IN RE: PETITION FOR ZONING VARIANCE *

NEC Old Eastern and Weber Avenues
(Hopewell Points fka Hopkins *

(Hopewell Pointe, fka Hopkins *

Landing)

15th Election District
5th Councilmanic District

Hopewell Pointe, LLC,

Petitioner

BEFORE THE

ZONING COMMISSIONER

OF BALTIMORE COUNTY

Case No. 97-440-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Variance for the property located at the northeast corner of Old Eastern Avenue and Weber Avenue, in eastern Baltimore County. The property is proposed for development as a residential subdivision to be known as Hopewell Pointe, previously referred to in plans submitted as Hopkins Landing. A series of variances are requested from the Baltimore County Zoning Regulations (BCZR) and the applicable provisions of the Comprehensive Manual of Development Policies (CMDP) (1972), as follows:

- A. From Section 1B01.2.C.1 of the BCZR and CMDP Section V.B.3, pursuant to Section 504 of the BCZR, to allow as little as 16 ft. between building to building in lieu of required 25 ft. for heights up to 40 ft., if necessary;
- B. From Section V.B.6.a., CMDP and pursuant to Section 504 BCZR to allow as little as 15 ft. from side window or windowed door to street right-of-way and as little as 15 ft. from front window or windowed door to street right of way in lieu of required 25 ft. setback, if necessary;
- C. From Section V.B.6.b CMDP pursuant to Section 504 BCZR to allow as little as 6 ft. from window or windowed door to lot line in cases where lot is adjacent to open space, and 8 ft. elsewhere, in lieu of the required 15 ft., if necessary;

- D. From Section 1B01.2.C.2.b BCZR and CMDP Section V.B.6.c, pursuant to Section 504 of the BCZR, to allow a little as 16 ft. from window in lieu of required 40 ft., if necessary;
- E. From Section V.B.8, pursuant to Section 504 of the BCZR to allow as little as 20 ft. from garage to street right of way in lieu of required 22 ft., if necessary;
- F. From Section 301.1 of the BCZR, pursuant to Section 504, to allow open porches, decks, or patios to project into the required yards by up to 50%, in lieu of the 25% maximum allowed; and
- G. From Section 1801.2.C.1, BCZR, and CMDP Section V.B.3 pursuant to Section 504 to allow as little as 50 ft. between building to building in lieu of 75 ft. for heights up to 60 ft., if necessary.

The subject property and requested relief are more particularly shown on Petitioner's Exhibit No. 1, the plat to accompany the Petition for Variance.

Appearing at the public hearing held for this case was Ellwood A. Sinsky, General Manager of Hopewell Pointe Limited Liability Company, property owner. Also present was Samuel Crozier, a Landscape Architect employed with Daft-McCune-Walker. The Petitioner was represented by John B. Gontrum Esquire. Ellen Jackson, on behalf of the Essex/Middle River Civic Association appeared in opposition.

Testimony and evidence presented was that the subject site is 54.72 acres in area, split zoned B.L.-A.S., B.M., D.R.2, D.R.10.5 and D.R.16. As noted above, the property is located in eastern Baltimore County, adjacent to Old Eastern Avenue, not far from Back River Neck Road. The property is a long, yet narrow, irregularly shaped property with significant frontage on Hopkins Creek. Presently, the property is largely undeveloped. Although currently undeveloped, the site has been the subject of

prior development plan submissions. Previously, a proposed community of approximately 290 townhouses was approved by the CRG in 1987. However, that project was never built out. Instead, the Developer has revised its plans and has received approval of such revisions as a "refinement" from the Development Review Committee. As presently proposed, the Developer contemplates the construction of 5 condominium buildings and 104 villa units. The condominium buildings will contain 117 separate condominiums, for a total onsite development of 221 units. The proposed residential subdivision is laid out to take advantage of the waterfront nature of the subject property and is more particularly shown on the site plan and exhibits which were offered at the hearing and are contained within the case file.

Mr. Crozier offered extensive testimony regarding the subdivision. He noted that the buildings will be two to three stories high and will be laid out in such a manner that the most residences will have sight lines to the water. Mr. Crozier also testified extensively about the site constraints associated with this property. Due to its waterfront nature and expansive area of wetlands on the property, the opportunity for building and supporting infrastructure is limited. Thus, the project has been laid out in a manner consistent with those site constraints.

The Petitioner for Variance seeks relief from the requirements contained within the 1972 CMDP. Many of those requirements are not applicable to current development, however, this project is governed by those regulations in effect when the original approval was granted by the CRG in 1987. The variances are fully described within the attachment filed with the Petition and primarily deal with the required distances between buildings, between window to building faces, from garages to street right of ways and open porches, decks or patios into yard areas. Mr. Crozier

offered detailed testimony regarding each of these variance requests, specifically describing where and why the variances were necessary and presenting justification to support same. Essentially, the community which is proposed is driven by a desire to offer alternate housing types (e.g., condominiums and villas) while taking advantage of the site's unique characteristics owing to its frontage on Hopkins Creek.

Ms. Jackson, the sole protestant who appeared, objects to the proposal. She also submitted a letter from the Essex/Middle River Civic Council, Inc., in opposition to the request. Her testimony and the contents of the letter indicate that objections are raised relating to the density the project. Specifically, it is alleged that the variances, if granted, would contribute to an increased density os housing on the site. is further noted that this Civic Council has worked to downzone both this property and the area in general in an effort to prevent over develop-I am appreciative of the Council's concerns and agree that over development of the site would be improper. However, the allegations that the project is over density are simply in error. As noted by Mr. Crozier, the zoning assigned to this site in 1987, when the project was originally approved as a townhouse development allowed 476 units. The current zoning allows 310 units a sufficient reduction. As noted above, the previous townhouse community proposed 290 units. Approximately 70 units have been eliminated under the current plan, so that 221 are now proposed. numbers are persuasive to the conclusion that not only is the project under density but is significantly less intense than originally proposed. Thus, I am not persuaded by the arguments presented by the Civic Council. I do not find that this project is too dense.

To the contrary, I am convinced by Mr. Crozier's testimony. In my judgment, a finding that the property is unique is appropriate. Clearly,

its configuration, environmental constraints and waterfront feature make this property unique. Moreover, those factors support a finding that the Petitioner would suffer a practical difficulty if the variance relief was not granted. In my judgment, the proposed layout is appropriate for this site. Thus, the Petition for Variance shall be granted.

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

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this _______day of June 1997 that a variance from Section 1B01.2.C.1 of the BCZR and CMDP Section V.B.3 pursuant to Section 504 of the BCZR to allow as little as 16 ft. between building to building in lieu of required 25 ft. for heights up to 40 ft., be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that a variance from Section V.B.6.a., CMDP and pursuant to Section 504 BCZR to allow as little as 15 ft. from side window or windowed door to street right-of-way and as little as 15 ft. from front window or windowed door to street right of way in lieu of required 25 ft. setback, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that a variance from Section V.B.6.b CMDP pursuant to Section 504 BCZR to allow as little as 6 ft. from window or windowed door to lot line in cases where lot is adjacent to open space, and 8 ft. elsewhere, in lieu of the required 15 ft., be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that a variance from Section 1B01.2.C.2.b of the BCZR and CMDP Section V.B.6.c, pursuant to Section 504, BCZR, to allow a little as 16 ft. from window to window in lieu of required 40 ft., be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that a variance from Section V.B.8, pursuant to Section 504 BCZR, to allow as little as 20 ft. from garage to street right of way in lieu of required 22 ft., be and is hereby GRANTED; and,

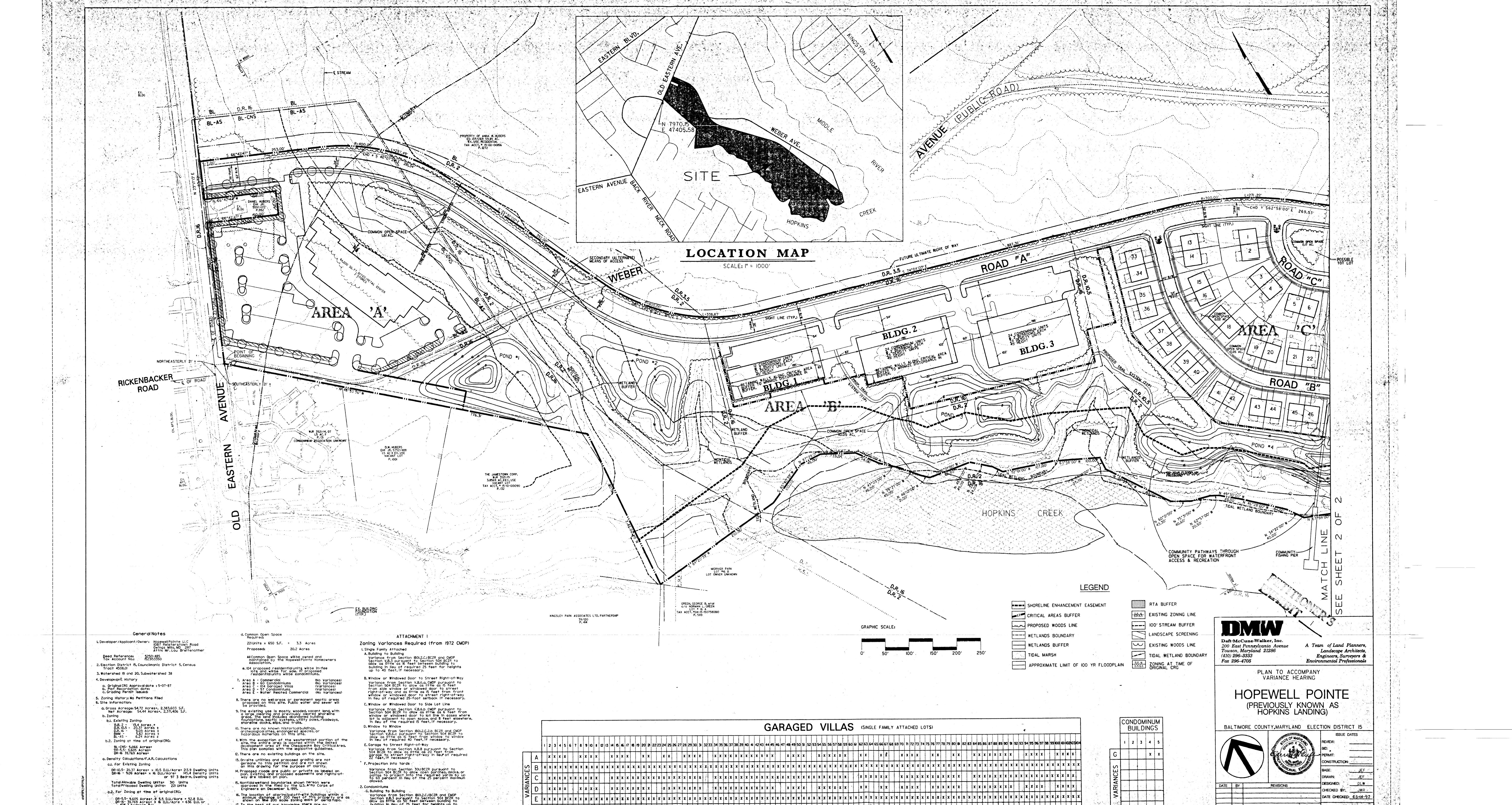
IT IS FURTHER ORDERED that a variance from Section 301.1 of the BCZR, pursuant to Section 504 to allow open porches, decks, or patios to project into the required yards by up to 60% in lieu of the 25% maximum allowed, be and is hereby GRANTED; and,

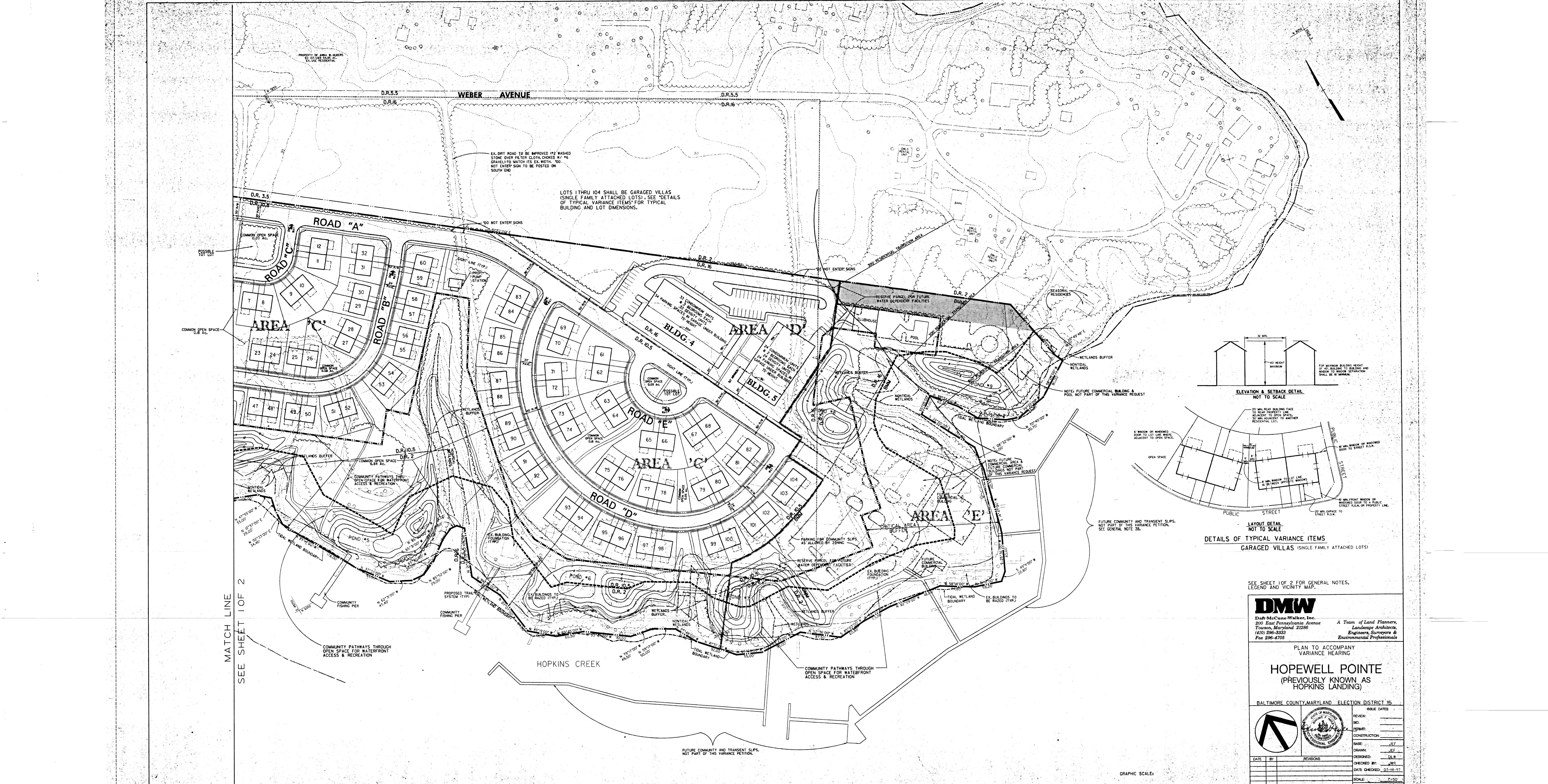
IT IS FURTHER ORDERED that a variance from Section 1B01.2.C.1, BCZR, and CMDP Section V.B.3, pursuant to Section 504, to allow as little as 50 ft. between building to building in lieu of 75 ft. for heights up to 60 ft., be and is hereby GRANTED, subject, however, to the following restriction:

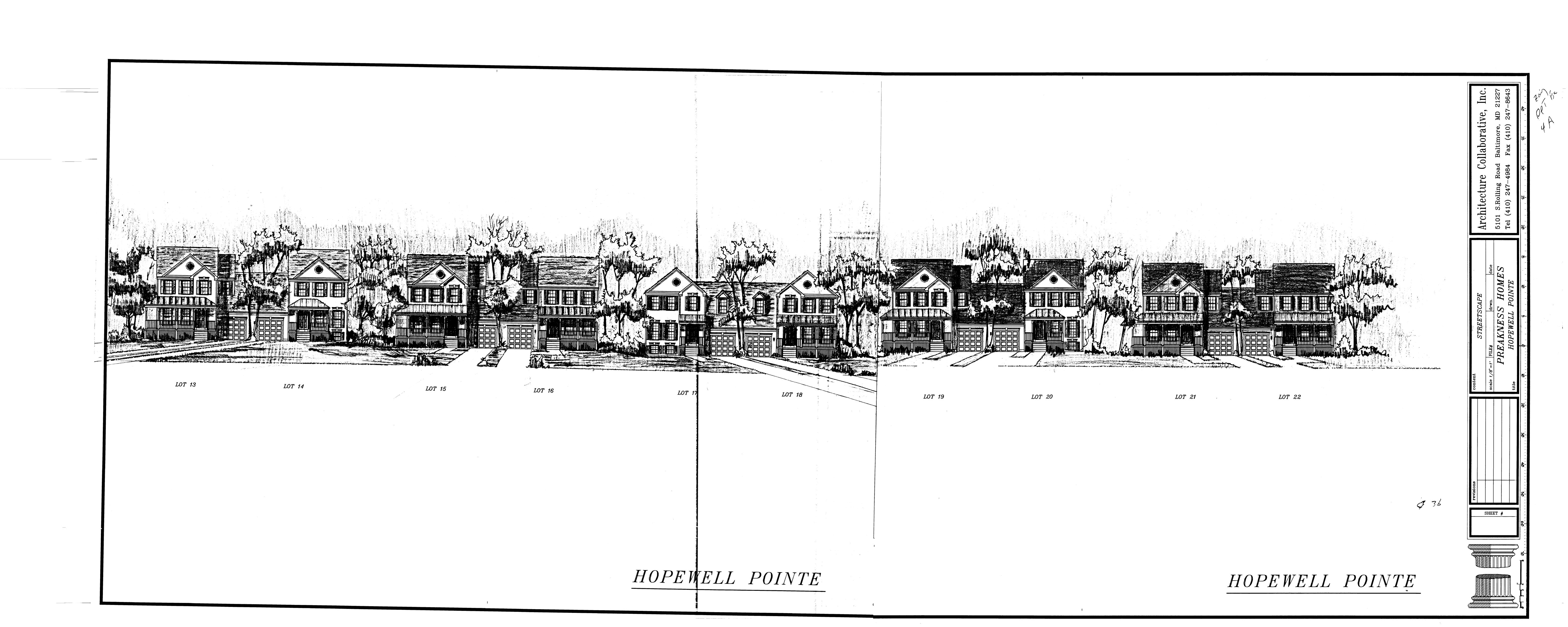
1. The Petitioner is hereby made aware that proceeding at this time is at its own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioner would be required to return, and be responsible for returning, said property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

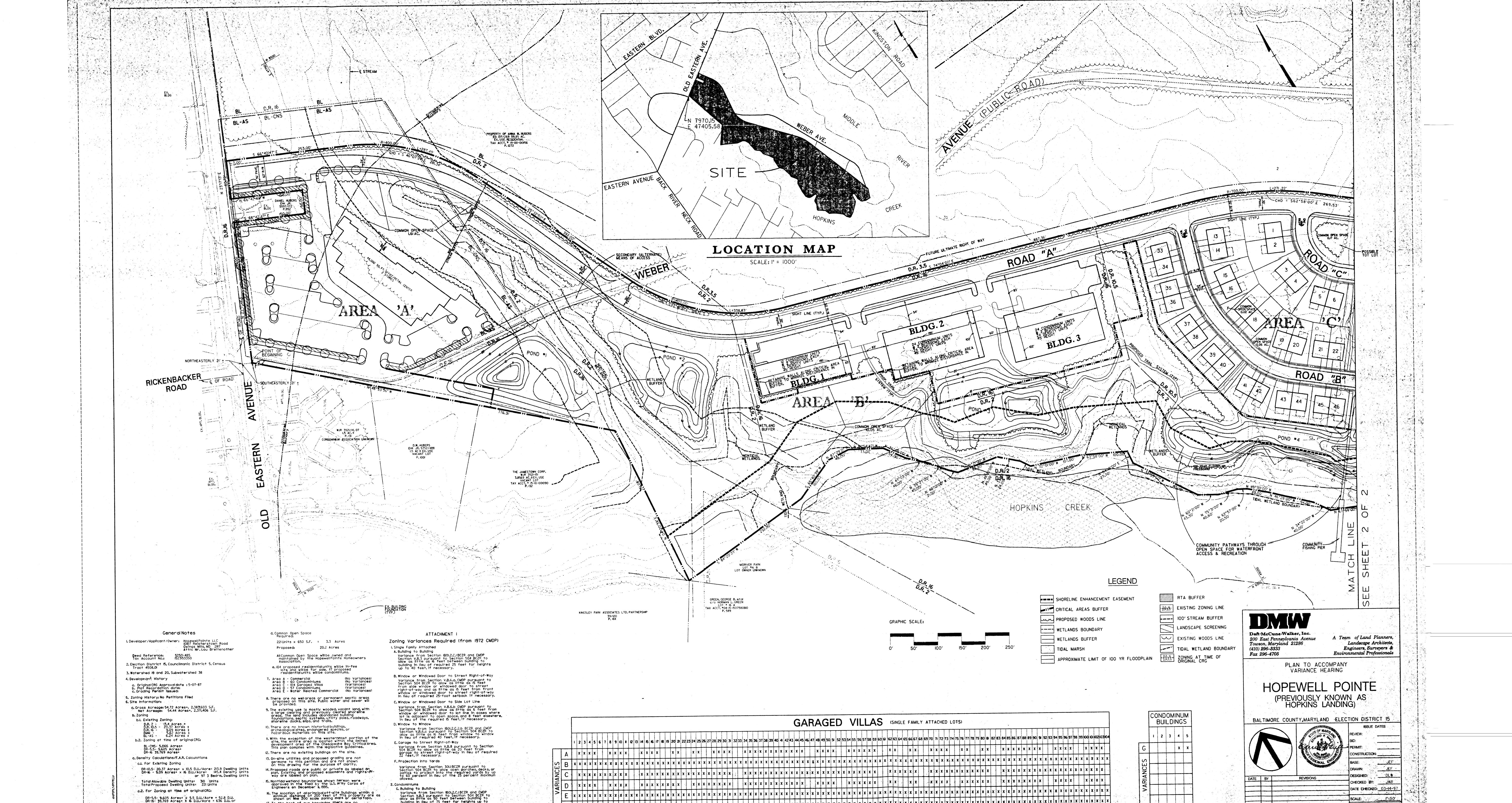
LAWRENCE E. SCHMIDT Zoning Commissioner for Baltimore County

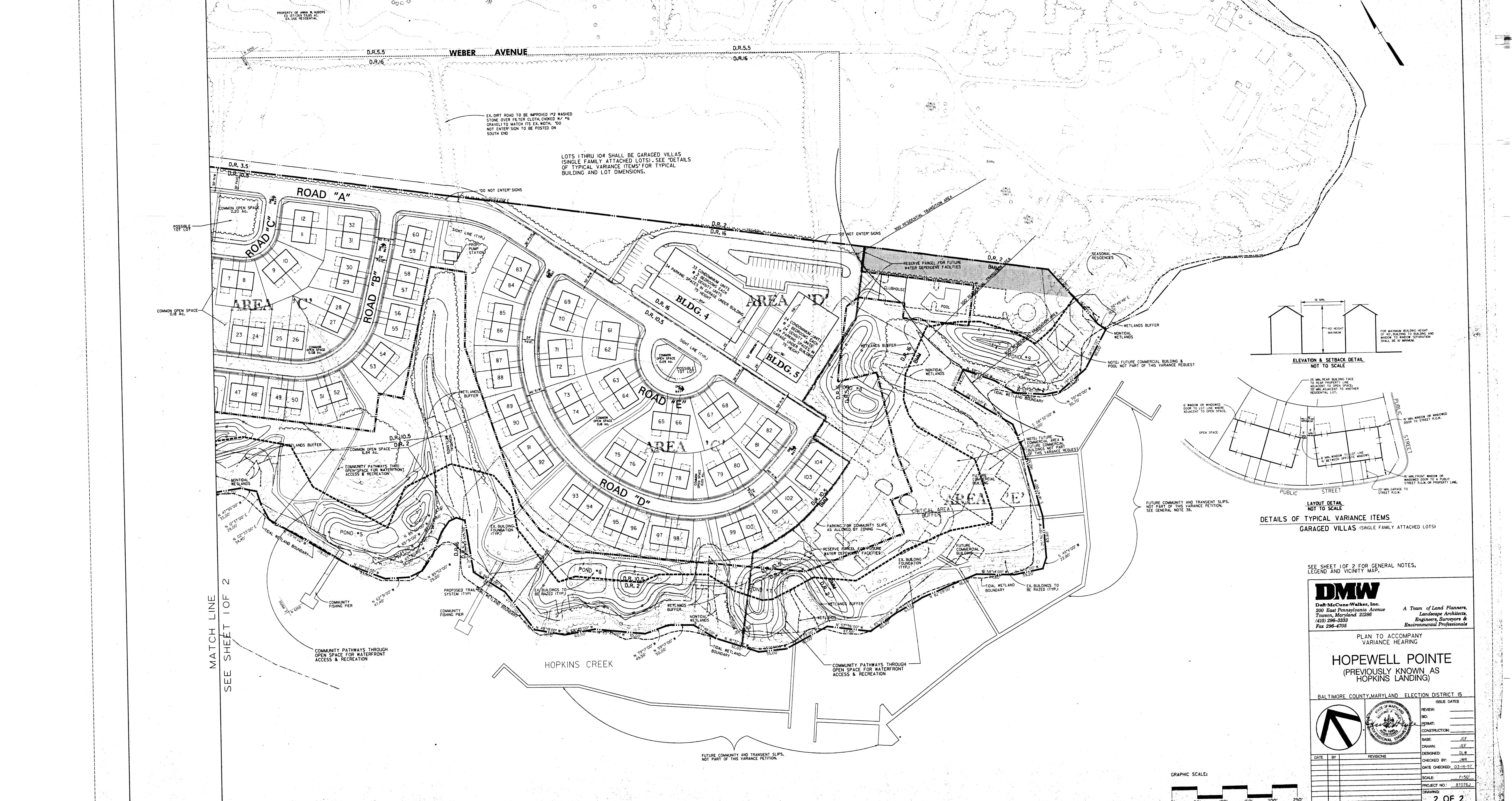
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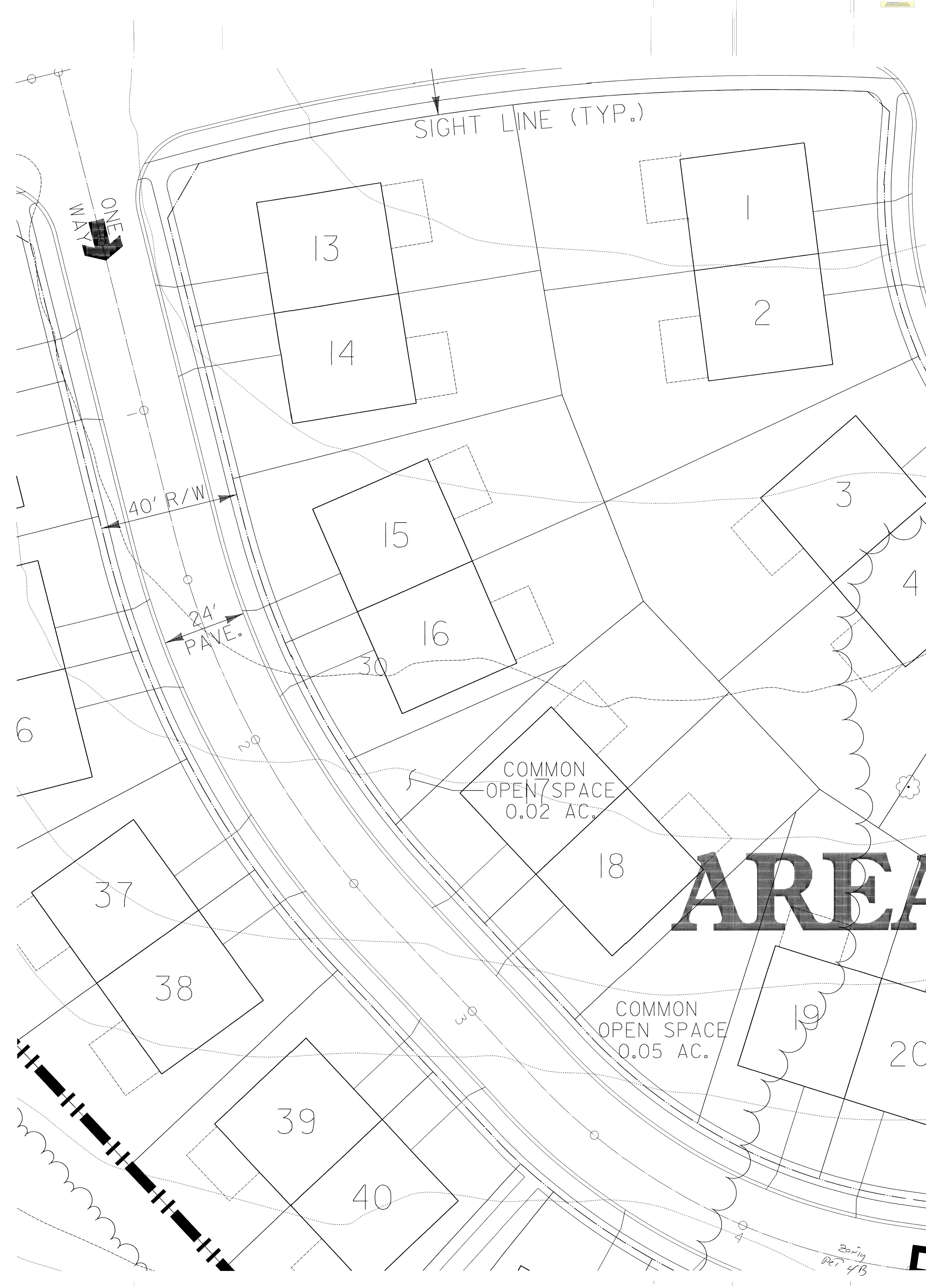


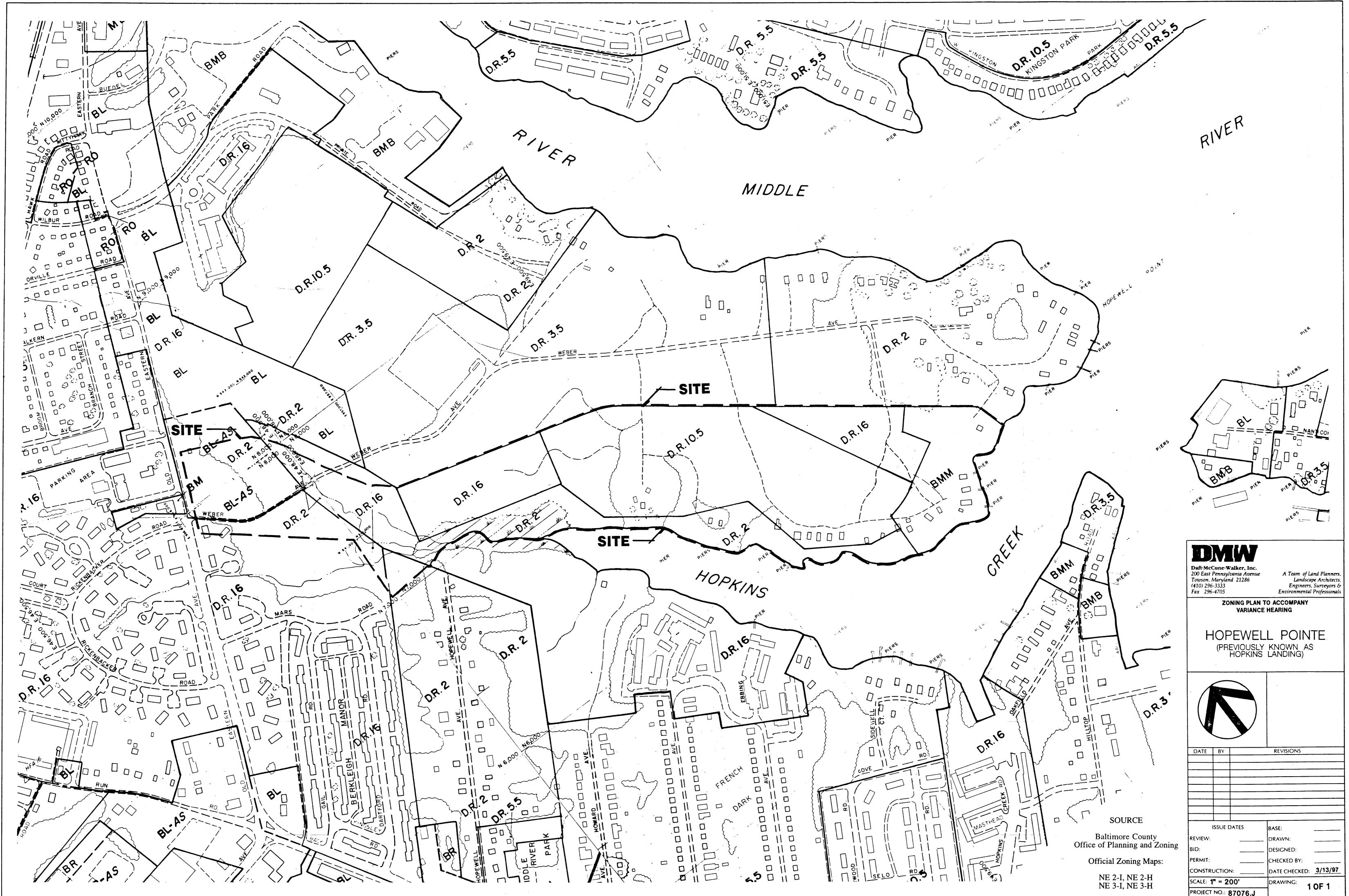












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