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N THE MATTER OF * BEFORE THE

THE APPLICATION OF MARIA & JOSEPH HORODOWICZ * COUNTY BOARD OF APPEALS

-PETITIONERS FOR ZONING
VARIANCE ON PROPERTY LOCATED * OF

ON THE SOUTHEAST SIDE CARNEY
ROAD, 225' SOUTHWEST OF C/L * BALTIMORE COUNTY

SECOND AVENUE (9305 CARNEY RD)

11TH ELECTION DISTRICT * CASE NO. 98-342-A 6TH COUNCILMANIC DISTRICT

OPINION

Maria and Joseph Horodowicz filed a timely appeal from the Deputy Zoning Commissioner's decision, dated July 20, 1998, denying a variance from Section 402 of the <u>Baltimore County Zoning Regulations</u> (BCZR) to permit a lot width of 50 feet in lieu of the required 80 feet; and to amend the previously approved site plan in prior Case No. 75-109-A to reflect the proposed multi-family dwelling use on the subject property owned by the Appellants /Petitioners at 9305 Carney Road, 11th Election District, 6th Councilmanic District.

The Appellants /Petitioners were represented by counsel, Michael Paul Smith. Protestants of record were Michael and Dawn Eck and Scott G. Bolch. Carole S. Demilio, Deputy People's Counsel for Baltimore County, represented the Office of People's Counsel for Baltimore County.

Testimony and evidence offered indicate that the subject property consists of a gross area of .2296 acre, more or less, zoned D.R. 5.5, and is improved with a 2-1/2 story brick building.

The Petitioner, Joseph Horodowicz, was the first witness. He testified that he and his wife are the owners of the subject property but they do not reside there. Mr. Horodowicz purchased

Case No. 98-342-A Maria & Joseph Horodowicz -Petitioners

the property at 9305 Carney Road as an investment two years ago through an advertisement in the <u>Penny Saver</u>, a local classified circular. He stated that he viewed the property as a nice, well-built house, the largest in the neighborhood. He presented the multiple listing dated March 7, 1997, as Petitioner's Exhibit #1 which showed the presence of an "in-law apartment" within the structure. Mr. Horodowicz testified that this indicated to him that the structure was already used as a two-family dwelling.

The Appellant /Petitioner further testified that the subject property is located close to a commercial district which includes business uses such as Griffith Honda. Photographs taken by Mr. Horodowicz (Petitioner's Exhibit #2, A-J) showed the area surrounding the subject property as well as the property itself with exterior stairways to three levels of the subject structure. Mr. Horodowicz testified that he had made no interior or exterior changes to the building since his purchase and that the three stairways had been constructed by the original owner. He said that he planned no further additions tot he property.

On cross-examination by Ms. Demilio, Mr. Horodowicz described the interior as three apartments, occupied by separate tenants. The first and third floor apartments have kitchens but the second floor has only a refrigerator, microwave and laundry sink. The first floor apartment is separated from the second floor apartment by a locked interior door to an interior stairway. Both apartments may be entered from the front door of the house into a hallway. Mr. Horodowicz indicated that he had put in the lock and also

Case No. 98-342-A Maria & Joseph Horodowicz -Petitioners provided the refrigerator for the second floor apartment. He acknowledged that there are five separate lots on the southeast side of Carney Road and that the subject property is the center lot. All are rectangular in shape and approximately the same square footage. Mr. Horodowicz described the topography on Carney Avenue as "flat."

Dennis Wertz, a senior planner for 17 years in the Baltimore County Office of Planning, was the next witness. He was accepted by the Board as an expert in land planning.

Mr. Wertz described the neighborhood surrounding the subject property as commercial along Harford Road and single-family detached older homes on the streets behind the commercial areas. Carney Road is a cul-de-sac running parallel to, but having no access from, Harford Road. Mr. Wertz indicated that the topography of the subject site was not unusual in the neighborhood and that, although the subject site was somewhat narrow, there is nothing unique about 9305 Carney Road, compared to other lots nearby.

He further opined that the house had always been used as a single-family dwelling since it was built in 1975 and that there is no impediment to a continuance of this use in keeping with the single-family use throughout the neighborhood. He noted that the variance from front and side yard setback requirements granted on November 26, 1974, by then-Deputy Zoning Commissioner James E. Dyer to the Norton family in order to construct the subject dwelling was specifically restricted to use of the property for a single-family dwelling. In addition, current comments by the Office of Planning

Case No. 98-342-A Maria & Joseph Horodowicz -Petitioners 4

(People's Counsel Exhibit #1) state that they can find no justification for the requested variance, and they recommend that it be denied.

Mr. Wertz further explained that the BCZR permits multi-family use in the D.R. 5.5 zone provided certain restrictions are met. In his opinion, in order for the subject property to be used as two apartments, the frontage necessary would be 80 feet. More than two families would require an additional 15 feet for each additional apartment. For example, the subject property would be required to have a 95-foot frontage for three apartments. Similarly, the lot area required for a two-family dwelling would be 10,000 square feet, and 13,000 square feet would be required for three families. The subject site contains 10,000 square feet total. However, the subject site is long and narrow and does not meet the required side yard setback sum of 35 feet.

These requirements are set forth, Mr. Wertz testified, to prevent an overcrowding of the land. A multi-family structure requires a larger lot than a single-family dwelling because it is used by more people. Mr. Wertz noted that density is defined in terms of the number of dwelling units permitted. In his opinion, the variance granted to the subject property in the 1975 case was specifically restricted to use as a single-family dwelling.

The next witness, Michael Anthony Rupp, testified as the president and a representative of the Carney Improvement Association. He presented the Rule 8 papers which were accepted by the Board as People's Counsel Exhibit #3. The position of the

Case No. 98-342-A Maria & Joseph Horodowicz -Petitioners association is in opposition to the granting of a variance which would allow a multi-family use on the subject property. The association's concerns are that such a granting would set a precedent in the neighborhood, increase traffic flow on narrow, residential streets, and add to parking problems. Mr. Rupp testified that he knew of no other requests for conversions to multi-family use within his association's boundaries. He said that the subject site is similar to others in the neighborhood; narrow and level, and that the proposed use would be out of character in a neighborhood of predominantly owner-occupied single-family

residences.

Michael Eck, who lives across the street from the subject site at 9304 Carney Road, testified that he had been a resident there since 1980. It was his opinion that the builders of the house had used the structure as a single-family dwelling since 1975 and that the subsequent owners had continued that use. He said that only since the current owners took possession had the building been rented out as separate apartments. He indicated that this situation created parking problems from the tenants and from the antique cars that Mr. Horodowicz stores in the rear of the subject lot. Mr. Eck submitted photographs (People's Counsel Exhibit #4, A-H) to demonstrate the difficulties he encounters with parking. He described the neighborhood as consisting of older single-family dwellings on flat, narrow, rectangular lots.

Pursuant to its present zoning classification, the Board finds as a matter of fact that only one dwelling is permitted on the Case No. 98-342-A Maria & Joseph Horodowicz -Petitioners subject property zoned D.R. 5.5 (.2296 x 5.5 = 1.2).

BCZR Section 402 allows for the conversion of a single-family dwelling to multi-family provided certain standards are met. Section 402 states in the applicable sections:

For residential use: 402.1 The converted dwelling must be located on a lot that will meet the dimensional requirements shown in the schedule which follows:

Width of Lot in Feet at Front Building Line		Lot Area	a in Square Feet			
Zone	1-3 Rooms	Each Additional Room	1-3 Rooms	Each Additional Room	Side Yard Minimum/ Side	Sin Feet Sum of Both
D.R. 5.5	80	15	10,000	3,000	Int 15	Int 35

Facts and testimony are undisputed that the subject property which has a 50-foot lot width in the front in lieu of the 80 feet required for two families and 95 feet required for three does not meet that requirement. Further, with a side yard setback of 8.5 feet in lieu of the required 15 and a sum of side yard setback of only 18.5 feet in lieu of the required 35 feet, the subject site cannot meet that requirement for conversion. And, finally, although the subject site is 10,000 square feet in total, it cannot meet the gross footage for the three apartments which now exist. As Mr. Wertz of the Planning Office pointed out, it is understandable that the setbacks are greater for multi-family dwellings than single family. Hence, the owners have requested a variance from these requirements to legitimize the current multi-family use.

Section 307 of the BCZR permits granting of a variance upon

certain terms and conditions where special circumstances or conditions exist that are peculiar to the land which is the subject

Case No. 98-342-A Maria & Joseph Horodowicz -Petitioners

of the variance request, and where strict compliance with the zoning regulations would result in practical difficulty or unreasonable hardship, and where the granting of said variance is within the spirit and intent of the law.

However, Section 307.1 specifically states: "No increase in residential density beyond that otherwise allowable by the zoning regulations shall be permitted as a result of any such grant of a variance from height or area regulations." The variance request by the Appellants /Petitioners asks for permission to increase density from the one dwelling unit which is permitted to multi-family use.

The Board finds as a matter of law that the area regulations of Section 402 cannot be varied in order to increase density. Therefore the variance request shall be denied.

Assuming arguendo that it did not fail for the above reason, the Appellants /Petitioners' case would not succeed under the legal standards set forth by the Court of Special Appeals decision in Cromwell v. Ward, 102 Md.App. 691 (1995). The Board of Appeals, hearing the case de novo, is given the task of interpreting regulations and statutes where issues are debatable in the light of the law. The first burden on the Petitioner for variance is to prove that the property is unique. This standard must be met before other parts of the variance requirements can be properly considered. The Board finds that all evidence and testimony, including that of the owner himself, indicate that the subject

Case No. 98-342-A Maria & Joseph Horodowicz -Petitioners property at 9305 Carney Road is not unique from other properties in

the area. It is a narrow, level lot, rectangular in shape,

improved by a single-family dwelling.

Although Mr. Horodowicz testified as to the "uniqueness" of the subject structure by virtue of its large size and exterior stairways, and counsel for the Appellants /Petitioners questioned Mr. Wertz of the Planning Office on this issue, it is clear from the language of Cromwell v. Ward, as well as North v. St. Mary's County, 99 Md.App. 502, 512 (1994) that the structure is not the governing criterion. North v. St. Mary's County states:

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access, or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as architectural aspects and bearing or party walls. [Emphasis added.]

The Board finds that there is nothing about the subject property to suggest that it is unique as a matter of law. We would therefore deny the variance on this account.

Although it is not strictly necessary for the Board to consider the request further since the above determination was made, the Board finds that there is no practical difficulty or unreasonable hardship imposed on the Horodowicz family through the denial of the variance. Practical difficulty or unreasonable hardship is the second prong for granting of a variance. The

Case No. 98-342-A Maria & Joseph Horodowicz -Petitioners

Petitioners are not constrained from using their single-family residence as designed. They purchased a single-family dwelling with the intention of leasing three apartments, and they made the conversion. Mr. Horodowicz testified that he was unaware of the legal requirements to do so. The economic situation in which they may find themselves as a result is self-imposed. An economic decision made on the part of the owners cannot be construed as hardship.

Further, the Board finds that a conversion of this single-family dwelling to multi-family use in this neighborhood, even without the variance requested, does not meet the spirit and intent of preserving the stable character of the older neighborhood of owner-occupied single-family houses as testified to by the residents, the local community organization, and the representative of the Planning Office.

Finally, the Board finds that the language of the original variance granted in Case No. 95-109-A effectively prohibits more than one family at the subject site.

The Board hereby denies the variance request and subjects the property at 9305 Carney Road to the restrictions as stated and will so order.

ORDER

THEREFORE, IT IS THIS _____ day of ______, 1999 by the County Board of Appeals of Baltimore County

ORDERED that the Petition for Variance seeking relief from Section 402 of the Baltimore County Zoning Regulations (BCZR) to

permit a lot width of 50 feet in lieu of the required 80 feet; and to amend the previously approved site plan in prior Case No. 75-109-A to reflect the proposed multi-family dwelling use on the subject property owned by the Appellants /Petitioners at 9305 Carney Road, 11th Election District, 6th Councilmanic District be and is hereby DENIED and subject to the following restrictions:

- The Appellants /Petitioners have 120 days from the date of this Opinion to cease using the subject property as a multi-family dwelling (apartments) and to return same to its original use as a single-family dwelling;
- Upon request and reasonable notice, Appellants /Petitioners shall permit a representative of the Zoning Enforcement Division to make an inspection of the subject property to insure compliance with this Order in the event it becomes necessary to do so as a result of a complaint; and
- 3. When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Opinion.

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

Donna M. Felling

Margaret\Worrall



County Board of Appeals of Baltimore County

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

May 21, 1999

Michael Paul Smith, Esquire BODIE, NAGLE, DOLINA, SMITH & HOBBS, P.A. 21 W. Susquehanna Avenue Towson, MD 21204

RE: In the Matter of Maria & Joseph Horodowicz Case No. 98~342-A

Dear Mr. Smith:

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

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the Maryland Rules and Procedure, with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number. If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Kathleen C. Bianco

Administrator

encl.

Michael and Dawn Eck
Scott G. Bolch
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

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IN THE MATTER * IN THE

OF * COUNTY BOARD OF APPEALS

99 MMR

MARIA HORODOWICZ * OF BALTIMORE COUNTY

and *

CASE NO.: 98-342-A

JOSEPH HORODOWICZ *

Petitioners *

MEMORANDUM OF LAW AND FACTS

FACTS AND IDENTIFICATION OF ISSUES

The testimony and evidence before the Board of Appeals reveals that the subject property consists of 10,000 square feet, more or less, zoned DR5.5 and is improved with a three-story brick dwelling with a basement. The subject property was involved in a prior zoning case, 75-109-A, which sought and was approved for the identical setbacks which are the subject of the current case. Evidence submitted and relied upon by the Petitioners for approval of the setbacks requested is that the structure situated on this property is unique when compared to the structures in the surrounding neighborhood. The uniqueness of the structure was uncontroverted.

The Protestants, represented by the Office of the People's Counsel, submitted evidence which they contend support a finding that the land on which the structure is situated is not unique when compared to the surrounding neighborhood. There, however, does not appear to be any serious contention of fact that the <u>structure</u> is unique. The dispute appears to be one of law, that is, whether a unique structure can support the granting of a variance. Another legal issue is the

¹ The prior case did not extend use of those setback variances for a two-family dwelling.

effect of the findings of the previous zoning case which previously found uniqueness and practical difficulty when the Zoning Commissioner granted the variance in 1975 for the current setbacks.

(See Appendix A attached hereto, the prior zoning Order).

LAW

The ordinance/zoning regulation at issue is Section 307.1 which provides:

"The zoning commissioner of Baltimore County and the county board of appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from offstreet parking regulations, and from sign regulations only in cases where special circumstances or conditions 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. No increase in residential density beyond that otherwise allowable by the regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking, or sign regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare. They shall have no power to grant any other variances...." (Emphasis Added)

As indicated by Judge Cathell in <u>Cromwell v. Ward</u>, 102 Md.App. 691, 694-5 (1995) consideration of a variance is a two-step process.

"The first step requires that 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 surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property.... then a second step is taken in the process, *i.e.*, a determination of whether practical difficulty and/or unreasonable hardship, resulting from the disproportionate impact of the ordinance caused by the property's uniqueness, exists. Further consideration must then be given to the general purposes of the zoning ordinance." (Emphasis in Original)

I. The Property And/Or Structure Is Unique?

The Office of the People's Counsel argued vigorously in their opening statement, relying upon Cromwell v. Ward, that the first prong set forth by Judge Cathell in Cromwell v. Ward could not be met. She quoted specifically from Cromwell v. Ward at pages 710 and 711

"In North v. St. Mary's County 99 Md. App. @512, 638 A.2d 1175 we held that the ordinance there required a finding that 'special conditions or circumstances exist that are peculiar to the land...' We there stated that, in the zoning context, the term 'unique' has a customized meaning:

In the zoning context the 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. 'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, *i.e.*, its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls...

Where by reason of the exceptional narrowness, shallowness, or unusual shape of a specific ... property ..., or by reason of exceptional topographic conditions or other extraordinary situation or special condition of ... property ... the literal enforcement ... would make it exceptionally difficult ... to comply ... and would cause unwarranted hardship and injustice..."

What I understand counsel for the Protestants to be emphasizing in the <u>Cromwell v. Ward</u> case are the examples of the way land can be found to be unique and the absence of any of those examples in our case. Most of counsel for Protestants' questions for witnesses concerned the absence of these facts, that is she argued that there was no uniqueness in shape, topography, or subsurface conditions, etc. In fact, if you recall, one particular question asked by counsel for the Office of the

People's Counsel regarded whether in Dennis Wertz's opinion, the uniqueness of a structure or building could be considered. He initially responded that it could not and it was only on examination by your undersigned and a refreshing of his recollection that it was revealed that the uniqueness of the structure could be considered. Mr. Wertz, read the provisions of Section 307.1 which provided in particular part "... in cases where special conditions exist that are peculiar to the ... structure which is the subject of the variance request ..." It is obvious that the County Council when drafting the variance regulation did permit the Board of Appeals to consider the uniqueness of the structure. They specifically so state. In this case, the evidence was uncontroverted in that this structure was substantially unique from any other structure in the area, let alone the majority of the structures in the neighborhood. At the time of purchase by the Horodowiczs, the structure had an exterior fire escape, multiple doors for exit at each level, it was a three-story structure, and its overall size far exceeds that of any home in the surrounding area. As such, the Horodowiczs' structure is unique within the meaning of Section 307.1.

It is important to point out that in the Cromwell case, the issue was uniqueness of the land. At all levels, Board of Appeals, Circuit Court, and Court of Specials Appeals, the existence of the structure could not be considered because it was created by Mr. Ward in derogation of the zoning regulations and all sides agreed that the evidence had to be considered at the time the permit application was submitted. Such is not the case in the Horodowicz situation as a valid variance was granted prior to its construction.

II. A Practical Difficulty Does Exist.

A practical difficulty does exist in the instant case. The Horodowiczs' have sufficient lot area to support a two-family dwelling and their structure is valid for its current dimensions, (the

prior variance case supported its current construction and no extension of or enlargement of the building is sought in the instant Petition.) It is important to remember that practical difficulty differs from unreasonable hardship and is a much lower standard. In <u>Anderson v. Board of Appeals</u>, 22 Md.App. 28, 39 (1974), the court wrote,

"Where the standard of 'practical difficulty' applies, the applicant is relieved of the burden of showing a taking in a constitutional sense, as is required under the 'undue hardship' standard. In order to justify the grant of an area variance the applicant need show only that:

- '1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
- '2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
- '3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured. Citing 2 Rathkopf, The Law of Zoning and Planning, 45-28-29 (3d ed. 1972)."

Applying the practical difficulty standard to the Horodowiczs' situation, there is a practical difficulty presented. First, we have a prior finding of practical difficulty in the 1975 case. See Appendix A and the res judicata/collateral estoppel argument contained in Section IV hereof. Second, other property owners in the Horodowiczs' area with at least 10,000 square feet, with smaller homes, would be allowed to have a two-family dwelling. The Horodowiczs, unlike most of their neighbors with 10,000 square feet of area, would not be able to have a two-family dwelling. The main reason for not being able to have a two-family dwelling is the size of the Horodowiczs' structure

which had previously been granted a variance to allow for such size. The Horodowiczs are not asking for an extension or expansion of the current building envelope, but rather simply being permitted to use their dwelling for the same purposes which their neighbors with 10,000 square feet can. To hold otherwise would not be fair and equitable. To do such would, in effect, state to the Horodowiczs, who have the most conducive structure for a two-family dwelling, you cannot have a two-family dwelling but your neighbor who has a much smaller residence can. It is for these reasons that the undersigned submits that the practical difficulty prong of the variance request has been met.

III. No Public Injury.

Finally, the Zoning Regulations provide that any variance shall not create injury to the public health, safety, and general welfare. I submit that the granting of the variance requested herein will not. The use of the property for a two-family dwelling is a permitted purpose. The Horodowiczs have the most conducive building/structure for such use. There is also no change in the exterior structure which would make the building closer to any of its neighbors.

To a large extent, no change will be seen by any of the neighbors. The only evidence submitted that your undersigned recalls with respect to the issue of the general welfare of the neighborhood was with respect to parking. As this Board can see, there is certainly adequate parking in that there are two parking pads for use of tenants at the Horodowiczs' premises. Mr. Horodowicz has indicated that any restrictions the Board would impose with respect to parking would be acceptable, *i.e.*, requiring one tenant to park in the front lot and one in the rear lot.

IV. Collateral Estoppel/Res Judicata.

Res Judicata means "a matter adjudged; a thing judicially acted upon or decided..."

Black's Law Dictionary, Sixth Ed. The uniqueness, practical difficulty, and general welfare of the

community as it relates to the placing of the current structure on this property was previously decided in Case 75-109-A. No enlargement of the current building envelope has been sought.

The Court of Appeals has...

... taken the position that in zoning cases principles of res judicata do apply, both where the first determination was to an immutable fact or condition, and where changes were possible but had not occurred. Woodlawn Area Citizens Association, Inc. v. Board of County Commissioners for Prince George's County, 214 Md. 187, 195 (1966)

In this case the building envelope which is sought to be approved has been previously approved in the 1975 case, after a full and fair opportunity to be heard. After a hearing, the Zoning Commissioner did find that the property and/or structure were/was unique and that a practical difficulty did exist, and it further appeared that by reason of the granting of the variances requested, the granting of the variances requested would not adversely affect the health, safety, and general welfare of the community. See Appendix A. There has been no change in the structure or property which has occurred since the 1975 case. The facts are the same. As such, based upon the principles of res judicata, the only issue before this Board is whether the granting of the identical setbacks granted in the 1975 case, but to different sections of the zoning regulations, would be without injury to the public health, safety, and general welfare of the community. With regard to the effect of the granting of the request for variances on the general welfare of the community, the argument is identical to that contained in Section III hereof.

In sum, the requirements and/or conditions precedent to the granting of the variance have been met and fulfilled.

WHEREFORE, your undersigned respectfully requests that this Honorable Board grant the

requested variances subject to any parking restrictions the Board deems necessary to be consistent with the general welfare of the community.

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Respectfully submitted.

Michael Paul Smith

Bodie, Nagle, Dolina, Smith & Hobbs, PA

FROM ASEA AND HEIGHT RESULATIONS

<u>ፐብ ፕዝ</u>	E ZONING	COMMISSIONER	OF	BALTIMORE	COUNTY:
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	a lot width of
fifty (50) feet instead of the required fifty-five	re (55) feet.
(Lot Nos. 425, 426, 437, 438 and parts of 424 and	1 439)
of the Zoning Regulations of Baltimore County, to the Zoning Law of B following reasons: (indicate hardship or practical difficulty)	altimore County; for th
See'attached memorandum.	
See attached description	
Property is to be posted and advertised as prescribed by Zoning	Regulations.
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____day of_**Hoverber**

County, on the____

	Pursuant to the advertisement sting of property, and public hearing in the above petition.
	and it appearing that by reason of the following finding of facts that strict compliance with
	the Baltimore County Zoning Regulations would result in practical difficulty and
•	unreasonable hardship upon the Petitioners
	**#
	**
	,
	the above Variance should be had; and it further appearing that by reason of the granting of the
	Variances requested not adversely affecting the health, safety and general welfare
	of the community, a Variance to permit a lot width of 50 feet instead of the re-
7	quired 55 feet (Lot Nos. 425, 426, 437, 438 and parts of 424 and 439)
F	Deputy IT IS ORDERED by the Zoning Commissioner of Baltimore County this 247#
t '	IT AS ORDERED by the Zoning Commissioner of Baltimore County this
7	day of $\frac{1}{2}$ November 1974., that the herein Petition for a Variance should be and the
Ä	same as granted, from and after the date of this order, subject to the approval of a site plant by the Department of Public Works and the Office of Planning and Zoning; and sai
,	Variance shall not be construded to permit more than one dwelling on the total
1	number of lots herein petitioned for Deputy Zoning Commissioner of Baltimore County
	Pursuant to the advertisement, posting of property and public hearing on the above petition
	and it appearing that by reason of
	the above Variance should NOT BE GRANTED.
	IT IS ORDERED by the Zoning Commissioner of Baltimore County, thisday
	of, 197, that the above Variance be and the same is hereby DENIED.

3/1/99

RE: PETITION FOR VARIANCE 9305 Carney Road, SE/S Carney Road, 225' SW of the c/l of Second Avenue 11th Election District, 6th Councilmanic

JOSEPH AND MARIA HORODOWICZ, Petitioners * BEFORE THE

* COUNTY BOARD OF APPEALS

* FOR BALTIMORE COUNTY

* Case No. 98-342-A

PEOPLE'S COUNSEL'S MEMORANDUM

Facts

Petitioners seek three variances to convert a single-family dwelling to a two-family rental.

The property is located in the Carney area, just northeast of Interstate 695, Exit 31. It is part of a subdivision known as Carney Heights, originally platted in the 1920's. It consists entirely of single-family dwellings built in the last 50 years.

The existing single-family dwelling was constructed in the 1970's. Seeking a larger house than permitted on the lot, the original owners petitioned Baltimore County for several variances. In his 1975 decision, the Zoning Commissioner cautioned the variances were granted for a single family dwelling only. The Petitioners do not dispute this. The original owners lived there and later sold to another family. Its sole use has been a single-family dwelling. In nearly 25 years, no one complained the house was not suitable.

The site is .2296 acres, 10,000 square feet. It is zoned for medium density (Density Residential 5.5). Two-family and multifamily dwellings are permitted, provided minimum setbacks and lot size exist. BCZR 101 defines two-family and multifamily. (See attached). In this zone, the hearing officer must make a specific finding of compatibility for a multifamily building. (BCZR

1BO1.1.A.1c.). Compatibility is not a requirement in the more intense D.R. 10.5 and D.R. 16 zones.

Here, only one dwelling is permitted. ($.2296 \times 5.5 = 1.2$). BCZR 402 (attached) allows for conversion of a single-family dwelling to two or multifamily, provided certain standards are met.

Petitioners bought the Carney Road house for investment purposes in 1997. They immediately reconstructed the interior to three apartments and continue to rent all three. They never intended to reside there. They have lived elsewhere for over 15 years. Separately, they lease out two apartments in a third detached house they own in the Carney area.

The house was listed at the time with a sales broker as a single-family dwelling. The listing indicates one kitchen and several bedrooms. There is no mention of separate apartments.

The listing states potential for in-law or au pair quarters. Petitioners could not have relied on this language - on cross-examination, Mr. Horodowicz admitted he did not know the meaning of those terms. In any event, use of a separate living area in a home for in laws requires zoning commissioner approval. In those cases, the limited purpose for relief is to allow elderly parents needing care to reside with their children. The order usually contains restrictions: the in-law accommodations cannot be construed as a separate apartment; they can only be used by the current owner; and upon a sale of the premises, the in-law accommodations must be removed. Petitioners do not claim the site had received zoning approval for in-law or au pair accommodations.

The Petitioners admitted that upon purchase, they installed interior doors to separate the apartments. They added kitchen appliances. Each apartment has a living room, kitchen, bath and

two bedrooms. All tenants use the laundry in the basement. A neighbor, Mrs. Eck, witnessed the changes from single-family to apartments.

Petitioners leased the three apartments from the beginning. They never sought approval for conversion to a multifamily dwelling. Baltimore County issued a violation notice. Under the conversion requirements in BCZR 402, Petitioners do not satisfy the front yard width and side yard setbacks. The site's 10,000 square foot area supports a maximum of two apartments. Petitioners seek variance for a 50 foot front yard width in lieu of 80 feet; for an 8.5 foot side yard in lieu of 15 feet; for total side yard setbacks of 18.5 feet in lieu of 35 feet; and to amend the site plan approved in the 1975 case. (Case 75-109).

Petitioners were vague about on site parking arrangements. The parking pad in the front of the house abuts the driveway/parking pad of the neighbor to the west. Cars would block each other. At most, there are 2 spaces. Petitioners identified a gravel area for parking at the rear of the site, off Hillside Avenue. Petitioners' historic vehicle occupies nearly the entire area and has been parked there since 1997. In any event, tenants prefer to park on the street, closer to the house, mailboxes and front door.

Carney Heights is a settled stable neighborhood in a larger residential area consisting of approximately 2500 homes. The residential areas are zoned DR 5.5. Carney Road is a cul-de-sac parallel to the 9300 block of Harford Road, but not accessible from Harford Road. The 200 scale Zoning Map and the GIS aerial map in evidence, comport with the witnesses' descriptions of the neighborhood. The witnesses testified the lots in the immediate area are relatively the same size, topographically uniform, mostly rectangular, improved with one and two story single family dwellings. Petitioner never disputed the characterization of the lots. He offered no other description. He never claimed his lot was unique. As to the structures, while he claimed his was

the largest, he pointed out a three-story house nearby, on the corner of Carney Road and 2nd Avenue.

Mr. Michael Rupp, president of the Carney Improvement Association, testified in opposition. He submitted the appropriate Rule 8 documents. He described a settled neighborhood with most of the homes constructed from the 1950's to the 1970's on narrow, sometimes rectangular lots. There are few garages. Residences park on the 16 foot paved streets. The houses were built for single families and continue as such. The association membership is opposed to conversion of Petitioner's property to a multifamily dwelling. Although there is potential financial gain for any homeowner who could convert his or her own home, the membership wants to maintain a single-family neighborhood. Multifamily units would destroy the character of the neighborhood, reduce home values, increase traffic, create parking congestion, and overcrowd the land. Neighbors have experienced some of these very problems with Petitioners' tenants.

Mr. Dennis Wertz testified as an expert planner for Baltimore County. Among other responsibilities, he reviews zoning petitions for the 6th District. His office opposes the variances and the use of the site for multiple families. He visited the site, reviewed the file and the applicable law. He maintained there is nothing unique about this site. He noted nearly all the lots are similar in shape and topography. He pointed out many lots in older neighborhoods in the County had narrow frontage. He did not believe the <u>size</u> of the house meets the standard of uniqueness required to grant a variance. Other homes in the county are this size and larger.

Others are smaller. Here, the size is not an impediment to single-family use. There have been no changes in the neighborhood to deter or prohibit the single-family use. It is both reasonable and

compatible. Additionally, Mr. Wertz pointed out the language in the 1975 Zoning Opinion effectively prohibits the structure's size to be construed as a basis to change the use.

Mr. Wertz has been a planner in the 6th district for 6 years and could not recall a single request for conversion to a multiple family dwelling in this neighborhood. He never wavered in his opinion the variances should be denied.

Petitioners provided absolutely no evidence the site is unique. They admitted other lots on their site plan are similarly shaped. They acknowledged the topography in the area is unremarkable. Their sole basis for the variance requests is that the size of the house is conducive to apartments. They admitted there were no tenants at the time of purchase. Significantly, Petitioners never stated they are unable to rent the house as a single-family dwelling. Their intention upon purchase, despite the legal requirements, was to rent out three apartments. They made the interior changes and immediately rented to three separate sets of tenants. They sought the variances only after issuance of a violation notice by Baltimore County.

The Deputy Zoning Commissioner denied the Petition for Variances. Petitioners filed an appeal with the CBA. The Office of Planning and Zoning, Carney Heights Community

Association, and neighbors oppose the relief.

The issues for consideration in this matter are:

- 1. Is BCZR 402 even subject to a variance under the provision of BCZR 307 which states, "No increase in residential density beyond that otherwise allowable by the zoning regulations shall be permitted as a result of any such grant of a variance from height or area regulations."
- 2. Have the Petitioners proved the site is unique as that term is defined in variance cases?
- 3. Have the Petitioners proved "practical difficulty?"

- 4. Even if unique, is there any connection between the alleged uniqueness and "practical difficulty"?
- 5. Does the site have a reasonable use as a single-family dwelling?
- 6. Is the alleged practical difficulty "self-created?"
- 7. Are the Petitioners required to show a change of circumstances to amend the 1975 Zoning Commissioner Order, which limits the dwelling to a single-family use?

A Variance to the Setback Requirements in BCZR 402 Effectively Increases Density at the Site.

BCZR 402 sets minimum area requirements to convert a dwelling from single-family to two or more families. It is tantamount to a density regulation. In the Density Residential (DR) zones, the site's zoning designation multiplied by the size of the lot determines the number of dwelling units permitted.

Here, one single-family dwelling is permitted on the site(DR 5.5 x .2296acres = 1.2unit). In order to convert the dwelling to multiple family use, certain area requirements (size of lot and setbacks) must be satisfied. In other words, a DR 5.5 lot must be of a minimum size to (1) contain sufficient area, and (2) permit construction of a dwelling to meet the setback standards. A relaxation of the standards essentially permits more families to reside on the site than either DR 5.5 zone or BCZR 402 permits.

In zoning, the size of the structure does not determine the permitted number of dwelling units. The size of the lot is the key. In terms of interior space, many houses in the DR zones could accommodate several apartments. But no matter the size of the structure, all houses in the zone must be set back certain distances from the property lines. This allows for orderly development that does not intrude upon neighbors. Understandably, the setbacks are greater for multifamily dwellings than single-family. The following chart, derived from BCZR 402, is

a comparison of the lot size and setbacks required for single family and duplex (one unit over the other) multifamily dwellings on an interior lot in the DR 5.5 zone:

TYPE OF DWELLING	LOT SIZE SI	DE YARD SETBACK	MIN. SUM OF SIDE YARDS	FRONT PROPERTY WIDTH
Single-Family	6,000 sq. ft.	10 ft.	N/A	55 ft.
Two Family	10,000	15	35	80
Three Family	13,000	15	35	95

In the case at hand, Petitioner cannot satisfy the side yard setbacks and front property width for two apartments. Additionally, he cannot satisfy the minimum lot size for a three family dwelling.

Arguably, the side yard setbacks would be met if a smaller dwelling were constructed on the site. But the Petitioner can never satisfy the front property width. A reduced front yard width also means less space for tenants to park in front of their house, forcing them to park in front of other houses on the street. This is precisely the complaint of the neighbors.

Moreover, there is no effective way to assure that the 3rd existing apartment will not be rented. Petitioner offered no evidence explaining if or how he would change the interior to no more than two apartments.

There Is No Evidence The Site Is "Unique."

Recent case law defines the elements of the term "unique" as it is used in variance law.

Cromwell v. Ward, 102 Md. App. 691 (1995) quotes and adopts the language in North v. St.

Mary's County, 99 Md. App. 502, 512 (1994):

In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access, or non-access to navigable waters, practical

restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

Petitioners failed to present evidence comparing the site to others in the area and zone as to shape, topography, subsurface conditions, environmental conditions, access, and abutting properties.

Furthermore, the elements that make it unique must concomitantly prevent compliance with the zoning laws. Here, Petitioners never made an attempt to claim the site is unique. Rather, they claim the rear doors and stairs to each level are unique features. Even if this were true as to the structure, these aspects clearly have not, and do not, prevent its use as a single-family dwelling.

Petitioners Have Failed to Prove "Practical Difficulty."

Petitioners are real estate investors. They purchased the site with the intention to convert this single-family home to three rental apartments. They never claimed the seller, or the broker, advised them a multifamily use was permitted. They offered no explanation at the hearing why the contract was not contingent on zoning approval. Petitioners do not allege they are unable to rent the property as a single family dwelling.

On this issue, the <u>Cromwell</u> Court agrees with out of state cases: "[The] hardship [must] not [be] the result of action taken by the appellant or a prior owner. ... However, when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the grounds of undue hardship." *Id.*, 717.

McLean v. Soley, 270 Md. 208, 2214-214, (1973) addresses "practical difficulty." The McLean Court refers to and adopts language in a zoning treatise (Rathkopf) to determine if practical difficulty exists:

- "1) Whether compliance with the strict letter of the restrictions governing area, setback, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
- 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
- 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

Here, the house was built in 1975 with the benefit of significant variances. It is legally unsound, and patently unfair to the neighborhood, for the Petitioner to now claim the size is a disadvantage.

The site benefits from a relaxation of the standards under the 1975 zoning decision.

Presumably, the original owners sought to maximize the size of their single-family dwelling.

Petitioner is a willing buyer who now claims the house does not suit his purposes. Zoning decisions cannot accommodate economic decisions of property owners that violate both the law, and the spirit and intent of the prior Order.

Moreover, further variances on the site adversely affect the welfare of the property owners in the area.

At the hearing, there was some mention that other houses in the area contain two apartments. Since many of the lots have less frontage than the required minimum, presumably zoning approval is required. Mr. Wertz could not recall a single request for conversion.

Even if conversion occurred elsewhere, the variances should not be granted. The Court of Appeals addresses the issue in <u>Easter v. Mayor and City Council of Baltimore</u>, 195 Md. 395

(1950). There Petitioner requested a variance from the minimum front yard depth setback to construct a one story addition and basement on Belair Road. The opponent was the owner of the tavern business next door, and the Petitioner's brother. His tavern encroached into the setback and fronted directly on Belair Road. Nevertheless, the Court found this fact, and the existence of front yard encroachment by three other buildings to the north to be immaterial. The Court noted they could have been illegal or nonconforming.

The Court in <u>Easter</u> adopted language in a New Jersey case: "Prior exceptions granted... are not in themselves controlling. Ill-advised or illegal variances do not furnish grounds for a repetition of the wrong. If that were not so, one variation would sustain if it did not compel others, and thus the general regulation eventually would be nullified. ... It is by these gradual encroachments, individually of relative insignificance, that the integrity of the general scheme is undermined and ultimately shattered. One departure serves as justification for another." (citations omitted). In <u>Easter</u>, the Court reversed the variance granted by the zoning board. See also <u>Park Shopping Center v. Lexington Park Theatre Co.</u>, 216 Md. 271 (1958).

The case of <u>Salisbury Bd.</u> of <u>Zoning Appeals v. Bounds</u>, 240 Md. 547 (1965) is particularly relevant. There, the applicant wrongly converted to a four apartment dwelling. He sought a variance from the minimum lot size standards. The Court addresses variance standards, self-imposed hardship and financial motives. Since the facts and issues raised are so similar to the instant case, it is attached hereto in its entirety.

The Site Has A Reasonable Use As A Single-Family Dwelling.

The neighbors confirmed the past use as a single family dwelling. The prior owners lived there and raised their families. The rear doors and stairways were never an impediment to the use.

All the witness described the area similarly. The neighborhood remains single-family and stable. Commercial development is restricted to frontage on Harford Road. Mr. Rupp recently moved to Carney Road which he views as a suitable location to raise his family. The Community Association actively seeks to maintain the single-family ambiance.

The Planning Office has no interest in rezoning to more intense residential zones. It does not recommend conversion to multifamily use. There have been no requests to convert to two family or multi family use; presumably zoning approval is required since most lots fail to meet the minimum 80 foot frontage. Commercial uses are limited to frontage on Harford Road.

Commercial intrusion in the neighborhood is opposed by the Planning Office and the citizens.

Petitioners' request to change the use is based solely on their personal economic preferences. Claims of economic hardship cannot support a variance.

Again <u>Easter</u>, *supra*, opines, "The fact that a variance would make property more profitable is not a sufficient ground to justify relaxation of setback requirements." (citations omitted).

The Petitioners offer no testimony that the site does not have a reasonable use. "When an applicant seeks a variance on the basis of practical difficulties or unnecessary hardships, ... he has the burden of showing a substantial and urgent need which would justify the exception. ..." Pem Construction Co. v. City of Baltimore, 233 Md. 372 (1964).

Petitioners' Hardship Claim Is Self-Created.

The Cromwell Court also addressed "self-inflicted hardship": "We have before referred to Marino v. Mayor and City Council of Baltimore, 215 Md. 206, 137 A.2d 198. There, the Court said, 'it was incumbent [on the applicant] to [show] ... that the hardship was not the result of the applicants' own actions." *Id.* 721

Petitioners purchased a single-family dwelling with the intention to lease three apartments.

They made the changes. They never inquired whether these actions were legal. They never tried to conform to the law and rent a single-family dwelling. Their present circumstances were of their own doing.

In referencing Rathkopf on Law of Zoning and Planning, p. 262, the Court of Appeals in Gleason v. Keswick, 197 Md. 46 (1951) states: "Where a person purchases property with the intention to apply to the board of appeals for a variance from the restrictions imposed by the ordinance, he cannot contend that such restrictions cause him such a peculiar hardship that entitles him to the special privileges which he seeks." A similar holding was later made in City of Baltimore v. Sapero, 230 Md. 291 (1962).

See also Evans v. Shore Communications, Inc., 112 Md. App. 284 (1996).

Petitioners Failed to Show a Change in Circumstances from the 1975 Decision.

The Petitions are framed for variance relief. In truth, Petitioners seek a change in use, from a single family dwelling to a two-family dwelling. Two-family and multifamily dwellings are permitted by right if the lot area and minimum setbacks are satisfied. If they are not met, arguably, the relief, although termed a variance, is actually a change in use. The language in the 1975 Zoning Commissioner decision effectively prohibits more than one family at the site.

In a 1956 decision, the Court of Appeals ruled that Petitioner must demonstrate "a change in circumstances" for the court to later affirm a special use permit that was previously denied.

"The general rule, where the question has arisen, seems to be that after the lapse of such time as may be specified by the ordinance, a zoning appeals board may consider and act upon a new application for a special permit previously denied, but that it may properly grant such a permit only if there has been a substantial change in conditions. ... This rule seems to rest not strictly on

the doctrine of *res judicata*, but upon the proposition that it would be arbitrary for the board to arrive at opposite conclusions on substantially the same state of facts and the same law." Whittle v. Board of Zoning Appeals, 125 A.2d 41 (1956).

Here, Petitioners offer no evidence that the structure, neighborhood, zoning, nor the applicable law, changed since 1975. Witnesses testified to the contrary. Likewise, the D.R. 5.5 zone and BCZR 402 are unchanged.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this _____ day of February, 1999, a copy of the foregoing People's Counsel's Memorandum was mailed to Michael Paul Smith, Esq., 21 W. Susquehanna Avenue, Towson, MD 21204, attorney for Appellants.

Peter Max ZIMMERMAN

DWELLING, ALTERNATIVE SITE DESIGN — A dwelling sited on a zero lot line or zipper lot, patio house or neo-traditional dwelling as prescribed in the Comprehensive Manual of Development Policies. [Bill No. 2-1992]

DWELLING, SINGLE-FAMILY DETACHED — A dwelling which is designed for and occupied by not more than one family and surrounded by open space or yards and not attached to any other dwelling by any means. Single-family detached dwellings to be developed as part of an alternative site design shall be considered alternative site design dwellings. [Bill No. 2-1992]

DWELLING, TWO-FAMILY — A two-family house containing two dwelling units each of which is totally separated from the other with an unpierced ceiling and floor extending from exterior wall to exterior wall or by an unpierced wall extending from ground to roof. [Bill No. 2-1992]

ELDERLY HOUSING FACILITY — The term "elderly housing facility" includes an assisted living facility, a continuing care facility and Class A or Class B housing for the elderly. [Bill Nos. 36-1988; 188-1993]

ENCLOSED MALL — A shopping center containing an enclosed pedestrian concourse or connecting enclosed pedestrian concourses to which at least 75% of the establishments therein front onto and have their only direct access (except as required for emergency use). [Bill No. 29-1982]

ENVIRONMENTAL IMPACT STATEMENT — A comprehensive study which accurately discloses the environmental consequences or enhancement of a proposed action. Such a statement must include the following:

A detailed description of the proposed action including information and technical data adequate to permit a careful assessment of environmental impact;

Discussion of the probable impact on the environment, including any impact on ecological systems and any direct or indirect consequence that may result from the action;

Any adverse environmental effects that cannot be avoided;

Alternatives to the proposed action that might avoid some or all of the adverse environmental effects, including analysis of cost and environmental impact of these alternatives;

An assessment of the cumulative, long-term effects of the proposed action including its relationship to short-term use of the environment versus the environment's long-term productivity; and

Any irreversible or irretrievable commitment of resources that might result from the action or which would curtail beneficial use of the environment. [Bill No. 98-1975]

EXCAVATIONS, CONTROLLED — All types of excavations other than those defined as "excavations, uncontrolled."

¹¹ Editor's Note: Information on the Manual may be obtained from the Department of Permits and Development Management.

LOT OF RECORD — A parcel of land with boundaries as recorded in the land records of Baltimore County on the same date as the effective date of the zoning regulation which governs the use, subdivision or other condition thereof. [Bill No. 100-1970]

LOT, THROUGH — A lot having its front and rear yards each abutting on a street.

MARINA — A modern boat basin, restricted to recreational marine craft of all types, with facilities for one or more of the following: berthing, launching and securing such craft, and permitting incidental minimum provision for refueling and emergency servicing, as well as the incidental sale of boats and also land (out-of-water) storage as provided in Section 417.7. [Bill Nos. 64-1963; 149-1992]

MEDICAL CLINIC — The term includes ambulatory care centers, diagnostic centers, birthing centers and dialysis satellite units. The term does not include ambulatory surgical facilities. [Bill No. 37-1988]

MEDICAL OFFICE — A place for the treatment of outpatients by one or more medical practitioners. This term does not include a veterinarian's office, medical clinic, ambulatory care center, diagnostic center, birthing center or dialysis satellite unit. The term does not include ambulatory surgical facilities. [Bill No. 37-1988]

MEDICAL PRACTITIONER — A physician, dentist, optometrist, chiropractor, podiatrist, psychologist, physical therapist, nurse, massage therapist or other similar health professional licensed or certified by the state. [Bill Nos. 37-1988; 29-1998]

MULTIFAMILY BUILDING — A structure containing three or more apartments. A multifamily building includes garden and other apartment buildings. [Bill No. 2-1992]²⁰

NIGHTCLUB — A tavern or other commercial establishment which provides live or recorded entertainment, with or without a dance floor, and which is categorized as a nightclub by the Building Code of Baltimore County. [Bill No. 110-1993]

NONCONFORMING USE — A legal use that does not conform to a use regulation for the zone in which it is located or to a special regulation applicable to such a use. A specifically named use described by the adjective "nonconforming" is a nonconforming use. [Bill No. 18-1976]

NONINDUSTRIAL USE — Any use other than an industrial, quasi-industrial or industry-related use. [Bill No. 178-1979]

NUDITY — A state of dress in which a human buttock, anus, genitalia or female breast is completely bared. [Bill No. 137-1990]

NUDITY, PARTIAL — A state of dress in which clothing covers no more than the genitals, pubic region and areolae of the female breast, as well as portions of the body covered by supporting straps or devices. [Bill No. 137-1990]

NURSERY, HORTICULTURAL — An agricultural operation primarily engaged in the production and marketing of trees, shrubs and plants. The plant materials may be produced on the premises and may be purchased elsewhere at any stage of maturity for further

²⁰ Editor's Note: The former definition of "neighborhood" which followed this definition was repealed by Bill No. 3-1993.

ARTICLE 4

7...

SPECIAL REGULATIONS

Section A400 Purpose [Bill Nos. 40-1967; 18-1976]

Certain uses, whether permitted as of right or by special exception, have singular, individual characteristics which make it necessary, in the public interest, to specify regulations in greater detail than would be feasible in the individual use regulations for each or any of the zones or districts. This article, therefore, provides such regulations.

Section B400 Application of This Article's Provisions [Bill No. 18-1976]

The provisions of this article apply only to principal uses except as otherwise specified (as in Item 405.4.D.7) or unless the provision implicitly relates to accessory usage (as in Section 405A).

Section 400 Accessory Buildings in Residence Zones [BCZR 1955; Bill No. 27-1963]

- 400.1 Accessory buildings in residence zones, other than farm buildings (Section 404) shall be located only in the rear yard and shall occupy not more than 40% thereof. On corner lots they shall be located only in the third of the lot farthest removed from any street and shall occupy not more than 50% of such third. In no case shall they be located less than 2½ feet from any side or rear lot lines, except that two private garages may be built with a common party wall straddling a side interior property line if all other requirements are met. The limitations imposed by this section shall not apply to a structure which is attached to the principal building by a covered passageway or which has one wall or part of one wall in common with it. Such structure shall be considered part of the principal building and shall be subject to the yard requirements for such a building.
- Accessory buildings, including parking pads, shall be set back not less than 15 feet from the center line of any alley on which the lot abuts. [Bill No. 2-1992]
- The height of accessory buildings, except as noted in Section 300 shall not exceed 15 feet.

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Section 401 Cemeteries [BCZR 1955]

The Zoning Commissioner or the Board of Appeals, on appeal, may require a minimum setback from any property line for any building, structure, grave or place of temporary or permanent burial, and may require such walls, fences and/or planting of shrubbery, trees or vines as may be reasonable and proper to afford adequate screening.

Section 402 Conversion of Dwellings [BCZR 1955]

For residential use:

- The converted dwelling must be located on a lot that will meet the dimensional requirements shown in the schedule which follows.
- 402.2 Separate cooking facilities and a separate bathroom shall be provided for each family unit.

CONVERSION OF ONE-FAMILY DWELLINGS MINIMUM DIMENSIONS

	Width	Width of Lot in Feet at Front Building Line		Lot Area In Square Feet		quare Side Yards (feet)		
Zone	Duplex ¹	Semi- Detached ¹	Each Add. Fam.	Two Families	Each Add. Family	Min. For One	Sum of Both	
D.R.1	175	175	25	50,000	10,000	Int. 25 Cor. 50	Int. 60 Cor. 75	
D.R.2	125	125	25	25,000	7,500	Int. 20 Cor. 35	Int. 50 Cor. 60	
D.R.3.5	90	100	15	12,500	4,000	Int. 20 Cor. 30	Int. 40 Cor. 50	
D.R.5.5	80	90	15	10,000	3,000	Int. 15 Cor. 25	Int. 35 Cor. 40	
D.R.10.5	70	80	10	Interior 8,050 Corner 9,200	2,500	Int. 15 Cor. 25	Int. 30 Cor. 40	
D.R.16	70	80	10	Interior 8,050 Corner 9,200	2,500	Int. 15 Cor. 25	Int. 30 Cor. 40	

NOTES:

The original BCZR 1955 definitions of "dwelling, duplex" and "dwelling, semi-detached" were deleted from Section 101 by Bill No. 100-1970. The entries previously read as follows:

[&]quot;Dwelling, Duplex: A two-family detached building with one housekeeping unit over the other.

[&]quot;Dwelling, Semi-detached: A building that has two one-family housekeeping units erected side by side on adjoining lots, separated from each other by an approved masonry party wall extending from the basement or cellar floor to the roof along the dividing lot line, and separated from any other building by space on all sides."

١,

For tearoom or restaurant use:

- To be converted for tearoom or restaurant use in an D.R.1 or D.R.2 Zone¹ as a special exception, the following requirements must be met:
 - A. Meals may be served only at tables, indoors or on an outdoor terrace, and not to persons remaining in cars.²
 - B. The minimum lot size shall be one acre.
 - C. Signs are permitted, subject to Section 450; [Bill No. 89-1997]
 - D. Service shall be provided only at mealtimes.³

Section 402A (Reserved)

Section 402B Antique Shops In Residential Zones [Bill No. 31-1978]

- An antique shop may be allowed, by special exception, in an R.C.2, R.C.4, R.C.5, D.R.1 or D.R.2 Zone only outside the urban-rural demarcation line and only on a lot no smaller than one acre; in a D.R.16 Zone, an antique shop is allowable only in a building originally constructed as a one-family dwelling that is situated on a lot with frontage on a Class I or Class II commercial motorway or in a historic district so designated by the National Register of Historic Places or the final landmarks list of the Baltimore County Landmarks Preservation Commission.
- 402B.2 No display or storage of merchandise shall be visible from any public street.
- 402B.3 Signs are permitted, subject to Section 450. [Bill No. 89-1997]

¹ Editor's Note: Such conversions are also permitted in certain R.C. Zones. See Article 1A.

² Editor's Note: Former Subsection B, which followed this subsection and established a parking space requirement, was repealed by Bill No. 26-1988.

Editor's Note: Former Section 402.4, Elevator Apartment Buildings and Office Buildings, Conditions for Accessory Business Uses in, which was added by Resolution, November 21, 1956, to follow this subsection, as amended by Bill No. 64-1960, was repealed by Bill No. 167-1980.

Section 402C Residential Art Salons [Bill Nos. 32-1978; 31-1984]

- 402C.1 A residential art salon may be allowed, by special exception, in an R.C.2, R.C.5, D.R.1 or D.R.2 Zone only outside the urban-rural demarcation line and only on a lot no smaller than one acre; in a D.R.16 Zone, a residential art salon is allowable only in a building originally constructed as a one-family dwelling that is situated in a historic district so designated by the National Register of Historic Places or the final landmarks list of the Baltimore County Landmarks Preservation Commission or on a lot with frontage on a Class I or Class II commercial motorway.
- 402C.2 No display or storage of merchandise shall be visible from any public street.
- 402C.3 Signs are permitted, subject to Section 450. [Bill No. 89-1997]
- 402C.4 Off-street parking spaces shall be provided in accordance with Section 409, except that, irrespective of any conflicting provisions of Section 409, off-street parking shall be provided for at least 10 cars in an R.C.2, R.C.5, D.R.1 or D.R.2 Zone and for at least 5 cars in a D.R.3.5 or D.R.5.5 Zone, and none need be provided in a D.R.16 Zone. All off-street parking spaces shall be screened in accordance with the Baltimore County Landscape Manual standards and criteria for commercial, office and industrial development.
- 402C.5 Hours of operation shall be not earlier than 10:00 a.m. and not later than 10:00 p.m. daily, or such shorter hours as the Zoning Commissioner may prescribe.

Section 402D Conversion of Dwellings to Bed-and-Breakfast Home or Bed-and-Breakfast in D.R. or R.C. Zones [Bill No. 113-1988]

Upon application, the Zoning Commissioner may issue a use permit (under Section 500.4) for the use of land, subject to the following conditions:

402D.1 The converted dwelling shall be located on a lot that will meet all of the dimensional requirements for its size and zone as indicated in the following table:

	Width of Lot in Feet at Front Building Line		Lot Area in Square Feet			
Zone	1 - 3 Rooms	Each Additional Room	1 - 3 Rooms	Each Additional Room	Side Yard: Minimum/ Side	Sin Feet Sum of Both
All R.C.'s or D.R.1	175	25	50,000	10,000	Int. 25 Cor. 50	Int. 60 Cor. 75
D.R.2	125	25	25,000	7,500	Int. 20 Cor. 35	Int. 50 Cor. 60
D.R.3.5	90	15	12,500	4,000	Int. 20 Cor. 30	Int. 40 Cor. 50
D.R.5.5	80	15	10,000	3,000	Int. 15 Cor. 25	Int. 35 Cor. 40
D.R.10 or D.R.16	70	10	Int. 8,050 Cor. 9,200	2;500	Int.: 15 Cor. 25	Int. 30 Cor. 40

- 402D.2 [Bill No. 172-1993] The converted dwelling shall be:
 - A. Situated on a lot with frontage on a principal arterial;
 - B. Officially designated as historic or located in a historic district, as identified on the Zoning Maps (or eligible for identification on the Zoning Maps); or
 - C. On a property located outside the urban-rural demarcation line (URDL).
- 402D.3 Individual rooms which are rented may not contain cooking facilities.
- 402D.4 The owner shall reside on the premises.
- 402D.5 Signs are permitted, subject to Section 450. [Bill No. 89-1997]
- 402D.6 Parking shall conform to provisions in Section 409 of these regulations.
- 402D.7 Screening shall be provided in accordance with the Baltimore County Landscape Manual.
- 402D.8 If the requirements for parking would require the elimination of existing amenities, the Zoning Commissioner may approve a modified plan under provisions in Section 409.12 of these regulations.
- 402D.9 Any structures established as a bed-and-breakfast facility and in operation of the date of enactment of this section shall be considered a lawful existing use, provided that the owner of such a facility applies for a use permit within 30 days of the enactment of this section and provides sufficient documentation to the satisfaction of the Zoning Commissioner that the facility has operated as a bed-and-breakfast facility according to the definitions in Section 101 and the provisions of 402F.
- 402D.10 Only structures constructed prior to the date of adoption of this section are eligible to apply for a use permit.

Section 402E Conversion of Dwellings to Country Inn in D.R. or R.C. Zones [Bill No. 113-1988]

Upon application, the Zoning Commissioner may grant a special exception (under Section 500.5) for the use of land, subject to the following conditions:

- 402E.1 The converted dwelling shall be located on a lot that will meet the dimensional requirements as indicated in Section 402D.1.
- 402E.2 [Bill No. 172-1993] The converted dwelling shall be:
 - A. Situated on a lot with frontage on a principal arterial; or
 - B. On a property located outside the urban-rural demarcation line (URDL).
 - C. The converted dwelling may not be located in any historic district, except the Ellicott Mills-Oella Historic District.

- 402E.3 Individual rooms which are rented may not contain cooking facilities.
- 402E.4 The owner or manager shall reside on the premises.
- 402E.5 Signs are permitted, subject to Section 450. [Bill No. 89-1997]
- 402E.6 Parking shall conform to provisions for both the number of rental rooms and the restaurant space in Section 409.6 of these regulations.
- 402E.7 Screening shall be provided in accordance with the Baltimore County Landscape Manual.
- 402E.8 If the requirements for parking would require the elimination of existing amenities, the Zoning Commissioner may approve a modified plan under provisions in Section 409.12 of these regulations.
- 402E.9 Only structures constructed prior to the date of adoption of this section are eligible to apply for a special exception.

Section 402F Reservation Book or Log [Bill No. 113-1988]

The owner or manager of a bed-and-breakfast home, a bed-and-breakfast inn or a country inn shall maintain a reservation book or a registration log. The book or log shall show the arrival and departure dates of all guests and shall be open for inspection by a zoning compliance officer.

Section 402G Enlargement of Country Inn [Bill No. 113-1988]

A country inn may be enlarged to accommodate facilities required for the operation of the inn, provided that the original character and the basic residential appearance of the building is maintained, as determined by the Zoning Commissioner at a special hearing according to the provisions of Section 500.7. In cases where the country inn will be located in a historic building or historic district, as identified on the Zoning Maps (or eligible for identification on the Zoning Maps), such enlargements are also subject to the provisions of Article X, Section 26-547, of the Baltimore County Code, 1988 Edition, as revised.

27, 34, 146 A.2d 864, 868. Here it was not performed, and, if the further assumption be made that the condition was not one for the benefit of both parties to the contract, as in Metz v. Heflin, supra, but was for the protection only of the buyer, it could have been excused or waived by him as being a provision for his benefit, see Griffith v. Scheungrab, supra; Bluthenthal & Bickart v. May Co., 127 Md. 277, 282, 96 A. 434; Gill v. Weller, 52 Md. 8, 15; 17 Am.Jur.2d Contracts §§ 361, 392; 3A Corbin, Contracts § 761 (1960); cf. Restatement, Contracts §§ 88 and 297, but the excusing or waiving would have had to be done before the expiration of the current zoning application term or within a reasonable time thereafter.

The written agreement of the parties was that both were bound if satisfactory rezoning were obtained by the specified time. After that time had expired without obtention of the rezoning, the buyer was not bound, and if the obligation of the sellers after that time were to continue or be extended, he must have agreed within a reasonable time thereafter to have become bound again. The situation is as if the sellers, at the end of the then current zoning application term, had again offered to sell the property for so much cash; in which case the buyer would have had to accept the offer within a reasonable time or have it lapse.

[7] It is hornbook law that an offer of no specified duration must be accepted within a time reasonable under the circumstances or the offer will lapse and a subsequent attempt to accept will be of no effect. Restatement, Contracts § 40 (1932); 1 Corbin, Contracts § 36 (1963); 17 C.J.S. Contracts § 51 (1963); Van Camp Co. v. Smith, 101 Md. 565, 573, 61 A. 284; cf. Hagan v. Dundore, 185 Md. 86, 43 A.2d 181, 160 A.L.R. 517; and Chapman v. Thomas, 211 Md. 102, 126 A.2d 579.

[8,9] In mid-1960 the buyer knew the condition had not been met, but it was not until three years later, on May 14, 1963, in his amended bill for specific performance,

that he first indicated by word or act that he was willing to excuse or waive the condition and take the land as it was. Some sixteen months after the last day of the critical zoning application term, when the sellers wrote that the contract had terminated, he took the position it was still in force, subject to the condition. Four months later he filed a bill which in effect asked a declaration that he still had time to obtain the rezoning because the District Council had not yet acted. His delay in excusing or waiving the condition was unreasonable as a matter of law in light of the notification of termination by the sellers and the rapidly rising prices of real estate in Montgomery County. Cf. Doering v. Fields, 187 Md. 484, 50 A.2d 553. Generally, whether a delay in accepting an offer is unreasonable under the circumstances is a question for the trier of fact to decide, but if the facts and permissible inferences are undisputed, as they are here, a court will rule on the point as a matter of law. 17A C.J.S. Contracts § 632 (1963); Van Camp Co. v. Smith, and Hagan v. Dundore, both supra.

Order affirmed, with costs.



240 Md. 547

SALISBURY BOARD OF ZONING APPEALS et al.

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Edward G. BOUNDS et al.

No. 41.

Court of Appeals of Maryland.

Dec. 2, 1965.

Proceeding on appeal from denial of variance. The Circuit Court for Wicomico County, Rex. A. Taylor, J., granted relief, and appeal was taken. The Court of Appeals, Marbury, J., held that filing of zoning board's transcript should follow filing

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of petition stating reasons for appeal from board, and applicants' failure to file petition alleging grounds for appeal was not excused by fact that transcript was not available before expiration of time for filing petition.

Reversed.

1. Zoning \$374, 590

Filing of zoning board's transcript should follow filing of petition stating reasons for appeal from board, and applicants' failure to file petition alleging grounds for appeal from denial of variance was not excused by fact that transcript was not available before expiration of time for filing B7 a.

2. Zoning \$=587

Court on appeal from denial of variance did not have discretion to condone late filing of petition stating grounds for appeal, regardless of showing of prejudice. Maryland Rules, Rules B2 e, B5.

3. Zoning €--497

Self-inflicted hardship resulting from owners' construction of four apartments in old house on lot which was large enough only to accommodate three apartments under zoning regulations, under misunderstanding that building permit had been issued, was not basis for variance.

4. Zoning \$\infty\$496, 497

There is hardship which may be relieved by variance where property, due to unique circumstances, cannot reasonably be adapted to use in conformity with zoning restrictions, but hardship must be caused solely through manner of operation of ordinance and variance cannot be granted if circumstances have been themselves caused or created by owner or his predecessor in title.

5. Zoning \$=512

Purely financial hardship resulting from prohibition of four-apartment dwelling would not, even if not self-inflicted, justify grant of variance to owners who had remodeled house so as to contain four apartments.

6. Zoning €=233

Board of zoning appeals was not empowered to overlook clear and ambiguous language of ordinances.

Victor H. Laws, City Sol., Salisbury, for appellants.

Hamilton P. Fox, Salisbury (Hearne, Fox petition. Maryland Rules, Rules B2 e, B5, & Bailey, Salisbury, on the brief), for appellees.

> Before HAMMOND, MARBURY, OP-PENHEIMER, BARNES and McWIL-LIAMS, JJ.

MARBURY, Judge.

The matter to be determined in this case is whether appellees will be allowed a variance to permit the use of a house, located at the southeast corner of West William Street and Park Avenue in Salisbury, Maryland, to be used as a four family dwelling instead of a three family dwelling, the latter being permitted without the necessity of obtaining a variance. Under the Salisbury Zoning Ordinance, before making any structural changes in a building, a permit must be obtained from the city's building inspector. The applicable sections of the Zoning Code provide that the request for such a permit must be made on a form supplied by the building inspector and signed by the applicant or his agent. The building inspector is then to determine whether the proposed changes will conform to the city's Zoning Code. If the requirements of the Code are met the building inspector is authorized to issue the building permit. In the instant case the appellees did not comply with the formal requirements of the Zoning Code,

and as a result a series of misunderstandings ensued which resulted in four apartment units being built within the old house without the necessary building permit being issued. The appellees contend that the financial hardship which has resulted from these misunderstandings are the special circumstances upon which a variance should have been granted.

Edward G. Bounds and S. Norman Holland, Jr., appellees, in July or early August, 1964, purchased the subject property which contained some 8,500 square feet of land, and was improved by an old, three story, frame house which had been used as a single family dwelling. Prior to the purchase one of the appellees, Edward G. Bounds, together with Joseph B. Pettus, Jr., then building inspector for the city of Salisbury, visited the subject property in order to ascertain whether the house when converted into four, or possibly five, apartment units would comply with the density requirements of the Zoning Ordinance. The Salisbury Zoning Code requires a minimum of 2,500 square feet of land per family for a frame building in a residential C district in which the house is located. Measurements were made by Bounds and Pettus at this time on the incorrect assumption that the property extended to the curb line of the street instead of to the edge of the sidewalk nearest the house, which was the actual boundary. It is presently uncontroverted that even with the curb line being used as the boundary, the subject property would encompass something less than the 10,000 square feet required for four apartment units.

Thinking that the property contained "approximately 10,000 square feet," Pettus advised Bounds that five apartment units would not be allowed without a variance, but that four apartment units could be constructed by merely obtaining a building permit. Appellee Bounds advised the building inspector that he was going to Arkansas for a few days and told Pettus the name of his partner (co-appellee herein), the name of his attorney, and stated: "if you'll take care of it [obtaining a permit], I'll

appreciate it." Pettus apparently agreed to make the necessary arrangements for the building permit, and did in fact issue a plumbing permit but he neglected to take any action with respect to the informally requested building permit.

When Bounds returned from his trip, he observed a building permit tacked to a tree on the property and he assumed, without examining, that it was the one he had requested Pettus to issue. Actually this permit was one granted some four years earlier which merely authorized a former owner to make minor repairs. Without further consultation with city officials, the appellees began making the structural changes necessary to convert the building into four apartment units. After eight-five to ninety per cent of these changes had been made, the appellees discovered that they did not have a building permit. Appellees then made a formal application for the permit and the acting building inspector, Joe T. Hearn, issued a building permit on October 19, 1964, albeit authorizing only three apartment units. At this time the appellees had completed substantially one hundred per cent of the work on four apartment units.

When the acting building inspector refused to issue a building permit or a certificate of occupancy for the fourth family unit, Bounds and Holland applied to the Salisbury Board of Zoning Appeals to grant them a variance so as to allow the fourth apartment. The Board, after a hearing, refused to grant such a variance on the grounds that the applicants were responsible for obtaining a valid permit and had demonstrated no hardship other than financial, which was legally insufficient.

The appellees here then appealed the Board's decision to the Circuit Court for Wicomico County. In their order for appeal the appellees failed to set forth the error committed by the agency from which the appeal was taken and this information was not supplied within ten days, as allowed by Maryland Rule B2 c. The appellants here filed a timely motion to dismiss the

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appeal, setting forth the failure to specify the alleged error committed by the Board as the reason for the motion. Bounds and Holland then attempted, some forty days after filing their order for appeal, to correct the deficiency by filing a petition "in accordance with Rule B2 e" alleging numerous grounds for appeal. Rule B5. Dismissal of Appeal, states:

"If the appellant shall fail to file his order for appeal within the time prescribed by Rule B4 (Time for Filing) or any order issued pursuant thereto, or shall fail to file his petition within the time prescribed by section e of Rule B2 (How Appeal Taken), the court shall dismiss the appeal unless cause to the contrary be shown."

The motion to dismiss the appeal was argued before Judge Taylor on February 1, 1965. The appellees argued that the cause to the contrary shown for failing to state reasons why the Board should be reversed was that they did not have the transcript of the Board's proceedings until the date on which the motion to dismiss was filed. The trial court reserved ruling on the motion until after hearing the case on its merits. On March 1, 1965, Judge Taylor heard arguments of counsel as to the merits of the case. He then denied the motion to dismiss the appeal, and on March 4, 1965, issued an order reversing the decision of the Board of Zoning Appeals and ordering the director of the Bureau of Inspections to issue a building permit to the applicants (appellees herein), which as well had the effect of granting the variance for which application had been made. The trial judge did not set forth his reasons for denying the motion to dismiss or for the reversal of the Board, and none of the parties availed themselves of Rules 18c and 564 b 2, which provide that the court upon motion of any party, seasonably made, shall prepare and file with the clerk a brief statement of the grounds for decision.

The Salisbury Board of Zoning Appeals and Henry P. Wojtanowski, Director of the

Bureau of Inspections for the City of Salisbury, appealed to this Court contending (1) that the appellees' appeal to the trial court from the Board should have been dismissed for failure to comply with Rule B2 e, and (2) apart from procedural questions the trial court committed reversible error in reversing the decision of the Board.

[1] As to the failure to comply with Rule B2 e and the resultant motion to dismiss pursuant to Rule B5, appellees (Bounds et al.) stressed the fact that the transcript of the testimony taken before the Board was not filed or otherwise made available to . them until December 28, 1964, ten days after the deadline for filing their petition had passed. Appellees assert that this was "cause to the contrary" under Rule B5 for their failure to file a petition stating the reasons for the appeal in compliance with Rule B2 e, but no Maryland case so holds and it is difficult to envision how such a contention could be sustained in view of the specific language of Rule B7 a, which indicates that the Board must file its record with the trial court after it receives an appellant's petition pursuant to Rule B2 e. The germane language of Rule B7 is:

"Record.

"a. Time Within Which Required —Content. Promptly after receipt of a copy of the first petition filed in a case pursuant to section e of Rule B2 (How Appeal Taken) and in any event within thirty days after such receipt, * * * the agency shall transmit to the clerk of the court the original or a certified copy of the record of its proceedings, including any transcript of testimony and any exhibit filed therein; * * *."

Since the above language clearly shows that the filing of the transcript shall follow, and not precede, the filing of the petition stating the reasons for the appeal, applicants below were not justified in waiting for the transcript before they ventured to state the reasons for their appeal and thus the appellees herein failed to show a cause to the contrary which would justify the lower court's refusal to dismiss the appeal for non-compliance with Rule B2 e.

[2] It was suggested, in appellees' brief and in argument before us, that absent a showing of prejudice to the appellants caused by the late filing of the petition, it was within the discretion of the trial court whether to condone the late filing of the petition and hear the case on its merits or to dismiss the appeal. The short answer to this is that Rules B2 e and B5 do not require any showing of prejudice to the adverse party and Rule B5 plainly states that the trial court, in the absence of cause to the contrary, shall dismiss the appeal for non-compliance with Rule B2 e.

Even though we think it was reversible error for the trial court to deny the motion to dismiss the appeal, we think the trial court also erred in reversing the order of the Board denying the variance.

[3, 4] Under Section 49.3 of the Salisbury Zoning Code, in order to authorize the variance applied for in this case, the Board was required to find that enforcement of the Code's population density provision would "* * * result in unwarranted hardship and injustice * * *" because of "* * * special conditions * * *." The only evidence before the Board as to hardship or injustice involving the property was the fact that repairs and alteration work had been substantially completed before an application for either a variance or a building permit had been made and that what had been done could not be undone without financial hardship to appellees. The appellants contend that a self-inflicted hardship such as was evident in this case can not be the basis for a variance, We agree. The general rule on this point is succinctly stated in 2 Rathkopf, The Law of Zoning and Planning, 48-1:

"§ 1. Hardship Caused by Affirmative Acts of Commission.

"Where property, due to unique circumstances applicable to it, cannot

reasonably be adopted to use in conformity with the restrictions of the zoning ordinance, hardship arises which is capable of being relieved through the grant of a variance. The restrictions of the ordinance, taken in conjunction with the unique circumstances affecting the property must be the proximate cause of the hardship. If the peculiar circumstances which render the property incapable of being used in accordance with the restrictions contained in the ordinance have been themselves caused or created by the property owner or his predecessor in title, the essential basis of a variance, i. e., that the hardship be caused solely through the manner of operation of the ordinance upon the particular property, is lacking. In such case, a variance will not be granted; the hardship, arising as a result of the act of the owner or his predecessor will be regarded as having been self-created, barring relief.

"This rule is simple and of general application in the several states.

"There is a uniform application of the rule in those cases in which there has been an act on the part of the property owner or his predecessor which has physically so affected the property as to create a unique circumstance or which in itself created either a practical difficulty or hardship in conforming to the restrictions of the ordinance."

The instant case fits squarely within the above general rule. The construction of the fourth apartment and the resultant hardship could have been avoided if the appellees had used proper diligence in ascertaining what the density requirements were for a four apartment dwelling within the district in which this property is located, and then made accurate measurements to see if this particular property met the square footage requirements. The hardship here relied on was entirely self-

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Cite as 214 A.2d 815

created and the Board properly refused to allow it to be used as a fulcrum to lift, by way of a variance, the valid limitations imposed by the Salisbury Zoning

Code.

Aside from the fact that the hardship shown to the Board was self-inflicted, it was also shown to be of a purely financial nature, i. e., that the applicants' return on their investment would be somewhat lower if the fourth apartment should remain unoccupied. Here the appellecs made no attempt to show that further structural changes could not be reasonably made so that all the space in the house could be utilized in three apartment units, or that if the fourth apartment remained vacant the return on their investment would be other than reasonable. Under these circumstances we think the Board would have been correct in denying them the requested variance even if the hardship upon which it was based had

not been self-inflicted.

[6] Much of the appellees' brief seems to suggest that the deficiency in lot size as applied to the city's population density requirement was really not material since there would be no injury to the public, and as a consequence the Board would have been justified in overlooking this comparatively slight deviation. However, that administrative body was not empowered to overlook the clear and unambiguous language of the Salisbury Zoning Ordinances. The legislative body which enacted these regulations can, of course, always make changes in them, but until this is done the citizens of Salisbury are entitled to the strict enforcement of the existing zoning ordinances. Since sufficient grounds for a variance were not shown, the Board correctly refused to deviate from the legislative determination of what the proper density requirements should be.

Order reversed, costs to be paid by appellees.

240 Md. 615 William KENNEDY et al.

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James K. FOLEY, Rec'r for Sentinel Publishing Co., Inc., et al.

No. 313.

Court of Appeals of Maryland. Dec. 8, 1965.

Incident to liquidation of three insolvent corporations, the Circuit Court for Montgomery County, Kathryn J. Shook, J., determined that chattel mortgages were valid, and an appeal was taken. The Court of Appeal, McWilliams, J., held that the time for appeal began to run from date of filing of orders that chattel mortgages were valid and not from date of court's oral opinions that chattel mortgages were valid.

Motions to dismiss appeal denied in part and granted in part and case remanded with directions.

Appeal and Error €=343

The time for appeal began to run from date of filing of orders that chattel mortgages were valid and not from date of court's oral opinions that chattel mortgages were valid.

Charles A. Dukes, Jr., Hyattsville, for appellants.

Richard F. Cadigan, Baltimore, for Blakeley Bank & Trust Co., appellee.

Saul M. Schwartzbach, Adelphi, for American Security & Trust Co., appellee.

Before PRESCOTT, C. J., and HAM-MOND, HORNEY, MARBURY, OPPEN-HEIMER, BARNES and McWILLIAMS, JJ.

McWILLIAMS, Judge.

Incident to the liquidation of three insolvant corporations the trial court had oc-

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IN RE:

PETITION FOR VARIANCE

SE/S Carney Road, 225' SW of

the c/l of Second Avenue

(9305 Carney Road)

11th Election District 6th Councilmanic District

Joseph Horodowicz, et ux

Petitioners

* BEFORE THE

* DEPUTY ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* Case No. 98-342-A

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* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner for consideration of a Petition for Variance filed by the owners of the subject property, Joseph and Maria Horodowicz, through their attorney, Michael Paul Smith, Esquire. The Petitioners seek relief from Section 402 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot width of 50 feet in lieu of the required 80 feet; a side yard setback of 8.5 feet in lieu of the required 15 feet; a side yard setback sum of 18.5 feet in lieu of the required 35 feet; and, to amend the previously approved site plan in prior Case No. 75-109-A to reflect the proposed modifications. The subject property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petition were Joseph Horodowicz, property owner, and Michael Paul Smith, Esquire, attorney for the Petitioners. Appearing as Protestants in the matter were Michael and Dawn Eck, and Scott G. Bolch, adjacent and nearby property owners.

Testimony and evidence offered revealed that the subject property consists of a gross area of 0.2296 acres, more or less, zoned D.R. 5.5, and is improved with a 2 and 1/2 story brick dwelling. As a result of a complaint filed by Mr. and Mrs. Michael Eck as to the use of the property

as apartments, the Petitioners were cited with a zoning violation notice and advised to file the instant Petition. At the opening of the case, Mr. Smith advised that the purpose for filing the variance request was to legitimize the property's use as a multi-family dwelling. Testimony indicated that the existing dwelling was constructed in 1975 and that there have been no structural changes. Testimony revealed that the lot is long and narrow; however, its zoning classification as D.R. 5.5 would allow two density units.

In further support of the Petitioners' request, Mr. Horodowicz testified that he and his wife purchased the property in April 1997 and have been using the dwelling as multi-apartments since that time. He testified that he rents out two apartments at this time, but that there are three apartments within the house.

Appearing in opposition to the Petitioners' request were adjacent property owners, Michael and Dawn Eck, and Scott Bolch, who resides across from the subject property. The Ecks and Mr. Bolch are opposed to the use of the subject property as a multi-family dwelling. They testified that the property was built by the Norton family in 1975 as a single family residence and that it was always used as a single family home until its purchase by the Horodowiczs. The Protestants testified that the house itself is very large and photographs of same would indicate that it was originally constructed for multi-family use. However, it was never used as such until the Horodowiczs purchased same in 1997.

It is also to be noted that this property was the subject of prior Case No. 75-109-A in which variance relief from front and side yard setback requirements was granted on November 26, 1974 by then Deputy Zoning Commissioner James E. Dyer to the Norton family in order to construct the

subject dwelling. However, Mr. Dyer specifically restricted the use of the property to a single family dwelling and noted within his Order that the variance relief being granted was not to be construed to permit any more than one dwelling on the subject site. Apparently, Mr. Dyer had concerns at that time that a multi-family use of the property might be intended, given the size of the dwelling, and he specifically prohibited same as a condition of the granting of the relief requested. Furthermore, reference is made to the comments submitted by the Office of Planning wherein they requested that the variances be denied.

After due consideration of the testimony and evidence presented in the instant case by both the Petitioners and the Protestants, and in view of the restrictions imposed by Mr. Dyer in prior Case No. 75-109-A, I am persuaded to deny the variances. It is clear that Mr. Dyer intended that the subject property be used only as a single family dwelling when he granted the prior variance relief. Given Mr. Dyer's previous decision and the objections raised by the neighbors, I find that the relief requested must be denied and that the subject property must be used as a single family dwelling. Furthermore, its present use as a multi-family dwelling must cease and the Petitioners shall be required to return the property to a single family use within one hundred and twenty (120) days of the date of this Order.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the variance shall be denied.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 20th day of July, 1998 that the Petition for Variance seeking relief from Section 402 of the Baltimore County Zoning

Regulations (B.C.Z.R.) to permit a lot width of 50 feet in lieu of the required 80 feet; a side yard setback of 8.5 feet in lieu of the required 15 feet; a side yard setback sum of 18.5 feet in lieu of the required 35 feet; and, to amend the previously approved site plan in prior Case No. 75-109-A to reflect the proposed multi-family dwelling use, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED and subject to the following restrictions:

- 1) The Petitioners have 120 days from the date of this Order to cease using the subject property as a multi-family dwelling (apartments) and to return same to its original use as a single family dwelling.
- 2) Upon request and reasonable notice, Petitioners shall permit a representative of the Zoning Enforcement Division to make an inspection of the subject property to insure compliance with this Order in the event it becomes necessary to do so as a result of a complaint.
- 3) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

IT IS FURTHER ORDERED that the Petitioners shall have thirty (30) days from the date of this Order to file an appeal of this decision.

TIMOTHY M. KOTROCO

Deputy Zoning Commissioner

for Baltimore County

TMK:bjs

ORDER RECEIVED FOR FILING By.



OB FILING

DADER RECEIVE

Date_

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 9305 Carney Road

This Petition shall be filed with the Department of Permits & 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). Petitioner is requesting a variance to Section 402 of the BCZR to permit (I) A lot width of 50 feet in Tieu of the feedulined lot width of 80 feet (A thirty foot variance); (II) A side yard set back of 15 feet in Tieu of a side yard setback of 15 feet (A 5.5 foot variance); and (III) A side yard setback of 15 feet in Tieu of the required side yard set back for both sides of 18.5 feet in Tieu of the required side yard set back for both sides of 18.5 feet in Tieu of the required side yard set back for both sides of 18.5 feet in Tieu of the required side yard set back for both sides of 18.5 feet in Tieu of the required side yard set back for both sides of 18.5 feet in Tieu of the required side yard set back for both sides of 18.5 feet in Tieu of the required side yard set back for both sides of 18.5 feet in Tieu of the required side yard set back for both sides of 35 feet (A 16.5 foot variance). AND TO AMENDITIE LAST APPEARED PLAN AND DRIVER of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (indicate hardship or IN Zent) No CASE

Please see attachment.

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.

	VWe do solemnly declare and affirm logal owner(s) of the property which	n, under the penaltic is the subject of this	s of perjury, that t/we are the Petition.
Contract Purchaser/Lessee:	Legal Owner(s):	•	
	Joseph Horodowi	icz	
(Type or Print Name)	(Type or Print Name)		
Signature	Signature Horse	las'eg	·—
Address	Maria Horodowicz		
City State Zipcode	(Type or Print Name) Mana Holo Signature	olonia	
Attorney for Petitioner:	- g. maiore	O	· · · · · · · · · · · · · · · · · · ·
Michael Paul Smith, Esquire	2914 Scherer Aver	iue Jia	1127
Midul Pul Sa H	Address Baltimore,	MD.	Phone No 21234
Signature	City Name, Address and phone number of	State sepresentative to be	Zipcode contacted.
143 Main Street (410) 833-1221			
Reisterstown, MD 21136	Name		-
State Zipcode	Address		Phone No.
		ICE USE ONLY	
•	ESTIMATED LENGTH OF HEARING	ilebie for Heering	
,	the following dates		Next Two Months
Printed with Soybean Ink on Recycled Paper	ALLOTHE	:A	
Revised 9/5/95	REVIEWED BY:	DATE	

98-342-A

342

Statement in Support of Petition for Variance

The subject property is zoned D.R.5.5 and has a total area of 10,000 square feet. Section 402 of the BCZR permits the subject property to be used as a two-family dwelling provided the subject property meets, among other things, the dimensional requirements contained therein and from which we are hereby requesting a variance.

The dwelling, along with many others in the immediately surrounding area, was built with narrow lot lines in the early 1970's in violation of the then existing setback requirements contained in Section 1B02.3(c) of the BCZR, from which a zoning variance was granted pursuant to Case No. 75-109-A. The Department granted this prior variance to allow (i) a minimum lot width of 50 feet in lieu of the required 55 feet (a 5 foot variance); (ii) a minimum front yard depth of 19 feet in lieu of the required 25 feet (a 6 foot variance); and (iii) a minimum width of an individual side yard of 8.5 feet in lieu of the required minimum width of an individual side yard of 10 feet (a 1.5 foot variance.) This prior variance allowed for the subject property to be used as a single family dwelling and no additions to the subject dwelling are contemplated at this time.

However, the subject property is unique from the neighboring properties in that it is the only two and one half story dwelling located in the immediately surrounding area. Thus the subject property is inherently designed to be used as a two family dwelling. The neighboring properties are different in the fact that many of them are only designed to simply house one family. Thus, the impact of Section 4.02 on the subject property is different than the impact upon the neighboring properties. Even if the neighboring property owners desired to convert their dwellings into two family dwellings, their dwellings are simply not designed to accommodate such use. Unreasonable hardship will be imposed upon the subject property if this variance is not granted as the owners will simply be prohibited from using their property in the manner for which it was inherently designed.

Your granting of the requested variance will not in anyway be detrimental to the health, safety or general welfare of the neighborhood. The granting of the requested variance will not have any noticeable impact on the surrounding neighborhood. Thus, for all the above mentioned reasons we hereby respectfully request that the requested zoning variance be granted.

PROEF FIEGEWED FOR FILLING

F \BNDSH\CLIENTS\HORODOWI TJD\VARIANCE PET

MV

February 2, 1998

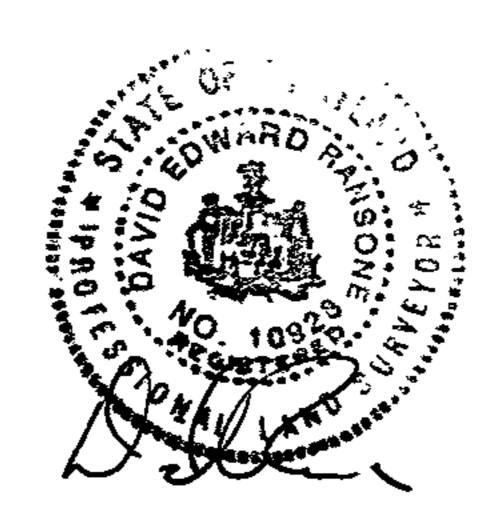
Zoning Description - 9305 Carney Road

All that lot(s) of ground situate, lying and being in the Eleventh Election District of Baltimore County, State of Maryland and described as follows to wit:

Beginning for the same on the Southeast side of Carney Road, 30 feet wide, distant 225 feet measured Southwesterly from the centerline of Second Avenue, running thence and binding on the Southeast side of Carney Road South 44 degrees 08 minutes West 50 feet, thence running South 45 degrees 52 minutes East 200 feet to the Northwest side of Hillside Road, 30 feet wide, thence binding on the Northwest side of said road, North 44 degrees 08 minutes East 50 feet, and thence running North 45 degrees 52 minutes West 200 feet to the place of beginning.

The improvements thereon being known as 9305 Carney Road.

This description is to be used for Zoning purposes and requirements only.



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 <u>Tow-</u> son, <u>Maryland</u> on the property identified herein as follows:

Case: #98-342-A 9305 Carney Road, 225' SW of Second Avenue 11th Election District 6th Councilmanic District Legal Owner(s):

Joseph Horodowicz & Maria Horodowicz

Variance: to permit a lot width of 50 feet in lieu of the required 80 feet; a side yard setback of 8.5 feet in lieu of 15 feet; a side yard setback for both sides of 35 feet; and to amend the last approved plan and order in zoning case 75-109-A

Hearing: Monday, May 18, 1998 at 2:00 p.m., in Room 407, County Courts Bldg., 401 Bosley 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.

5/541 April 30 C224709

CERTIFICATE OF PUBLICATION

TOWSON, MD., 4/30 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 $\frac{1}{20}$ successive weeks, the first publication appearing on $\frac{4}{30}$, 1998
weeks, the first publication appearing on $4/30$, 1998
THE JEFFERSONIAN,
a. Henrelism
LEGAL AD TOWSON

BALTIMORE COUNTY, MARYI ND OFFICE OF BUDGET & FINANCE MISCELLANEOUS RECEIPT DATE 8/17/98 ACCOUNT 001-6150 AMOUNT \$ 210.00 RECEIVED FROM: Bodie, Nagle, Dolina, Smith & Hobbs FOR: APPEAL FOR VARIANCE CASE #98-342-A 94 9305 Carney Road	PAID RECEIPT PROCESS ACTUAL TIME 8/18/1998 8/17/1998 15:12:22 REC USOS CASHTER LIMI L'AS DRIMER 5 5 MISCELLANGES CASH RECEIPT RECEIPT # 071542 OFLIN CR NO. 058668 Baltimore County, Maryland
DISTRIBUTION WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER	CASHIER'S VALIDATION
BALTIMORE COUNTY, MAR AND OFFICE OF BUDGET & FINANCE MISCELLANEOUS RECEIPT JUL 342 No. 51734 DATE 3/19/98 ACCOUNT ROOIGO 50 AMOUNT \$ 50.00	FRUSESS ACTUAL TIME 3/19/17/8 3/19/19/8 10:31:37 AT WEST CASHIER STRY BXT TRAVER 5 MISSELLANDE CASH RETEIPT Reseipt 4 05/57/3 OF N CX NO. 05/77/9 50.00 CHECK: 1/4

DISTRIBUTION
WHITE - CASHIER

PINK - AGENCY

YELLOW - CUSTOMER

CASHER'S VALIDATION

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The <u>Baltimore County Zoning Regulations</u> (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:
Item Number or Case Number: 98-372-A
Petitioner: Joseph and Manja Honodowicz
Petitioner:
PLEASE FORWARD ADVERTISING BILL TO:
Name: Joseph Bonodou icz
Address: 2914 Scherer Avenue
BART MI) 2 (234
Telephone Number: 410 665 - 1133 (+)
410 628-6617 (W)

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:

ZONING NOTICE

Case No.: 98-342-A

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

PLACE:
DATE AND TIME:
REQUEST: VARIANCES TO PERMIT A SOFT LOT WIDTH, AN 84 FT SIDE SETBACK
AND A SUM OF SIDE YARDS OF THE 18 2 FT. IN LIEU OF THE REQUIRED SO FT,
15 FT, AND 35 FT. RESPECTIVELY (FOR A 2 APPORTMENT DWELLING) AND TO AMEND
THE APPRINED PLAN AND ORDER IN ZONING CASE # 75-109-A.

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

TO CONFIRM HEARING CALL 887-3391.

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.

HANDICAPPED ACCESSIBLE

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: L. Stahl DATE: March 4 1999

D. Felling M. Worrall

FROM: Kathi

SUBJECT: Case No. 98-342-A /Maria & Joseph Horodowicz -Petitioners

The subject matter has been scheduled for public deliberation on Wednesday, March 24, 1999 at 9:30 a.m. A copy of that Notice of Deliberation was mailed to you on February 11, 1999. Attached are the following documents filed by Counsel with regard to this case:

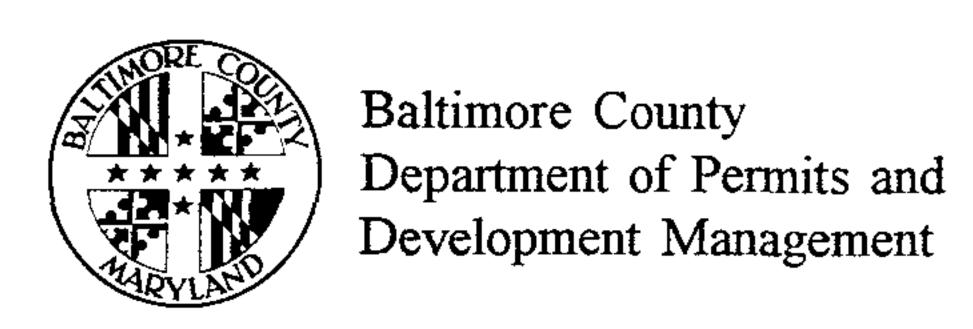
- 1. People's Counsel's Memorandum filed March 1, 1999; and
- Memorandum of Law and Facts filed by Michael Paul Smith, Esquire, on behalf of Petitioners.

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

kathi

Attachments

Mund



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

April 13, 1998

Michael Paul Smith, Esquire 143 Main Street Reisterstown, MD 21136

RE: Case Number 98-342-A

Petitioner: Horodowicz

Location: 9305 Carney Road

Dear Mr. Smith:

The above matter, previously assigned to be heard on Tuesday, May 12, 1998 has been rescheduled for Monday, May 18, 1998 at 2:00 p.m. in Room 407, County Courts Building, 401 Bosley Avenue.

The new hearing date and time should be affixed to the hearing notice sign posted on the property as soon as possible.

If you need further information or have any questions, please do not hesitate to contact Sophia Jennings at 410-887-3391.

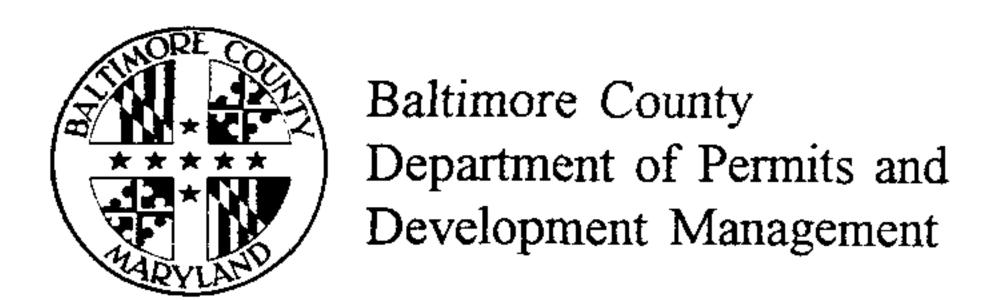
Very truly yours,

Arnold Jablon

Director

AJ:scj

c: Maria & Joseph Horodowicz



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

April 10, 1998

Michael Paul Smith, Esquire 143 Main Street Reisterstown, MD 21136

RE: Case Number 98-342-A

Petitioner: Horodowicz

Location: 9305 Carney Road

Dear Mr. Smith:

The above matter, previously assigned to be heard on Tuesday, May 12, 1998 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. The petitioner or his/her agent may not personally post or change a zoning sign. One of the currently approved vendors/posters must be contacted to do so.

If the property has been posted with notice of the hearing date, as quickly as possible a notice of postponement should be affixed to the sign(s). Then, upon notification of the new hearing date, such sign(s) must be changed to give notice of the new hearing date.

Very truly yours,

Arnold Jablon

Director

AJ:scj

c: Maria & Joseph Horodowicz



Printed with Soybean Ink on Recycled Paper TO: PATUXENT PUBLISHING COMPANY April 23, 1998 Issue - Jeffersonian

Please forward billing to:

Joseph Horodowicz 2914 Scherer Avenue Baltimore, MD 21234

410-665-1133 (hone) 410-628-6617 (work)

NOTICE OF ZONING LEARING

The Zoning Commissioner of Baltimer County, by authority of the Zoning Act and Regulations of Baltimore County, will be ablic hearing in Towson Maryland on the property identified herein as Allows:

CASE NUMBER: 98-342-A

9305 Carney Rad

SE/S Carney Road, 225' SW of Second Avenue 11th Election District - 6th Council and District Legal Owner: Joseph Horodowicz & Maria Horodowicz

Variance to permit a location of 50 feet in lieu of the required 80 feet; a side yard setback of 8.5 feet in lieu of 15 feet; a side yard setback for both sides of 35 feet; and to amend the last approved plan and order in zoning case 7,109-1.

HEARING:

Tuesday, May 12, 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.



County Board of Appeals of Baltimore County

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

February 11, 1999

NOTICE OF DELIBERATION:

IN THE MATTER OF:

MARIA & JOSEPH HORODOWICZ -Petitioners Case No. 98-342-A

The subject matter, having been heard by the Board of Appeals on February 2, 1999, has been assigned the following date and time for public deliberation:

DATE AND TIME: Wednesday, March 24, 1999 at 9:30 a.m.

LOCATION : Room 48, Basement, Old Courthouse

NOTE: Closing Memos are due from Counsel on Monday, March 1, 1999 (Original and three (3) copies to be filed).

Kathleen C. Bianco Administrator

cc: Counsel for Appellants /Petitioners : Michael Paul Smith, Esquire
Appellants /Petitioners: Maria and Joseph Horodowicz

Protestants

: Michael and Dawn Eck

: Scott G. Bolch

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

Copies to: L.F.W.





Baltimore County Department of Permits and Development Management

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

May 13, 1998

Michael Paul Smith, Esq. 143 Main Street Reisterstown, MD 21136

RE:

Item No.: 342

Case No.: 98-342-A

Petitioner: Joseph & Maria

Horodowicz

Location: 9305 Carney Road

Dear Mr. Smith:

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 19, 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.

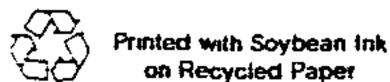
If you need further information or have any questions regarding these comments, please do not hesitate to contact the commenting agency or Gwendolyn Stephens in the zoning office (410-887-3391).

Sincerely,

Onl Rictianaly

W. Carl Richards, Jr. Zoning Supervisor

WCR:ggs
Attachment(s)





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

April 13, 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 MARCH 30, 1998

Item No.: SEE BELOW Zoning Agenda:

Gentlemen:

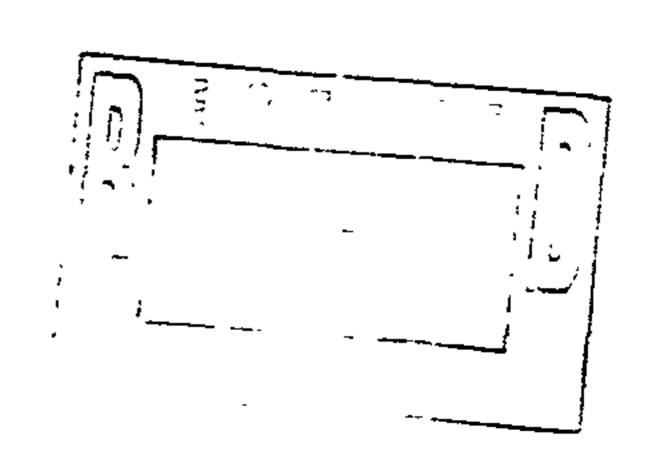
Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

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

339, 340, 341, 342, 343, 344, 345, AND 346

REVIEWER: LT. ROBERT P. SAUERWALD
Fire Marshal Office, PHONE 387-4831, MS-1102F

cc: File



BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO:

Arnold Jablon, Director

Date: April 8, 1998

Department of Permits & Development

Management

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

SUBJECT:

Zoning Advisory Committee Meeting

for April 6, 1998

Item Nos. 339, 340, 341, 342, 343,

344, 345, and 346

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

RWB:HJO:jrb

cc: File

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

DATE: April 1, 1998

PDM

TO: Arnold Jablon, Director

and Development Management

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

Office of Planning

SUBJECT: 9305 Carney Road

<u>INFORMATION</u>

Item Number:

342

Petitioner:

Horodowicz Property

Zoning:

DR 5.5

Requested Action:

Variance

Summary of Recommendations:

The Office of Planning can find no justification for the requested variance, and recommends that the applicant's request be denied as there currently appears to be a reasonable use of the property as a single-family, detached dwelling.

Prepared by: Jeffy M-Zg

Division Chief: My L. Kerns

AFK/JL

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

INTER-OFFICE CORRESPONDENCE

TO:

MCP

DATE: 3

FROM:

R. Bruce Seeley Ris 9 Permits and Development Review

DEPRM

SUBJECT: Zoning Advisory Committee

Mesting Date: Lous!

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

Itam #'s:

RES:sp

BRUCE2/DEPRM/TXTSBP



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 3/25/98 Item No. 342

JOSEBY MOLOGOMICS

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

LG

APPEAL

Petition for Variance
9305 Carney Road
SE/S Carney Road, 225' SW of centerline Second Avenue
11th Election District - 6th Councilmanic District
Maria & Joseph Horodowicz- Petitioner
Case Number: 98-342-A

Petition for Variance

Description of Property

Certificate of Posting (posted 5/1/98 by Garland E. Moore)

Certification of Publication (advertised in Jeffersonian on 4/30/98)

Zoning Advisory Committee Comments

Petitioners Sign-in Sheet

Protestants Sign-in Sheet

Petitioners' Exhibits:

1 --- Plat to Accompany Petition for Zoning Variance

14 Photographs (not marked as exhibits)

Letter from Michael Paul Smith, Esquire, from Bodie, Nagle, Dolina, Smith & Hobbs, to Timothy Kotroco, Esquire, Deputy Zoning Commissioner, dated May 27, 1998.

Petition from Homeowners Against the "Request of Variance".

Entry of Appearance of the People's Counsel.

Petition for Zoning Variance from Height and Area Regulations and Deputy Zoning Commissioner Dyer's Order dated November 26, 1974 (granted, subject to approval of a site plan).

Deputy Zoning Commissioner Kotroco's Order dated July 20, 1998 (denied)

Notice of Appeal received on August 14, 1998 from Michael Paul Smith, Esquire.

c: Michael Paul Smith, Esquire People's Counsel of Baltimore County, MS #2010 Timothy Kotroco, Deputy Zoning Commissioner Arnold Jablon, Director of PDM Case No. 98-342-A

VAR -To permit a lot width of 50' ilo required 80'; side yd setback of 8.5' ilo required 15'; side yd setback of 18.5' ilo required 35'; and to amend previously approved site plan in 75-109-A to reflect same.

7/20/98 -D.Z.C.'s Order in which Petition for Variance was DENIED.

12/18/98 - Notice of Assignment for hearing scheduled for Tuesday, February 2, 1999 at 10:00 a.m. sent to following:

Michael Paul Smith, Esquire
Maria and Joseph Horodowicz
Michael and Dawn Eck
Scott G. Bolch
People's Counsel for Baltimore County
Pat Keller, Director /Planning
Lawrence E. Schmidt /Z.C.
Arnold Jablon, Director /PDM
Virginia W. Barnhart, County Attorney

- 2/02/99 -Hearing concluded; memos due 3/01/99; deliberation scheduled for 3/24/99; Notice to be sent.
- 2/11/99 -Notice of Deliberation sent to parties; scheduled for Wednesday, March 24, 1999 at 9:30 a.m. Copy to L.F.W.
- 3/01/99 -People's Counsel's Memorandum filed.

 Memorandum of Law and Facts filed by Michael Paul Smith, Esq.

 on behalf of Petitioners (FAX copies hand-delivered with notation that Original would be delivered "later this week."
- 3/03/99 -Original Memorandum received from Michael Paul Smith, Esquire; placed in case file.
- 3/04/99 -Copies of above memos sent to L.F.W. by memo.
- 3/24/99 -Deliberation concluded; Variance DENIED pursuant to language of 307; also fails as to uniqueness, practical difficulty /unreasonable hardship, spirit and intent. Written Opinion /Order to be issued.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director DATE: August 16, 1999

Permits & Development Management

FROM: Charlotte E. Radcliffe

County Board of Appeals

SUBJECT: Closed File:

98-342-A /Maria & Joseph Horodowicz - Petitioners

As no appeal was taken from the Board's decision (issued May 21, 1999) in the above captioned case, we are hereby closing the file and returning same herewith.

Attachment (File No. 98-342-A)



Baltimore County Zoning Commissioner Office of Planning and Zoning

Suite 112, Courthouse 400 Washington Avenue Towson, Maryland 21204 (410) 887-4386

November 20, 1998

Mr. Michael A. Rupp
The Carney Improvement Association
P.O. Box 28282
Parkville, Maryland 21234

RE: PETITION FOR VARIANCE
(9305 Carney Road)
Joseph Horodowicz, et ux - Petitioners
Case No. 98-342-A

Dear Mr. Rupp:

In response to your letter dated November 6, 1998 concerning the above-captioned matter, the following information is offered.

As you are aware, I denied the requested relief by my Order dated July 20, 1998, and imposed certain restrictions on the property owner to bring the property into compliance with the zoning regulations. You note in your letter that Mr. Horodowicz has filed an appeal of my decision to the County Board of Appeals. Unfortunately, inasmuch as an appeal has been timely filed, my decision in the matter is essentially held in abeyance until such time as a decision is made by the Board of Appeals, who may either uphold my decision or rule in favor of the Petitioners.

By copy of this letter to the Board, I am requesting that they notify you as soon as possible as to whether an appeal hearing date has been scheduled so that you and your organization can prepare for that hearing. For further information as to the appeal hearing process, please contact the Board at 887-3180.

If I can be of any further assistance, please do not hesitate to contact me.

Very truly yours,

Lungthy Motoro

TIMOTHY M. KOTROCO

Deputy Zoning Commissioner

for Baltimore County

TMK:bjs

cc: Baltimore County Board of Appeals
People's Counsel; Case Files

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY MINUTES OF DELIBERATION

IN THE MATTER OF: Maria & Joseph Horodowicz -Petitioners

Case No. 98-342-A

DATE : Wednesday, March 24, 1999

BOARD / PANEL : Lawrence M. Stahl (LMS)

Margaret Worrall (MW) (Donna M. Felling (DMF)

SECRETARY : Kathleen C. Bianco

Administrator

PURPOSE: To deliberate Case No. 98-342-A /Petition for Variance

(multi family dwelling /existing structure); heard before

Board on February 2, 1999.

The Board, having convened for public deliberation as scheduled by notice dated February 11, 1999, and upon deliberation between panel members, following is the decision reached by the Board:

Issues: BCZR 402 -- Can it be varied?

No other density other than what is allowed by BCZR; can only be SFD; to be more than SFD per 402 must meet regulations; question is -- can those regs be varied?

Looked at 1975 -- SFD could be built; reviewed 402 chart -- in '75 front yard was 50'; now it's 55' but clearly allowed one dwelling; res judicata does not apply in these proceedings. "Unique" was not addressed in 1975; substantial change required.

Unanimous agreement of Board that you cannot increase density; cannot vary regulations necessary to meet 307.1; request would fail at this point.

In arguendo -- moving on to merits of case (even if above did not apply), would still fail.

Unique was not decided before; variance granted before does not make it unique; both Smith and People's Counsel talk about unique, but there is nothing unique; no argument or testimony as to uniqueness; architectural aspect is not unique; even if it was unique, can still be used as SFD; not deprived of use of land; practical difficulty is self-imposed. One family is permitted. Economic decision cannot be hardship.

Variance is unanimously denied; fails initially as to first question raised as to varying regulations to meet 307.1; fails as to uniqueness; does permit use of land/structure by owner; no practical difficulty or unreasonable hardship; economic decision is

Maria and Joseph Horodowicz -Petitioners Case No. 98-342-A /Minutes of Deliberation

not a hardship; also fails as to spirit and intent - SFD neighborhood.

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

NOTE: This document confirms for the file that public deliberation was held this date in the subject matter and a final decision rendered in which the requested variance relief was denied.

Respectfully submitted,

Latur C. Bianco

Kathleen C. Bianco

Administrator

BODIE, NAGLE, DOLINA, SMITH & HOBBS

A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

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Reisterstown, MD 21136
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99 MAR

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Michael G. DeHaven

Chester H. Hobbs, IV *

David L. Thurston

Kelly A Koermer

Michael F. Fenton **

* Also Admitted in DC

** Admitted in PA Only

March 1, 1999

HAND-DELIVERED

County Board of Appeals of Baltimore County 400 Washington Avenue Towson, MD 21204

RE: In the Matter of Maria Horodowicz and Joseph Horodowicz Case No. 98-342-A

To Whom it May Concern:

Please find enclosed for filing a faxed copy of the Memorandum of Law and Facts in regards to the above-referenced matter. The original of this Memorandum will be delivered to your office for filing later this week.

Thank you for your time and attention to this matter. Please contact our office should you have any

Very truly yours

questions.

Michael Paul Smith

MPS/cmh

encls.

cc: Carole S. Demilio,
Office of the People's Counsel

BODIE, NAGLE, DOLINA, SMITH & HOBBS

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March 31, 1998

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R. Scott Krause

Of Counsel:

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Michael F Fenton **

Chester H Hobbs, IV *

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

RE: Notice of Zoning Hearing Case No. 98-342-A Joseph & Maria Horodowicz Tuesday, May 12, 1998 at 9:00 a.m.

Dear Mr. Jablon:

I am in receipt of the Notice of Zoning Hearing in the above referenced matter. I would like to request a postponement of same, as I have a trial scheduled on the same day at 8:30 a.m. in the District Court for Baltimore City (Maryland General Hospital v. Bevins, Case No. 0101-0050466-97).

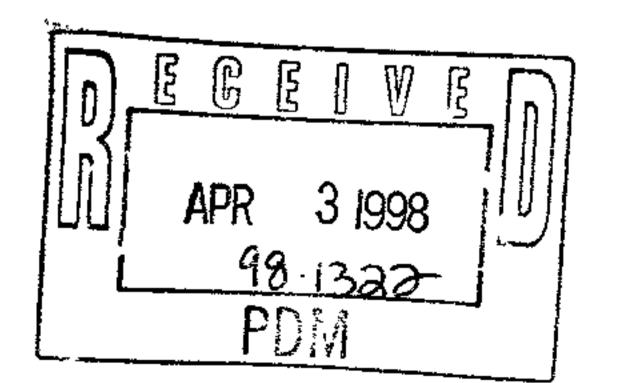
If you have any questions, please do not hesitate to contact me.

Michael Paul Smith

truly/vou

MPS:sf

cc: Mr. and Mrs. Joseph Horodowicz



Thomas G. Bodie John J. Nagle, Ⅲ * Thomas J. Dolina Chester H Hobbs, IV * Michael Paul Smith Michael G. DeHaven R. Scott Krause

Of Counsel:

R. Taylor McLean, Jr. Wallace Dann David L. Thurston Kelly A. Koermer Michael F. Fenton **

* Also Admitted in DC ** Admitted in PA Only

BODIE, NAGLE, DOLINA, SMITH & HOBBS

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143 Main Street Reisterstown, MD 21136 (410) 833-1221 Fax: (410) 833-0026

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May 27, 1998

Martin J. Smith (1938-1992)

C. Arthur Eby, Jr. (Rettred)

Towson Office:

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112 W. Pennsylvania Ave., Suite 103 Bel Air, MD 21014 (410) 836-8943

Fax: (410) 893-9701

Pennsylvania Office: 11 East Market Street, Third Floor York, PA 17401

Timothy Kotroco, Esquire Deputy Zoning Commissioner Baltimore County Office of Planning Suite 405, County Courts Building 401 Bosley Avenue Towson, Maryland 21204

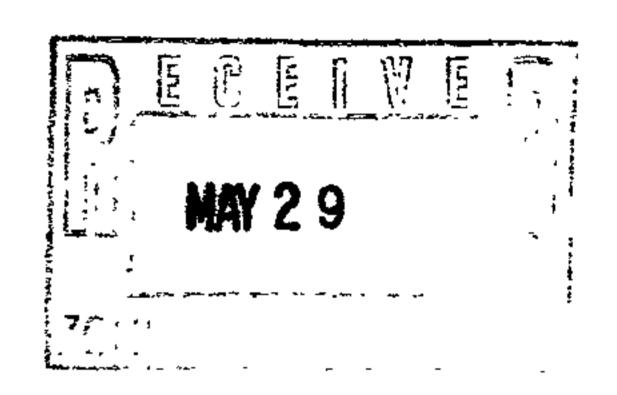
RE: Case No. 98-342-A

Petition on Horodowicz, Joseph Location: 9305 Carney Road

Dear Commissioner Kotroco:

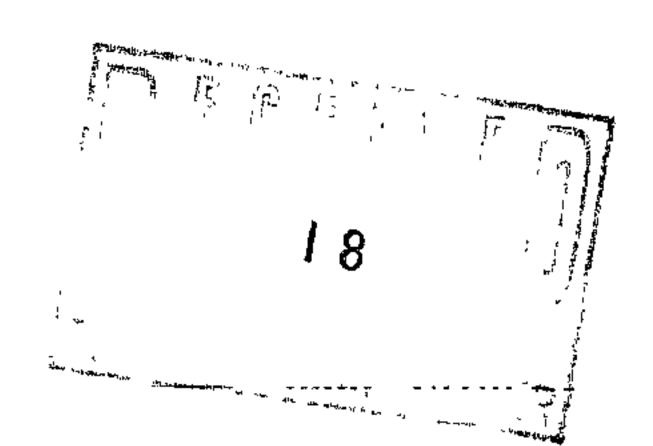
Enclosed please find the petition and ruling with regard to same in Case No. 75-109-A. As you can see from the plat accompanying the current petition, 9305 Carney Road consists of Lots 424, 425, 426, 437, 438, and 439. The Petition for Zoning Variance was for, what is currently described as 9305 Carney Road. The zoning commissioner found that a strict application of the Baltimore County zoning regulations would result in a practical difficulty and unreasonable hardship upon the petitioners and that the variance requested would not adversely affect the health, safety, and general welfare of the community. The zoning commissioner permitted an eight feet side setback and a 50' lot width. As our testimony indicated, no modifications have been made to the building which would further encroach the previously approved setbacks. The main change is the Baltimore County zoning regulations section which the petitioner is asking to be varied. The building will not have any further encroachments upon the property lines.

I also advise that discussions were attempted with the protestants in this matter regarding placing in any leases that future tenants be required to agree to a non-disturbance of the neighborhood, a violation of which would constitute a default and restrictions on the property with respect to parking. The protestants indicated that the proposed offer was not acceptable, and wanted single family use only.



The Carney Improvement Association P.O. Box 28282 Parkville, Maryland 21234 (410) 663-0056

Mr. Timothy M. Kotroco
Deputy Zoning Commisioner, Baltimore County
Suite 405, County Courts Building
401 Bosley Avenue
Towson, Maryland 21204



November 6, 1998

Dear Mr. Kotroco:

Our organization was approached by Mr. & Mrs. Michael Eck with regard to a residence opposite their own at 9305 Carney Road. This residence although clearly zoned for single family occupancy is currently being utilized as multi-family apartments. This dwelling is located in a single family neighborhood, with relatively no off street parking.

This building is owned by a Mr. Joseph Horodowicz and has been since approximately 1996. Only since 1997 has it been utilized as multi-family housing. Presently there are three apartments rented on this property.

On July 20th, 1998 a decision by yourself to deny a Petition for Variance was rendered against Mr. Horodowicz in Case No. 98-342-A. On August 14th, 1998, an appeal was filed in your office on behalf of Mr. Horodowicz by his attorney. Since then, the apartments have continued to be leased, traffic and parking continue to be a problem and nothing has been heard of as far as a date for the appeal hearing.

On behalf of the Ecks and the seventeen other petitiioners, our organization would greatly appreciate a reply from your office as soon as possible. I may be reached at the above phone number and address and await your anticipated reply.

Sincerely,

Michael A. Rupp President, C.I.A.

mar

cc: Mr. & Mrs. Eck

Councilman Bartenfelder

Mr. Arnold Jablon

WE, THE UNDERSIGNED HOMEOWNERS, PETITION AGAINST THE "REQUEST OF VARIANCE" AT THE PROPERTY KNOWN AS 9305 CARNEY ROAD - BALTIMORE, MD, 21234 AND RESPECTFULLY REQUEST THE CURRENT ZONING REMAIN IN FORCE.

NAME: Imalis Romatas NAME: /mathy William NAME: Ex 1 Pagst NAME: Mel Hammerbacke NAME: Prichall DEck

NAME: Parth Reimschissel address: 9309 Carney Rd DATE: 2/10/98

NAME: Scot D. Bolch Address: 9303 Carney Rd DATE: 10Feb 98

NAME: Mer Victoria Address: 9307 CARNEY Rd. DATE: 10 FEB 98

NAME: Pamel Mathias Address: 9306 Carney Rd. DATE: 10 Feb 1998. ADDRESS: 9306 CARNEY RID NAME: San P Keller ADDRESS: 9310 CARNEY Rd. t elen W. Atha ADDRESS: 3017 Second Ref. ADDRESS: 3019 SECONDO AUE ADDRESS: 9301 Atlleville Rd. ADDRESS: 9301 Hellsreh Kd ADDRESS: 30/9 Skord au DATE: 2/23/98 ADDRESS: 3024 Second ave ADDRESS: 3025 Second Ane ADDRESS: 3026 Secondans

ADDRESS: 3631 Second aux ADDRESS: 9304 Carney Red

DATE: 10 Feb 199

DATE: 10 Feb 199

DATE: 10 Feb. 199.

DATE: 10 Feb 1992

DATE: 2/10/9/

DATE: 2/22/98

DATE: 2/22/98

DATE: 2/22/98

DATE: 2/2298

DATE: 2/25/98

PLEASE PRINT CLEARLY

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
Michael D. Eck	930 4 Carney Rd
Dawn MECK	9304 Carrey Rd
Scott G. Bolch	9303 Carney Rd.

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PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS			
Joseph HORODOWICZ	2914 SCHERER AUE Bollo, 1			
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	· 			
				
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		ng of facts that strict compliance with
the Baltimore	County Zoning Regulations V	would result in practical difficulty and
unreasonable	bardship upon the Petitioner.	B
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		pearing that by reason of the granting of
Variances rec	mested not adversely affecti	ng the health, safety and general well
at time and a	front ward of 2 feet instead 0	side yard of 8 feet instead of the required 25 feet and to permit a
setback of 27	feet from the center line of	the street instead of the required so
(Lot Nos. 425	, 426, 437, 438 and parts of	should be granted.
3 1	Deputy	260 71
IT IS ORDER	RED by the Zoning Commissioner of	Baltimore County this
day of Novem	ber 1974, that the he	erein Petition for a Variance should be and the
/3		
. 1		and and to the approval of a site
same in granted.	from and after the date of this of the timent of Public Works and O	der, subject to the approval of a site of the of Planning and Zoning; and, sa
Na ribuce apa	Il not be construded to perm	It more than one dwelling on the total
Variance sha	Il not be construded to perm	fice of Planning and Zoning; and, so it more than one dwelling on the total Zoning Commissioner of Baltimore County
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MLS#: BC2117285

Metropolitan Regional Information Systems, Inc.

Page: 1

Date: 03/07/97 Time: 17:54

9305 CARNEY AVE

Full Listing

Ownership: Fee Simple, Sale Classification: Residential MLS#: BC2117285

List Price: \$199,900 Status: ACTIVE Listing Type: Excl. Right

Postal Address: CARNEY Address: 9305 CARNEY AVE

Incorporated City/Town: County: BC

Zip Code: 21234-3215 **Election District: 11** State: MD

Advertised Subdivision: CARNEY HEIGHTS Recorded Subdivision: CARNEY HEIGHTS

Thomas Bros. Map Coordinate: N/A Old Map Coordinate: BC28E08

Tax ID#: 1800003108 Total Taxes: \$2,498 Area: N/A

HOA Fee: Age: 10 Lot Size: 10000

Townhouse Type: Detached Type: Detached Style: Other

Total Half Baths: Total Full Baths: 3 Total Bedrooms: 6 #Fireplaces: 0 #Levels: 3 Model Name:

High: Middle: Elementary:

Show Instructions: Call Office

Show Day: All Days Show Time:

INTERIOR

BR Lower 2: BR Lower 1: **BR Upper 2**: 2 BR Upper 1: 2 BR Main: 2 Full BA Lower 2: Full BA Lower 1: Full BA Upper 2: 1 Full BA Upper 1: 1 Full BA Main: 1 Half BA Lower 2: Half BA Lower 1: Half BA Upper 2: Half BA Upper 1: Half BA Main:

<u>Fireplace</u> **Flooring** <u>Level</u> Room Wood Main Living Room: 14x 20 Wood Main Bedroom-Master: 15x 15 Wood Main Bedroom-Second: 14x 11

Carpet Upper 1 Bedroom-Third: 15x 10 Carpet Upper 1 Bedroom-Fourth: 11x 8 Wood Upper 2 Bedroom-Fifth: 12x 21 Vinyl Main Kitchen: 13x 12 Carpet Upper 1 Family Rm: 12x 21 Vinyl Upper 2 Other Room 1: 11x 10

Interior Style: Main Entrance: Foyer

Other Rooms: In-Law/auPair/Ste, Laundry-BR Lvl, Lndry-Sep Rm, Lndry-Uppr Lvl, Main Lvl BR, MBR w/Sit Rm, 2

Master BR, 2nd Stry Fam Rm

Dining/Kitchen: Kit-Table Space, Liv/Din Combo

Appliances: Dishwasher, Dryer, Extra Refrg/Frz, Oven/Range-Electric, Refrigerator, Washer

Amenities: Attic-Stairs Fixed, Entry LvI BR, Home Warranty, Shades/Blinds, Wood Floors, W/W Carpeting appeallant Aphibut

Security:

Windows/Doors: Dble Pane Wind

Walls/Ceilings:

Basement: Y

Basement Type: Full

Handicap:

Extra Unit Description: In - Law Suite

MLS#: BC2117285

Metropolitan Regional Information Systems, Inc.

Page: 2 Date: 03/07/97

9305 CARNEY AVE

Full Listing

Time: 17:54

R-Factor Basement:

R-Factor Ceiling:

R-Factor Walls:

Total Finished SQFT: Fin SQFT Below Grade: Fin SQFT Above Grade: **Unfin SQFT Below Grade:** **Unfin SQFT Above Grade:**

House Dimensions:

Directions:

Remarks:

"ONE OF A KIND" PROPERTY 3 FULL FINISHED LEVELS PLUS HUGE BASEMENT*STUDDEDAND INSULATED-READY FOR YOU TO FINISH*THIRD FLOOR W/COMPLETE 2ND KITCHENPLUS LR OR HUGE MBR AND 2 BEDROOMS AND BATH 2ND FLOOR W/FR*2 BDRMS, BATHAND 13X12 LAUNDRY RM! PELLA WINDOWS AND UNBELIEVABLE SOLID CONSTRUCTIONMANY BUILT-INS!GOOD CONDITION!

EXTERIOR

Age: 10

Year Built: 1987

Exterior: Balcony, Deck, Fenced - Fully

Exterior Construction: Brick

Other Buildings:

New Construction: N

Original Builder:

Year Renovated:

Roofing: Shingle-Asphalt

Transportation:

Lot Size-SF: 10000 Lot Size-Acres: 0.23

Lot Dimensions:

Roads: Topography: Lot Description:

View/Exposure: **Building Sites/Lots:**

Parking: Drvwy/Off Str Type of Garage: Type of Carport:

of Assigned Spaces: # of Garage Spaces: # of Carport Spaces:

Soil Types:

Property Condition: Shows Well

UTILITIES

Heating System: Forced Air, Wood Burn Stove

Hot Water: Natural Gas

Cooling System: Window Unit(s) Sewer/Septic: Public Sewer

TV/Cable/Comm:

Heating Fuel: Natural Gas

Water: Public

Cooling Fuel: Electric

Farm: N

Water Oriented: N

FINANCIAL INFORMATION

Earnest Money:

Possession: Negotiable

Project Approved:

Special Tax: \$352

Total Taxes: \$2,498

Tax Year: 1996

City/Town:

State/County: \$2,146

Front Foot Fee:

Tap:

Refuse:

Water/Sewer Hook-up Fee:

Metropolitan Regional Information Systems, Inc.: Information is believed to be accurate but should not be relied upon without verification

I HE CARNEY	MAPRODEMENT	ASSOCIATION
RESOLVED: That the p	position of the	CARNEY
IMPROHEMENT	Association as	adopted by the (Board
of Directors) (Zoning Commi		
MULTI- FAMILY APARTMENT E CASE # 98-342-A	3UILDING (9305-C	EARNEY ROSO)
IS that: SINCE THIS BUILDING NEIGHBORHOOD, WITH RELE CARNEY IMPROVEMENT ASSO AN ALLOWANCE IN VALUE OF HOMES IN THE IN	THIS CASE WOU	U A SINGGE FAMILY DWELLING STREET PERKING, THE ANY WARIANCE IN ZONIUG. O CLEARLY DEGRADE THE
AS WITNESS OUR HANDS	AND SEAL THI	Sday of
ATTEST:	THE CARNEY IM	PROUGUET Association
Secretary	President	Au Au

	the <u>OCTOBER</u>	MEETING)			
RESOLVED: That at	the <u>Octosee</u>	1998	meeting	gof	the
CARNEY IMPROVEMENT	······································	Associ	ation	held	on
OCTOBER 2154		it was	decided	by	the
Association that responsib	ility for review	and act	ion on a	ll zor	ing
matters for the period	1998 - 1999				be
placed in the (Board of Dir	ectors) (Zoning	Committe	e) consi	sting	j of
54 BA	ICHAEL A. RUPP 25TIN WANDRES - HERRY MITZEL - UL HECKNER - OU DESIMONE - TTY FANNIN -	VICE PRE SECRETAR RECORDING SEARGENT	SIDENT Y SECRETAL AT BRMS		
AS WITNESS OUR HAN	NDS AND SEAL	THIS	<u> </u>	day	of
ATTEST:	THE CARKY 15	A PROVENCY	Asso	ciati	on
Secretary	President	J			_

ASSOCIATION

THE CARNEY IMPROVEMENT

Secretary

The Carney Improvement Association P.O. Box 28282 Parkville, Maryland 21234-8282 (410) 663-0056

AFFIDAVIT

STATE OF MARYLAND BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I am currently a duly elected member of the (board of directors) (Zoning Committee) of the CARNEY IMPROVEMENT

ASSOCIATION.

PRESIDENT

(Signature)

ATTEST:

THE CARNEY IMPROVEMENT ASSOCIATION

DATE: 21199

(President)

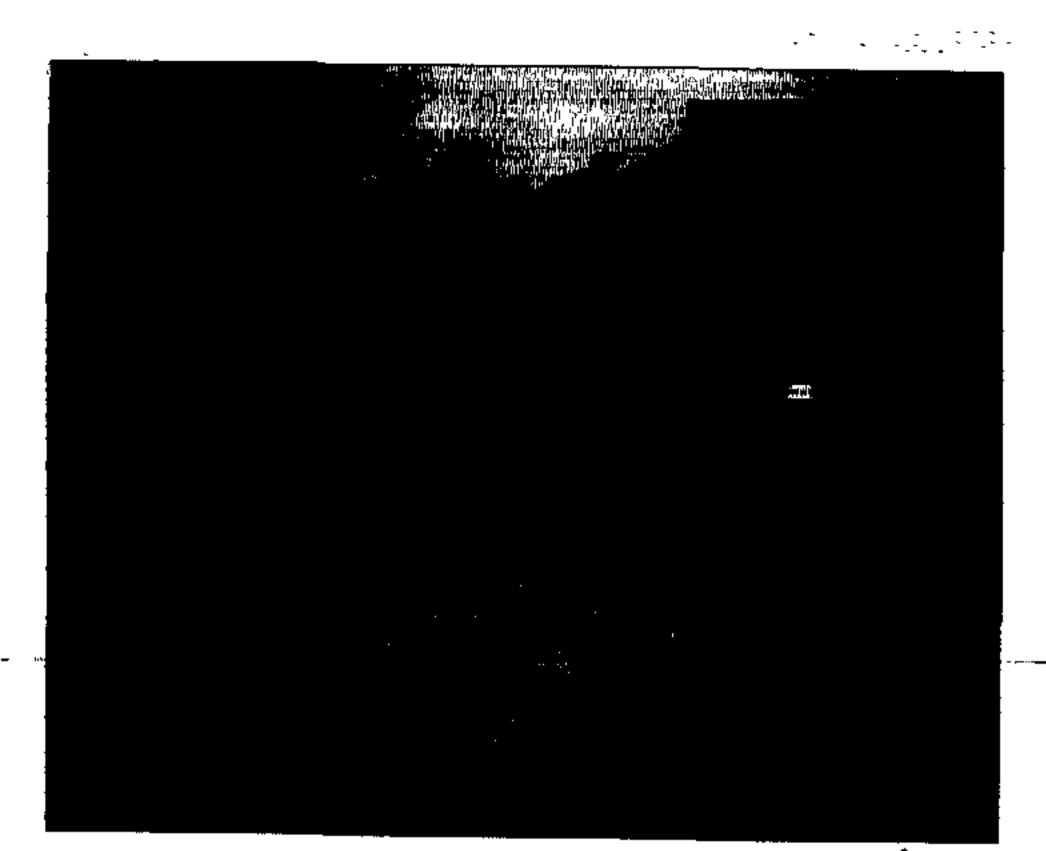
To whom it may concern:

I, we, have lived in the neighborhood for which this petition for variance has been filed for the number of years which is specified after our names. The building which is owned by the Horodowiczs' is the largest home in this neighborhood. So long as there are no additions to the current exterior and both parking areas are used to limit the use of the street for parking, we support Mr. & Mrs Horodowiczs' petition to allow the structure as a two family/ tenant dwelling. The tenants who have occupied the premises to date have not caused any problems to date

Sharin Spingler 9300 Garney Evad Wilbru Willinght 9301 Carney Ove 35 yr Eleanor Hright 35 4rs. 9301 Carney are. William W. Wight 9301 Carney Ave 324rs.

C.Michael Spandler O Michael Spandler 9300 Carney Rd Balto Md 21234 Lived 7 Years at This Location

Appellants filments
Appellants



People's Counsel, Let A.



People Thilliet



People's Counsel

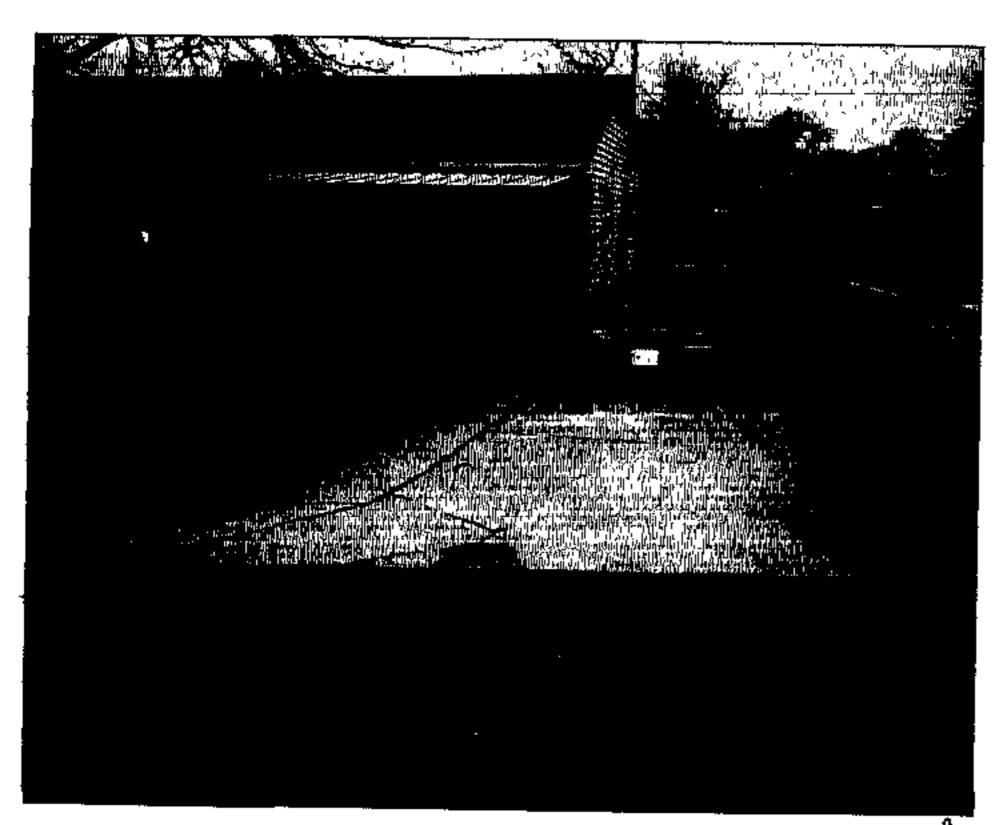


People's Coursel

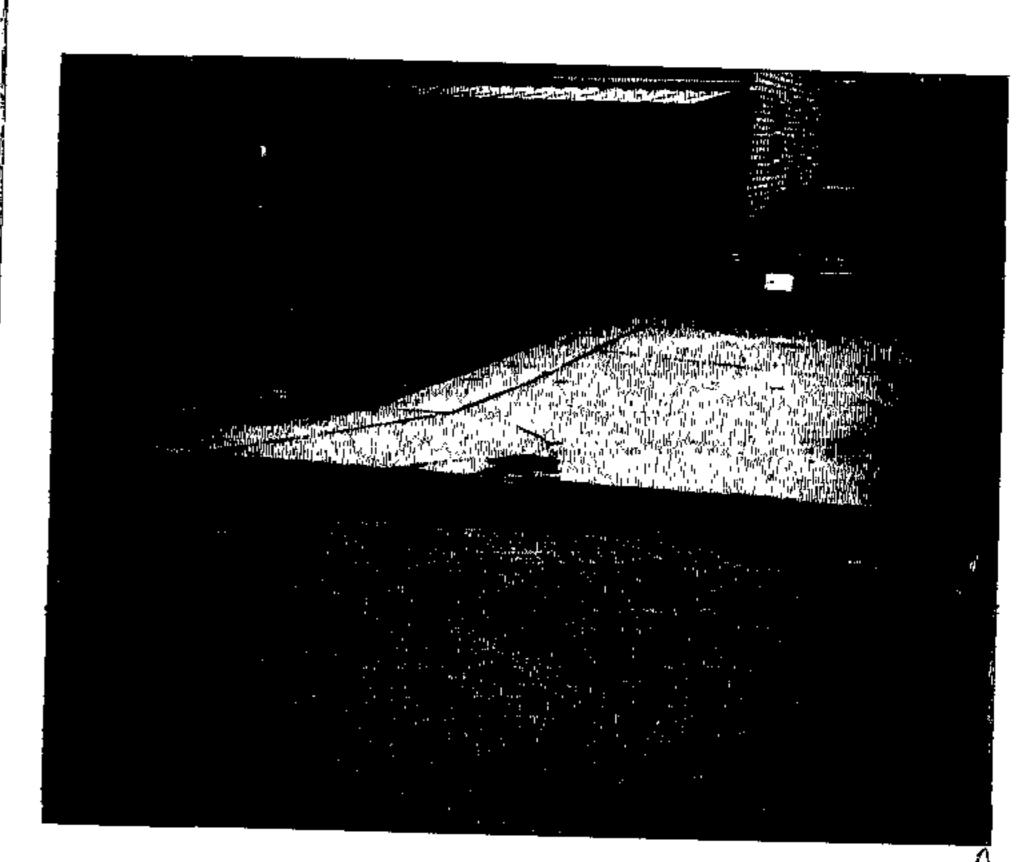
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People's Counsel Exhibit #G

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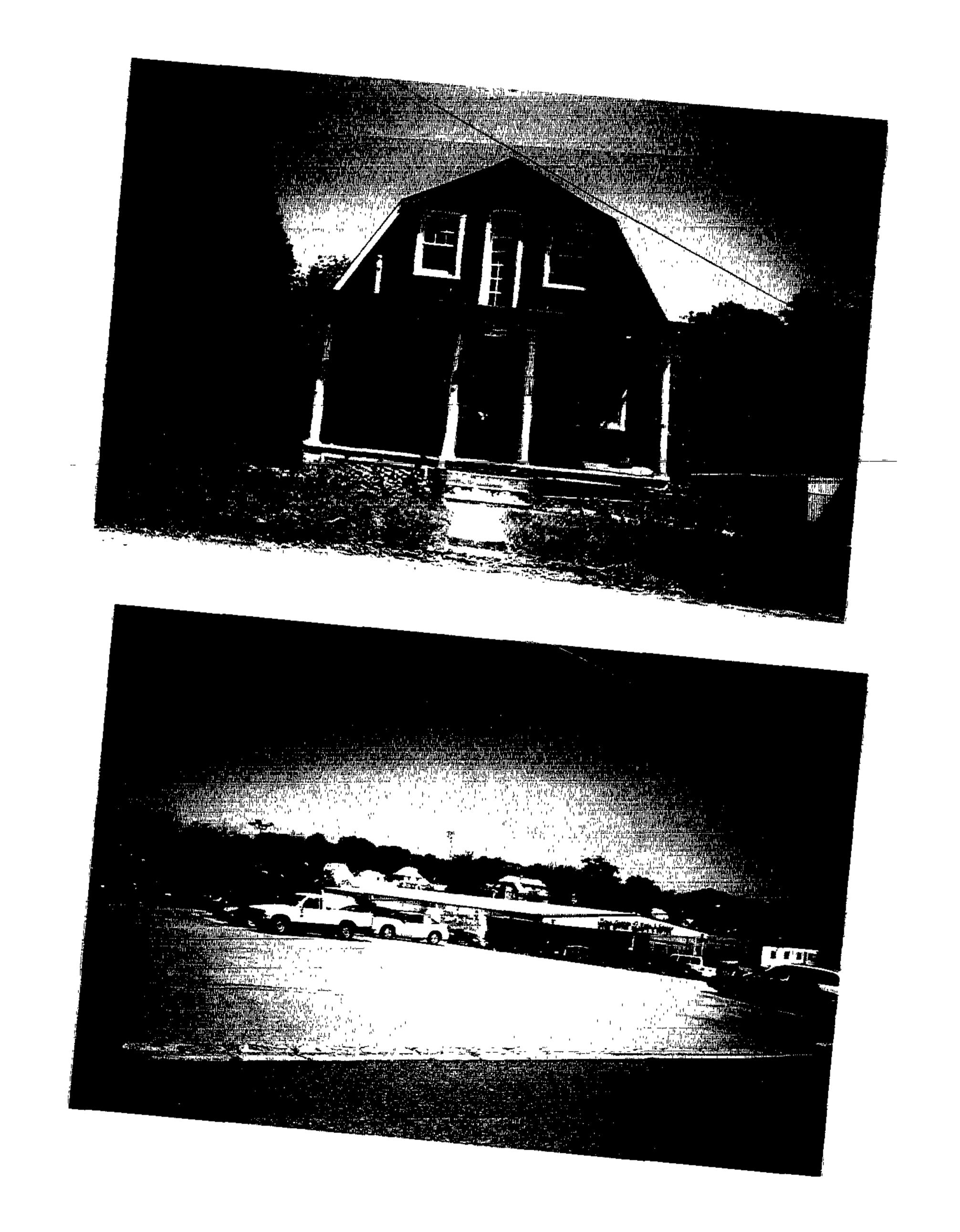
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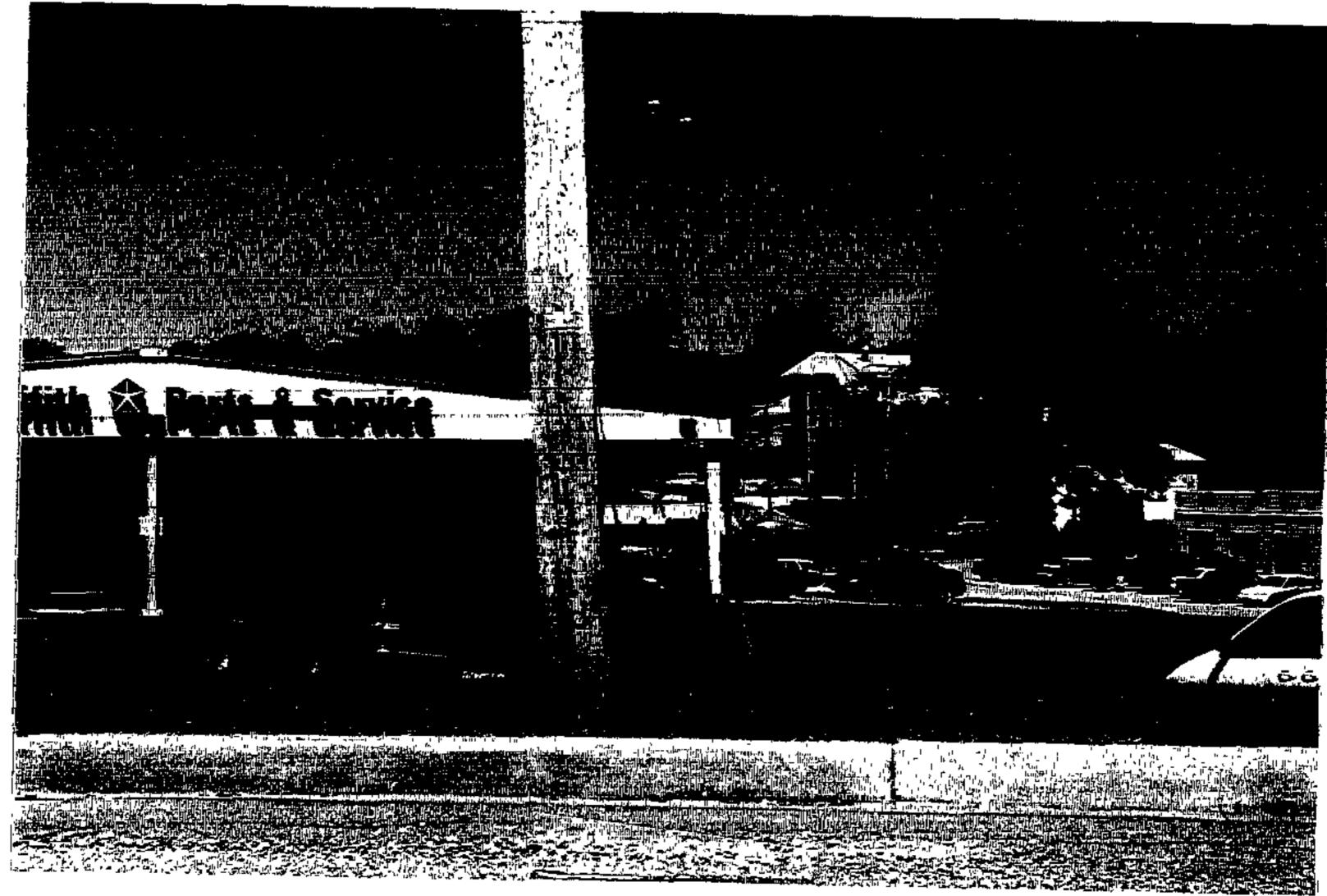














































photographs

98-342-A



Baltimore County Zoning Commissioner Office of Planning
Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204





HCS WITH OPHIOPHOTO PLOT



