IN THE MATTER OF THE APPLICATION OF JANICE OBERST – LEGAL OWNER; DR. HARLAN AND AMANDA ZINN – C.P. / PETITIONERS FOR VARIANCE ON PROPERTY LOCATED ON THE E/S OF COLD SPRING RD, 640' +/- S OF CHESAPEAKE AVENUE (809 COLD SPRING ROAD) 15TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 04-522-A

* * * * * * * * *

OPINION

This matter comes as an appeal of a Deputy Zoning Commissioner Order in which the requested variance relief was denied. The variance request is for property at 809 Cold Spring Road. Petitioners requested relief from § 1B02.3.C.1 of the *Baltimore County Zoning Regulations* (BCZR) to allow a lot containing 5,092 square feet, a front yard of 23 feet and a rear yard of 2 feet, in lieu of the required 10,000 square feet, 30 feet, and 30 feet respectively. Petitioners also request approval of the lot as an undersized lot per § 304 of the BCZR.

A public, *de novo* hearing was held before the Board of Appeals on February 24 and May 25, 2005. Petitioners Janice Oberst, legal owner, and Dr. Harlan Zinn, contract purchaser, were represented by John B. Gontrum, Esquire. Carole S. Demilio, Deputy People's Counsel, appeared on behalf of the Office of People's Counsel. The Board publicly deliberated this case on July 28, 2005.

Background

The subject property, Lot 304, was first platted in 1914 as part of Plan "C" of the Long Beach Estates subdivision (see Petitioner's Exhibit 1). It is an undeveloped parcel of land fronting Galloway Creek, off Cold Spring Road. According to the Maryland Department of Assessments and Taxations Real Property Data Search, the property consists of 5,396 square feet (Petitioner's Exhibit 5A). Lot 304 was bought by the family of Ms. Janice Oberst around 1954, following their purchase of 810 Cold Spring Road, which was their residence. In 1992, the

family purchased an adjoining 900 square foot parcel from Bowley's Quarters Improvement Association, giving Lot 304 a total of 6,296 sq. ft. A survey by J.S. Dallas, Inc., however, describes the combined square footage as 5,092 (People's Counsel Exhibit 11). According to Ms. Oberst's testimony, during the 50 years her family has owned Lot 304, they kept a small sailboat, and her father operated a charter business. They maintained a storage shed on the lot. The property was also connected to public water and sewer, on which the family paid property taxes. (See Petitioner's Exhibit 8, a copy of the tax bill for Lot 304.) The lot had been improved with a pier and bulkhead, but since Hurricane Isabel, only the bulkhead remained. In 2003, it was transferred from Ms. Ann Schuman (Petitioner's mother) to Ms. Oberst (Petitioner's Exhibit 5C), and in 2004, Ms. Schuman sold the house at 810 Cold Spring Road to Mr. Robert Kroll.

Ms. Oberst testified that her mother, Ann Schuman, had granted permission to County garbage trucks to use the property as a turnaround, since Cold Spring Road ended in a cul de sac. This permission was formalized in 1998, when Ms. Schuman (then Ann Kratzer) signed a statement allowing the Baltimore County Department of Public Works, Bureau of Solid Waste Management to pave the turnaround (Petitioner Exhibit 7).

The property has been re-zoned several times since it was platted in 1914. In 1971, it was zoned Rural Deferred Planning, which required a minimum 1-acre lot for development. In 1976, the area was rezoned D.R. 5.5, which required a minimum 6,000 square feet for development. In 1992, the area was rezoned D.R. 3.5, which required a minimum 10,000 square feet, and which remains the zoning today.

Issues Presented

1. Can the Board consider the revised variance request and how should be setbacks be

measured?

2. Does the property satisfy the requirements of BCZR § 307 and the standards of *Cromwell v. Ward*?

3. Does the proposed house, and the change in the placement of the turnaround, present a public safety issue?

Testimony and Evidence

1. Can the Board consider the revised variance request and how should the setbacks be measured?

Ms. Oberst first sought a Petition for Variance for this property in 2003 in Case 03-500-A. The Zoning Commissioner denied relief because he determined that the property was too small upon which to build.

In 2004, with a new contract purchaser and revised proposal for the property, Ms. Oberst again requested a variance. The Petition was denied by the Deputy Zoning Commissioner, and subsequently, an appeal was made to this Board. Prior to the hearing before the Board, the Petition was amended. Petitioner's Exhibit 4 presents the revised Site Plan, which shows the footprint of a house measuring 16 feet long by 46 feet wide. In addition, the property lines are redrawn to include a portion of the 40-foot right-of-way known as Cold Spring Road. The inclusion of the right-of-way would bring the square footage of the property to 7,504 and the rear setback, from the house to the road pavement, to 25 feet. The front yard setback remains 23 feet.

Mr. Scott Dallas, of J.S. Dallas, Inc., was accepted as an expert in zoning and surveying and testified that he had checked with the Baltimore County Bureau of Land Acquisition and found there was no record of a County taking or deed for the 40-foot right-of-way. He opined that since the right-of-way was never formally taken by the County it was, therefore, retained by

the property owner. He stated that the revised lot size was comparable in size to other lots in the neighborhood.

Mr. Mitchell Kellman, of Daft, McCune, Walker, Inc., was accepted as an expert in zoning and development regulations. He produced a number of photos (Petitioner's Exhibits 10A-P), showing neighboring houses with fences, boats, plantings, etc. within the 40-foot right-of-way of Cold Spring Road and pointed out that along this stretch of Cold Spring Road there were no sidewalks, and that other houses in the area seemed to use the unpaved portion of the right-of-way as an extension of their properties.

In rebuttal, Mr. Eric Rockel, from the Baltimore County Bureau of Land Acquisition, supported the Petitioner's position in part, stating that a review of County records revealed that Baltimore County did not own the 40-foot right-of-way known as Cold Spring Road. He went on to point out, however, that the County could claim a prescriptive right to the road, because it had been in open and continuous use for many years. Prescriptive rights, he noted, had to be determined by a Circuit Court ruling. Further, on cross-examination, he referred to the County's sewer construction plan (People's Counsel Exhibit 10), dated 1999, on which the 40-foot right-of-way was clearly marked.

On cross-examination, Mr. Rockel also opined that, even though the Bowley's Quarters Improvement Association had sold the "road end" parcel—900 sq. ft.—to Ms. Oberst's family, the community still had the right to use the parcel, and it could not be built upon.

Mr. Mark Cunningham, a Community Review Planner with the Baltimore County Office of Planning, testified for People's Counsel regarding the front and rear setbacks. He had reviewed the original petition and site plan for variance and submitted comments on them in

2004. In regard to the 2-foot setback from the right-of-way, he stated that it would result in potential liability, because of the cul de sac and turnaround issues. He also stated that houses along Cold Spring Road were set back farther than 2 feet from the right-of-way, so it would not be consistent with the neighborhood.

On cross-examination, Mr. Cunningham was shown the revised petition (Exhibit 4) which increased the lot size and the rear yard setback by utilizing part of the right-of-way. He noted that, had he an opportunity to review this site plan, his comments might have been different. The larger square footage would make the property more compatible with the neighborhood, and a rear setback of 22 feet was preferable to a 2-foot setback. However, he noted that those changes would not necessarily have meant the plan would have been approved, as there were other County officials who had to look at and approve a site plan. He reiterated that he still would not recommend building a house "two feet from a fire truck or snow plow."

On direct examination, the witness also testified that Petitioners had used the wrong standard in calculating the front yard setbacks (between the house and the water). BCZR § 303.1 requires that front yards in a D.R. 3.5 zone be averaged, although they are not required to be setback more than 50 feet. Since the properties north and south of Lot 304 averaged more than 50 feet, the front yard setback on Lot 304 would need to be 50 feet, not 30 feet as Petitioners argued. Petitioners would have to request a variance from the use of front-yard averaging, which they had not done, according to Mr. Cunningham. Cross-examined on this point, Cunningham was asked to consider the fact that 800 Cold Spring Road, the property south of Lot 304, had a larger than average setback, due to being on the point. He reiterated that this setback would still have to be used in the averaging, under BCZR 303.1.

In testimony for People's Counsel regarding the neighborhood and use of the right of way, Mr. Richard Pitz, of 808 Cold Spring Road, pointed out that his house and many others in the area were built on double or triple lots. He also stated that, while some property owners might make use the Cold Spring Road right-of-way, no one had built in it, and he opposed building a house in the 40-foot right-of-way.

2. *Does the property satisfy the requirements of BCZR Section 307 and standards of* Cromwell v. Ward*?*

In making the Petitioners' argument for uniqueness, Mr. Scott Dallas stated that he believed that the property was unique because of its shape. Under cross-examination, however, Mr. Dallas stated that the lot did meet the width requirements of the zoning regulations, and that if it had also met the area requirement of 10,000 sq. ft., it would have been a buildable lot under the current zoning. Mr. Dallas was unsure of all the uses possible for this property if a house could not be built there, but agreed that a pier was a legitimate use for recreation activities, noting that the lot had, in fact, been used for years as a place to both launch and store a boat.

Mr. Kellman also testified regarding the property's uniqueness, referring to Petitioner's Exhibit 3B, a letter from the State of Maryland Critical Area Commission, which granted a variance approval from the 25-foot Critical Area Setback due to the "unusual configuration of this lot." He stated that the irregular shape of this lot makes it unique; that it is wider than it is long, compared to other lots in the area. He also opined that without variances, the owner would not be able to build, creating a practical difficulty.

Upon cross-examination, Mr. Kellman conceded that there were other developed lots in the area of similar size as Lot 304, which had been built on under previous zoning, so that based on size, Lot 304 was not unique. Directed to People's Counsel Exhibit 1 (a GIS map of the area),

Mr. Kellman conceded that there were other lots that were of similar shape as Lot 304. He also agreed with People's Counsel that Lot 304 stood out from the others on the original plat, Exhibit 1, in that it was not numbered in sequence. All the other lots on the East side of the peninsula are numbered 199-220, with Lot 304 following 199.

In his testimony Mr. Cunningham stated that there was nothing unusual about this property, and that it had other civic and social uses. He stated that, according the Zoning Commissioner's Policy Handbook, waterfront property could be improved with piers and be used for recreational purposes, even if the lot was unimproved with a dwelling.

Two neighborhood property owners testified regarding the use of Lot 304. Mr. Pritz testified that the site had always been used for recreational purposes in the past, and thought it should remain as such. Mr. Robert Kroll, who purchased 810 Cold Spring Road from Ms. Shuman, also testified that he had been interested in purchasing Lot 304, but that it was too expensive.

3. *Does the proposed house and the change in the placement of the turnaround present a public safety issue?*

Dr. Harlan Zinn, the contract purchaser of Lot 304, testified regarding the house he plans to build on site should the requested variances be granted. He noted that in compliance with flood plain regulations, and based on discussions with DEPRM, the site would be properly landscaped, with additional trees planted. Dr. Zinn further testified that he understood the need for the turnaround in the interests of safety of the community, and stated that he intended to keep it but would move it to a more accessible location (Petitioner's Exhibit 2). He stated that all County and commercial trucks using Cold Spring Road might use the turnaround.

Mr. Richard Pritz, Ms. Nancy Huber of 810 Cold Spring Road, and Mr. Robert Kroll, all

owners of properties adjacent to or across the street from Lot 304, testified against allowing a house to be built on what they considered to be too small a parcel of land. They also expressed concerns regarding the turnaround. Mr. Pitz and Mr. Kroll, particularly, were concerned because their properties are immediately across from Lot 304, relating that, even now, they often have trucks backing up into their driveways and on their properties. Their concern was that once a house is built on Lot 304, such incidents would increase, because drivers would miss the turnaround.

Decision

This Board first considered the question of whether this Petition for Variance should be reviewed, or whether it was barred by *res judicata* and collateral estoppel, as Deputy People's Counsel Demilio argues in her closing memo. She notes that in 2003, the Zoning Commissioner decided against a similar Petition for Variance relief, finding that there was nothing unique about the property and that, due to its size, it would not support the proposed dwelling and would be detrimental to the neighborhood. People's Counsel argues that since nothing about the property had changed since 2003, "it cannot be found unique in the instant case under the legal principle of *res judicata*." This Board believes, however, that since the hearing before it is *de novo*, we should properly consider the merits of Petitioners' current Petition for Variance.

This Board also agreed that Lot 304 would not qualify as an undersized lot, as defined in BCZR § 304. Although the lot was recorded prior to 1955, as required by § 304.1A, it does not comply with "all the other requirements of the height and area regulations" as required by § 304.1B without the requested variance relief.

Variances are rare and difficult to grant. They must meet a very stringent test placed

upon them by the zoning regulations, as interpreted by the Maryland Court of Special Appeals. The Court, in *Cromwell v. Ward* 102 Md. App. 691 (1994), notes that "The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances" (at 702). The Court notes further that a review of cases in Maryland since the state zoning enabling act in 1927 found only five reported Maryland cases in which the grant of a variance had been affirmed or the denial of one reversed.

Section 307 of the *Baltimore County Zoning Regulations* permits granting a variance from height and area regulations "only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request" and where strict compliance with the zoning regulations would "result in practical difficulty or unreasonable hardship." Furthermore, according to § 307, "any such variance shall be granted only if in strict harmony with the spirit and intent" of said regulations and "only in such manner as to grant relief without injury to public health, safety and general welfare."

These conditions for granting a variance have been interpreted by the Court of Special Appeals in a number of cases, most particularly *Cromwell v. Ward.* According to *Cromwell*, Petitioners must first prove that their property is unique. This condition must be met as a prerequisite to considering whether or not practical difficulty even exists.

Uniqueness

In *Cromwell*, the Court referred to the definition of "uniqueness" provided in North v. St. Mary's County, 99 Md. App at 512,638 A.2d 1175:

> 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 restriction.

The Court goes on to cite a number of cases in *Cromwell* supporting the conclusion that uniqueness must pertain to the property in question and cannot be a general condition shared by other properties in the area. In addition the uniqueness of the property must be tied to the request for variances.

In testimony, the arguments for uniqueness were made by Mr. Dallas and Mr. Kellman. They both pointed to the shape of the property as being its unique feature. Mr. Kellman pointed specifically to the fact that the property is wider than it is long. However, Mr. Dallas admitted during cross-examination that the lot meets the width requirements of the zoning regulation, and both he and Mr. Kellman admitted that the subject site was in fact similar to other properties in the immediate area. He also acknowledged that, if the lot had also met the area and front and back yard setback requirements, it would not need variances. Therefore, the fact that the property is wider than it is long was not sufficient to establish uniqueness. Variances are needed for this lot because it is not long enough to build without them.

In Petitioners' Closing Memo, a number of other arguments are made for uniqueness, but this Board did not find them credible. For instance, the memo states that "all waterfront properties have the unique feature that the water (not the road) is considered the front of the property" (Petitioner's Memo, p. 3). However, by the criteria set forth in § 307 and *Cromwell*, the fact that "all waterfront properties" share this feature means the property is not unique in this regard. *Cromwell* and succeeding cases are clear that the uniqueness must be as to the subject property itself. Furthermore, the fact that the property is on the waterfront is not a sufficient

reason for the variance request. Houses can be built on waterfront property, if they meet zoning requirements. This property, although on the waterfront, simply does not meet the area and setback zoning requirements.

Petitioners' Memorandum also argues that the property is unique because the 40-foot right-of-way at the rear of the property is not in actuality 40 feet, but only the 18 feet of paved surface. Petitioners' Memo also argues that the lot size is a unique characteristic, because the right-of-way is not considered in the total square footage. However, if either of these arguments were true, they would also apply to every lot along Cold Spring Road, and again, would not meet § 307 or *Cromwell's* definition of uniqueness. Furthermore, by adding the area from the 40-foot right-of-way to the area of the subject property, the size of the property is no longer a unique feature; it becomes similar in size to the other properties in the community, as Mr. Kellman pointed out in cross-examination. Petitioners cannot claim the property is unique because of small size and at the same time add the area from the 40-foot right-of-way to increase the rear setback.

This Board also agreed that it could not consider the 40-foot right-of-way as part of this property. It appears on County maps as recently as 1999 (People's Counsel Exhibit 10). In addition, as Mr. Rockel, from the Baltimore County Bureau of Land Acquisition testified, the County could claim a prescriptive right to the entire right-of-way, since it has been in use some 90 years. It is not up to this Board to determine whether Ms. Oberst's property includes this right-of- way, or whether the County has such a prescriptive right. That determination has to be made by a Circuit Court. We must consider the property as platted in 1914. In addition, according to Mr. Rockel's testimony, we also cannot consider the 900 square-foot, end-of-road

parcel purchased by Ms. Oberst's mother as part of the buildable portion of this property.

This leaves the original 5,396 square foot property (per Exhibit 5A) to be considered, which requires variances for a rear setback of 2 feet and a front setback of 23 feet. No evidence was presented by Petitioners to show that the size of this property made it unique under § 307 and/or *Cromwell*. In fact, various witnesses pointed out that Lot 304 was similar in size to others in the area, except that some houses were built on double and triple lots. As People's Counsel's Memo points out, any houses built on single lots of similar size to Lot 304 under previous zoning regulations are nonconforming and protected. Those houses were legal when constructed. The fact that this property is wider than it is long is not what causes the need for a variance. The subject property needs variances because it is too small – which itself is not a unique feature. It is of similar size to other properties in the area, but they were developed during earlier zoning eras. This Board concludes therefore that this lot is not unique as required by BCZR 307 and *Cromwell*.

Practical Difficulty

Once the Board of Appeals finds that there is no uniqueness to the property causing the need or a granting of a variance, it need go no further. The Court of Special Appeals in *Cromwell* writes:

> The first step requires a finding that the property whereon the structures are to be placed (or uses conducted) is--in and of itself—unique . . . 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. (Id at 695)

However, during deliberations this Board recognized clearly that in denying variances for this property, it was, in effect, concluding that it was an unbuildable

property, thus limiting greatly the owner's use of it. We therefore considered all aspects of the granting of a variance, including the practical difficulty and whether a variance request would be in keeping with the spirit and intent of the zoning ordinance.

Cromwell notes that BCZR § 307 requires that, were the property to be found unique, the question of practical difficulty is then addressed. The Court in *Cromwell* is explicit that the practical difficulty must result from "the disproportionate impact of the ordinance *caused* by the property's uniqueness..." (*Cromwell* at 695, italics in original). The standard to be applied is set out in *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 MD.App.28, 37-39. According to the Court of Special Appeals in that case, there are three criteria for a showing of practical difficulty:

> 1. Whether compliance with the strict letter of the restrictions governing area, setbacks . . . would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
>
> 2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district….
>
> 3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured. (Id at 39)

In their Memorandum, Petitioners argue that being denied the requested variances would impose a practical difficulty because "Compliance with the strict letter of the area restriction would unreasonably prevent the owner from using the Property for a permitted purpose or would render conformity with regulations unnecessarily burdensome. . . . Without the variance there is no open area left for a house of any size. A true practical difficulty exists if the Property cannot

be used" (Petitioner's Memo, p. 21).

But, as People's Counsel points out, and as the evidence establishes, the property can be used and has been used for other legal purposes, but not residential. People's Counsel points out that "a property owner is not entitled to every use in the zone, only a reasonable use" (People's Counsel Memo, p. 15).

Petitioners argue that "there is no sound reason why [they] should be denied the right to reside on their property when their neighbors have not been denied the same right on similarly sized lots" (Petitioner's Memo, p. 15). But, as noted earlier, the neighbors' houses are nonconforming and therefore protected.

Given the zoning history of Lot 304, this Board found that Petitioners would not meet the practical difficulty test, even if it had found the property unique. Since zoning was first imposed on this area 10 years before the property was purchased by Ms. Oberst's family, Lot 304 has never conformed to any zoning requirements for development. Ms. Oberst's family knew, or should have known, from the time they purchased the property that their ability to develop it was limited, based on the zoning codes. The Courts have consistently held that, when a landowner purchases a property knowing the zoning restrictions, he may not then complain of his self-imposed predicament.

We conclude, therefore, that this petition would fail on the second prong of the Variance test: practical difficulty.

Spirit and Intent of the Zoning Regulations

This request for variances asks the Board to consider 5,396 square feet in lieu of 10,000 square feet, 23 feet front yard setback in lieu of either 30 or 50 (depending on which argument

for measurement is accepted), and 2 feet rear setback in lieu of 30 feet. In almost all cases, the request is for a variance half that required by the zoning regulations.

Petitioner attempts to argue that under a previous zoning scheme, D.R. 5.5, which was the zoning from 1976 until 1992, this property was buildable. However, under that zoning scheme the property still would have required variances, and the setback requests would still have been half of what was required. But, more importantly, property owners cannot pick the zoning scheme most preferable for their interests.

Zoning regulations are imposed for the benefit of an entire community, and must be abided by except in very unique circumstances. "The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances." (*Cromwell*, at 702).

It is impossible to view these setback requests as being in the spirit and intent of the zoning regulations. The only request even remotely acceptable is the front yard setback, which was allowed by the Chesapeake Bay Critical Area Commission, and conforms somewhat to other setbacks north of the property. But the property is so narrow that a 23-foot front yard setback and 2 foot rear yard setback only leaves 16-foot depth for the house, an unacceptable result.

Therefore, this Board finds that none of the conditions as required by § 307 of the BCZR or *Cromwell* in order to grant the request for variance have been met. The subject property is not unique. It has never met the zoning requirements to build on, and it can be used for other legal purposes, so the zoning regulations do not impose a practical difficulty. Finally, the variance request, being half of what is required by the zoning regulations, would not meet the spirit and intent of the BCZR.

ORDER

THERFORE IT IS ORDERED, this 20 day of December, 2005, that the Petitioners' request for variance from § 1B02.3.C.1 of the *Baltimore County Zoning Regulations*, to allow a lot containing 5,092 sq. ft., a front yard of 23 ft. and a rear yard of 2 ft., in lieu of the required 10,000 sq. ft., 30 ft., and 30 ft., respectively, and to approve an undersized lot pursuant to § 304 of the B.C.Z.R. be and is hereby **DENIED**.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Chairman

Margaret Brassil, Ph.D.

John P. Quinn

Case No. 04-522-A

In the Matter of: Janice Oberst – Legal Owner; Dr. Harlan and Amanda Zinn – C.P.

VAR – To allow a lot containing 5,092 sf, a front yd of 23' and a rear yard of 2' ilo the required 10,000 sf, 30' and 30' respectively; and to approve an undersized lot pursuant to § 304 of the BCZR.

7/20/04 (corrected first page 7/26/04) – DZC's Order in which requested variance relief was DENIED.

12/07/04 -Notice of Assignment sent to following; assigned for hearing on Thursday, February 24, 2005 at 10:00 a.m.:

Janice Oberst/Legal Owne
Dr. Harlan Sinn /C.P.
Douglas Zinn
Scott Dallas /J Scott Dallas Inc
Richard Pitz
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

2/24/05 – Board convened for hearing (Stahl, Brassil, Quinn); concluded day #1; assigned for day #2 with agreement of counsel as to date and time to Wednesday, 5/18/05 at 10 a.m.; notice to be sent (counsel indicated that only ½ day is required to complete this matter; afternoon could be used for additional hearings).

2/28/05 – Notice of Assignment /Day #2 sent to parties; assigned, as agreed by counsel, to Wednesday, May 18, 2005 at 10:00 a.m. FYI copy to 2-5-6.

3/01/05 – Amended Notice of Assignment /Day #2 sent to parties; amended to add counsel for petitioner (entered appearance on the record at hearing).

3/04/05 – T/C from L. Stahl's office (Lynda); he will be out of town during the week of 5/16/05 and not available on 5/18/05 for the scheduled day #2.

3/07/05 – T/C to Lynda – confirmed with her that Larry will be available on 5/25/05; also confirmed Ms. Demilio and Mr. Gontrum on that date; notice to be sent reassigning day #2 to 5/25/05.

3/09/05 – Notice of PP and Reassignment sent to parties; case reassigned to Wednesday, May 25, 2005 at 10:00 a.m. as confirmed with counsel.

5/25/05 – Board convened for day #2 (2-5-6); concluded hearing this date; memos due from parties 6/30/05; deliberation to be assigned.

5/26/05 – Notice of Deliberation sent to parties; assigned for Thursday, July 28, 2005 at 9:30 a.m. FYI copy to 2-5-6.

6/30/05 – Facts and Overview of People's Counsel's Position filed by C. Demilio on behalf of Office of People's Counsel; Petitioner's Memorandum in Lieu of Closing Argument filed by John Gontrum on behalf of Petitioners.

7/07/05 –Transmittal memo prepared for CBA panel members – Stahl, Brassil and Quinn. To Brassil on 7/12/05; To Quinn on 7/13/05; and To Stahl on 7/14/05.

7/28/05 – Board convened for deliberation (2-5-6); unanimous decision – variance request DENIED; written Opinion/Order to be issued (5); appellate period to run from date of written Order.

11/14/05 – Letter from J. Gontrum with accompanying documentation regarding "issues bearing on variances requested"; request for reopening of hearing and reconsideration of deliberation.

11/16/05 – Letter to Mr. Gontrum returning his 11/14/05 letter and documentation, pursuant to Board's policy = premature filing. Action confirmed with panel members.

Overview Memorandum

20040522 'A'

supplemental

(1)

6/30/05

RE:	PETITION FOR VARIANCE 809 Cold Spring Road; E/side of Cold Spring Road, 640' +/- S of Chesapeake Avenue 15th Election 7 6th Councilmanic Districts Legal Owner(s):Janice Oberst Contract Purchaser(s): Dr Harlan and Amanda C. Zinn Petitioner(s)	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY 04-522-A

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BOARD OF APPEALS

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FACTS AND OVERVIEW OF PEOPLE'S COUNSEL'S POSITION

Some of the facts in this case are undisputed. The present owner of Lot 304 is the daughter of long-time owners. The lot is part of an old subdivision (Long Green Estates) and has remained unimproved from its inception until now. Mrs. Oberst's parents also owned Lot 196 across the street at 810 Cold Spring Road, where they resided. Her mother, June Schuman, sold Lot 196 in April, 2004,to Robert Kroll who testified in opposition to the Petition. Oberst's parents built a bulkhead and pier on Lot 304 and used it for recreation and boating in conjunction with their home across the street. In 1992, they purchased a sliver of land adjoining Lot 304 from the Bowleys Quarters Improvement Association for $2000. It consists of 900 square feet and was never even assigned a lot number in the Long Green Subdivision. Mr. Eric Rockel from the Baltimore County Department of Land Acquisition testified that it was common for a community association to acquire what Mr. Rockel called "end of road" parcels for community use. He testified that despite the deed from Bowley's Quarters to Mrs. Oberst's parents, the County has taken the position that the quit claim deed does not extinguish the community's rights in the parcel, such as access to the water.

Mr. Rockel also agreed that a cul-de-sac on a peninsula, such as Cold Spring Avenue, would require a turn-around area for such vehicles as trash trucks, emergency vehicles, and snow removal equipment to service Cold Spring Avenue, a Baltimore County public road. This long-standing turnaround on Lot 304 reduces the "area" available to construct a dwelling as Petitioner proposes. On this point, Young, American Law of Zoning, 3rd, § 9.64 states:

> ***"In determining the area of a lot, an owner may not include the area of a right-of-way which he owns but is obligated to keep open for nearby property owners. Bankers Trust Co. v. Zoning Bd. of Appeals, 165 Conn. 624, 345 A2d 544 (1974)."***

Even without deducting the area for the turn-around, Petitioner does not meet the minimum area requirements of the zone when the entire area of Lot 304 and the adjacent sliver are combined. In fact, since zoning was introduced to Baltimore County in 1945, Lot 304 never satisfied the minimum area requirements of whatever zone was placed on the site. The sliver adds no meaningful area to the equation. This supports the testimony of the citizens and OPZ that the site is too small to support a residence.

A review of the zoning history and the subdivision plat supports People's Counsel premise that the site was never intended as a building lot:

Long Beach Estates. Petitioner's Exhibit 1- the Long Beach Estates Subdivision Plan shows Lot 304 as totally out of sequence with the other lot numbers on Cold Spring Road; it is not unreasonable to assume it was not intended to be sold and developed as the other lots. In fact, no improvements were ever erected on the site since the subdivision was laid out in 1910. Petitioner's family never sought to develop it with a

home in the many decades Mrs. Schuman testified they lived on Cold Spring Road. Additionally, the sliver, a mere 900 sq. ft parcel as per the deed in Petitioner's Exhibit 5D at the end of the road, was never even assigned a lot number.

Zoning History: Rural Deferred Planning. The RDP zone assigned to the site in 1971 required a minimum 1 acre lot (approx. 43,500 sq. ft), which the site did not meet.

Zoning History: D.R. 5.5. The D.R. 5.5 zone was attached in 1976. This zone establishes a minimum area of 6000 sq. ft per lot under the small lot Table in BCZR 1B02.3 C.1. If the Table does not apply, D.R. 5.5 requires a minimum lot size over 7900 sq. ft. In 1976, Petitioner owned Lot 304, (not the adjoining sliver which was acquired in 1992). Lot 304 is less than 5400 sq. ft, undersized for the D.R. 5.5 zone. (See Petitioner's Exhibit 5A.). The setbacks for the D.R. 5.5 zone are comparable to current regulations. The proposal here could not meet the setbacks even if the site were zoned D.R. 5.5.

Zoning History: D.R. 3.5. In 1992, the site was rezoned to D.R. 3.5. At the same time, Petitioner acquired the adjoining 900 sq. ft. sliver from the Bowley's Quarters Community Association. Under the aforementioned Table in BCZR, D.R. 3.5 requires a minimum lot size of 10,000 sq. ft. If the Table does not apply, D.R. 3.5 requires over 12,400 sq. ft minimum per lot. The evidence shows Lot 304 and the sliver are a maximum 6200 sq. ft., and do not meet the area requirements for the D.R. 3.5 zone. In summary, under any scenario since zoning was enacted in the County, the site is undersized.

Existing Development Not Comparable. Petitioner's references to other development in the neighborhood are misleading. The existing homes built under the

1910 Long Green Estates Plat before the enactment of zoning are nonconforming and protected. Petitioner cannot bootstrap her relief to the existence of these older dwellings, which were legal when constructed. Additionally, other lots, or combined contiguous lots in single ownership, may satisfy current area regulations. Again, Petitioner's request is out of line with dwellings that satisfy current zoning standards. Petitioner did not point out a single dwelling constructed under the current zoning that did not satisfy the minimum lot size, or substantially meet the setback standards.

In summary, a rezoning cannot be used as a basis to grant a variance. Even so, there is no evidence here that the rezoning of the site over the years made substandard an otherwise suitable lot as to area and setbacks. Except for the period prior to 1945 when zoning was first enacted in Baltimore County, Lot 304, the adjoining sliver, or both combined, could never meet the applicable area or setback requirements to support a dwelling. And Petitioner offered no deed or other evidence that her family even owned the site prior to zoning in 1945 when a dwelling may have been permitted. The testimony that it was bought for "investment" is misleading and specious. It is undisputed that there was no request to build a home and that no dwelling was ever constructed on the site at any time until Oberst's 2003 Petition. Furthermore, Petitioner did not dispute that unimproved waterfront property in itself is a good investment and has increased in value over the years.

Existing and Past Uses On The Site. Both Petitioner's witnesses and the protestants agree that Lot 304 has always had viable recreational uses – boating, fishing etc. Recreational uses are not uncommon on unimproved lots on the water, and the

testimony of opposing witnesses indicates that waterfront property is bought, sold, maintained and used solely for these purposes. In fact, such uses are permitted in BCZR as explained in the Zoning Commissioner's Policy Manual at 417.1:

> ***"Waterfront Construction***
>
> ***(c) Unimproved Lots: Waterfront construction (piers, mooring piles, bulkheads) may be constructed on unimproved lots pursuant to Section 417. [BCZR 417]"***

Here, Petitioner Oberst's family, whose house across Cold Spring Road was on the Frog Mortar Creek side of the peninsula, built a pier off Lot 304 on the Galloway Creek side, to launch a boat for recreation and fishing expeditions. The neighbors never opposed this use.

It cannot be overlooked that it was Petitioner Oberst who chose to sell Lot 304 and the adjoining sliver separate from their home site on Lot 196, despite many years of joint use. It is significant that Mr. Robert Kroll who purchased Lot 196 testified that he was interested in buying Lot 304 to continue the recreational open space as a complement to his house. While he was willing to pay a respectable price as waterfront recreational open space, the asking price for a building lot was inconsistent with its prior use.

The Front and Rear Yard Setback Calculations Are Incorrect; the Relief Is Without Merit. Not only does the site fail to meet minimum lot size, but the Petitioner also seeks significant front yard and rear yard setbacks. This need for significant variances suggests the site was never intended as a building lot and cannot reasonably accommodate a dwelling. Furthermore, we challenge the legality and the accuracy of the setback variances in Petitioner's case. The Zoning Commissioner's Policy Manual

(ZCPM) at Section 400.2.a (1) (attached) is clear that on waterfront property, the front yard is the area between the house and the waterfront, and the rear yard is the area between the house and the street.

First, we dispute Petitioner's position as to what the front yard setback should be. Petitioner suggests the Table for small lots applies and the required setback is 30 ft. It is our position, as well as the opinion of the Office of Planning and Zoning, ("OPZ") that front yard averaging under BCZR 303.1 and the Policy Manual Section 400.2.a (2) apply and the required setback is 50 ft.

BCZR 303.1 ***In D.R.2, D.R.3.5 and D.R.5.5 Zones,[3] the front yard depth of any building hereafter erected shall be the average of the front yard depths of the lots immediately adjoining on each side, provided such adjoining lots are improved with principal buildings situate within 200 feet of the joint side property line, but where said immediately adjoining lots are not both so improved, then the depth of the front yard of any building hereafter erected shall be not less than the average depth of the front yards of all improved lots within 200 feet on each side thereof, provided that no dwelling shall be required to be set back more than 60 feet in D.R.2 Zones, 50 feet in D.R.3.5 Zones and 40 feet in D.R.5.5 Zones. In no case, however, shall nonresidential principal buildings have front yards of less depth than those specified therefor in the area regulations for D.R.2, D.R.3.5 and D.R.5.5 Zones respectively. [Resolution, November 21, 1956]*** **(emphasis supplied).**

ZCPM 400.2.a. – Accessory Buildings – Waterfront setbacks

> ***(2) In D.R. zones the same maximum average setback requirements apply on waterfront.***

It is undisputed that the adjoining properties that factor into the averaging calculations are within 200 ft of the site and are setback from the water more than 50 ft. With these facts, and the application of BCZR 303, a front yard setback between the proposed dwelling and the waterfront must be 50 ft. Instead, Petitioner claims a 30 ft

setback is required as per the Table in BCZR 1B02.3 C.1. Marc Cunningham from OPZ testified that averaging under BCZR 303, and not the Table, is applicable.

In any event, under either standard, Petitioner variance request for a 23 ft front yard setback should not be granted. Petitioner's erroneous application of the law is a red herring. The request must be seen in light of the proper regulations as a significant deviation from the standard that violates the "spirit and intent" of the area regulations as stated in BCZR 307.

The Rear Yard Setback Calculation Is Inaccurate; the Relief Is Without Merit. Petitioner miscalculates the extent of the rear yard setback (the area between the proposed dwelling and Cold Spring Road). The Petition for Variance requests a 2 ft rear yard setback in lieu of the required 30ft. Petitioner maintained this position before the Deputy Zoning Commissioner. Her relief was denied. Now at the CBA hearing, Petitioner presents a new theory on the width of Cold Spring Road that relies on contradictory evidence. In the Petition and before the Deputy Zoning Commissioner, the setback was calculated as the distance between the 40 ft. right-of-way line for Cold Spring Road and the proposed dwelling. At the CBA hearing the Petitioner unilaterally claims the right-of-way is 25 ft., not 40 feet, thus reducing her variance request. The location of the proposed dwelling did not change. The Petitioner's evidence on this point is conflicting, confusing, and illustrates the need for proper pleading and County review. Moreover, it may not be within the jurisdiction of the CBA to determine property lines. In any event, the rear yard variance, whether it is for 23 ft or 2 ft, is not warranted and should be denied.

Violation of Chesapeake Bay Critical Area Law. The spirit and intent of the Chesapeake Bay Critical Area laws prohibit this type of over-development of a site that eviscerates the purpose of the law. This will be discussed in more detail in another section of this Memorandum.

ISSUES

The questions to be decided are:

1. Does the denial of variance relief for this site requested by Petitioner in Case #03-500-A **(People's Counsel Exhibit#2)** bar relief in the instant case under the doctrines of *res judicata* and/or *collateral estoppel?*
2. Did the Petitioner prove uniqueness under BCZR 307 and *Cromwell v. Ward?*
3. Did the Petitioner prove practical difficulty under BCZR 307 and *Cromwell v. Ward?*
4. Is the County Board of Appeals authorized to determine property boundaries?

Statement of Facts Pertinent to *Res Judicata* and *Collateral Estoppel*

Petitioner Oberst requested a Petition for Variance for this site in Case 03-500-A, filed April, 2003. In that case as in the instant case, Petitioner Oberst sought relief for an undersized lot, and front and rear yard setbacks. There was a second Petitioner who was a contract purchaser. The Zoning Commissioner denied the relief and stated in his Opinion (People's Counsel's Exhibit 2):

> ***"I concur with Mr. Pitz*** [opposing neighbor] ***that the property is simply too small for the proposed development. I am appreciative that the property is a lot of record that was originally recorded as part of the subdivision of Long Beach Estates well prior to the adoption of the current zoning regulations. Nonetheless, it is simply too small to support the proposed dwelling and development of the parcel would be inconsistent***

with the neighborhood and cause detrimental impacts to adjacent properties. In sum, I am not persuaded that the Petitioners have met the requirements of Section 307 and Cromwell v. Ward, 307 Md. 1 (1995), for relief to be granted."

The case was fully litigated in 2003. The decision of the Zoning Commissioner was not appealed by Oberst and was a final binding Order. The parties are identical or in privity. The cause of action is the same in both cases. The site is identical. The same issues raised and litigated in 2003 are the very issues in the instant case – is the site unique under *Cromwell* and will practical difficulty result if the relief is not granted. If the property was not unique in 2003, and there is not a scintilla of evidence that the site has changed in any way, it cannot be found unique in the instant case under the legal principle of *res judicata.*

Argument: *Res Judicata, Collateral Estoppel* - Interpretation of Variance Law

The Claim a Variance is Warranted is Barred by *Res Judicata, Collateral Estoppel*

The doctrines of res judicata and collateral estoppel apply to administrative decisions. Batson v. Shifflett 325 Md. 684, 704-705 (1992); see Century I Condominium Ass'n v. Plaza Condominium Joint Venture 64 Md.App. 107, 113-114 (1985). The Court of Appeals has consistently applied these doctrines in zoning cases. Fertitta v. Brown 252 Md. 594 (1969); Chatham Corp. v. Beltram 243 Md. 138 (1966); Woodlawn Area Citizens Ass'n v. Board of County Comm'rs 241 Md. 187 (1966); Whittle v. Board of Zoning Appeals 211 Md. 36 (1956).

The doctrine of collateral estoppel is also known as "issue preclusion." It stands for the proposition that matters actually litigated and resolved against a party in a proceeding are considered to have been finally adjudicated for the purpose of a

subsequent proceeding even where the subsequent proceeding differs in form. See Jones v. State 350 Md. 284, 295 (1998); MPC, Inc. v. Kenny 279 Md. 29, 34-36 (1977); Pat Perusse Realty v. Lingo 249 Md. 33, 43-45 (1968); Prescott v. Coppage 266 Md. 562, 570-573 (1972). Here, the Petitioner Oberst requested the same relief for the same site under the same regulations and zoning laws. She is also a party to the current proceeding. Doctor Zinn, the contract purchaser here, is in privity to Oberst and is also bound by the 2003 decision. "Privity" is defined in Black's Law Dictionary as ***"Mutual or successive relationship to the same rights of property. Derivative interest founded on, or growing out of, contract . . . between parties; . . ."***

To illustrate the point, we attach Chief Judge Hall Hammond's opinion in Fertitta v. Brown, *supra*. It chronicles Fertitta's persistent and repeated attempts to legitimize his marina use on the Baltimore County waterfront. After an August 28, 1962 finding by the zoning commissioner of a violation, Fertitta filed a petition to establish a non-conforming use. The Commissioner denied this petition on July 31, 1963 and ordered Fertitta to cease operations. Upon appeal, the Board of Appeals affirmed. Fertitta's appeal to the Circuit Court was dismissed for technical reasons.

Upon yet another petition, and another round of hearings from the commissioner to the Board to the Circuit Court, Judge Proctor found that the July 31, 1963 commissioner order, having survived appeals to the CBA and Circuit Court, was conclusive and "the end of the road." Fertitta appealed to the Court of Appeals but failed to perfect it. He then filed a declaratory judgment action to avoid or overturn the July 31,

1963 order. The Circuit Court sustained Brown's demurrer. The Court of Appeals affirmed because Judge Proctor's decision had preclusive effect.

If we combine Fertitta v. Brown, highlighting Judge Proctor's decision, with the Batson decision that *res judicata* and *collateral estoppel* apply to administrative decisions, it is inescapable that the Zoning Commissioner's 2003 decision, being a final order that was not appealed, precludes the litigation of the essential issues resolved in that proceeding. As to the issues, the present case is in a position equivalent to Fertitta when it came before Judge Proctor. *Collateral estoppel* and *res judicata* apply despite the difference in the form of the proceeding. Otherwise, a Petitioner denied relief could litigate *ad infinitum,* by simply slightly amending the setbacks or adding a different party as contract purchaser. This is exactly the type of cunning and forum shopping that the principles of *res judicata* and *collateral estoppel* prohibit.

These principles were recently applied in Case No. 05-172-SPHA, attached. It should be noted that in those succession of cases for the same site, the set back variances were different in each of the three cases referred to in the latest decision. Case No 01-313-A decision of this Board and Case No. 03-342-SPHA (ZC) are attached with Case No. 05-172-SPHA and highlighted as to this point. (The issue was also raised In the Matter of Meittinis before this Board. Because the Circuit Court reversed the CBA, it stated it did not have to reach the issue of *res judicata*).

Argument: Variances Are Not Warranted under BCZR 307 and Cromwell v. Ward

> ***" . . . 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 4th 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 *Cromwell, 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 *Cromwell* at 710, 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).

Most important, the size of the lot is not a unique feature. Judge Cathell in *Cromwell* at 717 cited approvingly Sibley v. Inhabitants of the Town of Wells, 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. . . <u>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</u>." (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 also stated:

> ***"[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)

(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 <u>before any consideration will be given to whether practical difficulty or unnecessary hardship exists.</u>" *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.

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."*** <u>Easter v. Mayor and City Council of Baltimore</u> , 195 Md. 395 (1950). ***"Fact that variance of zoning ordinance will make realty more profitable is not sufficient ground to justify variance."*** <u>Gleason v. Keswick Imp. Ass'n</u>, 197 Md. 46 (1951).

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 4th 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 4th 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 4th Edition, Section 20.54*

The appellate courts have rejected variance claims based on financial or revenue considerations. Burns v. Mayor & City Council, 251 Md. 554 (1968), Daihl v. County Board of Appeals, 258 Md. 157 (1970) and Cromwell, supra, quoting Xanthos v. Board of Adjustment, 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).

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 (B). 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, 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."***

Here, Petitioner cannot obtain relief under Section 304 without qualifying for variance relief for the front and rear yard setbacks, a violation of 304.B. Furthermore, there is no evidence the setbacks, even if permitted under 304, qualify for a variance under the uniqueness standards in BCZR 307.1 and *Cromwell.*

Testimony of Witnesses

The following witnesses testified in opposition to the Petition:

- Marc Cunningham – Planner, Baltimore County Office of Planning and Zoning
- Nancy Hubers – adjoining resident
- Richard Pitz – adjacent neighbor
- Michael Vivirito – Bowleys Quarter Improvement Association officer and resident of the area
- Robert Kroll - adjacent neighbor

Their testimony, or approved proffer in the case of Mr. Vivirito, emphasized the following:

- Lot 304 even with the adjoining strip acquired from Bowleys Quarters is too small to support a dwelling.

- A dwelling on this undersized lot that also requires significant variances is out of character with the neighborhood and would have a negative effect on the property values of the current residents.

- While other dwellings may be non-conforming, Petitioner cannot point to a single dwelling constructed on an undersized lot under current zoning.

- The site has had a separate and viable waterfront use for fishing, boating and recreation.

- This Petition is barred by the decision in the 2003 case in which a variance was denied on the basis of lack of uniqueness and practical difficulty; there has been no change to the site or the area since the 2003 decision.

- The area is low-lying and has experienced significant flooding during storms, let alone Hurricane Isabel when the site flooded.

- It is essential that on this cul-de-sac, a turn-around area that has been used continuously for many years remain on the site for use by emergency vehicles, County snow removal equipment, etc.

- Although the site was used by Petitioner Oberst's family along with their home across the street, Petitioner chose not to sell it with the sale of her former home, thus ignoring a viable use; Mr. Kroll who bought her home even had an interest in and inquired about Lot 304.

- Development of the site is contrary to the principles and policies of the Critical Area laws.

- There is no evidence of uniqueness under the standards of BCZR 307.1 and *Cromwell.*

The main points of Petitioner's case to deny the variance are:

1. The evidence as to whether the right of way for Cold Spring Road is 40 ft or 25 ft. is conflicting and should be reviewed by the County agencies or the Circuit Court in a separate action; Mr. Eric Rockel admitted on cross-examination that the maps prepared by the engineering firm of Morris and Ritchey used by the County to construct water and sewer service to the area in 1998, show a 40 ft. right-of-way; the fact that the County cannot locate a deed does not mean the evidence of a 40ft right-of-way is invalid. Petitioner's surveyor, Mr. Dallas' own description of the site states Cold Spring Road is 40ft wide **(People's Counsel's Exhibit #11)**. The ZCPM touches on this issue at 1B01.2.C.3.b Road Widening - Existing Lots, attached. It provides that if an unimproved lot meets area requirements before the road widening, it will become nonconforming after the taking. Even so, it requires any future buildings and use to meet the current zoning regulations. There is no relaxation of setbacks for road or right-of-way expansions. Young, supra at § 9.64, also states:

> ***"In determining whether a lot meets minimum area requirements, land may not be considered which is reserved for road purposes in lieu of street." (citations omitted).***

If the Petitioner is in error, and it is determined that the right of way is 40 feet, granting the set back variance here would catastrophic for all parties. Young, American Law of Zoning, 3rd § 9.64 is clear:

"An alley bed at the rear of a lot may not be included in computing the are of the lot ..." (citations omitted).

Moreover, a request for a variance to locate a house 2 ft from a public road is without precedence in People's Counsel experience. It is one thing to request a setback variance from an adjoining residence or residential lot line. It is quite another to permit a permanent structure 2 feet from the public road. As Mr. Cunningham from OPZ stated, the health safety and welfare of the citizens are at risk if this variance is granted. It is also irrelevant that other residents may have made passive use of the right-of-way area with grass and small plantings. This is not unusual nor is such activity permanent. Such use is not evidence of the exact right-of-way line as Petitioner suggests and is irrelevant to a basic property issue. Regardless, of use, setbacks must be calculated from the right-of way – " ". Finally, Petitioner must still qualify for a variance even if the right-of-way is 25 ft; evidence of uniqueness or practical difficulty is lacking regardless of the location of the right-of-way line.

2. The turnaround area was granted to the County by Petitioner Oberst's family in 1998 and never revoked; a turnaround on Lot 304 and/or the adjoining sliver has been in existence for as long as the residents can remember – it is necessary for emergency and service vehicles on this cul-de-sac and thus the "public health, safety and general welfare;" even Petitioner Zinn admits it is necessary and has agreed to maintain a turn-around area on the site, although the neighbors testified the proposed location would cause further damage to their properties by the large vehicles; in any event, the designated turn-around area further reduces an already undersized lot.

3. Petitioner could not differentiate this case from the denial of variances on the same site in 2003; *res judicata* prohibits the relief requested here; a similar decision was reached by the Deputy Zoning Commissioner in the attached Case #05-172 for 11304 Beach Road; variances were sought and denied at the site in prior cases, including a decision of the CBA in the attached Case #01-313-A; *res judicata* was applicable even if the setback variances in the later case differed in feet from what was requested in the earlier case. Similarly, in Case # 05-308A, the Deputy Commissioner denied a sign variance on the basis of *res judicata*. The appeal is now pending before this Board. The decision of the Zoning Commissioner in 2003 that Lot 304 and the adjoining sliver of land was not unique under *Cromwell* and BCZR 307.1 must be respected and followed – there is not a scintilla of evidence that the site itself has changed in any way. Even Petitioner's witnesses as well as the Planner Mr. Cunningham testified that the site has not changed since 2003.

4. Even if *res judicata* does not bar relief, Petitioner failed to carry the burden of proof. The only evidence of uniqueness as defined in *Cromwell* was a discussion of the shape. But Mr. Kellman admitted others in the subdivision are similarly shaped. More importantly, it is not the shape that is driving the need for variances. The site is simply too small to satisfy the minimum area and required setbacks. And under the language in *Cromwell*, the size of the site is not unique because even Petitioner's witnesses recognized other small lots on the peninsula:

> ***"[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.

See also the subdivision plat for Long Beach Estate as to lot sizes. **Petitioner's Exhibit 1.**

A close review of Petitioner's case discloses it is no different than the type of evidence refuted by Judge Cathell:

> ***"Instead of first determining whether the subject property is unusual or unique, the zoning authorities are first determining whether a practical difficulty or unreasonable hardship exists. That determination is then used to create a unique and unusual situation as to the subject property because surrounding properties do not experience the hardship or difficulty. . . Simply stated, the variance that is desired (and the difficulties that would exist if it is not granted)cannot be the source of the first prong of the variance process – an inherent uniqueness of the subject property not shared by surrounding properties."*** Id. 695.

As stated, the application of zoning on the site in 1971 and the subsequent rezonings do not make the site unique. The site itself must have an inherent characteristic which differentiates it from others and which makes the application of the set back regulations unduly burdensome. If rezoning alone justified a variance, the effect would set in motion a runaway train: (i) the power of the County Council to rezone would be emasculated, or rendered altogether moot; (ii) the law of nonconforming use would be superfluous; (iii) the first zone applied to a site would, in effect, remain the zone for all time; variances would be justified under the distorted logic that the site is "unique" because it cannot comply with current regulations.

5. It must be emphasized that the size of the lot does not make it unique *per se*. It is never mentioned in the discussion of uniqueness in *Cromwell*. A rare small lot

that does not meet the standards in BCZR 304 may be entitled to a variance if it is an aberration in the neighborhood and has no other use under the zoning regulations if relief is not granted. This strict interpretation is important, otherwise, no variance for an undersized lot could ever be denied.

For this reason, and to permit some relief for lot owners in old subdivisions, Baltimore County, like other jurisdictions, has provided specific regulations for undersized lots. As discussed above, BCZR 304 sets forth specific criteria for relief. The Petitioner here does not qualify for relief under 304 because she cannot comply with 304 B, which prohibits relief if front and rear yard setbacks cannot be satisfied. Unless the site meets the *Cromwell* standards for a variance for area and setbacks, there is no relief simply because the lot is undersized. Furthermore, BCZR 307 specifically states, ***"No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations."*** (Emphasis added). The variance requested here from the minimum lot size directly violates this restriction on variance relief for undersized lots. Since there is a viable use of the site as discussed in the next paragraph, there is no justification to grant the variances.

6. The uncontested evidence shows the Petitioner and her family maintained viable uses on the site for many years, including boating and fishing. Unlike non-waterfront properties, uses in conjunction with waterfront construction (piers, mooring piles, bulkheads) are permitted on unimproved lots without a principal residential use. (See BCZR 417). A property owner is not entitled to every use in the zone. He is only

entitled to some reasonable use. It is evident such recreational uses are reasonable since Petitioner Oberst and her family used the site in this way for decades. Clearly, her motive is to make more money by selling the site as a building lot. While this may be a recognized economic preference, it has been stated consistently by the appellate courts in Maryland, and discussed above in this Memorandum, that economic profitability is not a basis for zoning relief. This also applies to Dr. Zinn's interests. Neither he nor the owner Oberst should use the zoning regulations for their own benefit and to the detriment of the neighbors.

7. It is obvious Long Beach Estates has been developed with a degree of distinct uniformity in its layout of lots and improvements. This is part of its character and charm. While no one disputes the larger Lot 199 at the point owned by the Hubers is an attribute, an unconventional large dwelling on an undersized lot detracts from the neighborhood. As the protesting witnesses testified, a house, regardless of style, on a lot that is so small it cannot accommodate modest setbacks, is out of character, out of place, and has an adverse effect on the entire neighborhood. (While the style of house should have no effect on the legal standards for variance relief, the Board should be sensitive to style and appearance if a dwelling is permitted here).

Moreover, here it may be dangerous as well as unsightly to build, given the need for a vehicle turn-around area on the site and the testimony describing a history of flooding on Lot 304.

8. The site is in the Chesapeake Bay Critical Area. Under BCZR 500.14, a

variance or special hearing cannot be granted unless certain specific findings are made by DEPRM. The June 11, 2004 letter from DEPRM **(Petitioner's Exhibit 3A)** fails to discuss the requirements in 500.14 C. that the proposal is ***"consistent with established land use policies for development in the Chesapeake Bay Critical Area"*** and must ***". . . address the fact that even if pollution is controlled, the number, movement and activities of persons in that area can create adverse environmental impacts."*** The Board is not required to accept DEPRM's letter as the definitive word on the Critical Area standards. The decision lies ultimately with the Board who must make its independent findings if the variances can be granted in such a manner ". . . without injury to public health, safety and general welfare" under BCZR 307. We contend they cannot under BCZR 500.14.

Summary

The Petition should be denied for the following reasons:

1. The relief is barred by *res judicata* and *collateral estoppel* since the identical relief was denied on July 29, 2003 in Case No. 03-500-A, a final decision of the then Zoning Commissioner, Lawrence Schmidt, that was not appealed.
2. Petitioner does not qualify for relief under BCZR 304 for undersized lots because she cannot comply with the requirement in BCZR 304 (B) that all other setback standards are met. Rather, not only does Petitioner fail to meet the minimum lot size, but she also requests variances from both the front and rear yard setback requirements.
3. Petitioner is not entitled to a variance because she failed to prove the site is unique, nor that the alleged uniqueness prevents, as a practical difficulty, a reasonable use of the site. There was no evidence the site qualified as unique under the standards in *Cromwell* and BCZR 307 as to ***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, which prohibit reasonable use of the site. The size is not a factor of uniqueness and Petitioner herself claims the size is similar to others on the subdivision plat. There is no evidence of practical difficulty since the site has had and can continue to have waterfront recreational uses.

4. The uncontested evidence of the opposing citizens and expert is the requested relief would violate the spirit and intent of the D.R. 3.5 zone, the Critical Areas Laws, and variance law, and would be injurious to public health, safety and welfare.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. DeMilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of June, 2005, a copy of the foregoing Entry of Appearance was mailed to John B. Gontrum, Esquire, Whiteford, Taylor & Preston, LLP, 210 W Pennsylvania Avenue, Towson, MD 21204, Attorney for Petitioner(s).

Carole S. DeMilio

CAROLE S DEMILIO
Deputy People's Counsel

1B01.2.C.3 SETBACKS FROM STREET CENTERLINES

a. Paper Streets -- Unimproved (paper) streets shall be considered the same as existing (improved) streets. The applicant has the option of either petitioning for a variance or a road closing. To initiate a road closing procedure, a person should contact:

Law Office	887-4420
Bureau of Land Acquisition	887-3252

b. Road Widening - Existing Lots -- When the County or State widens a road right-of-way that adjoins a lot and the setbacks and/or the lot area become deficient or the deficiency is increased by the taking, then the following applies:

1. If the lot is "a lot of record" as defined in B.C.Z.R. unimproved and considered buildable (area-wise) prior to the taking, the area will be considered nonconforming after the taking. However, all structures and uses must meet the setbacks required in the current zoning regulations.
2. If the lot is improved with a structure, then any deficiencies (inclusive of height, setback and/or area) that are created by the taking will be considered nonconforming.

1B01.2.C.4 MINIMUM AREA STANDARDS IN RESIDENTIAL TRANSITION AREAS for subdivisions approved from September 19, 1970 to September 25, 1981 (adoption of Bill 100-70 until Repeal by Bill 124-81) - Dwellings (no other principal building permitted) and accessory buildings in residential transition areas, if designated under Subparagraph 1B01.1.B.1 as Group I, Group II, or Group III uses, shall be situated on lots in accordance with the standards set forth in the table below and with the provisions of Section 400, respectively. No more than one principal building shall be situated on any lot in such a residential transition area.

Residential Transition Uses to Which Lot is Limited under Subparagraph B.1 of Subsection 1B01.1	Zone Within Which Adjacent Dwelling or Lot is Situated	Minimum Standards for Dwelling Permitted				
		Minimum Lot Area, in Square Feet	Minimum Lot Width, in Feet	Minimum Distance from Building to Centerline of Any Street, in Feet	Minimum Rear-Yard Depth in Feet	Minimum Width of Any Side Yard (Except as Otherwise Provided, as on a Corner Lot), in Feet	Minimum Sum of Widths of Side Yards for Any Detached Building
Group I uses	D.R. 1	25,000	125	75	50	20	50
" " "	D.R. 2	13,000	90	65	40	15	30
" " "	D.R. 3.5	7,500	70	55	30	10	25
" " "	D.R. 5.5	5,700	55	50	30	8	20
Group II or Group III uses	D.R. 1 D.R. 2 D.R. 3.5 D.R. 5.5 D.R. 10.5	Two-Family Detached Dwelling: 7,600 One-Family Detached Dwelling: 5,700 One-Family Semidetached Dwelling: 3,800 Group House: 1,970 Group-House Apartment Building: 1,970 per dwelling unit	Two-Family Detached Dwelling: 70 One-Family Detached Dwelling: 53 One-Family Semidetached Dwelling: 35 Group House: 20 Group-House Apartment Building: 20 per dwelling unit	50	30	One- or Two-Family Detached Dwelling: 8 One-Family Semidetached Dwelling, Group House, or Group-House Apartment Building: 15	20

Provided, however, that alternative standards of lot or side-yard width may be applied to non-rectangular lots if such standards have been adopted under the authority of Section 504. (Bill No. 100, 1970.)

Res Judicata

1/11

IN RE: PETITIONS FOR VARIANCE AND SPECIAL HEARING N/S of Beach Road, 115 ft. E centerline of Opie Road 11th Election District 5th Councilmanic District (11304 Beach Road)	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO. 05-172-SPHA
Lone Wolf D. Silverheels *Petitioner*	*	

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as Petitions for Special Hearing and Variance filed by the legal owner of the subject property, Lone Wolf D. Silverheels. The special hearing and variance requests are for property located at 11304 Beach Road in Baltimore County. The special hearing request is filed pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to use the property for a single-family dwelling with an existing garage and to amend Case Nos. 03-342-SPHA and 01-313-A. In addition, a variance is requested from Section 1A01.3B.3 of the Baltimore County Zoning Regulations, to permit a proposed dwelling with a 49 ft. setback to the centerline of the street and a side setback of 8 ft. and 18 ft. in lieu of the required 75 ft. and 35 ft. respectively and to permit an undersized lot in a subdivision recorded prior to March 30, 1955. The subject property and requested relief are more particularly described on Petitioner's Exhibit No. 1, the plat to accompany the Petition for Variance.

This case was originally set for hearing on November 23, 2004 but because the property was not posted the Department of Permits and Development Management rescheduled the hearing to January 10, 2005 and notified the Petitioner of his obligation to post the property for this hearing. However, the property was not posted with Notice of Hearing of the January 10, 2005 hearing. A note in the file from the Petitioner indicated that the property was not posted

Res Judecata

IN THE MATTER OF THE APPLICATION OF DANIEL H. DUPONT –LEGAL OWNER, /PETITIONER FOR A VARIANCE ON PROPERTY LOCATED AT 11304 BEACH ROAD, N/W BEACH ROAD, 115' E CENTERLINE OPIE ROAD	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
11TH ELECTION DISTRICT 5TH COUNCILMANIC DISTRICT	*	CASE NO. 01-313-A

* * * * * * * * *

OPINION

This matter comes before the Board as a result of a denial by the Deputy Zoning Commissioner of the Petitioner's request for relief under *Baltimore County Zoning Regulations* (BCZR) §§ 304 and 307; specifically, to allow construction of a modular structure on an undersized lot in an R.C. 2 zone (in which the minimum for such construction is 1 acre), and to vary the dimensional requirements applicable in the zone to permit a side property line setback of 7 feet and 14 feet respectively in lieu of 35 feet, and 48 feet to the centerline of the street in lieu of the 75 feet required.

The matter was heard *de novo* by the Board on March 5, 202. Appearing on behalf of the Petitioner was Michael Freilich, Esquire. Carole S. Demilio, Deputy People's Counsel, appeared in opposition.

The Petitioner, Daniel Dupont, testified and described his purchase of lots 33 and 34 by a single deed under the address of 11306 Beach Road in 1994 from Genevieve Gerry. He related that in 1998 he conveyed the lots separately to himself under separate deeds, also obtaining a separate address and tax assessment for each. He further stated that he replaced the existing structure on Lot 33 with a new modular home on the identical residential footprint. He hoped to gain rental income from a similar modular home to be placed on adjacent Lot 34.

Richard Matz, a professional engineer well known to the Board, was presented and accepted as an expert in engineering. He testified as to the preparation of the plat in support of Petitioner's request. He described the property as well as the surrounding area and outlined various difficulties inherent in the

Res Judicata

IN RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE – N/S Beach Road, 115' E of Opie Road (11304 Beach Road) 11th Election District 5th Council District	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY
	*	Case No. 03-342-SPHA
Daniel Dupont (aka Lonewolf Silverheels) Petitioner	*	

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Hearing and Variance filed by the owner of the subject property, Daniel Dupont, also known as Lonewolf Silverheels. The Petitioner requests a special hearing to approve the use of the subject property for a single-family dwelling and an existing garage with a height of 24 feet. In addition, variance relief is requested from Section 1A01.3.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a front yard setback of 49 feet in lieu of the required 75 feet, and side yard setbacks of 9 feet and 18 feet in lieu of the required 35 feet each for 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 was Timothy P. Knepp, Esquire. Mr. Dupont/ Silverheels did not appear at the hearing and no testimony was offered on his behalf. There were no Protestants or other interested persons present.

The property under consideration is a rectangular shaped parcel, 53' x 200' in dimension, located on the north side of Beach Road, just east of its intersection with Opie Road in eastern Baltimore County. The property is also known as Lot 34 of Bird River Beach and contains 10,600 sq.ft. in area, zoned R.C.2. Presently, the lot is improved with a two-story garage to the rear of the parcel, which has been the subject of an ongoing zoning violation. Pursuant to documentation contained within the case file, the Petitioner obtained approval for the existing

252 Md. 594

Albert J. FERTITTA

v.

Lambert A. BROWN et al.

No. 386.

Court of Appeals of Maryland.

March 7, 1969.

Proceeding on bill for declaratory decree for relief from order of zoning commissioner that property owner cease using his waterfront property for boatyard and marina. The Circuit Court, Baltimore County, W. Albert Menchine, J., sustained protestors' demurrer without leave to amend and plaintiff appealed. The Court of Appeals, Hammond C. J., held that the circuit court's final judgment, which denied relief from zoning commissioner's orders that property owner cease using his waterfront property as marina in violation of zoning ordinance, was binding adjudication on property owner, who had failed to appeal from such orders and circuit court judgment, that on same state of fact and law property owner did not have right, legal or constitutional, to operate marina or to carry on marina-type activity.

Affirmed.

1. Judgment ⇐650

The circuit court's final judgment, which denied relief from zoning commissioner's orders that property owner cease using his waterfront property as marina in violation of zoning ordinance, was binding adjudication on property owner, who had failed to appeal from such orders and circuit court judgment, that on same state of fact and law property owner did not have right, legal or constitutional, to operate marina or to carry on marina-type activity.

2. Zoning ⇐40

No constitutional right is impinged by legal necessity of landowner to use his property as others similarly situated must use theirs under valid zoning ordinance unless landowner is deprived of all reasonable use of his property.

3. Declaratory Judgment ⇐47

Once a controversy has been finally adjudicated by a court with jurisdiction of subject matter and parties, the controversy is no longer alive and, therefore, is not the proper subject for declaratory judgment action.

4. Declaratory Judgment ⇐41

Declaratory proceedings were not intended to and should not serve as substitute for appellate review or as a belated appeal.

5. Declaratory Judgment ⇐47

Where special mechanics for review of orders of zoning commissioner had already been utilized by property owner to binding finality, declaratory relief on same question was not available to him.

William E. Chamberlain, Baltimore (Ginsberg & Ginsberg and Hyman Ginsberg, Baltimore, on the brief), for appellant.

Ernest C. Trimble, Towson, for appellees.

Before HAMMOND, C. J., and MARBURY, BARNES, FINAN, SINGLEY and SMITH, JJ.

HAMMOND, Chief Judge.

The flowers that bloom in the spring have something to do with this case and their coming this year will not inspire Albert J. Fertitta, the appellant, to sing tra la as he has done figuratively for the past six springs. The zoning commissioner of Baltimore County after a hearing brought about by protesting neighbors, the appellees, herein referred to as Brown, found on August 28, 1962, that Mr. Fertitta was illegally conducting a marina on his riverfront lot, 208 Corsica Road, in the 15th Election District, and in an order never

appealed directed such
manently within thirt
Mr. Fertitta each spri
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Brown, the zoning co
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front lot for a marina
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were all those of his
neighbors, to whom he
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Again over the objectic
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1964, before the deputy
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given him by a provisio
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hearing to determine the
of a non-conforming use.
continued to November 9,
on January 15, 1965, the
commissioner decided that
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1945, the year zoning first
more County, and continuo
the year Fertitta bought tl
that boats are no longer s
paired there, and held that
Road "may be used for the
and the sale of marine supp
items."

-TENTS - are permitted on a temporary basis for periods not exceeding 30 days for religious, educational or recreational uses.

-TRAILERS/TRUCKS - If originally constructed, fitted, designed, or used as a trailer, shipping container, truck body, or other similar vehicle are not permitted on residential property as principal or accessory structures such as sheds, garages, storage buildings or otherwise.

-UNUSUAL AND/OR LARGE STRUCTURES/USES not listed above or specifically exempted in 400.1.d below may be subject to a special hearing before the Zoning Commissioner:

(1) See the following cases:
83-259 (outdoor model train layout)
85-62-SPH (large greenhouse)

400.1.f - THINGS NOT CONSIDERED AS ACCESSORY and therefore not subject to the provisions of Section 400 B.C.Z.R.

- Air conditioning/heating units
- Bird baths
- Children's play equipment (not including treehouses/playhouses)
- Flag poles
- Handicapped access ramps
- Lawn furniture (moveable)

SECTION 400.2.a - ACCESSORY BUILDINGS - WATERFRONT SETBACKS

(1) On all waterfront, when the proposed house fronts on the water, use the water as the front property line.

(2) In D.R. zones the same maximum average setback requirements apply on waterfront.

(3) In R.C. zones, the front yard requirement on the water would be the same as the street property line requirements based on a 50 ft. street.

SECTION 400.2.b - ACCESSORY BUILDINGS - SETBACKS FROM PAPER STREETS/ALLEYS

For the purposes of determining required setbacks, unimproved (paper) streets or alleys shall be considered the same as existing (improved) streets. The same shall apply to corner lots regarding the placement of accessory buildings. The applicant has the option of either petitioning for a variance or a road closing. To initiate a road closing procedure, a person should contact:

Law Office	887-4420
Bureau of Land Acquisition	887-3252

JUDGMENT OF THE COURT OF SPECIAL APPEALS AFFIRMING THE VIOLATION OF PROBATION AFFIRMED;

JUDGMENT OF THE COURT OF SPECIAL APPEALS VACATING THE SENTENCE REVERSED AND THE CASE REMANDED TO THAT COURT WITH DIRECTION TO AFFIRM THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY;

COSTS IN THIS COURT AND IN THE COURT OF SPECIAL APPEALS TO BE PAID BY GARY DOPKOWSKI.

---

602 A.2d 1191

Arthur E. BATSON, Jr. et al.

v.

A. Spencer SHIFLETT, Jr.

No. 42 Sept. Term, 1991.

Court of Appeals of Maryland.

March 12, 1992.

Local union president brought suit against national union and its president for defamation and intentional infliction of emotional distress for statements made during labor dispute after local union entered unauthorized contract. The Circuit Court, Baltimore County, John F. Fader, II, J.,

probation shall be sought by application for leave to appeal." He declares:

> This Court would invite mischief if it were to uphold the circuit court's arbitrary dismissal of [Dopkowski's] statement that he had obtained treatment for his drug problem.

He does not explain what mischief we are inviting, and we do not see any.

entered judgment in favor of local president and defendants appealed. The Court of Special Appeals, Alpert, J., 86 Md.App. 340, 586 A.2d 792, affirmed. On certiorari, the Court of Appeal, Karwacki, J., held that: (1) collateral estoppel did not prevent local president from proving falsity of statements in tort suit; (2) tort suits were not preempted by federal labor law; (3) evidence supported jury finding of defamation; (4) accusations in labor dispute were not outrageous conduct needed to support intentional infliction of emotional distress claim; and (5) new trial was required to determine compensatory and punitive damages solely for defamation.

Affirmed in part, reversed in part, and remanded.

1. Judgment ⇐948(1)

Collateral estoppel is affirmative defense which must be set forth in answer to complaint. Md.Rule 2–323(g).

2. Appeal and Error ⇐499(1)

Appellate court will not ordinarily decide issue unless it plainly appears by record to have been raised in or decided by trial court. Md.Rule 8–131(a).

3. Certiorari ⇐64(1)

In reviewing decision rendered by Court of Special Appeals, Court of Appeals ordinarily will consider only issues that have been raised in petition for certiorari or any cross petition. Md.Rule 8–131(b)(1).

4. Administrative Law and Procedure ⇐501

Whether administrative agency's declaration should be given collateral estoppel effect depends upon whether agency was acting in judicial capacity, issue presented to district court was actually litigated before agency, and resolution of issue was necessary to agency's decision.

5. Administrative Law and Procedure ⇐501

Agency findings made in course of proceedings that are judicial in nature should be given same preclusive effect,

Baltimore County, Maryland
OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

June 30, 2005

RECEIVED
JUN 30 2005
BALTIMORE COUNTY
BOARD OF APPEALS

Kathleen Bianco, Administrator
County Board of Appeals
of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

Re: In the Matter of Janice Oberst, Legal Owner
and Dr. Harlan & Amanda Zinn, Contract Purchasers
Case No.: 04-522-A

Dear Ms. Bianco:

Enclosed please find the original Facts and Overview of People's Counsel's Position along with three copies of such for filing with regard the above-referenced case.

Thank you for your consideration.

Sincerely,

Carole S. Demilio /rmw

Carole S. Demilio
Deputy People's Counsel for Baltimore County

CSD\rmw

cc: John B. Gontrum, Esquire

6/30/05

IN THE MATTER OF:	*	
	*	BEFORE THE
JANICE OBERST, Legal Owner & DR. HARLAN & AMANDA ZINN, Contract Purchasers,	*	COUNTY BOARD OF APPEALS
		FOR BALTIMORE COUNTY
W/S Cold Spring Road, 700' S of the c/l Chesapeake Avenue (809 Cold Spring Road)	*	
	*	
15th Election District		Case No: 04-~~552~~-522-A
6th Councilmanic District	*	

* * * * * * * * * * *

PETITIONERS' MEMORANDUM IN LIEU OF CLOSING ARGUMENTS

FACTUAL AND PROCEDURAL BACKGROUND

Janice Oberst, Dr. Harlan K. Zinn and Amanda C. Zinn (collectively, "Petitioners"), submit this memorandum in support of their appeal to the County Board of Appeals for Baltimore County from an order by the Deputy Zoning Commissioner of Baltimore County denying their request for variances. Petitioners request variance relief for the property located at 809 Cold Spring Road (the "Property") in the Bowley's Quarters community in eastern Baltimore County. The variance request is from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations ("BCZR"), to allow a lot containing 5,092 square feet, a front yard of 23 feet and a rear yard of 2 feet in lieu of the required 10,000 square feet, 30 feet and 30 feet respectively, and to approve an undersized lot pursuant to Section 304 of the BCZR. A critical area variance was approved for the Property on June 11, 2004 (Pet. Ex. 3).

On July 20, 2004, after a hearing at which the Petitioners appeared without counsel, the Deputy Zoning Commissioner for Baltimore County issued an Order denying Petitioners' request

for variances. Petitioners then appealed to this Board. A hearing was held and testimony and evidence was received on February 24, 2005 and May 25, 2005.

Janice Oberst, the legal owner, had previously applied for variances for the Property; however, there are significant differences between the prior petition and this Petition. In the prior petition, the proposed house was placed in a different location on the Property with substantially different setbacks. No critical area variance had been obtained, and no mitigation had been proposed. The house itself as proposed was determined inconsistent with the neighborhood (People's Counsel Ex. 3).

The Property is a waterfront property consisting of Lot 304 of Plan "C" of Long Beach Estates recorded among the Land Records of Baltimore County in Plat Book 4, page 131, and of a 900 square foot parcel originally deeded by the Bowley's Quarters Improvement Association to Ms. Oberst's family in 1992. (Pet. Ex. 1, 5(c)). The true description of the Property, however, is very different from its description in the Long Beach record plat. First, the roadway of Cold Spring Road, shown on the record plat as a 40 foot roadway, was never dedicated to Baltimore County. Baltimore County maintains an area less than half of this width and claims only that area (T. 5/18/05, pp. 81, 93)[1]. All of the photos submitted by the parties indicate that the individual lot owners along Cold Spring Road have maintained and claimed areas up to the right of way actually maintained by Baltimore County. People's Counsel's Exhibit 1, the April, 2002, GIS aerial map, is particularly instructive in showing the relationship of the neighborhood's dwellings to the waterfront and to Cold Spring Road. Second, as the site plans indicate (Pet. Ex. 2 & 4) erosion over the years, particularly from hurricane Isabel, has caused deletion of area along the waterfront.

[1] Transcript references are to the May hearing and are cited as "T. 5/25/05".

Ms. Oberst's family has owned Lot 304 for many decades. Prior to Ms. Oberst's acquisition of the Property, it was owned by her mother, Mrs. Shuman. Mrs. Shuman's family owned Lot 810 across Cold Spring Road. They purchased Lot 304, and later the 900 square foot parcel, as investment properties. They also used Lot 304 as a place to keep their boat even though Lot 810 has its own pier (People's Counsel Ex. 1; T. 5/25/05, p. 70). Lot 814 has always been held and maintained separately from the improved, non-contiguous residential property in a separate tax account and is treated separately for water and sewer assessments (Pet. Ex. 5, 8).

In 1998 the Baltimore County Department of Public Works sought permission from Mrs. Schuman to use a portion of the Property as a turnaround for garbage trucks. Mrs. Schuman granted that permission; however, no ownership rights were granted to Baltimore County (Pet. Ex. 7). Eric Rockel, Supervisor of Contracts, Negotiations and Records in the Bureau of Land Acquisition for Baltimore County, confirmed that Mrs. Schuman's permission did not set up rights in Baltimore County (T. 5/25/05, pp. 94-95). There was no testimony or evidence placed in the record disputing Petitioners' evidence as to the ownership of the roadway or the turnaround.

I. THE PROPERTY'S UNIQUENESS

The Property has several unique characteristics warranting the requested variances. The most obvious factor is the actual layout of the Property and its relationship-- not to adjoining neighbors, but to the water and to Cold Spring Road. All waterfront properties have the unique feature that the water (not the road) is considered the front of the property. The Zoning Policy Manual (the "Manual") indicates that front yard setbacks for the purposes of averaging are typically taken from roadways-- not waterways. (Manual, pp. 1-1.3a, 1-1.3b). Section 400.2.a of the Manual states that proposed waterfront homes should use the waterfront as the front of the property.

However, this Section must be read in conjunction with Section 400.1.a of the Manual which indicates that the determination of the front of waterfront property must consider a number of special factors including the orientation of other houses and accessory buildings on nearby lots.

Although the maximum averaging setbacks apply pursuant to Section 400.2.a, it is clear from the diagrams used and incorporated as part of the Manual that such setbacks may not always apply due to the configuration of the shoreline. *See, e.g.*, Manual, §417.3 & BCZR, App. J (where the proposed dwelling on the concave shoreline is set back less from the water than are the adjoining properties). In this case, both the Zoning Bureau of the Department of Permits and Development Management and the Deputy Zoning Commissioner advised against using the front yard averaging method based on the unique shoreline and adjacent structure configuration.[2] Consequently, the 30 foot front yard setback was used for the Property.

The 30 foot front yard setback requirement should also apply to the Property because the large adjoining lot located at 800 Cold Spring Road is surrounded by water on three sides, with its front on Middle River, whereas the Property fronts Galloway Creek. (People's Counsel Ex. 1; Pet. Ex. 2, 4, 6B). Consequently, the "front yard" of 800 Cold Spring Road is not located on the same waterway as the Property.[3] As a result, the front yard averaging method should not apply in this case.[4]

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[2] It should be noted that both of these opinions are based on a longstanding common sense approach. (T. 5/25/05, p. 115).

[3] Averaging the setback of the adjacent dwelling at 813 Cold Spring Road (20 feet), the front yard setback of the dwelling at 800 Cold Spring Road (57 feet), and the setback of the garage, shed and apartment at 800 Cold Spring Road (14 feet) results in an average of 30 feet. (Pet. Ex. 4). Setbacks not stated on the site plans are based on using the scale shown on the site plan.

[4] The required setback issue is relevant only to the extent that it impacts the public notice of the variance being sought. Here, the setback is 23 feet from the proposed house to the water. There is no confusion as to the location of the proposed house. Whether the required setback is 30 feet or 50 feet (or something in between) does not change the factual setback of 23 feet, and does not materially impact the variance sought by Petitioners.

Another unique characteristic of the Property pertains to the rear yard variance request. Section 1B01.2.C.3a of the Manual provides that "paper streets" shall be considered the same as existing (improved) streets. Plan "C" of Long Beach Estates was recorded in 1914. At that time, Cold Spring Avenue was shown as a 40 foot right of way. The edge of the paper right of way is 2 feet from the proposed dwelling. Over the past 90 years, however, the county has never accepted what might be considered an implied offer of dedication. Mr. Rockel refused to accept that an offer had even been made of the right of way (T. 5/25/05 at pp. 92-93). Consequently, as property owners used the right of way as their own, as clearly they have done, the right of way has diminished to the area maintained by Baltimore County, and the actual dwelling setback has increased to 25 feet.

Cold Spring Road, as it is now known, is not a "paper street." It actually exists. However, instead of existing as a 40 foot wide right of way, it only exists as a 16 -18 foot right of way.[5] In this case the Petitioner's surveyor originally used the setback from the right of way originally platted-- not the right of way as it has only subsequently been known to exist.

The true setback of the proposed dwelling to the paved roadway is 25 feet. Because the built roadway is not centered in the old right of way, the paved road is actually further from the proposed house than the center of the old right of way. Here, the paved portion of the roadway, as the true right of way, is further evidenced by the fact that virtually all of the other dwellings in the vicinity fronting on Cold Spring Road (including Mr. Pitz's new house across Cold Spring Road) are far closer to the platted right of way than the BCZR permit. Baltimore County would have to go

[5] The official 2004 Comprehensive Zoning Map introduced by People's Counsel indicates that the road width is 18 feet more or less. (People's Counsel Ex. 9).

through an eminent domain process in order to acquire any rights in the property under the control and dominion of the lot owners. Consequently, the "paper" setback of 2 feet should more properly be considered a setback of 25 feet in lieu of the required 30 feet.

Another unique characteristic of the Property is its lot size. Using the worse case scenario, the surveyor did not compute any of the platted 40 foot right of way in the Property's area calculation. Rather, the surveyor used the dimensions reflected by the record plat. The platted dimensions result in an area of 5,092 square feet. This calculation is not truly reflective of the actual conditions or situation of the Property. First, under Maryland law as well as under the BCZR, at least half of the right of way belongs to Ms. Oberst. (Md. Code Ann., Real Property, §2-114; Policy Manual §101, "Acreage, Gross Residential"). To that end, Ms. Oberst is entitled to the calculation which increases the size of the Property to over 7,500 square feet. This is particularly significant because unlike most calculations of gross acreage, the area shown in the old, platted right of way is actually unencumbered by an existing right of way. Consequently, the square footage is not only a "gross" square footage, but may also be considered as a net, usable lot area.[6]

Front, rear and lot size variances as well as the approval of an undersized lot must be obtained in order to build on the Property. The real issue of whether a dwelling is appropriate on this site can not be determined strictly from the Petition or from Petitioners' Exhibit 2. Rather, the true character of the Property is accurately reflected by Petitioners' Exhibit 4 and by the photographs of the Property and its surrounding neighborhood. This appeal arises from the fact that

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[6] Reference was made by People's Counsel to the fact that a portion of the calculated square footage as shown on Petitioners' Ex. 4 lies beyond the bulkhead in Galloway Creek. It should not be calculated into the lot area. That lost area, however, is more than equaled by the area gained in fact according to Mr. Rockel's testimony that the county only owns the paved roadbed. As indicated on Petitioners' Ex. 4, the roadbed is not centered in the right of way, and Petitioners actually have acquired more than half the easement area taken into the calculation as shown on the site plan. Accordingly, Petitioners have at least the 7,500 square feet at their disposal for the use of this lot.

Petitioners are being denied the right to build on the Property because its severely irregular shape requires a variance in order to permit a single family dwelling unit. Petitioners will undoubtedly suffer practical difficulties without the requested variances. Petitioners merely seek the same rights as others in the neighborhood—the right to build a home on their property. Mr. Kellman gave extensive testimony on the character of the neighborhood when he presented Petitioners' Exhibit 10A-P. Virtually all of the single lots are less than 10,000 square feet in size and have improvements that are close to the paved road.

The zoning of the Property has varied over the years. It was not zoned up until 1955 at which point it was zoned R.D.P. at one house per acre. From 1976 to 1992 it was zoned D.R. 5.5. It has been zoned D.R. 3.5 since 1992 (People's Counsel Ex. 7). The Property's zoning history is significant in determining what the acceptable building patterns have been in the community. Petitioners do not allege that the variance standards should be taken from the Property's prior zoning designations. As indicated by the photographs and site plans, however, and according to Mr. Kellman's observations, the lots and the houses in the community conform more to a D.R. 5.5 layout than to the requirements of D.R. 3.5 (T. 5/25/05, pp. 119-20, 125). Most of the lots, with the exception of 800 Cold Spring Road, are not only less than one acre in size, but also are less than 10,000 square feet in size. All of the other properties appear to be over 6,000 square feet, the minimum lot size for D.R. 5.5. Their lot widths and setbacks, as shown on the site plans and photos, also appear closer to D.R. 5.5 standards than to D.R. 3.5 standards because most of the lots on the record plat are less than 70 feet wide.

Compared to the other lots in the subdivision, the shape of the Property is clearly unique. (Pet. Ex. 1). The Property is one of the very few parcels that conform to the D.R. 3.5 lot width

requirements because it is over 115 feet wide. However, its depth from the roadway to the water is only 75 feet. Consequently, it has different issues than the other lots in the subdivision, most all of which are undersized. Virtually every independent review of the Property has recognized its unique site characteristics, which even justified a critical area variance (Pet. Ex. 3).

Mr. Pitz argued that the Property is susceptible to flooding, and Mrs. Schuman agreed that flooding occurred during hurricane Isabel and other hurricanes. Like most of Bowley's Quarters, the Property lies in the tidal flood plain and is susceptible to flooding during major storms. However, this factor does not render the Property unsafe for a house. Neither the state nor the local reviewing agencies raised any safety concerns with the construction of a dwelling provided it meets flood plain requirements. No variance of those requirements is being sought. The photographs clearly show that Mr. Pitz chose to raise the ground around his home and that others have raised their homes above tidal flood levels (Pet. Ex. 6). The issue of occasional tidal flooding has no bearing on this case.

Likewise, neither the Chesapeake Bay Critical Areas Commission nor the Baltimore County Department of Environmental Protection and Resource Management ("DEPRM") have indicated any wetlands concerns (T. 5/25/05, pp. 104-05). Additional plantings on the Property, which were required as a condition to the critical area variance, will enhance the Property's environmental features. Currently, the Property does not have significant vegetation. (Pet. Ex. 6a).

Petitioners propose to build a single family home measuring 16 feet by 46 feet. Petitioners propose to build the home in order to comply as much as practically possible with the applicable setback regulations. There is no recognizable housing pattern in the area. (People's Counsel Ex. 1; Pet. Ex. 10e-f; T. 5/25/05, p. 24). Some houses are quite large; some are very small. Materials

used in construction and quality of construction also vary greatly. The size of Petitioners' house will not be dissimilar from some of the other structures.[7] However the shape of the house is dictated by the unique shape of the Property.

Petitioners are willing to submit their proposed house plans to the Office of Planning for review, and they are not committed to any particular architectural design. Petitioners agreed to that submittal as a condition to the grant of the requested variances (T. 5/25/05, pp. 135-36). This puts to rest issues pertaining to the conformity of the structure to the neighborhood. It is clear and uncontested that a house cannot be built on the Property without the requested variances. This case presents a textbook example of an exceptional circumstance warranting a variance.

APPLICABLE LEGAL STANDARDS

There are two types of zoning variances recognized in Maryland: 1) use variances and 2) area or setback variances. The Court of Appeals of Maryland recognizes a distinction between a use variance and an area variance. *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md.App. 28, 37-39 (1974). Use variances permit a use other than that permitted in the particular zone or district. Area variances are variances taken from height, bulk, or setback requirements as in this case.

Use variances change the character of the zoned district and are customarily concerned with "undue hardship" claims, where the land cannot yield a reasonable return if used only in accordance with the use restrictions of the ordinance and a variance must be permitted to avoid confiscatory operation of the ordinance. To prove a use variance the following criteria must be met:

[7] Pet. Ex. 4 indicates houses that scale to the same width and which have the same square footage. The main

1) compliance with the ordinance would render the property unable to obtain a reasonable return or deprive the property of any reasonable use; 2) the difficulties or hardships are unique to the property and contrast with other property owners in the same zone; 3) the hardship was not the result of the property owner's own actions. *Id.* at 38-39.

Area variances are customarily concerned with a lower threshold of encountering "practical difficulty" due to the impact of the regulations without a variance. This lesser burden is permitted because the impact of an area variance is viewed as being much less drastic than that of a use variance. *Id.* at 39. Where the standard of "practical difficulty" applies, the petitioner is relieved of the burden of showing a taking in a constitutional sense, as is required under the "undue hardship" standard. There is no burden of showing a deprivation of all reasonable use of the property. Rather, the burden is to show that using the property for a desired, permitted use would be difficult. In order to obtain an area variance Petitioners must only show: 1) compliance with the area or setback regulations would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity unnecessarily burdensome; 2) granting the variance would do substantial justice to the property owner as well as to others in the neighborhood, or a lesser variance than that requested would give substantial relief to the other owner and be more consistent with justice to other property owners; 3) relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured. *Id.* at 39 (quoting *McLean v. So*ley, 270 Md. 208, 214-15 (1973)).

Similar to area and use regulations, variance provisions are created by ordinance and limited by ordinance. In Baltimore County use variances cannot be granted. The zoning regulations

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architectural distinction between the proposed dwelling and many existing dwellings is that the proposed

provide only for area variances. Section 307 of the BCZR restricts the granting of variances to area, parking and sign variances. Variances may be granted from height and area regulations "only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with ... [the regulations] would result in practical difficulty or unreasonable hardship." BCZR, §307. It is critically important that the standards of "practical difficulty" and "unreasonable hardship" are placed in the disjunctive. In some jurisdictions area variances must meet the much more severe "unreasonable hardship" test. However, in Baltimore County, a petitioner must only show practical difficulty.

Cromwell v. Ward, 102 Md.App. 691 (1995) is often misinterpreted and misunderstood. *Cromwell* must be read in the context of subsequent cases such as *Mastandrea v. North*, 361 Md. 107 (2000) and *Lewis v. Dept. of Natural Resources*, 377 Md. 382 (2003). *Cromwell* did not break new ground; it merely restated the rules that have been applied over decades. The *Cromwell* Court stated that the variance process generally is a two step process:

> The first step requires a finding that the property whereon the 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 unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's

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structure will conform to flood plain requirements as any new structure in the area must do.

> uniqueness, exists. Further consideration must then be given to the general purposes of the zoning ordinance.

Id. at 694-95 (emphasis in original).

In granting Petitioners' critical area variance for use of the buffer area, the Chesapeake Bay Critical Area Commission used a standard ranking in probative difficulty between the practical difficulty standard applicable in the present case, and the undue hardship standard applicable to use variances. Petitioners were required to show that a literal enforcement of the critical area requirements would result in "unwarranted hardship" and a "deprivation of rights commonly enjoyed by other properties in similar areas within the Critical Area." (Pet. Ex. 3). In *Lewis*, the Court of Appeals restated its previous determinations that "unwarranted hardship" was akin to the denial of a reasonable and significant use of the property within the restricted area. *Lewis,* 377 Md. at 412-16.

Lewis overturned the decision of the local Board of Zoning Appeals denying a request for a variance to construct a hunting camp on property located within a critical area buffer. There, the Board incorrectly applied the unwarranted hardship standard relying on facts suggesting alternative uses and possible construction outside of the buffer area. The issue is not whether all use of all of the property is impacted. Rather, it is only whether a reasonable and significant use within the buffer regulated by the Critical Area Law is impacted. *Id.* at 420. Here, the filed maps and plans show that most of the neighboring properties, including the large property at 800 Cold Spring Road, contain dwellings that would require a critical area variance. Consequently, denial of the variance in this case would deprive Petitioners of building lot rights enjoyed by all of their neighbors.

Lewis also clarified the standard for "uniqueness." Quoting *North v. St. Mary's County*, 99 Md. App. 502, 514 (1994), 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*, sub-surface 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.

Lewis, 377 Md. 382, 434 (2003) (emphasis in original).

The *Lewis* Court suggested that the island's shape and topography had a bearing on the unique attributes of the property. In *Mastandrea* there was testimony that the clay content of the soil required the impervious brick pavers for wheelchair access. Notably, the fact that piers provided access to the properties in *Lewis* and *Mastandrea* did not preclude the award of the variances for the structures sought.

The Critical Area standard is more difficult to meet than the practical difficulty standard. Practical difficulty does not require a finding that denying the variance precludes a significant use of the property. The petitioner must only show that an otherwise permitted use is denied or is unduly impacted by the regulations as applied to the property. Peoples' Counsel incorrectly argues that the standard is whether all reasonable use is denied. The proper standard is whether a permitted use is practically difficult to exercise without the requested variance. In addition to the

standards already discussed, variances should only be granted if they are in strict harmony with the spirit and intent of the height and area regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare. BCZR §307.

DISCUSSION

I. THE SUBJECT SITE IS UNIQUELY SHAPED, AND IT IS THIS UNIQUE SHAPE AND THE RELATIONSHIP OF THE PROPERTY TO THE WATERFRONT AND TO THE ROAD WHICH REQUIRES THE VARIANCES

The Property's unique and unusual shape is not refuted by any testimony or evidence. Ample and undisputed testimony of the Property's unique shape and its unique relationship to Cold Spring Road was given by Dr. Harlan Zinn, the contract purchaser of the property, Jonathan S. Dallas, an expert surveyor, and Mitchell Kellman, a zoning expert. The unique shape and relationship of the Property to the water and to the roadway is also evident from the site plans, photographs and record plat. In addition, both the State Critical Area Commission and County Department of Environmental Protection and Resource Management found the Property to be unusual in its configuration. Only the adjacent property at 813 Cold Spring Road is similar, and it has a dwelling with setbacks that are less than those sought in this case. (Pet. Ex. 4).

II. THE APPROPRIATE STANDARD TO BE APPLIED IS THAT OF PRACTICAL DIFFICULTY, WHICH CLEARLY IS PRESENT IF THE REQUESTED VARIANCES ARE NOT GRANTED

Strict application of the setbacks and area requirements in BCZR §1B02.3.C.1 will undoubtedly result in severe practical difficulties to Petitioners. There is no dispute that an otherwise permitted single family dwelling unit cannot be built on the Property without the variances. Although the Property is zoned residential and has consistently been taxed for public water and sewer, the applicable setback and area regulations do not permit a dwelling unit.

Petitioners demonstrated, through testimony and photographs, that other dwellings on Cold Spring Road have similar (if not the same) setbacks as the proposed dwelling. Messrs. Dallas and Kellman testified that the proposed home is in conformity with other homes in the community and that without the requested variances, the Property may only be used for severely limited and unpractical uses. There is no sound reason why Petitioners should be denied the right to reside on their property when their neighbors have not been denied the same right on similarly sized lots.

In his Order dated July 20, 2004, the Deputy Zoning Commissioner not only found that the lot was unique but also that Petitioners would suffer hardship and practical difficulty if the variances are denied (July 20, 2004 Order, p. 6). However, he also found that the Property can be used as a recreation site and for sailboat mooring and that those "valuable uses would continue regardless of whether or not the variances are granted." (July 20, 2004 Order, pp. 6-7). Likewise, People's Counsel argues that the Property can be used for other recreational uses. A recreation site or a private pier is not a viable and reasonable economic use of a residentially zoned building lot. *See, e.g., Steel v. Cape Corp.*, 111 Md.App. 1, 30-37 (1996) (affirming circuit court's reversal of Board of Appeals decision denying a request for rezoning property from open space district to residential use and finding no economically viable use for a tract of land with setback and access requirements only permitting an unreasonably shaped and sized dwelling unit). Without a dwelling on the Property, Petitioners are not even permitted to erect a shed or other type of accessory structure.

In fairness to the Deputy Zoning Commissioner as well as to the Office of Planning in its comment, neither had been presented with the Property's actual lot size and setbacks as presented to this Board. As Mr. Cunningham and Deputy Commissioner Murphy indicated, a setback of 2

feet from a road is just too small. No one wants a snow plow blade two feet from their front door (July 20, 2004 Order, p. 7; T. 5/25/05, pp. 38- 45). On the other hand the true site conditions show a lot that is actually 50 percent greater in size than indicated from the record plat with a setback from the roadway of 25 feet. That lot is not too small, nor is the proposed house too close to the roadway.

It also is clear, however, that People's Counsel and the Deputy Zoning Commissioner have applied the incorrect zoning variance standard. It is totally irrelevant that the Property can be used for a pier and can perhaps be used for picnicking by the owners. It also is irrelevant whether these uses are commercially viable and productive uses of the Property. The standard is not one of undue hardship, which requires a taking standard. It is not even that of unreasonable hardship as used by the Critical Area Commission in the deprivation of a significant permitted use. The standard is that of practical difficulty which only means that it would be practically difficult to enjoy **a** permitted use. In this case it happens to be a very significant use of the Property and the practical difficulty limits virtually all significant use of the Property, but the test is much less stringent than that.[8]

The Property is privately owned and is zoned D.R. 3.5. There is no existing residential use on the Property. None of the purposes of the D.R. zoning classifications are to prevent a single family dwelling unit from being erected on a building lot. Rather, the clearly articulated purposes of the D.R. zoning classifications are to regulate density while fostering a greater variety in housing types within future residential developments (BCZR §1B00.2).

A. Lot Area

[8] Under *Steel v. Cape Corp.*, it is arguable that the Property would qualify for the variances under the stricter standards of unreasonable hardship or undue hardship if the only permitted use is a pier. This is indeed a denial of all reasonable use of the Property.

With the exception of 800 Cold Spring Road, virtually all of the lots on Cold Spring Road have less than the minimum 10,000 square feet area as required in a D.R. 3.5 zone (T. 5/25/05, pp. 117-20; Pet Ex. 4). In fact, the property located at 810 Cold Spring Road has a net lot area of 8,800 square feet; 812 has a net lot area of 7,828 square feet; 814 has a net lot area of 8,575 square feet, 815 has a net lot area of 8,520 square feet and 817 has a net lot area of 9,920 square feet (T. 5/25/05, pp.119-20). A review of the record plat (Pet. Ex. 1) shows that just multiplying the dimensions of the lots yields individual building lots that are in conformance with the lot size of D.R. 5.5 zoning that was formerly on the Property. The character of development of the area also shows that the lot sizes are generally less than 10,000 square feet (People's Counsel Ex. 1).

The actual, usable lot size of the Property is over 7,500 square feet. This is more than sufficient to permit a single family, detached dwelling. While it may be argued that technically the size has to exclude the full record plat width of Cold Spring Road, the uncontested evidence is that the lot, as it actually exists today, has a usable square footage that is consistent with other lots now existing and being used for single family dwellings in the immediate area.

Here, the Board is being asked to determine whether the Property (as it actually exists) has enough usable land to support a dwelling so that it does not injure the health, safety or general welfare of the community. Based on the facts presented by the surveyor, the zoning expert and the County Bureau of Land Acquisition, it does.

The three prongs of the practical difficulty test clearly are met by this variance request:

1. Compliance with the strict letter of the area restriction would unreasonably prevent the owner from using the Property for a permitted purpose or would render conformity with the regulations unnecessarily burdensome. Absent the approval of the area

variance, there is no use of the Property for a residential dwelling which is the foremost permitted use in the D.R. zones. Given the size of the lots in the area on which houses have been built, it is unreasonable to prevent Petitioners from rights commonly enjoyed by others with similarly zoned land.

2. The grant of the variance would do substantial justice to Petitioners as well as to other property owners in the zoning district. In this case the grant of the variance would simply permit what others now enjoy in the zone based on the older lot scheme. People's Counsel is correct in that the D.R. 3.5 minimum lot size of 10,000 square feet is not met. However, the entire scheme of development of this area was based on a record plat from which lots were purchased as building lots. The original Lot 304 was even augmented by the 900 square foot parcel acquired in 1992. (Pet. Ex. 5). Similar to other lots, it was sold and bought as a building lot, and its use as such will not create an injustice to anyone else in the neighborhood given its usable area.

3. Relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured. The BCZR must be read as a whole to determine their spirit rather than singling out one section over another. It is clear that this lot does not meet minimum lot size for a D.R. 3.5 zone. The spirit of the regulations, however, goes beyond this section. The purpose of the residential zones is to permit a diversity of dwellings. Several sections of the code recognize that undersized lots are acceptable. In addition to BCZR §304, Sections 103.1 and 103.3, for example, state that the area and density regulations in effect at the time of the submittal of the subdivision plan for approval by the Planning Board or its predecessor shall apply regardless of the current

zoning. The granting of area variances has become very common to the point that for existing structures such variances may even be handled administratively. (Baltimore County Code § 32-3-303). Consequently, there is nothing about the granting of this variance that is contrary to the spirit of the zoning regulations.

The granting of the variance also does not injure the public health, safety or welfare. Petitioners have agreed that as conditions to the variance the current turnaround on the Property would be moved and not eliminated. Although it has been established that the owner may withdraw permission for the turnaround at any time, Petitioners are willing to relocate the turnaround on the Property to the north. It is most logically placed opposite his driveway given the barriers Mr. Pitz has placed on his property along the paved portion of the roadway (Pet. Ex. 10) and his statements that the trucks using the turnaround in its current location injured his shrubbery. Petitioners also are willing to submit the plans for the construction of the dwelling to the Office of Planning for review and approval. Other houses in the area have similar dimensions such as at 814 and 812 Cold Spring Road. (Pet. Ex. 4). The flood plain regulations must be observed, but no height variance is necessary. There was no testimony that a house on this lot would create a safety hazard to anyone. The granting of the variance consequently improves an existing situation with the turnaround, and protection is offered through an independent review of the house plans.

B. The Rear Yard Setback

The guidelines for the preparation of petitions and site plans calls for setbacks to be measured from right of ways as shown on plats or deeds, which results in the 2 foot rear yard

setback as shown on the Petition and Petitioners' Exhibit 2. If this were the true setback, the concerns raised by the Office of Planning and by the Deputy Zoning Commissioner would be legitimate issues. However, in this case the proposed dwelling's rear yard setback should be measured from the paved portion of Cold Spring Road. Eric Rockel testified that "Baltimore County do[es] not own the forty foot right of way known as Cold Spring." (T. 5/25/05, p. 80). Mr. Rockel further testified that Baltimore County only claims the paved portion of Cold Spring Road and does not claim the turnaround area (T. 5/25/05, pp. 80-81, 92-93). Baltimore County does not own the entire right of way as depicted on the forty-foot right of way depicted on the record plat (Pet. Ex. 1) or on the sewer plan dated April 22, 1999 (Counsel Ex. 10; T. 5/25/05, pp. 90-95). People's Counsel's Exhibit 9, the official 2004 zoning map for Baltimore County, depicts the area owned by the county as 18' wide at the Property. Mr. Pitz testified it may be less. A variance from the rear yard requirement of 30 feet is necessary, but the actual setback from the paving is 25 feet--not 2 feet (T. 5/25/05, pp. 101 - 02; Pet. Ex. 4).

People's Counsel incorrectly argues that the unpaved turnaround area is the point to be used in measuring the rear yard setback. Petitioners are not obligated to have such a turnaround on their property, and no property rights recognized by zoning are created by their letter of permission (T. 5/25/05, pp. 94-95; Pet. Ex. 7). Because the owner of the Property did the county and her neighbors a favor by granting permission to the county for the turnaround without compensation, she should not be punished by losing all building rights on the Property.

The relocation of the turnaround as proposed by Petitioners was endorsed by Mark Cunningham, People's Counsel's witness from the Office of Planning as being an *improvement* in its location. In response to the question of whether relocating the turnaround would be appropriate,

Mr. Cunningham stated: "It would relieve the concerns that we stated earlier that, based on this assumption, the proposed re-location of the turn-around would be in a much better position than where it was originally." (T. 5/25/05, pp. 56-57).

The three prongs of the practical difficulty test are also met by this variance request:

1. Compliance with the strict letter of the area restriction would unreasonably prevent the owner from using the Property for a permitted purpose or would render conformity with the regulations unnecessarily burdensome. Without the rear yard variance there can be no dwelling placed on the Property. Whether the Board believes that the technical variance to be granted is 2 feet in lieu of the required 30 feet or the actual setback of 25 feet in lieu of the required 30 feet, the placement of the dwelling in relation to the road and the property line is the same. Without the variance there is no open area left for a house of any size. A true practical difficulty exists if the Property can not be used.

2. The grant of the variance would do substantial justice to Petitioners as well as to other property owners in the zoning district. In this case the grant of the variance would simply permit what others now enjoy in the zone based on the older lot scheme. Petitioners' Exhibit 4, as well as the photographs in People's Counsel Ex. 1 and Petitioners' Exhibit 10, proves that the improvements on this lot will be no closer to the roadway and will be further away than the improvements on the neighboring lots. The location of the proposed house is wholly consistent with the other houses in the community with respect to its relationship to the roadway. A greater variance than that sought might have been considered, but for the critical area issues, in order to enlarge

the house had the actual setback of the dwelling to the property line been known originally. A lesser variance would simply either make the proposed dwelling too small to be habitable and/or would not be noticeable. There is nothing to be gained and a large practical difficulty encountered by lessening the variance sought.

3. Relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured. There is no disagreement that virtually all of the other properties along Cold Spring Road contain improvements in close proximity to the paving. Also, there is no dispute over the calculations or measurements presented by Mr. Dallas or Mr. Kellman of the relationships of existing dwellings to the roadway. The granting of this variance is in complete harmony with the preservation of the character of the neighborhood, which is one of the stated purposes of the D.R. zone. (BCZR §1B00.2C). The fact that the turnaround will be relocated and preserved on the Property will enhance the public safety and welfare. Nothing in the proposal to build the house will adversely impact the public's safety or welfare.[9]

C. The Front Yard Setback

The front yard setback differs significantly from that proposed in the previous zoning case where the variance was denied by Commissioner Schmidt. (People's Counsel Ex. 2). Most significantly, this setback was reviewed by the Critical Area Commission and DEPRM, and it was approved as meriting a variance from the critical area buffer. As discussed above, this variance requires meeting a very stringent standard, but in this case it was found to be justified. The setback

[9] Mr. Pitz, whose house fronts on Middle River may have his view of Galloway Creek impacted by the proposed development of the residence. His primary objection seemed to that the Property's "look" would be impacted as well as the impact of the removal of the turnaround on his property. Mr. Pitz, however, has no recognizable rights in the view across Petitioners' lot, and the turnaround issue is proposed to be resolved to his benefit.

of 23 feet from the bulkhead is not inconsistent with other setbacks in the community, most notably on the adjoining property. Because the use merited the variance, mitigation in the form of plantings is required, which should only enhance the environmental contribution of the Property as well as its appearance.

The three prongs of the practical difficulty test are also met by this variance request:

1. Compliance with the strict letter of the area restriction would unreasonably prevent the owner from using the Property for a permitted purpose or would render conformity with the regulations unnecessarily burdensome. Different regulatory bodies can certainly reach different conclusions based on the scope of their regulations, but in this case it would be extremely difficult, if not impossible, to fashion criteria as to the denial of this variance request based on the lenient standard of practical difficulty after the Critical Area Commission and DEPRM already granted the variance from the 100 foot buffer under the stringent unreasonable hardship criteria. Denial of this variance effectively denies not only the proposed permitted use but virtually all reasonable use of the Property. It makes no sense to deny the variance for this permitted use on this site.

   Counsel and Protestants have indicated that there are environmental reasons to deny the requested variance. However, they have not produced any testimony or evidence to refute the conclusions of DEPRM. Indeed, it seems somewhat strange for these arguments to be made by the individuals who made them given the extent of the improvements on their own properties and the relationship of those improvements to the waterfront. For example, Mrs. Huber's house sets back from the water at least 57 feet, but her 8.5 to 11 foot high wall extends down to the water, and her garage, shed and

apartment are all located within the same proximity to the water as the proposed dwelling. The planking and improvements on her pier alone rival all of the proposed improvements on the Property (Pet. Ex. 4, 6b; People's Counsel Ex. 1; T. 5/25/05, p.103). Mr. Pitz has substantially regraded his property from the contours shown on the topographic maps in order to elevate his dwelling out of the flood plain. His dwelling is considerably improved and apparently enlarged from the house that previously existed on his lot prior to hurricane Isabel. (People's Counsel Ex. 1, Pet. Ex. 4, 6B, 10).

In short, the proposal of Petitioners has undergone rigorous scrutiny and has been found to be a reasonable response to the unique shape of the Property. Without the requested variance from the water, a practical difficulty undoubtedly exists.

2. The grant of the variance would do substantial justice to Petitioners as well as to other property owners in the zoning district. In this case the grant of the variance would simply permit what others now enjoy in the zone based on the older lot scheme. It is difficult to argue that the variance is not in harmony with the other lots in the community when the adjacent dwelling at 813 Cold Spring Road is 20 feet from the water, and the garage, shed and apartment at 800 Cold Spring Road are 14 feet from the water. Both structures are deeper than Petitioners' proposed dwelling. The simple fact is that, like the adjacent property at 813 Cold Spring Road, there is simply no other place to put the house. Note also

the positioning of other structures in the community with respect to the waterfront as shown on People's Counsel Ex. 1.

3. Relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured. Unlike side yard variances which relate to the proximity of structures to abutting properties, this front yard variance neither relates to a road, nor to private property. It relates to the waterfront. There is no testimony that the award of this variance would be injurious to the health, safety or general welfare of the community. The dwelling must conform to the conditions of approval contained in DEPRM's letter. (Pet. Ex. 3). The setback variance is sought simply because of the unusual shape of the Property. No other dwelling or property will be impacted, and the intent of the setback ordinance will be met. The review and approval of the Critical Area Commission indicates that the public welfare will be served. Even the Office of Planning indicated that it was not this variance request which prompted its initial comment. (T. 5/25/05, pp. 17, 43-45).

III. PROTESTANTS' ARGUMENTS

A. RES JUDICATA.

People's Counsel argues that the doctrine of res judicata should apply to this variance request and that denial of the previous request in Case No. 03-500A by Commissioner Schmidt should preclude any further consideration of variance relief for the Property. In this respect the

Deputy Zoning Commissioner was quite correct in that this case is brought on a very different proposal (July 20, 2004 Order, p. 5), and Petitioners should not be prevented from presenting these variance requests to use the Property for a permitted use.

The doctrine of res judicata should be used sparingly in very informal administrative proceedings where parties are not represented by counsel. "The threshold inquiry is whether the earlier proceeding is the essential equivalent of a judicial proceeding." *Sugarloaf v. Waste Disposal*, 323 Md. 641, 659 n. 13. Estoppel also was not found in an employment case before a hearing officer. *Maryland State Department of Education v. Shoop*, 119 Md. App. 181 (1998). Subsequent proceedings gave greater weight to the evidence (*Id.* at 198-99). The initial proceeding before Commissioner Schmidt was apparently very informal, and obviously Dr. Zinn's proposal and testimony were not presented. He was not even a party to that case.

Moreover, in this case there are significant differences in the level of proof that has been offered the Board even from the evidence presented under this Petition to the Deputy Zoning Commissioner. The variances sought and case presented here is very different from the previous case presented to Commissioner Schmidt, and the Petitioners should not be precluded from trying to reconfigure the proposed improvements so as to minimize the impact on the lot, on the environment and on the community. There is much more to this case than a simple retrial of the case that Commissioner Schmidt heard. Issues pertaining to the actual lot size and setbacks were not even brought to light until legal counsel had the opportunity to review the plans and county records. These issues reflect significantly on the variances before the Board.

B. PETITIONERS' PETITION AND ORIGINAL SITE PLAN.

At the time of the filing of the original Petition the Petitioners believed that they only had 5,092 square feet as measured by zoning. It is understood that zoning plans and descriptions do not rise to the level of surveys or property descriptions. That is why they are labeled as zoning plans and descriptions. Even the tax records indicate that the Petitioners own in excess of 6,500 square feet, which also exceeds the minimum D.R. 5.5 zoning requirements (Pet Ex. 5a, 5b). The issue did not become clear, however, until Baltimore County confirmed that it did not claim the right of way shown on the plats and that indeed it would need to exercise eminent domain to claim it from Petitioners. That confirmation clarified that the actual 7,500 square foot area comprising the Property used by Petitioners could be counted on to continue to be available for use in the future.

Petitioners have not sought to withdraw the original Petition. The reason is that it is not clear how the Zoning Bureau interprets lot sizes and setbacks. Should the "official" setback be from the right of way shown on the record plat (Pet. Ex. 2) or the right of way shown on the zoning maps (People's Counsel Ex. 9) and on Petitioners' Exhibit 4? As long as the Board understands that regardless of how it wishes the variance to read, that the actual, real, permanent setback is 25 feet from the roadway, and that is the real yard area under the dominion and control of the Petitioners then it makes little difference whether it is 2 feet from the right of way shown on the record plat or 25 feet from the paved road. The purpose of Petitioners' Exhibit 4 is to show the actual dimensions of usable, owned area claimed by Petitioners. No one has presented any evidence to refute this area actually being under their control. As long as the variances to size and to setback are granted with that understanding then any change in that condition would impact on the variance granted so that the community would be protected from the house being placed in any other relationship to the roadway.

Consequently, there has been adequate notice to the community as to what was sought in the Petitions and as to what was presented to the Board. The house position has not changed on the Property; the setbacks have not changed. The actual characteristics of the Property have not changed. All that Petitioners have tried to do is to present to the Board the fact that the lot is clearly of a size that can accommodate a dwelling similar to the other dwellings in the community.

C. NEIGHBORS' CONCERNS.

Mr. Pitz in his testimony and exhibits raised several issues with respect to the Petitioners' proposal that are exemplified in People's Counsel Ex. 4. People's Counsel Ex. 4 shows how the Protestants view the lot – a lovely piece of waterfront open space to be used by waterfowl with great unobstructed views of the water and shore and that is how they want it to remain.

Protestants agree that the county only controls the paved area of the narrow road. The concrete blocks along the front of Mr. Pitz's lot shows that he does not want vehicles coming on to his property past the paved portion. He claims that area as his own. He testified at length over the problems he had with people backing on to his property because of the location of the turnaround. His testimony and exhibits acknowledge Petitioners' primary contention that the true property line is the paved portion of the right of way.

The turnaround is of critical importance to the Protestants. Mr. Pitz claims that the turnaround should be a permanent burden on Petitioners' property, yet neither he nor the other witnesses offered any proof to rebut Eric Rockel's testimony or the clear wording of Petitioners' Exhibit 7 that the county has no rights to Petitioners' land. In fact, People's Counsel's Exhibit 4 shows the deterioration of the current turnaround. It simply is not in the best location. People are using Mr. Pitz's driveway to turn around as the Exhibit shows. By sizing the turnaround properly

and locating it to the north Mr. Pitz may share some of the burden of vehicles turning around, but that is a fact based on the location of the lots. It is easy for Mr. Pitz to place the burden of the turnaround on someone else, but there is no logical reason to impose it more on them than on anyone else. The occurrence of vehicles turning around on Cold Spring Road is not something that has just happened over night, but it has obviously been going on for as long as there have been lots and houses along Cold Spring Road. If the turnaround is properly sized and relocated, there may be less damage to Mr. Pitz's property than now exists. This was certainly the view of the Office of Planning. There certainly will be less of a problem than if the Petitioners exercise their rights to forbid turning onto their Property.

Mr. Pitz mentions issues with flooding and wetlands on the site, yet the site has been thoroughly reviewed by the responsible agencies, and there are no wetlands at risk. The Board could take judicial notice of the fact that most of the shoreline of Bowleys Quarters is in the tidal flood plain based on the county's own mappings and elevations on People's Counsel's Exhibits 1 and 9. That fact, however, did not stop Mr. Pitz from improving his house considerably (Pet. Ex. 6a, 6b). It should not prevent the granting of the variances provided that the flood plain regulations are met.

Finally, Mrs. Hubers testified that she is opposed to the variances because of precedent in the community. Obviously, each variance case turns on the facts presented, and such precedent has never been recognized. Mrs. Hubers' lot is separated from the Property by a masonry wall that runs to the water and is over 10 feet high in places, not 6 feet as she testified (Pet. Ex. 4; T. 5/25/05 at 103). Structures including a shed, garage and tall apartment as shown on the photos are as close to the water and closer to the road end of Cold Spring than the dwelling proposed by Petitioners (Pet.

Ex. 4; People's Counsel Ex. 1). Her own lot boasts two piers with substantial construction that is certainly not being proposed by Petitioners People's Counsel Ex. 1; Pet. Ex. 4, 6). She offered no good or sound legal reason not to grant the variances. To deny Petitioners the variances would deny them rights she enjoys. Petitioners' lot does not exist for her benefit or for that of Mr. Pitz, or their view. They should be allowed to build the requested dwelling with the understanding that the lot is uniquely shaped and that the actual setbacks of the house from the water and from the road will not create any safety issues.

CONCLUSION

Petitioners should not be denied all reasonable use of the Property. They should not be denied uses afforded to others similarly situated. Because the strict application of the regulations to this unusually shaped property creates a practical difficulty by denying the Property a permitted use commonly enjoyed by others, the variance to that regulation should be granted. In this case the Board has substantial independent testimony and evidence supporting the granting of the requested variances: the uncontested evidence that the Property has a unique shape and characteristics; the recommendation of the Critical Area Commission and DEPRM; Eric Rockel's testimony as to the true extent of the Property and the real setbacks; the plats and photos confirming the evidence that the community has built up to the paved road and utilized the same setbacks sought by Petitioners; and the concession by the Office of Planning that had the true extent of the setbacks been known their recommendation would have been more in keeping with the situation of the house on the adjacent property.

Notwithstanding the testimony presented by Mr. Kellman and Dr. Zinn, or Ms. Shuman's testimony pertaining to the character of the neighborhood or history of the lot and its purpose, the

site plan and independent testimony buttressed by the photos of the lot and surrounding properties form an inescapable foundation for the granting of the requested variances. There is no evidence that the safety or general welfare of the community will be harmed by the granting of these variances. In fact, approval of the site plan with the conditions discussed above should enhance the community. Therefore, for the reasons set forth above, Petitioners respectfully request that the variances be granted.

John B. Gontrum
Whiteford, Taylor & Preston L.L.P.
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515
(410) 832-2000

Attorney for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of June, 2005, a copy of Petitioners' Memorandum In Lieu of Closing Arguments was mailed first class, postage prepaid to:

Peter M. Zimmerman, Esquire
Counsel for Baltimore County
Room 47
400 Washington Avenue
Towson, MD 21204

John B. Gontrum

337692

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TELEPHONE 703 836-5742
FAX 703 836-0265

June 30, 2005

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

Attn: Clerk

Re: In the Matter of:
Janice Oberst, Legal Owner &
Dr. Harlan & Amanda Zinn,
Contract Purchasers
Case No. 04-~~552~~-A
522

Dear Clerk:

Enclosed please find original and three copies of Petitioner's Memorandum in Lieu of Closing Arguments and attached Appendix to be filed in the referenced case.

Very truly yours,

John B. Gontrum

JBG:sar
Enclosures

Cc: Office of People's Counsel
(Carole S. Demillio)

RECEIVED
JUN 30 2005
BALTIMORE COUNTY
BOARD OF APPEALS

APPENDIX

Tab 1	BCZR §1B02.3.C.1
Tab 2	BCZR §304
Tab 3	Transcript from May 25, 2005 Hearing
Tab 4	Zoning Policy Manual, pp. 1-1.3(a) & 1-1.3(b)
Tab 5	Zoning Policy Manual, §400.2.a
Tab 6	Zoning Policy Manual, §400.1.a
Tab 7	Zoning Policy Manual, §417.3
Tab 8	BCZR, App. J
Tab 9	Zoning Policy Manual, §1B01.2.C.3a
Tab 10	Annotated Code of Maryland, Real Property, §2-114
Tab 11	Zoning Policy Manual, §101 "Gross Acreage"
Tab 12	*Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md.App. 28 (1974)
Tab 13	BCZR §307
Tab 14	*Cromwell v. Ward*, 102 Md. App. 691 (1995)
Tab 15	*Mastandrea v. North*, 361 Md. 107 (2000)
Tab 16	*Lewis v. Dept. of Natural Resources*, 377 Md. 382 (2003)
Tab 17	BCZR §1B00.2
Tab 18	BCZR §103.1, 103.3
Tab 19	*Steel v. Cape Corp.*, 111 Md. App. 1 (1996)
Tab 20	Baltimore County Code, § 32-3-303
Tab 21	*Sugarloaf Citizens Assoc. v. Northeast Maryland Waste Disposal Authority*, 323 Md. 641 (1991)
Tab 22	*Maryland State Department of Education v. Shoop*, 119 Md. App. 181 (1998)

Tab 1

1B02.3 Special regulations for certain existing developments or subdivisions and for small lots or tracts in D.R. Zones.

A. In D.R. Zones, contrary provisions of this article notwithstanding, the provisions of or pursuant to this subsection shall apply to the use, occupancy and development of; alteration or expansion of structures upon; and administrative procedures with respect to:

1. Any lot which is in a recorded residential subdivision approved by the Baltimore County Planning Board or Planning Commission and which has been used, occupied or improved in accordance with the approved subdivision plan;

2. Any land in a subdivision tract which was laid out in accordance with the regulations of residence zoning classifications now rescinded, for which a subdivision plan tentatively approved by the Planning Board remains in effect and which has not been used, occupied or improved in accordance with such plan;

3. Any lot or tract of lots in single ownership which is not in an existing development or subdivision, as described in Subsection A.1 or A.2, and which is too small in gross area to accommodate six dwelling or density units in accordance with the maximum permitted density in the D.R. Zone in which such tract is located;

4. Any lot or tract of lots in single ownership which is not in an existing development or subdivision, as described in Subsection A.1 or A.2, and which is less than one-half acre in area, regardless of the number of dwelling or density units permitted at the maximum permitted density in the zone in which it is located; or

5. Any lot or tract of lots in single ownership which is in a duly recorded subdivision plat not approved by the Baltimore County Planning Board or Planning Commission.

B. Standards applicable to existing developments, etc. The minimum standards for net area, lot width, front yard depth, single-side-yard width, sum of widths of both side yards, rear yard depth and height with respect to each use in a development described in Subsection A.1 above, shall be as prescribed by the zoning regulations applicable to such use at the time the plan was approved by the Planning Board or Commission; however, the same or similar standards may be codified under Section 504, and these standards shall thereupon control in such existing developments. Development of any subdivision described in Subsection A.2 shall be in accordance with the tentatively approved subdivision plan therefor. Standards for development of lots or tracts described in Subsection A.3, A.4 or A.5 shall be as set forth in Subsection C below.

C. Development standards for small lots or tracts.

1. Any dwelling hereafter constructed on a lot or tract described in Subsection A.3 or A.4 shall comply with the requirements of the following table:

Pet 1
CBA

W.P.C. No 4. 131

PLAN "C" of LONG BEACH ESTATES

SUB-DIVIDED BY

CITYCO REALTY CO.

BALTIMORE, MD.

SCALE 1" = 200' NOV 1910

2 ELEXINGTON ST St. PAUL 3652

SURVEYED AND PLATTED BY

READING & HOWARD

CIVIL & LANDSCAPE ENGRS

BALTIMORE, MD.

COLD SPRING COVE

MIDDLE RIVER

CREEK

MORTAR

FROG

SUSQUEHANNA AVENUE

SEVENTH ROAD

EIGHTH ROAD

CHESAPEAKE AVENUE

Filed Aug 7th 1914
Test: Wm. P. Cole
Clerk.

MSA C514 3136-4806

all improved lots within 200 feet on each side thereof, provided that no dwelling shall be required to be set back more than 60 feet in D.R.2 Zones, 50 feet in D.R.3.5 Zones and 40 feet in D.R.5.5 Zones. In no case, however, shall nonresidential principal buildings have front yards of less depth than those specified therefor in the area regulations for D.R.2, D.R.3.5 and D.R.5.5 Zones respectively. **[Resolution, November 21, 1956]**

303.2 In B.L., B.M. and B.R. Zones, the front yard depth of any building hereafter erected shall be the average of the front yard depths of the lots immediately adjoining on each side, provided such adjoining lots are improved with permanent commercial buildings constructed of fire-resisting materials situate within 100 feet of the joint side property line, but where said immediately adjoining lots are not both so improved, then the depth of the front yard of any building hereafter erected shall be not less than the average depth of the front yards of all lots within 100 feet on each side thereof which are improved as described above.

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.

304.2 Building permit application.

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

Information Sheet METHOD OF MEASURING SETBACKS

Tab 4

IN ALL ZONES, EXCEPT R.C.'s

- Street Frontage & Building to Lot Line Orientation

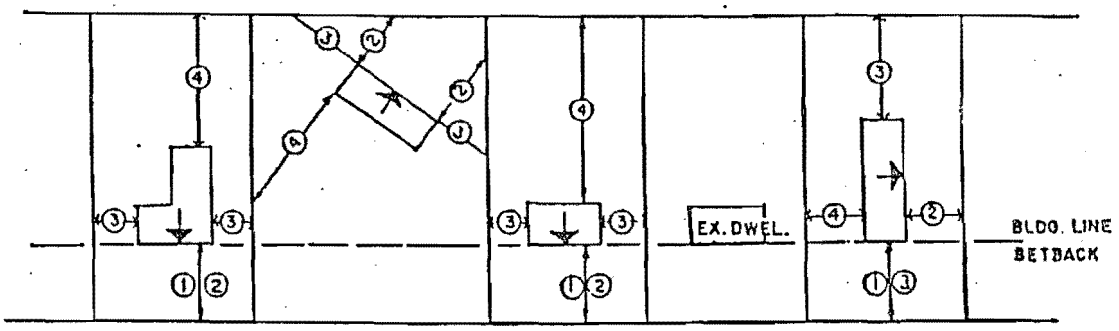
i. The front setback distance is measured radial or perpendicular to the road or front right-of-way.

ii. Side and rear setback distances are measured by extending the foundation wall lines to the nearest intersection of the property line.

iii. The building line setback required by the lot's zoning classification must be maintained from all abutting street frontages.

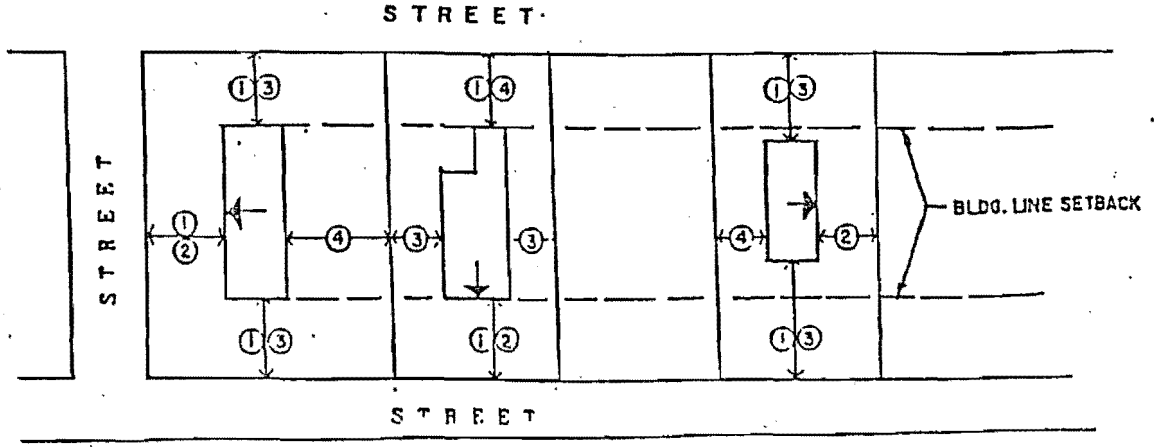
iv. Additionally, if a building is oriented so as to face or front a lot line other than a street, applicable front, side and rear setbacks relative to the building's front must also be maintained as required by the property's class.

v. Diagrams



1. Street Building Line Setback (If two setbacks conflict the greater of the two shall be maintained)
2. Front Yard Setback
3. Side Yard Setback
4. Rear Yard Setback

→ =FRONT OF BUILDING



APPROVED MAY 13 1992

Tab 5

-TENTS - are permitted on a temporary basis for periods not exceeding 30 days for religious, educational or recreational uses.

-TRAILERS/TRUCKS - If originally constructed, fitted, designed, or used as a trailer, shipping container, truck body, or other similar vehicle are not permitted on residential property as principal or accessory structures such as sheds, garages, storage buildings or otherwise.

-UNUSUAL AND/OR LARGE STRUCTURES/USES not listed above or specifically exempted in 400.1.d below may be subject to a special hearing before the Zoning Commissioner:

(1) See the following cases:
83-259 (outdoor model train layout)
85-62-SPH (large greenhouse)

400.1.f - THINGS NOT CONSIDERED AS ACCESSORY and therefore not subject to the provisions of Section 400 B.C.Z.R.

- Air conditioning/heating units
- Bird baths
- Children's play equipment (not including treehouses/playhouses)
- Flag poles
- Handicapped access ramps
- Lawn furniture (moveable)

SECTION 400.2.a - ACCESSORY BUILDINGS - WATERFRONT SETBACKS

(1) On all waterfront, when the proposed house fronts on the water, use the water as the front property line.

(2) In D.R. zones the same maximum average setback requirements apply on waterfront.

(3) In R.C. zones, the front yard requirement on the water would be the same as the street property line requirements based on a 50 ft. street.

SECTION 400.2.b - ACCESSORY BUILDINGS - SETBACKS FROM PAPER STREETS/ALLEYS

For the purposes of determining required setbacks, unimproved (paper) streets or alleys shall be considered the same as existing (improved) streets. The same shall apply to corner lots regarding the placement of accessory buildings. The applicant has the option of either petitioning for a variance or a road closing. To initiate a road closing procedure, a person should contact:

Law Office	887-4420
Bureau of Land Acquisition	887-3252

The Maryland Court of Special Appeals in Hofmeister, et al v. Frank Realty Company, dealing with Baltimore County Zoning Regulations ruled that both "Use Permits" and "Section 502 Special Exceptions" are all classified within the board category of special exceptions:

"Notwithstanding this differentiation between the species, we think it preeminently clear that the singling out of certain conditional uses for special treatment in Art. 4 of the BCZR did not in any fashion denigrate from their credentials as members in continued good standing of the genus "Special Exceptions." Art. 4, in its Statement of Purpose, makes the reason for the distinct treatment quite clear:

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

SECTION 400.1.a - ACCESSORY BUILDINGS - Waterfront Property - When determining the placement of accessory structures on waterfront lots, the following factors will be considered:

(1) The orientation of the existing dwelling and other buildings on the lot.

(2) The orientation of other houses and accessory buildings on other nearby waterfront lots.

(3) An inspection of the property is usually made to determine the existing conditions.

(4) See the following cases: 84-275-A
85-106-SPH
89-100-SPH Pier Rights

Waterfront construction (piers, mooring piles, bulkheads) can be built on unimproved lots, under Section 417, provided that no accessory buildings/structures are constructed.

SECTION
400.1.b ACCESSORY STRUCTURES/USES-Vacant Property- If two or more lots are under the same ownership and one lot is improved with a dwelling and an accessory structure is proposed on an adjacent lot, this may be accomplished by:

(1) Straddling the joint property line; or
(2) Combining the vacant lot with the dwelling lot under one metes and bounds description, with one tax account number, if possible.
(3) When two lots are combined for the purpose of building an accessory structure, the owner must have exclusive use of all of the property between the dwelling and the accessory structure, with no easements or rights-of-way between the lots.
(4) You cannot variance an accessory structure on a vacant lot.
(5) See the following case: 88-206-SPH

400.1.c ACCESSORY STRUCTURES/USES - R.C. Zoned Property

(1) Is subject to the provisions of Section 400 B.C.Z.R. & Z.C.P.M.
(2) Farms or farmette structures are only subject to Section 404.2 B.C.Z.R. & Z.C.P.M. (Page 4-6) except for swimming pools which are subject to Section 400 BCZR & ZCPM (See Case #88-206-SPH).

APPROVED MAY 13 1992

SECTION
417.3 THESE DIAGRAMS ARE TO BE USED AS A GUIDE IN DETERMINING DIVISIONAL PROPERTY LINES ON WATERFRONT CONSTRUCTION

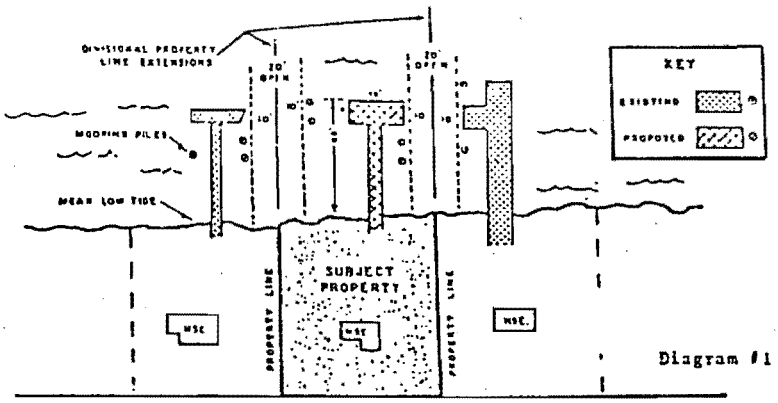


Diagram #1

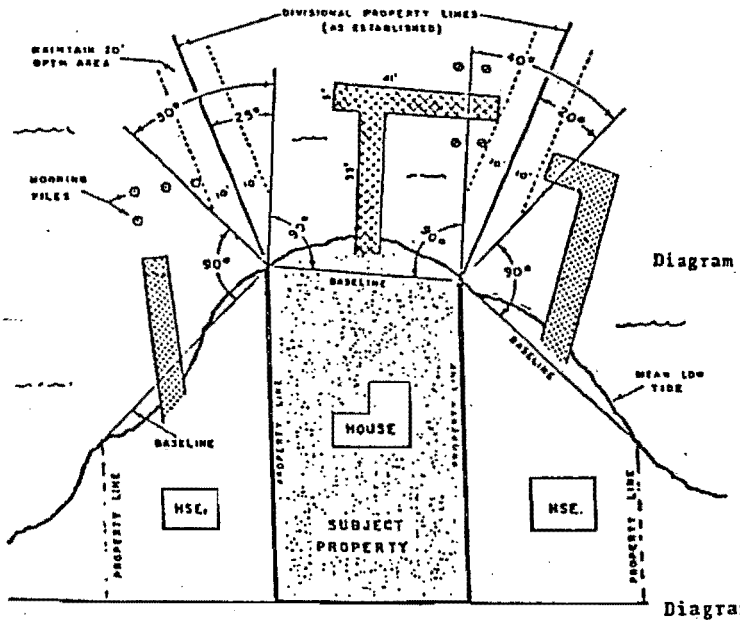
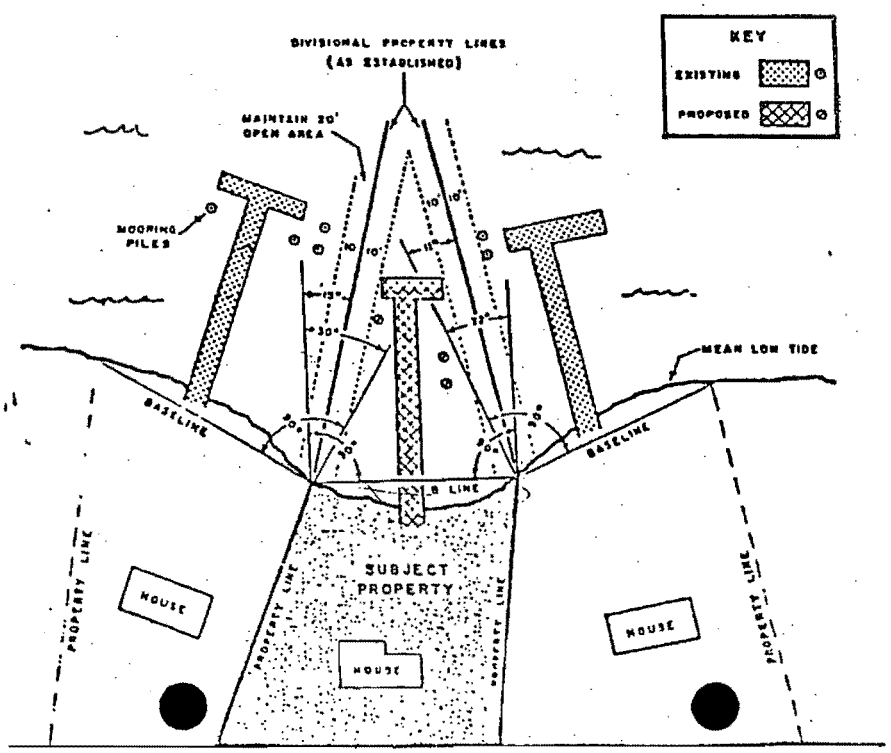


Diagram #2

Diagram #3



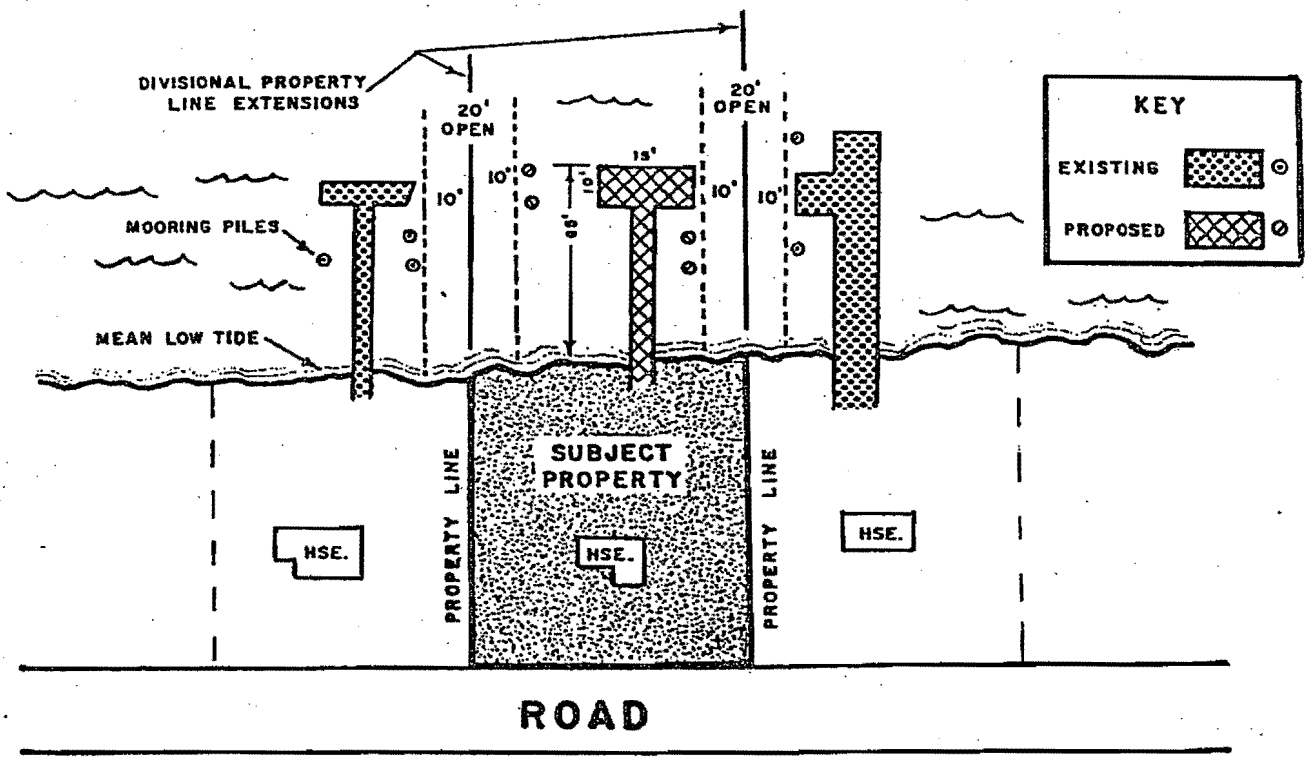
L 901

Tab 8

APPENDIX J

WATERFRONT CONSTRUCTION DIAGRAMS

These diagrams are to be used as a guide in determining divisional property lines on waterfront construction (see Section 417).



Tab 9

1801.2.C.3 SETBACKS FROM STREET CENTERLINES

a. Paper Streets -- Unimproved (paper) streets shall be considered the same as existing (improved) streets. The applicant has the option of either petitioning for a variance or a road closing. To initiate a road closing procedure, a person should contact:

Law Office	887-4420
Bureau of Land Acquisition	887-3252

b. Road Widening - Existing Lots -- When the County or State widens a road right-of-way that adjoins a lot and the setbacks and/or the lot area become deficient or the deficiency is increased by the taking, then the following applies:

1. If the lot is "a lot of record" as defined in B.C.Z.R. unimproved and considered buildable (area-wise) prior to the taking, the area will be considered nonconforming after the taking. However, all structures and uses must meet the setbacks required in the current zoning regulations.
2. If the lot is improved with a structure, then any deficiencies (inclusive of height, setback and/or area) that are created by the taking will be considered nonconforming.

1801.2.C.4 MINIMUM AREA STANDARDS IN RESIDENTIAL TRANSITION AREAS for subdivisions approved from September 19, 1970 to September 25, 1981 (adoption of Bill 100-70 until Repeal by Bill 124-81) - Dwellings (no other principal building permitted) and accessory buildings in residential transition areas, if designated under Subparagraph 1801.1.B.1 as Group I, Group II, or Group III uses, shall be situated on lots in accordance with the standards set forth in the table below and with the provisions of Section 400, respectively. No more than one principal building shall be situated on any lot in such a residential transition area.

Residential Transition Uses to Which Lot is Limited under Subparagraph B.1 of Subsection 1801.1	Zone Within Which Adjacent Dwelling or Lot is Situated	Minimum Standards for Dwelling Permitted: Minimum Lot Area, In Square Feet	Minimum Lot Width, In Feet	Minimum Distance from Building to Centerline of Any Street, In Feet	Minimum Rear-Yard Depth In Feet	Minimum Width of Any Side Yard (Except as Otherwise Provided, as on a Corner Lot), In Feet	Minimum Sum of Widths of Side Yards for Any Detached Building
Group I uses	D.R. 1	21,000	125	75	50	20	50
" " "	D.R. 2	13,000	90	65	40	15	30
" " "	D.R. 3.5	7,300	70	55	30	10	25
" " "	D.R. 5.5	5,700	55	50	30	8	20
Group II or Group III uses	D.R. 1	Two-family Detached Dwelling: 7,600 per dwelling unit	70	50	30	One- or Two-family Detached Dwelling: 8	One- or Two-family Detached Dwelling, One-family Semidetached Dwelling, Group House, or Group-House Apartment Building: 15	20
	D.R. 2	One-family Detached Dwelling: 5,700	53					
	D.R. 3.5	One-family Semidetached Dwelling: 3,800	35					
	D.R. 5.5	Group House: 1,970	20					
	D.R. 10.5	Group-House Apartment Building: 1,970 per dwelling unit	25 per dwelling unit					

Provided, however, that alternative standards of lot or side-yard width may be applied to non-rectangular lots if such standards have been adopted under the authority of Section 504. (Bill No. 100, 1970.)

Tab 10

Covenant against encumbrances is personal. — A covenant against encumbrances is a personal one, and does not run with the land. Dillow v. Magraw, 102 Md. App. 343, 649 A.2d 1157 (1994), aff'd, 341 Md. 492, 671 A.2d 485 (1996).

Liability of grantor for acts by predecessor in title. — A general covenant against encumbrances, expressed either in the abbreviated form of this section, or in the traditional common law forms, warrants that the land conveyed is absolutely free of encumbrances; accordingly, the grantor is responsible to the grantee for any encumbrances created either by the grantor or his predecessors in title. Magraw v. Dillow, 341 Md. 492, 671 A.2d 485 (1996).

Encumbrance prior to acquisition of legal title. — A party who has an interest in land and encumbers it before acquiring legal title may be liable to his or her grantee for breach of the personal covenant against encumbrances. Dillow v. Magraw, 102 Md. App. 343, 649 A.2d 1157 (1994), aff'd, 341 Md. 492, 671 A.2d 485 (1996).

§ 2-112. Effect of covenant for further assurances.

A covenant by a grantor in a deed "that he will execute further assurances of the land as may be requisite" has the same effect as if the grantor had covenanted that he at any time on any reasonable request, at the expense of the grantee, will do any further act and execute any further instrument to perfect the grant and assure to the grantee the lands granted, or intended to be granted, as shall be reasonably required by the grantee or his attorney. (An. Code 1957, art. 21, § 5-112; 1974, ch. 12, § 2; 1988, ch. 6, § 1; 1989, ch. 5, § 1.)

Consideration of underlying contract to establish breach of covenants. — Where the land intended to be conveyed, as indicated in a deed, was actually conveyed, this section and § 2-110 of this title do not provide an exception to the parol evidence rule which would allow consideration of the underlying contract to establish breach of covenants. Canatella v. Davis, 264 Md. 190, 286 A.2d 122 (1972).

Quoted in Marcus v. Bathon, 72 Md. App. 475, 531 A.2d 690 (1987), cert. denied, 313 Md. 612, 547 A.2d 189 (1988).

§ 2-113. "Die without issue", and similar phrases.

Unless a contrary intent is expressly indicated in the deed, the words "die without issue", or "die without leaving issue", or other words in a deed which may imply either a lack or a failure of issue of a person in his lifetime, or at the time of his death, or an indefinite failure of his issue, mean a lack or a failure of issue in the lifetime, or at the time of the death of the person, and not an indefinite failure of his issue. (An. Code 1957, art. 21, § 5-113; 1974, ch. 12, § 2; 1988, ch. 6, § 1.)

Cross references. — As to application of this section, see § 15-102 of this article.

Maryland Law Review. — For note concerning construction of the phrase "death without issue" and similar terms, see 11 Md. L. Rev. 25 (1950).

Quoted in Caruthers v. Buscher, 38 Md. App. 661, 382 A.2d 608 (1978).

§ 2-114. Title to street or highway where land binding on it is granted.

(a) *In general.* — Except as otherwise provided, any deed, will, or other instrument that grants land binding on any street or highway, or that includes any street or highway as 1 or more of the lines thereof, shall be construed to pass to the devisee, donee, or grantee all the right, title, and interest of the devisor, donor, or grantor (hereinafter referred to as the transferor) in the street or highway for that portion on which it binds.

Tab 11

SECTION 101

Acreage, Gross Residential: The Residentially zoned acreage within the perimeter of the subdivision proposed for residential development, plus not more than half the width of existing or recorded boundary streets (maximum 60-foot right of way) to which the subdivision has right of access, ...

Tab 12

Westlaw.

22 Md.App. 28, 322 A.2d 220
(Cite as: **22 Md.App. 28**)

C

22 Md.App. 28, 322 A.2d 220

Court of Special Appeals of Maryland.
McRae ANDERSON et al.
v.
BOARD OF APPEALS, TOWN OF CHESAPEAKE BEACH, Maryland, et al.
No. 531.

July 12, 1974.

Appeal from an order of the Circuit Court, Calvert County, Perry G. Bowen, Jr., J., affirming a decision of town's board of appeals granting variances from town's zoning ordinance requirement relating to distance between facing walls of buildings and granting special exception for multiple dwellings in commercial recreation district. The Court of Special Appeals, Davidson, J., held that zoning ordinance authorizing granting of an area variance only if strict application of ordinance regarding distance between buildings would result in practical difficulty and unnecessary hardship required that applicant also prove hardship and not merely proof of practical difficulties, and that board's action in granting variances without proof of hardship was arbitrary.

Reversed.

West Headnotes

[1] **Zoning and Planning 414 ⇐503**
414k503 Most Cited Cases
An "area variance" is a variance from area, height, density, setback or sideline restrictions.

[2] **Zoning and Planning 414 ⇐502.1**
414k502.1 Most Cited Cases
(Formerly 414k502)
A "use variance" is a variance permitting a use other than that permitted in particular district by zoning ordinance.

[3] **Zoning and Planning 414 ⇐502.1**
414k502,1 Most Cited Cases
(Formerly 414k502)

Zoning and Planning 414 ⇐503
414k503 Most Cited Cases
A use variance changes the character of the zoned district while an area variance does not.

[4] **Zoning and Planning 414 ⇐495**
414k495 Most Cited Cases
Use variances are customarily concerned with hardship cases, where land cannot yield a reasonable return if used only in accordance with use restrictions of the zoning ordinance and a variance must be permitted to avoid confiscatory operation of ordinance, while area variances are customarily concerned with practical difficulty.

[5] **Zoning and Planning 414 ⇐536**
414k536 Most Cited Cases
In order to obtain a use variance, applicant must prove that if he complied with ordinance he would be unable to secure a reasonable return from or make any reasonable use of property, that difficulties or hardships are peculiar to his property in contrast with other property in same district, and that hardship was not result of applicant's own actions.

[6] **Zoning and Planning 414 ⇐536**
414k536 Most Cited Cases
An applicant for an area variance does not have to show a taking in a constitutional sense but must show that compliance with strict letter of restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent him from using property for permitted purpose or render conformity with restrictions unnecessarily burdensome, that grant of variance would do substantial justice to applicant as well as to other property owners in district, and that relief can be granted in such fashion that spirit of ordinance will be observed and public safety and welfare secured.

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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.

304.6 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.

304.7 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,

Tab 14

Westlaw.

102 Md.App. 691, 651 A.2d 424
(Cite as: 102 Md.App. 691)

▷

102 Md.App. 691, 651 A.2d 424

Court of Special Appeals of Maryland.
David CROMWELL, et al.
v.
Arthur Thomas WARD, III.
No. 617, Sept. Term, 1994.

Decided Jan. 4, 1995.

The Circuit Court , Baltimore County , Lawrence Daniels, J., affirmed order of board of appeals granting height variance for accessory building already built by owner. Appeal was taken. The Court of Special Appeals , Cathell, J., held that: (1) no variance was appropriate where property was not shown to be unusual or unique from surrounding properties before variance based on practical difficulty or unreasonable hardship was sought; (2) landowner's self-created hardship arising from construction of accessory building before variance was sought was not grounds for grant; and (3) approval of building permit for accessory building did not support grant of variance sought.

Reversed.

West Headnotes

[1] **Zoning and Planning 414 ⇐461**
414k461 Most Cited Cases
City was not estopped from refusing to grant variance from height restriction on auxiliary building merely because owner submitted and obtained construction permit, at least where owner's plan's elevation schematics contained neither elevation dimensions nor scale and elevation was not stated; while zoning inspectors might have been able to extrapolate dimensions from other schematics, they were not required to do so in light of owner's affirmative statement in application of compliance with zoning requirements. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

[2] **Zoning and Planning 414 ⇐496**
414k496 Most Cited Cases
Under law on variances in Maryland and under Baltimore County's charter and ordinance, property's peculiar characteristics or unusual circumstances relating only and uniquely to that property must exist in conjunction with ordinance's more severe impact on specific property because of property's uniqueness before any consideration will be given to whether requisite practical difficulty or unnecessary hardship exists. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

[3] **Zoning and Planning 414 ⇐497**
414k497 Most Cited Cases
Practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

[4] **Zoning and Planning 414 ⇐496**
414k496 Most Cited Cases
Mistake of county official cannot be the "practical difficulty" unique to subject property required to authorize grant of variance. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

[5] **Zoning and Planning 414 ⇐503**
414k503 Most Cited Cases
Granting of variance from height restrictions on auxiliary building was arbitrary and illegal where subject site was not in any way peculiar, unusual or unique when compared to other properties in neighborhood and thus was not disproportionately affected by height restriction; self-created hardship arising from owner's failure to disclose height dimensions in applying for permit and construction of building in nonconformity were self-imposed or created hardships that could not support variance. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

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Tab 15

Westlaw.

361 Md. 107, 760 A.2d 677, 20 NDLR P 110
(Cite as: 361 Md. 107)

H

361 Md. 107, 760 A.2d 677, 20 NDLR P 110

Court of Appeals of Maryland.
John P. MASTANDREA, et ux.
v.
John C. NORTH, II.
No. 119, Sept. Term, 1999.

Oct. 10, 2000.

Chesapeake Bay critical area commission sought review of county board of appeals' grant of variance from critical area regulations, for brick-in-sand pathway designed for wheelchair access for landowners' daughter on residential property with frontage on creek. The Circuit Court , Talbot County , William S. Horne, J., reversed. Landowners appealed. After issuance of writ of certiorari, the Court of Appeals , Harrell, J., held that: (1) pathway constituted a reasonable modification to relevant zoning ordinance requirement, and (2) evidence supported grant of variance.

Judgment of circuit court reversed and remanded with directions.

West Headnotes

[1] **Zoning and Planning 414 ⇐570**
414k570 Most Cited Cases
Question of whether Americans with Disabilities Act (ADA) or local zoning ordinance authorizing " reasonable accommodations" for benefit of disabled citizens in zoning matter was source of legal authority for county board of appeals' consideration of reasonable accommodations to a disabled person in a variance proceeding was not required to be resolved in case in which board granted variance from Chesapeake Bay critical area regulations, for brick-in-sand pathway designed for wheelchair access on landowners' residential property that had frontage on creek, where critical area commission conceded that board had the abstract legal authority to grant a variance as a reasonable accommodation to a disabled person. 42 U.S.C.A. §§ 12131 -12134.

[2] **Zoning and Planning 414 ⇐502.1**
414k502.1 Most Cited Cases
Brick-in-sand pathway designed for wheelchair access for landowners' daughter on residential property in Chesapeake Bay critical area constituted a reasonable modification to relevant zoning ordinance requirement and enabled such a disabled person to enjoy waterfront within critical area buffer equally with a non-disabled person.

[3] **Zoning and Planning 414 ⇐745.1**
414k745.1 Most Cited Cases
Court of Appeals' role in reviewing whether county board of appeals, as administrative agency, correctly reached conclusions required by zoning ordinance for grant of variance in Chesapeake Bay critical area buffer was precisely the same as that of circuit court; that meant that Court was required to review administrative decision itself.

[4] **Zoning and Planning 414 ⇐607**
414k607 Most Cited Cases
For its conclusions to be "fairly debatable" in process of judicial review, county board of appeals' decision to grant variance must have been based on substantial evidence.

[5] **Zoning and Planning 414 ⇐709**
414k709 Most Cited Cases
Under substantial evidence test for reviewing county board of appeals' grant of variance, court may not substitute its judgment on question whether the inference drawn is right one or whether a different inference would be better supported; test is reasonableness, not rightness.

[6] **Zoning and Planning 414 ⇐502.1**
414k502.1 Most Cited Cases
County board of appeals was not required to consider whether denying variance from

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Tab 16

Westlaw.

377 Md. 382

377 Md. 382, 833 A.2d 563
(Cite as: 377 Md. 382)

H
377 Md. 382, 833 A.2d 563

Court of Appeals of Maryland.
Edwin H. LEWIS
v.
DEPARTMENT OF NATURAL RESOURCES.
No. 114, Sept. Term, 2002.

July 31, 2003.
Opinion on Reconsideration Oct. 10, 2003.

Landowner appealed from decision of the county board of zoning appeals denying his request for a zoning variance to construct a hunting camp on his property located within a Critical Area Buffer. The Circuit Court , Wicomico County , D. William Simpson, J., upheld the decision of the board, and landowner appealed. The Court of Special Appeals affirmed, and landowner filed petition for writ of certiorari. The Court of Appeals , Cathell, J., held that: (1) board's reliance on facts suggesting alternative uses and possible construction outside of the buffer in Chesapeake Bay critical area was akin to asking whether denying landowner's request for zoning variance would result in denying landowner " all economically beneficial or productive use of the land," i.e., the unconstitutional takings standard, and use of this standard by board was improper; (2) board committed legal error when it failed to make specific finding as to whether it considered landowner's land unique for the purposes of variance; and (3) board's decision denying variance was arbitrary and capricious since board utilized incorrect standards of law throughout its findings of fact and resolution of decision.

Vacated and remanded with instructions.

Wilner , J., dissented and filed opinion in which Raker and Battaglia, JJ., joined and dissented on denial of

motion for reconsideration and filed opinion.

Battaglia, J., dissented on denial of motion for reconsideration and filed opinion.

West Headnotes

[1] **Zoning and Planning 414 ⇐1**
414k1 Most Cited Cases
Zoning ordinances are in derogation of the common law right to so use private property as to realize its highest utility.

[2] **Zoning and Planning 414 ⇐495**
414k495 Most Cited Cases
County board of zoning appeals had to use statutory criteria within county ordinance providing that board is empowered to grant variances in Chesapeake Bay critical area where, owing to special features of site or other circumstances, literal enforcement of provisions would result in unwarranted hardship, in order to determine whether strict enforcement of county ordinance would deny landowner who sought variance reasonable and significant use of his land, and in doing so, board had to apply standard that did not look to whether landowner would be denied all reasonable uses of his entire property, but rather standard that should determine if his proposed use was reasonable and significant one.

[3] **Zoning and Planning 414 ⇐495**
414k495 Most Cited Cases
In respect to variances in buffer areas in Chesapeake Bay critical area, the correct standard is not whether the property owner retains a reasonable and significant use for the property outside the buffer, but whether he is being denied a reasonable use of property within the buffer.

[4] **Zoning and Planning 414 ⇐502.1**
414k502.1 Most Cited Cases
County board of zoning appeals' reliance on facts suggesting alternative uses and possible construction outside of the buffer in Chesapeake Bay critical area was akin to asking whether

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Tab 17

ARTICLE 1B

DENSITY RESIDENTIAL (D.R.) ZONES
[Bill No. 100-1970]

Section 1B00
Legislative Statement of Findings; Policy With Respect to D.R. Zones in General

1B00.1 Declaration of findings. The Baltimore County Council finds:

A. That residential zoning regulations heretofore in effect have not been conducive to the creation of housing diversity in Baltimore County subdivisions;

B. That minimum standards for individual lots, having been derived from maximum overall density standards, have resulted in an excessive spreading of residential development over subdivision tracts; such spreading of development has led to removal or undesirable transformation of natural vegetation and other features more properly left in their natural or previous states, and has led to visual monotony;

C. That zoning reclassifications based on lot sizes and types of housing have, in some situations, prevented the construction of the maximum numbers of housing units intended to be permitted on development tracts, especially in cases of severe topographical variation, or have induced "cramped" layout or other undesirable subdivision design characteristics as accommodation of maximum density is achieved;

D. That evolving markets for types of housing units not permitted in lower-density zones have created pressures leading to frequent rezoning, ultimately resulting in vastly greater population levels than have been planned for, tending to nullify planning efforts and to overload and overcrowd public facilities;

E. That, as a result of such rezoning, residential zoning classifications at the various density levels have not been applied to a satisfactory degree in proper relation or with sufficient regard to: location or size of commercial or industrial areas or uses; utilities, motorways, schools or other public facilities; timeliness of development; conservation and allocation of land resources; and other factors which should be considered in planning for the development of the county on the basis of a comprehensive rationale;

F. That, in light of the above findings, it is in the interest of the general welfare that new zoning classifications, formulated so as to avoid such effects in future residential development, be established as hereinafter provided;

G. That the ability to distribute density across different zone boundaries, as provided for in Bill 100-1970, has resulted in density patterns often unintended by the county during the comprehensive zoning map process; and [Bill No. 2-1992]

Tab 19

Westlaw.

111 Md.App. 1, 677 A.2d 634
(Cite as: 111 Md.App. 1)

C
111 Md.App. 1, 677 A.2d 634

Court of Special Appeals of Maryland.
Robin S. STEEL et al.
v.
CAPE CORPORATION.
No. 1541, Sept. Term, 1995.

June 4, 1996.

Applicant sought review of decision of county board of appeals denying its request to rezone private property from open space to residential classification. The Circuit Court , Anne Arundel County , Bruce C. Williams, J., reversed board's decision. Objectors appealed. The Court of Special Appeals , Cathell, J., held that denial of rezoning application based on inadequacy of school facilities resulted in unconstitutional regulatory taking.

Affirmed.

West Headnotes

[1] **Eminent Domain 148 ⇐2.1**
148k2.1 Most Cited Cases
(Formerly 148k2(1))
In undertaking regulatory takings analysis, first step focuses upon appropriateness of regulation itself. U.S.C.A. Const.Amend. 5.

[2] **Eminent Domain 148 ⇐2.10(6)**
148k2.10(6) Most Cited Cases
(Formerly 148k2(1.2))
Temporary character of ordinance on adequacy of school facilities, combined with zoning ordinance on open space classification, did not insulate statutory scheme from rezoning applicant's constitutional takings claim. U.S.C.A. Const.Amend. 5.

[3] **Zoning and Planning 414 ⇐489**
414k489 Most Cited Cases
Mistaken zoning classification does not justify grant of variance; it permits rezoning.

[4] **Eminent Domain 148 ⇐2.10(6)**
148k2.10(6) Most Cited Cases
(Formerly 148k2(1.2))
Hearing officer's purported grant of residential low density zoning classification upon denial of request for residential classification was improper and did not preclude applicant from asserting claim that the continued classification of private property as open space constituted regulatory taking. U.S.C.A. Const.Amend. 5.

[5] **Eminent Domain 148 ⇐2.10(6)**
148k2.10(6) Most Cited Cases
(Formerly 148k2(1.2))
No reasonable economical use could be made of four noncontiguous tracts of property abutting on property that had been denied residential zoning classification so as to preclude applicant's takings claim; though tracts had residential classification, application of setback requirements to largest tract resulted in less than reasonable buildable width, and remaining parcels were smaller and may have had even smaller buildable areas when setback and access requirements were factored in. U.S.C.A. Const.Amend. 5.

[6] **Eminent Domain 148 ⇐2.10(6)**
148k2.10(6) Most Cited Cases
(Formerly 148k2(1.2))
County board of appeals' denial of application for rezoning from open space to residential classification, based on inadequacy of school facilities, resulted in unconstitutional regulatory taking of applicant's private property which had been mistakenly downsized to open space classification without applicant's knowledge when community association wrongfully asserted ownership interest in property; open space classification, which permitted general recreational uses that preserved environment, provided no

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Tab 20

(2) The notice shall provide:

(i) The address of the property under petition or, if not available, a description of the property; and

(ii) The action requested by the petition.

(c) *Referral to Director of Planning.* Once a hearing date for a petition is established, the Department of Permits and Development Management shall promptly forward a copy of the petition to the Director or Deputy Director of the Office of Planning for consideration and a written report containing findings relating to planning factors.
(1988 Code, § 26-127) (Bill No. 18, 1990, § 2; Bill No. 91, 1990, § 2; Bill No. 1, 1992, § 2; Bill No. 103-02, § 2, 7-1-2004)

§ 32-3-303. SAME – ADMINISTRATIVE SPECIAL HEARING.

(a) *In general.*

(1) Notwithstanding the hearing requirements under § 32-3-302 of this subtitle, the Zoning Commissioner may grant variances from area and height regulations without a public hearing if the variance petition involves an owner-occupied lot zoned residential, as defined by the Baltimore County Zoning Regulations.

(2) (i) In order to receive a variance without a hearing, the petitioner shall file a supporting affidavit with the petition under oath made on the personal knowledge of the petitioner that sets forth facts that would otherwise satisfy the petitioner's burden of proof if a hearing were to be required.

(ii) The affidavit is in addition to the information required by the Zoning Commissioner on the petition.

(3) The Zoning Commissioner may not grant a variance under this section unless notice of the petition is conspicuously posted on the property for a period of at least 15 days following the filing of the application in accordance with the requirement of the Department of Permits and Development Management.

(b) *Request for public hearing.*

(1) Within the 15 day posting period required under subsection (a)(3) of this section, an occupant or owner within 1,000 feet of the lot in question may file a written request for a public hearing with the Department of Permits and Development Management .

(2) The Department of Permits and Development Management shall schedule a hearing to be held on a date within 75 days after receiving a request for a public hearing.

Tab 21

*641 323 Md. 641

594 A.2d 1115

Court of Appeals of Maryland.

SUGARLOAF CITIZENS ASSOCIATION and Karen Kalla and Beverly Thoms
v.
NORTHEAST MARYLAND WASTE DISPOSAL AUTHORITY and Montgomery County, Maryland et al.

No. 32 Sept. Term, 1990.
July 18, 1991.

Motions for Reconsideration Denied September 6, 1991.

See opinion by Eldridge, J. at 1124.
Chasanow, J., dissents in part.

Construction of municipal solid waste incinerator was proposed and application filed with the Air Management Administration for approval of location of the potential source of air pollution in a Prevention of Significant Deterioration (PSD) area. Before a public hearing was held on the application, nonprofit corporation representing interests of area residents brought suit requesting declaration that Administration was required to hold adjudicatory hearing before taking final action on the application and petitioned for writ of mandamus. County and regional waste disposal authority intervened as defendants, and individual landowners were added as plaintiffs. The Circuit Court, Baltimore City, Joseph H.H. Kaplan, J., granted summary judgment for defendants, and corporation and landowners appealed. Administration, county, and authority petitioned for writ of certiorari, and corporation and property owners cross-petitioned. After grant of both petitions, the Court of Appeals, Eldridge, J., held that: (1) hearing required when approval for location of potential source of air pollution in PSD area is sought is not contested case hearing; (2) contested case hearing is available at construction permit stage; and (3) determinations made at nontrial type of hearing in determining whether approval for location of potential source of air pollution in PSD area would be permitted would not be preclusive of whether construction and operation permits should subsequently be issued under principles of res judicata or collateral estoppel.

Affirmed.

Chasanow, J., would grant motions for reconsideration in part.

On Motion For Reconsideration

West Headnotes

[1] Environmental Law ⚿656

149E ----
149EXIII Judicial Review or Intervention
149Ek649 Persons Entitled to Sue or Seek Review; Standing
149Ek656 Other Particular Parties.

(Formerly 199k25.15(4.1), 199k25.15(4) Health and Environment)

Standing of named individual plaintiff property owners to bring suit challenging approval for location of potential source of air pollution in Prevention of Significant Deterioration area did not need to be considered, where contested case hearing was found not to be required for such preliminary or interlocutory approval.

[2] Administrative Law and Procedure ⚿475

15A ----
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(D) Hearings and Adjudications
15Ak469 Hearing
15Ak475 Proceedings at Hearing in General.

Under terms of the Administrative Procedure Act (APA), when proceeding meets definition of "contested case," agency is required to provide certain trial type procedures during course of the proceeding. Code, State Government, § 10-208.

[3] Administrative Law and Procedure ⚿469.1

15A ----
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(D) Hearings and Adjudications
15Ak469 Hearing
15Ak469.1 In General.

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*181 119 Md.App. 181

704 A.2d 499, 123 Ed. Law Rep. 260

Court of Special Appeals of Maryland.

MARYLAND STATE DEPARTMENT OF EDUCATION
v.
Douglas **SHOOP**.
No. 614 Sept. Term, 1997.
Jan. 13, 1998.

Automobile mechanics instructor in Maryland Correctional Training Center (MCTC) appealed his suspensions and subsequent termination for knowingly violating tool security policies by allowing inmate students unsupervised access to shop tools. The Circuit Court, Washington County, Daniel W. Moylan, J., reversed instructor's second suspension and termination on res judicata and due process grounds. Maryland State Department of Education (MSDE) appealed. The Court of Special Appeals, Davis, J., held that: (1) MSDE was not acting in "judicial capacity" when it suspended instructor for one day and, thus, res judicata did not preclude its subsequent proceeding to terminate him; (2) double jeopardy did not bar instructor's second suspension and termination; and (3) because instructor had actual notice that MSDE would call officer as witness and use his investigatory report, instructor's due process rights were not violated.

Reversed and remanded with instructions.

West Headnotes

[1] Officers and Public Employees ⚖72.50
283 ----
283I Appointment, Qualification, and Tenure
283I(H) Proceedings for Removal, Suspension, or Other Discipline
283I(H)3 Judicial Review
283k72.49 Scope of Review
283k72.50 In General; Questions or Matters Considered.

[See headnote text below]

[1] Officers and Public Employees ⚖72.55(2)
283 ----
283I Appointment, Qualification, and Tenure
283I(H) Proceedings for Removal, Suspension, or Other Discipline
283I(H)3 Judicial Review
283k72.49 Scope of Review
283k72.55 Questions of Law or Fact; Findings
283k72.55(2) Weight or Sufficiency of Evidence; Credibility.

Court's role in reviewing agency's disciplinary suspension, suspension without pay pending filing of charges for removal, or charge for removal is limited to determining if there is substantial evidence in the record as a whole to support agency's findings and conclusions, and to determine if administrative decision is premised upon erroneous conclusion of law. Code, State Government, § 10-222.

[2] Administrative Law and Procedure ⚖683
15A ----
15AV Judicial Review of Administrative Decisions
15AV(A) In General
15Ak681 Further Review
15Ak683 Scope.

Court of Special Appeals' role in appeal from circuit court's review of agency's final decision is precisely the same as that of the circuit court. Code, State Government, § 10-222(h).

[3] Administrative Law and Procedure ⚖784.1
15A ----
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak784 Fact Questions
15Ak784.1 In General.

Reviewing court may not make its own findings of fact or supply factual findings that were not made by agency.

[4] Administrative Law and Procedure ⚖485
15A ----
15AIV Powers and Proceedings of Administrative Agencies, Officers and Agents
15AIV(D) Hearings and Adjudications
15Ak484 Findings
15Ak485 Necessity and Purpose.

Findings of fact are essential for reviewing court meaningfully to review agency's decision.

[5] Administrative Law and Procedure ⚖789
15A ----
15AV Judicial Review of Administrative Decisions
15AV(E) Particular Questions, Review of
15Ak784 Fact Questions
15Ak789 Inferences or Conclusions from Evidence in General.

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IN RE: PETITION FOR VARIANCE E/S of Cold Spring Road, 640 ft. +/- S centerline of Chesapeake Avenue 15th Election District 6th Councilmanic District **(809 Cold Spring Road)** Janice Oberst, *Legal Owner* **and** Amanda C. & Dr. Harlan K. Zinn, *Contract Purchasers* *Petitioners*	*	BEFORE THE *DEPUTY ZONING COMMISSIONER* OF BALTIMORE COUNTY CASE NO. 04-522-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, Janice Oberst and Amanda C. & Dr. Harlan K. Zinn, the contract purchasers. The Petitioners are requesting variance relief for property located at ~~8098~~ Cold Spring Road in the eastern area of Baltimore County. The variance request is from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a lot containing 5,092 sq. ft., a front yard of 23 ft. and a rear yard of 2 ft. in lieu of the required 10,000 sq. ft., 30 ft. and 30 ft. respectively, 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 25, 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 29, 2004 to notify any interested persons of the scheduled hearing date.

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Date 7/20/04
By

Applicable Law

Section 307 of the B.C.Z.R. – ***Variances***.

"The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the

subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to the public health, safety and general welfare. They shall have no power to grant any other variances. Before granting any variance, the Zoning Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification. Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance."

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: A ZAC comment was received from the Department of Environmental Protection & Resource Management (DEPRM) dated June 9, 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 July 8, 2004 recommending denial of the requested relief, a copy of this comment is attached hereto and made a part hereof. In addition, a ZAC comment was also received from the Bureau of Development Plans Review dated June 3, 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 Scott Dallas whose surveying firm prepared the plan to accompany, Jan Oberst, Richard Oberst, Douglas Zinn and Harlan Zinn, the Petitioners. Appearing in opposition to the request was Richard Pitz, adjacent property owner. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

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Date 7/20/04
By DRJ

Testimony and Evidence

Testimony and evidence indicated that the property, which is the subject of this variance request, is vacant, consists of 5,092 sq. ft. and is zoned D.R. 3.5. This property was the subject of another zoning variance case (Case No. 03-500-A) in which Zoning Commissioner Schmidt denied similar variances in his order dated July 28, 2003. The lot has been the site of the present owner's sailboat mooring. It is served by public water and sewer.

Mr. Dallas presented the plan to accompany the petition marked as Petitioners' Exhibit No. 1. He proffered that the proposed home on the site was significantly different from that of the prior case. In the prior case, the proposed home was a 28 ft. x 28 ft. single family home located 2 ft. from the rear property line with a separate parking pad. As a waterfront property, this lot is subject to the requirements of the Chesapeake Bay Critical Area legislation. When the previous hearing took place in 2003, approval by DEPRM had apparently not been attained.

In this design, the home is 16 ft. x 46 ft. with parking only under the first floor and a proposal to remove the existing concrete pad and gravel drive. Mr. Dallas explained that this would allow the impervious area of the site to essentially remain what it is today, that is without a home on site. He also explained that he had proposed to move the home 7 ft. off the rear property line, but that this had been rejected by DEPRM who has now approved the design. Apparently, DEPRM wanted to move the home as far back away from the waterfront as possible to minimize impact on Galloway Creek. Even so, the Petitioner must request a front yard setback variance of 23 ft. in lieu of the required 30 ft. for DR 3.5 zoned land. On the other hand, the rear of the home is within 2 ft. of the road turnaround for this part of the peninsula. Mr. Dallas presented several photographs of homes in the area which were also very close to the road.

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Date 7/20/04
By

The proposed house would be elevated one story to avoid the damage done to so many other waterfront properties in the area during Hurricane Isabel in 2003. Over this first level, which will be used for parking, the house would have two stories of living space. The house would be only 16 ft. in depth, similar to smaller row homes in the Baltimore County and Baltimore City. As such, there would be essentially one room and a hallway end to end. Unlike row homes in the area, of course, this home would have windows for light and air.

The area of this very irregularly shaped lot includes lot 304 of the Long Beach Estates subdivision, which was recorded in the Land Records of the County in 1910. The area also includes a small parcel of an old right-of-way, which has now been acquired by the owner. However, although the lot is listed as 5,092 sq. ft. of area, in fact, the boundaries of the lot extend out into the water. The actual dry land of the lot is approximately 4,800 sq. feet.

Mr. Dallas argued that the 2 ft. setback problem had been initially caused by Baltimore County because DEPRM required moving the house away from the water while the Department of Public Works built the turnaround for this peninsula essentially on the property line. Presumably, the latter occurred because the property was vacant and the owner did not object.

Mr. Pitz presented testimony and evidence that the lot is simply too small for a home to be added to it. He notes that the home proposed in 2003 had a 784 sq. foot footprint while this home is essentially the same at 736 sq. feet. He testified that a 16 ft. x 46 ft. home has the same configuration as a mobile home and that it would change the character of this single-family home neighborhood if allowed to be built.

His primary concern was that this proposal for a 2 ft. rear yard setback was exactly the same as was turned down by Commissioner Schmidt at the hearing in July 2003. This setback puts the rear wall of the house only 2 ft. from the end of the paved portion of the turnaround. He was concerned that vehicles using the turnaround would hit the rear wall of the new home. As

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Date 7/20/04
By

evidence that this could happen, he presented photographs of the damage done to the existing turnaround by trash trucks and other larger vehicles. See protestant's photos, Exhibit Nos. 5B and 6.

A dispute arose as to the proper front yard setback. Mr. Dallas explained that he used the zoning chart of Section 1B02.3.C.1 (B.C.Z.R.) which specifies a 30 ft. setback for front yards in DR 3.5 zoned property. However, if one were to average the front yard setbacks of adjoining lots, particularly lot 199 which is setback 92 ft. from the water and lot 200 which is setback 20 ft. from the water, the standard would be 55 ft. Also disputed was whether several neighbors signed petitions both supporting and opposing the requested relief.

Findings of fact and conclusions of law

Since this case will likely be appealed to the Board of Appeals, I will address each of the issues raised.

Res Judicata

The legal system has a provision that once a case is heard and a decision made, the same case can not be brought back again. Mr. Pitz indicates that this case was just heard and decided only one year ago. He points out the variances requested in the 2003 case and in this case were for front and rear yard setbacks and an undersized lot. He contends that since the case had been decided by Commissioner Schmidt last year, I should dismiss this case.

While I recognize the similarity of these cases, there are enough differences that I will not dismiss the case on the basis of *res judicata.* I note that the house is shaped differently, the setback from the water in this case is 25 ft. as opposed to 11 ft. in the 2003 case, and the impervious surface proposed is significantly reduced from the 2003 case. In addition, the Petitioner has obtained variances from the Chesapeake Bay Critical Area regulations with this design.

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Date 12/16/04
By

Front Yard Setback.

While it is true that the County customarily averages the front yard setbacks of adjoining properties, in this case I find that the small lot front yard set back of 30 ft. is the appropriate standard even though the standard applied in the 2003 case was the average (55 feet). The reason the County averages front yard setbacks is to make sure that the proposed building lines up reasonably with existing buildings on adjoining lots. In other words, they do no want a new structure to protrude out along the line of buildings. This makes great sense when the buildings are along a common road or waterfront. However, this is sharp peninsula where lot 199 is virtually around the corner from the proposed house and trying to align these proposed with the existing homes is not logical. See Petitioner's Exhibit No. 1, particularly the vicinity map.

Unique lot

A threshold question for any variance case is whether the lot is unique. *Cromwell v Ward,* 110 Md App. 691, 651 A 2d 424 (1995) requires that there be some physical peculiarity on the property to meet the threshold. I find that this lot is unique in the sense *Cromwell* requires. It is very irregularly shaped, is waterfront property subject to periodic flooding, and subject to the Chesapeake Bay Critical Area legislation. As such, the zoning and CBCA regulations impacts this lot disproportionately as compared to other lots in the area which were laid out in accord with such regulations. The lot was laid out in 1910 much before the zoning and CBCA regulations were imposed upon the lot.

Hardship or Practical Difficulty

I also find that the if the variances were denied the owner would suffer hardship and practical difficulty. In short, the Petitioners would have a lot on the water on which they could not build a home. However, in finding this to be so, I am not saying that the regulations forbid

ORDER RECEIVED FOR FILING
7/20/04
By

any reasonable use of the property. The owners have used the property as a recreation site and to moor their sailboat. These are valuable uses that would continue regardless of whether or not the variances are granted.

Density/ Spirit and Intent

Section 307.1 requires "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". I find it troubling to look only at the calculated area of the lot where a portion of the lot is out in Galloway Creek. I can not imagine the County Council intended to give credit for property that is located in the water although the technical definition of the lot may be as presented. This is a spirit and intent issue. The dry land area is approximately 4,800 sq. ft. Given DR 3.5 zoning, this lot would be entitled to only 0.39 dwellings if one considers the dry land area. This is not close to the size lot envisioned by the Council when it imposed DR 3.5 on this area. I recognize that many of the lots in the immediate area are standard 50 ft. wide waterfront lots which also do not look like DR 3.5 lots. However, it is not my place to ignore the zoning on the property.

General Welfare

Section 307.1 also requires "Furthermore, any such variance shall be granted .....only in such manner as to grant relief without injury to the public health, safety and general welfare." The Office of Planning points out that the lot is too small to accommodate the proposed residence and the 2 ft. rear yard setback is out of character with the neighborhood. In addition, they are concerned that the home is too close to the turnaround. Mr. Pitz presented evidence which shows there is a problem with vehicles in the turnaround now much less when a home is built 2 ft. from the where the trash trucks and snow plows will be operating.

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Date 7/20/04
By

I am also troubled by the placement of a very long narrow home in a neighborhood in which the homes are built in a more traditional way. I would not want to set a precedent for this home in this neighborhood.

In summary, considering all the evidence presented, I arrive where Mr. Schmidt found himself last July. The lot is simply too small for the home proposed.

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

THEREFORE, IT IS ORDERED, this 20 day of July, 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 allow a lot containing 5,092 sq. ft., a front yard of 23 ft. and a rear yard of 2 ft. in lieu of the required 10,000 sq. ft., 30 ft. and 30 ft. respectively, and to approve an undersized lot pursuant to Section 304 of the B.C.Z.R., be and it is hereby **DENIED**.

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:raj

ORDER RECEIVED FOR FILING
Date 7/26/04
By Raj

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at # 809 Cold Spring ~~Avenue~~ Road

which is presently zoned D.R. 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)

1 B02.3 C.1. to allow a lot containing 5,092 square feet, front yard of 23 feet and rear yard of 2 feet in lieu of the required 10,000 square feet, 30 feet and 30 feet respectively and to approve an undersized lot.

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty) Unusualshape and size of lot will not allow development with strict adherence to zoning regulations. Purchaser is proposing extremely narrow dwelling which will still require variances above, while accommodating environmental regulations to the extent possible.

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

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

Contract Purchaser/Lessee:

Dr. Harlan K. Zinn & Amanda C. Zinn
Name - Type or Print

Harlan K. Zinn Amanda C. Zinn
Signature

10628 Park Heights Ave. 410-486-2899
Address Telephone No.

Owings Mills, MD 21117
City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

Ms. Janice Oberst
Name - Type or Print

Janice Oberst
Signature

Name - Type or Print

Signature

2587 Vance Drive
Address Telephone No.

Mt. Airy MD 21771
City State Zip Code

Representative to be Contacted:

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

P. O. Box 26
13523 Long Green Pike 410-817-4600
Address Telephone No.

Baldwin MD 21013
City State Zip Code

Case No. 04-522A

REV 9/15/98

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING
Reviewed By JSM Date 5-12-04

J. S. DALLAS, INC.

SURVEYING & ENGINEERING

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

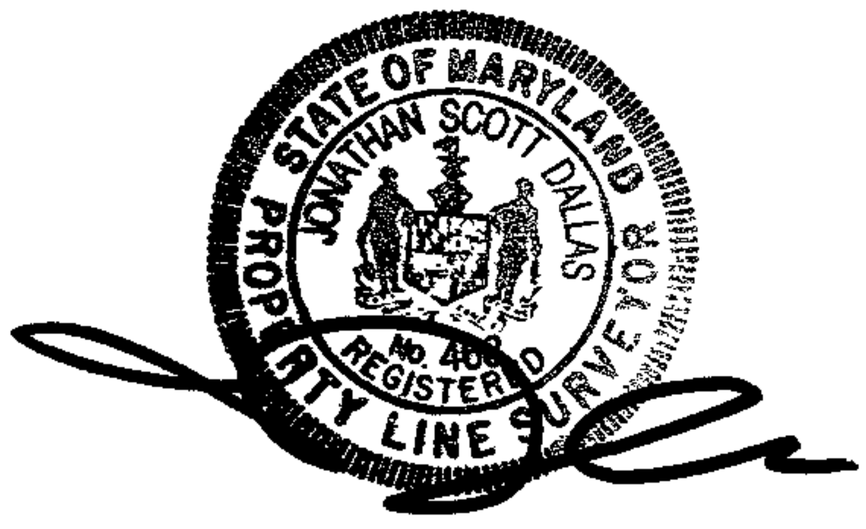
ZONING DESCRIPTION -#809 Cold Spring Road-
TAX MAP 98 -PARCEL 203 lot 304 (and Adjacent)

BEGINNING *at a point on the east side of Cold Spring Road, 40 feet wide, at the distance of 640 feet, more or less, in a southerly direction from the extension of the centerline of Chesapeake Avenue, 40 feet wide, as shown on the Plat entitled Plan "C" of Long Beach Estates and recorded among the Land Records of Baltimore County in Plat Book W.P.C. No. 4 folio 131, at the division line between Lots 304 and 200 as shown on said Plat thence running with and binding on said division line, with all bearings and distances herein according to a Boundary Survey dated December 5, 2001 by Siterite Surveying, Inc.* ***(1) South 64 degrees 09 minutes 00 seconds East 107 feet more or less*** *to a point in the Galloway Creek, thence leaving said division line and running with and binding on the outline of said Lot* ***(2) South 04 degrees 13 minutes 25 seconds East 36.83 feet*** *thence leaving said Lot 304 and running* ***(3) South 30 degrees 36 minutes 14 seconds East 28.71 feet*** *to the northernmost outline of Lot 199 as shown on said Plat thence running with and binding on a part of said northernmost outline* ***(4) South 88 degrees 51 minutes 00 seconds West 50.26 feet*** *to intersect said east side of Cold Spring Road thence running with and binding on said east side of Cold Spring* ***(5) North 30 degrees 09 minutes 00 seconds West 126.17 feet*** *to the place of beginning.*

CONTAINING ***5,092 square feet or 0.117 acres*** *of land, more or less.*

BEING *all of those two parcels of Land which by deed dated January 14, 2003 and recorded among the Land Records of Baltimore County in Liber 17471 folio 328 etc. was conveyed by Ann June Schuman fka Ann June Kratzer and Janice Ann Oberst to Janice Ann Oberst.*

Note: above description for zoning purposes only.



NOTICE OF ZONING HEARING

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

Case: #04-522-A
809 Cold Spring Road
E/side of Cold Spring Road, 640 feet +/- s/of Chesapeake Avenue
15th Election District - 6th Councilmanic District
Legal Owner(s): Janice Oberst

Variance: to allow a lot containing 5,092 square feet, front yard of 23 feet and rear yard of 2 feet in lieu of the required 10,000 square feet, 30 feet, and 30 feet and to approve an undersize lot.

Hearing: Wednesday, July 14, 2004 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley 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.
JT/6/838 June 29 10849

CERTIFICATE OF PUBLICATION

6/30/, 2004

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 6/29/, 2004.

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

S. Wilkinson

LEGAL ADVERTISING

S 272

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 36042

DATE 5.12.04 ACCOUNT 001-006-6150

AMOUNT $ 65.00

RECEIVED FROM: 2 NW 809 Glo Springs Rd.

FOR: VAR.

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
5/13/2004	5/12/2004	14:22:00	1

REG MGR1 WALKIN JRIC JHR
>>RECEIPT # 186940 5/12/2004 OFLN
Dept 5 526 ZONING VERIFICATION
CK NO. 036042
Recpt Tot $65.00
$65.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

CERTIFICATE OF POSTING

Date: JUNE 30, 2004

Attention: Kristen Matthews

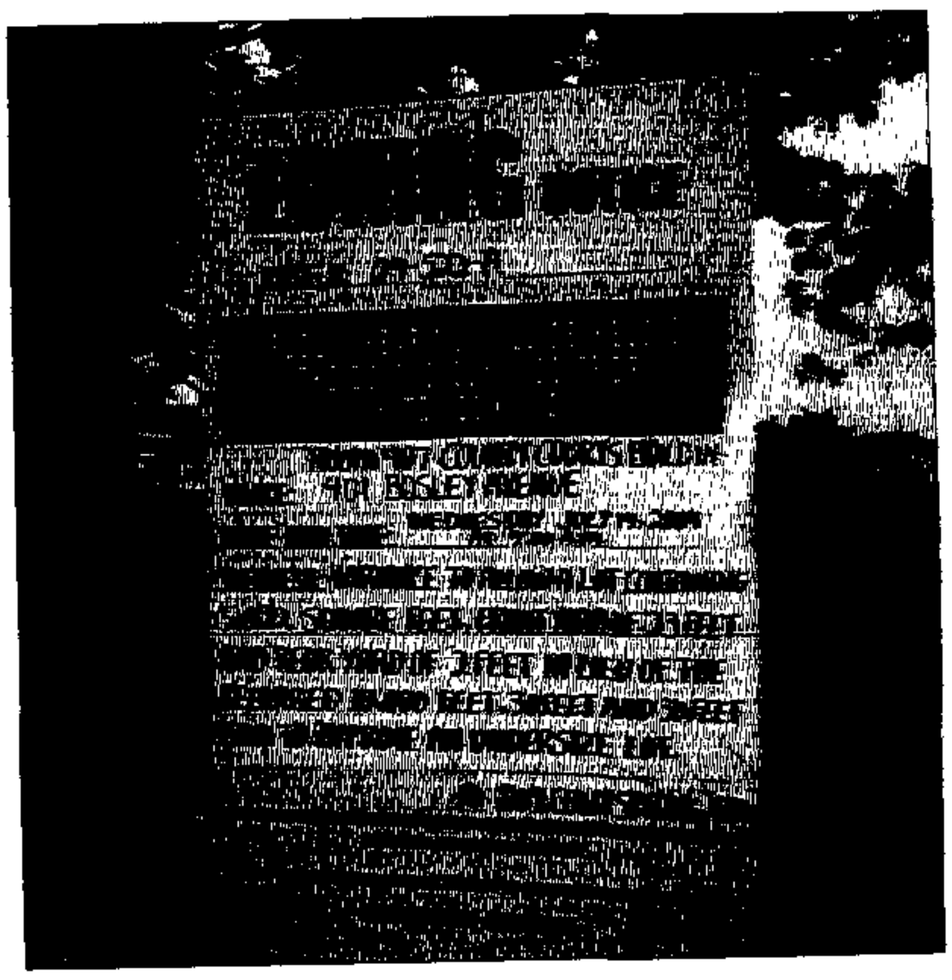
RE: Case Number 04-522-A

Petitioner/Developer: JANICE OBERST / DR. HARLAN ZINN, J.S DALLAS

Date of Hearing/Closing: JULY 14, 2004

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at 809 COLD SPRING ROAD

The sign(s) were posted on JUNE 25, 2004.
(Month, Day, Year)



Linda O'Keefe
(Signature of Sign Poster)

LINDA O'KEEFE
(Printed Name of Sign Poster)

523 PENNY LANE
(Street Address of Sign Poster)

HUNT VALLEY MD 21030
(City, State, Zip Code of Sign Poster)

410-666-5366
(Telephone Number of Sign Poster)

Revised 3/1/01 - SCJ

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:

Item Number or Case Number: 522

Petitioner: Dr. Harlan Zinn

Address or Location: 809 Cold Spring Lane

PLEASE FORWARD ADVERTISING BILL TO:

Name: Dr. Harlan Zinn

Address: 10628 Park Heights Ave

Owings Mills, Md. 21117

Telephone Number: 410 486-2899

Revised 2/20/98 - SCJ

TO: PATUXENT PUBLISHING COMPANY
Tuesday, June 29, 2004 Issue - Jeffersonian

Please forward billing to:
Dr. Harlan Zinn
10628 Park Heights Avenue
Owings Mills, MD 21117

410-486-2899

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: 04-522-A
809 Cold Spring Road
E/side of Cold Spring Road,640 feet +/- s/of Chesapeake Avenue
15th Election District – 6th Councilmanic District
Legal Owner: Janice Oberst

Variance to allow a lot containing 5,092 square feet, front yard of 23 feet and rear yard of 2 feet in lieu of the required 10,000 square feet, 30 feet, and 30 feet and to approve an undersize lot.

Hearing: Wednesday, July 14, 2004, at 9:00 a.m. in Rm. 407, County Courts Building,
401 Bosley Avenue

Lawrence E. Schmidt

LAWRENCE E. SCHMIDT
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL 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

May 21, 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: 04-522-A
809 Cold Spring Road
E/side of Cold Spring Road,640 feet +/- s/of Chesapeake Avenue
15th Election District – 6th Councilmanic District
Legal Owner: Janice Oberst

Variance to allow a lot containing 5,092 square feet, front yard of 23 feet and rear yard of 2 feet in lieu of the required 10,000 square feet, 30 feet, and 30 feet and to approve an undersize lot.

Hearing: Wednesday, July 14, 2004, at 9:00 a.m. in Rm. 407, County Courts Building,
401 Bosley Avenue

Timothy Kotroco
Director

TK:klm

C: Janice Oberst, 2587 Vance Drive, Mt. Airy 21771
Dr. Harlan Zinn, & Amanda Zinn, 10628 Park Heights Ave., Owings Mills 21117
J. Scott Dallas, P.O. Box 26, 13523 Long Green Pike, Baldwin 21013

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

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County Board of Appeals of Baltimore County

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

May 26, 2005

NOTICE OF DELIBERATION

IN THE MATTER OF:

DR. HARLAN AND AMANDA ZINN – C.P.;
JANICE OBERST – Legal Owner
Case No. 04-522-A

Having heard this matter on 2/24/05 and 4/25/05, public deliberation has been scheduled for the following date /time:

DATE AND TIME : THURSDAY, JULY 28, 2005 at 9:30 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

NOTE: Closing briefs are due on Thursday, June 30, 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: Counsel for Appellants /Petitioners : John B. Gontrum, Esquire
Appellants /Petitioners : Janice Oberst/Legal Owner
Dr. Harlan Zinn /C.P.

Douglas Zinn
Scott Dallas /J Scott Dallas Inc

Protestant : Richard Pitz

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

FYI: 2-5-6

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on Recycled Paper

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

March 9, 2005

NOTICE OF POSTPONEMENT & REASSIGNMENT /Day #2

CASE #: 04-522-A

IN THE MATTER OF: JANICE OBERST – Legal Owner;
DR. HARLAN & AMADA ZINN – C.P. 809 Cold Spring Road
15th Election District; 6th Councilmanic District

Day #2 from 2/24/05

5/14/04 – D.Z.C.'s Order in which variance request was DENIED.

which had been assigned for day #2 on 5/18/05 has been **ADMINISTRATIVELY POSTPONED** by the Board of Appeals due to a schedule conflict with a panel member; and has been

REASSIGNED FOR: **WEDNESDAY, MAY 25, 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: Counsel for Appellants /Petitioners : John B. Gontrum, Esquire
Appellants /Petitioners : Janice Oberst/Legal Owner
Dr. Harlan Sinn /C.P.

Douglas Zinn
Scott Dallas /J Scott Dallas Inc

Protestant : Richard Pitz

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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on Recycled Paper

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

December 7, 2004

NOTICE OF ASSIGNMENT

CASE #: 04-522-A **IN THE MATTER OF: JANICE OBERST – Legal Owner;**
DR. HARLAN & AMADA ZINN – C.P. 809 Cold Spring Road
15th Election District; 6th Councilmanic District

5/14/04 – D.Z.C.'s Order in which variance request was DENIED.

ASSIGNED FOR: **THURSDAY, FEBRUARY 24, 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: Appellants /Petitioners : Janice Oberst/Legal Owne
Dr. Harlan Sinn /C.P.

Douglas Zinn
Scott Dallas /J Scott Dallas Inc

Protestant : Richard Pitz

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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on Recycled Paper

County Board of Appeals of Baltimore County

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

Amended 3-01-05 - to add counsel for petitioners

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

February 28, 2005

NOTICE OF ASSIGNMENT /Day #2

CASE #: 04-522-A

Day #2 from 2/24/05

IN THE MATTER OF: JANICE OBERST – Legal Owner;
DR. HARLAN & AMADA ZINN – C.P. 809 Cold Spring Road
15th Election District; 6th Councilmanic District

5/14/04 – D.Z.C.'s Order in which variance request was DENIED.

ASSIGNED FOR: **WEDNESDAY, MAY 18, 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: Appellants /Petitioners : Janice Oberst/Legal Owne
Dr. Harlan Sinn /C.P.

Douglas Zinn
Scott Dallas /J Scott Dallas Inc

Protestant : Richard Pitz

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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on Recycled Paper

County Board of Appeals of Baltimore County

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

PP'd 3/9/05-Ph
5/25/05-
2 Stake O/T
5/18.

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

March 1, 2005

AMENDED NOTICE OF ASSIGNMENT /Day #2
[Amended to add Counsel for Petitioners]

CASE #: 04-522-A

IN THE MATTER OF: JANICE OBERST – Legal Owner;
DR. HARLAN & AMADA ZINN – C.P. 809 Cold Spring Road
15th Election District; 6th Councilmanic District

Day #2 from 2/24/05

5/14/04 – D.Z.C.'s Order in which variance request was DENIED.

ASSIGNED FOR: **WEDNESDAY, MAY 18, 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: Counsel for Appellants /Petitioners : John B. Gontrum, Esquire
Appellants /Petitioners : Janice Oberst/Legal Owne
Dr. Harlan Sinn /C.P.

Douglas Zinn
Scott Dallas /J Scott Dallas Inc

Protestant : Richard Pitz

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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on Recycled Paper

Department of Permits and 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

July 7, 2004

Ms. Janice Oberst
2587 Vance Drive
Mt. Airy, Maryland 21771

Dear Ms. Oberst:

RE: Case Number:04-522-A, 809 Coldspring Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on May 12, 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,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: clb

Enclosures

c: People's Counsel
Dr. Harlan K. Zinn 10628 Park Heights Avenue Owings Mills 21117
J. Scott Dallas P.O. Box 26 13523 Long Green Pike Baldwin 21013

Printed on Recycled Paper

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits &
Development Management

DATE: June 3, 2004

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

SUBJECT: Zoning Advisory Committee Meeting
For June ~~1, 2004~~
Item No. 522

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

The flood protection elevation for this site is 11.2 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-06-01-2004-ITEM NO 522-06032004

9m 7/14

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits and
Development Management

DATE: July 8, 2004

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

RECEIVED

JUL - 9 2004

ZONING COMMISSIONER

SUBJECT: 809 Cold Spring Road

INFORMATION:

Item Number: 04-522

Petitioner: Janice Oberst

Zoning: DR 3.5

Requested Action: Variance

SUMMARY OF RECOMMENDATIONS:

The Office of Planning does not support the petitioner's request to permit a rear yard setback of 2 feet in lieu of the minimum required 30 feet, and recommends that the petitioner's request be **DENIED**.

It is the opinion of this office that the subject property is too small to accommodate the proposed residence and that a 2-foot rear yard is not in keeping with the character of the neighborhood. In addition, the turnaround provided at the end of Cold Spring Road in the right-of-way in front of the residence does not provide adequate separation from the residence. A similar request was made under Case # 3-500-A in 2003 which was denied. The text of the Zoning Commissioner's Order is attached to the plan.

Prepared by: Mark A. Cunningham

Division Chief: Lynn Lanham
AFK/LL:MAC:

ORDER RECEIVED FOR FILING
Date 7/22/04
By Rec'd

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Timothy M. Kotroco, Director
Department of Permits &
Development Management

DATE: June 3, 2004

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

SUBJECT: Zoning Advisory Committee Meeting
For June ~~1, 2004~~
Item No. 522

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

The flood protection elevation for this site is 11.2 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-06-01-2004-ITEM NO 522-06032004

ORDER RECEIVED FOR FILING
Date 7/20/04
By

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

August 17, 2004

Mr. and Mrs. Richard Oberst
2587 Vance Drive
Mt. Airy, Maryland 21771

Dear Mr. and Mrs. Oberst:

RE: Case: 04-522-A, 809 Cold Spring Road

Please be advised that this office received your appeal of the above-referenced case on August 2, 2004. 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

Timothy Kotroco
Director

TK:klm

c: Lawrence E. Schmidt, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Harlan Zinn, 10628 Park Heights Ave., Owings Mills 21117
Douglas Zinn, 3652 Galloway Road, Baltimore 21220
J. Scott Dallas, 13523 Long Green Pike, P.O. Box 26, Baldwin 21013
Richard Pitz, 808 Cold Spring Road, Baltimore 21220

Fire Department

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

Baltimore County

James T Smith, Jr., County Executive
John J Hohman, Chief

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

May 9, 2004

ATTENTION: Kristen Mathews

Distribution Meeting of: May 1, 2004

Item No.: 516, 518, 519-522, 524, 525, 527-529

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

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

SHA
State Highway Administration
Driven to Excel

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

MARYLAND DEPARTMENT OF TRANSPORTATION

Date: 5.25.04

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

RE: Baltimore County
Item No. 522 JCM

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,

K. A. McDonald

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

IN THE MATTER OF: JANICE OBERST - Legal Owner DR. HARLAN & AMANDA ZINN - C.P.* 809 Cold Spring Road, 15th Election District; 6th Councilmanic District	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO.: 04-522-A

RECEIVED
MAY 23 2005
ZONING COMMISSIONER

* * * * * * * * *

AFFIDAVIT OF SERVICE OF SUBPOENA

I, Anya A. Enova, depose and say:

1. I am a competent person over 18 years of age.

2. On Thursday, May 19, 2005 at approximately 3:15 p.m., I served a subpoena to compel the attendance of and production of documents by Eric G. Rockel. Service was by hand delivery to Eric G. Rockel, Supervisor, Bureau of Land Acquisition, Contract and Negotiations/Records Management, 111 W. Chesapeake Avenue, Towson, MD 21204.

3. Copies of the papers served are attached hereto.

I solemnly affirm under penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

Anya A. Enova
Whiteford, Taylor & Preston, LLP
210 W. Pennsylvania Avenue, 4th Floor
Towson, Maryland 21204
410-832-2000

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Affidavit of Service of Subpoena was this 19th day of May, 2005 mailed to:

Office of People's Counsel
400 Washington Avenue
Towson, Maryland 21204

William J. Wiseman, III, Zoning Commissioner
401 Bosley Avenue
Towson, Maryland 21204

Arnold F. "Pat" Keller, III, Planning Director
401 Bosley Avenue, Room 406
Towson, Maryland 21204

Timothy M. Kotroco, Director
Department of PDM
111 W. Chesapeake Avenue
Towson, Maryland 21204

Anya A. Enoya

335043

IN THE MATTER OF: JANICE OBERST - Legal Owner DR. HARLAN & AMANDA ZINN - C.P.* 809 Cold Spring Road, 15th Election District; 6th Councilmanic District	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
	*	CASE NO.: 04-522-A

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

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT:

TO: ERIC G. ROCKEL, Supervisor
Bureau of Land Acquisition
Contract and Negotiation/Records Management
111 W. Chesapeake Avenue
Towson, Maryland 21204

SERVE ON: ERIC G. ROCKEL, Supervisor
Bureau of Land Acquisition
Contract and Negotiation/Records Management
111 W. Chesapeake Avenue
Towson, Maryland 21204

RECEIVED
MAY 19 2005
BALTIMORE COUNTY
BOARD OF APPEALS

YOU ARE HEREBY COMMANDED TO:

( ) Personally appear;
( ) Produce documents and/or objects only;
(X) Personally appear and produce documents or objects;

at the Board of Appeals, in Room 49 Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204, on **Wednesday, May 25, 2005 at 10:00 a.m.**

YOU ARE COMMANDED TO produce the following documents or objects for the purpose of indicating your level of usage of the property over time. This is intended to reflect the impact on the surrounding community. From this information the proposed impact of usage of the property on the agricultural community may be determined.

1. Any and all documents and records regarding County ownership and rights in Cold Spring Road in Bowley's Quarters, South of Chesapeake Road.

SUBPOENA REQUESTED BY:
John B. Gontrum, Esquire
Whiteford, Taylor & Preston L.L.P.
Suite 400
210 West Pennsylvania Avenue
Towson, Maryland 21204-4515
(410) 832-2055

The witness named above is hereby ORDERED to so appear before the Hearing Officer. The Board Requests the Private Process Server to issue the summons set forth herein.

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

286462

RE:	PETITION FOR VARIANCE 809 Cold Spring Road; E/side of Cold Spring Road, 640' +/- S of Chesapeake Avenue 15th Election 7 6th Councilmanic Districts Legal Owner(s):Janice Oberst Contract Purchaser(s): Dr Harlan and Amanda C. Zinn Petitioner(s)	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 04-522-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
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of June, 2004, a copy of the foregoing Entry of Appearance was mailed to, J. Scott Dallas, P.O. Box 26, 13523 Long Green Pike, Baldwin, MD 21013, Representative for Petitioner(s).

RECEIVED
JUN 0 3 2004
Per.....

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

County Board of Appeals of Baltimore County

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

December 20, 2005

John B. Gontrum, Esquire
WHITEFORD TAYLOR & PRESTON LLP
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

RE: *In the Matter of: Janice Oberst – Legal Owner;*
Dr. Harlan & Amanda Zinn – C.P. /Petitioners
Case No. 04-522-A

Dear Mr. Gontrum:

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,

Kathleen C. Bianco

Kathleen C. Bianco
Administrator

Enclosure

c: Janice Oberst/Legal Owner
Dr. Harlan Sinn /C.P.
Douglas Zinn
Scott Dallas /J Scott Dallas Inc
Richard Pitz
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

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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 21, 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: 04-522-A
809 Cold Spring Road
E/side of Cold Spring Road,640 feet +/- s/of Chesapeake Avenue
15th Election District – 6th Councilmanic District
Legal Owner: Janice Oberst

Variance to allow a lot containing 5,092 square feet, front yard of 23 feet and rear yard of 2 feet in lieu of the required 10,000 square feet, 30 feet, and 30 feet and to approve an undersize lot.

Hearing: Wednesday, July 14, 2004, at 9:00 a.m. in Rm. 407, County Courts Building,
401 Bosley Avenue

Timothy Kotroco
Director

TK:klm

C: Janice Oberst, 2587 Vance Drive, Mt. Airy 21771
Dr. Harlan Zinn, & Amanda Zinn, 10628 Park Heights Ave., Owings Mills 21117
J. Scott Dallas, P.O. Box 26, 13523 Long Green Pike, Baldwin 21013

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

Robert L. Ehrlich, Jr.
Governor

Michael S. Steele
Lt. Governor

Martin G. Madden
Chairman

Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

March 29, 2004

Mr. Keith Kelley
Baltimore County
Department of Environmental Protection
and Resource Management
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

RE: **BC 353-03: 04-02 Oberst Property Buffer Variance Request**
Tax Map 98, Parcel 203, Lot 304: 809Cold Spring Lane

Dear Keith,

I have reviewed the information regarding this Buffer variance request to construct a dwelling in the 25-foot Critical Area Setback on a grandfathered lot in the LDA of Galloway Creek. This lot is located in a Buffer Management Area and is subject to a 25-foot Critical Area Setback. Due to the unusual configuration of this lot, the proposed development cannot be sited outside the Setback, even though it has been located as far away from the shoreline as possible. We do not oppose this variance request. We recommend the variance approval include the following condition:

- That mitigation for new disturbances in the Setback are to be provided on-site at a 3:1 ratio and disturbances in the Buffer outside the Setback are to be provided on-site at a 2:1 ratio, to the extent feasible.

Please provide this office with a copy of the written decision made in this case. Feel free to contact me at 410-260-3481 if you have any questions regarding these comments.

Sincerely,

Wanda Diane Cole

Wanda Diane Cole
Natural Resources Planner

cc: Mr. Harlan Zinn

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

June 11, 2004

Ms. Janice Oberst
2587 Vance Drive
Mount Airy, MD 21771

Re: 809 Cold Spring Road
Critical Area Administrative Variance

Dear Ms. Oberst:

The Department of Environmental Protection and Resource Management (DEPRM) has received your revised variance request to construct a dwelling in the 100 foot tidal buffer closer to Galloway Creek/Middle River (23' in lieu of the required 32') 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 entire 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.

The fourth criterion requires that a variance is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property. This variance is not based upon conditions or circumstances which are the result of your actions. Therefore, this criterion has been met.

The fifth criterion requires that granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area regulations. We acknowledge that alternative dwelling designs were explored to minimize buffer impacts. With mitigation, granting of the variance will not adversely affect water quality, or adversely impact fish, wildlife, or plant habitat.

Based upon our review, it is this Department's findings that the first four of the above criteria have been met, and that the fifth criterion can be met by planting three (3) 5-6 foot high, native, deciduous trees for every 100 square feet of proposed impervious structure, or paying a fee-in-lieu of $1.20 per square foot of impervious structure, or a combination of the mitigative options. Any pervious structures (deck) will require one-third the mitigation mentioned above. Therefore, the requested variance is hereby approved in accordance with Section 26-445(c) of the Baltimore County Code with the following conditions:

1. The attached "Notice of Granting of Variance" must be published in The Avenue, Dundalk Eagle or The East County Times. Final variance approval cannot be granted until fifteen (15) calendar days after the notice has been published. A copy of the Certificate of Publication for the advertisement issued by the newspaper, or a copy of the advertisement from the paper must be submitted to this office prior to receiving final variance approval.

2. Any trees to be planted must be done so by release of the Use & Occupancy Certificate. Any fee-in-lieu must be paid prior to building permit approval.

3. If any of the two (2) existing trees are removed, they must be replaced on a 1 to 1 basis by release of the Use & Occupancy Certificate.

4. The new dwelling shall not be located closer than 23 feet from Galloway Creek/ Middle River.

It is the intent of this Department to approve this variance subject to the above conditions. Changes in site layout may require submittal of revised plans and an amended variance request.

Please sign the statement on the next page and then return a copy of the letter along with your Certificate of Publication to this Department c/o Ms. Patricia Farr of Environmental Impact Review. Failure to return a signed copy of this letter and the other item may result in delays in

processing of permits or other development plans for the subject property, and/or may render this variance null and void.

If you have questions regarding this project, please contact Mr. Keith Kelley at (410) 887-3980.

Sincerely,

David A. C. Carroll
Director

DACC/kdk

cc: Ms. Wanda Cole, CBCA Commission
Mr. Scott Dallas, J. S. Dallas, Inc.

I/We have read and agree to implement the above requirements to bring my/our property into compliance with Chesapeake Bay Critical Area regulations.

_____ _____

Signature Date Signature Date

Attachment

J:\keith\revisedobersteaav

BALTIMORE COUNTY

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

NOTICE OF GRANTING OF VARIANCE

ADDRESS: 809 Cold Spring Road

LEGAL OWNER: Ms. Janice Oberst

The Baltimore County Department of Environmental Protection and Resource Management, pursuant to Section 26-445(c) of the Baltimore County Code, hereby gives notice that a variance from Section 26-449 of the Code, Chesapeake Bay Critical Area Requirements, will be granted for the purpose of constructing a single family dwelling within the 100 foot buffer to Galloway Creek/Middle River on the referenced property.

Any person or persons, jointly or severally, or any taxpayer aggrieved or feeling aggrieved by this decision, may appeal to the Baltimore County Board of Appeals within forty-five (45) days from the date of this notice. Appeals must be made in writing, stating the reason for appeal, and must be mailed to Environmental Impact Review, Baltimore County Department of Environmental Protection and Resource Management, 401 Bosley Avenue, Suite 416, Towson, Maryland 21204. All appeals must be accompanied by a check for $75.00 payable to Baltimore County Government.

J:\keith\revisedoberstcaav2

BALTIMORE COUNTY DEPARTMENT OF PUBLIC WORKS

BUREAU OF SOLID WASTE MANAGEMENT

TOWSON, MARYLAND 21204

Permission is hereby granted Baltimore County, Maryland the right to construct and/or maintain on our/my property:

Construct a black top turn around for use by Baltimore County equipment and refuse collection vehicles.

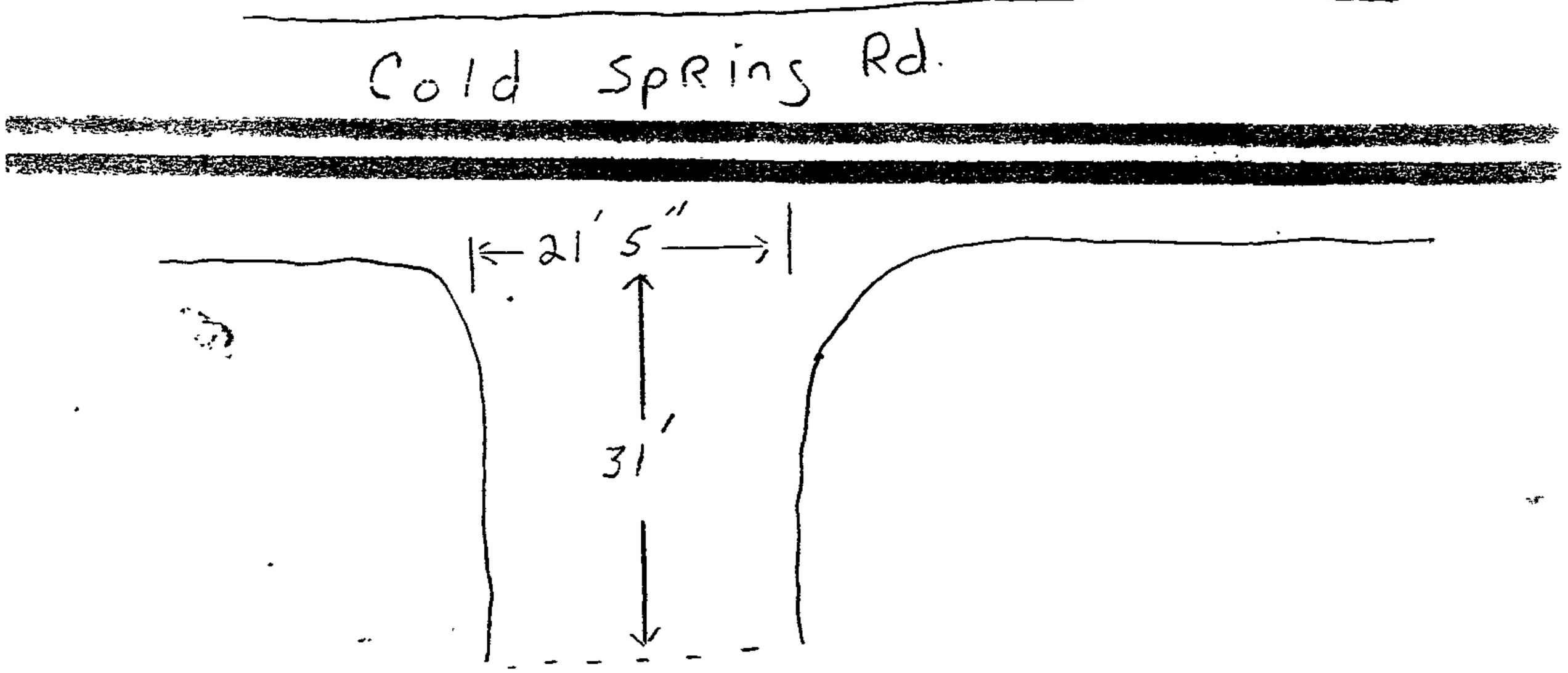
Description Of Work

It is further understood that no property is being turned over to Baltimore County and that we/I will not be charged for this construction.

We/I request that the following special stipulations be observed

Ann Jane Kratzer — Property Owner — 11-7-98 — Date — Richard Neu — Witness

Beth Sheely — Property Owner — 11-7-98 — Date — _____ — Witness



INTER-OFFICE CORRESPONDENCE
RECOMMENDATION FORM

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

Permit or Case No. 04-522A

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

RE: Undersized Lots

Residential Processing Fee Paid
($50.00)

Accepted by _____
Date _____

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

MINIMUM APPLICANT SUPPLIED INFORMATION:

Jonathan Scott Dallas
Print Name of Applicant Address 410.817.4600 Telephone Number

Lot Address # 809 Cold Spring Rd. Election District 15 Councilmanic District 6 Square Feet 5,092

Lot Location: N E S W side corner of Cold Spring Rd. (street) 640'± feet from ~~N E S W corner~~ of ℄ ext. Chesapeake Avenue (street)

Land Owner: Janice Ann Oberst Tax Account Number 1511770661

Address: 2587 Vance Drive Mount Airy, MD. 21771 c/o Dr. Harlan Zinn Telephone Number 410) 486-2899

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

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

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

6. Current Zoning Classification: D.R. 3.5

TO BE FILLED IN BY THE OFFICE OF PLANNING ONLY!

RECOMMENDATIONS / COMMENTS:

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

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

Date: _____

Revised 2/25/9

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

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

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

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

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

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

DATE POSTED _____

HEARING REQUESTED? YES____ NO____ - DATE _____

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

TENTATIVE DECISION DATE _____ B (A + 30 Days)

*Usually within 15 days of filing

CERTIFICATE OF POSTING

District: _____

Location of Property: _____

_____

Posted by: _____ Date of Posting: _____
Signature

Number of Signs: _____

Revised 2/25/9

PLEASE PRINT CLEARLY

CASE NAME _____
CASE NUMBER 04-522-A
DATE 7/14/04

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS (Surveyor)	CITY, STATE, ZIP	E-MAIL
J. Scott Dallas	P.O. Box 24	Baldwin MD. 21013	
Jen OBERST	2587 VANCE DR	Mt Airy MD 21771	CAPTRICH1@adelphia.net
HARLAN ZINN	10628 Park Heights Ave	Owings Mills MD 21117	zinns@attglobal.net
Richard E. Oberst	2587 Vance Dr	Mount Airy MD 21771	CAPTRICH1@adelphia.net
DOUGLAS ZINN	3652 GALLOWAY RD.	BALTIMORE, MD. 21220	ZINNS@EROLS.COM

PLEASE PRINT CLEARLY

CASE NAME
CASE NUMBER 04-522-A
DATE 7-14-04

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
RICHARD PITZ	808 COLD SPRING RD	BALTO. MD	RPITZ@JHMI.EDU

PETITIONER EXHIBITS

20040522 "A"
supplemental

(2)

Verified 3/25/05
Verified 3/26/05

Petitioners Exhibits

Oberst

CBA 04-522-A

Pet 1 ✓ Long Beach Estates Subdivision Plat

Pet 2 ✓ Site Plan

Pet 3 ✓
A - 2 Letters June 11, 2004 David Carell to. Ms Oberst
B - Mailed 2904 from CAC to DPRM

Pet 4 ✓ Revised Site Plan

Pet 5
A - SDAT
B - SDAT
C - Deed - Grantee is Mom 1/14/2003
D - Deed to July 26 1992
E - Deed Sept 4 1990

Pet 6 ✓
A - Photo of lot
B - Aerial - before Isabel, not sure when taken but before 1991

Pet 7 ✓ Public Works - Date 11/98 Memo

Pet 8 ✓ Tax Bill on lot 304

Pet 9 ✓ CV Mitchell Kellman

Pet 10 ✓
A-P Photos

Pet 11 ✓ House Drawings (3)

SURVEYED AND PLATTED BY

REDING & HOWARD

CIVIL & LANDSCAPE EN'GRS

BALTIMORE, MD.

PLAN "C"
of LONG BEACH ESTATES

SUB-DIVIDED BY

CITYCO REALTY CO.

BALTIMORE, MD.

SCALE 1"=200' NOV. 1910

2 E. LEXINGTON ST ST. PAUL 3652

MORTAR CREEK

FROG

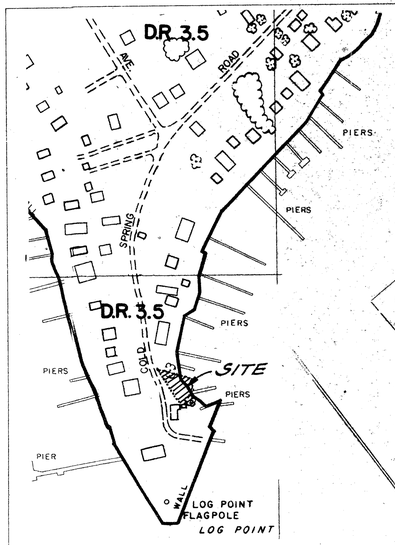
MIDDLE RIVER

COLD SPRING COVE

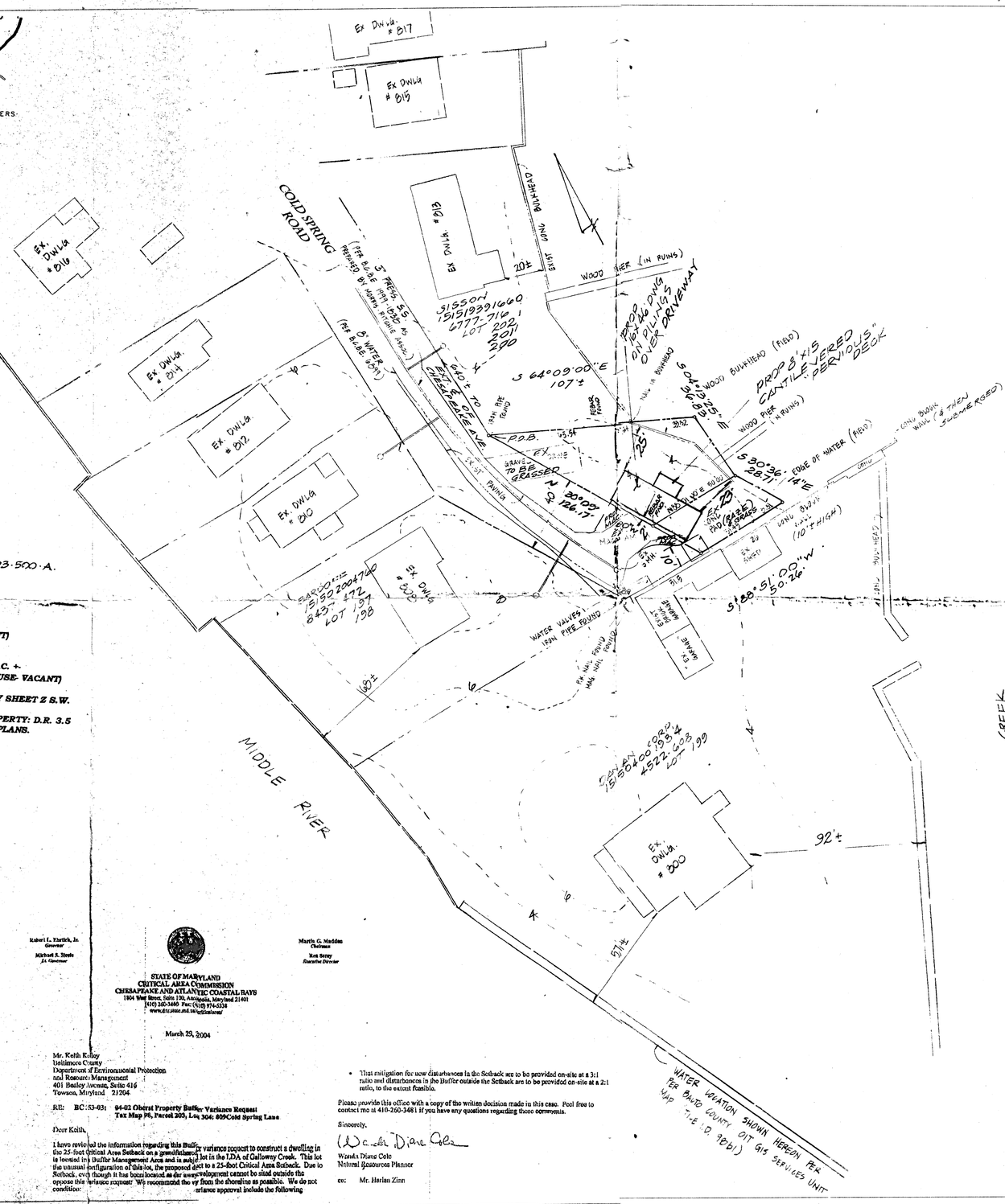
Filed for Reg. this 9th day of May 1914
Wm. P. Cole Clerk

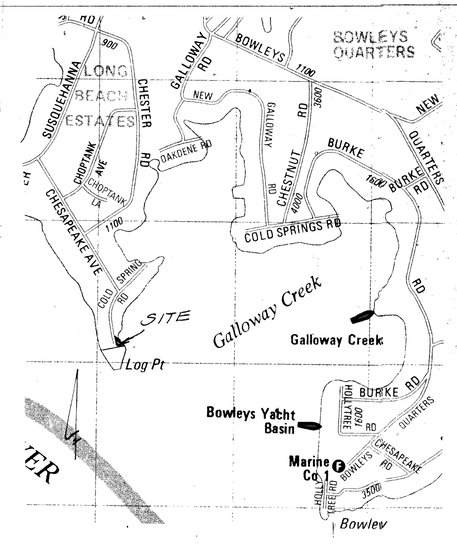
W.P.C. No 4. 131

Pet 1
CBA



PART OF OPZ NE 1-K
1"= 200'





VICINITY MAP 1'=1000'

NOTES

1. ATTACHED PRIOR ZONING HEARING DECISION 03-500-A.
2. OWNERSHIP: DEED REFERENCE : 17471/328
   JANICE ANN OBERST
   2587 VANCE DRIVE
   MT. AIRY, MD 21771
   PHONE: (C/O DR. HARLAN K. ZINN) 410-486-2899
3. PROPERTY INFORMATION:
   TAX MAP 98 PARCEL 203 LOT 304 (AND ADJACENT)
   ACCT. NO. 1511770661
   LONG BEACH ESTATES PLAT C (4-131)
4. AREA OF SUBJECT SITE: 5,092 SF +- OR 0.117 AC. +-
5. PROPOSED NEW SINGLE FAMILY RESIDENCE. (EX. USE- VACANT)
6. SITE IS IN C.B.C.A. (LDA) PER MAP NO. 98.
7. SITE LIES IN FLOOD ZONE A10 PER BCMD S.D. KEY SHEET Z S.W. AND F.E.M.A. F.I.R.M. 240010 0445 C
8. EXISTING ZONING OF SITE AND SURROUNDING PROPERTY: D.R. 3.5
9. UTILITIES SHOWN HEREON ARE PER REFERENCED PLANS.
10. NOT A KNOWN HISTORIC BUILDING OR SITE.
11. ZONING OF SITE D.R. 3.5 PER OPZ NE 1-K.

IN RE: PETITION FOR VARIANCE
W/S Cold Spring Road, 700' S of the c/l Chesapeake Avenue
(809 Cold Spring Road)
15th Election District
6th Council District

Janice Ann Oberst, Owner;
Robert B. Long, Contract Purchaser

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 03-500-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, Janice Ann Oberst, and the Contract Purchaser, Robert B. Long. The Petitioners request relief from Sections 303.1 and 1B.02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a front setback of 11 feet in lieu of the required average 55 feet, a rear setback of 2 feet in lieu of the required 30 feet, and approval of the property as an undersized lot.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 28th day of July 2003 that the Petition for Variance seeking relief from Sections 303.1 and 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a front setback of 11 feet in lieu of the required average 55 feet, a rear setback of 2 feet in lieu of the required 30 feet, and approval of the property as an undersized lot, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED.

Any appeal of this decision must be entered within thirty (30) days of the date hereof.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

Pet Ex #2

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

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

Martin G. Madden Chairman
Ren Serey Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

March 29, 2004

Mr. Keith Kelley
Baltimore County
Department of Environmental Protection
and Resource Management
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

RE: BC-03-031 04-02 Oberst Property Buffer Variance Request
Tax Map 98, Parcel 203, Lot 304; 809 Cold Spring Lane

Dear Keith,

I have reviewed the information regarding this Buffer variance request to construct a dwelling in the 25-foot Critical Area Setback on a grandfathered lot in the LDA of Galloway Creek. This lot is located in a Buffer Management Area and is subject to a 25-foot Critical Area Setback. Due to the unusual configuration of this lot, the proposed development cannot be sited outside the Setback, even though it has been located as far away from the shoreline as possible. We do not oppose this variance request. We recommend the following conditions for variance approval include the following:

- That mitigation for new disturbances in the Setback are to be provided on-site at a 3:1 ratio and disturbances in the Buffer outside the Setback are to be provided on-site at a 2:1 ratio, to the extent feasible.

Please provide this office with a copy of the written decision made in this case. Feel free to contact me at 410-260-3481 if you have any questions regarding these comments.

Sincerely,

Wanda Diane Cole
Natural Resources Planner

cc: Mr. Harlan Zinn

SITE PLAN TO ACCOMPANY PETITION FOR ZONING VARIANCE AND UNDERSIZED LOT APPROVAL

 # 809 COLD SPRING ROAD

15TH ELEC. DIST. 6TH COUNC. DIST. BALTIMORE COUNTY, MD.
SCALE: 1"= 30' MAY, 2004

j.o. # 03-1014

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

CBA Post 3A

June 11, 2004

Ms. Janice Oberst
2587 Vance Drive
Mount Airy, MD 21771

Re: 809 Cold Spring Road
Critical Area Administrative Variance

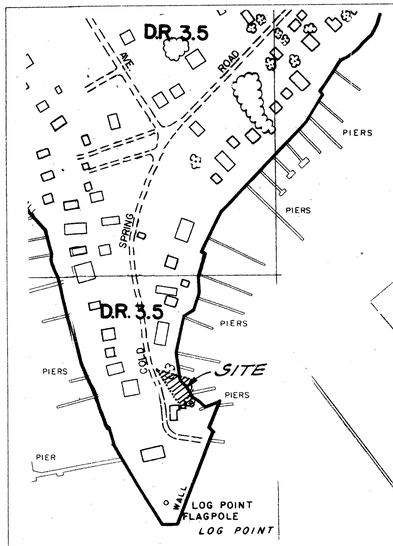
Dear Ms. Oberst:

The Department of Environmental Protection and Resource Management (DEPRM) has received your revised variance request to construct a dwelling in the 100 foot tidal buffer closer to Galloway Creek/Middle River (23' in lieu of the required 32') 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.

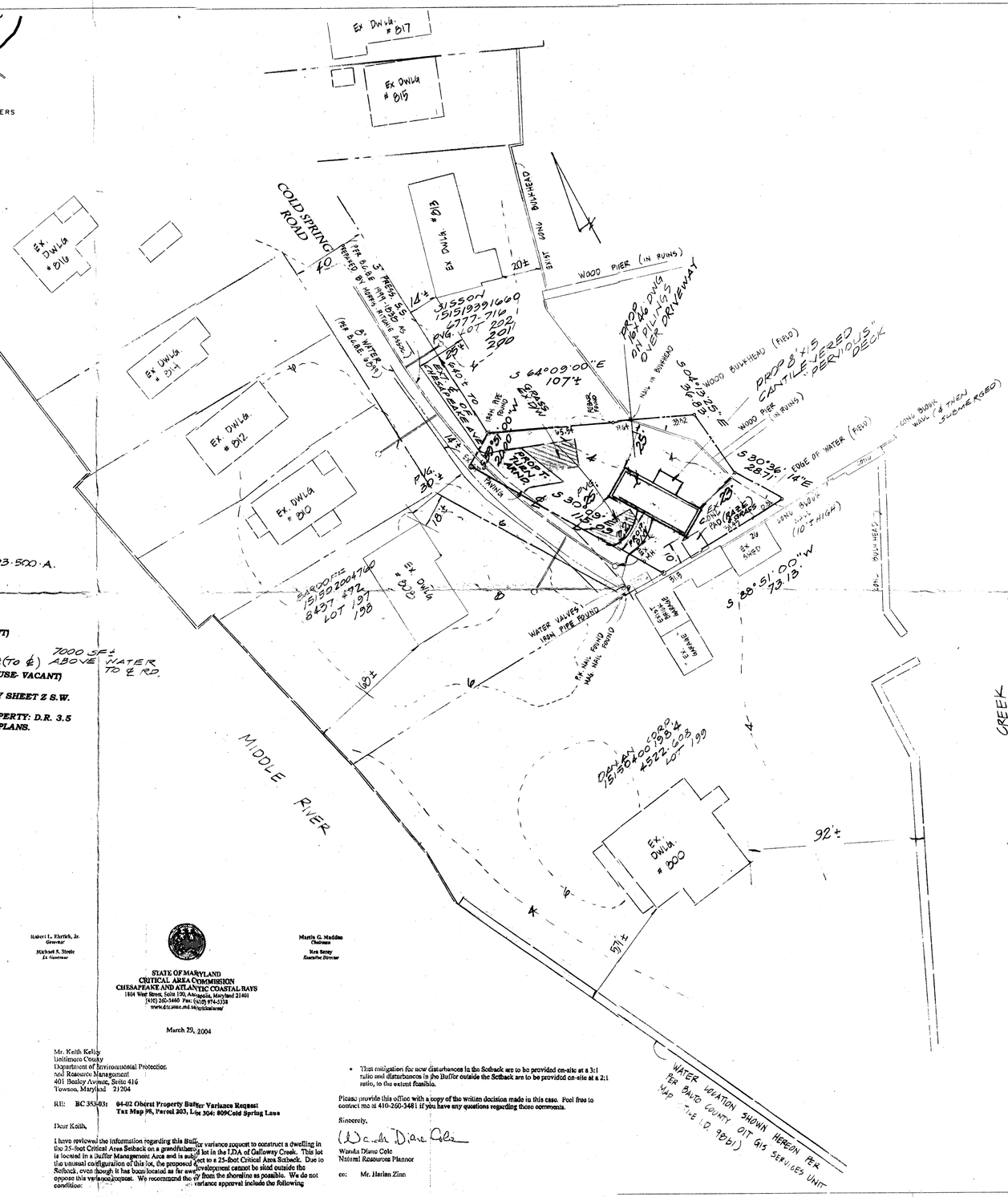
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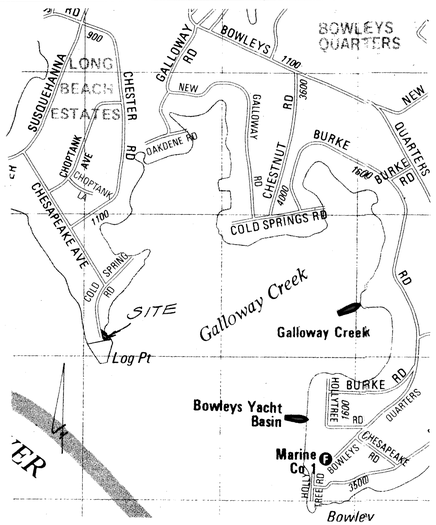
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PART OF OPZ NE 1-K
1"= 200'





VICINITY MAP 1'=1000'

NOTES

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2. OWNERSHIP: DEED REFERENCE : 17471/328
   JANICE ANN OBERST
   2587 VANCE DRIVE
   MT. AIRY, MD 21771
   PHONE: (C/O DR. HARLAN K. ZINN) 410-486-2899
3. PROPERTY INFORMATION:
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   ACCT. NO. 1511770661
   LONG BEACH ESTATES PLAT C (4-131)
4. AREA OF SUBJECT SITE 7504 SF± 0.172AC± (To ℄) 7000 SF± ABOVE WATER TO ℄ RD.
5. PROPOSED NEW SINGLE FAMILY RESIDENCE. (EX. USE- VACANT)
6. SITE IS IN C.B.C.A. (LDA) PER MAP NO. 98.
7. SITE LIES IN FLOOD ZONE A10 PER BCMD S.D. KEY SHEET Z S.W. AND F.E.M.A. F.I.R.M. 240010 0445 C
8. EXISTING ZONING OF SITE AND SURROUNDING PROPERTY: D.R. 3.5
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11. ZONING OF SITE D.R. 3.5 PER OPZ NE 1-K.

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March 29, 2004

Mr. Keith Kelly
Baltimore County
Department of Environmental Protection
and Resource Management
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

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Tax Map 98, Parcel 203, Lot 304; 809Cold Spring Lane

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- That mitigation for new disturbances in the Setback are to be provided on-site at a 3:1 ratio and disturbances in the Buffer outside the Setback are to be provided on-site at a 2:1 ratio, to the extent feasible.

Please provide this office with a copy of the written decision made in this case. Feel free to contact me at 410-260-3481 if you have any questions regarding these comments.

Sincerely,

Wanda Diane Cole
Natural Resources Planner

cc: Mr. Harlan Zinn

IN RE: PETITION FOR VARIANCE
W/S Cold Spring Road, 700' S of the c/l Chesapeake Avenue
(809 Cold Spring Road)
15th Election District
6th Council District

Janice Ann Oberst, Owner;
Robert B. Long, Contract Purchaser

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 03-500-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, Janice Ann Oberst, and the Contract Purchaser, Robert B. Long. The Petitioners request relief from Sections 303.1 and 1B.02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a front setback of 11 feet in lieu of the required average 55 feet, a rear setback of 2 feet in lieu of the required 30 feet, and approval of the property as an undersized lot.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 20th day of July 2003 that the Petition for Variance seeking relief from Sections 303.1 and 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a front setback of 11 feet in lieu of the required average 55 feet, a rear setback of 2 feet in lieu of the required 30 feet, and approval of the property as an undersized lot, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED.

Any appeal of this decision must be entered within thirty (30) days of the date hereof.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

PET. EX 4

EXISTING CONDITIONS PLAN

SITE PLAN TO ACCOMPANY PETITION FOR ZONING VARIANCE AND UNDERSIZED LOT APPROVAL

 # 809 COLD SPRING ROAD

15TH ELEC. DIST. 6TH COUNC. DIST. BALTIMORE COUNTY, MD.

SCALE: 1"= 30' 11-11-04 2-23-05

j.o. # 03-1014

Pet 5A

Click here for a plain text ADA compliant screen.

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 -** 1511770661

Owner Information

Owner Name: OBERST JANICE ANN
Use: RESIDENTIAL
Principal Residence: NO
Mailing Address: 2587 VANCE DR
MOUNT AIRY MD 21771-8813
Deed Reference: 1) /17471/ 328
2)

Location & Structure Information

Premises Address
COLD SPRING AVE

Zoning
WATERFRONT

Legal Description
LONG BEACH ESTATES

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:	C
98	4	203					304	82	Plat Ref:	4/ 131

Special Tax Areas
Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		5,396.00 SF	34

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2003	As Of 07/01/2004
Land:	45,390	45,390		
Improvements:	1,940	1,940		
Total:	47,330	47,330	47,330	47,330
Preferential Land:	0	0	0	0

Transfer Information

Seller: SCHUMAN ANN JUNE	**Date:** 01/31/2003	**Price:** $0
Type: NOT ARMS-LENGTH	**Deed1:** /17471/ 328	**Deed2:**
Seller: KRATZER JOHN L	**Date:** 03/31/1994	**Price:** $1
Type: NOT ARMS-LENGTH	**Deed1:** /10436/ 530	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Pet 5B

Click here for a plain text ADA compliant screen.

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 -** 2200004507

Owner Information

Owner Name:	OBERST JANICE ANN	**Use:**	RESIDENTIAL
		Principal Residence:	NO
Mailing Address:	2587 VANCE DR MOUNT AIRY MD 21771-8813	**Deed Reference:**	1) /17471/ 328 2)

Location & Structure Information

Premises Address
810 COLD SPRING RD

Legal Description
LND ADJ TO LT 304
810 COLD SPRING RD
LONG BEACH ESTATES

WATERFRONT

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
98	4	203						82	Plat Ref: 4/ 131

Special Tax Areas **Town**
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		1,125.00 SF	34

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2004	As Of 07/01/2005
Land:	1,120	1,120		
Improvements:	0	0		
Total:	1,120	1,120	1,120	1,120
Preferential Land:	0	0	0	0

Transfer Information

Seller:	SCHUMAN ANN JUNE	**Date:**	01/31/2003	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/17471/ 328	**Deed2:**	
Seller:	SHEELY MARY ELIZABETH	**Date:**	04/05/2001	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/15098/ 369	**Deed2:**	
Seller:	BOWLEYS QUARTERS	**Date:**	08/04/1992	**Price:**	$2,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/ 9309/ 4	**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: NO
Exempt Class:

Special Tax Recapture:

* NONE *

5C

DEED – FEE SIMPLE –
NO CONSIDERATION
NO TITLE SEARCH

This Deed, Made This 14TH day of JANUARY in the year two thousand and three, by and between Ann June Schuman fka Ann June Kratzer and Janice Ann Oberst, parties of the first part and Janice Ann Oberst, party of the second part.

WITNESSETH, That in consideration of the sum of no dollars the said parties of the first part, Ann June Schuman fka Ann June Kratzer and Janice Ann Oberst do grant and convey all of the following described property unto the party of the second part, Janice Ann Oberst, in fee simple, all that lot of ground situated in Baltimore County, Maryland and described as follows, that is to say:

BEING KNOWN AND DESIGNATED as Lot No. 304, Plat of Long Beach Estates 97.59' by 102', fronts on the East side of Cold Spring Avenue, corner of a 25' road; which Plat is on file in the office of the Clerk of the Circuit Court for Baltimore County, Plat Book W.P.C. No. 4, folio 131, in the fifteenth election district of Baltimore County.

BEING the same lot of ground which by deed dated February 15, 1994, and recorded among the Land Records of Baltimore County in Liber 10436, folio 530 was granted and conveyed by Ann June Kratzer unto Ann June Kratzer and Janice Ann Oberst, the within grantors. The said Ann June Kratzer now known as Ann June Schuman for reason of her remarriage.

BEGINNING for the same at the corners formed by the intersect of the east side of Cold spring Road with the north side of a 25 foot road or Right of Way, as laid out and shown on the plat entitled Plan "C" Long Beach Estates, said plat being recorded among the Land Records Of Baltimore County in Plat Book 4 folio 131; thence leaving Cold spring Road and binding on the north side of said road or Right Of Way in an easterly direction 50 feet more or less to the waters of Cold spring Cove, thence binding on the waters of Cold Spring Cove in a southerly direction 25 feet more or less to the northern outline of Lot 199 and to the south side of said road or right Of Way, thence running and binding on the northern outline of Lot 199 and on the south side of said road or Right of Way in a westerly direction 40 feet more or less to the east side of Cold spring Road, and thence running and binding on the east side of Cold Spring Road North 30 degrees 09 Minutes West 25.50 feet more or less to the place of beginning.

5D

LIBER 9309 PAGE 004

THIS DEED Made this 20 day of July in the year One Thousand Nine Hundred and Ninety-Two, by and between Bowley's Quarters Improvement Association, Inc., a body corporate, State of Maryland, of the first part, and Mary Elizabeth Sheely of Baltimore County, State of Maryland, of the second part.

WITNESSETH, that for and in consideration of the sum of Two Thousand Dollars ($ 2,000.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the said Bowley's Quarters Improvement Association, Inc., a body corporate, does hereby grant and convey unto the said Mary Elizabeth Sheely, as tenants by the entireties, their assigns, and unto the survivor of them, his or her personal representatives and assigns, in fee simple, all that lot of ground situate in the Fifteenth Election District, Baltimore County, Maryland, and described as follows:

BEGINNING for the same at the corner formed by the intersect of the east side of Cold Spring ~~Avenue~~ Road with the north side of a 25 foot road or Right of Way, as laid out and shown on the plat entitled Plan "C" Long Beach Estates, said plat being recorded among the land records of Baltimore County in Plat Book 4 folio 131; thence leaving Cold Spring ~~Avenue~~ Road and binding on the north side of said road or Right of Way in an easterly direction 50 feet more or less to the waters of Cold Spring Cove, thence binding on the waters of Cold Spring Cove in a southerly direction 25 feet more or less to the northern outline of Lot 199 and to the south side of said road or Right of Way, thence running and binding on the northern outline of Lot 199 and on the south side of said road or Right of Way in a westerly direction 40 feet more or less to the east side of Cold Spring ~~Avenue~~ Road, and thence running and binding on the east side of Cold Spring ~~Avenue~~ Road North 30 degrees 09 Minutes West 25.50 feet more or less to the place of beginning.

Containing 900 square feet more or less.

BEING a part of the land abandoned by the local realty companies who after disposing of all building lots in Long Beach Estates vested the easements in the Long Beach Improvement Association.

BEING also part of the land conveyed unto Bowley's Quarters Improvement Association, Inc., by deed of Robert M. Thomas, Trustee, dated September 4, 1962 and recorded among the Land Records of Baltimore County, in Liber RRG 4249, Folio 367 and by the merger and assimilation of the Long Beach Improvement Association on October 11, 1984, whereby the Bowleys Quarters Improvement Association assumed the liabilities, assets, and records of the Long Beach Improvement Association.

BEING also part of the land conveyed unto Bowley's Quarters Improvement Association, Inc. by deed of Bowley's Quarters Improvement Association, Inc., grantor, dated September 4, 1990, and recorded among the Land Records of Baltimore County, in Liber 8587, Folio 849.

THE undersigned corporate officer certified that this conveyance is not part of the transfer in which there is a sale, lease, exchange or other transfer of all or substantially all of the property and assets of the said Grantor.

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Baltimore County
8-4-92

[illegible] TRANSFER TAX
[illegible] APPLICABLE

SIGNATURE [illegible] DATE 8-4-92

01A01#0165TLTRTX
BC 0003:48PM08-04-92

$32.00

5E

LIBER 8587 PAGE 849

THIS DEED, made this 4th day of September in the year One Thousand Nine Hundred and Ninety, by and between Bowleys Quarters Improvement Association, Inc., Grantor, a body corporate State of Maryland, party of the first part, and Bowleys Quarters Improvement Association, Inc., Grantee, party of the second part.

1990

WITNESSETH, that for no actual monetary consideration, the Grantor does hereby grant and convey to the Grantee their assigned in fee simple all of its rights, title and interest in that lot of ground situate in the fifteenth election district, Baltimore County, Maryland and described as follows:

B RC/F 18.00
DEED
SM CLERK 18.00
#19389 C004 R01 T12:07
09/06/90

BEGINNING for the same at the corner formed by the intersect of the east side of Cold Spring Avenue with the north side of a 25 foot road or Right of Way, as laid out and shown on the plat entitled Plan "C" Long Beach Estates, said plat being recorded among the land records of Baltimore County in Plat Book 4 folio 131; thence leaving Cold Spring Avenue and binding on the north side of said road or Right of Way in an easterly direction 50 feet more or less to the waters of Cold Spring Cove, thence binding on the waters of Cold Spring Cove in a southerly direction 25 feet more or less to the northern outline of Lot 199 and to the south side of said road or Right of Way, thence running and binding on the northern outline of Lot 191 and on the south side of said road or Right of Way in a westerly direction 40 feet more or less to the east side of Cold Spring Avenue, and thence running and binding on the east side of Cold Spring Avenue North 30 degrees 09 Minutes West 25.50 feet more or less to the place of beginning.

BEING a part of the land conveyed unto Bowleys Quarters Improvement Association, Inc., by deed of Robert M. Thomas, Trustee, dated September 4, 1962 and recorded among the land records of Baltimore County, in Liber RRG 4249, folio 367 and by the merger and assimilation of the Long Beach Improvement Association on October 11, 1984 whereby the Bowleys Quarters Association, Inc. assumed the liabilities, assets, and records of the Long Beach Improvement Association.

(see attached)

became

part of

in

THE undersigned corporate officer certified that this conveyance is not part of the transfer in which there is a sale, lease, exchange or other transfer of all or substantially all of the property and assets of the said Grantor.

TOGETHER with the buildings and improvements thereupon erected made or being and all and every the rights, alleys, ways, waters, priveleges, appurtenances and same belonging or anywise appertaining.

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Baltimore County
9-6-90
By

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE
SIGNATURE
DATE 9-6-90

TRANSFER TAX NOT REQUIRED
Director of Finance
BALTIMORE COUNTY MARYLAND
Per
Authorized Signature
9-6-90

Sec. 11-65 E





Pet Ex 7

BALTIMORE COUNTY DEPARTMENT OF PUBLIC WORKS

BUREAU OF SOLID WASTE MANAGEMENT

TOWSON, MARYLAND 21204

Permission is hereby granted Baltimore County, Maryland the right to construct and/or maintain on our/my property:

Construct a black top turn around for use by Baltimore County equipment and refuse collection vehicles.

Description of Work

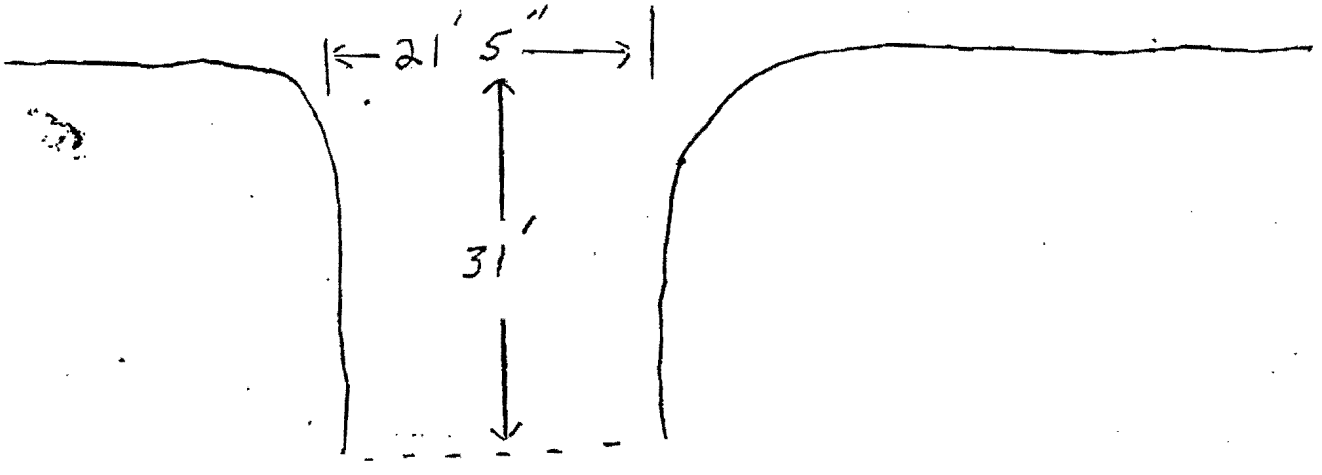
It is further understood that no property is being turned over to Baltimore County and that we/I will not be charged for this construction.

We/I request that the following special stipulations be observed

Ann Jane Kratzer — Property Owner — 11-7-98 — Date — Richard Wenz — Witness

Beth Sheely — Property Owner — 11-7-98 — Date — _____ — Witness

Cold Spring Rd.



MAKE CHECKS PAYABLE TO:
BALTIMORE COUNTY, MD.

BALTIMORE COUNTY, MARYLAND
STATE AND COUNTY REAL PROPERTY TAX BILL

TAXPAYER'S COPY
DETACH AND RETAIN
TELEPHONE: 410-887-2403

PARCEL NUMBER	YEAR	CYCLE	BILL DATE	ELECTION DISTRICT
15-11-770661	2005	FY	07/01/2004	15

ASSESSMENT: 47,330

LEVY PERIOD: JULY 1,2004-JUNE 30,2005

CHARGES		PROPERTY STATUS	RATE PER $100	TAXES/CHARGES
SEWER BENEFIT	160.00	NOT A PRINCIPAL RESIDENCE	COUNTY TAX	1.115	527.73
SEWER SERVICE			STATE TAX	.132	62.48
WATER BENEFIT			CHARGES		340.79
WATER DISTRIBUTION					
CONSTRUCTION LOAN	180.79				
OTHER					
TOTAL CHARGES	340.79				

OWNER'S NAME AND ADDRESS
OBERST JANICE ANN
2587 VANCE DR
MOUNT AIRY MD 21771

PROPERTY DESCRIPTION
LONG BEACH ESTATES
00000 COLD SPRING

3-048286

Paid #3448

LOT	BLOCK	SEC	PLAT	BOOK	FOLIO
304			C	00	000

CONSTANT YIELD 1.085 DIFFERENCE 0.030

GROSS BILL 931.00
INTEREST/ DISCOUNT
NET TOTAL

BALTIMORE COUNTY, MARYLAND
STATE AND COUNTY REAL PROPERTY TAXES

PLEASE RETURN THIS PART WITH YOUR FIRST SEMIANNUAL PAYMENT

MAIL TO: BALTIMORE COUNTY
P.O. BOX 64281
BALTO. MD. 21264-4281

PARCEL NUMBER	YEAR	CYCLE	BILL DATE	
15-11-770661	2005	FY	07/01/2004	3-048286

OWNER'S NAME AND ADDRESS

FIRST SEMIANNUAL PAYMENT CHARGES

IF PAID BY

DISCOUNT

PAY THIS AMOUNT

SEMIANNUAL PAYMENT ELIGIBILITY :

A PROPERTY OWNER IS ELIGIBLE TO ELECT THE SEMIANNUAL PAYMENT OF THEIR REAL PROPERTY TAXES FOR A RESIDENTIAL PROPERTY THAT IS DESIGNATED AS THEIR 'PRINCIPAL RESIDENCE'.

THIS PROPERTY IS IDENTIFIED WITH THE STATE DEPARTMENT OF ASSESSMENTS AS 'NOT A PRINCIPAL RESIDENCE' AND IS NOT ELIGIBLE FOR THE SEMIANNUAL PAYMENT OPTION. TO CORRECT STATUS CALL 410-512-4905.

SECOND SEMIANNUAL PAYMENT

Pet 8

Pet
9

Mitchell J. Kellman
Zoning Expert

DMW
Daft·McCune·Walker, Inc.

200 East Pennsylvania Avenue
Towson, Maryland 21204
Phone 410 296 3333
Fax 410 296 4705
mkellman@dmw.com

A Team of Land Planners, Landscape Architects, Golf Course Designers, Engineers, Surveyors & Environmental Professionals



Mr. Kellman has over 11 years of experience working in zoning administration and subdivision regulation for the public sector; 9 of those years were with the Baltimore County Office of Planning and Zoning. His responsibilities included review, approval and signatory powers on behalf of the Director of Final Development Plans and Record Plats. He represented the Zoning Office on the County Development Review Committee, a body reviewing the procedural compliance of all development submissions. Review of petitions and site plans filed for zoning hearing approvals were within his authority. Additionally, he supervised county review staff, met with professionals and public on development project matters, and

Significant Projects

Waterview
Baltimore County, Maryland

Hopewell Pointe
Baltimore County, Maryland

GBMC
Baltimore County, Maryland

Sheppard and Enoch Pratt Hospital
Baltimore County, Maryland

Charlestown Retirement Community
Baltimore County, Maryland

Oakcrest Village Retirement Community
Baltimore County, Maryland

Goucher College
Baltimore County, Maryland

Notre Dame Preparatory School
Baltimore County, Maryland

Professional Background

Daft-McCune-Walker, Inc.
Towson, Maryland
2000 - Present

Baltimore County Office of Permits and Development Management - Development Control
1988 - 2000

Education

B.A. Towson University
Geography and Environmental Planning - Urban Planning
1983

Masters Geography and Environmental Planning - Urban Planning
1987

Associations

Gama Theta Epsilon (International Graphic Honor Society)

American Planning Association

CBA Pet 10 A



Subject site

- Looking East from new corner of lot

- new house stakes

10 B



APPEAL SIGN POSTING REQUEST

CASE NO.: 04-522-A

JANICE OBERST– LEGAL OWNER

809 COLD SPRING ROAD – BALTIMORE 21220

15TH ELECTION DISTRICT APPEALED: 8/2/04

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

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

CERTIFICATE OF POSTING

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

Attention: Kathleen Bianco
Administrator

CASE NO.: 04-522-A

Petitioner/Developer:

JANICE OBERST. – LEGAL OWNER

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

809 COLD SPRING ROAD

The sign was posted on 10/12, 2004

By: Gary Freund
(Signature of Sign Poster)

GARY FREUND
(Printed Name)

Looking north from subject site
across 913 Coldspring Rd.

10 C



From subject site to dwelling at 808
and driveway - west across Cold Spring Rd.

10 D



From site on coldspring looking north

10 E



North on Cold Spring from site
Entrance to site 2nd
813 Cold Spring on right

10 F



North on cold spring

813 on right

810 Entrance on left

10 G



North on Cold Spring

- new lane construction - 516 on left
  515 on right

Pat 10 H



NOREL or cold spray

SIS or RISAT

I.



North on Coldspring toward Chesapeake on left
521 on right

CBA 10 ✓.



Looking South at cold spray coated site

Bit Force on Left

Pet 10 K.



Looking South on Cold Spring
Toward site

BIS on Left

Pet 10 L.



Looking South on Cold Spring

D13 on LEFT

- ENTRANCE INTO FOR STRAIGHT

Pet 10 M.



South or Coldspring

subject site on left center

F10 is on Right

10 N.



south on cold spring

looking at 800 cold spring

- subject site on left where car is parked



Looking at subject site & well
of 800 cold spring

-concrete pad site of former shed

CBA 10 P.



~~Sandy~~ 814 Coldspring Rd.

18' wide

Pet 11



PROTESTANT'S / PEOPLE'S COUNSEL EXHIBITS

2004052 2 "A"

supplemental

B-760 Filed

(3)

Verified 2/25/05
Verified 5-26-05

Protestants / Peoples Council

CBA 04-522-A Exhibits

PC 1 GIS MAP 2002 Aprx

PC 2 Schmidt OP.

PC 3 House drawing

PC 4 A-L Photos on Board → LARGE Exhibit

PC 5 Neighbor List

PC 6 SDAT for ~~[illegible]~~ Lot 304

PC 7 Interoffice Memo March 1, 2005

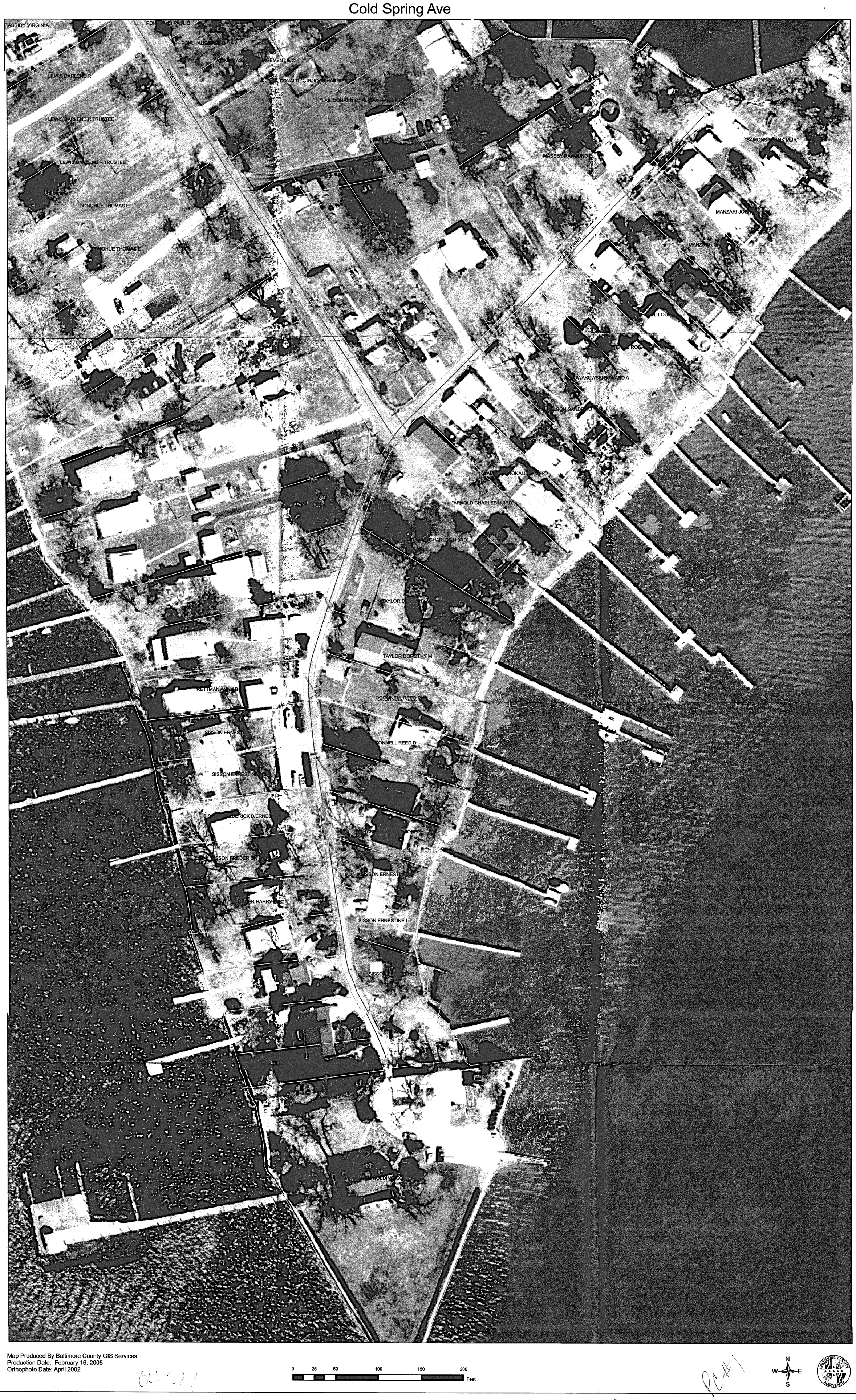
PC 8 PC Sign In

PC 9 2004 Zoning MAP

PC 10 Sewer MAP dated 1999 [copy to come tomorrow]

PC 11 Dallas Inc. Zoning Description

Cold Spring Ave



Map Produced By Baltimore County GIS Services
Production Date: February 16, 2005
Orthophoto Date: April 2002

0 25 50 100 150 200
Feet

N
W E
S

EXHIBIT A

CBA PC 2

Baltimore County
Zoning Commissioner

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

July 29, 2003

Ms. Janice A. Oberst
2587 Vance Drive
Mt. Airy, Maryland 21771

RE: PETITION FOR VARIANCE
W/S Cold Spring Road, 700' S of the c/l Chesapeake Avenue
(809 Cold Spring Road)
15th Election District – 6th Council District
Janice Ann Oberst, Owner; Robert B. Long, Contract Purchaser - Petitioners
Case No. 03-500-A

Dear Mr. Oberst:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Variance has been denied, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Department of Permits and Development Management office at 887-3391.

Very truly yours,

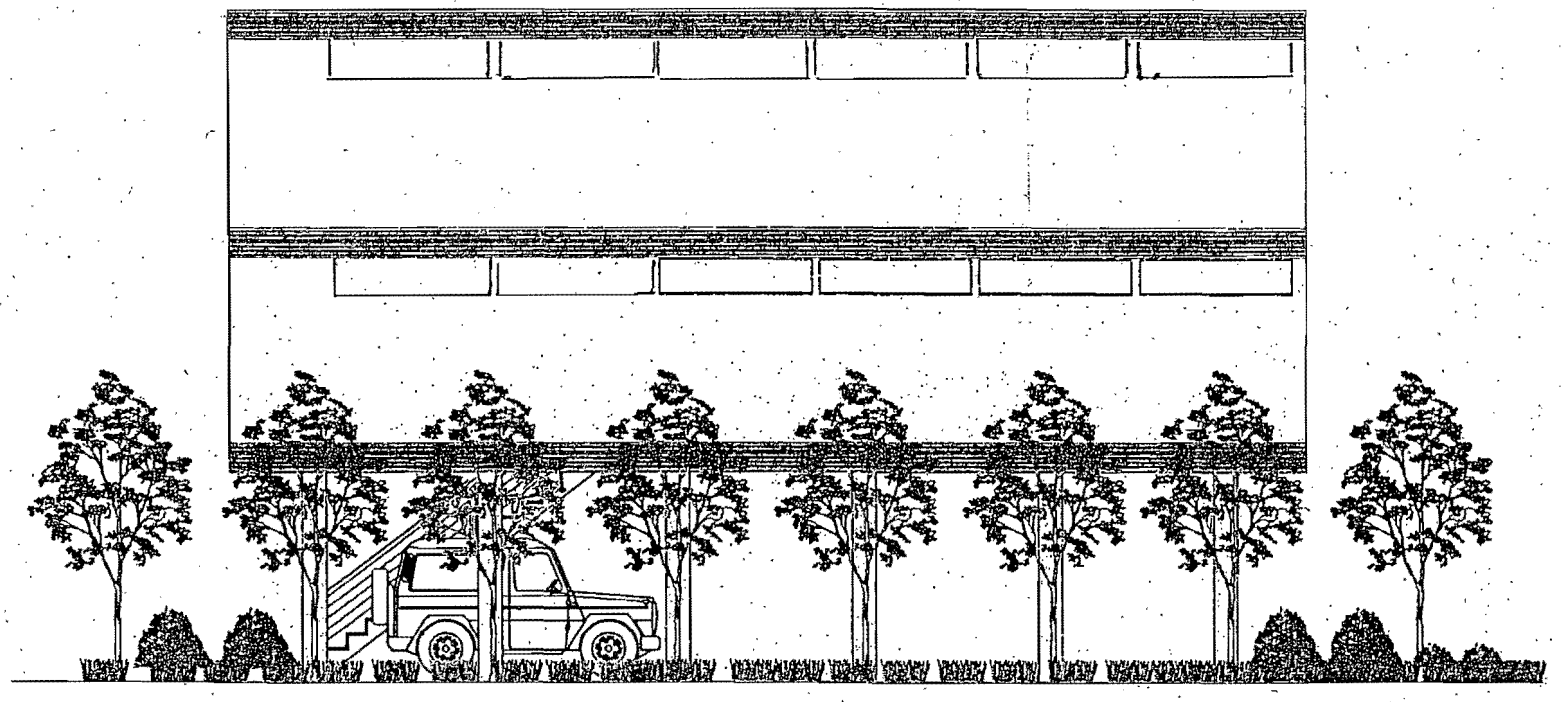
LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

cc: Mr. Robert Long, 3827 Annadale Road, Baltimore, Md. 21222
Mr. Richard Pitz, 808 Cold Spring Road, Baltimore, Md. 21220
Mr. Mike Vivirito, 3619 Bay Drive, Baltimore, Md. 21220
Chesapeake Bay Critical Areas Commission,
1804 West Street, Suite 100, Annapolis, Md. 21401
DEPRM; People's Counsel; Case File

Printed with Soybean Ink on Recycled Paper

EXHIBIT F



Proposed West Elevation with Landscaping

Proposed SFD for Harlan Zinn 309 Cold Spring Road Baltimore, MAryland 21220	Scale: 1/8" - 1'-0" Drawing # Z-04-1-1A Date: 17 Jan 2004

PC 3

DATE: 2-24-05

PC 5

PEOPLE'S COUNSEL'S SIGN-IN SHEET

CASE NAME: Oberst

CASE NO.: 04-522-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
YES	RICHARD PITZ 808 COLD SPRING 410-335-0267	NEIGHBOR
	Nancy Hubers	800 Cold Spring Rd 410-335-3234 Neighbor
	READ VAN ZILE 812 COLD SPRING RD	410 335-4161 Neighbor
	Ernestine Sisson 8134 820 Coldspring Rd	410-335-4796 neighbor
	Robert KROLL 810 Cold Spring Rd.	410 335-1119 neighbor
	JIM TRABING 815 COLD SPRING RD	410-335-1306 NEIGHBOR

PC 6

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 -** 1511770661

Owner Information

Owner Name:	OBERST JANICE ANN	**Use:**	RESIDENTIAL
		Principal Residence:	NO
Mailing Address:	2587 VANCE DR MOUNT AIRY MD 21771-8813	**Deed Reference:**	1) /17471/ 328 2)

Location & Structure Information

Premises Address
COLD SPRING AVE

Legal Description
WATERFRONT
LONG BEACH ESTATES

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assesment Area	Plat No:	C
98	4	203					304	3	Plat Ref:	4/ 131

Special Tax Areas
Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		5,396.00 SF	34

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2004	As Of 07/01/2005
Land:	45,390	45,390		
Improvements:	1,940	1,940		
Total:	47,330	47,330	47,330	47,330
Preferential Land:	0	0	0	0

Transfer Information

Seller: SCHUMAN ANN JUNE	**Date:** 01/31/2003	**Price:** $0
Type: NOT ARMS-LENGTH	**Deed1:** /17471/ 328	**Deed2:**
Seller: KRATZER JOHN L	**Date:** 03/31/1994	**Price:** $1
Type: NOT ARMS-LENGTH	**Deed1:** /10436/ 530	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

PC 7

BALTIMORE COUNTY, MARYLAND
Interoffice Memorandum

DATE: March 1, 2005

TO: Peter Max Zimmerman, People's Counsel for Baltimore County

FROM: David Duvall, Zoning Review

SUBJECT: 809 Cold Spring Road

Beginning with the 1971 zoning map, the above property was classified as Residential - Deferred Planning (RDP). With the 1976 maps, it became Residential with a density of 5.5 dwelling per acre (D.R. 5.5). This classification continued until, as you note, the quadrennial map change of 1992 where the density was converted to 3.5 dwellings per acre (D.R. 3.5) The property retains this zoning designation.

DATE: 5/25/05

PC 8

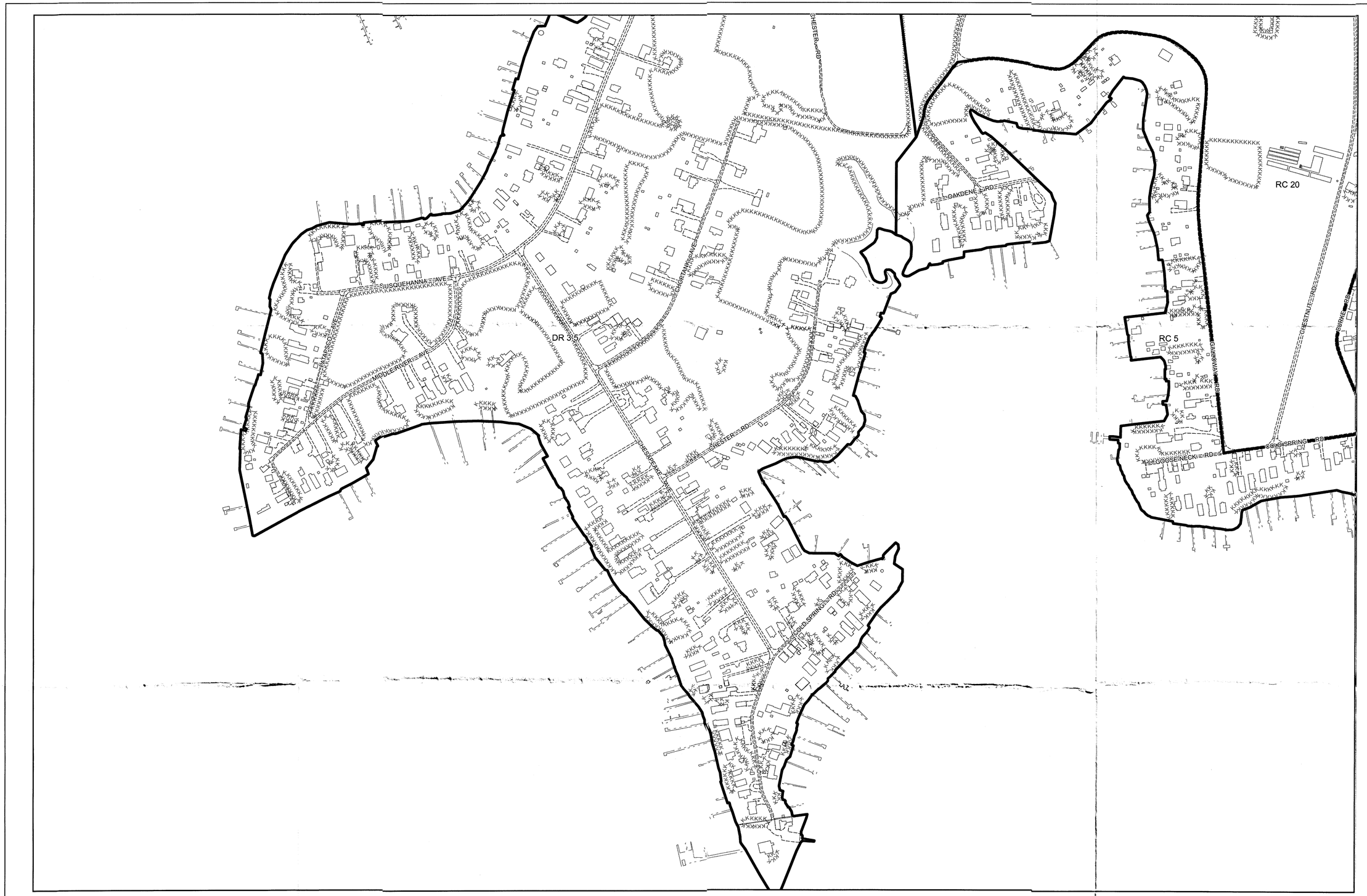
PEOPLE'S COUNSEL'S SIGN-IN SHEET

CASE NAME: Janice Obrest

CASE NO.: 04-522-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
YES	RICHARD PITZ 808 GOLD SPRING 410-335-0267	ADJACENT NEIGHBOR
YES	MICHAEL VIVIRITO 3619 BAY DR. 21220 410-335-3371	BOWLEYS QUARTER IMP. ASSOC LOT NOT LARGE ENOUGH TO BUILD HOUSE ON



Plan Sheet: *098B1*

Note:
Section 32-3-202 of the Baltimore County, 2003 Code establishes the zoning geodatabase. This map represents the actions of the Baltimore County Council on August 31, 2004 (Bills 82-04, 83-04, 84-04, 85-04, 86-04, 87-04, 88-04, and 89-04) effective September 3, 2004.

Legend

Zoning — Streams — Vegetation
Buildings — Roads

Baltimore County
Office of Planning and Zoning
Official Zoning Map

090C3	091A3	091B3	091C3	092A3
097C1	098A1	098B1	098C1	099A1
097C2	098A2	098B2	098C2	

Scale
1" = 200'
0 100 200 400 Feet

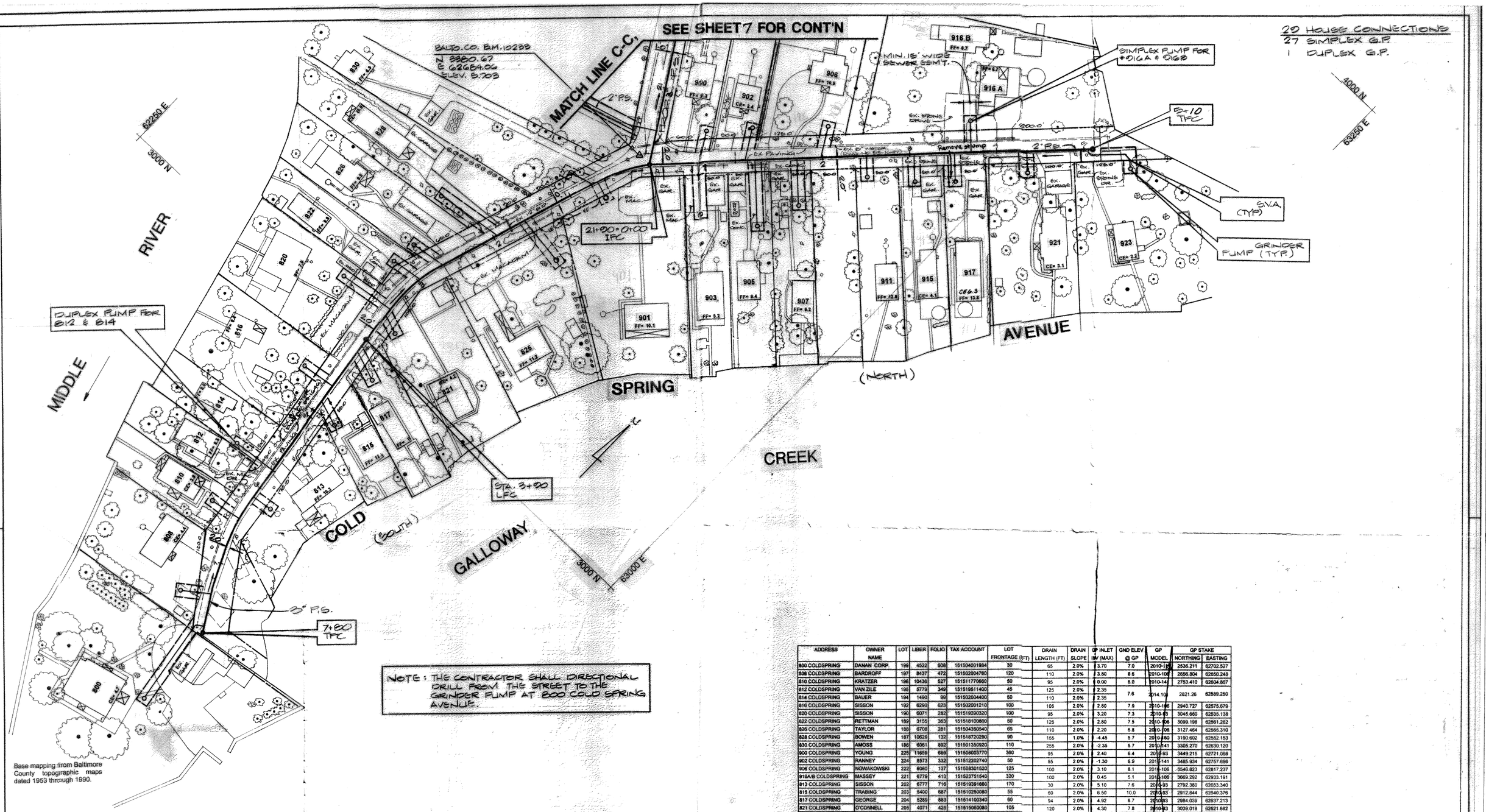
1

Data Sources:
Planametric Data - Baltimore County
OIT/GIS Services Unit
1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning
1:2400, 2004

RC 9

04-522-A

20 HOUSE CONNECTIONS
27 SIMPLEX G.P.
1 DUPLEX G.P.



Base mapping from Baltimore County topographic maps dated 1953 through 1990.

NOTE: THE CONTRACTOR SHALL DIRECTIONAL DRILL FROM THE STREET TO THE GRINDER PUMP AT 800 COLD SPRING AVENUE.

ADDRESS	OWNER NAME	LOT	LIBER	FOLIO	TAX ACCOUNT	LOT FRONTAGE (FT)	DRAIN LENGTH (FT)	DRAIN SLOPE	GP INLET INV (MAX)	GND ELEV @ GP	GP MODEL	GP STAKE NORTHING	GP STAKE EASTING
800 COLDSPRING	DANAN CORP.	199	4522	608	151504001984	30	65	2.0%	3.70	7.0	2010-105	2536.211	62702.527
808 COLDSPRING	BARDROFF	197	8457	472	151502004780	120	110	2.0%	3.80	8.6	2010-105	2656.804	62650.248
810 COLDSPRING	KRATZER	196	10436	527	151511770660	50	95	2.0%	0.00	6.0	2010-141	2753.410	62604.857
812 COLDSPRING	VAN ZILE	195	5779	349	151519511400	45	125	2.0%	2.35	7.6	2014.10	2821.26	62589.250
814 COLDSPRING	BAUER	194	1490	99	151502004400	50	110	2.0%	2.35				
816 COLDSPRING	SISSON	192	6290	623	151502001210	100	105	2.0%	2.80	7.9	2010-105	2940.727	62575.679
820 COLDSPRING	SISSON	190	6071	282	151515950320	100	95	2.0%	3.20	7.3	2010-93	3045.660	62535.138
822 COLDSPRING	RETTMAN	189	3155	363	151518100800	50	125	2.0%	2.80	7.5	2010-105	3099.198	62561.282
826 COLDSPRING	TAYLOR	188	6708	281	151504350540	65	110	2.0%	2.20	6.8	2010-105	3127.464	62566.310
828 COLDSPRING	BOWEN	187	10629	132	151518720290	90	155	1.0%	-4.45	5.7	2010-160	3180.602	62552.153
830 COLDSPRING	AMOSS	186	6061	892	151501350920	110	255	2.0%	-2.35	5.7	2010-141	3305.270	62630.120
900 COLDSPRING	YOUNG	225	11659	689	151508003770	360	95	2.0%	2.40	6.4	2010-93	3449.215	62721.068
902 COLDSPRING	RANNEY	224	8573	332	151512202740	50	85	2.0%	-1.30	6.9	2010-141	3485.934	62757.686
906 COLDSPRING	NOWAKOWSKI	222	6080	137	151508301520	125	100	2.0%	3.10	8.1	2010-105	3546.823	62817.237
918A/B COLDSPRING	MASSEY	221	6779	413	151523751540	320	100	2.0%	0.45	5.1	2010-105	3669.292	62933.191
813 COLDSPRING	SISSON	202	6777	716	151519391660	170	30	2.0%	5.10	7.6	2010-93	2792.380	62683.340
815 COLDSPRING	TRABING	203	5400	687	151510250080	55	60	2.0%	6.50	10.0	2010-93	2912.844	62640.376
817 COLDSPRING	GEORGE	204	5289	883	151514100340	60	94	2.0%	4.92	8.7	2010-93	2984.039	62637.213
821 COLDSPRING	O'CONNELL	205	4071	425	151515050080	105	120	2.0%	4.30	7.8	2010-93	3039.019	62621.682
825 COLDSPRING	HALL	207	6071	143	151515740120	145	60	2.0%	4.85	7.2	2010-93	3225.300	62699.530
901 COLDSPRING	ARNOLD	209	7316	328	152000013390	155	125	2.0%	2.40	6.0	2010-93	3317.260	62687.600
903 COLDSPRING	WAMHOFF	211	5450	11	151503232620	50	65	2.0%	3.18	6.7	2010-93	3380.285	62781.576
905 COLDSPRING	DEAVER	212	8824	80	151504200570	45	40	2.0%	3.00	7.6	2010-105	3412.000	62235.000
907 COLDSPRING	NELSON	213	7560	134	151519073470	50	180	2.0%	0.50	8.1	2010-141	3459.954	62853.188
911 COLDSPRING	STOYENKO	215	6495	701	151502202050	50	95	2.0%	5.75	9.1	2010-93	3537.423	62889.420
915 COLDSPRING	LIBERTINI	216	5555	560	151508301560	50	78	2.0%	0.54	8.5	2010-141	3575.064	62928.893
917 COLDSPRING	SCHUCHHARDT	217	6331	206	151519070530	50	126	2.0%	0.15	7.4	2010-141	3607.463	62963.623
921 COLDSPRING	MILLER	219	2363	495	151513552870	100	60	2.0%	-0.60	5.5	2010-118	3675.765	63012.045
923 COLDSPRING	MILLER	220	5636	213	151513400770	80	65	2.0%	-3.10	4.7	2010-141	3760.429	63094.508

4-26-01 Revise G.P. Inlet Inv. Max. for 917 Coldspring RAF
4-17-01 Relocate T.P.C. in Cold Spring Rd & Rev. G.P. Easement #923 Cold Spring Rd RAF
4-6-00 General Revisions MRA
2-2-00 change G.P. size for 830 Cold Spring to 118" simplex 'RSH

MRA
MORRIS AND RITCHIE ASSOCIATES, INC.
ENGINEERS, PLANNERS, SURVEYORS, and LANDSCAPE ARCHITECTS
139 North Main Street, Suite 200
Bel Air, Maryland 21014
(410) 879-1690 (410) 836-7560

CITY OF BALTIMORE

DIRECTOR DEPT. OF PUBLIC WORKS — DATE

CHIEF, UTILITY ENG. DIVISION BUR. OF WATER AND WASTEWATER — DATE

DATE	RIGHT OF WAY	REF.	ROAD PERMIT AND GRADES	P. W. A. DIR. NO.
			PERMIT REQUESTED	
			PERMIT NUMBER	
			GRADE ESTABLISHED	
			PROFILE NUMBER	

CONTRACT NO.

REVISED AS PER RECORD PRINT

J.O.	DRAFTSMAN	DATE
1-85-9	E. THOMPSON	9-30-04

	BUREAU OF ENGINEERING	HIGHWAYS	STRUCTURES	STORM DRAINS	WATER	SEWER	FIELD ENGINEER
ENGINEER Bruce C. McMillin	REVIEWED	RCD	JWA	[illegible]	BFK	[illegible]	
DATE 6-18-99 LIC. NO 13715	DATE	4/21/99	4/21/99	4/21/99	4/21/99	4/21/99	

BUREAU OF ENGINEERING AND CONSTRUCTION
APPROVED [signature] CHIEF
DATE 4/22/99

DEPARTMENT OF PUBLIC WORKS
APPROVED [signature] DIRECTOR
DATE

SEAL
DESIGNED B.C.M.
DRAWN M.R.A.
CHECKED B.C.M.

LEVEL BK.
DETAIL BK.

KEY SHEET 2 SW

POSITION SHEET 9484, 9485 & 9486

DATE	REVISION	BY
8/20/99	Easements for 901 & 903 Coldspring Rd.	SMM
9/1/99	Easement for #830	RJH
1/28/99	Easement for #811, #815 & #917	SMM

SCALE
PLAN: 1"=50'
PROFILE: HOR. 1"=50' VERT. 1"=5'

BALTIMORE COUNTY | DEPARTMENT OF PUBLIC WORKS | BUREAU OF ENGINEERING AND CONSTRUCTION

LONG BEACH AREAS 1 AND 2 WASTEWATER COLLECTION SYSTEM

SUBDIVISION LONG BEACH — EL. DISTRICT NO. 15C6 — BALTIMORE COUNTY TYPE NUMBER 1

JOB ORDER NO. 99447SX0
SHEET 12 OF 20
DWG. NO. 1999-1838
FILE: 1

STATE OF MARYLAND — BRUCE CLIFFORD MCMILLIN — NO. 13715 — REGISTERED PROFESSIONAL ENGINEER

Received

Oberst Hearing

CBA PC 10

J. S. DALLAS, INC.

SURVEYING & ENGINEERING

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

PC11

ZONING DESCRIPTION -#809 Cold Spring Road-
TAX MAP 98 -PARCEL 203 lot 304 (and Adjacent)

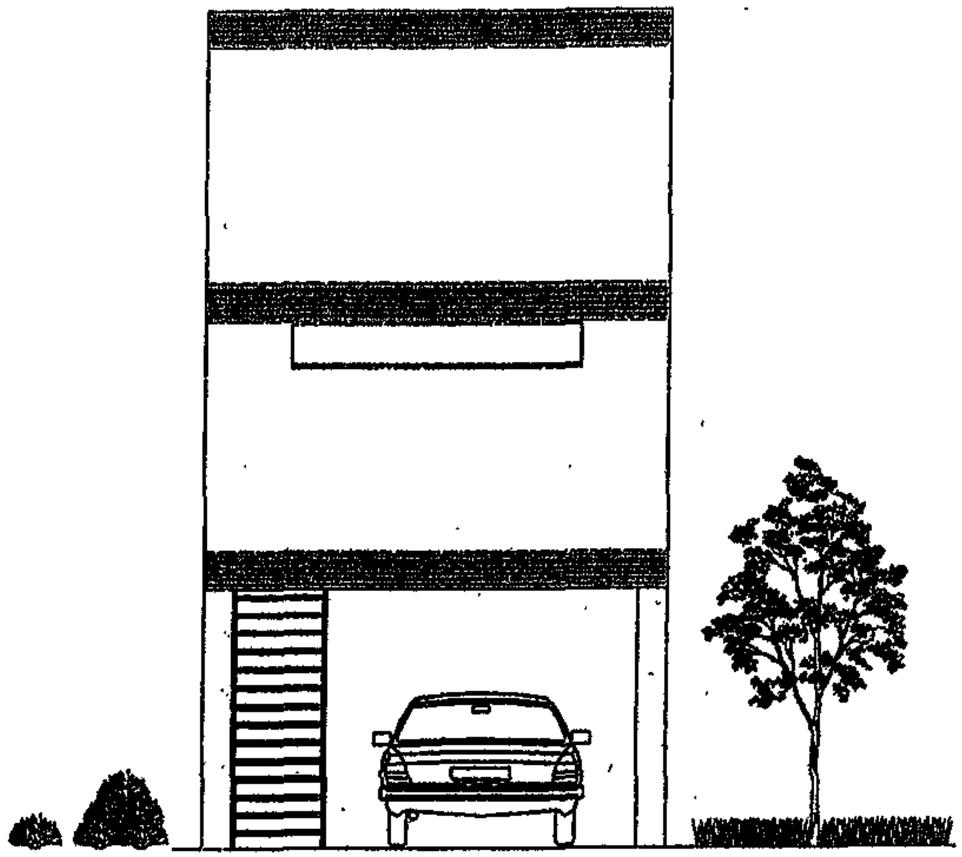
BEGINNING at a point on the east side of Cold Spring Road, 40 feet wide, at the distance of 640 feet, more or less, in a southerly direction from the extension of the centerline of Chesapeake Avenue, 40 feet wide, as shown on the Plat entitled Plan "C" of Long Beach Estates and recorded among the Land Records of Baltimore County in Plat Book W.P.C. No. 4 folio 131, at the division line between Lots 304 and 200 as shown on said Plat thence running with and binding on said division line, with all bearings and distances herein according to a Boundary Survey dated December 5, 2001 by Siterite Surveying, Inc. ***(1) South 64 degrees 09 minutes 00 seconds East 107 feet more or less*** *to a point in the Galloway Creek, thence leaving said division line and running with and binding on the outline of said Lot* ***(2) South 04 degrees 13 minutes 25 seconds East 36.83 feet*** *thence leaving said Lot 304 and running* ***(3) South 30 degrees 36 minutes 14 seconds East 28.71 feet*** *to the northernmost outline of Lot 199 as shown on said Plat thence running with and binding on a part of said northernmost outline* ***(4) South 88 degrees 51 minutes 00 seconds West 50.26 feet*** *to intersect said east side of Cold Spring Road thence running with and binding on said east side of Cold Spring* ***(5) North 30 degrees 09 minutes 00 seconds West 126.17 feet*** *to the place of beginning.*

CONTAINING ***5,092 square feet or 0.117 acres*** *of land, more or less.*

BEING all of those two parcels of Land which by deed dated January 14, 2003 and recorded among the Land Records of Baltimore County in Liber 17471 folio 328 etc. was conveyed by Ann June Schuman fka Ann June Kratzer and Janice Ann Oberst to Janice Ann Oberst.

Note: above description for zoning purposes only.

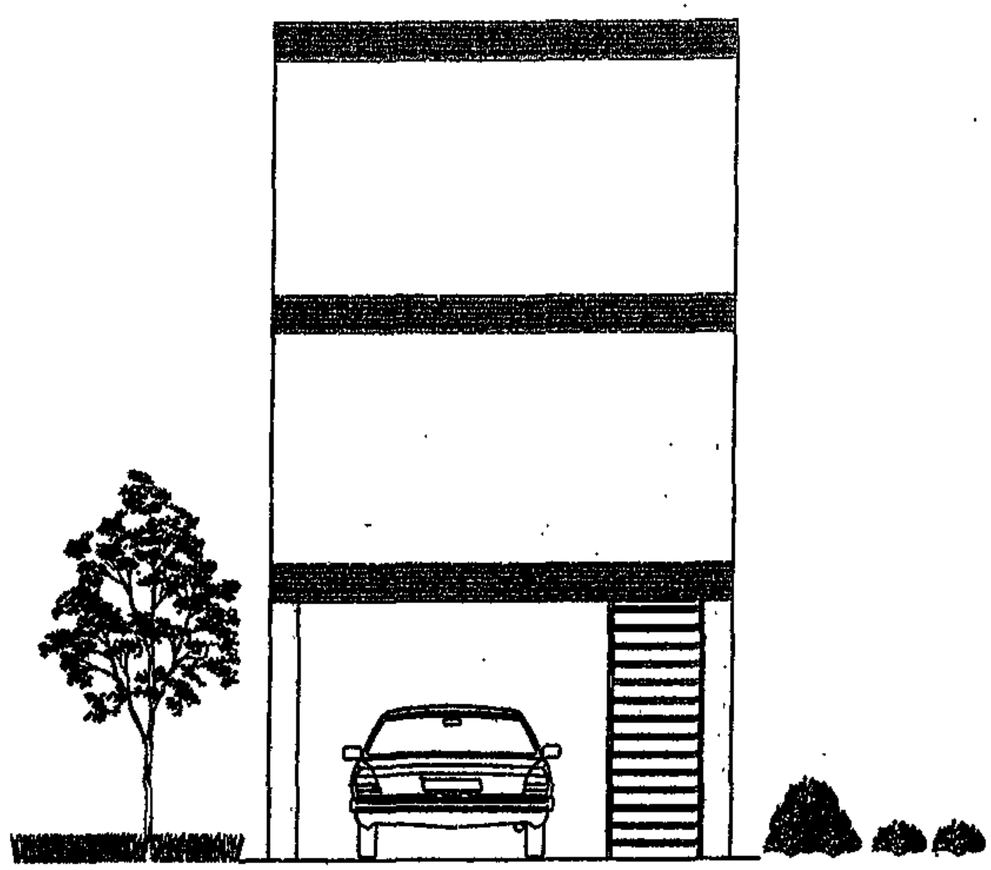




Proposed North Elevation with Landscaping

Proposed SFD for Harlan Zinn
809 Cold Spring Road
Baltimore, MAryland 21220

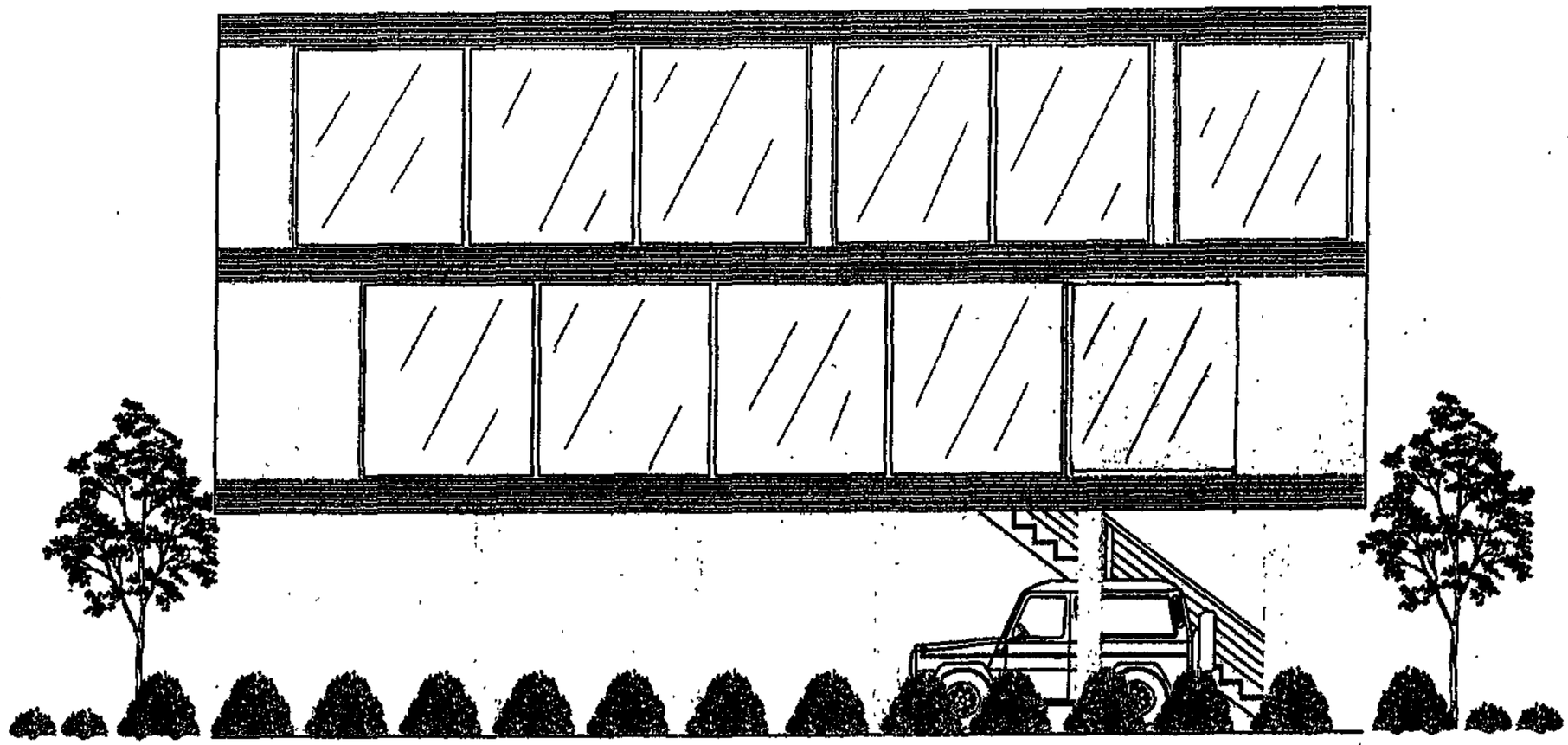
Scale:	1/8" = 1'-0"
Drawing #	Z-04-1-1A
Date:	17 Jan 2004



Proposed South Elevation with Landscaping

Proposed SFD for Harlan Zinn
809 Cold Spring Road
Baltimore, MAryland 21220

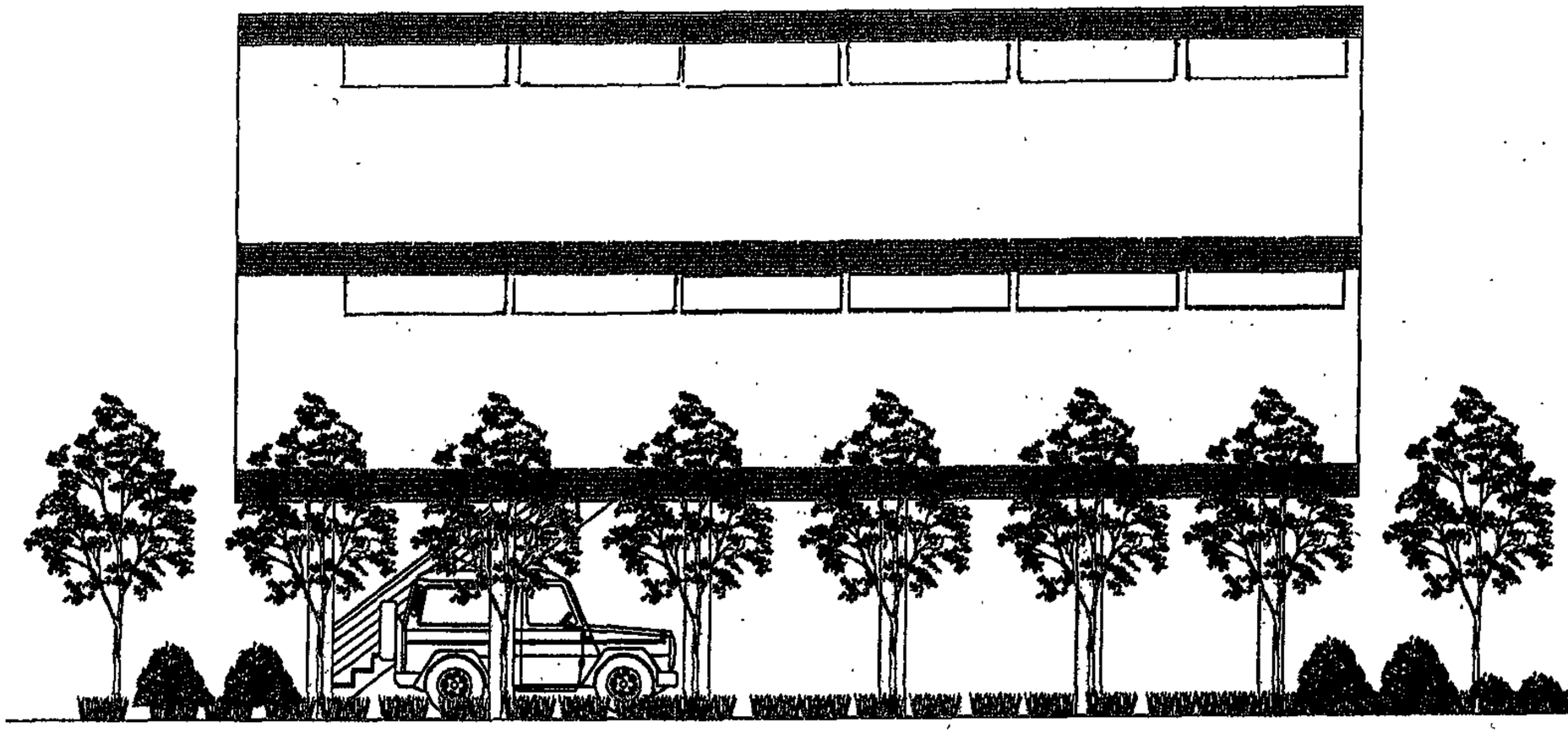
Scale:	1/8" = 1'-0"
Drawing #	Z-04-1-1A
Date:	17 Jan 2004



Proposed East Elevation with Landscaping

Proposed SFD for Harlan Zinn
809 Cold Spring Road
Baltimore, MAryland 21220

Scale:	1/8" = 1'-0"
Drawing #	Z-04-1-1A
Date:	17 Jan 2004

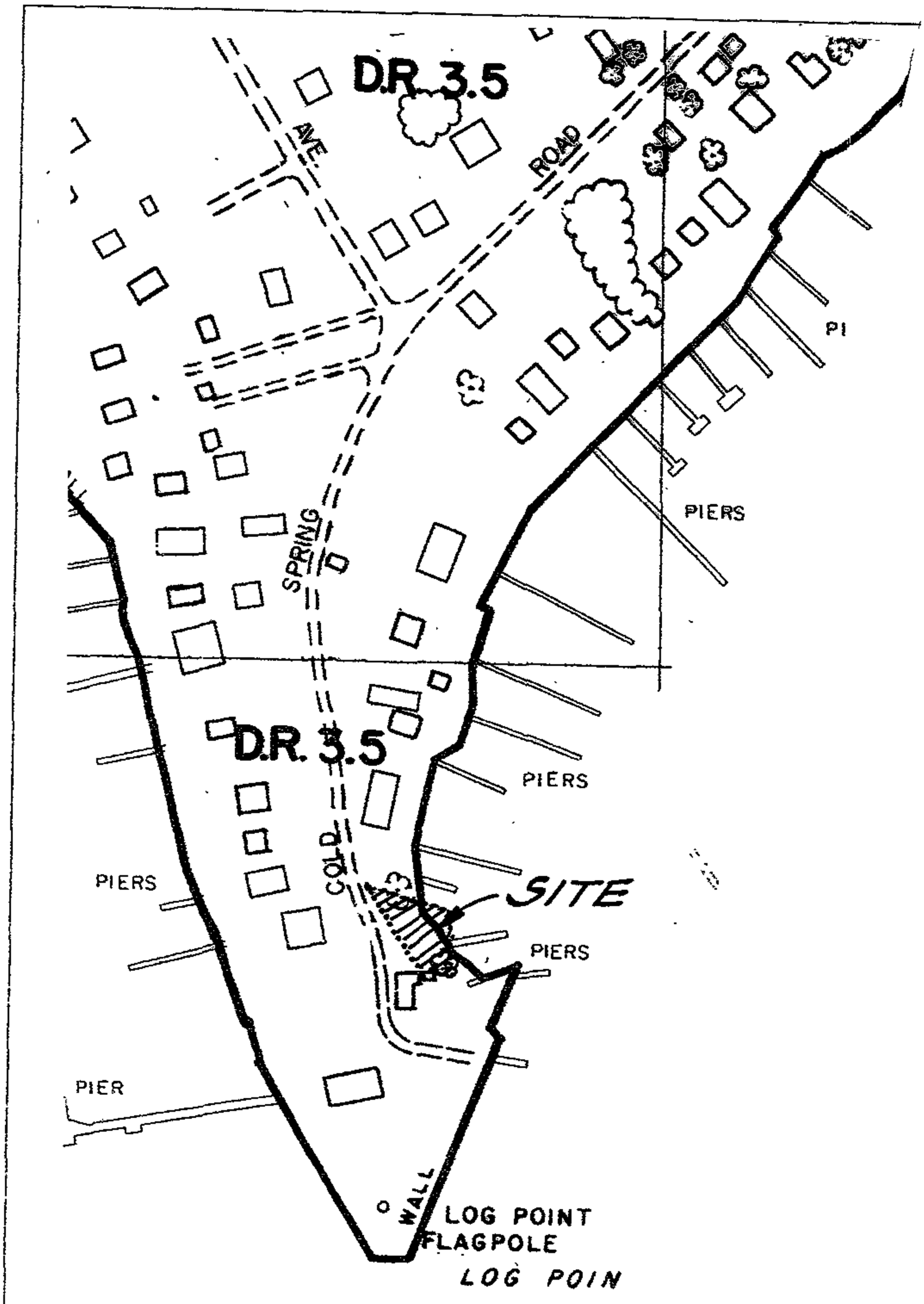


Proposed West Elevation with Landscaping

Proposed SFD for Harlan Zinn
809 Cold Spring Road
Baltimore, MAryland 21220

Scale:	1/8" = 1'-0"
Drawing #	Z-04-1-1A
Date:	17 Jan 2004

#809 COLD SPRING ROAD



PART OF OPZ NE 1-K
1"= 200'

Protestant
EXHIBIT 1

Zoning Notice 04-522A – Resident's Opposition

The residential housing unit proposed for the substantially undersized waterfront lot (Lot 304 - 809 Cold Spring Rd, Baltimore County) lies in the Chesapeake Bay Critical Area and fails to meet the **'reasonable use'** criteria of the Maryland Department of Natural Resources Critical Area Commission and the Department of Environmental Protection and Resource Management (DEPRM).

It is a matter of public record; and still pertinent to this hearing, that a similar zoning variance request for the same undeveloped property was denied last year by the zoning commissioner (Lawrence Schmidt) on the day (June 25, 2003) of the public hearing and followed with the written denial dated July 29, 2003. This denial was consistent with a letter dated May 24, 2003 from the Director, Baltimore County Office of Planning to the Director, Department of Permits and Development Management failing to support the petitioner's variance request while stating that the subject property is too small to accommodate the proposed residence and that the 2-foot rear yard is not in keeping with the character of the neighborhood

An additional denial letter was issued from the Director, DEPRM, to the petitioners on July 15, 2003 explaining that they had failed to meet 4 of the 5 necessary criteria as defined in COMAR 27.01.11.These criteria apply to the construction of any dwelling in the 100-foot buffer to Galloway Creek closer than Buffer Management Area Regulations allow and specify.

The variance request last year was also for a residential dwelling with a rear yard setback of 2 feet from the county right-of-way turnabout, a front yard setback of 11 feet from Galloway Creek with a 28' x 28' (784 SF footprint) residence. This variance request still includes the same rear yard 2-foot setback from the county right-of-way turnabout, a front yard setback of 23 feet from Galloway Creek with a 16' x 46' (736 SF footprint) residence; essentially a different shaped residence. Each variance request should be judged on its own merits, so let's review the parameters of this request:

- This undersized property at the end of a narrowing peninsula is low-lying and floods completely during high tide when accompanied by easterly storms. We need no reminders of the destruction and heartache caused by Hurricane Isabel less than a year ago as we were again reminded how vulnerable and helpless we are in the path of nature's wrath when we live close to the water. With all good intentions we can elevate a living space but there is no protection for vehicles, landscaping or anything stored at ground level. After the hurricane, everything that formerly was on this property, including the metal storage shed, and everything in it was in my yard.

- Front yard (from Gallaway Creek) setback variance requested by petitioner is **23 feet** rather than the required **55 feet.** The Baltimore County Zoning Regulations note a 30-foot setback for regular residential structures; however, this is not applicable for waterfront property and the previous variance request was weighed against the neighborhood standard of 55 feet, thus, this is a **42%** reduction in the required standard. The laws passed since the Critical Area Act of 1984 were enacted to maximize, not minimize the buffer areas that prevent runoff to the Chesapeake Bay watershed. I would hope that one of the priorities of this commission is to uphold the legistr to protect the bay and its tributaries, not to further endanger this precious resource. 4A/4B

- Rear setback variance requested by owners of **2 feet** rather than the standard **30 feet** – a **93%** setback reduction. This **2-foot** distance abuts the turnabout in the road used by county snowplows, garbage and recycling trucks. My property also abuts this turnabout and I have replaced shrubs damaged by county trucks. Cold Spring Rd. is just 14 feet wide between this undeveloped lot and my property where the turnabout starts. Building a residence 2 feet from the turnabout will further hinder trucks from turning around and consequently increase the damage to my property. 4A/4B 5A/B/C

- This property is filled-land that previously had been used for boat access via pier. In addition to the inadequate setback distances caused by the lot shape, the lot size (5,092.00 SF) is barely half of the Minimum Net Lot Area per Dwelling Unit (10,000 SF for DR 3.5) as noted in the Baltimore County Zoning Regulations 1B02. One adjoining property is 20,000 SF, the other adjoining property is a full acre; my property directly across Cold Spring Rd is 16,000 SF. At no point is this property deeper than 47 feet from roadside property line to Galloway Creek. This property is only partially protected by bulkhead; there is a 23-foot wide wetlands area on the southern edge of the shoreline with a gradual 3-foot slope to the water, affording no protection to high tides. What mitigation is possible to protect this natural wetland area with native marsh grasses? 4A/B/C/D

- My driveway is damaged and sunken due to large trucks that turn around using my driveway. This situation will only worsen if the trucks are left with just my driveway as delivery trucks often fail to go to the end of the road to use the turnabout as they see my driveway as the first opportunity to turn around.

- Older residences on this dead-end road have to contend with minimal parking areas that often results in vehicle encroachment in the narrow road during family events; thus, creating "public-safety" concerns for Emergency vehicles. We do not need to add to this problem with undersized lot development. 6A/B/C

- Although I understand the desire of the owners to maximize the property value of this undersized lot, I also need to be cognizant of the negative impact this proposed dwelling will have on my property value just across the road. An area of desirable natural, wildlife habitat populated with native marsh grasses, home to ducks, geese and herons will be eliminated due to development encroachment and a stilted, mobile-home shaped residence looming over a county right-of-way just 2 feet away

4A/4B

As a long-standing resident, I would not attempt to hinder another owner's effort to reasonably utilize their land; yet, reduced setback variance requests of **93%** and **42%** are severe reductions of the standards; any proposed dwelling on this property is not 'reasonable use' and is not consistent with the doctrines of the Maryland Department of Natural Resources Critical Area Commission, the Baltimore County Department of Environmental Protection & Resource Management (DEPRM) and certainly not the Chesapeake Bay Foundation who works so closely with our local agencies to improve water quality and natural habitats.

Circumventing the guidelines of concerned state and local agencies undermines the efforts of those entrusted with promoting 'smart growth' in the county and *minimizing the adverse effects* of human activities on water quality and natural habitats; thus fostering a consistent, uniform, and more sensitive development activity within the Critical Area. What value are our guidelines and standards if we are not going to adhere to them? I ask this commission to review the facts, weigh them against the acknowledged standards and decide in the best interests of our community and the Chesapeake Bay watershed. Let's not make a decision and set a precedent that will render our standards ineffective and negate the conscientious efforts of the many responsible agencies empowered to protect the Chesapeake Bay.

We, the undersigned, respectfully, yet fully, support this opposition to this variance request:

Richard Pitz
808 Cold Spring Rd.
Primary Opposition

Ernestine Sisson
813 Cold Spring Rd.
820 Cold Spring Rd.

Robert Kroll, 3rd
810 Cold Spring Rd.

James Trabing
815 Cold Spring Rd.

Read Van Zile
812 Cold Spring Rd.

Michael Vivirito, President
Bowleys Qrtrs Improvement Assoc.

Exhibits:

- o Notice of Zoning Hearing
- Real Property Assessment and Taxation – both parcels deeded to Oberst with a total gross taxable assessment base of $48,450 as of 7.01.04; Use is indicated as "**Residential**". Real property tax totals $939.57
- Background legal deed transfer of adjacent lot property to previous current owner (use defined as 25' right of way road to water and subsequently as (Long Beach Improvement Association to Bowleys Quarters Association, Bowleys Quarters Association to mother, mother to daughter, daughter to mother, mother to current daughter)
- Letters of Endorsement / No Objections from nearby property owners - (813, 815, 810 and 820 Cold Spring Road)
- MD Critical Area Commission – Chesapeake & Atlantic Coastal Bays Variance Approval – March 29, 2004
- Dept. of Environmental Protection and Resource Management – Critical Area Administrative Variance Approval – June 11, 2004
- Verbal statement from sewage design engineer, Baltimore County Department of Public Works
- Baltimore Co. Department of Public Works – Turn Around Authorization by Owner (11.98)
- Rear of Property Setback Precedents (photographs)
- Other "T" turn-a-rounds within Bowleys Quarters
- Entry of Appearance – People's Counsel for Baltimore County (no issues as of July 9, 2004)
- Certificate of Posting of Zoning Notice
- Certificate of Publication – Jeffersonian (6.29.04)
- Certificate of Publication – Dundalk Eagle

Pet # 3

Click here for a plain text ADA compliant screen.

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** - 1511770661

Owner Information

Owner Name: OBERST JANICE ANN

Mailing Address: 2587 VANCE DR
MOUNT AIRY MD 21771-8813

Use: RESIDENTIAL
Principal Residence: NO
Deed Reference: 1) /17471/ 328
2)

Location & Structure Information

Premises Address	Zoning	Legal Description
COLD SPRING AVE	WATERFRONT	LONG BEACH ESTATES

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:	Plat Ref:
98	4	203					304	82	C	4/ 131

Special Tax Areas **Town** **Ad Valorem** **Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		5,396.00 SF	34

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2003	As Of 07/01/2004
Land:	45,390	45,390		
Improvements:	1,940	1,940		
Total:	47,330	47,330	47,330	47,330
Preferential Land:	0	0	0	0

Transfer Information

Seller: SCHUMAN ANN JUNE	**Date:** 01/31/2003	**Price:** $0
Type: NOT ARMS-LENGTH	**Deed1:** /17471/ 328	**Deed2:**
Seller: KRATZER JOHN L	**Date:** 03/31/1994	**Price:** $1
Type: NOT ARMS-LENGTH	**Deed1:** /10436/ 530	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Click here for a plain text ADA compliant screen.

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 -** 2200004507

Owner Information

Owner Name: OBERST JANICE ANN

Mailing Address: 2587 VANCE DR
MOUNT AIRY MD 21771-8813

Use: RESIDENTIAL
Principal Residence: NO
Deed Reference: 1) /17471/ 328
2)

Location & Structure Information

Premises Address
810 COLD SPRING RD

Zoning
WATERFRONT

Legal Description
LND ADJ TO LT 304
810 COLD SPRING RD
LONG BEACH ESTATES

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:	
98	4	203						82	Plat Ref:	4/ 131

Special Tax Areas
Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		1,125.00 SF	34

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2003	As Of 07/01/2004
Land:	1,120	1,120		
Improvements:	0	0		
Total:	1,120	1,120	1,120	1,120
Preferential Land:	0	0	0	0

Transfer Information

Seller: SCHUMAN ANN JUNE
Type: NOT ARMS-LENGTH
Date: 01/31/2003 **Price:** $0
Deed1: /17471/ 328 **Deed2:**

Seller: SHEELY MARY ELIZABETH
Type: NOT ARMS-LENGTH
Date: 04/05/2001 **Price:** $0
Deed1: /15098/ 369 **Deed2:**

Seller: BOWLEYS QUARTERS
Type: IMPROVED ARMS-LENGTH
Date: 08/04/1992 **Price:** $2,000
Deed1: / 9309/ 4 **Deed2:**

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0

.AKE CHECKS
PAYABLE TO:
BALTIMORE COUNTY, MD.

BALTIMORE COUNTY, MARYLAND
STATE AND COUNTY REAL PROPERTY TAX BILL

TAXPAYER'S COPY
DETACH AND RETAIN
TELEPHONE: 410-887-2403

PARCEL NUMBER	YEAR
15-11-770661	2005

CYCLE FY | BILL DATE 07/01/2004 | ELECTION DISTRICT 15

ASSESSMENT 47,330

LEVY PERIOD JULY 1,2004-JUNE 30,2005

CHARGES		RATE PER $100	TAXES/CHARGES
SEWER BENEFIT	160.00		
SEWER SERVICE		1.115	527.73
WATER BENEFIT			
WATER DISTRIBUTION		.132	62.48
CONSTRUCTION LOAN	180.79		340.79
OTHER			
TOTAL CHARGES	340.79		

PROPERTY STATUS
NOT A PRINCIPAL RESIDENCE

COUNTY TAX
STATE TAX
CHARGES

OWNER'S NAME AND ADDRESS
OBERST JANICE ANN
2587 VANCE DR
MOUNT AIRY MD 21771

PROPERTY DESCRIPTION
LONG BEACH ESTATES
00000 COLD SPRING

3-048286

LOT	BLOCK	SEC	PLAT	BOOK	FOLIO
304			C	00	000

CONSTANT YIELD 1.085 DIFFERENCE 0.030

GROSS BILL 931.00

INTEREST/ DISCOUNT

NET TOTAL

BALTIMORE COUNTY, MARYLAND
STATE AND COUNTY REAL PROPERTY TAXES

PLEASE RETURN THIS PART WITH YOUR FIRST SEMIANNUAL PAYMENT

MAIL TO: BALTIMORE COUNTY
P.O. BOX 64281
BALTO. MD. 21264-4281

PARCEL NUMBER	YEAR
15-11-770661	2005

CYCLE FY | BILL DATE 07/01/2004 | 3-048286

OWNER'S NAME AND ADDRESS

	FIRST SEMIANNUAL PAYMENT CHARGES	IF PAID BY	DISCOUNT	PAY THIS AMOUNT

SEMIANNUAL PAYMENT ELIGIBILITY :

A PROPERTY OWNER IS ELIGIBLE TO ELECT THE SEMIANNUAL PAYMENT OF THEIR REAL PROPERTY TAXES FOR A RESIDENTIAL PROPERTY THAT IS DESIGNATED AS THEIR 'PRINCIPAL RESIDENCE'.

THIS PROPERTY IS IDENTIFIED WITH THE STATE DEPARTMENT OF ASSESSMENTS AS 'NOT A PRINCIPAL RESIDENCE' AND IS NOT ELIGIBLE FOR THE SEMIANNUAL PAYMENT OPTION. TO CORRECT STATUS CALL 410-512-4905.

SECOND SEMIANNUAL PAYMENT

BALTIMORE COUNTY, MARYLAND
STATE AND COUNTY REAL PROPERTY TAXES

PLEASE RETURN THIS PART WITH YOUR FULL ANNUAL PAYMENT

MAIL TO: BALTIMORE COUNTY
P.O. BOX 64281
BALTO. MD. 21264-4281

PARCEL NUMBER	YEAR
15-11-770661	2005

CYCLE FY | BILL DATE 07/01/2004

OWNER'S NAME AND ADDRESS

	FULL ANNUAL PAYMENT CHARGES	IF PAID BY	DISCOUNT OR INTEREST	PAY THIS AMOUNT
COTAX	527.73	7/31	5.28-	925.72
STTAX	62.48			
CHARGES	340.79	8/31	2.64-	928.36
		9/30		931.00
		10/31	9.31	940.31

OBERST JANICE ANN
2587 VANCE DR
MOUNT AIRY MD 21771

151177066120059FY007000925720009283600093100000940310000000000000000

. CHECKS .
ABLE TO:
LTIMORE COUNTY, MD.

BALTIMORE COUNTY, MARYLAND
STATE AND COUNTY REAL PROPERTY TAX BILL

TAXPAYER'S COPY
DETACH AND RETAIN
TELEPHONE: 410-887-2403

PARCEL NUMBER	YEAR
22-00-004507	2005

CYCLE	BILL DATE	ELECTION DISTRICT
FY	07/01/2004	15

ASSESSMENT
1,120

LEVY PERIOD
JULY 1,2004-JUNE 30,2005

PROPERTY STATUS
NOT A PRINCIPAL RESIDENCE

	RATE PER $100	TAXES/CHARGES
COUNTY TAX	1.115	12.49
STATE TAX	.132	1.48
SEWER BENEFIT		
SEWER SERVICE		
WATER BENEFIT		
WATER DISTRIBUTION		
CONSTRUCTION LOAN		
OTHER		
TOTAL CHARGES		

OWNER'S NAME AND ADDRESS
OBERST JANICE ANN
2587 VANCE DR
MOUNT AIRY MD 21771

PROPERTY DESCRIPTION
LONG BEACH ESTATES
LND ADJ TO LT 304
00810 COLD SPRING

3-048287

GROSS BILL 13.97

LOT	BLOCK	SEC	PLAT	BOOK	FOLIO
O				00	000

INTEREST/ DISCOUNT

NET TOTAL

CONSTANT YIELD 1.085 DIFFERENCE 0.030

BALTIMORE COUNTY, MARYLAND
STATE AND COUNTY REAL PROPERTY TAXES

PLEASE RETURN THIS PART WITH YOUR FIRST SEMIANNUAL PAYMENT

MAIL TO: BALTIMORE COUNTY
P.O. BOX 64281
BALTO. MD. 21264-4281

PARCEL NUMBER	YEAR
22-00-004507	2005

CYCLE	BILL DATE
FY	07/01/2004

3-048287

OWNER'S NAME AND ADDRESS

FIRST SEMIANNUAL PAYMENT CHARGES

IF PAID BY | DISCOUNT | PAY THIS AMOUNT

```
**********************************************************
*                                                        *
*  SEMIANNUAL PAYMENT ELIGIBILITY :                      *
*  -------------------------------                       *
*                                                        *
*  A PROPERTY OWNER IS ELIGIBLE TO ELECT THE SEMIANNUAL  *
*  PAYMENT OF THEIR REAL PROPERTY TAXES FOR A RESIDENTIAL*
*  PROPERTY THAT IS DESIGNATED AS THEIR 'PRINCIPAL RESIDENCE'.
*                                                        *
*  THIS PROPERTY IS IDENTIFIED WITH THE STATE DEPARTMENT OF
*  ASSESSMENTS AS 'NOT A PRINCIPAL RESIDENCE' AND IS NOT *
*  ELIGIBLE FOR THE SEMIANNUAL PAYMENT OPTION.  TO CORRECT
*  STATUS CALL 410-512-4905.                             *
**********************************************************
```

SECOND SEMIANNUAL PAYMENT

BALTIMORE COUNTY, MARYLAND
STATE AND COUNTY REAL PROPERTY TAXES

PLEASE RETURN THIS PART WITH YOUR FULL ANNUAL PAYMENT

MAIL TO: BALTIMORE COUNTY
P.O. BOX 64281
BALTO. MD. 21264-4281

PARCEL NUMBER	YEAR
22-00-004507	2005

CYCLE	BILL DATE
FY	07/01/2004

OWNER'S NAME AND ADDRESS

	FULL ANNUAL PAYMENT CHARGES
COTAX	12.49
STTAX	1.48

IF PAID BY	DISCOUNT OR INTEREST	PAY THIS AMOUNT
7/31	.12-	13.85
8/31	.06-	13.91
9/30		13.97
10/31	.13	14.10

OBERST JANICE ANN
2587 VANCE DR
MOUNT AIRY MD 21771

2200004507200051FY00700001385000139100001397000014100000000000000000

Real Property Search - Individual Report

Click here for a plain text ADA compliant screen.

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** - 2200004507

Owner Information

Owner Name: OBERST JANICE ANN

Mailing Address: 2587 VANCE DR
MOUNT AIRY MD 21771-8813

Use: RESIDENTIAL
Principal Residence: NO
Deed Reference: 1) /17471/ 328
2)

Location & Structure Information

Premises Address
810 COLD SPRING RD

Legal Description
LND ADJ TO LT 304
810 COLD SPRING RD
LONG BEACH ESTATES

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
98	4	203		WATERFRONT				82	Plat Ref: 4/ 131

Special Tax Areas
Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		1,125.00 SF	34

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2003	As Of 07/01/2004
Land:	1,120	1,120		
Improvements:	0	0		
Total:	1,120	1,120	1,120	1,120
Preferential Land:	0	0	0	0

Transfer Information

Seller: SCHUMAN ANN JUNE	**Date:** 01/31/2003	**Price:** $0	
Type: NOT ARMS-LENGTH	**Deed1:** /17471/ 328	**Deed2:**	
Seller: SHEELY MARY ELIZABETH	**Date:** 04/05/2001	**Price:** $0	
Type: NOT ARMS-LENGTH	**Deed1:** /15098/ 369	**Deed2:**	
Seller: BOWLEYS QUARTERS	**Date:** 08/04/1992	**Price:** $2,000	
Type: IMPROVED ARMS-LENGTH	**Deed1:** / 9309/ 4	**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Real Property Detail

Ownership and Address Information

Parcel ID	15-11-770661
Owner Name	Oberst Janice Ann
Owner Address	2587 Vance Dr , Mount Airy , MD 21771
Property/Situs Address	Cold Spring Ave
District	15
Property Class	34 Waterfront/Residential
Activity	Not Semi Annual Eligible
Miscellaneous	

Legal Description

IMPS

Assessment Information

Full Year	47,330

Tax rate for Full Year: County $1.11500 . State $.13200. per $100 of Assessed Value

Tax Receivable Amounts

Bill Date: 7/01/03

	Original	Paid Outstanding		First SA	Second SA
Taxes/Charges	931.00	931.00	.00	.00	.00
Fees	.00	.00	.00	.00	
Gross	931.00	931.00	.00	.00	.00
Discount Applied	(5.28)	(5.28)			
New Discount			(.00)	(.00)	
Interest Applied	.00	.00			
New Interest			.00	.00	.00
Total	925.72	925.72	.00	.00	.00

Date to calculate interest amount owed (mm/dd/yyyy): 2/10/2004 Recalculate

If the recalculation process does not change the amount due, please contact the Office of Budget and Finance for further assistance.

More Detail New Search

Real Property Detail

Ownership and Address Information

Parcel ID	22-00-004507
Owner Name	Oberst Janice Ann
Owner Address	2587 Vance Dr , Mount Airy , MD 21771
Property/Situs Address	810 Cold Spring Rd
District	15
Property Class	34 Waterfront/Residential
Activity	Not Semi Annual Eligible
Miscellaneous	

Legal Description

LND ADJ TO LT 304
810 COLD SPRING RD

Assessment Information

Full Year	1,120

Tax rate for Full Year: County $1.11500 , State $.13200, per $100 of Assessed Value

Tax Receivable Amounts

Bill Date: 7/01/03

	Original	Paid Outstanding		First SA	Second SA
Taxes/Charges	13.97	13.97	.00	.00	.00
Fees	.00	.00	.00	.00	
Gross	13.97	13.97	.00	.00	.00
Discount Applied	(.12)	(.12)			
New Discount			(.00)	(.00)	
Interest Applied	.00	.00			
New Interest			.00	.00	.00
Total	13.85	13.85	.00	.00	.00

Date to calculate interest amount owed (mm/dd/yyyy): 2/10/2004 Recalculate

If the recalculation process does not change the amount due, please contact the Office of Budget and Finance for further assistance.

THIS DEED Made this 27 day of July in the year One Thousand Nine Hundred and Ninety-Two, by and between Bowley's Quarters Improvement Association, Inc., a body corporate, State of Maryland, of the first part, and Mary Elizabeth Sheely of Baltimore County, State of Maryland, of the second part

WITNESSETH, that for and in consideration of the sum of Two Thousand Dollars ($ 2,000.00) and other good and valuable considerations, the receipt of which is hereby acknowledged, the said Bowley's Quarters Improvement Association, Inc., a body corporate, does hereby grant and convey unto the said Mary Elizabeth Sheely, as tenants by the entireties, their assigns, and unto the survivor of them, his or her personal representatives and assigns, in fee simple, all that lot of ground situate in the Fifteenth Election District, Baltimore County, Maryland, and described as follows.

BEGINNING for the same at the corner formed by the intersect of the east side of Cold Spring ~~Avenue~~ Road with the north side of a 25 foot road or Right of Way, as laid out and shown on the plat entitled Plan "C" Long Beach Estates, said plat being recorded among the land records of Baltimore County in Plat Book 4 folio 131; thence leaving Cold Spring ~~Avenue~~ Road and binding on the north side of said road or Right of Way in an easterly direction 50 feet more or less to the waters of Cold Spring Cove, thence binding on the waters of Cold Spring Cove in a southerly direction 25 feet more or less to the northern outline of Lot 199 and to the south side of said road or Right of Way, thence running and binding on the northern outline of Lot 199 and on the south side of said road or Right of Way in a westerly direction 40 feet more or less to the east side of Cold Spring ~~Avenue~~ Road and thence running and binding on the east side of Cold Spring ~~Avenue~~ Road North 30 degrees 09 Minutes West 25.50 feet more or less to the place of beginning.

Containing 900 square feet more or less.

BEING a part of the land abandoned by the local realty companies who after disposing of all building lots in Long Beach Estates vested the easements in the Long Beach Improvement Association.

BEING also part of the land conveyed unto Bowley's Quarters Improvement Association, Inc., by deed of Robert M. Thomas Trustee, dated September 4, 1962 and recorded among the Land Records of Baltimore County, in Liber RRG 4249, Folio 367 and by the merger and assimilation of the Long Beach Improvement Association on October 11, 1984, whereby the Bowleys Quarters Improvement Association assumed the liabilities, assets, and records of the Long Beach Improvement Association.

BEING also part of the land conveyed unto Bowley's Quarters Improvement Association, Inc. by deed of Bowley's Quarters Improvement Association, Inc., grantor, dated September 1, 1990, and recorded among the Land Records of Baltimore County, in Liber 8587, Folio 849

THE undersigned corporate officer certified that this conveyance is not part of the transfer in which there is a sale, lease, exchange or other transfer of all or substantially all of the property and assets of the said Grantor.

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Baltimore County
7-28-92
Date

[illegible] TRANSFER TAX
[illegible]
SIGNATURE [illegible] DATE 7-24-92
01A01#0165TLTRTX $32.00
BY C003:48PM08-04-92

EXHIBIT NO. 1

TOGETHER with the buildings and improvements thereupon erected made or being and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or anywise appertaining.

TO HAVE AND TO HOLD the said lot or parcel of land above described and mentioned and hereby intended to be conveyed; together with rights, privileges, appurtenances and advantages thereto belonging or appurtaining unto and to the proper use and benefit of the said Mary Elizabeth Sheely, as tenants by the entireties, their assigns, and unto the survivor of them, his or her personal representatives and assigns, in fee simple.

AND the said party of the first part hereby covenants that it has not done any act, matter or thing whatsoever to encumber the property hereby conveyed; that it will warrent specially the property granted and that it will execute such further assurance of the same as may be requisite.

IN WITNESS WHEREOF Bowley's Quarters Improvement Association, Inc. has caused these presents to be executed in its name by William Jordan, its President, attested by H. Andrew Jones, its Secretary, and its corporate seal affixed hereto.

ATTEST

H. Andrew Jones

H.Andrew Jones
Secretary

BOWLEY'S QUARTERS IMPROVEMENT ASSOCIATION, INC.

BY William Jordan

William Jordan
President

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

On this 20th day of JULY, 1992, before me, a Notary Public of the State of Maryland, in and for _____ County aforesaid, the undersigned officer, personally appeared William Jordan who acknowledged himself to be the President of Bowleys Quarters Improvement Association, Inc., a body corporate, and that he as such President, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as President.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires 8/26/94

THIS IS TO CERTIFY THAT THE WITHIN INSTRUMENT HAS BEEN PREPARED BY AN AUTHORIZED AGENT OF BOWLEYS QUARTERS IMP. ASSOC. INC.

Charles Hoffa Jr. M.D.
Chairman Legislative Committee
and Road Committee

Return To:

Mary Elizabeth Heaney
810 Cold Spring Rd
Baltimore, MD 21210

0015098 369

Notice: This is a legally binding document. Consult your attorney if you do not understand any part of it.

QUITCLAIM DEED

THIS QUITCLAIM DEED, is made on the 3rd day of April, #2001,

by and between, MARY ELIZABETH SHEELY ("First Party")

whose residence and/or mailing address is 3725 RUSH ROAD, JARRETTSVILLE, MD. 21084

and ANN JUNE SCHUMAN ("Second Party")

whose residence and/or mailing address is 810 COLD SPRING ROAD, BALTIMORE, MD. 21210

WITNESSETH, That in consideration for the sum of GIFT - ZERO DOLLARS ($ 0.00) paid by the Second Party, the First Party does hereby remise, release and forever quitclaim unto the Second Party any right, title, interest and claim which the First Party has in and to the following described real property, together with any improvements thereon

Description of Property (including any improvements) FIFTEENTH ELECTION DISTRICT, BALTIMORE COUNTY, MARYLAND, BEGINNING FOR THE SAME AT THE CORNER FORMED BY THE INTERSECT OF THE EAST SIDE OF COLD SPRING ROAD WITH THE NORTH SIDE OF A 25' FOOT ROAD OR RIGHT OF WAY, AS LAID OUT AND SHOWN ON THE PLAT ENTITLED PLAN "C" LONG BEACH ESTATES, SAID PLAT BEING RECORDED AMONG THE LAND RECORDS OF BALTIMORE COUNTY IN PLAT BOOK 4 FOLIO 131, THENCE LEAVING COLD SPRING ROAD AND BINDING ON THE NORTH SIDE OF SAID ROAD OR RIGHT OF WAY IN AN EASTERLY DIRECTION 50 FEET MORE OR LESS TO THE WATERS OF COLD SPRING COVE, THENCE BINDING ON THE WATERS OF COLD SPRING COVE IN A SOUTHERLY DIRECTION 25 FEET MORE OR LESS

Add release of Dower, Curtesy or other Spousal Rights, if applicable: (CONTINUED ON ATTACHMENT)

REVIEWED SDAT
17 4-4-01
BY DATE

TO HAVE AND TO HOLD the above described property unto the Second Party, and the Second Party's executors, administrators, successors and assigns forever.

It is understood that this conveyance is made without covenants or warranties of any kind, either express or implied.

IN WITNESS WHEREOF, the First Party has signed and sealed this Quitclaim Deed on the day and year first above written.

Witnesses:

M. E. Evans — Mary Elizabeth Sheely (L.S.)

_____ (L.S.)

REDIFORM. 10298
© Copyright Rediform 1993-2

STATE OF Maryland)
SS:
COUNTY OF Harford)

On April 3 2001 before me Charlotte M Canapp CRM/BA
(date) (name and title of officer taking Acknowledgement)
Notary, personally appeared MARY ELIZABETH Sheely

(name(s) of person(s) signing instrument)

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Charlotte M Canapp
Signature 4-1-2002

This is to certify that the within instrument was prepared by one of the undersigned parties named in the within instrument.

Signed Ann Janet Schuman
ANN JANET SCHUMAN

Read the instructions and other important information on the package. When using this form you will be acting as your own attorney since Rediform, its advisors and retailers do not render legal advice or services. Rediform, its advisors and retailers assume no liability for loss or damage resulting from the use of this form.

REDIFORM. 10298

QUITCLAIM DEED

Dated:

TO THE NORTHERN OUTLINE OF LOT 199 AND TO THE SOUTH SIDE OF SAID ROAD OR RIGHT OF WAY, THENCE RUNNING AND BINDING ON THE NORTHERN OUTLINE OF LOT 199 AND ON THE SOUTH SIDE OF SAID ROAD OR RIGHT OF WAY IN A WESTERLY DIRECTION 40 FEET MORE OR LESS TO THE EAST SIDE OF COLD SPRING ROAD, AND THENCE RUNNING AND BINDING ON THE EAST SIDE OF COLD SPRING ROAD NORTH 30 DEGREES 09 MINUTES WEST 25.50 FEET MORE OR LESS TO THE PLACE OF BEGINNING. CONTAINING 900 SQUARE FEET MORE OR LESS.

BEING A PART OF THE LAND ABANDONED BY THE LOCAL REALTY COMPANIES WHO AFTER DISPOSING OF ALL BUILDING LOTS IN LONG BEACH ESTATES VESTED THE EASEMENTS IN THE LONG BEACH IMPROVEMENT ASSOCIATION.

BEING ALSO PART OF THE LAND CONVEYED UNTO BOWLEY'S QUARTERS IMPROVEMENT ASSOCIATION, INC. BY DEED OF ROBERT M. THOMAS, TRUSTEE, DATED SEPTEMBER 4, 1962 AND RECORDED AMONG THE LAND RECORDS OF BALTIMORE COUNTY, IN LIBER RRG 4249, FOLIO 367 AND BY THE MERGER AND ASSIMILATION OF THE LONG BEACH IMPROVEMENT ASSOCIATION ON OCTOBER 11, 1984, WHEREBY THE BOWLEY'S QUARTERS IMPROVEMENT ASSOCIATION ASSUMED THE LIABILITIES, ASSETS AND RECORDS OF THE LONG BEACH IMPROVEMENT ASSOCIATION.

BEING ALSO PART OF THE LAND CONVEYED UNTO BOWLEY'S QUARTERS IMPROVEMENT ASSOCIATION, INC. BY DEED OF BOWLEY'S QUARTERS IMPROVEMENT ASSOCIATION, INC., GRANTOR, DATED SEPTEMBER 4, 1990 AND RECORDED AMONG THE LAND RECORDS OF BALTIMORE COUNTY, IN LIBER 8587, FOLIO 849.

THIS DEED MADE THIS 20 JULY 1992 BY AND BETWEEN BOWLEY'S QUARTERS IMPV'T. ASSN. A/BODY CORPORATE, STATE (over.

OF MARYLAND, OF THE FIRST PART, AND
MARY ELIZABETH SHEELY OF BALTIMORE
COUNTY, STATE OF MARYLAND, OF THE
SECOND PART.

00015098 372

ATTACHMENT 2.

TO HAVE AND TO HOLD THE SAID LOT OR PARCEL OF LAND ABOVE DESCRIBED AND MENTIONED AND HEREBY INTENDED TO BE CONVEYED; TOGETHER WITH RIGHTS, AND PRIVILEGES, APPURTENANCES AND ADVANTAGES THERETO BELONGING OR APPURTAINING UNTO AND TO THE PROPER USE AND BENEFIT AND JUNE SCHUMAN, ~~AS TENANTS BY THE ENTIRETIES~~ A.I.S., THEIR ASSIGNS, AND UNTO THE SURVIVOR OF THEM, HIS OR HER PERSONAL REPRESENTATIVES AND ASSIGNS, IN FEE SIMPLE.

00015098 373

0017471 328

DEED – FEE SIMPLE –
NO CONSIDERATION
NO TITLE SEARCH

This Deed, Made This 14th day of JANUARY in the year two thousand and three, by and between Ann June Schuman fka Ann June Kratzer and Janice Ann Oberst, parties of the first part and Janice Ann Oberst, party of the second part.

WITNESSETH, That in consideration of the sum of no dollars the said parties of the first part, Ann June Schuman fka Ann June Kratzer and Janice Ann Oberst do grant and convey all of the following described property unto the party of the second part, Janice Ann Oberst, in fee simple, all that lot of ground situated in Baltimore County, Maryland and described as follows, that is to say:

BEING KNOWN AND DESIGNATED as Lot No. 304, Plat of Long Beach Estates 97.59' by 102', fronts on the East side of Cold Spring Avenue, corner of a 25' road; which Plat is on file in the office of the Clerk of the Circuit Court for Baltimore County, Plat Book W.P.C. No. 4, folio 131, in the fifteenth election district of Baltimore County.

BEING the same lot of ground which by deed dated February 15, 1994, and recorded among the Land Records of Baltimore County in Liber 10436, folio 530 was granted and conveyed by Ann June Kratzer unto Ann June Kratzer and Janice Ann Oberst, the within grantors. The said Ann June Kratzer now known as Ann June Schuman for reason of her remarriage.

BEGINNING for the same at the corners formed by the intersect of the east side of Cold spring Road with the north side of a 25 foot road or Right of Way, as laid out and shown on the plat entitled Plan "C" Long Beach Estates, said plat being recorded among the Land Records Of Baltimore County in Plat Book 4 folio 131; thence leaving Cold spring Road and binding on the north side of said road or Right Of Way in an easterly direction 50 feet more or less to the waters of Cold spring Cove, thence binding on the waters of Cold Spring Cove in a southerly direction 25 feet more or less to the northern outline of Lot 199 and to the south side of said road or right Of Way, thence running and binding on the northern outline of Lot 199 and on the south side of said road or Right of Way in a westerly direction 40 feet more or less to the east side of Cold spring Road, and thence running and binding on the east side of Cold Spring Road North 30 degrees 09 Minutes West 25.50 feet more or less to the place of beginning.

BEING the same lot of ground which by deed dated April 3, 2001 and recorded among the Land Records Of Baltimore County in Liber 15098, folio 369, was granted and conveyed by Mary Elizabeth Sheely unto Ann June Schuman, the within grantor.

TOGETHER with the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belongings, or in anywise appertaining.

TO HAVE AND TO HOLD the said described lot of ground and premises to the said Janice Ann Oberst.

AND the said parties of the first part hereby covenants that they have not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed:

that they will warrant specially the property hereby granted: and that they will execute such further assurances of the same as may be requisite.

WITNESS the hand and seal of said grantor

Test:

Ann June Schuman (SEAL)
Ann June Schuman, fka Ann June Kratzer

Janice Ann Oberst (SEAL)
Janice Ann Oberst

STATE OF MARYLAND, County of Baltimore, to wit:

I HEREBY CERTIFY, That on this 31 day of January in the year two thousand and three, before me, the subscriber, a Notary Public of the State of Maryland, personally appeared Ann June Schuman, fka Anne June Kratzer, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within

instrument, who signed the same in my presence and acknowledged that he/she executed the same for the purposes therein contained, and in the capacity therein stated.

IN WITNESS WHEREOF, I here unto set my hand and official seal.

T.P. Knepp
Notary Public

My Commission expires:

7-1-04

STATE OF MARYLAND, County of Baltimore, to wit:

I HEREBY CERTIFY, That on this 14th day of January in the year two thousand and three, before me, the subscriber, a Notary Public of the State of Maryland, personally appeared Janice Ann Oberst, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, who signed the same in my presence and acknowledged that he/she executed the same for the purposes therein contained, and in the capacity therein stated.

IN WITNESS WHEREOF, I here unto set my hand and official seal.

Notary Public

My Commission expires:

9-1-5

This is to certify that the within instrument has been prepared by the undersigned Maryland attorney.

T.P Knepp
Timothy P. Knepp

0104b.550

FEE SIMPLE DEED—INDIVIDUAL GRANTOR AND GRANTEE

This Deed, made this 15th day of Feb. , 1994 , by and between Ann June Kratzer, of Baltimore County, Maryland

party of the first part, and Ann June Kratzer and Janice Ann Oberst,

her daughter

parties of the second part:

Witnesseth, that in consideration of Five dollars the said party of the first part does grant and convey unto Ann June Kratzer and Janice Ann ~~Kratzer~~ Oberst, as joint tenants, not tenants in common

parties of the second part, their heirs, personal representatives and assigns, in fee simple all that piece or parcel of land situate, lying and being in Baltimore County, State of Maryland, described as follows to wit:

Being known and designated as Lot No 304 as shown on the Plat of Long Beach Estates, recorded in Plat Records of Baltimore County Plat Book WPC No 4, folio 131, in the fifteenth Election District of Baltimore County..

Being the same lot of ground described in Quit Claim Deed dated April 4, 1960, recorded Liber 3817, Page 567; and in Tax Deed dated February 9, 1961, recorded in Liber 3817, Page 569. John L. Kratzer died Janaury 30, 1993.

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE

SIGNATURE JE DATE 3-31-94

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Baltimore County

By JE Date 3-31-94

And the said party of the first part covenant that she will warrant specially the property hereby conveyed;

and that she will execute such further assurances of said land as may be requisite.

Witness hand and seal .

TEST:

James O'C Gentry

Ann June Kratzer [SEAL]

[SEAL]

STATE OF Maryland
COUNTY OF Baltimore } To Wit:

On this 15th day of Feb , 19 94 , **before me,** a Notary Public

the undersigned officer, personally appeared Ann June Kratzer

known to me (or satisfactorily proven) to be the person whose name subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained, and in my presence signed and sealed the same.

In Witness Whereof, I hereunto set my hand and official seal.

Notary Public

My commission expires:

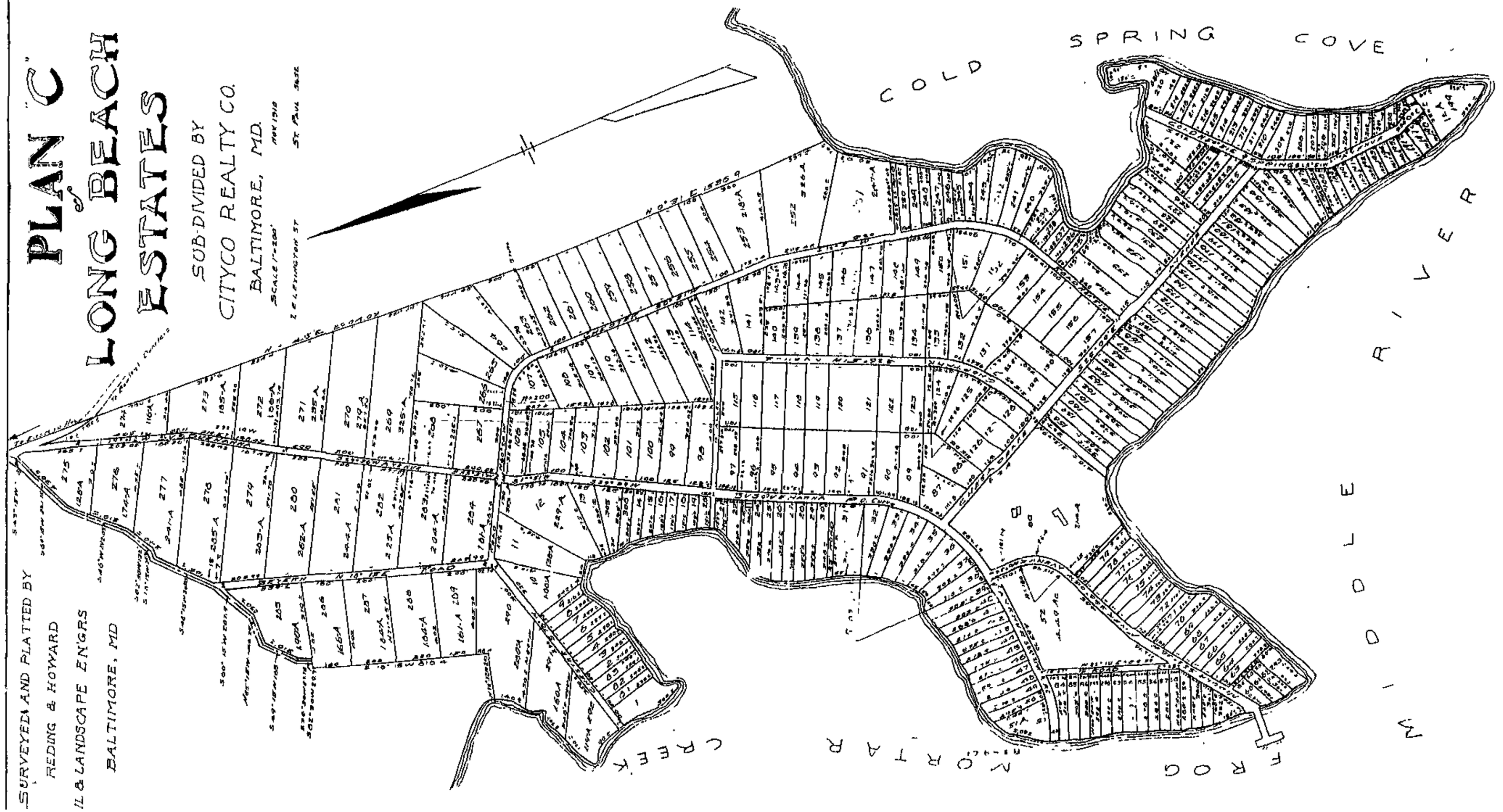
DARLENE J. HASTINGS
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires December 27, 1997

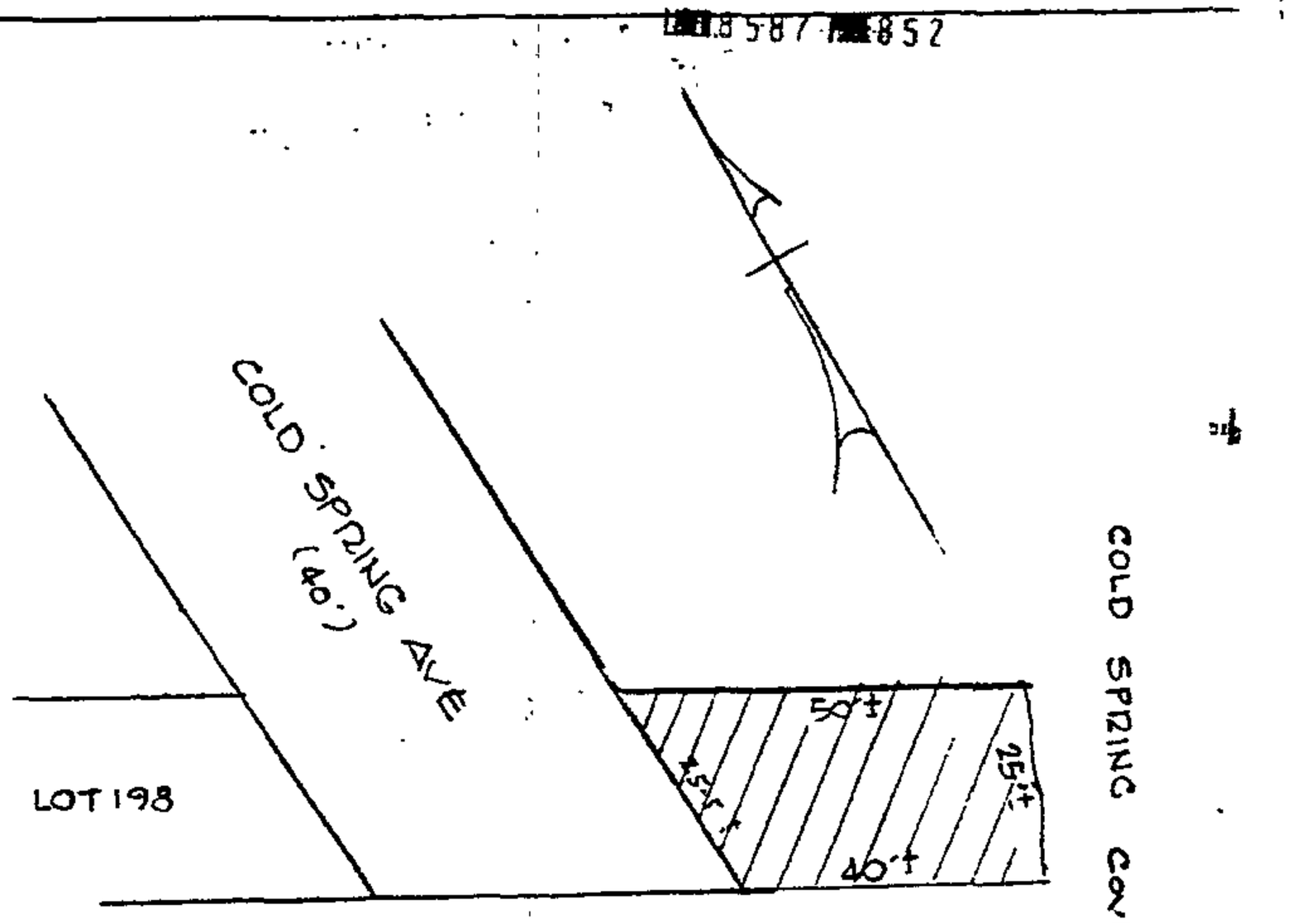
THIS IS TO CERTIFY that the within instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

PLAN "C"
of
LONG BEACH
ESTATES

SUB-DIVIDED BY
CITYCO REALTY CO.
BALTIMORE, MD.
SCALE 1"=200' MAY 1918

SURVEYED AND PLATTED BY
READING & HOWARD
CIVIL & LANDSCAPE ENGRS
BALTIMORE, MD





25 FOOT ROAD
PLAN "C"
LONG BEACH ESTATES
PLAT BOOK 4-131
15TH DISTRICT BALTIMORE CO., MARYLAND
SCALE 1" = 20'
DATE 8-10-90

STATE OF MARYLAND
FRANK S. LEE
No. 11
REGISTERED
PROPERTY LINE SURVEYOR

MicBar Co., Inc.

Deed

Lot 304
4/131

S.M.

D. 9-4-60

R. 3-10-61

S.M. 15098-371

D.

R.

John L. Kratzer
Ann June Kratzer

Ann June Kratzer

Deed

Lot 304
4/131

S.M. 10436-536

D. 2-15-94

R. 3-31-94

F/S

Ann June Kratzer
Janice Ann Oberst (J/T)

Mary Elizabeth Sheely (Jan Oberst sister daughter of Anne Schuman)

Deed - Quitclaim

M+B
900 sq. ft.

S.M. 15098-369

D. 4-3-01

R. 4-5-01

Ann June Schuman

Ann June Schuman fka Ann June Kratzer
Janice Ann Oberst

1st
Lot 304
Long Beach Estates
4/131
2nd M+B

Deed

S.M. 17471-328

D. 1-14-03

R. 1-31-03

F/S

Janice Ann Oberst

Zoning Commissioner
Baltimore County Office of Zoning
401 Bosley Avenue
Towson, Maryland 21204
Att: Lawrence E. Schmidt

Dear Mr. Schmidt:

As an adjacent homeowner living on Coldspring Road in Bowleys Quarters, Baltimore, Maryland, 21220, we have met with Dr. Harlan and Amanda Zinn regarding their desire to construct a residence on lot 304 - 809 Coldspring Road.

We are aware of the fact that the property would require a number of variances to permit construction. We feel their proposed building footprint is consistent with our neighboring properties relative to property line and building set backs and is an undersized lot of record for building purposes. The turn-around area which abuts 809 Coldspring Road is part of the County's 40 foot right-of-way, is unique to this property, and provides benefits to all adjacent neighbors. This family should not be penalized in their desire to build on the property due to the right-of-way used by us as neighbors.

It is our further understanding that the Zinns will satisfy the appropriate environmental regulations pertaining to development of the site in Baltimore County, including their plans to install extensive native plants and trees.

Therefore, we wish to go on record as having no objection to the plans of the Zinns to construct a residence at this location.

Sincerely yours,

Ernestine I Sisson
813 Coldspring Rd
820 Coldspring Rd
410-335-4296

Zoning Commissioner
Baltimore County Office of Zoning
401 Bosley Avenue
Towson, Maryland 21204
Att: Lawrence E. Schmidt

Dear Mr. Schmidt:

As an adjacent homeowner living on Coldspring Road in Bowleys Quarters, Baltimore, Maryland, 21220, we have met with Dr. Harlan and Amanda Zinn regarding their desire to construct a residence on lot 304 - 809 Coldspring Road.

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Therefore, we wish to go on record as having no objection to the plans of the Zinns to construct a residence at this location.

Sincerely yours,

Mike Trabing
MIKE TRABING
815 COLDSPRING RD
BALTO, MD, 21220
410-335-1306

Zoning Commissioner
Baltimore County Office of Zoning
401 Bosley Avenue
Towson, Maryland 21204
Att: Lawrence E. Schmidt

Dear Mr. Schmidt:

As an adjacent homeowner living on Coldspring Road in Bowleys Quarters, Baltimore, Maryland, 21220, we have met with Dr. Harlan and Amanda Zinn regarding their desire to construct a residence on lot 304 - 809 Coldspring Road.

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It is our further understanding that the Zinns will satisfy the appropriate environmental regulations pertaining to development of the site in Baltimore County, including their plans to install extensive native plants and trees.

Therefore, we wish to go on record as having no objection to the plans of the Zinns to construct a residence at this location.

Sincerely yours,

Anne Jane Schuman 11/17/03

810 Coldspring Rd.

(410) 335-4302

January 8, 2004

Renee Henry – engineer, Sewage Design Division, Office of Public Works-410.887.3730

Ms. Henry reviewed the entire Long Beach Estates Subdivision and the actual property address (lot 304, or 809 Cold Spring Road) during the discussion with me. She indicated that "E-1 Grinder Pumps" were installed in properties on Cold Spring Road. In detail, "the sewage system designed for the street has excess capacity and would be able to accommodate and tie in any vacant lots, including lot 304". She further stated that "she would not anticipate any problem to do so."

Unfortunately, she cannot provide any official written statement at this point but would do so during the application process. There does additionally exist the option for the property owner to either use the current County contractor or contract independently for an experienced plumber to install the grinder pump.

Petition for Variance – Case # 04522A July 14, 2004

809-10 Coldspring Road - Rear of Property Setback Precendents

Precedent properties within the Bowley's Quarters community:

o 1326 Burke Avenue - 6' from asphalt road bed



o 1512 Burke Avenue - 7' from asphalt road bed



o 3505 Bay Drive - 4' from asphalt road bed



o 3825 Bay Drive - 4' from asphalt road bed



Other "T" turn-arounds (turn in, back-up and go back out) within Bowleys Quarters that occur at dead-end streets per discussions with Baltimore County departments responsible for maintenance.

- 3431 Choptank Road (housing significantly set back from turn-around



9 1028 Chester Road (housing significantly set back from turn-around)



RE: PETITION FOR VARIANCE
809 Cold Spring Road; E/side of Cold Spring Road, 640' +/- S of Chesapeake Avenue
15th Election 7 6th Councilmanic Districts
Legal Owner(s):Janice Oberst
Contract Purchaser(s): Dr Harlan and Amanda C. Zinn
Petitioner(s)

* BEFORE THE
* ZONING COMMISSIONER
* FOR
* BALTIMORE COUNTY
* 04-522-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
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of June, 2004, a copy of the foregoing Entry of Appearance was mailed to, J. Scott Dallas, P.O. Box 26, 13523 Long Green Pike, Baldwin, MD 21013, Representative for Petitioner(s).

Peter Max Zimmerman
PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

ATTN: Dr. ZINN

CERTIFICATE OF POSTING

Date: JUNE 30, 2004

Attention: Kristen Matthews

RE: Case Number: 04-522-A

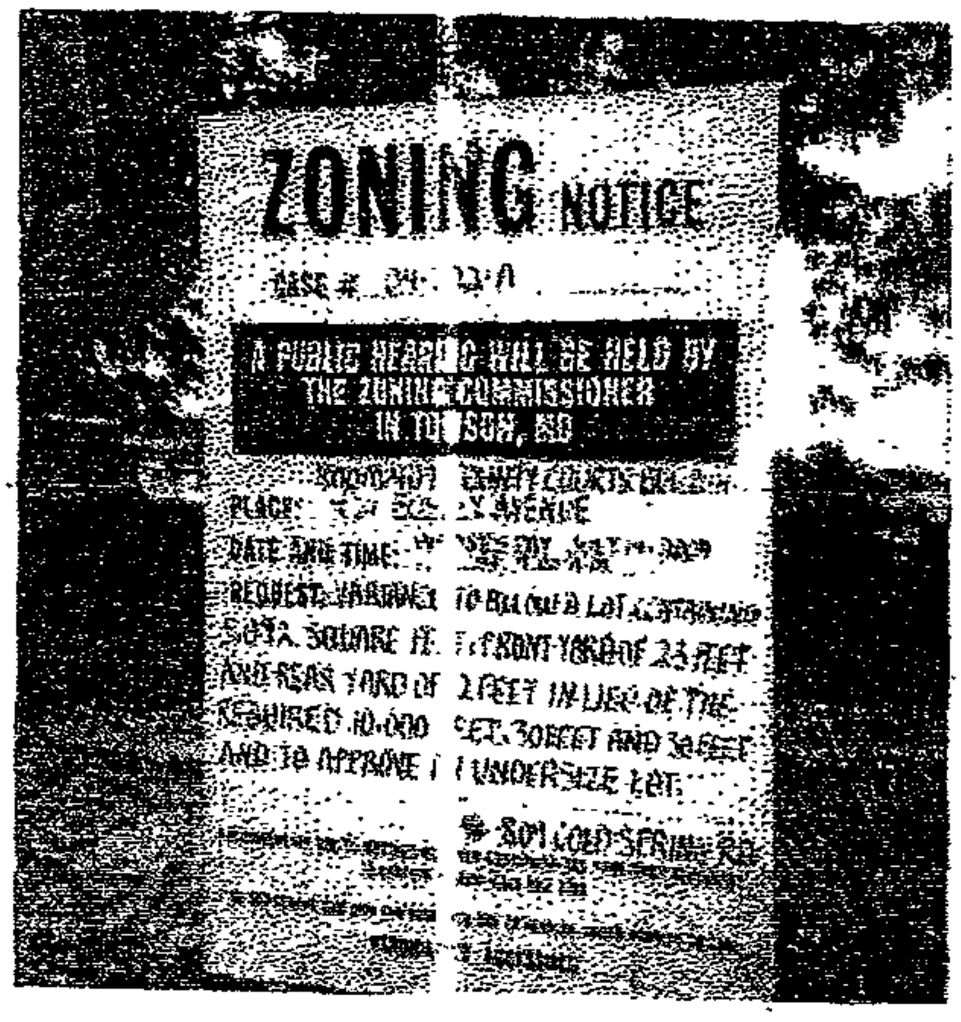
Petitioner/Developer: JANICE OBERST / DR. HARLAN ZINN, J.S DALLAS

Date of Hearing/Closing: JULY 14, 2004

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at 809 COLD SPRING ROAD

The sign(s) were posted on JUNE 25, 2004.
(Month, Day, Year)

Linda O'Keefe
(Signature of Sign Poster)



LINDA O'KEEFE
(Printed Name of Sign Poster)

523 PENNY LANE
(Street Address of Sign Poster)

HUNT VALLEY MD 21030
(City, State, Zip Code of Sign Poster)

410-666-5366
(Telephone Number of Sign Poster)

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: #04-522-A
809 Cold Spring Road
E/side of Cold Spring Road, 640 feet +/- s/of Chesapeake Avenue
15th Election District - 6th Councilmanic District
Legal Owner(s): Janice Oberst

Variance: to allow a lot containing 5,092 square feet, front yard of 23 feet and rear yard of 2 feet in lieu of the required 10,000 square feet, 30 feet, and 30 feet and to approve an undersize lot.

Hearing: Wednesday, July 14, 2004 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley 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.

10849

CERTIFICATE OF PUBLICATION

6/30/, 2004

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 6/29/, 2004.

- ☒ The Jeffersonian
- ☐ Arbutus Times
- ☐ Catonsville Times
- ☐ Towson Times
- ☐ Owings Mills Times
- ☐ NE Booster/Reporter
- ☐ North County News

S. Wilkinson

LEGAL ADVERTISING

BALTIMORE COUNTY
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT

NOTICE OF GRANTING OF VARIANCE

ADDRESS: 809 Cold Spring Road
LEGAL OWNER: Ms. Janice Oberst

The Baltimore County Department of Environmental Protection and Resource Management, pursuant to Section 26-445(c) of the Baltimore County Code, hereby gives notice that a variance from Section 26-449 of the Code, Chesapeake Bay Critical Area Requirements, will be granted for the purpose of constructing a single family dwelling within the 100 foot buffer to Galloway Creek/Middle River on the referenced property. Any person or persons, jointly or severally, or any taxpayer aggrieved or feeling aggrieved by this decision, may appeal to the Baltimore County Board of Appeals within forty-five (45) days from the date of this notice. Appeals must be made in writing, stating the reason for appeal, and must be mailed to Environmental Impact Review, Baltimore County Department of Environmental Protection and Resource Management, 401 Bosley Avenue, Suite 416, Towson, Maryland 21204. All appeals must be accompanied by a check for $75.00 payable to Baltimore County Government.

CERTIFICATE OF PUBLICATION

OFFICE OF

Dundalk Eagle

4 N. Center Place
P.O. Box 8936
Dundalk, MD 21222 June 17, 2004

THIS IS TO CERTIFY, that the annexed advertisement of Granting of Variance

was inserted in *The Dundalk Eagle* **a weekly newspaper published in Baltimore County, Maryland, once a week for** one ~~successive weeks~~ **before the** 18th **day of** June **2004 ; that is to say, the same was inserted in the issues of** June 17, 2004

Kimbel Publication, Inc.
per Publisher.

By _____

DRAFT #2

1" PIPE FD.
N 81°03'27" W 1.72'
FROM CORNER

5
1" PIPE FD.
(6" COVER)
HELD

EX. BROKEN MACADAM DRIVE

EX. CONCRETE BLOCK BULKHEA

MAG NAIL SET IN TOP
OF BULKHEAD

EX. WOOD BULKH

S 64°00'00" E 65.54'

S 30°03'00" E 126.1'

REBAR & CAP SET

3839.0113 SQ. FT.
0.0881 ACRES

PARCEL 304

COMPU
S 04°13'
36.8

EX. WOOD P

REBAR & CAP SET

N 88°51'00" E 50.00'

QUIT CLAIM DEED
15098/369
1253.0811 SQ. FT.
0.0288 ACRES

COMPU
S 30°35'
28.7

P.K. NAIL FD.
N 22°04'12" W
0.71'

MAG NAIL SET

45.73'

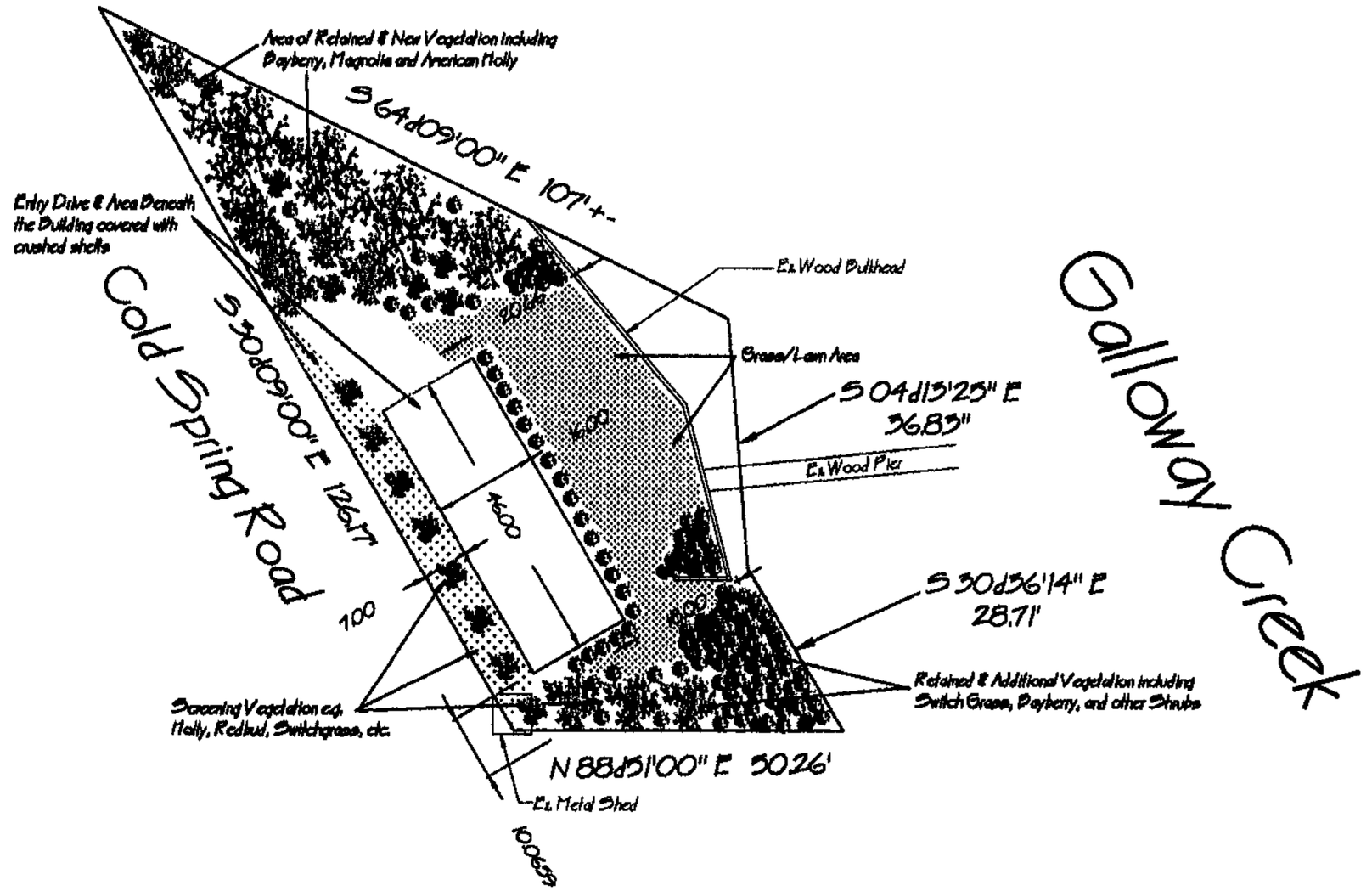
N 88°51'00" E 50.26'

REBAR & CAP SET

EXIST METAL SHED
ON PROPERTY CORNER

EXISTING BRICK DWELLING & GARAGE

Footprint – pea gravel w/ concrete piers (25% of total site)
Entire property to utilize approved ground cover & native trees (19)
Right of way to be landscaped with approved ground
covers & holly (6)



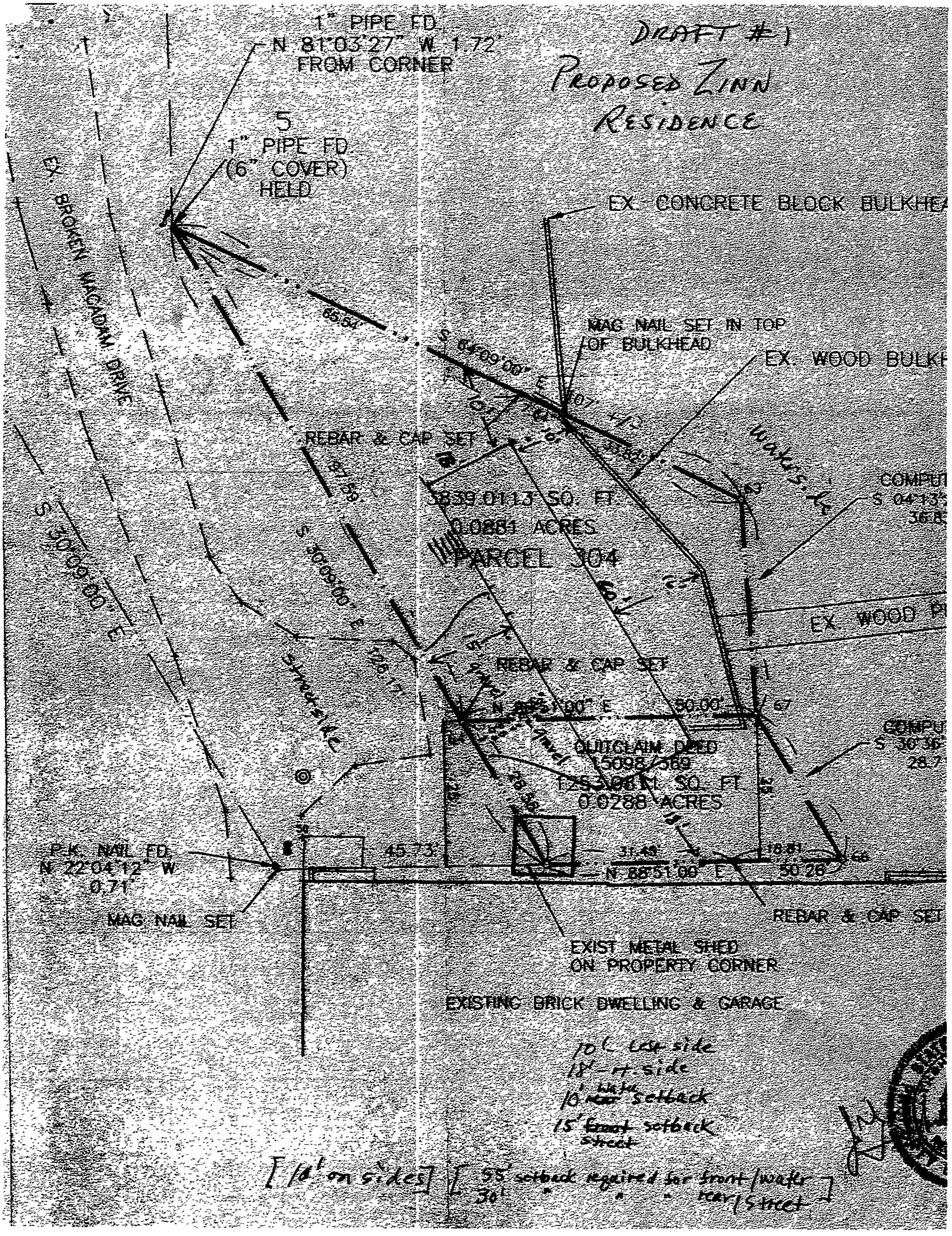
Site Plan with Existing & Proposed Landscaping

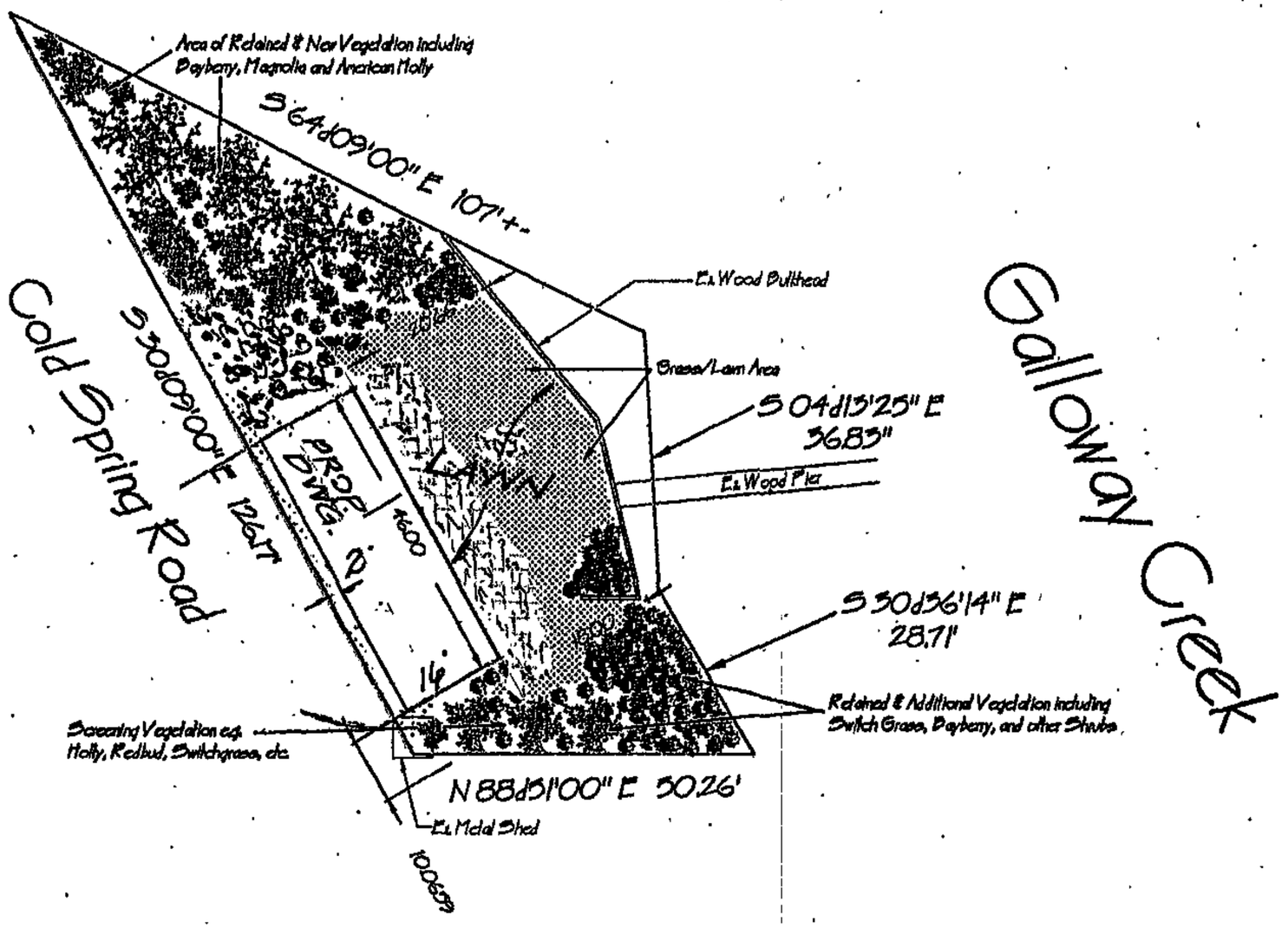
Proposed SFD for Harlan Zinn
309 Cold Spring Road
Baltimore, MAryland 21220

Scale:	1" = 30'
Drawing #	Z-04-1-1A
Date:	17 Jan 2004

DRAFT #1

Proposed Zinn Residence





Site Plan with Existing & Proposed Landscaping

ALTERNATIVE LAYOUT

Proposed SFD for Harlan Zinn
309 Cold Spring Road
Baltimore, MAryland 21220

Scale:	1" = 30'
Drawing #	Z-04-1-1A
Date:	17 Jan 2004

DENSITY RESIDENTIAL ZONES

Zoning Classification	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	30
D.R.5.5	6,000	55	25	10	--	30
D.R.10.5	3,000	20	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.

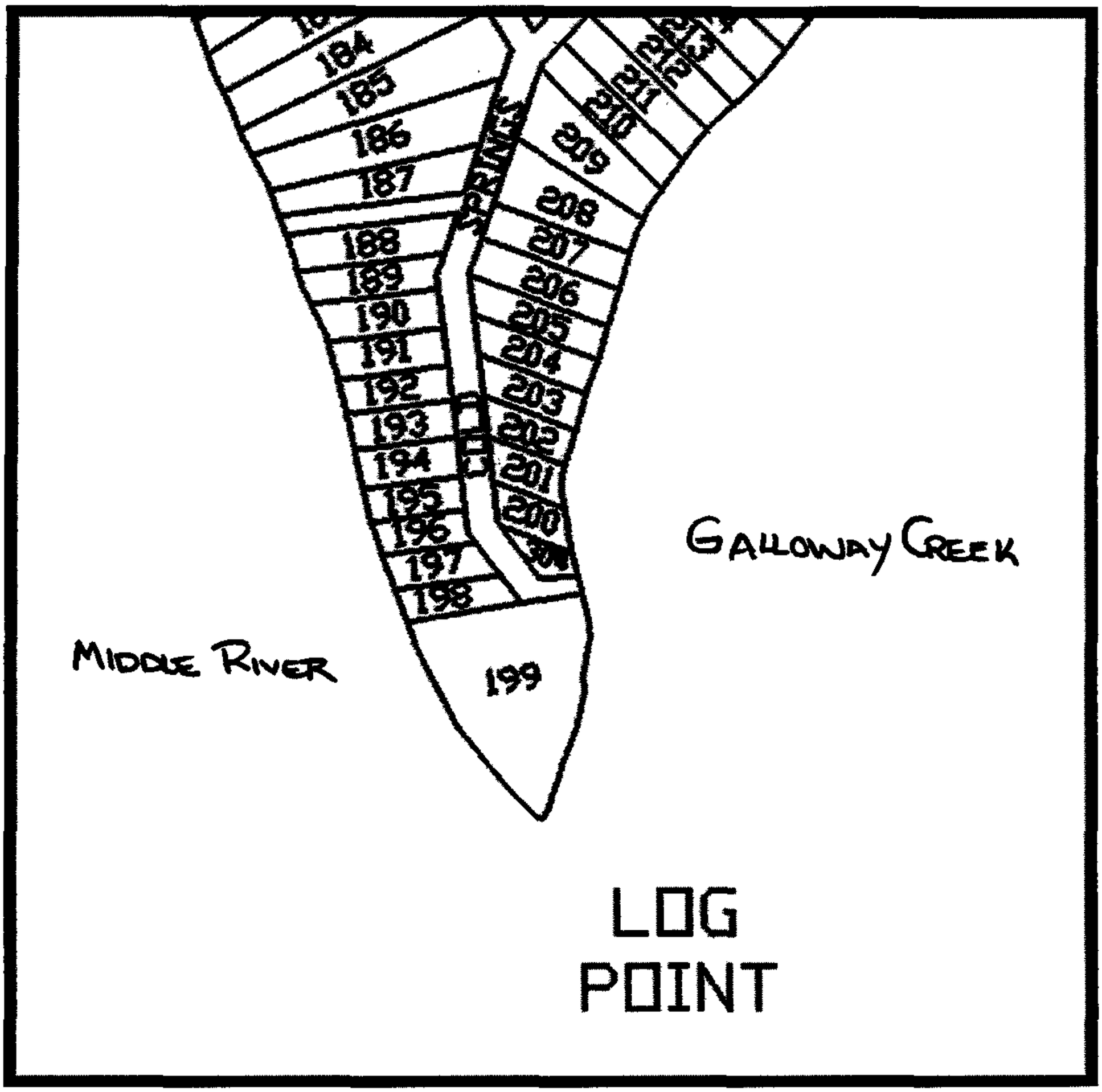
RESOURCE CONSERVATION ZONES

EXHIBIT 4

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

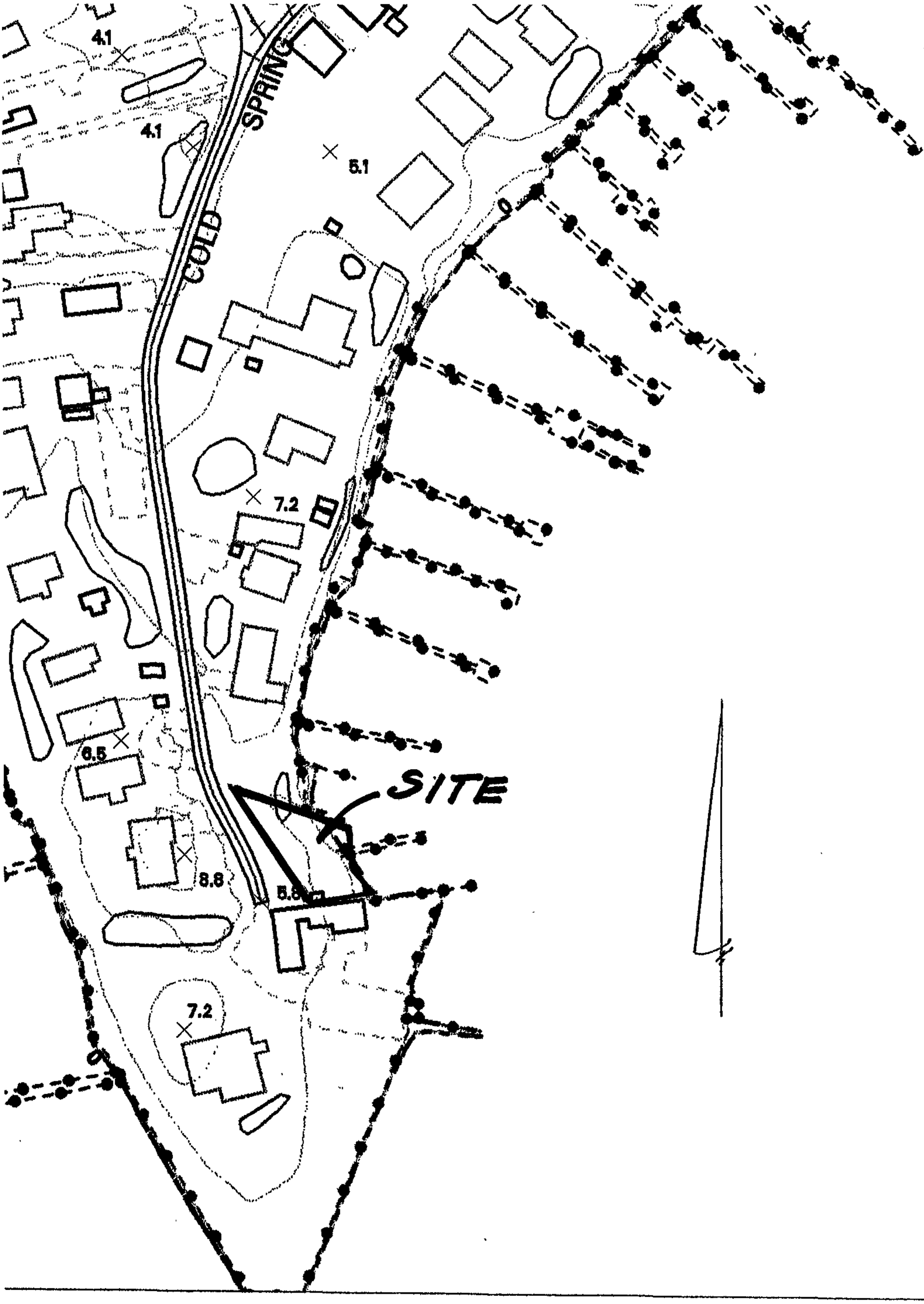
Go Back
View Map
New Search

District - 15**Account Number** - 1511770661



Property maps provided courtesy of the Maryland Department of Planning ©2001.
For more information on electronic mapping applications, visit the Maryland Department of Planning web site at www.mdp.state.md.us

no exhibit in this case
only reference



#809 COLD SPRING ROAD
TOPOGRAPHIC OVERLAY
TileID: 9861
1" = 100'

EX. DWLG. #816

8

9

EX DWLG. #817

10

EX DWLG #815

EX. DWLG. #814

7

EX. DWLG. #812

6

11

PROP. 3" PRESS. S.S. (PER B.C.B.E. 1999-1038 AS PREPARED BY HORNS. RITCHIE ASSOC.)

8" WATER (PER B.C.B.E. 6899)

EX DWLG. #813

SISSON
151519391660
4777-716
LOT 202
201
280

20±

EXIST CONC BULKHEAD

WOOD PIER (IN

EX. DWLG. #810

5

PROP CRUSHED SHELL

PROP 16'x46' DWG ON PILINGS OVER CRUSHED SHELL

IRON PIPE FOUND

S64°09'00"E 65.54

REBAR FOUND

GRAVEL EX DRIVE

NAIL IN BULKHEAD

7.6±

107±

WOOD

BAROFF
151502004760
8437-472
LOT 197
198

EX. DWLG #808

4

COLD SPRING AVENUE

EXIST PAVING

40'

97.59
S30°09'00"E
126.17

20±

SITE

PROP

33.82

S04°13'25"E
56.83

WOOD

68±

EX. MACADAM

N61°51'00"E 50.00

21

EX. MH.

EX. 18'

CONC PAD

WATER VALVES
IRON PIPE FOUND

CONC

10'

21.42

19.91

51.8

EXIST BRICK GARAGE

EX. SHED 26'

CONC BLD WALL (10'± H

P.K. NAIL FOUND
MAG. NAIL FOUND

"EX. GARAGE"

RIVER

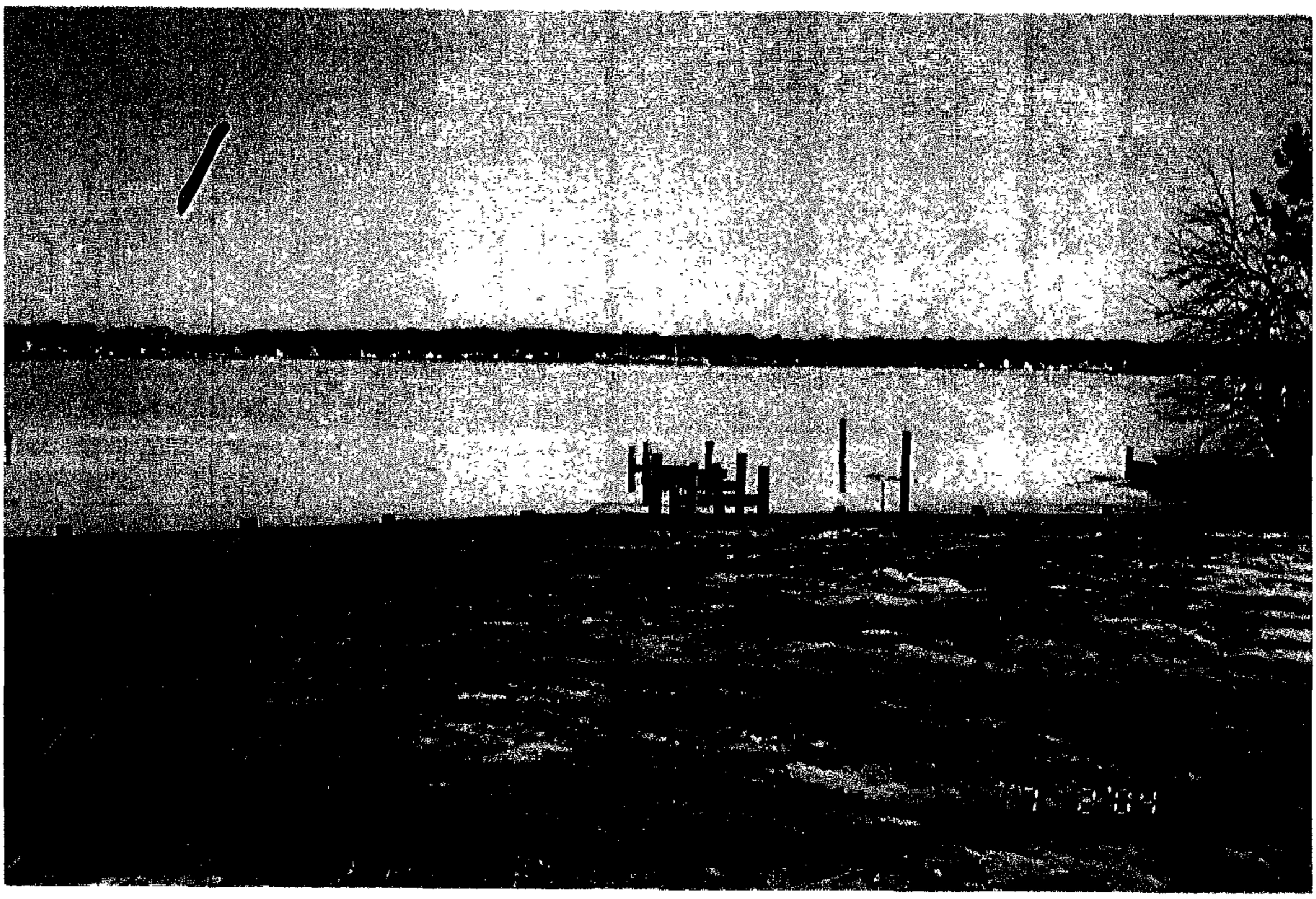
31

DANAN
151604001984
4522.608
LOT 199

EX. DWLG. #800

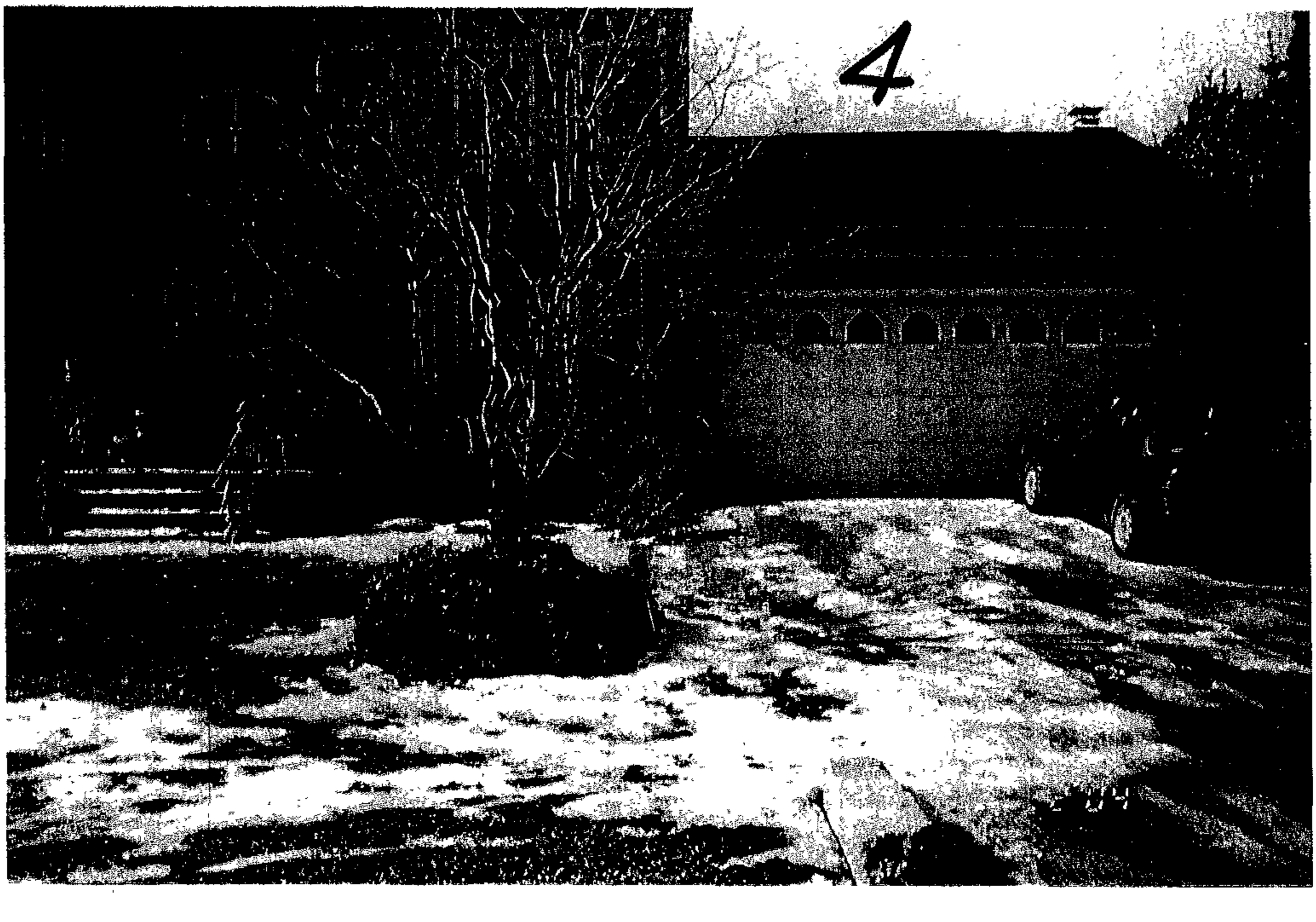
60'±

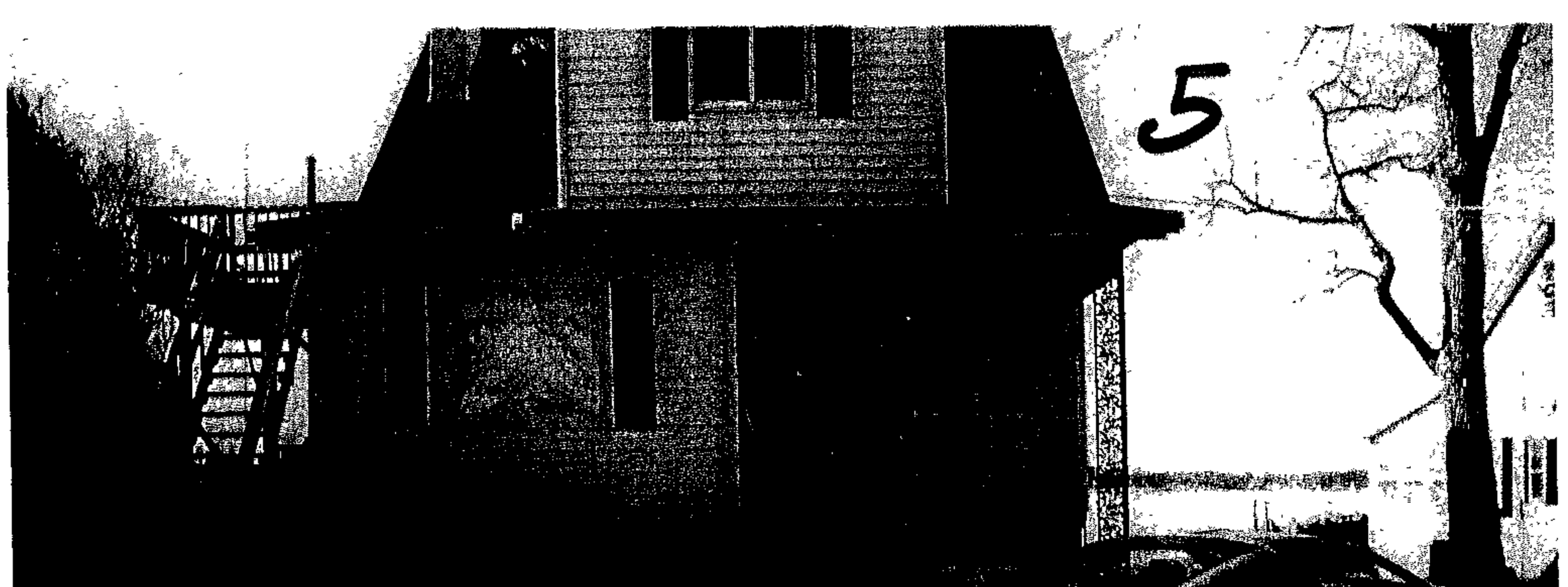
PHOTO KEY #809 COLD SPRING ROAD


1
2


2


3


4


5


6


7

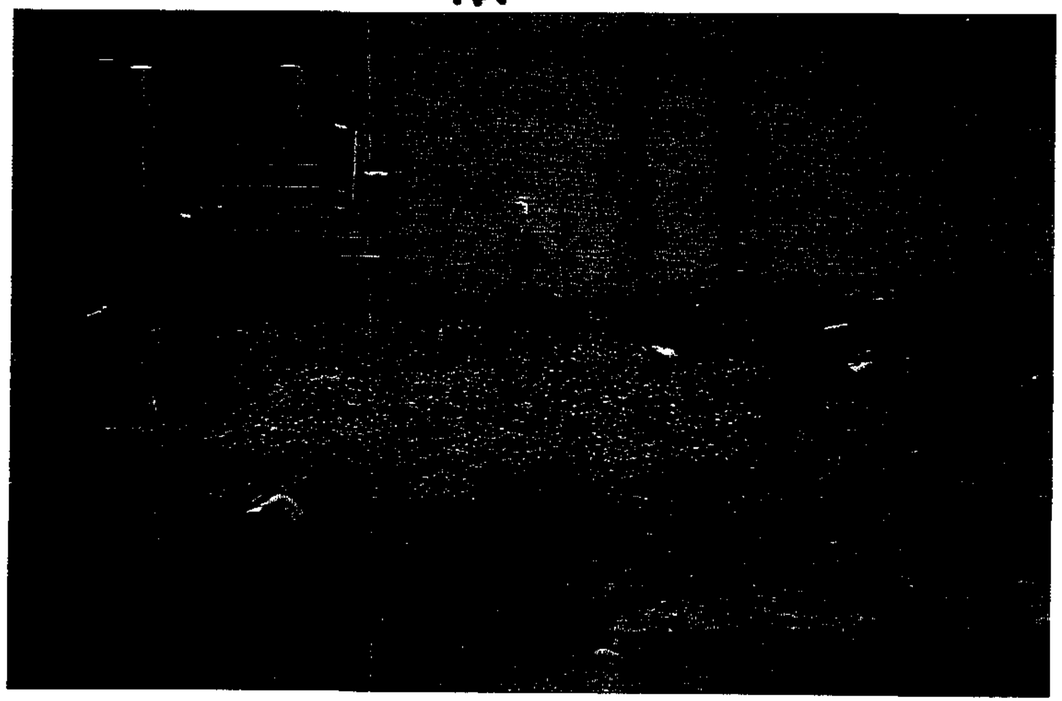

8


9

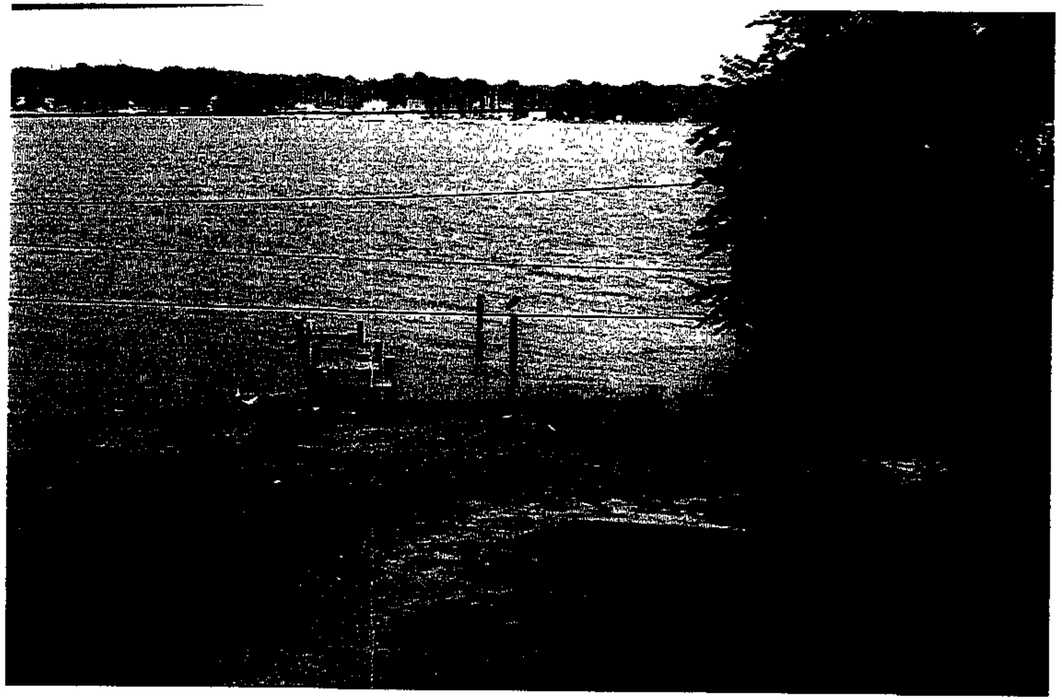

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11

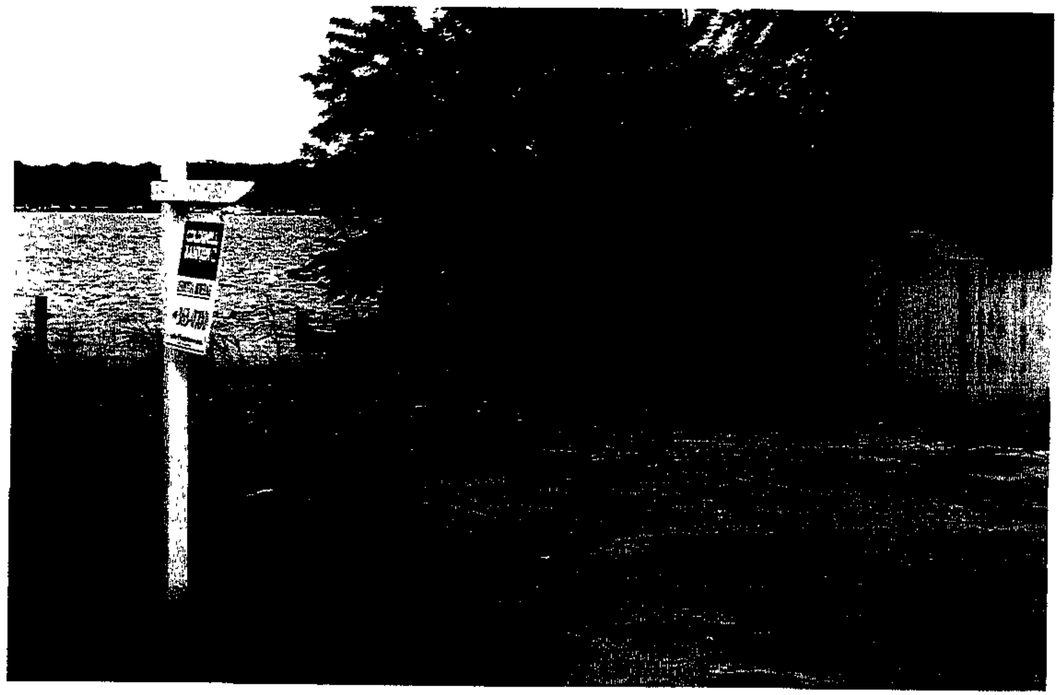
4A



4B



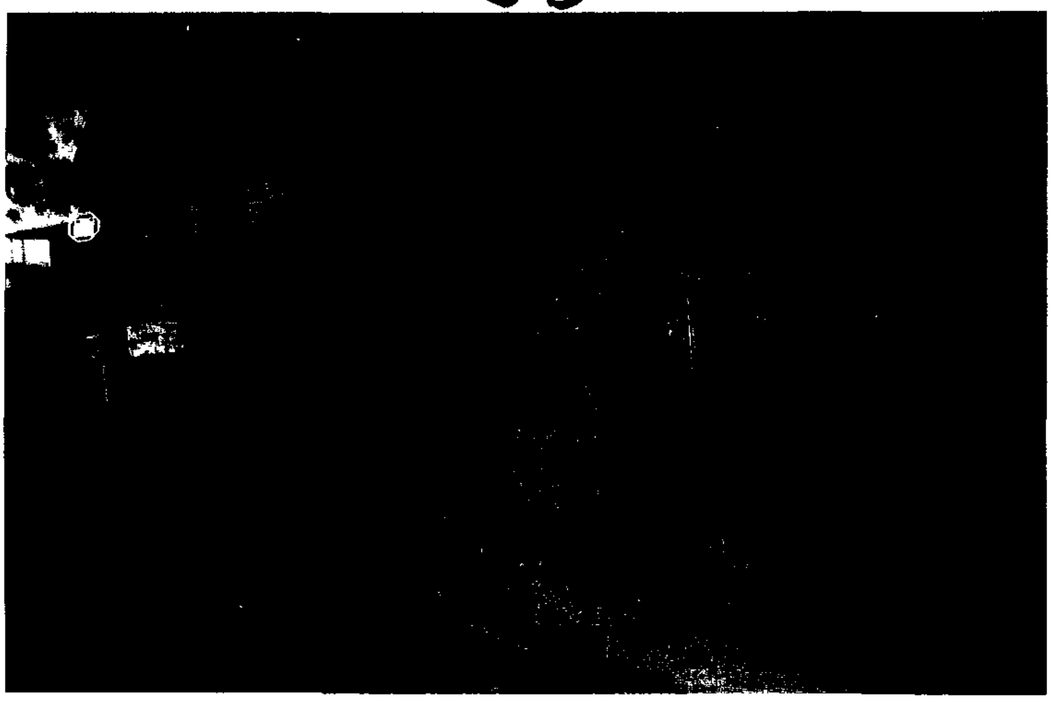
4C EXHIBIT 4



4D



5B



5A



5c

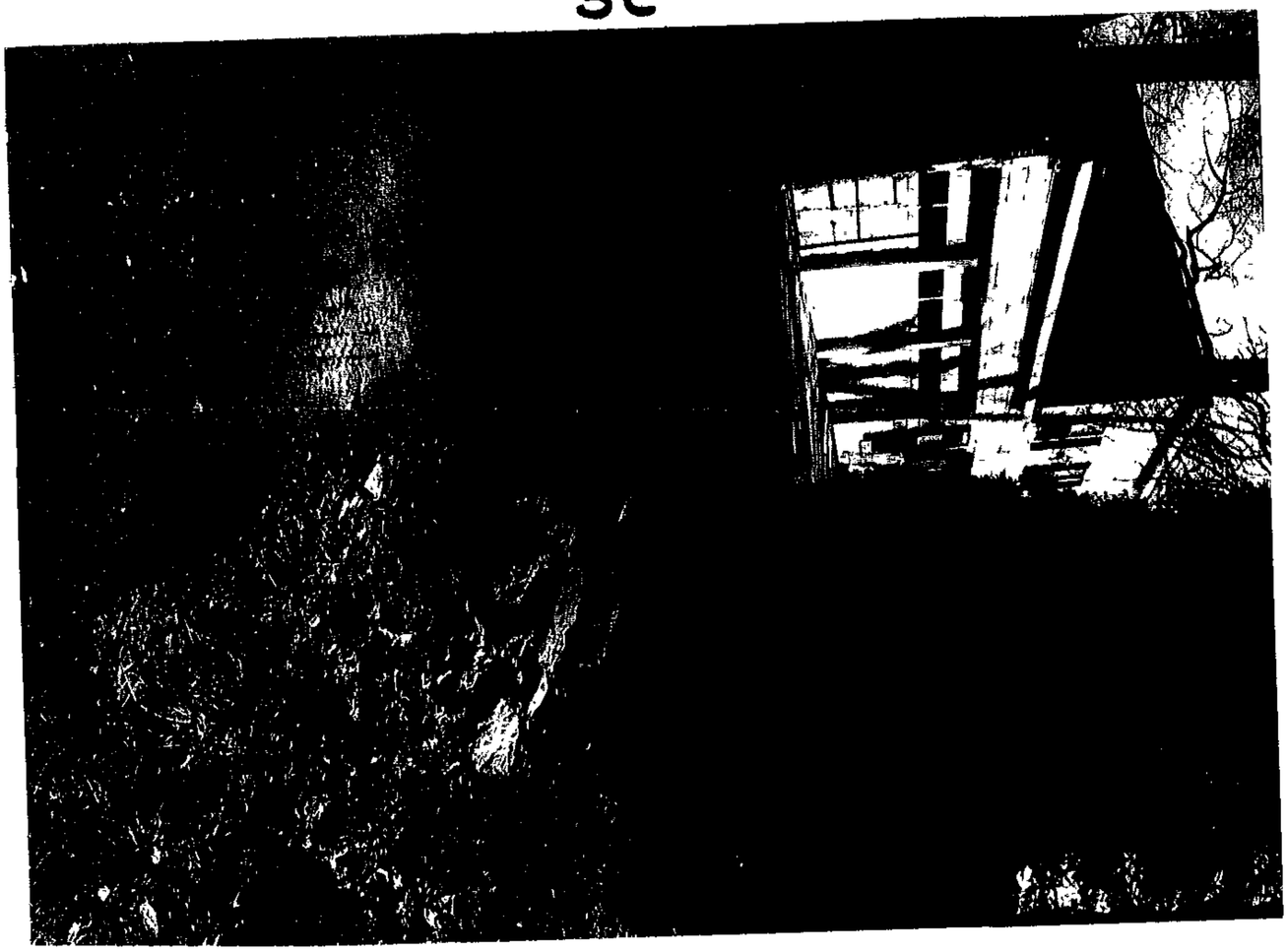
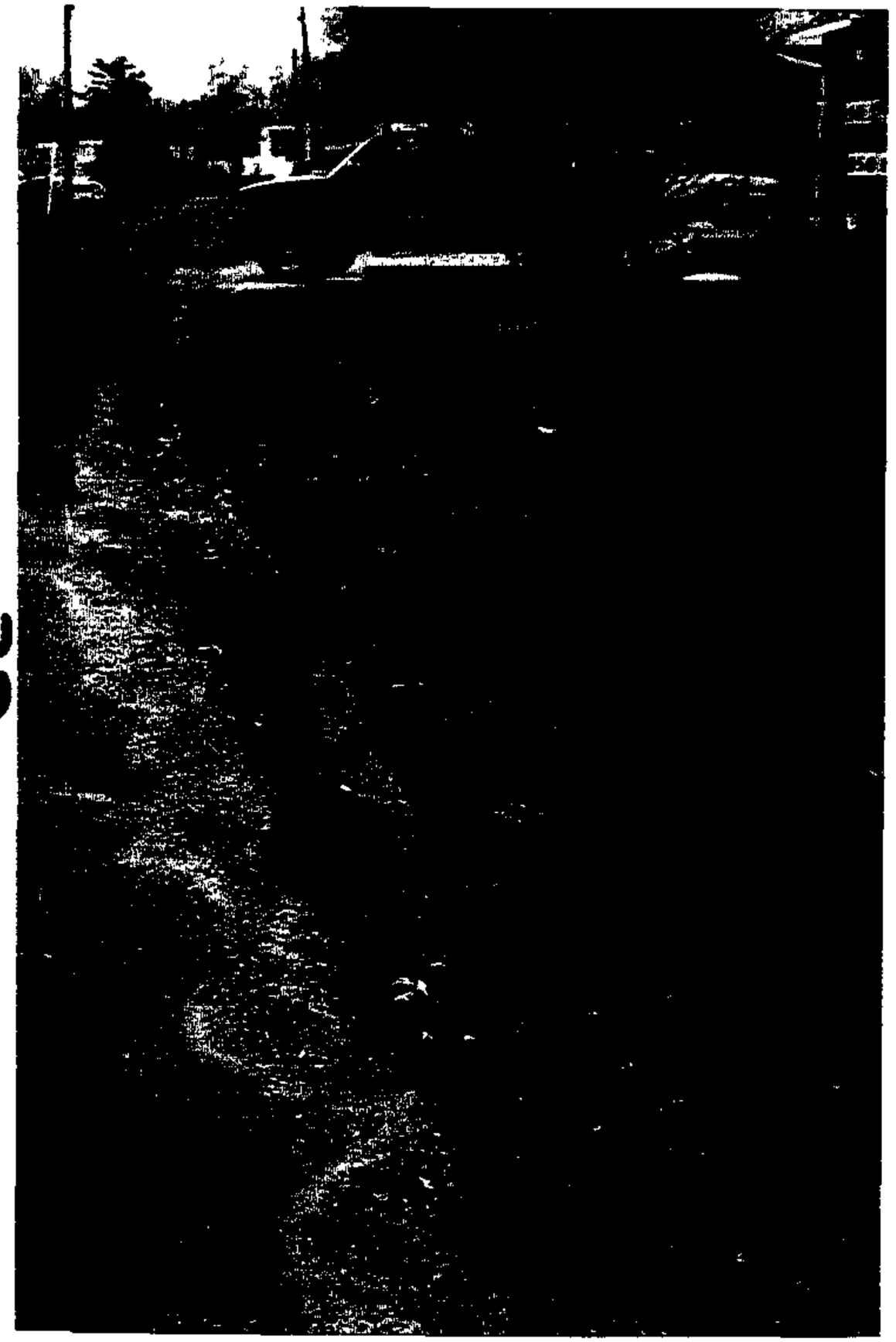
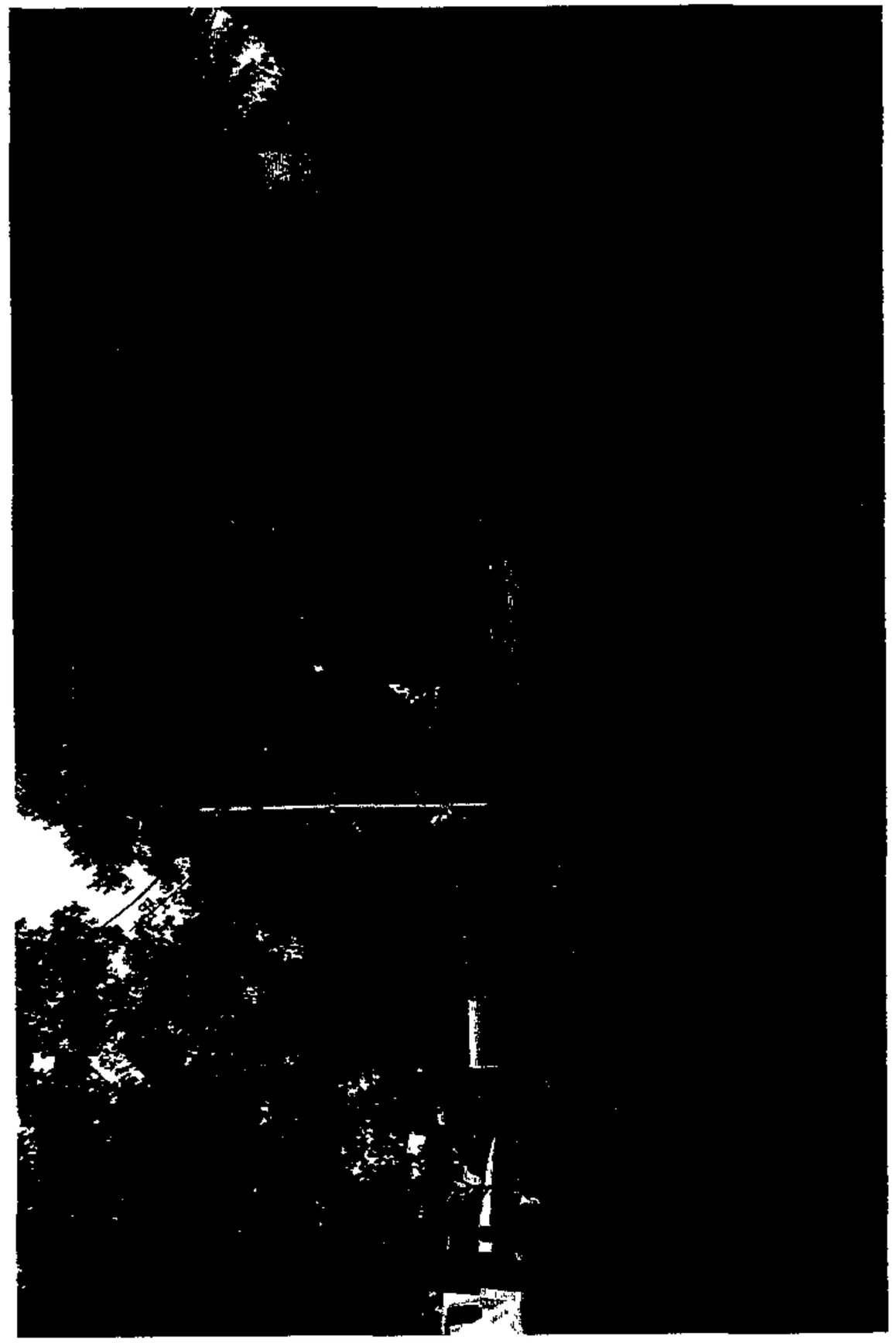


EXHIBIT 5

EXHIBIT 6



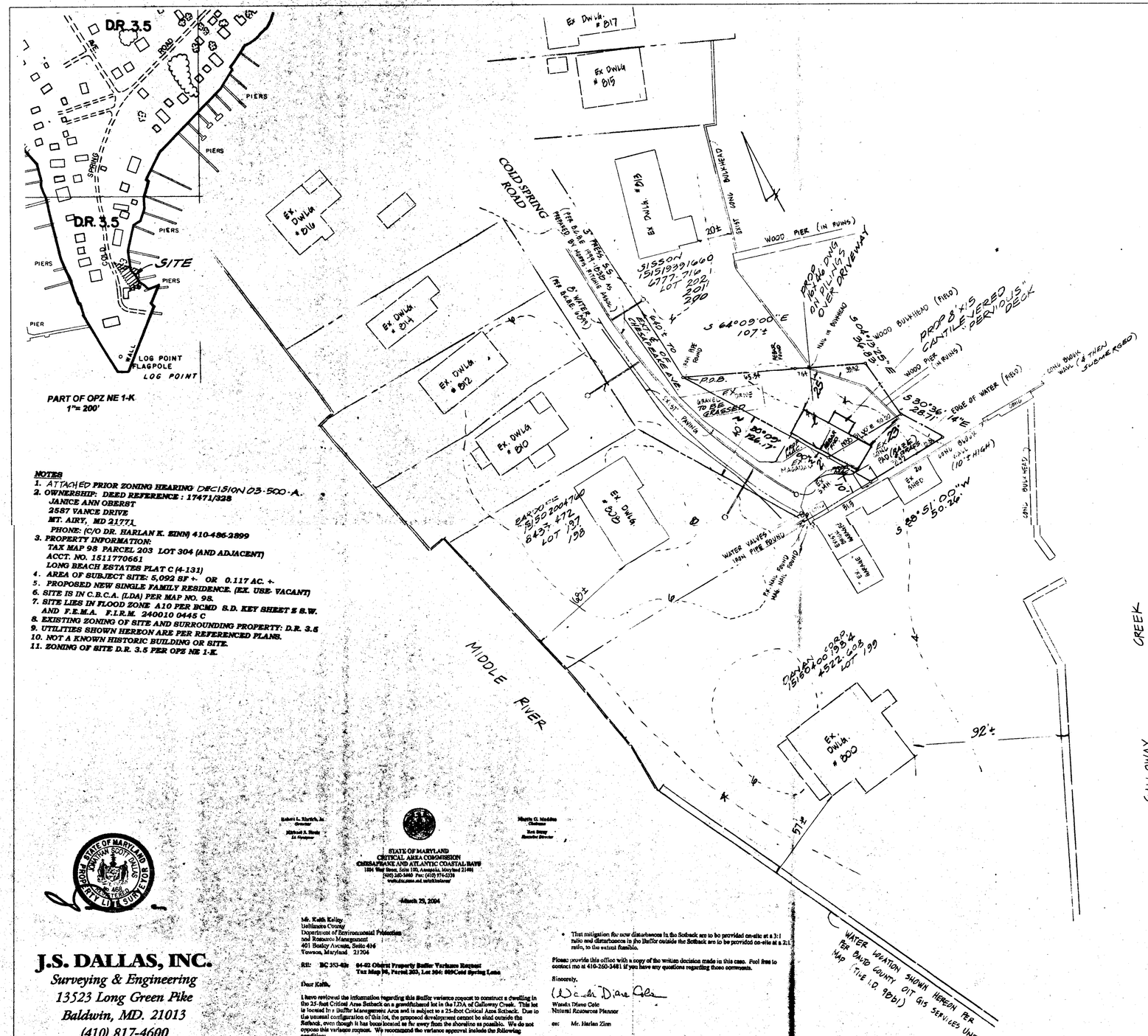
6C

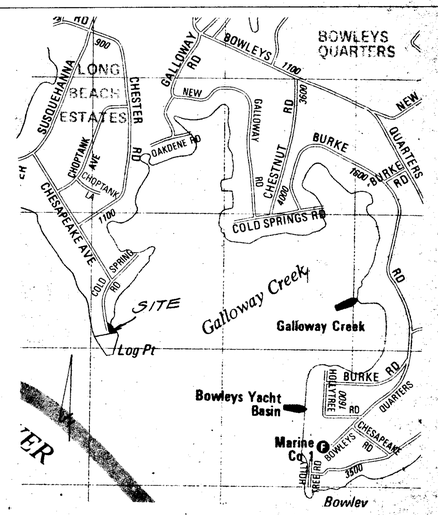


6B



6A





VICINITY MAP 1'=1000'

NOTES

1. ATTACHED PRIOR ZONING HEARING/ DECISION 03-500-A.
2. OWNERSHIP: DEED REFERENCE : 17471/328
   JANICE ANN OBERST
   2587 VANCE DRIVE
   MT. AIRY, MD 21771
   PHONE: (C/O DR. HARLAN K. ZINN) 410-486-2899
3. PROPERTY INFORMATION:
   TAX MAP 98 PARCEL 203 LOT 304 (AND ADJACENT)
   ACCT. NO. 1511770661
   LONG BEACH ESTATES PLAT C (4-131)
4. AREA OF SUBJECT SITE: 5,092 SF +- OR 0.117 AC. +-
5. PROPOSED NEW SINGLE FAMILY RESIDENCE. (EX. USE- VACANT)
6. SITE IS IN C.B.C.A. (LDA) PER MAP NO. 9B.
7. SITE LIES IN FLOOD ZONE A10 PER BCMD S.D. KEY SHEET S S.W. AND F.E.M.A. F.I.R.M. 240010 0445 C
8. EXISTING ZONING OF SITE AND SURROUNDING PROPERTY: D.R. 3.5
9. UTILITIES SHOWN HEREON ARE PER REFERENCED PLANS.
10. NOT A KNOWN HISTORIC BUILDING OR SITE.
11. ZONING OF SITE D.R. 3.5 PER OPZ NE 1-K.

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

IN RE: PETITION FOR VARIANCE
W/S Cold Spring Road, 700' S of the c/l
Chesapeake Avenue
(809 Cold Spring Road)
15th Election District
6th Council District

Janice Ann Oberst, Owner;
Robert B. Long, Contract Purchaser

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case No. 03-500-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, Janice Ann Oberst, and the Contract Purchaser, Robert B. Long. The Petitioners request relief from Sections 303.1 and 1B.02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a front setback of 11 feet in lieu of the required average 55 feet, a rear setback of 2 feet in lieu of the required 30 feet, and approval of the property as an undersized lot.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth herein, the relief requested shall be denied.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 22nd day of July 2003 that the Petition for Variance seeking relief from Sections 303.1 and 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a front setback of 11 feet in lieu of the required average 55 feet, a rear setback of 2 feet in lieu of the required 30 feet, and approval of the property as an undersized lot, in accordance with Petitioner's Exhibit 1, be and is hereby DENIED.

Any appeal of this decision must be entered within thirty (30) days of the date hereof.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

Pet. Ex. #1

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

Martin G. Madden
Chairman
Ren Serey
Executive Director

STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS
1804 West Street, Suite 100, Annapolis, Maryland 21401
(410) 260-3460 Fax: (410) 974-5338
www.dnr.state.md.us/criticalarea/

March 29, 2004

Mr. Keith Kelley
Baltimore County
Department of Environmental Protection
and Resource Management
401 Bosley Avenue, Suite 416
Towson, Maryland 21204

RE: **BC 353-03r 04-02 Oberst Property Buffer Variance Request**
Tax Map 98, Parcel 203, Lot 304: 809 Cold Spring Lane

Dear Keith,

I have reviewed the information regarding this Buffer variance request to construct a dwelling in the 25-foot Critical Area Setback on a grandfathered lot in the LDA of Galloway Creek. This lot is located in a Buffer Management Area and is subject to a 25-foot Critical Area Setback. Due to the unusual configuration of this lot, the proposed development cannot be sited outside the Setback, even though it has been located as far away from the shoreline as possible. We do not oppose this variance request. We recommend the variance approval include the following condition:

- That mitigation for new disturbances in the Setback are to be provided on-site at a 3:1 ratio and disturbances in the Buffer outside the Setback are to be provided on-site at a 2:1 ratio, to the extent feasible.

Please provide this office with a copy of the written decision made in this case. Feel free to contact me at 410-260-3481 if you have any questions regarding these comments.

Sincerely,

Wanda Diane Cole
Natural Resources Planner

cc: Mr. Harlan Zinn

SITE PLAN TO ACCOMPANY PETITION FOR ZONING VARIANCE AND UNDERSIZED LOT APPROVAL

 # 809 COLD SPRING ROAD

15TH ELEC. DIST. 6TH COUNC. DIST. BALTIMORE COUNTY, MD.
SCALE: 1"= 30' MAY, 2004

Jo. # 03-1014

Pet #1