

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
 W/S Barkley Woods Rd., 410 ft.
 NE/S Gardens Road * ZONING COMMISSIONER
 3512 Liberty Gardens Road
 2nd Election District * OF BALTIMORE COUNTY
 2nd Councilmanic District
 Legal Owner: Barkley Woods, Inc. * Case No. 98-274-SPH
 Petitioner

* * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner as a Petition for Special Hearing for the residential subdivision known as Barkley Woods, located in the Milford Mill community of Baltimore County. The Petition was filed by Barkley Woods, Inc., property owner. Special Hearing relief is requested to approve an amendment to the First Amended Final Development Plan of Barkley Woods. The subject property and requested relief are more particularly shown on Petitioner's Exhibit No. 1, the 2nd Amended Final Development Plan of Barkley Woods.

Appearing at the requisite public hearing held for this case was Mark Bennett, on behalf of Barkley Woods, Inc., Petitioner. Also appearing in support of the Petition was Jim Joyce, President of the Baltimore Division of Ryland Homes, and Davis S. Thaler and Philip Carroll, from D.S. Thaler and Associates, Inc., the engineers/surveyors who prepared the site plan. The Petitioner was represented by Benjamin Bronstein, Esquire. Judith Berger from the Lochearn and Liberty Road Community Council appeared in opposition to the request, as did Wayne N. Overman of the Rockdale Community Improvement Association.

Testimony and evidence presented was that the subject property is approximately 36 acres in area, zoned D.R.5.5. This large tract is located in northwest Baltimore County, near the Liberty Road interchange with the Baltimore Beltway (I-695).

ORDER RECEIVED FOR FILING
Date 2/26/98
By [Signature]

The development plan approval for the subject subdivision was originally granted by the County Review Group (CRG) in 1989. At that time, a plan was submitted and approved by Baltimore County for the construction of the subject subdivision which will contain 147 townhouse units and 53 single family dwellings. In fact, a portion of the subdivision has been built out. All of the infrastructure (roads, public utilities, etc.) have been constructed and approximately 55 townhouse units have been built or sold.

At the time of the CRG approval, setbacks and similar development requirements were regulated by the Comprehensive Manual of Development Policy (CMDP). The Manual in effect at the time of the approval of this CRG plan placed significant restrictions on the location of windows in individual units and the distances which needed to be maintained from windows to other units, property lines, tract boundaries, etc. Subsequently, the County comprehensively amended the Comprehensive Manual of Development Policy. Under the current CMDP, the setback standards are less severe, however, the proposed residential development is subject to increased esthetic requirements.

In 1995, the Petitioner and others filed a Petition for Zoning Variance and Special Hearing for the subject property. Relief was requested, at that time, to allow setbacks between windows and property lines, windows and right of way lines and windows to windows less than what was allowed under the CMDP which regulated this project in 1989. Additionally, the Petition for Special Hearing filed at that time sought approval of an amendment to the Final Development Plan in accordance with the variance requests. The matter came before this Zoning Commissioner and the Petitions were granted by Order dated November 30, 1995. A subsequent Order

ORDER RECEIVED FOR FILING

Date

3/26/98

By

by me dated December 5, 1995 added several lots which had inadvertently been omitted in the prior Order.

A timely appeal was taken of my decision. By opinion and Order issued August 8, 1996, the County Board of Appeals denied the Petition for Variance. The Board found that the Petitioner had failed to offer persuasive testimony that the property was unique and that the variance requests complied with the requirements of Section 307 of the BCZR and the holding in Cromwell v. Ward, 102 Md. App 692 (1995). Having denied the variance, the Petition for Special Hearing was moot.

Frustrated in its attempt in that case, the Petitioner tries anew in the instant matter. However, rather than filing a Petition for Variance from the old CMDP, the Petitioner seeks approval to amend its plan, pursuant to a Petition for Special Hearing. Specifically, the Petitioner now seeks to submit its plan for consideration under the new CMDP. Such a proposal subjects the plan to the requirements of the current CMDP. The Petitioner indicated that the plan was in compliance with the regulations in that Manual and, moreover, that the new CMDP would permit the installation of windows in certain units which have not, as yet, been built.

The Protestants object to both the Petitioner's approach and their ultimate plan. As to the approach, they assert that the prior opinion from the Board of Appeals bars consideration of the instant Petition for Special Hearing. The Protestants also believe that the plan, on its merits, is inappropriate.

As to the procedure, it is clear that the Petitioner may offer any number of amendments to the FDP that it desires. There is no prohibition in the BCZR as to the amount of times a Final Development Plan may be amended. Indeed, this Zoning Commissioner has considered Final Development Plans which have had in excess of 6 to 8 amendments.

ORDER RECEIVED FOR FILING
Date 3/26/98
By M. Gorkh

Moreover, the issue raised in the prior case and the decision therein does not bar the present Petition. The prior matter dealt with Petition for Variance, the criteria for which is governed by Section 307 of the BCZR and the case law, including Cromwell, supra. No variances are requested in the instant case. As noted above, the Petitioner seeks relief pursuant to a Petition for Special Hearing. The criteria under which special hearing relief must be considered is quite different than a variance request. In that the Petitioner is willing to subject its plan to compliance with the new CMDP, consideration for special hearing relief is permitted.

As to the merits of the special hearing, same must be considered within the confines of Section 502.1 of the BCZR. Essentially, in order for special hearing relief to be granted, a finding must be made that the proposal would not be detrimental to the health, safety or general welfare of the locale. In this regard, it is to be noted that there is no increase in residential density proposed and no change to the building envelopes. The project is not significantly different from what was originally approved but for the inclusion of windows and other amenities on individual units. Additionally, the plan has undergone review by the member agencies of the Baltimore County Zoning Plans Advisory Committee. The Office of Planning commented that, "... an amendment to the final development plan of Barkley Woods will not adversely impact the community." I agree.

Based upon the testimony and evidence presented, I am persuaded to grant the Petition for Special Hearing. In my judgment, the Petitioner has satisfied the requirements which are applicable to that Petition. I do not believe that a grant of the relief will cause any detrimental impact to the health, safety or general welfare of the locale. As noted

ORDER RECEIVED FOR FILING

Date

By

3/26/98
M. G. G. G.

above, there is no increase in residential density proposed and the project will not cause an overcrowding of land or cause similar detrimental impacts.

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 of Baltimore County this 26th day of March 1998 that, pursuant to the Petition for Special Hearing, approval to amend the First Amended Final Development Plan of Barkley Woods, 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

LES:mmn

ORDER RECEIVED FOR FILING
Date 3/26/98
By M. Spork



Baltimore County
Zoning Commissioner
Office of Planning

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

March 26, 1998

Benjamin Bronstein, Esquire
George and Bronstein, LLP
29 W. Susquehanna Avenue, Suite 205
Towson, Maryland 21204

RE: Petition for Special Hearing
Case No. 98-274-SPH
Barkley Woods, Inc., Petitioner

Dear Mr. Bronstein:

Enclosed please find the decision rendered in the above captioned case. The Petition for Special Hearing has been granted, in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3391.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lawrence E. Schmidt".

Lawrence E. Schmidt
Zoning Commissioner

LES:mmn
att.

- c: David Thaler and Phillip Carroll, P.E.
D.S. Thaler and Associates
7115 Ambassador Road, 21244
- c: Mark Bennett, Vice President
Barkley Woods, Inc.
1829 Reisterstown Road
Baltimore, Md. 21208
- c: Mr. Judith Berger c/o Lochearn Community Assn.
3801 Lochearn Dr.
Baltimore, Md. 21207-6363
- c: Mr. Wayne N. Overman c/o Rockdale Community Improv. Assn
3522 Rockdale Court
Baltimore, Md. 21244-2937



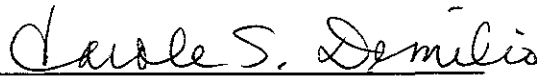
RE: PETITION FOR SPECIAL HEARING * BEFORE THE
3512 Liberty Gardens Rd, Westerly S. Bark-
ley Woods Rd, 410' NE/S Gardens Rd * ZONING COMMISSIONER
2nd Election District, 2nd Councilmanic * OF BALTIMORE COUNTY
Barkley Woods, Inc. *
Petitioner * CASE NO. 98-274-SPH

* * * * *

ENTRY OF APPEARANCE

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


PETER MAX ZIMMERMAN
People's Counsel for Baltimore County


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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of February, 1998, a copy of the foregoing Entry of Appearance was mailed to Benjamin Bronstein, Esq., George & Bronstein, 29 W. Susquehanna Avenue, Suite 205, Towson, MD 21204, attorney for Petitioner.


PETER MAX ZIMMERMAN



Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at

3512 Liberty Gardens Road

which is presently zoned DR3.5

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

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

amending the First Amended Final Development Plan Barkley Woods.

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

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

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City

State

Zipcode

Attorney for Petitioner: Benjamin Bronstein
George and Bronstein, LLP

(Type or Print Name)

Signature

29 W. Susquehanna Ave., Suite 205

Address (410) 296-0200 Phone No.

Towson, Maryland 21204

City

State

Zipcode

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

Legal Owner(s) Barkley Woods, Inc.

(Type or Print Name)

Signature

Mark Bennett, Vice President

(Type or Print Name)

Signature

1829 Reisterstown Road (410)484-8400

Address

Phone No.

Baltimore, Maryland 21208

City

State

Zipcode

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

Phillip Carroll, P.E.

D.S. Thaler & Associates

Name

7115 Ambassador Road, Balto., MD 21244

Address (410)944-3647

Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates

Next Two Months

ALL

OTHER

REVIEWED BY: RT

DATE 1-23-98

Zoning Administration

98-274-SPA

274

January 6, 1998

**PROPERTY DESCRIPTION
FOR ZONING PURPOSES ONLY**

Beginning on the westerly side of Barkley Woods Road, a 62 foot wide right-of-way, at a point 410 feet, more or less, from the northerly side of Liberty Gardens Road, an ultimately 60 foot wide right-of-way, thence running for the following courses and distances:

1. · Northwesterly ^{L-} 27.69 feet by a curve to the right, having a radius of ^{R-} 570.23 feet and a chord bearing North 26°03'45" West 27.68 feet, more or less, thence,
2. · North 24°40'18" West 1.92 feet, more or less, to a point; thence,
3. · South 57°46'49" West 41.00 feet, more or less, to a point; thence,
4. · South 75°47'55" West 166.46 feet, more or less, to a point; thence,
5. · South 72°00'47" West 14.05 feet, more or less, to a point; thence,
6. · South 65°40'13" West 140.00 feet, more or less, to a point; thence,
7. · North 24°19'47" West 54.29 feet, more or less, to a point; thence,
8. · North 61°19'52" West 131.03 feet, more or less, to a point; thence,
9. · North 80°43'18" West 71.13 feet, more or less, to a point; thence,
10. · South 25°27'47" West 99.30 feet, more or less, to a point; thence,
11. South 30°34'45" West 102.22 feet, more or less, to a point; thence,
12. South 54°52'43" West 82.17 feet, more or less, to a point; thence,
13. North 65°44'10" West 636.75 feet, more or less, to a point; thence,

98-274-SPH

page 2

January 6, 1998

**PROPERTY DESCRIPTION
FOR ZONING PURPOSES ONLY**

14. North $50^{\circ}19'10''$ East 1028.28 feet, more or less, to a point; thence,
15. South $22^{\circ}57'26''$ East 161.69 feet, more or less, to a point; thence,
16. Northeasterly 32.24 feet by a curve to the right, having a radius of 510.00 feet and a chord bearing North $76^{\circ}10'34''$ East 32.23 feet, more or less, to a point; thence,
17. North $77^{\circ}59'13''$ East 143.61 feet, more or less, to a point; thence,
18. Southeasterly 69.62 feet by a curve to the right, having a radius of 125.00 feet and a chord bearing South $86^{\circ}03'24''$ East 68.73 feet, more or less, to a point; thence,
19. North $59^{\circ}08'17''$ East 104.50 feet, more or less, to a point; thence,
20. North $25^{\circ}42'58''$ East 77.59 feet, more or less, to a point; thence,
21. North $54^{\circ}30'01''$ East 11.89 feet, more or less, to a point; thence,
22. South $87^{\circ}51'33''$ East 35.47 feet, more or less, to a point; thence,
23. North $83^{\circ}38'47''$ East 62.67 feet, more or less, to a point; thence,
24. South $64^{\circ}55'02''$ East 49.54 feet, more or less, to a point; thence,
25. South $89^{\circ}58'56''$ East 21.22 feet, more or less, to a point; thence,
26. North $48^{\circ}37'33''$ East 92.95 feet, more or less, to a point on the aforesaid Liberty Gardens Road, thence binding on said Road,

page 3

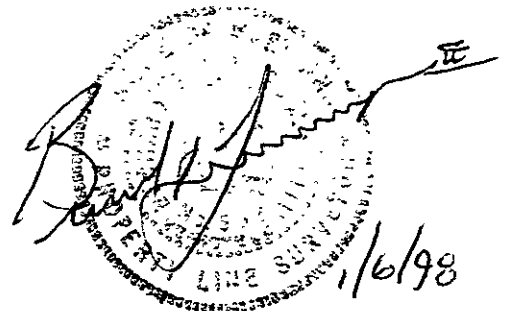
January 6, 1998

**PROPERTY DESCRIPTION
FOR ZONING PURPOSES ONLY**

27. South 20°43'43" East 91.65 feet, more or less, to a point; thence,
28. Southeasterly 230.64 feet by a curve to the left, having a radius of 1,462.40 feet and a chord bearing South 25°14'48" East 230.40 feet, more or less, to a point; thence,
29. South 29°45'53" East 74.49 feet, more or less, to a point; thence,
30. Southeasterly 258.61 feet by a curve to the right, having a radius of 640.00 feet and a chord bearing South 18°11'20" East 256.85 feet, thence leaving said Road,
31. South 57°14'07" West 189.45 feet, more or less, to a point; thence,
32. South 61°34'03" West 105.29 feet, more or less, to a point; thence,
33. North 38°15'01" West 45.19 feet, more or less, to a point; thence,
34. South 65°19'42" West 142.52 feet to the point of beginning.

Containing 21.06 acres of land, more or less.

BarkleyWoods/1/6/98/BL/D#7-97/98



BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

ITEM # 274
No. 048606

DATE 1-23-78 ACCOUNT R-001-0150

CODE # 070

AMOUNT \$ 650.00

RECEIVED FROM: GEORGE AND DOROTHY

FOR: SPECIAL HEARINGS, 3512 LIBERTY GARDEN RD.

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

98
274-SPH

PAID RECEIPT

PROCESS	ACTUAL	TIME
1/23/1998	1/23/1998	11:14:28
5 MISSEL LANDS CASH RECEIPT		
Receipt #	035975	
CR NO.	040506	

Baltimore County, Maryland 650.00 CASH

CASHER'S VALIDATION

**NOTICE OF
ZONING HEARING**

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

Case: #98-274-SPH
3512 Liberty Gardens Road
Westley/S. Barkley Woods
Road, 410' NE/S Gardens
Road
2nd Election District
2nd Councilmanic District
Legal Owner(s):

Barkley Woods, Inc.
Special Hearing: amending
the First Amended Final Development Plan Barkley Woods
Hearing: Thursday, March 5,
1998 at 9:00 a.m. in Room
407, County Courts Bldg.,
401 Bopsey Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County

NOTES: (1) Hearings are
Handicapped Accessible, for
special accommodations
Please Call (410) 887-3353

(2) For information concerning
the file, and/or hearing,
Please Call (410) 887-3391

2/13/98 Feb. 12 C2069327

CERTIFICATE OF PUBLICATION

TOWSON, MD., 2-12, 1998

THIS IS TO CERTIFY, that the annexed advertisement was
published in THE JEFFERSONIAN, a weekly newspaper published
in Towson, Baltimore County, Md., once in each of 1 successive
weeks, the first publication appearing on 2-12, 1998

THE JEFFERSONIAN,

A. H. Williams
LEGAL AD. - TOWSON

CERTIFICATE OF POSTINGRE: Case No.: 98-274-SPH

Petitioner/Developer: _____

Barkley Woods IncDate of Hearing/Closing: 3-5-98

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

Attention: Ms. Gwendolyn Stephens

Ladies and Gentlemen:

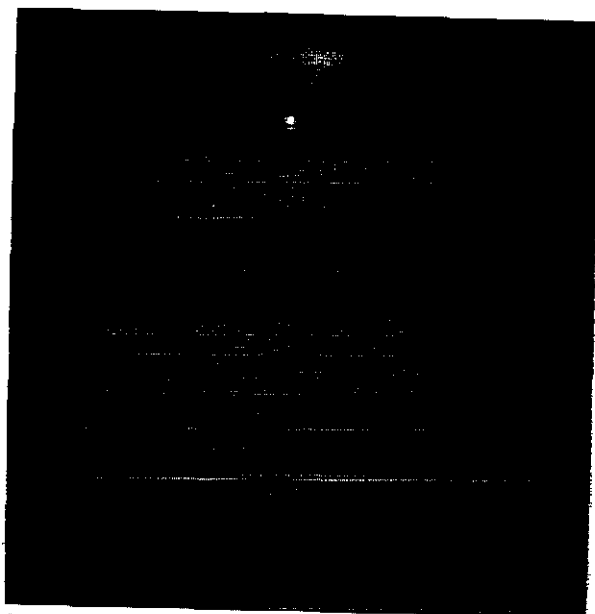
This letter is to certify under the penalties of perjury that the necessary sign(s) required by law
were posted conspicuously on the property located at _____

351V LIBERTY GARDENS ROAD

The sign(s) were posted on _____

2-17-98
(Month, Day, Year)

Sincerely,

Thomas P. Ogle 2-17-98
(Signature of Sign Poster and Date)THOMAS P. OGLE SR
(Printed Name)325 NICHOLSON RD
(Address)BALTO MD 21221
(City, State, Zip Code)410-687-8405
(Telephone Number)98-274-SPH

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

Date to be Posted: Anytime before but no later than _____

Format for Sign Printing, Black Letters on White Background:

ITEM 274

ZONING NOTICE

Case No.: 98-274 SPH

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

PLACE: _____

DATE AND TIME: _____

REQUEST: SPECIAL HEARING TO AMEND THE FIRST
AMENDED FINAL DEVELOPMENT PLAN OF
BARKLEY WOODS,

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 887-3391.

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

HANDICAPPED ACCESSIBLE

TO: PATUXENT PUBLISHING COMPANY
February 12, 1998 Issue - Jeffersonian

Please forward billing to:

Benjamin Bronstein, Esquire 410-296-0200
George and Bronstein, LLP
29 W. Susquehanna Avenue
Suite 205
Towson, MD 21204

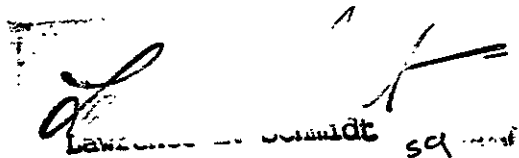
NOTICE OF ZONING HEARING

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

CASE NUMBER: 98-274-SPH
3512 Liberty Gardens Road
Westerly/S Barkley Woods Road, 410' NE/S Gardens Road
2nd Election District - 2nd Councilmanic District
Legal Owner: Barkley Woods, Inc.

Special Hearing amending the First Amended Final Development Plan Barkley Woods.

HEARING: Thursday, March 5, 1998 at 9:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue



Lawrence E. Schmidt

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

- NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS
PLEASE CALL 410-887-3353.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 410-
887-3391.



Baltimore County
Department of Permits and
Development Management

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

January 29, 1998

NOTICE OF ZONING HEARING

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

CASE NUMBER: 98-274-SPH
3512 Liberty Gardens Road
Westerly/S Barkley Woods Road, 410' NE/S Gardens Road
2nd Election District - 2nd Councilmanic District
Legal Owner: Barkley Woods, Inc.

Special Hearing amending the First Amended Final Development Plan Barkley Woods.

HEARING: Thursday, March 5, 1998 at 9:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue

A handwritten signature in black ink, appearing to read "Arnold Jablon", with the initials "scs" written below it.

Arnold Jablon
Director

c: Benjamin Bronstein, Esquire
Barkley Woods, Inc.
D.S. Thaler & Associates

- NOTES: (1) **YOU MUST HAVE THE ZONING NOTICE SIGN POSTED ON THE PROPERTY BY February 18, 1998.**
- (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 410-887-3353.
- (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 410-887-3391.





Baltimore County
Department of Permits and
Development Management

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

February 18, 1998

Benjamin Bronstein, Esquire
George and Bronstein, LLP
29 W. Susquehanna Avenue, Suite 205
Towson, MD 21204

RE: Item No.: 274
Case No.: 98-274-SPH
Petitioner: Barkley Woods, Inc.

Dear Mr. Bronstein:

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 January 23, 1998.

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 (410-887-3391).

Sincerely,

A handwritten signature in black ink, reading "W. Carl Richards, Jr." in a cursive style.

W. Carl Richards, Jr.
Zoning Supervisor

WCR/re
Attachment(s)



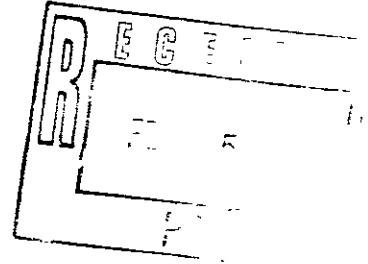


Baltimore County
Fire Department

Office of the Fire Marshal
700 East Joppa Road
Towson, Maryland 21286-5500
410-887-4880

February 4, 1998

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 February 2, 1998

Item No.: 268, 269, 273, 274, and 275

Zoning Agenda:

Gentlemen:

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

4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1991 edition prior to occupancy.

REVIEWER: LT. ROBERT P. SAUERWALD

Fire Marshal Office, PHONE 897-4881, MS-1102F

cc: File



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
and Development Management

Date: February 9, 1998

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

SUBJECT: 3521 Liberty Gardens Road

INFORMATION

Item Number: 274

Petitioner: Barkley Woods, Inc.

Zoning: DR 5.5

Requested Action: Special Hearing

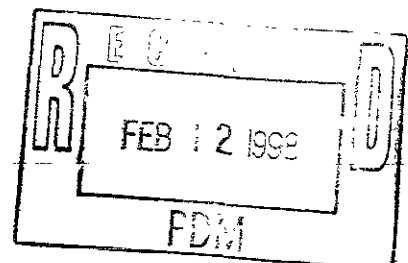
Summary of Recommendations:

Based upon the information provided and analysis conducted, staff believes that an amendment to the final development plan of Barkely Woods will not adversely impact the community.

Prepared by: Gifford W. Long

Division Chief: Darryl L. Keene

AFK/JL





Maryland Department of Transportation
State Highway Administration

David L. Winstead
Secretary
Parker F. Williams
Administrator

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

RE: Baltimore County 1/30/98
Item No. 274 RT

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,

Ronald Burns, Chief
Engineering Access Permits
Division

for

LG

My telephone number is _____

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

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

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT
INTER-OFFICE CORRESPONDENCE

TO: POM

DATE:

4/29/92

FROM: R. Bruce Seeley. RBS/92
Permits and Development Review
DEPRM

SUBJECT: Zoning Advisory Committee
Meeting Date: FEB 2, 92

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

Item #'s:

98-156

267

269

270

272

273

274

275

RBS:sp

BRUCE2/DEPRM/TXTS8P

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

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

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

Date: February 10, 1998

FROM:  Robert W. Bowling, Chief
 Bureau of Developer's Plans Review

SUBJECT: Zoning Advisory Committee Meeting
 for February 9, 1998
 Item Nos. 247, 269, 270, 271, 274,
 277, and CASE NUMBER R-98-150

The Bureau of Developer's Plans Review has reviewed the subject zoning items, and we have no comments.

RWB:HJO:jrb

cc: File

AP
3/5

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
and Development Management

Date: February 9, 1998

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

SUBJECT: 3521 Liberty Gardens Road

INFORMATION

Item Number: 274

Petitioner: Barkley Woods, Inc.

Zoning: DR 5.5

Requested Action: Special Hearing

Summary of Recommendations:

Based upon the information provided and analysis conducted, staff believes that an amendment to the final development plan of Barkely Woods will not adversely impact the community.

Prepared by: Jeffrey W. Jay
Division Chief: Gary L. Keene

AFK/JL

LAW OFFICES
GEORGE AND BRONSTEIN, LLP

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29 WEST SUSQUEHANNA AVENUE
TOWSON, MARYLAND 21204
(410) 296-0200
FAX: (410) 296-3719

HARRIS JAMES GEORGE
BENJAMIN BRONSTEIN

CONSTANCE K. PUTZEL
OF COUNSEL

January 22, 1998

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

RE: Barkley Woods

Dear Mr. Jablon:

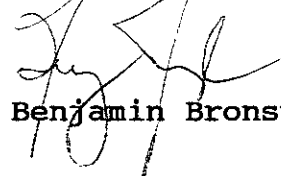
In reference to the above entitled subdivision, I am enclosing the following:

1. three (3) copies of Petition for Special Hearing;
2. twelve (12) copies of the Second Amended Final Development Plan;
3. three (3) copies of the Description under seal;
4. copy of the 200' Scale Zoning Map; and
5. my check to cover the cost of filing.

Please enter my appearance on behalf of the Petitioner and advise me of the hearing date.

Very truly yours,

GEORGE AND BRONSTEIN, LLP



Benjamin Bronstein

BB/mlh
Enclosures

98-274-5PH

IN THE MATTER OF
THE APPLICATION OF
RICHMOND AMERICAN HOMES
AND RUBY HOLZAPFEL, ET AL
FOR A SPECIAL HEARING AND
VARIANCES ON PROPERTY LOCATED
ON THE NORTH SIDE OF LIBERTY
GARDENS ROAD, 150' EAST OF OAK
HAVEN CIRCLE, BARKLEY WOODS,
SECTION I
2ND ELECTION DISTRICT
2ND COUNCILMANIC DISTRICT

* * * * *

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 96-120-SPHA

OPINION

This matter comes before this Board on appeal from the November 30, 1995, decision of the Zoning Commissioner in which the Petitions for Special Hearing and Variance were granted with restrictions. The Zoning Commissioner issued an Amended Order on December 5, 1995, to incorporate inadvertently omitted lots.

The matter was heard de novo in a single day of testimony. Robert A. Hoffman, Esquire, represented the Petitioners, Richmond American Homes of Maryland, the contract purchaser; and Ruby Holzapfel, the Estate of Carl M. Holzapfel and Barkley Woods, Inc., property owners. The Appellants, the Rockdale Civic and Improvement Association and Cyril Byron, Wayne N. Overman, Jerome Goodman and John Jones, were not represented by counsel; Mr. Goodman acted as their spokesman. Peter Max Zimmerman, People's Counsel for Baltimore County, also participated in the matter.

This case concerns a tract of land north of Liberty Gardens Road and east of Ripple Road known as the residential development of Barkley Woods, Section I. The subject property consists of approximately 36.3640 acres zoned DR 5.5. The Final Development Plan for a development consisting of 53 single family homes and 147 townhouses received County Review Group approval in 1989. The townhouses are currently under construction.

The Petitioners wish to amend the Final Development Plan to permit a total of 88 variances in four categories. The requested variances, which pertain to side windows on end units of townhouses, are as follows:

1. Variance from the Comprehensive Manual of Development Policies (CMDP) V.B.6.b to allow a minimum setback of 7 feet from window to property line in lieu of the required 15 feet for lots 54, 57, 58, 62, 63, 67, 68, 73, 74, 79, 80, 85, 86, 91, 92, 98, 99, 106, 107,

- 114, 115, 122, 123, 128, 129, 134, 135, 142, 149, 156, 157, 163, 167, 171, 175, 176, 183, 184, 189, 190, 194, 195 and 200.
2. Variance from the CMDP V.B.6.a to allow a minimum setback of 15 feet from window to right-of-way in lieu of the required 25 feet for lots 63, 114, 115, 164 and 172.
 3. Variance from Section 1B01.2.C.2.b of the Baltimore County Zoning Regulations (BCZR) and CMDP V.B.6.c to allow a minimum distance of 24 feet from window to window in lieu of the required 40 feet for lots 57 and 58, 67 and 68, 73 and 74, 79 and 80, 91 and 92, 106 and 107, 156 and 157, 171 and 200, 194 and 195, and 175 and 176.
 4. Variance from Section 1B01.2.C.1 of the BCZR and CMDP V.B.3 to allow a distance of 24 feet between buildings in lieu of the required 30 feet for lots 57 and 58, 67 and 68, 73 and 74, 79 and 80, 91 and 92, 106 and 107, 156 and 157, 171 and 200, 194 and 195, and 175 and 176.

Section 1B01.3.A.7.b of the BCZR provides that a Final Development Plan may be amended under Special Exception procedures, enumerated in Section 502 of the BCZR. The amendment must be in accord with the Comprehensive Manual of Development Policies.

The Petitioners' sole witness was Alan Scoll, chief of architecture and planning for D.S. Thaler and Associates. Mr. Scoll, under whose supervision the site plan for the subject development was prepared, was accepted by the Board as an expert in landscape architecture and land planning.

Mr. Scoll testified that the project was planned mostly by the previous owner, Janson Homes. He stated that at that time the CMDP placed restrictions on window relations to windows in other buildings, and developments were laid out to accommodate that kind of construction. The result was a lot of windowless walls, which were less expensive to build, but less attractive, he testified.

The present CMDP regulations don't place such restrictions on windows on the sides of buildings; however, according to the Zoning Office, when a builder seeks an amendment to a Final Development Plan that was approved under the old CMDP regulations, the old CMDP procedures and requirements apply.

Mr. Scoll testified that the situation is unique in that the Final Development Plan was approved under an old set of regulations, but now the regulations have changed and the market has changed. The builder would simply like to do a better job and make the houses more attractive by putting side windows in the end units of the townhouses, he stated.

If the amendment is not granted, the builder will face the practical difficulty of not being able to build the best quality product he could, Mr. Scoll said. He testified, however, that the project is fully approved and will go forward even if the variances are not granted; the end units will be built without the side windows.

Mr. Scoll testified that the granting of the requested variances would be within the spirit and intent of the zoning regulations, and would comply with all the Special Exception requirements of Section 502.1 of the BCZR.

Jerome Goodman, who is vice-president of the Rockdale Civic and Improvement Association and lives about three blocks away from the subject property, testified as to his concern regarding a potential increase in fire danger if the variances are granted. Mr. Goodman, a licensed professional engineer, testified that the proposed inclusion of bay windows on the end units would make the buildings closer together and allow a fire to spread more easily. He said that his association is opposed to anything that would increase danger from fire.

Mr. Goodman also testified that there is nothing unusual in the topography of the subject property.

Judith Berger, president of the Lochearn Improvement Association, and Leon P. Bass, who lives four or five blocks from the subject property, also testified in opposition to the proposed amendment.

The granting of the Petition for Special Hearing to amend the Final Development Plan depends on the granting of the Petition for Variance.

To be granted a variance, the Petitioner must comply with Section 307.1 of the BCZR, which states that a variance may be granted "only in cases where special circumstances exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the zoning regulations for Baltimore County would result in practical difficulty or unreasonable hardship . . ."

In Cromwell v. Ward, 102 Md. App. 691 (1995) the Court of Special Appeals has construed this regulation as follows:

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

Cromwell cited North v. St. Mary's County, 99 Md. App. at 512 to show that the term "unique" in the zoning context requires that the subject property have an inherent characteristic not shared by other properties in the area, in regard to such factors as shape, topography, subsurface condition, environmental factors, and so forth.

The Petitioners failed to present any testimony or evidence to this Board showing that the subject site possessed any such peculiar, unusual or unique factors. Thus, the first step of the variance process was not met, and the practical difficulty or unreasonable hardship requirements cannot be properly considered.

However, even assuming, for the sake of argument, that the property meets the requirement of uniqueness, the Petitioners failed to produce convincing evidence of practical difficulty or unreasonable hardship. The Petitioners are seeking the variances for marketing and aesthetic reasons. The fact that the project will go ahead even if the requested relief is not granted, as testified to by Mr. Scoll, shows that there is no unreasonable hardship.

For these reasons the Board will deny the Petition for Variance and must therefore deny the Petition for Special Hearing.

ORDER

IT IS THEREFORE, this 8th day of August, 1996, by the County Board of Appeals of Baltimore County,

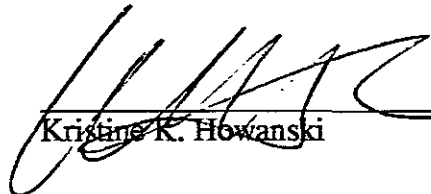
ORDERED that the Petition for Special Hearing to amend the Final Development Plan for Barkley Woods, Section I, be and is hereby **DENIED**; and it is further

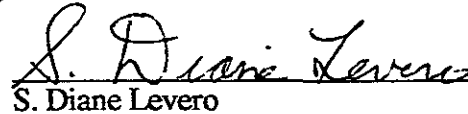
ORDERED that the Petition for Variance as set forth in this Opinion be and is hereby **DENIED**.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY


Robert O. Schuetz, Chairman


Kristine K. Howanski


S. Diane Levero



County Board of Appeals of Baltimore County

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

August 8, 1996

Mr. Jerome Goodman
7915 Liberty Road
Baltimore, MD 21244

Mr. Cyril Byron
7811 Liberty Road
Baltimore, MD 21244

✓ Mr. Wayne N. Overman
3522 Rockdale Court
Baltimore, MD 21244

Mr. John Jones
8024 Montwood Road
Baltimore, MD 21244

RE: Case No. 96-120-SPHA
Richmond American Homes of Md.
and Ruby Holzapfel, et al

Gentlemen:

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. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Charlotte E. Radcliffe for
Kathleen C. Bianco
Legal Administrator

Enclosure

cc: Robert A. Hoffman, Esquire
Kenneth A. Berg, Vice President
Richmond American Homes of Md.
Ruby Holzapfel
Stewart J. Greenebaum for
Harley Woods, Inc.
Judith Berger
People's Counsel for Baltimore County
Pat Keller
Lawrence E. Schmidt
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney



PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME

LOCHEARN

*LRCC

JUDITH BERGER

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9440808

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21201-6363

Wayne N. Overman

RCIA.

3522 Rockdale Court

21244-2937

410) 922-5986

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME

ADDRESS

Ben BRONSTEIN

29 W Suoquehanna Ave 21204

DAVID TATLER

7115 AMBASSADOR RD 21244

PHILIP CARROLL

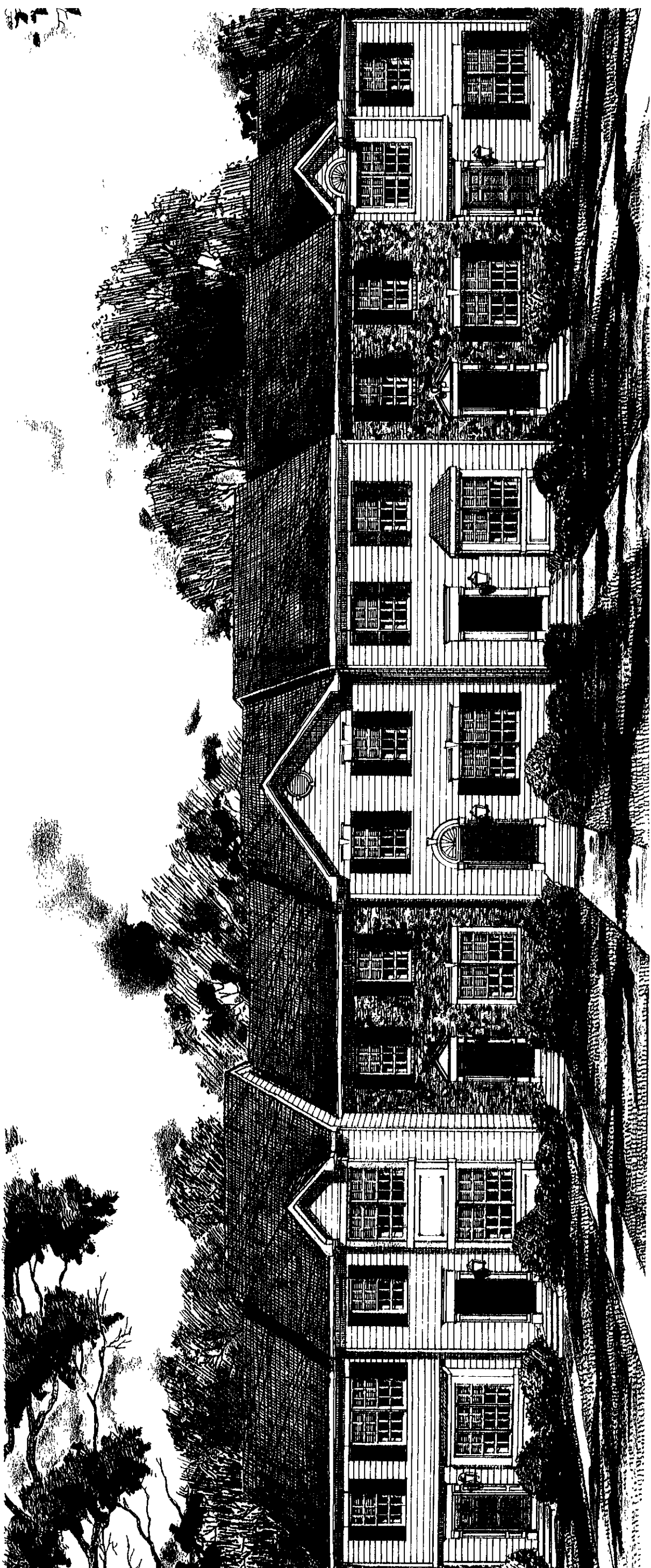
Jim Joyce

2515 Boston St Balt 21224

MARK Bennett

1829 Reisterstown Rd Suite 410 - 21208





Box No 3

Chamberlain



Elevation E

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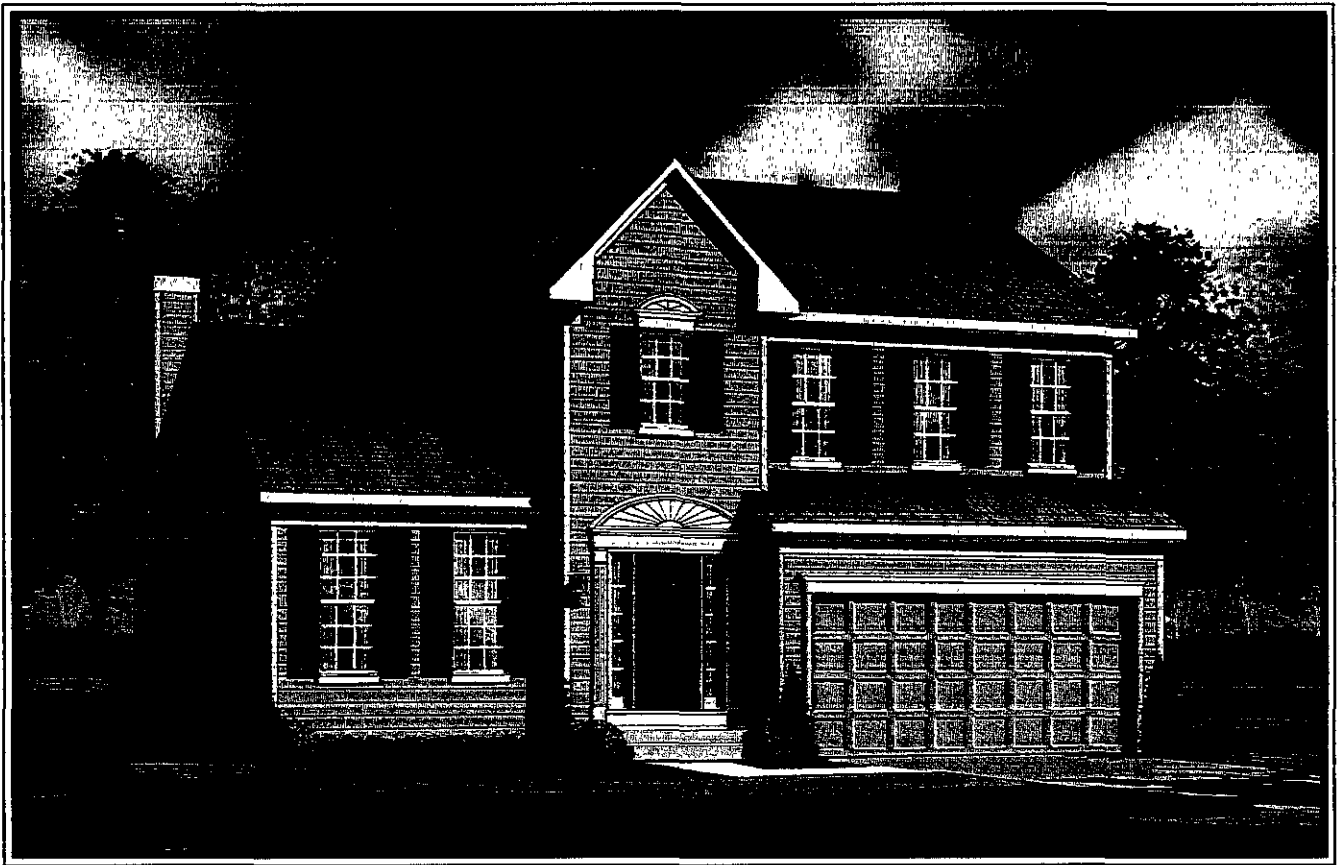


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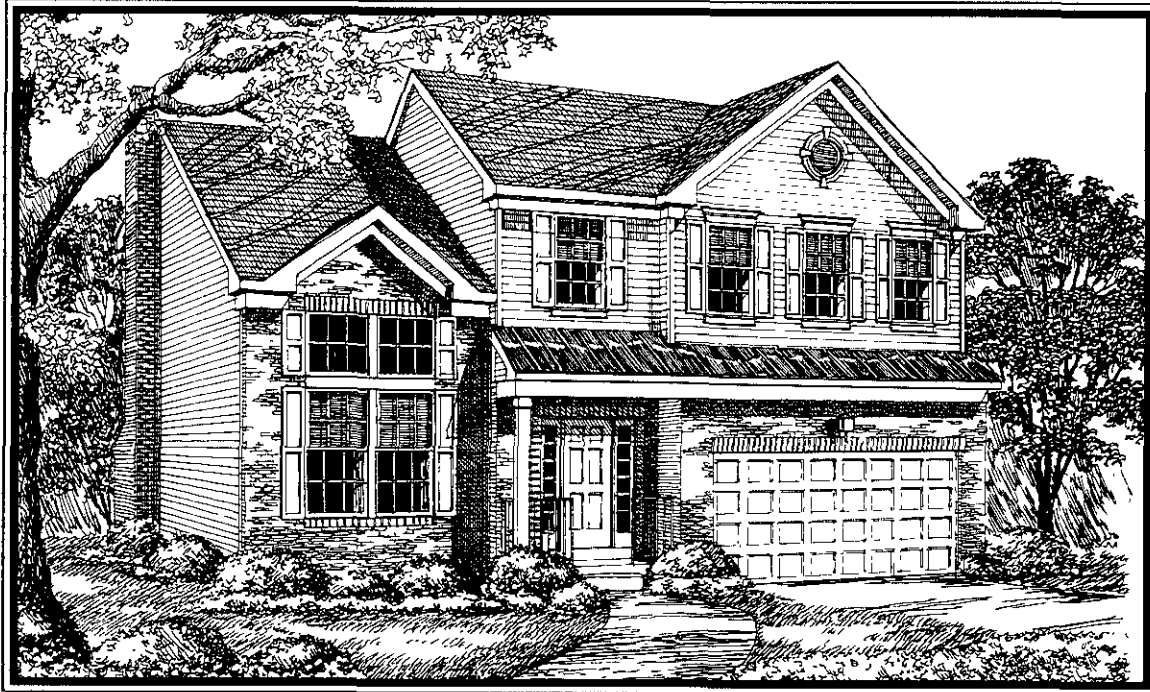


Elevation A

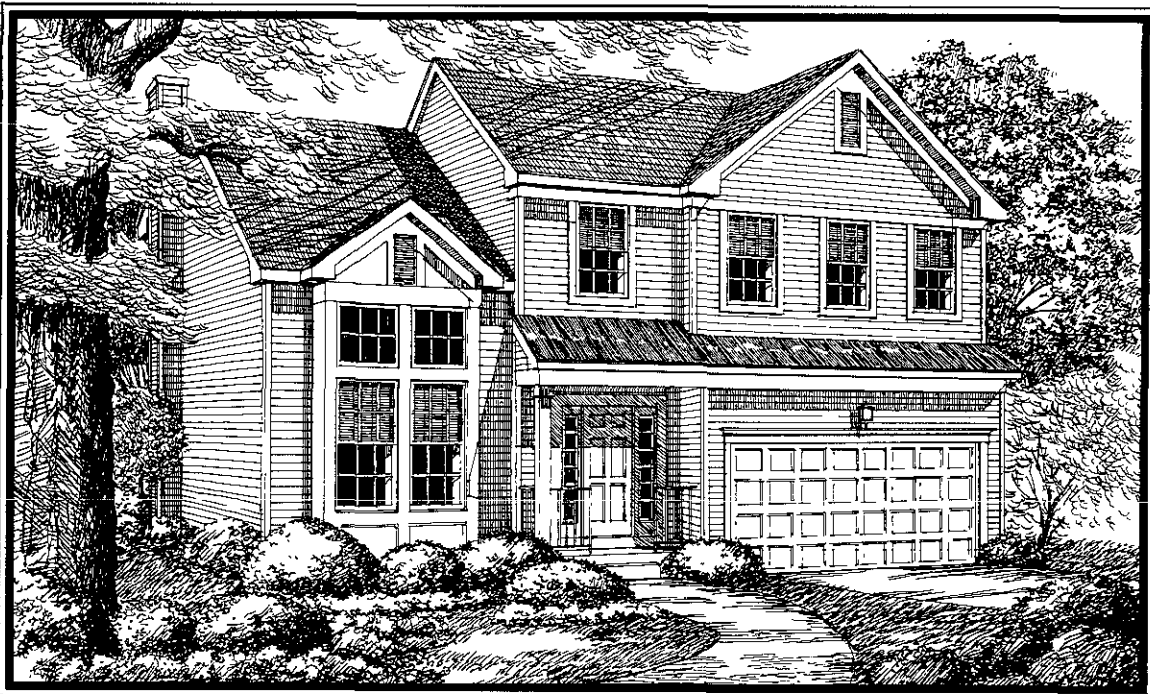
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