THE APPLICATION OF WILLIAM H. MATHEWS FOR A SPECIAL HEARING ON PROPERTY LOCATED ON THE S/S * LINDEN TERRACE, 500' E OF C/L YORK RD (10 LINDEN TERRACE) AND PROPERTY LOCATED ON THE N/ S LINDEN TERRACE, 650' E OF C/* CASE NO. 97-326-SPH and L YORK RD (15 LINDEN TERRACE) CASE NO. 97-327-SPH

BEFORE THE

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

OPINION

This case comes to the Board of Appeals based on an appeal by the Appellant /Property Owner from a decision of the Zoning Commissioner dated March 20, 1998 which granted the Petitions for Special Hearing filed by Hunter Rowe, a Zoning Inspector with the Office of Permits and Development Management, for the property known as 10 Linden Terrace (97-326-SPH) alleging the illegal conversion of a single-family dwelling into seven apartments; and for the property known as 15 Linden Terrace (97-327-SPH) alleging the illegal conversion of a single-family dwelling into seven apartments; exceeding the number of units permitted pursuant to Section 402 of the Baltimore County Zoning Regulations (BCZR).

This matter was heard by this Board de novo on December 2, 1998. In lieu of closing argument, Counsel submitted memoranda on January 7, 1999, and public deliberation was held on January 21, 1999, due notice of which was provided to all interested parties. Counsel for the Appellant /Property Owner was Michael P. Tanczyn, Esquire, and Lee S. Thompson, Assistant County Attorney, represented Baltimore County, Maryland.

The case below involved five separate zoning violations citing those violations as exceeding the number of family units permissible, utilizing the conversion chart for one-family dwellings pursuant to Section 402 of the BCZR. Three of the

individual cases were resolved satisfactorily below.

The instant case on appeal before the Board involves the two remaining properties; namely, 10 Linden Terrace and 15 Linden Terrace; and alleges the illegal conversion of a single-family dwelling into seven apartments in each property, wherein the lot size does not support such a use (pursuant to Section 402, BCZR). The property at 10 Linden Terrace is rectangularly shaped, approximately .288 acre in area, zoned D.R. 16, is improved with a 2-1/2 story frame dwelling, and contains six individual apartments. The property at 15 Linden Terrace is also zoned D.R. 16, is approximately .45 acre in area, and also is improved with a single-family dwelling consisting of seven individual apartments.

March 20, 1998, found that both properties in question do not qualify as a legal nonconforming use; and therefore required the application of the conversion chart pursuant to Section 402 of the BCZR. He determined that 10 Linden Terrace was permitted four apartment units instead of the six units which currently exist, and that 15 Linden Terrace was permitted six apartments instead of the seven which are currently in use on that particular property.

In the instant case, the Appellant, through his attorney, argues that the correct regulations to be applied in determining the number of apartment units permissible for each of the subject properties should come from density unit calculations contained in the Zoning Commissioner's Guidelines, and not from Section 402 of the BCZR. Regardless of that determination, Appellant argues that both properties should obtain relief from Section 104.1 of the BCZR

as qualifying legal nonconforming uses.

Appellant's first witness was James Watson, whose testimony related to only 10 Linden Terrace. Mr. Watson testified that his parents purchased the subject property in 1948 from Mr. Howard Bregel (which is documented by the Deed of Sale entered as Appellant/Respondent's Exhibit No. 1), stating at the time of purchase there existed six separate apartments consisting of:

- 3 apartments on the first floor;
- 1 apartment in the basement;
- 1 apartment on the second floor; and
- 1 apartment on the third floor.

He testified that each apartment had separate entrances and its own kitchen, bathroom and living quarters. He further stated each apartment remained in its original form from 1948 through 1974 when he and his brothers purchased the subject site by way of Deed (Appellant/Respondent's Exhibit No. 2) from his parents, with the time of sale to Mr. Mathews (the Appellant herein) by way of Deed (Appellant/Respondent's Exhibit No. 3) in 1980. During this time he was personally familiar with 10 Linden Terrace and was absent only for military service between 1953 and 1955. He recalled that each of the apartments was constantly being utilized by either immediate family members, which included his uncle, his parents and brothers, who occupied separate apartments during different periods of their lives (including the time before and after in which he married and lived there with his family) which involved the use of different apartments. He also referenced soldiers stationed at Fort Meade who would, on different occasions, lease individual apartments. He specifically recalled that a Mr. Harris occupied the second floor apartment, reiterating that all the apartment

units were constantly being utilized.

Mr. Frederick Craig also testified in support of the Appellant /Property Owner. Mr. Craig testified that he purchased 31 Linden Terrace in 1967 and resided there with his family until 1990. Mr. Craig further testified that he was familiar with both 10 Linden Terrace and 15 Linden Terrace since the 1970s. At that time he served as President of the Towson Manor Improvement Association, and recalled delivering monthly newsletters to the neighboring houses, including the subject properties.

Mr. Craig recalled that 10 Linden Terrace had six mailboxes, and that 15 Linden Terrace had seven mailboxes; and also housed the law office of a Mr. Barton Benson in the basement. He further testified that he would help his son deliver newspapers to these addresses as part of his route. Mr. Craig further stated that, acting on behalf of State Farm Insurance, he had inspected and insured 10 Linden Terrace for six apartments and 15 Linden Terrace for seven apartments from 1982 until the present. These inspections occurred after Mr. Mathews purchased both properties and made substantial improvements, especially to the electrical wiring, which brought each property up to the current Code requirements for Baltimore County, and also satisfied State Farm's stringent requirements relating to apartment units.

Mr. Paul Wynn, a general contractor, also testified in support of the Appellant /Property Owner, stating that since the purchase of both properties by Mr. Mathews in 1980 he had performed the rehabilitation work and general maintenance on both sites, and indicated that the <u>original configuration</u> of 10 Linden Terrace was

for six apartments and for 15 Linden Terrace was seven apartments, and has remained unchanged; the only improvements occurring to both being to modernize or correct deteriorating conditions that pre-existed, thus improving the overall quality of both properties.

Mr. Wynn opined that the construction of both properties dated between 1930 and 1940, based upon the construction methods used in both properties, and the outdated appliances and materials, such as tin sinks and cast iron used throughout.

Mr. Wynn also stated that both properties have remained fully rented since 1980 through the present, except for periods of approximately 1 month when general maintenance would be performed in between tenants.

Ms. Anne Martin, who has resided at 12 Linden Terrace since 1987, was next to testify. She referenced Appellant/Respondent's Exhibit No. 5, a letter from the Office of Planning and Zoning dated September 26, 1990 in which she was cited for having seven apartments on a D.R. 16 lot in which the zoning maps showed no reference for a special exception to allow such activity to exist; and she was required to file for a special hearing or face civil penalties. Ms. Martin went on to say that seven apartments existed when she purchased the property, and upon receipt of the letter, she hired the firm of Venable, Baetjer & Howard to represent her along with the engineering firm of Spellman and Larson, who satisfied Baltimore County that the 1981 permit satisfied density unit calculations, and that Baltimore County withdrew its objection. She also indicated that 12 Linden Terrace would not have met the requirements of Section 402.1.

Mr. William Mathews, testifying on his own behalf, stated he currently resides at 17 Linden Terrace, having moved there between 1970 and 1972. His overall knowledge of the neighborhood dates back to at least 1957, when he resided in the immediate neighborhood on Willow Avenue while he attended Towson State University.

He stated while a student there, he would, on occasion, visit friends living at 10 Linden Terrace, indicating it was then configured for six apartments. However, his first-hand knowledge pertaining to 15 Linden Terrace only dated to the time he moved to his current residence in approximately 1970. Mr. Mathews further stated upon his inspection and purchase of both properties in 1980, and due to the deteriorating condition of both, he had made substantial improvements, including upgrading the electrical services to both properties, in order to bring each into compliance with current codes, as well as to meet the standards of the State Farm Apartment Program; but that at no time was the original configuration of either property changed.

Mr. Mathews detailed the configuration of both properties, echoing the testimony of previous witnesses, in that each apartment unit at both properties in question was serviced by separate entrances, and contained its own kitchen, living space, and bathroom facilities during the entire time of his ownership. He further testified as to his familiarity with both properties, at least since 1970, when he moved into his current residence, and that both sites have remained continually rented without interruption.

Mr. Mathews also stated that he was cited in 1992 by way of letter (Appellant/Respondent's Exhibit No. 13) from the Office of Zoning Administration and Development Management challenging the use of seven apartments at 15 Linden Terrace, and alleging that the lot size did not support such a use pursuant to Section 402.2 of the BCZR.

He recalled that upon receipt of the letter he met with representatives of the Code Enforcement Office and the Office of Planning & Zoning, who utilized density unit calculations to determine that seven apartments were permitted in 15 Linden Terrace. Finally, he stated that Baltimore County took no further action with regard to this alleged violation until 1997 when the Petition for Special Hearing was filed with the Zoning Commissioner on five of his properties, and which resulted in this appeal.

There are two issues presented in this case. The first is whether or not the subject properties qualify as a "nonconforming use," and the second is whether or not the use of these properties is governed by Section 402 of the BCZR. Absent any finding that both properties on appeal qualify as a legal nonconforming use, the Board must then either apply the conversion chart which lists the minimum lot area in square feet for the conversion of one family dwellings into multi-family units, pursuant to Section 402 of the BCZR, or as Appellant contends, the correct application of the Code which should fall under the density calculation chart contained within the BCZR.

In determining a legal nonconforming use, it becomes the burden of the Appellant/Property Owner to establish that a

nonconforming use, as defined in Section 101 of the BCZR, had existed prior to the adoption of the D.R. zoning classification and meets the requirements of Section 104.1, which states in pertinent part:

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

As a result of testimony from both the Appellant /Respondent and his witnesses, especially the testimony of Mr. Watson, it is clear that 10 Linden Terrace was in use as a six-apartment dwelling prior to the adoption of the D.R. classification, and that use has remained uninterrupted to the present. Baltimore County offered no witnesses to rebut the testimony of any of Appellant's witnesses. In conclusion, therefore, the Board finds that Appellant has met his burden in establishing that 10 Linden Terrace is a legal nonconforming use, thus satisfying Section 104.1 of the BCZR, and that the use of six apartments as it currently exists today be permitted.

Turning to the second property in question; namely, 15 Linden Terrace, the Board finds that the Appellant /Property Owner has failed to meet his burden to establish a nonconforming use. The earliest testimony relating to the subject site was offered by Mr. Craig which dates back to the early 1970s, in which his knowledge of the property only confirmed that a law office existed in the basement, and that there were seven mailboxes, but could not specify to either the number of apartment units or to their actual

use. His only conclusive knowledge relating to the subject site dated to 1982 when, while acting as an agent for State Farm, he had personally inspected the property, which resulted in coverage for seven apartments.

Mr. Mathews' earliest recollection pertaining to 15 Linden Terrace also dates to between 1970 and 1972, when he moved to the neighborhood. Thus, the Board finds that the Appellant has failed to meet his burden of proof in qualifying 15 Linden Terrace as a nonconforming use pursuant to Section 104.1 of the BCZR. There was no testimony presented to account for the specific use of seven apartments for a period of 15 years plus, from 1955 to 1970-72; and that the use would have continued without interruption or abandonment for a period of one year or more.

As the Appellant has satisfied the requirements for a nonconforming use as to 10 Linden Terrace, the only property in question remains 15 Linden Terrace. The Appellant, in his support of using the density unit calculation contained in the BCZR to allow the seven existing apartments, offered not only the testimony of Ms. Martin but also submitted additional exhibits relative to 14 Linden Terrace, entered by stipulation of the parties, indicating a like result.

The Board finds that Section 402.1 is applicable in this matter. In 1955, the Baltimore County Council adopted Section 402 of the BCZR for the purpose of regulating the conversion of single-family dwellings into multi-family dwellings.

In 1970, the County Council enacted Bill 100 which revised the BCZR but did not repeal Section 402. We find that the Council

intended Section 402 to remain in effect and be used to determine the density use in the conversion of the single-family structure at issue here. We therefore recognize the stipulation of both parties that 15 Linden Terrace does not qualify for seven apartments under the requirements of Section 402 but is limited to a total of six apartments.

ORDER

IT IS THEREFORE this 25th day of March, 1999 by the County Board of Appeals of Baltimore County

ORDERED that the property known as 10 Linden Terrace is approved as a legal nonconforming use for a total of six (6) apartment units; and it is further

ORDERED that the property known as 15 Linden Terrace is limited to a total of six (6) apartment units pursuant to Section 402 of the BCZR.

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 APPEAUS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Panel Chairman

Thomas P. Melwin

Thomas P. Melvin

Donna M. Felling





County Board of Appeals of Baltimore County

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

March 25, 1999

Michael P. Tanczyn, Esquire 606 Baltimore Avenue Suite 106 Towson, MD 21204

> RE: In the Matter of William H. Mathews Case No. 97-326-SPH and Case No. 97-327-SPH

Dear Mr. Tanczyn:

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

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 and Procedure, with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Kathleen C. Bianco

Administrator

encl.

CC: William H. Mathews
Lee S. Thomson, Assistant County Attorney
Virginia W. Barnhart, County Attorney
Hunter Rowe, Zoning Inspector /PDM
Arnold Jablon, Director /PDM
Lisa Keir MS 2201
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C

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IN RE: THE PETITION OF
BALTIMORE COUNTY FOR A 11 16
SPECIAL HEARING

BEFORE THE

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BOARD OF APPEALS

Petitioner * FOR BALTIMORE COUNTY

10 Linden Terrace * CASE NO. 97-326-SPH

15 Linden Terrace

* CASE NO. 97-327-SPH

RESPONDENT'S MEMORANDUM

William Mathews, Respondent, by his attorney, Michael P. Tanczyn, respectfully submits the within Memorandum to assist the Board of Appeals in its deliberation of this matter.

STATEMENT OF THE CASE

Baltimore County petitioned Special Hearings in Cases 97-326-SPH through 97-330-SPH for five residential properties, owned by William H. Mathews, located in Towson. Three of the petitions were resolved by stipulations of the parties or denial of the Special Hearing Petition by the March 18, 1998 Order of the Zoning Commissioner. Mr. Mathews, the property owner, noted a timely appeal in cases 97-326-SPH 10 Linden Terrace, and 97-327-SPH 15 Linden Terrace, which was heard by the Board of Appeals for Baltimore County on December 2, 1998.

QUESTIONS PRESENTED

- 1. Whether Baltimore County met its burden of proof as Petitioner to show conversion to seven (7) apartments at both 10 and 15 Linden Terrace since Section 402 became effective in 1955 as it alleged in its Petition since multifamily dwellings are otherwise permitted of right in DR-16 zones as they were under Section V-C Residence zones in the 1945 Zoning Regulations for apartments.
- 2. Whether the properties at 10 Linden Terrace and 15 Linden Terrace are valid non-conforming uses since 10 Linden Terrace was configured for six (6) apartments prior to 1948 and 15 Linden Terrace was configured for seven (7) apartment units prior to 1955 when Section 402 was adopted and effective regarding prospective conversions of existing single family dwelling units to multi-family housing units.
- 3. Whether Baltimore County's prior interpretation of its conversion regulations utilizing density units for 12 Linden Terrace in 1981 and 14 Linden Terrace in 1985, mandate approval for Respondent's continued use of 10 Linden Terrace for six (6) apartments and 15 Linden Terrace for seven (7) apartments as would be proper utilizing the density unit calculations as was done for those other property owners.

STATEMENT OF FACTS

By stipulation of the parties, all of the exhibits introduced before the Zoning Commissioner relating to 10 and 15 Linden Terrace were admitted by stipulation before the Board of Appeals of Baltimore County. Those included photographic evidence of the existence of seven mailboxes and seven electric meters at 15 Linden Terrace Exhibit 6C (ZC), and six mailboxes and six electric meters at 10 Linden Terrace Exhibit 5E (ZC), and a stipulation by the Respondent that both properties were configured for the respective number of apartments attributed to them and were rented as such at present. Exhibits also included drawings prepared by the Baltimore County Surveyor for 10 and 15 Linden Terrace showing the lot dimensions and location of improvements thereon Exhibit 5B, 6B (ZC), surveyor's certificate as to the square footage contained on the respective lots, the plat of Bowen recorded in 1897 in the Land Records of Baltimore County which was Exhibit 14 (ZC), and on which Linden Terrace is then referred to as May Avenue, and proof of alley closing adjacent to 10 Linden in 1985 Exhibit 5C (ZC). Petitioner called no witnesses for its case in chief or in rebuttal.

Respondent called the following witnesses whose testimony is summarized in chronological order as follows:

Mr. James Watson. Mr. Watson authenticated Respondent's Exhibits 1 through 3 which were a 1948 Deed by which his parents purchased 10 Linden Terrace from Mr. Bregel; and 1974 Deed by which he and his brothers purchased 10 Linden Terrace from their parents and the 1980 Deed by which they sold 10 Linden Terrace to William Mathews. Mr. Watson testified in detail that when his parents purchased the property, there were three separate apartments on the first floor, one in the basement, one on the second floor, and one on the third floor. He testified as to the separate entrances to each of those apartments and that each of them had kitchen facilities and a separate bathroom and that they were utilized as separate dwelling units by members of his family and by tenants for the entire time that his parents owned the property and for the time that he and his brothers rented out the properties until they sold the property to Mr. Mathews in 1980. He further testified that there were no reconfigurations or additions to create more dwelling units during the time of his parents' ownership or the time when his brothers and he owned the property, and that it was configured throughout for six (6) apartments when they owned it and when it was sold to Mr. Mathews. Except for the time when he was serving in the United States Armed Forces in the Korean conflict, he testified that the property was always rented out, usually to at least five different parties in addition to his family, and that he had lived in various apartments in the house at various times of his life, both before and after he was married and had a family. Mr. Watson testified that he would have been 13 years old in 1948 when his parents purchased the property and moved to the first floor unit.

Mr. Frederick Craig. Mr. Craig next testified that he and his wife had purchased 31 Linden Terrace in 1967 and resided there until 1990 with their family. He testified that he had served on the Community Association for that community known as Towson Manor Improvement Association which he recalled was reformed in the early '70s. He had served in the offices of President of the Association, and in the 1970s, as Vice President of Zoning Matters. He also testified he had been a Block Captain, and in that capacity had delivered monthly newsletters within the area of his responsibility which included both 10 and 15 Linden Terrace, and had delivered as many newsletters

as there were mailboxes and that he recalled there being six (6) at 10 Linden Terrace and seven (7) at 15 Linden Terrace. He also testified that he helped his son with a newspaper route which his son had in the early '70s, and that he would personally deliver newspapers to not all residents of 10 and 15 Linden Terrace, but to three or four customers at each location, and that he was aware that the apartments were configured for six (6) at 10 Linden Terrace and seven (7) at 15 Linden Terrace. He also testified that in his occupation as a State Farm Insurance sales person, he had inspected and insured these properties since Bill Mathews had come into ownership and confirmed that it was insured for above average improvements as made by Mr. Mathews at both locations and for six (6) units at Linden Terrace and seven (7) units at 15 Linden Terrace. He testified as to the upgrades to the property made by Mr. Mathews to bring the properties up to code so that they could be insured under the more stringent State Farm requirements which would only insure average or above average improvements. He expressed his opinion that the work done by Mr. Mathews on the properties not only upgraded the condition of the premises, but made them an attractive multi-family housing in keeping with the neighborhood.

Mr. Craig knew Barton Benson and knew that he resided and had a law office in part of 15 Linden Terrace and that he rented out all of the premises for apartments.

Ms. Virginia Duncan. Ms. Duncan next testified that she had resided in the neighborhood since 1961 and that she and her husband from 1961 until her husband's death in 1977 operated a neighborhood cab service, with first one and then two cabs, which serviced the immediate neighborhood primarily, and she was aware of numerous calls to pick-up fares at both 10 and 15 Linden Terrace from residents who were there. After being shown pictures of the improvements, she expressed her opinion that the improvements were attractive at 10 and 15 Linden Terrace although she was not familiar with exactly what improvements had been made by Mr. Mathews since he purchased the property.

Anne Martien. Anne Martien appeared to testify as the owner of 12 Linden Terrace since she purchased it by Deed from Barton Benson in 1987. The extensive proffer concerning her proposed testimony and related exhibits was accepted by the County. The exhibits included the Deed by which she purchased the property, a 1990 letter from Baltimore County challenging the existence of seven (7) apartments at 12 Linden Terrace, and the microfilm record of Building Permit B-33460, approved in May of 1981, for an addition for more apartments, calculated under the density unit definition and a site plan with those calculations approved by Planning and Zoning in May 1981. Ms. Martien testified that the building had seven (7) apartments in it when she purchased it and continued to have that number, and that the County withdrew its objection after she hired Venable, Baetjer, and Howard to represent her along with Spellman and Larson, Engineers, who satisfied Baltimore County that the 1981 permit, based on the density unit calculations, was approved. The proffer included the stipulation that 12 Linden Terrace would not have met the requirements of Section 402 for conversions of residential units for multi-family dwellings under the requirements of that Section. Respondent's Exhibit 4-6 were the 2/27/87 deed of her purchase; the 9/26/90 letter from Baltimore County challenging the seven (7) units; and Permit 33460 with microfilmed site plan with density units calculated.

Paul Wynn. Paul Wynn next testified that he was a building contractor and had done rehab, maintenance, and repair work generally and on Mr. Mathews' properties including 10 and 15 Linden

Terrace since Mathews had purchased them. He testified based on his extensive contracting experience that the properties were configured for six (6) apartments at 10 Linden Terrace, and seven (7) apartments at 15 Linden Terrace when he first viewed them after Mr. Mathews purchased these properties. He further testified that he had recently been in both properties and frequently over the term of Mr. Mathews' ownership, and that the properties had not been reconfigured or any additional units created over the time of Mr. Mathews' ownership, and that the properties were rented out throughout the time of Mr. Mathews' ownership for the respective apartments indicated at each location.

In answer to questions from the Board, he testified that the construction of the apartments would be old style in terms of the materials and style of construction utilized as opposed to more modern conversion or renovation of the properties, and he testified as to illustrative examples of that the size of rooms, use of cast iron enameled sinks and tin in the improvements would have been representative of construction from the '30s and '40s and he expressed his opinion that these houses were sixty to eighty years old based on his observations of the improvements as constructed.

William Mathews. Mr. Mathews then testified that he was born in 1938 and had attended Towson State University between 1957 and 1961. He testified that he had visited 10 Linden Terrace to know that it was configured for six (6) apartments during the time that he attended Towson State and that he had lived in this immediate neighborhood first on Willow Avenue and later at 17 Linden Terrace beginning somewhere between 1970 and 1972 to the present.

He identified Respondent's Exhibit 7 as the records he had obtained from Baltimore County concerning a building permit for 14 Linden Terrace with excerpts from the County's microfilm record showing the lot dimensions and the three apartment addition called for under that permit application as approved by Baltimore County in 1985.

He further testified as on personal knowledge of the existence of seven (7) apartments in 14 Linden Terrace and 12 Linden Terrace and that his efforts to obtain print copies of Baltimore County Building Permits B-77201 and B-77802 had been frustrated by the printer being broken in the Zoning Enforcement Office where the microfilm cassettes were located. By agreement by counsel, copies of those permits will be obtained and after review by Mr. Lee Thomson, Esquire, will be submitted to the Board for inclusion in this record with regard to 14 Linden Terrace.

Mr. Mathews testified in detail as to the configuration layout of both 10 and 15 Linden Terrace and the access to each apartment from the outside. He further testified as to the type of electrical service, being the fuse box type, in place when he purchased each property, and his efforts to upgrade both properties not only as to electrical service but as to meet current code requirements so that they could be insured under the State Farm apartment program. He further testified that since he moved into the neighborhood in 1970–1972, he knew that the properties had been rented out for multiple units and that when he inspected them before purchasing them, that there were six (6) units in 10 Linden Terrace and seven (7) units in 15 Linden Terrace and that he had made no additions since he purchased them to add additional units and that they were still configured with those same numbers of apartment units.

He testified that in 1992 he received a letter Exhibit 13 (ZC) challenging the seven (7) apartments in 15 Linden Terrace and that he met with representatives of the Code Enforcement Office Mr. Timothy Fitts and a representative of the Office of Planning and Zoning, Larry Goetz, who utilized density unit calculations to calculate seven (7) apartments would be permitted in 15 Linden Terrace and that the County took no further action with regard to that alleged code violation until filing these Special Hearing Petitions in 1997 on five of his properties. He testified that during the time from 1970 through the present of his personal knowledge, that the properties at 10 and 15 Linden Terrace were continuously rented out. He identified photos which were accepted into evidence of 15 Linden Terrace, 12 Linden Terrace, and 14 Linden Terrace to show the improvements existing thereon as of November 25, 1998 Exhibit 8A-C. Additional photos were admitted before the Zoning Commissioner below to show the improvements of 10 and 15 Linden Terrace which are part of the exhibits before the Board Exhibit 11 (ZC).

Mr. Mathews identified the Deed Exhibit 10 by which he purchased 15 Linden Terrace from the Estate of Barton Benson, as well as the earlier Deed conveying the property to Mr. and Mrs. Benson from 1961 Exhibit 11.

ARGUMENT 1

WHETHER BALTIMORE COUNTY MET ITS BURDEN OF PROOF AS PETITIONER TO SHOW CONVERSION TO SEVEN (7) APARTMENTS AT BOTH 10 AND 15 LINDEN TERRACE SINCE SECTION 402 BECAME EFFECTIVE IN 1955 AS IT ALLEGED IN ITS PETITION SINCE MULTIFAMILY DWELLINGS ARE OTHERWISE PERMITTED OF RIGHT IN DR-16 ZONES AS THEY WERE UNDER SECTION V-C RESIDENCE ZONES IN THE 1945 ZONING REGULATIONS FOR APARTMENTS.

Baltimore County, which bore the Burden of Proof as the Petitioner to prove the allegations of its Petition, failed to do so in its failure to show conversion of a single family dwelling into seven (7) apartments, wherein the lot area does not support such a use, which was the common allegation by way of description in the County Petitions for both 10 and 15 Linden Terrace. Both Petitions 97-326 as to 10 Linden Terrace and 97-327 as to 15 Linden Terrace contain identical allegations, except for the different property address, namely that Baltimore County, by Special Hearing, petitioned first the Zoning Commissioner and now the County Board of Appeals to find that William Mathews converted the above properties into seven (7) apartments therein where the lot area requirements of Section 402 would not support such a use.

Although the County's boiler plate stamped information on the Petition form references Sections 26-3 and 26-121A of the County Code, as well as reciting the nature of violations, it is clear that the County intended to, by its Petition for Special Hearing, request under Section 500.6 of the Zoning Regulations to ask the Zoning Commissioner to interpret the enumerated sections in light of the County's allegation aforesaid as to both properties. That is so because if the County were treating this as a violation case, it would have been filed in the District Court for Baltimore County under current law and practice. The Burden of Proof in the case of a Special Hearing is on the Petitioner who seeks an affirmative ruling from either the Zoning Commissioner or the Board of Appeals that its allegations are sustained on the evidence presented.

In this case the exhibits pertinent to these two properties, admitted before the Zoning Commissioner below, were also introduced by joint stipulation of the parties. The excerpts of the zoning maps showed that both 10 and 15 Linden Terrace are presently zoned DR-16 Exhibits 1-A and B. Mr. Mathews purchased 10 Linden by Deed dated September 15, 1980, but the County closed the alley adjacent to 10 Linden Terrace adding square footage back to the property by actions culminating in August 28, 1985 Exhibit 5-C, and Exhibit 6-A was the Deed by which Mr. Mathews purchased 15 Linden Terrace June 15, 1987. Photos showing six electric meters and six mailboxes at 10 Linden Exhibit 5-E and seven mailboxes at 15 Linden Exhibit 6-C were admitted as well as site plans showing square footage for 10 Linden (5-B), and 15 Linden (6-B). A survey by W. T. Sadler showing lot line adjustment to account for the alley closing at 10 Linden adding 1,200 square feet plus or minus to that property was Exhibit 5-D. The plat of Bowen showing both properties as platted in 1897 and photos of the two houses, as well as a letter from Baltimore County Code Enforcement Timothy Fitts to Mr. Mathews regarding 15 Linden dated November 16, 1992 Exhibit 13, represented the exhibits before the Zoning Commissioner and introduced in this case by stipulation of the parties. The County rested and called no other witnesses.

In a light most favorable to Baltimore County as the moving party, those bits of evidence establish the present existence of seven (7) apartments at 15 Linden and six (6) apartments (rather than the seven (7) alleged) at 10 Linden. There was no testimony adduced by that evidence to prove or establish the County's allegation that Mr. Mathews had converted these properties to seven (7) apartment units. Indeed the overwhelming evidence was to the contrary in the form of testimony of witnesses called by the Respondent as well as the Respondent, William Mathews', own testimony. Their testimony will be discussed in detail in Question 2.

Multifamily buildings and group houses are permitted of right in DR-10.5 and DR-16 zones (BCZR 1B01.1 A1 D) as well as in the previous zones applicable to these properties under prior zoning regulations, namely RA zones (Section 100.3A, zones heretofore classified as RA are now classified as DR-16), and under the 1945 Regulations, C Residence Zone an apartment was permitted use under Section V C Residence Zone, which became the RA Zone under Section 100.3 found at page 1-3 of the Zoning Regulations. Because apartments or multifamily units or group houses are permitted uses in a DR-16 Zone, it was critical for the County to show conversion of a single family dwelling after the effective date of Section 402 in 1955 of the Zoning Regulations which specifically dealt with conversions of single family dwellings to multifamily dwellings. Imposition of zoning is prospective as applied to existing properties or uses at the time of enactment Amereihn v. Kotras, 194 Md. @ 591, 71 A2d 865, @ 868 (1950) as noted in that case,

"the Zoning Regulations under the authority of this Act in Baltimore County were adopted and approved by the County Commissioners effective January 2, 1945, and until that date there were no Zoning Regulations in Baltimore County. Property owners until that date were privileged to use their property for any lawful purpose...the effect of Zoning Regulations is in the future – their operation is prospective, to protect and preserve, not destroy quoting Dal Maso v. Board of County Commissioners 182 Md. 200, 34 A2d 464 and Kahl v. Consolidated Gas and Electric Company 60 A2d 754, (1948)."

Therefore, if the County failed to prove a crucial element, namely that the conversion took place since the Section 402 was effective in 1955, then it would fail in its allegations to provisions of Section 402 were applicable and its Petition ought be dismissed.

This is not a Petition for a Nonconforming Use brought by the property owner who in that case, would bear the Burden of Proof to establish that his property met the requirements of Section 104 of the Baltimore County Zoning Regulations. In this case, the local Government, Baltimore County, as the moving party, bears the burden as the Petitioner to prove its allegations as any Petitioner must in order to prevail for its requested relief. There is no proof of a conversion after 1955, for either property, brought in the County's case, and therefore, the County's Petition ought be denied.

WHETHER THE PROPERTIES AT 10 LINDEN TERRACE AND 15 LINDEN TERRACE ARE VALID NON-CONFORMING USES SINCE 10 LINDEN TERRACE WAS CONFIGURED FOR (6) APARTMENTS PRIOR TO 1948 AND 15 LINDEN TERRACE WAS CONFIGURED FOR SEVEN (7) APARTMENT UNITS PRIOR TO 1955 WHEN SECTION 402 WAS ADOPTED AND EFFECTIVE REGARDING PROSPECTIVE CONVERSIONS OF EXISTING SINGLE FAMILY DWELLING UNITS TO MULTI-FAMILY HOUSING UNITS.

The properties at 10 Linden Terrace and 15 Linden Terrace are valid nonconforming uses since 10 Linden Terrace was configured for six (6) apartments prior to its purchase by the Watsons in 1948 and 15 Linden Terrace was configured for seven (7) apartment units prior to 1955 when Section 402 was adopted and effective regarding prospective conversions of existing single family dwellings into multifamily housing units.

To establish that 10 and 15 Linden Terrace were converted prior to the adoption of Section 402 in 1955, the Respondents, who had no burden to prove that point, called as to 10 Linden Terrace Mr. James Watson. Mr. Watson authenticated Exhibits 1 through 3 which were the 1948 Deed by which his parents purchased 10 Linden Terrace from a Mr. Bregel. Mr. Watson testified in detail and at length in answer to all questions asked that his family had moved into the property after it was purchased and had rented out the other units. He also testified to the configuration of the interior at the time they moved in when he would have been thirteen (13) years old. There were three separate apartments on the first floor, one in the basement, one on the second floor, and one on the third floor. He also testified as to separate entrances to each of those apartments and that each of them had kitchen facilities and separate bathrooms and that they had been utilized as separate dwelling units by members of his family and tenants for the entire time that his parents had owned the property and from the time that he and his brothers had rented out the property after they purchased it from their parents in 1974, until the time when he and his brothers sold it to Mr. Mathews in 1980.

Paul Wynn, a building contractor, was also called as a witness and testified that since Mr. Mathews owned both properties, he had worked on both 10 and 15 Linden Terrace for Mr. Mathews between tenancies and that there had been no conversion of the properties to create more apartments in the time Mr. Mathews had owned them, which is significant on the County's allegations of a conversion of the properties by Mr. Mathews during his time of ownership. He further testified that the properties were configured for six (6) apartments at 10 Linden Terrace at

time of purchase and seven (7) apartments at 15 Linden Terrace when he first viewed them after Mr. Mathews purchased the properties and that they were so configured at present. In answer to questions from the Board members, he testified that based on the materials used and style of construction utilized, he characterized the construction as being old as opposed to renovation construction to create the apartments and gave his estimate that the houses were 60 to 80 years old based on his observations of the improvements as constructed.

Mr. Frederick Craig, who resided in the neighborhood from 1967 until 1990 and served on his local community association, including the Office of President, and in charge of zoning matters as Vice President, and had been a Block Captain. Those responsibilities, and particularly that of Block Captain, entailed delivering monthly newsletters to both 10 and 15 Linden Terrace, and he testified he had delivered as many newsletters as there were mailboxes and he recalls there being six (6) at 10 Linden and seven (7) at 15 Linden. He also helped his son deliver papers on his newspaper route and was familiar with 10 and 15 Linden Terrace and the rental units because of that. He was also aware, because of his position as a State Farm Insurance sales person, in which capacity he had inspected these properties since Mr. Mathews had come into ownership and found six (6) units at 10 Linden Terrace and seven (7) units at 15 Linden Terrace. He testified about upgrades made to the property by Mr. Mathews to improve them under current building codes so that they could be insured under State Farm's stringent requirements, which would only insure average or above average improvements. He expressed his opinion that the work done by Mr. Mathews on the properties not only upgraded the condition of the premises, but made them attractive, multifamily housing in keeping with the neighborhood. Mr. Craig also had know Barton Benson when he owned 15 Linden Terrace and that Mr. Benson had rented out all of the premises for apartments as well as maintaining his law office in there.

Finally, Mr. Mathews testified not only based on his experience since owning both properties, but that he had attended Towson State University between 1957 and 1961, and that he had visited 10 Linden Terrace to know that it had six (6) apartments during the time that he had attended Towson State, and that from the time he moved into the neighborhood beginning sometime between 1970 and 1972, he was familiar with 10 Linden Terrace and its configuration as well as the apartments in 15 Linden Terrace. Mr. Mathews testified in detail as to the configuration layout for both 10 and 15 Linden Terrace, not at variance with Mr. Watson as to 10 Linden Terrace, and as to the access to each apartment from the outside. He further testified as to the electrical service at the time he purchased each property and the upgrades he had made not only as to electrical service, but to meet code requirements so that they could be insured under the State Farm program and he knew that there had been six (6) units in 10 Linden Terrace and seven (7) units in 15 Linden Terrace since the time he had lived in the neighborhood. He also testified he had made no additions to either property to create new units since he purchased them. They were still configured with the same numbers of apartment units as they had at the time he purchased them. He also recalls receiving in late 1992 a letter from Code Enforcement in Baltimore County challenging the seven (7) apartments in 15 Linden Terrace. As a result of receiving that letter, he met with not only Mr. Timothy Fitts of Code Enforcement, but also a Planner, Larry Goetz, who together calculated that seven (7) apartments would be permitted under density unit calculations in 15 Linden Terrace. From the time that occurred in late 1992, the County took no further action with regard to 15 Linden Terrace until filing the instant Special Hearing Petition on these properties and three others in 1997. He further

testified that from the time he had lived in the neighborhood in the early seventies to the present, on his own personal knowledge, that the properties had been continuously rented out.

The Baltimore County Zoning Regulations shall apply as of the date of their adoption, but the provisions pertaining to use, height, area and density of population shall not apply to any development, subdivision or parcel of land, the preliminary plan for which was originally submitted to the Baltimore County Planning Commission, now Planning Board, and approved or tentatively approved under the then existing official procedure in Baltimore County prior to the adoption of these regulations Section 103.1 adopted March 30, 1955. In the case of both 10 and 15 Linden Terrace the only testimony before the Board dates their construction to the 1930s or 1940s prior to the adoption of the Zoning Regulations. Assuming, only for the sake of presenting this argument, that those houses were built and configured prior to March 30, 1955 when Section 402 became law, the provisions of Section 104.1 would come into play concerning nonconforming uses. That regulation well known to this Board allows legally existing nonconforming uses to continue provided that any change from a nonconforming use to any other use or upon abandonment or discontinuance for more than one year the right to continue or resume, such nonconforming use shall terminate. That is not at odds at all with the provisions of Section 402 which specifically was written for and to deal with conversions of property made after the effective date of the adoption of Section 402 of the zoning regulations, namely March 30, 1955. The County produced no evidence to establish that since March 30, 1955 either of these properties had undergone conversion in violation of the provisions of Section 402 from single family dwelling to multiple family dwelling. Therefore, to read the code sections in harmony, existing multifamily dwellings, including apartments, as allowed under the 1945 Regulations in C Residence Zones, could continue to exist after the adoption of the Section 402 in 1955 since that section only dealt and was only intended to deal prospectively with future conversions from single family dwellings. Even more significantly, the County, after hearing all of the witnesses of the Respondent, did not present any rebuttal evidence or call any witnesses to rebut any of the testimony of Respondent's witnesses. Since the County was the moving party, if it had any such evidence, it surely would have brought it to the Board and asked for its admission in order to establish a conversion since 1955 in order to maintain the allegations under its complaint.

Notwithstanding that, the evidence admitted represented the best available evidence showed both properties were utilized for multifamily dwellings prior to the adoption of Section 402 and continuously thereafter. Indeed in the case of 10 Linden Terrace when the Watson family purchased it in 1948, it was already configured for six (6) dwelling units with separate entrances and separate kitchens and bathroom facilities and remained so all the way through their time of ownership, which linked with Mr. Mathews to the present providing common ownership since 1948 with the property configured for six (6) apartment units.

Mr. Paul Wynn, the contractor in his testimony corroborated the configuration of the units and that they have been continuously rented out and that they were originally built in the thirties and forties and configured as multifamily dwellings as initially constructed. Since Towson Normal School, which became Towson State Teachers College and now Towson University, was already in existence before any of these structures would have been built, there is a logical inference that the properties were specifically built in order to house an existing population, namely those attending college nearby within close walking distance at the time of their original construction.

Because of all of the evidence and testimony that was presented before the Board is consistent, the units would easily qualify as legal existing units and the provisions of Section 402 would only be applicable to them if the conversions took place after March 30, 1955 <u>Daniels v. Board of Zoning Appeals of Baltimore County</u> 205 Md. 36, 106 A2d 57 (1954).

WHETHER BALTIMORE COUNTY'S PRIOR INTERPRETATION OF ITS CONVERSION REGULATIONS UTILIZING DENSITY UNITS FOR 12 LINDEN TERRACE IN 1981 AND 14 LINDEN TERRACE IN 1985, MANDATE APPROVAL FOR RESPONDENT'S CONTINUED USE OF 10 LINDEN TERRACE FOR SIX (6) APARTMENTS AND 15 LINDEN TERRACE FOR (7) APARTMENTS AS WOULD BE PROPER UTILIZING THE DENSITY UNIT CALCULATIONS AS WAS DONE FOR THOSE OTHER PROPERTY OWNERS.

Baltimore County's prior interpretation of its conversion regulations utilizing density units as a basis for adding apartments for 12 Linden Terrace in 1981 and 14 Linden Terrace in 1985, mandates approval of Respondent's continued use of 10 Linden Terrace for six (6) apartments and 15 Linden Terrace for seven (7) apartments as would be proper utilizing the density unit calculations as was done for those other property owners.

As was shown by the documentary evidence and the testimony of William Mathews, the County has on at least two occasions in the immediate neighborhood and on the same street, chosen to allow expansions to allow seven (7) units in 12 Linden Terrace in 1981 and seven (7) units in 14 Linden Terrace in 1985. In both cases, the property owners had petitioned for expansion of multifamily units by the additional units, and the County on each occasion utilized what would properly be called using the Zoning Commissioner's guidelines at page A-21 density unit calculations. These density unit calculations are done by computing the net lot size, which for both of the aforementioned properties, was 100 feet frontage by 167 feet depth for a cumulative total of 16,700 square feet. Then the result is divided by 43,560 square feet (1 acre) and the acreage computed is multiplied by 16 based on 16 units per acre for DR-16 zone. In the case of Ms. Martien at 12 Linden Terrace, the conversions had been done by the prior owner, Barton Benson, Esquire, under Baltimore County Permit B33460. The existing apartment usage for the seven (7) units were two two bedrooms and five one bedroom apartments. When utilizing the Baltimore County guidelines contained in the definition section of Section 101 under "density unit," a one bedroom dwelling is equivalent to .75 density units, and a two bedroom dwelling unit is equivalent to one density unit, and an efficiency is equivalent of .50 density unit. When multiplying the acreage times DR-16, six (6) net density units are the result for 12 Linden Terrace and for 14 Linden Terrace as well. When converting the actual apartments into density units, the total for 12 Linden Terrace is calculated at 5.75, and for 14 Linden Terrace the seven (7) apartments including four two bedrooms, two one bedroom, and one efficiency, total six (6) density units. The permits by which Mr. Turlington converted 14 Linden Terrace in 1985 were added to the record for two of them, B77201 and B77202, by letter after they had been reviewed by the Assistant County Attorney, Mr. Lee Thomson, Esquire. The third permit, B77802, was not available from the County's Code Enforcement Records from which the other two permits were obtained, since it was not a Code Enforcement Case, and as the Board was advised at the time of the hearing, Baltimore County Permit records are not retained beyond three years so that the last permit, B77802, if obtained from the property owner and will be forwarded to Mr. Thomson and if acceptable to the Board, submitted to the Board when received.

The Board may recall that part of the stipulation or proffer which was accepted of Ms. Martien's testimony was that her property was configured for seven (7) apartments. If the Board reviews the site plan and permits submitted for 14 Linden Terrace beginning with B77201, under Subsection A, the Board will see "change of occupancy" and below that, "from single family dwelling to three apartments for the main structure." The alterations were to be done in the existing single family dwelling, and in addition with additional apartments was also approved in permit B77202, which was also obtained and forwarded to the County Board of Appeals. That is entitled an "addition" under type of improvement and calls for "construction of a two story and basement addition on the rear of an existing dwelling to be used for two apartments, with the basement to be storage." It cross references Permit B77201 for change of occupancy. The site plan corroborates and confirms the dimensions of the lot as used in the density unit calculation, as does the microfilmed site plan for Ms. Martien's property under Permit B33460, and the Board will note on the site plan the density unit calculations utilized in granting the approval.

Mr. Mathews seeks similar treatment for each of his properties located on the same street. In considering 10 Linden Terrace Exhibit 5-A, the lot size is calculated at 15,525 square feet including the portion attributable to the alley closing for that property. Multiplied by the DR-16 units per acre, that would yield 5.55 allowable density units. The existing density units under the Baltimore County Zoning Regulations for that property total 4.75 and are, as testified to, one efficiency in the attic, three two bedrooms and two two bedrooms, are well within the density unit calculation for existing structures for DR-16 zoned land.

With regard to 15 Linden Terrace as depicted on the site plan in 6B and divided by the square footage in the acreage, that calculates out when multiplied to 7.29 density units. The testimony concerning the use of and configuration of 15 Linden Terrace was that it had four efficiencies, one two bedroom, and two one bedroom units for a total of 4.50 density units utilizing the density unit calculation definition under the Baltimore County Zoning Regulations. For structures existing in DR-16 zones, the use of the property by Mr. Mathews, unless converted after 1955, would be permitted under the Zoning Regulations. Even if done after 1955 as in the case of the other neighbors, the density unit calculations were utilized in order to allow them to have seven (7) apartment units.

The irony in this situation is while it is clear that others obtained their approvals for additions constructed well after 1955, it is equally clear if not clearer that Mr. Mathews' units at both 10 and 15 Linden Terrace were original construction and configured when built for six (6) and seven (7) units respectively. The greater irony is that if that is so, the County is imposing or seeking to impose the conversion regulations applicable to prospective conversions after March 30, 1955 to his properties while the County utilized density unit calculations for neighboring properties on the same street in 1981 and 1985 respectively.

To summarize, if 10 and 15 Linden Terrace were on March 30, 1955, in existence and configured for six (6) and seven (7) apartments, they would be allowed to continue to be so used even with the adoption of Section 402 because they pre-existed the adoption of that regulation, were already multifamily housing and therefore, would not represent a conversion from single family dwelling to multifamily housing.

The County's actions in this case to seek reduction in units at 10 and 15 Linden Terrace when it had previously approved additions utilizing density unit calculations for the adjoining structures, encourages Mr. Mathews to ask to be treated the same as his neighbors, and to be allowed continued use for yet another reason, because he meets the criteria under density unit calculations for the existing square footage on each of his large tracts.

CONCLUSION

The County's Petitions should be denied because:

- 1. It failed to meet its Burden of Proof to show a conversion of either 10 or 15 Linden Terrace since March 30, 1955 from single family dwelling to multifamily dwelling.
- 2. The unrebutted evidence was that the multifamily structures at 10 and 15 Linden Terrace were constructed sixty (60) to eighty (80) years ago, were configured for six (6) and seven (7) units as of March 30, 1955 and have been continuously rented out and maintained for that purpose through the present and therefore, qualify as nonconforming uses.
- 3. Utilizing density unit calculations as defined under the Baltimore County Zoning Regulations, the Respondent's properties at 10 and 15 Linden Terrace are well within the allowable density units for the acreage on site and whether or not configured for six (6) and seven (7) apartment units prior to March 30, 1955, should be treated as were the owners at 12 and 14 Linden Terrace who established seven (7) apartment units utilizing density units calculations with County approval.

Respectfully submitted,

Michael P. Tanczyn, Esquire

Attorney for the Respondent, William Mathews -

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 7th day of January 1999 a copy of the foregoing was mailed by first class mail, postage prepaid, to Lee Stuart Thomson, Esquire, Assistant County Attorney, Room 200, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, Attorney for the Petitioner.

Michael P. Tanczyn, Esquire

Suite 106, 606 Baltimore Avenue

Towson, Maryland 21204

(410) 296-8823

1/1/17

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IN THE MATTER OF WILLIAM H. MATHEWS 10 Linden Terrace 9th Election District 4th Council manic District Petitioner	* * * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 97-326-SPH ***********************************	
IN THE MATTER OF WILLIAM H. MATHEWS 15 Linden Terrace 9th Election District 4TH Council manic District Petitioner	* * * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 97-327-SPH	SHIT SERVER AND SAN SERVER AND SAN SERVER AND SAN SERVER AND SAN

MEMORANDUM OF BALTIMORE COUNTY, MARYLAND

Posture of Case

These cases arose initially upon the Petition of Baltimore County, Maryland (County) for a Special Hearing before the Zoning Commissioner for the purpose of determining whether or not a violation of the Baltimore County Zoning Regulations (BCZR) existed on either property by virtue of the conversion of a single family dwelling thereon into a multiple dwelling containing "family" units in excess of those permitted under Section 402 of the BCZR relating to the conversion of single family dwellings into multi-family dwellings. Upon the evidence submitted to him the Zoning Commissioner found that, in each case, a violation of Section 402 in fact

existed. William H. Mathews, the property owner (Respondent) duly noted his appeal to the Board.

At the outset of the proceeding before the Board it was stipulated that each property was in a D.R.16 zone. It was further stipulated that, as to 10 Linden Terrace, four units would be permitted under Section 402 while there were in fact six units upon the property. As to 15 Linden Terrace, it was stipulated that six units would be permitted under Section 402 while in fact there were seven units on the property. Thus it was conceded at the outset that each property was in violation of Section 402 of the BCZR.

While conceding that the number of units upon the properties exceeds that permitted by Section 402 of the BCZR, Respondent nonetheless contends that he is not in violation of the BCZR. He bases this conclusion upon two premises. First, he states that he is the beneficiary of a non-conforming use. Failing that, he contends that the Zoning Commissioner erred in his interpretation of the BCZR as applied to these cases in utilizing Section 402 to determine the maximum number of permitted units upon the properties when in fact a determination of the permitted "density units" within a D.R.16 zone would have resulted in a conclusion that no violation exists on either property.

Burden of Proof

Unquestionably, when the County initially filed its Petition for a Special Hearing before the Zoning Commissioner, seeking to have that official determine that Respondent was in violation of the BCZR, the County assumed the burden of proving its assertions. In finding the two properties in violation, the Zoning Commissioner apparently concluded that the County had met its burden. While the Respondent filed this appeal, Section 501.6 of the BCZR provides that such appeals shall be heard by the Board denovo. The provision for a denovo hearing would necessarily impose upon the County the same burden of proof that it has assumed in the original proceeding before the Zoning Commissioner to the extent of persuading the trier of the fact that Respondent was in violation of Section 402 of the BCZR. In the instant case the County has clearly met that burden by virtue of the stipulation entered into at the outset that Respondent was in violation of Section 402 of the BCZR as to each of the two properties.

In advancing the contention that he is shielded from the affect of Section 402 by the existence of a non-conforming use, it is well settled that Respondent assumes the burden of proving the existence of that state of facts. In the case of <u>Calhoun v. County Board of Appeals</u>, 262 Md. 265, 277 A.2d 589 (1971), the Court of Appeals, speaking through Chief Judge Hall Hammond, and in reversing the Zoning

Commissioner, this Board and the Circuit Court for Baltimore County, said:

"The burden of proving a non-conforming use is on the claimant of the use.... 'There can be little doubt that each claimant must assume the burden of establishing the existence of a non-conforming use at the time of the passage of the prohibiting zoning ordinance'." (Citations omitted.)

In discussing the extent of the burden imposed upon the property owner the Court of Special Appeals, in the 1991 case of Lone v. Montgomery County, 85 Md. App. 477, 584 A.2nd 142, opined:

"An owner of land may establish a 'lawful nonconforming use' if the evidence conclusively establishes that before and at the time of the adoption of the original zoning ordinance, he was using substantially all of his tract of land in a then-lawful manner for a use which by a later legislative action became nonpermitted." (Emphasis supplied.)

As to Respondent's contention that no violation exists upon the properties because the number of permitted units in each building should be determined by the application of the "density unit" formula rather than the application of the provisions of Section 402, while conceding the existence of a violation of Section 402 he advances an alternate legal theory and thereby assumes the burden of persuading the Board of its applicability in the instance case. To hold otherwise would impose a burden upon the County to demonstrate to the Board not only the existence of a violation of a given Section of the BCZR, but also the absence of any provision therein which might in any way be construed as permitting the existence of the

violation alleged.

Issue of Non-Conforming Use

The Court of Special Appeals stated in Lone vs. Montgomery County, supra, that the standard of proof of the existence of a non-conforming use is "evidence" which "conclusively establishes" its existence. The County submits that the evidence submitted to the Board by Respondent doesn't rise to that standard.

Section 402 of the BCZR was adopted in 1955. The only testimony offered by the Respondent with respect to the use of either property during the year 1955 and prior was that of James Watson who testified as to 10 Linden Terrace to the effect that that property had been the residence of the Watson family from August of 1948 up through and including 1955. Mr. Watson testified that to his knowledge there had been three separate units on the first floor of 10 Linden and one each in the basement, second floor and third floor. Mr. Watson testified that his family had usually occupied two of the units on the first floor as well as either the third floor or the second floor of the building. According to Mr. Watson the basement had always been rented. He recalled the back unit on the first floor and from time to time, either the second floor or the third floor as having been rented to others. It seemed clear from Mr. Watson's testimony however that during the period prior to and through 1955 when his family occupied the building that it had always used at least two units on the

first floor and either all or part of the second floor or the third floor for family living thus reducing the number of "families" occupying the building to four. Section 402 speaks in terms of "family unit" and "families" and not dwelling units. In short the regulation appears to regulate the number of families, as defined in the BCZR, who could occupy the converted dwelling requiring only that each "family unit" have a separate bathroom and cooking facilities. Mr. Watson's testimony did not establish the use of 10 Linden Terrace by more than four families during the period in question, although he did allude to the possibility, without so stating definitely, that there could have been as many as five families on the premises at one point or another.

Frederick Craig, who is an insurance agent insuring the properties in question for the Respondent, testified that his company had issued policies insuring 10 Linden with six units from 1982 forward and 15 Linden with seven units from 1984 forward. Additionally he lived at 31 Linden from 1967 through 1990 and held a number of offices in the community association during that period time. Mr. Craig had a recollection of delivering newspapers for the community association and recalled that there were a number of boxes at 15 Linden Avenue which he stated to be six or seven. He also stated that his son had a paper route in the neighborhood between 1974 and 1977 and that there were always a number of papers delivered to each of the properties. His best guess was three papers at 10 and three to four papers at 15. Mr.

Craig had no knowledge of the use of these properties in 1955 nor at any other time prior to his moving to the neighborhood in 1967.

Virginia Dunkin testified on behalf of the Respondent that she had lived at 101 Linden Terrace continuously since 1961. Ms. Dunkin's testimony was unable to shed any definitive light on the number of units existing in either property during the time that she lived in the neighborhood, other than to suggest that they contained multiple dwelling units. She had no knowledge of the properties prior to 1961.

Paul Wind, the Respondent's contractor testified as to his maintenance of the properties on behalf of the Respondent during the time that the Respondent had owned them and his involvement in renovations done to each property. Mr. Wind's testimony confirmed the existence of the number of units in each property at the time that they had been acquired by the Respondent, indicating that the same number of units existed there today. Mr. Wind had no knowledge of the properties prior to the time that the Respondent had acquired them. In response to the questioning of the Chairman and of Respondent's counsel, Mr. Wind stated that many of the fixtures on the property (i.e. sinks, appliances, etc.) were old. His testimony, particularly in response to questions propounded by the Chairman, appeared to infer that the fixtures were of a type likely to have been installed prior to 1955. Mr. Wind's testimony in this respect however was cursory and vague. He did not testify that all of the fixtures

in all of the units were of a type that predated 1955. Had this been the case it would have been simple for the witness to so testify as the Board had apparently already accepted him as having sufficient knowledge to offer testimony in this respect upon which the Board could rely. Given that 10 Linden would have been permitted four units, and 15 Linden six units, under the provisions of Section 402, and given the age of the neighborhood and the nearby student population, it is certainly reasonable to assume that both of these properties were used as multiple dwellings prior to 1955 and, as to 10 Linden, that was certainly the testimony of Mr. Watson. What is not resolved by any of the testimony is precisely how many units existed in each of the properties in 1955.

Respondent testified and described the makeup of each property at the present time and at the time that he acquired the same. Respondent first moved to the neighborhood residing at 26 Willow Avenue between 1970 and 1972. It was at this time that he acquired his first definitive knowledge relating to the two properties at issue here. Patently Mr. Matthews had no knowledge with respect to the number of units existing in either of these properties prior to the time that he moved to 26 Willow Avenue and he did not offer any testimony in that respect.

In sum, the County submits that there was no definitive or reliable testimony as to the number of units existing at 15 Linden Terrace in 1955 and, with respect to

10 Linden Terrace, while Mr. Watson's testimony would appear to establish the existence of six separate units at 10 Linden in 1955, this did not extend to "family units" as his testimony was to the effect that his family occupied at least three of the units, as a family, during the period in question. The County submits that the testimony offered to the Board did not "conclusively" establish the existence of a non-conforming use as to either property.

Application of Density Unit Formula

Respondent contends that the use and configuration of the subject properties is governed not by Section 402 of the BCZR but rather by the application of "density units" as defined in the BCZR and as permitted under Section 1B02.2. By way of evidentuary support for this conclusion Respondent brings to the attention of the Board two incidents in which building permits were approved by the County for conversions permitting units in excess of those allowed by Section 402 and one incident in which the County apparently terminated an enforcement effort under Section 402 when the density unit theory was advanced as a defense.

The County believes that the Respondent's reliance upon this theory is misplaced for a number of reasons. First, Respondent has consistently contended that both properties contained the present number of units in 1955, when Section 402 was first enacted. The term "density unit" however first surfaced and was subsequently

defined in the BCZR by virtue of Bill 100 adopted by the County Council in 1970. That Bill, which accomplished a sweeping revision of the BCZR, with many new additions thereto, referenced "density unit" in a number of different contexts. Section 100.1.A.2 of the Regulations, establishing the zones, provided for a D.R.16 zone in which there were permitted 16.0 density units per acre. The D.R.16 zone was in lieu of the former R.A. zone (an abbreviation for "Residential Apartments"). Bill 100 does not contain any language which implies or infers an intention on the part of the council to apply the newly adopted language to then existing properties and the County would submit that the use of the term "density units" was prospective in its nature, application and enforcement.

Secondly, and of greater import, is the clear inference arising from the evidence that both 15 Linden and 10 Linden were originally constructed as single family dwellings. At some time thereafter they were converted into multi-family dwellings. Section 402 of the BCZR was adopted originally in 1955 for the purpose of addressing and regulating the conversion of single family dwellings into multi-family dwellings. In adopting Bill 100 in 1970 the County Council did not see fit to repeal Section 402 thereby demonstrating a legislative intent that the provisions of Section 402 were intended to continue to apply to the conversion of single family dwellings into multi-family dwellings and, in any event, to the conversion of those single family

dwellings which existed prior to the adoption of Bill 100.

Thirdly, the fact that the County may have in two instances approved the use of the density unit formula in determining the issuance of a permit for a permitted conversion and in one instance forborne to take enforcement action upon the same premise does not provide a foundation upon which Respondent may rely in the instant cases. The County is not infallible. The issuance of a permit upon a faulty premise does not create an entitlement upon the part of others seeking a permit upon the same premise. Particularly where, as is the case here, there is no prejudice to the individual seeking to assert the entitlement. Respondent does not assert that he himself obtained a permit for the conversion of these properties upon a faulty premise which the County now seeks to disavow to his detriment. Neither does he assert that he sought or received any assurances prior to the purchase or acquisition of either of these properties that the number of family units contained in the property was a number permitted by the BCZR.

In sum, as to this contention, Respondent owns multi-family dwellings which were converted to such from single family dwellings and are subject to the provisions of Section 402 of the BCZR, they were in existence long prior to the adoption of Bill 100 which first created the concept of density units and their application within a D.R.16 zone and Respondent has failed to demonstrate that he in any way relied upon

density units as an appropriate formula to his detriment in such fashion as would raise any issue of estoppel.

Conclusion

In asserting that Respondent was in violation of Section 402 of the BCZR, the County had the burden of proof. It met that burden. Respondent had the burden of proving the existence of a non-conforming use. He failed to provide conclusive evidence of the existence of a non-conforming use on either property. Having the burden of persuasion, Respondent failed to demonstrate that the application of the density unit formula was an appropriate manner in which to determine the permitted number of units upon the conversion of a single family dwelling to a multi-family dwelling, as contemplated in Section 402 of the BCZR. For the reasons stated the decision of the Zoning Commissioner should be affirmed in each case.

Respectfully submitted,

LEE'S. THOMSON

Assistant County Attorney

Courthouse, 2nd Floor

Towson, Maryland 21204

410/887-4420

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ______ day of January, 1999, I caused a copy of the foregoing Memorandum to be mailed, first class mail, postage prepaid, to Michael P. Tanczyn, Esquire, Suite 106, 606 Baltimore Avenue, Towson, Maryland 21204, Attorney for the Respondent.

LEE S. THOMSON

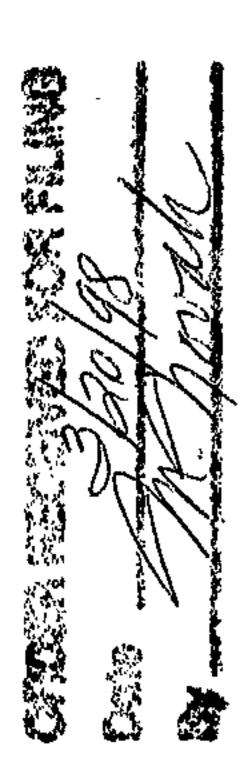
Assistant County Attorney

IN RE:	PETITION FOR SPECIAL HEARING	*	BEFORE THE
	S/S Linden Terrace, 500 ft. E of c/l York Road	*	ZONING COMMISSIONER
	10 Linden Terrace		
	9th Election District 4th Councilmanic District	*	OF BALTIMORE COUNTY
	William H. Mathews	*	Case No. 97-326-SPH
	Petitioner		
	***	*****	* * *
IN RE:	PETITION FOR SPECIAL HEARING N/S Linden Terrace, 650 ft.	*	BEFORE THE
	E of c/l York Road 15 Linden Terrace	*	ZONING COMMISSIONER
	9th Election District	*	OF BALTIMORE COUNTY
	4th Councilmanic District William H. Mathews	*	Case No. 97-327-SPH
	Petitioner		
	****	****	k *
IN RE:	PETITION FOR SPECIAL HEARING N/S Burke Avenue, 340 ft.	ጵ	BEFORE THE
	E of c/l York Road 10 Burke Avenue	*	ZONING COMMISSIONER
	9th Election District	*	OF BALTIMORE COUNTY
	4th Councilmanic District William H. Mathews	*	Case No. 97-328-SPH
	Petitioner		

IN RE:	PETITION FOR SPECIAL HEARING N/S Burke Avenue, 450 ft.	*	BEFORE THE
	E of c/l York Road 16 Burke Avenue	*	ZONING COMMISSIONER
	9th Election District	*	OF BALTIMORE COUNTY
	4th Councilmanic District William H. Mathews	*	Case No. 97-329-SPH
	Petitioner		1
	***	*****	* *
IN RE:	PETITION FOR SPECIAL HEARING NW cor. Aigburth and Willow	*	BEFORE THE
	Avenues	*	ZONING COMMISSIONER
	122 Willow Avenue		
	9th Election District	*	OF BALTIMORE COUNTY
	4th Councilmanic District		OF DUBLINGS COOMIT
	William H. Mathews	*	Case No. 97-330-SPH
	Harram III DECIEND		case no. 37-330-Srn

FINDINGS OF FACT AND CONCLUSIONS OF LAW

These matters come before the Zoning Commissioner for a single public hearing to consider five separate lots of record, all owned by William H. Mathews and located in Towson. Each of the five properties is subject to



Petitioner

a Petition for Special Hearing filed by Mr. Hunter Rowe, a Zoning Inspector, with the Office of Permits and Development Management. Under case No. 97-326-SPH, a Petition for Special Hearing has been filed for the property known as 10 Linden Terrace, alleging the illegal conversion of a single family dwelling thereon into seven apartments; wherein the lot area does not support such a use. Under case No. 97-327-SPH, regarding 15 Linden Terrace, an illegal conversion of a single family dwelling into 7 apartments is alleged; wherein the lot area does not support such a use. In case No. 97-328-SPH, regarding 10 Burke Avenue, an illegal conversion of a single family dwelling into three apartments is alleged, wherein the lot area does not support such a use. Under case No. 97-329-SPH, regarding 16 Burke Avenue, an illegal conversion of a single family dwelling into 3 apartments is alleged; wherein the lot area does not support such a Finally, under case No. 97-330-SPH, regarding 122 Willow Avenue, an use. illegal conversion of a single family dwelling into 3 apartments is alleged; wherein the lot area does not support such a use.

At the public hearing held for these matters, the Petitioner, Baltimore County Department of Permits and Development Management, was represented by Lee S. Thompson, Esquire, Assistant County Attorney. The property owner was represented by Michael Tanczyn, Esquire.

Testimony was received from Hunter Rowe, a Code Enforcement Officer, employed with Baltimore County since 1987. Mr. Rowe described each of the properties in general, as well as his inspection of same and findings. He also offered a series of photographs of the properties and rendered opinions, based upon his inspections, as to the current and past uses of the properties. In addition to Mr. Rowe's testimony, testimony was also received from a number of former/current residents of one or more of the properties at issue. Among those testifying was Whitney Dance a former

The Market of the second

resident of 10 Burke Avenue; Steve Bavett, who resided at 16 E. Burke Avenue; and Keith O'Brien, who has lived in the area for many years and formerly worked in the neighborhood delivering the Baltimore Sun newspaper. Mr. O'Brien testified about his recollections as to the number of apartment units at 10 Linden Terrace and 122 Willow Avenue. Also testifying was Paul J. Wynn, who has done maintenance on the dwelling at 122 Willow Avenue and the buildings at 10 Linden Terrace and 15 Linden Terrace. Also, testimony was received from Robert Derbyshire, who lives at 118 Willow Avenue, adjacent to the property at 122 Willow Avenue. Finally, a tape of a recorded interview with Mrs. Hilda Wilson was received and considered by this Zoning Commissioner. Mrs. Wilson is elderly and was a student at the former Towson Normal School (now Towson University) in the 1920s. She resided at 10 Linden Avenue and made statements about her recollections of the use of that premises. In addition to all of the testimony from the witnesses identified above, a significant volume of documentary evidence was offered which will be more specifically referred to in discussing each property. As importantly, certain stipulations were reached by and between the parties regarding the uses of the properties.

Turning first to the matters most easily resolved, a stipulation was entered by and between the parties regarding the property known as 10 Burke Avenue. That subject property is .138 acres in area, zoned D.R.16. It is improved with a residential dwelling (duplex unit) known as 10 Burke Avenue. The parties stipulated that only one residential unit is permitted in this dwelling. Moreover, it appears that the property has been previously used for three apartments. In fact, a photograph of the site was submitted (Petitioner's Exhibit 3C) which shows that the dwelling is served by three separate utility meters. However, in view of the parties' stipulation, the future permitted use of this property is not in dispute.

The County's Petition for Special Hearing shall be granted and the use of the property hereafter is restricted to but a single unit. The property cannot be converted to a multi apartment use under any legal theory, either pursuant to Section 402 (conversion of dwellings) of the BCZR, as a nonconforming use (Section 101) or under any other regulation. The parties' stipulation resolves the issue for this property.

A similar result is reached as to 16 Burke Avenue. This property is immediately down the street from 10 Burke Avenue. The property is also zoned D.R.16, is .15 acres in area and is improved with a residential dwelling (duplex) structure. As was the case with 10 Burke Avenue, the parties also stipulated that only one residential unit is permitted on this property. Testimony and evidence presented was persuasive that the property has been used in the past for three apartments. A photograph was submitted (Petitioner's Exhibit 2C) indicating the existence of three electric utility meters. Pursuant to the parties' stipulation, it is found that the use of the property for anything other than a single residential unit is illegal and not permitted under any provision of the BCZR.

Turning next to the disputed cases, consideration is next given to the property at 10 Linden Terrace (Case No. 97-326-SPH). The lot known as 10 Linden Terrace is a rectangularly shaped lot, approximately .288 acres in area, zoned D.R.16. The property is improved with a 2-1/2 story frame dwelling. It was stipulated that the property presently contains six different apartment units. Photographs were submitted of the building, showing six separate utility meters (Petitioner's Exhibit 5E). Also, Mr. Rowe described the structure in some detail but indicated that he had not been inside of the property or visited same in the months immediately prior to hearing.

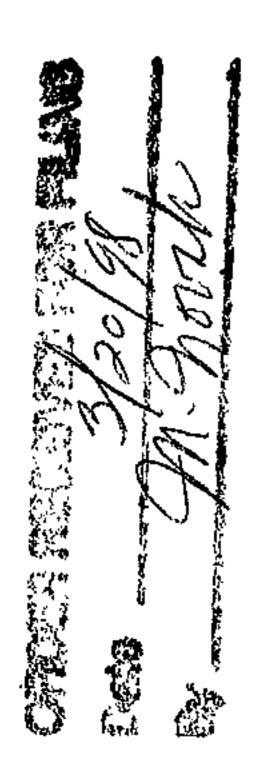
Mr. O'Brien. As noted above, he has lived in the neighborhood for many years, since approximately 1935. Prior to his retirement he delivered the Baltimore Sun newspaper for years to approximately 3,000 customers in the Towson area. He offered testimony regarding his deliveries to 6 apartments at 10 Linden Terrace while he was so employed from approximately 1935 to 1965. He indicated that he recalls putting newspapers on the porch of this building in that it was not allowed by the Sunpaper regulations to throw them into the yard.

Testimony was also offered about the history of 10 linden Terrace by Mr. Mathews. He described the condition of the property when he purchased same in 1980 and his improvements and rehabilitation of the property.

The recorded interview of Ms. Hilda Wilson also related to 10 Linden Terrace. A review of her testimony indicates that her memory is less than concise as to the use of the dwelling. Although she recalls residing at that property in an apartment therein, her testimony was not detailed as to the exact number of units in the building. Testimony was also received regarding this property from Paul Wynn who had performed maintenance on the site since the mid 1970s.

Apparently, it is the Petitioner's theory that the six apartments which presently exist at 10 Linden Terrace are permitted as a nonconforming use. This assertion is contested by Baltimore County. Through counsel, the County asserts that only four units are permitted, pursuant to Section 402 of the BCZR (conversion table). Moreover, the County asserts that a nonconforming use designation cannot attach to this property and that there is insufficient evidence to support such a finding.

A nonconforming use is defined in Section 101 of the BCZR as "A legal use that does not conform to a use regulation for the zone in which it is



located or to a special regulation applicable to such a use". Nonconforming uses are regulated by Section 104 of the BCZR. Section 104.1 provides that nonconforming uses may be permitted, pursuant to the requirements provided therein. Essentially, the nonconforming use designation is utilized to grandfather an otherwise illegal use. If the use existed prior to the time the property's zoning classification was adopted which prohibits the use, the use may continue.

In this case, I am not persuaded that competent evidence was offered to support a finding that 10 Linden Terrace is nonconforming for six apartments. Ms. Wilson's memory was understandably unclear and never established a precise number of apartment units. Mr. Mathews' recollection dates only to the mid 1970s; several years prior to the time he purchased the property in 1980. Likewise, Mr. Wynn has been familiar with the property only since the mid 1970s. For the nonconforming use designation to attach here, testimony need be offered as to the property's use as a 6 apartment unit since at least 1955, the date the comprehensive zoning regulations were enacted.

Mr. O'Brien's testimony must be considered, however, in the end, was rejected. Although I do not doubt the sincerity of the witness, his ability to recall a single building among 3,000 customers over a period of thirty years must be questioned. Moreover, his testimony was frequently contradictory, specifically regarding the dates he resided in the neighborhood. For all of these reasons, I decline to enter a finding that the property at 10 Linden Terrace is nonconforming. Thus, the Petition for Special Hearing in this case (No. 97-326-SPH) must be granted and the property's use must therefore be restricted to four units only.

The next property under consideration if 15 Linden Terrace (case No. 97-327-SPH). This property is .45 acres in area, zoned D.R.16. The

property is improved with a single family dwelling. Mr. Mathews acquired this property in his sole name from other family members in October of 1992. By stipulation, the parties agreed that the structure contains seven apartment units. Through counsel, the County contends that only six units are permitted, pursuant to the density/area regulations. I agree with the County's position that only six units are permitted under the density/area regulations and the conversion table (Section 402). Moreover, I do not find that the property is nonconforming or is otherwise exempt from the density/area regulations. Thus, the Petition for Special Hearing shall be granted and the property's use limited to six units.

The final case for consideration relates to the property at 122 Willow Avenue (case No. 97-330-SPH). This property is .14 acres in area zoned D.R.5.5. Mr. Mathews acquired the property on September 30, 1974. A stipulation entered into by and between the parties was that the property is used for three apartments. The County contends that only one unit is allowed. The respondent avers that three units are permitted. His argument has two basis; that the property is nonconforming use and that such a finding has already been established. Specifically, the respondent argues that the consideration of this issue, at this time, is barred by res ajudicata.

Evidence presented was that in 1980, Mr. Mathews responded to a complaint filed with the Zoning Office of Baltimore County regarding the use of the property for three apartments. In his response to the complaint, Mr. Mathews submitted three affidavits which collectively stated that the building at 122 Willow Avenue had been used for three apartments since since 1941. Based upon the documentation, then Zoning Commissioner Hammond issued a conditional Order stating, in part, ". . . a rebuttable presumption has been raised indicating that a nonconforming use exists on

the subject property, subject, however, to be rebutted by testimony produced by others at a Special Hearing to determine the existence of a nonconforming use subsequent to posting and advertising the property for such purpose." Commissioner Hammond's conclusion was essentially updated by letter dated December 10, 1991 by John J. Sullivan, Jr., on behalf of Arnold Jablon, Director of Zoning Administration and Development Management. That letter affirmed that a nonconforming use had been conditionally approved for three apartments.

By its very terms, Commissioner Hammond's Order was a conditional finding only and thus not a final judgment on the matter at issue. As is well settled, res ajudicata attaches only when a final judgment has been entered. Thus, Commissioner Hammond's Order cannot be the basis for the conclusion that res ajudicata bars consideration of this issue.

However, as to the merits of the nonconforming use, I find the evidence presented by Mr. Mathews, in the case at bar, persuasive. In my judgment, the Petitioner here (i.e., Baltimore County) has failed to produce evidence sufficient to rebut the presumption of the existence of a nonconforming use found by Commissioner Hammond. Thus, the Petition for Special Hearing is denied for 122 Willow Avenue (Case No. 97-330-SPH) and the use of the property for three apartments is permitted as a nonconforming use.

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 in part and denied in part.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this day of March, 1998 that, pursuant to the Petition for Special Hearing, under case No. 97-326-SPH, the property at 10 Linden Terrace may hereafter be used for not more than 4 apartments; and,

IT IS FURTHER ORDERED that, pursuant to the Petition for Special Hearing, under case No. 97-327-SPH, the property at 15 Linden Terrace, may hereafter be used for not more than 6 apartments; and,

IT IS FURTHER ORDERED that, pursuant to the Petition for Special Hearing, under case No. 97-328-SPH, the property at 10 Burke Avenue may hereafter be used for not more than 1 dwelling unit; and,

IT IS FURTHER ORDERED that, pursuant to the Petition for Special Hearing, under case No. 97-329-SPH, the property at 16 Burke Avenue may hereafter be used for not more than 1 dwelling unit; and,

IT IS FURTHER ORDERED that the Petitions for Special Hearing are, therefore, granted in cases 97-326-SPH, 97-327-SPH, 97-328-SPH and 97-329-SPH; and

TT IS FURTHER ORDERED that, pursuant to the Petition for Special Hearing, under case No. 97-330-SPH, the property at 122 Willow Avenue is nonconforming and may hereafter be used for up to 3 apartments and that, as such, the Petition for Special Hearing be and is hereby DENIED.

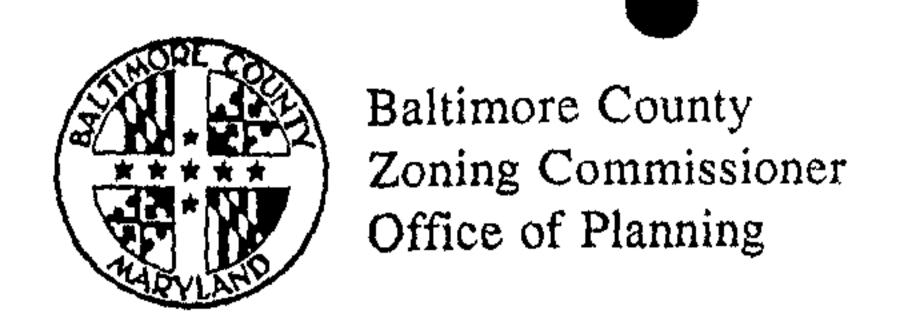
Any appeal from this decision must be made in accordance with the applicable provisions of law.

LES/mmn

THE SECOND

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LAWRENCE E. SCHMIDT Zoning Commissioner for Baltimore County



Suite 405, County Courts Bldg. 401 Bosley Avenue Towson, Maryland 21204 410-887-4386

March 19, 1998

Michael P. Tanczyn, Esquire 606 Baltimore Avenue, Suite 106 Towson, Maryland 21204

Lee S. Thomson, Esquire Asst. County Attorney Office of Law 400 Washington Avenue Towson, Maryland 21204

RE: Petitions for Special Hearing
Case Nos. 97-326-SPH, 97-327-SPH, 97-328-SPH, 97-329-SPH & 97-330-SPH
William H. Mathews/Legal Owner

Gentlemen:

Enclosed please find the decision rendered in the above captioned case. The Petitions for Special Hearing have been granted, in part and denied in part, 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 887-3391.

Very truly yours,

Zawrence E. Schmidt Zoning Commissioner

LES:mmn att.

c: Lisa Keir, Aide to Councilman Riley

c: Mr. William H. Mathews 8 Linden Terrace Baltimore, Maryland 21286

Printed with Soybean Ink on Recycled Paper

Petition for Special Hearing

Case #: 97-327-56H

to the Zoning Commissioner of Baltimore County

44 ;			
for	the	property Conted	nt

15 Linden Terrace

which is presently zoned

D.R.16

This Pelition shall be filed with the Office of Zoning Administration & Development Management.

Ballimore County hereby pelitions for a Special Hearing under Sections 26-3 and 26-121(a) of the County Code and Section 500.6 of the Zoning Regulations of Ballimore County, for the Zoning Commissioner to conduct a hearing involving a violation or elleged violation or non-compliance with any zoning regulations or order issued by the Zoning Commissioner, Board of Appeals or Court, or for the proper interpretation thereof, more specifically:

Section number(s): 101 - "Dwelling"; "Family"; "Lot, Interior"; "Lot of Record"

102.1; 1B01.1A; 402

Nature of violation(s): Conversion of a single-family dwelling into seven (7) apartments, wherein

the lotarea does not support such a use.

I do solemnly allism that the contents stated above are correct to the best of my knowledge, information and belief.

2/5/97

Office of Zoning Administration Representative

SUMMONS

000CD 10.	william n. Machews			•		
ADDRESS:	8 Linden Terrace	~ ~~~~~~~~~			•	•
•	Baltimore, Maryland 21	.286	•		•	-
To appear ar	eals or Court.	ming violation or lot the p	uipose of a proper in	derpretation of th	e zonina regulations or order o	I the Zoning Commission
Board of Vbb	eals or Court.	•	•	•	Baltimore County Of 111 W. Chesapeake A	

Please be advised that your failure to appear at the date, time and location stated above could result in your attachment.



Baltimore County
Department of Permits and
Development Management

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· ·		
STIMATED LENGTH OF HEA		1

CERTIFICATE OF POSTING

•	RE: Case No.:
	Petitioner/Developer:
	WM. H. MATHEWS
	Date of Hearing/Closing:
Baltimore County Department of Permits and Development Management County Office Building, Room 111 111 West Chesapeake Avenue Towson, MD 21204	
Attention: Ms. Gwendolyn Stephens	
Ladies and Gentlemen:	
The sign(s) were posted on	ated at 15 LINDEN TERR. 198 (Month, Day, Year)
	(Month, Day, 1 car)
	Sincerely, Auy Telun 6/5/98 (Signature of Sign Poster and Date) GARY FREUND (Printed Name)
•	(Address)
	(City, State, Zip Code)
	(Telephone Number)

CERTIFICATE OF POSTING

•	RE: Case No.: 97-327-SPH
	Petitioner/Developer:
	Date of Hearing/Closing: March 19, 199
Baltimore County Department of Permits and Development Management County Office Building, Room 111 111 West Chesapeake Avenue Towson, MD 21204	Wednesday
Attention: Ms. Gwendolyn Stephens	
Ladies and Gentlemen:	•
The sign(s) were posted onFebruary 28, 1	.997 (Month, Day, Year)
· · · · · · · · · · · · · · · · · · ·	Sincerely,
	(Signature of Sign Poster and Date) Hunter Rowe (Printed Name) /// W. Ches Perks Ave (Address) Towson Md. 2/204 (City, State, Zip Code)
•	(Telephone Number)

10: Ms. Gwen S., B.C.Z.D.

GOW SSON, TOWSON ZYZES

For Postponement of MAR. 19.97 Heaving

ZUNIGNOTICE Case #: 97-328-SPH A PUBLIC HEARING WILL BE HELD BY THE ZONING COMMISSIONER IN TOWSON, MD. PLACE : ROOM 106, COUNTY OFFICE BUILDING TIME & DATE : WED, MARCH 19, 1997 AT 2:00 P.M. SPECIAL HEARING EOR A DETERMINATION TO SUFFORT THAT THE LOT AREA. CANNOT PERMIT THE CONVERSION OF A SINGLE FAMILY. DWELLING_INTO_ OSTPONED LER GWIN S. ETURN SIGN AND POST TO ROOM TOW, COUNTY OFFICE SUILDING INTE DUE TO WEATHER ON WHITH CONDITIONS AND SOME ISSTATING DAY REFORE THE BCHEDULED HEARING DATE

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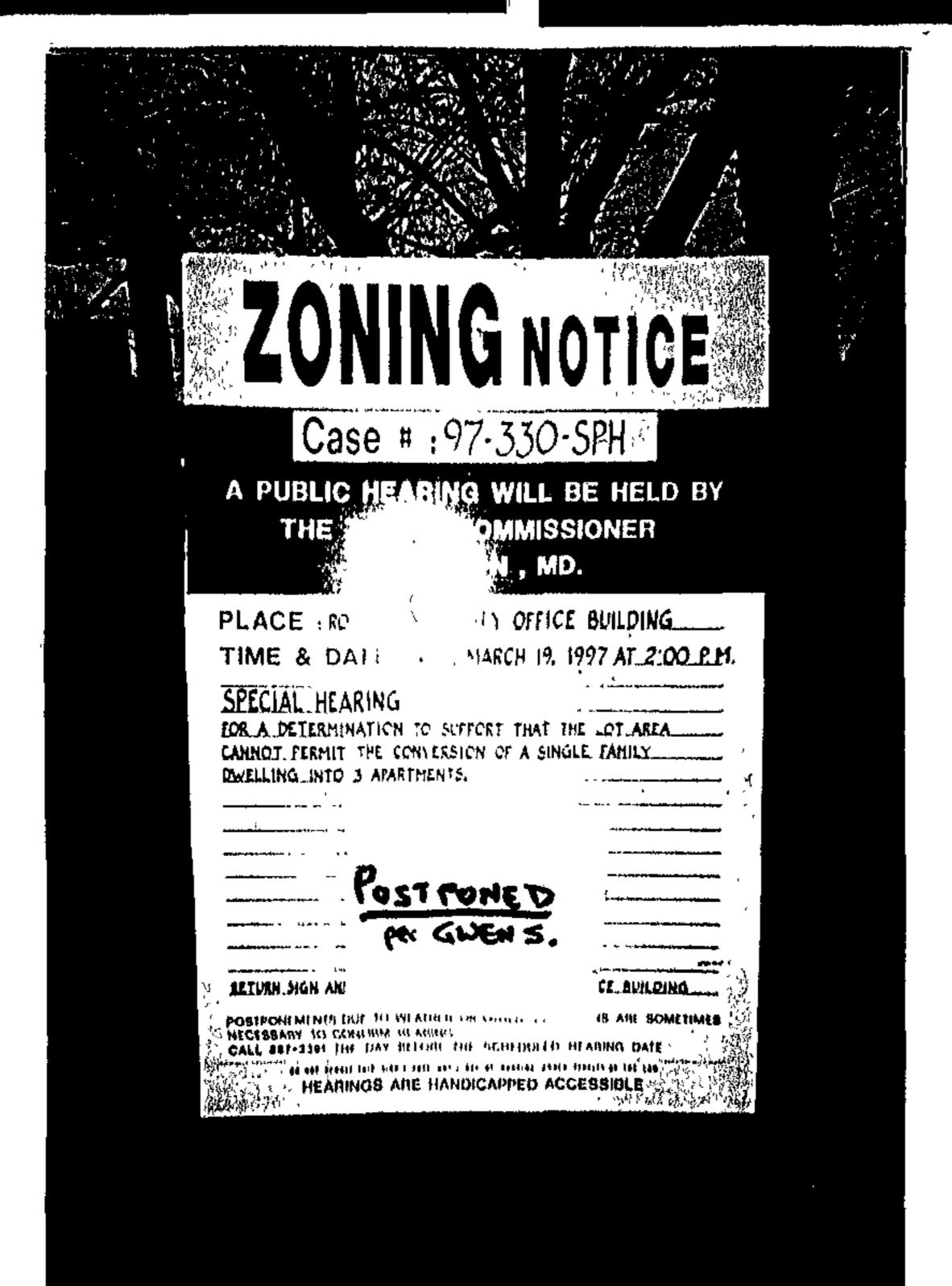
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IN TOWSON, MARCH 19 1997/A16 2



I TO SEE THE THE PROPERTY CONTRACTOR OF SECURITY SECURITY

	CASHIER'S VALIDATION	CASHIER'S VALIDATION
BALTIMORE COUNTY, MARYLAND OFFICE OF BUDGET & FINA E MISCELLANEOUS RECEIPT DATE 4/28/98 ACCOUNT K-001-6150 RECEIVED ACCOUNT \$ 380.00 RECEIVED ACCOUNT \$ 380.00 FOR: Again of Agai	DISTRIBUTION WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER	BALTIMORE COUNTY, MARYLAND OFFICE OF BUDGET & FINA E MISCELLANEOUS RECEIPT DATE 4/29/98 ACCOUNT R-00/-6/50 RECEIVED ACCOUNT 8-55.00 AMOUNT \$ 35.00 FOR ACCENTANCE OF THE GOOD ACCOUNT ACCOUNTS.

Request for Zoning: Variance, Special Exception, or Special Hearing

15 Linden Terrace

Date to be Posted: Anytime before but no later than 3-4-97

Format for Sign Printing, Black Letters on White Background:

TEM 327

ZONING NOTICE

Case No.: 97.327-5PH

A PUBLIC HEARING WILL BE HELD BY THE ZONING COMMISSIONER IN TOWSON, MD

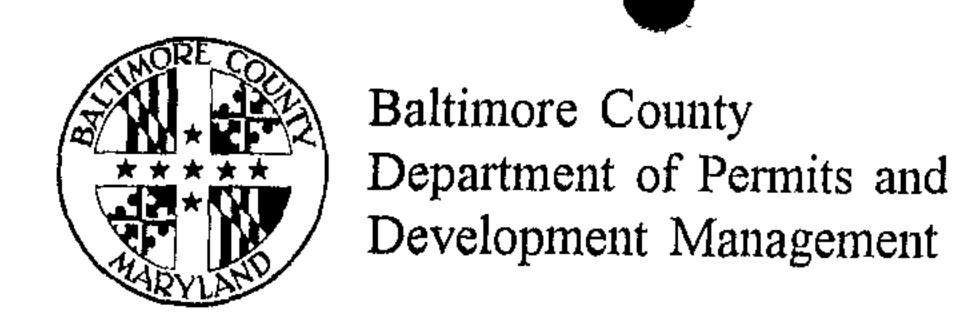
PLACE:	III M. CHESHACHUE HAE' KOCH IDO' CODMII DILICE DOTENTIAG
DATE AND TIME:	WEDNESDAY, MARCH 19, 1997 at 2:00 P.M.
REQUEST: SP	ECIAL HEARING FOR A DETERMINATION
TO SUPPO	RT THE LOT AREA CANNOT
PERMIT	THE CONVERSION OF A SINGLE FAMILY
DWELLIA	JG INTO T APARTHENTS

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.

TO CONFIRM HEARING CALL 887-3391.

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE



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

May 1, 1997

NOTICE OF REASSIGNMENT

VIOLATION HEARING

CASE NUMBER: 97-327-SPH

15 Linden Terrace

Legal Owner(s): William Mathews

Petitioner: Baltimore County/Permits and Development Management/Code

Enforcement

Special Hearing involving an alleged violation or non-compliance of Sections 101, 102.1; 1801.1A; and 402 Baltimore County Zoning Regulations; specifically, the conversation of a single family dwelling into seven apartments, wherein, the lot area does not support such use.

HEARING: THURSDAY, JUNE 26, 1997 at 9:00 a.m., 4th Floor Hearing Room Courts Bldg., 401 Bosley Avenue.

ARNOLD JABLON

DIRECTOR

cc: William Mathews

Michael P. Tanczyn, Esq. Code Enforcement/Law Office

PLEASE NOTE THAT THE ZONING SIGN ON THE PROPERTY MUST BE ALTERED TO GIVE NOTICE OF THE ABOVE HEARING ON OR BEFORE JUNE 11, 1997 AND CERTIFICATION OF SAME FILED WITH THIS OFFICE. PLEASE CONTACT THE SIGN VENDOR USED FOR THE ORIGINAL POSTING.



County Board of Appeals of Baltimore County

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

January 11, 1999

NOTICE OF DELIBERATION

IN THE MATTER OF:

WILLIAM H. MATHEWS -Petitioner Case Nos. 97-326-SPH and 97-327-SPH

Having concluded the hearing in this matter on December 2, 1999, closing memos filed by Counsel on January 7, 1999, public deliberation has been scheduled as follows:

DATE AND TIME

THURSDAY, JANUARY 21, 1999 at 9:30 a.m.

LOCATION

Room 48, Basement, Old Courthouse

Kathleen C. Bianco
Administrator

cc: Counsel for Appellant /Property Owner: Michael P. Tanczyn, Esquire Appellant /Property Owner: William H. Mathews

Lee S. Thomson, Assistant County Attorney Virginia W. Barnhart, County Attorney Hunter Rowe, Zoning Inspector /PDM Arnold Jablon, Director /PDM

Lisa Keir MS 2201
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C

copies: L.F.M.





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

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

August 25, 1998

NOTICE OF ASSIGNMENT

CASE #: 97-326-SPH

IN THE MATTER OF: WILLIAM H. MATHEWS -Petitioner 10 Linden Terrace 9th E; 4th C

(Petition for Special Hearing filed by Baltimore County DPDM; restricted to 4 apartment units pursuant to BCZR 402 per ZC's Order 3/20/98.)

and CASE #: 97-327-SPH

IN THE MATTER OF: WILLIAM H. MATHEWS -Petitioner 15 Linden Terrace 9th E; 4th C

(Petition for Special Hearing filed by Baltimroe County DPDM; restricted to 6 apartment units pursuant to BCZR 402 per ZC's Order 3/20/98.)

ASSIGNED FOR:

WEDNESDAY, DECEMBER 2, 1998 at 10:00 a.m.

NOTICE:

This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.

Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

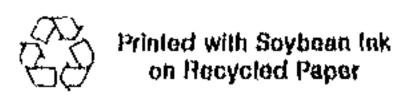
IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

Kathleen C. Bianco Administrator

cc: Counsel for Appellant /Property Owner: Michael P. Tanczyn, Esquire Appellant /Property Owner: William H. Mathews

Lee S. Thomson, Assistant County Attorney Virginia W. Barnhart, County Attorney Hunter Rowe, Zoning Inspector /PDM Arnold Jablon, Director /PDM

Lisa Keir MS 2201
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: September 29, 1999

Permits & Development Management

FROM: Charlotte E. Radcliffe

County Board of Appeals

SUBJECT: Closed Files:

97-326-SPH & 97-327-SPH /William H. Mathews

Since no further appeal was taken from the Board's Opinion dated March 25, 1999, and the 30-day appellate period has expired, we are hereby closing the files and returning same herewith.

Attachment (File No. 97-326-SPH & 97-327-SPH)

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: L. Stahl

DATE: January 11, 1999

T. Melvin

D. Felling

FROM: Kathi

SUBJECT: Case No. 97-326-SPH and 97-327-SPH /William H. Mathews

The subject matter has been scheduled for public deliberation on Thursday, January 21, 1999 at 9:30 a.m. Attached are copies of:

- 1. Memorandum of Baltimore County, Maryland filed by Lee. S. Thomson, Assistant County Attorney; and
- 2. Respondent's Memorandum filed by Michael P. Tanczyn, Esquire, on behalf of William H. Mathews, Petitioner.

Please note that Mr. Tanczyn has also filed copies of Permit No. 77201 and Permit No. 77202, along with a letter from Mr. Thomson in response to that filing. These documents have been placed in the subject file.

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

kathi

Attachments

1

RE: PETITIONS FO	-	HEARING	3	*	F	BEFORE T	HE		• •
(VIOLATION HEARIN 10 Linden Terrace	·			*	2	ZONING C	OMMIS	SSIONER	
15 Linden Terrace 10 Burke Avenue	•			*	C	OF BALTI	MORE	COUNTY (
16 Burke Avenue 122 Willow Avenue				*	(CASE NOS		-	
9th Election Dist	rict, 4th	Council	lmanic	*				-327-SPH -328-SPH	<u>;</u>
Legal Owner(s): W	illiam Ma	tthews			•		97.	-329-SPH	/
Petitioner: Balti	more Coun	ty/Perm.					97	-330-SPH	
Development	managemen	it/Code i	uniorce						
				*					
* * *	* *	*	*	*	*	*	*	*	*

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

People's Counsel for Baltimore County

CAROLE S. DEMILIO

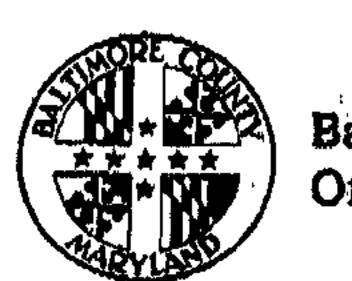
Deputy People's Counsel Room 47, Courthouse 400 Washington Avenue Towson, MD 21204

(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this Agreed day of March, 1997, a copy of the foregoing Entry of Appearance was mailed to William H. Mathews, 8 Linden Terrace, Baltimore, MD 21286, Legal Owner.

Peter Max ZIMMERMAN



Baltimore County
Office of Law

400 Washington Avenue Towson, Maryland 21204 410-887-4420

Fax: 410-296-0931

January 6, 1999

Michael P. Tanczyn, Esquire 606 Baltimore Avenue, Ste. 106 Towson, Maryland 21204

RE: Board of Appeals

Case Nos. 97-326-SPH and 97-327-SPH

William Mathews

Dear Mike:

By way of a formal response to your letters of December 30, 1998 and January 4, 1999, it is my understanding that your purpose in proffering the evidence referenced therein to the Board of Appeals is to demonstrate that the County had, on a past occasion (1985) approved the issuance of building permits allowing construction and conversion on the property referred to therein into a number of units in excess of those which would have been permitted under Section 402 of the Baltimore County Zoning Regulations. The copies which you provided to me were not sufficiently legible to establish those facts however you have assured me that the originals from which they were made, and which you had an opportunity to view, would in fact reflect the facts which you have stated and based on that advice I would not object to these documents because of imperfections in the copies

It is my recollection (my notes are sadly lacking in that regard) that I objected to similar evidence which you put in the record as to another property at the time of the hearing, on the ground of its relevance, and that the objection was over-ruled by the Board. I would enter the same objection with respect to the documents which you now propose to add to the record, i.e. relevance. As I have addressed that issue in the Memorandum which I will submit to the Board, I see no reason to belabor it in this letter.

In order that you not be delayed in your submission, I am faxing a copy of this letter to you and will request that you include it with your submission in order that the Board may be aware of my objection on the issue of relevance and that that objection may be part of the record. Thank you for your continuing courtesies in the presentation of these cases.

Very truly yours,

Lee S. Thomson Assistant County Attorney

LST/ile

Come visit the County's Website at www.co.ba.md.us





Baltimore County
Department of Permits and
Development Management

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

May 6, 1998

Mr. Lee S. Thomson Assistant County Attorney Baltimore County Office of Law 400 Washington Avenue Towson, MD 21204

> RE: Petition for Special Hearing Case No. 97-327-SPH 15 Linden Terrace 9c4 William H. Mathews - Petitioner

Dear Mr. Thomson:

Please be advised that an appeal of the above referenced case was filed in this office on April 17, 1998 by Michael P. Tanczyn, Esquire on behalf of William H. Mathews. 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 the Board of Appeals at 410-887-3180.

Sincerely,

Arnold Jablon

Director

AJ:scj

c: Ms. Lisa Keir People's Counsel

APPEAL

Petition for Special Hearing
15 Linden Terrace
N/S Linden Terrace, 650' E of centerline York Road
9th Election District - 4th Councilmanic District
William H. Mathews - Petitioner
Case Number: 997-327-SPH

Petition for Special Hearing

(No Description of Property Found)

Certificate of Posting

(No Certificate of Publication Found)

Petitioner's Exhibits:

1A-15 (Filed with Appeal #97-326-SPH)

Deed from William H. Mathews and Raymond H. Mathews and Mary Mathews to William H. Mathews dated October 19, 1992

Zoning Commissioner's Order (Filed with Appeal #97-326-SPH)

Notice of Appeal received on April 17, 1998 from Michael P. Tanczyn, Esquire, on behalf of William H. Mathews

c: Michael P. Tanczyn, Esquire, 606 Baltimore Avenue, Suite 106, Towson, MD 21204 Lee S. Thomson, Esquire, Asst. County Attorney, Office of Law, 400 Washington Avenue, Towson, MD 21204 Lisa Keir, Aide to Councilman Riley Mr. William H. Mathews, 8 Linden Terrace, Baltimore, MD 21286 People's Counsel of Baltimore County, MS #2010 Lawrence Schmidt, Zoning Commissioner Arnold Jablon, Director of PDM CASE #: 97-326-SPH

WILLIAM H. MATHEWS -Petitioner 10 Linden Terrace 9th E; 4th C

Petition for Special Hearing filed by Baltimore County Department of Permits & Development Management /Hunter Rowe, Zoning Inspector -- zoning violation /6 apartments 3/20/98 -Order of the ZC -- restricted to 4 apartment units pursuant to BCZR 402

and Case # 97-327-SPH

WILLIAM H. MATHEWS -Petitioner
15 Linden Terrace 9th E; 4th C

Petition for Special Hearing filed by Baltimroe County Department of Permits & Development Management /Hunter Rowe, Zoning Inspector -- zoning violation /7 apartments 3/20/98 -Order of the ZC -- restricted to 6 apartment units pursuant to BCZR 402.

8/25/98 - Notice of Assignment for hearing scheduled for Wednesday, December 2, 1998 at 10:00 a.m. sent to following:

Michael P. Tanczyn, Esquire
William H. Mathews
Lee S. Thomson, Assistant County Attorney
Virginia W. Barnhart, County Attorney
Hunter Rowe, Zoning Inspector /PDM
Arnold Jablon, Director /PDM
Lisa Keir MS 2201
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C

- 12/02/98 -Hearing concluded; closing briefs due January 7, 1999; deliberation to be scheduled (L.F.M.)
- 1/05/99 -Building permits 77201 and 77202 provided by Mr. Tanczyn, per Board's instructions, by letter dated January 5, 1999.
- 1/07/99 -Supplement from M. Tanczyn to be included with above; supplement consists of letter from L. Thomson -- objected to similar evidence on the record; said objection overruled by Board. Would enter same objection with respect to documents Mr. Tanczyn now proposes to enter into record as to relevance. Will address this matter more fully in his Memorandum to be submitted. Requests that his 1/06/99 letter to Mr. Tanczyn, as well as his objection as stated in that letter, become a part of the record.
- 1/07/99 -Memorandum filed by Baltimore County 1/07/99 Memo filed by M. Tanczyn 1/07/99
- 1/11/99 -Notice of Deliberation sent to parties; scheduled for Thursday, January 21, 1999 at 9:30 a.m. Copy to L.F.M. with copies of memos.

Page 2

CASE #: 97-326-SPH

WILLIAM H. MATHEWS -Petitioner 10 Linden Terrace 9th E; 4th C

and

Case # 97-327-SPH

WILLIAM H. MATHEWS -Petitioner
15 Linden Terrace 9th E; 4th C

1/15/99 -Letter from Michael Tanczyn, Esquire -- enclosing legible photocopy of Building Permit No. 77802 to supplement record as authorized by the Board. Also stating that it was reviewed by Lee Thomson, counsel for Baltimore County, who reiterates his objection to this as to relevance as more fully stated in his prior letter of 1/06/99.

4/17/98 To. R35

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 17, 1998

Honorable Lawrence E. Schmidt Zoning Commissioner Baltimore County Suite 405, County Courts Building 401 Bosley Avenue Towson, MD 21204

RE:

Petition for Special Hearing 10 Linden Terrace

Case No:

97-326-SPH

RE:

Petition for Special Hearing 15 Linden Terrace

Case No:

97-327-SPH

William H. Mathews Box 5501 Towson, Maryland 21285/ Legal Owner

Dear Mr. Commissioner:

Please enter an appeal from your decision in the above cases to the Board of Appeals for Baltimore County on behalf of the property owner William H. Mathews, my client.

I enclose my check made payable to Baltimore County in the amount of \$350.00 for the filing costs. Thank you very much for your assistance in this regard.

Very truly yours,

Michael P. Tanczyn

MPT: kc

cc:

William H. Mathews

Mr. Lee S. Thomson, Esq., Asst. County Attorney

Law Offices MICHAEL P. TANCZYN, P.A. Suite 106, 606 Baltimore Avenue Towson, Maryland 21204 (410) 296-8823 - (410) 296-8824 3/4/97 Fax: (410) 296-8827 Computer Fax: (410) 296-2848 of but all should general allerations after affinderable March 10, 1997 المالية المالية Lawrence E. Schmidt, Zoning Commissionex Old Courthouse, Room 113 400 Washington Avenue Towson, MD 21204 Cases Numbered SPH-97-326; SPH-97-327; Re: SPH-97-328; SPH-97-329; SPH-97-330 Dear Commissioner Schmidt: I have just been retained by the property owner for the properties involved in the above cases for which the County has filed special hearing requests presently scheduled for hearing on March 19, 1997. All of these involve residential structures which were built well before Zoning Regulations were enacted for Baltimore County in 1945. One of them has been the subject of two previous zoning hearing on alleged violations in 1980 and 1990 for 122 Willow Avenue, which I am told was successfully defended as a multi-apartment residential unit antedating zoning which is again under attack for the same issue. The purpose of this letter is to request a continuance from the scheduled hearing to allow me adequate time to review the past history, assemble necessary witnesses to establish the historical usage of the properties as multi-family residential structures, and to work on several ancillary matters which may moot several of these properties if we have a little time to try to do some things. There have been no prior requests for continuance, and from the pictures shown me by my client the properties appear to be maintained in exemplary condition at present. I therefore request a continuance and ask that you advise us of your decision in that regard. Very truly yours, Michael P. Tanczyn MPT/ed Mr. William Mathews CC:

LAW OFFICES

MICHAEL P. TANCZYN, P.A.

Suite 106 • 606 Baltimore Avenue Towson, Maryland 21204 Phone: (410) 296-8823 • (410) 296-8824

Fax: (410) 296-8827 • Computer Fax: (410) 296-2848

December 30, 1998

HAND DELIVERED

Mr. Lee Stuart Thomson, Esq. Old Courthouse, Room 2 400 Washington Avenue Towson, MD 21204-4606

Re: Special Hearing Petitions of Baltimore County

My Client: William Mathews - Case No. 97-326-SPH & 97-327-SPH

Dear Lee:

I hope that you enjoyed a pleasant Christmas Holiday and will accept my best wishes for a safe, healthy and Happy New Year.

With regard to the above cases, after much digging in the Code Enforcement Archives, I have unearthed the following for your perusal with regard to building permits 77201 and 77202 which are:

- 1. Permit 77201 To change 14 Linden Terrace from a single family dwelling to three apartments and site plan.
- 2. Permit 77202 To construct two story and basement addition on rear of existing dwelling to be used for two apartments, basement to be used for storage and site plan.

You will recall from Mr. Mathews' testimony that the original structure has three apartments as reflected in 77201, and the addition is now used for three apartments including the basement. I believe there was also a photograph admitted into evidence illustrating 14 Linden as presently configured from the outside. Permit 77802 for the other three apartments existing at 14 Linden was unavailable from Permits or Zoning records, although the apartments exist.

Please let me know if these are legible enough to be submitted to the Board of Appeals for inclusion in this record and I will get copies to the Board only after I hear from you.

11. 10

If you have any questions concerning this, please do not hesitate to call me.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/gr

Case No. 97-326-SPH and Case No. 97-327- SPH /William Mathews

Attached includes:

- Supplements to the Record filed by Michael P. Tanczyn, Esquire
- Objection to same as indicated in attached copy of 1/06/99 letter from Lee Thomson, Assistant County Attorney.

LAW OFFICES

MICHAEL P. TANCZYN, P.A.

Suite 106 • 606 Baltimore Avenue Towson, Maryland 21204 Phone: (410) 296-8823 • (410) 296-8824

Fax: (410) 296-8827 • Computer Fax: (410) 296-2848

January 6, 1999

County Board of Appeals of Baltimore County Attn: Kathy Bianco Old Courthouse, Room 49 400 Washington Avenue Towson, MD 21204

Re: Special Hearing Petitions of Baltimore County

My Client: William Mathews — Case No. 97-326-SPH & 97-327-SPH

Dear Kathy:

Enclosed herewith please find a letter and fax cover sheet from Mr. Lee S. Thomson, Esquire, to be added as a supplement to my submission of the permit documents.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/gr Enclosures

cc: Mr. Lee Stuart Thomson, Esq.

Mr. William Mathews

99 JAN -7 PM 2: 22

LAW OFFICES

MICHAEL P. TANCZYN, P.A.

Suite 106 • 606 Baltimore Avenue Towson, Maryland 21204 Phone: (410) 296-8823 • (410) 296-8824

Fax: (410) 296-8827 • Computer Fax: (410) 296-2848

January 5, 1999

County Board of Appeals of Baltimore County Attn: Kathy Bianco Old Courthouse, Room 49 400 Washington Avenue Towson, MD 21204

Re: Special Hearing Petitions of Baltimore County

My Client: William Mathews — Case No. 97-326-SPH & 97-327-SPH

Dear Kathy:

With regard to the above cases per the Board's instructions to Counsel and after Mr. Thomson's review, I have enclosed for inclusion in this record the following building permits:

- 1. Permit 77201 To change 14 Linden Terrace from a single family dwelling to three apartments and site plan.
- 2. Permit 77202 To construct two story and basement addition on rear of existing dwelling to be used for two apartments, basement to be used for storage and site plan.

The original structure has three apartments as reflected in 77201, and the addition is now used for four apartments including the basement, per Mr. Mathew's eye witness testimony. I believe there was also a photograph admitted into evidence illustrating 14 Linden as presently configured from the outside. Permit 77802 for the other apartments existing at 14 Linden was unavailable from Permits or Zoning records, although the apartments exist.

Thank you for your assistance in this matter.

Very truly yours,

Michael P. Tanczyn, Esquire

MPT/gr

Enclosures

cc: Mr. Lee Stuart Thomson, Esq.

Mr. William Mathews

COUNTY MINUTES OF DELIBERATION

IN THE MATTER OF: William H. Mathews -Appellant /Property Owner

Case No. 97-326-SPH and Case No. 97-327-SPH

DATE: Thursday, January 21, 1999

BOARD / PANEL : Lawrence M. Stahl (LMS)

Donna M. Felling (DMF)
Thomas P. Melvin (TPM)

THOMOD L. METATH

SECRETARY: Kathleen C. Bianco

Administrator

PURPOSE: To deliberate Case No. 97-326-SPH and Case No. 97-327-SPH

/Petition for Special Hearing /determination of number of

apartments allowed.

The Board discussed and deliberated issues as to this matter and testimony and evidence produced, including testimony and evidence received as to the number of apartments existing and the length of time; requirements necessary for nonconforming use, including continuing uninterrupted with no abandonment or discontinuance for a period of one year or more.

Upon conclusion of deliberation among panel members, the following decisions were reached by each Board member:

As to 10 Linden Terrace -- 6 apartments approved; found from testimony and evidence that these units were continuously rented out; okay on 6 apartments for #10. As to 6: LMS -Yes; DMF -Yes; TPM -Yes.

As to 15 Linden Terrace -- 6 apartments approved; no testimony as to 1955 to 1980; both insurance and construction starts with 1980; left with gap in time. As to 6: LMS -Yes; DMF -Yes; TPM -Yes.

Board also concluded (unanimously), in reaching above decision, that Section 402 was applicable in this case; therefore 15 Linden must be reduced by one unit. As to 402: LMS -Yes; DMF -Yes; TPM -Yes

The Board's unanimous decision based on testimony and evidence produced at hearing and after public deliberation: APPROVED legal nonconforming use as to 10 Linden Terrace for six (6) units; As to 15 Linden Terrace, APPROVED for six (6) units pursuant to Section 402; did not prove legal nonconforming use.

Written Opinion and Order to be issued by the Board as required by statute. Appellate period to run from date of written Order; anyone feeling aggrieved by the Board's decision may appeal to Circuit Court.

These minutes indicate public deliberation in this matter was held this date in the subject matter and a final decision rendered by the Board of Appeals.

Respectfully submitted,

Kathleen C. Bianco

Administrator

[] pormany 15, 1999

Country Boosel of appeals JAN 15 AM 10: 44
Other: Kathy Bianco Rosenthouse, PH mooned

400 Washington Ove

persuelled burch

Tosser MA 21204

Re: Special Hearing Patitions of Baltione County My Chart: William Mathema Cours 97-3265PH497-3275

public to reported altiped a si Atentered brookens for the persons of Bulding for the bearing the bearing the bearing the bearing the bearing the first bearing the bearing th Mrs Mrs William Toblengton who supplied it to my client The Board of appeals had outhorized this supplementation of the record. Weether Baltemore Country Permits Dept nor the consumper turned with beauter theorewarders about obtantion from the Turbingtons just this whek. Mr Lee Thomson in all the party atterners has revealed this paint and skanged its submission to the Board a appeals. He renterates his objection to this as to relevente as more fully stated in his prior letter of January 6, 1999 which we forewarded to the Board by our

Please bring this to the Board's attention asop. Very truly yours

- Muchael P. Toury

Emboure BP 17802 Ce Mrs William Mathems Mr Lee S. Thomson Esq



Déal 5/10003 20,8727

Baltimore County
Department of Permits and Development Management
Bureau of Code Enforcement
111 West Chesapeake Avenue
Towson, Maryland 21204

CODE VIOLATION NOTICE

NAME: William Matth	eu5	DA	TE: <u>9/23/46</u>	
ADDRESS: 8 /inden ten				
CITY-ZIP: BALT: MJ. 2/				
RE: Case No.	_ LOCATION: DISTRICT:	15 GENDEN	1 Tem	1
Dear Mr. Mathews	·	;		
In accordance with the <u>Baltimo</u> the above location, zoned <i>D.R</i> 16. Thi	re County Code, Artic is inspection revealed	le IV, Section 402. (d), violation(s) according	an inspection was conducted o to the following code(s):	f
Baltimore County Zoning Regu				4
Building Code of Baltimore Code	unty, Maryland, Section	on 102.1.		
Livability Code, Baltimore Cour	nty, Section 18-68.			
Other				•
The following correction(s) is/a	re required:	<u>-</u>		-
Under the present	•	a lat com	mx 23m50 5a	FT
· · · · · · · · · · · · · · · · · · ·				
15 required to s	-		_	
Indicate this site				
The number of A	4075. TO C	omply WITH	1 section 402	-
(caclosed) on tile	ton a s	per jal hea	ring wherein a	٠.
determination ca			~ /	=
is NON-CONTORMI				-
The above violation(s) must be corrected proceed, in which you may be subject to House	o a civil penalty. Shot	lg you need further cla	rification, please contact	•
MUNTEN KOWE	Cor	de Inspector, at (410) 8	87 うつ / . う	4

Item No: NA TYPE : TESIDENTIA! Contract Purchasers N/A Critical ArEA: No Election District : 5th Council manic District à 4th Existing Zonna 2 DR-16 LEGAL OWNER & WILLIAM H. MATHEWS & LINDEN TETTACE, BATO. P. 21286 ATEA : 45 ACTES Attorney à LEE S. thomson Exit, more (ount) 100 posé Zoning that the lot Area cannot permit the conversion of A single. FAMILY dwalling into SEVEN (7)
ABAITMENTS. Lestion of 15 Linden Ten app 650' E & york

["Density, Net" and definition deleted by Bill No. 100, 1970.]

Density Unit: An expression of extent or density of dwelling use as related to number of rooms in, or type of, dwelling unit, so that:

Each officiency agartment is equivalent to 0.50 density unit; Each 1-bedroom dwelling unit is equivalent to 0.75 density unit; unit;

Each 2-bedroom dwelling unit is equivalent to 1.00 density unit;

Each dwelling unit with 3 or more bedrooms is equivalent to 1.50 density units; [Bill No. 100, 1970.]

Design_Provisions._Adopted: Design provisions adopted by the Planning Board under the authority of Subsection 504.1 of these regulations. [Bill No. 98, 1975.]

Diametral Dimension (of a lot): The diameter of the largest circle that may be inscribed within lot lines. [Bill No. 98, 1975.]

Disabled Person: Any person who at the time of the filing of a petition for special exception for a home occupation of a disabled person has been determined to be disabled or handicapped pursuant to the provisions and procedures prescribed in subsection 13-616(A)(1) of the Transportation Article of the Annotated Code of Maryland, 1977 Volume, 1980 Cumulative Supplement, as amended; in U.S.C.A. Sec. 416; in 29 U.S.C.A. Sec. 715; or in 42 U.S.C.A. Sec. 6001 (7). [Bill No. 27, 1981.]

Drive-in Cluster, Planned: An integral commercial development for which an overall plan has been approved by the Office of Planning and Zoning and which: is under common ownership or control; is on a site at least three acres in net area; has at least 500 feet of lot frontage on arterial streets; and is devoted primarily to drive-in uses or other vehicle-oriented establishments, with vehicular access to any use in the development solely from service drives on the site. [Bill No. 40, 1967.]

Driverin Restaurant: A retail outlet where food or beverages are sold to a substantial extent for consumption by customers in parked motor vehicles. [Bill No. 40, 1967.]

<u>Duplicating Service Business</u>: A business establishment containing no more than 3000 square feet of net floor area where the principal use is the provision of quick-copy duplicating and printing of reports, resumes, correspondence, office forms and other similar services to businesses and individuals. For the purpose of this definition, the term net floor area includes selling and working space and accessory storage areas, but it does not include areas intended and utilized for permanent uses

BALTIMERE COUNTY ZONIEG TOOLS

HOTE: For detailed information, see Baltimore County Zoning Regulations, 1981 Edition

	The second distribution, see baltimore county Zoning Regulations, 1981 Edition					
	Zoning Classification, Terms, etc.	Summary				
RESOURCE NSERVATION	R.C. 2 R.C. 3 R.C. 4	Deferral of Planning and Development Watershed Protection				
S	(see attached chart)					
PERSONAL PESSONAL		Density Residential for low, medium and high density urban residential areas. Numeral in each classification indicates maximum number of units permitted per acre. No standard minimum lot size is required.				
	Formula: Lotsize Feet x Feet = \$\P\F DIVIPE By 43560\$ in acre = MULTIPLY X .16 Unity = \$\fmu\cup u	2 bedroom dwelling unit=1.00 " 3 or more bedroom dwelling unit=1.50 "				
	Residential Transition Areas	Residential areas where dwelling-type and lot-size requirements must be compatible with existing residences or subdivision lots.				
REEVATOR APARTMENT	R.A.E. 7	desidence, Apartment, Elevator for mid-rise elevator apartment build- ing development in designated town and community centers. Forty density units per acre.				
	R.A.E. 2	esidence, Apartment, Elevator for high-rise elevator apartment build- ings within designated town centers only. Eighty <u>density units</u> per acre.				
	R-0 Re	esidential Office to accommodate house conversion to office build- ings as of right; small conventional office buildings permitted by special exception.				
OFFICE		ffice Building to accommodate medium-size conventional office build- ings in areas along heavily travelled highways that are well served by public transit and are located near commercial centers.				
10	0-2	ffice Park to provide selectively for development of a limited number of spacious well-landscaped office parks.				
BUSINES	B.L	Isiness Major				
NUFACTUR	in the second of	nufacturing Rastricted the most restrictive industrial classification; may be granted only by the zoning petition process.				
	M.L.R Ma	nuracturing Light Restricted permits industrial plants and offices with convenient access to expressways to serve as industrial employment centers.				
	-	nufacturing Light provides for light industrial uses such as assembly plants, processing, etc. nufacturing Heavy the most permissive industrial classification				
	**************************************	stricts to further the purposes of zones; they are intended to provide greater refinement in land-use regulation.				
	C.RCommercial, Rural	C.S.ACommercial, Supporting Area				
	C.N.SCommercial, Neighborhood Shoppin C.C.CCommercial, Community Core	- attraction and clar, deliper				
	C.TCommercial, Town-Center Core	C.S2Commercial, Strip-2 I.MIndustrial Major				

- k. Existing and proposed widths and types of paving of any street within each such parcel
- Location and width of any proposed entrance on each such parcel; locations and widths of existing entrances
- m. Use(s), dimensions, and location of any existing building on each such parcel
- n. Use(s), dimensions, and location of any proposed building or addition on each such parcel, and proposed use(s) of any existing building if its use is to be changed. (Note: Any building without a setback on any side must meet special building-code and fire-code requirements with regard to type of construction, windows, etc.)
- o. In cases where yard setbacks or areas are to be determined, the locations of all principal buildings within a distance of at least 200 feet from each joint side property line
- p. "Height tent", in cases where maximum height is determined by such means
- q. Residential density and types of dwelling units EXAMPLE--

Existing zoning D.R. 5.5
Proposed zoning D.R. 16
Gross area 10 acres
Permitted density 16 density units/
acre
Maximum number of density

Types of dwelling units and "design" density--

160

units permitted

Dwelling-unit	type	Number	Density units
Efficency	. 5	80	40
1-bedroom	. 15	80	60
2-bedroom	1.00	20	20
3+-bedroom	ַל בֿ, וַ	14	<u>21</u>
Totals	_	194	141

"Design" density 19.4 DU/acre 14.1 DnU/acre

医伊格特氏体体中的一种中心的一种中心的一种中心的一种中心的一种中心的特别的自然的对象的特别的特别的自然的一种的一种的一种的一种的一种的一种的一种的一种的一种的



BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND LICENSES TOWSON, MARYLAND 21204

BUILDINGS ENGINEER

BUILDING PERMIT

PERMIT #: 77802 CONTROL #: COC961-85 · DIST: 09 PREC:11 DATE ISSUED: 06/16/85 TAX ACCOUNT #: 090920800690 CLASS: 04 / PLOT 1 . R FLAT/O DATA O ELEC YES PLUM YES FLANS: CONET 0 LOCATION: 14 LINDEN TERR SUBDIVISION: SO/LINDEN TERR Y 611 E. YORK KD. CWNERS IMPORMATION PAMER TURLING TALL WILLIAM & NOWLY ADDR: 14 LINDEY TEEP, TOWSON, MO INC. TENAN": CCHTR OWNER ENGNE: -3ELLE: WORK: ALJERATIONS TO BE DONE IN EXISTING BASEMENT APTS TO INCLUDE HYAC, PLUMBING, WALLS, ELECTRIC. REFER TO PERMITS FOR ADDITION (APPL STATES PROP: LOOX209X163/ 167(AS PER DEED V 5 OR MORE FAM. CODE BLDG. CODE: OWNERSH RESIDENTIAL CATEROORY: DETACHED PROPOSED LOC: 7 FAMILY DWEL ESTIMATED & MBER FAMILY TYPET WE 5,000,00 ADDITION TYPE OF IMPRV: USE: OR MORE FAMILY : 7 UNITS BASEMENT: FULL FOUNDATION: BLOCK

LOT SIZE AND SETBACKS

SEWAGE: PUBLIC EXIST

SIZE: 100/209 X 163/167

FRONT STREET: 100

SIDE STREET:

FRONT SETB: NO

SIDE SETE: NO/NO

REAR SETB: 72

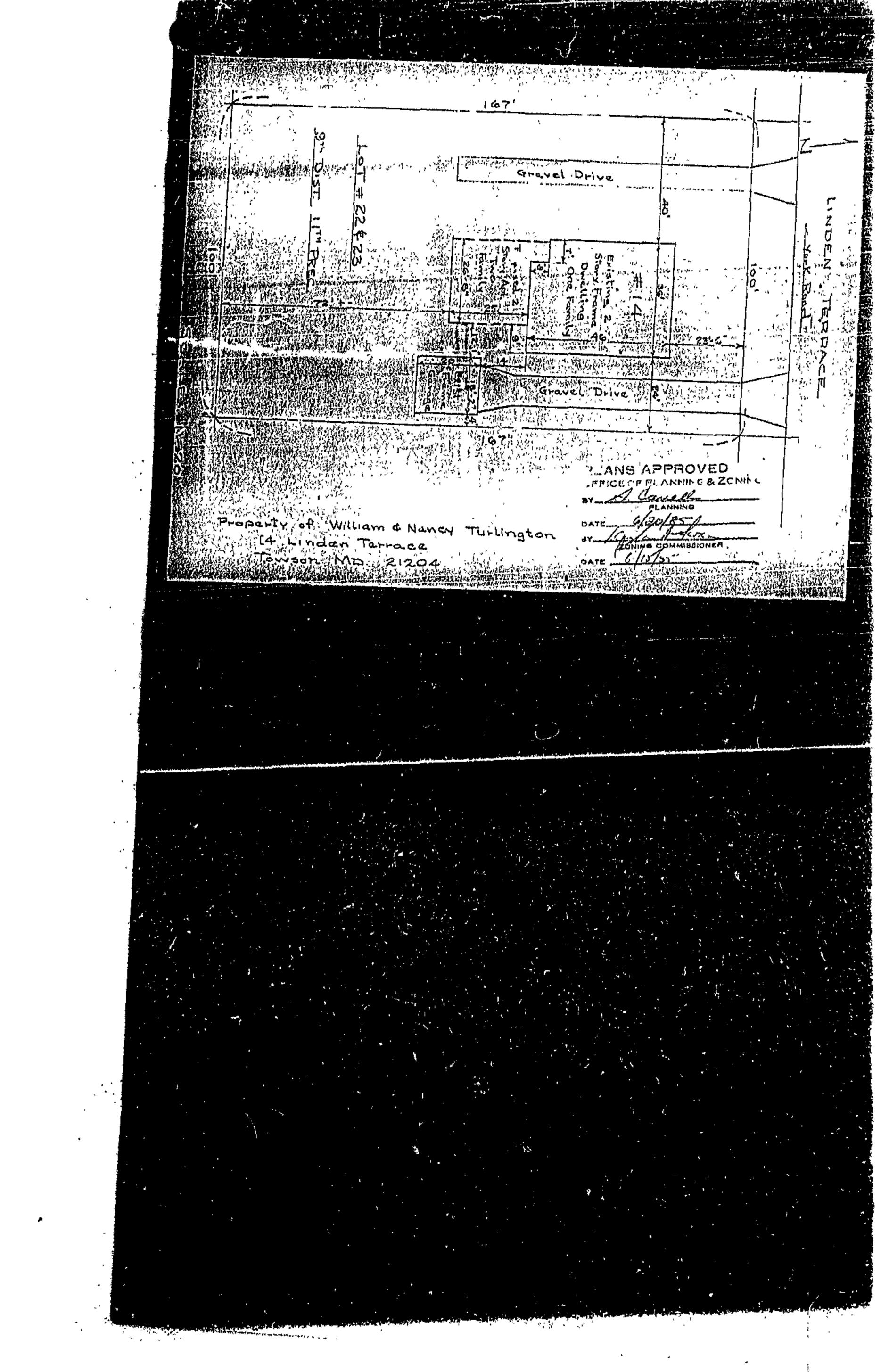
THIS PERMIT
EXPIRES ONE
YEAR FROM DATE
OF ISSUE

WATER: PUBLIC EXIST

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FROM

and MARY MATHEWS MATHEWS and RAYMOND

WILLIAM

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MATHEWS

19

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

TO HAVE AND TO HOLD the said described lot of ground and premises, above described and mentioned, and hereby intended to be conveyed; together with the lights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said party of the second part his personal representatives and assigns in fee simple.

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

Witness the hands and seals of the said parties of the first part, Grantors herein.

WITNESS:

WILLIAM H. MATHEWS

WILLIAM H. MATHEWS

RAYMOND H. MATHEWS

WARD MATHEMS

WARD MATHEMS

STATE OF Maryland, COUNTY OF Baltimore, TO WIT:

I HEREBY CERTIFY, that on this 19 day of October, 1992, before me, the subscriber, a Notary Public of the State of Mary Land aforesaid, personally appeared WILLIAM H. MATHEWS and RAYMOND H. MATHEWS and MARY MATHEWS and they acknowledged the foregoing Deed to be their act, deed and for the process therein set forth.

WITNESS my hand and notarial seal the day and year last above written.

MY COMMISSION EXPIRES: July 1, 1990

12-1-94

able considerations the receipt whereof is hereby acknowledged the said party of the first part do hereby grant and convey to the said parties of the second part as tenants by the entireties their assigns and unto the survivor of them his or her heirs and assigns in fee simple all that lotof ground situate in Baltimore County in the State of Maryland and described as follows that is to say

BEING known and designated as Lot No 5 Section D of the Plat of Villa Nova said Plat being recorded among the Plat Records of Baltimore County in Plat Book W P C No 3 folio 76

BEING one of the lots of ground described in a Deed from C Braddock Jones and Caroline S Jones his wife to the above within named Grantors dated August 27 1945 and recorded among the Land Records of Baltimore County in Liber R J S No 1399 folio 549

Together with the buildings and improvements thereupon and the rights alleys ways waters privileges appurtenances and advantages to the same belonging or in anywise appertaining

To have and to hold the said lot of ground and premises unto and to the use of the said parties of the second part as tenants by the entireties their assigns and unto the survivor of them his or her heirs and assigns in fee simple forever

And the said Grantor hereby covenant that it has not done nor suffered to be done any act matter or thing whatsoever to encumber the property hereby granted that it will warrant specially the property hereby granted and conveyed and it will execute such further assurances of said land as may be requisite

WITNESS the signature of the said body corporate by the hand of C Braddock Jones its President and its corpora_e seal hereto affixed

WITNESS

THE BOURSE REALTY CORPORATION

Nathan Schindler

(CORPORATE SEAL)

By C Braddock Jones President

State of Maryland Baltimore City to wit

I HEREBY CERTIFY that on this 26th day of April in the year one thousand nine hundred and forty eight before me the subscriber a Notary Public of the State of Maryland in and for Baltimore City aforesaid personally appeared C Braddock Jones the President of THE BOURSE REALTY CORPORATION the within named Grantor and he acknowledged the aforegoing Deed to be the act of said body corporate

IN TESTIMONY WHEREOF I hereunto set my hand and affix my notarial seal (NOTARIAL SEAL) Fred C Kennedy Notary Public

Recorded Apr 27 1948 at 2:35 P M and exd per T Braden Silcott Clerk Rec cmcg Exd by SG&AG

51968 Howard C Bregel

: THIS DEED Made this 23rd day of April in the year one

Deed to Maurice M Watson et al

: thousand nine hundred and forty eight by and between

US \$13.75 SS \$13.75

HOWARD C BREGEL of Baltimore City in the State of Mary-

land Committee of the person and estate of Delia T Lester

party of the first part and Maurice M Watson and Elizabeth C Watson his wife of Baltimore FREE TO BE SEED OF THE REPORT OF THE PROPERTY County in the State of Maryland parties of the second part

WHEREAS by a decree of the Circuit Court of Baltimore City passed in a cause in said Court entitled "Ex-Parte in the Matter of Delia T Lester" dated November 21 1947 the return of the inquisition issued in said couse was confirmed and the said party of the first part was appointed Committee of the person and estate of the aforesaid Delia T Lester of Baltimore the aforesaid Committee having since qualified by giving the bond prescribed in said decree and

WHEREAS the aforesaid Committee did on December 8 1947 file a petition in the aforesaid Court for the sale of the hereinafter described lot of ground which forms a portion of the real estate of the aforesaid Delia T Lester and

LIVERED

second part at and for the sum of Twelve thousand five hundred and 00/100 Dollars which sale was duly reported to the aforesaid Court and which sale was finally ratified by the aforesaid Court on March 4 1948 (a duly certified copy of the decree and other proceedings in said cause having been filed heretofore in the Office of the Clerk of the Circuit Court of Baltimore County) and

WHEREAS the purchase money of the hereinafter described lot of ground has been fully paid and satisfied by the parties of the second part to the party of the first part

NOW THEREFORE THIS DEED WITNESSETH that for and in consideration of the sum of Twelve thousand five hundred and OO/100 Dollars the receipt whereof is hereby acknowledged the said party of the first part Committee as aforesaid does hereby grant and convey unto the said parties of the second part as tenants by the entireties their assigns and unto the survivor of them his or her heirs and assigns in fee simple all that lot of ground situate in Baltimore County in the State of Maryland and described as follows that is to say

BEGINNING in the center of Linden Terrace formerly known as May Avenue at apoint 230 feet 4 inches more or less from the east line of a lot of ground formerly owned by Thomas W Offutt said point also being 450 feet 4 inches from a point in the center of Linden Terrace on the east line of the Baltimore and York Turnpike Koad and running thence easterly bonding on the center line of Linden Terrace 75 feet to a corner of the lot of ground conveyed by Robert W J Parlett et al to Medora K Jump et al by deed dated July 27 1911 and recorded among the Land Records of Baltimore County in Liber W P C No 329 folio 566 &c and running thence along the west line of said lot 207 feet more or less to the center line of an alley 20 feet wide there laid out parallel or nearly so with Linden Terrace thence westerly binding in the center of said 20 foot alley 75 feet more or less to intersect a line drawn southerly from the place of beginning at right angles to Linden Terrace thence northerly reversing said line so drawn and binding thereon 207 feet more or less to the place of beginning The improvements whereon being known as No 10 Linden Terrace

BEING the same lot of ground described in a Deed from Warren Thomas King and wife to Delia T Lester unmarried dated November 7 1941 and recorded among the Land Recordsof Baltimore County in Liber C H K No 1201 folio 23

TOGETHER with the buildings and improvements thereupon and the rights alleys ways waters privileges appurtenances and advantages to the same belonging or in anywise appertaining

TO HAVE AND TO HOLD the said lot of ground and premises unto and to the use of the said parties of the second part as tenants by the entireties their assigns and unto the survivor of them his or her heirs and assigns in fee simple forever free and discharged of all right or claim of the said Delia T Lester unmarried or any of the parties to said cause or to any person or persons claiming by through or under them

WITNESS the hand and seal of the within named Grantor Committee as aforesaid Witness

Georgia V Walker

Howard C Bregel Committee

(SEAL)

STATE OF MARYLAND BALT IMORE CITY TO WIT

I HEREBY CERTIFY that on this 23rd day of April in the year one thousand nine hundred and forty eight before me the subscriber a Notary Public of the State of Maryland in and for Baltimore City personally appeared HOWARD C BRECEL Committee as aforesaid the within named Grantor and he acknowledged the foregoing Deed to be his act as such Committee

AS WITNESS my hand and notarial seal

(NOTARIAL SEAL)

Georgia V Walker Notary Public

Recorded Apr 27 1948 at 2:35 P M and exd per T Braden Silcott Clerk Rec emcg

Exd by SG&AG

THIS DEED, made this 15th day of September in the year nineteen hundred and eighty, by and between JAMES S. WATSON, TOSEPH W. WATSON and ROBERT C. WATSON, Co-Partners trading as 3 W REALTY COMPANY, a Maryland General Partnership, all of Baltimore County, State of Maryland, parties of the first part; and WILLIAM H. MATHEWS of Baltimore County, State of Maryland, party of the second part.

WITNESSETH:

THAT in consideration of the sum of SIXTY-TWO THOUSAND DOLLARS (\$62,000.00), the said parties of the first part, Co-Partners as aforesaid, do grant and convey unto the said WILLIAM H. MATHEWS, his personal representatives and assigns, all that lot of ground situate and lying in Baltimore County, State of Maryland, and described as follows, that is to say:

BEGINNING in the center of Linden Terrace formerly known as May Avenue at a point 230 feet 4 inches more or less from the east line of a lot of ground formerly owned by Thomas W. Offutt said point also being 450 feet 4 inches from a point in the center of Linden Terrace on the east line of the Baltimore and York Turnpike Road and running thence easterly binding on the center line of Linden Terrace 75 feet to a corner of the lot of ground and conveyed by Robert W. J. Parlett et al to Medora K. Jump et al by deed dated July 27, 1911 and recorded among the Land Records of Baltimore County in Liber W.P.C. No. 329, folio 566 &c and running thence along the west line of said Lot 207 feet more or less to the center line of an alley 20 feet wide there laid out parallel or nearly so with Linden Terrace thence westerly binding in the center of said 20 foot alley 75 feet more or less to intersect a line drawn southerly from the place of beginning at right angles to Linden Terrace thence northerly reversing said line so drawn and binding thereon 207 feet more or less to the place of beginning. The improvements thereon being known as No. 10 Linden Terrace.

BEING the same lot of ground which, by Deed dated August 1, 1974 and recorded among the Land Records of Baltimore County in Liber E.H.K.Jr. No. 5467, folio 524, was granted and conveyed by Maurice M. Watson and Elizabeth C. Watson, his wife, to the said James S. Watson, Joseph W. Watson and Robert C. Watson, Co-Partners trading as 3 W Realty Company.

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

TO HAVE AND TO HOLD the said described lot of ground and premises unto and to the use of the said WILLIAM H. MATHEWS, his personal representatives and assigns, forever, in fee simple.

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VY AND DITTO
ATTORNEYS
FIDELITY BUILDING
AORE, MARYLAND 21201

Respondent Albillet

AND the said parties of the first part, Co-Partners as aforesaid, hereby covenant that they have not done nor suffered to be done any act, matter or thing whatsoever to encumber the property hereby conveyed; that they will warrant specially the property hereby granted; and that they will execute such further assurances of the same as may be requisite.

WITNESS the hands and seals of said Grantors, Co-Partners as aforesaid.

TEST:

(LAWVER)

ames Tames S. Watson

ofo)≰eph/Wi. Watson

Robert C. Watson

Co-Partners trading as 3 W Realty Company

STATE OF MARYLAND, BALTIMORE COUNTY, to wit:

I HEREBY CERTIFY that on this in the year nineteen hundred and eighty, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore County, personally appeared JAMES S. WATSON, JOSEPH W. WATSON and ROBERT C. WATSON, Co-Partners trading as 3 W REALTY COMPANY, a Maryland General Partnership, known to me (or satisfactorily proved) to be the persons whose names are subscribed to the within instrument and they acknowledged the foregoing Deed (to William H. Mathews) to be their act, Co-Partners as aforesaid, and that they executed the same for the purposes therein contained and in my presence signed and sealed the same.

AS WITNESS my hand and Notarial Seal

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ATTORNEYS

7 FIDELITY BUILDING

MORE, MARYLAND 21201

03-61 das Reold for record 03-61 dis Per Elmer H. Kahline,

Mail to Level a

Recoipt Non

Notary Public

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

J. Robert Haines Zoning Commissioner

September 26, 1990



Dennis F. Rasmus County Exec

Ms. Anne T. Martien 702 West Allegheny Avenue Towson, Maryland 21204

Case No. C-90-2467 RE: 12 Linden Terrace 9th Election District

artien: Dear Ms.

on ; come to my attention that there are seven apartments located property. The zoning maps show no reference of this property ated a special exception to allow such activity to exist. the a

Il be up to you to come in and file for a special hearing to allow being artments on a D.R. 16 lot. Failure to do so by October 25, 1990 t in the issuance of a citation, wherein you are subject to a sever sever enalty of \$200.00 for each violation and each day shall be civi ed a separate violation. cons

you have any questions, please contact me at 887-8092.

Sincerely,

NOR KEVIN R. C' Zoning Ins stor

CASE # <u>C90-2467</u> 12 LIMPEN TERA.

Respondent Milliet April 15



lawyers little Insurance Orporation

National Headquarters - Richmond, Virginia

LAWYERS TITLE INSURANCE 114 E. LEXINGTON STORY

THIRD FLOOR

THIS DEED, Made this 15th day of June in the year one thousand nine hundred and eighty-seven by and between BETTY CHURCH BENSON of Baltimore County in the State of Maryland, party of the first part, and WILLIAM H. MATHEWS and RAYMOND H. MATHEWS and MARY MATHEWS, his wife, parties of the second part.

WITNESSETH that in consideration of the sum of \$ 230,000.00, (the actual consideration paid or to be paid) and other good and valuable consideration the receipt of which is hereby acknowledged, the said party of the first part does grant and convey unto the said WILLIAM H. MATHEWS, his Personal Representatives and assigns, as to an undivided one-half interest and unto the said RAYMOND H. MATHEWS and MARY MATHEWS, his wife, at Tenants by the Entireties, their assigns, the survivor of them and the survivor's Personal Representatives and assigns as to the remaining undivided one-half interest, in fee simple, all that lot of ground situate in Baltimore County, State of Maryland, and STATE DEPARTMENT OF described as follows:

AGRICULTURAL TRANSFER TAX TOT APPLICABLE,

SIGNATURE

ASSESSMENTS & TAXATION

DATE

BEGINNING for the same on the North side of Linden Terrace (formerly May Avenue) sixty feet wide at the end of the second line in the description in a Deed from Henry L. Bowen to John H. Grill, et al, dated April 3, 1907, and recorded among the Land Records of Baltimore County in Liber W.P.C. No. 313, folio 220, and running thence bounding reversely on said line North 1-1/4 degrees East 208 feet 7 inches, more or less, to the end thereof to intersect the first line of that parcel of land which by Deed dated March 31, 1877, and recorded among the Land Records aforesaid in Liber J.B. No. 101, folio 177, was conveyed by Valverda A. P. Ware, et al, to David McIntosh, thence bounding on said first line South 88-1/4 degrees West 90 feet 2 inches, thence South 4-1/4 degrees West and binding on the Easternmost line of the lot of ground which by RC FDeed dated December 19, 1900, and recorded among the Land Records aforesaid ip $_{\rm T}$ 14.00 Liber N.B.M. No. 250, folio 296, was conveyed by Henry L. Bowen to George A. B 1005 1150.00 Davis, et al., 206 feet 6 inches, more or less, to the North side of Linden Terrace, thence bounding on the North side of Linden Terrace South 87-150 CLERK 1150.00 degrees East 100 feet to the place of beginning. The improvements thereon #72945 C004 ROL T15:07 06/25/87

BEING Lot No. 10 and part of Lot No. 11 as shown on the Flat of the Land Belonging to Henry L. Bowen, which Plat is filed among the Land Records of Baltimore County in Plat Book J.W.S. No. 2, folio 139.

BEING all and the same lot of ground which by Deed of Assignment dated June 9, 1967 and recorded among the Land Records of Baltimore County in Liber O.T.G. No. 4767, folio 158 was granted and assigned by Urban Title Holding Company, Inc. unto N. Barton Benson, Jr. and Betty Church Benson, his wife.

BEING also all and the same lot of ground which by Deed dated June 9, 1967 and recorded among the Land Records of Baltimore County in Liber O.T.G. No. 4767, folio 161 was granted and conveyed by Mason H. Kornmann, Jr. unto N. Barton Benson, Jr. and Betty Church Benson, his wife.

THE said N. Barton Benson, Jr. departed this life on or about June 22 1986. thereby vesting absolute title unto the said Betty Church Benson by operation of Law.

LIBER7 5.8 7 PAGE | 9 9

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

TO HAVE AND TO HOLD the said described lot of ground and premises, above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said parties of the second part as aforesaid in fee simple.

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

Witness the hand and seal of the said party of the first part, Grantor herein.

WITNESS:

BETTY CHURCH BENSON

STATE OF MARYLAND, COUNTY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY, that on this 15th day of June, 1987, before me, the subscriber, a Notary Public of the State of MARYLAND aforesaid, personally appeared BETTY CHURCH BENSON and she acknowledged the foregoing need to be her act, deed and for the purposes therein set forth.

WITNESS my hand and notarial seal the day and year last above written,

NOTARY PUBL

MY COMMISSION EXPIRES:

THIS DEED. Made this 17 day of July, in the year nineteen hundred and sixty-one, by and between CLARENCE E. PUSEY, JR., and EMILY W. PUSEY, his wife, of Baltimore County, State of Maryland, parties of the first part, and N. BARTON BENSON, JR., of Baltimore County, State of Maryland, party of the second part.

WITNESSETH. That in consideration of the sum of Five Dollars (\$5.00) and other good and valuable considerations, this day paid, the receipt whereof is hereby acknowledged, the said CLARENCE E. PUSEY, JR., and EMILY W. PUSEY, his wife, do grant and assign unto the said N. BARTON BEWSON, JR., his personal representatives and assigns, all of their right, title, and interest in and to all that parcel of ground situate, lying, and being in the Ninth Election District of Baltimore County, State of Maryland, and described as follows, that is to say:

BEGINNING for the same on the North side of Linden Terrace (formerly May Avenue) sixty feet wide at the end of the second line in the description in a deed from Henry L. Bowen to John H. Grill, et al., dated April 3, 1907, and recorded among the Land Records of Baltimore County in Liber W.P.C. No. 313, follo 220, and running thence bounding reversely on said line North 1-1/4 degrees East. 208 feet 7 inches, more or less, to the end thereof to intersect the first line of that parcel of land which by deed dated March 31, 1877, and recorded among the Land Records aforesaid in Liber J.B. No. 101, folio 177, was conveyed by Valverda A. P. Ware, et al., to David McIntosh, thence bounding on said first line South 88-1/4 degrees West 90 feet 2 inches, thence South 4-1/4 degrees West and binding on the Easternmost line of the lot of ground which by deed dated December 19, 1900, and recorded among the Land Records aforesaid in Liber N.B.M. No. 250, folio 296, was conveyed by Henry L. Bowen to George A. Davis, et al., 206 feet 6 inches, more or less, to the North side of Linden Terrace, thence bounding on the North side of Linden Terrace South 87-1/2 degrees East 100 feet to the place of beginning.

BEING Lot No. 10 and part of Lot No. 11 as shown on the Plat of the Land Belonging to Henry L. Bowen, which Plat is filed among the Land Records of Baltimore County in Plat Book J.W.S. No. 2, folio 139.

THE improvements thereon being known as No. 15 Linden

BEING all and the same property which by lease dated September 23, 1960, and recorded among the Land Records of Baltimore County in Liber W.J.R. No. 3757, folio 179, was demised and leased by Mason H. Kornmann, Jr., unmarried, unto N. Barton Benson, Jr., and Clarence E. Pusey, Jr., as joint tenants, subject to the payment of an annual ground rent of 12, payable annually on the 23 day of September in each and every year.

SEE also agreement dated May 28, 1959, and recorded among the Land Records aforesaid prior hereto between Evelyn B. Benson and N. Barton Benson, Jr.

TOGETHER WITH the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances, and advantages thereto belonging, or in anywise appertaining.

TO HAVE AND TO HOLD the said described lot of ground and premises unto and to the use of the said N. BARTON BENSON, JR., his personal representatives and assigns, for all the residue of the term of years yet to come and unexpired therein, with the benefit of renewal forever; subject to the payment of an annual ground rent of 1¢, payable annually on the 23rd day of September in each and every year.

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

AS WITNESS the hands and seals of said Grantors.

WITNESS:

James D. C. Downes

Clarence E. Pusey, Jr. / (SEAL)

Emily W. Pusey (SEAL)

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT:

I HEREBY CERTIFY, That on this day of July, in the year nineteen hundred and sixty-one, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared CLARENCE . PUSEY, JR., AND EMILY W. PUSEY, his wife, the within-named Grantors, and they acknowledged the aforegoing Deed to be their act.

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