IN RE: PETITION FOR VARIANCE * BEFORE THE
S/S of Clarks Point Road, 1,345 ft. +/- E
centerline of Bowleys Quarters Road * DEPUTY ZONING COMMISSIONER
15th Election District
6th Councilmanic District * FOR BALTIMORE COUNTY
(3741 **Clarks Point Road**)
(3743 Clarks Point Road) * CASE NOS. 05-547-A, 05-548-A
(3745 Clarks Point Road)
*
Anjani Dibello & Robert D. Leas, AND 05-549-A
Legal Owners *
Petitioners

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

IN RE: PETITION FOR VARIANCE *
SW/S of Rossville Boulevard, 150 ft. NW
centerline of Gum Spring Road *
14th Election District
6th Councilmanic District *
(150 ft. W of Gum Spring Road on
S/S of **Rossville Boulevard**) * CASE NO. 05-678-A

Jennifer Adams, Legal Owners * AND
Petitioner
*
PETITION FOR VARIANCE CASE NO. 05-677-A
SW/S of Rossville Boulevard, 200 ft. NW *
centerline of Gum Spring Road
14th Election District *
6th Councilmanic District
(200 ft. W of Gum Spring Road on *
S/S of **Rossville Boulevard)**
*
Stephen Collesano
Petitioner *

* *

IN RE: PETITION FOR VARIANCE *
E/S of Lincoln Avenue, 96 ft. S
centerline of Geise Avenue *
15th Election District
7th Councilmanic District *
(2225 **Lincoln Avenue**)
* CASE NO. 05-585-A

Emma M. Hardesty & Edward Lister, Jr., *
Legal Owners
Petitioners * AND

PETITION FOR VARIANCE * CASE NO. 05-586-A
E/S of Lincoln Avenue, 146 ft. S
centerline of Geise Avenue *
15th Election District
7th Councilmanic District *
(2221 Lincoln Avenue)
*
Emma M. Hardesty & Edward Lister, Jr., *
Petitioners
* * * * * * * * * * * * * *

IN RE: PETITION FOR VARIANCE *
N/S of St. Lukes Lane, 25 ft. W
centerline of Yataruba Drive *
2nd Election District
4th Councilmanic District *
(3116 St. Lukes Lane)
* CASE NO. 06-001-A
Stanley Graves, Legal Owner
and *
W. Stephen Cook, Contract Purchaser
Petitioners *
* * * * * * * * * * * * * * * * *

IN RE: PETITION FOR VARIANCE *
E/S of North Point Road, 320 ft. N
centerline of Elmore Avenue *
15th Election District
7th Councilmanic District *
(7616 North Point Road)
* CASE NO. 06-053-A
Paul Kennard Hidden, *Legal Owner*
Petitioner * AND

PETITION FOR VARIANCE *
E/S of North Point Road, 270 ft. E
centerline of Elmore Avenue *
15th Election District
7th Councilmanic District *
(7618 North Point Road)
* CASE NO. 06-054-A
Paul Kennard Hidden, *Legal Owner*
and *
Douglas Keith Williams, *Contract Purchaser*
Petitioners *
* *

Date 10-9-05 By

FINDINGS OF FACT AND CONCLUSIONS OF LAW

These matters come before this Deputy Zoning Commissioner as Petitions for Variance filed by the legal owners of each property as more particularly described in each case file. The Petitioners are requesting variance relief for properties set forth as follows:

Clark's Point

Case No. 05-547-A: The property is located at 3741 Clarks Point Road (lot 39) in the eastern area of Baltimore County. Variance relief is requested from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a lot to have a lot width of 50 ft. in lieu of the required 55 ft. and to approve an undersized lot per Section 304 of the B.C.Z.R.

Case No. 05-548-A: The property is located at 3743 Clarks Point Road (lot 38) in the eastern area of Baltimore County. Variance relief is requested from Section 1B02.3.C.1 of the B.C.Z.R., to permit a variance to allow a lot to have a lot width of 50 ft. in lieu of the required 55 ft. and to approve an undersized lot per Section 304.

Case No. 05-549-A: The property is located at 3745 Clarks Point Road (lot 37) in the eastern area of Baltimore County. Variance relief is requested from Section 1B02.3.C.1 of the B.C.Z.R., to permit a variance to allow a lot to have a lot width of 50 ft. in lieu of the required 55 ft.

The three cases set forth above will be subsequently referred to collectively as "Clarks Point".

Rossville

Case No. 05-678-A: The property is located 150 ft. west of Gum Spring Road on the south side of Rossville Boulevard in the eastern area of Baltimore County. Variance relief is requested from Section 1B02.3.C.1 of the B.C.Z.R., to permit an existing lot of record (lot 76) in a DR 3.5 zone to have a lot width of 50 ft. in lieu of the 70 ft. required and to have minimum sum of side yard widths of 20 ft. in lieu of the required 25 ft.

Case No. 05-677-A: The property is located 200 ft. west of Gum Spring Road on the south side of Rossville Boulevard in the eastern area of Baltimore County. Variance relief is requested from Section 1B02.3.C.1 of the B.C.Z.R., to permit an existing lot of record (lot 75) in a DR 3.5 zone, with a lot width of 50 ft. and a sum of side yard setbacks of 20 ft. in lieu of the minimum required 70 ft. and 25 ft. respectively.

The two cases set forth above will be subsequently referred to collectively as "Rossville".

Lincoln Avenue

Case No. 05-585-A: The property is located at 2225 Lincoln Avenue in the eastern area of Baltimore County. Variance relief is requested from Section 1B02.3.C.1 of the B.C.Z.R., to permit a lot width of 50 ft. in lieu of the required 55 ft. and from Section 1B02.3.C.1, to permit a side yard setback of 6 ft. +/- in lieu of the required 10 ft. for an existing dwelling.

Case No. 05-586-A: The adjacent property to Case No. 05-585-A is located at 2221 Lincoln Avenue. Variance relief is requested from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a minimum lot width of 50 ft. in lieu of the required 55 ft. for a proposed single-family dwelling.

The two cases set forth above will be subsequently referred to collectively as "Lincoln Avenue".

St. Lukes Lane

Case No. 06-001-A: The property is located at 3116 St. Lukes Lane in Baltimore County. Variance relief is requested from Sections 1B02.3.C.1 and 1B02.3.C a of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a side street setback of 15 ft. in lieu of 30 ft. required and a lot width of 55 ft. in lieu of 70 ft. required.

This case will be subsequently referred to as "St. Luke's Lane".

North Point

Case No. 06-053-A: The property is located at 7616 North Point Road in the eastern area of Baltimore County. Variance relief is requested from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow an existing dwelling with a lot width of 50 ft. in lieu of the required 55 ft.

Case No. 06-054-A: The property is located at 7618 North Point Road in the eastern area of Baltimore County. Variance relief is requested from Section 1B02.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a proposed dwelling with a lot width of 50 ft. in lieu of the required 55 ft.

These cases will be subsequently referred to as "North Point "

Each of these properties was posted with Notice of Hearing for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, Notices of Zoning hearing were published in "The Jeffersonian" newspaper for each case to notify any interested persons of the scheduled hearing date. Dates of publication and posting are found in the individual files.

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 each case as indicated in the respective files.

Interested Persons

Appearing at the hearing in regard to each variance request are those shown by the sign-in sheets for each case. Francis X. Borgerding, Esquire represented the Petitioners in Clarks Point. Neil Lanzi, Esquire represented the Petitioners in Lincoln Avenue. Joanne Kubinec, Esquire and Jennifer Adams represented the Petitioners in Rossville Boulevard. Finally, Lawrence Hammond, Esquire represented the Petitioners in St. Lukes Lane. The Petitioners on North Point Road appeared *pro se*. Each Petition was not opposed except Clark's Point which was eventually resolved with the protestants. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in these cases.

Introduction

The Court of Appeals issued its decision in the case of *Friends of the Ridge v Baltimore Gas and Electric Company*, 352 Md.645, 724 A.2d 34 (1999), which held that BGE could assemble parcels and proceed with development without obtaining variances from internal lot lines defining those parcels. However, in arriving at its holding in this case, the Court announced the doctrine of zoning merger citing seminal cases in New Jersey and Pennsylvania. Apparently, more than six years passed before the Court applied the doctrine in the case of *Remes v Montgomery County* 387 Md 52, 874 A 2d 470 (2005). However, this time the Court applied the doctrine restricting property rights, sending shock waves through the real estate development community.

To my knowledge, this Commission has never applied the *Remes* decision to any case before

it. However, in the case of *Woodbrook LLC*, Case No. 03-218-SPH (dated June 2, 2003) this Commission applied the doctrine of zoning merger outlined in *Friends* to deny building on undersized lots of record. While the *Woodbrook* case was appealed to the Board of Appeals, the Petitioner subsequently withdrew the appeal so that no decision by the Board on the merits occurred.

By chance, ten cases involving the application of the zoning merger doctrine appeared nearly simultaneously before this Commission in the summer of 2005. Remarkably, they run the full spectrum of issues, which the Court of Appeals discussed, in applying the doctrine in *Remes*. These range from when the doctrine applies, to can variances be granted after merger and resubdivision. Consequently, these cases were consolidated herein. Counsel in each case was invited to present additional evidence or argument after the initial zoning hearings if they indicated an interest in doing so. For comparison, the site plan for each case has been reproduced (not to scale) as Exhibits A through E attached to this opinion.

Questions Presented

The questions presented in each case are:

a) Does the doctrine of zoning merger apply to this case? Have adjacent lots been merged from a zoning standpoint because of some event or circumstance in the past?

b) If the doctrine does apply, can the owner request a variance to build on the undersized lot and avoid the impact of the merger?

c) If the doctrine does apply, and no variance is available to avoid the impact of the merger at the initial zoning stage, can the problem be fixed by removing structures or uses that were evidence of the merger? Can an owner fix the problem after the merger?

d) If the doctrine applies, and the owner goes through a resubdivision process as the *Remes* Court directs, can the owner obtain a variance for the re subdivision?

Testimony and Evidence

Clark's Point

The Petitioner purchased three adjacent lots in 2004 with the intent to renovate the existing home on Lot 37 and build two new homes for his son and daughter on Lots 38 and 39. The Petitioner indicated the latter lots are unimproved except for a frame shed on Lot 38, which will be razed. See Exhibit A. These lots are land record lots, which are part of the "Bowleys Quarter" Plat 2 subdivision, which was recorded in the Land Records of Baltimore County in April 1921. The County did not approve this subdivision because it was created many years before the County's subdivision approval process was enacted. In any event, Lot 39 contains 15,500 sq. ft.; Lot 38 contains 16,500 sq. ft. and Lot 37 contains 18,850 sq. ft. All are zoned DR 5.5 and are 50 feet wide. The current DR 5.5 regulations require a minimum lot width of 55 feet and 6,000 sq. feet of area.

Exhibit A and an aerial photograph of the properties shows a common driveway and pier serving all three lots. Lot 39 also has a boat ramp. The frame shed to be razed is located on the boundary between Lots 37 and 38.

Each lot is separately assessed for real estate tax purposes. Lot 37 (with existing house) has a total assessment of $183,000, Lot 38 is assessed for $138,000 and Lot 39 is assessed for $49,000. The existing dwelling on Lot 37 meets all DR 5.5 zoning setback regulations.

Lincoln Avenue

In this case the Petitioner purchased two adjacent lots in the 1960's. The Petitioner indicated that the area was Lot 1-G of the "J. W. Hinson Property" subdivision, which was recorded in the Land Records in 1935. This subdivision was also not approved by the County having been created many years before the County's subdivision approval process was enacted. Apparently, a

prior owner further subdivided Lot 1-G (a 100 ft. wide lot) by deed in 1951 into the two 50 ft. wide lots which are the subject of the present case. The northern lot is improved by a single-family dwelling built in 1950. The southern lot is vacant.

The Petitioner would like to erect a single-family dwelling on the southern lot as shown in Exhibit B. The new home meets all DR 5.5 setback regulations except the lot width does not meet the 55 ft. lot width requirement.

The Petitioner originally requested a side yard setback variance for the existing house in addition to the variance for the 50 ft. lot width. However, after consultation with the neighbor to the north, the Petitioner withdrew the request for the side yard setback variance and proposed instead to raze the existing house and replace it with a design that meets all setback requirements. Both lots are 11,200 sq. ft. and meet the minimum size for DR 5.5 lots of 6,000 sq. ft.

For real estate tax purposes, the southern lot (vacant) is assessed at $29,000 while the northern lot with the existing house is assessed at $77,000.

Both lots are served by a common gravel driveway, which straddles the boundary between the subject lots. Photographs of the southern lot show it is presently grass and trees. The front of the existing house on the northern lot faces the southern lot rather than the road. The new home which replaces this existing home would have its front facing the road.

Roseville Boulevard

The subject properties are Lots 75 and 76 of the "Gum Spring Farm" subdivision which was recorded in the Land Records of Baltimore County in 1925. Likewise this subdivision has not been approved by the County, having been created many years before the County's subdivision approval process was enacted. Both lots are 50 ft. wide and approximately 195 ft. long. Each contain approximately 9,750 sq. ft. and are zoned DR 3.5. The DR 3.5 regulations require a minimum width of 70 ft. and 10,000 sq. ft. in area.

A single-family dwelling was built across the boundary between the two lots in 1937 with the bulk of the dwelling on lot 76.

The two lots with the dwelling were purchased by the Bouthners in March 1982 who in turn sold the lots in separate deeds to the Petitioners in April 2005. Ms. Adams purchased Lot 76 for $87,950. Mr. Collesano purchased Lot 75 for $87,950. Ms. Adams represented that she is not related to Mr. Collesano nor does she have a relationship with him, but rather that they are two legal strangers who purchased separate lots and the dwelling simultaneously with the intention to raze the existing dwelling and build two new homes on the two lots. Each Petitioner proffered that the two lots are separately assessed for tax purposes. Ms. Adams' lot is assessed for $83,720 while Mr. Collesano's lot is assessed at $2,430.

The purchasers propose to raze the existing home and erect two new homes on the separate lots which will meet all DR 3.5 regulations except lot width, lot area and sum of the side yard setbacks. The DR 3.5 regulations require a 25 ft. sum of side yard setback. The Petitioners propose 20 ft. sum of side yard setback instead to allow wider new homes to be built. In addition each lot is approximately 9,700 sq. feet. The DR 3.5 regulations require 10,000 sq. feet. Finally the Petitioners lots are each 50 feet wide while the DR 3.5 regulations require 70 feet width.

St. Lukes Lane

The subject properties are Lots 13 and 14 of the "Sunrise Cedars" subdivision that was recorded in the Land Records of the County in 1946. Again this subdivision has not been approved by the County having been created many years before the County's subdivision approval process was enacted. The lots front on St. Lukes Lane and Yataruba Drive and are improved by a single-family dwelling that was built in 1948 across the boundary of Lots 13 and 14. The Petitioner contends that this was an error that went undetected because no zoning regulations applied which would require building setbacks. Each lot as originally configured was approximately 83 ft. wide

and 125 ft. deep, for a total area of 10,375 sq. ft. The properties are zoned DR 3.5 which require a minimum 70 ft. lot width and 10,000 sq. ft. lot area. The Petitioner purchased the properties in May 2001 for $134,000. The properties are assessed together with the dwelling for $139,260.

The Petitioner has applied for a lot line adjustment to reconfigure the two lots. Lot 14, as reconfigured, will contain the existing dwelling which will remain and contain 10,756 sq. ft. The existing dwelling will meet all DR 3.5 setback regulations. Lot 13 will be reconfigured into an L-shape and will contain 10,086 sq. ft. A new home will be built on Lot 13 that will be 15 ft. from the side street and have a lot width of 55 ft. DR 3.5 regulations require a side street setback of 30 ft. and lot width of 70 ft.. Thus the need for variances in the instant case.

The Petitioner disagreed with the Office of Planning comments that this would create an illegal panhandle on Lot 14. The Petitioner points out that Lot 14 will have 20 ft. of in-fee access to St. Lukes Lane. In addition, Lot 14 will enjoy an easement that will burden Lot 13 across the bottom of the "L", so that the owner of Lot 14 will still look out onto St. Lukes Lane as if it were the owners' front yard. The Petitioner disagrees once again with the Office of Planning who indicates that the reconfigured Lot 13 will be undersized.

North Point Road

The *pro se* Petitioner indicated that the subject properties are Lots 72 and 73 of the "Triple Union" subdivision which was recorded in the Land Records of Baltimore County before 1940. As in the above cases this subdivision has not been approved by the County, having been created many years before the County's subdivision approval process was enacted. Both lots are 50 ft. wide and approximately 150 ft. long (approximately 7,500 sq. ft.) and zoned DR 5.5. The DR 5.5 regulations require a minimum 55 ft. lot width and 6000 sq. ft. lot area.

Lot 73 is improved by a single-family dwelling that was built in 1924. Lot 72 is vacant except for a small shed. The existing dwelling meets all setback requirements.

The owner would like to sell the adjacent lot to his friend who in turn will build a single family dwelling that he will use as his residence. The two lots are separately assessed for tax purposes. Lot 73 is assessed for $83,000 while lot 72 is assessed at $7,500. If the variance is approved the owner will move the shed to his lot. He admitted that he cuts the grass on the adjacent lot, the burden of which he gave as one reason to sell the lot to the contract purchaser.

Findings of Fact and Conclusions of Law

Doctrine of Zoning Merger

The Court of Appeals first recognized the doctrine of zoning merger in the case of *Friends of the Ridge v Baltimore Gas and Electric Company*, 352 Md.645, 724 A.2d 34 (1999), which held that BGE could assemble parcels and proceed with development without obtaining variances from internal lot lines defining those parcels. However, in arriving at its holding in this case, the Court announced the doctrine of zoning merger. Judge Cathell noted that there is a national effort by counties to restrict undersized parcels, especially where the owner has contiguous undersized parcels. He indicated that the doctrine of zoning merger "generally prohibits the use of individual substandard parcels if contiguous parcels have been, at any relevant time, in the same ownership and at the time of that ownership, the combined parcel was not substandard. In other words, if several contiguous parcels, each of which do not comply with present zoning, are in single ownership and, as combined, the single parcel is usable without violating zoning provisions, one of the separate, nonconforming parcels may not then or thereafter be considered nonconforming, nor may a variance be granted for that separate parcel". He went on to emphasize that this doctrine prohibits use of undersized parcels and not those that exceed the regulations.

The Court cited the seminal case in New Jersey of *Loechner v Campoli*, 49 N.J. 504, 231 A.2d 553 (1967), in which the Loechner's built a house on three 25 ft. wide lots and later acquired

two adjacent vacant lots. The New Jersey court ruled that the five lots merged and consequently that Mrs. Loechner could not sell off the two vacant lots for a new home.

Judge Cathell also cited *Somol v Board of Adjustment*, 277 NJ Super 22o, 649 A.2d 422 (1994), in which the New Jersey Court discussed the presumption that contiguous lots merge into the larger parcel. However, he noted that most jurisdictions applying the doctrine require some evidence of the owner's intent to merge. In regard to intent to merge, he cited *Iannucci v Zoning Board of Appeals*, 25 Conn App 85, 592 A.2d 970 (1991), in which a house built on two adjacent lots was found to be sufficient evidence of intent to merge. The Connecticut court noted that the lots remained separate on a map filed in the land records but the lots merged from a zoning standpoint.

Six years after the Maryland Court announced the zoning merger doctrine in Maryland, Judge Cathell applied the doctrine in the traditional way to restrict use of undersized parcels in the case of *Remes v Montgomery County* 387 Md 52, 874 A 2d 470 (2005). In Remes, the two lots were created by a subdivision recorded in 1945. The Court found that the two lots merged from a zoning standpoint which prohibited building a new home on the second lot, even though a permit had been issued by the County to do so.

Evidence showed that prior owners erected a home on a corner lot in 1951. They purchased the second adjacent lot in 1954. This lot was sold in 2003 with the intent to erect a new home on the lot.

The Court found that merger had occurred because prior owners constructed a circular driveway serving the residence on the corner lot over both lots. In addition, the prior owners constructed a swimming pool on the adjacent lot as an accessory structure to the residence on the corner lot. There was some evidence that the pool may have been demolished as of 2003. The prior owners constructed an addition to the home on the corner lot in 1963, which encroached upon

the setback required for the adjacent lot without a variance being requested or issued. Further evidence indicated that between 1974 and 2003, the lots were not separately assessed for tax purposes but rather were billed as a single account. Finally, a prior owner conveyed the lots in a single deed.

The Court noted that when lots are merged from a zoning standpoint, the lots remain separate from a subdivision standpoint. The Court indicated that title examiners regularly consider the aspects of zoning in researching title to property and would warn purchasers of lots that have merged. Surveys would also show encroachments. Once zoning merger has occurred, the separate lots may be sold but may not be used unless they conform to the zoning as well as the subdivision process.

Finally, having found the two lots merged from a zoning standpoint, the Court held that in order for the adjacent lot to be utilized separate and apart from the corner lot, the owner would have to resubdivide the merged lot. The Court noted that it may be necessary to seek variances as to setbacks or to remove encroachments from adjacent lots during this resubdivision process.

Petitioner's attorney's submitted the case of *Township of Middleton v Middleton Township Zoning Hearing Board*, 548 A 2d 1297 (1988) for the proposition that there is no automatic merger just because adjacent properties come into common ownership. The Court noted that the landowner bears the burden of proving that he or his predecessors intend to keep the parcels separate and distinct and not part of one integrated tract. That proof must be grounded upon some overt, unequivocal physical manifestation of this intent and not based solely on the subjective statements regarding intent. Finally, the Court recognized an intent to integrate both lots into a larger tract can be demonstrated by building a house which straddles the common border.

In a similar case in New Jersey, *Board of Adjustment of the Borough of Morris Plains v Cusato*, 649 A2d 422 (N.J. Super, 1994), the Court found that where two contiguous lots were

acquired separately and treated as separate lots there was no merger. In this case, the lots were back to back and did not face the same street and there was no evidence that the lots were ever used together. Finally, the lots were assessed and taxed separately. Consequently there was no merger.

Finally, the Petitioners' attorneys cited *Bridge v Neptune Township Zoning Board of Adjustment* 559 A2d 855 (N.J. super 1989). In this case, the Court held that where the owner of two contiguous lots, both of which front on the same street, constructs a single-family dwelling so as to cover all or part of both lots, those lots lose their identity and merge into a single parcel. However, the Court also recognized that if the lots remain entirely vacant, lots may retain their separate identity. The Court also recognized the pitfall of lot line adjustments that make lots substandard or more substandard after resubdivision. Finally, the Court held that once lots merge, zoning variances are not available without resubdivision.

Case Law Summary

After reviewing the above case law, I find that the following principles apply to cases involving the zoning merger doctrine.

- Zoning merger is not automatic in Maryland even if adjacent undersized lots are in common ownership
- The burden of proof falls on the Petitioner to show that adjacent undersized lots have not merged.
- There is no presumption in favor of merger where adjacent undersized lots have had common ownership but rather each case must be decided on the facts of each case.
- Zoning merger occurs where the owner of adjacent undersized lots intends to merge the lots
- Proof of the owner's intent to merge adjacent undersized lots may be inferred by evidence of merger within the land records of the subject properties or by evidence of the use of or improvements on the undersized lots which show a common use of the lots.

- There must be some overt action on the part of the owner that demonstrates intent to merge.
- One example of an overt act that shows the owners intent to merge is application to a government agency in which the undersized lots are treated in common.

Most of the above principles are taken directly from the cases cited above. However, the last principle requires further explanation. In *Remes,* the Court found merger by the owner building a swimming pool on the adjacent lot which, unless the lots were merged, would have required a zoning hearing to allow an accessory structure on a lot without a principal structure. In Baltimore County this would be done by special hearing. The owner apparently did not apply for a zoning hearing to this effect showing his intent to treat the common lot line between the lots as if it did not exist, i.e. the lots merged. Note, however, that the swimming pool was built presumably after zoning regulations were imposed on the property. I presume that a permit was required to build the pool. Consequently, the owner, by seeking a permit to build the pool without a zoning hearing to allow the accessory structure alone on a lot, declared in a public forum his intent to merge the lots.

Again, in *Remes*, the Court cited the fact that the owner built an addition to the house on the corner lot, which encroached on the side yard setback from the common lot line between lots. Again, I presume that the owner applied for and was granted a permit to build the addition and did not apply for a variance for the side yard setback problem. Again, the owner treated the lot line between lots as if it did not exist, i.e. the lots merged. Most importantly, the owner did this in a public forum such as the permit process.

Further, in *Remes* the owner apparently petitioned the State Department of Assessments and Taxation not to assess the two lots separately but rather to assess them as one. In my experience getting SDAT to agree to assess record lots as one is very difficult. This takes a lot of persuading and petitioning. Again, this was an overt act in a public forum which showed the owner's intent to merge the lots. I note for the discussion below, a later owner repetitioned SDAT to assess the lots

separately which I presume SDAT was happy to do. This goes to the issue of can you fix the merger as does the removal of the swimming pool.

Finally, the *Remes* Court cites the circular driveway across both lots as evidence of common use. I do not know if Montgomery County required a permit to construct the driveway and so do not know if this was evidence of an overt action in a public forum which would show intent to merge.

As some examples of overt actions in public forums, Baltimore County requires permits for the following:

1. Dwellings
2. Additions to dwellings
3. All in ground swimming pools, above ground pools greater then 18 feet round and all pools in the Chesapeake Bay Critical Area and within historic districts;
4. Sheds and garages over 120 sq. feet (10 x 12) and all sheds and garages in the Chesapeake Bay Critical Area and within historic districts;
5. Driveways which disturb more than 5,000 sq. feet and driveways which require curb cuts;
6. Waterfront bulkheads and replacement bulkheads;
7. Piers;
8. Gazeboes in the Chesapeake Bay Critical Area and within historic districts

The County does not require permits for:

1. a boat on a trailer;
2. recreational vehicles under 35 feet.
3. lawns, gardens and woods

Simply because a permit is not required does not mean that certain improvements are not evidence of merger. For example, six tomato plants growing on a lot may not be evidence of intent to merge as these may or may not serve the uses on the other adjacent lots. However, an elaborate formal garden leading to and from the adjacent lot could be evidence of merger.

Finally, I note that the Deputy Zoning Commissioner found in Case No. 03-218- SPH that a common driveway, along with lawn, trees and shrubs were sufficient evidence to find merger. I realize that he did not have the guidance of the *Remes* case available to him in making his decision. Nor do I have the site plan he reviewed in this case. Nevertheless it is apparent I will depart

somewhat from his decision in the following.

Question A

Did zoning merger occur?

I find that, based upon the evidence presented, zoning merger occurred in Clark's Point, Rossville Boulevard and St. Lukes Lane. The latter two cases are straight forward. A prior owner built a dwelling across the lot line separating two adjacent lots. Clearly, the owner intended to merge the lots. Case law in New Jersey and Pennsylvania, as well as common sense, clearly indicate this result.

Much more difficult is the Clark's Point case where the evidence of common usage among three lots is as follows: a common driveway serving all three lots, a common bulkhead serving all three lots, one pier for all three lots and a large frame shed (20 ft. x 15 ft.) built on the lot line separating lots 37 and 38. In regard to the shed, I note that erecting a shed on a common lot line is regularly done in this County to avoid having a special hearing for an accessory structure on a lot without a principal structure.

This looks very much like the situation of the swimming pool erected on the adjacent lot in *Remes*. Without merger the pool would be subject to a zoning hearing to approve an accessory structure without a principal structure. This problem goes away, if the corner lot that provides the principal structure and adjacent lot are merged as the Court found.

Returning to Clark's Point, the shed, bulkhead, pier and driveway (in the CBCA) require permits. Whether in fact the prior owner actually applied for and was granted a permit, I do not know from the evidence presented. Nor do I know from *Remes* whether permits were actually obtained for the pool, addition to the house and driveway. However, the need for permits and associated zoning actions are the kind of overt actions in a public forum which the *Remes* case show intent to merge, even if the permits were not actually obtained. The need for a permit and

subsequent zoning relief can be extremely strong evidence of intent to merge undersize lots.

I admit there is evidence to the contrary in Clark's Point. The tax assessments are separate and substantial. The existing house needs no variances. I take it as no evidence that the owners maintained a common lawn. Finally, there is the possibility that the shed, bulkhead, pier and driveway are non conforming uses started long before zoning was imposed on the property. However on balance it appears to me that a prior owner intended to merge these lots given the many overt actions in a public forum which indicate merger.

In contrast, the shed on the adjacent lot in the North Point case appears to me to be the typical Home Depot prefab shed which would not require a permit to erect. I see no evidence of merger in the fact that the owner cuts the grass on the lot. The evidence before me indicates these are and have been separate lots.

The only evidence of merger on Lincoln Avenue is a short common driveway and the fact that the owner cuts the grass on the adjacent lot. I also recognize that the subdivision, which is relevant to this case, was accomplished by deed after the house was built. This is quite different from the ordinary situation. The house was erected with the front yard facing the adjacent lot and not the street. This occurred while the lot was still large lot 1-G. After the house was erected, the lot was further subdivided by deed. Consequently, the fact that the house faces the side can not factor into evidence whether the lots were merged because the owner subdivided after the house was built. Again I find that simply cutting the grass on the adjacent lot is no evidence of merger. Given the short extent of the common driveway, I do not believe a permit would be required and so there is no overt action in a public forum which indicates merger.

Question B

If the zoning merger doctrine does apply, can the owner request a variance to build on the undersized lot and avoid the impact of the merger?

In regard to Clark's Point Road, Rossville Boulevard and St. Luke's Lane, the three cases in which I found that the lots have merged, several attorneys opined that even if the lots were merged, I could grant variances at this stage to allow the use of the undersized lots. I find, however, that I can not for the reasons below.

I suppose the best reason is that Judge Cathell directly and clearly says that I can not. In *Friends* the Court states, "In other words, if several contiguous parcels, each of which do not comply with present zoning, are in single ownership and as combined, the single parcel is usable without violating zoning provisions, one of the separate, non conforming parcels may not then or *thereafter* be considered nonconforming, nor may a variance be granted for that separate parcel." (Underlined emphasis supplied). See page 653. I understand the reason for this statement is that once the lots merge, there are no internal lot lines (in a zoning sense) which one could vary. The internal lot lines have disappeared from a zoning perspective. One can not obtain a variance on lines that do not exist.

As importantly, the purpose of the doctrine is to restrict undersized parcels. If the Petitioner can simply apply for and be granted the same variance otherwise requested, there is no point to the zoning merger doctrine. The Court has outlined what is to happen next. After zoning merger, the Petitioner is then free to resubdivide the larger combined and merged lot. At this point, the Court indicates in *Remes* that the Petitioner may apply for variances. See Section II Conclusion of the *Remes* decision. Whether this is truly open to the Petitioner will be explored below. However, at this stage no variances are available. The Remes Court leaves open the possibility of variances only at the resubdivision stage.

Question C

If the doctrine does apply, and no variance is available to avoid the impact of the merger at the initial zoning stage, can the problem be fixed by removing structures or uses that were

evidence of the merger? Can an owner fix the problem after the merger?

This is by far the most difficult question in my view. Said another way, can the Petitioner in Clark's Point remove the offending shed as he plans to do, remove the circular driveway, breakup the common bulkhead and erect two more piers on the properties so that all evidence of common use is expunged? Can the Petitioners in Rossville raze the house erected on both lots as they clearly plan to do and avoid merger?

In the Conclusion in the *Remes* case, the Court alludes to fixing the problem when it says " In order for Lot 11 to be utilized separate and apart from Lot 12, there would have to be a resubdivision of the combined lot, creating two lots both of which meet the requirement of both the zoning ordinance and the subdivision regulations. In that process it may well be necessary to seek zoning variances as to setbacks or remove the setback encroachments of the structure on Lot 12." (Emphasis supplied). In my view, the Court is referring to removing encroachments (fixing the problem) during the resubdivision process and not during an initial variance hearing such as presented herein.

In addition, the Court in *Friends* emphasized that once merger occurred subsequent owners could not fix the problem. Again, the Court stated, "In other words, if several contiguous parcels, each of which do not comply with present zoning, are in single ownership and as combined, the single parcel is usable without violating zoning provisions, one of the separate, nonconforming parcels may not then or *thereafter* be considered nonconforming, nor may a variance be granted for that separate parcel." (Emphasis supplied by the Court). Taken together, it appears the Court holds that once merger has occurred a subsequent owner can not undo the merger by removing evidence of merger. Nor can a subsequent owner merely declare in a zoning hearing or on the land records that the subsequent owner hereby revokes the prior intent to merge. If the latter was allowed in *Remes*, the owners would simply have made such a declaration and the case would have been over.

Again, in *Remes* the swimming pool was likely already removed when the case came to hearing. The tax assessments were already back to apply to separate lots. Surely the common driveway will be removed to provide separate driveways. These facts did not affect the outcome. It is clear that the Court intends that once merger occurs the only "solution" open to the owner is resubdivision.

Cases from other states which have adopted the zoning merger doctrine indicate the same result. The Court in *Laurel Beach v Zoning Board of Appeals*, 66 Conn. App 640, 785 A 2d 1169 (Conn. App 2001) indicates that once two lots were merged, they can not thereafter be resubdivided into two separate lots. Also see *Ianucci v Zoning Board of Appeals*, 25 Conn. App. 85, 592 A 2d 970 (1991). Finally in Bell v Zoning Board of Appeals, 27 Conn. App. 41, 604 A 2d 379 the Court indicates that merger of contiguous lots owned by the same person can occur by operation of law.

That said, this result falls particularly harshly on the owners of the Rossville properties. It is clear in building the house across the lot lines, a prior owner intended to merge the lots. However, the present owners of the property, who testified to be unrelated, purchased separate lots from the sellers in separate deeds. One bought a lot with ¾ of a house on it. The other a lot with ¼ house. Clearly, the owners can not use the house in common. At the time of the purchase they indicated their intent to raze the house. Apparently the title company examining the land records insured good title to each lot, perhaps being completely unaware of the doctrine of zoning merger. My experience in such real estate transactions indicates that, at least in the Baltimore area, title companies routinely except to zoning impacts anyway leaving these owners in a precarious position. Frankly, I see no relief for these owners even if they follow the Court's direction to resubdivide the now merged lot as will be discussed below.

Question E

If the doctrine applies, and the owner goes through a resubdivision process as the *Remes* Court directs, can the owner obtain a variance during resubdivision?

This is precisely the fact situation in the St. Lukes case. In this case the two adjacent lots are improved by a single-family dwelling that was built across the common boundary. As above, clearly the owner's act shows intent to merge the lots. Each lot as originally configured met all requirements of the DR 3.5 regulations even though they were imposed after the lots were recorded.

Apparently, aware of the zoning merger doctrine, the Petitioner has applied for resubdivision by lot line adjustment to reconfigure the two lots. The result will be a wider lot for the existing house so no setbacks are violated and a new L-shaped lot for a new home burdened by an easement to insure the existing house can have a front lawn. Both new lots will meet the area regulations of the DR 3.5. However, the new home will be built on the L-shaped lot 15 ft. from the side street and the reconfigured lot will have a lot width of 55 ft. The DR 3.5 regulations require a side street setback of 30 ft. and minimum lot width of 70 ft. Thus the variances are requested.

In the new configuration, however, the lots have lost their uniqueness. This Commission has regularly found that undersized lots created before zoning was imposed in the County are unique in a zoning sense and satisfy the tests of *Cromwell v Ward* 102 Md. App. 691 (1995). We have found that the impact of zoning imposed after the creation of the subdivision on existing undersized lots is different from the impact on other lots in the neighborhood that were created in accordance with zoning regulations. For example, many of the 50-foot wide, ¼ acre waterfront lots in the eastern end of the County were recorded in the land records in the 1920's. In the 1970's, RC 5 zoning was applied to many such lots. These regulations require 50-foot side yard setbacks and the area of each lot recently increased to 1.5 acres by the Council. Obviously, no use can be made of these lots under these regulations. The impact of after applied zoning is different on these lots than others created in accord with the RC regulations. Again, we regularly find these undersized lots unique and approve variances if the proposed use does not change the character of the neighborhood or pattern of development in the immediate area.

However, when someone subdivides property, the new subdivision must meet all County regulations. While they theoretically can apply for a variance, the person subdividing draws the lines of the subdivision. Clearly, any deviation from the regulations is self-imposed and can not meet *Cromwell v Ward*. In the St. Lukes case, the Petitioner took two lots, which met all requirements of the DR 3.5 zone, and created two lots which do not meet those regulations. Clearly, these new deficiencies are self-imposed. Consequently, I must deny the requests.

This problem illustrates that the promise of resubdivision and variances to follow suggested in *Remes* may be somewhat hollow. In Clark's Point, the owner has three 50-foot wide lots. Having found the lots merged, the owner can now apply for resubdivision which will result in two lots that meet the regulations. Should the owner apply for variances to restore the three lots, the new lot lines showing now three lots will not meet the regulations and not pass the *Cromwell* test as self-imposed.

Finally, even if somehow this Commission could find new lots which need variances after resubdivision met *Cromwell*, I do not believe the *Remes* Court would approve achieving the result the owner want by simply going through another bureaucratic step. Let me explain. The owner applies for variances to approve undersized lots. This Commission finds the lots merged and denies the relief. The owner then applies for resubdivision and in that process now applies for exactly the same relief requested in the initial application. If we approved the "new" variance relief, we have simply negated the doctrine of zoning merger by having the owner fill out another form and pay an additional fee. An owner who has three undersized lots would, if the "new" variance request is approved, then have exactly the same three undersized lots. The Court can not intend this result. The same arguments apply to the hope that the Court presents in resubdivision of removing encroachments to fix the problem.

If this analysis is correct, resubdivision will not help these Petitioners. In the St. Lukes case,

the owner can not accomplish what he wants by resubdivision because the variances this generates are self-imposed as above. In Rossville, resubdivision will not give the owner two separate lots on which to build two homes unless a variance is granted. Again, this variance will be self-imposed and even if granted would result in making the zoning merger doctrine ineffective. In Clark's Point, resubdivision will result in two lots in place of three. I suppose that is better than the present one merged lot, but that is not much solace for the Petitioner who has likely paid top dollar for each waterfront lot. Perhaps I am too pessimistic about the prospects for relief in difficult situations such as Rossville. Perhaps with ingenuity, some relief may be found.

Variance Requests

Clark's Point I must deny the variance request here because I find the lots have merged under the doctrine of zoning merger.

Rossville I must deny the variance request because I find the lots have merged under the doctrine of zoning merger.

St. Lukes I must deny the variance request because I find the variance requests are self-imposed.

North Point I will grant the variance requests, as I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Each lot is 50 ft. wide as laid out in a Land Record subdivision recorded prior to imposition of zoning on the property. As a result, these lots are impacted by the new regulations in a different way from the impact on lots in subdivisions laid out after the DR regulations were imposed. I further find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. The Petitioner would like to build a new home on the now vacant lot which he can not do if the Petitions are denied.

I further find that no increase in residential density beyond that otherwise allowable by the

Zoning Regulations will result by granting these variances. Each lot exceeds the minimum lot size of 6,000 sq. ft as required by the DR 5.5 regulations.

I further find that the requests fit the pattern of development in the neighborhood and will not adversely impact the neighborhood. The Petitioner presented letters of support from the most affected neighbor.

Lincoln Avenue The Petitioner has withdrawn the request for a variance for a side yard set back for the existing house, which the Petitioner will raze. The new homes on both lots will meet all DR 5.5 setback regulations. The only deficiency is the lot widths of 50 feet in lieu of the 55 feet required.

I will grant the lot width variance requests on each lot as I find special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. Each lot is 50 ft. wide as laid out in a Land Record subdivision laid out prior to imposition of zoning in the property. As a result, these lots are impacted by the new regulations in a different way from the impact on lots in subdivisions laid out after the DR regulations were imposed. I further find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. The Petitioner would like to build a new home on the now vacant lot which he can not do if the Petitions are denied.

I further find that no increase in residential density beyond that otherwise allowable by the Zoning Regulations will result by granting these variances. Each lot exceeds the minimum lot size of 6,000 sq. ft required by the DR 5.5 regulations.

I further find that these variances can be granted in strict harmony with the spirit and intent of said regulations, and in a manner as to grant relief without injury to the public health, safety and general welfare. The Petitioner has demonstrated that his proposal is consistent with the pattern of development in the immediate area and will not change the character of the neighborhood.

Pursuant to the advertisement, posting of the properties, and public hearing on these petitions held, and after considering the testimony and evidence offered by the Petitioners in each case, I find that the Petitioners' variance requests shall be granted or denied as set forth below.

THEREFORE, IT IS ORDERED, this 6 day of October 2005, by this Deputy Zoning Commissioner, that the Petitioners' requests for variance relief as follows:

Case No. 05-547-A: Property located at 3741 Clarks Point Road. The variance relief requested from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a lot to have a lot width of 50 ft. in lieu of the required 55 ft., be and is hereby DENIED; and

Case No. 05-548-A: Property located at 3743 Clarks Point Road. The variance relief requested from Section 1B02.3.C.1 of the B.C.Z.R., to permit a variance to allow a lot to have a lot width of 50 ft. in lieu of the required 55 ft., be and is hereby DENIED; and

Case No. 05-549-A: Property located at 3745 Clarks Point Road. The variance relief requested from Section 1B02.3.C.1 of the B.C.Z.R., to permit a variance to allow a lot to have a lot width of 50 ft. in lieu of the required 55 ft., be and is hereby DENIED; and

Case No. 05-678-A: Property located on the south side of Rossville Boulevard. The variance relief requested from Section 1B02.3.C.1 of the B.C.Z.R., to permit an existing lot of record (lot 76) in a DR 3.5 zone to have a lot width of 50 ft. in lieu of the 70 ft. required and to have minimum sum of side yard widths of 20 ft. in lieu of the required 25 ft., be and is hereby DENIED; and

Case No. 05-677-A: Property located on the south side of Rossville Boulevard. The variance relief requested from Section 1B02.3.C.1 of the B.C.Z.R., to permit an existing lot of record (lot 75) in a DR 3.5 zone, with a lot width of 50 ft. and a sum of side yard setbacks of 20 ft. in lieu of the minimum required 70 ft. and 25 ft. respectively. be and is hereby DENIED; and

ORDER RECEIVED FOR FILING
Date 10-6-05
By

Case No. 05-585-A: Property located at 2225 Lincoln Avenue. The variance relief requested from Section 1B02.3.C.1 of the B.C.Z.R., to permit a lot width of 50 ft. in lieu of the required 55 ft. is hereby GRANTED and from Section 1B02.3.C.1, to permit a side yard setback of 6 ft. +/- in lieu of the required 10 ft. for an existing dwelling, be and is hereby DENIED having been withdrawn by the Petitioner; and

Case No. 05-586-A: Property located at 2221 Lincoln Avenue. The variance relief requested from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a minimum lot width of 50 ft. in lieu of the required 55 ft. for a proposed single-family dwelling, be and is hereby GRANTED subject, however, to the following restrictions, which are conditions precedent to the relief granted herein:

1. The Petitioners may apply for their building permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition;

2. The Petitioners must be in compliance with the ZAC comments submitted by the Office of Planning dated June 27, 2005

3. The Petitioners must be in compliance with the ZAC comments submitted by DEPRM dated June 14, 2005,

4. The Petitioners must be in compliance with the ZAC comments submitted by Plans Review dated June 2, 2005,

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

Case No. 06-001-A: Property located at 3116 St. Lukes Lane. The variance relief requested from Sections 1B02.3/C.1 and 1B02.3.C.1.a of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a side street setback of 15 ft. in lieu of 30 ft. required and a lot width of 55 ft. in lieu of 70 ft. required, be and is hereby DENIED; and

Case No. 06-053-A: Property located at 7616 North Point Road. The variance relief

requested from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow an existing dwelling with a lot width of 50 ft. in lieu of the required 55 ft., be and is hereby GRANTED; and

Case No. 06-054-A: Property located at 7618 North Point Road. The variance relief requested from Section 1B02.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to allow a proposed dwelling with a lot width of 50 ft. in lieu of the required 55 ft. is hereby GRANTED; subject, however, to the following restrictions, which are conditions precedent to the relief granted herein:

6. The Petitioners may apply for their building permits and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition;

7. The Petitioners must be in compliance with the ZAC comments submitted by the Office of Planning dated august 16, 2005

8. The Petitioners must be in compliance with the ZAC comments submitted by DEPRM dated September 7, 2005,

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

Any appeal of any of these decisions 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 9-29-05
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

October 6, 2005
~~September 29, 2005~~

TO: **Addressees Listed Below**

Re: Petitions for Variance
Case Nos. 05-547-A, 05-548-A & 05-548-A – Clarks Point Rd.
Case Nos. 05-678-A & 05-677-A - Rossville Blvd.
Case Nos. 05-585-A & 05-586-A - Lincoln Ave.
Case No. 06-001-A - St. Luke's La.
Case Nos. 06-053 & 06-054 - North Point Rd.

Dear Ladies & Gentlemen:

Enclosed please find the decision rendered in the above-captioned cases. The petitions for variance have been granted or 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

John V. Murphy
Deputy Zoning Commissioner

JVM:raj
Enclosure

Stanley J. Collesano, 120 Rivermist, Buffalo, NY 14202
Jennifer Adams, 337 Beach Drive, Annapolis, MD 21403
Mike Alexander, Gerhold, Cross & Etzel, Ltd., 320 E. Towsontown Blvd., Ste. 100, Towson, MD 21286
Edward Lister, Jr., Trustee for Emma M. Hardesty, 1158 Canon Way, Westminster, MD 21157
Clyde F. Hinkle, Bafitis & Associates, Inc., 1249 Engleberth Road, Baltimore, MD 21221
Neil Lanzi, Esquire, 409 Washington Ave., Suite 617, Towson, MD 21204
Francis X. Borgerding, Jr., Esquire, 409 Washington Ave., Ste. 600, Towson, MD 21204
Robert D. Leas & Anjani DiBello, 3745 Clarks Point Road, Baltimore, MD 21220
W. Stephen Cook, 125 Teapot Court, Reisterstown, MD 21136
Stanley Graves, 3116 St. Luke's Lane, Baltimore, MD 21207
Richard E. Matz, P.E., Colbert, Matz, Rosenfelt, Inc., 2835 Smith Ave., Suite G, Baltimore, MD 21209
Paul Kennard Hidden, 7616 North Point Road, Baltimore, MD 21219
Douglas Keith Williams, 2806 Kirkleigh Road, Dundalk, MD 21222

GBCA

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 2221 Lincoln Avenue

which is presently zoned DR 5.5

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s)

1B02.3.C.1 to permit a lot width of 50' in lieu of the required 55'. for a proposed single family dwelling.

of the Zoning Regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: (indicate hardship or practical difficulty) The subject 50' wide lot and the 50' wide lot adjacent to the north (2225) was created prior to the establishment of Baltimore County Zoning Regulations in March 1955. The current owner purchased 2 adjacent lots in 1967 and occupied the existing dwelling on 1 lot; retaining the adjacent lot as vacant land to be sold in the future to generate income during their retirement years. Under current zoning regulations a minimum 55' lot width is required generating practical difficulty and hardship for the owner.

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

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address Telephone No.

City State Zip Code

Legal Owner(s):

Emma M. Hardesty
Name - Type or Print

Signature

Edward Lister Jr. (Trustee & Nephew)
Name - Type or Print

Signature

1158 Canon Way 410-340-9828
Address Telephone No.

Westminister MD 21157
City State Zip Code

Representative to be Contacted:

Bafitis & Associates, Inc., Clyde F. Hinkle
Name

1249 Engleberth Road 410-391-2336
Address Telephone No.

Baltimore MD 21221
City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Case No. 05-586-A

Reviewed By BM Date 5/13/05

REV 9/15/98

ORDER RECEIVED FOR FILING
Date 10-6-05
By Debra Wiley

Bafitis & Associates, Inc.

ZONING DESCRIPTION
FOR
2221 LINCOLN AVENUE
15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MARYLAND

Beginning at a point on the East side of Lincoln Avenue, 30' Wide, said point being situated 146' southerly from the centerline of Geise Avenue extended to the East side of said Lincoln Avenue, thence leaving the East side of said Lincoln Avenue the following courses and distances South 81°-36'-00" East 217.43 feet; South 08°-24'-00" West 50.00 feet, North 81°-36'-00" West 214.91 feet to the East side of said Lincoln Avenue; thence binding on the East side of Lincoln Avenue North 05°-30'-00" East 50.06 feet to the point of beginning.

Containing 10,808 Square Feet (0.248 Acres) of land, more or less.

Being a portion of the land described in a deed recorded in the deed records of Baltimore County in Liber 15187, Folio 577.

STATE OF MARYLAND
WILLIAM N. BAFITIS
No. 11641
REGISTERED
PROFESSIONAL ENGINEER

William N. Bafitis, P.E. Md. Reg. No. 11641

5/12/05
Date

#586

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 444379

DATE 5/17/05 ACCOUNT R 001-006-615 0

AMOUNT $ 65.00

RECEIVED FROM: Bo Ctie & Assoc, Inc.

FOR: Variance

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

Item # 586

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
5/16/2005	5/16/2005	10:12:23	4

SG 0506 WALKIN DRCH KOK
>RECEIPT # 359777 5/16/2005 OFLH
Dept 5 528 ZONING VERIFICATION
IP NO. 444379
Recpt Tot $65.00
$65.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

CERTIFICATE OF POSTING

RE: Case No.: 05-586-A

Petitioner/Developer: EMMA M. HARDESTY & EDWARD LISTER

Date of Hearing/Closing: JULY 5, 2005

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

ATTN: Kristen Matthews {(410) 887-3394}

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:

2221 LINCOLN AVE

The sign(s) were posted on 6-18-05
(Month, Day, Year)

Sincerely,

Robert Black 6/21/05
(Signature of Sign Poster) (Date)

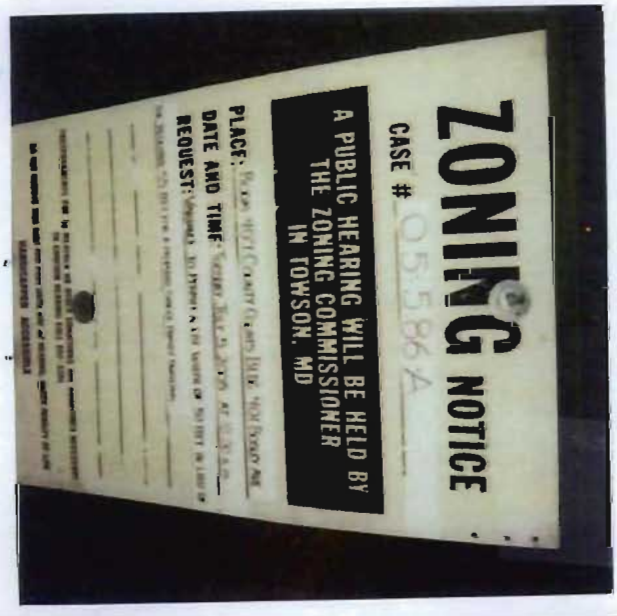
SSG Robert Black
(Print Name)

1508 Leslie Road
(Address)

Dundalk, Maryland 21222
(City, State, Zip Code)

(410) 282-7940
(Telephone Number)

2221 LINCOLN AVE



Department of Permits and Development Management

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

Baltimore County

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

May 20, 2005

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: 05-586-A
2221 Lincoln Avenue
E/side of Lincoln Avenue, 146 feet south of centerline of Geise Avenue
15th Election District – 7th Councilmanic District
Legal Owners: Emma M. Hardesty & Edward Lister, Jr. (Trustee & Nephew)

Variance to permit a lot width of 50 feet in lieu of the required 55 feet for a proposed single family dwelling.

Hearing: Tuesday, July 5, 2005 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: Emma Hardesty & Edward Lister, Jr., 1158 Canon Way, Westminster 21157
Bafitis & Assoc., 1249 Engleberth Road, Baltimore 21221

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, JUNE 20, 2005.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY
Tuesday, June 21, 2005 Issue - Jeffersonian

Please forward billing to:
Edward Lister, Jr. 410-340-9828
1158 Canon Way
Westminster, MD 21157

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:

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Legal Owners: Emma M. Hardesty & Edward Lister, Jr. (Trustee & Nephew)

Variance to permit a lot width of 50 feet in lieu of the required 55 feet for a proposed single family dwelling.

Hearing: Tuesday, July 5, 2005 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

WILLIAM J WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
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: 05-586-A

Petitioner: Emma M. Hardesty

Address or Location: 2221 Lincoln Ave.

PLEASE FORWARD ADVERTISING BILL TO:

Name: Edward Lister, Jr.

Address: 1158 Canon Way
Westminster, MD. 21157

Telephone Number: 410-340-9828

Revised 2/20/98 - SCJ

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

June 27, 2005

Emma M. Hardesty
Edward Lister, Jr.
1158 Canon Way
Westminster, Maryland 21157

Dear Ms. Hardesty and Mr. Lister:

RE: Case Number: 05-586-A, 2221 Lincoln Avenue

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on May 13, 2005.

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
Bafitis & Associates, Inc. Clyde Hinkle 1249 Engleberth Road Baltimore 21221

Fire Department

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

Baltimore County

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

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

May 20, 2005

ATTENTION: Zoning Review planners

Distribution Meeting of: May 20, 2005

Item No.: 584-587, 589-594 (586)

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.

1. The site shall be made to comply with all applicable parts of the Baltimore County Fire Prevention Code prior to occupancy or beginning of operation.

Insp. Tribble
Fire Marshal's Office
410-887-4880
MS-1102F

cc: File

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

State Highway Administration
Driven to Excel

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

Maryland Department of Transportation

Date: 5.20.05

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

RE: Baltimore County
Item No. 586 BPR

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

BALTIMORE COUNTY, MARYLAND
DEPARTMENT OF ENVIRONMENTAL PROTECTION & RESOURCE MANAGEMENT

TO: Tim Kotroco

FROM: John D. Oltman, Jr JDO

DATE: June 14, 2005

SUBJECT: Zoning Item # 05-586
Address 2221 Lincoln Avenue

Zoning Advisory Committee Meeting of January May 31, 2005

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

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

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

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

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

Additional Comments:

This property must comply with the Limited Development Area and Buffer Management Area Subsets of the CBCA Regulations. Please note that the applicant must satisfy the Impervious Surface Limits, Minimum Tree Cover Limits (15%), setbacks from relevant environmental resources, and any mitigation requirements associated with the Limited Development Are Regulations.

Reviewer: Mike Kulis, Sue Farrinetti Date: June 14, 2005

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: June 27, 2005

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

SUBJECT: Zoning Advisory Petition(s): **Case(s) 5-585 and 5-586** ***Amended Comment***

The Office of Planning does not oppose the petitioner's request to permit a lot width of 50 feet in lieu of the minimum required 55 feet and to permit a side yard of 6 feet ± in lieu of the minimum required 10 feet.

If the petitioner's request is granted, the following conditions shall apply to the proposed dwelling:

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 Curtis Murray with the Office of Planning at 410-887-3480.

Prepared By: Curtis Murray

Division Chief: Jeffrey W. Long

CM/LL

W:\DEVREV\ZAC\5-585 and 5-586amended.doc

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: June 2, 2005

FROM: Dennis A. Kennedy, Acting Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For June 6, 2005
Item No. 586

The Bureau of Development Plans Review has reviewed the subject zoning item and we have the following comment(s).

The flood protection elevation for this site is 10.4.

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

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

The building engineer shall require a permit for this project.

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

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

The minimum right of way for all public roads in Baltimore County is 40-foot. Setback shall be modified accordingly.

DAK:CEN:clw
cc: File
ZAC-ITEM NO 586-06022005.doc

RE:	PETITION FOR VARIANCE 2221 Lincoln Avenue; E/side Lincoln Avenue, 146' S c/line Geise Avenue 15th Election & 7th Councilmanic Districts Legal Owner(s): Emma M Hardesty & Edward Lister, Jr. Petitioner(s)	*	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 05-586-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 and all documentation filed in the case.

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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of May, 2005, a copy of the foregoing Entry of Appearance was mailed to, Bafitis & Associates, Inc, Clyde Hinkle, 1249 Engleberth Road, Baltimore, Md 21221, Representative for Petitioner(s).

RECEIVED
MAY 20 2005
Per.....

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

ATTN: KRISTEN

ing Review Office at (410) 887-3391.
JT/5/691 Jn 21 55985

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: #05-585-A
2221 Lincoln Avenue
E/side of Lincoln Avenue, 146 feet south of centerline of Geise Avenue
15th Election District
7th Councilmanic District
Legal Owner(s):
Emma M. Hardesty & Edward Listar, Jr.
(Trustee & Nephew)
Variance: to permit a lot width of 50 feet in lieu of the required 55 feet for a proposed single family dwelling.
Hearing: Tuesday, July 5, 2005 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

WILLIAM J. WISEMAN, III
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/5/693 June 21 56019

Hearing, Contact the Zoning Review Office at (410) 887-3391.
JT/5/687 June 21 56952

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: #05-591-A
7399 Brightside Avenue
S/side of Brightside Avenue at the distance of 135 feet to centerline of Summit Avenue
14th Election District
7th Councilmanic District
Legal Owner(s): Wayne J. Edwards
Variance: to permit a dwelling with a lot width of 50 feet in lieu of the required 55 feet.
Hearing: Wednesday, July 6, 2005 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

WILLIAM J. WISEMAN, III
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/5/686 June 21 55953

HEARING: Contact the Zoning Review Office at (410) 887-3391.
JT/5/689 June 21 56954

CIRCUIT COURT FOR BALTIMORE COUNTY

WILLIAM M. LEVY
MICHAEL E. MARINO
V.
CAROL C. GATTO

Case Number: 03-C-05-004420 FC

NOTICE OF SALE

Notice is hereby issued by the Circuit Court for Baltimore County, this 15th day of June, 2005 that the sale made and reported by William M. Levy and Michael E. Marino, Substitute Trustee(s) appointed for the sale of the property described in these proceedings 60 Night Wing Drive, Baltimore, Maryland 21220 be ratified and confirmed thirty (30) days from the date of this Notice, unless cause to the contrary be shown, provided a copy of this Notice be inserted in some Newspaper published in this County, once in each of three (3) successive weeks.

The report states the amount of the sale to be $95,500.00.

SUZANNE MENSH, Clerk
True Copy Test:
SUZANNE MENSH, Clerk
JT 6/721 Jun 21,28 Jly 5 56170

SUZANNE MENSH, Clerk
JT 6/717 Jn 21,28 Jly 5 56156

CIRCUIT COURT FOR BALTIMORE COUNTY

ALVIN E. FRIEDMAN
KENNETH J. MACFADYEN
JAMES J. LOFTUS
DANIEL MENCHEL
V.
JO ANN McGRAY
WILLIAM G. HERR, JR.

Case Number: 03-C-03-008339 FC

NOTICE OF SALE

Notice is hereby issued by the Circuit Court for Baltimore County, this 15th day of June, 2005 that the sale made and reported by Daniel Menchel, Substitute Trustee(s) appointed for the sale of the property described in these proceedings 7920 34th Street a/k/a Thirty-Fourth Street, Baltimore, MD 21237 be ratified and confirmed thirty (30) days from the date of this Notice, unless cause to the contrary be shown, provided a copy of this Notice be inserted in some Newspaper published in this County, once in each of three (3) successive weeks.

The report states the amount of the sale to be $180,000.00.

SUZANNE MENSH, Clerk
True Copy Test:
SUZANNE MENSH, Clerk
JT 6/718 Jn 21,28 Jly 5 56159

CIRCUIT COURT FOR BALTIMORE COUNTY

HOWARD N. BIERMAN
JACOB GEESING
CARRIE M. WARD
V.
GERTRUDE C. NOBLES

Case Number: 03-C-04-002586 FC

NOTICE OF SALE

Notice is hereby issue[d] by the Circuit Court for Ba[l]timore County, this 16[th] day of June, 2005 that th[e] sale made and reported [by] Howard N. Bierman, Sub[sti]tute Trustee(s) appointe[d] for the sale of the proper[ty] described in these proceed[ings] 16 Gwynnlake Driv[e] a/k/a 16 Gwynn La[ne] Drive, Baltimore, M[D] 21207 be ratified and co[n]firmed thirty (30) da[ys] from the date of this N[o]tice, unless cause to t[he] contrary be shown, prov[ided] a copy of this Notice [be] inserted in some Newsp[a]per published in this Cou[n]ty, once in each of three [(3)] successive weeks.

The report states [the] amount of the sale to [be] $123,500.00.

SUZANNE MENSH, Clerk
True Copy Test:
SUZANNE MENSH, Clerk
JT 6/735 Jn 21,28, Jly 5 56[illegible]

COHN, GOLDBERG & DEUTSCH, LLC
ATTORNEYS AT LAW
600 BALTIMORE AVENUE, SUITE 208
TOWSON, MARYLAND 21204

SUBSTITUTE TRUSTEES' SALE OF IMPROVED REAL PROPERTY
3902 CHAFFEY ROAD
RANDALLSTOWN, MD 21133

Under a power of sale contained in a certain Deed of Trust from Allan Levy and Bonnie K. Levy f/k/a Bonnie K. Sherman dated July 24, 1998 and recorded in Liber 13623, Folio 249 among the Land Records of Baltimore County, Maryland, with an original principal balance of $93,600.00, and an original interest rate of 9.500, default having occurred under the terms thereof, the Substitute Trustees will sell at public auction at the Courthouse door for the Circuit Court for Baltimore County, on

July 7, 2005 AT 10:03 AM

COHN, GOLDBERG & DEUTSCH, LLC
ATTORNEYS AT LAW
600 BALTIMORE AVENUE, SUITE 208
TOWSON, MARYLAND 21204

SUBSTITUTE TRUSTEES' SALE OF IMPROVED REAL PROPERTY
3106 EAST AVENUE
BALTIMORE, MD 21234

Under a power of sale contained in a certain Deed of Trust from Gregory W. Rogers dated October 20, 2003 and recorded in Liber 20336, Folio 533 among the Land Records of Baltimore County, Maryland, with an original principal balance of $115,000.00, and an original interest rate of 7.300, default having occurred under the terms thereof, the Substitute Trustees will sell at public auction at the Courthouse door for the Circuit Court for Baltimore County, on

June 23, 2005 AT 10:00 AM

ALL THAT FEE-SIMPLE LOT OF GROUND and the im-

COVAHEY, BOOZ
Attc
606 Baltimo
Towson,
(41

SUBSTITUTE[S]
OF [illegible]
LEASEHOLD D[EED]
K[illegible]

NO. 1967
BALTIMORE, M[D]

Under and by virtue a certain Deed of Trus[t] Continental - Towson, 2004 and recorded [in] more County in Liber [illegible] ration of Substitution and recorded among [the] cords substituting T[he] Michael T. Pate, Jon[es] T. Opendan as Subst[itute] Trust aforesaid. Natio[nal] current holder of th[e] insuror thereof being [in] and default having o[c]curred the undersigned Sub[stitute] at public auction, [at] Courts Building, 40[1] entrance), Towson, [MD]

Wednesd[ay]

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

July 8, 2005

Neil Lanzi, Esquire
409 Washington Avenue, Suite 617
Towson, Maryland 21204

Re: Petitions for Variance
Case Nos. 05-585-A & 05-586-A
Property: 2221 & 2225 Lincoln Avenue

Dear Mr. Lanzi:

I recently became aware of the doctrine of zoning merger which the Court of Appeals has apparently approved in the cases of *Friends of the Ridge, etc.*, 352 Md. 645, 724 A 2nd 34 (1999) and *Remes, etc.*, 387 MD. 52, 874 A.2d 470 (2005). The *Remes* case was issued May 2005 with motion to reconsider denied in June 2005. To my knowledge is the first case to apply the zoning merger doctrine to a specific case which would restrict property rights. The *Remes* Court indicates that contiguous lots in common ownership are merged from a zoning under certain circumstances which prohibit granting variances for substandard lots. Needless to say, these cases will have a profound affect on many properties in the older subdivisions in the County.

In my review of these files, it appears that we have several elements of zoning merger as described by the Court. However, I failed to bring this matter to your attention at the hearing, to give you a chance to indicate whether or not you believe zoning merger has occurred in this case and what that should mean to the outcome.

I would gladly schedule a hearing on this matter but will be happy to have you submit additional information by mail, if you prefer.

Very truly yours,

John V. Murphy

John V. Murphy
Deputy Zoning Commissioner

JVM:raj

Zoning Merger Addresses:

Stanley J. Collesano
120 Rivermist
Buffalo, NY 14202

Jennifer Adams
337 Beach Drive
Annapolis, MD 21403

Mike Alexander
Gerhold, Cross & Etzel, Ltd.
320 E. Towsontown Blvd., Ste. 100
Towson, MD 21286

Edward Lister, Jr., Trustee
for Emma M. Hardesty
1158 Canon Way
Westminster, MD 21157

Clyde F. Hinkle
Bafitis & Associates, Inc.
1249 Engleberth Road
Baltimore, MD 21221

Neil Lanzi, Esquire
409 Washington Ave., Suite 617
Towson, MD 21204

Francis X. Borgerding, Jr., Esquire
409 Washington Ave., Ste. 600
Towson, MD 21204

Robert D. Leas & Anjani DiBello
3745 Clarks Point Road
Baltimore, MD 21220

W. Stephen Cook
125 Teapot Court
Reisterstown, MD 21136

Stanley Graves
3116 St. Luke's Lane
Baltimore, MD 21207

Richard E. Matz, P.E.
Colbert, Matz, Rosenfelt, Inc.
2835 Smith Ave., Suite G
Baltimore, MD 21209

Paul Kennard Hidden
7616 North Point Road
Baltimore, MD 21219

Douglas Keith Williams
2806 Kirkleigh Road
Dundalk, MD 21222

Baltimore County Zoning Commissioner
Office of Planning
Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
SERVICE REQUESTED

W. STEPHEN COOK
125 TEAPOT COURT
REISTERSTOWN, MD 21136

DOUGLAS KEITH WILLIAMS
2806 KIRKLEIGH ROAD
DUNDALK, MD 21222

PAUL KENNARD HIDDEN
7616 NORTH POINT ROAD
BALTIMORE, MD 21219

STANLEY GRAVES
3116 ST. LUKE'S LANE
BALTIMORE, MD 21207

401 Bosley Avenue
Towson, Maryland 21204
RVICE REQUESTED

NEIL LANZI, ESQUIRE
409 WASHINGTON AVE., SUITE 617
TOWSON, MD 21204

CLYDE F. HINKLE
BAFITIS & ASSOCIATES, INC.
1249 ENGLEBERTH ROAD
BALTIMORE, MD 21221

EDWARD LISTER, JR., TRUSTEE
FOR EMMA M. HARDESTY
1158 CANON WAY
WESTMINSTER, MD 21157

MIKE ALEXANDER
GERHOLD, CROSS & ETZEL, LTD.
320 E. TOWSONTOWN BLVD., STE. 100
TOWSON, MD 21286

[redacted]
337 BEACH DRIVE
ANNAPOLIS, MD 21403

SERVICE REQUESTED

FRANCIS X. BORGERDING, JR., ESQUIRE
409 WASHINGTON AVE., STE. 600
TOWSON, MD 21204

RICHARD E. MATZ, P.E.
COLBERT, MATZ, ROSENFELT, INC.
2835 SMITH AVE., SUITE G
BALTIMORE, MD 21209

ROBERT D. LEAS & ANJANI DIBELLO
3745 CLARKS POINT ROAD
BALTIMORE, MD 21220

ERVICE REQUESTED

STANLEY J. COLLESANO
120 RIVERMIST
BUFFALO, NY 14202

Baltimore County Zoning Commissioner
Office of Planning
Suite 405, County Courts Bldg.
401 Bosley Avenue
Towson, Maryland 21204
ERVICE REQUESTED

FRANCIS X. BORGERDING, JR., ESQUIRE
409 WASHINGTON AVE., STE. 600
TOWSON, MD 21204

IN RE: PETITIONS FOR VARIANCE
E/S Lincoln Avenue, Across and
50'S of the c/l Geise Avenue
(2229 & 2227 Lincoln Avenue)
15th Election District
7th Council District

Gary M. Maynor, Jr.
Petitioner

* BEFORE THE

* ZONING COMMISSIONER

* OF BALTIMORE COUNTY

* Cases Nos. 05-461-A & 05-462-A

*

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Variance filed by the owner of the subject adjacent properties, Gary M. Maynor, Jr. Since the properties are owned by the same person and are located adjacent to one another, the two cases were heard contemporaneously. In this regard, it is to be noted that the Petitioner had previously filed for relief under Cases Nos. 05-284-A and 05-285-A and a hearing was scheduled before Deputy Zoning Commissioner John V. Murphy on February 1, 2005. However, as a result of a misunderstanding, neither the Petitioner nor his representative attended the hearing, nor was there any request for postponement. Thus, by Order dated February 8, 2005, Deputy Zoning Commissioner Murphy dismissed the requested variance without prejudice. Subsequently, the Petitioner advised that he was not aware that his presence at the public hearing was required and requested a reconsideration of the matter. Ultimately, the Director of the Department of Permits and Development Management allowed the Petitioner to re-file his requests under the above-captioned Case numbers seeking relief as more particularly described below.

In Case No. 05-461-A, the Petitioners request a variance from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to approve an existing dwelling, known as 2227 Lincoln Avenue, on a lot with a width of 50 feet in lieu of the required 55 feet. In Case No. 05-462-A, the Petitioners request similar relief from Sections 1B02.3.C.1 and 304.1 of the B.C.Z.R. to permit a lot width of 50 feet in lieu of the minimum required 55 feet and approval of

the subject property as an undersized lot, for a proposed dwelling, to be known as 2229 Lincoln Avenue. The subject properties and requested relief are more particularly described on the site plans submitted in each case, which were accepted into evidence and marked respectively as Petitioners' Exhibits 1.

Appearing at the requisite public hearing in support of the request was Gary Maynor, property owner. There were no Protestants or other interested persons present.

Testimony and evidence offered revealed that the subject properties are located on the east side of Lincoln Avenue, across from its intersection with Geise Avenue in Edgemere, not far from Jones Creek and Old Road Bay. The properties are also identified as being part of Lot 1G of the J. W. Hinson property, an older subdivision that was platted and recorded in the Land Records in 1935, well prior to the adoption of the first set of zoning regulations in Baltimore County. As is often the case with older subdivisions, many of the lots are undersized and do not meet current area and width requirements for development. In this regard, the subject property is comprised of two parcels, both of which are 50 feet wide and range in depth from 235 to 240 feet deep. As shown on the site plan, the property known as 2227 Lincoln Avenue, contains a gross area of 11,811 sq.ft., zoned D.R.5.5, and is improved with a two-story dwelling in which the Petitioner resides. The property known as 2229 Lincoln Avenue contains a gross area of 11,937 sq.ft., split-zoned B.L. and D.R.5.5, and is unimproved; however, has traditionally been used as the side yard to the improved parcel known as 2227 Lincoln Avenue. In this regard, although the subject property is located in an area predominantly zoned D.R.5.5, a larger area of this parcel is zoned B.L., apparently due to the fact that the immediately adjacent property to the north is zoned B.L. and is improved with an apartment building which contains a convenience store on the first floor. In any event, both properties are served by public water and sewer, and have their own individual tax identification numbers.

The instant Petitions were filed seeking recognition that the subject properties are two separate building lots so as to permit development of the unimproved lot, and to legitimize the existing dwelling. In this regard, both lots are only 50 feet wide; however, contain more than

11,000 sq.ft. in area. The D.R.5.5 zoning regulations require a minimum lot width of 55 feet, and minimum lot area of 6,000 sq.ft. Thus, the only deficiency in both instances is the lot width, which is 5 feet shy of the required 55 feet. The new house will meet all front, side and rear yard setback requirements and will be located a consistent distance from the road as other houses in the vicinity. In that both lots contain well above the minimum required area, that portion of the request seeking approval of the unimproved lot as undersized shall be dismissed as moot.

Turning first to the relief requested in Case No. 05-462-A, I am persuaded that relief should be granted to allow construction of the proposed single-family dwelling on the property known as 2229 Lincoln Avenue. The fact that this subdivision was platted and recorded many years ago, well prior to the adoption of the B.C.Z.R. is a persuasive factor. Moreover, the proposed dwelling will meet all front, side, and rear yard setback requirements and will be situated on the lot consistent with other homes along Lincoln Avenue. Finally, the neighbors support the proposal. The only deficiency in this instance is the lot width, which is 5 feet shy of the required 55 feet. It is to be noted that given the property's close proximity to the water, the proposed development must be in compliance with Chesapeake Bay Critical Areas Regulations. Moreover, the proposed dwelling shall be constructed substantially in accordance with the building elevation drawings reviewed and approved by the Office of Planning.

Relief will likewise be granted in Case No. 05-461-A to legitimize the existing dwelling on the property known as 2227 Lincoln Avenue. As noted above, these lots were created in 1935 and the dwelling has existed on the subject property since 1947. Thus, it is clear that strict compliance with the zoning regulations would be impractical and result in an unreasonable hardship for the Petitioners. In my view, the relief requested will not result in any detriment to the health, safety and general welfare of the surrounding locale and meets the spirit and intent of Section 307 for relief to be granted.

Pursuant to the advertisement, posting of the properties, and public hearing on these Petitions held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 12th day of April 2005 that the Petition for Variance filed in Case No. 05-461-A seeking relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot width of 50 feet in lieu of the required 55 feet, for the existing dwelling known as 2227 Lincoln Avenue, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED; and,

IT IS FURTHER ORDERED that the Petition for Variance filed in Case No. 05-462-A, seeking relief from Section 1B02.3.C.1 of the B.C.Z.R. to permit a lot width of 50 feet in lieu of the required 55 feet for a proposed dwelling, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, the Petitioner is hereby made aware that proceeding at this time is at his own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

2) Compliance with Chesapeake Bay Critical Areas regulations as set forth in the ZAC comments submitted by the Department of Environmental Protection and Resource Management (DEPRM), dated January 24, 2005, a copy of which is attached hereto and made a part hereof.

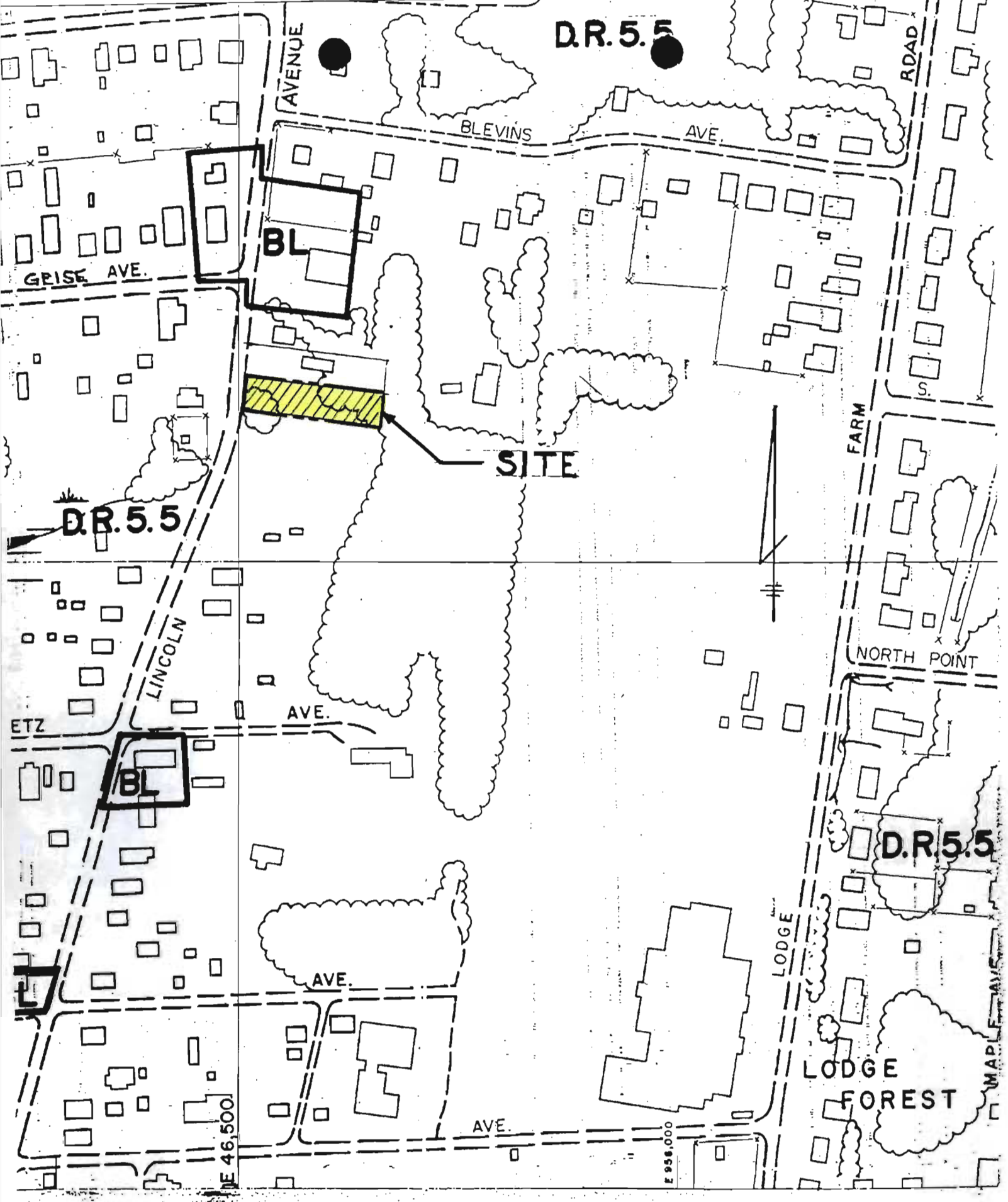
3) The proposed dwelling shall be constructed substantially in accordance with the building elevation drawings reviewed and approved by the Office of Planning. Additionally, the Petitioners shall provide landscaping along the public road for both properties.

4) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order

IT IS FURTHER ORDERED that the relief requested in Case No. 05-462-A seeking approval of the unimproved lot (2229 Lincoln Avenue) as undersized, pursuant to Section 304 of the B.C.Z.R., be and is hereby DISMISSED AS MOOT.

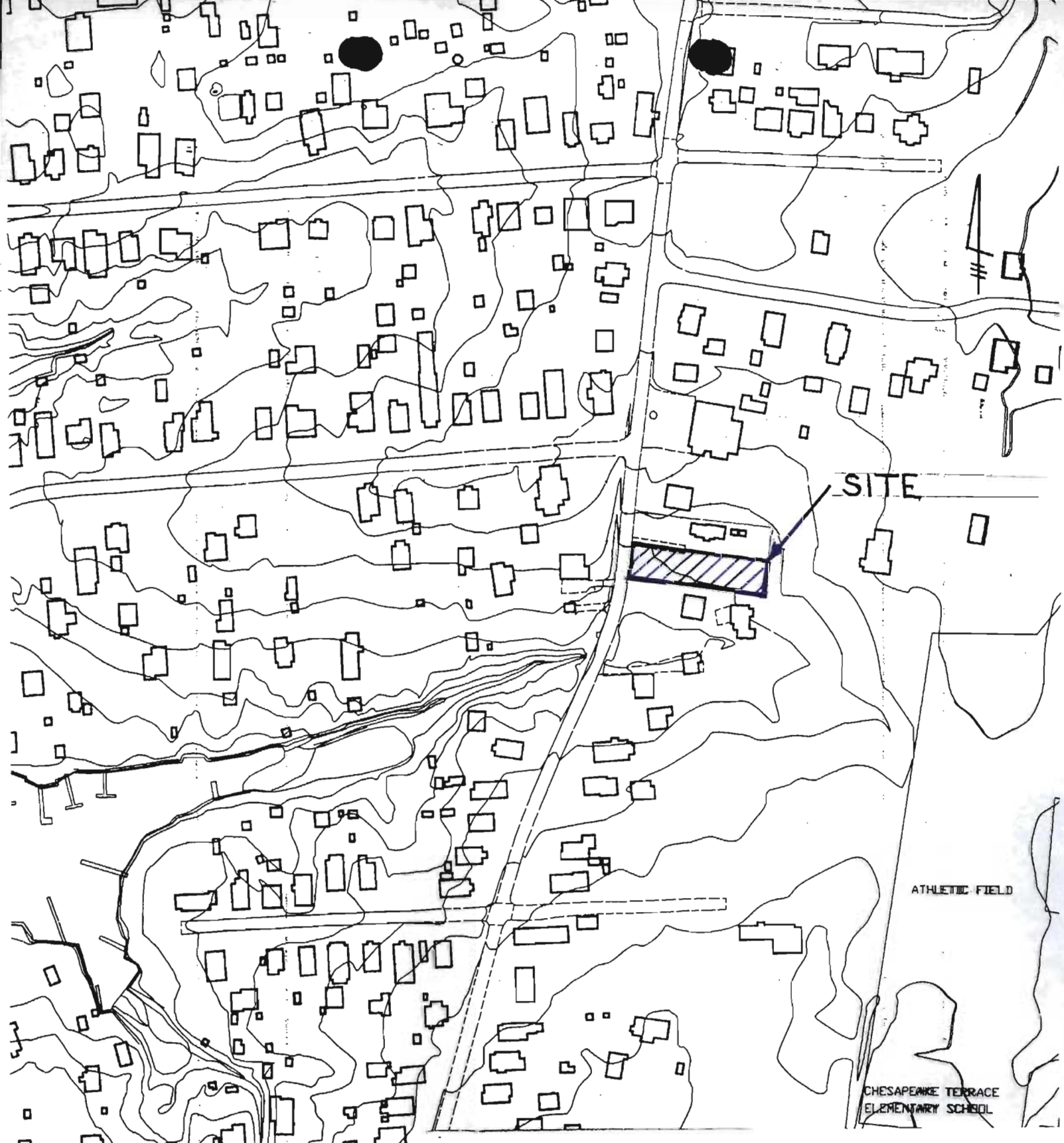
WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:bjs



SCALE	LOCATION	SHEET
1" = 200'±	LODGE FOREST	S.E. 7-H
DATE OF PHOTOGRAPHY JANUARY		

ZONING MAP #586
for
#2221 LINCOLN AVE.



1"=200' TOPOGRAPHIC MAP

for

#2221 LINCOLN AVENUE

#586

EXHIBIT A – CLARKS POINT ROAD

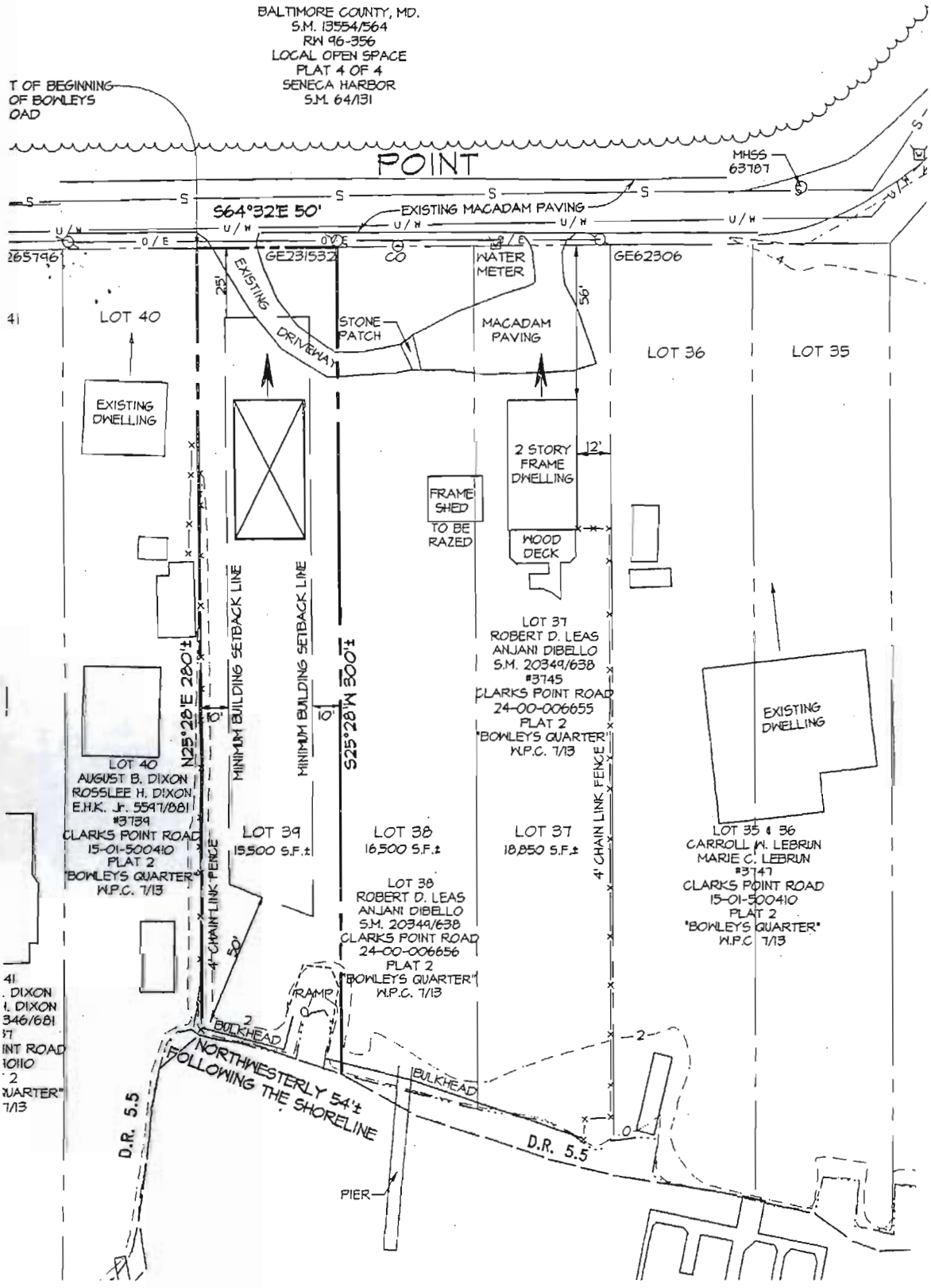


EXHIBIT B – LINCOLN AVENUE

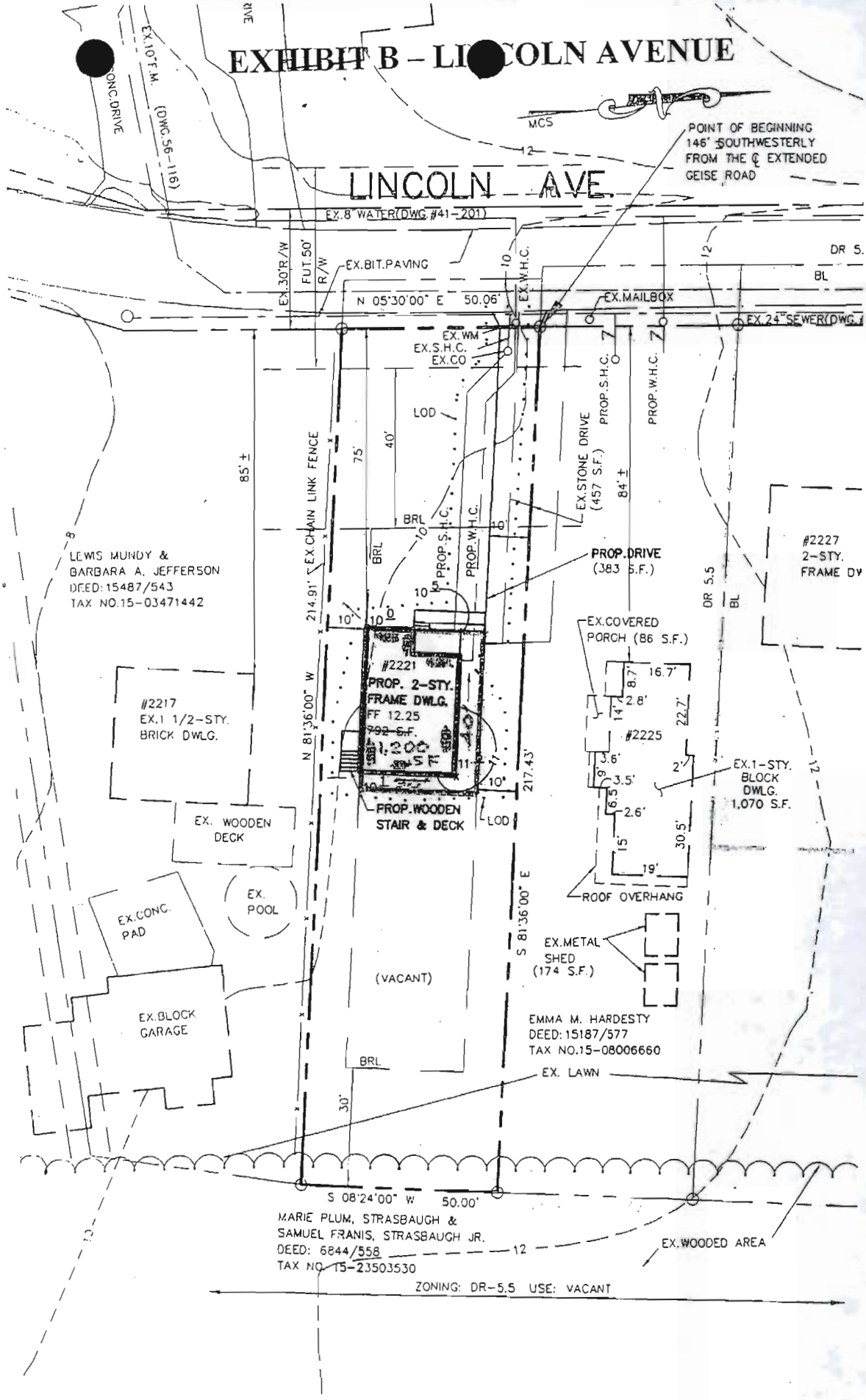


EXHIBIT C – ROSSVILLE BLVD.

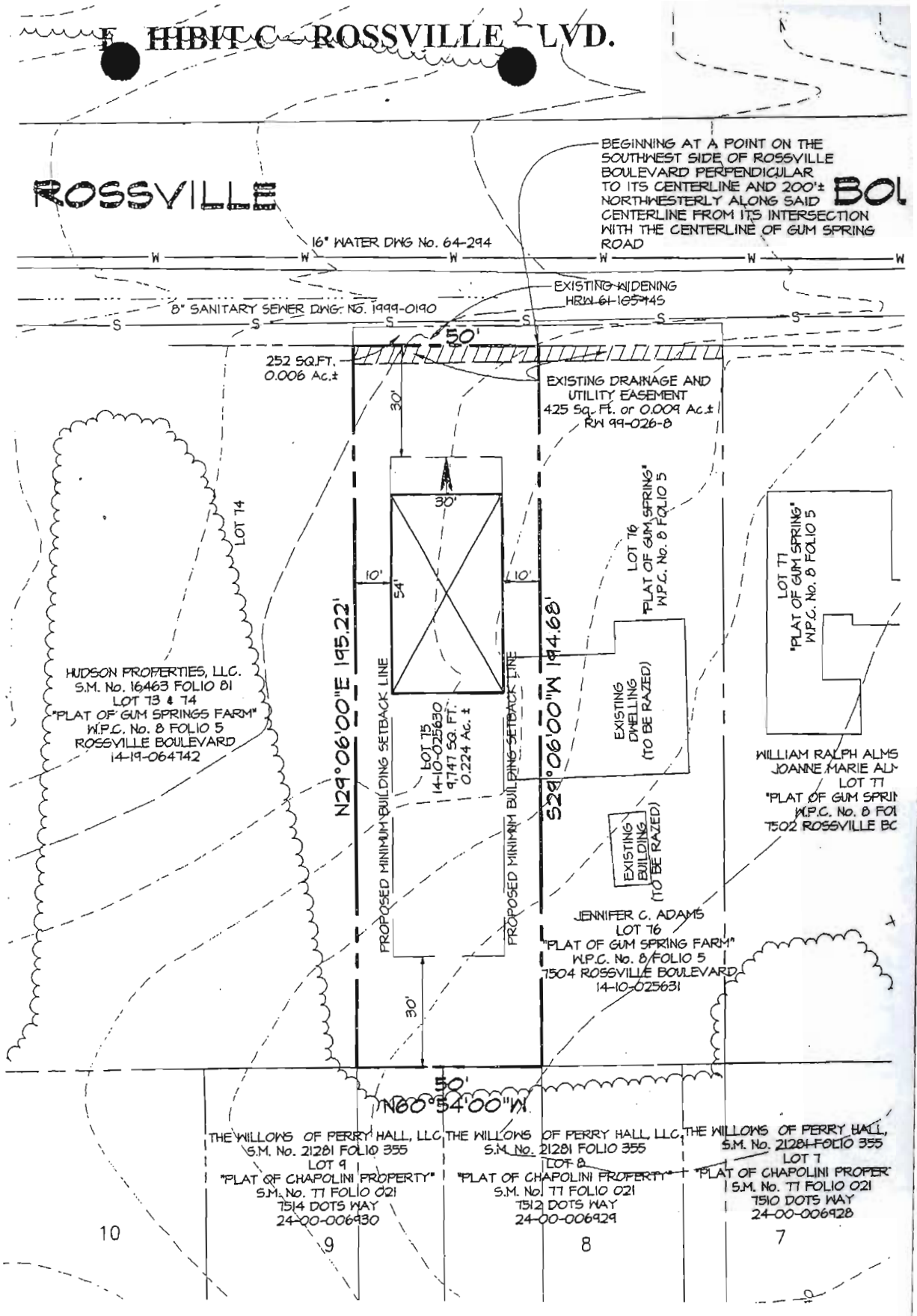
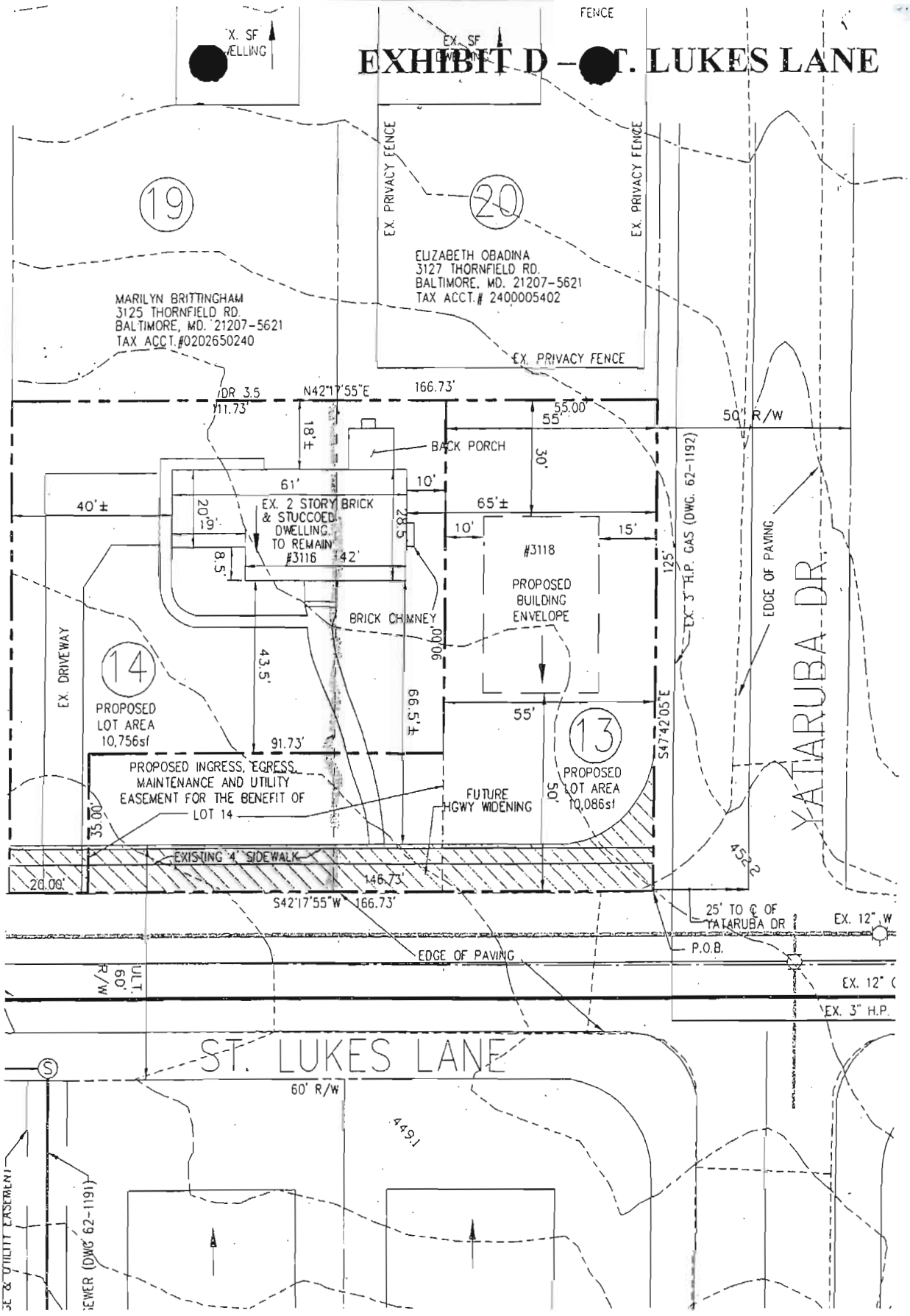


EXHIBIT D – ST. LUKES LANE



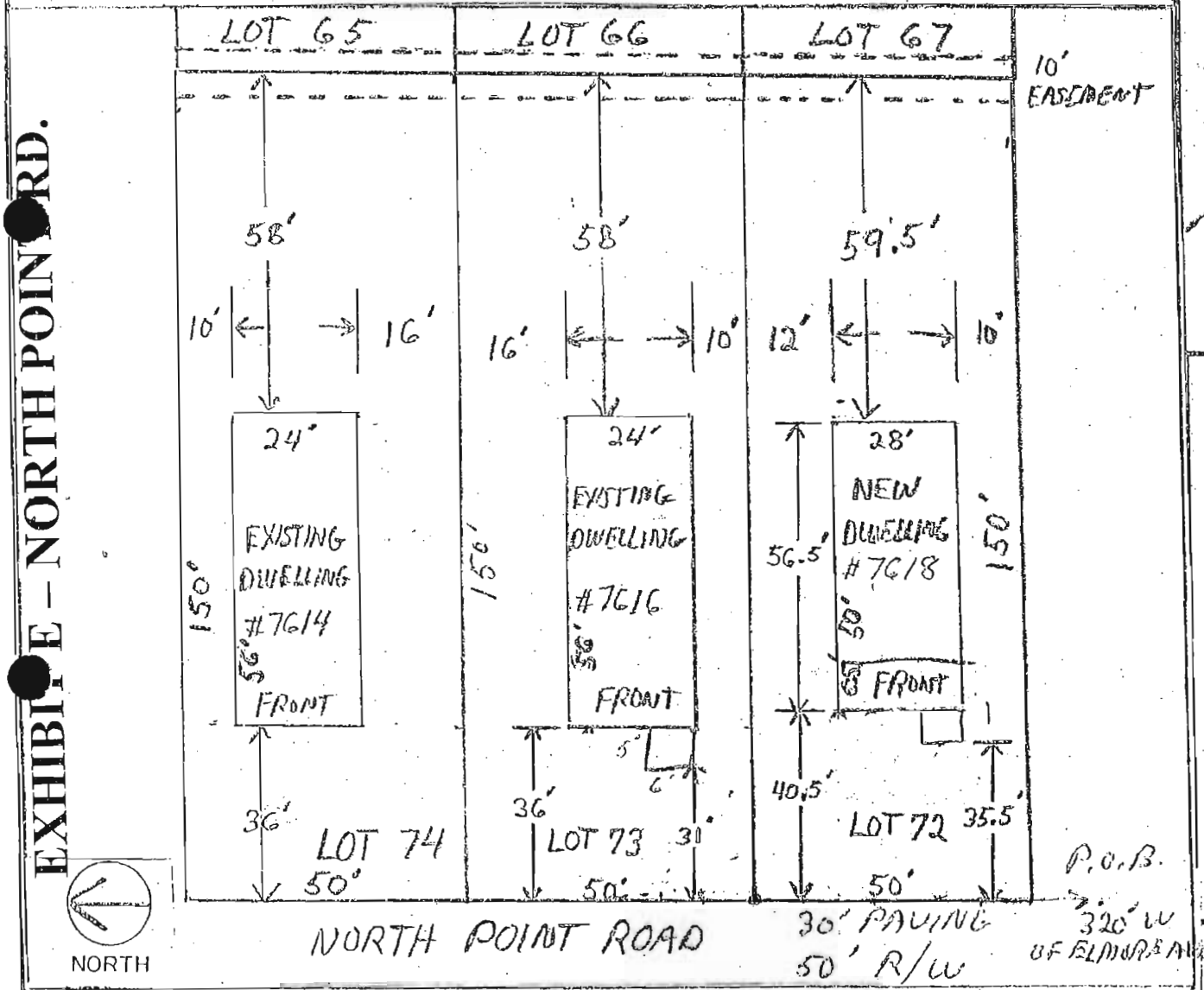
PLAT TO ACCOMPANY PETITION FOR ZONING ☒ VARIANCE ☐ SPECIAL HEARING

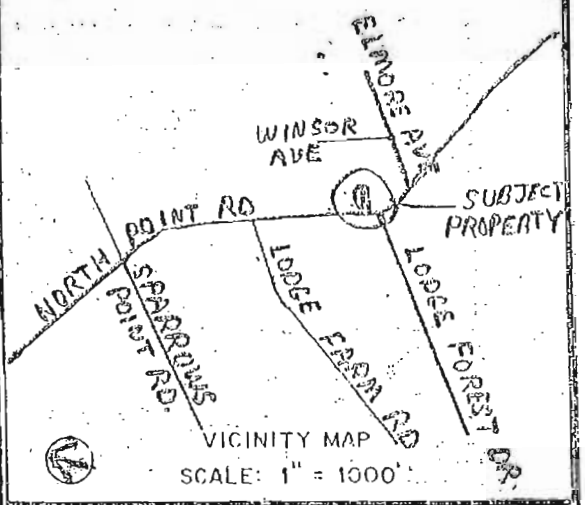
PROPERTY ADDRESS 7616 NORTH POINT RD. SEE PAGES 5 & 6 OF THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION

SUBDIVISION NAME TRIPLE UNION

PLAT BOOK # 08 FOLIO # 058 LOT # 73 SECTION # ___

OWNER PAUL HIDDEN





LOCATION INFORMATION

ELECTION DISTRICT 15

COUNCILMANIC DISTRICT 7

1"=200' SCALE MAP # 111C2

ZONING DR 5.5

LOT SIZE ___ ACREAGE 7500 SQUARE FEET

	PUBLIC	PRIVATE
SEWER	☒	☐
WATER	☒	☐

	YES	NO
CHESAPEAKE BAY CRITICAL AREA	☐	☒
100 YEAR FLOOD PLAIN	☐	☒
HISTORIC PROPERTY/ BUILDING	☐	☒

PRIOR ZONING HEARING NONE

ZONING OFFICE USE ONLY

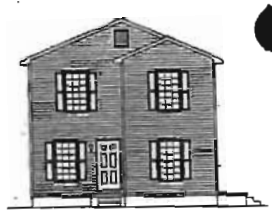
REVIEWED BY	ITEM #	CASE #
SP	053	

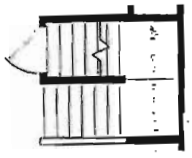
PREPARED BY PH SCALE OF DRAWING: 1" = 30'

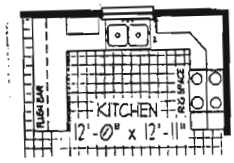
-15-

Ridgeland

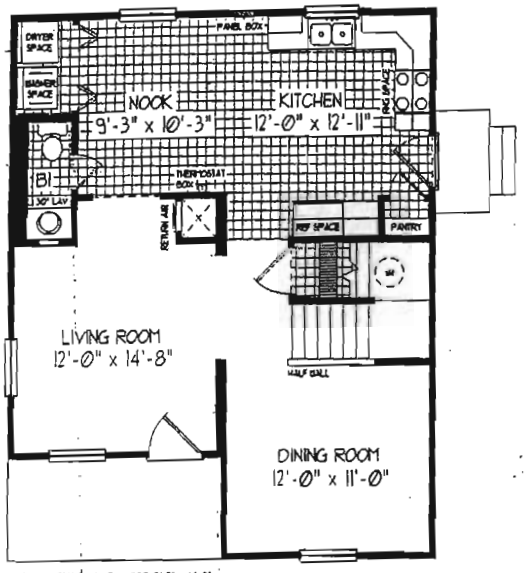

Alternate Elevation


Standard Elevation


BASEMENT ALTERNATE

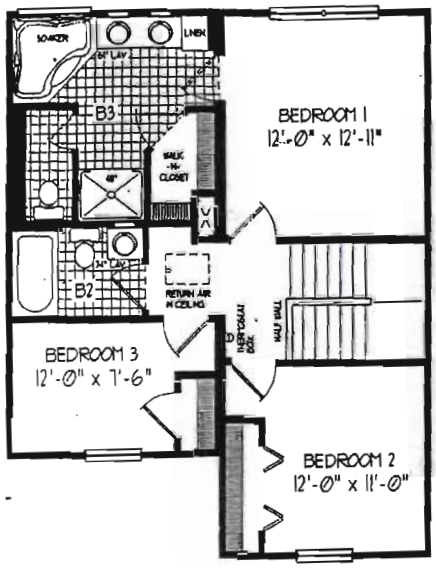


KITCHEN ALTERNATE



ALL MATERIALS & LABOR FOR 0'-7" x 6'-0" PORCH ARE TO BE BY PURCHASER

FIRST LEVEL



SECOND LEVEL

TWO STORY

Livable Area: 1460 sq. ft.
Series: F1460/2-TS
Size: 25'-2" x 30'-0"

#586

Photo 1 2217 Lincoln Avenue

Photo 2 2213 Lincoln Avenue

Photo 3 2216 Lincoln Ave. 2221 Lincoln Ave.

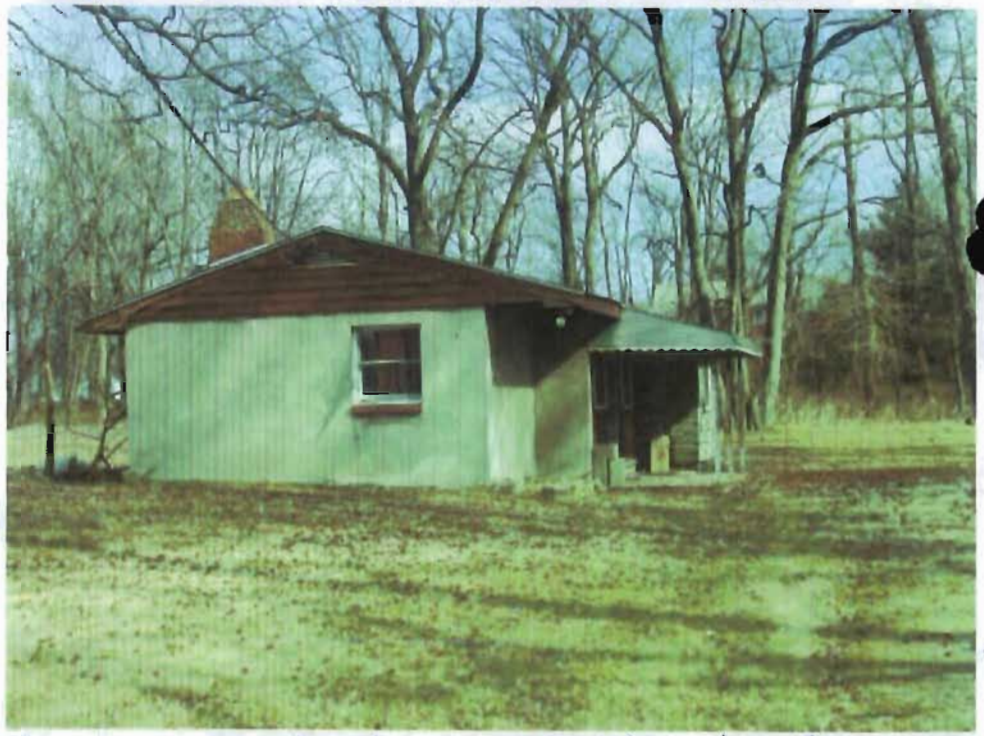


Photo 4 2225 Lincoln Avenue

4586

Photo. 5 2227 Lincoln Avenue

Photo. 6 7359 Geise Avenue

Photo. 7 7357 Geise Avenue

Photo. 8 7354 & 7356 Geise Ave.

2221 Lincoln Ave.

#586


Terrace
GROCERIES, INC.
410-477-9878


ZONING NOTICE

#7357

#7354 & 7356

GEIS AVE.

LINCOLN AVE.

EX.1-STY. BRICK BLDG. (PUMPING STATION)

EX.CONC.DRIVE

EX.10"F.M. (DWG.56-116)

EX.BIT.DRIVE

#2216 EX.1-STY. FRAME DWLG.

EX.30'R/W

EX.BIT.PAVING

EX.8"WATER(DWG.#41-201)

BL

DR 5.5

MCS

EX.W.H.C.

EX.BIT.PAVING

EX.MAILBOX

EX.24"SEWER(DWG.#42-790)

EX.10"FORCE MAIN (DWG.56-168)

#2213

#2217

#2225

#2227

S 05°30'00" W 50.06'

EX.WM

EX.S.H.C.

EX.CO

PROP.S.H.C.

PROP.W.H.C.

EX.CHAIN LINK FENCE

EX.STONE DRIVE

PROP.DRIVE

BRL

S 81°36'00" E 214.31'

S 81°36'00" E 217.43'

85'±

84'±

75'

40'

LEWIS MUNDY & BARBARA A. JEFFERSON
DEED: 15487/543
TAX NO.15-03471442

#2221
PROP. 2-STY.
FRAME DWLG.
FF 12.25
792 S.F.

#2217
EX.1 1/2-STY.
BRICK DWLG.

EX. WOODEN DECK

EX. POOL

EX.CONC. PAD

EX.BLOCK

(VACANT)

EX.COVERED PORCH (86 S.F.)

#2225

EX.1-STY. BLOCK DWLG. 1,070 S.F.

ROOF OVERHANG

EX.METAL SHED (174 S.F.)

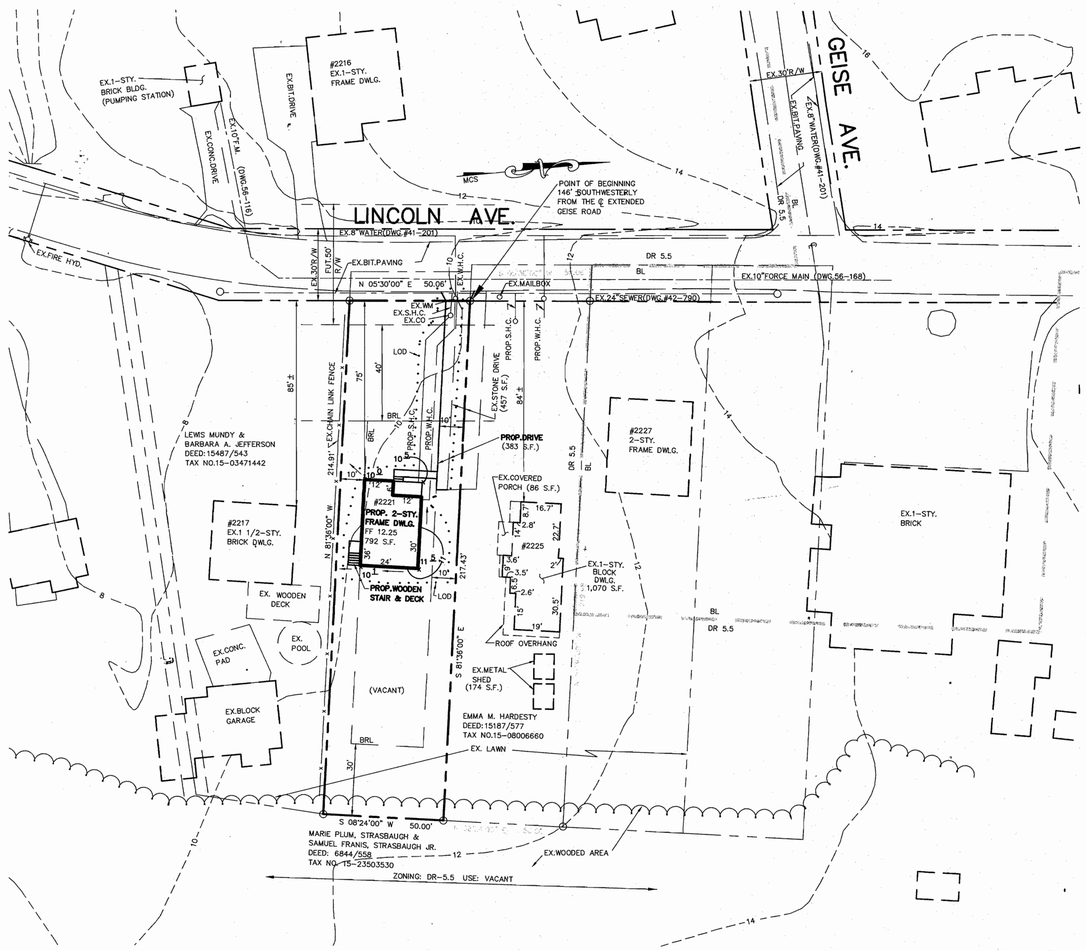
EMMA M. HARDESTY

#2227
2-STY.
FRAME DWLG.

EX.1-STY.
BRICK

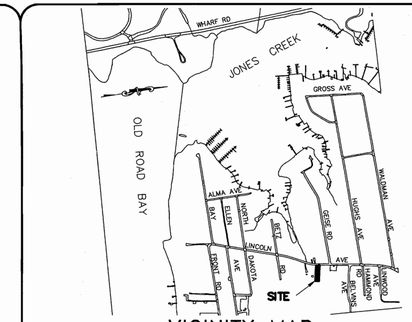
PHOTOGRAPH KEY
for
2221 LINCOLN AVE.

#586



NOTES

1. THIS SITE IS SITUATED WITHIN THE CHESAPEAKE BAY CRITICAL AREAS AND IS CLASSIFIED BY LAND USE AS LIMITED DEVELOPMENT AREA (LDA)(MAP 111).
2. THE FIRM INSURANCE RATE MAP, PANEL 555 OF 575 INDICATES THAT THIS SITE IS SITUATED IN FLOOD ZONE B. THE 100 YEAR FLOOD ELEVATION IS SHOWN AS 9.00 (BCMD).UTILIZING NORTH AMERICAN VERTICAL DATUM (NAVD) OF 1988 THE 100 YEAR FLOOD ELEVATION IS 7.30 (NAVD 88). BALTIMORE COUNTY REQUIRES A FLOOD PROTECTION MINIMUM ELEVATION OF 10.40 (BCMD), 8.70 (NAVD 88). SOUTH OF BACK RIVER LOWEST HABITABLE FLOOR MUST BE ELEVATED TO OR ABOVE FLOOD PROTECTION ELEVATION.
3. THERE HAVE BEEN NO ZONING HEARINGS OR CASES FOR THIS SITE.
4. PROPERTY LINES SHOWN HEREON WERE COMPLIED FROM AVAILABLE PUBLIC IMFORMATION AND DO NOT REPRESENT A BOUNDARY SURVEY.
5. TOPOGRAPHY SHOWN HEREON WAS TAKEN FROM BALTIMORE COUNTY GIS TOPOGRAPHY & FIELD VERIFIED (MARCH 2005).



VICINITY MAP
(SCALE: 1" = 1000')

SITE DATA

1) OWNER: EMMA M. HARDESTY
#2225 LINCOLN AVENUE
BALTIMORE, MARYLAND 21219
2) DEED REF: 15187/577 (04/21/2001)
3) TAX ACC. NO.: 15-08006660
4) PLAT REF: J.W. HINSON PLAT REF: 10/97 (04/10/1935)
5) TAX MAP: 111 PARCEL: 197 LOT: PART OF LOT 1G
6) ELECTION DISTRICT: 15TH
7) CONCILMANIC DISTRICT: 7TH
8) REGIONAL PLANNING DISTRICT: 331B
9) CENSUS TRACT: 4521
10) ZONING: DR 5.5
11) EXISTING USE: VACANT
PROPOSED USE: RESIDENTIAL,SINGLE FAMILY
12) SITE AREA: 10,808 S.F. OR 0.248 AC.

ZONING VARIANCE REQUESTED

1. TO PERMIT A LOT WIDTH OF 50' IN LIEU OF THE REQUIRED 55' SECTION 1B02.3C.1.(BCZR).

IMPERVIOUS AREAS

EXISTING

DRIVE	457 S.F.
	457 S.F. = 457 / 10,808 = 4.2%

PROPOSED

DWELLING	792 S.F.
CONC.WALK, PORCH & STAIR	138 S.F.
DRIVE (457 + 383)	840 S.F.
	1,768 S.F. = 1,768 / 10,808 = 16.4%

DISTURBED AREA: 3,415 S.F.

Bafitis & Associates, Inc.
William N. Bafitis, P.E.
PRESIDENT
Civil Engineers/Land Planners
SURVEYORS
1249 Engleberth Rd. Baltimore, MD 21221
(410) 391-2336

PLAT TO ACCOMPANY PETITION FOR ZONING VARIANCE FOR #2221 LINCOLN AVENUE

15TH ELECTION DISTRICT BALTIMORE COUNTY, MARYLAND

STATE OF MARYLAND WILLIAM N. BAFITIS 11164 REGISTERED PROFESSIONAL ENGINEER

WILLIAM N. BAFITIS, P.E.

1

SHEET 1 OF 1

SCALE: 1" = 30'

JOB ORDER NO: 20502

DATE: 05/11/05

NO.	REVISIONS	DATE

C:\20502\BASE.dwg Wed May 11 13:30:42 2005

#586