OFFICE WED FOR FILMS.

3 / 8/04

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IN RE: PETITION FOR VARIANCE
S/S of Martell Avenue, 125 ft. W
centerline of East Avenue
12th Election District
7th Councilmanic District
(Lot 63, Martell Avenue)

Dorothy & Samuel Fanzone Petitioners

- * BEFORE THE
- * DEPUTY ZONING COMMISSIONER
- * OF BALTIMORE COUNTY
- * CASE NO. 04-280-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 owners of the subject property, Dorothy and Samuel Fanzone. The Petitioners are requesting variance relief for property located at Lot 63, Martell Avenue in the eastern area of Baltimore County. The variance request is from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a lot width of 50 ft. in lieu of the required 55 ft. and to approve an undersized lot with an existing dwelling per Section 304 of the B.C.Z.R.

The property was posted with Notice of Hearing on January 30, 2004, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on February 3, 2004 to notify any interested persons of the scheduled hearing date.

Applicable Law

Section 307 of the B.C.Z.R. - Variances.

"The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to the public health, safety and general welfare. They shall have no power to grant any other

variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance."

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: A ZAC comment from the Office of Planning dated December 23, 2003 opposing Petitioners' request, a copy of which is attached hereto and made a part hereof.

Interested Persons

Appearing at the hearing on behalf of the variance request was Vincent Moskunas, Site Rite Surveying Inc, which company prepared the site plan for the Petitioner. By agreement, the Protestants did not have to appear at the hearing. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

Testimony and evidence indicated that the property, which is the subject of this variance request, consists of approximately 12,100 sq. ft., zoned D.R.5.5 and is improved by an existing home. This property is Lot 63 of the subdivision known as the "Justus Martell Property" recorded in the Land Records in June 1910. See Petitioner's Exhibit No. 2. The lot, as laid out, is 50 ft. wide. The DR 5.5 zoning imposed on the property requires a 55 ft. wide lot and thus the request for zoning relief.

This is a companion case to Case Nos. 04-279-A, 04-274-A and 04-275-A which involve the identical request for relief for Lots 64, 62 and 61. Lots 61, 62 and 63 are vacant and the three proposed homes on the three vacant lots meet all County requirements except that the lots are undersized per Mr. Moskunas. By agreement of the Petitioner and Protestants, all testimony

and evidence given by either side in this case also applies equally in Case Nos. 04-279-A, 04-274 and 04-275.

Mr. Moskunas initially noted that these lots have been in the same ownership since 1946. However, in testimony and by means of deeds submitted during the hearing for Case No. 04-274, it appears that significant changes in title have occurred on these lots. Per Mr. Moskunas, Joseph and Susan Fanzone have owned Lots 61 and 62 since 1946. However, Joseph died subsequently and Susan sold these two lots to V&W Homes LLC after the petition was filed. Samuel and Dorothy Fanzone have owned Lots 63 and 64 since 1946. However, both Samuel and Dorothy have died subsequently and their estate is being handled by their son Carmen Fanzone, their personal representative. Apparently, Carmen Fanzone transferred Lot 64 to himself and sold Lot 63 to V&W Homes LLC after the petition was filed. Consequently, at the time of the hearings, V&W owned Lots 61, 62 and 63 while Carmen Fanzone owns Lot 64 with the existing home.

Mr. Moskunas indicated that pubic sewer connections have been planned for each lot, (see sewer drawing from Baltimore County, Petitioners' Exhibit No. 3) and that access to public water and sewer removes any concern that the undersized lots will not be large enough to accommodate well and septic systems.

The Office of Planning opposes the requested variances based upon the fact that Lots 61 & 62 and lots 63 & 64 are owned by the same persons. We now know that V&W Homes owns Lots 61, 62 and 63. The Office of Planning's initial argument that the owner merely needs to reconfigure the two lots to arrive at a lot which will not require a variance is extended to include the three lots owned by V&W Homes. Thus, Planning sees no hardship or practical difficulty on the part of the owner, which could form the basis of a variance.

apparently some consultation with the County agencies, the Protestants decided to oppose the variances as shown by their March 4, 2004 letter included in the file.

Findings of Fact and Conclusions of Law

As stated to Mr. Moskunas at the hearing, by definition there can be no practical difficulty or hardship if he finds a way to do what he wants without a variance. Exhibit No. 9 shows such a plan. The Protestants, for whatever reason, did not accept his proposal to support the petitions of variance so that the three new home would align along Martell Avenue. Consequently, I must deny the variances. Petitioners' Exhibit No. 9 shows that by rearranging lot lines and positioning homes there is a means to comply within the zoning regulations and not require any variances. Thus, there is no unreasonable hardship or practical difficulty. addition, regarding practical difficulty, V&W Homes owns three adjacent lots. As the Office of Planning indicates and Mr. Moskunas confirms, the owner can meet the regulations by reconfiguring these lots.

Finally, I note that the petition requests approval of the undersize lot pursuant to Section 304 of the Baltimore County Zoning Regulations. It has been this office's consistent position that Section 304 is an alternative route for approval of undersized lots. If a lot qualifies under Section 304 then nothing further is needed. However, Section 304.1 specifically requires that the owner of the lot does not own sufficient adjoining land to conform to the width and area requirements. I find that in this case the owner does own sufficient land to comply with the width regulations and consequently is not entitled to approval under Section 304. Also note that the Zoning Commissioner's Policy Manual refers to the "six year rule" for properties considered for approval under Section 304 of the Baltimore County Zoning Regulations. This policy addresses the practice of some applicants who, prior to consideration of undersized adjoining Nots, nominally transfer title to a third party prior to the hearing, which would then allow them to

claim that they have no interest in adjoining land, no means of combining lots, and, therefore, meet the requirement of not having sufficient adjoining land. I find that the "six year rule" of said Policy Manual is applicable to these properties.

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 Petitioners, I find that the Petitioners' variance request should be denied.

THEREFORE, IT IS ORDERED, this ______ day of March, 2004, by this Deputy Zoning Commissioner, that the Petitioners' request for variance from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a lot width of 50 ft. in lieu of the required 55 ft. and to approve an undersized lot with an existing dwelling per Section 304 of the B.C.Z.R., be and is hereby DENIED; and

IT IS FURTHER ORDERED, that in any future petition for approval of this property as an undersized lot, that the zoning history shall include the finding that the "six year rule" of Section 304 of the Zoning Commissioner's Policy Manual applies to this property.

IT IS FURTHER ORDERED, that any appeal of this decision must be made within thirty (30) days of the date of this Order.

JOHN V. MURPHY

DEPUTY ZONING COMMISSIONĚR

FOR BALTIMORE COUNTY

JVM:raj

Zoning Commissioner

Suite 405, County Courts Building 401 Bosley Avenue Towson, Maryland 21204 Tel: 410-887-3868 • Fax: 410-887-3468



Baltimore County

James T. Smith, Jr., County Executive Lawrence E. Schmidt, Zoning Commissioner

March 19, 2004

Vincent Moskunas Site Rite Surveying, Inc. 200 E. Joppa Road, Room 101 Towson, Maryland 21286

> Re: Petitions for Variance Case Nos. 04-279-A & 04-280-A Property: Lot #64 & Lot #63, Martell Avenue

Dear Mr. Moskunas:

Enclosed please find the decisions rendered in the above-captioned cases. The petitions for variance have been denied 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,

⅓ohn V. Murphy

Deputy Zoning Commissioner

JVM:raj Enclosure

cc: Carmen Fanzone 11 Hunt Farms Court Sparks, MD 21152 Donald S. Miller 1817 West Avenue Baltimore, MD 21222

Martha & William Kimmich 7128 Martell Avenue Baltimore, MD 21222





Betition for Variance

to the Zoning Commissioner of Baltimore County

ne Zoming	for the property located at 101 63 May 7211 Avenue	
	for the property located at VVI 65 / VVVVI VV / VVVV	
	which is presently zoned DPSS	

I/We do solemnly declare and affirm, under the penalties of

perjury, that I/we are the legal owner(s) of the property which

This Petition shall be filed with the Department of Permits and Coveropment 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)

width of 50 ft. in lieu of the required 55 ft. and to approve an undersized 10th per Section 344 BCZR.

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty) (a) the subject property is and has been a lot of record on a plat entitled "Justus Martell" recorded 4/82 since 1910. (b) the configuration of the lot hinders compliance with the Baltimore County Zoning Regulations (B.C.Z.R.); thus, strict compliance with such regulations would unreasonably prevent the use of the property as permitted. (c) the lots in the surrounding area are consistently 50' wide, with an existing single family dwelling; therefore, the relief being requested is in strict harmony with the spirit and intent of the B.C.Z.R.

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.

is the subject of this Petition. Contract Purchaser/Lessee: <u> Legai Owner(s):</u> Fauzone by Juscon Wayne Tanzone Name - Type or Print Name - Type or Print Warne Signature Signature Fauzone By Address Telephone No. Name - Prope of Print City State Zip Code Signature Parms Cowf **Attorney For Petitioner:** Address Telephone No. Name - Type or Print Zip Code City State Representative to be Contacted: Signature Survening Compan Address Name K00M [0] Telephone No. Address Telephone No. MD 21286 NOSMOI State City Zip Code State Zip Code OFFICE USE ONLY ESTIMATED LENGTH OF HEARING No. 1 04-280-A UNAVAILABLE FOR HEARING Date Reviewed By

ZONING DESCRIPTION FOR #7131 MARTELL AVENUE

BEGINNING at a point on the south side of Martell Avenue which is 50 feet wide at the distance of 125 feet west of the centerline of East Avenue which is 50 feet wide. Being Lot No. 63 in the subdivision of Justus Martell as recorded in Baltimore County Plat Book No. 4, folio No. 82, containing 12,100 square feet. Also known as #7131 Martell Avenue and located in the 12th Election District, 7th Councilmanic District.

OF WAR OF BUILDING BU

Michael V. Moskunas

Site Rite Surveying, Inc. 200 E. Joppa Road Suite 101 Towson MD 21286 (410) 828-9060

BALTIMORE COUNTY, MARYLAND OFFICE OF BUDGET & FINANCE No. 3102	
MISCELLANEOUS RECEIPT DATE ACCOUNT	145THESS ACTUAL 11NE 18N 2/00/2003 12/00/2003 09/25:41 1 11 USO) WALKIN JRIC JOR
AMOUNT \$ //C.O.	THE IPT IN 1676.04 12/00/2005 UPLN Dept 5 528 ZUMING MERIFICATION CR NO. 031029 Rocet Fot \$115.00
RECEIVED FROM:	koltimore County, Haryland
FOR:	
DISTRIBUTION WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER	CASHIER'S VALIDATION

NOTICE OF ZONING HEARING

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

Case: #04-280-A Lot 63, Martell Avenue S/side Martell Avenue Lot 63 12th Election District 7th Councilmanic District Legal Owner(s): Samuel Fanzone Variance: to permit a lot width of 50 feet in lieu of the required 55 feet and to approve an undersized lot. Hearing: Wednesday, February 18, 2004 at 2:00 p.m. in Room 407, County Courts Building, 401 Bosley Avenue.

LAWRENCE E. SCHMIDT
Zoning Commissioner for
Baitimore 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) 8878391.

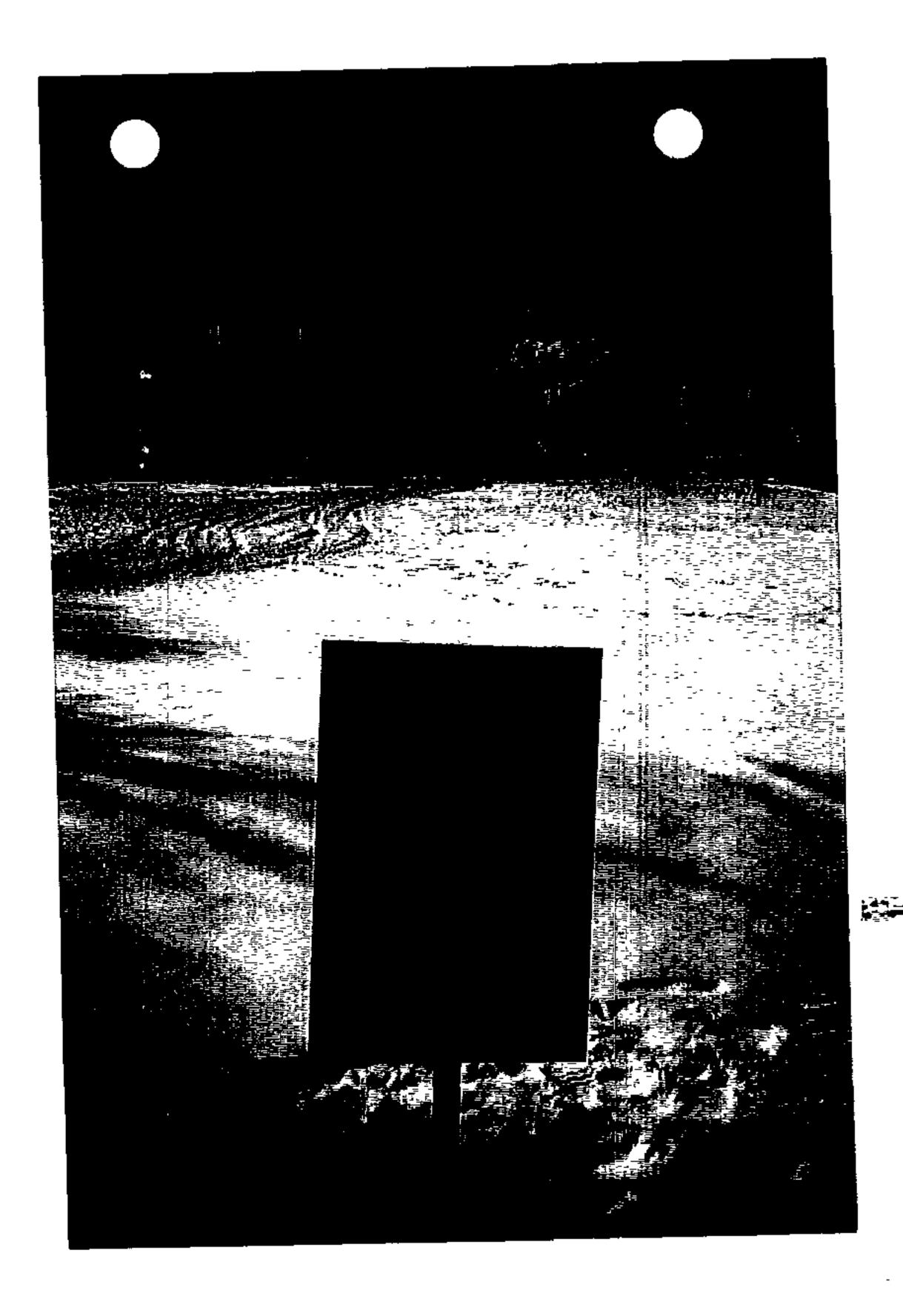
3391.

JT/2/604 Feb. 3 C647958

CERTIFICATE OF PUBLICATION

24,2004
THIS IS TO CERTIFY, that the annexed advertisement was published
in the following weekly newspaper published in Baltimore County, Md.,
once in each ofsuccessive weeks, the first publication appearing
on $\frac{23}{3}$, $\frac{2004}{}$.
The Jeffersonian
☐ Arbutus Times
☐ Catonsville Times
☐ Towson Times
Owings Mills Times
□ NE Booster/Reporter
☐ North County News
S. Wilkings

LEGAL ADVERTISING



CERTIFICATE OF POSTING

Baltimore County Department of

County Office Building, Room 111

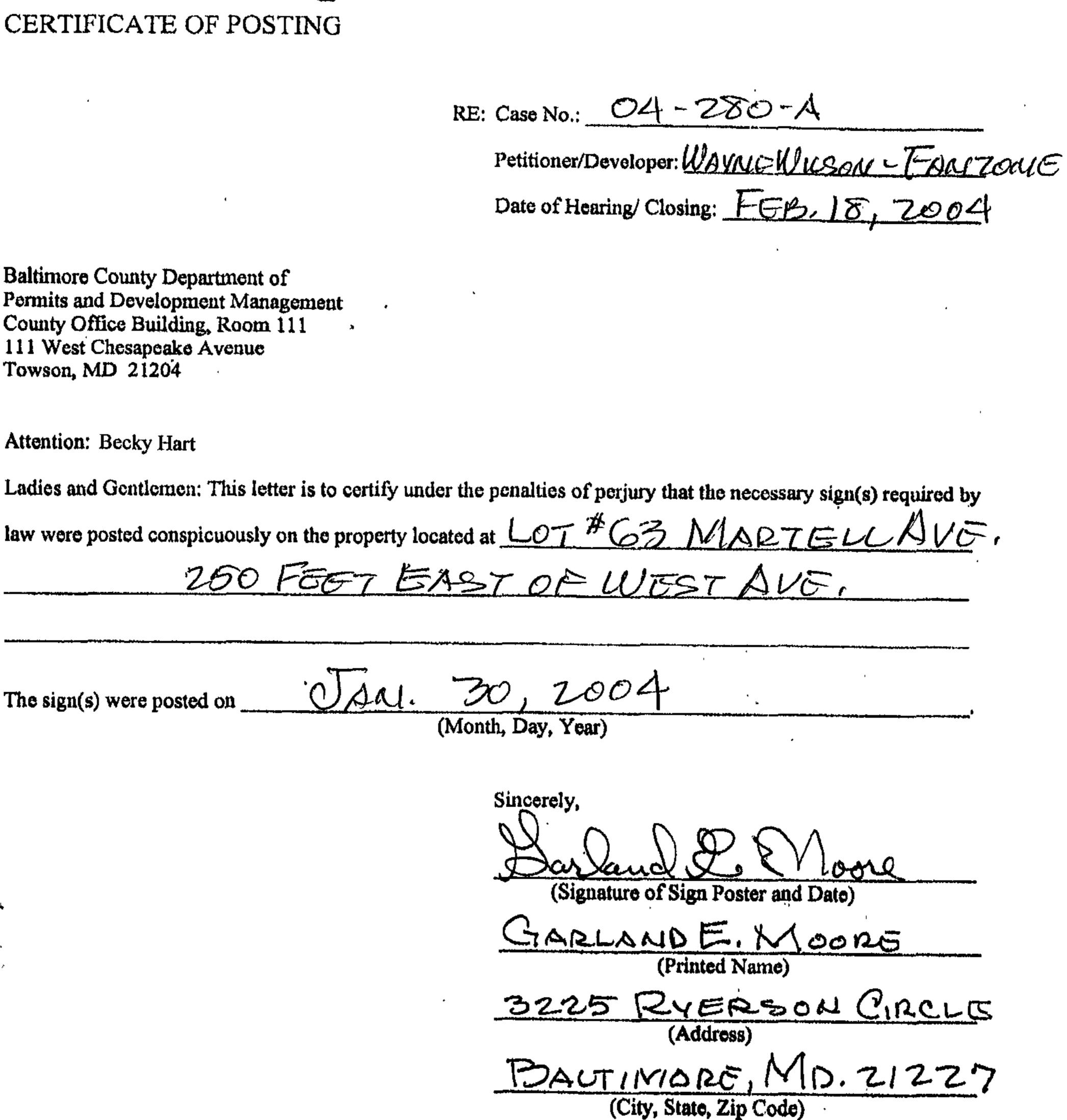
111 West Chesapeake Avenue

Towson, MD 21204

Attention: Becky Hart

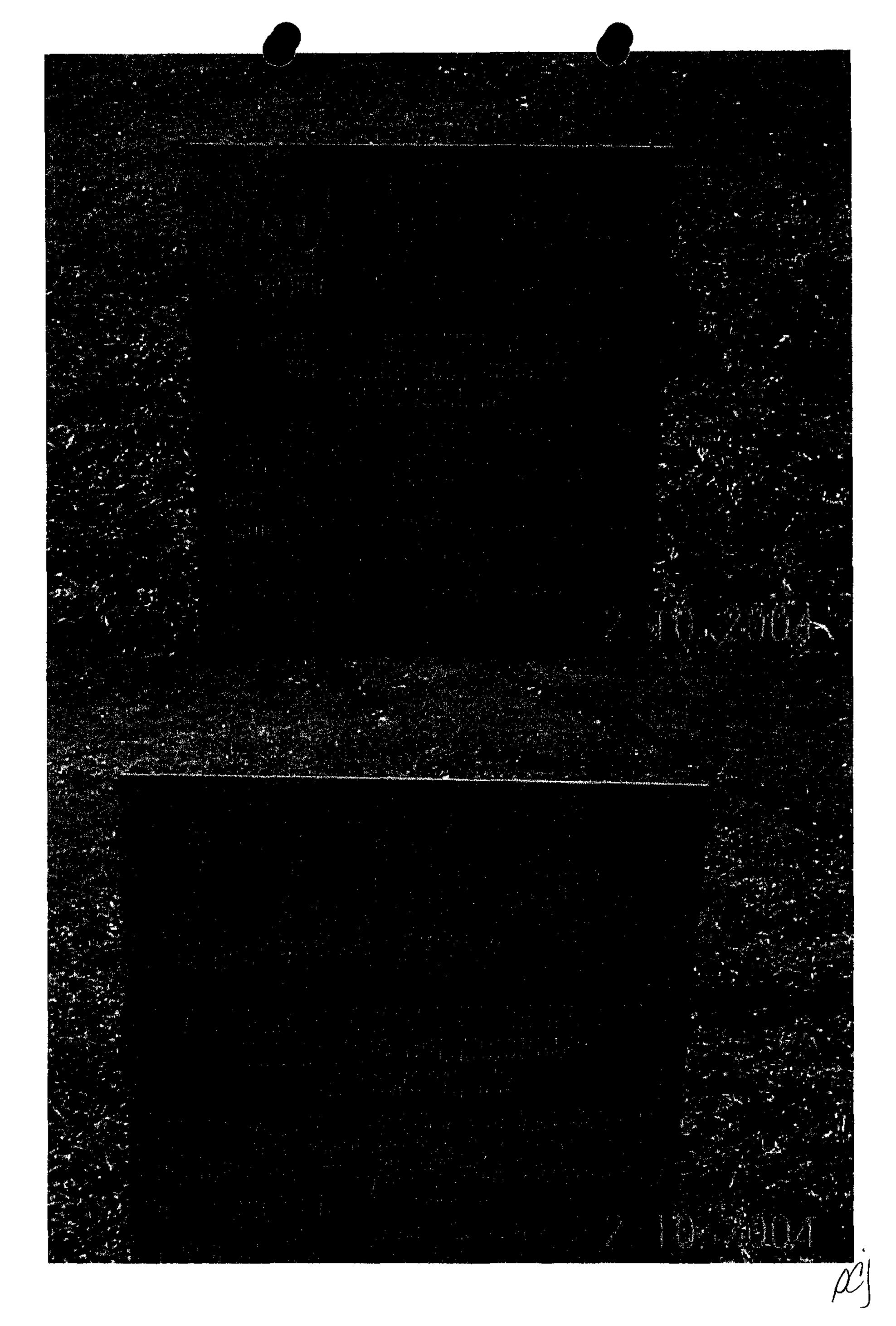
The sign(s) were posted on

Permits and Development Management



(410) 242-4263

(Telephone Number)



RE: PETITION FOR VARIANCE

7131 Martell Avenue, Lot 63; S/side Martell
Avenue, 125' W c/line of East Avenue

12th Election & 7th Councilmanic Districts
Legal Owner(s): Samuel Fanzone by Joseph *
W Fanzone & Dorothy Fanzone by
Carmen R. Fanzone

*

Petitioner(s)

BEFORE THE

ZONING COMMISSIONER

FOR

BALTIMORE COUNTY

04-280-A

* * * * * * * * *

ENTRY OF APPEARANCE

*

Please enter the appearance of People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and 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
People's Counsel for Baltimore County

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 day of January, 2004, a copy of the foregoing Entry of Appearance was mailed to Site Rite Surveying, Inc, 200 E Joppa Road, Room 101, Towson, MD 21286, Representative for Petitioner(s).

RECEIVED

JAN 05 2004

Per.....

PETER MAN ZIMMERMAN

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

TO: PATUXENT PUBLISHING COMPANY
Thursday, January 22, 2004 Issue - Jeffersonian

Please forward billing to:

V & W Homes 502 Sylvan Way Pasadena, MD 21222

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: 04-280-A

Lot 63, Martin Avenue S/side Martell Avenue Lot 63 12th Election District – 7th Councilmanic District Legal Owner: Samuel Fanzone

Variance to permit a lot width of 50 feet in lieu of the required 55 feet and to approve an undersized lot

Hearing:

Wednesday, February 11, 2004 in Room 106 at 2:00, County Office Building,

111 West Chesapeake Avenue

LAWRENCE E. SCHMIDT

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
Tuesday, February 3, 2004 Issue - Jeffersonian

Please forward billing to:

V & W Homes 502 Sylvan Way Pasadena, MD 21222

410-828-9060

CORRECTED 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: 04-280-A

Lot 63, Martell Avenue S/side Martell Avenue Lot 63 12th Election District – 7th Councilmanic District

Legal Owner: Samuel Fanzone

Marine Statement of the statement of the

Variance to permit a lot width of 50 feet in lieu of the required 55 feet and to approve an undersized lot

Hearing: Wednesday, February 18, 2004 in Room 407 at 2:00 p.m., County Courts Building, 401 Boslev Avenue

LAWRENCE E. SCHMIDT

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

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





James T Smith, Jr., County Executive Timothy M Kotroco, Director

January 9, 2004

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: 04-280-A

Lot 63, Martin Avenue S/side Martell Avenue Lot 63

12th Election District – 7th Councilmanic District

Legal Owner: Samuel Fanzone

buth Rotroco

Variance to permit a lot width of 50 feet in lieu of the required 55 feet and to approve an undersized lot

Hearing:

Wednesday, February 11, 2004 in Room 106 at 2:00, County Office Building, 111 West Chesapeake Avenue

Timothy Kotroco Director

TK:rlh

C: Joseph Fanzone for Samuel Fanzone, 11 Hunt Farms Court, Sparks 21152 Site Rite Surveying, 200 E. Joppa Road, Room 101, Towson 21204

- NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY WEDNESDAY, JANUARY 28, 2004.
 - (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.

Department of Permits an Development Management

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



Baltimore County

James T. Smith, Jr, County Executive Timothy M. Kotroco, Director

January 13, 2004

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: 04-280-A

Lot 63, Martin Avenue S/side Martell Avenue Lot 63

12th Election District – 7th Councilmanic District

Legal Owner: Samuel Fanzone

Variance to permit a lot width of 50 feet in lieu of the required 55 feet and to approve an undersized lot

Hearing:

Wednesday, February 18, 2004 in Room 407 at 2:00 p.m., County Courts Building, 401 Boslev Avenue

Multy Kotroco

Timothy Kotroco Director

TK:rlh

C: Joseph Fanzone for Samuel Fanzone, 11 Hunt Farms Court, Sparks 21152 Site Rite Surveying, 200 E. Joppa Road, Room 101, Towson 21204

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, FEBRUARY 3, 2004.

- (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.

Department of Permits and Development Management

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





James T. Smith, Jr., County Executive Timothy M Kotroco, Director

January 15, 2004

CORRECTED 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: 04-280-A

Lot 63, Martell Avenue

S/side Martell Avenue Lot 63

12th Election District – 7th Councilmanic District

Legal Owner: Samuel Fanzone

Variance to permit a lot width of 50 feet in lieu of the required 55 feet and to approve an undersized lot

Hearing:

Wednesday, February 18, 2004 in Room 407 at 2:00 p.m., County Courts Building,

401 Bosley Avenue

Timothy Kotroco

Director

TK:rlh

C: Joseph Fanzone for Samuel Fanzone, 11 Hunt Farms Court, Sparks 21152 Site Rite Surveying, 200 E. Joppa Road, Room 101, Towson 21204

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, FEBRUARY 3, 2004.

- (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.

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

ZONING REVIEW

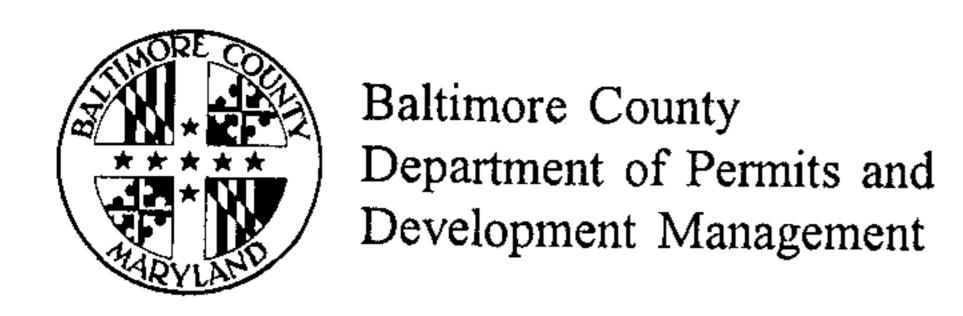
ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:
Item Number or Case Number: 04 - 280 - A Petitioner: Va W Howy
Address or Location: #17131 MayAcll Avuve
PLEASE FORWARD ADVERTISING BILL TO: Name: V& W Howes
Address: 502 Sylvan Way Pasadena, MD 21122
Telephone Number: 40 320 5316



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

February 13, 2004

Mr. Samuel Fanzone Mrs. Dorothy Fanzone 11 Hunt Farms Court Sparks, Maryland 21152

Dear: Mr. and Mrs. Fanzone

RE: Case Number: 04-280-A, Address Lot 63 Martin Avenue

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on December 8, 2003.

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,

u. Callibald

W. Carl Richards, Jr. Supervisor, Zoning Review

WCR: clb

Enclosures

c: People's Counsel Site Rite Surveying, Inc. 200 E. Joppa Road, Rm. 101 Towson, 21286







Baltimore County Fire Department

700 East Joppa Road Towson, Maryland 21286-5500 410-887-4500

County Office Building, Room 111 Mail Stop #1105 111 West Chesapeake Avenue Towson, Maryland 21204

January 5, 2004

ATTENTION: Rebecca Hart

Distribution Meeting of: December 29, 2003

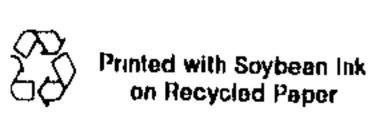
Item No.:

(280-)285, 287-299

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

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

cc: File



BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

DATE: February 2, 2004

TO:

Timothy M. Kotroco, Director

Department of Permits & Development Management

FROM

Robert W. Bowling, Supervisor Bureau of Development Plans

Review

SUBJECT:

Zoning Advisory Committee Meeting

For January 5, 2004 Item Nos (280), 281, 282, 284, 285, 286, 288, 289, 290, 291, 292, and 299

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

RWB:jrb

cc: File



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

Department of Permits and Development Management

FROM:

Arnold F. 'Pat' Keller, III

Director, Office of Planning

DATE: January 27, 2004

RECEIVED

JAN 2 8 2004

ZONING COMMISSIONER

SUBJECT:

7131 Martell Avenue

INFORMATION:

Item Number:

04-280

Petitioner:

Samuel Fanzone

Zoning:

DR 5.5

Requested Action:

Variance

SUMMARY OF RECOMMENDATIONS:

The Office of Planning does not support the petitioner's request. Per Section 304 of the Baltimore County Zoning Regulations (BCZR), a one-family detached dwelling may be erected on a lot having an area or width at the building line less than that required by the BCZR if the owner of the lot does not own sufficient adjoining land to conform to the width and area requirement.

This office has determined that the owner of the subject 50-foot wide lot also owns the adjoining 50-foot wide lots – (lots 61 and 62) on Martel Avenue. Therefore, this office recommends that the petitioner's variance and undersized lot request be **DENIED**.

Repared by

OH FILE

PADER RECEIVED

Section Chief:

FK/LL:MAC

W:\DEVREV\ZAC\04-280.doc





Robert L. Ehrlich, Jr., Governor Michael S. Steele, Lt. Governor

Robert L. Flanagan, Secretary Neil J. Pedersen, Administrator

BPR

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: 1.7.04

Baltimore County

Item No. 280

RE:

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

Dear. Ms. Hart:

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,

/~

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

 SECTION 304 -- USE OF UNDERSIZED SINGLE-FAMILY LOTS - Prior to the application for a building permit, the applicant must provide satisfactory documentation. The applicant may be required to furnish:

- a. a copy of the pre-1955 deed or subdivision plat;
- b. (no additions)
- c. contiguous ownership

It is obvious that Section 304 of the Baltimore County Zoning Regulations recognizes the existence of parcels of property that did not meet the minimum lot sizes mandated at the time the minimum lot size regulations were passed. To do otherwise would have the effect of rendering such undersized lots useless, and such legislation would be unconstitutional.

- Section 304 B.C.Z.R., however, is silent as to when contiguous ownership would serve as a bar to its implementation, i.e., contiguous ownership in existence only at the time this regulation was passed or contiguous ownership in existence at that time and at any time thereafter.
- It is therefore important to consider the intent of the owner who attempts to invoke the applicability of Section 304 BCZR. Each situation must be judged individually by the particular facts and circumstances presented. If the intent to avoid the regulations is obvious, Section 304c. cannot be invoked and variances must be required. An obvious method used is called "checkerboarding". The owner of a tract of land consisting of undersized lots makes conveyances of certain lots in order to create a pattern of ownership which qualifies each percel as an undersized lot in a single and separate ownership, thereby avoiding the necessity of public hearing and notice for a variance. Often this is done by transferring title to members of the owner's family or to his business associates, e.g., to officers of the corporation which purchased the tract. Another method is to sell adjoining undersized lots which were recently purchased to individual, bona fide buyers. This would permit the new owner of a single undersized lot to build without a variance, where such permission would not have been granted to the owner of the entire tract.
- If a single owner of contiguous undersized lots has purchased the property in good faith and without any intent to avoid the area requirements, 304c. may be used to allow the owner to build pursuant thereto. Good faith also must be determined by the facts and circumstances of each situation, but such factors as dates of purchase of the purcels, the purpose of the purchase, the intent of the purchase, can be utilized to so determine. This office has traditionally applied the "six year rule" to determine good faith, and that rule shall be one criteria to be used. The rule holds that if the single owner of an undersized lot contiguous to another parcel owned by him has transferred ownership of one to another, 304c. would apply if such new ownership has been held for a period of at least six years. This rule shall not preclude exceptions where it is clear, and equitable, that single ownership of contiguous property was not intended to avoid area requirements.
- 4. Ownership Information Including:
 - (i) a property tax computer printout for all adjacent properties, in addition to the subject property;
 - (ii) copies of the deeds for all adjacent properties, in addition to the subject property; and
 - (iii) a notarized affidavit stating that the applicant has had no financial interests for the prior six years in any adjacent properties.

Interpretation: The Zoning Commissioner retains the right Section 500.6 B.C.Z.R. to interpret whether the spirit and intent of these Regulations are being adhered to on a case-by-case basis (see Section 101 - Ownership Z.C.P.M., Page 1-23)

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RECOMMENDATION FORM

Director, Office of Planning & Community Conservation Attention: Jeffrey Long
County Courts Building, Room 408 401 Bosley Avenue Towson, MD 21204 Residential Processing Fee Paid FROM: Amold Jablon, Director (\$50,00) Department of Permits & Development Management Date (2/8/07 RE; Undersized Lots Pursuant to Section 304.2 (Battimore 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: V&W Homes 502 Sylvan Way Pasadura MD 21122 1-41 320 9316

Print Name of Applicant Telephone Number ____Election District 2 Councilmanic District 7 Square Feet 2100 Lot Location: NESWiside/corner of MARCH AVUNU. 125 feet from NESW corner of Past Avunu Land Owner: Samuel and Donthy Fanzone Tex Account Number Address: 1 Hunt Farms A. Sturks up 21192 Telephone Number 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? NO 1. This Récommendation Form (3 copies) 2. Permit Application (Pendung approval) 3. Site Plan Property (3 copies) Care Martin Company of the Company o 4. Building Elevation Drawings 5. Photographs (please label all photos clearly) Adjoining Buildings Surrounding Neighborhood 6. Current Zoning Classification: Post-it* Fax Note 7671 Τo From TO BE FILLED IN BY THE OFF Co./Dept. Co. FLECOMMENDATIONS / COMMENTS: Phone # Phone # Fax # Fax# Approval conditioned on required the Director Office of Planning and Community Conservation

Copy sent to Vince Moskunas - 3 9 04

04-280

WILLIAM H. KIMMICH

7128 Martell Ave Baltimore, Maryland 21222 MAR 8 2004

410-284-2328 w.kimmich@earthlink.net ZONING COMMISSIONER

March 4th 2004

Mr. Murphy
Deputy Zoning Commissioner
Room 405 Courts Bldg

Sir:

Yesterday March 3,2004, I spoke to two sections of zoning and they told me that there has been no application to the DRC as of 3/3/04 and that it is legal to section off lots that they have presented. The center home only has to be a given number of feet behind the offset.

I cannot honestly approve the building of three homes in this lot the way it is proposed. Breaking up the center lot in that manner might be legal but how will it look. The driveway will also subtract from appearance.

Building (Two) 2 homes in that space would be agreeable & would not over crowd the area The number of homes on both sides of the street would be the same, maintaining the integrity of the neighborhood.

Bottom line none one wants three homes on that lot.

Very truly yours,

William H. Kimmich



February 24, 2004

200 E. Joppa Road Shell Building, Suite 101 Towson, MD 21286

tel. 410.828.9060 fax. 410.828.9066

www.siterItesurveying.com

Mr. Donald S. Miller 1817 West Avenue Baltimore MD 21222

Mr. William H. Kimmich 7128 Martell Avenue Baltimore MD 21222

Re: Undersize zoning cases on Martel Avenue

Gentlemen:

Please find enclosed a plat marked as Petitioner #9 which shows revisions to Lots 61 through 64. These are revisions which will eliminate the need for the undersize variances 04-274-A, 04-275-A, 04-279-A and 04-280-A.

Per letter dated December 23, 2004 from the Office of Planning re Item No. 04-275 stating the variance would be denied because the width of the lots were less than the fifty-five (55) feet needed under the zoning regulations. By the revisions to the property lines, this is now possible.

Mr. Murphy, the Deputy Zoning Commissioner, suggested that I send you this new information for your review and comments. He has allowed the variances to remain open for three (3) weeks for you to review the package and to give him a call on your decision. He can be reached at (410) 887-4386.

The developer would like to proceed with the fifty (50) foot lots without your protests. We feel V&W Homes design is aesthetically more appealing since the houses are more in line and closer to Martell Avenue which allows the two (2) car parking pad in front of each unit.

This letter and plat is being sent to each of you as your names appear on the Citizen's Sign-in Sheet dated February 18, 2004.

If you have any questions, please feel free to give me a call. If you do not, please give the Deputy Zoning Commissioner your decision on this matter.

Very truly yours,

Vincent J. Moskunas

President

Enclosure

CC: Deputy Zoning Commissioner

File:\ martell.doc

LETTER OF TRANSMITTAL

Site Rite Surveying, Inc.

DIRECT CORRESPONDENCE TO:

Shell Building, Room 101 200 East Joppa Road Towson, Maryland 21286 410-828-9060 Fax 410-828-9066

TO: ZONING. COMM	18818かど ²⁷ DATE:	
	SUBJECT: FOUNG CASES	04-274-A-275-A
ATTENTION: DEPUTY FOUR		
WE ARE, UNDER SEPERATE	COVER, TRANSMITTING VIA, U.S. MAIL () THE FOLLOWING
QUANTITY DRAWING	DESCRIPTION AND/OR TITLE	
TRANSMITTED AS INDICATED BEL		
PER YOUR REQUEST	APPROVED - DWG(s)	
FOR YOUR INFORMATION	APPROVED AS NOTED - DWG(S)	
☐ FOR APPROVAL	RETURNED FOR CORRECTION - DWG(s)	
☐ FOR COMMENT	PLEASE RESUBMIT - DWG(S)	
COPY(S) OF	SENT TO	
COPY(S) OF	SENT TO SENT TO	<u> </u>
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	NE COPY OF THIS TRANSMITTAL AS A RECEIPT	
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te Rite Surveying, Inc.		
ENT BY:	RECEIVED BY:	
	DATE:	

U.S. POSTAL SERVICE CERTIFICATE OF MAILING
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOTPROVIDE FOR INSURANCE—POSTMASTER

Received From:

SITE RITE SYRVEYING /NC PROVIDED

ZOOE JOPPA ROAD.

One place of ordinary mail addressed to:

MREMRS WILLIAM H. KIMMICH

7/28 MARTELL AVE.

BALTO., MD, ~1222

PS Form 3817, Mar. 1989

U.S. POSTAL SERVICE CERTIFICATE OF MAILING
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL, DOES NOT
PROVIDE FOR INSURANCE—POSTMASTER

Received From:

SITE RITE SURVEYING, INC.

ZOO E. JOPPA ROAD.

TOWSON, MD. 21286

One piece of ordinary mail addressed to:

MR. DONALO S. MILLER

1817 WEST AVE.

BALTO, MD. 21222

PS Form 3817, Mar. 1989

7

IN THE ORPHANS' COURT

(OR)

BEFORE THE REGISTER OF WILLS

FOR

BALTIMORE COUNTY, MARYLAND

IN THE MATTER OF	INTHE
THE ESTATE OF	ORPHANS' COURT FOR
Samuel Fanzone	BALTIMORE COUNTY
DECEASED	ESTATE NO. 1 14453
*****************************	**************
	DRDER
UPON the foregoing To To God Service and Verification, it is this	Administration Account, Certificate of day of <u>October</u> , <u>201</u> , by the Orphans'
ORDERED that the said FI/ST Avis is hereby approved, subject to exceptions being order, at which time this Order shall become fire	ng filed within twenty (20) days from the date of this
\	Theresa a Lawle Julie L. Enson
	JUDGES

ZONING HEARING FILE INTERNAL CHECKLIST Zoning Case No. DJ- 280-1

Date Completed/Initials	
1-9-044	PREPARE HEARING FILE (put case number on all papers; hole punch and place appropriately; put label and case number on folder; complete information on stamp on front of folder)
	DETERMINE HEARING DATE (schedule within 45 days of filing; post and advertise at least 15 days prior to hearing)
	TYPE HEARING NOTICE AND ADVERTISING NOTICE (type according to sample, taking billing information for advertising from advertising form in file; make appropriate copies; mail original and copies of hearing notice; place original advertising notice in Patuxent's box; file copies of both notices in hearing file; update ZAC in computer for hearing date, time and place)
	UPDATE ZONING COMMISSIONER'S HEARING CALENDAR (keep original in "red" folder; mail copy to zoning commissioner's office)
	COMPLETE FILE (write hearing date, time, and room on front of hearing folder; file in numerical order in cabinet next to copier until it is pulled for sending to zoning commissioner's office)
	POSTPONEMENTS (type postponement letter; make appropriate copies; mail original and copies; send copy to zoning commissioner; file copy in hearing file; update hearing calendar and ZAC in computer)
	RESCHEDULING (determine hearing date; type letter confirming new date; make appropriate copies; mail original and copies; file copy in hearing file; update hearing calendar and ZAC in computer; refile hearing folder)
2/3/04 2/13/04 C/3	INDEX CARDS (prepare index cards, according to sample; file cards in cabinet)
	ADVERTISING/POSTING CERTIFICATES (check off on front of hearing file; put certificates in file)
	COMMENTS (check off agency comments received on front of hearing file; make copies; type comments letter; mail original to petitioner; file copy in hearing file)
	FILES TO ZONING COMMISSIONER'S OFFICE (pull the files for the following

week every Friday and administrative files on Tuesday; verify that checklist on front of

hearing file has been completed; secure all papers under clips in file; send files for

hearings to zoning commissioner's office by noon on Friday and files for administrative

on Tuesday morning)

PLAN 70 Reference BE USED KITH Section HE Z 냋 303.1 TERMINING PHINIOPPE Baltimore FRONT LOTS County YARD AHE NOT IMPROVED Zoning DEPTHS Regulations 물 RESIDENCE ZONES

joint Saintof pa provided D.R.2, depth baildings lots are Of any D.R. 3 aball lots auch pot ai tuate **# Potb** #1 0, any building hereaft the average depth of to sparsage within lots are improved ALSON. other Supplied Zonas 200 feet said immedi-Structure the g front 8

D.R.2 FT.

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specified 5 regulati #7131 PROPERTY SUBJECT Vacant 200



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DOPOTHY FANZONE
1206000311 242'± 243't JOSEPH & SUSAN FANZONE 1206000340 12084 51 $\widehat{\overline{e}}$ 246'± #1817 WEST AVENUE EX. 50' P/W

At the hearing for Case No. 04-279-A, Mr. Miller brought a petition signed by numerous neighbors opposing the variances. There was some confusion regarding the petition, which stated that 4 homes were to be built instead of 3. However, in fact, only three new homes are planned to be built on all four lots. Nevertheless, Mr. Miller indicated his opposition to the variances. Also see Protestant's photographs, Exhibit No. 2, which he testified showed that there was not enough room for the new homes, that there were only two curb cuts onto Martell Avenue from the lots, and that there is a problem of flooding in the neighborhood.

He and Mr. Kimmich indicated that the neighborhood had been developed primarily with homes having double lots and that having homes on the single lots as proposed would be out of character for the neighborhood. See the zoning map which accompanied the petition. Mr. Moskunas, however, pointed out that the five homes on West Avenue were reoriented and consumed only two lots in being constructed.

On the day of the last hearing (Case No. 04-275), Mr. Moskunas presented Petitioners' Exhibit No. 9, which showed an arrangement of three new homes on the three vacant lots and lot line adjustments, which he proffered, required no variances. Essentially, he moved the new home on the middle lot toward the rear and away from Martell Avenue. As I indicated at the hearing, this evidence by definition indicates that there is no hardship or practical difficulty, which could form the basis for a variance. However, Mr. Moskunas pointed out that, if the requested variances are approved, the three new homes could be aligned along Martell Avenue in keeping with the other homes on the block and have large back yards just as the other homes on the block. He felt the Protestants should under these circumstances support the variance requests.

In fairness to the Protestants that had not seen the latest proposal, Mr. Moskunas agreed to send this new evidence to the Protestants and keep the record open for their response. After