IN THE MATTER OF	*	BEFORE THE
THE APPLICATIONS OF		
MATHEM CHACKO -PETITIONER	*	COUNTY BOARD OF APPEALS
FOR A ZONING VARIANCE ON		
PROPERTY LOCATED ON THE E/S	*	OF
SUMTER AVE., 670' +/- E OF		
CHESACO AVE., EASTERLY ALONG	*	BALTIMORE COUNTY
PRIVATE R/W 1004 SUMTER AVE.		
PROPOSED LOT 1	*	CASE NO. 97-388-A
AND		
PROPOSED LOT 2	*	CASE NO. 97-389-A
15TH ELECTION DISTRICT		
7TH COUNCILMANIC DISTRICT	*	

* * * * * * * * *

OPINION

Francis X. Borgerding, Jr., Esquire, filed a timely appeal on behalf of the Petitioner, Mathem Chacko, from the Zoning Commissioner's decision dated October 7, 1997. Mr. Borgerding represented the Petitioner before the Board; Deputy People's Counsel for Baltimore County, Carole S. Demilio, also participated in these proceedings.

The Petitioner requested 1) a variance to permit a detached dwelling on Lot 1 containing less than 20,000 square feet which does not abut a right-of-way at least 30 feet wide over which the public has easement to travel; and 2) an identical variance to permit another detached dwelling on adjoining Lot 2 at the subject property at 1004 Sumter Avenue, 15th Election District, 7th Councilmanic District of Baltimore County.

On the day of the hearing, May 19, 1998, Paul Lee of Century Engineering appeared as the first witness for the Petitioner. The Board accepted Mr. Lee as an expert in engineering and land planning. Mr. Lee prepared the plats for the subject property and the variance requests (Petitioner's Exhibits No. 1 and No. 2). He testified that he had presented the Petitioner's proposal to Baltimore County's Development Review Committee (DRC) as a minor

subdivision, but the DRC did not act because of the right-of-way question.

Mr. Lee described the subject property as .415 acre in total with a depth of 480 feet, a parcel created from the resubdivision of Lots 157 and 158 which were part of Rosedale Terrace, a residential development laid out in 1910. The resubdivision created Lots 1000, 1002, and 1006 which front on Sumter Avenue, plus the subject property (1004) and the Reinhardt property (1004-1/2), which are accessed by a 12-foot private right-of-way off Sumter Avenue. This resubdivision was recorded by metes and bounds as early as 1938 (Petitioner's Exhibits No. 3 and No. 4).

It was Mr. Lee's opinion that the permitted density of the subject property (zoned D.R. 5.5) was 2.28 lots which would meet all development regulations except the 30-foot right-of-way requirement. He further testified that the subject property was unique in that it slopes 15 feet lower than Sumter Avenue. There is also a second 12-foot right-of-way to access 1006 Sumter Avenue on the west side of the property, as well as a utility easement on the north side. The property, according to Mr. Lee, is landlocked except for the private right-of-way access. The fact that the subject property adjoins Batavia Park, owned by the County, adds to its uniqueness, according to Mr. Lee.

In addition, Mr. Lee cited practical difficulty because, in his opinion, the Petitioner could not "do anything" with his property unless the variances requested are granted. He felt that the spirit and intent of the Baltimore County Zoning Regulations (BCZR) would be met because no harm would accrue to neighboring

properties.

Mr. Lee testified that consideration of the panhandle regulations was not appropriate in this case because the Petitioner does not own an in-fee strip to a public road.

On cross-examination by Ms. Demilio, Mr. Lee testified that the Policy Manual, p. 8, specifies that a lot of less than 20,000 square feet must access frontage on a public road or be served by a panhandle, and that a private right-of-way is prohibited. Mr. Lee further testified that there was no Fire Department approval or Public Works waiver in existence at the date of the hearing before the Board, and that there had been no minor subdivision approved by Baltimore County, which, he admitted, is the usual first step in developing a parcel.

The Petitioner, Mathem Chacko, was the next witness. Mr. Chacko testified that he had purchased the subject property in September /October 1986 at an auction after reading a notice of the sale in the newspaper. He was aware of the access when he purchased the property. At that time, there existed a two-bedroom house approximately 70 to 80 years old. Mr. Chacko said that the house was in poor condition, and that the tenant to whom he rented the property did not pay the rent and did not take care of the property, and that he was forced to evict him. Subsequently, the property was vandalized, and Baltimore County ordered him to make repairs or to raze the house. Mr. Chacko estimated that repairs would cost $55,000.00, and he decided to raze the structure in 1991.

He indicated that the subdivision of the parcel is the only

way he can use his property, and that he plans to build houses for his children to live in. He agreed with Mr. Lee that the property is unique and that he would suffer practical difficulty if the variances were not granted. He said that he used to live in the Rosedale area, but that he has moved to Odenton. His former residence is for sale and is currently rented.

The first People's Counsel witness was Bonnie Heider. Ms. Heider testified that she is the owner of 1006 Sumter Avenue which is part of the original Rosedale Terrace Lot 157. She said that her grandfather divided the original lots to provide property for his children. As far as she knows, he did not go through a zoning procedure to do so. Her brother lives in her house at 1006. Her uncle, Edward Reinhardt, has lived on a lot behind and adjacent to the Petitioner's lot since 1929, and her grandfather lived in the house which previously occupied the subject property until his death. She said that her house was formerly accessed through the same 12-foot right-of-way as Mr. Reinhardt's and Mr. Chacko's, but the road became too congested and cars could not pass on the driveway. Since 1006 fronted on Sumter Avenue, Ms. Heider created a new driveway to her house directly accessing that street. It was her opinion that emergency vehicles would not have "easy access" over the 12-foot right-of-way, and that the only place they could turn around would be on the Reinhardt parcel.

Ms. Heider described the Chacko property today as in poor condition, overgrown and not well-maintained. As evidence, she offered photographs which were accepted as People's Counsel Exhibit No. 5. She pointed out on the photos that the right-of-way is in

poor condition and is not maintained by the County because it is private. She further testified as to drainage problems. She indicated that at the time of Mr. Chacko's purchase the house on the subject property was in need of repair, but that it had been continuously occupied.

Joseph Passapoe then testified that he is the owner of 1008 Sumter Avenue as well as 8214 La Cotti Lane, a farm which adjoins the Petitioner's lot to the north. Through 1008 he is able to access his farm from the south. He expressed concern about the amount of stormwater runoff and erosion from Sumter Avenue onto his farm property. Stating that he is a plumber by trade, he further testified that he had experienced difficulties getting large equipment to sites on private rights-of-way and that it was his opinion that rights-of-way were no longer permitted because they cannot accommodate modern vehicular traffic. He also opined that the subject property is not unique, but is just like the other Sumter Avenue properties which fall away in grade from the street and are similarly shaped.

Joseph Novak testified that he is the owner of 1002 Sumter Avenue, and his brother-in-law owns 1000 Sumter Avenue. Mr. Novak submitted a photo (People's Counsel Exhibit No. 7) which showed the narrowness and steep incline of the right-of-way to the subject property, the fact that it is not well maintained, and that there is a drainage problem in the area from the slope of all the lots on Sumter Avenue.

Cecilia Leybold, who has lived on the adjoining Passapoe farm since her birth, testified that drainage and stormwater problems

have existed on the property since she could remember. Furthermore, there is no public sewer or water connected to the subject property.

The Petitioner's attorney, Mr. Borgerding, proffered that public utilities are available to the property and that Mr. Chacko would be willing to hook up. The Petitioner would also accept a requirement to maintain the right-of-way along his property to Sumter Avenue, although he does not in fact own the land on which the right-of-way exists.

The Board deliberated the case in public on June 30, 1998. Upon consideration of the testimony and the exhibits, plus a careful review of the law, the Board unanimously found that the Petitioner failed to meet his burden on a number of grounds.

The Board found that in fact Section 102.4 of the BCZR is not subject to variance relief. Section 307 permits variance from "height and area regulations, from off-street parking, and from sign regulations...**They [Zoning Commissioner and County Board of Appeals] shall have no power to grant any other variances."** (Emphasis added.) The Petitioner requested that the Board permit a right-of-way under Section 307 which is less than the required 30 feet. The Board does not have authority to grant such a variance even if they felt it was warranted, which they do not.

The Board further questions the appropriateness of considering variance relief for a property which has not been addressed through the Baltimore County Development Process and reviewed by the appropriate County agencies.

The Board also notes that the Petitioner may not seek relief

under Section 26-266 of the Baltimore County Code because the right-of-way does not comply with the panhandle requirements. The Petitioner does not own an in-fee strip to a public road, and even if he actually owned this right-of-way strip, it is less than the required width of 24 feet for two lots.

Case law cited by People's Counsel relative to the authority of the government to deny building permits for properties which have insufficient or unsafe access is persuasive. See Fink v. Jagger, 211 NYS2d 51 (1960), Spalke v. Board of Appeals, 7 Mass App 683, 389 NE2d 788 (1979), Macchia v. Board of Appeals, 164 NYS2d 463 (1957), and especially Iddings v. Board of Appeals, 255 NE2d 604 (1970).

Further, we find that in fact there is nothing unique about the subject property under the standards set out by Cromwell v. Ward, 102 Md.App. 691 (1995). The Chacko property is similar in shape and grade to the neighboring lots in the old Rosedale Terrace subdivision. We also find that if there is any practical difficulty sustained by the Petitioner it is by his own creation. Evidence and corroborating testimony support that a house, inhabited until and even after the Petitioner's purchase, existed as a nonconforming use at 1004 Sumter Avenue. It was the Petitioner's decision to raze that dwelling after he purchased it.

It is the opinion of this Board that the subdivision of this property into two lots to exist on a substandard private right-of-way would be an over-intensification of development which would be likely to create problems of safety as well as environmental concerns at the expense of the rest of the neighborhood for the

economic gain of the Petitioner, who does not plan to reside in the area.

For the above reasons, the Board will deny the variance requests of the Petitioner.

O R D E R

THEREFORE, IT IS THIS 4th day of August, **1998 by** the County Board of Appeals of Baltimore County

ORDERED that the Petition for Variance in Case No. 97-388-A to permit a detached dwelling on proposed Lot 1, 1004 Sumter Avenue, containing less than 20,000 square feet which does not abut a right-of-way at least 30 feet wide over which the public has easement to travel be and the same is hereby **DENIED**; and it is further

ORDERED that the Petition for Variance in Case No. 97-389-A to permit a detached dwelling on proposed Lot 2, 1004 Sumter Avenue, containing less than 20,000 square feet which does not abut a right-of-way at least 30 feet wide over which the public has easement to travel be and the same is hereby **DENIED**

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Panel Chairman

Margaret Worrall

Thomas P. Melvin

County Board of Appeals of Baltimore County
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180

August 4, 1998

Francis X. Borgerding, Jr., Esquire
Suite 600
Mercantile-Towson Building
409 Washington Avenue
Towson, MD 21204

RE: Case No. 97-388-A and Case No. 97-389-A /Mathem Chacko -Petitioner

Dear Mr. Borgerding:

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.** 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,

Charlotte E. Radcliffe

Kathleen C. Bianco
Administrator

encl.

cc: Mr. Mathem Chacko
Century Engineering
Bonnie E. Heider
Joseph C. Passapoe
Mr. & Mrs. Edward Reinhardt
Cecelia Legbold
Marion C. Benner
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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on Recycled Paper

IN RE:	PETITION FOR ZONING VARIANCE E/S Sumter Ave., 670' +/- E of Chesaco Ave., Ely along a private R/W 1004 Sumter Avenue, proposed Lot 1 15th Election District 7th Councilmanic District Mathem Chacko, Petitioner	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No.: 97-388-A

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

NOTICE OF APPEAL TO COUNTY BOARD OF APPEALS

Mathem Chacko, Petitioner, by and through undersigned counsel, hereby files an appeal to the County Board of Appeals from the decision rendered by the Zoning Commissioner in the above-matter on October 7, 1997.

FRANCIS X. BORGERDING, JR.
409 Washington Avenue, Suite 600
Towson, Maryland 21204
410-296-6820
ATTORNEY FOR DEFENDANT, MATHEM CHACKO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of November, 1997, a copy of the aforegoing was mailed, postage prepaid, to:

Baltimore County Board of Appeals
Basement
Old Court House
Towson, Maryland 21204

Peter Max Zimmerman
People's Counsel for
Baltimore County
Room 47, Court House
400 Washington Avenue
Towson, Maryland 21204

FRANCIS X. BORGERDING, JR.

IN RE: PETITION FOR ZONING VARIANCE * BEFORE THE
E/S Sumter Ave.,670' +/- E of Chesaco
Ave., Ely along a private R/W * ZONING COMMISSIONER
1004 Sumter Avenue, proposed Lot 1
15th Election District * OF BALTIMORE COUNTY
7th Councilmanic District
Mathem Chacko, Petitioner * Case No. 97-388-A

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IN RE: PETITION FOR ZONING VARIANCE * BEFORE THE
E/S Sumter Ave., 670'+/- E of Chesaco
Ave., Ely along a private R/W * ZONING COMMISSIONER
1004 Sumter Avenue, proposed Lot 2
15th Election District * OF BALTIMORE COUNTY
7th Councilmanic District
Mathem Chacko, Petitioner * Case No. 97-389-A

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

These matters come before the Zoning Commissioner as a combined hearing, for cases 97-388-A and 97-389-A. Each case presents a Petition for Variance, for the property collectively known as 1004 Sumter Avenue in the Rosedale community of Baltimore County. The Petitions were filed by Mathem Chacko, property owner. Within case No. 97-388-A, variance relief is requested from Section 102.4 of the Baltimore County Zoning Regulations (BCZR) to permit a detached dwelling on a lot containing less than 20,000 sq. ft. (i.e., 9,085 sq. ft.) which does not abut a right of way at least 30 ft. wide over which the public has an easement to travel. Within case No. 97-389-A, similar relief is requested, to wit, a variance from Section 102.4 of the BCZR to permit a detached single family dwelling on a lot containing less than 20,000 sq. ft. (8,994 sq. ft.) which does not abut a right of way at least 30 ft. wide over which the public has an easement to travel. Although both Petitions are brought for the property known as 1004 Sumter Avenue, the Petition in zoning case No. 97-388-A is for proposed lot No. 1 and the Petition for Variance in case No. 97-389-A is for proposed lot No. 2. The subject property and requested relief are more

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By

particularly shown on the plat to accompany the Petition for Zoning Variances, marked as Petitioner's Exhibit No. 1A.

Appearing at the public hearing held for this case was the property owner/Petitioner, Mathem Chacko. Also present in support of the Petition was Paul Lee, the engineer who prepared the site plan. The Petitioner was represented by Francis X. Borgerding, Esquire. A number of individuals residing in the surrounding community appeared in opposition to the request. They included Edward and Mary Reinhardt, F.W. Heider, Jr., Bonnie E. Heider, Cecilia Legbold and Joseph Passapae.

Testimony and evidence presented was that the subject property under consideration is .415 acres in area, zoned D.R.5.5. The property at issue is roughly rectangular in shape and is composed of parts of lots 157 and 158 of the old plat (Plan C) for Rosedale Terraces. That plat was recorded among the Land Records of Baltimore County on March 1, 1910. Apparently, the property was at one time improved with a single family dwelling. However, that dwelling has been razed. Additionally, the subject property has no direct fee simple frontage and/or access to any public street. This factor has resulted in the Petitions for Variance which have been filed. Historically, vehicular access to the site has been by way of a 12 ft. wide private road which leads to the property from Sumter Avenue. During the course of the hearing, Mr. Lee produced a deed indicating that the property owner of the subject property has the right to utilize that private driveway for access and that the said right of way was established in the Land Records of Baltimore County by deed as far back as 1948.

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Date 1/17/97
By Mary Ann Smith

Mr. Chacko presently owns the subject property and wishes to subdivide the same into two lots, shown on the plan as lot 1 and lot 2. Lot No. 1 is located to the rear of the site and is proposed to be 9,084 sq. ft. in area. Lot No. 2 occupies the front portion of the property and

will be 8,994 sq. ft. in area. It is envisioned that each lot will be improved with a single family dwelling. Moreover, vehicular access to both lots will continue to be by way of an existing 12 ft. wide drive.

The zoning variances have been requested from Section 102.4 of the BCZR. This section is infrequently considered by this Zoning Commissioner, however, was thoughtfully evaluated in considering the subject Petitions. Section 102.4 states, "No dwelling, other than a multi-family building, shall be built on a lot containing less than 20,000 sq. ft. which does not abut on a right of way at least 30 ft. wide over which the public has an easement of travel, <u>except as provided for panhandle lots in Section 26-266 of the Baltimore County Code.</u>" (emphasis added) It is apparent that the language employed in the first portion of this regulation applies to the subject lots. That is, single family dwellings, as opposed to multi-family dwellings, are proposed on both lots and each lot is less than 20,000 sq. ft. Moreover, the right of way which provides access to the the proposed lots is narrower than 30 ft. Thus, it appears that variance relief from this section of the BCZR would be necessary. However, the final phrase of the regulation provides an exception to its applicability. Specifically, the requirements of Section 102.4 are not applicable for panhandle lots, as described in Section 26-266 of the Code.

In view of this language, an examination of the County Code is necessary to determine whether Section 102.4 is controlling in this instance, or whether the property is excepted from the requirements by the provisions of Section 26-266 of the Code.

A panhandle driveway is defined within those definitions listed within Section 26-168 of the County Code. The definition states that a panhandle driveway is ". . . the paved roadway which serves one or more abutting panhandle lots and provides vehicular access to the local street

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Date 10/17/01
By M. Gro

or to a collector street." This definition would appear to describe the roadway which serves the subject lots. However, Section 26-168 also defines "panhandle lot" as ". . . a lot so shaped and situated that its only frontage or access to the local or collector street is a narrow strip of land which is held <u>in fee</u> except as provided in Section 26-266, and which may contain a panhandle driveway and water and sewer lines and other utilities." (emphasis added)

As noted above, Section 26-266 regulates panhandle driveways. That section includes the standards which panhandle driveways must satisfy. Within Section 26-266(1), it is provided that panhandle driveways shall be a minimum of 12 ft. in width per lot where two lots are involved. Thus, in the instant case, the required panhandle driveway must be 24 ft. Moreover, Section 26-266 states that the panhandle lots must be composed of an in fee strip of land. Other standards in that section describe the amount of dwellings which may be served {26-266(3)} and the maximum length of panhandle driveways {26-266(4).

It is clear that the right of way which has long existed to serve these properties does not meet these requirements. Specifically, it fails in at least two respects; it is not held in fee by Mr. Chacko and is less than the minimum width required. Therefore, the right-of-way at issue is not a panhandle driveway as defined in the Code and standards generally set forth in Section 26-266. It is of note that Mr. Lee opined a similar position at the hearing; stating that the right of way strip was not, by definition, a panhandle drive.

Having determined that the existing right of way is not a panhandle drive as defined and regulated by the Code, one may draw the conclusion that, therefore, variance relief is required from Section 102.4 in that the exception as stated therein is not applicable. However, a further

analysis of Section 26-266 is required, specifically, the provisions of Section 26-266(2). Therein, it is provided that, "The Hearing Officer may approve access to the local or collector street through an existing right of way instead of an in fee strip, in cases where such a right of way has been established prior to the submittal of the development plan." The Hearing Officer means the County's Zoning Commissioner or Deputy Zoning Commissioner (see Section 26-168). Moreover, it is obvious that the strip at issue is indeed a pre-existing right of way which has been established prior to the submittal of the development plan. The existence of this language is significant in this case and is dispositive to the conclusion that a variance from Section 102.4 of the BCZR is not necessary. That is, the excepting language contained within Section 102.4 refers the reader to Section 26-266; and Section 26-266(2) accurately describes the situation as it exists here. Thus, what is properly for consideration before me is whether approval should be granted through an existing right of way instead of an in fee strip. The standards set forth in Section 307 are not applicable.

Regrettably, Section 26-266 provides little guidance in describing the standards that the Hearing Officer (Zoning Commissioner) should employ in considering whether an existing right of way should be utilized. Seemingly, it would be appropriate to consider the historic use of the in fee strip, the character and density of the surrounding neighborhood and the expected levels of traffic to be generated. In applying these standards, I am persuaded that the existing fee simple strip should not be utilized to serve the two lots proposed. Clearly, the historic use of the fee simple strip was to serve the single dwelling which formerly occupied the property. That is, the in fee strip was originally created, no doubt, to serve only one single family dwelling. The subdivision proposed, with

the addition of another house, doubles the intended capacity of the strip. Moreover, an examination of the original plat is significant. As noted above, the subject property is part of what was originally shown as lots 157 and 158 on the plat of Plan C for the subdivision known as Rosedale Terrace. As shown on both that plat and the site plan submitted, original lots 157 and 158 have, in fact, been ultimately subdivided so as to create four lots. Specifically, the properties known as 1002 Sumter Avenue and 1006 Sumter Avenue all support existing single family dwellings on portions of old lots, 157 and 158. To add two additional dwellings would result in the existence of five single family dwellings on the original two lots which were platted. In my judgment, such a result would be an over intensification of what was initially envisioned for these lots.

Based on these factors, I am, therefore, persuaded to deny the relief requested. The Petition for Variance will be denied, as moot, however, the Order which will be entered will reflect my conclusion that the right of way strip should not be utilized to provide access for two single family lots, pursuant to Section 26-262(2) of the Baltimore County Code.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 7th day of October, 1997 that a variance from Section 102.4 of the Baltimore County Zoning Regulations (BCZR) to permit a detached dwelling on a lot containing less than 20,000 sq. ft. (i.e., 9,085 sq. ft.) which does not abut a right of way at least 30 ft. wide over which the public has an easement to travel, be and is hereby DENIED, as MOOT; and,

IT IS FURTHER ORDERED that relief to allow the utilization of an existing right of way to provide access to two single family dwelling lots, pursuant to Section 26-262(2) of the Baltimore County Code, as set forth herein above, be and is hereby DENIED.

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

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES/mmn

FILING
10/7/97
By M. Gorth

Baltimore County
Zoning Commissioner
Office of Planning

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

October 3, 1997

Frank Borgerding, Esquire
409 Washington Avenue
Towson, Maryland 21204

RE: Case Nos. 97-388-A and 97-389-A
Petitions for Zoning Variance
Property: 1004 Sumter Avenue, Lots 1 and 2

Dear Mr. Borgerding:

Enclosed please find the decision rendered in the above captioned case. The Petition for Zoning Variance has been denied, 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,

Lawrence E. Schmidt
Zoning Commissioner

LES:mmn
att.
c: Mr. Mathem Chacko
8016 Sagramore Road
Baltimore, Maryland 21237

c: Paul Lee Engineering, Inc.
304 W. Pennsylvania Avenue
Towson, Maryland 21204

c: Protestants

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IN THE MATTER OF	*	BEFORE THE
MATHEM CHACKO-PETITIONER	*	COUNTY BOARD OF
1004 SUMTER AVENUE, PROPOSED	*	APPEALS FOR
LOT 1, 15TH ELECTION DISTRICT:	*	BALTIMORE COUNTY
7TH COUNCILMANIC/	*	Case No. 97-388A AND

* *

IN THE MATTER OF	*	Case No. 97-389A
MATHEM CHACKO-PETITIONER	*	
1004 SUMTER AVENUE, PROPOSED	*	
LOT 2, 15TH ELECTION DISTRICT:	*	
7TH COUNCILMANIC DISTRICT	*	

* *

CLOSING ARGUMENT MEMORANDUM

Mathem Chacko, by and through his attorney, Francis X. Borgerding, Jr. files this Closing Argument Memorandum and in support of says:

STATEMENT OF THE CASE

This case comes before the Board on Petitioner Mathem Chacko's appeal of the decision of the Zoning Commissioner of Baltimore County. The Zoning Commissioner of Baltimore County denied the Petitioner's variances from Section 102.4 of the Baltimore County Zoning Regulations (herein "BCZR") as moot and further denied Petitioner's requested relief under the terms of Section 26-266(2) of the Baltimore County Code.

STATEMENT OF FACTS

Petitioner's first witness was Mr. Paul Lee. Paul Lee was accepted as an expert witness

in engineering and land planning. He testified that he was familiar with the subject property, 1004 Sumter Ave. Mr. Lee testified that he was retained by the Petitioner in an attempt to subdivide the subject property. He testified that he created Petitioner's Exhibits #1 and #2 which were entered into evidence. Petitioner's #1 is the plat created for the zoning hearing, Case #97-388A, and Petitioner's #2 is the plat created for zoning case #97-389A. Mr. Lee described the Petitioner's property as consisting of .415 acres, zoned DR 5.5. The property, located in the Rosedale area of eastern Baltimore County, is in a subdivision created pursuant to a plat recorded in the land records of Baltimore County created in 1910 entitled "Rosedale Terraces" at WPC 3-90. Mr. Lee noted that the subject property was land locked with no frontage on a public street and that it's only access to the nearest public street, Sumter Ave. was through a 12-foot right of way which was created in 1948.

Mr. Lee noted under the property's DR 5.5 zoning, that from a density perspective, a lot size of 6,000 square feet is required for a buildable lot. Mr. Lee further noted that both proposed lots well exceeded that limit as the proposed lot #1 contains 9,084 square feet, and proposed lot #2 contains 8,994 square feet. Entered into evidence through Mr. Lee were Petitioner's Exhibits #3-6, which were deeds detailing the history of the subject property and surrounding property. Mr. Lee noted in particular Petitioner's #5, which created the 12 foot right of way at issue in the subject case in 1948. Mr. Lee noted that at the time of the creation of the 12-foot right of way, the right of way met all of the existing standards under the BCZR. Mr. Lee noted, however, that Section 102.4 of the present BCZR requires a 30-foot right of way for lots under 20,000 square feet in area.

Mr. Lee referred to the public utility easement coming from Sumter Avenue to the

Petitioner's property as noted on Petitioner's #1 and #2. Further, Mr. Lee noted that in his opinion, the highest and best use of the property was development into 2 lots. Mr. Lee testified that but for the requirements of Section 102.4, all other zoning regulations such as density, setbacks, etc., are met for subdivision of the subject property.

Mr. Lee testified that the subject property is unique when compared to surrounding similarly zoned property, in that the subject property is land locked and has no frontage on a public road. The only means of access to a public road is the existing 12-foot right of way established in 1948. Mr. Lee also testified that the property is unique topographically, as the grade of the property falls off from Sumter Avenue. Mr. Lee noted that the development of the lot is restricted due to the grade of the property, especially in light of the existing right of way which must be used for access to the property. Mr. Lee further testified that the application of Section 102.4 of the BCZR has a more severe impact on the subject property because of the fact that it is land locked. Mr. Lee noted that if the subject property was swiveled so that it had road frontage on Sumter Avenue, as the smaller lots 1000 and 1002 Sumter Ave. are, that the subject property would require no zoning relief to be developed into 2 lots.

Mr. Lee testified that if the requested variance were not granted, that the petitioner would suffer practical difficulty and unreasonable hardship as all other zoning requirements such as density and setbacks are met by the subject property for subdivision into 2 lots, but for the requirements of Section 102.4 so that if the requested variance is not granted, it would render the subject property unusable. Further, Mr. Lee testified that if the requested variance is granted, he foresaw no harm to the health, safety and welfare of the surrounding community. Mr. Lee also testified that in his opinion, if the requested variance is granted, he did not foresee any harm to

the surrounding community from a traffic perspective as right of way was presently serving 2 lots and the requested relief would allow only 1 additional lot.

Mr. Lee testified that in his opinion, the requirements of Section 26-266 of the BCC which deal with panhandle regulations are not applicable to the petitioner's requested relief. Mr. Lee testified however, that if the Board felt that Section 26-266 applies, in his opinion, Section 26-266(2) allows the Board to waive the requirements of Section 26-266 in relation to the subject property. Mr. Lee testified that in his opinion, the subject property meets the standards for relief under Section 26-266(2) as the right of way at issue has been in existence since 1948, well before the development plan submitted by the petitioner.

On cross examination, Mr. Lee testified in his opinion, the Board can waive the requirements of Section 26-266 pursuant to 26-266(2). Further, Mr. Lee testified that the grade of the property makes the property unique, especially in light of the existing right of way, because it limits the ability to develop the property.

The next witness to testify was Petitioner Mathan Chacko. Mr. Chacko testified that he has been the owner of the subject property since 1986. Further he testified that he has never owned any other surrounding property. Mr. Chacko described the surrounding area as a residential area. He stated that at the time he purchased the property, that there existed a house on the subject property. The house was 70-80 years old. Mr. Chacko stated that at the time of his purchase of the property, the house was in bad condition. He testified that he rented the subject property for approximately 3 years. He further testified that the individuals who rented the property did not take care of the property and additionally, failed to pay rent to him. The Petitioner testified that eventually he had the tenants removed from the property. Mr. Chacko

further testified that after the tenants were removed from the property, the house was vandalized and that after inspection by Baltimore County, he was told that he would have to put $50,000-$60,000 of repair into the house or tear it down. He testified that at that point (approximately 1991), he tore the house down. Mr. Chacko testified that the only means of access to a public street from the subject property was through the existing 12-foot right of way. He testified that he was asking for relief being requested pursuant to the subject hearing because the subject property is land locked, and if allowed to develop the subject property into 2 lots, that he would be giving his 2 children the 2 built lots. Mr. Chacko testified that he felt the subject property was unique compared to other surrounding properties in the area because the property is land locked and its only means of access to a public street is the existing 12-foot right of way. He testified that the granting of the requested variance will give him substantial relief. Further, Mr. Chacko testified that the granting of the variance would not cause any harm to the health, safety and welfare of the surrounding community. In addition, Mr. Chacko testified that he would suffer practical difficulty and unreasonable hardship if the variance is not granted.

Protestant's witnesses included Bonnie Hieder. Ms. Heider lives at 2227 Larchmont Drive in Fallston, MD 21047. On cross examination, Ms. Heider testified that her grandfather subdivided the subject property and created lots 1000 and 1002 Sumter Avenue as well as the property which she owns, 1006 Sumter Avenue and the property which her uncle resides on in the rear of the subject property. Further, Ms. Heider testified that her grandfather created the right of way at issue in the subject hearing in 1948. She related how the subject property was auctioned after falling out of her grandfather's hands. She further stated that her uncle, Edward Rhinehart had resided at his property, in her words "forever". Ms. Heider acknowledged the

easement for public utilities shown on Petitioner's #1 and #2. She further testified that she understood that if the property was developed, it would be cleared and graded. Ms. Heider testified that access on the existing right of way for the fire department would be "access, but not easy access".

Joseph Passapoe also testified on behalf of the Protestants. Mr. Passapoe testified that he is a plumber and is concerned about runoff from Sumter Avenue. Further, he stated he was concerned about the access of the subject property. He stated that when the access was created in 1948, the vehicles and traffic problems of today were not in existence.

Also testifying on behalf of the Protestants was Mr. Novak, owner of 1002 Sumter Avenue. He testified that he is the owner of 1000 and 1002 Sumter Avenue which he bought from Edward Cochran. He further testified that his nephew is a tenant at 1000 Sumter Avenue. Mr. Novak testified that if Baltimore County Storm Water Management requirements were met in relation to development of the subject property, that it would alleviate some of his concerns with regard to the development of the subject property. He further testified that if the petitioner were required to make right of way improvements in conjunction with development of the subject property, that would alleviate some of his concerns with regard to development of the subject property. Mr. Novak testified that he has owned 1000 and 1002 Sumter Avenue for approximately 3 years.

Cecilia Liabold also testified. Ms. Liabold is the aunt of Mr. Passapoe.

The Protestants also forwarded a sign-in sheet for Protestants who were present but did not testify, which included Mr. Anderson of 8009 Sumter Avenue, who had to leave the hearing early, Mr. Irvin of 1000 Sumter Avenue, Mr. and Mrs. Rhinehart, who live in back of the subject

property.

On rebuttal, Petitioner, after conferring with opposing counsel, in lieu of calling Mr. Paul Lee back to the stand, proffered that Mr. Lee had testified during direct and would testify on rebuttal that the subject property has access to public water and sewer and that he had noted the easement for utility services coming from Sumter Avenue on Petitioner's #1 and #2, and that if the subject property is development it would be developed with public sewer and water. Petitioner then ended its rebuttal case. At the end of testimony, the petitioner proffered to the Board that the Petitioner would willingly accept conditions from the Board to require: 1) the Petitioner to maintain the right of way access from Sumter Avenue to the subject property; 2) that the subject property would be developed with public water and sewer; and 3) that the petitioner meet all Baltimore County Storm Water Management requirements for development of the proposed lots #1 and #2.

APPLICABLE LAW

Baltimore County Zoning Regulations

Section 102.4

Section 307

Baltimore County Code

Section 26-266

Section 26-168

Case Law

Cromwell v. Ward, 102 MD App. 691, 1995

ARGUMENT

Petitioner Mathem Chacko is requesting a variance from Section 102.4 of the Baltimore County Zoning Regulations. Section 102.4 of the BCZR states:

> 102.4--No dwelling, other than a multi-family building shall be built on a lot containing less than 20,000 square feet which does not abut on a right-of-way at least 30 feet wide over which the public has an easement of travel, except as provided for panhandle lots in Section 26-266 of the County Code. [B.C.Z.R., 1955; Bill No. 179, 1989; Bill No. 2, 1992.]

The Zoning Commissioner, pursuant to his opinion below, ruled Petitioner's requested variance as moot and considered Petitioner's request for relief under the terms of the Baltimore County Code, Section 26-266, which reads:

> Sec. 26-266. Panhandle driveways.
> Panhandle lots may only be permitted to achieve better use of irregularly shaped parcels, avoid development in environmentally sensitive areas, and to provide access to interior lots where a public road is neither feasible nor desirable. Panhandle lots may be permitted only where such lots would not e detrimental to adjacent properties and would not conflict with efforts to provide for public safety and general welfare. Panhandle lots may be permitted in accordance with the following standards:
>
> (1) each lot of less than three (3) acres shall include an in-fee strip of land providing access to the local street, except as provided in subsection (2) of this section. Panhandle fee strips shall be a minimum of twenty (20) feet in width to serve one (1) lot, a minimum of twelve (12) feet in width per lot where two (2) lots are involved, and a minimum of ten (10) feet in width per lot where three (3) or more lots are involved. In developments within the metropolitan area where public water and sewer services are available, planned or considered, the minimum panhandle fee strip for two (2) or more lots is twelve (12) feet per lot.
>
> (2) the hearing officer may approve access to the local or collector street through an existing right-of-way instead of an in-fee strip, in cases where such a right of way has been established prior to the submittal of the development plan.

(3) A single panhandle driveway may serve up to five (5) dwellings, three (3) of which may be on internal lots not adjacent to the local or collector street. Panhandle driveways serving lots greater than twenty thousand (20,000) square feet may serve five (5) internal lots plus two (2) dwellings on the front lots adjacent to the panhandle driveway and the local or collector street. In either case, the front lots need not be part of the panhandle driveway development. Notwithstanding the provisions of section 26-172, none of the requirements in this subsection shall be waived.

(4) In any DR zone, the panhandle length shall not exceed five hundred (500) feet. In any RC zone, the panhandle length shall not exceed one thousand (1,000) feet. The maximum permitted length of a panhandle is subject to variance under section 307 of the zoning regulations.

(5) For panhandle driveways serving more than one (1) lot, covenants are to be noted on the record plat providing for common use and maintenance of the panhandle driveway and culvert if any.

(6) The orientation of the dwelling shall be indicated on the plan. The dwelling shall be oriented to establish a desirable relationship between the proposed dwellings and existing adjacent homes and between the proposed dwellings themselves.

(7) Provision must be made at the intersection of the panhandle driveway and the street for collection, mail delivery, and identification of each dwelling served by the panhandle as follows:

a. A paved trash collection area shall be located at the right-side intersection of the panhandle driveway and public orad, as the driveway is exited. The trash collection area shall provide at least sixteen (16) square feet per dwelling unit served by the panhandle driveway.

b. The mail delivery area shall be located at the left intersection of the panhandle driveway and public road, as the driveway is exited.

c. Each dwelling served by a panhandle driveway shall be numerically identified in accordance with section 7-8 of this Code.

(8) The panhandle driveway shall be built in accordance with standards established by the director of public works. The panhandle shall be paved within one (1) year of the issuance of the first occupancy permit and prior to the issuance of the occupancy permit of the last lot to be served, whichever comes first. In DR zones, utilities shall be provided to all lots to be served by the panhandle prior to the paving of the panhandle driveway.

(9) No parking shall be permitted along a panhandle driveway.

(10) Notwithstanding any other provision of these regulations to the contrary, the director of planning may grant a final waiver from any part of this section or these regulations, except subsections (3) and (4) of this section if the director finds (I) that the size, scope, and nature of the subdivision of land into three (3) or fewer lots for residential single-family dwellings does not justify strict compliance with this section, and (ii) that a waiver would be within the scope, purpose, and intent of this section, and (iii) all other county ordinances and regulations have been complied with. (Code 1978, § 22-85; Bill No. 172, 1989, § 2; Bill No. 106, 1990, § 1; Bill No. 61-95, § 1, 6-30-95)

Petitioner believes that his proper avenue of relief is a variance from Section 102.4 of the BZCR, however, if the Board disagrees, Petitioner feels that his requested relief meets the burden for relief under Section 26-266(2). As Mr. Paul Lee, an expert land planner and engineer testified, in his opinion, the Board of Appeals can waive the requirements of Section 26-266 by Section 26-266(2). Further, Mr. Lee testified that if that Section is applicable in the Petitioner's case, in his opinion, the Petitioner meets the requirements of Section 26-266(2) because the right of way in the present case has been in existence since well before the development plan at issue was proposed as the right of way in the instant case was created in 1948.

Under the law on variances in Maryland and under Baltimore County's charter and ordinance, a property's peculiar characteristics or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance's more severe impact on

the subject property because of the property's uniqueness before consideration can be given to requisite practical difficulty or hardship exists for the granting of a variance. Cromwell v. Ward, 102 MD App. 691, (1995). As Cromwell states at 715, the treatise writers are also in accord with the rule that variances should only be granted when the uniqueness or peculiarity of a subject property is not shared by neighboring properties, and where the uniqueness of that property results in an extraordinary impact upon it by the operation of the statute, thus creating undue difficulty (or unnecessary hardship in respect to use variances).

Although Cromwell establishes a high burden, when the record in the instant case is reviewed, it is clear that the subject property is unique when compared to neighboring properties and that the uniqueness of the property results in extraordinary impact upon the property by the operation of Section 102.4 of the BCZR.

Paul Lee, an expert land planner and engineer testified that the subject property is unique when compared to surrounding similarly zoned property, in that the subject property is land locked and has no frontage on a public road. The only means of access to a public road is the existing 12-foot right of way established in 1948. Mr. Lee also testified that the property is unique topographically, as the grade of the property falls off from Sumter Avenue. Mr. Lee noted that the development of the lot is restricted due to the grade of the property, especially in light of the existing right of way which must be used for access to the property. Mr. Lee further testified that the application of Section 102.4 of the BCZR has a more severe impact on the subject property because of the fact that it is land locked. Mr. Lee noted that if the subject property was swiveled so that it had road frontage on Sumter Avenue, as the smaller lots 1000 and 1002 Sumter Ave. are, that the subject property would require no zoning relief to be

developed into 2 lots.

Mr. Lee testified that if the requested variance were not granted, that the petitioner would suffer practical difficulty and unreasonable hardship as all other zoning requirements such as density and setbacks are met by the subject property for subdivision into 2 lots, but for the requirements of Section 102.4. Further, Mr. Lee testified that if the requested variance is granted, he foresaw no harm to the health, safety and welfare of the surrounding community. Mr. Lee also testified that in his opinion, if the requested variance is granted, he did not foresee any harm to the surrounding community from a traffic perspective as right of way was presently serving 2 lots and the requested relief would allow only 1 additional lot.

On cross examination, People's Counsel, Carol Demilio, Esquire, asked Mr. Lee whether there were any other properties in Baltimore County that were landlocked or had topographical problems. Although Cromwell establishes a high burden for the granting of a variance, the uniqueness requirement of Cromwell does not require that there be absolutely no other properties in Baltimore County or whatever subdivision may be at issue, that have the same characteristics. The uniqueness requirement of Cromwell, rather, requires that the property for which a variance is requested have a unique characteristic when compared to neighboring properties in general and throughout Baltimore County. The subject property clearly meets that burden.

Petitioner Mathem Chacko also testified before the Board. He testified that he was asking for relief being requested pursuant to the subject hearing because the subject property is land locked, and if allowed to develop the subject property into 2 lots, that he would be giving his 2 children the 2 built lots. Mr. Chacko testified that he felt the subject property was unique compared to other surrounding properties in the area because the property is land locked and its

only means of access to a public street is the existing 12-foot right of way. He testified that the granting of the requested variance will give him substantial relief. Further, Mr. Chacko testified that the granting of the variance would not cause any harm to the health, safety and welfare of the surrounding community. In addition, Mr. Chacko testified that he would suffer practical difficulty and unreasonable hardship if the variance is not granted.

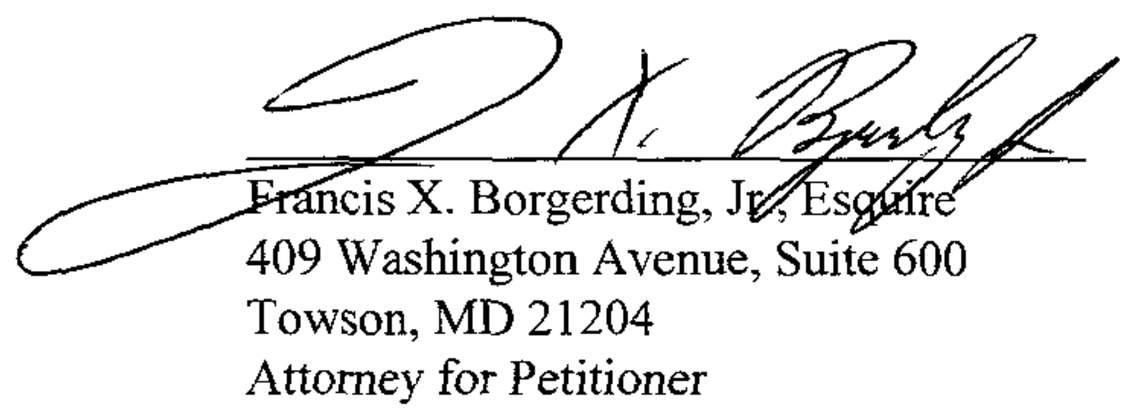
Protestants in this matter produced no expert testimony. The lay witnesses that testified on behalf of the Protestants testified about issues of concern with regard to the Petitioner's requested relief such as right of way maintenance, the ability of the subject property to be developed with public water and sewer and potential runoff from development of the subject property.

Petitioner proffered to the Board at the end of the case that he would accept conditions from the Board requiring proper right of way maintenance, a requirement that any development be with public water and sewer, and a requirement that all Baltimore County Storm Water Management requirements be met pursuant to development of the subject property.

Although Cromwell v. Ward establishes a difficult standard for the granting of a variance, when the evidence and testimony in the instant case are reviewed as a whole are reviewed, it is clear that the subject property's unique characteristics (being landlocked, topography), are the proximate cause of the zoning ordinance's (Section 102.4 of the BCZR) more severe impact on the subject property because of the property's uniqueness. It is also clear that if the requested variance is not granted, the Petitioner would suffer practical difficulty and unreasonable hardship (inability to use land for 2 lots despite meeting all other zoning requirements).

CONCLUSION

In light of the above, this Honorable Court should grant the Petitioner's requested variance from Section 102.4 of the BCZR in each of the two above-captioned cases, or in the alternative, waive the requirements of section 26-266 with regard to the subject property pursuant to Section 26-266(2).



Francis X. Borgerding, Jr., Esquire
409 Washington Avenue, Suite 600
Towson, MD 21204
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that on this 18th day of June, 1998 a copy of the foregoing Closing Memorandum was mailed to People's Counsel for Baltimore County, Room 47 Courthouse, 400 Washington Ave., Towson, MD 21204.

Francis X. Borgerding, Jr., Esquire

IN THE MATTER OF PETITION FOR VARIANCE FOR 1004 SUMTER AVENUE, MATHEM CHACKO, PETITIONER

BEFORE THE BALTIMORE COUNTY BOARD OF APPEALS

Case No. 97-388-A
97-389-A

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

People's Counsel for Baltimore County files this Memorandum in the Matter of Petitions for Variance filed by appellant, Mathem Chacko.

STATEMENT OF THE CASE AND FACTS

In 1986, Mathen E. Chacko (Petitioner) purchased at public auction a single lot with a dwelling, located off Sumter Avenue in the Chesaco area of Baltimore County. Mr. Chacko testified he saw the auction ad in the newspaper and sent his wife to drive by the site.

He was the successful bidder; he rented the property to a residential tenant. Mr. Chacko never lived there. He testified he owns other rental properties in Maryland.

Mr. Chacko made no repairs to the dwelling. The residents attributed the deteriorating condition to Mr. Chacko's failure to repair and maintain the site, and his failure to monitor the tenants. At some point, the condition became deplorable. The property was condemned and torn down by Mr. Chacko. The neighbors testified the site continues to be poorly maintained and is an eyesore in the community.

Mr. Chacko petitions to subdivide the site into two

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residential lots. (He actually filed two Petitions for a Variance - one for each lot. The reference in this Memorandum to the "Petition" includes both). He claimed he began the subdivision process but did not pursue it after county officials advised him he lacked sufficient road width access under Baltimore County Code and Baltimore County Zoning regulations for two residential lots.

The Petitioner seeks a zoning variance to reduce the minimum road width.

The Zoning Commissioner denied the relief requested and Mr. Chacko appealed to the CBA.

The CBA hearing was May 19th. The Petitioner produced **Mr. Chacko and Mr. Paul Lee.** Seven witnesses appeared in opposition, all immediate residents or owners in the area, and four testified. (People's Counsel's Exhibit 8).

A DESCRIPTION OF THE SITE AND ITS HISTORY

The site is .415 acres, approximately 18,000 square feet, zoned DR 5.5, and located in Rosedale, near Pulaski Highway (Route 40). It is part of a 1910 recorded subdivision known as Rosedale Terrace. (People's Counsel Exhibit 9).

The subdivision was laid out for single family dwellings on lots of 2/3rd to 3/4th acre. It was built out accordingly. The lots proposed by the Petitioner are .2 acre each.

The site lies at the right angle where Sumter Avenue veers from northbound to westbound, toward Pulaski Highway. Sumter Avenue terminates at the railroad tracks which run northeast/southwest, parallel to Pulaski Highway. The site is

bound on the east by Batavia Park, a wooded area owned by Baltimore County.

The single family homes are built on the original lots and front Sumter Avenue.

The subject site (part of original Lots 157 and 158) and the adjoining lot to the west (originally Lot 158) were held by a single owner during the 1930's and 1940's.

In 1938, and in 1945, the owner divided Lots 157 and 158 by deed, and created three additional lots fronting on Sumter Avenue: (i) 1006 Sumter Avenue, currently owned by Bonnie Heiden; (1) 1002 Sumter Avenue and 1000 Sumter Avenue, both owned by Joseph F. Novak, who resides in one house and rents the second to a relative. Both owners oppose the relief.

This division occured prior to compreshensive zoning in Baltimore County. The original owner's home remained behind these three. Mr. Chacko purchased the owner's home.

The three houses fronting on Sumter access directly onto Sumter Avenue by their own driveways. The original owner, along with the dwelling behind him owned and occupied by Mr. & Mrs. Reinhardt for nearly 50 years, who oppose the relief, accessed Sumter Avenue by a 12 foot right of way, (of which approximately 10 feet is gravel) running perpendicular to westbound Sumter, and parallel and abutting Batavia Park.(See People's Counsel's map exhibits 2 & 6).

The private right of way extends nearly 400 feet and ends on the private property of Mr.& Mrs. Reinhardt. There is no turn-off

area anywhere on the private right-of way.

NONCONFORMING USE AND SELF CREATED HARDSHIP

The two lots proposed by Mr. Chacko are 9085 sq. ft. and 8994 sq. ft., with the 12 foot right of way as their only access.

Section 104.2 of the Baltimore County Zoning Regulations states:

"No dwelling, other than a multi-family building, shall be built on a lot containing less than 20,000 square feet which does not abut a right-of-way at least 30 feet wide over which the public has an easement of travel, except as provided for panhandle lots in Section 26-266 of the County Code. [BCZR, 1955; Bill no. 172, 1989; Bill NO. 2, 1992.]"

The aforementioned Baltimore County Code Section 26-266 is part of Baltimore County's Development Regulations Law. It requires a 20 feet wide **in fee** panhandle road strip to develop a single lot and a 24 feet wide in fee strip for two lots.

Mr. Chacko cannot comply with BCZR 102.4 because the right-of way is well under 30 feet and is not public. Nor can he comply with the panhandle provision because he does not own the 12 foot right-of-way in fee, and it is not 24 feet wide .

The dwelling that existed on the site for many years predated these zoning and development regulations and was nonconforming at the time Mr. Chacko purchased the property.

BCZR 104 is the **nonconforming use** regulation. A nonconforming use must cease upon any change in use, or discontinuance for a year. Expansion over 25% of floor area is prohibited. The

nonconforming structure can be rebuilt only if destroyed by fire or other similar casualty, but cannot be enlarged.

Here, Mr. Chacko (i) discontinued the single family use; (ii) removed the existing nonconforming structure; (iii) requests to rebuild without regard to floor area and expansion limit of 25%; (iv) requests a change in the nonconforming **use** (from one to two dwellings).

Mr. Chacko lost the nonconforming use status when he demolished the house. It was not destroyed by "casualty". On the contrary, Mr. Chacko neglected to maintain it. He admitted that he invested very little in maintainance and repairs. As landlord, Mr. Chacko bears responsibilty for his selection of tenants and their general behavior.

The neighbors corroborated that the house was not kept in good repair.

The road width requirement was enacted in 1955. Mr Chacko purchased the property in 1986. He had every opportunity to ascertain the applicable law prior to purchase. Moreover, he could have maintained the existing dwelling. His predicament is self-created.

As a result of his actions, Mr. Chacko is bound by the current law.

ROAD WIDTH AND ACCESS IS A DEVELOPMENT PLAN ISSUE

Public access to a development must be decided in the development process after appropriate review and comments by the Baltimore County agencies. Petitioner's requested relief is out of

order at best, and contrary to the development standards in Baltimore County Code (BCC) Section 26-166 et seq.

A "minor" subdivision plan (3 lots or less) must abide by all development regualtions except the community input meeting and the hearing officer's hearing. (BCC 26-171). See BCC 26-203 for the requirements for the development plan. Additionally, BCC 26-205 mandates county review of the proposed plan, including review by public works, fire, planning and zoning.

Specifically, BCC 26-262, 26-263 (attached hereto) provide for access standards, including road width.

Petitioner requests the CBA to approve a plan that did not receive favorable comments and approval in the subdivision process.

Other jurisdictions recognize the importance of road access and confirm the need for careful review of the plat in the development process.

"An important segment of the plat review process is concerned with the adequacy of the subdivider's plans for streets and highways." ". . . a plat will be examined to determine whether the proposed streets are of sufficient width and are well designed to meet the needs of the new area. . . These standards are intended to protect the purchasers of land in the new subdivision by assuring them of suitable access routes . . . Within the confines of such a general delegation of authority, most municipalities have adopted subdivision regulations which prescribe in some detail the standards of street width and design. . . A subdivision plat can be rejected on the ground that its access routes are too narrow, or

that its dead end streets lack sufficient turn-around space." Williams, American Law of Zoning, Volume Section 25.32 et seq. See also Baltimore v. Princeton Constr. Co., 229 Md 176 (1962).

Moreover, the Petitioner's engineer, Mr. Paul Lee, admitted it is customary to proceed through the development process first, or at least simultaneously, with any request for zoning relief. (BCC 26-206.1 provides for a combined hearing for zoning and for plan approval). In any event, a Petitioner cannot circumvent disapproval and negative comments from the County agencies by seeking variance relief on the same issue.

It is undisputed that the panhandle legislation does not apply to the site. While paragraph (2) of BCC 26-266 in the panhandle law permits access through an existing right-of-way, this option is subject to the restrictions of BCZR 102.4 requiring a 30 ft. right-of-way width over which the public has access for lots under 20,000 sq. ft. These sections are also in harmony with the Department of Public Works policy set forth in People's Counsel's Exhibit 1 which **prohibits** development of lots less than 20,000 sq. ft. on a private right-of-way. Additionally, there was ample evidence from the protestants that permitting two additional dwellings over burdens the right-of-way, which is essentially the conclusion of the Zoning Commissioner.

At the least, there are issues of safety (fire and emergency vehicles), environment (runoff and impervious surface) that require input from the respective agancies. (See Comments of Office of Planning and Zoning dated March 25, 1997, and Comments from Public

Works, in Board's file and attached hereto, and People's Counsel Exhibit 1 for development requirements on rights of way).

Finally, it should be noted the panhandle law refers to the "hearing officer" (for development plans) and not the "zoning commissioner". BCC 26-266 for right-of-way access can be invoked by the CBA in a development plan appeal, but not in a sole zoning variance appeal.

BCZR SECTION 102.4 IS NOT SUBJECT TO VARIANCE RELIEF

BCZR Section 307 permits a variance from "height and area regulations, from off-street parking, and from sign regulations . . . They [zoning commissioner and county board of appeals] shall have no power to grant any other variances."

The relief requested by Petitioner does not pertain to height, area (the bulk regulations for the zone), signs and parking. Height and area requirements pertain to structures and signs on the subject site. If off site development is subject to a variance under BCZR 307, the regulation would specify, as in "off-site parking".

There is no authority to reduce the width of a right of way under BCZR 307, and under the bulk regulations for the D.R. 5.5 zone, and particularly on petition of a single user when other users are in opposition.

THE RELIEF MUST BE DENIED ON THE MERITS

If the CBA determines it has authority to decide a variance here, there is ample authority to support BCZR 102.4 and to deny the relief.

"A Michigan court upheld an ordinance prohibiting landowners from building more than one home on their property unless access was provided by a road at least sixty-six feet in width. The court found the law was a legitimate exercise of the township's police power because it was intended to protect the safety of its citizens by requiring the access to residential property be wide enough to allow for the entry and exit of emergency vehicles such as police cars, ambulances and fire trucks." Williams, supra at Section 25.33 quoting Bevan v. Township of Brandon, 438 Mich. 385 (1991), cert denied 502 US 1060. (See also Comments of Robert W. Bowling dated March 31, 1997 in Board's file stating Baltimore County Fire Department requires 16 foot wide access).

The denial of building permits on roads which have fallen into disrepair, and have insufficient access has been upheld. See Fink v. Jagger, 211 NYS2d 51 (1960), Spalke v. Board of Appeals, 7 Mass App 683, 389 NE2d 788 (1979), Macchia v. Board ofAppeals, 164 NYS2d 463 (1957).

"Where land has been subdivided so as to leave two rear lots which did not front on street, and no land was reserved to widen pasageways used by these lots, denial of building permits for rear lots on the ground that they did not front upon street as required by zoning law was not in excess of board's authority." Iddings v. Board of Appeals, 255 NE2d 604 (1970).

There is a failure to provide access where the only route is a "rough, broken unfinished road" Stoneham v. Savelo, 170 NE2d 417 (1960), or where the access road is below required width standards

Gerczak v. Todd, 233 Md 25 (1963).

In 1995, this CBA denied a Special Hearing Petition to further subdivide a lot on a panhandle strip and refused to waive the width requirements under BCC Section 26-266(1). In The Matter Of August T. McColgan, Case No. 95-278-SPH.

Moreover, the Petitioner has no claim for a "taking". See Khan and Anello cases attached.

PETITIONER FAILED TO PROVE ELEMENTS FOR VARIANCE RELIEF UNDER BCZR 307 AND CASELAW

If the CBA reaches the merits of the variance request, **there is no evidence of uniqueness**. The Petitioner's engineer, Mr. Lee, admitted there are other similarly shaped lots in Baltimore County, and that other lots slope downward below street level. Additionally, the neighbors testified that the grade of all the lots on the entire street is the same as the subject site.

Mr. Lee also admitted that other lots in the county access onto rights of way that meet all requirements.

Without evidence of uniqueness, the Board need not proceed to the second prong of the burden of proof for a variance. Even so, any claim of **practical difficulty or unreasonable hardship is self-created**.

The Petitioner purchased the property as an investment hoping to make a good deal at an auction. Over the next 10 years he failed to maintain the existing non-conforming dwelling, allowing it to deteriorate to the point of crumbling. He forfeited his nonconforming status.

In the meantime, the neighbors have had to live with the condition of the property. They asserted with testimony and photographs that it is the most, and probably the only, unkempt property in the neighborhood, and constitutes an eyesore. (See People's Counsel's Exhibits 4 A.B.C.D.).

Furthermore, the drainage and runoff problems from the poorly maintained property site and right of way, since purchased by Mr. Chacko, have adversely affected properties to the rear. Two additional dwellings will exacerbate these conditions.

Furthermore, Petitioner's site plan offers no solution to the drainage problem. (See Comments of Robert W. Bowling dated March 31, 1997, in Board's file).

The Petitioner's case falls well short of the standards stated in Cromwell v. Ward, 102 Md.App. 691 (1995).

CONCLUSION

In conclusion, the Petitions for Variance must be denied:

1. The CBA cannot vary the right of way width under BCZR 307.
2. Baltimore County prohibits development of lots less than 20,000 sq. ft. on a private right-of-way; Petitioner's site is on a private right of way.
3. BCZR 102.4 requires that development of lots on less than 20,000 sq. ft that do not front a public road, must be on a public right-of-way over 30 feet or on a panhandle in-fee strip; Petitioner satisfies none of these requirements.
4. The issue must be addressed in the Development Process and

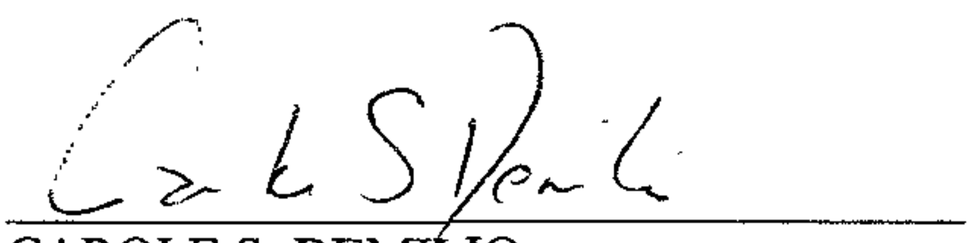
reviewed by County agencies and Public Works.

5. The Petitioner failed to prove uniqueness of the site and practical difficulty.

6. Any hardship is self created.

Respectfully submitted,

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



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

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June, 1998, a copy of the foregoing Memorandum of People's Counsel for Baltimore County was mailed to Francis X. Borgerding, Esq., 409 Washington Avenue, Suite 600, Towson, MD 21204, attorney for Petitioner.

CAROLE S. DEMILIO

development management may award contracts for the completion of any or all of the required improvements through the process of informal bidding outlined in section 15-86 of this Code or through the award of contracts to the private contractors hired by the applicant prior to the default, in amounts not to exceed the amount of available security proceeds. Notice of the award of such contracts shall be provided to the council under section 902(f) of the Charter.
(Code 1978, § 22-79; Bill No. 87-97, § 1, 9-29-97)

Secs. 26-247—26-260. Reserved.

DIVISION 4. GENERAL DESIGN STANDARDS AND REQUIREMENTS

Sec. 26-261. Compliance.

(a) The general design standards and requirements set forth in this division are intended to provide criteria for the preparation and review of proposed development.

(b) Subject to the provisions of sections 26-170 and 26-172, all development shall meet the standards and requirements contained in this division and shall conform to the policy and intent of these regulations.

(c) Additional standards and requirements, not inconsistent with these regulations, shall be adopted in accordance with the provisions of section 26-283 of these regulations.

(d) Proposed development in the critical area must also comply with the standards and requirements specified in this Code.
(Code 1978, § 22-80)

Sec. 26-262. Street system.

The proposed street system must provide safe and convenient vehicular circulation, both within the tract and between it and neighboring properties or particular traffic generators. To this end, no plan or plat may be approved unless the tract to which it applies is bordered by or would have access to a public street that is or would be made adequate to carry anticipated traffic; and no plan or plat may be approved unless construction pursuant to it would provide adequate access for emergency-service vehicles to each building on the tract. Internal circulation must be predominantly by local streets and through-traffic movement predominantly by collector or arterial streets. Only the minimum necessary number of driveway entrances on collector or arterial streets may be permitted, and the county may require the provision of a single access drive or a frontage road to serve adjacent buildings or lots, where necessary to reduce the number of entrances on an arterial street. Access drives connecting nonresidential developments may be required. The street system may be required to be extended to the boundaries of the tract and connected to adjacent street.
(Code 1978, § 22-81)

Cross reference—Roads, bridges and sidewalks, tit. 31.

Sec. 26-263. Street design and construction.

Proposed streets must conform to adopted county standards for design and construction, except that different standards may be imposed where necessary to:

(1) Preserve trees or other natural features;

(2) Minimize grading or impervious surfacing;

(3) Accommodate utilities, landscaping, benches, sidewalks, or other street-side facilities; or

(4) Increase the suitability of the design or construction to the terrain, soil, surface drainage, groundwater, or anticipated traffic load or speed.

In addition, the county may require the provision of turning lanes and traffic signals as necessary at heavily traveled intersections or impose other special requirements for street design or arrangement as may be necessary to minimize the total number of intersections or to minimize four-way intersections, oblique intersections, intersections on curves, or large corner radii. No proposed street may be designed so as to intersect at grade with any railroad, except sidings.
(Code 1978, § 22-82)

Cross reference—Roads, bridges and sidewalks, tit. 31.

Sec. 26-264. Parking, signs, benches and transit facilities.

(a) Parking required under provisions of the zoning regulations and the state building code for the handicapped must be located and designed so

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

60

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

DATE: March 25, 1997

FROM: Arnold F. 'Pat' Keller, III, Director
Office of Planning

SUBJECT: 1004 Sumter Avenue

RECEIVED
APR 11 1997

INFORMATION:

Item Number: 388 & 389

Petitioner: Mathem Chacko

Property Size:

Zoning: DR 5.5

Requested Action: Variance

Hearing Date: / /

SUMMARY OF RECOMMENDATIONS:

This office recommends that these properties be processed through the minor subdivision procedure prior to any consideration of the variances.

Prepared by: Jeffrey W. Long

Division Chief: Cary L. Kerns

AFK:JL

ITEM388/PZONE/ZAC1

B A L T I M O R E C O U N T Y, M A R Y L A N D

INTEROFFICE CORRESPONDENCE

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

Date: March 31, 1997

FROM: Robert W. Bowling, Chief
Development Plans Review Division

SUBJECT: Zoning Advisory Committee Meeting
for March 31, 1997
Item No. 388

The Development Plans Review Division has reviewed the subject zoning item.

If a 16' wide access is not available the developer must obtain the Fire Departments approval of the 12 foot wide private right-of-way access to Sumter Avenue.

A gravity sewer won't work for this lot as the grade drops away from Sumter Avenue, therefore the sewer house connection will require a grinder pump.

RWB:HJO:cab

cc: File

ZONE331.388

87 N.Y.2d 344

In the Matter of Shahid U. KHAN, Respondent,

v.

ZONING BOARD OF APPEALS OF the VILLAGE OF IRVINGTON et al., Appellants.

Court of Appeals of New York.

Jan. 16, 1996.

Landowner commenced Article 78 proceeding contesting denial of building permit or variance by village zoning board of appeals. The Supreme Court, Westchester County, Cowhey, J., ruled in favor of board, and landowner appealed. The Supreme Court, Appellate Division, 194 A.D.2d 539, 599 N.Y.S.2d 975, reversed, and board sought leave to appeal. The Court of Appeals, Smith, J., held that: (1) there was no legal basis for creation of separate common-law right that would automatically exempt property owners from area restrictions without individualized assessment of hardship; (2) zoning ordinance providing exemptions to minimum lot or area regulations did not apply to resource protection regulations; and (3) board acted appropriately in denying area variance.

Order of Appellate Division reversed; petition dismissed.

1. Zoning and Planning ⟹151

Municipality may, in reasonable exercise of its police powers, change its zoning to control land use and development.

2. Zoning and Planning ⟹503

Municipality that chooses to make changes to its zoning to control land use and development may, but need not, exempt existing owners of substandard lots from the changes' more onerous effects; abrogating *Matter of Pateman v Zoning Bd. of Appeals*, 191 A.D.2d 568, 594 N.Y.S.2d 809, *Matter of Morin v. Zoning Bd. of Appeals*, 163 A.D.2d 389, 558 N.Y.S.2d 117, *Matter of M.E.F. Bldrs. v. Siegel*, 162 A.D.2d 533, 556 N.Y.S.2d 730, *Cange v Scheyer*, 146 A.D.2d 594, N.Y.S.2d 836, *Modular Homes Corp. Combs*, 115 A.D.2d 527, 495 N.Y.S.2d *Matter of Mackay v. Mayhall*, 92 Misc. 868, 401 N.Y.S.2d 679, *Matter of Eu Zoning Bd. of Appeals*, 165 A.D.2d 872, N.Y.S.2d 344.

3. Zoning and Planning ⟹254

Village zoning ordinance, which provi that nonconforming or substandard prop may be exempt from minimum lot or regulations where its ownership was di ent from that of any adjoining land on e tive date of ordinance and is still so owne time of request for building permit, did provide exemption from regulations lim development and restricting new cons tion on environmentally sensitive areas; nance related only to area and width. lage of Irvington, N.Y., Zoning Ordin § 47-5.D.

4. Zoning and Planning ⟹605, 703

Determination of zoning board of peals must be upheld if it is rational supported by substantial evidence.

5. Zoning and Planning ⟹481, 494

Generally, a "use variance" will allo of land as a matter of discretion in ci stances when desired exceptional us been proscribed by zoning regulations; cant must make a showing of unnec hardship. McKinney's Town Law §, McKinney's Village Law § 7-712-b.

See publication Words and Phra for other judicial constructions and d initions

6. Zoning and Planning ⟹503, 504

An "area variance" involves ... such as setback lines, frontage requir lot-size restrictions, density regulatio yard requirements; generally speak involves no change in essential char zoned district, nor does it seek to essential use of the land.

See publication Words and Phra for other judicial constructions and d initions.

7. Zoning and Planning ⟹503

Zoning Board of Appeals, before ing area variance, must engage in b

considering factors outlined in applica- tatute and weighing benefit to applicant t detriment to health, safety, and wel- of neighborhood or community; appli- need not establish practical difficulties use of his land. McKinney's Village 7-712-b, subd. 3(b).

ning and Planning ⟹503

Village zoning board of appeals acted priately and within its authority in de- landowner's application for area vari- after passage of regulations that re- d new construction on property, which located within flood plain; board found variance was not warranted because ap- t had failed to demonstrate practical ulties. McKinney's Village Law § 7- subd. 3(b).

ning and Planning ⟹379, 503

andowner failed to demonstrate that of area variance or building permit ted to confiscatory taking following e of regulation that restricted new uction on his property; landowner did fer proof of value of property before ter regulation went into effect.

n.

Plunkett & Jaffe, P.C., White Plains J. Plunkett and Elizabeth S. Torkel- counsel), for appellants.

Richard T. Blancato, Tarrytown, for re- nt.

OPINION OF THE COURT

TH, Judge.

ondent Khan sought to construct a ce on property that was made subject ronmental zoning regulations soon af- bought it. The primary issue in this whether a separate ordinance which an exemption from zoning regula- property held in single and separate hip gave respondent a right to build in the new environmental zoning regu- Because we determine that the ordi- roviding the exemption here does not the zoning regulation at issue de protect property from the effects of e reverse.

Respondent, Shahid U. Khan, seeks, pursuant to CPLR Article 78, to vacate and annul a decision by appellant, Zoning Board of Appeals of the Village of Irvington (hereinafter ZBA), which denied respondent's request for issuance of a building permit or, in the alternative, a variance. Respondent is the owner of two parcels (both improved and unimproved) of real property (Tax Map Sheet 10B, Block 229, Lots 83, 84, 85 and portions of 81 and 82) located in the Village of Irvington, Westchester County, New York. The two parcels were purchased on January 27, 1989, under a single contract of sale with two separate deeds. No apportionment of the purchase price was made between the two parcels by the parties or the contract. However, the valuation of the two parcels for transfer tax purposes was $270,000 for the improved parcel and $10,000 for the unimproved parcel. Respondent acquired the unimproved parcel in his name only and acquired the parcel improved with a single-family dwelling jointly with his wife. The improved parcel is not in issue here. Both parcels were held by the previous owners as one lot. Respondent divided the parcels in order to build on the unimproved property and sell it.

Both parcels are located in a single-family zoning district requiring that lots have a minimum area of 5,000 square feet. The unimproved parcel has 5,202 square feet. Under the Village's zoning ordinance, the transfer of the subject property, as divided, created a legal building lot separate from the adjoining parcel without the requirement of subdivision approval (Village of Irvington Zoning Ordinance § 47-52), as each lot had the required frontage on an existing improved public street.

no subdivision approval required here.

On January 30, 1989, after the purchase and division of the two parcels, respondent applied for a building permit to construct a house on the unimproved parcel. Respondent was informed that because the subject property was located in a "flood plain area," before a building permit could be issued, he had to apply for a development permit or

flood plain area

variance from the Village Board of Trustees under chapter 19 of the Village Code.[1]

On February 28, 1989, approximately one month after respondent purchased the subject property, the Board of Trustees amended the Village of Irvington Zoning Ordinance with the enactment of the "Resource Protection" regulations. The purpose of these regulations was to protect environmentally sensitive areas such as wetlands, watersheds and flood plains. The Resource Protection regulations limited development and restricted new construction on environmentally sensitive areas within the Village. Included within the regulations are all land located on a flood plain, wetlands, watershed land and steep slopes. Under the Resource Protection regulations, the Village's Planning Board determines the "net buildable site area" by subtracting the "base site area" from the "resource protection land".

The Planning Board determined that respondent's "net buildable site area" under the Resource regulation's formula was "zero" as the entire parcel was located in a flood plain (record on appeal, at 45). On March 29, 1989, respondent applied to the ZBA (1) for a favorable interpretation of the zoning ordinance applicable to single and separate ownership (Village Zoning Ordinance § 47–5.D)[2] or (2) for an area variance. At the May 23, 1989 meeting of the ZBA, respondent appeared with his attorney and his architect Respondent contended that he had a constitutional right to build a residence on the property, that he would add fill to prevent flooding, and that the property with a house would have a value of $100,000 and without a house, a value of only $10,000. Opposition to the application included assertions of a risk of increased flooding to nearby properties caused by the new construction, destruction of the aesthetic value of the and an increase in traffic congestion.

On August 15, 1989, after additional ment, the ZBA concluded that section was inapplicable to the facts here bec applied only to upzoning, that is, to th requirements for building on propert concluded further that because the property was, before and after the enac of the Resource regulations, located within a flood plain area, a variance chapter 19 of the Village's prior zoning lations was required. In addition, the stated that because respondent had fai demonstrate practical difficulties, no va was warranted.

Respondent commenced an article 78 ceeding seeking annulment of the ZBA termination and an order directing is of a building permit or variance. Su Court dismissed the petition, conclud the ZBA properly denied petitioner's for a favorable interpretation of secti 5.D, as that section was enacted to owners of property in single and ownership from the consequences of ing." The court found the Resource tions were not part of the minimum and area requirements of the zoni nance. The court further found th denial of respondent's request for a a reasonable exercise of its discre supported by the record. The Court rejected respondent's argume unconstitutional taking, finding re failed to offer proof of the property value when it was acquired as com the value after enactment of the

The Appellate Division reversed the determination of the ZBA and the ZBA to grant respondent's and issue a variance. The Appellat

1. Chapter 19 was adopted on October 16, 1978 to comply with Federal regulations concerning comprehensive programs for low-cost flood insurance to homeowners to regulate development in flood plains "Flood plain areas" are based on a Flood Insurance Rate Map and a Federal study prepared by the Federal Emergency Management Agency

2. Section 47–5 D (renum § 243–7.D [1990]) ("single and separate ownership" provision) provides

"D The minimum lot width or tions shall not apply to any lot wi and/or width of less than that prescr provided that

"1 Such lot was under different from that of any adjoining land on th date of this ordinance and is still so o time of application for a building p

"2 Such lot shall be subject to a plicable regulations prescribed by nance."

since respondent owned the subject in single and separate ownership enactment of the ordinance render- nconforming, respondent had a vest- to use the property for residential

lant ZBA argues that respondent is led to an exemption under section of the Zoning Ordinance and that the Division erred in concluding that ent has a vested right to use the parcel for residential purposes.

of the courts of this State have rec- a common-law right to an exemption inimum area ordinances where the was held in single and separate p before an ordinance's adoption rendered substandard as a result of nance (*see, Matter of Pateman v. Bd. of Appeals*, 191 A.D.2d 568, 594 809, *appeal dismissed* 82 N.Y.2d N.Y.S.2d 795, 622 N.E.2d 295; *Matorin v Zoning Bd. of Appeals*, 163 389, 558 N.Y.S.2d 117; *Matter of Bldrs v. Siegel*, 162 A.D.2d 533, 556 730; *Cange v. Scheyer*, 146 A.D.2d N.Y.S.2d 836; *Modular Homes Combs*, 115 A.D.2d 527, 495 724; *Matter of Mackay v Mayhall*, 2d 868, 401 N.Y.S.2d 679; *see also, Ewers v Zoning Bd. of Appeals*, 2d 873, 560 N.Y.S.2d 344; *Matter of Volz*, 34 A.D.2d 966, 313 N.Y.S.2d based on constitutional concerns confiscatory takings and using con- rowed from the nonconforming use *see, Matter of Dittmer v. Epstein*, 675, 310 N.Y.S.2d 540; *Matter of Board of Zoning & Appeals*, 28 281 N.Y.S.2d 569, *affd*, 21 N.Y.2d Y.S.2d 990, 237 N.E.2d 239; *Matandalay Constr. v. Eccleston*, 9 195 N.Y.S.2d 84; *see also, Matong Is. Land Research Bur. v.* Misc.2d 469, 159 N.Y.S.2d 414), the d separate ownership" doctrine been applied in the lower courts when certain criteria are satisfied, of what was once a buildable lot is use it for residential purposes not- g a contrary area restriction and dingly, the owner must be issued a variance as a matter of right and without regard to economic injury, self-imposed hardship or the possibility of a sale (*see, Matter of Pateman v. Zoning Bd. of Appeals, supra, Matter of M.E.F. Bldrs. v. Siegel, supra; Modular Homes Corp. v. Combs, supra*). Significantly, the doctrine has never been explicitly recognized by this Court

[1, 2] Having examined the case law, we now conclude that there is no need for a common-law rule to protect landowners who possess parcels in "single and separate ownership" situations, and, accordingly, we decline to adopt such a rule. A municipality may in the reasonable exercise of its police powers change its zoning to control land use and development. A municipality that chooses to make such changes may, but need not, exempt existing owners of substandard lots from the changes' more onerous effects. As one of several ways to accomplish this, a municipality may provide through its ordinance for exemptions for property that is held in single and separate ownership. In the usual case, such exemptions are self-executing and no application to the local Zoning Board of Appeals is necessary. In contrast, where the municipality has not created an exemption as a matter of legislative grace, the property owner can ordinarily utilize the local provisions for obtaining a variance. Failing that, an owner who perceives himself or herself aggrieved can bring a judicial proceeding alleging an unconstitutional taking or some governmental arbitrariness in the denial of a variance. Since the owner's constitutional rights are amply protected by the availability of such proceedings, there is no legal basis for overriding the municipality's legislative choice by creating a separate common-law right that would automatically exempt property owners from area restrictions without an individualized assessment of hardship.

[3] In this case, the single and separate ownership exemption found in Irvington Village Zoning Ordinance § 47–5.D is inapplicable The ordinance limits an exemption by its terms and provides that nonconforming or substandard property may be exempt from minimum lot or area regulations where its ownership was different from

that of any adjoining land on the effective date of the ordinance and is still so owned at the time of the request for a building permit. As such, it is similar to ordinances generally used for property held in "single and separate ownership" or "grandfather-clause" type provisions for zoning regulations involving substandard lots (*see*, 1 Anderson, New York Zoning Law and Practice § 9.43, at 472–479 [3d ed]). The ordinance relates to area and width and has no application here where Resource Protection regulations were designed to protect property against floods.

[4] Thus, in order to prevail, respondent would have to show entitlement to a variance almost as a matter of law since a Zoning Board's determination must be upheld if it is rational and supported by substantial evidence (*Matter of Fuhst v Foley*, 45 N.Y.2d 441, 444, 410 N.Y.S.2d 56, 382 N.E.2d 756; *Conley v. Town of Brookhaven Zoning Bd. of Appeals*, 40 N.Y.2d 309, 314, 386 N.Y.S.2d 681, 353 N.E.2d 594).

[5] Respondent's burden turns on whether a use or area variance is at issue. Generally, a use variance will allow use of land as a matter of discretion in circumstances when the desired exceptional use has been proscribed by the zoning regulations (*Consolidated Edison Co. v Hoffman*, 43 N.Y.2d 598, 606–607, 403 N.Y.S.2d 193, 374 N.E.2d 105). The applicant must make a showing of unnecessary hardship (*see, Matter of Sasso v Osgood*, 86 N.Y.2d 374, 633 N.Y.S.2d 259, 657 N.E.2d 254; *Matter of Otto v Steinhilber*, 282 N.Y. 71, 24 N.E.2d 851).[3]

[6] Here, respondent is seeking an area variance "Generally speaking, an area variance involves no change in the essential character of the zoned district" (*Matter of Wilcox v. Zoning Bd. of Appeals*, 17 N.Y.2d 249, 254, 270 N.Y.S.2d 569, 217 N.E.2d 633; *see also, Matter of Overhill Bldg. Co v Delany*, 28 N.Y.2d 449, 322 N.Y.S 2d 696, 271 N.E.2d 537), nor does it seek to change the essential use of the land (*Matter of National Merritt v Weist*, 41 N Y.2d 438, 441, 393 N.Y.S.2d 379, 361 N.E.2d 1028). Thus, an area variance involves "matters such as setback frontage requirements, lot-size restric density regulations, and yard require (2 Anderson, *op. cit.*, <\it|> § 23.06).

[7] In *Matter of Sasso v. Osgood* this Court interpreted the parallel pro of Town Law § 267–b(3) and held th Zoning Board, before granting an are ance, must engage in a balancing test, ering the factors outlined in |352the and weighing the benefit to the ap against the detriment to the health, and welfare of the neighborhood or co ty. The applicant need no longer e practical difficulties in the use of his That interpretation and analysis ap section 7–712–b(3)(b), the Village La sion relevant here.

[8] Applying that test in this c conclude that the Zoning Board acted priately and within its powers in den variance.

[9] Finally, respondent's argum denial of a variance and permit amo confiscatory taking is rejected. Re failed to offer proof of the value of t erty before and after the regulation effect (*Matter of Kransteuber v. Sch* A.D.2d 724, 574 N.Y.S.2d 968, *affd.* 783, 587 N.Y.S.2d 272, 599 N.E.2d

Accordingly, the order of the Division should be reversed, with the petition dismissed.

Order reversed, etc

KAYE, C.J., and SIMONS, TITO BELLACOSA, LEVINE and CIP JJ., concur.

3. The requirements for a showing of hardship are now set forth in Town Law § 267–b and Village Law § 7–712–b

87 N Y.2d 353

The PEOPLE of the State of New York, Appellant,

v.

urn J. PERRY, Jr., Respondent.

Court of Appeals of New York.

Feb. 8, 1996.

endant was charged with traffic in- of failing to yield to emergency vehi- "appearance letter," defense counsel town court that defendant was enter- guilty plea and requested supporting n. After no deposition was re- efendant moved to dismiss simplified ion. The Homer Town Court, granted motion, based on failure to and prosecution appealed The County Court, Mullen, J., affirmed ied. Appeal was allowed, and the Appeals, Ciparick, J., held that let- r constituted nor dispensed with arraignment as required to trigger n's obligation to furnish supporting

sed and simplified information re-

lles ⇐351.1

earance letter" sent by defense ore than 48 hours after defendant charged with traffic infraction, ported to enter not guilty plea and supporting deposition for simpli- mation, did not satisfy need for nt and therefore did not trigger n's obligation to furnish supporting for simplified information. CPL §§ 1.20, subd. 9, 100.25, 0.40, subd. 2, 170.10, subds. 1, 1(a, subd 1(a), 170.35, subd. 1(a); Vehicle and Traffic Law 806.

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rd J. Shay, District Attorney of County, Cortland (David J. Adinolfi el), for appellant.

Milburn J. Perry, Jr., respondent pro se, precluded.

OPINION OF THE COURT

CIPARICK, Judge.

The question on appeal is whether an appearance letter sent by defense counsel more than 48 hours after defendant had been charged with a traffic infraction triggered the People's obligation to furnish a supporting deposition under CPL 100.25(2). We conclude that defense counsel's appearance letter neither constituted nor dispensed with the need for an arraignment and therefore hold that the People were under no statutory obligation to furnish a supporting deposition.

On March 20, 1994, defendant was charged with failing to yield to an emergency vehicle, a traffic infraction proscribed by Vehicle and Traffic Law § 1144. By an "appearance letter" dated April 12, 1994, defendant's lawyer notified Town Court that defendant was entering a not guilty plea and requested a supporting deposition from the complaining police officer.

After more than 30 days had elapsed from the mailing of the appearance letter, defendant moved to dismiss the simplified traffic information based on the People's failure to timely |353furnish a supporting deposition. Town Court dismissed the simplified information for "lack of prosecution." On appeal, County Court modified the dismissal on the law to clarify that the simplified information was rendered insufficient on its face by the People's failure to furnish the requested supporting deposition (*see*, CPL 100.40[2]) and, as so modified, affirmed the dismissal of the simplified information. A Judge of this Court granted leave and we now reverse.

CPL 100.25(2) provides that a "defendant arraigned upon a simplified information is, upon a timely request, entitled as a matter of right to have filed with the court and served upon him, or if he is represented by an attorney, upon his attorney, a supporting deposition of the complainant police officer * * * providing reasonable cause to believe that the defendant committed the offense or offenses charged." If properly requested, a

89 N Y 2d 535

[535]In the Matter of Rose E. ANELLO, Appellant,

v.

ZONING BOARD OF APPEALS OF THE VILLAGE OF DOBBS FERRY et al., Respondents,

Briary Woods Neighborhood Association, Intervenor-Respondent.

Court of Appeals of New York

Feb 18, 1997

Property owner brought action challenging decision by village zoning board of appeals denying variance from "steep slope" ordinance, which prevented owner from building single-family dwelling on her lot The Supreme Court, Westchester County, Leavitt, J., annulled board's decision, and board appealed. The Supreme Court, Appellate Division, 226 A.D.2d 458, 641 N.Y.S 2d 52, reversed, and property owner sought further review The Court of Appeals, Ciparick, J , held that, since owner acquired her property after enactment of ordinance, its enforcement did not deprive her of any property interest for which she was entitled just compensation

Affirmed

Wesley, J., dissented and filed opinion.

Eminent Domain ⇐2(1.2)

Where property owner purchased property two years after village's enactment of "steep slope" ordinance, enforcement of ordinance to deny variance, which prevented owner from building single-family dwelling, did not constitute governmental taking of any property interest for which compensation was due. U S.C.A Const.Amend 5; McKinney's Const. Art 1, § 7

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[536]Morvillo, Abramowitz, Grand, Iason & Silberberg, P C., New York City (Catherine M Foti, of counsel), for appellant.

[537]Plunkett & Jaffe, P.C., White Pl (Kevin J Plunkett and Elizabeth S. Tor sen, of counsel), for respondents.

[538]Morgan, Lewis & Bockius LLP, York City (David Stoelting, of counsel intervenor-respondent

OPINION OF THE COURT

CIPARICK, Judge.

Petitioner contends that the denial variance from Dobbs [539]Ferry's "steep ordinance, which prevents her from bui a one-family dwelling on a parcel, const a taking of property for which she is en to just compensation (*see*, U.S Const Amend; N.Y Const., art. I, § 7). We agree and conclude that because petit acquired her property after the enactme the steep-slope ordinance, its enforce does not deprive her of any property est.

In 1989, the Village enacted the slope ordinance in an effort to "protect ronmentally sensitive lands, preserve Village's natural resources and promot orderly development of land * * * wi cessively steep slope areas" (Dobbs Village Code § 300-35.D). To dete whether a lot is large enough to be oped, the ordinance requires a perc reduction of the property's gross ar pending upon the degree of the prop slope, which yields the buildable are plying the steep-slope ordinance to p er's property, the buildable area is le 4,200 square feet, well below the Code's minimum buildable area of square feet.

Petitioner sought to construct a one dwelling on the property and appli variance from the steep-slope or The Zoning Board of Appeals den variance, reasoning that petitioner the property over two years after th slope law came into effect and therefo full knowledge that the lot was unbu and non-conforming" The Board als that granting a "variance would have stantial detrimental impact upon th rounding area and constitute a detri the health, safety and welfare of the

ood." On petitioner's subsequent CPLR e, 78 proceeding, Supreme Court an- the Board's decision, holding that peti- was entitled to a variance under the e and separate ownership" theory the Board's appeal was pending before ppellate Division, this Court rendered cision in *Matter of Khan v Zoning Bd. peals*, 87 N.Y.2d 344, 639 N.Y.S.2d 302, N.E.2d 782, rejecting the "single and te ownership" doctrine The Appel- Division thereafter reversed the order of me Court based solely on *Khan* and sed the petition, concluding that the 's denial of a variance was not arbi- or capricious and was supported by ntial evidence.

appeal to this Court, petitioner's main ent is that the denial of a variance the steep-slope ordinance works a tak- her property Petitioner's takings must fail because she never acquired nfettered right to build on the perty free from the steep-slope ordi- Petitioner purchased the property in two years *after* the steep-slope ordi- was enacted. This statutory restric- ns encumbered petitioner's title from tset of her ownership and its enforce- oes not constitute a governmental tak- any property interest owned by her *Soon Duck Kim v. City of New* 90 N.Y.2d 1, 7, 659 N.Y.S.2d 145, 681 d 312 [decided today] [enforcement of ting statutory lateral-support obli- not a taking of a property interest]; *of Gazza v New York State Dept of Conservation*, 89 N.Y.2d 603, 614, 657 2d 555, 679 N.E.2d 1035 [decided to- nforcement of preexisting statutory s restriction not a taking of a proper- est]).

he reasons fully elaborated in *Kim*, t 7, 659 N.Y.S.2d 145, 681 N.E.2d 312 *za, supra*, at 609, 657 N.Y.S.2d 555, .2d 1035, we are unpersuaded by the ts in the dissenting opinion. Impor- etitioner does not seek to invalidate p-slope ordinance as an improper of the Village's police power, but only challenges the ordinance as applied to her property (*see, Gazza, supra*, at 614, 657 N.Y.S.2d 555, 679 N.E.2d 1035, *Vernon Park Realty v. City of Mount Vernon*, 307 N Y. 493, 500-501, 121 N.E.2d 517).

Moreover, we disagree with the dissent's assertion that our holdings in these cases will impede the alienability of property. The rule that preexisting regulations inhere in a property owner's title will affect the *value* of property, but this should furnish ample incentive to the prior owner—the party whose title has been redefined by the promulgation of a new regulation—to assert whatever compensatory takings claim it might have. If a prior owner, whether immediate or not, fails to assert a takings claim, it is this prior owner who might suffer the potential loss because the purchase price of the property will very likely reflect any restrictions inhering in title. Of course, the parties can condition sale on receipt of the necessary use allowances or prosecution of a takings claim. Any compensation received by a subsequent owner for enforcement of the very restriction that served to abate the purchase price would amount to a windfall, and a rule tolerating that situation would reward land speculation to the detriment of the public fisc. Additionally, the rule advanced by the dissent would have the effect of unsettling property law and other land-use restrictions throughout the State. The bright-line rule articulated in *Kim* and *Gazza*, which allows for a subsequent purchaser to challenge the validity of previously enacted laws (as opposed to pursuing a compensatory takings claim), will enhance certainty and, to that extent, facilitate transferability of title.

Furthermore, if property owners were permitted to assert compensatory takings claims based on enforcement of preexisting[541] regulations, the traditional takings analysis articulated in *Penn Cent.*, and its inquiry into "the extent to which the regulation has interfered with distinct investment-backed expectations," would be rendered hopelessly circular (*see, Penn Cent Transp. Co. v. New York City*, 438 U.S 104, 124, 98 S.Ct 2646, 2659, 57 L.Ed.2d 631)[1] To illus-

dissent notes, Justice Kennedy opined in that "[s]ome circularity must be tolerated in these matters," but Justice Kennedy was discussing the impact of *newly enacted* regulations

trate based on the facts of this case If petitioner's title was defined without regard to the steep-slope restriction, then her investment-backed expectations would include the possibility of winning a compensatory takings lawsuit as a result of the Village's *enforcement of the ordinance* However, the success of her compensatory takings lawsuit would depend largely on the extent to which the ordinance interferes with her investment-backed expectations, which would in turn depend on the possible success of the compensatory takings claim, and so on. This inevitable circularity points up the analytical flaw in permitting a subsequent purchaser to assert a compensatory *takings claim* based on a property interest that has already been defined out of the owner's title.[2]

Petitioner's other arguments are unpreserved or without merit Accordingly, the order of the Appellate Division should be affirmed, with costs.

WESLEY, Judge, dissenting.

I disagree that the enforcement of the steep-slope ordinance does not constitute a taking of petitioner's property merely because the ordinance was enacted prior to petitioner's acquisition of the property. I, therefore, respectfully dissent.

In *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1029, 112 S.Ct. 2886, 2900, 120 L.Ed.2d 798, the United States Supreme Court held that a confiscatory[542] regulation, i.e., one that prohibits all economically beneficial use of land, "cannot be newly legislated or decreed (without compensation), but must inhere in the title itself, in the restrictions that background principles of the State's law of property and nuisance already place upon land ownership." If the Village ordinance in this case prohibits all economically bene use of Mrs Anello's property, then Anello must be compensated for the pr unless she had already been restricted developing it by the very nature and of the lot or by another principle of of property of New York.

The majority holds that Mrs. Ane already been restricted from develop property by the ordinance itself, becau ordinance had been in effect for two before she acquired the property. If for any parcel of property that is com deprived of its value by the ordinan Village has, "'by *ipse dixit*, * * * form[ed] private property into public ty without compensation'" once the p transferred to another (*Lucas v. South olina Coastal Council, supra*, 505 U 1031, 112 S.Ct., at 2901, quoting *Webb ulous Pharmacies v. Beckwith*, 449 U 164, 101 S.Ct 446, 452, 66 L.Ed.2d

The fact that a parcel is transferred not make a once-compensable taking noncompensable. As we reaffirm to subsequent purchaser may attack p enacted regulations that affect the p property as beyond government's police power" (*Matter of Gazza v. N State Dept. of Envtl Conservation*, 8 603, 614, 657 N.Y.S.2d 555, 679 N.E citing *Pennsylvania Coal Co. v. Ma* U.S 393, 413, 43 S.Ct 158, 159, 67 and *Vernon Park Realty v. City o Vernon*, 307 N Y. 493, 500–501, 12 517)

The majority reaffirms this rule o context of a challenge to the val regulation itself, and not in the co claim that an otherwise valid regu worked a taking of all the econom

on a property owner's investment-backed expectations, and not the separate issue of *preexisting* restrictions inhering in title (*see Lucas v South Carolina Coastal Council*, 505 U S 1003, 1034–1035, 112 S Ct 2886, 2903, 120 L Ed 2d 798 [Kennedy, J, concurring]) In this connection, Justice Kennedy observed that "[t]he common law of nuisance is too narrow a confine for the exercise of regulatory power in a complex and interdependent society * * * The State should not be prevented from enacting new regulatory initiatives in response to changing conditions * * * The Takings Clause does not require a static body of state property law" (*id*, at 1035, 112 S Ct, at 29 omitted])

2. The dissent s arguments concerning of an owner to separately transfer a c ry takings claim to a successor-in-i the right of a decedent's estate to claim are directed to issues not bef noted in *Gazza*, 89 N Y 2d, at 613, 65 555, 679 N E.2d 1035, we leave for *the issues* of transferability left ope cases

ular piece of property. I see no to draw such a distinction, to the I believe that there are compelling why no such distinction should be

le that a purchaser of real estate subject to all existing zoning provi without any right to challenge any of would threaten the free transferabili real estate, ignore the possible effect anged circumstances, and tend to owners to bring actions challenging ning provision of doubtful validity selling their property[543] Moreover, rule of law would in time lead to a quilt pattern of the enforceability of ing law intended to have uniform ability" (*Lopes v City of Peabody*, ass. 299, 303, 629 N.E.2d 1312, 1315) gh the court in *Lopes* noted that hts of a subsequent purchaser to damages might well stand in a posificantly different from that of one to have a zoning provision invalidat *es, supra*, at n 8), I believe that the considerations applies in this r all of these reasons, I would hold long as the Village could not have the prior owners of the parcel of all ally beneficial use of the property compensation, "the prior owners understood to have transferred their erty rights in conveying the lot" *California Coastal Commn.*, 483 833–834, n. 2, 107 S.Ct 3141, 3147, Ed.2d 677; *see also, K & K Constr ment of Natural Resources*, 217 56, 64, 551 N W.2d 413, 417–418). or owner cannot transfer a potential im to a subsequent purchaser, then erty's value is destroyed by the ithout the government having to nsation for it As suggested by In *Lopes*, and as noted in my opinion in *Gazza*, the majority's effectively forces New York prop s to keep abreast of regulatory and, if an enactment appears to parcel of its economic value, to nsation for the taking. Any prop who overlooks or misinterprets a enactment, or who lacks the re commence a taking action, cannot

transfer the property to someone else without destroying the property's value. Instead, he or she will find that the property has, without compensation, been dedicated to whatever governmental purpose formed the basis for the regulatory enactment

The majority's opinion also has the potential to work an interesting alchemy on the estate of a decedent who, through infirmity or other reason, could not challenge a confiscatory regulation prior to the decedent's death The majority's view also creates the prospect of adjacent landowners with similar lots and similar land use regulations who sue to challenge a regulation as confiscatory, but receive totally different results, dependent upon the date of ownership and the date of the regulation's enactment. I do not believe that such a restriction on alienability comports with the intent of those who drafted the Constitution (*see generally*, Kmiec, *The Original Understanding*[544] *of the Taking Clause is Neither Weak nor Obtuse*, 88 Colum L Rev 1630 [1988])

I recognize that "[t]here is an inherent tendency towards circularity" if a taking is defined by the reasonable expectations of the owner, but "[s]ome circularity must be tolerated in these matters" (*Lucas v. South Carolina Coastal Council, supra*, 505 U.S., at 1034, 112 S Ct., at 2903 [Kennedy, J., concurring]) More importantly, as Justice Kennedy points out, the definition is not entirely circular as long as "[t]he expectations protected by the Constitution are based on objective rules and customs that can be understood as reasonable by all parties involved" (*Lucas v South Carolina Coastal Council, supra*, 505 U.S., at 1035, 112 S.Ct, at 2903). Thus, for example, in *Gazza* the taking issue was not determined by Mr. Gazza's expectation that the property would be worth $396,000 as a single-family residential lot. That expectation was not reasonable because, as Supreme Court determined, the property had value as a result of other uses permitted under the Tidal Wetlands Act and the local zoning ordinance.

In this case, by contrast, we have no basis for determining whether Mrs. Anello's expectations were reasonable at this point. I am aware of no principle of New York common law, and the majority cites none, that would have prohibited all economically beneficial

use of Mrs. Anello's property because its over-all slope is approximately 21%. There is, however, no need for us to conduct such a "logically antecedent inquiry into the nature of the owner's estate" (*Lucas v. South Carolina Coastal Council, supra*, 505 U.S., at 1027, 112 S.Ct., at 2899), because no court has yet determined that the denial of the variance from the ordinance deprived the property of all economic use (*Spears v. Berle*, 48 N.Y.2d 254, 263-264, 422 N.Y.S.2d 636, 397 N.E.2d 1304). As the majority notes, Supreme Court relied upon the now-discredited principle of "single and separate ownership" in granting the petition without an evidentiary hearing, and neither Supreme Court nor the Appellate Division addressed Mrs. Anello's claim of a taking. I agree with the majority that Mrs. Anello's other arguments are unpreserved or without merit. I would, however, modify by deleting so much of the order of the Appellate Division that dismisses the petition, and remit the case to Supreme Court for a hearing on petitioner's taking claim (*Spears v. Berle, supra*).

|546 KAYE, C.J., and BELLACOSA, SMITH and LEVINE, JJ., concur.

WESLEY, J., dissents and votes to modify in a separate opinion.

TITONE, J., took no part.

Order affirmed, with costs.

89 N.Y.2d 546

|546 **STANDARD FUNDING CORP., Respondent,**

v.

Jeffrey LEWITT et al., Defendants,

and

Public Service Mutual Insurance Company, Appellant.

Court of Appeals of New York.

March 20, 1997.

Premium financing company brought suit against insurer for losses incurred on fraudulent premium financing agreements entered into with insurer's agent on behalf of purported insureds. The Supreme Court, Nassau County, Lockman, J., entered judgment in favor of premium financing company after nonjury trial. The Supreme Court, Appellate Division, 225 A.D.2d 608, 639 N.Y.S.2d 137, affirmed. Insurer took appeal by permission. The Court of Appeals, Levine, J., held that insurer's agent had neither actual nor apparent authority to enter into premium financing agreements on behalf of insurer, such that insurer was not responsible for fraudulent agreements entered into by agent on behalf of nonexistent insureds, and (2) fact that insurer received notices of financing was not basis for imposing a liability on it.

Order of Appellate Division reversed.

1. **Insurance** ⟹87

Insurer's agent did not have actual authority under agency contract to enter into premium financing agreements on behalf of insurer where agency agreement expressly authorized agent only to issue insurance policies and to receive and collect premiums, nothing in agreement authorized agent to negotiate or enter into premium financing agreements.

2. **Insurance** ⟹93

Insurance agent's frauds perpetrated in context of premium financing arrangements were not within scope of agent's actual authority under agency agreement.

3. **Insurance** ⟹87

Insurer's agent did not have apparent authority to enter into or procure premium financing agreements on behalf of insurer, where insurer made no representations regarding agent's authority to procure premium financing for its proposed insureds, but insurer represented that agent was empowered to write insurance policies and accept premiums for them, notwithstanding its certificate that agent was agent in good standing authorized to write all lines of business.

4. **Insurance** ⟹94

Insurer's receipt of notices of financing by premium finance company was not basis for imposing liability on insurer where insurer never signified acceptance of terms and conditions of financing agreements, as required, and thus never expressly ratified premium financing agreements entered into by insurer's agent.

5. **Insurance** ⟹94

Rule that ratification may be implied where principal retains benefits of unauthorized transaction with knowledge of material facts did not apply to agent's entering into premium financing agreements on behalf of insurer without actual or apparent authority, where insurer received no premiums or any other benefit in connection with fraudulent financing agreements.

Landman Corsi Ballaine & Ford, P.C., New York City (William G. Ballaine and Jamie K. Suhrada, of counsel), for appellant.

Stuart R. Jablonski, Glen Cove, and Jay B. Meirowitz, for respondent.

OPINION OF THE COURT

LEVINE, Judge.

Plaintiff Standard Funding Corporation, a insurance premium financing company, entered into a series of financing agreements with Lewitt Agency, Inc. to finance the premiums on insurance policies of defendant Public Service Mutual Insurance Company. Standard Funding had provided Lewitt with financing agreement forms which Lewitt and the prospective insureds were to complete and sign. Before entering into the first financing agreement with Lewitt, Standard Funding contacted Public Service Mutual and its personnel confirmed that Lewitt was current in good standing with the company, and was authorized to sell all lines of business.

Pursuant to the financing agreements, Standard Funding would finance the bulk of the insured's initial insurance policy premium in exchange for a security interest in all unearned premiums. The insured would agree to repay Standard Funding on an installment schedule, if the insured defaulted, the financing agreement gave Standard Funding the authority to cancel the insurance policy and assert a right to all unearned premiums due under the policy.

At issue on this appeal are four such agreements that Standard Funding and Lewitt entered into in October and December 1989 to finance premiums ranging from $15,500 to $153,500 for policies purportedly issued by Public Service Mutual. On |549 October 20, 1989, Lewitt tendered two executed financing agreements to Standard Funding. Each form, which was signed by Lewitt and the insured, indicated that Public Service Mutual had issued policies to the insureds and that the insureds had paid approximately 25% of the premiums to the insurance company. Standard Funding accepted the financing agreements, and in accordance with their terms, issued two checks to Lewitt totaling $23,325. Standard Funding then sent Public Service Mutual "Notice of Financing" forms containing copies of the checks issued to Lewitt. In mid-December, Lewitt completed two additional financing agreements for the financing of Public Service Mutual premiums and received two checks from Standard Funding in the total amount of $204,000. Again, Standard Funding sent notice of financing forms with copies of the checks to Public Service Mutual. Public Service Mutual did not respond to any of the notices.

After Standard Funding failed to receive payments from the alleged insureds, it contacted Public Service Mutual who investigated the matter and discovered that these four financing agreements covered fictitious policies and false insureds. No policies were ever issued in connection with these agreements and Public Service Mutual received no premiums for them. Public Service Mutual thereafter terminated Lewitt's agency contract.

Standard Funding commenced this damages action against Lewitt and Public Service Mutual. The claim against Public Service Mutual was premised on the theory that the insurer was liable for the fraudulent acts of Lewitt acting as its agent. After Lewitt

388

Petition for Variance

97-388-A

to the Zoning Commissioner of Baltimore County

for the property located at # 1004 Sumter Avenue - Proposed Lot 1

which is presently zoned DR 5.5

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

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 102.4 to permit 2 detached dwellings containing less than 20,000 s.f. (Lot1 = 9,085s.f.± and Lot 2 = 8,994 s.f.±) which do not abut a right of way at least 30' wide (existing right of way of 12' to Sumter Avenue) over which the public has an easement to travel.
THIS REQUEST IS FOR PROPOSED LOT 1

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

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

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

~~Contract Purchaser/Lessee~~ Engineer:

Paul Lee Engineering, Inc.
(Type or Print Name)

Signature

304 W. Pennsylvania Ave.
Address

Towson, Maryland 21204
City State Zipcode

Attorney for Petitioner

Frank Borgerding
(Type or Print Name)

Signature

409 Washington Ave. 296-6820
Address Phone No

Towson, Maryland 21204
City State Zipcode

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

Legal Owner(s)

Mathem Chacko
(Type or Print Name)

Mathew Chacko
Signature

(Type or Print Name)

Signature

8016 Sagramore Road 866-1587
Address Phone No

Baltimore, Maryland 21237
City State Zipcode

Name, Address and phone number of representative to be contacted

Frank Borgerding - DiNenna, Breschi
Name

409 Washington Ave. 21204 296-6820
Address Phone No

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 1/2 HR

unavailable for Hearing the following dates _____ Next Two Months

ALL ✓ OTHER _____

REVIEWED BY JRR DATE 3/13/97

SET TO BE HEARD WITH ITEM 389

Zoning Administration & Development Management

Printed with Soybean Ink on Recycled Paper

388

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97-388-A

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Address Phone No

Baltimore, Maryland 21237
City State Zipcode

Name, Address and phone number of representative to be contacted

Frank Borgerding - DiNenna, Breschi
Name

409 Washington Ave. 21204 296-6820
Address Phone No

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

unavailable for Hearing

the following dates _____ Next Two Months

ALL _____ OTHER _____

REVIEWED BY: _____ DATE _____

Zoning Administration & Development Management

Printed with Soybean Ink on Recycled Paper

To point @ Dwellings less than 20,000 S.F. ~~on lots less than 20~~ on a lot that does not
about on a 30' public r/w.

PER WCR. ATTY. TO
COME IN + CHANGE
PETITION WORDING ON
388 + 389 TO ABOVE
3/19/97

Paul Lee, P.E.

388

Paul Lee Engineering Inc.
304 W. Pennsylvania Ave.
Towson, Maryland 21204
410-821-5941

97-388-A

DESCRIPTION

#1004 SUMTER AVENUE (PROPOSED LOT # 1)

ELECTION DISTRICT 15C7 - BALTIMORE COUNTY, MARYLAND

Beginning for the same at a point along the south property line of the subject site, said point also being located N 60°06' E - 670' ± and N 42°35'07" E - 231.64' from the intersection of the center of Chesaco Avenue with Sumter Avenue; thence running with and binding on a portion of said south property line (1) N 42°35'07" E - 73.56' to intersect the east boundary of subject site, thence running with and binding on said east boundary line (2) N 11°50'21" W - 127.19' to the intersection with the north boundary line, thence running with and binding on a portion of said north boundary line (3) S 42°57'57" W - 101.10' to intersect with the new line of division, thence running with and binding reversely on said line of division (4) S 23°22'17" E - 114.02' to the point of beginning.

Containing 9,084 square feet of land, more or less and shown as Lot # 1.

STATE OF MARYLAND
PAUL LEE
No. 7000
PROFESSIONAL ENGINEER

J.O. 97-002
2/17/97

RE: Case No.: 97-388-A

Petitioner/Developer: MATHEW CHACKO

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:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at SUMTER AVE AND PRIVATE ROADWAY

The sign(s) were posted on 12/8/97
(Month, Day, Year)

Sincerely,

Gary Freund 12/8
(Signature of Sign Poster and Date)

GARY FREUND
(Printed Name)

_____
(Address)

_____
(City, State, Zip Code)

_____
(Telephone Number)

9/96
cert.doc

CERTIFICATE OF POSTING

RE: Case # 97-388-A

Petitioner/Developer:
(Mathem Chacko)
Date of Hearing/Closing:
(May 12, 1997)

Baltimore County Department of
Permits and Development Management
County Office Building, Room 111
111 West Chesapeake Avenue
Towson, Maryland 21204

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at

____1004 Sumter Ave.(proposed Lot 1 , Baltimore, Maryland 21237_____

The sign(s) were posted on_____ April 24, 1997_____
(Month, Day, Year)

Sincerely,

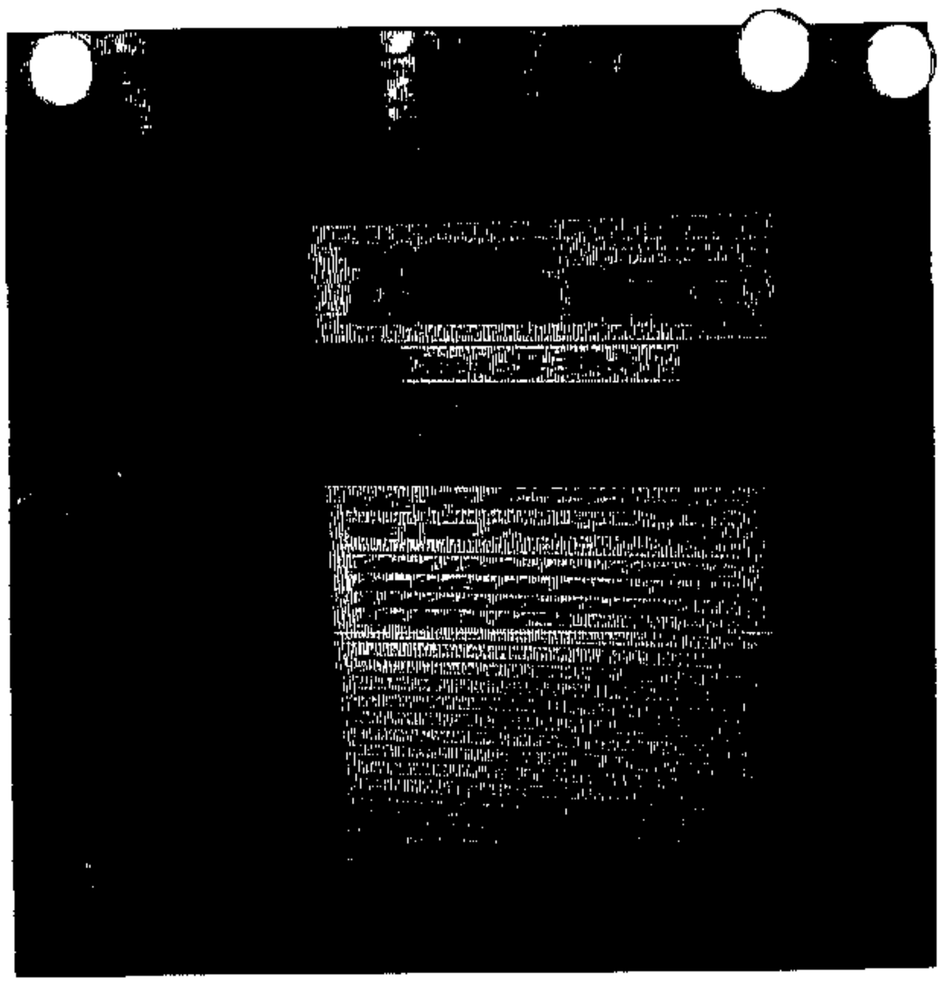
Thomas P. Ogle 4/24/97
(Signature of Sign Poster & Date)

_____Thomas P. Ogle, Sr._____
(Printed Name)

_____325 Nicholson Road_____
(Address)

_____ Baltimore, Maryland 21221_____

_____(410)-687-8405_____
(Telephone Number)



97-388-A
LOT #1

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 044387

DATE 11/5/97 ACCOUNT R-001-6150

AMOUNT $ 420.00

RECEIVED FROM: MATHEW CHACKO

FOR: Appeals - 97-388-A & 97-369-A

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
PROCESS COLUMN TIME
11/06/1997 11/06/1997 10:09:3
PLU WS04 CASHIER LSMI LXS DRAWER
5 MISCELLANEOUS CASH RECEIPT
Receipt # 027469 ATN
CR NO. 044387
420.00 CHECK
Baltimore County, Maryland

CASHIER'S VALIDATION

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

No. 026712

388 JLL

DATE 3/13/97 ACCOUNT R001-6150

AMOUNT $ 50.00

RECEIVED FROM: CHACKO

FOR: RV

03A91#0206MICHRC $50.00
BA C001:34PM03-13-97

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

[redacted]
of the Zoning [redacted] tions of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: #97-388-A
1004 Sumter Avenue
Proposed Lot 1
E/S Sumter Ave, 670' +/- E of Chesaco Ave., thence Easterly along the private right-of-way,
15th Election District
7th Councilmanic
[redacted]
Hearing: Friday, April 18, 1997 at 10:00 a.m. in Rm. 106 County Office Building.

LAWRENCE E. SCHMIDT
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Call 887-3353.
(2) For information concerning the File and/or Hearing, Please Call 887-3391.

3/348 March 27 C130090

CERTIFICATE OF PUBLICATION

TOWSON, MD., March 27, 1997

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on March 27 1997.

THE JEFFERSONIAN,

A. Henrikson

LEGAL AD. - TOWSON

[redacted]

Baltimore County
Department of Permits and
Development Management

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

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

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

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

Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

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

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: 388

Petitioner: CHACKO

Location: 1004 SUMTER AVE.

PLEASE FORWARD ADVERTISING BILL TO:

NAME: MATHEW CHACKO

ADDRESS: 8016 SAGRAMORE RD
BALTIMORE, MD. 21237

PHONE NUMBER: 866-1587

AJ:ggs

(Revised 09/24/96)

Printed with Soybean Ink

Exhibit B

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

Date to be Posted: Anytime before but no later than 3/24/97.

Format for Sign Printing, Black Letters on White Background:

ZONING NOTICE

Case No.: 97-388-A

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

PLACE: _____

DATE AND TIME: _____

REQUEST: TO PERMIT A DWELLING ON A LOT LESS THAN 20,000 SQ. FT. IN AREA WHICH DOES NOT ABUT A RIGHT OF WAY AT LEAST 30 FT WIDE. (FOR PROPOSED LOT # 1)

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

9/96
post.4.doc

TO: PUTUXENT PUBLISHING COMPANY
March 27, 1997 Issue - Jeffersonian

Please foward billing to:

MATHEM Chacko
8016 Sagramore Road
altimore, MD 21237
866-1587

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 97-388-A
1004 Sumter Avenue, Proposed Lot 1
E/S Sumter Avenue, 670'+/- E of Chesaco Avenue, thence Easterly along a private right-of-way
15th Election District - 7th Councilmanic
Legal Owner(s): Mathem Chacko

Variance to permit a detached dwelling on a lot less than 20,000 square feet that does not abut on a 30 foot public right-of-way.

HEARING: FRIDAY, APRIL 18, 1997 at 10:00 a.m. in Room 106, County Office Building.

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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

Baltimore County
Department of Permits and
Development Management

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

March 21, 1997

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 97-388-A
1004 Sumter Avenue, Proposed Lot 1
E/S Sumter Avenue, 670'+/- E of Chesaco Avenue, thence Easterly along a private right-of-way
15th Election District - 7th Councilmanic
Legal Owner(s): Mathem Chacko

Variance to permit a detached dwelling on a lot less than 20,000 square feet that does not abut on a 30 foot public right-of-way.

HEARING: FRIDAY, APRIL 18, 1997 at 10:00 a.m. in Room 106, County Office Building.

Arnold Jablon
Director

cc: Mathem Chacko
Frank Borgerding, Esq.
Paul Lee

NOTES: (1) YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY APRIL 3, 1997.
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.
(3) FOR INFORMATION CONCERING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.

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on Recycled Paper

Baltimore County
Department of Permits and
Development Management

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

April 8, 1997

NOTICE OF REASSIGNMENT

Rescheduled from 4/18/97
CASE NUMBER: 97-388-A
1004 Sumter Avenue, Proposed Lot 1
E/S Sumter Avenue, 670'+/- E of Chesaco Avenue, thence Easterly along a private right-of-way
15th Election District - 7th Councilmanic
Legal Owner(s): Mathem Chacko

Variance to permit a detached dwelling on a lot less than 20,000 square feet that does not abut on a 30 foot public right-of-way.

HEARING: MONDAY, MAY 12, 1997 at 11:00 a.m, 4th floor hearing room Courts Building, 401 Bosley Avenue.

ARNOLD JABLON
DIRECTOR

cc: Francis X. Borgerding, Jr., Esq.
Paul Lee Engineering, Inc.

PLEASE NOTE THAT THE ZONING SIGN ON THE PROPERTY MUST BE ALTERED TO GIVE NOTICE OF THE ABOVE HEARING ON OR BEFORE APRIL 27, 1997 AND CERTIFICATION OF SAME FILED WITH THIS OFFICE. PLEASE CONTACT THE SIGN VENDOR USED FOR THE ORIGINAL POSTING.

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County Board of Appeals of Baltimore County

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

Hearing Room - Room 48
Old Courthouse, 400 Washington Avenue

December 29, 1997

NOTICE OF ASSIGNMENT

CASE #: 97-388-A — **IN THE MATTER OF: MATHEM CHACKO -Petitioner**
1004 Sumter Avenue, proposed Lot 1
15th Election District; 7th Councilmanic

AND

CASE #: 97-389-A — **IN THE MATTER OF: MATHEM CHACKO -Petitioner**
1004 Sumter Avenue, proposed Lot 2
15th Election District; 7th Councilmanic

(Petitions for Variance DENIED as MOOT by Z.C.)

ASSIGNED FOR: TUESDAY, MAY 19, 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 /Petitioner : Francis X. Borgerding, Jr., Esquire
Appellant /Petitioner : Mr. Mathem Chacko
Century Engineering

Bonnie E. Heider
Joseph C. Passapoe
Mr. & Mrs. Edward Reinhardt
Cecelia Legbold

People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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County Board of Appeals of Baltimore County

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

June 19, 1998

NOTICE OF DELIBERATION

This case having been heard by the Board of Appeals on May 19, 1998, and closing briefs having been filed by Counsel as requested, the following date and time has been assigned to this matter for deliberation:

MATHEM CHACKO -Petitioner
CASE NO. 97-388-A AND CASE NO. 97-389-A

DATE AND TIME : Tuesday, June 30, 1998 at 9:30 a.m.

LOCATION : Room 48, Basement, Old Courthouse

Kathleen C. Bianco
Administrator

---

cc: Counsel for Appellant /Petitioner: Francis X. Borgerding, Jr., Esquire
Appellant /Petitioner : Mr. Mathem Chacko

Century Engineering

Bonnie E. Heider
Joseph C. Passapoe
Mr. & Mrs. Edward Reinhardt
Cecelia Legbold
Marion C. Benner
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

COPIED: L.M.W.

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Baltimore County
Department of Permits and
Development Management

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

April 10, 1997

Frank Borgerding, Esquire
409 Washington Avenue
Towson, MD 21204

RE: Item No.: 388
Case No.: 97-388-A
Petitioner: Mathem Chacko

Dear Mr. Borgerding:

The Zoning Advisory Committee (ZAC), which consists of representatives from Baltimore County approval agencies, has reviewed the plans submitted with the above referenced petition, which was accepted for processing by Permits and Development Management (PDM), Zoning Review, on March 13, 1997.

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

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

Sincerely,

W. Carl Richards, Jr.
Zoning Supervisor

WCR/re
Attachment(s)

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B A L T I M O R E C O U N T Y, M A R Y L A N D

INTER-OFFICE CORRESPONDENCE

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

DATE: March 25, 1997

FROM: Arnold F. 'Pat' Keller, III, Director
Office of Planning

SUBJECT: 1004 Sumter Avenue

INFORMATION:

Item Number: 388 & 389

Petitioner: Mathem Chacko

Property Size:

Zoning: DR 5.5

Requested Action: Variance

Hearing Date: / /

SUMMARY OF RECOMMENDATIONS:

This office recommends that these properties be processed through the minor subdivision procedure prior to any consideration of the variances.

Prepared by: Jeffrey W. Long

Division Chief: Gary L. Kerns

AFK:JL

ITEM388/PZONE/ZAC1

B A L T I M O R E C O U N T Y, M A R Y L A N D

INTEROFFICE CORRESPONDENCE

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

Date: March 31, 1997

FROM: Robert W. Bowling, Chief
Development Plans Review Division

SUBJECT: Zoning Advisory Committee Meeting
for March 31, 1997
Item No. 388

The Development Plans Review Division has reviewed the subject zoning item.

If a 16' wide access is not available the developer must obtain the Fire Departments approval of the 12 foot wide private right-of-way access to Sumter Avenue.

A gravity sewer won't work for this lot as the grade drops away from Sumter Avenue, therefore the sewer house connection will require a grinder pump.

RWB:HJO:cab

cc: File

ZONE331.388

Maryland Department of Transportation
State Highway Administration

David L. Winstead
Secretary
Parker F. Williams
Administrator

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

RE: Baltimore County 3.21.97
Item No. 388 J.L.L.

Dear Ms. Eubanks:

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

Please contact Larry Gredlein at 410-545-5606 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

for Ronald Burns, Chief
Engineering Access Permits
Division

LG

My telephone number is _____

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

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

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

TO: PDM DATE: 3/25/97

FROM: R. Bruce Seeley
Permits and Development Review
DEPRM

SUBJECT: Zoning Advisory Committee
Meeting Date: March 24, 97

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

Item #'s:

379
381
382
383
385
387
388
389
390
393
394

RBS:sp

BRUCE2/DEPRM/TXTSBP

Baltimore County Government
Fire Department

700 East Joppa Road Suite 901
Towson, MD 21286-5500

(410) 887-4500

March 31, 1997

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

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF March 24, 1997

Item No.: SEE BELOW Zoning Agenda:

Gentlemen:

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

8. The Fire Marshal's Office has no comments at this time, IN REFERENCE TO THE FOLLOWING ITEM NUMBERS:

380, 381, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392

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

RECEIVED
3

Printed on Recycled Paper

#387 --- MJK

1. Sign form is incomplete/incorrect.

#388 --- JLL

1. Sign form is incomplete/incorrect.
2. No practical difficulty or hardship on petition form.
3. No description on folder.
4. No zoning on folder.
5. No acreage on folder.
6. No election district on folder.
7. No councilmanic district on folder.

#389 --- JLL

1. Sign form is incomplete/incorrect.
2. No practical difficulty or hardship on petition form.

#390 --- MJK

1. Sign form is incomplete/incorrect.
2. No telephone number for legal owner.

#391 --- CAM

1. No review information on bottom of petition form.
2. Area listed on folder - acres, square feet, what?

#392 --- CAM

1. No review information on bottom of petition form.

#394 --- JLL

1. Sign form is incomplete/incorrect.

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: L. Stahl
T. Melvin
M. Worrall

DATE: June 19, 1998

FROM: Kathi

SUBJECT: Case No. 97-388-A and Case No. 97-389-A /Mathem Chacko /Petitioner

The subject matter has been scheduled for public deliberation on Tuesday, June 30, 1998 at 9:30 a.m. Attached are the following documents filed by Counsel with regard to this case:

1. Closing Argument Memorandum filed by Francis X. Borgerding, Jr., Esquire, on behalf of Petitioner; and

2. Memorandum for People's Counsel for Baltimore County.

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

kathi

Kathi

Attachments

P.S. Just a reminder - On Tuesday, June 30th, Larry and Margaret are scheduled for the 10:00 case following this deliberation. Tom is scheduled only for the deliberation of the subject matter.

Baltimore County
Department of Permits and
Development Management

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

November 5, 1997

Mr. and Mrs. Edward Reinhardt
1004 1/2 Sumter Avenue
Baltimore, MD 21237

RE: Petition for Zoning Variance
E/S Sumter Ave., 670' +/- E of Chesaco Ave., Ely along a private R/W (1004 Sumter Avenue, proposed Lot 1)
15th Election District
7th Councilmanic District
Mathem Chacko - Petitioner
Case No. 97-388-A

Dear Mr. and Mrs. Reinhart:

Please be advised that an appeal of the above-referenced case was filed in this office on November 4, 1997 by Francis X. Borgerding, Jr., Esquire on behalf of Mathem Chacko. 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 410-887-3180.

Sincerely,

ARNOLD JABLON
Director

AJ:rye

c: People's Counsel

RECEIVED
COUNTY BOARD OF APPEALS
97 NOV -7 AM 9:27

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APPEAL

Petition for Zoning Variance
E/S Sumter Ave., 670' +/- E of Chesaco Ave., Ely along a private R/W
(1004 Sumter Avenue, proposed Lot 1)
15th Election District - 7th Councilmanic District
Mathem Chacko - Petitioner
Case No. 97-388-A

Petition for Zoning Variance

Description of Property

Certificate of Posting

Certificate of Publication

Zoning Advisory Committee Comments

Petitioners and Protestants Sign-In Sheets

Petitioners' Exhibits: 1 - Plan "C" Rosedale Terraces
1A - Plat to Accompany Petition for Variance

Zoning Commissioner's Order dated October 7, 1997 (Denied)

Notice of Appeal received on November 4, 1997 from Francis X. Borgerding, Jr., Esquire on behalf of Mathem Chacko

✓E

c: Francis X. Borgerding, Jr., Esquire, 409 Washington Avenue, Towson, MD 21204
Mr. Mathem Chacko, ~~8016 Sagramore Road, Baltimore~~, MD 21237 Ret'd Ctg P.O. - undeliverable as addressed
c/o Counsel Century Engineering, 32 West Road, Towson, MD 21204
People's Counsel of Baltimore County, M.S. 2010
Lawrence Schmidt, Zoning Commissioner
Arnold Jablon, Director of PDM

Bonnie E. Heider
2227 Larchmont Drive
Fallston, MD 21047
(appeared at Z.C. level)

Joseph C. Passapoe
8214 La Cotti Lane
Baltimore, MD 21237
(appeared at Z.C. level)

Mr. & Mrs. Edward Reinhardt
1004½ Sumter Avenue
Fallston, MD 21047
(appeared at Z.C. level)

Cecelia Leybold
8211 La Cotti Lane
Baltimore, MD 21237
(appeared at Z.C. level)

Marion C. Benner
1020 Sumter Avenue
Baltimore, MD 21237

Added to file by request.

RECEIVED
COUNTY BOARD OF APPEALS
97 NOV -7 AM 9:27

Case No. 97-388-A — VAR -To permit detached dwelling on lot containing less than 20,000 sf (ie 9,085 sf) which does not abut r/w at least 30' wide over which public has easement to travel (Proposed Lot 1)

and

Case No. 97-389-A — VAR -To permit detached dwelling on lot containing less than 20,000 sf (ie 8,994 sf) which does not abut r/w at least 30' wide over which public has easement to travel (Proposed Lot 2)

10/07/97 -Z.C.'s Order in which Petitions for Variance were DENIED as MOOT.

12/29/97 -Notice of Assignment for hearing scheduled for Tuesday, May 19, 1998 at 10:00 a.m. sent to following:

Francis X. Borgerding, Jr., Esquire
Mr. Mathem Chacko
Century Engineering
Bonnie E. Heider
Joseph C. Passapoe
Mr. & Mrs. Edward Reinhardt
Cecelia Legbold
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

2/02/98 -After second attempt at mailing of Notice to Mr. Chacko at the address shown both in the file and on the petitions, the notice was returned to the Board office a second time. Therefore, copy of Notice sent this date c/o F. Borgerding, with letter requesting that he forward same to his client, and also advise this office if there is a change in address or error in our file.

5/19/98 -Hearing completed before Board; memos due 30 days (June 18, 1998) from counsel (Borgerding and Demilio). Deliberation date to be set. L.W.M.

6/18/98 -Closing briefs filed by Frank Borgerding and People's Counsel.

6/19/98 -Notice of Deliberation sent to parties; scheduled for Tuesday, June 30, 1998 at 9:30 a.m. Copies to L.M.W. with copy of each brief filed. (To L and M in office this date; to W via Towson P.O. this date.)

6/30/98 -Public deliberation concluded this date; variance relief as requested to be denied by unanimous decision of the Board (L.M.W.); written Opinion and Order to be issued; appellate period to run from date of written Order.

County Board of Appeals of Baltimore County

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

February 2, 1998

Francis X. Borgerding, Jr., Esquire
Suite 600
Mercantile-Towson Building
409 Washington Avenue
Towson, MD 21204

RE: Case No. 97-388-A and Case No. 97-389-A
Mathem Chacko -Petitioner

Dear Mr. Borgerding:

Attached is a copy of the Notice of Assignment for the subject matter (scheduled for hearing on Tuesday, May 19, 1998 at 10:00 a.m.). On two separate occasions, we have attempted to mail this copy to Mr. Chacko at the address given in the file and on the petitions filed (8016 Sagramore Road, Baltimore 21237). However, on those two occasions, the Notice has been returned marked "UNDELIVERABLE AS ADDRESSED."

Therefore, we are sending this copy to you with the request that you forward same to your client. If there has been a change of address, or if our file is incorrect, please let me know.

Very truly yours,

Kathleen C. Bianco
Administrator

Enclosure

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COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Mathem Chacko -Petitioner
Case No. 97-388-A and Case No. 97-389-A

DATE : June 30, 1998 at 9:40 a.m.

BOARD /PANEL : Lawrence M. Stahl (LMS)
Margaret Worrall (MW)
Thomas P. Melvin (TPM)

SECRETARY : Kathleen C. Bianco
Administrator

PURPOSE: To deliberate Petitions for Variance filed by Mathem Chacko -Petition in Case No. 97-388-A to permit a detached dwelling on a lot containing less than 20,000 sq. ft. (i.e., 9,085 sq. ft.) which does not abut a right of way at least 30' wide over which the public has easement to travel; and Case No. 97-389-A to permit a detached dwelling on a lot containing less than 20,000 sq. ft. (i.e., 8,994 sq. ft.). Heard before the Board on May 19, 1998; closing Briefs filed by Counsel on June 18, 1998.

LMS: Good morning, everyone. We are here in Case No. 97-388-A and 97-389-A, Mathem Chacko. We are here for a deliberation this morning; all evidence having been heard in the case.

Since we do have a lot of guests in the room -- we understand there is a 10:00 a.m. hearing -- this is a deliberation; a discussion between Board members of a case previously heard, represented by counsel at the counsel table. It is not a hearing in the sense there is a back and forth. We will have discussions among ourselves without any input or comment from anyone in the room.

At the conclusion of this, we will take a short recess and then proceed with the next hearing that will take place at 10:00 a.m.

Margaret?

MW: I think the facts of this case were pretty well established without much disagreement. Petitioner wishes to create two lots behind Sumter Avenue in a subdivision that was developed in 1910, if I remember, in Rosedale Terrace. The subject property is .415 acre and was established as approximately 18,000 sq. ft. with access by a 12-foot right-of-way owned by another person; not owned by the Petitioner.

As I've said, Petitioner wishes to create two residential lots from this piece of land, and that is actually what brings me

to have a problem with this, what I will call process, chosen by the Petitioner before we even get to the variance -- the access and what happens to right-of-way.

It was People's Counsel's Memorandum that brought this out, and it was something that I had been wondering about -- it does not seem to me that this is the venue by which a subdivision can be made on a piece of property, before we even get into the variance issue.

Requesting a variance before subdivision approval seems to me to be an initial problem with the way the Petitioner has chosen to proceed.

I would be happy to hear what you all have to say.

As to the merits of the case, to me there are a lot of things wrong -- if we get into the variance and whether the property qualifies under Cromwell v. Ward standards, the subject property to me does not seem to qualify as unique. It's very much like other properties in the area. There was testimony that other properties had slopes off Sumter Avenue. Nothing particularly unique about the property.

The fact that it is land-locked simply creates another problem with access situation, but it is not, to me, such a unique situation. I also feel that practical difficulty and hardship -- the difficult situation Petitioner finds himself in -- is something he created with what was initially a nonconforming old lot with a house that had been there for many years with a right-of-way that does not meet current standards, and this nonconforming use was allowed to disappear; the house was torn down and the lot has not been used for residential purposes for a while.

Perhaps the use of this property for building lot could be salvaged but it seems to me the plan needs to be reviewed through normal subdivision procedures and not by granting variances. The required access regulations in my mind were designed to avoid just such a situation -- over-intensification of a piece of property not meeting the standards.

A subdivision without proper access creates problems of safety and environmental concerns at the expense of remainder of the neighborhood so that the Petitioner can make an economic gain, which will not affect him personally because he does not plan to live there.

Consequently, it would be my opinion that the Petitioner's request should be denied.

TPM: Basically, I agree with you, Margaret. As to 307.1, there is no uniqueness in the property. It's basically landlocked but so was the Reinhardt property in back.

The topography of the lot is the same as neighboring properties.

There's one other point -- Section 26-266 and panhandle lots -- that if we do not find there is uniqueness, we should then go to 266 -- Mr. Lee on cross and direct said this was not the proper method. We should go on to 102.4. So basically, I have nothing else to add except we should deny the Petitions.

LMS: The comments that I would have made -- I'll cut to the bottom line -- I agree, but for the purposes of discussion -- a very interesting point was brought up.

I looked at uniqueness and other things and then to a basic comment -- can we in fact vary this type of activity? Answer: We cannot or at least apparently under the standard we cannot. A variance is not a panacea for everything. Only certain things you can do with a variance, and there are things you cannot do with a variance. Section 307.1 clearly states that: "...(T)he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking, and from sign regulations...."

And then it goes on to talk about special cases and circumstances.

I never really got to the question of variance other than as an academic exercise to see if there was practical difficulty or hardship. I was stuck on the uniqueness -- Mr. Lee agrees that other lots share the same characteristics, but I don't think we reach it because we have to say that some things cannot be varied. I agree with you, Margaret -- the subdivision process directs itself to this.

I read the comments from different departments -- obviously there are some serious questions -- including the question of emergency vehicles coming into the area. It's a very narrow road -- difficult -- it appears to me not to be navigated. Adding use by emergency vehicles will not improve it. It's not what the folks who put the rules in place intended. All of the access rules are based on the premise that not only can

people get in and out, but also services. Government ultimately protects the citizens.

I think there are a lot of problems with this. Mr. Chacko does not hold it in fee; there's not enough land; 12' is not what the standard calls for.

I would therefore agree that the requests should be denied.

I would thank counsel for their efforts. We will prepare a written Opinion which we will issue as quickly as the Board can arrange it. Any appeal from our decision to the Circuit Court for Baltimore County will begin on the date that the Opinion is actually issued, and not from today's date.

Thank you all.

~~~~~~~~~~~~~~~~~~~~~~~~

These minutes indicate public deliberation in this matter was held this date in the subject matter and a final decision rendered in which the requested variance relief was denied.

Respectfully submitted,

Kathleen C. Bianco

Kathleen C. Bianco
Administrator
~~~~~~~~~~~~~~~~~~~~~~~~

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director **DATE:** March 19, 1999
Permits & Development Management

FROM: Charlotte E. Radcliffe
County Board of Appeals

SUBJECT: Closed File: 97-388-A & 97-389-A /Mathem Chacko

As no further appeal was taken in the above captioned matter, we are hereby closing the files and returning same to you herewith.

Attachment (Case File No. 97-388-A & 97-389-A)

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Paul Lee	304 W. Pennsylvania Ave
Matthew Chacko	2040 Brigadier Blvd.

Printed with Soybean Ink
on Recycled Paper

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
EDWARD WILLIS REINHARDT	1004 1/2 SUMTER AVENUE
MARY DOROTHY REINHARDT	1004 1/2 SUMTER AVENUE
BONNIE E. HEIDER	2227 LARCHMONT DRIVE
F.W. HEIDER JR	1006 SUMTER AVE
Ingelia Leybold	8211 La Cotti Lane 21237
Joseph C. Pasquale	8214 La Cotti Lane 21237

Baltimore County
Department of Permits and
Development Management

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

March 27, 1997

Francis X. Borgerding, Jr., Esq.
409 Washington Avenue, Suite 600
Towson, Maryland 21204

Re: CASE NUMBER: 97-388-A and 97-389-A
PETITIONER(S): Mathem Chacko
LOCATION: 1004 Sumter Avenue

Dear Mr. Borgerding:

The above matter, previously assigned to be hearing on April 18, 1997 has been postponed at your request.

Please be advised that as the individual requesting and receiving the postponement, the responsibility and costs associated with the appropriate posting of the property now lies with you. You and/or a member of your staff may not personally post or change a zoning sign. One of the currently approved vendors/posters must be contacted to do so. Enclosed you will find a listing of those vendors.

As quickly as possible a notice of postponement should be affixed to the sign(s) now on the property. Further, upon notification of the new hearing date, the sign (s) must be changed to reflect same.

Arnold Jablon
Director

cc: Mathem Chacko
Paul Lee Engineering, Inc.

AJ:ggs

Printed with Soybean Ink
on Recycled Paper

97-1290

FRANCIS X. BORGERDING, JR.

Attorney at Law

MERCANTILE-TOWSON BLDG - SUITE 600
409 WASHINGTON AVE.
TOWSON, MD 21204
OFFICE (410) 296-6820
TELEFAX (410) 296-6884

Member of Maryland and District of Columbia Bar

3/25/97
4
JC 65
OK per usual
filtline

March 24, 1997

Arnold Jablon, Director
Baltimore County
Department of Permits and
Development Management
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Case Nos.: 97-388-A and 97-389-A
Property Located at: 1004 Sumter Avenue, Proposed Lots 1 and 2
Hearing Date: Friday, April 18, 1997 @ 10:00 a.m. in Room 106 County Office Building

Dear Mr. Jablon:

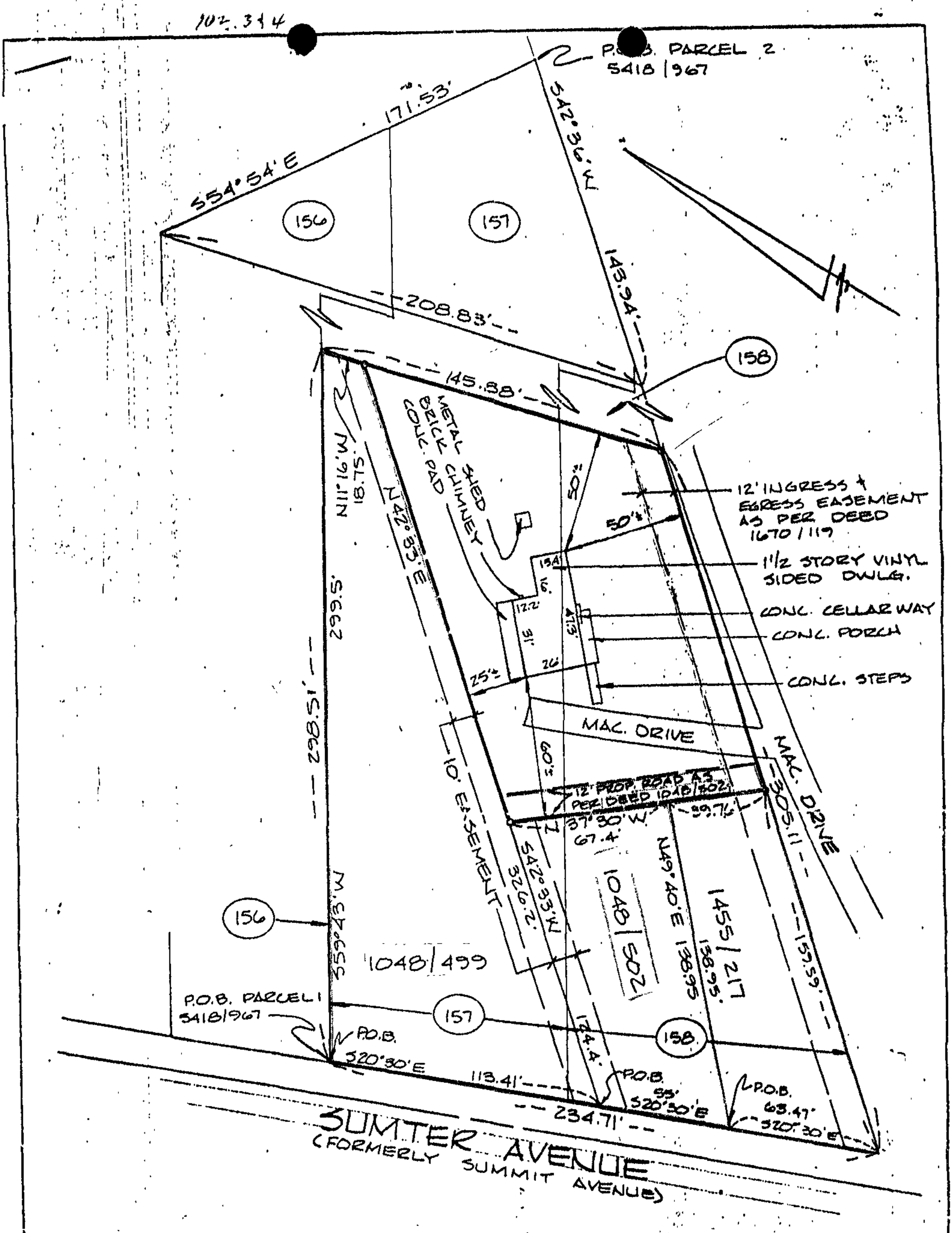
I am writing on behalf of my client, Mathem Chacko, in relation to the above-referenced cases scheduled for hearing on Friday, April 18, 1997, at 10:00 a.m. in Room 106 of the County Office Building. The purpose of this correspondence is to request a postponement of the above-referenced matters. The reason for the request for postponement is that I will be out of state on the date of April 18, 1997.

I apologize for any inconvenience this request causes your office. Thank you very much for your cooperation with regard to this matter.

Very truly yours,

FRANCIS X. BORGERDING, JR.

FXBJr:bjk



The information on this plat shows only that the improvements indicated hereon are contained within the outlines of the lot upon which they are erected unless otherwise noted and is not to be used to establish property lines or corners.

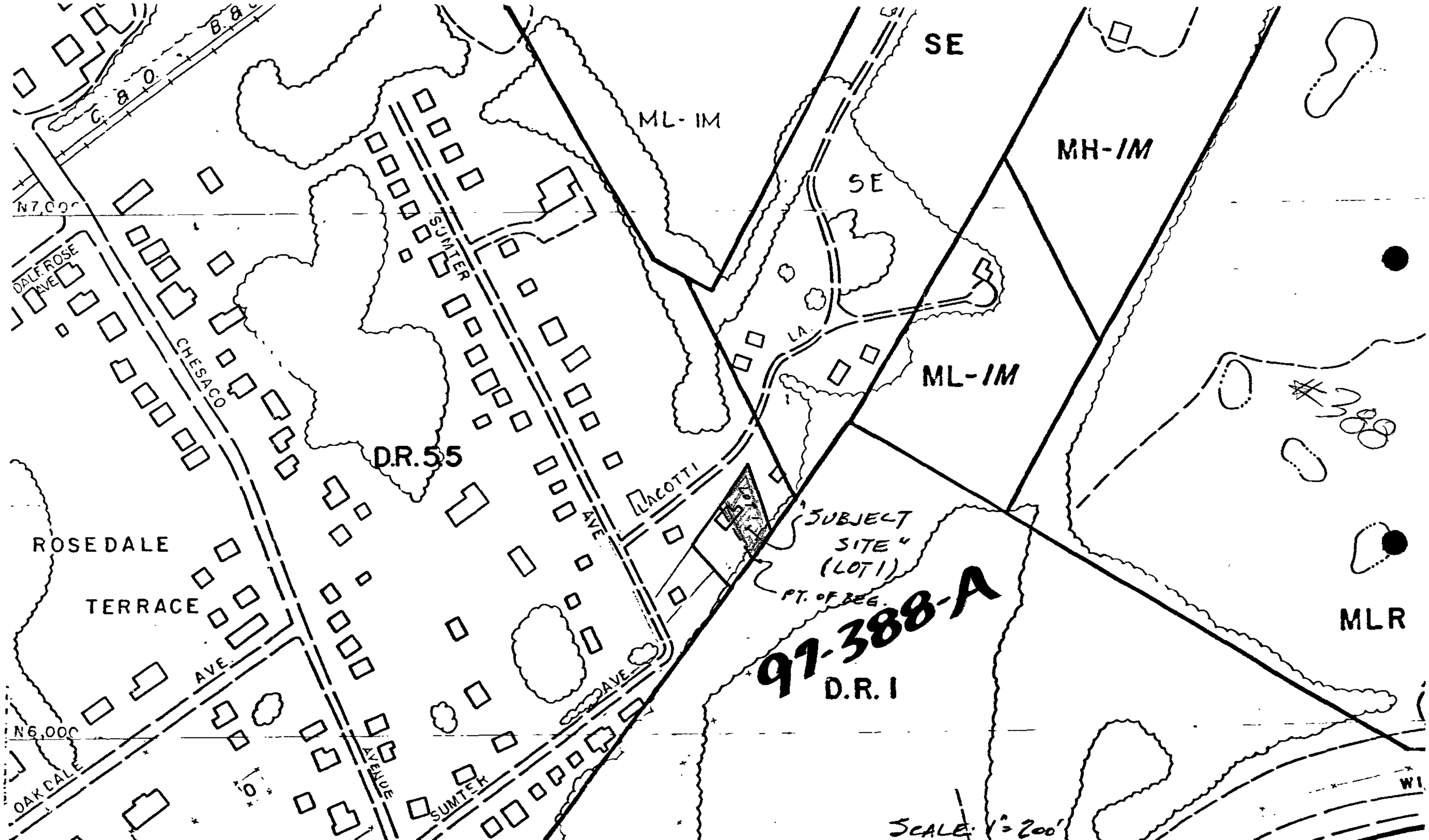
DEED REFERENCE: 5418/967
PORTION OF LOTS 157 & 158 Δ 3/90
ROSEDALE TERRACES
15TH. ELECTION DISTRICT
BALTIMORE COUNTY, MD.

STATE OF MARYLAND
DAVID M. DALLAS, JR.
4470
REGISTERED
PROFESSIONAL LAND SURVEYOR

LOCATION SURVEY
#1004 SUMTER AVE.

VTA ASSOCIATES, INC.
SURVEYING & ENGINEERING
3132 E. JOPPA ROAD BALTIMORE, MARYLAND 21234
668-0090

date	5.01.90
scale	1" = 50'
job.no.	JK-1
drawn	SE
checked	


C. & O.
B. & O.
N7,000
DALE ROSE AVE
CHESACO
SUMTER
D.R.55
ROSEDALE
TERRACE
AVE
N6,000
OAKDALE
AVENUE
SUMTER
ACOTTI
AVE
ML-IM
SE
SE
LA
ML-IM
MH-IM
SUBJECT SITE (LOT 1)
PT. OF BEG.
91-388-A
D.R. 1
MLR
#388
SCALE: 1" = 200'

3A - 3G (7)
4A - 4E (5)
5A - 5B (2)
and #7 (1)

Photos (15)
(People's Counsel)

Case # 97-388-A
97-389-A

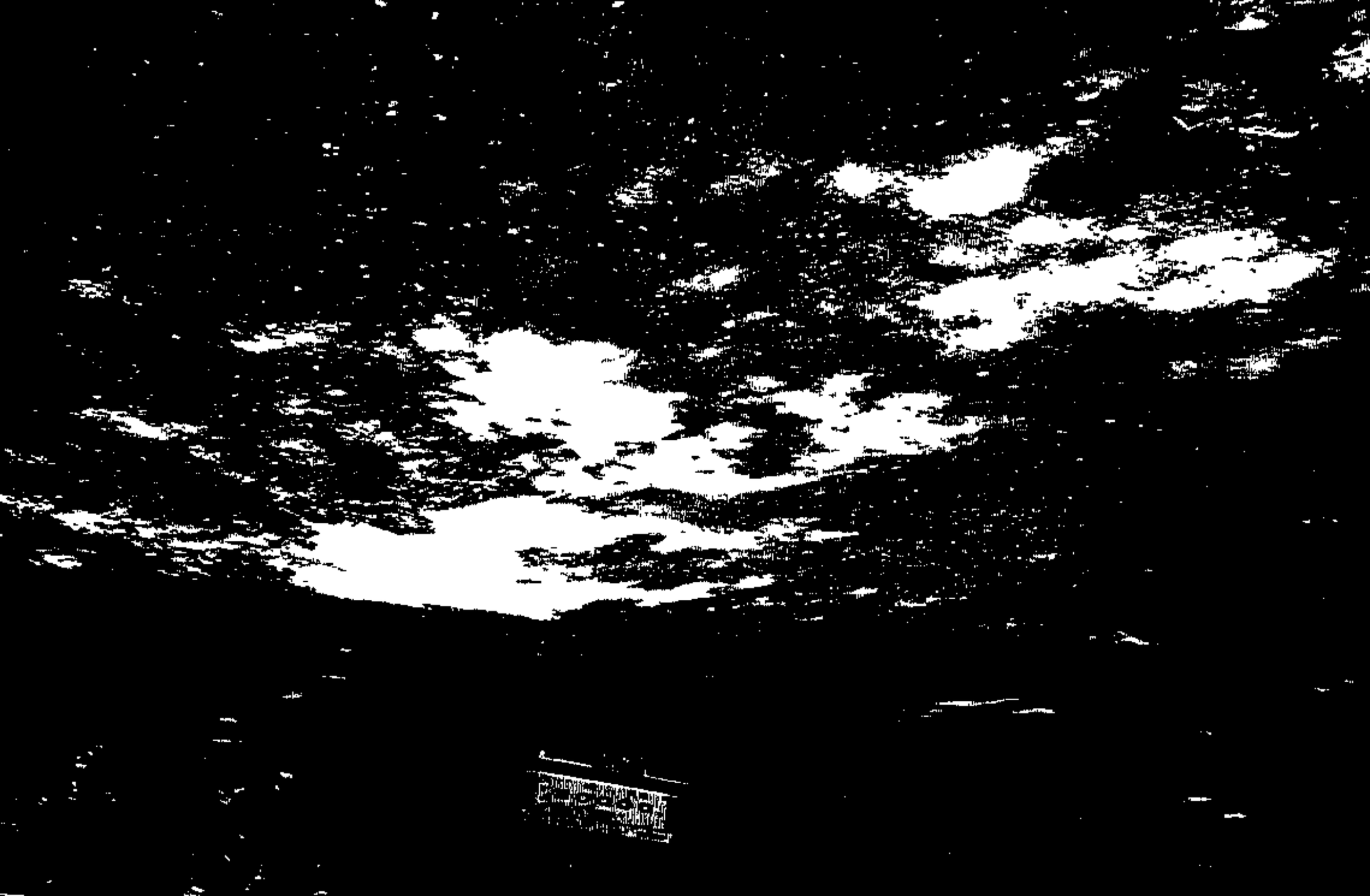
Chacko

PRIVATE DRIVE AT
EDGE OF CHACO PROPERTY

P4A

PRIVATE DRIVE
AT CHAKO PROPERTY

PC4B



PRIVATE DRIVE #4

BC4C

PRIVATE DRIVE #3

PC4D

CHAKO PROPERTY
AND PRIVATE DRIVE

PG 4E

CHAKO PROPERTY

#3

PL #5 A

CHAKO PROPERTY

#2

R 5B

TYPICAL PROPERTY
ON SUMTER AVE PC3A
#18

TYPICAL PROPERTY
ON SUMMER AVE PG #3B

#5

TYPICAL PROPERTY
ON SUMTER AVE

PC 3
C

#6

TYPICAL PROPERTY ON SUMTER AVE #3

PC3
D

TYPICAL PROPERTIES (2)
ON SUMTER AVE PC3
#1 E

TYPICAL PROPERTIES (2)
ON SUMTER AVE
PC3F #2

TYPICAL PROPERTY ON SUMMER AVE.

PC 36.

Pet #3

(Notarial) Sadye B Jacobs

(Seal) Notary Public

Recorded Dec 31 1938 At 12 M & Exd Per C Willing Browne Jr Clerk

115234 : This Deed Made this thirty-first day of December in the
Frederick B Reinhardt & wife : year one thousand nine hundred and thirty-eight by and
Deed to : between Frederick B Reinhardt and Anna B Reinhardt his wife
Marie Reinhardt : of Baltimore County in the State of Maryland of the first part and Marie Reinhardt single of the same County and State of the second part

Witnesseth that in consideration of the sum of five dollars and of other good and valuable considerations the receipt whereof is hereby acknowledged the said Frederick B Reinhardt and Anna B Reinhardt his wife do grant and convey unto the said Marie Reinhardt (subject to the easements and restrictions hereafter mentioned) her heirs and assigns in fee-simple all that lot of ground situate lying and being in Baltimore County aforesaid and described as follows that is to say

Beginning for the same on the northeast side of Sumter Avenue (formerly called Summit Avenue) at the southernmost corner of lot number 158 thence southeasterly along the northeast side of Sumter Avenue (formerly called Summit Avenue) south twenty degrees thirty minutes east one hundred and thirteen and forty-three hundredths feet thence in a northeasterly direction north forty-two degrees thirty-three minutes east three hundred and twenty-six and two-tenths feet thence in a northwesterly direction north eleven degrees sixteen minutes west eighteen and seventy-five hundredths feet thence in a southwesterly direction south fifty-nine degrees forty-three minutes west two hundred and ninety-nine and five-tenths feet to the place of beginning

Being parts of lots numbers 157 and 158 as laid out on Plan "C" of Rosedale Terraces and being parts of lots numbers 157 and 158 as laid out on the Revised Plat of Rosedale Terraces Being also part of the land firstly described in a deed from Cityco Realty Company of Baltimore City a body corporate to Frederick B Reinhardt and wife dated March 25th 1929 and recorded among the Land Records of Baltimore County in Liber W H M number 817 folio 326 etc

Together with the buildings and improvements thereon erected made or being and all and every the rights alleys ways waters privileges appurtenances and advantages to the same

belonging or in any wise appertaining

To Have And To Hold the said lot of ground and premises above described and mentioned and hereby intended to be conveyed together with the rights priviloges appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Marie Reinhardt her heirs and assigns in fee-simple

Subject however to an easement right privilege of the said Frederick B Reinhardt and Anna B Reinhardt his wife their heirs and assigns perpetually to use the said property for the purpose of conducting water electricity gas and sewerage through under over and along the said property for the benefit of other property which the said Frederick B Reinhardt and Anna B Reinhardt his wife or their heirs and assigns now have own or possess the said easement right and privilege to be a burden and incumbrance for a width of ten feet frontage on the northeast side of Sumter Avenue northwest from the north forty-two degrees thirty-three minutes East line and for a length of 326 and 2/10ths feet parallel with the said north forty-two degrees thirty-three minutes east line

And the said parties of the first part hereby covenant that they will warrant specially the property hereby granted and conveyed and that they will execute such further assurances of said property as may be requisite

Witness the hands and seals of said grantors

Test — Frederick B Reinhardt (Seal)

George L Lochloebler — Anna B Reinhardt (Seal)

State of Maryland City of Baltimore to wit

I Hereby Certify that on this thirty-first day of December in the year one thousand nine hundred and thirty-eight before me the subscriber a Notary Public of the State of Maryland in and for the City aforesaid personally appeared Frederick B Reinhardt and Anna B Reinhardt his wife and they acknowledged the foregoing Deed to be their act

(Notarial) — Charles J Kozlovsky

(Seal) — Notary Public

Recorded Dec 31 1938 At 12 M & Exd Per C Willing Browne Jr Clerk

---

115235 : This Deed Made this 31st day of December in the year one
Frederick B Reinhardt & wife : thousand nine hundred and thirty-eight by Frederick
Deed to : B Reinhardt and Anna B Reinhardt his wife of Baltimore
Edward Reinhardt & wife : County in the State of Maryland parties of the first part and Edward Reinhardt and Eva E Reinhardt his wife of the same County and State parties of the second part

Witnesseth that in consideration of the sum of Five Dollars and of other good and valuable considerations the receipt whereof is hereby acknowledged the said Frederick B Reinhardt and Anna B Reinhardt his wife do grant and convey unto Edward Reinhardt and Eva E Reinhardt his wife as tenants by the entireties their heirs and assigns in fee simple all that lot of ground and premises situate lying and being in Baltimore County and described as follows that is to say

Beginning for the same at the northeasternmost end of the south forty-two degrees thirty six minutes west fourteen hundred and eighty-five one-hundredths foot line in the deed from the Owners Realty Company of Baltimore City to the Cityoo Realty Company of Baltimore City and hereinafter referred to thence running with and binding on said line

south forty-two degrees thirty-six minutes west one hundred and forty-tyree and ninety-four one hundredths feet to the northeast side of the property heretofore conveyed to the Canton Railroad Company thence northwesterly on the northeast side of said property two hundred and eight and eighty-three one hundredths feet to the northeasternmost outline of the property heretofore conveyed to the Cityco Realty Company of Baltimore City by the Owners Realty Company of Baltimore City and hereinafter referred to thence binding on said outline south fifty four degrees fifty four minutes east one hundred and seventy-one and fifty-three one hundredths feet to the place of beginning Being parts of Lots numbers 156 157 and 158 as laid out on Plan "C" of Rosedale Terraces subdivided by the Cityco Realty Company of Baltimore City and recorded among the Land Records of Baltimore County in Plat Book W P C No 3 folio 90 and being Lot Number 202 as laid out on the Revised Plat of Rosedale Terraces Being a portion of the property which was conveyed to the Cityco Realty Company of Baltimore City by the Owners Realty Company of Baltimore City by deed dated November 29 1910 and recorded among the Land Records of Baltimore County in Liber W P C No 369 folio 513 Being also the lot of ground secondly described in a deed dated March 25th 1929 from Cityco Realty Company of Baltimore City to the said Frederick B Reinhardt and Anna B Reinhardt his wife

Together with the buildings and improvements thereon erected made or being and all and every the rights alleys ways waters privileges appurtenances and advantages to the same belonging or in any wise appertaining

To Have And To Hold the said lot of ground and premises above described and mentioned and hereby intended to be conveyed together with the rights privileges appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Edward Reinhardt and Eva E Reinhardt his wife as tenants by the entireties their heirs and assigns forever in fee-simple

And the said Frederick B Reinhardt and Anna B Reinhardt his wife do hereby covenant that they will warrant specially the property hereby granted and conveyed and that they will execute such further assurances of the same as may be requisite and they further covenant that they have not done or suffered to be done any act matter or thing whatsoever to encumber the property hereby conveyed

Witness the hands and seals of said grantors

Test

George L Dochloebler

Frederick B Reinhardt (Seal)

Anna B Reinhardt (Seal)

State of Maryland Baltimore City to wit

I Hereby Certify that on this 31st day of December in the year one thousand nine hundred and thirty-eight before me the subscriber a Notary Public of the State of Maryland in and for Baltimore City aforesaid personally appeared Frederick B Reinhardt and Anna B Reinhardt and acknowledged the foregoing Deed to be their act

(Notarial)

(Seal)

Elizabeth Brooks Cipra

Notary Public

Recorded Dec 31 1938 At 12 M & Exd Per C Willing Browne Jr Clerk

115236 :
Frederick B Reinhardt & wife :
Deed to :
Andrew Lang & wife :

This Deed Made this thirty-first day of December in the year one thousand nine hundred and thirty-eight by Frederick B Reinhardt and Anna B Reinhardt his wife of Baltimore County in the State of Maryland parties of the first part and Andrew Lang and Charlotte A Lang his wife of the same County and State parties of the second part

Witnesseth that in consideration of the sum of Five Dollars and of other good and valuable considerations the receipt whereof is hereby acknowledged the said Frederick B Reinhardt and Anna B Reinhardt his wife do grant and convey unto Andrew Lang and Charlotte A Lang his wife as tenants by the entireties (subject however to the easements and restrictions hereinafter mentioned and described) their heirs and assigns in fee-simple all that lot of ground and premises situate lying and being in Baltimore County and described as follows that is to say

Beginning for the same on the northeast side of Sumter Avenue (formerly called Summit Avenue) at a point south twenty degrees thirty minutes east one hundred and thirteen and forty-three hundredths feet distant in a southeasterly direction from the southernmost corner of lot Number 156 thence southeasterly on the northeast side of Sumter Avenue (formerly called Summit Avenue) south twenty degrees thirty minutes east fifty-five feet thence in a northeasterly direction north Forty-nine degrees forty minutes east one hundred and thirty eight and ninety-five one-hundredths feet to the northwest side of a proposed street twelve feet more or less in width there to be laid out and kept open for the benefit of other properties adjoining thereto thence along the northwest side of said proposed street north thirty-seven degrees thirty minutes west sixty-seven and four-tenths feet thence in a southwesterly direction south forty-two degrees thirty-three minutes west one hundred and twenty-four and four-tenths feet to the original point and place of beginning Being part of lot Number 158 as laid out on Plan "C" of Rosedale Terraces and being part of lot Number 158 as laid out on the Revised Plat of Rosedale Terraces Being also part of the land firstly described in a deed from Cityco Realty Company of Baltimore City to Frederick B Reinhardt and wife dated March 25th 1929 and recorded among the Land Records of Baltimore County in Liber W H M number 817 folio 326 etc

Together with the buildings and improvements thereon erected made or being and all and every the rights alleys ways waters privileges appurtenances and advantages to the same belonging or in any wise appertaining

To Have And To Hold the said lot of ground and premises above described and mentioned and hereby intended to be conveyed together with the rights privileges appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said Andrew Lang and Charlotte Lang his wife as tenants by the entireties their heirs and assigns forever in fee-simple

Subject however to the present easement right and placement of water and water pipes over and through the said property and subject further to the easements privileges and rights of the said Frederick B Reinhardt and Anna B Reinhardt his wife their heirs and assigns perpetually to use the said property for the benefit of other property which the said Frederick B Reinhardt and Anna B Reinhardt his wife their heirs and assigns now have own or possess for the purpose of conducting water gas electricty and sewerage the said easements rights and privileges to be a burden and incumbrance for a width of ten feet frontage on the northeast side of Sumter Avenue from the beginning point south twenty degrees

thirty minutes east ten feet in a southeasterly direction and thence parallel with the north forty-two degrees thirty-three minutes east line for a distance of one hundred and twenty-four and four-tenths feet

And The Said Frederick B Reinhardt and Anna B Reinhardt hereby covenant that they will warrant specially the property hereby granted and conveyed and that they will execute such further assurances of said property as may be requisite

Witness the hands and seals of said grantors

Test — Frederick B Reinhardt (Seal)

George L Lochloebler — Anna B Reinhardt (Seal)

State of Maryland Baltimore City to wit

I Hereby Certify that on this thirty-first day of December in the year one thousand nine hundred and thirty-eight before me the subscriber a Notary Public of the State of Maryland in and for Baltimore City aforesaid personally appeared Frederick B Reinhardt and Anna B Reinhardt his wife and they acknowledged the foregoing Deed to be their act

(Notarial) (Seal) — Charles J Kozlovsky, Notary Public

Recorded Dec 31 1938 At 12 P & Exd Per C Willing Browne Jr Clerk

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115704 — George J Gebhardt — Deed to — Jean Okyen

This Deed Made this 10th day of January in the year one thousand nine hundred and thirty-nine by and between George J Gebhardt of Baltimore City in the State of Maryland of the first part and Jean Okyen unmarried of the same place of the second part

Witnesseth that in consideration of the sum of Five ($5.00) Dollars and other good and valuable considerations the receipt whereof is hereby acknowledged the said George J Gebhardt does grant and convey unto the said Jean Okyen her heirs and assigns in fee simple all that lot of ground situate lying and being in Baltimore County aforesaid and described as follows that is to say

Beginning for the same at a concrete marker which is one hundred and sixty-eight and nine-tenths feet distant and bears south seventy-five degrees east from a stone monument marked "E-39" standing on the southeasterly side of Westchester Avenue being called for in the description of the outline of the tract of land (of which said parcel is a portion) which is described in a deed from W J Dickey and Sons Incorporated to said John H Donaldson dated November 6th 1907 and recorded among the said records of Baltimore County in Liber W P C No 320 folio 507 and running thence south eighty degrees twenty minutes east two hundred and five and six-tenths feet to a concrete marker on the northwesterly line of a thirty foot avenue to be laid and then continuing the same course sixteen feet to the centre of said Avenue thence running along the centre of this Avenue south twenty-nine degrees fifty minutes west two hundred and twenty-eight and one-half feet to the centre point of the intersection of this Avenue with another Avenue also thirty feet wide to be laid out leading to Westchester Avenue thence running along this last Avenue north seventy-two degrees fifty-four minutes west one hundred and eighty feet and four-tenths feet to a point thence running north twenty degrees twenty-two minutes east fifteen feet about to a concrete marker on the northeasterly line of this last named Avenue thence continuing the same course one hundred and seventy-nine feet to the point of beginning Containing and laid out for ninety-five one-hundredths acres more or less

Being the same lot of ground described in a deed from Irvin S Yeuldhall and Mary

Pt #4

nes and Catherine C Hughes his wife

GETHER with the buildings and improvements thereupon erected made or being and all and the rights alleys ways waters privileges appurtenances and advantages to the same ing or in anywise appertaining

HAVE AND HOLD the said described lots of ground and premises unto and to the use of id CALVIN LEGG and EVELYN FAY LEGG his wife as tenants by the entireties their heirs signs and the heirs and assigns of the survivor of them forever in fee simple Subject restrictions set forth in the above mentioned lease dated November 12 1926 and re- among the aforesaid Land Records in Liber WPC No 638 folio 357 from Henry Kolb In- ted to Charles J Rybak and wife

the said parties of the first part hereby covenant that they have done no act to er said land hereby conveyed that they will warrant specially the property hereby ed and that they will execute such further assurances of said land as may be requisite

TNESS the hands and seals of said grantors

leen P Watt	Charles J Rybak	(SEAL)
	Edith M Rybak	(SEAL)

OF MARYLAND BALTIMORE CITY TO WIT

ereby certify that on this 26th day of April in the year one thousand nine hundred rty-six before me the subscriber a Notary Public of the State of Maryland in and for ore City aforesaid personally appeared CHARLES J RYBAK and EDITH M RYBAK his wife ove-named grantors and they acknowledged the foregoing Deed to be their act

witness my hand and Notarial Seal

(Notarial Seal)

Eileen P Watt

Notary Public

ed May 4 1946 at 11:30 AM exd per Robert J Spittel Clerk

rded by MAP) (Exd By W & G)

---

64)	THIS DEED Made this 22 day of April in the year of Our
rick Reinhardt, Widower)	Lord one thousand nine hun red and forty-five by and
To)	between FREDERICK B REINHARDT widower of Baltimore County
B Reinhardt & Wife)	in the State of Maryland party of the first part and

B REINHARDT and ROMA D REINHARDT his wife of the same County and State parties of the d part

TNESSETH that in consideration of the payment of the sum of five dollars and of other d valuable considerations the receipt of all of which is hereby acknowledged the said of the first part does hereby grant and convey unto John B Reinhardt and Roma D Rein- his wife as tenants by the entireties their heirs and assigns in fee simple forever t lot of ground and premises situate lying and being in Baltimore County in the State ryland and described as follows to wit

GINNING for the same on the northeast side of Sumter Avenue at a point one hundred ight and forty-three hundredths (168.43) feet from the southernmost corner of lot 156 as shown on plat by Reding and Howard dated March 1 1910 thence south twenty thirty minutes east along the northeast side of Sumter Avenue sixty-three and forty-

seven hundredths (63.47) feet to a pipe in the south side of a twelve (12) foot private road laid out for the purpose of egress and ingress to the properties of Andrew Lang and wife Marie Reinhardt F B Reinhardt and Edward Reinhardt and wife and their heirs only not for the benefit of their assigns thence along said road in a northeasterly course one hundred fifty-nine and fifty-nine hundredths (159.59) feet to a point on the south side of said road thencenorthwesterly thirty-nine and seventy-six hundredths (39.76) feet to the southeasternmost corner of the land of Andrew Lang and wife thence southwesterly by the southern boundary of the land of Andrew Land and wife one hundred thirty-eight and ninety-five hundredths (138.95) feet to the place of beginning containing 0.167 acres or less

BEING part of Lot No 158 of Plan C of Rosedale Terraces recorded among the Land Records of Baltimore County in Plat Book WPC 3 folio 90 and being part of lot No 158 as laid on the revised plat of Rosedale Terraces

TOGETHER with the buildings thereupon and the rights alleys ways waters privileges appurtenances and advantages thereto belonging or in any wise appertaining

TO HAVE AND TO HOLD the said described lot of ground and premises unto and to the use of the said John B Reinhardt and Roma D Reinhardt his wife as tenants by the entireties heirs and assigns in fee simple forever

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

WITNESS the hand and seal of said grantor

WITNESS

Burneice F Lovelace Frederick B Reinhardt

STATE OF MARYLAND CITY OF BALTIMORE TO WIT

I HEREBY CERTIFY that on this 22 day of April 1946 before me the subscriber a Notary Public of the State of Maryland in and for the County of Baltimore personally appeared Frederick B Reinhardt the grantor in the aforegoing deed and he acknowledged the aforegoing to be his act and deed

AS WITNESS my hand and Notarial Seal

(Notarial Seal)

Burneice F Lovelace

Notary Public

Recorded May 4 1946 at 11:30 AM exd per Robert J Spittel Clerk

(Recorded by MAP) (Exd by W & R)

110055)
Stanley W Batko & Wife)
Deed To)
Milton M Smulson & Wife)
USS $2.75 SS $2.50)

THIS DEED Made this 4th day of May in the year one thousand nine hundred and forty-six by and between STANLEY W BATKO and VIOLET BATKO his wife of the County of Baltimore State of Maryland of the first part and MILTON M SMULSON and LILLIAN SMULSON his wife of the County of Baltimore State of Maryland parties of the second part

WITNESSETH that in consideration of the sum of five ($5.00) dollars and all other and valuable considerations the receipt of which is hereby acknowledged the said Stanley

Released June 7/23/46 Lillian Smulson

of the State of Maryland, in and for the City aforesaid, personally appeared Daniel J. Wieczynski and Laura V Wieczynski, his wife, the above named Mortgagors, and they each acknowledged the foregoing Mortgage to be their respective act.

At the same time also personally appeared J.Henry Michel, the President of the within body corporate, Mortgagee, and made oath in due form of law that the consideration of said mortgage is true and bona fide as therein set forth; and also made oath that he is the agent of the Mortgagee and is duly authorized to make this affidavit.

IN TESTIMONY WHEREOF, I Have hereunto set my hand and affixed my official seal the day and year aforesaid

(Notarial Seal) Charles H. Cover Notary Public

Charles H. Cover

Rec Jun 30 1948 at 2 P M & exd per T Braden Silcott Clerk Rec M K

Exd by SG&AG

From folio 119 Liber 1670
For value received, Amoskeag Savings Bank, hereby releases the within mortgage, Witness the signature & seal of said corporation by its Executive Vice President, William J. Hamilton & its Asst. Secretary, J. Robert Prescott this 3rd day of April, 1967.
Witnesses: Marjorie E. Hitchcock Amoskeag Savings Bank
Judith V. Bremner BY: William J. Hamilton Executive Vice Pres.
(Corporate Seal) BY: J. Robert Prescott Asst. Secretary
Rec. May 10, 1967 at 11:15 A M &Exd per Orville T. Gosnell, Clerk Xg

---

CELIVERED TO FEB 7 1949 SIGNATURE

5697¼ Andrew Lang et al : THIS INDENTURE, made this 29th day of May in the year
Indenture Edw W Reinhardt et al : nineteen hundred forty-eight, by and between Andrew Lang
- and Charlotte A. Lang, his wife of Baltimore County, State of Maryland, of the first part; and Frederick R Reinhardt, widower, of the same County and State, of the second part; and Edward W Reinhardt and Eva E. Reinhardt, his wife, of the same County and State of the third part.

WHEREAS the said parties of the first part are seised in fee simple of a parcel of land situate on the northeasterly side of Sumter Avenue in Rosedale, Baltimore County, Maryland, more particularly described in a deed dated May 10 1948 and recorded among the Land Records of Baltimore County on or about May 20, 1948 from John Reinhardt and wife to the said Andrew Lang and wife and across which there runs a private road hereinafter more fully described; and

WHEREAS the said party of the second part is seised in fee simple of another parcel of land immediately adjoining on the northeast, the parcel of land owned by the said parties of the first part, and more particularly described in a deed from the Cityco Realty Company of Baltimore City to Frederick B. Reinhardt and Anna B. Reinhardt, his wife, dated March 25, 1929 and recorded among the Land Records of Baltimore County in Liber W. H. M. No. 817, folio 326 and across which land there runs a private roadway as hereinafter more fully described; and

WHEREAS the said parties of the third part are seised in fee simple of another tract of land lying further to the northeast and more particularly described in a deed dated December 31, 1938 and recorded among the Land Records of Baltimore County in Liber C. W. B. Jr. No. 1048, folio 500 from Frederick B. Reinhardt and wife; and

WHEREAS there is now in existence a private roadway serving the aforesaid tracts or parcels of land owned by the said parties hereto and more particularly described as follows:

BEGINNING for the same at a point on the northeast side of Sumter Avenue where it is intersected by the s outh 42 degrees 36 minutes West 1400.85 foot line of Deed from Owens Realty Company of Baltimore City to Cityco Realty Company of Baltimore City dated November 29,1910 and recorded among the Land Records of Baltimore County in Liber W.P.C.No.369,folio 513; thence reversing said line and binding on a part thereof (said line being also the southeasterly side of Lot No.158 as laid out on the Plat of Rosedale Terraces Plan C as recorded among the Plat Records of Baltimore County in Plat Book W.P.C. No. 3, folio 90) North 42 degrees 30 minutes East 307.78 feet, more or less to the southwesterly side of the land conveyed by the Cityco Realty Company to the Canton Company of Baltimore dated January 15, 1913 and recorded among the Land Records of Baltimore County in Liber W. P.C. No.406,folio 298; thence binding on the southwesterly side thereof North 12 degrees 54 minutes 10 seconds West 14.58 feet; thence South 42 degrees 30 minutes West 309.84 feet more or less to the northeasterly side of Sumter Avenue;and thence binding on the northeast side of Sumter Avenue South 20 degrees 30 minutes East 13.47 feet to the place of beginning.

AND WHEREAS the said parties of the first and second parts have agreed in consideration of the sum of Five Dollars andother good and valuable considerations, the receipt of which is hereby acknowledged, to grant unto the said parties of the third part an easement or right-of-way over the said private road for the purposes and in the manner hereinafter expressed:

AND WHEREAS the said parties of the first part have agreed in consideration of the sum of Five Dollars and other good and valuable considerations,receipt of which is hereby acknowledged, to grant unto the said party of the second part an easement or right-of-way over the said private road for the purposes and in the manner hereinafter expressed:

NOW THIS INDENTURE WITNESSETH that in pursuance of the said agreement and in consideration of the sum of Five dollars and other good and valuable considerations paid by the parties of the third part to the parties of the first and second parts,the receipt whereof is hereby acknowledged,the parties of the first and second part hereby grant unto the parties of the third part, their heirs and assigns; and

ALSO WITNESSETH in pursuance of the said agreement and in consideration of the sum of Five dollars and other good and valuable considerations paid by the said party of the second part to the said parties of the first part, the receipt whereof is hereby acknowledged, the parties of the first part hereby grant unto the party of the second part,his heirs and assigns:

Full and free right and liberty for them, their tenants, servants, visitors, licensees, heirs and assigns ,in common with all others having the like right, at all times hereafter, with or without horses, cattle, or other animals, carts,carriages, or other vehicles of any description, for all purposes connected with the use and enjoyment of the said lands of the parties of the second and third parts for whatever purpose the said lands may be from time to time lawfully used and enjoyed,to pass and repass along the said private road for the purpose of going from the said Sumter Avenue to the land of the said parties of the second and third parts or vice versa.

TO HAVE AND TO HOLD the said easement or right-of-way hereby granted unto the parties of the second and third parts,their respective heirs and assigns ,as appurtenant to the said lands of the said parties of the second and third parts and every part thereof.

IN WITNESS WHEREOF the hands and seals of the parties of the first and second parts hereto.

TEST:	Andrew Lang	(SEAL)
Howard J Bohlen	Andrew Lang	
Howard J. Bohlen	Charlotte A. Lang	(SEAL)
	Charlotte A. Lang	

Pc #6 LIBER 7311 FOLIO 207

THIS DEED, Made this 20th day of October in the year one thousand nine hundred and eighty-six, by and between GENEVIEVE A. SEISER and DONNA J. ROBERTSON, Personal Representative of the Estate of CHARLOTTE M. MARTIN, parties of the first part, Grantor, and MATHEN E. CHACKO and ALEYKUTTY E. CHACKO, his wife, parties of the second part, Grantee.

WITNESSETH, That in consideration of the sum of $ 37,500.00 and other valuable considerations, the receipt whereof is hereby acknowledged, the said Grantor does hereby grant, convey and assign unto the said Grantees, as tenants by the entireties, their assigns, and unto the survivor of them, his or her personal representatives and assigns, all that lot(s) of ground situate in the Fifteenth Election District of Baltimore County in the State of Maryland, and described as follows, that is to say:

C RC/F 17.00
C T TX 187.50
C DOCS 187.50
DEED 0
CHK JR T 392.00
10/30/

BEGINNING for the same thereof on the Northeast side of Summit Avenue at the southernmost corner of Lot Number 156; thence Southeasterly along the Northeast side of Summit Avenue, two hundred and thirty-four and seventy-one one-hundredths (234.71) feet to the whole outline of the property heretofore conveyed to Cityco Realty Company and hereinafter referred to; thence Northeasterly along said outline, three hundred and five and eleven one-hundredths (305.11) feet to the property heretofore conveyed to the Canton Railroad Company; thence Northwesterly along said outline one hundred and forty-five and eighty-eight one hundredths (145.88) feet to Lot Number 156; thence southwesterly along Lot Number 156, two hundred and ninety-eight and fifty-one one-hundredths (298.51) feet to the place of beginning. Being parts of Lots Numbers 157 and 158, as laid out on Plan "C" of Rosedale Terraces hereinafter referred to, and being Lots Numbers 157 and 158, as laid out on the Revised Plat of Rosedale Terraces. The improvements thereon being known as No. 1004 Sumter Avenue.

SAVING AND EXCEPTING THEREFROM, those lots of ground, heretofore conveyed by the following Deeds:

1. Dated December 31, 1938 and recorded among the Land Records of Baltimore County in Liber C.W.B. Jr. No. 1048 folio 499, from Frederick B. Reinhardt and Anna B. Reinhardt, his wife, to Marie Reinhardt.

2. Dated December 31, 1938 and recorded as aforesaid in Liber C.W.B., Jr. No. 1048 folio 502, from Frederick B. Reinhardt and Anna B. Reinhardt, his wife, to Andrew Lang and Charlotte A. Lang, his wife.

3. Dated April 22, 1945 and recorded as aforesaid in Liber R.J.S. No. 1455 folio 217, from Frederick B. Reinhardt to John B. Reinhardt and Roma D. Reinhardt, his wife.

BEING the same property which by Deed dated April 10, 1980 and recorded among the Land Records of Baltimore County in Liber E.H.K., Jr. No. 6155 folio 593, was conveyed by John R. Baumgartner and Genevieve A. Baumgartner to John R. Baumgartner for life, with remainder upon his death to Genevieve A. Baumgartner.

(continued)

STATE DEPARTMENT OF ASSESSMENTS & TAXATION
CLERK 10-30-86 DATE

AGRICULTURAL TRANSFER TAX NOT APPLICABLE
SIGNATURE DATE 10-30

B B 181*****60000:a 230*A

P. C. # 1

PROCEDURE FOR MINOR SUBDIVISION

1 Initially, in accordance with the attached filing procedure, 20 copies of the plan should be submitted to the Department of Permits and Development Management (PDM) in the County Office Building, Room 123, along with the review fee for all minor subdivisions, and the basic filing certification (Page 4) The processing fees are :

One lot subdivision	$282
Two lot subdivision	$435
Three lot subdivision	$527

These processing fees are subject to change.

2. Prints will be distributed to the reviewing agencies within three working days to allow for the first review, and will have a 15 workday response deadline. It will be made clear that the responses not received by the deadline will be considered approvals during the final certification review by (PDM).

3. The agencies' comments will be returned to the surveyor via the pick-up bin three days after the due date, along with a cover letter outlining the county's commitment and the responsibility of the surveyor for the second plan submission. Contact between the surveyor and the county agencies is encouraged. This will not eliminate the need for subsequent reviews, but could expedite plan approval. The surveyor (and P.E. if required) will be responsible for the resolution of agency comments and the submission of the revised plans to PDM.

4. The plans are forwarded to the zoning review planner who will disperse to the agencies for second review. This person will act as "project manager" for the minor subdivision and should be contacted for all questions regarding the status for the subdivision. The telephone number is 410-887-3391. The second review will also have a 15 workday response deadline.

5. Plan approval must come within one year of submittal or the file will be purged. If the plan is not approved after the third formal review, or if the file is inactive for a period of 90 days (as determined by the planner), the planwill be denied, the file will be purged and returned to the applicant. A new application and fee must be submitted to restart the review process.

6. Once approved, the "project manager" will contact the surveyor to request an original and three prints. These must be submitted to PDM in room 123,County Office Building. These will be forwarded to Zoning Review and to the Department of Environmental Protection and Resource Management (DEPRM) for signature. Final approval is in about a week. The surveyor will be responsible for providing the DEPRM with eight copies of the signed plan for distribution to the agencies for inclusion into their files. The original mylar will be returned to the surveyor, unless it is to be recorded in the Minor subdivision/Greenway Plan book.

Revised plans will not be accepted for review without the revision date and reasons for revisions being included on the plans.

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

Baltimore County Office Building, Towson, MD 21204

TO. All Engineers/Surveyors DATE. August 19, 1994

FROM: Department of Permits and Development Management

RE: Recording of Minor Subdivision Procedures

It has recently come to our attention that owners of properties subdivided through the minor subdivision process have been attempting to record their plans at the Land Records Office.

Minor subdivision plans intended to be recorded may be recorded in the Minor Subdivision/Greenway Plan Book, a record plat is not required. The plan(s) must also be presented in an acceptable form for recording, i.e., original ink on mylar with original signatures, reprographic "washoff" mylar with original signatures or other media approved for recording. Prints, diazo mylars, sepias, xerox copies,sticky backs, etc., will not be accepted. All plans submitted for recordation shall be processed through this office and accompanied by the appropriate fees. An alternative to this process is to attach a reduced copy directly to the deed(s).

Transfers of properties should be accomplished via metes and bonds descriptions whether or not the minor subdivision has been placed on record. Transfers referencing plan titles and lot numbers only may not be permitted as the plans recorded among the Minor Subdivision/Greenway Plan Book do not typically meet the requirements of the Annotated Code of Maryland.

There has been a recurring problem of deeds being written for minor subdivisions setting out road widenings as separate parcels/lots. Please be aware that Baltimore County does not encourage separate parcels for road widening strips unless the county has commented on the road widening strip during approval process.

To prevent further delays and misunderstandings, please inform your clients and/or their title attorneys of these procedures. Questions may be directed to the Department of Permits and Development Management at (410) 887-3335.

Your cooperation is greatly appreciated.

MINOR SUBDIVISION FILING PROCEDURES

Prior to submitting the plan, it is advised that the surveyor contact the following agencies for pertinent data that may be required:

1. Environmental Protection and Resource Management, Department of (DEPRM)
   (See Basic Filing Certification).....887-3980
2. Fire Department.....887-4880
3. Permits and Development Management, Department of (PDM)
   - Development Plans Review.....887-3751
   - Land Acquisition.....887-3255
   - Street Names and Addresses.....887-3710
   - Zoning Review.....887-3391
4. Planning, Strategic.....887-3211
5. Recreation and Parks.....887-3823
6. Solid Waste Management.....887-3185
7. State Highway Administration.....545-5606
8. Tax Assessment.....887-3284

TIMELINES:

*1. One year maximum processing time.
*2. No more than three plan reviews prior to approval.
*3. 90 days maximum time for an inactive file, as determined by the planner after agency comments have been made and remain unresolved

* If these timelines are exceeded the plan may be disapproved, the file purged, and returned to the applicant. A new application and fee must be submitted to continue the review process.

NOTE: Place this signature block at the lower right corner of the plan

THE ATTACHED BASIC FILING CERTIFICATION MUST BE COMPLETED AND SIGNED INDICATING THAT THE ESSENTIAL BASIC INFORMATION IS IN PLACE.

MINOR SUBDIVISION
BASIC FILING CERTIFICATION

To be initialed, signed, sealed ONLY by the surveyor. Submit 19 copies of the plan with the filing fee to

Department of Permits and Development Management
ATTN: Darryl Putty
111 W. Chesapeake Avenue, Room 123
Towson, MD 21204

Pertinent data has been obtained from the reviewing agencies regarding this subdivision and the following basic information is in place:

<u>County Office Building</u>
Department of Permits and
Development Management
Development Management.....Room 123
Development Plans Review.....Room 211
Zoning.....Room 111

<u>New Courts Building</u>
Department of Environmental
Protection and Resource Management..... ...Room 416
Office of Planning (Panhandles).....Room 406

_____ 1. Existing improvements including buildings, uses, water and sewer designations, mains, wells, septics, and underground tanks

_____ 2. Topography, soils.

_____ 3. Streams and floodplains, wetlands, and forest buffers.

_____ 4. Forest conservation requirements resolved.

_____ 5. Perc tests completed.

_____ 6. Existing and proposed right-of-way(s), paving, and improvements including utilities.

_____ 7. Zoning and overall density calculations since last zoning change.

_____ 8. If zoned RC-2 and the property to be subdivided has not been separately described in deed or separately recorded in a subdivision prior to November 25, 1979 a devolution of the title must be approved by the Department of Permits and Development Management, Bureau of Zoning Review prior to filing the minor subdivision. The planner must initial the plan.

_____ 9. If zoned RC-4 and prior to filing, the distribution of the conservancy and building areas must be determined by meeting with Department of Environment Protection and Resource Management and the Office of Planning.

_____ 10. If located within the Chesapeake Bay Critical Area, the findings plan must be submitted to Department of Environmental Protection and Resource Management and resolved prior to filing the minor subdivision.

_____ 11. Contact Strategic Planning before submitting any minor subdivision panhandle plans.

_____
Signature of Surveyor

Address: _____

_____

Telephone No. _____

SEAL

DEVELOPMENT REVIEW AND APPROVAL PROCESS

DEPARTMENT	TELEPHONE NUMBERS
ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT	
RC2 and RC4	887-2904
Storm Water Management:	887-3768
Wells and Septic	887-3980
Wetlands, Water Quality, and Tree Preservation	887-3980
FIRE DEPARTMENT	887-4880
PERMITS AND DEVELOPMENT MANAGEMENT	
Building Plans Review	887-3987
Development Management	887-3353
Development Plans Review	887-3571
Land Acquisition	887-3293
Zoning	887-3391
PLANNING, STRATEGIC	887-3480
PUBLIC WORKS	
Reception and Processing (Water, Sewer)	887-3363
Solid Waste Management	887-3188
RECREATION AND PARKS	887-3824
STATE HIGHWAY ADMINISTRATION	333-1350

SPECIFIC INFORMATION	DESIGNATED REVIEWING AGENCY	
Community Issues	Community Planning	887-3480
Wells and Perc Tests	Ground Water Management	887-2762
Landscape Requirements	Permits and Development Management	887-3751
Waiver of Process, Standards	Permits and Development Management	887-3353
Historical Sites	Office of Planning	887-3495
Critical Areas	Environmental Protection and Resource Management	887-3980
Microwave Path Protection	Central Services	887-2148

MINOR SUBDIVISIONS
IMPACT OF BILL NO. 172-89

The "panhandle" legislation adopted by the County Council on December 4, 1989, known as Bill No 172-89, became effective January 26, 1990. In addition to clarifying county policy concerning panhandle lots, this law places restrictions on subdivisions and the building permit processing of minor developments of three lots or less using panhandle lots.

A panhandle lot is a lot so shaped and situated that its only frontage or access to the local or collector street is a narrow in-fee strip of land which contains a driveway and may contain water, sewer lines, and other utilities

Section 26-171(a)(6) of the Baltimore County Code (development regulations) requires that minor residential subdivisions with a panhandle driveway are subject to division two of these regulations, but exempt from Sections 26-202 and 26-206 requirements.

Section 26-266 (10) of the Baltimore County Code requires that any panhandle lot of a minor residential subdivision, that was subdivided prior to the effective date of this legislation, be subject to the requirement of this section before a building permit may be issued.

MINOR SUBDIVISION CHECKLISTS

Developments impacted by Bill No. 172-89 should follow the panhandle checklist, as well as the minor subdivision checklist and developments not impacted by the above-referenced bill should follow the minor subdivision checklist.

Although the checklists are extensive, the intention is to identify any items the county needs to understand in order to make reasonably informed decisions concerning minor development projects. It is the responsibility of the engineer/surveyor preparing the plan to be sure that no item(s) are omitted.

The developer should be prepared for a minimum of two to three months to process the minor subdivision plan. If there are questions, please refer to the attached list of agency staff representatives.

OPEN SPACE REQUIREMENTS FOR MINOR SUBDIVISIONS

For residential development in certain Density Residential(D.R.) zones, the Baltimore County Local Open Space Manual has requirements for dedication of public open space and in certain situations allows or requires waivers of the open space with payment of a fee. Such waivers can take several weeks to approve and process. To avoid delay to minor subdivisions, residential developments of three lots or less, this office recommends that the attached open space wavier request be filled out and submitted with one copy of the plan to the Department of Recreation and Parks at the beginning of the development process.

If there are questions, please call Recreation and Parks at 887-3824.

REQUEST FOR WAIVER OF LOCAL OPEN SPACE

Date:_____

Project: _____

Location:_____

Election District: _____

Councilmanic District:_____

Local Open Space Coordinator
Baltimore County Dept. of Rec. & Parks
301 Washington Avenue
Towson, Maryland 21204

Gross Acreage: _____ Number of Proposed Units: _____

Zoning:_____ Local Open Space Required:_____

REASONS FOR REQUESTING A WAIVER (Check all that apply):

_____ Open Space required is less than 0.50 acres

_____ There are no adjacent parcels of Local Open Space, School Recreation Centers, or Parklands

_____ No Master Plan and/or other County plan issue/conflict involved (i.e., Growth Area Plan, Greenways issue, etc.)

_____
Signature of Owner/Agent

REQUEST FOR WAIVER OF LOCAL OPEN SPACE

(Attach One Copy of Plan to This Request)

Date: _____

Director
Department of Recreation and Parks
301 Washington Avenue
Towson, MD 21204

PROJECT: _____

LOCATION: _____

_____

ELECTION DISTRICT: _____

COUNCILMANIC DISTRICT: _____

Gross Acreage: _____ Number of Proposed Units: _____

Zoning: _____ Local Open Space Required: _____

REASONS FOR REQUESTING A WAIVER:

1. _____

2. _____

3. _____

_____
Signature of Owner/Agent Date

Attachment

SUBDIVISION ACCESS BY PRIVATE RIGHT-OF-WAY

Means of access to residential subdivisions fall into three categories according to minimum lot size, with each category presented in decreasing order of preference for access as follows:

Three Acres or Greater:

1. Private right-of-way.
   a. Physical standards shall follow panhandle requirements.
   b. Developer must state that he has a legal right to burden existing right-of-way.
   c Under special circumstances, new right-of-ways must be created.

2. Frontage on public road is recommended, but not required.

3. Panhandle in-fee strip to public road is preferable to a private right-of-way, but is not required.

20,000 Square Feet or Greater, But less Than Three Acres:

1. Frontage on public road is recommended.

2. Panhandle in-fee strip to public road is required as a minimum.

3. Private right-of-way (Section 22-85 (b), Baltimore County Code, BCC; Bill No. 18, 1990) :
   a. Physical standards shall follow panhandle requirements.
   b. Developer must state legal right to burden existing right-of-way.
   c. New right-of-way may not be created in this category, and the developer must demonstrate a history of usage for the existing right-of-way.

Less Than 20,000 Square Feet:

1. Frontage on public road is required, except as provided in Section 22-85, BCC.

2. Panhandle in-fee strip to public road under Section 22-85, BCC.

3. Private right-of-way prohibited in Section 102.4, Baltimore County Zoning Regulations.

Disclaimer:

Any subdivision plan(s) or plat(s) submitted for county review involving private right-of-ways and approval shall include this disclaimer: not approved by the Bureau of Land Acquisition "Baltimore County makes no warranty expressed or implied as to the right of any present or future owner of any lot shown on this plat to use all or any part of that land designated as a private right-of-way for the purpose of ingress, egress, regress, or the right to open or excavate the aforesaid private right-of-way for the purpose of installing, constructing, and maintaining utilities such as, but not limited to, water, sewer, electrical, telephone or cable television."

MINOR AND PANHANDLE SUBDIVISION CHECKLIST
(Three Lots Maximum)

Items below must be addressed prior to final zoning approval.

I. STANDARD NOTES: To be placed under vicinity map, along the right side of plan in the following order (as applicable):

_____ A. Area of tract; gross and net.
_____ B. Zoning classification, along with the 200 foot scale map reference number
_____ C. Density calculations:
1. Lots allowed.(zoning density X gross acres =)
2. Lots proposed =
Be advised, if potential density based on gross area in the Density Residential (D.R.) zones are six or more lots, then use large lot requirements (Section 1B02, Baltimore County Zoning Regulations) even if less than six lots are proposed.

_____ D. Owner's name, address, and telephone number.
_____ E. Tax account number (10-digit property identification number) of subject property and adjoining properties.
_____ F. Plat reference: plat book, folio, lot, block, and section; deed reference. liber and folio.
_____ G. Tax map, block, and parcel number.
_____ H. Census tract, regional planning district, school district, watershed, and sub-sewershed.

II. TITLE BLOCK: Place in lower right corner of plan as follows:

MINOR SUBDIVISION OF

_____ A. Add minor subdivision number assigned by county.
_____ B. Scale, date of drawing, election district, and councilmanic district.

III. VICINITY MAP: Place in upper right corner of plan using 1,000 foot scale or larger.

_____ A. Outline property clearly and indicate "SITE" with arrow.

IV. PROFESSIONAL SEAL:

_____ A. Seal the plan and include the name, address, and telephone number of surveyor preparing the plat. If appropriate, include the project manager.

V. ADDITIONAL FEATURES:

_____ A. North arrow.
_____ B. Dimension all lines of subdivision with bearing and distance.
_____ C. Provide appropriate building envelope(s) and dimension setbacks.
_____ D. Indicate all existing and proposed uses of property, i.e., two single family dwellings, etc.
_____ E. Label height on existing dwellings in feet or stories.
_____ F. Label accessory structures to remain and indicate height (highest point of grade to peak of roof) or if to be razed, note when and who is responsible, i.e., to be razed by developer before sale of any lots or first building permit application.
_____ G. Indicate road name and street address of dwelling and adjacent lots.
_____ H. Provide zone lines on property and within 200 feet of tract boundary.

_____ I. Indicate distance from the proposed lots to centerline of nearest intersecting public street.

_____ J. If property was the subject of a zoning hearing, list case number, decision, and any conditions or indicate if there is no zoning case history.

_____ K. Show Revision Block and date all revisions.

VI PANHANDLE LOTS:

_____ A. Indicate front orientation by arrow(s) on existing dwellings.

_____ B. Indicate proposed dwelling orientation per Section 22-266(6), BCC.

_____ C. Indicate location of mailbox and paved trash collection area per Section 26-277(7)a and b, BCC, if applicable.

_____ D Indicate width and length of existing right-of-way and paving per Section 26-266(1), BCC.

_____ E. Indicate width and length of existing right-of-way or recorded easement.

_____ F. Note on plan: "The panhandle shall be paved within one year of the issuance of the first occupancy permit and prior to the issuance of the occupancy permit of the last lot to be served, whichever comes first".

_____ G. Panhandle Waiver:

A Proposed right-of-way _____ feet in lieu of the required_____ feet, as per Section 26-266(10), BCC.

B. Indicate panhandle profile.

_____ H. For panhandle driveways serving more than one lot, a "covenant" (use in common and maintenance) is to be recorded with the record plat

VII. RESOURCE ZONES CONSERVATION (R.C.):

_____ A. R.C.-2: Provide zoning history in deed and map format in accordance with zoning policy RSD-10 (property boundaries and devolution of title is checked from change in zoning regulation on November 25, 1979).

_____ B. Farm Use: Provide documentation of reduced acreage farm or tenant farm dwelling recommendations from the Agricultural and Preservation Board.

_____ C. If zoned R.C -4 the distribution of the conservancy and building areas must be determined by meeting with Department of Environmental Protection and Resource Management and the Office of Planning prior to filing.

_____ D. Show R.C.-4 computations

VIII. ADDITIONAL ZONING ISSUES:

_____ A. Add Density Note: "This property as shown on the plan has been held intact since _____. The developer's surveyor has confirmed that no part of the gross area of this property as shown on the plan has ever been utilized, recorded, or represented as density or area to support any off-site dwellings"

_____ B. A zoning final development plan may be required depending on the number of lots created (as determined from zoning and the effective date of the zoning regulations for that zone).

IX. OTHER COMMENTS:

Fold all plans to 8-1/2 X 11, with the title block facing out in the lower right-hand corner.
If you have any questions or need additional information, please contact the planner at 887-3391.

Baltimore County, Maryland
Department of Environmental
Protection and Resource Management

Minor Subdivision Review Checklist

I. Groundwater Management

_____ A. Master Water and Sewer Designation (note on plan).

1. Interim agreement.
2. Metro water and sewer lines.
3. Existing septic system(s) and well(s).

_____ B. Location or vicinity map.

_____ C. Identify adjacent property owners or subdivisions.

_____ D. Soils identified (SCS Soil Survey) and Wet Weather Testing.

_____ E. Contours shown (Baltimore County photogrammetric maps).

1. 25% or greater slopes cross hatched or shaded.
2. At least five foot contours.
3. Gravity fall to highest elevation of septic reserve area (SRA). If not, a variance is required from Groundwater Management. Two percent fall (1/4" per foot) from house to septic tank and one percent (1/8" per foot) from tank to dry well or drainfield.

_____ F. Septic reserve areas.

1. 10,000 square feet, at least 50 feet wide (new and existing lots).
2. Soil tests done and properly labeled. Review cannot be accomplished until soil tests are completed.
3. One water test for each septic reserve area.
4. Septic reserve area centered around tests.
5. At least twenty-five feet (25') from swales.
6. 10 feet from property line or easement.
7. At least 20 feet from house.
8. At least 100 feet from stream.
9. Lot within 2,500 feet of the normal water level of water supply reservoir or within a 5,000 foot radius upstream from the water intake on streams used as a potable supply or within a 5,000 foot radius of water intake located within a reservoir shall have an area not less than two acres and a minimum width of 175 feet.
10. 50 feet from a dry well attempt or backfilled well.
11. 100 feet from well(s) and not directly uphill from adjacent well(s).

_____ G. Water Wells

1. Water Appropriations Permit (two or more new lots).
2. Locate and show all drilled or dug wells.
3. At least 30 feet from house.
4. At least 15 feet from right-of-ways.
5. Dry well attempts shown.
6. Well abandonment reports for backfilled wells.
7. 100 feet from well to well.

_____ H. Showing Underground storage tanks on site or on adjacent properties.

II. Environmental Impact

_____ A. Non-CBCA

1. Soil types from SCS Soil Survey.
2. Existing topography (Baltimore County photogrammetric maps or field run). Field *run may be required if field review indicates significant deviation from* photogrammetric.
3. Perennial or intermittent streams, bodies of water, spring, and seeps on or within 200 feet of the property.
4. Existing land cover (including forest stands).
5. Field delineated and surveyed tidal and non-tidal wetlands, 100-year floodplain with associated forest buffer (FB), and building setback labeled. Field delineated, marked, and surveyed forest buffer.
6. Wetland delineation reports, if applicable.
7. A steep slope and erodible soils analysis is required when (a) slopes exceed 10% within 500 feet of a stream, wetland, or waterbody (b) soil erodibility "K" values exceed 24 within 500 feet of a stream, wetland, or waterbody or (c) the vegetative cover within 100 feet of a stream, wetland, or waterbody is bare soil, fallow land, crops, or active pasture, orchard, or woods in poor condition.
8. Standard non-disturbance and protective convenants notes. Forest buffer must be labeled as a reservation or easement. Notes must agree.
9. Rare, threatened, or endangered species habitat.
10. Encroachments into the forest buffer by permitted activities or structures require an alternatives analysis and approval. Any other infringement in the forest buffer or building setback will require a variance and approval.
11. Building setbacks, existing, and proposed utilities and easements, roads, and driveways.
12. Forest Conservation Act requirements (does not apply if in Critical Area) prior to approval:

    a. Applies to any development project 40,000 square feet or greater not approved prior to January, 1993.
    b. Approved forest stand delineation (FSD) or Simplified Forest Stand Delineation (lot layout should be based on FSD prioritization).
    c. Approved forest conservation worksheet (FCW).
    d. Approved forest conservation plan (FCP).
    e. If applicable show forest retention area(s), afforestation, reforestation area(s), and nondisturbance and protective convenants notes, and 35 foot setbacks.
    f. A security equal to 100% of the estimated cost of implementing the Forest Conservation Plan must be posted prior to approval.
    g. Any fee-in-lieu must be paid to the Department of Environmental Protection and Resource Management and noted on the plan prior to approval.
    h. The *timing of afforestation/reforestation shall be determined in conjuction with* the Department of Environmental Protection and Resource Management, maximum not to exceed two growing seasons following subdivision approval.
    i. Label forest conservation easement(s) and setbacks.
    j. Show and label forest conservation access easements.
    k. Show proposed limits of disturbance.
    l. A variation from the requirements of the forest conservation regulations may require submittal and approval of a special variance.

INFORMATION TO BE SUBMITTED FOR MINOR SUBDIVISION
PANHANDLE REVIEW

Project Name _____ Project No. _____

Panhandle lots cannot be detrimental to adjacent properties and are generally unacceptable in Density Residential(D.R.) zones. If an owner or developer wants to present a case for a proposed panhandle lot(s), in addition to the information required for a development plan, as listed in Section 26-203, of the Baltimore County Code, the Office of Planning requires the following information:

___ 1 A "neighborhood map" must be included that shows building and where possible, the property lines around the block and across the street, or within 500 feet of the site in Density Residential (D.R.) zones, or within 1,000 feet in Resource Conservation (R.C.) zones. This can be compiled without a field survey (see attached example). The orientation of the surrounding houses should be indicated.

___ 2. The plat or site plan must show the approximate (non-surveyed) lot lines and building locations and orientations of properties adjacent to and within 200 feet of the site

___ 3. The orientation of the dwelling(s) shall be indicated on the plan. Fronts facing rears of houses are generally unacceptable.

___ 4 A series of photographs or a video tape must be submitted indicating in which direction each photograph is taken. These pictures should include:

a) A wide angle photograph or series of photographs looking into the site from each of the four directions showing any existing house (s) on the site and properties within 200 feet on either side of the site;
b) A wide-angle photograph or series of photographs looking outward from the site in each of the four directions and showing at least 200 feet; and
c) Any other photographs showing the character of the area, including any existing panhandles with an indication on the neighborhoods map of their location.

___ 5. If appropriate, schematic elevations or photographs of proposed prototypical house types should be included. The following features should be shown:

a) House type and square footage;
b) Building height;
c) Roof pitches and style;
d) Foundations and finished floor lines;
e) Doorway and openings;
f) Overhangs; and
g) Materials to be used.

A note may be required on the plan specifying ways in which the new house(s) will be compatible with existing houses in the neighborhood in size, height, materials, and style. Sometimes a note will be required on the plan indicating that some type of landscape screening or street tree treatment will be provided in specific locations.

The Office of Planning will determine if the site is historic or contains any historic buildings, that must be preserved, as listed o the County Register, or it the site is part of a greenway system or scenic route designated in the Master Plan.

P.C. #8

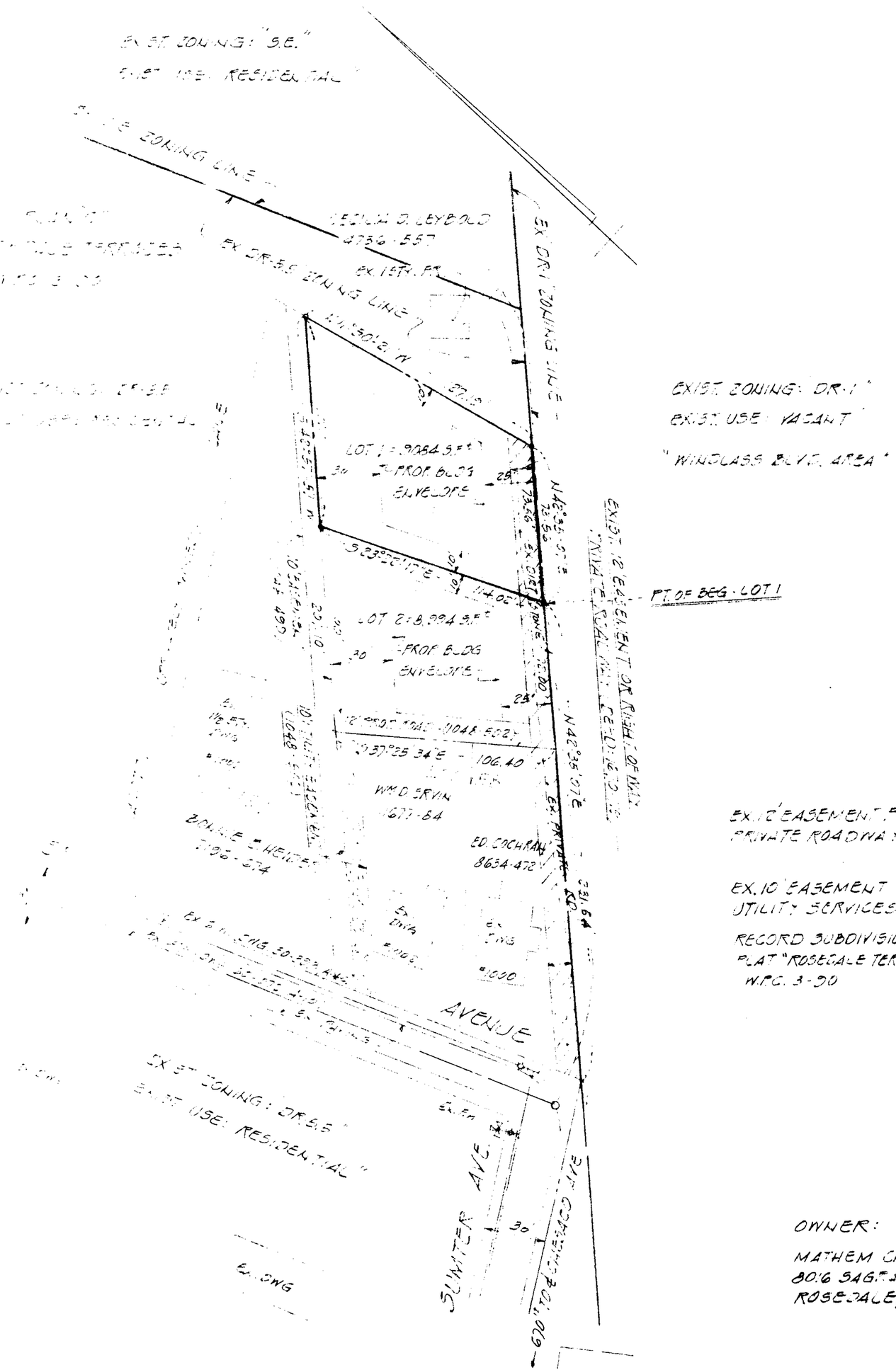
DATE: 5-19-98

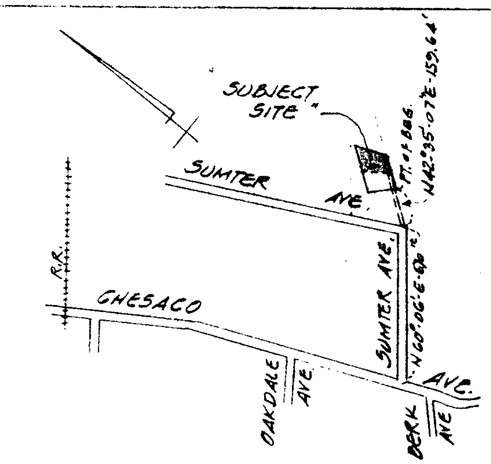
PEOPLE'S COUNSEL'S SIGN IN SHEET

CASE: 97-388 97-389

The Office of People's Counsel was created by County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns if they do not have their own attorney. If you wish to be assisted by People's Counsel, please sign below.

Check if you wish to testify.	Name/Address Phone No.	(Community Group You Represent?) Basis of Your Concerns
✓	Joseph F. Novak 410 1002 Sumter Ave 5746336	
✓	Edward W m Dorothy Reinhardt 1004 1/2 Sumter avenue	
	Bonnie E. Heider 2227 Lakemont Drive Parkton 21047	
✓	Joseph C. Passapae 687-0143 8214 LaCotti Ln. 21237	
	Cecelia Leybold 8211 LaCotti Ln 21237	
	~~[illegible]~~ 1002 Sumter Ave William Ervin	
	Chris Anderson 8109 Sumter	





LOCATION PLAN
SCALE: 1"=500'

EX. 12' EASEMENT FOR PRIVATE ROADWAY

EX. 10' EASEMENT FOR UTILITY SERVICES

RECORD SUBDIVISION PLAT "ROSEDALE TERRACE" LOT 158 W.P.C. 3-90

GENERAL NOTES:

1. AREA OF PROPERTY = 0.415 Ac.± (GROSS = 0.415 Ac.±)
2. EXISTING ZONING OF PROPERTY = "DR-5.5"
3. EXISTING USE OF PROPERTY = "RESIDENTIAL" (VACANT)
4. PROPOSED ZONING OF PROPERTY = "DR-5.5"
5. PROPOSED USE OF PROPERTY = RESIDENTIAL
6. NUMBER OF LOTS PERMITTED: 0.415 × 5.5 = 2.28 LOTS
7. NUMBER OF LOTS PROPOSED = 2 LOTS
8. PROPERTY SERVED BY PUBLIC UTILITIES.
9. PROPERTY SUBMITTED TO BALTO. CO. DRC #042540, PROJECT 93-153M.P.
10. PETITIONER REQUESTING A VARIANCE TO SECTION 102.4 OF THE BCZR TO PERMIT 2 DETACHED DWELLINGS ON 2 PROPOSED LOTS CONTAINING LESS THAN 20,000 S.F. (LOT 1 = 9,086 S.F.± AND LOT 2 = 8,994 S.F.±) WHICH DO NOT ABUT A RIGHT OF WAY AT LEAST 30' WIDE (EXISTING RIGHT OF WAY OF 10' TO SUMTER AVE.) OVER WHICH THE PUBLIC HAS AN EASEMENT OF TRAVEL.
11. EXISTING 12' EASEMENT OR RIGHT OF WAY FOR PRIVATE ROADWAY RECORDED IN LIBER 1670-119.
12. EXISTING 10' EASEMENT FOR UTILITY SERVICES RECORDED IN LIBER 1048-603.
13. OPEN SPACE WAIVER REQUESTED
14. NO ZONING HISTORY EXISTING FOR SUBJECT PROPERTY.
15. EXISTING DWELLING HAS BEEN RAZED.
16. SUBJECT PROPERTY HAS NO IN FEE FRONTAGE ALONG SUMTER AVE. OR ANY PUBLIC RIGHT OF WAY.

97-388-A

PLAT TO ACCOMPANY PETITION
FOR

VARIANCES

*1004 SUMTER AVENUE - LOT #1

ELECT. DIST. 15C7 BALTIMORE COUNTY, MD.

SCALE: 1"=40' FEB. 17, 1997

#388

Pet 1A

OWNER:
MATHEM CHACKO
8016 SAGEMORE ROAD
ROSEDALE, MARYLAND 21237

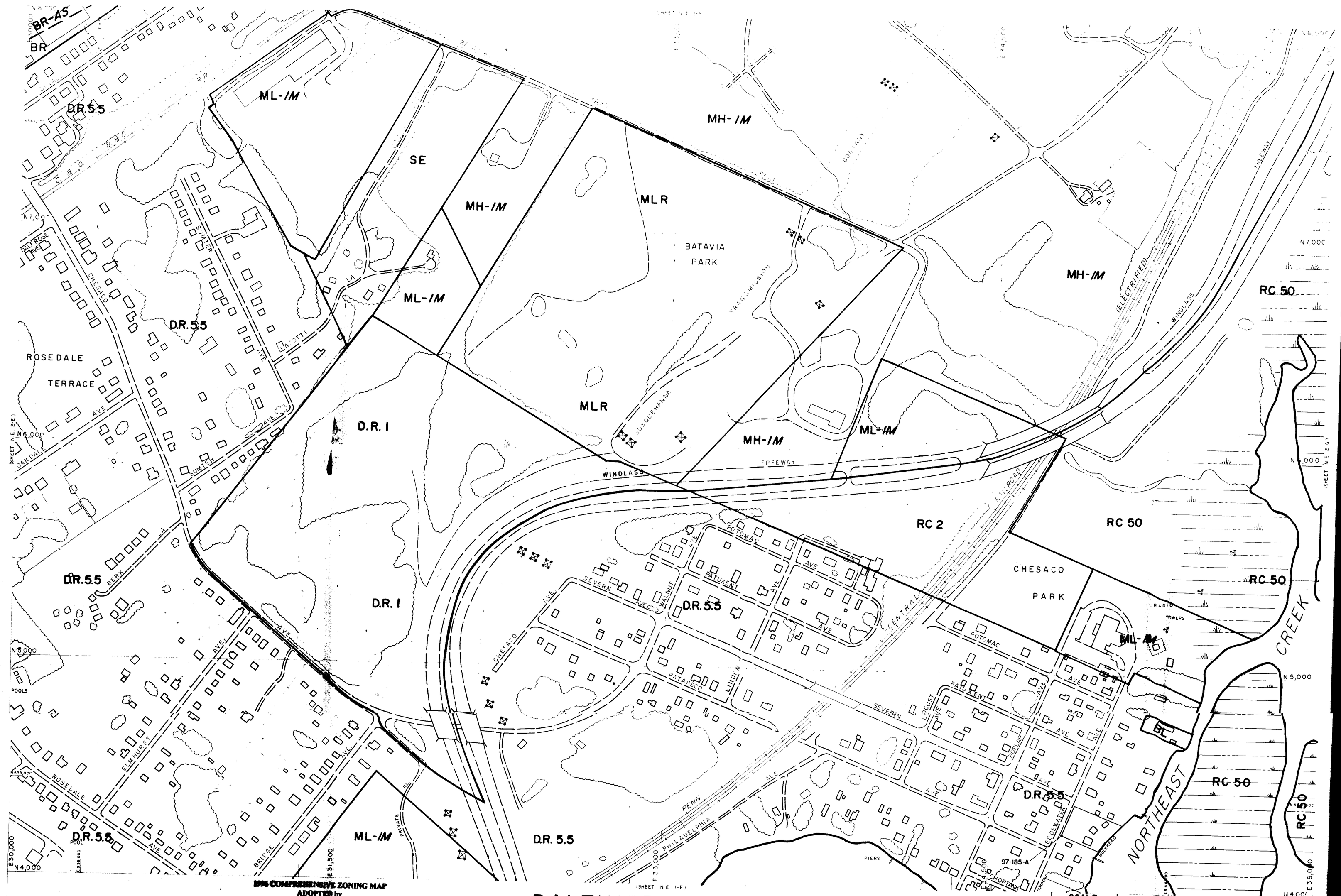
PAUL LEE ENGINEERING, INC.
304 W. PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204

STATE OF MARYLAND PAUL LEE REGISTERED PROFESSIONAL ENGINEER

SHEET 1 OF 2

Jo. 97-002

P.C. #6



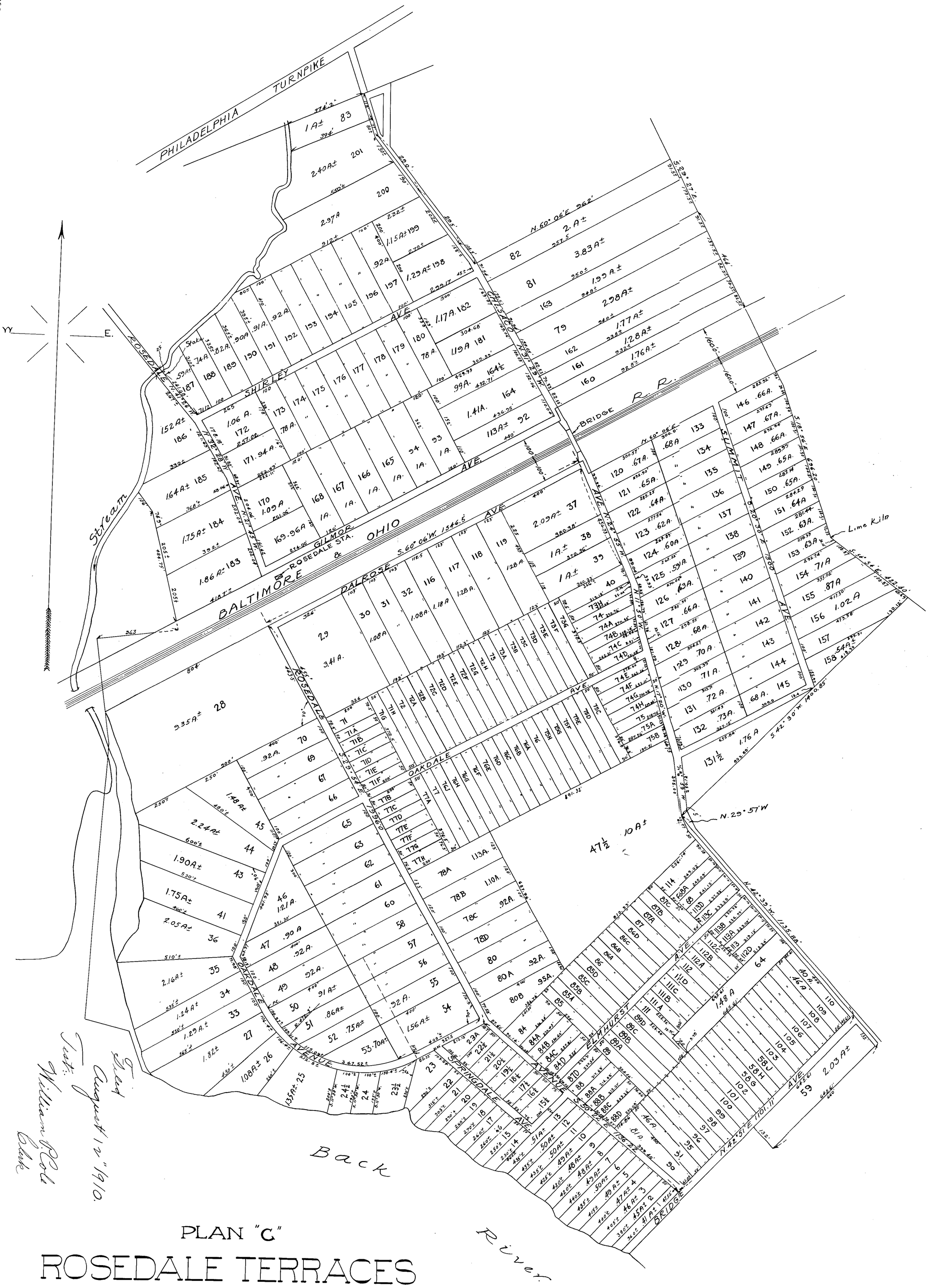
1996 COMPREHENSIVE ZONING MAP
ADOPTED by
THE BALTIMORE COUNTY COUNCIL
OCTOBER 8, 1996
Bills Nos. 129-96, 130-96, 131-96, 132-96, 133-96, 134-96, 135-96

Kevin Kamenetz
Chairman, County Council

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE	LOCATION	SHEET
1" = 200'±	CHESACO PARK	N. E. 2-F
DATE OF PHOTOGRAPHY JANUARY 1986		



PLAN "C"

ROSEDALE TERRACES

ON BALTIMORE & OHIO R.R.

BALTIMORE CO. MD.

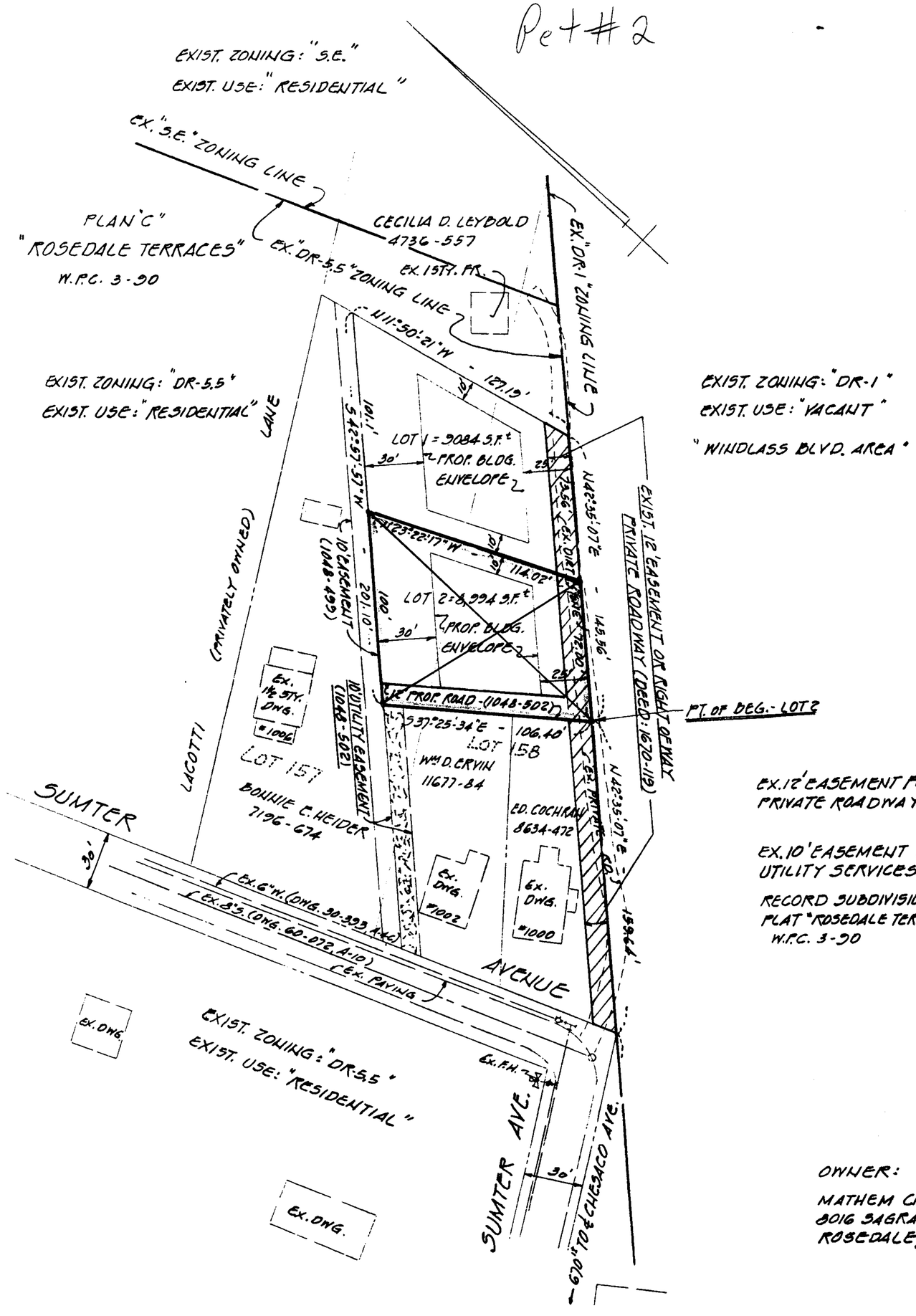
LOTS FOR SALE BY.

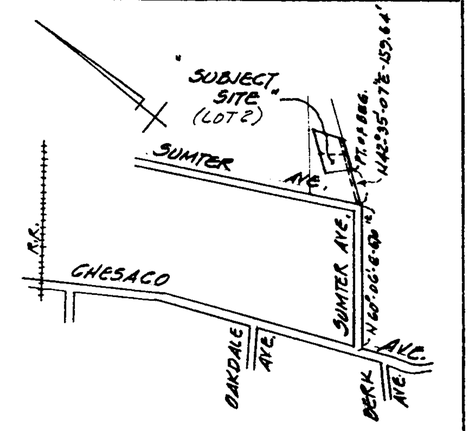
CITYCO REALTY CO.

RESURVEYED & PLATTED BY
REDING & HOWARD - CIVIL & LANDSCAPE ENGRS.
BALTIMORE MD. MAR-1-1910.
SCALE: 1 IN = 200 FT.

W.P.C. No 3 - 90

Pet #2





LOCATION PLAN
SCALE: 1" = 500'

EX. 12' EASEMENT FOR PRIVATE ROADWAY

EX. 10' EASEMENT FOR UTILITY SERVICES

RECORD SUBDIVISION PLAT "ROSEDALE TERRACE" LOT 158
W.P.C. 3-90

GENERAL NOTES:

1. AREA OF PROPERTY = 0.415 Ac.± (GROSS = 0.415 Ac.±)
2. EXISTING ZONING OF PROPERTY = "DR-5.5"
3. EXISTING USE OF PROPERTY = "RESIDENTIAL" (VACANT)
4. PROPOSED ZONING OF PROPERTY = "DR-5.5"
5. PROPOSED USE OF PROPERTY = "RESIDENTIAL"
6. NUMBER OF LOTS PERMITTED = 0.415 × 5.5 = 2.28 LOTS
7. NUMBER OF LOTS PROPOSED = 2 LOTS
8. PROPERTY SERVED BY PUBLIC UTILITIES.
9. PROPERTY SUBMITTED TO BALTO. CO. DRC #04254C, PROJECT 93-153MIP.
10. PETITIONER REQUESTING A VARIANCE TO SECTION 102.4 OF THE BCZR TO PERMIT 2 DETACHED DWELLINGS ON 2 PROPOSED LOTS CONTAINING LESS THAN 20,000 S.F. (LOT 1 = 9,085 S.F.± AND LOT 2 = 8,994 S.F.±) WHICH DO NOT ABUT A RIGHT OF WAY AT LEAST 30' WIDE (EXISTING RIGHT OF WAY OF 12' TO SUMTER AVE.) OVER WHICH THE PUBLIC HAS AN EASEMENT OF TRAVEL.
11. EXISTING 12' EASEMENT OR RIGHT OF WAY FOR PRIVATE ROADWAY RECORDED IN LIBER 1670-119.
12. EXISTING 10' EASEMENT FOR UTILITY SERVICES RECORDED IN LIBER 1048-502.
13. OPEN SPACE WAIVER REQUESTED.
14. NO ZONING HISTORY EXISTING FOR SUBJECT PROPERTY.
15. EXISTING DWELLING HAS BEEN RAZED.
16. SUBJECT PROPERTY HAS NO IN FEE FRONTAGE ALONG SUMTER AVE. OR ANY PUBLIC RIGHT OF WAY.

OWNER:
MATHEM CHACKO
8016 SAGRAMORE ROAD
ROSEDALE, MARYLAND 21237

PLAT TO ACCOMPANY PETITION
FOR

VARIANCES

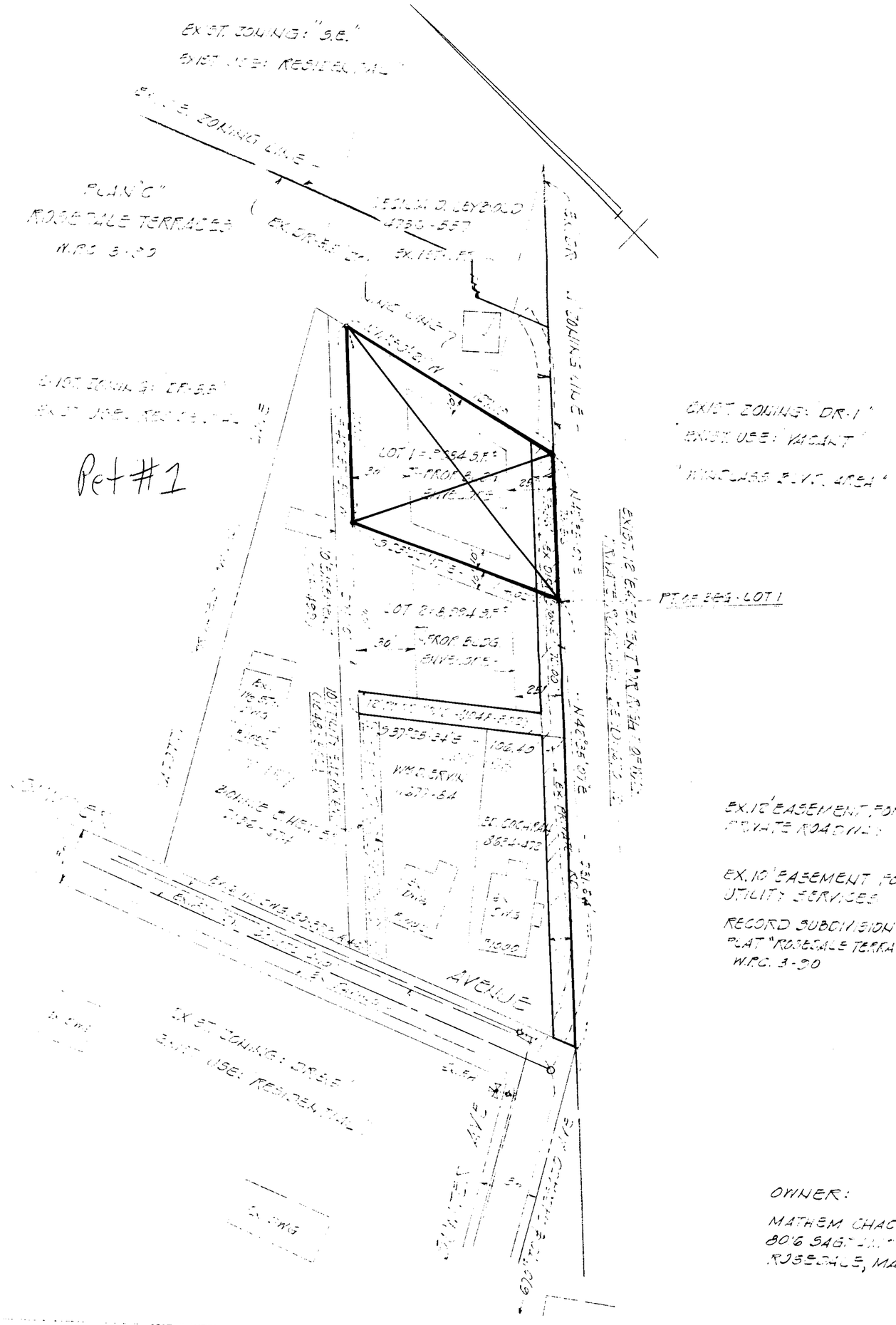
#1004 SUMTER AVENUE - LOT #2

ELECT. DIST. 15C7 BALTIMORE COUNTY, MD.
SCALE: 1" = 40' FEB. 17, 1997

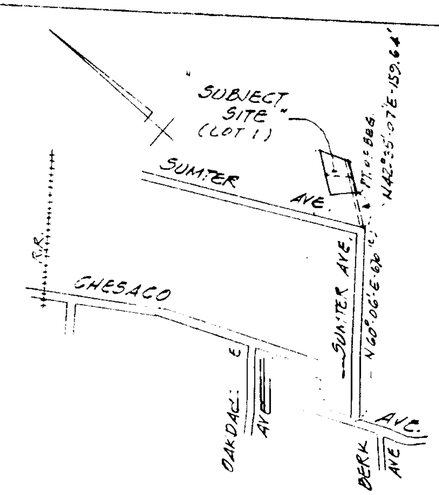
PAUL LEE ENGINEERING, INC.
304 W. PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204

SHEET 2 OF 2

Jo. 97-002



Pet #1



LOCATION PLAN
(SCALE: 1"=500')

EX. 10' EASEMENT FOR PRIVATE ROADWAY

EX. 10' EASEMENT FOR UTILITY SERVICES

RECORD SUBDIVISION
PLAT "ROSEDALE TERRACE" (LOT 1158)
W.P.C. 3-90

GENERAL NOTES:

1. AREA OF PROPERTY = 0.415 Ac.± (GROSS = 0.415 Ac.±)
2. EXISTING ZONING OF PROPERTY = "DR-B.E."
3. EXISTING USE OF PROPERTY = RESIDENTIAL (VACANT)
4. PROPOSED ZONING OF PROPERTY = "DR-B.E."
5. PROPOSED USE OF PROPERTY = RESIDENTIAL
6. NUMBER OF LOTS PERMITTED: 0.415 Ac. ÷ 2.0 = 2.08 LOTS
7. NUMBER OF LOTS PROPOSED = 2 LOTS
8. PROPERTY SERVED BY PUBLIC UTILITIES.
9. PROPERTY SUBMITTED TO BALTO. CO. SRC #142540, PROJECT 93-153M.T.
10. PETITIONER REQUESTING A VARIANCE IN SECTION 1001.4 OF THE BCZR TO PERMIT 2 DETACHED DWELLINGS ON 2 PROPOSED LOTS CONTAINING 1.50 Ac.± (LOT 1 = 8,985 S.F.± AND LOT 2 = 8,994 S.F.±) WHICH DO NOT ABUT A RIGHT OF WAY AT LEAST 30' WIDE (EXISTING RIGHT OF WAY REFERRED TO AS SUMTER AVE.) OVER WHICH THE PUBLIC HAS AN EASEMENT OF TRAVEL.
11. EXISTING 12' EASEMENT OR RIGHT OF WAY FOR PRIVATE ROADWAY RECORDED IN LIBER 1670-119.
12. EXISTING 10' EASEMENT FOR UTILITY SERVICES RECORDED IN LIBER 1548-502.
13. A FEL STAGE IV VER REQUESTED.
14. NO ZONING HISTORY EXISTING FOR SUBJECT PROPERTY.
15. EXISTING DWELLING HAS BEEN RAZED.
16. SUBJECT PROPERTY HAS NO IN FEE FRONTAGE ALONG SUMTER AVE. OR ANY PUBLIC RIGHT OF WAY.

OWNER:
MATHEW CHACKO
8016 SAGINAW AVE.
ROSEDALE, MARYLAND 21237

PLAT TO ACCOMPANY PETITION
FOR

VARIANCES

#1004 SUMTER AVENUE - LOT #1

ELECT. DIST. 15C7 BALTIMORE COUNTY, MD.
SCALE: 1"=40' FEB. 12, 1997

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

STATE OF MARYLAND
PAUL LEE
No. 4271
PROFESSIONAL ENGINEER

SHEET 1 OF 2

Jo. 97-002

LEGEND

- RAIL LINES
- STREET CENTERLINE
- BUILDINGS
- STREAM
- RECREATION
- CULTURE
- VEGATATION
- CONTOUR LINES

BALTIMORE COUNTY MARYLAND

N

PHOTOGRAPHY DATE: 1995
CONTOUR INTERVAL TWO FEET
BALTIMORE COUNTY OIT/GIS
SERVICES UNIT