IN THE MATTER OF THE APPLICATIONS OF

MATHEM CHACKO -PETITIONER * COUNTY BOARD OF APPEALS

FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE E/S *

SUMTER AVE., 670' +/- E OF

CHESACO AVE., EASTERLY ALONG * BALTIMORE COUNTY PRIVATE R/W 1004 SUMTER AVE.

PROPOSED LOT 1

AND

PROPOSED LOT 2 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT BEFORE THE

OF

CASE NO. 97-388-A

CASE NO. 97-389-A

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

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

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 <u>Baltimore County Zoning Regulations</u> (BCZR) would be met because no harm would accrue to neighboring

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

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

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

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

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

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

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

under Section 26-266 of the <u>Baltimore County Code</u> 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 <u>Fink v. Jagger</u>, 211 NYS2d 51 (1960), <u>Spalke v. Board of Appeals</u>, 7 Mass App 683, 389 NE2d 788 (1979), <u>Macchia v. Board of Appeals</u>, 164 NYS2d 463 (1957), and especially <u>Iddings v. Board of Appeals</u>, 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.

ORDER

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,

Charles E. Roolely 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

IN RE: PETITION FOR ZONING *

VARIANCE E/S Sumter

BEFORE THE

Ave., 670' + - E of *

ZONING COMMISSIONER

Chesaco Ave., Ely

among a private R/W *

OF BALTIMORE COUNTY

1004 Sumter Avenue,

proposed Lot 2

Case No.: 97-389-A

15th Election

District

7th Councilmanic

District

Mathem Chacko,

Petitioner

*

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 _4" day of _loudy 1997, a copy of the aforegoing was mailed, postage prepaid, to:

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

Baltimore County Board of Appeals Basement

Old Court House

21204 Towson, Maryland

X. BORGERDÍNG, JR.

7/7/7/

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

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 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

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.

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, except as provided for panhandle lots in Section 26-266 of the Baltimore County Code." It (emphasis added) 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

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.

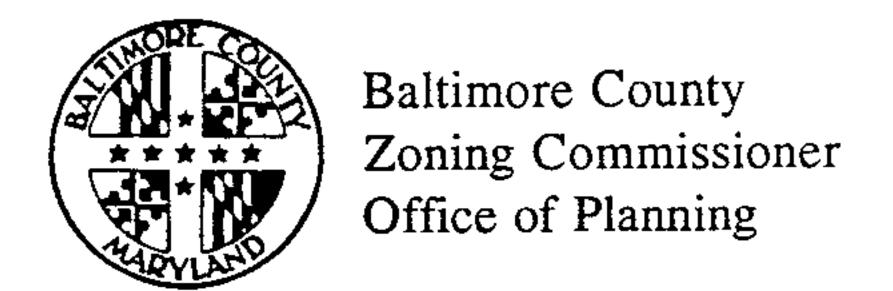
IT IS FURTHER ORDERED that relief to allow the utilization of an existing right of way to provide access to two single family dwelling lots, pursuant to Section 26-262(2) of the Baltimore County Code, as set forth herein above, be and is hereby DENIED.

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



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

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	*	
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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 most 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

<u>ARGUMENT</u>

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 most 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. <u>Cromwell v.</u>

Ward, 102 MD App. 691, (1995). As <u>Cromwell</u> 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 <u>Cromwell</u> 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 <u>Cromwell v. Ward</u> 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 <u>for day</u> 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 02:4 Nd 81 NN 86

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 seg.
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! 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 Coungel 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 <u>Fink v. Jagger</u>, 211 NYS2d 51 (1960), <u>Spalke v. Board of Appeals</u>, 7 Mass App 683, 389 NE2d 788 (1979), <u>Macchia v. Board of Appeals</u>, 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." <u>Iddings v. Board of Appeals</u>, 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 selfcreated.

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 <u>private right-of-way</u>; 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 <u>public right-of-way</u> over 30 feet or on a panhandle infee 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

Pote Mar Timmeron

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 18 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

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

Trusteesas ٥ţ tally sensitive areas such as wetlands, water-sheds and flood plains. The Resource Pro-Ė Protection regulations, the Village's Planning "net buildable site dinance with the enactment of the "Resource sheds and flood plains. The Resource Pro-tection regulations limited development and On February 28, 1989, approximately one month after respondent purchased the sub-Zoning Orenvironmenthese regulations was to protect environmenpurpose Village. site from the "resource protection land" "base amended the Village of Irvington tally sensitive areas within the ਰ \mathbf{The} restricted new construction on the Board subtracting the regulations determines the property, Protection" λq Board area"

At the responand separate tions of a risk of increased flooding to nearby properties caused by the new construction, area" under the Resource regulation's formula was "zero" in a flood 47and that the property with a 29, 1989, respondent applied to the ZBA (1) the zoning Respondent contended that he had a constitutional right to build a residence on of \$100,000 and determined that re-On March fill to preand hus aronly \$10,000 Opposition to the application included asser-200 Zoning Ordinance May 23, 1989 meeting of the ZBA, variance the entire parcel was located ö the property, that he would add dent appeared with his attorney on appeal, at 45). spondent's "net buildable site to stngle a favorable interpretation ್ a value a value (2) for an area The Planning Board ordinance applicable ownership (Village Z would have house, vent flooding, plam (record ল ö without chitect pouse for

- to comply with Federal regulations concerning comprehensive programs for low-cost flood in-Chapter 19 was adopted on October 16, 1978 surance 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
- Section 47-5 D (renum § 243-7 D [1990]) ("single and separate ownership" provision) pro

destruction of the aesthetic value of the and an increase in traffic congestion :

On August 15, 1989, after additional property was, before and after the end ment, the ZBA concluded that section applied only to upzoning, that is, to the applied only warreness for building on property stated that because respondent had his was mapplicable to the facts here bec of the Resource regulations, located 📆 demonstrate practical difficulties, no vir chapter 19 of the Village's prior zoning lations was required. In addition, the concluded further that because the within 1839a flood plain area, a variance was warranted

Respondent commenced an article as ceeding seeking annulment of the ZBA termination and an order directing in Court dismissed the petition, concluding the ZBA properly denied petitioner's R as that section was enacted to The court found the Resource nance. The court further found the denial of respondent's request for a a reasonable exercise of its discression by the record. The E Court dismissed the petition, concluding a favorable interpretation of section ownership from the consequences of unconstitutional taking, finding referenced to the constitutional taking, finding referenced to the constitution of the consti failed to offer proof of the property tions were not part of the minimized area requirements of the zonth in single and i Court rejected respondent's argund value when it was acquired as com the value after enactment of the a building permit or variance the record. owners of property supported by for

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

- tions shall not apply to any lot with and/or width of less than that present The minimum lot width of provided that
 - from that of any adjoining land on the date of this ordinance and is still so 6 time of application for a building
 - Such lot shall be subject to prescribed regulations

;. ≈ APPEALS OF IRVINGTON KHAN v. ZONING BD. OF

Cite as 662 N E 2d 782 (N.Y 1996)

stance respondent owned the subject ownership to use the property for residential in single and separate ownership onactment of the ordinance render-

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

a common-law right to an exemption 281 N Y.S.2d 569, affd, 21 N.Y.2d X.S.2d 990, 237 N.E.2d 239, Mat-andalay Constr v Eccleston, 9 of the courts of this State have recdinimum area ordinances where the rendered substandard as a result of $\frac{1}{1}$ framework $\frac{1}{1}$ in $\frac{1}{1}$ $\frac{1}{$ was held in single and separate to before an ordinance's adoption been applied in the lower courts
when certain criteria are satisfied,
of what was once a buildable lot is Bd of Appeals, 191 A.D 2d 568, 594 809, appeal dismissed 82 N.Y.2d N.Y.2d N.Y.S.2d 795, 622 N E.2d 295, Mat. 163 HomesMatter of 556D.2d 495* Volz, 34 A D.2d 966, 313 N Y.S.2d see also, **Fowe**d from the nonconforming use TN; Matter of Mackay v Mayhall, Matter of concerns Matter of Zoning Bd. of Appeals, 83 confiscatory takings and using con-Epsternthe 195 N.Y.S.2d 84; see also, Mat-**5**, ne a contrary area restriction and the it for residential purposes notwingly, the owner must be issued a of Appeals, **Pldrs.** v Stegel, 162 A.D 2d 533, Board of Zoning & Appeals, 527, Scheyer, 146 A. Misc.2d 469, 159 N Y.S 2d 414), Modular836, 12, 15 A.D.2d **thes** Matter of Dutmer v 2d 868, 401 N.Y.S.2d 679, 2d 873, 560 N.Y.S 2d 344; 117, on constitutional 675, 310 N.Y.S.2d 540, orn v Zoning Bd 389, 558 N.Y S.2d 115 Cange vad separate 730; Cange N.Y S.2d Combs Fwers v Combs,. 2008 3

of Apvariance as a matter of right and without self-unposed Significantly, the doctrine has never been explicitly recognized by thus Bldrs.Homes Corp sale Bď. hardship or the possibility of a of Pateman v Zoning t supra, Matter of M.E.F ınjury, Modular есопотис Combs, supra) supra supra3 Matter regard Sregel, peals,

- Having examined the case law, we common-law rule to protect landowners who cline to adopt such a rule. A municipality may in the reasonable exercise of its police powers change its zoning to control land use situations, and, accordingly, we dees to make such changes may, but need not, exempt existing owners of substandard lots A municipality that choosmunicipality may provide through its ordifor exemptions for property that is executing and no application to the local Zontrast, where the municipality has not created an exemption as a matter of legislative grace, the property owner can ordinarily utilize the Failing that, an owner who perceives himself In conceeding alleging an unconstitutional taking or or herself aggrieved can bring a judicial protional rights are amply protected by the availability of such proceedings, there is no legal basis for overriding the municipality's conclude that there is no need for some governmental arbitrarmess in the denia variance. Since the owner's constitu-Variance empt property owners from area restrictions legislative choice by creating a separate comwithout an individualized assessment of hardto accomplish thus, possess parcels in "single and separate held in single and separate ownership from the changes' more onerous effects mon-law right that would automatically usual case, such exemptions are ing Board of Appeals is necessary. C) obtaming of several ways provisions for and development ership" nance al of
- In this case, the single and separate conforming or substandard property may be ownership exemption found in Irvington Vil-The ordinance limits an exemption by its terms and provides that nonexempt from minimum lot or area regulations where its ownership was different from \$ 47-5 D Ordinance Zoning <u>ន</u>ែររាជpplicable,

EASTERN REPORTER, 2d SERIES 662 NORTH

that of any adjoining land on the effective rate ownership" or "grandfather-clause" type unvolving at 472-479 against floods. As such, it is similar to ordinances generally to area and here where so owned at Resource Protection regulations were deand sepasubstandard lots (see, 1 Anderson, New York date of the ordinance and is still so owned at the time of the request for a building permit regulations used for property held in "single Zoning Law and Practice § 943, The ordinance relates width and has no application signed to protect property for zoning provisions [3d ed])

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

ally, a use variance will allow use of land as a matter of discretion in circumstances when necessary hardship (see, Matter of Sasso v Osgood, 86 N Y.2d 374, 633 N Y.S.2d 259, 657 Respondent's burden turns on whethscribed by the zoning regulations (Consoli-N.Y 2d 598, The applicant must make a showing of un-Sternhilber, Generbeen pro-N E 2d 105) er a use or area variance is at issue. the desured exceptional use has dated Ednson Co v Hoffman, 43 Matter of Otto v 606-607, 403 N Y.S.2d 193, 374 282 N.Y 71, 24 N.E.2d 85113 N E.2d 254;

acter of the zoned district" (Matter of Wilcox 441, 393 N Y.S 2d Here, respondent is seeking an area v Zoning Bd of Appeals, 17 N.Y.2d 249, 254, use of the land (Matter of National Merrit ance involves no change in the essential char-"Generally speaking, an area vari-271 N E.2d the essential Thus, an area varisee also, Delany,270 N.Y.S.2d 569, 217 N.E 2d 633, N Y.2d 449, 322 N.Y.S 2d 696, 537), nor does it seek to change Ç 41 N.Y.2d 438, Matter of Overhill Bldg 379, 361 N.E.2d 1028). r Weest, variance

\$ 267-b and of hardship The requirements for a showing are now set forth in Town Law

ance involves "matters such as setback" frontage requirements, lot-size restrict density regulations, and yard require <\tell> § 23.06). (2 Anderson, op cit,

Zoning Board, before granting an area this Court interpreted the parallel prof That interpretation and analysis apprection 7-712-b(3)(b), the Village Land ance, must engage in a balancing test. weighing the benefit to the air The applicant need no longer eat § 267-b(3) and held it practical difficulties in the use of 👪 In Matter of Sasso v Osgood 🕻 against the detriment to the health. and welfare of the neighborhood o**r ca** sion relevant here of Town Law

conclude that the Zoning Board acted priately and within its powers in deright Applying that test in this c <u></u>

failed to offer proof of the value of the denial of a variance and permit and A.D 2d 724, 574 N.Y.S 2d 968, affit 👊 erty before and after the regulation Finally, respondent's argum effect (Matter of Kransteuber v. Som 783, 587 N.Y.S.2d 272, 699 N.E.2d 📆 is rejected. confiscatory taking

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

Order reversed, etc

ported to enter not guilty plea and supporting deposition for sumplimition, did not satisfy need for

is and thereson to furnish supporting

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



1, 1(a,

1(3)

subd

Lаw

Traffic

and

Vehacle

00.25,

for simplified inform CPL §§ 1.20, subd 9, 1.0.40, subd 2, 170.10, subds 1 to 1.0.10, sub

information

Village Law & 7-712-b

County, Cortland (David J. Admolfi Coll., for appellant

d J. Shay, District Attorney of

Cite as 662 N E.2d 787 (N.Y. 1996) v. PERRY PEOPLE

≻ ≥

Perry, Jr, respondent pro se, Milburn J precluded

OPINION OF THE COURT

CIPARICK, Judge,

urn J. PERRY, Jr., Respondent.

The PEOPLE of the State

87 N Y 2d 353

alof New York, Appellant,

Surt of Appeals of New York.

Feb 8, 1996.

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

veh

endant was charged with traffic in-

of failing to yield to emergency

appearance letter," defense counsel

smity plea and requested supporting

gendant moved to dismiss simplified

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deposition

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After

The production of the producti

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

The

County Court, Mullen, J., affirmed

k. and prosecution appealed

Appeals, Ciparick, J., held that let-

Appeal was allowed,

er constituted nor dispensed

and the

arrangment as required to trigger

gu's obligation to furnish supporting

reed and simplified information re-

granted motion, based on failure to

with

Court

Town

Horner

The

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

France letter" sent by detense fore than 48 hours after defendant

illes (=>351.1

infraction,

charged with traffic

officer CPL 100.25(2) provides that a "defendant upon a timely request, entitled as a matter of providing reasonable cause to believe that the defendant committed the offense or If properly requested, a right to have filed with the court and served attorney, upon his attorney, a supporting dearraigned upon a sumplified information upon hum, or if he is represented by of the complamant police offenses charged" position

isaln the Matter of Rose E. ANELLO, Appellant, 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

decision by village zoning board of ap-is denving variance from "steep slope" owner from board appealed The Supreme Court, Appellate Division, 226 A.D.2d 458, 641 NYS 2d The Court of Appeals, Ciparick, Property owner brought action challengdecision, and sought furon her lot held that, since owner acquired her proper after enactment of ordinance, its enhulding single-family dwelling on her ion ordinance, its enforcement did not deprive her of any properinterest for which she was entitled just 52 reversed, and property owner ordinance, which prevented Leavitt, J. annulled board's peals denving compensation ther review

Affirmed

Wesley J, dissented and filed

Emment Domain ☞2(1.2)

Where property owner purchased property two vears after village's enactment of "steep slope" ordinance, enforcement of ordiprevented dwelling, compensation did not constitute governmental taking of any 5, McKinowner from building single-family to deny variance, which property interest for which cowas due USCA Const Amend nev's Const Art 1, § 7

(Catherine lason & Grand ListMorvillo, Abramowitz, Gransilloerberg, P.C., New York City M. Foti, of counsel), for appellant

Jss7Plunkett & Jaffe, P.C., White P. (Kevin J Plunkett and Elizabeth S. To sen, of counsel), for respondents

York City (David Stoelting, of counsely Bockins LLP LisaMorgan, Lewis & intervenor-respondent

OPINION OF THE COURT

CIPARICK, Judge

a taking of property for which she is entered to just compensation (see, U.S. Courts Amend, N.Y. Const., art 1, § 7). one-family dwelling on a parcel, const ordinance, which prevents her from but acquired her property after the enactment does not deprive her of any property F variance from Dobbs 1.39 Ferry's "steep" Petitioner contends that the denial Amend, NY Const., art 1, § 7). W steep-slope ordinance, its enforce

In 1989, the Village enacted the Village's natural resources and promotioned orderly development of land * * • • preserve whether a lot is large enough to be słope areas" (Dob**bs j** slope ordinance in an effort to "protect plying the steep-slope ordinance to per's property, the buildable area is less 4.200 square feet, well below the To detail property's gross and degree of the prop ordinance requires a pere buildable area slope, which vields the buildable lands, reduction of the property's § 300-35 D) ronmentally sensitive pending upon the mnnnmn steep Code square feet oped, the cessively Village

stantial detrimental impact upon trounding area and constitute a detrie variance, reasoning that petitioner the dwelling on the property and applications of the steep-slope of the st and non-conforming " The Board alog slope law came into effect and therein that granting a "variance would have" the health, safety and welfare of the full knowledge that the lot was unby Petitioner sought to construct a one of Appeals det the Zoning Board

APPEALS OF ANELLO v. ZONING BD.

Cite as 678 N E 2d 870 (N Y 1997)

the Board's appeal was pending before ppellate Division, this Court rendered vision in Matter of Khan v Zoning Bd. Feals, 87 N Y.2d 344, 639 N Y S 2d 302, YE.2d 782, rejecting the "single and the ownership" doctrine. The Appelthe On petitioner's subsequent CPLR an the Board's decision, holding that petier of the ownership" theory and s demal of a variance was not arbior capricious and was supported by intial evidence specific to this Court, petitioner's main tent is that the denial of a variance Court Division thereafter reversed the order of Ene Court based solely on Khan issed the petition, concluding that was entitled to a variance under the 's. The Supreme proceeding, and separate 20 g

imust fail because she never acquired infettered right to build on the Pettioner purchased the property in two years after the steep-slope ordinas enacted. This statutory restric-Soon Duck Kim v City of New NY.2d 1, 7, 659 NY.S 2d 145, 681 not a taking of a property interest],

of Gazza v New York State Dept of
Conservation, 89 N Y.2d 603, 614, 657

of 655, 679 N.E 2d 1035 [decided tothe steep-slope ordinance works a takins enacted.

Instructional and the from the from the enforcethe continuous response and its enforcewoer we are constitute a governmental takstatutory miorcement of preexisting statutory restriction not a taking of a properlateral-support statutory o_t morcement est) **String**

The reasons fully elaborated in Kim, 7, 659 N Y.S 2d 145, 681 N.E 2d 312 2d 1035, we are unpersuaded by the **22a**, supra, at 609, 657 N Y.S.2d 555, Petitioner does not seek to invalidate of the Village's police power, but dissent notes, Justice Kennedy opined in Islome cuculanty mus be tolerated an improper ordinance as an impro Village's police power, the dissenting opinion

her property (see, Gazza, supra, at 614, 657 N Y.S.2d 555, 679 N.E.2d 1035; Vernon Park applied 307 City of Mount Vernon, only challenges the ordinance as 493, 500-501, 121 N E 2d 517) Realty v

we disagree with the dissent's impede the alienability of property. The rule assertion that our holdings in these cases will centive to the prior owner—the party whose title has been redefined by the promulgation prior loss that preexisting regulations inhere in a propprior owner, whether immediate or not, fails -to assert whatever comowner who might suffer the potential loss because the purchase price of the property Any compensation received by a subsequent will very likely reflect any restrictions inher-Of course, the parties can condinecessary use owner for enforcement of the very restriction takings would amount to a wandfall, and a rule tolerating that situation would reward land specu-The bright-line rule allowances or prosecution of a takings claim sent would have the effect of unsettling propand other land-use restrictions the State The bright-line rule articulated in Kim and Gazza, which allows Additionally, the rule advanced by the dischallenge the title will affect the value property, but this should furnish ample validity of previously enacted laws (as takings claim, it is this pensatory takings claim it might have public \$ purchase extent, facilitate transferability of title. compensatory and, the detriment of the will enhance certainty a subsequent purchaser to the the on receipt of served to abate posed to pursuing a of a new regulationand owner's Moreover, assert a ing in title. throughout sale law. 2 claim),

mitted to assert compensatory takings claims Furthermore, if property owners were perin Penn Cent, and its inquiry into based on enforcement of preexistings41 regulations, the traditional takings analysis artic-"the extent to which the regulation has inter-Co v New York tations," would be rendered hopelessly circu-104, 124, 98 S.Ct. 2646, 2659, expecfered with distinct investment-backed lar (see, Penn Cent Trunsp Ctty, 438 U.S 104, 124 oc $631)^{1}$ L.Ed 2d

in these matters," but Justice Kennedy was dis

order of the Appellate Division should be affirmed with costs unpreother arguments Petitioner's

WESLEY, Judge, dissenting

steep-slope ordinance does not constitute a of the property merely beordinance was enacted prior property enforcement the therefore, respectfully dissent petitioner's acquisition of disagree that the peutioner's the Jo cause

nussance already place upon the restrictions If the Village ordinance in ficial use of land, "cannot be newly legislated or decreed (without compensation), but must the State's law 120 L Ed 2d 798, the United States Supreme a confiscatory at regulation, economically bene-Ct 2886, 2900, Coastal Counthat background principles of 1003 1029, 112 S In Lucas v South Carolina inhere in the title itself, in ie, one that prohibits all land ownership" Court held that of property and cal, 505 U S

e of meexisting Lucas v South LU35, 112 S Ct. 2886, 2903-120 L Ed 2d 798 [Kenneds J, concurring]). In this connection, Justice Kenneds observed that '[t]he common law of nursemblance is too narrow a confine for the common law of nursemblance. The Lakings d mierdependent not be prevented sponse to changing conditions. The Takings (Lause does not require a static budy of state prop on a property owner sunvestment-backed expecta initialives (see, State shouldw regulatory regulators power in a complex on a property with separate tions and not the separate restrictions whering in title (connect, 505) separate enacting new The Cerolina Coasta 1035, 112 S Ct

developing it by the very nature and to of the lot or by another principle of the of property of New York unless she had already been restricted Anello's property, the this case prohibits all economically be Anello must be compensated for the 🕦 of Mrs

for any parcel of property that is confidenced of its value by the ordinaria ordinance had been in effect for the before she acquired the property. If transferred to another (Lucas v Social 1051, 112 Str., a. -- Beckwith, 449 Unulous Pharmacies 1 Beckwith, 449 Unulous Pharmacies 2 Beckwith, 440 Unulous Pharmac olina Coastal Council, supra, 505 Tt. 1051, 112 S Ct., at 2901, quoting West. property by the ordinance itself, because aiready been restricted from developi form[ed] private property into public in to without compensation," once the party without compensation," The majority holds that Mrs. And turp esdi iq, , Village has,

Realty v Cuty c 493, 500-501, 121 State Dept of Envil Conservation 5.55, 679 N.E. subsequent purchaser may attack 📭 393, 413, 43 S Ct. 158, 159, **67 L** enacted regulations that affect the property as beyond government's beyond The fact that a parcel is transferred not make a once-compensable taking As we reaffirm to police power" (Matter of Gazza v. M æ citing Pennsylvania Coal Co and Vernon Park Realty Vernon, 307 N Y noncompensable

context of a challenge to the valid claim that an otherwise valid regul regulation itself, and not in the cou worked a taking of all the economia The majority reaffirms this rule o

erts Jaw" (1d., at 1035, 112 S Ct., at 2%) omitted])

claim are directed to issues not berd noted in Gazza, 89 N Y Zd, at 613, 63, the 555, 6°9 N E 2d 1033, we leave for the issues of transferability left operation. The dissents arguments concerning a decedent's estate to an of an owner to separately transfer a co takings claim to

APPEALS Q ZONING BD. ANELLO 1

1997)

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transfer the property to someone else with-N E 2d 870 (N) no 566 Cite as 678

the I believe that there are compelling why no such distinction should be distinction, to diar piece of property diametro

has, without compensation, been dedicated to

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value

out destroying the property's stead, he or she will find that t

the property

governmental purpose formed the

whatever

basis for the regulatory enactment

The majority's opinion also has the poten-

estate of a decedent who, through infirmity

work an interesting alchemy

or other reason, could not challenge a confis-

regulation prior to the decedent's The majority's view also creates the

prospect of adjacent jandowners with similar

results, dependent

different

totally

generally, kmiec, The

the Taking

Understanding of the Taking Neither Weak nor Obtuse, 88 Co-

an inherent

2

"(t)here

recognize that

with the intent of those who drafted

such a restriction on alternability com-

lots and similar land use regulations who sue upon the date of ownership and the date of the regulation's enactment. I do not beheve to challenge a regulation as confiscatory, lum L Rev 1630 (1988)) the Constitution (see Clause 18 Originalcatory that a purchaser of rearinubject to all existing zoning proviany right to challenge any of bility" (Lopes v City of Peabody, Les. 299, 303, 629 N E 2d 1312, 1315)

which the court in Lopes noted that this of a subsequent purchaser to test estate, ignore the possible effect 2 cowners to bring actions challenging coning provision of doubtful validity selling their property 233 Moreover, rule of law would in time lead to a ing law intended to have uniform bility" (Lopes v City of Peabody, quit pattern of the enforceability of opinion in Gazza, the majourn, interively forces New York propthis OH6 hat fong as the Village could not have the prior owners of the parcel of all lator all of these reasons, I would hold silly beneficial use of the property ecompensation, "the prior owners 483 inderstood to have transferred their lot" **damages** might well stand in a pos 3141, 3147, 217 owner cannot transfer a potential to a subsequent purchaser, then the 833-834, n 2, 107 S Ct 3141, 3147, Ed.2d 677, see also, h & K Coustr . 56, 64, 551 N W 2d 413, 417-418) 3 þ 3 2 Any propcommence a taking action, cannot enactment, or who lacks the recurcumstances, and tend to have a zoning provision invalid 8), I beheve tl who overlooks or misinterprets and, if an enactment appears government having nt As suggested and as noted in of its economic value, perty rights in conveying the considerations applies in Resources, is destroved by 🎜 Cahfornua Coastal Conunn mation for the taking Natura! at n insation for value n Lopes, without the supra, Ó **Far**ce] padun 23 7 iment The state of

US, at

entirely

tendency towards circularity" if a taking is defined by the reasonable expectations of the olina Coastal Council, supra, 505 U.S., at 1034, 112 S.Ct., at 2903 [Kenned], J., concurowner, but "fslome curcularity must be toler-Jective rules and customs that can be understood as reasonable by all parties involved" (Lucas v South Carolina Coastal Council, More importantly, as Justice Kenne-"[t]he expectations proated in these matters" (Lucas v South Car-Thus, for example, in Gazza the taking issue Gazza's expectation that the property would be worth \$396,expectation was not reasonable because, as determined, the property had value as a result of other uses permitted Tidal Wetlands Act and the local at 1035, 112 S Ct., at 2903) tected by the Constitution are based on a single-family residential lot dy points out, the definition is not was not determined by Mr erreular as long as Supreme Court zoning ordinance 505 U.S. ring]) supra

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

145KAYE, C.J., and BELLACOS/SMITH and LEVINE. JJ., concur

to modify WESLEY, !, dissents and votes in a separate opinion

Order affirmed, with costs TITONE, J., took no part



1546STANDARD FUNDING CORP., Respondent, 89 N Y 2d 546

Jeffrey LEWITT et al., Defendants,

Public Service Mutual Insurance Company, Appellant. and

Court of Appeals of New York March 20, 1997

C brought suit against insurer for losses incurred company financing Premum

Nassau County, Lockman, J., entered for ment in favor of premium financing comments. agreements enterediff. actual nor apparent authority to enter 🚰 entered into with insurer's agent on behind financing was not basis for imposing a hel Supreme Con vine, J. held that insurer's agent had net agent on behalf of nonexistent unsite Insurer took and premium financing agreements on behal and (2) fact that insurer received notical insurer, such that insurer was not respe The Court of Appeal premium financing agreem Supreme A D.2d The in lavo, ... nonjury trial. The Y S.2d 137, affirmed purported insureds ble for fraudulent by permission fraudulent Appellate

Order of Appellate Division reverse

Insurance C=87

Insurer's agent did not have actual msurer where agency agreement exten authorized agent only to issue insurance to receive and collect premi premium financing agreements on **beh**i enter into premium m agreement authorized thority under agency contract to or agreements negotiate and nothing

2 Insurance ∞93

were not within scope of agent's actif context of premium financing arranger Insurance agent's frauds perpetra thority under agency agreement.

3 Insurance c=87

its certification representations regard financing agreements on behalf of he represented that agent was empower proposed insureds, but that agent was agent in good standing agent's authority to procure premium write insurance policies and accept **pre** of business authority to enter into or procure Insurer's agent did not have them, notwithstanding to write all lines msurer made no for 1ts rized

v. LEWITT 1997) STANDARD FUNDING CORP N E 2d 874 (N 1 Cite as 678

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Standard Funding on

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ance policy and assert a right to all unearned stallment schedule, if the insured defaulted, Funding the authority to cancel premiums due under the policy agreement financıng rms 23 Insurer's receipt of notices of financing premium finance company was not baand thus never expressly where er never signified acceptance of tel **Fonditions** of financing agreements, **is re**quired, and thur imposing liability on insurer

Standard

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the insur-

he Service Mutual did not respond to any of ing sent notice of financing forms with copies Again, Standard Funding then sent Public Service Mutual "Notice Financing" forms containing copies of the financing the Standard Fund-In mid-December, such ₹0 80 Levrit and the insured, indicated that Public cordance with their terms, issued two checks õ insureds and that the insureds had paid apģ December Each form, which was signed by cepted the financing agreements, and in ac-Standard 1989 to finance premiums ranging from \$15,agreements that Standard Funding and Lew-\$153,500 for policies purportedly is-Standard Funding agreements for the financing of Public received 20, 1989. Lewitt tendered Standard Funding in the At issue on this appeal are four of the checks to Public Service Mutual Mutual. Mutual had issued policies premiums completed two additional financing agreements to entered into in October and and Service Lewitt totaling \$23,325 the checks issued to Lewitt premiums oţ amount of \$204,000 insurance company Public 25% Mutual checks from proximately 24October λ'n executed Funding Service S sned

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Rule that ratification may

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Linto by insurer's agent

premium financing

After Standard Funding failed the nonces

ments and Public Service Mutual received no Public Service Mutual to receive ed the matter and discovered that these four No policies were connection with these agreethereafter terminated Lewitt's agency contacted Public Service Mutual who investigatagreements covered fictitious polipayments from the alleged insureds, it conand false insureds premiums for them ever issued in financing

Mutual was premised on the theory that the ages action against Lewitt and Public Service After Lewitl Service insurer was hable for the fraudulent acts of Standard Funding commenced this dam-The claim against Public acting as its agent Mutual Lewitt

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Premiums

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rd Funding would finance the bulk of

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and Funding had provided Lewitt

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intiff Standard Funding Corporation,

MINE, Judge

metrance premium financing

OPINION OF THE COURT

into a series of financing agreements

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Ballame

Suhrada, of counsel), for appel-

PC,

Landman Corsi Ballaine & Ford,

City (William G

York

and

Cove,

Jablonski, Gien

Stuart R

B. Merrowitz, for respondent

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

BALT COUNTY, MARY AND

INTER-OFFICE CORRESPONDENCE

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

FROM: Arnold F. 'Pat' Keller, III, Director

Office of Planning

SUBJECT: 1004 Sumter Avenue

APR | 1997

INFORMATION:

Item Number:

388 & 389

Petitioner: Mathem Chacko

Property Size:

Zoning:

DR 5.5

Requested Action:

<u>Variance</u>

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:

Division Chief:

AFK: JL

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director

Date: March 31, 1997

Department of Permits & Development

Management

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

134 In the Matter of Shahid U. KHAN, Respondent ZONING BOARD OF APPEALS OF the VILLAGE OF IRVINGTON et al., Appellants.

York. Court of Appeals of New

Jan 16, 1996

exemptions to tions without 599 N Y.S 2d 975, reversed, and board sought right that would automatically exempt propminimum lot or area regulations did not apwas no legal common-law denymg area ceeding contesting demal of building permit Westchester County, Cowhey, J., ruled in favor of board, Supreme Appeals, board of ap-A.D.2d 539, Article 78 prohardship; resource protection regulations; Ç \mathbf{T} he Appellate Division, 194 creation of separate (3) board acted appropriately in owners from area restric Court (1) there Court, variance by village zoning individualized assessment of zoning ordinance providing Landowner commenced appealed. \mathbf{T}_{De} Supreme Smith, J., held that. appeal and landowner The for 2 variance Court, pasis

Order of Appellate Division reversed, petition dismissed

Zoning and Planning \$\ins\$151

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

Zoning and Planning ←503

make of Appeals, 163 A.D.2d land use and lots from the 556 N.Y.S.2d abrogating 191 A D.2d 568, 594 N Y.S.2d 809, Matter of development may, but need not, exempt existing owners of substandard lots from the Matter of Pateman v Zoning Bd. of Appeals, Ç chooses changes' more onerous effects; changes to its zoning to control 389, 558 N Y.S.2d 117, Matte Bldrs v Svegel, 162 A.D 2d 533, that 389, 558 NV C Municipality

527, 495 N Y.S.24 Mayhall, 92 M. Scheyer, 146 A.D.2d 594 of Etam Zoning Bd. of Appeals, 165 A.D.2d 871 Modular Homes N Y.S.2d 679, Matter Combs, 115 A.D.2d 527, Matter of Mackay v. 836, 730, Cange vN.Y.S 2d 344. N.Y.S.2d 868, 401

Zoning and Planning 5254

nance related only to area and width a lage of Irvington, NY., Zoning Ordin time of request for building permit, did regulations where its ownership was de tive date of ordinance and is still so owner that nonconforming or substandard prop Village zoning ordinance, which pro ent from that of any adjoining land on provide exemption from regulations lin development and restricting new con tion on environmentally sensitive areas; 47-5 D

Zoning and Planning \$\infty\$ 605, 703 19

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

5. Zoning and Planning \$2481, 494

McKinney's Town Law has Generally, a "use variance" will all McKinney's Village Law § 7-712-b. | of land as a matter of discretion in di been proscribed by zoning regulations; exceptional un must make a showing of unbed when desired hardship stances

for other judicial constructions and publication Words and Phri initions

Zoning and Planning \$\sim 503, 504

zoned district, nor does it seek tox involves no change in essential charge such as setback lines, frontage require lot-size restrictions, density regulatiq variance" involves essential use of the land. "area Ą٦

See publication Words and Phrafor other judicial constructions and untions

Zoning and Planning \$\infty503\$ **r**∹

Zoning Board of Appeals, before ıng area variance, must engage in bi

783 × × APPEALS OF IRVINGTON BD. OF APPEALS 0 KHAN v. ZONING

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considering factors outlined in applicaapplicant apphneed not establish practical difficulties use of his land McKunney's Village 7-712-b, subd 3(b) and welneighborhood or community; at detriment to health, safety, tatute and weighing benefit to

ning and Planning \$503

acted printely and within its authority in de-landowner's application for area varied new construction on property, which beated within flood plain, board found that repractical rariance was not warranted because ap-Village zoning board of appeals McKinney's Village Law after passage of regulations int had fauled to demonstrate bested within flood plain, subd 3(b).

ning and Planning \$379, 503

before that variance or building permit confiscatory taking following landowner did demonstrate of regulation that restricted property ner regulation went into effect ruction on his property Ter proof of value of Andowner failed to of area eted to

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

for re-**Mehard** T. Blancato, Tarrytown,

POPINION OF THE COURT

TH, Judge

the zoning regulation at issue de ondent Khan sought to construct a on property that was made subject commental zoning regulations soon afnought it. The primary issue in this which property held in single and separate ip gave respondent a right to build in regnan exemption from zoning regulathe zoning regulation as protect property from the effects of Because we determine that the ordizoning a separate ordinance the new environmental

seeks, 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 Respondent is the owner of two parcels (both unproved and real property (Tax Map 1 229, Lots 83, 84, 85 and portions of 81 and 82) located in the Village of Irvington, Westchester County, New York. No apportionment of The two parcels were purchased on January 27, 1989, under a single contract of sale with purchase price was made between the two parcels by the parties or the contract. However, the valuation of the two parcels for Both unproved parcel and \$10,000 for the unum-Respondent acquired the unparcels were held by the previous owners as t. Respondent divided the parcels in to build on the unimproved property with a singletransfer tax purposes was \$270,000 for and अन्Respondent, Shahid U. Khan, family dwelling jointly with his wife improved parcel is not in issue here. improved parcel in his name only pursuant to CPLR Article 78, the alternative, a variance. quired the parcel improved separate deeds Sheet 10B, Block ō proved parcel. unimproved) one lot. and sell it two

The Both parcels are located in a single-family transfer of the subject property, as divided, Under the Village's zoning ordinance, the created a legal building lot separate from the feet adjoining parcel without the requirement of approval (Village of Irvington Zoning Ordinance § 47-52), as each lot had existing imthat lots have square of 5,000 square feet unimproved parcel has 5,202 an 0 U district requiring the required frontage proved public street minimum area subdivision

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



Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at

97-389-A

IWe do solemnly declare and affirm under the penalties of perjury, that I/we are the

1004 Sunter Avenue - Proposed Lot 2
which is presently zoned

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 Z. of the Zoning Regulations of Baltimore County, to 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.

	ing it owner(s) of the property which is the subject of this Petition
Sentratification Engineer:	Legal Owner(s)
Paul Lee Engineering, Inc.	Mathem Chacko
(Type or Print Name)	(Type or Print Name)
•	Mathem Chaetto.
Signature	Signature
_304_W. Pennsylvania Ave.	
Address	(Type or Print Name)
Towson, Maryland 21204	
Towson, Maryland 21204	Signature
Attorney for Petitioner	
Frank Borgerding	8016 Sagramore Road 866-1587
(Type of Print Name)	Address Phone No
	Baltimore, Maryland 21237
Signature	City State Zipcode Name, Address and phone number of representative to be contacted
409 Washington Ave. 96-6820	Frank Borgerding - DiNenna, Breschi
Towson, Maryland 21204 City State 21204	409 Washington Ave. 21204 296-6820
	OFFICE USE ONLY
Administration and the second	ESTIMATED LENGTH OF HEARING
	unevailable for Hearing
7 7	the following dates Next Two Months
Printed with Soybean Ink on Recycled Paper	ALLOTHER
A TOTAL OF MINER	REVIEWED BY DATE



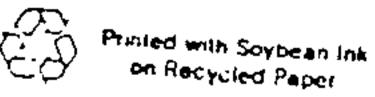
Petition for Variance to the Zoning Commissioner of Baltimore County

for the property located at

1004 Sumter Avenue - Proposed Lot which is presently zoned

This Petition shall be filed with the Office of Zoning Administration & Development Management. The undersigned, legal owner(s) of the property situate in Beltimore 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

Property is abut on a public	that do not
	CHANGE Destury that there s.c., to
Paul Le (Type of Pilit Name 388 + 389	DING ON TO ABOUE 3/19/97
304 W. Pennsylvania Ave. Towson, Maryland 21204 State Zipcode	(Type or Print Name) Signature
Frank Borgerding (Type or Print Name)	8016 Sagramore Road 866-1587 Address Baltimore, Maryland 21237
409 Washington Ave. 96-6820 Address Phone No. 21204	Name, Address and phone number of representative to be contacted Frank Borgerding - DiNenna, Breschi Name
City State Zipcode	409 Washington Ave. 21204 296-6820 Address OFFICE USE ONLY ESTIMATED LENGTH OF HEARING Unavailable for Hearing
Printed with Soybean Ink on Recycled Paper	ALLOTHERDATE



Paul Lea PE

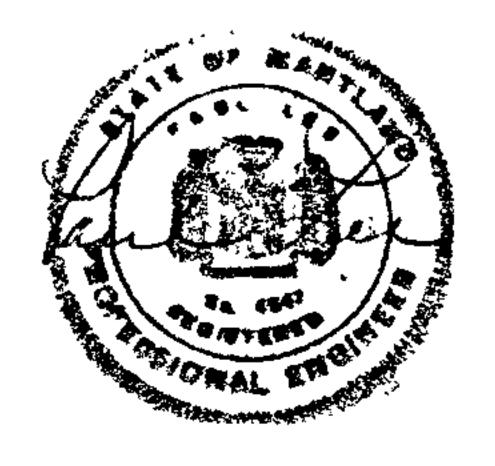
Paul Lee Engineering Inc. 304 W. Pennsylvania Ave.
Towson, Maryland 21204
97-389-A 410-821-5941

DESCRIPTION

#1004 SUMTER AVENUE (PROPOSED LOT # 2) 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 $60^{\circ}06'$ E - $670'^{+}$ and N $42^{\circ}35'07''$ E - 159.64' from the intersection of the center of Chesaco Avenue with Sumter Avenue; thence running with and binding on a portion of said property line (1) N 42^o35'07" E - 72.00', thence running for a new line of division (2) N $23^{\circ}22'17''$ W - 114.02' to intersect the north boundary of said property, thence running with and binding on a portion of said north line (3) S 42°57'57" W - 100.00' to the intersection with the west boundary line of said property, thence running with and binding on said west boundary line (4) S 37^o25'34" E - 106.40' to the point of beginning.

Containing 8,994 square feet of land, more or less and shown as Lot # 2.



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

	RE: Case No.: 97-389 19
	Petitioner/Developer:
	MATHEM 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:	
The sign(s) were posted on	12/8/97
The sign(s) were posted on	12/8/97 (Month, Day, Year)
The sign(s) were posted on	
The sign(s) were posted on	(Month, Day, Year)
The sign(s) were posted on	(Month, Day, Year) Sincerely, Huy Jewn 12/8
The sign(s) were posted on	(Month, Day, Year) Sincerely, Huy Jewn 12/8
The sign(s) were posted on	(Month, Day, Year) Sincerely, Lay Jew 12/8 (Signature of Sign Poster and Date
The sign(s) were posted on	(Month, Day, Year) Sincerely, Huy Jew 12/8 (Signature of Sign Poster and Date GARY FREUND)
The sign(s) were posted on	Sincerely, Hay Jew 12/8 (Signature of Sign Poster and Date GARY FREUND (Printed Name)

CERTIFICATE OF POSTING

. . . .

RE: Case # 97-389-A

Petitioner/Developer:
(Mathem Chacko)
Date of Hearing/Glasing:
(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		
were posted conspicuously on the property located at		
1994 Sumter Ave.(proposed Lot	2 , Baltimore, Maryland 21237	
The sign(s) were posted on	April 24, 1997	
	(Month, Day, Year)	

97.389-A LOT#2

of the Zoning Act and Regulations of Baltimore County will told a public hearing in <u>Tow-</u> son Maryland on the property identified herein as follows:

Case: #97-389-A
1004 Sumler Avenue
Proposed Lot 2
E/S Sumler Ave. 670' +/- E of
Chesaco Ave., thence Easterly
along a private right of way, a
distance of 159.64' +/- to proposed lot #2
15th Election District
7th Councilmanic
Legal Owner(s):

Variance: to permit a detached dwelling on a lot less than 20,000 square feet that does not abut on a 30 feet public right-of-way. 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 coocerning the File and/or Hearing. Please Call 887-3391.

3/349 March 27 C130087

CERTIFICATE OF PUBLICATION

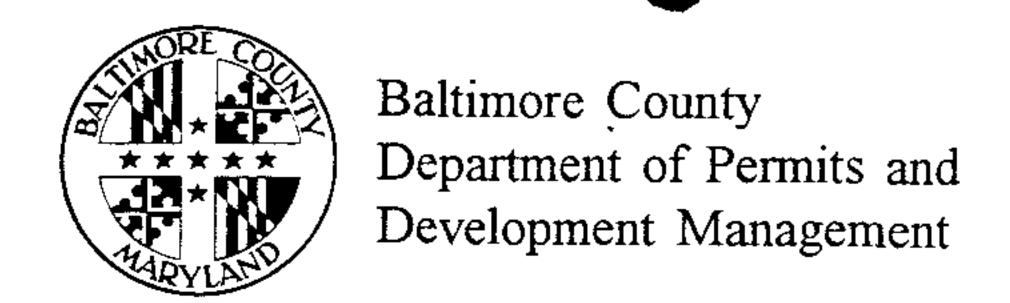
TOWSON, MD., Mark 27, 1977

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of _____ successive weeks, the first publication appearing on Mark 27, 1927.

THE JEFFERSONIAN,

LEGAL AD. - TOWSON

•	01108
AMOUNT_\$ 50 p	00
KO	<u> </u>
U3A91#02O7MICHRC 8A COD1:34FM0313-97	\$50.0 ∩
	AMOUNT_\$ 50. KO U3A91 NU207MICHRC



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 <u>Towson, Maryland</u> on the property identified herein as follows:

CASE NUMBER: 97-389-A

1004 Sumter Avenue, Proposed Lot 2

E/S Sumter Avenue, 670'+/- E of Chesaco Avenue, thence Easterly along a private right-of-way, a

distance of 159.64'+/- to proposed lot #2 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.

cc:

Arnold Jablon

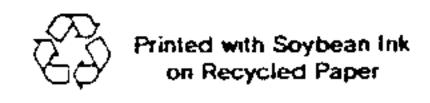
Director

Mathem Chacko

Paul Lee

Frank Borgerding, Esq.

- NOTES: (1) YOU MUST HAVE THE ZONLING 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.



TO: PUTUXENT PUBLISHING COMPANY

March 27, 1997 Issue - Jeffersonian

Please foward billing to:

Mathem Chacko 8016 Sagramore Road Baltimore, 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 <u>Towson, Maryland</u> on the property identified herein as follows:

CASE NUMBER: 97-389-A

1004 Sumter Avenue, Proposed Lot 2

E/S Sumter Avenue, 670'+/- E of Chesaco Avenue, thence Easterly along a private right-of-way, a

distance of 159.64'+/- to proposed lot #2 15th Election District - 7th Councilmanic

Legal Owner(s): Mathem Chacko

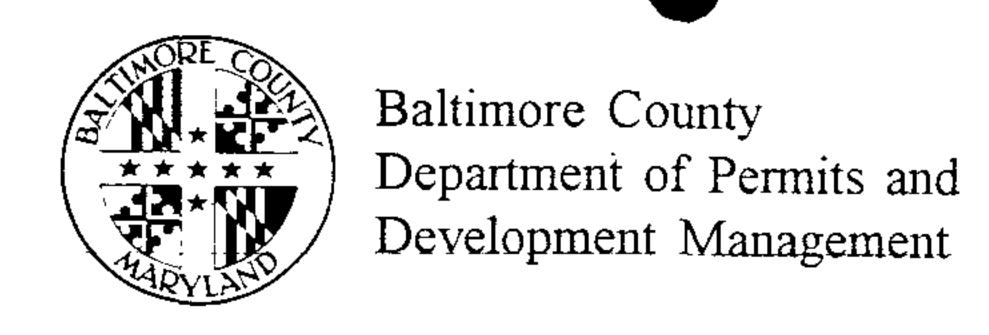
Variance to permit a detached dwelling on a lot less than 20,000 square feet that does not abut on a 30 foot public right-of-way.

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.



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: 97-389-A
1004 Sumter Avenue, Proposed Lot 2
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.



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.

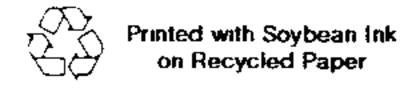
Please refer to the Board's Rules of Practice & Procedure, Appendix C, Baltimore County Code.

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
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





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

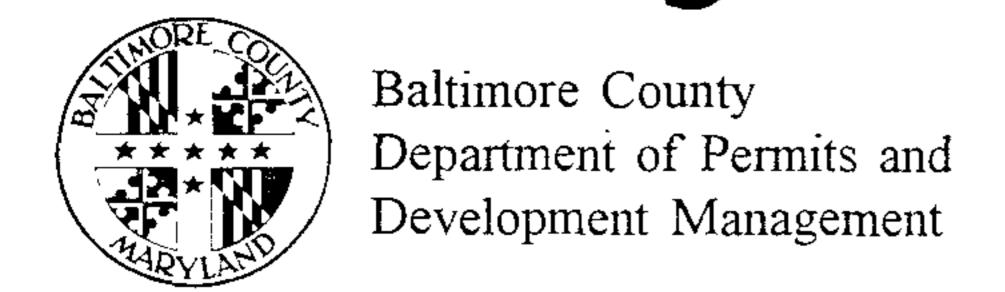
cc: Counsel for Appellant /Petitioner: Francis X. Borgerding, Jr., Esquire
Appellant /Petitioner : Mr. Mathem Chacko

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.





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.: 389

Case No.: 97-389-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.

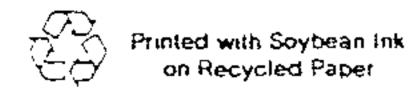
If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Roslyn Eubanks in the zoning office (887-3391).

Sincerely,

W. Carl Richards, Jr.

Zoning Supervisor

WCR/re
Attachment(s)



BALT MORE COUNTY, MARYLAND

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:

Division Chief:

AFK: JL

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO:

Arnold Jablon, Director

Date: March 31, 1997

Department of Permits & Development

Management

FROM:

Robert W. Bowling, Chief

Development Plans Review Division

SUBJECT: Zoning Advisory Committee Meeting

for March 31, 1997

Item No. 389

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

ZONE331.389



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 3.21.57

Item No.

389 166

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,

1. J. Hall. 1. Ronald Burns, Chief

Engineering Access Permits

Division

LG

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

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

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:

Fursuant 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.

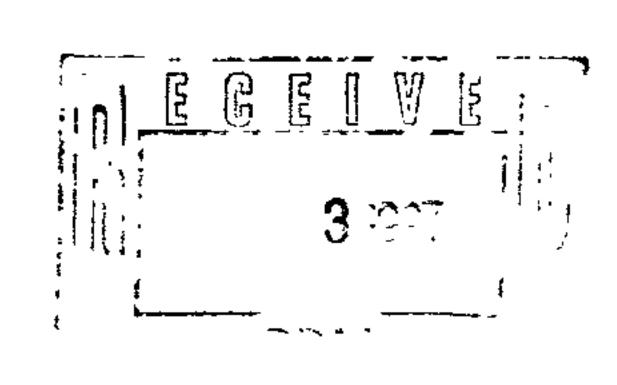
8. The Fire Marshal's Office has no comments at this time, IN REFERENCE TO THE FOLLOWING ITEM NUMBERS:

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

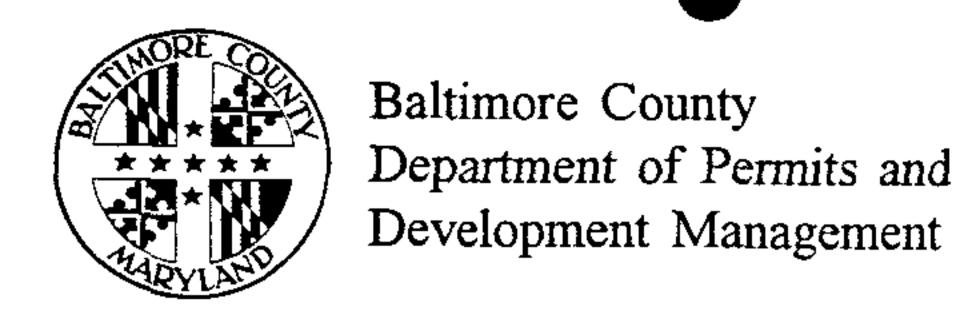
REVIEWER: LT. ROBERT P. SAUERWALD

Fire Marshal Office, PHONE 887-4881, MS-1102F

cc: File







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

November 5, 1997

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

Variance
E/S Sumter Ave., 670' +/E of Chesaco Ave., Ely
along a private R/W
(1004 Sumter Avenue,
proposed Lot 2)
15th Election District
7th Councilmanic District
Mathem Chacko - Petitioner
Case No. 97-389-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

97 NOV -7 AM 9: 2

Petition for Zoning Variance
E/S Sumter Ave., 670' +/- E of Chesaco Ave., Ely along a private R/W
(1004 Sumter Avenue, proposed Lot 2)
15th Election District - 7th Councilmanic District
Mathem Chacko - Petitioner
Case No. 97-389-A

Petition for Zoning Variance

Description of Property

Certificate of Posting

-Certificate of Publication

-Zoning Advisory Committee Comments

Petitioners' Exhibit: '18 - Plat to Accompany Petition for Variance

Leopy of Deed dated December 31, 1938

Copy of a Deed dated April 22, 1945

Copy of an Indenture dated May 29, 1948

Copy of a Deed dated October 20, 1986

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

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

C: K Francis X. Borgerding, Jr., Esquire, 409 Washington Avenue,

Towson, MD 21204

Mr. Mathem Chacko, 8016 Sagramore Road, Baltimore, MD 21237

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) VE

COUNTY BOARD OF ATTE

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.

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)

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

Mathem Chacko -Petitioner /Case No. 97-388-A and Case No. 97-389-A /Minutes of Deliberation

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 <u>Cromwell v. Ward</u> 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. Mathem Chacko -Petitioner /Case No. 97-388-A and Case No. 97-389-A /Minutes of Deliberation

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

Mathem Chacko -Petitioner /Case No. 97-388-A and Case No. 97-389-A /Minutes of Deliberation

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

Administrator



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.

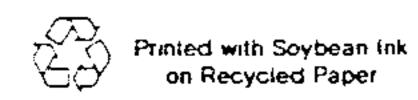
As quickly as possible a notice of postponement should be affixed to the sign(s) now on the property. Further, upon notification of the new hearing date, the sign (s) must be changed to reflect same.

Arnold Jablon Director

cc: Mathem Chacko

Paul Lee Engineering, Inc.

AJ:ggs





Attorney at Law

Mercantile Building - Suite 600 409 Washington Avenue Towson, Maryland 21204 (410) 296-6820 Fax (410) 296-6884

Member of Maryland and District of Columbia Bar

November 4, 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

97-389-A

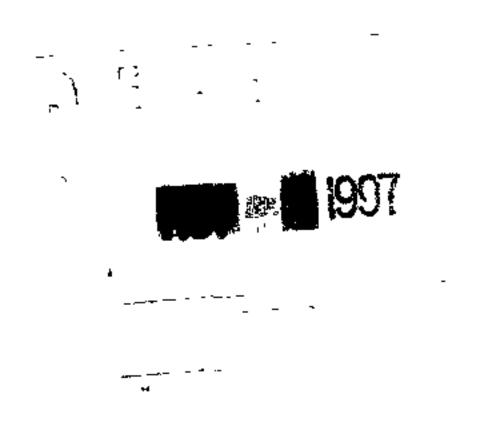
Dear Mr. Jablon:

Enclosed for filing please find Notices of Appeal to the County Board of Appeals for Baltimore County in case numbers 97-388-A and 97-389-A. Thank you very much for your cooperation with regard to this matter.

Very truly yours,

FRANCIS X. BORGERDING, JR.

FXBJr:bjk Enclosure



47-1290

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

Jobs medica

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.

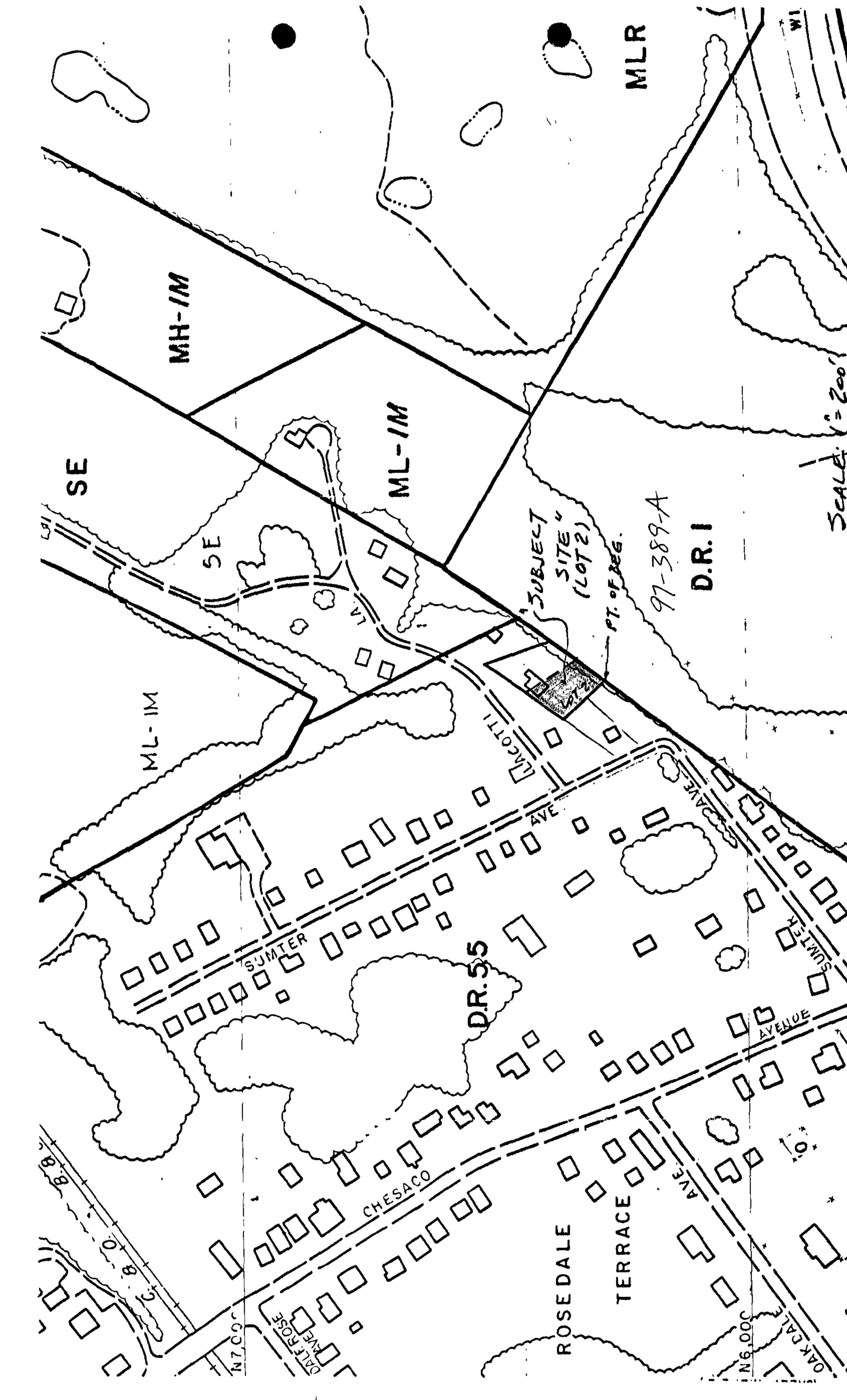
I apologize for any inconvenience this request causes your office. Thank you very much for your cooperation with regard to this matter.

Very truly yours,

FRANCIS X. BORGERDING, JR.

FXBJr:bjk

Ó



133

L.1.1

The feet

(Notarial)

(Seal)

Sadye B Jacobs

Notary Public

Decembed Dec 31 1938 At 18 M & Exd Per C Willing Frowns Jr Clerk

115234

Frederick B Reinhardt & wife

Doed to

Marie Reinhardt

This Deed Made this thirty-first day of December in the year one thousand nine hundred and thirty-cight by and

between Frederick B Reinhardt and Anna B Reinhardt his wife

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 Paris Reinhardt (subject to the essements and restrictions hereafter mentioned) her heirs and assigns in fee-simple all that lot of ground situate lying and being in Paltimore 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 decrees 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-tenthales 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 R Roinhardt and wife dated March 25th 1929 and recorded among the Land Records of Baltimore County in Liber W H M number 817 folio.

Together with the buildings and improvements thereon erected made or being and all and every the rights alleys ways waters privileges appurtenances and adventages 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 appurtenences and advantages thereto belonging or appertaining unto end to the proper use and benefit of the said Parie Reinhardt her heirs and assirns 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 assions pornetually to use the said property for the purpose of conducting water electricity ras and sewerage through under over and along the said property for the tenefit of other property which the said Frederick B Reinhardt and Anna B Reinhardt his wife or their heirs and assions now have own or possers the said easement right and privilege to be a burden and incumbrance for a width of ten feet frontaed on the northeast side of Sumter Avenue northwest from the north forty-two decrees thirtythree minutes East line and for a length of 326 and 2/10ths fert 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 te requisite

Witness the hands and seals of said grantors

Test

Frederick B Reinhardt (Seal)

Anna B Reinhardt

(Seal)

George L Lochloebler

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 subjoriber a Notary public of the State of Maryland in and for the City aforesaid personally ameared Frederick B Reinhardt and Anna B Reinhardt his wife and they acknowledged the foregoing Deed to be their sct

(Noturial)

Charles J Kozlovsky

(Scal)

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

thous and nine hundred and thirty-eight by Frederick

Deed to

B Reinhardt und Anna B Reinhardt his wife of Baltimore

Edward Reinhardt & wife

County in the State of Paryland 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 Cityco Realty Company of Baltimore City and hereinafter referred to thence running with end 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 "roperty heretofore conveyed to the Canton Railroad Company thence northwesterly on the northeast side of said property two hundred and eight and eighty-three one hundredthe fact to the northeasternmost outline of the property heretofore convoyed to the Cityco Realty Company of Baltimore City by the Owners Realty Company of Baltimore City and hereinsfter referred to thence binding on said outline south fifty four degrees fifty four minutes east one hundred and sevente-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 haid out on the newised Plat of Rosedale Terraces Being a portion of the property which was conveyed to the Cityco Realty Company of Beltimore City by the Owners Resity 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 do ted Merch 25th 1929 from Cityco Realty Company of Bultimore 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 rightealless ways waters privileges arountemances 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 to gether 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 beirs and assigns for ever in fee-simple

And the said Frederick B Reinhardt und 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 whatspever to encumbed the property hereby conveyed

Witness the hands and seals of said grantors

Test

Frederick B Reinhardt (Seal)

George L Dochloebler

Anna B Reinhardt (Seq1)

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 Potary Public of the State of Paryland 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)

Elizabeth Brooks Cipra

(Seal)

Notary Fublic

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

(*)

115236

This Deed Mide this thirty-first day of December in the

Frederick B Reinhardt & wife :

your one thousand nine hundred and thirty-eight by

Deed to .

Frederick B Reinhardt and Anna B Reinhardt his wife of

Andrew Lang & wife

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 Christie 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 Beltimore 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 twentyfour and four-tenths fest to the original point and place of beginning Being part of lot Number 158 as laid out on Plan "C" of Mosedale Terraces and being part of lot Mumber 158 as laid out on the Revised Flat 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 tenunts 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 E Reinhardt and Anna E Reinhardt his wife their heirs end assigns perpetually to use the reid property for the benefit of other property which the said Frederick E Reinhardt and Anna E Reinhardt his wife their heirs and assigns now have own or possess for the purpose of conducting water gas electricity 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

100

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-

And The Said Frederick B Reinhardt and Anna P 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 scals of said grantors

Test

Frederick B Reinhardt (Seal)

George L Lochloebler

Anna B Reinhardt

(Seal)

I have regarded to the transfer to the second of the secon

State of Maryland paltimore 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 subscribe a Notary Public of the State of Maryland in and for Beltimore 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 1' & Exd Per C Willing Browne Jr Clerk

115704 : This Deed Made this 1Cth day of January in the year one thousand

George J Gebhardt : nine hundred and thirty-nine by and between George f Gebhardt

Deed to : of Heltimore City in the State of Maryland of the first part and

Jean Okyen : 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 enother Avenue also thirty feet wide to be laid out leading to Westchester Avenue thence running along this last Avenue north seventytwo degrees fifty-four minutes west one hundred and eighty feat 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 lire of this last named Avenue thence continuing the same course one hundred and seventy-nine feet to the roint of beginning Containing and haid out for ninety-five one-hundredths acres more or less

Being the same lot of ground described in a decd from Irvin S Youldhall and Mary

Ò

and Catherine C Hughes his wife

the rights alleys ways waters privileges appurtenames and advantages to the same

HAVE AND HOLD the said described lots of ground and premises unto and to the use of CALVIN LEGG and EVELYN FAY LEGG his wife as tenants by the entireties their heirs digns 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 remaining the aforesaid Land Records in Liber WPC No 638 folio 357 from Henry Kolb Inted to Charles J Rybak and wife

the said parties of the first part hereby covenant that they have done no act to resaid land hereby conveyed that they will warrant specially the property hereby 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)

MARYLAND BALTIMORE CITY TO WIT

ty-six before me the subscriber a Notary Public of the State of Maryland in and for City aforesaid personally appeared CHARLES J RYBAK and EDITH M RYBAK his wife over-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

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

ded by MAP)

(Exd By W & G)

)	THIS DEED Made this 22 day of April in the year of Our		
ick Reinhardt, Widower)	Lord one thousand nime hun red and forty-five by and		
)	be tween FREDERICK B REINHARDT widower of Baltimore County		
Heinhardt & Wife	}	in the State of Maryland party of the first part and		
(1)	—' TNH A I	RDT his wife of the same County and State parties of the		
part	T 141 174 1	the new were of one same country and blace particles of one		
in the second se				
TNESSETH that in consideration of the payment of the sum of five dollars and of other				
nd valuable consideratio	ns tl	ne receipt of all of which is hereby acknowledged the said		
of the first part does h	e re bj	grant and convey unto John B Reinhardt and Roma D Rein-		
wife as tenants by t	he er	ntireties their heirs and assigns in fee simple forever		
tilot of ground and pre	mises	s situate lying and being in Baltimore County in the State		
viand and described as f	ollov	vs to wit		
CINNING for the same on	the i	northeast side of Sumter Avenue at a point one hundred		
ight and forty-three hu	ndred	ths (168.43) feet from the southernmost corner of lot		
156 as shown on plat by	Redi	ng and Howard dated March 1 1910 thence south twenty		
thirty minutes east al	ong 1	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 priviled road laid out for the purpose of egress and ingress to the properties of Andrew Land 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 hundred fifty-nine and fifty-nine hundredths (159.59) feet to a point on the south said of said road thencenorthwesterly thirty-nine and seventy-six hundredths (39.76) feet the southeasternmost corner of the land of Andrew Lang and wife thence southwesterly the, southern boundary of the land of Andrew Land and wife one hundred thirty-eight and nime ty-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 of Baltimore County in Plat Book WPC 3 folio 90 and being part of lot No 158 as laid the revised plat of Rosedale Terraces

TOGETHER with the buildings thereupon and the rights alleys ways waters privilege 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 of the said John B Reinhardt and Roma D Reinhardt his wife as tenants by the entiretime heirs and assigns in fee simple forever

AND the said party of the first part hereby covenants that he has not done or suffice 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 other and further assurances of the same as may be requisite

WITNESS the hand and seal of said grantor

Burneice F Lovelace

WITNESS

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 at Not Public of the State of Maryland in and for the County of Baltimore personally appear.

Frederick B Reinhardt the grantor in the aforegoing deed and he acknowledged the aforegoing be his act and deed

AS W ITNESS my hand and Notarial Seal

(Notarial Seal)

Burneice F Lovelace

Notary Public

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

(Recorded by MAP)

(Exd by W & R)

110055)	THIS DEED Made this 4th day of May in the year one
Štanley W Batko & Wife)	nine hundred and forty-six by and between STANLEY W
Deed To	}	and VIOLET BATKO his wife of the County of Baltimor
Milton M Smulson & Wife)	of Maryland of the first part and MILTON M SMULSON
USS \$2.75 SS \$2.50	_)	LILLIAN SMULSON his wife of the County of Baltimore
of Maryland parties of the	30CO	nd 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 State

Dehinden Health.

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.

IH 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
Witnesses: Marjorie E. Hitchcock Amoskeag Savings Bank
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

1849

3,14

F17 C3

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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

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 south 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.Ne.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 and other 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

Howard J Bohlen Andrew Lang

Howard J. Bohlen (SEAL)

Charlotte A. Lang

(SEAL)

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/CHACKO and ALEYKUTTY/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 (8)% of ground situate in (, RC/F

the Fifteenth

Election District of Baltimore County

C RC/E 17 C T TX 187 C DOCS 187

392

in the State of Maryland, and described as follows, that is to say:

OEEN CHK JR T

BEGINNING for the same thereof on the Northeast side of Summit Avenue (101 ROE) is southernmost corner of Lot Number 156; thence Southeasterly along the Northeast side 101 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.

STATE DEPARTMENT OF

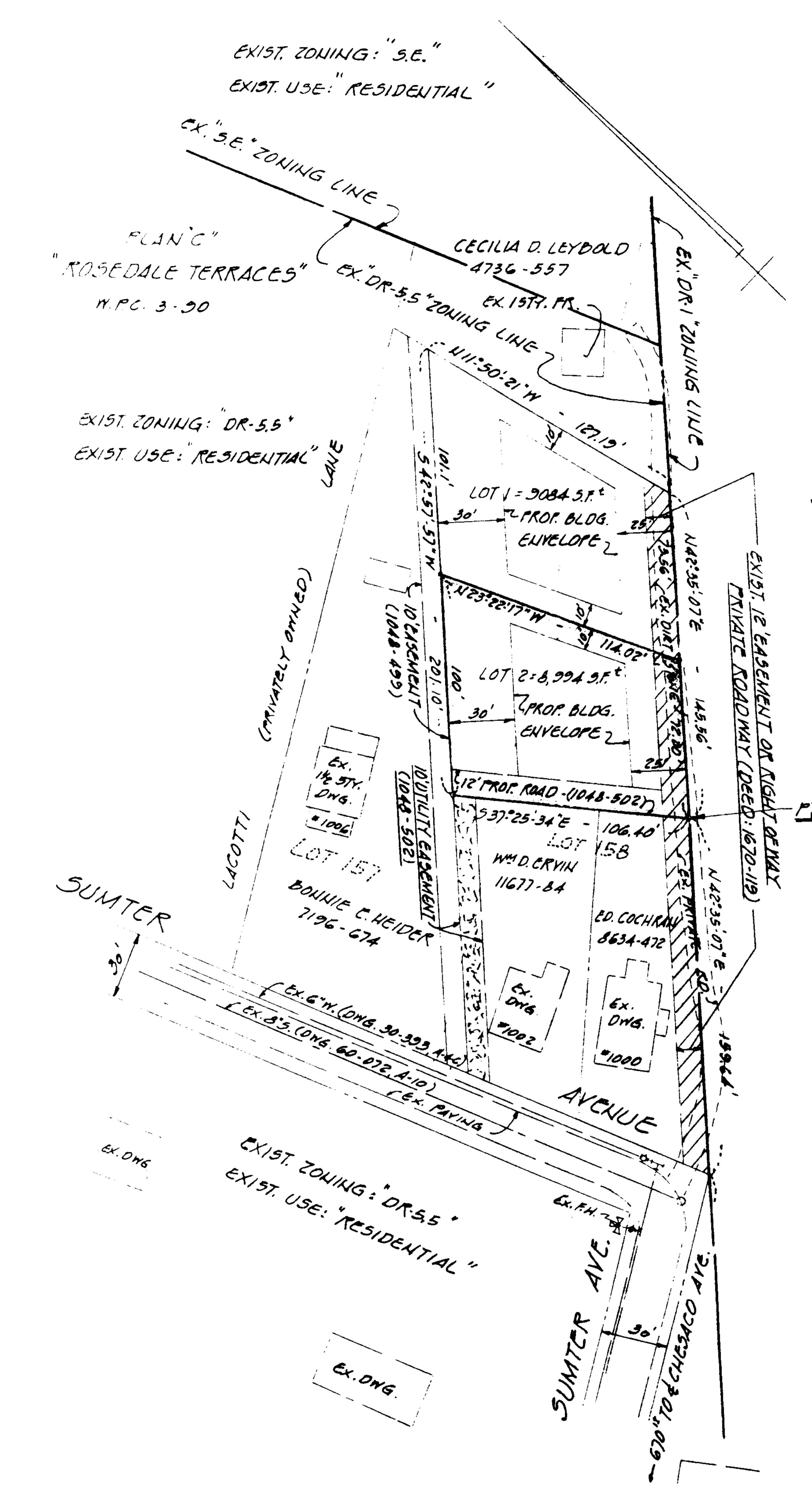
(continued)

ASSESSMENTS & TAXATION

11-30-86

DATE

AGRICULTURAL TRANSFER TAX NOT APPLICABLE SIGNATURE DATE



EXIST. ZONING: "DR-1"
EXIST. USE: "MCANT"

"WINDLASS BLYD. AREA"

-PT. OF DEG. - LOTE

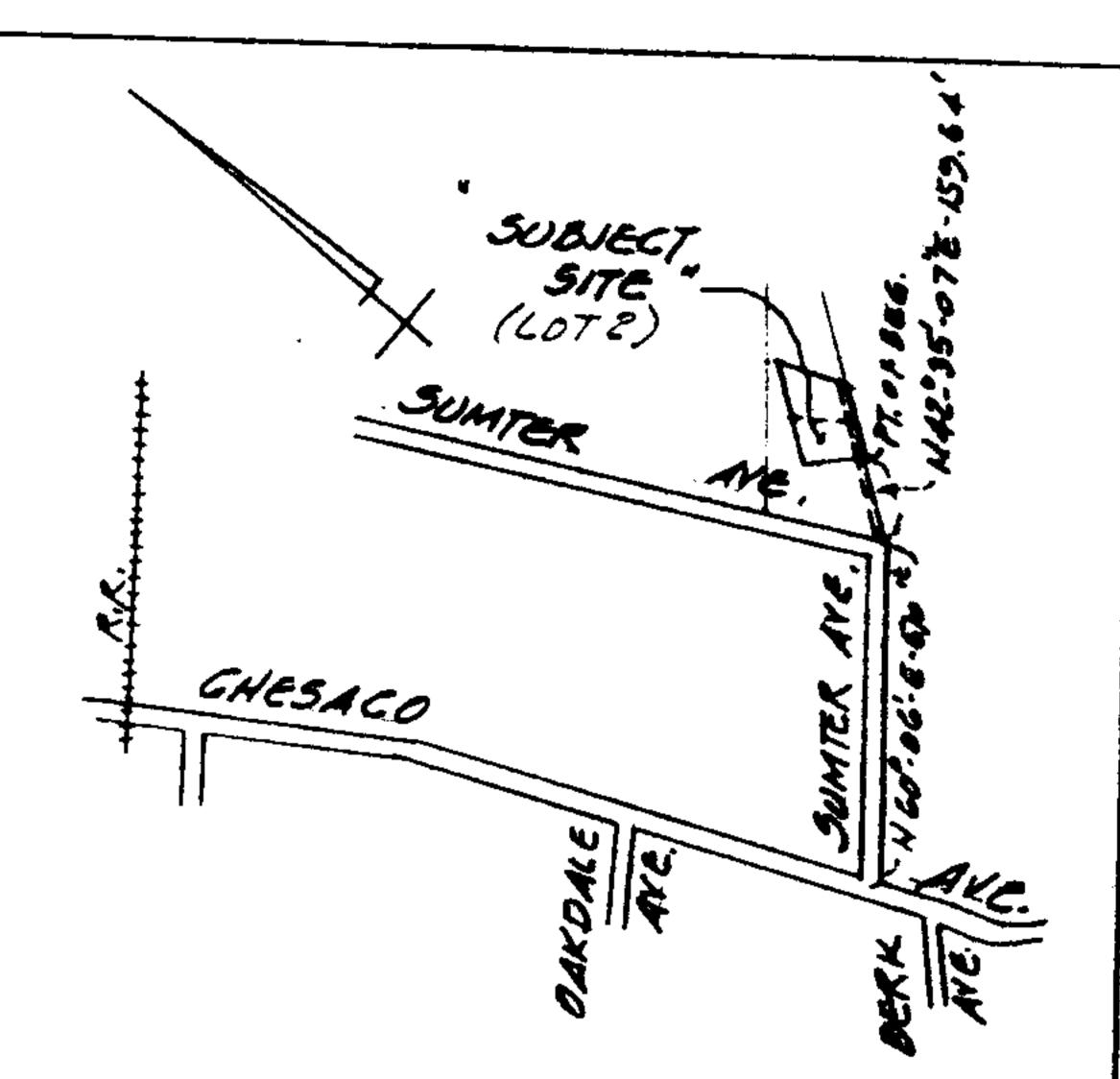
EX.12 EASEMENT FOR
PRIVATE ROADWAY

EX.10 EASEMENT FOR UTILITY SERVICES

RECORD SUBDIVISION
PLAT "ROSEDALE TERRACE" LOT 158
W.F.C. 3-20

OWNER:

MATHEM CHACKO 3016 SAGRAMORE ROAD ROSEDALE, MARYLAND 21237



LOCATION PLAN SCALE: 13500

GENERAL NOTES:

I AREA OF PROPERTY

" 0.415 Ac. + (GR055 = 0.415 Ac. 1)

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 PF LOTS PERMITTED : 0.415 x 5.5 = 2.28 LOTS

7. HUMBER OF LOTS PROPOSED = 2 COTS 8. PROPERTY SERVED BY PUBLIC UTILITIES.

2. PROPERTY SUBMITTED TO BALTO. CO. DRC "04254C, PROJECT 93-153MP.

10. TETITIONER REQUESTING A VARIANCE TO SECTION 102.4 OF THE BCZR
TO FERMIT 2 DETACHED DWELLINGS ON 2 PROPOSED LOTS CONTAINING
LESS THAN 20,000 9.F. (LOT 1 = 9,085 SF.* AND LOT 2 · 8,994 SF.*) WHICH
DO NOT A PUT 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 IE EASEMENT OR RIGHT OF WAY FOR PRIVATE ROADWAY
RECORDED IN LIBER 1670-119.

12. EXISTING R'EASEMENT FOR UTILITY SERVICES RECORDED IN LIBER 1048-502:

13. OFEN SPACE WAIVER REQUESTED,

14. HO 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.

97-399-4

PLAT TO ACCOMPANY PETITION

FOR

VARIANCES

*1004 SUMTER AVENUE - LOT *2

ELECT. DIST. 15C7 BAL

BALTIMORE COUNTY, MD.

5 CALE: 1"= 40'

FEB. 17, 1997

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

SHEET ZOF Z

