IN RE: PETITION FOR VARIANCE

N/S of Magnolia Avenue, 725 ft.

E of Rose Avenue

13th Election District

1st Councilmanic District

(3224 Magnolia Ave., Lots 855 & 856

**English Consul Estates**)

\* CASE NO. 05-174-A

BEFORE THE

DEPUTY ZONING COMMISSIONER

OF BALTIMORE COUNTY

Daniel L. Lippy, P.R. Petitioner

\*

\*

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Variance filed by the legal owner of the subject property, Daniel L. Lippy, P.R. The Petitioner is requesting variance relief for property located at 3224 Magnolia Ave., Lots 855 & 856 English Consul Estates in Baltimore County. Variance relief is requested from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit the sum of side yard widths of 20 ft. in lieu of the required 25 ft. and a front yard depth of 20 ft. in lieu of the required 30 ft. and a lot width of 47 ft. in lieu of 70 ft. and to approve an undersized lot.

The property was posted with Notice of Hearing on October 15, 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 November 2, 2004 to notify any interested persons of the scheduled hearing date

#### Applicable Law

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

"The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such

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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: Comments from the Planning Office indicate that the request should be denied because this request was denied twice in past cases before the Zoning Commission and the Board of Appeals. A note from the Zoning Office indicated that several of the requested variances may not be needed. Although not a ZAC comment, a note from People's Counsel indicated that the request should be denied for the reasons given by the Planning Office.

#### Interested Persons

Appearing at the hearing on behalf of the variance request were Daniel Lippy and Robert Lippy who are the heirs of the late title owner of the property, Daniel Lippy. Michael Ertel, the professional engineer who prepared the Plan to Accompany also attended the hearing on behalf of Petitioners. Francis X. Borgerding, Jr., Esquire represented the Petitioner.

Katherine and Thomas Schatz, Richard Parker, Sr., Richard Parked Jr, Patricia Parker and Ian Giffin appeared as protestants at the hearing. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

#### Testimony and Evidence

Testimony and evidence indicated that the property consists of 5,875 sq. ft. and is zoned D.R.3.5. The Petitioner indicated that the property is vacant save a garage located at the rear of the property. The County/City line bisects the rear of the property such that the garage is

actually in the City. Mr. Ertel indicated that this property is made up of lot 856 and part of lot 855 of the English Consul Estate subdivision, which was recorded in the Land Records of Baltimore County in 1910. These were originally 25 ft. wide lots by 125 ft. deep interior to the subdivision as shown on Petitioner's Exhibit 4. However, in 1991 the adjacent property owner, Richard Parker Sr., successfully pursued an adverse possession case against the former owner reducing the width of lot 855 from 25 ft. to 22 ft. Thus, the property in question is 47 ft. wide. See Petitioner's Exhibit 7 for the Circuit Court Order awarding the 3 ft. strip to the Parker's.

Mr. Ertel indicated that the neighborhood contains many modest single-family homes that are sometimes erected on two and sometimes on three adjacent lots. See Petitioner's Exhibit 2 for photographs of typical homes in the neighborhood. One adjacent neighbor's home (the Parker Sr. home) is shown and marked "3222" on Exhibit 2, the Petitioner's property shown on Petitioner's Exhibit 8 and the other adjacent home (Ms. Schatz) is shown on Petitioner's Exhibit 3 C.

Mr. Ertel proffered that the property had been the subject of prior zoning cases in which approval of these lots for building a single-family home was denied. In Case No. 86-438-A, the Board of Appeals denied the request for an undersized lot of 50 ft. under the then DR 5.5 zoning applicable to the property. In Case No. 91-129-A, again the Board of Appeals denied the same request based upon the fact that the prior case adjudicated this issue and no error of law was found.

The late Daniel Lippy purchased the property in 1992. The present applicants applied for approval of an undersized lot under Section 304 of the B.C.Z.R. However, while this petition was pending, the County Council downshifted the zoning on the property from DR 5.5 to DR 3.5 in August 2004. As a result, the Petitioner applied for the present zoning requests for variance.

Mr. Ertel explained that the request for variance to the sum of side yard setbacks of 20 ft. in lieu of the required 25 ft. arises from the intention to erect a standard 27 ft. wide home on the property. In order to follow the regulations, the Petitioner would have to reduce the house width to 22 ft., which he thought too small, to be practical and not in keeping with other homes in the neighborhood. In regard to the request for variance from the front yard minimum of 30 ft. for DR 3.5 zones, Mr. Ertel indicated that the owner could easily meet the 30 ft. requirement, but that the house would then be substantially behind both the Schatz home (which is only 7.5 ft. from the front property line) and the Parker home (which is 22.5 ft. from the front property line). Rather, he noted that the Zoning Office preferred to average the front yards of the adjacent homes, thus the 20 ft. request.

In regard to the request for variance of the minimum lot width of 70 ft., Mr. Ertel pointed out that the property is only 47 ft. wide and there is no land for sale on either side that can be purchased to achieve the required width. Finally, he noted that the lot size is approximately 5875 sq. ft. and cannot meet the 10,000 sq. ft. requirement for the same reasons. He testified that building a home on the property would improve the neighborhood as opposed to the current vacant lot that attracts dumping and is a constant maintenance burden on the owners. He noted that the property was intended for residential development, but if the variances were denied the owner would have an unbuildable lot and would suffer hardship and practical difficulty. He opined that building such a house will not adversely affect the neighborhood.

On cross-examination by the protestants, he admitted that some of the homes shown on Petitioner's Exhibit 2 are located in Baltimore City, although he denied this should disqualify them from consideration as they are in the same subdivision and neighborhood. On later cross-examination, he admitted that during his previous testimony concerning traffic, he was unfamiliar with the proposed Rosegate subdivision nearby or the local problems with traffic.

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Danny Lippy testified that his late father purchased the property in 1992 and that since that time the owner has had to pay taxes, and maintain the property without any practical use of the property. He would like to sell the property but complained that he received no reasonable offers.

In regard to the protestant's case, Mr. Parker noted that the area had been recently downshifted from DR 5.5 to DR 3.5 by the County Council. He testified that this same proposal had been considered and rejected by the County twice before and should be rejected again for the same reasons. He felt that there was no hardship because the late Mr. Lippy was aware that the property had failed four times to obtain zoning approval for an undersized lot and there was no change in circumstance. If the property failed before with DR 5.5 zoning, he reasoned that it should fail even more so under DR 3.5 zoning. He noted that the neighborhood was changing, that there is traffic heavy on Magnolia Avenue, and that 11 new homes will be built down the street in the new Rosegate subdivision even after the zoning downshift. He was particularly concerned about cut through traffic and introduced into evidence a traffic study conducted by the County on Magnolia Avenue to justify adding speed bumps to the roadbed. See Protestant's Exhibit 3.

He also noted that two homes had been built in the neighborhood on the basis of undersized lots, but that these had shown problems that reinforced his opposition to this Petition. In regard to the pattern of development in the neighborhood, Mr. Parker, with assistance from other protestants, testified that homes along Magnolia Avenue to the east were built on 3 lots (his home), and 6 lots. To the west (the Schatz home) 3 lots, 3 lots and 5 lots. South of the property across Magnolia Avenue, the homes were built on 5 lots, 2 lots (Giffin property), 3 lots and 4 lots.

Ms. Schatz testified to the history of previous owners of the property and their attempts to build a house on this undersized lot. She indicated that these owners, including the late Mr. Lippy, knew about the zoning problems and therefore any hardship was self-created. She objects to any house being situated on the property and cites her home's proximity to the proposed home and that she and her husband maintain parts of the property. She thought that the owner could use the property in many ways including storage in the garage. Mr. Parker disagreed, noting that the garage could only be used if a house were constructed on the property.

Mr. Richard Parker, Jr. indicated that he lives across Magnolia Avenue and opposes the variances because newly constructed homes in the neighborhood are already causing traffic and parking problems. He opined that some vehicles from the new house would have to park in front of other lots because the property width was so small. Mr. Giffin expressed similar reasons, but admitted that his home is built on two not three lots. However, he believed that his case is different from this case in that his neighbor's homes are farther removed from his due to their many lots.

#### Findings of Fact and Conclusions of Law

In reviewing the opinions in Case No. 86-438-A and Case No. 91-129-A, the Board of Appeals makes it clear that the basis of these decisions was that the owners knew or should have known of the zoning deficiencies of these lots and that by purchasing the properties they cannot claim hardship as this was self-created by the purchaser. The Board goes on to cite the case of Gleason v Keswick Improvement Association, 197 Md 46, 78 A 2d 164 (1951) for the proposition that a purchaser of property that does not conform to the zoning regulations is disqualified from claiming hardship or difficulty as this situation is self-created. Having thus found no hardship, the Board in Case No. 91-129-A goes on to reason that once a zoning case is

decided subsequent litigation involving the same issues is binding on the later case in the absence of an erroneous determination of law.

While I have no doubt that the late Mr. Lippy knew or should have known of the zoning deficiencies of these lots, the law has at least been clarified in the recent case of *Roeser v Anne Arundel County*, 386 Md 292, 793 A.2d. 545 (2002). In *Roeser* the Court of Appeals specifically overruled *Gleason* and its reasoning. In *Roeser*, the Court held that purchasing property with notice of zoning restrictions was not a self-created hardship that precludes the owner from receiving an area variance. Thus, in this case, while this case is essentially the same case as determined by the Board in 1991, the law has changed and the property can now be considered for variance.

I further find that these lots are in a zoning sense unique in that they are part of a 1910 subdivision, which specified 25 ft. wide lots, none of which can meet modern zoning regulations. The DR 5.5 regulations were likely imposed on the property in 1955 and as recently as 2004, DR 3.5 regulations were imposed on the property. Consequently, the later imposed zoning impacts these lots in a way different from the way it impacts other lots in the area which are laid out according to the zoning regulations. In short I find, as this Commission has done over many cases with undersized lots in old subdivisions, that *Cromwell v Ward* criteria does not directly apply to these cases but must be logically extended to account for these peculiar circumstances.

I further find that now that Roeser is the law, the owner is not precluded from arguing hardship as self-created. Given that, I find that the owner will suffer hardship in that the maintenance of two isolated lots now essentially vacant by remote owners is very much a hardship. There is little practical use that can be made of these lots if the owner can not build a home thereon.

However, I will deny the requested variances because of the final requirements of Section 304.7 of the B.C.Z.R. In order to grant these variances, I must find that there be no increase in residential density beyond that otherwise allowable by the Zoning Regulations. Furthermore, I must find that these variances can be granted if in strict harmony with the spirit and intent of the regulations, and in such manner as to grant relief without injury to the public health, safety and general welfare.

The County Council recently downshifted the zoning on this property to DR 3.5 from the prior DR 5.5. I am obliged to apply the most recent law. Under the DR 5.5 zoning, the property was marginal. Under the DR 3.5 regulations the property is approximately half the size it should be. Said another way, one house on 5875 sq. ft. is a density of approximately 7.4 dwelling units per acre. This is neither within the spirit nor the intent of the <u>present</u> zoning regulations.

In addition, the testimony of the protestants and Petitioner's Exhibit 1, show that the pattern of development in the neighborhood is not one home per two lots but one home per three or more lots. To squeeze a house onto these two lots would change the character of the neighborhood in violation of the regulation that the proposal not adversely affect the neighborhood. In coming to this conclusion, I am aware that Mr. Giffin's home is on two lots rather than three or more lots. However, I accept his explanation that he is adjoined by properties on which homes are substantial distances from his home so that for all the world it appears a consistent pattern.

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 Petitioner's variance request should be denied.

THEREFORE, IT IS ORDERED, this \_\_\_\_\_\_\_day of November, 2004, by this Deputy Zoning Commissioner, that the Petitioner's request for variance from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit the sum of side yard widths of 20 ft. in lieu of the required 25 ft. and a front yard depth of 20 ft. in lieu of the required 30 ft. and a lot width of 47 ft. in lieu of 70 ft. and to approve an undersized lot, be and is hereby DENIED.

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

IOHN V. MURPHY

DEPUTY ZONING COMMISSIONER

FOR BALTIMORE COUNTY

JVM:raj



#### Zoning Commissioner

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



#### Baltimore County

James T. Smith, Jr., County Executive
William J. Wiseman III, Zoning Commissioner

November 16, 2004

Francis X. Borgerding, Jr., Esquire 409 Washington Avenue, Suite 600 Towson, Maryland 21204

Re: Petition for Variance Case No. 05-174-A Property: 3224 Magnolia Avenue, Lots 855 & 856

Dear Mr. Borgerding:

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

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

Very truly yours,

John V. Murphy

Deputy Zoning Commissioner

JVM:raj Enclosure

c: Daniel L. Lippy, Jr., 107 E. Lawnwood Drive, Collierville, TN 38017 Robert J. Lippy, 5205 Laurel Pointe Drive, Valrico, FL 33594 Michael J. Ertel, 208 Washington Ave., 2<sup>nd</sup> Flr., Towson, MD 21204 Katherine & Thomas Schatz, 3226 Magnolia Ave., Baltimore, MD 21227 Rich Parker, Jr., 3221 Magnolia Ave., Baltimore, MD 21227 Patricia & Richard Parker, 3222 Magnolia Ave., Baltimore, MD 21227 Ian Giffin, 3223 Magnolia Ave., Baltimore, MD 21227





## Petition for Variance

### to the Zoning Commissioner of Baltimore County for the property located at English Council Estates

which is presently zoned \_\_DR3.5

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) 1802.3.C.1 of the Baltimore County Zoning Regulations to permit the sum of side yard widths of 20 feet in lieu of the required 25 feet and a front yard depth of 20 feet in lieu of the required 30 feet and a lot width of 47 feet in lieu of 70 feet. AND TO APPROVE AN UNDERSIZED LOT (FXB

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty)

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:			Legal Owner(s):			
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Signature			Signature	• •		
Address	<u> </u>	Telephone No.	Name - Type or Print			
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Attorney For Petitioner:			5110 Benson Avenue			
Attorney ron rous			Address		Telephone No.	
Francis X. Borg	gerding, Jr.		Baltimore	MD	21227	
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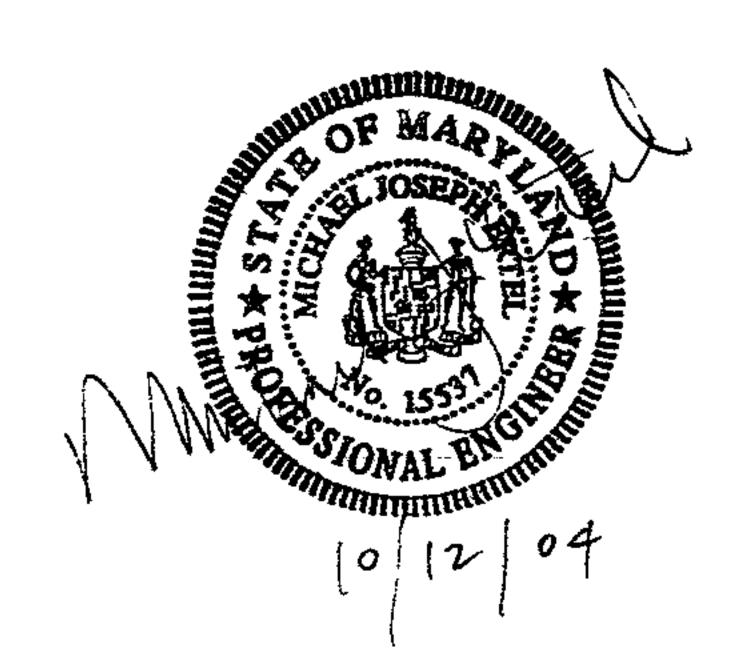
#### ZONING DESCRIPTION #3224 MAGNOLIA AVENUE

114

Election District 13 Councilmanic District 1

Beginning at point on the North side of Magnolia Avenue which is 40' wide at a distance of 725'+/- East of the centerline of Rose Avenue which is 40' wide.

\*Being Lot #855 & 856 in the subdivision of English Consul Estates as recorded in Baltimore County Plat Book # 3, Folio # 108, containing 5875 Sq. Ft. or 0.135 Acres.



# NOTICE OF ZONING HEARING

The Zoning Commissioner of Batteriore Gounty, by authority of the Zoning Act and Regulations of Battimore County will hold a public hearing in Tower.

See See See English Council Battimore County Will hold a public hearing in Tower.

See See English Council Estates

See Magnolia Avenue, Lot 858 & 856 English Council Estates

North side Magnolia Avenue, Tot 656 & 856 English Council Estates

North side Magnolia Avenue, Tot 656 & 856 English Council States

North side Magnolia Avenue, Tot 656 & 856 English Council Cagal Owner(s): Daniel L. Lippy

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The Jeffersonian

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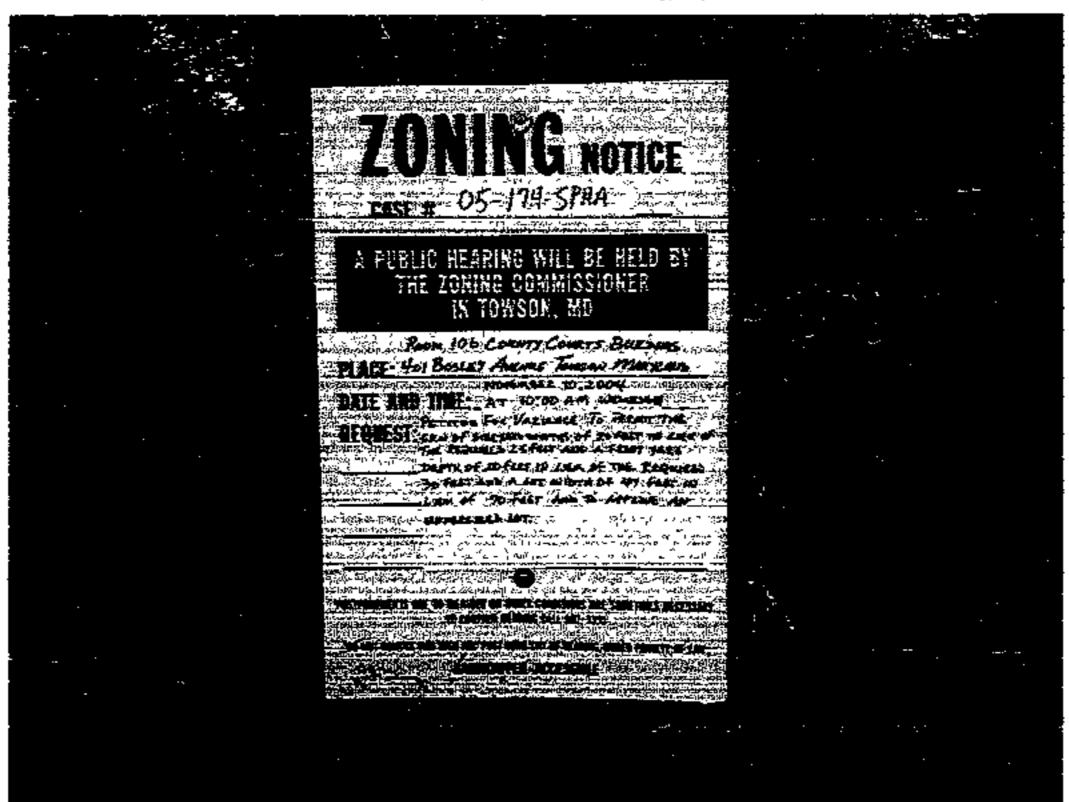
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#### Certificate Of Posting

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	Petitioner/Developer: 41004/
	Date of Hearing/Closing: ///10/04
Baltimore County Department of Permits and Development Management County Office Building, Room 111 111 West Chesapeake Avenue Towson, MD 21204	
Attention:	
Ladies and Gentlemen:	
This letter is to certify under the penaltic sign(s) required by law were posted constat  3224 M	
This sign(s) were posted on	Aber 15, 2004.
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Sin	cerely,
martada 10/15/04	
Machalle 10/15/04 (Signature of Sign Poster and Date)	
Martin Ogle	
(Printed Name)	
5016 Castlestone Drive	
(Address)	
Balto, MD 21237	
(City,State,Zip Code)	
( <del>410)-933-9470</del>	
(Phone Number)	

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metrogle 10/15/04

#### Certificate Of Posting

RE: Case NO .: Building PERMIT

Petitioner/Developer: LIPPY/ MJ CONSULTING INC.

Date of Hearing/Closing: 9/22/04

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

Attention:

Ladies and Gentlemen:

> (Month, Day, Year) Sincerely,

(Signature of Sign Poster and Date)

Martin Ogle

(Printed Name)

5016 Castlestone Drive

(Address)

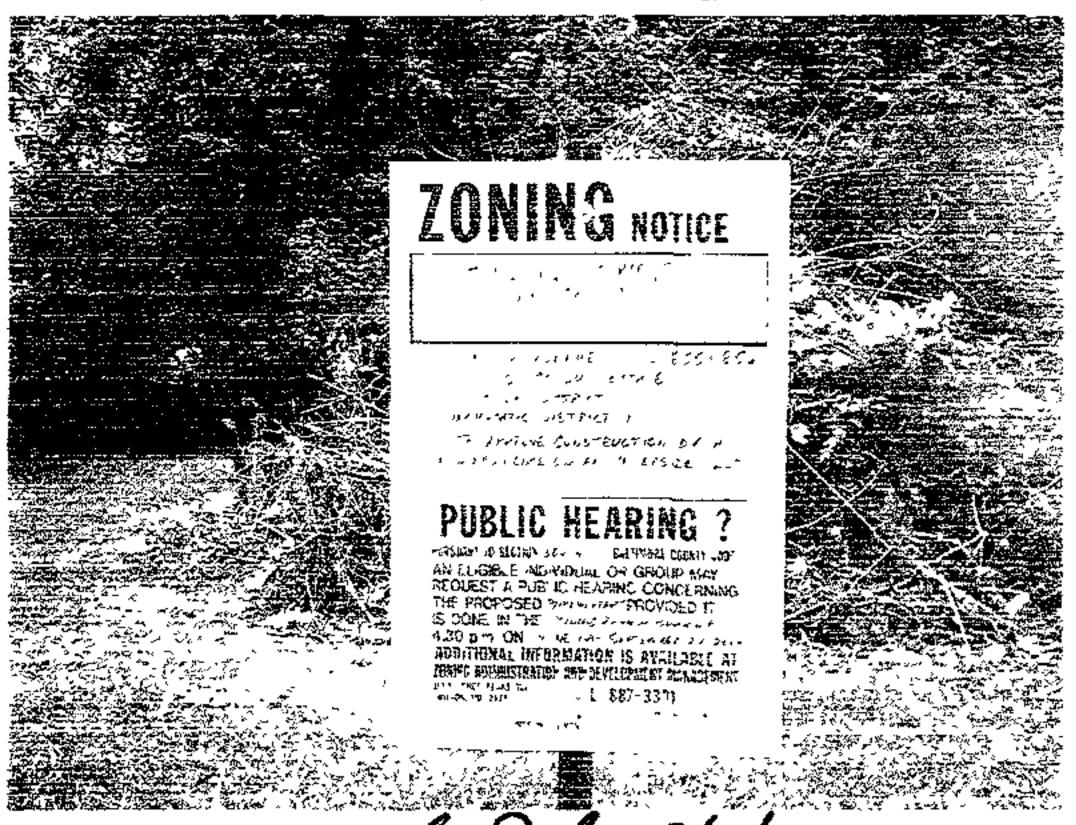
Balto, MD 21237

(City,State,Zip Code)

(410)-933-9470

(Phone Number)

m000075 (1152x864x24b jpeg)



Meter Ogl 9/4/04

TO: PATUXENT PUBLISHING COMPANY

Tuesday, October 26, 2004 Issue - Jeffersonian

Please forward billing to:

Mr. Francis Borgerding, Jr. 409 Washington Avenue, # 600 Towson, Maryland 21204

410-296-6820

#### **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: 05-174-A

3224 Magnolia Avenue, Lot 855 & 856 English Council Estates North side Magnolia Avenue, 725 feet east of Rose Avenue 13<sup>th</sup> Election District—1<sup>st</sup> Councilmanic District

Legal Owner: Daniel L. Lippy

<u>Variance</u> to permit the sum of side yard widths of 20 feet in lieu of the required 25 feet and a front yard depth of 20 feet in lieu of the required 30 feet and a lot width of 47 feet in lieu of 70 feet, and to approve an undersized lot (FXB).

Hearing: Wednesday, November 10, 2004 at 10:00 am, Room 106, Baltimore County Office Building, 111 West Chesapeake Avenue

WILLIAM WISEMAN

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.



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





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

October 25, 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: 05-174-A

3224 Magnolia Avenue, Lot 855 & 856 English Council Estates North side Magnolia Avenue, 725 feet east of Rose Avenue 13<sup>th</sup> Election District—1<sup>st</sup> Councilmanic District Legal Owner: Daniel L. Lippy

<u>Variance</u> to permit the sum of side yard widths of 20 feet in lieu of the required 25 feet and a front yard depth of 20 feet in lieu of the required 30 feet and a lot width of 47 feet in lieu of 70 feet, and to approve an undersized lot (FXB).

Hearing: Wednesday, November 10, 2004 at 10:00 am, Room 106, Baltimore County Office Building, 111 West Chesapeake Avenue

Timothy Kotroco

Director

TK: clb

C: Francis X. Borgerding, Jr. 409 Washington Avenue # 600 Towson 21204 Daniel L. Lippy 5110 Benson Avenue Baltimore 21227

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, OCTOBER 26, 2004

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



#### Department of Permits Development Management

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





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

November 3, 2004

Francis X. Borgerding, Jr. 409 Washington Avenue #600 Towson, Maryland 21204

Dear Mr. Borgerding:

RE: Case Number:05-174-A, 3224 Magnolia Avenue, lot # 855 & 856 English Council Estates

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on October 15, 2004.

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

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

Very truly yours,

U. Call Rill ()

W. Carl Richards, Jr. Supervisor, Zoning Review

WCR: clb

**Enclosures** 

People's Counsel C:

Daniel L. Lippy 5110 Benson Avenue Baltimore 21227



#### Fire Department

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





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

October 27, 2004

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

ATTENTION: Zoning Review planners

Distribution Meeting of: October 25, 2004

Item No.:

.72**,** (174**,)** 177, 183–19

Pursuant to your request, the referenced plan(s) have been reviewed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

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

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

cc: File



#### BALTIMORE COUNTY, MARYLAND

#### INTEROFFICE CORRESPONDENCE

**DATE:** November 4, 2004

TO:

Timothy M. Kotroco, Director

Department of Permits & Development Management

FROM

Robert W. Bowling, Supervisor Bureau of Development Plans

Review

**SUBJECT:** 

Zoning Advisory Committee Meeting

For November 1, 2004

Item Nos. 172, 174, 183, 184, 186, 187, 188, 189, 190, 191, 192, and

193

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

RWB:CEN:jrb

cc: File

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

TO:

William Wiseman

**Zoning Commissioner** 

FROM:

R. Bruce Seeley 195

Natural Resource Manager

DATE:

November 9, 2004

SUBJECT:

Zoning Item

# 05-174

Address

3224 Magnolia Avenue

Lots 855 and 856 English Consul Estates

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

Reviewers:

Dave Lykens, Sue Farinetti

Date: November 9, 2004

is / \$ 2004

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

TO:

Tim Kotroco

PDM

FROM:

John D. Oltman, Jr 💯

**DEPRM** 

DATE:

November 29, 2004

SUBJECT:

Zoning Items # See List Below

Zoning Advisory Committee Meeting of October 25, 2004.

X The Department of Environmental Protection and Resource Management has no comments on the following zoning items:

05-174

05-186

05-187

05-188

05-190

05-192

Reviewers:

Sue Farinetti, Dave Lykens

#### BALTIMORE COUNTY, MARYLAND

#### INTER-OFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

Department of Permits and Development Management

FROM:

Arnold F. 'Pat' Keller, III

Director, Office of Planning

**SUBJECT:** 

3224 Magnolia Avenue

**INFORMATION:** 

**Item Number:** 

5-174

**Petitioner:** 

Daniel L. Lippy

Zoning:

DR 3.5

Requested Action:

Variance

#### SUMMARY OF RECOMMENDATIONS:

The Office of Planning does support the petitioner's request and recommens that it be **DENIED**.

The information provided by the applicant is insufficient. Although the applicant has provided photos of several existing houses located on Magnolia Avenue and Lily Avenue, there are no photos of three adjacent houses. Photos should have been provided for 3223, 3226, and 3227 Magnolia Avenue. House no. 3226 is located next to the applicant's property while house nos. 3223 and 3227 are located directly across the street from the applicant's property.

The applicant's property is located in an old subdivision known as English Consul Estate. Older style homes are prevalent in this subdivision. I question whether the applicant's proposed dwelling is appropriate. The exterior of the proposed dwelling appears to be too modern in comparison to the older homes in the neighborhood. The applicant should demonstrate that the proposed dwelling is in compliance with the architectural design requirements of Section 304.2.B.2 of the BCZR. An explanation of compliance and/or alternative house proposals should be provided.

**DATE:** November 9, 2004

RECEIVED
NOV-9 2004

MING COMMISSIONER

When the application for this property was submitted to PDM, the zoning of the property was DR 5.5. The property has since been rezoned to DR 3.5 (see 2004 CZMP Issue 1-057). This zoning change became effective on September 3, 2004. Presumably, the DR 3.5 zoning regulations now apply to this proposal. Nevertheless, the property does not meet the minimum lot size requirement and the minimum lot width requirement specified in either the DR 3.5 or the DR 5.5 zoning classifications (see Section 1B02.3.C.1). Also, the applicant's proposal does not comply with the minimum requirement for the sum of side yard widths in the DR 3.5 zone. Therefore, variances are needed in order to build the proposed dwelling. Apparently, the issue of variances was litigated at least twice previously before the Deputy Zoning Commissioner and the Board of Appeals (see Case Nos. 86-438-A and 91-129-A). In both cases the request to build on this lot was denied. This office is of the opinion that the previous decisions should be upheld.

In Case No. 91-129-A the Board of Appeals found that the owner of this property at that time (Gerald A. Martin, Jr.) purchased a property which did not conform to the BCZR. Therefore, the Board found, as a matter of law, that the petitioner was disqualified from claiming hardship or difficulty, because the hardship and general situation was self-created. Presumably, the same finding would apply to the current owner of the property (Daniel Lippy).

Prepared by:

**Division Chief:** 

AFK/LL:MAC:

RE: PETITION FOR VARIANCE
3224 Magnolia Avenue, Lot 855 & 856;
N/side Magnolia Ave 725' E of Rose Ave
13<sup>th</sup> Election & 1<sup>st</sup> Councilmanic Districts
Legal Owner(s): Daniel L. Lippy, P.R.

\*

\*

Petitioner(s)

BALTIMORE COUNTY

ZONING COMMISSIONER

**BEFORE THE** 

\* 05-174-A

**FOR** 

ENTRY OF APPEARANCE

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

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

RECEIVED OC:

Permananana

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 29<sup>th</sup> day of October, 2004, a copy of the foregoing Entry of Appearance was mailed to, Francis X. Borgerding, Jr, Esquire, 409 Washington Avenue, St 600, Towson, MD, 21204, Attorney for Petitioner(s).

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

Permit or Case No. NA

#### INTER-OFFICE CORRESPONDENCE RECOMMENDATION FORM

TO:	Director, Office of Planning & Community Conservation	Permit or Case No. MA	<del> </del>
	Attention: Jeffrey Long LYNN LAWHAM		
	County Courts Building, Room 406		
	401 Bosley Avenue		
	Towson, MD 21204	Residential Processing (\$50.00)	) ree Palo
FROM:	Ameld Jablott, Director		
	Department of Permits & Development Management	Accepted by	
		Date 8/27/04	<del>**</del>
RE:	Undersized Lots		The state of the s
	to Section 304.2 (Baltimore County Zoning Regulations) effective June 25, 1992, this office of Planning and Community Conservation prior to this office's approval of a dwelling permi		nd comments from
MINIMU	M APPLICANT SUPPLIED INFORMATION:		
	Robert Lippy 5205 Laure Po	int Dr. Valrica	F/a. 33594
	Lot Address Maanolia Ve L+856 P+855 Election District 13 Coun	cilmanic District Square Fe	et 5875
Lot Loca	tion: NES W/6de/comer of MAGNULIA AVE . 725 feet fro		
Land Ov	vner: Dan 2) Lippui Tax A	ccount Number 130220	27400
Address		hone Number (440) 29	6-5288
	ST OF MATERIALS. (to be submitted for design review by the Office of Planning and Corr	musity Conservation)	CHACL ERTO
TO BE	FILLED IN BY ZONING REVIEW, DEPARTMENT OF PERMITS AND DEVELOPMENT M		<u> </u>
	YES,	PROVIDED?	·
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РТОР	erty (3 cooles)	<u></u>	<b>388</b>
4. Buildir	ng Elevation Drawings		2999
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6. Currer	t Zoning Classification:		Z   1000
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	A PEINT OF	DIAMETER	
	IUFFILE UF	LTHMMINIO(-	Revised 2/05/02

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 a filing by	application has to on	been reviewed ろって	and is accepted for
(name of planner)		Date	(A)
A sign indicating the proposed building must be post decision can be rendered. The cost of filing is \$50 current fees prior to filing the application.	sted on the prop 0.00. This fee	perty for fifteer is subject to	n (15) days before a change. Confirm a
In the absence of a request for public hearing duri expected within approximately four weeks. However then the decision shall only be rendered after the requ	, if a valid dema	and is received	, a decision can be by the closing date
*SUGGESTED POSTING DATE $\frac{9}{4}$	07/04	D (15 Day	ys Before C)
DATE POSTED **	<u> </u>		
HEARING REQUESTED? YES NO DA	ATE	<u></u>	<del></del>
CLOSING DAY (LAST DAY FOR HEARING DEMANI	D) 9/22/0	<u>4</u> c	(B-3 Work Days)
TENTATIVE DECISION DATI	E 9/27/0	14 B	(A + 30 Days)
*Usually within 15 days of filing			
CERTIFICATE OF POSTING			<del></del>
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TO APPROVE CONSTRUCTION OF A NEW RE	esidence c	IN AN UND	ERSIZED LOT

Revised 2/25/99

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The second of th

#### BALTIMORE COUNTY, MARYLAND

#### INTRA-OFFICE CORRESPONDENCE

TO:

Jenifer German

DATE: 9/9/04

FROM:

Dennis Wertz

SUBJECT:

Undersized Lot (Magnolia Avenue Lots 855 & 856)

The information provided by the applicant is insufficient. Although the applicant has provided photos of several existing houses located on Magnolia Avenue and Lily Avenue, there are no photos of three adjacent houses. Photos should have been provided for 3223, 3226, and 3227 Magnolia Avenue. House no. 3226 is located next to the applicant's property while house nos. 3223 and 3227 are located directly across the street from the applicant's property.

The applicant's property is located in an old subdivision known as English Consul Estate. Older style homes are prevalent in this subdivision. I question whether the applicant's proposed dwelling is appropriate. The exterior of the proposed dwelling appears to be too modern in comparison to the older homes in the neighborhood. The housing type within this area seems to be mostly cape cod styles and 2-story dwellings with porches. The applicant should demonstrate that the proposed dwelling is in compliance with the architectural design requirements of Section 304.2.B.2 of the BCZR. An explanation of compliance and/or alternative house proposals should be provided.

When the application for this property was submitted to PDM, the zoning of the property was DR5.5. The property has since been rezoned to DR 3.5 (see 2004 CZMP Issue 1-057). This zoning change became effective on September 3, 2004. Presumably, the DR3.5 zoning regulations now apply to this proposal. Nevertheless, the property does not meet the minimum lot size requirement and the minimum lot width requirement specified for both the DR3.5 and the DR5.5 zoning classifications (see Section 1B02.3.C.1). Also, the applicant's proposal does not comply with the minimum requirement for the sum of side yard widths in the DR3.5 zone. Therefore, variances are needed in order to build the proposed dwelling. Apparently, the issue of variances was litigated at least twice previously before the Deputy Zoning Commissioner and the Board of Appeals (see Case Nos. 86-438-A and 91-129-A). In both cases the request to build on this lot was denied. Based on my review of the applicant's proposal, I don't see any reason why the previous decisions shouldn't be upheld.

In Case No. 91-129-A the Board of Appeals found that the owner of this property at that time (Gerald A. Martin, Jr.) purchased a property which did not conform to the BCZR. Therefore, the Board found, as a matter of law, that the petitioner was disqualified from claiming hardship or difficulty, because the hardship and general situation was self-

W:\DEVREV\undersized Iot\Undersized Lot (Magnolia Ave Lots 855 & 856).doc

Sent By: 0;

0;

created. Presumably, the same finding would apply to the current owner of the property

Based upon the above comments, this proposal should not be approved by the Office of Planning or PDM. If the applicant desires to pursue this matter, PDM should require a public hearing before the Zoning Commissioner.

cc: Lynn Lanham
Jeff Mayhew

(Daniel Lippy).

State Highway
Administration

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

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

#### Maryland Department of Transportation

Date: 11.9.04

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

RE: Baltimore County

Item No. 174 JUC

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,

Steven D. Foster, Chief

1. Hoult

**Engineering Access Permits Division** 

#### BALTIMORE COUNTY, MARYLAND Interoffice Memorandum

DATE: October 6, 2004

TO: SG. Samuel Moxley
County Council, 1<sup>st</sup> Council District

FROM: Timothy Kotroco, Director 🚓 Department of Permits and Development Management By Carl Richards, Jr., Zoning Supervisor

SUBJECT: 3224 Magnolia Avenue Undersized Lot Application Dist. 13C1, Case # 05-174-SPH

Please be advised that as provided for in Section 304.4 <u>Baltimore County Zoning Regulations</u> (BCZR), I am scheduling a public hearing on 11/10/04 at 10:00 am, in Room 106 County Office Building for the above referenced request.

There are no permits filed at this address and after next Thursday, we will know whether or not the required variance has been filed timely in order to comply with the new zone and advertising requirements specified in the law. See the attached letter from W. Carl Richards, Jr. to Robert and Daniel Lippy explaining the variance as a result of the rezoning superceding the undersized lot request. It is up to Mr. Lippy to file the variance, or the 11/10/04 hearing could not legally address all the conflicts based on the plan filed.

Liter was sent to

pairies shown above

Stating that Undersize

Lot was denied by

the Planning Office

comments, (comment was

also sent with note). Mr.

Lippy was also made aware

that if he wished to continue

that he would need to file

for a hearry.

always

Note was sent to Mr. Lippy (Both Robert + Daniel) attached w/ a cepy et devised application from the Planning-Office & Juteroffice Correspondence from Dennis Westz. Note stated that in order to continue further that he would have to come in to our office to file for a hearing. This was done at the request 28 John Lewis on 9/10/24. In addition to or understat let approint hearing, 20king variances are now required due to the neckostication of the zoning on-site for DX.5.5 to DX 3.5.

Lofile. 05-174-SPHA Denging undersugeflot soning is now No note on plan confirming our adjacent ownership No Corse on Pen Some of the variance requests imay not be necessary Front average settlick



1

Baltimore County, Maryland OFFICE OF PEOPLE'S COUNSEL

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

NOV \_ 8 2004

RECEIVED

ZONING COMMISSIONER

CAROLE S. DEMILIO Deputy People's Counsel

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

PETER MAX ZIMMERMAN People's Counsel

November 5, 2004

William J. Wiseman, Zoning Commissioner County Courts Building 401 Bosley Avenue, Suite 405 Towson, Maryland 21204

Re:

Daniel L. Lippy, P.R.

05-174-A

Dear Mr. Wiseman,

For your information, this property has a zoning history. This office participated in two previous variance petition cases, case numbers. 86-438-A and 91-129-A. Both cases went to the County Board of Appeals, and both petitions were denied. Enclosed is a copy of each the Board opinions in these cases, dated October 30, 1986 and November 1, 1991 respectively. We are not aware of any reason for a different result here.

Thank you for your consideration.

Very truly yours,

Peter Max Zimmerman

People's Counsel for Baltimore County

PMZ/rmw

Francis X. Borgerding, Jr, Esquire cc:

#### Department of Permits a Development Management

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





#### Baltimoré County

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

October 6, 2004

Robert Lippy 5205 Laurel Point Drive Valrico, Florida 33594

Daniel Lippy 5110 Benson Avenue Baltimore, Maryland 21117

Undersize Lot Application 8/27/04

3274 Magnolia Avenue Lot #855 and 856 English

Council Estates (no permit filed)

Dist. 13C1

Previous Zoning Cases: 86-438A, 91-129A

Dear Mr.'s Lippy,

RE:

Reference is made to the above reference undersized lot application and as you both have been notified on 9/16/04 by Ms. Kristen Matthews in this office, that your application cannot be processed any further without a public hearing before the Zoning Commissioner.

Typically, this office, based on Section 304.4 of the <u>Baltimore County Zoning</u> Regulations (BCZR), will schedule a public special hearing within 30 days on a demand by any owner or occupant within 1,000 feet of the subject lot. This office did not receive a demand, however, on 9/14/04 the Planning Office recommended disapproval. This office would not issue any approvals without the concurrence of Planning, therefore, as a simple explanation, your application cannot be processed any further without a public special hearing.

Unfortunately, the more complicated explanation is a result of the recent rezoning of the lot from DR 5.5 to DR 3.5 by the County Council a few days after your undersized lot application was filed, your current proposal does not meet the new DR 3.5 zoning requirements i.e. sum of side yard setbacks of 25 feet and a lot width of 70 feet. As a result, your undersized lot application is superceded by a variance requirement, which, we do not have an application for. This is why we sent you the forms on 9/16/04, so you would be able to address all conflicts should you have decided to proceed.



Please be advised notwithstanding the new variance requirements (above), the Director of Permits and Development Management has scheduled a public special hearing, on your request for November 10,2004, at 10:00 am, in Room 106, County Office Building. The case number is 05-174-SPH and if you decide to add the required variance to your request you must file the required variance materials (plats, petitions, fees, etc.) in this office no later than 10/14/04 (see checklist sent to you on 9/16/04). If you do not file the variance and if it is not posted and advertised as required by law, it cannot be addressed at the 11/10/04 hearing for an undersized lot.

I trust that the information set forth in this letter is sufficiently detailed and responsive to the request. If you need further information or have any questions, please do not hesitate to contact me at 410-887-3391.

Very truly yours,

W. Carl Richards, Jr.

Zoning Supervisor Zoning Review

C: Jennifer German, Planning Office file

IN THE MATTER OF THE
PETITION OF GERALD A. MARTIN, JR.
FOR A ZONING VARIANCE
ON PROPERTY LOCATED ON THE
NORTH SIDE OF MAGNOLIA AVENUE,
593 EAST OF LILAC AVENUE
(3224 MAGNOLIA AVENUE)
13TH ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT

\* BEFORE THE

\* COUNTY BOARD OF APPEALS

\* OF

\* BALTIMORE COUNTY

\* CASE NO: 91-129-A

#### OPINION

This matter comes before this Board as an appeal from a decision of the Deputy Zoning Commissioner of Baltimore County, dated November 20, 1990, denying the property owner's Petition for a Variance to permit a buildable lot with a width of 50 feet in lieu of the required 55 feet.

The Petitioner/Appellant, Gerald A. Martin, Jr., appeared and represented himself without legal counsel. Peter Max Zimmerman, Deputy People's Counsel, appeared on behalf of the People's Counsel for Baltimore County and Patricia L. Parker, Richard E. Parker, Katherine Schatz, Thomas Schatz, Katharina Keller and Richard Parker, Jr. appeared as Protestants.

Magnolia Avenue, is located in the subdivision known as English consul and is split by the Baltimore County/Baltimore City line. The testimony further indicated that the subject lot was once 50 feet wide, but, by virtue of an adverse possession decree, is now only 46-1/2 feet wide.

A previous Opinion and Order of this Board (Case No: 86-438-A) was entered into evidence as an exhibit. \_\_Said Opinion and Order

IN THE MATTER OF

THE PETITION OF JOAN M. COX FOR VARIANCE ON PROPERTY LOCATED ON THE N/S OF MAGNOLIA

AVE., 593' E. OF C/L OF LILAC AVE. (3224 MAGNOLIA AVENUE)

13th DISTRICT

BEFORE

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

No. 86-438-A

#### OPINION

This matter comes before the Board on an appeal from the findings of fact and order of the Deputy Zoning Commissioner dated May 16, 1986. In Her Order, the Deputy Zoning Commissioner denied the Petitioner's request for variance, which sought relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (BCZR). That Section requires, for dwelling construction, a minimum lot width of 55 feet. In view of the Petitioner's lot width of 50 feet, the requested variance was sought.

Although the merits of the requested variance were contested, the underlying facts are generally not in dispute. The property is located in an older subdivision known as English Consul in southwest Baltimore County. English Consul straddles the Baltimore City/County line and contains many older Although the character of the subdivision has remained essentially the homes. same, there have been increasing inroads of commercial development in the surrounding area.

When the development was originally established circa 1915, many The narrowness of these lots of the lots were created with 25 foot widths. resulted in many property buyers purchasing two (2) or more lots. When houses were then constructed, the neighborhood took a non-uniform appearance containing various sized yards, with widths of 50 feet, 75 feet, 100 feet, and larger yards in 25 foot increments. As the Petitioner pointed out, there are a number of residences presently existing on 50 foot wide lots, some in Baltimore City and others in Baltimore County. Apparently, construction on 50 foot lots in the Raltimore City section of English Consul is not in violation of that



TO:

Timothy Kotroco, Director

Department of Permits and Development Management

FROM:

S.G. Samuel Moxley

Chairman, County Council

SUBJECT:

Magnolia Avenue, Lots 856 & 855/ Building Permit Request

DATE:

September 20, 2004

Recently, Robert Lippy, of 5205 Laurel Point Drive, Valrico Florida, requested a building permit to build on undersized lots in the First Council District. The Zoning Office accepted the request and forwarded the request to the Office of Planning for review. Under County regulations, the Zoning Office allowed the applicant to move forward with only a 15-day posting period. Assuming no objections were raised or no resident demanded a hearing, the permit would have been issued.

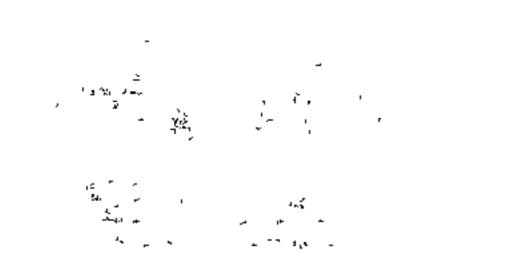
At my urging, the Office of Planning rejected the undersized lot proposal. Further, the community is adamantly opposed to the request. The community was willing to file for a hearing, but I would not allow them to do so. I have offered to contact you and request the hearing.

This property has been subject to previous zoning hearings. Given the past history, I found it odd that the applicant was allowed to move forward with the request. With the County and community opposition highlighted, I respectfully request that you work with the Zoning Commissioner's Office to schedule a full hearing. This will give all parties an opportunity to have their interests heard.

I thank you in advance for your assistance in this matter. Please feel free to provide me with the hearing date and time so that I can relay it back to the community.

SGM:bes

cc. Moses Rodriguez
Mrs. Parker



PLEASE PRINT CLEARLY

CASE NAME 3224 Magnera CASE NUMBER 105-176/-D

PETITIONER'S SIGN-IN SHEET

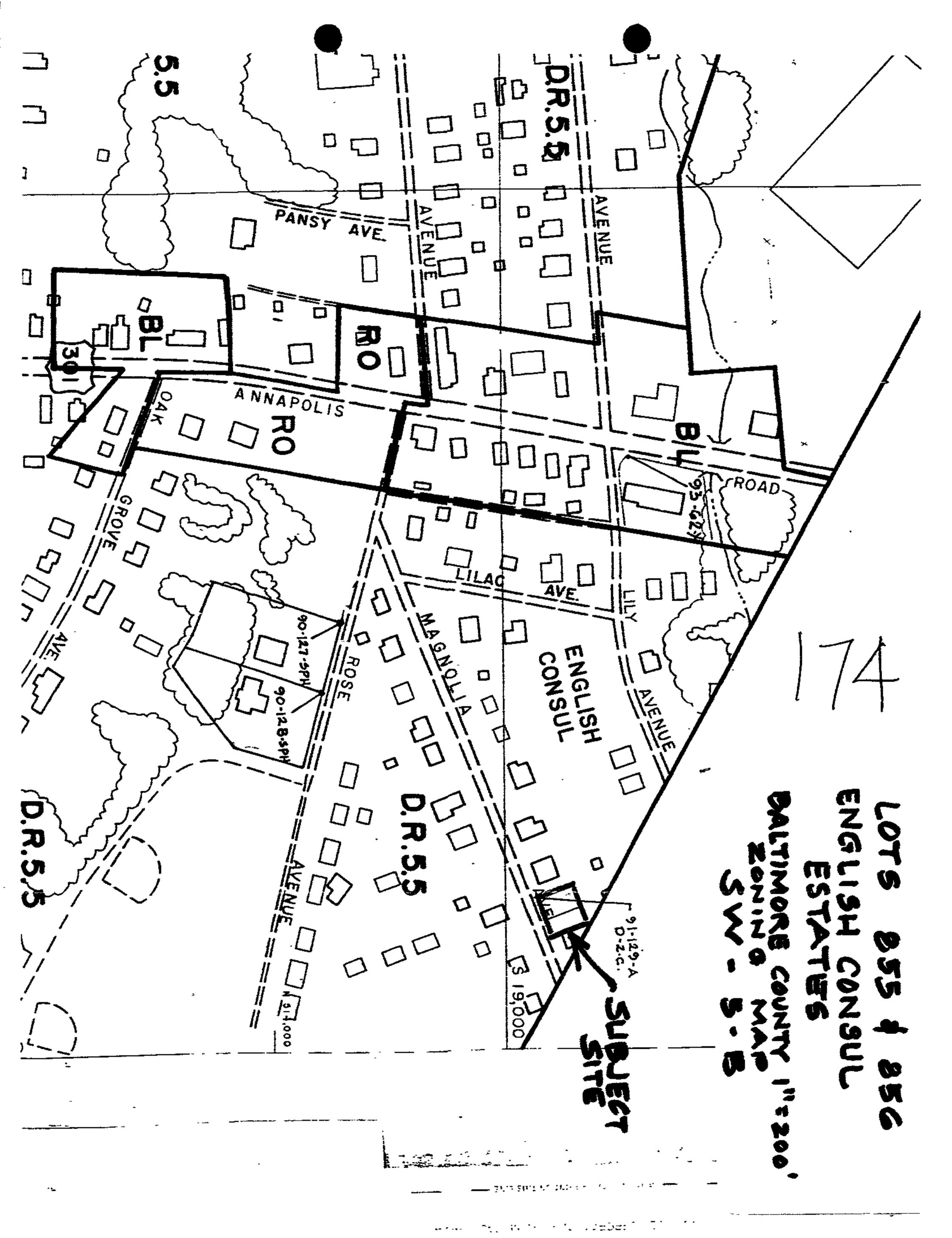
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TATE,	VALRICO, FL. 33594 TOWCON! MD 33594									
107 E. LAWMOOD DA	2005 LAWREL POINTE DR.			•						
DANIEL L LIPPY JR	ROBERT J. LIPY									

PLEASE PRINT CLEARLY

CASE NAME 3224 Magnalin yur.
CASE NUMBER 05-194-A
DATE 11/10/06

# CITIZEN'S SIGN-IN SHEET

E-MAIL	X X	PINKEHELLE CTOMAHODE	1/4	1/1/A									
CITY, STATE, ZIP	Baltimora Md. 21227	BACT MD 21227	2017 MD 21227	154 to med 21221	Balls Ma 21227								
ADDRESS	\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \	<b>-</b> 7		3222 MAGNOLIA HVE	3223 Mazzola Lane								
NAME	Kutherine E. Schatz	ARKER	KAHAND PAKEL	CARIA, ARKOU	to 6: 16								



Phot.

### Glen E. Cox

Appraiser-Consultant

101 Park drive Baltimore, Maryland 21228 PHONE - 1 - 744-3018

May 8, 1987

Mr. Salvatore E. Anello 1334 Sulphur Spring Road Baltimore, MD 21227

Re: Lots 855 & 856 Magnolia Avenue

Dear Mr. Anello:

You have asked me to render an opinion on the value of the above property which were formerly in the name of Joan M. Cox but now owned by Charles E. Kelley.

Public records show that Joan M. Cox sold to Thomas C. Schatz her property known as 3226 Magnolia Avenue on July 30, 1986. Baltimore County showed this as a partial release to the Schatz's, evidently deeding to Charles E. Kelley 50 feet of land of 125 feet in the original site. No record could be found that the 50 feet was recorded by Mr. Kelley.

Subsequently, the Zoning Board denied a building permit to Mr. Kelley on May 16, 1986 under Case #438A. The denial was appealed on June 5, 1986 and at the Appeal Board hearing on October 30, 1986, they also denied a building permit. The only other alternative Mr. Kelley has is to go to Circuit Court and sue for a building permit. It has been my experience that normally this type of case would be granted by the Zoning Board on a 50 foot site instead of a 55 foot site. I've been involved in cases where they have issued a permit on only a 40 foot site.

It is very difficult to determine the value of the 50 feet lot where a building permit will not be issued. It then is of use only to the owners on each side of the property, the Parkers and Schatz's. The owners of 3226 Magnolia Avenue could buy Lots 855 and 856 and then easily add five feet of their land to the 50 feet, making a 55 foot building site. It is my opinion that the same thing could happen if Mr. Parker at 3222 Magnolia Avenue would buy the property. This possibility would make the two lots more valuable to each of the parties above.

QND FZ

Michael Sauer
Panel Chairman
Office of Zoning
111 W Chesapeake Ave
Towson, Md 21204

Case# 91-129-A Manolia Ave residents vs. Gerald Martin

Dear Sir,

We were in attendance on August 30 for the appeal of the above case. Testimony taken in that case raised several questions that concern us regarding the ownership and worth of lots 855 and 856.

We have yet to see a recorded deed showing Gerald Martin as owner of the lots. At the first hearing he presented an unstamped photocopy of a deed that was rejected as evidence. He has not proved ownership. Neither has he provided a tax bill which would prove ownership as well as record the assessed land value.

You will find in the original transcripts of case 86-438-A that no money exchanged hands when Joan Cox transferred the property to Charles Kelley. The lots were presented as payment for a repair bill owed by Mrs. Cox to Mr. Kelley. We question whether a similar exchange has occurred between Gerald Martin and Charles Kelley. That Mr.Kelley attended the adverse possession suit as Mr.Martin's witness fostered our opinion that Mr. Kelley retains an interest in the lots.

Mr.Kelley remains a licensed builder in Baltimore County. Now that Mr. Martin states that he may sell the lots to a builder upon gaining rezoning, we question whether that builder will be Mr. Kelley, who exhausted his appeals to gain rezoning himself.

Mr. Martin testified that he paid for the lots with a loan from a private investor, to whom he is paying only interest at this time. We wonder who the investor is and why he accepts only interest. We would like to know his identity and the terms of the contract, which seems pertinent to this case in that Mr. Martin is declaring financial hardship. If he has expended no money he has lost none. Contingency clauses may exist: Mr.Kelley had one with Mrs. Cox in his first contract for the lots, that voided the contract if rezoning was denied.

RANG

Subj:

Magnolia Ave. After Study

Date:

9/30/2004 7:48:15 AM Eastern Standard Time

From:

wiink@co.ba.mg.us

To:

lovingtouch36869@aol.com

CC:

Bsheppard.QCH\_PO.CCH\_DOM@co.ba.md.us, dwiles.CCB\_PO.COB\_DOM@cc.pa.md.us

I have received the results of the after study on Magnolia Ave. it revealed the following:

Before Traffic Calming

Total Volume = 5295 vehicles in 48hr. Average Speed = 32.5 mph Motorists exceeding 35 mph = 413 vehicles

After Traffic Calming
Total Volume = 4648 vehicles in 48hr.
Average Speed = 26 mph
Motorists exceeding 35 mph = 392

This represents a 20% reduction in the average speed and a 5% reduction in motorists traveling over 35 mph.

Thanks

W. Keith Link Baltimore County Traffic Engineering (410)887-3554

11/06/2004

925!

Zoning Board commissioner County courts building 401 Bosley Avenue Towson, Maryland

Subject: Zoning Notice Case Number 05-174-SPHA

To: Zoning Board Commissioner or representative of:

If the aforementioned variance and undersized lot is approved, it will in my opinion have a major adverse impact on the safety, welfare and values of the community in general and the adjoining properties in particular.

Only some of my concerns are as follows:

- Landscaping, storm water runoff and long term sediment control: will severely affect adjoining properties if a dwelling is allowed to be constructed on such a small parcel.
- Parking: an already over traveled residential street, (documented by the county which has, within the last several months installed speed or traffic slowing devices in the street to help in reducing both the speed and volume of traffic with little effect) Magnolia Avenue has multiple vehicles lined up in front of houses. Without exception all of these vehicles belong to the owners of homes with little or no driveways creating an obstacle course through which transient vehicles must maneuver, many times complete with horn blowing, brake squealing activity. This clearly evident by the tire marks left in the street and bent sheet metal on parked vehicles. The addition of another house on such a small property without adequate off road parking for at least 2 vehicles for would certainly add to this already dangerous situation.
- Fire: No matter what the positioning of a house on the property it will be located extremely close to the residences of adjoining property.

#### • The community in general:

English Consul Estates. One of the oldest communities in the area. Originally part of the English Consulate to Maryland. The Old Mansion Still stands on the next street.

I have lived on this street for almost 60 years my self, my wife for 38. Most of the older residents have passed on but the legacy of the homes they built still exists. The younger and newer residents are revitalizing this small pocket of old Baltimore County and bringing new life to it. They didn't move here to have a house jammed up against them or have to tolerate the problems that will surely be associated with its construction.

If any additional discussion or information is required please feel free to contact us.

Sincerely

Robert W. Gardner

Claire C. Gardner

3232 Magnolia Avenue

Baltinore County, Maryland 21227-2129

Protes

78 WHEM IT MAY CONCERN 11.10.04

AND WE ARE AGAINST BILL-OR CASE # 05-174-SPRA

MICIARLY DAWN RESLEY

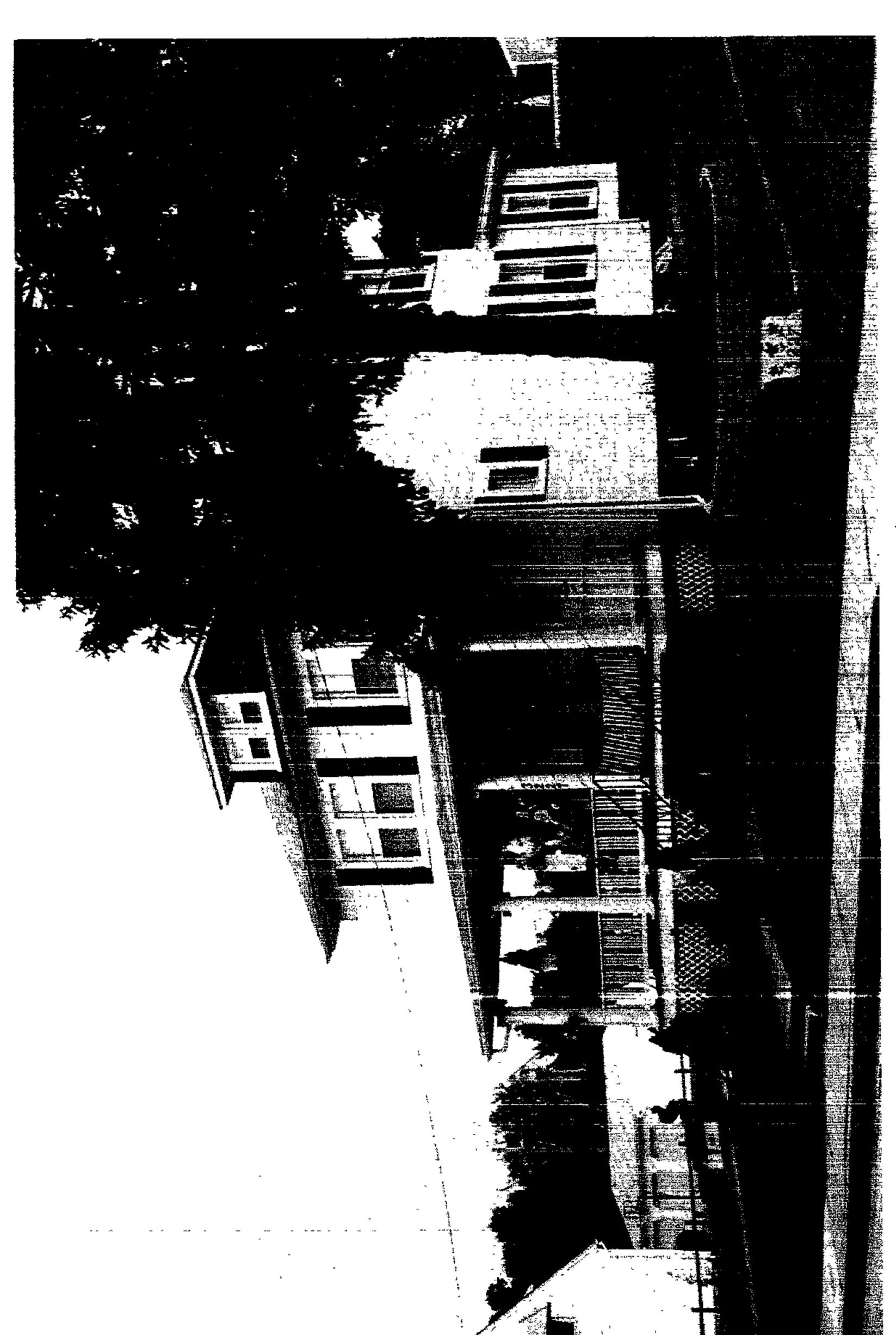
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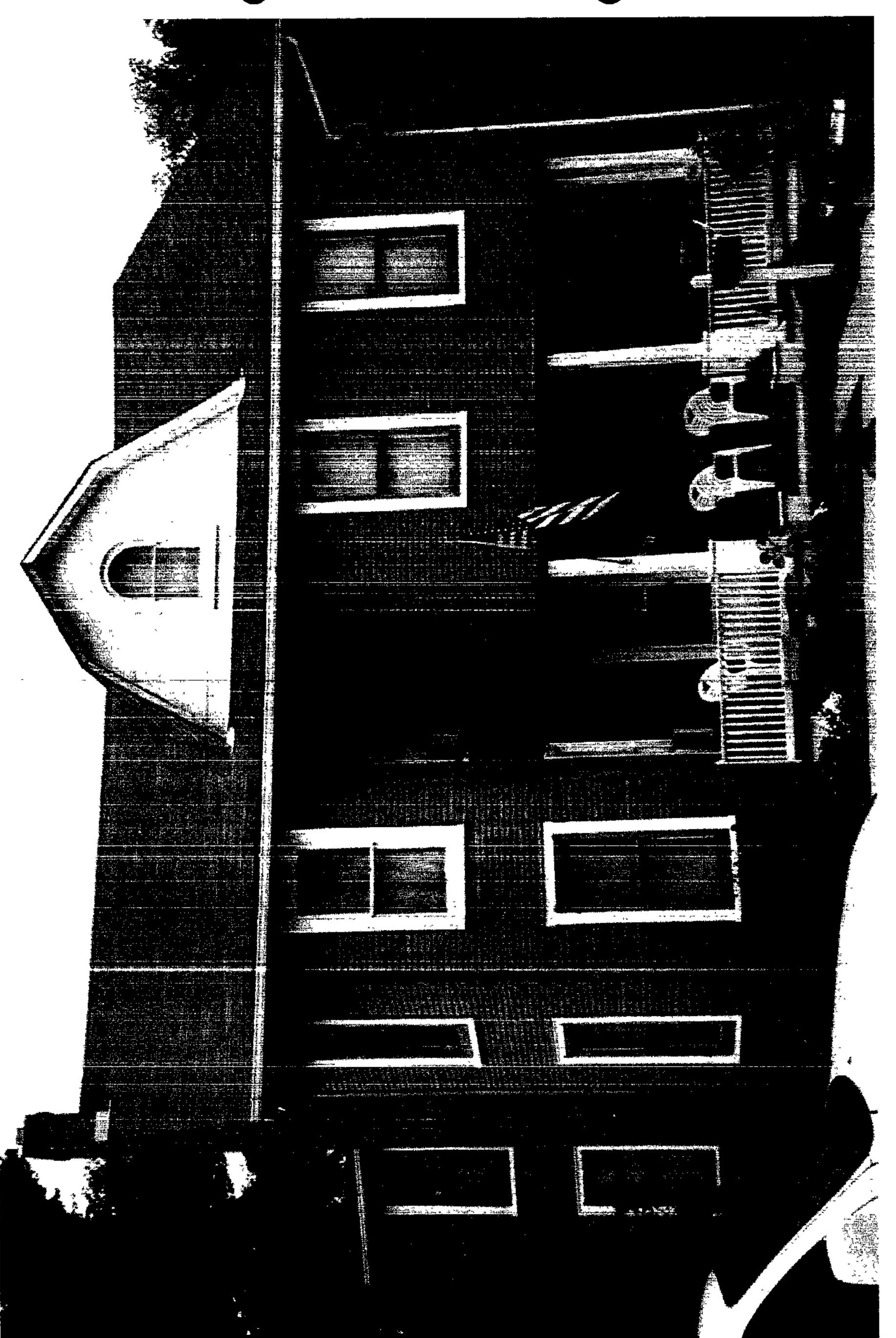
11/09/04 To bokom It may Cousern The have been residents of 3228 Magnoled lese for the past 34 years. Duet on the lot down from us It is a very small pucel of land and it would not accommodite a house of Ong style to enhance our neighborhore yours 1 Ruly moms John Deenter Batterne med 21227



# 3223



# 3227



IN THE MATTER OF
THE PETITION OF
JOAN M. COX
FOR VARIANCE ON PROPERTY
LOCATED ON THE N/S OF MAGNOLIA
AVE., 593' E. OF C/L OF LILAC AVE.
(3224 MAGNOLIA AVENUE)
13th DISTRICT

BEFORE

COUNTY BOARD OF APPEALS

OF

BALTIMORE COUNTY

No. 86-438-A

OPINION

This matter comes before the Board on an appeal from the findings of fact and order of the Deputy Zoning Commissioner dated May 15, 1986. In Her Order, the Deputy Zoning Commissioner denied the Petitioner's request for variance, which sought relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (BCZR). That Section requires, for dwelling construction, a minimum lot width of 55 feet. In view of the Petitioner's lot width of 50 feet, the requested variance was sought.

Although the merits of the requested variance were contested, the underlying facts are generally not in dispute. The property is located in an older subdivision known as English Consul in southwest Baltimore County. English Consul straddles the Baltimore City/County line and contains many older homes. Although the character of the subdivision has remained essentially the same, there have been increasing inroads of commercial development in the surrounding area.

When the development was originally established circa 1915, many of the lots were created with 25 foot widths. The narrowness of these lots resulted in many property buyers purchasing two (2) or more lots. When houses were then constructed, the neighborhood took a non-uniform appearance containing various sized yards, with widths of 50 feet, 75 feet, 100 feet, and larger yards in 25 foot increments. As the Petitioner pointed out, there are a number of residences presently existing on 50 foot wide lots, some in Baltimore City and others in Baltimore County. Apparently, construction on 50 foot lots in the Baltimore City section of English Consul is not in violation of that

IN THE MATTER OF THE
PETITION OF GERALD A. MARTIN, JR.
FOR A ZONING VARIANCE
ON PROPERTY LOCATED ON THE
NORTH SIDE OF MAGNOLIA AVENUE,
593' EAST OF LILAC AVENUE
(3224 MAGNOLIA AVENUE)
13TH ELECTION DISTRICT
1ST COUNCILMANIC DISTRICT

\* BEFORE THE

\* COUNTY BOARD OF APPEALS

\* OF

\* BALTIMORE COUNTY

\* CASE NØ: 91-129-A

#### **OPINION**

This matter comes before this Board as an appeal from a decision of the Deputy Zoning Commissioner of Baltimore County, dated November 20, 1990, denying the property owner's Petition for a Variance to permit a buildable lot with a width of 50 feet in lieu of the required 55 feet.

The Petitioner/Appellant, Gerald A. Martin, Jr., appeared and represented himself without legal counsel. Peter Max Zimmerman, Deputy People's Counsel, appeared on behalf of the People's Counsel for Baltimore County and Patricia L. Parker, Richard E. Parker, Katherine Schatz, Thomas Schatz, Katharina Keller and Richard Parker, Jr. appeared as Protestants.

Magnolia Avenue, is located in the subdivision known as English Consul and is split by the Baltimore County/Baltimore City line. The testimony further indicated that the subject lot was once 50 feet wide, but, by virtue of an adverse possession decree, is now only 46-1/2 feet wide.

A previous Opinion and Order of this Board (Case No: 86-438-A) was entered into evidence as an exhibit. \_\_Said Opinion and Order

RICHARD E. PARKER
PATRICIA L. PARKER
Plaintiffs,

\* CIRCUIT COURT

IN THE

v.

z

\* FOR

\*

GERALD MARTIN, JR.

\* BALTIMORE COUNTY

Defendant.

\* CIVIL ACTION #: 68-359-90CSP-3203

\* \* \* \* \*

\* \* \* \* \*

#### ORDER

This matter having come to trial on February 5, 1991 and upon consideration of Plaintiffs' Motion for Summary Judgment, Plaintiffs' Counsel and Defendant, Pro Se, having been heard, and the pleadings, Answers to Interrogatories, Admissions, and Affidavits herein having been read and considered, it is this day of February, 1991, by the Circuit Court for Baltimore County;

ORDERED that judgment be, and it is hereby entered against the Defendant, Gerald Martin, Jr. and in favor of the Plaintiffs, Richard E. Parker and Patricia L. Parker, declaring that by virtue of their adverse possession, fee simple title is vested in said Plaintiffs as Tenants by the Entireties in all that lot of ground situate partly in Baltimore County and partly in Baltimore City, State of Maryland, which is designated as "Disputed Property" on a Plat entitled Survey Exhibit, Lots 852-856, Section A, English Consul Estate (WPC 3-108A) which Plat was prepared by Peter A. Gallerizzo of T.S.A., Inc. and certified by the same surveyor on February 5, 1991, and which is attached hereunto as Exhibit A and incorporated herein, and it is further;





#### MI CONSULTING, INC.

208 Washington Avenue 2<sup>nd</sup> floor Towson, Maryland 21204

Phone 410-296-5288
Fax 410-296-5289
E-mail miconsultinging@comeast net

November 4, 2004

Baltimore County Office of Planning 406 Bosley Avenue Towson, Md. 21204

Attn. Ms. Jenifer German

Re: Undersized Lot - Magnolia Avenue Lots 855 & 856

Dear Ms. German,

We have received a copy of the planning office memo dated 9/9/04 regarding our submittal of an undersized lot and submit the following response. Our submittal included a sampling of 14 homes in the immediate neighborhood. The memo requested that we provide pictures of #3223, 3226 and 3227 and those are included with this letter. Note that on our submittal included #3222 and 3221, which are identical to 3227 and 3223 respectively. The memo questions whether the proposed house is appropriate given that the existing homes are primarily cape cods and two story dwellings with porches. Our proposed house is a two story colonial with a porch. Section 304.2B.2. of the BCZR states that the design should be based on elements such as height, massing, proportions of windows and doors to walls etc. We respectfully disagree with the assessment that the proposed house may be inappropriate and contend that the proposed house matches those criteria. Materials and colors were not provided with our submittal, but we would be eager to listen to suggestions from your office in that regard.

Our application was submitted based on the zoning in place at the time, DR-5.5. Assuming that that zone were in place, the BCZR Section 1B02.3.C.1 states that the side yards are 10' and there is no sum of side yards in DR-5.5. The memo states correctly that this lot does not meet the width and area regulations, however, section 304.1 permits a house on a lot with a width or area less than that required in the area regulations under certain conditions. The undersized lot application is the process under which we must demonstrate how we meet those conditions. A copy of that section of the BCZR is enclosed.

Ms. Jenifer German

Q J J

Note to file 05-174-SPHA mingent flan Culture in DR 5.5 while in Inter is DR 3,5 Per letter from OP No note on plan confining in adjacent ownership Some of the naneouce requests may no

Zoning Classifica- tion	Minimum Net Lot Area per Dwlling Unit (sq. ft.)	Minimum Lot Width (feet)	Minimum Front Yard Depth (feet)	Minimum Width of Individual Side Yard (feet)	Minimum Sum of Side Yard Widths (feet)	Minimum Rear Yard Depth (feet)
D.R.1	40,000	150	50	20	50	50
D.R.2	20,000	100	40	15	40	40
D.R.3.5	10,000	70	30	10	25	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.

\*

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 buildings for D.R.2, D.R.3.5 and D.R.5.5 Zones respectively. [Resolution, November 21, 1956]

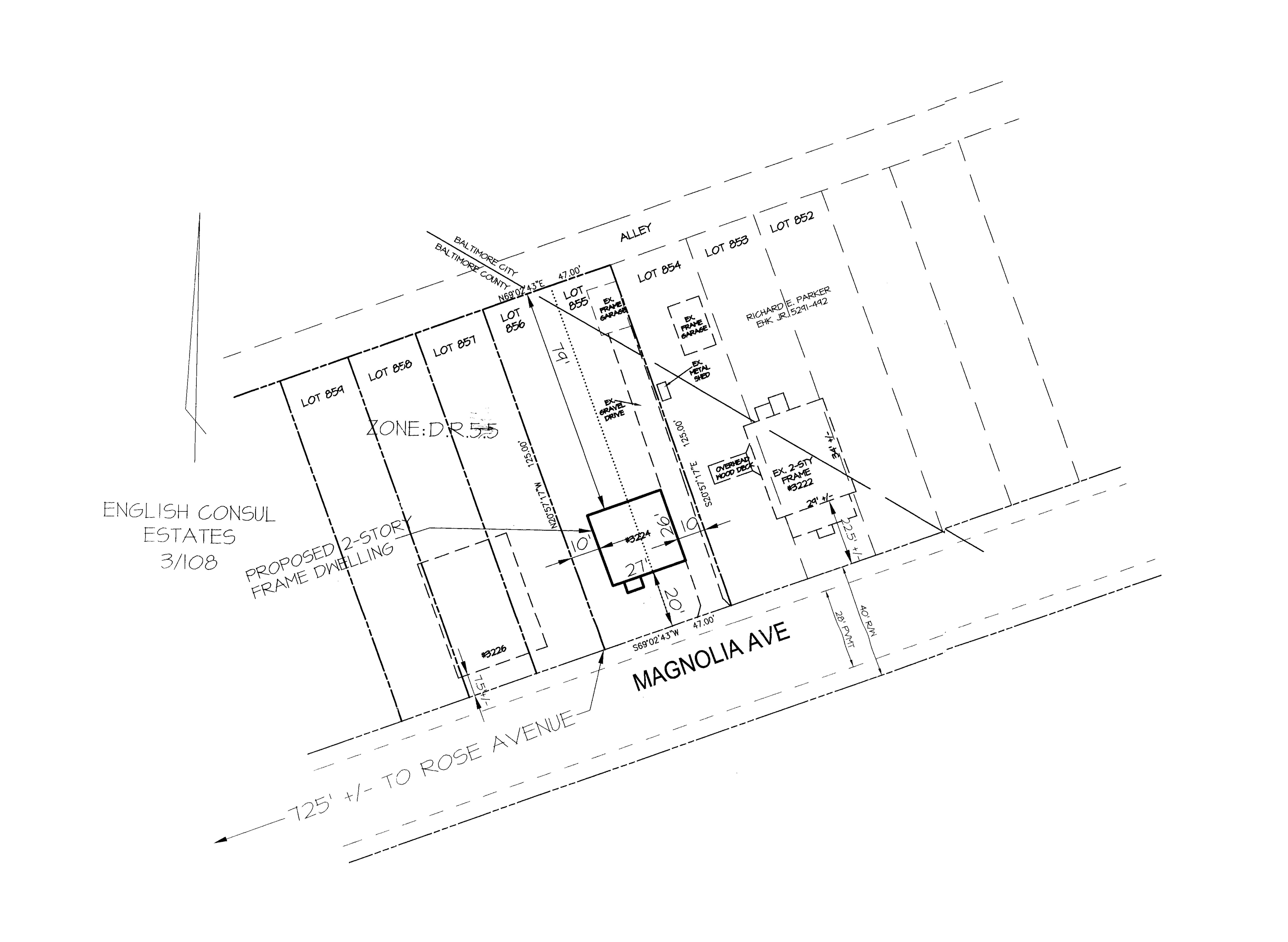
In B.L., B.M. and B.R. Zones, the front yard depth of any building hereafter erected shall be the average of the front yard depths of the lots immediately adjoining on each side, provided such adjoining lots are improved with permanent commercial buildings constructed of fire-resisting materials situate within 100 feet of the joint side property constructed of immediately adjoining lots are not both so improved, then the 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]

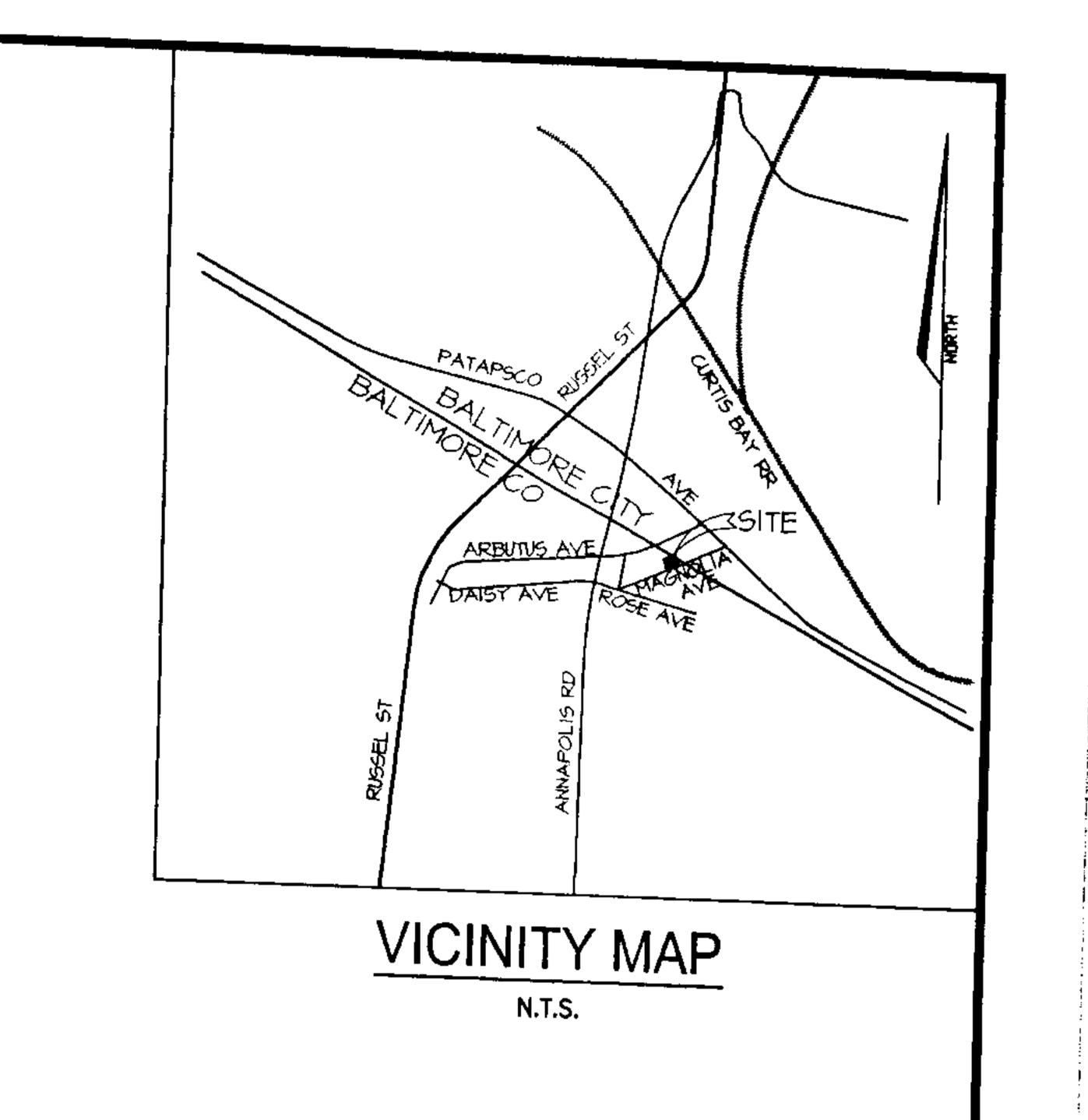
- A one-family detached or semi-detached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:
  - A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;
  - B. All other requirements of the height and area regulations are complied with; and
  - C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

#### 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



God Time XFr ve Xime (64 - 664HIPPY - YARIANE Felw ; - 167 1272004 - 4:29:30 PM, Copyright 2003 M.J. Consulting, Inc.



#### SITE INFORMATION

CENSUS TRACT: 4301.02
TAX MAP: 109, BLOCK: 5, PARCEL: 377 COUNILMANIC DISTRICT: 1 SUBDIVISION: ENGLISH CONSUL ESTATES WATERSHED: PATAPSCO RIVER SUBSEWERSHED: 66N REGIONAL PLANNING DISTRICT: 325 BALTIMORE COUNTY 200 SCALE ZONING MAP NO. SW-5-B.

#### **GENERAL NOTES**

- 1. EXISTING USE: VACANT LAND
- 2. PROPOSED USE: RESIDENTIAL 3. EXISTING ZONING: D.R.3.5
- 4. THERE ARE NO HAZARDOUS MATERIAL SITES ON THIS PROPERTY
  - 5. THERE ARE NO HISTORICAL SITES ON THIS PROPERTY
- 6. THERE ARE NO UNDERGROUND STORAGE TANKS ON THIS PROPERTY
- 7. THE PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA
  - 8. THIS PROPERTY WAS THE SUBJECT OF A PRIOR ZONING CASE NO. 91-129-A REQUESTING A VARIANCE TO CONSTRUCT A HOUSE ON A LOT IN A DR-5.5 ZONE 50' IN WIDTH IN LIEU OF THE REQUIRED 55'. THE REQUEST WAS DENIED BY THE ZONING COMMISSIONER. THE CASE WAS APPEALED TO THE BALTIMORE COUNTY BOARD OF APPEALS AND WAS ALSO DENIED.

# ZONING REQUEST

REQUEST A VARIANCE TO SECTION 1B02.3C.1 OF THE BCZR TO ALLOW THE SUM OF THE SIDEYARDS TO BE 20' IN LIEU OF THE REQUIRED 25', A FRONT YARD OF 20' IN LIEU OF THE REQUIRED 30' AND A LOT WIDTH OF 47' IN LIEU OF THE REQUIRED 70'.

## **LEGEND**

EX. BUILDING RESTRICTION LINE EX. CURB



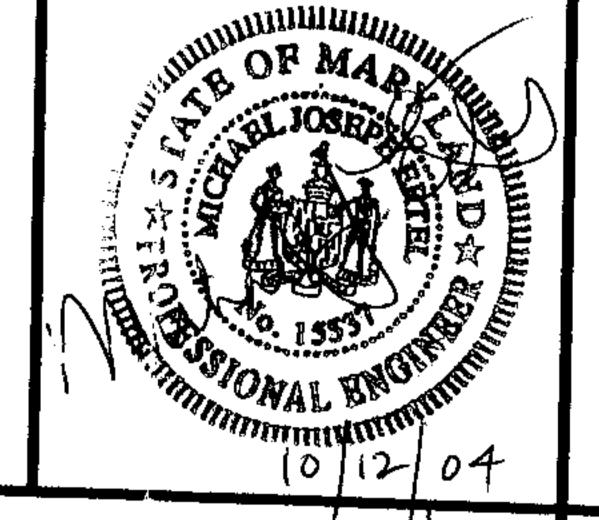
OWNER/APPLICANT

DANIEL L. LIPPY 5110 BENSON AVENUE BALTIMORE, MD 21227 910-410-7440

## PREPARER OF PLAN

MJ CONSULTING, INC. 208 WASHINGTON AVE. 2ND FLOOR TOWSON, MD 21204 410-296-5288 FAX 410-296-5289

REVISION



# PLAT TO ACCOMPANY PETITION FOR VARIANCE

LOTS 855 & 856 ENGLISH CONSUL ESTATES ELECTION DISTRICT 13
COUNCILMATIC DISTRICT 1
BALTIMORE COUNTY, MARYLAND

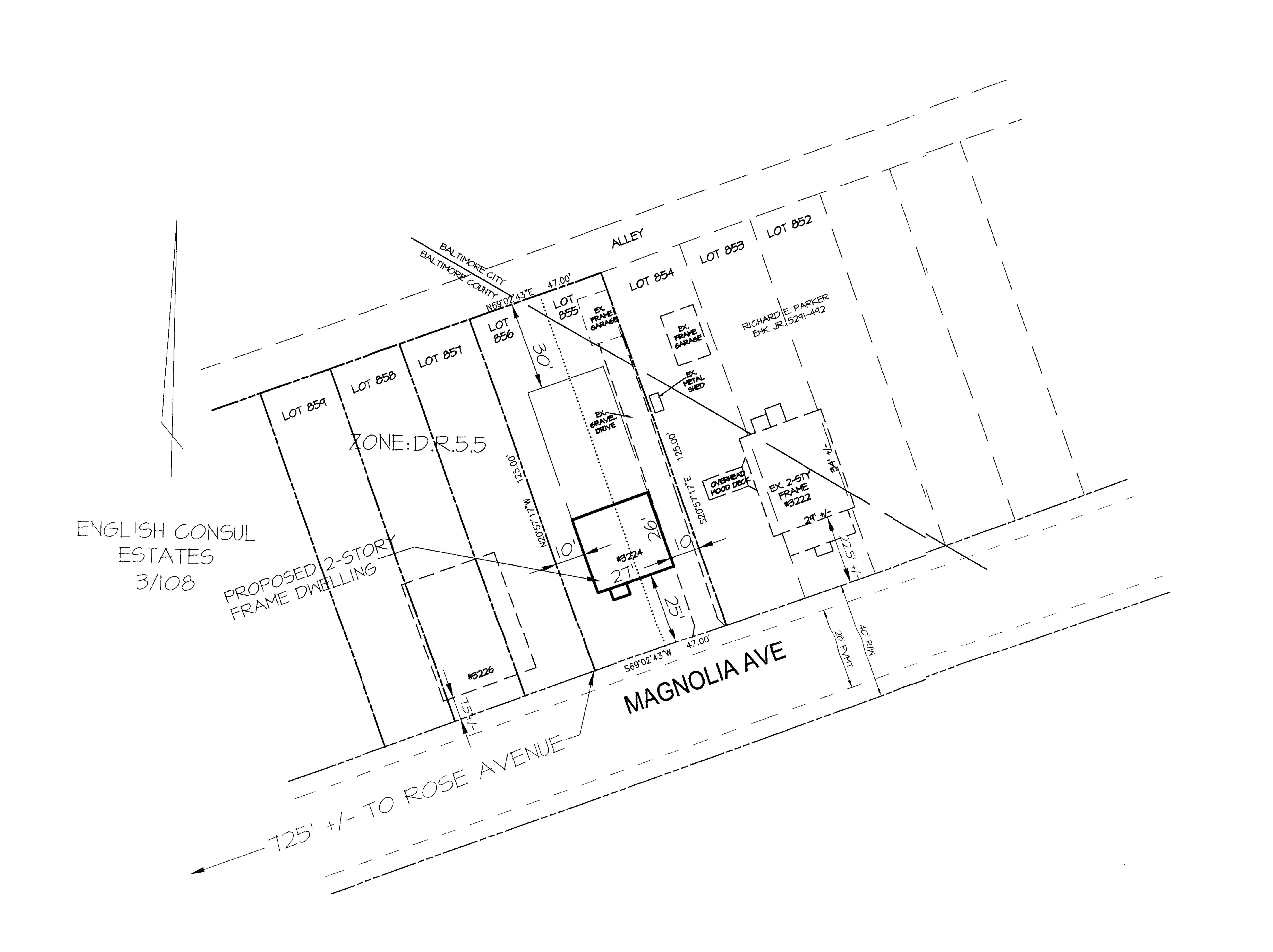
SHEET 1 OF 1

208 Washington Ave., 2nd Floor Towson, Maryland 21204 410-296-5288 fax 410-296-5289

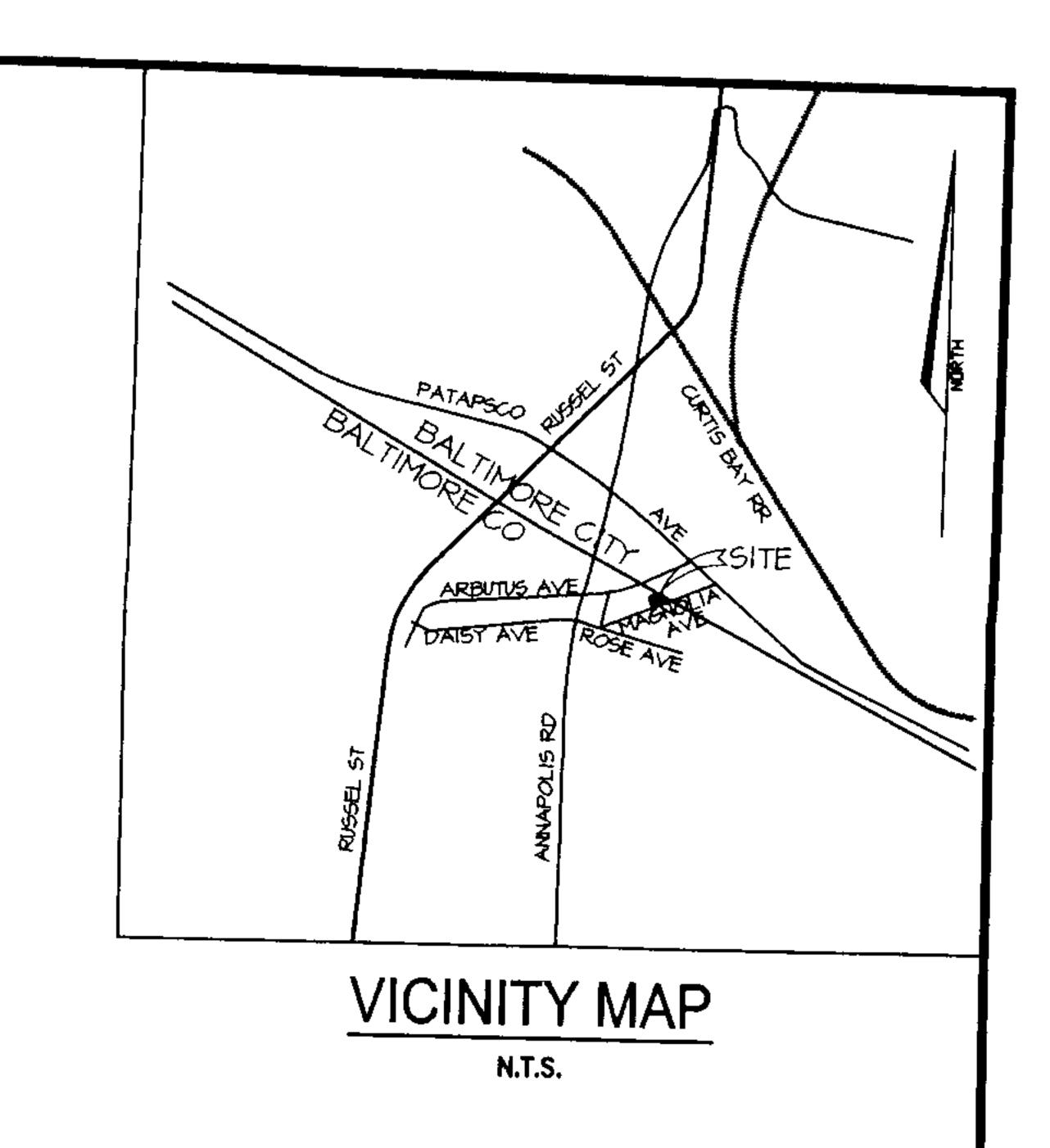
DRAWN BY:

mjconsultinginc@comcast.net

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SITE INFORMATION

DEED REFERENCE: 9196/409 PLAT REFERENCE: 3/108 CENSUS TRACT: TAX MAP: 109, BLOCK: 5, PARCEL: 377 COUNILMANIC DISTRICT: 1 SUBDIVISION: ENGLISH CONSUL ESTATES WATERSHED: SUBSEWERSHED: 66N

1. EXISTING USE: VACANT LAND 2. PROPOSED USE: RESIDENTIAL 3. EXISTING ZONING: D.R.5.5

4. THERE ARE NO HAZARDOUS MATERIAL SITES ON THIS PROPERTY

5. THERE ARE NO HISTORICAL SITES ON THIS PROPERTY

6. THERE ARE NO UNDERGROUND STORAGE TANKS ON THIS PROPERTY

7. THE PROPERTY IS NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA OR FLOODINAIN. TO NO ADJACENT LOT OWNERSHIP IN PAST 6 YRS, MY

O.P. PACK SENT THIS DATE

# LEGEND

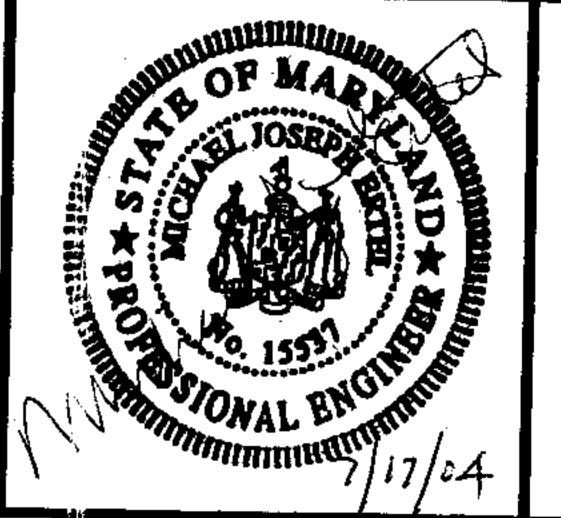
EX. BUILDING RESTRICTION LINE EX. CURB

OWNER/APPLICANT

DANIEL L. LIPPY 5110 BENSON AVENUE BALTIMORE, MD 21227 910-410-7440

## PREPARER OF PLAN

MJ CONSULTING, INC. 208 WASHINGTON AVE. 2ND FLOOR TOWSON, MD 21204 410-296-5288 FAX 410-296-5289



# PLAT TO ACCOMPANY PETITION FOR SPECIAL HEARING FOR DEVELOPMENT OF UNDERSIZED LOT

LOTS 855 & 856 ENGLISH CONSUL ESTATE

ELECTION DISTRICT 13
COUNCILMATIC DISTRICT 1 BALTIMORE COUNTY, MARYLAND

SHEET 1 OF 2

MI CONSULTING, INC.

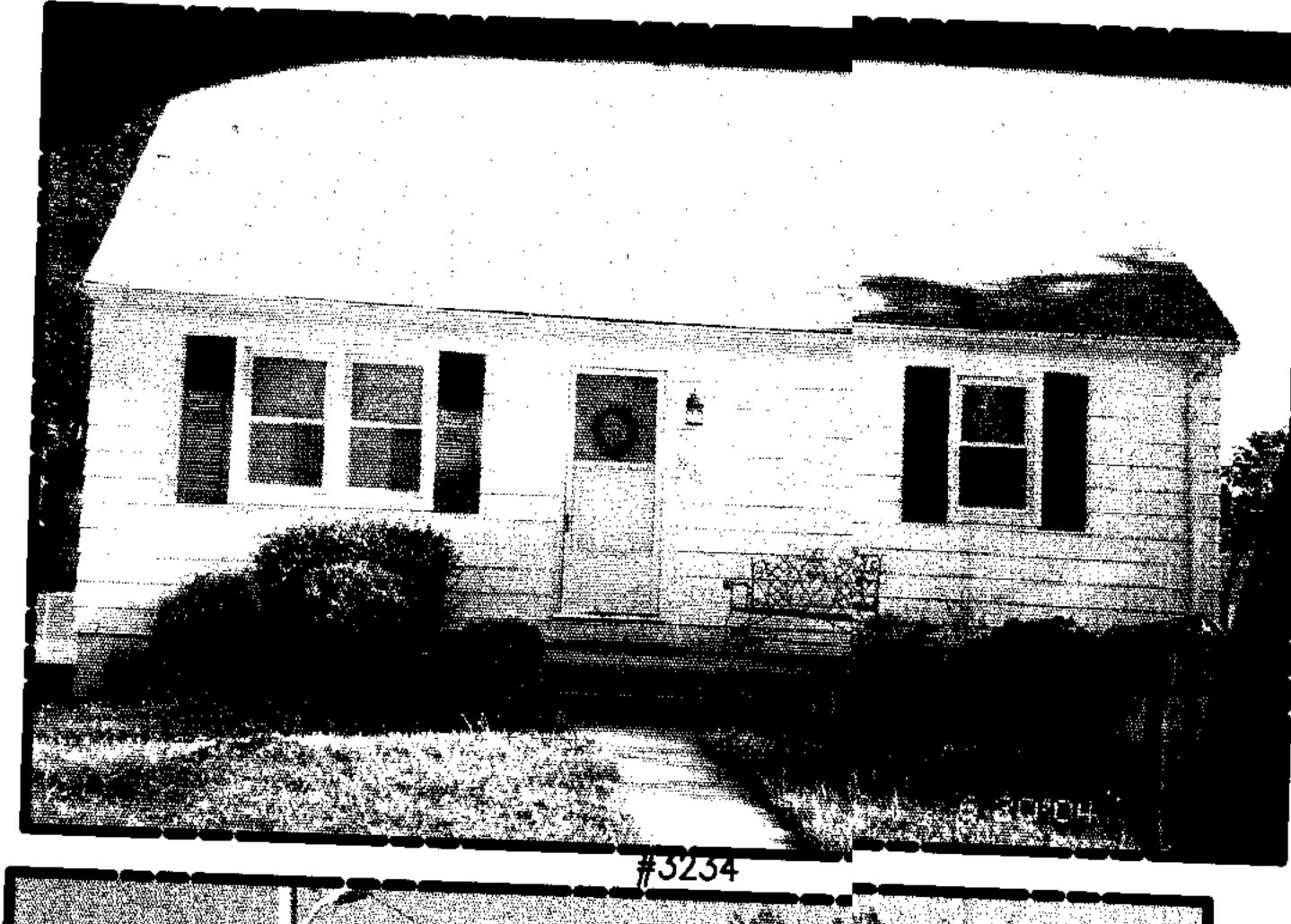
208 Washington Ave., 2nd Floor
Towson, Maryland 21204
410-296-5288 fax 410-296-5289

mjconsultinginc@comcast.net

DRAWN BY: DESIGNED BY: CHECKED BY: JOB NO:



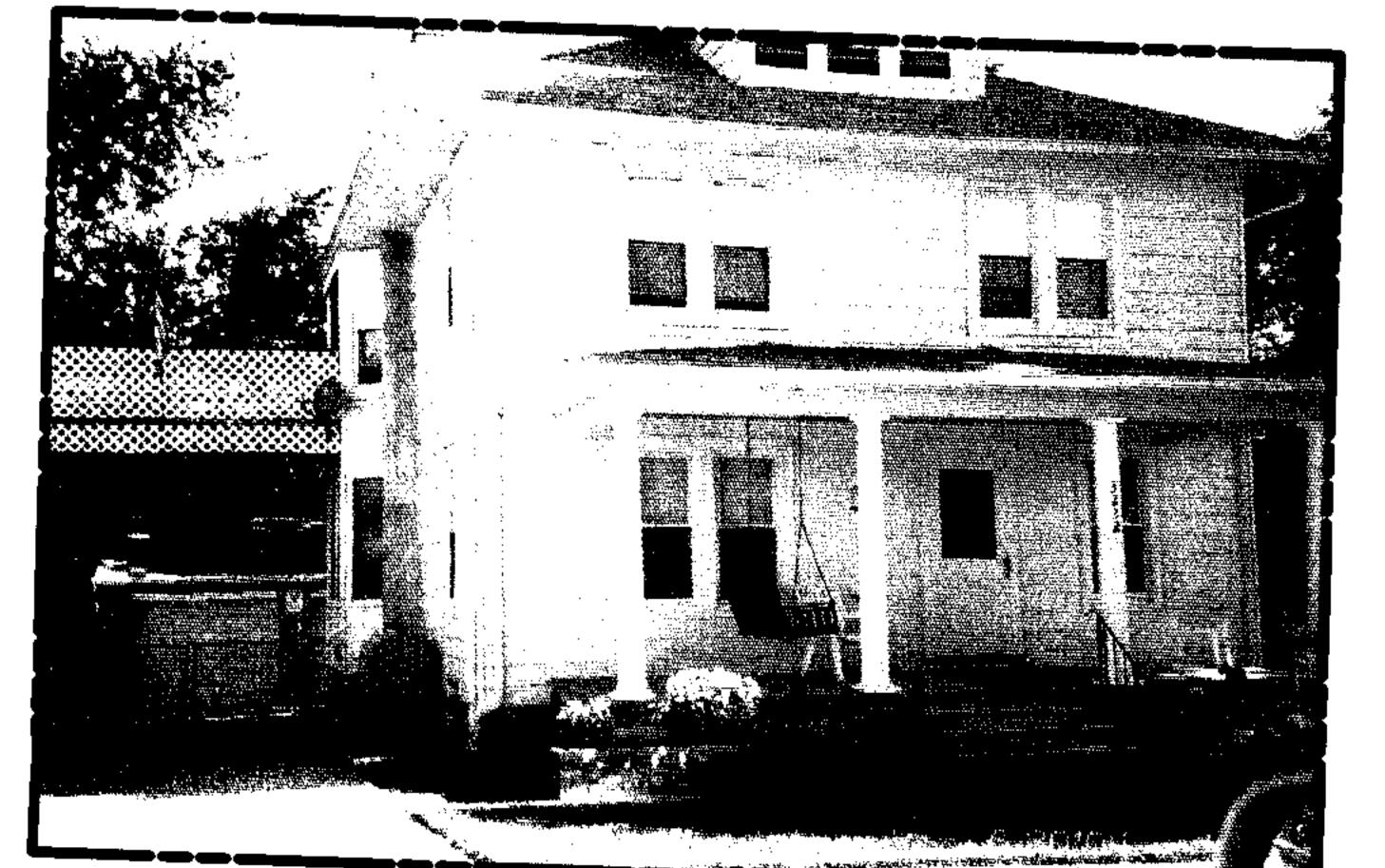








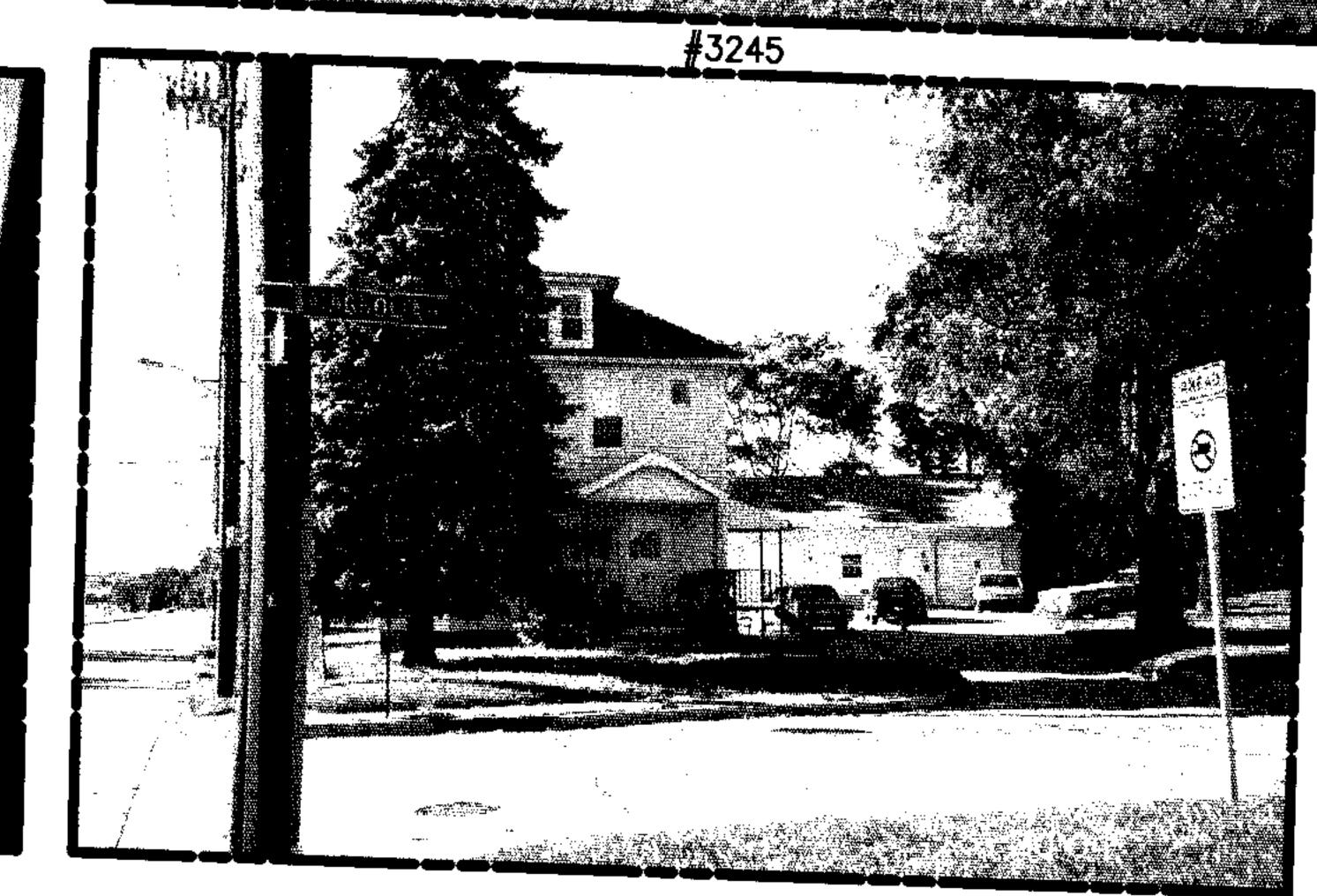






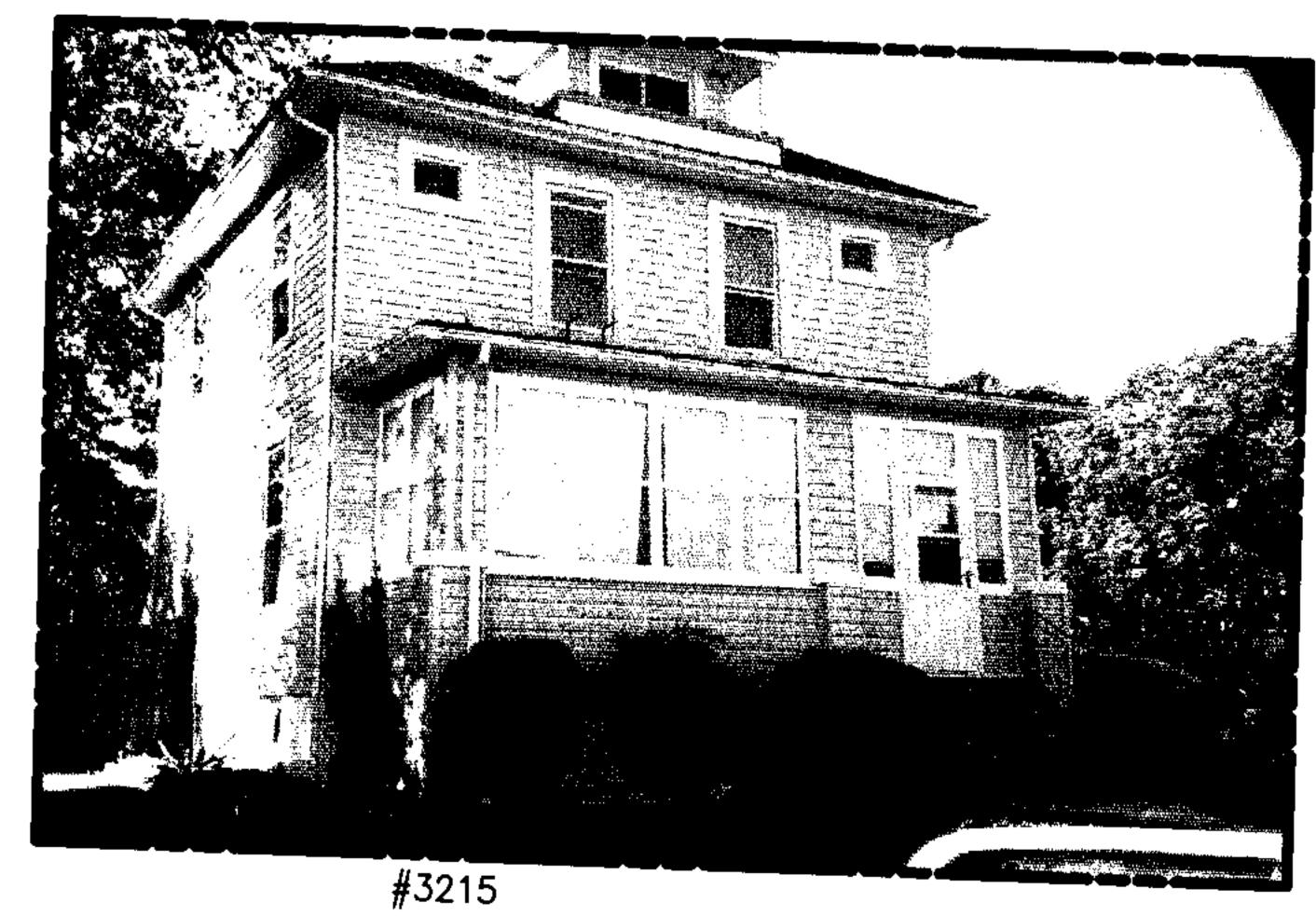










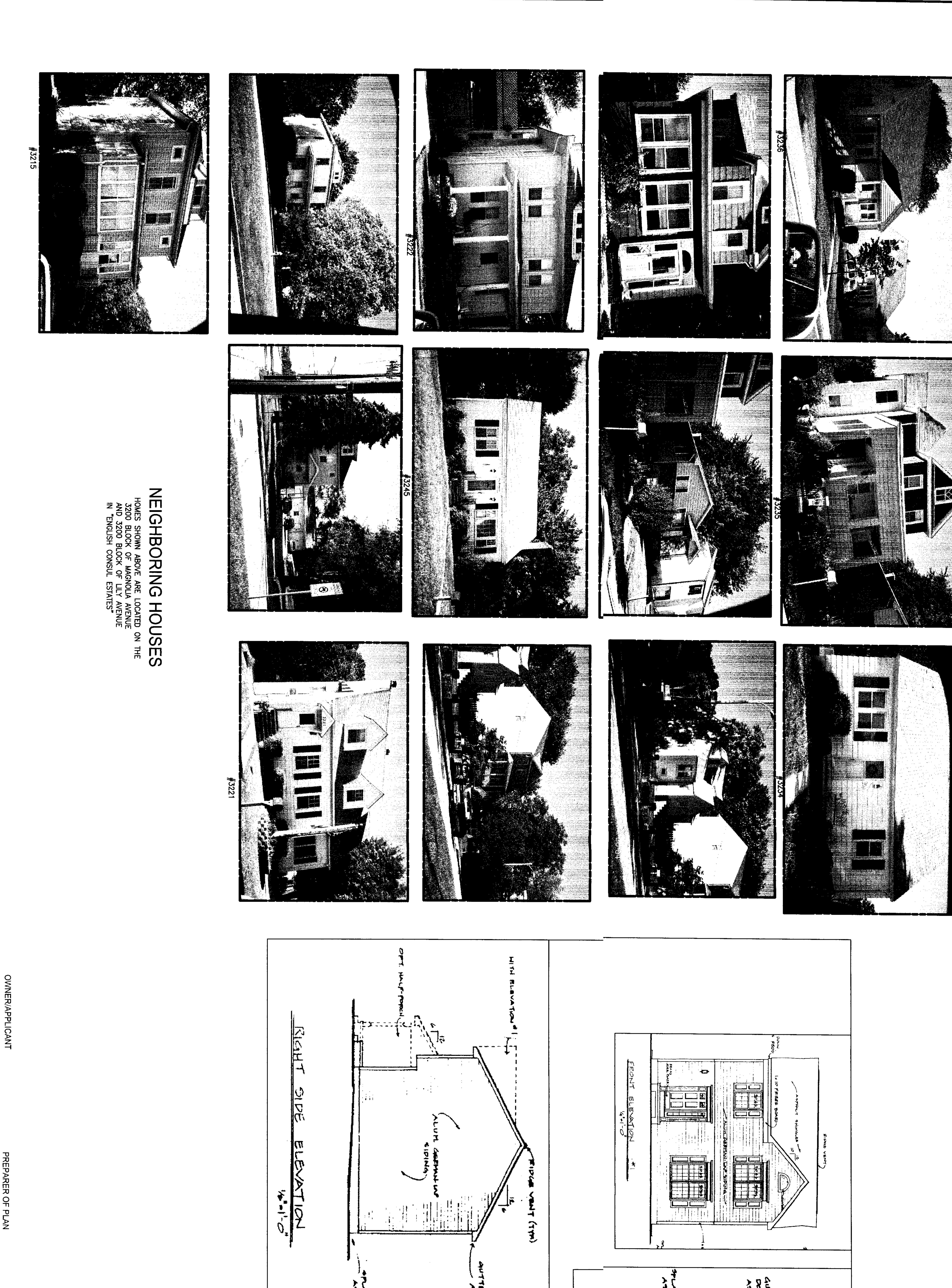


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# NEIGHBORING HOUSES

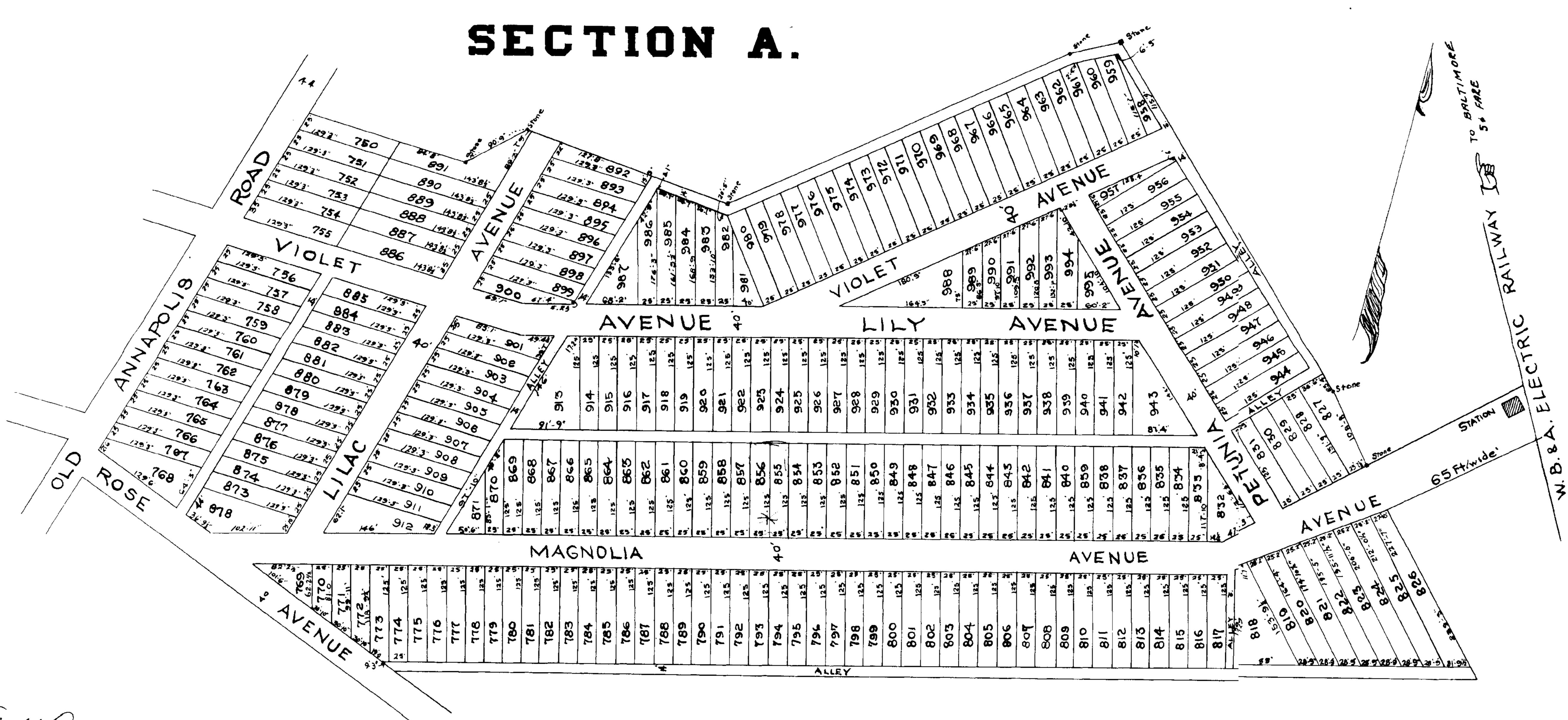
HOMES SHOWN ABOVE ARE LOCATED ON THE 3200 BLOCK OF MAGNOLIA AVENUE AND 3200 BLOCK OF LILY AVENUE IN "ENGLISH CONSUL ESTATES"

			<del></del>		
OWNER/APPLICANT  DANIEL L. LIPPY 5110 BENSON AVENUE BALTIMORE, MD 21227 910-410-7440	PREPARER OF PLAN MJ CONSULTING, INC. 208 WASHINGTON AVE. 2ND FLOOR TOWSON, MD 21204 410-296-5288 FAX 410-296-5289		PLAT TO ACCOMPANY PETITION FOR SPECIAL HEARING FOR DEVELOPMENT OF UNDERSIZED LOT  LOTS 855 & 856  ENGLISH CONSUL ESTATE  ELECTION DISTRICT 13  COUNCILMATIC DISTRICT 1  BALTIMORE COUNTY, MARYLAND SHEET 2		
	BY REVISION	DATE	MI CONSULTING, INC.  208 Washington Ave., 2nd Floor Towson, Maryland 21204 410-296-5288 fax 410-296-5289 email mjconsultinginc@comcast.net	SCALE N/A	DATE: APRIL, 2004  DESIGNED BY: MJE



PREPARE
MJ CONSU
208 WASH
TOWSON, 1
410-296FAX 410-**MC.**d Floor
204
6-5289

Plat of Port of



Streets, alley and Roodways designated on this flot are afred 14 my Dedignoted topelie we has Ital Baltime Md

Filed November 17'1910 Fest: Morp Cole Eleck

REBAR & CAP-N 69° 02' 43" E LOT 856 LOT 853 LOT 852 EX. FRAME RICHARD E. PARKER EHK JR. 5291-492 EX. GRAVEL DRIVEWAY OVERHEAD WOOD DEC" EX. 2-STY FRAME DWELLING \*3222 Section 2 DISPUTED PROPERTY FOUND REBAR & CAP INON PIPE FOUND 5 69" 02' 43" W \_\_ IRON PIPE FOUND MAGNOLIA AVENUE



VICINITY MAP SCALE: 1"= 2000"

SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE MEASUREMENTS SHOWN HEREON ARE CORRECT.

PETER A. GALLERIZZO DATE
MARYLAND PROFESSIONAL LAND SURVEYOR "10705



SURVEY EXHIBIT

LOTS 852-856 SECTION A

ENGLISH CONSUL ESTATE (WPC 3-108A)

BALTIMORE, MARYLAND

SCALE: 1"= 20"

DATE: FEBUARY 4, 1991

T.S.A., INC.

8480 BALTIMORE NATIONAL PIKE SUITE 418
ELLICOTT CITY, MARYLAND 21043
301-465-6105