05-239-A &
05-240-A

	*	IN THE
	*	CIRCUIT COURT
IN THE MATTER OF THOMAS S. NELSON	*	FOR
	*	BALTIMORE COUNTY
	*	CASE NO.: 03-C-09-5828

* *

MEMORANDUM OPINION AND ORDER

This matter comes before this Court on appeal from the Baltimore County Board of Appeals in Cases Number 05239A and 05240A. The case involves Respondent's request for variances of the Baltimore County Zoning Regulations (B.C.Z.R.) for properties located at 2623 Marine Avenue, Lot 1 and 2 to permit homes to be constructed on each lot with a width of 50 feet in lieu of 55 feet. On August 17, 2005, a hearing was held before the County Board of Appeals. The hearing was continued on November 22, 2005, and public deliberation was heard on January 5, 2006. In an opinion dated April 6, 2006, the Board unanimously granted Respondent's request for variance. Petitioner subsequently appealed the decision to the Circuit Court of Baltimore County. This Court has reviewed and considered the record and attached exhibits, memorandum as well as arguments made by the Parties before this Court on November 19, 2009. For the reasons set forth herein, the judgment of the Baltimore County Board of Appeals shall be **AFFIRMED**.

Background Facts

Respondent F&M Enterprises, Inc. has owned the subject property since the 1930s. The subject property consists of five 20-foot lots that were platted and recorded in

Board of Appeals
cc: F. Lauer Esq
A. Jablon

FILED JAN 14 2010 pe

the Baltimore County Land Records in 1921 as a single area built to support the manufacturing companies in the area. Houses in the immediate vicinity of the property were all built prior to the Baltimore County Zoning Regulations that came into effect in 1955. Respondent proposes building two houses on the five lots, creating two 50-foot wide lots. In late 2004, Respondent filed petitions for variances, pursuant to BCZR § 304, seeking permission to have two lots with widths of 50-feet in lieu of the 55-foot width required of property zoned DR5.5 under BCZR § 1B02.3.C.1.

Respondent's initial petition for variances was filed with the Zoning Commissioner of Baltimore County. In an opinion dated January 26, 2005, Respondent's petition for variances was denied. Respondent appealed the findings of the Deputy Zoning Commissioner to the County Board of Appeals. *De novo* hearings were held on August 17, 2005 and November 22, 2005, and public deliberations were held January 5, 2006. In an opinion dated April 7, 2006, the Board unanimously granted the request of Respondent to build the two houses with 50-foot widths, finding that the "Small Lot Table" requirements of BCZR § 1B02.3 were not applicable to the property.

Questions Presented

This Court restates the questions presented by Petitioner in his appeal for judicial review as follows:

I. Whether Respondent's alternative theory regarding exemption of the subject property materially altered the nature of the hearing and required new notice to the public?

II. Whether the Board of Appeals erred in its interpretation of BCZR § 1B02.3.C.1?

This court answers both questions "No" and therefore AFFIRMS the decision of the Baltimore County Board of Appeals.

Standard of Review

The court's scope of review of a decision of an administrative agency is narrow, recognizing that board members have expertise in a particular area and ordinarily should be free to exercise their discretion as such. *Annapolis v. Annap. Waterfront Co.*, 284 Md. 383 , 395, 396 *A. 2d 1080 (1979), citing Finney v. Halle, 241 Md. 223, 216 A.2d 530 (1966).*

The standard for review of the action of an administrative agency is whether a reasoning mind could have determined the conclusion, which the administrative agency reached. *Nnoli v. Nnoli, 101 Md. App. 243, 646 A.2d 1021 (1994).* An order of an administrative agency must be upheld on judicial review if it is not based upon an erroneous determination of law, and if the agency's conclusions reasonably may be based upon the facts proven; however, a reviewing court is under no constraints in reversing an administrative decision that is premised solely upon an erroneous conclusion of law. *Montgomery County v. Buckman, 333 Md. 516, 636 A.2d 448 (1994).*

A reviewing court may, and should, examine facts found by an agency, to see if there was evidence to support each fact found. If there was evidence of the fact in the record before the agency, no matter how conflicting, or how questionable the credibility of the source of the evidence, the court has no power to substitute its assessment of credibility for that made by the agency, and by doing so, reject the fact. *Comm'r, Baltimore City Police Dep't v. Cason, 34 Md. App. 487, 368 A.2d 1067 (1977),* cert.

denied, *280 Md. 728 (1977)*. A reviewing court may, and should, examine any inference, drawn by an agency, of the existence of a fact not shown by direct proof, to see if that inference reasonably follows from other facts which are shown by direct proof. If it does, even though the agency might reasonably have drawn a different inference, the court has no power to disagree with the fact so inferred. *Id. at 508, 368 A.2d 1067*. A reviewing court may, and should, examine any conclusion reached by an agency, to see whether reasoning minds could reasonably reach that conclusion from facts in the record before the agency, by direct proof, or by permissible inference. If the conclusion could be so reached, then it is based upon substantial evidence, and the court has no power to reject that conclusion. *Id. at 508, 368 A.2d 1067*.

Discussion

I. Petitioner was Given Proper Notice of the Hearing on the Requested Variances.

Respondent's original petition sought two variances: a variance of the 55-foot width requirement as well as a variance of the standard front yard size of the subject lots. At the opening of the *de novo* hearing, Respondent dismissed his petition for the yard variances, and proceeded on his request for the width variances. Respondent's case, put simply, sought variances of the small lot table requirements of BCZR § 1B02.3.C.1 or, in the alternative, argued that the Small Lot Table was inapplicable to the subject property.

Petitioner argues that these last-minute amendments to the hearing characterized a material change in legal argument requiring new notice to the public of the change in legal theory. Petitioner believes that the very nature of the hearing was changed when Respondent dismissed his requested variances and sought an alternative to the two lot width variance petitions. The Deputy Zoning Commissioner was presented with the issue

of exemption from the Small Lot Table at the original variance hearing. As such, Petitioner believes the issue of exemption from the Small Lot Table was not properly before the County Board of Appeals and should not have been considered in making its determination.

The lack of proper notice may sufficiently rise to the level of a violation of an individual or the collective public's constitutional right to Procedural Due Process. In *Cassidy v. County Board of Appeals*, 218 Md. 418 (1958), cited by Petitioner, the Court of Appeals found that a lack of proper notice apprising the public of an Appellee's new argument was consequently fatal to jurisdiction of the case. Petitioner relies on this point to argue that here, like in *Cassidy*, Respondent needed to provide notice of a petition for a special exemption before proceeding on the issue of exemption from the Small Lot Table.

As Respondent cites in his memorandum, *Cassidy* further explains that, "the notice should be apprised [sic] clearly of the character of the action proposed and enough of the basis upon which it rests to enable him intelligently to prepare for the hearing." *Cassidy*, 218 Md. at 424. The Court in *Cassidy* was not concerned that the words "special exception" appear in the notice, but rather that "anyone who attended the hearing prepared to defeat [the application for property reclassification] would likewise have been prepared to defeat the grant of a special exception. *Id.* at 225-226. Respondent argues that the issue of variance per se implicates the issue of exemption from the small lot table; by definition, any argument for denying variances from the Small Lot Table simultaneously argues for applying the Small Lot Table to the property. The two issues are inextricably entwined. In fact, Petitioner appeared at the Board hearing and subsequently cross-examined witnesses regarding the applicability of the Small Lot

Table. Clearly Petitioner had notice to prepare to discuss the Small Lot Table and its applicability to the subject property.

Respondent's presentation of an alternative argument did not fundamentally change the nature of the variance hearing. Respondent continued his pursuit of the variances and, only as an alternative, presented the argument of exemption from the Small Lot Table. The nature of these arguments involves the exact same statutes of the BCZR. No additional notice was required, and the notice given for the Board of Appeals hearing was adequate as provided.

II. The County Board of Appeals rationally and appropriately determined that the "Small Lot Table" does not apply to the subject property.

BCZR § 1B02.3A exempts some property types from certain provisions of BCZR, including the Small Lot Table. Of those exempt properties, included is a category of "Any lot or tract of lots in single ownership which is in a duly recorded subdivision plat not approved by the Baltimore County Planning Board or Planning Commission." BCZR § 1B02.3A5. The subject property was platted and recorded in 1921, more than 30 years before the BCZR was implemented in 1955. The subject property clearly falls into this category of exemption.

Petitioner argues that the subject property also meets the definitions of §§ 1B02.3A3, A4 and 1B02.3B of the BCZR. Petitioner argues that even if the subject property is subject to exemption under A5, it simultaneously does not qualify for exemption under A3, A4 and 3B. In its April 7, 2006 opinion, the Board clearly specified that the applicable section of the code was BCZR § 1B02.3A5 and not any of the other

sections suggested by Petitioner. In evaluating the decision of the Board of Appeals, this court must defer to the expertise and consideration of the Board regarding subject matter within their purview. Based on evidence presented at the hearing, testimony, oral arguments made and memoranda filed to the Board of Appeals in support or against their Motions for Reconsideration, the Board found that the subject property fit the definition of BCZR § 1B02.3A5, and was thus exempt from the Small Lot Table requirements. It is the opinion of this court that such determination was made rationally and appropriately, without error or misapplication of the law.

Conclusion

For the reasons set forth herein, the decision of the Baltimore County Board of Appeals shall be **AFFIRMED**.

JUDGE RUTH JAKUBOWSKI

	*	IN THE
	*	CIRCUIT COURT
IN THE MATTER OF THOMAS S. NELSON	*	FOR
	*	BALTIMORE COUNTY
	*	CASE NO.: 03-C-09-5828

* *

ORDER

This matter came before the Court as an appeal from a decision of the Baltimore County Board of Appeals. Based upon the Court's review of the record, it is thereupon this _____ day of December, 2009, by the Circuit Court for Baltimore County, Maryland,

ORDERED that the opinion of the Baltimore County Board of Appeals shall be and is hereby **AFFIRMED**.

Judge
Ruth A. Jakubowski

Date: 12/21/09

Clerk to notify parties.

True Copy Test
Clerk
Deputy Clerk

FILED JAN 14 2010

6/10/09

PETITION OF	*	IN THE
THOMAS S. NELSON	*	CIRCUIT COURT FOR
	*	BALTIMORE COUNTY
FOR JUDICIAL REVIEW OF THE DECISION OF COUNTY BOARD OF APEALS Of BALTIMORE COUNTY Jefferson Bldg-Room 203 105 W. Chesapeake Ave Towson, Maryland 21204	*	CIVIL ACTION
	*	NO. 3-0C-09-005828
IN THE MATTER OF: F & M Enterprises—Legal Owners For Variance on Property located On the E/S Marine Ave, 346' N of C/L Sparrows Point Road (2633 Marine Ave, Undersized Lot 1) And 445' N C/L Sparrows Point Road (2623 Marine Ave, Undersized Lot 2)	*	
15th Election District 7th Councilmanic District	*	
CBA Case No. 05-239 A and 05-240 A	*	

****

RESPONSE TO PETITION FOR JUDICIAL REVIEW

F & M Enterprises, Inc., Respondent herein, by Arnold Jablon, its attorney, in accordance with Maryland Rule 7-204, submit this Response to the Petition for Judicial Review filed by Thomas S. Nelson and states that it intends to participate in this action for judicial review. Respondent was a party to the above-referenced proceeding before the County Board of Appeals for Baltimore County.

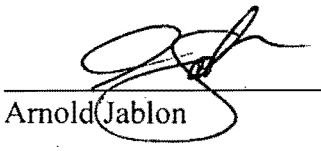
Arnold Jablon
210 West Pennsylvania Ave., 6th Floor
Towson, Maryland 21285-5517
410 494 6298

Attorney for Respondent

RECEIVED
JUN 10 2009
BALTIMORE COUNTY
BOARD OF APPEALS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of June 2009, copies of the foregoing Response to Petition for Judicial Review were hand delivered to the County Board of Appeals, The Jefferson Bldg, Suite 203, 105 W. Chesapeake Ave., Towson, Maryland 21204, and mailed, by first class delivery, postage prepaid, to Thomas S. Nelson, 2617 N. Marine Ave, Baltimore, Maryland 21219.



Arnold Jablon

6/21/09

IN THE MATTER OF THE APPLICATION OF F & M ENTERPRISES, INC. - PETITIONER FOR ZONING VARIANCE ON PROPERTY LOCATED ON THE E/S MARINE AVENUE 346' N C/L SPARROWS POINT ROAD (2623 MARINE AVE, UNDERSIZED LOT 1) AND 445' N C/L SPARROWS POINT ROAD (2623 MARINE AVE, UNDERSIZED LOT 2)	* BEFORE THE * COUNTY BOARD OF APPEALS * OF * BALTIMORE COUNTY * CASE NO. 05-239-A and CASE NO. 05-240-A
15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT	*

* * * * * * * * * *

OPINION AND RULING
on MOTION FOR RECONSIDERATION and MOTION TO INTERVENE

A Motion for Reconsideration and a Motion to Intervene was filed by Peter Max Zimmerman, People's Counsel for Baltimore County. Protestant, Thomas Nelson joined in the Motions. This matter was originally deliberated on July 16, 2006 and was re-deliberated on February 25, 2009.

This case was heard in 2006 in regards the above Motions. The Board at the time consisted of Chairman Lawrence M. Stahl and Members, Michael Mohler and Dr. Margaret Brassil. Deliberation on the Motion for Reconsideration took place on July 13, 2006. At the request of counsel, and noting no opposition, the Board was asked to delay the issuance of a written opinion as to the Motions, pending further proceedings below. On June 20, 2008, Petitioner's Counsel requested that the Opinion be issued. By that time; however, Dr. Brassil and Mr. Mohler were no longer Members of the County Board of Appeals. Under the Board's rules, an Opinion could not be entered by the remaining Member, so two (2) present Board members; Wendell Grier, Esquire and Robert Witt, were assigned to the matter.

The members of the current panel reviewed the relevant motions, responses, files, documents, transcripts, and all evidence pertaining to the matter. The Motions were re-deliberated on February 25, 2009.

Under the Rules, the Board believes that a Motion for Reconsideration should only be necessary when there is new case or statutory law on the issues at bar, which were not existing or otherwise available when the case was heard. Additionally, the Board will consider such a Motion upon allegations and proof of fraud, mistake, or irregularity in the hearing of the matter. This Board has taken the position consistently that a Motion for Reconsideration is not simply another opportunity to disagree with the Opinion of the Board and to once again present argument to that effect.

After our review of the case, we find that there was no additional law that was unavailable, nor a showing of fraud, mistake, or irregularity in this matter. It is clearly Protestant's prerogative to disagree with the Board's view and conclusions as to the facts and applicable law in the case; and therefore, to take issue with the decision reached. The procedure for appeal of the Board's decision is clear and available to Protestant(s). If Protestant(s) wishes, a Petition for Judicial Review to the Circuit Court is the appropriate forum for those disagreements.

The issue has also been raised as to whether or not the Office of People's Counsel had standing to file the Motion at all. The record reflects that People's Counsel did not take part in the hearing before the Zoning Commissioner; neither did it enter its appearance and participate in the Board of Appeals proceeding. It was only after the hearing was completed, the matter publicly deliberated, and our Opinion issued, that the Office of People's Counsel filed it's

Motion for Reconsideration; and a separate Motion to Intervene; which were then joined by Mr. Nelson.

While the Board understands the task of the Office of People's Counsel, that office should not be allowed to utilize its position and Mission Statement within County government to delay or frustrate the appropriate fact finding and decision making role of this Board of Appeals; nor visit those effects upon citizens who, in good faith have their issues addressed in the legal process. If People's Counsel is permitted to maintain standing to file a Motion for Reconsideration after not participating in any way before the Zoning Commission or the Board of Appeals, then the filing of a such a motion by them, under the circumstances, acts merely as a delaying and obfuscatory tactic. Such an action is contrary to the responsibility of government to reach a final timely conclusion of these types of proceedings and only serves to send the wrong message to those who seek permission or redress through the system.

The Office of People's Counsel had ample time and opportunity to determine if the issues raised in this matter necessitated their involvement, in person or by brief before the original deliberation by the Board. People's Counsel cannot use their filing of a motion, when they have not participated, to request, in essence, a retrial of issues determined by the Board in such a case. To do so would literally allow People's Counsel to wait on each case, and depending upon its outcome, delay the completion of the matter at the Board level, frustrating by its filing, the right of Petitioners/Protestants to seek appeal or if no appeal is taken, to move forward with the project in question.

The determination by the Board to hear and rule upon this Motion does not, however depend upon the outcome of the Motion of People's Counsel to intervene. Mr. Nelson joined in

the Motion, within the appropriate time. Therefore, for all intent and purposes, the Motion also became his. Since he is clearly an active litigant in the matter, the Motion has been addressed.

This Board believes unanimously that People's Counsel must decide to involve itself in a matter before the Board deliberates in order to have standing to file a post-opinion Motion to Reconsider. In this matter he did not do so and therefore has no such right.

Accordingly, this Board unanimously denies the Motion for Reconsideration and denies People's Counsel Motion to be joined and/or to intervene in this matter.

ORDER

THEREFORE, IT IS THIS 21st day of April, 2009 by the County Board of Appeals of Baltimore County,

ORDERED that Motion For Reconsideration And Motion To Intervene filed by Peter Max Zimmerman, People's Counsel for Baltimore County and Protestant, Thomas Nelson be and the same is hereby **DENIED**.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Panel Chair

Wendell H. Grier

Robert W. Witt

Amended from original: Case No. 05-329-A to be **Case No. 05-239-A**

RECEIVED
MAY 26 2009
BALTIMORE COUNTY
BOARD OF APPEALS

PETITION OF F & M ENTERPRISES, INC.	*	IN THE
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY, 105 W. Chesapeake Ave. Towson, MD 21204	*	CIRCUIT COURT
IN THE CASE OF F & M ENTERPRISES, INC. - LEGAL OWNER/PETITION FOR A ZONING VARIANCE ON PROPERTY LOCATED AT E/S MARINE AVENUE 346' N C/L SPARROWS POINT ROAD (2623 MARINE AVE, UNDERSIZED LOT 1) AND 445' N C/L SPARROWS POINT ROAD (2623 MARINE AVE, UNDERSIZED LOT 2)	*	FOR
	*	BALTIMORE COUNTY
15th Election District, 7th Councilmanic District	*	
Case No. 05-239-A and **Case No. 05-240-A** Before the County Board of Appeals	*	Case No. C-09-5828

* * * * * * * * * * *

AMENDED **PETITION FOR JUDICIAL REVIEW**

THOMAS S. NELSON (Protestant) hereby requests judicial review of the County Board of Appeals for Baltimore County's

OPINION AND RULING on MOTION FOR RECONSIDERATION and MOTION TO INTERVENE

Dated: April 21, 2009

THOMAS S. NELSON was a party to the proceedings before the County Board of Appeals of Baltimore County in this matter.

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

Thomas S. Nelson

Thomas S. Nelson
2617 N. Marine Ave.
Baltimore MD. 21219-1719
PHONE: 410-477-9861

ATTACHED:
A: ORDER APRIL 7, 2006
B: ORDER ON RECONSIDERATION APRIL 21, 2009

RECEIVED AND FILED
2009 MAY 21 PM 1:39
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

5/20/09

RECEIVED
MAY 26 2009
BALTIMORE COUNTY
BOARD OF APPEALS

PETITION OF F & M ENTERPRISES, INC.	*	IN THE
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY 105 W. CHESAPEAKE AVE. TOWSON, MD. 21204	*	CIRCUIT COURT
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	*	BALTIMORE COUNTY
15th Election District, 7th Councilmanic District	*	
Case No. 05-329-A and Case No. 05-240-A Before the County Board of Appeals	*	Case No. C-09-5828

* * * * * * * * * * *

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PHONE: 410-477-9861

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RECEIVED AND FILED 2009 MAY 20 PM 2:57

CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of May, 2009, a copy of the foregoing Petition for Judicial Review was mailed to:

Peter Max Zimmerman, Esquire
Office of People's Counsel
The Jefferson Building, Ste 204
105 W. Chesapeake Ave.
Towson, MD 21204

Arnold Jablon, Esquire
210 Allegheny Ave.
Towson 21204

Thomas S. Nelson

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Arnold Jablon, Esquire
210 Allegheny Ave.
Towson 21204

Thomas S. Nelson

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-09-005828

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY THE
105 W Chesapeake Avenue
Towson, MD 21204

4/21/09

IN THE MATTER OF THE APPLICATION OF F & M ENTERPRISES, INC. - PETITIONER FOR ZONING VARIANCE ON PROPERTY LOCATED ON THE E/S MARINE AVENUE 346' N C/L SPARROWS POINT ROAD (2623 MARINE AVE, UNDERSIZED LOT 1) AND 445' N C/L SPARROWS POINT ROAD (2623 MARINE AVE, UNDERSIZED LOT 2)	* BEFORE THE * COUNTY BOARD OF APPEALS * OF * BALTIMORE COUNTY * CASE NO. 05-239-A and CASE NO. 05-240-A
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This Board believes unanimously that People's Counsel must decide to involve itself in a matter before the Board deliberates in order to have standing to file a post-opinion Motion to Reconsider. In this matter he did not do so and therefore has no such right.

Accordingly, this Board unanimously denies the Motion for Reconsideration and denies People's Counsel Motion to be joined and/or to intervene in this matter.

ORDER

THEREFORE, IT IS THIS 21st day of April, 2009 by the County Board of Appeals of Baltimore County,

ORDERED that Motion For Reconsideration And Motion To Intervene filed by Peter Max Zimmerman, People's Counsel for Baltimore County and Protestant, Thomas Nelson be and the same is hereby **DENIED**.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Panel Chair

Wendell H. Grier

Robert W. Witt

6/21/09

County Board of Appeals of Baltimore County

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

April 21, 2009

Peter Max Zimmerman, Esquire
Office of People's Counsel
The Jefferson Building, Ste 204
105 W. Chesapeake Avenue
Towson, MD 21204

Thomas Nelson
2617 N. Marine Avenue
Baltimore, MD 21219

RE: *In the Matter of: F & M Enterprises, Inc*
Case No.: 05-239-A and 05-240-A

Dear Mr. Zimmerman and Mr. Nelson:

Enclosed please find a copy of the Opinion and Ruling on Motion for Reconsideration and Motion to Intervene issued this date by the County Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Theresa Shelton/kc

Theresa R. Shelton
Administrator

Duplicate Original Letter

TRS/klc
Enclosure

c: Arnold Jablon, Esquire
F & M Enterprises, Inc.
Paul Lee/Century Engineering
Michael Narutowicz
James Narutowicz

Nancy West, Assistant County Attorney
John E. Beverungen, County Attorney
William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director/PDM
Arnold F. "Pat" Keller, Director/Planning

6/22/06

RE:	PETITION FOR VARIANCE 2623 Marine Ave, Undersized Lot 1; E/side Marine Ave, 345' N c/line Sparrows Pt Rd 2623 Marine Ave, Undersized Lot 2; E/side Marine Ave, 445' N c/line Sparrows Pt Rd 15th Election & 7th Councel manic Districts Legal Owner(s): F&M Enterprises, Inc, Petitioner(s)	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY CASE NO.: 05-239-A and CASE NO. 05-240-A

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

PROTESTANTS REPLY MEMORANDUM ON MOTION FOR RECONSIDERATION

Protestants reply to the response filed by Petitioners F & M Enterprises, Inc.

As I recall I have not retained Mr. Jablon to speak on my behalf. Thus, Mr. Jablon (Petitioners counsel) presumes too much when he assumes that I "would not have filed .... but for the People's counsel's filing." Quite the contrary, I have expressed my intent to take every action to prevent this petition and any form of allowance that would permit construction of more than one home on the property petitioned; and, all further attempts to subdivide tracts into small lots of less than fifty-five foot frontage throughout my community.
Unless it has been ruled that a protestant is not allowed to wait for the People's Counsel to submit a document before making a submission I will continue to stand aside to allow the "Peoples Counsel" to act first; but if they do not protest I certainly will continue to file all possible appeals and motions in protests.

Thomas Steven Nelson

THOMAS STEVEN NELSON
Protestant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22 day of June, 2006, a copy of the Reply Memorandum was mailed to Arnold Jablon, Esq., 210 Allegheny Avenue, Towson, MD 21204, attorney for Petitioners, and People's Counsel for Baltimore County, Room 47, Old Courthouse 400 Washington Avenue, Towson, Maryland 21204.

RECEIVED
JUN 22 2006
BALTIMORE COUNTY
BOARD OF APPEALS

Thomas Steven Nelson

THOMAS STEVEN NELSON
Protestant

6/14/06

RE:	PETITION FOR VARIANCE 2623 Marine Ave, Undersized Lot 1; E/side Marine Ave, 345' N c/line Sparrows Pt Rd 2623 Marine Ave, Undersized Lot 2; E/side Marine Ave, 445' N c/line Sparrows Pt Rd 15th Election & 7th Councilmanic Districts Legal Owner(s): F&M Enterprises, Inc, Michael & James Narutowicz, II Petitioner(s)	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY CASE NO.: 05-239-A and CASE NO.: 05-240-A

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BOARD OF APPEALS

* * * * * * * * *

PEOPLE'S COUNSEL'S ALTERNATIVE MOTION TO BE JOINED AND/OR TO INTERVENE

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY, hereinafter, "Movant", states:

1. The Baltimore County Charter assigns to the People's Counsel the defense of the comprehensive zoning map, and establishes standing to appear before "the courts on behalf of the interests of the public in general, to defend any duly enacted master plan and/or comprehensive zoning map as adopted by the county council ... " Sec. 524.1(b)(3)A.

2. For reasons given in the Motion for Reconsideration and Reply Memorandum pertinent to the Motion, People's Counsel has the right to enter its appearance in these proceedings. Moreover, the presence of Protestant Thomas Nelson makes it unnecessary to inquire into the party status of People's Counsel. However, in the abundance of caution, even if there were any question about the absolute right to participate at this stage of the proceedings, People's Counsel is filing this alternative motion to be joined and/or to intervene.

3. The case here raises issues directly challenging the application of the "small lot table" of BCZR 1B02.3 to property mapped D.R. 5.5 in the comprehensive zoning of Petitioners F & M Enterprises, Inc., et al.

4. These issues involve the effect of County Council zoning legislation on small lots in subdivisions established prior to subdivision review by the Baltimore County Planning Commission or Planning Board. Specifically, there are legal issues of countywide importance pertinent to interpretation of BCZR 1B02.3.

5. Where a case or controversy turns out to involve a significant zoning issue, the Circuit Court and Court of Appeals have specifically approved the intervention or joinder of People's Counsel even at the Court level.

6. The continuation of this litigation in the absence of the People's Counsel will, as a practical matter, preempt, impair, or impede People's Counsel's ability to defend substantively and procedurally the D.R. 5.5 zoning map and applicable law governing this zoning of the subject property particularly and similar property spanning the entire county in general.

7. Moreover, existing representation is inadequate because the function of Movant People's Counsel is different from that of Protestant Thomas Nelson, whose interests are focused more specifically on the immediate neighborhood.

8. Joinder of the Movant in these proceedings is further critical to underline the important zoning map and regulation issues, including the protection of the small lot table area regulations and law relating to undersized lots.

9. Joinder of the Movant is further important because otherwise the Petitioners have attempted to circumvent the zoning variance process which is available and adequate for review of requested deviations from the small lot table area regulations. It is part of the responsibility of the Movant to defend the legitimacy of the zoning variance process where the law applies.

10. Since the Movant People's Counsel has such an interest that a judgment may not in fairness be rendered without its presence, the office is an indispensable party.

11. Alternatively, intervention is proper.

WHEREFORE, Movant People's Counsel prays that is be joined or allowed as an interested party by virtue of the Baltimore County Charter.

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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

STATEMENT OF POINTS AND AUTHORITIES

I. Authority of People's Counsel

The Maryland courts have recognized the standing of the People's Counsel to defend the comprehensive zoning maps. People's Counsel v. Crown Development Corp., 328 Md. 303 (1992); Board of Child Care v. Harker, 316 Md. 683 (1989); People's Counsel v. Maryland Marine Mfg. Co., 316 Md. 491 (1989); People's Counsel v. A.V. Williams, 45 Md. App. 617 (1980). This includes the participation of the office in defense of the variance law. Riffin v. People's Counsel 137 Md. App. 90 (2001); Red Roof Inns v. People's Counsel 96 Md. App. 219 (1993).

II. Entry of Appearance in Administrative Proceedings

The Maryland courts have established liberal standards for appearance in administrative proceedings for any party who indicates an interest. Dorsey v. Bethel A.M.E. Church 375 Md. 59, 72 (2003); Sugaloaf Citizens v. Department of Environment 344 Md. 271, 287-89 (1996). Moreover, where an existing party has standing, there is no need to inquire into the status of other parties on the same side. People's Counsel v. Crown Development Corp. 328 Md. 303, 317 (1992).

III. Indispensable Parties – Rule 2-211, by analogy

An indispensable party is one whose interest in a controversy is such that a court cannot, in fairness, render the judgment without having jurisdiction over the party. In Re Harris, 15 F.

Supp. 404 (DMD 1936). In the absence of parties necessary to the proper litigation of the action the court is without jurisdiction. Chairman v. Waldron, 285 Md. 175 (1979).

IV. Intervention of Right: Rule 2-214, by analogy

1. For the purpose of intervention, a party is or may be bound by a judgment where he has "an interest for the purpose of which intervention is essential and which is not otherwise protected." Citizens Coordinating Committee for Friendship Heights v. TKU, 276 Md. 705 (1976). This translates to the impairment, as a practical matter, of the ability to respect the pertinent interest.

2. The standard of "inadequacy of existing representation" is measured by the "serious possibility" standard. Maryland National Capital Park and Planning Commission v. Washington National Arena, 30 Md. App. 712 (1976). To this end, representation is inadequate so long as the interest of the absentee is not identical with the interest of the existing parties, as in the case of different levels or agencies of government. A finding of prospective adversity is sufficient, but not necessary. Even a difference of interest which might be reflected not in adversity but rather intensity of interest or disposition to appeal will satisfy the minimal showing required of the absentee to meet the intervention test. See Nuesse v. Camp, 385 F.2d 694, 701 (D.C. Cir. 1967); Hines v. D'Artois, 532 F.2d 726 (5th Cir. 1976).

V. Permissive Intervention: Rule 2-214, by analogy

3. In any event, the People's Counsel has a public interest in the defense of the comprehensive zoning map and ordinance to property mapped D.R. 5.5 subject to the small lot table.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY this 14 day of June, 2006, a copy of the People's Counsel's Alternative Motion to be joined and/or to Intervene was mailed to Arnold Jablon, Esq., Venable LLP, 210 Allegheny Avenue, Towson, MD 21204, Attorney for Petitioners and to Thomas Nelson, 2617 N. Marine Avenue, Baltimore, MD 21219.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

6/14/06

RE:	PETITION FOR VARIANCE 2623 Marine Ave, Undersized Lot 1; E/side Marine Ave, 345' N c/line Sparrows Pt Rd 2623 Marine Ave, Undersized Lot 2; E/side Marine Ave, 445' N c/line Sparrows Pt Rd 15th Election & 7th Councilmanic Districts Legal Owner(s): F&M Enterprises, Inc, Michael & James Narutowicz, II Petitioner(s)	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY CASE NO.: 05-239-A and CASE NO. 05-240-A

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

PEOPLE'S COUNSEL'S REPLY MEMORANDUM ON RECONSIDERATION

People's Counsel for Baltimore County here replies to the response filed by Petitioners F& M Enterprises, Inc. and Michael and James Narutowicz, II.

Introduction

The cause of the problem in this case is that the Petitioners began by filing on November 9, 2004 a petition for variances and for approval of an undersized lot. The petition proceeded in that way at the Deputy Zoning Commissioner level; and the DZC addressed it as such in his January 26, 2005 opinion. There followed the appeal of the denial of the variances. Then, without warning, Petitioners ("F & M") switched at the CBA hearings (August and November, 2005) to the position that no variances were required. Having executed this surprise tactic, in violation of fundamental jurisdictional principles, Petitioners now attack People's Counsel for coming in to challenge the maneuver. They also have the arrogance to ask the CBA to disregard completely Protestant Thomas Nelson's independent request for reconsideration.

The special hearing procedure under BCZR 500.7 is available and is the right way to raise questions "... to determine the rights whatsoever of such person in any property in Baltimore County insofar as they are affected by these [zoning] regulations." It is the functional

equivalent of the declaratory judgment procedure traditionally available to determine legal rights under Maryland law. Antwerpen v. Baltimore County 163 Md. App. 194, 209 (2005).

If F & M believed that variances were unnecessary, then it should have filed a petition for special hearing at the inception. If it got the idea later on, it could have filed such a petition subsequently and then consolidated it with the variance case. The filing of a petition for variances is actually inconsistent with the assertion that the variances are not required. It is like asking for what one doesn't need. Even if the two requests may be viewed as alternatives, the right way to raise the legal issue was to bring a proper petition so that there could be proper notice, an opportunity for interested parties intelligently to address the issue, review by the Zoning Advisory Committee, and consideration by the Zoning Commissioner. Because this was not done, the case was not in a posture for the issue to be heard for the first time on appeal. The CBA's appellate jurisdiction could not properly extend to a claim outside the four corners of the petition. Moreover, it was contrary to fundamental principles of justice to allow the injection of such an important issue at the appellate level.

F & M has attempted to deflect attention from its use of the petition for variances as bait, disguising a late push to gain a ruling that their proposed development is a matter of right. F & M tries to shift blame to the parties and public whose rights were prejudiced. It is a familiar but nonetheless intolerable tactic for the aggressor to label the victim as the party at fault.

The attempt to exclude People's Counsel and ignore Mr. Nelson's separate motion avoids or diverts attention from the merits. We shall address the participation and notice issues first, and then discuss the Court of Special Appeals decision which resolves the legal issue. Mardo Homes v. Baltimore County, No. 120, September Term, 1977 (Unreported, Davidson, Wilner, and Melvin, Judges), attached as Exhibit A, affirmed the Board of Appeals decision that 50-foot wide

lots in the D.R. 5.5 Zone which qualify as A.3 or A.4 lots under BCZR 1B02.3 are subject to the small lots table even if they do not qualify as A.5 lots. It also acknowledged the Zoning Supervisor James Dyer's observation regarding the overlap of A.3, A.4, and A.5 categories while finding it unnecessary to resolve the case on that point.

There is no dispute, and F & M has conceded, that the subject lots fit the A.3 and A.4 small lot categories. Therefore, based on the law and on the controlling Mardo Homes case, the CBA must recognize that its opinion here must be reconsidered and reversed.

This means that if F & M had followed the proper procedure and requested a special hearing, People's Counsel would have had the opportunity to advise the CBA of its earlier rejection of the same claim made here by F & M with respect to interpretation of the zoning law. If, moreover, the CBA had required F & M to follow the proper procedure, the CBA would have avoided making the erroneous legal determination that variances are unnecessary. Fortunately, CBA Rule 10 provides the avenue for reconsideration and correction of just such errors.

I. The Petitioners Executed a Deceptive Transformation of the Subject Matter of the Case Which Changed the Character of the Petition and Effectively Denied Procedural Due Process of Law to the Public and the Parties

F & M attempts to camouflage or disguise the significance of their shift from a petition for variances and for approval of an undersized lot to a petition for a legal determination that no such variances or approval are required. It suggests that its appellate tactic is merely another argument relating to the variances. It also suggests the public and People's Counsel should have been prepared for such an argument or position. For these reasons, F & M blames and criticizes People's Counsel for not showing any interest in the case until after the County Board of Appeals decision. At the same time, F & M disregards any surprise to other members of the

public, including Protestant Thomas Nelson, who justifiably understood the case as involving a request for variances, and not the broader question of the legal necessity for requesting variances.

The filing of a Petition for Variances underscores the acknowledgement that variances are required. In this context, a petitioner is bound by the pleading he files and may not amend it at the Board of Appeals. This principle is comparable to the judicial doctrine of estoppel by pleading. Wilson Bros. v. Cooey 251 Md. 350 (1968); Van Royen v. Lacey 266 Md. 649 (1972); Winmart v. Ltd. v. Miles 345 Md. 614 (1997). It precludes any change in position which conflicts with the position established by pleading. As Judge Smith wrote in Van Royen,

> "Be that as it may, estoppel by admission or pleading has long recognized in this State .... In the later case [Eden v. Garey 46 Md. 24, 41 (1877)], the Court of Exchequer in Cave v. Mills, 7 H. & W. 927, was quoted as saying, 'A man shall not be allowed to blow hot and cold, to claim at one time and deny at another.'"

The Zoning Advisory Committee reviewed the present petition with reference to the merits of the variances. The public notice alerted the public that the request was for variances. The Deputy Zoning Commissioner (DZC) addressed the merits of the variances in his ruling. The filing of the appeal was from the DZC opinion denying the variances.

There was never any indication in the documentary record, until the County Board of Appeals opinion on appeal, that there was an attempt to shift ground and suggest an explicit legal ruling that no variances were required. Such a major change in the character of the case violates the fundamental requirement of notice and opportunity to be heard which the Court of Appeals has emphasized consistently. Cassidy v. County Board of Appeals 218 Md. 418 (1958); Maryland State Police v. Zeigler 330 Md. 540, 559 (1993); Maryland Aggregates v. State 337 Md. 658, 686-87 (1995); Pitsenberger v. Pitsenberger 287 Md. 20, 30 (1980),

It is even more objectionable that F & M's tactical change occurred at the appellate level. While CBA hearings are *de novo* under Charter Sec. 603, they occur within the framework

of appellate jurisdiction. UPS v. People's Counsel 336 Md. 569 (1994). It is elementary that a petition or complaint may not be amended for the first time at the appellate level.

The F & M specific tactical change to challenge the applicability of the "small lot table" under BCZR 1B02.3 is objectionable on yet another level because BCZR 500.7 provides a clear avenue to request a legal determination. That avenue is known as the Petition for Special Hearing. It is a form of declaratory judgment proceeding which is well known to the CBA. Antwerpen v. Baltimore County 163 Md. App. 194, 209 (2005).

It is, therefore, appalling that F& M not only hid and camouflaged its surprise tactic until springing it at the CBA hearing, but also now seeks to immunize the aggression from review. The attempt to exclude reconsideration upon People's Counsel's Motion for Reconsideration, and separately, upon Motion for Reconsideration by Thomas Nelson, must fail. We explain.

II. People's Counsel, Properly a Party, has the Right to file a Motion for Reconsideration, particularly where Petitioners Changed the Nature of the Case without Notice.

There are several reasons, apart from lack of sufficient prior notice, which authorize People's Counsel to appear in the case at this time. A paramount concern is F & M's change in course. A relatively typical variance request for front lot width (50' instead of 55') and front yard setback (25' instead of 30.25') for two particular lots underwent a metamorphosis. It reappeared at the CBA as a request for a legal determination that the variances are unnecessary and that, as a matter of law, lots in the BCZR 1B02.3.A.5 category are beyond the reach of the BCZR 1B02.3 Small Lot table. This raises an issue of countywide public importance pertaining to the defense of the comprehensive zoning maps and the controlling BCZR. Under Charter Sec. 524.1(b), this is the classic type of case in which People's Counsel has participated. In effect, the case has undergone a metamorphosis from a variance case to a special hearing case in disguise. The following are examples of special hearing cases in which People's Counsel has participated all

the way to the appellate courts. People's Counsel for Baltimore County v. Maryland Marine Mfg. Co. 316 Md. 491 (1989); Board of Child Care v. Harker 316 Md. 683 (1989); Marzullo v. Kahl 366 Md. 158 (2001). Antwerpen v. Baltimore County 163 Md. App. 194 (2005).

The short answer to F & M's challenge to People's Counsel's participation is that, as in People's Counsel v. Crown Development Corp. 328 Md. 303, 317 (1992), the participation and Motion for Reconsideration filed by Thomas Nelson make it unnecessary to inquire into People's Counsel's participation. There is no dispute that Mr. Nelson, a neighbor, is a proper party. As Judge McAuliffe wrote in Crown Development,

> "Finally, respondent argues that the People's Counsel for Baltimore County should not have been permitted to intervene at the circuit court level. Respondent does not, however, suggest how the presence of People's Counsel had prejudiced it. Alison Tucker was a proper party before the circuit court, and had standing to appeal to the Court of Special Appeals and to petition this Court for certiorari. Accordingly, the presence of People's Counsel was not required to obtain appellate review at any level in this case. *See Sugarloaf v. waste Disposal,* 323 Md. 641, 650 n. 6, 594 A.2d 1115 (1991), and *Board v. Haberlin*, 320 Md. 399, 404, 578 A.2d 215 (1990) ("[w]here there exists a party having standing to bring an action . . . we shall not ordinarily inquire as to whether another party on the same side also has standing.").

Petitioners attempt to downplay and have the CBA disregard Mr. Nelson's Motion as merely in support of People's Counsel's Motion. Petitioners absurdly and presumptuously argue (Page 4 and footnote 1) that Mr. Nelson would not have filed his motion if not for People's Counsel's Motion, that it was an afterthought, and that his handwritten title "Motion for Reconsideration" should be disregarded. But, no matter how hard Petitioners try, they cannot escape the fact that Mr. Nelson has filed his own motion, entitled: Motion for Reconsideration and in Support of the Motion for Reconsideration filed by People's Counsel ..." As in Crown Development, with the parties on the same side, the CBA need not inquire into People's Counsel's participation. This is true at the Circuit Court level, and it is true at the agency level.

An independent examination shows, in any event, that People's Counsel has the right to participate. Charter Sec. 524.1(b) assigns to the People's Counsel the authority and responsibility to defend the comprehensive zoning maps in the public interest. This makes People's Counsel a necessary party at least to the extent of provision of notice and opportunity to be heard. Having entered the office's appearance at the Zoning Commissioner level, People's Counsel evaluated the case based on the nature of the petition. People's Counsel was entitled, therefore, to notice of any change in the nature of the Petition. Such notice was never given to anyone. In essence, a new case emerged at the CBA. When People's Counsel, having been blindsided, happened to learn of the shift by a chance reading of the April 7, 2006 CBA opinion, People's Counsel had the opportunity for the first time to be heard on the legal issues.

The Court of Appeals has consistently emphasized the "liberal standards under Maryland law for party status at an administrative hearing." Dorsey v. Bethel A.M.E. Church 375 Md. 59, 72 (2003). Judge Eldridge quoted Sugarloaf v. Department of Environment 344 Md. 271, 286-87, which stated, in part:

> "Bearing in mind that the format for proceedings before administrative agencies is intentionally designed to be informal so as to encourage citizen participation, we think that absent a reasonable agency or other regulation providing for a more formal method of becoming a party, anyone clearly identifying himself to the agency for the record as having an interest in the outcome of the matter being considered by that agency, thereby becomes a party to the proceedings.'"

In this context, Rule 10, which allows for the filing of a Motion for Reconsideration, does not place any restriction with respect to the timing of the participation of the person filing the motion for reconsideration. Otherwise stated, anyone with an interest in the outcome of the reconsideration ("the matter being considered") has the right to participate, and there is no requirement of prior participation by that person.

Of course, ordinarily, a party who has not participated at trial takes the case as he finds it. The present case is unusual in that the existing record reflects the jurisdictional problem and irregularity relating to the shift in the character of the case without proper notice. Under these circumstances, the participation by People's Counsel here does not open up a "Pandora"s Box" or invite unsupported motions by dissatisfied parties in other cases. As the records of the CBA reflect, People's Counsel rarely files a Motion for Reconsideration. That is because there rarely is procedural mistake and irregularity such as occurred here.

In sum, given the liberal standards for party status in administrative proceedings, the availability of a motion for reconsideration under Board Rule 10, and the blitzkrieg tactic of the Petitioners in pushing through a change in the character of the case without proper notice, it is in the interest of law and justice to provide People's Counsel an opportunity to be heard in defense of the comprehensive zoning maps.

III. The Merryman Case Reinforces People's Counsel's Position

A somewhat similar timing issue arose in the case of Merryman Farms CBA No. 94-105. The relevant documents are attached as Exhibit B. The case did not present a jurisdictional or procedural problem. However, after the Board of Appeals issued its 1994 decision in an appeal involving a ZADM (Zoning and Administration Development Department) decision, People's Counsel learned that there was a core zoning issue involving a change in zoning and vested rights. This caused People's Counsel to enter the case with a motion for reconsideration.

At that time, prior to the adoption of current Board Rule 10 in Bill 50-05, such a motion did not stay the CBA decision. Therefore, People's Counsel as well as interested citizens filed petitions for judicial review. The property owner filed a motion to dismiss People's Counsel

from the case, alleging that the office's late appearance disqualified it from being a party to the proceedings. But Judge Thomas Bollinger disagreed. He denied the motion on April 21, 1995.

A review of the attached documents shows the similarity of issues presented to and decided by the Court in the Merryman Farms case and the issues presented to the CBA here. The cause for People's Counsel to participate here is even stronger because of the notice problem and the procedural irregularity. In Merryman Farms, there was no procedural irregularity. There was rather the unusual phenomenon of a vested rights issue arising in a ZADM appeal matter.

Judge Bollinger's denial of the Motion to Dismiss in Merryman Farms made it unnecessary for him to rule on People's Counsel's Motion, in the Alternative to Be Joined and/or to Intervene, following the pattern in People's Counsel v. Crown Development Corp., *supra.* People's Counsel is filing a similar Motion here out of prudence. The result, however, should be the same as in Merryman Farms. The CBA should accept and honor People's Counsel's right to appear as a party and file for reconsideration, especially considering the totality of circumstances. It will, therefore, be unnecessary to decide the alternative motion.

IV. CBA Rule 10 Does Not Require a Showing of Fraud, Mistake, or Irregularity; In any Event, People's Counsel's Motion Raises Jurisdictional Problems Which Partake of Mistake and Irregularity, if not Fraud

Bill 50-05 introduced current Rule 10. This provides for the first time explicitly allows a motion for reconsideration at the CBA. It places no restriction on the scope of review relevant to such a motion. It also clarifies that such a motion stays the time for appeal.

The language of the Rule and its history reflect that the Rule is modeled on Rule 4K of the Zoning Commissioner's Rules. These have been applied and interpreted liberally. The Inter-Office Correspondence dated February 23, 2005 from Kathleen Bianco, CBA Administrator, to Jay Liner, County Attorney, attached as Exhibit C, proposes the New Rule:

"Rule 10 is completely new and, again, is a rule modeled after the Zoning Commissioner's Rules (Rule 4K). The Board's present Rule 10 gives the Board very limited revisory power, and experience has shown that, when a Motion for Reconsideration is filed to correct an error or misunderstanding, a ruling by the Board to amend its original Order could often resolve this matter. However, the Board's current rules allow no stay for the 30-day appeal period and therefore preclude the Board from acting on many of the Motions that are filed within those 30 days. The proposed Rule 10 would allow the Board sufficient time to review a Motion as filed, including any responses thereto, deliberate publicly and then scheduled, at its discretion, a hearing on the Motion; and issue a ruling without jeopardizing the 30-day appeal period."

Among other things, Rule 10 may apply to correct "an error or misunderstanding." There is no requirement to show "fraud, mistake, or irregularity."

While Bill 50 renumbers prior Rule 10 as Rule 11, this provides the CBA with authority on its own its own to revise an order in the case of fraud, mistake or irregularity. The exercise of this power does not require a motion. In sum, new Rule 10 stands apart and does not make a motion for reconsideration dependent on Rule 11 fraud, mistake, or irregularity. In any event, the procedural and jurisdictional problems involved in the present case involve mistakes, irregularities, and more. There is cause for reconsideration here under both Rule 10 and Rule 11.

V. The Petitioners' New or Changed Claim Is Not Excusable as a "Defense;" There Is Nothing Routine, Common or Acceptable About this Tactic

At pages 6-7 of its response, F & M states:

"There was nothing underhanded about the argument and filing a Petition for Special Hearing was certainly not a prerequisite to making the argument, especially in light of the fact that F&M provided the necessary evidence in support of the Petition for Variance. The argument was effectively a defense offered by F & M, which is not a novel concept in zoning hearings – Applicants routinely make such arguments, insisting relief is not necessary, yet providing evidence why relief should be granted. Indeed, that is why applicants frequently include language on the petitions for relief requesting the relief 'if necessary' or 'as deemed necessary,' just as F & M did in the instant case. See Exhibit 1. Due to the commonness of these arguments, and because People's Counsel tactically chose not to attend any hearings in this case, it may not now claim to have been 'blindsided with respect to the extraordinary request."

This contains a series of false premises and misstatements.

F & M's attempt to provide evidence to justify approval of variances does not excuse or allow a different request which is not found in the petition or advertised to the public. That would be like arguing that because one offers to pay for a quart of milk at the supermarket, it is all right to take the cheesecake without paying for it. Presenting evidence to support the variance request is what F & M was obligated to do. It does not give an entitlement to change the case.

To suggest the argument for exemption of A.5 lots is "effectively a defense" is deceptive and illogical. A defense is an opposition offered by a defendant or protestant to a claim made by a plaintiff or applicant. It is not an opposition offered by a plaintiff or applicant to counter its own claim. F & M's contention that it does not require variances is a very different claim from the claim that its petition for variances should be granted. A petition for variances presupposes that variances are required. That is why it is "underhanded" to shift at the appellate level.

It is, moreover, not true that applicants file petitions for zoning relief and then routinely argue that such relief is not necessary. If this occasionally occurs, then it is improper. The more familiar and appropriate way to make such claims is to combine a petition for zoning relief (special exception or variance) with a petition for special hearing for a legal determination that the use is a matter of right, so that no other zoning relief is necessary.

Here, each Petition for Variance filed by F & M requests lot width or setback variances. There is no modifying language, "if necessary" or "as deemed necessary." Each petition asks for approval of an "UNDERSIZED LOT" and "Variance from Section(s):

> "1B02.3.C.1, 303.1 & 304 of the BCZR to permit a min. lot width of 50' in lieu of the required 55' and a 25' front yard setback in lieu of the required front yard average of 30.75' and to approve an undersized lot pursuant to Sect. 304 with any other variances as deemed necessary by the Zoning Commissioner."

This petition does not request a legal determination that variances are unnecessary. The language "other variances as deemed necessary" refers to additional variances, which would have to be advertised specifically in order to be reviewed.

People's Counsel's decision not to attend the hearing was based on the judgment that the case presented as an isolated request for front lot width and setback variances which did not present any novel issues. It was the office's judgment that the CBA would be able to make the usual findings of fact and conclusions of law pertinent to variance relief based on the evidence presented by the parties. Had the office been aware that a more general legal interpretation of countywide significance were involved, it would have attended the hearing and presented a true defense to the surprise claim by F & M. The CBA would have then been apprised of the legal insufficiency of F & M's position, including the Mardo Homes decision.

VI. The Notice Was Not Adequate

As F&M admits, on page 8, the Cassidy case requires "the notice should be apprised clearly of the character of the action proposed and enough of the basis upon which it rests to enable him intelligently to prepare for the hearing." 218 Md. at 424. The Cassidy case went on to hold that notice of a zoning reclassification would not preclude consideration of a special exception. F&M argues that this decision supports its position that notice of a variance petition supports a claim that a variance is not required. But this is a misreading of Cassidy because the special exception there was, in comparison to the reclassification, a lesser included request pertinent to the specific property. Judge Prescott there wrote:

> "The Board, in its able opinion, in answering the protestants' argument that different standards of proof apply to petitions of reclassification than do to special exceptions and that constitutional requirements concerning notice, therefore, had not been met by advertising and posting for a reclassification, pointed out that all matters of proof which must appear to support a special exception case, plus either a showing of error in the original zoning or a substantial change in neighborhood conditions, must be

established in a reclassification case. It cited as authority the case of Price v. Cohen, 213 Md. 457, 132 A.2d 125, where a reclassification was denied because a situation detrimental to public safety and welfare existed. The Board, therefore, held that the notice of the attempt to reclassify was sufficient to meet the constitutional need of notice, as well as that required by sec. 500.5 for granting the special exception. It stated, however, that it would not make a similar ruling if the situation were in reverse, namely, had the notice been for special exception and a reclassification granted."

In contrast, the request for a legal determination that variances are not necessary for these lots (and, by extension, any other lots in Baltimore County) which can fit the BCZR 1B02.3.A.5 category is a much more far-reaching request than a request for variances. Neither People's Counsel nor any member of the public would have any idea from the notice that such a request is being made. Anyone attending the hearing, such as Mr. Nelson, would be prepared only to defend against the merits of the variances, not the contention that the requests are actually a matter of right. By no means is the shift here to a lesser included request.

F&M also argues on Page 10 that the *de novo* nature of the CBA hearing alleviates the problem. But the *de novo* character of the CBA hearing does not alter the appellate character of its jurisdiction. The only required substantive notice is the notice provided at the Zoning Commissioner level, and that this relates to the petition. In other words, the *de novo* character of the CBA hearing does not give *carte blanche* to change the nature of the case.

VII. The CBA's Legal Interpretation Is in Error

F & M's argument on pages 10-11 misses the forest for the trees, or more accurately, isolates a tree in order to hide the forest. F & M persistently maintains a narrow focus on BCZR 1B02.3.C's omission of the A.5 category. This disregards BCZR 1B02.3.B, which clearly relates the A.3, A.4, and A.5 lots to the small lot table. It also disregards the parallel characteristics of these three categories of small lots.

The main thing is that F&M has no adequate answer to the point that its lots also are A.3 and A.4 lots as a matter of fact, and that these are covered by the small lot table:

> "1B02.3 Special regulations for certain existing developments or subdivisions and for small lots or tracts in D.R. Zones.
>
> A. In D.R. Zones, contrary provisions of this article notwithstanding, the provisions of or pursuant to this subsection shall apply to the use, occupancy and development of; alteration or expansion of structures upon; and administrative procedures with respect to:
>
> 1. Any lot which is in a recorded residential subdivision approved by the Baltimore County Planning Board or Planning Commission and which has been used, occupied or improved in accordance with the approved subdivision plan;
>
> 2. Any land in a subdivision tract which was laid out in accordance with the regulations of residence zoning classifications now rescinded, for which a subdivision plan tentatively approved by the Planning Board remains in effect and which has not been used, occupied or improved in accordance with such plan;
>
> 3. Any lot or tract of lots in single ownership which is not in an existing development or subdivision, as described in Subsection A.1 or A.2, and which is too small in gross area to accommodate six dwelling or density units in accordance with the maximum permitted density in the D.R. Zone in which such tract is located;
>
> 4. Any lot or tract of lots in single ownership which is not in an existing development or subdivision, as described in Subsection A.1 or A.2, and which is less than one-half acre in area, regardless of the number of dwelling or density units permitted at the maximum permitted density in the zone in which it is located; or
>
> 5. Any lot or tract of lots in single ownership which is in a duly recorded subdivision plat not approved by the Baltimore County Planning Board or Planning Commission."

The F & M lots are not in a subdivision approved or tentatively approved by the Baltimore County Planning Board or Planning Commission. They are clearly too small in gross area to accommodate six dwelling or density units under the D.R. 5.5 Zone and are each less than one-half acre. Thus, they fit within A.3 and A.4.

Mardo Homes resolves that such lots are subject to the small lots table, even if not under A.5. The Court applied the principles of statutory construction. On page 6, the Court wrote:

"Applying these principles to the regulation now being considered, we conclude that under the plain wording of section 1B02.3, appellants' lots are lots described in subparagraphs A.3, A.4, and A.5. The 55 foot minimum width requirement made applicable to A.3 and A.4 lots is, therefore, applicable to appellants' lots."

Since Mardo Homes, the County Council has left BCZR 1B02.3 intact. Over the 29 years since Mardo Homes, lots such as the F & M lots have consistently been subject to variance review.

F & M's argument is that there is some ambiguity in the statute, which can be resolved by the CBA in favor of F & M. The County Board of Appeals decided otherwise in the Mardo Homes, and the Court of Special Appeals (as well as the Circuit Court) reinforced that decision.

The error in the CBA's legal conclusion is traceable, in part to the lack of adequate notice. Had there been a properly filed petition for special hearing, with correct notice, the Zoning Advisory Committee would have had a chance to consider the issue; the Deputy Zoning Commissioner could have addressed it. Most important, the CBA would not have overlooked the Mardo Homes case. If there were proper notice of the issue, our office would have brought Mardo Homes to the Board's attention and this litigation would have been simplified.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

C. S. DeMilio

CAROLE S. DEMILIO
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Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14 day of June, 2006, a copy of the People's Counsel's Reply Memorandum on Reconsideration was mailed to Arnold Jablon, Esq., Venable LLP, 210 Allegheny Avenue, Towson, MD 21204, attorney for Petitioners, and to Thomas Nelson, 2617 N. Marine Avenue, Baltimore, MD 21219.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 120

September Term, 1977

BUILDING PERMITS #63255 and #63256

MARDO HOMES, INC., ET AL.

v.

BALTIMORE COUNTY, MARYLAND

Davidson,
Melvin,
Wilner,
JJ.

PER CURIAM

Filed: November 22, 1977

Exhibit A

Rec'd 11-23-77
2:30 PM

FILE COPY

FILE COPY

IN THE MATTER OF MERRYMAN'S FARMS /ZADM VII-102 -Eleanor Ross /Owner PINEY MILL ROAD AND OLD YORK ROAD 7TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
RE: ZADM DECISION /EXPIRATION OF RECORD PLATS	*	CASE NO. CBA-94-105

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

O P I N I O N

This case comes before this Board on appeal from a ZADM decision that the specified record plats for the development known as Merryman's Farms have expired. The case was heard this day in its entirety. Preliminarily, Baltimore County raised the issue that the Board has no jurisdiction to hear this case. The Board concludes that it does have authority under Daniel Hope, Jr., et al v. Baltimore County, Maryland, et al, 288 Md. 656 (1980). The Hope decision mandates that this Board must accept jurisdiction of any administrative ruling. Under the Hope decision, the Board must take testimony in this case and render an opinion.

Appearing before the Board and testifying on behalf of Baltimore County was Joseph Maranto, a project manager with 18 years planning and zoning experience. Mr. Maranto was the only witness representing Baltimore County. Appearing for the Appellant /Property Owner was James Stephen Klein, a land planner, engineer and land surveyor. Also appearing and testifying for the Appellant was Norman Gerber, a self-employed planner since 1988 with extensive experience in the Baltimore County Office of Planning & Zoning. No other witnesses testified. The facts as ascertained through the testimony and evidence are as follows.

Exhibit B

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

TO: Jay L. Liner
County Attorney

DATE: February 23, 2005

FROM: Kathleen C. Bianco, Administrator
Board of Appeals of Baltimore County

SUBJECT: Proposed Revisions to the Board's Rules of Practice and Procedure

Attached for your review is a summary of changes proposed by the Board to its Rules of Practice and Procedure pursuant to § 603 of the *Baltimore County Charter*. These revisions, which have been provided to and discussed with Mike Field and Nancy West, are the result of numerous meetings of the Board and are necessitated by situations which have occurred before the Board but which were not addressed in the Board's Rules:

- Rule 1(c) previously granted the chairman the authority to replace a Board member who could no longer serve to conclude a matter before the Board by reason of illness or death.

  ✓ The revised Rule 1(c) is more inclusive in that it can be applied as well to a Board member who resigns or simply is not reappointed.

- Rule 1(e) is new and applies to cameras, etc., in the hearing room. (This rule is modeled after Rule 4.I of the Zoning Commissioner's Rules.)

- Rule 2(b) is revised to add "or a party of record if not represented by counsel" as indicated by the shaded area. This appears to have been pure oversight in the first part as it exists in the second.

- Rule 3(b) previously provided only for withdrawal of an appeal pending before the Board. The revised 3(b) would also address the withdrawal of a Petition as well. The Board's revised 3(b)(ii) is modeled after the Zoning Commissioner's Rule 4.F, "Withdrawals," and is believed to be necessary based upon past requests to withdraw petitions prior to conclusion of a hearing before the Board.

- Rule 8(c) adds the sentence, "or special meeting of the association." The rule as it exists only provides for votes to be taken at either the annual meeting of the association or at the first meeting of each year. Practice and experience has shown this to be an impractical request. The additional language will also support the actions taken by the Board for many years.

- Rule 10 is completely new and, again, is a rule modeled after the Zoning Commissioner's Rules (Rule 4.K). The Board's present Rule 10 gives the Board very limited revisory power, and experience has shown that, when a Motion for Reconsideration is filed to correct an error or misunderstanding, a ruling by the Board to amend its original Order could often resolve the matter. However, the Board's current rules allow no stay for the 30-day appeal period and therefore preclude the Board from acting on many of the Motions that are filed within those 30 days. The proposed Rule 10 would allow the Board sufficient time to review a Motion as filed, including any responses thereto, deliberate publicly and then schedule, at its discretion, a hearing on the Motion; and issue a ruling without jeopardizing the 30-day appeal period.

Please have the necessary legislation prepared for submittal to the County Council adopting these changes. Should you have any questions, please call me at extension 3180.

Attachment

Exhibit C

c: Michael E. Field, Assistant County Attorney
Nancy C. West, Assistant County Attorney

5/31/06

IN THE MATTER OF THE APPLICATION OF F & M ENTERPRISES INC. – PETITIONER FOR ZONING VARIANCE ON PROPERTY LOCATED ON THE E/S MARINE AVENUE 346' N C/L SPARROWS POINT ROAD (2623 MARINE AVE, UNDERSIZED LOT 1) AND 445' N C/L SPARROWS POINT ROAD (2623 MARINE AVE, UNDERSIZED LOT 2)	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY
15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT	*	CASE NOS: 05-239-A & 05-240-A

RECEIVED
MAY 31 2006
BALTIMORE COUNTY
BOARD OF APPEALS

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

RESPONSE TO MOTION FOR RECONSIDERATION

F&M Enterprises, Inc. ("F&M"), by its undersigned attorney, hereby responds to the Motion for Reconsideration filed by People's Counsel for Baltimore County and the Motion for Reconsideration filed by Thomas Nelson, Protestant. In support of its response, F&M states the following:

I. **People's Counsel Is Not A Party Before The County Board Of Appeals For Baltimore County And, Therefore, Has No Authority Or Right To File A Motion For Reconsideration.**

People's Counsel filed its Motion for Reconsideration (the "Motion") "[p]ursuant to Rule 10 of the County Board of Appeals (CBA) Rules of Practice and Procedure." People's Counsel's Motion at 1. Rule 10 states "[a] *party* may file a motion for reconsideration of an order of the board of appeals" (emphasis added). In the present case, People's Counsel has no authority to invoke the rights provided under Rule 10.

People's Counsel is not a party to the present case. People's Counsel would have the County Board of Appeals for Baltimore County ("Board of Appeals" or "Board") believe that, because People's Counsel "entered its appearance in writing before the Zoning Commissioner in the present cases," it automatically remains a "party" *through any appeal taken to the Board.*

People's Counsel's Motion at 3. Indeed, People's Counsel merely asserts, *without any supporting authority*, that "[t]he Zoning Commissioner/[Board] proceedings are ongoing and are not final until the expiration of the reconsideration period." People's Counsel's Motion at 5. Thereby, People's Counsel would claim that, after entering its appearance before the Zoning Commissioner, it need not do so before the Board; it remains a "party." This is baseless. The fact remains that, aside from entering its appearance before the Zoning Commissioner in this case, People's Counsel never attended a hearing or filed a pleading in any tribunal, before inexplicably filing the instant Motion.

People's Counsel cannot claim he need not enter his appearance before the Board because the case is a continuation of the Zoning Commissioner's hearing, while, as explained in detail below, also arguing that the arguments presented before the Board are "new" and require additional notice. These arguments cannot coexist. The hearing before the Board is *de novo* and, therefore, requires an entry of appearance by People's Counsel, or at least some acknowledgement of its intent to participate, to establish itself as a party in the matter. As discussed below, F&M provided adequate notice of the hearing. However, due to People's Counsel's inactivity and disinterest throughout the pendency of this case, particularly its failure to formally notify the Board or otherwise show any indication of its intent to participate in the instant matter, it effectively never was a party and, therefore, has no right to challenge the Board's decision pursuant to Rule 10.

People's Counsel offers no compelling reason why the Board should permit it to file the instant Motion, after having failed to participate in the case whatsoever. As with most issues regarding its authority or standing, People's Counsel points to *People's Counsel v. Crown Development*, 328 Md. 303 (1992), insisting that case sanctions its ability to participate in a case

virtually whenever, wherever, and however it wants. People's Counsel intimates that, because *Crown* authorized People's Counsel's initial appearance in a case in the Circuit Court, then People's Counsel must necessarily be permitted to first participate in a case by filing a Motion to Reconsider the Board's opinion, as in this case. However, *Crown* is distinguishable from the instant case.

The Court of Appeals' discussion in *Crown* regarding People's Counsel's broad authority and right to intervene in cases hinged upon the concept of prejudice to opposing parties. In *Crown*, the Court of Appeals found it important that another individual party "was a proper party before the Circuit Court and had standing to appeal to the Court of Special Appeals." *Crown*, 328 Md. at 317. For that reason, the Court of Appeals recognized that "the presence of People's Counsel was not required to obtain appellate review at any level." *Id.* Therefore, People's Counsel's sudden presence and participation did not cause any prejudice to the opposing party.

By contrast, in this case F&M has been prejudiced by People's Counsel's unforeseen filing of the instant Motion. F&M has spent considerable time and money arguing its case before the Zoning Commissioner and the Board. F&M was aware that People's Counsel had entered its appearance before the Zoning Commissioner. However, People's Counsel's tactical decision to thereafter neither participate in the hearing before the Zoning Commissioner nor enter its appearance or participate in the *de novo* hearing before the Board, indicated that People's Counsel was not participating in the instant case. Now, suddenly, after attending several days of hearings and successfully arguing its case and defending against the arguments of the sole participating Protestant, F&M must defend against a collateral attack by People's Counsel.

People's Counsel's strategy and actions have inappropriately manipulated the procedure of the instant case. In *Crown,* the Court of Appeals found no fault in People's Counsel's entry of appearance at the Circuit Court level because *another party had brought the appeal to the Circuit Court and joined in the subsequent appeals. See id.* Here, but for People's Counsel's Motion, the Board's decision in favor of F&M presumably would have been final, as the sole Protestant in the case did not make a similar motion prior to People's Counsel's intervention, or file a petition for judicial review. Mr. Nelson has now filed his own "Motion for Reconsideration," but it is clear he would not have done so without People's Counsel having first filed its Motion.[1] Therefore, solely due to People's Counsel's actions, a review of the Board's decision has been requested, potentially requiring F&M to reargue its case. This is simply not fair and is inconsistent with *Crown.* It is clear that People's Counsel's approach in this case has prejudiced F&M and, therefore, People's Counsel may not rely on *Crown* to attempt to participate in the present case.

If the Board accepts and acts upon People's Counsel's Motion under the present circumstances, it will open Pandora's Box. Allowing People's Counsel to file Motions to Reconsider, without it having ever participated in any hearing or entering its appearance before the Board, will sanction similar behavior in future cases. Permitting the instant Motion will undoubtedly cause People's Counsel to continually "sit on its hands" and not participate in various hearings, knowing it can collaterally attack any objectionable Board decision. This is a dangerous proposition, as it is unfair to landowners and, frankly, inconsiderate to the Board. Through its instant Motion, People's Counsel essentially implies that it did not have the interest

[1] Mr. Nelson's "Motion" is most definitely an afterthought and a reaction to People's Counsel's Motion. The first typewritten line in the "Motion" states that it is "*in support of* the **Motion for Reconsideration** filed on April 13, 2006 by, People's Counsel for Baltimore County ...." After typing the pleading in support of People's Counsel's Motion, Mr. Nelson titled his submission a "Motion for Reconsideration" *in handwriting.* These circumstances indicate that Mr. Nelson intended for his submission to supplement People's Counsel's Motion and, therefore, the Board can safely infer that he would not have filed his submission, but for People's Counsel's filing.

or time to attend hearings in this case, but, because it did not approve of the Board's decision, it is now ready to participate in the case, on its own terms. This attitude should not prevail.

Additionally, Rule 10 of the Board's Rules of Practice and Procedure – the Rule governing motions for reconsideration – does not contemplate a motion like the one filed by People's Counsel in this case. Rule 10 cannot be read or construed without reference to the limitations upon the Board's revisory powers outlined in Rule 11. On April 18, 2005, the Baltimore County Council adopted Bill 50-05, which added Rule 10 to the Board's Rules of Practice and Procedure. Prior to that adoption, the only reference to the Board's ability to alter its orders after issuance was that discussed in Rule 11[2], which reads: "Within thirty (30) days after the entry of an order, the board shall have revisory power and control over the order in the event of fraud, mistake, or irregularity." As Rule 11 does not specifically permit interested parties to request the Board reconsider and revise its orders, the Council adopted Rule 10 to provide that right. However, although a party may now request the Board to *reconsider* an order, pursuant to Rule 10, it remains that the Board may not correspondingly *change or revise* that order without meeting the standard outlined in Rule 11. By association, a party requesting reconsideration of a Board order, pursuant to Rule 10, must, therefore, allege and prove some "fraud, mistake, or irregularity" in order to compel the Board to actually revise the order. Because People's Counsel has failed to make any such allegation in its Motion, the Board must decline to reconsider its April 7, 2006 order.

Ultimately, because People's Counsel has not entered its appearance before the Board of Appeals in this *de novo* hearing or otherwise participated in the case whatsoever, it is not a party to the case and may not properly file a motion for reconsideration, pursuant to Rule 10. Additionally, People's Counsel has failed to make any allegations of "fraud, mistake, or

[2] Prior to the adoption of what is now Rule 10, Rule 11 was actually Rule 10.

irregularity" and, therefore, the Board cannot be compelled to reconsider and revise its order in this case.

II. Even If The Board Of Appeals AcceptsThe Motion, People's Counsel Raises No Issues That Warrant Reconsideration Of Or Amendment To The Board's Opinion.

A. F&M's arguments before the Board do not constitute a new request for relief.

F&M never withdrew its Petition for Variance. Despite People's Counsel's inference otherwise, F&M only abandoned the setback variance request – F&M never withdrew any portion of its Petition for Variance. As can be gleaned from the Board's opinion and the testimony presented before the Board, F&M presented evidence and argument to the Board relating to the lot width variance. *See* Board Opinion ("Bd. Op.") at 2-4. However, F&M also argued in the alternative that, although F&M had proven its entitlement to a variance, the subject property was not subject to the small lot table, outlined in Baltimore County Zoning Regulations ("BCZR") Section 1B02.3.C.1, and a variance was not necessary. As indicated in its opinion, the Board was compelled by the latter argument and saw no need to reach the merits of the Petition for Variance. *See* Bd. Op. at 5-6.

F&M's alternative argument regarding the inapplicability of the small lot table did not "amend [F&M's] zoning variance petitions and effectively substitute special hearing or declaratory judgment petitions," as People's Counsel has argued. People's Counsel's Motion at 1. People's Counsel would have the Board believe that F&M attempted to "pull the wool over the Board's eyes" by suddenly making a new legal argument, but that is not accurate. In the *de novo* hearing before the Board, F&M, in addition to proving its variance case, made the alternative argument that a variance is not necessary on F&M's property (the "Property"). There was nothing underhanded about the argument and filing a Petition for Special Hearing was certainly not a prerequisite to making the argument, especially in light of the fact that F&M

provided the necessary evidence in support of the Petition for Variance. The argument was effectively a defense offered by F&M, which is not a novel concept in zoning hearings – applicants routinely make such arguments, insisting relief is not necessary, yet providing evidence why relief should be granted. Indeed, that is why applicants frequently include language on the petitions for relief, requesting the relief "if necessary" or "as deemed necessary," just as F&M did in the instant case. ***See Exhibit 1***. Due to the commonness of these arguments, and because People's Counsel tactically chose to not attend any hearings in this case, it may not now claim to have been "blindsided with respect to the extraordinary request." People's Counsel's Motion at 5.

The fact that F&M offered its defense "for the first time" during the *de novo* hearing before the Board of Appeals is of no moment. Being *de novo,* the hearing before the Board often times differs from that before the Zoning Commissioner – additional witnesses may be called, different evidence may be presented, and new arguments may be made. Therefore, although F&M sought a variance before the Zoning Commissioner without arguing the variance was not necessary, it was not precluded from making that argument before the Board.

B. F&M provided adequate notice for the hearing before the Board of Appeals and People's Counsel was not denied procedural due process.

People's Counsel and the general public have not been denied procedural due process. The Property was posted with notice of both the hearing before the Zoning Commissioner and the hearing before the Board, advising the public of F&M's petitions for variance. People's Counsel, citing *Cassidy v. County Board of Appeals,* 218 Md. 418 (1958), insists the notice of the hearing before the Board was inadequate, and consequently "fatal to jurisdiction," because it neglected to apprise the public of F&M's "new" argument, which "increase[d] the impact of the proposal [and] add[ed] a new element" to the original petitions. People's Counsel's Motion at 5.

In *Cassidy,* the jurisdictional issue revolved around a hearing notice that mentioned only an application for property reclassification but failed to mention a petition for special exception. The appellants argued that the notice was inadequate and, therefore, the Zoning Commissioner did not have proper jurisdiction to grant the special exception. However, as *Cassidy* explains, "'the noticee should be apprised clearly of the character of the action proposed and *enough of the basis upon which it rests to enable him intelligently to prepare for the hearing.*'" *Cassidy*, 218 Md. at 424 (citation omitted) (emphasis supplied).

The notice provided by F&M in the instant matter was certainly enough to allow the public to "intelligently prepare" for the hearing. The Court of Appeals in *Cassidy* was not concerned that the notice did not contain the words "special exception;" rather, the Court was satisfied that "[a]nyone who attended the hearing prepared to defeat [the application for property reclassification] would *likewise have been prepared to defeat the grant of a special exception.*" *Id.* at 225-26 (emphasis supplied). Such is the instant matter. Were a member of the public to appear at the hearing prepared to argue against the variances from the small lot table requirements, so too would they be prepared to argue the Property *was subject to* the small lot table; the two arguments are indisputably interconnected. In fact, Protestant appeared at the hearing and, without difficulty, cross-examined witnesses regarding the applicability of the small lot table and made supporting arguments. Had People's Counsel actually attended the hearing, it would have been similarly prepared.

The out-of-state cases People's Counsel cites to assert that F&M's argument "changed the nature" of the case, and thereby invalidated the notice provided, are all distinguishable. *Drum v. Fresno County Dept. of Public Works,* 144 Cal.App.3d 777 (1983), involved a situation where applicants presented certain construction plans in conjunction with a request for variance,

giving public notice of the pending hearing based on the substance of those plans. The variance was approved and subsequently the applicant commenced construction on a structure that differed from that approved in conjunction with the variance, which the court found effectively nullified the notice provided by the applicant. In the present case, regardless of whether the Board granted the variance from the small lot table or determined the small lot table did not apply, the result would be F&M's construction of two homes on the five lots, in lieu of one, and, therefore, F&M provided adequate notice of its requested relief. *Fedder v. McCurdy*, 768 P.2d 711 (Colo.App. 1988), involved defective notice provided by the applicant, which the court determined to be "ambiguous." In the present case, People's counsel does not allege ambiguity and the requested relief was not ambiguous – all were on notice that F&M was requesting a variance from the small lot table "as deemed necessary," in order to form two lots and construct two homes. ***See Exhibit 1.*** Similarly, *Lunt v. Zoning Board,* 191 A.2d 553 (Conn. 1963), involved defective notice provided by the applicant, which the court determined "did not fairly and sufficiently apprise those who might be affected. . ." *Id.* at 556. Again, in the present case, the notice adequately informed the public that F&M desired a variance from the small lot table "as deemed necessary." Lastly, *Mello v. Board of Adjustment,* 177 A.2d 533 (R.I. 1962), involved the Rhode Island court's interpretation of notice required under a *Rhode Island statute* and that court's explanation that the notice was "insufficient to constitute the constructive notice to the public that was contemplated by the legislature in enacting [the applicable state statute]." *Id.* at 536. The *Mello* court was particularly concerned by the inadequate description of the property at issue. In the present case, the Rhode Island statute does not apply and People's Counsel makes no assertion that F&M's property description was inadequate.

Even if People's Counsel were correct that F&M's defense constituted a "new" argument, over which the Zoning Commissioner retains "original jurisdiction," the Board's consideration of the argument did not deny People's Counsel procedural due process. Any error was cured because the hearing before the Board was *de novo*. As established above, the notice of the hearing before the Board was adequate to allow the public to prepare for the defense presented by F&M and, therefore, were People's Counsel to have appeared at the hearing, it would have had the opportunity to present evidence, cross-examine witnesses, and offer argument, just as Protestant did. The *de novo* nature of the hearing before the Board alleviates any injustice that may be caused by the Zoning Commissioner not having first considered the arguments. *See, e.g., Golden Ring Yacht Basin, Inc. v. People's Counsel,* Court of Special Appeals, No. 1047, September Term, 1994 at 15-17 (unreported opinion) (citing *Hill v. Baltimore County,* 86 Md. App. 642 (1991); *Boehm v. Anne Arundel,* 54 Md. App. 497 (1983)) (***Exhibit 2***). As such, the Board was well within its jurisdiction to hear F&M's arguments regarding the inapplicability of the small lot table and, more importantly, the Board was correct in its determination that a variance was not necessary.

C. The Board of Appeals rationally and appropriately determined that the small lot table does not apply to the Property.

As the Board properly found, the small lot table outlined in BCZR Section 1B02.3.C.1 does not apply to the Property. The Property is clearly the type that is described in BCZR Section 1B02.3.A.5 ("A.5 property"), which is absent from BCZR Section 1B02.3.C.1, the section that mandates compliance with the small lot table. People's Counsel argues this is an "inadvertent omission," as Section 1B02.3.B requires that A.5 property be subject to the provisions of Section 1B02.3.C, in general. However, this argument ignores the plain language of Section 1B02.3.C.1 and contravenes well settled Maryland law. Pursuant to *Kushell v.*

Department of Natural Resources, 385 Md. 563 (2005), a court – in this case the Board of Appeals – may neither "'add nor delete [statutory] language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute.'" *Kushel*, 385 Md. at 576-77 (quoting *Price v. State,* 378 Md. 378 (2003)). People's Counsel is, therefore, improperly requesting the Board add language to Section 1B02.3.C.1; that is, to infer that A.5 property is subject to the small lot table, when the statute clearly states it is not. Were the County Council to have intended the small lot table to apply to A.5 property, it would have stated so in Section 1B02.3.C.1; however, the Council did not do so and, therefore, the plain language of the statute indicates that the small lot table does not apply to A.5 property. This has been the case for the fifty plus years the statute has been in effect.

The Board properly found the Property to be A.5 property. People's Counsel argues that, in addition to meeting the definition under BCZR Section 1B02.3.A.5, the Property also meets the definitions under Sections 1B02.3.A.3 and A.4. People's Counsel further argues, therefore, that even if A.5 property is exempt from compliance with the small lot table, the Property nevertheless must comply with the small lot table because of its contemporaneous qualification under A.3 and A.4. At best, People's Counsel's observation highlights the inherent ambiguity of Section 1B02.3.A, but this discrepancy should be construed in favor of F&M. It is widely viewed that "[w]here doubt exists as to the meaning of zoning restrictions, courts hold that such restrictions will be strictly construed in favor of the landowner" and "where doubt exists as to the meaning of permissive zoning provisions, courts also hold that such provisions will be liberally construed in favor of the landowner." Arden H. and Daren A. Rathkopf, The Law of Zoning and Planning § 5:13 (Release No. 13, 2005) (***Exhibit 3***). This authority, which relies upon an abundance of case law, confirms the Board was correct in interpreting the statute in the least

restrictive manner by defining the Property as A.5 property, so as to permit F&M to use the Property as it desired—to create two lots and construct two dwellings. When in doubt, the Board must construe the BCZR in a manner that is favorable for the property owner, just as the Board did in the instant case. *See supra.*

III. Protestant Likewise Raises No Issues In His Motion To Compel The Board Of Appeals To Change The Relief Granted In Its Opinion.

Protestant offers four brief statements that fail to convey any compelling argument. Not only do the statements merely reiterate what Protestant stated at the hearing before the Board, but they fail to state any particular reason why the Board should reconsider or amend the order granted in this case. Protestant, effectively joining in People's Counsel's previously filed Motion, is attempting to remind the Board of facts established at the hearing; facts that People's Counsel neglected to mention in its Motion, as it had not participated in the hearings. Because, as discussed above, Protestant neglects to assert any fraud, mistake, or irregularity in the Board's opinion or otherwise present any new arguments, the Board should decline to reconsider the opinion issued in this case.

CONCLUSION

For the above stated reasons, F&M Enterprises, Inc. respectfully requests that the Board of Appeals decline to reconsider, alter, or amend its April 7, 2006 decision.

Arnold Jablon/CDM

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210 Allegheny Avenue
Towson, Maryland 21204
(410) 494-6200

#225881v4

CERTIFICATE OF SERVICE

I hereby certify that on this 31 day of May, 2006, a copy of this Response to Motion for Reconsideration was hand delivered to Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County and sent via first class mail to Thomas Nelson, 2617 N. Marine Ave., Baltimore Maryland, 21219.

Arnold Jablon/COM
ARNOLD JABLON
Attorney for F&M Enterprises, Inc.

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 2623 MARINE AVENUE

which is presently zoned DR 5.5 & BL-AS

UNDERSIZED LOT 1 - LOTS 399, 398 & PART OF 397

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 1B02.3.C.1, 303.1 & 304 OF THE BCZR TO PERMIT A MIN. LOT WIDTH OF 50' IN LIEU OF THE REQUIRED 55' AND A 25' FRONT YARD SETBACK IN LIEU OF THE REQUIRED FRONT YARD AVERAGE OF 30.75' AND TO APPROVE AN UNDERSIZED LOT PURSUANT TO SECT. 304 WITH ANY OTHER VARIANCES AS DEEMED NECESSARY BY THE ZONING COMMISSIONER.

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

TO BE ADDRESSED AT HEARING

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.

ENGINEER:

~~Contract Purchaser/Lessee:~~

PAUL LEE, CENTURY ENGINEERING, INC.
Name - Type or Print

Signature

32 WEST ROAD — 410-823-8070
Address — Telephone No.

TOWSON — MD — 21204
City — State — Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address — Telephone No.

City — State — Zip Code

Legal Owner(s):

F & M ENTERPRISES, INC.
Name - Type or Print

Signature MICHAEL J. NARUTOWICZ, II

Name - Type or Print

Signature JAMES A. NARUTOWICZ, JR.

5200 NORTHPOINT BLVD. — 410-477-1696
Address — Telephone No.

BALTIMORE — MD — 21219
City — State — Zip Code

Representative to be Contacted:

PAUL LEE, CENTURY ENGINEERING, INC.
Name

32 WEST ROAD — 410-823-8070
Address — Telephone No.

TOWSON — MD — 21204
City — State — Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By _____ Date _____

Case No. _____

ZO/ 9/15/95

EXHIBIT 1

and accepted usage.[1] The legislative intent behind an ordinance is found in the plain, unambiguous and ordinary meaning of the terms of the ordinance.[2] Contemporaneous declarations of intent that are clearly wrong, erroneous, or unreasonable in view of the plain and ordinary meaning of the terms in the ordinance itself are not binding on a reviewing court.[3]

§ 5:13 Strict construction doctrine—Construction in favor of the free use of land

---

[Section 5:12]

[1]E.g., Wegner Auto Co., Inc. v. Ballard, 353 N.W.2d 57 (S.D. 1984).

[2]E.g., Harlow v. Planning and Zoning Com'n of Town of Westport, 194 Conn. 187, 479 A.2d 808 (1984). And see Appeal of American Fast Foods, 18 Ches. Co. Rep. 311, 312, 50 D.&C.2d 192, 194–95 (1970), the court therein noting:

> The township argues that the provision in question is directed against the operation of a "Gino" type of establishment, and that such an establishment creates undesirable side effects which should not be permitted within the township. We do not know whether a Gino establishment is good or bad from the township's point of view. If it encourages activity which conflicts with the public interest, the prohibition of the undesirable activity would seem to be the appropriate method of overcoming its undesirable effect. That result cannot be obtained by attempting to read a meaning into the language of the zoning ordinance which that language does not justify.

[3]See DeKalb County v. Post Apartment Homes, L.P., 234 Ga. App. 409, 506 S.E.2d 899 (1998) (county officers cannot change plain meaning of an unambiguous ordinance by testimony about their subjective intent); High Ridge Hinkle Joint Venture v. City of Albuquerque, 1998-NMSC-050, 126 N.M. 413, 970 P.2d 599 (1998) (deference to City's interpretation is not proper where it contradicts plain and ordinary meaning of ordinance).

See also Donovan v. Board of Zoning Appeals of Rockingham County, 251 Va. 271, 467 S.E.2d 808 (1996) (while "great weight" is given to interpretation of zoning ordinance provided by those charged with its administration, such an interpretation cannot be followed where it is "plainly wrong").

The Supreme Court of New Hampshire held that construction of a "tower to support antennas" would violate a town's 35-foot height limitation, despite an exception for "chimneys or antennas." Carnie v. Town of Richmond, 139 N.H. 21, 648 A.2d 205 (1994). Drawing from the dictionary, common sense, and various other sources, the court concluded that the exception was intended for "ordinary, pre-cable television antenna[s]," not 100-foot towers. To illustrate its point, the court used the following example:

> [T]he 2120-foot guyed Warszawa radio mast at Konstantynow, sixty miles northwest of the capital of Poland, is the world's tallest-ever structure. N. McWhirter, The Guinness Book of Records 100 (P. Matthews ed. 1994). "The mast was so high that anyone falling off the top would reach terminal velocity and hence cease to be accelerating before hitting the ground." *Id.* Were we to accept the . . . proffered definition of "antenna," this structure would not violate the height limitation. We cannot envision that such a result was contemplated by the town residents when they adopted the zoning ordinance.

648 A.2d at 206.

EXHIBIT 2

ESTOPPEL
REFINEMENT - MATERIAL
PUBLIC (H)
DE NOVO
NOTICE

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1047

SEPTEMBER TERM, 1994

GOLDEN RING YACHT BASIN, INC./
CHESAPEAKE YACHTING CENTER

v.

PEOPLE'S COUNSEL FOR BALTIMORE
COUNTY

Murphy,
Hollander,
Sause, John W., Jr.,
(Specially assigned)
JJ.

PER CURIAM

Filed: May 22, 1995

RECEIVED
JUN 1 1995
ZADM

EXHIBIT 3

FROM: Thomas Nelson, 2617 N. Marine Avenue, Baltimore, MD 21219.

RE:	PETITION FOR VARIANCE 2623 Marine Ave, Undersized Lot 1; E/side Marine Ave, 345' N c/line Sparrows Pt Rd 2623 Marine Ave, Undersized Lot 2; E/side Marine Ave, 445' N c/line Sparrows Pt Rd 15th Election & 7th Councilmanic Districts Legal Owner(s): F&M Enterprises, Inc, Michael & James Narutowicz, II Petitioner(s)	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY CASE NO.: 05-239-A and CASE NO. 05-240-A

THOMAS NELSONS MOTION FOR RECONSIDERATION,

AND In support of the **MOTION FOR RECONSIDERATION** Filed on April 13, 2006 by, People's Counsel for Baltimore County for reconsideration of the opinion and order dated April 7, 2006:

And in addition, to note that:

1) A plot plan for lots 395 - 399 (the subject lots known as; 2623 N. Marine Ave.) in Sparrows Point Manor was filed for: F & M enterprises, Inc. (the petitioners) on June 2, 2004. That plot plan shows a 25 ft. front setback and 13.5 ft. side setback from the joining lot numbered 400 without request for variances.

2) An application for building permit was filed on July 21, 2004; indicating a Front Setback of only 25 feet and Side Setback of only 6.25 feet ; again without request for variances.

3) It was necessary to have Baltimore County post a stop work order on the property after petitioners stripped the wooded lots 395 - 399 at 2623 N. Marine Ave. without a permit and without taking any run-off precautions.

4) Written petitions were accepted into evidence which contained signatures of juveniles and other non-owners living outside the area.

REQUEST THAT THE BOARD REVERSE ITS DECISION.

Thomas S. Nelson 05/05/06

THOMAS S.NELSON
2617 N. Marine Ave.
Baltimore, Md. 21219
(410) 455 - 4105

RECEIVED
MAY 05 2006
BALTIMORE COUNTY
BOARD OF APPEALS

C.C. PEOPLES COUNSEL
ARNOLD JABLON ESQ

County Board of Appeals of Baltimore County

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

April 14, 2006

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

RE: *In the Matter of: F & M Enterprises, Inc.*
Case No. 05-239-A and Case No. 05-240-A
Motion for Reconsideration

Dear Mr. Zimmerman:

The Board is in receipt of your Motion for Reconsideration of the Opinion and Order issued by this Board on April 7, 2006 in the subject matter.

This Motion was received by this Office on April 13, 2006, pursuant to Rule 10 of the Board's Rules of Practice and Procedure, which states as follows:

> **The filing of a motion for reconsideration shall stay all further proceedings in the matter, including the time limits and deadlines for the filing of a petition for judicial review.** After public deliberation and in its discretion, the board may convene a hearing to receive testimony or argument or both on the motion. Each party participating in the hearing on the motion shall be limited to testimony or argument only with respect to the motion; the board may not receive additional testimony with respect to the substantive matter of the case. **Within 30 days after the date of the board's ruling on the motion for reconsideration, any party aggrieved by the decision shall file a petition for judicial review. The petition for judicial review shall request judicial review of the board's original order, the board's ruling on the motion for reconsideration or both.**

Therefore, a date will be assigned as expeditiously as possible for hearing and/or public deliberation, limited to those issues raised in your motion and allowing sufficient time for any response to be filed thereto, for which a Notice of Assignment will be sent to all parties.

Very truly yours,

Kathleen C. Bianco
Administrator

c: Arnold Jablon, Esquire
Paul Lee, Century Engineering
Thomas Nelson

Printed with Soybean Ink on Recycled Paper

VENABLE® LLP

210 Allegheny Avenue
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Towson, Maryland 21285-5517

Telephone 410-494-6200
Facsimile 410-821-0147

www.venable.com

Arnold Jablon 410-494-6200 ajablon@venable.com

May 31, 2006

RECEIVED
MAY 31 2006
BALTIMORE COUNTY
BOARD OF APPEALS

HAND DELIVERED
Kathleen C. Bianco, Administrator
County Board of Appeals for Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, Maryland 21204

Re: Case No. 05-239-A & 05-240-A
Property: 2623 Marine Avenue
Legal Owner: F&M Enterprises, Inc.

Dear Ms. Bianco,

Please find enclosed for filing an original and three copies of F&M Enterprises, Inc.'s Response to Motion for Reconsideration.

If you require any further information or have any questions or concerns, please do not hesitate to contact me. Thank you for your attention to this matter.

Very truly yours,

Arnold Jablon/cdm

Arnold Jablon

AJ : cdm

cc: Peter Max Zimmerman, Esquire
Thomas Nelson

TODOC1/229814v1

4/13/06

RE:	PETITION FOR VARIANCE 2623 Marine Ave, Undersized Lot 1; E/side Marine Ave, 345' N c/line Sparrows Pt Rd 2623 Marine Ave, Undersized Lot 2; E/side Marine Ave, 445' N c/line Sparrows Pt Rd 15th Election & 7th Councilmanic Districts Legal Owner(s): F&M Enterprises, Inc, Michael & James Narutowicz, II Petitioner(s)	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY CASE NO.: 05-239-A and CASE NO. 05-240-A

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

REQUEST FOR HEARING

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY requests an expedited hearing on the Motion for Reconsideration filed in the above-captioned cases.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. DeMilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13 day of April, 2006, a copy of the Request for Hearing was mailed to Arnold Jablon, Esq., Venable LLP, 210 Allegheny Avenue, Towson, MD 21204, attorney for Petitioners, to Paul Lee, Century Engineering, Inc, 32 West Road, Towson, MD 21204, representative for Petitioners, and to Thomas Nelson, 2617 N. Marine Avenue, Baltimore, MD 21219.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

4/13/06

RE:	PETITION FOR VARIANCE 2623 Marine Ave, Undersized Lot 1; E/side Marine Ave, 345' N c/line Sparrows Pt Rd 2623 Marine Ave, Undersized Lot 2; E/side Marine Ave, 445' N c/line Sparrows Pt Rd 15th Election & 7th Councilmanic Districts Legal Owner(s): F&M Enterprises, Inc, Michael & James Narutowicz, II Petitioner(s)	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY CASE NO.: 06-239-A and CASE NO. 06-240-A

RECEIVED
APR 13 2006
BALTIMORE COUNTY
BOARD OF APPEALS

* * * * * * * * * *

MOTION FOR RECONSIDERATION

Pursuant to Rule 10 of the County Board of Appeals (CBA) Rules of Practice and Procedure, People's Counsel for Baltimore County files this motion for reconsideration of the opinion and order dated April 7, 2006:

1. People's Counsel for Baltimore County, pursuant to its charter responsibility to defend the comprehensive zoning maps under Charter Sec. 524.1, requests that the County Board of Appeals reconsider its opinion because of jurisdictional, procedural and substantive errors. The CBA allowed Petitioners to amend their zoning variance petitions and effectively to substitute special hearing or declaratory judgment petitions with respect to whether variances are required and whether the "small lot table" of BCZR 1B02.3.C applies to the subject properties. The CBA proceedings, while *de novo*, involve the exercise of appellate jurisdiction. UPS v. People's Counsel for Baltimore County 336 Md. 569 (1994). At this level, it is improper to allow a material amendment. In this context, moreover, adequate public notice is a prerequisite to jurisdiction. Cassidy v. County Board of Appeals 218 Md. 418 (1958). The allowance of a material amendment, much less injection or full substitution, of a new petition at any level is impermissible unless there is public notice of such amendment. It also facilitates evasion of

comment from the Zoning Advisory Committee and denies other interested parties the opportunity to be apprised of the nature of the case and to prepare, to present expert evidence and argument, and properly to be heard. This violates procedural due process of law.

2. The procedural and jurisdictional problems have contributed, moreover, to the CBA's erroneous substantive legal conclusion that the "small lot table" does not apply to Petitioners' property or to the tracts identified and lots assembled in each petition.

First of all, the "small lot table" does apply to so-called "A.5" lots. The apparently inadvertent omission of "A.5" from the preamble to BCZR 1B02.3.C.1 is not a loophole in light of the entire section and the specific reference in BCZR 1B02.3.B to coverage for "A.5" lots under subsection C:

> "Standards for development of lots or tracts described in Subsection A.3., A.4, or A.5 shall be as set forth in Subsection C below.

Indeed, such a loophole would exempt such lots from any regulation, an absurd conclusion.

Secondly, the lots in questions clearly meet the criteria of "A.3" and "A.4" lots, which clearly are subject to the "small lot table." As to A.3, the entire tract of 12,500 square feet (125' X 100')." ... is too small in gross area to accommodate six dwelling or density units in accordance with the maximum permitted density in the D.R. zone in which the tract is located." Over an acre, 43,560 square feet, would be required for six dwellings in a D.R. 5.5 zone. As to A.4, the entire tract of 12,500 square feet "... is less than one-half acre in area."

3. These cases commenced with two matching petitions for variances for undersized lots with reference to the "small lot table" standards of BCZR 1B02.3.C., the undersized lot standards of BCZR 304, and the front yard setback standards of BCZR 303.1.

4. Petitioners own five adjoining lots of the old Sparrows Point Manor subdivision, each 20 feet wide, on Marine Avenue in the Sparrows Point area. The zoning classification is D.R.

5.5. The "small lot table" requires a minimum front lot width of 55 feet. Therefore, in the absence of variances, Petitioners are limited to one dwelling.

5. These companion variance cases are of a type filed frequently in areas where subdivisions predate zoning in Baltimore County. Indeed, it has been the consistent practice of the Baltimore County zoning office to require the filing of variance petitions to develop lots created in the old subdivisions which are undersized by current standards. They are reviewed under the well-known variance standards of BCZR 307.1, explained further in Cromwell v. Ward 102 Md. App. 691 (1995) and other cases.

6. To address such situations, the County Council established the "small lot table" in Bill 100, 1970, which also enacted the Density Residential zones. BCZR 304 dates from the 1955 BCZR. Together, they set up a logical framework to evaluate petitions to deviate from standards established for small lots and lots created prior to enactment of the zoning regulations.

7. People's Counsel entered its appearance in writing before the Zoning Commissioner in the present cases on the premise that they were filed as variance cases. The Zoning Advisory Committee reviewed the petitions and issued comments on that basis. The public newspaper and posting notice required under Code Sec. 32-3-302 identified the cases as variance cases.

8. There was no indication or notice of any legal issues with respect to interpretation of BCZR 1B02.3.C.1, whether the proposed uses are exempt from the "small lot table," and whether they may be approved without variances. Such issues would involve a separate petition for special hearing under BCZR 500.7 for a legal determination. People's Counsel for Baltimiore County v. Maryland Marine Mfg. Co. 316 Md. 491 (1989); Board of Child Care v. Harker 316 Md. 683 (1989); Marzullo v. Kahl 366 Md. 158 (2001). As the Court of Special Appeals has recognized, such special hearings are akin to declaratory judgments. Antwerpen v. Baltimore

County 163 Md. App. 194, 209 (2005). The Deputy Zoning Commissioner (DZC) decided the case as a typical variance case, as reflected in his opinion dated January 26, 2005.

9. For the first time, at the CBA hearing of this case (August 17 and November 22, 2005), without prior notice of any kind, Petitioners asserted that they are allowed to build on the two properties in question without the necessity of variances. So, instead of a relatively ordinary variance case contested between neighboring property owners, the case metamorphosed precipitously into a special hearing to exempt these lots (and likely hundreds or thousands of others) from historically implemented small lot table standards and consequent variance requirement. As reflected in the CBA opinion April 7, 2006, they advanced their interpretation that the "small lot table" does not apply to "A.5" lots, by virtue of the linguistic omission in BCZR 1B02.3.C, and that their lots are A.5 lots.

10. So, without public notice, Petitioners injected their new and different request for relief, which amounts to a legal determination properly cognizable only by petition for special hearing with a proper description of the legal issue. There was, moreover, no notice to the People's Counsel for Baltimore County, which the Charter effectively makes a necessary party to such petitions and to whom notice must be sent. As a result, Petitioners sought and got free rein to change dramatically the nature of the case and advance their argument without giving the public and People's Counsel fair notice and opportunity to be heard. This is improper in any case, but particularly lacking in justification where the newly raised issue will affect many properties and neighborhoods all around Baltimore County rather than just the particular Marine Avenue properties identified in the petition. Indeed, the record reflects that the Petitioners themselves own many other properties which may come within the scope of the ruling.

11. In this context, People's Counsel, having registered its interest in the variance case and having been blindsided with respect to the extraordinary request for legal relief, must reassert its interest in the defense of the comprehensive zoning maps. The Maryland Court of Appeals has emphasized that any person who indicates an interest in an administrative proceeding is properly a party to the case. Maryland Nat'l Cap. Park & Planning Comm'n v. Smith 333 Md. 3 (1993); Sugarloaf Citizens v. MDE 344 Md. 271 (1996); Dorsey v. Bethel A.M.E. Church 375 Md. 59 (2003). The Zoning Commissioner/CBA proceedings are ongoing and are not final until the expiration of the reconsideration period. In any event, People's Counsel is a necessary party to these proceedings and should have been further notified and/or joined at the time the case underwent transformation. Indeed, the Court of Appeals has sustained the intervention of People's Counsel where the office entered its initial appearance at the Circuit Court level to defend important zoning density issues. People's Counsel v. Crown Development Corp. 328 Md. 303, 317 (1992).

12. Defective notice is fatal to jurisdiction. Cassidy v. County Board of Appeals 218 Md. 418 (1958). A petition may not be amended in such a way as to increase the impact of the proposal or add a new element which a member of the public reasonably would find material in considering whether to participate and in preparing the defense. Here, the Petitioners without prior warning actually injected or substituted new special hearing petitions.

13. In many cases, the appellate courts have rejected lesser attempts to change the nature of a zoning petition without proper and specific public notice of the substance of the change. Drum v. Fresno County Department of Public Works 144 Cal.App.3d 777, 192 Cal.Rptr. 782 (1983); Fedder v. McCurdy 768 P.2d 711 (Colo. App. 1988); Lunt v. Zoning Board 191 A.2d 553 (Conn. 1963); Mello v. Board of Adjustment 177 A.2d 533 (R.I. 1962), attached

14. It should be underlined that proper notice is an essential element of procedural due process of law. This applies to administrative proceedings, especially involving trials and quasi-judicial decisions. Maryland State Police v. Zeigler 330 Md. 540, 559 (1993). In Maryland Aggregates v. State 337 Md. 658, 686-87 (1995), Judge Eldridge quoted the Zeigler opinion:

> "Procedural due process, guaranteed to persons in this State by Article 24 of the Maryland Declaration of Rights, requires that administrative agencies performing adjudicatory or quasi-judicial functions observe the basic principles of fairness as to parties appearing before them. ... " [citations omitted].

The delineation of procedural due process rights depends on the circumstances. The Court of Appeals wrote in Pitsenberger v. Pitsenberger 287 Md. 20, 30 (1980),

"Once it is determined that an interest is entitled to due process protection, the pertinent inquiry then becomes what process is due. ... The Supreme Court has recognized that interpretation of the due process clause is a practical matter which must be approached with the realization that due process 'negates any concept of inflexible procedures universally applicable to every imaginable situation.'"

15. Under these circumstances, the case must be dismissed or, at best, remanded to the Deputy Zoning Commissioner (DZC) for a new public notice, review by the ZAC, and a new DZC hearing. This also will afford the Deputy Zoning Commissioner the opportunity to exercise his original jurisdiction over the new proposal, and afford county agencies and existing parties, as well as the public, an opportunity to prepare for it.

16. This is particularly important where there are convincing reasons to reject the Petitioners' position on the merits. Their reliance on omission of the "A.5" language in BCZR 1B02.3.C.1 does not hold up in light of the broader language of BCZR 1B02.3.B and the overall purpose of the section. In any event, the Petitioners' tracts meet the criteria of "A.3" and "A.4" and so cannot escape

the small lot table in any event. On top of this, there must be weighed the past practice and implementation of the law to require the filing of variance petitions in similarly situated cases.

17. As to the variance petitions, it appears from the CBA opinion that they would have to be denied. The CBA wrote, at pages 2-3:

> "The witness [Petitioner Mike Narutowicz]testified to owning 40 to 45 houses in the area and conceded that variance relief had been requested and denied by Baltimore County. Mr. Thomas [Nelson] questioned him about the uniqueness of the properties in the area and the witness responded that they 'were not substantially' different and that there were "'no real differences' from other properties in the area. The witness replied that it was his belief that they would actually improve the area."

This negates the first prong of "uniqueness" and thus disqualifies the petitions under Cromwell v. Ward 102 Md. App. 691 (1995). The concession that variance relief was previously denied is also fatal to the petition. Whittle v. County Board of Appeals 211 Md. 36 (1956); Woodlawn Area Citizens Ass'n v. Co. Comm'rs 241 Md. 187 (1966).

While the CBA on page 3 recited Paul Lee's claims that the "mixed zoning classifications" of Sparrows Point Manor and the "density of home development that resulted rendered the area unique," this is not probative as to uniqueness of the properties in question. Nor is there any relevance to his claim that the imposition of new standards in the 1955 BCZR made the property unique. Judge Kathleeen Cox rejected this absurd thesis in her recent opinion in the Mueller case, attached. Mr. Lee did admit, consistent with Mr.. Narutowicz's testimony, that homes had been developed on lots of various sizes – 40 feet, 60 feet, and 80 feet. He also did not, and could not, contradict, Mr. Narutowicz's admission that he owns many similarly situated lots. Indeed, the approval of variances here would apparently open the floodgates to undermine zoning law with the approval of serial variances for his benefit.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. DeMilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13 day of April, 2006, a copy of the Motion for Reconsideration was mailed to Arnold Jablon, Esq., Venable LLP, 210 Allegheny Avenue, Towson, MD 21204, attorney for Petitioners, to Paul Lee, Century Engineering, Inc, 32 West Road, Towson, MD 21204, representative for Petitioners, and to Thomas Nelson, 2617 N. Marine Avenue, Baltimore, MD 21219.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

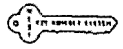
developed by Eastern without any suggestion from the complainants that they be adopted, and it is also apparent that neither of these plans even approximated what the complainants were seeking by their suit.

From this full recital of the facts we think it clear that neither the complainants nor their counsel contributed to the formulation or execution of the plans to use available funds to purchase and retire outstanding preferred stock of Eastern. The most that they can be said to have accomplished was to help to block a totally different plan—the abortive recapitalization plan of 1955—which seemed doomed to failure even before they whittled down management's inadequate proxy support. The plan which the complainants advocated was radically different from the plan finally adopted.

The case has been fully and ably presented as to the various questions of law involved and the different rules of law which the respective parties assert to be correct. Harris v. Chicago Great Western Ry. Co., 7 Cir., 197 F.2d 829; Krocse v. General Steel Castings Corp., 3 Cir., 179 F.2d 760, 15 A.L.R.2d 1117, and Gordon v. Elliman, 306 N.Y. 456, 119 N.E.2d 331, seem to be the cases most heavily relied upon by the complainants, and Knapp v. Bankers Securities Corporation, 3 Cir., 230 F.2d 717, seems to be that most heavily relied upon by Eastern. Whether this suit should be regarded as a derivative suit or as a representative suit, and whether counsel for the complainants in a suit such as this would be entitled to compensation as much as in the case of an undoubtedly derivative suit in which their efforts resulted in benefit to the corporation, are questions which we need not decide. Under any possible applicable rule of law which has been urged upon us, we think it essential that the efforts of counsel shall have contributed to the beneficial result for which they seek compensation. There was no contract in this case under which Eastern agreed to pay the complainants' counsel fees, and, as we understand the position of the complainants' counsel, they do not contend that such a contract would be valid unless they had contributed to a result beneficial to the corporation.

The trial court found that the complainants and their counsel did not contribute to the result here accomplished—the application of Eastern's funds to the purchase on tenders of its preferred stocks at prices equivalent to their asset preference upon voluntary liquidation. We think that this finding of the trial court was fully supported. Accordingly the decree dismissing the petition for a counsel fee to the complainants' solicitors is affirmed.

Decree affirmed, with costs.



218 Md. 418

Edward T. CASSIDY et al.

v.

COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY and Baltimore Gas and Electric Company.

No. 125.

Court of Appeals of Maryland.

Dec. 22, 1958.

Appeal from decree of the Circuit Court for Baltimore County, John E. Raine, Jr., J., affirming order of county board of appeals granting utility special exception authorizing construction of steam electric generating station and related facilities. The Court of Appeals, Prescott, J., held that notice which stated that public hearing would be held upon utility's petition for a change or reclassification constituted substantial compliance with county zoning regulation, notwithstanding fact that notice did not specifically state that a request for a special exception had been made.

Affirmed.

1. Administrative Law and Procedure ⇐453

Failure of an administrative official or board to give a proper notice of a hearing required by law is fatal to jurisdiction of official or board to conduct hearing.

2. Counties ⇐21½

Where notice given by county zoning commissioner stated that a public hearing would be held on petition of utility for a change or reclassification of certain property, notice constituted sufficient compliance with zoning regulation notwithstanding fact that it failed to call attention to fact that a special exception was sought.

3. Counties ⇐21½

County zoning commissioner and county zoning board of appeals had jurisdiction to grant public utility special exception to permit erection of electric steam generating plant and related facilities in residence zone permitting one and two family dwellings.

4. Counties ⇐21½

County zoning regulation permitting granting of special exceptions in residential zones for "public utility uses" comprehended a steam electric generating plant and related facilities.

See publication Words and Phrases, for other judicial constructions and definitions of "Public Utility Uses".

5. Counties ⇐21½

On appeal from decree of circuit court affirming order of county zoning board of appeals granting public utility special exception which authorized construction of a steam electric generating station in residential zone, there was substantial evidence to support board's finding that use would not be detrimental to the locality involved.

6. Counties ⇐21½

In review of order of county board of appeals granting special exception to public utility to permit erection of steam electric generating plant and related facilities in residential zone, there was substantial evidence to justify granting of special exception without resort being had to any principle of preferential treatment for public utility.

7. Counties ⇐21½

Where there was sufficient and substantial evidence adduced upon issue so as to render decision of county zoning board of appeals with respect to granting of special exception fairly debatable, action of board must be affirmed.

James N. Phillips, Baltimore (Leonard A. Vadala and Fletcher Krause, Baltimore, on the brief), for appellants.

Wilmer H. Driver, Baltimore (Paul S. Clarkson, Baltimore, and John Grason Turnbull, Towson, on the brief), for appellees.

Before BRUNE, C. J., and HAMMOND, PRESCOTT and HORNEY, JJ.

PRESCOTT, Judge.

This is an appeal from a decree of the Circuit Court for Baltimore County, filed June 13, 1958, affirming an order of the County Board of Appeals of Baltimore County (Board) granting the appellee, Baltimore Gas and Electric Company (hereinafter referred to as the "Gas and Electric Company" or the "Company"), a special exception subject to certain conditions and restrictions, which authorized the construction of a steam electric generating station and related facilities on Carroll Island Neck between Saltpeter and Seneca Creeks, in the 15th Election District of Baltimore County.

I

The first, and one of the principal, contentions of the appellant is an attack upon the jurisdiction of the Zoning Commissioner (Commissioner) who originally granted a special exception upon an application for

[Deleted 168-776]

Opinion (*Aloy* v. *Mash*) on pages 768-776 omitted.

HEARING GRANTED

[Civ. No. 6056. Fifth Dist. June 10, 1983.]

ROBERT E. DRUM et al., Plaintiffs and Respondents, v.
FRESNO COUNTY DEPARTMENT OF PUBLIC WORKS et al.,
Defendants and Appellants.

COUNTY OF FRESNO, Plaintiff and Appellant, v.
ROBERT E. DRUM et al., Defendants and Respondents.

SUMMARY

Following the issuance by a county of a zoning variance and building permit, a homeowner commenced construction of a two-story addition to his home. Deeming the addition to be in excess of the terms of the variance, the county issued a stop-work order. The owner filed a petition for an alternative writ of mandate against the county, which was consolidated with the county's action for injunctive relief. The trial court issued the writ of mandate sought by the owner and denied the county's request for a preliminary injunction. (Superior Court of Fresno County, Nos. 254421-1, 254698-4, Hollis G. Best, Judge.)

The Court of Appeal reversed the judgments with directions to the trial court to vacate its order issuing the writ of mandate and to grant a preliminary injunction. The court held that since the notice given to the owner's neighbors regarding the application for a zoning variance mentioned only his plan to build a garage, and made no mention of a second story dwelling unit to be built on top of the garage, such notice was insufficient, as to the dwelling unit, to meet due process requirements or the notice requirements of local and state law (Gov. Code, §§ 65901, 65905). The court held that a variance granted without the mandated reasonably adequate notice cannot be construed as granting a privilege beyond that of which notice was given. (Opinion by Andreen, Acting P. J., with Hamlin and Martin, JJ., concurring.)

HEADNOTES

Classified [illegible]

the stipulation. We accept the stipulation and order that the respondent be disbarred and that he be ordered to pay restitution to the estate of Ada Schreiner in the amount of $70,602.76.

I.

Donald C. Hanneman was admitted to the bar of this court in October 6, 1961 and is registered as an attorney on the records of this court. At all pertinent times, he was licensed to practice law in Colorado. He is, therefore, subject to the jurisdiction of this court in all matters relating to the practice of law. C.R.C.P. 241.1(b), 7A C.R.S. (1988 Supp.).

According to the stipulation, the respondent prepared a will for Ada Schreiner, who died on May 15, 1986. Schreiner's will named Frederick Kurtz as personal representative of her estate and named Schreiner's two granddaughters as beneficiaries. In June 1986 the respondent filed an Application for Informal Probate of Will in Arapahoe County District Court. An estate was opened, Kurtz was appointed as personal representative, and the respondent, acting as Kurtz' attorney, counseled him in administration of the estate.

Rather than opening a new bank account, Kurtz and the respondent maintained the decedent's bank accounts. Over a period of time, the respondent repeatedly requested that Kurtz withdraw funds to be delivered to him, supposedly for estate purposes. Kurtz complied and the respondent eventually received a total of $74,809.76, which he used for personal purposes which were unrelated to Schreiner's estate. The beneficiaries of the will retained another attorney for the purpose of removing Kurtz as the personal representative.

The respondent billed $6,707.00 for services performed regarding Schreiner's estate and is entitled to an offset in that amount against the funds taken from the estate. Because no repayment has been made by the respondent, the net amount he misappropriated is $68,102.76. In addition, the beneficiaries expended $2,500.00 in attorney fees because of the respondent's misappropriation.

The parties agree that the respondent's misappropriation amounts to dishonesty in violation of DR 1-102(A)(4),[1] and adversely reflects on his fitness to practice law in violation of DR 1-102(A)(6).[2] As an aggravating factor, the respondent was the subject of a private censure by this court in March 1985. In mitigation, the respondent asserted severe financial problems experienced by him from 1982 through 1986.

The parties to the stipulation recommended disbarment as the appropriate discipline. The inquiry panel approved the stipulation and we agree with the grievance committee's recommendation. The respondent, Donald C. Hanneman, is disbarred and his name is ordered stricken from the roll of attorneys licensed to practice before this court. The respondent is directed to comply with the requirements of C.R.C.P. 241.21, specifying certain action to be taken after disbarment. The respondent is ordered to pay restitution in the amount of $70,602.76 plus interest at the statutory rate from the date of this order, to the estate of Ada Schreiner or to her beneficiaries if the estate has been closed. It is further ordered that the respondent shall not be readmitted to the bar of this state until he has made restitution as ordered. The respondent's readmission is further conditioned upon full compliance with C.R.C.P. 241.22(a).

1. DR 1-102(A)(4) states that a lawyer shall not "[e]ngage in conduct involving dishonesty, fraud, deceit, or misrepresentation."

2. DR 1-102(A)(6) states that a lawyer shall not "[e]ngage in any other conduct that adversely reflects on his fitness to practice law."

Bruce FEDDER, Marsha Fedder, Don Anderson, Ann Anderson, Bob G. Fullen, Dave Padgett, Lynn Padgett, Ed West, Ronnie West, Bob Hoefer, May Lou Hoefer, Steve Beasley, and Joan Beasley, Plaintiffs-Appellees,

v.

Francis McCURDY, Sonya Blackstock and Suzy McDanal, as Members of the Board of County Commissioners of the County of Douglas, State of Colorado, and as Members of the Board of Adjustment of the County of Douglas, State of Colorado, Lewis Christiansen, Theresa Christiansen as Members of the Board of Adjustment of the County of Douglas, State of Colorado, and Mobile Premix Concrete, Inc., Defendants-Appellants.

Bruce FEDDER, Marsha Fedder, Don Anderson, Ann Anderson, Bob G. Fullen, Dave Padgett, Lynn Padgett, Ed West, Ronnie West, Bob Hoefer, May Lou Hoefer, Steve Beasley, and Joan Beasley, Plaintiffs-Appellees,

v.

MOBILE PREMIX CONCRETE, INC., Defendant-Appellant.

Nos. 85CA1221, 85CA1228.

Colorado Court of Appeals, Div. I.

March 31, 1988.

As Modified on Denial of Rehearing July 14, 1988.

Certiorari Denied Feb. 6, 1989.

Landowner seeking to construct concrete batch plant applied for rezoning and a height variance, and local zoning authorities granted both applications. On challenge by nearby owners, however, the District Court, Douglas County, Thomas J. Curry, J., reversed both decisions, and appeal was taken. The Court of Appeals, Metzger, J., held that: (1) owners living near site of proposed plant had standing to challenge decisions; (2) competent evidence board of adjustment hearing on height variance was insufficient; and (4) members of board of county commissioners could appoint themselves to board of adjustment.

Affirmed in part, reversed in part, and remanded.

1. Action ⇐13

Proper inquiry on standing is whether plaintiff has suffered injury in fact to legally protected interest as contemplated by statutory or constitutional provisions.

2. Action ⇐13

Proper resolution of standing question involves two considerations: whether petitioner has suffered actual injury from challenged governmental action, and whether injury is to legally protected or cognizable interest.

3. Zoning and Planning ⇐571

If legal right to rely on zoning of land, absent substantial reasons for change, is invaded by rezoning decision such that neighboring landowners are adversely affected, they have right to seek judicial relief.

4. Zoning and Planning ⇐571

Nearby landowners had standing to challenge rezoning and variance granted for construction of concrete batch plant; plant was to be located only one-half mile from residential area where landowners lived, and it would cause severe dust problems and increased traffic.

5. Administrative Law and Procedure ⇐676

When court reviews agency decision, it is limited to matters contained within record of proceeding before agency. Rules Civ.Proc., Rule 106.

6. Zoning and Planning ⇐604

Court must look to entire record and must uphold rezoning decision unless there is no competent evidence to support it.

7. Administrative Law and Procedure ⇐750

Burden is on individual challenging ad-

have been dismissed on basis that he had no standing in court as competitor and was therefore not aggrieved. C.G.S.A. §§ 14–321, 14–322, 14–324.

7. Zoning ⇐571

Mere fact that one will be business competitor of party granted certificate of approval of location of gasoline station does not disqualify one from being aggrieved person entitled to appeal for other valid reasons, but aggrievement for reasons other than competition is essential. C.G.S.A. § 14–324.

John W. Colleran, New Haven, with whom, on the brief, was Dennis N. Garvey, New Haven, for appellant (named plaintiff).

Anthony S. Avallone, New Haven, with whom, on the brief, was Joseph E. Bove, New Haven, for appellee (defendant Granato); with him also was Charles H. Fischer, Jr., West Haven, for appellee (named defendant).

Before BALDWIN, C. J., and KING, MURPHY, SHEA and ALCORN, JJ.

BALDWIN, Chief Justice.

The plaintiff Bernard McDermott owns and operates a gasoline station at 9 Kimberly Avenue in West Haven. Kimberly Avenue is a heavily traveled main thoroughfare between West Haven and New Haven. McDermott also owns and resides in a house in the general neighborhood. The defendant zoning board of appeals, acting under General Statutes § 14–322, granted a certificate of approval to the defendant Mark Granato for the location of a gasoline station at 36–42 Kimberly Avenue, which is across the avenue and about 150 feet from McDermott's station. The Court of Common Pleas dismissed the plaintiffs' appeal from the action of the board, and McDermott has appealed from that judgment.

[1, 2] The board was acting pursuant to General Statutes §§ 14–321 and 14–322. In determining the suitability of the proposed location for a gasoline station, the board was performing a special statutory function as an agency of the state. Dubiel v. Zoning Board of Appeals, 147 Conn. 517, 520, 162 A.2d 711. Any person aggrieved by the board's action was entitled to appeal to the Court of Common Pleas under General Statutes § 14–324. In the present appeal, McDermott alleged that he was a resident, property owner and taxpayer in West Haven, that frequently he traveled past the proposed location, that his property would be adversely affected if the location was approved, and that for these reasons he was aggrieved by the board's action. To invoke judicial power to review the board's action, McDermott had the burden of proving that he was aggrieved within the meaning of § 14–324 and therefore was in a position to challenge the action taken by the board. Milford v. Commissioner of Motor Vehicles, 139 Conn. 677, 681, 96 A.2d 806. McDermott attempted to sustain this burden by showing that a gasoline station on the site proposed would increase the existing traffic congestion on this heavily traveled highway and would depreciate the value of his property. The court, however, failed to credit his proof of property devaluation, found that McDermott had "no standing in court as a competitor," and concluded that he was not aggrieved.

[3, 4] To show that he was aggrieved and therefore entitled to appeal under General Statutes § 14–324, it was not essential for McDermott to prove that his property would be depreciated in value. General Statutes § 14–322 is primarily concerned with factors pertaining to public safety rather than property values. Esso Standard Oil Co. v. Zoning Board of Appeals, 148 Conn. 507, 508, 172 A.2d 607. To issue a certificate of approval under § 14–322, the board was required to find that the proposed location was suitable, due consideration being given to the factors designated in the statute, and that the proposed use would not imperil the public safety. A person is aggrieved within the meaning of § 14–324 if he has a personal or property interest which will be substantially and adversely affected by a finding of the board that the location is suitable and that its use for a gasoline station will not imperil the safety of the public. Milford v. Commissioner of Motor Vehicles, supra; see Norton v. Shore Line Electric Ry. Co., 84 Conn. 24, 33, 78 A. 587; Kamerman v. LeRoy, 133 Conn. 232, 237, 50 A.2d 175; O'Connor v. Board of Zoning Appeals, 140 Conn. 65, 72, 98 A.2d 515.

[5] In addition to the evidence concerning depreciation in the value of his property, McDermott offered evidence that the proposed station would be located on a curve approximately across the avenue from his gasoline station, that the traffic on the avenue is extremely heavy now and that another gasoline station would increase the already existing congestion and create more cross traffic. The court, in determining the issue of aggrievement, should have considered this evidence from the viewpoint not alone of property values but of whether McDermott's interests would be substantially and materially affected by the board's finding that the proposed location was suitable and that its use for a gasoline station would not imperil the safety of the public. There is no rule of thumb applicable to every case. Whether a person is aggrieved by the action of an administrative authority must depend, in large part, on the circumstances of the particular case.

[6, 7] Although an appellant may not prove that he is aggrieved solely by reason of the fact that a proposed gasoline station would, in view of competition, depreciate the value of his property, he is not to be penalized because that feature is in the case. The mere fact that one is a business competitor does not disqualify him from being [illegible] Zuckerman v. Board of Zoning Appeals, 144 Conn. 160, 163, 128 A.2d 325; Farr v. Zoning Board of Appeals, 139 Conn. 577, 583, 95 A.2d 792. This is not to say, of course, that an aggrievement for valid reasons other than competition is not an essential element. See Langbein v. Planning Board of City of Stamford, 145 Conn. 674, 676, 146 A.2d 412. The trial court, in dismissing the appeal applied an incorrect standard of aggrievement.

There is error, the judgment is set aside and a new trial is ordered.

In this opinion the other Judges concurred.

Donald C. LUNT et al.

v.

ZONING BOARD OF APPEALS OF the TOWN OF WALLINGFORD et al.

Supreme Court of Errors of Connecticut.

May 15, 1963.

Proceeding for change of nonconforming use to another nonconforming use. The defendant board granted permission to change to the requested nonconforming use and appeal was taken. The Court of Common Pleas in New Haven County, Healey, J., entered judgment dismissing appeal after trial to the court, and appeal was taken. The Supreme Court of Errors, Murphy, J., held that notice which was published on November 3 concerning hearing to take place on request for zoning variance on November 13 was fatally defective on ground that intervening period between date of publication of notice and date of hearing was nine days instead of the 10 day minimum required by statute.

thereof to P & D Transportation, Inc. subject to the condition that a variance be granted under which P & D Transportation, Inc., hereinafter referred to as P & D, would be permitted to renovate the building and convert it into a storage warehouse.

On February 27, 1961 Egan's and P & D applied jointly to the inspector of buildings for permission to renovate the building so as "to alter the same from one adapted as a laundry and to create wherein [sic] a storage warehouse." In the application the building was described as being located at the corner of Halsey and Garfield streets in Newport and on lots 165 and 52 of assessor's plat 9. On February 28, 1961 this application was denied by the inspector of buildings for the reason that such a use is not allowed in an R–10 residential district.

Thereafter, on March 3, 1961, Egan's and P & D jointly petitioned the respondent board for a variance in the application of the terms of the ordinance with respect to the property located at Garfield and Halsey streets in Newport. The variance sought was such as would permit the applicants "To renovate the building thereon to adapt it from a laundry to a storage warehouse." In this application it was stated that the building was located on lot 52 of plat 9. The omission of lot 165 from the description of the location of the building in this application is not without significance in our opinion.

An extended hearing thereon was held by the board, and considerable evidence was adduced thereat to show the extent to which the building was susceptible of conversion to any use that would be permitted under the pertinent zoning classification and as to the effect that the variance, if granted, would have on surrounding properties. Thereafter the board granted the variance by unanimous vote and in its written decision found specifically that literal enforcement of the pertinent provisions of the zoning ordinance would result in unnecessary hardship. In that decision, however, the board made other findings which, in our opinion, are significant of a misconception as to the nature of its authority to grant a variance.

The board appears to have concluded that pursuant to certain designated provisions of the Newport zoning ordinance it has jurisdiction to hear and determine "any appeal resulting from a denial by the Building Inspector of a petition for a variance." If the board so concludes, it clearly misconceives the jurisdiction conferred upon it by the provisions of G.L.1956, § 45–24–19. In subparagraph a. thereof the board is given appellate jurisdiction to hear and determine appeals from decisions of a variety of municipal officers, including a building inspector. This court has noted the powers that ordinarily are exercisable by these officers in M. & L. Die & Tool Co. v. Board of Review, 77 R.I. 443, 76 A.2d 537, but we are aware of no provision of law that confers jurisdiction upon a building inspector to hear and determine an application for a variance of the provisions of a zoning ordinance.

This power to vary the terms of an ordinance is conferred exclusively upon boards of review by § 45–24–13 of the enabling act, and in its exercise these boards must comply strictly with the provisions of the enabling act which confer this power upon them. The pertinent provision is to be found in § 45–24–19, subd. c. wherein the legislature empowered such boards "To authorize upon appeal in specific cases such variance in the application of the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the spirit of the ordinance shall be observed and substantial justice done." The genesis of the variance is in constitutional considerations. It was devised to permit the orderly alleviation of zoning classifications which so restrict the use of land as to become confiscatory.

[1] In Denton v. Zoning Board of Review, at page 719, we said that the general assembly conferred this power to authorize variances upon boards of review intending "to vest these boards with authority to prevent the indirect taking of land without compensation by depriving the owner of all beneficial use thereof." The legislature, aware of the impact that zoning classifications may have on land ownership in peculiar circumstances, intended to entrust to an agency of its own design and creation the power to alleviate any hardship that might arise out of these peculiar situations through the granting of a variance. These agencies are the boards of review provided for in the act. Nothing in the enabling act warrants a conclusion that the legislature contemplated that boards of review would exercise this important power in accordance with the dictates or directions of the local legislatures. The power thus conferred upon the boards of review to grant variances is subject neither to enlargement nor restriction by provisions contained in local ordinances. Noonan v. Zoning Board of Review, R.I., 159 A.2d 606.

Our view of this matter was aptly stated in Duffcon Concrete Products, Inc. v. Borough of Cresskill, 1 N.J. 509, 64 A.2d 347, 9 A.L.R.2d 678. Referring to the powers of these boards, which in the New Jersey statute are designated as boards of adjustment, that court said at page 515, 64 A.2d at page 351: "Once the board of adjustment is provided for in the zoning ordinance, its powers stem directly from the statute * * * and may not in any way be circumscribed, altered or extended by the municipal governing body. Under these circumstances, the inclusion in the zoning ordinance of a word for word recital of the statutory powers of the board of adjustment would be superfluous."

[2] This is not to say, however, that the question as to a landowner's entitlement to a variance may not be raised before a board of review by way of an appeal from the denial by a building inspector of a permit. Where an owner has applied to a building inspector for a permit and the application is denied for the reason that the proposed use is not a permitted use under the ordinance, the owner on an appeal to the board of review from that decision may raise therein the question of his entitlement to a variance. Such action, in our opinion, would properly raise this question before a board of review. It does not follow, however, that the building inspector would have authority to grant a construction permit on the ground that the applicant was entitled to a variance. There can be little doubt but that the legislature contemplated that questions as to a landowner's entitlement to a variance would be raised before boards of review by such procedure. This is evidenced by its use of the words "upon appeal" in enacting subparagraph c. of said § 45–24–19.

[3] It has been the practice of landowners, however, to bypass the building inspector and to make an original application to a board of review for a variance in instances where it appears that that officer would be compelled to deny an application for a construction permit. This variance, if granted, would then be the basis for an application for a construction permit that might subsequently be made. It appears from records certified to this court in zoning cases that this procedure is the one to which property owners usually resort. Because of this practice, which is of long standing, we must construe an application to a board for a variance to be in the nature of an "appeal" within the meaning of that term as it is used in subparagraph c. of § 45–24–19 and that such an application is also in the nature of an "appeal" as that term is used in § 45–24–18, which requires the giving of notice when hearings are to be held on appeals to a board of review.

[4] Because we take the view that an application to a board of review for a variance is an "appeal" within the meaning of

PETITION OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY	*	IN THE
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	CIRCUIT COURT FOR
IN THE MATTER OF APPLICATION OF **HERMAN AND GRACE MUELLER**	*	BALTIMORE COUNTY
	*	Case No. 3-C-05-7736

RECEIVED
JAN 31 2006
PEOPLE'S COUNSEL

* * * * * * * * * * *

MEMORANDUM OPINION

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

I. PROCEDURAL AND FACTUAL BACKGROUND

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

FILED JAN 31 2006

PETITION OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY	*	IN THE
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	CIRCUIT COURT FOR
IN THE MATTER OF APPLICATION OF **HERMAN AND GRACE MUELLER**	*	BALTIMORE COUNTY
	*	Case No. 3-C-05-7736

* * * * * * * * * * *

JUDGMENT ORDER

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

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

JUDGE KATHLEEN GALLOGLY COX

Date: 1/25/06

Clerk: Please send copies to all parties.

True Copy Test
SUZANNE MENSH, Clerk
Per Brenda O'Neil
Assistant Clerk

4/1/06

IN THE MATTER OF THE APPLICATION OF F & M ENTERPRISES, INC. - PETITIONER FOR ZONING VARIANCE ON PROPERTY LOCATED ON THE E/S MARINE AVENUE 346' N C/L SPARROWS POINT ROAD (2623 MARINE AVE, UNDERSIZED LOT 1) AND 445' N C/L SPARROWS POINT ROAD (2623 MARINE AVE, UNDERSIZED LOT 2) 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT	* BEFORE THE * COUNTY BOARD OF APPEALS * OF * BALTIMORE COUNTY * CASE NO. 05-239-A and CASE NO. 05-240-A *

* * * * * * * * *

OPINION

This matter comes on appeal from a decision of the Deputy Zoning Commissioner (DZC) dated January 26, 2005 in which Petitioner's requests for variance from §§ 1B02.3.1, 303.1 and 304 of the *Baltimore County Zoning Regulations* (B.C.Z.R.) for properties located at 2623 Marine Avenue, Lot 1 and 2, in the southeastern area of Baltimore County, to permit homes to be constructed on each lot with a width of 50 feet in lieu of the required 55 feet and 25-foot front yard setback in lieu of the required front yard average of 30.75 feet, which relief was DENIED. The Board of Appeals for Baltimore County held *de novo* hearings on August 17, 2005 and November 22, 2005, and public deliberation was held on January 5, 2006. The Petitioner, F&M Enterprises Inc., was represented by Arnold Jablon, Esquire. Protestant Thomas Nelson appeared *pro se.*

Facts

In opening statements, Mr. Jablon withdrew Petitioner's request for the setback variance relief. He stated that the Petitioner would comply with the existing setback requirements. As to the remaining request for 50-foot wide lot in lieu of 55 feet, he stated that the "small lot table" under §§

504 and 1B02.3 does not apply in this case.

The subject property is in an area described as "Sparrows Point Manor" and F & M Enterprises, Inc., (F & M) has been the owner of the property since the 1930's. The subject property consists of five (5) 20-foot lots that were platted and recorded in the Baltimore County Land Records in 1921 as a single area built to support the manufacturing companies in the area. They were never approved by the Baltimore County Planning Board or the Baltimore County Planning Commission as neither existed at the time this land was platted and recorded. Additionally, the houses in this area were built prior to the *Baltimore County Zoning Regulations* that came into effect in 1955.

Testimony

Petitioner Mike Narutowicz, co-owner of F & M Enterprises, testified that he is a third generation co-owner of F & M and the legal owner of the five 20-foot lots in question (Petitioner's Exhibit 1). Mr. Narutowicz stated that they (F & M) are proposing to build two single-family homes on these lots, which are located in an extremely diverse section of Baltimore County, with numerous commercial sites in the nearby area (Petitioner's Exhibit 3A-R.).

Under cross-examination, Mr. Narutowicz was questioned about the ownership dates as well as Protestant's Exhibit 1 (deed indicating purchase in 1940). Mr. Thomas, a neighbor to this site, appearing *pro se*, questioned the Petitioner about financial hardships and profits if F & M were unable to build the properties as requested and about other F & M holdings in the area. The witness testified to owning 40 to 45 houses in the area and conceded that variance relief had been requested and denied by Baltimore County in the past on this property. Mr. Thomas questioned him about the uniqueness of the properties in the area and the witness responded that they "were

not substantially" different and that there were "no real differences" from other properties in the area. Mr. Thomas inquired as to the effect the proposed houses would have on the area. The witness replied it was his belief that they would actually improve the area.

Upon redirect, Mr. Jablon submitted Petitioner's Exhibit 4A-B which contained names of property owners in the area collected by the Petitioner in support of the relief requested. Although Mr. Nelson raised questions on the record as to the substance and manner in which the exhibit was collected; the Board accepted the exhibit.

Paul Lee, a civil engineer, was recognized and accepted as an "expert witness" on land use and zoning. He testified that he is familiar with the property, which is zoned D.R. 5.5, the surrounding zoning classifications, and the proposed plan. He stated that the area known as "Sparrows Point Manor" was platted in 1921 and has mixed zoning classifications, including D.R. 5.5, B.L. and R.O. He maintained that the different types of zoning classifications on the properties render this area "unique." The witness testified there we 43 houses in the area on 40-foot wide lots and some on 60- and 80-foot wide lots. He testified that the intent at the beginning of the development was to construct as many residences as possible in the area of the Sparrows Point plant to permit workers to live near their work. Mr. Lee testified that the density of home development that resulted rendered this area "unique." The witness noted that this platted area of record was not approved by the Baltimore County Planning Board or the Baltimore County Planning Commission as they did not exist at that time. Mr. Lee observed that the 55-foot width requirement was imposed by the zoning regulations that were adopted in 1955; and, therefore, as a practical result by virtue of the new regulations, the subject lots were rendered non-compliant immediately upon the adoption of the regulations. Additionally, he testified as to his belief that

the "small lot table" under § 1B02.3.A5, B and C does not apply here and is not applicable to the proposed development.

Mr. Lee also presented his belief that the subject site was unique. He testified that any house which would be larger would be out of character with the area; and further stated that this development would not impair the public interest or the land and that public health, safety and welfare would be maintained.

Protestant Nelson, testifying on his own behalf, contradicted Petitioner's claim of uniqueness and questioned the validity of Petitioner's Exhibit 4A-B (names of neighbors submitted in support of requested relief). He also cited the fact that Baltimore County had previously denied variance requests and that there was no financial hardship to F & M Enterprises in building one house versus two.

Applicable Law

In reviewing this matter the parties have presented § 1B02.3 which states in part:

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

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

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

3. Any lot or tract of lots in single ownership which is not in an existing development or subdivision, as described in Subsection A.1 or A.2, and which is too small in gross area to accommodate six dwelling or density units in

accordance with the maximum permitted density in the D.R. Zone in which such tract is located;

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

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

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

C. Development standards for small lots or tracts.

1. Any dwelling hereafter constructed on a lot or tract described in Subsection A.3 or A.4 shall comply with the requirements of the following table **[table not included here]**.

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.

Decision

In view of Mr. Jablons' withdrawal of the requested variance, we need not consider the statues and case law relating to the granting or denial of variances.

Under subsection A.5 of the applicable zoning section the subject lots are in single

ownership with in a duly recorded subdivision plat, and were not approved by the Baltimore County Planning Board or Planning Commission. Subsection B of 1B02.3 states in part:

> Development of any subdivision described in Subsection A.2 shall be in accordance with the tentatively approved subdivision plan therefore, Standards for development of lots or tracts described in Subsection A.3, A.4 or A.5 shall be as set forth in Subsection C below.
>
> Subsection C states,
>
> > 1. Any dwelling hearafter constructed on a lot or tract described in Subsection A.3 or A.4 shall comply with the following table **(table not included here).**

Subsection A.5, which accurately describes the subject sites, is specifically not included in subsection C. The intent of the legislation is clearly that those properties described by subsection A.5 were not subject to the table in subsection C.

As a result, the properties described in subsection A.5 are clearly exempted from the width requirements of the table.

Therefore, the Board unanimously finds that, based upon the above, Petitioner's request to construct two houses on lots with a width of 50 feet in lieu of the required 55 feet is granted.

ORDER

THEREFORE, IT IS THIS 7th day of April, 2006 by the County Board of Appeals of Baltimore County

ORDERED that Petitioner's request to construct two houses on lots with a width of 50 feet in lieu of the required 55 feet be and the same is hereby **GRANTED**.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Panel Chair

Mike Mohler

Margaret Brassil, Ph.D.

County Board of Appeals of Baltimore County

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

April 7, 2006

Arnold Jablon, Esquire
VENABLE, BAETJER & HOWARD, LLP
210 Allegheny Avenue
Towson, MD 21204

RE: *In the Matter of: F & M Enterprises, Inc.*
Case No. 05-239-A and Case No. CBA-05-240-A

Dear Mr. Jablon:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules of Procedure*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Kathleen C. Bianco
Administrator

Enclosure

c: F & M Enterprises, Inc.
Michael J. Narutowicz II
James A. Narutowicz, Jr.
Paul Lee /Century Engineering, Inc.
Thomas Nelson
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Printed with Soybean Ink
on Recycled Paper

2/10/05

IN RE: PETITION FOR VARIANCE E/S of Marine Ave., 346 ft. N Centerline of Sparrows Point Road (Lot 1) and E/S of Marine Ave. 445 ft. N Centerline of Sparrows Point Rd (Lot 2) 2623 Marine Ave., Undersized Lot 1 2623 Marine Ave., Undersized Lot 2 7th Councilmanic District 15th Election District F & M Enterprises, Inc., Owner Case Nos 05-239A & 05-240A	*	BEFORE THE COUNTY DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY

RECEIVED
FEB 17 2005
BALTIMORE COUNTY
BOARD OF APPEALS

* * * * *

NOTICE OF APPEAL

F & M Enterprises, Inc., by Michael J. Narutowicz, owner of the subject property, by and through its attorney Arnold Jablon, Venable, LLP, feeling aggrieved by the final decision and determination of the Deputy Zoning Commissioner of Baltimore County denying the appellants' request to for variance relief in Case Nos 05-239A and 05-240A, dated 26 January 2005 and attached hereto and incorporated herein as Exhibit A.

Appellants herewith take exception to that final decision of the Deputy Zoning Commissioner as reflected in Exhibit A and appeal to the County Board of Appeals. Appellants submit that the review by the CBA from the final decision of the Deputy Zoning Commissioner shall be a hearing *de novo* pursuant to the Baltimore County Charter.

Filed concurrently with this Notice of Appeal is a check made payable to Baltimore County to cover the costs of the appeal.

Respectfully submitted

Arnold Jablon
Venable, LLP
210 Allegheny Ave.
Towson, Maryland 21204
410-494-6298

attorney for appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT copies of the foregoing Notice of Appeal was hand delivered to the Baltimore County Board of Appeals, Basement, Old Courthouse, 400 Washington Ave., Towson, Maryland 21204; and Timothy Kotroco, Director, Department of Permits and Development Management, Towson, Maryland 21204, on this 16th day of February, 2005.

Arnold Jablon.

IN RE: PETITION FOR VARIANCE E/S of Marine Avenue, 346 ft. N centerline of Sparrows Point Road (**Lot 1**) and E/S of Marine Avenue, 445 ft. N centerline of Sparrows Point Road (**Lot 2**) 15th Election District 7th Councilmanic District **(2623 Marine Ave., Undersized Lot 1)** **(2623 Marine Ave., Undersized Lot 2)** F & M Enterprises, Inc., by Michael J. Narutowicz, II, *Legal Owner* **and** Paul Lee, Century Engineering, Inc., *Lessees* *Petitioners*	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NOS. 05-239-A & 05-240-A

Exhibit 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 properties, F & M Enterprises, Inc., by Michael J. Narutowicz, II. The Petitioners are requesting variance relief for properties located at 2623 Marine Avenue, Undersized Lot 1 and Undersized Lot 2 in the southeastern area of Baltimore County. Variance relief is requested from Sections 1B02.3.1, 303.1 and 304 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit each lot to have a minimum lot width of 50 ft. in lieu of the required 55 ft. and 25 ft. front yard setback in lieu of the required front yard average of 30.75 ft. and to approve an undersized lot.

The properties were posted with Notice of Hearing on December 23, 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 December 28, 2004 to notify any interested persons of the scheduled hearing date

1/26/05

IN RE: PETITION FOR VARIANCE E/S of Marine Avenue, 346 ft. N centerline of Sparrows Point Road **(Lot 1)** and E/S of Marine Avenue, 445 ft. N centerline of Sparrows Point Road **(Lot 2)** 15th Election District 7th Councilmanic District **(2623 Marine Ave., Undersized Lot 1)** **(2623 Marine Ave., Undersized Lot 2)** F & M Enterprises, Inc., by Michael J. Narutowicz, II, *Legal Owner* **and** Paul Lee, Century Engineering, Inc., *Lessees* *Petitioners*	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NOS. 05-239-A & 05-240-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 properties, F & M Enterprises, Inc., by Michael J. Narutowicz, II. The Petitioners are requesting variance relief for properties located at 2623 Marine Avenue, Undersized Lot 1 and Undersized Lot 2 in the southeastern area of Baltimore County. Variance relief is requested from Sections 1B02.3.1, 303.1 and 304 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit each lot to have a minimum lot width of 50 ft. in lieu of the required 55 ft. and 25 ft. front yard setback in lieu of the required front yard average of 30.75 ft. and to approve an undersized lot.

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ORDER RECEIVED FOR FILING
Date 1/26/05
By Mag

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 Office of Planning dated November 26, 2004, a copy of which is attached hereto and made a part hereof.

Interested Persons

Appearing at the hearing on behalf of the variance requests were Paul Lee, Century Engineering, and James and Michael Narutowicz, Petitioners. Thomas Nelson appeared as a protestant at the hearing. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

Mr. Lee proffered that Lot 1 consists of 12,500 sq. ft. and is lot 399, 398 and one half of lot 397 of the "Sparrows Point Manor" subdivision which was recorded among the Land Records of Baltimore County in 1921. Each of these lots is 20 ft. wide and so Lot 1 is 50 ft. wide. Lot 2

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Date 11/26/05
By

is the same size and width (50 ft.) and is composed of lots 395, 396 and one half of lot 397. Lot 1 is primarily zoned DR 5.5 but has a small portion zoned BL-AS and RO. Similarly Lot 2 is primarily zoned DR 5.5 and has a small portion zoned RO. Lots 1 and Lot 2 are owned by the Petitioners and are vacant. Thus, the Petitioners propose to create Lot 1 and Lot 2 by a lot line adjustment dividing subdivision lot 397 equally between these Lots. Since the resulting Lots will each be 50 ft. in width, the Petitioner is asking for a variance from the minimum lot width in the DR 5.5 zone of 55 ft. Finally, the Petitioner proposes two dwellings on these Lots which would be set back from Marine Avenue 25 ft. in lieu of the required 30.75 ft. The latter is derived by averaging the actual front yard setbacks of the existing homes along Marine Avenue. Mr. Lee noted, however, that the DR 5.5 regulations require a 25 ft. front yard setback, which his client proposes to meet. The proposed building envelope meets all County regulations except lot width and front yard setback. Each lot also more than meets the minimum area for DR 5.5 lots.

Mr. Lee indicated that the adjacent neighborhood was a mixture of homes on two, three or more lots (Sparrows Point Manor lots). See Petitioner's Exhibit 1. Next to Lot #1 at 2625 Marine Avenue there is one home on a 40 ft. lot. Next to that is a home at 2627 Marine Avenue on a 60 ft. lot. On the other side of Lot #2 is a home on an 80 ft. lot at 2617 Marine Avenue. Mr. Nelson, the protestant in this case, has a home on a 60 ft. lot. To the rear of the subject properties at 2602 Sparrows Point Road is one house on a 60 ft. lot and a vacant 60 ft. lot. Next to this is one house on a 40 ft. lot at 2608 Sparrows Point Road, then one house on a 40 ft. lot at 2610 Sparrows Point Road, and then one house on an 80 ft. lot at 2612 Sparrows Point Road. On the other side of Marine Avenue the pattern of development is more complex in that the lot lines are not perpendicular to the avenue. Again see Petitioner's Exhibit 1. The pattern in this

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Date 1/26/05
By

area is one house on a 68 ft. lot at 2628, one house on a 50 ft. lot at 2626 and one house on an 85 ft. lot at 2624.

Mr. Lee proffered that, in general the houses in the area are fifty or more years old, which can not comply with present zoning regulations. He urged that the subject lots are unique because they were laid out many years before the zoning regulations were imposed. He noted that the properties are served by public water and sewer and are not in the Chesapeake Bay Critical Area. He argued that there was no property adjacent to the two Lots in question to purchase so as to avoid the need for a variance. Finally, he noted the hardship to the Petitioners because they would be unable to build two homes on the five lots, which were intended to be developed residentially.

When asked if the building envelope could be reduced to meet the 30.75 foot setback, Mr. Lee indicated that it would be feasible to build a home on the lot that met the 30.75 foot setback. Instead of a 30 ft. x 70 ft. envelope, the envelope would be approximately 30 ft. x 65 ft. He also admitted on cross-examination by Mr. Nelson that if the variance were denied the Petitioner could build only one house instead of two. However, Mr. Lee noted that an owner could not build a mansion on five lots in a modest neighborhood. He indicated that two homes in the envelope described would be compatible with the neighborhood. Finally, Mr. Lee said that his client agreed to all the comments from the Planning Office.

Mr. Nelson, a nearby property owner and protestant indicated that the Petitioner owns many lots in the neighborhood, has other areas in which to build homes and consequently there is no hardship on the Petitioner. He was concerned that the 50 ft. lots would not be large enough to have off-street parking and noted parking problems on Marine Avenue. He provided

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Date 12/26/05
By

photographs of the homes in the neighborhood showing that modern homes were being built on lots wider than 50 ft. Finally, he argued the lots were not unique in a zoning sense.

Findings of Fact and Conclusions of Law

Many cases involving old subdivisions in the eastern part of the County have been found to be unique in a zoning sense. These subdivisions were laid out much before the zoning regulations were imposed and consequently we have held that the zoning regulations impacted these lots in a way different from those laid out in accord with the regulations. We have regularly found hardship and practical difficulty where there was no adjacent land to purchase to avoid the variance. Perhaps the lot was 50 ft. wide and regulations required 55 ft. wide lots. There was no way the owner could meet the regulations.

However, in this case the Petitioner owns five adjacent lots. The Petitioner can build one house on these five lots and not require a variance. By definition, there can be no hardship if there is adjacent land, which the Petitioner owns, or controls that can be used to avoid the variance. Said another way, the Petitioner can obtain a building permit tomorrow without a lot width variance by using the five lots of record. There is no hardship. The fact that the Petitioner potentially could make more money on two homes is not a hardship recognized by the zoning cases.

Similarly, the Petitioner could reduce the building envelope to 30 ft. x 65 ft. and not require a front yard setback variance. There was no evidence that this size home would be unreasonable for the neighborhood. Consequently, there is no hardship in this request and this variance can not be granted.

As I know that this matter will likely be appealed to the Board of Appeals, I will also find that the Petitioner has shown sufficiently that two homes on 50 ft. lots will not change the

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Date 4/26/05
By

character of the neighborhood. The evidence is a very mixed picture. There are three homes in the immediate area which are on 40 ft. lots. The Petitioner is asking to build a home on 50 ft. lots. While there are wider lots, the mix of two more homes will not in my view be detrimental to the neighborhood.

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

THEREFORE, IT IS ORDERED, this 26 day of January, 2005, by this Deputy Zoning Commissioner, that the Petitioners' requests for Variance from Sections 1B02.3.1, 303.1 and 304 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit each lot to have a minimum lot width of 50 ft. in lieu of the required 55 ft. and 25 ft. front yard setback in lieu of the required front yard average of 30.75 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.

John V. Murphy

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:raj

ORDER RECEIVED FOR FILING
Date 1/26/05
By

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 27, 2005

Paul Lee, P.E.
Century Engineering, Inc.
32 West Road
Towson, Maryland 21204

Re: Petitions for Variance
Case Nos. 05-239-A & 05-240-A
Property: 2623 Marine Avenue

Dear Mr. Lee:

Enclosed please find the decision rendered in the above-captioned case. The petitions for variance have been ~~granted~~ 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: Michael Narutowicz, 1435 Autumn Leaf Road, Towson, MD 21286
James Narutowicz, 902 E. Seminary Avenue, Towson, MD 21286
Thomas S. Nelson, 2617 N. Marine Avenue, Baltimore, MD 21219

Printed on Recycled Paper

F & M ENTERPRISES, INC.
2623 MARINE AVENUE
CASE NO. 05-240-A - 7TH C; 15TH E

05-240-A

8/17/2005 @ 10 a.m. Day #1
11/22/2005 @ 10 a.m. Day #2
1/05/06 @ 9:00 am Delib.
7/13/06 @ 9:00 a.m. Delib on Motion for Reconsideration

2/25/09 9:00 A.M. Delib on Motions for Reconsider

April 7, 2006

April 21, 2009
Opinion & Ruling on Motions Issued

05-240-A
See 05-239-A

20050239 "A"
+
20050240 "A"

(2)

Assgn Post. ✓
4/12/05 Docket Ent. Cmps
Hudes Standing ✓

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 2623 MARINE AVENUE

which is presently zoned DR 5.5 & BL-AS, RO

UNDERSIZED LOT 1 - LOTS 399, 398 & PART OF 397

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 1B02.3.C.1, 303.1 & 304 OF THE BCZR TO PERMIT A MIN. LOT WIDTH OF 50' IN LIEU OF THE REQUIRED 55' AND A 25' FRONT YARD SETBACK IN LIEU OF THE REQUIRED FRONT YARD AVERAGE OF 30.75' AND TO APPROVE AN UNDERSIZED LOT PURSUANT TO SECT. 304 WITH ANY OTHER VARIANCES AS DEEMED NECESSARY BY THE ZONING COMMISSIONER.

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

TO BE ADDRESSED AT HEARING

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.

ENGINEER:

Contract Purchaser/Lessee:

PAUL LEE, CENTURY ENGINEERING, INC.
Name - Type or Print

Paul Lee
Signature

32 WEST ROAD — 410-823-8070
Address — Telephone No.

TOWSON — MD — 21204
City — State — Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address — Telephone No.

City — State — Zip Code

Legal Owner(s):

F & M ENTERPRISES, INC.
Name - Type or Print

Mark J. Narutowicz, II
Signature MICHAEL J. NARUTOWICZ, II

Name - Type or Print

James A. Narutowicz, Jr.
Signature JAMES A. NARUTOWICZ, JR.

5200 NORTHPOINT BLVD. — 410-477-1696
Address — Telephone No.

BALTIMORE — MD — 21219
City — State — Zip Code

Representative to be Contacted:

PAUL LEE, CENTURY ENGINEERING, INC.
Name

32 WEST ROAD — 410-823-8070
Address — Telephone No.

TOWSON — MD — 21204
City — State — Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____
Reviewed By JE Date 11/9/04

Case No. 05-239-A

REV 9/15/98

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 2623 MARINE AVENUE

which is presently zoned DR 5.5 & BL-AS, RO

UNDERSIZED LOT 2 - LOTS 395, 396 & PART OF 397

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 1B02.3.C.1, 303.1 & 304 OF THE BCZR TO PERMIT A MIN. LOT WIDTH OF 50' IN LIEU OF THE REQUIRED 55'AND A 25' FRONT YARD SETBACK IN LIEU OF THE REQUIRED FRONT YARD AVERAGE OF 30.75' AND TO APPROVE AN UNDERSIZED LOT PURSUANT TO SECT. 304 WITH ANY OTHER VARIANCES AS DEEMED NECESSARY BY THE ZONING COMMISSIONER.

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

TO BE ADDRESSED AT HEARING

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.

ENGINEER:

~~Contract Purchaser/Lessee~~

PAUL LEE, CENTURY ENGINEERING, INC.
Name - Type or Print

Paul Lee
Signature

32 WEST ROAD — 410-823-8070
Address — Telephone No.

TOWSON — MD — 21204
City — State — Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address — Telephone No.

City — State — Zip Code

Legal Owner(s):

F & M ENTERPRISES, INC.
Name - Type or Print

Michael J. Narutowicz, II
Signature MICHAEL J. NARUTOWICZ, II

Name - Type or Print

James A. Narutowicz, Jr.
Signature JAMES A. NARUTOWICZ, JR.

5200 NORTHPOINT BLVD. — 410-477-1696
Address — Telephone No.

BALTIMORE — MD — 21219
City — State — Zip Code

Representative to be Contacted:

PAUL LEE, CENTURY ENGINEERING, INC.
Name

32 WEST ROAD — 410-823-8070
Address — Telephone No.

TOWSON — MD — 21204
City — State — Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By JF Date 11-9-04

ORDER RECEIVED FOR FILING
Date 11/10/04
By RCE 9/15/98

Case No. 05-240-A

CENTURY ENGINEERING

32 West Road
Towson, MD 21204

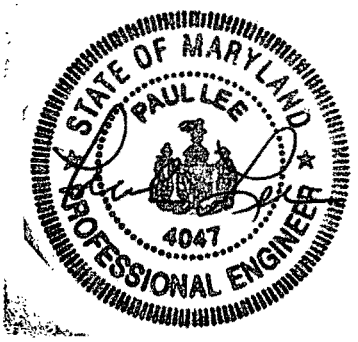
DESCRIPTION

PART OF #2623 MARINE AVENUE – UNDERSIZED LOT #1
(LOTS 399, 398 & PART OF LOT 397 – AREA 6,250 S.F.)

ELECTION DISTRICT 15C7 BALTIMORE COUNTY, MD

Beginning for the same at a point on the East side of Marine Avenue, said point being on the division line between Lots 399 & 400 and also located northerly 345'± from the center of Sparrows Point Road; thence running with and binding on said East side 1) N26° 28' 00" E – 50.00' to a point, thence leaving said East side of Marine Avenue and running for a new line of division through Lot 397, 2) S63° 32' 00" E – 125' to a point on the rear property line of lot 397, thence running with and binding on said rear property line 3) S26° 28' 00" W – 50.00' to a point being on the division line between Lots 399 & 400, thence running with and binding on said division line 4) N63° 32' 00" W – 125.00' to the place of beginning.

Continuing 6,250 s.f. (0.143 Ac.±) of land more or less and referred to as Lots 399, 398 and part of Lot 397 of the subdivision of "Sparrows Point Manor" as recorded in Plat Book W.P.C. 5-82.



239

32 West Road
Towson, MD 21204

DESCRIPTION

PART OF #2623 MARINE AVENUE – UNDERSIZED LOT #2
(LOTS 395, 396 & PART OF LOT 397 – AREA 6,250 S.F.)

ELECTION DISTRICT 15C7 BALTIMORE COUNTY, MD

Beginning for the same at a point on the East side of Marine Avenue, said point being on the division line between Lots 394 & 395 and also located northerly 445'± from the center of Sparrows Point Road; thence leaving said East side and running with and binding on said division line 1) S63° 32' 00" E – 125.00' to a point on the rear property line thence running with and binding on said rear property line 2) S26° 28' 00" W – 50.00' to a point, thence leaving said point and running for a new line of division through Lot 397, 3) N63° 32' 00" W – 125.00' to a point on the East side of Marine Avenue, thence running with and binding on said East side 4) N26° 28' 00" E – 50.00' to the place of beginning.

Continuing 6,250 s.f. (0.143 Ac.±) of land more or less and referred to as Lots 395, 396 and part of Lot 397 of the subdivision of "Sparrows Point Manor" as recorded in Plat Book W.P.C. 5-82.

240

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT

ZONING REVIEW

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID

For Newspaper Advertising:

Item Number or Case Number 05-240-A

Petitioner F & M ENTERPRISES, INC.

Address or Location 2623 MARINE AVE. (LOTS 395, 396, & PART OF 397)

PLEASE FORWARD ADVERTISING BILL TO

Name F & M ENTERPRISES, INC.

Address 5200 NORTHPOINT BLVD.
BALTIMORE, MARYLAND. 21219

Telephone Number 410-477-1696, EXT. 2

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 42608

DATE 11-9-04 ACCOUNT 001-006-6150

AMOUNT $ 115.00

RECEIVED FROM: Veronica Northcraft

2023 Maple Ave / Lot #2 Item 240

FOR: Variance + Undersized Lot

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	CODE	TRN
11/10/2004	11/09/2004	15:20:37	1

REG #018 WILKIN JRIC DRW
RECEIPT # 212779 11/09/2004 OFUN
Dept 5 520 ZONING VERIFICATION
CK NO. 042608
Recpt tot $115.00
$115.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

NOTICE OF ZONING HEARING

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

Case: # 05-239-A
2623 Marine Avenue
E/side of Marine Ave. at the distance of 345 feet north from the centerline of Sparrows Point Rd.
15th Election District — 7th Councilmanic District
Legal Owner(s): F&M Enterprises, Inc., Michael Nartowicz
Engineer: Paul Lee, Century Engineering

Variance to permit a minimum lot width of 50 feet in lieu of the required 55 feet and 25 foot front yard setback in lieu of the required front yard average of 30.75 feet and to approve an undersized lot.

Hearing: Tuesday, January 11, 2005 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

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 concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT 12/765 Dec. 28 34016

CERTIFICATE OF PUBLICATION

12/30/, 2004

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 12/28/, 2004.

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

P. Wilkinson

LEGAL ADVERTISING

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: # 05-240-A
2623 Marine Avenue, Undersized Lot 2
E/side of Marine Ave., at the distance of 345 feet north from the centerline of Sparrows Point Rd.
15th Election District — 7th Councilmanic District
Legal Owner(s): F&M Enterprises, Inc., Michael Narutowicz, II, James Narutowicz, Jr.
Engineer: Paul Lee, Century Engineering

Variance to permit a minimum lot width of 50 feet in lieu of the required 55 feet and 25-foot front yard setback in lieu of the required front yard average of 30.75 feet and to approve an undersize lot.

Hearing: Tuesday, January 11, 2005 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

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 concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT 12/767 Dec. 28 34018

CERTIFICATE OF PUBLICATION

12/30/, 2004

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 12/28/, 2004.

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

P. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No.: 05-239-A

Petitioner/Developer: F. & M. ENTERPRISES, INC.

Date of Hearing/ Closing: JAN. 11, 2005

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

Attention: Becky Hart

Ladies and Gentlemen: This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at

2623 MARINE AVE. LOT #1

The sign(s) were posted on DEC. 23, 2004
(Month, Day, Year)

Sincerely,

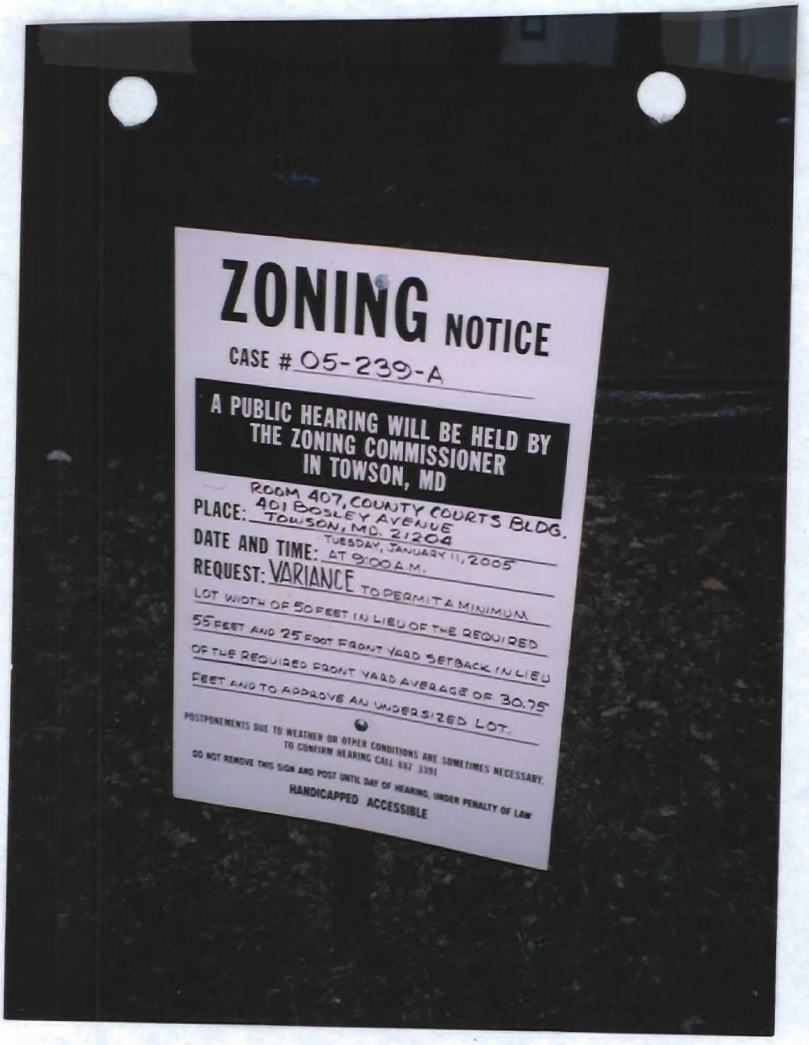
Garland E. Moore
(Signature of Sign Poster and Date)

GARLAND E. MOORE
(Printed Name)

3225 RYERSON CIRCLE
(Address)

BALTIMORE, MD. 21227
(City, State, Zip Code)

(410) 242-4263
(Telephone Number)


ZONING NOTICE
CASE # 05-239-A
A PUBLIC HEARING WILL BE HELD BY THE ZONING COMMISSIONER IN TOWSON, MD
PLACE: ROOM 407, COUNTY COURTS BLDG. 401 BOSLEY AVENUE TOWSON, MD. 21204
DATE AND TIME: TUESDAY, JANUARY 11, 2005 AT 9:00 A.M.
REQUEST: VARIANCE TO PERMIT A MINIMUM LOT WIDTH OF 50 FEET IN LIEU OF THE REQUIRED 55 FEET AND 25 FOOT FRONT YARD SETBACK IN LIEU OF THE REQUIRED FRONT YARD AVERAGE OF 30.75 FEET AND TO APPROVE AN UNDERSIZED LOT.
POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY.
TO CONFIRM HEARING CALL 887 3391
DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING, UNDER PENALTY OF LAW
HANDICAPPED ACCESSIBLE

ZONING NOTICE
CASE # 05-239-A
A PUBLIC HEARING WILL BE HELD BY THE ZONING COMMISSIONER IN TOWSON, MD
HANDICAPPED ACCESSIBLE

CERTIFICATE OF POSTING

RE: Case No.: 05-240-A

Petitioner/Developer: F. & M. ENTERPRISES, INC.

Date of Hearing/ Closing: JAN. 11, 2005

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

Attention: Becky Hart

Ladies and Gentlemen: This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at

#2623 MARINE AVE. LOT #2

The sign(s) were posted on DEC. 23, 2004
(Month, Day, Year)

Sincerely,

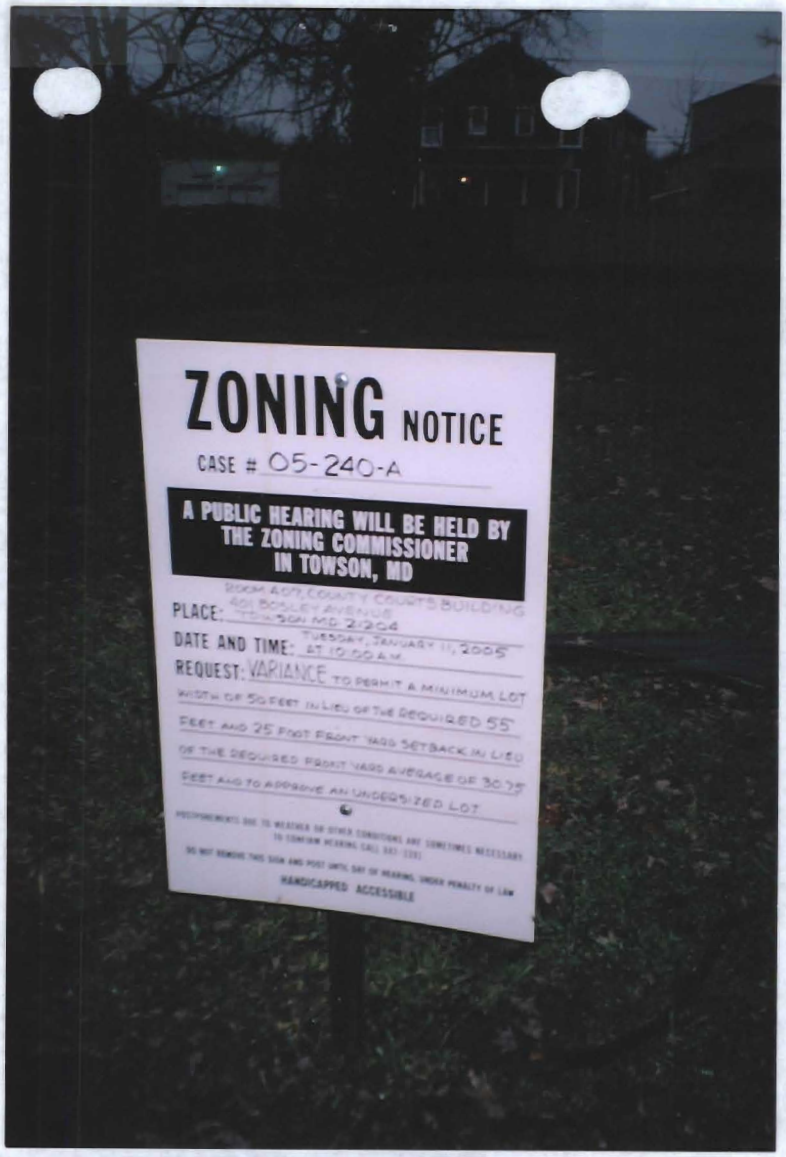
Garland E. Moore
(Signature of Sign Poster and Date)

GARLAND E. MOORE
(Printed Name)

3225 RYERSON CIRCLE
(Address)

BALTIMORE, MD. 21227
(City, State, Zip Code)

(410) 242-4263
(Telephone Number)


ZONING NOTICE
CASE # 05-240-A
A PUBLIC HEARING WILL BE HELD BY THE ZONING COMMISSIONER IN TOWSON, MD
PLACE: ROOM 405, COUNTY COURTS BUILDING 401 BOSLEY AVENUE TOWSON, MD 21204
DATE AND TIME: TUESDAY, JANUARY 11, 2005 AT 10:00 AM
REQUEST: VARIANCE TO PERMIT A MINIMUM LOT WIDTH OF 50 FEET IN LIEU OF THE REQUIRED 55' FEET AND 25 FOOT FRONT YARD SETBACK IN LIEU OF THE REQUIRED FRONT YARD AVERAGE OF 30.75' FEET AND TO APPROVE AN UNDERSIZED LOT
IMPEDIMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY TO TOWSON HEARING CALL 887-3391
DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING, UNDER PENALTY OF LAW
HANDICAPPED ACCESSIBLE

ZONING NOTICE
CASE # 05-240-A
A PUBLIC HEARING WILL BE HELD BY THE ZONING COMMISSIONER IN TOWSON, MD
PLACE:
DATE AND TIME:
REQUEST: VARIANCE TO PERMIT A MINIMUM LOT
HANDICAPPED ACCESSIBLE

Department of Permits and Development Management

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

Baltimore County

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

November 23, 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: 05-239-A
2623 Marine Avenue, Undersized Lot 1
E/side of Marine Ave. at the distance of 345 feet north from the centerline of Sparrows Point Rd.
15th Election District – 7th Councilmanic District
Legal Owner: F& M Enterprises, Inc., Michael Nartowicz, II, James Narutowicz, Jr.
Engineer: Paul Lee, Century Engineering

Variance to permit a minimum lot width of 50 feet in lieu of the required 55 feet and 25 foot front yard setback in lieu of the required front yard average of 30.75 feet and to approve an undersized lot.

Hearing: Tuesday, January 11, 2005 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: F & M Enterprises, Inc., 5200 Northpoint Blvd., Baltimore 21219
Paul Lee, 32 West Rd., Towson 21204

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, DECEMBER 27, 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.

Printed on Recycled Paper

Department of Permits and Development Management

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

Baltimore County

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

November 23, 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: 05-240-A
2623 Marine Avenue, Undersized Lot 2
E/side of Marine Ave. at the distance of 345 feet north from the centerline of Sparrows Point Rd.
15th Election District – 7th Councilmanic District
Legal Owners: F & M Enterprises, Inc., Michael Narutowicz, II, James Narutowicz, Jr.
Engineer: Paul Lee, Century Engineering

Variance to permit a minimum lot width of 50 feet in lieu of the required 55 feet and 25-foot front yard setback in lieu of the required front yard average of 30.75 feet and to approve an undersize lot.

Hearing: Tuesday, January 11, 2005 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: F & M Enterprises, Inc., 5200 Northpoint Blvd., Baltimore 21219
Paul Lee, 32 West Road, Towson 21204

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, DECEMBER 27, 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.

Printed on Recycled Paper

APPEAL SIGN POSTING REQUEST

CASE NO. 05-239-A

F & M ENTERPRISES

2623 MARINE AVENUE

15TH ELECTION DISTRICT APPEALED: 2/17/2005

ATTACHMENT – (Plan to accompany Petition – Petitioner's Exhibit No. 1)

*****COMPLETE AND RETURN BELOW INFORMATION******

CERTIFICATE OF POSTING

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

Attention: Kathleen Bianco
Administrator

CASE NO.: 05-239-A

Legal Owners: F & M ENTERPRISES

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

2623 MARINE AVENUE

The sign was posted on 5/5, 2005

By: Gary Freund
(Signature of Sign Poster)

GARY FREUND
(Print Name)

APPEAL SIGN POSTING REQUEST

CASE NO. 05-240-A

F & M ENTERPRISES

2623 MARINE AVENUE

15TH ELECTION DISTRICT APPEALED: 2/17/2005

ATTACHMENT – (Plan to accompany Petition – Petitioner's Exhibit No. 1)

*****COMPLETE AND RETURN BELOW INFORMATION******

CERTIFICATE OF POSTING

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

Attention: Kathleen Bianco
Administrator

CASE NO.: 05-240-A

Legal Owners: F & M ENTERPRISES

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

2623 MARINE AVENUE

The sign was posted on 5/5, 2005

By: Gary Freund
(Signature of Sign Poster)

GARY FREUND
(Print Name)

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

May 31, 2005

NOTICE OF ASSIGNMENT

CASE #: 05-239-A — **IN THE MATTER OF: F & M ENTERPRISES, INC. – Legal Owners**
2623 Marine Avenue, Undersized Lot 1

and

CASE #: 05-240-A — **IN THE MATTER OF: F & M ENTERPRISES, INC. – Legal Owners**
2623 Marine Avenue, Undersized Lot 2
15th Election District; 7th Councilmanic District

1/26/05 – D.Z.C.'s Decision in which requested variance relief for 50' lot width and 25' front yard setback for each lot and to approve an undersized lot is DENIED.

ASSIGNED FOR: **WEDNESDAY, AUGUST 17, 2005 at 10:00 a.m..**

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco
Administrator

---

c: Counsel for Petitioner /Appellant : Arnold Jablon, Esquire
Petitioner /Appellant : F & M Enterprises, Inc.
Michael J. Narutowicz II
James A. Narutowicz, Jr.

Paul Lee /Century Engineering, Inc.

Protestant : Thomas Nelson

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

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County Board of Appeals of Baltimore County

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

May 31, 2006

NOTICE OF DELIBERATION -
MOTION FOR RECONSIDERATION

IN THE MATTER OF:
F & M ENTERPRISES, INC. – MOTION FOR RECONSIDERATION
Case No. 05-239-A and Case No. 05-240-A

The Board will convene on the following date/time to publicly deliberate and discuss the Motions for Reconsideration, and Response thereto, filed in the subject matter, with any further action by the Board to be taken after that public deliberation; and has been scheduled for

DATE AND TIME : **THURSDAY, JULY 13, 2006 at 9:00 a.m.**

LOCATION : **Hearing Room 48, Basement, Old Courthouse**

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS. A WRITTEN RULING WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES AT THE CONCLUSION OF FINAL DELIBERATION IN THIS MATTER.

Kathleen C. Bianco
Administrator

c: Counsel for Petitioner /Appellant : Arnold Jablon, Esquire
Petitioner /Appellant : F & M Enterprises, Inc.
Michael J. Narutowicz II
James A. Narutowicz, Jr.

Paul Lee /Century Engineering, Inc.

Protestant : Thomas Nelson

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

FYI: 2-1-5

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County Board of Appeals of Baltimore County

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

7/13/06
Mr. Nelson phoned P.C. & BOA. He wondered why he wasn't notified of date. I checked file & his name is listed. I apologized and sent I would note July.

May 31, 2006

NOTICE OF DELIBERATION - MOTION FOR RECONSIDERATION

IN THE MATTER OF:
F & M ENTERPRISES, INC. – MOTION FOR RECONSIDERATION
Case No. 05-239-A and Case No. 05-240-A

The Board will convene on the following date/time to publicly deliberate and discuss the Motions for Reconsideration, and Response thereto, filed in the subject matter, with any further action by the Board to be taken after that public deliberation; and has been scheduled for

DATE AND TIME : THURSDAY, JULY 13, 2006 at 9:00 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

NOTE: ALL PUBLIC DELIBERATIONS ARE OPEN SESSIONS. A WRITTEN RULING WILL BE ISSUED BY THE BOARD AND A COPY SENT TO ALL PARTIES AT THE CONCLUSION OF FINAL DELIBERATION IN THIS MATTER.

Kathleen C. Bianco
Administrator

---

c: Counsel for Petitioner /Appellant : Arnold Jablon, Esquire
Petitioner /Appellant : F & M Enterprises, Inc.
Michael J. Narutowicz II
James A. Narutowicz, Jr.

Paul Lee /Century Engineering, Inc.

Protestant : Thomas Nelson

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

FYI: 2-1-5

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County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

September 15, 2005

NOTICE OF ASSIGNMENT /Day #2

CASE #: 05-239-A — **IN THE MATTER OF: F & M ENTERPRISES, INC. – Legal Owners**
2623 Marine Avenue, Undersized Lot 1

and

CASE #: 05-240-A — **IN THE MATTER OF: F & M ENTERPRISES, INC. – Legal Owners**
2623 Marine Avenue, Undersized Lot 2
15th Election District; 7th Councilmanic District

Day #2 from 8/17/05

1/26/05 – D.Z.C.'s Decision in which requested variance relief for 50' lot width and 25' front yard setback for each lot and to approve an undersized lot is DENIED.

ASSIGNED FOR: **TUESDAY, NOVEMBER 22, 2005 at 10:00 a.m..**

NOTICE: **This appeal is an evidentiary hearing; therefore, parties should consider the advisability of retaining an attorney.**

Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.

IMPORTANT: No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).

If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.

Kathleen C. Bianco
Administrator

---

c: Counsel for Petitioner /Appellant : Arnold Jablon, Esquire
Petitioner /Appellant : F & M Enterprises, Inc.
Michael J. Narutowicz II
James A. Narutowicz, Jr.

Paul Lee /Century Engineering, Inc.

Protestant : Thomas Nelson

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

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County Board of Appeals of Baltimore County

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

November 25, 2005

NOTICE OF DELIBERATION

IN THE MATTER OF:

F & M ENTERPRISES, INC. – Legal Owners
Case No. 05-239-A and Case No. 05-240-A

Having heard this matter on 8/17/05 and 11/22/05, public deliberation has been scheduled for the following date /time:

DATE AND TIME : **THURSDAY, JANUARY 5, 2006 at 9:00 a.m.**

LOCATION : **Hearing Room 48, Basement, Old Courthouse**

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

Kathleen C. Bianco
Administrator

c: Counsel for Petitioner /Appellant : Arnold Jablon, Esquire
Petitioner /Appellant : F & M Enterprises, Inc.
Michael J. Narutowicz II
James A. Narutowicz, Jr.

Paul Lee /Century Engineering, Inc.

Protestant : Thomas Nelson

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

FYI: 2-1-5

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County Board of Appeals of Baltimore County

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

Recent as to Amended Year

December 24, 2008

NOTICE OF DELIBERATION/MOTION FOR RECONSIDERATION

CASE #: 05-239-A — **IN THE MATTER OF: F & M ENTERPRISES, INC. – Legal Owners**
2623 Marine Avenue, Undersized Lot 1

and

CASE #: 05-240-A — **IN THE MATTER OF: F & M ENTERPRISES, INC. – Legal Owners**
2623 Marine Avenue, Undersized Lot 2
15th Election District; 7th Councilmanic District

Two Panel Members selected to replace Michael Mohler and Margaret Brassil Ph.D. who are no longer members of the Board. Public deliberation has been scheduled for the following date /time:

DATE AND TIME : **WEDNESDAY, FEBRUARY 25, 2008 at 9:00 a.m.**

LOCATION : Hearing Room #2, Jefferson Building
105 W. Chesapeake Avenue, Second Floor
(adjacent to Suite 203)

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

Theresa R. Shelton
Administrator

c: Counsel for Petitioner /Appellant : Arnold Jablon, Esquire
Petitioner /Appellant : F & M Enterprises, Inc.
Michael J. Narutowicz II
James A. Narutowicz, Jr.

Paul Lee /Century Engineering, Inc.

Protestant : Thomas Nelson

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

FYI: 2-4-6

Department of Permits and Development Management

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

Baltimore County

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

January 4, 2005

Michael Narutowicz
F&M Enterprises, Inc.
5200 Northpoint Blvd.
Baltimore, Maryland 21219

Dear Mr.Narutowicz:

RE: Case Number: 05-239-A, 2623 Marine Avenue

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on November 9, 2004.

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

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

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: clb

Enclosures

c: People's Counsel
Paul Lee Century Engineering, Inc. 32 West Road Towson 21204

Printed on Recycled Paper

Department of Permits
Development Management

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

Baltimore County

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

January 4, 2005

Michael Narutowicz
F&M Enterprises, Inc.
5200 Northpoint Blvd.
Baltimore, Maryland 21219

Dear Mr. Narutowicz:

RE: Case Number: 05-240-A, 2623 Marine Avenue

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on November 9, 2004.

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

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

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR:

Enclosures

c: People's Counsel
Paul Lee Century Engineering, Inc. 32 West Road Towson 21204

Printed on Recycled Paper

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Tim Kotroco
PDM

FROM: John D. Oltman, Jr JDO
DEPRM

DATE: December 10, 2004

SUBJECT: Zoning Items # See List Below

Zoning Advisory Committee Meeting of November 22, 2004.

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

05-227
05-229
05-230
05-232
05-233
05-234
05-235
05-238
05-239
05-240
05-241
05-242
05-243
05-244
05-245
05-246
05-247
05-248

Reviewers: Sue Farinetti, Dave Lykens

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Tim Kotroco
PDM

FROM: John D. Oltman, Jr JDO
DEPRM

DATE: December 10, 2004

SUBJECT: Zoning Items # See List Below

Zoning Advisory Committee Meeting of November 22, 2004.

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

05-227
05-229
05-230
05-232
05-233
05-234
05-235
05-238
05-239
05-240
05-241
05-242
05-243
05-244
05-245
05-246
05-247
05-248

Reviewers: Sue Farinetti, Dave Lykens

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: December 7, 2004

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

SUBJECT: Zoning Advisory Committee Meeting
For November 29, 2004
Item Nos. 227, 228, 229, 230, 231, 232,
233, 234, 237, 238, 239, 240, 241, 242,
243, 244, 246, and 248

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

INTEROFFICE CORRESPONDENCE

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

DATE: December 7, 2004

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

SUBJECT: Zoning Advisory Committee Meeting
For November 29, 2004
Item Nos. 227, 228, 229, 230, 231, 232,
233, 234, 237, 238, 239, 240, 241, 242,
243, 244, 246, and 248

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

RWB:CEN:jrb

cc: File

ZAC-11-29-2004-NO COMMENT ITEMS-ITEM NOS 227-249-12072004

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: November 26, 2004

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

SUBJECT: Zoning Advisory Petition(s): **Case(s) 5-239 & 5-240**

The Office of Planning has reviewed the subject request and has determined that the petitioner owns sufficient adjoining land to conform to the minimum width and area requirements and therefore does not meet the standards stated in Section 304.1.C of the BCZR. Nevertheless, there are existing 40-foot wide lots in the immediate vicinity of the subject lots. As such, this office does not oppose the petitioner's request.

If the petitioner's request is granted, the following conditions shall apply to the proposed dwellings at 2623 Marine Avenue (lots 1 & 2):

1. Submit building elevations to this office for review and approval prior to the issuance any building permit. The proposed dwelling shall be compatible in size, exterior building materials, color, and architectural detail as that of the existing dwellings in the area.
2. Provide landscaping along the public road.

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: Mark A Cunningham

Division Chief: Lynn Lanham

MAC/LL

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: November 26, 2004

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

SUBJECT: Zoning Advisory Petition(s): **Case(s) 5-239 & 5-240**

The Office of Planning has reviewed the subject request and has determined that the petitioner owns sufficient adjoining land to conform to the minimum width and area requirements and therefore does not meet the standards stated in Section 304.1.C of the BCZR. Nevertheless, there are existing 40-foot wide lots in the immediate vicinity of the subject lots. As such, this office does not oppose the petitioner's request.

If the petitioner's request is granted, the following conditions shall apply to the proposed dwellings at 2623 Marine Avenue (lots 1 & 2):

1. Submit building elevations to this office for review and approval prior to the issuance any building permit. The proposed dwelling shall be compatible in size, exterior building materials, color, and architectural detail as that of the existing dwellings in the area.
2. Provide landscaping along the public road.

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: Mark A. Cunningham

Division Chief: Lynn Lanham

MAC/LL

Fire Department

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

Baltimore County

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

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

November 22, 2004

ATTENTION: Zoning Review planners

Distribution Meeting of: November 22, 2004

Item No.: 227-241, 243, 245-249 239

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

Printed on Recycled Paper

Fire Department

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

Baltimore County

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

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

November 22, 2004

ATTENTION: Zoning Review planners

Distribution Meeting of: November 22, 2004

Item No.: 227-241, 243, 245-249 (240)

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

Printed on Recycled Paper

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

SHA State Highway Administration — Driven to Excel

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

Maryland Department of Transportation

Date: 11.22.04

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

RE: Baltimore County
Item No. 239 JRF

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,

S. D. Foster

Steven D. Foster, Chief
Engineering Access Permits Division

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

SHA State Highway Administration — Driven to Excel

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

Maryland Department of Transportation

Date: 11.22.04

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

RE: Baltimore County
Item No. 240 JRF

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,

S. D. Foster

Steven D. Foster, Chief
Engineering Access Permits Division

RE:	PETITION FOR VARIANCE 2623 Marine Ave, Undersized Lot 1; E/side Marine Ave, 345' N c/line Sparrows Pt Rd 15th Election & 7th Councilmanic Districts Legal Owner(s): F&M Enterprises, Inc, Michael & James Narutowicz, II Petitioner(s)	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 05-239-A

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

ENTRY OF APPEARANCE

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

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

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

RECEIVED
NOV 24 2004
Per

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of November, 2004, a copy of the foregoing Entry of Appearance was mailed to, Paul Lee, Century Engineering, Inc, 32 West Road, Towson, MD 21204, Representative for Petitioner(s).

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

RE:	PETITION FOR VARIANCE 2623 Marine Ave, Undersized Lot 2; E/side Marine Ave, 445' N c/line Sparrows Pt Rd 15th Election & 7th Councilmanic Districts Legal Owner(s): F&M Enterprises, Inc, Michael & James Narutowicz, II Petitioner(s)	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 05-240-A

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

ENTRY OF APPEARANCE

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

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio

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

RECEIVED
NOV 24 2004
Per CLH

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of November, 2004, a copy of the foregoing Entry of Appearance was mailed to, Paul Lee, Century Engineering, Inc, 32 West Road, Towson, MD 21204, Representative for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

INTER-OFFICE CORRESPONDENCE
RECOMMENDATION FORM

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

Permit or Case No. 05-239-A

Residential Processing Fee Paid ($50.00)

Accepted by JRF
Date 11-9-04

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

RE: Undersized Lots

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

MINIMUM APPLICANT SUPPLIED INFORMATION:

F & M ENTERPRISES, INC. (Print Name of Applicant) 5200 NORTHPOINT BLVD. 21219 (Address) 410-477-1696 (Telephone Number)

Lot Address 2623 MARINE AVE. - LOT 1 (LOTS 399, 398 & ½ LOT 397) Election District 15 Councilmanic District 7 Square Feet 6,250

Lot Location: ~~XXE XXW~~/side/~~XXXX~~ of MARINE AVE. (street) 322.46 feet from N E ~~XXW~~ corner of SPARROWS POINT RD. (street)

Land Owner: F & M ENTERPRISES, INC. Tax Account Number 15-05-190239

Address: 5200 NORTHPOINT BLVD. 21219 Telephone Number (410) 477-1696

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

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

	PROVIDED? YES	NO
1. This Recommendation Form (3 copies)		
2. Permit Application		
3. Site Plan Property (3 copies)		
4. Building Elevation Drawings		
5. Photographs (please label all photos clearly) Adjoining Buildings		
Surrounding Neighborhood		

6. Current Zoning Classification: DR 5.5 / BL-AS

TO BE FILLED IN BY THE OFFICE OF PLANNING ONLY!

RECOMMENDATIONS / COMMENTS:

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

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

RECEIVED
NOV 15 2004
OFFICE OF PLANNING

Date: 11/29/04

Revised 2/05/02

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

INTER-OFFICE CORRESPONDENCE
RECOMMENDATION FORM

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

Permit or Case No. 05-240-A

Residential Processing Fee Paid ($50.00)
Accepted by JRF
Date 11/9/04

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

RE: Undersized Lots

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

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F & M ENTERPRISES, INC. (Print Name of Applicant) 5200 NORTHPOINT BLVD. 21219 (Address) 410-477-1696 (Telephone Number)

Lot Address 2623 MARINE AVE. - LOT 2 (LOTS 395, 396 & ½ LOT 397) Election District 15 Councilmanic District 7 Square Feet 6,250

Lot Location: ~~N E S W~~/side ~~of~~ of MARINE AVE. (street) 372.46 feet from N E ~~S W~~ corner of SPARROWS POINT RD. (street)

Land Owner: F & M ENTERPRISES, INC. Tax Account Number 15-05-190239

Address: 5200 NORTHPOINT BLVD. 21219 Telephone Number (410) 477-1696

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5. Photographs (please label all photos clearly) Adjoining Buildings		
Surrounding Neighborhood		

6. Current Zoning Classification: DR 5.5 / BL-AS

Post-it® Fax Note 7671 | Date 11-29-04 | # of pages ▶ 2
To JUN FERNANDO | From J. GERMAN
Co./Dept. | Phone # | Fax # X 2824
Phone # X 3495 | Fax #

TO BE FILLED IN BY THE OFFICE OF PLANNING ONLY!

RECOMMENDATIONS / COMMENTS:

☑ Approval ☐ Disapproval ☐ Approval conditioned on required modifications of the application to conform with t

Signed by: [signature] for the Director, Office of Planning and Community Conservation

RECEIVED NOV 15 2004 OFFICE OF PLANNING

Date: 11/29/04

Revised 2/05/02

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

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Date 11/9/04

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Lot Location: ~~N E S W~~/side ~~corner~~ of MARINE AVE. (street), 372.46 feet from N E ~~S W~~ corner of SPARROWS POINT RD. (street)

Land Owner: F & M ENTERPRISES, INC. Tax Account Number 15-05-190239

Address: 5200 NORTHPOINT BLVD. 21219 Telephone Number (410) 477-1696

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

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

	PROVIDED? YES	NO
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2. Permit Application		
3. Site Plan Property (3 copies)		
4. Building Elevation Drawings		
5. Photographs (please label all photos clearly) Adjoining Buildings		
Surrounding Neighborhood		

6. Current Zoning Classification: DR 5.5 / BL-AS & RO

TO BE FILLED IN BY THE OFFICE OF PLANNING ONLY!

RECOMMENDATIONS / COMMENTS:

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

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

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

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

Baltimore County

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

March 15, 2005

Paul Lee, P.E.
Century Engineering, Inc.
32 West Road
Towson, MD 21204

Dear Mr. Lee:

RE: Case: 05-239-A, 2623 Marine Avenue

Please be advised that we received an appeal of the above-referenced case on behalf of the Petitioners, filed in this office on February 17, 2005. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

Timothy Kotroco
Director

TK:klm

c: William Wiseman, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Michael Narutowicz, 1435 Autumn Leaf Road, Towson 21286
James Narutowicz, 902 E. Seminary Avenue, Towson 21286
Thomas S. Nelson, 2617 N. Marine Avenue, Baltimore 21219
Arnold Jablon, Venable, 210 Allegheny Avenue, Towson 21204

RECEIVED
MAR 18 '05
BALTIMORE COUNTY
BOARD OF APPEALS

APPEAL

Petition for Variance
2623 Marine Avenue, Undersized Lot 1
E/s Marine Avenue, 346 ft. N c/line Sparrows Point Road
15th Election District – 7th Councilmanic District
Legal Owners: F & M Enterprises, Inc.

Case No.: 05-239-A

✓ Petition for Variance (November 9, 2005)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (November 23, 2005)

✓ Certification of Publication (The Jeffersonian – December 28, 2004)

✓ Certificate of Posting (December 23, 2005) by Garland E. Moore

✓ Entry of Appearance by People's Counsel (November 24, 2004)

✓ Petitioner(s) Sign-In Sheet – One Sheet

Protestant(s) Sign-In Sheet - None

✓ Citizen(s) Sign-In Sheet – One Sheet

✓ Zoning Advisory Committee Comments

Petitioners' Exhibit
- ✓ 1. Plat to accompany petition for Variance
- ✓ 2. Sparrows Point Manor Plat
- ✓ 3. Zoning Map
- ✓ 3B. Map Output

Protestants' Exhibits:
- ✓ 1. Photos (a-c)
- ✓ 2. Photos (a-d)
- ✓ 3. Record Plat
- ✓ 4. Real Property Data Search Documents

RECEIVED
MAR 16 2005
BALTIMORE COUNTY
BOARD OF APPEALS

Miscellaneous (Not Marked as Exhibit) - None

Deputy Zoning Commissioner's (DENIED – January 26, 2005)

Appealed 2/17/2005

Notice of Appeal received on February 17, 2005 from Arnold Jablon for F & M Enterprises, Inc.

c: People's Counsel of Baltimore County, MS #2010
Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
~~Paul Lee, Century Engineering, 32 West Rd., Towson 21204~~
~~Michael Narutowicz, 1435 Autumn Leaf Road, Towson 21286~~
James Narutowicz, 902 E. Seminary Ave., Towson 21286
Thomas Nelson, 2617 N. Marine Avenue, Baltimore 21219

Returned undeliverable

date sent March 16, 2005, klm

8/16/08 Spoke w/ Arnold Jablon about court reporter + hope he will go ahead w/ hope

APPEAL

Petition for Variance
2623 Marine Avenue, Undersized Lot, 2
E/s Marine Avenue, 445 ft., N c/line Sparrows Point Road
15th Election District – 7th Councilmanic District
Legal Owners: F & M Enterprises, Inc.

Case No.: 05-240-A

✓ Petition for Variance (November 9, 2004)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (November 23, 2005)

✓ Certification of Publication (December 28, 2005 – The Jeffersonian)

✓ Certificate of Posting (December 23, 2004) by Garland E. Moore

✓ Entry of Appearance by People's Counsel (November 24, 2004)

✓ Petitioner(s) Sign-In Sheet – One Sheet

Protestant(s) Sign-In Sheet - None

✓ Citizen(s) Sign-In Sheet – One Sheet

✓ Zoning Advisory Committee Comments

RECEIVED
MAR 1 8 2005
BALTIMORE COUNTY
BOARD OF APPEALS

Petitioners' Exhibit
1. Plat to accompany Petition for Variance

Protestants' Exhibits:
None

✓ Miscellaneous (Not Marked as Exhibit)
1. Undersized Lot Recommendation Form

✓ Deputy Zoning Commissioner's Order (DENIED – January 26, 2005)

✓ Notice of Appeal received on February 17, 2005 from Arnold Jablon, attorney for Petitioners

c: People's Counsel of Baltimore County, MS #2010
Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
~~Paul Lee, Century Engineering, 32 West Rd., Towson 21204~~ } 3 Returned
~~Michael Narutowicz, 1435 Autumn Leaf Rd., Towson 21286~~ } 3 undeliverable
James Narutowicz, 902 E. Seminary Ave., Towson 21286
Thomas S. Nelson, 2617 N. Marine Ave., Baltimore 21219

date sent March 16, 2005, klm

APPEAL

Petition for Variance
2623 Marine Avenue, Undersized Lot, 2
E/s Marine Avenue, 445 ft., N c/line Sparrows Point Road
15th Election District – 7th Councilmanic District
Legal Owners: F & M Enterprises, Inc.

Case No.: 05-240-A

Petition for Variance (November 9, 2004)

Zoning Description of Property

Notice of Zoning Hearing (November 23, 2005)

Certification of Publication (December 28, 2005 – The Jeffersonian)

Certificate of Posting (December 23, 2004) by Garland E. Moore

Entry of Appearance by People's Counsel (November 24, 2004)

Petitioner(s) Sign-In Sheet – One Sheet

Protestant(s) Sign-In Sheet - None

Citizen(s) Sign-In Sheet – One Sheet

Zoning Advisory Committee Comments

Petitioners' Exhibit
1. Plat to accompany Petition for Variance

Protestants' Exhibits:
None

Miscellaneous (Not Marked as Exhibit)
1. Undersized Lot Recommendation Form

Deputy Zoning Commissioner's Order (DENIED – January 26, 2005)

Notice of Appeal received on February 17, 2005 from Arnold Jablon, attorney for Petitioners

c: People's Counsel of Baltimore County, MS #2010
Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Paul Lee, Century Engineering, 32 West Rd., Towson 21204
Michael Narutowicz, 1435 Autumn Leaf Rd., Towson 21286
James Narutowicz, 902 E. Seminary Ave., Towson 21286
Thomas S. Nelson, 2617 N. Marine Ave., Baltimore 21219

date sent March 16, 2005, klm

Case No. 05-239-A and
Case No. 05-240-A

In the Matter of: F & M Enterprises, Inc.
2623 Marine Avenue; Undersized Lot 1 (239-A) and
Undersized Lot 2 (240-A)

VAR – To permit each lot to have a minimum lot width of 50' ilo required 55' and 25' front yard setback ilo req'd front yard average of 30.75' and to approve undersized lot

1/26/05 – D.Z.C.'s Order in which requested variance relief and approval of undersized lot DENIED.

5/31/05 -Notice of Assignment sent to following; assigned for hearing on Wednesday, August 17, 2005 at 10 a.m.:

Arnold Jablon, Esquire
F & M Enterprises, Inc.
Michael J. Narutowicz II
James A. Narutowicz, Jr.
Paul Lee /Century Engineering, Inc.
Thomas Nelson
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

8/17/05 – Board convened for hearing (Stahl, M Mohler, Brassil); completed day #1; to be assigned an additional hearing day and notice to be sent.

9/15/05 – Notice of Assignment, Day #2 sent to above; assigned for Tuesday, November 22, 2005 at 10:00 a.m. FYI copy to 2-1-5).

11/22/05 – Board convened for day #2 (Stahl, Mohler M, Brassil); concluded hearing this date. Received oral closing argument this date; no written briefs to be filed. Deliberation to be assigned and notice sent.

11/25/05 -- Notice of Deliberation sent to parties; assigned for Thursday, January 5, 2006 at 9:00 a.m. FYI copy to 2-1-5.

1/05/06 – Board convened for deliberation (Stahl, M Mohler, Brassil); unanimous decision – that the lots meet requirements of 1B01 and do not require variance, as argued and evidenced by counsel at hearing. Written Opinion and Order to be issued; appellate period to run from date of written Order. (1)

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
THOMAS S. NELSON *

CIVIL ACTION
FOR JUDICIAL REVIEW OF THE OPINION OF * NO. : **03-C-09-005828**
THE BOARD OF APPEALS
OF BALTIMORE COUNTY *
JEFFERSON BUILDING – ROOM 203
105 W. CHESAPEAKE AVENUE *
TOWSON, MARYLAND 21204

*

IN THE MATTER OF :
F & M ENTERPRISES, INC. – LEGAL OWNERS *
FOR VARIANCE ON PROPERTY LOCATED
ON THE E/S MARINE AVENUE, 346' N OF *
C/L SPARROWS POINT ROAD
(2633 MARINE AVENUE, UNDERSIZED LOT 1) *
AND 445' N C/L SPARROWS POINT ROAD
(2623 MARINE AVENUE, UNDERSIZED LOT 2) *

15TH ELECTION DISTRICT *
7TH COUNCILMANIC DISTRICT

*

BOARD OF APPEALS CASE NO.: 05-239-A
AND 05-240-A *

RECEIVED AND FILED
2009 JUL 14 AM 9: 16
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

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

PROCEEDINGS BEFORE THE ZONING COMMISSIONER
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the Petition for Judicial Review directed against it in this case, herewith transmits the record of proceedings had in the above-entitled matter, consisting of the original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

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

No. 05-239-A

November 9, 2004	Petition for Variance filed by F & M Enterprises, Inc., Michael J. Narutowicz, II, James A. Narutowicz, and Paul Lee, Century Engineering, Inc. to permit a minimum lot width of 50' in lieu of the required 55' and a 25' front yard setback in lieu of the required front yard average of 30.75' and to approve an undersized lot pursuant to section 304 with any other variances as deemed necessary. (Lot 1)
November 23	Notice of Hearing before the Zoning Commissioner
November 24	Entry of Appearance filed by People's Counsel for Baltimore County.
December 23	Certificate of Posting.
December 30	Certificate of Publication in newspaper
January 4, 2005	ZAC Comments.

No. 05-240-A

November 9, 2004	Petition for Variance filed by F & M Enterprises, Inc., Michael J. Narutowicz, II, James A. Narutowicz, and Paul Lee, Century Engineering, Inc. to permit a minimum lot width of 50' in lieu of the required 55' and a 25' front yard setback in lieu of the required front yard average of 30.75' and to approve an undersized lot pursuant to section 304 with any other variances as deemed necessary. (Lot 2)
November 23	Notice of Hearing before the Zoning Commissioner
November 24	Entry of Appearance filed by People's Counsel for Baltimore County.
December 23	Certificate of Posting.
December 30	Certificate of Publication in newspaper
January 4, 2005	ZAC Comments.

Case No.: 05-239-A and 05-240-A

January 11, 2005	Hearing held before the Deputy Zoning Commissioner
January 27	Findings of Fact and Conclusions of Law issued by the Deputy Zoning Commissioner. Petitions for Variance were DENIED.

February 17, 2005	Notice of Appeal filed by Arnold Jablon, Esquire on behalf of F & M Enterprises, Inc., by Michael J. Narutowicz, Legal Owner/Petitioner.
March 18	Appeal received by Board of Appeals.
May 5	Certificate of Posting
August 17	Board convened for hearing, Day #1 – continued to Day #2
November 22	Board convened for hearing, Day #2 - completed

Exhibits submitted at hearing (two days) before the Board of Appeals:

Petitioner's Exhibit No.

1 – Plat to accompany Petition for Variance dated 7/15/05
2 – Site Plan - undated
3 – Photos (A-AI) depicting various sites in proximity to the subject location.
4a – Petitions from neighborhood in support – dated 7/27/05 (1 page)
4b – Petitions from neighborhood in support – dated 7/27/05 (1 page)
5 – Record Survey and Plat of Sparrows Point Manor dated 4/1921
6 – 2000 Comprehensive Zoning Map dated 10/10/2000
7 – Plat marked with lot sizes same as Exhibit 5, Survey and Plat dated 4/1921

Protestants' Exhibit No.

1 – Deed for lots – dated 1940
2 – Copy of Plat Sparrows Point Manor
3 – Zoning Commissioner Opinion dated June 25, 1974
4 – Aerial photo with pink
5a-g – Deeds – multiple (7 deeds in total)
6 – Aerial photo in color
7 – SDAT Real Property Data Search and Property Listing and coversheet- 13 pages
8a-c – SDAT Real Property Data Search and Property Listing and coversheet (33 pages total)
9 – CZMP 2004 map Issue 07-016
10 – Aerial photograph in color dated 8/16/05
11 – Zoning Review Hearing Checklist revised 8/30/01 (3 pages) Individual Residential lots.
12 – Small Zoning map of Sparrows Point Manor lots

13 – Letter from Thomas Nelson dated 8/17/05 summarizing lot purchases
14 – BCZR Article 6, Section 600-Interpretation (1 page)
15 – Summary of 1974 Petition from Thomas Nelson

January 5, 2006	Board convened for Public deliberation.
April 7	Final Opinion and Order issued by the Board in which the Petitions for Variance relief were GRANTED in Case Nos.: 05-239-A and 05-240-A
April 13	Motion for Reconsideration filed by Office of People's Counsel for Baltimore County.
May 5	Motion for Reconsideration filed by Thomas Nelson, Protestant, joining the Motion for Reconsideration filed by Office of People's Counsel.
May 31	Petitioner's Response to Motion for Reconsideration filed by Arnold Jablon, Esquire on behalf of F & M Enterprises, Inc., Petitioner.
June 14	People's Counsel's Reply Memorandum on Reconsideration filed by the Office of People's Counsel for Baltimore County.
June 14	People's Counsel's Alternative Motion to be Joined and/or to Intervene filed by Office of People's Counsel for Baltimore County.
June 22	Protestant's Reply Memorandum on Motion for Reconsideration filed by Thomas Nelson, Protestant.
July 13, 2006	Board convened for a Public deliberation on the Motion for Reconsideration filed by Office of People's Counsel and joined by Protestant, Thomas Nelson.
October 24, 2006	Verbal request of Counsel for Petitioner, Arnold Jablon, to Board Panel Chairman to withhold Board's final written decision pending the outcome of a possible upper court decision that may have an impact in this matter. (The decision in this matter continued to be held pending the outcome of related case number 07-275-A. The Petition for Variance in Case No.: 07-275-A was subsequently filed on December 14, 2006. The Board completed Case No.: 07-275-A by denying the Petition for Variance in its Opinion dated July 24, 2008.)
June 20, 2008	Letter received from Arnold Jablon, Esquire wherein he states: "...the Board at my request did not issue its written decision. At this time, I am now requesting that the Board issue its opinion on the motions."

July 1	Letter from the Office of People's Counsel in response to Mr. Jablon's letter of June 20, 2008 requesting independent look at Motion for Reconsideration originally filed on April 13, 2006 (two of the three original Board Members had left the Board).
February 25, 2009	New Board panel (consisting of one original Board member and two new panel members) convened for a Public Deliberation on Motion for Reconsideration filed on 4/13/06 by Office of People's Counsel and joined by Protestant, Thomas Nelson.
April 21	Opinion and Ruling on Motion for Reconsideration and Motion to Intervene issued by Board DENYING the Motions.
May 20	Petition for Judicial Review filed by Thomas Nelson, Protestant.
May 21	Amended Petition for Judicial Review filed by Thomas Nelson, Protestant.
June 1	Certificate of Compliance sent to interested parties.
June 10	Response to Petition for Judicial Review filed in the Circuit Court for Baltimore County by Arnold Jablon, Esquire, on behalf of F & M Enterprises, Inc.
July 13	Transcript of testimony filed.
July 14	Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.

Sunny Cannington

Sunny Cannington, Legal Secretary
County Board of Appeals
The Jefferson Building, Suite 203
105 W. Chesapeake Ave.
Towson, Maryland 21204
410-887-3180

c: Fred M. Lauer Esquire
Thomas Nelson
Arnold Jablon, Esquire
Michael Narutowicz
James Narutowicz
Office of People's Counsel
William J. Wiseman III, Zoning Commissioner
Arnold "Pat" Keller, Director, Office of Planning
Timothy M. Kotroco, Director, Permits and Development Management
John Beverungen, County Attorney

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
THOMAS S. NELSON *

CIVIL ACTION
FOR JUDICIAL REVIEW OF THE OPINION OF * NO. : 03-C-09-005828
THE COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY *
JEFFERSON BUILDING – ROOM 203
105 W. CHESAPEAKE AVENUE *
TOWSON, MARYLAND 21204

*

IN THE MATTER OF :
F & M ENTERPRISES, INC. – LEGAL OWNERS *
FOR VARIANCE ON PROPERTY LOCATED
ON THE E/S MARINE AVENUE, 346' N OF *
C/L SPARROWS POINT ROAD
(2633 MARINE AVENUE, UNDERSIZED LOT 1)*
AND 445' N C/L SPARROWS POINT ROAD
(2623 MARINE AVENUE, UNDERSIZED LOT 2)*

15TH ELECTION DISTRICT *
7TH COUNCILMANIC DISTRICT

*

BOARD OF APPEALS CASE NO.: 05-239-A
AND 05-240-A *

RECEIVED AND FILED
2009 JUN -1 AM 11: 08
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

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

CERTIFICATE OF COMPLIANCE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the County Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely:

Fred M. Lauer Esquire
120 E. Baltimore Street
Suite 1808
Baltimore, MD 21202

Thomas Nelson
2617 N. Marine Avenue
Baltimore, MD 21219

Paul Lee
Century Engineering
32 West Road
Towson, MD 21204

Michael Narutowicz
1435 Autumn Leaf Road
Towson, MD 21286

James Narutowicz
902 E. Seminary Avenue
Towson, MD 21286

Arnold Jablon, Esquire
Venable, LLP
210 Allegheny Avenue
Towson, MD 21204

Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, MD 21204

William J. Wiseman III, Zoning Commissioner
The Jefferson Building, Suite 103
105 W. Chesapeake Avenue
Towson, MD 21204

Arnold "Pat" Keller, Director
Office of Planning
The Jefferson Building, Suite 101
105 W. Chesapeake Avenue
Towson, MD 21204

Timothy M. Kotroco, Director
Department of Permits and Development Management
Baltimore County Office Building
111 W. Chesapeake Avenue, Suite 105
Towson, MD 21204

John Beverungen, County Attorney
Office of Law
400 Washington Avenue
Towson, MD 21204

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

I HEREBY CERTIFY that on this 10th day of June, 2009, a copy of the foregoing Certificate of Compliance has been mailed to the individuals listed above.

Sunny Cannington

Sunny Cannington, Legal Secretary
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
410-887-3180

County Board of Appeals of Baltimore County

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

June 1, 2009

Arnold Jablon, Esquire
Venable, LLP
210 Allegheny Avenue
Towson, MD 21204

Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, MD 21204

RE: Petition for Judicial Review
Circuit Court Case No.: 03-C-09-005828
In the Matter of: F & M Enterprises, Inc.
Board of Appeals Case No.: 05-239-A and 05-240-A

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules that a Petition for Judicial Review was filed on May 21, 2009 by Thomas Nelson in the Circuit Court for Baltimore County from the decision of the Board of Appeals of Baltimore County rendered in the above matter. Any party wishing to oppose the petition must file a response with the Circuit Court for Baltimore County within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, **must be filed under Circuit Court Case No.: 03-C-09-5828.**

A copy of the Certificate of Notice has been enclosed for your convenience.

Very truly yours,

Sunny Cannington

Sunny Cannington
Legal Secretary

Duplicate Cover Letter

Enclosure

cc: Fred M. Lauer, Esquire
Paul Lee, Century Engineering
James Narutowicz
Arnold Keller, Director/Planning
John Beverungen, County Attorney
Thomas Nelson
Michael Narutowicz
William J. Wiseman, III/Zoning Commissioner
Timothy Kotroco, Director/PDM

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

N O T I C E O F R E C O R D

Case Number: 03-C-09-005828 AA
Administrative Agency : 05-240-A
Administrative Agency : 05-329-A
C I V I L

In the Matter of Thomas S Nelson

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 14th day of July, 2009.

Suzanne Mensh
Clerk of the Circuit Court, per _____

Date issued: 07/16/09

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY THE
105 W Chesapeake Avenue
Towson, MD 21204

RECEIVED
JUL 20 2009
BALTIMORE COUNTY
BOARD OF APPEALS

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-09-005828

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY THE
105 W Chesapeake Avenue
Towson, MD 21204

RECEIVED
JUL 20 2009
BALTIMORE COUNTY
BOARD OF APPEALS

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

RECEIVED
AUG 18 2009
BALTIMORE COUNTY
BOARD OF APPEALS

County Board Of Appeals Of Baltimore County The
105 W Chesapeake Avenue
Towson MD 21204

Assignment Date: 08/17/09

Case Title: In the Matter of Thomas S Nelson
Case No: 03-C-09-005828 AA

F + M Enterprises

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Joy M Keller at (410) 887-3233.
You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 09/01/09
2. All Motions (excluding Motions in Limine) are due by..... 10/09/09
3. TRIAL DATE is..... 11/18/09
   Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned; 1/2 HOUR ADMINISTRATIVE APPEAL

Honorable John Grason Turnbull II
Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponement must be submitted in writing with a copy to all counsel/parties involved. All requests for postponement must be approved by the Judge.

Settlement Conference (Room 507): All counsel and their clients MUST attend the settlement conference in person. All insurance representatives MUST attend this conference in person as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more information.)

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Civil Assignment Office at (410)-887-2660 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Voluntary Dismissal: Per Md. Rule 2-506, after an answer or motion for summary judgment is filed, a plaintiff may dismiss an action without leave of court by filing a stipulation of dismissal signed by all parties who have appeared in the action. The stipulation shall be filed with the Clerk's Office. Also, unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action.

Court Costs: All court costs MUST be paid on the date of the settlement conference or trial.

Camera Phones Prohibited: Pursuant to Md. Rule 16-109 b.3., **cameras and recording equipment are strictly prohibited** in courtrooms and adjacent hallways. This means that camera cell phones should not be brought with you on the day of your hearing to the Courthouse.

cc: Thomas S Nelson
cc: Arnold Jablon Esq
Issue Date 08/17/09

Baltimore County, Maryland
OFFICE OF PEOPLE'S COUNSEL
Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

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

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

July 1, 2008

RECEIVED
JUL 01 2008
BALTIMORE COUNTY
BOARD OF APPEALS

Edward W. Crizer, Jr., Chairman
County Board of Appeals
400 Washington Avenue, Room 49
Towson, MD 21204

Re: F&M Enterprises, Inc
Case Nos.: 05-239-A & 05-240-A & 07-275-A

Dear Mr. Crizer:

Upon review of Arnold Jablon, Esquire's letter to the Board of June 20, 2008, we offer the following observations. As noted by Mr. Jablon, the CBA did deliberate this matter and vote to deny our office's Motion for Reconsideration in 2006, but deferred issuance of a written opinion at his request. As the record shows, the issue involved the interpretation of BCZR § 1B02.3.C and specifically whether or not there is required a variance in order to develop the undersized lots in question.

In the meantime, on behalf of Petitioner F & M, as an alternative, and in the hope of avoiding further litigation in the present case, there was a filed a new petition for variances on the same lots in Case No. 07-275-A. It is my understanding that the CBA recently conducted a deliberation on this case and denied the variances. A written opinion will be forthcoming.

In light of the above, we understand Mr. Jablon's request for a written opinion in the initial cases. However, we note that two of the three Board members involved in these cases ---- Mr. Michael Mohler and Ms. Margaret Brassil Ph.D – are no longer on the Board. Only Lawrence Stahl remains from the original Board. This means that two new members must be appointed to the panel. See People's Counsel v. Country Ridge Shopping Center 144 Md. App. 580 (2002).

We continue to believe that our office's motion for reconsideration should have been granted. We ask that the two new Board members take an independent look at the reconsideration issue before issuing a final decision. In that connection, there should be a public deliberation by the new panel.

Thank you for your consideration.

Very truly yours,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S Demilio

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw

cc: Arnold Jablon, Esquire
Fred Lauer, Esquire
Thomas Nelson

County Board of Appeals of Baltimore County

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

June 4, 2009

Thomas Nelson
2617 N. Marine Avenue
Baltimore, MD 21219

Re: In the Matter of: F & M Enterprises, Inc.
Circuit Court Case No.: 03-C-09-005828
Board of Appeals Case No.: 05-239-A and 05-240-A

Dear Mr. Nelson:

This letter is to confirm our conversation today with regard to the transcripts for the above referenced case.

As discussed, and in accordance with the Maryland Rules, the Board of Appeals is required to submit the record of proceedings to the Circuit Court for Baltimore County within 60 days. You are responsible for the cost of the transcript of the record and the transcript must be paid for in time to transmit the same to the Circuit Court within the 60 day timeframe as stated in the Maryland Rules. Ms. Christine Leary will be typing the transcripts. She has been instructed to contact you by phone to provide you with the estimated costs, required deposit and the completion date.

Please direct all questions, payments, and inquiries related to this matter to Ms. Leary at the below contact information.

Very truly yours,

Theresa Shelton/kc

Theresa R. Shelton
Administrator

TRS/klc

cc.: Fred M. Lauer, Esquire
Arnold Jablon, Esquire
Office of People's Counsel

Typist: Christine Leary
Telephone Number: 443-622-4898
Mailing Address: 9529 Fox Farm Road, Baltimore, MD 21236

County Board of Appeals of Baltimore County

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

June 4, 2009

Christine Leary
9529 Fox Farm Road
Baltimore, MD 21236

Re: Transcripts

Dear Ms. Leary:

Pursuant to our conversation today, attached are copies of the tape recordings of the proceedings before the Board. Please contact Mr. Thomas Nelson with regard to payment for the transcripts in this matter.

Please be advised that the original transcripts are due to the Board by July 13, 2009 for filing with the file in the Circuit Court.

Mr. Nelson's home phone number is: 410-477-9861. Mr. Nelson's cell phone number is: 410-458-2050.

Should you have any problems or questions, please do not hesitate to contact me.

Very truly yours,

Sunny Cannington

Sunny Cannington
Legal Secretary

cc: Thomas Nelson
Fred Lauer, Esquire

County Board of Appeals of Baltimore County

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

June 4, 2009

Thomas Nelson
2617 N. Marine Avenue
Baltimore, MD 21219

Re: In the Matter of: F & M Enterprises, Inc.
Board of Appeals Case No.: 05-239-A and 05-240-A
Circuit Court Case No.: 03-C-09-005828

Dear Mr. Nelson:

This is to follow up our conversation and my message of June 2, 2009. I spoke with the typist on Tuesday, June 2, 2009. She estimated that the most it would cost for the transcript would be $1,260.00 and that is if every minute of each tape is used. Please be advised that the original transcript must be provided to the Board of Appeals no later than July 13, 2009 for filing in the Circuit Court. The typist must be paid in full in time for the typist to prepare the transcripts.

Please contact this office immediately upon your receipt of this letter to discuss if you will be using the typist I have spoken with or someone else.

If we have not heard from you by Wednesday, June 10, 2009, we will forward the tapes to the typist for transcription purposes. At that time you will need to contact her at the information listed below to discuss this matter.

Very truly yours,

Sunny Cannington

Sunny Cannington
Legal Secretary

cc: Fred M. Lauer, Esquire
Typist

Typist: Christine Leary
Telephone #: 443-622-4898

County Board of Appeals of Baltimore County

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

May 20, 2009

Thomas Nelson
2617 N. Marine Avenue
Baltimore, MD 21219

RE: *In the Matter of: F & M Enterprises, Inc*
Case No.: 05-239-A and 05-240-A

Dear Mr. Nelson:

As per our telephone conversation this date, enclosed please find a copy of the Opinion issued on April 7, 2006 by the County Board of Appeals of Baltimore County in the above subject matter.

Very truly yours,

Theresa R. Shelton
Administrator

trs

Enclosure: Opinion

c(w/Encl.): Fred M. Lauer Esquire

County Board of Appeals of Baltimore County

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

May 20, 2009

Thomas Nelson
2617 N. Marine Avenue
Baltimore, MD 21219

RE: *In the Matter of: F & M Enterprises, Inc*
Case No.: 05-239-A and 05-240-A

Dear Mr. Nelson:

As per our telephone conversation this date, enclosed please find a copy of the Opinion issued on April 7, 2006 by the County Board of Appeals of Baltimore County in the above subject matter.

Very truly yours,

Theresa R. Shelton

Theresa R. Shelton
Administrator

trs

Enclosure: Opinion

c(w/Encl.): Fred M. Lauer Esquire

2-426, 7

County Board of Appeals of Baltimore County

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

December 29, 2008

AMENDED AS TO YEAR FROM 2008 TO 2009

NOTICE OF DELIBERATION/MOTION FOR RECONSIDERATION

CASE #: 05-239-A — **IN THE MATTER OF: F & M ENTERPRISES, INC. – Legal Owners**
2623 Marine Avenue, Undersized Lot 1

and

CASE #: 05-240-A — **IN THE MATTER OF: F & M ENTERPRISES, INC. – Legal Owners**
2623 Marine Avenue, Undersized Lot 2
15th Election District; 7th Councilmanic District

Two Panel Members selected to replace Michael Mohler and Margaret Brassil Ph.D. who are no longer members of the Board. Public deliberation has been scheduled for the following date /time:

DATE AND TIME : **WEDNESDAY, FEBRUARY 25, 2009 at 9:00 a.m.**

LOCATION : Hearing Room #2, Jefferson Building
105 W. Chesapeake Avenue, Second Floor
(adjacent to Suite 203)

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

Theresa R. Shelton
Administrator

---

c: Counsel for Petitioner /Appellant : Arnold Jablon, Esquire
Petitioner /Appellant : F & M Enterprises, Inc.
Michael J. Narutowicz II
James A. Narutowicz, Jr.

Paul Lee /Century Engineering, Inc.

Protestant : Thomas Nelson

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

RECEIVED
DEC 31 2008
CENTURY ENGINEERING, INC.
10710 GILROY ROAD
HUNT VALLEY, MD 21031

FYI: 2-4-6

PC
2/26/09

County Board of Appeals of Baltimore County

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

December 24, 2008

NOTICE OF DELIBERATION/MOTION FOR RECONSIDERATION

CASE #: 05-239-A — IN THE MATTER OF: F & M ENTERPRISES, INC. – Legal Owners
2623 Marine Avenue, Undersized Lot 1

and

CASE #: 05-240-A — IN THE MATTER OF: F & M ENTERPRISES, INC. – Legal Owners
2623 Marine Avenue, Undersized Lot 2
15th Election District; 7th Councilmanic District

Two Panel Members selected to replace Michael Mohler and Margaret Brassil Ph.D. who are no longer members of the Board. Public deliberation has been scheduled for the following date /time:

DATE AND TIME : **WEDNESDAY, FEBRUARY 25, 2008 at 9:00 a.m.**

LOCATION : Hearing Room #2, Jefferson Building
105 W. Chesapeake Avenue, Second Floor
(adjacent to Suite 203)

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

Theresa R. Shelton
Administrator

c: Counsel for Petitioner /Appellant : Arnold Jablon, Esquire
Petitioner /Appellant : F & M Enterprises, Inc.
Michael J. Narutowicz II
James A. Narutowicz, Jr.

Paul Lee /Century Engineering, Inc.

Protestant : Thomas Nelson

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

RECEIVED
JAN 8 2009
CENTURY ENGINEERING, INC.
10710 GILROY ROAD
HUNT VALLEY, MD 21031

FYI: 2-4-6

Kathleen Bianco - Re: Date for Deliberation

From: <mikemohler1@comcast.net>
To: "Kathleen Bianco" <kbianco@co.ba.md.us>
Date: 5/31/2006 3:07 PM
Subject: Re: Date for Deliberation

no problem

--
Mike Mohler
Whalen Properties
410-746-6079

---------- Original message ----------
From: "Kathleen Bianco" <kbianco@co.ba.md.us>

> Mike:
>
> Would it be possible for you to be here the morning of Thursday, July 13, 2006
> to deliberate a Motion for Reconsideration in F&M Enterprises at 9:00 a.m.?
>
> Both Larry Stahl and Margie are scheduled for that date. After that time, the
> three of you are on vacation during various weeks, which would then push this
> deliberation into the Fall of 2006.
>
> I forwarded Pete Zimmerman's Motion for Reconsideration to the three of you on
> April 14, when it was filed by Pete. In addition, I now have a Motion
> supporting Pete's Motion filed by the Protestant, and also a Response to same
> filed by Venable.
>
> If you could possibly be here the morning of July 13th at 9 am. for this
> deliberation, you would not be obliged to stay for the next hearing as a Board
> is already scheduled for that.
>
> Can you do this?
>
> thanks
>
> kathi
>
> Kathleen C. Bianco, Administrator
> County Board of Appeals
> Room 49, Old Courthouse
> Towson, MD 21204
> 410-887-3180
> 410-887-3182 (FAX)
> kbianco@co.ba.md.us
>

TO: PATUXENT PUBLISHING COMPANY
Tuesday, December 28, 2004 Issue - Jeffersonian

Please forward billing to:
F & M Enterprises, Inc.
5200 Northpoint Blvd.
Baltimore, MD 21219

410-477-1696 ext. 2

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: 05-240-A
2623 Marine Avenue, Undersized Lot 2
E/side of Marine Ave. at the distance of 345 feet north from the centerline of Sparrows Point Rd.
15th Election District – 7th Councilmanic District
Legal Owners: F & M Enterprises, Inc., Michael Narutowicz, II, James Narutowicz, Jr.
Engineer: Paul Lee, Century Engineering

Variance to permit a minimum lot width of 50 feet in lieu of the required 55 feet and 25-foot front yard setback in lieu of the required front yard average of 30.75 feet and to approve an undersize lot.

Hearing: Tuesday, January 11, 2005 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

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.

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence
Phone: 410-887-3180 Fax: 410-887-3182

DATE: March 15, 2010

TO: Timothy Kotroco, Director
Permits & Development Management

FROM: Sunny Cannington, Legal Secretary
Board of Appeals

SUBJECT: CLOSED APPEAL CASE FILES/CASES DISMISSED

The following cases have been closed as of the above date and are being returned to your office.

Case No:	Case Name:
05-239-A & 05-240-A	F & M Enterprises, Inc.

cc: John Beverungen, County Attorney
Nancy C. West, Assistant County Attorney

VENABLE LLP

RECEIVED
JUN 20 2008
BALTIMORE COUNTY
BOARD OF APPEALS

ARNOLD JABLON
(410) 494-6298

aejablon@venable.com

20 June 2008

Ms. Kathleen C. Bianco
Administrator
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Ave.
Towson, Maryland 21204

Re: F & M Enterprises, Inc.
Case Nos. 05-239 A and o5-240A

Dear Ms. Bianco:

The above matters were decided by the Board of Appeals and a written decision rendered on April 7th, 2006. Subsequently, both the People's Counsel and the protestant, Mr. Thomas Nelson, filed Motions for Reconsideration pursuant to Rule 10 of the Board's Rules of Practice and Procedure.

The Board met in public deliberation and denied the motions. However, the Board at my request did not issue its written decision. At this time, I am now requesting that the Board issue its opinion on the motions.

I understand the filing of the motions for reconsideration stayed all further proceedings, including the time limitations and deadlines for the filing of a petition for judicial review. Upon the issuance of the opinion on the motions, and within 30 days of its date, an appeal then may be taken within 30 days.

Thank you for your consideration.

Sincerely,

Arnold Jablon

c: Peter M. Zimmerman, Esq.
Thomas Nelson
Fred Lauer, Esq

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

COPY

IN THE MATTER OF: F & M Enterprises, Inc.
2623 Marine Avenue
Lot #1 & Lot #2
Case No.: 05-239-A
and No.: 05-240-A

DATE : January 5, 2006

BOARD/PANEL Lawrence M. Stahl
Dr. Margaret Brassil
Mike Mohler

RECORDED BY: Linda B. Fliegel/Legal Secretary

PURPOSE: Petitions for Variance relief to allow each lot a width of 50 ' in lieu of 55' and a front yard set back of 25' in lieu of the 30.75'.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

The Board members discussed various issues including, but not limited to, the following:

- The properties are residential and are located in a commercial area.
- Zoning in area is mixed.
- The Board discussed and reviewed the applicable sections of the B.C.Z.R. with respect to under sized lots.
- The small lot table, § 1B02 of the B.C.Z.R., was discussed and there appeared to be nothing that fit this instance.
- Property was not considered to be unique.

DECISION BY BOARD MEMBERS:

FINAL DECISION: After a deliberation and review of the facts and law, the Board agreed unanimously that the lots do not require a variance.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place that date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted

Linda B. Fliegel

Linda B. Fliegel
County Board of Appeals

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: F & M Enterprises, Inc.
2623 Marine Avenue
Lot #1 & Lot #2
Case No.: 05-239-A
and No.: 05-240-A

DATE : July 13, 2006

BOARD/PANEL Lawrence M. Stahl
Dr. Margaret Brassil
Mike Mohler

RECORDED BY: Linda B. Fliegel/Legal Secretary

PURPOSE: To deliberation a Motion for Consideration submitted by People's Counsel.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

The Board members discussed various issues including, *but not limited to*, the following:

a.) Should People's Counsel be involved at this point and allowed to file a Motion for Reconsideration?

b.) Did the issues change to necessitate additional notice, or action, by the Petitioner?

c.) Are there any other procedural issues involved?

d.) Should there have been an additional notice, or, should this matter have been Remanded?

- Motion for Reconsideration, under Rule 10, is for matters where there is fraud, misrepresentation or, irregularity.
- Bill 50-50 explicitly addresses Motions for Reconsideration.
- Looking at the information that the Board had at the time it rendered its decision, there was no evidence of fraud, misrepresentation, or irregularity.
- If a party disagrees with the Board's decision, then they most take the next step and appeal the matter to the Circuit Court.
- If People's Counsel is allowed to enter any case, once it has already been heard, then each case could be an on going process.
- People's Counsel is the "watch dog" for the County and has a duty to perform. If People's Counsel had anticipated the out come of this hearing, they most likely would have participated.

- When People's Counsel made its initial decision not to get into the case, with that decision came risks. Does it foreclose them from entering the case at this time? Yes, and that is why they have the option to appeal this case to the Circuit Court.

DECISION BY BOARD MEMBERS:

FINAL DECISION: After a through deliberation and review of the facts, and law, the Board unanimously agreed to *DENY* the Motion for Reconsideration. The Board felt that there was no proof of fraud, mistake and/or irregularity on the part of the Board when rendering its decision.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place that date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted

Linda B. Fliegel

Linda B. Fliegel
County Board of Appeals

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: F & M ENTERPRISES, INC 05-239-A
05-240-A

DATE: February 25, 2009

BOARD/PANEL: Lawrence Stahl
Wendell Grier
Robert Witt

RECORDED BY: Sunny Cannington/Legal Secretary

PURPOSE: To deliberate the following:

1. Motion for Reconsideration filed by People's Counsel.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board discussed the history of this matter. This matter came before the Board in 2006. The Board at that time consisted of Mr. Stahl, Mr. Michael Mohler and Dr. Margaret Brassil. The Board held the hearings and public deliberation and issued their opinion in this matter. The Petitioner was represented by Arnold Jablon and the Protestant, Thomas Nelson, appeared pro se. At no time did People's Counsel get involved in this matter before the Board until after the Opinion was issued. People's Counsel waited until after this case had concluded to file a Motion for Reconsideration that was later joined by Protestant, Nelson.
- The Board deliberated the Motion for Reconsideration on July 13, 2006 wherein the Board at that time determined that People's Counsel did not have standing in this case to file the Motion for Reconsideration. Even if People's Counsel had been involved, there was no change in law, fraud, mistake or irregularity, therefore the Motion for Reconsideration was Denied at that time.
- After the deliberation on the Motion for Reconsideration, the Board was asked by Counsel, not to issue their opinion because an additional case was being filed with the Zoning Commissioner that could render the decision in this case Moot.
- Since this case was last heard, two of the previous Board members have left the Board. Counsel in this matter requested that the opinion now be issued. Law requires that a minimum of two Board members sign the opinion. Since only one Board member is left, this case was required to be re-deliberated.
- The Board reviewed the file, Motion for Reconsideration of People's Counsel and the Responses filed by Counsel. The Board also reviewed the Minutes from the previous deliberation and the decision of the Board at that time.

- The Board feels that the previous decision of the Board as indicated in the Minutes of July 13, 2006, was appropriate. Since there was no change in law, fraud, mistake or irregularity, the Motion for Reconsideration should be denied.
- While Mr. Nelson, Protestant, had standing to file the Motion for Reconsideration, which he joined, People's Counsel did not. People's Counsel was not involved in any way when this case appeared before the Board. The Board feels that if they allowed People's Counsel to have standing in this matter, this could gravely impact every case the Board has and could conceivably, extend the length of each case by months. The Board feels that given the fact that during a Motion for Reconsideration, the Board may allow additional hearings and testimony, to allow People's Counsel to participate after the conclusion of the case could provide for a re-trial of each case after it has been concluded.

DECISION BY BOARD MEMBERS: The Board finds that People's Counsel did not have standing in this case to file a Motion for Reconsideration. However, for the sake of argument, if People's Counsel did have standing no change in law, fraud, mistake or irregularity was cited in the Motion for Reconsideration and therefore the Motion fails.

FINAL DECISION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY the Motion for Reconsideration and notes that People's Counsel did not have standing to file the Motion.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted,

Sunny Cannington

Sunny Cannington

PLEASE PRINT CLEARLY

CASE NAME 2623 MARINE AVE
CASE NUMBER 05-239 A
DATE 1-11-05 9AM

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Paul Lee	32 West Rd	TOWSON, MD 21204	
MICHAEL NARUTOWICZ	1435 Autumn Leaf Rd.	TOWSON MD. 21286	
JAMES NARUTOWICZ	902 E. Seminary Ave.	TOWSON MD. 21286	

PLEASE PRINT CLEARLY

CASE NAME LOT 1 2623
CASE NUMBER 05-239-A
DATE 01/11/05

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E-MAIL
THOMAS S. NELSON	2617 N. MARINE	BALTO., MD. 21219	TNELSON2@CCBC MD.EDU

Department of Permits and Development Management

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

Baltimore County

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

March 15, 2005

Paul Lee, P.E.
Century Engineering, Inc.
32 West Road
Towson, MD 21204

RECEIVED
MAR 18 2005
BALTIMORE COUNTY
BOARD OF APPEALS

Dear Mr. Lee:

RE: Case: 05-240-A, 2623 Marine Avenue, Lot 2

Please be advised that we received an appeal of the above-referenced case on behalf of the Petitioners, filed in this office on February 17, 2005. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to call the Board at 410-887-3180.

Sincerely,

Timothy Kotroco

Timothy Kotroco
Director

TK:klm

c: William Wiseman, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Michael Narutowicz, 1435 Autumn Leaf Road, Towson 21286
James Narutowicz, 902 E. Seminary Avenue, Towson 21286
Thomas S. Nelson, 2617 N. Marine Avenue, Baltimore 21219
Arnold Jablon, Venable, 210 Allegheny Avenue, Towson 21204

ecycled Paper

PLEASE PRINT CLEARLY

CASE NAME LOT 2 2623
CASE NUMBER 05-240-A
DATE 01/11/05

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
THOMAS S. NELSON	2617 N. MARINE AVE.	BALTO. MD. 21219	TNELSON2@CCBCMD.EDU

PLEASE PRINT CLEARLY

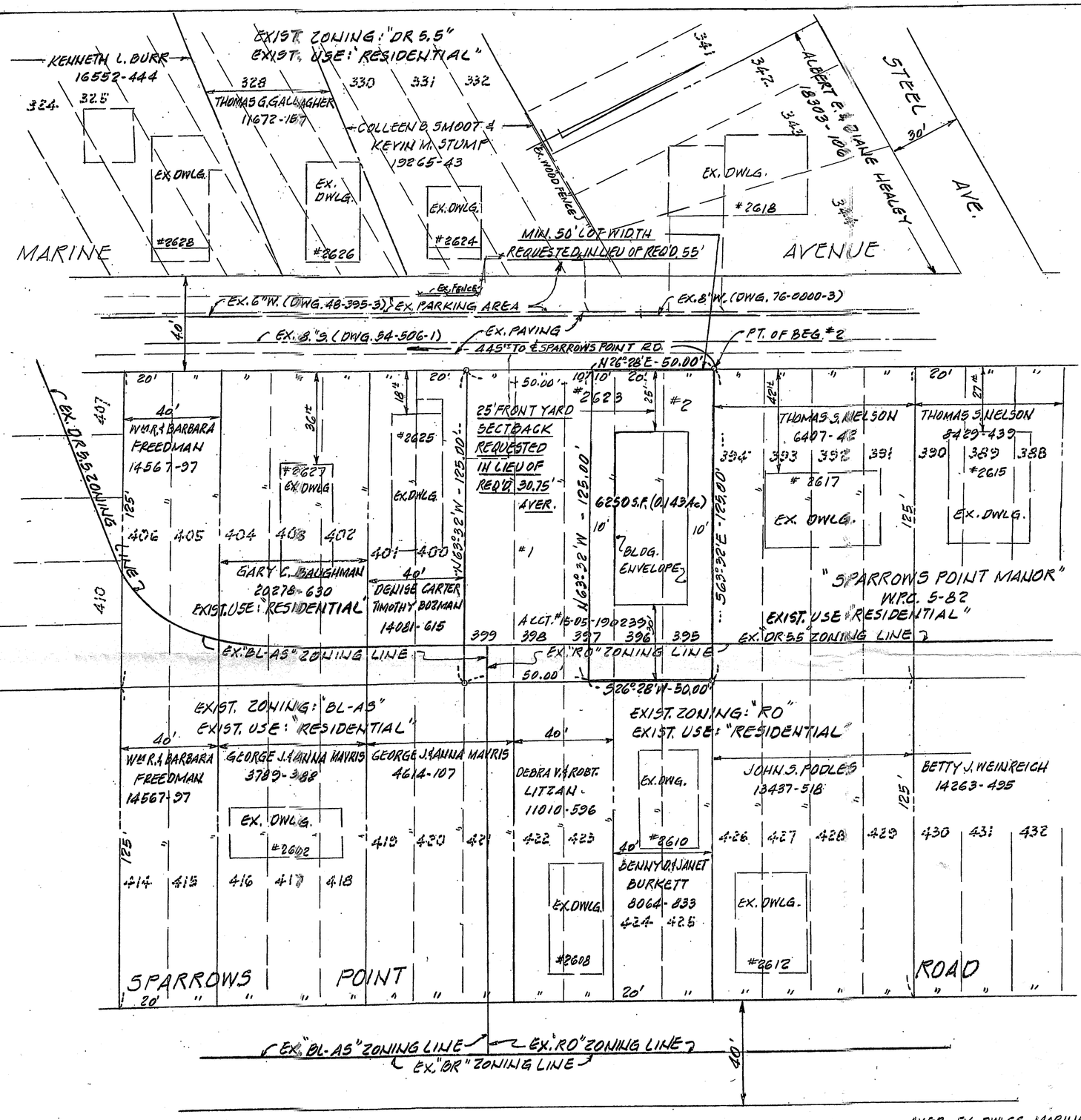
CASE NAME 2623 MARINE AVE
CASE NUMBER 05-240 A
DATE 1-11-05 10A.M

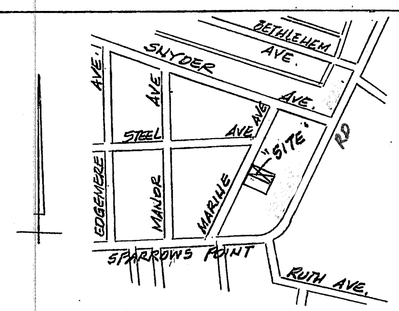
PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Paul Lee	32 WEST RD	TOWSON, MD 21204	
Michael Nartowicz	1435 Autumn Leaf RL	Towson MD. 21286	
James Nartowicz	902 E. Seminary Ave.	Towson MD. 21286	

3

EXHIBITS





LOCATION PLAN
SCALE: 1" = 500'

GENERAL NOTES:

1. AREA OF PROPERTY = 12500 S.F. (0.287Ac.)
2. EXISTING ZONING OF PROPERTY = "DR 5.5 & BL-AS," "RO"
3. EXISTING USE OF PROPERTY = "VACANT"
4. PROPOSED ZONING OF PROPERTY = "DR 5.5 & BL-AS," "RO"
5. PROPOSED USE OF PROPERTY = "RESIDENTIAL"
6. PROPERTY RECORDED AS LOTS 394 THRU 399 (5 - 20' LOTS = 100') ON PLAT OF "SPARROWS POINT MANOR" IN PLAT BOOK W.P.C. # 5-82
7. PROPERTY SERVED BY PUBLIC SEWER & WATER
8. OWNER IS REQUESTING A LIMITED EXEMPTION FOR A LOT LINE ADJUSTMENT TO MOVE LOT LINE OF LOT 396 & 397 - 10' INTO LOT 397 TO CREATE 2 - 50' LOTS. REQUEST BEING SUBMITTED TO THE DRC.
9. PETITIONER REQUESTING A VARIANCE TO SECTIONS 1B02.3.C.1, 303.1 AND 304 OF THE BCZR TO PERMIT A MIN. LOT WIDTH OF 50' IN LIEU OF THE REQ'D. 55' AND A 25' FRONT YARD SETBACK IN LIEU OF THE REQ'D. AVERAGE SETBACK OF 30.75' AND TO APPROVE AN UNDERSIZED LOT PERSUANT TO SECT. 304 WITH ANY OTHER VARIANCES AS DEEMED NECESSARY BY THE ZONING COMMISSIONER.
10. PROPERTY LOCATED ON BCMD "5E6H", SCALE: 1" = 200'
11. PROPERTY HAS NO ZONING HISTORY.
12. A/CCT. #15-05-190239 - DEED: 5594-661
13. PROPERTY NOT LOCATED IN CRITICAL AREA

OWNER:
F & M ENTERPRISES, INC.
5200 NORTHPOINT BLVD.
BALTIMORE, MD. 21219

AVER. EX. DWLGS. - MARINE AVE.

#2615	- F.Y.	27'
#2617	-	42'
#2625	-	18'
#2627	-	36'
TOTAL		123'

AVER. F.Y. = 30.75'

UNDERSIZED LOT #2

PLAT TO ACCOMPANY PETITION

FOR

VARIANCES

#2623 MARINE AVENUE

(LOTS 395, 396 & PART OF 397)

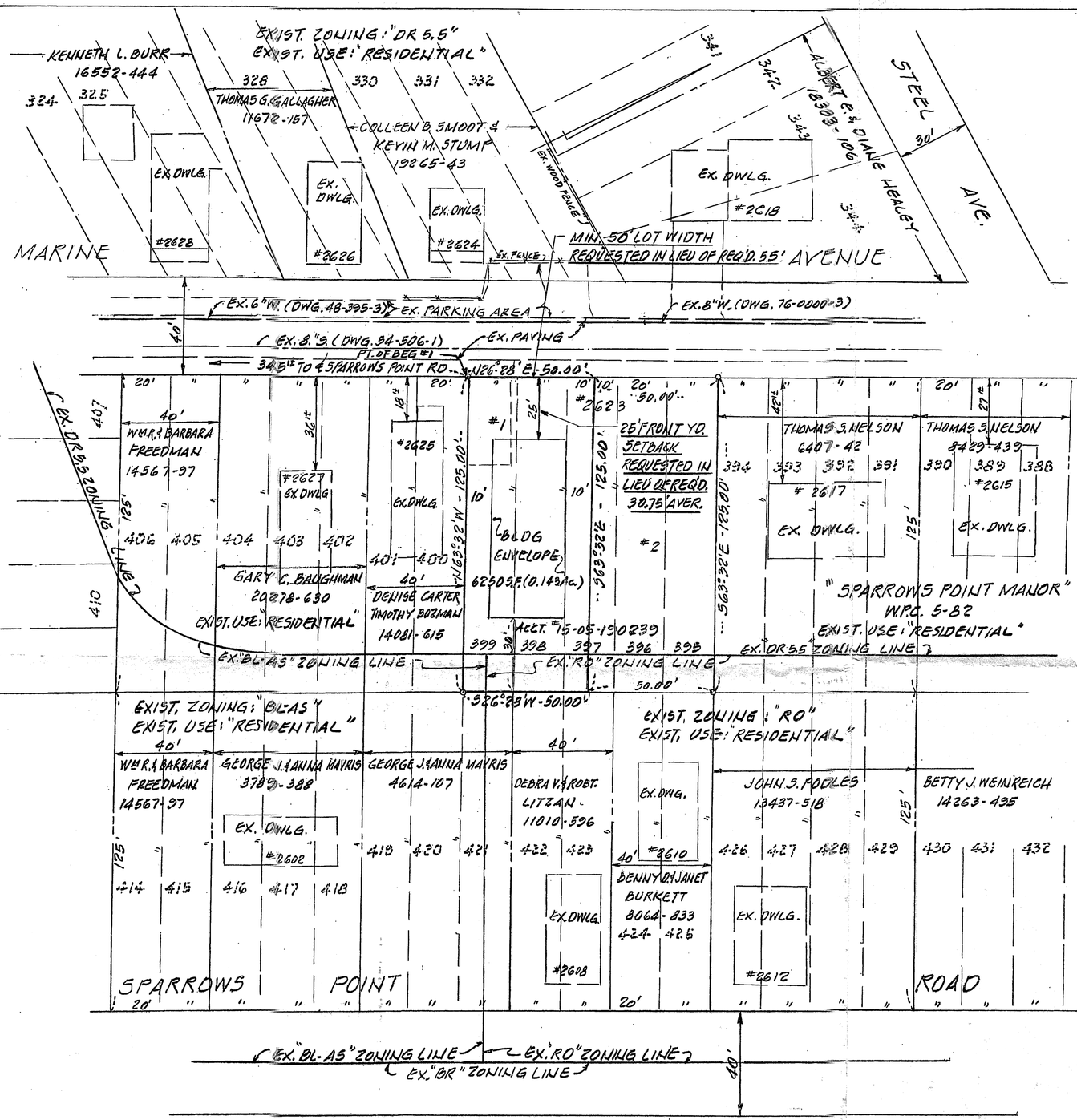
ELECT. DIST. 15 C7 — BALTIMORE CO., MD.

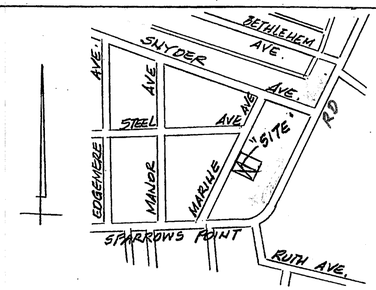
SCALE: 1" = 30' — OCT. 29, 2004

2/10 Rev #1

ENGINEER: CENTURY ENGINEERING, INC.
32 WEST ROAD
TOWSON, MARYLAND 21204
(410) 823-8070

STATE OF MARYLAND — PAUL LEE — 4047 — PROFESSIONAL ENGINEER





LOCATION PLAN
SCALE: 1" = 500'

GENERAL NOTES:

1. AREA OF PROPERTY = 12500 S.F. (0.287 Ac.)
2. EXISTING ZONING OF PROPERTY = "DR 5.5 & BL-AS," "RO"
3. EXISTING USE OF PROPERTY = "VACANT"
4. PROPOSED ZONING OF PROPERTY = "DR 5.5 & BL-AS," "RO"
5. PROPOSED USE OF PROPERTY = "RESIDENTIAL"
6. PROPERTY RECORDED AS LOTS 394 THRU 399 (5 - 20' LOTS = 100') ON PLAT OF "SPARROWS POINT MANOR" IN PLAT BOOK W.P.C. # 5-82
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11. PROPERTY HAS NO ZONING HISTORY.
12. ACCT. # 15-05-190239 - DEED: 5594-661
13. PROPERTY NOT LOCATED IN CRITICAL AREA

OWNER:
F & M ENTERPRISES, INC.
5200 NORTHPOINT BLVD.
BALTIMORE, MD. 21219

AVER. EX. DWLGS. MARINE AVE.

# 2615	- F.Y.	27'
# 2617	-	42'
# 2625	-	18'
# 2627	-	36'
TOTAL		123'

AVER. F.Y. = 30.75'

UNDERSIZED LOT # 1
PLAT TO ACCOMPANY PETITION
FOR
VARIANCES
2623 MARINE AVENUE
(LOTS 399, 398 & PART OF 397)

ELECT. DIST. 15 C 7 BALTIMORE CO., MD.
SCALE: 1" = 30' OCT. 26, 2004

Rec'd 11/

239

ENGINEER: CENTURY ENGINEERING, INC.
312 WEST ROAD
TOWSON, MARYLAND 21204
(410) 823-8070

STATE OF MARYLAND PAUL LEE HUBER 4047 PROFESSIONAL ENGINEER

W.P.C. № 5 ~ 82

S 70°54'E - 522.46'

Sassafras Tree

2' Reserved

N-71°10'W

N-71°10'W

Pipe

Pipe

S 26°21'E 1245'

N-70°39'W - 284.5

Pipe

SNYDER AVENUE

SNYDER AVENUE

N-1°04'W

N-1°04'W

N-1°04'W - 1007.2

STEEL AVENUE

N 88°56E

AVENUE

MARINE ROAD

N 26°28E

N 26°28E

EDGEMERE MANOR

POINT

SPARROWS

N-87°47'E

N-87°47'E 130'

Stake

Post

130'

N-1°04'W-330

SUBJECT SITE

N 15°34E

N 86°02 E

Pet. #2

SPARROWS POINT MANOR

SUBDIVIDED BY

KEATING-REALTY-CO.

12 EAST LEXINGTON ST. BALTO. MD

SURVEY & PLAT BY

— J-SPENCE-HOWARD —

Civil & Consulting Engr. Baltimore-Md.

Scale-100'=1inch ~ April, 1921.

Book #134 - File - 424

ZONING MAP "SEE H"
SCALE: 1" = 200'

1.85" = 110.88' Pet 3B 0.021 mi. = 110.88 ft.

Protestants

1 a-c

2 a-d

photographs

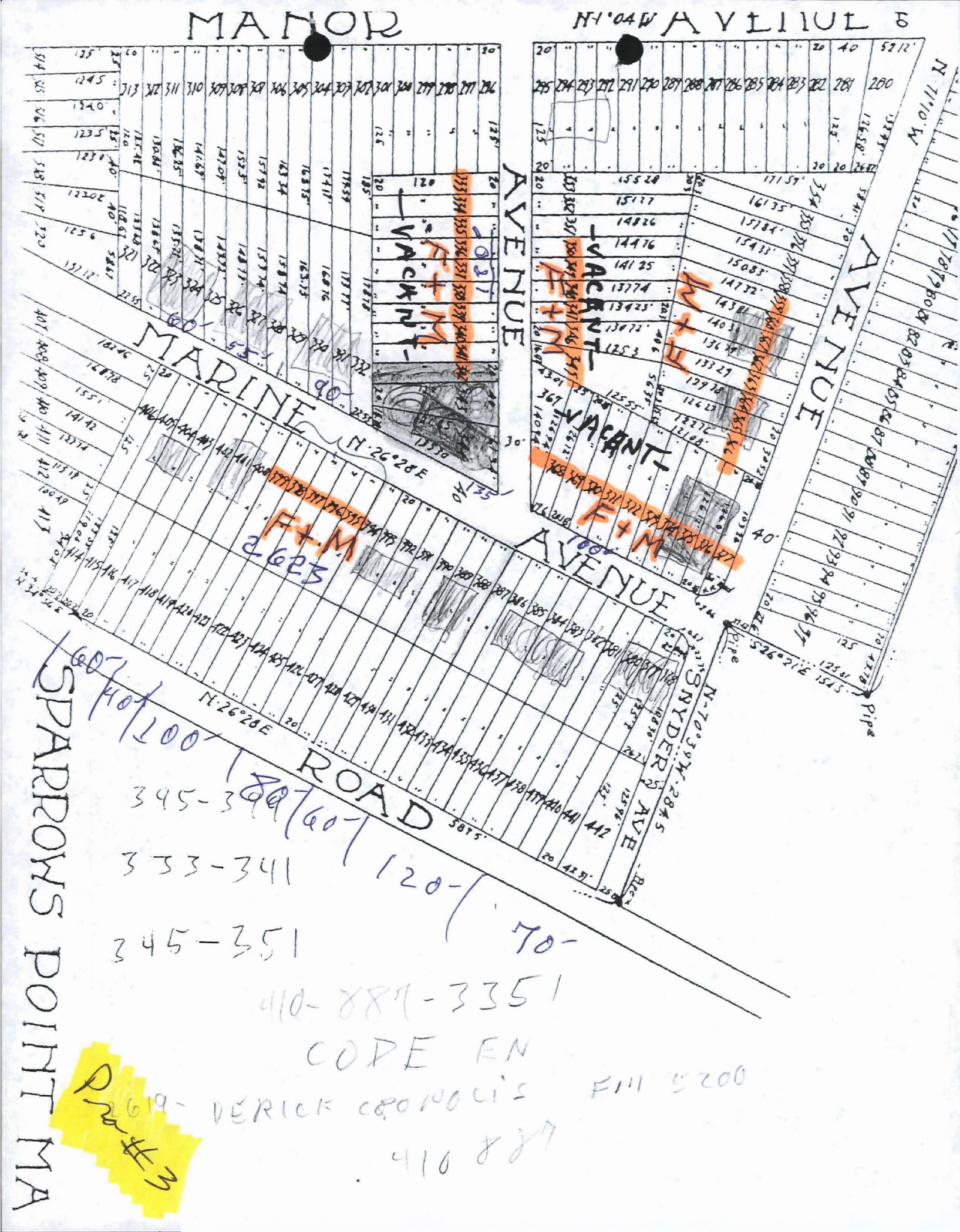
J & M Enterprises
05-239-A
2623 Maine Ave.

bbb2445, fktmp325_0001

01/10/05

bbb2445, fktmf338_0005

01/10/05


MANOR
AVENUE
MARINE
AVENUE
ROAD
SPARROWS POINT MA
VACANT
F+M
F+M
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VACANT
VACANT
F+M
F+M
2625
N 26° 28 E
N 26° 28 E
N 70° 39 W 284.5
S 26° 21 E
N 11° 04 W
AVENUE
60'
90'
100'
120'
70'
60'
40'
60'
100'
80'
60'
345-351
333-341
345-351
410-887-3351
CODE EN
2619- VERICK COUNCIL'S
FILL 5200
410 887
Pin #3

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

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New Search

Page 1 of 3

Name	Account	Street	OWN OCC	Map	Parcel
BALTIMORE COUNTY	11 2200018078	SNYDER LA	N	72	
BALTIMORE COUNTY	11 2000004683	SNYDER LA	N	72	8
BALTIMORE COUNTY	11 1800011461	SNYDER LA	N	72	855
BEDNAREK RICHARD	12 1211067230	SNYDER AVE	N	103	513
CENTER SYSTEMS AS	15 1512002733	SNYDER AVE	N	111	135
CHRISTIAN G WILD	11 2000005004	SNYDER LA	N	72	1189
DELVECCHIO STEPHE	12 1219078180	SNYDER AVE	N	103	513
F & M ENTERPRISES	15 1505190200	SNYDER AVE	N	111	135
F & M ENTERPRISES	15 1505190210	SNYDER AVE	N	111	135
F & M ENTERPRISES	15 1505190212	SNYDER AVE	N	111	135
F & M ENTERPRISES	15 1505190215	SNYDER AVE	N	111	135
F & M ENTERPRISES	15 1505190221	SNYDER AVE	N	111	135
F & M ENTERPRISES	15 1505190226	SNYDER AVE	N	111	135
F & M ENTERPRISES	15 1505190227	SNYDER AVE	N	111	135
F & M ENTERPRISES	15 1505190228	SNYDER AVE	N	111	135
F & M ENTERPRISES	15 1505190235	SNYDER AVE	N	111	135
F & M ENTERPRISES	15 1505190236	SNYDER AVE	N	111	135
HAGEL JOSEPH M	12 1208001722	SNYDER AVE	N	103	513
HAGEL JOSEPH M	12 1600010065	SNYDER AVE	N	103	513
HENKIN JEROME DAV	12 1218010891	SNYDER AVE	N	103	513
HOFFMAN VERNON S	15 1503001590	SNYDER AVE	N	111	135
NOWAKOWSKI STEPHE	11 1120055741	SNYDER AVE	N	72	380
RYCHTAR LEONA M	15 1502851271	SNYDER AVE	N	111	135
SEARFOSS JOHN WJR	15 1506570385	SNYDER AVE	N	111	66
SMITH DENISE	12 1211077760	SNYDER AVE	N	103	513
WELSH CONSOLIDATE	15 1523155380	SNYDER AVE	N	111	135
WELSH CONSOLIDATE	15 1523155381	SNYDER AVE	N	111	135
YEAGER CHARLES WJ	11 1125015026	SNYDER AVE	N	72	710
COOPER JOHN J	12 1203052510	1801 SNYDER AVE	N	103	513
MOSS JAMES S	12 1211069150	1803 SNYDER AVE	H	103	513
DEICKMAN KATHY A	12 1223054930	1804 SNYDER AVE	H	103	513
DEVENNY DEBORAH C	12 1202025510	1805 SNYDER AVE	H	103	513
ROSSO ROBERT E	12 1219027670	1806 SNYDER AVE	H	103	513

Pro #4

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

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New Search

Page 1 of 1

Name	Account	Street	OWN OCC	Map	Parcel
CIMILDORA HENRY F	15 1504001661	EDGEMERE AVE	N	111	135
F & M ENTERPRISES	15 1505190230	EDGEMERE AVE	N	111	135
F & M ENTERPRISES	15 1518870181	EDGEMERE AVE	N	111	135
MIDWAY LUMBER CO	15 1513554240	EDGEMERE AVE	N	111	135
WHITE RONALD KENN	15 1523350241	EDGEMERE AVE	N	111	135
BYRD CHRISTOPHER	15 1507581550	2601 EDGEMERE AVE	H	111	135
DENTON ROBERT O	15 1504200330	2602 EDGEMERE AVE	H	111	135
WHITE RONALD KENN	15 1523350240	2604 EDGEMERE AVE	H	111	135
JUDD DAVID W	15 2400002437	2605 EDGEMERE AVE	H	111	135
CIMILDORA HENRY F	15 1504001660	2607 EDGEMERE AVE	N	111	135
CIMILDORA HENRY F	15 1507583070	2609 EDGEMERE AVE	H	111	135
F & M ENTERPRISES	15 1505190224	2611 EDGEMERE AVE	N	111	135
LOCKARD CHARLES G	15 1520300223	2615 EDGEMERE RD	H	111	135
PAUL ALBERT J	15 1513752010	2617 EDGEMERE AVE	D	111	135
F & M ENTERPRISES	15 1505190231	2619 EDGEMERE AVE	N	111	135
DAWSON KEITH LEE	15 1504000950	2622 EDGEMERE AVE	H	111	135
PORTER SHIRLEY D	15 1526400571	2624 EDGEMERE AVE	H	111	135
SCHOTT ANITA JANE	15 2000006309	2625 EDGEMERE AVE	H	111	135
F & M ENTERPRISES	15 1518870180	2626 EDGEMERE AVE	N	111	135
F & M ENTERPRISES	15 1518870182	2626 EDGEMERE AVE	N	111	135
SCHOTT THEODORE R	15 2000006310	2627 EDGEMERE AVE	H	111	135
BASKETTE ROBERT F	15 1502006910	2629 EDGEMERE AVE	H	111	135
MEREDITH NORMAN D	15 2200012497	2630 EDGEMERE AVE	H	111	135
CLARK RONALD R2ND	15 1501330102	2631 EDGEMERE AVE	N	111	135
CLARK RONALD R2ND	15 1501330103	2631 EDGEMERE AVE	N	111	135
CLARK RONALD R2ND	15 1501330104	2631 EDGEMERE AVE	N	111	135
SIEGERT RICHARD D	15 1507150840	2632 EDGEMERE AVE	H	111	135
PARKER CHRISTINE	15 1516000331	2634 EDGEMERE AVE	H	111	135
MARTIN LEO ANTHON	15 1513202840	2636 EDGEMERE AVE	D	111	135

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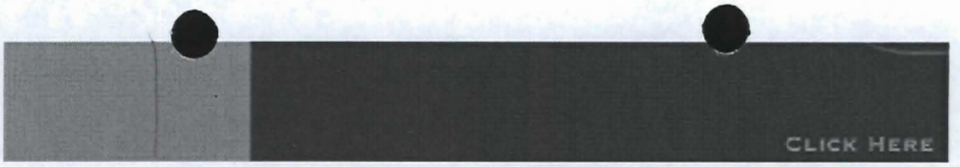
Name	Account	Street	OWN OCC	Map	Parcel
AKERS RUTH E	15 1700003526	MARINE AVE	N	111	378
EDGEMERE FREE MET	15 1900008806	MARINE AVE	N	111	423
F & M ENTERPRISES	15 1505190201	MARINE AVE	N	111	135
F & M ENTERPRISES	15 1505190202	MARINE AVE	N	111	135
F & M ENTERPRISES	15 1505190205	MARINE AVE	N	111	135
FREEDMAN WILLIAM	15 1505190217	MARINE AVE	N	111	135
GALLAGHER THOMAS	15 1514100711	MARINE AVE	N	111	135
SEARFOSS JOHN WJR	15 1506570382	MARINE AVE	N	111	135
SMOOT COLLEEN B	15 1515770051	MARINE AVE	N	111	135
JUDD DAVID W	15 1501100010	2503 MARINE AVE	N	111	66
SEARFOSS JOHN WJR	15 1506570380	2509 MARINE AVE	N	111	66
EDGEMERE FREE MET	15 1523154050	2510 MARINE AVE	N	111	58
SEARFOSS JOHN WJR	15 1506572502	2511 MARINE AVE	N	111	66
JACOBS HELEN	15 1519320090	2513 MARINE AVE	N	111	66
EDGEMERE FREE MET	15 1519322070	2518 MARINE AVE	N	111	67
SHKOR JOHN THOMAS	15 1519321732	2519 MARINE AVE	N	111	66
SHKOR WILLIAMJR	15 1519321731	2521 MARINE AVE	N	111	66
WARLICK JOEY NSR	15 1505190237	2601 MARINE AVE	N	111	135
WHITLOCK LAWRENCE	15 1505190238	2611 MARINE AVE	H	111	135
NELSON THOMAS STE	15 1506000860	2615 N MARINE AVE	N	111	135
NELSON THOMAS STE	15 1600014886	2617 N MARINE AVE	H	111	135
HEALEY ALBERT E3R	15 1513201801	2618 N MARINE AVE	H	111	135
F & M ENTERPRISES	15 1505190239	2623 N MARINE AVE	N	111	135
SMOOT COLLEEN B	15 1515770050	2624 N MARINE AVE	H	111	135
CARTER DENISE	15 1506450780	2625 N MARINE AVE	H	111	135
GALLAGHER THOMAS	15 1514100710	2626 N MARINE AVE	H	111	135
BAUGHMAN GARY C	15 1502651080	2627 N MARINE AVE	H	111	135
BURR KENNETH L	15 1519071501	2628 N MARINE AVE	N	111	135
BURR KENNETH L	15 1900002068	2628 MARINE AVE	H	111	135



Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
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Name	Account	Street	OWN OCC	Map	Parcel
F & M ENTERPRISES	15 1505190223	STEEL AVE	N	111	135
F & M ENTERPRISES	15 1505190232	STEEL AVE	N	111	135
F & M ENTERPRISES	15 1505190233	STEEL AVE	N	111	135
F & M ENTERPRISES	15 1505190234	STEEL AVE	N	111	135
GLAD BARBARA DONN	15 1513201800	2512 STEEL AVE	H	111	135

Maryland Department of Assessments and Taxation
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Name	Account	Street	OWN OCC	Map	Parcel
ABGLO ASSOCIATES	15 1501020220	NORTH POINT BLVD	N	96	227
ACME ENTERPRISES	15 1600010328	NORTH POINT RD	N	104	453
ALBERT RICHARD AN	15 1507581231	NORTH POINT BLVD	N	97	1138
APPLE O DEVELOPME	15 2100008537	NORTH POINT BLVD	N	104	565
BAKLAYAN GARBIS	12 1214094991	NORTH POINT RD	N	103	438
BALTIMORE COUNTY	15 1800014229	NORTH POINT BLVD	N	96	
BALTIMORE COUNTY	15 1800014230	NORTH POINT BLVD	N	96	
BALTIMORE COUNTY	15 1513751035	NORTH POINT BLVD	N	96	29
BALTIMORE COUNTY	15 1600000310	NORTH POINT BLVD	N	96	29
BALTIMORE COUNTY	15 1502190208	NORTH POINT RD	N	96	301
BALTIMORE COUNTY	15 1800014226	NORTH POINT BLVD	N	96	323
BALTIMORE COUNTY	15 1600006102	NORTH POINT RD	N	96	409
BALTIMORE COUNTY	15 1700007069	NORTH POINT RD	N	103	583
BALTIMORE COUNTY	15 1700007439	NORTH POINT BLVD	N	104	207
BALTIMORE COUNTY	15 1700007440	NORTH POINT BLVD	N	104	207
BALTIMORE COUNTY	15 1502190233	NORTH POINT RD	N	104	221
BALTIMORE COUNTY	15 1502190300	NORTH POINT BLVD	N	104	224
BALTIMORE COUNTY	15 1507000791	NORTH POINT BLVD	N	104	290
BALTIMORE COUNTY	15 1502190991	NORTH POINT BLVD	N	111	42
BALTIMORE COUNTY	15 1502190206	NORTH POINT RD	N	111	141
BALTIMORE COUNTY	15 2200027670	NORTH POINT RD	N	111	141
BALTIMORE COUNTY	15 1700005968	NORTH POINT RD	N	111	145
BALTIMORE COUNTY	15 1800012028	NORTH POINT RD	N	115	32
BALTIMORE COUNTY	15 1502574047	NORTH POINT RD	N	115	46
BALTIMORE GAS & E	15 1502001247	NORTH POINT RD	N		
BALTIMORE GAS & E	12 1202003342	NORTH POINT RD	N	96	
BALTIMORE GAS & E	15 1502001314	NORTH POINT BLVD	N	104	225
BALTIMORE GAS & E	15 1502001268	NORTH POINT RD	N	111	418
BARBER MARLENE RU	14 1600012940	NORTH POINT RD	N	89	637
BARCIKOWSKI JOSEP	15 1523500862	NORTH POINT RD	N	104	362
BENA PATRICIA	15 1512741052	NORTH POINT RD	N	111	98
BK REALTY CO	15 1900008084	NORTH POINT BLVD	N	96	261
BOARD OF EDUCATIO	15 1502574054	NORTH POINT RD	N	111	

Click here for a plain text ADA compliant screen.

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

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Ground Rent

Account Identifier: **District -** 15 **Account Number -** 1505190203

Owner Information

Owner Name: F & M ENTERPRISES INC

Use: COMMERCIAL
Principal Residence: NO

Mailing Address: 5200 N POINT BLVD
BALTIMORE MD 21219-1703

Deed Reference: 1) / 5287/ 618
2)

Location & Structure Information

Premises Address
2600 SNYDER AVE

Legal Description
LT 40-41
1127 W MARINE AVENUE
SPARROWS POINT MANOR

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
111	10	135					40	82	Plat Ref: 5/ 82

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		17,859.00 SF	06

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2004	As Of 07/01/2005
Land:	55,300	53,000		
Improvements:	14,400	16,100		
Total:	69,700	69,100	69,100	69,100
Preferential Land:	0	0	0	0

Transfer Information

Seller:	EDGEMERE HOLDING CO	**Date:**	08/01/1972	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/ 5287/ 618	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2004	07/01/2005
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

4

PETITIONER'S EXHIBITS

05-239-A &
05-240-A

Verified 11-22-05

Petitioner Exhibits F&M

Verified

Ex 1 — Plat for Variance

Ex 2 — Site Plan

Ex 3 — Photos

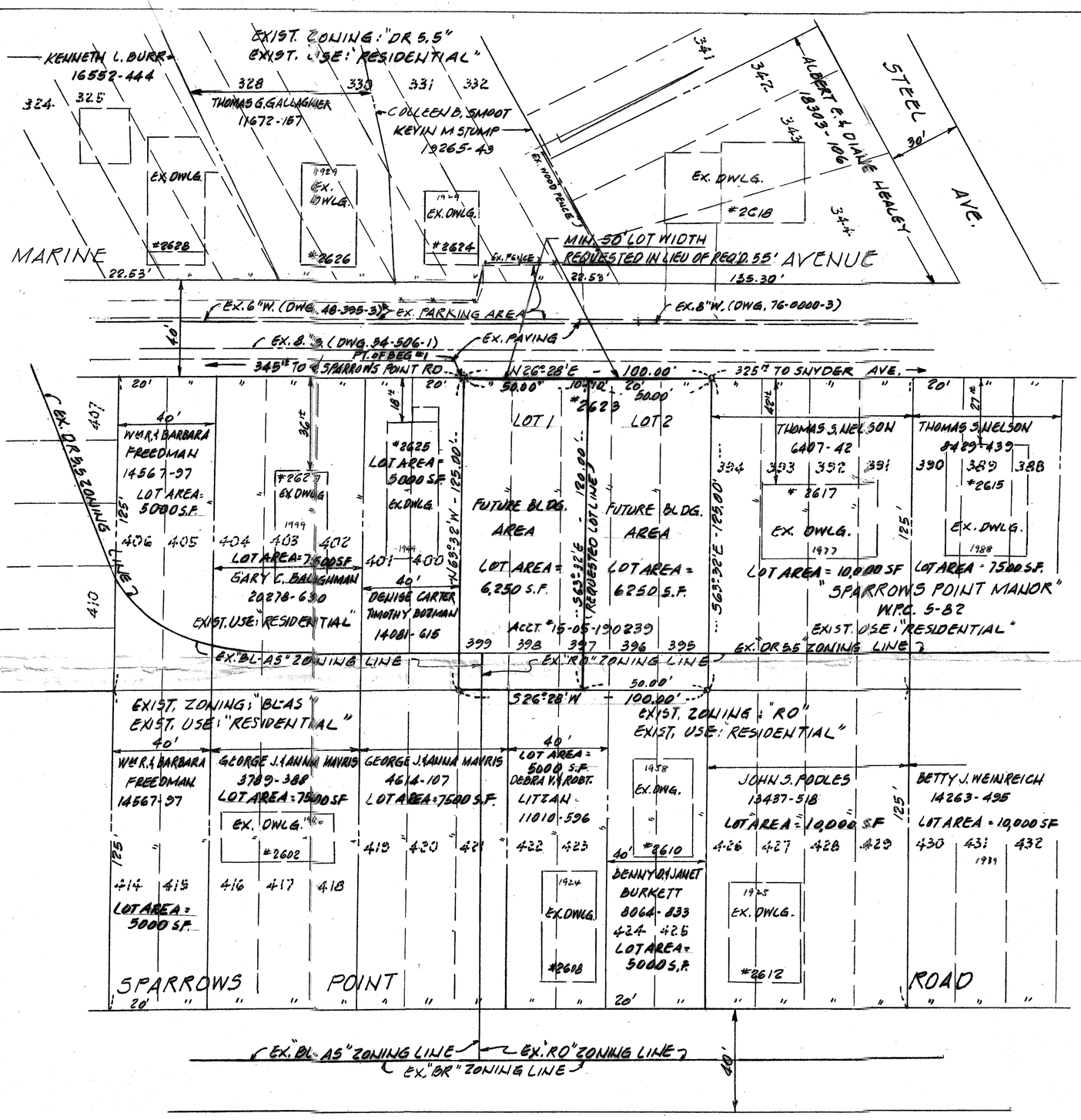
A - AI

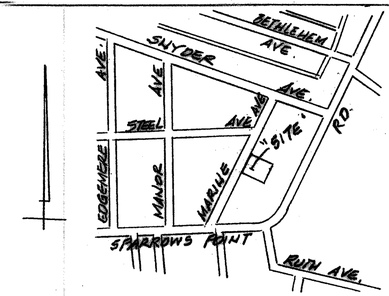
4A — Petitions from
4B — Neighborhood in Support

Pet 5 — Record Plat Spanous Pt. Manor

Pet 6 — Official Zoning Map

Pet 7 — Plat - marked with lot sizes





LOCATION PLAN
SCALE: 1" = 500'

GENERAL NOTES:

1. AREA OF PROPERTY = 12500 S.F. (0.287 Ac.)
2. EXISTING ZONING OF PROPERTY = "DR 5.5 & BL-AS", "RO"
3. EXISTING USE OF PROPERTY = "VACANT"
4. PROPOSED ZONING OF PROPERTY = "DR 5.5 & BL-AS" "RO"
5. PROPOSED USE OF PROPERTY = "RESIDENTIAL"
6. PROPERTY RECORDED AS LOTS 395 THRU 399 (5 - 20' LOTS = 100') ON PLAT OF "SPARROWS POINT MANOR" IN PLAT BOOK W.P.C. # 5-82
7. PROPERTY SERVED BY PUBLIC SEWER & WATER
8. OWNER IS REQUESTING A LIMITED EXEMPTION FOR A LOT LINE ADJUSTMENT TO MOVE LOT LINE OF LOT 396 & 397 - 10' IN INTO LOT 397 TO CREATE 2 - 50' LOTS. REQUEST BEING SUBMITTED TO THE DRC.
9. PETITIONER REQUESTING A VARIANCE TO SECTION 1B02.3.C.1, OF THE BCZR TO PERMIT A MIN. LOT WITH OF 50' IN LIEU OF THE REQUIRED 55' (A VAR. OF 5').
10. PROPERTY IS LOCATED ON BCMD "5EGH", SCALE: 1" = 200'
11. PROPERTY HAS NO ZONING HISTORY
12. PROPERTY ACCT. # 15-05-190239 - DEED: 5594-661
13. PROPERTY NOT LOCATED IN CRITICAL AREA.

OWNER:
F & M ENTERPRISES, INC.
5200 NORTHPOINT BLVD.
BALTIMORE, MD. 21219

AVER. EX. DWLGS - MARINE AVE.
2615 - F.Y. 27'
2617 - 42'
2625 - 18'
2627 - 36'
TOTAL 123'
AVER. F.Y. = 30.75'

PLAT TO ACCOMPANY PETITION
FOR
VARIANCE
2623 MARINE AVENUE
(LOTS 395 - 399)

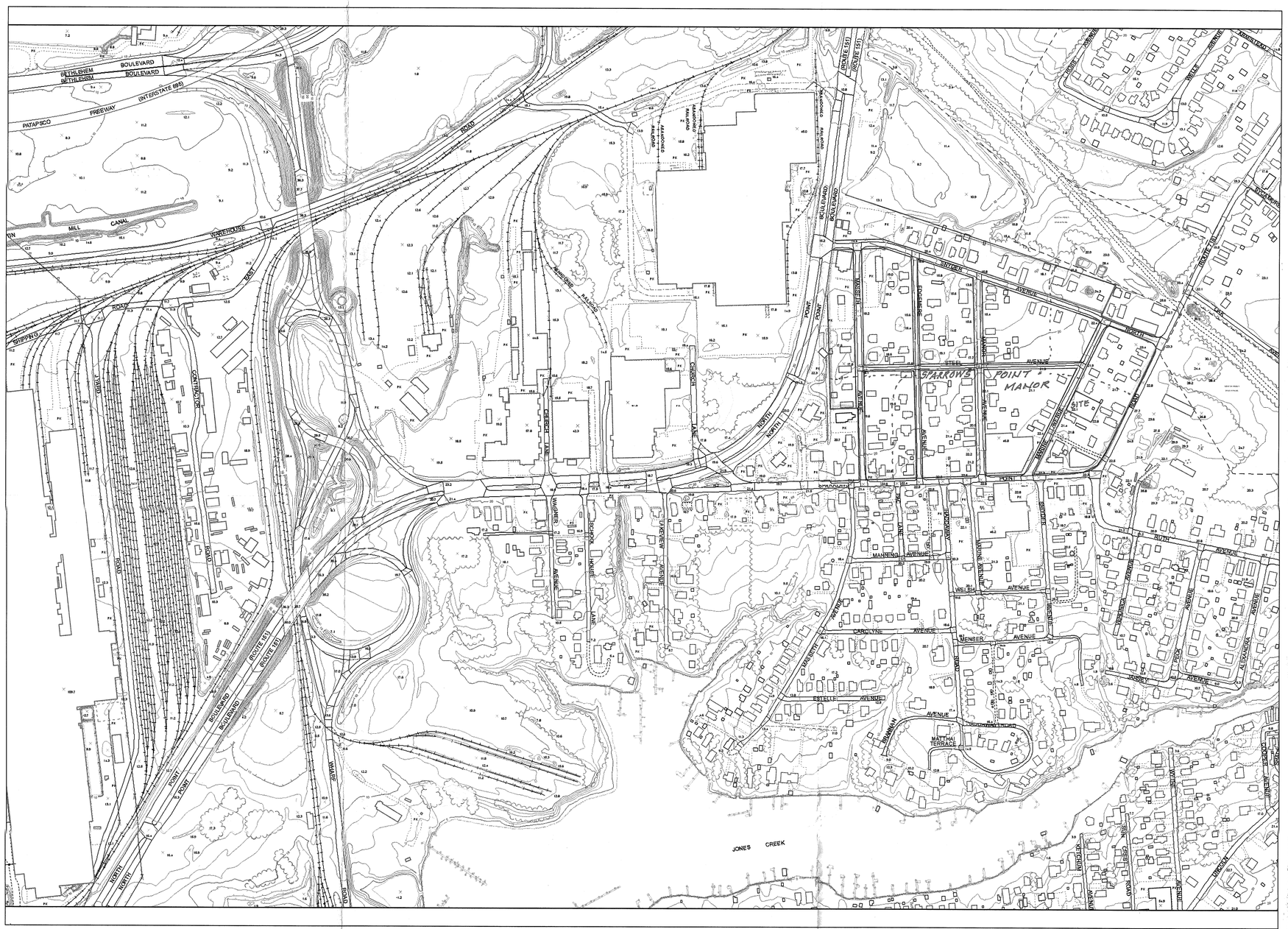
ELECT. DIST. 15 C 7 — BALTIMORE CO., MD.
SCALE: 1" = 30' — JULY 15, 2005

ENGINEER: CENTURY ENGINEERING, INC.
32 WEST ROAD
TOWSON, MARYLAND 21204
(410) 823-8070

STATE OF MARYLAND — PAUL LEGG — 4047 — PROFESSIONAL ENGINEER

24-261.00

PET EXH 3


BETHLEHEM BOULEVARD
BETHLEHEM BOULEVARD
PATAPSCO FREEWAY (INTERSTATE 895)
MILL CANAL
WAREHOUSE
EAST
ROAD
CONTRACTOR
ROAD
SHIPYARD
ROAD
ROUTE 151
ROUTE 151
BOULEVARD
BOULEVARD
MAIN GATE RAILROAD
POINT
POINT
BOULEVARD
BOULEVARD
NORTH
POINT
ROAD
CHURCH LANE
CHURCH
LANE
NORTH POINT
ROAD
SPARROWS POINT BOULEVARD
SPARROWS POINT BOULEVARD
SPARROWS POINT BOULEVAR

Fuel Company
Within 100 yards
Intersection Marine & N. Snyder

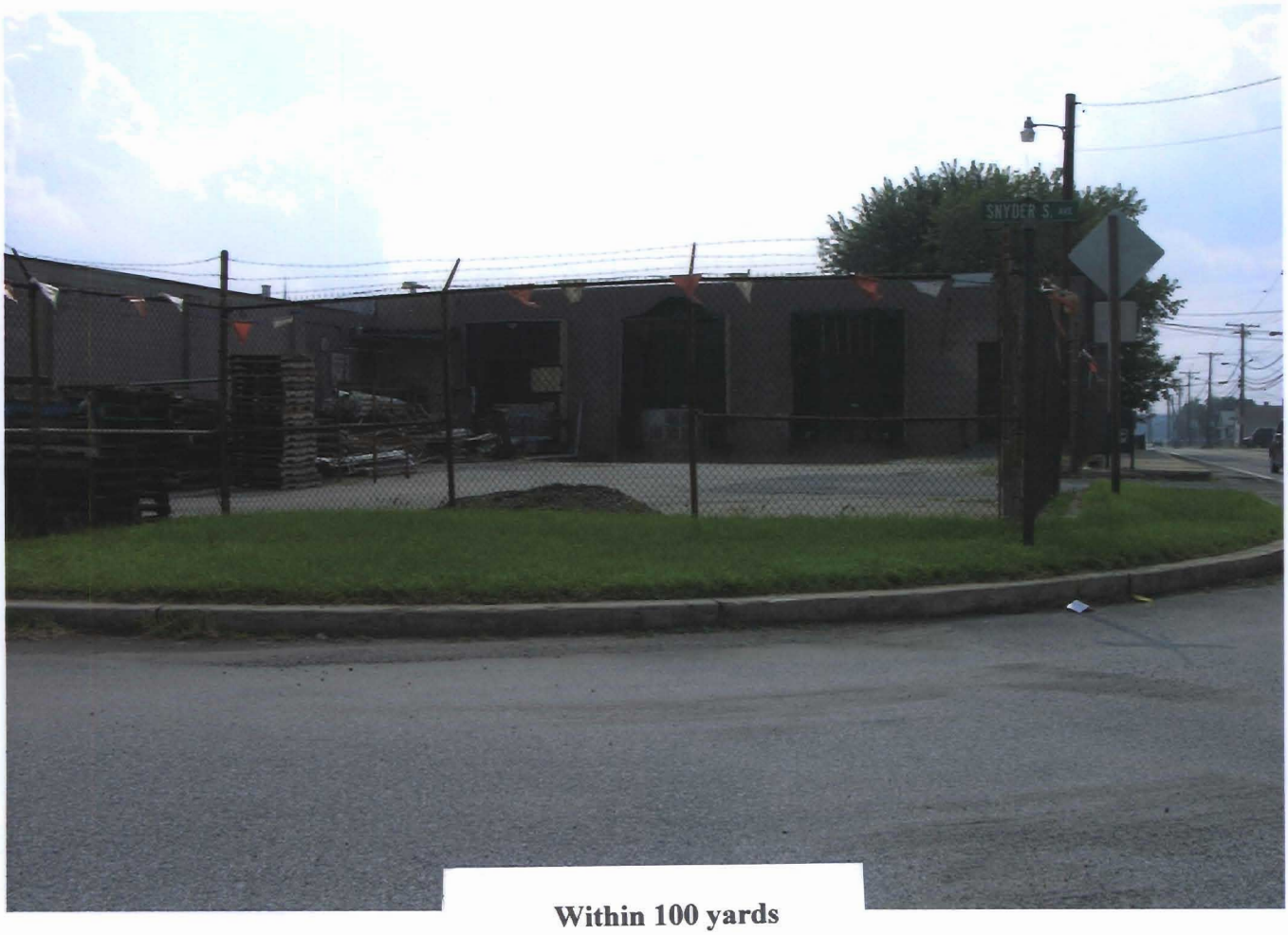
3AG

3A

North Point Blvd.

Within 1 mile of Property

3B



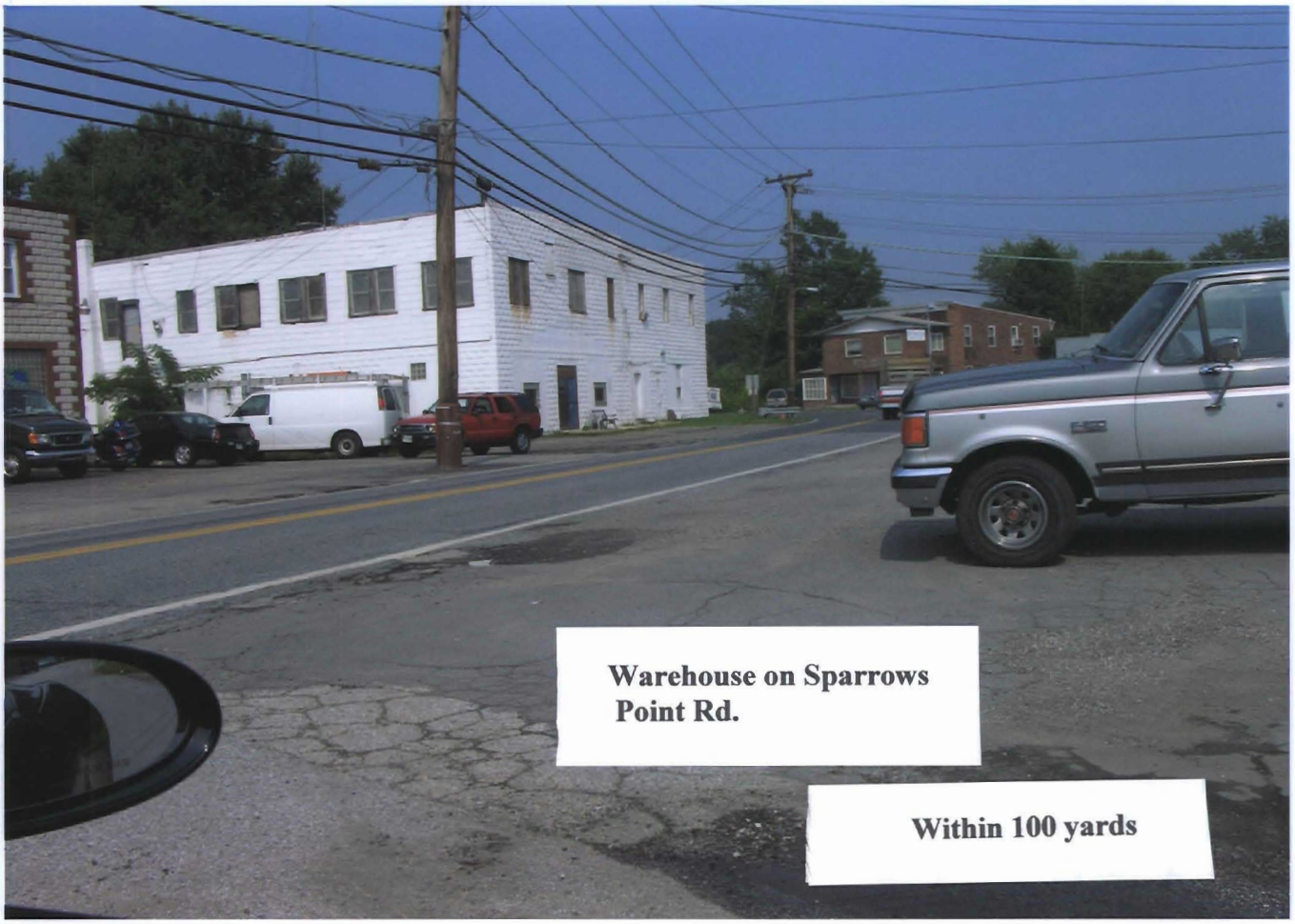
3C

Within 100 yards

3D

Within 200 yards

3E


Warehouse on Sparrows Point Rd.
Within 100 yards

3F

3G

Sparrows Point Road

Within 200 yards

3H

Intersection S. Snyder
& Sparrows Point Rd.

Within 1 mile of property
North Point Blvd.

3I

JERICHO
Within 200 yards
Sparrows Point Road

3J

3K

Dap Manufacturing

Within 1 mile of property

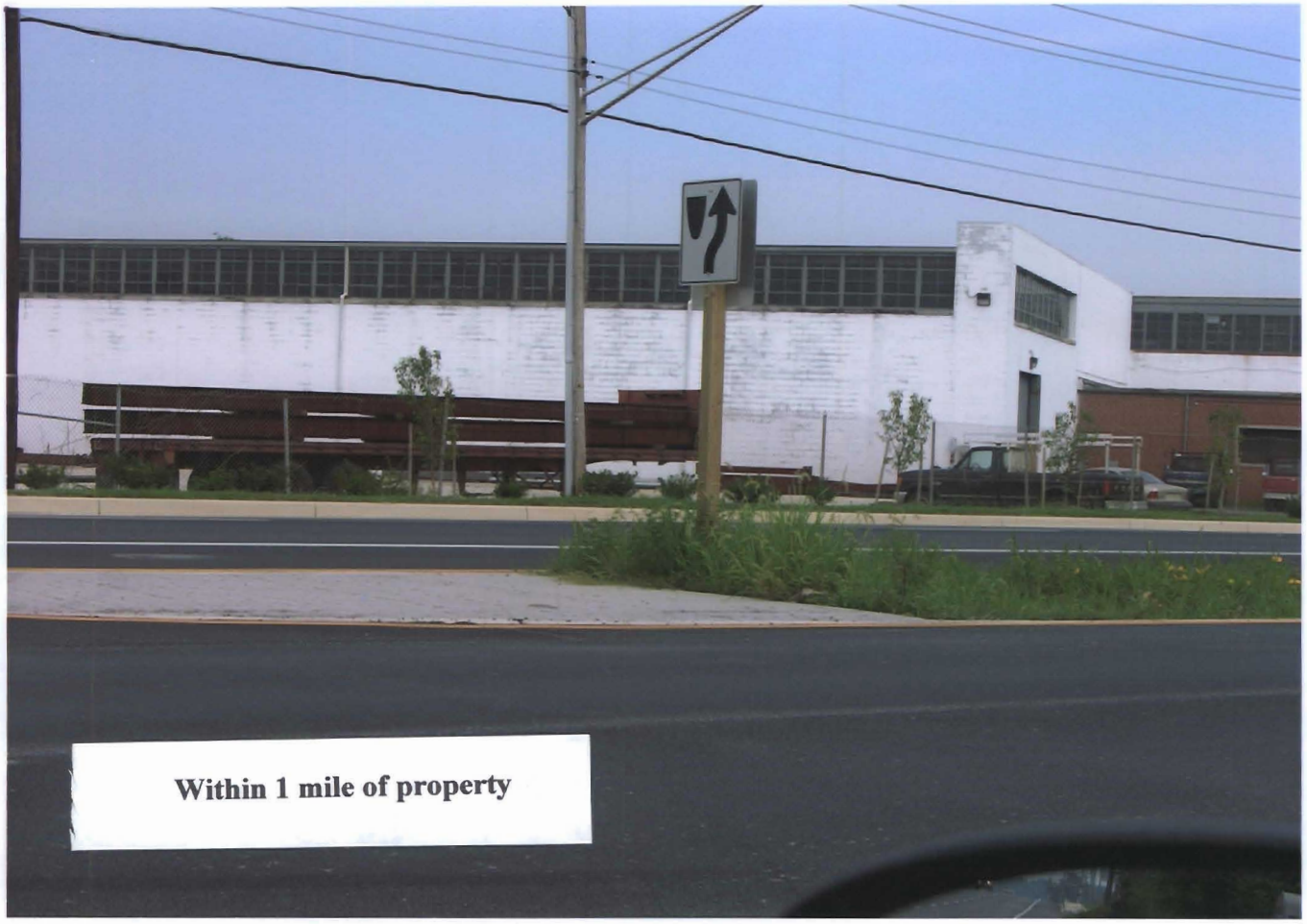
3L

3M

North Point Blvd.

Within 1 mile of Property

3N

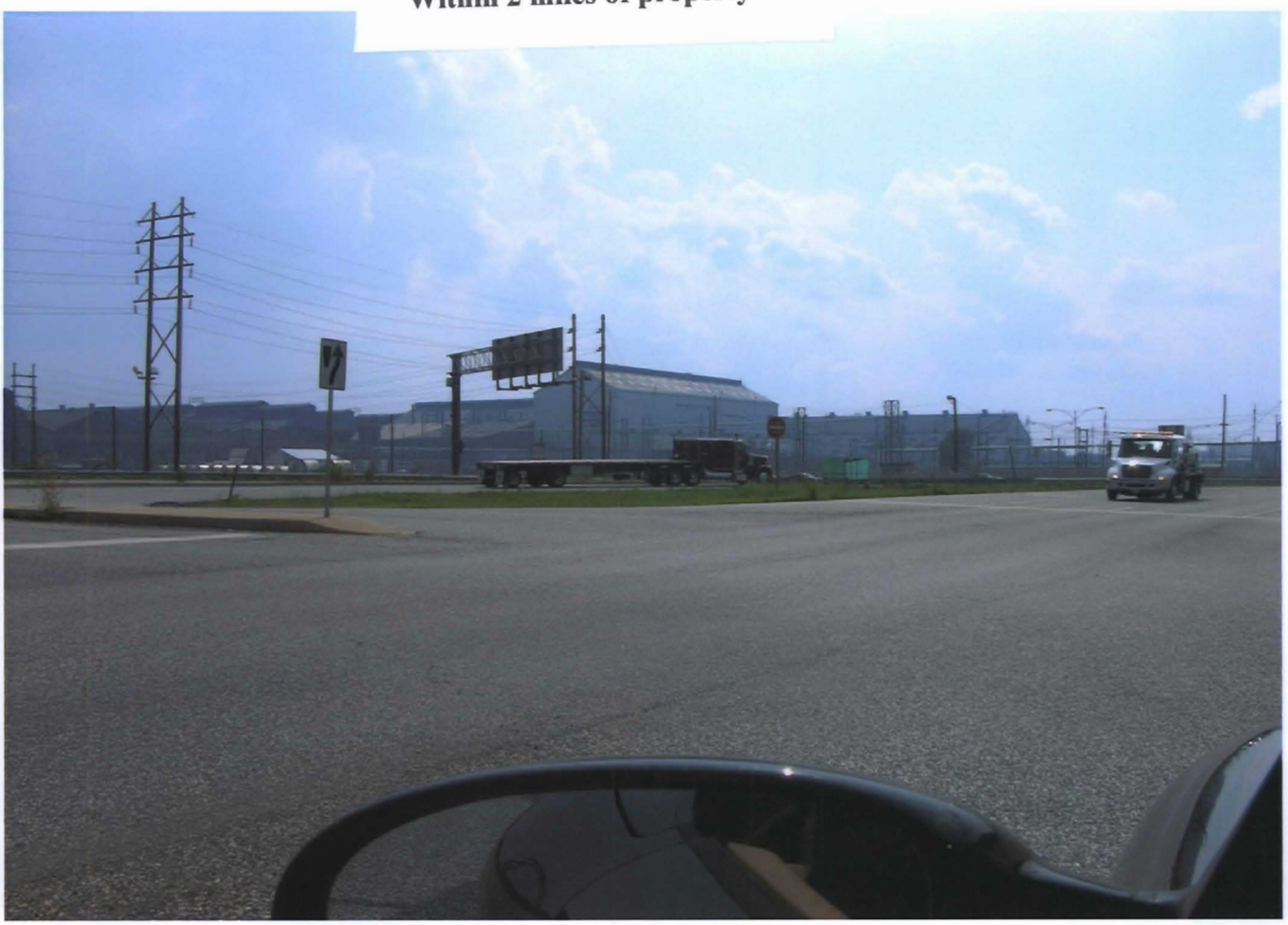


30

3P

3Q

Within 2 miles of property



3R

3S

North Point Blvd.

Within 2 miles of property

3T

3U

Beth. Steele

Within 2 miles of property

3V

3W

North Point Blvd.

Within 2 miles of property

3X

34

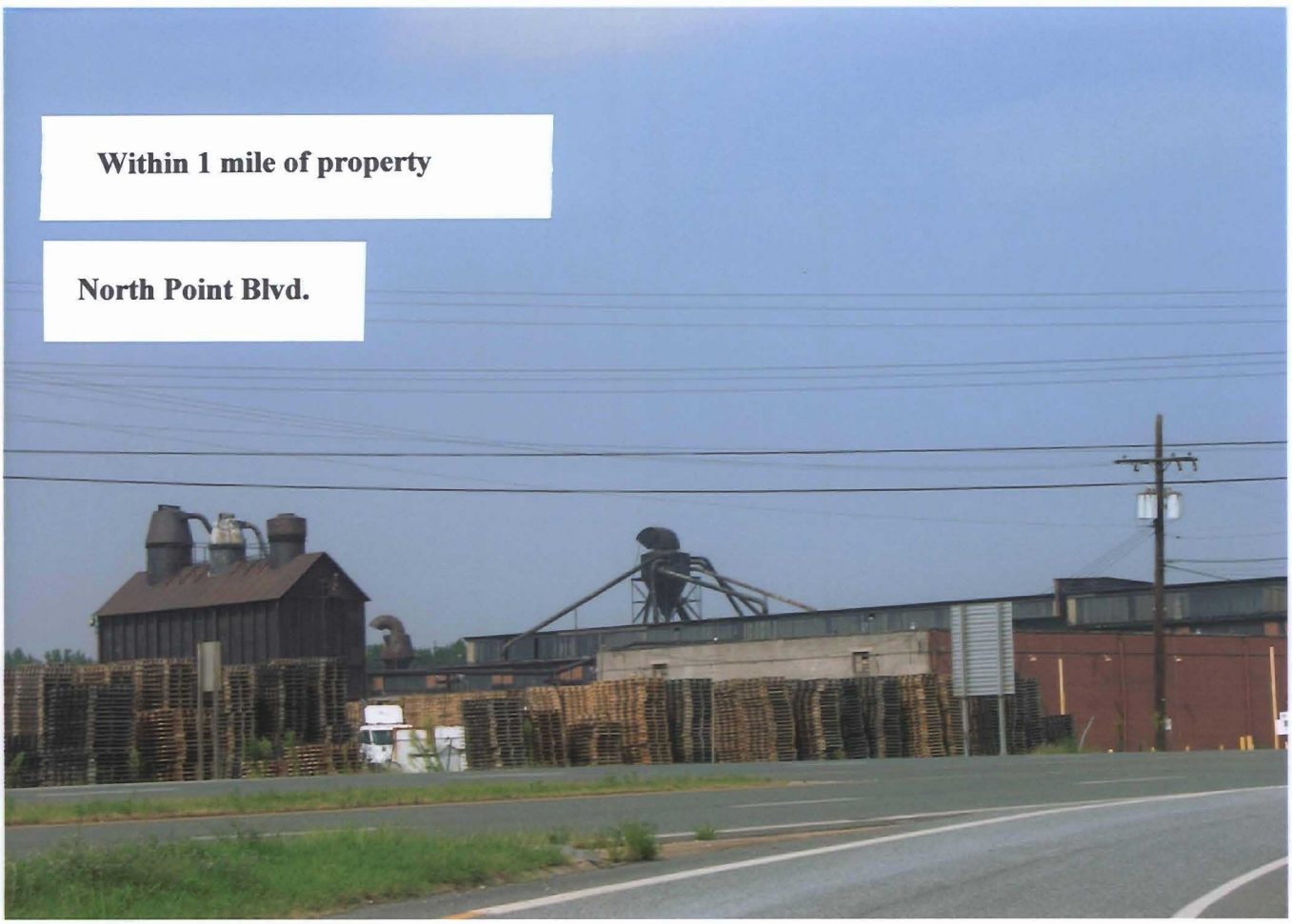
North Point Blvd.

Within 2 miles of property

32

Beth. Steele
Within 2 miles of Property

3AA


Within 1 mile of property
North Point Blvd.

3AB

3AC

North Point Blvd.

Container Storage

Within 2 miles of property

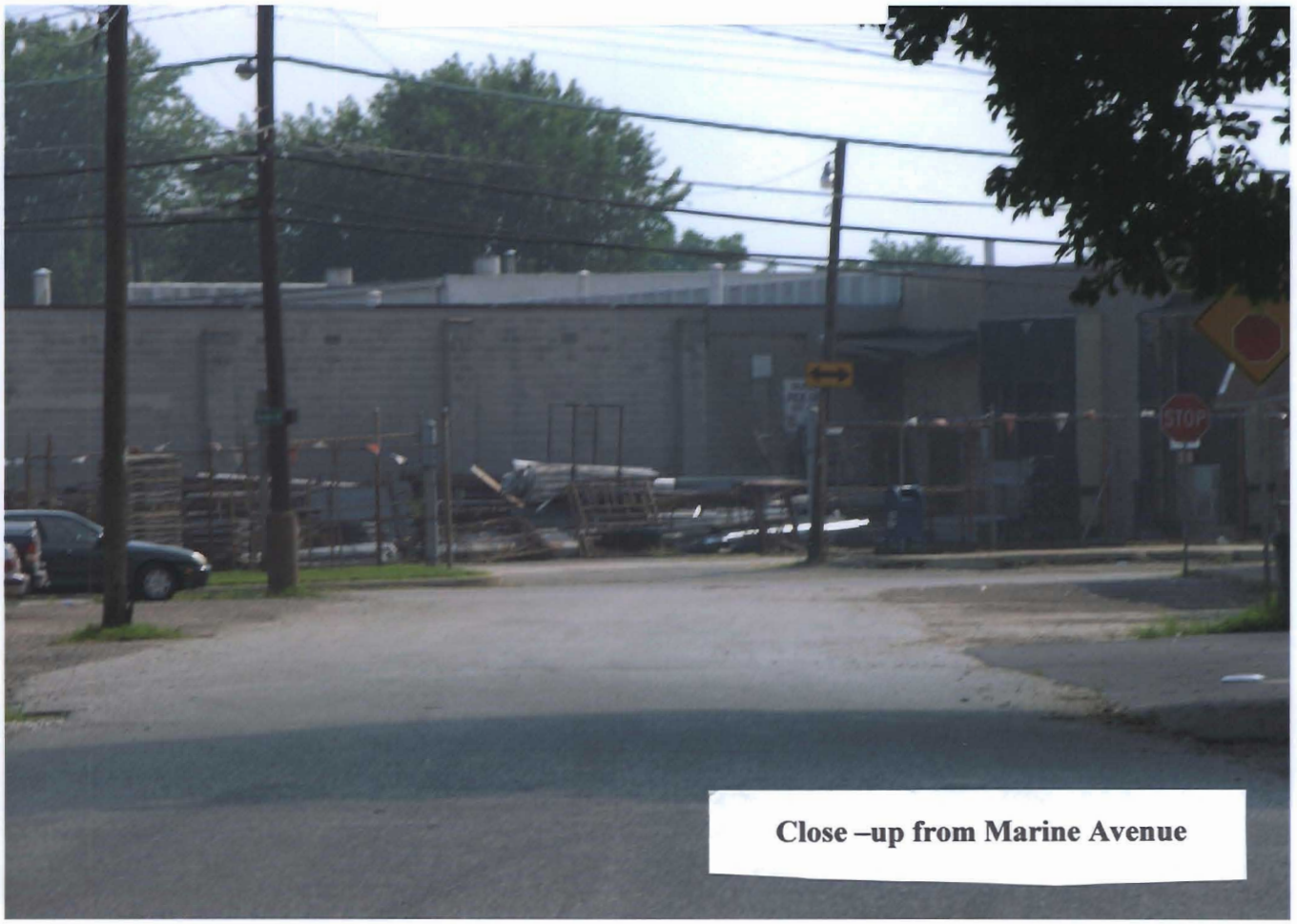
3AD

3AE

3AF

3AH

View from Marine Avenue



3AI

Close –up from Marine Avenue

CBA PRT BAM 4(a)

July 27, 2005

To Whom It May Concern,

F & M Enterprises, Inc., by Michael J. Narutowicz II, has notified us that it owns Lot 395, 396, 397, 398, and 399, also known as 2623 Marine Ave, in the Subdivision of Sparrows Point Manor. Each of the these lots is 20' wide. F & M informed us that it wants to merge these lots into two 50' lots in order to build homes on each sometime in the future. In order to do so, F & M is required by Baltimore County to file petitions for variances to permit lot widths of 50' instead of the required 55'. I am a resident and/or property owner in the subdivision of Sparrows Point Manor and have absolutely no objection to F & M obtaining the requested variances.

Sincerely,

SIGNITURE	PRINT NAME	ADDRESS
	Michael McKenny	2510 N. Snyder Ave
	JOAN McKENNY	2508 N. SNYDER AVE
	Leon McKenny	2508 N. SNYDER AVE
	CHRIS McKENNY	2626 SPARROW'S PT. RD
	William Freedman	2518 Sparrows Pt. Rd.
	Kenneth Burr	2608 N. MARINE AVE
	Jamie Burr	2628 N Marine Ave.
	Patricia Burr	2628 N. Marine Ave.
	Leroy Krieger	2516 Sp. Pt. Rd
	Tom Krieger	2924 Wells ave
	GARY BAUGHMAN	2627 N. MARINE AVE
	Scott McKenny	2516 North Snyder
	Barbara D Glad	252 Steel Ave

Pet. Exh 6

(SHEET S.E. 5-H)

(SHEET S.E. 6-G)

(SHEET S.E. 6-I)

(SHEET S.E.7-H)

E 42,000 | E 43,500 | E 45,000 | E 46,500 | E 48,000

N 513,000 | S 20,000 | S 21,000 | S 22,000 | S 23,000 | S 24,000

MH-IM

BM

BL

PELMAR

SALISBURY

BYRDHILL

GEDDESCREST

MILLER

BOULEVARD

"BETHLEHEM STEEL CO."

D.R.5.5

LYNCH POINT

HL-B

BL-AS

D.R. 5.5

ROAD

BATTLE PARK

BATTLE PARK

ASHMEAD

ROSE

WELLS

FOUND.

PRIVATE RD.

MORRISON

GROOMS PLAT

R.C.5

BR

PARKING AREA

RHEEM MANUFACTURING COMPANY

S.S.

SPARROWS POINT RHEEM MFG. CO. TANK

TANK

ML-AS

BR-AS

RO

D.R. 5.5

POINT MANOR

STEEL

SURGES SITE

SPARROWS

PRIVATE ROAD

TRANSPORTATION

WAGNER

SCHOOL

LANE

VIEW

PAC

BRANNAN

MARINE

SKYDEF

RUTH

EDGEWERE

MANOR

BM-AS

BL-AS

ISLAND

SYCAMORE

OAK

PARKING AREA

FARM

LODGE

B.& O. OVERPASS (UNDER CONSTRUCTION)

E-SW | E-SE
A-NW | A-NE

THIS MAP HAS BEEN REVISED IN SELECTED AREAS.
TOPOGRAPHY COMPILED BY PHOTOGRAMMETRIC METHODS
BY BUCHART-HORN, INC. BALTIMORE, MD. 21210

2000 COMPREHENSIVE ZONING MAP
ADOPTED by
THE BALTIMORE COUNTY COUNCIL
OCTOBER 10, 2000
Bills Nos. 87-00, 88-00, 89-00, 90-00, 91-00, 92-00, 93-00,

Joseph Bartenfelder
Chairman, County Council

BALTIMORE COUNTY
OFFICE OF PLANNING AND ZONING
OFFICIAL ZONING MAP

SCALE	LOCATION	SHEET
1" = 200'±	EDGEMERE LODGE FOREST	S.E. 6-H
DATE OF PHOTOGRAPHY JANUARY 1986		

Pet 6

SE 6H

Pet Exh 5

W.P.C. Nº 5 ~ 82

EXIST. 40' LOTS OF RECORD

1950 EXIST. 40' LOT WITH HOUSE - DATE BUILT

NUMBER OF LOTS 50' WIDTH & LESS
40' - 43
50' - 2
SINGLE LOT - 5
(LOTS 37-41 ELIMINATED FOR SNYDER AVE. EXTENSION)

15TH DISTRICT

SPARROWS POINT MANOR

SUBDIVIDED BY

KEATING-REALTY-CO.

12 EAST LEXINGTON ST. BALTO. MD

SURVEY & PLAT BY

— J-SPENCE-HOWARD —

Civil & Consulting Engr. Baltimore-Md.

Scale-100'=1inch ~ April, 1921.

Book #134 - File - 424

Pet 5

EXH. 2

W.P.C. No 5 ~ 82

~~Plat~~ Plat EXH 7

EXIST. 40' LOTS OF RECORD

1950 EXIST. 40' LOT WITH HOUSE - DATE BUILT

NUMBER OF LOTS 50' WIDTH & LESS
40' - 43
50' - 2
SINGLE LOT - 5
(LOTS 37-41 ELIMINATED FOR SNYDER AVE. EXTENSION)

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12 EAST LEXINGTON ST. BALTO. MD

SURVEY & PLAT BY

— J-SPENCE-HOWARD —

Civil & Consulting Engr. Baltimore Md.

Scale - 100' = 1 inch ~ April, 1921.

Book #134 - File - 424

Plat 7

5

PROTESTANT'S EXHIBITS

Verified
11-22-05

Protestants Exhibits
& F&M

Ex 1 Deed for lots - dated 1940

Ex 2 Copy of Plat Sparrows Pt. Manor

Ex 3 ZC Opinion June 25, 1974

Ex 4 Aerial photo with pink

Ex 5 A-G Deeds - multiple (7 deeds total)

Ex 6 Aerial in Color

Ex 7 SDAT - Coversheet and 13 pages

Ex 8 A-C SDAT Documents
A - 5 pages, B - 10 pages C - 18 pages

Ex 9 C2MP2004 (map)

Ex 10 Aerial Photo

Ex 11 Zoning Review Hearing Checklist

Ex 12 Small Zoning map with color

Ex 13 Summary of lot purchases

Ex 14 BCZR 6-600 - Interpretation

Ex 15 Summary of 1974 Petition

AS WITNESS the hands and seals of said Releasors

Witness

Herbert M Carson (SEAL)
Ira M Witt (SEAL)
Jay B Pierce Peter G Cameron (SEAL)
Liquidating Trustees of the non-liquid
and depreciated assets of The Lycoming
Trust Company of Williamsport Pa

COMMONWEALTH OF PENNSYLVANIA LYCOMING COUNTY TO WIT

I HEREBY CERTIFY That on this 8th day of July 1940 before me the subscriber a Notary Public of the Commonwealth of Pennsylvania in and for Lycoming County aforesaid personally appeared Herbert M Carson Ira M Witt and Peter G Cameron Liquidating Trustees of the non-liquid and depreciated assets of The Lycoming Trust Company of Williamsport Pennsylvania and they acknowled ed the aforegoing Release to be their act as such Trustees

AS WITNESS my hand and Notarial Seal

(Notarial Seal)

Caroline Faber Martz
Notary Public
My Commission Expires May 6 1941

Recorded July 16 1940 at 11 50 O'Clock A M and Exd per

C Willing Browne Jr Clerk

CBA Prot. 1

154059

Updegraff-Reed Company
Deed to
Michael Narutowicz & wife
U S S $18.50 - S S $18.20

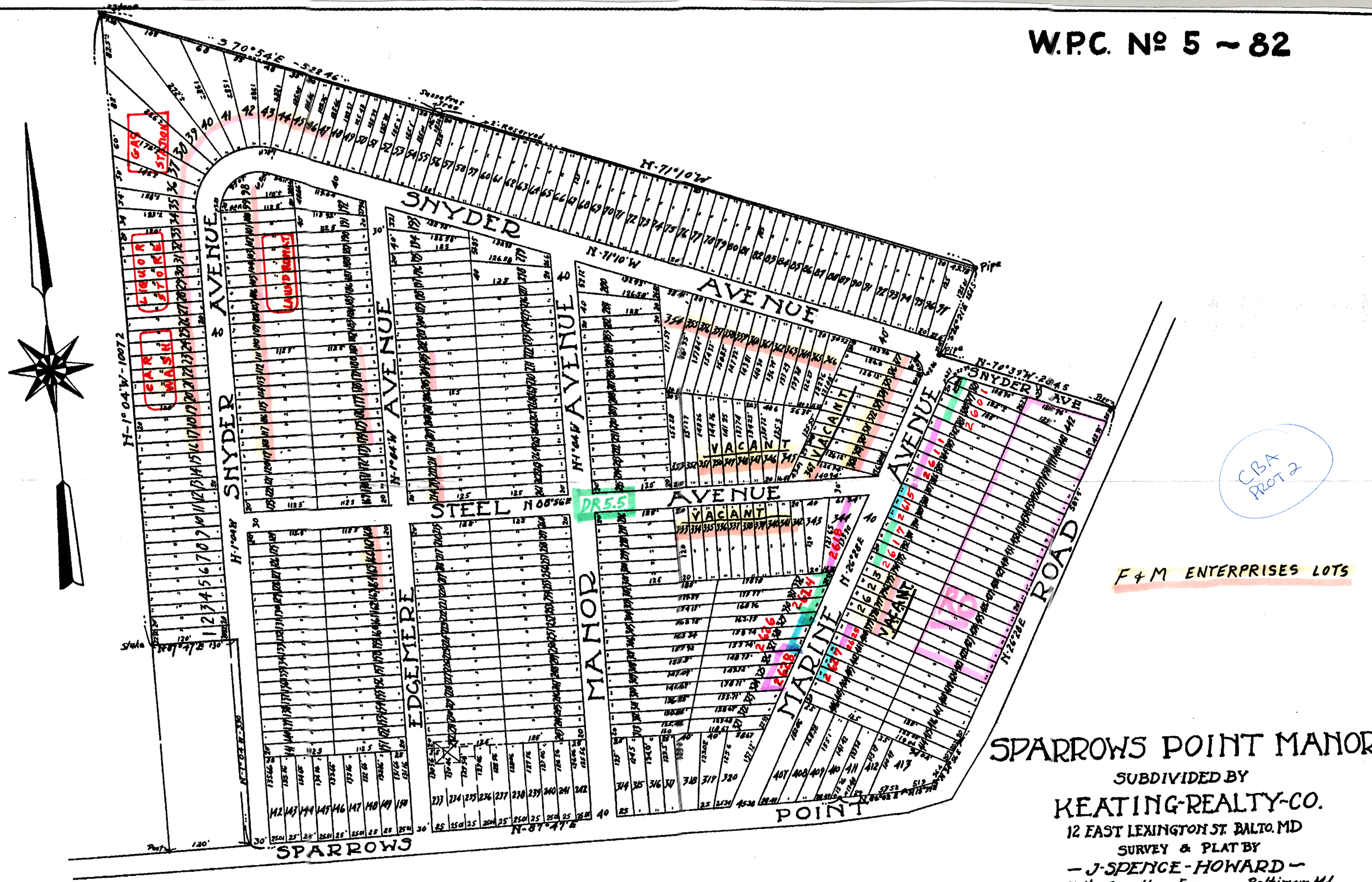
THIS DEED Made this 15th day of July in the year one thousand nine hundred and forty by and between Updegraff-Reed Company a body corporate of the Commonwealth of Pennsylvania of the first part and Michael Narutowicz and Frances Narutowicz his w wife of Baltimore County State of Maryland of the second part

WITNESSETH that in consideration of the sum of Five Dollars and other valuable considerations the receipt of which is hereby acknowledged the said party of the first part does grant and convey unto the said parties of the second part as tenants by the entireties the survivor of them their assigns and the heirs and assigns of the survivor in fee simple all those 186 lots of ground situate lying and being in Baltimore County State of Maryland aforesaid and described as follows that is to say

BEING Lots numbered 19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39 45-46-47-48-49-62-63-64-65-66-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-105-106-107-108-111-112-113-114-115-116-117-118119-120-121-122-123-146-147-151-152-153-154-155-156-164-165-174-175-176-177-178-179-180-181-182-183-199-200-201-202-203-204-205-211-212-213-214-228-229-230-240-241-242-248-249-250-267-268-269-270-271-272-273-274-275-276-277-280-284-285-301-302-303-304-307-308-309-331-332-333-334-335-336-337-338-339-340-341-348-349-350-351-354-355-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-382-383-384-385-386-387-388-389-390-395-396-397-398-399-402-403-404-421 424-425-430 as shown on Plat of Sparrows Point Manor recorded W P C No 5 folio 82

BEING part of the property more fully described and referred to in deed dated

W.P.C. № 5 ~ 82



SPARROWS POINT MANOR

SUBDIVIDED BY

KEATING-REALTY-CO.

12 EAST LEXINGTON ST. BALTO. MD

SURVEY & PLAT BY

— J-SPENCE-HOWARD —

Civil & Consulting Engr. Baltimore Md.

Scale-100'=1inch ~ April, 1921.

Book #134 - File - 424

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Zoning Advisory Committee Date: Aug. 28, 1973

FROM: Joseph N. Nolan

SUBJECT: Lots 424 and 425 Sparrows Point Road

F. and M. Enterprises moved three (3) houses on property they own in Edgemere without obtaining the required permit. All (3) three buildings have evidence of rot and decay and will require extensive work to alter the buildings to comply with the present building code.

A permit for one of the structures was issued on July 11, 19[illegible] but has not been [illegible] Buildings are vacant, vandalized and open to the public and are developing into a nuisance to the neighborhood.

Joseph N. Nolan
Deputy Buildings Engineer

JMN:bac

CBA Prot. Ex 3

2622.

Prot. E+4

5F

LIBER 5594 FAGE 661

THIS DEED, Made this 19th day of ~~November~~ December in the year one thousand nine hundred and seventy-five, by and between THE EDGEMERE HOLDING COMPANY, Grantor, party of the first part, and F. AND M. ENTERPRISES, INC., Grantee, party of the second part, both being Maryland corporations.

WITNESSETH, That in consideration of the sum of Five Dollars ($5.00) and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said party of the first part does hereby grant and convey unto the said party of the second part, its successors and assigns, in fee simple, all those lots of ground situate, lying and being in the Fifteenth Election District of Baltimore County, State of Maryland, and described as follows; that is to say:

BEING KNOWN AND DESIGNATED as Lots Nos. 174, 175, 176, 177, 178, 179, 180, 181, 203, 204, 205, 211, 212, 213, 214, 333, 334, 335, 336, 337, 338, 339, 340, 341, 345, 346, 347, 348, 349, 350, 351, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 395, 396, 397, 398, 399, 405, 406, 411, 412, 413, 414, and 415, as shown on the Plat of Sparrows Point Manor dated April 1, 1921 and recorded among the Plat Records of Baltimore County in Liber W.P.C. No. 5, folio 82.

BEING the same lots of ground acquired by the Grantor herein by the following deeds recorded among the Land Records of Baltimore County:

1. Deed dated November 2, 1962 recorded in Liber W.J.R. No. 4067, folio 71, by and between Michael J. Narutowicz and Frances Narutowicz, his wife, and The Edgemere Holding Company, Grantor herein.

2. Deed dated June 1, 1953 recorded in Liber G.L.B. No. 2517, folio 536, by and between Michael J. Narutowicz and Frances Narutowicz, his wife, and The Edgemere Holding Company, Grantor herein.

3. Deed dated December 28, 1961 recorded in Liber W.J.R. No. 3940, folio 393 from The North Point Democratic Club Incorporated to The Edgemere Holding Company, Grantor herein.

4. Deed dated October 15, 1965 recorded in Liber O.T.G. No. 4532, folio 562 from Clyde Medlin and Margaret V. Medlin, his wife to The Edgemere Holding Company, Grantor herein.

5. Deed dated June 4, 1966 recorded in Liber O.T.G. No. 4627, folio 318 from Clyde A. Garrison and Zelda Mae Garrison, his wife, to The Edgemere Holding Company, Grantor herein.

TOGETHER with the buildings and improvements thereupon erected, made or being, and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging or anywise appertaining.

CBA Prot. Ex 5

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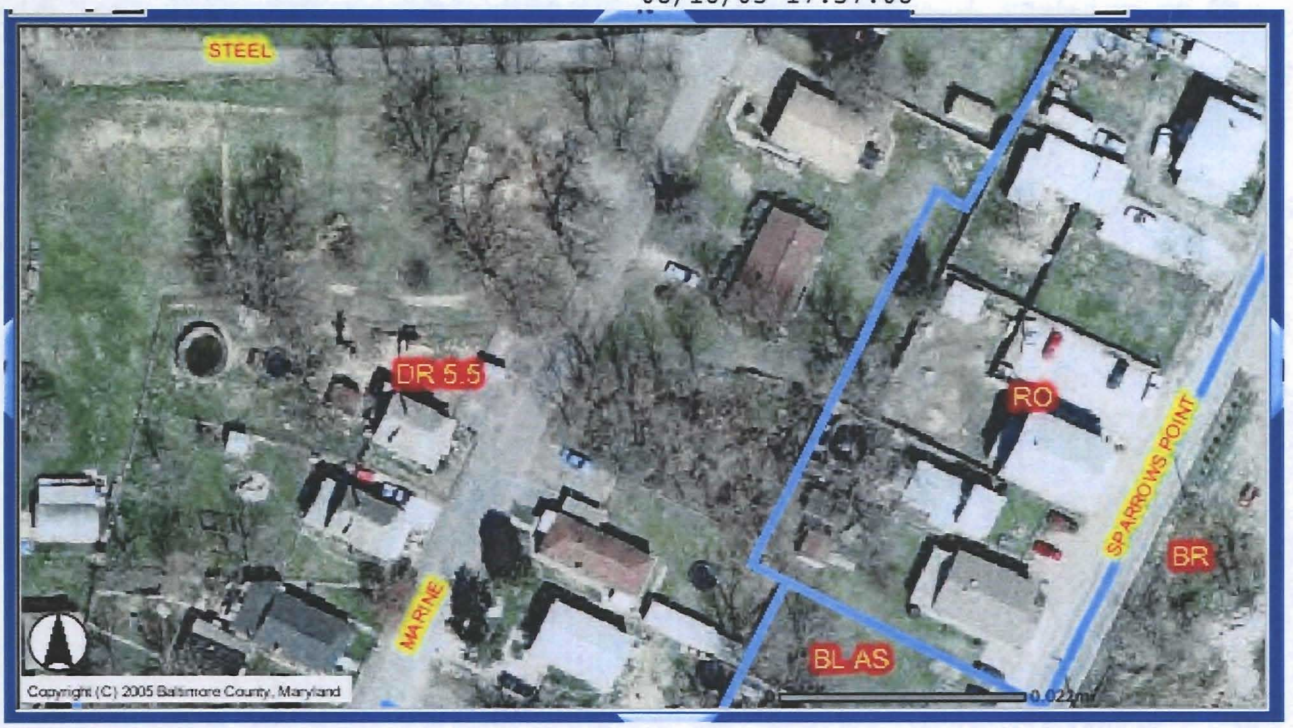

CBA
Prot EY6

CBA Prot Ex 7

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

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Page 1 of 1

Name	Account	Street	OWN OCC	Map	Parcel	
AKERS RUTH E	15 1700003526	MARINE AVE	N	111	378	
BURR KENNETH L	15 1519071501	N MARINE AVE	N	111	135	
EDGEMERE FREE MET	15 1900008806	MARINE AVE	N	111	423	
F & M ENTERPRISES	15 1505190201	MARINE AVE	N	111	135	
F & M ENTERPRISES	15 1505190202	MARINE AVE	N	111	135	
F & M ENTERPRISES	15 1505190205	MARINE AVE	N	111	135	
FREEDMAN WILLIAM	15 1505190217	MARINE AVE	N	111	135	
GALLAGHER THOMAS	15 1514100711	MARINE AVE	N	111	135	
SEARFOSS JOHN WJR	15 1506570382	MARINE AVE	N	111	135	
SMOOT COLLEEN B	15 1515770051	MARINE AVE	N	111	135	
JUDD DAVID W	15 1501100010	2503 MARINE AVE	N	111	66	
SEARFOSS JOHN WJR	15 1506570380	2509 MARINE AVE	N	111	66	
EDGEMERE FREE MET	15 1523154050	2510 MARINE AVE	N	111	58	
SEARFOSS JOHN WJR	15 1506572502	2511 MARINE AVE	N	111	66	
JACOBS HELEN	15 1519320090	2513 MARINE AVE	N	111	66	
EDGEMERE FREE MET	15 1519322070	2518 MARINE AVE	N	111	67	
SHKOR JOHN THOMAS	15 1519321732	2519 MARINE AVE	N	111	66	
SHKOR WILLIAMJR	15 1519321731	2521 MARINE AVE	N	111	66	
WARLICK JOEY NSR	15 1505190237	2601 MARINE AVE	N	111	135	70
WHITLOCK LAWRENCE	15 1505190238	2611 MARINE AVE	H	111	135	120
NELSON THOMAS STE	15 1506000860	2615 N MARINE AVE	N	111	135	60
NELSON THOMAS STE	15 1600014886	2617 N MARINE AVE	H	111	135	80
HEALEY ALBERT E3R	15 1513201801	2618 N MARINE AVE	H	111	135	135
* F & M ENTERPRISES	15 1505190239	2623 N MARINE AVE	N	111	135	395-399
SMOOT COLLEEN B	15 1515770050	2624 N MARINE AVE	H	111	135	65
CARTER DENISE	15 1506450780	2625 N MARINE AVE	H	111	135	40
GALLAGHER THOMAS	15 1514100710	2626 N MARINE AVE	H	111	135	55
BAUGHMAN GARY C	15 1502651080	2627 N MARINE AVE	H	111	135	60
BURR KENNETH L	15 1900002068	2628 N MARINE AVE	H	111	135	60

745/10 = 74.5 AVG. FRONT FOOT

745

Prct & A

Click here for a plain text ADA compliant screen.

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

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Ground Rent

Account Identifier: **District -** 15 **Account Number -** 1505190201

Owner Information

Owner Name:	F & M ENTERPRISES INC	**Use:**	RESIDENTIAL
		Principal Residence:	NO
Mailing Address:	NEW N POINT RD SNYDER AVE BALTIMORE MD 21219	**Deed Reference:**	1) 2)

Location & Structure Information

Premises Address
MARINE AVE

Legal Description
LT 367,368
SPARROWS POINT MANOR

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assesment Area	Plat No:
111	10	135					367	3	Plat Ref: 5/ 82

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		5,719.00 SF	04

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2004	As Of 07/01/2005
Land:	2,850	2,850		
Improvements:	0	0		
Total:	2,850	2,850	2,850	2,850
Preferential Land:	0	0	0	0

Transfer Information

Seller: EDGEMERE HOLDING CO	**Date:** 12/19/1975	**Price:** $0
Type: NOT ARMS-LENGTH	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments	**Class**	07/01/2004	07/01/2005
County	000	0	0

Prot 8 B

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Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

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New Search
Ground Rent

Account Identifier: **District -** 15 **Account Number -** 1505190232

Owner Information

Owner Name:	F & M ENTERPRISES INC	**Use:**	RESIDENTIAL
		Principal Residence:	NO
Mailing Address:	5200 N POINT BLVD BALTIMORE MD 21219-1703	**Deed Reference:**	1) / 5594/ 661 2)

Location & Structure Information

Premises Address
STEEL AVE

Legal Description
LT 333-341
SPARROWS POINT MANOR

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
111	10	135					333	3	Plat Ref: 5/ 82

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		21,600.00 SF	04

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2004	As Of 07/01/2005
Land:	25,650	25,650		
Improvements:	0	0		
Total:	25,650	25,650	25,650	25,650
Preferential Land:	0	0	0	0

Transfer Information

Seller: EDGEMERE HOLDING CO	**Date:** 12/19/1975	**Price:** $0
Type: NOT ARMS-LENGTH	**Deed1:** / 5594/ 661	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments	**Class**	07/01/2004	07/01/2005
County	000	0	0

Rot 8C

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Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

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New Search
Ground Rent

Account Identifier: **District -** 15 **Account Number -** 1505190222

Owner Information

Owner Name:	F & M ENTERPRISES INC	**Use:**	RESIDENTIAL
		Principal Residence:	NO
Mailing Address:	5200 N POINT BLVD BALTIMORE MD 21219-1703	**Deed Reference:**	1) / 5287/ 618 2)

Location & Structure Information

Premises Address
2608 SNYDER AVE

Legal Description
PT LT 16,17,18
630 N SPARROWS POINT RO
SPARROWS POINT MANOR

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assesment Area	Plat No:
111	10	135					16	3	Plat Ref: 5/ 82

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1924		6,900.00 SF	06

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2004	As Of 07/01/2005
Land:	24,100	35,700		
Improvements:	34,200	41,900		
Total:	58,300	77,600	71,166	77,600
Preferential Land:	0	0	0	0

Transfer Information

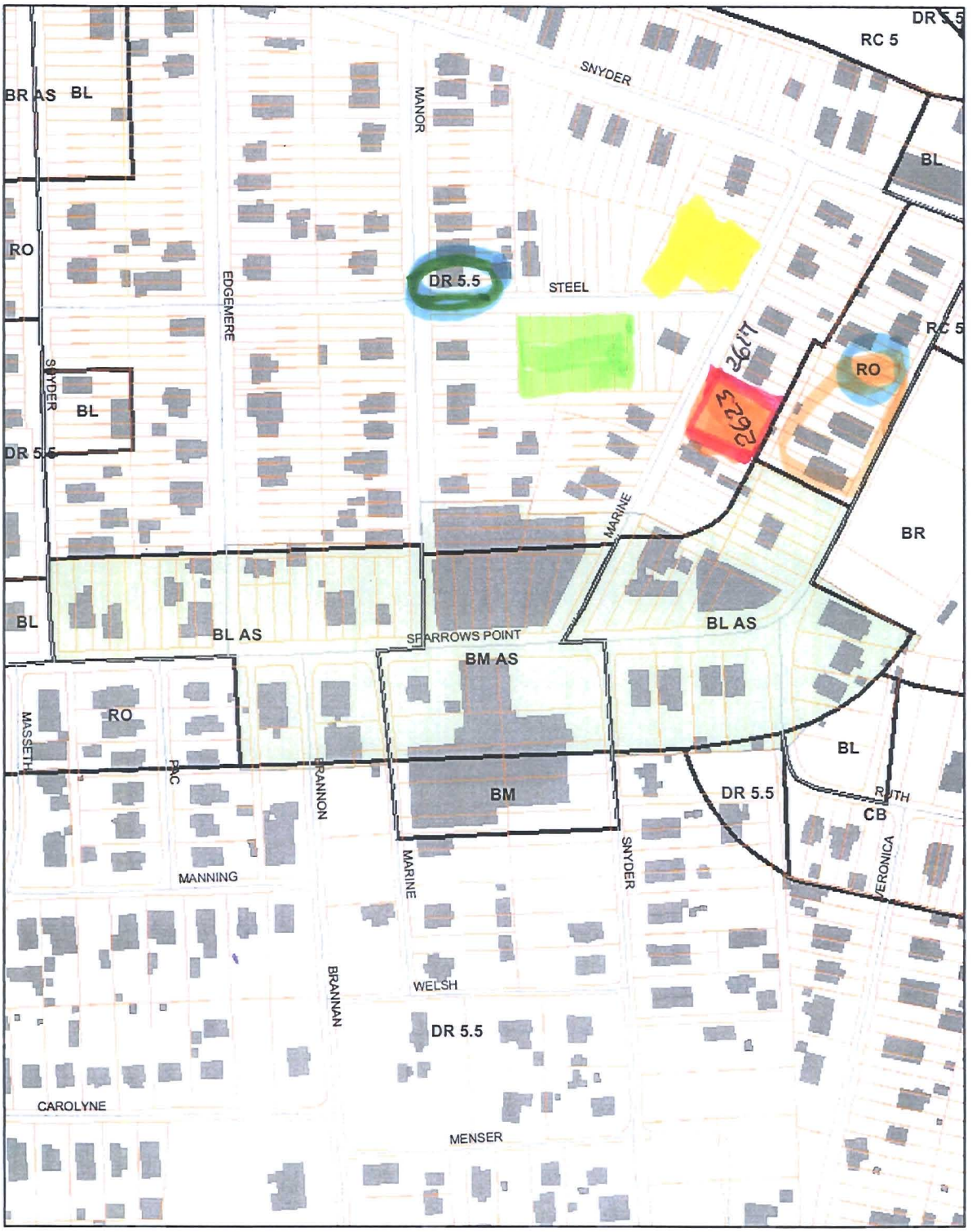
Seller: EDGEMERE HOLDING CO	**Date:** 08/01/1972	**Price:** $0
Type: NOT ARMS-LENGTH	**Deed1:** / 5287/ 618	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments	**Class**	07/01/2004	07/01/2005

Prot 9

CZMP 2004
Issue 7-016



Legend

- Roads
- baco_parcels
- Zoning
- Streams
- hydrop
- Buildings
- 7-016

N W E S

180 90 0 180 Feet

Signature / Date

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Prot 10

Prot 11

ZONING REVIEW HEARING CHECKLIST

REVISED 08/30/01

This checklist is provided to you, for your information only, and **is not to be considered legal advice.**

First, and most importantly: You must understand that the relief you have requested is a quasi-judicial decision and you are responsible for meeting the burden of law required by the Baltimore County Zoning Regulations (BCZR). A judicial hearing is an adversary process and, therefore, there may be opposition to your request. During a judicial hearing, the parties will be permitted to testify, present evidence, and cross-examine witnesses. Either the Zoning Commissioner or the Deputy Zoning Commissioner will rule on the evidence and testimony to determine whether or not the petition will be granted.

Second: You must understand that if a hearing is required, you are permitted to have representation by an attorney of your choice. You are not required to have an attorney, but it is recommended that you consider obtaining legal representation. But, if you are incorporated, it is considered a requirement that you be represented by an attorney.

Third: It is strongly recommended that you read and understand the requirements of the BCZR.

Fourth: No employee of the Department of Permits and Development Management (PDM) may provide legal advice to anyone. The representations and opinions of any employee are not to be construed as definitive in any case. Only the decision of the Zoning Commissioner/Deputy Zoning Commissioner rendered after the statutory required public hearing is considered dispositive in matters relating to the interpretation of the BCZR.

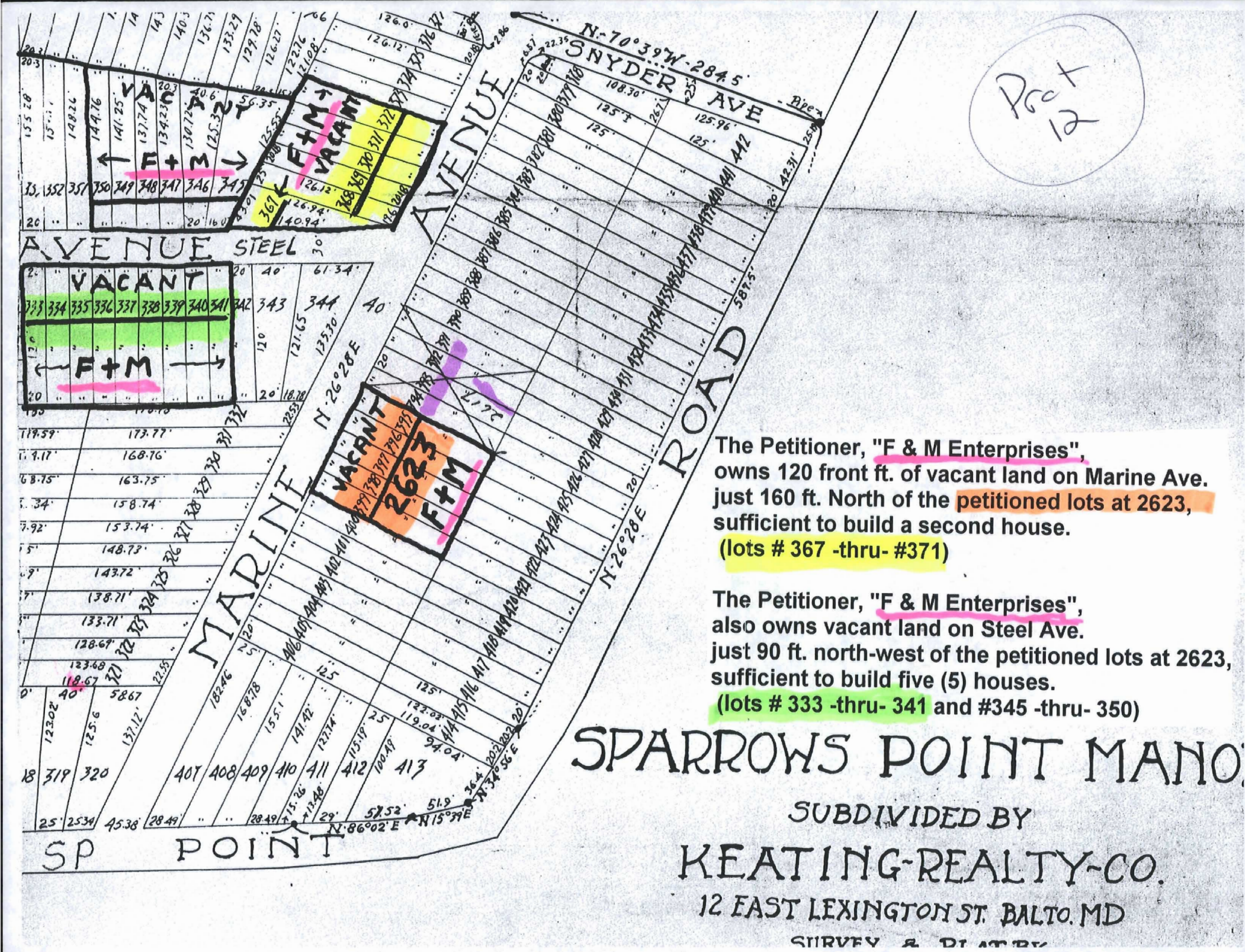
Even though there may not be opposition in a given case, your request may be denied.

For further information or to make an appointment, please contact:

Zoning Review
Department of Permits and Development Management
111 West Chesapeake Avenue
Room 111
Towson, MD 21204
Telephone: 410-887-3391

INDIVIDUAL RESIDENTIAL LOTS

Variances
Administrative Variances
Special Hearings
Posting & Waivers



The Petitioner, "F & M Enterprises",
owns 120 front ft. of vacant land on Marine Ave.
just 160 ft. North of the petitioned lots at 2623,
sufficient to build a second house.
(lots # 367 -thru- #371)

The Petitioner, "F & M Enterprises",
also owns vacant land on Steel Ave.
just 90 ft. north-west of the petitioned lots at 2623,
sufficient to build five (5) houses.
(lots # 333 -thru- 341 and #345 -thru- 350)

Pet 13

Re: Petitions for Variance

Case Nos. 05-239-A & 05-240-A

Property: 2623 Marine Avenue

From:

Thomas S. Nelson

2617 North Marine Avenue

Baltimore Maryland 21219

August 17, 2005

As the owner of a home adjacent to the petitioned lots with an eighty (80) foot front footage and a forty (40) foot setback I am opposed to the granting of any variance of any kind for the petitioned lots at, 2623 North Marine Avenue.

This petitioner had ample opportunity to comply with zoning codes that have existed since 1945.

Lots numbered: 395, 396, 397, 398, 399 as recorded among the land records of Baltimore County in Liber W.P.C. No. 5 folio 82 were acquired by the petitioner, Mr. Michael Narutowicz (subsequently The Edgemere Holding Company) - (a.k.a. F & M Enterprises) on, July 15, 1940 (Liber 1108 PAGE 583 'submitted'). Since that time the petitioner has had at least four (4) opportunities to purchase adjoining vacant lots that would have satisfied the zoning regulations in place since 1945.

Adjacent lots to the south of the petitioners property identified as vacant lots No. 400 and 401 were sold to Mr. & Mrs. Fox in 1947 (Liber 1627 PAGE 129 'submitted').

Adjacent lots to the north of the petitioners property identified as vacant lots No. 391, 392, 393, 394 were sold to Mr. & Mrs. Dematatis in 1966 (Liber 4656 PAGE 256 'submitted'); then sold vacant to Mr. Holloway in 1973 (Liber 5402 PAGE 754 'submitted'); then sold vacant to Mr. & Mrs. Nelson in 1974 (Liber 5481 PAGE 579 'submitted') .

This petitioner has bought and sold many parcels within the DR 5.5 area of Liber W.P.C. No. 5 folio 82 and has developed and expand residential and businesses on DR 5.5 lots in this area (liquor store, gasoline station, carwash, Laundromat) since 1945. That F&M Enterprises had knowledge of the existing zoning regulations is also evidenced by their previous attempt to acquire the same variances on these same lots (395-399) before the zoning board in 1973, (Petition for Variances Dated August 3, 1973 : ORDER of the Zoning Commissioner No. 74-99-A Dated June 25, 1974 'DENIED').

B.C.Z.R.

Prt 14

ARTICLE 6—INTERPRETATION AND SEVERABILITY

Section 600—INTERPRETATION

In their interpretation and application, these Regulations shall be held to be the minimum requirements for the promotion of the public health, safety, convenience, and general welfare. Where these Regulations impose a greater restriction on the use of buildings or land or on the height of buildings, or require larger yards, courts or other open spaces, or impose other higher standards than are imposed by the provisions of any law, ordinance, regulation or private agreement, these Regulations shall control. When greater restrictions are imposed by an law ordinance, regulation, or private agreement than are required by these Regulations, such greater restrictions shall not be affected by these Regulations. 1/

Section 601—SEVERABILITY

If any section, paragraph, subdivision, clause or provision of these Regulations shall be adjudged invalid, such adjudications shall apply only to the section, paragraph, subdivision, clause, or provisions so adjudged, and the remainder of the Regulations shall be deemed valid and effective.

The County Council of Baltimore County hereby declares that it would have adopted these Regulations and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Dale Anderson
County Executive, Baltimore County

Harry T. Bartenfelder
Chairman, County Council

1/ See also Section 22-26, Baltimore County Code, 1968.

Prot 15

Re: Petitions for Variance

Case Nos. 05-239-A & 05-240-A

Property: 2623 Marine Avenue, Baltimore, Maryland 21219

From Protester: Thomas S. Nelson 2617 Marine Avenue

Baltimore, Maryland 21219

Based on the fact that the order of the Zoning Commissioner, No. 74-99-A Dated June 25, 1974, found that, "strict compliance with the Baltimore County Zoning Regulations would not result in practical difficulty and/or unreasonable hardship upon the Petitioner, and the Variances should NOT BE GRANTED." to this petitioner for these same lots; I purchased the adjacent lots 391, 392, 393, 394 and built my primary residence at 2617 Marine Avenue.

During the hearing for this most recent petition for variance the petitioner's expert witness explained how the drastic reduction in workforce at the local steel plant and surrounding small industries would impact the need for housing in the area. When asked he agreed that such a drastic reduction in the workforce would reduce the need for additional housing in the area. The same expert witness also stated that he could not identify how the property under petition is unique, unusual, and different from the surrounding properties such that the uniqueness causes the zoning provision to impact more on the subject property than on the surrounding properties. He further stated that the petitioners could easily build a mansion on the property but that it would be impractical in this area.

The fact that the petitioner can not comply with zoning regulations in place since 1945, and still construct more than one house on the subject property is the direct result of the applicant's own action. There have been several vacant property sales on both sides of the subject property through the decades since the petitioner purchased this property that would have easily provided enough land for the petitioner to build several houses without the need for variances of any kind. In addition, the petitioner has sufficient lands accross the street to build several houses. (refer to protesters exhibits)

IN THE MATTER OF:	*	BEFORE THE
F&M ENTERPRISES	*	COUNTY BOARD OF APPEALS
2623 Marine Avenue	*	FOR BALTIMORE COUNTY
15th Election District	*	
7th Councilmanic District	*	Case No. 05239A, 05240A

****

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 on November 22, 2005

****

ON BEHALF OF THE APPELLEES/PETITIONERS:
ARNOLD JABLON, ESQUIRE

ON BEHALF OF THE APPELLANTS/ROTESTANTS:
MR. THOMAS NELSON, In Proper Person

ALSO PRESENT: PAUL LEE

TRANSCRIBED BY: CHRISTINE R. LEARY

IN THE MATTER OF:	*	BEFORE THE
F&M ENTERPRISES	*	COUNTY BOARD OF APPEALS
2623 Marine Avenue	*	FOR BALTIMORE COUNTY
15th Election District	*	
7th Councilmanic District	*	Case No. 05239A, 05240A

****

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 on August 17, 2005.

VOLUME I

****

ON BEHALF OF THE APPELLEES/PETITIONERS:

ARNOLD JABLON, ESQUIRE

ON BEHALF OF THE APPELLANTS/PROTESTANTS:

MR. THOMAS NELSON, In Proper Person

ALSO PRESENT: PAUL LEE

TRANSCRIBED BY: CHRISTINE R. LEARY

IN THE MATTER OF: * BEFORE THE
F&M ENTERPRISES * COUNTY BOARD OF APPEALS
2623 Marine Avenue * FOR BALTIMORE COUNTY
15th Election District *
7th Councilmanic District * Case No. 05239A, 05240A
****

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 on August 17, 2005.

VOLUME II

****

ON BEHALF OF THE APPELLEES/PETITIONERS:
ARNOLD JABLON, ESQUIRE

ON BEHALF OF THE APPELLANTS/PROTESTANTS:
MR. THOMAS NELSON, In Proper Person

ALSO PRESENT: PAUL LEE

TRANSCRIBED BY: CHRISTINE R. LEARY

RHEEM MANUFACTURING COMPANY

SPARROWS POINT
RHEEM MFG. CO.
TANK

R.C. 5

BL

BM

BL

BL

BR-AS

ML-AS

RO

D.R. 5.5

BL

BR-AS

D.R. 5.5

BL AS

BM-AS

BL-AS

RO

RO

BR

RO

BL

RO

BL

BM

D.R. 5.5

BL

D.R. 5.5

SNYDER AVE.

AVE.

AVE.

AVE.

STEEL AVE

AVE. 24D

POINT

ROAD

PRIVATE

NORTH POINT

BLVD.

SPARROWS

TRANS. STATION

LAKEVIEW AVE.

E 45,000

MASSETT AVE.

PAC LANE

BRANNAN AVE.

EDGEMERE

MANOR

MARINE AVE.

SNYDER AVE

MARINE

E 46,500

RUTH

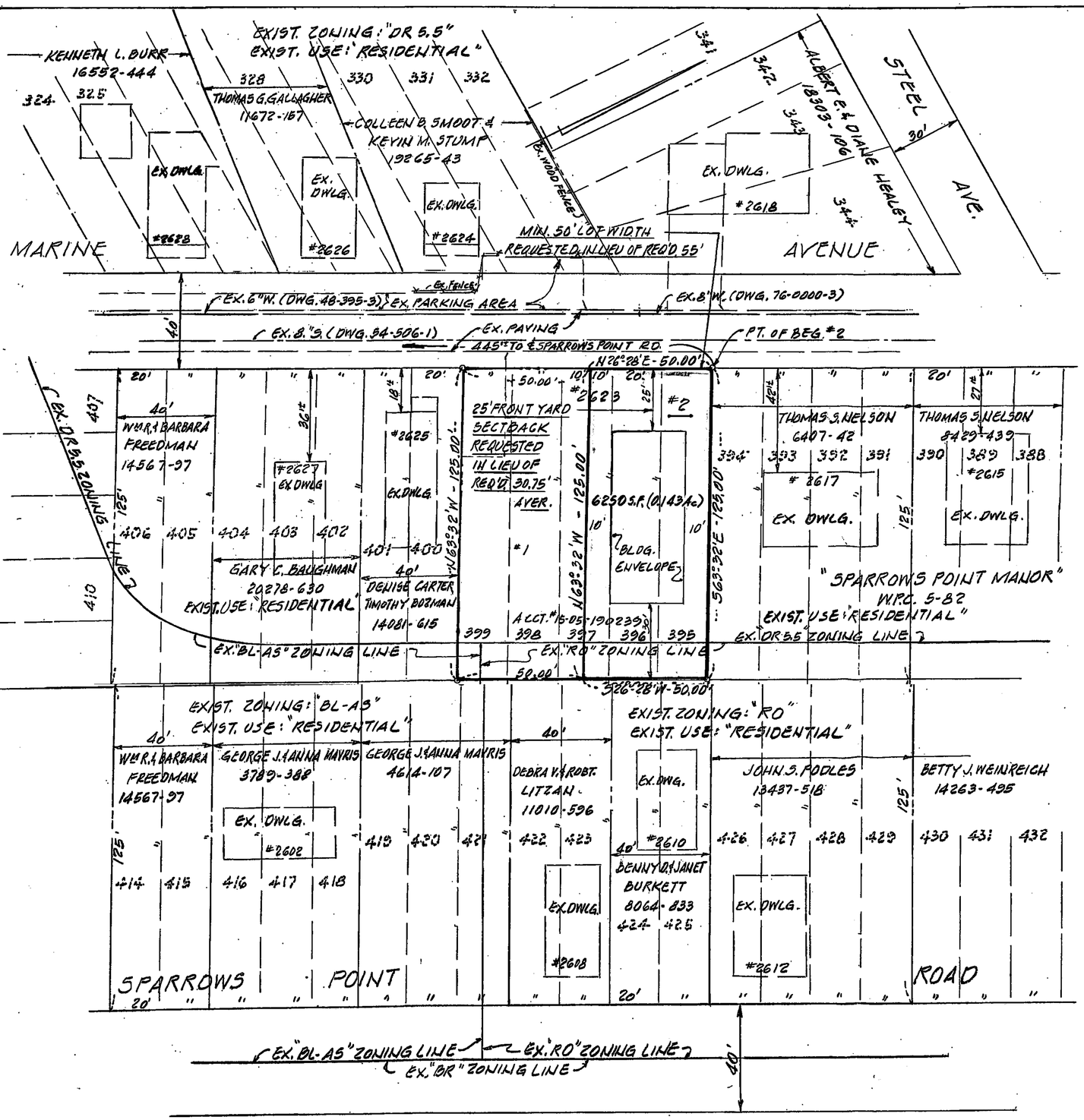
AVE.

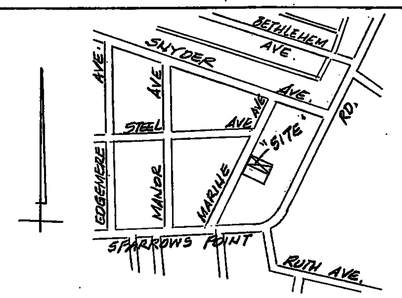
PARKING AREA

"SUBJECT SITE-LOT 2"

(SHEET S.E.7-H)

ZONING MAP "SE 6 H"
SCALE: 1"=200'





LOCATION PLAN
SCALE: 1" = 500'

GENERAL NOTES:

1. AREA OF PROPERTY = 12500 S.F. (0.287 Ac.)
2. EXISTING ZONING OF PROPERTY = "DR 5.5 & BL-AS", "RO"
3. EXISTING USE OF PROPERTY = "VACANT"
4. PROPOSED ZONING OF PROPERTY = "DR 5.5 & BL-AS", "RO"
5. PROPOSED USE OF PROPERTY = "RESIDENTIAL"
6. PROPERTY RECORDED AS LOTS 394 THRU 399 (5 - 20' LOTS = 100') ON PLAT OF "SPARROWS POINT MANOR" IN PLAT BOOK W.P.C. # 5-82
7. PROPERTY SERVED BY PUBLIC SEWER & WATER
8. OWNER IS REQUESTING A LIMITED EXEMPTION FOR A LOT LINE ADJUSTMENT TO MOVE LOT LINE OF LOT 396 & 397 - 10' INTO LOT 397 TO CREATE 2 - 50' LOTS. REQUEST BEING SUBMITTED TO THE DRC.
9. PETITIONER REQUESTING A VARIANCE TO SECTIONS 1B02.3.C.1, 303.1 AND 304 OF THE BCZR TO PERMIT A MIN. LOT WIDTH OF 50' IN LIEU OF THE REQ'D. 55' AND A 25' FRONT YARD SETBACK IN LIEU OF THE REQ'D. AVERAGE SETBACK OF 30.75' AND TO APPROVE AN UNDERSIZED LOT PERSUANT TO SECT. 304 WITH ANY OTHER VARIANCES AS DEEMED NECESSARY BY THE ZONING COMMISSIONER.
10. PROPERTY LOCATED ON BCMD "5E 6H", SCALE: 1" = 200'
11. PROPERTY HAS NO ZONING HISTORY.
12. ACCT. # 15-05-190239 - DEED: 5594-661
13. PROPERTY NOT LOCATED IN CRITICAL AREA

OWNER:
F & M ENTERPRISES, INC.
5200 NORTHPOINT BLVD.
BALTIMORE, MD. 21219

AVER. EX. DWLGS - MARINE AVE.

# 2615	-	F.Y. 27'
# 2617	-	42'
# 2625	-	18'
# 2627	-	36'
TOTAL		123'

AVER. F.Y. = 30.75'

UNDERSIZED LOT # 2

PLAT TO ACCOMPANY PETITION FOR VARIANCES

2623 MARINE AVENUE

(LOTS 395, 396 & PART OF 397)

ELECT. DIST. 15 C7 BALTIMORE CO., MD.

SCALE: 1" = 30' OCT. 29, 2004

Pet Ex #1

ENGINEER: CENTURY ENGINEERING, INC.
32 WEST ROAD
TOWSON, MARYLAND 21204
(410) 823-8070

STATE OF MARYLAND PAUL LEE JR. 3047 PROFESSIONAL ENGINEER

CASE # 05-240 A 24-261