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04-487-A

OPINIONS

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7/2/08

IN THE MATTER OF
THE APPLICATION OF
GRACE AND HERMAN MUELLER, IR. -LEGAL
OWNERS /PETITIONERS FOR VARIANCE ON
PROPERTY LOCATED ON THE S/S OF
BAUERNSCHMIDT DR. E OF C/L OF
BAUERNSCHMIDT DRIVE
(2608 BAUERNSCHMIDT DRIVE)

15<sup>TH</sup> ELECTION DISTRICT 7<sup>TH</sup> COUNCILMANIC DISTRICT [Case No. 04-487-A]

- \* ON REMAND
- \* FROM THE
- \* CIRCUIT COURT FOR
- \* BALTIMORE COUNTY
- \* Civil Action No.: 03-C-05-7736

# ORDER OF THE BOARD ON REMAND FROM THE CIRCUIT COURT FOR BALTIMORE COUNTY PURSUANT TO ORDER OF THE MARYLAND COURT OF SPECIAL APPEALS

This matter comes before the Board of Appeals on remand by Order of The Honorable Kathleen Gallogly Cox, Judge, Circuit Court for Baltimore County, filed April 4, 2008, pursuant to the November 2, 2007, Order of the Court of Special Appeals of Maryland, writ of certiorari having been denied by Order of the Court of Appeals on February 15, 2008, and, consistent with the decision of the Court of Special Appeals filed April 4, 2008, in re *Herman Mueller, Jr., et al, v. People's Counsel for Baltimore County,* 177 Md.App.43, Judge Kathleen Gallogly Cox, on remand, orders as follows:

For the reasons set forth in the Opinion of the Court of Special Appeals dated November 2, 2007, this matter is REMANDED to the Baltimore County Board of Appeals for further proceedings consistent with the direction set forth in that Opinion.

IT IS THEREFORE this And day of John 2008, by the County Board of Appeals of Baltimore County,

ORDERED that, pursuant to the Remand Order of the Honorable Kathleen

2

Case No. 04-487-A /In the Matter of Grace M. and Herman Mueller, Jr. Circuit Court Civil Action No. 03-C-05-7736

Gallogly Cox, Judge, Circuit Court for Baltimore County, filed April 4, 2008, pursuant to the November 2, 2007, Order of the Court of Special Appeals, the Opinion and Order of the Baltimore County Board of Appeals, dated July 8, 2005, in which Petitioners' requested zoning relief was granted with restrictions, is hereby reinstated as the final Opinion and Order in this matter.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY 1

Lawrence M. Stahl, Panel Chair

<sup>&</sup>lt;sup>1</sup> Mr. Stahl is the sole remaining member of the three-member panel of the Board that originally heard this case in 2004. Michael O. Ramsey and John P. Quinn are no longer members of the Board of Appeals. Therefore, this Order on Remand from the Circuit Court and the Court of Special Appeals has been signed by the remaining panel member.



## County Board of Appeals of Baltimore County

JEFFERSON BUILDING SECOND FLOOR, SUITE 203 105 WEST CHESAPEAKE AVENUE TOWSON, MARYLAND, 21204 410-887-3180 FAX: 410-687-3182

July 2, 2008

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

RE: Circuit Case #03-C-05-7736 /In the Matter of
Grace M. and Herman Mueller /Case No. 04-487-A
On Remand from the Circuit Court for Baltimore County
Pursuant to Order of the Maryland Court of Special Appeals

Dear Mr. Zimmerman:

Enclosed please find a copy of the Board's Order issued this date in response to the Remand

Order The Honorable Kathleen Gallogly Cox, Judge, Circuit Court for Baltimore County.

Very truly yours,

Kathleen C. Bianco Administrator

#### Enclosure

c: Edward J. Gilliss, Esquire
Mr. & Mrs. Herman Mueller
James Grammer /McKee & Associates, Inc.
Steven Glock
Silvana Wisniewski

Robert Koch
Steve Hummel
Linda Clarke

William J. Wiseman III /Zoning Commissioner

Pat Keller, Planning Director

Timothy M. Kotroco, Director /PDM

PETITION OF PEOPLE'S COUNSEL FOR \*

IN THE

**BALTIMORE COUNTY** 

CIRCUIT COURT

FOR JUDICIAL REVIEW OF THE \*
DECISION OF THE COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY \*

FOR

**BALTIMORE COUNTY** 

IN THE MATTER OF APPLICATION OF \*
HERMAN AND GRACE MUELLER

Case No. 3-C-05-7736

#### <u>ORDER</u>

For the reasons set forth in the Opinion of the Court of Special Appeals dated November 2, 2007, this matter is REMANDED to the Baltimore County Board of Appeals for further proceedings consistent with the direction set forth in that Opinion.

JUDGE KATHLEEN GALLOGLY COX

Date: 3270

Clerk: Please send copies to all parties.

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11/2/07

#### **HEADNOTE:**

Herman Mueller, Jr., et al. v. People's Counsel for Baltimore County, No. 319, September Term, 2006

VARIANCE; UNDERSIZED LOT; BALTIMORE COUNTY ZONING REGULATION ("BCZR") § 304.1; BCZR § 307; GRANDFATHER CLAUSE; MERGER OF LOTS.

In 1978, Mr. and Mrs. Herman Mueller, Jr., appellants, acquired two adjoining, undersized waterfront lots from Mr. Mueller's parents. The elder Muellers acquired the first lot (Lot 66) in 1947, and built a summer home on it in 1948. They acquired the second lot (Lot 67) in 1960, but never built any permanent structures on it. The lots conformed to Baltimore County Zoning Regulations with regard to area and width until 1970. In 2004, appellants petitioned for a variance as to the undeveloped lot (Lot 67), to make it a buildable lot.

BCZR § 304, titled "Use of Undersized Single-Family Lots," is a grandfather clause for undersized lots. Under the principles of statutory construction, it applied here with respect to the variance request, rather than the general variance provision, set forth in BCZR § 307. Therefore, appellants were not required to establish uniqueness or hardship. Appellants satisfied the criteria of § 304.1 because, under the facts of this case, they did not have sufficient land available from Lot 66 so as to conform Lot 67 to the current width and area requirements. Moreover, appellants did not create a self-inflicted hardship by their use of the lots, because neither lot was rendered nonconforming as a result of actions taken by appellants after the change in zoning laws. Lot 66 was improved before the change in the area requirements, and appellants could not "borrow" land from Lot 66 to enlarge Lot 67 without making Lot 66 more substandard than it already is.

Nor did the lots merge under the rationale of *Remes v. Montgomery County*, 387 Md. 52 (2005), so as to bar the variance request. Appellants did not use Lot 67 in service of Lot 66 to such an extent as to give rise to an unintended merger.

## REPORTED

## IN THE COURT OF SPECIAL

## **APPEALS OF MARYLAND**

No. 319

SEPTEMBER TERM, 2006

HERMAN MUELLER, JR., ET AL.

v.

## PEOPLE'S COUNSEL FOR **BALTIMORE COUNTY**

Hollander, Eyler, Deborah S. Woodward,

JJ.

Opinion by Hollander, J.

Filed: 11-02-2007

In this appeal, we are asked to determine whether the Circuit Court for Baltimore County erred in reversing the Baltimore County Board of Appeals (the "Board"), which had granted a "Petition for Variance" (the "Petition") as to an undersized waterfront lot owned by Herman Mueller, Jr. and Grace Mueller, appellants. The lot became undersized as a result of changes to Baltimore County's zoning laws.

When the Petition was filed, appellants also owned an adjoining waterfront lot that Mr. Mueller's parents had purchased in 1947, and on which they had constructed a residence in 1948 (referred to as "Lot 66" or "Property I"). The lot at issue here (referred to as "Lot 67" or "Property II"), was purchased by Mr. Mueller's parents in 1960, and has remained undeveloped. Appellants acquired the properties in 1979. In 2004, they sought a variance as to the undeveloped lot in order to construct a dwelling on it. People's Counsel for Baltimore County, appellee, opposed the Petition. After appellants prevailed before the Board, appellee sought judicial review in the circuit court. That court reversed the Board.

This appeal followed. Appellants pose the following questions:

- 1. Did the Board properly grant the Appellants' Petition for Variance in Accordance with the standards for undersized lots established in BCZR Section 304.1?
- 2. Did the Board properly grant Appellants' Petition for Variance in accordance with the BCZR Section 307 variance process?
- 3. Was the Board correct in finding that the doctrine of merger is inapplicable to Properties I and II?

For the reasons set forth below, we shall reverse the circuit court and remand to the Board for further proceedings.

#### FACTUAL AND PROCEDURAL SUMMARY

In 1947, Herman Mueller, Sr. and his wife, Thelma Mueller (the "elder Muellers"), the parents of appellant Herman Mueller, Jr., acquired Lot 66, located at 2606 Bauernschmidt Drive in Baltimore County (the "County"). In 1948, they constructed a dwelling on Lot 66, which is used as a summer home and weekend retreat. The elder Muellers purchased the adjacent waterfront lot, Lot 67, in 1960, located at 2608 Bauernschmidt Drive. Lot 66 is approximately 8,400 square feet in area, and 50 feet wide, while Lot 67 is approximately 6,812 square feet in area and about 61 feet wide.

The lots are located in Bauernschmidt Manor, a 1940 waterfront subdivision on the Turkey Point Peninsula, in eastern Baltimore County. Bauernschmidt Manor consists predominantly of single family residences built in the 1940's and 1950's, many on lots which are about 50 feet wide, and thus undersized under current zoning regulations. However, many homes in the waterfront section of Bauernschmidt Manor were constructed on multiple, contiguous lots. Lots 66 and 67 both front on Greyhound Creek, which flows into Middle River. Moreover, most of the area comprising the two lots is located within the 100-foot Chesapeake Bay Critical Area Buffer.<sup>2</sup>

<sup>&</sup>lt;sup>1</sup> Originally, Lot 67 was 50 feet wide, but it was enlarged by the purchase of a portion of an adjacent emergency water access lane that was no longer needed for public safety purposes.

<sup>&</sup>lt;sup>2</sup> Baltimore County Zoning Regulation 500.14 prohibits the Board from granting a variance within the 100 foot setback unless certain criteria are satisfied. On May 20, 2004, the Baltimore County Department of Environmental Protection & Resource Management ("DEPRM") advised the Zoning Advisory Committee ("ZAC") that development of Lot 67 "must comply with Chesapeake Bay Critical Area Regulations. . . ." As we said in *Becker* (continued...)

In 1978, the two parcels were re-deeded to Thelma Mueller and her son, Herman Mueller, Jr. Then, in 1979, the deeds were transferred to appellants Herman, Jr. and his wife, Grace Mueller. Both lots were collectively known as 2606 Bauernschmidt Drive,<sup>3</sup> but are deeded separately. As of January 1, 2003, the land portion of Lot 66 was valued at \$98,550, while the improvements were valued at \$21,550. As of that date, Lot 67 had a "Base Value" of \$5,720. During the pendency of the variance proceedings, appellant sold Lot 66.

Lots 66 and 67 conformed to Baltimore County Zoning Regulations ("BCZR") until 1970, when the Bauernschmidt Manor subdivision was re-zoned Density Residential 3.5 or "D.R. 3.5," (i.e., 3.5 units per acre). In order to construct a dwelling on a lot that is zoned D.R. 3.5, a minimum lot area of 10,000 square feet per dwelling unit is required, along with a minimum lot width of 70 feet. *See* BCZR § 1B02.3.C.1.<sup>4</sup>

On April 27, 2004, appellants filed their variance Petition, in which they sought permission to make Lot 67 a buildable lot. In particular, the Petition requested that the Zoning Commissioner "approve an undersized lot per Section 304 [of BCZR] with any other

Chesapeake Bay Critical Area Regulations.

<sup>&</sup>lt;sup>2</sup>(...continued) v. Anne Arundel County, 174 Md. App. 114, 139 (2007), "there are different criteria that must be met for 'ordinary' or 'general' zoning variances and critical area variances." This opinion does not address whether appellants' proposed development of Lot 67 satisfies the

<sup>&</sup>lt;sup>3</sup> Records of the Maryland Department of Assessments and Taxation ("SDAT") were admitted in evidence at the Board hearing and show that, as of January 1, 2003, only the improved lot had a street number.

<sup>&</sup>lt;sup>4</sup> As discussed, *infra*, the County established a comprehensive zoning scheme in 1945 and, in 1955, it passed an ordinance to "grandfather" lots that had become substandard as a result of the 1945 ordinance, allowing them to be developed under certain conditions.

variances deemed necessary. . . . "5

A zoning hearing was held on June 21, 2004. Thereafter, on June 23, 2004, the Deputy Zoning Commissioner granted appellants' Petition, stating, in relevant part:

#### **Interested Persons**

Appearing at the hearing on behalf of the variance request were James Grammer, engineer from McKee & Associates, Inc., Steven Glock and Herman Mueller, the Petitioner. Silvana Wisniewski, Robert Koch and Steve Hummel appeared in opposition to the petition. Linda Clark attended the hearing as a [sic] interested citizen. 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 6,812.10 sq. ft., more or less, and is zoned DR 3.5. Mr. Grammer proffered that the subject property is a vacant lot (lot 67) of the Bauernschmidt Manor subdivision which was recorded in the Land Records of Baltimore County in 1940. Its frontage along Bauernschmidt Drive is approximately 50 ft. as are most other lots in the subdivision. See Petitioner's Exhibit 1. The Petitioner acquired one half of a 20 ft. wide emergency water access strip in 1960 that separates lots 68 and 67 and so the combined road frontage is approximately 61 ft. As such, the combination does not meet the minimum 70 ft. width required by the regulations for DR 3.5 property. The subject lot faces Greyhound Creek and widens out to approximately 70 ft. along the water. The lot contains approximately 6,800 sq. ft of area, whereas the regulations require 10,000 sq. ft. The property is served by public sewer and water.

Lot 66 is also owned by the Petitioner and is improved by a single-family dwelling. Again, its frontage along Bauernschmidt Drive is approximately 50 ft. . . .

The Deputy Zoning Commissioner proceeded to list the nearby properties as an

<sup>&</sup>lt;sup>5</sup>In its opinion, the circuit court stated that appellants sought relief under both BCZR § 304 and § 307. The Petition refers only to § 304.

indication of the development pattern. He noted that several were built on 50 foot lots, while others were situated on double lots. Moreover, he observed that several protestants were concerned about jeopardizing their own views of the water. Further, he stated:

Mr. Grammer indicated that the proposed home would meet all County requirements for setbacks but could not meet the area and lot width regulations. As such, he believed that the subject property qualifies under Section 304 since the lot was recorded prior to March 30, 1955, that all other requirements except area and width will be complied with, and the owner does not own sufficient adjoining land to conform to the area and width requirements. Again, in regard to the latter requirement, he noted that lot 66 was already undersized and there would be no sense to take land from this undersized lot as this would also require a variance. In addition, he noted that the property could not meet the zoning regulations imposed upon it many years after it was laid out and recorded. This would amount to both a hardship and practical difficulty. (Emphasis added.)

The opinion continued:

### Findings of fact and conclusions of law

In regard to what was requested in terms of variance, I find that there are special circumstances or conditions existing, that are peculiar to the land or structure, which is the subject of the variance request. The subdivision was recorded in the 1940's much before the DR 3.5 regulations were imposed. I recognize that the case of Cromwell v. Ward, 102 Md App 691, 651 A2d 424, (1995) seems to indicate that there must be some physical uniqueness in the size[,] shape or environment of the property to qualify for a variance. However, I do not believe the Court addressed the issue of old subdivisions having new zoning regulations imposed upon them. In such a case, the imposition of the new regulations impacts the lot in the old subdivision disproportionately as compared to lots in the area laid out in accord with the regulations. I find that under these circumstances the property passes the first test and is unique. There is no way for the 50 ft. lots, which were designed before the new regulations, to meet the new 70 ft. width or area requirements. Requiring such would be a hardship and a practical difficulty.

However, as I indicated at the hearing, I must also find that the variance can be granted in strict harmony with the spirit and intent of said regulations, and in a manner as to grant relief without injury to the public health, safety and general welfare. To me, this means that I look to the pattern of development in the immediate area to see if the old undersized lots are generally developed with single-family homes on 50 ft. lots or has the "neighborhood" been developed with double lots. In my way of thinking, the proposed new home should be compatible with the existing neighborhood. Said another way, allowing new homes on 50 ft. lots in neighborhoods which have been developed in double lots would be out of place with and change the character of the neighborhood.

I think it also important to arrive at the same result using Section 304 or the formal variance procedure. Both have been requested here. This lot meets all the criteria of Section 304.1 as it is a pre-1955 lot, the new home will meet all regulations other than lot width and area, and there is no adjoining land from which the owner could take to make the lot conform. I distinguish the Clark's Point Road case referred to me by the protestants because the Clark's Point Road owner had three lots that could be combined to produce two lots which would meet the regulations. However, here, lot 66 is not large enough to contribute land without creating just another variance case.

Also, by Section 304.4, I am additionally charged with finding whether or not the proposed dwelling is "appropriate". I find that it is "appropriate" in this case because the neighborhood has been developed with single-family homes on 50 ft. wide lots in the past. As evidenced above, I find that the pattern of development shows that most of the lots are developed as single family homes on 50 ft. lots. I acknowledge that there are a few double lots on the edge of this neighborhood. I define the neighborhood to be the water front and water view properties shown on Petitioner's Exhibit No. 1. Just as the water front lots are generally developed as single-family homes on the 50 ft. lots, the protestants [sic] homes across Bauernschmidt Drive are not developed as double lots, but rather single-family homes on 50 ft. lots. I do not believe that allowing another single-family home on the subject lot will adversely affect the character of the neighborhood as these are already so developed. . . .

Under the totality of the evidence, I also find that such a variance can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare.

Finally, I understand that the protestants have enjoyed the view from across the road for many years. I understand that they would like to continue to enjoy that view. However, they have the opportunity to purchase the development rights on the Petitioner's lot as it seems that the Petitioner is ready to sell the lot. In this case the Petitioner would maintain his view to the west without an additional neighbor. It may even be possible for an agreement with Mr. Hummel and Koch to similarly restrict the development rights on

their waterfront properties. However, I cannot impose such restrictions by law. This must be a matter of agreement among the Parties.

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 granted. (Emphasis added.)

Appellee filed a *de novo* appeal to the Board, which held an evidentiary hearing on February 3, 2005.<sup>6</sup> We turn to review the evidence adduced at the hearing.

James Grammer, a project manager for McKee & Associates, testified on appellants' behalf.<sup>7</sup> As a project manager, he reviewed site plans and supervised property surveys. Moreover, for a period of twenty years, he worked with the County zoning office regarding the variance and zoning process. Grammer explained that Lot 67 was created before March 30, 1955, pursuant to a validly approved subdivision; that it has access to public water and sewer service; and that it cannot be further subdivided. He claimed that, with the exception of the D.R. 3.5 area and width requirements, Lot 67 meets all BCZR height and area regulations.

Grammer described a small boat ramp on Lot 67, "near the line of division" between lots 66 and 67, which he "assume[d]" was used by the Muellers in conjunction with their home on Lot 66. Grammer also testified that appellants placed an "aluminum shed" on Lot 67, and he acknowledged that it "straddles the property line between Lot 67 and 68 [sic]...."

<sup>&</sup>lt;sup>6</sup> As of the time of the Board's hearing, appellants still owned Lot 66.

<sup>&</sup>lt;sup>7</sup> Appellants were unsuccessful in having Grammer certified as an expert in the County variance and zoning processes.

He also recognized that "some" of the properties along the waterfront, and some behind the houses on the waterfront, were constructed on double lots.

The following testimony on cross-examination is relevant:

[COUNSEL FOR APPELLEE]: Now, let's look at the adjoining property where the Muellers have their home. Just to keep the record straight, that's 2606 [Bauernschmidt Drive].

[MR. GRAMMER]: Correct.

[COUNSEL FOR APPELLEE]: Now, is 2606 and 2608 are [sic] combined, if you combine the acreage, will that meet the 10,000 square foot minimum acreage required in the D.R. 3.5?

[MR. GRAMMER]: Yes, if they were both combined.

[COUNSEL FOR APPELLEE]: Would it also meet the front yard requirement of the seventy foot, front footage requirement of seventy feet, if they are combined?

[MR. GRAMMER]: Yes.

However, Grammer maintained that, in actuality, it is not possible for Lot 67 to conform to current zoning laws by using land that is part of Lot 66, because Lot 67 "does not have sufficient adjacent land to conform to current width and area requirements." Grammer indicated that the owner of Lot 66 would then be required to seek a variance for reducing the size of that lot. He explained that Lot 66

is currently improved with a dwelling. That itself and on its own is an undersized lot. There's no ground we can acquire from it that would increase our lot to meet the minimum area or the minimum lot width of the building line, in any case, and if we did take any ground from [Lot 66], it would just make the existing deficiencies on Lot 66, 2606 Baurenschmidt, worse.

Mr. Mueller testified that, throughout the years, Lot 66 was used primarily as "a

weekend retreat," while Lot 67 was used "to play ball on, the kids went over, and ran on it." He maintained that he "never" intended to merge the two lots, which are separately deeded and taxed. Although Lot 67 is situated "to the side" of the house on Lot 66, he insisted that "it was a lot," and did not serve as a "side yard" for Lot 66.

Appellants' son-in-law, Steven Glock, has been familiar with both lots for about 30 years, as he knew the Mueller family since he was six years old. He testified that the residence on Lot 66 is used as a "weekend home." Moreover, he stated that Lot 67 was "always characterized... as a separate lot" and referred to as "the lot." He added: "I call it that because that's what we referred to it in the thirty years I have been familiar with the property." According to Glock, the family entertained on Lot 66, not Lot 67. He explained that "the side lot was simply, you know, a lot," where the children played ball. With regard to the shed on Lot 67, he claimed it is "very easily moved" because it is approximately "tenby-ten," made of aluminum, and is not a permanent structure. Glock also testified that appellants used it to store a riding lawnmower, a push lawnmower, and other handtools. As to Lot 67, he claimed: "There is no boathouse. There's a section of a seawall that's open... It can be used to take a boat in and out."

Since the DR 3.5 zoning regulations were imposed in 1970, residences have been built on other undersized lots within the Bauernschmidt Manor community. For example, in 1972 a residence was built at 2412 Bauernschmidt (waterfront property); in 1979, a residence was built at 2311 Bauernschmidt (non-waterfront); in 1980, a residence was built at 2705 Bauernschmidt (non-waterfront); in 1986 a residence was constructed at 2308 Bauernschmidt

(non-waterfront); and in 2004 a residence was built at 2508 Bauernschmidt (waterfront property). The smallest of these properties was 2705 Bauernschmidt, with an area of 7450 sq. feet.<sup>8</sup>

Appellee presented two witnesses. In addition, appellee presented a petition from neighbors who opposed the variance request.

Aaron Kluttz has lived at 2618 Bauernschmidt Drive since 1991. That property consists of lots 70 and 71. He acknowledged that he intended to merge his two lots.

According to Kluttz, the Muellers have always treated their two lots as one property, with no visible line of separation. When asked about appellants' use of the properties, Kluttz stated: "I know each holiday, they have a pretty large party . . . I don't know exactly where they put their tents, but it seems like they use both areas consistently." Further, he testified: "It's just all one big yard." He added that Mr. Mueller keeps the grass on both properties "nice, keeps it all mowed." He also stated that the Muellers use Lot 67 for recreational activities, and it has a shed on it as well as a sandy "beach ramp," from which "you can launch a boat." The remainder of both lots is "straight bulkhead all the way across."

Kluttz maintained that treating appellants' two lots as one parcel would be consistent with the neighborhood, which is composed of many residences built on double lots. He also testified that on appellant's waterfront block, two other single, vacant waterfront lots are used by their respective owners as front yards, with their residences located across the street. He

<sup>&</sup>lt;sup>8</sup> In 1983, a residence was built at 2515 Bauernschmidt, a non-waterfront property, consisting of 14,136 square feet.

added that his neighbor, Perry Leventis, constructed a house in the area in the past 15 years, which he believed was built on a lot exceeding the 10,000 square feet minimum.<sup>9</sup>

Appellants' counsel questioned Kluttz about a residence built on an undersized lot that had been used as a side lot for an existing dwelling owned by Steven Wilson. Although each of Wilson's properties exceeds 13,000 square feet in area, the property in issue lacked the 70 foot width requirement to meet current zoning regulations. Yet, a variance was granted to build a residence on the vacant lot adjoining Wilson's residence. Mr. Kluttz expressed concern that development of Lot 67 would obstruct his view of the water. Because the area is designated as a Critical Area, Kluttz was also of the view that development should be restricted in compliance with the regulations.

Ronald Wisniewski has lived at 2605 Baurenschmidt Drive, a double lot, since 1982. He conceded that he uses his own lots as "one parcel"; that his house "straddles" the lot line; and his home is "built in the center" of the two lots. Nevertheless, he explained that it is "very common" in the neighborhood for houses to be built "on double lots." For that reason, he did not believe construction on Lot 67 would be in keeping with the character of the area. Indeed, he claimed that if appellants' variance request were granted, it would be "the first house built on Greyhound Creek within the hundred foot buffer since, I guess, the Muellers built their home." He expressed concern that he would "lose [his] waterfront view" if the Petition were granted.

<sup>&</sup>lt;sup>9</sup> While the record contains many SDAT records pertaining to properties located in Baurenschmidt Manor, we have not been able to locate a record pertaining to Leventis.

#### Wisniewski also stated:

Like I said before, we, the community association, was successful in preventing any building in the hundred foot buffer along Greyhound Creek.

You extend that map all the way up, you will see it's all woodland, all the way around. And from that section of the road there, from Baurenschmidt, that's the only view, unobstructed view, you have of that creek, and it's all undeveloped.

And the people enjoy that every day, walking through there, and seeing that view.

Once they build there, no one will even know they're on waterfront, basically, because you're going to be looking through houses.

So it not only affects my property value, my loss of view, but it affects everybody's property value.

According to Wisnewski, appellants "mostly" used their home "on weekends." He also stated that they used Lot 67 to launch and store their boat and for "outdoor activities." He also claimed that, when hosting social gatherings, appellants used Lot 67 for a variety of purposes, including parking, playing horseshoes, and playing ball, and sometimes tables were put on the line between the two lots. Mr. Wisnewski indicated that he has seen others playing on Lot 67 (i.e., people who are not members of appellants' family). Wisnewski noted that there is no line of demarcation between lots 66 and 67, and stated that "[t]he major part of sixty-seven was open. . . ."

Wisniewski explained that he contacted SDAT about the property taxes for lots 66 and 67, because he was interested in the comparison to his own. He claimed that the property taxes for Lot 67 are lower than that for Lot 66, because SDAT considered Lot 67 a "mowing property," in that it "was a lot extension or an unbuildable lot."

In a 29-page post-hearing memorandum filed with the Board on March 17, 2005,

appellee raised a number of issues. People's Counsel argued that appellants failed to satisfy the requirements for a variance, including the uniqueness requirement. Moreover, appellee claimed that appellants did not show "practical difficulty," and that granting a variance would be "in direct conflict with variance law and the spirit and intent of the regulations," stating: "... Petitioner wants a radical deviation from the regulations in the D.R. 3.5 zone because he believes he can make more money with two separate lots."

Appellee also argued that "the merger doctrine supports denial of the Petition under BCZR 304," and that the use of the two properties over the years created a zoning merger that precluded appellants from obtaining the requested variance. People's Counsel added that the Petition "fail[ed] to satisfy Chesapeake Bay Critical Area Standards." Further, People's Counsel asserted:

The site was used effectively by Petitioner with his adjoining property for many years. There is nothing prohibiting Petitioner from selling both lots together, particularly since the SDAT records show both lots were acquired by Petitioner at the same time (5-11-79)....<sup>[10]</sup> It is apparent that the Petitioner intends to separate the site from lot 66 after all these years in the hope of increasing his profit. He rejects the viable alternative of selling the combined lots and improvements together, in compliance with current zoning regulations and long-standing use. But a property owner is not entitled to every use in the zone, only a reasonable use. Nor can a variance be granted to increase Petitioner's economic gain... Meanwhile, the evidence demonstrates it is reasonable and common in this area to utilize and transfer two or more of the old lots as a single home site, particularly along the waterfront on Baurenschmidt Drive.

Muellers' parents. The elder Muellers did not acquire the two lots at the same time. Indeed, they built a home on Lot 66 twelve years before they acquired Lot 67.

On July 8, 2005, the Board issued its "Opinion," granting appellants' Petition, with the caveat that any building must comply with the Chesapeake Bay Critical Area requirements, which would be addressed during the building permit process. The Board considered the variance under BCZR § 304, stating:

Petitioners, Grace M. and Herman Mueller, Jr., requested variance relief for property located at 2608 Bauernschmidt Drive in the "Bauernschmidt Manor" subdivision, to permit a 6,812 sq. ft. lot in lieu of the minimum required 10,000 sq. ft.; to permit a lot width of 61 feet in lieu of the minimum 70 feet per § 304 of the *Baltimore County Zoning Regulations* (BCZR); and to permit an undersized lot per § 304.

After the Board reviewed the evidence, it set forth its "Discussion," as follows:

The Board of Appeals members deliberated this request for a variance on May 4, 2005. After much discussion the members agreed on the following.

The property was developed in the early 1940's and the Muellers purchased two lots in 1947.<sup>[11]</sup> A home was built on lot 66 in 1948 that conformed to zoning requirements which were changed in 1970. The outcome of this zoning change, to already existing properties, resulted in a legitimate nonconforming use, causing the property to become unique. Based upon the evidence and testimony received at [the] hearing, we find that there are special circumstances or conditions which exist that are peculiar to the land or structure that is the subject of the variance request.

\* \* \*

While it appears from Cromwell [v. Ward, 102 Md. App. 691 (1995)] that there must be some physical uniqueness in the size and shape or environment of the property to qualify for a variance, we believe that the court did not address the imposition of new zoning regulations on old subdivisions. In such cases, the imposition of new regulations impacts the lots in the old subdivision disproportionately as compared to lots in the area developed after and in accordance with new regulations. We therefore find that, under these

This finding is clearly erroneous but not material; the elder Muellers acquired Lot 66 in 1947, and they acquired Lot 67 in 1960.

circumstances, the property passes the first test and is unique. This subdivision was recorded in the 1940s prior to D.R. 3.5 zoning, and denying the requested variance would result in a hardship and practical difficulty.

As to the issues brought up in People's Counsel's memorandum:

- 1. Profitability, inconvenience, or preferable alternative The Board finds that as a result of the new zoning imposed after 1950 makes these issues moot.
- 2. The variance request does not conflict with the spirit or intent of the regulations.
- 3. As to the issue of "merger," there is no mention of intent by the owner to combine the lots as one unit. It appears through testimony by the owner that he has never considered merging the two lots as one property as further indicated by the separate tax bills.
- 4. As to the Chesapeake Bay Critical Area requirements, this issue will be addressed with the building permit per DEPRM [Department of Environmental Protection and Resource Management] and ZAC [Zoning Advisory Committee] comments when the owner applies for a building permit.

The Board Members also feel that the development of this lot will not harm or change the nature of the area. Denying the requested variance relief would relinquish the use of lot 67 to only expansion of the current yard of lot 66. Therefore, this Board will grant the requested variance relief and it will so order.

#### (Emphasis added.)

The Board issued the following Order:

**ORDERED** that the Petitioners' request to permit a 6,812 sq. ft. lot in lieu of the minimum required 10,000 sq. ft. and permit a lot width of 61 feet in lieu of the minimum 70 feet per § 304 of the Baltimore County Zoning Regulations (BCZR) be and the same is hereby **GRANTED**, with the following restrictions:

- 1. Compliance with the ZAC comments submitted by DEPRM [Department of Environmental Protection and Resource Management] dated may 20, 20024 [sic], a copy of which is attached hereto and made par hereof;
- 2. Compliance with the ZAC comments submitted by the Bureau of Development Plans Review dated May 18, 2004, a copy of

which is attached hereto and made a part hereof; and

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

Thereafter, on July 15, 2005, appellee filed a "Petition for Judicial Review." Appellants sold Lot 66 sometime during the Fall of 2005, and the new owner recorded title on December 15, 2005. Following a hearing on January 9, 2006, the circuit court reversed the Board's decision. In a well written "Memorandum Opinion" and "Judgment Order" dated January 25, 2006, the court said, in part:

In this case, the properties at issue were re-zoned in 1970 in a manner that increased the minimum lot size and width. Further construction was thereby limited, unless parties owned adjacent parcels or a variance was obtained. Testimony established that many, if not most, of the homes originally constructed in the subdivision are now on lots construed to be undersized, based upon the re-zoning. New construction has occurred within the subdivision on double lots, in compliance with the new zoning restrictions.

\* \* \*

The decision of whether to grant a variance under either provision [of the BCZR] is a two-step process. The first requires a determination of whether the property, in and of itself, is "unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provisions to impact disproportionately upon that property." Cromwell v. Ward, 102 Md. App. 691, 694 (1995). If that "uniqueness" does not exist, no variance may be granted. If it does, then the second hurdle is to determine whether practical difficulty and/or unreasonable hardship result from the disproportionate impact of the zoning ordinance caused by the property's unique quality. Cromwell, supra at 694-695.

\* \* \*

The Board found, and the [appellants] currently argue, that application of the new zoning in 1970 disproportionately impacts undeveloped lots in the

old subdivision, such as the Muellers, and that alone suffices for a finding that the property is "unique." Additionally, the [Muellers] cite to the testimony of their expert, James Grammer, who notes that Lot 67 would be rendered unusable for residential purposes if the variance were not granted.

This analysis ignores the requirements under <u>Cromwell</u> that the impact on the property at issue be somehow different from that of surrounding properties. In fact, the impact here is the same as to every undeveloped lot in the subdivision. Construction of that fact, alone, as rendering a property "unique" would effectively gut the impact of the rezoning. Every undersized lot throughout the community would then be able to claim it was unique on the basis of the re-zoning alone, and the increased lot size restrictions would be virtually meaningless.

B.C.Z.R. affords some limited relief to property owners like the Muellers who own undersized lots in older subdivisions. By its express terms, however, relief under B.C.Z.R. 304.1 is not permitted if the owner has sufficient adjoining land to conform with the area and width restrictions set forth in the applicable zoning. At the time these matters were before the Board, the combined lots permitted construction of one residence that met with the regulations. It would be contrary to the intent of this regulation, and to the zoning modification overall, to allow construction of a second structure on this same site.

The requested variance must fail for other reasons as well. At the time this case was before the Board, the Muellers owned Lots 66 and 67, which are contiguous. This fact is also crucial to the variance analysis.

The doctrine of merger has developed in zoning analysis to allow consideration of the lot sizes of contiguous parcels with common ownership, where development on a single parcel would violate the zoning restriction. This doctrine of merger was first formally recognized in Maryland in Friends of the Ridge, supra, at which time the Court of Appeals held that a landowner who clearly desires to combine or merge several parcels of lots of land into one larger parcel may do so to allow consideration of the contiguous lots in service of a single structure or project. In reaching this conclusion, the Court noted a split in the approach to merger employed in other jurisdictions. The majority required some evidence, often minimal, of the owner's expression of intent to merge the parcels. However, some jurisdictions presume merger automatically. In Friends of the Ridge, supra, the court was not required to determine which of these approaches Maryland should follow.

In <u>Remes v. Montgomery County</u>, 387 Md. 52 (2005), the Court of Appeals further explored the doctrine of zoning merger. In <u>Remes</u>, the Court held that two contiguous lots held in common ownership that were used by prior owners in service to one another had merged for zoning purposes. Thus

permits could not be issued to permit construction on the vacant lot, where such construction would create a non-conforming use on the adjacent lot. As the Court noted, when zoning merger occurs, the lots remain divided, and the doctrine simply operates as an adjustment of zoning requirements. Remes at 478. However, once that occurs, one can't later sell off a parcel without correcting nonconformance issues and simply seek a variance. To hold otherwise would allow the original owner to "flip-flop between his or her adjacent parcels, thwarting the intent of the land development regulations and, perhaps more egregiously skirting [the] County's exacting requirements for subdivision." Remes at 489.

At the time the Board considered the Mueller's [sic] variance request, they had adjacent parcels. The undeveloped parcel had been used in combination with the developed parcel for over 40 years. The dock used by the family was on the undeveloped lot, and a shed straddled the property line. While never formally "merged" into a single deed, the properties had shared a common address for many years. The double lot had sufficient area to comply with the revised zoning restrictions. To allow the owners to now claim they are entitled to a variance to permit construction of a home on the undeveloped parcel would be contrary to the analysis employed by the Court in Remes.

Finally, the [Muellers] argue that the December sale of [Property I], leaving them owners of only the undeveloped lot, eliminates the merger analysis. This argument must fail for several reasons. First, in the posture of this case, this Court is bound to analysis of the facts and issue [sic] before the Board. To the extent that new facts develop that may impact on the Board's analysis, the proper remedy is to remand for further review, not to analyze those facts in the first instance on appeal. Second, in the analysis under B.C.Z.R. 304.1, at the time of application the Muellers owned adjoining land. Thus this development is not one that this Court may consider in the first instance as according a basis for relief by grant of a variance.

\* \* \*

For the reasons stated, the Court finds that the July 8, 2005 decision of the Board of Appeals was premised on an erroneous interpretation of the law, and thus was in error. For that reason, the decision of the Board of Appeals is REVERSED, and this case is remanded for an entry of a ruling consistent with the ruling set forth in this opinion.

(Emphasis added.)

On February 7, 2006, appellants filed a "Motion to Alter or Amend Judgment," which was denied on March 9, 2006. The court said: "For the reasons previously stated, this Court does not believe BCZR 304.1 authorized the relief granted below."

#### **DISCUSSION**

I.

"The very essence of zoning is territorial division [of land within a jurisdiction] according to the character of the land and the buildings, their peculiar suitability for particular uses, and uniformity of use within the zone." Heath v. Mayor and City Council of Baltimore, 187 Md. 296, 305 (1946). See Schultz v. Pritts, 291 Md. 1 (1981); Northwest Merchants Terminal v. O'Rourke, 191 Md. 171 (1948); Applestein v. Baltimore City, 156 Md. 40 (1928); Baltimore County v. Wesley Chapel, 110 Md. App. 585, 602, rev'd on other grounds, 344 Md. 52 (1996). The power to zone is a legislative function. Anne Arundel County v. McDonough, 277 Md. 271, 283 (1976); Nottingham Village, Inc. v. Baltimore County, 266 Md. 339, 350 (1972); Board of County Comm'rs for Prince George's County v. Edmonds, 240 Md. 680 (1965). The authority stems from the State's police power to regulate in the interest of the general welfare. See Maryland-National Capital Park & Planning Comm'n v. Mayor of Rockville, 272 Md. 550, 560 (1974); Norbeck Village Joint Venture v. Montgomery County Council, 254 Md. 59, 65-66 (1969); American Oil Co. v. Miller, 204 Md. 32, 39 (1954). See also Euclid v. Ambler Realty Co., 272 U.S. 365, 387 (1926).

At least one function of zoning is "to preserve various types of neighborhoods, be they residential, industrial, commercial or historical." *Montgomery County v. Horman*, 46 Md.

App. 491, 497-98 (1980). Zoning and planning are separate functions, however. Howard Co. v. Dorsey, 292 Md. 351, 361 (1982); Board of County Comm'rs of Carroll County v. Stephans, 286 Md. 384, 389 (1979). Planning is a broader concept, encompassing the development of a community and the creation of "goals for orderly growth and development including the establishment of viable neighborhoods for which it delineates appropriate boundaries," and "suggest[ing] methods for implementation and achievement of those goals, including proposals for future land use and zoning classifications." Dorsey, 292 Md. at 362. See Washington County Taxpayers Assoc., Inc. v. Board of County Comm'rs, 269 Md. 454, 455-56 (1973) ("planning embraces zoning, in a general way, but the converse is not true"); see also 1 E. Yokley, Zoning Law and Practice §§ 1-2 (4th ed. 1978) (noting that "zoning is almost exclusively concerned with use regulation, whereas planning is a broader term and indicates the development of a community. . . . "); 101A C.J.S. Zoning and Planning § 5 (1979) ("'Planning' contemplates the evolvement of an overall program or design of the present and future physical development of the total area and services of an existing or contemplated municipality, while 'zoning' is part of an end result or product of planning").

The first zoning regulations in Baltimore County took effect on January 2, 1945, "when, pursuant to previous authorization by the General Assembly, the County Commissioners adopted a comprehensive set of zoning regulations." *McKemy v. Baltimore County*, 39 Md. App. 257, 259 (1978). Then, on March 30, 1955, the County adopted "a new set of comprehensive zoning regulations." *Id.* at 260. However, it also enacted BCZR § 304 to "grandfather" lots that had become substandard as a result of the zoning law, allowing

them to be developed under certain conditions. BCZR § 304 was intended to mitigate the harsh effect of the zoning scheme, and to avoid constitutional takings violations. The County sought to balance the expectancy interests of landowners who, in the 1940's and 1950's, may have intended to build on land that was later affected by the zoning scheme, and the long-term interests of the County in protecting against over-development and overcrowding.

In 1970, the zoning ordinance was amended again to add area and density provisions to its zoning scheme for the purpose of improving the health, safety, and general welfare of its citizens. At that time, the present minimum width and minimum area requirements were established. The ordinance was amended again in 1991 to add a "compatibility review" to the process, requiring a landowner who seeks a building permit to show that the proposed dwelling is appropriate to the neighborhood.

"A variance is an authorization for [that] . . . which is prohibited by a zoning ordinance. . . . "Cromwell v. Ward; 102 Md. App. 691, 699 (1995)(citation omitted). The burden is on the applicant to show facts to warrant a variance. Easter v. Mayor and City Council of Baltimore, 195 Md. 395, 400 (1950). In general, "the specific need for the variance 'must be substantial and urgent and not merely for the convenience of the applicant[.]" Chesley v. City of Annapolis, \_\_\_\_ Md. App. \_\_\_\_, No. 1104, September Term, 2006, slip op. at 17 (filed September 27, 2007) (quoting Belvoir Farms Homeowners Ass'n, Inc. v. North, 355 Md. 259, 276 (1999)). Ordinarily, a variance is warranted if the "applicable zoning restriction . . . is so unreasonable as to constitute an arbitrary and capricious interference with the basic right of private ownership," or otherwise results in

"unwarranted hardship." Belvoir Farms, 355 Md. at 276, 282 (citation omitted).

Writing for this Court in *Cromwell*, 102 Md. App. at 694, Judge Cathell explained that the variance process "is at least a two-step process." He stated, *id.* at 694-95:

The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is—in and of itself—unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.*, a determination of whether practical difficulty and/or<sup>[]</sup> unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness, exists. Further consideration must then be given to the general purposes of the zoning ordinance.

Noting that a variance is often confused with a special exception, the Court observed, id. at 699-700: "[T]he variance and exception are designed to meet two entirely different needs. The variance contemplates a departure from the terms of the ordinance in order to preclude confiscation of property, while the exception contemplates a permitted use . . . [once] the prescribed conditions therefore are met." (Citation omitted.) Moreover, the Court stated: "The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances." Id. at 703 (citation omitted).

II.

We turn to review the zoning regulations pertinent here. BCZR § 304 is titled "Use of Undersized Single-Family Lots." The first part, § 304.1, sets out threshold criteria for eligibility, stating:

Except as provided in Section 4A03, 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;
- B. All other requirements of the height and area regulations are complied with; 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.

If the threshold requirements of BCZR § 304.1 have been met, the inquiry proceeds to the "compatibility review" outlined in BCZR § 304.2, captioned "Building Permit Application." It provides, in part:

- A. Any person desiring to erect a dwelling pursuant to the provisions of this section shall file with the Department of Permits and Development Management, at the time of application for a building permit, plans sufficient to allow the Office of Planning to prepare the guidelines provided in Subsection B below. Elevation drawings may be required in addition to plans and drawings otherwise required to be submitted as part of the application for a building permit. Photographs representative of the neighborhood where the lot or tract is situated may be required by the Office of Planning in order to determine appropriateness of the proposed new building in relation to existing structures in the neighborhood.
- B. At the time of application for the building permit, as provided above, the Director of the Department of Permits and Development Management shall request comments from the Director of the Office of Planning (the "Director"). Within 15 days of receipt of a request from the Director of the Department of Permits and Development Management, the Director shall provide to the Department of Permits and Development Management written recommendations concerning the application with regard to the following:
  - 1. Site design. New buildings shall be appropriate in the

context of the neighborhood in which they are proposed to be located. Appropriateness shall be evaluated on the basis of new building size, lot coverage, building orientation and location on the lot or tract.

- Architectural design. Appropriateness shall be evaluated based upon one or more of these architectural design elements or aspects:
  - a. Height.
  - b. Bulk or massing.
  - Major divisions, or architectural rhythm, of facades.
  - Proportions of openings such as windows and doors in relation to walls.
  - e. Roof design and treatment.
  - f. Materials and colors, and other aspects of facade texture or appearance.

BCZR § 307 is titled "Variances." BCZR § 307.1 provides:

The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from 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 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 of 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.

As to BCZR § 307, the Cromwell Court said, 102 Md. App. at 698-99:

The Baltimore County ordinance requires "conditions . . . peculiar to the land . . . and . . . practical difficulty . . . ." Both must exist. But the terms "practical difficulty" and "unreasonable hardship" are stated in the ordinance disjunctively. Thus, at least as to variances other than use variances, if the property is found to be unique, the practical difficulty standard would then apply. . . . 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 that uniqueness is first established that we then concern ourselves with the practical difficulties (or unnecessary hardships in use variance cases).

Section 4A03, entitled "Growth Management Plan for Bowleys Quarters and Back River Neck Areas," is similar to BCZR § 304, except that it applies to residential property "located in the Bowleys Quarters and Back River Neck areas . . . ." See § 4A03.2. But, § 4A03 imposes two additional requirements: (1) the property must meet the criteria for a variance under BCZR § 307; and (2) the property must have access to public sewer service. 12

<sup>&</sup>lt;sup>12</sup> Appellants state that BCZR § 4A03 "applies to Lot 67 because the property is in the Back River Neck Area." The Board made no such finding, however. Indeed, in its opinion, the Board only mentioned § 4A03 in its "Testimony" section, as follows:

Mr. Grammer testified [that i]n 1948 lot 67 did meet the zoning requirements for building a home. He also opined that the subject lot did meet the other requirement regarding the height and area as required under § 304.1B and § 4A03B.

Moreover, appellee does not appear to argue that § 4A03 applies here; the section is not included in its appendix of zoning regulations, nor does it cite to the section in its brief. The circuit court addressed that section, but stated that the Muellers sought relief under (continued...)

Under § 4A03.1, an undersized lot is defined as follows: "An unimproved platted lot or a lot of record on or before August 6, 1999, that does not meet the area, height or setback requirements in these Zoning Regulations to allow the construction of a dwelling." Section 4A03.4 is titled "Building permits." Section 4A03.4.B provides:

A building permit may be issued for the construction of a dwelling on an undersized lot subject to the following conditions:

- 1. The owner of the lot does not own sufficient adjoining land that if combined with the adjoining land would allow the property owner to conform to the current zoning requirements;
- 2. No further subdivision of the lot is allowed;
- 3. The property owner obtains a variance as provided in Section 307 of these Zoning Regulations; and
- 4. The property owner connects to a public sewer where available and with adequate capacity.

BCZR § 4A03.5.B contains the same site design and architectural design requirements as set forth in BCZR § 304.2.B.

As noted, the majority of the land comprising lots 66 and 67 is located within the 100-foot Chesapeake Bay Critical Area Buffer. Baltimore County Code § 33-2-401 bars construction within that buffer unless a variance is granted in accordance with the Chesapeake Bay Critical Area criteria. BCZR § 500.14 prohibits the Board from rendering any decision on a petition for special exception or a variance within the Chesapeake Bay

<sup>12(...</sup>continued) BCZR §§ 304 and 307.

#### Critical Area setback unless:

[T]he Zoning Commissioner has received from the Director of the Department of Environmental Protection and Resource Management, or his designated representative, written recommendations describing how the proposed request would:

- A. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;
- B. Conserve fish, wildlife and plant habitat; and
- C. Be consistent with established land use policies for development in the Chesapeake Bay Critical Area which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts.

#### BCZR § 104.1 concerns nonconforming uses. It states:

A nonconforming use (as defined by Section 101) may continue except as otherwise specifically provided in these regulations, provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate.

#### III.

Appellants claim that the Board properly applied the requirements of BCZR § 304.1 in granting their Petition for undersized lot relief. In their view, the Board's decision "was based on substantial evidence within the record that the Appellants met all of the requirements . . ." of that section. Therefore, they urge us to reverse the circuit court.

According to appellants, BCZR §§ 304.1 and 307 are "independent methodologies available to obtain authority to build a residence on an undersized lot." They explain:

"Section 304.1 is simply an undersized lot provision, which is an alternative methodology to the much more general Section 307 variance process." Moreover, appellants contend that they satisfied the criteria of § 304.1, which does not require a determination that a property is unique and unusual in a manner different from the nature of the surrounding properties. Rather, appellants argue that § 304.1

allows for the construction of a residence on an undersized lot if three elements are met: (A) the subdivision was created prior to March 30, 1955; (B) other height and area regulations are satisfied; and (C) insufficient adjoining land is available. Importantly, nowhere does Section 304.1 require application of Section 307's standards.

#### (Emphasis added.)

Appellants maintain that the circuit court "correctly accepted that elements A and B [of § 304.1] were established," but "refused to recognize the substantial evidence presented by the Appellants that Property II does not have sufficient adjoining land in order to conform to the current zoning regulations." They posit: "The Appellants could not simply 'borrow' land from the already developed, undersized Property I in order to make Property II of lawful size so as to permit construction of a residence. As stated by Mr. Grammer, the effect would only have been to require a variance for the existing, developed Property I."

In any event, appellants argue that the Board properly found Lot 67 unique, a factor under BCZR § 307, based on the imposition of new zoning regulations on an old subdivision.<sup>13</sup> Urging this Court to affirm the Board, appellants state: "Finding lawfully

<sup>&</sup>lt;sup>13</sup> As noted, the circuit court disagreed. It concluded that Lot 67 is not unique because (continued...)

created lots that pre-dated zoning to be 'unique' is appropriate." In appellants' view, Lot 67 "is disproportionately impacted as compared to properties in other subdivisions or communities that were subdivided consistent with the requirements of D.R. 3.5. . . ." Moreover, they argue that the *Cromwell* decision "never suggests that in determining whether a property is unique, it must be compared only to those properties within its immediate vicinity." Appellants assert that, "[b]y focusing solely on the Bauernschmidt Manor subdivision," the court "did not take into account . . . that the D.R. 3.5 zoning regulations affect a much broader area than just Bauernschmidt Manor."

In addition, appellants maintain that the Board was legally correct in determining that, without a variance, practical difficulty will result. According to appellants, "Property I, an undersized and developed lot, did not afford Appellants adequate adjoining land to make the non-conforming Property II 'conforming.'" They suggest that, if they are not granted a variance, Lot 67 "will have to remain vacant," rendering it "essentially worthless as compared to Property I or any other developed property in the same subdivision." Based upon the alleged "economic harm" that would accrue to appellants if they are not granted a variance, appellants ask this Court to find that strict compliance with the zoning regulations will result in practical difficulty.

Further, appellants maintain that the Board correctly found that a variance would not

<sup>13(...</sup>continued)
the impact of the zoning regulations has the same effect on "every undeveloped lot in the subdivision."

violate the spirit and intent of the sixty-year old community, which is substantially developed. They point out that twenty-three of the properties on Bauernschmidt Drive were developed prior to the enactment of D.R. 3.5 regulations, and were constructed on what are now undersized lots. Appellants also allege that, since the enactment of D.R. 3.5 zoning in 1970, structures have been built on undersized lots on five occasions. Therefore, they insist that granting their request would not injure the public heath, safety, or welfare of the community.

Appellants also contend that, in addition to meeting all three requirements of § 304.1, they satisfied the additional requirements set forth in § 4A03.4B. In this regard, they note that the properties cannot be further subdivided, and Property II has access to public water and sewer.

In addition, appellants insist that they "should not be barred from obtaining County permission to construct a home on Property II simply based on the fact that they sold Property I." They insist that they did not "create" a hardship as to Lot 66. Appellants also contend that "the record lacks any evidence demonstrating that the doctrine of merger applies."

People's Counsel suggests that Lot 67 does not qualify for relief under BCZR § 304 or BCZR § 307. Claiming that the Board erred "on every legal issue," appellee asserts: "[C]ontrary to the [Board's] Opinion, a variance must stand on its own merits under the Cromwell standards for uniqueness and practical difficulty and under BCZR 307. Alternatively, the property must qualify for undersized lot relief under BCZR 304. There is

no evidence to support relief under either scenario." In appellee's view, the Board's "decision is inadequate in form and substance. It lacks even a minimal analysis of the facts and application of the law required under the fairly debatable standard for judicial review." Among other things, argues appellee, the Board ignored the evidence that, over the years, Lot 67 was utilized as a side yard for Lot 66, as well as the fact that other dwellings were constructed on double lots in the subdivision.

According to appellee, the Board's "most serious" mistake concerned its finding as to uniqueness, and "the justification of a variance based on the imposition of D.R. 3.5 zoning in 1970." Appellee explains:

The implications of this premise turn upside down long standing [sic] zoning principals [sic] on reclassification, variance, and nonconforming use. There is no authority to expand the definition of uniqueness to include a condition unrelated to the geographic features of the site or improvements. Further, the [Board] interjects a standard – size – that is not contemplated by the definition of uniqueness cited in <u>Cromwell v. Ward</u> 102 Md. App. 691 (1995). It also grants a prohibitive increase in density under the variance statute, B.C.Z.R. 307. This misinterpretation in turn conflicts with the limited and conditional statutory relief afforded undersized lots under B.C.Z.R. 304.1. It also seriously usurps and undermines the legislation [sic] authority of the Baltimore County Council under Md. Ann. Code, Art. 25A(X) to rezone residential property, including the concomitant increase in minimum lot size. Finally, the legal errors expand nonconforming uses, a violation of long-standing zoning principles to reduce or restrict such uses.

\* \* \*

If the variances are granted here, it creates instability for residential reclassifications that seek to reduce density by increasing minimum lot size. There are 6 D.R. classifications and 8 Resource Conservation (R.C.) zones, each with varying densities per acre. If a variance is granted to reduce lot area, it effectively supercedes a site's zoning classification, which in turn collapses the comprehensive zoning authority of the County Council under Md. Ann.

Code, Art. 25A(X).

Insisting that there was "no evidence of uniqueness causing practical difficulty to prevent a reasonable use," appellee contends that the Board "foisted its own standard for uniqueness," and "disguised its errors by giving lip service to legitimate variance standards. . ." Appellee elaborates, asserting that a finding of uniqueness "must relate to conditions on the land itself." Thus, appellee contends that the Board "illegally expand[ed] a reasonable use standard for practical difficulty to include the petitioner's preferred uses."

Moreover, People's Counsel claims that the Board's decision "has the disturbing side effect of extending and expanding a nonconforming use, contrary to conventional zoning principles to eliminate such uses." Appellee comments:

In adopting a conflicting and unauthorized standard for definition of uniqueness, the [Board] acted illegally and exceeded its authority. The impact on statutory construction and administrative and zoning law is seismic. In addition to subverting the Charter authority of the County Council, the decision violates the traditional definition of uniqueness, which must relate to the conditions on the land itself. Cromwell, *supra*.

Similarly, appellee maintains that the Board's "assessment of practical difficulty is woefully inadequate and insufficient under the legal standard of review. . . ." Appellee argues:

Even if practical difficulty is an issue here, the variances must be denied because the characteristics of the site do not prohibit a reasonable use in conjunction with lot 68<sup>[14]</sup> and consistent with other uses in the neighborhood. Appellants may desire a second dwelling as a different use now, but that is not the standard for practical difficulty.

<sup>14</sup> We assume appellee meant Lot 66.

Further, appellee argues that "a variance cannot be granted for a perceived economic advantage. Zoning principles have long rejected variance relief based on convenience and profitability for the property owner." Appellee continues:

The decision gives protective non-conforming status to a use that did not exist when the new law became effective. In other words, when D.R. 3.5 was applied to the site, lot 67 was used as a side yard for the dwelling on lot 68 [sic], not for a second dwelling. The [Board's] decision gives a type of "retroactive" nonconforming use for a dwelling on lot 67 as a justification for variance relief.

In addition, appellee maintains that BCZR § 304 does not apply. Appellee explains:

Variance relief cannot conflict with this statute. Zoning regulations are not like a smorgasbord. BCZR 307 must be applied harmoniously with BCZR 304. It is contradictory and arbitrary to grant a variance for lot size, if BCZR 304[.1](c) prohibits the same relief. Unfortunately, the [Board] ignored the proper application [of] BCZR 304(c), which is not intended to permit every use, or maximize the owner's profits, but rather assure some use.

(Emphasis in original.)

People's Counsel also maintains that the Board's decision is "legally flawed in the interpretation and application of the merger doctrine[.]" According to appellee, the owner of two adjoining parcels need not state an intention to merge the properties in order for merger to occur. In appellee's view, "construction of a second dwelling is a *de facto* illegal expansion or change of a nonconforming use under BCZR 104.1... If the relief is granted, both lots 67 and  $68^{[15]}$  are nonconforming uses, contrary to the policy to eliminate, not increase, such uses."

<sup>&</sup>lt;sup>15</sup>We assume appellee meant to say lots 66 and 67.

Finally, People's Counsel complains that the requested variance violates Chesapeake

Bay Critical Area standards, stating:

The Critical Area Regulations, enacted in 1988, prohibit new construction within the 100 ft[.] buffer of tributaries that flow into the Chesapeake Bay. It is significant that no new construction has been permitted along the waterfront here, including Grey Hound Creek in this area, since the enactment of the Critical Area Law. E.39. Petitioner's request would be the first new house built along the water on Bauernschmidt Drive, except for 2515 Bauernschmidt, a 14,134 sq ft double lot, built in 1983 prior to the critical area law. E.39. B.C.Z.R. 500.14 imposes standards and findings to be made by the [Zoning Commission or Board] applicable to all zoning petitions in the Chesapeake Bay Critical Area. The [Board] completely ignored this provision and made no such findings:

"As to the Chesapeake Bay Critical Area requirements, this issue will be addressed with the building permit per DEPRM and ZAC comments when the owner applies for a building permit." Opinion p. 6.

### IV.

We review the final decision of the Board, rather than the circuit court, in accordance with the well established principles of administrative law. See, e.g., People's Counsel for Baltimore County v. Surina, \_\_\_\_ Md. \_\_\_\_, No. 111, September Term, 2006, slip op. at 15 (filed August 23, 2007); Board of Physician Quality Assurance v. Mullan, 381 Md. 157, 165 (2004); Mastandrea v. North, 361 Md. 107, 133 (2000). Our role is the same as that of the circuit court. Capital Commercial Props., Inc. v. Montgomery County Planning Bd., 158 Md. App. 88, 95 (2004). We review the administrative agency's adjudicatory decision to determine "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." Noland, 386 Md. at 571 (citing United Parcel Serv., Inc. v. People's Counsel, 336 Md. 569, 577 (1994)). See Total Audio-Visual Systems, Inc. v. Dep't of Labor, 360 Md. 387, 394 (2000).

A reviewing court "may not substitute its judgment for the administrative agency's in matters where purely discretionary decisions are involved, particularly when the matter in dispute involves areas within that agency's particular realm of expertise . . . so long as the agency's determination is based on 'substantial evidence." Surina, slip op. at 15 (citations omitted). See Mullan, 381 Md. at 164; United Parcel Serv., 336 Md. at 577. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Bulluck v. Pelham Wood Apartments, 283 Md. 505, 512 (1978); see Gigeous v. ECI, 363 Md. 481, 497 (2001); see Surina, slip op. at 15 (same). But, "[w]e are less deferential in our review . . . of the legal conclusions of the administrative body and may reverse those decisions where the legal conclusions reached by that body are based on an erroneous interpretation or application of the zoning statutes, regulations, and ordinances relevant and applicable to the property that is the subject of the dispute." Id., slip op. at 16 (citing Belvoir Farms, 355 Md. at 267-68).

Of import here, the Court of Appeals has said: "It is a clearly established rule in the law of zoning that a court may not substitute its judgment for that of the Zoning Board." Stansbury v. Jones, 372 Md. 172, 182 (2002)(citation omitted). Indeed, "the zoning agency is considered to be the expert in the assessment of the evidence, not the court." Bowman Group v. Moser, 112 Md. App. 694, 699 (1996), cert. denied, 344 Md. 568 (1997); see also

Cremins v. County Commr's of Washington County, 164 Md. App. 426, 437 (2005); White v. Spring, 109 Md. App. 692, 699, cert. denied, 343 Md. 680 (1996).

In White v. North, 356 Md. 31 (1999), the Court of Appeals specifically elucidated the process of judicial review applicable to zoning matters:

In judicial review of zoning matters, including special exceptions and variances, "the correct test to be applied is whether the issue before the administrative body is 'fairly debatable,' that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions." For its conclusion to be fairly debatable, the administrative agency overseeing the variance decision must have "substantial evidence" on the record supporting its decision.

Id. at 44 (internal citations omitted); see also Alviani v. Dixon, 365 Md. 95, 107-108 (2001); Mastandrea, 361 Md. at 133-34.

In this case, the Board did not specify in its opinion the BCZR section or sections on which it relied to grant appellants' request for variance relief. However, the Board discussed several variance criteria, such as the uniqueness of the property, which is an element under BCZR § 307 and § 4A03. Nevertheless, in its Order, the Board expressly relied solely on BCZR § 304. In its analysis, the circuit court considered BCZR § 304, as well as BCZR § 307 and § 4A03. But, as we have seen, we must review the Board's decision. And, an appellate court will review an agency decision "solely on the grounds relied upon by the agency." *Schwartz v. Md. Dep't of Natural Resources*, 385 Md. 534, 555-56 (2005) (quoting *Brodie v. MVA*, 367 Md. 1, 4 (2001)). In effect, this means that the agency must be right for the right reason. Therefore, we shall focus on BCZR § 304.

BCZR § 304 is a "grandfather" provision that protects a landowner from a change in the zoning laws if, *inter alia*, the lot was recorded by deed prior to 1955, or the lot was recorded as part of a validly approved subdivision prior to 1955. Although the Board (and the circuit court) discussed elements that are part of BCZR § 307, we are satisfied that BCZR § 304 controls here, rather than BCZR § 307.<sup>16</sup>

In reaching our conclusion, we apply the principles of statutory construction. The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature. Chow v. State, 393 Md. 431, 443 (2006) (quoting Kushell v. Department of Natural Resources, 385 Md. 563, 576 (2005)); see Dep't of Health & Mental Hygiene v. Kelly, 397 Md. 399, 419 (2007). We are guided in this endeavor by the statutory text. Reier v. State Dep't of Assessments and Taxation, 397 Md. 2, 26 (2007); Deville v. State, 383 Md. 217, 223 (2004); Huffman v. State, 356 Md. 622, 628 (1999); State v. Pagano, 341 Md. 129, 133 (1996). We give the words of a statute their ordinary and usual meaning. City of Balt. Development Corp. v. Carmel Realty Assocs., 395 Md. 299, 319 (2006); Ridge Heating, Air Conditioning and Plumbing, Inc. v. Brennen, 366 Md. 336, 350 (2001). If the statute is not ambiguous, we generally will not look beyond its language to determine legislative intent.

<sup>&</sup>lt;sup>16</sup>As the Board did not apply BCZR § 4A03, and appellee never argued that the Board erred by not applying BCZR § 4A03, we decline to consider that provision. We note, however, that it incorporates BCZR § 307.

<sup>&</sup>lt;sup>17</sup>We interpret ordinances under the same canons of construction that we apply to the interpretation of statutes. *Howard Lesearch and Dev. Corp. v. Concerned Citizens for the Columbia Concept*, 297 Md. 357, 362 (1983); *Ahalt v. Montgomery Co.*, 113 Md. App. 14, 25 (1996).

See Stanley v. State, 390 Md. 175, 182 (2005)("Where the statutory language is free from . . . ambiguity, courts will neither look beyond the words of the statute itself to determine legislative intent nor add to or delete words from the statute.") (Citations omitted); Kaczorowski v. Mayor & City Council of Baltimore, 309 Md. 505, 513-14 (1987).

In our effort to effectuate the Legislature's intent, we may consider "the consequences resulting from one meaning rather than another, and adopt that construction which avoids an illogical or unreasonable result, or one which is inconsistent with common sense." Chesapeake Charter, Inc. v. Anne Arundel County Bd. of Educ., 358 Md. 129, 135 (2000) (citation omitted); see Frost v. State, 336 Md. 125, 137 (1994). Moreover, if ""reasonably possible,"" we read a statute "so "that no word, phrase, clause or sentence is rendered surplusage or meaningless,"" Del Marr v. Montgomery County, 169 Md. App. 187, 207 (2006) (citations omitted), aff'd, 397 Md. 308 (2007), or "superfluous or redundant." Blondell v. Baltimore City Police Dep't., 341 Md. 680, 691 (1996); see Collins, 383 Md. at 691; Eng'g Mgmt. Servs., Inc. v. Md. State Highway Admin., 375 Md. 211, 224 (2003); Mayor & Council of Rockville v. Rylyns Enters., Inc., 372 Md. 514, 551 (2002). Further, we are obligated to construe the statute as a whole, so that all provisions are considered together and, to the extent possible, reconciled and harmonized. Deville, 383 Md. at 223; Navarro-Monzo v. Washington Adventist, 380 Md. 195, 204 (2004). Where "appropriate," we interpret a provision "in the context of the entire statutory scheme of which it is a part." Gordon Family Partnership v. Gar on Jer, 348 Md. 129, 138 (1997).

Of import here, if there is any conflict between two statutory provisions, the more

& n.15 (2007) ("Ordinarily, a specific enactment prevails over an incompatible general enactment in the same or another statute."). As the Court explained in *State v. Ghajari*, 346 Md. 101, 115 (1997), "when two statutes appear to apply to the same situation, [the] Court will attempt to give effect to both statutes to the extent that they are reconcilable." But, if there is an irreconcilable conflict, "the specific statute is controlling...." *Id.* at 116. *See also Maryland-National Capital Park and Planning Comm 'n v. Anderson*, 395 Md. 172, 183, 194 (2006); *Mayor of Oakland v. Mayor of Mountain Lake Park*, 392 Md. 301, 316-17 (2006).

In this case, as between BCZR § 304 and BCZR § 307, § 304 is clearly the more specific statute, because it is a grandfather provision that applies to lots that became undersized due to changes in the zoning laws. In contrast, § 307 applies generally to all variance requests. Therefore, § 304 controls. BCZR § 304 does not contain elements of practical difficulty or uniqueness, which are embodied in § 307.

The grandfather clause of § 304 has limits, however. BCZR § 304.1.(C) provides relief only to owners who "do not own sufficient adjoining land to conform to the width and area requirements contained in these guidelines." We pause to review 4 Kenneth H. Young, *Anderson's American Law of Zoning* §§ 9.66-9.67 (4th ed. 1997), with regard to grandfather clauses in zoning matters:

<sup>&</sup>lt;sup>18</sup>Similarly, BCZR § 4A03.4.B.1 limits the granting of a building permit to owners of undersized lots only if "the owner of the lot does not own sufficient adjoining land that if combined with the adjoining land would allow the property owner to conform to the current zoning requirements."

Before the subdivision of land was subjected to municipal control, a great deal of municipal land had been divided into small lots, many with less than 30 feet of frontage and less than 3,000 square feet of space. When greater frontage and area requirements were superimposed upon this pattern, many owners were left with substandard lots. Strict and literal enforcement of the more stringent regulations would have made such lots useless to their owners and to the community. In addition, the regulations which destroyed the use value of such substandard lots would have been held confiscatory.

To avoid this result, most ordinances provide some relief for the owner of a substandard lot... Under such an ordinance, the owner of a substandard lot which was of record prior to the adoption of the restrictive ordinance need not seek administrative relief. He is entitled as of right to develop his lot within the limits of the exception. His right to such relief may be lost where he treats a number of lots as a single unit for the purpose of constructing a condominium. If the determination of his qualification for an exception is committed to an administrative board, as is true under some ordinances, the task of the board is simply to determine whether the lot was one of record on the effective date of the ordinance. The board is without discretion to deny a permit if the specific requirements of the ordinance are met...

\* \* \*

The common exception of lots which were recorded prior to the effective date of a restrictive ordinance is limited to lots which were in single and separate ownership on that date. Under such a provision, an owner is entitled to an exception only if his lot is isolated. If the owner of such a lot owns another lot adjacent to it, he is not entitled to an exception. Rather, he must combine the two lots to form one which will meet, or more closely approximate, the frontage and area requirements of the ordinance. Where, for example, a landowner held four contiguous lots which each had a frontage of 20 feet, he was regarded as owning 80 feet of frontage and was required to redivide the land consistent with the zoning regulations. This requirement was held reasonable as it permitted him some reasonable use of his land. The same result was reached where the owner of a lot containing 5,000 square feet acquired a contiguous lot of the same size. Under the ordinance he was considered to own a lot of 10,000 square feet. However, the requirement that adjacent substandard lots be merged may be unreasonable if the lots are the same size as most other lots in the area.

(Emphasis added; footnotes omitted.)

In this case, there is no dispute that appellants satisfied BCZR § 304.1(A) and (B).

The question is whether appellants satisfied BCZR § 304.1(C), which states: "The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements..." As noted, the Board was of the view that there was no adjoining parcel available to appellants under the circumstances of this case. In contrast, the circuit court ruled, *inter alia*, that appellants had a "double lot" and thus they "had sufficient area to comply with the zoning requirements." We disagree with the circuit court.

Appellants' house was constructed on Lot 66 prior to enactment of the current area and width requirements. Lot 67 remained undeveloped and vacant. Had appellants requested a variance as to Lot 66, it is clear that appellants would have had adjoining land -- Lot 67 -- a vacant and undeveloped lot, which could have been combined with Lot 66 so as to render Lot 66 a conforming parcel. In this case, however, we must analyze whether Lot 67 had sufficient adjoining land available to it from Lot 66 so as to create a conforming parcel on Lot 67. To the extent that the circuit court determined that appellants had an adjacent parcel to enable them to satisfy current zoning requirements, it erred.<sup>19</sup>

In Cromwell, 102 Md. App. 691, this Court made clear that self-inflicted hardships

<sup>19</sup> We agree with the circuit court's determination that appellants' subsequent sale of Lot 66 has no effect on our review of the issues. "[A]ppellate review of administrative decisions is limited to those issues and concerns raised before the administrative agency." Capital Commercial Props., Inc., 158 Md. App. at 96. Moreover, "[i]t is the function of the reviewing court to review only the materials that were in the record before the agency at the time it made its final decision." Department of Labor v. Boardley, 164 Md. App. 404, 415 (2005) (citing Chertkof v. Dep't. of Nat. Resources, 43 Md. App. 10, 17 (1979)). At the time the Board made its decision, the appellants owned both Lot 66 and Lot 67. Lot 66 was not sold until after the Board made its final decision and the appeal before the circuit court was pending.

cannot justify a variance. There, we said, id. at 722:

Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

The Court added, id. at 726:

It is not the purpose of variance procedures to effect a legalization of a property owner's intentional or unintentional violations of zoning requirements. When administrative entities such as zoning authorities take it upon themselves to ignore the provisions of the statutes enacted by the legislative branch of government, they substitute their policies for those of the policymakers. That is improper.

As we see it, however, appellants' use of Lot 66 does not give rise to a claim of self-inflicted hardship with regard to Lot 67.<sup>20</sup> The "typical type of self-created hardship" arises from "an act of commission by the owner" or his predecessor. *Richard Roeser Prof'l Builder, Inc. v. Anne Arundel Co.*, 368 Md. 294, 317 (2002). *See Stansbury*, 372 Md. at 198 (recognizing that subdividing property in accordance with all applicable statutes does not, generally, constitute a self-created hardship, even though the act of subdivision was an act of commission). Put another way, a self-created hardship results from affirmative "actions of the landowner," rather than from the "impact . . . of the zoning ordinance on the property." *Roeser*, 368 Md. at 314. *See, e.g., Ad + Soil, Inc. v. County Comm'rs of Queen Anne's County*, 307 Md. 307, 316 (1986).

Appellee does not suggest that appellants do not stand in the shoes of the elder Muellers with respect to the use of the lots. Nor has appellee argued that BCZR § 304 does not apply because Mr. Mueller acquired the lots from his parents after the enactment in 1970 of the D.R. 3.5 zoning provision.

This case is unlike those in which the landowner took an affirmative action that resulted in the hardship. Here, the elder Muellers acquired Lot 67 several years after their residence was constructed on Lot 66. And, when they acquired Lot 67, it was a buildable lot. Neither Lot 66 nor Lot 67 was rendered nonconforming by virtue of actions taken by the elder Muellers, or appellants, *after* the zoning law in issue was enacted.

To be sure, zoning ordinances often limit grandfather clauses to lots of record that are in single or separate ownership. Put another way, an ordinance may limit the grandfather clause by a provision that, in effect, merges contiguous, vacant, substandard lots under common ownership, so that they are treated as a single parcel for purposes of zoning area and frontage requirements. But, appellants correctly argue that they did not own sufficient adjoining land to enable Lot 67 to comply with the zoning ordinances. This is because, with regard to Lot 67, appellants did not own an adjoining, *unimproved* parcel. Rather, the adjoining parcel, Lot 66, was improved before the change in the zoning law. Thus, appellants could not "borrow" land from Lot 66 to enlarge Lot 67 without making Lot 66 more substandard than it already is.

Appellee cites Board of Zoning Appeals of the City of Hammond, Lake County v. Waskelo, 168 N.E.2d 72 (Ind. 1960), to support its position. In our view, Waskelo is distinguishable from the case sub judice.

In Waskelo, the court denied a variance for property owners who voluntarily subdivided their property. At the time of the purchase of the subject property in that case, the property was one lot and conformed to the applicable zoning regulations. After the

subdivision, the owners sold the improved lot and retained the remaining lot, which did not meet frontage requirements. The owners then sought a variance to construct a dwelling on the substandard lot. In that circumstance, the court refused to find a hardship to justify a variance, stating: "The property as it existed at the time of purchase conformed fully with the provisions of the zoning ordinance." *Id.* at 73. The court went on to state that the owners' decision to sell the improved portion of their property, with full knowledge of the restriction on the use of the remaining portion, is "not the result of any invalid application of terms of the zoning ordinance to their particular property, even though landowners might have been under a hardship in utilizing the portion of the lots which they retained." *Id.* at 74.

Unlike the landowners in *Waskelo*, appellants did not subdivide a conforming lot, thereby creating a substandard or nonconforming lot. Instead, appellants' relatives purchased two lots at separate times, both of which were conforming when acquired. And, they developed the first lot years before they even purchased the second lot. As a result of rezoning, both lots became nonconforming. The creation of the nonconforming lots was not of appellants' doing, however. Thus, appellants did not create a hardship for themselves.

We find the reasoning in *Burke v. Board of Adjustment of the Borough of Spring Lake*, 145 A.2d 790 (N.J. Super. Ct. App. Div. 1958), persuasive. There, the town of Spring Lake increased its frontage requirements for a building permit from 50 feet to 100 feet, and adopted a provision to "grandfather" current owners, which stated, in part, *id.* at 792:

'Notwithstanding the Lot Area and Lot width requirements of (the area here involved) \* \* \*, a single family dwelling may be erected on any lot separately owned and not adjacent to any lot in the same ownership [on] the effective date of this ordinance.'

In 1946, before the new zoning ordinance was passed, the plaintiff purchased two contiguous lots, each having 50 feet of frontage. The plaintiff erected a dwelling house on one of the properties when the old zoning ordinance was in force. A year after the new ordinance was adopted, the plaintiff sought permission to erect a dwelling on the undeveloped lot, which had become undersized. The local zoning board denied her application for a variance, on the ground that the lot failed to comply with the new frontage requirements. The plaintiff appealed, arguing that, unless permitted to construct a dwelling on the property, the lot was "useless." *Id.* at 791. The trial judge concluded that the variance should be granted on the grounds of undue hardship. *Id.* 

On appeal, the defendants, the Board of Adjustment of the Borough of Spring Lake and its building inspector, argued that the ordinance expressly sanctioned dwellings on 50 foot frontage lots only when "not adjacent to any lot in the same ownership." *Id.* at 792. The defendants also challenged the trial court's finding of undue hardship, arguing that the plaintiff caused the undue hardship. The Superior Court disagreed, stating:

We fail to perceive . . . any justification for holding that a property owner who constructs her home on a 50-foot frontage lot and who leaves *untouched* another adjoining lot with the same dimensions -- all done many years before the enactment of an amendatory ordinance increasing the frontage requirements -- has in any culpable sense contributed to her own hardship.

## *Id.* (Emphasis added.)

Rejecting the defendants' claim that plaintiff was not entitled to relief because she owned an adjoining lot, the court upheld the award of variance. It said:

The evident purpose of [the] provision is to allow dwellings on 50-foot frontage lots unless the owner himself has the wherewithal to make his lot

comply with the new requirements, *i.e.*, adjacent property, in which event he would not need a variance, at the expense of the community-at-large. But the exclusion of those lots 'adjacent to any lot in the same ownership' does not faithfully reflect the purpose of the provision unless it is limited to vacant adjacent lots. That plaintiff finds herself with the adjacent lot 17, which because of the dwelling thereon, she cannot use to make lot 16 comply is clearly no reason for denying her the benefit of the cited ameliorative provision. Realistically, the plaintiff has a house on one 50-foot lot and another vacant 50-foot lot. If she cannot build on the latter, it will be forever useless. That the two lots are adjacent does not mitigate her hardship.

Id. at 793 (Italics in the original; boldface added.)

As in *Burke*, we believe the grandfather clause in § 304 was meant to limit the construction of residences on undersized lots when a landowner possesses a contiguous, *vacant* or undeveloped parcel of property. That is not the situation here, through no fault or action of appellants.

Appellee suggests that, even if Lot 66 has been developed, appellants are not entitled to the variance because the two lots merged into one under merger principles. Notably, the Board rejected appellee's merger claim. The circuit court, however, agreed with appellee that, based on merger, appellants are not entitled to treat Lots 66 and 67 as distinct properties. As we discussed earlier, we may not set aside a factual finding that is "fairly debatable," i.e., "based upon evidence from which reasonable persons could come to different conclusions." White, 356 Md. at 44. In our view, the matter is "fairly debatable," and thus the Board's finding as to lack of merger was not clearly erroneous. Accordingly, we shall not disregard it. We explain.

Merger, in the context of land use, is the joining of contiguous parcels under common

ownership, so that they are viewed as a single parcel for purposes of zoning regulations. 3 Ziegler, Rathkopf's Law of Zoning and Planning, §32.04, n.1 (1994). Zoning merger in Maryland can occur as a result of a property owner's use of contiguous lots under the same ownership. See Friends of the Ridge v. Baltimore Gas & Elec. Co., 352 Md. 645 (1999)(recognizing existence of zoning merger).

4 Arden H. Rathkopf, et al., Rathkopf's, *The Law of Zoning and Planning*, § 49.13 (4th ed. 2001), provides guidance. It states:

Zoning ordinance provisions often limit exemptions or grandfather clauses to lots of record that are in single or separate ownership. Either implicitly by such provisions or expressly by "merger" requirements in the ordinance itself, contiguous substandard lots under common ownership may lose their separate identity and be treated as a single parcel for purposes of zoning area and frontage requirements and subdivision restrictions. Merger provisions generally have been upheld against due process, equal protection, and taking claims. The application of merger provisions when a variance is sought is often the subject of litigation and denial of a variance is frequently sustained by courts based on such provisions. Merger requirements may operate upon contiguous undeveloped lots or upon contiguous lots where one or more of the lots are already developed.

In dealing with substandard lots, as with nonconforming uses which are analogous, the point of reference is the effective date of the bylaw. The basic purpose of the ordinance provision establishing generally applicable minimum lot requirements has as its corollary the purpose to freeze and minimize substandard lots. If there is a merger provision in the ordinance, it is designed to result in a maximum number of standard lots from each separate tract of land in single ownership at the effective date of the ordinance. The number of separately described parcels which an owner or his predecessors in title may have acquired over the course of time to make up the entire tract is thus immaterial. Il

(Emphasis added; footnotes omitted.)

Appellee claims that, by the way in which appellants used both lots, a merger

occurred. Appellee directs our attention, *inter alia*, to *Sciacca v. Caruso*, 769 A.2d 578 (R.I. 2001), for the proposition that appellants "cannot 'unmerge'" their properties. In that case, Caruso held two adjacent lots, each of which met the minimum buildable lot size at the time they were acquired by her in the 1960's. The owner constructed a dwelling on Lot 91 and landscaped and placed a shed on lot 92. *Id.* at 579. Nearly twenty years later, the town amended its zoning ordinance, which increased the minimum lot size and frontage requirements. As a result, the lots did not meet the frontage or area requirements under the new ordinance. However, if combined, the lots satisfied the new regulations. In the same amendment to the zoning ordinance, the town included "a so-called merger provision, pursuant to which contiguous lot Nos. 91 and 92 merged into one lot to meet this particular residential zoning district's minimum lot area and frontage requirements." *Id.* at 579-80.<sup>21</sup>

<sup>&</sup>lt;sup>21</sup> The merger provision provided:

<sup>&</sup>quot;Contiguous lots under the same ownership. Where no adjacent lot is in the same ownership at the time this amendment becomes effective, so as to enable the formation of a larger lot, an existing lot shown on a plat duly recorded in the office of the town clerk prior to January 6, 1953 which fails to meet either the minimum frontage requirements or minimum area requirements, or both, of this chapter, may be used for a one-family dwelling in an R-40, R-20, R-15, R-10 and R-7 district. Where land adjacent to such a lot is in the same ownership, the exemption of the previous sentence shall not apply. If adjacent land in the same ownership is not sufficient to meet the minimum frontage requirements or minimum area requirements, or both, then the largest area and frontage which the adjoining common ownership make possible shall be provided.

<sup>&</sup>quot;No parcel, tract or lots of land contiguous to each other and under single ownership shall be subdivided in a manner where the lot width or area shall be below the requirements fixed by this chapter. No yard, or open space (continued...)

In 1997, Caruso sought to build a dwelling on Lot 92. To "unmerge" the lots, she was granted approval to subdivide the property along its original lines. She then sought a variance from the minimum area and frontage requirement. Although several neighboring property owners objected to the variance request, it was ultimately granted by the zoning board. *Id.* at 581. The opponents then challenged that ruling in court.

Under Rhode Island statutory law, in order for a property owner to be entitled to a variance from frontage or area requirements, the owner must satisfy the zoning board "that the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience, which means that there is no other reasonable alternative to enjoy a legally permitted beneficial use of one's property." *Id.* at 583 (emphasis omitted). Moreover, before a zoning board grants a variance, it must be satisfied that any hardship suffered was "not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain." *Id.* "Given this statutory language and the circumstances concerning how Caruso created the substandard lot that was the subject of her variance request," the Supreme Court

<sup>&</sup>lt;sup>21</sup>(...continued) provided around any building for the purpose of complying with the provisions of this chapter, shall again be used as a yard or open space for any other building.

<sup>&</sup>quot;Nothing contained in paragraphs (a) or (b) shall be construed to exempt such lots from the side yard, front yard, and rear yard requirements of the zone in which such lots are located." Johnston Town Code § 26-16(b) (1995).

Id. at 580 n.1 (italies in original; boldface added).

of Rhode Island ruled that "the zoning board's grant of a dimensional variance improperly ignored the 'prior action of the applicant' in creating the alleged hardship." *Id.* at 584. It continued, *id.*: "Here, the undeniable fact is that Caruso's prior action caused the planning board to subdivide her single-conforming lot into two substandard-sized parcels, thereby creating the undersized lot in question. This 'prior action' resulted in the self-created hardship that she later used as the basis for her variance request."

In overruling the zoning board, the court concluded: "To rule otherwise would allow Caruso and other similarly situated property owners to circumvent applicable zoning laws pertaining to the validity of merger provisions like those in the town's zoning ordinance, as well as to evade the threshold showing of hardship that is required to obtain relief from their application through the granting of a dimensional variance." *Id.* at 585.

We are not persuaded by *Sciacca*. The question remains whether the doctrine of merger applies here.

In *Friends of the Ridge*, 352 Md. 645, the property owner, BG&E, sought a declaration that three adjacent properties it owned merged for zoning purposes, so that the site was of sufficient size to allow it to enlarge an electricity substation. BG&E applied for a variance from certain setback requirements in order to operate the larger substation. The Board determined, however, that no variance was necessary. *Id.* at 648 n.3. The petitioners, Friends of the Ridge, appealed, asserting that because the parcels were never legally combined, BG&E was required to obtain a variance to use the three parcels as one. *Id.* at 649. The Court of Appeals sustained the Board's decision that the variance criteria of BCZR

did not apply, reasoning that the assemblage of contiguous parcels was sufficiently large to overcome the conditions triggering the need for a variance. *Id.* at 662.

With regard to the principles of merger, the Court said, id. at 653-54:

Efforts throughout the country, including Baltimore County, have been to restrict undersize[d] parcels, not oversized parcels. These efforts have resulted in the creation and evolution in zoning of the doctrine of merger, which, in zoning cases, generally prohibits the use of individual substandard parcels if contiguous parcels have been, at any relevant time, in the same ownership and at the time of that ownership, the combined parcel was not substandard. In other words, if several contiguous parcels, each of which do not comply with present zoning, are in single ownership and, as combined, the single parcel is usable without violating zoning provisions, one of the separate, nonconforming parcels may not then or thereafter be considered nonconforming, nor may a variance be granted for that separate parcel. Some cases discuss automatic merger, but most require that the intent of the owner to merge the parcels be expressed, though little evidence of that intent is required. As far as we can discern, the zoning doctrine of lot merger has never been applied in any jurisdiction to limit the creation of parcels that exceed minimum dimensional requirements; merger has been applied only to prohibit the later creation of undersized parcels. This, perhaps, is due to the general lack of objection to large parcels. A discussion, however, of how the doctrine of merger applies conversely to the present case may help emphasize that, in the context described above, merger occurs without the need for official It is accepted automatically in some subdivision or conveyancing. jurisdictions or, most often, with minimum proof of the owner's intent in other jurisdictions and always without the necessity of official action. We see no reason why a doctrine that seeks to prevent the proliferation or use of nonconforming, undersized lots by holding that they have been combined or merged into a larger parcel should not, as far as zoning is concerned, be applied properly to permit the creation, through the combining by use of a larger parcel from already conforming smaller parcels, without the necessity of official action or conveyancing.

Ultimately, the Court held that "a landowner who clearly desires to combine or merge several parcels or lots of land into one larger parcel may do so." *Id.* at 658. Of import here, the Court said: "An owner of contiguous parcels of land *may merge those parcels to form one* 

tract if he desires to do so. An intent on the part of the owner to do so may be inferred from his conduct with respect to the land and the use which he makes of it. . . . Intent is a question of fact." Id. at 659 (italics in original; boldface added). The Court recognized that one way for a landowner to manifest intent to merge contiguous properties is by "integrat[ing] or utiliz[ing] the contiguous lots in the service of a single structure or project . . . ." Id. at 658.

Remes v. Montgomery County, 387 Md. 52 (2005), is also pertinent. There, the Court applied the concept of zoning merger to treat two residential lots as one, even though the owner wanted to treat them separately. Ralph and Violette Duffie purchased a parcel of property in 1951 (Lot 12), located in a subdivision created in 1945. They constructed a residence on that lot. *Id.* at 57. Several years later the Duffies purchased an adjoining parcel, Lot 11. *Id.* Over the years, both properties had been assessed as one lot for tax assessment purposes, and the properties shared the same address. *Id.* at 58. In addition, the Duffies installed a driveway that traversed both lots and, in 1959, they received a building permit to construct a swimming pool on Lot 11, "as an accessory use to their home on Lot 12...." *Id.* at 57. In 1963, the Duffies again sought a building permit to construct an addition to the residence, which resulted in an encroachment to the setback requirements on the Lot 11 side of the residence. *Id.* at 58.

In 1999, after the Duffies' deaths, both properties were transferred to their son by a single deed describing both properties. *Id.* On January 15, 2003, the Duffies' son executed a deed conveying one of the two lots to Design-Tech Builders, Inc. In 2002, before it

purchased the property, Design-Tech obtained a building permit to construct a single-family dwelling on the property it eventually purchased. *Id.* at 59. Shortly after the sale of January 15, 2003, David Remes, an owner of property adjacent to the lot purchased by Design-Tech, filed an action in circuit court seeking a declaration that the Duffies' two lots had merged for zoning purposes, and to rescind the sale to Design-Tech. *Id.* at 60.

The Court of Appeals held that although the properties were separately deeded, it "does not lead us to the necessary conclusion that these lots for zoning limitations are not subject to the doctrine of zoning merger." *Id.* at 80. The Court reiterated what it had said in *Ridge*, "that merger may be derived from the common owner's intent, as evidenced by 'integrat[ing] or utiliz[ing] the contiguous lots in the service of a single structure or project. . . " *Id.* at 66 (citing *Ridge*, 352 Md. at 658).

Underscoring that "[e]ach case must be examined on its own," id. at 68, the Court said, id.:

In the case at bar, there is ample evidence to conclude the elder Duffies intended to use their Lot 11 and Lot 12 as one property for zoning purposes: the pool on Lot 11 violates (or violated) the prescribed setbacks from the street and from Lot 12, unless it was dedicated for zoning purposes to Lot 12, and from the time of its creation was thus an accessory use to the structure or use of Lot 12; the additions to the house on Lot 12 encroach upon that lot's setbacks; the circular driveway traverses both Lot 11 and Lot 12; until very recently the lots were assessed for tax purposes as a single parcel; and the subsequent personal representative's deed conveying Lot 11 and Lot 12 to Mr. Duffie described a single lot comprised of two lots, in that it reads "Lot numbered eleven (11) and twelve (12)."

The Court concluded that the properties had merged for zoning purposes because they "were under common ownership, and at the time of that common ownership, they were used

in service to one another." *Id.* at 87. It reasoned that, in order for the adjacent property to be "utilized separate and apart from [the other], there would have to be a resubdivision of the combined lot, creating two lots both of which meet the requirements of both the zoning ordinance and the subdivision regulations." *Id.* 

This case is distinguishable from *Remes* on its facts. Appellants made no improvements to Lot 67 of a kind that are remotely comparable to those made to Lot 11 in *Remes*. The elder Muellers acquired Lot 66 in 1947, and Lot 67 in 1960. The evidence before the Board indicated that the family's boat launch and a moveable storage shed were located on Lot 67. Mr. Mueller and appellants' son-in-law both testified that Lot 67 was generally utilized for recreational activities, such as ball playing. However, no permanent structures were erected on Lot 67, such as a swimming pool or a common driveway. Nor was Lot 67 used in service of Lot 66 in a way comparable in degree to the way that Lot 11 served Lot 12 in *Remes*. Moreover, Mr. Mueller testified that it was never his intent to merge the two properties.

To be sure, there was no physical or structural line of demarcation separating the lots. But, that is not required to preclude merger. Nor were appellants or the elder Muellers required to abstain entirely from the use of Lot 67 in order to preclude merger. If the Board were compelled to find merger on these facts, it would mean that almost any time a landowner owns adjoining and contiguous parcels, they would merge as a matter of law for zoning purposes.

On these facts, the Board was not clearly erroneous in concluding that appellants' use

of Lot 67 did not create a merger. We agree with appellants, who argue:

[N]ot all uses of an adjacent undeveloped property result in a merger. It is improper and without legal foundation to suggest that Appellants' occasional recreational use of Property II caused Properties I and II to merge. If the Appellants had bought an undeveloped lot somewhere else in the community, and "play[ed] ball" on it or placed a shed on it, such actions would never be considered merger. Moreover, the mere existence of a shed - not constructed on a foundation and not a structure for which a building permit was sought — cannot be viewed as similar to a permanent improvement benefitting the other parcel or a driveway being built across one lot to access another. The Appellants never needed the undeveloped Property II for them to enjoy the use of their developed Property I. [22]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY REVERSED; CASE REMANDED TO THAT COURT WITH INSTRUCTIONS TO REMAND TO THE BOARD FOR FURTHER PROCEEDINGS. COSTS TO BE PAID BY APPELLEE.

<sup>&</sup>lt;sup>22</sup>We note that the Board determined that Lot 67 is "unique." Although BCZR § 307 contains a uniqueness requirement, BCZR § 304 does not contain such a requirement, and the Board's Order indicates that it granted the variance pursuant to § 304. Therefore, we need not address the element of uniqueness or hardship. As noted, we may only uphold the agency on the grounds on which it relied. See Department of Health and Mental Hygiene v. Campbell, 364 Md. 108, 111 n.1 (2001).

n/a/06

PETITION OF PEOPLE'S COUNSEL FOR \* •

**BALTIMORE COUNTY** 

IN THE

CIRCUIT COURT

FOR JUDICIAL REVIEW OF THE \*
DECISION OF THE COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY \*

**FOR** 

BALTIMORE COUNTY

IN THE MATTER OF APPLICATION OF \*
HERMAN AND GRACE MUELLER

Case No. 3-C-05-7736

MEMORANDUM OPINION

Herman and Grace Mueller ("the Muellers") have filed a Motion to Alter or Amend the judgment entered on January 28, 2006, pursuant to this Court's memorandum Opinion dated January 26, 2006. The Court has reviewed the Motion and the Response, and has determined that no hearing is necessary. The Muellers raise essentially three arguments, which will be addressed separately.

# 1. Muellers' Claim of Error Regarding the Address of the Property.

The Muellers claim that this Court was erroneous in its conclusion that the two lots were collectively known as 2608 Bauernschmidt Drive, as each lot now has a separate address, and separate tax bills have been issued historically on these lots. While the latter facts are undoubtedly true, the property was collectively known by a unified reference for a lengthy period of time. The separate tax bills and later reference by separate street addresses does not alter the basis for this Court's factual and legal analysis.

MAR 1 7 2006

BALTIMORE COUNTY BOARD OF APPEALS

## 2. Muellers' Claim of Error Concerning Other Area Construction.

Muellers next claim error in the factual finding that area construction occurred on double lots, citing evidence of other area construction on single lots that has been approved. These facts are largely immaterial to the Court's analysis. Whether construction has been approved on other lots is not binding on this Court and isn't material under the legal standards that govern this decision.

# 3. Muellers' Claim That This Court Erred In Failing To Affirm Relief Under the Standards Set Forth In BCZR §304.1

Finally, Muellers claim this Court erred in failing to affirm the grant of a variance under the standards for undersized lots incorporated in BCZR §304.1. Essentially, the Petitioners argue that they seek to build on the undeveloped lot, and there is insufficient additional area on the developed lot to contribute to the needs of the undeveloped lot. Thus Petitioners claim they satisfy the three criteria set forth in BCZR §304.1. Petitioners' analysis ignores the doctrine of merger, as outlined in this Court's Memorandum Opinion. For the reasons previously stated, this Court does not believe BCZR §304.1 authorizes the relief granted below.

## 4. Conclusion

For the reasons stated, this Court finds no ground to alter or amend the Judgment previously entered. Accordingly, the Motion to Alter or Amend shall be DENIED.

JUDGE KATHLEEN GALLOGLY COX

Date: 3/9/06

Clerk: Please send copies to all parties.

Per Suzanne Menski, Clerk

PETITION OF PEOPLE'S COUNSEL FOR\*
BALTIMORE COUNTY

IN THE

CIRCUIT COURT

FOR JUDICIAL REVIEW OF THE \*
DECISION OF THE COUNTY BOARD
OF APPEALS OF BALTIMORE COUNTY\*

FOR

**BALTIMORE COUNTY** 

IN THE MATTER OF APPLICATION OF \* HERMAN AND GRACE MUELLER

Case No. 3-C-05-7736

## **ORDER**

For the reasons stated in this Court's Memorandum Opinion dated March 9, 2006,

Petitioner's Motion to Alter or Amend (Paper 18000) is DENIED.

JUDGE KATHLEEN GALLOGLY COX

Date: 3/9/04

Clerk: Please send copies to all parties.

True Copy Tost
SUZANNE MENSH, Clerk

Assistant Gerk

1/25/06

PETITION OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

IN THE MATTER OF APPLICATION OF HERMAN AND GRACE MUELLER

IN THE

CIRCUIT COURT

FOR

BALTIMORE COUN

Case No. 3-C-05-7736

## MEMORANDUM OPINION

This matter comes before the Court on appeal from the decision of the Baltimore County Board of Appeals (the "Board") dated July 8, 2005. The Court has considered the memoranda filed by both parties, the post-hearing memoranda addressing the impact of the sale of one of the parcels of land at issue, and the arguments of counsel on January 9, 2006, in reaching the decisions set forth in this Memorandum Opinion.

## I. PROCEDURAL AND FACTUAL BACKGROUND

When this zoning matter was initiated, Grace and Herman Mueller, Jr. owned two adjoining lots in Baurenschmidt Manor, a 1940 waterfront subdivision on Turkey Point in Baltimore County. In 1947, Mr. Mueller's parents, Herman and Thelma Mueller, purchased Lot 66 on Baurenschmidt Drive, along with an adjacent sliver of land. Lot 66 is approximately 8500 sq. ft., and is 50 feet wide. In accordance with the zoning then in existence, a home was constructed on Lot 66 in 1948. In 1960, Herman and Thelma Mueller purchased the adjacent parcel, Lot 67. Lot 67 is approximately 5700 sq. ft. and 60 feet wide. Both parcels were

re-deeded to Thelma Mueller and her son, Herman Mueller, Jr., in 1978. The following year, these deeds were transferred to Herman, Jr. and his wife, Grace Mueller.

The parcels remain improved with the original dwelling on Lot 66, which serves as a weekend and summer residence, a shed set on cinder blocks that straddles the two lots, and a boat launching area located on Lot 67. The lots remain separately deeded, and receive separate tax bills. However they are known collectively as 2608 Bauernschmidt Drive.

In 1970, the Baurenschmidt Manor sub-division was re-zoned D.R. 3.5, which required a minimum lot size of 10,000 sq. ft., and a minimum lot width of 70 feet. While the lots, in combination, meet these requirements, neither of the individual lots is sufficiently large. The entire site is also located within the 100-foot Chesapeake Bay Critical Area Buffer. Baltimore County Code § 33-2-401 prohibits construction within that buffer. Baltimore County Zoning Regulation ("BCZR") 500.14 prohibits the Board from granting a variance within the 100 foot setback unless certain criteria are satisfied.

The Muellers filed a petition seeking variances to enable construction of a dwelling on Lot 67. Specifically, they sought relief under BCZR 304 and 307 for the area and width requirements in order to construct on an undersized lot. On June 23, 2004,

the Deputy Zoning Commissioner granted the Mueller's Petition for a variance. The People's Counsel filed a timely de novo appeal.

The Board conducted an evidentiary hearing on February 3, 2004. At the hearing before the Board, the Muellers testified that they sought to build a home on Lot 67 for their daughter and son-in-law. Evidence was introduced to document the purchase and development of the property, as outlined above. People's Counsel presented a signed petition along with testimony from two neighbors who opposed the requested variance. Those neighbors, together with the Petitioner's expert, James Grammer, all acknowledged that houses originally built in this development are on lots that are now considered to be undersized, in light of the 1970 zoning change. They also noted, however, that since the time of the zoning change, homes have been constructed on double lots in the area in order to comply with the current zoning requirements.

The Board issued a decision dated July 8, 2005, affirming the decision to grant a variance. People's Counsel filed a timely appeal to this Court. While this appeal was pending, the Muellers sold Lot 66, and settlement occurred on December 15, 2005.

### II. STANDARD OF REVIEW

On appeal from the decision of an administrative agency, including review of a zoning decision, the determination below

should be affirmed if it is not based upon an error of law, and if the agency's conclusions are reasonably based upon the record.

See, People's Counsel v. Maryland Marine, 316 Md. 491, 196-197

(1989) and cases cited therein. This standard prohibits a reviewing court from substituting its judgment for the expertise of the administrative agency. That deference, however, is not accorded if the reviewing court determines that the decision below is based upon an erroneous conclusion of law. See, Belvoir Farms v. North, 355 Md. 259, 267-268 (1999) and cases cited therein.

In order for a reviewing court to uphold the decision of an administrative board, the Court must determine whether reasoning minds reasonable could have reached the factual conclusions made by the board. See Eberle v. Bell, 103 Md. App. 160, 166 (1975) and cases cited therein. The reviewing court, however, must not simply substitute its factual determinations for that of the board or agency. See, Supervisor of Assessments v. Ely, 272 Md. 77 (1974).

## III. DECISION BY THE BOARD OF APPEALS

The factual findings of the Board, pertaining to the history of the property and its development, are supported by the record and are consistent with those outlined above.

In addressing the request for a variance, the Board stated:

The outcome of [the 1970] zoning change [to a D.R. 3.5 zone], to already existing properties,

resulted in a legitimate nonconforming use, causing the property to become unique. Based upon the evidence and testimony received at hearing, we find that there are special circumstances or conditions, which exist that, are peculiar to the land or structure that is the subject of the variance request.

The Board next considered the case law that discusses the requirements for a finding that property is "unique" for purposes of the grant of a variance. In particular, the Board considered the discussion in <a href="Mainto:Cromwell v. Ward">Cromwell v. Ward</a>, 102 Md. App. 691, 698, 710 (1995), and concluded:

While it appears from Cromwell that there must be some physical uniqueness in the size and shape or environment of the property to qualify for a variance, we believe that the Court did not address the imposition of new zoning regulations on old subdivisions. In such cases, the imposition of the new regulations impacts the lots in the old subdivision disproportionately as compared to lots in the area developed after and in accordance with the new regulations. We therefore find that, under these circumstances, the property passes the first test and is unique.

As to the other issued raised, the Board found that profitability and inconvenience were not motivating the variance request, and that the request did not conflict with the spirit or intent of the regulations. It further found no intent by the owners to combine their lots into one unit, and therefore held the doctrine of merger to be inapplicable. Finally, it held that the issues related to the Chesapeake Bay Critical Area requirements would be addressed during the permitting process.

Overall, the Board determined that the proposed development of Lot 67 would not harm or change the area, and that to deny the variance request would limit the use of that lot to an expansion of the yard of Lot 66. Accordingly the requested variance was granted.

## IV. LEGAL ANALYSIS

As stated by the Court of Appeals in Friends of the Ridge v. Baltimore Gas and Electric, 352 Md. 645, 650-651 (1999), zoning ordinances in residential districts typically establish dimensional minimums (e.g., lot size, distances between structures, or the height of structures), density restrictions, or ancillary restrictions, (e.g., parking or building requirements). One focus of these ordinances is to restrict development on undersized parcels.

In this case, the properties at issue were re-zoned in 1970 in a manner that increased the minimum lot size and width. Further construction was thereby limited, unless parties owned adjacent parcels or a variance was obtained. Testimony established that many, if not most, of the homes originally constructed in the subdivision are now on lots construed to be undersized, based upon the re-zoning. New construction has occurred within the subdivision on double lots, in compliance with the new zoning restrictions.

BCZR 307.1 is in accord with the general variance law and states that the Board may grant variances:

. . . 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 of Baltimore County would result in practical difficulty or unreasonable hardship.

Variances are not favored under the law and presumed to be in conflict with the regulations. As stated in <u>Cromwell v. Ward</u>, 102 Md. App. 691, 703 (1995):

The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances.

The Muellers sought their zoning variance under one of two county zoning provisions dealing with undersized lots. BCZR Section 304.1 permits the erection of housing on undersized properties under the following circumstances:

Except as provided in Section 4A03, a one-family detached or semi-detached 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;
- B. All other requirements of the height and area regulations are complied with; 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.

Section 4A03.4B applies similar if not identical standards, and states:

A building permit may be issued for the construction of a dwelling on an undersized lot subject to the following conditions:

- The owner of the lot does not own sufficient adjoining land that if combined with the adjoining land would allow the property owner to conform to the current zoning requirements;
- 2. No further subdivision of the lot is allowed;
- 3. The property owner obtains a variance as provided for in Section 307 of these Zoning Regulations; and
- 4. The property owner connects to a public sewer where available and with adequate capacity.

In addition, the Muellers rely upon BCZR Section 307.1, which states, in pertinent part:

The Zoning Commissioner of Baltimore County and the County Board, 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 public health, safety and general welfare. They shall have no power to grant any other variances.

The decision of whether to grant a variance under either provision is a two-step process. The first requires a determination of whether the property, in and of itself, is "unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provisions to impact disproportionately upon that property."

Cromwell v. Ward, 102 Md. App. 691, 694 (1995). If that "uniqueness" does not exist, no variance may be granted. If it does, then the second hurdle is to determine whether practical difficulty and/or unreasonable hardship result from the disproportionate impact of the zoning ordinance caused by the property's unique quality. Cromwell, supra. at 694-695.

In <u>Cromwell</u>, <u>supra</u>., the Court of Appeals stressed that uniqueness is a condition relating to the characteristics of the property itself, and not to impact of the zoning restrictions. As the Court 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 the neighboring property. "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other

similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

#### Cromwell, supra. at 710.

The Board found, and the Appellees currently argue, that application of the new zoning in 1970 disproportionately impacts undeveloped lots in the old subdivision, such as the Muellers, and that alone suffices for a finding that the property is "unique." Additionally, the Appellees cite to the testimony of their expert, James Grammer, who notes that Lot 67 would be rendered unusable for residential purposes if the variance were not granted.

This analysis ignores the requirements under <u>Cromwell</u> that the impact on the property at issue be somehow different from that of surrounding properties. In fact, the impact here is the same as to every undeveloped lot in the subdivision. Construction of that fact, alone, as rendering a property "unique" would effectively gut the impact of the rezoning. Every undersized lot throughout the community would then be able to claim it was unique on the basis of the re-zoning alone, and the increased lot size restrictions would be virtually meaningless.

BCZR 304.1 affords some limited relief to property owners like the Muellers who own undersized lots in older subdivisions. By its express terms, however, relief under

BCZR 304.1 is not permitted if the owner has sufficient adjoining land to conform with the area and width restrictions set forth in the applicable zoning. At the time these matters were before the Board, the combined lots permitted construction of one residence that met with the regulations. It would be contrary to the intent of this regulation, and to the zoning modification overall, to allow construction of a second structure on this same site.

The requested variance must fail for other reasons as well. At the time this case was before the Board, the Muellers owned Lots 66 and 67, which are contiguous. This fact is also crucial to the variance analysis.

The doctrine of merger has developed in zoning analysis to allow consideration of the lot sizes of contiguous parcels with common ownership, where development on a single parcel would violate the zoning restriction. This doctrine of merger was first formally recognized in Maryland in <a href="#friends-of-the-Ridge">Friends-of-the-Ridge</a>, <a href="mailto:supra.">supra.</a>, at which time the Court of Appeals held that a landowner who clearly desires to combine or merge several parcels or lots of land into one larger parcel may do so to allow consideration of the contiguous lots in service of a single structure or project. In reaching this conclusion, the Court noted a split in the approach to merger employed in other jurisdictions. The majority required some evidence, often minimal, of the owner's

expression of intent to merge the parcels. However some jurisdictions presume merger automatically. In <u>Friends of the Ridge</u>, <u>supra.</u>, the court was not required to determine which of these approaches Maryland should follow.

In Remes v. Montgomery County, 387 Md. 52 (2005), the Court of Appeals further explored the doctrine of zoning merger. Remes, the Court held that two contiguous lots held in common ownership that were used by prior owners in service to one another had merged for zoning purposes. Thus permits could not be issued to permit construction on the vacant lot, where such construction would create a non-conforming use on the adjacent lot. As the Court noted, when zoning merger occurs, the lots remain divided, and the doctrine simply operates as an adjustment of zoning requirements. Remes at 478. However once that occurs, one can't later sell off a parcel without correcting nonconformance issues and simply seek a variance. To hold otherwise would allow the original owner to "flip-flop between his or her adjacent parcels, thwarting the intent of the land development regulations and, perhaps more egregiously, skirting [the] County's exacting requirements for subdivision." Remes at 489.

At the time the Board considered the Mueller's variance request, they had adjacent parcels. The undeveloped parcel had been used in combination with the developed parcel for over 40

years. The dock used by the family was on the undeveloped lot, and a shed straddled the property line. While never formally "merged" into a single deed, the properties had shared a common address for many years. The double lot had sufficient area to comply with the revised zoning restrictions. To allow the owners to now claim they are entitled to a variance to permit construction of a home on the undeveloped parcel would be contrary to the analysis employed by the Court in Remes.

Finally, the Respondents argue that the December sale of Lot 66, leaving them owners of only the undeveloped lot, eliminates the merger analysis. This argument must fail for several reasons. First, in the posture of this case, this Court is bound to analysis of the facts and issue before the Board. To the extent that new facts develop that may impact on the Board's analysis, the proper remedy is to remand for further review, not to analyze those facts in the first instance on appeal. Second, in the analysis under BCZR 304.1, at the time of application the Muellers owned adjoining land. Thus this development is not one that this Court may consider in the first instance as one according a basis for relief by grant of a variance.

#### V. CONCLUSION

For the reasons stated, the Court finds that the July 8, 2005 decision of the Board of Appeals was premised on an erroneous interpretation of the law, and thus was in error. For

that reason, the decision of the Board of Appeals is REVERSED, and this case is remanded for entry of a ruling consistent with the ruling set forth in this opinion.

JUDGE KATHLEEN GALLOGLY COX

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Date:		25/	06 _

Clerk: Please send copies to all parties.

PETITION OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

IN THE

FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY

CIRCUIT COURT

\* FOR

IN THE MATTER OF APPLICATION OF HERMAN AND GRACE MUELLER

BALTIMORE COUNTY

Case No. 3-C-05-7736

JUDGMENT ORDER

For the reasons stated in this Court's Memorandum Opinion dated January 25, 2006, it is ORDERED this 6.5 day of January, 2006 as follows:

The Court finds that the July 8, 2005 decision of the Board of Appeals was premised on an erroneous interpretation of the law, and thus was in error. For that reason, the decision of the Board of Appeals is REVERSED, and this case is remanded for entry of a ruling consistent with the ruling set forth in this opinion.

JUDGE KATHLEEN GALLOGLY COX

. Constitution

Date: |25/08

Clerk: Please send copies to all parties.

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-05-007736



BALTIMORE COUNTY BOARD OF APPEALS

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY THE Old Courthouse Room 47 400 Washington Avenue Towson, MD 21204

8/1/05

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY

PETITION OF:
PEOPLE'S COUNSEL FOR
BALTIMORE COUNTY
Old Courthouse – Room 47
400 Washington Avenue
Towson, MD 21204

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 THE APPLICATION
HERMAN & GRACE MUELLER
Variance for property located on the S/S
Bauernschmidt Drive, 276' E of c/line
Baurenschmidt Drive (2608 Bauernschmidt Drive)
Case No.: 04-487-A

15<sup>TH</sup> ELECTION DISTRICT 7<sup>TH</sup> COUNCILMANIC DISTRICT CIVIL ACTION ; E. No. 3-C-05-7736

RECEIVED AND FIL

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:

Peter Max Zimmerman People's Counsel for Baltimore County, Old Courthouse, Room 47 400 Washington Avenue Towson, Maryland 21204 HERMAN & GRACE MUELLER BOARD OF APPEALS E NO. 04-487-A CIRCUIT COURT CASE NO.: 3-C-05-007736

> Edward J. Gilllis, Esquire Royston, Mueller, McLean & Reid, LLP The Royston Building – Suite 600 102 W. Pennsylvania Avenue Towson, MD 21204-4573

Herman & Grace Mueller, Jr. 6212 Fair Oaks Avenue Baltimore, MD 21214-1513

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

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

I HEREBY CERTIFY that on this day of August, 2005, a copy of the foregoing Certificate of Notice has been mailed to: Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, Old Courthouse, Room 47, 400 Washington Avenue, Towson, Maryland 21204, Edward J. Gilllis, Esquire, Royston, Mueller, McLean & Reid, LLP, The Royston Building – Suite 600, 102 W. Pennsylvania Avenue, Towson, MD 21204-4573, Herman & Grace Mueller, Jr., 6212 Fair Oaks Avenue, Baltimore, MD 21214-1513.

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



## 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 1, 2005

Edward J. Gilliss, Esquire Royston, Mueller, McLean & Reid, LLP The Royston Bldg. – Suite 600 102 W. Pennsylvania Avenue Towson, MD 21204-4573

RE: Circuit Court Civil Action No. 3-C-05-007736

Petition for Judicial Review

Herman & Grace Mueller, Jr.

Board of Appeals Case No.: 04-487-A

Dear Mr. Gilliss:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on July 15, 2005, in the Circuit Court for Baltimore County 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-05-007736.

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda B. Fliegel Legal Secretary

/lbf

Enclosure

c: John V. Murphy, Deputy

Zoning Commissioner

Timothy M. Kotroco, Director/PDM

Peter M. Zimmerman, Esq.

People's Counsel for Baltimore County

Ms. Linda Clarke

Mr. James Grammer

Mr. Steven Glock

Ms. Silvana Wisniewski

Mr. Robert Koch

Mr. Steven Hummel

# 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 1, 2005

Peter M. Zimmerman, Esq. People's Counsel for Baltimore County Old Courthouse – Room 47 400 Washington Avenue Towson, MD 21204

RE: Circuit Court Civil Action No. 3-C-05-007736

Petition for Judicial Review Herman & Grace Mueller

Board of Appeals Case No.: 04-487-A

Dear Mr. Zimmerman:

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. The cost of the transcript of the record must be paid by you and must be paid in time to transmit the same to the Circuit Court within the sixty day timeframe, as stated in the Maryland Rules.

The Court Reporter that you need to contact to obtain the transcript and make arrangement for payment is as follows:

**CAROLYN PEATT** 

TELEPHONE: 410-486-8209 Date of Hearing: February 3, 2005

This office has also notified Ms. Peatt that a transcript on the above captioned matter is due by <u>September 9, 2005</u>, for filing in the Circuit Court. A copy of your Petition, which includes your telephone number, has been provided to the Court Reporter, which enables her to contact you for payment provisions.

Enclosed is a copy of the Certificate of Notice.

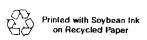
Very truly yours,

Line B. Thegel

Linda B. Fliegel Legal Secretary

/trs c:

Carolyn Peatt, Court Reporter Edward J. Gilliss, Esquire



PETITION OF PEOPLE'S COUNSEL FOR

**BALTIMORE COUNTY**, Old Courthouse, Room 47,

400 Washington Avenue, Towson, MD 21204

IN THE

CIRCUIT COURT

FOR JUDICIAL REVIEW OF THE

DECISION OF THE COUNTY BOARD

OF APPEALS OF BALTIMORE COUNTY

Old Courthouse, Room 47, 400 Washington

Avenue, Towson, MD 21204

FOR

IN THE MATTER OF THE APPLICATION

OF HERMAN & GRACE MUELLER FOR A

VARIANCE for property located on the S/S Bauernschmidt

Drive, 276' E of c/line Baurenschmidt Drive

(2608 Bauernschmidt Drive)

15th Election District, 7th Councilmanic District

Case No. 04-487-A before the County Board of Appeals of Baltimore County

BALTIMORE COUNTY



#### PETITION FOR JUDICIAL REVIEW

BALTIMORE COUNTY

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY hereby requests judicial review of

Opinion and Order of the County Board of Appeals dated July 8, 2005. People's Counsel for Baltimore County was a party to the proceeding before the County Board of Appeals of Baltimore County in this matter.

This Petition is filed pursuant to Rule 7-202 of the Maryland Rules of Procedure.

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

Pet Mux / immermen

CAROLE S. DEMILIO

Deputy People's Counsel

Old Courthouse, Room 47

400 Washington Avenue

Towson, MD 21204

RECEIVED (410) 887-2188

05 JUL 15 AM 11: 35

# CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this of July, 2005, a copy of the foregoing

Petition for Judicial Review was mailed to Edward Gilliss, Esquire, Royston, Mueller,

McLean and Reid, LLP, 102 West Pennsylvania Avenue, Towson, MD 21204-4575, Attorney

for Petitioners.

CAROLE S. DEMILIO

Deputy People's Counsel for Baltimore County

Muller

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-05-007736

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY THE Old Courthouse Room 47 400 Washington Avenue Towson, MD 21204

JUL 1 9 2005

BALTIMORE COUNTY
BOARD OF APPEALS

7/3/06

IN THE MATTER OF

THE APPLICATION OF

GRACE M. & HERMAN MUELLER, IR. \* CC

LEGAL OWNERS / PETITIONERS FOR

VARIANCE ON PROPERTY LOCATED ON THE \* OF

S/S OF BAUERNSCHMIDT DR, E OF C/L OF

BAUERNSCHMIDT DRIVE \* BA

2608 BAUERNSCHMIDT DRIVE

15<sup>TH</sup> ELECTION DISTRICT \* CA

7<sup>TH</sup> COUNCIL MANIC DISTRICT

- BEFORE THE
- COUNTY BOARD OF APPEALS
- BALTIMORE COUNTY
- \* CASE NO. 04-487-A

#### OPINION

This matter comes before the Baltimore County Board of Appeals on an appeal filed by the Office of People's Counsel from a decision of the Deputy Zoning Commissioner dated June 23, 2004 in which Petitioners' request for variance was granted with restrictions.

Petitioners, Grace M. and Herman Mueller, Jr., requested variance relief for property located at 2608 Bauernschmidt Drive in the "Bauernschmidt Manor" subdivision, to permit a 6,812 sq. ft. lot in lieu of the minimum required 10,000 sq. ft.; to permit a lot width of 61 feet in lieu of the minimum 70 feet per § 304 of the *Baltimore County Zoning Regulations* (BCZR); and to permit an undersized lot per § 304.

Petitioners were represented by Edward J. Gilliss, Esquire. Carole S. Demilio, Deputy People's Counsel for Baltimore County, appeared on behalf of the Office of People's Counsel.

## **Testimony**

Mr. James Grammer, Land Developer associated with McKee & Associates, Inc., for 21 years, testified on behalf of the petitioners that Lot 67 was deed insufficient to build a home under the current regulations in the D.R. 3.5 zone. Mr. Grammer testified

In 1948 lot 67 did meet the zoning requirements for building a home. He also opined that the subject lot did meet the other requirement regarding height and area as required under § 304.1B and § 4A03B. It was Mr. Grammer's opinion that the owners do not own sufficient adjoining land if combined with the subject property to conform to the current zoning requirements. The lot has access to public water and sewer service.

On cross-examination by People's Counsel, Mr. Grammer stated the development of other properties on undersized lots was completed prior to the 1983 zoning change to D.R.3.5. Mr. Grammer indicated other homes were built in the area after 1983 on double lots to meet the zoning requirements. Mr. Grammer acknowledged that the owners had a shed located on the property lines between of lots 66 and 67.

Mr. Steven Glock, son-in-law of the owners, testified that the properties were used by the family primarily for recreational use during the summer months. He stated that the shed on the subject lot was used for storage and not a permanent building with a foundation.

Mr. Herman Mueller, the owner of lots 66 and 67, stated that he bought the lots in 1947 and built on lot 66 in 1947. He has never combined the two lots as one. He confirmed that there was a shed was on concrete blocks and located on the property line of the two lots and was used for storage. He further testified he receives two separate tax bills and has two separate deeds. Mr. Mueller desires now to build a home on lot 67 for his daughter and son-in-law.

People's Counsel presented two witnesses and signatures on a petition from neighbors that protested the requested variance.

Mr. Aaron Kluttz testified that he has lived in the area for 14 years and opposes the request for variance. He opined that the current owners of the subject lots have always treated the two lots as one property with no visible line of separation. He feels the two lots being considered as one parcel is in keeping with the neighborhood and his property, which is also comprised of two lots. He stated that the Muellers use the property as a summer home and use the side lot (lot 67) for recreational activities and that a shed exists on the subject lot.

Mr. Kluttz further opined that, due to the area being designated as a Critical Area, development should be restricted per the regulations. He feels the proposed development of a home on this lot would affect the Critical Area Buffer enacted in 1988. The majority of homes built in the area are on double lots. He feels the remaining single lots are used to have access to the water and unlikely to be developed. To allow this lot to be developed would obstruct his view of the water.

Mr. Wiesnowski testified that he also lives on a doublewide lot since 1982. He feels a development of a new home would also jeopardize the health of Greyhound Creek and is out of character for the neighborhood and affects the home values in the area. He also had concerns of setting a precedent for the area that other lots could be developed on these small lots creating additional traffic and parking problems.

The Office of Peoples Counsel presented the following issues in a Memorandum submitted to the Board:

- 1. Uniqueness should not be granted due to lot size, or configuration. The lot is the same as other lots in area and can be utilized with the other lot owned by the Petitioners.
- 2. Variance should not be granted for profit, inconvenience, preferable alternative, or damages to owner as lot may be used for recreation as in the past.
- 3. Granting the variance conflicts with the spirit and intent of the regulations language in BCZR 307.
- 4. Use by owner shows "merger" of the two lots into one when owned by the same owner.
- 5. The petition for variance fails to satisfy Chesapeake Bay Critical Area Standards.

#### Discussion

The Board of Appeals members deliberated this request for a variance on May 4, 2005. After much discussion the members agreed on the following.

The property was developed in the early 1940's and the Muellers purchased two lots in 1947. A home was built on lot 66 in 1948 that conformed to zoning requirements which were changed in 1970. The outcome of this zoning change, to already existing properties, resulted in a legitimate nonconforming use, causing the property to become unique. Based upon the evidence and testimony received at hearing, we find that there are special circumstances or conditions which exist that are peculiar to the land or structure that is the subject of the variance request.

The Court of Special Appeals in *Cromwell v. Ward*, 102 Md.App. 691 (1995), states as follows:

...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.

While it appears from *Cromwell* that there must be some physical uniqueness in the size and shape or environment of the property to qualify for a variance, we believe that the Court did not address the imposition of new zoning regulations on old subdivisions. In such cases, the imposition of the new regulations impacts the lots in the old subdivision disproportionately as compared to lots in the area developed after and in accordance with the new regulations. We therefore find that, under these circumstances, the property passes the first test and is unique. This subdivision was recorded in the 1940s prior to D.R. 3.5 zoning, and denying the requested variance would result in a hardship and practical difficulty.

As to the issues brought up in People's Counsel's memorandum:

- 1. Profitability, inconvenience, or preferable alternative The Board finds that as a result of the new zoning imposed after 1950 makes these issues moot.
- The variance request does not conflict with the spirit or intent of the Regulations.
- 3. As to the issue of "merger," there is no mention of intent by the owner to combine the lots as one unit. It appears through testimony by the owner that he has never considered merging the two lots as one property as further indicated by the separate tax bills.
- 4. As to the Chesapeake Bay Critical Area requirements, this issue will be addressed with the building permit per DEPRM and ZAC comments when the owner applies for a building permit.

The Board members also feel that the development of this lot will not harm or change the nature of the area. Denying the requested variance relief would relinquish the use of lot 67 to only expansion of the current yard of lot 66. Therefore, this Board will grant the requested variance relief and will so order.

#### ORDER

THEREFORE, IT IS THIS \_ & day of \_\_\_\_\_\_, 2005 by the County Board of Appeals of Baltimore County

ORDERED that the Petitioners' request to permit a 6,812 sq. ft. lot in lieu of the minimum required 10,000 sq. ft. and permit a lot width of 61 feet in lieu of the minimum 70 feet per § 304 of the *Baltimore County Zoning Regulations* (BCZR) be and the same is

## hereby **GRANTED**, with the following restrictions:

- 1. Compliance with the ZAC comments submitted by DEPRM dated May 20, 20024, a copy of which is attached hereto and made a part hereof;
- 2. Compliance with the ZAC comments submitted by the Bureau of Development Plans Review dated May 18, 2004, a copy of which is attached hereto and made a part hereof; and
- 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

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 & |

Lawrence M. Stahl, Chairman

Michael O. Ramsey

John P. Quinn

# BALTIMORE COUNTY, MARYLAND DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO:	Tim Kotroco
FROM:	R. Bruce Seeley 1255/JDO
DATE:	May 20, 2004
SUBJECT	T: Zoning Item # 04-487  Address 2608 Bauernschmidt Drive (Mueller Property)
Zo	oning Advisory Committee Meeting of May 3, 2004
	te Department of Environmental Protection and Resource Management has no mments on the above-referenced zoning item.
	e Department of Environmental Protection and Resource Management offers following comments on the above-referenced zoning item:
**************************************	Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Section 14-331 through 14-350 of the Baltimore County Code).
	Development of this property must comply with the Forest Conservation Regulations (Section 14-401 through 14-422 of the Baltimore County Code).
<u></u> 2	Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code).

Additional Comments:

7

Reviewer:

Keith Kelley

Date: May 20, 2004

#### BALTIMORE COUNTY, MARYLAND

#### INTEROFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

**DATE:** May 18, 2004

Department of Permits & Development Management

FROM:

Robert W. Bowling, Supervisor

Bureau of Development Plans

Review

SUBJECT:

Zoning Advisory Committee Meeting

For May 10, 2004 Item No. 487)

The Bureau of Development Plans Review has reviewed the subject-zoning item.

The flood protection elevation for this site is 10.4 feet.

In conformance with Federal Flood Insurance requirements, the first floor or basement floor must be at least 1 foot above the flood plain elevation in all construction.

The property to be developed is located adjacent to tidewater. The developer is advised that the proper sections of the *Baltimore County Building Code* must be followed whereby elevation limitations are placed on the lowest floor (including basements) of residential (commercial) development.

The building engineer shall require a permit for this project.

The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with materials resistant to flood damage.

Flood-resistant construction shall be in accordance with the requirement of B.O.C.A. International Building Code adopted by the county.

RWB:CEN:jrb

cc: File

ZAC-05-10-2004-ITEM NO 487-05182004



## County Board of Appeals of Baltimore County

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

July 8, 2005

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

RE: In the Matter of: Grace M. & Herman Mueller, Jr.. - Legal Owners /Petitioners Case No. 04-487-A

Dear Mr. Zimmerman:

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 subsequent Petitions for Judicial Review filed from this decision should be noted under the same civil action number as the first Petition. 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,

Kathlein C. Burco
Kathleen C. Bianco

Administrator

#### Enclosure

c: Edward J. Gilliss, Esquire
Mr. & Mrs. Herman Mueller
James Grammer /McKee & Associates, Inc.
Steven Glock
Silvana Wisniewski
Robert Koch
Steve Hummel
Linda Clarke
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

# BALTIMORE COUNTY, MARYLAND Board of Appeals of Baltimore County POST-HEARING MEMOS – GRACE & HERMAN MUELLER

**DATE:** March 21, 2005

TO:

L. Stahl

M. Ramsey

J. Quinn

FROM:

Kathi

**SUBJECT:** 

Case No. 04-487-A / In the Matter of: Grace M. & Herman Mueller, Jr.

Post-Hearing Memos; Deliberation assigned for 5/04/05

Attached are the following documents filed on 5/17/05 in the subject matter:

Memorandum of the People's Counsel for Baltimore County; and

 Post-Hearing Memorandum filed by Edward J Gilliss, Esquire, on behalf of Mr. and Mrs. Mueller, Petitioners.

Public deliberation is scheduled in this matter on Wednesday, May 4, 2005 at 9:00 a.m. Notice of that deliberation was sent out on 3/07/05; hearing held on 2/03/05.

Any questions, please call me.

Kathi

Attachments (2)

3/17/05

IN RE: PETITION FOR VARIANCE

S/S of Bauernschmidt Drive, 276 ft. E Centerline of Bauernschmidt Drive 15<sup>th</sup> Election District 7<sup>th</sup> Councilmanic District

(2608 Bauernschmidt Drive)

Grace M. Mueller & Herman Mueller, Jr.

Petitioners

BEFORE THE

\* COUNTY

\* BOARD OF APPEALS

\* OF BALTIMORE COUNTY

Case No.: 04-487-A

\*

**POST-HEARING MEMORANDUM** 

Grace M. Mueller and Herman Mueller, Jr., by their undersigned counsel, hereby submit this Post-Hearing Memorandum as requested by the County Board of Appeals for Baltimore County at the conclusion of the February 3, 2005 proceeding before the Board.

#### <u>INTRODUCTION</u>

This Post-Hearing Memorandum incorporates and supplements the Memorandum of Law filed on February 3, 2005 and marked as Exhibit No. 1 to the February 3, 2005 proceeding.

#### **ISSUE**

The Deputy Zoning Commissioner granted the Muellers' request for a variance. People's Counsel noted this appeal. Carol Demilio, Deputy People's Counsel, made clear during her opening remarks that the issue concerning People's Counsel (and the apparent basis for the appeal) is the fact that the Muellers own a lot next to the parcel for which a variance is sought.

Hence, the issue to be addressed by this Board is whether it agrees with the Deputy

Zoning Commissioner who granted the variance based upon undersized lot law, despite the fact
that the Petitioners own a developed lot next to the vacantal of the law and the law and the law and the law and the law are an adversariance is sought.

MAR 1 7 2005

BALTIMORE COUNTY BOARD OF APPEALS

ROYSTON, MUELLER,
MCLEAN & REID, LLP
SUITE 500
102 W. PENN. AVE.

102 W. PENN. AVE.
TOWSON, MARYLAND
21204-4575
410-823-1800

#### **FACTS**

There is no dispute that the property at issue, 2608 Bauernschmidt Drive (also identified as Lot 67 – and one-half of the harbor entrance – on the Bauernschmidt Manor Plat) is an undersized lot subject to relief pursuant to BCZR Section 304 and/or BCZR Section 4A03 and/or BCZR Section 307 (Petitioners' Exhibit No. 3).

Evidence produced showed the lot to be part of the Bauernschmidt Manor subdivision, Baltimore County Land Records plat reference 12/81, dated August 28, 1940 (Petitioners' Exhibit No. 3). Further, evidence introduced showed the property to be zoned DR3.5 (People's Counsel Exhibit No. 4).

This Board may take notice of the fact that County law states that the minimum lot size in DR3.5 zones is 10,000 square feet with a requirement of 70 feet of road frontage (see BCZR Section 1B02.3.C.1). Testimony adduced at the hearing (see Petitioners' Exhibit No. 2) is that the lot is only 6,812 square feet and has only 60 feet of road frontage.

Hence, by either the Section 304 or Section 4A03 standards, the lot is of sufficient age and of insufficient size to be afforded relief pursuant to those Sections. Further still, the testimony from James Grammer (also reflected in Petitioners' Exhibit No. 2) was that no other variances of height or area regulations are required. Stated another way, and in conformity with Section 304.1B: "All other requirements of the height and area regulations are complied with."

Mr. Grammer further testified, consistent with the requirements of Section 304 and of Section 4A03B, that no further subdivision of the lot is allowed and that public sewer and public water are available for the lot. Mr. Grammer also testified that although the Muellers own the lot next door at 2606 Bauernschmidt Drive (Lot 66), it is already developed with a residence constructed in 1948 (Herman Mueller confirmed that testimony) and that there is insufficient

ROYSTON, MUELLER, MCLEAN & REID, LLP SUITE 600 102 W. PENN. AVE. TOWSON. MARYLAND 21204-4575 410-823-1800 land available on 2606 Bauernschmidt Drive to contribute to 2608 Bauernschmidt Drive to make it a lot of conforming size. Otherwise stated, there is insufficient land between the shared property line and the residence on 2606 Bauernschmidt Drive to give 2608 Bauernschmidt Drive either 70 feet of road frontage or 10,000 square feet of lot size.

Hence, the applicants satisfy the additional requirements of Sections 304 and 4A03 in that they do not own "sufficient adjoining land to confirm to the width and area requirements" as required by Section 304, nor do they own "sufficient adjoining land that if combined with the adjoining land would allow the property owner to conform to the current zoning requirements" as required by Section 4A03.B.

The Petitioners admit that if they owned lots 66 and 67, and both of them were undeveloped, the undersized lot provisions would not apply. An owner of two undeveloped lots would be required to combine the lots to create one lot that would satisfy the minimum requirements of DR3.5

The Petitioners further offer that if they sold lot 67 to a third party (e.g., their son-in-law, Steven Glock (who testified in this matter)), and if that third party sought the relief sought in this matter, there would not be adjoining land owned by the applicant. In that instance, the third-party applicant would not be confronted with the "artificial" issue that People's Counsel now seeks to create.

Further, pursuant to BCZR Section 307, the Muellers are entitled to a variance as an undersized lot is, by definition, unique. Section 304 and Section 4A03 both afford relief. 2608 Bauernschmidt Drive would be unable to serve as residential property without the variance because it is, by area, smaller than the DR3.5 zoning requirement. The lot predates DR3.5

ROYSTON, MUELLER, MCLEAN & REID, LLP

SUITE 600 102 W. PENN. AVE. TOWSON. MARYLAND 21204-4575 410-823-1800 zoning, and without variance would be of no value. Mr. Grammer testified that no other uses exist.

Further still, practical difficulty will result if a variance is not granted since the Muellers will be unable to put 2608 Bauernschmidt Drive to use without the variance.

Finally, there is no harm to the public health, safety or welfare by the grant of a variance. Testimony was offered about other undersized lots in the Bauernschmidt Manor community, and Petitioners' Exhibit No. 6 identified 23 other undersized, developed properties within the immediate vicinity of 2608 Bauernschmidt Drive. Further still, Petitioners' Exhibits Nos. 12 and 13 concerned variances granted for two undersized lots directly behind the Wisniewski property (Mr. Wisniewski was one of the neighbors who testified that his view would be harmed if a home is built on 2608 Bauernschmidt Drive). None of the neighbors testified to any health or safety concerns (other than construction-related issues that would exist anywhere, anytime and only for the limited time of any construction). Their only concern was that their views might be impacted. Again, such a concern is not a health, safety or welfare problem (and if any of the neighbor(s) desired to protect their views through 2608 Bauernschmidt Road, they could certainly negotiate to purchase that land and thereby control its use).

Muellers' use of 2608 Bauernschmidt Drive over the course of time. People's Counsel adduced testimony that the Muellers used 2608 Bauernschmidt Drive for such things as playing ball and launching a boat into Greyhound Creek. On cross-examination, Mr. Wisniewski testified that he would expect an owner of property to use the property and that if he owned a separate lot next door to his residence he would use it. In short, a property owner should be expected to occupy

Deputy People's Counsel spent substantial time interrogating neighbors about the

ROYSTON, MUELLER,
MCLEAN & REID, LLP
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102 W. PENN. AVE.
TOWSON. MARYLAND
21204-4575
410-823-1800

his property.

None of the testimony of neighbors about the Muellers' use of 2608 Bauernschmidt Drive challenged the Mueller/Glock testimony that there was never any intent to "merge" 2608 and 2606 Bauernschmidt Drive. To contrast, testimony was heard from Mr. Wisniewski and others that they owned property that had previously been two lots, but that Mr. Wisniewski used the property as one lot. Mr. Wisniewski testified that he had only one deed and that his house is built over the property lines of his former two-lot property. In total opposite fashion, Mr. Mueller testified that he owns 2606 and 2608 Bauernschmidt Drive by separate deeds (Petitioners' Exhibits Nos. 5A and 5B), that he receives separate tax bills, and that the parcels have always been treated as separate. He even shared with the Board that the family calls 2608 Bauernschmidt Drive: "The Lot."

By contrast, the Muellers' residence (constructed before zoning laws applied) at 2606 Bauernschmidt Drive is built solely on lot 66. At most, a temporary structure (as testified by Messrs. Grammer, Glock, and Mueller) may be on or over the property line. That temporary structure, a small pre-fabricated shed, sits on cinderblocks (as also testified to by Mr. Kluttz). The shed is no evidence of an intent to merge lots.

Friends of the Ridge v. Balto. Gas & Elec. Co., 352 Md. 645 (1999), also discussed in the previously submitted February 3, 2005 Memorandum of Law, concerned a property owner's intent to merge lots. Here, the testimony is clear that the property owners (the Muellers) do not intend to merge lots.

Mr. Mueller's testimony that he does not intend to merge lots 66 and 67 of Bauernschmidt Manor is consistent with the *Friends of the Ridge* language at p.653, fn.8: "We are unaware of any Maryland cases adopting the zoning doctrine of merger." The *Friends of the* 

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21204-4575
410-923-1800

*Ridge* court made clear at page 658 of its opinion that contiguous land owned by the same person does not necessarily constitute a single lot. There, the court stated:

We shall hold that a landowner who clearly desires to combine or merge several parcels or lots of land into one larger parcel may do so. One way he or she may do so is to integrate or utilize the contiguous lots in the service of a single structure or project, as Respondent proposes in the instant case.

Mr. Mueller's testimony was clear: He has never intended to merge lots 66 and 67. Testimony of neighbors cannot be used to defeat the owner's clear assertions of intent.

#### **CONCLUSION**

In light of the fact that the Muellers expressed their desire <u>not</u> to merge lots 66 and 67, the *Friends of the Ridge* holding is inapplicable to this matter. There is no "voluntary merger."

The Muellers satisfy the requirements of Sections 304, 307 and 4A03 of the Baltimore County Zoning Regulations; the decision of the Deputy Zoning Commissioner was appropriate. This Board must issue an Order granting the Muellers' relief based upon their lawful undersized lot and County regulations affording relief to owners of lawful undersized lots.

Edward J. Gilliss

Royston, Mueller, McLean & Reid, LLP

The Royston Building, Suite 600

102 West Pennsylvania Avenue

Towson, Maryland 21204

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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the <u>17<sup>th</sup> day of March, 2005</u> a copy of the foregoing Post-Hearing Memorandum was mailed, by first class mail, postage prepaid, to: Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County, 606 Baltimore Avenue, Suite 204, Towson, Maryland 21204-4097.

EDWARD J. GILLESS

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ROYSTON, MUELLER, McLEAN & REID, LLP

SUITE 600 102 W. PENN. AVE. TOWSON. MARYLAND 21204-4575 410-823-1800 3/17/05

RE: PETITION FOR VARIANCE

S/side Bauernschmidt Drive, 276' E of

c/line of Bauernschmidt Drive

BOARD OF APPEALS

BEFORE THE COUNTY

(2608 Bauernschmidt Drive)

15<sup>th</sup> Election & 5<sup>th</sup> Councilmanic Districts

FOR

Legal Owner(s): Herman & Grace Mueller

Petitioner(s) \* 04-487-A

BALTIMORE COUNTEIVED

04-487-A

MAR 1 7 2005

BALTIMORE COUNTY BOARD OF APPEALS

# MEMORANDUM OF THE PEOPLE'S COUNSEL' FOR BALTIMORE COUNTY

#### FACTS AND OVERVIEW OF THE CASE

Petitioners, Herman and Grace Mueller, ("Petitioner") own two adjoining waterfront lots on Middle River. They reside elsewhere. Petitioner acquired lots 66 and 67 from a family member at least 25 years ago. They also acquired a sliver of land less than 1200 sq. ft., formerly public access to the water, between Lot 67 and Lot 68. (Together referred to as the "site"). The site is improved with a dwelling and accessory structures and has been used as a summer or vacation residence. The site has been known as 2606 Bauernschmidt Drive. Until this Petition was filed, Lot 67 did not have a separate address with the Department of Assessments and Taxation. The site is part of Bauernschmidt Manor, platted in 1940. Petitioner seeks relief to sell Lot 67 ("subject property") as a building lot.

The existing dwelling happens to lie on lot 66, but there is no visible distinction between lots 66 and 67. A shed straddles the lots and the boat ramp is located on lot 67. Separately, lot 66 is about 8500 sq. ft. and 50 feet wide; the current D.R. 3.5 zoning

requires 10,000 sq. ft and a 70 foot width. Lot 67, at about 5700 sq. ft, is only one-half of the minimum lot size; its width is about 10 feet less than the required minimum width. Lot 67 is valued at \$5700 or \$1.00 per square foot, hardly the market value for buildable waterfront property. By contrast, the land value alone for Lot 66 is nearly \$100,000. As a protesting witness explained, the State of Maryland has assessed Lot 67 not as a buildable lot, but as a "mowing lot", or, in other words, a side yard. It was common for buyers to purchase several adjoining lots in these old subdivisions. Generally, owners constructed a dwelling, and treated the lots as a single home site. If the improvements did not straddle the property, the open space served as the side yard that enhanced the overall value.

Now, after utilizing the lots as a single home site for many years, Petitioner seeks variance relief to construct another dwelling on the undersized Lot 67 "to permit a 6812.10 square foot lot in-lieu of the minimum 10,000 square feet and to permit a lot width of 61 feet instead of the minimum 70 feet; to approve an undersized lot per Section 304 . . ." The Deputy Zoning Petitioner granted the Petition on June 23, 2004. The Opinion incorrectly states the pattern of development on Bauernschmidt Drive. A timely appeal was filed by Office of People's Counsel because there was no basis to grant the variance under BCZR 307 or relief under BCZR 304. A testamentary hearing was held before the County Board of Appeals ("CBA" "Board") on February 3, 2005. In lieu of closing arguments, the CBA requested legal memorandum from the parties.

Petitioner never claimed the site could not continue as a single home site, or that the existing home could not be renovated. Presumably, the Petitioner expects to increase his profit if the property is sold as two separate home sites. Appellate cases have refuted

increased profitability as a basis to grant a variance. It is undisputed that the site has a perfectly viable use as a summer home and weekend retreat; this has been the traditional use by the Petitioner and his family for entertaining family and friends. There was no evidence that the site has been used in any other manner. The neighbors testified that during parties and get-togethers, both lots would be used for picnic tables, ball-playing, horseshoes, and boating. Even Petitioner and his son-in-law could not contradict this use of the site.

It is clear from the testimony of protesting neighbors and the GIS aerial map (PC#1) that no dwelling in the immediate neighborhood is located on a lot as small as the subject property. There are only three homes on single lots along the waterfront, all of which were constructed prior to the current D.R. zones enacted in 1970. They are legitimate non-conforming uses, but cannot be used as a basis to grant the relief here. "... it is held that a variance may be granted only for hardships which relate specifically to the applicant's land. Thus, a landowner was not entitled to a variance to relieve his land from a restriction which applied to all lots of similar size." (Young, American Law of Zoning, 4th Edition, § 20.60.)

On the other hand, at least 7dwellings are constructed on double lots along the water, compared to the 3 on single lots built in 1947, 1949 and 1950. (P.C. #1 & #3) As stated, it was not uncommon for buyers in these old subdivisions to purchase several adjoining lots for a single home site. Apparently Petitioner's family purchased both lots together many years ago.

Lots 68 and 69 along the waterfront are unimproved and owned by the homeowners directly across Bauernschmidt Drive. According to the undisputed testimony of the neighbors, these unimproved lots serve as a type of shoreline front yard for the houses directly behind them and provide waterfront access for these homeowners. It is reasonable to assume these two unimproved waterfront lots will not be developed, but will continue to be used as open space yard in conjunction with the residences behind them across Bauernschmidt Drive. For these reasons, Petitioners' request is out-of-character with the immediate neighborhood and is a radical deviation from the pattern of development on the waterfront.

The testimony is undisputed that Petitioner's entire site appears as a single home site. There are no natural or man-made features separating lot 66 and 67. Lot 66 was always and continues to be the side yard for the house. Guests and family members sat at picnic tables, played games, lounged or parked automobiles in the side yard without regard to any boundary. Petitioner and his family and friends used the boat ramp located on lot 66. Petitioner's shed straddles lot 66 and 67. Petitioner placed it there without regard to any boundary between the lots. It is immaterial whether it can be moved or not; rather, it shows the Petitioner treated the lots as one parcel. He used it as a single home site at least since it was deeded to him in 1979, and probably by his family before then. There was no evidence lot 67 was purchased with the intention to build a separate house.

The site is located within the 100 foot Critical Area Buffer. The Critical Area Regulations were enacted in 1988 and prohibit new construction within the buffer without approval of Department of Environmental Protection and Resource Management.

(DEPRM). It is significant that no new construction has been permitted along this portion of Grey Hound Creek since the enactment of the Critical Area Law. Petitioner's request would be the first new house built along Bauernschmidt here since 1955, except for 2515 Bauernschmidt build in 1983 prior to the Critical Area Law, on combined lots totaling 14,136 sq. ft Petitioner's requested relief compares unfavorable with the pattern of development in the immediate area. The neighborhood may contain dwellings on lots slightly less the required 10,000, but each of these lots is significantly larger than Petitioner's Lot 67. (See P.C. Exhibit # 3)

Moreover, if the relief is granted, the *two* resulting undersized lots would further exacerbate and frustrate the current D.R. 3.5 zone and the Critical Area Regulations. While the size of some of the home sites in the neighborhood may be nonconforming, these lots contain dwellings constructed prior to 1955. Moreover, the existence of other nonconforming uses or variances do not justify a variance here. *See Young, American Law of Zoning, 4<sup>th</sup> ed, § 20.56.* 

"To qualify as a nonconforming use, the use in issue must exist on the day specified in the ordinance. [the applicable date here is 1970 when the D.R. 3.5. regulations were enacted in Bill 100]. Thus, if a nonconforming use is defined by the ordinance as one which existed before passage of the restrictive ordinance, a use may be continued after passage only if it existed prior to that date. Where premises at some time prior to enactment were used for the purpose in issue, but such premises were not used for the nonconforming purpose [construction of a second dwelling on lot 67] on the date the ordinance was passed (or took effect), the use is not protected. . . . even if the use was anticipated by the landowner prior to adoption of the restrictive ordinance." (emphasis supplied).

#### TESTIMONY

#### A. Protestant Witnesses

Aaron Kluttz testified in opposition to the request. He resides at 2616 Bauernschmidt. His home is located on waterfront lots 70 and 71. He has resided there for over 14 years. He testified that the Petitioner has used both lots together as a home site for as long as he can remember. Mr. Kluttz testified lot 67 has always been used as a side yard and appears as one continuous yard along with the dwelling, with no visible division between the lots. The site contains a shed set in concrete in the middle of the site. The witness testified the site has always been used as a summer home; Petitioner's family and guests traversed the property without regard to any separation between lot 66 and lot 67. He compared Petitioner's site to his own use of lots 70 and 71 as a single home site. Mr. Kluttz described the homes on Bauernschmidt Drive along Greyhound Creek. Lot 63 is 7,900 sq. ft. with a house constructed in 1947. Lot 64 is 10,800 sq. ft. with a house constructed in 1949. Lot 65 is 12,525 sq. ft. with a house constructed in 1950. All of these lots are larger than lot 67. Lot 66 is improved with Petitioner's house. Lot 68 is unimproved and is owned by the Hummels who also owns Lot 58 directly across the road. The dwelling is located on Lot 58 and both lots are used as one home site by the Hummels. A similar arrangement exists for Lot 69, which is vacant, and Lot 59, which is improved and located across the road. Lots 59 and 69 are owned by the Kochs. Lots 56 and 57 are the Wisniewski's and are together over 19,000 sq. ft. Mr. Kluttz pointed out this area is within the designated Critical Area and that development must abide by the restrictions under those regulations. He is shocked that DEPRM would

permit development of an undersized lot well within the 100 foot buffer. He had no knowledge of the waivers and variances Petitioner sought from DEPRM, and would have opposed them, particularly since he and his neighbors were successful in imposing restrictions under the critical areas regulations for proposed developments elsewhere on the peninsula. In summary, Mr. Kluttz opposes construction of a second home on Petitioner's property as being out of character for the neighborhood for several reasons: (1) this would be the first dwelling constructed within the Critical Area Buffer since the law was enacted in 1988; (2) the majority of the existing homes, nearly all constructed over 45 years ago, were built on double lots and used as single home sites - on the contrary, Petitioner's request is unusual for the area; (3) the remaining single, unimproved waterfront lots are owned by residents across the road and used in conjunction with the existing dwelling as a single home site – as such it is unlikely they will be developed with a second home as Petitioner requests here; (4) the proposed second dwelling will obstruct Mr. Kluttz's view of the water, for which this Board in other cases has denied variances for accessory structures, or height variances along the water.

Ron Wiesnowski, also testified against the construction of a second home on Petitioner's property. He has lived on a double lot across the road from Petitioner's site since 1982. He was surprised that structures could be constructed within the 100 foot Critical Area buffer since other proposed development in the area had to abide by the setbacks. He believes the second home jeopardizes the health of Greyhound Creek, a tributary of the Bay, in violation of the purpose and intent of the critical area legislation.

The witness also stated the proposed second home on the undersized lot is out of character for the neighborhood and adversely affects the value of his home. He agrees with Mr. Kluttz that the majority of home sites in the immediate area, particularly along the Bauernschmidt Drive waterfront, are on double lots. He distinguished the Burke home built behind his home at Lot 60 (Pet. Exh. 12 & 13) In contrast to the subject property, it is not a waterfront lot, is 13,000 sq. ft, and requires only a minor variance to meet the 70 ft. front width.

### b. Petitioner's Witnesses

The Petitioner's witness failed to satisfy the burden of proof. Mr. James Grammer, a surveyor, testified about the site plan but did not qualify as an expert land planner. He merely presented the facts on the plan but did not offer expert support for the variance or BCZR 304. In fact, he failed to present a single fact to support uniqueness or practical difficulty, or even discuss these criteria.

In the seminal zoning case, <u>Cromwell v. Ward</u>, 102 Md.App. at 710 (1995), the Court 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 have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls."

The witness did not recite a single characteristic of uniqueness described in Cromwell. Mr. Grammer only described the size of the subject property. But Cromwell does not even mention the property's *size* in the definition of unique features. Otherwise, every undersized lot would be entitled to a variance, minimum lot size requirements would be a meaningless standard, and BCZR 304 providing strict requirements for undersized lots would be an obsolete statute. The *American Law of Zoning*, *supra*, explains at Section 20.60:

"Thus a landowner was not entitled to a variance to relieve his land from a restriction which applied to all lots of similar size."

The Court of Special Appeals reversed the CBA and denied variances for a long-standing trucking facility in Baltimore County in <u>Umerely v. People's Counsel.</u> 108 Md. App. 497 (1996). <u>Umerley</u> sought variances, claiming the site was too small to accommodate the setback requirements for the trucking facility use. Judge Bishop reiterated that the uniqueness of the property must be different from surrounding properties "such that the uniqueness or peculiarity of the property causes the zoning provision to have a disproportionate impact on the property." <u>Umerley</u> at 506. The Court held the inability of the site to accommodate the setbacks for a desired use, the trucking facility, was not evidence of uniqueness under <u>Cromwell</u> and BCZR 307.

The site plan drafter here, Mr. Grammer, did not present a shred of evidence of practical difficulty preventing a reasonable use of the site. There was no evidence from Mr. Grammar that unless the relief is granted, the site could not be used residentially. On

the contrary, he described an existing residential use with a dwelling, dock, shed, and boat ramp, typical structures and uses for residential waterfront home sites.

Zoning principles have long rejected variance relief based on convenience and profitability for the property owner. "Practical difficulty" does <u>not</u> mean:

- (i) Increase profit for the homeowner: "The courts have consistently held that a variance may not be granted solely on the ground that such relief will enable the applicant to make a greater profit." American Law of Zoning 4<sup>th</sup> Edition, Section 20.23
- (ii) inconvenience to the applicant if the variance is not granted "... an applicant cannot qualify for an area variance simply by showing that he will be inconvenienced if relief is not granted." American Law of Zoning  $4^{th}$  Edition, Section 20.54
- (iii) preferences of the property owner: "To warrant the granting of an area variance there must be something more than a showing that a variance would permit the applicant to select a preferable alternative." American Law of Zoning  $4^{th}$  Edition, Section 20.54

The appellate courts have rejected variance claims based on financial or revenue considerations. <u>Burns v. Mayor & City Council</u>, 251 Md. 554 (1968), <u>Daihl v. County Board of Appeals</u>, 258 Md. 157 (1970) and <u>Cromwell</u>, supra, quoting <u>Xanthos v. Board of Adjustment</u>, 685 P.2d 1032, 1037 (1985).

"Financial return . . . alone, never justifies a variance."

"Hardship is not demonstrated by economic loss alone.. Every person requesting a variance can indicate some economic loss. To allow a variance any time any economic loss is alleged would make a mockery of the zoning program." Cromwell at 715. (citations omitted).

A property owner is not entitled to construct improvements on every square foot of his property in defiance of zoning law. It is understood that some part of a lot may remain unimproved open space. In <u>Annapolis v. Waterman</u>, 357 Md. 484, 745 A.2d

1000 (2000), a takings case, the developers sued the city of Annapolis for a regulatory taking, when the City required certain portions of the site (Lot 1) be dedicated for public recreation as a condition for approval of the subdivision. The developer argued that the denial of a dwelling on lot 1 must be the measure of damages. Damages in a regulatory takings case is defined as "whether there was loss of all viable economic use." The Court of Appeals disagreed that lot 1 is viewed in isolation and held that damages, if any, must be viewed in the context of the use on the entire site, or a phase of the development. In other words, would the dedication of one lot to open space deprive the developer of all viable use of the entire property, not just the dedicated lot., which reduced the damages claimed by the developer. Judge Cathell wrote:

"The trial court also erred by not including at least the entire thirdphase property (all of Lot 4, including the duplex lots). In considering whether a regulatory taking has left remaining viable economic use of the property, the property to be assessed for economically viable use is, as we have said, the entire tract of land, not just the proposed new corner Lot 1..."

Judge Cathell cited the language in the famous Supreme Court case involving air space above Grand Central Station, Penn Central Transportation co. v. New York City, 438 U.S. 104 (1978):

'Taking' jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated. . . . the Court focuses rather both on the character of the action and on the nature and extent of the interference with rights in the parcel as a whole. . . . " (emphasis added) (citations omitted).

Waterman at 528 also quoted <u>Keystone Bituminous Coal Ass'n v. DeBenedictis</u> 480 U.S. 470 that required the property be viewed as a whole in determining if a viable use remained:

"Many zoning ordinances place limits on the property owner's rights to make profitable use of some segments of his property. A requirement that a building occupy no more than a specified percentage of the lot on which it is located could be characterized as a taking of the vacant area . . . Similarly, under petitioners' theory one could always argue that a setback ordinance requiring that no structure be built within a certain distance from the property line constitutes a taking because the footage represents a distinct segment of the property for takings law purposes. There is no basis for treating the less than 2% of petitioner's coal as a separate piece of property." (citations omitted).

Mr. Grammer also admits the combined lots currently meets the area and width requirements for the existing dwelling, but would be deficient in at least area and width if the relief is granted for a second home. Thus the variance conflicts with the spirit and intent of the Regulations in violation of the specific language in BCZR 307:

"Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said . . . area . . . regulations, and only in such manner as to grant relief without injury to public health, safety, and general welfare."

The witness failed to provide any basis for his bald assertion that the variance would have no effect on health, safety and welfare. Such allegations, without supporting reasons, have no probative value for the trier of fact (the Board) under <u>People's Counsel v. Beechwood</u> 107 Md.App. 627 (1995).

The Petitioner's son-in-law, **Steven Glock**, testified in support of the relief. Surprisingly, he offered no evidence of practical difficulty or hardship. Instead, he corroborated the protesting neighbor's testimony that the site has been used as a single home site for picnics, parties and family get-togethers, where the side yard is used in conjunction with the dwelling, and without regard to any boundary on the property. This proves Lot 67 has a viable use.

The Petitioner, Mr. Henry Mueller, admitted in his testimony that the entire site has been used consistently for recreation and family gatherings. He corroborated the use of the site as a summer home site since at least 1979. He never denied a viable use. He never claimed the subject property's shape, topography or other unusual features prevent a reasonable use without variance relief. Again, the *size* of the lot is not an element of uniqueness under BCZR 307 or the appellate cases. Otherwise, no variance for an undersized lot could be denied. The regulations for minimum lot size and the exceptions under 304 would be rendered meaningless, contrary to the principles of statutory construction:

"When the statute to be interpreted is part of a statutory scheme, it must be interpreted in that context. That means that, when interpreting any statute, the statute as a whole must be construed, interpreting each provision of the statute in the context of the entire statutory scheme. Thus, statutes on the same subject are to be read together and harmonized to the extent possible, reading them so as to avoid rendering either of them, or any portion, meaningless, surplusage, superfluous or nugatory." Whiting-Turner Contracting Co. v. Fitzpatrick, 366 Md. 295, 302-03, 783 A.2d 667, 671 (2001) (internal quotations omitted) (citations omitted) (emphasis supplied).

#### VARIANCE LAW

"... with respect to variances, it is said that a variance is 'designed as an escape hatch from the literal terms of the ordinance which, if strictly applied, would deny a property owner all beneficial use of his land and thus amount to confiscation." (citations omitted, emphasis supplied). Young, American Law of Zoning 4<sup>th</sup> Edition, Section 20.02. P. 411, 412.

BCZR 307.1 is in accord with general variance law and states that the CBA may grant variances:

"... 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 of Baltimore County would result in practical difficulty or unreasonable hardship."

Variances are not favored under the law and presumed to be in conflict with the regulations. For these reason, the spirit and intent of the law must be strictly construed. As Judge Cathell pointed out in <u>Cromwell</u>, supra:

"The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. See, e.g., A. Rathkopf, 3 The law of Zoning and Planning Section 38 (1978)." Id. 651 A.2d 424,430.

The strict standard requires proof of the following:

- 1. That the land or structure is "unique," a zoning term of art;
- 2. That the uniqueness "results" in "practical difficulty" pertinent to zoning compliance;
- 3. That there is true "practical difficulty," another zoning term of art; and
- 4. That any such "practical difficulty" is not self-created.

The first inquiry here is whether the property is peculiar or "unique." If evidence of uniqueness is insufficient or unpersuasive, the inquiry ends there. Cromwell v. Ward 102 Md. App. 691 (1995); Umerley v. People's Counsel 108 Md. App. 497 (1996); Riffin v. People's Counsel 137 Md. App. 90 (2001). If this threshold is passed, the further question is whether the unique condition results in "practical difficulty." McLean v. Soley 270 Md. 208, 213-15 (1973).

# (a) Uniqueness Defined and Analyzed

The word "unique" is defined strictly. Otherwise, anyone could make some sort of claim. In <u>Cromwell</u>, 102 Md.App. at 710 (1995), the Court 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 have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls."

The variance statute is found in **BCZR 307.1**:

"... 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 public health, safety and general welfare. They shall have no power to grant any other variances."

Petitioner's witnesses did not present a shred of evidence to support the criteria for uniqueness, although it is their burden. "("The burden of proof is on the applicant to establish that his land is uniquely affected resulting in unnecessary hardship.")" Cromwell at 721 (citations omitted).

Moreover, the facts are clear that the site has functioned well as part of the home site since at least from the time the existing dwelling was constructed in 1949. There is no evidence here of the uniqueness standards reiterated in <u>Cromwell</u>. The GIS map

(PC#1) shows the rectangular *shape* of Lot 67 is nearly identical to other waterfront lots, and is common in this area and other areas of Baltimore County. Petitioner's witnesses did not dispute this. Nor did the Petitioner refute that the *topography* is flat, there are no adverse *subsurface conditions*; there is no evidence of any *historical significance* to the location or improvements; there are no unusual *environmental factors* since the lot is comparable to others along the waterfront; the site's *access to navigable waters* is not an "inherent characteristic not shared by other properties in the area"; there are no *abutting obstructions or restrictions* that interfere with this site; finally, there is no question of a building with *unusual architectural aspects and bearing or party walls*." The size of the lot is not a unique feature. Judge Cathell in <u>Cromwell</u> at 717 cited approvingly <u>Sibley v. Inhabitants of the Town of Wells</u>, 462 A2d 27, 30-31 (1983):

"[T]he need for a variance [must be] due to the unique circumstances of the property and not to the general conditions in the neighborhood; . . . [T]he hardship [must] not [be] the result of action taken by the appellant or a prior owner. . . However, the mere fact that the lot is substandard is not a unique circumstance; all the undeveloped lots in that neighborhood are of substandard size." (emphasis supplied)

Judge Cathell referenced at p. 718 other out-of state decisions in describing uniqueness:

"("[P]roperty owner must sustain the heavy burden of proving that the zoning ordinance imposes an unnecessary hardship which is unique to his particular property . . ."). . . A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, unique to that parcel and not shared by other property owners in the area . . . [Applicant] Indialantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance." (citations omitted).

Judge Cathell further pointed out:

"[I]t is not uniqueness of the plight of the owner, but uniqueness of the land causing the plight which is the criterion . . . Thus, a landowner was not entitled to a variance to relieve his land from a restriction which applied equally to all lots of similar size." Cromwell at 719-720, (citations omitted)

Moreover, the existence of the dwelling here on Lot 66 is not a factor. "Simply having an old building on land upon which a new building has been constructed does not constitute special circumstances." Cromwell, at 715. (citations omitted).

## (b) Practical Difficulty Is Not An Issue and Does Not Exist

Since there is no evidence of uniqueness, the Board need not consider whether the uniqueness caused "practical difficulty":

"We conclude that the law in Maryland and in Baltimore County under its charter and ordinance remains as it has always been – a property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance's more severe impact on the specific property because of the property's uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists." Cromwell at 721.

Judge Cathell further explained that practical difficulty must be caused by the established uniqueness: "... the uniqueness of the property caused the ordinance to have a different impact on it [subject property] than on adjoining property... and there is evidence that the neighboring properties were in any way different than the subject property." Cromwell at 721.

Even if the site here were unique, there is no evidence of practical difficulty particular to this site as compared to other comparable lots in the area. The site was used

effectively by Petitioner with his adjoining property for many years. There is nothing prohibiting Petitioner from selling both lots together, particularly since the SDAT records show both lots were acquired by Petitioner at the same time (5-11-79). (See SDAT printouts attached to Petitioner's Memorandum filed at the CBA hearing. It is apparent that the Petitioner intends to separate the site from lot 66 after all these years in the hope of increasing his profit. He rejects the viable alternative of selling the combined lots and improvements together, in compliance with current zoning regulations and long-standing use. But a property owner is not entitled to every use in the zone, only a reasonable use. Nor can a variance be granted to increase Petitioner's economic gain: "Mere fact that variance would make property more profitable is not a sufficient ground to justify granting of variance from setback requirements of Baltimore Zoning Ordinance." Easter v. Mayor and City Council of Baltimore, 195 Md. 395 (1950). "Fact that variance of zoning ordinance will make realty more profitable is not sufficient ground to justify variance." Gleason v. Keswick Imp. Ass'n, 197 Md. 46 (1951). Meanwhile, the evidence demonstrates it is reasonable and common in this area to utilize and transfer two or more of the old lots as a single home site, particularly along the waterfront on Baurenshemidt Drive. There is no practical difficulty here; rather, Petitioner wants a radical deviation from the regulations in the DR 3.5 zone because he believes he can make more money with two separate lots. This is in direct conflict with variance law and the spirit and intent of the regulations.

# BCZR 304 - Limited Exception To Build On Undersized Lot Does Not Apply

Petitioner does not meet the requirements under BCZR 304, which permits limited relief for undersized lots under very specific conditions. Specifically, Petitioner does not comply with 304 (c). BCZR 304.1 states:

"Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building ling less than that required by the area regulations contained in there regulations if:

- A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1995;
- B. All other requirements of the height and area regulations are complied with; 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."

This provision is based on general zoning principles that afford some relief for property owners with a single lot in an old subdivision. It is a limited exemption to the general prohibition of construction on an undersized lot. It is not meant to permit every use, or maximize the owner's profits, but rather assure some use. A review of the history of older subdivisions and how they are treated under current zoning laws is described in Young, *American Law of Zoning 4<sup>th</sup> edition*, in Section 9.66-9.67:

"Before the subdivision of land was subjected to municipal control, a great deal of municipal land had been divided into small lots, many with less than 30 feet of frontage and less than 3,000 square feet of space. When greater frontage and area requirements were superimposed upon this pattern, many owners were left with substandard lots. Strict and literal enforcement of the more stringent regulations would have made such lots useless to their owners and to the community. In addition, the regulations which destroyed the use value of such substandard lots would have been held confiscatory.

To avoid this result, most ordinances provide some relief for the owner of a substandard lot. . . . To obtain relief the owner must show a deed which has been recorded prior to the adoption of the restrictive ordinance. He must demonstrate that no use is available under the ordinance. . . .

The common exception of lots which were recorded prior to the effective date of a restrictive ordinance is limited to lots which were in single and separate ownership on that date. Under such a provision, an owner is entitled to an exception only if his lot is isolated. If the owner of such a lot owns another lot adjacent to it, he is not entitled to an exception. Rather, he must combine the two lots to form one which will meet, or more closely approximate, the frontage and area requirements of the ordinance. Where, for example, a landowner held four contiguous lots which each had a frontage of 20 feet, he was regarded as owning 80 feet of frontage and was required to redivide the land consistent with the zoning regulations. This requirement was held reasonable as it permitted him some reasonable use of his land. The same result was reached where the owner of a lot containing 5000 square feet acquired a contiguous lot of the same size. Under the ordinance he was considered to own a lot of 10,000 square feet . . . An owner of several contiguous parcels may not combine them so as to leave a substandard lot, and assert a right to an exception of the latter. Thus, an owner of four 25-foot lots proposed to create one lot, which met the applicable 80-foot frontage requirement, and to build on the 20-foot lot. He urged that to deny him a permit to use the substandard lot was an unconstitutional deprivation of property. The court rejected this argument and upheld a denial of a permit to build on the substandard portion." (citations omitted, emphasis supplied). (The only exception to the merger may be if the entire neighborhood has been developed on single undersized lots, which clearly is not supported by the facts in the instant case).

It would be disingenuous for Petitioner to misuse this provision, contrary to its intended purpose and in conflict with BCZR 304 (c). It is ludicrous to claim an exception under BCZR 304 to allow Petitioner two separate dwellings, while an owner of two adjacent unimproved lots is limited to a single house. Instead, the application of 304 under both scenarios would permit a single dwelling in order to most closely comply with the current minimum lot size requirements. Petitioner cannot claim he owns no adjoining

property to comply with the current DR 3.5 zoning. He has sufficient area and width with both lots to comply. That is the purpose of the restriction in 304 (c). For Petitioner to suggest the Board should ignore Petitioner's adjoining lot because it is improved, renders not only section (c) meaningless, but ignores the spirit and intent of the statute. The site must be looked at as a whole, as stated in <u>Waterman</u>, *supra*. Moreover, the principles of statutory construction require logical interpretation and application of BCZR 304 (c). See <u>Whiting-Turner Contracting Co. v. Fitzpatrick</u>, *supra* and quoted on P. 13 of this memorandum.

Furthermore, Petitioner has benefited from a dwelling and accessory uses on the entire site. There is nothing prohibiting him from selling both lots as a single home site. Development on two or more lots is in character with the area. Compliance with zoning regulations should be encouraged, not ignored. As a practical matter, and in line with the current zone, the use here can easily continue and function in is present state with a single dwelling on both lots.

# The Merger Doctrine Supports Denial of the Petition Under BCZR 304

The prior use of both lots as a single residential use brings into play a long-standing zoning principle know as "merger". As pointed out, BCZR 304.1 (c) prohibits development of an undersized lot contiguous to property under same ownership, where the combined lots would satisfy current area and width requirements. In effect, the lots merge, and current regulations are applied to the property as a whole. The purpose of this doctrine of merger is to discourage nonconforming uses and structures as against public policy.

Ziegler, Rathkopf's Law of Zoning and Planning, Section 32.04 states:

"Zoning ordinance provisions often limit exemptions or grandfather clauses to lots of record that are in single or separate ownership. Either implicitly by such provisions or expressly by "merger" requirements in the ordinance itself, contiguous substandard lots under common ownership may lose their separate identity and be treated as a single parcel for purposes of zoning area and frontage requirements and subdivision restrictions. Merger provisions generally have been upheld against due process, equal protection, and taking claims . . . Merger requirements may operate upon contiguous undeveloped lots or upon contiguous lots where one or more of the lots are already developed.

In dealing with substandard lots . . . the point or reference is the effective date of the bylaw. The basic purpose of the ordinance provision establishing generally applicable minimum lot requirements has as its corollary the purpose to freeze and minimize substandard lots. If there is a merger provision in the ordinance, it is designed to result in a maximum number of standard lots from each separate tract of land in single ownership at the effective date of the ordinance. The number of separately described parcels which an owner or his predecessors in title may have acquired over the course of time to make up the entire tract is thus immaterial. (emphasis supplied).

In other words, lot 66 and 67 merge for purposes of determining density and lot size under DR 3.5. The table in BCZR 1B02.3 requires, among other setbacks in this zone, 10,000 sq. ft. area per dwelling, and a 70 ft. minimum lot width. Petitioner meets these requirements when the lots are merged, but is deficient if the lots are treated separately. BCZR 304 (c) provides the statutory basis for the merger explained in Rathkopf's treatise cited above. The undisputed history of the use here also supports an implied merger even without 304 ©. In any event, the Petition must be denied.

The Court of Appeals discussed merger in <u>Friends of the Ridge v. Balto. Gas & Elec. Co.</u>, 352 Md. 645 (1999). Judge Cathell discussed a merger of adjoining parcels for a single use. There, the property owner, BGE claimed the lots merged, eliminating the

need for a variance from an internal lot line. The Court was not required to find, on the facts of that case whether the property owners' use of the site resulted in a merger of the lots. However, the Court quoted favorably out-of-state cases that upheld and applied the merger doctrine. Arguably, the Court of Appeals in Friends, did not foreclose the next logical step of extending the merger doctrine to facts supporting a single use on adjoining lots. Moreover, the Court clearly recognized that existing improvements commit the site to the current use, and will not be ignored in subsequent development proposals elsewhere on the site:

"An owner of contiguous parcels who erects a structure in what would ordinarily be a setback of one of the individual parcels, might, under this [merger] doctrine, although we do not now decide it, also cause a combination of lots thus restricting the future alienability of the unbuilt upon parcel because the conveyance of that parcel would cause the property upon which the structure is built to be in violation of the ordinance. ..." Friends, supra at 658, footnote 11. (emphasis supplied).

In other words, development on lot 67 is prohibited because both lots 66 and 67 are required to satisfy the area and width requirements for the existing dwelling under the current DR 3.5 zone and BCZR 1B02.3. Moreover, Friends of the Ridge does not prohibit application of the merger doctrine referred to by Rathkopf in his treatise. Judge Cathell, in Friends at 659, quotes a Connecticut case that stated the owner's intent to merge separate lots "may be inferred from his conduct with respect to the land and the use which he makes of it... We shall hold that a landowner who clearly desires to combine or merge several parcels or lots of land into one larger parcel may do so. One way her or she may do so is to integrate or utilize the contiguous lots in the

service of a single structure or project. Such an owner would also risk being forced to bring that parcel into conformity by removing the structure from the setback."

Friends of the Ridge was preceded by Grill v. People's Counsel for Baltimore County, decided by the Court of Special Appeals in an unreported decision dated November 1, 1996. The Court also quoted approvingly the standard definition of merger: "Merger, in the context of land use, is the joining of contiguous parcels under common ownership, so that they are viewed as a single parcel for purposes of zoning regulations." (Citations omitted). Because the Appellant in Grill did not have a lot created by a deed dated prior to March 30, 1955 under BCZR 304.1(a), the Court stated, "As we see it, we need not determine whether the parcels merged when the Blackburns owned them. This is because the Board properly concluded that B.C.Z.R. Section 304.1 was not applicable to the Grills, based on the deeds they acquired in November 1993." But as in Friends of the Ridge, the Court was receptive to the applicable of the merger doctrine, and particularly under BCZR 304.1 (C) prohibiting development of an undersized lot where the owner owns adjoining land.

The denial of the Petition here under BCZR 304.1 (C) is also supported by McLean v. Soley, 270 Md. 208, 213-215 (1973) which requires the agency to determine if a lesser variance than that applied for would do justice to other property owners. Under McLean, the CBA must determine if the merger of the adjoining lots would reduce or eliminate the need for a variance while allowing for a reasonable use of the site.

The Petitioner here has demonstrated that he has utilized the lots for a single residential use. The law is clear. As stated in American Law of Zoning, supra "...the

right to the exception [to construct a dwelling on an undersized lot] is lost if adjacent parcels are acquired by the same owner. BCZR 304 (c) supports this zoning principle and prohibits a second dwelling on the site.

## History of Zoning and Nonconforming Uses

If the Petition is granted, the negative effect is twofold. Lot 66 with the existing dwelling becomes nonconforming as to area and width, as does lot 67 for the proposed dwelling. Even if the existing situation is nonconforming, noncompliance with current zoning laws is exacerbated if a second dwelling is constructed. This violates BCZR 102.1 and 102.2:

- 102.1 "No land shall be used or occupied and no building or structure shall be erected, altered, located or used except in conformity with these regulations and this shall include any extension of a lawful nonconforming use.
- 102.2 No yard space or minimum area required for a building or use shall be considered as any part of the yard space or minimum area for another building or use."

BCZR 104.1 allows nonconforming uses to exist unless changed, abandoned or discontinued. BCZR 104.2 addresses fire or other casualty situations. In general, the policy of the law is to eliminate nonconforming uses over time. Prince George's County v. E.L. Gardner 293 Md. 259, 267-68 (1991) contains an excellent discussion of nonconforming use law. Judge Davidson wrote:

"This Court has repeatedly recognized that one of the fundamental problems of zoning is the inability to eliminate incompatible nonconforming land uses. In *Grant v. Mayor and City Council of Baltimore*, 212 Md. 301, 307, 129 A.2d 363, 365 (1957), this Court said:

"Nonconforming uses have been a problem since the inception of zoning. Originally they were not regarded as serious handicaps to its effective operation; it was felt they would be few and likely to be eliminated by the passage of time and restrictions on their expansion. For these reasons and because it was thought that to require immediate cessation would be harsh and unreasonable, a deprivation of rights in property out of proportion to the public benefits to be obtained and, so, unconstitutional, and finally a red flag to property owners at a time when strong opposition might have jeopardized the chance of any zoning, most, if not all, zoning ordinances provided that lawful uses existing on the effective date of the law could continue although such uses could not thereafter be begun. Nevertheless, the earnest aim and ultimate purpose of zoning was and is to reduce nonconformance to conformance as speedily as possible with due regard to the legitimate interests of all concerned, and the ordinances forbid or limit expansion of nonconforming uses and forfeit the right to them upon abandonment of the use or the destruction of the improvements housing the use."

Thus, this Court has recognized that the problem inherent in accommodating existing vested rights in incompatible land uses with the future planned development of a community is ordinarily resolved, under local ordinances, by permitting existing uses to continue as nonconforming uses subject to various limitations upon the right to change, expand, alter, repair, restore, or recommence after abandonment. Moreover, this Court has further recognized that the purpose of such restrictions is to achieve the ultimate elimination of nonconforming uses through economic attrition and physical obsolescence. The Arundel Corp. v. Board of Zoning Appeals of Howard County, 255 Md. 78, 83-4, 257 A.2d 142, 146 (1969); Stieff v. Collins, 237 Md. 601, 604, 207 A.2d 489, 491 (1965); Colati v. Jirout, 186 Md. 652, 655, 657, 47 A.2d 613, 614-15 (1946); Beyer v. Mayor of Baltimore, 182 Md. 444, 446, 34 A.2d 765, 766 (1943); See Kastendike v. Baltimore Ass'n for Retarded Children, Inc., 267 Md. 389, 397, 297 A.2d 745, 749-50 (1972).

Whether a nonconforming use can be changed, extended, enlarged, altered, repaired, restored, or recommenced after abandonment ordinarily is governed by the provisions of the applicable local ordinances and regulations. Feldstein v. La Vale Zoning Board, 246 Md. 204, 211, 227 A.2d 731, 734 (1967); Phillips v. Zoning Comm'r of Howard County, 225 Md. 102, 109, 169 A.2d 410, 413 (1961); Board of Zoning Appeals of Baltimore County v. Gue, 217 Md. 16, 21-22, 141 A.2d 510, 513 (1958). These local ordinances and regulations must be strictly construed in order to effectuate the purpose of eliminating nonconforming uses. Mayor of Baltimore v. Byrd, 191 Md. 632, 638, 62 A.2d 588, 591 (1948); Colati, 186 Md. at 658-59, 47 A.2d at 616; Knox

v. Mayor of Baltimore, 180 Md. 88, 96, 23 A.2d 15, 18 (1941); see City of Hagerstown v. Wood, 257 Md. 558, 563, 263 A.2d 532, 534 (1970); Hewitt v. County Comm'rs of Baltimore County, 220 Md. 48, 59, 151 A.2d 144, 150 (1959)."

## The Petition Fails to Satisfy Chesapeake Bay Critical Area Standards

BCZR 500.14 sets standards applicable to all zoning petitions in the Chesapeake Bay Critical Area. DEPRM must provide a recommendation describing how the proposed request would minimize adverse water quality impacts; conserve fish, wildlife and plant habitat; and be consistent with land use policies for the Critical Area. The DEPRM report submitted here is cursory, *pro forma*, and conclusive. It merely regurgitates the language in the statute without analysis of the facts. DEPRM has not made the required statutory findings with supporting reasons. The DEPRM variance would not withstand scrutiny of judicial review. This failure is *vel non* a separate reason to deny the petition. See <u>People's Counsel v. Beachwood</u> 107 Md. App. 627, 659-64 (1995), cert. denied 342 Md. 472 (1996). Thus, it need not be accepted by this Board, which is authorized to deny the zoning relief on critical area criteria under the "spirit and intent" provisions in BCZR 307.

In this connection, it is evident that the placement of a second dwelling on a waterfront property of .15 acres is an overcrowding of the land and inevitably adds unnecessary environmental stress to the bay. It is inconsistent with standards for Limited Development Areas. The GIS map also shows that most of the properties in the area have a single dwelling on larger lots. Indeed, the usual build-out is on lots greater than Petitioner's, and which approximate closer the minimum 10,000 sq. ft area. In contrast,

the proposal crowds the subject property. More importantly, the proposed dwelling is entirely within the 100 ft buffer, which the citizens testified is practically unheard of for new construction in the area.

### **SUMMARY**

Petitioner's case is no stronger than the undersized lot cases denied by the CBA In the Matter of Hranicka, 03-096 A and 03-097 A, In the Matter of Gerald Martin, 91-129 A, In the Matter of Cox, 86-438 A, In the Matter of DuPont, 01-313 A, In the Matter of Robert Johnson, 95-52 SPHA, In the Matter of Warren Grill, 94-163, to name a few. The Circuit Court, and even the Court of Special Appeals in Grill, affirmed the CBA's denial. In fact, People's Counsel cannot recall a single undersized lot case granted by the CBA, either under 304 or 307, where Petitioner owned one or more adjoining lots. In some cases relief was denied if the width was deficient, even if the lot area satisfied the current standards. Petitioner here is not without a viable use. Certainly, the combined lots 66 and 67 have value for a single dwelling with an expansive water frontage, as evidenced by the pattern of development in the immediate area. There is no evidence that Petitioner satisfies the uniqueness and practical difficulty standard for a variance. In fact, protestant's evidence proves the site is not unique and there is no practical difficulty to continue the current use. Also, Petitioner failed vel non to satisfy 304 (c). For these reasons, the Petition conflicts with the spirit and intent of the law and must be denied.

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

CAROLE S. DEMÍLIO

Deputy People's Counsel

Old Courthouse, Room 47

400 Washington Avenue

Towson, MD 21204

(410) 887-2188

# **CERTIFICATE OF SERVICE**

day of March, 2005, a copy of the I HEREBY CERTIFY that on this foregoing Memorandum of the People's Counsel for Baltimore County was mailed Edward J. Gillis, Esquire, Royston, Mueller, McLean & Reid, LLP, The Royston Building, Suite 600, 102 West Pennsylvania Avenue, Towson, MD 21204, Attorney for Petitioner(s).

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

1/91/05.

IN RE: PETITION FOR VARIANCE

S/S of Bauernschmidt Drive, 276 ft. E

Centerline of Bauernschmidt Drive

15<sup>th</sup> Election District

7<sup>th</sup> Councilmanic District

(2608 Bauernschmidt Drive)

\* BEFORE THE

\* BALTIMORE COUNTY

\* BOARD OF APPEALS

\* Case No. 04-487-A

Grace M. Mueller & Herman Mueller, Jr.

Petitioners

\*

NOTICE OF ENTRY OF APPEARANCE

Grace M. Mueller and Herman Mueller, Jr., Petitioners, by their undersigned counsel, pursuant to Rule 6(d) of the Rules of Practice and Procedure of the County Board of Appeals, hereby note the entry of appearance of Edward J. Gilliss as counsel on their behalf.

The Petitioners are: Grace M. Mueller and Herman Mueller, Jr.

6212 Fair Oaks Avenue Baltimore, Maryland 21214

Counsel is:

Edward J. Gilliss

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Towson, Maryland 21204

(410) 823-1800

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Royston, Mueller, McLean & Reid, LLP

The Royston Building, Suite 600 102 West Pennsylvania Avenue Towson, Maryland 21204

(410) 823-1800

Attorneys for Grace M. Mueller and Herman Mueller, Jr., Petitioners

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the <u>31st day of January</u>, <u>2005</u> a copy of the foregoing Notice of Entry of Appearance was mailed, via first class mail, postage prepaid, to: Peter Max Zimmerman, Esquire, 606 Baltimore Avenue, Suite 204, Towson, Maryland 21204-4097.

EDWARDJ. GILLISS

FYLTTGATTONS/EIG/Clients/Glock/Noticeof/Appear.doc

ROYSTON, MUELLER, McLean & Reid, LLP

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January 31, 2005

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### **VIA HAND DELIVERY**

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

Re:

Petition for Variance

2608 Bauernschmidt Drive

Case No.: 04-487-A

Dear Sir:

Enclosed with this letter please find for filing in the above-captioned appeal a Notice of Entry of Appearance on behalf of Petitioners Grace M. Mueller and Herman Mueller, Jr.

Thank you for your assistance.

Very truly yours,

Edward I Gillian

EJG/lap Enclosure

cc:

Peter Max Zimmerman, Esquire (w/encl)

Mr. Steven J. Glock (w/encl)

Mr. and Mrs. Herman Mueller, Jr. (w/encl)

FALTIGATIONS/EIGClients/Glock/Bdof/Appeals In 1-28-05 doc

RECEIVED

JAN 3 1 2005

BALTIMORE COUNTY BOARD OF APPEALS 6/23/04

IN RE: PETITION FOR VARIANCE
S/S of Bauernschmidt Drive, 276 ft. E
centerline of Bauernschmidt Drive
15th Election District
7th Councilmanic District
(2608 Bauernschmidt Drive)

Grace M. & Herman Mueller, Jr.

Petitioners

- BEFORE THE
- \* DEPUTY ZONING COMMISSIONER
- \* OF BALTIMORE COUNTY
- \* CASE NO. 04-487-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, Grace M. & Herman Mueller, Jr. The Petitioners are requesting variance relief for property located at 2608 Bauernschmidt Drive in the "Bauernschmidt Manor" subdivision 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 6,812 sq. ft. lot in lieu of the minimum required 10,000 sq. ft. and to permit a lot width of 61 ft. in lieu of the minimum 70 ft. and to approve an undersized lot pursuant to Section 304 of the B.C.Z.R.

The property was posted with Notice of Hearing on June 5, 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 June 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,

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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 was received from the Department of Environmental Protection & Resource Management (DEPRM) dated May 20, 2004 stating that the Petitioners must comply with the Chesapeake Bay Critical Area Regulations, a copy of which is attached hereto and made a part hereof. A ZAC comment was also received from the Bureau of Development Plans Review dated May 18, 2004 setting forth several federal and county code requirements the Petitioners must comply with for this project.

### **Interested Persons**

Appearing at the hearing on behalf of the variance request were James Grammer, engineer from McKee & Associates, Inc., Steven Glock and Herman Mueller, the Petitioner. Silvana Wisniewski, Robert Koch and Steve Hummel appeared in opposition to the petition. Linda Clarke attended the hearing as a interested citizen. 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 6,812.10 sq. ft., more or less, and is zoned DR 3.5. Mr. Grammer proffered that the subject property is a vacant lot (lot 67) of the Bauernschmidt Manor subdivision which was recorded in the Land Records of Baltimore County in 1940. Its frontage along Bauernschmidt Drive is approximately 50 ft. as are most other lots in the subdivision. See

Petitioner's Exhibit No. 1. The Petitioner acquired one half of a 20 ft. wide emergency water access strip in 1960 that separates lots 68 and 67 and so the combined road frontage is approximately 61 ft. As such, the combination does not meet the minimum 70 ft. width required by the regulations for DR 3.5 property. The subject lot faces Greyhound Creek and widens out to approximately 70 ft. along the water. The lot contains approximately 6,800 sq. ft of area, whereas the regulations require 10,000 sq. ft. The property is served by public water and sewer.

Lot 66 is also owned by the Petitioner and is improved by a single-family dwelling. Again, its frontage along Bauernschmidt Drive is approximately 50 ft. When asked whether all variances could be avoided by adjusting the lot lines between these lots, Mr. Grammer indicated that variances could not be avoided because lot 68 was already undersized in both area and road frontage.

Testimony of the Petitioner and protestants indicated the following development pattern:

Lots 71 and 70. Home on double lot. Note the dwelling is virtually on the division line.

Lot 69 owned by protestant Koch is vacant

Lot 68 owned by protestant Hummel is vacant

Lot 67 the subject property

Lot 66 is the Petitioner's single-family home on 50 ft. lot

Lot 65 is a single-family home on 50 ft. lot

Lot 64 is a single-family home on 50 ft. lot

Lot 63 is a single-family home on 50 ft. lot

Lot 63 is a single-family home on 50 ft. lot

Lot 62 and 61 home on double lot.

THE HOUND BY FIRE

Lot 59 is a single-family home on 50 ft. lot

Lot 58 is a single-family home on 50 ft. lot



Lot 57 is a single-family home on 50 ft. lot

Mr. Grammer indicated that the proposed home would meet all County requirements for setbacks but could not meet the area and lot width regulations. As such, he believed that the subject property qualifies under Section 304 since the lot was recorded prior to March 30, 1955, that all other requirements except area and width will be complied with, and the owner does not own sufficient adjoining land to conform to the area and width requirements. Again, in regard to the latter requirement, he noted that lot 66 was already undersized and there would be no sense to take land from this undersized lot as this would also require a variance. In addition, he noted that the property could not meet the zoning regulations imposed upon it many years after it was laid out and recorded. This would amount to both a hardship and practical difficulty.

All of the protestants attending the hearing live across Bauernschmidt Drive and not on the water. Ms. Wisniewski testified that a new home on the subject property would block her view of the water. She noted the area that was flooded due to Hurricane Isabel (see protestants photographs, Exhibit Nos. 1E and 1F). She also presented the decision by this Commissioner on the three lots involved in the Clark's Point Road Case, namely Case Nos. 04-442 A through 04-444 A, for the proposition that no variance can be granted if the owner owns adjacent property.

Mr. Koch owns vacant lot 69 but has his home on lot 59 across the road. Consequently, his direct view of the water would not be impaired by the new home. Similarly, Mr. Hummel owns vacant lot 68 but has his home on lot 58 across the road.

Mr. Koch indicated that he did not believe that anyone could build within the 100 ft. Chesapeake Bay Critical Area so the request should be denied. He would like to keep the subject property vacant to continue his view of the water. He indicated that because of the subject lot being flooded, that the new home would be built 10 ft. higher, blocking even more

severely his view of the water. Mr. Hummel held a similar position and in addition cited a parking problem that already exists in the neighborhood. This parking problem is solved at times by he and his neighbors getting permission to park on the subject property. He also objected to use of half of the emergency access strip by the Petitioner and characterized the strip as community property.

In rebuttal, Mr. Grammer noted that the new home would have to be built 10.4 ft. above mean hightide, but that the area of the new home rises from the water and already was 6 ft. or 7 ft. above the hightide. Consequently, the new home would only be raised 3-4 ft. to meet the County regulations. He also indicated that the emergency access strip existed many years ago so that the fire department could have access to the water in order to fight fires in the neighborhood. However, the property is now served by public water and the Petitioner purchased one half of the obsolete strip years ago as did Protestant Hummel. He noted that in order to build in the Chesapeake Bay Critical Area one must meet strenuous regulations but that it is possible.

#### Findings of fact and conclusions of law

In regard to what was requested in terms of variance, I find that there are special circumstances or conditions existing, that are peculiar to the land or structure, which is the subject of the variance request. The subdivision was recorded in the 1940's much before the DR 3.5 regulations were imposed. I recognize that the case of *Cromwell v Ward*, 102 Md App 691, 651 A2d 424, (1995) seems to indicate that there must be some physical uniqueness in the size shape or environment of the property to qualify for a variance. However, I do not believe the Court addressed the issue of old subdivisions having new zoning regulations imposed upon them. In such a case, the imposition of the new regulations impacts the lots in the old subdivision disproportionately as compared to lots in the area laid out in accord with the regulations. I find that under these circumstances the property passes the first test and is unique. There is no way

for the 50 ft. lots, which were designed before the new regulations, to meet the new 70 ft. width or area requirements. Requiring such would be a hardship and practical difficulty.

However, as I indicated at the hearing, I must also find that the variance can be granted in strict harmony with the spirit and intent of said regulations, and in a manner as to grant relief without injury to the public health, safety and general welfare. To me, this means that I look to the pattern of development in the immediate area to see if the old undersized lots are generally developed with single-family homes on 50 ft. lots or has the "neighborhood" been developed with double lots. In my way of thinking, the proposed new home should be compatible with the existing neighborhood. Said another way, allowing new homes on 50 ft. lots in neighborhoods which have been developed in double lots would be out of place with and change the character of the neighborhood.

I think it also important to arrive at the same result whether using Section 304 or the formal variance procedure. Both have been requested here. This lot meets all the criteria of Section 304.1 as it is a pre-1955 lot, the new home will meet all regulations other than lot width and area, and there is no adjoining land from which the owner could take to make the lot conform. I distinguish the Clark's Point Road case referred to me by the protestants because the Clark's Point Road owner had three lots that could be combined to produce two lots which would meet the regulations. However, here, lot 66 is not large enough to contribute land without creating just another variance case.

Also, by Section 304.4, I am additionally charged with finding whether or not the proposed dwelling is "appropriate". I find that it is "appropriate" in this case because the neighborhood has been developed with single-family homes on 50 ft. wide lots in the past. As evidenced above, I find that the pattern of development shows that most of the lots are developed as single-family homes on 50 ft. lots. I acknowledge that there are a few double lots on the edge of this

MOER RECEIVED FOR FRIDES

neighborhood. I define the neighborhood to be the water front and water view properties shown on Petitioner's Exhibit No. 1. Just as the water front lots are generally developed as single-family homes on 50 ft. lots, the protestants homes across Bauernschmidt Drive are not developed as double lots, but rather single-family homes on 50 ft. lots. I do not believe that allowing another single-family home on the subject lot will adversely affect the character of the neighborhood as these are already so developed. I realize in so finding that both protestants Hummel and Koch can follow Mr. Mueller in requesting that they be allowed to utilize their undersized lots on the waterfront.

Under the totality of the evidence, I also find that such a variance can be granted in strict harmony with the spirit and intent of said regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare.

Finally, I understand that the protestants have enjoyed the view from across the road to the water for many years. I understand that they would like to continue to enjoy that view. However, they have the opportunity to purchase the development rights on the Petitioner's lot as it seems that the Petitioner is ready to sell the lot. In this case the Petitioner would maintain his view to the west without an additional neighbor. It may even be possible for an agreement with Mr. Hummel and Koch to similarly restrict the development rights on their waterfront properties. However, I can not impose such restrictions by law. This must be a matter of agreement among the Parties.

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 granted.

ONOER RECEIVED FOR FLING

Date 6/43/64

Sy A.C. Palletti

THEREFORE, IT IS ORDERED, this <u>23</u> day of June, 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 6,812 sq. ft. lot in lieu of the minimum required 10,000 sq. ft. and to permit a lot width of 61 ft. in lieu of the minimum 70 ft. and to approve an undersized lot, be and it is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted herein:

- 1. The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their 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 Petitioners would be required to return, and be responsible for returning, said property to its original condition;
- 2. Compliance with the ZAC comments submitted by DEPRM dated May 20, 2004, a copy of which is attached hereto and made a part hereof;
- 3. Compliance with the ZAC comments submitted by the Bureau of Development Plans Review dated May 18, 2004, a copy of which is attached hereto and made a part hereof;
- 4. When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

JOHN V. MURPHY

DEPUTY ZONING COMMISSIONER

FOR BALTIMORE COUNTY

JVM:raj



# BALTIMORE COUNTY, MARYLAND DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

7	~~	٠.
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Tim Kotroco

FROM:

R. Bruce Seeley RES JOO

DATE:

May 20, 2004

SUBJECT:

Zoning Item

#(04- 487

Address

2608 Bauernschmidt Drive (Mueller Property)

Zoning Advisory Committee Meeting of May 3, 2004

The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.

X The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item:

Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 14-331 through 14-350 of the Baltimore County Code).

Development of this property must comply with the Forest Conservation Regulations (Section 14-401 through 14-422 of the Baltimore County Code).

X Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code).

Additional Comments:

7

Reviewer:

Keith Kelley

Date: May 20, 2004

S;\Devcoord\ZAC SHELL 11-20-03.doc



**DATE:** May 18, 2004



#### INTEROFFICE CORRESPONDENCE

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 May 10, 2004 Item No. 487

The Bureau of Development Plans Review has reviewed the subject-zoning item.

The flood protection elevation for this site is 10.4 fect.

In conformance with *Federal Flood Insurance* requirements, the first floor or basement floor must be at least 1 foot above the flood plain elevation in all construction.

The property to be developed is located adjacent to tidewater. The developer is advised that the proper sections of the Baltimore County Building Code must be followed whereby elevation limitations are placed on the lowest floor (including basements) of residential (commercial) development.

The building engineer shall require a permit for this project.

The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with materials resistant to flood damage.

Flood-resistant construction shall be in accordance with the requirement of B.O.C.A. International Building Code adopted by the county.

RWB:CEN:jrb

cc; File

Second Marcos 1

ZAC-05-10-2004-ITEM NO 487-05182004

# 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

June 23, 2004

Mr. & Mrs. Herman Mueller, Jr. 6212 Fair Oaks Avenue Baltimore, Maryland 21214-1513

> Re: Petition for Variance Case No. 04-487-A Property: 2608 Bauernschmidt Drive

Dear Mr. & Mrs. Mueller:

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,

John V. Murphy

Deputy Zoning Commissioner

JVM:raj Enclosure

c: James D. Grammer, McKee & Associates, 5 Shawan Road, Ste. 1, Cockeysville, MD 21030 Steven Glock, 2406 Grable Ct., Forest Hill, MD 21050
 Silvana Wisniewski, 2605 Bauernschmidt Dr., Baltimore, MD 21221
 Linda Clarke, 4319 Willshire Avenue, Baltimore, MD 21206
 Robert Koch, 2611 Bauernschmidt Dr., Baltimore, MD 21221
 Steve Hummel, 2609 Bauernschmidt Dr., Baltimore, MD 21221





# (20040487) "s"

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A STATE OF THE PARTY OF THE PAR

Engineering • Surveying • Environmental Planning
Real Estate Development

April 26, 2004

ZONING DESCRIPTION
2608 BAUERNSCHMIDT DRIVE
LOT 67, BAUERNSCHMIDT MANOR
15<sup>TH</sup> ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

BEGINNING at a point on the south side of Bauernschmidt Drive, which is 40 feet wide at the distance of 276 feet east of the centerline of Bauernschmidt Drive, which 40 feet wide. Being Lot 67, Section D, Bauernschmidt Manor as recorded in Baltimore County Plat Book 12, Page 81, containing 6,812.10 square feet +/- or 0.16 acres +\-. Also known as 2608 Bauernschmidt Drive located in the 15<sup>th</sup> Election District.

04-4870

# APPEAL SIGN POSTING REQUEST

CASE NO.: 04-487-A

# GRACE AND HERMAN MUELLER, JR. = LEGAL OWNER

#### 2608 BAUERNSCHMIDT DRIVE

15<sup>TH</sup> ELECTION DISTRICT

APPEALED: JULY 7, 2004

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

CASE NO.: 04-487-A

Petitioner/Developer:

GRACE AND HERMAN MUELLER, JR. – LEGAL OWNER

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

# 2608 BAUERNSCHMIDT DRIVE

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The sign was posted on	N. W.	9V /	· · · · · · · · · · · · · · · · · · ·	004	
By:					
(Signature of Signature					
(Printed Name)	<u> </u>	) 16/1	7		









# 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

October 26, 2004

## **NOTICE OF ASSIGNMENT**

CASE #: 04-487-A

IN THE MATTER OF: GRACE M. & HERMAN MUELLER, JR. -

Legal Owners / Petitioners 2608 Bauernschmidt Drive 15<sup>th</sup> Election District; 7<sup>th</sup> Councilmanic District

6/23/04 - D.Z.C.'s Order in which variance request was GRANTED with restrictions.

ASSIGNED FOR:

THURSDAY, FEBRUARY 3, 2005 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 B, 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

: Office of People's Counsel

Legal Owners /Petitioners
James Grammer /McKee & Associates, Inc.
Steven Glock

: Mr. & Mrs. Herman Mueller

Silvana Wisniewski Robert Koch

Counsel for Petitioners (entered 1/31/05): Edward J. Gilliss, Esquire

Steve Hummel Linda Clarke

William J. Wiseman III /Zoning Commissioner Pat Keller, Planning Director Timothy M. Kotroco, Director /PDM





# 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 4, 2005

<u>NOTICE OF DELIBERATION</u>

IN THE MATTER OF:

GRACE M. AND HERMAN MUELLER, JR. Case No. 04-487-A

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

DATE AND TIME

WEDNESDAY, APRIL 6, 2005 at 9:00 a.m.

LOCATION

Hearing Room 48, Basement, Old Courthouse

NOTE: Closing briefs are due on Thursday, March 17, 2005
(Original and three [3] copies)

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS, HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

Kathleen C. Bianco Administrator

c:

Appellant /Protestant

: Office of People's Counsel

5,04,05 polos

Remout 4,06/05

Counsel for Legal Owners /Petitioners Legal Owners /Petitioners : Edward J. Gilliss, Esquire : Mr. & Mrs. Herman Mueller

James Grammer /McKee & Associates, Inc.

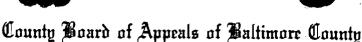
Steven Glock

Silvana Wisniewski Robert Koch Steve Hummel Linda Clarke

William J. Wiseman III /Zoning Commissioner Pat Keller, Planning Director Timothy M. Kotroco, Director /PDM

FYI: 2-4-6







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

March 7, 2005

# NOTICE OF REASSIGNMENT OF DELIBERATION

IN THE MATTER OF:

GRACE M. AND HERMAN MUELLER, JR. Case No. 04-487-A

which was assigned to be deliberated by the Board of Appeals on 4/06/05 has been **REASSIGNED** to the following date and time due to a scheduling conflict on the part of a Board member; and has been rescheduled as follows:

DATE AND TIME

WEDNESDAY, MAY 4, 2005 at 9:00 a.m.

**LOCATION** 

Hearing Room 48, Basement, Old Courthouse

NOTE: Closing briefs are due on Thursday, March 17, 2005
(Original and three [3] copies)

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

Kathleen C. Bianco Administrator

c:

Appellant /Protestant

: Office of People's Counsel

Counsel for Legal Owners /Petitioners Legal Owners /Petitioners : Edward J. Gilliss, Esquire : Mr. & Mrs. Herman Mueller

James Grammer /McKee & Associates, Inc.

Steven Glock

Silvana Wisniewski Robert Koch Steve Hummel Linda Clarke

William J. Wiseman III /Zoning Commissioner Pat Keller, Planning Director .
Timothy M. Kotroco, Director /PDM

FYI: 2-4-6



# County Board of Appeals of Baltimore County

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

March 7, 2005

# NOTICE OF REASSIGNMENT OF DELIBERATION

IN THE MATTER OF:

GRACE M. AND HERMAN MUELLER, JR. Case No. 04-487-A

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WEDNESDAY, MAY 4, 2005 at 9:00 a.m.

LOCATION

Hearing Room 48, Basement, Old Courthouse

NOTE: Closing briefs are due on Thursday, March 17, 2005 (Original and three [3] copies)

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS; HOWEVER, ATTENDANCE IS NOT REQUIRED. A WRITTEN OPINION /ORDER WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES.

> Kathleen C. Bianco Administrator

c:

Appellant /Protestant

Counsel for Legal Owners /Petitioners Legal Owners /Petitioners James Grammer /McKee & Associates, Inc. Steven Glock

Silvana Wisniewski Robert Koch Steve Hummel Linda Clarke

William J. Wiseman III /Zoning Commissioner Pat Keller, Planning Director Timothy M. Kotroco, Director /PDM

: Office of People's Counsel

: Edward J. Gilliss, Esquire

: Mr. & Mrs. Herman Mueller

Mueller Charles And Charles An

FYI: 2-4-6

# 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



# **Baltimore County**

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



BALTIMORE COUNTY BOARD OF APPEALS

Mr. & Mrs. Herman Mueller, Jr. 6212 Fair Oaks Avenue Baltimore, MD 21214-1513

Dear Mr. and Mrs. Mueller:

RE: Case: 04-487-A, 2608 Bauernschmidt Drive

Please be advised that an appeal of the above-referenced case was filed in this office on July 7, 2004 by Peoples Counsel of Baltimore County. 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,

Timothy Kotroco Director

## TK:klm

c: Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
James Grammer, McKee & Associates, 5 Shawan Rd., Ste. 1, Cockeysville 21030
Steven Glock, 2406 Grable Court, Forest Hill 21050
Silvana Wisniewski, 2605 Bauernschmidt Dr., Baltimore 21221
Linda Clarke, 4319 Willshire Avenue, Baltimore 21206
Robert Koch, 2611 Bauernschmidt Dr., Baltimore 21221
Steve Hummel, 2609 Bauernschmidt Dr., Baltimore 21221



# Baltimore County, Maryland

# OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse 400 Washington Ave. Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

July 7, 2004

Timothy Kotroco, Director Department of Permits and Development Management 111 W. Chesapeake Avenue Towson, MD 21204

Hand-delivered

Re:

PETITION FOR VARIANCE

S/S of Bauernschmidt Drive, 276' E c/line Bauernschmidt Dr

(2608 Bauernschmidt Drive)

15<sup>th</sup> Election District; 7<sup>th</sup> Council District

Grace M & Herman Mueller, Jr- Petitioner(s)

Case No.: 04-487-A

Dear Mr. Kotroco:

Please enter an appeal by the People's Counsel for Baltimore County to the County Board of Appeals from the Findings of Fact and Conclusions of Law dated June 23, 2004 by the Baltimore County Deputy Zoning Commissioner in the above-entitled case

Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

Peter Max Zimmerman

People's Counsel for Baltimore County

Carole S. Demilio

Deputy People's Counsel

PMZ/CSD/rmw

cc:

James Grammer, McKee & Associates Herman, Jr. & Grace Mueller, Petitioners RECEIVED

JUL 0 7 2004

Per. LB.

# **APPEAL**

Petition for Variance
2608 Bauernschmidt Drive
S/S of Bauernschmidt Dr., 276' E c/line of Bauernschmidt Dr.
15<sup>th</sup> Election District – 7<sup>th</sup> Councilmanic District
Grace M. & Herman Mueller, Jr. - Petitioners

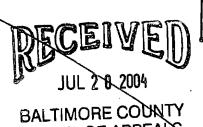
Case No.: 04-487-A

Petition for Variance (April 27, 2004)
✓ Zoning Description of Property
Notice of Zoning Hearing (May 11, 2004)
V Certification of Publication (June 3, 2004 – The Jeffersonian)
Certificate of Posting (June 5, 2004) by Richard Hoffman
Entry of Appearance by People's Counsel (April 30, 2004)
Petitioner(s) Sign-In Sheet One Sheet
Protestant(s) Sign-In Sheet None
Citizen(s) Sign-In Sheet One Sheet
Zoning Advisory Committee Comments (Jule 17, 2004)
Petitioners' Exhibit  1. Plat to accompany petition for zoning variance  2. Photos 2a – 2e.
Protestants' Exhibits:  1. Photos 1a – 1f. 2. Petitions for request of Denial Mut Marked as Chilat
Miscellaneous (Not Marked as Exhibit)  V1. Baltimore County Zoning Regulations page 1B-24
Deputy Zoning Commissioner's Order (GRANTED – June 23, 2004)
Notice of Appeal received on July 7, 2004 from People's Counsel of Baltimore County
c: People's Counsel of Baltimore County, MS #2010 Zoning Commissioner/Deputy Zoning Commissioner Timothy Kotroco, Director of PDM

date sent July 26, 2004, klm-

Linda Clarke Robert Koch Steve Hummel

James Grammer Steven Glock Silvana Wisniewski



BOARD OF APPEALS

Mr. & Mrs. Herman Mueller, 6212 Fair Oaks Ave., Baltimore 21214-1513

BALTIMORE COUNTY BOARD OF APPEALS HERMAN MUELLER, JR. GRACE MUELLER 6212 FAIR OAKS AVENUE BALTIMORE, MD 21214-1513

JAMES GRAMMER
MCKEE & ASSOCIAT4ES
5 SHAWAN ROAD, STE 1
COCKEYSVILLE MD 21030

STEVEN GLOCK 2406 GRABLE COURT FOREST HILL MD 21050

SILVANA WISNIEWSKI 2605 BAUERNSCHMIDT DRIVE BALTIMORE, MD 21221

LINDA CLARKE 4319 WILLSHIRE AVENUE BALTIMORE, MD 21206

> ROBERT KOCHY 2611 BAUERNSCHMIDT DRIVE BALTIMORE, MD 21221

STEVE HUMMEL 2609 BAUERNSCHMIDT DRIVE BALTIMORE, MD 21221 Edward J. Gilliss ROYSTON, MUELLER, McLEAN & REID LLP Suite 600 The Royston Building 102 W. Pennsylvania Avenue Towson, MD 21204-4575

410-823-1800

FAX 410-828-7859



.Case No. 04-487-A

In the Matter of: Grace M. & Herman Mueller, Jr. – Legal Owners

/Petitioners 2608 Bauernschmidt Drive

15<sup>th</sup> E; 7<sup>th</sup> C

VAR – To permit a 6,812 sq ft lot ilo minimum required 10,000 sq ft and to permit lot width of 61' ilo minimum of 70'; and to approve an undersized lot pursuant to § 304 of the BCZR

6/23/04 -- D.Z.C.'s Order in which requested variance relief was GRANTED with restrictions.

10/26/04	4 -Notice of Assignment sent to following; assigned:	for hearing on	Thursday	February	3 2005 at	· 10 a m ·
10/20/0-	4-Notice of Assignment sent to following, assigned	ior nearing on	. Thursday	, reordary	5, 2005 at	. 10 a.m.,
	Office of People's Counsel			,		
*	Mr. & Mrs. Herman Mueller		•	•		
	James Grammer /McKee & Associates, Inc.				•	
	Steven Glock				٠,	•
	Silvana Wisniewski			•		
	Robert Koch					
	Steve Hummel					
	Linda Clarke William I. Wisaman III / Zanina Commissioner					
	William J. Wiseman III /Zoning Commissioner Pat Keller, Planning Director					ř
	Timothy M. Kotroco, Director /PDM					
	Timothy W. Rottoco, Director /1 DW					
2/03/05	Board convened for hearing (Stahl, Ramsey, Quint to be assigned for 4/06/05 and notice sent.	n); completed	hearing; n	nemos due	3/17/05; d	leliberation
2/04/05	<ul> <li>Notice of Deliberation sent this date; assigned for 4-6.</li> </ul>	Wednesday, A	April 6, 20	05 at 9:00	a.m. FYI o	copy to 2-
3/07/05	<ul> <li>Notice of Reassignment of Deliberation sent to par was not available on assigned date of 4/06/05. FYI</li> </ul>			06/05 to 5/	/04/05; M.	Ramsey
3/17/05	Memorandum of the People's Counsel for Baltimo     Post-Hearing Memorandum filed by Edward J. Co.				ners.	
3/21/05	- Copies of above Memos sent to 2-4-6 this date. De	elib assigned t	for 5/04/0:	5.		
5/04/05	- Board convened for deliberation (2-4-6); unanimous request; written Opinion and Order to be issued; approximately.					

# **BOARD OF APPEALS OF BALTIMORE COUNTY**

# **MINUTES OF DELIBERATION**

IN THE MATTER OF:

Grace & Herman Mueller, Jr.

Case No.: 04-487-A

DATE:

May 4, 2005

**BOARD/PANEL** 

Larry M. Stahl

Michael O. Ramsey

John P. Quinn

**RECORDED BY:** 

Linda B. Fliegel/Legal Secretary

**PURPOSE:** To deliberate whether or not a Petition for Variance, filed by Herman and Grace Mueller, Jr., should be granted to permit a 6,812 sq. ft. lot, ilo the required 10,000 sq. ft. lot and to permit a lot width of 61 feet ilo the required 70 ft; to approve an undersized lot per Section 304.

## PANEL MEMBERS DISCUSSED THE FOLLOWING:

# **STANDING**

- . Owners own lots 66 & 67.
- . Lots 66 & 67 are two small lots.
- One lot is developed and they want to develop the other one.
- Property is unique in its size and width, which was formulated prior to current zoning.
- . These lots were an appropriate size at the time of their initial zoning.
- Every indication shows that the lots have always been viewed as two separate properties, including for tax purposes.
- . Owners have never attempted to merge the two lots.
- . Allowing the variance would not change the nature of the neighborhood.
- Owners need the granting of the variance in order to develop the other lot.
- If variance is not granted the only option the owner would possibly have would be to expand his current yard.

**DECISION BY BOARD MEMBERS:** The Board reached a unanimous decision to GRANT the request for a variance.

May 4, 2005 Deliberation – 04-487-A Petition for Variance Herman and Grace Mueller, Jr.

<u>FINAL DECISION:</u> After a deliberation and review of the facts and law, the Board GRANTED the Petition for Variance.

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 the Board.

Respectfully Submitted

Linda B. Fliegel

County Board of Appeals

**CIVIL ACTION NO.: 3-C-05-00736** 

MATTER OF: HGERMAN & GRACE MUELLER

CASE RETURNED FROM THE COUNTY BOARD OF APPEALS WITH THE EXHIBITS, THE BOARD'S RECORD EXTRACT, AND TRANSCRIPT, WHICH WAS PREVIOUSLY FILED IN THE ABOVE-ENTITLED CASE, ALONG ZONING COMMISSIONER'S FILE AND EXHIBITS.

CASE RETURNED AT THE REQUEST OF JOHN ALMOND BECAUSE SAME IS ON APPEAL AND WILL BE FORWARDED TO ANNAPOLIS.

CLERK/S OFFICE

DATE:

# PETITION OF:

# PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

CIVIL ACTION NO.: 3-C-05-007736

MATTER OF: HERMAN & GRACE MUELLER

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

CLERK'S OFFICE

DATE:

PETITION OF:

PEOPLE'S COUNSEL FOR BALTIMORE

COUNTY

OLD COURTHOUSE - RM. 47

400 WASHINGTON AVENUE

TOWSON, MD 21204

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

HERMAN & GRACE MUELLER

VARIANCE FOR THE PROPERTY LOCATED

ON THE S/S OF BAUERNSCHMIDT DRIVE,

276' E OF C/LINE BAUERNSCHMIDT DRIVE

(2608 BAUERNSCHMIDT DRIVE)

BALTIMORE, MD 21221

CASE NO.: 04-487-A

15<sup>TH</sup> ELECTION DISTRICT

7<sup>TH</sup> COUNCILMANIC DISTRICT

CIVIL ACTION No. 3-C-05-007736

RECEIVED AND FILED

# 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 in the above-entitled matter, consisting of the original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

05 SEP 19 PM 2: 52

HERMAN AND GRAC UELLER
Board of Appeals Case No.: 04-487-A
Civil Action No.: C-05-007736

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

# **OF BALTIMORE COUNTY**

# CASE NO.: 04-487-A

April 27, 2004 Petition for Variance – 1B02.3C.1 to permit a 6,812.10 sq. ft. lot in-

lieu-of the minimum 10,000 sq. feet and to permit a lot width of 61 ft. in-lieu-of the minimum 70 feet; to approve an undersized lot per Section 304 with any other variances deemed necessary by the

Zoning Commissioner.

The lot is existing. The lot is too small in area and width to meet

required dimensions.

April 30 Entry of Appearance by People's Counsel

May 11 Corrected Notice of Zoning Hearing

June 3 Certificate of Publication

June 5 Certificate of Posting

June 17 ZAC Comments

June 21 Hearing held before the Deputy Zoning Commissioner -

Petitioner's request for variance to permit a 6,812 sq. ft. lot in lieu of the minimun of 10,0000 sq. ft. was *GRANTED* 

with restrictions.

June 23 Finding of Facts and Conclusions of Law – Petitioner's

request for variance from Section 1B02.3.C.1 of the B.C.Z.R was GRANTED with restrictions which were

conditions precedent to the relief granted.

July 7 Appeal entered by People's Counsel for Baltimore County

Jan. 31, 2005 Entry of Appearance by Edward J. Gilliss, Attorney for

Petitioners

Feb. 3 Hearing before the Board of Appeals

HERMAN AND GRAC Board of Appeals Case No.: 04-487-A Civil Action No.: C-05-007736

Petitioner's Exhibits

1. Memorandum (missing)

2. Plat developed by McKee

3. Plat of Bauernschmidt lot #67

4. Photos of lot (A - E)

5A. Title info. – Maryland Dept. of Assessments & Taxation Printout and copy of Deed.

5B. Title history

6. 2304 – 2705 property tax records of lots (23 pages of tax records of area properties.

7. Collective comments of Zon. Office 4 pgs. 5/10/04

8. Critical Area comments from DEPRM 8/23/04

9. Deed--tax assessment to 2618 Bauernschmidt

10. Deed -tax assessment to 2518 Bauernschmidt

11. Zoning letter to build on 2 lots

12. 01-281-A Petition for Variance

13. 01-282-A Petition for Variance

14. Witness #2 tax records – lot #57 – of his property 2605 Baurenschmidt

# People's Counsel Exhibits

July 8

1. Aerial photo of area neighborhood

2. Photo of Mueller lot from street – 2608

3. S.D.A.T. form

4. Plat

5. Sign-In Sheet

March 17 Memorandum of the People's Counsel for Baltimore County

March 17 Post-Hearing Memorandum filed by Edward J. Gillis,
Attorney for Petitioners

May 4 Board convened for public deliberation

Opinion issued by the Board of Appeals *GRANTING* Petitioner's request with the following restrictions:

1. Compliance with the ZAC comments submitted by DEPRM dated May 20, 2004;

2. Compliance with the ZAC comments submitted by the Bureau of Development Plans Review dated May 18, 2004; and

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

July 19 Petition for Judicial Review filed by People's Counsel received from the Circuit Court for Baltimore County.

Aug 1 Certificate of Notice sent to interested parties.

Sept. 19 Transcript of testimony filed.

Sept. 19 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.

Linda B. Fliegel, Legal Secretary

County Board of Appeals Room 49 - Old Courthouse 400 Washington Avenue

Towson, Maryland 21204 (410-887-3180)

People's Counsel for Baltimore County Edward J. Gilliss, Esq., Attorney for Petitioners

C0510-Sont + 17/20/06 mueller

# 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

02/27/08

Case Number: 03-C-05-007736 AE OTH

Date Filed: 07/15/2005 Status: Closed/Active

Judge Assigned: To Be Assigned,

Location :

CTS Start : 07/15/05 Target : 01/11/07

In The Matter of: Peoples Counsel For Baltimore County

#### CASE HISTORY

#### OTHER REFERENCE NUMBERS

Description

Number

Administrative Agency

04-487-A

Case Folder ID

C05007736V01

#### INVOLVED PARTIES

Type Num N	ame(Last,First,Mid,Title)	Addr Str/End	Pty, Disp. Addr Update	Entered
PET 001 P	eoples Counsel For Baltimore County	•	CT DO 03/15/06	07/18/05
		Party ID: 0776176		4
	•		•	
Mail: 0	ld Courthouse Room 47	07/18/05	07/18/05 LMC	07/18/05 LMC
4	00 Washington Avenue	•		
T	owson, MD 21204			
	•		•	
Attorne	y: 0029075 Zimmerman, Peter M	Appear: 03/15/2000	6	03/15/06
*	People's Counsel For Baltimore Count	· · · · · · · · · · · · · · · · · · ·		
	Room 47 Courthouse	,		
	400 Washington Ave	•		
	Towson, MD 21204			
•	(410)887-2188			
	0804268 Demilio, Carole S	Appear: 07/15/200	5 ·	07/18/05

Date: 02/27/08 03-C-05-007736 Time: 11:53 Page:

> Deputy Peoples Counsel Old Courthouse Room 47 400 Washington Ave Towson, MD 21204 (410)887-2188

Type Num Name(Last, First, Mid, Title) Addr Str/End Pty. Disp. Entered

Addr Update

CT DO 03/15/06 07/18/05 RES 001 Mueller, Herman

Party ID: 0776181

Appear: 08/18/2005 Attorney: 0013744 Gilliss, Edward J 08/18/05

Royston, Mueller, McLean & Reid, LLF

102 West Pennsylvania Ave

Suite 600 Towson, MD 21204

(410)823-1800

CT DO 03/15/06 07/18/05 002 Mueller, Grace

Party ID: 0776182

Attorney: 0013744 Gilliss, Edward J Appear: 08/18/2005 08/18/05

Royston, Mueller, McLean &Reid, LLP

102 West Pennsylvania Ave

Suite 600

Towson, MD 21204

(410)823-1800

001 County Board Of Appeals Of Baltimore County The CT DO 03/15/06 07/18/05

07/18/05

Party ID: 0776180

07/18/05 LMC

07/18/05 LMC

Mail: Old Courthouse Room 47 400 Washington Avenue Towson, MD 21204

CALENDAR EVENTS

Time Fac Event Description Text SA Jdg Day Of Notice User ID

ResultDt By Result Judge ` Rec Result

01/09/06 09:30A CR16 Civil Non-Jury Trial Y ' KGC 0'1 /01 Held/Concluded 01/09/06 E K.Cox

Stenographer(s): Debbie Kaplaska

**DISPOSITION HISTORY** 

'03-C-05-007736 Date: 02/27/08 Time: 11:53 Page: 3

Disp	Disp		Stage			Activity
Date	Code	Description	Code	Description	User	Date
					<del>-</del>	
01/28/06	DO	Decree or Order	CT	AFTER TRIAL/HEARING	PH	01/28/06
03/15/06	DO	Decree or Order	CT.	AFTER TRIAL/HEARING	DR	03/15/06

# JUDGE HISTORY

### DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	User	: ID
0001000	Petition for Judicial Review	07/15/05	07/18/05	PET001	TBA	01/28/06	LMC	PH
0001001	Answer Filed by RES001-Mueller, RES002-Mueller	08/16/05	08/18/05	RESO01	ТВА	01/28/06	SAP	РН
0002000	Notice of Service of Discovery	08/01/05	08/03/05	000	TEA	01/28/06	ЕМН	РН
0003000	Transcript of Record from Adm Agency *	09/19/05	09/20/05	ITP001	TBA	01/28/06	SAP	PH
0004000	Notice of Transcript of Record Sent	09/20/05	09/20/05	ITP001	тва	09/20/05	SAP	SAP
0005000	Notice of Transcript of Record Sent	09/20/05	09/20/05	PET001	ТВА	09/20/05	SAP	SAP
0006000	Notice of Transcript of Record Sent	09/20/05	09/20/05	RES001	TBA	09/20/05	SAP	SAP
0007000	Notice of Transcript of Record Sent	09/20/05	09/20/05	RESO02	TBA	09/20/05	SAP	SAP
0008000	Scheduling Order	10/13/05	10/13/05	000	тва .	10/13/05	KLS	KLS
0009000	Memorandum of People's Counsel For Baltimore County	10/20/05	10/26/05	000	TBA	10/26/05	NF	NF
0009001	Answer Filed by RES001-Mueller, RES002-Mueller	11/18/05	11/30/05	RESO01	TBA .	01/28/06	ЕМН	рн
0010000	*Correspondence Filed by Attorney: Edward J Gilliss Esq	12/22/05	01/03/06	000	тва	01/03/06	РН	
0011000	Correspondence *	12/27/05	01/04/06	PET001	TBA	01/04/06	PKE	PKE
0012000	Open Court Proceeding  Jan. 9, 2006. Hon. Kathleen G. Cox. He re:administrative appeal. Order to be f		in '	000	KGC .	01/28/06	DB .	РН

03-C-	-05-007736 Date: 02/27	/08	Time	: 11	:53		.:			Page:
Num/Seq	Description	Filed	Entered	Party	Jdg F	Ruling		Closed	User	ID
	Supplemental Memorandum of the Peoples counsel for Baltimore County *	01/23/06	01/26/06	PET001	TBA			01/26/06	SAP	
	Supplemental Memorandum of Law regarding the Doctrine of zoning merger * Filed by RES002-Mueller, RES001-Mueller	01/23/06	01/26/06	RESO02	TBA		•	01/26/06	SAP	
	Memorandum Opinion and Order reversing decision and remanding case	01/28/06	01/28/06	000	KGC (	Granted		01/25/06	PH	
	DOcket enrties sent to the Boared of Appeals	02/01/06	. 02/01/06	000	TBA			03/15/06	CMM.	DR .
0017000	Invoice #16022 SENT TO EDWARD J GILLISS ( CCU 05-12-06 )	02/02/06	02/02/06	000	TBA			03/15/06	PKE	TW
	Motion to Alter/Amend Judgment with memoradum & exhibit Filed by RES001-Mueller, RES002-Mueller	02/07/06	02/09/06	RESO01	KGC I	Denied		03/09/06	ЕМН	DR
0018001	Answer with exhibits	02/14/06	02/21/06	PET001	TBA			03/15/06	PKE	DR .
	Request for Hearing on motion to alter/amend judgment Filed by RES001-Mueller, RES002-Mueller	02/07/06	02/09/06	RESO01	TBA .			03/15/06	ЕМН :	DR
	Memorandum Opinion of the Court denying Motion to Alter or Amend	03/15/06	03/15/06	000	KGC I	Denied		03/09/06	DR	
,	*Notice of Appeal to COSA or COA 13/M3-17 Filed by RES001-Mueller, RES002-Mueller	04/07/06	04/07/06	RESO01	TBA				LMC <sub>.</sub>	LMC
0022000	Pre Trial Hearing Letter Issued	04/10/06	04/10/06	000	TBA			04/10/06	JD	
	Collection Notice-Invoice sent to	05/12/06	05/12/06	RESO01	TBA			٠	CW	
0024000	Order to proceed w/out prehearing conf.	05/25/06	05/25/06	000	TBA				JD	
	Original Record sent to COSA Sent Certified Mail, 1 Volume, 1 Transcr		07/20/06 cordion F		TBA .		*.		JD	

# TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Туре	Num	Seq
1ANS	1st Answer T	ickle CLOSED	08/16/05	0	no	no	DANS	D	001	001

03-C-05-007736 Date: 02/27/08 Time: 11:53 Page: 5

Code Tickle Name		-		-			туре	Num	Seq
1ANS 1st Answer Tickle				_			ם	009	001
1YRT One Year Tickle (Jud	CLOSED	07/15/06	365	no	no	DAAA	D	001	000
DEXH Destroy Exhibits	CLOSED	03/05/06	33	no	no	U643	F	000	000
EXPU Exhibit Pickup Notic	CLOSED	03/29/06	30	no	йo			000	000
EXPU Exhibit Pickup Notic	CLOSED	05/14/06	30	no	no	,		000	000
SLMH Set List For Motions	CANCEL	02/21/06	0	no	no	SLMM	T	000	000
SLMM Set List Motions Mar	Done	11/02/08	999	yes	yes	DANS	D	019	000
SLMR Set List For Motions	CANCEL	03/01/06	22	no	no	SLMM	Т	018	000
SLTR Set List For Trial	Done	08/16/05	0	yes	yes	1ANS	Т	001	001
SLTR Set List For Trial	CLOSED	11/18/05	0	yes	no .	1ANŞ	Т	009	001

#### **EXHIBITS**

Line # Marked	Code Description	SpH Sloc NoticeDt	Disp Dt Dis By
Offered By: ITP	001 County Board Of Appea	als Of Ba	
000	B box 472/ appeals d	· ·	

# DIFFERENTIATED CASE MANAGEMENT

# TRACKS AND MILESTONES

Track : R1 Description: EXPEDITED APPEAL TRACK Custom: Yes

Assign Date: 10/13/05 Order Date: 10/13/05

Start Date : 10/13/05 Remove Date:

Milestone Scheduled Target Actual Status

Motions to Dismiss under MD. Rule 2-322 ( 10/28/05 01/28/06 CLOSED
All Motions (excluding Motions in Limine 11/30/05 01/28/06 CLOSED
TRIAL DATE is 01/09/06 01/11/06 01/09/06 REACHED

7 03-C-05-007736 Date: 02/27/08 Time: 11:53

Page:

# PUBLIC NOTE TITLES

1) 11/18/05 PEOPLES COUNSEL REQUESTING 1HR

# ACCOUNTING SUMMARY

NON-INVOICED OBLIGATIONS AND PAYMENTS

Date	Rcpt/Initials	Acct	Desc		Debit	Credit	Method	Balance
			*					*
04/07/06	200600009040/ <b>TW</b>	1101	CF-Civil	Fil '	.00	.60.00	CK	-60.00 ·
04/07/06	200600009040/ <b>TW</b>	1999	CTSPAPP		.00	50.00	CK -	110.00
04/29/06		1999	CTSPAPP		50.00			-60.00
04/29/06		1101	CF-Civil	Fil	60.00	, 00		.00

02/01/06 INVOICE# 2006000515/M

PARTY: Herman Mueller

TOTAL:

\$115.00

Date	Rcpt/Initials	Acct	Desc	Debit	Credit	Method	Balance
04/29/06		1101	CF-Civil Fil	80.00	.00	*	80.00
04/29/06		1500	Appearance F	10.00	.00		90.00
04/29/06		1265	MLSC	25.00	.00	. 1	15.00
06/28/06	200600015750/JJ	1101	CF-Civil Fil	.00	80.00	ST '	35.00
06/28/06	200600015750/JJ	1265	MLSC	.00	25,00	ST	10.00
06/28/06	200600015750/JJ	1500	Appearance F	.00	10.00	ŚT .	.00

# 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

04/07/08

Case Number: 03-C-05-007736 AE OTH

Date Filed: 07/15/2005 Status: Closed/Active

Judge Assigned: To Be Assigned,

Location :

CTS Start : 07/15/05 Target : 01/11/07

In The Matter of: Peoples Counsel For Baltimore County

#### CASE HISTORY

### OTHER REFERENCE NUMBERS

. Number Administrative Agency 04-487-A Case Folder ID C05007736V01

# INVOLVED PARTIES

	í.		
Type Num Name(Last.First.Mid.Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
PET 001 Peoples Counsel For Baltimo	re County Party ID: 0776176	BT DO 04/04/08	07/18/05
Mail: Old Courthouse Room 47 400 Washington Avenue Towson, MD 21204	07/18/05	07/18/05 LMC	07/ <b>1</b> 8/05 LMC
Attorney: 0029075 Zimmerman. Pete People's Counsel For Ba 105 West Chesapeake Ave Room 204 Towson. MD 21204 (410)887-2188	Itimore County		03/15/06
0804268 Demilio, Carole	S Appear: 07/2	15/2005	07/18/05

04/07/08 03-C-05-007736 Date: Time: 09:52 Page: 2

> Deputy Peoples Counsel 105 West Chesapeake Ave.

Room 204

Towson, MD 21204 (410)887-2188

Type Num Name(Last, First, Mid, Title) Addr Str/End Pty, Disp. Entered

Addr Update

RES 001 Mueller, Herman BT DO 04/04/08 07/18/05

Party ID: 0776181

08/18/05 Attorney: 0013744 Gilliss, Edward J Appear: 08/18/2005

Royston, Mueller, McLean & Reid, LLP

102 West Pennsylvania Ave

Suite 600

Towson, MD 21204 (410)823-1800

BT DO: 04/04/08 07/18/05 RES 002 Mueller, Grace

Party ID: 0776182

08/18/05 Attorney: 0013744 Gilliss, Edward J Appear: 08/18/2005

Royston, Mueller, McLean &Reid, LLP

102 West Pennsylvania Ave

Suite 600

Towson, MD 21204 (410)823-1800

BT DO 04/04/08 07/18/05 001 County Board Of Appeals Of Baltimore County The

Party ID: 0776180

07/18/05 LMC 07/18/05 07/18/05 LMC Mail: Old Courthouse Room 47

400 Washington Avenue Towson, MD 21204

CALENDAR EVENTS

Date Time Fac Event Description Text SA Jdg Day Of Notice User ID

Result ResultDt By Result Judge Rec

01/09/06 09:30A CR16 Civil Non-Jury Trial Υ KGC 01 /01 KLS

Held/Concluded 01/09/06 E K.Cox Stenographer(s): Debbie Kaplaska

DISPOSITION HISTORY

03-C-05-007736 Date: 04/07/08 Time: 09:52 Page: 3

Disp Date	Disp Code	Description	Stage Code	Description		Activity Date
01/28/06 03/15/06		Decree or Order Decree or Order	CT CT	AFTER TRIAL/HEARING AFTER TRIAL/HEARING		01/28/06 03/15/06
04/04/08	DO	Decree or Order	BT	BEFORE TRIAL/HEARING	PKE	04/05/08

# JUDGE HISTORY

JUDGE ASSIGNED Type Assign Date Removal RSN
TBA To Be Assigned, J 07/18/05

# DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling	Closed	Usei	~ 1D
0001.000	Petition for Judicial Review	07/15/05	07/18/05	PET001	TBA	01/28/06	LMC	PH
0001001	Answer Filed by RES001-Mueller, RES002-Mueller	08/16/05	08/18/05	RES001	TBA	01/28/06	SAP	РН
0002000	Notice of Service of Discovery	08/01/05	08/03/05	000	TBA	01/28/06	EMH	PH
0003000	Transcript of Record from Adm Agency *	09/19/05	09/20/05	1TP001	ТВА	01/28/06	SAP	PH
0004000	Notice of Transcript of Record Sent	09/20/05	09/20/05	ITP001	ТВА	09/20/05	SAP	SAP
0005000	Notice of Transcript of Record Sent	09/20/05	09/20/05	PET001	TBA	09/20/05	SAP	SAP
0006000	Notice of Transcript of Record Sent	09/20/05	09/20/05	RES001	ТВА	09/20/05	SAP	SAP
0007000	Notice of Transcript of Record Sent	09/20/05	09/20/05	RES002	ТВА	09/20/05	SAP.	SAP
0008000	Scheduling Order	10/13/05	10/13/05	000	TBA .	10/13/05	KLS	KLS
0009000	Memorandum of People's Counsel For Baltimore County	10/20/05	10/26/05	000	TBA	10/26/05	NF	NF
0009001	Answer Filed by RES001-Mueller, RES002-Mueller	11/18/05	11/30/05	RES001	ТВА	01/28/06	ЕМН	РН
0010000	*Correspondence Filed by Attorney: Edward J Gilliss Esq	12/22/05	01/03/06	000	TBA	01/03/06	РН	
0011000	Correspondence *	12/27/05	01/04/06	PET001	TBA .	01/04/06	PKE	PKE
0012000	Open Court Proceeding Jan. 9, 2006, Hon. Kathleen G. Cox. Here:administrative appeal. Order to be f	aring had		000	KGC	01/28/06	OB	РН

03-C-05-007736 Date: 04/07/08 Time: 09:52 Page:

Num/Seq	Description	Filed	Entered	Party	Jdg Ruling		Closed	Use	r ID
0000000									
0013000	Supplemental Memorandum of the Peoples counsel for Baltimore County *	01/23/06	01/26/06	PET001	IBA		01/26/06	SAP	
0014000	Supplemental Memorandum of Law regarding the Doctrine of zoning merger * Filed by RES002-Mueller, RES001-Mueller	01/23/06	01./26/06	RESO02	TBA .		01/26/06	SAP	
0015000	Memorandum Opinion and Order reversing decision and remanding case	01/28/06	01/28/06	000	KGC Granted		01/25/06	PH	
	DOcket enrties sent to the Boared of Appeals	02/01/06	02/01/06	000	T,BA		03/15/06	CMM	DR
0017000	Invoice #16022 SENT TO EDWARD J GILLISS ( CCU 05-12-06 )	02/02/06	02/02/06	000	ТВА .		03/15/06	PKE	TW
	Motion to Alter/Amend Judgment with . memoradum & exhibit Filed by RES001-Mueller, RES002-Mueller	02/07/06	02/09/06	RES001	KGC Denied	,	03/09/06	EMH	DR
0018001	Answer with exhibits	02/14/06	02/21/06	PET001	TBA		03/15/06	PKE	DR
0019000	Request for Hearing on motion to alter/amend judgment Filed by RES001-Mueller, RES002-Mueller	02/07/06	02/09/06	RESO01	TBA		03/15/06	EMH	DR
0020000	Memorandum Opinion of the Court denying Motion to Alter or Amend	03/15/06	03/15/06	000	KGC Denied		03/09/06	DR	
0021000	*Notice of Appeal to COSA or COA 13/M3-17 Filed by RES001-Mueller, RES002-Mueller	04/07/06	04/07/06	·RESO01	TBA		04/04/08	LMC	PKE
0022000	Pre Trial Hearing Letter Issued	04/10/06	04/10/06	000	TBA		04/10/06	JD	
0023000	Collection Notice-Invoice sent to Central Collection Unit	05/12/06	05/12/06	RES001	ТВА		04/04/08	CW	PKE
0024000	Order to proceed w/out prehearing conf.	05/25/06	05/25/06	000	TBA		04/04/08	JD	PKE
0025000	Original Record sent to COSA Sent Certified Mail, 1 Volume, 1 Transcr Containing Exhibits #7000 1670 0010 4919	ipt, I Aco	07/20/06 cordion F		TBA		04/04/08	'nD	PKE
0026000	Returned from COSA - 1 Volume, 1 Transcript, 1 Accord/File Containing Exh		03/26/08	000	TBA		04/04/08	JD	PKE
0027000	Reopen Case	03/27/08	03/27/08	000	T'BA		03/27/08	PKE	
0028000	Mandate Received From Court of Special Appeals	03/25/08	03/27/08	000	ТВА		04/04/08	PKE	PKE

03-C-05-007736

Date: 04/07/08

Time: 09:52

Judgment of the Circuit Court for Baltimore Co reversed, case remanded to the court with instructions to remand to the Board for further proceedings.

Num/Seq D	Description	Filed	Entered	Party	Jdg Ruling	Closed	User ID
В	Order Remanding Case to Baltimore Co Board of Appeals for Further proceedings	04/04/08	04/05/08	000	KGC Ruled	04/04/08	PKE
0030000 D	DOCKET ENTRIES SENT TO BOA	04/07/08	04/07/08	000	TBA		AEF .

### TICKLE

Code	Tickle Name					GoAhead	From	Туре	Num	Seq
1ANS	1st Answer Tickle				no	no	DANS	D	001	001
1ANS	1st Answer Tickle	CLOSED	11/18/05	0	no ·	по	DANŞ	D	009	001.
1YRT	One Year Tickle (Jud	CLOSED	07/15/06	365	no	110	DAAA	D	001	000
DEXH	Destroy Exhibits	CLOSED	03/05/06	33	no	no	U643	F	000	000
EXPU	Exhibit Pickup Notic	CLOSED	03/29/06	30	no	no			000	000
EXPU	Exhibit Pickup Notic	CLOSED	05/14/06	30	no .	no			000	000
EXPU	Exhibit Pickup Notic	CLOSED	06/04/08	30	no	no ·			000	000
SLMH	Set List For Motions	CANCEL	02/21/06	0	no	no	SLMM	Т	000	000
SLMM	Set List Motions Mar	Done	11/02/08	999	yes	yes	DANS	D	019	000
SLMR	Set List For Motions	CANCEL	03/01/06	22	no	no	SLMM	Τ .	018	000
SLTR	Set List For Trial	Done	08/16/05	0	yes .	yes	1ANS	Т	001	001
SLTR	Set List For Trial	CLOSED	11/18/05	0	yes	no	1ANS	Т	009	001

### EXHIBITS

Line # Marked	l Cod	e Description	SpH_S	loc	NoticeDt	Disp	Dt	Dis	B)
Offered By:	ITP 001	County Board Of	Appeals Of	Ba					
000	В	box 472/ appea	als d 0						

Page:

5

03-C-05-007736 Date: 04/07/08

Time: 09:52

DIFFERENTIATED CASE MANAGEMENT

TRACKS AND MILESTONES

Track: R1 Description: EXPEDITED APPEAL TRACK Custom: Yes

Assign Date: 10/13/05 Order Date: 10/13/05

Start Date : 10/13/05 Remove Date:

Milestone Scheduled Target Actual Status

Motions to Dismiss under MD. Rule 2-322( 10/28/05 01/28/06 CLOSED

All Motions (excluding Motions in-Limine 11/30/05 01/28/06 CLOSED

01/09/06 01/11/06 01/09/06 REACHED TRIAL DATE is -

### PUBLIC NOTE TITLES

1) 11/18/05 PEOPLES COUNSEL REQUESTING 1HR

### ACCOUNTING SUMMARY

NON-INVOICED OBLIGATIONS AND PAYMENTS

Date	Rcpt/Initials	Acct	Desc	Debit	Credit	Method	i Balance
04/07/06	200600009040/TW	1101	CF-Civil Fil	. 00	60.00	CK	-60.00
04/07/06	200600009040/TW	1999 (	CTSPAPP	.00	50,00	CK -	110.00
04/29/06		1999 (	CTSPAPP	50,00	. 00		-60,00
04/29/06		1101	CF-Civil Fil	60.00	. 00		, 00

02/01/06 INVOICE# 2006000515/M TOTAL: \$115.00

PARTY: Herman Mueller

Date •	Rcpt/Initials	Acct	Desc 	Debit	Credit	Method Balance
04/29/06		1101 (	CF-Civil Fil	80.00	. 00	80.00
04/29/06		1500 A	Appearance F	10.00	. 00	90.00
04/29/06		1265 1	MLSC	25,00	. 00	115.00
06/28/06	200600015750/JJ	1101 (	CF-Civil Fil	. 00	80, <b>0</b> 0	ST ·35,00

Page: 6

03-C-05-007736 Date: 04/07/08 Time: 09:52 Page:

06/28/06 200600015750/JJ 1265 MLSC .00 25.00 ST . 10.00

06/28/06 200600015750/JJ 1500 Appearance F .00 10.00 ST .00

mueller

### NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

# 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 Assignment Date: 10/13/05 Old Courthouse Room 47 400 Washington Avenue Towson MD 21204

Case Title: In The Matter of: Peoples Counsel For Baltimore County

Case No: 03-C-05-007736 AE

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Joy M Keller 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	10/28/05
2.	All Motions (excluding Motions in Limine) are due by	,11/30/05
3.	TRIAL DATE is	01/09/06
	Civil Non-Jury Trial: Start Time: 09:30AM: To Be Assigned: 1/2 HOUR ADMINISTRATIVE APPEAL	

# Honorable John Grason Turnbull II Judge

<u>Postponement Policy:</u> 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 <u>MUST</u> attend the settlement conference <u>in person</u>. All insurance representatives <u>MUST</u> attend this conference <u>in person</u> 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.)

<u>Special Assistance Needs:</u> 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.

<u>Voluntary Dismissal</u>: 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 trial.

cc: Edward J Gilliss Esq



cc: Carole S Demilio Esq Issue Date 10/13/05

# 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

05/19/08

Case Number: 03-C-05-007736 AE OTH

Date Filed: 07/15/2005 Status: Closed/Active

Judge Assigned: To Be Assigned,

Location :

CTS Start : 07/15/05 Target : 01/11/07

In The Matter of: Peoples Counsel For Baltimore County

### CASE HISTORY

### OTHER REFERENCE NUMBERS

Description Number

Administrative Agency 04-487-A
Case Folder ID C05007736V01

### INVOLVED PARTIES

Type Num Name(Last First Mid, Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
PET 001 Peoples Counsel For Baltimore Cou	nty Party ID: 0776176	BT DO 04/04/08	. 07/18/05
Mail: Old Courthouse Room 47 400 Washington Avenue Towson, MD 21204	07/18/05	07/18/05 LMC	07/18/05 LMC
Attorney: 0029075 Zimmerman, Peter M People's Counsel For Baltimor 105 West Chesapeake Ave Room 204 Towson, MD 21204 (410)887-2188	Appear: 03/15 re County	/2006	03/15/06
0804268 Demilio, Carole S	Appear: 07/ <b>1</b> 5	/2005	07/18/05

05/19/08 03-C-05-007736 Time: 14:12 Date: Page: 2 Deputy Peoples Counsel 105 West Chesapeake Ave. Room 204 Towson, MD 21204 (410)887-2188 Type Num Name(Last,First,Mid,Title) Addr Str/End Pty. Disp. Entered Addr Update RES 001 Mueller, Herman BT DO 04/04/08 07/18/05 Party ID: 0776181 Attorney: 0013744 Gilliss, Edward J Appear: 08/18/2005 08/18/05 Royston, Mueller, McLean &Reid, LLP 102 West Pennsylvania Ave Suite 600 Towson, MD 21204 (410)823-1800 RES 002 Mueller, Grace BT DO 04/04/08 07/18/05 Party ID: 0776182 Attorney: 0013744 Gilliss, Edward J Appear: 08/18/2005 08/18/05 Royston, Mueller, McLean & Reid, LLP 102 West Pennsylvania Ave Suite 600 Towson, MD 21204 (410)823-1800 001 County Board Of Appeals Of Baltimore County The BT DO 04/04/08 07/18/05 Party ID: 0776180 07/18/05 LMC 07/18/05 LMC Mail: Old Courthouse Room 47 07/18/05 400 Washington Avenue Towson, MD 21204

### CALENDAR EVENTS

Date Time Fac Event Description Text SA Jdg Day Of Notice User ID
Result ResultDt By Result Judge Rec

01/09/06 09:30A CR16 Civil Non-Jury Trial Y KGC 01 /01 KLS
Held/Concluded 01/09/06 E K.Cox Y
Stenographer(s): Debbie Kaplaska

### **DISPOSITION HISTORY**

03-C-05-007736

Date: 05/19/08 Time: 14:12

Page:

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Disp Date	Disp Code	Description	Stage Code	Description		Activity Date
01/28/06	DO	Decree or Order	CT	AFTER TRIAL/HEARING	PH	01/28/06
03/15/06		Decree or Order	CT	AFTER TRIAL/HEARING	DR	03/15/06
04/04/08		Decree or Order	BT	BEFORE TRIAL/HEARING	PKE	04/05/08

### JUDGE HISTORY

JUDGE ASSIGNED Type Assign Date Removal RSN TBA To Be Assigned J 07/18/05

### DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	Usei	r ID
0001000	Petition for Judicial Review	07/15/05	07/18/05	PET001	TBA		01/28/06	LMC	PH
0001001	Answer Filed by RES001-Mueller, RES002-Mueller	08/16/05	08/18/05	RES001	TBA		01/28/06	SAP	PH
0002000	Notice of Service of Discovery	08/01/05	08/03/05	000	ТВА		01/28/06	EMH	PH
0003000	Transcript of Record from Adm Agency *	09/19/05	09/20/05	ITP001	TBA		01/28/06	SAP	PH
0004000	Notice of Transcript of Record Sent	09/20/05	09/20/05	ITP001	TBA		09/20/05	SAP	SAP
0005000	Notice of Transcript of Record Sent	09/20/05	09/20/05	PET001	TBA	,	09/20/05	SAP	SAP
0006000	Notice of Transcript of Record Sent	09/20/05	09/20/05	RES001	TBA	•	09/20/05	SAP	SAP
0007000	Notice of Transcript of Record Sent	09/20/05	09/20/05	RES002	TBA	•	09/20/05	SAP	SAP
0008000	Scheduling Order	10/13/05	10/13/05	000	TBA		10/13/05	KLS	KLS
0009000	Memorandum of People's Counsel For Baltimore County	10/20/05	10/26/05	.000	TBA	·. :	10/26/05	NF	NF
0009001	Answer Filed by RES001-Mueller, RES002-Mueller	11/18/05	11/30/05	RESO01	TBA	:	01/28/06	ЕМН	PH ·
0010000	*Correspondence Filed by Attorney: Edward J Gilliss Esq	12/22/05	01/03/06	000	ТВА		01/03/06	PH.	
0011000	Correspondence *	12/27/05	01/04/06	PET001	TBA		01/04/06	PKE	PKE
0012000	Open Court Proceeding Jan. 9, 2006. Hon. Kathleen G. Cox. Her re:administrative appeal. Order to be f	aring had			KGC		01/28/06	DB	PH

03-C-05-007736 Date: 05/19/08 Time: 14:12 Page: 4

Num/Seq	Description		Entered		Jdg Ruling		User ID
0013000	Supplemental Memorandum of the Peoples counsel for Baltimore County $\dot{\mathbf{x}}$		01/26/06			01/26/06	SAP .
0014000	Supplemental Memorandum of Law regarding the Doctrine of zoning merger * Filed by RES002-Mueller, RES001-Mueller	01/23/06	01/26/06	RES002	TBA	01/26/06	SAP
0015000	Memorandum Opinion and Order reversing decision and remanding case	01/28/06	01/28/06	000	KGC Granted	01/25/06	РН
	DOcket enries sent to the Boared of Appeals	02/01/06	02/01/06	000	TBA	03/15/06	CMM DR
0017000	Invoice #16022 SENT TO EDWARD J GILLISS ( CCU 05-12-06 )	02/02/06	02/02/06	000	TBA	03/15/06	PKE TW
	Motion to Alter/Amend Judgment with memoradum & exhibit Filed by RES001-Mueller, RES002-Mueller	02/07/06	02/09/06	RES001	KGC Denied	03/09/06	EMH DR
0018001	Answer with exhibits	02/14/06	02/21/06	PET001	ТВА	03/15/06	PKE DR
	Request for Hearing on motion to alter/amend judgment Filed by RES001-Mueller, RES002-Mueller	02/07/06	02/09/06	RES001	TBA	03/15/06	EMH DR
	Memorandum Opinion of the Court denying Motion to Alter or Amend	03/15/06	03/15/06	000	KGC Denied	03/09/06	DR .
	*Notice of Appeal to COSA or COA 13/M3-17 Filed by RES001-Mueller, RES002-Mueller	04/07/06	04/07/06	RES001	TBA	04/04/08	LMC PKE
0022000	Pre Trial Hearing Letter Issued	04/10/06	04/10/06	000	ТВА	04/10/06	JD
0023000	Collection Notice-Invoice sent to Central Collection Unit	05/12/06	05/12/06	RESO01	TBA	04/04/08	CW PKE
0024000	Order to proceed w/out prehearing conf.	05/25/06	05/25/06	000	TBA	04/04/08	JD PKE
	Original Record sent to COSA Sent Certified Mail, 1 Volume, 1 Transcr Containing Exhibits #7000 1670 0010 4919	ipt, 1 Acc	07/20/06 cordion F		ТВА	04/04/08	JD PKE
	Returned from COSA - 1 Volume, 1 Transcript, 1 Accord/File Containing Exh		03/26/08	000	ТВА	04/04/08	JD PKE
0027000	Reopen Case	03/27/08	03/27/08	000	ТВА	03/27/08	PKE
	Mandate Received from Court of Special Appeals	03/25/08	03/27/08	000	ТВА	04/04/08	PKE PKE

03-C-05-007736 Date: 05/19/08

Time: 14:12

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Judgment of the Circuit Court for Baltimore Co reversed, case remanded to the court with instructions to remand to the Board for further proceedings.

Num/Seq Desc	ription		Filed	Entered	Party	Jdg Ruling	Closed	User ID	
Boar	er Remanding Case to Baltimore d of Appeals for her proceedings	e Co	04/04/08	04/05/08	000	KGC Ruled	04/04/08	PKE	
.0030000 DOCK	ET ENTRIES SENT TO BOA		04/07/08	04/07/08	000	TBA .		AEF	

### TICKLE

Code Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Туре	Num	Seq
1ANS 1st Answer Tickle	CLOSED	08/16/05	0	no	no.	DANS	D	001	001
1ANS 1st Answer Tickle	CLOSED	11/18/05	0	no	no	DANS	D	009	001
1YRT One Year Tickle (Jud	CLOSED	07/15/06	365	no	no	DAAA	D	001	000
DEXH Destroy Exhibits	CLOSED	03/05/06	33	no	no	U643	F	000	000
EXPU Exhibit Pickup Notic	CLOSED	03/29/06	30	no	no			000	000
EXPU Exhibit Pickup Notic	CLOSED	05/14/06	30	no	no			000	000
EXPU Exhibit Pickup Notic	CLOSED	06/04/08	30	no	no '			000	000
SLMH Set List For Motions	CANCEL	02/21/06	. 0	no ·	no	SLMM	T	000	000
SLMM Set List Motions Mar	Done	11/02/08	999	yes	yes .	DANS	D	019	000
SLMR Set List For Motions	CANCEL	03/01/06	22	no .	no	SLMM	T	018	000
SLTR Set List For Trial	Done	08/16/05	0	yes	yes	1ANS	T	001	001
SLTR Set List For Trial	CLOSED	11/18/05	0	yes	no	1ANS	T	009	001

### EXHIBITS

SpH Sloc NoticeDt Disp Dt Dis By Code Description

Offered By: ITP 001 County Board Of Appeals Of Ba 000 В box 472/ appeals d '0

Date: 05/19/08 03-C-05-007736 Time: 14:12

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### DIFFERENTIATED CASE MANAGEMENT

### TRACKS AND MILESTONES

Track ; R1 Description: EXPEDITED APPEAL TRACK Custom: Yes

Assign Date: 10/13/05 Order Date: 10/13/05

Start Date : 10/13/05 Remove Date:

Milestone Scheduled Target Actual Status Motions to Dismiss under MD. Rule 2-322( 10/28/05 01/28/06 CLOSED All Motions (excluding Motions in Limine 11/30/05 01/28/06 CLOSED TRIAL DATE is 01/09/06 01/11/06 01/09/06 REACHED

### PUBLIC NOTE TITLES

1) 11/18/05 PEOPLES COUNSEL REQUESTING 1HR

### ACCOUNTING SUMMARY

### NON-INVOICED OBLIGATIONS AND PAYMENTS

Date	Rcpt/Initials	Acct	Desc	Debit	Credit	Method Balance					
				•							
04/07/06	200600009040/TW	1101 C	F-Civil Fil	.00	60.00	CK	-60.00				
04/07/06	200600009040/TW	<b>1</b> 999 C	TSPAPP	.00	50.00	CK	-110.00				
04/29/06		1999 C	TSPAPP	50.00	. 00		-60.00				
04/29/06		1101 C	F-Civil Fil	60.00	. 00		.00				

02/01/06 INVOICE# 2006000515/M TOTAL: \$115.00 STATUS: PAID

PARTY: Herman Mueller

Invoice Created on 02/01/06 Invoice Mailed on 02/01/06 1st Notice on 03/03/06 2nd Notice on 03/18/06 Collection on 05/12/06 Collection - CCU on 05/12/06 Collection on 06/28/06 Collection on 06/28/06 03-C-05-007736 Date: 05/19/08 Time: 14:12 Page:

Collection

PAID

on 06/28/06 on 06/29/06

Date	Rcpt/Initials	Acct Desc	Debit	Credit Me	thod Balance
04/29/06 04/29/06 04/29/06 06/28/06 06/28/06 06/28/06	200600015750/JJ 200600015750/JJ 200600015750/JJ	1101 CF-Civil Fil 1500 Appearance F 1265 MLSC 1101 CF-Civil Fil 1265 MLSC 1500 Appearance F	80.00 10.00 25.00 .00 .00	.00 .00 .00 80.00 ST 25.00 ST 10.00 ST	

### NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

# 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 For Baltimore County The Assignment Date: 04/04/08
Old CourtHouse Room 49
400 Washington Avenue
Baltimore MD 21204

Case Title: In the Matter of Falls Road Community Assn The, et al Case No: 03-C-07-012594 AA

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Joy M Keller 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

### <u>Honorable John Grason Turnbull II</u> Judge

<u>Postponement Policy:</u> 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 Civil Assignment Office at (410)-887-2660 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

<u>Voluntary Dismissal</u>: 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 trial.

Camera Phones Prohibited: Pursuant to Md. Rule 16-109 b.3., cameras and recording equipment are strictly prohibited in courtrooms

and adjacent hallways. This means that camera cell phones should not be brought with you on the day of your hearing to the Courthouse.

cc: Baltimore Province Of The Sist

cc: Michael R McCann Esq cc: James A Dunbar Esq cc: Christopher D Mudd Esq

Issue Date 04/04/08

	•		
	04-487-A	2608 Bauernschmidt Drive Grace and Herman Mueller, Jr. <u>Baltimore, MD 21221</u>	
	April 27, 2004	Petition for Variance filed by Herman and Grace Mueller, Jr., to permit a 6,812 sq ft lot, ilo the req'd 10,000 sq ft lot and to permit a lot width of 61 ft ilo the req'd 70 ft; to approve an undersized lot per Section 304.	
	June 23, 2004	Finding of Fact and Conclusion of Law by the Deputy Zoning Commissioner: Granted	
	July 7, 2004	Notice of Appeal filed by the Office of People's Counsel	
	July 28, 2004	Appeal received BOA.	
	July 8, 2005	Opinion and Order processed and mailed. The Board <i>GRANTED</i> Petitioner's request with the following restrictions:	
	•	<ol> <li>Compliance with the ZAC comments submitted by DEPRM dated 5/20/2004.</li> </ol>	
	·	<ol><li>Compliance with the ZAC comments submitted by the Bur. Of Dev. Plans Review dated May 18, 2004.</li></ol>	
,		<ol><li>When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.</li></ol>	
	July 19, 2005	Received notification of a Petition for Judicial filing by People's Counsel on July 15, 2005.	·
	August 1, 2005	Certificate of Mailing filed by BOA.	
	Sept. 19, 2005	Transcript of Testimony and Record of Proceedings filed in the Circuit Court.	
	Jan. 25, 2006	Judgment Order issued by Judge Kathleen Gallogly Cox as follows:	
	•	The Court finds that the July 8, 2005 decision of the Board of Appeals was premised on an erroneous interpretation of the law, and thus was in error. For that reason, the decision of the Board of Appeals is REVERSED, and this case is remanded for entry of a ruling consistent with the ruling set forth in this opinion.	
	Nov. 2, 2007	Court of Special Appeals of Maryland ruled that a Judgment of the Circuit Court for Baltimore County reversed; case remanded to that court with instructions to remand to the Board of Appeals for further proceedings.	· 
	3/27/2008	Circuit Court Order Remanding case to Board of Appeals for further proceedings.	Ò
	6/30/2008	Board file retrieved from Circuit Court.	

Circuit Court of Maryland

Go Back

### Case Information

Court System: Circuit Court for Baltimore County - Civil System

Case Number: 03C05007736

Title: In The Matter of: Peoples Counsel For Baltimore County
Case Type: Admin. Agency Appeal Ex Parte Filing Date: 07/15/2005

Case Status: Closed/Active

Case Disposition: Decree or Order Disposition Date: 04/04/2008

### Plaintiff/Petitioner Information

(Each Plaintiff/Petitioner is displayed below)

Party Type: Petitioner Party No.: 1

Business or Organization Name: Peoples Counsel For Baltimore County

Address: Old Courthouse Room 47

City: Towson State: MD Zip Code: 21204

Attorney(s) for the Plaintiff/Petitioner

Name: Demilio, Esq, Carole S

Practice Name: Deputy Peoples Counsel

Address: 105 West Chesapeake Ave.

Room 204

City: Towson State: MD Zip Code: 21204

Name: Zimmerman, Esq, Peter M

Practice Name: People's Counsel For Baltimore County

Address: 105 West Chesapeake Ave.

Room 204

City: Towson State: MD Zip Code: 21204

### Defendant/Respondent Information

(Each Defendant/Respondent is displayed below)

Party Type: Respondent Party No.: 1

Name: Mueller, Herman

Attorney(s) for the Defendant/Respondent

Name: Gilliss, Esq, Edward J

Practice Name: Royston, Mueller, McLean &Reid, LLP

Address: 102 West Pennsylvania Ave

Suite 600

City: Towson State: MD Zip Code: 21204

Party Type: Respondent Party No.: 2

Name: Mueller, Grace

Attorney(s) for the Defendant/Respondent

Name: Gilliss, Esq, Edward J

Practice Name: Royston, Mueller, McLean &Reid, LLP

Address: 102 West Pennsylvania Ave

Suite 600

City: Towson State: MD Zip Code: 21204

### Court Scheduling Information

Event Type: Civil Non-Jury Trial Notice Date: Event Date: 01/09/2006 Event Time: 09:30 AM

Result: Held/Concluded Result Date: 01/09/2006

### Related Persons Information

(Each Related person is displayed below)

Party Type: Interested Party Party No.: 1

Business or Organization Name: County Board Of Appeals Of Baltimore County The

Address: Old Courthouse Room 47

City: Towson State: MD Zip Code: 21204

### Document Tracking

(Each Document listed. Documents are listed in Document No./Sequence No. order)

Doc No./Seq No.: 1/0

File Date: 07/15/2005 Close Date: 01/28/2006 Decision:

Party Type: Petitioner Party No.: 1 Document Name: Petition for Judicial Review

Doc No./Seg No.: 1/1

File Date: 08/16/2005 Close Date: 01/28/2006 Decision:

Party Type: Respondent Party No.: 1

Document Name: Answer

Filed by RES001-Mueller, RES002-Mueller

Doc No./Seq No.: 2/0

File Date: **08/01/2005** Close Date: **01/28/2006** Decision:

Document Name: Notice of Service of Discovery

Doc No./Seq No.: 3/0

File Date: **09/19/2005** Close Date: **01/28/2006** Decision:

Party Type: Interested Party Party No.: 1

Document Name: Transcript of Record from Adm Agency \*

Doc No./Seq No.: 4/0

File Date: 09/20/2005 Close Date: 09/20/2005 Decision:

Party Type: Interested Party Party No.: 1 Document Name: Notice of Transcript of Record Sent

Doc No./Seq No.: 5/0

File Date: 09/20/2005 Close Date: 09/20/2005 Decision:

Party Type: Petitioner Party No.: 1

Document Name: Notice of Transcript of Record Sent

Doc No./Seq No.: 6/0

File Date: 09/20/2005 Close Date: 09/20/2005 Decision:

Party Type: Respondent Party No.: 1

Document Name: Notice of Transcript of Record Sent

Doc No./Seq No.: 7/0

File Date: **09/20/2005** Close Date: **09/20/2005** Decision:

Party Type: Respondent Party No.: 2

Document Name: Notice of Transcript of Record Sent

Doc No./Seq No.: 8/0

File Date: 10/13/2005 Close Date: 10/13/2005 Decision:

Document Name: Scheduling Order

Doc No./Seq No.: 9/0

File Date: 10/20/2005 Close Date: 10/26/2005 Decision:

Document Name: Memorandum of People's Counsel For Baltimore County

Doc No./Seq No.: 9/1

File Date: 11/18/2005 Close Date: 01/28/2006 Decision:

Party Type: Respondent Party No.: 1

Document Name: Answer

Filed by RES001-Mueller, RES002-Mueller

Doc No./Seq No.: 10/0

File Date: 12/22/2005 Close Date: 01/03/2006 Decision:

Document Name: \*Correspondence

Filed by Attorney: Edward J Gilliss Esq

Doc No./Seq No.: 11/0

File Date: 12/27/2005 Close Date: 01/04/2006 Decision:

Party Type: Petitioner Party No.: 1

Document Name: Correspondence \*

Doc No./Seq No.: 12/0

File Date: **01/09/2006** Close Date: **01/28/2006** Decision:

Document Name: Open Court Proceeding

Jan. 9, 2006. Hon. Kathleen G. Cox. Hearing had in re:administrative appeal.

Order to be filed by the court.

Doc No./Seq No.: 13/0

File Date: 01/23/2006 Close Date: 01/26/2006 Decision:

Party Type: Petitioner Party No.: 1

Document Name: Supplemental Memorandum of the Peoples counsel for Baltimore County \*

Doc No./Seq No.: 14/0

File Date: 01/23/2006 · Close Date: 01/26/2006 Decision:

Party Type: Respondent Party No.: 2

Document Name: Supplemental Memorandum of Law regarding the Doctrine of zoning merger \*

Filed by RES002-Mueller, RES001-Mueller

Doc No./Seq No.: 15/0

File Date: 01/28/2006 Close Date: 01/25/2006 Decision: Granted

Document Name: Memorandum Opinion and Order reversing decision and remanding case

Doc No./Seg No.: 16/0

File Date: 02/01/2006 Close Date: 03/15/2006 Decision: Document Name: DOcket enrties sent to the Boared of Appeals

Doc No./Seq No.: 17/0

File Date: 02/02/2006 Close Date: 03/15/2006 Decision: Document Name: Invoice #16022 SENT TO EDWARD J GILLISS

( CCU 05-12-06 )

Doc No./Seq No.: 18/0

File Date: 02/07/2006 Close Date: 03/09/2006 Decision: Denied

Party Type: Respondent Party No.: 1

Document Name: Motion to Alter/Amend Judgment with memoradum & exhibit

Filed by RES001-Mueller, RES002-Mueller

Doc No./Seq No.: **18/1** 

File Date: 02/14/2006 Close Date: 03/15/2006 Decision:

Party Type: Petitioner Party No.: 1 Document Name: Answer with exhibits

Doc No./Seq No.: 19/0

File Date: **02/07/2006** Close Date: **03/15/2006** Decision:

Party Type: Respondent Party No.: 1

Document Name: Request for Hearing on motion to alter/amend judgment

Filed by RES001-Mueller, RES002-Mueller

Doc No./Seq No.: 20/0

File Date: 03/15/2006 Close Date: 03/09/2006 Decision: Denied

Document Name: Memorandum Opinion of the Court denying Motion to Alter or Amend

Doc No./Seq No.: 21/0

File Date: 04/07/2006 Close Date: 04/04/2008 Decision:

Party Type: Respondent Party No.: 1

Document Name: \*Notice of Appeal to COSA or COA 13/M3-17

Filed by RES001-Mueller, RES002-Mueller

Doc No./Seq No.: 22/0

File Date: 04/10/2006 Close Date: 04/10/2006 Decision:

Document Name: Pre Trial Hearing Letter Issued

Doc No./Seq No.: 23/0

File Date: 05/12/2006 Close Date: 04/04/2008 Decision:

Party Type: Respondent Party No.: 1

Document Name: Collection Notice-Invoice sent to Central Collection Unit

Doc No./Seq No.: 24/0

File Date: 05/25/2006 Close Date: 04/04/2008 Decision:

Document Name: Order to proceed w/out prehearing conf.

Doc No./Seq No.: 25/0

File Date: 07/20/2006 Close Date: 04/04/2008 Decision:

Document Name: Original Record sent to COSA

Sent Certified Mail, 1 Volume, 1 Transcript, 1 Accordion File

Containing Exhibits #7000 1670 0010 4919 1208

Doc No./Seq No.: 26/0

File Date: 03/26/2008 Close Date: 04/04/2008 Decision:

Decument Name: Returned from COSA - 1 Volume, 1 Transcript, 1 Accord/File Containing

**Exhibits** 

Doc No./Seq No.: **27/0** 

File Date: 03/27/2008 Close Date: 03/27/2008 Decision:

Document Name: Reopen Case

Doc No./Seq No.: 28/0

File Date: 03/25/2008 Close Date: 04/04/2008 Decision: Document Name: Mandate Received from Court of Special Appeals

Judgment of the Circuit Court for Baltimore Co reversed, case remanded to the

court with instructions to remand to the Board for further proceedings.

Doc No./Seq No.: 29/0

File Date: 04/04/2008 Close Date: 04/04/2008 Decision: Ruled

Document Name: Order Remanding Case to Baltimore Co Board of Appeals for

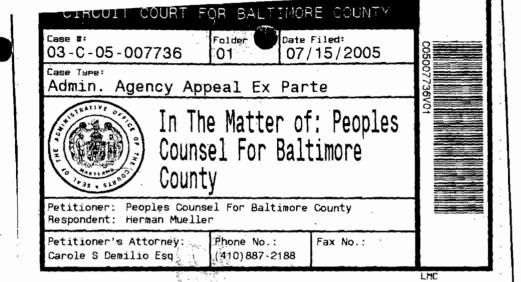
further proceedings

Doc No./Seq No.: 30/0

File Date: **04/07/2008** Close Date: Decision:

Document Name: DOCKET ENTRIES SENT TO BOA

The complete case file can be obtained from the Circuit Courthouse.



# CIRCUIT COURT FOR BALTIMORE COUNTY

CIVIL / FAMILY

ADDITIONAL RECORDS ON MICROFILM YES

15pl	14pl	13pl	12pl	11pl	10pl	9pl	8pl	7pl	6pl	5pl	4pl	3pl	2pl	pl.	
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OLUME

CASE NUMBER

### ZONE AND DISTRICT-REGULATIONS



Section 259
Districts
[Bill No. 40-1967]

259.1 General. [Bill Nos. 111-1968;-127-1994]

In any district, the use, height, area and other regulations applicable in the underlying zone(s) or district(s) upon which the district is superimposed shall govern except as may specifically be enlarged, modified or limited by the district regulations in this section. In the case of conflict between the provisions of an underlying zone and overlaying district(s), the most recently enacted provision shall prevail.

### 259.2 Statements of legislative intent for districts.

(Compliance with a statement of legislative intent shall not, in itself, be sufficient cause to classify property within the district to which such statement applies.)

### A. C.R. (Commercial, Rural) District. [Bill No. 103-1988]

- The C.R. District is established to provide opportunities for convenience shopping and personal services that are customarily and frequently needed by the rural residential and agricultural population and tourists. It is intended that the C.R. District be applied only to areas where such facilities are not available within a reasonable distance, where sewerage treatment and a potable water supply can be provided without an adverse effect on the environment and neighboring uses, and where public roads are capable of handling the anticipated increase in traffic without adverse impacts on surrounding areas. The commercial centers within C.R. Districts are not intended to be regional facilities providing specialty goods to a population outside of the rural area.
  - 2. C.R. Districts may be assigned to areas of commercial development beyond the urban-rural demarcation line for which C.R. District designation is recommended in the Master Plan. The underlying zone may be B.L., B.M., B.R. or R-O. The C.R. District may also be applied to land zoned R.C.5 which is adjacent to a C.R. District, provided that the location, configuration and physical characteristics of the site and the potential for access to an adequate public road make the land suitable for commercial development.
- B. A.S. (Automotive Services) District. The A.S. District may be applied within the urban-rural demarcation line (URDL) to certain parcels of land zoned B.L., B.M. or B.R., which are appropriate for uses dominated by the parking and servicing of automobiles or characterized by frequent parking turnover, such as fuel service stations and car wash operations. Any land heretofore classified as C.N.S., C.S.A., C.S.-1 or C.S.-2 on the effective date of Bill No. 172-1993 shall hereby be classified an A.S. District. [Bill No. 172-19938]

<sup>&</sup>lt;sup>8</sup> Editor's Note: This bill repealed former Subsections E, F and G of this Section 259.2, which subsections contained the legislative intent for the C.S.A. (Commercial, Supporting Area) District; C.S-1 (Commercial, Strip) District; and the C.S-2 (Commercial, Strip) District.

- C. If the Department of Permits and Development Management has not notified the applicant of a determination pursuant to the provisions of this section, or has not notified the applicant pursuant to Section 304.4 above of the intention to require a public hearing, the dwelling shall be considered appropriate for purposes of this section.
- The decision of the Zoning Commissioner or the Director of the Department of Permits and Development Management may be appealed, in which case the hearing shall be scheduled by the Board of Appeals within 45 days from receipt of the request.
- The Director of the Department of Permits and Development Management shall establish appropriate fee schedules.

## Section 305 Replacement of Destroyed or Damaged Dwellings

[BCZR 1955; repealed by Bill No. 124-1991; re-enacted by Bill No. 214-1991]

In case of complete or partial casualty loss by fire, windstorm, flood or otherwise of an existing dwelling that does not comply with height or area requirements of the zone in which it is located, such dwelling may be restored, provided area or height deficiencies of the dwelling before the casualty are not increased in any respect, and such restoration is subject to the limitations imposed by Section 104.2 of the Baltimore County Zoning Regulations.

# Section 306 Minor Public Utility Structures [BCZR 1955; Resolution, November 21, 1956; Bill No. 32-2004]

Minimum lot area regulations in any zone shall not apply to:

- A. Repeater, booster or transformer stations;
- B. Bus shelters, Class A or B; or
- C. Small community dial offices.

Section 307 Variances

[BCZR 1955; Bill Nos. 107-1963; 32-1988; 2-1992; 9-1996]

307.1 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,

Section 450
Signs
[Bill No. 89-1997]

### 450.1 Statement of general findings and policies.

- A. Signs convey information which is essential for protecting the safety of Baltimore County's citizens, maintaining order within its communities and advancing the health of its economy.
- B. Businesses, small and large, established and new, contribute to Baltimore County's economic welfare by creating jobs and job opportunities, developing under-utilized and revitalizing depressed areas, and providing an expanded tax base. Because signage is necessary for the success and growth of businesses in the county, the regulation of signage must reasonably accommodate the needs of the business community.
- C. The amount of signage in Baltimore County is excessive. Excessive signage unduly distracts drivers and pedestrians, thereby creating traffic and safety hazards, impairing the utility of the highway system, and reducing the effectiveness of signs and other devices necessary for directing and controlling traffic.
- D. Baltimore County's appearance is marred, property values and public investments are jeopardized, scenic routes are diminished, and revitalization and conservation efforts are impeded by excessive signage and incompatible signage.
- E. The existence of excessive and incompatible signage is contrary to the goals of the County Master Plan, as adopted and amended. Included among those goals are:
  - 1. Improved quality of commercial corridors, including signage.
  - 2. Improved compatibility between industrial and residential uses, including signage.
  - 3. Enhanced control of placement, size and design of commercial corridor signage.
- F. In light of the above, Baltimore County has a substantial interest in promoting the public health, safety and general welfare by reducing or eliminating excessive and incompatible signage.
- G. To that end, these regulations are intended to be the least restricting means to achieve the following:
  - 1. Eliminate and restrict signs which constitute an actual or potential distraction or other hazard to the safe operation of motor vehicles or the safe passage of pedestrians.
  - 2. Encourage sound practices in signage, thereby assisting the public to locate facilities, goods and services without undue difficulty, danger, or confusion.

- Appeals from the Zoning Commissioner shall be heard by the board of zoning appeals de novo. At such hearing, all parties, including the Zoning Commissioner, shall have the right to be represented by counsel, to produce witnesses and to file and submit all proper oral or written evidence.
- The decision and order of the board of zoning appeals may affirm or reverse in whole, or in part, any decision or order of the Zoning Commissioner, or may modify the order appealed from and direct the issuance of a permit for such modified use as it may deem proper, subject, however, to zoning regulations and restrictions.
- The charges and fees for procedures before the Zoning Commissioner to be paid by petitioner and before the board of appeals by the appellant or petitioner, shall be as follows. [Bill Nos. 64-1960; 57-1982; 36-1984]
  - A. Cost of procedure before Zoning Commissioner,.
    - (1) Petition for special exception: \$100.
    - (2) Petition for special hearing pertaining to a one-family residence: \$35.
    - (3) Petition for variance pertaining to a one-family residence: \$35.
    - (4) All other petitions for variance or special hearing: \$100.
    - (5) Maximum charge for petitions filed together: \$250.
  - B. Cost of proceedings before the County Board of Appeals.
    - (1) Appeals from granting or refusing to grant a special exception: \$100.
    - (2) Petition for reclassification: \$100.
    - (3) All other hearings or appeals: \$75.
  - C. The fees established herein may be changed by the County Administrative Officer from time to time and shall be in addition to advertising and posting expenses as established by the County Administrative Officer. In addition, the County Administrative Officer shall waive any or all of the fees or expenses established herein for the filing of a petition for special exception or variance when such petition is filed by a Baltimore County volunteer fire, ambulance or rescue company.

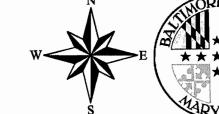
Section 502 Special Exceptions [BCZR 1955]

(See Section 270, Schedule of Special Exceptions.)

NOTE: Certain types of uses are required to secure a permit to allow them to be placed in one or more zones in which their uncontrolled occurrence might cause unsatisfactory results of one kind or another. A few uses, such as dumps and junkyards, are inherently so objectionable as to make extra regulations and controls advisable even in the M.H. Zone, to which they are restricted. Others, like a cemetery, do not fit into any of the zone categories, that is, residential,

# (20040487) "S"

(3)







12/81

**Account Identifier:** 

District - 15 Account Number - 1508002690

Owner-Information

Owner Name:

BABCOCK ROBERT W

BABCOCK CATHERINE R AMOSS

Use:

RESIDENTIAL

No. 1

Principal Residence: YES

VEC

Mailing Address:

PO BOX 401

FALLSTON MD 21047-0401

Deed Reference:

1) /16463/ 323

2)

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	Locati	on &	Struct	ure In	torm	ation	4

**Premises Address** 

2508 BAUERNSCHMIDT DR

Legal Description

WATERFRONT BAUERNSCHMIDT MANOR

MapGridParcelSub DistrictSubdivisionSectionBlockLotGroupPlat No:98835A1482Plat Ref:

Town
Special Tax Areas Ad Valorem

Tax Class

**Primary Structure Built Enclosed Area Property Land Area** County Use 2,243 SF 8,025.00 SF 2004 34 Stories **Basement** Exterior Type 1 1/2 YES STANDARD UNIT SIDING

Value Information

 Base
 Value
 Phase-in Assessments

 Value
 As Of O1/01/2003
 As Of O7/01/2004
 As Of O7/01/2005

Land: 109,500 119,500 Improvements: 175,730 196,130 Total: 285,230 315,630

Preferential Land: 0 0

305,496 · 315,630 0

Deed2:

Transfer Information 💢 🛴

 Seller:
 NICHOLLS ARTHUR
 Date:
 06/03/2002 Deed1:
 Price:
 \$247,000 Deed2:

 Type:
 IMPROVED ARMS-LENGTH
 Deed1:
 /16463/323
 Price:
 \$0

 Seller:
 HARRIS JOHN E,SR
 Date:
 05/05/1980 Deed2:
 Price:
 \$0

 Type:
 NOT ARMS-LENGTH
 Deed1:
 / 6161/614
 Deed2:
 Price:

 Seller:
 Date:
 Price:
 \*\*

Seller: Date: Type: Deed1:

Exemption Information

•

01/19/2005 11:24 AM

Park & Status CBA & A 3



Maryland Department of Assessments and Taxation BALTIMORE COUNTY
Real Property Data Search

Go Back View Map New Search Ground Rent

**Account Identifier:** 

District - 15 Account Number - 1508006310

Owner Information

Owner Name:

Mailing Address:

DI PIETRO THERESA D

Use:

RESIDENTIAL

Principal Residence: YES

2509 BAUERNSCHMIDT DR BALTIMORE MD 21221-1717

Deed Reference:

1) / 6206/ 42

2)

Location & Structure Information

Premises Address

**2509 BAUERNSCHMIDT DR** 

**Legal Description** 

WS BAUERNSCHMIDT DR BAUERNSCHMIDT MANOR

Map Grid Parcel 98 8 35 Sub District
 ■ Comparison
 ■ Comparison

Subdivision

**Section** 

Block

Lot Group 51 82

Group Plat No: 82 Plat Ref:

12/81

Special Tax Areas

Town Ad Valorem Tax Class

Primary Structure Built 1944 Enclosed Area 672 SF **Property Land Area** 11,200.00 SF

County Use 04

Stories

Basement

Туре

Exterior

1

P

YES

STANDARD UNIT

ASBESTOS SHINGLE

Value Information

•	Base	Value	Phase-in Assessm	ents
	Value	As Of	As Of	As Of
		01/01/2003	07/01/2004	07/01/2005
Land:	33,050	33,050	•	
Improvements:	37,150	40,300		
Total:	70,200	73,350	72,300	73,350
Preferential Land:	0	0	. 0	0

Transfer Information

Seller: DIPIETRO FREDERICK J 09/16/1980 Price: \$0 Date: Type: NOT ARMS-LENGTH Deed1: / 6206/ 42 Deed2: Seller: Date: Price: Type: Deed1: Deed2: Seller: Date: Price: Deed1: Deed2: Typė:



12/81

**Account Identifier:** 

District - 15 Account Number - 1503232850

Owner Information

Owner Name:

CHASON-BRUNES SHIRLEY MARRIE

Use: RESI Principal Residence: YES

RESIDENTIAL:

Mailing Address:

2510 BAUERNSCHMIDT DR BALTIMORE MD 21221-1738 Deed Reference:

1) /14926/ 298

2)

Location & Structure Information

**Premises Address** 

**Legal Description** 

2510 BAUERNSCHMIDT DR

Land:

Improvements:

WATERFRONT

**BAUERNSCHMIDT MANOR** 

Мар Grid **Parcel Sub District** Subdivision Section Block Lot Group Plat No: 98 8 35 Α 15 Plat Ref:

Town

**Special Tax Areas** 

Ad Valorem Tax Class

**Primary Structure Built Enclosed Area Property Land Area** County Use 1,008 SF 8,700.00 SF 34 1951 **Storles Basement** Type Exterior YES STANDARD UNIT ASBESTOS SHINGLE 1 1/2

Value Information

 Base
 Value
 Phase-in Assessments

 Value
 As Of 01/01/2003
 As Of 07/01/2004
 As Of 07/01/2005

 109,500 119,500 45,730 50,370
 10,500 45,730
 10,500 45,730
 10,500 45,730

 Total:
 155,230
 169,870
 164,990
 169,870

 Preferential Land:
 0
 0
 0
 0

Transfer Information

Seller: CHASON EARL R Date: 01/18/2001 Price: **NOT ARMS-LENGTH** Deed1: /14926/ 298 Deed2: Type: Date: Price: Seller: Deed1: Deed2: Type: Seller: Date: Price: Deed1: Deed2: Type:



**Account Identifier:** 

District - 15 Account Number - 1508650213

Owner-Information 🐩 💮

Owner Name:

DVORAK DAVID K,JR

**DVORAK GEORGENE S** 

Use:

RESIDENTIAL

· ·

Principal Residence:

**Mailing Address:** 

2511 BAUERNSCHMIDT DR

**BALTIMORE MD 21221-1717** 

Deed Reference:

1) / 7336/ 832

2)

YES

Location & Structure Information

**Premises Address** 

2511 BAUERNSCHMIDT DR

**Legal Description** 

300 S RIVERSIDE DRIVE BAUERNSCHMIDT MANOR

Мар Grid Parcel **Sub District** Subdivision Section Block Lot Plat No: Group 98 8 35 С 52 Plat Ref: 12/81

Town

Special Tax Areas

Ad Valorem Tax Class

**Primary Structure Built Enclosed Area** Property Land Area County Use 1953 1,092 SF 10,700.00 SF 04 **Stories Basement** Type Exterior 1 1/2 YES STANDARD UNIT BRICK

-Value Information ....

Base Value **Phase-in Assessments** Value As Of As Of As Of 01/01/2003 07/01/2004 07/01/2005 Land: 32,920 32,920 Improvements: 63,960 70,460 101,212 103,380 Total: 96,880 103,380 Preferential Land:

Transfer Information

**Date:** 10/09/1986 **Price:** \$58,000 Seller: STAHL GEORGE IMPROVED ARMS-LENGTH Deed1: / 7336/832 Deed2: Type: Date: Price: Seller: Deed1: Deed2: Type: Date: Price: Seller: Deed1: Deed2: Type:



Account Identifier:

District - 15 Account Number - 1516750580

Owner Information

Owner Name:

**GRICE SUSANNE MCPHERSON** 

MCPHERSON LANCE C ETAL

Use:

RESIDENTIAL

Principal Residence: NO

Mailing Address:

1606 THORNWOOD CT

PO BOX 588

**Deed Reference:** 

1) /11337/ 287

2)

**FALLSTON MD 21047-0588** 

Location & Structure Information

**Premises Address** 

2512 BAUERNSCHMIDT DR

**Legal Description** 

2512 BAUERNSCHMIDT DR BAUERNSCHMIDT MANOR

WATERFRONT

Sub District Subdivision Section Block Plat No: Parcel Lot Group

Map Plat Ref: 12/81 98 8 35 Α 16

Town

Special Tax Areas

Grid

Ad Valorem Tax Class

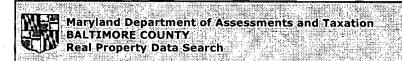
Primary Struc	ture Built	<b>Enclosed Area</b>	Property Land Area	County Use
1949		627 SF	9,300.00 SF	34
Stories	Basement	,	Туре	Exterior
1	NO		STANDARD UNIT	SIDING

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			114	2 I	-		 -	H	^	n	
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	Base (	Value	Phase-in Assessm	in Assessments					
•	Value	` As Of	As Of		As Of				
		01/01/2003	07/01/2004		07/01/2005				
Land:	109,500	119,500							
Improvements:	31,330	36,620							
Total:	140,830	156,120	151,022		156,120				
Preferential Land:	. 0	0	. 0		. 0				

Alter 578	De story of life of the second	to division of the section of the Pole
M.5 4.7. 11	27.7.650 1 h	mation
MATERIAL PROPERTY	er:Intol	'Mation

Seller: MCPHERSON DORIS C Type: NOT ARMS-LENGTH	Date: 12/07/1995 Deed1: /11337/ 287	Price: \$0 Deed2:
Seller: PRIMUS MARIE A Type: NOT ARMS-LENGTH	<b>Date:</b> 04/24/1990 <b>Deed1:</b> / 8137/ 345	Price: \$0 Deed2:
Seller: Type:	Date: Deed1:	Price: Deed2:



12/-81

County Use

**Account Identifier:** 

District - 15 Account Number - 1508650211

Owner Information

Owner Name:

Mailing Address:

STAHL GEORGE BERNARD

STAHL CONCELIA ANNA

Use:

RESIDENTIAL

2515 BAUERNSCHMIDT DR

**BALTIMORE MD 21221-1717** 

Deed Reference:

Principal Residence:

1) / 5130/77

2)

YES

Location & Structure Information

**Premises Address** 

2515 BAUERNSCHMIDT DR

**Legal Description** 

400 S RIVERSIDE RD **BAUERNSCHMIDT MANOR** 

Мар **Sub District** Grid Parcel Subdivision Section Block Lot Group Plat No: 98 8 35 C 54 Plat Ref:

Town Special Tax Areas Ad Valorem

Tax Class

**Primary Structure Built Enclosed Area** 

1983 2,092 SF 14,136.00 SF 04 **Stories** Basement Type Exterior SIDING

2

Type:

Seller:

Type:

Seller:

Type:

YES

STANDARD UNIT

Property Land Area

Value Information Value Confidence Value V

Base Value Phase-in Assessments Value As Of As Of As Of 01/01/2003 07/01/2004 07/01/2005 Land: 33,780 33,780 Improvements: 130,110 182,000 198,482 215,780 Total: 163,890 215,780 0 0 Preferential Land: 0

Transfer Information

Selier: HOFFMAN ALBERT NOT ARMS-LENGTH

Date: 09/28/1970 Deed1: / 5130/ 77 Date:

Price: \$0 Deed2: Price:

Deed1: Deed2: Price: Date: Deed1: Deed2:



Maryland Department of Assessments and Taxation **BALTIMORE COUNTY** Real Property Data Search

Go Back View Map New Search **Ground Rent** 

**Account Identifier:** 

District - 15 Account Number - 1512001310

Owner Information

Owner Name:

SOMMER RONALD R

SOMMER JOYCE E

Use:

RESIDENTIAL

**Principal Residence:** 

Mailing Address:

2516 BAUERNSCHMIDT DR

**BALTIMORE MD 21221-1738** 

**Deed Reference:** 

1) / 8170/604

2)

YES

	C														

**Premises Address** 

2516 BAUERNSCHMIDT DR

**Legal Description** 

930 SE TULIP PATH

WATERFRONT

**BAUERNSCHMIDT MANOR** 

Grid Parcel **Sub District** Subdivision Section Map Block Lot Group Plat No: 98 8 35 17 Plat Ref: 12/81

Town

Special Tax Areas

**Ad Valorem Tax Class** 

Primary Struct 1919	ture Built ·	Enclosed Area 2,496 SF	Property Land Area 13,888.00 SF	County Use	,reca
Stories	Basement	What is the construction of the construction o	Туре	Exterior	
2	` VES		STANDARD UNIT	SIDING	

· · · · · · · · · · · · · · · · · · ·		
	ue Information	ċ

•	Base	Value	Phase-in Asse	ssments
	Value	As Of	As Of	As Of
		01/01/2003	07/01/2004	07/01/2005
Land:	112,220	122,470		
Improvements:	78,510	110,840	•	
Total:	190,730	233,310	· 219,116	233,310
Preferential Land:	. 0	0	0	0

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-								*****	-	_	_	.,			_	-	-

Seller: SOMMER RONALD R Type: NOT ARMS-LENGTH	<b>Date:</b> 05/10/1989 <b>Deed1:</b> / 8170/ 604	Price: \$0 Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:



Maryland Department of Assessments and Taxation BALTIMORE COUNTY.
Real Property Data Search

Go Back View Map New Search Ground Rent

**County Use** 

34

**Account Identifier:** 

District - 15 Account Number - 2400000506

Owner Information

Owner Name:

RIEMER MATTHEW

Use:

RESIDENTIAL

Mailing Address: 2518 BAUERNSCHMIDT D

2518 BAUERNSCHMIDT DR BALTIMORE MD 21221-1738 Principal Residence:

Deed Reference:

1) /15174/ 573

2)

YES

Location & Structure Information

**Premises Address** 

2518 BAUERNSCHMIDT DR

**Legal Description** 

LTS 18,62

**Property Land Area** 

BAUERNSCHMIDT DR BAUERMSCHMIDT MANOR

Section Grid : Parcel **Sub District** Subdivision **Block** Plat No: Map Lot Group D 18 98 8 35 82 Plat Ref: 12/81

Special Tax Areas

**Primary Structure Bullt** 

Ad Valorem Tax Class

Town

 1944
 4,186 SF
 17,370.00 SF

 Stories
 Basement
 Type
 Exterior

 2
 YES
 STANDARD UNIT
 FRAME

**Enclosed Area** 

Value Information

Base Value Phase-in Assessments As Of As Of Value As Of 07/01/2004 07/01/2005 01/01/2003 99,840 Land: 113,090 301,050 Improvements: 260,760 373,850 400,890 Total: 400,890 391,876 0 Preferential Land: 0

Transfer Information

Date: Price: Seller: Type: Deed1: Deed2: Date: Price: Seller: Deed1: Deed2: Type: Date: Price: Seller: Deed2: Type: Deed1:

Exemption Information

Partial Exempt Assessments Class 07/01/2004 07/01/2005 County 000 0 0 State 000 0 0 0 Municipal 0 000



**Account Identifier:** 

District - 15 Account Number - 1511770200

Owner Information

Owner Name:

BENNETT EDMUND K

BENNETT PAMELA J

Use:

RESIDENTIAL

DEININETT PARIECA 3

Principal Residence:

Mailing Address:

2600 BAUERNSCHMIDT DR

**BALTIMORE MD 21221-1737** 

Deed Reference:

1) /12753/ 23

2)

YES

Location & Structure Information

**Premises Address** 

2600 BAUERNSCHMIDT DR

Parcel

**Legal Description** 

2600 BAUERNSCHMIDT DR BAUERNSCHMIDT MANOR

WATERFRONT

Sub District Subdivision Section Block Lot Group Plat No:

98 8 35 D 63 82 Plat Ref: 12/81

Town

Special Tax Areas

Grid

Map

Ad Valorem Tax Class

 Primary Structure Built
 Enclosed Area
 Property Land Area
 County Use

 1947
 2,100 SF
 7,900.00 SF
 34

 Stories
 Basement
 Type
 Exterior

 2
 YES
 STANDARD UNIT
 SIDING

Value Information

 Base
 Value
 Phase-in Assessments

 Value
 As Of
 As Of
 As Of

 01/01/2003
 07/01/2004
 07/01/2005

 Land:
 109,500
 119,500

Improvements: 152,260 163,070
Total: 261,760 282,570

Preferential Land: 0 282,

570 275,632 0 0 282,570 0

 Seller:
 GREGORY DANIEL X
 Date:
 03/30/1998
 Price:
 \$305,000

 Type:
 IMPROVED ARMS-LENGTH
 Deed1:
 /12753/23
 Deed2:

Transfer Information

 Seller:
 SLOAN JOHN W PHILLIPS JAMES N,TR
 Date:
 02/27/1996
 Price:
 \$138,000

 Type:
 NOT ARMS-LENGTH
 Deed1:
 /11450/ 116
 Deed2:

 Seller:
 KRIETE EDWIN R
 Date:
 10/16/1995
 Price:
 \$0

 Type:
 NOT ARMS-LENGTH
 Deed1:
 /11257/374
 Deed2:



Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back View Map New Search Ground Rent

**Account Identifier:** 

District - 15 Account Number - 1512590540

Owner Information

Owner Name:

SWIGER EARNEST

SWIGER CAROLYN E

Use:

RESIDENTIAL

SWIDEN CANOLINE

Principal Residence: YES

Mailing Address: 2601 BAUERNSCHMIDT DR

**BALTIMORE MD 21221-1718** 

Deed Reference:

1) / 6712/214

2)

#### Location & Structure Information

**Premises Address** 

2601 BAUERNSCHMIDT DR

Legal Description

**BAUERNSCHMIDT MANOR** 

Map Grid **Parcel** Sub District Subdivision Section Block Lot Group Plat No: 98 8 35 С Plat Ref: 12/81

Town

Special Tax Areas Ad Valorem
Tax Class

I da Cido

**Primary Structure Built Enclosed Area Property Land Area County Use** 1952 1,576 SF 9,050.00 SF 04 **Stories Basement Exterior** Type YES STANDARD UNIT 1 1/2 **FRAME** 

#### Value Information

	Base	value	Phase-in Assessments		
	Value	As Of	As Of	As Of	
		01/01/2003	07/01/2003	07/01/2004	
Land:	32,510	32,510		*	
Improvements:	67,510	73,330			
Totai;	100,020	105,840	101,960	103,900	
Preferential Land:	0	0	0	0	

#### Transfer Information

Seller: L	LONG JAMES A	Date: 05/15/1984	<b>Price:</b> \$49,000
Type: I	IMPROVED ARMS-LENGTH	Deed1: / 6712/ 214_	Deed2:
Seller:		Date:	Price:
Туре:	·	Deed1:	Deed2:
Seller:	American State of Commence of the Commence of	Date:	Price:
Type:		Deed1:	Deed2:



**Account Identifier:** 

District - 15 Account Number - 1519511610

Owner Information

**Owner Name:** 

**DUFFY MICHAEL T** 

(RASPE KAREN DUFFY/DUFFY JOSEPH F

Use:

RESIDENTIAL

Mailing Address:

2602 BAUERNSCHMIDT DR

**BALTIMORE MD 21221-1737** 

Deed Reference:

**Principal Residence:** 

1) /11432/ 234

2)

#### Location & Structure Information

**Premises Address** 

2602 BAUERNSCHMIDT DR

**Legal Description** 

2602 BAUERNSCHMIDT DR BAUERNSCHMIDT MANOR

WATERFRONT.

**Subdivision** Section Block Lot Group Plat No:

Map Grid Parcel Sub District 98 8 35 D 64 82 Plat Ref: 12/81

Town

**Special Tax Areas** 

Ad Valorem Tax Class

**Enclosed Area Primary Structure Built Property Land Area** County Use 1949 -1,890 SF 10,800.00 SF 34 **Stories Basement** Type Exterior 2 YES STANDARD UNIT SIDING

#### Value Information

Base Value	Value	Phase-in Assessments		
	As Of	As Of	As Of	
	01/01/2003	07/01/2003	07/01/2004	
109,500	120,800	•		
55,680	71,480		r	
165,180	192,280	174,213	183,246	
. 0	» <b>0</b>	. 0	0	
	Value 109,500 55,680 165,180	Value         As Of 01/01/2003           109,500         120,800           55,680         71,480           165,180         192,280	Value         As Of 01/01/2003         As Of 07/01/2003           109,500         120,800 55,680 71,480 165,180 192,280         174,213	

#### Transfer Information

Seller:	DUFFY JOHN M	<b>Date:</b> 02/13/1996	Price: \$0
Type:	NOT ARMS-LENGTH	Deed1: /11432/ 234	Deed2:
Seller:	SMITH WALTER H	<b>Date:</b> 03/09/1971	Price: \$9,000
Type:	IMPROVED ARMS-LENGTH	<b>Deed1:</b> / 5171/ 576	Deed2:
Seller:		Date:	Price:
Type:		Deed1:	Deed2:



**Account Identifier:** 

District - 15 Account Number - 1502201250

Owner Information

**Owner Name:** 

Mailing Address:

HOFFMAN ALBERT, JR

2604 BAUERNSCHMIDT DR

**BALTIMORE MD 21221-1737** 

HOFFMAN MARION

Use:

RESIDENTIAL

**Principal Residence:** 

Block

Lot

65

**Deed Reference:** 

1) / 5099/ 359

Plat No:

Plat Ref:

12/81

2)

YES

	4. 1			1 213	4 3 L YY	2.50	4.1	- 1	*			22			***	- 1
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a sra	ra	TI						-1		_	101	OF	ma	TIE	ъг	ŧ.

**Premises Address** 

Grid

Map

**Legal Description** 

2604 BAUERNSCHMIDT DR

Parcel

WATERFRONT

**BAUERNSCHMIDT MANOR** Group

82

Subdivision Section 98 8 35 D Town

**Sub District** 

**Ad Valorem** 

**Special Tax Areas** Tax Class

Primary Structure	Built	Enclosed Area	<b>Property Land Area</b>	County Use
1950		1,730 SF	12,525.00 SF	34
<b>Stories</b>	<b>Basement</b> YES	•	<b>Type</b> SPLIT LEVEL	<b>Exterior</b> SIDING

#### Value Information

	Base	Value	Phase-in Assessments		
	Value	As Of	As Of	As Of	
		01/01/2003	07/01/2003	07/01/2004	
Land:	95,020	104,130			
Improvements:	56,860	86,470	•		
Total:	151,880	190,600	164,786	177,692	
Preferential Land:	0	0	. 0	0	

#### Transfer Information

Seller: BECKMAN HENRY W Type: IMPROVED ARMS-LENGTH	<b>Date:</b> 06/11/1970 <b>Deed1:</b> / 5099/ 359	Price: \$14,500 Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:



12/81

**Account Identifier:** 

District - 15 Account Number - 1513855421

Owner Information

Owner Name:

WÍSNIEWSKI RONALD C

WISNIEWSKI SILVANA M

Use:

RESIDENTIAL

--

Principal Residence:

Mailing Address:

2605 BAUERNSCHMIDT DR

**BALTIMORE MD 21221-1718** 

Deed Reference:

1) / 6483/ 519

2)

YES

#### Location & Structure Information

**Premises Address** 

2605 BAUERNSCHMIDT DR

**Legal Description** 

BAUERNSCHMIDT MANOR

MapGridParcelSub DistrictSubdivisionSectionBlockLotGroupPlat No:98835C5682Plat Ref:

Town Ad Valorem

Special Tax Areas

Tax Class

**Enclosed Area Property Land Area Primary Structure Built County Use** 1956 2,377 SF 9,450.00 SF 04 **Basement** Exterior **Stories** Type 2 NO STANDARD UNIT FRAME

#### Value Information

•	Base	Value	Phase-in Assessme	ents
	Value	As Of	As Of	As Of
		01/01/2003	07/01/2003	07/01/2004
Land:	32,610	32,610		•
Improvements:	111,850	121,790		
Total:	144,460	154,400	147,773	151,086
Preferential Land:	0	0	0	0

#### Transfer Information

Seller: AGOR ROBERT	<b>Date:</b> 01/31/1983	Price: \$0
Type: NOT ARMS-LENGTH	<b>Deed1:</b> / 6483/ 519	Deed2:
Seller:	Date:	Price:
Туре:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:



Maryland Department of Assessments and Taxation BALTIMORE COUNTY Real Property Data Search

View Map New Search **Ground Rent** 

Go Back

**Account Identifier:** 

District - 15 Account Number - 1513855420

Owner Information

Owner Name:

MUELLER HERMAN, JR

MUELLER GRACE M

Use:

RESIDENTIAL

Principal Residence: NO

Mailing Address: 6212 FAIR OAKS AVE

**BALTIMORE MD 21214-1513** 

Deed Reference:

1) / 6020/ 195

2)

#### Location & Structure Information

**Premises Address** 

2606 BAUERNSCHMIDT DR

**Legal Description** 

**BAUERNSCHMIDT MANOR** 

Parcel Map Grid 1 **Sub District** Subdivision Section Block Lot Group Plat No: 98 8 35 D 66 82 Plat Ref: 12/81

**Special Tax Areas** 

Ad Valorem

Town

WATERFRONT

Tax Class **Primary Structure Built** 

**Enclosed Area Property Land Area** County Use 526 SF 8,400.00 SF 1949 34 **Stories Basement** Туре Exterior STANDARD UNIT YES ASBESTOS SHINGLE 1

Value Information

Base Value Phase-in Assessments Value As Of As Of As Of 01/01/2003 07/01/2003 07/01/2004 Land: 98,550 98,550 21,550 Improvements: 16,360 Total: 114,910 120,100 116,640 118,370 **Preferential Land:** 0

Transfer Information

Price: \$0 Seller: AGOR THELMA Date: 05/11/1979 Type: NOT ARMS-LENGTH Deed1: / 6020/ 195 Deed2: Seller: Date: Price: Deed2: Deed1: Type: Price: Seller: Date: Deed1: Deed2: Type:



Go Back Maryland Department of Assessments and Taxation View Map New Search Real Property Data Search Ground Rent

**Account Identifier:** 

District - 15 Account Number - 1503003561

Owner Information

Owner Name:

Mailing Address:

WILSON STEVE W

Use:

RESIDENTIAL

YES

2607 BAUERNSCHMIDT DR **BALTIMORE MD 21221-1718**  Deed Reference:

**Principal Residence:** 

1) /14828/ 451

12/81

2)

Location & Structure Information

**Premises Address** 

2607 BAUERNSCHMIDT DR

**Legal Description** 

200 SE RIVERSIDE DR

**BAUERNSCHMIDT MANOR** 

Map Grid Parcel **Sub District** Subdivision Section Block Lot Group Plat No: 98 35 C 8 61 Plat Ref:

Town-**Special Tax Areas Ad Valorem** 

Tax Class

Primary Struc	ture Built	<b>Enclosed Area</b>	Property Land Area	County Use
1957		970 SF	13,860.00 SF	04
Stories	Basement	-	Туре	Exterior
1	YES		STANDARD UNIT	BRICK

#### Value Information

	Base	Value	Phase-in Assessments		
	Value	As Of 01/01/2003	As Of 07/01/2003	As Of 07/01/2004	
Land:	33,710	33,710 63,510	,,	.,,,	
Improvements: Total:	57,630 91,340	97,220	93,300	95,260	
Preferential Land:	0	0	0 .	0	

#### Transfer Information

Seller: Type:		Date: Deed1:		Price: Deed2:	
Type:	NOT ARMS-LENGTH	Deed1:	/ 5285/ 968	Deed2:	,
Seller:	CATALFAMO ANTHONY P	Date:	07/25/1972	Price:	\$0
Type:	NOT ARMS-LENGTH	Deed1:	/14828/ 451	Deed2:	
Seller:	WILSON THORNTON W	Date:	11/27/2000	Price:	\$0 .





**Account Identifier:** 

District - 15 Account Number - 1513855423

Owner Information

Owner Name:

Mailing Address:

MUELLER HERMAN, JR

MUELLER GRACE M

Use:

RESIDENTIAL

1) / 6020/ 197

Principal Residence: NO

Deed Reference:

2)

6212 FAIR OAKS AVE

**BALTIMORE MD 21214-1513** 

Location & Structure Information

Premises Address BAUERNSCHMIDT DR

**Legal Description** 

WATERFRONT

BAUERNSCHMIDT MANOR

Grid Parcel Map 98 8 35

**Sub District** 

Subdivision

Section D

Block Lot 67

Group Plat No: Plat Ref:

12/81

Special Tax Areas

Ad Valorem

**Tax Class** 

Town

**Primary Structure Built** 

**Enclosed Area** 

**Property Land Area** 

County Use

0000

5,720.00 SF

34

**Stories** 

**Basement** 

**Type** 

**Exterior** 

Value Information

•	Base	Value	Phase-in Assessments			
	Value	As Of	As Of	As Of		
		01/01/2003	07/01/2003	07/01/2004		
Land:	5,720	5,720				
Improvements:	. 0	0				
Total:	5,720	5,720	5,720	5,720		
referential Land:	0	0	0	n		

1	v	au	1116		er I	211	п	a	r. 1	20

Seller: MUELLER THELMA Type: NOT ARMS-LENGTH	<b>Date:</b> 05/11/1979 <b>Deed1:</b> / 6020/ 197	Price: \$0 Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:



Account Identifier:

District - 15 Account Number - 1504500901

Owner Information

Owner Name:

THUMMEL STEVEN M

Use:

RESIDENTIAL

Mailing Address:

2609 BAUERNSCHMIDT DR **BALTIMORE MD 21221-1718**  Deed Reference:

Principal Residence:

1) /11520/ 474

2)

NO

Location & Structure Information

**Premises Address** 

· Legal Description

BAUERNSCHMIDT DR

SW COR HARBOR ENT **BAUERNSCHMIDT MANOR** 

WATERFRONT

Subdivision Section Lot Group Plat No:

Map Grid Parcel 35 98 8

**Sub District** 

Town

Block D

68 82 Plat Ref:

12/81

Special Tax Areas

Ad Valorem Tax Class

**Property Land Area** 

**County Use** 

0000

**Primary Structure Built Enclosed Area** 

5,460.00 SF

34

**Stories** 

**Basement** 

**Type** 

Exterior

Value Information

	Base Value	Value	Phase-in Assessments		
		As Of	As Of	As Of	
		01/01/2003	07/01/2003	07/01/2004	
Land:	5,460	5,460			
Improvements:	. 0	0	. •		
Total:	5,460	5,460	5,460	5,460	
Preferential Land:	· <b>O</b>	0	0	0	

Transfer Information

Seller: DOMULEWICZ WILLIAM E Type: MULT ACCTS ARMS-LENGTH Date: 04/08/1996 Deed1: /11520/ 474 Price: \$150,000

Seller: DOMULEWICZ STANLEY

Date: 02/24/1994 Deed1: /10363/598 Deed2: Price: Deed2:

NOT ARMS-LENGTH Type: Seller:

Date:

Price: Deed2:

Type:

Deed1:





**Account Identifier:** 

District - 15 Account Number - 1504500902

Owner Information

Owner Name:

KOCH ROBERT M,2ND

KOCH LAURA J

Use:

RESIDENTIAL

**Principal Residence:** 

NO

**Mailing Address:** 

2611 BAUERNSCHMIDT DR

**BALTIMORE MD 21221-1718** 

**Deed Reference:** 

Block

1) /14951/614

Plat No:

Plat Ref:

2)

1	-	200	vinin.			16.575,500	till .	 - 17	N 6		6,3.3	* * * * * * *		 4.10		13.				2.3
'n	п			21	-	0	98.	 		~1	•	re		 	-	-	•	•	-	
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Section

D

Premises Address

Map

Legal Description

BAUERNSCHMIDT DR

Grid

WATERFRONT

**BAUERNSCHMIDT MANOR** Group

82

98 35 Town **Special Tax Areas** 

**Ad Valorem** 

Tax Class

**Sub District** 

**Primary Structure Built** 0000

**Parcel** 

**Enclosed Area** 

Subdivision

**Property Land Area** 

Lot

69

County Use

12/81

5,640.00 SF

34

**Stories** 

Basement

Type

Exterior

Value Information

	Base	Value	Phase-in As	Phase-in Assessments		
	Value	As Of	As Of	As Of		
		01/01/2003	07/01/2003	07/01/2004		
Land:	5,640	5,640				
Improvements:	0	0				
Total:	5,640	5,640	5,640	5,640		
Preferential Land:	0	0	0	. 0		

#### Transfer Information

Seller: DOMULEWICZ STANLEY	<b>Date:</b> 02/01/2001	Price: \$90,000
Type: MULT ACCTS ARMS-LENGTH	Deed1: /14951/ 614	Deed2:
Seller: DOMULEWICZ STANLEY	Date: 02/24/1994	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: /10363/ 595	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:



12/81

**Account Identifier:** 

District - 15 Account Number - 1504500900

Owner Information

Owner Name:

KOCH ROBERT M,2ND

KOCH LAURA J

Use:

RESIDENTIAL

KOCH BIOIGN 3

Principal Residence:

..\_\_

**Mailing Address:** 

2611 BAUERNSCHMIDT DR

**BALTIMORE MD 21221-1718** 

**Deed Reference:** 

1) /14951/614

2)

#### Location & Structure Information

Premises Address

2611 BAUERNSCHMIDT DR

Legal Description

**BAUERNSCHMIDT MANOR** 

Map Grid ParcelSub DistrictSubdivisionSectionBlockLotGroup Plat No:98835C5982Plat Ref:

Town
Special Tax Areas Ad Valorem

Tax Class

Primary Structure Built Enclosed Area Property Land Area County Use
1957 750 SF 16,095.00 SF 04

StoriesBasementTypeExterior1YESSTANDARD UNITSTUCCO

#### Value Information

Base Value Phase-in Assessments Value As Of As Of As Of 01/01/2003 07/01/2003 07/01/2004 34,270 .. Land: 34,270 49,250 Improvements: 37,460 79,590 Total: 75,660 71,730 83,520 Preferential Land: n 0

#### Transfer Information

Seller: DOMULEWICZ STANLEY 02/01/2001 **Price:** \$90,000 Date: Deed1: /14951/ 614 MULT ACCTS ARMS-LENGTH Deed2: Type: 02/24/1994 Price: Date: \$0 Seller: DOMULEWICZ STANLEY Deed2: NOT ARMS-LENGTH Deed1: /10363/592 Type: Date: Price: Seller: Type: Deed 1: Deed2:

Maryland Department of Assessments and Taxation BALTIMORE COUNTY Real Property Data Search Go Back View Map New Search Ground Rent

**Account Identifier:** 

District - 15 Account Number - 2200008306

36.4	A 600 00 4			w 1420 - 1	1 . v b. b b.
Ow	/ne	r In	forn	nati	on

Owner Name:

KLUTTZ AARON W

Use: Principal Residence: RESIDENTIAL

Deed Reference:

1) / 8810/ 246

2)

YES

Mailing Address: 2618 BAUERNSCHMIDT DR

**BALTIMORE MD 21221-1737** 

Location & Structure Information

**Premises Address** 

2618 BAUERNSCHMIDT DR

**Legal Description** 

LTS 70-71 .45 AC

BAUERNSCHMIDT MANOR

Map Grid Parcel Sub District Subdivision Section Block Lot Group Plat No:

98 8 35 D 70 82 Plat Ref:

98 8 35 D 70 82 **Piat Ref:** 12/81

Special Tax Areas

Ad Valorem

Tax Class

Town

Primary Structure Built		<b>Enclosed Area</b>	Property Land Area	County Use		
1900		2,328 SF	19,427.00 SF	04		
Stories	Basement		Туре	Exterior		
2	YES		STANDARD UNIT	SIDING		

#### 

	Base	Value	Phase-in Assessments		
	Value	As Of	As Of	As Of	
	,	01/01/2003	07/01/2004	07/01/2005	
Land:	97,100	105,850		,	
Improvements:	86,370	116,990		*	
Total:	183,470	222,840	209,716	222,840	
Preferential Land:	0	0	0	0	

#### Transfer Information

Seller: MILLER WILLIAM E ,JR Type: IMPROVED ARMS-LENGTH		<b>Date:</b> 06/05/1991 <b>Deed1:</b> / 8810/ 246	Price: \$170,500 Deed2:
Seiler:	•	Date:	Price:
Type:		Deed1:	Deed2:
Seller:		Date:	Price:
Type:		Deed1:	Deed2:

Partial Exempt Assessments	Class	07/01/2004	07/01/2005	,		
County	000 000	0	0			
Municipal	000	Ö	0			
•						

DATE: 2305

#### PEOPLE'S COUNSEL'S SIGN-IN SHEET

CASE NAME: HERMON & Grace Mueller

CASE NO .: 04-487-A

The Office of People's Counsel was created by the County Charter to participate in zoning matters on behalf of the public interest. While it does not actually represent community groups or protestants, it will assist in the presentation of their concerns, whether they have their own attorney or not. If you wish to be assisted by People's Counsel, please sign below.

Check if you wish to testify	Name / Address Phone Number	Community Group You Represent / Basis of Your Concerns			
	Silvana Wisnicuski	over crowding			
	Aaron Kluttz				
	Por Wishiers 4.	disryptine to neighborhood			
	Joe Eiber	INCONSISTANT GRANTING OF UNRIANCE			
	·				
-					
· · · · · · · · · · · · · · · · · · ·					
		Mean la			
1	· .	It Eshilut			
		# 5			

Lots leb + 67 + Alever >25 yrs- ago puedrasal 2606 - waterfunt Seeks to sell Lot 67 House > 66 Shod - Shadles Launch -> 67 D.R. 3.5 - min lot size 10000 Sex - width 70' That 66 8 500 50 Lit 67, plus 5700 / 60 Critical Suca Briller BCC 33-2-40 1 prohibits const in bellen BCZR 500.14 pwhihitz CBA to grant variance of 100' set buck under critica net Petitiner - Deck renances under BCZR 307 Syr area / width BLZR 304 reliet to gonst-develley in hot 67 Zonen Comm. Scented 6/23 Tox CBA granded 7/8/05 Practical deliculty? Messer landouver ween Roman agrees against landowned want to -> Roley look to wheat - use "in sever one an the "

Variance 2/3/05 Grace & Hermon Mueller, Ja 1960 moned water frank copening! Ed Billin - for Matitainen Toning Comes. Granted Variance DR 3,5 19 and A 7c'n Lot Small 6,800 Beg 3041 grants varie (Brandfathersa) FOI Sec 307 Unique because origanily Carl ~ Demelo - Pouple Consol Let 66 +67 304 une for let Sulderenon granted Joshy year - mont recident us 2 Lota to brill their home. 2) water from t - Critical Bay area, 3/ ne hadship by present and Witness for applicant #1

Witness for applicant to the new New How Flowers

Mr. James Grammer 21 year W/ Marker ang, 2608 Bauerschmidt Brine 68/2 # Et #2 - relat of Property n/ development Lowerd Requirements Mad nelief to Build under prior rega, Curred By Family Since 1945 did autify zoning neg Lot in Exhibit to me under 10,000 \$ 1=x 17 - Comments of Voning Comme 8 Retter approving antisal Coma develops Sext. 304. 1 Alexelling may be allow ple regimement. 2608-Let doer not meet monimum rete reguirement 2606- Not meet prin sequirement of co. Code. In developed. Many connect Wister & Sewer Service if brief on Lot 160f If not developed (built on) opener ruffer love,

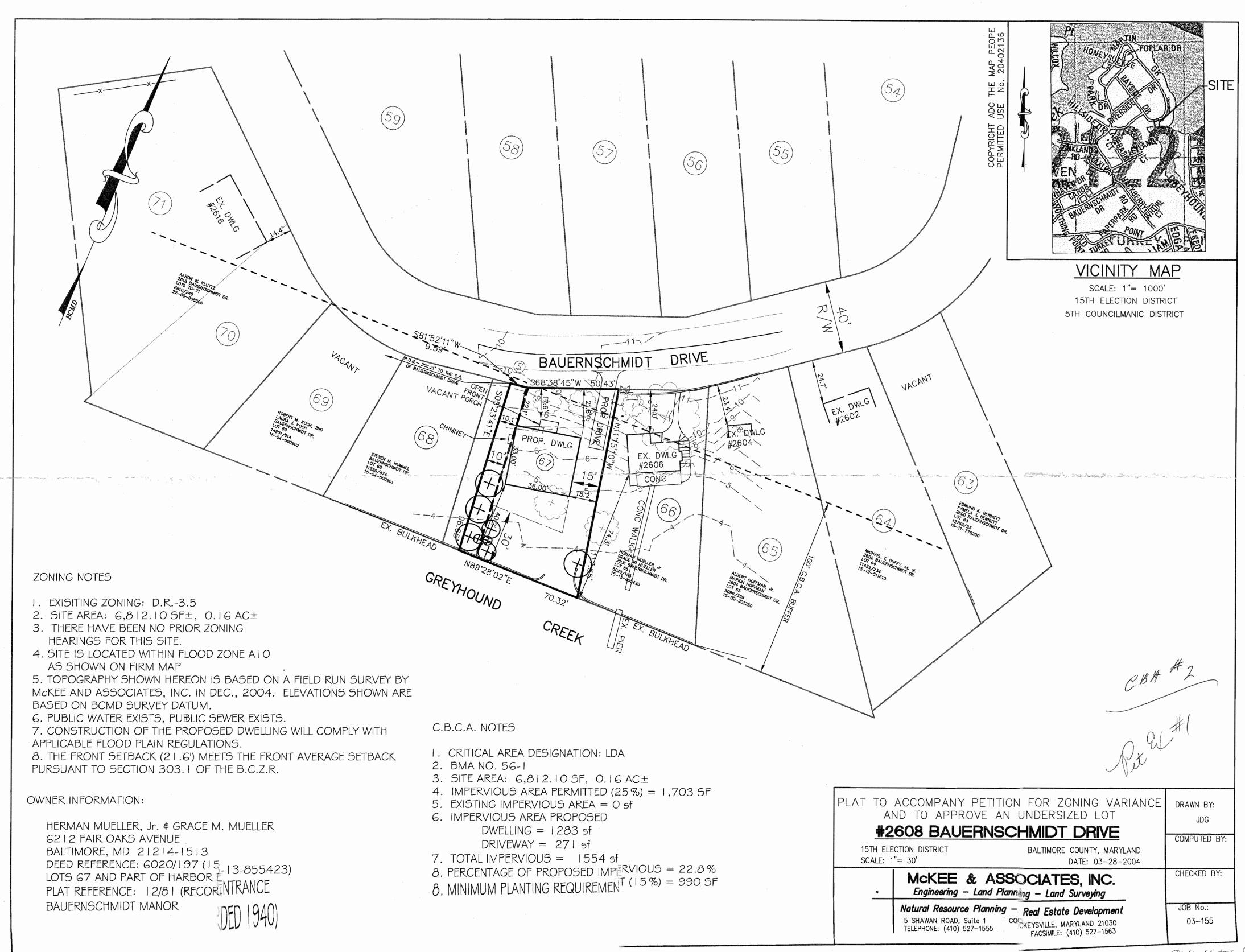
Vage # 2 Cron Exam By People Exhibit # 1 avail Whate of lot , foren neighborhood other prepention developed prior to 2:51 a hearble lat. 2611 + 2618 One fave Late providing on 1 Lot Summer Home Kroperty Conveyed In Wide But not deep Lot Let 2606 + 08 tigether would meet to cloye an 266km under New Reg. Selbuts 25 Front 30 mm Let #66 2608-Lot 303. 1 averege settructe on Street in Let#67 Redirectsome Late not 70' Wide shed not pamiate stucture Bytnen # 2 Stephen Gleck - 2404 Grable Ut - Frut Pill 26 of Wred 2606 Adome Shed not perminant on 2608 CRUSS FXAM leve of thed und or Strings. Bitnew # 3 Mr Herman Moller - Owner of Lata Bought in 47' built on 48 Bought offen Lot 1960 weekend netweat never tried to Compine later. Shed represe + was for storage live on I signerate with to bould on Let Cross Ham But shed for convince never repented but to be built

Page # 3 Lot 2666 466 Unered at \$100,000 Nearla Councel. Cura property 2618 Bournehmilt filome built around 1900 Mueller - sere let for entertain etc. Thed on property, ramp to make Bulk headen on buffy Lota? 2611 Property Mr Koch har lot asome street on hales waterfront lot he we at accin 260 Lot another let on Nationaile

My lemma tals har bot on double let on water side (1 ck Home Lacation)! 25/6 Bannershart 13, 888 \$ 1 daulling 19: 2600 nomether thomas 1940's Built - (See Top Record) all superties in fleed ones 11 h feet build up. Will affect view to water if Ind Wome built on vacant bet, Object to building due to me affectivet purking Cross Fars 1 dug gar: Lot 70-471 18+62 Single Kleed Fell of Blanke lot sell together. Burte Preparty has now home built recently, 27ms 612+4 - 2 ming Retation neg Walion & Bute anne: Welson granted If property meet requirement - no Olyectron Frankedge of Einmake deeds Separat Leta on each Side of Bouch De NITH1355 4-2 1255 the 2 live en Structricle wienes 12 y x no 12 y x no Opener 2 lots use ar one prouperty muller me their varant let ar otrage. I Enter turmente + parking Let 67

ne him to regurate late. some Idama built on bouble Lota Building Home on Mi Lota not in Freques with area Black View of Water - May Create more development. new Home Site comple room to limited

Mueller Exhibits - Approllants 04-487-A Appa Hant Petitioner Verified 2/03/05 developed by Mckee of Burndam it Let #67 Manualy tox records of but Toxxion of area pregentie tap averment to 2618 Buren store Found C Cornel of made Let from Street. 2666 12 - 01-281-14 Vetition for Varies 105 Money It



C.W B. JR. - 12-81



TY. A. C. A. K. S. C. K. C.



Maryland Department of Assessments and Taxation **BALTIMORE COUNTY** Real Property Data Search

Go Back View Map New Search

**Account Identifier:** 

District - 15 Account Number - 1513855420

Owner Information

Owner Name:

MUELLER HERMAN, JR

MUELLER GRACE M

Use:

RESIDENTIAL

Principal Residence:

**Mailing Address:** 

6212 FAIR OAKS AVE

**BALTIMORE MD 21214-1513** 

Deed Reference:

1) / 6020/ 195

NO

rocation	# 2tlactale	Tutormation

Premises Address

Мар

98

Zonina

Legal Description

2606 BAUERNSCHMIDT DR

Grid

8

WATERFRONT

BAUERNSCHMIDT MANOR

Lot

66

Sub District

Subdivision

Section Block Group Plat No: 82

Plat Ref:

12/81

Special Tax Areas

Town **Ad Valorem** Tax Class

**Primary Structure Built** 1949

Parcel

35

**Enclosed Area** 

D,

**Property Land Area** 8,400.00 SF

County Use

526 SF

Type

Exterior

**Stories** 1

Basement YÉS

STANDARD UNIT

ASBESTOS SHINGLE

Value Information

Value As Of Phase-in Assessments As Of

As Of

Base Value

01/01/2003 98,550 07/01/2003

07/01/2004

Land: Improvements:

**Preferential Land:** 

Total:

98.550 16,360 114,910

21,550 120,100

n

116,640

118,370

n

Transfer Information

Seller: AGOR THELMA

NOT ARMS-LENGTH

Date:

05/11/1979

Deed1:

/ 6020/ 195

Price: Deed2:

Deed1:

Date:

Price:

Deed2:

Date: Deed1:

Price:

Deed2:

**Exemption Information** 

**Partial Exempt Assessments** 

Class 000

07/01/2003

07/01/2004

County State Municipal

Type: Seller:

Type: Seller:

Type:

000 000

0 0 0

0 0

Tax Exempt:

**Exempt Class:** 

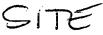
NO

Special Tax Recapture:

\* NONE \*

HISTORY





Go Back View Map **New Search** 

**Account Identifier:** 

District - 15 Account Number - 1513855423

**Owner Information** 

Owner Name:

MUELLER HERMAN,JR

MUELLER GRACE M

Use:

RESIDENTIAL

Mailing Address:

Tax Exempt: Exempt Class: 6212 FAIR OAKS AVE

**BALTIMORE MD 21214-1513** 

Principal Residence:

NO

Deed Reference:

TE | 6020# 197

BALII	MORE MD 21214-	1513	,		2)	
,						
1		Location & S	Structure Inform	ation		4
remises Address AUERNSCHMIDT.DR	Z	Coning		Legal D	escription	
ACEMICAL PROPERTY OF THE PROPE	.v.	VATERFRONT		BAUERN	SCHMIDT MANOR	•
Map Grid Parcel 98 8 35	Sub District	Subdivisio	<b>n Section</b> D	<b>Block Lot</b> 67	Group Plat No: 82 Plat Ref:	12/ 81
pecial Tax Areas		n /alorem Class				
Primary Structure 0000	8uilt	Enclosed	Area	Property Land 5,720.00 SF		County Use 34
Stories	Basemei	nt	>	Туре	Ex	terior /
	,	Valu	e Information			
	Base	Value	Phase-in Assess			
	Value	As Of	As Of	As Of		
		01/01/2003	,	07/01/2004		
Land:	5,720	5,720				
Improvements:	0	- i, O				
Total:	5,720	5,720	5,720	5,720		
Preferential Land:	0	0	<b>O</b>	0		
	*	Trans	fer Information			
	√.1 e	i v reigi	ý.		-	
Seller: MUELLER THELMA Type: NOT ARMS-LENGTH			Date: Deed1	05/11/1979 : /6020/197	Price: \$0 Deed2:	
Seller: Type:	,		Date: Deed1	•	Price; Deed2:	
eller: ype:	4 - 2	47.5 47.5 5.5	Date: Deed1	<b>:</b>	Price: Deed2:	
A Company of the Comp		Exemp	tion Information			
Partial Exempt Assessments County State	<b>Class</b> 000 000		07/01/2003 0 0 /	07/01/2 0 0	004	
Municipal	000	1. 1	0 /	. 0		

Special Tax Recapture:

\* NONE \*



Maryland Department of Assessments and Taxation **BALTIMORE COUNTY** Real Property Data Search

Go Back View Map **New Search Ground Rent** 

12/81

Account Identifier:

District - 15 Account Number - 1511000260

**Owner Information** 

Owner Name:

POMMETT FRANCIS A,3RD

POMMETT JILLAIN M

Use:

RESIDENTIAL

**Principal Residence:** 

Mailing Address:

2304 BAUERNSCHMIDT DR

**BALTIMORE MD 21221-1711** 

Deed Reference:

1) /12863/638

2)

YES

Location & Structure Information

**Premises Address** 

2304 BAUERNSCHMIDT DR

**Legal Description** 

LT 133,151

2304 BAUERNSCHMIDT DR **BAUERNSCHMIDT MANOR** 

Grid Parcel **Sub District** Subdivision Section **Block** Lot Group Plat No: Plat Ref: 8 35 н 82

Town Special Tax Areas

Ad Valorem Tax Class

**Primary Structure Built Enclosed Area** Property Land Area County Use 1909 1,556 SF 8,856.00 SF 04 **Stories** Basement Type Exterior

2 YES STANDARD UNIT ASBESTOS SHINGLE

Value Information

Base Value **Phase-in Assessments** As Of Value As Of, As Of 01/01/2003 07/01/2004 07/01/2005 32,460 Land: 32,460 Improvements: 65,060 71,690 104,150 Total: 104,150 97,520 101,940 Preferential Land:

**Transfer Information** 

Seller: GATTA ROBERT M Date: 05/15/1998 Price: \$120,000 IMPROVED ARMS-LENGTH Deed1: /12863/638 Deed 2: Type:

GATTA ROBERT M Date: 01/07/1998 Price: Seller: NOT ARMS-LENGTH Deed1: /12590/ 1 Deed 2: Type: Seller: KAMBERGER ETHEL B Date: 06/30/1995 Price: \$128,500

Type: NOT ARMS-LENGTH Deed1: /11115/ 118 Deed 2:

**Exemption Information** 

Partial Exempt Assessments Class 07/01/2004 07/01/2005 County 000 0 0 000 0 0 State 000 0 0 Municipal

Tax Exempt: Exempt Class: NO

Special Tax Recapture:

\* NONE \* C. LLIZE TIVE 7mc

http://sdatcert3.resiusa.org/rp\_rewrite/detail.asp?accountnumber=15+1511000260&count... 12/16/2004

#### 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

**SUBJECT:** 

Zoning Advisory Petition(s): Case 4-487

DATE: May 10, 2004
RECEIVED

ZONING COMMISSIONER

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer. For further questions or additional information concerning the matters stated herein, please contact Mark A. Cunningham in the Office of Planning at 410-887-3480.

MAC/LL

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### Department of Environmental Protection and Resource Management

401 Bosley Avenue, Suite 416 Towson, Maryland 21204



#### **Baltimore County**

James T. Smith, Jr., County Executive David A.C. Carroll, Director

August 23, 2004

Mr. and Mrs. Herman Mueller, Jr. 6212 Fair Oaks Avenue Baltimore, MD 21214-1513 CBA De g

Re:

2608 Bauernschmidt Drive

Critical Area Administrative Variance

Dear Mr. and Mrs. Mueller:

The Department of Environmental Protection and Resource Management (DEPRM) has received your variance request to construct a dwelling in the 100 foot tidal buffer closer to Greyhound Creek/Middle River (40' in lieu of the required 66') than Buffer Management Area Regulations allow. The Director of DEPRM may grant a variance to the Chesapeake Bay Critical Area regulations in accordance with regulations adopted by the Critical Area Commission concerning variances as set forth in COMAR 27.01.11. There are five (5) criteria listed in COMAR 27.01.11 that shall be used to evaluate the variance request. All five (5) of the criteria must be met in order to approve the variance.

The first criterion requires that special conditions exist that are peculiar to the land or structure, and that literal enforcement of the regulations would result in unwarranted hardship. The majority of the lot is in the 100-foot buffer due its shape/size. This property was already a recorded lot prior to the onset of Chesapeake Bay Critical Area Regulations. A literal enforcement of the regulations would prevent the construction of the dwelling, resulting in unwarranted hardship. Therefore, this criterion has been met.

The second criterion requires that a literal enforcement of the regulations would deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area. Many of the properties along the Chesapeake Bay waterfront have homes within the 100-foot tidal buffer. A similar variance would be granted on another waterfront lot under similar circumstances. Therefore, this criterion has been met.

The third criterion requires that granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. Granting of this variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the Critical Area. Therefore, this criterion has been met.



Visit the County's Website at www.baltimorecountyonline.info



Maryland Department of Assessments and Taxation **BALTIMORE COUNTY Real Property Data Search** 

Go Back View Map **New Search Ground Rent** 

Account Identifier:

District - 15 Account Number - 2200008306

**Owner Information** 

Owner Name:

KLUTTZ AARON W

Use: Principal Residence: RESIDENTIAL

**Mailing Address:** 

2618 BAUERNSCHMIDT DR BALTIMORE MD 21221-1737 Deed Reference:

1) / 8810/ 246

2)

YES

Location & Structure Information

**Premises Address** 

2618 BAUERNSCHMIDT DR

Legal Description

LTS 70-71 .45 AC

BAUERNSCHMIDT MANOR

Grid **Sub District** Subdivision Section **Block** Lot Group Plat No: Map Parcel 8 35 70 Plat Ref: 98 D 82

Special Tax Areas

**Primary Structure Built** 

Town Ad Valorem

Tax Class

**Enclosed Area** 

**Property Land Area** 

**County Use** 

12/81

2,328 SF 19,427.00 SF Stories **Basement** Type Exterior SIDING 2 YES STANDARD UNIT

Value Information

Base Value Phase-in Assessments Value As Of As Of As Of 01/01/2003 07/01/2004 07/01/2005 Land:

Improvements: Total:

97,100 105,850 86,370 116,990 183,470 222,840

209,716

222,840

Preferential Land: 0 0

**Transfer Information** 

MILLER WILLIAM E, JR 06/05/1991 Price: \$170,500 Seller: IMPROVED ARMS-LENGTH Deed1: / 8810/ 246 Deed2: Type: Date: Seller:

Type: Deed1: Seller: Date: Type:

Price: Deed2:

Price: Deed1: Deed2:

**Exemption Information** 

Partial Exempt Assessments Class 07/01/2004 07/01/2005 County 000 n n 000 State 0 0 Municipal 000 0 0

Tax Exempt: **Exempt Class:**  NO

Special Tax Recapture:

\* NONE \*



Maryland Department of Assessments and Taxation **BALTIMORE COUNTY Real Property Data Search** 

Go Back View Map **New Search Ground Rent** 

**Account Identifier:** 

District - 15 Account Number - 2400000506

**Owner Information** 

Owner Name:

RIEMER MATTHEW

Use:

RESIDENTIAL YES

**Mailing Address:** 

2518 BAUERNSCHMIDT DR **BALTIMORE MD 21221-1738**  **Principal Residence: Deed Reference:** 

1) /15174/ 573

2)

Location & Structure Information

**Premises Address** 

2518 BAUERNSCHMIDT DR

Legal Description

LTS 18.62

BAUERNSCHMIDT DR BAUERMSCHMIDT MANOR

Section Group Plat No: Man Grid Parcel Sub District Subdivision Block Lot 98 D 18 82 Plat Ref: 12/81 35

Town

**Special Tax Areas** 

Ad Valorem Tax Class

**Primary Structure Built Enclosed Area Property Land Area County Use** 1944 17,370.00 SF 4,186 SF 34 **Stories Basement** Type **Exterior** YES STANDARD UNIT FRAME 2

Value Information

Base Value **Phase-in Assessments** Value As Of As Of As Of 01/01/2003 07/01/2004 07/01/2005 113,090 99,840 Land:

Improvements: 260,760 301,050

Total: 373,850 400,890 391,876 400,890 **Preferential Land:** O 0 0 0

Transfer Information

Seller: Date: Price: Deed2: Type: Deed1: Seller: Date: Price: Deed1: Deed2: Type: Date: Price: Seller: Deed1: Deed2: Type:

**Exemption Information** 

**Partial Exempt Assessments** Class 07/01/2004 07/01/2005 County 000 0 State 000n O Municipal 000 0 0

Tax Exempt: **Exempt Class:**  NO

Special Tax Recapture:

\* NONE \* CBA Exhibit

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IN RE: PETITION FOR ADMIN. VARIANCE E/S Bayside Drive, 220' S centerline of Riverside Drive 15th Election District 5th Councilmanic District (2607 Bayside Drive)

Steve W. Wilson Petitioner

- \* BEFORE THE
- \* DEPUTY ZONING COMMISSIONER
- \* OF BALTIMORE COUNTY
- \* CASE NO. 01-281-A

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as an Administrative Variance filed by Steve W. Wilson, property owner, for that property known as 2607 Bayside Drive in the Back River Neck area of Baltimore County. The Petitioner herein seeks a variance from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (BCZR), to permit a side yard setback of 8 ft. in lieu of the required 10 ft. and a sum of side yard setbacks of 21.5 ft. in lieu of the required 25 ft. and a lot width of 61 ft. in lieu of the required 70 ft. The subject property and requested relief are more particularly described on Petitioner's Exhibit No. 1, the plat to accompany the Petition for Variance.

The Petitioner has filed the supporting affidavits as required by Section 26-127 (b)(1) of the Baltimore County Code. The subject property having been posted, and there being no request for a public hearing, a decision shall be rendered based upon the documentation contained in the case file.

In the opinion of the Deputy Zoning Commissioner, the information, photographs, and affidavits submitted provide sufficient facts that the relief requested sufficiently complies with the requirements of Section 307.1, 307.2 and 500.14 of the Baltimore County Zoning Regulations (B.C.Z.R.) and should therefore be granted. There is no evidence in the record that

CBB FX hist

#12

to 2/4/0/

IN RE: PETITION FOR VARIANCE

E/S Bayside Drive, 272' S of the c/l

Riverside Drive

(Lot 60, Bauernschmidt Manor, Sec. C)

15<sup>th</sup> Election District 5<sup>th</sup> Council District

Steve W. Wilson Petitioner

- \* BEFORE THE
- \* ZONING COMMISSIONER
- \* OF BALTIMORE COUNTY
- \* Case No. 01-282-A

•

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owner of the subject property, Steve W. Wilson. The Petitioner requests variance relief from Sections 1B02.3.C.1 and 304 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot width of 59 feet in lieu of the required 70 feet, and to approve the subject property as an undersized lot for development with a single family dwelling. The subject property and requested relief are more particularly described on the site plan submitted which was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request was Vincent Moskunas, a representative of Site Rite, Inc., a consultant retained by the Petitioner, who prepared the site plan for this property. There were no Protestants or other interested persons present.

The subject property is an unimproved, rectangular shaped parcel located on the east side of Bayside Drive, just north of that road's intersection with Bauernschmidt Drive in Essex. The property is known as Lot 60 of the Bauernschmidt Manor subdivision, which was recorded in the Land Records of Baltimore County in approximately 1940, prior to the adoption of the B.C.Z.R. The property consists of approximately 13,000 sq.ft. in area, zoned D.R.3.5. Although the property meets the minimum area requirements for a D.R.3.5-zoned lot, it lacks sufficient width at the building line. As more particularly shown on the site plan, the property is approximately 47 feet wide at its frontage adjacent to Bayside Drive, but tapers to an increased

ORDER REGENED FOR FILING
Date

3y

Charle And
Date

CBA #13



Maryland Department of Assessments and Taxation BALTIMORE COUNTY Real Property Data Search Go Back
View Map
New Search
Ground Rent

**Account Identifier:** 

District - 15 Account Number - 1513855422

**Owner Information** 

Owner Name:

**Mailing Address:** 

WISNIEWSKI RONALD C

WISNIEWSKI SILVANA M

Use:

RESIDENTIAL

2605 BAUERNSCHMIDT DR

**BALTIMORE MD 21221-1718** 

Principal Residence:

LSIDENTIAL

Deed Reference:

1) / 6483/ 519

2)

**Location & Structure Information** 

**Premises Address** 

BAUERNSCHMIDT DR

**Legal Description** 

BAUERNSCHMIDT MANOR

Мар Grid Parcel **Sub District** Subdivision Section **Block** Lot Group Plat No: 98 8 35 57 82 Plat Ref: 12/81

Town

Special Tax Areas

Ad Valorem Tax Class

Primary Structure Built Enclosed Area Property Land Area County Use
0000 9.550.00 SF 04

Stories Basement Type Exterior

**Value Information** 

Base Value **Phase-in Assessments** As Of Value As Of As Of 01/01/2003 07/01/2004 07/01/2005 Land: 25,130 25,130 Improvements: O 0 Total: 25,130 25,130 25,130 25,130 Preferential Land: 0 n 0 n

Transfer Information

 Seller:
 AGOR ROBERT
 Date:
 01/31/1983
 Price:
 \$0

 Type:
 NOT ARMS-LENGTH
 Deed1:
 / 6483/519
 Deed2:

 Soller:
 Date:
 Price:
 \$0

Seller: Date: Price:
Type: Deed1: Deed2:
Seller: Date: Price:

Type: Deed1: Deed2:

Exemption Information

 Partial Exempt Assessments
 Class
 07/01/2004
 07/01/2005

 County
 000
 0
 0

 State
 000
 0
 0

 Municipal
 000
 0
 0

Tax Exempt: Exempt Class: NO

Special Tax Recapture:

\* NONE \*

CBA hibit

IN THE MATTER OF:

- \* BEFORE THE
- GRACE M. MUELLER & HERMAN \* COUNTY BOARD OF APPEALS

MUELLER, JR., Petitioners

IN RE: PETITION FOR VARIANCE \* BALTIMORE COUNTY

15th Election District

\* Case No. 04-2487-A

7th Councilmanic District \* February 3, 2005

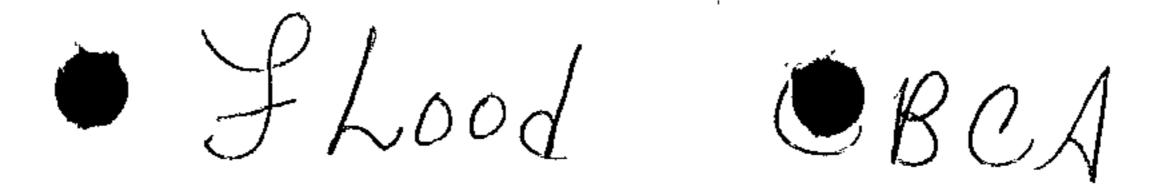
(2608 Bauernschmidt Drive)

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 at 10 a.m, February 3, 2005.

## ORIGINAL

Reported by:

C.E. Peatt





# Petition for Variance

to the Zoning Commissioner of Baltimore County for the property located at 2608 Bellernschmidt Drive

which is presently zoned \_\_\_\_DR 3.5

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) 1B02.3C.1 to permit a

6,812.10 square foot lot in-lieu-of the minimum 10,000 square feet and to permit a lot width of 61 feet inlieu-of the minimum 70 feet; to approve an undersized lot per Section 304 with any other variances deemed necessary by the Zoning Commissioner.

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty)

The lot is existing. The lot is too small in area and width to meet the required dimensions.

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.

Legal Owner(s):

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:

REV 9/15/98

#### Herman Mueller, Jr. Name - Type or Print Name - Type or Print camout, Signature Grace M. Mueller Address Telephone No. Namey- Type or Print City State Zip Code Signature (410) 426-3145 6212 Fair Oaks Avenue Attorney For Petitioner: Address Telephone No. Baltimore, MD 21214-1513 Name - Type or Print City State Zip Code Representative to be Contacted: Signature McKee and Associates, Inc. Company Name 5 Shawan Road, Suite 1 (410) 527-1555 Address Address Telephone No. Telephone No. Cockeysville, MD 21030 City State Zip Code City State Zlp Code OFFICE USE ONLY ESTIMATED LENGTH OF HEARING \_\_\_\_ ... UNAVAILABLE FOR HEARING

## 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: #04-487-A

2608 Bauernschmidt Drive
S/sida of Bauernschmidt Drive 276 feet east of centerline off of Bauernschmidt Drive
15th Election District 5th Councilmanic District
Legal Owner(s): Herman & Grace Mueller
Variance: to permit a 6.812-10 square feet lot in lieu of the minimum 10.000 square feet and to permit a lot width of 61 feet in fleu of the minimum 70 feet, to approve an undersized lot with any other variance deemed necessary by the Zoning Commissioner
Hearing: Monday, June 21, 2004 at 19:00 a.m. in Room 407, County Courte Building, 461 Bosiey Avenue.

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

6/010 June 3 7402

## CERTIFICATE OF PUBLICATION

63, $2004$	_
THIS IS TO CERTIFY, that the annexed advertisement was pub	lished
in the following weekly newspaper published in Baltimore County,	Md.,
once in each ofsuccessive weeks, the first publication appe	aring
The Jeffersonian	
Arbutus Times	
☐ Catonsville Times	
☐ Towson Times	
Owings Mills Times	
□ NE Booster/Reporter	
☐ North County News	
S. Willing	

LEGAL ADVERTISING

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BALTIMORE COFFICE OF BUDG			ECEIVED HOM:	DISTABLUTION WATTE - CASSIER
852	WG.			

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RE: Case No.: 04-487-A
Petitioner/Developer:
HERMANG GRACE MUELLE
Date of Hearing/Closing: 6/21/04
•
cated at
6/5/04 (Month, Day, Year)
Sincerely,  Signature of Sign Poster and Date)  RICHARD E. HOFFMAN  (Printed Name)  904 DELLWOOD DR.  (Address)

2608 BAUGENSCHMIOT DA POSTED 6/5/04 Ofmhele Offic 6/5/04

## 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: O4.487. A. (EUMOGOSIZOO COT.)
Petitioner: Herman Mueller In and Grace Mueller
Address or Location: 2608 Bauernschmidt Drive
PLEASE FORWARD ADVERTISING BILL TO:  Name: Herman Mueller.  Address: 6212 Fair Oaks Ave  Baltimore, MD 21214-1513
Telephone Number: 40.476.3145.

Revised 2/20/98 - SCJ

O. 4. 487.

# 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



#### Baltimore County

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

May 11, 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: 04-487-A

2608 Bauernschmidt Drive

S/side of Bauernschmidt Drive, 276 feet east of centerline off of Bauernschmidt Drive 15<sup>th</sup> Election District – 5<sup>th</sup> Councilmanic District

Legal Owners: Herman & Grace Mueller

Variance to permit a 6,812.10 square feet lot in lieu of the minimum 10,000 square feet and to permit a lot width of 61 feet in lieu of the minimum 70 feet; to approve an undersized lot with any other variance deemed necessary by the Zoning Commissioner.

Hearing: Monday, June 21, 2004, at 10:00 a.m. in Room 407, County Courts Building,

401 Bosley Avenue

Timothy Kotroco
Director

TK:klm

C: Herman & Grace Mueller, 6212 Fair Oaks Ave., Baltimore 21214-1513 McKee & Associates, Inc., 5 Shawan Rd., Ste. 1, Cockeysville 21030

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, JUNE 5, 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.

TO: PATUXENT PUBLISHING COMPANY

Thursday, May 27, 2004 Issue - Jeffersonian

Please forward billing to:

Herman Mueller 6212 Fair Oaks Avenue Baltimore, MD 21214-1513

410-426-3145

#### **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: 04-487-A

2608 Bauernschmidt Drive

S/side of Bauernschmidt Drive, 276 feet east of centerline off of Bauernschmidt Drive 15<sup>th</sup> Election District – 5<sup>th</sup> Councilmanic District

Legal Owners: Herman & Grace Mueller

<u>Variance</u> to permit a 6,812.10 square feet lot in lieu of the minimum 10,000 square feet and to permit a lot width of 61 feet in lieu of the minimum 70 feet; to approve an undersized lot with any other variance deemed necessary by the Zoning Commissioner.

Hearing: Monday, June 14, 2004, at 9:00 a.m. in Room 407, County Courts Building,

401 Bosley Avenue

Lawrence B. Schmidt

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



#### Baltimore County

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

April 29, 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: 04-487-A

2608 Bauernschmidt Drive

S/side of Bauernschmidt Drive, 276 feet east of centerline off of Bauernschmidt Drive 15<sup>th</sup> Election District – 5<sup>th</sup> Councilmanic District

Legal Owners: Herman & Grace Mueller

<u>Variance</u> to permit a 6,812.10 square feet lot in lieu of the minimum 10,000 square feet and to permit a lot width of 61 feet in lieu of the minimum 70 feet; to approve an undersized lot with any other variance deemed necessary by the Zoning Commissioner.

Hearing: Monday, June 14, 2004, at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

Timothy Kotroco

Director

TK:klm

C: Herman & Grace Mueller, 6212 Fair Oaks Ave., Baltimore 21214-1513 McKee & Associates, Inc., 5 Shawan Rd., Ste. 1, Cockeysville 21030

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY SATURDAY, MAY 29, 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.



Visit the County's Website at www.baltimorecountyonline.info

TO: PATUXENT PUBLISHING COMPANY

Thursday, June 3, 2004 Issue - Jeffersonian

Please forward billing to:

Herman Mueller 6212 Fair Oaks Avenue Baltimore, MD 21214-1513

410-426-3145

#### **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: 04-487-A

2608 Bauernschmidt Drive

S/side of Bauernschmidt Drive, 276 feet east of centerline off of Bauernschmidt Drive 15<sup>th</sup> Election District – 5<sup>th</sup> Councilmanic District

Legal Owners: Herman & Grace Mueller

<u>Variance</u> to permit a 6,812.10 square feet lot in lieu of the minimum 10,000 square feet and to permit a lot width of 61 feet in lieu of the minimum 70 feet; to approve an undersized lot with any other variance deemed necessary by the Zoning Commissioner.

Hearing: Monday, June 21, 2004, at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue

The will be a section of the section

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 Development Management

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



#### **Baltimore County**

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

June 17, 2004

Herman Mueller, Jr. Grace C. Mueller 6212 Fair Oaks Avenue Baltimore, Maryland 21214-1513

Dear Mr. and Mrs. Mueller:

RE: Case Number:04-487-A, 2608 Bauernschmidt Drive

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on April 27, 2004.

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. Call Rihall S

W. Carl Richards, Jr.

Supervisor, Zoning Review

WCR: clb

**Enclosures** 

c: People's Counsel McKee & Associates 5 Schwan Road, Ste. 1 Cockeysville 21030



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

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

#### MARYLAND DEPARTMENT OF TRANSPORTATION

Date:

4.30.04

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

RE:

**Baltimore County** 

Item No.

487

JRA

Dear. Ms.Matthews:

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

1. 1. And L



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 May 10, 2004

ATTENTION: Rebecca Hart

Distribution Meeting of: May 3, 2004

Item No.:

479, 482-487

Dear Ms. Hart:

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.

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

#### INTER-OFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

Department of Permits and Development Management

DATE: May 10, 2004 RECEIVED

FROM:

Arnold F. 'Pat' Keller, III

Director, Office of Planning

MAY 1 1 2004

ZONING COMMISSIONER

**SUBJECT:** 

Zoning Advisory Petition(s): Case 4-487

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer. For further questions or additional information concerning the matters stated herein, please contact Mark A. Cunningham in the Office of Planning at 410-887-3480.

**Division Chief:** 

MAC/LL

### BALTIMORE COUNTY, MARYLAND DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO:	Tim Kotroco
FROM:	R. Bruce Seeley 1285/JDO
DATE:	May 20, 2004
SUBJECT:	Zoning Item # 04- 487 Address 2608 Bauernschmidt Drive (Mueller Property)
Zoning	g Advisory Committee Meeting of May 3, 2004
	epartment of Environmental Protection and Resource Management has no ents on the above-referenced zoning item.
	epartment of Environmental Protection and Resource Management offers lowing comments on the above-referenced zoning item:
<del>1</del>	Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Section 14-331 through 14-350 of the Baltimore County Code).
	Development of this property must comply with the Forest Conservation Regulations (Section 14-401 through 14-422 of the Baltimore County Code).
<u>X</u>	Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code).
<u>Additi</u>	onal Comments:

1

Reviewer:

Keith Kelley

Date: May 20, 2004

#### BALTIMORE COUNTY, MARYLAND

#### INTEROFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

**DATE:** May 18, 2004

Department of Permits & Development Management

FROM:

Robert W. Bowling, Supervisor

Bureau of Development Plans

Review

**SUBJECT:** 

Zoning Advisory Committee Meeting

For May 10, 2004 Item No. 487)

The Bureau of Development Plans Review has reviewed the subject-zoning item.

The flood protection elevation for this site is 10.4 feet.

In conformance with Federal Flood Insurance requirements, the first floor or basement floor must be at least 1 foot above the flood plain elevation in all construction.

The property to be developed is located adjacent to tidewater. The developer is advised that the proper sections of the *Baltimore County Building Code* must be followed whereby elevation limitations are placed on the lowest floor (*including basements*) of residential (*commercial*) development.

The building engineer shall require a permit for this project.

The building shall be designed and adequately anchored to prevent flotation, collapse, or lateral movement of structure with materials resistant to flood damage.

Flood-resistant construction shall be in accordance with the requirement of B.O.C.A. International Building Code adopted by the county.

RWB:CEN:jrb

cc: File

ZAC-05-10-2004-ITEM NO 487-05182004

PETITION FOR VARIANCE RE:

2608 Bauernschmidt Dr; S/side Bauernschmidt

Dr, 276' E of c/line of Bauernschmidt Dr 15<sup>th</sup> Election & 5<sup>th</sup> Councilmanic Districts

Legal Owner(s): Herman & Grace Mueller

Petitioner(s)

**BEFORE THE** 

ZONING COMMISSIONER

**FOR** 

**BALTIMORE COUNTY** 

04-487-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 30<sup>th</sup> day of April, 2004, a copy of the foregoing Entry of Appearance was mailed to, McKee & Associates, Inc, 5 Shawan Road, Suite 1, Cockeysville, MD 21030, Representative for Petitioner(s).

RECEIVED

APR 3 0 2004

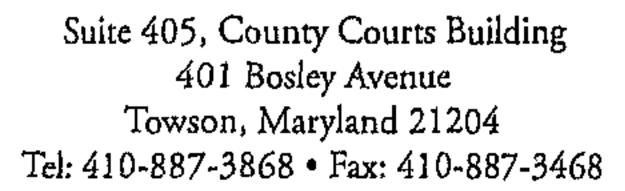
Per.....

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

1mmer nary

#### Zoning Commissioner





Baltimore County

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

July 22, 2004

Mr. & Mrs. Ronald Wisniewski 2605 Bauernschmidt Drive Baltimore, Maryland 21221

> Re: Petition for Variance Case No. 04-487-A

Petitioners: Grace M. & Herman Mueller, Jr.

Property: 2608 Bauernschmidt Drive

Dear Mr. & Mrs. Wisniewski:

We are in receipt of your motion to reconsider regarding the above-captioned matter. However, this case was appealed to the Board of Appeals last week, and since this appeal renders your motion for reconsideration moot, I will not be preparing an order responding to your motion because the Board of Appeals now has jurisdiction over this matter.

If you require additional information concerning this case, please feel free to contact our appeals clerk at 410-887-3391 or the Board of Appeals at 410-887-3180.

Very truly yours,

John V. Murphy

Deputy Zoning Commissioner

JVM:raj Enclosure



Visit the County's Website at www.baltimorecountyonline.info

#### Baltimore County, Maryland



OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse 400 Washington Ave. Towson, MD 21204

(410) 887-2188

PETER MAX ZIMMERMAN People's Counsel

Deputy People's Counsel

July 7, 2004

Timothy Kotroco, Director
Department of Permits and
Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Hand-delivered

Re:

PETITION FOR VARIANCE

S/S of Bauernschmidt Drive, 276' E c/line Bauernschmidt Dr

(2608 Bauernschmidt Drive)

15<sup>th</sup> Election District; 7<sup>th</sup> Council District Grace M & Herman Mueller, Jr- Petitioner(s)

Case No.: 04-487-A

Dear Mr. Kotroco:

Please enter an appeal by the People's Counsel for Baltimore County to the County Board of Appeals from the Findings of Fact and Conclusions of Law dated June 23, 2004 by the Baltimore County Deputy Zoning Commissioner in the above-entitled case

Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours

Peter Max Zimmerman

People's Counsel for Baltimore County

Carole S. Demifio

Deputy People's Counsel

PMZ/CSD/rmw

cc:

James Grammer, McKee & Associates Herman, Jr. & Grace Mueller, Petitioners RECEIVED

JUL 0 7 2004

Per. LB...

# 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



#### **Baltimore County**

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

July 22, 2004

Mr. & Mrs. Herman Mueller, Jr. 6212 Fair Oaks Avenue Baltimore, MD 21214-1513

Dear Mr. and Mrs. Mueller:

RE: Case: 04-487-A, 2608 Bauernschmidt Drive

Please be advised that an appeal of the above-referenced case was filed in this office on July 7, 2004 by Peoples Counsel of Baltimore County. 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,

Timothy Kotroco Director

#### TK:klm

c: Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
James Grammer, McKee & Associates, 5 Shawan Rd., Ste. 1, Cockeysville 21030
Steven Glock, 2406 Grable Court, Forest Hill 21050
Silvana Wisniewski, 2605 Bauernschmidt Dr., Baltimore 21221
Linda Clarke, 4319 Willshire Avenue, Baltimore 21206
Robert Koch, 2611 Bauernschmidt Dr., Baltimore 21221
Steve Hummel, 2609 Bauernschmidt Dr., Baltimore 21221

# 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



#### **Baltimore County**

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

May 11, 2004

Herman Mueller, Jr. Grace Mueller 6212 Fair Oaks Avenue Baltimore, MD 21214-1513

Dear Mr. and Mrs. Mueller:

RE: Case Number: 04-487-A, 2608 Bauernschmidt Drive

The above matter, previously scheduled for Monday, June 14, 2004, has been postponed. The new hearing notice is attached with the new date.

Please be advised that the responsibility of the appropriate posting of the property is with the Petitioners. The petitioner or his/her agent may not personally post or change a zoning sign. One of the currently approved vendors/posters must be contacted to do so. If the property has been posted with the notice of the original hearing date, as quickly as possible after you have been notified, the new hearing date should be affixed to the sign(s).

Very truly yours,

Timothy Kotroco
Director

TK:klm

C: McKee & Associates, 5 Shawan Road, Ste. 1, Cockeysville 21030



TO:

Director, Office of Planning & Community Conservation

Attention: Jeffrey Long

	County Courts Building, Room 406			
	401 Bosley Avenue Towson, MD 21204			Residential Processing Fee Paid (\$50.00)
FROM:	Arnold Jablon, Director Department of Permits & Development Man	nagement		Accepted by 500-7
RE:	Undersized Lots	- 		Date <u>04-27.04</u>
	to Section 304.2 (Baltimore County Zoning Regue of Planning and Community Conservation prior to	•	•	esting recommendations and comments from
MINIMU	M APPLICANT SUPPLIED INFORMATION:		-	-
	Herman Mueller, Jr. Print Name of Applicant	6212 Fair Oaks Avenus Address	e <u>Balti</u> r	norre, MD 21214 (410) 426-3145 Telephone Number
	Lot Address 2608 Bauernschmidt Drive	-	t_15_Councilmani	c District 5 Square Feet 6,812
Lot Loca	ation: NES W/side/corner of Bauernschmidt	(street) 276	feet from N E	S W corner of Bauernschmidt Drive (street)
Land Ov	vner: Herman Mueller, Jr. and Grace M	1. Mæller	Tax Account	Number 15-13-855423
Address	6212 Fair Oaks Avenue, Baltimo	ne, MD 21214	Telephone N	umber (410) 426-3145
CHECKL	IST OF MATERIALS (to be submitted for design	review by the Office of Plann	ing and Community	Conservation)
TO BE	FILLED IN BY ZONING REVIEW, DEPARTMEN	VT OF PERMITS AND DEVEL	LOPMENT MANAGE	EMENT ONLY!
			PROVI <b>YES</b>	
	ecommendation Form (3 copies)		PROVI	NO
1. I'his R	ecommendation Form (3 copies) t Application	<del></del>		
1. This R 2. Permi 3. Site P	t Application	<del></del> -	YES	
1. This R 2. Permi 3. Site P Přop	t Application ian	· · · · · · · · · · · · · · · · · · ·	YES	
1. This R 2. Permi 3. Site P Prop 4. Buildi 5. Photo	t Application ian erly (3 copies)	· <del>**</del> *********************************	YES	
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Revised 2/05/02

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

O4.487-A

Permit or Case No. 04-487. C

ASE NUMBER 04-487 A DAW

# PETITIONER'S SIGN-IN SHEET

E- MAIL	igrammer @ mckeeinc. com	8										
CITY, STATE, ZIP	Cocressule MD 21030	V. H	Burning no sizing									
4DD		CT. SPECTIFIE, P	ORIZ FIRMS ANSWE									
NAME	AMES D. GRAMMETC	YEAR J. GORT	HEFTAN MUELLER									

CASE NUMBER 04-487-A

# CITIZEN'S SIGN-IN SHEET

E- MAIL					
122 Ho. M. d. 1221 34 ths. M. 21221 34 ths. M. 21221 3450 M. 21221					
ADDRESS 4319 Willsmidto. 2611 13over 15chmidt 1.					
Silvana Wisnicuski Linda CLARRE Lobort Keb STEUE HUMMER					

Zoning Classifica- tion	Minimum Net Lot Area per Dwlling Unit (sq. ft.)	Minimum Lot Width (feet)	Minimum Front Yard Depth (feet)	Minimum Width of Individual Side Yard (feet)	Minimum Sum of Side Yard Widths (feet)	Minimum Rear Yard Depth (feet)
D.R.1	40,000	150	50	20	50	50
D.R.2	20,000	100	40	15	40	40
D.R.3.5	10,000	70	30	10	25	
D.R.5.5	6,000	55	25		2.5	30
D.R.10.5	3,000	20		10		30
<del></del>			10	10		50
D.R.16	2,500	20	10	25		30

- 2. Other standards for development of small lots on tracts as so described shall be as set forth in provisions adopted pursuant to the authority of Section 504.
- D. An amendment to any part of a development plan involving only property subject to the provisions of this subsection shall not be subject to the provisions of Section 1B01.3.A.7.

59milar case

IN RE: PETITION FOR VARIANCE S/S of Clarks Point Road,

500 ft. E of Bowleys Quarters Road

15th Election District

6th Councilmanic District

(3711 Clarks Point Road, Lot 53)

(3713 Clarks Point Road, Lot 52)

(3715 Clarks Point Road)

Patricia A. & Calvin D. Gilbert Petitioners BEFORE THE

\* DEPUTY ZONING COMMISSIONER

\* OF BALTIMORE COUNTY

\* CASE NO. 04-442-A

CASE NO. 04-443-A

\* CASE NO. 04-444-A

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

These matters come before this Deputy Zoning Commissioner as Petitions for Variance filed by the legal owners of the subject properties, Patricia A. and Calvin D. Gilbert. The Petitioners are requesting variance relief as follows:

Case No. 04-442-A: Property located at 3711 Clarks Point Road (Lot 53) in the eastern area of Baltimore County. Variance relief is requested from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a proposed dwelling with side yard setbacks of 8 ft. 8 in. and 2 ft. respectively, in lieu of the minimum required 10 ft. each, and to permit an undersized lot.

Case No. 04-443-A: Property located at 3713 Clarks Point Road (Lot 52) in the eastern area of Baltimore County. Variance relief is requested from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a proposed replacement dwelling (Isabel Damage) with side yard setbacks of 8 ft. and 8 in. and 5 ft. respectively, in lieu of the minimum required 10 ft. each.

Case No. 04-444-A: Property located at 3715 Clarks Point Road in the eastern area of Baltimore County. Variance relief is requested from Section 1B02.3.C.1 of the Baltimore

Q & A

County Zoning Regulations (B.C.Z.R.), to permit a proposed dwelling with side yard setbacks of 8 ft. and 8 in. and 2 ft. respectively, in lieu of the minimum required 10 ft. each and to permit an undersized lot.

These properties were posted with Notice of Hearing on May 3, 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 May 4, 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."

Section 304 of the B.C.Z.R. - Use of Undersized Single Family Lots (Reference Only)

Section 304, Use of Undersized Single-Family Lots [BCZR 1955; Bill No. 47-1992]

304.1[Bill Nos. 64-1999; 28-2001] Except as provided in Section 4A03, 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;

B.All other requirements of the height and area regulations are complied with; 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.

#### 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 was received from the Department of Environmental Protection & Resource Management (DEPRM) dated April 14, 2004 stating that the Petitioners must comply with the Chesapeake Bay Critical Area Regulations, a copy of which is attached hereto and made a part hereof. A ZAC comment was also received from the Office of Planning dated April 14, 2004, 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 Edward Koplin, P.E. who prepared the site plan and Calvin and Patricia Gilbert, the Petitioners. Edward Covahey, Esquire represented the Petitioners. Ann and Victor Bassetti, John Steele, Christina Buedel and

Clyde Hargis appeared at the hearing in opposition to the Petition. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

#### **Testimony and Evidence**

Testimony and evidence indicated that lot 53 (3711 Clarks Point Road) which consists of 13,238 sq. ft. is in the "Bowley's Quarter, Plat 2", subdivision which was recorded in the land records of Baltimore County on April 16, 1921. In addition, Petitioners own Lot 52 (3713 Clarks Point Road) which consists of 12,029 sq. ft. and Lot 51 (3715 Clarks Point Road) which consists of 13,176 sq. ft. These properties are all companion cases. See Petitioners' Exhibit No. 2 for the Bowleys Quarter subdivision and Petitioners' Exhibit Nos. 1A, 1B and 1C for the plan to accompany for each case. These three lots are adjacent to one another, are generally vacant, and are zoned DR 5.5. The cases were heard contemporaneously with one another and by agreement, all evidence and testimony in these case is applicable to all three.

Mr. Gilbert testified that he owns all three lots and that he and his wife have struggled to improve a "handyman's special" home located on lot 52, the center lot, they purchased 14 years ago. In addition to the home on lot 52, the properties are improved by a garage/carport, which is located near the Clark's Point Road and straddles lots 53 and 52. Mr. Gilbert testified that in September 2003, the area was struck by the storm surge of Hurricane Isabel and both their home and garage suffered extensive damage. The home, which was closer to the water's edge of Seneca Creek, was damaged so greatly that it was not feasible to rebuild. Consequently, the Petitioners razed the home. Mr. Gilbert testified that the proceeds from his insurance were only enough to pay off the first mortgage on the home. He said he needed the variances requested so that he could sell the adjacent lots and thus afford to rebuild his home because his flood insurance was inadequate.

However, on cross-examination by the protestants, he admitted that he had entered into but had not settled on a contract for sale for all three lots with the engineer working on this case, Edward Koplin. He stated that the contract was for \$375,000 and was not contingent on the success of these zoning cases. He finally admitted that he would not be living in the middle home after the contract for sale was settled.

Mr. Covahey proffered that each lot was 50 ft. wide and that the 10 ft. setbacks required by the DR 5.5 zoning resulted in a home on each lot that was only 30 ft. wide. He proffered that a 30 ft. home on waterfront property in this section of Baltimore County was unrealistic. He further explained that the home on lot 52 could be rebuilt on the still existing foundation and that such a home would be approximately 36 ft. wide and non-conforming because it was 8 ft. 8 in. from one lot line and 5 ft. from the other lot line. Thus, the previously existing home could not meet the DR 5.5 zoning setback requirements and that requiring the owner to reduce the home to do so would be a hardship and present a practical difficulty. See Petitioners' Exhibit No. 1B and note that the garage is separated from the rebuilt home so that although it is 5 ft. from the lot line, the garage does not need a variance as a accessory building.

Mr. Gilbert presented photographs of homes in the area which were developed on 50 ft. lots. See Petitioners' Exhibit No. 9. He also described the area next to his lot 53 as a low lying wetlands area into which storm water drained from his lot.

Mr. Koplin, a registered professional engineer, who prepared the plan to accompany testified that the previously existing home on lot 52 was built in the 1950's and could not have met the DR 5.5 zoning side yard setback requirements of 10 ft. as it existed. He described the proposed home on lot 51 (see Petitioners' Exhibit No. 1C), which is a 36 ft. wide home which was laid out with the same side yard setbacks of 8 ft. 8 in. and 5 ft., as the previously existing

home on lot 52. The proposed home on lot 53 is identical to the proposed home on lot 51. See Petitioners' Exhibit No. 1A. Note that in both of these two designs the garage is attached to the home with the additional variance requested that the side yard setback be 2 ft. instead of 10 ft. He indicated that this was a reasonable design for a modern home on the waterfront but admitted on cross-examination that if he separated the garage from the home, he would not need this variance by simply reducing the width of the garage 1 ft. He pointed out that detached accessory buildings are required only to be 2.5 ft. from the property line. Finally, he noted that the three proposed homes would be set back from the water in line with one another so that the home on lot 49, the Buedel property would not lose its view of the water.

He also testified that the three lots were unique because they were lower in elevation than the lots to the west, Buedel etc., as these lots had been raised in height over the years by filling. Because they are the lower lots in the area, they received the storm water from the higher lots and in turn discharged storm water onto the lots to the east, the wetlands. He testified that modern homes require more width than 30 ft. and that all three homes would have to be raised approximately 6 ft. above present elevation to meet the County flood requirements for homes in the flood plain. This also presented a hardship and practical difficulty in the extra expense incurred which had to be reflected in a larger (wider) home than is allowed under the DR 5.5 regulations. He presented detailed elevations for each home, which he indicated met all County regulations except the setbacks noted. See Petitioners' Exhibit Nos. 12A, 12B and 12C.

On cross-examination, he admitted that he was the contract purchaser of the three lots, and that he intended to sell all the homes to the public. He denied allegations by the protestants that lot 53 had substantial areas of wetlands and emphasized that the lots and proposed homes had been reviewed and approved by DEPRM including the impervious surface area. He also denied

that a 30 ft. wide home was practical even if it could be constructed with more length to give a home of equivalent size to those proposed.

The protestants opposed the variances requested primarily on the grounds that although the subdivision was laid out in 50 ft. lots, the neighborhood was developed with homes on several lots. They testified that developing this small group of homes on 50 ft. lots would change the character of the neighborhood. See the aerial map, Petitioners' Exhibit No. 11. The protestants point out that lot 54 is vacant. The subject lots have a garage that spans lots 53 and 51 while the previously existing home on lot 52 is centered on the three lots. They testified that the Petitioners used all three lots and that their pier serviced all three lots. Lots 50, 49 and 48 are owned by the Buedels (one of the protestants) who have a rental home on lot 50 and a garage on lot 49 which serves the main home that straddles lots 49 and 48. While lot 47 is developed with a home on a 50 ft. lot, lots 46, 45 and 44 are developed as one home on lot 45 with accessory structures to serve the main house on lots 46 and 44. In addition, the protestants objected to lining up all three of the proposed homes as presented. Again, they say that this would change the neighborhood in which the homes are staggered with respect to the distance each was built from the water.

The protestants complained that the three homes would overtax the public sewer line, would increase storm water runoff from the properties onto the wetlands to the west which would adversely affect wildlife in the wetlands, and that fire equipment could not get through homes to the water if placed so close together. They presented a letter dated September 18, 2000 from Keith Kelley of DEPRM and they argued that wetlands were present on lot 53 and that the required 35 ft. setback from wetlands had not been followed by the Petitioners in proposing a home on this lot. They emphasized that all the lots in this area of Bowley's Quarter were 50 ft.

across and, therefore, not unique. They noted that all homes in the area had to be built up to pass flood surges and such economic difficulties did not constitute a hardship for variance cases.

#### Findings of Fact and Conclusions of Law

As this case will likely be appealed, I will make a detailed findings of fact and law to aid the appellate process. I will deny the variances requested for the following reasons:

#### Garage variance - 2 ft. in lieu of 10 ft.

As Mr Koplin indicated that he could avoid this variance by simply detaching the garage and reducing the size of the garage by 1 ft. Where there is a reasonable way to meet the zoning regulations there can not be a hardship by definition.

#### House variances - 8.6 ft and 5 ft in lieu of 10 ft.

It is true that this office has routinely approved and denied side yard setback variances similar to these requests for these waterfront properties in the eastern area of Baltimore County. We have held in approving these variances that when new zoning regulations are applied to recorded subdivisions and homes built according to old regulations, that in itself indicates "special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request" i.e. the property is unique. The reasoning for this is that the new regulations on old subdivisions impacts the old subdivisions differently than other subdivisions which have been or could have been designed to the new standard. Typically an existing house in the old subdivision does not meet the new setback requirements and it is unreasonable to ask the owner to remove walls or reduce the size of the house to meet current standards. This office believes this finding is in accord with *Cromwell v Ward*, 102 MD 691, 651 A.2d 424. In that case the *Cromwell* Court cited with approval the definition of "unique" in the case of *North v. St. Mary's County*, 99 Md. App. at 512. The Cromwell Court said,

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

While many of the reasons given by the court have to do with physical attributes of the land such as the existence of stream, wetlands, etc. the court recognized that the historical significance of existing structures and property triggers the disparate impact of the new regulation on those structures and property and signifies that the properties are unique. Historical significance can be shown by demonstrating that the property has been listed on a government historic preservation list or is located in a county imposed historic district. By analogy, we have found the imposition of new zoning regulations on old subdivisions likewise indicates that the properties in the old subdivision are unique even if there are no unusual physical aspects of the properties.

That said, I note the Petitioners' argument that the lower elevation of the three lots constitutes a unique feature of the lots compared to surrounding lots. I find, as a matter of fact, that the three lots are lower in elevation than the surrounding lots. One test for uniqueness has to do with the disparate impact of the zoning regulations because of a physical feature. Lower elevation would clearly relate to the need to build the new homes above the flood plain, which would not be as severe on other lots that were higher. However, the problem presented by the Petitioner is side yard set backs. An irregularly shaped lot for example could trigger a disparate impact of side yard set back, but I am not sure how a lower elevation would affect side yard set backs. Nevertheless, I find the lots are unique.

Ordinarily, I would have no difficulty finding hardship and practical difficulty for requests for side yard set backs for a lot with an existing home, or one razed by a natural disaster such as Hurricane Isabel inflicted on this whole area of shore properties. However, there can be no hardship when the same owner owns adjacent properties and the need for variance avoided by simple lot line adjustments. In this case, the Petitioners own 150 ft. of lot width and can avoid the side yard set back variances by making lot line adjustment. The obvious result may be that they would reduce the three lots to two lots (two 75 ft. widths) on which they can build homes up to 50 ft. in width without a variance. Also see Section 304.1.C above for similar reasoning for undersized lots.

I find that the lots and shoreline shown on Petitioners' Exhibit No. 11 define the area, which constitutes the neighborhood in this case. I further find that while there is evidence of single 50 ft. lots being developed in this "neighborhood", homes on single 50 ft. lots are not the predominate development pattern. Rather, I find that the neighborhood has generally been developed with homes on multiple lots that have accessory structures to serve those homes. The Petitioners' lots are a good example. The garage/carport spanned two lot lines while the home was located on the center of the three lots. The pier clearly served the home and all three lots. I find that to allow development on 50 ft. lots in this neighborhood would fundamentally change the nature of the area and would violate the spirit and intent of the regulations and adversely affect the general welfare of the neighborhood.

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 requests should be denied.

THEREFORE, IT IS ORDERED, this 25th day of May, 2004, by this Deputy Zoning Commissioner, that the Petitioners' requests for variance relief as follows:

Case No. 04-442-A: Property located at 3711 Clarks Point Road (Lot 53) in the eastern area of Baltimore County. Variance relief is requested from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a proposed dwelling with side yard setbacks of 8 ft. 8 in. and 2 ft. respectively, in lieu of the minimum required 10 ft. each, and to permit an undersized lot.

Case No. 04-443-A: Property located at 3713 Clarks Point Road (Lot 52) in the eastern area of Baltimore County. Variance relief is requested from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a proposed replacement dwelling (Isabel Damage) with side yard setbacks of 8 ft. and 8 in. and 5 ft. respectively, in lieu of the minimum required 10 ft. each.

Case No. 04-444-A: Property located at 3715 Clarks Point Road in the eastern area of Baltimore County. Variance relief is requested from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a proposed dwelling with side yard setbacks of 8 ft. and 8 in. and 2 ft. respectively, in lieu of the minimum required 10 ft. each and to permit an undersized lot.

be and they are hereby DENIED.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

\_\_\_SIGNED\_\_\_
JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:raj

#### NOTICE OF OPPOSITION TO ZONING REQUEST

An application has been filed by Herman Mueller for a variance for the purpose permit building on 2608 Bauernschmidt Drive in the Baltimore County, MD. The property in question is presently zoned for D3.5, and the adjacent property is D3.5. As property owners in the area, the undersigned do hereby request that the pending application mentioned herein be denied by the John V. Murphy Deputy Zoning Commissioner for Baltimore County on the following grounds:

- 1. Section 304 of the BCZR- Use of Undersized Single Family Lots (BCZR 1955; Bill No.47-1992 304.1 (Bill Nos.64-1999; 28-2001) Except as provided in Section 4A03, 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;
  - B. All other requirements of the height and area regulations are complied with; 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.
- The intent of this particular clause (specifically line C), we believe, was to address the variance requests of properties like 2608 Bauernschmidt Drive:
  - to prevent builders and owners, who want to maximize their investments, from squeezing a home on both smaller than allowed adjacent lots in older communities,
  - b. especially in the popular Chesapeake Bay waterfront communities which results in tightly packed, ill-fitting homes blocking water views,
  - approval of variances in these cases would defeat the very purpose of the trying to manage growth in such sensitive areas.
- 2. The petitioner does not meet the provision of line C as stated above. The petitioner owns the adjacent property and could replace the existing structure with the new proposed structure without any harm or variance.

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- 3. Reference Case Nos. 04-442-A, o4-443-A, 04-444-A, Date 5-25-04; a very similar case where the findings resulted in variance denied. (See copy enclosed)
- 4. The property has forever been regarded by the neighborhood and the County as an extension (or a consolidation) of the improved property of 2606. It is not uncommon in the community for homes to be built on multiple lots. The County Department of Assessments assessed the property at \$ 5,720, which would be absurdly low for a waterfront building lot. The reason given for such a low assessment is that the County considers the property, as one representative referred to it as, a mowing property or additional unbuildable land.
- 5. The owner likewise forever enjoyed this low assessment and by making the low tax payments year after year the owner, we contend, consents to and agrees with the Department of Assessment that the property is unbuildable and basically an extension of the 2606 property. Therefore, we contend the owner would have no grounds to claim undue harm and hardship if the property is decided today to remain as such.
- 6. Properties with identical circumstances to that of the petitioned property are shown on the site plan identified as 68, 69 and 70. These properties are also considered extension of properties 58, 59 and 71 respectively. The owners of these properties have forever understood these lots are unbuildable and the Department of Assessment agrees and assess these properties accordingly.
- 7. The County with the neighborhood's diligent assistance has successfully protected the 100 feet buffer along Greyhound Creek's shoreline. Granting this variance request, we contend, would give special preference to the petitioner and would be the first new building permitted within the 100 feet buffer of the creek since the Critical Areas Legislation was enacted. This will set a detrimental precedent for the rest of the creek properties and set in motion variance petitions that will surely be forthcoming, siting any granting of a variance to this property. The granting of this variance for this property will therefore increase the residential density beyond what was intended in current zoning regulations especially in respect to waterfront properties, and threaten the health, environment and general welfare of the community.

No. 04-487-A be DENIED on the above grounds: Name: Silvana + Ronald Wisniewski Address: 2405 Bauernsch midt Dr. Signature: Salum Wesniech

Comment: Man Wesniech Name: Garon & Shellie Kluffz Address: 2618 Bauern Schmidt Pr. Signature: Sklutts. A. Comment: No place for drive way: lot is much to small community is already to crowded; will set presidence for other small lots in reighborhood that are to small for homes idamage to precious wetlands Paris + Karen Leventis Address: 2702 Bauprus, chmidt, Da Signature: Kuin funto - Karen Kurentis in sensitive areas like chesapeala bay. It will be an ill fifting home blocking Name: Robert + Laura Koely Address: 26/1 Banenschmantto. Signature: Land Control Control Comment: We do nother ed every more housing on the It will not represent the measiborhood, thorwill bermote no parking Critaral long or on Name: Robert & Marge Krak Address: 2206 Remarke M. Signature: The Actual Actual Comment: Secretary area, water ran off Mo parking dry state 100/4 from the water

The undersigned property owners request pending application of the above mentioned Case

The undersigned property owners request pending application of the above mentioned Case No. 04-487-A be DENIED on the above grounds: Name: MARILYN S. BEDERKA Address: 2412 Baucruschmidt Drive Signature: Marilyn D. Bederban Comment: Name: STEVEN HUMMEL Address: 8609 BAUERNSCHMIDT Signature: Steven M. Hum Comment: Name: RONALD R. SOMMER Address: 2576 BACKENSCHMIDT DRIVE Comment: I BELIEVE A PROPERTY OWNER HAS RICHTI but IN 71ths CASE A BAD PROPOSAL. Name: Address: Signature: Comment: Name: Address: Signature: Comment:

The undersigned property owners request pending application of the above mentioned Cas	i <del>e</del>
No. 04-487-A be DENIED on the above grounds:	
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Name: MARY Vojik Address: 509 HillsIDE DR.	
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## **OPPOSITION TO VARIANCE REQUEST CASE 04-487-A**

An application has been filed by Herman Mueller for a variance for the purpose permit building on 2608 Bauernschmidt Drive in the Baltimore County, MD. The property in question is presently zoned for D3.5, and the adjacent property is D3.5. As property owners in the area, the undersigned do hereby request that the pending application mentioned herein be denied by the John V. Murphy Deputy Zoning Commissioner for Baltimore County on the following grounds:

- We agree with the objections presented in the document titled Notice of Opposition to Zoning Request.
- 2. Our house, which is directly across the street from the Muellers, is a water-view property. Property 56 and 57 as indicated on the site plan. Granting this variance would FOREEVER BLOCK OUR VIEW of the water. Please see photographs that were taken from our front porch. Also please take notice of the pictures that show the property completely flooded indicating that it is totally within the flood plain.
- 3. For over 20 years that we lived here, the Muellers used their two properties as "one" property not unlike how we use our double lot and our neighbors use their double lots.
- 4. The Muellers used this adjacent lot for added storage (with the shed on the property); they used it for launching (using the boat ramp) and storing their boat; they used it for a vegetable garden; they used it for family outings and other general normal back yard functions. Basically they used their adjacent lot just as we and their immediate neighbors use their adjacent lots.
- 5. We therefore contend that the property is not unlike any neighboring properties and no special conditions exist to change that status and the petitioner will not experience any hardship, if the variance is denied. The petitioner can rebuild his flood-damaged house on the adjacent property replacing it with the proposed house.
- We also contend granting this variance will confer special privilege to the petitioner at the expense of our waterview.
- Additionally, the section of property marked with X's on the site plan was formerly a
  community right-of-way that was apparently deeded over to the Muellers at some time.

Although this property is deeded to them, we contend it was the intention of the developer and we agree that this property should not become a part of the calculations for required set backs and this water-view should not be blocked or the property be built upon.

- 8. Granting this variance would adversely affect us and negatively impact the neighboring property owners and be in disharmony of the purpose and intent of the Zoning regulations especially considering line C of Section 304 of the BCZR- Use of Undersized Single Family Lots (BCZR 1955; Bill No.47-1992 304.1 (Bill Nos.64-1999; 28-2001) Except as provided in Section 4A03, 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;
  - B. All other requirements of the height and area regulations are complied with; 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.

Residents Name:

Ronald and Silvana Wisniewski

Street Address:

2605 Bauernschmidt Drive

Signatures:

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Ronald & Silvana Wisniewski
2605 Bauernschmidt Drive
Baitimore Maryland 21221

Baltimore County Deputy Zoning Commissioner

John V. Murphy

Office of Planing

Suite 405, County Courts Bldg.

401 Bosley Avenue

Towson, Maryland 21204

RECEIVED

JUL 2 0 2004

ZONING COMMISSIONER

July 19, 2004

Re: Motion to Reconsider Decision - Case NO. 04-487-A

#### Applicable Law

Section 304 of the B.C.Z.R. - Use of Undersized Single Family Lots (Reference Only)

Section 304, Use of Undersized Single-Family Lots [BCZR 1955; Bill No.47-1992]

Section 304.1 [Bill Nos. 64-1999; 28-2001] Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than 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;

- B. All other requirements of height and area are complied with; and
- C. The owner of the lot <u>does not</u> own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

In Cromwell v. Ward, 102 Md. App. 691, 703 (1995), "the general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances."

Appeals In Carne v. City of Baltimore, 201 Md. 130, 136 (1952) the Court of Appeals stating: The need sufficient to justify an exception must be substantial and urgent and not merely for the convenience of the applicant, inasmuch as the aim of the ordinance is to prevent exceptions as far as possible, and a liberal construction allowing exceptions for reasons that are not substantial and urgent would have the tendency to cause discrimination and eventually destroy the usefulness of the ordinance

The 1999 Court of Appeals decision in a Baltimore County case, in which the court ruled that "lots with overlapping structures should be considered a single merged lot".

### Argument (in part) for Reconsideration

- 1. The intent of the laws, referenced above, were to prevent tearing down old homes that straddle small undersized lots permitted before 1955 zoning and getting variances to squeeze dwellings on both undersize lots. If the petitioner's lots were both vacant (as would be the case if the existing 2606 house was torn down), then a proposed dwelling would require getting relief from required restrictions from the adjacent lot. The two lots are considered one merged lot allowing only one dwelling to be erected.
- 2. The accessory shed (shown in the submitted photos) and the right of way to the boat ramp (shown on the site plan) both overlap the 2606 property (lot 66) and the petitioned adjacent lot 67. Therefor lots 67 and 66 should be considered a single merged lot allowing for only one dwelling.
- 3. The petitioner's adjacent undersized lots (67 and 66) should not be treated any differently, as when the same lots are both vacant; and subsequently both lots are considered a single merged lot, allowing for only one dwelling on the combined lots. Reference Case Nos. 04-442-A, 04-443-A, 04-444-A, Date 5-25-04; a very similar case where the findings resulted in the variance denied. Although three lots were involved in this case, the two vacant undersized lots are considered one lot.
- 4. The request for variance to build on the petitioned undersized lot is substantially a request for change in use of the property from an unbuildable extension of lot 66 to a buildable lot. The use of the petitioned lot has long been established as an unbuildable lot and considered an extension of lot 66, as are vacant lots 69 and 68 are considered unbuildable extension lots of 59 and 58 respectively. The variance will change the established use of this lot as well as the neighboring vacant lots and be detrimental to the enjoyment and use of neighboring lots.

- 5. 2608 Bauernschmidt Drive is not a recognized address by the Assessment Department. It is recognized as a unbuildable lot extension of the address 2606 Bauernschmidt Drive and the assessed value is \$5,720. The petitioner benefited greatly for years from this unbuildable status and low assessment of the lot and the adjacent right of way with extremely low yearly property tax. The claim of hardship in this respect is therefore disingenuous.
- 6. The petitioner made use of the two lots as one single merged lot ever since his ownership in the 50's. The petitioner used the lots concurrently for such things as family outings, launching and storing his boat, accessory storage, vegetable gardening, etc.
- 7. Neighboring lots, particularly lots 69 and 68, although separated from their main dwelling lots 59 and 58 by a roadway, have a status of unbuildable lot extensions and an established use the same as the petitioned lot and therefore no hardship because of peculiarity can be claimed.
- 8. The variance is largely a convenience to the petitioner and any hardship claimed by the petitioner is self-imposed. The hardship generates from the petitioner's attempt to change the established use and assessment status of the petitioned property and the adjacent right of way. A reasonable remedy to the claimed hardship is to replace his stormed damaged dwelling on the 2606 property with the proposed dwelling, get relief from required restrictions from the petitioned lot, and continue to enjoy the established uses of the petitioned lot and adjacent right of way.
- 9. The variance defeats the very purpose of managing growth on the extremely vulnerable 100 Feet Buffer of the Critical Areas of the Chesapeake Bay, especially since the entire property is within this buffer. Houses will be squeeze onto undersize lots by a developer who is only concerned about maximizing his investment and leaving the community with tightly packed dwellings ill fitting homes and blocked water views.

- 10. The variance, as determined in the findings subsequently allows for four tightly packed dwellings to be erected on the vacant adjacent <u>undersized</u> lots along the Greyhound Creek all within the 100 Feet buffer. This would be unprecedented in this neighborhood since the enacting of the Critical Area Legislation.
- 11. The variance discriminates and cheats owners of neighboring properties of their water views. The neighboring property owners reasonably assumed the right of way adjacent to the petitioned property, regardless of ownership, would remain a right of way, free of any building and free from any obstruction of view of the water. Additionally, neighboring lot owners reasonably assumed that the right of way regardless of ownership would not be used to gain relief from required restrictions for adjacent properties. The use of the right of way for this purpose should not be allowed and all building forbidden.
- 12. In the findings Mr. Koch owns vacant lot 69 but has his home on lot 59 across the road.

  Consequently, his direct view of the water would not be impaired by the new home.

  Similarly, Mr. Hummel owns vacant lot 68 but has his home on lot 58 across the road.

  This determination is used to justify no reason to deny the petitioned variance.

  Conversely, in the findings it is determined the owners of the 2605 Bauernschmidt Drive will be adversely affected with blocked water-views. Logically this determination should be a reason to deny the variance.
- 13. It was and is reasonable to assume, by neighboring property owners, that:
  - a. the petitioned lot lies totally within the 100 Feet Buffer Zone of the Critical Areas and therefore unbuildable,
  - b. the petitioned lot is undersized and considered unbuildable,
  - c. the petitioned lot was used and has long been established as an extension of the 2606 property as are neighboring properties and therefore unbuildable,
  - d. the right of way is unbuildable and can not be used to gain relief from required restrictions of adjacent property,

e. the assessment of both the petitioned lot and right of way by the Assessment Department is unbuildable,

and that subsequently, it was and is reasonable to assume that existing water-views will remain water-views.

14. Additionally, the variance is detrimental to the use and enjoyment of the neighboring properties and subsequently results in financial loss from their loss of property value. The variance gives special treatment and discriminatingly awards monetary benefit to the petitioner at the expense of monetary loss of property value suffered by neighboring property owners.

Sincerely,	
Donald & Silvana Wisniewski	i Loran Drum

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Date Received:

Engineering • Surveying • Environmental Planning
Real Estate Development



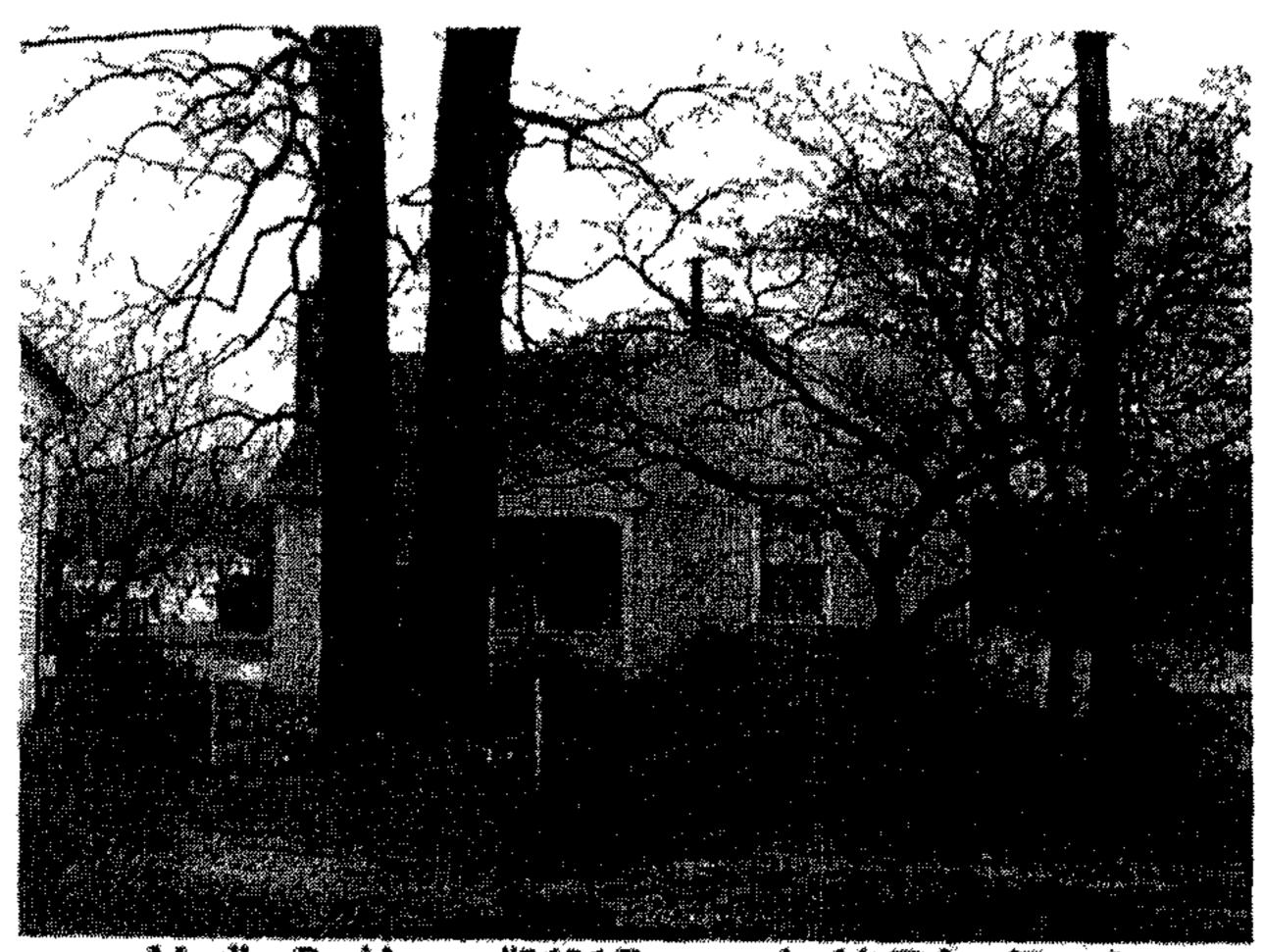
Front of #2608 Bauernschmidt Drive



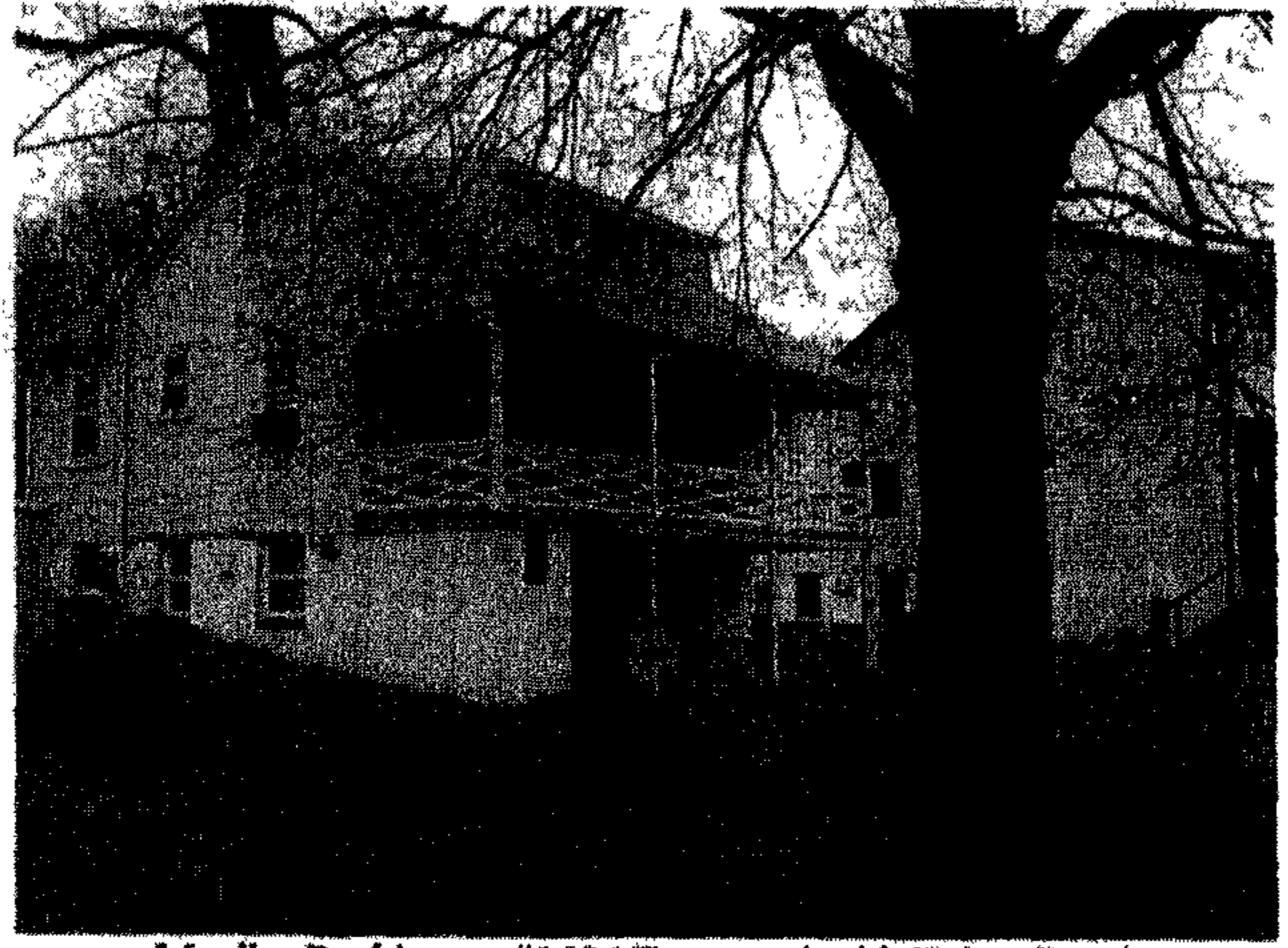
Rear of #2608 Bauernschmidt Drive

Zoning Case No. <u>C4-487.</u> 4 #2608 Bauernschmidt Drive 15th Election District

Engineering \* Surveying \* Environmental Planning Real Estate Development



Mueller Residence: #2606 Bauernschmidt Drive (Front)



Mueller Residence: #2606 Bauernschmidt Drive (Rear)

Zoning Case No. <u>O4.457.Q</u> #2608 Bauernschmidt Drive 15<sup>th</sup> Election District

Engineering \* Surveying \* Environmental Planning Real Estate Development



Hummel Property (Front)

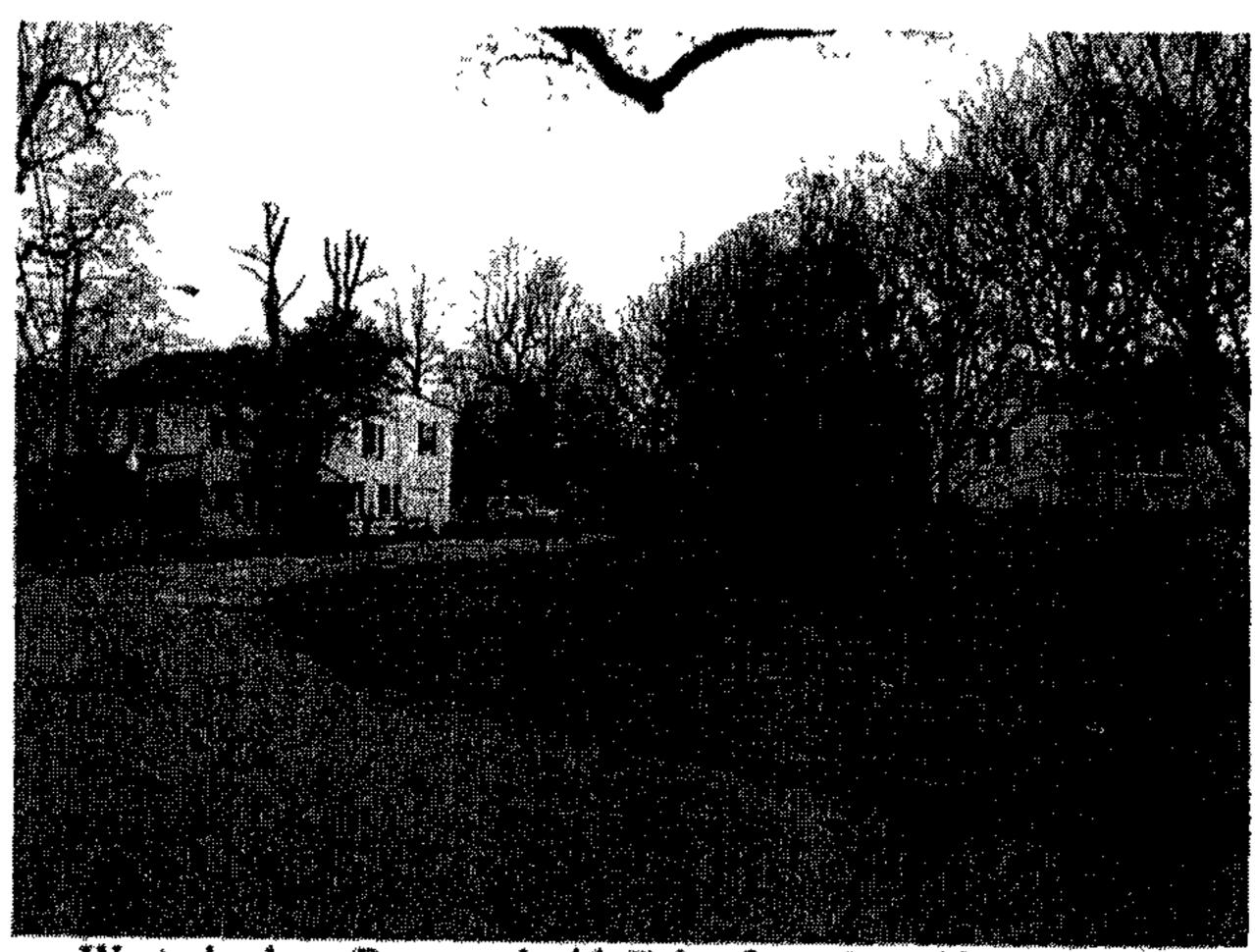


Hummel Property (Rear)

Zoning Case No. O4. 487. (1)
#2608 Bauernschmidt Drive
15th Election District

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Engineering • Surveying • Environmental Planning
Real Estate Development



Westerly along Bauernschmidt Drive from the subject property

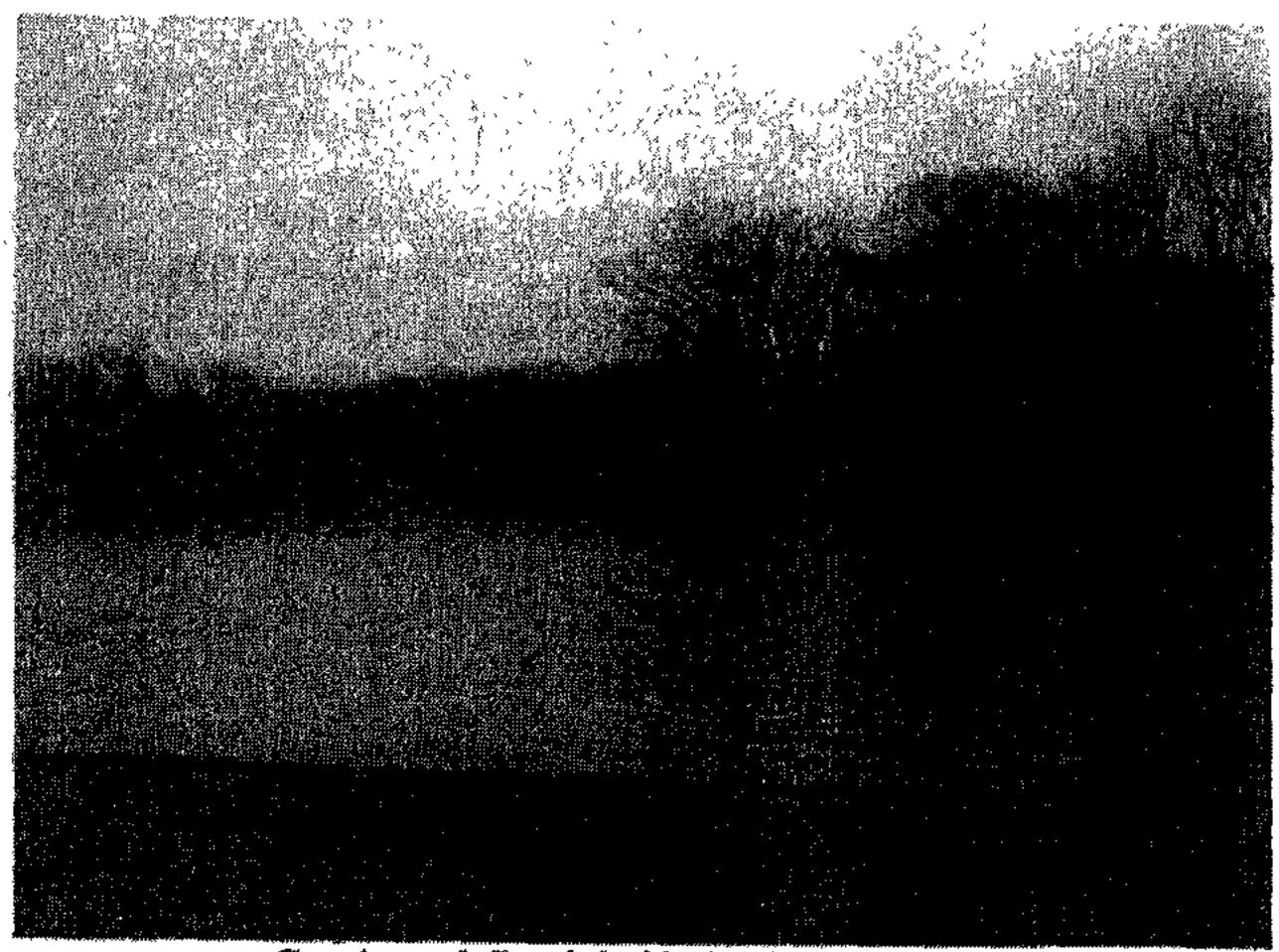


Easterly along Bauernschmidt Drive from subject property

Zoning Case No. 04. 487. (1) #2608 Bauernschmidt Drive 15th Election District

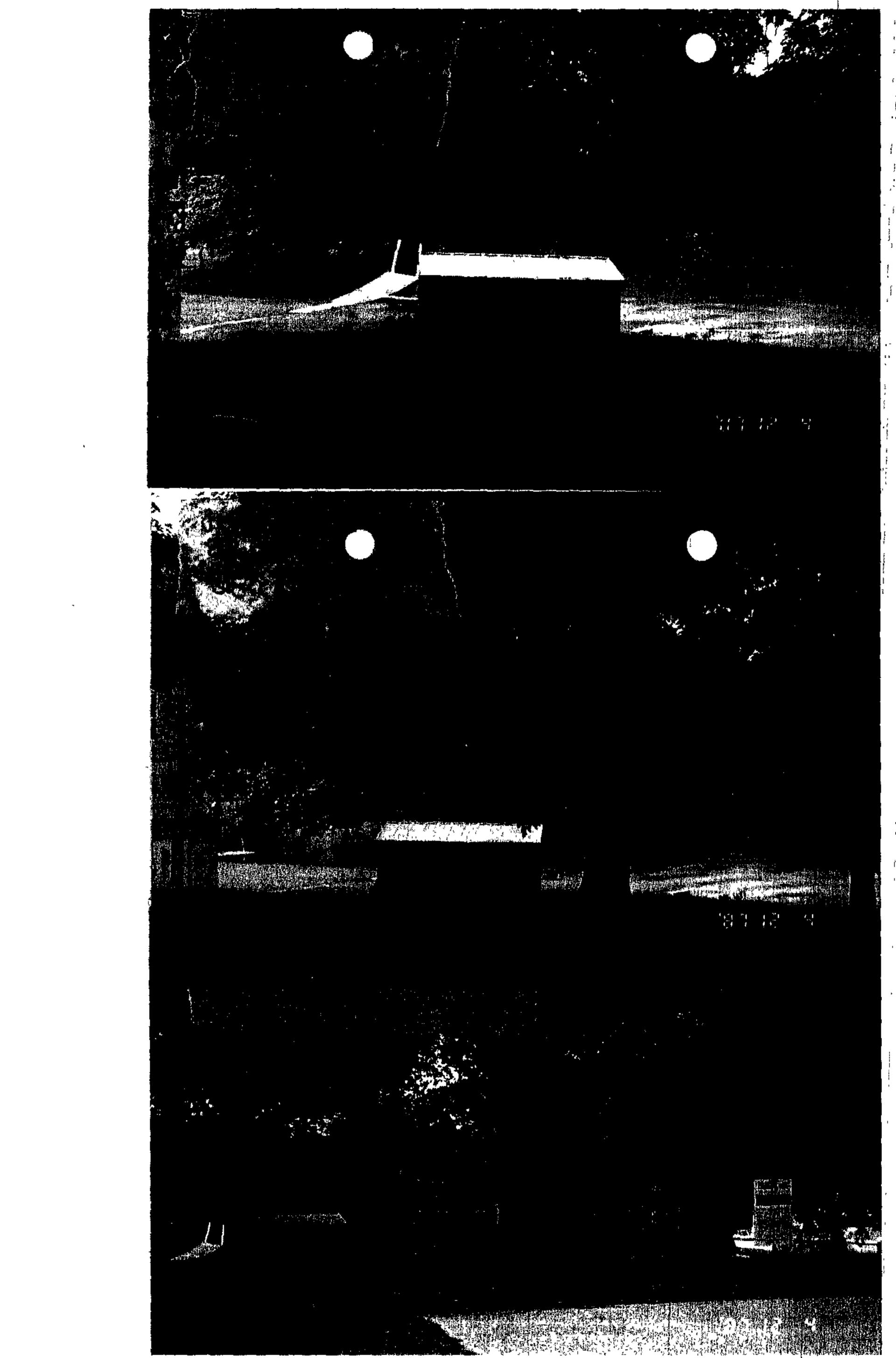


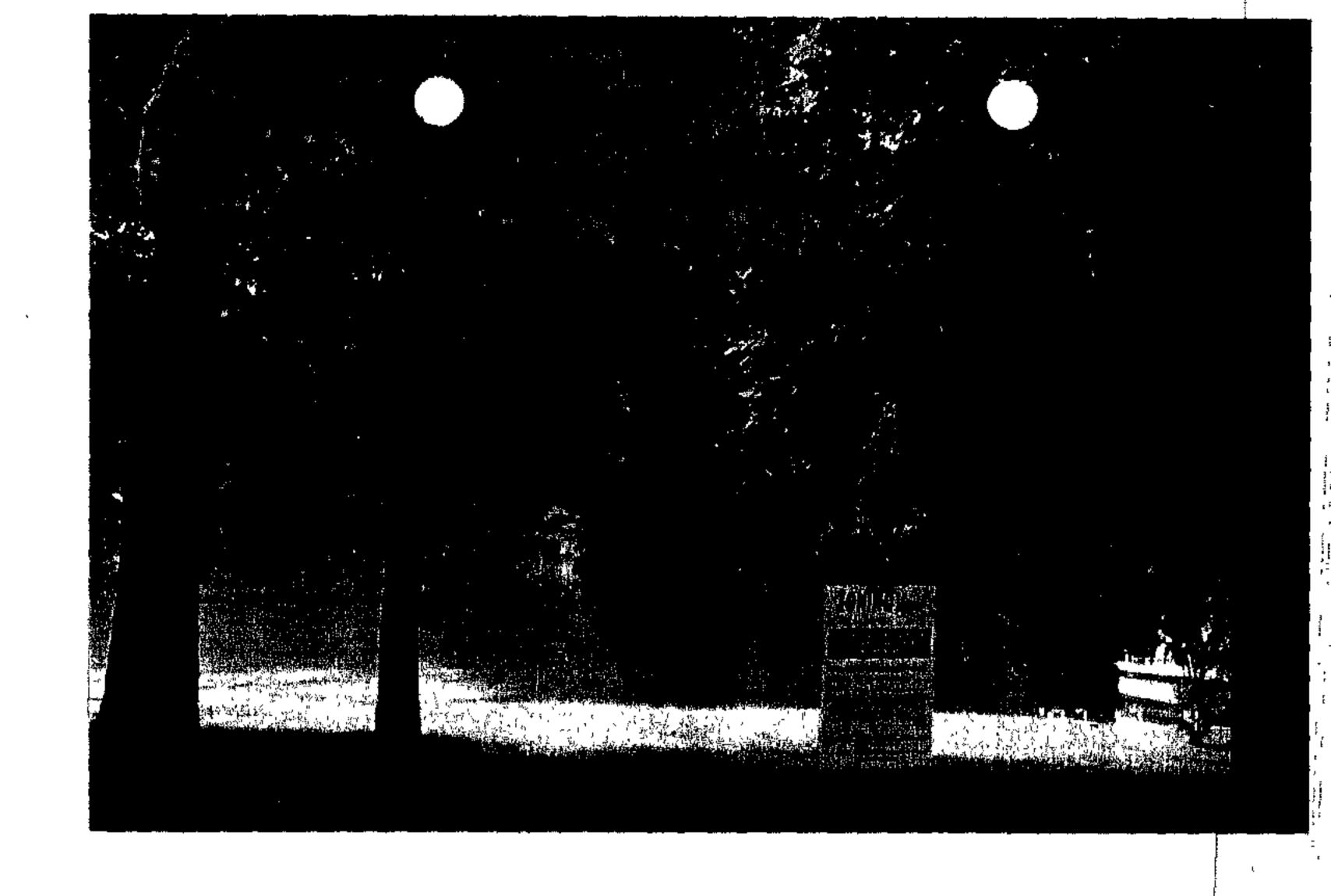
Property across Bauernschmidt Drive from subject property



Greyhound Creek behind subject property

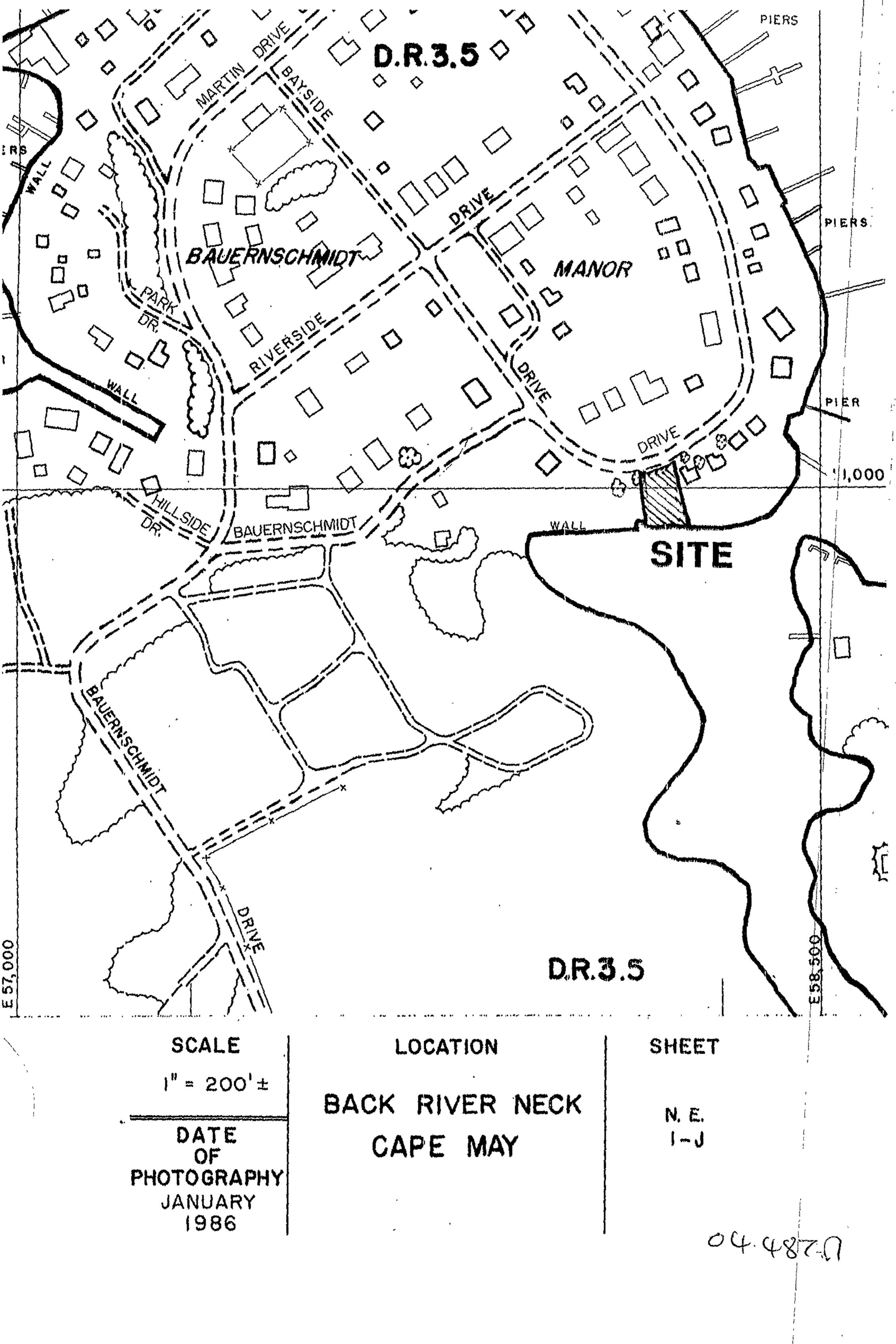
Zoning Case No. 04. 487. (1)
#2608 Bauernschmidt Drive
15th Election District












# MCKEE & ASSOCIATES, INC.

CIVIL ENGINEERS - LAND SURVEYORS SHAWAN PLACE 5 SHAWAN ROAD COCKEYSVILLE, MD 21030 PHONE - (410) 527-1555

## 2608 BAUERNSCHMIDT DRIVE

DATE: 04/26/2004



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