IN RE: PETITION FOR VARIANCE W/S of Maple Road, 970 ft. S centerline of Poplar Road 15th Election District 5th Councilmanic District (1102 Maple Road)

Petitioners

Elizabeth M. & Morgan William Baxley

BEFORE THE

DEPUTY ZONING COMMISSIONER

OF BALTIMORE COUNTY

CASE NO. 05-183-A

ORDER ON MOTION FOR RECONSIDERATION

This matter comes before this Deputy Zoning Commissioner as a Motion for Reconsideration filed by Elizabeth M. and Morgan William Baxley, legal owners of the property located at 1102 Maple Road in the eastern area of Baltimore County. The Petitioners request that I reconsider my previous decision issued December 2, 2004 in which I denied the Petitioners' request for variance from Section 1A04.3.B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit side building setbacks of 11 ft. in lieu of 50 ft. from lot lines for a proposed dwelling.

The Petitioners filed a timely Motion for Reconsideration of the Commissioner's Order received by this office on December 14, 2004. The Petitioner contends that the Findings of Fact and Conclusions of Law issued in this case are legally and practically incorrect under four theories:

- 1. Section 304.1 of the B.C.Z.R. does not consider density when the issue pertains to building a single-family home on an undersized lot that was recorded before March 30, 2004. The subject lot was of record before March 30, 1955. Rather, considerations of density apply only to subdivision of property, which is not at issue in this case.
- 2. The Planning Office did not object to the requested relief.
- 3. Similar variances were granted in Case No. 96-493-A in the neighborhood.
- 4. That the Petitioner has paid taxes on this lot as a buildable lot since 1983.

Taking the first issue raised, perhaps it would be helpful to outline how the regulations treat undersized lots. First, the owner has the option of selecting an administrative approval of the

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undersized lot under Section 304 of the B.C.Z.R. This is very much like the process for an administrative hearing in that after the application is made, the property is posted notifying the area property owners of the relief sought. If no objection is noted from the public and the lot qualifies under the requirements of Section 304.1 subsections A (lot recorded prior to 1955), B (meets all height and area regulations) and C (no adjacent property available), a building permit can be issued without further hearing by the Administration. If a protest is made, the County sets the matter in for hearing. At the hearing the Zoning Commissioner determines to approve or deny the application after determining "whether the proposed dwelling is appropriate". See Section 304.4 of the B.C.Z.R.

In the subject case, this lot does not qualify for administrative relief because the proposed dwelling does not meet the side building setbacks.

In the alternative, the owner can ask for a variance from the regulations. Here the Zoning Commissioner has to consider each of the criteria listed in Section 307 of the B.C.Z.R. These are as follows:

- 1. That the property or structure is peculiar. This means that there is something odd or unique about the property which sets it apart from others in the neighborhood in regard to the impact the zoning regulations have on the use of the property.
- 2. That the owner would suffer a hardship or practical difficulty if the regulations were strictly enforced.
- 3. That granting the variance will not increase the density otherwise allowable.
- 4. That the proposed use is within the spirit and intent of the applicable regulations.
- 5. That the proposed use would not adversely impact the neighborhood.

In the subject request, I found that the property was unique and that it would be a hardship to strictly enforce the regulations. Although ultimately I denied the request, I thought I should let the Petitioner know that the request passed the first and second tests.

However, as one can see by the regulations I am required in variance cases to consider density. I found density to be a problem not only looking at the lot but also looking at the neighborhood. If this were the only problem, I may have decided differently. However, I noted that the County Council recently passed a bill increasing the lot size for RC 5 property. I agree that this bill does not apply directly to this lot for the reasons stated, but when I examine whether the request meets the spirit and intent of the regulations, I believe I must look to the Council's intent in the largest and most general sense. Here the message was clear that the Council wants less development in RC 5 zones. But again if this were the only issue, I may have decided otherwise.

When I consider the issue of adverse impact on the neighborhood, I look particularly at neighborhoods in old subdivisions to see if the proposed use will change the pattern of development of the neighborhood. Many times the pattern is one house on each fifty foot lot. Around the corner from this location we can find one house on two fifty foot lots. This pattern of development has great impact on the value of properties and the uses residents can make of them. For example, reasonably sized homes on fifty foot lots will be very close together. There will necessarily be great interaction among neighbors, little on no privacy, and an intense feeling of neighborhood. Neighborhoods developed with one house on two fifty foot lots have an entirely different feel. There can be a great deal more privacy and much less neighbor to neighbor interaction.

In the subject case, the request was to build one house on one fifty foot lot. Next to this property there is one house on five lots. On the other side of this property there is a vacant fifty foot lot but next to it is one house on two lots. In my view, if the Petitioner erects his house on one lifty foot lot, this will change the pattern of development of the neighborhood and adversely affect the community. Taking all into account on balance and realizing there will be a hardship on the lowner, I denied the request.

The Petitioner also points out that the Planning Office did not object to the requested relief and that similar variances were granted in Case No. 96-493-A in the neighborhood. However, as the Petitioner points out in his Motion, in Case No. 96-493-A the variance requests were for one house on two lots. This of course is the point. As indicated in the subject order, if this lot were combined with Lot 27, likely a different result would occur. One house on two lots in this neighborhood. I also note that the owner of Lot 27 has the same problem as this Petitioner. It may be in this owner's best interest to discuss this matter with the Petitioner. In addition, I can not presume that because the Planning Office made no comment, they agree with this request. They simply made no comment.

Finally, the Petitioner notes that he has paid taxes on this lot as a buildable lot since 1983. While this is not a criteria listed to be considered in Section 307 of the B.C.Z.R. as to whether or not a variance should be granted, I can understand the Petitioner's frustration in this regard. If the lot is assessed as buildable, the Orders in this case can be proof to the State Department of Assessments and Taxation that the present assessments are in error and should be reduced.

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

OHYV. 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

January 4, 2005

Mr. & Mrs. Morgan William Baxley 2315 Hamiltowne Circle Baltimore, Maryland 21237

> Re: Motion for Reconsideration Case No. 05-183-A (Petition for Variance) Property: 1102 Maple Road

Dear Mr. & Mrs. Baxley:

Enclosed please find my Order on your Motion for Reconsideration regarding the above-captioned case.

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

John V. Murphy

JVM:raj Enclosure

c: Vince MoskunasSite Rite Surveying, Inc.200 E. Joppa Road, Room 101Towson, Maryland 21286



Visit the County's Website at www.baltimorecountyonline.info

IN RE: PETITION FOR VARIANCE
W/S of Maple Road, 970 ft. S
centerline of Poplar Road
15th Election District
5th Councilmanic District
(1102 Maple Road)

Elizabeth M. & Morgan William Baxley

Petitioners

- * BEFORE THE
- * DEPUTY ZONING COMMISSIONER
- * OF BALTIMORE COUNTY
- CASE NO. 05-183-A

* * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

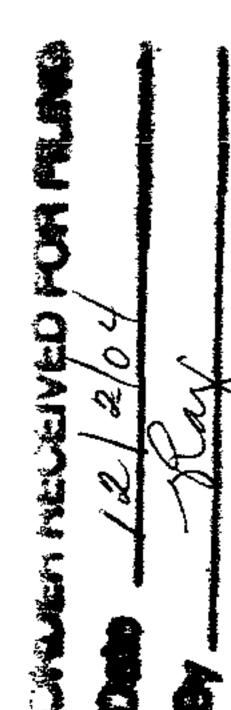
This matter comes before this Deputy Zoning Commissioner as a Petition for Variance filed by the legal owners of the subject property, Elizabeth M. and Morgan William Baxley. The Petitioners are requesting variance relief for property located at 1102 Maple Road in the eastern area of Baltimore County. Variance relief is requested from Section 1A04.3.B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit side building setbacks of 11 ft. in lieu of 50 ft. from lot lines for a proposed dwelling.

The property was posted with Notice of Hearing on November 8, 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 9, 2004 to notify any interested persons of the scheduled hearing date.

Applicable Law

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

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



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

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: A ZAC comment was received from the Department of Environmental Protection & Resource Management (DEPRM) dated November 16, 2004, a copy of which is attached hereto and made a part hereof.

Interested Persons

Appearing at the hearing on behalf of the variance request for the Petitioner was Vince Moskunas on behalf of Site Rite Surveying, Inc., the firm that prepared the site plan of the property. No protestants or citizens appeared at the hearing. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

This property contains approximately 0.4 acres and is zoned R.C. 5. Mr Moskunas proffered that the subject property is vacant and is known as Lot 26 of the Cedar Beach subdivision which was recorded in the Land Records of Baltimore County in 1924. This lot and Lots 20 through 45 are 50 ft. wide. See Petitioners' Exhibit 2. The R.C. 5 zoning regulations were imposed in the 1970's. He pointed out that the Petitioners have owned the property since 1983.

The Petitioners would like to build a house shown on Petitioners' Exhibit 1. The home proposed is a standard 28 ft. x 46 ft. house, which meets all of the setback regulations except lot line setback. Mr. Moskunas indicated that since the lot was 50 feet wide there was no practical way to meet the 50 ft. setback on either side of the house. Essentially, to impose the regulations

means that no home could be built and he indicated that this would be a hardship on the Petitioners.

He then reviewed the pattern of development in the area. He noted that the home to the south at 1108 Maple Road had one house on five 50 ft. lots (Lots 20 to 25). Lot 26 is the subject property. Lot 27 is vacant. There is one home on Lots 28 and 29 at 1030 Maple Road. There is one home on a 50 ft. lot (Lot 30) and another on Lot 31. He noted that the house on Lots 28 and 29 required a variance since the side yard set backs could not be met even with two lots. Similarly, he noted the side yards for the homes on Lot 30 and 31 do not meet the present side yard setbacks. He pointed out that there is no land available for sale on either side of this lot (Lot 26) which the owners can purchase and meet the set back regulations. He opined that locating a home on Lot 26 would be fully compatible with the pattern of development in the neighborhood and as such meets the spirit and intent of the RC regulations.

Findings of Fact and Conclusions of Law

As with these older subdivision on the east side of the County, I have no trouble finding that special circumstances or conditions exist that are peculiar to the land or structure, which is the subject of the variance request. The lot was laid out in 1924 and R.C. 5 regulations imposed on it in the 1970's. Therefore, I find that this lot is impacted by the regulations in a way different from lots laid out in accord with the regulations and is in a zoning sense unique.

I further find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. This lot was laid out for residential development, but applying the R.C. 5 regulations means that no house could be built. Clearly, a 50-foot wide lot can not meet 50 ft. setback requirements from each lot line.

However, the problem comes when I look at the pattern of development to see if the new home would change the character of the neighborhood. In addition, I have to be cognizant that

Totological Control

recent County Council Bill No. 55-2004 increased the minimum lot size in the R.C. 5 zones from one acre to one and half acre when I look at the spirit and intent issue.

Regarding the latter, I acknowledge that this .4 acre lot will never meet the minimum lot size and, having been laid out many years before the RC regulations were imposed, these lots are not expected to meet the minimum lot size. But the message from the County Council is also clear that they want the density of development decreased substantially in R.C. 5 zones compared to the prior standard. The density proposed on this lot is 2.5 dwelling units per acre. The density allowed in the regulations is 0.667 dwelling units per acre. Said another way, the density is 3.7 times what is now allowed in the RC 5 zone. Having said this, I recognize that traditionally we have also looked at the density resulting from a new home being located in a neighborhood by looking at the neighborhood as a whole. Otherwise it would be impossible to approve virtually any undersized lot. Looking at the neighborhood as defined by the Petitioner (Lots 20 through 32) there are 12 lots approximately 0.4 acres in size or 4.8 acres. At 0.667 dwellings per acre 3.2 dwellings would be allowed. According to the exhibits and testimony there are already 4 dwellings on these twelve lots.

The pattern of development is also troubling. The existing homes on each side of the subject property are on double lots or larger lots. Because the house on Lots 20 through 25 is so far away from this lot, and Lot 27 is vacant, one could argue that allowing a home on this 50 foot lot will not change the pattern of development from the perspective of distance between homes. My problem is not with this lot, but that if these variance are granted it would then be arbitrary to deny similar variances for vacant Lot 27. Now the change in pattern of development would be drastically changed to the detriment of the neighborhood.

Clearly, locating one home on combined Lots 26 and 27 would be compatible with the pattern of development in the neighborhood even though this would stretch the density somewhat. I realize these lots are in different ownership and this proposal is not before me. I also realize that

even with 100 feet of width one house on these two lots will require side yard setback variances as the setbacks are then as wide as the lot.

Considering all the testimony and evidence presented especially the precedent that would be set for Lot 27, I will deny these variance requests.

Pursuant to the advertisement, posting of the property, and public hearing on this petition held, and after considering the testimony and evidence offered by the Petitioners, I find that the Petitioners' variance requests not withdrawn should be denied

THEREFORE, IT IS ORDERED, this _____ day of December, 2004, by this Deputy Zoning Commissioner, that the Petitioners' request for variance from Section 1A04.3.B.2 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit side building setbacks of 11 ft. in lieu of 50 ft. from lot lines for a proposed dwelling, be and is hereby DENIED.

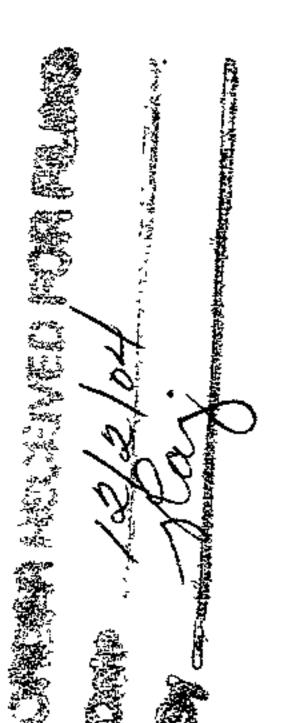
Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JOHN.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

December 2, 2004

Mr. & Mrs. Morgan William Baxley 2315 Hamiltowne Circle Baltimore, Maryland 21237

Re: Petition for Variance
Case No. 05-183-A
Property: 1102 Maple Road

Dear Mr. & Mrs. Baxley:

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: Vince MoskunasSite Rite Surveying, Inc.200 E. Joppa Road, Room 101Towson, Maryland 21286



Visit the County's Website at www.baltimorecountyonline.info



Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at	#1102	Maple	Poad	
which is	presently zo	med 120	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) /AO4.3, B.2 TO PERMIT

SIDE BUILDING SETBACKS OF 11 FT. IN LIEU OF 50 FT. FROM LOT LINES (FOR A PROPOSED DWELLING)

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

Suattadud

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/L	Lessee:		Legal Owner(s):
**			MORGAN WILLIAM BAXLEY
Name - Type or Print		Nam	e-Type or Print **Morgan Willer Dallon
Signature	······································	· · · · · · · · · · · · · · · · · · ·	Signature
Address		Telephone No.	Name - Type or Print
City	State	Zip Code	Signature Signature Market Mark Frenchs
Attorney For Petition	er:		2315 Ham town Civil 443 463 497
	- , <u></u>		Address Battum, MO 21237 Telephone No.
Name - Type or Print		City	State Zip Code Representative to be Contacted:
Signature	 	-	
<u></u>	·	<u> </u>	- Site Rute Surveying, I'm.
Company			200 to Joppa Road Rulol 460 828-9060
Address		Telephone No.	Address Telephone No. TOWSDL MD 21286
City	State	Zip Code	City State Zip Code
2 1			OFFICE USE ONLY
Case No. 28	33 A		ESTIMATED LENGTH OF HEARING 2H
REV 5/98		Reviewed By	UNAVAILABLE FOR HEARING Date 10 108 104
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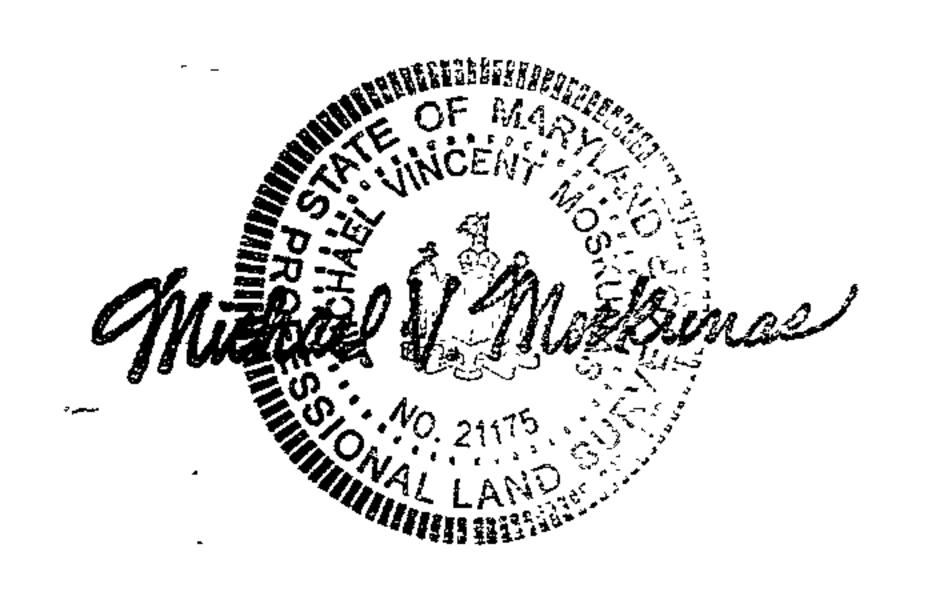
REASONS FOR ZONING PETITION FOR #1102 MAPLE ROAD

- 1. THIS IS A LOT OF RECORD AS SHOWN ON CEDAR BEACH PLAT DATED 1924. THIS LOT HAS BEEN HELD UNDER THE SAME OWNERSHIP SINCE 1983. THE PETITIONERS DO NOT OWN ANY ADJACENT PROPERTY IN ORDER TO MEET CURRENT RC5 REQUIREMENTS.
- 2. THE CEDAR BEACH PLAT HAS LOT WIDTHS OF 25 FEET AND 50 FEET. THE LOTS ADJACENT TO THIS PROPERTY ARE 50 FEET WIDE. DUE TO THE LOT WIDTH LIMITATIONS, IT IS IMPOSSIBLE TO MEET THE SETBACK REQUIREMENTS; THUS CREATING A NONBUILDABLE LOT. GRANTING RELIEF OF REQUIRED SETBACKS WILL ALLOW THE PROPERTY OWNERS TO USE THIS LOT AS PERMITTED.
- 3. THIS REQUEST IS WITHIN THE SPIRIT AND INTENT OF THE B.C.Z.R. AND GRANTING RELIEF WILL NOT CAUSE INJURY TO THE SAFETY OR WELFARE OF THE COMMUNITY.

D03 193 A

ZONING DESCRIPTION #1102 MAPLE ROAD

Beginning at a point on the west side of Maple Road which is 40 feet wide at the distance of 970 feet south of the centerline of Poplar Road which is 30 feet wide. Being Lot No. 26, in the Subdivision of "Cedar Beach" as recorded in Baltimore County Plat Book No. 7, Folio No. 186, containing 14,800 S.F. Also known as #1102 Maple Road and located in the 15th Election District, 5th Councilmanic District.



Michael V. Moskunas Reg. No. 21175

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

TOWNS THE BALTIMORE COUNTY MARYLAND OFFICE OF BUDGET & FINANCE MISCELLANEOUS RECEIPT PINK . AGEN PROFIVED

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

Case: #05-183-A
1102 Maple Road
West side of Maple Road
970 feet south of Poplar
Broad
15th Election District
5th Councilmanic District
Legal Owner(s): Morgan
William and Elizabeth M.

Variance: to permit side variance: to permit side building setbacks of 11 feet in lieu of 50 feet from lot lines for a proposed

dwelling. Wednesday, No-Yember 24, 2004 at 2:00 a.m. in Room 407, County Courts Builiding, 401 Bosley Avenue.

WILLIAM WISEMAN
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 doncerning the File and/office at (410) 887-4386.
(2) For Information doncerning the File and/office at (410) 887-4386.
(3) For Information doncerning the File and/office at (410) 887-3391.

ATE OF PUBLICATION

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TIFY, that the annexed advertisement was published successive weeks, the first publication appearing in the following weekly newspaper published in Baltimore County, Md., 2007 4 once in each of ono

The Jeffersonian

Arbutus Times

Catonsville Times

Owings Mills Times Towson Times

NE Booster/Reporter

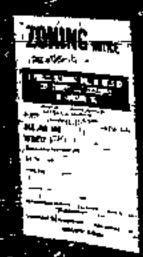
North County News

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LEGAL ADVERTISING

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CERTIFICATE OF POSTING

emits and Development Management county Office Building, Room 111 11 West Chesapeake Avenue cowson, MD 21204	•
ttention: Becky Hart	
adies and Gentlemen: This letter is to certify under the penalties of perjury	hat the necessary sign(s) required by
w were posted conspicuously on the property located at #1102 M	APLE ROAD
CTARLAN 3225 R BAUTIM (City, (C410) 2	Sign Poster and Date) DE. Moors Printed Name) YERSON CIRCLE (Address) ORE, MD. 21227 State, Zip Code) 42-4263 lephone Number)

RE: Case No.: 05-183-A

Petitioner/Developer: CARPERITRY UNLIMITED

Date of Hearing/Closing: NOV. 24, 7004

TO: PATUXENT PUBLISHING COMPANY

Tuesday, November 9, 2004 Issue - Jeffersonian

Please forward billing to:

Carpentry Unlimited c/o Mark Fuchslayer P.O. Box 16638 Baltimore, Maryland 21221

443-463-4972

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: 05-183-A

1102 Maple Road
West side of Maple Road, 970 feet south of Poplar Road
15th Election District—5th Councilmanic District
Legal Owners: Morgan William and Elizabeth M.Baxley

Variance to permit side building setbacks of 11 feet in lieu of 50 feet from lot lines for a proposed dwelling.

Hearing: Wednesday, November 24, 2004 at 2:00 pm, Room 407 County Courts Building

#01 Bosley 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.

Department of Permits and Development Management

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: 05-183-A

buth Rotroco

1102 Maple Road
West side of Maple Road, 970 feet south of Poplar Road
15th Election District—5th Councilmanic District
Legal Owners: Morgan William and Elizabeth M.Baxley

Variance to permit side building setbacks of 11 feet in lieu of 50 feet from lot lines for a proposed dwelling.

Hearing: Wednesday, November 24, 2004 at 2:00 pm, Room 407 County Courts Building 401 Bosley Avenue

Timothy Kotroco
Director

TK: clb

C: Morgan William and Elizabeth M. Baxley 2315 Hamiltown Circle Baltimore 21237 Site Rite Surveying, Inc. 200 E. Joppa Road, Rm. 101 Towson 21286

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, NOVEMBER 9, 2004.

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



Visit the County's Website at www.baltimorecountyonline.info

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

For Newspaper Advertising:	. 05-183-A
Item Number or Case Number	•
Petitioner: MOMAN AM	d Elizabeth Baxlus
Petitioner: MOMAN AM Address or Location: #110	2 Maple Road
DUEACE EODIMADD ADVEDT	TICINIC DILL TO:
PLEASE FORWARD ADVERT	
Name: Carpenty Www	moter 40 Mark Frichslager
Name: Carpenty Www. Address: P.O. Box 6	1938 40 Mark Frichslager
Name: Carpenty Www. Address: P.O. Box 6	1938 40 Mark Frichslager
Name: Carpentry Www	1938 40 Mark Frichslager

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 17, 2004

Morgan William Baxley Elizabeth M. Baxley 2315 Hamiltowne Circle Baltimore, Maryland 21237

Dear Mr. and Mrs. Baxley:

RE: Case Number:05-183-A, 1102 Maple Road

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

W. Carl Richards, Jr. Supervisor, Zoning Review

WCR: clb

Enclosures

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



Visit the County's Website at www.baltimorecountyonline.info

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

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.:

172, 174, 177, (183)-195

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



Visit the County's Website at www.baltimorecountyonline.info

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

DATE: November 4, 2004

TO:

Timothy M. Kotroco, Director

Department of Permits & Development Management

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:	Tim Kotroco
FROM:	John D. Oltman, Jr づ ^{り o}
DATE:	November 16, 2004
SUBJECT:	Zoning Item # 05-183 Address 1102 Maple Road (Baxley Property)
Zoning	g Advisory Committee Meeting of October 25, 2004.
	epartment of Environmental Protection and Resource Management has no ents on the above-referenced zoning item.
	epartment of Environmental Protection and Resource Management offers lowing comments on the above-referenced zoning item:
<u>X</u>	Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 14-331 through 14-350 of the Baltimore County Code).
	Development of this property must comply with the Forest Conservation Regulations (Section 14-401 through 14-422 of the Baltimore County Code).
<u>X</u>	Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code).
Additio	onal Comments:

Reviewer: Martha Mickey Date: November 16, 2004

9 1/2 h

BALTIMORE COUNTY, MARYENED

NOV _ 3 2004

INTER-OFFICE CORRESPONDENCE

ZONING COMMISSIONER

DATE: October 28, 2004

TO:

Timothy M. Kotroco, Director

Department of Permits and Development Management

FROM:

Arnold F. 'Pat' Keller, III

Director, Office of Planning

SUBJECT: Zoning Advisory Petition(s): Case(s) 5-156, 5-177, and 5-183

The Office of Planning has reviewed the above referenced case(s) and has no comments to offer. For further questions or additional information concerning the matters stated herein, please contact Mark A. Cunningham in the Office of Planning at 410-887-3480.

Prepared By:

Division Chief:

MAC/LL



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



Robert L Flanagan, Secretary Neil J Pedersen, Administrator

Maryland Department of Transportation

Date: 11.9.09

Baltimore County

Item No. 183

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

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.

RE:

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. J. Hoell

Engineering Access Permits Division

RE:	PETITION FOR VARIANCE	*	BEFORE THE
	1102 Maple Road; W/side Maple Road, 970' S of Poplar Road 15 th Election & 5 th Councilmanic Districts	*	ZONING COMMISSIONER
	Legal Owner(s): Morgan William &	*	FOR
	Elizabeth M. Baxley Petitioner(s)	*	BALTIMORE COUNTY
		*	05-183-A

ENTRY OF APPEARANCE

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

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

RECEIVED

Per....

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 29th day of October, 2004, a copy of the foregoing Entry of Appearance was mailed to, Site Rite Surveying, Inc, 200 E Joppa Road, Suite 101, Towson, MD 21286, Representative for Petitioner(s).

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

SITE RITE SURVEYING, INC.

200 East Joppa Road, Suite 101 Towson Maryland 21286 (410) 828-9060

December 14, 2004

Mr. John V. Murphy
Deputy Zoning Commissioner
Baltimore County Zoning Commissioner's Office
401 Bosley Avenue, Room 405
Towson MD 21204

DEC 1 4 2004
ZONING COMMISSIONER

Re: Case No. 05-183-A #1102 Maple Road Motion for Reconsideration

Dear Mr. Murphy:

Site Rite Surveying, Inc. is acting as Agent for the owner of the above project. This motion for reconsideration, as we see it, is based on the following:

1. The zoning regulation for Baltimore County clearly outlines that if an existing lot of record is recorded before March 30, 1955 (See Attachment C), it does not have to meet the area requirements for undersize lot approval and density is not an issue. Density only pertains to a subdivision of the original lots that are being subdivided into new lots. The County Council Bill No. 55-2004 may have increased the minimum lot size in the R.C.5 zones but there is a provision that an existing lot can receive a Special Hearing if it is a recorded lot of record before September 2, 2003 (See Attachment A).

At the time of filing the application, it was instructed that the Special Hearing was not needed because of Section 304. There seems to be a good deal of confusion as to the regulations.

- 2. The Zak comments from the Office of Planning did not have any comments to offer about this lot. They would surely have denied the request if it was in conflict with the new bill.
- 3. The Zoning Case No. 96-493-A (See Attachment B) granting the variance for #1030 Maple Road in the same vicinity as this lot. As indicated, the lots in the area of Cedar Branch Community are 50 feet wide. Although this lot is 100 feet wide, it was granted because it was in strict harmony with the spirit and intent of the B.C.Z.R. as we feel this lot also meets the requirement for variance.
- 4. By your decision, you have denied this Petitioner his right to construct his home on a lot that he has paid taxes on as a buildable lot since 1983. This Petitioner has met the requirements under McClean V. Soley, 270 MD 208 (1973) as stated in Attachment B and should be able to complete his investment as he had intended to do when he purchased the property. The force main has been constructed and completed in the area as of May 1998 so that this community could function by the improvement without impact to The Chesapeake Bay.

Mr. John V. Murphy December 14, 2004 Page 2

In summary, the issue is not with the new R.C.5 Regulations as to density but the approval of the sideyard variances requested which does not change the history of this area. Ownership of lots located in fill areas is difficult but they were established before zoning and the idea of meeting density is wrong because all of the existing lots are in violation in the neighborhood if the R.C.5 area is not met. Planning realizes this and that is why the Council Bill has stated the Exception for the kind of area variance. An individual's rights as long as he or she is not developing a lot (subdividing it) and is only trying to improve it then these regulations, as stated, are exempted from the regulation as set forth in the bill. We believe if the Deputy Zoning Commission disapproves this individual rights to improve this lot that the County has set a precedent for all the undeveloped lots in these areas and that the unsuspecting owners be notified of their problem of a non-buildable lot and that their assessment be reduced from a buildable lot to a non-buildable assessment by lowering his or her taxes. The individual departments need to step up and be held accountable for the loss of the taxpayer's real estate investment.

We would appreciate you looking into the feelings of both Zoning and Planning for their input as to in fill lot situations and how variance meets those qualifications and that the variances are based on sideyard conditions and not density.

If you need any further information, please contact me at this office, Monday through Friday, 7:00 am to 4:00 pm.

Sincerely,

Vincent J. Moskunas, Sr.

Vincent J. Modernes, Sr.

President

Enclosures – 3 Attachments

File: maple rd.doc\vjm

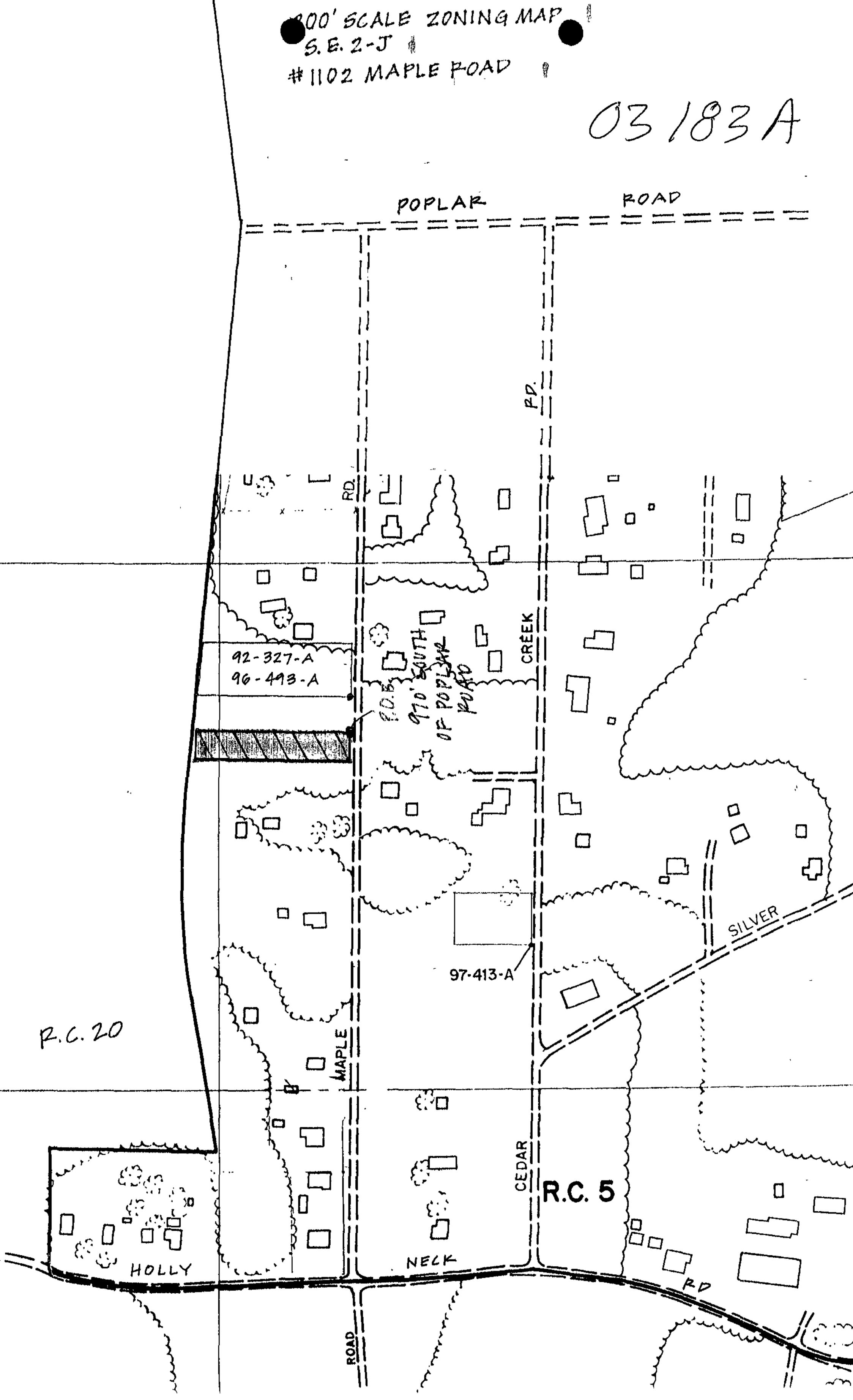
PLEASE PRINT CLEARLY

CASE NAME 1102 MAPLE
CASE NUMBER 5-183 A
DATE 11/24/04

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CITY, STATE, ZIP	Towns W. 21286									
ADDRESS	ZOC G. JOPPA RD									
NAME	SITE RITE SURVEYING INC									

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A 774-CHETENT 4 A RESOURCE CONSERVATION ZONES

- 3. The Office of Planning may require the submittal of sufficient information, such as a written narrative of the salient features of the site, the design concept of the site plan, a photo montage and building elevations and grading plans, from which a finding can be made on compliance of the project with the standards.
- 4. Deviation from the standards may be allowed only if clearly necessary to:
 - a. Comply with another standard; or
 - b. Comply with environmental regulations or otherwise protect resources.
- 5. Deviation from the standards is not permitted for the purpose of allowing additional lots.
- C. Consideration of findings; deviation from standards.
 - 1. The findings of the Office of Planning shall be submitted to the hearing officer or to the Director of Permits and Development Management, as applicable.
 - 2. The hearing officer or the Director of Permits and Development Management, as applicable, shall adopt the findings presented by the Office of Planning before a development plan is approved, unless the hearing officer or Director determines that the findings constitute an abuse of discretion or are unsupported by the documentation and evidence presented to the office. The Office of Planning may recommend relaxation of public works standards if necessary to enhance or maintain the rural character of the proposed development provided that public safety is not jeopardized.

D. Site planning.

- 1. A development proposal shall:
 - Reflect the traditional rural character of the area in architectural form, scale, materials, detailing and landscaping context.
 - b. Retain the existing quality vegetation of the site to the fullest extent possible and protect the root systems of the remaining vegetation during construction.
 - c. Integrate, where possible, significant features of the site, such as distinctive buildings, vistas, topographic features, specimen trees, tree stands, hedgerows, monuments, landmarks and gardens, into the site design, and retain the existing character of the features and their settings.
 - d. Coordinate building design, site layout, and grading so that grade transitions are gradual and respect the existing topography.
 - e. Provide for smooth transitions between the proposed development and the surrounding rural area by arranging and orienting the proposed buildings and site improvements to complement those in the surrounding vicinity.

§ 1A04

RESOURCE CONSERVATION ZONES

§ 1A04

- Accommodations for public spectators may not be provided at the facility and field;
- b. Only one sports organization may use the facility and field at one time;
- c. The facility and field may not include lighting that would produce substantial off-site illumination;
- d. The sports organization may not sell admission to the sports events at the facility and field; and
- e. The facility and field shall be located:
 - (1) Within proximity to adequate road access; and
 - (2) On publicly owned land.

1A04.3 Height and area regulations.

- A. Height regulation. No structure hereafter erected in an R.C.5 Zone shall exceed a height of 35 feet, except as provided under Section 300.
- B. Area regulations.
 - 1. Lot area; density control. [Bill Nos. 178-1979¹³55-2004¹⁴]
 - a. A lot having an area of less than 1 1/2 acres may not be created in an R.C. 5 Zone. The maximum gross residential density of a lot of record is 0.667 dwelling per acre.
 - b. The owner of a single lot of record that is not a subdivision and that is in existence prior to September 2, 2003 but does not meet the minimum acreage requirement, or does not meet the setback requirement of Paragraph 2., may apply for a special hearing under Article 5 to alter the minimum lot size requirement. However, the provisions of Section 1A04.4 may not be varied.

2. Building setbacks. [Bill No. 55-2004]

a. As used in this section, "collector road" means a street or road that is designed for speeds of at least 35 miles per hour, and is intended for travel, including commuter travel, between residential neighborhoods, but not for travel within neighborhoods, and is not designated as a principal arterial.

Editor's Note: This bill also repealed former Paragraph 2, "Minimum diametral dimension," which followed this paragraph.

Editor's Note: This bill also stated that it would not apply to any concept plan or application for limited exemption or waiver accepted for filing prior to June 7, 2004, that it would not apply to the Back River Neck District as defined in Section 4A03.13 of the Baltimore County Zoning Regulations, and any structure, building or use in existence prior to the effective date of this bill that is damaged or destroyed by fire or other casualty after the effective date of this bill would be subject to the provisions of Section 104 of the Baltimore County Zoning Regulations regarding nonconforming uses. The effective date of this bill is 6-11-2004.

IN RE: PETITION FOR VARIANCE

W/S Maple Road, 1120' N of

Holly Neck Road (1030 Maple Road)

15th Election District 5th Councilmanic District

Dennis M. Ayres, et ux Petitioners * BEFORE THE

* DEPUTY ZONING COMMISSIONER

* OF BALTIMORE COUNTY

Case No. 96-493-A

*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Variance for that property known as 1030 Maple Road, located in the vicinity of Holly Neck Road in the community of Cedar Beach in Essex. The Petition was filed by the owners of the property, Dennis M. and Donna L. Ayres. The Petitioners seek relief from Section 1A04.3.B.3 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit side yard setbacks of 18 feet each in lieu of the minimum required 50 feet from any lot line, for a proposed dwelling. The subject property and relief sought are more particularly described on the site plan submitted which was accepted and marked into evidence as Petitioner's Exhibit 1.

Appearing at the hearing on behalf of the Petition were Dennis and Donna Ayres, property owners. There were no Protestants present.

Testimony and evidence offered revealed that the subject property consists of a combined gross area of .68 acres, more or less, zoned R.C. 5 and is presently unimproved. The property is located in the community of Cedar Beach which was developed many years ago with 50-foot wide lots. The subject property, also known as Lots 28 and 29 of Cedar Beach, is approximately 100 feet wide and approximately 299 feet deep. The Petitioners have owned the property since 1982 and have been awaiting the arrival of public sewerage prior to constructing a home on the property. Public

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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]

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

60.445.

§ 304

BALTIMORE COUNTY ZONING REGULATIONS

§ 304

Department of Permits and Development Management written recommendations concerning the application with regard to the following:

- Site design. New buildings shall be appropriate in the context of the neighborhood in which they are proposed to be located. Appropriateness shall be evaluated on the basis of new building size, lot coverage, building orientation and location on the lot or tract.
- 2. Architectural design. Appropriateness shall be evaluated based upon one or more of these architectural design elements or aspects:
 - a. Height.
 - b. Bulk or massing.
 - c. Major divisions, or architectural rhythm, of facades.
 - d. Proportions of openings such as windows and doors in relation to walls.
 - e. Roof design and treatment.
 - f. Materials and colors, and other aspects of facade texture or appearance.
- 3. Design amendments. The Director may recommend approval, disapproval or modification of the building permit to conform with the recommendations proposed by the Office of Planning.
- Public notice. Upon application for a building permit pursuant to this section, the subject property shall be posted conspicuously under the direction of the Department of Permits and Development Management with notice of the application for a period of at least 15 days.
- Public hearing. Within the fifteen-day posting period: (1) Any owner or occupant within 1,000 feet of the lot may file a written request for a public hearing with the Department of Permits and Development Management, or (2) the Director of Permits and Development Management may require a public hearing. The Department of Permits and Development Management shall notify the applicant within 20 days of the receipt of a request for a public hearing. A hearing before the Zoning Commissioner shall be scheduled within 30 days from receipt of the request for public hearing. At the public hearing, the Zoning Commissioner shall make a determination whether the proposed dwelling is appropriate.

304.5 Final approval.

- A. The Director of the Department of Permits and Development Management may issue the building permit; or
- B. Notwithstanding any provision to the contrary, the Director of the Department of Permits and Development Management may require a public hearing before the Zoning Commissioner pursuant to Section 304.4 above; or

and described as follows, that is to say:

This Deed, Made Tius		
in the year one thousand nine hundred and eighty-three	by and between	
MORGAN W. BAXLEY	NA CHARL SAND STATE STATE STATE SPACE STATE STATE STATE STATE	
of Baltimore County. Maryland / oft	he first part, and	
of Baltimore County, Maryland of to MORGAN WILLIAM BAXLEY, SR. and ELIZABETH MARGARET BAXLEY,	his wife	
of the second part.		
Wirnessern, That in consideration of the sum of Zero (\$0.00) Dollars at good and valuable considerations, the receipt of which is ledged	hereby acknow-	
the said MORGAN W. BAXLEY		# 53
do es grant and convey to the said MORGAN WILLIAM BAXLEY, SR. and MARGARET BAXLEY, his wife, as tenants by the entireties, and unto the survivor of them, his or her	their assigns	
personal representatives accessors and assigns, in fee sing	ple, all that	

ALL THAT lot of ground known as Lot No. 26 upon the Plat of Cedar Beach as shown on the Plat recorded in Plat Book W.P.C. No. 7, folio 186.

_____lot ____ of ground situate in Baltimore County, Maryland------

BEING the same lot of ground which by Deed dated December 4, 1956 and recorded among the Land Records of Baltimore County in Liber G.L.B. No. 3067, folio 524 was granted and conveyed by Walter I. Copenspire and Charlotte M. Copenspire, his wife, parties of the first part, and John D. Copenspire, Trustee, party of the second part unto the within Grantor. The said Morgan W. Baxley has since married Elizabeth Margaret Baxley on July 25, 1961.

> AGRICULTURAL TRANSFER TAX HOT APPLICABLE


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STATE DEPARTMENT OF ASSESSMENTS & TAXATIQUE

TRANSFER TAX NOT REQUIRED

Director of Finance

BALTIMORE COUNTY, MARYLAND
Per Authorizations Sec. 11-85 M



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