

The Palmetto Group, Inc.	*	In the
Appellant	*	Court of Special Appeals
v.	*	No. 935
Cyril Bennett et al.	*	September Term, 1998
Appellee	*	

ORDER

It appearing that appellant is in default of Maryland Rule 8-502, the brief due on October 5, 1998, not having been filed, it is this 15th day of October, 1998, by the Court of Special Appeals, upon its own initiative, pursuant to Maryland Rule 8-602(a)(7),

ORDERED that the captioned appeal be, and it is hereby dismissed.

(CHIEF JUDGE'S SIGNATURE
APPEARS ON ORIGINAL ORDER)



LESLIE D. GRADET
CLERK

Court of Special Appeals
Courts of Appeal Building
Annapolis, Md. 21401-1699

(410) 974-3646
WASHINGTON AREA (301) 261-2920

KATHARINE M. KNIGHT
CHIEF DEPUTY

October 16, 1998

Lee R. Jacobson, Esquire
502 Washington Avenue
Suite 320
Towson, Maryland 21204

Re: The Palmetto Group, Inc. vs. Cyril Bennett et al.
No. 935, September Term, 1998

Dear Mr. Jacobson:

Enclosed is a copy of an Order of this Court dated October 15, 1998 dismissing the captioned appeal for the reason stated therein. The mandate of the Court will issue pursuant to Maryland Rule 8-606 (b).

Very truly yours,

A handwritten signature in cursive script that reads "Leslie D. Gradet".

Leslie D. Gradet
Clerk

LDG:njb
Enclosure
cc: Michael P. Tanczyn, Esquire

LAW OFFICES
MICHAEL P. TANCZYN, P.A.
 Suite 106, 606 Baltimore Avenue
 Towson, Maryland 21204
 (410) 296-8823 • (410) 296-8824
 Fax: (410) 296-8827 • Computer Fax: (410) 296-2848

FACSIMILE INFORMATION TRANSMITTAL SHEET

DATE: October 21, 1998

TIME: 3:40 p.m.

PAGE 1 OF 3

TO: Ms. Kate Milton and Mr. Arnold Jablon, Esquire

FAX NO.: 410-887-2824

FROM: **Michael P. Tanczyn**

RE: Palmetto Group, Inc. vs. Cyril Bennett et al.

Aronah Avenue, Mr. Richard Batterton

DOCUMENTS: _____

REMARKS: Following is a copy of the Order from the Court of Special Appeals
dismissing the appeal.

* * * NOTICE OF CONFIDENTIALITY * * *

The documents in this facsimile transmission are ATTORNEY PRIVILEGED AND CONFIDENTIAL and are intended for the use of the individual or entity named above. If you have received this communication in error, or are not sure whether it is privileged, please immediately notify us by telephone at (410) 296-8823 and return the original document in its entirety to us at the above address via the U. S. Postal Service. ANY DISSEMINATION, DISTRIBUTION, COPYING, OR OTHER TAKING OF ANY ACTION IN RELIANCE ON THE CONTENTS OF THIS DOCUMENT BY ANYONE OTHER THAN THE INTENDED RECIPIENT IS STRICTLY PROHIBITED.

1-2-98
PDM/A. JASLAN

SELF CREATED
HANDSHIP

430
96-340-A-The Palmetto Group
Ct AFFIRMS the CBA
1/2/98 (James T. Smith, Jr., J)
TO file

PETITION OF The Palmetto Group, Inc.
3829 Palmetto Court
Ellicott City, MD 21042

* IN THE CIRCUIT COURT
* FOR BALTIMORE COUNTY

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY

*
* Case No. 03-C-97-02976

* * * * *

OPINION & ORDER

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98-267
PDM

This is an appeal from the decision of the Board of Appeals of Baltimore County (hereinafter referred to as the "Board"). The Board denied the Petition for Variance filed by The Palmetto Group (hereinafter referred to as "Appellant"). A hearing on this appeal and argument on behalf of both parties was presented to this Court on November 18, 1997. The Court reviewed the Petition for Appeal, the record before the Board, the Reply Memorandum filed on behalf of Cyril Bennett, Alice Bennett, Tonya Bennett, Wanda L. Stirling, Ida Steward, William Tate, Geneva Tate, Harold Borden, Daniel Klevinger, Richard M. Batterton, and Martha M. Batterton, Appellees (hereinafter referred to as "Appellees").

Appellant purchased Lots 7 through 12 in Block 26 of a platted subdivision known as "Catonsville Heights" in 1984. The property is zoned DR5.5. Appellant built and sold a dwelling on Lots 7 through 9 known as 1110 Arunah Avenue.

On the remaining Lots 10 through 12 known as 1108 Arunah Avenue, Appellant proposes to construct a single-family, 26 foot by 26 foot, two-story colonial style dwelling. Lots 10 through 12 form a triangular shaped lot of .188 acres or 8,186.6 square feet. The minimum required for a single family dwelling lot in the DR5.5 zone is 6,000 square feet. Appellant's proposed dwelling

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AB

would be closer to the street than other properties within the community. Appellant filed a Petition requesting a variance to allow a front setback of 15 feet in lieu of the required 25 feet and a rear yard setback of 20 feet in lieu of the required 30 feet for Lots 10 through 12 known as 1108 Arunah Avenue.

On June 21, 1996, the Baltimore County Zoning Commissioner granted a variance to allow a front yard setback of 15 feet in lieu of the required 25 feet, and a rear yard setback of 20 feet in lieu of the required 30 feet for 1108 Arunah Avenue. Subsequently, on December 31, 1996, the Board heard Appellees' de novo appeal. Public deliberation of the case was held on January 30, 1997. The Board reversed the Baltimore County Zoning Commissioner and denied the variance in its Order dated March 4, 1997. Relying on Cromwell v. Ward, 102 Md. App. 691 (1995), the Board found that, "although the property has unique characteristics, any difficulties or hardships to the Petitioner are self-created, arising from the conveyance of the rear yard area." (Opinion at 6-7).

The question presented by Appellant in this appeal is whether the Board erred in denying its request for a variance from the front and rear yard set-back requirements. The Court of Special Appeals has stated that "[t]he order of a county zoning authority 'must be upheld upon review if it is not premised on an error of law and if [its] conclusions reasonably may be based upon the facts proven.'" Evans v. Shore Communications, 112 Md. App. 284, 298 (1996) (quoting Umerley v. People's Counsel, 108 Md. App. 497, cert. denied, 342 Md. 584 (1996)).

Specifically, the standard of review requires that the reviewing court determine whether the agency recognized and applied the correct principles of law, whether the agency's decision was

based on substantial evidence, and finally whether the agency applied the law to the facts. Id.

The parties agree in their memoranda that the issue is governed by Section 307 of the Baltimore County Zoning Regulations (BCZR) as well as the factors set forth by the Court of Special Appeals in Cromwell v. Ward, supra. Section 307.1 of the BCZR provides that the standard for granting variances is that there be special circumstances or conditions which exist which are peculiar to the land, and where strict compliance with the regulation would result in practical difficulty or unreasonable hardship.

The Court of Special Appeals set forth in Cromwell the following two-step process for determining a variance:

- (1) [T]he property whereupon structures are to be placed (or uses conducted) is-in and of itself-unique and unusual in a manner different from the nature of the surrounding properties, so much that the uniqueness and peculiarity causes the zoning provision to impact disproportionately upon that property; and
- (2) If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, i.e., a determination of whether practical difficulty and/or unreasonable hardship resulting from the disproportionate impact of the ordinance caused by the property's uniqueness, exists. Further consideration must be given to the general purpose of the zoning ordinance.

Cromwell at 694-95 (footnote omitted)(emphasis omitted). The Board relied on both Section 307 of the BCZR and Cromwell in reaching its decision to reverse the Baltimore County Zoning Commissioner.

Appellant asserts that the present circumstances warrant the variance relief requested.

Specifically, Appellant argues that the 1108 Arunah Avenue property is "unique" under BCZR

307.1 and satisfies the first prong of Cromwell. The Cromwell Court explained that the property must be “compared to surrounding properties” to determine whether it is in fact unique. The Board heard evidence from various residents of Catonsville Heights regarding the character of various properties in the community. The Board concluded that the 1108 Arunah Avenue property was unique when compared to surrounding properties in the Arunah Avenue vicinity. (Opinion at 2-3).

Appellant does not contest the Board’s determination that the subject property has inherent characteristics not shared by the other properties in the area and Appellees have not filed a cross appeal. The subject property’s uniqueness, therefore, is not an issue before this Court.

The second prong of the Cromwell test defines the issues in this appeal. The Court of Special Appeals in Cromwell stated that “practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.” Id. at 722.

The Board applied these principles and determined that the Appellant did create the practical difficulty or unnecessary hardship. The Board determined that Appellant was familiar with the entire tract of which the subject property was part and knew before its purchase of the prior conveyance by Appellant’s predecessor in title to Baltimore County. This prior conveyance was of a 20 foot by 30 foot rear yard section fronting on Delaware Place for an emergency vehicle turn-around. This conveyance reduced the rear yard area of Lot 10 which is the cause of Appellant attempting to locate the proposed residence in a manner which necessitates the variance requested.

Appellant argues that “with or without the dedicated turnaround the Petitioner would need relief from the set back requirements due to the size of the available building envelope should the relief not be granted.” (Appellant’s Memorandum at 5). The Board, however, further stated that the “[a]ctions and considerations of the Petitioner [Appellant] in platting the (first constructed) rancher on lots [sic] 7, 8 and 9 and the foreseen limitations of construction on Lots 10, 11 and 12 had to cause an awareness of the need for variances, which should be granted only under exceptional circumstances.” (Opinion at 6.)

Appellant chose to construct a single family residence on Lots 7, 8 and 9 with the knowledge that Lots 10, 11 and 12 would necessarily contain a smaller building envelope on account of the previous conveyance. Appellant knew that Lots 10, 11 and 12 would not be sufficient for constructing the proposed two story colonial residence without the requested variances.

Appellant, proceeding with its course of development respecting the entire tract of land, created the self-inflicted hardship which necessitates variance relief.

The Board applied the Cromwell approach to the facts as the Board found them in denying the requested variance. In so doing, the Board did not err in its application of the law and its factual determinations were supported by the record. Section 307.1 of the BCZR provides that a variance shall be granted “only in such manner as to grant relief without substantial injury to public health, safety, and general welfare.” The Board concluded that the relief requested by Appellant would impact the aesthetics in the neighborhood and would have a detrimental impact on the neighborhood’s property values. The Board heard testimony from neighbors and their spokesperson that the requested variance relief would result in a decline in value to the

surrounding properties. (Opinion at 2-3). The testimony also indicated that other dwellings in the neighborhood were built on three or four platted undersized lots without the need for variance relief from the uniform setbacks. The testimony and record before the Board provided substantial evidence in support of the Board's conclusion.

For the reasons stated above, the decision of the Board of Appeals of Baltimore County is hereby **AFFIRMED**, with the costs of this appeal to be paid by the Appellant.



JAMES T. SMITH, JR., Judge

Date

Dec 30, 1997

cc: Lee R. Jacobson, Esq.
Suite 320, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204

Michael P. Tanczyn, Esq.
606 Baltimore Ave., Suite 106
Towson, Maryland 21204

2 3/97

PETITION OF The Palmetto Group, Inc.
3829 Palmetto Court
Ellicott City, MD 21042

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

FOR JUDICIAL REVIEW OF THE
DECISION OF THE COUNTY BOARD OF
APPEALS OF BALTIMORE COUNTY
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

RECEIVED
COUNTY BOARD OF APPEALS
97 OCT -3 PM 3:25

IN THE MATTER OF

THE APPLICATION OF
THE PALMETTO GROUP, INC.
FOR A VARIANCE ON PROPERTY
LOCATED AT THE INTERSECTION
ARUNAH AVENUE & DELAWARE PLACE
(1108 ARUNAH AVENUE)

1ST ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT

CASE NO. 96-430-A

Case No. 03-C-97-02976

* * * * *

APPELLEES' MEMORANDUM OF LAW

CYRIL BENNETT, ALICE BENNETT, TONYA BENNETT, WANDA L.
STIRLING, IDA STEWARD, WILLIAM TATE, GENEVA TATE, HAROLD BORDEN,
DANIEL KLEVINGER, TAMMY KLEVINGER, RICHARD M. BATTERTON, and
MARTHA M. BATTERTON, Appellees, by Michael P. Tanczyn, Esq., their attorney,
in accordance with Maryland Rule 7-207, hereby file this Memorandum of Law to
assist the Court in considering this Appeal.

QUESTIONS PRESENTED

1. Whether the Decision of the County Board of Appeals of Baltimore County in denying the requested Variances was based on substantial evidence and fairly debatable and thus must be upheld on review.

STATEMENT OF THE CASE

The Petitioners, as lot owners of three unimproved lots located at 1108 Arunah Avenue in the Catonsville Heights section of western Baltimore County, filed a Petition seeking a front yard setback of 15 feet in lieu of the required 25 feet and a rear setback of 20 feet in lieu of the required 30 feet.

Upon hearing, the Baltimore County Zoning Commissioner, by Order of June 22, 1996, granted the relief requested with three (3) restrictions.

On timely appeal filed by the Protestants the matter came on for hearing *de novo* before the County Board of Appeals of Baltimore County on December 31, 1996. Following public deliberation on January 30, 1997 the County Board of Appeals of Baltimore County denied the requested Variance by its Order of March 4, 1997.

On timely appeal to the Circuit Court for Baltimore County the Petitioners sought judicial review of the denial of the requested Variance.

STATEMENT OF FACTS

The Petitioners had purchased Lots 7 through 12 in Block 26 of a platted subdivision known as "Catonsville Heights" in 1994. All of those lots were

then unimproved. Subsequently the developer/owner, Petitioner herein, built on Lots 7 through 9 a rancher dwelling known as 1110 Arunah Avenue, which it conveyed to Family Service Foundation by Deed recorded among the Land Records of Baltimore County in Liber 11426, folio 689. The Petitioner, who was then left with Lots 10 through 12, filed the instant Petition requesting Variances as noted in the heading. The property is zoned DR 5.5 and Lots 10 through 12 have a claimed lot size of .18 acre or 8,186.6 square feet.

As was noted by the Protestants before the County Board of Appeals of Baltimore County, the evidence before the County Board of Appeals included the Plat of Catonsville Heights as introduced into evidence and recorded in Plat Book WPC No. 6, folio 178, filed July 22, 1919, and the Plat submitted by Petitioners to accompany their Petition for Variance prepared by McKee & Associates, Inc. which was not sealed dated April 23, 1996 as to the common line dividing Lots 9 and 10.

The platted lot on Block 26 with a common line dividing Lots 9 and 10 recites a length of 82.62 feet whereas the unsealed plat and unsealed description of McKee & Associates, Inc. claimed a greater length than that disclosed by the plat of 86.62 feet. If the Plat of Catonsville Heights as recorded is correct and has not been amended, and there is no evidence to the contrary in the case before the Board, then the claimed square footage in the Petition exceeds the actual square footage as disclosed by the Catonsville Heights plat for these lots to less than 8,186.6 square feet as claimed in the description of the Petitioners

and by the Petitioners. Notwithstanding that, the Board afforded the Petitioners' assertion of full claim as to the existing square footage.

Protestants were all residents of this community of Catonsville Heights Subdivision, which had been filed for record in 1919 among the Land Records of Baltimore County, prior to the adoption of Comprehensive Zoning Regulations for Baltimore County.

Protestants pointed out to the County Board of Appeals in the evidence numerous examples within the platted subdivision in Block 25, Lots 1, 2, and 3, and in Block 15, Lots 49 and 50, as well as Lots 1 and 2, and in Block 4, Lots 12 and 13, and in Block 10, Lots 12 and 13, as well as Lots 26 and 27. All of the aforesaid lots form triangles as does Petitioners' three lots in Block 26; namely Lots 10 through 12. The Petitioners' claim that these lots form a unique shaped lot within the development is disproved by the existence of other lots as platted in the Catonsville Heights Subdivision.

The Petitioner's plat, which was submitted into evidence to accompany their Zoning Petition, indicated that their neighbors' properties were built out for single residences on three or four or more building lots as originally platted with greater setbacks from the front yard property line than Petitioners seek in keeping with a common scheme of development as built and as the community has evolved over time in Catonsville Heights.

The Petitioner's property on Arunah Avenue is the entrance to this community on one side and visitors to the community coming from the west would

of necessity pass the Petitioner's property upon entering the community of Catonsville Heights.

ARGUMENT

The Decision of the County Board of Appeals of Baltimore County was based on substantial evidence and fairly debatable and thus should be upheld on review.

The Court of Special Appeals recently held that "[t]he order of a county zoning authority 'must be upheld upon review if it is not premised on an error of law and if [its] conclusions reasonably may be based upon the facts proven." (Emphasis added) Evans v. Shore Communications, 112 Md.App. 284, 298 (1996); [quoting Umerley v. People's Counsel, 108 Md.App. 497, 672 A.2d 173, cert. denied, 342 Md. 584, 678 A.2d 1049 (1996)]. Additionally, it held :

...the action of the zoning authority is "fairly debatable" if based on substantial evidence; and that the fairly debatable test "accords with the general standard for judicial review of the ruling of an administrative agency, which [is] defined as whether a reasoning mind reasonably could have reached the factual conclusion the agency reached; this need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment. (Citations omitted) Id.

Further, the standard of review requires the following three-step analysis:

1. First, the reviewing court must determine whether the agency recognized and applied the correct principles of law governing the case. The reviewing court is not constrained to affirm the agency where its order "is premised solely upon an erroneous conclusion of law."

2. Once it is determined that the agency did not err in its determination or interpretation of the applicable law, the reviewing court next examines the agency's factual findings to determine if they are supported by substantial evidence; i.e., by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...

3. Finally, the reviewing court must examine how the agency applied the law to the facts. This, of course, is a judgmental process involving a mixed question of law and fact, and great deference must be accorded to the agency. The test of appellate review of this function is whether a reasoning mind could reasonably have reached the conclusion reached by the [agency], consistent with a proper application of the [controlling legal principles]. *Id.*

First, the order of the County Board of Appeals of Baltimore County was not premised upon the application of an incorrect law or an error of law. In determining whether the Petitioners had met their burden for the Variances sought, the County Board of Appeals correctly applied the appropriate provisions of the Baltimore County Zoning Regulations, Section 307, and the factors set forth most recently in Cromwell v. Ward, 102 Md.App. 691, 651 A.2d 424 (1995). The County Board of Appeals' conclusions were reasonably based on the facts proven.

On the facts shown, the Petitioners originally purchased six (6) unimproved building lots and chose to build on three (3) of them a structure which they then sold prior to the filing of this Petition. In so choosing the builders made a calculated gamble that they would be able to squeeze two (2) building lots out of the six (6) building lots where their neighbors who had previously built residences surrounding this property had chosen to build residences on lots of three (3), four (4) or more building lots, which the Petitioners elected voluntarily

not to do.

In this case the earlier development actions of the Petitioner were the actions which caused the necessity for a request for a Variance, which the Cromwell Court [supra] at page 439, again quoting Marino v. Mayor and City Council of Baltimore, 215 Md. 206, 137 A.2d 198, and Pollard v. Zoning Board of Appeals, 186 Conn 32, 438 A.2d 1186 (1982), notes "...is never considered proper grounds for a variance."

Other authority of earlier decisions standing for the same proposition that requested variances cannot be approved on a basis to afford a property owner a special privilege are Gleason v. Keswick Improvement Association, Inc., 197 Md. 46, 78 A.2d 164 (1951); Easter v. Mayor and City Council of Baltimore, 195 Md. 395, 73 A.2d 491 (1950); Carney v. City of Baltimore, 201 Md. 130, 93 A.2d 74 (1953); and Umerley v. People's Counsel for Baltimore County, 108 Md.App. 497, 672 A.2d 173, Cert. Denied 342 Md. 584, 678 A.2d 1049.

The Petitioners relied before the County Board of Appeals and in their Memorandum of Law to this Court on what they claimed to be the authority of Cromwell v. Ward [supra] to support their Petition.

The Protestants, who are all residents of Catonsville Heights Subdivision, which was filed for record in 1919 among the Land Records of Baltimore County. On the evidence presented in the form of documentary evidence as well as oral testimony to the County Board of Appeals, both by Petitioners as well as by various Protestants, it is clear that each record property

address of both the Petitioners at 1110 Arunah Avenue as well as all of the Protestants are located on numerous platted lots, none of which individually would suffice for building a residence which would meet the requirements of the Zoning Regulations for Baltimore County as a single building lot.

A quick survey of the Plat of Catonsville Heights introduced into evidence will show numerous other lots in other blocks similar to Petitioner's property in shape and size which are triangular in shape. The Petitioner's claims that its lots form a unique set of circumstances within the development is disproved by the existence of other triangular lots as platted in the Catonsville Heights Subdivision and outlined in the Statement of Facts.

More to the point, the Petitioners, when they bought the property in 1994, bought it as part of a larger tract which included Lots 7 through 12, lots then unimproved. Cromwell v. Ward (supra) first holds at page 428 that the claimed uniqueness on a particular property must be compared to other properties within the district or the platted subdivision to see if the ordinance impacts Petitioners' property in a way different from other properties located within the platted subdivision. Although the County Board of Appeals chose to find that the other lots noted by Protestants were not within the vicinity of the Petitioners' property, that is to be viewed in the context that all of the lots cited by Protestants as being of triangular shape lie within the platted community of Catonsville Heights, which was developed in a common scheme of development and the lots were sold off an approved plat for an entire subdivision.

In considering the uniqueness of a property, the Cromwell Court opined, at page 430, that:

“The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances.” Quoting with approval A. Rathkopf, 3 The Law of Zoning and Planning, Section 38 (1979).

In that same section the Cromwell Court in tracing the history of prior variance decision, at page 431, notes:

“[I]t was incumbent upon the Marinos to have shown . . . (ii) that the difficulties or hardships *were peculiar to the property in question in contrast with those of other property owners in the same district, and* (iii) that the hardship was not the result of the applicants’ own actions.” Quoting Marino v. Mayor and City Council of Baltimore, 215 Md. 206, at 218, 137 A.2d 198 (1957) (emphasis added), and Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A.2d 810 (1965).

Further in the Cromwell v. Ward historical tracing of variance decisions, at page 433, the Court notes the sludge storage case of AD + Soil, Inc. v. County Commissioners. The Court there said, at page 433,

“. . . The Court of Appeals noted that the trial court, in affirming the agency’s denial of a variance, agreed that ‘the only hardships facing Ad + Soil were of its own making’. 307 Md. at 317, 513 A.2d 893 (1986).

As applied to the instant case, the Petitioners’ calculated business decision before filing this Petition to build out Lots 7, 8, and 9 and then attempt to obtain another building envelope of a size acceptable to them by seeking the instant variances was their decision and any practical difficulty was of their making. The Petitioners could have developed Lots 7 through 12 as a single

home. A more recent case also immediately thereafter quoted in Cromwell, Red Roof Inns, Inc. v. People's Counsel, 96 Md.App. 219, 624 A.2d 1281 (1993), notes at page 434 that,

“... ‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area. . .”

Further in Cromwell, at page 435, quoting with approval decisions in accord outside the State of Maryland, as follows:

“In Walkingstick v. Board of Adjustment, 706 P.2d 899 (Okla.1985), the zoning board, having failed to comply with notice requirements, granted a permit for an oil drilling well. Amoco had expended considerable sums before the board's omission was discovered. The relevant part of the ordinance involved was similar to the one in the instant case. After the court noted that the hardships alleged were not peculiar to the subject site, it stated the general rule that ‘a hardship created by the owner . . . constitutes no valid basis for a variance . . . [D]eprivation of an advantage does not constitute an unnecessary hardship.’ 706 P.2d at 904. It concluded:

The need to expose tools to the ravages of the environment may be peculiar to Amoco. But, the language of section 44-107(2) [as does the language in the Baltimore County ordinance] clearly refers to conditions peculiar to the property, *not to activities peculiar to the owner of such property.* at 904-05 (emphasis added).”

The Court of Special Appeals noted at page 436 of Cromwell that,

“Hardship is not demonstrated by economic loss alone. It must be tied to the special circumstances, none of which have been proven here. Every person requesting a variance can indicate some economic loss. To allow a variance any time any economic loss is alleged would make a mockery of the zoning program. Further the Zanthos[es] brought their losses upon themselves (emphasis added) The application affirmatively alleged . . . that no dwelling existed . . .”

In like accord, the Cromwell court at page 437 quotes a Maine case

in accord as follows:

“In Sibley v. Inhabitants of the Town of Wells, 462 A.2d 27, at 30-31 (1983), the Supreme Judicial Court of Maine upheld the denial of a variance, holding:

[T]he need of a variance [must be] due to the unique circumstances of the property and not to the general conditions in the neighborhood;

...
... [T]he hardship [must] not [be] the result of actions taken by the appellant or a prior owner.

...
... However, the mere fact that the lot is substandard is not a unique circumstance; all the undeveloped lots in that neighborhood are of substandard size . . .

... However, when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the grounds of undue hardship.”

The Petitioners have failed to satisfy in the opinion of the County Board of Appeals the practical difficulty or unreasonable hardship prong because the County Board of Appeals found that the Petitioners' situation was a hardship of its own making (Board Opinion, page 6). As the Board aptly said:

“Referencing Cromwell, when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the grounds of undue hardship. Therefore the Board finds that, although the property has unique characteristics, any difficulties or hardships to the Petitioner are self created arising from the conveyance of the rear yard area as explained above.”
(County Board of Appeals Opinion, page 6 and 7)

The County Board of Appeals also quoted Baltimore County Zoning Regulations, Section 307.1, correctly that a variance may be granted only in such a manner as to grant relief without harm to the public safety, health or general

welfare. The Board noted the point raised by the Protestants as to the general uniformity of setbacks for dwellings in the neighborhood without the need for variances on holdings including three or four platted undersized lots, and the Board found that the community would be impacted and that the proposed construction with the variances requested could have a detrimental impact on property values in this community.

To conclude, the legality of the denial of the variances is, at a minimum, "fairly debatable" and a reasoning mind reasonably could have reached the Board's factual conclusion stated in the preceding paragraph and in full in the Board's Opinion that the Petitioners' dilemma arose from hardships of its own creation and to allow the Petitioners the relief requested could have detrimental impact on the remainder of the community built out on more numerous and larger lots, which the Petitioner had with its original purchase in 1994 before it chose to split the lots and take a chance on getting a variance for the remainder.

The Order of the County Board of Appeals of Baltimore denying the Petition for Variances was not based on an error of law, was reasonably based on the facts proven through substantial evidence before the County Board of Appeals, and the issue is fairly debatable. Therefore, the Order of the County Board of Appeals of Baltimore County should be affirmed.

CONCLUSION

The Appellees, Protestants below, respectfully request this Honorable Court affirm the County Board of Appeals of Baltimore County in its decision to

deny the Variances requested by Petitioners.

Respectfully submitted,

MICHAEL P. TANCZYN, ESQ.
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
Telephone: (410) 297-8823
Attorney for the Appellees

I HEREBY CERTIFY that, on this 29 day of July, 1997, a copy of the foregoing Appellees' Memorandum of Law, was mailed, postage prepaid, to Lee R. Jacobson, Esquire, Jacobson & Myerberg, P.A., Nottingham Centre, Suite 320, 502 Washington Avenue, Towson, Maryland, 21204, attorney for Appellants; Peter Max Zimmerman, Esquire, Baltimore County People's Counsel, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland, 21204; and to the Secretary, County Board of Appeals of Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland, 21204.


MICHAEL P. TANCZYN, ESQ.

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF THE PALMETTO GROUP, INC.
3829 Palmetto Court
Ellicott City, Maryland 21042

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204

CIVIL
ACTION
No. 3-C-97-02976

IN THE CASE OF: IN THE MATTER OF THE
APPLICATION OF
THE PALMETTO GROUP, INC.
FOR A ZONING VARIANCE ON PROPERTY
LOCATED AT THE INTERSECTION OF ARUNAH
AVENUE AND DELAWARE PLACE
(1108 ARUNAH AVENUE)
1ST ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT
CASE NO. 96-430-A

* * * * *

PROCEEDINGS BEFORE THE ZONING COMMISSIONER
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now come Robert O. Schuetz, S. Diane Levero, and Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, and in answer to the Petition for Judicial Review directed against them in this case, herewith return the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND
DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
OF BALTIMORE COUNTY

No. 96-430-A

April 23, 1996

Petition for Variance filed by Lee Jacobson, Esquire, on behalf of Eric Bers, President of The Palmetto Group, Inc. to allow a front setback of 15 ft. in lieu of the required 25 ft., and a rear setback of 20 ft. in lieu of the required 30 ft.

May 9

Publication in newspaper.

RECEIVED AND FILED
MAY 11 1996
ST. JAMES

May 24, 1996 Certificate of Posting of property.

June 5 ZAC Comments.

June 10 Hearing held on Petition by the Zoning Commissioner.

June 22 Order of the Zoning Commissioner in which Petition for Variance was GRANTED with restrictions.

July 19 Notice of Appeal filed by Richard M. Batterton on behalf of the Arunah Avenue Community.

December 31 Hearing before the Board of Appeals. At conclusion, Memorandum in Support submitted by Lee R. Jacobson, Counsel for Petitioner.

January 10, 1997 Protestant's Responsive Memorandum filed by Richard M. Batterton.

January 21 Petitioner's Response to Protestant's Responsive Memorandum filed by Lee R. Jacobson, Jr., Esquire.

January 23 Letter from Richard M. Batterton to Board; objection to inclusion of "Petitioner's Response to Protestant's Responsive Memorandum".

January 24 Letter from County Board of Appeals to Richard Batterton: both attachments to Petitioner's Response to Protestant's Responsive Memorandum have been pulled and will not be considered part of Petitioner's Response.

January 27 Reply letter to Protestant's correspondence dated January 23, 1997 from Lee Jacobson, Esquire.

January 30 Deliberation conducted by the Board.

March 4 Opinion and Order of the Board in which the Petition for Variance was DENIED.

March 25 Petition for Judicial Review filed in the Circuit Court for Baltimore County by Lee R. Jacobson, Esquire, on behalf of The Palmetto Group, Inc.

March 27 Copy of Petition for Judicial Review received by the Board of Appeals from the Circuit Court for Baltimore County.

March 27, 1997 Certificate of Notice sent to interested parties.

Petitioner's Exhibit Nos. 1-Plan
2-Plat to accompany Petition
3-Photos (11"x17" Boards in CBA closet)
4-Photos (11"x17" Boards in CBA closet)
5-Photos (11"x17" Boards in CBA closet)
6-Curriculum Vitae, James D. Grammer
7-Record Plat -Catonsville Heights

No Protestant's Exhibits

May 13, 1997 Transcript of testimony filed.

May 13, 1997 Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board. However, all tangible material or evidence of an unwieldy or bulky nature will be retained in the Board of Appeals office and upon request of the parties or the Court will be transmitted to the Court by whomever institutes the request.

Respectfully submitted,

Charlotte E. Radcliffe

Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals of Baltimore
County, Room 49, Basement - Old Courthouse
400 Washington Avenue
Towson, MD 21204 (410) 887-3180

cc: Michael P. Tanczyn, Esquire
Richard M. Batterton
Lee Jacobson, Esquire
Eric L. Bers /The Palmetto Group
People's Counsel for Baltimore County
Virginia W. Barnhart, County Attorney

PETITION OF THE PALMETTO *
GROUP, INC. *
3829 Palmetto Court *
Ellicott City, Maryland 21042 *

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

FOR JUDICIAL REVIEW OF THE *
DECISION OF THE COUNTY BOARD *
OF APPEALS OF BALTIMORE COUNTY *
Room 49, Old Courthouse, *
400 Washington Avenue, *
Towson, Maryland 21204, *

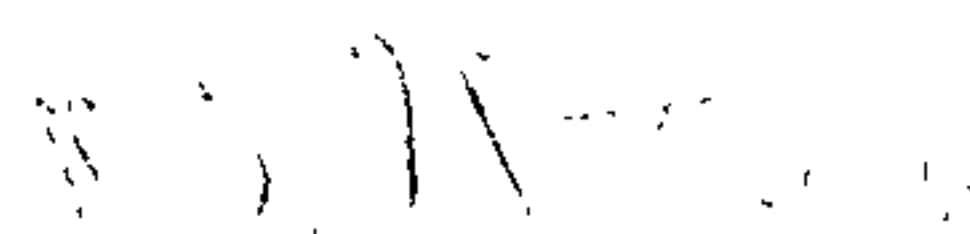
IN THE CASE OF: IN THE MATTER *
OF THE APPLICATION OF *
THE PALMETTO GROUP, INC. *
FOR A ZONING VARIANCE ON *
PROPERTY LOCATED AT THE *
INTERSECTION OF ARUNAH AVENUE *
AND DELAWARE PLACE *
(1108 ARUNAH AVENUE) *
1ST ELECTION DISTRICT *
1ST COUNCILMANIC DISTRICT *
CASE NO. 96-430-A *

CIVIL ACTION NO. 3-C-97-02976

* * * * *

RESPONSE TO PETITION

NOW COMES, Cyril Bennett, Alice Bennett, Tonya Bennett,
Wanda L. Stirling, Ida Steward, William Tate, Geneva Tate, Harold
Borden, Daniel Klevinger, Tammy Klevinger, Richard M. Batterton,
and Martha M. Batterton, parties below by their attorney, Michael
P. Tanczyn, Esq., who intend to participate in the action for
Judicial Review.


MICHAEL P. TANCZYN, ESQ.
606 Baltimore Avenue, Suite 106
Towson, Maryland 21204
Telephone: (410) 297-8823

RECEIVED
COUNTY BOARD OF APPEALS
97 APR 25 PM 1:22

I HEREBY CERTIFY that, on this 25th day of April, 1997, a copy of the foregoing was mailed, postage prepaid, to Lee R. Jacobson, Esquire, Jacobson & Myerberg, P.A., Nottingham Centre, Suite 320, 502 Washington Avenue, Towson, Maryland, 21204, attorney for Petitioner; Peter Max Zimmerman, Esquire, Baltimore County People's Counsel, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland, 21204; and to the County Board of Appeals of Baltimore County, Old Courthouse, Room 49, 400 Washington Avenue, Towson, Maryland, 21204.


MICHAEL P. TANCZYN, ESQ.

Law Offices
MICHAEL P. TANCZYN, P.A.

Suite 106, 606 Baltimore Avenue
Towson, Maryland 21204
(410) 296-8823 - (410) 296-8824
Fax: (410) 296-8827
Computer Fax: (410) 296-2848

April 25, 1997

Civil Clerk
Baltimore County Circuit Court
County Courts Building
401 Bosley Avenue
Towson, MD 21204

Re: Petition of The Palmetto Group, Inc.
County Board of Appeals Case No. 96-430-A
Circuit Court Case No. 3-C-97-02976

Dear Madam Clerk:

Enclosed herewith please find Response to Petition for filing in the above matter.

Very truly yours,



Michael P. Tanczyn

MPT/ed
Enclosure

cc: Lee R. Jacobson, Esq.
Peter Max Zimmerman, Esq.
County Board of Appeals of Baltimore County
Clients

RECEIVED
COUNTY BOARD OF APPEALS
97 APR 25 PM 1:43

IN THE CIRCUIT COURT
FOR BALTIMORE COUNTY

PETITION OF THE PALMETTO GROUP, INC.
3829 Palmetto Court
Ellicott City, Maryland 21042

FOR JUDICIAL REVIEW OF THE DECISION OF
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY
Room 49, Old Courthouse, 400 Washing-
ton Avenue, Towson, MD 21204

CIVIL
ACTION
No. 3-C-97-02976

IN THE CASE OF: IN THE MATTER OF THE
APPLICATION OF
THE PALMETTO GROUP, INC.
FOR A ZONING VARIANCE ON PROPERTY
LOCATED AT THE INTERSECTION OF ARUNAH
AVENUE AND DELAWARE PLACE
(1108 ARUNAH AVENUE)
1ST ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT
CASE NO. 96-430-A

* * * * *

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the provisions of Rule 7-202(e) of the Maryland Rules of Procedure, Robert O. Schuetz, S. Diane Levero, Harry E. Buchheister, Jr., constituting the County Board of Appeals of Baltimore County, has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely, Lee R. Jacobson, Esquire, JACOBSON & MYERBERG, P.A., Suite 320, Nottingham Centre, 502 Washington Avenue, Towson, Maryland 21204, Counsel for Petitioner; Eric Bers, President, The Palmetto Group, Inc., 3829 Palmetto Court, Ellicott City, Maryland 21042, Petitioner; Richard M. Batterton, 1005 Arunah Avenue, Baltimore, Maryland 21228, spokesman for Protestants; and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington Avenue, Room 47, Towson, Maryland 21204; a copy of which Notice is attached hereto

and prayed that it may be made a part hereof.

RECEIVED AND FILED
97 MAR 27 AM 11:51

Charlotte E. Radcliffe
Charlotte E. Radcliffe, Legal Secretary
County Board of Appeals, Room 49 -Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to Lee R. Jacobson, Esquire, JACOBSON & MYERBERG, P.A., Suite 320, Nottingham Centre, 502 Washington Avenue, Towson, Maryland 21204, Counsel for Petitioner; Eric Bers, President, The Palmetto Group, Inc., 3829 Palmetto Court, Ellicott City, Maryland 21042, Petitioner; Richard M. Batterton, 1005 Arunah Avenue, Baltimore, Maryland 21228, spokesman for Protestants; and Peter Max Zimmerman, PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, 400 Washington Avenue, Room 47, Towson, Maryland 21204, this 27th day of March, 1997.

Charlotte E. Radcliffe

Charlotte E. Radcliffe Legal Secretary
County Board of Appeals, Room 49 - Basement
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410) 887-3180



County Board of Appeals of Baltimore County

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

March 27, 1997

Lee R. Jacobson, Esquire
JACOBSON & MYERBERG, P.A.
Suite 320, 502 Washington Avenue
Towson, MD 21204-4523

RE: Civil Action No. 3-C-97-2976
THE PALMETTO GROUP, INC.

Dear Mr. Jacobson:

In accordance with Rule 7-206(c) of the Maryland Rules of Procedure, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with Rule 7-206(c).

Enclosed is a copy of the Certificate of Notice which has been filed in the Circuit Court.

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

c: The Palmetto Group, Inc.





County Board of Appeals of Baltimore County

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

March 27, 1997

Richard M. Batterton
1005 Arunah Avenue
Baltimore, MD 21228

RE: Civil Action No. 3-C-97-02976
THE PALMETTO GROUP, INC.

Dear Mr. Batterton:

Notice is hereby given, in accordance with the Maryland Rules of Procedure, that a Petition for Judicial Review was filed on March 25, 1997, in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to Rule 7-202(d)(2)(B).

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. 3-C-97-02976.

Enclosed is a copy of the Certificate of Notice, which has been filed in the Circuit Court.

Very truly yours,

Charlotte E. Radcliffe
Charlotte E. Radcliffe
Legal Secretary

Enclosure

c: Alice L. and Tonya M. Bennett
Ms. Wanda L. Stirling
Ms. Ida Steward
Mr. William J. Tate
Mr. Richard Dahl
People's Counsel for Baltimore County
Lawrence E. Schmidt /PDM
Arnold Jablon /PDM
Virginia W. Barnhart, County Attorney



IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF The Palmetto Group, Inc.
3829 Palmetto Court
Ellicott City, Maryland 21042

FOR JUDICIAL REVIEW OF THE DECISION OF THE
COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21228

CIVIL
ACTION

No. C97-2976

IN THE MATTER OF

THE APPLICATION OF
THE PALMETTO GROUP, INC.
FOR A VARIANCE ON PROPERTY
LOCATED AT THE INTERSECTION
ARUNAH AVENUE AND DELAWARE PLACE
(1108 ARUNAH AVENUE)

1ST ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT

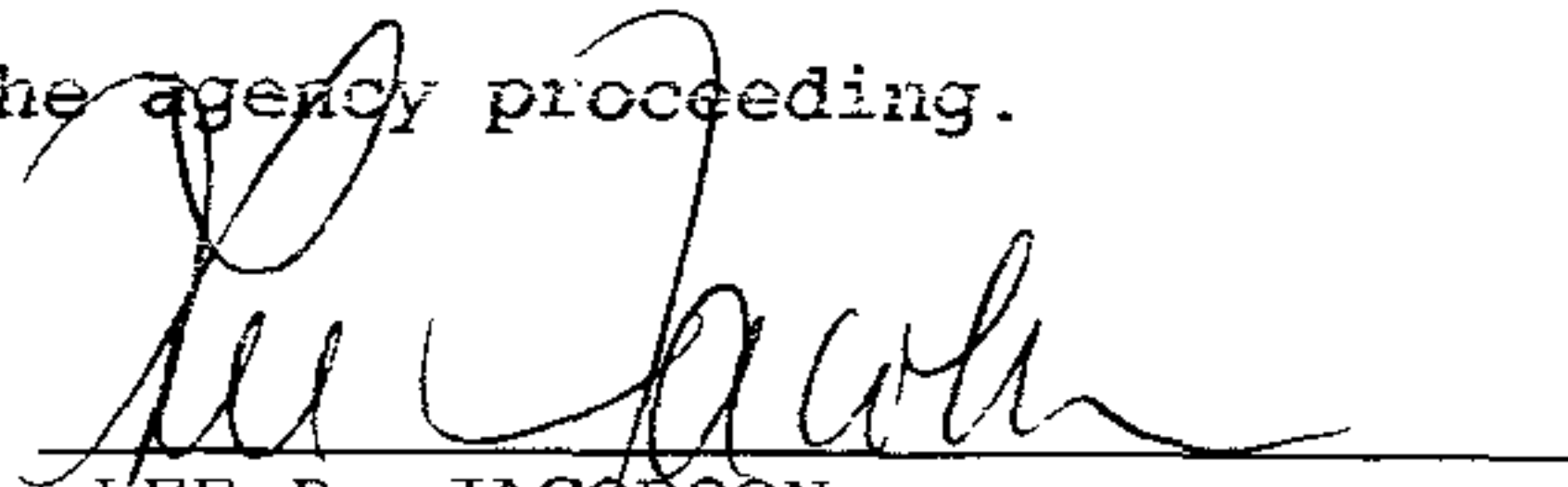
CASE NO. 96-430-A

* * * * *

PETITION FOR JUDICIAL REVIEW

Petitioner, THE PALMETTO GROUP, INC., by it's attorney, Lee R. Jacobson and Jacobson & Myerberg, P.A., files this petition for judicial review of the decision of the County Board of Appeals of Baltimore County, of March 4, 1997.

Petitioner, was a party to the agency proceeding.



LEE R. JACOBSON
JACOBSON & MYERBERG, P.A.
Suite 320, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
(410) 828-7090
Attorney for Petitioner

FILED MAR 25 1997

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258

Case Number: 03-C-97-002976

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Old Courthouse Room 49
400 Washington Avenue
Towson, MD 21228

IN THE MATTER OF	*	BEFORE THE
THE APPLICATION OF	*	COUNTY BOARD OF APPEALS
<u>THE PALMETTO GROUP, INC.</u>	*	
FOR A VARIANCE ON PROPERTY	*	OF
LOCATED AT THE INTERSECTION	*	BALTIMORE COUNTY
OF ARUNAH AVENUE AND DELAWARE	*	
PLACE (1108 ARUNAH AVENUE)	*	CASE NO. 96-430-A
1ST ELECTION DISTRICT	*	
1ST COUNCILMANIC DISTRICT	*	
* * * *	*	* * * *

O P I N I O N

This matter comes before the Board on appeal of the decision by the Zoning Commissioner dated June 21, 1996 granting a variance to allow a front yard setback of 15 feet in lieu of the required 25 feet, and a rear yard setback of 20 feet in lieu of the required 30 feet for the property known as 1108 Arunah Avenue in the subdivision of Catonsville Heights.

The property is a triangular-shaped lot bounded by Arunah Avenue and Delaware Place. It is zoned D.R. 5.5 and has an area of .188 acre or 8,186.6 sq. ft., substantially greater than the 6,000 sq. ft. minimum required for a single-family dwelling in the D.R. 5.5 zone.

The Petitioner, The Palmetto Group, Inc., was represented by Lee R. Jacobson, Esquire. Also appearing on behalf of The Palmetto Group was Eric Bers, President. Participating as spokesman for the Protestants was Richard M. Batterton of 1005 Arunah Avenue.

This case was heard in its entirety on December 31, 1996. An interval of ten days was afforded Mr. Batterton to submit a Responsive Memorandum to Petitioner's "Memorandum in Support," which was submitted at the conclusion of the hearing. The Public Deliberation of the case was held on Thursday, January 30, 1997.

In testimony before this Board, Mr. Bers reviewed plans for constructing a single-family, 26-foot by 26-foot, two-story colonial-style dwelling on a combined three-lot parcel, emphasizing the triangular configuration of the site and the essential need for front and rear yard setbacks in order to build a house compatible with the neighborhood. Mr. Bers asserted that the proposed dwelling of 1,400 to 1,500 sq. ft. located on the triangular parcel would be closer to the street because of the "uniqueness" of his property, unlike any other in the community. Testimony revealed that the previous owner had conveyed by deed a rear 20-foot by 30-foot section of the site to Baltimore County for a turn-around for emergency vehicles. Mr. Bers emphasized that, without the variances for front and rear yard setbacks, he would lose the right to use his property as permitted by the laws of Baltimore County.

James Grammer, surveyor and project manager with McKee & Associates, testified to his knowledge of the subject site as triangular and unique, with a limited building envelope. With the granting of the variances, he felt the spirit and intent of the zoning regulations would be maintained. Mr. Grammer further asserted that the site was unique when compared to properties in the vicinity of Arunah Avenue, but not when compared to the entire subdivision of Catonsville Heights.

Daniel Lee Clevenger, resident at 1006 Arunah Avenue for eight years, testified to his opposition to construction of the proposed house. Describing the parcel as an eyesore of weeds and trash, Mr. Clevenger spoke of personally maintaining the wooded parcel and of

an earlier inquiry to purchase the lots. With the proposed house on the subject site, Mr. Clevenger anticipated a decline in the value of his house.

Cyril P. Bennett, a resident of 1105 Arunah Avenue for eighteen years and a lifetime resident of the community, testified as the first to build a modern house in the Arunah Avenue location, and of his observation of all subsequent houses built. Mr. Bennett remarked that he never had cause to protest as all were built under the codes and regulations of the County. The variances should not be granted in this matter because the site would not be comparable to others that have met setback requirements. He argued that to grant the setback variances would devalue his property and lifetime investment.

Richard Batterton, spokesman for the neighborhood protestants, and a resident since 1993 when he purchased the last house built in the area by a developer, testified that all the homes complied with the Baltimore County Zoning Regulations (BCZR). He claimed that as an experienced developer, Petitioner should have seen the risk at hand for the remaining three lots of his original six-lot parcel. With Petitioner's planned construction of a rancher at 1110 Arunah Avenue, on three lots of his six-lot parcel, he should have recognized a property at risk. In response to Petitioner's Memorandum, Mr. Batterton asserts that Palmetto, Inc., "took a chance on squeezing two building lots out of six platted lots of a size much smaller than those of surrounding properties."

The statute which governs the granting of variances, as set

out in Cromwell v. Ward, 102 Md.App. 691 (1995), defines the variance determination as a two-step process:

- (1) The subject property is unique or unusual in a manner different from the nature of the surrounding properties, so much that the uniqueness and peculiarity cause the zoning provision to impact disproportionately upon the property; and
- (2) If the property is considered unique or unusual, the second step in the process is to determine if practical difficulty or unreasonable hardship results from the disproportionate impact of the ordinance on the property's uniqueness. Further consideration must be given to the "general purpose" of the zoning ordinance.

Section 307.1 of the BCZR provides the standard for granting variances -- that there be special circumstances or conditions which exist which are peculiar to the land, and where strict compliance with the regulation would result in practical difficulty or unreasonable hardship.

Evidence indicates that Petitioner purchased six (6) undersized lots in 1994, numbered 7 through 12. On lots 7, 8 and 9, a ranch-style house was built on the 20-foot wide lots on Arunah Avenue requiring no variances. The question of uniqueness arises as to the remaining three lots (10, 11 and 12) and the triangular configuration they form, requiring setbacks for construction not possible without variances from Section 1B02.3 of the BCZR.

Protestants argue several salient points of clarification as

to the sole uniqueness of the property in the community. They identified at least four triangular properties elsewhere in the Catonsville Heights subdivision. The Board notes that Cromwell states "compared to surrounding properties." The examples identified by Protestants are not close by. If focusing on the Arunah Avenue vicinity, the Board recognizes that the triangular parcel comprised of Lots 10, 11 and 12 is unique.

In particular, the previous owner conveyed to the County a 20-foot by 30-foot rear yard section fronting on Delaware Place for an emergency vehicle turn-around, thereby reducing the rear yard area of lot #10, an act now creating a difficulty for the present owner. This action, perhaps unrealized by Petitioner in 1994, has necessitated a positioning of the proposed house so that the front and rear yard variances are now needed as a result of that conveyance. (Petitioner's Exhibit 2)

It is evident to the Board that the zoning regulation impacts the subject property in a way different from other similarly shaped sites in the community by the taking of the rear yard area by the County rather than the County completing the roadbed of Delaware Place to a junction with Arunah Avenue. This gives the subject property an inherent characteristic not shared by other properties in the area.

However, turning to the second prong of Cromwell as to the practical difficulty or unreasonable hardship, it is reasonable to presume that Petitioner carefully studied the entire tract of six lots in 1994 and knew of the rear yard conveyance to the County

highway department. Actions and considerations of the Petitioner in platting the rancher on lots 7, 8 and 9 and the foreseen limitations of construction on Lots 10, 11 and 12 had to cause an awareness of the need for variances, which should be granted only under exceptional circumstances. The Board takes reference from Cromwell that the hardship must not be the result of actions taken by a previous owner.

Section 307.1 of the BCZR states that a variance may be granted only in such a manner as to grant relief without harm to public safety, health and general welfare. The front yard variance of 15 feet is especially troublesome to the Protestants as they note the general uniformity of setback for dwellings in the neighborhood built without the need for variances on three or four platted undersized lots. The Board concurs that aesthetics would be impacted and that the proposed construction on the subject site with variances could have a detrimental impact on property values.

The Board concurs with Petitioner that the property has a uniqueness, but one facing hardship of its own making. The rear yard conveyance necessitated a 30-foot side yard setback rather than 10 feet, and the subsequent need for the front yard setback of 15 feet and rear yard setback of 20 feet (Petitioner's Exhibit 2). Referencing Cromwell, when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the grounds of undue hardship.

Therefore, the Board finds that, although the property has unique characteristics, any difficulties or hardships to the

Petitioner are self-created, arising from the conveyance of the rear yard area as explained above. For these reasons, the variances requested should be denied.

O R D E R

THEREFORE, IT IS THIS 4th day of March, 1997
by the County Board of Appeals of Baltimore County

ORDERED that the request for variance from Section 1B02.3 of the Baltimore County Zoning Regulations to allow a front yard setback of 15 feet in lieu of 25 feet, and a rear yard setback of 20 feet in lieu of 30 feet be and is hereby DENIED.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Robert O. Schuetz
Robert O. Schuetz, Chairman

S. Diane Levero
S. Diane Levero

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

(R)

THE PALMETTO GROUP, INC.

Petitioner

* BEFORE THE
* COUNTY BOARD
* OF APPEALS
* FOR BALTIMORE COUNTY
* CASE NO.: 96-430-A

* * * * *

PETITIONER'S RESPONSE TO
PROTESTANT'S RESPONSIVE MEMORANDUM

The Palmetto Group, Inc, by Lee R. Jacobson and Jacobson & Myerberg, P.A. submit this Memorandum in response to the Protestant's Responsive Memorandum.

The Protestant's in their responsive memorandum initially raise a question as to the length of a common line dividing lots 9 and 10 in Block 26 on the Plat of Catonsville Heights. Much is made by the Protestant's of the fact that the original Plat of Catonsville Heights recites a length of 82.62 feet for the common dividing line between lots 9 and 10, whereas the description of McKee and Associates recites a greater length of 86.62 feet. In fact, the description provided by McKee and Associates is supported by a survey performed on September 26, 1993 by Paul Lee Engineering Inc., a copy of which is attached hereto and prayed to be made a part hereof. The Paul Lee Engineering survey notes an error on the subdivision plat reciting the correct length of 86.61 feet, the length called in the McKee survey. Even given the error and accepting for a moment the shorter length recited in the subdivision plat, the lots comprising the subject parcel are still well over

JACOBSON &
MYERBERG, P A
SUITE 320
NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON MD 21204
TELEPHONE 828-7090

the 6,000 square foot minimum required for a single family dwelling lot in a D.R. 5.5 zone.

Both the Petitioner and Protestant's rely on the case of Cromwell v Ward, 102 Md App. 691, 651 A.2d 424 (1995) in support of their respective positions regarding the requested variance. Cromwell notes that the variance process is at least two steps. The threshold question or first step requires a finding that the property whereon the structure is to be placed "is in and of itself unique and unusual in a manner different from the nature of the surrounding properties". Though Cromwell provides no definition of "unique and unusual" The American Heritage Dictionary Second Edition defines unique as being without equal, and unusual as not common or ordinary. Protestant's note that examples abound where triangular shaped lots are created within the platted subdivision and cite six (6) examples. What the Protestant's have failed to point out is that they have found six (6) examples of irregularly shaped lots out of a total of one thousand three hundred sixty nine (1,369) lots in the platted Catonsville Heights subdivision. Are seven (7) triangular lots common or ordinary when compared to the remaining one thousand three hundred sixty two (1,362). The Petitioner avers that by anyone's definition seven (7) triangularly shaped lots out of one thousand three hundred sixty nine (1,369) is clearly unique and unusual.

Protestant's further state that the requested variance

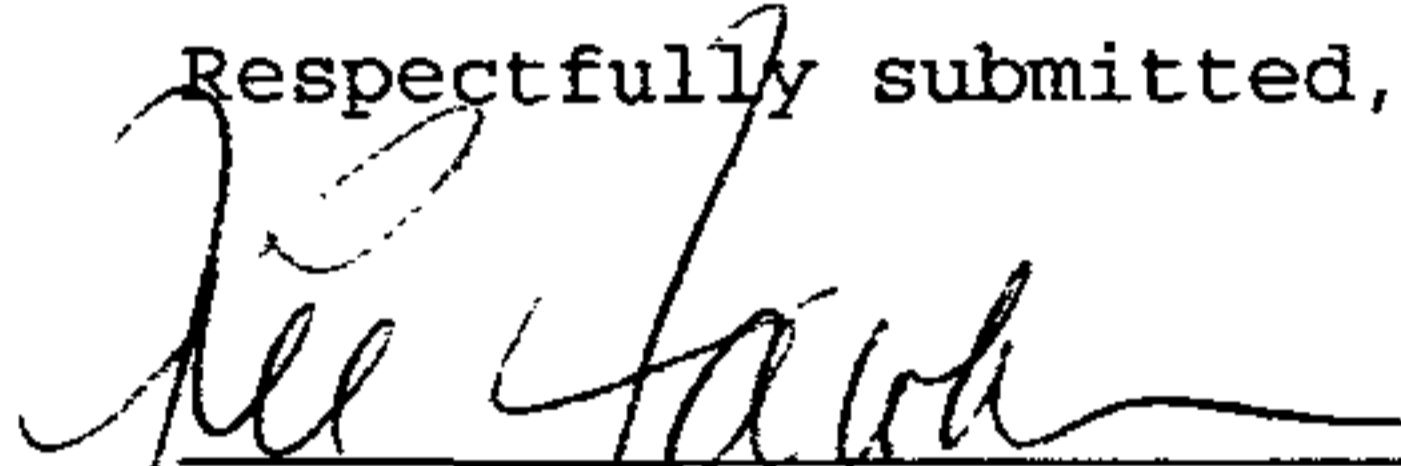
would have an adverse impact on property values in the community, as the dwelling proposed for the Petitioner's property stands at the western entrance to the community. In fact, the western entrance to the community serves a mere 85 lots (lots not homes) which comprise only 6% of the platted lots in the subdivision. Further, the impact alluded to by the Protestant's is grossly overstated considering that the dwelling proposed by the Petitioner is nearly identical to existing homes located across from the Petitioner's property.

The cases of Red Roof v. Peoples Counsel, 96 Md. App. 219, 624 A.2d 1281 (1993) and Sibley v. Inhabitants of the Town of Wells, 462 A.2d 27, (1983) cited by the Protestant's in support of their position that the hardship faced by the Petitioner is of his own making are clearly inappropriate for consideration by the Board. The irregular lots were created in 1919 well before any zoning regulations were in effect in Baltimore County. When developed almost 80 years ago the subdivision plan called for a home on each lot. Until such time as the zoning regulations were promulgated the Petitioner would have been entitled to three homes on his property. Thus, the regulations' impact on the property creates the hardship as the regulations were intended to apply to normal shaped lots. Here, the Petitioner's property has 36% more area than required by the County for single family development but can't meet the setback requirements due to it's unusual configuration.

Finally, like Red Roof Inns, the Sibley case is distinguished from the matter at issue as it refers to "undeveloped lots...of substandard size". As previously noted the Petitioner's lot meets and exceeds the area requirement.

In conclusion, after due consideration is given to the testimony provided before the Board and the Memoranda submitted by the Petitioner, the Petitioner respectfully requests that the Petition for Variance from the Baltimore County Zoning Regulations to allow a front setback of 15 feet in lieu of the required 25 feet, and a rear setback of 20 feet in lieu of the required 30 feet be granted and the findings of fact and conclusions of law of the Zoning Commissioner upheld.

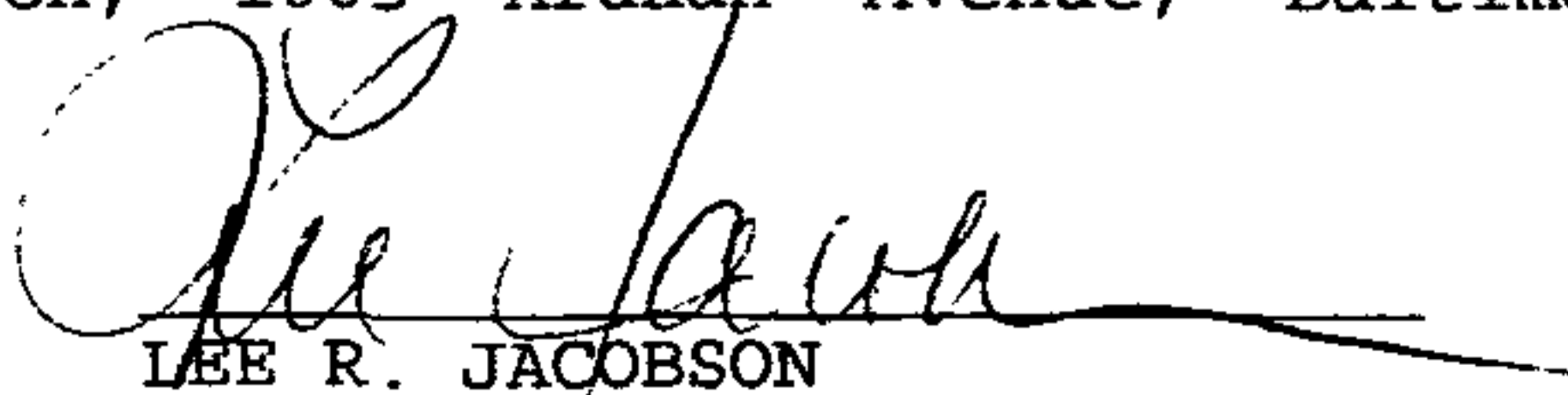
Respectfully submitted,



LEE R. JACOBSON
JACOBSON & MYERBERG, P.A.
Suite 320, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
828-7090

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on January 20, 1997, a copy of the foregoing Petitioner's Response to Protestant's Responsive Memorandum was mailed postage prepaid, to Richard M. Batterton, 1005 Arunah Avenue, Baltimore, Maryland 21228.



LEE R. JACOBSON

Paul Lee P.E.

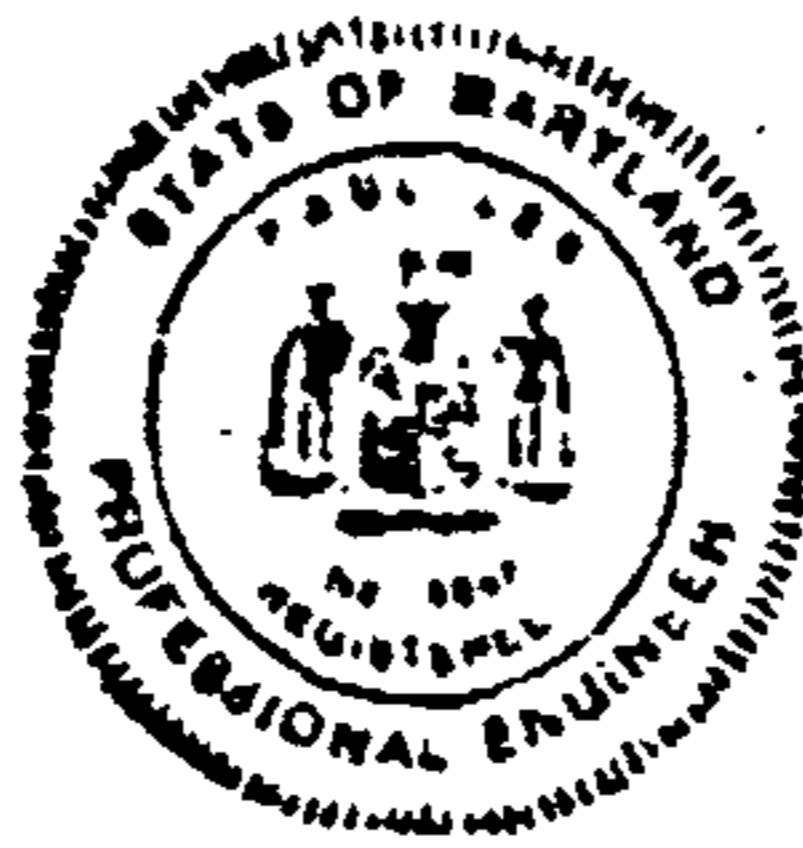
*Paul Lee Engineering Inc.
304 W. Pennsylvania Ave.
Towson, Maryland 21284
410-821-5941*

DESCRIPTION

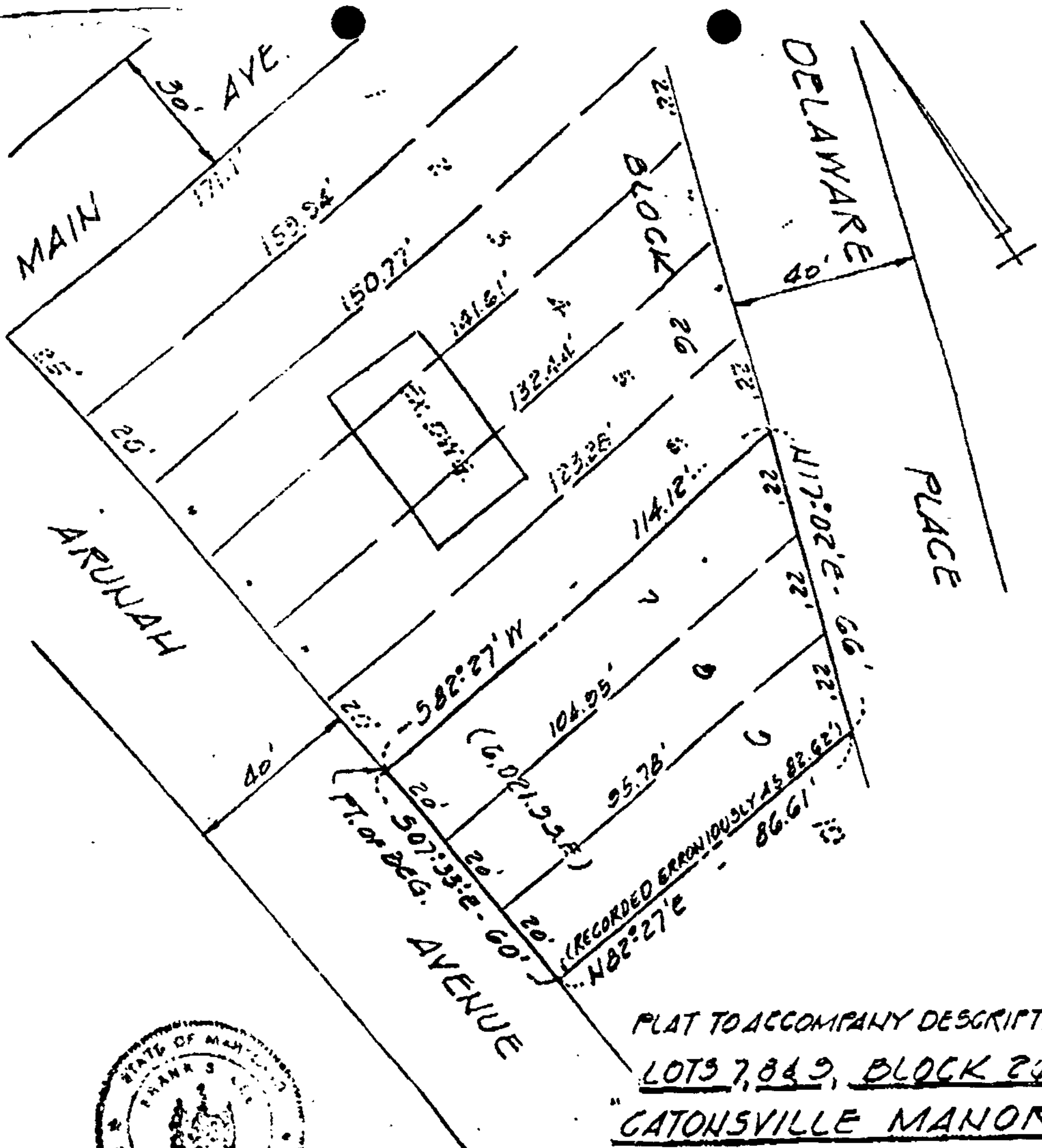
LOTS 7, 8, & 9, BLOCK 26, CATONSVILLE MANOR, 6/178
1ST DISTRICT, BALTIMORE COUNTY, MARYLAND

Beginning for the same on the east side of Arunah Avenue at the division line between Lots 6 and 7, Block 26 as laid out and shown on the plat of Catonsville Manor, said plat being recorded among the land records of Baltimore County in Plat Book 6, folio 178; thence running and binding on the east side thereof South $7^{\circ}33'$ East 60 feet to the division line between Lots 9 and 10, thence binding on said division line North $82^{\circ}27'$ East 86.61 feet (erroneously recorded as 82.62 feet on subdivision plat) to the west side of Delaware Avenue, thence binding on the west side thereof North $17^{\circ}02'$ East 66 feet to the division line between Lots 6 and 7 above referred to, thence binding on said division line South $82^{\circ}27'$ West 114.12 feet to the place of beginning.

Containing 6021.9 square feet of land, more or less.



Ca. 1000 — Surveyors — Geo. H. H. H.



PLAT TO ACCOMPANY DESCRIPTION
LOTS 7, 8 & 9, BLOCK 26
"CATONSVILLE MANOR"

(P.D. 6-178)

INLECT. DIST. BALTO. CO., MD.
 SCALE: 1" = 30' SEPT. 26, 1993

PAUL LEE ENGINEERING, INC.
 304 W. PENNSYLVANIA AVENUE
 TOWSON, MARYLAND - 21204

IN RE

PETITION FOR VARIANCE TO PROVIDE
A FRONT SETBACK OF 15' IN LIEN
OF THE REQUIRED 25' AND A REAR
SETBACK OF 20' IN LIEN OF THE
REQUIRED 30'

THE PALMETTO GROUP, INC.

Petitioner

for 1108 Arunah Avenue
Catonsville, Maryland, 21228

* * * * *

* BEFORE THE COUNTY
* BOARD OF APPEALS
* OF BALTIMORE COUNTY

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Case No. 96-430-A

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PROTESTANTS' RESPONSIVE MEMORANDUM

Protestants submit the within Memorandum in response to the Memorandum filed by the Petitioners earlier and as permitted by the County Board of Appeals of Baltimore County.

On the evidence before the Board, the Petitioners purchased Lots 7 through 12 in Block 26 of Catonsville Heights in 1994. All of those lots were then unimproved.

Subsequently the developer/owner, Petitioner herein, built on Lots 7 through 9 a rancher dwelling known as 1110 Arunah Avenue which it conveyed by Deed to Family Service Foundation by Deed recorded among the Land Records of Baltimore County in Liber 11426 at folio 689.

The Petitioner, then left with lots 10 through 12, filed the instant Petition requesting variances as noted in the heading.

11/25

The property is zoned DR 5.5 and Lots 10 through 12 have a claimed lot size of .18 acre, or 8,186.6 square feet.

There is a question raised by a comparison of the Plat of Catonsville Heights introduced into evidence as recorded in Plat Book WPC No. 6, folio 178, filed July 22, 1919, and the plat submitted by Petitioners to accompany their Petition for Variance prepared by McKee & Associates, Inc. which is not sealed, dated April 23, 1996, as to the common line dividing Lots 9 and 10. The platted lot on Block 26 for the common line dividing Lots 9 and 10 recites a length of 82.62 feet whereas the unsealed plat and unsealed description of McKee & Associates, Inc. claims a greater length than that disclosed by the plat of 86.62 feet. If the Plat of Catonsville Heights as recorded is correct and has not been amended, and there is no evidence to the contrary in the case before the Board, then the claimed square footage in the Petition exceeds the actual square footage as disclosed by the Catonsville Heights Plat to less than 8,186.6 square feet as claimed in the description of the Petitioner and by the Petitioners.

The grant of the requested Variances is governed and controlled by an interpretation of Section 307 of the Baltimore County Zoning Regulations and the prior case law interpreting variances as properly granted or denied.

The Petitioners rely on what they claim to be the authority of Cromwell v. Ward, 102 Md.App. 691, 651 A.2d 424 (1995)

to support their Petition. In fact, when the Zoning Commissioner's Opinion and Order is placed next to the Petitioners' Memorandum, there are remarkable similarities between the text of the Zoning Commissioner's Opinion and those in the Petitioners' Memorandum. Unfortunately there are portions of Cromwell v. Ward other than those quoted by Petitioners in their Memorandum which are salient and helpful as well as other case law which would indicate strong authority and give support for denial of these variances.

Protestants are all residents in Catonsville Heights Subdivision, which was filed for record in 1919 among the Land Records of Baltimore County before the adoption of Comprehensive Zoning Regulations for Baltimore County. On the evidence presented in the documentary evidence, as well as in testimony, to the Board, both by the Petitioners as well as by reference to the Petitioners' plat and the testimony of the various Protestants, it is clear that for each record property address of Petitioners at 1108 and 1110 Arunah Avenue as well as all of the Protestants, are located on numerous platted lots, none of which individually would suffice for building a residence which would meet the requirements of the Zoning Regulations for Baltimore County.

A quick survey of the Plat of Catonsville Heights aforesaid will show numerous other lots in other blocks which are similar to Petitioners' property in shape and size. Examples abound wherever triangles are created within the platted

subdivision and, for the record, in Block 25 Lots 1, 2, and 3, in Block 15 Lots 49 and 50, as well as Lots 1 and 2, Block 4 Lots 12 and 13, Block 10 Lots 12 and 13, as well as lots 26 and 27. All form triangles, as does Petitioners' three lots in Block 26, which are the subject of this Petition; namely, Lots 10 through 12. So Petitioners' claim that these lots form a unique set of circumstances within the development is disproven by the existence of other lots as platted in the Catonsville Heights subdivision.

It is necessary and helpful to recall that, when Petitioners bought this property in 1994, they bought it as part of a larger tract which included Lots 7 through 12 and the land was then unimproved. A quick glance at Petitioners' plat which accompanied their zoning Petition indicates that those properties shown as belonging to neighbors are built out for single residences on three or four or more lots as platted (emphasis added) as well as the fact that all of those properties were built with greater setbacks from the front yard property line than Petitioners seek in keeping with a common scheme of development as built and as the community has evolved over time.

It is also significant to note from review of the Plat of Catonsville Heights next to the vicinity map on Petitioners' plat to see that Arunah Avenue where Lots 10, 11 and 12, as well as Lots 7, 8, and 9, front is the entrance to the community and that visitors to the community coming from the West would of necessity

pass the Petitioners' property upon entering the community of Catonsville Heights. Numerous interior streets are dead ends or undeveloped and entrance to the community from the West is solely via Arunah Avenue. That is significant because of the adverse impact the grant of these variances would have on property values in the community occasioned by visitors seeing two houses built by Petitioners on Lots 7, 8, and 9 and Lots 10, 11, and 12 which are built out at a lesser density or standard than those of the established surrounding community.

Stated in another way, Petitioners made a calculated business decision after they bought these six unimproved lots in 1994 and elected to roll the dice or take their chances on squeezing two building lots out of six platted lots of a size much smaller than those on which homes had been built surrounding their property and in the rest of the community of Catonsville Heights.

Cromwell v. Ward first holds, at page 428, that the claimed uniqueness on a particular property must be compared to other properties within the district or the platted subdivision to see if the ordinance impacts Petitioners' property in a way different from other properties located within the platted subdivision. In this case the other examples of triangular shaped properties have been developed with the same density as lots more regularly shaped.

In considering the uniqueness of a property the Cromwell

Court opined, at page 430, that,

"The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances." Quoting with approval A. Rathkopf, 3 *The Law of Zoning and Planning*, Section 38 (1979).

In that same section the Cromwell Court in tracing the history of prior variance decision, at page 431, notes:

"[I]t was incumbent upon the Marinis to have shown . . . (ii) that the difficulties or hardships were peculiar to the property in question in contrast with those of other property owners in the same district, and (iii) that the hardship was not the result of the applicants' own actions." Quoting Marino v. Mayor and City Council of Baltimore, 215 Md. 206, at 218, 137 A.2d 198 (1957) (emphasis added), and Salisbury Board of Zoning Appeals v. Bounds, 240 Md. 547, 214 A.2d 810 (1965).

Further in the Cromwell v. Ward historical tracing of variance decisions, at page 433, the Court notes the sludge storage case of AD + Soil, Inc. v. County Commissioners. The Court there said, at page 433,

". . . The Court of Appeals noted that the trial court, in affirming the agency's denial of a variance, agreed that 'the only hardships facing Ad + Soil were of its own making'. 307 Md. at 317, 513 A.2d 893 (1986).

As applied to the instant case, the Petitioners' calculated business decision before filing this Petition to build out Lots 7, 8, and 9 and then attempt to obtain another building envelope of a size acceptable to them by seeking the instant variances was their decision and any practical difficulty was of their making. The Petitioners could have developed Lots 7 through 12 as a single home. A more recent case also immediately

thereafter quoted in Cromwell, Red Roof Inns, Inc. v. People's Counsel, 96 Md.App. 219, 624 A.2d 1281 (1993), notes at page 434 that,

" . . . 'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area. . . ."

Further in Cromwell, at page 435, quoting with approval decisions in accord outside the State of Maryland, as follows:

"In Walkingstick v. Board of Adjustment, 706 P.2d 899 (Okla.1985), the zoning board, having failed to comply with notice requirements, granted a permit for an oil drilling well. Amoco had expended considerable sums before the board's omission was discovered. The relevant part of the ordinance involved was similar to the one in the instant case. After the court noted that the hardships alleged were not peculiar to the subject site, it stated the general rule that 'a hardship created by the owner . . . constitutes no valid basis for a variance . . . [D]eprivation of an advantage does not constitute an unnecessary hardship.' 706 P.2d at 904. It concluded:

The need to expose tools to the ravages of the environment may be peculiar to Amoco. But, the language of section 44-107(2) [as does the language in the Baltimore County ordinance] clearly refers to conditions peculiar to the property, *not to activities peculiar to the owner of such property.* at 904-05 (emphasis added)."

The Court of Special Appeals noted at page 436 of Cromwell that,

"Hardship is not demonstrated by economic loss alone. It must be tied to the special circumstances, none of which have been proven here. Every person requesting a variance can indicate some economic loss. To allow avariance any time any economic loss is alleged would make a mockery of the zoning program. Further the Zanthos[es] brought their losses upon themselves (emphasis added) The application affirmatively alleged . . . that no dwelling existed"

In like accord, the Cromwell court at page 437 quotes a Maine case in accord as follows:

"In Sibley v. Inhabitants of the Town of Wells, 462 A.2d 27, at 30-31 (1983), the Supreme Judicial Court of Maine upheld the denial of a variance, holding:

[T]he need of a variance [must be] due to the unique circumstances of the property and not to the general conditions in the neighborhood;

. . . [T]he hardship [must] not [be] the result of actions taken by the appellant or a prior owner.

. . . However, the mere fact that the lot is substandard is not a unique circumstance; all the undeveloped lots in that neighborhood are of substandard size . . .

. . . However, when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the grounds of undue hardship."

In this Palmetto case the earlier development actions of the Petitioner are the actions which caused the necessity of a request for a variance which the Cromwell court at page 439, again quoting Marino v. Mayor and City Council of Baltimore, 215 Md. 206, 137 A.2d 198, and Pollard v. Zoning Board of Appeals, 186 Conn. 32, 438 A.2d 1186 (1982), notes ". . . is never considered proper grounds for a variance."

Other authority of earlier decisions not previously cited standing for the same proposition that requested variances cannot be approved on the basis to afford a property owner a special privilege are Gleason v. Keswick Improvement Association, Inc., 197 Md. 46, 78 A.2d 164 (1951); Easter v. Mayor and City Council of

Baltimore, 195 Md. 395, 73 A.2d 491 (1950); Carney v. City of Baltimore, 201 Md. 130, 93 A.2d 74 (1953); and Umerley v. People's Counsel for Baltimore County, 108 Md.App. 497, 672 A.2d 173, Cert. Denied 342 Md. 584, 678 A.2d 1049.

In conclusion, the Protestants respectfully request that the Petition for Variances of The Palmetto Group, Inc. for Lots 10, 11, and 12 be denied in light of the Petitioners' development of Lots 7, 8, and 9 since purchase which afforded them a reasonable proper use of the property in question.

Respectfully Submitted,

Richard M. Batterton
RICHARD M. BATTERTON
1005 Arunah Avenue
Baltimore, Maryland, 21228

I HEREBY CERTIFY that, on this 10th day of January, 1997, a copy of this Responsive Memorandum was mailed, postage prepaid, to Lee R. Jacobson, Esquire, Jacobson & Myerberg, P.A., 502 Washington Avenue, Suite 320, Towson, Maryland, 21204, attorneys for Petitioners.

Richard M. Batterton
RICHARD M. BATTERTON

THE PALMETTO GROUP, INC. * BEFORE THE
* COUNTY BOARD
* OF APPEALS
Petitioner * FOR BALTIMORE COUNTY
* CASE NO.: 96-430-A

* * * * *

MEMORANDUM IN SUPPORT

The Petitioners in this matter, represented by Lee R. Jacobson and Jacobson & Myerberg, P.A., 502 Washington Avenue, Suite 320, Towson, Maryland 21204. The Petition for Variance is supported by the expert testimony of James D. Grammer, McKee & Associates, Inc., 5 Shawan Road, Hunt Valley, Maryland 21030.

The facts in this matter are that the Petitioners purchased that subject site in 1994. The property located at 1108 Arunah Avenue, located in the Catonsville Heights section of Western Baltimore County is a triangular shaped lot bounded by Arunah Avenue and Delaware Place. The property is zoned DR5.5 and is a lot size of .188 acres or 8,186.6 square feet, substantially greater than the 6000 square feet minimum required for a single family dwelling lot in the DR5.5 zone. The Petitioner is requesting Variance Relief Section 1B02.3.C of the Baltimore County Zoning Regulations to allow a front setback of 15 feet in lieu of the required 25 feet and a rear setback of 20 feet in lieu of the required 30 feet. The property and requested relief is more particularly shown on the plat which

property and requested relief is more particularly shown on the plat which accompanied the Petition for Variance. The Petitioner proposes to construct a single family dwelling on the site. The 3 bedroom 2 1/2 bath proposed dwelling is 26 x 26 feet in dimension and will contain approximately 1400 - 1500 square feet of living area. The proposed home will be compatible with other dwellings in the area which are described as a mix of two story colonials and ranchers. Testimony presented indicates that strict adherence to the zoning regulations is not possible for if the required set backs were observed only a minimally sized building envelope of 15 x 15 feet would be allowable.

Consideration of variances is governed by Section 307 of Baltimore County Zoning Regulations. In addition, the Court of Special Appeals in the recent case of Cromwell v. Ward, 102 Md.App.691 (1995), has further defined and explained the requirements for variance relief under that section. The Court in Cromwell at 694, noted that the variance process was:

"... at least a two step process. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is--in and of itself--unique and unusual in a manner different from the nature of the surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon the property. Unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in supportable finding

of uniqueness or unusualness, then a second step is taken in the process, i.e., a determination of whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance caused by the property's uniqueness exists. Further consideration must then be given to the general purpose of the zoning ordinance."

The Zoning Commissioner found that this property is clearly unusual due to its shape and orientation. As shown on the site plan, the property, triangular in configuration, is bordered by two roadways, Arunah Avenue and Delaware Place. The triangular configuration clearly makes the property distinct from other parcels in the vicinity, which as indicated on the plat, are properties which are rectangular in nature. Maintenance of the prescribed setbacks on the other lots in this neighborhood is without difficulty due to their uniform nature and configuration. It is the unusual triangular configuration of the Petitioner's lot that makes observance of the setback requirements impossible. Thus, the first step noted by the Court in Cromwell defining that the property whereon the structures are to be placed as unique and unusual, in a manner different from the nature of the surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property is satisfied.

The second step in the process as noted in Cromwell is to determine whether practical difficulty or unreasonable hardship results from the disproportionate impact of the

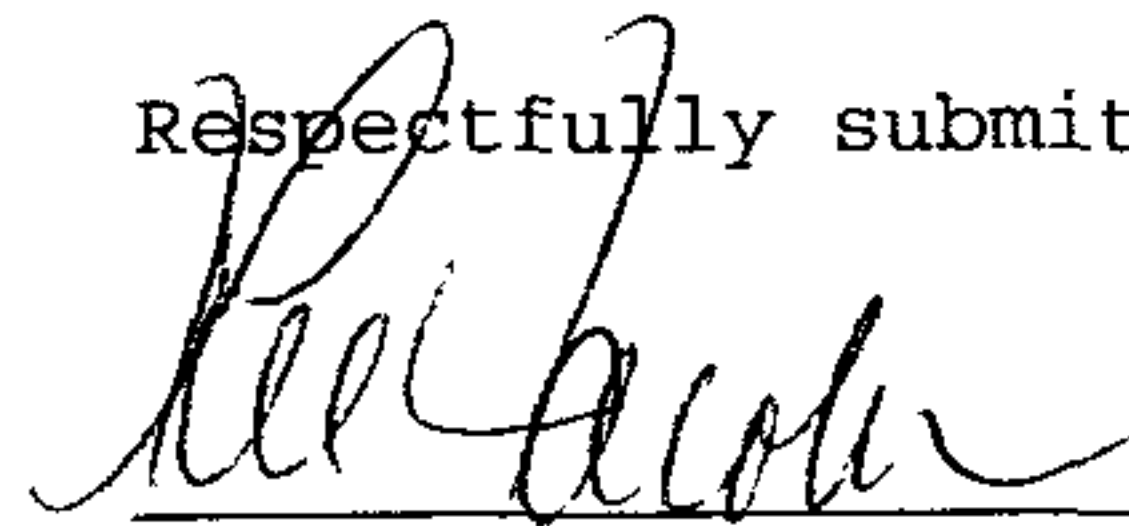
ordinance caused by the property's uniqueness. The Petitioner has shown the practical difficulty of constructing a single family home on this lot due to its unique configuration. If strict adherence to the regulations were required the building envelope would be of such a narrow dimension, 15 x 15 feet, that any dwelling constructed thereon would be incompatible with the surrounding neighborhood. Thus, due to the property's uniqueness, set back requirements cannot reasonably be observed.

Finally, a determination must be made as to whether any adverse impact would result if the variance relief were granted. As the Petitioner has indicated, the proposed dwelling would be a single family dwelling, 26 x 26 feet, containing approximately 1400 - 1500 square feet of living area. This 3 bedroom 2/1/2 bath single family home in a neighborhood of two story colonials and ranchers will clearly be compatible with other dwellings in the area. There is no evidence in the record that would suggest that the variance would create any issue of safety or injustice to anyone in the community. In fact, the only detriment created by this variance would be if the Petitioner's requested relief were to be denied, as then the Petitioner would lose the right to use his land as permitted by the Laws of Baltimore County.

Thus, for all of the reasons presented herein, as well

as the testimony of the Petitioner and his witness at the time of the hearing of this appeal, the Petition for Variance from Section 1B02.3.C of the Baltimore County Zoning Regulations to allow a front setback of 15 feet in lieu of the required 25 feet, and a rear setback of 20 feet in lieu of the required 30 feet should be granted and the findings of fact and conclusions of law reached by the Zoning Commissioner upheld.

Respectfully submitted,



LEE R. JACOBSON
JACOBSON & MYERBERG, P.A.
Suite 320, Nottingham Centre
502 Washington Avenue
Towson, Maryland 21204
828-7090

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502 WASHINGTON AVENUE
TOWSON MD 21204
TELEPHONE 828 7090



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

July 24, 1996

Lee Jacobson, Esquire
502 Washington Avenue
Suite 320
Towson, MD 21204

RE: Petition for Zoning
Variance
Intersection Arunah
Avenue and Delaware Place
(1108 Arunah Avenue)
1st Election District
1st Councilmanic District
The Palmetto Group, Inc.
- Petitioner
Case No. 96-430-A

Dear Mr. Jacobson:

Please be advised that an appeal of the above-referenced case was filed in this office on July 19, 1996 by Robert M. Batterton on behalf of the Arunah Avenue Community. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals, (Board).

If you have any questions concerning this matter, please do not hesitate to call 887-3180.

Sincerely,

ARNOLD JABLON
Director

AJ:rye

cc: Ms. Alice L. and Ms. Tonya M. Bennett
Ms. Wanda L. Stirling
Ms. Ida Steward
Mr. William J. Tate
Mr. Richard Dahl
People's Counsel

IN RE: PETITION FOR ZONING VARIANCE * BEFORE THE
 Intersec. Arunah Avenue and * ZONING COMMISSIONER
 Delaware Place * OF BALTIMORE COUNTY
 1108 Arunah Avenue *
 1st Election District * Case No. 96-430-A
 1st Councilmanic District *
 The Palmetto Group, Inc. *
 Petitioner *

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Variance for the property located at 1108 Arunah Avenue located in the Catonsville Heights section of western Baltimore County. The Petition is filed by The Palmetto Group, Inc., property owner, through Eric Bers, President. Variance relief is requested from Section 1B02.3.C of the Baltimore County Zoning Regulations (BCZR) to allow a front setback of 15 ft. in lieu of the required 25 ft., and a rear setback of 20 ft. in lieu of the required 30 ft. The subject property and requested relief is more particularly shown on Petitioner's Exhibit No. 2, the plat to accompany the Petition for Variance.

Appearing at the public hearing held for this case was the aforementioned Eric L. Bers, on behalf of The Palmetto Group, Inc. Also appearing in support of the Petition was Cynthia Bowden, from McKee and Associates, Inc., civil engineers and land surveyors. The Petitioner was represented by Lee Jacobson, Esquire. Appearing in opposition to the request were a number of residents of the surrounding locale, including Alice L. Bennett, Wanda L. Stirling, Ida Steward, Tonya M. Bennett, William J. Tate, Richard M. Batterton and Richard Dahl. In addition to these Protestants, a series of letters were received in opposition to the request from members of the subject community.

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Date

6/21/96

By

M. Howard

MICROFILMED

Mr. Bers testified that his corporation is the owner of the subject property, known as 1108 Arunah Avenue. This is a triangularly shaped lot, approximately .188 acres in area, zoned D.R.5.5. The property encompasses 8,186 sq. ft., which is greater than the 6,000 sq. ft. minimum required for a single family dwelling lot in the D.R.5.5 zone. The Petitioner proposes constructing a single family dwelling on the site. The house proposed is 26 x 26 ft. in dimension and will contain approximately 1400 to 1500 sq. ft. of living area. Mr. Bers also indicated that the dwelling will contain 3 bedrooms and 2-1/2 baths. He testified that the home will be compatible with other dwellings in the area, which he described as a mix of two story colonials and ranchers. He also testified that strict adherence to the regulations was not possible. If the required setbacks were observed, only a minimally sized building envelope (15 ft. x 15 ft.) would be allowable.

Cynthia Bowden, a land surveyor with McKee and Associates also testified. She noted that a front yard setback of 15 ft. would be maintained, in lieu of the 26 ft. required and that a rear yard setback of 20 ft., in lieu of 30 ft. would be held. She corroborated Mr. Bers testimony as it related to the proposed dwelling. She also opined, in her professional opinion, that strict adherence to the setback standards was impractical. Specifically, she agreed with Mr. Bers that only a minimally sized building envelope of approximately 15 x 15 ft. would be available and any dwelling fitting within that envelope would be incompatible with the neighborhood.

As to the Protestants who appeared, they generally oppose the request. One area of concern was the use of the adjoining property at 1110 Arunah Avenue. That property is owned by the Petitioner and is utilized as a home for disabled adults. The Protestants fear a similar use on the

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Date

6/27/96
M. G. Gorch

By

subject property. As I explained at the hearing, the case before me for consideration does not relate to the use of the property, per se. The matter under consideration relates only to the front and rear yard setbacks. All of the uses of the subject property, and adjacent properties, must be in accordance with the BCZR. If the Protestants believe that the properties are being used illegally under the zoning regulations, an inquiry should be made with the office of Permits and Development Management/Zoning Inspection Division. An inspector from the County will conduct an onsite investigation to determine if the existing uses are proper.

Concerns were also expressed regarding the street known as Delaware Place. As shown on the site plan, Delaware Place is located to the rear of the subject property. The road ends immediately adjacent to the site and, apparently, a new turn around area is proposed. The Protestants were concerned about the impact of that turn around area. According to the site plan, it appears that only the subject property will be affected by this potential construction.

Consideration of variances is governed by Section 307 of the BCZR. Moreover, the Court of Special Appeals in the recent case of Cromwell v. Ward, 102 Md. App. 691 (1995) has defined and explained the requirements for variance relief under that section.

As noted by the Court, the Zoning Commissioner must first determine whether the subject property is unique. In this case, such a finding is clearly found. This is an unusual property, specifically, because of its shape and orientation. As shown on the site plan, the property is triangular in configuration and lies adjacent to two roadways, both Arunah Avenue and Delaware Place. The unusual configuration clearly makes the property distinct from other parcels in the vicinity.

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By

6/21/96
M. G. Gandy

MICROFILMED

Having determined that the property is unique, the Petitioner is next required to demonstrate that a practical difficulty or unreasonable hardship would result if strict adherence to the regulations were required. Such a conclusion is also made in this case. The practical difficulty is the fact that the allowed building envelope is of such narrow dimensions to not allow a permissible use (e.g., single family dwelling) if strict adherence to the regulation were required. That is, the setback requirements, owing to the property's uniqueness, cannot reasonably be observed.

The final test relates to whether an adverse impact would result if variance relief were granted. In this case, I find no adverse impact. Again, it is to be emphasized that the matter before me is not about the proposed use of the property. Although the Petitioner indicated during testimony that the house would be a single family dwelling, any permissible use is allowed. There will be no adverse impact by the construction of a dwelling on this site. Such a use will be consistent with other uses in the neighborhood.

For all of these reasons, the Petition for Variance should and must be granted and I will so order. However, the Baltimore County Code (Section 26-127) does empower the Zoning Commissioner to add any reasonable restrictions or limitations on the grant of variance relief. In my judgment, a restriction should be imposed here. Specifically, the variance relief shall be expressly conditioned on the Petitioner submitting elevation/architectural drawings to the Office of Planning for review and approval. In my judgment, the Petitioner should be required to submit these drawings to the Office of Planning, so that a dwelling compatible with the neighborhood will be constructed. Thus, building permits shall not be released until the Office of Planning has reviewed and approved elevation/architectural drawings for the proposed house.

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Date

By

MICROFILMED

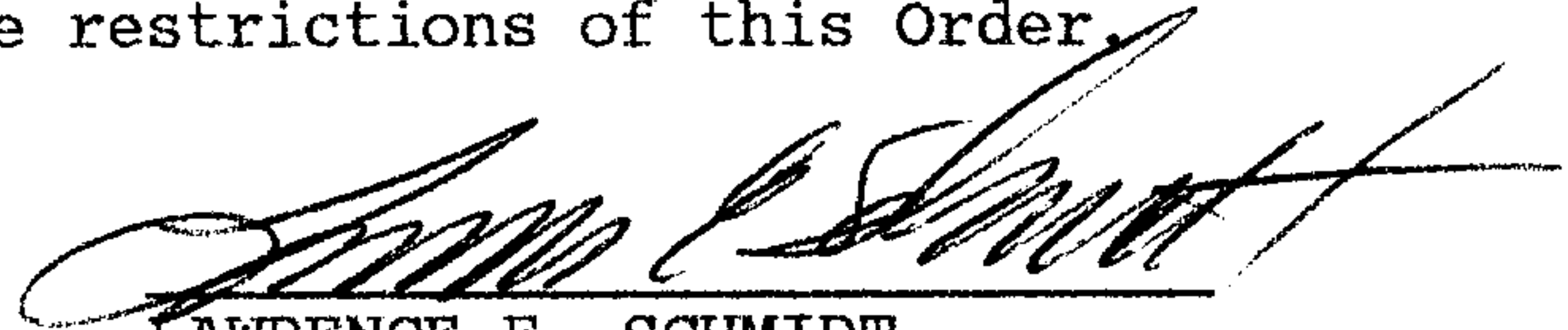
Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 22nd day of June, 1996 that a variance from Section 1B02.3.C. of the Baltimore County Zoning Regulations (BCZR) to allow a front yard setback of 15 ft., in lieu of the required 25 ft., and a rear setback of 20 ft., in lieu of the required 30 ft., be and is hereby GRANTED, subject, however, to the following restriction:

1. The Petitioner may apply for its building permit and be granted same upon receipt of this Order; however, Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property to its original condition.

2. The Petitioner shall submit to the Office of Planning, for review and approval, elevation/architectural drawings for the proposed house.

3. When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.



LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES/mmn

ORDER RECEIVED FOR FILING

Date

6/21/96

By

J. H. Good

MICROFILMED

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning



Suite 112 Courthouse
400 Washington Avenue
Towson, MD 21204

(410) 887-4386

June 19, 1996

Lee Jacobson, Esquire
Suite 320
502 Washington Avenue
Towson, Maryland 21204

RE: Case No. 96-430-A
Petition for Zoning Variance
Location: 1108 Arunah Avenue
The Palmetto Group, Inc., Petitioner

Dear Mr. Jacobson:

Enclosed please find the decision rendered in the above captioned case. The Petition for 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 887-3353.

Very truly yours

A handwritten signature in black ink, appearing to read "Lawrence E. Schmidt".

Lawrence E. Schmidt
Zoning Commissioner

LES:mmn
att.

c: Mr. Eric L. Bers, 3829 Palmetto Court, Ellicott City, Md. 21042
c: Ms. Alice L. Bennett, Ms. Tonya M. Bennett, 1105 Arunah Avenue
c: Ms. Wanda L. Stirling, 1002 Arunah Avenue, 21228
c: Ms. Ida Steward, 1113 Arunah Avenue, 21228
c: Mr. William J. Tate, 1003 Arunah Avenue, 21228
c: Mr. Richard M. Batterton, 1005 Arunah Avenue, 21228
Mr. Richard Dahl, 411 Delaware Lane, 21228

MICROFILMED

426



Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at

#1108 Arunah Avenue

96-430-A

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 Variance from Section(s)

See attached (A)

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

See attached (B)

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/Lessee:

Legal Owner(s): The Palmetto Group, Inc.

(Type or Print Name)

Eric Bers President

(Type or Print Name)

Signature

Signature

Address

(Type or Print Name)

City

State

Zipcode

Signature

Attorney for Petitioner:

Lee Jacobson

P.O. Box 841

750-0791

(Type or Print Name)

Address

Phone No

Signature

Ellicott City, Maryland 21041

City

State

Zipcode

Name, Address and phone number of representative to be contacted.

suite 320

502 Washington Avenue 828-7090

Address

Phone No.

City

Towson

State

Maryland 21204

Zipcode

Cynthia B. Bowden

McKee & Associates, Inc.

Name

5 Shawan Road

Hunt Valley, Maryland 21030 527-1555

Address

Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: _____ DATE _____

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A 26
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MCKEE & ASSOCIATES, INC.

Engineering - Surveying - Real Estate Development

SHAWAN PLACE, 5 SHAWAN ROAD

HUNT VALLEY, MARYLAND 21030

Telephone: (410) 527-1555

Facsimile: (410) 527-1563

Attachment to Zoning Variance Request

(A) ...petition for a variance from section 1B02.3.C Development Standards for Small Lots or Tracts) ^{AND 303.1} to permit a front setback of 15' in lieu of the required 26' minimum and rear setback of 20' in lieu of the required 30' minimum.

(B) Strict compliance with the existing setback requirements would result in a maximum possible house size being 15' x 15'. In addition a portion of Delaware Place was closed by Baltimore County for a turn-around on the subject lots. Holding the required front and side setbacks would place the proposed house within two feet of the turn-around area. Holding the required rear and side setbacks would leave less than a 10 foot front setback.

With the granting of this variance the spirit of the ordinance will be observed and the public safety and welfare actually improved with the addition of a turn-around for Delaware Place.

1 - 2 - wps/10/1/7/2/1/1/1

MICROFILMED

A76

96-430-A

MCKEE & ASSOCIATES, INC.

Engineering - Surveying - Real Estate Development

SHAWAN PLACE, 5 SHAWAN ROAD

HUNT VALLEY, MARYLAND 21030

Telephone. (410) 527-1555

Facsimile (410) 527-1563

April 23, 1996

ZONING DESCRIPTION FOR 1108 ARUNAH AVENUE
THE PALMETTO GROUP, INC. PROPERTY

Beginning for the same at the intersection of Arunah Avenue (40 feet wide) and Delaware Place (40 feet wide) as laid out and shown on a Plat of Catonsville Heights, Block 26, recorded among the Land Records of Baltimore County, Maryland, in Plat Book 6, Page 178, the property is also recorded as a deed among the Land Records of Baltimore County in Liber 11538, folio 255; thence running with and binding on Arunah Avenue;

- 1) North 07 degrees 33 minutes 00 seconds West 189.00 feet; thence leaving the road
- 2) North 02 degrees 27 minutes 00 seconds East 86.62 feet to Delaware Place; thence running with and binding on said road
- 3) South 17 degrees 04 minutes 15 seconds West 207.90 feet to the beginning.

Containing 8,186.6 square feet, or 0.188 acres of land, more or less.

Also, known as 1108 Arunah Avenue and located in the First Election District and First Councilmanic District.

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY 96-430-17
Towson, Maryland

District 1st

Date of Posting 5/24/96

Posted for: Variance

Petitioner: The Palmetto Group, Inc.

Location of property: 1108 Arunah Ave

Location of Sign: Facing roadway on property being zoned

Remarks: _____

Posted by M. Healy
Signature

Date of return: 5/31/96

Number of Signs: 1

CERTIFICATE OF PUBLICATION

TOWSON, MD., May 17, 1996

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 May 16, 1996

THE JEFFERSONIAN,

A. Henrichson

LEGAL AD. - TOWSON

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the proposed variance as follows:

Case #96-430-A
(Item 426)
1108 Arunah Avenue
intersection - Arunah Avenue
and Delaware Place
1st Election District
1st Councilmanic

Legal Owner(s):
The Palmetto Group, Inc.
Variance: to permit a front setback of 15 feet in lieu of the required 25 ft. minimum and rear setback of 20 feet in lieu of the required 30 ft. minimum.

Hearing: Monday, June 10, 1996 at 10:00 a.m. in Rm. 118, Old Courthouse.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Call 887-3353.

(2) For information concerning the File and/or Hearing, Please Call 887-3391.

5/243 - May 16 C52596

PETITION OF: The Palmetto Group, Inc.

CIVIL ACTION # 3-C-97-02976

IN THE MATTER OF The Palmetto Group, Inc.

RECEIVED FROM THE COUNTY BOARD OF
APPEALS EXHIBITS, BOARD'S RECORD
EXTRACT & TRANSCRIPT FILED IN THE
ABOVE-ENTITLED CASE, AND ZONING
COMMISSIONER'S FILE AND EXHIBITS

Debra Gilmore
Clerk's Office

Date: 5-13-97

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

BY JLL # 426
NO 019850

DATE 5/1/96 ACCOUNT R0016150

(R)

AMOUNT \$ 85.00

RECEIVED FROM: PALMETTO GROUP.

1108 ARUNAH AVE.

FOR: RV FILING \$ 50.00
1 SIGN POSTING \$ 35.00

DLADDN0117NICHRC

\$85.00

BA C009:16AND5-01-96

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION

WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

96-430

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

No. 23505

DATE 7/22/96 ACCOUNT 10-001-0150

AMOUNT \$ 210.00

RECEIVED FROM: Michael Eatherford

FOR: Appeal + Sign

01A00#0287M:CHRE \$110.00
BA 001:05AM07-22-96

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

RUE

Baltimore County Government
Office of Zoning Administration
and Development Management



111 West Chesapeake Avenue
Towson, MD 21204

(410) 887-3353

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County Zoning Regulations require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for posting and advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements.

PAYMENT WILL BE MADE AS FOLLOWS:

- 1) Posting fees will be accessed and paid to this office at the time of filing.
- 2) Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 426

Petitioner: The Palmetto Group

Location: 1108 Arunah Avenue (lots 10,11,12)

PLEASE FORWARD ADVERTISING BILL TO:

NAME: The Palmetto Group

ADDRESS: P.O. Box 841

Ellicott City, Maryland 21041

PHONE NUMBER: 750-0791

AJ:ggs

(Revised 04/09/93)



TO: PUTOXENT PUBLISHING COMPANY
May 16, 1996 Issue - Jeffersonian

Please forward billing to:

The Palmetto Group
P. O. Box 841
Ellicott City, MD 21041
750-0791

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 NUMBER: 96-430-A (Item 426)
1108 Arunah Avenue
intersection Arunah Avenue and Delaware Place
1st Election District - 1st Councilmanic
Legal Owner(s): The Palmetto Group, Inc.

Variance to permit a front setback of 15 feet in lieu of the required 25 ft. minimum and rear setback of 20 feet in lieu of the required 30 ft. minimum.

HEARING: MONDAY, JUNE 10, 1996 at 10:00 a.m. in Room 118, Old Courthouse.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

May 13, 1996

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 NUMBER: 96-430-A (Item 426)
1108 Arunah Avenue
intersection Arunah Avenue and Delaware Place
1st Election District - 1st Councilmanic
Legal Owner(s): The Palmetto Group, Inc.

Variance to permit a front setback of 15 feet in lieu of the required 25 ft. minimum and rear setback of 20 feet in lieu of the required 30 ft. minimum.

HEARING: MONDAY, JUNE 10, 1996 at 10:00 a.m. in Room 118, Old Courthouse.

A handwritten signature in cursive script that reads "Arnold Jablon".

Arnold Jablon
Director

cc: The Palmetto Group, Inc.
McKee & Associates, Inc.
Lee Jacobson, Esq.

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.





County Board of Appeals of Baltimore County

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

January 3, 1997

NOTICE OF DELIBERATION

Having concluded this case on December 31, 1996, the County Board of Appeals has scheduled the following date and time for deliberation in the matter of:

THE PALMETTO GROUP, INC. -Petitioner
CASE NO. 96-430-A

DATE AND TIME : Thursday, January 30, 1997 at 9:30 a.m.

LOCATION : Room 48, Basement, Old Courthouse

PLEASE NOTE: PROTESTANT'S RESPONSE TO PETITIONER'S MEMORANDUM IS DUE FRIDAY, JANUARY 10, 1997 (Original and three copies).

Kathleen C. Bianco
Legal Administrator

- cc: Richard M. Batterton Appellant /Protestant
Alice L. and Tonya M. Bennett Protestants
Wanda L. Stirling Protestant
Ida Steward
William J. Tate
Richard Dahl
Lee Jacobson, Esquire Counsel for Petitioner
Eric L. Bers /The Palmetto Group Petitioner
People's Counsel for Baltimore County
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

Copied: R.B.M.



Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

June 5, 1996

Lee Jacobson, Esquire
Suite 320
502 Washington Avenue
Towson, Maryland 21204

RE: Item No.: 426
Case No.: 96-430-A
Petitioner: The Palmetto Group

Dear Mr. Jacobson:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on April 23, 1996.

Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the permanent case file.

If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Joyce Watson in the zoning office (887-3391).

Sincerely,

W. Carl Richards, Jr.
Zoning Supervisor

WCR/re
Attachment(s)



BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

TO: PDM

DATE: 6-4-96

FROM: R. Bruce Seeley
Permits and Development Review
DEPRM

SUBJECT: Zoning Advisory Committee
Meeting Date: May 13/1996

The Department of Environmental Protection & Resource Management has no comments for the following Zoning Advisory Committee Items:

Item #'s: 423 432
424 433
425 434
426 435
428 436
429
430
431

Seeley

RBS:sp

BRUCE2/DEPRM/TXTSBP

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits & Development
Management

Date. May 20, 1996

FROM: *RWB* Robert W. Bowling, Chief
Development Plans Review Division
Department of Permits & Development
Management

SUBJECT: Zoning Advisory Committee Meeting
for May 20, 1996
Item Nos. 423, 425, 426, 428, 429,
430, 434, 436

The Development Plans Review Division has reviewed the subject zoning item, and we have no comments.

RWB:HJO:jrb

cc: File

Baltimore County Government
Fire Department



700 East Joppa Road
Towson, MD 21286-5500

Office of the Fire Marshal
(410) 887-4880

DATE: 05/16/96

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204
MAIL STOP-1105

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF MAY 13, 1996.

Item No.: SEE BELOW

Zoning Agenda:

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.

8. The Fire Marshal's Office has no comments at this time, IN REFERENCE TO THE FOLLOWING ITEM NUMBERS: 423, 424, 425, 426, 428, 429, 430, 431, 432, 433, 435 AND 436.

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File



Maryland Department of Transportation
State Highway Administration

David L. Winstead
Secretary
Hal Kassoff
Administrator

5-10-96

Ms. Joyce Watson
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 426 (JLL)

Dear Ms. Watson:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

Please contact Bob Small at 410-545-5581 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

Ronald Burns, Chief
Engineering Access Permits
Division

BS/es

My telephone number is _____

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Permits and Development
Management

DATE: May 9, 1996

FROM: Pat Keller, Director
Office of Planning

SUBJECT: Petitions from Zoning Advisory Committee

The Office of Planning has no comments on the following petition(s):

Item No. Nos. 423, 425, 426, 428, 431, 434, 435, and 436

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3495.

Prepared by:

Jeffrey W. Long

Division Chief:

Sam L. Kerns

PK/JL

PETITION PROBLEMS

#423 --- JRF

1. No telephone number for legal owner.
2. No hardship or practical difficulty on petition form.
3. Notary section is incomplete.

#426 --- JLL

1. Who signed for attorney? Need authorization for person signing for attorney.
2. No review information on bottom of petition form.
3. Need better description.

#428 --- CAM

1. No wording (just section number) on petition form for variance.
2. Address and telephone number for legal owner not in proper place on petition form.

#429 --- JLL

1. Only one legal owner signed petition form. Need other signatures or authorization for this person to sign for all.

#431 --- CAM

1. No review information on bottom of petition form.

#433 --- JRA

1. No wording or section number of petition form for variance.
2. Folder says zoning is "B.M. & M.R."; petition says zoning is "M.R." - which is correct??
3. Checks and receipt still in folder - never cashed.

#435 --- JJS

1. Need title of person signing for legal owner. Need authorization for person signing for legal owner.

RE: PETITION FOR VARIANCE
1108 Arunah Avenue, Intersection Arunah
Avenue and Delaware Place, 1st Election
District, 1st Councilmanic

The Palmetto Group, Inc.
Petitioner

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* CASE NO. 96-430-A

* * * * *

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Room 47, Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of June, 1996, a copy of the foregoing Entry of Appearance was mailed to Lee Jacobson, Esquire, 502 Washington Avenue, Suite 320, Towson, MD 21204, attorney for Petitioner.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

APPEAL

Petition for Zoning Variance
Intersection Arunah Avenue and Delaware Place
(1108 Arunah Avenue)
1st Election District - 1st Councilmanic District
The Palmetto Group, Inc. - Petitioner
Case No. 96-430-A

Petition for Zoning Variance

Description of Property

Certificate of Posting

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Petitioner(s) and Protestant(s) Sign-In Sheets

Petitioner's Exhibits: 1 - Letter from Hemant and Pratima Shah,
dated June 5, 1996
2 - Plat to Accompany Petition for Zoning

Protestant's Exhibits: 1A-1I - Nine Letters of Opposition, dated June
5, 1996
2A-2B - Two Letters of Opposition

Zoning Commissioner's Order dated June 21, 1996 (Granted)

Notice of Appeal received on July 19, 1996 from Mr. Richard M.
Batterton on behalf of the Arunah Avenue Community

cc: Mr. Eric L. Bers, 3829 Palmetto Court, Ellicott City, MD 21042
Ms. Alice L. and Ms. Tonya M. Bennett, 1105 Arunah Avenue, 21228
Ms. Wanda L. Stirling, 1002 Arunah Avenue, 21228
Ms Ida Steward, 1113 Arunah Avenue, 21228
Mr. William J. Tate, 1003 Arunah Avenue, 21228
Mr. Richard M. Batterton, 1005 Arunah Avenue, 21228
Mr. Richard Dahl, 411 Delaware Lane, 21228
Lee Jacobson, Esquire, 502 Washington Avenue, Suite 320, 21204
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Lawrence Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM

The Palmetto Group, Inc.
3829 Palmetto Court
Ellicott City, Maryland 21042

96-430-A

Civil Action No. 3-C-97-02976

April 23, 1996 Petition for Variance filed by Lee Jacobson, Esquire, on behalf of Eric Bers, President of The Palmetto Group, Inc. to allow a front setback of 15 ft. in lieu of the required 25 ft., and a rear setback of 20 ft. in lieu of the required 30 ft.

June 10 Hearing held on Petition by the Zoning Commissioner.

June 22 Order of the Zoning Commissioner in which Petition for Variance was GRANTED with restrictions.

July 19 Notice of Appeal filed by Richard M. Batterton on behalf of the Arunah Avenue Community.

December 31 Hearing before the Board of Appeals. At conclusion, Memorandum in Support submitted by Lee R. Jacobson, Counsel for Petitioner.

January 10, 1997 Protestant's Responsive Memorandum filed by Richard M. Batterton.

January 21 Petitioner's Response to Protestant's Responsive Memorandum filed by Lee R. Jacobson, Jr., Esquire.

January 23 Letter from Richard M. Batterton to Board; objection to inclusion of "Petitioner's Response to Protestant's Responsive Memorandum".

January 24 Letter from County Board of Appeals to Richard Batterton: both attachments to Petitioner's Response to Protestant's Responsive Memorandum have been pulled and will not be considered part of Petitioner's Response.

January 27 Reply letter to Protestant's correspondence dated January 23, 1997 from Lee Jacobson, Esquire.

January 30 Deliberation conducted by the Board.

March 4 Opinion and Order of the Board in which the Petition for Variance was DENIED.

March 25 ✓*JE* Petition for Judicial Review filed in the Circuit Court for Baltimore County by Lee R. Jacobson, Esquire, on behalf of The Palmetto Group, Inc. (rec'd in CBA 3/27/97)

March 27 Certificate of Notice sent to interested parties.

May 13, 1997 ✓ Transcript of testimony filed; Record of Proceedings filed in the Circuit Court.

January 2, 1998 ✓*JE* Opinion & Order issued by the CCT for Balto. County; decision of the CBA is AFFIRMED; denied Petition for Variance. (James T. Smith, Jr., J)

January 29 ✓*JE* Notice of Appeal filed in the Court of Special Appeals by Lee Jacobson, Esquire, on behalf of The Palmetto Group, Inc.

10/21/98 -T/C from Kate Milton /PDM - she was told the Petitioner w/d the appeal to CSA. T/C made to CCT - their docket does not show any reference to that w/d as of this date. I told Kate "once CCT's docket shows this, we will know that case is final and CCT opinion stands"
C. E. Radcliffe /CBA.

9/24/96 -Notice of Assignment for hearing scheduled for Tuesday,
December 31, 1996 at 10:00 a.m. sent to following:

Richard M. Batterton
Alice L. and Tonya M. Bennett
Wanda L. Stirling
Ida Steward
William J. Tate
Richard Dahl
Lee Jacobson, Esquire
Eric L. Bers /The Palmetto Group
People's Counsel for Baltimore County
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

832-2050
Lynn Yates
1-2470

12/31/96 -Matter concluded before Board. At conclusion, Counsel for
Petitioner submitted his Memorandum in Support; Protestant was not
represented by Counsel. Board allowed Protestant 10 days to file
response to Petitioner's Memorandum (1/10/97). Deliberation of the
case will take place subsequent to receipt of Protestant's
Response.

1/03/97 -Notice of Deliberation sent to parties; matter scheduled for
public deliberation on Thursday, January 30, 1997 at 9:30 a.m.; CBA
panel copied.

1/10/97 -Protestants' Responsive Memorandum filed by Richard M.
Batterton on behalf of Protestants in this matter, as requested.
(Copies to R.B.M.)

1/21/97 -Petitioner's Response to Protestant's Responsive Memorandum
filed by Lee Jacobson, Esquire; to R.B.M.
(Minus attachments (2) per instruction of
ROS.)

1/24/97 -letter from Richard M. Batterton objecting to filing of Reply
Memo by L. Jacobson, and to attachments thereto.

- Letter to Mr. Batterton indicating that Petitioner's Reply will
remain as part of file; however, two attachments referenced have
been pulled and will not be included with file or as part of packet
to R.B.M.

1/28/97 -Letter dtd 1/27/97 from L. Jacobson in response to Mr.
Batterton's letter of 1/23/97. FAX copy to Mr. Batterton this
date. Letter held for file. (File removed by B. 1/28/97 for
review prior to deliberation 1/30/97.)

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

01/08/98

Case Number: 03-C-97-002976 AE
Date Filed: 03/25/97
Status: Open/Active
Judge Assigned: To Be Assigned,

In The Matter of: Palmetto Group Inc The

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
-----	-----
Administrative Agency	96-430-A

INVOLVED PARTIES

Type Num	Name(Last,First,Mid,Title)	Dispo	Entered
-----	-----	-----	-----
PET 001	Palmetto Group Inc The		03/25/97
Attorney	0015216 Jacobson, Lee Ric Jacobson & Myerberg P A. 502 Washington Avenue Ste 320 Nottingham Centre Towson, MD 21204 (410)828-7090		
	0800309 Nordhoff, Katherine D Mister, Loker & Bartlett 30 East Padonia Road Suite 404 Timonium, MD 21093 (410)561-3000		
ITP 001	County Board Of Appeals Of Baltimore County		03/25/97
	Old Courthouse Room 49 400 Washington Avenue Towson, MD 21228		
ITP 002	Bennett, Cyril		04/28/97
Attorney	0012544 Tanczyn, Michael P		

Michael P Tanczyn, P.A
 Suite 106
 606 Baltimore Avenue
 Baltimore, MD 21204
 (410)296-8823

Type Num	Name(Last,First,Mid,Title)	Dispo	Entered
ITP 003	Bennett, Alice Attorney 0012544 Tanczyn, Michael P Michael P Tanczyn, P A Suite 106 606 Baltimore Avenue Baltimore, MD 21204 (410)296-8823		04/28/97
ITP 004	Bennett, Tonya Attorney 0012544 Tanczyn, Michael P Michael P. Tanczyn, P A Suite 106 606 Baltimore Avenue Baltimore, MD 21204 (410)296-8823		04/28/97
ITP 005	Stirling, Wanda L Attorney: 0012544 Tanczyn, Michael P Michael P Tanczyn, P A Suite 106 606 Baltimore Avenue Baltimore, MD 21204 (410)296-8823		04/28/97
ITP 006	Steward Ida Attorney: 0012544 Tanczyn, Michael P Michael P Tanczyn, P.A. Suite 106 606 Baltimore Avenue Baltimore, MD 21204 (410)296-8823		04/28/97
ITP 007	Tate, William Attorney: 0012544 Tanczyn, Michael P Michael P Tanczyn, P A. Suite 106 606 Baltimore Avenue Baltimore, MD 21204 (410)296-8823		04/28/97
ITP 008	Tate, Geneva Attorney. 0012544 Tanczyn, Michael P Michael P Tanczyn, P A. Suite 106 606 Baltimore Avenue		04/28/97

Baltimore, MD 21204
(410)296-8823

Type Num	Name(Last,First,Mid,Title)	Dispo	Entered
ITP 009	Borden, Harold Attorney 0012544 Tanczyn, Michael P Michael P. Tanczyn, P.A Suite 106 606 Baltimore Avenue Baltimore, MD 21204 (410)296-8823		04/28/97
ITP 010	Klevinger, Daniel Attorney 0012544 Tanczyn, Michael P Michael P Tanczyn, P A. Suite 106 606 Baltimore Avenue Baltimore, MD 21204 (410)296-8823		04/28/97
ITP 011	Klevinger, Tammy Attorney 0012544 Tanczyn, Michael P Michael P Tanczyn, P A. Suite 106 606 Baltimore Avenue Baltimore, MD 21204 (410)296-8823		04/28/97
ITP 012	Batterton, Richard M Attorney 0012544 Tanczyn, Michael P Michael P Tanczyn, P A Suite 106 606 Baltimore Avenue Baltimore, MD 21204 (410)296-8823		04/28/97
ITP 013	Batterton, Martha M Attorney 0012544 Tanczyn, Michael P Michael P. Tanczyn, P A Suite 106 606 Baltimore Avenue Baltimore, MD 21204 (410)296-8823		04/28/97

CALENDAR EVENTS

Date	Time	Dur	Cer	Evnt	Jdg	L Day	Of Rslt	By	ResultDt	Jdg	T Notice	Rec
10/06/97	09.30A	003	yes	CIVI	TBA	01	/01	CON	C	11/18/97	JTS P	Y
Stenographer(s) Steven D Perrine												

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal	RSN
TBA To Be Assigned,	J	03/25/97		

DOCUMENT TRACKING

Num/Seq	Description	Filed	Received	Entered	Party	Routed	Ruling	Closed	User ID
001000	Pet for Judicial Review/Workmans Comp (The Application Of The Paletto Group, Inc For A Variance On Property Located At The Intersection Arunah Avenue And Delaware Place 1108 Arunah Avenue) 1st Election District 1st Councilmanic District	03/25/97	03/25/97	03/25/97	TBA	PET001			CB CB
001001	Answer fd by itp 2-13	04/28/97	04/25/97	04/28/97	TBA	000			CB CB
002000	Transcript of Record from Adm Agency	05/14/97	05/13/97	05/14/97	TBA	000			JH JH
003000	Notice - Recpt of Record of Proceedings copies sent	05/14/97	05/13/97	05/14/97	TBA	000			JH JH
004000	Notice of Appeal Sent	05/14/97	05/14/97	05/14/97	TBA	ITP001	05/14/97	05/14/97	JH JH
005000	Notice of Appeal Sent	05/14/97	05/14/97	05/14/97	TBA	ITP002	05/14/97	05/14/97	JH JH
006000	Notice of Appeal Sent	05/14/97	05/14/97	05/14/97	TBA	ITP003	05/14/97	05/14/97	JH JH
007000	Notice of Appeal Sent	05/14/97	05/14/97	05/14/97	TBA	ITP004	05/14/97	05/14/97	JH JH
008000	Notice of Appeal Sent	05/14/97	05/14/97	05/14/97	TBA	ITP005	05/14/97	05/14/97	JH JH
009000	Notice of Appeal Sent	05/14/97	05/14/97	05/14/97	TBA	ITP006	05/14/97	05/14/97	JH JH
010000	Notice of Appeal Sent	05/14/97	05/14/97	05/14/97	TBA	ITP007	05/14/97	05/14/97	JH JH
011000	Notice of Appeal Sent	05/14/97	05/14/97	05/14/97	TBA	ITP008	05/14/97	05/14/97	JH JH
012000	Notice of Appeal Sent	05/14/97	05/14/97	05/14/97	TBA	ITP009	05/14/97	05/14/97	JH JH
013000	Notice of Appeal Sent	05/14/97	05/14/97	05/14/97	TBA	ITP010	05/14/97	05/14/97	JH JH
014000	Notice of Appeal Sent	05/14/97	05/14/97	05/14/97	TBA	ITP011	05/14/97	05/14/97	JH JH
015000	Notice of Appeal Sent	05/14/97	05/14/97	05/14/97	TBA	ITP012	05/14/97	05/14/97	JH JH
016000	Notice of Appeal Sent	05/14/97	05/14/97	05/14/97	TBA	ITP013	05/14/97	05/14/97	JH JH

Num/Seq	Description	Filed	Received	Entered	Party	Routed	Ruling	Closed	User ID
017000	Notice of Appeal Sent	05/14/97	05/14/97	05/14/97	TBA	PET001	05/14/97	05/14/97	JH JH
018000	Memorandum In Support Of The Board Of Appeals	06/16/97	06/13/97	06/16/97	TBA	000		06/16/97	CB CB
019000	Petitioner/Appellant's Memorandum Of Law In Support of Petition For Judicial Review	06/18/97	06/17/97	06/18/97	TBA	PET001		06/18/97	CB CB
020000	Scheduling Order	07/07/97	07/07/97	07/07/97	TBA	000	07/07/97	07/07/97	JD JD
021000	Memorandum Of Law ** Filed by ITP002-Bennett, Cyril, ITP003-Bennett, Alice, ITP004-Bennett, Tonya, ITP005-Stirling, Wanda L, ITP006-Steward, Ida, ITP007-Tate, William, ITP008-Tate, Geneva, ITP009-Borden, Harold, ITP010-Klevinger, Daniel, ITP011-Klevinger, Tammy, ITP012-Batterton, Richard M, ITP013-Batterton, Martha M	10/06/97	10/03/97	10/06/97	TBA	ITP002		10/06/97	JH JH
022000	Open Court Proceeding Nov 18, 1997 Hon James T Smith Jr Hearing had Decision held sub-curia Opinion and Order to be filed	11/18/97		11/18/97	JTS	000			BH BH
023000	Opinion and Order of the Court Affirming Decision	01/02/98		01/02/98	JTS	000	Granted	01/02/98	LG LG
024000	Invoice #6089 sent to Lee R Jacobson for \$10 00	01/07/98		01/07/98	TBA	000			CB CB
025000	sent docket entries to Board of Appeals	01/08/98		01/08/98	TBA	000			LC LC

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type
WCSL	Workmans Comp Set L1	CANCEL	07/23/97	120	no	no	DTRA	D
1ANS	1st Answer Tickle	OPEN	04/25/97	0	no	no	DANS	D
SLTR	Set List For Trial	CANCEL	04/25/97	0	yes	no	1ANS	T

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
000		ITP 001	County Board Of Appeals Of Ba BOX 24Transcript					B

DIFFERENTIATED CASE MANAGEMENT
TRACKS AND MILESTONES

Track · R1 Description: EXPEDITED APPEAL TRACK Custom Yes
Assign Date 07/07/97 Order Date 07/07/97
Start Date · 07/07/97 Remove Date.

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD Rule 2-322		07/22/97		OPEN
All Motions (excluding Motions in Limine		08/27/97		OPEN
TRIAL DATE is	10/06/97	10/05/97	11/18/97	REACHED

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258

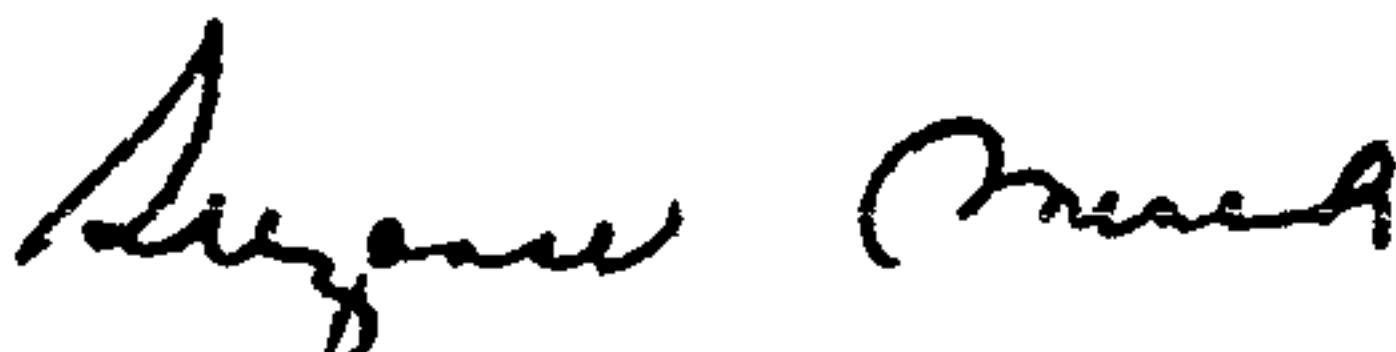
N O T I C E O F R E C O R D

Case Number: 03-C-97-002976
Old Case number:
C I V I L

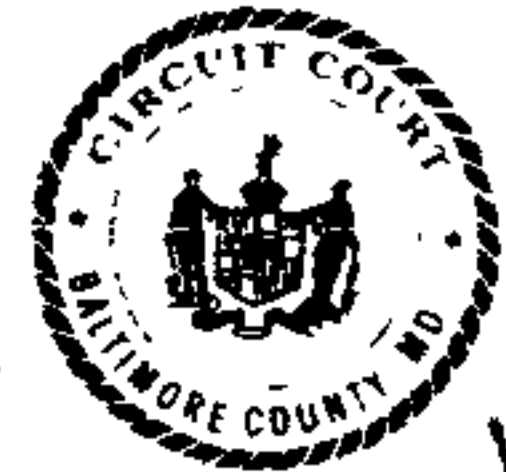
In The Matter of: Palmetto Group Inc The

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 13th day of May, 1997.



Suzanne Mensh
Clerk of the Circuit Court, per



J.H.

Date issued: 05/14/97

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
Old Courthouse Room 49
400 Washington Avenue
Towson, MD 21228

RECEIVED
COUNTY BOARD OF APPEALS
97 MAY 16 PM 12:52

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MD 21285-6754

County Board Of Appeals Of Baltimore County
Old Courthouse Room 49
400 Washington Avenue
Towson MD 21228

Assignment Date: 07/07/97

Case Title: In The Matter of: Palmetto Group Inc The
Case No: 03-C-97-002976 AE

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Richard P. Abbott at (410) 887-3233.

You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

- 1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 07/22/97
 - 2. All Motions (excluding Motions in Limine) are due by..... 08/27/97
 - 3. TRIAL DATE is..... 10/06/97
- Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned: APPEAL: 3 HOURS

Honorable John Grason Turnbull II
County Administrative Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponements must be submitted in writing with a copy to all counsel/parties involved. All requests for postponements of cases filed after October 1, 1994 must be approved by the Administrative Judge.

Settlement Conference (Room 507): All counsel and their clients **MUST** attend the settlement conference **in person**. All insurance representatives **MUST** attend this conference **in person** as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258

Court Costs: All court costs **MUST** be paid on the date of the settlement conference or trial

cc: Michael P Tanczyn Esq
cc: Lee Ric Jacobson
cc: Katherine D Nordhoff Esq
Issue Date 07/07/97

RECEIVED
COUNTY BOARD OF APPEALS
97 JUL -8 AM 11:54

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: R. Schuetz DATE: January 10, 1997
D. Levero
H. Buchheister

FROM: Kathi

SUBJECT: Case No. 96-430-A /The Palmetto Group, Inc.

The subject matter is scheduled for deliberation on Thursday, January 30, 1997 at 9:30 a.m. As you'll recall, Petitioners' Memorandum in Support of Petition was filed by their attorney at the conclusion of the hearing on December 31, 1996. The Board then allowed Protestants until January 10, 1997 to file their response to that Memorandum, which has been done.

Therefore, enclosed for your review prior to the January 30th deliberation in this matter are the following:

1. Memorandum in Support filed by Lee R. Jacobson, Esquire, on behalf of the Petitioners on December 31, 1996.
2. Protestants' Responsive Memorandum filed by Richard M. Batterton, Protestant, on behalf of the Protestants in this matter on January 10, 1997, as requested by the Board on 12/31/96.

Should you have any questions regarding the above, or need any additional information prior to public deliberation, please call me.

kathi

Attachments

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: R. Schuetz
D. Levero
H. Buchheister

DATE: January 21, 1997

FROM: Kathi

SUBJECT: Transmittal #2 -Case No. 96-430-A /The Palmetto Group

On January 10th, I forwarded to you copies of Petitioner's Memorandum in Support filed on 12/31/96 at the subject hearing, as well as copies of Protestants' Responsive Memorandum filed 1/10/97.

To supplement the above filings, enclosed is a copy of Petitioner's Response to Protestant's Responsive Memorandum filed this date by Mr. Jacobson on behalf of Petitioner.

As you know, this matter is scheduled for deliberation on Thursday, January 30, 1997 at 9:30 a.m.

Should you have any questions regarding the above, or need any additional information prior to public deliberation, please call me.

kathi


Attachment

*Note. Copies to Bd
did not include
attachments (Description
and Plot) your confirm
of R. Schuetz's
memo. sent.*

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: April 1, 2002

TO: Arnold Jablon, Director
Permits & Development Management
Attn.: David Duvall

FROM: Theresa R. Shelton 
Board of Appeals

SUBJECT: **The Palmetto Group, Inc.**
Case No.: 96-430-A
Circuit Court Case No.: 03-C-97-002976

Judge Smith of the Circuit Court issued an Order on 1/2/98 AFFIRMING BOA. The case was then appealed to the Court of Special Appeals. The Court of Special Appeals issued a Mandate on 12/98 dismissing the appeal. No further appeals have been taken in this matter. The Board of Appeals is closing and returning the file that is attached herewith.

Attachment: SUBJECT FILE ATTACHED

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: The Palmetto Group, Inc. -Petitioners
Case No. 96-430-A

DATE : January 30, 1997

BOARD /PANEL : Robert O. Schuetz, Chairman (ROS)
Harry E. Buchheister, Jr. (HEB)
S. Diane Levero (SDL)

SECRETARY : Kathleen C. Bianco
Legal Administrator

Those present at this deliberation included Richard M. Batterton, Appellant /Protestant; and Lee Jacobson, Esquire, Counsel for Petitioner /The Palmetto Group, Inc. People's Counsel did not participate in these proceedings.

ROS: Good morning, ladies and gentlemen. We are here this morning on Case No. 96-340-A, The Palmetto Group. The purpose of this morning's gathering is to deliberate the matter we heard on the merits. And we subsequently received memorandums from the respective sides. Additionally, I'd like to make a couple of preliminary issues known. One is during the closing moments of the evidentiary portion of the proceedings, we received a Memorandum in Support of the Petition filed by Petitioner's Counsel. We gave the Protestants a period to respond, which they did. Also, at the closing moments of the evidentiary portion, I indicated that we would also give Petitioners an opportunity for response to Protestants' response. I will, however, indicate that the material which was attached to Petitioner's Response to the Response, that being the Paul Lee information and so forth, was not given to my colleagues. As a matter of ruling from the bench, I prevented that from being submitted with the memorandum to my colleagues. Frankly, Mr. Jacobson, I don't see where that has a whole lot of weight in this matter. But I did not want a tainted record at this point, so to speak.

As for what I am going to call Protestants' filing of a protest, this Board, as a practice, always allows information which comes to the Board into the file. And, of course, information which was brought by Mr. Batterton in his letter of January 23rd contained information of case law; the Board can certainly take judicial notice in that record, and that being a recent decision, I would applaud Mr. Batterton in finding this. And so, both of my colleagues have that information.

Finally, the January 27, 1997 letter from Mr. Jacobson, my colleagues have not had it yet. It was just received and

faxed to Mr. Batterton on the 28th. I've not seen it. But I did have an opportunity to read it, and I will give my colleagues an opportunity to read it. I see where you are responding to Protestants' letter of protest. It has nothing to do with the factual issues before us. But in deference to you. Mr. Jacobson, I would like to give them a few moments to read it. I think the merits speak for themselves, and we have ample case law to consider the matter.

We will now take a few minutes, and we will be back out in five to ten minutes.

BRIEF RECESS AT THIS JUNCTURE; BOARD THEN RE-CONVENED.

ROS: Thank you, everybody. My apologies for taking a little longer than usual with this issue.

I would like to remind everybody that this portion of the hearing is not included as part of the record per se. The Board will be generating minutes of this meeting. We have not discussed this case among ourselves, and the purpose of today's proceedings is to indicate our compliance with the open meetings law in the State of Maryland.

We did decide who would go first, and Harry has volunteered to do that. I will caution you that this is not part of the record; there will be no response; will ask you to step outside.

HEB: I would like to preface my remarks by saying that I did take a ride through Catonsville Heights. I entered a rather large community off Ingleside Avenue by way of Raynor Road, and really could not find Arunah Avenue. Then I also came in from Winters Lane. And, of course, ran right into it. So I kind of familiarized myself with the community and with that comment, I will say that Catonsville Heights is a community of, I would imagine, several hundred lots platted many years ago in 1919, and most of the lots are 20 feet in width. I saw one house that was on Woodside Avenue that had to be on a 20-foot lot; it was an old house. Back in those years, you could do that. In recent years, under the present zoning of D.R. 5.5, 55-foot lots are required, and a total minimum of 6,000 sq. ft. Three adjoining lots have been absolutely necessary for building a single-family dwelling in Catonsville Heights. The land is zoned D.R. 5.5.

Petitioner is requesting variance relief from the zoning regulations to allow 15-foot setback versus the 25 feet required, and a 20-foot rear yard setback in lieu of the required 30 feet. The subject property is 8,186 sq. ft. in

area, and is a triangular-shaped right angle with, what I call, 82-1/2 in length and then the triangular lot along Arunah of 189 feet to its apex where it intersects the opposite boundary along Delaware Place. The subject property was platted in 1919 as lots 10, 11 and 12. Petitioner proposes to build a single-family dwelling; 26 x 26; two-story colonial style home; similar to several others near the site. Strict adherence to the zoning regulations would limit the building envelope of 15 x 15' according to Petitioner and that would be an impossibility to build.

The statute that governs the granting of variances is Cromwell v. Ward, which defines the variance determination as a two-step process: (1) the subject property is unique or unusual in a manner different from the nature of surrounding properties causing zoning provisions to impact disproportionately upon the property; and (2) if the property is considered to be unique or unusual, the second step is to determine if practical difficulty or unusual hardship result from the disproportionate impact of the ordinance.

Strong consideration must be given to the general purpose of the ordinance. Section 307.1 provides the standard for granting variances -- that there be special circumstances or conditions which exist which are peculiar to the land and where strict compliance with the regulations will result in practical difficulty or unusual hardship. Testimony and evidence show that the Petitioner purchased six lots in 1994 (lots 7 through 12). On lots 7, 8 and 9 -- a ranch-style dwelling on three 20-foot lots on Arunah Avenue; no variance required. The dwelling was conveyed by deed to the Family Service Foundation.

The question of unique arises as to lots 10, 11 and 12, and the triangular configuration that form the required setbacks not possible without a variance. The Petitioner insists that the plan did not create any issue of safety or injustice to anyone in the community. Petitioner states that if denied he would lose the right to use his land as permitted by the laws of Baltimore County.

Protestants argue several salient points. They identify at least four triangular-shaped properties, indicating that it's not unique. I note that in Cromwell it states that the properties be compared to surrounding properties regarding uniqueness. And the examples indicated by the Protestants are in the subdivision, but not close by. If focusing on the Arunah Avenue vicinity, lots 10, 11 and 12, as a triangular parcel, is different or unusual. When the Petitioner purchased the tract of six lots as a package, it had to be

obvious that lots 10, 11 and 12 would be restrictive and limited for positioning another dwelling, after building the rancher on lots 7, 8 and 9. The plat dimensions should have raised questions for utilizing the land's configuration for a building envelope meeting the zoning regulations. In particular, the previous owner conveyed to the County a 20' x 30' rear yard section fronting on Delaware Place for a road turn-around, thereby reducing the rear yard area of lot 10, an act then which is now creating the difficulty for the present owner. It appears to me that this action, perhaps unrealized in 1994, has necessitated a positioning of the proposed two-story house so that front and rear yard variances are now needed, and that is the consequence of that conveyance. The proposed location of the dwelling on lot 11 primarily will occupy an area of 8,100 sq. ft. of the total parcel. The difference remaining is a portion extending to the apex of the triangular-shaped lot. It appears to me that the uniqueness of this property is that the zoning regulations impacts the property in a way different from the other lots in the community.

Rather than to extend and complete the roadbed of Delaware Place, to a junction with Arunah Avenue, being aware of the community plat, Delaware Place is not a through road. Adjacent to this subject site is basically a well-maintained lawn. I think this taking gives an unusual characteristic to the property. However, as the second prong of Cromwell as to practical difficulty or unreasonable hardship -- it's reasonable to presume that the Petitioner carefully studied the entire tract of six lots purchased in 1994, and knowing of the rear road conveyance to the County, that he should have recognized the potential hardship and difficulty -- Cromwell also states that the hardship must not be the result of hardship or actions taken by the owner -- actions taken by the owner in developing lots 7, 8 and 9; and the foreseen limitations of building on lots 10, 11 and 12 had to cause awareness of need for variance which should be granted only under unusual circumstances.

Yes, the property has a uniqueness compared to others in the surrounding neighborhood, but as stated in Cromwell, when a landowner purchases land with actual knowledge of zoning restrictions, he may not be granted a variance on the grounds of undue hardship. Therefore, I feel that the requested variance should be denied.

SDL: I'm not going to go over everything. I think Harry pretty much summarized the facts of the case.

The subject property does have an irregular shape causing the

zoning regulations to impact. The question is how unique or peculiar is this property. Protestants cite six examples of groups of lots forming triangular parcels in Catonsville Heights to show that the property's shape is not unique.

Petitioner argues that 7 in more than 1,000 lots still leaves the lot unusual enough to qualify.

The words "unique" and "peculiar" are subjective -- must be judgement call by this Board. I would have to say that considering six other instances of triangular lots, I don't consider it to be all that unique to the neighborhood.

Turning to strict compliance with the setback resulting in practical difficulty or unreasonable hardship, certainly that would not permit the Petitioner to build a house of practicable size, but the hardship is self-created since six contiguous lots were bought in 1994; could have combined them for building a house.

Section 307.1 states that a variance may be granted only in such a manner as to grant relief without harm to public safety, health and general welfare. The front variance especially bothers me, as the owner of a similarly sized house on similarly placed land. Jutting out 10 feet beyond the other houses, the aesthetics would be impacted. There would also be a detrimental impact on the property values.

In my opinion, Petitioner has failed to meet the requirements. I would deny the request.

ROS: This is my turn. I came here this morning not knowing what I was going to do. I thought I knew yesterday afternoon and re-read everything, reviewed my notes this morning. I was hoping that my colleagues would sway me one way or another, and I would say they have. One of the issues that bothered me in this case was not so much Cromwell's uniqueness test, because in my view, Cromwell goes too far in unfairly putting a burden on property owners above and beyond that intended by the Council. I think that uniqueness is one thing that must be proven, but one must be mindful of what one is comparing the site to when considering uniqueness question. I think one does not have to include the entire platted subdivision -- some arbitrary line over which the Developer had control many years ago. Cromwell's language, as pointed out by Mr. Batterton, does give the Board some guidance as to unique.

In that light, I think that this particular property is indeed unique. But a unique property calls for a unique solution. That's where the plan falls apart. Architecturally speaking,

it's not enough, in my view, to take a unique situation and put cookie-cutter houses on the lot. That's not the solution. I'm not saying that what is proposed is architecturally displeasing, but from a planning point. it's inadequate for the same arguments my colleague, Ms. Levero, has indicated -- negative impact on the neighborhood. When one lives in a community such as this and architectural requirements have been created over a long period of time, development of neighborhood issues, such as setbacks, get to be cast in stone. It's not impossible to deviate from that but is lacking in this instance.

And so I would side with Mr. Buchheister in indicating that I believe it's unique, but I would indicate that the issue of practical difficulty and unreasonable hardship and whether or not this particular property meets the other bent and that is that it not impact on the neighborhood or its general welfare and enjoyment of property.

I think this is a first for me where something like this has come down to a fine point. But I believe it's a salient point because of the uniqueness of the property.


For those reasons, I, too, would deny the variance.

The Board will issue a written Opinion and Order subsequent to these proceedings. Any Petition for Judicial Review should be taken from the date of that Order and not today's date.

Thank you very kindly.

* * * * *

Respectfully submitted,



Kathleen C. Bianco
Legal Administrator



County Board of Appeals of Baltimore County

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

January 24, 1997

Mr. Richard M. Batterton
1005 Arunah Avenue
Catonsville, MD 21228

Re: Case No. 96-430-A
The Palmetto Group, Inc.

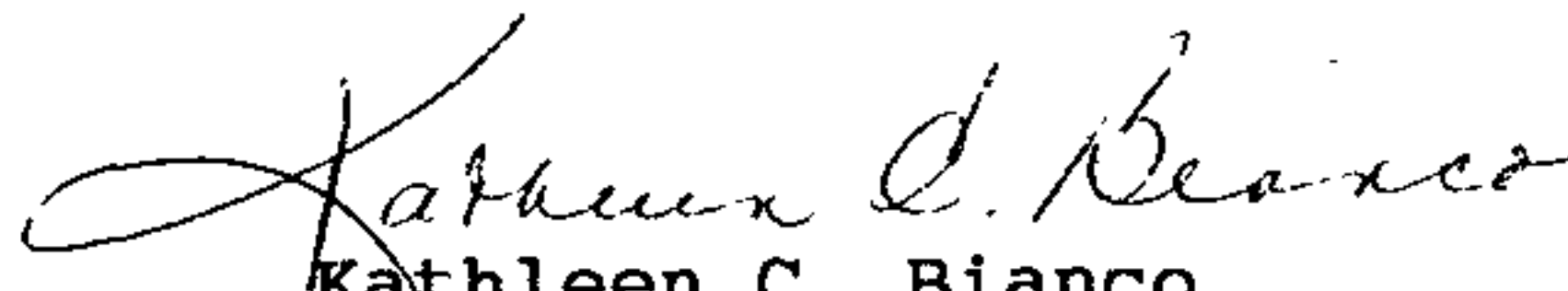
Dear Mr. Batterton:

This office is in receipt of your letter dated January 23rd regarding the subject matter.

In response to your objection regarding Petitioner's Response to Protestant's Responsive Memorandum, said Memorandum, in and of itself, will remain part of the file and will not be stricken. However, both attachments thereto have been pulled and will not be considered part of Petitioner's Response.

By copy of this letter, Mr. Jacobson has been advised of this action. The Board will convene on Thursday, January 30th, to deliberate this matter.

Very truly yours,


Kathleen C. Bianco
Legal Administrator

cc: Lee R. Jacobson, Esquire

*See memo rate
at back of Jacobson
memo.*



Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3353
Fax: (410) 887-5708

October 21, 1998

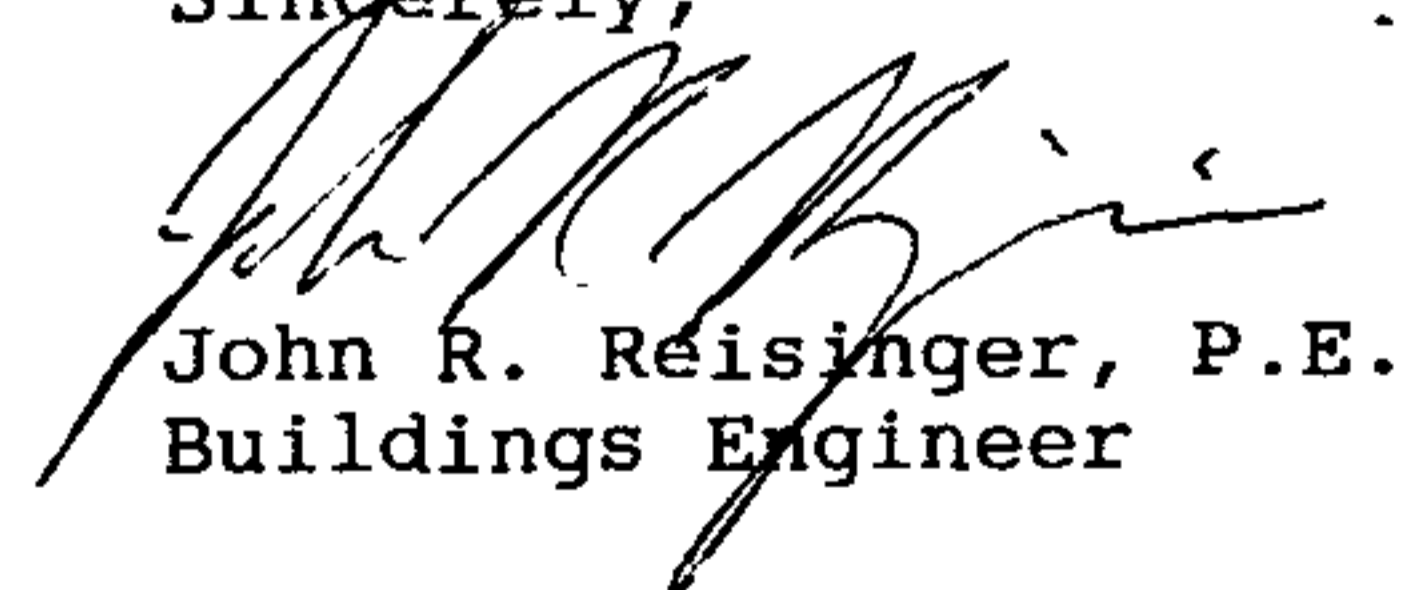
Ms. Nancy Farlow
Pacesetter Homes
P.O. Box 841
Ellicott City, Md 21041

Re: 1106 Arunah Ave
Permit B351881

Dear Ms. Farlow:

Based on information received from the Zoning Office, the above permit is hereby suspended. All work on the project, including grading, must stop until such time as the permit can be reinstated. Please contact Kate Milton at 410-887-3391 for more information.

Sincerely,



John R. Reisinger, P.E.
Buildings Engineer

c. Kate Milton, Zoning
John Altmeyer, Inspections
Tom Regulski, DEPRM
Palmetto Group, Inc.
P.O. Box 841
Ellicott City, Md 21041



LAW OFFICES
JACOBSON & MYERBERG, P.A.
SUITE 320, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 828-7090
FAX (410) 828-7012

LEE R. JACOBSON
HENRY J. MYERBERG

January 20, 1997

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

Attention: Kathleen C. Bianco

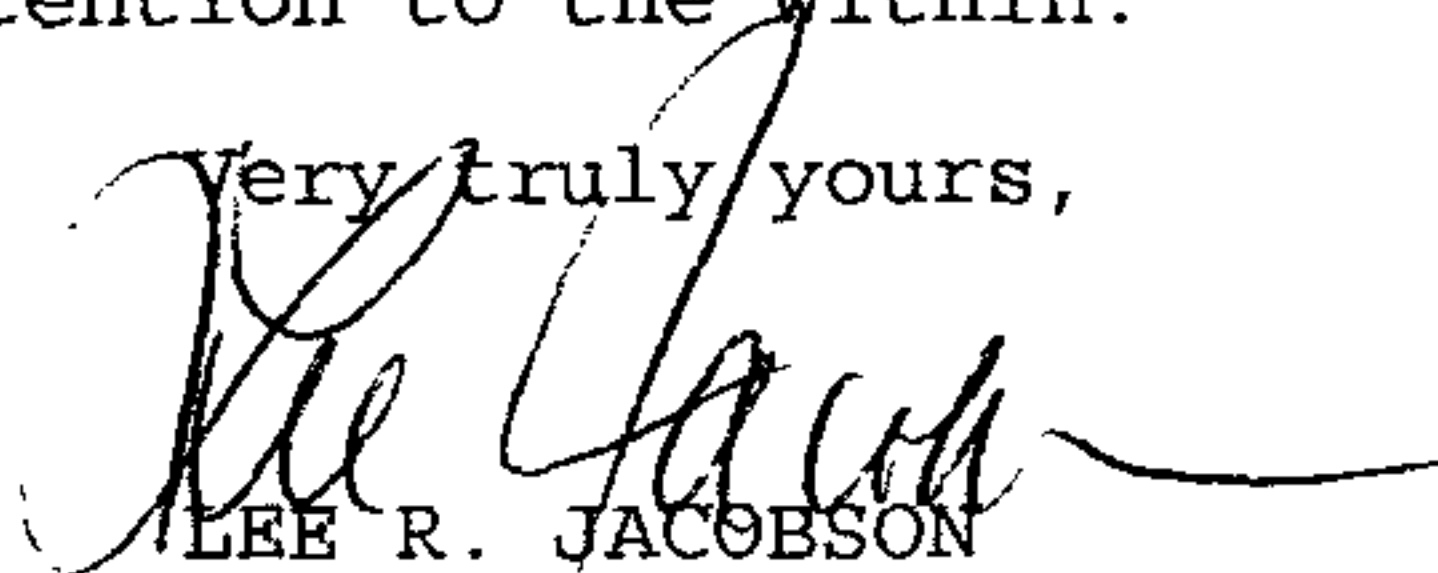
Re: The Palmetto Group, Inc. - Petitioner
Case No.: 96-430-A

Dear Ms. Bianco:

Please find enclosed original and three copies of
Petitioner's Response to Protestant's Responsive Memorandum for
filing in the above entitled matter.

Thank you for your kind attention to the within.

Very truly yours,



LEE R. JACOBSON

LRJ:mcm
Enclosure
cc: Mr. Richard M. Batterton

LAW OFFICES
JACOBSON & MYERBERG, P.A.
SUITE 320, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 828-7090
FAX (410) 828-7012

LEE R. JACOBSON
HENRY J. MYERBERG

January 27, 1997

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

Post-it® Fax Note	7671	Date	1-28-97	# of pages	2
To	Richard Batterton	From	Kathi Bianco		
Co./Dept.		Co.	Bd. of Appeals		
Phone #	766-9095	Phone #	887-3180		
Fax #	766-9980	Fax #	887-3182		

Attention: Kathleen C. Bianco

Re: The Palmetto Group, Inc. - Petitioner
Case No.: 96-430-A

Dear Ms. Bianco:

In light of the Protestant's correspondence of January 23, 1997, I feel constrained to reply on behalf of the Petitioner to the various complaints raised by Mr. Batterton.

Initially Mr. Batterton complains that the Petitioner's Response to Protestant's Responsive Memorandum is somehow violative of due process. In fact, due process and Maryland case law long have mandated that the moving party, here the Petitioner, having the burden of proof, has the right to open and close the final argument Baltimore v. Hurlock, 113 Md 674, 78 A 558 (1910).

Additionally, at the close of the testimony in this matter, upon the Petitioner's submission of it's Memorandum in Support, the Board allowed the Protestants ten days to respond and the Petitioner ten days thereafter for rebuttal argument.

Thus, not only is Petitioner herein entitled by virtue of the mandate of due process to respond to Protestant's Memorandum but as well by the parameters of the argument set by this honorable Board.

The Protestants' next complain as to the submission by the Petitioner of an engineering survey and description prepared by

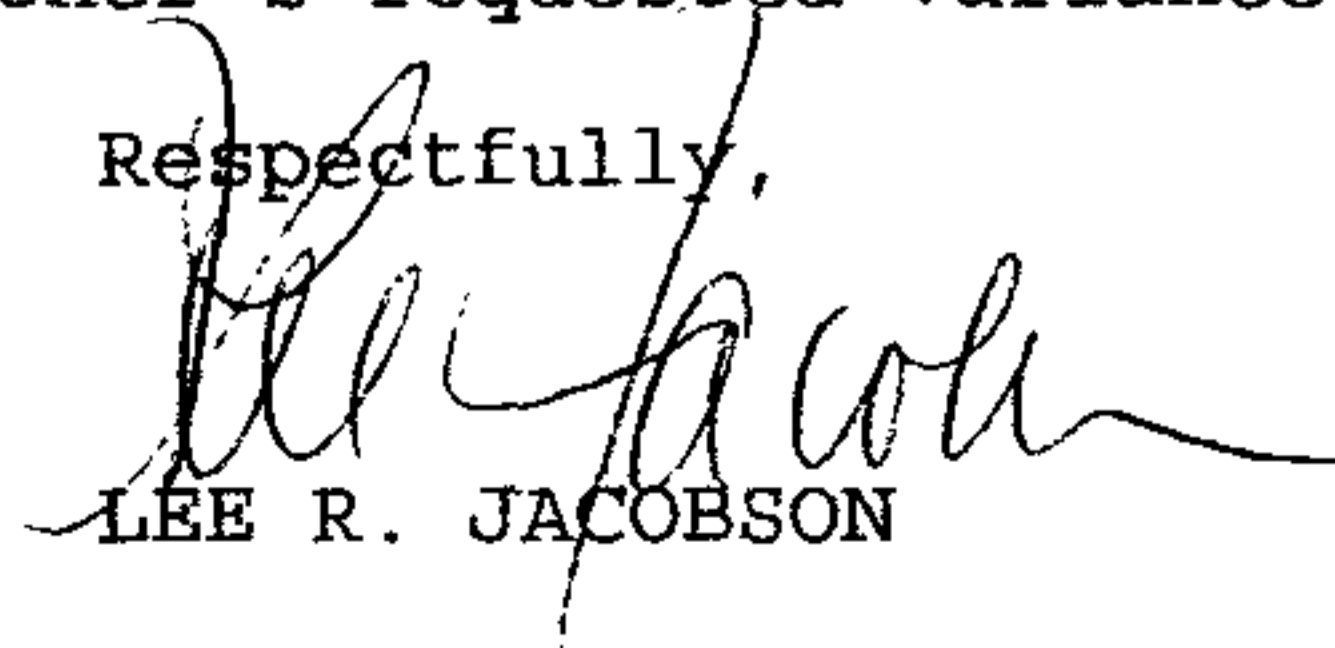
Paul Lee Engineering Co. These documents were merely submitted to rebut the Protestants' argument regarding a four foot difference of a common dividing line between lots 9 and 10. The difference wasn't argued by the Protestants in their closing argument before the Board and it was not until the submission of their responsive memorandum that the issue arose. As pointed out in the Petitioner's response, this "red herring" now raised by the Protestants is of little consequence as, even given the error as pointed out in the Lee survey, the property at issue is still substantially greater than the 6,000 square foot minimum required for a single family dwelling lot in a D.R. 5.5 zone.

Finally, Evans v. Shore Communications, Inc., et al., 112 Md App. 284, 685 A. 2d 454 (1996) cited by the Protestants in support of their position against the requested set back variance is like the cases cited in their Memorandum clearly distinguishable. The crux of the Appellee's case involved the request for a special exception and variance to construct a communications tower in Talbot County. The Court is called upon to interpret the provisions governing variances in Talbot County.

What your Petitioner does find instructive in this opinion is the language used by the Court in determining it's standard for review of an administrative agency. Quoting the Court in Moseman v. County Council of Prince George's County, 99 Md App. 258, 262, 636 A.2d 499, cert denied, 335 Md. 229, 643 A.2d 383 (1994) Judge Davis wrote, "In determining whether there was substantial evidence to support the agency's decision, if there was evidence from which a reasonable person could come to different conclusions, this Court will not substitute it's judgement for that of the administrative agency, even if we might have reached a different conclusion independently." Id.

Having fully responded to the Protestants' correspondence, the Petitioner again stridently urges this Board to uphold the findings of fact and conclusions of law reached by the Zoning Commissioner and grant the Petitioner's requested variance.

Respectfully,



LEE R. JACOBSON

DIAL ELECTRONICS

"Specializing in the repair, restoration and replacement of consumer electronics"

96-3975
7/22/96
of
TO JW

Mr. Arnold Jablon

Director

Office of Permits and Development Management
Balto. County, Maryland

REF: Case No. 96-430-A

Petition for zoning variance

Dear Sir,

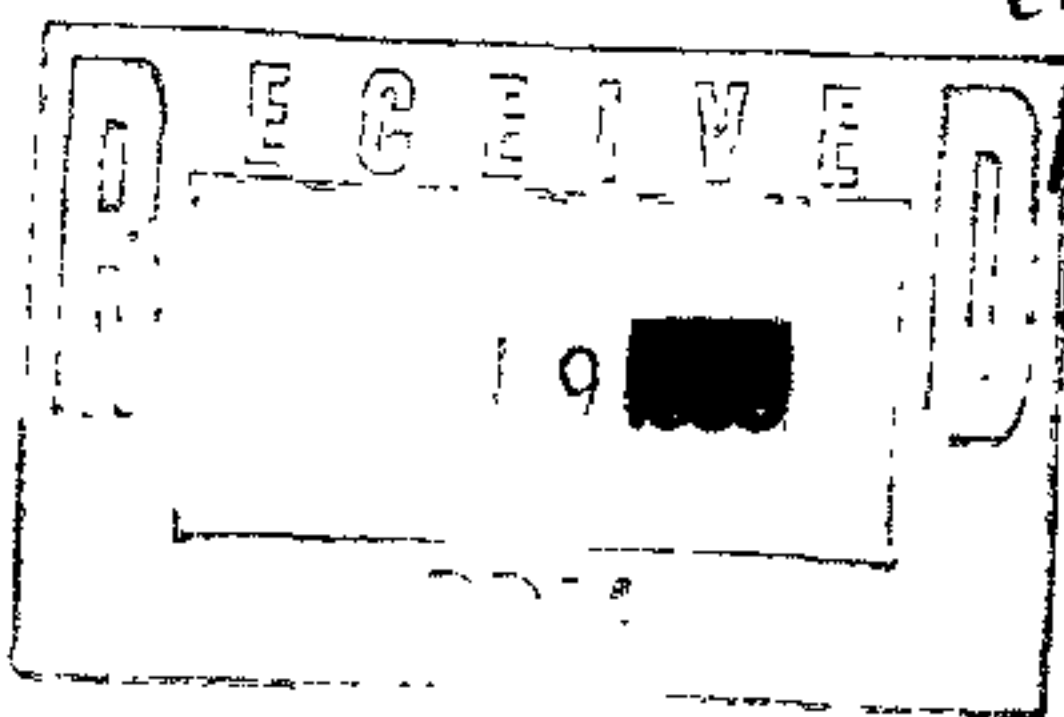
This correspondence constitutes an official notification of and request for an appeal hearing in the above mentioned case. I respectfully request that you forward this file to the Board of Appeals so that they may schedule a hearing in the near future.

Please find enclosed a check in the amount of \$210.00 for all fees associated with the appeal. Also, could all correspondence proceeding from this point forward be directed to me, personally. I am acting on behalf of our community in this matter. My address is: 1005 Arunah Ave.

Catonsville, Md. 21228

Richard M. Batterton

Sincerely,
Richard M. Batterton



DIAL ELECTRONICS

"Specializing in the repair, replacement and restoration of consumer electronics."

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

January 23, 1997

Attention: Kathleen C. Bianco

Re: The Palmetto Group, Inc. - Petitioner
Case No. : 96-430A

Dear Ms. Bianco:

I am in receipt of correspondence and material from Lee R. Jacobson, P.A., counsel for the Petitioner, in the above mentioned case, dated January 20th, 1997. Presumably you have also received this material, including the "Petitioner's Response to Protestant's Responsive Memorandum."

The Protestants hereby express our vigorous objections to the inclusion of this material in the Board's case file for deliberation. It is my distinct understanding that the submission of any documentation at this time is entirely inappropriate based on the specific parameters set forth by the Board at the conclusion of the hearing. At that time ample opportunity was provided to the Petitioner to present and enter into the record any evidence they wished. Clearly the "Memorandum of Support" should have constituted the totality and summation of their arguments. Under strict guidelines set forth by the Board, we then submitted our "Protestants' Responsive Memorandum." Should this not have been the last aspect of "due process" for written argument by both parties? I believe that not only has the Petitioner exceeded his rights under the accepted parameters mandated by the Board, but has now introduced new evidentiary exhibits unrelated to case law.

I believe my inspection of the case file at your office January 8th, 1997 was thorough. If so, I must conclude that the attachments to the January 20th, 1997 correspondence from the Petitioner includes heretofore unviewed evidentiary material and exhibits. Specifically, the "Description" and "Plat to Accompany Description" of lot 7,8 and 9, Block 26, "Cationsville Manor" generated by Paul Lee Engineering, Inc. are noted. Additionally these exhibits introduced a descriptive identifier to the community, previously not referred to in any of the direct testimony, as "Catonsville Manor." Previously submitted exhibits and testimony identify the community as "Catonsville Heights", a substantially larger entity. They then further argue based on these exhibits.

Counsel for the Petitioner has chosen at this late juncture to address issues raised by the Protestants' Response Memorandum. We vehemently object to this questionable strategy and respectfully request that the entire content of the "Petitioner's Response to Protestant's Responsive

Memorandum" be stricken and deleted from consideration, review, deliberation and the case file completely. This would obviously include any and all references to the "Description" and "Plat" attachments from Paul Lee Engineering, Inc.

We are resisting the strong inclination to respond with further testimony, evidence and exhibits such as those now forwarded by the Petitioner. If "due process" was concluded by the completion and remittance of our "Response", what basis does Mr. Jacobson have for further action? My neighbors and I will await the Board's timely answer to our objection.

Please also find enclosed copies of the Advance Sheets-Atlantic Reporter, 2nd Series, dated January 10th, 1997. Although this case was reported November 27th, 1996, the Opinion was published just after we filed our memo January 9th, 1997. We strongly believe that it is highly instructive on the issue of the Variance. The case cited is Robert S. Evans v. Shore Communications, Inc. et al., 112 Md App. 284,685 A. 2d 454(1996). Although the entire content of the Opinion is illuminating, of particular applicability and interest is the text proceeding from Page 464, II, [7] and continuing through to the conclusion of the Opinion.

This enclosure is submitted by the Protestants purely as a recently published matter of case law recorded and available to any with interest, as well as to the Board of Appeals during deliberation of the immediate matter at hand. A copy of all materials forwarded to you will be sent to Mr. Jacobson.

We thank you for your kind consideration of this letter and its contents and patiently await the Board's determination as to the merits of our objection.

Respectfully,



Richard M. Batterton
1005 Arunah Avenue
Catonsville, Md. 21228

RMB : MMB
Enclosure
cc: Mr. Lee Jacobson

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112 Md.App. 284

Robert S. EVANS

v.

SHORE COMMUNICATIONS, INC., et al.

No. 907, Sept. Term, 1996.

Court of Special Appeals of Maryland.

Nov. 27, 1996.

Applicant appealed decision of county board of appeals denying special exception and variance for construction of antenna tower. The Circuit Court, Talbot County, William S. Horne, J., reversed in part and affirmed in part. Both parties appealed. The Court of Special Appeals, Davis, J., held that: (1) board's decision denying special exception was based upon consideration of improper factors, and (2) board's denial of variance was not arbitrary or capricious.

Affirmed and remanded with instructions.

1. Zoning and Planning ⇄503

Decision of county board of appeals to deny special exception for construction of antenna tower was improperly based on proliferation of towers in area as use regulation already delineated that additional towers could not be located within three-mile radius of existing tower and board only had authority to determine whether neighborhood would be adversely affected and whether use was in harmony with comprehensive plan. Talbot County, Md., Zoning Ordinance § 19.14(a), (b)(4).

2. Zoning and Planning ⇄745.1

Court of Special Appeals must review action of county board of appeals in same manner in which trial court conducted its review of board's decision denying special exception to zoning ordinance.

3. Zoning and Planning ⇄481

"Special exception" is valid zoning mechanism that delegates only limited authority to administrative board to determine use to be

permissible in absence of any fact or circumstances that negate presumption.

See publication Words and Phrases for other judicial constructions and definitions.

4. Zoning and Planning ⇄481

County council, by designating use as special exception, determines that use is generally compatible with other uses in zone.

5. Zoning and Planning ⇄503

County board of appeals improperly denied special exception for construction of antenna tower even assuming that tower would result in adverse impact on surrounding properties, where board failed to make finding that adverse effects would be greater in proposed location than they would generally be elsewhere within areas of county where towers may be established. Talbot County, Md., Zoning Ordinance § 19.14(b)(4).

6. Zoning and Planning ⇄503

Conclusion by county board of appeals that construction of antenna tower would be unique to pattern of developed land use in area and detrimental to nearby residents' use and enjoyment of rural character of their property did not justify denial of special exception for tower where board failed to state how tower would undermine rural character of neighborhood. Talbot County, Md., Zoning Ordinance § 19.14(a), (b)(4).

7. Zoning and Planning ⇄503

Decision of county board of appeals to deny variance for construction of 300-foot antenna tower was not arbitrary or capricious despite claim by applicant that property was uniquely suited as location for multiuser tower where special circumstances supporting location of tower on property were created by actions of applicant, not by property itself. Talbot County, Md., Zoning Ordinance § 19.14(b)(3).

8. Zoning and Planning ⇄531

"Variance administrative proceeding" involves particular applicant's request for administrative authorization to engage in specific activity at specific location; it determines rights and obligations of applicant with respect to utilization of parcel of property

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Cite as 685 A.2d 454 (Md.App. 1996)

owned by him and effects of that utilization upon certain others who may be aggrieved.

See publication Words and Phrases for other judicial constructions and definitions.

9. Zoning and Planning ⇨531

Variance administrative proceeding and special exception proceeding are adjudicatory, rather than legislative, proceedings.

10. Zoning and Planning ⇨489

Variations cannot be granted to stem future variance requests nor may deviations from zoning restrictions find their justification in hypothetical situations.

11. Zoning and Planning ⇨489, 493

In determining whether to grant variance, first consideration cannot be fact that variance is desired and difficulties will exist if it is not granted.

12. Zoning and Planning ⇨481

Variations permit uses that are prohibited and presumed to be in conflict with zoning ordinance.

13. Zoning and Planning ⇨497

Hardship from zoning which is self-inflicted is not ground for variance.

14. Zoning and Planning ⇨744

Appellant's argument that decision of county board of appeals denying variance deprived it of rights commonly enjoyed by other property owners in same zone was not properly before Court of Special Appeals where appellant did not reproduce board's prior decisions in its appendix, did not provide Court with one citation in its brief, or indicate where in record Court could find such list or decisions themselves.

Sidney S. Campen, Jr. (Campen & Walsworth, P.A., on the brief), Easton, for appellant.

John P. White, Easton, for appellees.

Argued before MURPHY, C.J., and WENNER and DAVIS, JJ.

DAVIS, Judge.

Robert S. Evans appeals from the judgment of the Circuit Court for Talbot County, which had reversed the decision of the Talbot County Board of Appeals denying a special exception and variance for the construction of an antenna tower. Shore Communications, Inc. and Mark Sapperstein, through their agent John H. Plummer & Associates, Inc., had filed a petition with the Talbot County Board of Appeals (Board), seeking to secure a special exception to construct a communications tower to the height of 200' and a variance to add an additional 100' of height to the tower. The Board denied the special exception request by a three-to-two vote and the variance was denied by unanimous vote. Petitioners then noted an appeal to the Circuit Court for Talbot County.

The testimony taken during the hearing before the Board was lost by virtue of an equipment malfunction, necessitating the filing of a stipulation by the parties to the testimony pursuant to MARYLAND RULE 7-206(b).

The circuit court, after hearing oral argument, affirmed the Board's decision to deny the variance, but reversed the Board with respect to the special exception. The court then remanded the case to the Board to grant the special exception to construct the proposed 200' tower.

Evans noted an appeal to this Court and appellees noted a cross-appeal from the circuit court's affirmance of the Board's decision to deny the variance. The parties elected to proceed by way of an expedited appeal pursuant to MARYLAND RULE 8-207. They present the following two questions for our review, restated as follows:

- I. Did Petitioners carry their burden of proof and persuasion before the Board regarding the substantive criteria required by the Talbot County Zoning Ordinance for the granting of a special exception to construct a 200' communications tower and, if so, was the evidence produced in opposition sufficient to make the issue fairly debatable?
- II. Did Petitioners carry their burden of proof and persuasion before the Board

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regarding the substantive criteria required by the Talbot County Zoning Ordinance for the granting of a variance to increase the height of the proposed communication tower 100' above the 200' special exception limits and, if so, was the evidence produced in opposition sufficient to make the question fairly debatable?

FACTS¹

The Board's public hearing on October 2, 1995 regarding Petitioners' Applications was attended by many persons from the neighborhood of the site of the proposed communication tower, most of whom opposed the erection of the proposed tower whether it reached to the 300' height requested by the variance or the 200' height requested by the special exception. In support of its Applications, Petitioners introduced four witnesses and numerous exhibits depicting the character of the neighborhood, the site of the proposed tower, views of other existing towers in Talbot County, a list of previously granted special exceptions for towers and tower height variances, design drawings of the proposed tower, various letters from public agencies favoring the proposed tower, a qualified expert real estate appraiser's report concluding that the proposed tower will not diminish neighboring property values, various published industry reports relating to health and safety issues and radio frequency electromagnetic fields associated with communication towers and an FAA [Federal Aviation Administration] acknowledgment of notice of receipt of the proposed construction of the tower.

Mark Sapperstein was produced by Petitioners and testified as follows:

He is one of the Petitioners and the President of Shore Communications, Inc., the other Petitioner.

Shore Communications, Inc. ("SCI") is a corporation engaged in constructing a network of radio communication towers on the Eastern Shore of Maryland. The network of towers will be utilized by various private

and public companies involved in the transmission of radio communication signals for use by cellular telephones, paging devices and other similar radio transmission equipment. SCI has also built towers in several locations on the Western Shore.

Mr. Sapperstein testified regarding all aspects of the substantive criteria required by the Zoning Ordinance of Talbot County ("ZOTC") as conditions for approval of special exceptions and variances. He testified that the location of the proposed tower was chosen so it would not be within three (3) miles of any other tower in the county, a prohibition created by § 19.4 of the Zoning Ordinance. The request for the variance was required because of the 200' height limitation for communication towers as set forth in § 19.10(x)(1)(IV) of the Zoning Ordinance.

The proposed tower will be erected on the land of Fred Johnson located at the intersection of Longwoods Road and U.S. Route 50, slightly north of Longwoods. The location of the property is shown on several exhibits presented by Petitioners and admitted as Petitioners' Exhibit Nos. 1, 2, 8 and 9. This location was also chosen because (1) it will be able to serve the most useful purpose in the network of other towers utilized by the communication companies seeking use of Petitioners' proposed tower; (2) the chosen site is the highest elevation in the general area which allows the tower height to be reduced from that which would be required if constructed on a lower elevation; (3) the proposed location is nearly equidistant from two nearby village centers, Skipton and Longwoods, which are relatively dense residential areas; (4) the proposed location is adjacent to a dense grove of tall trees which will create a visual buffer of the lower portion of the tower on its west side; (5) the proposed location is adjacent to Maryland State Route 50, a heavily-traveled four lane highway where property values will least likely be affected and residential activity least interrupted; and (6) the proposed location is adjacent to exist-

our review herein is based exclusively on that statement of facts in lieu of a record extract.

1. We reproduced the agreed statement of facts verbatim since, pursuant to MARYLAND RULE 8-207,

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Cite as 685 A.2d 454 (Md.App. 1996)

ing electric power lines running parallel to Maryland Route 50 and rising over 100' in height, thus reducing the visual impact of the height of the proposed tower on the neighboring properties.

The tower will be a 3-legged, free-standing lattice-type metal tower constructed in accordance with the design concepts displayed on Petitioners' Exhibits No. 7 and No. 20. Exhibit No. 20 is a photograph of a tower similar to the one proposed which is located near Wye Mills, Maryland. Petitioners' Exhibit No. 7 is an engineered design drawing showing the proposed construction features of the tower. The structure will be set in a concrete base buried deep in the earth. There is no risk that the tower will tip over.

The proposed site of the tower is a five acre +/- parcel of agricultural use land which will be leased by Petitioners from Fred Johnson. The tower will utilize a very small portion of the parcel for a building pad approximately 100' x 100' where the tower and three equipment buildings will be constructed. The pad will be improved by a chain-link fence for security purposes. Plantings will be placed around the exterior of the fence as a visual buffer. The buildings will house various appurtenant equipment required for transmission and receipt of radio signals. The tower and buildings will be accessed by a private farm lane leading from the Longwoods public road and located entirely on the rented parcel. It will not be open to public use.

Mr. Sapperstein used Petitioners' Exhibit No. 1, an aerial photo of the neighborhood, to point out the location of the proposed tower relative to various landmarks and homes owned by persons opposing the Application. The exhibit clearly depicted the character of the neighborhood and showed the Village of Longwoods as well as the home of Respondent, Robert Evans.

Petitioners' Exhibit No. 9 was introduced to show the location of the proposed tower as being in an RAC [Rural/Agricultural Conservation] zone where it is permitted as a special exception. The proposed site will not be in an area protected

by the critical areas or non-tidal wetlands regulations.

Mr. Sapperstein testified that locating the tower near U.S. Route 50 would produce the optimum performance for transmission of the radio signals and would be least interruptive of residential and agricultural uses in that area of the County.

The tower will be inspected and maintained by Petitioners' personnel on a periodic basis. It will bear such lighting fixtures as the U.S. Federal Aviation Administration ("FAA") may require for assuring the safety of the tower and passing aircraft. There will be moderate lighting provided at the base of the tower for the convenience of Petitioners' personnel inspecting the tower at night. The entry gate to the pad site will be locked at all times when personnel are not on site. The premises will be secured from intrusion by trespassers by a chain-link fence and an alarm system.

Three communication companies have currently subscribed for space on the tower. It will have the potential of accommodating three other users for a total of six users.

Mr. Sapperstein introduced Petitioners' Exhibit No. 3 which is a "Path-Pro" diagram displaying a gap in transmission coverage for one of the subscribing users which is transmitting signals in Talbot County. The diagram also shows the curative effect if the proposed tower is permitted. He explained that the location of a tower in a network scheme such as is being organized by Petitioners is a very delicate process which must accommodate the needs of the several users of the tower as well as complying with the Zoning Ordinance prohibition against locating a tower any closer than three (3) miles to an existing tower. The location proposed for the tower will accommodate the needs of various state and local agencies such as the Emergency Management Agency and the Emergency Medical Services.

Mr. Sapperstein described the nature of the radio waves that will be transmitted and received by the equipment mounted on the tower. He introduced Petitioners' Ex-

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hibits No. 16, 17 and 19, representing various articles describing radio frequencies and answering questions regarding interference with television reception. He explained that there will be no potential for explosion or fire resulting from the equipment kept on the premises because the electrical energy levels of the equipment are very low. There would be no propensity for endangerment of public health or safety resulting from construction of the tower because the tower will be located in the center of the 5-acre parcel allowing ample clearance of safe distance for tipping or breaking should either occur, however unlikely.

Use of the tower by local agencies will enhance the performance of the local police and fire companies and other public services which depend on radio transmissions during the performance of their duties.

There will be no requirement for water and sewer service to the premises. There will be no special requirement or burden placed on local police or fire agencies to secure or protect the premises. Access to the premises from Longwoods Road will be by a private lane and Petitioners' personnel will visit the premises infrequently so there will be no adverse impact on pedestrian or vehicular traffic using Longwoods Road or U.S. Route 50. The type of vehicular traffic using the lane will not be such as to cause any nuisance effects such as dust, noise or vibration.

There are several other towers in the County which exceed the 200' height limit. He explained that although the mere fact that there are other towers exceeding 200' does not justify the granting of the variance in this case, the very existence of other towers exceeding the 200' limit, strongly suggests that the legislated limit of 200' is flawed and not reasonable under the circumstances of today's communication requirements.

He also testified that he did not believe that granting a variance in this case would confer upon Petitioners any special privilege not enjoyed by others in the same zone because the County Council will recognize soon that it must increase the allow-

able height of communication towers to avoid a proliferation of towers resulting from the steady increase in demand for this quasi-public utility service.

He also testified that the requested variance is not the result of any conditions or circumstances which result solely from Petitioners' actions. The need for the variance results from the general public's increasing demand for more communication service on the one hand, and the strict limitation of one tower per three (3) mile radius. With the potential number of towers in the County limited by the three (3) mile regulation, the only means of fulfilling the demand for space to mount transmission equipment is to extend the towers beyond the 200' limit.

According to Mr. Sapperstein, the granting of the variance will have no adverse effect upon water quality or impact on fish, wildlife or plant habitat located in the vicinity of the proposed tower.

Finally, Mr. Sapperstein opined that the County Council had arbitrarily created an unrealistically low height limit on these towers because that limit will not necessarily serve or protect any public interest or prevent any potential harm to the public at large. If aesthetics is the motivation for the 200' limit, the limit chosen would seem meaningless when it is recognized that an increase of 100' on an existing 200' tower will cause an insignificant increase of visual impact.

Fred Johnson was produced by Petitioners and testified as follows:

He is the owner of the property upon which SCI proposes to construct its communication tower and that he has leased the five acre parcel to SCI for that purpose. His personal home is located adjacent to the proposed site of the tower and he has no objection to the tower as proposed. He candidly testified that had he known there was going to be so much opposition from the people in the community, he would not have leased his property for this purpose.

Eugene Bidun was produced by Petitioners and testified as follows:

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He testified that he is the Director of the Maryland Institute for Emergency Medical Services System which is located in Baltimore, Maryland. His agency is responsible for all hospital-to-ambulance and medivac communications in the State of Maryland. His agency has had the privilege of utilizing free space on towers constructed by Petitioners throughout the State of Maryland. He confirmed that he wrote to the Board recommending that the proposed tower be allowed at the 300' height so that his agency will receive better service in the north and east portions of Talbot County. He described his familiarity with Petitioners' networks and described their services as being dependable and beneficial to his agency and to the community at large.

William Kleppinger was produced by Petitioners and testified as follows:

Mr. Kleppinger was accepted by the Board as an expert witness on real estate appraisal matters. He introduced a report prepared by himself dated September 24, 1995 which analyzes and describes the impact the proposed tower will have on the value and use of properties located in the near vicinity of the proposed tower. He also introduced various photographs which he took of towers located in Talbot County. In his opinion, the towers located elsewhere in the County have had no negative impact on adjoining property values. He concluded that Petitioners' communication tower at the proposed site will have no adverse effects on real estate values in that neighborhood above and beyond the effect that is inherently associated with the location of a tower such as this any where in the RAC zones of the County.

The following exhibits were introduced and received in evidence by the Board on behalf of Petitioners:

- Aerial photograph of the site and neighborhood.
- Map of Talbot County
- Chart showing coverage of signals from tower.
- Letter dated August 4, 1995 from the Director of the Maryland Institute for

Emergency Medical Services System to the Board of Appeals.

- Design drawing of proposed tower. (Same as Board's Exhibit No. 11).
 - Copy of Chart from Talbot County Comprehensive Plan showing location of proposed tower.
 - Copies of Chart showing the site of proposed tower in the ItAC zone.
 - Consultant's report prepared by Mid Shore Appraisal Services dated September 24, 1995.
 - Listing of previous special exceptions and variances granted by the Board for communication towers.
 - Letter dated September 29, 1995 from John H. Plummer, President, John H. Plummer & Associates, Inc., to the Board of Appeals indicating that in connection with this application he is acting as the authorized agent of Shore Communications, Inc. and the property owners.
 - Mounted photographs showing other towers existing in Talbot County.
 - Photocopy of a report concerning health and safety issues related to radio frequency electromagnetic fields emitted by communications towers similar to the one proposed by Petitioners.
 - Photocopy of a report concerning the potential for television reception interference from communications towers.
 - Acknowledgement from the Federal Aviation Administration of receipt of a Notice of Proposed Construction of the proposed tower.
 - Photocopy of a report indicating that exposure to radio frequency energy from a tower similar to the one proposed by Petitioners is below the maximum permissible exposure set by the American National Standards Institute.
 - Chart indicating the relative power levels emitted from [sic] various types of towers, ranging from UHF television towers to Cellular towers.
- Thomas Wyman, a nearby property owner, requested the Board to be allowed to comment on Petitioners' Application. He indicated that he had obtained signa-

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tures on a Petition from approximately fifty people in the Longwoods area, all in opposition to the tower. The Petition was submitted to the Board as Protestants' Exhibit 1 over the objection of Petitioners' counsel. The Petition pointed out that the TCZO does not permit antenna towers in excess of 200' as requested by Petitioner. Mr. Wyman indicated that he was opposed to the tower because of the FAA required lighting and the impact of a 300' tower on property values and the scenery in this area of large and expensive farms in an RAC Zone. Also, Mr. Wyman stated that Petitioner had not demonstrated a need for the proposed tower.

William Callahan, farm manager for Robert Bell, Forest Landing Farm, a 1,000 acre estate, requested the Board to be allowed to comment on Petitioners' Application. He stated that he and Mr. Bell were opposed to it because the lights (especially required strobe lights that blink at night) on a nearby tower could not be shielded due to FCC requirements, which would create a nuisance from their perspective:

Charles Ted Taylor, a nearby property owner, requested the Board to be allowed to comment on Petitioners' Application. He voiced his opposition to the tower as being unsightly in the rural estate setting of the area and that he felt it would impact adversely on property values. Mr. Taylor also suggested that there are currently an adequate number of antenna towers in Talbot County.

Theresa Newman, a nearby property owner, requested to be allowed to comment on Petitioners' Application. She was opposed to the tower. She stated that one cannot landscape a tower and that it would be unsightly from her prospective [sic] in a very scenic area of the county adjacent to U.S. Route 50.

John Roselius, farm manager for Robert Evans, owner of the nearby Winter Run Farm, was produced by Respondent and testified as follows: He stated that they operate a very complex and extensive horse breeding operation on nearby Winter Run Farm, which was chosen by Mr.

Evans for horse breeding due to its natural and quiet rural setting. He stated that the tower would not only destroy the scenery and character of the area, but will disrupt their horse breeding operation due to the very temperamental nature of thoroughbred horses when subjected to such changes, as the introduction of blinking lights all night on a communications tower. He said such lights would bother mares in fold [sic] and cause a loss of revenue to Mr. Evans. Also, Mr. Roselius stated that property values would most assuredly be affected by the tower and finally that he frequently used his cellular phone at all hours and had experienced no problems with communications in the area.

Mr. Roselius testified that he had moved here from Wyoming to conduct the horse breeding operation and reminded the Board that once scenic areas such as this are lost, they cannot be recovered in the future.

At the conclusion of the hearing, Respondent, Robert Evans, through counsel, presented a Memorandum in Opposition to the Request for Special Exception and Variance which pointed out that the general purpose of the Zoning Ordinance is to preserve the existing rural character and quality of life of Talbot County and that the location of the proposed tower is squarely within one of the more rural and estate areas of the County, having been zoned RAC (Rural/Agricultural Conservation). Under the Ordinance, any development in this district must conserve and protect agricultural lands and preserve the rural character of the County through the conservation of open space and agricultural lands as required by the qualitative mandate of the Comprehensive Plan.

Finally, the Memorandum called attention to the jurisdictional limitation on the authority of the Board. The Ordinance specifically states that the Board may not legalize any violation of the Ordinance (e.g., a tower in excess of 200') nor may the Board amend or change the Zoning Ordinance or Zoning Maps (Sec.19.14(b)(5)). A 300' tower in the RAC Zone clearly exceeds the limitation of authority of the Board in this case.

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Cite as 683 A.2d 454 (Md.App. 1996)

The Board permitted cross-examination of witnesses by counsel for the respective parties.

STANDARD OF REVIEW

We said recently in *Umerley v. People's Counsel*, 108 Md.App. 497, 672 A.2d 173, cert. denied, 342 Md. 584, 678 A.2d 1049 (1996) that

[t]he order of a county zoning authority "must be upheld on review if it is not premised upon an error of law and if [its] conclusions reasonably may be based upon the facts proven."

Id., at 503, 672 A.2d 173 (quoting *Ad + Soil, Inc. v. County Comm'rs of Queen Anne's County*, 307 Md. 307, 338, 513 A.2d 893 (1986)). In chronicling other guiding principles regarding the review of an order of a county zoning authority, we noted that the zoning authority must properly construe controlling law (citing *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 287, 96 A.2d 261 (1953)); that the action of the zoning authority is "fairly debatable" if based on substantial evidence (citing *Northampton Corp. v. Prince George's County*, 273 Md. 83, 101, 827 A.2d 774 (1974)); and that the fairly debatable test "accords with the general standard for judicial review of the ruling of an administrative agency, which [is] defined as whether a reasoning mind reasonably could have reached the factual conclusion the agency reached; this need not and must not be either judicial fact-finding or a substitution of judicial judgment for agency judgment." (citing *Board of County Comm'rs v. Holbrook*, 314 Md. 210, 218, 550 A.2d 664 (1988)). We noted that in *Ocean Hideaway Condominium Ass'n. v. Boardwalk Plaza Venture*, 68 Md.App. 650, 665, 515 A.2d 485 (1986), we had held that the zoning authority decision was not fairly debatable, and thus was "arbitrary, capricious and a denial of due process of law" because there was no substantial evidence to support the factual findings of the zoning authority.

We held, in *Umerley*, that the application of the standards of review set forth required a three-step analysis enunciated by us in *Comptroller v. World Book Childcraft, Int'l,*

Inc., 67 Md.App. 424, 508 A.2d 148, cert. denied, 307 Md. 260, 513 A.2d 814 (1986):

1. First, the reviewing court must determine whether the agency recognized and applied the correct principles of law governing this case. The reviewing court is not constrained to affirm the agency where its order "is premised solely upon an erroneous conclusion of law."

2. Once it is determined that the agency did not err in its determination or interpretation of the applicable law, the reviewing court next examines the agency's factual findings to determine if they are supported by substantial evidence, i.e., by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion....

3. Finally, the reviewing court must examine how the agency applied the law to the facts. This, of course, is a judgmental process involving a mixed question of law and fact, and great deference must be accorded to the agency. The test of appellate review of this function is "whether, ... a reasoning mind could reasonably have reached the conclusion reached by the [agency], consistent with a proper application of the [controlling legal principles]."

Id. at 438-39, 508 A.2d 148 (emphasis added, citations omitted).

LEGAL ANALYSIS

I

[1] With these principles in mind, we turn to the case *sub judice*. Section 19.14(b)(4) of the Talbot County Zoning Ordinance provides:

Special Exceptions

(i) Purpose. Certain land uses by their very nature tend to be incompatible with other land uses in the same land use district but may be found acceptable in certain circumstances when conditioned in a manner to protect abutting land owners and to preserve the character of the area. Special exception uses listed in the general table of use regulations by zoning districts § 19.14 of this Ordinance may only be approved following a review and recommendation by the planning commission and

final approval and authorization after a public hearing before the board of appeals. Special exception uses within the critical area may only be approved by the board of appeals after receipt of notification by the Chesapeake Bay Critical Area Commission.

Appellant concedes that antenna towers are permitted by special exception in RAC (Rural/Agricultural Conservative District), notwithstanding their inherent deleterious effects. He contends, however, that the Board may consider the cumulative deleterious effect of too many towers on the issue of the intent of the Comprehensive Plan to preserve and conserve agricultural lands and the rural character of Talbot County. Appellant argues that that consideration is the central issue in this appeal. In support of his position, appellant cites *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981), *Prince George's County v. Brandywine*, 109 Md.App. 589, 676 A.2d 585, cert. granted 343 Md. 566, 683 A.2d 178 (No. 74, Sept. Term, 1996, filed October 19, 1996), *Mossburg v. Montgomery County*, 107 Md.App. 1, 666 A.2d 1253 (1995), cert. denied sub nom. *Twin Lakes Citizens v. Mossburg*, 341 Md. 649, 672 A.2d 623 (1996), and as standing for the proposition that a use permitted by special exception in a given area may reach a threshold by virtue of the preexisting saturation of that same use at that location as opposed to elsewhere in the subdivision.

Appellees contend that the Board's role was limited to that of a fact finder applying the policies and standards set forth by the county council and the ordinance and that a finding that the proliferation of towers "results in a loss of scenic views which characterize the county" was a usurpation of the legislative role properly granted to the council. In support of their contention that the county council has addressed the issue of aesthetics and tower proliferation, appellees cite the table of use regulations, § 19.4(a) where under the designation, "Radio Communications," the table provides that "new antenna towers shall not be located within a 3 mile radius of any existing antenna towers in the unincorporated area of the county." Appellees further invite our attention to

§ 19.14(b)(6) of the Zoning Ordinance entitled "Limitation of Authority of the Board of Appeals," subsection (ii) (apx.7) which provides that "the Board of Appeals shall not amend any of the provisions of the ordinance....".

[2] Appellees conclude that any decision regarding the distance between the proposed tower and existing towers was a transgression by the Board on the proper legislative function of the council and, hence, beyond the Board's authority. The decision by the Circuit Court for Talbot County to remand the case to the Board with instructions to grant the special exception was based on the court's determination that "... [t]he proliferation of the towers is not a proper province of the Board." The only other basis given by the lower court for remanding the case with instructions to grant the special exception is the court's determination that the conclusions of the Board could not have been reasonably based upon the facts before the Board. Of course, we must review the action of the Board in the same manner in which the circuit court conducted its review of the Board's decision. *Mortimer v. Howard Research and Dev. Corp.*, 83 Md.App. 432, 442, 575 A.2d 750, cert. denied, 821 Md. 164, 582 A.2d 499 (1990).

The Court of Appeals said in *Schultz*, 291 Md. at 11, 432 A.2d 1319:

This Court has frequently expressed the applicable standards for judicial review of the grant or denial of a special exception use. The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

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Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal.

Id. (emphasis added, citations omitted).

Ultimately, the *Schultz* Court held:

... the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.

Id. at 22-23, 432 A.2d 1319 (citations omitted).

[3, 4] The question of whether the proliferation of towers in the rural areas of the county was a matter properly within the province of the Board will not detain us long. The language of *Schultz* makes clear that a special exception is a valid zoning mechanism that delegates only limited authority to an administrative board to determine the use to be permissible in the absence of any fact or circumstances that negate the presumption. The county council has already legislatively

determined, by designating the use as a special exception, general compatibility with the other uses in the zone. See *Mossburg*, 107 Md.App. at 8, 666 A.2d 1253. The council, having already determined that no antenna tower shall be located within a three-mile radius of any existing tower, has made a zoning decision delineating where additional antenna towers may be located. The only authority delegated to the Board was a determination of whether the general neighborhood would be adversely affected and whether the use was in harmony with the general purpose and intent of the Comprehensive Plan. *Schultz*, 291 Md. at 11, 432 A.2d 1319. We hold, therefore, that the lower court properly remanded the case to the Board because it relied on the proliferation of towers as its basis for denying the special exception.

Although we are obliged to conduct our own examination of the Board's ultimate decision and the findings of fact in support thereof, we note that the trial judge decided that the Board's conclusions could not have been reasonably based on the facts before it and ordered the Board to grant the special exception. A review of the parties' agreed statement of facts reveals that the objections lodged by neighboring property owners focused primarily on a perceived diminution of property values. There was further opposition because of the lighting required by the FAA, in one case the lighting feared to cause a loss in revenue because of the effect on mares in foal on a neighbor's horse breeding farm. There was also a claim that the tower would be unsightly in the rural estate setting and would destroy the scenery and character of the area.

Counsel for appellant, according to the agreed statement of facts, pointed out in a memorandum submitted to the court, "that the general purpose of the Zoning Ordinance is to preserve the existing rural character and quality of life of Talbot County and that the location of the proposed tower is squarely within one of the more rural and estate areas of the County, having been zoned RAC (Rural/Agricultural Conservation)." Obviously, the memorandum correctly sets forth one of the purposes of the Comprehensive Plan;

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however, a conclusory statement by counsel does not provide a factual basis upon which the Board can render a decision as to the grant or denial of a special exception.

With respect to the adverse impact on the surrounding area, appellees assert that any glare from the FAA required lighting would not necessarily constitute an adverse impact. John Roselius, manager of a nearby farm, claimed that the blinking lights all night on a communications tower would disrupt the horse breeding operation because of the temperamental nature of their horses. According to appellees, FAA regulations do not require lights on towers 200' or less in height, a fact that we are unable to divine from the record before us.²

[5] Assuming, *arguendo*, that appellant has produced evidence that the tower will result in an adverse impact on the surrounding properties, the Board was nevertheless obliged to make a finding that the adverse effects would be greater in the proposed location than they would generally be elsewhere within the areas of the county where they may be established. *Schultz*, 291 Md. at 22-23, 432 A.2d 1319. Such a finding was not made by the Board.

[6] Finally, the Board concluded that the proposed use was not compatible with the pattern of existing developed land use in that "the proposed tower is unique to the pattern of existing developed land use in the vicinity." The Board opined that the tower would be detrimental to the use of nearby residents in terms of the use and enjoyment of the rural character of their property. Clearly, the section of the Comprehensive Plan titled, "Rural and Agricultural Conservation Areas," provides for conservation of the rural and agrarian character of the area in the face of expanding suburban and residential development. The Board fails to state how construction of the tower in question undermines the rural character of the neighborhood and somehow transforms the area into a neighborhood antithetical in character to that of a rural neighborhood. The unique-

2. Obviously, even if the FAA requirements applied to towers in excess of 200' in height, the proceedings before the Board sought the grant of a variance for the 300' tower as well as a special

ness referred to by the Board must be in terms of adverse effects and the adverse effects must be above and beyond those inherently associated with the location of a special exception use any where else within the zone. See *Dean v. Baltimore Gas & Electric Co.*, 240 Md. 317, 331, 214 A.2d 146 (1965); *Mossburg*, 107 Md.App. at 24-25, 666 A.2d 1253.

While it appears that the Board reached the wrong conclusions based on the facts before it, we believe that, had it applied the correct standard, the only proper decision it could have reached on the evidence before it would have been a grant of the special exception. We affirm the trial court's remand for the Board to grant the application for special exception and instruct the Board to apply the proper legal standard to the evidence.

II

[7] Appellee, Shore Communications, Inc. (SCI), cross-appeals from the judgment of the circuit court, arguing that the Board of Appeals arbitrarily and capriciously denied a variance for a 300' tower. Again, the issue is whether the question before the Board was fairly debatable; i.e., if, in applying the correct legal standard, the decision of the Board "is supported by substantial evidence on the record taken as a whole." *Moseman v. County Council of Prince George's County*, 99 Md.App. 258, 262, 636 A.2d 499, cert. denied, 335 Md. 229, 643 A.2d 383 (1994) (citations omitted). "In determining whether there was substantial evidence to support the agency's decision, if there was evidence from which a reasonable person could come to different conclusions, this Court will not substitute its judgment for that of the administrative agency, even if we might have reached a different conclusion independently." *Id.*

Section 19.14(b)(3) contains the provisions governing variances in Talbot County. It reads, in pertinent part:

exception for the 200' tower and thus the FAA lighting requirement for towers in excess of 200' would have been relevant.

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Cite as 685 A.2d 454 (Md.App. 1996)

Variances

(i) Purpose. A variance from the quantitative numerical requirements of this Ordinance may be granted by the Board of Appeals in specific cases if such a variance would not be contrary to the public health, safety, or welfare, and if there are special conditions such as site features or other circumstances not created by the property owner, and if a literal enforcement of the provisions of this Ordinance would result in undue hardship to the property owner. A variance from the qualitative policy requirements of this Ordinance may not be requested.

(ii) An application for a variance ... must demonstrate that the criteria set forth in [a] through [e] below, have been met.

[a] Special conditions or circumstances exist that are peculiar to the land or structure such that a literal enforcement of the provisions of this Ordinance would result in unwarranted hardship to the property owner;

[b] A literal interpretation of this Ordinance will deprive the property owner of rights commonly enjoyed by other property owners in the same zone;

[c] The granting of a variance will not confer upon the property owner any special privilege that would be denied by this Ordinance to other owners of lands or structures within the same zone; and

[d] The variance request is not based on conditions or circumstances which are the result of actions by the property owner nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.

SCI contends that the Board of Appeals acted arbitrarily in two conclusions made during the hearing. First, SCI directs our attention to Paragraph 13 of the Board's findings, which appeared as follows:

13. The Board finds there are no special conditions and circumstances which are peculiar to the land and structure such that a literal enforcement of the provisions of the ordinance would result in unwarranted hardship to the property owners (or the Applicant). The justification provided for the variance is that it would allow addition-

al competition in the cellular telephone industry and the decrease the [sic] need for additional towers in the surrounding areas. The Board cannot find a hardship thus created for the property owner (or the Applicant).

SCI contends that the "circumstances peculiar to this property" are that the property is "uniquely suited as a location for a tower bearing a 100' extension" for three reasons. First, the land is located just outside the three-mile radius of another tower north of the site. Second, the property is the only property in the vicinity that will accommodate the networking requirements of the three users who have subscribed for space on the tower. Third, the property is one of the highest elevations in the general vicinity, which will allow the height of the tower to be less than if it were on a lower elevation. Thus, says SCI, the land is uniquely ideal for a multi-user, 300' tower in that part of the county. As a result, the Board imposed an unwarranted hardship by denying the variance, because SCI will lose the opportunity to construct a tower that will be tall enough to accommodate the needs of the three subscribers and the prospective subscribers who will want to complete their own networks in the future by locating on the proposed tower.

We do not think the Board acted in an arbitrary or capricious manner. Its factual conclusions were supported by substantial evidence and the conclusion it reached is certainly fairly debatable. SCI's recitation of the "peculiar circumstances" of the land neglects several important considerations. The first factor cited by SCI, the proximity of other towers to the subject property is, without more, not dispositive. All land located 360 degrees just outside a three-mile radius of an existing tower—any tower in the zoning district—would satisfy this "circumstance."

[8-10] The last factor is similarly irrelevant; it amounts to an argument that the Board should have granted a variance for a 300' tower so that SCI would not need a taller tower. This seems to us akin to a builder asking the building inspector for relief from safety regulations in one instance so

that he will not have to violate more safety regulations later. A variance administrative proceeding, like a special exception proceeding, involves a particular applicant's request for administrative authorization to engage in a specific activity at a specific location; it "determines the rights and obligations of the applicant with respect to the utilization of a parcel of property owned by him, and the effects of that utilization upon certain others who may be aggrieved." *Mossburg*, 329 Md. at 506, 620 A.2d 886. Thus, they are adjudicatory, rather than legislative, proceedings. *Id.* One logical extension of this principle is that variances cannot be granted to stem future variance requests, nor may deviations from zoning restrictions find their justification in hypothetical situations. The fact remains that the proposed tower is 300' tall, well above the regular permitted height, regardless of the height of an alternate tower on another piece of land.

[11, 12] Moreover, while SCI unfortunately may have painted itself into a corner when it entered into a lease agreement for the property for the purpose of constructing the proposed tower, "the variance that is desired (and the difficulties that would exist if it is not granted) cannot be the source of the first prong of the variance process. . . ." *Cromwell v. Ward*, 102 Md.App. 691, 695, 651 A.2d 424 (1995). As stated in *Kennerly v. Baltimore*, 247 Md. 601, 238 A.2d 800 (1967):

To grant a variance the Board must find from the evidence more than that the building allowed would be suitable or desirable or could do no harm or *would be convenient for or profitable to its owner*. The Board must find there was proof of "urgent necessity, hardship peculiar to the particular property. . . ."

Id. at 606-07, 238 A.2d 800 (emphasis added). The burden on the petitioner is indeed heavy, and springs from a recognition that variances permit uses that are prohibited and presumed to be in conflict with the ordinance. *North v. St. Mary's County*, 99 Md.App. 502, 510, 638 A.2d 1175, *cert. denied sub nom.*

3. See *Cromwell supra*, n. 1, p. 695, 651 A.2d 424, for the applications of "practical difficulty" and "unreasonable hardship" when they are stated in

Enoch v. North, 336 Md. 224, 647 A.2d 444 (1994).

[13] In this case, the first prong of the variance process, as the parties and the Board have recognized, is whether peculiar circumstances surround the property. The Board found that the variance request is based on special circumstances that were created by the actions of SCI, not by the property itself. In other words, the second "special condition and circumstance" claimed by SCI—the needs of its subscribers—are not peculiar to the land, but created by SCI. We agree. The customer requirements cited by SCI as support for its argument serve to illustrate that fact. The needs of SCI's customers have nothing to do with the peculiarity of the property in question. Thus, any hardship claimed by SCI—the second prong of the test—is self-inflicted, and thus not a ground for a variance. *Ad + Soil, Inc.*, 307 Md. at 340, 513 A.2d 893; *Cromwell*, 102 Md.App. at 721-22, 651 A.2d 424.

[14] Because the requirements of § 19.14(b)(3) are conjunctive rather than disjunctive, then, strictly speaking, we need not address SCI's remaining contentions.³ Since, however, they can be addressed easily, we will do so to avoid the expense and delay of another appeal. MD. RULE 8-131(a) (1996). SCI contends that the Board deprived it of the due process of law when it found that "the literal interpretation of the ordinance would not deprive the property owners of rights commonly enjoyed by other property owners in the same zone." In support of its argument, SCI relies on all of the previous grants of variances by the Talbot County Board of Appeals since 1974, which show, according to SCI, that the Board's decision in the case *sub judice* was not consistent with its earlier decisions. SCI, however, does not provide further argument in support of its due process claim. Further, SCI did not reproduce these decisions in its appendix, it did not provide us with one citation in its brief, or indicate where in the record we may find such a list or the decisions themselves. Therefore, this argument

the disjunctive. See also *Chester Haven v. Bd. of Appeals*, 103 Md.App. 324, 340, 653 A.2d 532 (1995).

LEWIS v. STATE FARM:

Cite as 685 A.2d 467 (Md.App. 1996)

Md. 467

112 Md.App. 311

Fraeda J. LEWIS

v.

**STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY.**

No. 972, Sept. Term, 1995.

Court of Special Appeals of Maryland.

Nov. 27, 1996.

is not properly before us. See, e.g., *von Lausch v. State*, 31 Md.App. 271, 281-82, 356 A.2d 277 (1976), *rev'd on other grounds*, 279 Md. 255, 368 A.2d 468 (1977) (appellate courts cannot be expected to delve through the record to unearth factual support favorable to appellant and then seek out law to sustain appellant's position).

Finally, again relying on the Board's previous grants of variances, SCI argues that the past decisional history of the Board mandated the application of a "practical difficulty" standard rather than the "unwarranted hardship" standard applied by the Board. Enunciated in *Anderson v. Board of Appeals*, 22 Md.App. 28, 322 A.2d 220 (1974), that standard provides less stringent requirements for the grant of a variance than that applied by the Board. *Id.* at 39, 322 A.2d 220. We see no reason to do so, however. First, as discussed *supra*, SCI provides us with no factual support for its claim. Second, *Anderson* sheds no light on the issue. The zoning ordinance in that case required a showing of "practical difficulty" and "unnecessary hardship" for a variance, and we properly declined to override the ordinance. In fact, we held in that case that proof of "practical difficulty" was not enough, precisely because the ordinance itself required more. *Id.* at 41, 322 A.2d 220. We do the same here. The Talbot County Ordinance requires a showing of "unwarranted hardship" if the restrictions are literally enforced. We will not disturb this legislative judgment, and we affirm that part of the circuit court's judgment that affirmed the Board's denial of a variance.

JUDGMENT OF THE CIRCUIT COURT FOR TALBOT COUNTY AFFIRMED; CASE REMANDED WITH INSTRUCTIONS TO VACATE THE DECISION OF THE BOARD OF APPEALS AND TO GRANT THE SPECIAL EXCEPTION AND DENY THE VARIANCE.

COSTS IN THIS COURT AND IN THE CIRCUIT COURT TO BE PAD ONE-HALF BY APPELLANTS AND ONE-HALF BY APPELLEES.



Insured sought determination that automobile insurer's premium surcharge, which was added after insured's husband was involved in single-car accident, was not justified. Following administrative proceedings that were resolved in insurer's favor, insured petitioned for review. The Circuit Court, Baltimore City, Albert M. Matricciani, Jr., J., affirmed administrative law judge's decision, and insured appealed. The Court of Special Appeals, Fischer, J., held that insurer's decision to add premium surcharge was not supported by substantial evidence justifying the increase, despite insurer's contention that husband was at least 50% at fault in accident, where insurer only determined that the road was wet at time of the single-car accident, and did not present any other evidence such as allegation that husband was speeding or driving in unreasonable manner.

Reversed and remanded with instructions.

1. Administrative Law and Procedure
§-791

Circuit court's revisory power over administrative law judge's (ALJ) findings of fact and mixed questions of fact and law was limited to whether substantial evidence existed in record to support ALJ's decision.

2. Administrative Law and Procedure
§-796

Reviewing court does not afford any deference to agency's conclusion on question of law.

TIME: 08:51:57
DATE: 10/21/98

AUTOMATED PERMIT TRACKING SYSTEM
APPROVALS DETAIL SCREEN

PANEL BP1018M
LAST UPDATE 10/15/98
PIR 15:57:53

PERMIT #: R351881

PASSWORD :

AGENCY	DATE	CODE	COMMENTS
BLD PLAN	09/09/98	01	JOS VENTURINA
SEDI CTL	10/15/98	01	SC-10-15-8 CD - Chuck Davis
ZONING	09/01/98	01	CAM/VLC
PUB SERV	09/01/98	01	CAM/VLC
ENVRMNT	09/09/98	01	EIR--09--09--8 RK -
PERMITS	10/15/98	01	DAS P

01 THRU 09 INDICATES AN "APPROVAL" ** 10 THRU 99 INDICATES A "DISAPPROVAL"

ENTER - NEXT APPROVAL

PF4 - ISSUE PERMIT

PF9 - SAVE
CLEAR - MENU

Requested issuance of Rescind 9am 21 Oct.
Based on conflicting info provided by Richard Batterton
410-766-9095
Cyril Bennett
410-747-9530

Subject in 3-C-97002976 Mike TANCZYM (Neighbors)
Lee Jacobson (Developer)

ERIC BERS (Developer) 410-750-0791 left msg
on machine saying Rescind at 9:03 AM 21 Oct

Per Charlotte R.

* March 4, Opinion out of Circuit Ct Offered Denial
Appealed Special Appeals - Aug -

260-1450

message

Please deliver to

Kate

Milton

2 pages

Plan Rec
21 Oct 98

3C-9702976
dropped appeal

Me Bers

Kate -

Attached is the site plan prepared by McKee & the Setbacks are 25' in the front & 30' in the rear.

Somehow they were obviously entered wrong on the permit!

Brian / Ambrose or someone from McKee will call you to discuss the correct figure 25, or 26 or whatever.

In the meantime, we will not be digging the foundation until this matter is resolved!

Lee Jacobson

Thank you for catching this error.

Bers

Lee Bers
Pacesetter Ho I

0102470140-41

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
DEPARTMENT OF PERMITS & DEVELOPMENT MANAGEMENT
TOWSON, MARYLAND 21204

DATE: 7/24/97
OEA: JH/KC
HISTORIC DISTRICT/BLDG.

PERMIT #: B 35/88
RECEIPT #: 368370
CONTROL #: NR
XREF #:

PROPERTY ADDRESS: 1106 ARUNAH AVE
SUITE/SPACE/FLOOR:
SUBDIV: CATONSVILLE HEIGHTS
TAX ACCOUNT #:
OWNER'S INFORMATION (LAST, FIRST): 01 9
NAME: PALMETTO GROUP, INC
ADDR: P.O. Box 841 EC 21041

FEE: 149.00 + 5.00
PAID: 154.00
PAID BY: APP
INSPECTOR:

DOES THIS BLDG. HAVE SPRINKLERS
YES NO

I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS.

APPLICANT INFORMATION
NAME: NANCY FARLOW
COMPANY: PACESETTER HOMES
STREET: P.O. Box 841
CITY, ST, ZIP: ELLICOTT CITY, MD 21041
PHONE #: 410-251-0791 MHC LICENSE #:
APPLICANT SIGNATURE: Nancy Farlow
PLANS: CONST 2 PLOT 7 PLAT 0 DATA 0 EL 1 PL 1
TENANT:
CONTR: PACESETTER HOMES
ENGR:
SELLR:

BUILDING CODE 1 or 2 FAM.
BOCA CODE X

- TYPE OF IMPROVEMENT
1. X NEW BLDG CONST
2. ADDITION
3. ALTERATION
4. REPAIR
5. WRECKING
6. MOVING
7. OTHER

DESCRIBE PROPOSED WORK:

Will MAINTAIN Const SFD - 3 BDRMS, open deck.
2' cantilever.
FRONT AVERAGE 30' X 25' X 31.4' = 1464 SF

TYPE OF USE

RESIDENTIAL

- 01. X ONE FAMILY
02. TWO FAMILY
03. THREE AND FOUR FAMILY
04. FIVE OR MORE FAMILY (ENTER NO UNITS)
05. SWIMMING POOL
06. GARAGE
07. OTHER

NON-RESIDENTIAL

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

House built over lot 10 + 11 lot line

total lot area 189' area wide 8220 SF total

TYPE FOUNDATION

- 1. SLAB
2. BLOCK
3. CONCRETE

- BASEMENT
1. X FULL
2. PARTIAL
3. NONE

Provisional approval subject to the combination of 3 lots into 1 lot with 1 TAX account

TYPE OF CONSTRUCTION

- 1. MASONRY
2. X WOOD FRAME
3. STRUCTURE STEEL
4. REINF. CONCRETE

TYPE OF HEATING FUEL

- 1. GAS
2. OIL
3. X ELECTRICITY
4. COAL

TYPE OF SEWAGE DISPOSAL

- 1. X PUBLIC SEWER
2. PRIVATE SYSTEM
SEPTIC
PRIVY

CENTRAL AIR: 1. X 2. ESTIMATED COST: \$60,000 OF MATERIALS AND LABOR

- 1. X PUBLIC SYSTEM
2. PRIVATE SYSTEM
EXISTS PROPOSED
EXISTS PROPOSED

PROPOSED USE: SGL FAM DWELLING
EXISTING USE: VACANT LOT

OWNERSHIP

- 1. X PRIVATELY OWNED 2. PUBLICLY OWNED 3. SALE 4. RENTAL

RESIDENTIAL CATEGORY:

- 1. X DETACHED 2. SEMI-DET. 3. GROUP 4. TOWNHSE 5. MIDRISE
EFF: #1BED: #2BED: 3 #3BED: X TOT BED: 3 TOT APTS/CONDOS: 6. HIRISE
FAMILY BEDROOMS
GARBAGE DISPOSAL 1. 10 2. N BATHROOMS 1 KITCHENS 1 CLASS 04 LIBER 6 FOLIO 172

BUILDING SIZE

FLOOR: 1464
WIDTH: 30
DEPTH: 25
HEIGHT: 31.4
STORIES: 2
LOT #'S: 10
CORNER LOT

LOT SIZE AND SETBACKS

SIZE: 2541 SF
FRONT STREET
SIDE STREET
FRONT SETBK: 23'
SIDE SETBK: 10'
SIDE S.R SETBK
REAR SETBK: 27'

APPROVAL SIGNATURES

BLD INSP :
BLD PLAN :
FIRE :
SEDI CTL :
ZONING :
PUB SERV :
ENVRMNT :
PERMIT :
* HSE #5 - 123 CRANE
DATE: 7/24/98

MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND -- NO PERMIT FEES REFUNDED

to deck?

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

ADDRESS

Eric L. Beus

3829 Palmetto CT

The Palmetto Group Inc

Ellicott City MD 21042

Cynthia Bowden

5 Shawan Rd Hunt Valley 21030

LEE JACOBSON ^{ANY FOR} PALMETTO GRP

500 Washington Ave, Towson MD 21286



PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME

ADDRESS

✓ ALICE L. BENNETT	1105 ARUNAH AVE.
✓ WANDA L. STIRLING	1002 ARUNAH AVE
✓ JIM STEWARD	1113 ARUNAH AVE
✓ TONYA M. BENNETT	1105 ARUNAH AVE
✓ WILLIAM J. TATE	1003 ARUNAH AVE
✓ RICHARD M. BATTERTON	1005 ARUNAH AVE.
✓ RICHARD DANZ	411 DESSAURE LN.



FILED	DIVISION OF REAL ESTATE BALTIMORE COUNTY, MARYLAND CLERK OF THE COURT TOWNSHIP ADMINISTRATION				
					DEED

05-RW-95-205-1
J.O. "0"
Item 1 (H)
Election District: 1C1

COUNTY HIGHWAY DEED
THIS DEED, Made this 11th day of December, 1995, in the year 1995, by THE PALMETTO GROUP, INC., a Maryland corporation, Grantor; and REISTERSTOWN FEDERAL SAVINGS BANK, a body corporate organized and existing under the laws of the United States of America, Mortgagee.
WITNESSETH, that in consideration of the sum of FIVE DOLLARS (\$5.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the said Grantor does grant and convey unto BALTIMORE COUNTY, MARYLAND, a body corporate and politic, its successors and assigns, in fee simple, for public highway purposes and any other governmental purposes, all that lot of ground situate, lying and being in the First Election District of Baltimore County, State of Maryland, and described as follows, that is to wit:

BEING a parcel of land containing 0.014 acre (608.3 sq. ft.), more or less, shown and indicated "HIGHWAY WIDENING AREA FOR TURN-AROUND" on Baltimore County Division of Real Estate No. RW 95-205-1, which is attached hereto as a part hereof.

FOR TITLE: See Deed dated May 2, 1995 and recorded among the land records of Baltimore County in Liber S.M. No. 11038, folio 117, from Louis S. Diggs and Shirley C. Diggs, his wife, to The Palmetto Group, Inc.

FOR TITLE TO MORTGAGE: See Mortgage dated May 2, 1995 and recorded among the land records of Baltimore County in Liber S.M. No. 11038, folio 120, from The Palmetto Group, Inc. to Reisterstown Federal Savings Bank.

TOGETHER with the appurtenances and advantages to the same belonging or in anywise appertaining.

TO HAVE AND TO HOLD the above granted property unto Baltimore County, Maryland, a body corporate and politic, its successors and assigns, in fee simple, for public highway purposes and any other governmental purposes.

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

AND the said Mortgagee joins in this Deed for the purpose of releasing the land above granted from the operation and effect of their mortgage held upon property of the Grantor, retaining, however, the rights they have as mortgagee in the remainder of said property not affected by this conveyance.

AS WITNESS the due execution hereof by the aforementioned Grantor.

ATTEST:
[Signature] THE PALMETTO GROUP, INC.
[Signature] REISTERSTOWN FEDERAL SAVINGS BANK, Mortgagee
[Signature] Edwin C. Whiteford, Trustee
[Signature] S. Pilar Burton, Trustee

STATE OF MARYLAND, BALTIMORE

I HEREBY CERTIFY that on this 11th day of December, 1995, before me, the undersigned, a Notary Public in and for the State of Maryland, personally appeared the said Grantor, THE PALMETTO GROUP, INC., and the said Mortgagee, REISTERSTOWN FEDERAL SAVINGS BANK, and they acknowledged the foregoing deed to me in my presence and sealed and signed the same in my presence.

AS WITNESS my Hand and Notary Seal this 11th day of December, 1995.

My Commission Expires: 7/1/97

STATE OF MARYLAND, BALTIMORE

I HEREBY CERTIFY that on this 11th day of December, 1995, before me, the undersigned, a Notary Public in and for the State of Maryland, personally appeared the said Grantor, THE PALMETTO GROUP, INC., and the said Mortgagee, REISTERSTOWN FEDERAL SAVINGS BANK, and they acknowledged the foregoing deed to me in my presence and sealed and signed the same in my presence.

AS WITNESS my Hand and Notary Seal this 11th day of December, 1995.

My Commission Expires: 7/1/97

STATE OF MARYLAND, BALTIMORE

I HEREBY CERTIFY that on this 11th day of December, 1995, before me, the undersigned, a Notary Public in and for the State of Maryland, personally appeared the said Grantor, THE PALMETTO GROUP, INC., and the said Mortgagee, REISTERSTOWN FEDERAL SAVINGS BANK, and they acknowledged the foregoing deed to me in my presence and sealed and signed the same in my presence.

AS WITNESS my Hand and Notary Seal this 11th day of December, 1995.

My Commission Expires: 7/1/97

Reviewed for form and legal sufficiency and approved for execution this 11th day of December, 1995.

[Signature]
Special Assistant

APPROVED and ACCEPTED this 11th day of December, 1995.

BALTIMORE COUNTY, MARYLAND
By: *[Signature]* (SEAL)
Suzanne E. Folly
County Administrative Director

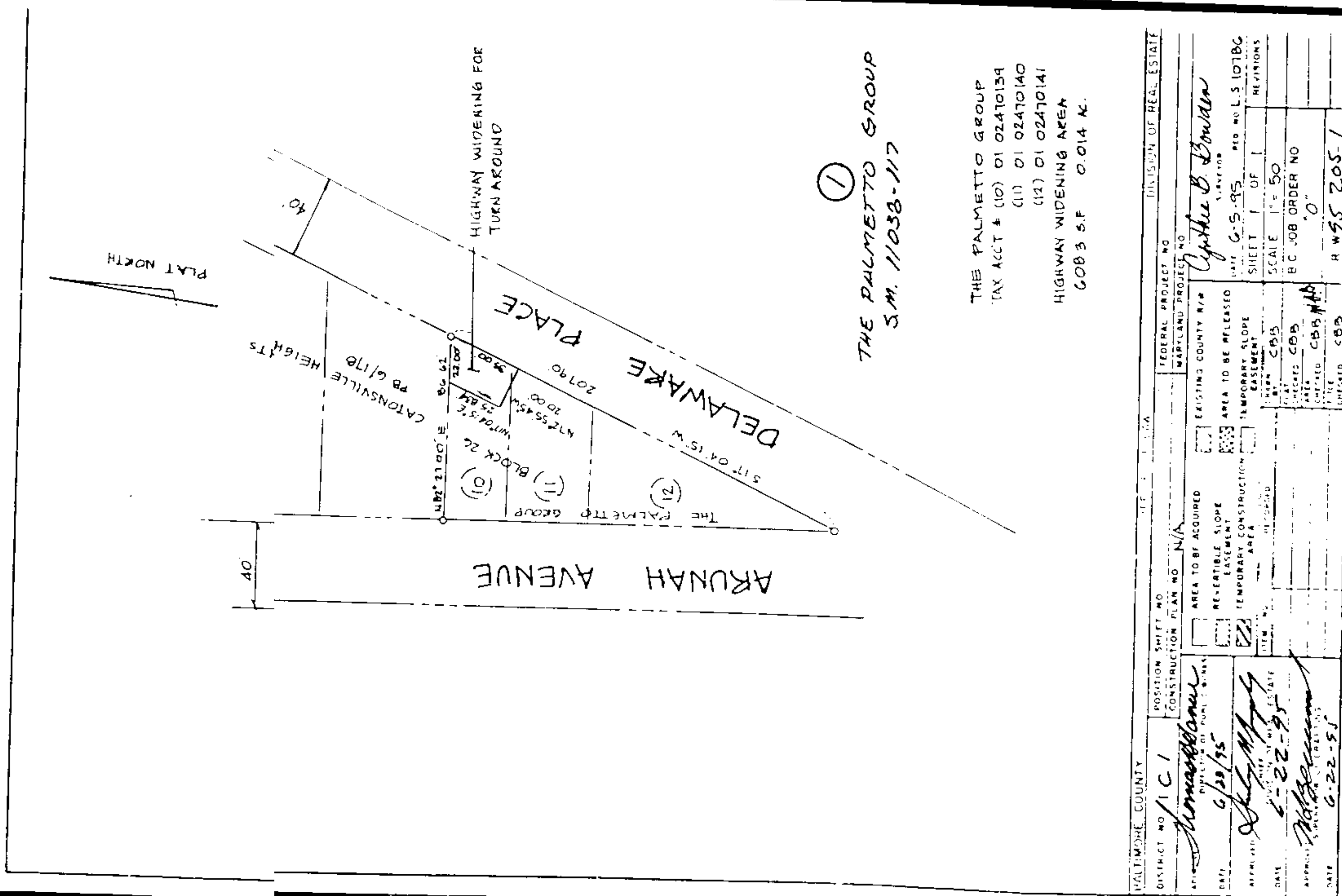
ATTEST:

[Signature]

This is to certify that the within instrument was prepared under the supervision of the Title Examination Supervisor who is an attorney admitted to practice before the Court of Appeals of Maryland.

[Signature]
Title Examination Supervisor

DFM:LMR:emm
Index: 6/1/95
Account Nos.: 01-02-470139
01-02-470140



STATE OF MARYLAND Land Instrument Intake Sheet
Baltimore County
Information provided is for the use of the Clerk of the Court, State Department of Assessments and Taxation only. All other information is for the use of the County Office only.

1. Types of Instruments: Deed, Mortgage, Other

2. Conveyance Type: Fee Simple, Life Estate, Lease, Other

3. Tax Exemptions (if Applicable): State Transfer, State Transfer

4. Consideration and Tax Calculations: Consideration Amount \$ 5.00, State Transfer Tax \$ 0.00, Other \$ 0.00

5. Fees: Recording Charge \$ 10.00, State Recordation Tax \$ 0.00, State Transfer Tax \$ 0.00, Other \$ 0.00

6. Description of Property: 0.014 acre, Highway Widening Area for Turn-Around, located at the intersection of Delaware Place and Arunah Avenue, Baltimore County, Maryland.

7. Location of Property Being Conveyed: 33-139 (B) (1)

8. Transferred From: THE PALMETTO GROUP, INC.

9. Transferred To: BALTIMORE COUNTY, MARYLAND



417 Delaware Road



1000 Arunah Avenue



1110 Arunah Avenue



1105 Arunah Avenue



1103 Arunah Avenue



1107 Arunah Avenue



411 Delaware Place



415 Delaware Place

~~Exhibit~~ Petitioner's #3
Exhibit 3



From Main Ave. Looking south
Along Delaware Place



From Main Ave. Looking south
along Arunah Avenue

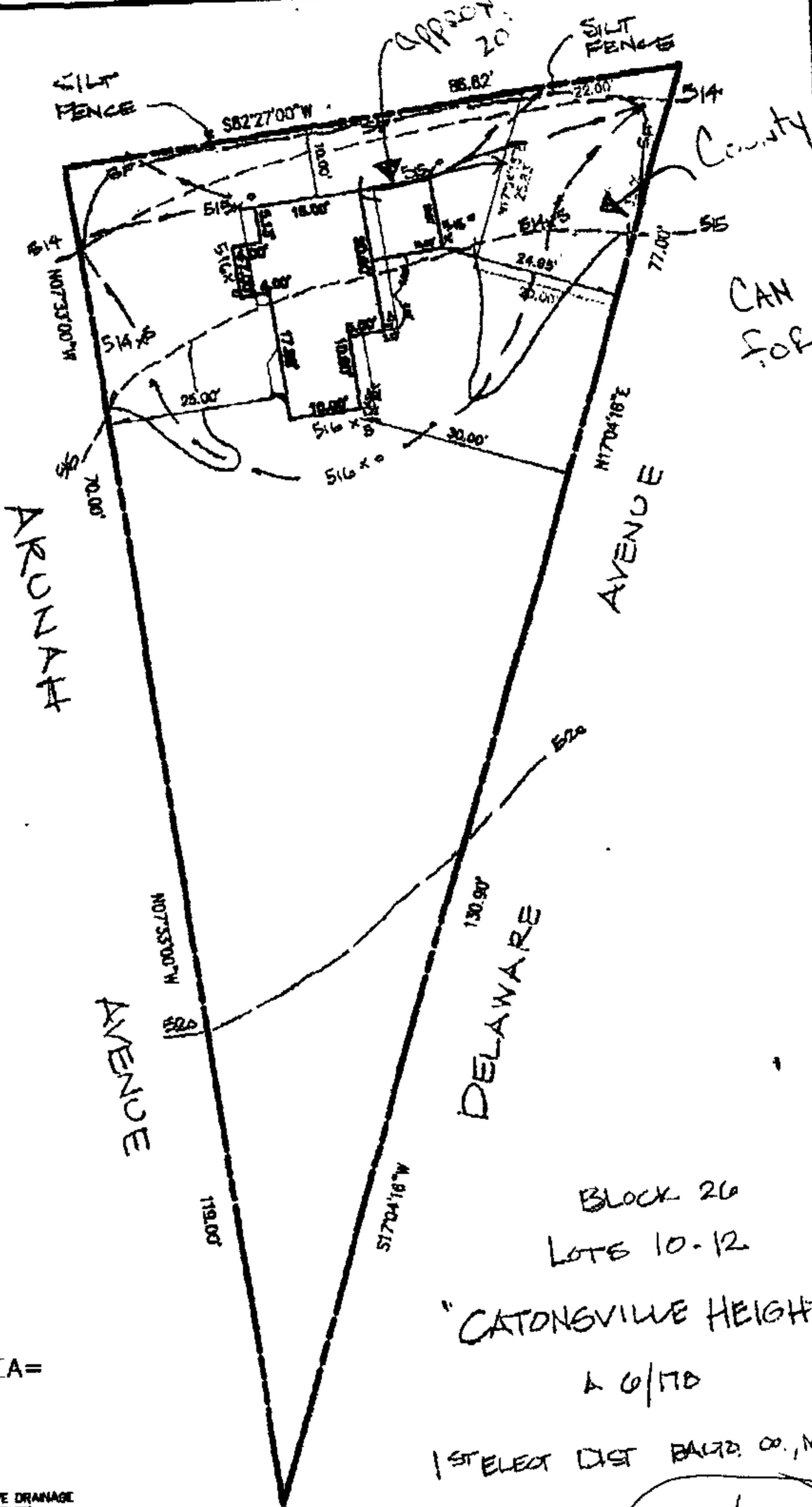
96-430-A



From Arunah Avenue Looking North

(40) 730-1612

PROP ELEV
C E 509.04'
F.F. 510.0



County OWNS
Not
Applicant
CAN
FOR
Not use
Setbacks

DISTURBED AREA =
6500 SF ±

CONTRACTOR TO MAINTAIN POSITIVE DRAINAGE
AWAY FROM FOUNDATION AT ALL TIMES.

BLOCK 20
LOTS 10-12
"CATONSVILLE HEIGHTS"
A 0/170

1ST ELECT DIST BALCO. CO., INC

DEED REF: 11538/255

Nota 1994 ref

Cynthia B Bowden 9-17-91
CYNTHIA B. BOWDEN DATE
MD REG No. 10788



SITE PLAN

1108 ARUNAH AVENUE

MCKEE & ASSOCIATES, INC.
Engineering - Land Planning - Land Surveying

Natural Resource Planning - Real Estate Development
SHAWAN PLACE, 5 SHAWAN ROAD HUNT VALLEY, MARYLAND 21030
TELEPHONE: (410) 527-1555 FACSIMILE: (410) 527-1553

SCALE:

1" = 20'

DATE:

9-17-91

JOB NO.

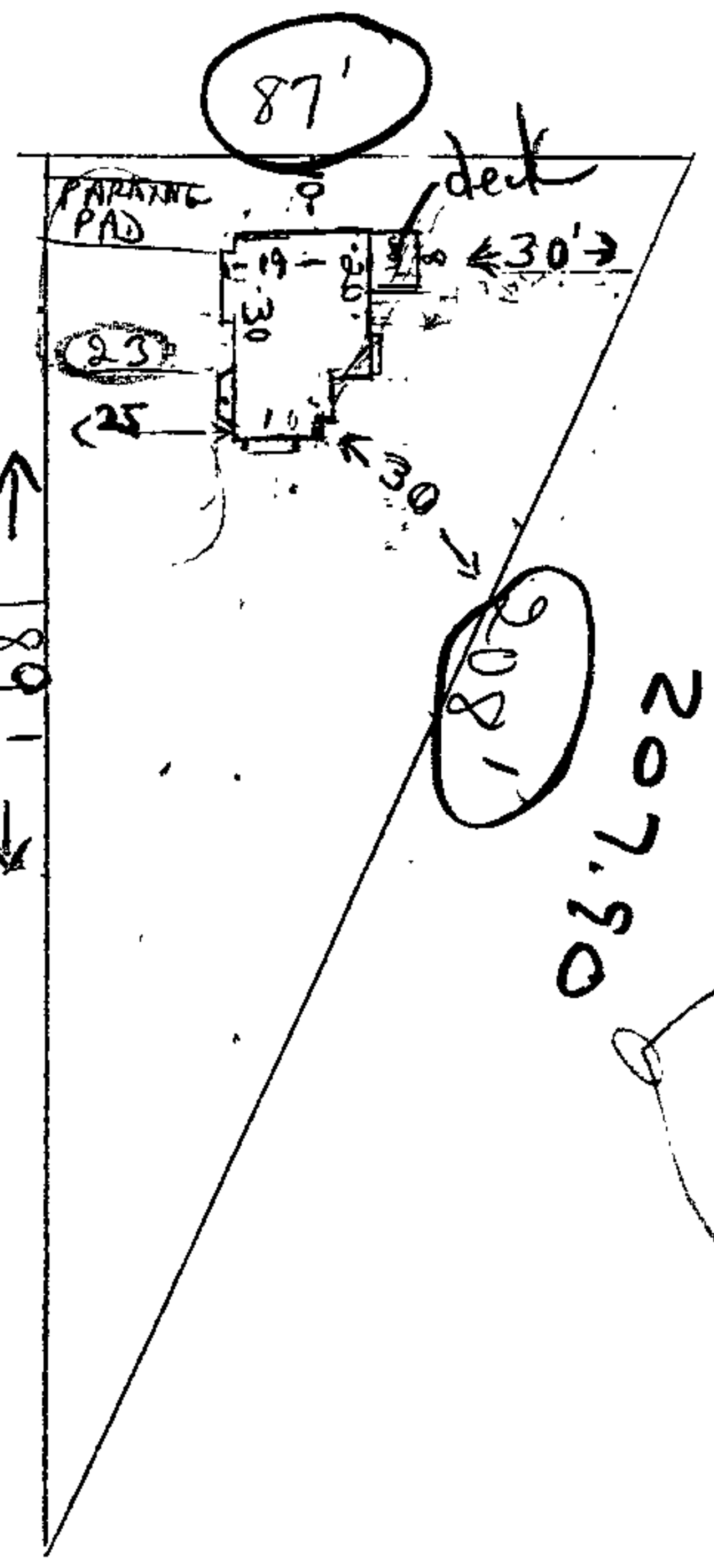
EB-2

DRAWN BY: [initials] CHECKED BY: [initials]

1" = 40'

86.62

LOTS 10, 11 + 12
ARUNDAH AVE



207.90

Road Closing
RC 95-9
Books 1142
in Land Ac Records

ERIC BRAS

MAP 95
GRID 20
PARCEL 225
L - 11038
F - 117

PALMETTO GROUP, INC
P.O. Box 841
SILICOTT CITY, MD 21041

Site plan submitted
w/ B351881
see Rough Sheet

TAX ACCT # 1504-0139
140
141

3025
1 1/2 BA

NDC 41

A26

ARUNAH AVENUE

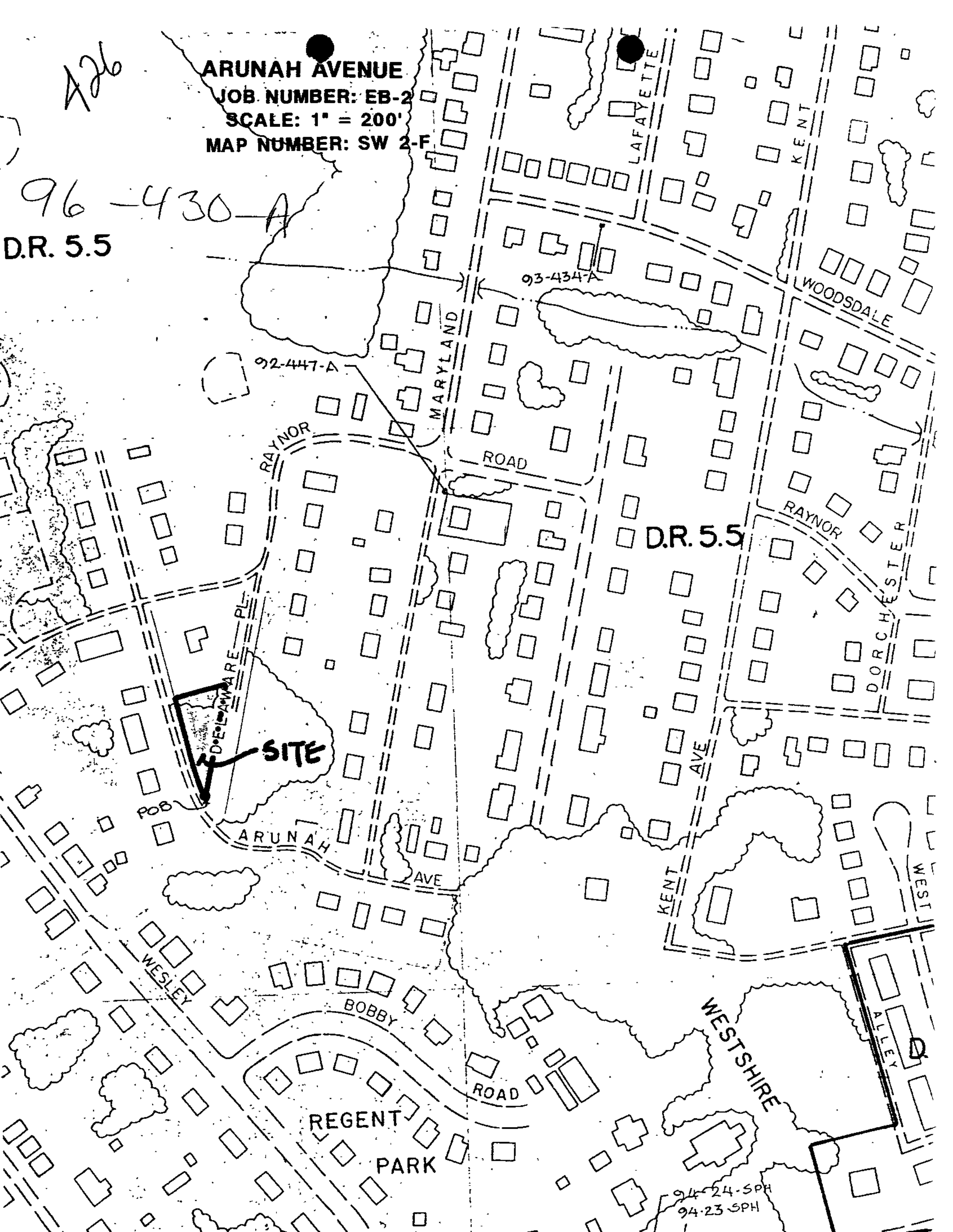
JOB NUMBER: EB-2

SCALE: 1" = 200'

MAP NUMBER: SW 2-F

96-430-A

D.R. 5.5



92-447-A

93-434-A

D.R. 5.5

SITE

POB

94-24-SPH
94-23-SPH

Plat to accompany Petition for Zoning

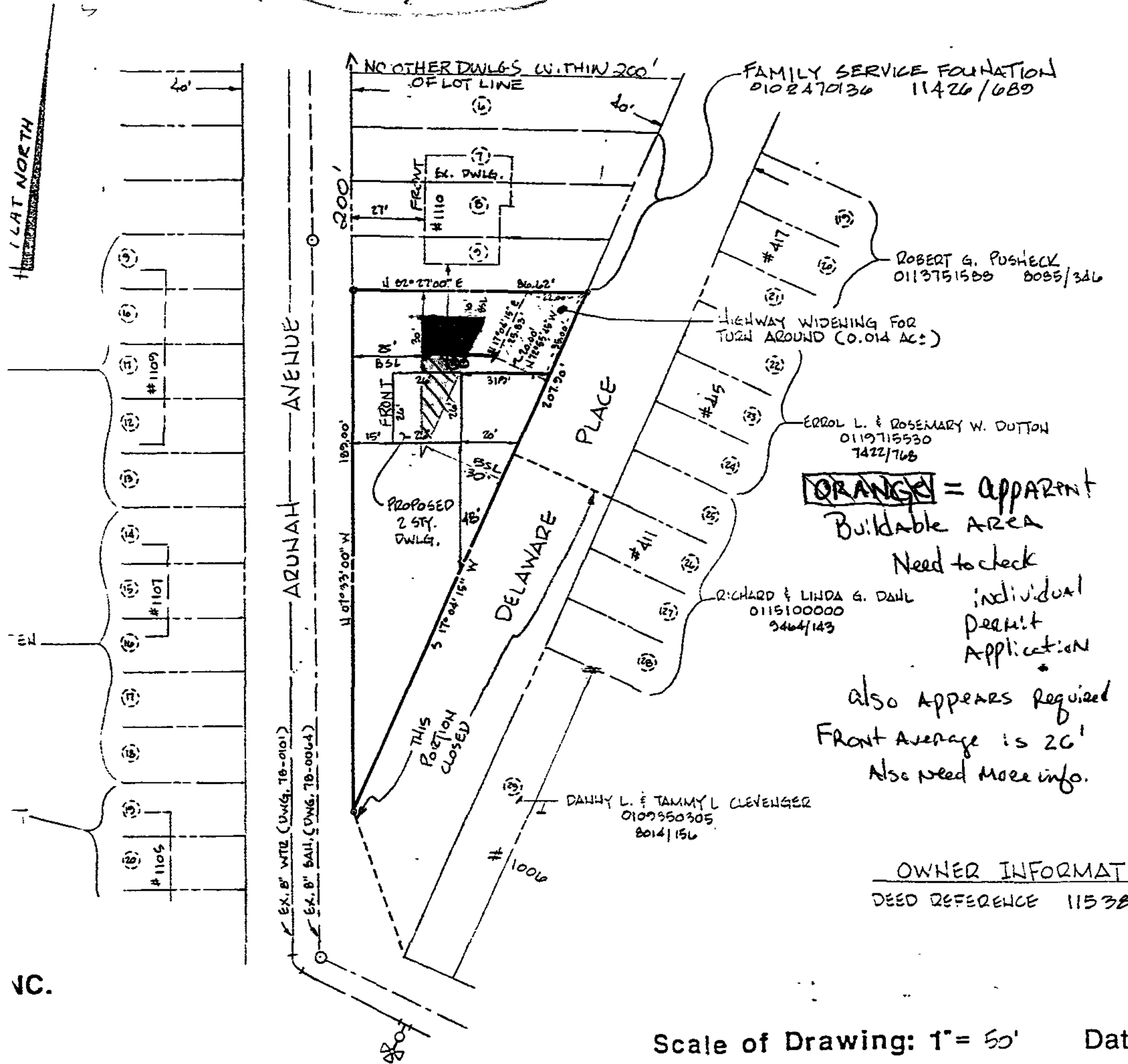
PROPERTY ADDRESS: 1108 ARUNAH AVENUE

Subdivision name: CATONSVILLE HEIGHTS

plat book # 6, folio # 178, lot # 10-12, section # BLOCK 26
 also recorded by deed in Liber 11538 Folio 255

OWNER: PALMETTO GROUP INC.

96-430-



ORANGE = Apparent Buildable Area

Need to check individual permit application
 also appears required Front Average is 20'
 Also need more info.

OWNER INFORMATION
 DEED REFERENCE 11538

Scale of Drawing: 1" = 50' Date

Plat to accompany Petition for Zoning

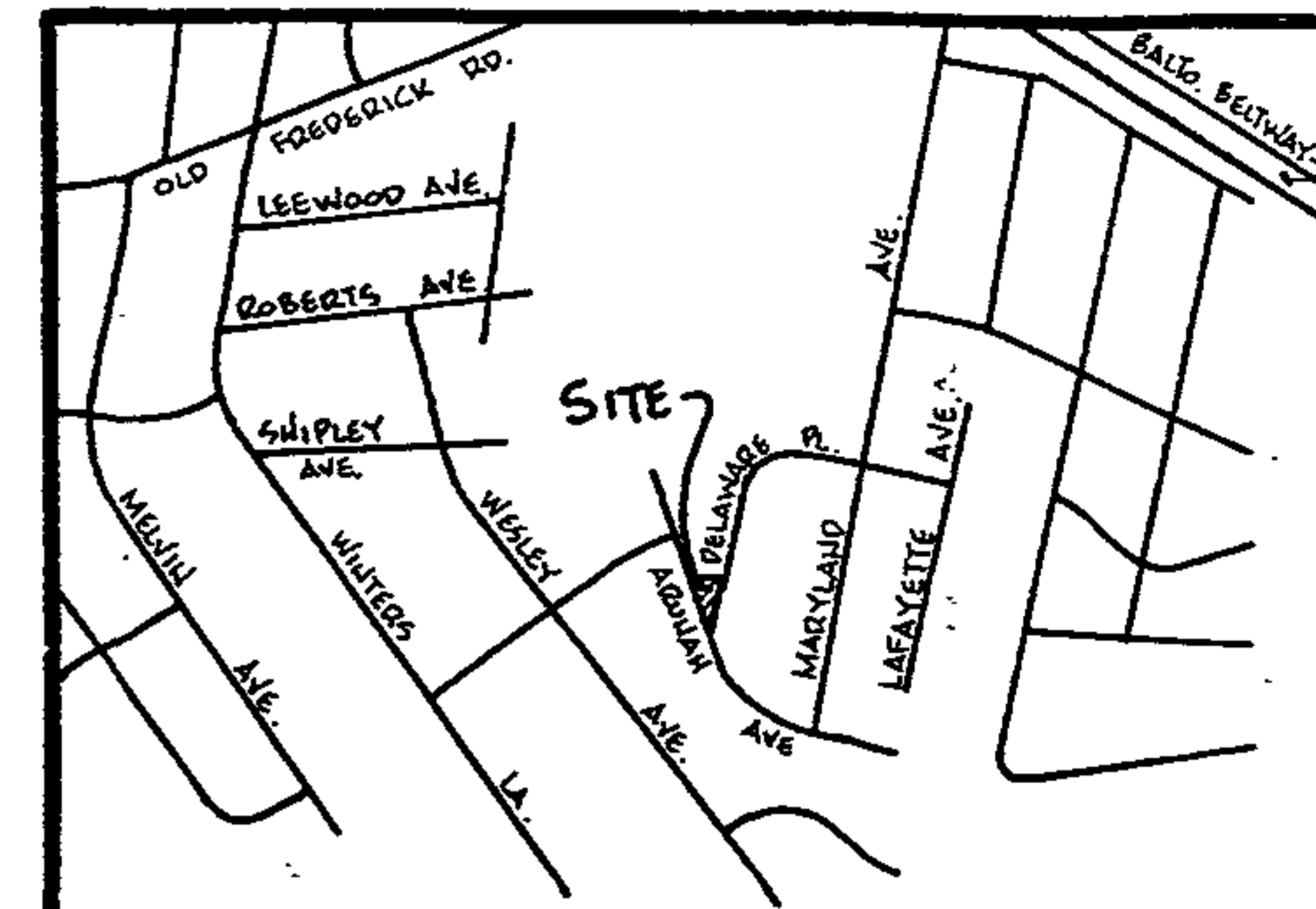
PROPERTY ADDRESS: 1108 AQUANA AVENUE

Subdivision name: CATONSVILLE HEIGHTS

plat book # 6, folio # 178, lot # 10-12, section # Block 26
also recorded by deed in Liber 11538 Folio 255

OWNER: PALMETTO GROUP INC.

96-430-A



Vicinity Map
scale: 1"=1000'

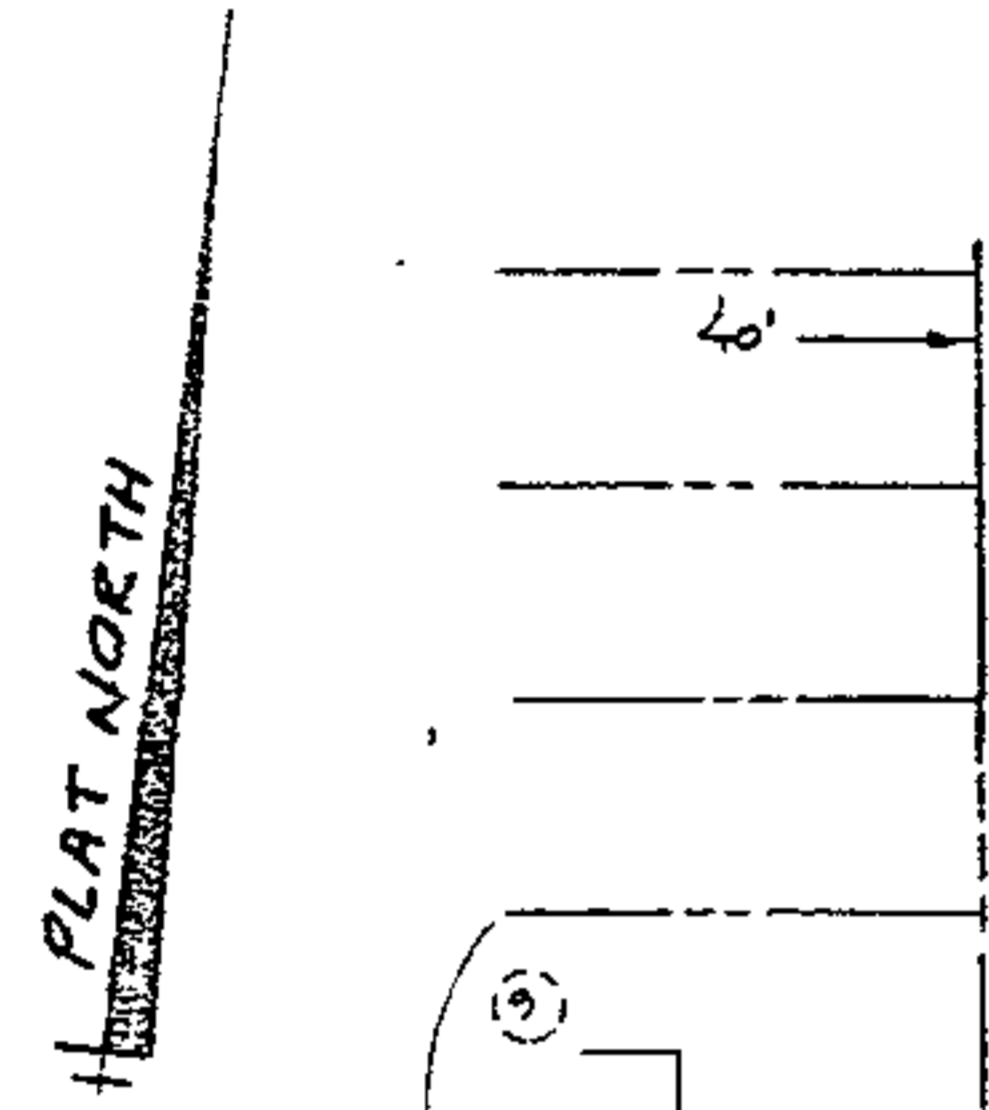
LOCATION INFORMATION

Councillmanic District: 1
Election District: 1
1"=200' scale map#: SW-2F
Zoning: D.R. 55
Lot size: 0.188 8186.6
acreaqe square feet

	public	private
SEWER:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
WATER:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Chesapeake Bay Critical Area:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Prior Zoning Hearings:	None	
NOT IN THE 100 YR FLOOD PLAIN.		

OWNER INFORMATION
DEED REFERENCE 11538/255

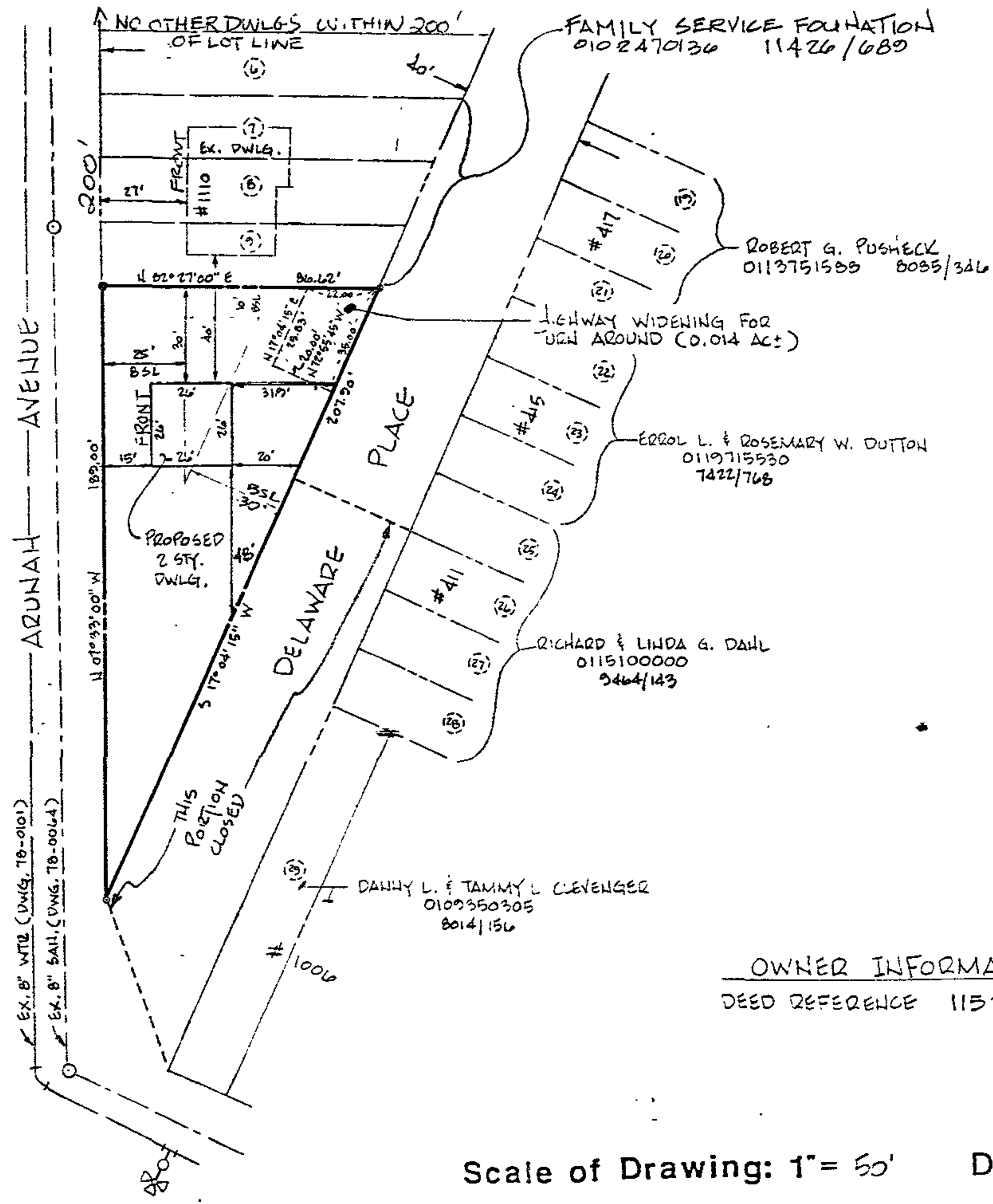
Scale of Drawing: 1"= 50' Date: 4-23-96



HAROLD Y. & JOANN H. BORDEN
1800011273
5767/953

FRANKLIN A. & GWYNETH L. BORDEN
1800013599
5767/722

CYRIL P. & ALICE L. BENNETT
0123153849
0123153850
5768/366



McKEE & ASSOCIATES, INC.
CIVIL ENGINEERS - LAND SURVEYORS
SHAWAN PLACE 5 SHAWAN ROAD
HUNT VALLEY, MD 21030
PHONE - (410) 527-1555