6/5/02

IN RE: PETITION FOR VARIANCE W/S of N. Hazelwood Avenue, 314' S/S of Charles Avenue 14th Election District 6th Councilmanic District (5850-A N. Hazelwood Avenue) Paula Rush *Petitioner*	* * * * * *	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO. 02-365-A

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Variance filed by the legal owner of the subject property, Paula Rush. The variance request involves property located at 5850-A N. Hazelwood Avenue, which property is currently zoned D.R.5.5. The subject property is unimproved at this time. The variance request is from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a lot width of 50 ft. in lieu of the required 55 ft. for a proposed single-family dwelling and to approve an undersized lot. It should be noted that at the time of the hearing before me, the property ownership had changed hands and the new owner Steve Kennecht, representative of Charter Homes, appeared at the hearing. Also attending the hearing was J. Scott Dallas, property line surveyor who prepared the site plan of the property. Appearing in opposition to the variance request were Thomas Rothwell, adjacent property owner and Denise Cadogan.

Testimony and evidence indicated that the property, which is the subject of this variance request, consists of 0.17 acres, more or less, zoned D.R.5.5. The subject property is rectangularly shaped, comprising 50 ft. of road frontage along N. Hazelwood Avenue and containing a depth of 150 ft. The property is served by public water and sewer. The new owner of the property is interested in constructing a new single-family residential dwelling on the site. In order to proceed with his plans to construct a home, the variance requests are necessary.

ORDER RECEIVED FOR FILING
Date 6/5/02
By

As stated previously, adjacent neighbors appeared in opposition to the Petitioner's request. Mr. Tom Rothwell who resides at 5850 N. Hazelwood Avenue opposes this variance to allow a home to be constructed on these two vacant lots. Mr. Rothwell testified that it was his opinion that a house could not be constructed on this vacant land. He testified that a home, as depicted on the site plan submitted into evidence, would infringe on the privacy that he currently enjoys at his property and would also devalue his home. He asked that the variance requested be denied.

Also attending the hearing in opposition to the Petitioner's request was Denise Cadogan. Ms. Cadogan resides at 5852 N. Hazelwood Avenue. She testified that her brother recently purchased the property wherein she resides. She is opposed to the construction of a new home on this vacant land which is located to the side of her house. She prefers to see the property remain in its vacant state.

This variance request was reviewed by the Office of Planning as to whether it is appropriate for a home to be constructed on this property. In all undersized lot cases, the Planning Office issues written comments suggesting whether or not the variance should be granted. The Office of Planning, by virtue of their written comment dated March 26, 2002, a copy of which was included in the case file, indicated their support of this variance request. The Planning Office has reviewed the type of house to be constructed on this property and believes it is compatible with the other homes in the community. Therefore, based on the position of the Office of Planning, I find that the variance should be granted to allow a home to be constructed on this property.

6/5/02 R. Jameson

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to Petitioner and her property. McLean v. Soley, 270 Md. 208 (1973).

To prove practical difficulty for an area variance, the Petitioner must meet the following:

1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;

2) whether a grant of the variance would do a substantial justice to the applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give sufficient relief; and,

3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. Of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship will result if the variance is not granted. It has been established that special circumstances or conditions exist that are peculiar to the property which is the subject of this request and that the requirements from which the Petitioner seeks relief will unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not cause any injury to the public health, safety or general welfare, and meets the spirit and intent of the B.C.Z.R.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and after considering the testimony and evidence offered by the Petitioner, I find that the Petitioner's variance request should be granted.

THEREFORE, IT IS ORDERED this 5th day of June, 2002, by this Deputy Zoning Commissioner, that the Petitioner's request for variance from Section 1B02.3.C.1 of the B.C.Z.R., to allow a lot width of 50 ft. in lieu of the required 55 ft. for a proposed single-family dwelling and to approve an undersized lot, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

ORDER RECEIVED FOR FILING
Date 6/5/02
By R. Jameson

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

2. The Petitioner shall be required to submit a landscape plan to Avery Harden, Landscape Architect for Baltimore County, providing extensive landscaping along the common property line of the subject property and the property owned by the adjacent property owner, Tom Rothwell. Said landscaping plan shall be submitted within thirty (30) days from the date of this Order.

3. When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

TMK:raj

ORDER RECEIVED FOR FILING
Date 6/5/02
By

9/15/04

IN THE MATTER OF THE APPLICATION OF CHARTER HOMES, LLC (PAULA RUSH - FORMER OWNER) FOR A VARIANCE ON PROPERTY LOCATED ON THE W/S OF N HAZELWOOD AVE, 314' S/S OF CHARLES AVE. (5850-A N HAZELWOOD AVENUE) 14TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT (Case No. 02-365-A)	* ON REMAND * FROM THE *CIRCUIT COURT FOR * BALTIMORE COUNTY * Civil Action No.: 03-C-03-006444 *

* * * * * * * * * * *

ORDER OF THE BOARD ON REMAND
FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY

This matter comes before the Board on remand by Order of Judge J. Norris Byrnes, Circuit Court for Baltimore County, filed July 27, 2004, in which Judge Byrnes orders as follows:

> For the foregoing reasons, it is this 16th day of July, 2004, by the Circuit Court for Baltimore County,
>
> ORDERED that the decision of the Board is REVERSED and REMANDED to the Board to grant the requested variance with appropriate conditions.

IT IS THEREFORE this 15th day of September, 2004, by the County Board of Appeals of Baltimore County

ORDERED that, consistent with the Remand Order of the Honorable J. Norris Byrnes, Judge, Circuit Court for Baltimore County, filed July 27, 2004, the Petition for Variance in Case No. 02-365-A be and the same is hereby **GRANTED**, subject to the following conditions, as set forth in the Deputy Zoning Commissioner's Order dated June 5, 2002:

1. The Petitioner shall be required to submit a landscape plan to Avery Harden, Landscape Architect for Baltimore County, providing extensive landscaping along the common property line of the subject property and the property owned by the adjacent property owner, Tom Rothwell. Said landscaping plan shall be submitted within thirty (30) days from the date of this Order.

2. When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott

Lawrence S. Wescott

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

September 15, 2004

Kirk J. Halpin, Esquire
10211 Wincopin Circle
Suite 600
Columbia, MD 21044

RE: Circuit Case #03-C-03-006444 /*In the Matter of Charter Homes LLC* /Case No. 02-365-A
On Remand from the Circuit Court for Baltimore County

Dear Mr. Halpin::

Enclosed please find a copy of the Board's Order issued this date in response to the Remand Order The Honorable J. Norris Byrnes, Judge, Circuit Court for Baltimore County.

Very truly yours,

Kathleen C. Bianco /trs
Kathleen C. Bianco
Administrator

Enclosure

c: Adam Skolnik /Charter Homes
J. Scott Dallas /J.S. Dallas Inc.
Thomas M. Rothwell
Otis and Denise Cadogan
Gloria T. Pack
Office of People's Counsel
The Honorable J. Norris Byrnes, Judge
Baltimore County Circuit Court
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Timothy M. Kotroco, Director /PDM

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on Recycled Paper

7/1/01

IN THE MATTER OF:	*	IN THE CIRCUIT COURT
CHARTER HOMES, LLC	*	FOR BALTIMORE COUNTY
		CASE NO. 03-C-03-006444

RECEIVED
JUL 20 2001
BALTIMORE COUNTY
BOARD OF APPEALS

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

ORDER

This is an appeal by Charter Homes, LLC ("Petitioner") from a decision of the County Board of Appeals of Baltimore County ("the Board") dated May 14, 2003. In its opinion, the Board denied Petitioner's request for variance ("Petition") to allow construction of a single-family home on an under-sized lot in a D.R. 5.5 zone. In doing so, the Board denied Petitioner's request to vary the dimensional requirements applicable in the zone to permit a lot with of fifty (50) feet in lieu of the required fifty-five (55) feet. For the reasons stated herein, the decision of the Board is REVERSED and REMANDED to the Board to grant the requested variance with appropriate conditions.

Background

Petitioner is the owner of a 0.17 acre parcel of unimproved real property known as 5850-A N. Hazelwood Avenue. The property, comprised of two lots, is rectangular in shape, with a width of fifty (50) feet along N. Hazelwood Avenue and depth of one hundred fifty (150) feet. The property was formerly owned by Paula Rush, who filed the Petition at issue on March 5, 2002, and then sold the property to Petitioner on April 22, 2002. The property is zoned D.R.5.5 under Section 1B02.3.C.1 of the Baltimore County Zoning Regulations ("BCZR"). Petitioner requested a variance to allow a lot width of fifty (50) feet, rather than the required fifty-five (55) feet, for the purpose of constructing a single-family residential dwelling on the property.

After reviewing the Petition, the Office of Planning indicated its support of the Petition in a written comment on March 26, 2002. The Petition was subsequently heard by Deputy Zoning Commissioner, Timothy M. Kotroco, who issued Findings of Fact and Conclusions of Law on June 5, 2002. In granting the Petition, the Deputy Zoning Commissioner ruled that "special circumstances or conditions exist that are peculiar to the property which is the subject of this request and that the requirements from which the Petitioner seeks relief will unduly restrict the use of the land due to the special circumstances unique to this particular parcel." (Findings of Fact and Conclusions of Law at 3).

On July 1, 2002, Thomas M. Rothwell, an adjacent property owner, noted an appeal of the Findings of Fact and Conclusions of Law to the Board. Mr. Rothwell opposed the variance requested by Petitioner, citing infringement of his privacy and devaluation of his home. A hearing was held before the Board on February 5, 2003. Petitioner presented testimony from Adam Skolnik, President of Charter Homes, LLC; Mark Cunningham, a development review planner from Baltimore County; and Jonathan S. Dallas, a property line surveyor.

After hearing testimony and arguments, the Board determined that Petitioner had not met each requirement under BCZR § 304.1.[1] Specifically, the Board held that Petitioner did not satisfy § 304.1B, which requires compliance with all other height and area regulations. In the opinion, the Board held that Petitioner "has not established the requisite uniqueness as called for under § 307.1[2] and Cromwell [v. Ward][3]." (Opinion of the Board at 3). In denying

[1] The Board found that Petitioner satisfied §§ 304.1A and 304.1C. Section 304.1A requires that the lot have been recorded by deed or in a validly approved subdivision prior to March 30, 1955. Section 304.1C requires that the owner of the lot does not own sufficient adjoining land to conform to the width and area requirements.
[2] Section 307.1 sets forth the Board's authority to grant variances from height and area regulations "only in cases where special circumstances or conditions exist that are peculiar to the land . . . and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship."

the variance, the Board wrote that "there was no credible testimony presented by any witness appearing on behalf of the Petitioner to establish any difference between the proposed site and other properties in the area." (Opinion of the Board at 3).

DISCUSSION

I. Standard of Review

The applicable standard of review of the action of an administrative agency is whether a reasonable mind could have reached the conclusion that was reached by the administrative agency. See Nnoli v. Nnoli, 101 Md. App. 243 (1994). A reviewing court should examine any conclusion reached by an agency to see whether reasoning minds could reasonably reach that conclusion from facts in the record before the agency, by direct proof, or by permissible inference. See Comm'r, Baltimore City Police Dep't v. Cason, 34 Md. App. 487 (1977), cert. denied, 280 Md. 728 (1977). If the conclusion of the agency could be reached, then it is based on substantial evidence, and the court has no power to reject the conclusion. Id.

Further, the reviewing court must uphold the order of the administrative agency if it is not based on an erroneous determination of law, and if the conclusions reasonably may be based on the facts proven. See Montgomery County v. Buckman, 333 Md. 516 (1994). If an administrative decision is based solely on an erroneous conclusion of law, the reviewing court is not limited in reversing such a decision. Id.

II. Review of the Board's Decision

Petitioner argues that the Board erred in finding that Petitioner did not establish the requisite uniqueness under § 307.1 and Cromwell. In support of its position, Petitioner cites the testimony given by Jonathan S. Dallas, a property line surveyor and the only witness

[3] 102 Md. App. 691 (1995) (holding that a finding of uniqueness is required before the Court can address practical difficulties).

qualified as an expert on behalf of either party. Mr. Dallas presented uncontradicted testimony that the topography of the property is unique in comparison to nearby properties, and that the slope of the property is much steeper than that of the surrounding area. Mr. Dallas testified that "the topography through the lot [is] sloping from three to one to a five to one slope at various points . . . as you face it, from the street, it slopes from right to left." (Record at 73). When asked if the topography makes this property unique, peculiar or special, Mr. Dallas replied in the affirmative, stating that the "topography of the overall subdivision really has only one strip of sloping land that's similar to this [property]" and that "it is steeper than the bulk of this plat." (Record at 87-88). Mr. Rothwell, the party opposing the Petition before the Board, did not present any testimony to contradict Mr. Dallas' expert opinion.

The objections of other homeowners in the neighborhood are self-serving. These homeowners would prefer to use Petitioner's property as an enlarged backyard. For instance, Mr. Rothwell testified that if the variance is granted, the privacy of his backyard would be interrupted. (Record at 21). Ms. Carol Cadogan, who lives at 5852 N. Hazelwood Avenue testified that 5850-A is "entirely too close to 5852" and that "it will block the breeze" and "the beautiful view of downtown Baltimore." (Record at 35). Ms. Gloria Pack, who lives at 5837 N. Hazelwood Avenue, testified that if a dwelling is built on the property in question "it will be right in [her] face" and "[y]ou won't get any breeze through the summer." (Record at 33). These neighboring homeowners do not want Petitioner to be able to make use of the property, rather, they prefer an "open space" for their own benefit.

The Court in Cromwell defined "uniqueness" for zoning purposes, as requiring "that the subject property has an inherent characteristic not shared by other properties in the area, i.e. shape, topography, subsurface condition, environmental factors, historical significance,

access or non-access to navigable waters, practical restrictions imposed by abutting properties . . . or other similar restrictions." 102 Md. App. at 710. From the record, it is clear that the property at issue does meet this definition based on its unusual topography. How the Board concluded otherwise is unclear.

In applying the appropriate standard of review, this Court is duty-bound to reverse the decision of the lower court if there lacks substantial evidence to support its decision. Based on the record before this Court, substantial evidence does not exist to support the decision of the Board. One expert witness, Mr. Dallas, was called to testify about the uniqueness of the property. The party challenging the Petition did not introduce its own expert witness to refute the testimony of Mr. Dallas, nor did the Board give any reason for it's decision to reject Mr. Dallas' testimony. Further, Mr. Dallas had testified approximately six (6) times before the Board and approximately twenty-five (25) times in various zoning cases. (Record at 69). The Board was mistaken in its determination that there was no credible testimony presented on the issue of the property's uniqueness.

In addition to establishing the existence of special conditions (i.e. uniqueness), § 307.1 also requires that Petitioner show that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. The Board did not reach this question since it found that Petitioner had not complied with the uniqueness requirement of § 307.1. Ordinarily, this case would be remanded to the Board to consider the issue of practical difficulty. However, under the circumstances here, this Court finds no need to do so because it is obvious that Petitioner meets the practical difficulty test. See State Dep't of Assessments and Taxation et al. v. Clark, 281 Md. 385, 405 (1977) ("we see no need to remand the case for determination of the constitutional issues because we can

resolve them on the record before us . . . and we shall exercise our discretion to determine them to avoid the expense and delay of another appeal.").

Area variances are customarily concerned with practical difficulty, rather than unreasonable hardship, which is the test for use variances. Loyola Fed. Savings & Loan Ass'n v. Buschman, 227 Md. 243, 248 (1961). Practical difficulty is a lesser requirement than unreasonable hardship because the character of the zoned district is not changed with area variances. Id. at 249. Whether practical difficulty has been established is determined by the following criteria:

> 1) Whether compliance with the strict letter of the restrictions governing area, set backs, 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.

2 Rathkopf, The Law of Zoning and Planning, 45-28, 29 (3d ed. 1972).

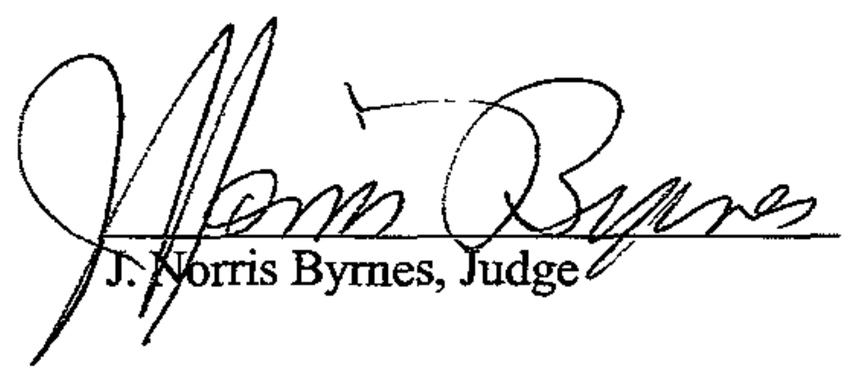
As Petitioner states, in 1921 the development was laid out into a majority of twenty-five (25) foot wide lots. (Petitioner's Rule 7-207 Memorandum of Law at 12). Most of the houses in the development were built on two such lots and have a lot width of fifty (50) feet, as is the property owned by Petitioner. Id. Petitioner desires only to build a residential dwelling in a neighborhood that is zoned for such use and that is already filled with dwellings on fifty (50) foot wide lots. Mr. Skolnik testified that if the variance is denied, he would be able to do "nothing" with the property. (Record at 60). Compliance with the strict letter of

the restrictions would undoubtedly deprive Petitioner of all economically beneficial uses of the property. Petitioner owns the only undeveloped lots on N. Hazelwood Avenue. (Petitioner's Rule 7-207 Memorandum of Law at 13). The Court finds that a grant of the petition would do substantial justice to Petitioner and other property owners in that Petitioner will be granted the same rights, no more and no less, that the objecting neighbors enjoy. Further, Petitioner has requested the minimal relief necessary to make use of the property. Finally, Mr. Skolnik and Mr. Dallas testified that the granting of the petition will not injure the pubic health, safety and general welfare of the community. (Record at 60-61, 76-77).

This Court finds that Petitioner satisfied both the uniqueness and practical difficulty prongs of § 307.1, thereby entitling Petitioner to a variance from the requirements of § 304.1B.

For the foregoing reasons, it is this 16th day of July, 2004 by the Circuit Court for Baltimore County,

ORDERED that the decision of the Board is REVERSED and REMANDED to the Board to grant the requested variance with appropriate conditions.



J. Norris Byrnes, Judge

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

May 14, 2003

Mr. Thomas Rothwell
5850 N. Hazelwood Avenue
Baltimore, MD 21206

RE: *In the Matter of: Paula Rush – Owner;*
Charter Homes, LLC / Case No. 02-365-A

Dear Mr. Rothwell:

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*, **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 /Fds

Kathleen C. Bianco
Administrator

Enclosure

c: Paula Rush
Steve Kennecht
Adam Skolnik /Charter Homes
J. Scott Dallas /J.S. Dallas Inc.
Otis and Denise Cadogan
Gloria T. Pack
Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

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on Recycled Paper

1/4/03

PETITION OF:	*	IN THE
CHARTER HOMES, LLC 3230 Bethany Lane, Suite 8 Ellicott City, Maryland 21042	*	CIRCUIT COURT
	*	FOR
	*	BALTIMORE COUNTY
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	
400 Washington Avenue, Room 49 Towson, Maryland 21204	*	Case No. 3-C-03-6444
	*	
IN THE CASE OF APPEAL NO. 02-365-A	*	

RECEIVED
NOV - 4 2003
BALTIMORE COUNTY
BOARD OF APPEALS

* * * * * * * *

PETITIONER'S RULE 7-207 MEMORANDUM OF LAW

Petitioner, Charter Homes, LLC ("Charter Homes"), by its attorneys, Kirk J. Halpin, Stanley S. Fine and Rosenberg, Martin, Funk and Greenberg, LLP, hereby files this Memorandum pursuant to Maryland Rule 7-207.

QUESTIONS PRESENTED

1. Whether the County Board of Appeals of Baltimore County (the "Board") erred in denying Charter Homes' Petition for Variance to allow a lot width of 50 feet in lieu of the required 55 feet for a proposed building lot and to approve an undersized lot where it, where the Board's decision is not supported by substantial evidence?

2. Whether the Board's decision to deny Charter Homes' Petition deprived Charter Homes' of all economically viable use of the Property, and therefore, violated rights guaranteed under the Fifth and Fourteenth Amendments to the United States

Constitution and Maryland's Constitution because the Board's decision constitutes a taking that requires the payment of just compensation?

STATEMENT OF FACTS

This is an appeal from the May 14, 2003 decision of the Board that denied Charter Homes' Petition for Variance (the "Petition") to allow a lot width of 50 feet in lieu of the required 55 feet for a proposed residential building lot and to approve an undersized lot for the property known an 5850-A N. Hazelwood Avenue in Baltimore County (the "Property"). See Charter Homes' Petition for Variance and the Board's decision (hereinafter "Decision") attached hereto as Exhibits A and B, respectively.

The previous owner of the Property, Paula Rush, filed the Petition on or about March 5, 2002, and subsequently sold the Property to Charter Homes on or about April 22, 2002. The Petition was reviewed by the Office of Planning and on March 26, 2002, by virtue of their written comment, indicated their support of the Petition. See Inter-Office Correspondence from Arnold F. 'Pat' Keller, III to Arnold Jablon dated March 26, 2002 attached hereto as Exhibit C.

The Petition was subsequently heard by Deputy Zoning Commissioner, Timothy M. Kotroco, who issued a Findings of Fact and Conclusions of Law on June 5, 2002, whereby the Deputy Zoning Commissioner ruled that "special circumstances or conditions exist that are peculiar to the property which is the subject of this request and that the requirements from which the Petitioner seeks relief will unduly restrict the use of the land due to the special circumstances unique to this particular parcel." See Findings of Fact and Conclusions of Law at 3 attached hereto as Exhibit D. Therefore, the Deputy Zoning Commissioner granted the Petition.

Constitution and Maryland's Constitution because the Board's decision constitutes a taking that requires the payment of just compensation?

STATEMENT OF FACTS

This is an appeal from the May 14, 2003 decision of the Board that denied Charter Homes' Petition for Variance (the "Petition") to allow a lot width of 50 feet in lieu of the required 55 feet for a proposed residential building lot and to approve an undersized lot for the property known an 5850-A N. Hazelwood Avenue in Baltimore County (the "Property"). See Charter Homes' Petition for Variance and the Board's decision (hereinafter "Decision") attached hereto as Exhibits A and B, respectively.

The previous owner of the Property, Paula Rush, filed the Petition on or about March 5, 2002, and subsequently sold the Property to Charter Homes on or about April 22, 2002. The Petition was reviewed by the Office of Planning and on March 26, 2002, by virtue of their written comment, indicated their support of the Petition. See Inter-Office Correspondence from Arnold F. 'Pat' Keller, III to Arnold Jablon dated March 26, 2002 attached hereto as Exhibit C.

The Petition was subsequently heard by Deputy Zoning Commissioner, Timothy M. Kotroco, who issued a Findings of Fact and Conclusions of Law on June 5, 2002, whereby the Deputy Zoning Commissioner ruled that "special circumstances or conditions exist that are peculiar to the property which is the subject of this request and that the requirements from which the Petitioner seeks relief will unduly restrict the use of the land due to the special circumstances unique to this particular parcel." See Findings of Fact and Conclusions of Law at 3 attached hereto as Exhibit D. Therefore, the Deputy Zoning Commissioner granted the Petition.

On or about July 1, 2002, Thomas M. Rothwell (the "Protestant"), an adjacent property owner, noted an appeal of the Deputy Zoning Commissioner's Findings of Fact and Conclusions of Law to the Baltimore County Board of Appeals (the "Board"). See copy of letter from the Protestant attached hereto as Exhibit E.

The Board held a hearing on Charter Homes' Petition on February 5, 2003. At this hearing, Charter Homes presented testimony, through its attorney, from the President of Charter Homes (Adam Skolnik), a development review planner from Baltimore County (Mark Cunningham), and a property line surveyor (Jonathan S. Dallas) in support of its Petition.

Through Mr. Dallas, the testimony established that, in 1921, the Plat of Countyside laid out the community, of which the Property is a part, into a majority of 25' wide lots. See Transcript of February 5, 2003 Board Hearing (hereinafter "TR") at 71:16; 72:2 attached hereto as Exhibit G. Further, the testimony established that according to a 1945 zoning map, the Property and surrounding area was initially part of a resident zone A, which had a minimum lot width of 50'. See TR at 72:11-12. The testimony established that many of the houses in the surrounding area were built by combining two 25' wide lots to accommodate one 50' wide lot. See TR at 71:15-18; 75:2, 6-9. The testimony further established that, the zoning for the Property and the surrounding area was changed to D.R. 5.5 in 1971 which requires a minimum lot width of 55' subject to an undersized lot approval. See TR at 71:11; 72:18.

Through Mr. Dallas, the testimony established that special circumstances or conditions exist that are peculiar to the Property, namely, the steep slope and overall topography of the Property is unique when compared to the surrounding subdivision. See

TR at 87:15-21; 88:1-3. The testimony established that throughout the Property, the topography varies from a three to one slope (meaning for every 3 feet you walk there is a 1-foot rise or fall) to a five to one slope (meaning for every 5 feet you walk there is a 1-foot rise or fall). See TR at 73:15-17.

Through Mr. Dallas, the testimony further established that the topography for the surrounding area varies generally from a five to one slope to a ten to one slope, which means that the surrounding area does not contain the same slope and overall topography that exists at the Property. See TR at 78:14-15. The testimony established that while the Property meets Baltimore County's criteria for grading and for slope, the Property is steeper than the bulk of the surrounding area. See TR at 88:1-3. The testimony further established that when reviewing the overall subdivision, there is only one strip of sloping land that is even similar to the slope at the Property. See TR at 87:19-21.

On behalf of Charter Homes and the Protestant, Mr. Dallas was the only witness that was admitted as an expert witness in the field of property line surveying and associated zoning matters. See TR at 70:13-15, 21.

Through Mr. Skolnik, the testimony established that if the Petition is denied that Charter Homes will not be able to use the Property for any other use. See TR at 60:13-16.

The Board issued its Decision on May 14, 2003 which ruled that (i) "the testimony of various witnesses as well as Petitioner's own witnesses clearly stated that there is no inherent 'uniqueness' in the proposed site" and (ii) there "was no credible testimony presented by any witness appearing on behalf of the Petitioner to establish any difference between the proposed site and other properties in the area" and (iii) that the Petitioner failed to meet the practical difficulty or hardship test since it "must related to

TR at 87:15-21; 88:1-3. The testimony established that throughout the Property, the topography varies from a three to one slope (meaning for every 3 feet you walk there is a 1-foot rise or fall) to a five to one slope (meaning for every 5 feet you walk there is a 1-foot rise or fall). See TR at 73:15-17.

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On behalf of Charter Homes and the Protestant, Mr. Dallas was the only witness that was admitted as an expert witness in the field of property line surveying and associated zoning matters. See TR at 70:13-15, 21.

Through Mr. Skolnik, the testimony established that if the Petition is denied that Charter Homes will not be able to use the Property for any other use. See TR at 60:13-16.

The Board issued its Decision on May 14, 2003 which ruled that (i) "the testimony of various witnesses as well as Petitioner's own witnesses clearly stated that there is no inherent 'uniqueness' in the proposed site" and (ii) there "was no credible testimony presented by any witness appearing on behalf of the Petitioner to establish any difference between the proposed site and other properties in the area" and (iii) that the Petitioner failed to meet the practical difficulty or hardship test since it "must related to

the land, not the owner." See Exhibit B at 3. Based upon the Board's belief that the Petitioner failed to present evidence as to the uniqueness of the Property, the Board denied the Petition. See Exhibit B at 4.

On June 12, 2003, Charter Homes filed this timely appeal of the Board's decision in this Court. See copy of Petition for Judicial Review attached hereto as Exhibit F.

STANDARD OF REVIEW

In Eastern Outdoor Advertising Co. v. Mayor and City Council of Baltimore, 128 Md. App. 494 (1999), the Court of Special Appeals discussed the standard of review applicable to an administrative agency decision:

> "[a] court's role in reviewing the decision of an administrative agency is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law. In fulfilling that role, courts recognize two standards of review of a decision of a zoning board: one for the board's conclusions of law and another for the board's findings of fact or conclusions of mixed questions of law and fact. When reviewing the board's legal conclusions, the court 'must determine whether the agency interpreted and applied the correct principles of law governing the case and no deference is given to a decision based solely on an error of law.' When reviewing findings of fact and conclusions regarding mixed questions, however, the circuit court 'cannot substitute its judgment for that of the agency and must accept the agency's conclusions if they are based on substantial evidence and if reasoning minds could reach the same conclusion based on the record."

Id. at 514 (internal citations omitted).

A reviewing court may reverse a decision of the zoning board where the action of the zoning authority has been found to be arbitrary, capricious, discriminatory or illegal. Hardesty v. Board of Zoning Appeals, 211 Md. 172, 177 (1956). See also State Ins. Comm'r v. Nat'l Bureau of Casualty Underwriters, 248 Md. 292, 300-01 (1967)(stating that a reviewing court may reverse or modify a decision of an agency as being arbitrary

and unreasonable if the decision is not based on or supported by sufficient facts or proper factual inferences).

Thus, this Court must decide whether the Board applied the proper legal standards to its decision to deny Charter Homes' Petition and whether there was substantial evidence in the record as a whole before the Board to support that decision. Charter Homes contends that the Board erred in its determination because there was not substantial evidence before the Board to support its decision.

ARGUMENT

I. THE BOARD ERRED IN DENYING CHARTER HOMES' PETITION FOR A VARIANCE BECAUSE THERE WAS NOT SUBSTANTIAL EVIDENCE TO SUPPORT THE BOARD'S DECISION.

The Board's decision to deny Charter Homes' Petition is premised on the Board's erroneous belief that (i) the Petitioner's own witnesses "clearly stated that there is no inherent 'uniqueness' in the proposed site" and (ii) that "there was no credible testimony presented by any witness appearing on behalf of the Petitioner to establish any difference between the proposed site and other properties in the area" and (iii) that the "Petitioner has not established the requisite uniqueness as called for under § 307 and Cromwell." After a careful review of the Transcript it is apparent that the Board's decision lacks authorization and support.

A. Charter Homes' witnesses did not clearly state that there is no inherent "uniqueness" in the proposed site.

1. J. Scott Dallas, the only witness qualified as an expert on behalf of either party, did not state that there is no inherent 'uniqueness' in the proposed site.

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A. Charter Homes' witnesses did not clearly state that there is no inherent "uniqueness" in the proposed site.

1. J. Scott Dallas, the only witness qualified as an expert on behalf of either party, did not state that there is no inherent 'uniqueness' in the proposed site.

J. Scott Dallas was admitted as an expert witness in the field of property line surveying and associated zoning matters on behalf of Charter Homes. See TR at 70:13-15, 21. No other witnesses were admitted as an expert witness on behalf of either party. Mr. Dallas' uncontradicted testimony established that the topography of the Property is unique when compared to nearby properties and the slope at the Property is much steeper than throughout the surrounding area. See TR at 73:15-17; 78:14-15; 87:15-21; 88:1-3. Mr. Dallas did not state that there is no inherent "uniqueness" in the proposed site.

2. **Adam Skolnik did not state that there is no inherent 'uniqueness' in the proposed site and even if he did, he is not a qualified witness in the field of property line surveying and associated zoning matters.**

Adam Skolnik testified in his capacity as President of Charter Homes and was not qualified as an expert witness. Mr. Skolnik testified as to the chain of title of the Property, the current undeveloped state of the Property, the houses that Charter Homes has built nearby, and the possible homes that Charter Homes' might build at this Property. See TR at 57:11-21; 58:13-15; 60:4-18. Mr. Skolink did not state that there is no inherent "uniqueness" in the proposed site.

3. **Mark Cunningham did not state that there is no inherent 'uniqueness' in the proposed site and even if he did, he is not a qualified witness in the field of property line surveying and associated zoning matters.**

Mark Cunningham testified as a Development Review Planner II for the Office of Planning of Baltimore County. See TR at 41:1. Mr. Cunningham was not admitted as an expert witness and was not qualified to testify in the field of property line surveying. See TR at 41:19-21; 42:1-2. Mr. Cunningham did not state that there is no inherent "uniqueness" in the proposed site.

The Board may have been confused by Mr. Cunningham's comments that the "topography was not germane or specific to that particular site" and the "topography runs throughout the neighborhood", however, he did not address the grade of the Property; and by his own admission, Mr. Cunningham indicated that "[w]e don't, per se, look at contours. That is not within our purview when we look at plans." See TR at 54:8-17, 55:8-9. Also, Mr. Cunningham stated that "I did not give any consideration to topography." See TR 54:8. Mr. Cunningham stated that "[w]hat we were looking at, the petition was for approval of a fifty foot wide lot. It has nothing to do with grading or anything to address the topography or contours." See TR at 54:12-14.

From a development standpoint, Mr. Cunningham is not a property line surveyor, was not admitted as an expert, and made it clear through his testimony that he does not look at the topography of the Property, and therefore, the Board cannot rely upon his comments in support of its belief that there is no inherent "uniqueness" in the proposed site.

B. There was credible testimony presented by Mr. Dallas which established the differences between the proposed site and other properties in the area.

1. Mr. Dallas presented credible evidence as to the differences between the proposed site and other properties in the area.

Mr. Dallas regularly provides surveying and engineering services for residential and commercial development. See TR at 68:15-16. Mr. Dallas is currently a licensed property surveyor and has been licensed since 1989 meeting all continuing education requirements since then. See TR at 70:8:12. Mr. Dallas has testified six previous times at the Board of Appeals and approximately 25 times in various zoning matters. See TR at

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69:18-20. Mr. Dallas was accepted as an expert witness in all of these cases, half of time after describing his credentials and answering some questions and half of the time automatically since the Zoning Commissioners were familiar with him or there were no opponents. See TR at 69:21; 70: 1-6.

Again, Mr. Dallas was admitted as an expert witness in the field of property line surveying and associated zoning matters on behalf of Charter Homes. See TR at 70:13-15, 21. No other witnesses were admitted as an expert witness on behalf of either party. Mr. Dallas' uncontradicted testimony established that the topography of the Property is unique when compared to nearby properties and the slope at the Property which varies from a three to one slope to a five to one slope (see TR at 73: 15-17) is much steeper than throughout the surrounding area which varies from five to one slope to ten to one slope (see TR at 78: 14-15).

2. **If the Board intended its statement that "there was no credible testimony" to apply to Mr. Dallas' uncontradicted testimony, then the Board did not make sufficient findings or provide sufficient evidence to support this statement.**

The Supreme Court of Rhode Island, in Hughes v. SACO Casting Co., Inc., 443 A.2d 1264 (R.I. 1982), held that

> "a judge or one acting in a quasi-judicial function may not reject uncontradicted testimony arbitrarily. Positive, uncontradicted evidence, we have said, may be rejected if it contains inherent improbabilities or contradictions that alone or in connection with other circumstances tend to contradict it. Such testimony may also be disregarded on credibility grounds **as long as the factfinder clearly but briefly states the reasons for rejecting the witness's testimony**."

Id. at 1266 (citations omitted) (emphasis added).

The Supreme Court of Georgia, in Lankford v. Holton, 200 S.E. 243 (G.A. 1938), held that

> "[d]irect and positive testimony, as distinguished from testimony circumstantial, opinionative, or actually negative in character, which is given by an unimpeached witness as to the existence of a fact apparently within his own knowledge, which is not in itself incredible, impossible, or inherently improbable, and which is not contradicted directly or by proof of facts or circumstances that could be taken as incompatible with such testimony, cannot be arbitrarily rejected by a jury or other trier of the facts upon the mere surmise that it perhaps might not be in accord with the truth."

Id. at 249 (citing Pennsylvania R. Co. v. Chamberlain, 288 U.S. 333, 341 (1933), among numerous other Georgia state cases).

The Board did not state any reasons for rejecting Mr. Dallas' uncontradicted, direct testimony that the Property was unique due to its topography and slope, both of which was within his personal knowledge and area of expertise following several inspections of the Property, and which is not in itself incredible, impossible, or inherently improbable.

C. The Petitioner met the requirements called for under § 307 and Cromwell v. Ward.

Section 307.1 of the Baltimore County Zoning Regulations states, in pertinent part, as follows:

> "[t]he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations . . . 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. . . . Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area . . . regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare."

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Id.

1. **Charter Homes established the uniqueness of the Property.**

In requiring a pre-requisite finding of "uniqueness", the Court defined the term "uniqueness" and stated:

> "[i]n 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 has an inherent characteristic not shared by other properties in the area, i.e., it 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. . . ."

Cromwell v. Ward, 102 Md. App. 691, 710 (1995).

Again, Mr. Dallas' uncontradicted testimony established that the topography of the Property is unique when compared to nearby properties and the slope at the Property which varies from a three to one slope to a five to one slope (see TR at 73: 15-17) is much steeper than throughout the surrounding area which varies from five to one slope to ten to one slope (see TR at 78: 14-15).

2. **Charter Homes established the practical difficulty or unreasonable hardship that would result from strict compliance of the Zoning Regulations for Baltimore County. Charter Homes established that the Petition complied with the spirit and intent of area regulations and will not result in injury to public health, safety and general welfare.**

Area variances, such as in the case sub judice, "are customarily concerned with 'practical difficulty.' " Loyola Federal Savings & Loan Ass'n v. Buschman, 227 Md. 243 (1961) (quoting Rathkopf, The Law of Zoning and Planning (1960 Supp. p. 169, supplementing p. 647 of the text). The following criteria has been established for determining whether "practical difficulty" has been established:

> "1) Whether compliance with the strict letter of the restrictions governing area, set backs, 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."

McLean v. Solely, 270 Md. 208, 214-15 (1973) (citing 2 Rathkopf, The Law of Zoning and Planning 45-28, 29 (3d ed. 1972)).

i. **Strict compliance with the Baltimore County Zoning Regulations governing lot width would deny all Charter Homes all economically beneficial or productive use of the Property.**

The Baltimore County regulations require a minimum lot width in D.R. 5.5 of 55'. See TR at 71:11; 72:18. The plat of Countyside laid out the development into a majority of 25' wide lots in 1921 when the zoning regulations then-required a minimum lot width of 50'. See TR at 71:16; 72:2. The majority of the houses in the area were built on two 25' wide lots such that the majority of houses in the area have a lot width of 50'. See TR at 71:15-18; 75:2, 6-9. Charter Homes' Property is 50' wide. See TR at 73:7-11. The property is zoned residential, the community is filled with residential houses, and Charter Homes wants to construct a house on the Property. See TR at 57: 16-18. If the Baltimore County Zoning Regulations are strictly construed, then and if the Petition is not granted, then Charter Homes will be denied from using the Property for all economically beneficial uses. See TR at 60:13-18; 65:3-7; 66:13-21; 67:1-19.

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ii. **A grant of the Petition by Charter Homes would do substantial justice being consistent with justice to other property owners and there is no lesser relaxation than that applied for in the Petition.**

A majority of the property owners in the area built their respective houses on two 25'-wide lots prior to the change in the minimum lot width from 50' to 55'. See TR at 71:15-20. Charter Homes owns the only undeveloped lots on Hazelwood and is requesting the minimum relief necessary to allow Charter Homes to construct a house (a variance to allow a lot width of 50 feet in lieu of the required 55 feet for a proposed building lot and to approve an undersized lot). See TR at 73:20:21; 74:1-3; 76:4-8.

iii. **The granting of the Variance will not injure the public health, safety, and general welfare.**

The Property is in an area that already contains all of the necessary public services, such as water and sewer. Charter Homes plans to construct one (1) house if the Petition is granted. The Property is in an area that is exclusively residential. The uncontradicted testimony of Messrs. Skolnik and Dallas established that the granting of the Petition will not injure the public health, safety, and general welfare of the community. See TR at 60:19-21; 61:1-6; 76:13-21; 77:1-4.

The Petitioner has not only met all of the requirements called for under § 307 and Cromwell v. Ward, but the Board's decision denying the Petition Board's decision is not supported by substantial evidence.

II. THE BOARD'S DECISION TO DENY CHARTER HOMES' PETITION DEPRIVED CHARTER HOMES OF ALL ECONOMICALLY VIABLE USE OF THE PROPERTY, AND THEREFORE, VIOLATED RIGHTS GUARANTEED UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND MARYLAND'S CONSTITUTION BECAUSE THE BOARD'S DECISION CONSTITUTES A TAKING THAT REQUIRES THE PAYMENT OF JUST COMPENSATION.

The Takings Clause of the Fifth Amendment of the United States Constitution, made applicable to the States through the Fourteenth Amendment, provides "nor shall private property be taken for public use, without just compensation." U.S. Const. Amend. V. The Due Process Clause of the Fourteenth Amendment provides: "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. Amend. XIV. The Maryland Constitution states: "The General Assembly shall enact no Law authorizing private property, to be taken for public use, without just compensation . . . ." Md. Const. Article III, § 40. The Maryland Declaration of Rights provides, in pertinent part: "That no man ought to be . . . disseized of his freehold . . . or deprived of his . . . property, but by the judgment of his peers, or by the law of the land." Md. Decl. Rights, Article XXIV.

In Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992), the U.S. Supreme Court reviewed its Fifth Amendment Takings Clause jurisprudence and identified "two discrete categories of regulatory action [that are] compensable without case-specific inquiry into the public interest advanced in support of the restraint." Id. at 1015. The first encompasses regulations that bring about an actual physical invasion of the property. The second concerns situations in which regulations deny a property owner of "all economically beneficial or productive use of land." Id.; see also Offen v. County

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Council, 96 Md. App. 526, 551-52 (1993) (discussing Lucas), aff'd in part, rev'd in part, 334 Md. 499 (1994). The case sub judice concerns the second category of regulatory action that is compensable without case specific inquiry into the public interest advanced by denying the Petition of Charter Homes.

In City of Baltimore v. Cohn, 204 Md. 523 (1954), the Court of Appeals of Maryland held that a "zoning ordinance which permanently so restricts the use of property that it cannot be used for any reasonable purpose goes beyond permissible regulation, and must be regarded as a taking of property without compensation." Id. at 530 (citing Northwest Merchants Terminal, Inc., v. O'Rourke, 191 Md. 171 (1948); Hoffman v. Mayor and City Council of Baltimore, 197 Md. 294 (1951); Arverne Bay Const. Co. v. Thatcher, 15 N.E.2d 587 (NY 1938)).

The Court in Cohn further held that

> "[t]o sustain an attack upon the validity of the ordinance, an aggrieved property owner must show that if the ordinance is enforced the consequent restrictions upon his property preclude its use for any purpose to which it is reasonably adapted, either because the ordinance does not authorize a variation of the general rule which would admit of such use, or because such variation has been refused by an administrative board in the exercise of a discretion which the ordinance confers upon it."

Id. See Lone v. Montgomery County, 85 Md. App. 477, 495 (1991); Tauber v. Montgomery County Council, 244 Md. 332 (1966); City of Baltimore v. Borinsky, 239 Md. 611, 622 (1965) (citing Pallace v. Inter City Land Co., 239 Md. 549 (1965); DePaul v. Board, 237 Md. 221, 27-29 (1965) and cases cited therein cited.

The Court of Appeals in Frankel v. City of Baltimore, 223 Md. 97 (1960), further held that

> "[w]e are not unmindful of the fact that in order to attack successfully the zoning ordinance as it applied to his property, it was incumbent upon Frankel [the property owner] to show that the hardship complained of affected his particular premises and was not generally common to other property in the neighborhood."

Id. at 104.

In many other Maryland cases, the property owner has argued that the denial of a variance or the present zoning deprives the property owner of the **most profitable or highest and best use of the land**. See Pem Construction Co. v. City of Baltimore, 233 Md. 372, 378 (1964); County Council for Montgomery County v. Gendelman, 227 Md. 491, 499 (1962); Walker v. Board of County Commissioner of Talbot County, 208 Md. 72, 90 (1955)).

Factually similar cases from other jurisdictions have resulted in the variance being granted as a result of a constitutional taking. In Russell v. District of Columbia Bd. of Zoning Adjustment, 402 A.2d 1231 (D.C. App. 1979), a property owner applied for a variance to construct a house on an unimproved lot of record (measuring 3,834.45 square feet) that had served as the backyard to the seller's home and where the minimum lot area requirement was 5,000 square feet. Id. at 1233. The Chevy Chase Citizens' Association opposed the variance because they believed that the house "would be out of harmony with the area, create a deleterious precedent, intrude on the privacy and aesthetic views of neighbors, create additional congestion and decrease property values." Id. The D.C. Board of Zoning Adjustment (the "BZA") granted the variance because it determined that the parcel at issue was the only property on the block divided into record lots which

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predated the current zoning regulations and "there is no other use to which [the lot] can be put and denial of the application would effectively deprive the owner of any use of that lot." Id. at 1233-34.

Property owners in the immediate vicinity of the disputed lot noted an appeal to the District of Columbia Court of Appeals. The District of Columbia Court of Appeals required that the "applicant for an area variance must demonstrate that the 'practical difficulties' of compliance are caused by the uniqueness of the property, not merely that his plight is unique." Id. at 1235 (citing Capitol Hill Restoration Society, Inc. v. District of Columbia Bd. of Zoning Adjustment, 398 A.2d 13, 15-16 (D.C. App. 1979); Association for Preservation 1700 Block of N Street v. District of Columbia Bd. of Zoning Adjustment, 384 A.2d 674, 678 (D.C. App. 1978); Palmer v. District of Columbia Bd. of Zoning Adjustment, 287 A.2d 535, 539 (D.C. App. 1972)).

The BZA found that "the practical difficulty of compliance stems for the substandard size of the lot, recorded prior to adoption of current zoning regulations, and its location in a district zoned solely for residential purposes." Id. at 1235. The District of Columbia Court of Appeals affirmed the BZA's ruling and held that

> "[t]his is not a case where the applicant seeks to avoid added expense or inconvenience inherent in the alternative methods of expansion, or to relieve personal problems. Nor is the applicant merely seeking the most profitable use for his land. This case presents a situation where the owner could never sell the unimproved lot for a residential use absent a variance. The minimum lot restrictions are more than 'unnecessarily burdensome' on these facts; they would effectively prevent development on the lot."

Id. at 1236 (internal citations omitted).

In Graves v. Bloomfield Planning Board, 235 A.2d 51 (N.J. Super 1967), a husband and wife (the "Graves") wanted to develop the only unimproved lot in a

residential area. Id. at 52. An extension of a local street was necessary in order to develop their property. Id. at 52-53. Therefore, the Graves' subdivided their 7,350 square foot triangular-shaped parcel into two pieces, one containing 6,500 square feet and the other containing 850 square feet. Id. at 53. The smaller parcel was to be deeded to the Town of Bloomfield and the larger parcel was to used to build a house. Id. Through this process, the larger parcel became a trapezoidal-shaped parcel with the front street line measuring 31.04'. Id. The local zoning regulations required a minimum lot width of 50'. Id.

The Planning Board approved the subdivision, and it was contended that the action of the Planning Board violated the zoning ordinance. Id. at 52. The Superior Court of New Jersey Law Division affirmed the Planning Board and dismissed the complaint holding that "[i]t is clear that if this lot, located in a single-family residential zone, cannot be used for construction of the proposed dwelling, it will for all practical purposes be useless." Id. at 55.

The Superior Court of New Jersey Law Division continued by quoting 1 Rathkopf, Law of Zoning and Planning (3d ed. 1964), c. 32, pp. 32--1, 32-- 3, as follows:

> "[p]rovisions in zoning ordinance establishing minimum lot areas and minimum width, or 'frontage' of lots, upon which dwellings may be erected have generally been upheld as a means of regulating the density of population and of assuring a desired quantum of light and air to the inhabitants of such dwellings. However, such provisions are invalid as to lots which, at the time of the enactment of such restrictions, are 'substandard', i.e., having a smaller size or having a lesser frontage than the required minimum, if such lots would thereby be rendered completely valueless. An ordinance having such effect is unconstitutional."

Graves, 306 A.2d at 56.

residential area. Id. at 52. An extension of a local street was necessary in order to develop their property. Id. at 52-53. Therefore, the Graves' subdivided their 7,350 square foot triangular-shaped parcel into two pieces, one containing 6,500 square feet and the other containing 850 square feet. Id. at 53. The smaller parcel was to be deeded to the Town of Bloomfield and the larger parcel was to used to build a house. Id. Through this process, the larger parcel became a trapezoidal-shaped parcel with the front street line measuring 31.04'. Id. The local zoning regulations required a minimum lot width of 50'. Id.

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Graves, 306 A.2d at 56.

Charter Homes has not argued that the denial of the Petition results in a less profitable use of the Property. Mr. Dallas' testimony established that (i) the Property is zoned residential (D.R. 5.5) which requires a minimum lot width of 55' (see TR at 71:11 and 72:18), (ii) the Property is made up of two 25'-wide lots which were originally laid out in 1921 (see TR at 71:16 and 72:2); and (iii) the Property is the only undeveloped lot on the street (See TR at 73:20:21; 74:1-3; 76:4-8). Charter Homes does not own any adjacent property to meet the minimum lot width requirement. Mr. Skolnik's testimony further established that (i) Charter Homes wants to build a house on the Property (See TR at 57:16-18) and (ii) if the Petition is denied that Charter Homes will be precluded from using the Property for all economically beneficial uses (See TR at 60:13-18; 65:3-7; 66:13-21; 67:1-19). For all of these reasons, the Board's decision to deny Charter Homes' Petition deprived Charter Homes' of all economically viable use of the Property, and therefore, violated rights guaranteed under the Fifth and Fourteenth Amendments to the United States Constitution and Maryland's Constitution because the Board's decision constitutes a taking that requires the payment of just compensation.

CONCLUSION

For all of the foregoing reasons, this Court should reverse the decision of the County Board of Appeals of Baltimore County and approve Charter Homes' Petition to allow a lot width of 50 feet in lieu of the required 55 feet for a proposed building lot and to approve an undersized lot, or in the alternative, remand this matter to the County Board of Appeals of Baltimore County for further hearings consistent with this Court's findings.

Kirk J. Halpin
Stanley S. Fine
ROSENBERG, MARTIN, FUNK & GREENBERG, LLP
25 S. Charles Street, Suite 2115
Baltimore, Maryland 21201
(410) 727-6600

Attorneys for Petitioner, Charter Homes

179312.02

Kirk J. Halpin
Stanley S. Fine
ROSENBERG, MARTIN, FUNK & GREENBERG, LLP
25 S. Charles Street, Suite 2115
Baltimore, Maryland 21201
(410) 727-6600

Attorneys for Petitioner, Charter Homes

179312 02

5/12/03

IN THE MATTER OF THE APPLICATION OF PAULA RUSH – LEGAL OWNER; CHARTER HOMES LLC FOR A VARIANCE ON PROPERTY LOCATED ON THE W/S OF N HAZELWOOD AVENUE, 314' S/S OF CHARLES AVENUE (5850-A N. HAZELWOOD AVENUE) 14TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT	* BEFORE THE * COUNTY BOARD OF APPEALS * OF * BALTIMORE COUNTY * CASE NO. 02-365-A	

* * * * * * * * *

OPINION

This matter comes before the Board as a result of a granting by the Deputy Zoning Commissioner of the Petitioner's request for relief under *Baltimore County Zoning Regulations* (BCZR) §§ 304 and 307; specifically, to allow construction of a single-family home on an undersized lot in a D.R. 5.5 zone and to vary the dimensional requirements applicable in the zone to permit a lot width of 50 feet in lieu of the required 55 feet.

The matter was heard *de novo* by the Board on February 5, 2003. Appearing on behalf of the Petitioner was Kirk J. Halpin, Esquire. Thomas M. Rothwell, 5850 N. Hazelwood Avenue, appeared in opposition.

The Petitioner, Adam Skolnik, testified and described his purchase of 5850-A N. Hazelwood Avenue on April 22, 2002 from Paula Rush.

Mr. Thomas M. Rothwell, owner of adjoining property located at 5852 N. Hazelwood Avenue, testified that he was concerned with his property value decreasing and the de-privatization of his rear yard.

Petitioner requests relief in part to construct a home on an "undersized" lot. Such an action is governed by BCZR § 304.1, which states in relevant part:

> ...a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:
>
> A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955; [BCZR 1955 Bill No. 47

1992]

B. All other requirements of the height and area regulations are complied with; [BCZR 1955] and

C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations. [BCZR 1955 Bill No. 47 1992]

It is clear from the reading of the statute that the requirements listed above are conjunctive in nature. Therefore, if the Petitioner's request fails to meet each of the criteria described in § 304.1, then no relief under that section may be granted to him. Turning to § 304.1A, the Board recognizes, by virtue of the testimony by Mr. J. Scott Dallas, of J.S. Dallas, Inc., that the lots in question were listed in a validly approved subdivision in 1925, well before the March 30, 1955 requirement. The Board is satisfied, on its face, that this section has been satisfied. Section 304.1C also appears to be satisfied, as the total of the two lots is .49 acre in a 1-acre required zone. The Board recognizes Counsel's extensive argument as to whether or not this section should be deemed contrary to the spirit and intent of the zoning regulations, but the Board finds that the language of the statute appears to be clear and specific.

Section 304.1B is the requirement most problematic for Petitioner. The site in question clearly does not meet the height and area regulations as set forth in the zoning regulations, and therefore a variance from those requirements must be granted before § 304.1B is satisfied. The granting of variances is clearly addressed in § 307.1 of the *Baltimore County Zoning Regulations*, which states, in pertinent part, as follows:

> "...(T)he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations...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.... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area...regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare...."

This Board enjoys the guidance provided by the Court of Special Appeals in *Cromwell v. Ward,*

102 Md.App. 691 (1995), wherein the Court writes:

> ...The Baltimore County ordinance requires "conditions ...peculiar to the land...and...practical difficulty...." Both must exist. ...However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when the uniqueness is first established that we then concern ourselves with the practical difficulties...." Id. at 698.

In requiring a pre-requisite finding of "uniqueness", the Court defined the term and stated:

> 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 has 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.... Id. at 710.

This Board finds that the Petitioner has not established the requisite uniqueness as called for under § 307 and *Cromwell*. There was no credible testimony presented by any witness appearing on behalf of the Petitioner to establish any difference between the proposed site and other properties in the area. In fact, the testimony of various witnesses as well as Petitioner's own witnesses clearly stated that there is no inherent "uniqueness" in the proposed site. Therefore, no further inquiries into the second issue of practical difficulty need to be explored.

The Board recognizes that Petitioner presented considerable testimony as to his personal difficulties and belief that for those reasons among others, he should have been granted the relief requested. However, hardship must relate to the land, not the owner.

In view of the failure of Petitioner to establish his entitlement to an appropriate variance of the height and area regulations as they relate to the proposed site, this Board finds that he has not successfully met the requirements of Section 304.1B and his Petition is therefore denied.

ORDER

THEREFORE, IT IS THIS 14th day of May, 2003 by the County Board of Appeals of Baltimore County

ORDERED that the Petitioner's request for variance to allow construction of a single-family home on an undersized lot in a D.R. 5.5 zone, and to vary the dimensional requirements applicable in the zone to permit a lot width of 50 feet in lieu of the required 55 feet, be and is hereby **DENIED**.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

C. Lynn Barranger, Panel Chairman

Lawrence S. Wescott

Richard K. Irish

Baltimore County
Zoning Commissioner

Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
410-887-4386
Fax: 410-887-3468

June 5, 2002

Paula Rush
5852 N Hazelwood Ave
Baltimore MD 21206

Re: Petition for Variance
Case No. 02-365-A
Property: 5850 N. Hazelwood Ave

Dear Ms. Rush:

Enclosed please find the decision rendered in the above-captioned case. The petition for variance has been granted in accordance with the enclosed Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days from the date of the Order to the Department of Permits and Development Management. If you require additional information concerning filing an appeal, please feel free to contact our appeals clerk at 410-887-3391.

Very truly yours,

Timothy Kotroco

Timothy M. Kotroco
Deputy Zoning Commissioner

TMK:raj
Enclosure

c: J Scott Dallas
P O Box 26
13512 Long Green Pike
Baldwin MD 21013

Denise Cadogan
5852 N Hazelwood Ave
Baltimore MD 21206

Thomas M Rothwell
5850 N Hazelwood Ave
Baltimore MD 21206

Printed with Soybean Ink
on Recycled Paper

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 5850 A N. Hazelwood Avenue

which is presently zoned DR 5.5

This Petition shall be filed with the Department of Permits and 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) 1 B02.3 C.1 to allow a lot width of 50 feet in lieu of the required minimum 55 feet. FOR A PROPOSED BUILDING LOT (JSD) AND TO APPROVE AN UNDERSIZE LOT

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty) Plat of "County Side" is primarily composed of 25' wide lots, many grouped in twos for improved lot widths of 50 feet, including ten or more sites within 500 feet of subject property. Proposed improvements will be consistent with existing neighborhood.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Variance, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

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

Contract Purchaser/Lessee:

Name - Type or Print

(JSD)

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

Paula Rush

Name - Type or Print

Signature

Name - Type or Print

(JSD)

Signature

5852 N. Hazelwood Ave. 410-480-3213

Address Telephone No.

Baltimore MD 21206

City State Zip Code

Representative to be Contacted:

J. Scott Dallas (J.S. Dallas, Inc.)

Name

P. O. Box 26
13523 Long Green Pike 410-817-4600

Address Telephone No.

Baldwin MD 21013

City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 1HR

UNAVAILABLE FOR HEARING —

Reviewed By JL Date 3/5/02

HEAR WITH #366

UNDERSIZE APPVL PACK TO OP 3/05/02

Case No. 02 365 A

RECEIVED FOR FILING

Date 6/5/02

By

REV 9/15/98

J. S. DALLAS, INC.

SURVEYING & ENGINEERING

13523 LONG GREEN PIKE
P.O. BOX 26
BALDWIN, MD 21013
(410) 817-4600
FAX (410) 817-4602

365

ZONING DESCRIPTION FOR # 5850 A N. HAZELWOOD AVENUE

BEGINNING *at a point on the west side of North Hazelwood Avenue, 30 feet wide, at the distance of 314 feet, more or less south of the south side of Charles Avenue, which is 30 feet wide.*

BEING *Lots No.193 and 194,* ***"COUNTY SIDE"*** *as recorded in Baltimore County Plat Book No.7 Folio 3.*

CONTAINING 7,500 *square feet of land, more or less or* ***0.17*** *acres of land, more or less.*

ALSO *known as* ***# 5850 A N. Hazelwood Avenue*** *and located in the 14th Election District 6th Councilmanic District.*

Note: above description is based on existing record plat and is for zoning purposes only.

STATE OF MARYLAND
JONATHAN SCOTT DALLAS
No. 468
REGISTERED
PROPERTY LINE SURVEYOR

NOTICE OF ZONING HEARING

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

Case: #02-365-A
5850 A N. Hazelwood Avenue
W/S of Hazelwood Avenue, 314' S of Charles Avenue
6th Election District
14th Councilmanic District
Legal Owner: Paula Rush
Variance: to allow a lot width of *50* feet *in lieu* of the required minimum 55 feet for a proposed building lot and to approve an undersized lot and any other relief necessary.
Hearing: Wednesday, May 22, 2002 at 11:00 a.m. in Room 407, County Courts Building, 401 Bosley Ave.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baltimore County
NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.
(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.
5/034 May 2 C535559

CERTIFICATE OF PUBLICATION

5/3/, 2002

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 5/2/, 2002.

- [X] The Jeffersonian
- [ ] Arbutus Times
- [ ] Catonsville Times
- [ ] Towson Times
- [ ] Owings Mills Times
- [ ] NE Booster/Reporter
- [ ] North County News

S. Wilkinson

LEGAL ADVERTISING

TO: PATUXENT PUBLISHING COMPANY
Tuesday, May 2, 2002 Issue – Jeffersonian

Please forward billing to:
Charter Homes
3230 Bethany Lane
Suite 8
Ellicott City MD 21042

410 480-3213

NOTICE OF ZONING HEARING

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

CASE NUMBER: 02-365-A
5850 A N Hazelwood Avenue
W/S of Hazelwood Avenue, 314' S of Charles Avenue
6th Election District – 14th Councilmanic District
Legal Owner: Paula Rush

Variance to allow a lot width of 50 feet in lieu of the required minimum 55 feet for a proposed building lot and to approve an undersized lot and any other relief necessary.

HEARING: Wednesday, May 22, 2002 at 11:00 am. In Room 407, County Courts Building, 401 Bosley Avenue

Lawrence E. Schmidt

LAWRENCE E. SCHMIDT GDZ
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY
Thursday, April 25, 2002 Issue – Jeffersonian

Please forward billing to:
Charter Homes
3230 Bethany Lane
Suite 8
Ellicott City MD 21042

410 480-3213

NOTICE OF ZONING HEARING

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

CASE NUMBER: 02-365-A
5850 A N Hazelwood Avenue
W/S of Hazelwood Avenue, 314' S of Charles Avenue
6th Election District – 14th Councilmanic District
Legal Owner: Paula Rush

Variance to allow a lot width of 50 feet in lieu of the required minimum 55 feet for a proposed building lot and to approve an undersized lot and any other relief necessary.

HEARING: Friday, May 10, 2002 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Lawrence E. Schmidt

LAWRENCE E. SCHMIDT GDZ
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (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 02-365-A

Petitioner Paula Rush

Address or Location 5850 A Hazelwood Ave.

PLEASE FORWARD ADVERTISING BILL TO

Name Charter Homes

Address 3230 Bethany La Suite 8
Ellicott City MD. 21042

Telephone Number 410-480-3213

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 14241

DATE 7/9/02 ACCOUNT 1.1.16150

AMOUNT $210.00

RECEIVED FROM: CR Properties

FOR: 5852 N. Hazelhurst Avenue
CV02-351

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
BUSINESS ACTIVITY TIME
07/10/2002 7/09/02 13:56:18
RECEIPT 5 WALKIN BUS LPR DRAWER 5
REC'D FROM: RECEIPT # 276352 07/09/2002 OFLN
DESCRIPTION: 5 528 ZONING VERIFICATION
CASH REC'D: 014249
Rcpt Tot $210.00
210.00 CK .00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

365 JLL

No. 11116

DATE 3/05/02 ACCOUNT 01 006 6150

AMOUNT $ 100.00

RECEIVED FROM: V. S Dallas

FOR: Variance & Landscape Cert approval

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
PAYMENT ACTUAL TIME
5/06/2002 3/05/2002 14:42:15
REG WS05 CASHIER RBOB LRB DRAWER 5
>>RECEIPT # 254983 OFLN
DEPT 5 528 ZONING VERIFICATION
CR NO. 011116
Recpt Tot 100.00
150.00 CK .00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

APPEAL SIGN POSTING REQUEST

CASE NO.: 02-3~~8~~65-A

Paula Rush - LEGAL OWNERS

5850-A N Hazelwood Avenue

14th ELECTION DISTRICT APPEALED: July 3, 2002

ATTACHMENT – (Plan to accompany Petition – Petitioner's Exhibit No. 1)

**********COMPLETE AND RETURN BELOW INFORMATION*****

CERTIFICATE OF POSTING

TO: Baltimore County Board of Appeals
400 Washington Avenue, Room 49
Towson, Maryland 21204

Attention: Kathleen Bianco
Administrator

RE: Case No.: 02-365-A

Petitioner/Developer:

Paula Rush

This is to certify that the necessary appeal sign was posted conspicuously on the property located at:

_____

The sign was posted on 7/29, 2002

By: Gary Freund
(Signature of Sign Poster)

GARY C. FREUND
(Printed Name)

CERTIFICATE OF POSTING

RE Case No.: 02-365-A

Petitioner/Developer: DALLAS, ETAL

Date of Hearing/Closing 5/22/02

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

Attention:

Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at #5850-A - NORTH HAZELWOOD AVE

The sign(s) were posted on 5/2/02
(Month, Day, Year)

Sincerely,

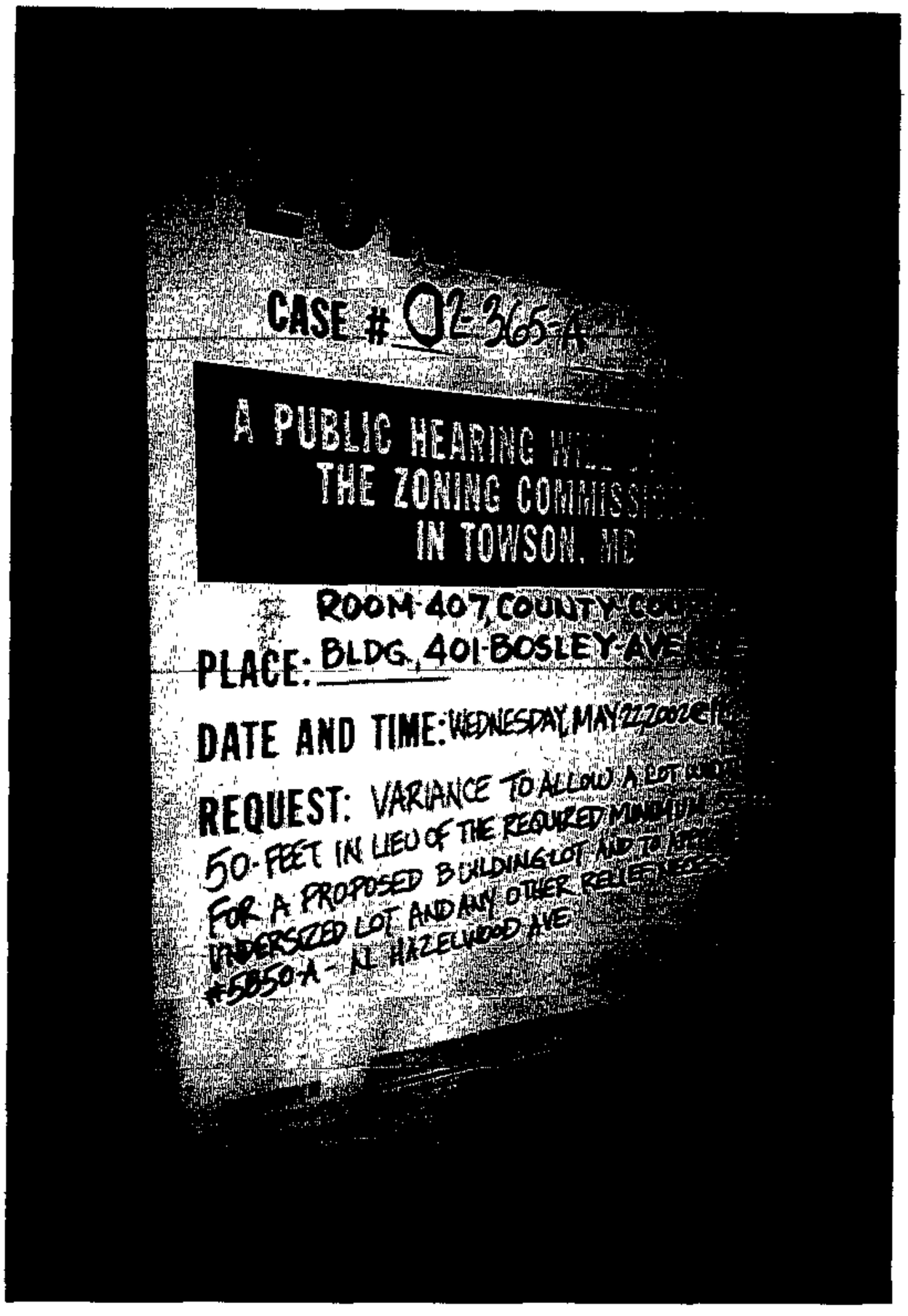
5/4/02
(Signature of Sign Poster and Date)

PATRICK M. O'KEEFE
(Printed Name)

523 PENNY LANE
(Address)

HUNT VALLEY, MD. 21030
(City, State, Zip Code)

410-666-5366 ; CELL-410-905-8571
(Telephone Number)



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

February 5, 2003

NOTICE OF DELIBERATION

IN THE MATTER OF:
PAULA RUSH / CHARTER HOMES LLC – Legal Owner
Case No-02-365-A

Having heard this matter on 2/05/03, public deliberation has been scheduled for the following date /time:

DATE AND TIME : TUESDAY, MARCH 11, 2003 at 12:00 noon

LOCATION : Hearing Room 48, Basement, Old Courthouse

Kathleen C. Bianco
Administrator

c: Appellant /Protestant : Thomas M. Rothwell

Legal Owner : Adam Skolnik /Charter Homes
Counsel for Charter Homes LLC : Kirk J. Halpin, Esquire

Paula Rush
J. Scott Dallas /J.S. Dallas Inc.

Otis and Denise Cadogan
Gloria T. Pack

Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

FYI copy: B.S.R.

Printed with Soybean Ink
on Recycled Paper

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

September 16, 2002

NOTICE OF ASSIGNMENT

CASE #: 02-365-A

IN THE MATTER OF: ***Paul Rush*** **–Legal Owner**
5850-A N Hazelwood Avenue
14th Election District; 6th Councilmanic District

6/05/02 – D.Z.C.'s Order in which requested variance relief was GRANTED with restrictions.

ASSIGNED FOR: **WEDNESDAY, FEBRUARY 5, 2003 at 10:00 a.m.**

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

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

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco
Administrator

c: Appellant /Protestant : Thomas M. Rothwell

Petitioner /Legal Owner : Paula Rush
Steve Kennecht

J. Scott Dallas /J.S. Dallas Inc.

Adam Skolnik /Charter Homes /added 9/19/02

Otis and Denise Cadogan
Gloria T. Pack

Kirk J. Halpin, Esq - Counsel for Charter Homes /entered 1/31/03

Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

Printed with Soybean Ink
on Recycled Paper

Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
410-887-3353
Fax: 410-887-5708

April 3, 2002

NOTICE OF ZONING HEARING

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

CASE NUMBER: 02-365-A
5850 A N Hazelwood Avenue
W/S of Hazelwood Avenue, 314' S of Charles Avenue
6th Election District – 14th Councilmanic District
Legal Owner: Paula Rush

Variance to allow a lot width of 50 feet in lieu of the required minimum 55 feet for a proposed building lot and to approve an undersized lot and any other relief necessary.

HEARING: Wednesday, May 22, 2002 at 11:00 am. In Room 407, County Courts Building, 401 Bosley Avenue

Arnold Jablon GDZ
Director

C: Paula Rush, 5852 N Hazelwood Avenue, Baltimore 21206
J. Scott Dallas, P O Box 26, Baldwin 21013

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, MAY 2, 2002.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
410-887-3353
Fax: 410-887-5708

March 26, 2002

NOTICE OF ZONING HEARING

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

CASE NUMBER: 02-365-A
5850 A N Hazelwood Avenue
W/S of Hazelwood Avenue, 314' S of Charles Avenue
6th Election District – 14th Councilmanic District
Legal Owner: Paula Rush

Variance to allow a lot width of 50 feet in lieu of the required minimum 55 feet for a proposed building lot and to approve an undersized lot and any other relief necessary.

HEARING: Friday, May 10, 2002 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Arnold Jablon
Director

C: Paula Rush, 5852 N Hazelwood Avenue, Baltimore 21206
J. Scott Dallas, P O Box 26, Baldwin 21013

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY THURSDAY, APRIL 25, 2002.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE, FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

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IN THE MATTER OF:	* BEFORE THE
PAULA RUSH _ LEGAL OWNER	* COUNTY BOARD OF APPEALS
5850-A N. Hazelwood Avenue	* OF
14th Election District	* BALTIMORE COUNTY
6th Councilmanic District	* February 5, 2003
	* Case No. 02-365-A

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 o'clock a.m., February 5, 2003.

* * * * *

ORIGINAL

Reported by:

C.E. Peatt

1 BOARD MEMBERS:
C. LYNN BARRANGER, Panel Chairman
2 LAWRENCE S. WESCOTT
3 RICHARD K. IRISH
4
5 APPEARANCES:
KIRK J. HALPIN, Esquire
6 On behalf of Petitioner
7 THOMAS M. ROTHWELL, Pro Se
8 Protestant/Appellant
9
10
11
12
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16
17
18
19
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21

1 P R O C E E D I N G S
2 * * * * *
3 THE CHAIRMAN: Good morning. We're here in the
4 matter of Case No. 02-365-A in the matter of Paula Rush,
5 legal owner, 5850-A North Hazelwood Avenue, in the 14th
6 Election District, 6th Councilmanic District, a case in
7 which the Deputy Zoning Commissioner granted variance
8 relief with restrictions under order dated 6/05/02.
9 Counsel, can you state your name, for the record?
10 MR. HALPIN: Good morning. Kirk Halpin, on
11 behalf of Charter Homes, which is the purchaser of the lot
12 from Paula Rush. Charter Homes purchased the lot on April
13 22, 2002, and I notified the Board of Appeals of that
14 recently.
15 THE CHAIRMAN: And you are, sir?
16 MR. ROTHWELL: Thomas Rothwell, residence at 5850
17 North Hazelwood Avenue.
18 THE CHAIRMAN: You're the appellant?
19 MR. ROTHWELL: Yes, ma'am.
20 THE CHAIRMAN: I note there are some other people
21 in the audience today. Are you here as participants?

1 MS. PACK: I am Gloria Pack. I live at 5837
2 North Hazelwood, and I'm here as an appellant.
3 MS. CADOGAN: Carol Cadogan, 5852 North
4 Hazelwood, as an appellant.
5 THE CHAIRMAN: To let you know, this court is run
6 like any other court of law. That is, we have an
7 evidentiary hearing. We take in the evidence.
8 We follow the rules of the court where the
9 appellants would have to present their case first, and
10 then it would be up to the petitioner to present their
11 evidence.
12 It is required by law for you to present evidence
13 based on the zoning regulations. That will be Section
14 304.1 for undersized lots and 307.1 for a variance based
15 on the reasons why this should or should not be granted.
16 And with that, we'll begin with you, Mr.
17 Rothwell. You need to come up here to be sworn.
18 T H O M A S M. R O T H W E L L,
19 having been called as a witness, was duly sworn, and
20 testified as follows:
21 THE CHAIRMAN: Mr. Rothwell, could you state your

1 name and address, for the court.
2 THE WITNESS: Thomas Michael Rothwell, 5850 North
3 Hazelwood Avenue, Baltimore, Maryland 21206.
4 THE CHAIRMAN: What would you like to tell our
5 court today?
6 THE WITNESS: Well, I would just like to tell my
7 story, I suppose. I'm not a professional at this, so you
8 have to excuse me.
9 When the request for the variance went in, I saw
10 the sign went up, and I talked to Paula Rush. She
11 actually talked to me before that and said, well, I have a
12 building lot here and I can get much more money for the
13 building lot than just selling the property.
14 She informed me that she was going to sell, I
15 suppose it's her father's property, Lefty's place, and I
16 went up there and talked with her. We walked around the
17 lot.
18 She's convinced this is a building lot. Okay, if
19 you think so. Then I find out it's not really a building
20 lot because it's only fifty feet wide.
21 So by the rules, my understanding, you need

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1 fifty-five feet to be considered a building lot.
2 Well, paula went ahead, my understanding is, she
3 went ahead and sold the property in three pieces, which
4 split up Lefty's place, and that's exactly what the
5 neighborhood looks at. This was Lefty's place.
6 THE CHAIRMAN: Excuse me. Who is "Lefty"?
7 THE WITNESS: Lefty was her father, and he lived
8 there for a long time. He was my neighbor for a long
9 time. He lived at 5852.
10 MR. WESCOTT: Is there a house on the lot?
11 THE WITNESS: Yes, sir.
12 MR. WESCOTT: And you lived next door at 5852?
13 THE WITNESS: Yes, sir. Now, the house at
14 5852 -- well, let me read this petition just so my words
15 work out right. To support my appeal, I went around the
16 neighborhood. In my letter asking for the appeal, I
17 stated that I knew of at least seven people on the street
18 that didn't want this to happen. I can read the letter,
19 but I knew this just from talking to these people.
20 THE CHAIRMAN: The problem is, with a court of
21 law, we look at that as hearsay, because the petitioner

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1 who is here would not be able to question them.
2 If you have a petition where they signed it, you
3 can submit it, and we give it the weight we feel is
4 necessary, and it will be part of the record.
5 But you cannot be saying "They said this," or
6 "They said that." That's all we can do at this point.
7 THE WITNESS: That's all I had for the first
8 hearing, was the hearsay of seven people. So when I found
9 out, and I got the letter from Timothy --
10 THE CHAIRMAN: Kotroco?
11 THE WITNESS: Yes. -- that the -- okay. Let me
12 back up a little bit here. I came into the first hearing
13 and I stated my objections to this.
14 My objections were that I thought what she
15 planned to do would de-value my property. I still think
16 it would de-value my property. It will, without a doubt,
17 drastically affect the privacy of my back yard.
18 I saw the house the builder wants to put up. He
19 built another one on the other side. The fellow took the
20 property, split it up into three parcels, sold two
21 building lots, and then sold 5852.

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1 Now, the builder went up there and put up a two
2 story and now he wants to put up another one just like it.
3 When he put the two story up on the other side, the 5854,
4 it's a two story house, it's at least four feet out of the
5 ground, and it has a twelve-twelve roof on it, which makes
6 it sixteen, twenty feet, ten feet, twenty-six plus four,
7 about thirty feet tall. The property next to me goes up
8 on a hill of about two to one, and I can submit this
9 drawing I drew this morning.
10 THE CHAIRMAN: Show it to him.
11 THE WITNESS: I know this is a fact because I
12 built my house and I designed the landscaping and the
13 grading and everything, I did it myself.
14 I have been sixteen years out of thirty in the
15 surveying business, so I know how to do these things. His
16 property goes up at least two to one.
17 So from my house to the property goes up about
18 ten feet, and then it goes up another three feet, then
19 you're going to put a two story up, four feet out of the
20 ground, which makes it about forty feet above my back
21 yard.

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1 So, in other words, he wants to put a skyscraper
2 up right next to my back yard.
3 THE CHAIRMAN: Do you want to submit that?
4 THE WITNESS: Sure.
5 THE CHAIRMAN: Do you have any objection?
6 MR. HALPIN: The only objection I would have is
7 to the dimensions, that I can't verify that. As to the
8 representative, I have no problem.
9 THE WITNESS: Well, you can verify the feet by
10 going through the records, because --
11 THE CHAIRMAN: That particular drawing, for it to
12 be verified, usually would be done by a professional
13 surveyor with a seal. Since it's a hand drawing, we can
14 take it as a representative drawing of the proposed
15 layout.
16 THE WITNESS: Okay.
17 THE CHAIRMAN: Would you like to submit that?
18 THE WITNESS: Sure.
19 THE CHAIRMAN We'll accept this as Appellant's
20 Exhibit No. 1.
21 THE WITNESS: Now, in granting the first

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1 variance, in granting the variance -- okay? -- it was
2 stated that it was conditionally granted because my
3 objection was that it would, or it will, tragically affect
4 the privacy of my back yard. There's no doubt about that.
5 So the variance was granted with a stipulation
6 that it had to be a landscape plan approved by the
7 commission.
8 Well, with that scenario and that drawing,
9 putting up that forty-foot house, the only way they are
10 going to do any kind of landscaping to protect my privacy
11 is to put about thirty foot trees in, and I know that's
12 not going to happen. You can't transplant a thirty-foot
13 tree. Okay. That's the privacy issue.
14 Now, the other issue I brought up when I objected
15 originally, I thought it would de-value my property
16 substantially. I didn't know how much, it was just
17 thinking that it would de-value my property.
18 So when the variance was granted, I went ahead
19 and had my house appraised. My property was appraised by
20 BLR Real Estate. I had the people come out and appraise
21 it, and I gave him three scenarios.

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1 THE CHAIRMAN: Before you go any further, are you
2 going to submit this as evidence as well?
3 THE WITNESS: Sure.
4 THE WITNESS: You need to let Mr. Halpin look at
5 that as well. Where did you receive this appraisal?
6 THE WITNESS: From BLR Appraisal Service. This
7 was done June 20.
8 THE CHAIRMAN: When was this done?
9 THE WITNESS: June 20, 2002.
10 THE CHAIRMAN: And does that accurately represent
11 your home and the information that's contained in there?
12 THE WITNESS: Yes. Now, in the appraisal, I
13 asked the fellow to give me three scenarios. One, what my
14 house would be worth --
15 MR. HALPIN: Before we proceed, can I have a
16 moment to look at this?
17 THE CHAIRMAN: My apologies.
18 MR. HALPIN: We would object. BLR is not here to
19 answer any questions we may have as to the appraisal.
20 THE CHAIRMAN: Do you have any comment on this,
21 Mr. Rothwell? Excuse me. I didn't understand what you

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1 said?
2 MR. HALPIN: I would object to submitting that,
3 or testifying to it, because BLR is not here for me to
4 question them.
5 THE WITNESS: I can talk about it.
6 THE CHAIRMAN: You can say that you got an
7 appraisal and what you feel your house is worth, but we'll
8 not be able to take it in saying this is an expert
9 opinion.
10 THE WITNESS: Okay. I mean, the dollar figure
11 here -- the reason I brought this man out to have the
12 house appraised, I explained to him what the situation was
13 and the reason for having this appraisal.
14 I told him that I thought the proposed plans next
15 door would affect the value of my property, and I wanted
16 to know by how much.
17 I wanted to know what the land was worth, I
18 wanted to know what the house was worth, you know, if this
19 was to happen.
20 Now, although it wasn't as much of a depreciation
21 as I thought, it still exists, and he didn't put it down

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1 here, because he --
2 THE CHAIRMAN: We can't talk about what he says.
3 You can say that you obtained this appraisal, that you
4 noticed there was a de-valuation.
5 THE WITNESS: Okay. He made the appraisal and
6 there was some de-valuation of about 2000 to $3000.
7 THE CHAIRMAN: That was one scenario?
8 THE WITNESS: That was one scenario. That's
9 potentially two to $3000.
10 MR. WESCOTT: What scenario was that?
11 THE WITNESS: That scenario if this project goes
12 forth with the house next door.
13 Now, the third scenario was --
14 MR. WESCOTT: What was the first one?
15 THE WITNESS: The first one was without the
16 house, the way things are, just the way they are. The
17 third scenario was suppose I owned that fifty feet of
18 property, then what's it make my house worth?
19 In other words, what's that property worth? He
20 said that would increase the value of the house by
21 approximately $3000.

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1 He also did his homework and found out -- I'm not
2 ure what the number is -- but found out that this builder
3 d paid -- it was either fifteen or $17,000 for the
4 property as a building lot. All right.
5 Now, to support this de-valuation, I wrote this
6 petition, and you can read it, of what I thought, my
7 thoughts on what this would do to the neighborhood and the
8 values of the properties. In other words, I wrote down --
9 THE CHAIRMAN: One second.
10 MR. HALPIN: Thank you.
11 THE CHAIRMAN Do you have any objection?
12 MR. HALPIN: I would object to the
13 characterization of the way it was written.
14 THE CHAIRMAN: This is an administrative court
15 and we understand we are dealing with lay people who don't
16 understand.
17 So usually, with petitions, we'll look at it as
18 if he can say these people lived in the area and signed
19 it. We understand your comment about the
20 characterization, but we'll take it for ID. only.
MR. HALPIN: I understand. Thank you.

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1 THE CHAIRMAN: To let you know what we are going
2 to do is, can you testify that for the ones that signed
3 this, can you testify they definitely reside at these
4 residences?
5 THE WITNESS: Yes, ma'am. I walked the
6 neighborhood and visited all the houses there.
7 THE CHAIRMAN: Then what we are going to do is
8 take this in for what it's worth and give it i.d. only.
9 It is not considered hard evidence. So we'll take it in
10 as Appellant No. 2 for i.d. only.
11 THE WITNESS: Can I further explain?
12 THE CHAIRMAN: Yes. But you also realize there's
13 a very strong line here. You can't be saying "So and so
14 said this," because they are not here for him to cross
15 examine.
16 THE WITNESS: Okay. So what I did, I took this
17 and I wrote down what I thought were some common
18 objections to this project and wrote them down.
And I walked around the neighborhood and said,
20 Do you agree with this? If you agree, sign the petition.
21 If you have any further comments, you can write them down.

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1 Virtually everybody I talked to -- do you want me
2 to read this?
3 THE CHAIRMAN: We can read it ourselves.
4 THE WITNESS: Virtually everybody I talked to
5 signed the petition. Nobody said, No, we are not signing
6 it.
7 I only covered half the street. I didn't even go
8 down to the end of the block. So I think it's a pretty
9 good representation of how the neighborhood feels about
10 this.
11 THE CHAIRMAN: So, basically, you're here talking
12 about your objections as to why you're against this
13 property, but do you have anything else that would apply
14 to why this should not be built in accordance to 304.1 or
15 307.1?
16 THE WITNESS: Yes, I do. In the first hearing, I
17 told -- I stated to Timothy Kotroco, I explained to him
18 that I had some people who agreed with me and said, All
19 you have to do is stand on that lot, stand on the street
20 and look at that lot, and it doesn't make sense to put a
21 house there.

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1 And that's what it says in the petition there,
2 that that house has always been, 5852, has always been
3 sort of the icon of that neighborhood.
4 The objection is, the appeal of that neighborhood
5 is it's a country-like setting, and it's a convenient
6 location. The pictures in this appraisal will or could be
7 used as evidence that it is a country-like setting.
8 There's no sidewalks. There's no curb and
9 gutter. Lot of trees. It's a country-like setting. Just
10 the appeal of the neighborhood. And this house at 5852
11 sits up on a hill, big wide side yard, fifty-eight feet of
12 side yard from that house to the property line, and it was
13 a big side yard on the other side and a swimming pool in
14 the back yard, a little short rancher sitting on top of
15 the hill.
16 It was a country-like appeal of the neighborhood.
17 It's been the icon of the neighborhood. Everybody
18 identifies the neighborhood by this house.
19 To split it up and put this two story basically
20 just destroys that icon. In effect, I think it
21 drastically depreciates the ambiance of the neighborhood.

1 That is basically the objection of all the people
2 that signed the petition. That and the fact that the
3 fifty-five foot lot, Timothy Ko --
4 THE CHAIRMAN: Kotroco.
5 THE WITNESS: -- Kotroco, well, when he sent the
6 results to me, he used two court cases as precedence for
7 his decision. It was McLean versus Solely and Chesapeake
8 Beach Anderson versus Board of Appeals, Chesapeake.
9 So I went and got the documentation for those two
10 cases. I read them as thoroughly as I could, not being a
11 lawyer.
12 The first case involved fellow who wanted to put
13 some apartment buildings up, and he needed a variance. He
14 could do what he wanted to do without the variance, but in
15 doing so, he would have to take out about 120 trees, which
16 would have drastically affect the neighborhood and the
17 people had been living there, and he had other apartments
18 that were full all the time. People liked the place.
19 And that was one of the reasons. If he could
20 move it and got this variance, he would only have had to
21 take out two or three trees, but it made it close to the

1 other guy's property as far as the window height and that
2 to the next door property, so it was one guy objected.
3 That doesn't make sense. That case involved trees.
4 I really didn't see where that case had any
5 relevance whatsoever to this situation, not being a
6 lawyer, but I didn't see where it had anything to do with
7 it.
8 The second case was the Town of Chesapeake Beach
9 and the zoning board gave this man this variance to change
10 the distance between two apartment buildings and the fact
11 that he wanted all his apartments facing the waterfront.
12 Again, he could have done it without doing the
13 variance, but the court asked him what his reason was for
14 doing this and why he wanted this variance, and he can
15 only say because he was going to lose money if he didn't.
16 And I quote from that case that that court
17 basically didn't decide what was good reason, but they did
18 specifically say what wasn't good reason, and I quote from
19 the case, Mere financial hardship an opportunity to get an
20 increased return from the property is not sufficient
21 reason for granting the variance.

1 Paula Rush was the petitioner for this variance,
2 and the way I see it, her only reason for getting this
3 variance was the fact that she could sell them lots for
4 $15,000 instead of $3000.
5 Paula, she packed up and moved out of the
6 neighborhood. She used to live in the yellow house behind
7 Lefty's house. That one is for sale also.
8 She wanted to get the maximum return out of that
9 property. That's the reason why she wants the variance.
10 She's the petitioner.
11 Now, if this fellow Timothy granted this based on
12 these court cases, I don't know why he sent me that one,
13 because that one doesn't tell me that justifies upholding
14 this.
15 THE CHAIRMAN: Mr. Rothwell, what we are going to
16 do is look at the evidence, and we are going to determine
17 whether or not does it meet the requirements, and also do
18 we grant the variances, and we base it on Cromwell versus
19 Ward, uniqueness, practical difficulty, and the spirit and
20 intent, so we will be looking at this like a clean slate.
21 THE WITNESS: Well, that's my case. The issues

1 here, I believe, are the fact that there's no way you're
2 going to put a house there and not interrupt the privacy
3 of my back yard.
4 It's just too close and too high. From my house
5 to the property line is at least ten feet. I stood out on
6 my back porch. I'm a surveyor. I've got a level eyeball.
7 I'd say where that house is going to sit is at least ten
8 feet or twelve feet above my back yard, and it's only
9 twenty-five, fifteen, thirty feet away. So there's no
10 way. There's no landscaping at all that's going to
11 protect my privacy. That's an issue. That's a big issue.
12 The money issue is not a big issue, but it's there.
13 THE CHAIRMAN: The money issue?
14 THE WITNESS: And the ambiance of the
15 neighborhood. I think that will de-value the property
16 value based on the fact this will interrupt the ambiance
17 of the neighborhood.
18 It's not a good thing. It doesn't belong there.
19 I mean, this appraiser looked at it, shook his head, said
20 the guy who granted this variance knew what he was going
21 to do before he did it.

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1 MR. HALPIN: Objection.
2 THE CHAIRMAN: We'll strike that.
THE WITNESS: I know you can't hear that for
4 hearsay, but that's what he said. I don't know what his
5 reason would be, but --
6 THE CHAIRMAN: We are going to strike that
7 because he's not here to cross. You said that's the end
8 of your case?
9 THE WITNESS: Yes, that's pretty much it.
10 THE CHAIRMAN: At this point, Mr. Halpin gets a
11 chance to cross examine you on any comments you have made.
12 THE WITNESS: Sure.
13 MR. HALPIN: I just had a few questions, please.
14 CROSS EXAMINATION
15 BY MR. HALPIN:
16 Q. Can you describe or can you see 5852 from your
17 house?
18 A. Yes.
19 Q. I think you described it at the top of a hill?
20 A. It's up the hill, and fifty-eight feet away.
21 Q. Can you describe the landscaping between your

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1 house and 5852 at this time? Are there a lot of trees?
2 A. There's trees -- there are trees where the new
3 house is going to be, big trees in the back yard. There's
4 a fence that's sort of overgrown and it has vines on it
5 that I left there for the privacy thing. There's one
6 other issue. Can I back up a minute?
7 THE CHAIRMAN: No. At this point, you can only
8 answer his questions.
9 Q. Will you describe the topography as far as is
10 your house higher or lower than 5852?
11 MR. WESCOTT: What house -- what is the property,
12 the number of the property that we're talking about?
13 MR. HALPIN: 5850-A, the lot between 5850 and
14 5852. There are two lots that are twenty-five feet.
15 MR. WESCOTT: 5850-A?
16 MR. HALPIN: Yes. I believe Mr. Rothwell lives
17 at 5850. 5850-A is the house my client intends to build
18 if this Board lets us proceed.
THE WITNESS: Can I speak?
20 MR. WESCOTT: Mr. Rothwell lives at 5850?
21 THE WITNESS: Yes, sir.

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1 MR. WESCOTT: Was it Lefty that lived at 5852?
2 MR. HALPIN: Right. There's two, twenty-five foot
3 lots between those two properties.
4 MR. WESCOTT: Between 5852 and 5850, or 5850-A?
5 MR. HALPIN: Between 5850 and 5852, there are
6 two, twenty-five foot lots that we are requesting a
7 variance.
8 MR. WESCOTT: How much property did Lefty own?
9 MR. HALPIN: How much property?
10 MR. WESCOTT: Evidently, another --
11 THE WITNESS: It was at least a fifty-five foot
12 on the other side, but the builder already put a house on
13 it.
14 MR. WESCOTT: It was fifty-five feet?
15 THE WITNESS: At least fifty-five feet, because
16 he didn't need a variance to build it. He built it at
17 5854. I can tell you it was --
18 MR. HALPIN: I have no further questions, and I
19 will orient the panel as to the site with my client.
20 THE WITNESS: Can I make another comment?
21 THE CHAIRMAN Yes, you may.

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1 THE WITNESS: In zoning and planning, are they
2 the people that give out addresses? When you build a
3 house, you apply for an address. The zoning and planning
4 assigns you the address?
5 THE CHAIRMAN I honestly cannot answer that. It
6 is my impression that they do.
7 THE WITNESS: Well, my house is located at 5850,
8 and this sketch will show you that it's fifty-eight feet
9 from the property line to 5852. And about thirty-two,
10 whatever it was, thirty-one feet from my house to the
11 property line, and fifty-eight feet to 5852. So that's
12 eighty -- eighty-nine feet between my house and the house
13 at 5852.
14 However, it's only twenty-five plus thirteen --
15 thirty-eight feet between my house and 5830. That's on
16 the drawing. So the house next door to me on the other
17 side at 5830, if this lot here is a building lot, why
18 wasn't I given 5832, instead of 5850?
19 THE CHAIRMAN: We cannot answer that here.
20 THE WITNESS: There's another objection I have to
21 this. I'm sorry I forgot to mention it. Introducing the

1 address of 5850, I have a hard enough time getting things
2 delivered to my house because I'm next door to 5830. Now
3 we're going to introduce 5850-A, and I can see all kinds
4 of problem trying to get things delivered. I definitely
5 don't want an address of 5850-A next door to me, not when
6 there's 5830 on the other side. It doesn't make any
7 sense.
8 MR. HALPIN: I have no further questions of this
9 witness.
10 THE CHAIRMAN: Thank you. You can step down.
11 Who would you like as the next person to take the witness
12 stand?
13 MR. ROTHWELL: Mr. Cadogan, who bought 5852.
14 Otis.
15 O T I S T. C A D O G A N,
16 having been called as a witness, was duly sworn and
17 testified as follows:
18 THE CHAIRMAN: State your name and address for
19 the record, please.
20 THE WITNESS: Otis T. Cadogan -- C-a-d-o-g-a-n--
21 address is 5852 North Hazelwood Avenue.

1 THE CHAIRMAN: Mr. Cadogan, what do you have to
2 tell this court concerning that property to be build?
3 THE WITNESS: Well, first, again, it's too close.
4 It's too close, problems if it were to be a fire, or
5 anything on either side. It's dangerous, very dangerous.
6 Second of all, it will sure close us up, the
7 houses you're talking about, eight feet between the
8 houses. We are going to have a problem getting back and
9 forth to the back of the yard.
10 And, also, I got windows on the side of the house
11 there. This house is going to be sitting plop right
12 there. And, of course, the neighborhood is going to
13 change in appearance, and not for the good.
14 THE CHAIRMAN: Is there anything else?
15 THE WITNESS: That's it for now.
16 THE CHAIRMAN: Mr. Halpin, did you have any
17 questions?
18 MR. HALPIN: I did have two.
19 CROSS EXAMINATION
20 BY MR. HALPIN:
21 Q. Mr. Cadogan, you said it's going to be eight feet

1 between the houses?
2 A. About eight feet between the houses.
3 Q. Where does that come from?
4 THE CHAIRMAN: Keep your voice up, please.
5 Q. Where did you obtain that knowledge?
6 A. The variance received.
7 Q. You stated there was a fire hazard by these
8 houses being so close?
9 A. So close.
10 Q. What's your profession?
11 A. I'm a maintenance tech.
12 Q. Thank you.
13 A. If I'm correct, the house to be built is of wood
14 and siding.
15 MR. HALPIN: I have no further questions.
16 THE CHAIRMAN: Thank you, sir.
17 THE WITNESS: That's it?
18 THE CHAIRMAN: Yes. Thank you. Who would you
19 like to have next?
20 MR. ROTHWELL: (Indicating.)
21 THE CHAIRMAN: Would you like to take the stand?

1 G L O R I A P A C K,
2 having been called as a witness, was duly sworn and
3 testified as follows:
4 THE CHAIRMAN: State your name and address, for
5 the record, please.
6 THE WITNESS: My name is Gloria T. Pack, 5837
7 North Hazelwood Avenue.
8 THE CHAIRMAN: What would you like to tell the
9 court today, Ms. Pack?
10 THE WITNESS: I'd like to tell the court today
11 that I have been living at my house since 1988, and the
12 reason I chose that house was because of the neighborhood
13 and the setting.
14 It's an older neighborhood, and it's nice people
15 in the neighborhood. And the house that they built across
16 the street on the other lot, when they were building it
17 and since it's been built, we have water runoff. I just
18 had to dig my yard up and pay $3000 because my basement
19 was flooded. It's one thing.
20 Number two, to build a house on that lot would be
21 disastrous to our neighborhood. Most of the houses in the

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1 neighborhood are elongated, out this way, and our
2 neighborhood has somewhat of a rustic look. It's a very
3 beautiful neighborhood.
4 Now we have a big green and yellow highrise
5 across the street, and that's exactly what it looks like,
6 a highrise tenement, because the house is not incompatible
7 with our neighborhood. It's not compatible with our
8 neighborhood. Also, to build another house up in a little
9 tiny small space where they are trying to push it in for
10 profit, it's not fair to the people who have lived there.
11 And I'd like to tell the court that it's a
12 non-compatible project that they have, and we pray that
13 the variance is not granted and that they don't build
14 another house.
15 The one there, we are stuck with. On the end of
16 our street, it was another house built, but that is an
17 addition to our neighborhood because that was a truck yard
18 which had all kinds of heavy equipment stored in it, so
19 the lady that owned it, her father owned it, so she got
20 the land back and built a new nice beautiful home down on
21 the corner of the street, which is an upgrade to our

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1 neighborhood, because even with her building that house
2 raised the value of our property, because it was a truck
3 yard down there.
4 But to build another house, to stick it up in a
5 little corner so somebody can have a fat bank account is
6 not fair. It's not fair to us, for people who have been
7 there, who have raised their children there, who have
8 pride in their neighborhood, it's not right. It's not
9 right.
10 And the houses that they're building aren't
11 compatible to our neighborhood. They aren't compatible to
12 where we live. And we don't want those big highrises in
13 our neighborhood.
14 THE CHAIRMAN: Anything else?
15 THE WITNESS: No. That's it.
16 THE CHAIRMAN: One second Mr. Halpin?
17 CROSS EXAMINATION
18 BY MR. HALPIN:
Q. How many stories is the big highrise that you
20 referred to?
21 A. Two.

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1 Q. The water runoff, is that from the 5850-A?
2 A. The new house, the new house that they built, it
3 comes down from there, the way they had to swerve the
4 driveway, you know, they came and marked off.
5 I don't know who the people were that came and
6 marked off to see how the water would run, and the water
7 runs in my driveway and on my grass.
8 And, you know, when it's raining, or snowing,
9 it's a big runoff. And before that house was built, we
10 never had that problem.
11 My basement was flooded. I just paid thirty-nine
12 ninety to have the whole lawn dug up and things done under
13 there. We never had problems like that. I mean, a pipe
14 could burst anytime or, you know, I don't even know what
15 the exact cause of it was, what the exact cause of it was.
16 My husband had all that, but it's just not compatible
17 there, anyway. You know, it's just not a good thing.
18 Q. This water runoff is caused by the lot that we're
19 talking about today or it was caused by something else?
20 A. The new house. The new one.
21 Q. So the water runoff doesn't have anything to do

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1 with the property today?
2 A. Yes, the water runs off from the first house you
3 built.
4 Q. But today, talking about 5850-A?
5 A. No. That would run into Nancy's yard, because
6 that's my next door neighbor. That would come down on her
7 property.
8 Q. In the corner lot, can you see that from your
9 house?
10 A. Unh-unh. It starts the beginning of our
11 neighborhood.
12 Q. Can you see 5850-A from your house?
13 A. Oh, yeah. If it's built, oh, yeah. It will be
14 right in my face. You won't get any breeze through the
15 summer.
16 MR. HALPIN: Thank you. I have no further
17 questions.
18 THE CHAIRMAN: Your next witness?
19 C A R O L C A D O G A N,
20 having been called as a witness, was duly sworn and
21 testified as follows:

1 THE CHAIRMAN: Have a seat. Would you state your
2 name and address for the record, please.
3 THE WITNESS: My name is Carol Cadogan. I live
4 at 5852 North Hazelwood Avenue. We purchased 5852 last
5 May, from Paula Rush.
6 I guess, as young homeowners, we didn't do a lot
7 of homework as per what the building next door is going to
8 do to our property.
9 However, along the way, we saw problems arising,
10 one, the house being built next door, 5854, all the water
11 was used from our property, but that's not what the
12 problem is today.
13 From the construction of this house at 5854, it
14 took away access to some land behind our house that shared
15 the same boundary as 5854. The problem, I'm saying this,
16 that the problem is going to be on the other side, too.
17 The way our house is situated, we had to install a
18 driveway in order to get on our property. This held us up
19 in closing.
20 So the dividing line between those two houses is
21 posing a problem now. The dividing line on the other side

1 of 5852-A is going to pose a problem getting access to and
2 from our property on the other side.
3 We have a lot of land in the front and in the
4 back. We have a pool smack dab in the middle. We have a
5 garage. The house is connected. The garage is connected
6 by an archway to our house. We have no access to take a
7 riding lawnmower around to the back to keep the property
8 behind the house clean, or mowed.
9 The dividing of the land, this is a problem from
10 Paula Rush from dividing the land like that, selling to
11 different people, to leave everybody with this problem we
12 have to deal with today.
13 And that's why I am here, to let you know that I
14 don't think it fair to the neighborhood that we are faced
15 with all those problems.
16 5850-A is going to be entirely too close to 5852.
17 It will block the breeze. It will block the view. We
18 have a beautiful view of downtown Baltimore from our top
19 floor. That is going to be totally blocked.
20 And these are some of the things we saw in the
21 house when we bought it. We didn't know that they were

1 going to put up a house on that lot, because we didn't
2 think it was enough space. Getting around to the back, at
3 least one side is blocked. We figured we can use the
4 other side to go around, and that going to be taken away
5 from us too, which is leaving us with problems like we
6 have to call in people to re-drain our property because we
7 have a pool which initially the pool ran off on 5854.
8 Now we have to veer that water off. We have to
9 do plumbing drainage to properly drain a lot of things
10 from our lot. Like I say, we had to install a driveway
11 because the driveway for the property came from 5854 into
12 5852, and that posed a big problem.
13 So I would like you to take into consideration
14 all of this when you make your decision today.
15 THE CHAIRMAN: Thank you.
16 CROSS EXAMINATION
17 BY MR. HALPIN:
18 Q. Just a few questions. You mentioned there's not
19 enough room to get your riding lawnmower to the rear of
20 the property?
21 A. No, it's not.

1 Q. When you're facing your house, how much room will
2 you have to the left?
3 A. The house, if you look at the property, when you
4 look at the driveway from 5854 --
5 Q. If you're standing on North Hazelwood looking to
6 your house, your house is right in front of you, how much
7 room will you have if the house is built at 5850-A to get
8 between your house and the end of your property line?
9 A. We'll have to -- I'm not sure exactly in eyeball.
10 I don't know distance. But if we try to bring a riding
11 lawnmower up on the property, it's not going to happen.
12 The fence is around the house already. We would
13 have to redo all fence work in order to accommodate
14 anything.
15 When the house is built, I'm not even sure if
16 we'll have any room to come up on our property because of
17 the way the property line is.
18 There's also a big pear tree down there. I'm not
19 sure if that tree -- I think it infringes on both
20 properties. More than likely, they are going to cut that
21 tree down. There's another tree in our yard. More than

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1 likely, that tree will have to go, or they may be
2 complaining we need to cut our tree down because it's
3 going to infringe on that land of 5850-A when they start,
4 if they get permission to build this house.
5 So we are talking about two big trees that will
6 be in jeopardy. I'm trying to answer your question. I do
7 not know how much space, because I'm not good with those
8 things. I don't know the distance.
9 MR. HALPIN: I have no further questions at this
10 time.
11 THE CHAIRMAN: You may be excused.
12 MR. ROTHWELL: I have a picture of what she's
13 talking about, to make things a little clearer.
14 THE CHAIRMAN: Would you show those to Mr.
15 Halpin?
16 MR. ROTHWELL: Mr. Halpin, these are pictures of
17 the street, my back yard. This is from the side yard, and
18 that's 5852 right through there. This will make the
19 drainage thing real clear. It shows how high up that is.
20 That's standing on the street.
21 THE CHAIRMAN: Did you take the pictures, Mr.

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1 Rothwell?
2 MR. ROTHWELL: No, I didn't. The appraiser took
3 the pictures.
4 THE CHAIRMAN: But they're just the pictures?
5 MR. ROTHWELL: Just pictures.
6 THE CHAIRMAN: Do they accurately depict your
7 area?
8 MR. ROTHWELL: Oh, yes, ma'am.
9 MR. HALPIN: They don't show the lot we're
10 talking about, 5850-A. I'd be happy to let them be
11 introduced. I have pictures that go into more detail
12 about the lot we are talking about.
13 THE CHAIRMAN: But this will complement their
14 evidence.
15 MR. ROTHWELL: I thought it would show to you
16 all, just to make her testimony a little clearer, this is
17 the house she's talking about.
18 THE CHAIRMAN: So we're going to take this in as
19 Appellant's 3A and 3B, and it's a total of six pictures.
20 MR. ROTHWELL: Actually, it's four. This is my
21 house. This is the street. That's the back of my house.

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1 That's the front of my house. And this is 5852.
2 THE CHAIRMAN: Thank you. Since that is the
3 appellant's case, we will go forward. Now, do you all
4 need a break, and we'll go forward with the petitioner's
5 case at that time.
6 MR. HALPIN: May I look at Appellant's No. 2,
7 please? For my first witness, I will call Mark Cunningham
8 from the office of planning.
9 M A R K C U N N I N G H A M,
10 having been called as a witness, was duly sworn,and
11 testified as follows:
12 DIRECT EXAMINATION
13 BY MR. HALPIN:.
14 Q. Would you please state your name, for the record?
15 A. Mark Cunningham.
16 Q. Your address?
17 A. Baltimore County Office of Planning.
18 Q. How long have you been employed by Baltimore
19 County?
20 A. Approximately three years.
21 Q. What is your title?

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1 A. Development Review Planner II.
2 Q. What responsibilities do you have with the Office
3 of Planning?
4 A. I review all petitions for zoning requests as in
5 the case that's before you, special hearings, special
6 exceptions.
7 THE CHAIRMAN: Mr. Cunningham, I'm not a speedy
8 writer, so slow down for me, please.
9 A. I also review all the minor subdivisions that
10 come before the county. I also review concept plans,
11 development plans, and when called upon, I come before the
12 Board of Appeals.
13 Q. So you have testified as a witness before the
14 Board of Appeals in the field of planning?
15 A. Yes, I have.
16 Q. Have you been accepted and approved as an expert
17 witness?
18 A. Yes, I have.
19 MR. HALPIN: I'd offer Mr. Cunningham as an
20 expert witness in the field of planning.
21 THE CHAIRMAN: We have a policy if they work for

1 Baltimore County, we don't need to accept them as expert
2 witnesses.
3 Q. Are you familiar with the petition for the
4 variance for the undersized lot today?
5 A. Yes, I am.
6 Q. What was your recommendation as to whether the
7 variance should be approved?
8 A. We recommended the variance should be approved.
9 Q. Why did you make this recommendation?
10 A. If I could, I would like to put some maps on the
11 board. This property first came to me a couple years ago
12 when Paula Rush was the current owner of the property.
13 I didn't know she had sold the property, but
14 that's irrelevant. Based on the density that's permitted
15 on the property, she wanted to create three single family
16 dwelling lots that also included panhandle lots.
17 We didn't feel, or I didn't feel, as though the
18 panhandle development was a part of the character of the
19 neighborhood. It is an older neighborhood and the lots
20 are basically conventional straight-on lots.
21 At the time when Ms. Rush appeared before me and

1 asked how would we view the panhandle development, I told
2 her we would not recommend approval of a panhandle
3 development for the fact that it was not in the character
4 of the neighborhood.
5 Looking at the lot, I noticed, looking at the
6 entire holding, I noticed that the entire holding
7 consisted of twenty-five foot lots of record. Being that
8 they were lots of record, I told Ms. Rush that she could
9 get three single family dwelling lots if she continued
10 with the existing lot patterns that were there.
11 And, as such, as I highlighted in the red, or in
12 the pink, the white, and the blue, these would be the
13 three single family dwelling lots.
14 We recommended approval of the undersized lots
15 because there are many -- the neighborhood, as I said
16 before, is an older neighborhood, and the majority of the
17 lots are twenty-five foot strips.
18 There in the dash outline is the property in
19 question. There is existing twenty-five or fifty foot
20 lots throughout the neighborhood, on North Hazelwood and
21 on Westwood. All those lots in this vicinity are all

1 twenty-five foot lots. They are two lots combined
2 together to create fifty foot lots.
3 All these lot on fifty foot lots, and there are
4 many lots within here that are also fifty foot lots. So
5 from a planning prospective, we did not feel as though
6 recommending approval of a fifty foot lot of two existing
7 lots of record would be contrary or incompatible with the
8 neighborhood.
9 Conditioned upon recommendation of approval, we
10 wanted them to build elevation drawings, and we wanted
11 them to build elevation drawings because the houses in the
12 neighborhoods are of a particular design.
13 They are older houses, and as it was alluded to,
14 it has a rustic look, and we wanted whatever was proposed
15 on the fifty foot lot to be compatible and in keeping with
16 the existing architectural design that was there, and
17 that's why we asked -- at the time that the requests were
18 made, we received photographs.
19 The photographs we received of the proposed
20 dwelling we felt would not be compatible with the existing
21 dwellings that were there, so we asked that prior to or in

1 conjunction with the building permit approval, we would
2 receive elevation drawings, and if we did not approve of
3 the elevation drawings, then the building permit would not
4 be issued.
5 Q. Did your section chief concur with your
6 recommendation?
7 A. Yes, he did.
8 Q. I have -- and I think it's in the file as well --
9 dated March 26, 2002, a written report. Did you prepare a
10 written report?
11 A. Yes, I did.
12 Q. That what's contained in the March 26, 2002
13 correspondence?
14 A. Yes.
15 MR. HALPIN: Do I need to submit this in
16 evidence?
17 THE CHAIRMAN: Might as well.
18 MR. HALPIN: Exhibit No. 1, please.
19 THE CHAIRMAN: Admitted.
20 Q. Would you please read the summary of your
21 recommendations as written here, please.

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1 A. The summary of the recommendation, the Office of
2 Planning supports the petitioner's request to allow a lot
3 width variance. The petitioner submitted photographs
4 depicting the house type that he would like to build.
5 However, revised building elevations should be
6 submitted to this office for review and approval prior to
7 the issuance of any building permit.
8 MR. HALPIN: Thank you. I have no other
9 questions at this time.
10 THE CHAIRMAN: Mr. Rothwell, do you have any
11 questions?
12 CROSS EXAMINATION
13 BY MR. ROTHWELL:
14 Q. Can you describe for me what that proposed house
15 was going to be? Is it two story?
16 A. The proposed house that we received when I
17 immediately looked at it, it was a two story house, but it
18 was not compatible or in keeping with the existing
19 dwellings in the neighborhoods, and we rejected it.
20 We have not received the building elevation
21 drawings yet, and that's why I made the statement in the

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1 recommendations that the condition is contingent upon
2 review and approval of the building elevation drawings.
3 Q. Well, what was your major consideration for not
4 approving the originally submitted house or, more in
5 particular, was it the height of the house?
6 A. No. It was because of the exterior facade. The
7 architectural details were not consistent with the
8 existing dwellings in the neighborhood.
9 Q. Can you explain what the architectural
10 differences were?
11 A. The house that he proposed was basically a vinyl
12 siding house, and the majority of the houses that we
13 looked at in the neighborhood were not of that character.
14 MR. ROTHWELL: Can I add a comment?
15 THE CHAIRMAN: No, you may not.
16 Q. Have you seen the house the builder has already
17 built?
18 A. Which house are you referring?
19 THE CHAIRMAN: That's not before us.
20 MR. WESCOTT: I'd like to hear it. As I
21 understand, and I thought the original plans were for what

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1 this builder wants to build, is another one like he
2 already built at 5854.
3 THE CHAIRMAN: Mr. Rothwell, my other panel
4 member would like to hear that question, so if you'd ask
5 the question.
6 Q. Have you seen the house that this builder built
7 at 5854 North Hazelwood Avenue?
8 A. Talking about the house that has the pool in the
9 back?
10 Q. No. The new house that was built at 5854 that's
11 already built.
12 A. No.
13 MR. WESCOTT: Did you ask for plans for that
14 house?
15 THE WITNESS: No, because that was not a part of
16 the submittal.
17 MR. WESCOTT: It was not part?
18 THE WITNESS: No. The house that he's referring
19 to is on a totally separate piece of parcel. We had no
20 reason to ask for that house.
21 When projects come before me, I can only make

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1 decisions on the project that's before me.
2 MR. WESCOTT: I understand that. You said there
3 were three lots of record?
4 THE WITNESS: No. There are eight lots of
5 record. The entire holding as is consists of eight
6 individual lots of record.
7 MR. WESCOTT: How many are twenty-five foot, all
8 of them?
9 THE WITNESS: All but one. I believe this lot,
10 lot 187, is a bit wider than twenty-five foot. However,
11 the reason why --
12 MR. WESCOTT: The drawing is not to scale?
13 THE WITNESS: This is to scale, yes.
14 MR. WESCOTT: It is?
15 THE WITNESS: Yes, sir.
16 MR. WESCOTT: The green ones certainly look
17 thinner than the one in between.
18 THE WITNESS: These are four lots. These are two
19 lots and these are two lots. So, yes, the green one is.
20 MR. IRISH: Can I interrupt for a second? The
21 pink is fifty foot wide, correct?

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1 THE WITNESS: Yes.
2 MR. IRISH: The white is a hundred feet wide
3 which consist of four lots?
4 THE WITNESS: That is correct.
5 MR. IRISH: The pink is two, twenty-five foot
6 lots. The white is four, twenty-five foot lots. The blue
7 consist of one, twenty-five foot lot --
8 THE WITNESS: And one 38.7 lot.
9 MR. WESCOTT: Which one are we talking about?
10 THE WITNESS: The lot in question is the pink
11 lot.
12 MR. WESCOTT: What's on the other two?
13 MR. IRISH: Do we have the addresses for the
14 other two?
15 THE WITNESS: This existing one and a half story
16 with a pool and the garage is 5852.
17 THE CHAIRMAN: That's Ms. Cadogan?
18 THE WITNESS: That is correct.
19 MR. WEST: What's the next one?
20 THE WITNESS: This one here, sir?
21 MR. WESCOTT: Yes.

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1 THE WITNESS: That's vacant property that has the
2 proposed development. That's the new house --
3 MR. WESCOTT: 58 --
4 MR. HALPIN: 5854.
5 MS. CADOGAN: That's what took away my access to
6 my back yard.
7 MR. HALPIN: Actually, I have some more
8 questions, please.
9 Q. (MR. ROTHWELL) Were you aware at the time that
10 this builder intended to build two houses identical on
11 these two pieces of property?
12 A. No. At the time when this came before me as a
13 subdivision, it came to me as a subdivision. That was it.
14 There were no building plans submitted. It was just a
15 subdivision, and that's all we were looking at, was the
16 subdivision.
17 Q. Was your basic recommendation for allowing this
18 based on putting something other than a two story up?
19 A. No. My reason for recommending approval of the
20 variance was based on the fact that there are existing
21 fifty foot lots in the neighborhood, that the neighborhood

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1 is predominantly divided into twenty-five foot strips, and
2 there are many two, twenty-five foot strips where people
3 have bought or purchased two, twenty-five foot strips and
4 have built across the property line.
5 They are many lots there, if you look at the
6 geographic information system drawing, where the lot width
7 drawings are across lot lines, because at the time the
8 subdivision were created, it was all twenty-five foot
9 lots.
10 The fact there are existing fifty foot lots in
11 the neighborhood was my reason for recommending approval
12 of a proposed fifty foot lot.
13 Q. I can't see very well, but do those drawings show
14 contours?
15 A. It shows -- yes, it does. It shows some contour,
16 yes. This is 170 elevation, 180 elevation.
17 THE CHAIRMAN: Do you have the record plat, Mr.
18 Halpin? You're submitting these as evidence. Can we
19 identify them?
20 MR. HALPIN: These are already in the record, but
21 I will be happy to.

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1 THE CHAIRMAN: We have not given them any number,
2 I don't believe.
3 MR. HALPIN: I would move the --
4 THE CHAIRMAN: We only have Petitioner's No. 1
5 which is your letter from planning.
6 MR. HALPIN: I would move to introduce the site
7 plan as Petitioner's No. 2.
8 THE WITNESS: Excuse me. That's part of my file.
9 MR. HALPIN: And the GIS drawing is Petitioner's
10 No. 3.
11 THE CHAIRMAN: After we are done today, we'll
12 have to make certain that we get copies so it's part of
13 our file and we can have it for our file.
14 Q. When you ask him --
15 THE CHAIRMAN: Refer to it as Petitioner's 2, I
16 believe.
17 Q. Can I ask you how much consideration was given to
18 this? How much consideration to the contours on this
19 property? Was that well thought of?
20 Did you really think that it was ten foot
21 elevation difference between my property and the next --

1 how close did you look at those contours?
2 MR. WESCOTT: How many questions are you going to ask? Where you going?
4 THE CHAIRMAN: Ask one question as a time.
5 Q. One question was, how much consideration was
6 given to the elevation and the contours on the site plan,
7 or Petitioner's 2?
8 A. I did not give any consideration to topography.
9 The topography was not germane or specific to that
10 particular site.
11 The topography runs throughout the neighborhood.
12 What we were looking at, the petition was for approval of
13 a fifty foot wide lot. It had nothing to do with grading
14 or anything to address the topography or contours.
15 It was specifically for the approval of a fifty
16 foot wide lot that comprised two existing twenty-five foot
17 lots of record.
18 Q. Is that a typical scenario in planning? How much
19 consideration does, typically, does zoning and planning
20 give to contours and elevation differences?
21 A. You must keep in mind when petitions for zoning

1 relief is considered, the planning department is not the
2 sole department that reviews the plan.
3 The plan circulates through fourteen different
4 departments. As far as contours are concerned, that would
5 be a review requirement, or responsibility of the
6 Department of Environment and Resource Protection
7 Management.
8 We don't, per se, look at contours. That is not
9 within our purview when we look at plans.
10 MR. ROTHWELL: No further questions.
11 THE CHAIRMAN: Mr. Halpin, you said you had
12 something further?
13 MR. HALPIN: They were clarified already. I have
14 no further questions.
15 THE CHAIRMAN: You may be excused. Why don't we
16 take a five-minute break and then come back.
17 (A recess was taken.)
18 THE CHAIRMAN: We're back on the record. Mr. Halpin?
20 MR. HALPIN: I call Adam Skolnik as my next
21 witness, please.

1 ADAM SKOLNIK,
2 called as a witness, having been duly sworn, testified as
3 follows:
4 DIRECT EXAMINATION
5 BY MR. HALPIN:
6 Q. Please state your name, for the record.
7 A. Adam Skolnik. S-K-o-l-n-i-k.
8 Q. Your address?
9 A. 4616 Oak View Court, Ellicott City, Maryland
10 21042.
11 Q. What is the name of the company you work for?
12 A. Charter Homes, LLC.
13 Q. What's the nature of Charter Homes' business?
14 A. We are a homebuilder.
15 Q. How many homes do you build a year?
16 A. Fifteen to twenty.
17 Q. What's your job title and responsibility with
18 Charter Homes?
19 A. I am a managing member. I concentrate on
20 acquisition of property and sales of built homes.
21 Q. How long have you been with Charter Homes?

1 A. Two years.
2 Q. Are you familiar with the appeal that's before
3 the Board of Appeals today?
4 A. Yes, I am.
5 Q. What is the address of the property that is the
6 subject of this appeal?
7 A. 5850-A North Hazelwood.
8 Q. Have you visited this location and the
9 surrounding properties?
10 A. Yes, I have.
11 Q. Do you know when you purchased the property from
12 Paula Rush?
13 A. April 26 of 2002.
14 Q. How much did you pay for the property?
15 A. $15,000.
16 Q. When you purchased the property from Paula Rush,
17 what did you intend to do with the property?
18 A. Build a home.
19 Q. Can you describe right now today what is on
20 5850-A?
21 A. Raw land.

1 Q. I have some color photographs I have shown to
2 you.
3 MR. HALPIN: To start with, I will introduce --
4 actually, if I could introduce these into evidence, it's
5 pages one, two, three and four, and it's pictures of the
6 street on the even side from 5810 to 5854.
7 THE CHAIRMAN: We will make it Petitioner's 4A,
8 B, C and D.
9 MR. HALPIN: Yes, please. 5810 North Hazelwood
10 to 5854 North Hazelwood, even side only.
11 Q. Start with the picture identified as 5850-A. Can
12 you describe the site?
13 A. I call it a raw piece of land which is an
14 undeveloped parcel. There's a tree on it, some grass, in
15 between two homes.
16 THE CHAIRMAN: That would be on what page?
17 THE WITNESS: Page three.
18 THE CHAIRMAN: So that would be 4C, and where is
19 it located on the page?
20 THE WITNESS: Bottom right.
21 THE CHAIRMAN: Thank you.

1 Q. Going through Petitioner's 4A, 4B, 4C and 4D, can
2 you describe the other properties nearby?
3 A. It's a mixture of shotgun ranchers or split
4 levels, Cape Cods, some two stories. I really kind of
5 call them boxey colonial. Split level with a one car
6 garage and two story Colonial.
7 Q. The house that you intend to build if the
8 variance is approved and you're allowed to go forward, is
9 it in keeping with the style of the neighborhood?
10 A. Yes. The house we would build would be -- we try
11 to keep the houses in compliance with the neighborhood, in
12 our opinion, and we are willing to build more than one
13 house. We're not sold on building any specific two story
14 or split level or rancher.
15 Q. Why did you build a two story at 5854?
16 A. We thought -- I still think -- it's a two story
17 Colonial, full front porch. It's a very country-esque
18 Colonial.
19 We just thought it was in keeping with the
20 neighborhood and we thought it was also going to improve
21 the values. I ended up selling it for $165,000, which was

1 substantial more, by $10,000, than any of the sales on the
2 street and the adjacent street or the parallel street
3 Westwood in the last two years.
4 Q. I think we've heard today there was some concern
5 about building a two story house on the subject lot.
6 Would you consider building a different style house?
7 A. Absolutely.
8 Q. Are you building any other houses in this
9 neighborhood?
10 A. Yes. I am building on Westwood Avenue, which is
11 one street over, a shotgun split level, as we call it, and
12 it's on a fifty foot wide lot.
13 Q. If the appeal today is granted denying the
14 request for the variance, what will you be able to do with
15 this property?
16 A. Nothing.
17 Q. Do you believe this is an unreasonable hardship?
18 A. Yes.
19 Q. If the Board of Appeals approves this request and
20 approves the variance and you're allowed to go forward, is
21 the house you're going to build injure the public health,

1 safety or welfare of the community?
2 A. No. As a matter of fact, the house we sold raised
3 the values of the houses in the neighborhood. It sold for
4 more. And, as most know, that's the way appraisers and
5 people value property, is based on comparative sales in
6 the neighborhood.
7 MR. HALPIN: One moment, please. That's all I
8 have at this time.
9 THE CHAIRMAN: Mr. Rothwell, do you have any
10 questions?
11 CROSS EXAMINATION
12 BY MR. ROTHWELL:
13 Q. Are there any bricks on the house at 5854?
14 A. No.
15 Q. Are there bricks on the other houses in the
16 neighborhood?
17 A. On some of them.
18 Q. From my recollection, it's on most of them,
19 especially the ones on that side of the street.
20 THE CHAIRMAN: You can't testify, sir.
21 Q. I had some other questions.

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1 GLORIA PACK: Can I ask a question?
2 THE CHAIRMAN: Why don't you tell him the question and let him ask it.
4 Q. Can you describe the color of the house at 5854?
5 A. It's like a pale yellow.
6 Q. Is it your intention to put a house at 5850-A,
7 was it your original intention to put the same house
8 that's on 5854?
9 A. Actually, what occurred was I had a set of plans
10 for a two story, which is the house that was built at 5854
11 on file with Baltimore County.
12 They were reviewing my split level plans at the
13 time, so I did submit the variance with the two story on
14 the variance hearing, you know, for all the issues,
15 because they had them on file, and it made it easier for
16 everybody to refer to them.
17 But they were looking at the other ones. I have
18 not put the house on the market. I have done nothing. I
19 have not decided which house to build.
20 Q. Now, all the information that I got back from the
21 first hearing said that Paula Rush petitioned for the

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1 variance.
2 Did Paula rush petition for the variance, or did
3 you petition for the variance?
4 A. I was the contract purchaser, so Ms. Rush was the
5 legal owner of the property, so pursuant to the county,
6 the owner had to file the variance, but I was the contract
7 purchaser as it was filed.
8 Q. I don't know if I'm going to ask this question or
9 not, but I am going to do it anyway. Did you purchase
10 that property with a contingency if this variance did not
11 go through?
12 A. No.
13 Q. So you just flat out bought it, knowing that it
14 needed a variance to build a house?
15 A. Correct.
16 Q. Thank you. Are you aware of the big trees in the
17 back of the lot?
18 A. Yes.
19 Q. Two of them are going to have to come down to
20 build a house?
21 A. I don't know exactly. We try and keep as many

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1 trees on the property as we can. I don't know which ones,
2 because I don't know which house I'm building.
3 I don't know which trees are going to come down
4 or not. If I can keep trees, I want to keep trees,
5 always.
6 Q. The reason I asked, I saw the original site plan
7 at the first hearing, and being a surveyor, I walked up
8 there and measured out and laid it out.
9 THE CHAIRMAN: You're testifying again.
10 MR. WESCOTT: Just ask questions. He'll answer
11 the question.
12 Q. The variance was granted based on a contingency.
13 You had to submit a detail landscaping plan. Do you have
14 any idea what you're going to do there?
15 A. I haven't submitted -- as planning testified, we
16 had to submit a plan and any other ancillary things before
17 we built a house as we go through the permitting plan.
18 When you appealed this, I didn't go forward with
19 submitting or doing any of those plans because I was not
20 sure now whether the lot was buildable.
21 Depending on what happens today, all of that will

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1 be detailed out. No, I don't know, because I am still not
2 sure which house I'm going to build.
3 Q. Supposing this doesn't go through, okay, what
4 would you do with that property?
5 A. I have absolutely no idea. I bought it with a
6 plan on building on it. I'm stuck with it. I don't know
7 what I'm going to do. I will offer it to you to buy.
8 GLORIA PACK: For how much?
9 MR. ROTHWELL: That's all.
10 MR. HALPIN: I have one more question.
11 REDIRECT EXAMINATION
12 BY MR. HALPIN:
13 Q. Do you have a history of meeting building
14 requirements set by Baltimore County?
15 A. Yes.
16 MR. HALPIN: Thank you.
17 MR. WESCOTT: 5854 is not shown?
18 THE WITNESS: Sure, it is.
19 MR. WESCOTT: Okay.
20 THE WITNESS: See, it blends in just like all the
21 others.

1 GLORIA PACK: No, it doesn't blend in.
2 MR. IRISH: I have a question. Let's go with,
3 just to clarify some things, 5854, you bought the
4 property?
5 THE WITNESS: Yes.
6 MR. IRISH: Built the home, sold it?
7 THE WITNESS: Yes.
8 MR. IRISH: 5852, the home existed?
9 THE WITNESS: Yes.
10 MR. IRISH: Did you purchase that home and
11 property and re-sell it?
12 THE WITNESS: No.
13 MR. IRISH: I just want to ask this question
14 because it seems like the opportunity here for my benefit
15 only.
16 You were asked if you were considering this an
17 undue hardship if you were not able to build on it. I
18 just kind of find that hard to rationalize. Would you
19 consider it more of like a lottery? Like a chance?
20 THE WITNESS: No. We are a small builder. I
21 build fifteen to twenty houses a year, and we started this

1 company two years ago.
2 I was a property manager by trade, working for a
3 management company downtown Baltimore. I was an apartment
4 community manager. My partner and I got together and have
5 literally taken our savings and tried to start our own
6 business, become a small business owner working for
7 ourselves instead of a large company.
8 There's no doubt today, if I have to eat this
9 property, that will be a relatively large portion of what
10 my partner and I might earn in a year because we are only
11 trying to build fifteen or twenty houses, and we are
12 scraping together to put money down to buy lots and all
13 these other things, especially in a real estate climate
14 that's still solid, but tailing off now due to economic
15 difficulty.
16 So there's no doubt losing a lot, the ability to
17 possibly make money, to having spent $15,000 and now being
18 worth comparatively less, would be an undue hardship in
19 both cases.
20 MR IRISH: Thank you.
21 MR. HALPIN: I have one more witness, please.

1 Mr. Dallas.
2 J O N A T H A N S. D A L L A S,
3 having been called as a witness, was duly sworn, and
4 testified as follows:
5 DIRECT EXAMINATION
6 BY MR. HALPIN:
7 Q. Please state your name, for the record.
8 A. Jonathan Scott Dallas.
9 Q. What is your address?
10 A. My business address is 13523 Long Green Pike,
11 Baltimore, Maryland 21013.
12 Q. What is the name of your business?
13 A. The name of the business is J.S. Dallas, Inc.
14 Q. What type of services do you provide?
15 A. We provide surveying and engineering services for
16 residential and commercial development.
17 Q. Have you ever testified as an expert witness
18 before in the field of property surveying and associated
19 zoning matters before the Board of Appeals of Baltimore
20 County?
21 A. Yes.

1 Q. Have you been accepted and approved as a witness
2 in this field?
3 A. Yes.
4 MR. HALPIN: I offer Mr. Scott Dallas as an
5 expert witness in the field of property line surveying and
6 associated zoning matters.
7 THE CHAIRMAN: I will be honest, I am feeling
8 uncomfortable because he doesn't have a lawyer. Could you
9 ask him a few more questions?
10 I don't know when you testified before and how
11 long you have been in the business and how many cases in
12 Baltimore County.
13 Q. When was the last time you testified before the
14 Board of Appeals?
15 A. Approximately ten months ago.
16 Q. How many times have you testified before the
17 Board of Appeals?
18 A. Approximately six times at the Board of Appeals'
19 levels and approximately twenty-five times in various
20 zoning cases.
21 Q. Were you accepted in each of those cases as an

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1 expert witness?
2 A. Yes. In all of the zoning appeals cases, I was actually questioned and accepted, and about half of the
4 zoning cases I was questioned and accepted. The others,
5 this did not even come up, because the Zoning
6 Commissioners were with me, and there was no opposition.
7 Q. How long have you been a property line surveyor?
8 A. I was licensed in 1989.
9 Q. You're still currently licensed?
10 A. I'm currently licensed. There's now continuing
11 educational requirements, and I met them for my licensing.
12 I was re-licensed in 2002.
13 MR. HALPIN: I would offer Mr. Scott Dallas as a
14 witness in the field of property line surveying and
15 associated zoning matters at this time.
16 THE CHAIRMAN: Mr. Rothwell, do you have any
17 concern?
18 MR. ROTHWELL: Not really. I am very familiar
19 with the surveying and the property line, and I know
20 subdivision layout. I used to do that kind of work.
21 THE CHAIRMAN: He's accepted.

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1 MR. HALPIN: Thank you.
2 Q. Mr. Dallas, are you familiar with the appeal
3 which is before the Board of Appeals today?
4 A. Yes, I am.
5 Q. Did you prepare Petitioner's No. 2, the site plan
6 which is on the board?
7 A. Yes, I did.
8 Q. Can you describe the general area from a land use
9 perspective around the property as well as the property
10 itself?
11 A. The area is zoned D.R. 5.5. It's made up of
12 single family homes. It's an area comprising lots or
13 pieces of lots from a very old record plat done in 1921
14 called Countyside.
15 The subject property is two of those lots which
16 are twenty-five feet wide and 150 feet deep, as are many
17 of the building lots in the area.
18 Many of the lots are that same size. There's
19 kind of a mixed style of construction and mixed sizing of
20 houses, but it's all residential.
21 Q. You referred to a plat of Countyside, I believe.

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1 Do you know about when that was filed?
2 A. Yes. That was filed in 1921.
3 Q. At that time, 1921, what was the zoning
4 requirement for minimum building lots in that area?
5 A. There were no true requirements. There was not a
6 true zoning development of any kind at that time.
7 Q. But as far as property widths, building a single
8 family house at that time?
9 A. At that time when the zoning requirements were
10 established for this area, it was initially zoned a
11 resident zone A, which had a fifty foot wide minimum
12 building.
13 That appears that way on the 1945 zoning maps,
14 which are the earliest maps I had any way to get my hands
15 on through the zoning department.
16 Q. You testified that, today, the property is D.R.
17 5.5 and the minimum building lot now is what?
18 A. Now, it's fifty-five feet subject to an
19 undersized lot approval. It actually can be allowed if a
20 plat was filed and approved by planning.
21 However, in 1921, although the plat was filed and

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1 all the lots essentially, except for these, have been
2 built out, there was no planning department to sign it.
3 So there wasn't a way we could meet that criteria, so we
4 filed for the undersized lot.
5 Q. What's at the property today?
6 A. It's unimproved.
7 Q. Can you describe the size, the shape, and the
8 topography of the parcel 5850-A?
9 A. Yes. As a whole, it's fifty feet wide, 150 feet
10 deep, which is a total of 7500 square feet, which meets
11 the minimum lot area.
12 We're not asking for any kind of bulk setback
13 relief. We meet all those requirements for the current
14 D.R. 5.5.
15 The topography through the lot, it's sloping
16 from three to one to a five to one slope at various points
17 throughout this lot. It slopes, as you face it from the
18 street, it slopes from right to left towards Mr.
19 Rothwell's lot. It's generally at the grade of 5852.
20 Q. Are there any other undeveloped lots on North
21 Hazelwood?

1 A. Nothing else that I know of from examining the
2 STAT records and the same GSI information that Mr.
3 Cunningham had presented.
4 Q. When is the last time you were at the property?
5 A. I was on the site yesterday.
6 Q. Had you been there before?
7 A. Yes, I had.
8 Q. If the zoning regulations of Baltimore County
9 were strictly complied with, what would be the result?
10 A. It would be unbuildable land.
11 Q. You testified as to this lot being the only
12 undeveloped lot and to the topography. Are there special
13 circumstances which exist at the property 5850-A that
14 makes the property peculiar, unique, or special?
15 A. Well, I believe that it's very peculiar because
16 we are so close to complying with the original intent of
17 the record plat.
18 As I stated, we're the only unbuildable lot, and
19 we nearly meet that requirement for a duly recorded and
20 approved plat.
21 It was clearly the intent at the time of this

1 plat that the lots were to be built on in groups of two.
2 Many of the surrounding houses are built on fifty foot
3 wide lots as we had originally brought up at the original
4 zoning, variance hearing.
5 It's very much in conformance with the
6 neighborhood to build on a fifty foot lot. There are
7 fifty foot lots not only along North Hazelwood, but there
8 are also existing fifty foot wide building lots on the
9 surrounding streets throughout this whole area.
10 Q. If I can show you Appellant's No. 2, the
11 petition, I think you've had a chance to look at that?
12 A. Yes.
13 Q. Do any of the people who signed that petition in
14 opposition to this variance reside on fifty foot lots at
15 this time?
16 A. Yes. Several of these addresses are actually
17 made up of two, twenty-five foot lots which are or have
18 one residence on it, similar to the request today.
19 Q. If the zoning regulations of Baltimore County
20 were strictly complied with, do you believe this would be
21 a practical difficulty or unreasonable hardship for my

1 client Charter Homes?
2 A. Very much so.
3 Q. Why?
4 A. This looks on the face entirely like a building
5 lot, and undeveloped piece of property, something that
6 could be built on. The neighborhood contains many fifty
7 foot wide lots, and it seems very much a hardship that
8 this particular one is not allowed to be improved.
9 Q. Do you believe that the subject property and the
10 petitioner's proposed use to build a house is in strict
11 harmony with the spirit and intent of the area
12 regulations?
13 A. Yes, I believe it's very much in spirit and
14 intent. I think this type of situation meets the intent
15 of the undersized lot provisions, and I also believe from
16 my relations over the last couple of years with Mr.
17 Skolnik that he would make every effort to comply with
18 planning's requirements, which they have stated, planning,
19 they are very concerned with this also being in
20 conformance with the neighborhood.
21 Q. If the variance is granted, do you believe that

1 the proposed use will injure the public health, safety or
2 general welfare of the community?
3 A. Not whatsoever. I can only see it being an
4 improvement.
5 Q. Now, you were here for Mr. Cadogan's testimony.
6 He had mentioned that there's going to be eight feet
7 between the houses. Is that accurate?
8 A. That's not accurate. There is eight feet from
9 his house to the adjacent property line on the subject
10 lot, and the site plan indicates another thirteen feet to
11 the proposed building, for a total of twenty one feet
12 between the houses.
13 MR. HALPIN: One more moment, please.
14 Q. So there would be eight feet then between their
15 house and the property line for a riding lawnmower, and
16 then thirteen additional feet from that property line to
17 the other house if it's built?
18 A. That's exactly correct, if it's built according
19 to this site plan.
20 MR. HALPIN: I have no further questions at this
21 time.

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1 THE CHAIRMAN: Mr. Rothwell, do you have any
2 questions?
3 MR. ROTHWELL: Yes.
4 CROSS EXAMINATION
5 BY MR. ROTHWELL:
6 Q. Could you describe the topo of the land on the
7 existing two story houses in general, existing two story
8 houses on fifty foot lots?
9 A. Where, sir?
10 Q. For instance, 58 -- I guess it would be 31, 32 --
11 the two stories across the street?
12 A. Can I look at a plan?
13 MR. IRISH: Sure.
14 A. It looks like they are generally from five to one
15 to ten to one.
16 Q. Five to one and ten to one?
17 A. Yes, sir. It certainly varies lot to lot,
18 contour to contour, and I'm taking this from Baltimore
19 County's GIS topography. This is not field run
20 topography.
21 Q. In relationship to the street, okay, does the

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1 land fall away or go up coming from the street to those
2 houses?
3 A. We're talking about houses that are directly
4 across from the subject site?
5 Q. Down the street, the two story houses that you're
6 talking about on a fifty foot lot, that the other
7 gentleman described as box houses.
8 A. Generally, they are close to the street grade at
9 the building line.
10 Q. Well, I say they fall at least a foot and a half
11 away, and I know they have drainage problems in the back
12 yard.
13 A. The Baltimore County GIS topography does not have
14 that level of precision between contours. It has two
15 foot contour intervals on it, and that's the only thing I
16 am using.
17 Q. I understand. That's why I am asking you, as a
18 witness, you have seen this site, and you have an eye for
19 that sort of thing.
20 A. I truly cannot see a one foot fall from the
21 street, fifty feet back, or forty foot back. I apologize.

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1 I don't have that level of expertise.
2 Q. Okay. Now, can you describe the topo of the
3 other two stories on the same side of the street downhill,
4 in relation to the street?
5 A. Again, based on the GIS topography, it looks like
6 they are at the building line. They are generally within
7 two feet of the road grade.
8 Q. Now, at 5850-A, maybe you can describe what's
9 going to happen there topography-wise with this two story
10 house. What's the topography going to do from the street
11 looking back on the lot?
12 A. Well, I will do an in-depth grading study and
13 grading plan pursuant to any future permit for the subject
14 property. I have not looked into any type of grading
15 design at this time.
16 It would be very much based on the type of house
17 that went in there, and it's not required for the zoning
18 case at hand.
19 Q. Then could you possibly look at Exhibit 2 up
20 there and describe for us according to the contours what
21 the topography does from the street, looking back on the

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1 lot?
2 A. What area, sir?
3 Q. Right there. The pink lot.
4 A. Yes, sir.
5 Q. Look at the elevation on the street.
6 A. Yes.
7 Q. Then go back to the lot. And what happens?
8 A. It's certainly higher than the street.
9 Q. By about how much?
10 A. To what point, sir?
11 Q. To the back of the lot, two-thirds of the way
12 back where the house is going to be.
13 A. Two-thirds, or at the house building line?
14 Q. Okay. The back of the lot.
15 A. The back of the lot, I show a contour of 180 at
16 the rear of the lot. And at the front lot, I show a
17 contour -- again, this is from Baltimore County's GIS
18 topography -- I show a contour 168.
19 That would indicate twelve foot of rise from the
20 front property line to the back property line, in general.
21 Q. Do the contours on that map show the contours of

1 the street?
2 A. Yes.
3 Q. Or to the property line? The property line is
4 five foot off the street?
5 A. Approximately five feet, that's correct, sir.
6 Q. Would you say, from looking at the site, that the
7 elevation from the street level to the property line, what
8 kind of elevation difference is there from your memory
9 would you say it is?
10 A. That's the beginning of the bank. That's the
11 beginning of the rise in elevation.
12 Q. Would you agree with me that there's at least
13 three foot of rise from the street to the top of the hill
14 there in front of the property?
15 A. It's not really something I can quantify without
16 having some kind of data. I couldn't say that. My eye is
17 not that expert.
18 Q. Just from your memory -- and I know you said you
19 were out there, and you're a surveyor, and you can see
20 things. I'm a surveyor. I can see them. I've done field
21 surveying for twenty-one years.

1 So I'm am asking you, as an expert witness, to
2 say how far does it go up?
3 I want these people here to get an idea of how
4 much elevation there is between the street and where that
5 house is going to be.
6 A. That wasn't what you asked me before. You asked
7 me to a bank area.
8 Q. I know. You're evading my question. You know
9 what I'm after, but you're evading me. I can't testify.
10 Only you can.
11 A. I understand. Are you asking me how far it is
12 from the street to the front, the front of the proposed
13 house?
14 Q. The elevation.
15 A. Approximately seven feet.
16 Q. Again, if you would, would you estimate --
17 because the contours don't go all the way to the street
18 level -- based from our experience an standing out there,
19 you can see the top of the hill where the top of the bank
20 comes around right off my property, where the tree is, and
21 it goes up at least three feet from the street to where

1 the top of the bank is going down to the street.
2 MR. WESCOTT: You're testifying now.
3 THE WITNESS: Well, I'm trying to point him in
4 the right direction so he can testify.
5 THE CHAIRMAN: No, you can't do that. That is
6 leading.
7 MR. WESCOTT: Ask him a question.
8 Q. From your recollection and your memory from
9 visiting the site --
10 A. Yes, sir.
11 Q. -- how high do you estimate the bank is at the
12 lower left-hand corner of the property in question? The
13 top of the bank to the street elevation?
14 A. It would only be a rough estimate and, roughly, I
15 would estimate about three feet.
16 Q. Thank you. So then would you say that three feet
17 plus the -- what did we figure before? Twelve feet? --
18 that approximately twelve and three is fifteen foot rise
19 from the street level to where the house is going to be?
20 A. No, sir.
21 Q. Would you agree with that?

1 A. No, sir, I do not agree to that.
2 Q. Would you agree to that assessment?
3 A. No, sir.
4 Q. Well, I can read that drawing and tell you that,
5 but just a comment --
6 MR. IRISH: No. Mr. Rothwell, I will clarify it
7 for you. He said it was seven feet from the front of the
8 property to the front of the house. Seven and three is
9 ten.
10 He said it was about twelve feet from the front
11 of the property to the rear of the property. Those were
12 the answers he gave you.
13 MR. ROTHWELL: Okay.
14 Q. Would you say that that is going to be a very
15 different setting for a two story on a house compared to
16 the other two stories on a house elevation-wise?
17 I mean, visualize, if you would, a two story
18 house, four feet out of the ground. Okay? And now we
19 have at least twelve feet from the street level, standing
20 on the street, looking at that house.
21 Can you sort of visualize what it's going to look

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1 like, and compare that to the other houses on the street,
2 which are basically downhill from the street, or level?
MR. HALPIN: If I can object here, my client
4 testified he's willing to build a split level. We don't
5 know whether we're going to build a two or not. We are
6 willing to work with the community.
7 I think those questions as to the two story
8 nature of the house are speculative at best and very much
9 different.
10 THE CHAIRMAN: Sustained. In other words, there
11 will be no more questioning about the level. He stated
12 the client testified they don't know what kind of house,
13 and you're asking about a specific house. Any other
14 questions?
15 MR. ROTHWELL: No further questions.
16 THE CHAIRMAN: Did that bring up any redirect?
17 MR. HALPIN: Am I able to introduce a plat, a
18 plat of Countyside?
19 THE CHAIRMAN: Yes.
20 MR. HALPIN: If I can, I'd like to make this
21 Petitioner's 5.

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1 THE CHAIRMAN: I think Mr. Rothwell made a
2 comment he didn't need to look at it.
3 MR. ROTHWELL: Well, they may want to look at it.
4 THE CHAIRMAN I'm sorry. I misunderstood.
5 REDIRECT EXAMINATION
6 BY MR. HALPIN:
7 Q. If I could show you what is Petitioner's No. 5, I
8 believe, which is the plat of Countyside which you
9 referred to which was recorded in 1921, which lots are we
10 talking about here today?
11 A. We're lots 193 and 194. On the plat, they are
12 generally centered left to right and near the top of the
13 plat in kind of the north central portion of the plat.
14 MR. HALPIN: Thank you.
15 Q. We went over the topography with some questions.
16 Does the topography at this site as well as the fact that
17 it's undeveloped make this property unique, peculiar or
18 special?
A. Yes. The topography of the overall subdivision
20 really has only one strip of sloping land that's similar
21 to this.

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1 Although it certainly meets Baltimore County's
2 criteria for grading and for slope, it is steeper than the
3 bulk of this plat.
4 MR. HALPIN: Thank you. I have no further
5 questions at this time. Does the Board have any questions
6 of Mr. Dallas?
7 THE CHAIRMAN: Mr. Rothwell, did you have
8 anything further of Mr. Dallas after they submitted that?
9 It would only have been to, since he brought up about this
10 and about the uniqueness, did you have any questions
11 pertaining to that?
12 MR. ROTHWELL: No. I think that drew a picture
13 of the slope of that and he just testified that, which is
14 one of our main objections here, to the slope of the
15 property.
16 THE CHAIRMAN: Okay.
17 MR. HALPIN: I have no further questions at this
18 time.
19 THE CHAIRMAN: Since we have appellants that are
20 not represented with a lawyer, I would like to have quick,
21 like we call them closing briefs, closing statements.

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1 So what we are going to do is ask you to
2 summarize why you feel this petition should not be
3 granted, and you will likewise summarize why you feel it
4 should be granted.
5 MR. ROTHWELL: Well, in summary, like the
6 petition states, whether it's been accepted as evidence or
7 not, I really don't know, but if you read that petition,
8 those front statements are what the people that signed
9 that agree to and believe in.
10 Secondly, you can stand on the street, and
11 although we have testimony that it looks like an
12 undeveloped piece of property, so what? It's an
13 undeveloped piece of property.
14 It doesn't need a house there. A house doesn't
15 belong there. It's just not enough room, that particular
16 site. The fact that my property sloped up at a minimum of
17 two to one from my side yard up to the next property, and
18 it even goes up further, puts it way up on a hill, and any
19 house you put up there is just really going to, seriously,
20 I will be living in a fishbowl in my back yard.
21 Like I stated before, unless somebody puts in

1 some thirty foot trees, which any landscape plan in the
2 world, there's nothing you can do there.
3 I enjoy the privacy of my back yard. Now, it's
4 fifty-eight feet of property which we are calling
5 undeveloped, but it's always been that house's side yard.
6 Like I said, the house was always the icon of the
7 neighborhood. It's what everybody that signed that
8 petition testified to, that we always looked at that house
9 as being, you know, that's the last piece of property that
10 shows a countrylike setting because it's open, has a big
11 side yard and swimming pool in the back.
12 It just like sets the stage for the whole
13 neighborhood. It always has and always will. Well, it
14 won't if it's allowed to be separated like it is.
15 The privacy issue just isn't going to go away, no
16 matter what kind of landscaping. If he puts up a two
17 story or a rancher, whatever, it's still up on the top of
18 the hill.
19 I'm in construction myself. I know what
20 motivates a builder. They put up as cheaply as possible,
21 get as much money as they can. The cheapest way is to go

1 do it is go up in the air, and stick the thing up on the
2 ground. There's evidence showing the two story built on
3 5854, it's a two story house that sits four or five feet
4 out of the ground because he didn't want to move the dirt
5 away and put a full basement in.
6 I know builders will do this, because I work for
7 them. I'm a surveyor. And the same thing is going to
8 happen next door.
9 Lord knows when he starts building, what's going
10 to happen to my basement when all the water comes running
11 down the hill if he doesn't do proper sediment erosion
12 control, which is not an issue here, but will be an issue
13 if anything is built there.
14 I know what I had to go through to build my
15 house. I know the landscaping, that I had spent three
16 days designing landscaping so it wouldn't drain off onto
17 people down the hill from me. And I hauled a lot of dirt
18 out of there. I hauled a hundred loads of dirt so I can
19 sit my house here and make it compatible with the
20 neighborhood and sit it back into the hill like it does.
21 That house doesn't belong there. That's all

1 there is to it. And the neighbors agree with me. I
2 pointed out this case that was given to me by the
3 gentleman -- and I still can't pronounce his name -- that
4 approved the variance to start with.
5 I assume he gave me those two court cases as a
6 justification for his action and used them as a precedent
7 saying, well, these are similar cases, and this is what I
8 base my decision on.
9 I assume that's the way it works. And when I
10 read through the one to the statement that says money is
11 not an issue, Paula Rush is the petitioner. She sold the
12 property for $15,000.
13 My appraiser says it's only worth $3000. She
14 made $12,000 on a piece of lot, presumably. She applied
15 for the variance. Why? To make more money.
16 The court case said money is not an issue. That
17 was the precedent set in that one court case.
18 Like I say, I only petitioned half the
19 neighborhood. I'm sure that if it goes any further, I
20 need to petition the rest of the neighborhood. I can get
21 twenty-five more signatures. The neighborhood basically

1 don't want this to happen.
2 Like it's also stated on the petition, they may
3 have reasons beyond the reasons written there. I only
4 wrote down the reasons why they didn't want it that I
5 thought would be common to the whole neighborhood. That's
6 basically my case.
7 THE CHAIRMAN: Mr. Halpin?
8 MR. HALPIN: The appellant today has not met the
9 burden under the Baltimore County zoning regulations for
10 showing the variance is not to be granted.
11 Even so, we believe that we have shown that a
12 variance should be granted.
13 The plat of Countyside which I submitted, Section
14 304 of the Baltimore County zoning regulations, permits a
15 lot. A lot shall be duly recorded either by deed or a
16 validly approved subdivision prior to March 30, 1955.
17 That was 1921. Unfortunately, the office of
18 planning's view is that they didn't approve it, that we
19 can't do this without the variance, so that's why we are
20 coming forward today.
21 I find that the whole idea of NIMBY -- not in my

1 back year -- that people who signed this petition live on
2 fifty foot lots right now, and don't want a house to be
3 built on a fifty foot lot.
4 The lot is peculiar, unique and special. Mr.
5 Dallas testified as to the topographical features of the
6 land as well this is the only undeveloped property at this
7 time.
8 There's no other use for this property other than
9 a building lot. That is a special hardship, undue
10 hardship.
11 My client, who's not a huge builder, builds
12 fifteen or twenty homes a year, there is the practical
13 difficulty to him.
14 The variance, if granted, will comply with the
15 spirit and intent of the zoning regulations. Mr. Dallas
16 spoke about that. And Charter Homes has a history of
17 complying with building requirements.
18 The last comment, this variance, if granted, will
19 not injure the public health, welfare, or safety of the
20 community.
21 Mr. Dallas testified to that. Mr. Cunningham

1 from the office of planning concurred and said that this
2 variance should be approved, and this complies with the
3 whole spirit and intent of the former Governor
4 Glendening's Smart Growth Program.
5 This is a in-fill lot. There's two, twenty-five
6 foot lots. There is no other use. There's utilities,
7 there's services there right now.
8 And for all those reasons, we believe that the
9 petitioner's request for the variance and the undersized
10 lot should be approved and the appellant's appeal should
11 be denied. That's all I have at this time. Thank you.
12 THE CHAIRMAN: What the Board is going to do,
13 we'll reconvene at a layer date and have a public
14 deliberation.
15 At that time, the members of the Board will
16 present their views on the evidence that was presented
17 before them based upon the law and come up with their
18 decision.
19 You will be notified of the hearing date when we
20 have the public deliberation. And with that, we are
21 adjourned.

1 MR. HALPIN: Thank you very much.
2 (Hearing concluded.)
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4 Otis Cadogan	26	27		
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1 EXHIBITS

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5 No. 2 15

6 No. 3A, 3B 39

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10 Petitioner Ex. No. Page

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12 No. 2 53

13 No. 3 53

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Baltimore County
Department of Permits and
Development Management

Development Processing
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
pdmlandacq@co.ba.md.us

May 16, 2002 .

Paula Rush
5852 N. Hazelwood Avenue
Baltimore MD 21206

Dear Ms. Rush:

RE: Case Number: 02-365-A, 5850 N. Hazelwood Avenue

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on 3/5/02.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure 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. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:rjc

Enclosures

c:
J. Scott Dallas J.S. Dallas, Inc. P.O. Box 26 13523 Long Green Pike Baldwin MD 21013
People's Counsel

Printed with Soybean Ink

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Arnold Jablon

FROM: R. Bruce Seeley RBS | TOT

DATE: April 16, 2002

Zoning Advisory Committee Meeting of March 18, 2002

SUBJECT: NO COMMENTS FOR THE FOLLOWING ZONING ITEMS:

360, 361, 362, 365, 366, 367, 369, 370, 371, 372, 373,375, 377

Waiting on AG Comments for #364, 368

Maryland Department of Transportation
State Highway Administration

Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

Date: 3-19-02

Mr. George Zahner
Baltimore County Office of
Permits and Development Management
County Office Building, Room 109
Towson, Maryland 21204

RE: Baltimore County
Item No. 365 JL

Dear. Mr. Zahner:

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.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

for Kenneth A. McDonald Jr., Chief
Engineering Access Permits Division

My telephone number is _____

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

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

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: April 17, 2002

FROM: Robert W. Bowling, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
for *March 25, 2002*
Item Nos 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 375, 376 and 377

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

RWB:CEN:cab

cc: File

ZAC-3-25-2002-NO COMMENT ITEMS-04172002.doc

Baltimore County
Fire Department

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

March 18, 2002

Department of Permits and
Development Management (PDM)
County Office Building, Room 111
Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

ATTENTION: George Zahner

RE: Property Owner: SEE BELOW

Location: DISTRIBUTION MEETING OF March 18, 2002

Item No.: 360-~~366~~ 365, 368, 370-377

Dear Ms. Zahner:

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.

7. The Fire Marshal's Office has no comments at this time.

REVIEWER: LIEUTENANT JIM MEZICK, Fire Marshal's Office
PHONE 887-4881, MS-1102F

cc: File

Printed with Soybean Ink
on Recycled Paper

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: March 26, 2002

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

MAR 28

SUBJECT: 5850 A North Hazelwood Avenue

INFORMATION:

Item Number: 02-365

Petitioner: Paula Rush

Zoning: DR 5.5

Requested Action: Variance

SUMMARY OF RECOMMENDATIONS:

The Office of Planning supports the petitioner's request to allow a lot width variance. The petitioner submitted a photograph depicting the house type that he would like to build. However, revised building elevations should be submitted to this office for review and approval prior to the issuance of any building permits.

Prepared by: Mark A Cumings

Section Chief: Lynn Lorber

AFK/LL:MAC:

Baltimore County
Department of Permits and
Development Management

Director's Office
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
410-887-3353
Fax: 410-887-5708

July 10, 2002

J. Scott Dallas Esquire
13523 Long Green Pike
Baldwin MD 21013

Dear Mr. Dallas:

RE: Case No. 02-365-A, 5850 N Hazelwood Avenue

Please be advised that an appeal of the above-referenced case was filed in this office on July 03, 2002 by Thomas M Rothwell. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

Arnold Jablon GDZ
Director

AJ: gdz

c: Paula Rush, 5850-A N Hazelwood Avenue, Baltimore 21206
Steve Kennecht, 5850-A N Hazelwood Avenue, Baltimore 21206
Thomas M Rothwell, 5850 N Hazelwood Avenue, Baltimore 21206
Denise Cadogan, 5852 N Hazelwood Avenue, Baltimore 21206
People's Counsel

Printed with Soybean Ink

To: GZ
Appeal

5850 N. Hazelwood Avenue
Baltimore, Maryland 21206
July 1, 2002

Director of Permits and Development Management
Baltimore County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Attention: Mr. Arnold Jablon

Re: Case No. 02-365-A

Dear Mr. Jablon:

On May 22, 2002, I was present at the hearing for CASE NO. 02-365-A. This case concerned a petition for variance to allow an undersized lot at 5852 N. Hazelwood Avenue to be used as a building lot. At the hearing I stated my objections (which are shared by at least seven of my neighbors on this street) to this variance. However, the variance was granted on June 5, 2002, by Timothy M. Kotroco (Deputy Zoning Commissioner). Please accept this letter and enclosed check as application for appeal to this case.

Sincerely,

Thomas M. Rothwell

Thomas M. Rothwell

Enclosure

RECEIVED
JUL 3 2002
DEPT OF PERMITS AND
DEVELOPMENT MANAGEMENT

APPEAL

Petition For Variance
5850-A N Hazelwood Avenue
W/S of N Hazelwood Avenue, 314' S/S of Charles Avenue
14th Election District – 6th Councilmanic District
Paula Rush - Legal Owner
Case No.: 02-365-A

Petition for Variance (dated 03/05/02)

Zoning Description of Property

Notice of Zoning Hearing (dated 04/03/02)

Certification of Publication (The Jeffersonian issue dated 05/02/02)

Certificate of Posting (dated 05/02/02 posted Patrick M O'Keefe)

Entry of Appearance by People's Counsel (dated 03/27/02)

Petitioner(s) Sign-In Sheet (None)

Protestant(s) Sign-In Sheet (1 page)

Citizen(s) Sign-In Sheet (None)

Zoning Advisory Committee Comments

Petitioners' Exhibits: (None)

Protestants' Exhibits: (None)

Miscellaneous (Not Marked as Exhibits):
- Site Plan to Accompany Petition for Zoning Variance (dated 02/21/02)

Deputy Zoning Commissioner's Order (dated 06/05/02 – GRANTED with Restrictions)

Notice of Appeal received on 07/03/02 from Thomas M Rothwell

c: J Scott Dallas Esquire, 13523 Long Green Pike, Baldwin MD 21013
People's Counsel of Baltimore County, MS #2010
Timothy Kotroco, Deputy Zoning Commissioner
Arnold Jablon, Director of PDM

date sent: 07/11/02 gdz

Case No. 02-365-A

VAR – To allow a lot width of 50' ilo required 55' for proposed SFD and to approve an undersized lot.

6/05/02 –D.Z.C.'s decision in which requested variance was GRANTED with restrictions.

9/16/02 –Notice of Assignment sent to following; assigned for hearing on Wednesday, February 5, 2003 at 10:00 a.m.:

Thomas M. Rothwell
Paula Rush
Steve Kennecht
J. Scott Dallas /J.S. Dallas Inc.
Otis and Denise Cadogan
Gloria T. Pack
Office of People's Counsel
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

9/19/02 – T/C from Adam Skolnik, Charter Homes – inquiring as to status of hearing; had we received letter indicating that Charter Homes is new owner and that Paula Rush no longer owns property? No letter in file; however, his partner, Steve Kennecht is noted in file as "Petitioner /Legal Owner" and was sent copy of 9/16/02 notice. Added: Adam Skolnik, Charter Homes, 3230 Bethany Lane, Suite 8, Ellicott City, MD 21042 and copy of notice sent to him.

1/31/03 – Letter from Kirk J. Halpin, Esquire, entering appearance on behalf of Charter Homes; file noted; copy of notice of assignment sent to Mr. Halpin (stamped and mailed this date).

2/05/03 – Hearing concluded before Board (Barranger, Irish, Wescott); notice sent this date for public deliberation assigned for Tuesday, March 11, 2003 at 12:00 noon. FYI copy to B.S.R.

3/11/03 – Board convened for deliberation (B.R.S.); unanimous decision of the Board – Petition for Variance DENIED; written Opinion and Order to be issued; appellate period to run from date of written Order.

02-365-A 5850-A N Hazelwood Aveue PAULA RUSH
Baltimore, MD 21206

3/5/02 Petition for Variance to allow a lot width of 50 feet ilo the required 55 feet for a proposed building lot and to approve an undersized lot.

6/5/02 Deputy Zoning Commissioner's Order, dated 6/5/02 – GRANTED with restrictions.

7/3/02 Appealed filed by Thomas M. Rothwell, 5850 N Hazelwood Avenue, Baltimore, MD 21206.

7/11/02 Appealed received at the BOA.

5/14/2003 Opinion Issued By The Board Of Appeals – Petition for Variance- DENIED.

6/12/2003 Petition for Judicial Review filed by Kirk Halpin, Esquire, on behalf of Charter Homes.

8/12/03 Petition Retrieved from Circuit Court.

8/13/2003 Certificate of Notice filed.

7/14/2004 Order from the Circuit Court – Judge Byrnes – Board is REVERSED and REMANDED to the Board to grant the requested variance with appropriate conditions.

9/8/2004 File received from Circuit Court

9/8/2004 File given to Administrator to prepare Order as stated by Judge Byrnes.

9/15/2004 Opinion Issued By The Board Of Appeals on Remand from the Circuit Court – Petition for Variance GRANTED with restrictions.

BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: Paula Rush / Charter Homes LLC
Case No.: 02-365-A

DATE: Tuesday, March 11, 2003

BOARD/PANEL:

Richard K. Irish	RKI
Lawrence S. Wescott	LSW
C. Lynn Barranger	CLB

RECORDED BY: Theresa R. Shelton / Legal Secretary

PURPOSE: To deliberate the Petition for Variance to allow a lot width of 50 feet ilo the required 55 feet for a proposed building lot and to approve an undersized lot.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

- lots are consistent with the other lots in the area
- the topography is the same throughout the neighborhood
- no testimony was given as to the uniqueness of the property
- used 307.1 instead of 304.1
- property does not meet guidelines for being unique
- slope of land does not appear to be different from other lots with slopes
- all of the properties have slope issues
- practical difficulty (economic) is self-imposed
- hardship must relate to land; not to owner
- spirit and intent – no issue with this prong

DECISIONS BY BOARD MEMBERS: Unanimous decision by the Board of Appeals to DENY the Variance requested.

FINAL DECISION: That the Petition for Variance to allow a lot width of 50 feet ilo the required 55 feet for a proposed building lot and to approve an undersized lot is DENIED.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place that date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by this Board.

Respectfully submitted,

Theresa R. Shelton

Theresa R. Shelton
County Board of Appeals

RE: PETITION FORVARIANCE 5850 N. Hazelwood Avenue, W/S Hazelwood Ave, 314' S of Charles Ave 14th Election District, 6th Councilmanic Legal Owner: Paula Rush Petitioner(s)	* * * * *	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY Case No. 02-365-A

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

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order. **All parties should copy People's Counsel on all correspondence sent/ documentation filed in the case.**

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of March, 2002 a copy of the foregoing Entry of Appearance was mailed to J. Scott Dallas, J.S. Dallas, Inc., 13523 Long Green Pike, P.O. Box 26, Baldwin, MD 21013, representative for Petitioners.

Peter Max Zimmerman

PETER MAX ZIMMERMAN

THIS UNDERSIZED LOT PACK TO OP 3/5/02

INTER-OFFICE CORRESPONDENCE
RECOMMENDATION FORM

TO: Director, Office of Planning & Community Conservation
Attention: Jeffrey Long
County Courts Building, Room 406
401 Bosley Avenue
Towson, MD 21204

COND. APPVL RCVD FROM OP 3/22/02 PUT IN 02-365-A

Permit or Case No. 02-365-A

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

Residential Processing Fee Paid ($50.00)
Accepted by JLL
Date 3/05/02

RE: Undersized Lots

Pursuant to Section 304.2 (Baltimore County Zoning Regulations) effective June 25, 1992, this office is requesting recommendations and comments from the Office of Planning and Community Conservation prior to this office's approval of a dwelling permit.

MINIMUM APPLICANT SUPPLIED INFORMATION.

J. Scott Dallas P.O. Box 26 Baldwin, MD 21913 (410) 817-4600
Print Name of Applicant — Address — Telephone Number

Lot Address 5850A N. Hazelwood Ave. Election District 14 Councilmanic District 6 Square Feet 7,500

Lot Location: N E S W/side/corner of N. Hazelwood Avenue (street) 314 feet from N E S W corner of Charles Avenue (street)

Land Owner: Paula Rush Tax Account Number 1413041253

Address: 5852 N. Hazelwood Ave. Balto., MD 21206 C/O Charter Homes Telephone Number (410) 480-3213

CHECKLIST OF MATERIALS- (to be submitted for design review by the Office of Planning and Community Conservation)

TO BE FILLED IN BY ZONING REVIEW, DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT ONLY!

	PROVIDED? YES	NO
1. This Recommendation Form (3 copies)	X	
2. Permit Application		X
3. Site Plan: Property (3 copies)	X	
Topo Map (2 copies) available in Room 206 County Office Building - *(please label site clearly)*	X	
4. Building Elevation Drawings	X	
5. Photographs (please label all photos clearly): Adjoining Buildings	X	
Surrounding Neighborhood	X	

6. Current Zoning Classification: D.R. 5.5

Post-it® Fax Note 7671 — Date 3/22 — # of pages ▶ 2
To John Lewis — From Lynn Lanham
Co./Dept. — Co.
Phone # x 2391 — Phone # x 2430
Fax # 2824 — Fax # 5862

TO BE FILLED IN BY THE OFFICE OF PLANNING ONLY!

RECOMMENDATIONS / COMMENTS:

☐ Approval ☐ Disapproval ☑ Approval conditioned on required modifications of the application to conform with the following:

see attached.

Signed by: Lynn Lanham
for the Director, Office of Planning and Community Conservation

RECEIVED MAR - 6 2002 OFFICE OF PLANNING

Date: 3/22/02

Revised 2/25/99

The architectural elevation drawings submitted with the undersized lot application were reviewed by the Office of Planning. Building materials and front façade treatment as shown are not appropriate and do not met the requirements of Section 304.2B.2 of the BCZR. The drawings were to be revised to incorporate brick treatment on the facades and to add a front porch detail. As of the date of these comments, revised drawings have not been received.
This office does not object to the granting of the the variance and/or the undersized lot approval provided revised elevation drawings are submitted to the Office of Planning prior to the issuance of any building permits.

THIS UNDERSIZED LOT [illegible] TO OP. 3/5/02

ZONING FILE.

INTER-OFFICE CORRESPONDENCE
RECOMMENDATION FORM

TO: Director, Office of Planning & Community Conservation
Attention: Jeffrey Long
County Courts Building, Room 406
401 Bosley Avenue
Towson, MD 21204

Permit or Case No. 02-365-A

Residential Processing Fee Paid
($50.00)

Accepted by JLL
Date 3/05/02

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

RE: Undersized Lots

Pursuant to Section 304.2 (Baltimore County Zoning Regulations) effective June 25, 1992, this office is requesting recommendations and comments from the Office of Planning and Community Conservation prior to this office's approval of a dwelling permit.

MINIMUM APPLICANT SUPPLIED INFORMATION:

J. Scott Dallas P.O. Box 26 Baldwin, MD 21913 (410) 817-4600
Print Name of Applicant — Address — Telephone Number

Lot Address 5850A N. Hazelwood Ave. Election District 14 Councilmanic District 6 Square Feet 7,500

Lot Location: N E S W/side/corner of N. Hazelwood Avenue (street), 314 feet from N E S W corner of Charles Avenue (street)

Land Owner: Paula Rush Tax Account Number 1413041253

Address: 5852 N. Hazelwood Ave. Balto., MD 21206 C/O Charter Homes Telephone Number (410) 480-3213

CHECKLIST OF MATERIALS-. (to be submitted for design review by the Office of Planning and Community Conservation)

TO BE FILLED IN BY ZONING REVIEW, DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT ONLY!

	PROVIDED? YES	NO
1. This Recommendation Form (3 copies)	X	
2. Permit Application		X
3. Site Plan Property (3 copies)	X	
Topo Map (2 copies): *available* in Room 206, County Office Building - ***(please label site clearly)***	X	
4. Building Elevation Drawings	X	
5. Photographs (please label all photos clearly) Adjoining Buildings	X	
Surrounding Neighborhood	X	

6. Current Zoning Classification: D.R. 5.5

TO BE FILLED IN BY THE OFFICE OF PLANNING ONLY!

RECOMMENDATIONS / COMMENTS:

☐ Approval ☐ Disapproval ☐ Approval conditioned on required modifications of the application to conform with the following recommendations:

Signed by: _____ Date: _____
for the Director, Office of Planning and Community Conservation

Revised 2/25/99

SCHEDULED DATE CERTIFICATE OF FILING AND POSTING FOR A BUILDING PERMIT APPLICATION PURSUANT TO SECTION 304.2

Department of Permits and Development Management (PDM)
County Office Building
111 West Chesapeake Avevnue
Towson, Maryland 21204

The application for your proposed Building Permit application has been reviewed and is accepted for filing by _____ on _____.
(name of planner) Date (A)

A sign indicating the proposed building must be posted on the property for fifteen (15) days before a decision can be rendered. The cost of filing is $50.00. This fee is subject to change. Confirm all current fees prior to filing the application.

In the absence of a request for public hearing during the 15-day posting period, a decision can be expected within approximately four weeks. However, if a valid demand is received by the closing date, then the decision shall only be rendered after the required public special hearing.

*SUGGESTED POSTING DATE _____ D (15 Days Before C)

DATE POSTED _____

HEARING REQUESTED? YES_____ NO_____ - DATE _____

CLOSING DAY (LAST DAY FOR HEARING DEMAND) _____ C (B-3 Work Days)

TENTATIVE DECISION DATE _____ B (A + 30 Days)

*Usually within 15 days of filing

CERTIFICATE OF POSTING

District: _____

Location of Property: _____

_____

Posted by: _____ Date of Posting: _____
Signature

Number of Signs: _____

Revised 2/25/99

PETITION OF: CHARTER HOMES, LLC

CIVIL ACTION NO.: 3-C-03-6444

MATTER OF: PAULA RUSH / CHARTER HOMES, LLC

RECEIVED FROM THE COUNTY BOARD OF APPEALS EXHIBITS AND BOARD'S RECORD EXTRACT AND TRANSCRIPT FILED IN THE ABOVE-ENTITLED CASE, AND ZONING COMMISSIONER'S FILE AND EXHIBITS.

CLERK'S OFFICE

DATE: October 2, 2003

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-03-006444

RECEIVED
OCT - 6 2003
BALTIMORE COUNTY
BOARD OF APPEALS

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY THE
Old Courthouse Room 49
400 Washington Avenue
Baltimore, MD 21204

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

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

Case Number: 03-C-03-006444
C I V I L

In The Matter of: Charter Homes L L C

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 2nd day of October, 2003.

Suzanne Mensh
Clerk of the Circuit Court, per QS

Date issued: 10/03/03

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY THE
Old Courthouse Room 49
400 Washington Avenue
Baltimore, MD 21204

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

5/11/04
Judge Byrnes
Out Curia
waiting on
order

06/08/04

Case Number: 03-C-03-006444 AE
Date Filed: 06/12/2003
Status: Open/Active
Judge Assigned: To Be Assigned,
Location :

In The Matter of: Charter Homes L L C

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Case Folder ID	C03006444V01

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. / Addr Update	Entered
PET	001	Charter Homes L L C Party ID: 0591048			06/13/03
		Mail: 3230 Bethany Lane Suite 8 Ellicott City, MD 21042	06/13/03	06/13/03 JET	06/13/03 JET
		Attorney: 0800457 Halpin, Kirk J Law Offices Of Kirk Halpin & Associates P A 10211 Wincopin Circle Ste 600 Columbia, MD 21044 (410)772-9797	Appear: 06/12/2003		06/13/03
RES	001	County Board Of Appeals Of Baltimore County The Party ID: 0591049			06/13/03

Mail: Old Courthouse Room 49 400 Washington Avenue Baltimore, MD 21204	06/13/03	06/13/03 JET	06/13/03 JET

CALENDAR EVENTS

Date Time	Dur	Event Description	Text	SA	Jdg	Day	Of Notice	User ID
Result		ResultDt By Result Judge		Rec				
03/30/04 09:30A		Civil Non-Jury Trial	Y		TBA	01 /01	GB	GB
Postpone		03/09/04 E						
04/15/04 09:30A		Civil Non-Jury Trial	Y		TBA	01 /01	GB	GB
Postpone		03/25/04 F						
05/11/04 09:30A	02Q	Civil Non-Jury Trial	Y		JNB	01 /01	GB	GI
Conclude		05/11/04 E J.Byrnes		Y				
Stenographer(s): Randy MacKubin								

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned,	J	06/13/03	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0001000	Petition for Judicial Review with affidavit and exhibit	06/12/03	06/13/03	PET001	TBA			JET JET
0002000	Notice of Service of Discovery	08/13/03	08/18/03	000	TBA			CS CS
0003000	Transcript of Record from Adm Agency	10/02/03	10/03/03	RES001	TBA			CS CS
0004000	Notice of Transcript of Record Sent	10/03/03	10/03/03	PET001	TBA		10/03/03	CS CS
0005000	Notice of Transcript of Record Sent	10/03/03	10/03/03	RES001	TBA		10/03/03	CS CS
0006000	Memorandum of Law	11/03/03	11/10/03	PET001	TBA		11/10/03	MI MI
0007000	Scheduling Order	12/22/03	12/22/03	000	TBA		12/22/03	KGR KGR
0008000	Scheduling Order	02/10/04	02/10/04	000	TBA		02/10/04	GB GB
0009000	Scheduling Order	03/09/04	03/09/04	000	TBA		03/09/04	GB GB

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0010000	Scheduling Order	03/25/04	03/25/04	000	TBA		03/25/04	GB GB
0011000	Open Court Proceeding May 11, 2004. Hon. J. Norris Byrnes. Hearing had re: Petition for Judicial Review - held sub curia.	05/11/04	05/11/04	000	TBA			GI GI

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1YRT	One Year Tickle (Jud	OPEN	06/11/04	365	no	no	DAAA	D	001	000
SLTR	Set List For Trial	CANCEL	10/02/03	0	yes	no	DTRA	D	003	000
SLTR	Set List For Trial	CANCEL	02/09/04	0	yes	no	CIVI	S	000	000
SLTR	Set List For Trial	CANCEL	02/10/04	0	yes	no	CIVI	S	000	000
SLTR	Set List For Trial	CANCEL	03/09/04	0	yes	no	CIVI	S	000	000
SLTR	Set List For Trial	CANCEL	03/25/04	0	yes	no	CIVI	S	000	000

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By: RES 001 County Board Of Appeals Of Ba								
000		B	BOX 381/CBA TRANSC		B			

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes
Assign Date: 12/22/03 Order Date : 12/22/03
Start Date : 12/22/03 Remove Date:

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD. Rule 2-322(		01/06/04		OPEN
All Motions (excluding Motions in Limine		04/01/04		OPEN
TRIAL DATE is	05/11/04	03/21/04	05/11/04	REACHED

PUBLIC NOTE TITLES

1) 1/21/04 PLTF M/O FOR P/PMT

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

Paula Rush

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

County Board Of Appeals Of Baltimore County The
Old Courthouse Room 49
400 Washington Avenue
Baltimore MD 21204

Assignment Date: 12/22/03

Case Title: In The Matter of: Charter Homes L L C
Case No: 03-C-03-006444 AE

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Richard P. Abbott at (410) 887-3233.
You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 01/06/04
2. All Motions (excluding Motions in Limine) are due by..... 02/19/04
3. TRIAL DATE is..... 03/30/04
   Civil Non-Jury Trial: Start Time: 09:30AM; To Be Assigned: 1 HOUR EXPEDITED APPEAL

Honorable John Grason Turnbull II
Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponement must be submitted in writing with a copy to all counsel/parties involved All requests for postponement must be approved by the Judge.

Settlement Conference (Room 507): All counsel and their clients MUST attend the settlement conference in person. All insurance representatives MUST attend this conference in person as well. Failure to attend may result in sanctions by the Court Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more information.)

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Court Administrator's Office at (410) 887-2687 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D Relay Service, (800) 735-2258.

Voluntary Dismissal: Per Md. Rule 2-506, after an answer or motion for summary judgment is filed, a plaintiff may dismiss an action without leave of court by filing a stipulation of dismissal signed by all parties who have appeared in the action. The stipulation shall be filed with the Clerk's Office. Also, unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action.

Court Costs: All court costs MUST be paid on the date of the settlement conference or tri

cc: Kirk J Halpin Esq

RECEIVED
DEC 30 2003
BALTIMORE COUNTY
BOARD OF APPEALS

Issue Date 12/22/03

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
CHARTER HOMES, LLC *
3230 Bethany Lane, Suite 8
Ellicott City, Maryland 21042 *

*

FOR JUDICIAL REVIEW OF THE
OPINION OF THE COUNTY BOARD *
OF APPEALS OF BALTIMORE COUNTY
OLD COURTHOUSE, ROOM 49 *
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204 *

CIVIL ACTION
NO.: 03-C-03-6444

IN THE MATTER OF: PAULA RUSH / *
CHARTER HOMES, LLC
LEGAL OWNER / VARIANCE *
(5850-A N Hazelwood Avenue)
2ND ELECTION DISTRICT *
2ND COUNCILMANIC DISTRICT

*

CASE NO: 02-365-A

RECEIVED AND FILED
2003 OCT -2 A 10: 37
CLERK OF CIRCUIT COURT
BALTIMORE COUNTY

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

PROCEEDINGS BEFORE THE ZONING COMMISSIONER
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the Petition for Judicial Review directed against it in this case, herewith transmits the record of proceedings had in the above-entitled matter, consisting of the following certified copies or original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT OF BALTIMORE COUNTY

02-365-A

March 5, 2002	Petition for Variance filed by Paula Rush to allow a lot width of 50 feet ilo the required 55 feet for a proposed building lot and to approve an undersized lot.
March 27	Entry of Appearance filed by People's Counsel for Baltimore
May 2	Certificate of Posting.
May 2	Certificate of Publication
May 16	ZAC Comments.
May 22	Hearing held before the Zoning Commissioner
June 5	Findings of Fact and Conclusions of Law issued by the Deputy Zoning Commissioner. Petition for Variance is Granted with restrictions.
July 3	Notice of Appeal filed by Thomas M. Rothwell, 5850 N. Hazelwood Avenue, Baltimore, MD 21206
February 5, 2003	Hearing held before the Board of Appeals.

Petitioner's Exhibits

1	Baltimore County Inter-Office Correspondence dated March 26, 2002 from Arnold F. 'Pat" Keller, III, Director, Office of Planning to Arnol Jablon, Director, Department of Permits and Development Manageme re: Summary of Recommendations
2	Site Plan to accompany Petition for Zoning Variance – 5850 A N. Hazelwood Avenue, dated February 21, 2002
3	GIS drawing, undated
4A	Four photographs, undated and marked: 5810 N. Hazelwood, 5814, 5816 and 5818
4B	Four photographs, undated and marked: 5820, 5822, 5824 and 5826
4C	Four photographs, undated and marked: 5828, 5830, 5850 and 5850 A
4D	Two photographs, undated and marked: 5852 and 5854
5	Plat of County Side, dated July 13, 1921

Protestant's Exhibits

1	Drawing by Thomas Rothwell on yellow legal paper
2	(ID only) Four page Petition submitted to the Baltimore County Zoning Commissioner , undated, with various signatures
3A	One page, dated 2/5/03, consisting of three photographs marked 5623 Daybreak Terrace; 12 Morning Star Court and 5852 North Hazelwood Avenue
3B	One page, dated 2/5/03, consisting of three photographs marked FRONT; REAR and STREET SCENE

March 11	Public Deliberation concluded by the Board.
May 14	Opinion and Order issued by the Board of Appeals; Petition for Variance is DENIED.
June 12	Petition for Judicial Review filed in the Circuit Court for Baltimore County by Kirk J. Halpin, Esquire, on behalf of Charter Homes, LLC.
August 12	Copy of Petition for Judicial Review RETRIEVED from the Circuit Court for Baltimore County by the Board of Appeals.
August 12	Certificate of Notice sent to interested parties.
October 2	Transcript of testimony filed.
October 2	Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.

Theresa R. Shelton

Theresa R. Shelton, Legal Secretary
County Board of Appeals, Room 49 Basement
Old Courthouse, 400 Washington Avenue
Towson, Maryland 21204 (410-887-3180)

c: Thomas M. Rothwell
Peter Max Zimmerman,
People's Counsel for Baltimore Counsel

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*

PETITION OF:
CHARTER HOMES, LLC *
3230 Bethany Lane, Suite 8
Ellicott City, Maryland 21042 *

* CIVIL ACTION
NO.: 03-C-03-6444

FOR JUDICIAL REVIEW OF THE
OPINION OF THE COUNTY BOARD *
OF APPEALS OF BALTIMORE COUNTY
OLD COURTHOUSE, ROOM 49 *
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204 *

IN THE MATTER OF: PAULA RUSH / *
CHARTER HOMES, LLC
LEGAL OWNER / VARIANCE *
(5850-A N Hazelwood Avenue)
2ND ELECTION DISTRICT *
2ND COUNCILMANIC DISTRICT
*

CASE NO: 02-365-A

RECEIVED AND FILED
2003 AUG 13 · P 12: 35
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

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

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the County Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely:

Kirk J. Halpin, Esquire
Rosenberg Proutt Funk & Greenberg, LLP, 25 South Charles Street, Suite 2115,
Baltimore, Maryland 21201

Adam Skolnik
Charter Homes, LLC
c/o Kirk J. Halpin, Esquire, Rosenberg Proutt Funk & Greenberg, LLP, 25 South Charles Street, Suite 2115, Baltimore, Maryland 21201

Thomas M. Rothwell
5850 N. Hazelwood Avenue, Baltimore, Maryland 21206

Paula Rush
1602 Bridewells Court, Joppa, Maryland 21085-5435

J. Scott Dallas
J.S. Dallas, Inc., Post Office Box 26, 13523 Long Green Pike, Baldwin, Maryland 21013

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

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.

Theresa R. Shelton

Theresa R. Shelton, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)

I HEREBY CERTIFY that a copy of the foregoing Certificate of Notice has been mailed to: Kirk J. Halpin, Esquire, Rosenberg Proutt Funk & Greenberg, LLP, 25 South Charles Street, Suite 2115, Baltimore, Maryland 21201; Adam Skolnik, Charter Homes, LLC, c/o Kirk J. Halpin, Esquire, Rosenberg Proutt Funk & Greenberg, LLP, 25 South Charles Street, Suite 2115, Baltimore, Maryland 21201; Thomas M. Rothwell, 5850 N. Hazelwood Avenue, Baltimore, Maryland 21206; Paula Rush, 1602 Bridewells Court, Joppa, Maryland 21085-5435; J. Scott Dallas, J.S. Dallas, Inc., Post Office Box 26, 13523 Long Green Pike, Baldwin, Maryland 21013, and Peter Max Zimmerman, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204, this 13th day of August, 2003.

Theresa R. Shelton

Theresa R. Shelton, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

08/11/04

Case Number: 03-C-03-006444 AE
Date Filed: 06/12/2003
Status: Closed/Active
Judge Assigned: To Be Assigned,
Location :

In The Matter of: Charter Homes L L C

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Case Folder ID	C03006444V01

INVOLVED PARTIES

Type	Num	Name(Last First,Mid,Title)	Addr Str/End	Pty. Disp. / Addr Update	Entered
PET	001	Charter Homes L L C Party ID: 0591048		BT DO 07/27/04	06/13/03
Mail		3230 Bethany Lane Suite 8 Ellicott City, MD 21042	06/13/03	06/13/03 JET	06/13/03 JET
Attorney		0800457 Halpin Kirk J Law Offices Of Kirk Halpin & Associates P A 10211 Wincopin Circle Ste 600 Columbia, MD 21044 (410)772-9797	Appear: 06/12/2003		06/13/03
RES	001	County Board Of Appeals Of Baltimore County The Party ID: 0591049		BT DO 07/27/04	06/13/03

Mail	Old Courthouse Room 49 400 Washington Avenue Baltimore MD 21204	06/13/03	06/13/03 JET	06/13/03 JET

CALENDAR EVENTS

Date Time	Dur	Event Description	Text	SA	Jdg	Day	Of Notice	User ID
Result		ResultDt By Result Judge		Rec				
03/30/04 09.30A		Civil Non-Jury Trial	Y		TBA	01 /01	GB	GB
Postpone		03/09/04 E						
04/15/04 09 30A		Civil Non-Jury Trial	Y		TBA	01 /01	GB	GB
Postpone		03/25/04 F						
05/11/04 09·30A	02Q	Civil Non-Jury Trial	Y		JNB	01 /01	GB	
Conclude		05/11/04 E J.Byrnes		Y				
Stenographer(s) Randy MacKubin								

DISPOSITION HISTORY

Disp Date	Disp Code	Description	Stage Code	Description	User
07/27/04	DO	Decree or Order	BT	BEFORE TRIAL/HEARING	JBJ

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned	J	06/13/03	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0001000	Petition for Judicial Review with affidavit and exhibit	06/12/03	06/13/03	PET001	TBA		07/27/04	JET JBJ
0002000	Notice of Service of Discovery	08/13/03	08/18/03	000	TBA		07/27/04	CS JBJ
0003000	Transcript of Record from Adm Agency	10/02/03	10/03/03	RES001	TBA		07/27/04	CS JBJ
0004000	Notice of Transcript of Record Sent	10/03/03	10/03/03	PET001	TBA		10/03/03	CS CS
0005000	Notice of Transcript of Record Sent	10/03/03	10/03/03	RES001	TBA		10/03/03	CS CS

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0006000	Memorandum of Law	11/03/03	11/10/03	PET001	TBA		11/10/03	MI MI
0007000	Scheduling Order	12/22/03	12/22/03	000	TBA		12/22/03	KGR KGR
0008000	Scheduling Order	02/10/04	02/10/04	000	TBA		02/10/04	GB GB
0009000	Scheduling Order	03/09/04	03/09/04	000	TBA		03/09/04	GB GB
0010000	Scheduling Order	03/25/04	03/25/04	000	TBA		03/25/04	GB GB
0011000	Open Court Proceeding May 11 2004 Hon J Norris Byrnes Hearing had re Petition for Judicial Review - held sub curia	05/11/04	05/11/04	000	TBA		07/27/04	GI JBJ
0012000	Order of Court decision of the Board is REVERSED and REMANDED to the Board as specified	07/27/04	07/27/04	000	JNB	Granted	07/16/04	JBJ JBJ
0013000	Docket entries sent to Board of Appeals of Baltimore County	08/11/04	08/11/04	000	TBA			CVM CVM

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
1YRT	One Year Tickle (Jud	CLOSED	06/11/04	365	no	no	DAAA	D	001	000
EXPU	Exhibit Pickup Notic	CLOSED	09/25/04	30	no	no			000	000
SLTR	Set List For Trial	CANCEL	10/02/03	0	yes	no	DTRA	D	003	000
SLTR	Set List For Trial	CANCEL	02/09/04	0	yes	no	CIVI	S	000	000
SLTR	Set List For Trial	CANCEL	02/10/04	0	yes	no	CIVI	S	000	000
SLTR	Set List For Trial	CANCEL	03/09/04	0	yes	no	CIVI	S	000	000
SLTR	Set List For Trial	CANCEL	03/25/04	0	yes	no	CIVI	S	000	000

EXHIBITS

Line #	Marked	Code	Description	SpH	Sloc	NoticeDt	Disp Dt	Dis By
Offered By		RES 001	County Board Of Appeals Of Ba					
000		R	BOX 381/CBA TRANSC		B			

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track	R1	Description	EXPEDITED APPEAL TRACK	Custom: Yes
Assign Date	12/22/03	Order Date	12/22/03	
Start Date	12/22/03	Remove Date		

Milestone	Scheduled	Target	Actual	Status
Motions to Dismiss under MD Rule 2-322(		01/06/04	07/27/04	CLOSED
All Motions (excluding Motions in Limine		04/01/04	07/27/04	CLOSED
TRIAL DATE is	05/11/04	03/21/04	05/11/04	REACHED

PUBLIC NOTE TITLES

1) 1/21/04 PLTF M/O FOR P/PMT

To File, TMK

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

August 12, 2003

Thomas M. Rothwell
5850 N. Hazelwood Avenue
Baltimore, Maryland 21206

RE: Circuit Court Civil Action No. 3-C-03-6444
Petition for Judicial Review
Paula Rush / Charter Homes, LLC
5850-A N. Hazelwood Avenue, Baltimore, Maryland 21206
Case No.: 02-365-A

Dear Mr. Rothwell:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on June 12, 2003, in the Circuit Court for Baltimore County (the Petition was retrieved by the Baltimore County Board of Appeals on this date); from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. **3-C-03-6444**.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton

Theresa R. Shelton
Legal Secretary

/trs
Enclosure

c: Kirk J. Halpin, Esquire
Adam Skolnik / Charter Homes, LLC
Paula Rush
Office of People's Counsel
Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director/PDM

Printed with Soybean Ink
on Recycled Paper

C-03-6444

PETITION OF:	*	IN THE
CHARTER HOMES, LLC 3230 Bethany Lane, Suite 8 Ellicott City, Maryland 21042	* *	CIRCUIT COURT FOR
	*	BALTIMORE COUNTY
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	Case No.
Old Courthouse, Room 49 400 Washington Avenue	*	
Towson, Maryland 21204	*	
IN THE APPEAL OF CASE NO. 02-365-A	*	

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

PETITION FOR JUDICIAL REVIEW

Petitioner, Charter Homes, LLC, by its attorneys, Kirk J. Halpin, and Rosenberg Proutt Funk & Greenberg, LLP, requests judicial review of the decision of the County Board of Appeals of Baltimore County (the "Board") in the matter of Case No. 02-365-A, which was decided by the Board on May 14, 2003, a copy of which decision is attached hereto. Petitioner was a party to the proceeding before the Board and purchased the property in question from Paula Rush, the original applicant.

Kirk J. Halpin
Rosenberg Proutt Funk & Greenberg, LLP
25 South Charles Street, Suite 2115
Baltimore, Maryland 21201
(410) 727-6600
Attorneys for Petitioner

174045.01

RECEIVED AND FILED
2003 JUN 12 P 1:58
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

August 12, 2003

Kirk J. Halpin, Esquire
Rosenberg Proutt Funk & Greenberg, LLP
25 South Charles Street, Suite 2115
Baltimore, Maryland 21201

RE: Circuit Court Civil Action No. 3-C-03-6444
Petition for Judicial Review
Paula Rush / Charter Homes, LLC
5850-A N. Hazelwood Avenue, Baltimore, Maryland 21206
Case No.: 02-365-A

Dear Mr. Halpin:

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the petition for judicial review which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days. This matter was retrieved from the Circuit Court on this date, therefore, the sixty day timeframe begins today.

The cost of the transcript of the record must be paid by you. In addition, all costs incurred for certified copies of other documents necessary for the completion of the record must also be at your expense.

The cost of the transcript, plus any other documents, must be paid in time to transmit the same to the Circuit Court within sixty days, in accordance with the Maryland Rules.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton
Legal Secretary

/trs
Enclosure
c: Mr. Thomas Rothwell

nted with Soybean Ink
on Recycled Paper

County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
410-887-3180
FAX: 410-887-3182

August 12, 2003

Thomas M. Rothwell
5850 N. Hazelwood Avenue
Baltimore, Maryland 21206

RE: Circuit Court Civil Action No. 3-C-03-6444
Petition for Judicial Review
Paula Rush / Charter Homes, LLC
5850-A N. Hazelwood Avenue, Baltimore, Maryland 21206
Case No.: 02-365-A

Dear Mr. Rothwell:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on June 12, 2003, in the Circuit Court for Baltimore County (the Petition was retrieved by the Baltimore County Board of Appeals on this date); from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, must be filed under Civil Action No. **3-C-03-6444.**

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Theresa R. Shelton
Legal Secretary

/trs
Enclosure

c: Kirk J. Halpin, Esquire
Adam Skolnik / Charter Homes, LLC
Paula Rush
Office of People's Counsel
Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director/PDM

Printed with Soybean Ink
on Recycled Paper

ROSENBERG PROUTT FUNK & GREENBERG, LLP
ATTORNEYS AT LAW
A PARTNERSHIP INCLUDING A PROFESSIONAL CORPORATION
2115 ALLFIRST BUILDING
25 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201

(410) 727-6600

FACSIMILE: (410) 727-1115

KIRK J. HALPIN
(410) 727-6600

E-MAIL: kirk@rpfg.com
WEBSITE: www.rpfg.com

January 31, 2003

via HAND-DELIVERY

County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Re: Case # 02-365-A
5850-A N Hazelwood Avenue

Dear Ms. Bianco:

Please enter the appearance of Kirk Halpin, as counsel for Charter Homes, LLC, the new owner of the property referenced in the above-captioned matter. Notice of entry has also been forwarded to People's Counsel for Baltimore County.

Very truly yours,

Kirk J. Halpin

KJH:bms
168418.01
cc: Peter Max Zimmerman, Esquire
Mr. Adam Skolnik

RECEIVED
JAN 3 1 2003
BALTIMOHE COUNTY
BOARD OF APPEALS

Rec'd file

Gloria T. Pack
5837 N. Hazelwood Ave.
Baltimore Md. 21206-2133
410-866-5330

To whom it may concern,

I would like to be notified of the court date for appeal # 02-365A. It is for property at 5850-A N. Hazelwood Ave.

Thank You,
Gloria T. Pack
Gloria T. Pack

02 AUG -5 PM 1:19

Answer to file.

Case Number 02-365-A
5/22/02

PLEASE *PRINT* LEGIBLY

PROTESTANT'S SIGN-IN SHEET

Name	Address	City, State	Zip Code
Thomas M Rothwell	5850 N. Hazelwood Ave	Balto. Md	21206
Denise Cadogan	5852 N. Hazelwood Ave	Balto. MD	21206

Revised 4/17/00

Petition for Variance

to the Zoning Commissioner of Baltimore County

EXHIBIT A

for the property located at 5850 A N. Hazelwood Avenue

which is presently zoned DR 5.5

This Petition shall be filed with the Department of Permits and 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) 1 B02.3 C.1 to allow a lot width of 50 feet in lieu of the required minimum 55 feet. FOR A PROPOSED BUILDING LOT. (JSD) AND TO APPROVE AN UNDERSIZE LOT

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty) Plat of "County Side" is primarily composed of 25' wide lots, many grouped in twos for improved lot widths of 50 feet, including ten or more sites within 500 feet of subject property. Proposed improvements will be consistent with existing neighborhood.

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Variance, advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

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

Contract Purchaser/Lessee:

Name - Type or Print

(JSD)

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

Paula Rush

Name - Type or Print

Signature

Name - Type or Print

(JSD)

Signature

5852 N. Hazelwood Ave. 410-480-3213)

Address Telephone No.

Baltimore MD 21206

City State Zip Code

Representative to be Contacted:

J. Scott Dallas (J.S. Dallas, Inc.)

Name

P. O. Box 26
13523 Long Green Pike 410-817-4600

Address Telephone No.

Baldwin MD 21013

City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 1HR

UNAVAILABLE FOR HEARING —

Reviewed By JL Date 3/5/02

HEAR WITH #366

UNDERSIZE APPVL PACK TO OP 3/05/02

Case No. 02 365 A

R2U 9/15/98

By

J. S. DALLAS, INC.
SURVEYING & ENGINEERING
13523 LONG GREEN PIKE
P.O. BOX 26
BALDWIN, MD 21013
(410) 817-4600
FAX (410) 817-4602

365

ZONING DESCRIPTION FOR # 5850 A N. HAZELWOOD AVENUE

BEGINNING *at a point on the west side of North Hazelwood Avenue, 30 feet wide, at the distance of 314 feet, more or less south of the south side of Charles Avenue, which is 30 feet wide.*

BEING *Lots No.193 and 194,* ***"COUNTY SIDE"*** *as recorded in Baltimore County Plat Book No.7 Folio 3.*

CONTAINING 7,500 *square feet of land, more or less or* ***0.17*** *acres of land, more or less.*

ALSO *known as* ***# 5850 A N. Hazelwood Avenue*** *and located in the 14th Election District 6th Councilmanic District.*

Note: above description is based on existing record plat and is for zoning purposes only.

STATE OF MARYLAND
JONATHAN SCOTT DALLAS
No. 368
REGISTERED
PROPERTY LINE SURVEYOR

EXHIBIT B

IN THE MATTER OF THE APPLICATION OF PAULA RUSH – LEGAL OWNER; CHARTER HOMES LLC FOR A VARIANCE ON PROPERTY LOCATED ON THE W/S OF N HAZELWOOD AVENUE, 314' S/S OF CHARLES AVENUE (5850-A N. HAZELWOOD AVENUE) 14TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT	* BEFORE THE * COUNTY BOARD OF APPEALS * OF * BALTIMORE COUNTY * CASE NO. 02-365-A

* * * * * * * * *

OPINION

This matter comes before the Board as a result of a granting by the Deputy Zoning Commissioner of the Petitioner's request for relief under *Baltimore County Zoning Regulations* (BCZR) §§ 304 and 307; specifically, to allow construction of a single-family home on an undersized lot in a D.R. 5.5 zone and to vary the dimensional requirements applicable in the zone to permit a lot width of 50 feet in lieu of the required 55 feet.

The matter was heard *de novo* by the Board on February 5, 2003. Appearing on behalf of the Petitioner was Kirk J. Halpin, Esquire. Thomas M. Rothwell, 5850 N. Hazelwood Avenue, appeared in opposition.

The Petitioner, Adam Skolnik, testified and described his purchase of 5850-A N. Hazelwood Avenue on April 22, 2002 from Paula Rush.

Mr. Thomas M. Rothwell, owner of adjoining property located at 5852 N. Hazelwood Avenue, testified that he was concerned with his property value decreasing and the de-privatization of his rear yard.

Petitioner requests relief in part to construct a home on an "undersized" lot. Such an action is governed by BCZR § 304.1, which states in relevant part:

> ...a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:
>
> A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955; [BCZR 1955 Bill No. 47

1992]

B. All other requirements of the height and area regulations are complied with; [BCZR 1955] and

C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations. [BCZR 1955 Bill No. 47 1992]

It is clear from the reading of the statute that the requirements listed above are conjunctive in nature. Therefore, if the Petitioner's request fails to meet each of the criteria described in § 304.1, then no relief under that section may be granted to him. Turning to § 304.1A, the Board recognizes, by virtue of the testimony by Mr. J. Scott Dallas, of J.S. Dallas, Inc., that the lots in question were listed in a validly approved subdivision in 1925, well before the March 30, 1955 requirement. The Board is satisfied, on its face, that this section has been satisfied. Section 304.1C also appears to be satisfied, as the total of the two lots is .49 acre in a 1-acre required zone. The Board recognizes Counsel's extensive argument as to whether or not this section should be deemed contrary to the spirit and intent of the zoning regulations, but the Board finds that the language of the statute appears to be clear and specific.

Section 304.1B is the requirement most problematic for Petitioner. The site in question clearly does not meet the height and area regulations as set forth in the zoning regulations, and therefore a variance from those requirements must be granted before § 304.1B is satisfied. The granting of variances is clearly addressed in § 307.1 of the *Baltimore County Zoning Regulations*, which states, in pertinent part, as follows:

"...(T)he County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations...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.... Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area...regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare...."

This Board enjoys the guidance provided by the Court of Special Appeals in *Cromwell v. Ward*,

102 Md.App. 691 (1995), wherein the Court writes:

> ...The Baltimore County ordinance requires "conditions ...peculiar to the land...and...practical difficulty...." Both must exist. ...However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of that piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when the uniqueness is first established that we then concern ourselves with the practical difficulties...." Id. at 698.

In requiring a pre-requisite finding of "uniqueness", the Court defined the term and stated:

> 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 has 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.... Id. at 710.

This Board finds that the Petitioner has not established the requisite uniqueness as called for under § 307 and *Cromwell*. There was no credible testimony presented by any witness appearing on behalf of the Petitioner to establish any difference between the proposed site and other properties in the area. In fact, the testimony of various witnesses as well as Petitioner's own witnesses clearly stated that there is no inherent "uniqueness" in the proposed site. Therefore, no further inquiries into the second issue of practical difficulty need to be explored.

The Board recognizes that Petitioner presented considerable testimony as to his personal difficulties and belief that for those reasons among others, he should have been granted the relief requested. However, hardship must relate to the land, not the owner.

In view of the failure of Petitioner to establish his entitlement to an appropriate variance of the height and area regulations as they relate to the proposed site, this Board finds that he has not successfully met the requirements of Section 304.1B and his Petition is therefore denied.

ORDER

THEREFORE, IT IS THIS 14th day of May, 2003 by the County Board of Appeals of Baltimore County

ORDERED that the Petitioner's request for variance to allow construction of a single-family home on an undersized lot in a D.R. 5.5 zone, and to vary the dimensional requirements applicable in the zone to permit a lot width of 50 feet in lieu of the required 55 feet, be and is hereby **DENIED**.

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

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

C. Lynn Barranger, Panel Chairman

Lawrence S. Wescott

Richard K. Irish

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: March 26, 2002

EXHIBIT C

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

SUBJECT: 5850 A North Hazelwood Avenue

INFORMATION:

Item Number: 02-365

Petitioner: Paula Rush

Zoning: DR 5.5

Requested Action: Variance

SUMMARY OF RECOMMENDATIONS:

The Office of Planning supports the petitioner's request to allow a lot width variance. The petitioner submitted a photograph depicting the house type that he would like to build. However, revised building elevations should be submitted to this office for review and approval prior to the issuance of any building permits.

Prepared by: Mark A Cumings

Section Chief: Lynn Lorber

AFK/LL:MAC:

EXHIBIT D

IN RE: PETITION FOR VARIANCE W/S of N. Hazelwood Avenue, 314' S/S of Charles Avenue 14th Election District 6th Councilmanic District (5850-A N. Hazelwood Avenue)	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY
Paula Rush *Petitioner*	*	CASE NO. 02-365-A

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

EXHIBIT D

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Variance filed by the legal owner of the subject property, Paula Rush. The variance request involves property located at 5850-A N. Hazelwood Avenue, which property is currently zoned D.R.5.5. The subject property is unimproved at this time. The variance request is from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a lot width of 50 ft. in lieu of the required 55 ft. for a proposed single-family dwelling and to approve an undersized lot. It should be noted that at the time of the hearing before me, the property ownership had changed hands and the new owner Steve Kennecht, representative of Charter Homes, appeared at the hearing. Also attending the hearing was J. Scott Dallas, property line surveyor who prepared the site plan of the property. Appearing in opposition to the variance request were Thomas Rothwell, adjacent property owner and Denise Cadogan.

Testimony and evidence indicated that the property, which is the subject of this variance request, consists of 0.17 acres, more or less, zoned D.R.5.5. The subject property is rectangularly shaped, comprising 50 ft. of road frontage along N. Hazelwood Avenue and containing a depth of 150 ft. The property is served by public water and sewer. The new owner of the property is interested in constructing a new single-family residential dwelling on the site. In order to proceed with his plans to construct a home, the variance requests are necessary.

As stated previously, adjacent neighbors appeared in opposition to the Petitioner's request. Mr. Tom Rothwell who resides at 5850 N. Hazelwood Avenue opposes this variance to allow a home to be constructed on these two vacant lots. Mr. Rothwell testified that it was his opinion that a house could not be constructed on this vacant land. He testified that a home, as depicted on the site plan submitted into evidence, would infringe on the privacy that he currently enjoys at his property and would also devalue his home. He asked that the variance requested be denied.

Also attending the hearing in opposition to the Petitioner's request was Denise Cadogan. Ms. Cadogan resides at 5852 N. Hazelwood Avenue. She testified that her brother recently purchased the property wherein she resides. She is opposed to the construction of a new home on this vacant land which is located to the side of her house. She prefers to see the property remain in its vacant state.

This variance request was reviewed by the Office of Planning as to whether it is appropriate for a home to be constructed on this property. In all undersized lot cases, the Planning Office issues written comments suggesting whether or not the variance should be granted. The Office of Planning, by virtue of their written comment dated March 26, 2002, a copy of which was included in the case file, indicated their support of this variance request. The Planning Office has reviewed the type of house to be constructed on this property and believes it is compatible with the other homes in the community. Therefore, based on the position of the Office of Planning, I find that the variance should be granted to allow a home to be constructed on this property.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to Petitioner and her property. McLean v. Soley, 270 Md. 208 (1973).

6/5/02 R. Jameson

To prove practical difficulty for an area variance, the Petitioner must meet the following:

1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;

2) whether a grant of the variance would do a substantial justice to the applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give sufficient relief; and,

3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. Of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship will result if the variance is not granted. It has been established that special circumstances or conditions exist that are peculiar to the property which is the subject of this request and that the requirements from which the Petitioner seeks relief will unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not cause any injury to the public health, safety or general welfare, and meets the spirit and intent of the B.C.Z.R.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and after considering the testimony and evidence offered by the Petitioner, I find that the Petitioner's variance request should be granted.

THEREFORE, IT IS ORDERED this 5th day of June, 2002, by this Deputy Zoning Commissioner, that the Petitioner's request for variance from Section 1B02.3.C.1 of the B.C.Z.R., to allow a lot width of 50 ft. in lieu of the required 55 ft. for a proposed single-family dwelling and to approve an undersized lot, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

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

2. The Petitioner shall be required to submit a landscape plan to Avery Harden, Landscape Architect for Baltimore County, providing extensive landscaping along the common property line of the subject property and the property owned by the adjacent property owner, Tom Rothwell. Said landscaping plan shall be submitted within thirty (30) days from the date of this Order.

3. When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

Timothy Kotroco

TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

TMK:raj

ORDER RECEIVED FOR FILING
Date 6/5/02
By R. Jenson

To: GZ
Appeal

5850 N. Hazelwood Avenue
Baltimore, Maryland 21206
July 1, 2002

EXHIBIT E

Director of Permits and Development Management
Baltimore County Office Building
111 W. Chesapeake Avenue
Towson, Maryland 21204

Attention: Mr. Arnold Jablon

Re: Case No. 02-365-A

Dear Mr. Jablon:

On May 22, 2002, I was present at the hearing for CASE NO. 02-365-A. This case concerned a petition for variance to allow an undersized lot at 5852 N. Hazelwood Avenue to be used as a building lot. At the hearing I stated my objections (which are shared by at least seven of my neighbors on this street) to this variance. However, the variance was granted on June 5, 2002, by Timothy M. Kotroco (Deputy Zoning Commissioner). Please accept this letter and enclosed check as application for appeal to this case.

Sincerely,

Thomas M. Rothwell

Thomas M. Rothwell

Enclosure

RECEIVED
JUL 3 2002
DEPT OF PERMITS AND
DEVELOPMENT MANAGEMENT

PETITION OF:	*	IN THE
CHARTER HOMES, LLC 3230 Bethany Lane, Suite 8 Ellicott City, Maryland 21042	* *	CIRCUIT COURT FOR
	*	BALTIMORE COUNTY
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS	*	Case No.
OF BALTIMORE COUNTY Old Courthouse, Room 49 400 Washington Avenue	*	
Towson, Maryland 21204	*	EXHIBIT F
IN THE APPEAL OF CASE NO. 02-365-A	*	

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

PETITION FOR JUDICIAL REVIEW

Petitioner, Charter Homes, LLC, by its attorneys, Kirk J. Halpin, and Rosenberg Proutt Funk & Greenberg, LLP, requests judicial review of the decision of the County Board of Appeals of Baltimore County (the "Board") in the matter of Case No. 02-365-A, which was decided by the Board on May 14, 2003, a copy of which decision is attached hereto. Petitioner was a party to the proceeding before the Board and purchased the property in question from Paula Rush, the original applicant.

Kirk J. Halpin
Rosenberg Proutt Funk & Greenberg, LLP
25 South Charles Street, Suite 2115
Baltimore, Maryland 21201
(410) 727-6600
Attorneys for Petitioner

174045.01

EXHIBIT F

IN THE MATTER OF:	* BEFORE THE
PAULA RUSH _ LEGAL OWNER	* COUNTY BOARD OF APPEALS
5850-A N. Hazelwood Avenue	* OF
14th Election District	* BALTIMORE COUNTY
6th Councilmanic District	* February 5, 2003
	* Case No. 02-365-A

EXHIBIT G

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, at 10 o'clock a.m., February 5, 2003.

* * * * *

Reported by:

C.E. Peatt

1 BOARD MEMBERS:
C. LYNN BARRANGER, Panel Chairman
2 LAWRENCE S. WESCOTT
3 RICHARD K. IRISH
4
5 APPEARANCES:
KIRK J. HALPIN, Esquire
6 On behalf of Petitioner
7 THOMAS M. ROTHWELL, Pro Se
8 Protestant/Appellant
9
10
11
12
13
14
15
16
17
18
19
20
21

1 P R O C E E D I N G S
2 * * * * *
3 THE CHAIRMAN: Good morning. We're here in the
4 matter of Case No. 02-365-A in the matter of Paula Rush,
5 legal owner, 5850-A North Hazelwood Avenue, in the 14th
6 Election District, 6th Councilmanic District, a case in
7 which the Deputy Zoning Commissioner granted variance
8 relief with restrictions under order dated 6/05/02.
9 Counsel, can you state your name, for the record?
10 MR. HALPIN: Good morning. Kirk Halpin, on
11 behalf of Charter Homes, which is the purchaser of the lot
12 from Paula Rush. Charter Homes purchased the lot on April
13 22, 2002, and I notified the Board of Appeals of that
14 recently.
15 THE CHAIRMAN: And you are, sir?
16 MR. ROTHWELL: Thomas Rothwell, residence at 5850
17 North Hazelwood Avenue.
18 THE CHAIRMAN: You're the appellant?
19 MR. ROTHWELL: Yes, ma'am.
20 THE CHAIRMAN: I note there are some other people
21 in the audience today. Are you here as participants?

1 MS. PACK: I am Gloria Pack. I live at 5837
2 North Hazelwood, and I'm here as an appellant.
3 MS. CADOGAN: Carol Cadogan, 5852 North
4 Hazelwood, as an appellant.
5 THE CHAIRMAN: To let you know, this court is run
6 like any other court of law. That is, we have an
7 evidentiary hearing. We take in the evidence.
8 We follow the rules of the court where the
9 appellants would have to present their case first, and
10 then it would be up to the petitioner to present their
11 evidence.
12 It is required by law for you to present evidence
13 based on the zoning regulations. That will be Section
14 304.1 for undersized lots and 307.1 for a variance based
15 on the reasons why this should or should not be granted.
16 And with that, we'll begin with you, Mr.
17 Rothwell. You need to come up here to be sworn.
18 T H O M A S M. R O T H W E L L,
19 having been called as a witness, was duly sworn, and
20 testified as follows:
21 THE CHAIRMAN: Mr. Rothwell, could you state your

1 name and address, for the court.
2 THE WITNESS: Thomas Michael Rothwell, 5850 North
3 Hazelwood Avenue, Baltimore, Maryland 21206.
4 THE CHAIRMAN: What would you like to tell our
5 court today?
6 THE WITNESS: Well, I would just like to tell my
7 story, I suppose. I'm not a professional at this, so you
8 have to excuse me.
9 When the request for the variance went in, I saw
10 the sign went up, and I talked to Paula Rush. She
11 actually talked to me before that and said, well, I have a
12 building lot here and I can get much more money for the
13 building lot than just selling the property.
14 She informed me that she was going to sell, I
15 suppose it's her father's property, Lefty's place, and I
16 went up there and talked with her. We walked around the
17 lot.
18 She's convinced this is a building lot. Okay, if
19 you think so. Then I find out it's not really a building
20 lot because it's only fifty feet wide.
21 So by the rules, my understanding, you need

Page 6

1 fifty-five feet to be considered a building lot.
2 Well, paula went ahead, my understanding is, she
3 went ahead and sold the property in three pieces, which
4 split up Lefty's place, and that's exactly what the
5 neighborhood looks at. This was Lefty's place.
6 THE CHAIRMAN: Excuse me. Who is "Lefty"?
7 THE WITNESS: Lefty was her father, and he lived
8 there for a long time. He was my neighbor for a long
9 time. He lived at 5852.
10 MR. WESCOTT: Is there a house on the lot?
11 THE WITNESS: Yes, sir.
12 MR. WESCOTT: And you lived next door at 5852?
13 THE WITNESS: Yes, sir. Now, the house at
14 5852 -- well, let me read this petition just so my words
15 work out right. To support my appeal, I went around the
16 neighborhood. In my letter asking for the appeal, I
17 stated that I knew of at least seven people on the street
18 that didn't want this to happen. I can read the letter,
19 but I knew this just from talking to these people.
20 THE CHAIRMAN: The problem is, with a court of
21 law, we look at that as hearsay, because the petitioner

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1 who is here would not be able to question them.
2 If you have a petition where they signed it, you
3 can submit it, and we give it the weight we feel is
4 necessary, and it will be part of the record.
5 But you cannot be saying "They said this," or
6 "They said that." That's all we can do at this point.
7 THE WITNESS: That's all I had for the first
8 hearing, was the hearsay of seven people. So when I found
9 out, and I got the letter from Timothy --
10 THE CHAIRMAN: Kotroco?
11 THE WITNESS: Yes. -- that the -- okay. Let me
12 back up a little bit here. I came into the first hearing
13 and I stated my objections to this.
14 My objections were that I thought what she
15 planned to do would de-value my property. I still think
16 it would de-value my property. It will, without a doubt,
17 drastically affect the privacy of my back yard.
18 I saw the house the builder wants to put up. He
19 built another one on the other side. The fellow took the
20 property, split it up into three parcels, sold two
21 building lots, and then sold 5852.

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1 Now, the builder went up there and put up a two
2 story and now he wants to put up another one just like it.
3 When he put the two story up on the other side, the 5854,
4 it's a two story house, it's at least four feet out of the
5 ground, and it has a twelve-twelve roof on it, which makes
6 it sixteen, twenty feet, ten feet, twenty-six plus four,
7 about thirty feet tall. The property next to me goes up
8 on a hill of about two to one, and I can submit this
9 drawing I drew this morning.
10 THE CHAIRMAN: Show it to him.
11 THE WITNESS: I know this is a fact because I
12 built my house and I designed the landscaping and the
13 grading and everything, I did it myself.
14 I have been sixteen years out of thirty in the
15 surveying business, so I know how to do these things. His
16 property goes up at least two to one.
17 So from my house to the property goes up about
18 ten feet, and then it goes up another three feet, then
19 you're going to put a two story up, four feet out of the
20 ground, which makes it about forty feet above my back
21 yard.

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1 So, in other words, he wants to put a skyscraper
2 up right next to my back yard.
3 THE CHAIRMAN: Do you want to submit that?
4 THE WITNESS: Sure.
5 THE CHAIRMAN: Do you have any objection?
6 MR. HALPIN: The only objection I would have is
7 to the dimensions, that I can't verify that. As to the
8 representative, I have no problem.
9 THE WITNESS: Well, you can verify the feet by
10 going through the records, because --
11 THE CHAIRMAN: That particular drawing, for it to
12 be verified, usually would be done by a professional
13 surveyor with a seal. Since it's a hand drawing, we can
14 take it as a representative drawing of the proposed
15 layout.
16 THE WITNESS: Okay.
17 THE CHAIRMAN: Would you like to submit that?
18 THE WITNESS: Sure.
19 THE CHAIRMAN We'll accept this as Appellant's
20 Exhibit No. 1.
21 THE WITNESS: Now, in granting the first

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1 variance, in granting the variance -- okay? -- it was
2 stated that it was conditionally granted because my
3 objection was that it would, or it will, tragically affect
4 the privacy of my back yard. There's no doubt about that.
5 So the variance was granted with a stipulation
6 that it had to be a landscape plan approved by the
7 commission.
8 Well, with that scenario and that drawing,
9 putting up that forty-foot house, the only way they are
10 going to do any kind of landscaping to protect my privacy
11 is to put about thirty foot trees in, and I know that's
12 not going to happen. You can't transplant a thirty-foot
13 tree. Okay. That's the privacy issue.
14 Now, the other issue I brought up when I objected
15 originally, I thought it would de-value my property
16 substantially. I didn't know how much, it was just
17 thinking that it would de-value my property.
18 So when the variance was granted, I went ahead
19 and had my house appraised. My property was appraised by
20 BLR Real Estate. I had the people come out and appraise
21 it, and I gave him three scenarios.

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1 THE CHAIRMAN: Before you go any further, are you
2 going to submit this as evidence as well?
3 THE WITNESS: Sure.
4 THE WITNESS: You need to let Mr. Halpin look at
5 that as well. Where did you receive this appraisal?
6 THE WITNESS: From BLR Appraisal Service. This
7 was done June 20.
8 THE CHAIRMAN: When was this done?
9 THE WITNESS: June 20, 2002.
10 THE CHAIRMAN: And does that accurately represent
11 your home and the information that's contained in there?
12 THE WITNESS: Yes. Now, in the appraisal, I
13 asked the fellow to give me three scenarios. One, what my
14 house would be worth --
15 MR. HALPIN: Before we proceed, can I have a
16 moment to look at this?
17 THE CHAIRMAN: My apologies.
18 MR. HALPIN: We would object. BLR is not here to
19 answer any questions we may have as to the appraisal.
20 THE CHAIRMAN: Do you have any comment on this,
21 Mr. Rothwell? Excuse me. I didn't understand what you

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1 said?
2 MR. HALPIN: I would object to submitting that,
3 or testifying to it, because BLR is not here for me to
4 question them.
5 THE WITNESS: I can talk about it.
6 THE CHAIRMAN: You can say that you got an
7 appraisal and what you feel your house is worth, but we'll
8 not be able to take it in saying this is an expert
9 opinion.
10 THE WITNESS: Okay. I mean, the dollar figure
11 here -- the reason I brought this man out to have the
12 house appraised, I explained to him what the situation was
13 and the reason for having this appraisal.
14 I told him that I thought the proposed plans next
15 door would affect the value of my property, and I wanted
16 to know by how much.
17 I wanted to know what the land was worth, I
18 wanted to know what the house was worth, you know, if this
19 was to happen.
20 Now, although it wasn't as much of a depreciation
21 as I thought, it still exists, and he didn't put it down

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1 here, because he --
2 THE CHAIRMAN: We can't talk about what he says.
3 You can say that you obtained this appraisal, that you
4 noticed there was a de-valuation.
5 THE WITNESS: Okay. He made the appraisal and
6 there was some de-valuation of about 2000 to $3000.
7 THE CHAIRMAN: That was one scenario?
8 THE WITNESS: That was one scenario. That's
9 potentially two to $3000.
10 MR. WESCOTT: What scenario was that?
11 THE WITNESS: That scenario if this project goes
12 forth with the house next door.
13 Now, the third scenario was --
14 MR. WESCOTT: What was the first one?
15 THE WITNESS: The first one was without the
16 house, the way things are, just the way they are. The
17 third scenario was suppose I owned that fifty feet of
18 property, then what's it make my house worth?
19 In other words, what's that property worth? He
20 said that would increase the value of the house by
21 approximately $3000.

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1 He also did his homework and found out -- I'm not
2 sure what the number is -- but found out that this builder
3 had paid -- it was either fifteen or $17,000 for the
4 property as a building lot. All right.
5 Now, to support this de-valuation, I wrote this
6 petition, and you can read it, of what I thought, my
7 thoughts on what this would do to the neighborhood and the
8 values of the properties. In other words, I wrote down --
9 THE CHAIRMAN: One second.
10 MR. HALPIN: Thank you.
11 THE CHAIRMAN Do you have any objection?
12 MR. HALPIN: I would object to the
13 characterization of the way it was written.
14 THE CHAIRMAN: This is an administrative court
15 and we understand we are dealing with lay people who don't
16 understand.
17 So usually, with petitions, we'll look at it as
18 if he can say these people lived in the area and signed
19 it. We understand your comment about the
20 characterization, but we'll take it for ID. only.
21 MR. HALPIN: I understand. Thank you.

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1 THE CHAIRMAN: To let you know what we are going
2 to do is, can you testify that for the ones that signed
3 this, can you testify they definitely reside at these
4 residences?
5 THE WITNESS: Yes, ma'am. I walked the
6 neighborhood and visited all the houses there.
7 THE CHAIRMAN: Then what we are going to do is
8 take this in for what it's worth and give it i.d. only.
9 It is not considered hard evidence. So we'll take it in
10 as Appellant No. 2 for i.d. only.
11 THE WITNESS: Can I further explain?
12 THE CHAIRMAN: Yes. But you also realize there's
13 a very strong line here. You can't be saying "So and so
14 said this," because they are not here for him to cross
15 examine.
16 THE WITNESS: Okay. So what I did, I took this
17 and I wrote down what I thought were some common
18 objections to this project and wrote them down.
19 And I walked around the neighborhood and said,
20 Do you agree with this? If you agree, sign the petition.
21 If you have any further comments, you can write them down.

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1 Virtually everybody I talked to -- do you want me
2 to read this?
3 THE CHAIRMAN: We can read it ourselves.
4 THE WITNESS: Virtually everybody I talked to
5 signed the petition. Nobody said, No, we are not signing
6 it.
7 I only covered half the street. I didn't even go
8 down to the end of the block. So I think it's a pretty
9 good representation of how the neighborhood feels about
10 this.
11 THE CHAIRMAN: So, basically, you're here talking
12 about your objections as to why you're against this
13 property, but do you have anything else that would apply
14 to why this should not be built in accordance to 304.1 or
15 307.1?
16 THE WITNESS: Yes, I do. In the first hearing, I
17 told -- I stated to Timothy Kotroco, I explained to him
18 that I had some people who agreed with me and said, All
19 you have to do is stand on that lot, stand on the street
20 and look at that lot, and it doesn't make sense to put a
21 house there.

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1 And that's what it says in the petition there,
2 that that house has always been, 5852, has always been
3 sort of the icon of that neighborhood.
4 The objection is, the appeal of that neighborhood
5 is it's a country-like setting, and it's a convenient
6 location. The pictures in this appraisal will or could be
7 used as evidence that it is a country-like setting.
8 There's no sidewalks. There's no curb and
9 gutter. Lot of trees. It's a country-like setting. Just
10 the appeal of the neighborhood. And this house at 5852
11 sits up on a hill, big wide side yard, fifty-eight feet of
12 side yard from that house to the property line, and it was
13 a big side yard on the other side and a swimming pool in
14 the back yard, a little short rancher sitting on top of
15 the hill.
16 It was a country-like appeal of the neighborhood.
17 It's been the icon of the neighborhood. Everybody
18 identifies the neighborhood by this house.
19 To split it up and put this two story basically
20 just destroys that icon. In effect, I think it
21 drastically depreciates the ambiance of the neighborhood.

1 That is basically the objection of all the people
2 that signed the petition. That and the fact that the
3 fifty-five foot lot, Timothy Ko --
4 THE CHAIRMAN: Kotroco.
5 THE WITNESS: – Kotroco, well, when he sent the
6 results to me, he used two court cases as precedence for
7 his decision. It was McLean versus Solely and Chesapeake
8 Beach Anderson versus Board of Appeals, Chesapeake.
9 So I went and got the documentation for those two
10 cases. I read them as thoroughly as I could, not being a
11 lawyer.
12 The first case involved fellow who wanted to put
13 some apartment buildings up, and he needed a variance. He
14 could do what he wanted to do without the variance, but in
15 doing so, he would have to take out about 120 trees, which
16 would have drastically affect the neighborhood and the
17 people had been living there, and he had other apartments
18 that were full all the time. People liked the place.
19 And that was one of the reasons. If he could
20 move it and got this variance, he would only have had to
21 take out two or three trees, but it made it close to the

1 other guy's property as far as the window height and that
2 to the next door property, so it was one guy objected.
3 That doesn't make sense. That case involved trees.
4 I really didn't see where that case had any
5 relevance whatsoever to this situation, not being a
6 lawyer, but I didn't see where it had anything to do with
7 it.
8 The second case was the Town of Chesapeake Beach
9 and the zoning board gave this man this variance to change
10 the distance between two apartment buildings and the fact
11 that he wanted all his apartments facing the waterfront.
12 Again, he could have done it without doing the
13 variance, but the court asked him what his reason was for
14 doing this and why he wanted this variance, and he can
15 only say because he was going to lose money if he didn't.
16 And I quote from that case that that court
17 basically didn't decide what was good reason, but they did
18 specifically say what wasn't good reason, and I quote from
19 the case, Mere financial hardship an opportunity to get an
20 increased return from the property is not sufficient
21 reason for granting the variance.

1 Paula Rush was the petitioner for this variance,
2 and the way I see it, her only reason for getting this
3 variance was the fact that she could sell them lots for
4 $15,000 instead of $3000.
5 Paula, she packed up and moved out of the
6 neighborhood. She used to live in the yellow house behind
7 Lefty's house. That one is for sale also.
8 She wanted to get the maximum return out of that
9 property. That's the reason why she wants the variance.
10 She's the petitioner.
11 Now, if this fellow Timothy granted this based on
12 these court cases, I don't know why he sent me that one,
13 because that one doesn't tell me that justifies upholding
14 this.
15 THE CHAIRMAN: Mr. Rothwell, what we are going to
16 do is look at the evidence, and we are going to determine
17 whether or not does it meet the requirements, and also do
18 we grant the variances, and we base it on Cromwell versus
19 Ward, uniqueness, practical difficulty, and the spirit and
20 intent, so we will be looking at this like a clean slate.
21 THE WITNESS: Well, that's my case. The issues

1 here, I believe, are the fact that there's no way you're
2 going to put a house there and not interrupt the privacy
3 of my back yard.
4 It's just too close and too high. From my house
5 to the property line is at least ten feet. I stood out on
6 my back porch. I'm a surveyor. I've got a level eyeball.
7 I'd say where that house is going to sit is at least ten
8 feet or twelve feet above my back yard, and it's only
9 twenty-five, fifteen, thirty feet away. So there's no
10 way. There's no landscaping at all that's going to
11 protect my privacy. That's an issue. That's a big issue.
12 The money issue is not a big issue, but it's there.
13 THE CHAIRMAN: The money issue?
14 THE WITNESS: And the ambiance of the
15 neighborhood. I think that will de-value the property
16 value based on the fact this will interrupt the ambiance
17 of the neighborhood.
18 It's not a good thing. It doesn't belong there.
19 I mean, this appraiser looked at it, shook his head, said
20 the guy who granted this variance knew what he was going
21 to do before he did it.

1 MR. HALPIN: Objection.
2 THE CHAIRMAN: We'll strike that.
3 THE WITNESS: I know you can't hear that for
4 hearsay, but that's what he said. I don't know what his
5 reason would be, but --
6 THE CHAIRMAN: We are going to strike that
7 because he's not here to cross. You said that's the end
8 of your case?
9 THE WITNESS: Yes, that's pretty much it.
10 THE CHAIRMAN: At this point, Mr. Halpin gets a
11 chance to cross examine you on any comments you have made.
12 THE WITNESS: Sure.
13 MR. HALPIN: I just had a few questions, please.
14 CROSS EXAMINATION
15 BY MR. HALPIN:
16 Q. Can you describe or can you see 5852 from your
17 house?
18 A. Yes.
19 Q. I think you described it at the top of a hill?
20 A. It's up the hill, and fifty-eight feet away.
21 Q. Can you describe the landscaping between your

1 house and 5852 at this time? Are there a lot of trees?
2 A. There's trees -- there are trees where the new
3 house is going to be, big trees in the back yard. There's
4 a fence that's sort of overgrown and it has vines on it
5 that I left there for the privacy thing. There's one
6 other issue. Can I back up a minute?
7 THE CHAIRMAN: No. At this point, you can only
8 answer his questions.
9 Q. Will you describe the topography as far as is
10 your house higher or lower than 5852?
11 MR. WESCOTT: What house -- what is the property,
12 the number of the property that we're talking about?
13 MR. HALPIN: 5850-A, the lot between 5850 and
14 5852. There are two lots that are twenty-five feet.
15 MR. WESCOTT: 5850-A?
16 MR. HALPIN: Yes. I believe Mr. Rothwell lives
17 at 5850. 5850-A is the house my client intends to build
18 if this Board lets us proceed.
19 THE WITNESS: Can I speak?
20 MR. WESCOTT: Mr. Rothwell lives at 5850?
21 THE WITNESS: Yes, sir.

1 MR. WESCOTT: Was it Lefty that lived at 5852?
2 MR. HALPIN: Right. There's two, twenty-five foot
3 lots between those two properties.
4 MR. WESCOTT: Between 5852 and 5850, or 5850-A?
5 MR. HALPIN: Between 5850 and 5852, there are
6 two, twenty-five foot lots that we are requesting a
7 variance.
8 MR. WESCOTT: How much property did Lefty own?
9 MR. HALPIN: How much property?
10 MR. WESCOTT: Evidently, another --
11 THE WITNESS: It was at least a fifty-five foot
12 on the other side, but the builder already put a house on
13 it.
14 MR. WESCOTT: It was fifty-five feet?
15 THE WITNESS: At least fifty-five feet, because
16 he didn't need a variance to build it. He built it at
17 5854. I can tell you it was --
18 MR. HALPIN: I have no further questions, and I
19 will orient the panel as to the site with my client.
20 THE WITNESS: Can I make another comment?
21 THE CHAIRMAN Yes, you may.

1 THE WITNESS: In zoning and planning, are they
2 the people that give out addresses? When you build a
3 house, you apply for an address. The zoning and planning
4 assigns you the address?
5 THE CHAIRMAN I honestly cannot answer that. It
6 is my impression that they do.
7 THE WITNESS: Well, my house is located at 5850,
8 and this sketch will show you that it's fifty-eight feet
9 from the property line to 5852. And about thirty-two,
10 whatever it was, thirty-one feet from my house to the
11 property line, and fifty-eight feet to 5852. So that's
12 eighty -- eighty-nine feet between my house and the house
13 at 5852.
14 However, it's only twenty-five plus thirteen --
15 thirty-eight feet between my house and 5830. That's on
16 the drawing. So the house next door to me on the other
17 side at 5830, if this lot here is a building lot, why
18 wasn't I given 5832, instead of 5850?
19 THE CHAIRMAN: We cannot answer that here.
20 THE WITNESS: There's another objection I have to
21 this. I'm sorry I forgot to mention it. Introducing the

1 address of 5850, I have a hard enough time getting things
2 delivered to my house because I'm next door to 5830. Now
3 we're going to introduce 5850-A, and I can see all kinds
4 of problem trying to get things delivered. I definitely
5 don't want an address of 5850-A next door to me, not when
6 there's 5830 on the other side. It doesn't make any
7 sense.
8 MR. HALPIN: I have no further questions of this
9 witness.
10 THE CHAIRMAN: Thank you. You can step down.
11 Who would you like as the next person to take the witness
12 stand?
13 MR. ROTHWELL: Mr. Cadogan, who bought 5852.
14 Otis.
15 OTIS T. CADOGAN,
16 having been called as a witness, was duly sworn and
17 testified as follows:
18 THE CHAIRMAN: State your name and address for
19 the record, please.
20 THE WITNESS: Otis T. Cadogan -- C-a-d-o-g-a-n--
21 address is 5852 North Hazelwood Avenue.

1 THE CHAIRMAN: Mr. Cadogan, what do you have to
2 tell this court concerning that property to be build?
3 THE WITNESS: Well, first, again, it's too close.
4 It's too close, problems if it were to be a fire, or
5 anything on either side. It's dangerous, very dangerous.
6 Second of all, it will sure close us up, the
7 houses you're talking about, eight feet between the
8 houses. We are going to have a problem getting back and
9 forth to the back of the yard.
10 And, also, I got windows on the side of the house
11 there. This house is going to be sitting plop right
12 there. And, of course, the neighborhood is going to
13 change in appearance, and not for the good.
14 THE CHAIRMAN: Is there anything else?
15 THE WITNESS: That's it for now.
16 THE CHAIRMAN: Mr. Halpin, did you have any
17 questions?
18 MR. HALPIN: I did have two.
19 CROSS EXAMINATION
20 BY MR. HALPIN:
21 Q. Mr. Cadogan, you said it's going to be eight feet

1 between the houses?
2 A. About eight feet between the houses.
3 Q. Where does that come from?
4 THE CHAIRMAN: Keep your voice up, please.
5 Q. Where did you obtain that knowledge?
6 A. The variance received.
7 Q. You stated there was a fire hazard by these
8 houses being so close?
9 A. So close.
10 Q. What's your profession?
11 A. I'm a maintenance tech.
12 Q. Thank you.
13 A. If I'm correct, the house to be built is of wood
14 and siding.
15 MR. HALPIN: I have no further questions.
16 THE CHAIRMAN: Thank you, sir.
17 THE WITNESS: That's it?
18 THE CHAIRMAN: Yes. Thank you. Who would you
19 like to have next?
20 MR. ROTHWELL: (Indicating.)
21 THE CHAIRMAN: Would you like to take the stand?

1 GLORIA PACK,
2 having been called as a witness, was duly sworn and
3 testified as follows:
4 THE CHAIRMAN: State your name and address, for
5 the record, please.
6 THE WITNESS: My name is Gloria T. Pack, 5837
7 North Hazelwood Avenue.
8 THE CHAIRMAN: What would you like to tell the
9 court today, Ms. Pack?
10 THE WITNESS: I'd like to tell the court today
11 that I have been living at my house since 1988, and the
12 reason I chose that house was because of the neighborhood
13 and the setting.
14 It's an older neighborhood, and it's nice people
15 in the neighborhood. And the house that they built across
16 the street on the other lot, when they were building it
17 and since it's been built, we have water runoff. I just
18 had to dig my yard up and pay $3000 because my basement
19 was flooded. It's one thing.
20 Number two, to build a house on that lot would be
21 disastrous to our neighborhood. Most of the houses in the

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1 neighborhood are elongated, out this way, and our
2 neighborhood has somewhat of a rustic look. It's a very
3 beautiful neighborhood.
4 Now we have a big green and yellow highrise
5 across the street, and that's exactly what it looks like,
6 a highrise tenement, because the house is not incompatible
7 with our neighborhood. It's not compatible with our
8 neighborhood. Also, to build another house up in a little
9 tiny small space where they are trying to push it in for
10 profit, it's not fair to the people who have lived there.
11 And I'd like to tell the court that it's a
12 non-compatible project that they have, and we pray that
13 the variance is not granted and that they don't build
14 another house.
15 The one there, we are stuck with. On the end of
16 our street, it was another house built, but that is an
17 addition to our neighborhood because that was a truck yard
18 which had all kinds of heavy equipment stored in it, so
19 the lady that owned it, her father owned it, so she got
20 the land back and built a new nice beautiful home down on
21 the corner of the street, which is an upgrade to our

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1 neighborhood, because even with her building that house
2 raised the value of our property, because it was a truck
3 yard down there.
4 But to build another house, to stick it up in a
5 little corner so somebody can have a fat bank account is
6 not fair. It's not fair to us, for people who have been
7 there, who have raised their children there, who have
8 pride in their neighborhood, it's not right. It's not
9 right.
10 And the houses that they're building aren't
11 compatible to our neighborhood. They aren't compatible to
12 where we live. And we don't want those big highrises in
13 our neighborhood.
14 THE CHAIRMAN: Anything else?
15 THE WITNESS: No. That's it.
16 THE CHAIRMAN: One second Mr. Halpin?
17 CROSS EXAMINATION
18 BY MR. HALPIN:
19 Q. How many stories is the big highrise that you
20 referred to?
21 A. Two.

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1 Q. The water runoff, is that from the 5850-A?
2 A. The new house, the new house that they built, it
3 comes down from there, the way they had to swerve the
4 driveway, you know, they came and marked off.
5 I don't know who the people were that came and
6 marked off to see how the water would run, and the water
7 runs in my driveway and on my grass.
8 And, you know, when it's raining, or snowing,
9 it's a big runoff. And before that house was built, we
10 never had that problem.
11 My basement was flooded. I just paid thirty-nine
12 ninety to have the whole lawn dug up and things done under
13 there. We never had problems like that. I mean, a pipe
14 could burst anytime or, you know, I don't even know what
15 the exact cause of it was, what the exact cause of it was.
16 My husband had all that, but it's just not compatible
17 there, anyway. You know, it's just not a good thing.
18 Q. This water runoff is caused by the lot that we're
19 talking about today or it was caused by something else?
20 A. The new house. The new one.
21 Q. So the water runoff doesn't have anything to do

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1 with the property today?
2 A. Yes, the water runs off from the first house you
3 built.
4 Q. But today, talking about 5850-A?
5 A. No. That would run into Nancy's yard, because
6 that's my next door neighbor. That would come down on her
7 property.
8 Q. In the corner lot, can you see that from your
9 house?
10 A. Unh-unh. It starts the beginning of our
11 neighborhood.
12 Q. Can you see 5850-A from your house?
13 A. Oh, yeah. If it's built, oh, yeah. It will be
14 right in my face. You won't get any breeze through the
15 summer.
16 MR. HALPIN: Thank you. I have no further
17 questions.
18 THE CHAIRMAN: Your next witness?
19 C A R O L C A D O G A N,
20 having been called as a witness, was duly sworn and
21 testified as follows:

1 THE CHAIRMAN: Have a seat. Would you state your
2 name and address for the record, please.
3 THE WITNESS: My name is Carol Cadogan. I live
4 at 5852 North Hazelwood Avenue. We purchased 5852 last
5 May, from Paula Rush.
6 I guess, as young homeowners, we didn't do a lot
7 of homework as per what the building next door is going to
8 do to our property.
9 However, along the way, we saw problems arising,
10 one, the house being built next door, 5854, all the water
11 was used from our property, but that's not what the
12 problem is today.
13 From the construction of this house at 5854, it
14 took away access to some land behind our house that shared
15 the same boundary as 5854. The problem, I'm saying this,
16 that the problem is going to be on the other side, too.
17 The way our house is situated, we had to install a
18 driveway in order to get on our property. This held us up
19 in closing.
20 So the dividing line between those two houses is
21 posing a problem now. The dividing line on the other side

1 of 5852-A is going to pose a problem getting access to and
2 from our property on the other side.
3 We have a lot of land in the front and in the
4 back. We have a pool smack dab in the middle. We have a
5 garage. The house is connected. The garage is connected
6 by an archway to our house. We have no access to take a
7 riding lawnmower around to the back to keep the property
8 behind the house clean, or mowed.
9 The dividing of the land, this is a problem from
10 Paula Rush from dividing the land like that, selling to
11 different people, to leave everybody with this problem we
12 have to deal with today.
13 And that's why I am here, to let you know that I
14 don't think it fair to the neighborhood that we are faced
15 with all those problems.
16 5850-A is going to be entirely too close to 5852.
17 It will block the breeze. It will block the view. We
18 have a beautiful view of downtown Baltimore from our top
19 floor. That is going to be totally blocked.
20 And these are some of the things we saw in the
21 house when we bought it. We didn't know that they were

1 going to put up a house on that lot, because we didn't
2 think it was enough space. Getting around to the back, at
3 least one side is blocked. We figured we can use the
4 other side to go around, and that going to be taken away
5 from us too, which is leaving us with problems like we
6 have to call in people to re-drain our property because we
7 have a pool which initially the pool ran off on 5854.
8 Now we have to veer that water off. We have to
9 do plumbing drainage to properly drain a lot of things
10 from our lot. Like I say, we had to install a driveway
11 because the driveway for the property came from 5854 into
12 5852, and that posed a big problem.
13 So I would like you to take into consideration
14 all of this when you make your decision today.
15 THE CHAIRMAN: Thank you.
16 CROSS EXAMINATION
17 BY MR. HALPIN:
18 Q. Just a few questions. You mentioned there's not
19 enough room to get your riding lawnmower to the rear of
20 the property?
21 A. No, it's not.

1 Q. When you're facing your house, how much room will
2 you have to the left?
3 A. The house, if you look at the property, when you
4 look at the driveway from 5854 --
5 Q. If you're standing on North Hazelwood looking to
6 your house, your house is right in front of you, how much
7 room will you have if the house is built at 5850-A to get
8 between your house and the end of your property line?
9 A. We'll have to -- I'm not sure exactly in eyeball.
10 I don't know distance. But if we try to bring a riding
11 lawnmower up on the property, it's not going to happen.
12 The fence is around the house already. We would
13 have to redo all fence work in order to accommodate
14 anything.
15 When the house is built, I'm not even sure if
16 we'll have any room to come up on our property because of
17 the way the property line is.
18 There's also a big pear tree down there. I'm not
19 sure if that tree -- I think it infringes on both
20 properties. More than likely, they are going to cut that
21 tree down. There's another tree in our yard. More than

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1 likely, that tree will have to go, or they may be
2 complaining we need to cut our tree down because it's
3 going to infringe on that land of 5850-A when they start,
4 if they get permission to build this house.
5 So we are talking about two big trees that will
6 be in jeopardy. I'm trying to answer your question. I do
7 not know how much space, because I'm not good with those
8 things. I don't know the distance.
9 MR. HALPIN: I have no further questions at this
10 time.
11 THE CHAIRMAN: You may be excused.
12 MR. ROTHWELL: I have a picture of what she's
13 talking about, to make things a little clearer.
14 THE CHAIRMAN: Would you show those to Mr.
15 Halpin?
16 MR. ROTHWELL: Mr. Halpin, these are pictures of
17 the street, my back yard. This is from the side yard, and
18 that's 5852 right through there. This will make the
19 drainage thing real clear. It shows how high up that is.
20 That's standing on the street.
21 THE CHAIRMAN: Did you take the pictures, Mr.

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1 Rothwell?
2 MR. ROTHWELL: No, I didn't. The appraiser took
3 the pictures.
4 THE CHAIRMAN: But they're just the pictures?
5 MR. ROTHWELL: Just pictures.
6 THE CHAIRMAN: Do they accurately depict your
7 area?
8 MR. ROTHWELL: Oh, yes, ma'am.
9 MR. HALPIN: They don't show the lot we're
10 talking about, 5850-A. I'd be happy to let them be
11 introduced. I have pictures that go into more detail
12 about the lot we are talking about.
13 THE CHAIRMAN: But this will complement their
14 evidence.
15 MR. ROTHWELL: I thought it would show to you
16 all, just to make her testimony a little clearer, this is
17 the house she's talking about.
18 THE CHAIRMAN: So we're going to take this in as
19 Appellant's 3A and 3B, and it's a total of six pictures.
20 MR. ROTHWELL: Actually, it's four. This is my
21 house. This is the street. That's the back of my house.

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1 That's the front of my house. And this is 5852.
2 THE CHAIRMAN: Thank you. Since that is the
3 appellant's case, we will go forward. Now, do you all
4 need a break, and we'll go forward with the petitioner's
5 case at that time.
6 MR. HALPIN: May I look at Appellant's No. 2,
7 please? For my first witness, I will call Mark Cunningham
8 from the office of planning.
9 MARK CUNNINGHAM,
10 having been called as a witness, was duly sworn,and
11 testified as follows:
12 DIRECT EXAMINATION
13 BY MR. HALPIN:.
14 Q. Would you please state your name, for the record?
15 A. Mark Cunningham.
16 Q. Your address?
17 A. Baltimore County Office of Planning.
18 Q. How long have you been employed by Baltimore
19 County?
20 A. Approximately three years.
21 Q. What is your title?

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1 A. Development Review Planner II.
2 Q. What responsibilities do you have with the Office
3 of Planning?
4 A. I review all petitions for zoning requests as in
5 the case that's before you, special hearings, special
6 exceptions.
7 THE CHAIRMAN: Mr. Cunningham, I'm not a speedy
8 writer, so slow down for me, please.
9 A. I also review all the minor subdivisions that
10 come before the county. I also review concept plans,
11 development plans, and when called upon, I come before the
12 Board of Appeals.
13 Q. So you have testified as a witness before the
14 Board of Appeals in the field of planning?
15 A. Yes, I have.
16 Q. Have you been accepted and approved as an expert
17 witness?
18 A. Yes, I have.
19 MR. HALPIN: I'd offer Mr. Cunningham as an
20 expert witness in the field of planning.
21 THE CHAIRMAN: We have a policy if they work for

1 Baltimore County, we don't need to accept them as expert
2 witnesses.
3 Q. Are you familiar with the petition for the
4 variance for the undersized lot today?
5 A. Yes, I am.
6 Q. What was your recommendation as to whether the
7 variance should be approved?
8 A. We recommended the variance should be approved.
9 Q. Why did you make this recommendation?
10 A. If I could, I would like to put some maps on the
11 board. This property first came to me a couple years ago
12 when Paula Rush was the current owner of the property.
13 I didn't know she had sold the property, but
14 that's irrelevant. Based on the density that's permitted
15 on the property, she wanted to create three single family
16 dwelling lots that also included panhandle lots.
17 We didn't feel, or I didn't feel, as though the
18 panhandle development was a part of the character of the
19 neighborhood. It is an older neighborhood and the lots
20 are basically conventional straight-on lots.
21 At the time when Ms. Rush appeared before me and

1 asked how would we view the panhandle development, I told
2 her we would not recommend approval of a panhandle
3 development for the fact that it was not in the character
4 of the neighborhood.
5 Looking at the lot, I noticed, looking at the
6 entire holding, I noticed that the entire holding
7 consisted of twenty-five foot lots of record. Being that
8 they were lots of record, I told Ms. Rush that she could
9 get three single family dwelling lots if she continued
10 with the existing lot patterns that were there.
11 And, as such, as I highlighted in the red, or in
12 the pink, the white, and the blue, these would be the
13 three single family dwelling lots.
14 We recommended approval of the undersized lots
15 because there are many -- the neighborhood, as I said
16 before, is an older neighborhood, and the majority of the
17 lots are twenty-five foot strips.
18 There in the dash outline is the property in
19 question. There is existing twenty-five or fifty foot
20 lots throughout the neighborhood, on North Hazelwood and
21 on Westwood. All those lots in this vicinity are all

1 twenty-five foot lots. They are two lots combined
2 together to create fifty foot lots.
3 All these lot on fifty foot lots, and there are
4 many lots within here that are also fifty foot lots. So
5 from a planning prospective, we did not feel as though
6 recommending approval of a fifty foot lot of two existing
7 lots of record would be contrary or incompatible with the
8 neighborhood.
9 Conditioned upon recommendation of approval, we
10 wanted them to build elevation drawings, and we wanted
11 them to build elevation drawings because the houses in the
12 neighborhoods are of a particular design.
13 They are older houses, and as it was alluded to,
14 it has a rustic look, and we wanted whatever was proposed
15 on the fifty foot lot to be compatible and in keeping with
16 the existing architectural design that was there, and
17 that's why we asked -- at the time that the requests were
18 made, we received photographs.
19 The photographs we received of the proposed
20 dwelling we felt would not be compatible with the existing
21 dwellings that were there, so we asked that prior to or in

1 conjunction with the building permit approval, we would
2 receive elevation drawings, and if we did not approve of
3 the elevation drawings, then the building permit would not
4 be issued.
5 Q. Did your section chief concur with your
6 recommendation?
7 A. Yes, he did.
8 Q. I have -- and I think it's in the file as well --
9 dated March 26, 2002, a written report. Did you prepare a
10 written report?
11 A. Yes, I did.
12 Q. That what's contained in the March 26, 2002
13 correspondence?
14 A. Yes.
15 MR. HALPIN: Do I need to submit this in
16 evidence?
17 THE CHAIRMAN: Might as well.
18 MR. HALPIN: Exhibit No. 1, please.
19 THE CHAIRMAN: Admitted.
20 Q. Would you please read the summary of your
21 recommendations as written here, please.

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1 A. The summary of the recommendation, the Office of
2 Planning supports the petitioner's request to allow a lot
3 width variance. The petitioner submitted photographs
4 depicting the house type that he would like to build.
5 However, revised building elevations should be
6 submitted to this office for review and approval prior to
7 the issuance of any building permit.
8 MR. HALPIN: Thank you. I have no other
9 questions at this time.
10 THE CHAIRMAN: Mr. Rothwell, do you have any
11 questions?
12 CROSS EXAMINATION
13 BY MR. ROTHWELL:
14 Q. Can you describe for me what that proposed house
15 was going to be? Is it two story?
16 A. The proposed house that we received when I
17 immediately looked at it, it was a two story house, but it
18 was not compatible or in keeping with the existing
19 dwellings in the neighborhoods, and we rejected it.
20 We have not received the building elevation
21 drawings yet, and that's why I made the statement in the

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1 recommendations that the condition is contingent upon
2 review and approval of the building elevation drawings.
3 Q. Well, what was your major consideration for not
4 approving the originally submitted house or, more in
5 particular, was it the height of the house?
6 A. No. It was because of the exterior facade. The
7 architectural details were not consistent with the
8 existing dwellings in the neighborhood.
9 Q. Can you explain what the architectural
10 differences were?
11 A. The house that he proposed was basically a vinyl
12 siding house, and the majority of the houses that we
13 looked at in the neighborhood were not of that character.
14 MR. ROTHWELL: Can I add a comment?
15 THE CHAIRMAN: No, you may not.
16 Q. Have you seen the house the builder has already
17 built?
18 A. Which house are you referring?
19 THE CHAIRMAN: That's not before us.
20 MR. WESCOTT: I'd like to hear it. As I
21 understand, and I thought the original plans were for what

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1 this builder wants to build, is another one like he
2 already built at 5854.
3 THE CHAIRMAN: Mr. Rothwell, my other panel
4 member would like to hear that question, so if you'd ask
5 the question.
6 Q. Have you seen the house that this builder built
7 at 5854 North Hazelwood Avenue?
8 A. Talking about the house that has the pool in the
9 back?
10 Q. No. The new house that was built at 5854 that's
11 already built.
12 A. No.
13 MR. WESCOTT: Did you ask for plans for that
14 house?
15 THE WITNESS: No, because that was not a part of
16 the submittal.
17 MR. WESCOTT: It was not part?
18 THE WITNESS: No. The house that he's referring
19 to is on a totally separate piece of parcel. We had no
20 reason to ask for that house.
21 When projects come before me, I can only make

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1 decisions on the project that's before me.
2 MR. WESCOTT: I understand that. You said there
3 were three lots of record?
4 THE WITNESS: No. There are eight lots of
5 record. The entire holding as is consists of eight
6 individual lots of record.
7 MR. WESCOTT: How many are twenty-five foot, all
8 of them?
9 THE WITNESS: All but one. I believe this lot,
10 lot 187, is a bit wider than twenty-five foot. However,
11 the reason why --
12 MR. WESCOTT: The drawing is not to scale?
13 THE WITNESS: This is to scale, yes.
14 MR. WESCOTT: It is?
15 THE WITNESS: Yes, sir.
16 MR. WESCOTT: The green ones certainly look
17 thinner than the one in between.
18 THE WITNESS: These are four lots. These are two
19 lots and these are two lots. So, yes, the green one is.
20 MR. IRISH: Can I interrupt for a second? The
21 pink is fifty foot wide, correct?

1 THE WITNESS: Yes.
2 MR. IRISH: The white is a hundred feet wide
3 which consist of four lots?
4 THE WITNESS: That is correct.
5 MR. IRISH: The pink is two, twenty-five foot
6 lots. The white is four, twenty-five foot lots. The blue
7 consist of one, twenty-five foot lot --
8 THE WITNESS: And one 38.7 lot.
9 MR. WESCOTT: Which one are we talking about?
10 THE WITNESS: The lot in question is the pink
11 lot.
12 MR. WESCOTT: What's on the other two?
13 MR. IRISH: Do we have the addresses for the
14 other two?
15 THE WITNESS: This existing one and a half story
16 with a pool and the garage is 5852.
17 THE CHAIRMAN: That's Ms. Cadogan?
18 THE WITNESS: That is correct.
19 MR. WEST: What's the next one?
20 THE WITNESS: This one here, sir?
21 MR. WESCOTT: Yes.

1 THE WITNESS: That's vacant property that has the
2 proposed development. That's the new house --
3 MR. WESCOTT: 58 --
4 MR. HALPIN: 5854.
5 MS. CADOGAN: That's what took away my access to
6 my back yard.
7 MR. HALPIN: Actually, I have some more
8 questions, please.
9 Q. (MR. ROTHWELL) Were you aware at the time that
10 this builder intended to build two houses identical on
11 these two pieces of property?
12 A. No. At the time when this came before me as a
13 subdivision, it came to me as a subdivision. That was it.
14 There were no building plans submitted. It was just a
15 subdivision, and that's all we were looking at, was the
16 subdivision.
17 Q. Was your basic recommendation for allowing this
18 based on putting something other than a two story up?
19 A. No. My reason for recommending approval of the
20 variance was based on the fact that there are existing
21 fifty foot lots in the neighborhood, that the neighborhood

1 is predominantly divided into twenty-five foot strips, and
2 there are many two, twenty-five foot strips where people
3 have bought or purchased two, twenty-five foot strips and
4 have built across the property line.
5 They are many lots there, if you look at the
6 geographic information system drawing, where the lot width
7 drawings are across lot lines, because at the time the
8 subdivision were created, it was all twenty-five foot
9 lots.
10 The fact there are existing fifty foot lots in
11 the neighborhood was my reason for recommending approval
12 of a proposed fifty foot lot.
13 Q. I can't see very well, but do those drawings show
14 contours?
15 A. It shows -- yes, it does. It shows some contour,
16 yes. This is 170 elevation, 180 elevation.
17 THE CHAIRMAN: Do you have the record plat, Mr.
18 Halpin? You're submitting these as evidence. Can we
19 identify them?
20 MR. HALPIN: These are already in the record, but
21 I will be happy to.

1 THE CHAIRMAN: We have not given them any number,
2 I don't believe.
3 MR. HALPIN: I would move the --
4 THE CHAIRMAN: We only have Petitioner's No. 1
5 which is your letter from planning.
6 MR. HALPIN: I would move to introduce the site
7 plan as Petitioner's No. 2.
8 THE WITNESS: Excuse me. That's part of my file.
9 MR. HALPIN: And the GIS drawing is Petitioner's
10 No. 3.
11 THE CHAIRMAN: After we are done today, we'll
12 have to make certain that we get copies so it's part of
13 our file and we can have it for our file.
14 Q. When you ask him --
15 THE CHAIRMAN: Refer to it as Petitioner's 2, I
16 believe.
17 Q. Can I ask you how much consideration was given to
18 this? How much consideration to the contours on this
19 property? Was that well thought of?
20 Did you really think that it was ten foot
21 elevation difference between my property and the next --

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1 how close did you look at those contours?
2 MR. WESCOTT: How many questions are you going to
3 ask? Where you going?
4 THE CHAIRMAN: Ask one question as a time.
5 Q. One question was, how much consideration was
6 given to the elevation and the contours on the site plan,
7 or Petitioner's 2?
8 A. I did not give any consideration to topography.
9 The topography was not germane or specific to that
10 particular site.
11 The topography runs throughout the neighborhood.
12 What we were looking at, the petition was for approval of
13 a fifty foot wide lot. It had nothing to do with grading
14 or anything to address the topography or contours.
15 It was specifically for the approval of a fifty
16 foot wide lot that comprised two existing twenty-five foot
17 lots of record.
18 Q. Is that a typical scenario in planning? How much
19 consideration does, typically, does zoning and planning
20 give to contours and elevation differences?
21 A. You must keep in mind when petitions for zoning

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1 relief is considered, the planning department is not the
2 sole department that reviews the plan.
3 The plan circulates through fourteen different
4 departments. As far as contours are concerned, that would
5 be a review requirement, or responsibility of the
6 Department of Environment and Resource Protection
7 Management.
8 We don't, per se, look at contours. That is not
9 within our purview when we look at plans.
10 MR. ROTHWELL: No further questions.
11 THE CHAIRMAN: Mr. Halpin, you said you had
12 something further?
13 MR. HALPIN: They were clarified already. I have
14 no further questions.
15 THE CHAIRMAN: You may be excused. Why don't we
16 take a five-minute break and then come back.
17 (A recess was taken.)
18 THE CHAIRMAN: We're back on the record. Mr.
19 Halpin?
20 MR. HALPIN: I call Adam Skolnik as my next
21 witness, please.

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1 ADAM SKOLNIK,
2 called as a witness, having been duly sworn, testified as
3 follows:
4 DIRECT EXAMINATION
5 BY MR. HALPIN:
6 Q. Please state your name, for the record.
7 A. Adam Skolnik. S-K-o-l-n-i-k.
8 Q. Your address?
9 A. 4616 Oak View Court, Ellicott City, Maryland
10 21042.
11 Q. What is the name of the company you work for?
12 A. Charter Homes, LLC.
13 Q. What's the nature of Charter Homes' business?
14 A. We are a homebuilder.
15 Q. How many homes do you build a year?
16 A. Fifteen to twenty.
17 Q. What's your job title and responsibility with
18 Charter Homes?
19 A. I am a managing member. I concentrate on
20 acquisition of property and sales of built homes.
21 Q. How long have you been with Charter Homes?

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1 A. Two years.
2 Q. Are you familiar with the appeal that's before
3 the Board of Appeals today?
4 A. Yes, I am.
5 Q. What is the address of the property that is the
6 subject of this appeal?
7 A. 5850-A North Hazelwood.
8 Q. Have you visited this location and the
9 surrounding properties?
10 A. Yes, I have.
11 Q. Do you know when you purchased the property from
12 Paula Rush?
13 A. April 26 of 2002.
14 Q. How much did you pay for the property?
15 A. $15,000.
16 Q. When you purchased the property from Paula Rush,
17 what did you intend to do with the property?
18 A. Build a home.
19 Q. Can you describe right now today what is on
20 5850-A?
21 A. Raw land.

1 Q. I have some color photographs I have shown to
2 you.
3 MR. HALPIN: To start with, I will introduce --
4 actually, if I could introduce these into evidence, it's
5 pages one, two, three and four, and it's pictures of the
6 street on the even side from 5810 to 5854.
7 THE CHAIRMAN: We will make it Petitioner's 4A,
8 B, C and D.
9 MR. HALPIN: Yes, please. 5810 North Hazelwood
10 to 5854 North Hazelwood, even side only.
11 Q. Start with the picture identified as 5850-A. Can
12 you describe the site?
13 A. I call it a raw piece of land which is an
14 undeveloped parcel. There's a tree on it, some grass, in
15 between two homes.
16 THE CHAIRMAN: That would be on what page?
17 THE WITNESS: Page three.
18 THE CHAIRMAN: So that would be 4C, and where is
19 it located on the page?
20 THE WITNESS: Bottom right.
21 THE CHAIRMAN: Thank you.

1 Q. Going through Petitioner's 4A, 4B, 4C and 4D, can
2 you describe the other properties nearby?
3 A. It's a mixture of shotgun ranchers or split
4 levels, Cape Cods, some two stories. I really kind of
5 call them boxey colonial. Split level with a one car
6 garage and two story Colonial.
7 Q. The house that you intend to build if the
8 variance is approved and you're allowed to go forward, is
9 it in keeping with the style of the neighborhood?
10 A. Yes. The house we would build would be -- we try
11 to keep the houses in compliance with the neighborhood, in
12 our opinion, and we are willing to build more than one
13 house. We're not sold on building any specific two story
14 or split level or rancher.
15 Q. Why did you build a two story at 5854?
16 A. We thought -- I still think -- it's a two story
17 Colonial, full front porch. It's a very country-esque
18 Colonial.
19 We just thought it was in keeping with the
20 neighborhood and we thought it was also going to improve
21 the values. I ended up selling it for $165,000, which was

1 substantial more, by $10,000, than any of the sales on the
2 street and the adjacent street or the parallel street
3 Westwood in the last two years.
4 Q. I think we've heard today there was some concern
5 about building a two story house on the subject lot.
6 Would you consider building a different style house?
7 A. Absolutely.
8 Q. Are you building any other houses in this
9 neighborhood?
10 A. Yes. I am building on Westwood Avenue, which is
11 one street over, a shotgun split level, as we call it, and
12 it's on a fifty foot wide lot.
13 Q. If the appeal today is granted denying the
14 request for the variance, what will you be able to do with
15 this property?
16 A. Nothing.
17 Q. Do you believe this is an unreasonable hardship?
18 A. Yes.
19 Q. If the Board of Appeals approves this request and
20 approves the variance and you're allowed to go forward, is
21 the house you're going to build injure the public health,

1 safety or welfare of the community?
2 A. No. As a matter of fact, the house we sold raised
3 the values of the houses in the neighborhood. It sold for
4 more. And, as most know, that's the way appraisers and
5 people value property, is based on comparative sales in
6 the neighborhood.
7 MR. HALPIN: One moment, please. That's all I
8 have at this time.
9 THE CHAIRMAN: Mr. Rothwell, do you have any
10 questions?
11 CROSS EXAMINATION
12 BY MR. ROTHWELL:
13 Q. Are there any bricks on the house at 5854?
14 A. No.
15 Q. Are there bricks on the other houses in the
16 neighborhood?
17 A. On some of them.
18 Q. From my recollection, it's on most of them,
19 especially the ones on that side of the street.
20 THE CHAIRMAN: You can't testify, sir.
21 Q. I had some other questions.

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1 GLORIA PACK: Can I ask a question?
2 THE CHAIRMAN: Why don't you tell him the
3 question and let him ask it.
4 Q. Can you describe the color of the house at 5854?
5 A. It's like a pale yellow.
6 Q. Is it your intention to put a house at 5850-A,
7 was it your original intention to put the same house
8 that's on 5854?
9 A. Actually, what occurred was I had a set of plans
10 for a two story, which is the house that was built at 5854
11 on file with Baltimore County.
12 They were reviewing my split level plans at the
13 time, so I did submit the variance with the two story on
14 the variance hearing, you know, for all the issues,
15 because they had them on file, and it made it easier for
16 everybody to refer to them.
17 But they were looking at the other ones. I have
18 not put the house on the market. I have done nothing. I
19 have not decided which house to build.
20 Q. Now, all the information that I got back from the
21 first hearing said that Paula Rush petitioned for the

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1 variance.
2 Did Paula rush petition for the variance, or did
3 you petition for the variance?
4 A. I was the contract purchaser, so Ms. Rush was the
5 legal owner of the property, so pursuant to the county,
6 the owner had to file the variance, but I was the contract
7 purchaser as it was filed.
8 Q. I don't know if I'm going to ask this question or
9 not, but I am going to do it anyway. Did you purchase
10 that property with a contingency if this variance did not
11 go through?
12 A. No.
13 Q. So you just flat out bought it, knowing that it
14 needed a variance to build a house?
15 A. Correct.
16 Q. Thank you. Are you aware of the big trees in the
17 back of the lot?
18 A. Yes.
19 Q. Two of them are going to have to come down to
20 build a house?
21 A. I don't know exactly. We try and keep as many

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1 trees on the property as we can. I don't know which ones,
2 because I don't know which house I'm building.
3 I don't know which trees are going to come down
4 or not. If I can keep trees, I want to keep trees,
5 always.
6 Q. The reason I asked, I saw the original site plan
7 at the first hearing, and being a surveyor, I walked up
8 there and measured out and laid it out.
9 THE CHAIRMAN: You're testifying again.
10 MR. WESCOTT: Just ask questions. He'll answer
11 the question.
12 Q. The variance was granted based on a contingency.
13 You had to submit a detail landscaping plan. Do you have
14 any idea what you're going to do there?
15 A. I haven't submitted -- as planning testified, we
16 had to submit a plan and any other ancillary things before
17 we built a house as we go through the permitting plan.
18 When you appealed this, I didn't go forward with
19 submitting or doing any of those plans because I was not
20 sure now whether the lot was buildable.
21 Depending on what happens today, all of that will

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1 be detailed out. No, I don't know, because I am still not
2 sure which house I'm going to build.
3 Q. Supposing this doesn't go through, okay, what
4 would you do with that property?
5 A. I have absolutely no idea. I bought it with a
6 plan on building on it. I'm stuck with it. I don't know
7 what I'm going to do. I will offer it to you to buy.
8 GLORIA PACK: For how much?
9 MR. ROTHWELL: That's all.
10 MR. HALPIN: I have one more question.
11 REDIRECT EXAMINATION
12 BY MR. HALPIN:
13 Q. Do you have a history of meeting building
14 requirements set by Baltimore County?
15 A. Yes.
16 MR. HALPIN: Thank you.
17 MR. WESCOTT: 5854 is not shown?
18 THE WITNESS: Sure, it is.
19 MR. WESCOTT: Okay.
20 THE WITNESS: See, it blends in just like all the
21 others.

1 GLORIA PACK: No, it doesn't blend in.
2 MR. IRISH: I have a question. Let's go with,
3 just to clarify some things, 5854, you bought the
4 property?
5 THE WITNESS: Yes.
6 MR. IRISH: Built the home, sold it?
7 THE WITNESS: Yes.
8 MR. IRISH: 5852, the home existed?
9 THE WITNESS: Yes.
10 MR. IRISH: Did you purchase that home and
11 property and re-sell it?
12 THE WITNESS: No.
13 MR. IRISH: I just want to ask this question
14 because it seems like the opportunity here for my benefit
15 only.
16 You were asked if you were considering this an
17 undue hardship if you were not able to build on it. I
18 just kind of find that hard to rationalize. Would you
19 consider it more of like a lottery? Like a chance?
20 THE WITNESS: No. We are a small builder. I
21 build fifteen to twenty houses a year, and we started this

1 company two years ago.
2 I was a property manager by trade, working for a
3 management company downtown Baltimore. I was an apartment
4 community manager. My partner and I got together and have
5 literally taken our savings and tried to start our own
6 business, become a small business owner working for
7 ourselves instead of a large company.
8 There's no doubt today, if I have to eat this
9 property, that will be a relatively large portion of what
10 my partner and I might earn in a year because we are only
11 trying to build fifteen or twenty houses, and we are
12 scraping together to put money down to buy lots and all
13 these other things, especially in a real estate climate
14 that's still solid, but tailing off now due to economic
15 difficulty.
16 So there's no doubt losing a lot, the ability to
17 possibly make money, to having spent $15,000 and now being
18 worth comparatively less, would be an undue hardship in
19 both cases.
20 MR IRISH: Thank you.
21 MR. HALPIN: I have one more witness, please.

1 Mr. Dallas.
2 JONATHAN S. DALLAS,
3 having been called as a witness, was duly sworn, and
4 testified as follows:
5 DIRECT EXAMINATION
6 BY MR. HALPIN:
7 Q. Please state your name, for the record.
8 A. Jonathan Scott Dallas.
9 Q. What is your address?
10 A. My business address is 13523 Long Green Pike,
11 Baltimore, Maryland 21013.
12 Q. What is the name of your business?
13 A. The name of the business is J.S. Dallas, Inc.
14 Q. What type of services do you provide?
15 A. We provide surveying and engineering services for
16 residential and commercial development.
17 Q. Have you ever testified as an expert witness
18 before in the field of property surveying and associated
19 zoning matters before the Board of Appeals of Baltimore
20 County?
21 A. Yes.

1 Q. Have you been accepted and approved as a witness
2 in this field?
3 A. Yes.
4 MR. HALPIN: I offer Mr. Scott Dallas as an
5 expert witness in the field of property line surveying and
6 associated zoning matters.
7 THE CHAIRMAN: I will be honest, I am feeling
8 uncomfortable because he doesn't have a lawyer. Could you
9 ask him a few more questions?
10 I don't know when you testified before and how
11 long you have been in the business and how many cases in
12 Baltimore County.
13 Q. When was the last time you testified before the
14 Board of Appeals?
15 A. Approximately ten months ago.
16 Q. How many times have you testified before the
17 Board of Appeals?
18 A. Approximately six times at the Board of Appeals'
19 levels and approximately twenty-five times in various
20 zoning cases.
21 Q. Were you accepted in each of those cases as an

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1 expert witness?
2 A. Yes. In all of the zoning appeals cases, I was
3 actually questioned and accepted, and about half of the
4 zoning cases I was questioned and accepted. The others,
5 this did not even come up, because the Zoning
6 Commissioners were with me, and there was no opposition.
7 Q. How long have you been a property line surveyor?
8 A. I was licensed in 1989.
9 Q. You're still currently licensed?
10 A. I'm currently licensed. There's now continuing
11 educational requirements, and I met them for my licensing.
12 I was re-licensed in 2002.
13 MR. HALPIN: I would offer Mr. Scott Dallas as a
14 witness in the field of property line surveying and
15 associated zoning matters at this time.
16 THE CHAIRMAN: Mr. Rothwell, do you have any
17 concern?
18 MR. ROTHWELL: Not really. I am very familiar
19 with the surveying and the property line, and I know
20 subdivision layout. I used to do that kind of work.
21 THE CHAIRMAN: He's accepted.

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1 MR. HALPIN: Thank you.
2 Q. Mr. Dallas, are you familiar with the appeal
3 which is before the Board of Appeals today?
4 A. Yes, I am.
5 Q. Did you prepare Petitioner's No. 2, the site plan
6 which is on the board?
7 A. Yes, I did.
8 Q. Can you describe the general area from a land use
9 perspective around the property as well as the property
10 itself?
11 A. The area is zoned D.R. 5.5. It's made up of
12 single family homes. It's an area comprising lots or
13 pieces of lots from a very old record plat done in 1921
14 called Countyside.
15 The subject property is two of those lots which
16 are twenty-five feet wide and 150 feet deep, as are many
17 of the building lots in the area.
18 Many of the lots are that same size. There's
19 kind of a mixed style of construction and mixed sizing of
20 houses, but it's all residential.
21 Q. You referred to a plat of Countyside, I believe.

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1 Do you know about when that was filed?
2 A. Yes. That was filed in 1921.
3 Q. At that time, 1921, what was the zoning
4 requirement for minimum building lots in that area?
5 A. There were no true requirements. There was not a
6 true zoning development of any kind at that time.
7 Q. But as far as property widths, building a single
8 family house at that time?
9 A. At that time when the zoning requirements were
10 established for this area, it was initially zoned a
11 resident zone A, which had a fifty foot wide minimum
12 building.
13 That appears that way on the 1945 zoning maps,
14 which are the earliest maps I had any way to get my hands
15 on through the zoning department.
16 Q. You testified that, today, the property is D.R.
17 5.5 and the minimum building lot now is what?
18 A. Now, it's fifty-five feet subject to an
19 undersized lot approval. It actually can be allowed if a
20 plat was filed and approved by planning.
21 However, in 1921, although the plat was filed and

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1 all the lots essentially, except for these, have been
2 built out, there was no planning department to sign it.
3 So there wasn't a way we could meet that criteria, so we
4 filed for the undersized lot.
5 Q. What's at the property today?
6 A. It's unimproved.
7 Q. Can you describe the size, the shape, and the
8 topography of the parcel 5850-A?
9 A. Yes. As a whole, it's fifty feet wide, 150 feet
10 deep, which is a total of 7500 square feet, which meets
11 the minimum lot area.
12 We're not asking for any kind of bulk setback
13 relief. We meet all those requirements for the current
14 D.R. 5.5.
15 The topography through the lot, it's sloping
16 from three to one to a five to one slope at various points
17 throughout this lot. It slopes, as you face it from the
18 street, it slopes from right to left towards Mr.
19 Rothwell's lot. It's generally at the grade of 5852.
20 Q. Are there any other undeveloped lots on North
21 Hazelwood?

1 A. Nothing else that I know of from examining the
2 STAT records and the same GSI information that Mr.
3 Cunningham had presented.
4 Q. When is the last time you were at the property?
5 A. I was on the site yesterday.
6 Q. Had you been there before?
7 A. Yes, I had.
8 Q. If the zoning regulations of Baltimore County
9 were strictly complied with, what would be the result?
10 A. It would be unbuildable land.
11 Q. You testified as to this lot being the only
12 undeveloped lot and to the topography. Are there special
13 circumstances which exist at the property 5850-A that
14 makes the property peculiar, unique, or special?
15 A. Well, I believe that it's very peculiar because
16 we are so close to complying with the original intent of
17 the record plat.
18 As I stated, we're the only unbuildable lot, and
19 we nearly meet that requirement for a duly recorded and
20 approved plat.
21 It was clearly the intent at the time of this

1 plat that the lots were to be built on in groups of two.
2 Many of the surrounding houses are built on fifty foot
3 wide lots as we had originally brought up at the original
4 zoning, variance hearing.
5 It's very much in conformance with the
6 neighborhood to build on a fifty foot lot. There are
7 fifty foot lots not only along North Hazelwood, but there
8 are also existing fifty foot wide building lots on the
9 surrounding streets throughout this whole area.
10 Q. If I can show you Appellant's No. 2, the
11 petition, I think you've had a chance to look at that?
12 A. Yes.
13 Q. Do any of the people who signed that petition in
14 opposition to this variance reside on fifty foot lots at
15 this time?
16 A. Yes. Several of these addresses are actually
17 made up of two, twenty-five foot lots which are or have
18 one residence on it, similar to the request today.
19 Q. If the zoning regulations of Baltimore County
20 were strictly complied with, do you believe this would be
21 a practical difficulty or unreasonable hardship for my

1 client Charter Homes?
2 A. Very much so.
3 Q. Why?
4 A. This looks on the face entirely like a building
5 lot, and undeveloped piece of property, something that
6 could be built on. The neighborhood contains many fifty
7 foot wide lots, and it seems very much a hardship that
8 this particular one is not allowed to be improved.
9 Q. Do you believe that the subject property and the
10 petitioner's proposed use to build a house is in strict
11 harmony with the spirit and intent of the area
12 regulations?
13 A. Yes, I believe it's very much in spirit and
14 intent. I think this type of situation meets the intent
15 of the undersized lot provisions, and I also believe from
16 my relations over the last couple of years with Mr.
17 Skolnik that he would make every effort to comply with
18 planning's requirements, which they have stated, planning,
19 they are very concerned with this also being in
20 conformance with the neighborhood.
21 Q. If the variance is granted, do you believe that

1 the proposed use will injure the public health, safety or
2 general welfare of the community?
3 A. Not whatsoever. I can only see it being an
4 improvement.
5 Q. Now, you were here for Mr. Cadogan's testimony.
6 He had mentioned that there's going to be eight feet
7 between the houses. Is that accurate?
8 A. That's not accurate. There is eight feet from
9 his house to the adjacent property line on the subject
10 lot, and the site plan indicates another thirteen feet to
11 the proposed building, for a total of twenty one feet
12 between the houses.
13 MR. HALPIN: One more moment, please.
14 Q. So there would be eight feet then between their
15 house and the property line for a riding lawnmower, and
16 then thirteen additional feet from that property line to
17 the other house if it's built?
18 A. That's exactly correct, if it's built according
19 to this site plan.
20 MR. HALPIN: I have no further questions at this
21 time.

1 THE CHAIRMAN: Mr. Rothwell, do you have any
2 questions?
3 MR. ROTHWELL: Yes.
4 CROSS EXAMINATION
5 BY MR. ROTHWELL:
6 Q. Could you describe the topo of the land on the
7 existing two story houses in general, existing two story
8 houses on fifty foot lots?
9 A. Where, sir?
10 Q. For instance, 58 -- I guess it would be 31, 32 --
11 the two stories across the street?
12 A. Can I look at a plan?
13 MR. IRISH: Sure.
14 A. It looks like they are generally from five to one
15 to ten to one.
16 Q. Five to one and ten to one?
17 A. Yes, sir. It certainly varies lot to lot,
18 contour to contour, and I'm taking this from Baltimore
19 County's GIS topography. This is not field run
20 topography.
21 Q. In relationship to the street, okay, does the

1 land fall away or go up coming from the street to those
2 houses?
3 A. We're talking about houses that are directly
4 across from the subject site?
5 Q. Down the street, the two story houses that you're
6 talking about on a fifty foot lot, that the other
7 gentleman described as box houses.
8 A. Generally, they are close to the street grade at
9 the building line.
10 Q. Well, I say they fall at least a foot and a half
11 away, and I know they have drainage problems in the back
12 yard.
13 A. The Baltimore County GIS topography does not have
14 that level of precision between contours. It has two
15 foot contour intervals on it, and that's the only thing I
16 am using.
17 Q. I understand. That's why I am asking you, as a
18 witness, you have seen this site, and you have an eye for
19 that sort of thing.
20 A. I truly cannot see a one foot fall from the
21 street, fifty feet back, or forty foot back. I apologize.

1 I don't have that level of expertise.
2 Q. Okay. Now, can you describe the topo of the
3 other two stories on the same side of the street downhill,
4 in relation to the street?
5 A. Again, based on the GIS topography, it looks like
6 they are at the building line. They are generally within
7 two feet of the road grade.
8 Q. Now, at 5850-A, maybe you can describe what's
9 going to happen there topography-wise with this two story
10 house. What's the topography going to do from the street
11 looking back on the lot?
12 A. Well, I will do an in-depth grading study and
13 grading plan pursuant to any future permit for the subject
14 property. I have not looked into any type of grading
15 design at this time.
16 It would be very much based on the type of house
17 that went in there, and it's not required for the zoning
18 case at hand.
19 Q. Then could you possibly look at Exhibit 2 up
20 there and describe for us according to the contours what
21 the topography does from the street, looking back on the

1 lot?
2 A. What area, sir?
3 Q. Right there. The pink lot.
4 A. Yes, sir.
5 Q. Look at the elevation on the street.
6 A. Yes.
7 Q. Then go back to the lot. And what happens?
8 A. It's certainly higher than the street.
9 Q. By about how much?
10 A. To what point, sir?
11 Q. To the back of the lot, two-thirds of the way
12 back where the house is going to be.
13 A. Two-thirds, or at the house building line?
14 Q. Okay. The back of the lot.
15 A. The back of the lot, I show a contour of 180 at
16 the rear of the lot. And at the front lot, I show a
17 contour -- again, this is from Baltimore County's GIS
18 topography -- I show a contour 168.
19 That would indicate twelve foot of rise from the
20 front property line to the back property line, in general.
21 Q. Do the contours on that map show the contours of

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1 the street?
2 A. Yes.
3 Q. Or to the property line? The property line is
4 five foot off the street?
5 A. Approximately five feet, that's correct, sir.
6 Q. Would you say, from looking at the site, that the
7 elevation from the street level to the property line, what
8 kind of elevation difference is there from your memory
9 would you say it is?
10 A. That's the beginning of the bank. That's the
11 beginning of the rise in elevation.
12 Q. Would you agree with me that there's at least
13 three foot of rise from the street to the top of the hill
14 there in front of the property?
15 A. It's not really something I can quantify without
16 having some kind of data. I couldn't say that. My eye is
17 not that expert.
18 Q. Just from your memory -- and I know you said you
19 were out there, and you're a surveyor, and you can see
20 things. I'm a surveyor. I can see them. I've done field
21 surveying for twenty-one years.

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1 So I'm am asking you, as an expert witness, to
2 say how far does it go up?
3 I want these people here to get an idea of how
4 much elevation there is between the street and where that
5 house is going to be.
6 A. That wasn't what you asked me before. You asked
7 me to a bank area.
8 Q. I know. You're evading my question. You know
9 what I'm after, but you're evading me. I can't testify.
10 Only you can.
11 A. I understand. Are you asking me how far it is
12 from the street to the front, the front of the proposed
13 house?
14 Q. The elevation.
15 A. Approximately seven feet.
16 Q. Again, if you would, would you estimate --
17 because the contours don't go all the way to the street
18 level -- based from our experience an standing out there,
19 you can see the top of the hill where the top of the bank
20 comes around right off my property, where the tree is, and
21 it goes up at least three feet from the street to where

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1 the top of the bank is going down to the street.
2 MR. WESCOTT: You're testifying now.
3 THE WITNESS: Well, I'm trying to point him in
4 the right direction so he can testify.
5 THE CHAIRMAN: No, you can't do that. That is
6 leading.
7 MR. WESCOTT: Ask him a question.
8 Q. From your recollection and your memory from
9 visiting the site --
10 A. Yes, sir.
11 Q. -- how high do you estimate the bank is at the
12 lower left-hand corner of the property in question? The
13 top of the bank to the street elevation?
14 A. It would only be a rough estimate and, roughly, I
15 would estimate about three feet.
16 Q. Thank you. So then would you say that three feet
17 plus the -- what did we figure before? Twelve feet? --
18 that approximately twelve and three is fifteen foot rise
19 from the street level to where the house is going to be?
20 A. No, sir.
21 Q. Would you agree with that?

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1 A. No, sir, I do not agree to that.
2 Q. Would you agree to that assessment?
3 A. No, sir.
4 Q. Well, I can read that drawing and tell you that,
5 but just a comment --
6 MR. IRISH: No. Mr. Rothwell, I will clarify it
7 for you. He said it was seven feet from the front of the
8 property to the front of the house. Seven and three is
9 ten.
10 He said it was about twelve feet from the front
11 of the property to the rear of the property. Those were
12 the answers he gave you.
13 MR. ROTHWELL: Okay.
14 Q. Would you say that that is going to be a very
15 different setting for a two story on a house compared to
16 the other two stories on a house elevation-wise?
17 I mean, visualize, if you would, a two story
18 house, four feet out of the ground. Okay? And now we
19 have at least twelve feet from the street level, standing
20 on the street, looking at that house.
21 Can you sort of visualize what it's going to look

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1 like, and compare that to the other houses on the street,
2 which are basically downhill from the street, or level?
3 MR. HALPIN: If I can object here, my client
4 testified he's willing to build a split level. We don't
5 know whether we're going to build a two or not. We are
6 willing to work with the community.
7 I think those questions as to the two story
8 nature of the house are speculative at best and very much
9 different.
10 THE CHAIRMAN: Sustained. In other words, there
11 will be no more questioning about the level. He stated
12 the client testified they don't know what kind of house,
13 and you're asking about a specific house. Any other
14 questions?
15 MR. ROTHWELL: No further questions.
16 THE CHAIRMAN: Did that bring up any redirect?
17 MR. HALPIN: Am I able to introduce a plat, a
18 plat of Countyside?
19 THE CHAIRMAN: Yes.
20 MR. HALPIN: If I can, I'd like to make this
21 Petitioner's 5.

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1 THE CHAIRMAN: I think Mr. Rothwell made a
2 comment he didn't need to look at it.
3 MR. ROTHWELL: Well, they may want to look at it.
4 THE CHAIRMAN I'm sorry. I misunderstood.
5 REDIRECT EXAMINATION
6 BY MR. HALPIN:
7 Q. If I could show you what is Petitioner's No. 5, I
8 believe, which is the plat of Countyside which you
9 referred to which was recorded in 1921, which lots are we
10 talking about here today?
11 A. We're lots 193 and 194. On the plat, they are
12 generally centered left to right and near the top of the
13 plat in kind of the north central portion of the plat.
14 MR. HALPIN: Thank you.
15 Q. We went over the topography with some questions.
16 Does the topography at this site as well as the fact that
17 it's undeveloped make this property unique, peculiar or
18 special?
19 A. Yes. The topography of the overall subdivision
20 really has only one strip of sloping land that's similar
21 to this.

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1 Although it certainly meets Baltimore County's
2 criteria for grading and for slope, it is steeper than the
3 bulk of this plat.
4 MR. HALPIN: Thank you. I have no further
5 questions at this time. Does the Board have any questions
6 of Mr. Dallas?
7 THE CHAIRMAN: Mr. Rothwell, did you have
8 anything further of Mr. Dallas after they submitted that?
9 It would only have been to, since he brought up about this
10 and about the uniqueness, did you have any questions
11 pertaining to that?
12 MR. ROTHWELL: No. I think that drew a picture
13 of the slope of that and he just testified that, which is
14 one of our main objections here, to the slope of the
15 property.
16 THE CHAIRMAN: Okay.
17 MR. HALPIN: I have no further questions at this
18 time.
19 THE CHAIRMAN: Since we have appellants that are
20 not represented with a lawyer, I would like to have quick,
21 like we call them closing briefs, closing statements.

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1 So what we are going to do is ask you to
2 summarize why you feel this petition should not be
3 granted, and you will likewise summarize why you feel it
4 should be granted.
5 MR. ROTHWELL: Well, in summary, like the
6 petition states, whether it's been accepted as evidence or
7 not, I really don't know, but if you read that petition,
8 those front statements are what the people that signed
9 that agree to and believe in.
10 Secondly, you can stand on the street, and
11 although we have testimony that it looks like an
12 undeveloped piece of property, so what? It's an
13 undeveloped piece of property.
14 It doesn't need a house there. A house doesn't
15 belong there. It's just not enough room, that particular
16 site. The fact that my property sloped up at a minimum of
17 two to one from my side yard up to the next property, and
18 it even goes up further, puts it way up on a hill, and any
19 house you put up there is just really going to, seriously,
20 I will be living in a fishbowl in my back yard.
21 Like I stated before, unless somebody puts in

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1 some thirty foot trees, which any landscape plan in the
2 world, there's nothing you can do there.
3 I enjoy the privacy of my back yard. Now, it's
4 fifty-eight feet of property which we are calling
5 undeveloped, but it's always been that house's side yard.
6 Like I said, the house was always the icon of the
7 neighborhood. It's what everybody that signed that
8 petition testified to, that we always looked at that house
9 as being, you know, that's the last piece of property that
10 shows a countrylike setting because it's open, has a big
11 side yard and swimming pool in the back.
12 It just like sets the stage for the whole
13 neighborhood. It always has and always will. Well, it
14 won't if it's allowed to be separated like it is.
15 The privacy issue just isn't going to go away, no
16 matter what kind of landscaping. If he puts up a two
17 story or a rancher, whatever, it's still up on the top of
18 the hill.
19 I'm in construction myself. I know what
20 motivates a builder. They put up as cheaply as possible,
21 get as much money as they can. The cheapest way is to go

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1 do it is go up in the air, and stick the thing up on the
2 ground. There's evidence showing the two story built on
3 5854, it's a two story house that sits four or five feet
4 out of the ground because he didn't want to move the dirt
5 away and put a full basement in.
6 I know builders will do this, because I work for
7 them. I'm a surveyor. And the same thing is going to
8 happen next door.
9 Lord knows when he starts building, what's going
10 to happen to my basement when all the water comes running
11 down the hill if he doesn't do proper sediment erosion
12 control, which is not an issue here, but will be an issue
13 if anything is built there.
14 I know what I had to go through to build my
15 house. I know the landscaping, that I had spent three
16 days designing landscaping so it wouldn't drain off onto
17 people down the hill from me. And I hauled a lot of dirt
18 out of there. I hauled a hundred loads of dirt so I can
19 sit my house here and make it compatible with the
20 neighborhood and sit it back into the hill like it does.
21 That house doesn't belong there. That's all

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1 there is to it. And the neighbors agree with me. I
2 pointed out this case that was given to me by the
3 gentleman -- and I still can't pronounce his name -- that
4 approved the variance to start with.
5 I assume he gave me those two court cases as a
6 justification for his action and used them as a precedent
7 saying, well, these are similar cases, and this is what I
8 base my decision on.
9 I assume that's the way it works. And when I
10 read through the one to the statement that says money is
11 not an issue, Paula Rush is the petitioner. She sold the
12 property for $15,000.
13 My appraiser says it's only worth $3000. She
14 made $12,000 on a piece of lot, presumably. She applied
15 for the variance. Why? To make more money.
16 The court case said money is not an issue. That
17 was the precedent set in that one court case.
18 Like I say, I only petitioned half the
19 neighborhood. I'm sure that if it goes any further, I
20 need to petition the rest of the neighborhood. I can get
21 twenty-five more signatures. The neighborhood basically

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1 don't want this to happen.
2 Like it's also stated on the petition, they may
3 have reasons beyond the reasons written there. I only
4 wrote down the reasons why they didn't want it that I
5 thought would be common to the whole neighborhood. That's
6 basically my case.
7 THE CHAIRMAN: Mr. Halpin?
8 MR. HALPIN: The appellant today has not met the
9 burden under the Baltimore County zoning regulations for
10 showing the variance is not to be granted.
11 Even so, we believe that we have shown that a
12 variance should be granted.
13 The plat of Countyside which I submitted, Section
14 304 of the Baltimore County zoning regulations, permits a
15 lot. A lot shall be duly recorded either by deed or a
16 validly approved subdivision prior to March 30, 1955.
17 That was 1921. Unfortunately, the office of
18 planning's view is that they didn't approve it, that we
19 can't do this without the variance, so that's why we are
20 coming forward today.
21 I find that the whole idea of NIMBY – not in my

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1 back year -- that people who signed this petition live on
2 fifty foot lots right now, and don't want a house to be
3 built on a fifty foot lot.
4 The lot is peculiar, unique and special. Mr.
5 Dallas testified as to the topographical features of the
6 land as well this is the only undeveloped property at this
7 time.
8 There's no other use for this property other than
9 a building lot. That is a special hardship, undue
10 hardship.
11 My client, who's not a huge builder, builds
12 fifteen or twenty homes a year, there is the practical
13 difficulty to him.
14 The variance, if granted, will comply with the
15 spirit and intent of the zoning regulations. Mr. Dallas
16 spoke about that. And Charter Homes has a history of
17 complying with building requirements.
18 The last comment, this variance, if granted, will
19 not injure the public health, welfare, or safety of the
20 community.
21 Mr. Dallas testified to that. Mr. Cunningham

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1 from the office of planning concurred and said that this
2 variance should be approved, and this complies with the
3 whole spirit and intent of the former Governor
4 Glendening's Smart Growth Program.
5 This is a in-fill lot. There's two, twenty-five
6 foot lots. There is no other use. There's utilities,
7 there's services there right now.
8 And for all those reasons, we believe that the
9 petitioner's request for the variance and the undersized
10 lot should be approved and the appellant's appeal should
11 be denied. That's all I have at this time. Thank you.
12 THE CHAIRMAN: What the Board is going to do,
13 we'll reconvene at a layer date and have a public
14 deliberation.
15 At that time, the members of the Board will
16 present their views on the evidence that was presented
17 before them based upon the law and come up with their
18 decision.
19 You will be notified of the hearing date when we
20 have the public deliberation. And with that, we are
21 adjourned.

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1 MR. HALPIN: Thank you very much.
2 (Hearing concluded.)
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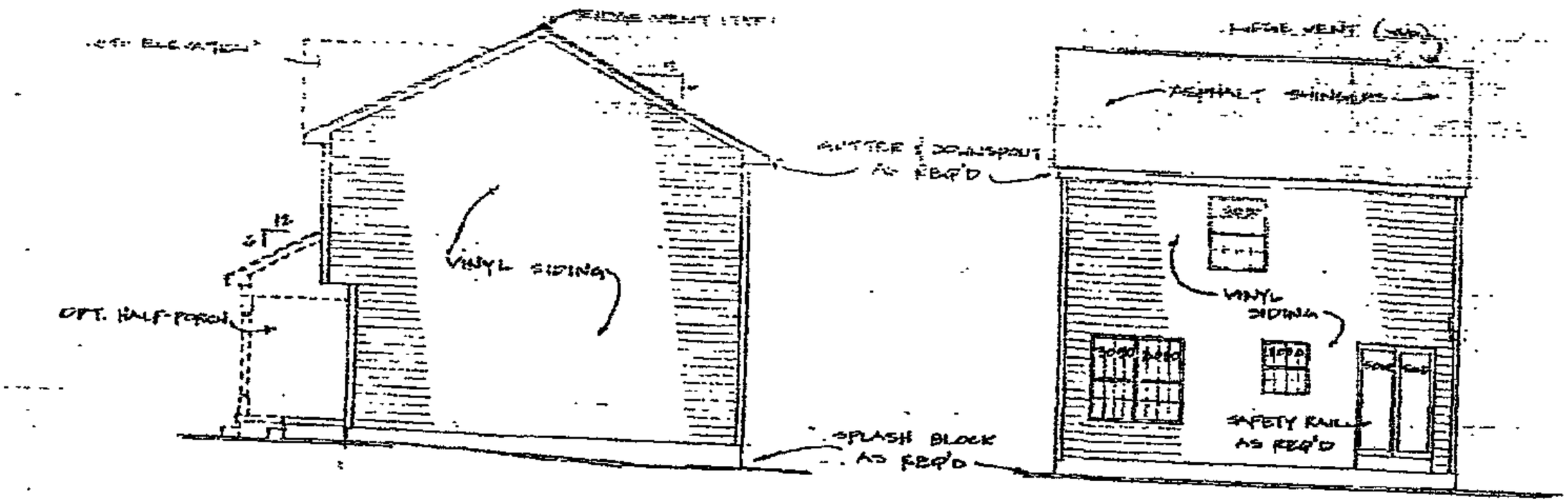
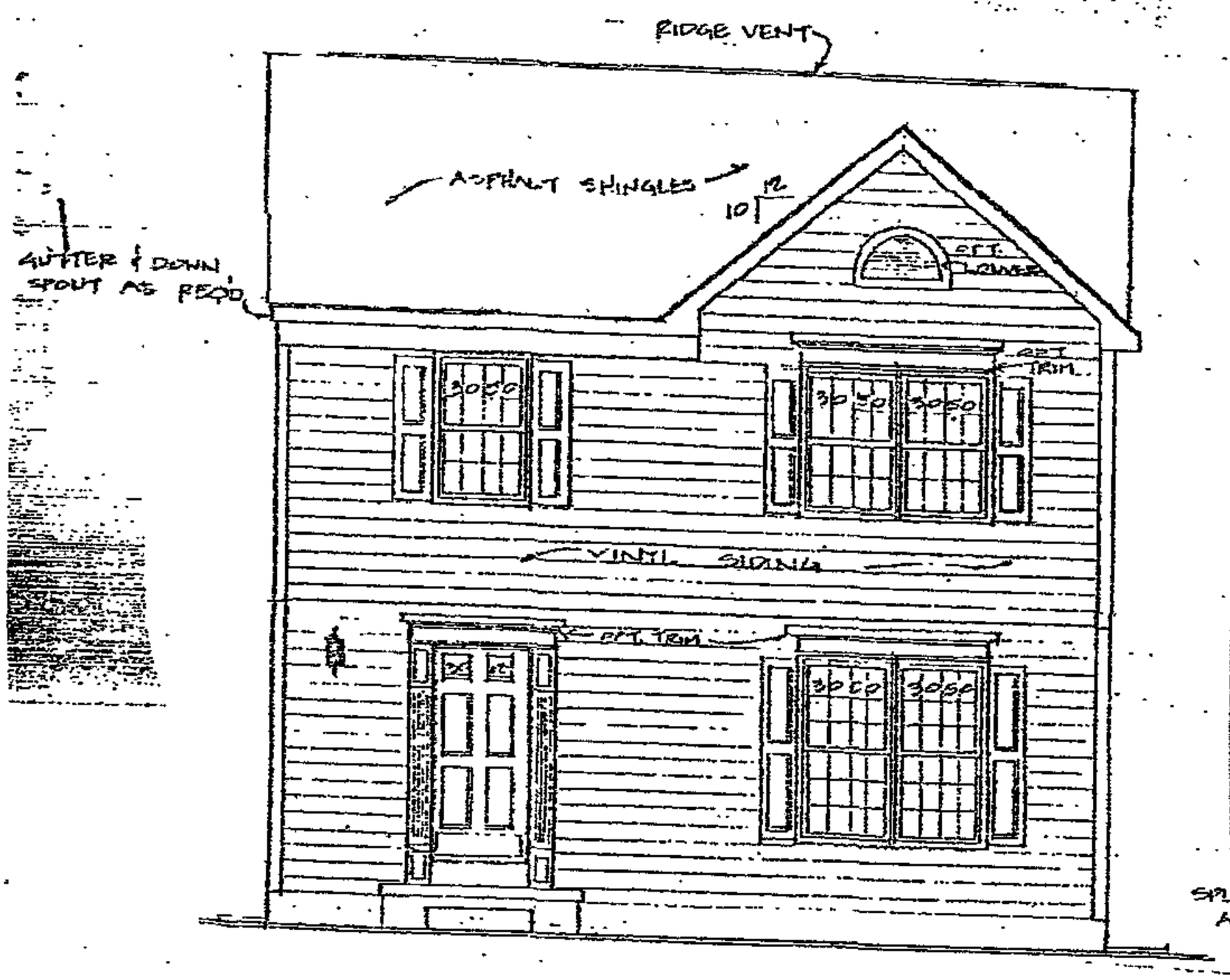
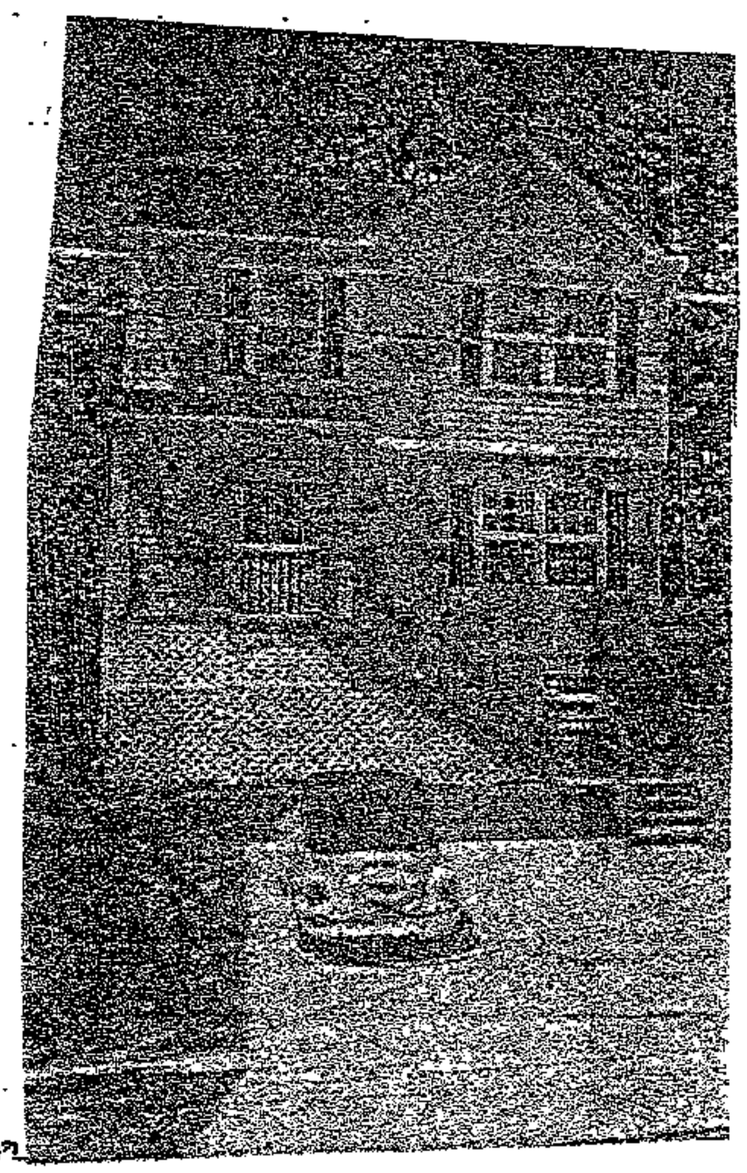


RIGHT SIDE ELEVATION
1/8"=1'-0"

REAR ELEVATION
1/8"=1'-0"



FRONT ELEVATION
1/4"=1'-0"



ACTUAL HOUSE
ELEV. PROPOSED
N. HAZELWOOD

N. HAZELWOOD AVE.
ELEVATION PLAN - (UNDERSIZED LOT)

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: March 26, 2002

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

SUBJECT: 5850 A North Hazelwood Avenue

INFORMATION:

Item Number: 02-365

Petitioner: Paula Rush

Zoning: DR 5.5

Requested Action: Variance

SUMMARY OF RECOMMENDATIONS:

The Office of Planning supports the petitioner's request to allow a lot width variance. The petitioner submitted a photograph depicting the house type that he would like to build. However, revised building elevations should be submitted to this office for review and approval prior to the issuance of any building permits.

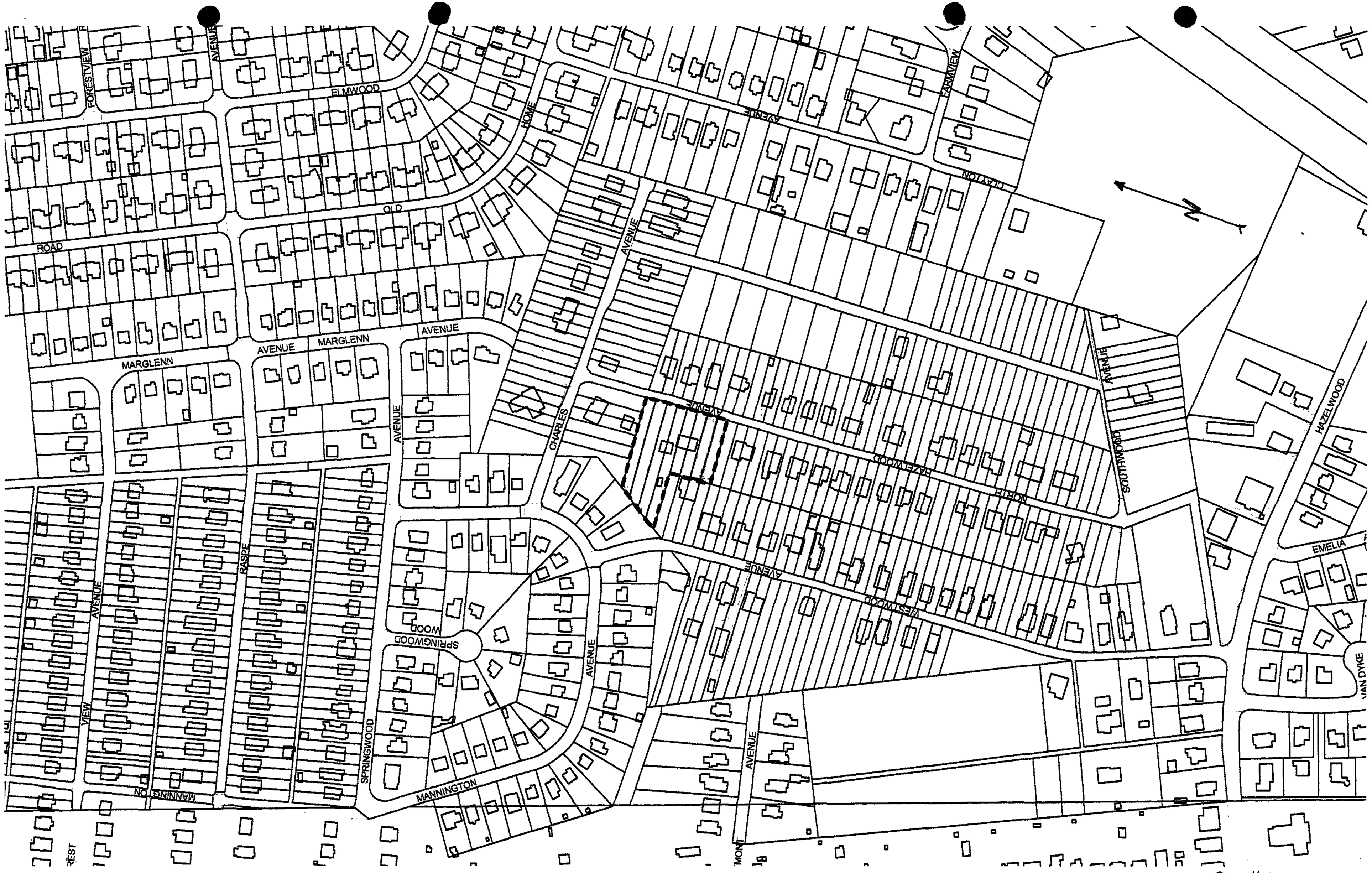
Prepared by: Mark A Cumings

Section Chief: Lynn Lorber

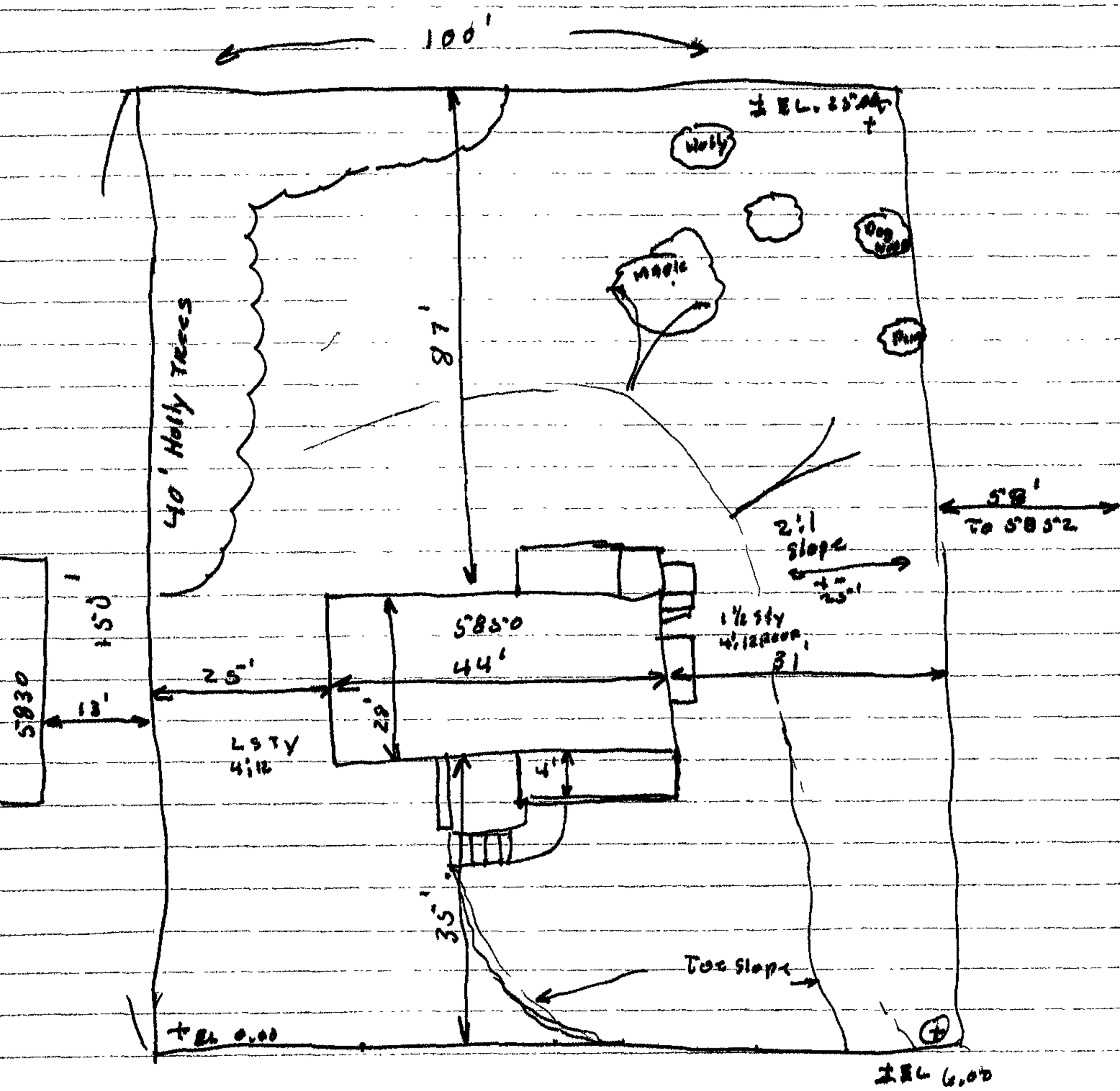
AFK/LL:MAC:

POT
1

PET #1 2/5/03


FORESTVIEW
AVENUE
ELMWOOD
HOME
AVENUE
FARMVIEW
CRAYTON
OLD
ROAD
AVENUE
MARGLENN
AVENUE
MARGLENN
AVENUE
CHARLES
AVENUE
AVENUE
HAZELWOOD
NORTH
SOUTHWOOD
AVENUE
HAZELWOOD
HAZELWOOD
EMELIA
AVENUE
WESTWOOD
VAN DYKE
AVENUE
RASPE
AVENUE
VIEW
SPRINGWOOD
WOOD
AVENUE
SPRINGWOOD
MANNINGTON
MANNING ON
AVENUE
MONT
REST

PET #3


100'
Holly
Dog Wood
Maple
Pine
40' Holly Trees
98'
58'
To S8 S2
2:1 slope
S8S0
44'
1½ sty
25'
31
S8S30
13'
29'
LSTY
4:12
4'
35'
Toe slope
+El. 0.00
+El. 6.00

PROT #1 2/5/03

To: The Baltimore County Zoning Commissioner

Subject: Case No. 02-365-A, Zoning Variance for 5850-A N. Hazelwood Avenue

We, the undersigned residents of Country Side, are opposed to the zoning variance granted for the property between 5850 N. Hazelwood and 5852 N. Hazelwood.

Although we agree with the below listed objections, we may have individual objections not listed.

(1) The property and improvements located at 5852 N. Hazelwood , with its side yards and its swimming pool, has always been an icon of the neighborhood.

To allow this variance would in effect destroy this icon, and thereby have a drastic negative impact on the ambiance of the neighborhood.

(2) Building a house between 5850 N. Hazelwood and 5852 N. Hazelwood will destroy the appeal of this neighborhood, which has always been a country-like setting in a convenient location.

(3) We should not have to sacrifice the ambiance of our neighborhood so that Paula Rush can realize approximately $12,000 profit as a result of selling this property as a building lot when, in fact, it is not a building lot according to the existing zoning.

PROT #2 (ID ONLY)
2/5/03

NAME	ADDRESS	COMMENTS
Thomas M Rutledge	5850 N. Hazelwood	
Mary L Kolb	5841 N Hazelwood	
Sandra L. Rose	5839 N. Hazelwood Ave.	
Wayne W. Rose	5839 N. Hazelwood Ave.	
Phillip J. Pack	5837 N. Hazelwood Ave.	There is already a present water run-off on to my property, development will increase the run-off and increase the present traffic flow onto North Hazelwood Ave.
Gloria J. Pack	5837 N. Hazelwood Ave	Another house on this property is not compatible to our neighborhood. It ruins the appearance of a settled neighborhood. The lot is not big enough to put another house there. It is a risk that we would have to spend more money for our pipes and sewage problems. Our neighborhood should not suffer and become cluttered for the sake of a profit for Paula Rush.
Dolores P. Allanique	5835 N. Hazelwood Ave.	The addition of another house to the property opposite ours will certainly ruin the looks of the neighborhood leading to its cluttered look.

NAME	ADDRESS	COMMENTS

Nancy S Kinner 5835 N Hazelwood Ave

I've enjoyed a pastoral view from my front window onto the large lot with one brick rancher in the middle. If another house is built, the view from my home will be much more urban - trees will have to be removed. The value of my home and lot will be deminished because the view and extra traffic on this street will be adversely affected

Tony & Marlene D'Ambrosio · 5831 N Hazelwood Ave

We do not wish to see this Blight on our neighbood built. We Moved here because we liked how the neighbood looked at that time.

Marlene D'Ambrosio - 5831 N. Hazelwood Ave.

Eunice J. Lattek - 5823 N. Hazlwood Ave.

I would rather not see another home on this Avenue, it is not fair to owners of 5850 or 5852.

NAME	ADDRESS	COMMENTS
Tomas Lattik	5821. N. Hazelwood ave.	
Paula Aylor	5819. N. Hazelwood Ave.	
ROBERT ASPELMEIER	5817 N. HAZELWOOD AVE.	
TROY SAULS	5813 N HAZELWOOD AVE.	
Rosemary Baird	5822 N. Hazelwood Ave.	
Eden Cappollini	5824 N. Hazelwood Ave	
DOMINICK CAPPOLLONI	5824 N. Hazelwood Ave	
GEORGE THORNTON	5826 N. HAZELWOOD AVE	
Genevieve Thornton	5826 N. Hazelwood Ave.	
Dennis Beecy	5830 N. HAZELWOOD AVE	
Barbara L. Beecy	5830 N. HAZELWOOD Ave.	
MICHAEL J. CONNORS	5828 N. HAZELWOOD AVE	
WANDA A. CONNORS	5828 N. HAZELWOOD AVE	
Judy McDermott	5829 N. Hazelwood Ave	
Dennis McDermott	5829 N. Hazelwood Ave	
~~[illegible]~~	5852 N HAZELWOOD AVE.	
Jean M. Rothwell	5850 N. Hazelwood Ave.	

COMPARABLE SALES

Borrower/Client Thomas M. Rothwell File No. S206W20S
Property Address 5850 North Hazelwood Avenue
City Baltimore County Baltimore State MD Zip Code 21206
Lender Thomas Rothwell

5623 Daybreak Terrace

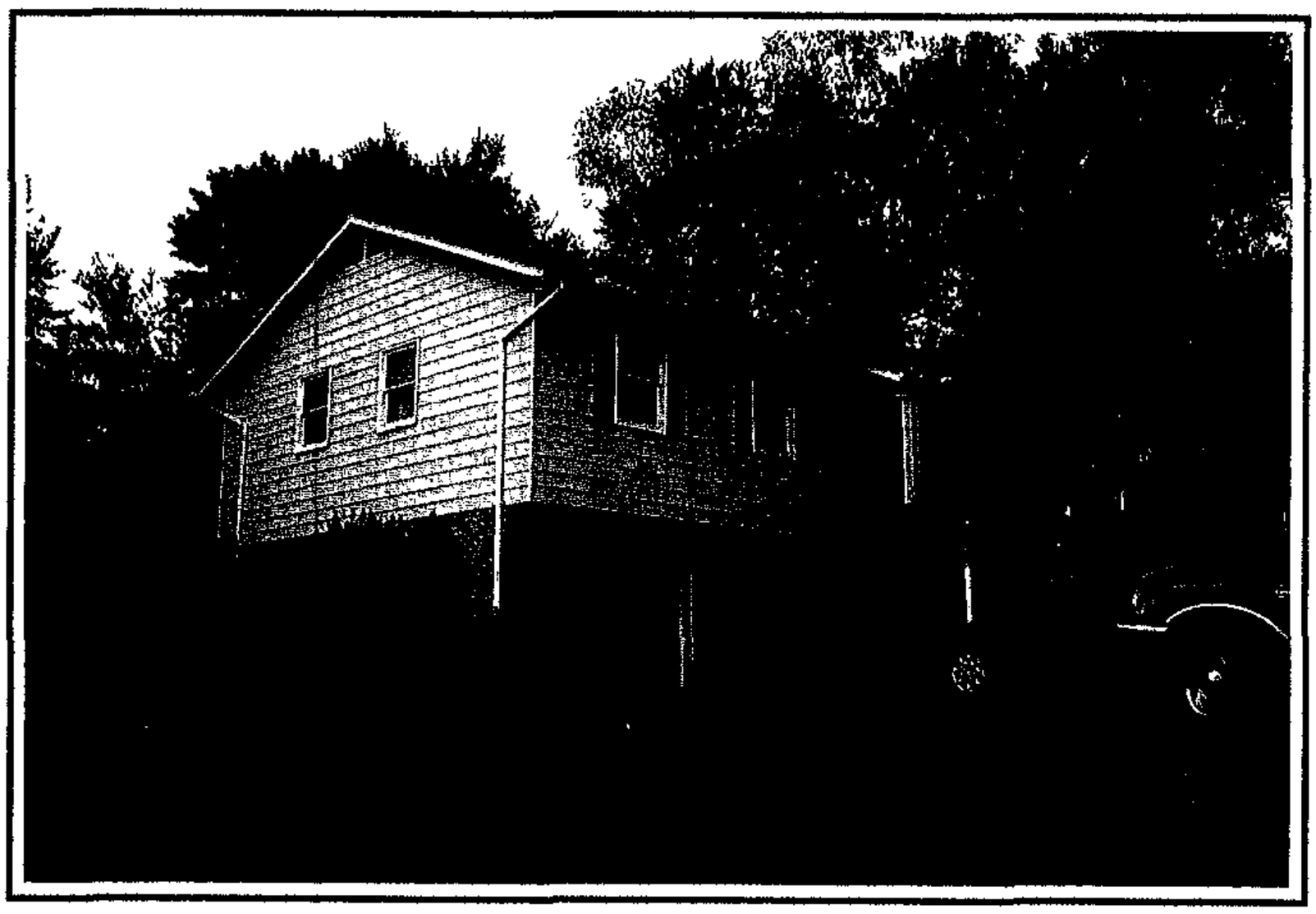
12 Morning Star Court

5852 North Hazelwood Avenue

PROT #3A 2/5/07 AP3A

EXTERIOR OF SUBJECT

Borrower/Client
File No. S206W20S
Property Address
City County State Zip Code
Lender



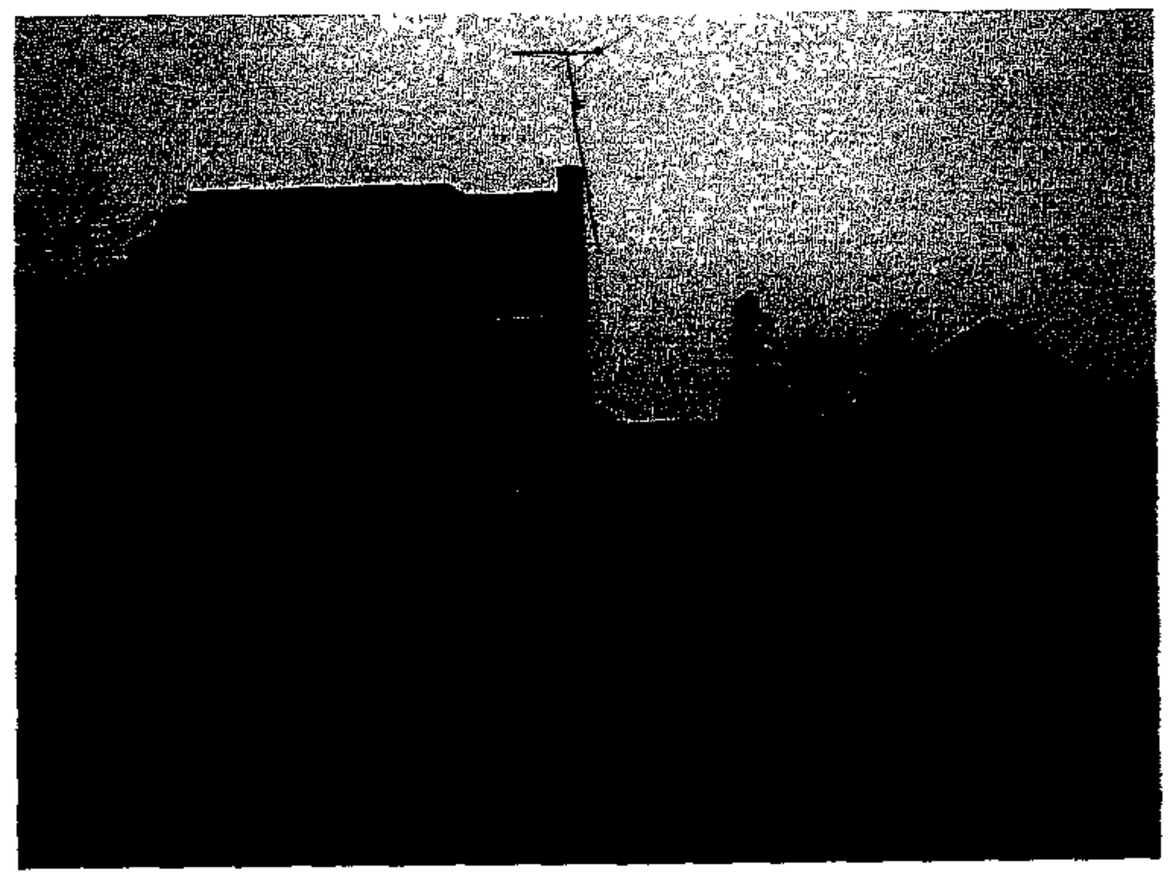
FRONT

REAR

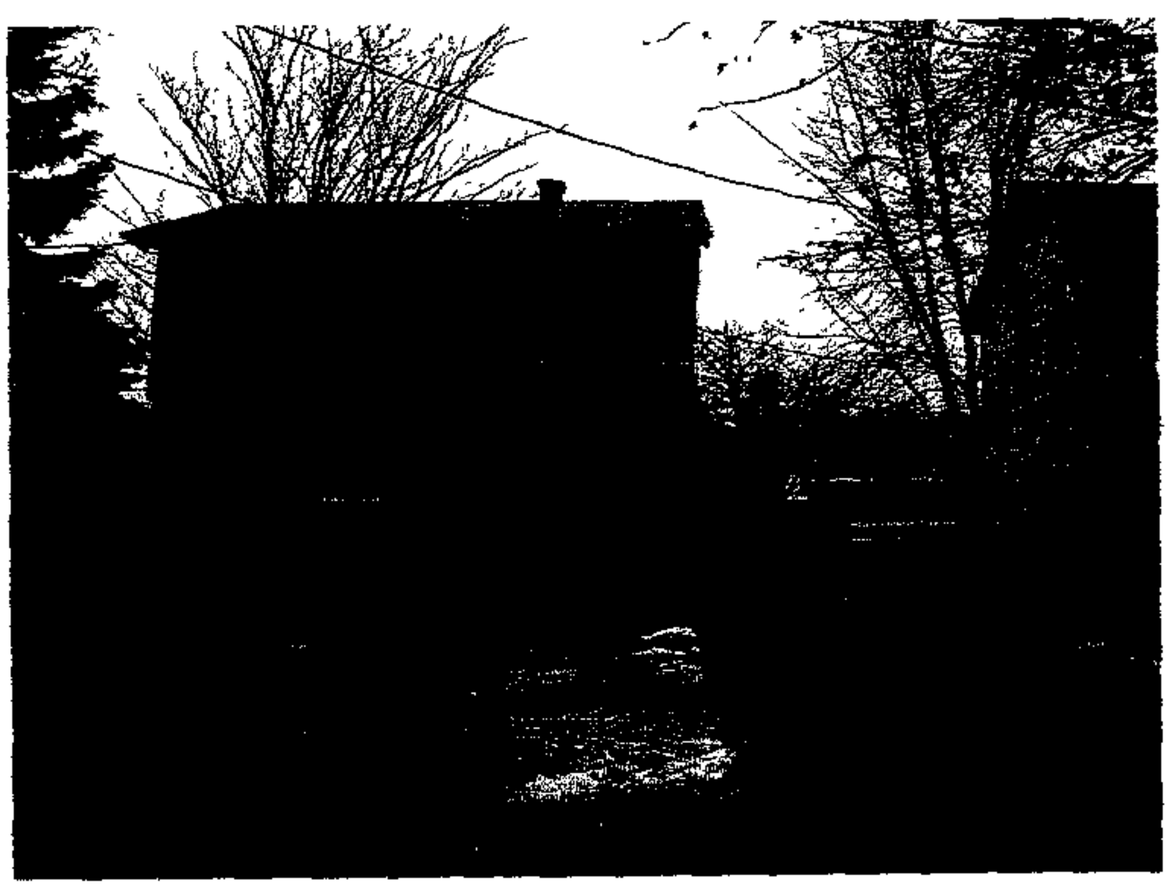
STREET SCENE

PROT #3B 2/5/07 AP3B

5810 N. Hazelwood



5814

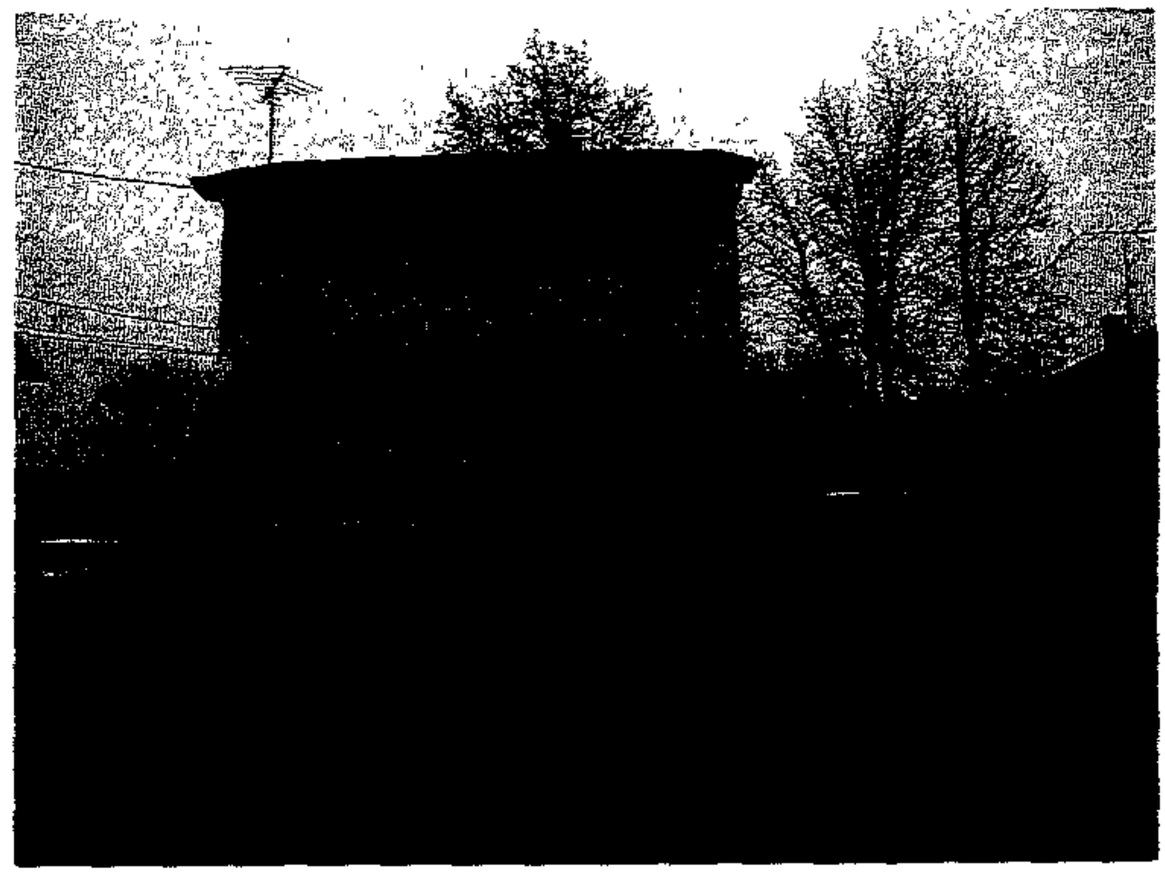


5816

5818

Petr
~~Prot~~ #4A

5820



5822

5824

5826

Petr
~~Pro7~~ #4B

5828

5830

5850

5850 A.

Petr.
~~Prot~~ #4C

④

5852

5854

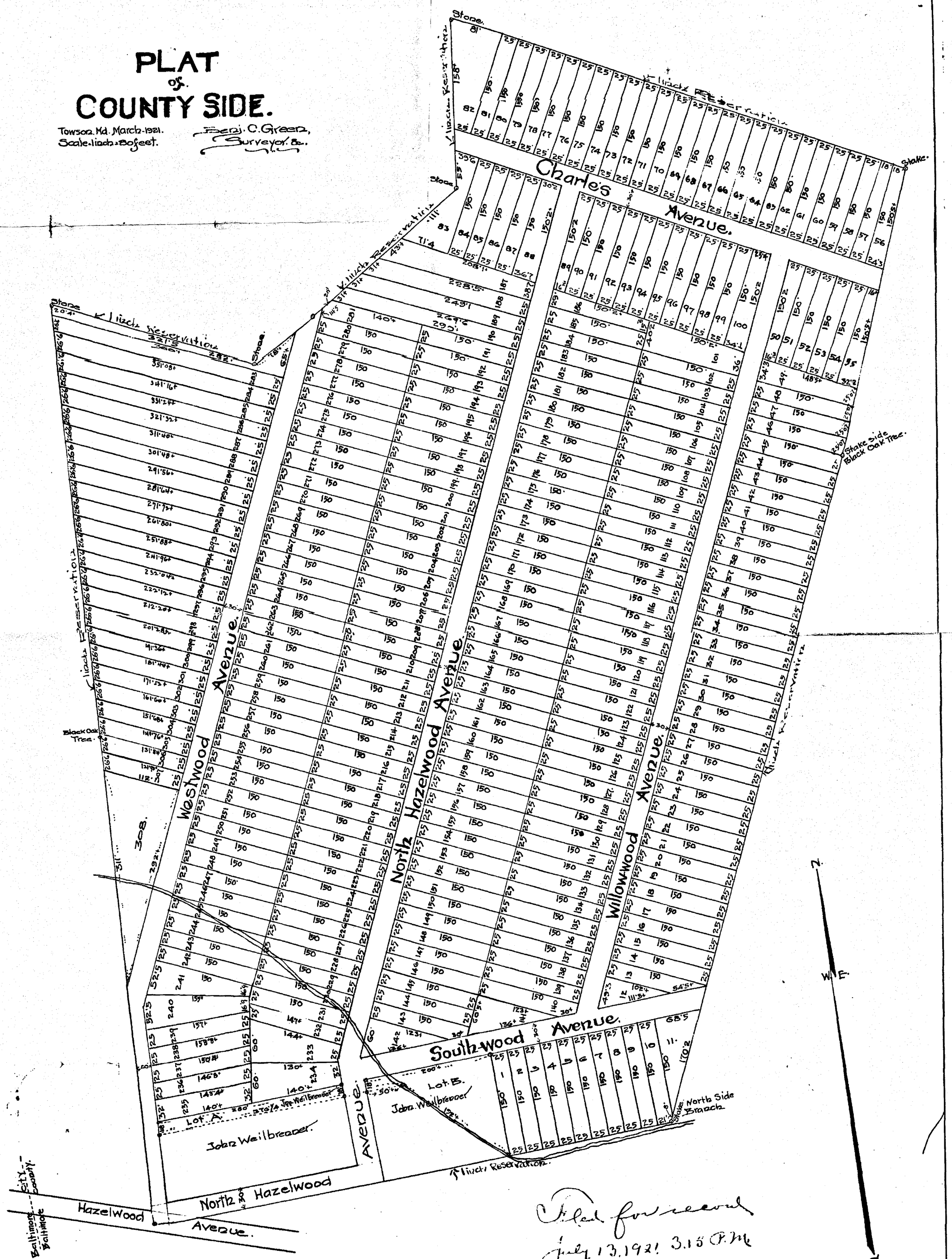
PROT #4D

W.F.C. 7-3

PLAT
of
COUNTY SIDE.

Towson, Md. March-1921.
Scale-1 inch=80 feet.

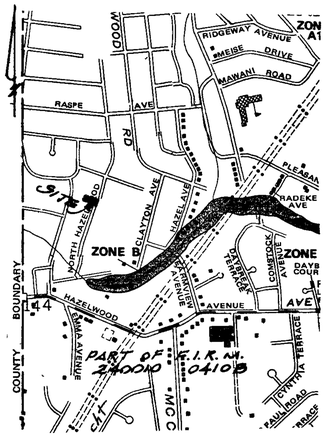
Benj. C. Green,
Surveyor &c.

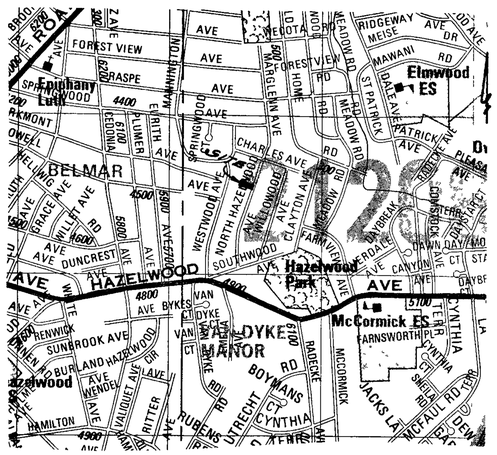


Filed for record
July 13, 1921 3.15 P.M.
Test: Wm P. Cole
Clerk

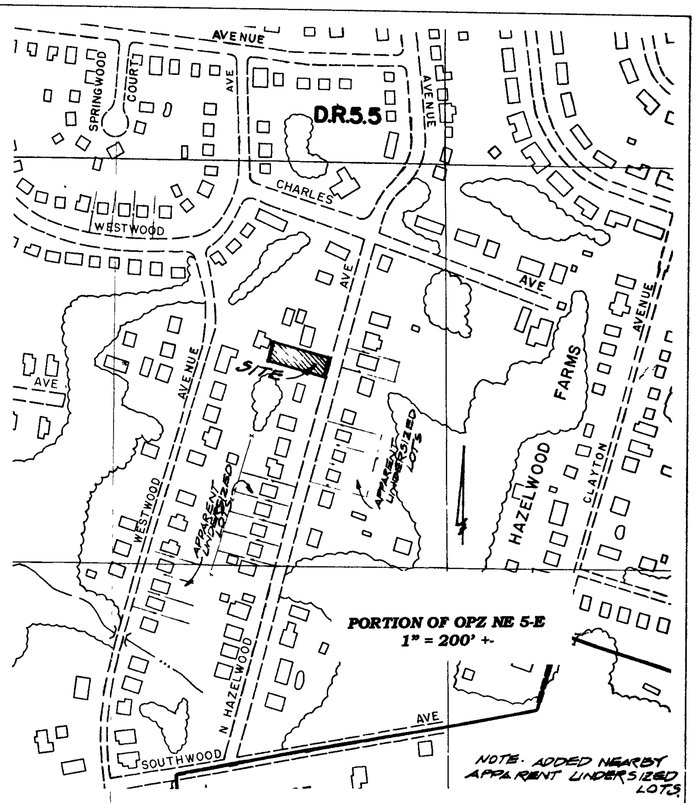
NOTES

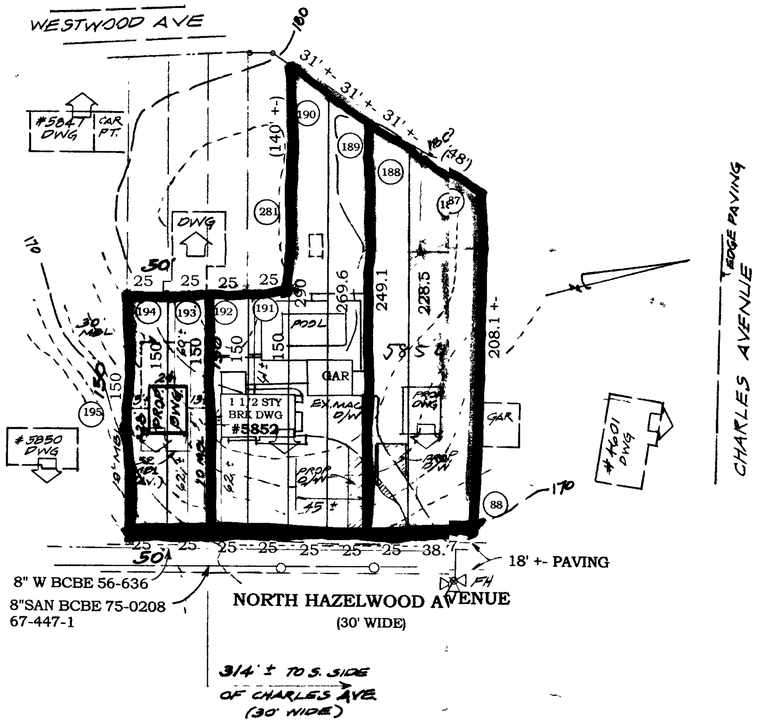
1 NO KNOWN PRIOR ZONING CASE HISTORY
2. OWNERSHIP·
   DEED REFERENCE- 13779/273 ETC.
   PAULA RUSH
   5852 HAZELWOOD AVENUE
   BALTIMORE, MD 21206
   PHONE: C/O CHARTER HOMES
   410-480-3213
3 PROPERTY INFORMATION:
   TAX MAP 89 PARCEL 618 LOTS 193 & 194 "COUNTYSIDE" 7/3
   ACCT. NO. 1413041253
4. AREA OF SUBJECT LOTS 7500 SF+- OR 0.17 AC.+-
5. PUBLIC WATER AND SEWER AS REFERENCED HEREON.
6. ZONING OF SITE AND SURROUNDING PROPERTIES: D.R.5.5
7 SITE LIES OUTSIDE CBCA PER MAP NO. 89.
8. SITE LIES WITHIN FLOOD ZONE C PER F.I.R.M. NO. 240010 410 B.
9. 2 PROPOSED PARKING SPACES ON SITE.





VICINITY MAP 1"=1000'





365

J.S. DALLAS, INC.
Surveying & Engineering
13523 Long Green Pike
Baldwin, MD. 21013
(410) 817-4600

SITE PLAN TO ACCOMPANY PETITION FOR ZONING VARIANCE
AND TO APPROVE AN UNDERSIZED LOT
(LOTS Nº 193 & 194)

#5850 A N. HAZELWOOD AVENUE

14 TH ELEC. DIST. 6 TH COUNC. DIST. BALTIMORE COUNTY, MD.
SCALE: 1"= 50' FEBRUARY 21, 2002

j.o. # EN-15 (00-836)

NOTES

1. NO KNOWN PRIOR ZONING CASE HISTORY
2. OWNERSHIP:
   DEED REFERENCE- 13779/273 ETC.
   PAULA RUSH
   5852 HAZELWOOD AVENUE
   BALTIMORE, MD 21206
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   TAX MAP 89 PARCEL 618 LOTS 193 & 194 "COUNTYSIDE" 7/3
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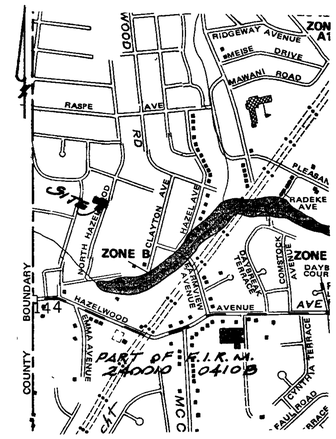
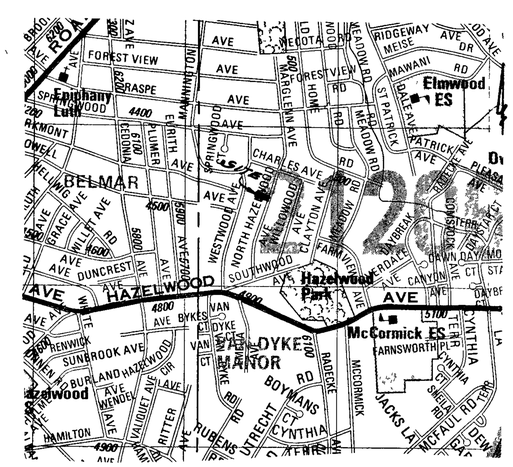
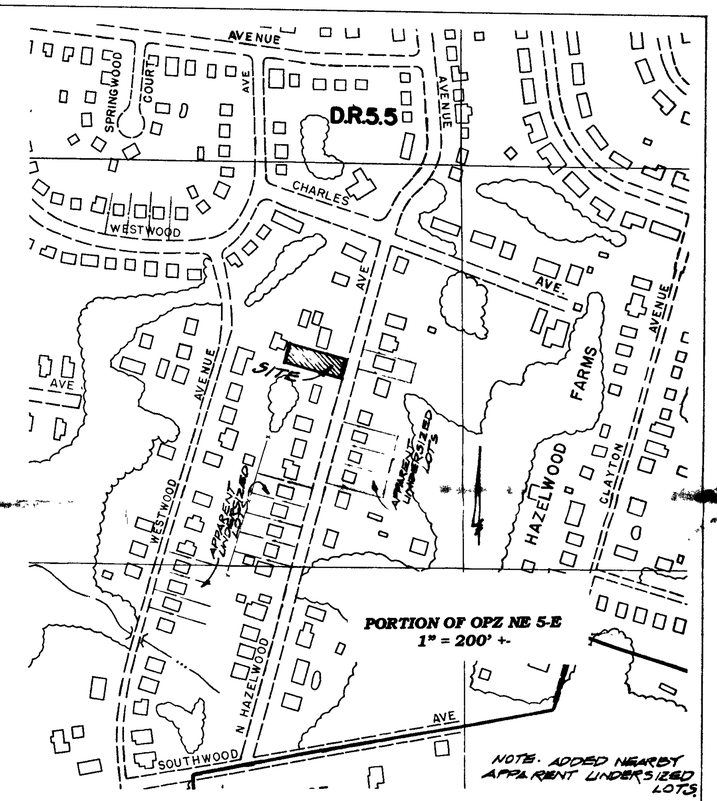
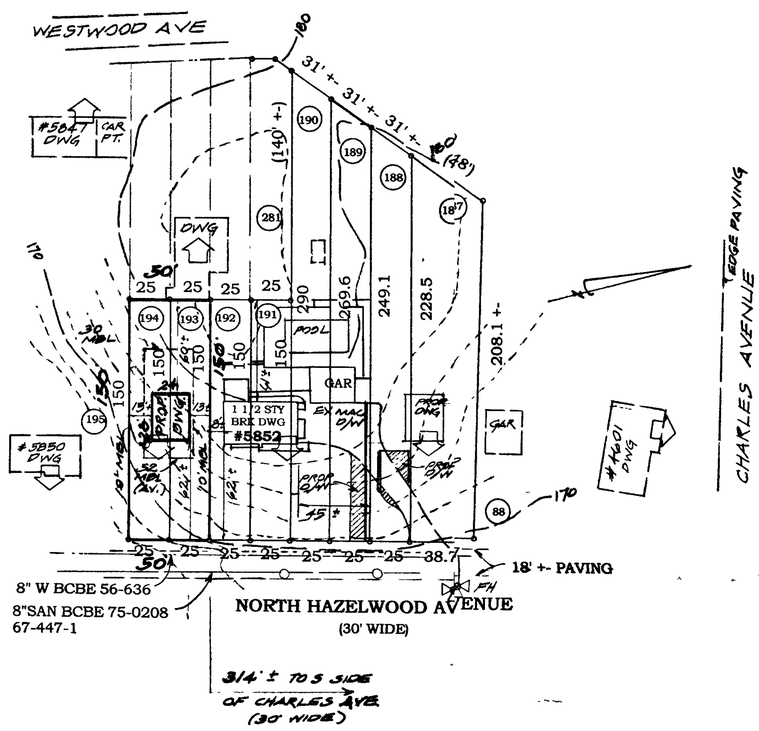
9. 2 PROPOSED PARKING SPACES ON SITE.





VICINITY MAP 1"=1000'





365

Pet. Ex. #1

J.S. DALLAS, INC.
Surveying & Engineering
13523 Long Green Pike
Baldwin, MD. 21013
(410) 817-4600

SITE PLAN TO ACCOMPANY PETITION FOR ZONING VARIANCE
AND TO APPROVE AN UNDERSIZED LOT
(LOTS Nº 193 & 194)

#5850 A N. HAZELWOOD AVENUE

14 TH ELEC. DIST. 6 TH COUNC. DIST. BALTIMORE COUNTY, MD.
SCALE: 1"= 50' FEBRUARY 21, 2002

j.o. # EN-15 (00-836)