10 - INQRY
                           PANEL BP1004M
```

```

TIME: 15:02:51      AUTOMATED PERMIT TRACKING SYSTEM      LAST UPDATE 11/22/93
DATE: 07/15/94      BUILDING DETAIL 1                      PLT      14:27:25
                                     TRACT:                BLOCK:
PERMIT # B173949     PLANS:  CONST 2      PLOT 7      FLAT 0      DATA 0      EL 1      PL 1
                                     TENANT
BUILDING CODE: 1      CONTR: RAYMORE BLDRS
IMPRV 1              ENGNR:
USE 01               SELLR:

```

|               |        |       |                                             |
|---------------|--------|-------|---------------------------------------------|
| FOUNDATION    | BASE   | WORK: | CONSTRUCT A SFD WITH A PREFAB FIREPLACE.    |
| 2             | 1      |       | NO OUTSIDE PROJECTION OF CHIMNEY. 3 BEDRMS. |
| CONSTRUC FUEL | SEWAGE | WATER | 48X25X22=2352 SQ. FT. PER 92-477 SPH. BOARD |
| 2             | 3      | 1P    | 1P OF APPEALS.                              |

CENTRAL AIR: 1  
ESTIMATED COST  
75,000.00      PROPOSED USE: SFD  
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RESIDENTIAL CAT: 1  
#EFF:      #1BED:      #2BED:      #3BED  
1 FAMILY BEDROOMS: 3      P

PASSWORD :

ENTER - NEXT DETAIL      PF2 - APPROVALS      PF7 - PREV. SCREEN      PF9 - SAVE  
PF4 - GENERAL PERMIT      PF3 - INSPECTIONS      PF8 - NEXT SCREEN      CLEAR - MENU  
PANEL RP1005M

```

TIME: 15:02:59 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 11/22/93
DATE: 07/15/94 BUILDING DETAIL 2 PLT 14:27:25

```

|               |         |               |                       |
|---------------|---------|---------------|-----------------------|
| PERMIT #:     | B473949 | BUILDING SIZE | LOT SIZE AND SETBACKS |
|               |         | FLOOR:        | SIZE: 5280 SQ. FT.    |
|               |         | WIDTH:        | FRONT STREET:         |
| GARBAGE DISP: | N       | DEPTH:        | SIDE STREET:          |
| POWDER ROOMS: | 0       | HEIGHT:       | FRONT SETB:           |
| BATHROOMS:    | 1       | STORIES:      | SIDE SETB:            |
| KITCHENS:     | 1       |               | SIDE STR SETB:        |
|               |         | LOT NOS:      | REAR SETB:            |
|               |         | CORNER LOT:   |                       |

### ZONING INFORMATION

DISTRICT: BLOCK: 2  
PETITION: SECTION:  
DATE: LIBER: 000  
MAP: FOLIO: 178  
CLASS: 04

ASSESSMENTS  
LAND: 0022780.00  
IMPROVEMENTS: 0000000.00  
TOTAL ASS.:

فَتَمْنَعُ الْوَالِدَيْنِ وَالْأَقْرَبُونَ

## PLANNING INFORMATION

MSTR PLAN AREA: SUBSEWER: GRIT AREA: PASSWORD:

ENTER - NEXT DETAIL      PF2 - APPROVALS      PF7 - PREV. SCREEN      PF9 - SAVE  
PF1 - GENERAL PERMIT      PF3 - INSPECTIONS      PF8 - NEXT SCREEN      CLEAR - MENU



IN THE MATTER OF THE APPLICATION OF GEORGE BAKER FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE NORTH-EAST SIDE ARUNAH AVENUE, 300' SOUTHEAST OF THE CENTERLINE MARYLAND AVE. (LOTS #31 & #32 ARUNAH AVENUE /GUISE PROPERTY) 1ST ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT

OPINION

This case comes before the Board on appeal from a decision by the Zoning Commissioner granting a Petition for Special Hearing which denied construction on an undersized property consisting of less than the required 6,000 sq. ft. The site is approximately 5,280 sq. ft. in area and is zoned D.R. 5.5, located in the Catonsville Heights community of the First Councilmanic District of Baltimore County.

The plan of the property owner to develop a residential dwelling on the subject lot has moved through several hearings before the Zoning Commissioner in which petitions for setback variances were denied for this 40-foot property, but later granted by the County Board of Appeals (May 6, 1992). In those considerations, an area variance for a lot size of less than 6,000 sq. ft. and a lot width of 40 feet in lieu of the minimum of 55 feet were not a part of the deliberations by the Board of Appeals.

Adjacent property owner, George Baker, filed for a Special Hearing in opposition, contesting that the approval of variances from a side yard setback has an entirely different impact on neighboring properties than the impact of development of an undersized tract. Mr. Baker filed for a Special Hearing before the Zoning Commissioner requesting a decision of whether the property

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Case No. 92-477-SPH George Baker /Petitioner  
of less than the 6,000 sq. ft. required in Section 1802.3.C.1 of the Baltimore County Zoning Regulations (BCZR) may be residentially developed. The Zoning Commissioner granted the Petition for Special Hearing, thereby prohibiting development of the site. An appeal of the Zoning Commissioner's decision (November 25, 1992) is the matter before this Board.

The subject property is a wooded area consisting of two lots, each with a 20-foot front, bounded on two sides by unimproved paper roads (Lafayette Avenue and Arunah Avenue) that provide a larger perspective of the lot size than the actual metes and bounds of the parcel.

Catonsville Heights was subdivided in or about 1920 into small parcels of 20 feet. The subject parcel, lots 31 and 32, was purchased by Ms. Guise's father in the 1920's, and inherited by her in 1950. The unimproved property has been assessed at a value of \$22,000.00 and has required tax payment by the owner for the past 42 years. With the requested area variance, along with the previously granted variances for setbacks, Ms. Guise intends to sell the property to others for eventual development.

An issue in this hearing is the practice of builders seeking infill lots in older neighborhoods for development. Many old subdivisions, such as Catonsville Heights, have narrow 20-foot vacant lots never to be built upon unless several can be combined to create a buildable parcel that meets the zoning regulations.

Testifying for the Appellant, Midge Stocksdales reviewed her survey of single-family dwellings built upon undersized lots within the D.R. 5.5 community. Testimony and photographic exhibits pointed to several properties of less than 6,000 sq. ft., as well

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Case No. 92-477-SPH George Baker /Petitioner  
as houses on two lots of 40 feet in width. Some of the houses cited by Ms. Stocksdales were new, and others were older residences of Catonsville Heights recorded before the 1955 zoning law. Two houses on Arunah Avenue, the location of the subject parcel, received density variances, as well as several others built in different locales of Catonsville Heights in recent years. In response to People's Counsel, Ms. Stocksdales estimated that there were at least eight to ten vacant lots of 40 ft. x 120 ft.

People's Counsel contested that the development of small infill lots is an issue throughout Baltimore County, where the price of buildable lots is escalating and builders look for infill lots. If the lots are undersized, the developer then seeks variances to build so-called "shot-gun houses" that may not be in character with the neighborhood.

Testifying in opposition to the development of Ms. Guide's property, Richard Hauf reviewed his concern for the preservation of the character and nature of his neighborhood along Lafayette Avenue. He argued that the dimensions of his 80' x 120'+ property and those of his neighborhood containing large rancher-type dwellings will be adversely affected by a dwelling constructed on the subject parcel. Mr. Hauf also asserted that the prospect of a small house so built to utilize a dirt road was out of character with the style and values of residences on his street. He further recounted problems and expenses he has incurred controlling storm water runoff in a location that is not serviced by storm water drains. Although he has controlled his personal basement water problems, Mr. Hauf fears the water runoff consequences of clearing the subject parcel for development. He asserted that the zoning

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Case No. 92-477-SPH George Baker /Petitioner  
law is adequate but must be enforced. Variances should not be granted to the detriment of existing houses. Mr. Hauf also bemoaned the fact that the County has done nothing in regard to storm drains and allows building without curbing on the streets. George Baker, Petitioner in this case to deny the area density variance, testified to his purchase of several 20-foot lots to enlarge his property, and of his offer to purchase the Guise property. With a property of 120 ft. by 120 ft. immediately adjacent to the subject parcel, Mr. Baker objected because the undersized lot was incompatible as to square feet with his and other properties in the area. With no storm drains to capture water runoff and the likelihood of a crusher run connection to Lafayette Avenue, the prospect of a single-family dwelling was out of character. He contends that an open wooded lot holds some of the water that an improved lot will pass on.

At issue in this matter is whether a net area density variance request be granted. Variances may be granted where strict application of the zoning regulations would cause practical difficulty to the property owner. In order to prove practical difficulty for an area variance, a Petitioner must meet the following:

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

Case No. 92-477-SPH George Baker /Petitioner  
Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

Testimony in this case is convincing that the property of Ms. Guise, initially acquired by her father in 1927, will be rendered useless if the requested variance is denied. Exhibits in the record showing the 20-foot lots along Arunah Avenue and testimony in this case reveal that any desire by Ms. Guise to purchase an additional lot to add to her two-lot parcel (31 & 32) is impossible as there is no lot available on the one side, and the 40-foot wide paper road (Lafayette Avenue) lies on the other. This is obviously a practical difficulty.

In reviewing this matter, it must also be kept in mind that "a variance should be granted only if in strict harmony with the spirit and intent of the zoning regulations; and only in such a manner as to grant relief without substantial injury to the public health, safety and general welfare." McLean v. Soley, 270 MD 208 (1973)

Section 307 (BCZR) requires that a variance cannot be granted unless a finding is made that there is no injury to public welfare. One of the issues centers on the fact that adjoining dwellings are on larger lots and that the subject property is too small in relation to others in the surrounding locale. However, the proposed 26 ft. by 60 ft. dwelling, with its previously granted side yard variances and the effects of a paper road never to be developed, provides the appearance of a property that is in harmony as to size and character with the neighborhood. By granting the area variance, there should be no injury to the public welfare on this point of objection by neighbors.

The problem of access to the site may be solved by a

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Case No. 92-477-SPH George Baker /Petitioner  
comparison of situations with Ms. Guise's neighbor's residence on the paper street aspect of Arunah Avenue, which they use for ingress and egress to their residence. The same can be expected of the subject property in utilizing Lafayette Avenue, without creating any adverse effect to the neighbor's property.

The concern of neighbors with storm water runoff from a reasonably level parcel of land with a 3-degree fall is hardly a matter to keep the subject property owner from utilizing her property for future development. Water runoff is a fact of nature, but one that will be weighed carefully by agencies of Baltimore County in approving any permits for construction on this parcel. Protestations by residents of this neighborhood regarding a lack of storm drains are undoubtedly valid, but this Board does not perceive this an appropriate reason for denying the possible development of the subject site.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship would result if the relief requested for an area variance were not granted. The Board is satisfied that the granting of the requested variances would not result in a detriment to the public health, safety and general welfare of the surrounding community. The Board believes that it would be grossly unfair to deny the variances and that in doing so the Board would be preventing the property owner from the use of the property for a residential purpose to the approximate level and extent as the residential use experienced by other property owners in the community. To require the property owner to conform to the Section 1802.3.C.1 of the BCZR as applied to this particular case would be to place an unnecessary

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Case No. 92-477-SPH George Baker /Petitioner  
burden upon her.

ORDER

IT IS THEREFORE this 28th day of April, 1993 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Special Hearing prohibiting development of the herein described residential property known as lots #31 and #32 Arunah Avenue and consisting of less than the required 6,000 sq. ft. be and is hereby DENIED; and it is further

ORDERED that the request for zoning variance to permit a parcel of 5,280 sq. ft. in lieu of the required 6,000 sq. ft. and to permit a lot width of 40 feet in lieu of the required 55 feet, be and is hereby GRANTED.

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

Michael B. Bauer, Acting Chairman

John G. Disney

Harry E. Buchheister, Jr.

MICROFILMED

IN THE MATTER OF LOT NOS. 31 & 32 ARUNAH AVENUE

PETITION FOR APPEAL

Lana Guise, Property Owner, by and through her attorneys Conwell F. Sapp and William T. Glasgow, files this Petition for Appeal from an order of the Zoning Commissioner denying Property Owner's Motion to Dismiss.

1. The Board of Appeals issued an opinion in Case No. 92-30-A dated May 6, 1992, in which it granted the Property Owner's requested variances for this property. Attached as Exhibit A.

2. After the time for appeal to Circuit Court had run, a neighbor, Petitioner George Baker brought a separate case before the Zoning Commissioner on a claim which concerned the fact that the lot was undersized which was assigned a new case number SPH 92-477.

3. Property Owner brought a Motion to Dismiss attached as Exhibit B on the basis of res judicata. A Post-Hearing Memorandum was also filed, attached as Exhibit C.

4. In a ruling dated September 24, 1992, the Zoning Commissioner denied such motion, attached as Exhibit D.



WHEREFORE, Property Owner appeals the denial of her Motion to Dismiss and respectfully requests a hearing on this matter.

Conwell F. Sapp  
Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
Suite 200  
Columbia, Maryland 21044  
(410) 740-4600

William T. Glasgow  
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of Oct, 1992, a copy of the foregoing Petition for Appeal was sent first class mail, postage prepaid to George Baker, 405 Lafayette Avenue, Baltimore, MD 21229; Phyllis Friedman, Esquire, Peoples Counsel, Baltimore County Zoning Office, Courthouse, Towson, MD 21204 and Lawrence E. Schmidt, Zoning Commissioner, 400 Washington Avenue, Towson, MD 21204.

-2-

Conwell F. Sapp  
Conwell F. Sapp  
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(410) 997-2298

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-3-

IN THE MATTER OF \* BOARD OF APPEALS  
LOT NOS. 31 & 32 \* BALTIMORE COUNTY  
ARUNAH AVENUE \* SPH 92-477  
\*\*\*\*\*

#### APPEAL

Please enter an appeal in the above-captioned matter.

Conwell F. Sapp  
Conwell F. Sapp  
REESE AND CARNEY  
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Suite 200  
Columbia, Maryland 21044  
(410) 740-4600  
William T. Glasgow  
William T. Glasgow  
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(410) 997-2298

IN THE MATTER OF \* BOARD OF APPEALS  
LOT NOS. 31 & 32 \* BALTIMORE COUNTY  
ARUNAH AVENUE \* SPH 92-477  
\*\*\*\*\*

#### APPEAL

Please enter an appeal in the above-captioned matter.

Conwell F. Sapp  
Conwell F. Sapp  
REESE AND CARNEY  
10715 Charter Drive  
Suite 200  
Columbia, MD 21044  
(410) 740-4600  
William T. Glasgow  
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, MD 21044  
(410) 997-2298

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of December, 1992, a copy of the foregoing Appeal was mailed, postage prepaid, to Lawrence E. Schmidt, Zoning Commissioner, 400 Washington Avenue, Towson, MD 21204, Ms. Phyllis Cole Friedman, People's Counsel for Baltimore County, Room 47, Courthouse, 400 Washington Avenue, Towson, MD 21204, Mr. Peter Max Zimmerman, Deputy People's Counsel, Room 47, Courthouse, 400 Washington Avenue, Towson, MD 21204 and Mr. George Baker, 405 Lafayette Avenue, Baltimore, MD 21228.

Conwell F. Sapp  
Conwell F. Sapp

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RECEIVED  
DEC 7 1992

ZONING OFFICE

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this \_\_\_ day of \_\_\_, 1992, a copy of the foregoing Appeal was mailed, postage prepaid, to George Baker, 405 Lafayette Avenue, Baltimore, MD 21229; Phyllis Friedman, Esquire, Peoples Counsel, Baltimore County Zoning Office, Courthouse, Towson, MD 21204 and Lawrence E. Schmidt, Zoning Commissioner, 400 Washington Avenue, Towson, MD 21204.

Conwell F. Sapp  
Conwell F. Sapp

William T. Glasgow

wtg\real\guise.lin  
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RE: PETITION FOR SPECIAL HEARING : BEFORE THE COUNTY BOARD  
NE/S ARUNAH AVE., 300' SE OF : OF APPEALS  
C/L MARYLAND AVE. :  
(LOTS #31 & #32, ARUNAH AVE.) : OF BALTIMORE COUNTY  
1ST ELECTION DISTRICT :  
1ST COUNCILMANIC DISTRICT : Case No. 92-477-SPH  
GEORGE BAKER, PETITIONER :  
LENA GUISE, PROPERTY OWNER/ :  
APPELLANT :  
\*\*\*\*\*

#### MOTION TO DISMISS APPEAL

People's Counsel for Baltimore County hereby moves to dismiss the appeal of the Zoning Commissioner's Ruling on Preliminary Motion on the grounds that no final order has been issued by the Zoning Commissioner and that the matter is not ripe for appeal.

Phyllis Cole Friedman  
Phyllis Cole Friedman  
People's Counsel for Baltimore County

Peter Max Zimmerman  
Peter Max Zimmerman  
Deputy People's Counsel  
Room 47, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204  
(410) 887-2188

#### MEMORANDUM OF POINTS AND AUTHORITIES:

Even though this is an administrative appeal, the Board should adopt the same principles as the courts and require that an appeal only be allowed from a decision in which Appellants have no further judicial process available. See Varhal.

14:14 2-NOV-92  
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COUNTY BOARD OF APPEALS

Corporation et al. v. Husper et al. Court of Special Appeals  
No. 1174, September Term, 1987, Per Curiam Opinion (1988).

If this position is not adhered to by the Board, it would enable Appellants to bypass the Zoning Commissioner's rulings entirely and would overburden the Board and not be within the spirit and intent of the administrative structure.

Further, for the reasons described in the attached memorandum filed by People's Counsel with the Zoning Commissioner, the substance of this matter should be addressed by the Zoning Commissioner.

Phyllis Cole Friedman  
Phyllis Cole Friedman

I HEREBY CERTIFY that on this 2nd day of November, 1992, a copy of the foregoing Motion to Dismiss Appeal was mailed to Conwell F. Sapp, Esquire, and William T. Glasgow, Esquire, Reese and Carney, 10715 Charter Drive, Suite 200, Columbia, MD 21044, Attorneys for Appellant; George Baker, 405 Lafayette Ave., Baltimore, MD 21228; and Lawrence E. Schmidt, Zoning Commissioner, Room 113, Courthouse, 400 Washington Ave., Towson, MD 21204.

Phyllis Cole Friedman  
Phyllis Cole Friedman

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IN THE MATTER OF \* BEFORE THE  
THE APPLICATION OF \* COUNTY BOARD OF APPEALS  
GEORGE BAKER /Petitioner \*  
FOR A SPECIAL HEARING ON PROPERTY \* OF  
LOCATED ON THE NORTHEAST SIDE \* BALTIMORE COUNTY  
ARUNAH AVENUE, 300' SOUTHEAST OF \*  
CENTERLINE MARYLAND AVENUE (LOTS \* CASE NO. 92-477-SPH  
#31 AND #32, ARUNAH AVENUE) \*  
1ST ELECTION DISTRICT \*  
1ST COUNCILMANIC DISTRICT \*

#### RULING ON PEOPLE'S COUNSEL'S MOTION TO DISMISS APPEAL

The Board has received a Motion to Dismiss Appeal filed by People's Counsel for Baltimore County and the Memorandum of Law in Opposition to Motion to Dismiss filed by Lena Guise, Property Owner, by and through her attorneys Conwell F. Sapp and William T. Glasgow, in the above-entitled matter.

Upon this Board's review and consideration of the foregoing Motion and Memorandum of Law in Opposition thereto,

IT IS HEREBY ORDERED by the County Board of Appeals of Baltimore County that said Motion to Dismiss Appeal filed herein by People's Counsel for Baltimore County be and the same is hereby GRANTED.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

William T. Hackett  
William T. Hackett, Chairman

Date: Nov 9, 1992



IN THE MATTER OF \* BEFORE THE  
Lots Nos. 31 & 32 \* BALTIMORE COUNTY  
of Arunah Avenue \* BOARD OF APPEALS  
\* Case No. 92-477-SPH  
92-30-A

**MOTION TO DENY PEOPLE'S COUNSEL'S  
MOTION TO DISMISS**

Lena Guise, Property Owner, by and through her attorneys  
Conwell F. Sapp and William T. Glasgow hereby moves to deny the  
Motion to Dismiss Appeal filed by People's Counsel in the above-  
referenced matter.

In support of this Motion, Property Owner submits the  
accompanying Memorandum of Law.

*Conwell F. Sapp*  
Conwell F. Sapp  
RESE AND CARNEY  
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Columbia, Maryland 21044  
(410) 740-4600

*William T. Glasgow*  
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 14<sup>th</sup> day of November,  
1992, a copy of the foregoing Motion to Deny People's Counsel's  
Motion to Appeal was sent first class mail, postage prepaid to  
George Baker, 405 Lafayette Avenue, Baltimore, Maryland and  
Phyllis Friedman, Esquire, Peoples Counsel, Baltimore County  
Zoning Office, Courthouse, Towson, MD 21204.

*Conwell F. Sapp*  
Conwell F. Sapp  
*William T. Glasgow*  
William T. Glasgow

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IN THE MATTER OF \* BEFORE THE  
Lots Nos. 31 & 32 \* BALTIMORE COUNTY  
of Arunah Avenue \* BOARD OF APPEALS  
\* Case No. 92-477-SPH  
92-30-A

**MEMORANDUM OF LAW  
IN OPPOSITION TO MOTION TO DISMISS**

**Facts**

Lena Guise, property owner, filed a request for variances  
for Lots 31 and 32 on Arunah Avenue, Case No. 92-30-A before the  
Zoning Commissioner of Baltimore County. Such petition was  
denied. This decision was appealed and reversed by the  
Baltimore County Board of Appeals following a hearing. No  
appeal was taken to Circuit Court. Protestants in 92-30-A filed  
for a second hearing before the Zoning Commissioner on the same  
property concerning the legality of property owner developing a  
property of less than 6,000 square feet. Another hearing was  
granted and the case was re-numbered as 92-477. People's  
Counsel, although not a party in the first case, entered her  
appearance. The hearing was held on July 27th, 1992 before  
Zoning Commissioner Lawrence Schmidt. No evidence was taken but  
argument was heard on a preliminary Motion to Dismiss brought by  
the property owner. Commissioner Schmidt withheld decision and  
requested written submissions. Following submission of  
Memorandum of Law, Commissioner Schmidt on September 24, 1992,  
denied the Motion to Dismiss. Property Owner timely appealed

this denial to the Baltimore County Board of Appeals. Peoples  
Counsel filed a Motion to Dismiss the appeal and this Memorandum  
of Law is in response.

**Argument**

People's Counsel contends that the appeal of a Zoning  
Commissioner's denial of a Motion to Dismiss cannot be heard  
because the denial was not a final judgment. While it is true  
that the general rule is that an interlocutory order is not  
final, there are important exceptions.

The first exception is the collateral order doctrine. An  
immediate appeal is proper if four conditions are met: (1) the  
order must conclusively determine a disputed question, (2) the  
order must resolve an important issue, (3) the order must be  
separate from the merits of the case, (4) the order would be  
effectively unreviewable on appeal from final judgment.

The Motion to Dismiss was brought by Property Owner based  
on res judicata. Denial of the motion by the Zoning  
Commissioner conclusively determined the disputed right of  
protestants to a second hearing. The issue decided concerned  
the authority, jurisdiction, and right of the Zoning  
Commissioner to hold such a hearing when the decision of the  
Baltimore County Board of Appeals had not been appealed. This  
is surely an important issue. The merits of the case concern  
the standards necessary for the granting of property variances.  
The merits are separate and distinct from the procedural issues  
which are raised by res judicata. Res judicata is a defense  
which will be considered waived if not asserted immediately.

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Friedenthal, Kane & Miller, Civil Procedure Hornbook, Series  
(1985) § 14.3. Will a full review be available after a second  
final judgment? A second final judgment is in itself an  
oxymoron. The property owner has a right to avoid the hearing  
set by the Zoning Commissioner entirely. The harm will have  
already occurred and will not be subject to correction through  
later review. Public Service Comm'n v. Patuxent Valley, 300 Md.  
200, 477 A.2d 759 (1984).

When a tribunal exceeds its authority an immediate appeal  
will lie prior to a decision on the merits. Cohen v. Willsett,  
269 Md. 194, 304 A.2d 824 (1973). Flower World of America v.  
Whittington, 39 Md. App. 1987, 385 A.2d 85 (1978). The basis  
for the res judicata was that the Zoning Commissioner was  
without authority to hold a hearing on questions already settled  
at the administrative appellate level. This is a second  
exception to the final judgment rule.

The principles of res judicata, while related, are  
different from those of collateral estoppel. The Motion to  
Dismiss was based on res judicata, but the decision by the  
Zoning Commissioner denying the Motion was premised on  
collateral estoppel. The Zoning Commissioner erred in  
determining that the issue of side yard setbacks and lot size  
are not identical issues and as a consequence res judicata did  
not apply. The thrust of res judicata is not whether issues are  
identical but whether any claims which were brought or which  
could have been brought in the original action bar a subsequent  
action between the same parties on the same cause of action.

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Thus, if a proceeding between parties  
involves the same cause of action as a  
previous proceeding between the same parties,  
the principle of res judicata applies and all  
matters actually litigated or that could have  
been litigated are conclusive in the  
subsequent proceeding. Alvay v. Alvay, 225  
Md. 386, 390, 171 A.2d 92, 94 (1961);  
Shodgrass v. Stubbs, 192 Md. 287, 290-91, 64  
A.2d 130, 132 (1949); Ekata v. Ecom, 64 Md.  
199, 204, 1 A. 54, 56 (1885). If a  
proceeding between parties does not involve  
the same cause of action as a previous  
proceeding between the same parties, the  
principle of collateral estoppel applies, and  
only those facts or issues actually litigated  
in the previous action are conclusive in the  
subsequent proceeding. Bankers & Shippers  
Ins. Co. of New York, 287 Md. at 652, 415  
A.2d at 284; MCP, Inc., 279 Md. at 33, 367  
A.2d at 489; Frascotti v. Coppage, 266 Md.  
562, 570-73, 296 A.2d 150, 154-55 (1972).  
When the principle of collateral estoppel  
applies, facts or issues decided in the  
previous action are conclusive only if  
identical to facts or issues presented in the  
subsequent proceeding. MCP, Inc., 279 Md. at  
35, 367 A.2d at 490; see Washington Suburban  
Sanitary Comm'n v. TXU Assoc., 281 Md. 1,  
18-19, 376 A.2d 505, 514 (1977).

Protestants and People's Counsel are barred from raising the  
question of lot size because the opportunity was available to  
them and not used at the Board of Appeals hearing. Makall v.  
Zayra Corp., 293 Md. 291, 443 A.2d 98, 102 1982; see also, MCP  
Inc. v. Kenny, 279 Md. 29, 367 A.2d 486 (1977).

Res judicata is rigidly formal and works  
mechanically. It resolutely ignores the  
substantive merit of the judgment it  
enforces. Decisions that plainly are wrong  
and that would be reversed on appeal, were  
that route available, are valid final  
judgments for res judicata finality of  
decision and protection from harassment would  
be frustrated completely if a plaintiff could  
evade the doctrine simply by arguing that  
the original decision was wrong. Res  
judicata reflects the policy that sometimes

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it is more important that a judgment be  
stable than that it be correct.

Friedenthal, Kane & Miller, Civil Procedure, Hornbook Series §  
14.3 at 616. There is nothing which indicates that the Board of  
Appeals made an error and if such an error had been made Circuit  
Court was the property place to raise the question. Civil  
Procedures, Hornbook Series (1985) § 14.3.

A factor addressed by courts considering the appealability  
of interlocutory orders is the harm which will occur in the  
event the appeal is not heard. Property Owner had a buyer for  
her property which sale was based on the variance approval by  
the Baltimore County Board of Appeals. The approval was  
obtained May 6, 1992. It is now November of 1992 with a second  
hearing scheduled before the Zoning Commissioner on November 10,  
1992. The sale may well be lost. In the event that the Zoning  
Commissioner denies the area variance another appeal will be  
necessary adding additional time and expense. Additional legal  
time, filing fees and transcript costs have already been  
incurred. The original variance petition was filed on November  
7, 1991.

Whether time and money are immediate harm is an open  
question but surely the law should serve as a shield in the case  
of Lena Guise. This is vexatious litigation.

Respectfully submitted,

-5-

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Conwell F. Sapp  
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William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 14<sup>th</sup> day of November,  
1992, a copy of the foregoing Memorandum of Law in Opposition to  
Motion to Dismiss was sent first class mail, postage prepaid to  
George Baker, 405 Lafayette Avenue, Baltimore, Maryland and  
Phyllis Friedman, Esquire, Peoples Counsel, Baltimore County  
Zoning Office, Courthouse, Towson, MD 21204.

*Conwell F. Sapp*  
Conwell F. Sapp  
*William T. Glasgow*  
William T. Glasgow

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IN THE MATTER OF                   \* Case No. 92-477-SPH  
Lots Nos. 31 & 32               \* BALTIMORE COUNTY  
of Arunah Avenue               \* ZONING COMMISSIONER  
\*\*\*\*\*

**MOTION TO DISMISS**

Lena Guise, Property Owner, by and through her attorneys  
Conwell F. Sapp and William T. Glasgow, hereby moves that the  
Petition for Special Hearing filed by George Baker be dismissed  
and for reasons states:

1. Lena Guise filed, pro se, a petition for a setback  
variance from the area regulations of Baltimore County zoning  
regulations on or about November 7, 1991 in Case No. 92-30-A.
2. By Order dated October 8, 1991, such petition was  
denied by the Deputy Zoning Commissioner of Baltimore County.
3. Appearance of counsel was entered and an appeal was  
timely filed to the Baltimore County Board of Appeals.
4. By Order Dated May 6, 1992, following an evidentiary  
hearing, the petition for a variance was granted.
5. No appeal was made to the Circuit Court of Baltimore  
County as required by law for review of a Board of Appeals  
decision.
6. On or about June 15, 1992, a neighbor, George Baker,  
who attended and participated in the Board of Appeals hearing  
filed a petition with the Zoning Commissioner of Baltimore  
County requesting a hearing on whether the same property could  
be developed.

7. This issue was specifically adjudicated in the Board  
of Appeals hearing and consequently is res judicata.  
WHEREFORE, Property Owner respectfully requests that this  
Petition be dismissed.

*Conwell F. Sapp*  
Conwell F. Sapp  
REESE AND CARNEY  
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Suite 200  
Columbia, Maryland 21044  
(410) 740-4600

*William T. Glasgow*  
William T. Glasgow  
10715 Charter Drive  
Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 22nd day of July,  
1992, a copy of the foregoing Motion to Dismiss was sent first  
class mail, postage prepaid to George Baker, 405 Lafayette  
Avenue, Baltimore, Maryland and Phyllis Friedman,  
Esquire, Peoples Counsel, Baltimore County Zoning Office,  
Courthouse, Towson, Maryland 21204.

*Conwell F. Sapp*  
Conwell F. Sapp  
*William T. Glasgow*  
William T. Glasgow

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George Baker is collaterally estopped from any further  
petition. The law and basic fairness do not permit such  
action.

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*William T. Glasgow*  
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Suite 250  
Columbia, Maryland 21044  
(410) 997-2298

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 22nd day of July,  
1992, a copy of the foregoing Memorandum of Law was sent first  
class mail, postage prepaid to George Baker, 405 Lafayette  
Avenue, Baltimore, Maryland and Phyllis Friedman, Esquire,  
Peoples Counsel, Baltimore County Zoning Office, Courthouse,  
Towson, MD 21204.

*Conwell F. Sapp*  
Conwell F. Sapp  
*William T. Glasgow*  
William T. Glasgow

clb\cfs\litig\guise.mol

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IN THE MATTER OF                   \* Case No. 92-477-SPH  
Lots Nos. 31 & 32               \* BALTIMORE COUNTY  
of Arunah Avenue               \* ZONING COMMISSIONER  
\*\*\*\*\*

**MEMORANDUM OF LAW**

Parties are Precluded from  
Re-litigating the Same Issues

The original variance petition filed by Property Owner was  
drafted with the aid of a Baltimore County Zoning technician  
because she was not represented by counsel at the time. The  
Property Owner explained what she intended and the wording was  
designed by the technician. Any deficiency in the petition is  
not an error of the Property Owner.

The property and the parties are identical to those in the  
hearing before the Deputy Zoning Commissioner and the Board of  
Appeals in Case No. 92-30-A. The issue of the property size and  
its capability of development have been heard through the  
testimony of Midge Stockdale concerning other area homes on  
property of the exact same dimensions. Evidence was entered of  
other variances granted in the neighborhood on properties of the  
same size which were subsequently improved. Expert testimony  
was presented by an engineer concerning the suitability of the  
property for a residence and the appropriate siting of such  
residence. All of this evidence and testimony was appropriately  
weighed by the Board of Appeals and incorporated into its  
Decision and Order. This was a final decision in the matter and  
can be appealed to the Circuit Court of Baltimore County if

timely filed with appropriate grounds. No other avenue is open  
to the parties.

"An Adjudicative determination by an administrative  
tribunal is conclusive under the rules of res judicata only  
insofar as the proceeding resulting in the determination  
entailed the essential elements of adjudication including: . .

. (b) The right on behalf of the party to present evidence and  
legal argument in support of the party's contention and fair  
opportunity to rebut evidence and argument by opposing parties .  
... Re-statement of Judgments § 83 (1982). Res judicata  
principles apply to administrative hearings as well as  
proceedings in court. George Baker as well as other neighbors  
in opposition have had two separate opportunities to be heard  
and cannot be permitted to come through a back door to do what  
cannot be done through the front door.

When the principles of res judicata are applied to a zoning  
decision, a second action on the same property is precluded  
unless there is a substantial difference in the neighborhood or  
change in circumstances, see generally, Chatham Corp. v.  
Baltram, 243 Md. 138, 220 A.2d 589 (1966) and Woodlawn Area Citi.  
Ass'n v. Bd. of Co. Comm., 241 Md. 187, 216 A.2d 149 (1966). In  
the case sub judice, the underlying assumptions and reasons are  
the same as those previously heard. The opposing neighbors are  
attempting to prevent Lena Guise from the lawful use of her  
property. Any reasons contended by petitioner should have been  
put forward at previous hearings simply to avoid this sort of  
duplicative argument.

IN THE MATTER OF                   \* Case No. 92-477-SPH  
Lots Nos. 31 & 32               \* BALTIMORE COUNTY  
of Arunah Avenue               \* ZONING COMMISSIONER  
\*\*\*\*\*

**POST HEARING MEMORANDUM OF LAW**

**Facts**

Lena Guise, property owner, filed a request for  
variances for Lots 31 and 32 on Arunah Avenue, Case No. 92-  
30-A before the Zoning Commissioner of Baltimore County.  
Such petition was denied. This decision was appealed and  
reversed by the Baltimore County Board of Appeals following a  
hearing. No appeal was taken to Circuit Court. Protestants  
in 92-30A filed for a second hearing before the Zoning  
Commissioner on the same property concerning the legality of  
property owner developing a property of less than 6,000  
square feet. Another hearing was granted and the case was  
renumbered as 92-477. People's Counsel, although not a party  
in the first case, entered her appearance. The hearing was  
held on July 27th, 1992 before Zoning Commissioner Lawrence  
Schmidt. No evidence was taken but argument was heard on a  
preliminary Motion to Dismiss brought by the property owner.  
Commissioner Schmidt withheld decision and requested written  
submissions.

**Principles of Res Judicata Apply to Administrative Hearings**

Professor Kenneth Davis, the leading authority on  
administrative law, in his treatise on the subject is quite

emphatic that res judicata does apply to administrative  
hearings. There are some administrative actions to which it  
does not apply such as some letter decisions by an agency but  
if there has been a hearing with each side able to present  
evidence res judicata applies. It applies even in hearings  
such as those held for individuals requesting Social Security  
benefits when there is, in fact, only one side. In this  
instance the protesting neighbors have twice had the hearing  
opportunity to hear and be heard. All issues regarding this  
property that could have been brought up at prior hearings  
should have been put forward. The underlying facts and  
assumptions of both cases are the same.

Peoples Counsel relies on Board of County Commissioner's  
v. Racine, 24 Md. App. 435 332 A.2d 306 (1975) for the  
premise that res judicata does not apply in a zoning case if  
an error of law has been made. This is incorrect on two  
levels. The most primary is that no illegality in the  
decision of the Board of Appeals can be shown. Secondly, the  
Court in Racine cited to work written by Professor Davis in  
1958 to support its decision. Davis himself states that res  
judicata as it relates to administrative law was markedly  
changed by a Supreme Court decision in 1966 United States  
v. Utah Construction & Mining Company, 384 U.S. 394, 421-22  
(1966). Davis in 1989 and the state of administrative law is  
markedly changed from 1958. The Davis quote cited by the  
Court in Racine was based on the 1942 Restatement of  
Judgments. The Restatement of Judgments was revised in 1982

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as Restatement of Judgments 2d. Davis on res judicata  
explains the changing law.

What is happening is that the fundamentals  
summarized in the 1942 Restatement of  
Judgments are no longer followed. The  
Restatement of Judgments 2d (1982) is  
different in its fundamentals. What is more  
important is that the Supreme Court is  
signaling its general acceptance of the new  
fundamentals, of the new details, and of the  
new language. For instance, §27 of the  
Restatement of Judgments 2d states a general  
rule which is now law: "When an issue of  
fact or law is actually litigated and  
determined by a valid and final judgment, the  
determination is conclusive in a subsequent  
action between the parties, whether on the  
same or a different claim." Under §70 of the  
1942 Restatement, a decision on a question of  
law was generally not binding in a subsequent  
action.

**The Board of Appeals Decision was Legal and Final**

People's Counsel presented a variety of legal theories  
which, while novel, are not persuasive. She postulated that  
variance allowing a reduction in the area of a particular  
property is in effect a change in the density requirements  
and the density change cannot be made by the Board of Appeals  
and is therefore illegal. The alchemy which changes an area  
requirement into a density classification is inexplicable.  
The authority used for many years by the Zoning Commissioner  
for area variances is clearly defined in §307.1 of the  
Baltimore County zoning regulations. Only one dwelling is  
proposed for this site. No violation is done to the purpose  
of the density requirements which were primarily designed to  
create better design in future subdivisions.

1800.2 - Purpose. The D.R. zoning  
classification are established, pursuant to

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the legislative findings set forth above, in order to:

- A. Foster a greater variety in housing types within future residential developments;
- B. Allow more feasible preservation of natural features and induce the reservation of ample and more suitably designed open spaces and parks, in order to better satisfy the needs of residents without economic disadvantage to developers;
- C. Allow greater flexibility in subdivision-development planning and provide for the inducement of more creative as well as more economic approaches to residential development, with the goal of desirable and distinctive identity and character of individual residential locales;
- D. Provide the means to satisfy differing housing-market requirements without reasoning, and thus without disruptive changes in density potential; and
- E. Provide for the application of residential zoning classifications in a manner more nearly in accord with comprehensive plans and comprehensive-planning goals.

The purpose and legislative intent was not to restrict an individual property owner so that she receives no economic benefit from a parcel of property which was subdivided in 1919 prior to any zoning regulations.

The same area as the subject property is listed on homes at 601 Maryland Avenue, 1006 Arunah Avenue, 501 Valkorn Road, 502A Dorchester Road and 521 Valkorn (new home). 6007 Montgomery Avenue was approved for construction last year. Case No. 91-245A for 5208 Carroll Place approved the same

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variances in 1991. Any illegality on the part of the Zoning Commissioner or Board of Appeals is long standing. If such an act were illegal the recourse is through an appeal to Circuit Court and not a second hearing before the Zoning Commissioner.

Alternatively, People's Counsel suggested that the area requirement was overlooked by the Board of Appeals. Not only was this not overlooked but evidence was presented and considered by the Board and such approval was incorporated into their opinion. Direct reference in the opinion is made to the width of the lot, the proposed building envelope and the testimony of Midge Stocksdales regarding properties of a similar size in the immediate area. See Transcript, pp. 23 and 24, attached hereto as Exhibit A. Entered into evidence was a variance plat depicting the area of the property which was a part of the submission. Also submitted into evidence was the record of a variance granted for an identically sized property within two blocks of the subject property. See Transcript, pp. 13 and 14, attached hereto as Exhibit B.

The initial Petition for Zoning Variance which was prepared by a clerk/technician of the Zoning office in aid of the property owner was brought for a variance from regulations at 1802.3.C.1 which states the minimum square footage for property and the set back requirements. The referenced regulations refer to both minimum area and set back. Both were considered by the Board of Appeals and

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although the variance petition could have been more carefully drafted, the area of the property in question was considered by the Board.

#### Entry of People's Counsel

People's Counsel has the authority to appear on behalf of the public on any zoning matter which she deems involves the public interest. The People's Counsel also as an aggrieved party has the authority to bring an appeal. People's Counsel v. Williams, 45 Md. App. 617 415 A.2d 585 (1980). The authority, however, has limits. To appeal, a party must be aggrieved and be a party to the proceeding below. In the first case before the Zoning Commissioner regarding this property People's Counsel did not appear. At the Board of Appeals hearing she advised the protestants outside of the hearing room prior to the hearing but chose not to appear at the hearing itself. She, therefore, lacked the party status necessary to appeal. The belated entry into a second hearing may be because of the lack of party status for purposes of appeal in the first case.

A principle of res judicata precludes the entry of People's Counsel at this eleventh hour.

A judgment, to operate as an estoppel must be upon the same subject matter and between the same parties. The term 'parties', however, is not restricted to those who appear as plaintiff and defendant upon the record. It includes those who are directly interested in the subject matter of the suit, knew of its pendency, and had the right to control, and direct, or defend it. The law, in dispensing even-handed justice to all, has wisely taken care 'ut sit finis litium', and if matters, which have been once solemnly decided, could

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be again drawn into controversy, there would be no end of litigation and disputes. Mr. Greenleaf has happily said, 'justice requires that every cause be once fairly and impartially tried; but the public tranquility demands, that having been once so tried, all litigation of that question and between the same parties should be closed forever'." McKinzie v. B & O R.R., 28 Md. 161, at 174-5.

quoted in Board of County Commissioners v. Racine, 24 Md. 435, 332 A.2d 306 (1975). People's Counsel could have entered this case and raised whatever issues she considered pertinent earlier. By not doing so she is precluded from doing so later. It is patently unfair to the Petitioner to put her to the time and expense of resolving issues after the appeal time has passed which have already been the subject of a final judgment.

WHEREFORE, for the foregoing reasons Petitioner prays that case no. 92-477 be dismissed.

Respectfully submitted,  
REESE AND CARNEY

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Conwell F. Sapp  
10715 Charter Drive  
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*William T. Glasgow*  
William T. Glasgow  
10715 Charter Drive  
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Columbia, Maryland 21044

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#### CERTIFICATE OF SERVICE

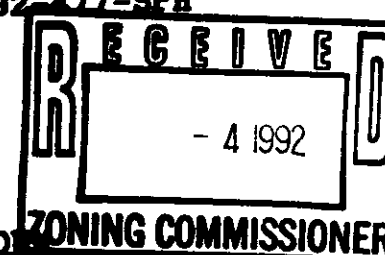
I HEREBY CERTIFY that on this 21<sup>st</sup> day of August, 1992, a copy of the foregoing Post Hearing Memorandum of Law was mailed, postage prepaid to George Baker, 405 Lafayette Avenue, Baltimore, Maryland and Phyllis Friedman, Esquire, People's Counsel, Baltimore County Zoning Office, Courthouse, Towson, Maryland 21204.

*Conwell F. Sapp*  
Conwell F. Sapp

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RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING  
NE/S Arunah Ave., 300' SE of : COMMISSIONER OF  
C/L Maryland Ave. :  
(Lots 431 & 432, Arunah Ave.) : BALTIMORE COUNTY  
1st Election District :  
1st Councilmanic District :  
GEORGE BAKER, Petitioner : Case No. 92-477-SPH  
LENA GUISE, Property Owner :  
:



People's Counsel files this memorandum in this matter in response to the request of the Zoning Commissioner.

The position of People's Counsel is that:

1. The doctrine of res judicata operates differently upon administrative cases which have ended without any judicial review. In such cases, as is the situation here, res judicata does not operate to preclude consideration of a mistake of law in the initial decision. In other words, "administrative res judicata" operates only to preclude challenge to factual findings, in the absence of a change in circumstances.

The leading case is Bd. of Co. Comm'rs v. Racine, 24 Md. App. 435, 332 A.2d 306 (1975). The property owner cites Chatham Corp. v. Baltcom, 243 Md. 138, 220 A.2d 588 (1968), and Woodlawn Area Cit. Ass'n v. Bd. of Co. Comm., 241 Md. 187, 218 A.2d 149 (1968). But the critical difference in these two cases is that both involved initial cases which were reviewed in the courts. Therefore, the scope of preclusion was greater. Once a case undergoes judicial review, a party is precluded subsequently

from raising legal theories which might have been raised in the first case. That is not the situation here.

2. The Commissioner cannot overlook the basic issue in this matter and that is whether issuing a permit at this time would be an illegal act in view of the fact that the lot in question has less than 8000 square feet.

3. The issue of the variance from the 8000 square feet area requirement was in any event never before the Zoning Commissioner or the County Board of Appeals when the first petition for variance filed by the property owner was heard by them. There was also no mention of it in the petition or the advertisement or posted notice.

The effect of this oversight prevented People's Counsel and the public at large from having notice of any such issue.

Res judicata requires that there be identity in issues as well as persons and parties to the action. In this case, there is thus a critical issue raised for the first time. Moreover, the protestants, who now appear as parties, were not in a position to go beyond the actual petition due to the fact that this was an administrative matter, governed by the property owner's petition.

4. Since no variance was asked for or granted, the following choices exist:

a.) Determine that a variance from the 8000 square feet required would amount to a density variance and

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refuse to issue a permit. This could be done administratively or quasi-judicially in this hearing.

b.) Determine that such a variance could be but has not been granted and either:

1. Rule upon it in this hearing;
2. Dismiss this petition, but require the lot owner to file a separate petition for such a variance; or
3. Dismiss this petition and determine that the County has somehow been estopped from requiring this variance. This would be an illogical result since the burden to request sufficient variances always rests with the property owner. (See decision dated July 14, 1992 In the Matter of Red Roof Inns, Inc., Circuit Court No. 91-CV-6923, attached as Exhibit A.) The failure of protestants cannot estop the County which has the ultimate burden to issue or not issue a building permit.

5. Alternatively, if this petition is dismissed on some theory of res judicata without even addressing the substantive issue, it may suggest a permit can be issued without a variance from the 8000 square foot area requirement. Should a permit then be issued based on the vacuum created by this action, it will be in derogation of the Zoning Regulations and amount to an illegal act.

For the above discussed reasons, People's Counsel requests the Zoning Commissioner not dismiss the instant petition and, instead, in the interest of judicial and administrative economy,

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rule upon a.) whether a variance from the 8000 square foot area requirement is a density variance; and if it is not, b.) whether it should be granted in this instance.

Respectfully submitted,

Phyllis Cole Friedman  
Phyllis Cole Friedman  
People's Counsel for Baltimore County

Peter Max Zimmerman  
Peter Max Zimmerman  
Deputy People's Counsel  
Room 47, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204  
(410) 587-2188

I HEREBY CERTIFY that on this 12th day of August, 1992,  
a copy of the foregoing People's Counsel's Memorandum was mailed  
to William T. Glasgow, Esquire, Suite 250, 10715 Charter Dr.,  
Columbia, MD 21044; and George Baker, 405 Lafayette Ave.,  
Baltimore, MD 21228.

Phyllis Cole Friedman  
Phyllis Cole Friedman

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IN RE: PETITION FOR SPECIAL HEARING \* BEFORE THE  
NE/S Arunah Ave., 300 ft. SE ZONING COMMISSIONER  
of c/l Maryland Avenue  
(Lots #31 & #32, Arunah Ave.)  
1st Election District \* OF BALTIMORE COUNTY  
1st Councilmanic District \* CASE # 92-477-SPH  
George Baker, Petitioner  
Lena Guise, Property Owner \*

\*\*\*\*\*  
RULING ON PRELIMINARY MOTION

The above captioned matter comes before the Zoning Commissioner as a Petition for Special Hearing for that property known as lots No. 31 and No. 32 on Arunah Avenue in the Catonsville Heights section of Baltimore County. The Petition was filed by George Baker, a neighbor of the subject site. The hearing for the Petition was scheduled on July 27, 1992. However, prior to presentation of any evidence and/or argument on the merits, counsel for the property owner moved to dismiss the Petition. Oral arguments and subsequent memorandums were offered by the parties. This ruling addresses only those issues raised within the Motion to Dismiss.

A brief history and overview of the subject property and its zoning history is in order. As noted, the subject site is comprised of 2 lots within the Catonsville Heights subdivision. The subject property is owned by Lena Guise. The property is approximately 5,280 sq. ft. in area and is zoned D.R.5.5. Under the provisions of Section 1802.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), the minimum net lot area per dwelling unit in a D.R.5.5 zone is 6,000 sq. ft. Further, that section of the regulations provides that any such dwelling on a lot zoned D.R.5.5 must have a 10 ft. side yard setback.

During the summer of 1991, Ms. Guise apparently decided to construct a dwelling on the subject lot. A house approximately 60 ft. deep and 26 ft.

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By Sh. G. Gork

wide was proposed. In that a building envelope of that size would result in only a 7 ft. side yard setback, Ms. Guise filed a Petition for Zoning Variance with this office. The Petition requested a variance from Section 1802.3.C.1. "to permit a side yard setback of 7 ft. and a side street setback of 7 ft. in lieu of the required 10 ft. and 25 ft. respectively." The case came in for a hearing before Deputy Zoning Commissioner, Timothy M. Kotroco. Following a public hearing, the Deputy Zoning Commissioner denied the Petition by his Order dated October 8, 1991. Unsatisfied with this result, Ms. Guise appealed Deputy Zoning Commissioner Kotroco's decision to the County Board of Appeals. After a hearing, the Board overruled Deputy Zoning Commissioner Kotroco's opinion and granted the variance on May 6, 1992. There has been no appeal of the Board's decision to the Circuit Court for Baltimore County. Thus the Board's decision is final. Nonetheless, unhappy with this result, one of Ms. Guise's neighbor (Mr. Baker) filed a Petition for Special Hearing in the instant case. This Petition requests a determination of whether "the herein described property, located in a D.R.5.5 zone and consisting of less than the required 6,000 sq. ft. may be residentially developed." That is, notwithstanding the Board's ruling granting the variance as to side yard setbacks, Mr. Baker seeks a determination as to whether the lot can be developed in view of the fact that the square foot area of same is less than the required 6,000 sq. ft.

As indicated above, counsel for Ms. Guise appeared at the public hearing and raised objection to the propriety of the current Petition and hearing. Simply stated, Ms. Guise believes that this issue has been litigated and that the present Petition is barred from consideration by the doctrine of res judicata. Although the memorandum of the counsel representing Ms. Guise speaks for itself, it is to be noted that the primary thrust of same

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By Sh. G. Gork

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is that the Board's ruling was dispositive of this issue and relitigation of same is improper.

People's Counsel and the neighboring property owners disagree. They believe that the issues are different (side yard setback vs. net area requirement) and thus the case should be heard.

As indicated, People's Counsel and counsel for Ms. Guise both submitted legal memorandums setting forth their positions. It seems apparent that both sides recognize that Board of County Commissioners v. Racine, 24 Md. App. 435, 332 A.2d 306 (1975) is the leading case in Maryland on this issue. Racine stands for the general proposition that the doctrine of res judicata can be applicable to the decisions of an administrative body, i.e., in this case, the Zoning Commissioner and the Board of Appeals. The principals of res judicata are well settled. Basically, the doctrine provides that once a final judgment has been entered, relitigation of the cause of action and issues presented is improper. If it were not so, litigation would be endless and parties thereto would never have disputes and issues resolved. Clearly, the public policy rationale for the doctrine is justified.

As indicated, Racine discussed the application of the res judicata to administrative bodies. Noted the Court, "We recognize, as indeed we must, that an unreversed final decision by a Zoning Board, passed in the exercise of its discretion upon issues of fact or upon mixed issues of law in fact are fully binding upon parties to the cause and their privies as to all issues determined thereby." Racine supra, pg. 314. It is clear that a prior decision by the County Board of Appeals or Zoning Commissioner may bar relitigation of identical issues, notwithstanding that the prior decision may not have undergone judicial scrutiny on appeal. However, that having been said, the doctrine of res judicata is to be applied narrowly. Only if

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By Sh. G. Gork

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the issues are the same, should the doctrine be applied. This is clear from the Court's language in Racine where, in examining the facts of the case before it, the Court noted "In the subject case, it is uncontroverted that the issue presented is identical; the parties are identical." Racine supra, pg. 311. Later, quoting from McKinzie v. Baltimore and Ohio Railroad Co., 28 Md. 161 (1867), the Court noted "A judgment, to operate as an estoppel, must be upon the same subject matter and between the same parties." (emphasis added) Racine supra, pg. 313. Even Black's Law Dictionary, Fifth Edition, 1979, notes that the application of res judicata "requires identity in things sued for as well as identity of cause of action, of persons and parties to an action and of quality in persons for or against whom claim is made."

It is apparent from these citations that the identical issue must exist in order for the doctrine of res judicata to be applicable. Does such an identical issue in this case exist? The answer must be in the negative.

Specifically, although determination of the applicability of the same section of the B.C.Z.R. is requested, two distinct and different requirements are at issue in these cases. Specifically, in the prior case, Deputy Commissioner Kotroco and the Board of Appeals considered the propriety of a side yard setback. In the case before me, consideration of the lot area is the germane issue. Determination of whether a variance should be granted from either of these requirements may require consideration of different issues; e.g., impact of a variance from a side yard setback upon an adjacent property may be quite different from the impact on neighboring properties of development on an undersized tract.

Further, a variance from the square foot area requirement may or may not involve a side yard setback variance. For example, a lot may have an

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By Sh. G. Gork

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area in excess of 6,000 sq. ft., yet still require a side yard setback variance in order to be developed. The situation exists vice versa. That is, an undersized lot may not require any side yard setback variance.

Since these are the possibilities, I cannot conclude that the issues presented are identical. The Petitioner in the present case may present yet other considerations inapplicable to the initial case. Further, Ms. Guise's counsel's argument notwithstanding, it is clear that the County Board of Appeals did not resolve the undersized lot issue at the hearing before them. Although there are fleeting references to the lot size within the transcript, the previous variance case involved only the side yard setback issues. There is no evidence that the Board considered, much less ruled upon, whether construction would be proper on an undersized lot.

I also concur with People's Counsel's conclusion that it is the property owner's burden to seek relief from all applicable regulations. The direction of the Zoning Technician who accepted the first Petition notwithstanding, Ms. Guise is responsible for securing all variances necessary to develop. She did not request an area variance previously; and it was not granted. If it is now needed to develop, it must be obtained.

For the aforementioned reasons, I shall deny Ms. Guise's Motion to Dismiss. This case shall be set for hearing on the merits of the Petition in due course.

THEREFORE, it is this 24th day of Sept., 1992 Ordered that the Motion to Dismiss be and is hereby DENIED.

Lawrence E. Schmitt  
LAWRENCE E. SCHMITT  
Zoning Commissioner for  
Baltimore County

LES:mmn

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Date 9/2/92  
By Sh. G. Gork

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IN RE: PETITION FOR SPECIAL HEARING \* BEFORE THE  
NE/S Arunah Ave., 300 ft. SE ZONING COMMISSIONER  
of c/l Maryland Avenue  
(Lots #31 & #32, Arunah Ave.)  
1st Election District \* OF BALTIMORE COUNTY  
1st Councilmanic District \* CASE # 92-477-SPH  
George Baker, Petitioner  
Lena Guise, Property Owner \*

\*\*\*\*\*  
FINDINGS OF FACT AND CONCLUSIONS OF LAW

Consideration of the future use of the above captioned property comes before this office again for a third time. Although relatively small, the subject property has endured a lengthy zoning history as its owner seeks to develop the site. The subject property is known as lots Nos. 31 and 32 on Arunah Avenue in the Catonsville Heights section of Baltimore County. The pending Petition was filed by George Baker, a neighboring property owner. The subject site is owned by Lena Guise and is presently undeveloped. The site is approximately 5,280 sq. ft. in area and is zoned D.R.5.5.

The history of Mrs. Guise's plans to develop a single family dwelling on the subject lot is significant. During the Summer of 1991, the property owner decided to construct a 60 ft. deep by 26 ft. wide dwelling on the property. The resulting building envelope from this construction would provide a 7 ft. side yard setback on both sides of the property. Under Section 1802.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), a 10 ft. side yard setback to adjoining residential property and 25 ft. setback to the abutting paper street must be maintained. The subject lot abuts a residential property to the east known as 804 Arunah Avenue. To the west, the site adjoins an unimproved paper street known as Lafayette Avenue. The improved portion of Lafayette Avenue actually ends near the northwest corner

ORDER RECEIVED FOR FILING  
Date 9/2/92  
By Sh. G. Gork

of the site. As a result of the property owner's inability to comply with the required setbacks, Mrs. Guise filed a Petition for Variance requesting relief from Section 1802.3.C.1 of the B.C.Z.R., to allow 7 ft. side yard setbacks in lieu of what was required. That Petition came in for a public hearing before the Deputy Zoning Commissioner, Timothy M. Kotroco. Following the hearing, Mr. Kotroco denied the Petition by his Order dated October 8, 1991. Unsatisfied with this result, Mrs. Guise appealed Deputy Zoning Commissioner Kotroco's decision to the County Board of Appeals. After the Board's hearing, an opinion was issued granting the Petition on May 6, 1992. In that there has been no appeal from the Board's decision to the Circuit Court for Baltimore County, the Board's decision is final. Thus, Mrs. Guise has obtained a lawful variance from Section 1802.3.C.1 of the B.C.Z.R. as it relates to 7 ft. side yard setbacks, in lieu of the required 10 ft. to a residential property and 25 ft. to the street.

Subsequent to the above litigation, Mr. Baker filed the instant Petition for Special Hearing. This Petition requests a determination of whether "The herein described property located in a D.R.5.5 zone and consisting of less than 6,000 sq. ft. may be residentially developed". That is, notwithstanding the Board's granting the variance as to the side yard setbacks, Mr. Baker seeks a determination as to whether the lot can be developed in view of the fact that the square foot area is less than the 6,000 sq. ft. required in Section 1802.3.C.1 of the B.C.Z.R.

Mr. Baker's Petition was received by the Zoning Office and scheduled for hearing on July 27, 1992. At that time, a preliminary motion was raised by counsel for Mrs. Guise as to the propriety of the Petition for Special Hearing. Specifically, her counsel argued that litigation of this issue is barred by the doctrine of res judicata. People's Counsel and the neighboring

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By Sh. G. Gork

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property owners disagreed. Both sides submitted legal memorandums and by my Order of September 24, 1992, the property owner's Motion to Dismiss the Petition was denied. Mrs. Guise immediately filed an appeal from my ruling. That appeal came before the County Board of Appeals which, by its Order of November 9, 1992, dismissed the appeal. Apparently, the Board felt that my ruling was in the nature of an interlocutory Order and this case could not be appealed until a decision on the merits of Mr. Baker's Petition was rendered. Therefore, this case came in, again, for public hearing before the Zoning Commissioner on November 10, 1992.

A number of issues were raised at this public hearing which need be addressed. First, it was discovered at the public hearing that Mrs. Guise and her neighbors have still not presented all issues which need be resolved before any construction could occur on site. Specifically, although the side yard setback issues have been resolved, and the 5,280 sq. ft. in lieu of 6,000 sq. ft. area issue is pending, no Petition has been filed seeking relief from Section 1802.3.C. of the B.C.Z.R., as it relates to minimum lot width. This section governs development standards for all property zoned D.R. For property zoned D.R.5.5, as is the subject lot, side yard setbacks of 10 ft. must be maintained, the lot area must be, at least, 6,000 sq. ft., and the lot must be a minimum of 55 ft. wide. In that the subject lot is only 40 ft. wide, a variance from this requirement is also necessary. Over Peoples Counsel's objection, I decided to include this issue in my deliberations for this case. I acknowledge that Mr. Baker did not amend his Petition for Special Hearing to include this issue that Mrs. Guise presently has no Petition before me to amend, and that the prior case did not raise this question. However, out of a sense of judicial economy, it seems appropriate to resolve all issues at this time. It would be improper to limit my inquiry

-3-

ry in the present case only to the lot area requirement. This would leave open the possibility that the property owner, Mr. Baker, or another neighbor, could refile another Petition regarding this site. Frankly, three public hearings regarding this case are quite enough and considerations relevant to these issues are largely the same. Thus, my Order shall address the net lot area requirement as well as the lot width requirement.

Secondly, it is to be noted that evidence was produced at the public hearing that the property owner was originally notified that variances from the above three requirements were necessary. That is, a copy of the sample Petition for Variance, which was drafted by the Zoning Technician who originally accepted this case, was submitted into evidence. The wording of that Petition addresses the side yard setback requirements, the lot area requirement, and the lot width requirement. Thus, the property owner was aware at the time the original Petition was filed that relief from these three standards was necessary. It is unclear as to why Mrs. Guise's original Petition addressed only the side yard setback. Why a request for relief on all three requirements was not made is a mystery.

A third issue to be considered is the application of Section 304 of the B.C.Z.R. This section allows development of undersized lots in certain circumstances. Specifically, Section 304.1 (which was recently re-adopted under Bill No. 47-92, but has remained substantially the same as it relates to this case) allows development of undersized lots without obtaining a variance under certain circumstances. Three conditions are listed which permit development on undersized lots. They are, that the lot shall be part of a validly approved subdivision or been duly recorded prior to March 30, 1955; that all other requirements of the height and area regulations are

-4-

complied with; and that the owner of the lot does not own sufficient or adjoining land to comply with the width and area requirements.

It is clear that Mrs. Guise may well meet two of these requirements. This subdivision is old and she testified that the property has been in her family for many years, well prior to the adoption of the comprehensive Baltimore County Zoning Regulations in 1955. Further, she does not own sufficient adjacent land to comply with the width and area requirements. However, she fails to comply with the third prong of the test presented in Section 304.1. Specifically, she cannot meet all other height and area requirements. Interpretation of the intent of this prong of the test offered in Section 304.1 previously came before the Board of Appeals in the matter of Harry Shuman, et al (case No. 89-85-A). Within the Board's decision, it was held that unless a property could comply with the height and area regulations of the B.C.Z.R., he/she may not exercise the privilege to develop conferred by Section 304. Further, compliance cannot be realized by obtaining a variance as to the height and area regulations. The opinion noted that a variance only confers validity on a plan which does not comply with the regulations. Therefore, the Board concluded that the petitioning for a variance from setback requirements renders the relief provided in Section 304 unavailable. Having participated in that opinion as a member of the Board, I believe that the conclusion reached therein remains controlling in this instance. Thus, I must hold that Mrs. Guise cannot develop the property, pursuant to Section 304 of the B.C.Z.R., in that she does not meet all other requirements of the height and area regulations contained within the B.C.Z.R., as evidenced by a previously approved Petition for Variance from the side yard setback requirements.

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The fourth issue raised within the confines of this case is offered by Peoples Counsel. Essentially, Peoples Counsel argues that any lot area standard cannot be varied. As a basis for this position, Peoples Counsel avers that the 6,000 sq. ft. lot area requirement is akin to a density requirement. Noting that only height and dimensional requirements can be varied under law, Peoples Counsel suggests that a variance to the lot area requirement relates to a density standard and could, therefore, impermissibly permit a given tract of land to exceed its density.

Although the logic of Peoples Counsel's argument is followed, I do not believe their conclusion is proper. Clearly, the B.C.Z.R. allows the Zoning Commissioner with the authority to grant area variances. The lot area variance is akin to any other dimensional requirement, be it a side, rear or front yard setback, or height restriction. All of the standards found in Section 1802.3.C.1, including minimum lot area, are to be applied to individual lots. In fact, the section is titled "Development Standards for small Lots or Tracts" (emphasis added) and the language used therein provides that the requirements listed shall be applied to a lot or a tract, as opposed to lots or tracts. That is, the standards are area and dimensional in scope and do not apply in the subdivision/density calculation process. Clearly the drafters of the B.C.Z.R. intended to establish this section as guidelines for development of individual tracts. If this were not so, not only would the lot area restriction in Section 1802.3.C.1 of the B.C.Z.R. be improper, but so would Section 304, as well. Thus, in my view, the argument of the Peoples Counsel in this respect must be rejected.

Having addressed these issues, attention is now turned to the fifth, and final, issue presented, namely, the merits of the pending Petition for Special Hearing. Actually, the decision rendered on this issue must be

-6-

received in the same light as would a Petition for Variance from the lot area and lot width requirements, if same had been filed by Mrs. Guise.

As to this issue, the positions of the parties are crystallized. On behalf of the property owner, testimony was received from Mrs. Guise, her daughter (Elizabeth Clark) and her realtor (Mudge Stockdale). Collectively, these witnesses stated that the lot is unusable if the width and area requirements are not waived. They observed that the property is zoned residential, taxed as a residential parcel and development should, therefore, be permitted. Further, they noted that there are other houses in this community on substandard sized lots. These witnesses further aver that Mrs. Guise's neighbors use the property for their own benefit. Although probably true, this allegation has no bearing on the issue presented, but is for the courts to determine in a trespass case. In sum, the property owner and her witnesses believe that a denial of permission to build would leave this lot without value.

In opposition, testimony was received from two neighbors, Mr. George Baker and Mrs. Richard Hauf. Both witnesses testified that there are no houses on lots this small in the subdivision. Further, the properties which are immediately adjacent to the site are on larger lots. These witnesses believe that to permit development on the property would cause an adverse effect on their properties.

This case presents the classic dilemma faced in many variance cases. To deny permission to build would be to deprive Mrs. Guise a legitimate use of her lot. Indeed, under such a circumstance, its value would be reduced. Nonetheless, as Peoples Counsel appropriately noted, not every variance should be granted merely because to deny same would render a lot

undevelopable. If all variances were approved, the purposes of the area requirements would be defeated.

The law regarding variances is well settled. Section 307.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) states that the Baltimore County Zoning Commissioner and/or Deputy Zoning Commissioner shall have the power to grant 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. Raley, 270 Md. 208 (1973).

The question, therefore, is whether it was fairly debatable that the evidence shows strict compliance with the regulations would result in practical difficulty or unreasonable hardship.

After careful consideration of all of the evidence and testimony presented, I am persuaded that the Petition for Special Hearing should be granted and that permission to develop the site must be denied. I draw this conclusion well aware of Mrs. Guise's testimony as to the diminution of value of this lot. This factor was apparently persuasive to the Board of Appeals in the side yard setback case. Therein, the Board noted "To deny the requested variances would be to deny the property owner a reasonable use of her property and would render the site useless." Although this inference as to value may be drawn, it cannot be the sole consideration relied on. As

stated earlier herein, if that were the case, every residentially zoned lot in Baltimore County could be developed, notwithstanding its size and configuration. In such a case, the provisions of Section 1802.3.C.1 would be rendered worthless.

It is also to be noted that not only does the property owner need show "practical difficulty", but Section 307.1 of the B.C.Z.R. requires a second finding; namely, that a variance cannot be granted unless a finding is made that there is no injury to the public welfare. Two factors lead me to conclude that this test is not satisfied in the pending case. First, the adjoining dwellings are all on larger lots. Frankly, the property is too small and development thereon would be inconsistent with the surrounding locale. Secondly, and as importantly, proper access to the site is questionable. As noted, Lafayette Avenue, to the west, is a paper street. Arunah Avenue, to the south, is not paved at that portion thereof which abuts this property. Therefore, a serious question is presented as to whether vehicular access can even be provided. Even if same were allowed from the paved portion of Lafayette Avenue to the northwest, the house would be oriented towards Mr. Baker's house at 405 Lafayette Avenue and would unquestionably cause an adverse effect to that lot. Thus, for these reasons, the special hearing shall be granted, so as to prohibit development of this site.

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

Accordingly, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 25th day of November, 1992 that, pursuant to the Petition for Special Hearing, prohibiting development of the herein described residential property, known as lots Nos. 31 and 32, Arunah Avenue, located in a D.R.5.5 zone,

and consisting of less than the required 6,000 sq. ft., required in Section 1803.C.1 of the B.C.Z.R., be and is hereby GRANTED.

Any appeal from this decision must be taken in accordance with the applicable provisions set forth in Section 26-132 of the Baltimore County Code.

LES:men

LAWRENCE E. SCHMIDT  
Zoning Commissioner for  
Baltimore County

-10-



Baltimore County Government  
Zoning Commissioner  
Office of Planning and Zoning  
Suite 113 Courthouse  
400 Washington Avenue  
Towson, MD 21204  
(410) 887-4386  
November 24, 1992

Mr. George Baker  
405 Lafayette Avenue  
Baltimore, Maryland 21229  
William T. Glasgow, Esquire  
10715 Charter Drive, Suite 250  
Columbia, Maryland 21044  
RE: Petition for Special Hearing  
George Baker, Petitioner  
Lena Guise, Property Owner  
NE/S Arunah Avenue, 300 ft. SE of c/l Maryland Avenue  
Lots #31 and 32 Arunah Avenue

Gentlemen:

Enclosed please find a copy of the decision rendered in the above captioned matter. The Petition for Special Hearing has been granted.

In the event any party finds the decision rendered unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Appeals Clerk at 887-3391.

Very truly yours,  
Lawrence E. Schmidt  
Zoning Commissioner  
for Baltimore County

LES:mmm  
encl.  
cc: Mrs. Lena Guise  
3306 Strickland Street  
Baltimore, Maryland 21229  
cc: Peoples Counsel



## Petition for Special Hearing

to the Zoning Commissioner of Baltimore County  
for the property located at 157 1/2 c/l Maryland Ave. 1st Election District  
which is presently zoned DR 5.5

The Herein described Property, LOCATED in a DR 5.5 ZONE AND CONSISTING OF less than the required 6000 sq. ft., MAY BE RESIDENTIALLY DEVELOPED (see zoning case 92-30-A & subsequent Appeal)

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of 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.

### ADJOINING OWNER

George Baker 288-5343  
Signature: George Baker  
Address: 405 Lafayette Ave  
Baltimore MD 21228

Lena Guise  
Signature: \_\_\_\_\_  
Address: \_\_\_\_\_

### Attorney for Petitioner:

Lawrence E. Schmidt  
Signature: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zipcode: \_\_\_\_\_

3306 STRICKLAND RD. 945-4520  
Baltimore MD 21229

George Baker  
Signature: George Baker  
Address: 405 Lafayette Ave Baltimore 21228  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zipcode: \_\_\_\_\_

ESTIMATED LENGTH OF HEARING: \_\_\_\_\_  
REMARKS: \_\_\_\_\_  
DATE: 6-4-92

#510

### ZONING DESCRIPTION

Beginning at a point on the Northeastly side of Arunah Avenue which is 40 feet wide at the distance of 300 feet Southwesterly of the centerline of the nearest improved intersecting street Maryland Avenue which is 40 feet wide. Being Lot 31 & Lot 32, Block 24, in the subdivision of Catonsville Heights as recorded in Baltimore County Plat Book # 6, Folio # 178, Containing 5320 square feet. Also known as Lot 31 & Lot 32 Arunah Avenue and located in the 1st Election District.

#510

### CERTIFICATE OF POSTING

ZONING DEPARTMENT OF BALTIMORE COUNTY  
Towson, Maryland

District: 1st Date of Posting: 7-8-92  
Posted for: Special Hearing  
Petitioner: Lena Guise  
Location of property: NE/S of Arunah Avenue, 300' SE of the c/l of Maryland Avenue, Lots 31 & 32 Arunah Avenue  
Location of signs: NE/S of Arunah Avenue, in front of subject property  
Remarks: \_\_\_\_\_  
Posted by: L. E. Schmidt Date of return: 7-10-92  
Number of signs: 1

### CERTIFICATE OF PUBLICATION

TOWSON, MD. \_\_\_\_\_, 19\_\_\_\_  
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 \_\_\_\_\_ successive weeks, the first publication appearing on \_\_\_\_\_, 19\_\_\_\_

THE JEFFERSONIAN,  
S. Zake Orlem  
Publisher

63.16



Baltimore County  
Zoning Administration &  
Development Management  
111 West Chesapeake Avenue  
Towson, Maryland 21204

### receipt

Account: R-001-4180  
Number: 92-477  
Date: 12/03/92  
APPEAL FEES: \_\_\_\_\_  
140 - OF ALL OTHER ORDERS: \_\_\_\_\_  
150 - POSTING SIGNS / ADVERTISING: \_\_\_\_\_  
LAST NAME OF OWNER: \_\_\_\_\_  
04040005WHICRC \$210.00  
BA C001130AM12-23-92  
Please Make Checks Payable To: Baltimore County  
Cusker Validation

### receipt

Account: R-001-4180  
Number: \_\_\_\_\_

6/05/92 H5200510  
PUBLIC HEARING FEES: \_\_\_\_\_  
140 - OF ALL OTHER ORDERS: \_\_\_\_\_  
150 - POSTING SIGNS / ADVERTISING: \_\_\_\_\_  
TOTAL: \$50.00  
LAST NAME OF OWNER: GUISE

040400017WICRC \$50.00  
BA C002131PM06-05-92  
Please Make Checks Payable To: Baltimore County  
Cusker Validation

### receipt

Account: R-001-4180  
Number: 92-477 SPA

10/14/92 A9300016  
APPEAL FEES: \_\_\_\_\_  
140 - OF ALL OTHER ORDERS: \_\_\_\_\_  
150 - POSTING SIGNS / ADVERTISING: \_\_\_\_\_  
TOTAL: \$210.00  
LAST NAME OF OWNER: GUISE

040400077WICRC \$210.00  
BA C001137M10-27-92  
Please Make Checks Payable To: Baltimore County  
Cusker Validation

111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

DATE: 7-10-92

George Baker  
405 Lafayette Avenue  
Baltimore, Maryland 21228

RE:  
CASE 92-477-SHA (Item 510)  
NE/S Arunah Avenue, 300' SE of c/l Maryland Avenue  
Lots #31 and #32 Arunah Avenue  
1st Election District - 1st Councilmatic  
Legal Owner(s): Lena Guise  
Petitioner(s): George Baker  
HEARING: MONDAY, JULY 27, 1992 at 11:00 a.m. in Rm. 118, Courthouse

Dear Petitioner(s):

Please be advised that \$ 63.16 is due for advertising and posting of the above captioned property and hearing date.

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

Please forward your check via return mail to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 109, Towson, Maryland 21204. Place the case number on the check and make same payable to Baltimore County, Maryland. In order to avoid delay of the issuance of proper credit and/or your Order, immediate attention to this matter is suggested.

Bel John

BRUCE J. JAMES  
DIRECTOR

Baltimore County Government  
Office of Zoning Administration  
and Development Management  
Office of Planning & Zoning

111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

JUNE 11, 1992

### 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, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE 92-477-SHA (Item 510)  
NE/S Arunah Avenue, 300' SE of c/l Maryland Avenue  
Lots #31 and #32 Arunah Avenue  
1st Election District - 1st Councilmatic  
Legal Owner(s): Lena Guise  
Petitioner(s): George Baker  
HEARING: MONDAY, JULY 27, 1992 at 11:00 a.m. in Rm. 118, Courthouse

Special Hearing to determine whether the property, consisting of less than required 6000 sq. ft., may be residentially developed.

Lawrence E. Schmidt  
Zoning Commissioner of  
Baltimore County

cc: Lena Guise  
George Baker

NOTE: HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.

Baltimore County Government  
Office of Zoning Administration  
and Development Management  
Office of Planning & Zoning

111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

OCTOBER 6, 1992

### NOTICE OF REASSIGNMENT

CASE NUMBER(S): 92-477-SHA  
LEGAL OWNER: LENA GUISE  
LOCATION: LOTS 31 and 32 ARUNAH AVENUE

HEARING OF THE ABOVE MATTER WILL TAKE PLACE AS FOLLOWS:

TUESDAY, NOVEMBER 10, 1992 at 2:00 p.m.

IN ROOM 118, OLD COURTHOUSE, 400 WASHINGTON AVENUE, TOWSON MD 21204.

Lawrence E. Schmidt  
Lawrence E. Schmidt

ZONING COMMISSIONER  
BALTIMORE COUNTY

cc: Lena Guise  
George Baker  
William T. Glasgow, Esq.  
Peoples Counsel



Baltimore County Government  
Office of Zoning Administration  
and Development Management  
Office of Planning & Zoning  
West Chesapeake Avenue  
Towson, MD 21204  
(410) 887-3353  
July 6, 1992

Ms. Lena Guise  
3306 Strickland Road  
Baltimore, MD 21229

RE: Item No. 510, Case No. 92-477-SPH  
Petitioner: Lena Guise, et al  
Petition for Special Hearing

Dear Ms. Guise:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

The following comments are related only to the filing of future zoning petitions, and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by Zoning personnel.

Baltimore County Government  
Office of Zoning Administration  
and Development Management  
Office of Planning & Zoning  
111 West Chesapeake Avenue  
Towson, MD 21204  
(410) 887-3353

Your petition has been received and accepted for filing this  
4th day of June, 1992

*Arnold Jablon*  
ARNOLD JABLON  
DIRECTOR

Received By:

*W. Carl Richards Jr.*  
Chairman,  
Zoning Plans Advisory Committee

Petitioner: Lena Guise, et al  
Petitioner's Attorney:

6/12/92 6477-92  
Development Review Committee Response Form  
Authorized signature: *Dennis H. Kennedy* Date: 6/22/92

| Project Name                            | Waiver Number                                    | Zoning Issue | Meeting Date |
|-----------------------------------------|--------------------------------------------------|--------------|--------------|
| Stonegate at Patapsco (Aerial Property) |                                                  |              |              |
| 90476                                   | TE (Waiting for developer to submit plans first) | 6-1-92       |              |
| COUNT 1                                 |                                                  |              |              |
| ✓ Washington Homes, Inc.                | 504                                              | 6-15-92      | NC           |
| DED DEPRM RP STP TE                     |                                                  |              |              |
| ✓ Aurelia Loveman For Joseph H. Loveman | 505                                              |              | NC           |
| DED DEPRM RP STP TE                     |                                                  |              |              |
| Timothy W. And Carol Anne M. Frost      | 506                                              |              | Comment      |
| DED DEPRM RP STP TE                     |                                                  |              |              |
| James B. And Brenda G. Thomas           | 507                                              |              | Comment      |
| DED DEPRM RP STP TE                     |                                                  |              |              |
| James E. Bishop, Sr.                    | 508                                              |              | NC           |
| DED DEPRM RP STP TE                     |                                                  |              |              |
| Victor E. And Sandra J. Fiorenza        | 509                                              |              | Comment      |
| DED DEPRM RP STP TE                     |                                                  |              |              |
| COUNT 7                                 |                                                  |              |              |
| FINAL TOTALS                            |                                                  |              |              |
| COUNT 8                                 |                                                  |              |              |
| *** END OF REPORT ***                   |                                                  |              |              |

BALTIMORE COUNTY, MARYLAND  
OFFICE OF PLANNING AND ZONING  
New Courts Bldg - 401 Bowley Avenue, Towson, MD 21204

MEMORANDUM

TO: Arnold Jablon, Director  
Zoning Administration & Development Management

FROM: Office of Planning and Zoning

DATE: June 19, 1992

SUBJECT: Guise Property

INFORMATION:  
Item Number: 510

Petitioner: Lena Guise

Property Size: 0.12 acres, 5,280 square feet

Zoning: D.R. 5.5

Requested Action: Special Hearing

Hearing Date: / /

SUMMARY OF RECOMMENDATIONS:

The petitioner is requesting a Special Hearing to seek approval for a building lot of 5,280 square feet in lieu of the required 6,000 square feet.

The Office of Planning and Zoning recommends APPROVAL of the petitioners request.

The Planning Office's area planner visited the site and indicates that there would be a sufficient setback to the east and west to allow a sense of separation between adjacent homes. Also there are other homes in the immediate area that are 20' to 26' wide built on two 20 foot wide lots. The proposed house would be compatible with the surrounding neighborhood. The area planner recommends that the house be oriented to the south.

Prepared by: *Frances Morley*

Division Chief:

PH:rdn

RECEIVED

PLANNING OFFICE

510/ZAC1

Development Review Committee Response Form  
Authorized signature: *Rachael J. Family* Date: 6/22/92

| Project Name                            | Waiver Number                                    | Zoning Issue | Meeting Date |
|-----------------------------------------|--------------------------------------------------|--------------|--------------|
| Stonegate at Patapsco (Aerial Property) |                                                  |              |              |
| 90476                                   | TE (Waiting for developer to submit plans first) | 6-1-92       |              |
| COUNT 1                                 |                                                  |              |              |

|                                         |     |     |         |
|-----------------------------------------|-----|-----|---------|
| ✓ Washington Homes, Inc.                | 504 | N/C | 6-15-92 |
| DED DEPRM RP STP TE                     |     |     |         |
| ✓ Aurelia Loveman For Joseph H. Loveman | 505 | N/C |         |
| DED DEPRM RP STP TE                     |     |     |         |
| ✓ Timothy W. And Carol Anne M. Frost    | 506 | N/C |         |
| DED DEPRM RP STP TE                     |     |     |         |
| ✓ James B. And Brenda G. Thomas         | 507 | N/C |         |
| DED DEPRM RP STP TE                     |     |     |         |
| ✓ James E. Bishop, Sr.                  | 508 | N/C |         |
| DED DEPRM RP STP TE                     |     |     |         |
| ✓ Victor E. And Sandra J. Fiorenza      | 509 | N/C |         |
| DED DEPRM RP STP TE                     |     |     |         |
| ✓ Lena Guise                            |     | N/C |         |
| DED DEPRM RP STP TE                     |     |     |         |
| COUNT 7                                 |     |     |         |
| Howard W. Dawson, Sr.                   | 503 | N/C | 6-8-92  |
| TE                                      |     |     |         |
| COUNT 1                                 |     |     |         |
| FINAL TOTALS                            |     |     |         |
| COUNT 9                                 |     |     |         |

Development Review Committee Response Form  
Authorized signature: *Patricia M. Lambert* Date: 6-20-92

| Project Name                            | Waiver Number                                    | Zoning Issue | Meeting Date |
|-----------------------------------------|--------------------------------------------------|--------------|--------------|
| Stonegate at Patapsco (Aerial Property) |                                                  |              |              |
| 90476                                   | TE (Waiting for developer to submit plans first) | 6-1-92       |              |
| COUNT 1                                 |                                                  |              |              |

|                     |     |  |                 |
|---------------------|-----|--|-----------------|
| Patricia M. Lambert | 496 |  | Thompson 6-8-92 |
| DED DEPRM RP STP TE |     |  |                 |
| ✓                   | 499 |  | 7-10-92         |
| DED DEPRM RP STP TE |     |  |                 |
| COUNT 1             |     |  |                 |

REPORT \*\*\*

Baltimore County Government  
Fire Department  
700 East Joppa Road, Suite 901  
Towson, MD 21204-5500  
JUNE 12, 1992  
(410) 887-4500

Arnold Jablon  
Director  
Zoning Administration and  
Development Management  
Baltimore County Office Building  
Towson, MD 21204

RE: Property Owner: LENA GUISE

Location: NE/S ARUNAH AVENUE, 300' SE OF CENTERLINE

Item No.: 510 (JCM) Zoning Agenda: JUNE 15, 1992

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.

7. The Fire Prevention Bureau has no comments at this time.

REVIEWER: *Carl J. Miller* Noted and Approved  
Planning Group  
Special Inspection Division  
Fire Prevention Bureau

JP/KKK

RECEIVED  
JUN 15 1992

ZONING OFFICE

Department of Recreation and Parks  
Development Review Committee Response Form  
Authorized signature: *Walter P. K...* Date: 6/23/92

| Project Name                            | Waiver Number | Zoning Issue | Meeting Date |
|-----------------------------------------|---------------|--------------|--------------|
| Washington Homes, Inc.                  |               |              |              |
| DED DEPRM RP STP TE                     | 504           | No Comments  | 6-15-92      |
| ✓ Aurelia Loveman For Joseph H. Loveman | 505           | No Comments  |              |
| DED DEPRM RP STP TE                     |               |              |              |
| ✓ Timothy W. And Carol Anne M. Frost    | 506           | No Comments  |              |
| DED DEPRM RP STP TE                     |               |              |              |
| ✓ James B. And Brenda G. Thomas         | 507           | No Comments  |              |
| DED DEPRM RP STP TE                     |               |              |              |
| ✓ James E. Bishop, Sr.                  | 508           | No Comments  |              |
| DED DEPRM RP STP TE                     |               |              |              |
| ✓ Victor E. And Sandra J. Fiorenza      | 509           | No Comments  |              |
| DED DEPRM RP STP TE                     |               |              |              |
| ✓ Lena Guise                            | 510           | No Comments  |              |
| DED DEPRM RP STP TE                     |               |              |              |

COUNT 7

FINAL TOTALS

COUNT 7

\*\*\* END OF REPORT \*\*\*



BALTIMORE COUNTY, MARYLAND  
Inter-office Correspondence

TO: Owen Stephens  
Docket Clerk, Office of Zoning

FROM: Lawrence E. Schmidt  
Zoning Commissioner

SUBJECT: Case No. 92-477-SPH  
Petitioner: George Baker, Lena Guise, Property Owner

Please set the attached case back in for hearing, in accordance with my Ruling on Preliminary Motion. Advise George Baker, Lena Guise and her attorney, Glasgow, together with Peoples Counsel. It will not be necessary for Ms. Guise to pay for posting and advertising again. You do not have to post or advertise this case for the new hearing.

If you have any questions, call me.

LES:mmm  
att.

Baltimore County Government  
Office of Zoning Administration  
and Development Management  
Office of Planning & Zoning

111 West Chesapeake Avenue  
Towson, MD 21204

October 29, 1992

(410) 887-3353

Baltimore County Board of Appeals  
Old Courthouse, Room 49  
400 Washington Avenue  
Towson, Maryland 21204

RE: Petition for Special Hearing  
NE/S Arunah Avenue, 300 ft. SE of c/1 Maryland Avenue  
(Lots #31 & #32, Arunah Avenue)  
1st Election District, 1st Councilmanic District  
GEORGE BAKER - Petitioner  
Case No. 92-477-SPH (Property Owner's Motion to Dismiss)

Dear Board:

Please be advised that an appeal from an order of the Zoning Commissioner denying the Property Owner's Motion to Dismiss for the above referenced case was filed in this office on October 8, 1992 by William T. Glasgow, Attorney on behalf of the property owner, Lena Guise. All materials relative to the case are being forwarded herewith.

Please notify all parties to the case of the date and time of the appeal hearing when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

*Arnold Jablon*  
Arnold Jablon - Director  
Zoning Administration and  
Development Management

AJ:cer

cc: Lena Guise - 3306 Strickland Street Baltimore, MD 21229

William T. Glasgow Esquire  
Suite 250 10715 Charter Drive, Columbia MD 21044

George Baker - 405 Lafayette Avenue Baltimore MD 21228

People's Counsel of Baltimore County  
Old Courthouse, 400 Washington Avenue, Towson, MD 21204

Printed on Recycled Paper

APPEAL

Petition for Special Hearing  
NE/S Arunah Avenue, 300 ft. SE of c/1 Maryland Avenue  
(Lots #31 & #32, Arunah Avenue)  
1st Election District - 1st Councilmanic District  
(GEORGE BAKER - Petitioner)  
Case No. 92-477-SPH

Petition(s) for Special Hearing  
Description of Property  
Certificate of Posting  
Certificate of Publication  
Entry of Appearance of People's Counsel (None submitted)  
Zoning Plans Advisory Committee Comments  
Director of Planning & Zoning Comments (Included with ZAC Comments)  
Exhibit A: Opinion  
Exhibit B: Motion to Dismiss  
Exhibit C: Post Hearing Memorandum of Law  
Exhibit D: Ruling on Preliminary Motion  
People's Counsel's Memorandum dated July 14, 1992  
Motion to Dismiss dated July 22, 1992  
Memorandum of Law dated July 22, 1992  
Post-Hearing Memorandum of Law dated August 21, 1992  
Ruling on Preliminary Motion dated September 24, 1992  
Notice of Appeal received October 8, 1992 from William T. Glasgow, Attorney on behalf of the property owner  
Petition for Appeal dated October 6, 1992

cc: Lena Guise - 3306 Strickland Street Baltimore, MD 21229

William T. Glasgow Esquire  
Suite 250 10715 Charter Drive, Columbia MD 21044

George Baker - 405 Lafayette Avenue Baltimore MD 21228

People's Counsel of Baltimore County  
Rm. 304, County Office Bldg., Towson, MD 21204

Request Notification: P. David Fields, Director of Planning & Zoning  
Patrick Keller, Office of Planning & Zoning  
Lawrence E. Schmidt, Zoning Commissioner  
Timothy M. Kotroco, Deputy Zoning Commissioner  
W. Carl Richards, Jr., Zoning Coordinator  
Docket Clerk  
Arnold Jablon, Director of ZADM  
Public Services

Baltimore County Government  
Office of Zoning Administration  
and Development Management

111 West Chesapeake Avenue  
Towson, MD 21204

December 22, 1992

(410) 887-3353

Baltimore County Board of Appeals  
Old Courthouse, Room 49  
400 Washington Avenue  
Towson, Maryland 21204

RE: Petition for Special Hearing  
NE/S Arunah Avenue, 300 ft. SE of c/1 Maryland Avenue  
(Lots #31 & #32, Arunah Avenue)  
1st Election District, 1st Councilmanic District  
GEORGE BAKER - Petitioner  
Case No. 92-477-SPH

Dear Board:

Please be advised that an appeal of the above-referenced case was filed in this office on December 7, 1992 by Conwell F. Sapp and William T. Glasgow, attorneys on behalf of Lena Guise, property owner. All materials relative to the case are being forwarded herewith.

Please notify all parties to the case of the date and time of the appeal hearing when it has been scheduled. If you have any questions concerning this matter, please do not hesitate to contact this office.

Very truly yours,

*Arnold Jablon*  
Arnold Jablon - Director  
Zoning Administration and  
Development Management

AJ:cer

Enclosures

cc: Lena Guise, 3306 Strickland Street, Baltimore MD 21229

William T. Glasgow and Conwell F. Sapp  
Reese and Carney 10715 Charter Drive, Ste 200, Columbia MD 21044

George Baker - 501 Lafayette Avenue, Baltimore MD 21228

People's Counsel, 400 Washington Avenue, Towson, MD 21204

Printed on Recycled Paper

APPEAL

Petition for Special Hearing  
NE/S Arunah Avenue, 300 ft. SE of c/1 Maryland Avenue  
(Lots #31 & #32, Arunah Avenue)  
1st Election District - 1st Councilmanic District  
GEORGE BAKER - PETITIONER  
LENA GUISE - PROPERTY OWNER  
Case No. 92-477-SPH

IN ADDITION TO THE MATERIALS PREVIOUSLY SUBMITTED ON OCTOBER 29, 1992  
IN REFERENCE TO THE ABOVE REFERENCED CASE, ENCLOSED ARE COPIES OF:

1. Zoning Commissioner's Order dated November 25, 1992 (Granted)
2. Notice of Appeal received on December 7, 1992 from Conwell F. Sapp and William T. Glasgow, attorneys on behalf of Lena Guise, property owner.

cc: Lena Guise, 3306 Strickland Street, Baltimore MD 21229

William T. Glasgow and Conwell F. Sapp  
Reese and Carney 10715 Charter Drive, Ste 200, Columbia MD 21044

George Baker - 501 Lafayette Avenue, Baltimore MD 21228

Request Notification: P. David Fields, Director of Planning & Zoning  
Patrick Keller, Office of Planning & Zoning  
Lawrence E. Schmidt, Zoning Commissioner  
Timothy M. Kotroco, Deputy Zoning Commissioner  
W. Carl Richards, Jr., Zoning Coordinator  
Docket Clerk  
Arnold Jablon, Director of ZADM  
Public Services

Baltimore County Government  
Zoning Commissioner  
Office of Planning and Zoning

Suite 113 Courthouse  
400 Washington Avenue  
Towson, MD 21204

(410) 887-3353

June 30, 1992

William T. Glasgow, Esquire  
Suite 250  
10715 Charter Drive  
Columbia, Maryland 21044

RE: Case No. 92-477-SPH  
Petition for Special Hearing  
Lena Guise/George Baker, Petitioner and Adjoining Neighbor

Dear Mr. Glasgow:

This is in response to your letter dated June 22, 1992 regarding the above captioned matter.

I have reviewed the files relative to the subject property known as Lots No. 31 and 32 of Arunah Avenue in the Catonsville Heights subdivision of Baltimore County.

According to my records, you are indeed correct that a Petition for Zoning Variance was filed for this property within case No. 92-30-A. That Petition sought relief from the side yard setback requirements set forth in Section 1802.3.C.1 of the Baltimore County Zoning Regulations. Specifically, relief was requested to permit a side yard setback of 7 ft. in lieu of the minimum required 10 ft. and a side street setback of 7 ft. in lieu of the required 25 ft. Following a public hearing, the Petition was denied by Order of Deputy Zoning Commissioner, Timothy M. Kotroco on October 8, 1991. The case was timely appealed to the Baltimore County Board of Appeals which reversed Mr. Kotroco's decision. By their Order of May 6, 1992, the Petition for Variance was granted. I note that there has not been an appeal from the Board of Appeals' decision.

William T. Glasgow, Esquire  
Suite 250  
10715 Charter Drive  
Columbia, Maryland 21044  
page 2....

Although the matter scheduled for hearing on July 27, 1992 relates to the same property, the issues are not the same. The matter scheduled before me on that date arises out of a Petition for Special Hearing filed by George Baker of 405 Lafayette Avenue. Mr. Baker is requesting an interpretation as to whether the subject lot may be developed notwithstanding the fact that it is less than the required 6,000 sq. ft. in area. Thus, although the issues are similar, they are not identical; in that the prior case dealt with setback requirements whereas the present matter relates to area requirements.

Under the circumstances, I am inclined to keep this matter on my docket and proceed with the hearing on July 27, 1992. I will, however, provide you with an opportunity to argue this matter further on the 27th by way of preliminary motion, if you deem it appropriate. However, based on my preliminary review, I believe that the case should proceed as scheduled.

Very truly yours,

*Lawrence E. Schmidt*  
Lawrence E. Schmidt

LES:mmm  
cc: Phyllis Friedman, Esquire  
Peoples Counsel

Baltimore County Government  
County Executive's Office

Roger B. Hayden  
County Executive

400 Washington Avenue  
Towson, Maryland 21204  
887-2450

July 27, 1992

Mr. and Mrs. George Baker  
405 Lafayette Avenue  
Baltimore, Maryland 21228

RE: Case No. 92-477-SPH (Item No. 510)  
Previous Case No. 92-30-A  
Lot Nos. 31 and 32, Arunah Avenue  
1st Election District

Dear Mr. and Mrs. Baker:

I am in receipt of your letter of July 18, 1992, concerning the above referenced matter.

As you know, a public hearing, wherein the petitioner requested a special hearing to determine whether the subject property, consisting of less than the required 6,000 square feet, may be residentially developed, was held on July 27, 1992, before the Zoning Commissioner. A decision has not been rendered at this time. However, a precedent would not be set if, in fact, the petition were granted. Each case stands on its own merits and in no way entitles other similar situations to occur without going through the required quasi-judicial hearing process. So that you may be apprised of the outcome of the hearing when it is rendered, I have asked that a copy of the decision be forwarded to you.

Although I cannot become involved in zoning issues, I do appreciate your concerns and want to assure you that they will be given every consideration prior to a decision being rendered.

Thank you for bringing your concerns to my attention.

Respectfully yours,

*R. B. Hayden*  
Roger B. Hayden  
County Executive

RBH/srl

cc: Lawrence E. Schmidt, Zoning Commissioner  
The Honorable Berchie L. Hanley  
Arnold Jablon, Zoning Administrator



Suite 113 Courthouse  
400 Washington Avenue  
Towson, MD 21204

(410) 887-480

September 23, 1992

William T. Glasgow, Esquire  
Suite 250  
10715 Charter Drive  
Columbia, Maryland 21044

RE: Ruling on Preliminary Motion  
Petition for Special Hearing  
Lots No 31 and 32, Arunah Avenue  
Lena Guise, Property Owner  
George Baker, Petitioner  
Case No. 92-477-SPH

Dear Mr. Glasgow:

Enclosed please find a copy of my Ruling on Preliminary Motion rendered in the above captioned matter.

Very truly yours,

*Lawrence E. Schmidt*  
LAWRENCE E. SCHMIDT  
Zoning Commissioner

LES:mmm  
att.

cc: Mr. George Baker  
405 Lafayette Avenue  
Baltimore, Maryland 21228  
cc: Peoples Counsel  
Phyllis Friedman, Esquire  
cc: Ms. Lena Guise  
3306 Strickland Street  
Baltimore, Maryland 21229



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

November 9, 1992

Phyllis Cole Friedman  
People's Counsel for Baltimore County  
Room 47, Old Courthouse  
400 Washington Avenue  
Towson, MD 21204

RE: Case No. 92-477-SPH  
George Baker/Petitioner

Dear Ms. Friedman:

Enclosed please find a copy of the Ruling on People's Counsel's Motion to Dismiss issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Very truly yours,

*Kathleen C. Weidenhammer*  
Kathleen C. Weidenhammer  
Administrative Assistant

encl.

cc: Connell F. Sapp, Esquire  
William T. Glasgow, Esquire  
Mr. George Baker  
Ms. Lena Guise  
P. David Fields  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr.  
Docket Clerk - Zoning  
Arnold Jablon, Director of  
Zoning Administration  
Public Services

Copy

January 25, 1993

Mr. George Baker  
405 Lafayette Avenue  
Baltimore, MD 21228

Re: Case No. 92-477-SPH  
George Baker /Petitioner

Dear Mr. Baker:

The enclosed copy of this Board's January 12th correspondence to Ms. Lena Guise regarding the subject matter was returned to this office today as undeliverable.

Upon reviewing the file, I've discovered that we were given two different addresses for you. Therefore, I'm assuming that, since number 501 is not correct, your correct address is as shown.

I'm sorry for any inconvenience this delay may have caused you.

Very truly yours,

Kathleen C. Weidenhammer  
Administrative Assistant



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

April 28, 1993

William T. Glasgow, Esquire  
REESE & CARMY  
Suite 250, 10715 Charter Drive  
Columbia, MD 21044

RE: Case No. 92-477-SPH  
George Baker /Petitioner

Dear Mr. Glasgow:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Very truly yours,

*Kathleen C. Weidenhammer*  
Kathleen C. Weidenhammer  
Administrative Assistant

encl.

cc: Connell F. Sapp, Esquire  
Ms. Lena Guise  
Mr. George Baker  
People's Counsel for Baltimore County  
P. David Fields  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr.  
Docket Clerk /Zoning  
Arnold Jablon, Director of  
Zoning Administration



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

January 12, 1993

Ms. Lena Guise  
3306 Strickland Street  
Baltimore, MD 21229

Re: Case No. 92-477-SPH  
George Baker /Petitioner

Dear Ms. Guise:

The Board is in receipt of your letter dated January 3, 1993 regarding the above-referenced case.

The issue decided by this Board on May 6, 1992 in Case No. 92-30-A dealt with a Petition for Variance, and is separate and distinct from the appeal presently pending before the Board of Appeals in Case No. 92-477-SPH. In the instant case, a decision was rendered by the Zoning Commissioner on November 25, 1992, and an appeal filed thereto on December 7, 1992. Therefore, this matter will be scheduled for hearing with regard to the current and pending appeal.

When a hearing date has been assigned, notices will be sent to all parties.

Very truly yours,

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

cc: William T. Glasgow, Esquire  
Connell F. Sapp, Esquire  
Mr. George Baker  
People's Counsel for Baltimore County



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

January 13, 1993

Hearing Room -  
Room 48, Old Courthouse  
400 Washington Avenue

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 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. 99-79.

CASE NO. 92-477-SPH

GEORGE BAKER /PETITIONER  
(Lena Guise Property)  
RE/s Arunah Avenue, 300' SE  
of c/l Maryland Avenue  
(Lots #31 & #32, Arunah Avenue)  
1st Election District  
1st Councilmanic District

SPH-lot size /less than 6,000  
sq. ft.; also lot width (40'  
in lieu of minimum 55')

11/25/92 - E.C.'s Order GRANTING  
Petition.

ASSIGNED FOR:

THURSDAY, MARCH 18, 1993 AT 10:00 a.m.

cc: George Baker  
Lena Guise  
William T. Glasgow, Esquire  
Connell F. Sapp, Esquire  
People's Counsel for Balto. Co.  
P. David Fields  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr.  
Docket Clerk - Zoning  
Arnold Jablon, Director of Zoning  
Administration

Kathleen C. Weidenhammer  
Administrative Assistant

1/13/93 - Following parties notified of hearing set for March 18, 1993 at 10:00 a.m.:

George Baker  
Lena Guise  
William T. Glasgow, Esquire  
Connell F. Sapp, Esquire  
People's Counsel for Balto. Co.  
P. David Fields  
Lawrence E. Schmidt  
Timothy M. Kotroco  
W. Carl Richards, Jr.  
Docket Clerk - Zoning  
Administration

Case No. 92-477-SPH  
George Baker /Petitioner  
Lena Guise /Property Owner/Appellant

11/02/92 -Motion to Dismiss Appeal filed by People's Counsel (no final order issued by Zoning Commissioner; not ripe for appeal; appeal taken from Zoning Commissioner's Ruling on Preliminary Motion, not final order.)

11/04/92 -Ltr from George Baker, Petitioner, objecting to appeal; premature to grant hearing on appeal of ruling.

11/06/92 -Memorandum of Law in Opposition to PC's Motion to Dismiss filed by C. Sapp, Esquire and W. Glasgow, Esquire, on behalf of property owner, Lena Guise.

11/09/92 -Board's Ruling on Motion to Dismiss --Motion GRANTED.

11/25/92 - Z.C.'s Order GRANTING Petition.

12/7/92 - Notice of appeal filed by Connell F. Sapp and Wm. T. Glasgow, attorneys for Lena Guise, property owner.

1/06/93 -Ltr from Lena Guise regarding the appeal pending in this matter; response being prepared for signature by Chairman.



111 West Chesapeake Avenue  
Towson, MD 21204

July 14, 1994

(410) 887-3353

Richard Hauf  
404 Lafayette Avenue  
Baltimore, MD 21228

RE: Permit #9-173949  
Approved 11/23/93  
401 Lafayette Avenue  
(Catonsville Heights)  
1st Election District

Dear Mr. Hauf:

Your letter to Carl Richards, dated July 2 and received on July 6, has been referred to me for reply. This letter replies to your letter and subsequent telephone conversations with zoning office staff.

In response to our discussions with you, we have reviewed all zoning case files pertaining to this site (case #92-30-A and #92-477-SPH), as well as the subsequent appeals. After a thorough review of the files, we believe the permit was properly approved by this office.

You have questioned the permit approval without requiring certain road improvements. This office takes direction from Public Works prior to approving permits as was done with this permit prior to approval. This office has rechecked Public Works' original approval recommendation and David Thomas in that office has reconfirmed the original recommendation.

Should you continue to be concerned that the permit was issued improperly, it is your right to appeal to the Baltimore County Board of Appeals.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 887-3391 (FAX - 887-5708).

Very truly yours,

*John A. Alexander*  
John A. Alexander  
Planner II

JRA:scj



6/18/92 6/18/92  
9  
RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER  
NE/S Arunah Ave., 300' SE of C/L  
Maryland Ave. (Lots #31 & #32, : OF BALTIMORE COUNTY  
Arunah Ave.), 1st Election Dist.  
1st Councilmanic Dist.  
GEORGE BAKER, Petitioner : Case No. 92-477-SPH  
LENA GUISE, Property Owner

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notices should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final order.

*Phyllis Cole Friedman*  
Phyllis Cole Friedman  
People's Counsel for Baltimore County

*Peter Max Zimmerman*  
Peter Max Zimmerman  
Deputy People's Counsel  
Room 47, Courthouse  
400 Washington Avenue  
Towson, Maryland 21204-4606  
(410) 887-2188

I HEREBY CERTIFY that on this 18th day of June, 1992, a copy of the foregoing Entry of Appearance was mailed to George Baker, 405 Lafayette Ave., Baltimore, MD 21228; and Lena Guise, 3306 Strickland Road, Baltimore, MD 21229.

RECEIVED  
JUN 19 1992  
ZONING OFFICE

*Phyllis Cole Friedman*  
Phyllis Cole Friedman

TIME: 15:02:22 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 12/22/93  
DATE: 12/22/93 APPROVALS DETAIL SCREEN PLU 14:07:20

PERMIT #: B173949  
AGENCY DATE CODE COMMENTS  
BLD PLAN 08/24/93 01 ALR  
SEDI CTL 12/22/93 01 TR/ALS  
ZONING 11/23/93 01 JRA/ASK  
PUB SERV 11/17/93 01 JRA OK PER PAT OKEEFE PUB WORKS  
ENVRMNT 12/06/93 01 MW/ER-12/6HM/MW  
PERMITS 12/22/93 01 DAS/MR

01 THRU 09 INDICATES AN "APPROVAL" \*\* 10 THRU 99 INDICATES A "DISAPPROVAL"

ENTER - NEXT APPROVAL PF4 - ISSUE PERMIT CLEAR - MENU  
PF1 - GENERAL PERMIT

TIME: 15:02:45 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 11/22/93  
DATE: 07/15/94 GENERAL PERMIT APPLICATION DATA PLM 14:26:57

PERMIT #: B173949 PROPERTY ADDRESS  
RECEIPT #: A199472 401 LAFAYETTE AVE  
CONTROL #: NR SUBDIV: CATONSVILLE HEIGHTS  
XREF #: B173949 TAX ACCOUNT #: 0107830150 DISTRICT/PRECINCT 01 08  
OWNERS INFORMATION (LAST, FIRST)  
FFE: 118.00 NAME: GUISE, LFMA

PAID BY: AGENT  
DATES  
APPLIED: 08/23/93 NAME: M. RAYNE  
ISSUED: 12/22/93 COMPANY: DAY MORE BDRS, INC.  
OCCUPANCY: ADDRESS: 1618 SHUCKS RD.  
ADDRESS: BEL AIR, MD. 21015  
INSPECTOR: OIR PHONE #: 494-2085 LICENSE #:  
REVISED STILL PLANS PER JAZZONING 11/22/93.KRA

ENTER - PERMIT DETAIL PF3 - INSPECTIONS PF7 - DELETE PF9 - SAVE  
PF2 - APPROVALS PF4 - ISSUE PERMIT PF8 - NEXT PERMIT PF10 - INQUIRY  
TIME: 15:02:51 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 11/22/93  
DATE: 07/15/94 BUILDING DETAIL 1 PLT 14:27:25  
PERMIT #: B173949 PLANS: CORST 2 PLAT 7 PLAT 0 DATA 0 EL 1 PL 1  
BUILDING CODE: 1  
IMPRV 1  
USE 01  
CONSTR: RAYMORE BDRS  
ENGINE:  
SELLER:

FOUNDATION BASE WORK: CONSTRUCT A SED WITH A PREFAB FIREPLACE.  
NO OUTSIDE PROJECTION OF CHIMNEY. 3 BEDRMS.  
CONSTRUC FUEL SEWAGE WATER 48X25X22-2352 SQ. FT. PER 92-477 SPH. BOARD  
2 3 1P 1P OF APPEALS.  
CENTRAL AIR 1  
ESTIMATED COST 75,000.00  
OWNERSHIP: 1 EXISTING USE: VACANT LOT  
RESIDENTIAL CAT: 1  
SEFF: 1-BED  
1 FAMILY BEDROOMS: 3 \$2BED: \$3BED: TOT BFD: TOT APTS:  
PASSWORD:

ENTER - NEXT DETAIL PF2 - APPROVALS PF7 - PREV. SCREEN PF9 - SAVE  
PF1 - GENERAL PERMIT PF3 - INSPECTIONS PF8 - NEXT SCREEN CLEAR - MENU  
TIME: 15:02:59 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 11/22/93  
DATE: 07/15/94 BUILDING DETAIL 2 PLT 14:27:25

PERMIT #: B173949 BUILDING SIZE LOT SIZE AND SETBACKS  
FLOOR: 2352 SIZE: 5280 SQ. FT.  
WIDTH: 48' FRONT STREET:  
DEPTH: 25' SIDE STREET:  
HEIGHT: 22' FRONT SETB: 30  
STORIES: 1+BASE SIDE SETB: 7/8  
SIDE SIR SETB:  
REAR SETB: 53

ZONING INFORMATION  
DISTRICT: BLOCK: 2  
SECTION: LAND: 0022780.00  
DATE: LIBR: 000 IMPROVEMENTS: 0000000.00  
MAP: FOLIO: 178 TOTAL ASS.:  
CLASS: 04

PLANNING INFORMATION  
MSR PLAN AREA: SUBSEWER: CRIT AREA: PASSWORD:  
ENTER - NEXT DETAIL PF2 - APPROVALS PF7 - PREV. SCREEN PF9 - SAVE  
PF1 - GENERAL PERMIT PF3 - INSPECTIONS PF8 - NEXT SCREEN CLEAR - MENU

8333-92  
10/14/92  
WILLIAM T. GLASGOW  
ATTORNEY AT LAW

SUITE 250  
10715 CHARTER DRIVE  
COLUMBIA, MARYLAND 21044

October 7, 1992

Charlotte Radcliffe, Secretary  
ZADM  
111 West Chesapeake  
Room 113  
Towson, MD 21204

Re: Lena Guise  
Case No. 92-477-SPH

Dear Ms. Radcliffe:

Please file the enclosed Appeal and Petition for Appeal in the above-referenced matter along with my check for \$210.00.

Very truly yours,

*William T. Glasgow*  
William T. Glasgow

WTG/kwb/C3a  
enclosure  
cc: Connie Sapp

RECEIVED  
OCT 8 1992  
ZONING OFFICE

6/24/92 6/19/92  
9  
WILLIAM T. GLASGOW  
ATTORNEY AT LAW

(301) 997-2298  
SUITE 250  
10715 CHARTER DRIVE  
COLUMBIA, MARYLAND 21044

June 22, 1992

The Honorable Lawrence E. Schmidt  
Zoning Commissioner of Baltimore County  
111 West Chesapeake Avenue  
Towson, MD 21204

Re: Case No. 92-477-SPH  
Hearing: July 27, 1992  
11 a.m.  
Room 118, Courthouse

Dear Commissioner Schmidt:

I am in receipt of a Notice of Hearing in the above-referenced case for the purpose of determining whether the property owned by Lena Guise consisting of less than the required 6,000 square feet may be residentially developed.

On April 23, 1992, a hearing was conducted before the County Board of Appeals for the purpose of requesting a variance because the lot was too small to meet the requirements for a house even though the property was zoned for residential construction. This was an appeal from a hearing before the Zoning Commissioner.

The County Board of Appeals ordered that the Petition for Variances for building set backs be granted. The neighbors were given 30 days to file an appeal to the Circuit Court and neglected to do so.

Mrs. Guise, who is 72 years old, has owned this property for 42 years and has paid taxes on it. Her father owned for a number of years prior to that and he paid taxes on it. The neighbors that object to the development of this property currently use the residential lot as a park with bike trails and picnic benches. The children in the neighboring houses use it as a play ground. Mrs. Guise needs to sell the property to make repairs to her present house.

The purpose of filing a Petition for a Variance was so that Mrs. Guise could get a building permit on a lot that consisted of less than 6,000 square feet. The variance was granted and the neighbors failed to file a proper appeal within sufficient time.

WILLIAM T. GLASGOW  
ATTORNEY AT LAW

(301) 997-2298  
SUITE 250  
10715 CHARTER DRIVE  
COLUMBIA, MARYLAND 21044

July 22, 1992

The Honorable Lawrence E. Schmidt  
Zoning Commissioner of Baltimore County  
Baltimore County Government  
Office of Planning and Zoning  
Suite 113 Courthouse  
400 Washington Avenue  
Towson, MD 21204

Re: Lena Guise  
Case No. 92-477-SPH

Dear Commissioner Schmidt:

Please find enclosed a Motion to Dismiss and accompanying Memorandum of Law in regard to the above-referenced matter.

Very truly yours,

*William T. Glasgow*  
William T. Glasgow

WTG/kwb/C3a  
enclosure  
cc: Connie Sapp

REESE AND CARNEY  
ATTORNEYS AT LAW

10715 CHARTER DRIVE  
COLUMBIA, MARYLAND 21044

(410) 740-4800  
WASHINGTON AREA  
(301) 621-5255

BALTIMORE FAX (410) 730-7728  
WASHINGTON FAX (301) 621-5273

OF COUNSEL  
CHARLES A. REESE

250 N. WASHINGTON STREET  
SUITE 800  
ROCKVILLE, MARYLAND 20850  
(301) 781-5250

August 21, 1992

Lawrence Schmidt  
Zoning Commissioner  
400 Washington Avenue  
Room 113  
Towson, MD 21204

Re: In the Matter of Lots Nos. 31 & 32  
of Arunah Avenue, Case No. 92-477-SPH

Dear Mr. Schmidt:

Please find enclosed for filing Post-Hearing Memorandum of Law for the above-referenced matter.

Very truly yours,

REESE AND CARNEY  
*Conwell F. Sapp*  
Conwell F. Sapp

CFS/djp

Enclosure

REESE AND CARNEY  
ATTORNEYS AT LAW

10715 CHARTER DRIVE  
COLUMBIA, MARYLAND 21044

(410) 740-4800  
WASHINGTON AREA  
(301) 621-5255

BALTIMORE FAX (410) 730-7728  
WASHINGTON FAX (301) 621-5273

OF COUNSEL  
CHARLES A. REESE

250 N. WASHINGTON STREET  
SUITE 800  
ROCKVILLE, MARYLAND 20850  
(301) 781-5250

November 6, 1992

Baltimore County  
Board of Appeals  
400 Washington Avenue  
Room 49  
Towson, Maryland 21204

ATTN: Ms. Weidenhammer

Dear Ms. Weidenhammer:

Re: In the Matter of Lots Nos. 31 & 32 of Arunah Avenue  
Case No. 92-477-SPH, 92-30-A

Enclosed please find for filing Motion to Deny People's Counsel's Motion to Dismiss and accompanying Memorandum of Law for the above-referenced matter.

Thank you for your anticipated cooperation.

Very truly yours,

REESE AND CARNEY  
*Conwell F. Sapp*  
Conwell F. Sapp

CFS/djp

Enclosures

10/14/92  
10/14/92  
10/14/92



REESE AND CARNEY  
ATTORNEYS AT LAW  
1078 CHARTER DRIVE  
COLUMBIA, MARYLAND 21044  
LAW OFFICES  
14101 7400-4800  
WASHINGTON AREA  
1308 821-8288  
BALTIMORE FAX (410) 730-7728  
WASHINGTON FAX (202) 821-8273  
OF COUNSEL  
CHARLES A. REESE  
255 N. WASHINGTON STREET  
SUITE 202  
ROCKVILLE, MARYLAND 20850  
(301) 762-6700  
DAVID A. CARNEY  
DANIEL H. SCHERR  
DAVID C. HARTSHORN  
KEVIN J. HILSHAM  
JUDITH S. BRESLER  
LAURENCE S. HARRIS  
L. HOLLAND STURM  
JEFFREY A. KREW  
JOAN M. BECKER  
MICHAEL S. MOUNARO  
CONWELL F. SAPP  
BETH A. JACKSON

December 3, 1992

Clerk  
Baltimore County Board of Appeals  
400 Washington Avenue, Room 49  
Towson, MD 21204

RE: Our File No. 42420/9001  
Lots 31 & 32, Arunah Avenue Zoning

Dear Clerk:

Mrs. Guise has been in the process of trying to obtain a variance for over a year now. She is in danger of losing her potential buyer for the property if this matter is not resolved soon. As a consequence, your prompt scheduling of this matter would be very much appreciated. If it is possible, we would be willing to take a hearing date on which someone else has cancelled so long as we have sufficient notice to get out subpoenas. Thank you for your cooperation.

Very truly yours,

REESE AND CARNEY

Conwell F. Sapp  
Conwell F. Sapp

CFS/sw  
enclosure: check

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND  
No. 1174  
September Term, 1987

VERBAL CORPORATION ET AL.

v.

PAUL HUPFER ET AL.

Moylan,  
Bloom,  
Pollitt,

JJ.

Per Curiam

Filed: March 24, 1988

Case No. CBA-87-106

County Board of Appeals of Baltimore County  
Old Courthouse Room 49  
400 Washington Avenue  
Towson, Maryland 21204

November 2, 1992

RE: SPH92-477

Gentlemen:

We are in receipt of petition letter dated October 7, 1992 from the law firm of William Glasgow directed to the Board of Appeals requesting a review of the Zoning Commissioner's decision denying their motion to dismiss a request for hearing pertaining to the issue of undersized lot.

We feel the Board of Appeals addressed very specific variance as stated in their second to last paragraph in their opinion dated May 5, 1992 in which they stated "ordered that the petition for variance of side yard setbacks is hereby granted" and made no mention of an area variance for undersize lot which we understand cannot be granted by either the Zoning Commissioner or Board of Appeals.

We have a November 10, 1992 hearing scheduled with the Zoning Commissioner. My neighbors and I feel this new issue should be addressed as it affects not only this particular lot but many other small lots in this old sub-division. Therefore, we feel that it would be premature to grant any hearing on this issue.

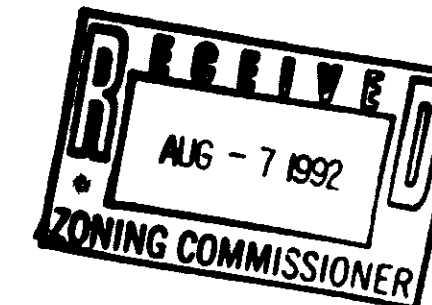
Very truly yours,

George Baker  
George Baker

cc: Ms. Phyllis Friedman, Esquire  
Peoples Counsel

cc: Ms. Charlotte Radcliffe  
EAM

George Baker  
405 Lafayette Avenue  
Baltimore, Maryland 21228



The Honorable Lawrence E. Schmidt  
Baltimore County Zoning Commissioner  
Baltimore County Government  
Office of Zoning and Planning  
Suite 113 Courthouse  
400 Washington Avenue  
Towson, Maryland 21204  
July 30, 1992

Dear Commissioner Schmidt:

This letter is in reference to case #92-477-SPH. Although I run the risk of being repetitive, I feel I must bring to your attention several items pertinent to this case.

Regarding Mrs. Guise's attorney's motion to dismiss this case we feel that:

1. The Board of Appeals did not address the issue of area density because they were not requested to do so. They were very definite in the variances they granted.
2. If her attorney felt the Appeals Board had granted this along with other variances, why on June 5 did he file a new petition asking for the area variance. (I have enclosed a copy for your records)

We were not remiss in making a timely appeal. Upon advice from the law firm of Romadka, Gontrum, and Hennegan, we did not appeal the Board of Appeals ruling, but instead directed our appeal to the Zoning Commissioner as area density had not been considered. It was Mr. Gontrum's opinion that area density variances could not be granted without zoning reclassification.

Thank you in advance for your assistance.

Sincerely,  
George Baker  
George Baker

cc: Ms. Friedman  
enclosure

July 18, 1992

The Honorable Roger Hayden  
The Old Court House  
400 Washington Avenue  
Towson, Maryland 21204

RE: ZONING CASE # 92-30A  
SEE ALSO # 92-477-SPH (Item 510)

Dear Mr. Hayden,

We are requesting your assistance regarding proposed construction in our neighborhood. We are opposed to the construction of a home which is scheduled to be built on a forty foot lot.

In 1991, the owner of the forty-foot lot, Mrs. Guise, requested closing of a portion of Lafayette Avenue (1st Election District) which was denied. A second hearing (Petition For Zoning Variance: N/S Arunah Avenue, 300' SR of Maryland Avenue) was held. This request was denied. Mrs. Guise, with the assistance of an attorney, appealed this ruling. She won the appeal. We, the undersigned, are in the process of appealing that decision.

We have researched zoning laws. John Gontrum, an attorney, explained that a forty foot lot will not meet DR 5.5 requirements related to lot area. Mr. Gontrum informed us that the lots would have to be re-zoned to meet the requirement. A hearing has been scheduled for the twenty-seventh of July before the zoning commissioner to review the current status.

Lafayette Avenue is a dead end, unimproved street, with homes built on sixty foot and larger lots. If forty foot lots are allowed to be built upon, we feel that the area will suffer for it. All of us have invested substantial amounts of money in our homes. Several of the neighbors have had to invest money to prevent and protect their homes from water damage because of the lack of drainage in the area.

All of us enjoy living in this neighborhood. It is not crowded or boxed in. We have made an investment in this community and feel that we have the right to protect our investment.

Zoning laws were created so that ALL citizens would be protected. We are very

RECEIVED  
JUL 22 1992  
ZONING OFFICE  
Dear Mr. Lawrence E. Schmidt  
I tried several times to  
I did not hear from you.  
In Oct 1990 when we went for a hearing  
on "Road Closing". Mr. Huff and Mr. Behr  
argued that if the paper road was closed  
How can a fire department get through in  
event of a fire I argued that the paper road  
was a wooded area. I did not get any-  
where.  
I wrote to Governor Schaffer sent him picture  
etc. to see if anything can be done.  
That Saturday one of his staff members called  
and explained that they only deal with the state.  
He told me to send all the information to  
Roger B. Hayden. He was nice enough to  
write a letter for me. I received a call  
from Midge and I went to see a zoning  
board member. He drew out a map  
how much feet we had to be in order  
to maintain

Dear Mr. William T. Hockett  
Chairman  
I am Lena Guise who asked for a  
variances on lot 31 and 32 in Catonsville  
Height. Case no 92-30A  
you and Michael B. Sauer and John B. Kliney  
approved the Variance on May 6, 1992.  
That if no one would appeal it after  
30 days.  
Mr. George Baker whom I am having so  
much trouble with. Did appeal but,  
after finding out how much the fees  
were a lawyer he dropped it.  
After 2 week later. He is starting the  
whole bill rolling again.  
The William T. Hockett can he do this  
if the case was closed.  
Please let me know. because he had  
me going two times and now I am  
3/18/92 @ 10:00

Plat to accompany Petition for Zoning Variance Special Hearing

PROPERTY ADDRESS: 403 LAFAYETTE AVENUE  
Subdivision name: CATONSVILLE HEIGHTS  
Plot number: 26, lot 31, 32, section 024

OWNER: LENA GUISE

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HOUSE #1220

HOUSE #1221



IN RE: PETITION FOR ZONING VARIANCE  
NE/S Delaware Place, 200' W  
of the c/l of Maryland Avenue  
(1006 Arunah Avenue)  
1st Election District  
1st Councilmanic District  
Gayle L. Smuck  
Petitioner

\* BEFORE THE  
\* DEPUTY ZONING COMMISSIONER  
\* OF BALTIMORE COUNTY  
\* Case No. 89-4-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein requests a variance to permit a side street setback of 10 feet in lieu of the required 25 feet for a proposed single family dwelling as more particularly described in Petitioner's Exhibit 1.

The Petitioner appeared and testified. Also appearing on behalf of the Petition were William Smuck, Petitioner's husband, and Elizabeth Gray, Real Estate Agent with Coldwell Banker. There were no Protestants.

Testimony indicated that the subject property, known as 1006 Arunah Avenue, is zoned D.R. 5.5 and is located on the corner of Arunah and Delaware Avenues. The Petitioner testified that she purchased the property eight years ago and that she and her husband now propose constructing a single family dwelling. If strict compliance with the zoning regulations is required, a building width of only 5 feet will be permitted as a result of the required 25-foot setback from Delaware Avenue, which is a paper street. There is no adjoining property available for purchase by the Petitioner to provide additional width. The Petitioner indicated she would suffer practical difficulty and unreasonable hardship if the variance was not granted.

Based upon the testimony and evidence presented at the hearing, all of which was uncontradicted, in the opinion of the Deputy Zoning Commissioner the relief requested sufficiently complies with the requirements

of Section 107 of the Baltimore County Zoning Regulations (B.C.Z.R.) and, therefore, should be granted. There is no evidence in the record that the subject variance would adversely affect the health, safety, and/or general welfare of the public. Furthermore, strict compliance with the B.C.Z.R. would result in practical difficulty and/or unreasonable hardship upon the Petitioner.

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

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 22nd day of July, 1988 that the Petition for Zoning Variance to permit a side street setback of 10 feet in lieu of the required 25 feet for a single family dwelling in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject, however, to the following restriction:

1) The Petitioner may apply for her building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at her own risk until such time as the applicable appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

ANN:bjs

ANN M. NASTAROWICZ  
Deputy Zoning Commissioner  
for Baltimore County

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

J. Robert Haines  
Zoning Commissioner

July 22, 1988

Ms. Gayle L. Smuck  
5500 Dogwood Road  
Baltimore, Maryland 21207

RE: PETITION FOR ZONING VARIANCE  
NE/S Delaware Place, 200' W of the c/l of Maryland Avenue  
(1006 Arunah Avenue)  
1st Election District; 1st Councilmanic District  
Case No. 89-4-A

Dear Ms. Smuck:

Enclosed please find the decision rendered on the above-referenced case. The Petition for Zoning Variance has been granted in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 494-3391.

Very truly yours,

ANN M. NASTAROWICZ  
Deputy Zoning Commissioner  
for Baltimore County

ANN:bjs  
Enclosure  
cc: People's Counsel

File

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

June 1, 1988

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning and Regulations of Baltimore County will hold a public hearing on the Petition identified herein in Room 106 of the County Office Building, located at 100 W. Chesapeake Avenue in Towson, Maryland as follows:

Petition for Zoning Variance  
CASE NUMBER: 89-4-A  
NE/S Delaware Place, 200' W c/l Maryland Avenue  
(1006 Arunah Avenue)  
1st Election District - 1st Councilmanic  
Petitioner(s): Gayle L. Smuck  
HEARING SCHEDULED: FRIDAY, JULY 15, 1988 at 2:00 p.m.

WOODBOX to permit a side street setback of 10 feet in lieu of the required 25 feet.

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  
cc: Gayle L. Smuck  
File

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

July 8, 1988

Ms. Gayle L. Smuck  
5500 Dogwood Road  
Baltimore, Maryland 21207

Re: Petition for Zoning Variance  
CASE NUMBER: 89-4-A  
NE/S Delaware Place, 200' W c/l Maryland Avenue  
(1006 Arunah Avenue)  
1st Election District - 1st Councilmanic  
Petitioner(s): Gayle L. Smuck  
HEARING SCHEDULED: FRIDAY, JULY 15, 1988 at 2:00 p.m.

Dear Ms. Smuck:

Please be advised that \$46.36 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.

Please make your check payable to Baltimore County, Maryland and bring it along with the sign(s) and post(s) to the Zoning Office, County Office Building, Room 106, Towson, Maryland 21204 fifteen (15) minutes before your hearing is scheduled to begin.

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

No. 52709

DATE: 7/8/88 ACCOUNT: 1111111111

AMOUNT: \$ 46.36

RECEIVED FROM: Gayle L. Smuck

FOR: 1111111111

VALIDATION OR SIGNATURE OF CASHIER

PROPERTY DESCRIPTION

Beginning on the NE/S of Arunah Avenue also the NE/Corner at Delaware Place (paperstreet). Also being 220' W o. the centerline of Maryland Avenue. Being lots #29 and #30 on the plat of Catonsville Heights Book 6-178. Containing 6024 square feet in the 1st Election District. Also known as 1006 Arunah Avenue.

PETITION FOR ZONING VARIANCE  
TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 89-4-A

The undersigned, land 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 1102.3.3.C.1. To permit a side street setback of 10 feet in lieu of the required 25 feet.

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

1. TO ALLOW CONSTRUCTION OF A SIDE STREET.
2. WITHOUT VARIANCE, THE SIDE STREET WOULD BE 25 FEET WIDE.
3. THEREFORE, THE SIDE STREET WOULD BE 10 FEET WIDE.

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):                                                                                     |
| (Type or Print Name)     | (Type or Print Name)                                                                                |
| Signature                | Signature                                                                                           |
| Address                  | (Type or Print Name)                                                                                |
| City and State           | Signature                                                                                           |
| Attorney for Petitioner: | Address                                                                                             |
| (Type or Print Name)     | City and State                                                                                      |
| Signature                | Name, address and phone number of legal owner, contract purchaser or representative to be contacted |
| Address                  |                                                                                                     |
| City and State           |                                                                                                     |

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

No. 50527

DATE: 7/8/88 ACCOUNT: 1111111111

AMOUNT: \$ 46.36

RECEIVED FROM: Gayle L. Smuck

FOR: 1111111111

VALIDATION OR SIGNATURE OF CASHIER

"DUPLICATE"  
CERTIFICATE OF PUBLICATION

TOWSON, MD., June 23, 1988

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., once in each of successive weeks, the first publication appearing on June 23, 1988.

THE JEFFERSONIAN,

S. Zabo, Publisher

33 75

Petitioner's Sub # 1A



# EXHIBIT A

IN THE MATTER OF THE APPLICATION OF LENA GUISE FOR VARIANCES ON PROPERTY LOCATED ON THE NORTH SIDE ARUNAH AVENUE, 300' SOUTHEAST OF MARYLAND AVENUE 1ST ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT

BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

CASE NO. 92-30-A

## OPINION

This case comes before this Board on appeal from a decision of the Deputy Zoning Commissioner denying the requested variances for side yard setbacks. This is an old subdivision of 20-foot lots. It dates back to the early part of this century. Mrs. Lena Guise, who is 72 years old, has owned this property known as Lots 31 and 32 of Catonsville Heights for 42 years. She attained this property as a gift from her father who owned it many years before that. Her purpose for requesting variances for this site is that she needs the income from this property to fix up her own home which is in bad need of repairs.

Sam Shockley testified for the Petitioner. He is a Civil Engineer and was qualified as an expert witness in engineering. He testified that this lot cannot be used for anything except residential use, and without the requested variances, nothing can be built on this property. In addition, he testified that there was no problem with storm water runoff from this lot. The size of the building envelope will be a maximum of 25 feet by 60 feet, and maybe smaller.

Midge Stocksdales, who testified for the Petitioner, stated that she was a realtor for 12 years and that she knows of other

EXHIBIT A

23

A. Absolutely. Our office is just about four blocks away from there.

Q. How long have you been in this business?

A. Twelve years.

Q. Are you familiar generally with this Caton Industrial Heights area?

A. Very, very familiar. I have sold property there. Have listed property there.

Q. You have been working with Mrs. Guise?

A. For over, or just about two years now, trying to sell this property.

Q. Are you aware of other properties in the area of about this approximate size that have homes on them?

A. Yes. There are quite a few of them that have a 40 foot lot that have been built on. Usually what they put on is a shotgun split by a builder, a 20 foot wide by 32, or something similar to a townhouse. You could just take --

MR. DISNEY: Called a what?

THE WITNESS: Shotgun split.

Q. What's that? I am still having trouble with that

BOARD OF APPEALS

# EXHIBIT B

IN THE MATTER OF Case No. 92-477-SPH  
Lots Nos. 31 & 32 BALTIMORE COUNTY  
of Arunah Avenue ZONING COMMISSIONER

## MOTION TO DISMISS

Lena Guise, Property Owner, by and through her attorneys Conwell F. Sapp and William T. Glasgow, hereby moves that the Petition for Special Hearing filed by George Baker be dismissed and for reasons states:

1. Lena Guise filed, pro se, a petition for a setback variance from the area regulations of Baltimore County zoning regulations on or about November 7, 1991 in Case No. 92-30-A.
2. By Order dated October 8, 1991, such petition was denied by the Deputy Zoning Commissioner of Baltimore County.
3. Appearance of counsel was entered and an appeal was timely filed to the Baltimore County Board of Appeals.
4. By Order Dated May 6, 1992, following an evidentiary hearing, the petition for a variance was granted.
5. No appeal was made to the Circuit Court of Baltimore County as required by law for review of a Board of Appeals decision.
6. On or about June 15, 1992, a neighbor, George Baker, who attended and participated in the Board of Appeals hearing filed a petition with the Zoning Commissioner of Baltimore County requesting a hearing on whether the same property could be developed.

# EXHIBIT C

IN THE MATTER OF Case No. 92-477-SPH  
Lots Nos. 31 & 32 BALTIMORE COUNTY  
of Arunah Avenue ZONING COMMISSIONER

## POST HEARING MEMORANDUM OF LAW

### Facts

Lena Guise, property owner, filed a request for variances for Lots 31 and 32 on Arunah Avenue, Case No. 92-30-A before the Zoning Commissioner of Baltimore County. Such petition was denied. This decision was appealed and reversed by the Baltimore County Board of Appeals following a hearing. No appeal was taken to Circuit Court. Protestants in 92-30A filed for a second hearing before the Zoning Commissioner on the same property concerning the legality of property owner developing a property of less than 6,000 square feet. Another hearing was granted and the case was renumbered as 92-477. People's Counsel, although not a party in the first case, entered her appearance. The hearing was held on July 27th, 1992 before Zoning Commissioner Lawrence Schmidt. No evidence was taken but argument was heard on a preliminary Motion to Dismiss brought by the property owner. Commissioner Schmidt withheld decision and requested written submissions.

### Principles of Res Judicata Apply to Administrative Hearings

Professor Kenneth Davis, the leading authority on administrative law, in his treatise on the subject is quite

RE: PETITION FOR SPECIAL HEARING : BEFORE THE ZONING COMMISSIONER  
RE/S Arunah Ave., 300' SE of : COMMISSIONER OF  
C/L Maryland Ave. : OF  
(Lots #31 & #32, Arunah Ave.) : BALTIMORE COUNTY  
1st Election District :  
1st Councilmanic District :  
GEORGE BAKER, Petitioner : Case No. 92-477-SPH  
LENA GUISE, Property Owner :

## PEOPLE'S COUNSEL'S MEMORANDUM

People's Counsel files this memorandum in this matter in response to the request of the Zoning Commissioner.

The position of People's Counsel is that:

1. The doctrine of res judicata operates differently upon administrative cases which have ended without any judicial review. In such cases, as is the situation here, res judicata does not operate to preclude consideration of a mistake of law in the initial decision. In other words, "administrative res judicata" operates only to preclude challenge to factual findings, in the absence of a change in circumstances.

The leading case is Bd. of Co. Comm'rs v. Racina, 24 Md. App. 435, 332 A.2d 308 (1975). The property owner cites Chatham Corp. v. Baltram, 243 Md. 138, 220 A.2d 589 (1966), and Woodlawn Area Cit. Ass'n v. Bd. of Co. Comm., 241 Md. 187, 218 A.2d 149 (1966). But the critical difference in these two cases is that both involved initial cases which were reviewed in the courts. Therefore, the scope of preclusion was greater. Once a case undergoes judicial review, a party is precluded subsequently

#91-83-A RED ROOF INNS, INC. - 7/14/92 - Judge Robert E. Cahill, Sr. AFFIRMS C.B. of A.

IN THE MATTER OF THE APPLICATION OF RED ROOF INNS, INC. FOR A VARIANCE ON PROPERTY LOCATED ON THE SOUTHWEST CORNER WEST TIMONIUM ROAD AND GREENSPRING DRIVE (111 WEST TIMONIUM ROAD 8TH ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT)

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

CASE NO. 91-CV-6923

## MEMORANDUM OPINION AND ORDER

In connection with the construction of its motel at the intersection of Timonium Road and Greenspring Drive, Red Roof Inns, Inc. (Red Roof) asked the Zoning Commissioner (the Commissioner) to grant it variances from the Baltimore County Zoning Regulations relating to the size and number of signs which it could place on its property. (The Petition also sought permission to erect two satellite receiving dishes but the decision on that variance has nothing to do with this administrative appeal.) Specifically, Red Roof requested the Commissioner: "to permit one stationary free-standing sign with a face of 216 square feet at a height of 70 feet from grade level in lieu of the required 25 square feet per face at a height of 6 feet; one additional stationary free-standing entrance sign with surface faces of 24 square feet at a height of 12 feet above grade in lieu of the required 6 feet above grade; [and] two wall-mounted sign(s) with a total area of 150 square feet in lieu of the required 90 square feet." (Findings of Fact, p. 1.)

Exhibit A

# EXHIBIT D

IN RE: PETITION FOR SPECIAL HEARING : BEFORE THE  
RE/S Arunah Ave., 300 ft. SE : ZONING COMMISSIONER  
of c/l Maryland Avenue : OF  
(Lots #31 & #32, Arunah Ave.) : BALTIMORE COUNTY  
1st Election District :  
1st Councilmanic District :  
George Baker, Petitioner : Case # 92-477-SPH  
Lena Guise, Property Owner :

## RULING ON PRELIMINARY MOTION

The above captioned matter comes before the Zoning Commissioner as a Petition for Special Hearing for that property known as lots No. 31 and No. 32 on Arunah Avenue in the Catonsville Heights section of Baltimore County. The Petition was filed by George Baker, a neighbor of the subject site. The hearing for the Petition was scheduled on July 27, 1992. However, prior to presentation of any evidence and/or argument on the merits, counsel for the property owner moved to dismiss the Petition. Oral arguments and subsequent memorandums were offered by the parties. This ruling addresses only those issues raised within the Motion to Dismiss.

A brief history and overview of the subject property and its zoning history is in order. As noted, the subject site is comprised of 2 lots within the Catonsville Heights subdivision. The subject property is owned by Lena Guise. The property is approximately 5,280 sq. ft. in area and is zoned D.R.5.5. Under the provisions of Section 1802.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), the minimum net lot area per dwelling unit in a D.R.5.5 zone is 6,000 sq. ft. Further, that section of the regulations provides that any such dwelling on a lot zoned D.R.5.5 must have a 10 ft. side yard setback.

During the summer of 1991, Ms. Guise apparently decided to construct a dwelling on the subject lot. A house approximately 60 ft. deep and 26 ft.

IN THE MATTER OF THE APPLICATION OF KATHERINE PAUL FOR A VARIANCE ON PROPERTY LOCATED ON THE WEST SIDE CARROLL PLACE, EAST OF LINDEN AVENUE (5208 CARROLL PLACE) 13TH ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT

BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

CASE NO. 91-245-A

## OPINION

On May 2, 1991 and by Amended Order dated May 17, 1991, the Deputy Zoning Commissioner for Baltimore County granted to the Petitioner, Katherine Paul, variances to permit a lot area of 4,000 square feet for Lots 6 and 7 and Lots 8 and 9 in lieu of the required 6,000 square feet for each, to permit a lot width of 40 feet in lieu of the required 55 feet for Lots 6 and 7 and Lots 8 and 9, to permit a side yard setback of 8 feet in lieu of the required 10 feet and a front yard setback of 13 feet in lieu of the required 25 feet for the existing dwelling on Lots 8 and 9, and to permit a side yard setback of 6 feet in lieu of the required 10 feet for the proposed dwelling on Lots 6 and 7.

Feeling aggrieved by the decision of the Deputy Zoning Commissioner, two neighbors, Brian Morrison and David McAuliffe, filed an appeal to the Board from the Deputy Zoning Commissioner's Orders.

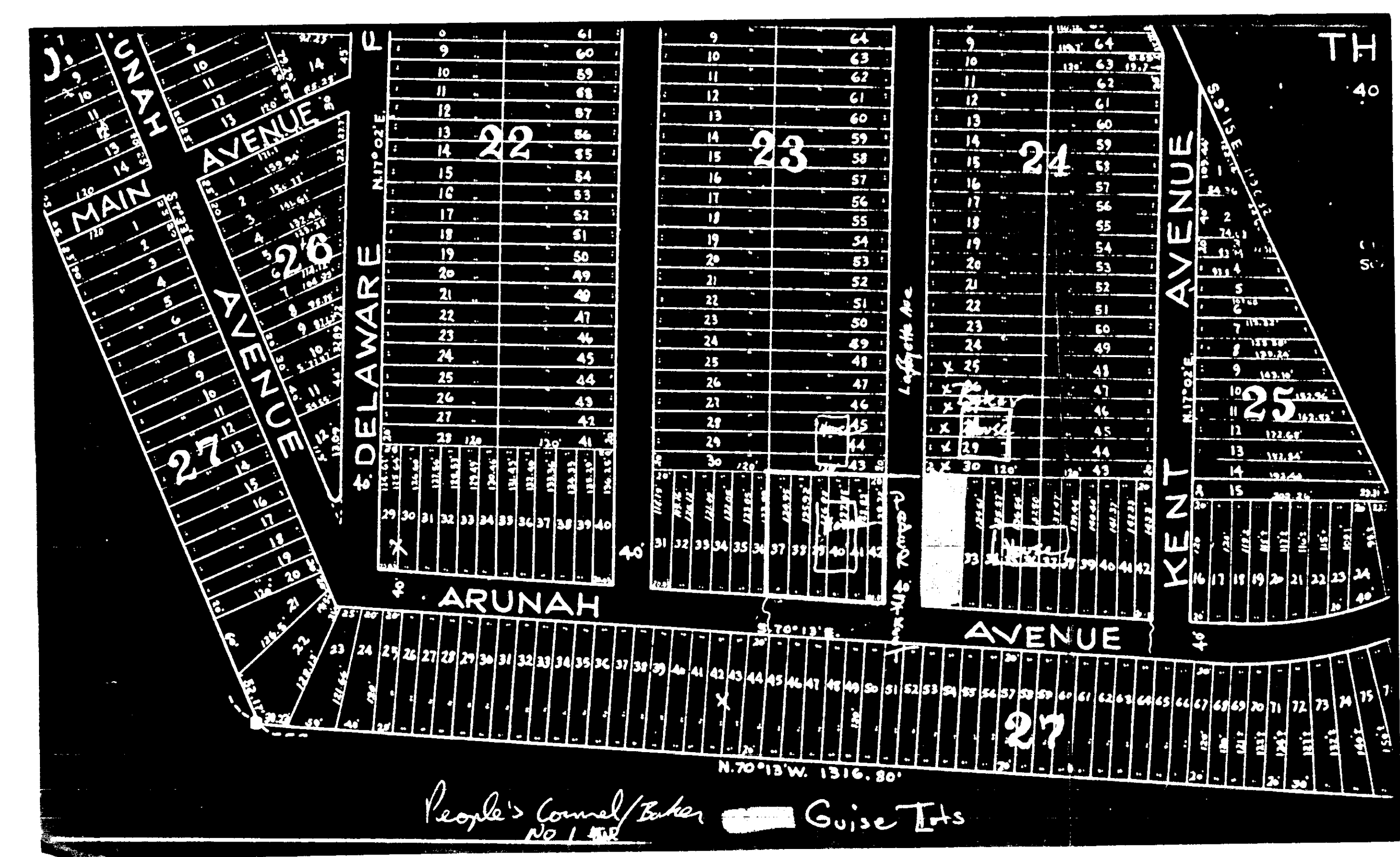
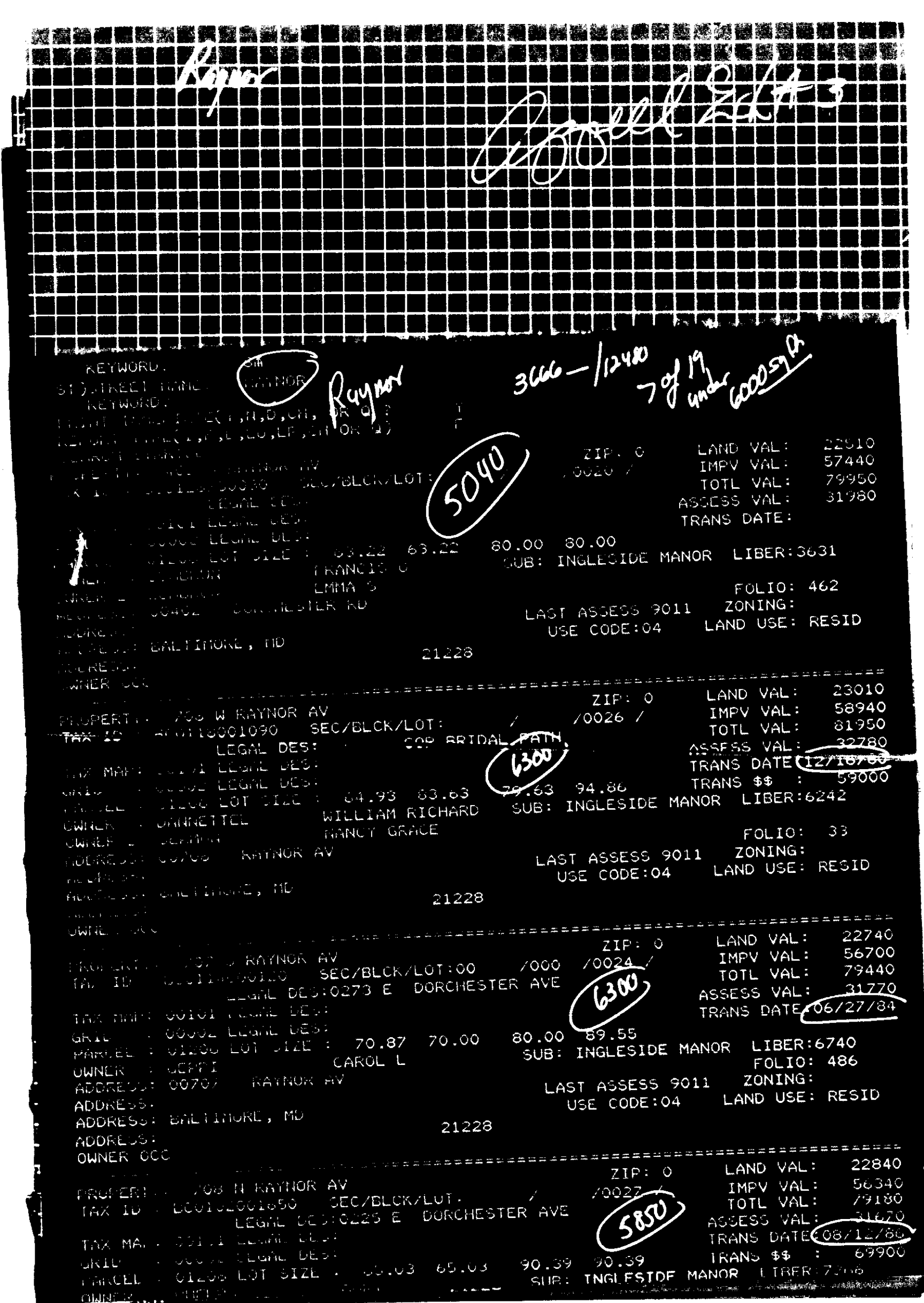
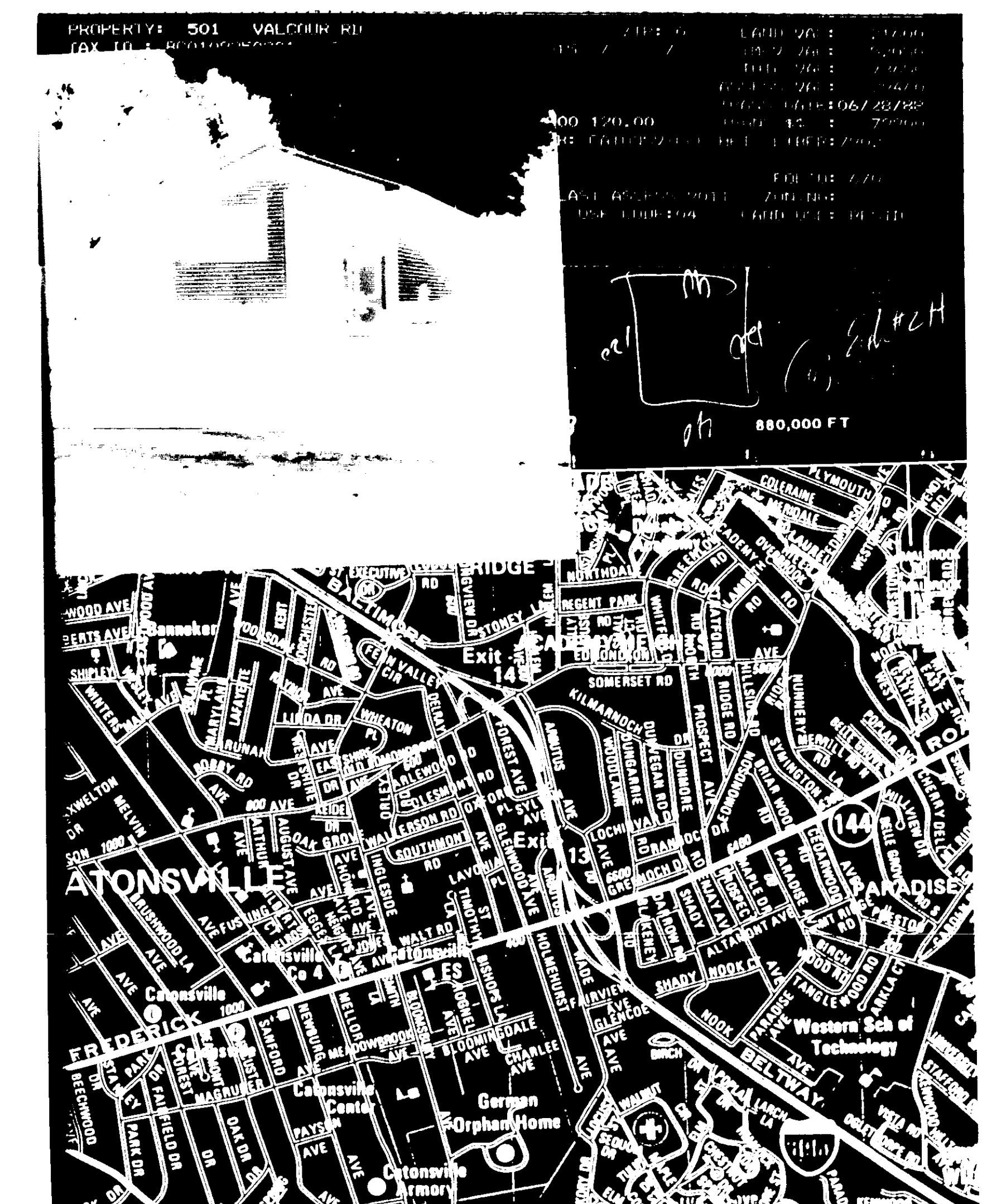
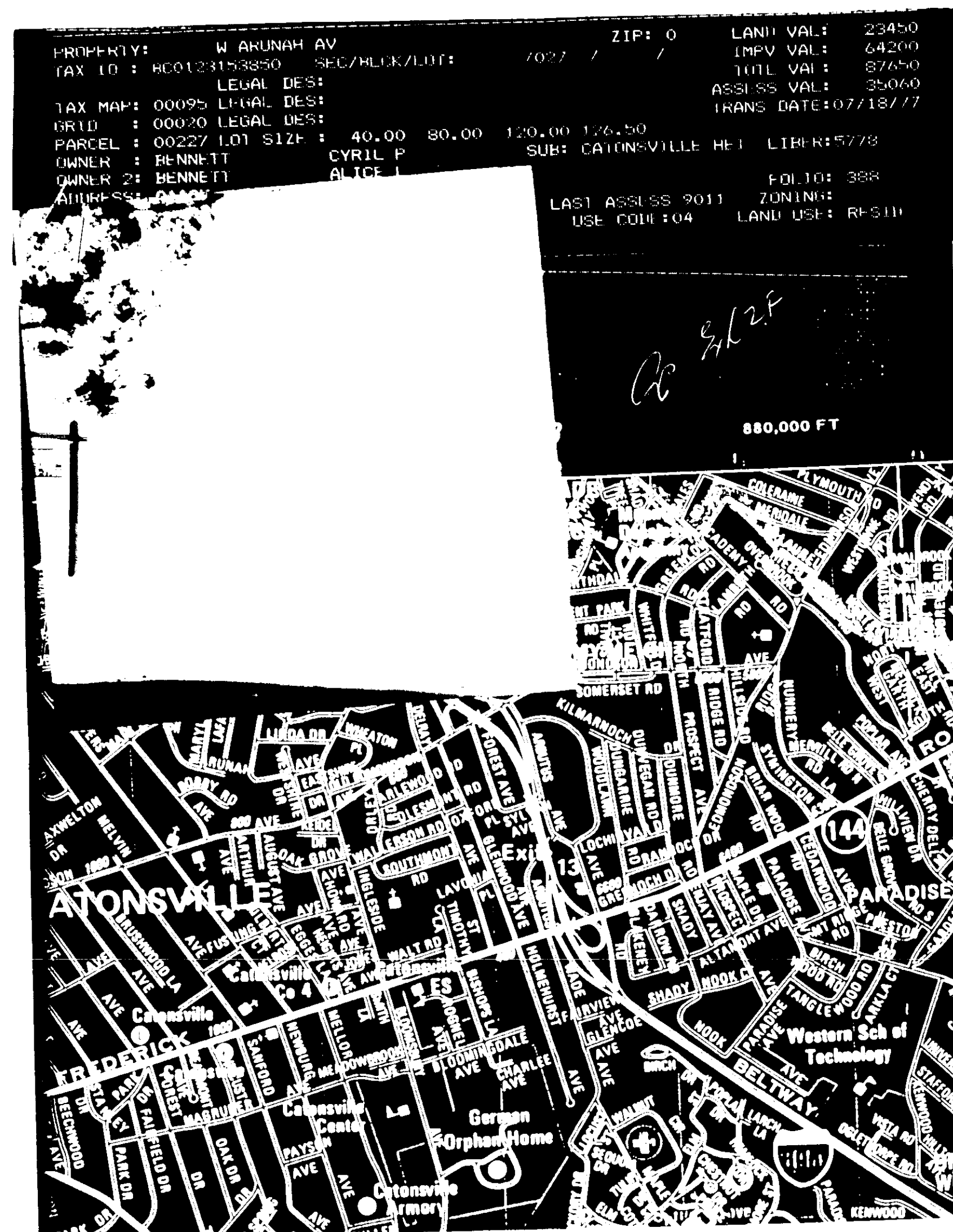
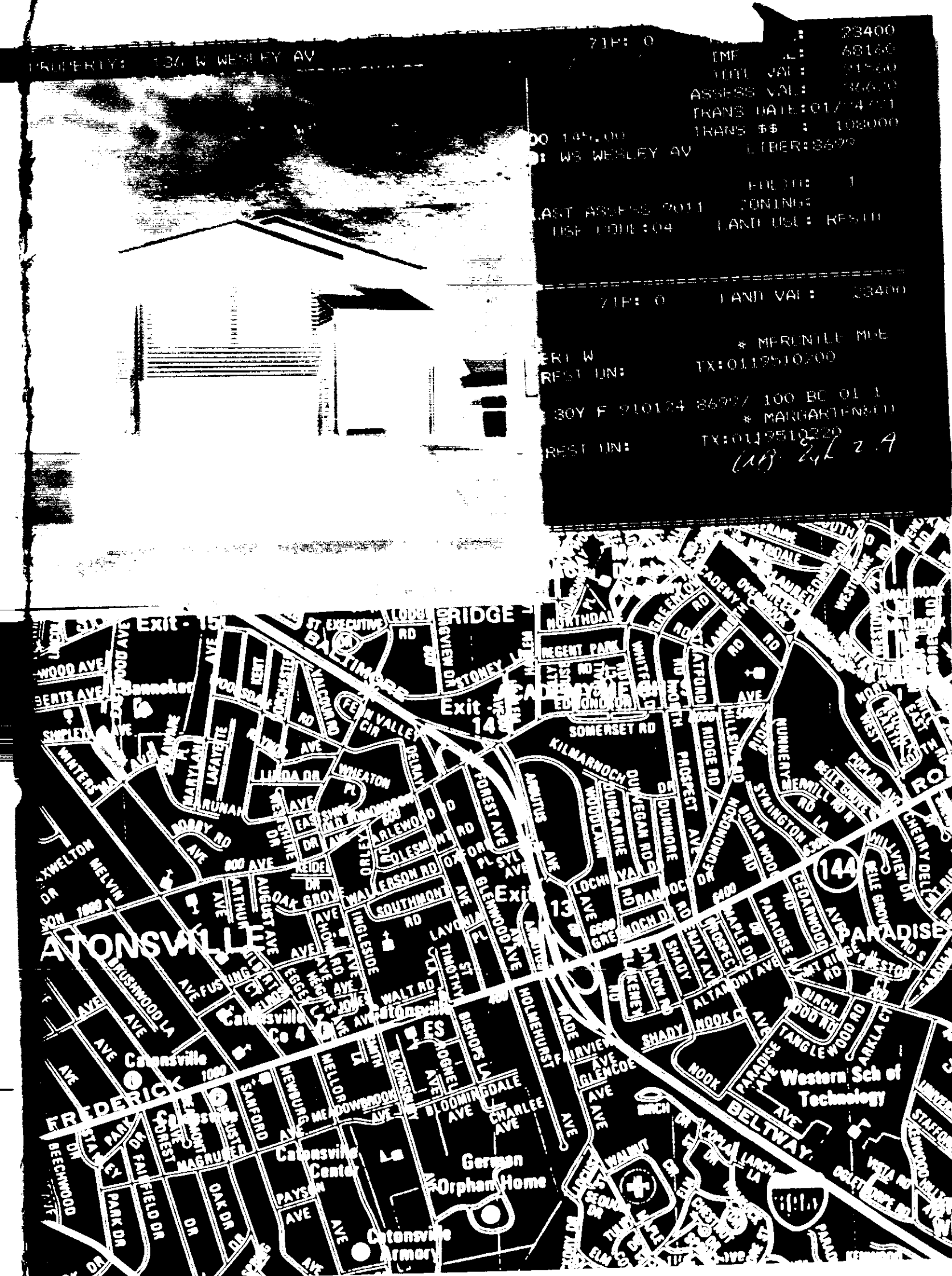
The matter was heard before this Board on October 25, 1991. Petitioner appeared, represented by S. Eric DiNenna, Esquire, and testified on her own behalf. Also testifying for the Petitioner was Paul Lee, an Engineer and land planner. Both Protestants testified along with other witnesses who live in the area in opposition to the requested variances. The property is known as 5208 Carroll Place. It is zoned D.R. 5.5 and is improved with a

EXIST. ZONING: DR-5.5  
EXIST. USE: "RESIDENTIAL"

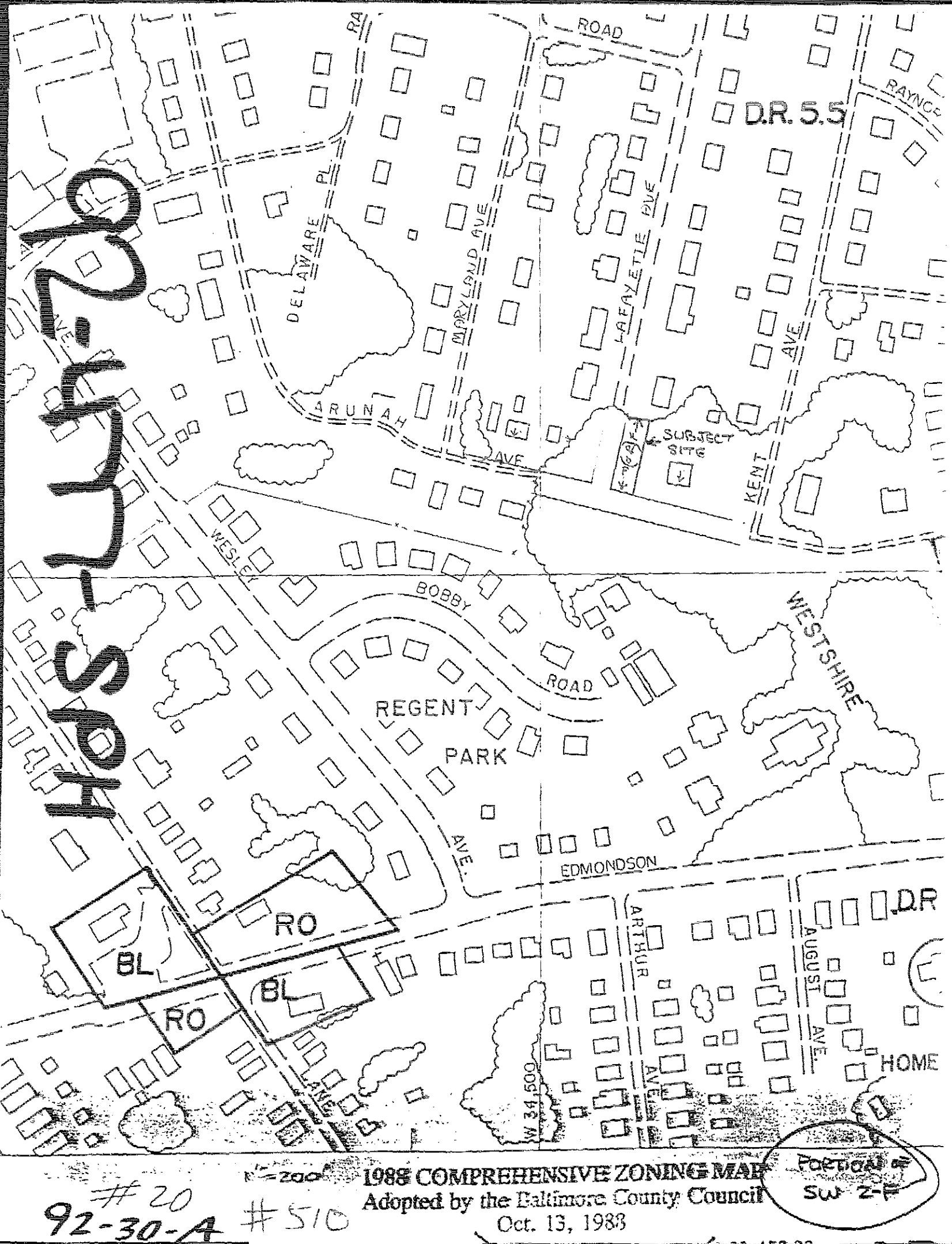












#510  
92-477-SPH

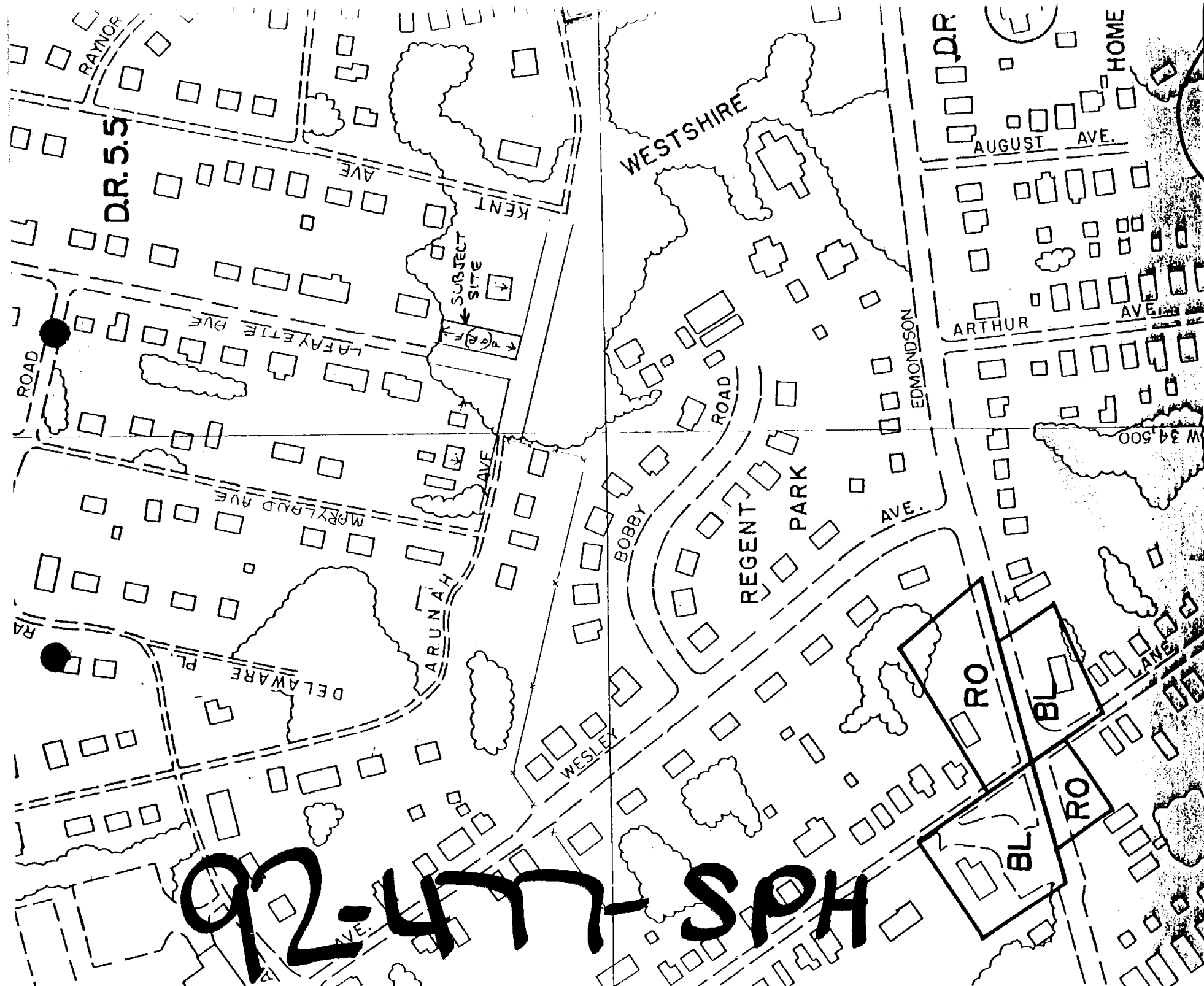
# BALTIMORE COUNTY OFFICE OF PLANNING AND ZONING PHOTOGRAPHIC MAP

PREPARED BY AIR PHOTOGRAPHICS, INC.  
MARTINSBURG, W.V. 25401

| SCALE                                        | LOCATION    | SHEET       |
|----------------------------------------------|-------------|-------------|
| 1" = 200' ±                                  | CATONSVILLE | S.W.<br>2-F |
| DATE<br>OF<br>PHOTOGRAPHY<br>JANUARY<br>1986 |             |             |



92-47-SPH



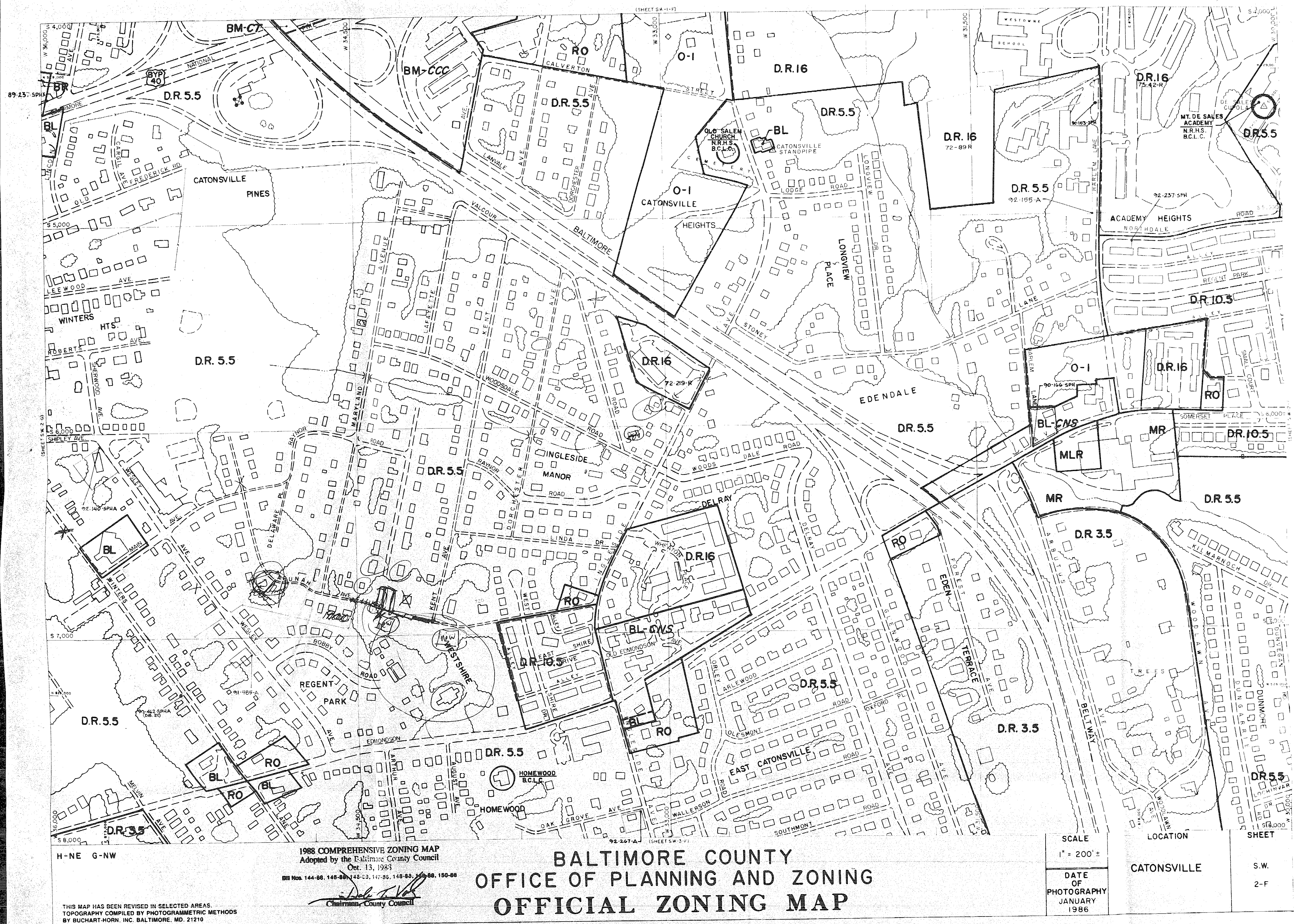
PORTION OF  
SW 2-F

1988 COMPREHENSIVE ZONING MAP  
Adopted by the Baltimore County Council  
Oct. 13, 1983

1988

# 20  
92-30-A # 510







# Plat to accompany Petition for Zoning ☒ Variance ☐ Special Hearing

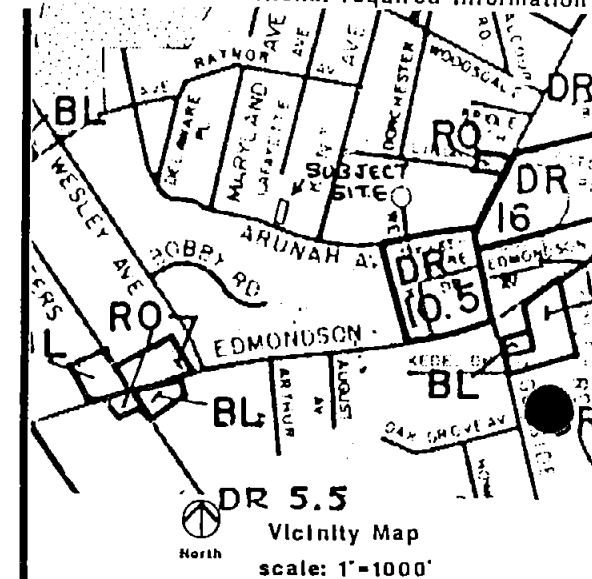
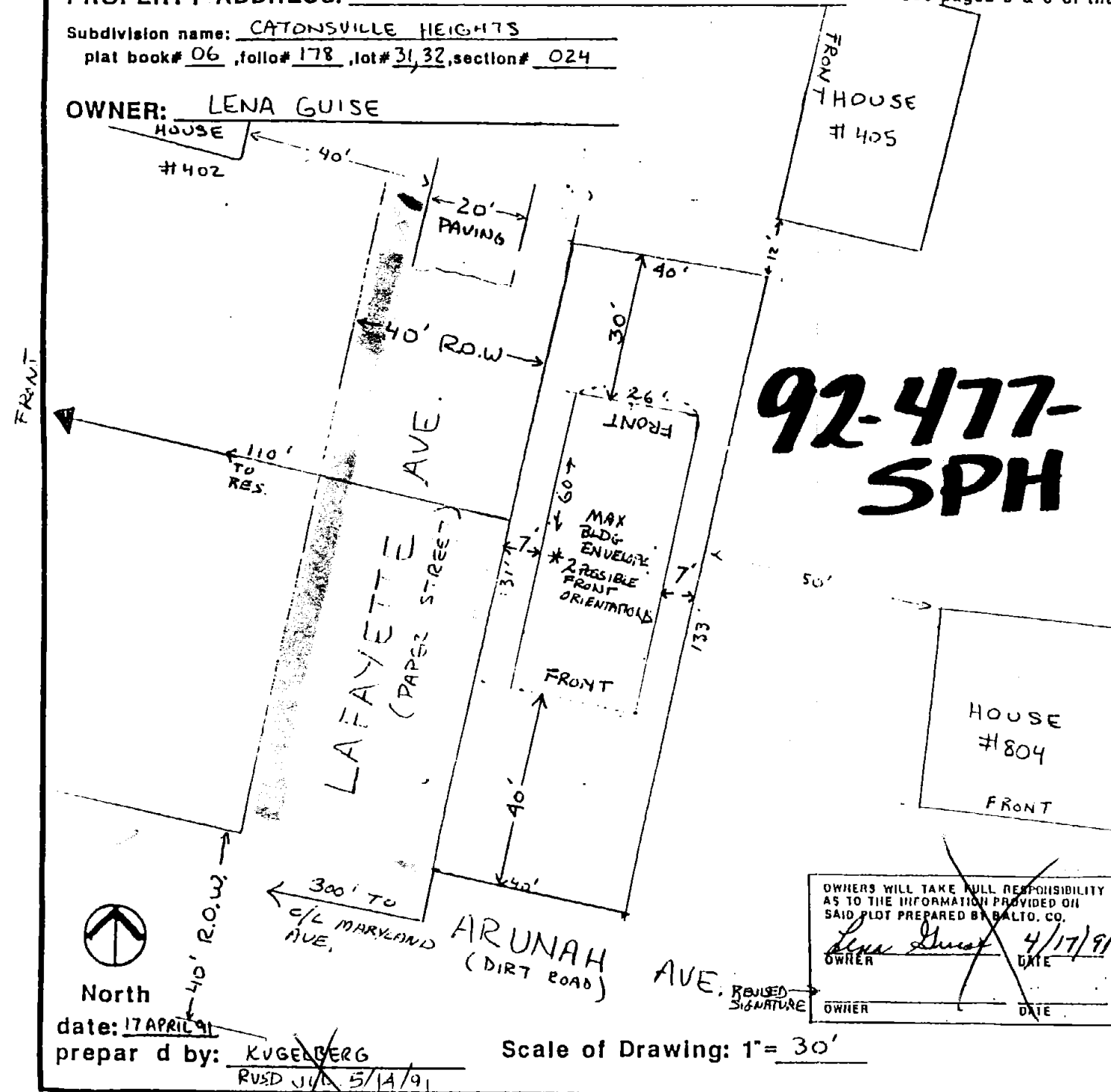
PROPERTY ADDRESS: 403 LAFAYETTE AVENUE

see pages 5 & 6 of the CHECKLIST for additional required information

Subdivision name: CATONSVILLE HEIGHTS

plat book# 06 ,folio# 178 ,lot# 31,32,section# 024

OWNER: LENA GUISE



## LOCATION INFORMATION

Councilmanic District: 1

Election District: 1

1"=200' scale map#: SW 2-F

Zoning: DR 5.5

Lot size: 0.12 acreage 5280 square feet

50' FROM PROPERTY LINE SEWER: ☒ public ☐ private

AT PROPERTY LINE WATER: ☒ public ☐ private

Chesapeake Bay Critical Area: ☐ yes ☒ no

Prior Zoning Hearings: None

92-30-A BD of Appeals

## Zoning Office USE ONLY!

reviewed by: JCM ITEM #: 510 CASE#:

OWNERS WILL TAKE FULL RESPONSIBILITY AS TO THE INFORMATION PROVIDED ON SAID PLAT PREPARED BY BALTO. CO.

Lena Guise 4/17/91  
OWNER DATE

OWNER DATE

Scale of Drawing: 1"= 30'

date: 17 APRIL 91

prepared by: KUGELBERG

REVISED JUL 5/14/91