IN RE: PETITION FOR VARIANCE

SW/Intersection of Peninsula Expressway

and Merritt Boulevard

12th Election District

7th Councilmanic District

(7801 Peninsula Expressway)

The Housing Enterprise Corp.,

Petitioner

By: J. Joseph Clarke

BEFORE THE

DEPUTY ZONING COMMISSIONER

FOR BALTIMORE COUNTY

\* CASE NO. 05-651-A

\* \* \* \* \* \* \* \* \* \* \* \* \*

\*

# FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Variance filed by the legal owner of the subject property, The Housing Enterprise Corp., by J. Joseph Clarke. The Petitioner is requesting variance relief for property located at 7801 Peninsula Expressway in the eastern area of Baltimore County. Variance relief is requested from Sections 206.4A and 1B01.2 C.1.e of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a building to tract boundary of 36 ft. in lieu of the required 60 ft.

The property was posted with Notice of Hearing on July 10, 2005, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on July 14, 2005 to notify any interested persons of the scheduled hearing date.

## Applicable Law

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

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

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

# Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: A ZAC comment was received from the Bureau of Development Plans Review dated June 28, 2005, a copy of which is attached hereto and made a part hereof. In addition, the Office of Planning submitted a ZAC comment dated June 21, 2005, a copy of which is attached hereto and made a part hereof.

## Interested Persons

Appearing at the hearing on behalf of the variance request were Fred Thompson, civil engineer and Joseph Clarke, for the corporate Petitioner. Joseph Woolman, Esquire represented the Petitioner at the hearing. There were no protestants or interested citizens at the hearing. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

## Testimony and Evidence

Mr. Woolman proffered that this is the same property and project that was approved in Case No. 05-115-SPHA and is now known as the Cove Point Apartments. Phase 1 of this project involved the building and apartment complex on the east end of the property which, as shown in Petitioner's Exhibit 2, is actually well under construction. In this phase, the Petitioner requested and was granted a setback variance allowing 40 ft. from the right-of-way of Peninsula Parkway.

This request involves the second apartment complex on the site which is now designed and requires a setback variance of 36 ft. from the right-of-way of Peninsula Parkway. Mr. Woolman opined that the same reasons apply here. The property which was found to be unique from a zoning standpoint continues to be so. The practical difficulty is the same, etc. See Petitioners' Exhibit 1.

In regard to ZAC comments, the Petitioner indicates that it fully accepts the comments of the Office of Planning. However, the Petitioner indicated that the comment from the Bureau of Plans Review would not apply in regard to the comment concerning the minimum 40 foot right-of-way. In short, no change to the Petition was necessary.

# Findings of Fact and Conclusions of Law

As I found previously in regard to the request for variance, I find that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. This is a long narrow site with wetlands and a stream running through it. Once again, I find it unique in a zoning sense. I further find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. The site is so constrained that no reasonable size building could be located thereon if the full 60 ft. of setback of Peninsula Parkway was applied. As it is, the Petitioner is providing the normal setback of 36 ft.

No increase in residential density beyond that otherwise allowable by the Zoning Regulations will result by granting this variance. Furthermore, this variance can be granted in strict harmony with the spirit and intent of the regulations, and in a manner as to grant relief without injury to the public health, safety and general welfare. The first floor of the building will be well above any possible flood, either from rain storms or tidal surges.

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

THEREFORE, IT IS ORDERED, this <u>3</u> day of August, 2005, by this Deputy Zoning Commissioner, that the Petitioner's request for variance from Sections 206.4A and 1B01.2C.1.e of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a building to tract boundary of 36 ft. in lieu of the required 60 ft., 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 permit 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. Compliance with the ZAC comments made by the Office of Planning dated June 21, 2005, a copy of which is attached hereto and made a part hereof;
- 3. When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

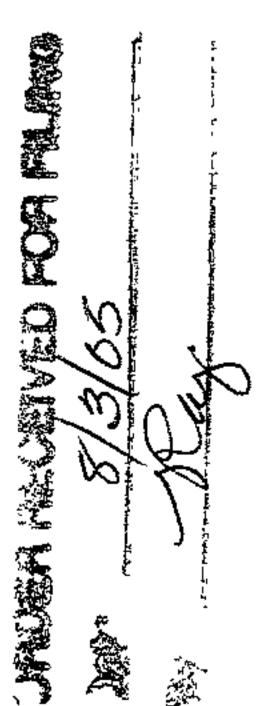
Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JOHN V. MURPHY

DEPUTY ZONING COMMISSIONER

FOR BALTIMORE COUNTY

JVM:raj



# Zoning Commissioner

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





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

August 4, 2005

Joseph Woolman, Esquire Gildea & Schmidt, LLC 300 E. Lombard Street, Ste. 1440 Baltimore, MD 21202-3228

> Re: Petition for Variance Case No. 05-651-A

> > Property: 7801 Peninsula Expressway

Dear Mr. Woolman:

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

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

Very truly yours,

John V. Murphy

Deputy Zoning Commissioner

JVM:raj Enclosure

c: Joe Clarke, 120 E. Baltimore Street, Baltimore, MD 21202 Fred Thompson, Gower Thompson, Inc., 429 E. Lake Ave., Baltimore, MD 21212



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



# Petition for Variance

# to the Zoning Commissioner of Baltimore County

for the property located at: 7801 Penninsula Expressway which is presently zoned: BLR & OR-2

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):

Please see attached document.

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

To be presented at hearing.

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

regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.

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

# Contract Purchaseril assess

The Enterprise Housing	Corp.		<del></del>	se Housing Corp.	
Name Type or Print			Name - Type or Print	Lunka	
Signature Moseph Clarke 312 N. Martin Luther Ki	ng Blvd.	(410) 332-7400	Signature J. Joseph Cla	rke	
Address		Telephone No.	Name - Type or		
Baltimore	MD	21201	••		
City	State	Zip Code	Signature		
Attorney For Petitic	ner:		312 N. Marti	n Luther King Blvd.	(410) 332-7400
			Address		Telephone N
David K. Gildea			Baltimore	MD	21201
Vame - Type or Print	1 '))-		City	State	Zîp Code
1 mul	1/2		Represent	ative to be Contac	cted:
Signature Gildea & Schmidt, LLC	•		David K. Gil		
Company			Name	······································	
300 Eart Lombard Street	, Suite 1440	410-234-0070	300 East Lo	nbard Street Suite 144	410-234-007
dress		Telephone No.	Address		Telephone No
Haltimore	MD	21202	Baltimore	N	MD 21202
aty	State	Zip Code	City	5	State Zip Code
				OFFICE USE ONLY	
case No	-651	· (A	ESTIMATED L	ENGTH OF HEARING	
Case No	····	Reviewed	ByUNAVAILABLE	FOR HEARING  Date 06-0	<del>}</del>

# Attachment to Variance Petition

1.) BCZR Section 206.4A and 1B01.2C.1.e to permit a building face to tract boundary of 36 feet in lieu of the required 60 feet.





# ZONING DESCRIPTION COVE POINT APARTMENTS 7795 AND 7801 PENINSULA EXPRESSWAY

BEGINNING AT A POINT AT THE SOUTHWEST INTERSECTION OF PENINSULA EXPRESSWAY (160 FEET RIGHT OF WAY) AND MERRITT BOULEVARD (VARIABLE RIGHT OF WAY GREATER THAN 100 FEET WIDE). THENCE EXTENDING THE FOLLOWING 9 COURSES AND DISTANCES.

- ALONG THE RIGHT OF WAY OF PENINSULA EXPRESSWAY SOUTH 59 DEGREES 56 MINUTES 04 SECONDS EAST, 2090.97 FEET AND
- ON AN ARC CURVING TO THE RIGHT HAVING A RADIUS OF 1,045.92 FEET, THE ARC DISTANCE OF 82.39 FEET (CHORD BEARING SOUTH 57 DEGREES 40 MINUTES 40 SECONDS EAST, 82.37 FEET).
- 3. THENCE EXTENDING SOUTH 03 DEGREES 34 MINUTES 19 SECONDS EAST, 128.84 FEET;
- 4. SOUTH 24 DEGREES 57 MINUTES 12 SECONDS WEST, 39.67 FEET TO THE RAILROAD RIGHT OF WAY LINE;
- 5. ALONG THE RAILROAD RIGHT OF WAY LINE NORTH 64 DEGREES 58 MINUTES 33 SECONDS WEST, 1,466.31 FEET, AND;
- 6. NORTH 25 DEGREES 01 MINUTES 27 SECONDS EAST, 15.00 FEET, AND;
- NORTH 64 DEGREES 58 MINUTES 33 SECONDS WEST, 826.33 FEET TO THE RIGHT OF WAY LINE OF MERRITT BOULEVARD;
- 8. ALONG THE RIGHT OF WAY LINE OF MERRITT BOULEVARD NORTH 35 DEGREES 44 MINUTES 31 SECONDS EAST, 288.22 FEET, AND;
- 9. NORTH 39 DEGREES 39 MINUTES 31 SECONDS EAST, 50.45 FEET TO THE POINT OF BEGINNING.

RECORDED IN LIBER 1406 FOLIO 077

CONTAINING 12.636 ACRES MORE OR LESS.

ALSO KNOWN AS 7795 AND 7801 PENINSULA EXPRESSWAY AND LOCATED IN THE 12th ELECTION DISTRICT.



05-651-A

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

DATE

ACCOUNT

AMOUNT \$

RECEIVED
FROM:

DISTRIBUTION
WHITE- CASHIER
PINK - AGENCY

YELLOW- CUSTOMER

CASHIER'S VALIDATION

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: #05-651-A

7801 Peninsula Expressway S/west intersection of Peninsufa Expressway and Merritt Blvd.

12th Election District 7th Councilmanic District Legal Owner(s): The Enterprise Housing Corp.,

J. Joseph Clarke Variance: to permit a building face to tract boundary of 36 feet in lieu of the required 60 feet.

Hearing: Friday, July 29, 2005 at 2:00 p.m. in Room 407, County Courts Build-ing, 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 Zon-ing Review Office at (410) 887-3391.

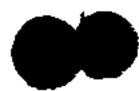
58604 7/095 July 14

# CERTIFICATE OF PUBLICATION

7/14/,2005
THIS IS TO CERTIFY, that the annexed advertisement was published
in the following weekly newspaper published in Baltimore County, Md., once in each ofsuccessive weeks, the first publication appearing on14
The Jeffersonian  Arbutus Times
☐ Catonsville Times ☐ Towson Times ☐ Owings Mills Times
☐ NE Booster/Reporter ☐ North County News

LEGAL ADVERTISING





# CERTIFICATE OF POSTING

RE: Case No.: 05-65/-A

Petitioner/Developer: The ENTERPRISE

HOUSING CORP, J. JOSEPH CLARKE

Date of Hearing/Closing: JULY 29, 2005

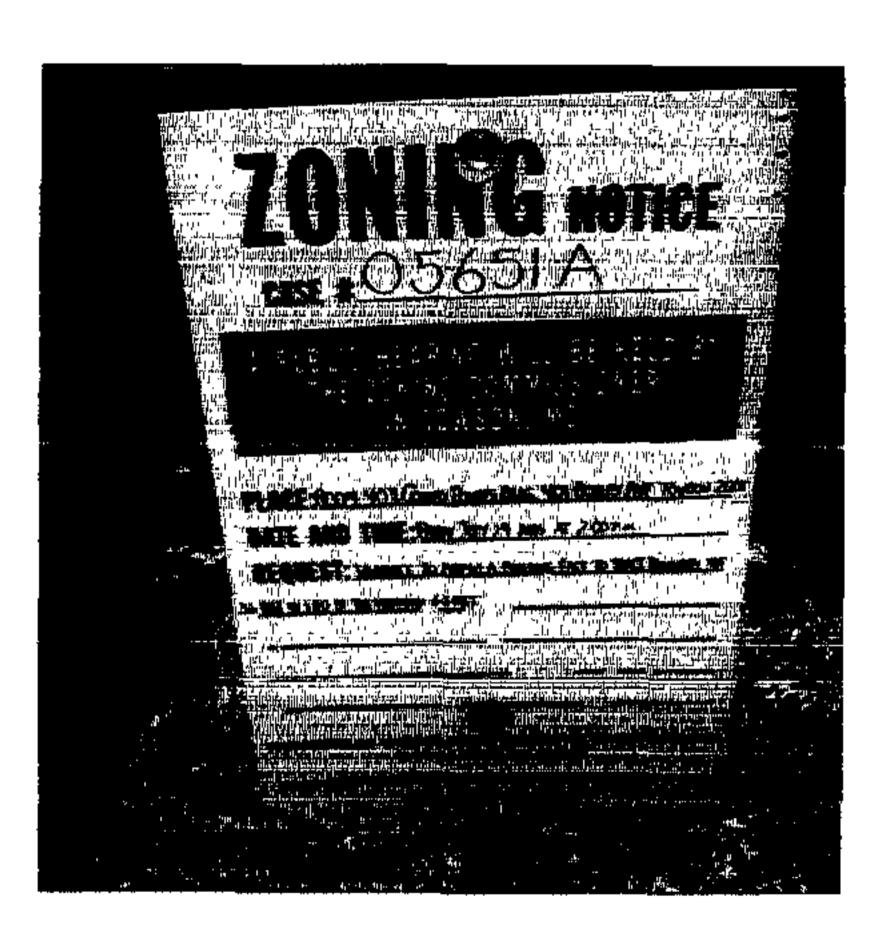
**Baltimore County Department of** Permits and Development Management County Office Building, Room 111 111 West Chesapeake Avenue Towson, Maryland 21204

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: \_ 7801 PENINSULA EXPRESSWAY JULY 10, 2005 The sign(s) were posted on \_ (Month, Day, Year)

Sincerely,



(Signature of Sign Poster) **SSG Robert Black** (Print Name) 1508 Leslie Road (Address) Dundalk, Maryland 21222 (City, State, Zip Code) (410) 282-7940 (Telephone Number)

7801 PENINSULA EXPY

# Department of Permits 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

June 16, 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: 05-651-A

7801 Peninsula Expressway

S/west intersection of Peninsula Expressway and Merritt Blvd.

12<sup>th</sup> Election District – 7<sup>th</sup> Councilmanic District

Legal Owners: The Enterprise Housing Corp., J. Joseph Clarke

Variance to permit a building face to tract boundary of 36 feet in lieu of the required 60 feet.

Hearing: Friday, July 29, 2005 at 2:00 p.m. in Room 407, County Courts Building,

401 Bosley Avenue, Towson 21204

Timothy Kotroco

Director

TK:klm

C: David Gildea, 300 E. Lombard St., Ste. 1440, Baltimore 21202 J. Joseph Clarke, 312 N. Martin Luther King Blvd., Baltimore 21201

NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY THURSDAY, JULY 14, 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.



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

TO: PATUXENT PUBLISHING COMPANY

Thursday, July 14, 2005 Issue - Jeffersonian

Please forward billing to:

David Gildea

410-234-0070

Gildea & Schmidt, LLC

300 E. Lombard Street, Ste. 1440

Baltimore, MD 21201

# **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: 05-651-A

7801 Peninsula Expressway

S/west intersection of Peninsula Expressway and Merritt Blvd.

12<sup>th</sup> Election District – 7<sup>th</sup> Councilmanic District

Legal Owners: The Enterprise Housing Corp., J. Joseph Clarke

Variance to permit a building face to tract boundary of 36 feet in lieu of the required 60 feet.

Hearing: Friday, July 29, 2005 at 2:00 p.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

WILLIAM JWISEMAN 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.



# ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

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

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

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

Revised 2/20/98 - SCJ

# Department of Permits and Development Management

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





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

July 18, 2005

David K. Gildea Gildea & Schmidt, LLC. 300 East Lombard Street, Ste. 1440 Baltimore, Maryland 21202

Dear Mr. Gildea:

RE: Case Number: 05-651-A, 7801 Peninsula Expressway

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

W. Calling yours, Calling Office of the Calling of

W. Carl Richards, Jr. Supervisor, Zoning Review

WCR: clb

**Enclosures** 

c: People's Counsel
The Enterprise Housing Corp. J. Joseph Clarke 312 N. Martin Luther King Blvd. Baltimore 21201



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



# BALTIMORE COUNTY, MARYLAND

# INTER-OFFICE CORRESPONDENCE

**TO:** Timothy M. Kotroco, Director

Department of Permits and Development Management

FROM: Arnold F. 'Pat' Keller, III

Director, Office of Planning

RECEIVED

**DATE:** June 21, 2005

JUN 2 1 2005

ZONING COMMISSIONER

SUBJECT: 7801 Penninsula Expressway

**INFORMATION:** 

Item Number: 5-651

**Petitioner:** The Enterprise Housing Corp.

Zoning: BLR & OR 2

SUMMARY OF RECOMMENDATIONS:

Requested Action: Variance

The Office of Planning does not oppose the petitioner's request to permit a building face setback of 36 feet in lieu of the minimum required 60 feet provided there is foundation landscaping of the proposed building and the adjoining parking lot. Foundation planting is necessary to transition from the parking lot to the 5-story building. Building elevations shall be similar in design and materials to the Phase I structure as illustrated on the approved development plan.

For further information concerning the matters stated here in, please contact Amy Mantay at 410-887-3480.

Prepared by:

**Rivision Chief:** 

AFK/LL: CM

WALKEN WILLIAMS

W\DEVREV\ZAC\5-651 doc

County Office Building, Room 111 Mail Stop #1105 111 West Chesapeake Avenue Towson, Maryland 21204 June 20,2005

ATTENTION: Zoning Review Planners

Distribution Meeting of April 4, 2005

Item No. 633,639,643,644,645,646,647.648,649,650,651,652,653,654,655,656,657,658,659,660 and 661

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

# The Fire Department has no comments at this time.

If you have any questions contact my office.

Acting Lt. Warren T. Moffitt Fire Marshal's Office 410-887-4880 MS-1102F

Cc:file



Administration

teHowway

Robert L. Flanagan, Secretary

Neil J. Pedersen, Administrator

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

Maryland Department of Transportation

Date: 6.20.05

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

RE: Baltimore County
Item No.

ASL

Dear Ms. Matthews:

We have reviewed the referenced item and have no objection to approval. Our review has determined that no construction is required within the State Highway Administration's right-of-way.

Should you have any questions regarding this matter, please contact Larry Gredlein at 410-545-5606 or by E-mail at (lgredlein@sha.state.md.us).

Very truly yours,

Steven D. Foster, Chief

1. 1. Auch

Engineering Access Permits Division

# BALTIMORE COUNTY, MARYLAND

# Inter-Office Correspondence



TO:	Timothy M. Kotroco
FROM:	R. Bruce Seeley M5
DATE:	September 7, 2005
SUBJECT:	Zoning Item # 05-651 Address 7801 Peninsula Expressway Cove Point Apartments
Zoning	Advisory Committee Meeting of June 20, 2005
<del></del> _	epartment of Environmental Protection and Resource Management has no ents on the above-referenced zoning item.
	epartment of Environmental Protection and Resource Management offers lowing comments on the above-referenced zoning item:
<u>X</u>	Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 14-331 through 14-350 of the Baltimore County Code).
	Development of this property must comply with the Forest Conservation Regulations (Section 14-401 through 14-422 of the Baltimore County Code).
<u>X</u>	Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 26-436 through 26-461, and other Sections, of the Baltimore County Code).
<u>Additi</u>	onal Comments:

Date: July 6, 2005

S:\Devcoord\ZAC05-651.doc

Reviewer:

Mike Kulis

# BALTIMORE COUNTY, MARYLAND

# INTEROFFICE CORRESPONDENCE

TO:

Timothy M. Kotroco, Director

**DATE:** June 28, 2005

Department of Permits & Development

Management

FROM:

Dennis A. Kennedy, Acting Supervisor

Bureau of Development Plans Review

SUBJECT:

Zoning Advisory Committee Meeting

For June 27, 2005 Item No. 651

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 651-06282005doc

64

RE: PETITION FOR VARIANCE

7801 Peninsula Expressway; SW intersection

Peninsula Expressway & Merritt Blvd

12<sup>th</sup> Election & 7<sup>th</sup> Councilmanic Districts

Legal Owner(s): The Housing Enterprise

Corp., by J. Joseph Clarke

Petitioner(s) \*

\*

FOR

BEFORE THE

BALTIMORE COUNTY

ZONING COMMISSIONER

05-651-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

People's Counsel for Baltimore County

CAROLE S. DEMILIO

Deputy People's Counsel

Old Courthouse, Room 47 400 Washington Avenue

Towson, MD 21204

(410) 887-2188

# CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16<sup>th</sup> day of June, 2005, a copy of the foregoing Entry of Appearance was mailed to, David Gildea, Esquire, Gildea & Schmidt LLC, 300 E. Lombard Street, Suite 1440, Baltimore, MD 21202, Attorney for Petitioner(s).

RECEIVED

JUN 16 ZIE

Per....

PETER MAX ZIMMERMAN

 $\triangle$  .  $\triangle$ 

People's Counsel for Baltimore County





# GILDEA & SCHMIDT, LLC

DAVID K. GILDEA DAVIDGILDEAGILDEALLC.COM

LAWRENCE E. SCHMIDT LSCHMIDT@GILDEALLC.COM

SEBASTIAN A. CROSS SCROSS@GILDEALLC.COM

JOSEPH R. WOOLMAN, III JWOOLMAN@GILDEALLC.COM

D DUSKY HOLMAN DHOLMAN@GILDEALLC.COM 300 EAST LOMBARD STREET

**SUITE 1440** 

BALTIMORE, MARYLAND 21202

TELEPHONE 410-234-0070 FACSIMILE 410-234-0072 www.gildeallc.com

TOWSON, MD OFFICE 220 BOSLEY AVENUE TOWSON, MARYLAND 21204 **TELEPHONE 410-337-7057** 

October 8, 2004

Mr. J. Joseph Clarke The Enterprise Housing Corp. 120 E. Baltimore Street Suite 1210 Baltimore, MD 21202

> The Enterprising Housing Corp./ 7801 Peninsula Expressway (Cove Point) Re:

Case No. 05-115-SPHA

Dear Joe:

Enclosed please find a copy the decision rendered by Zoning Commissioner John Murphy in the above referenced matter. You will note that this decision is dated October 5, 2004. Commissioner Murphy has granted our request for Special Hearing to permit a structure and parking in a riverine floodplain, and has granted our request for Variance from certain setback requirements contained in the Baltimore County Zoning Regulations.

If you have any questions regarding this matter, please do not hesitate to contact me. With kind regards, I am

Very truly yours,

. Woolman, III

JRWIII:bhb

Enclosure

Cc: Frederick J. Thompson, Gower Thompson, Inc.

Cindy Gower, Gower Thompson, Inc.

David K. Gildea, Esquire

PLEASE PRINT CLEARLY

CASE NAME 150/ Penguase Ma CASE NUMBER 05-651-A DATE 1/29/05

# PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Shorman Jose (ANT)	Sow see from Sold for war	9 E. Cher the 21212	Sowerthanp C 402. Con
Socola Nacola	F Comband St. &	Z	June 1 Caller 1 C. Com
	•		



IN RE: PETITION FOR SPECIAL HEARING

& VARIANCE

SE/Corner of Peninsula Expressway

12th Election District

7th Councilmanic District

(7801 & 7795 Peninsula Expressway)

CSX Realty Development Corp.

By: Stephen A. Crosby, Legal Owners

AND

The Enterprise Housing Corp.

By: Harvey Zeiger, Vice-President

Petitioners

BEFORE THE

DEPUTY ZONING COMMISSIONER

OF BALTIMORE COUNTY

CASE NO. 05-115-SPHA

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# FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Hearing and Variance filed by the legal owners of the subject property, CSX Realty Development Corp., by Stephen A. Crosby and the lessee, The Enterprise Housing Corp., by Harvey Zeiger, Vice-President. The Petitioners is requesting a special hearing and variance for property they own at 7801 and 7795 Peninsula Expressway. The subject property is zoned BLR & OR-2. The special hearing request is for a waiver pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.) and Section 3112.0 of the Building Code; and Sections 32-4-414, 32-4-107.(a)(2), 32-8-301 BCC, to permit a structure and parking in a riverine floodplain. In addition, a variance is requested from Sections 206.4A and 1B01.2C1e of the B.C.Z.R., to permit a building face to tract boundary of 40 ft. in lieu of the required 60 ft.

The property was posted with Notice of Hearing on September 7, 2004, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on September 14, 2004 to notify any interested persons of the scheduled hearing date.

## Applicable Law

Section 500.7 of the B.C.Z.R. Special Hearings.





The Zoning Commissioner shall have the power to conduct such other hearings and pass such orders thereon as shall in his discretion be necessary for the proper enforcement of all zoning regulations, subject to the right of appeal to the County Board of Appeals. The power given hereunder shall include the right of any interested persons to petition the Zoning Commissioner for a public hearing after advertisement and notice to determine the existence of any non conforming use on any premises or to determine any rights whatsoever of such person in any property in Baltimore County insofar as they may be affected by these regulations.

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

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

## Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: A ZAC comment was received from the Office of Planning dated September 13, 2004 stating that Petitioners must submit building elevations to their office for review and approval prior to the issuance of any building permits, a copy of which is attached hereto and made a part hereof. The Department of Environmental Protection & Resource Management (DEPRM) also submitted ZAC comments dated September 21, 2004 stating that the Petitioners must comply with the Chesapeake Bay Critical Area Regulations, a copy of which is attached hereto and made a part hereof.



# Interested Persons

Appearing at the hearing on behalf of the variance request were Fred Thompson, professional engineer, Joseph Clarke and Cindy Gower for the Petitioner Corporation. Joseph Woolman, Esquire represented the Petitioners. There were no Protestants or citizens at the hearing. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

# Testimony and Evidence

Testimony and evidence indicated that the property, which is the subject of this variance contains 12.636 acres, more or less and is zoned BLR & OR-2. The property is presently vacant and lies between Peninsula Expressway and the CSX railroad tracks just off of Merritt Boulevard. The Petitioner would like to erect apartment buildings in two phases to be known as the Cove Point Apartments. There is to be a four-story apartment building having 100 units in the first phase and a five-story apartment house in the second phase. Both would serve the elderly population of the area. All parking and environmental matters are designed for both buildings.

The challenge to this site is the fact that it is subject to both tidal surges and flooding. The site is drained by two culverts located under the CSX tracks which eventually lead to the Chesapeake Bay. As a result, the buildings have to be elevated above the flood level for storm surges coming up through the culverts from the bay. In addition, the site is the downstream focus of a large drainage area for rain storm flooding which can occur simultaneously with bay storm surges. As a result, the site must be able to handle the 100 year tidal surge as well as the 100 year rain storm. In response to these challenges, Mr. Thompson performed a 100 year floodplain study which was reviewed and approved by the County. See Petitioner's Exhibit No.

3. As further evidence of the site's capabilities, Mr. Thompson took photographs of the stream



that flows through the property during a recent tropical storm. Exhibit Nos. 2E and 2F show that although a great deal of rain fell on the drainage area, the stream stayed within its banks.

To accommodate this dual problem, Mr. Thompson indicated that the plan to accompany the request shows a storm water management facility on site designed to hold the 100 year rainstorm. See Petitioner's Exhibit No. 1. In addition, the Petitioner proposes to fill much of the site in order to raise the ground level so as to greatly modify the 100 year flood plain. See Petitioner's Exhibit No. 1. The predevelopment floodplain shows that parts of both buildings would be located within the 100 year flood plain which would be prohibited by Section 32-8-304 (2). However because the floodplain is modified, neither building is within the prohibited area as shown on Petitioner's Exhibit No. 1. The buildings will ultimately have the first floor 18.5 ft. above the mean high water level. Mr. Thompson indicated that this fill will not increase the flood levels in violation of Section 32-8-304 (1) as the storm water is contained within the site. He noted that the railway and small culverts under the tracks create a storm water management facility which holds the runoff and discharges it slowly downstream. Consequently, there is no increase in flood levels. There is one small portion of the parking lot, however, which will be located in the post development flood plain. Consequently the need for a waiver. Mr. Thompson indicated that this does not violate any provision of the regulations or code.

The request for variance arises because Peninsula Expressway is designated as an arterial roadway and requires building setbacks 60 ft. from the right-of-way, whereas ordinarily the distance from a building to a roadway is 40 ft. The Petitioner's engineer indicated that the 40 ft. setback is needed in order to have a viable apartment complex on this site.

Mr. Woolman noted the property is long and narrow, portions of which are in the floodplain with wetlands and a stream running through it. As such, he believes that the property is unique in a zoning sense. He indicated that it would be a hardship and practical difficulty to provide the 60 ft. setback given the constraints of the site.

In regard to the Special Hearing, the request is for a waiver to permit a storm water management facility and parking in a riverine floodplain. Mr. Thompson indicated that the plan complies with all regulations, was within the scope purpose and intent of the regulations, and that strict compliance with the prohibition against building in the floodplain is not justified due to the nature of this proposal and the extraordinary precautions taken by the Petitioner to insure the safety of tenants. He noted again that the Department of Public Works recommends the waiver be granted.

# Findings of fact and conclusions of law

In regard to the request for variance, I find that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request. This is a long narrow site with wetlands and a stream running through it. I find it unique in a zoning sense. I further find that strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. The site is so constrained that no reasonable size building could be located thereon if the full 60 ft. of setback was applied. As it is, the Petitioner is providing the normal setback of 40 ft.

No increase in residential density beyond that otherwise allowable by the Zoning Regulations will result by granting this variance. Furthermore, this variance can be granted in strict harmony with the spirit and intent of the regulations, and in a manner as to grant relief without injury to the public health, safety and general welfare. The first floor of the building will be well above any possible flood, either from rain storms or tidal surges.

I also approve the special hearing request to permit the storm water management facility and parking in a riverine floodplain. No buildings will be within the post development floodplain. This is accomplished by filling the site. However, I find that this fill will not increase flood levels downstream because of the effect of the track embankment and small culverts beneath which restrict the flow of water downstream.





While a small portion of the parking lot and the storm water management facility will be in the floodplain, I find that the Petitioner has good and sufficient cause for the granting of this waiver and that a failure to grant this waiver would result in hardship to the applicant. Furthermore, the granting of this waiver will not increase flood heights, impact public safety, incur extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing and local and state laws and ordinances. These findings are made pursuant to Section 32-8-303 of the Baltimore County Code.

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

THEREFORE, IT IS ORDERED, this <u>f</u> day of October, 2004, by this Deputy Zoning Commissioner, that the Petitioners' request for special hearing requested pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), and Section 3112.0 of the Building Code; and Sections 32-4-414, 32-4-107.(a)(2), 32-8-301 BCC, to permit a structure and parking in a riverine floodplain, be and is hereby GRANTED; and

IT IS FURTHER ORDERED, that the Petitioners' request for variance from Sections 206.4A and 1B01.2C1e of the B.C.Z.R., to permit a building face to tract boundary of 40 ft. in lieu of the required 60 ft., 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 permit 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. Compliance with the ZAC comments submitted by DEPRM dated September 21, 2004, a copy of which is attached hereto and made a part hereof;





- 3. Compliance with the ZAC comments submitted by the Office of Planning dated September 13, 2004, a copy of which is attached hereto and made a part hereof; and
- 4. When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

JOHN V. MURPHY

DEPUTY ZONING COMMISSIONER

FOR BALTIMORE COUNTY

JVM:raj



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# **FACSIMILE COVER SHEET**

TO:	FAX NO.:
J. Joseph Clarke	(410) 385-2866
Fred Thompson	(410) 532-0104
Cindy Gower	(410) 532-0104
FROM:	DATE: 10/8/04
Joseph R. Woolman, III	
	NO. OF PAGES: 9
	(INCLUDING COVER)
REGARDING:	
The Enterprise Housing Corp./Cove Po	oint

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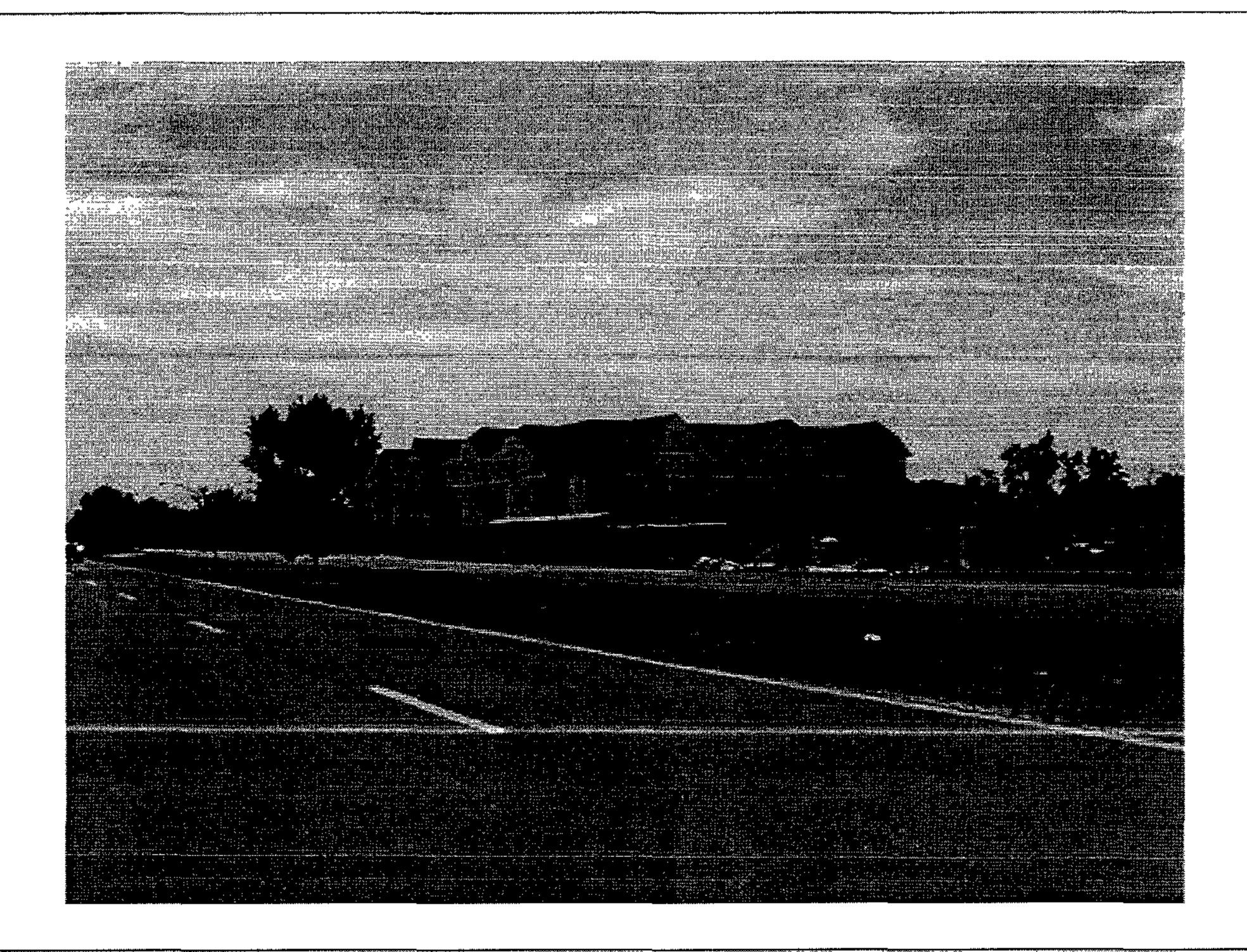
# Joe Woolman

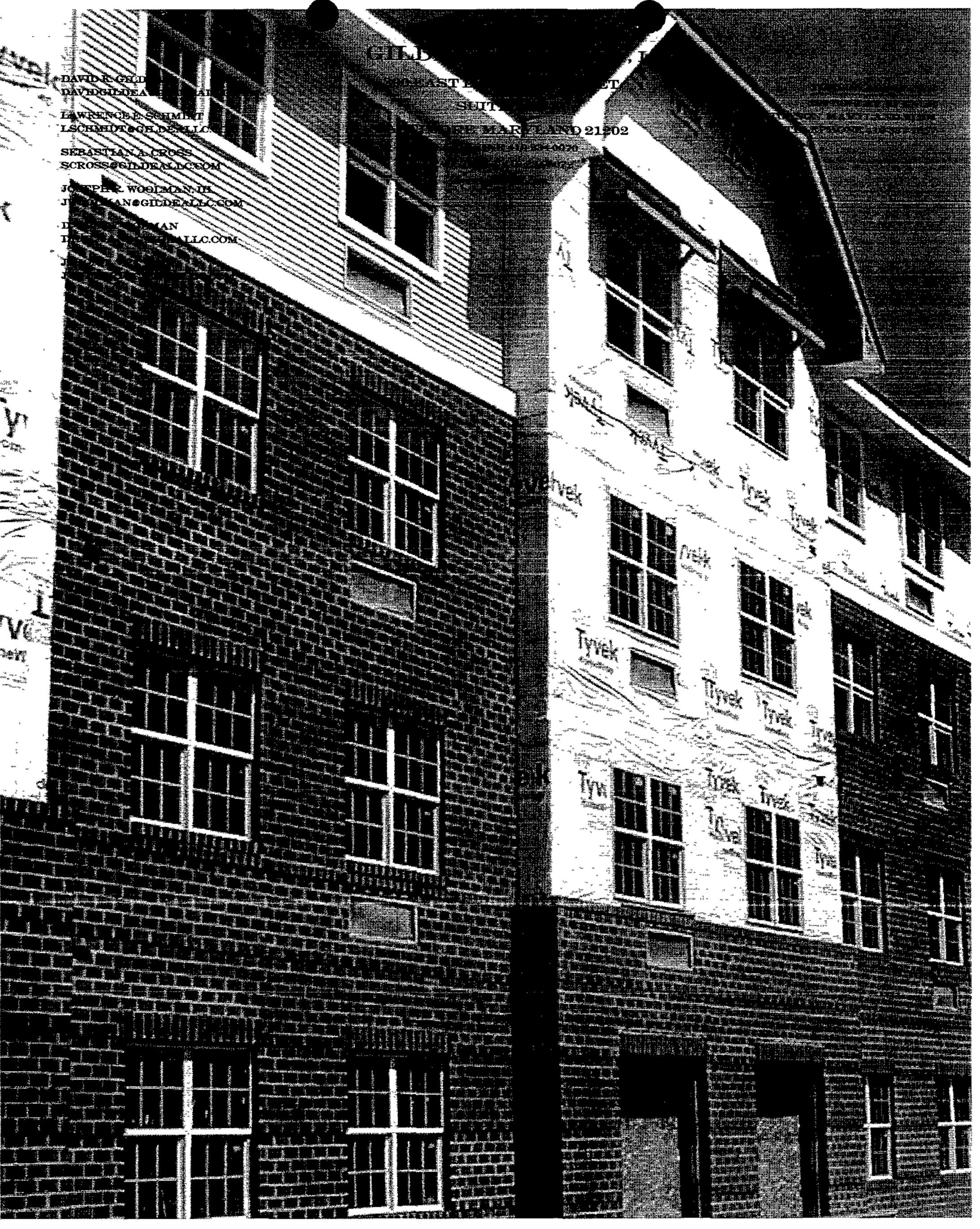
From: DAVIDGILDEA LEE SIICIAIKE@msn.com> 300 EAST LOMBARD STREET "Harvey Zeiger" <a href="https://www.mar.com">https://www.mar.com</a>; "Chickie Graystone scopayson@esic.org>; "Ron Wilson" <a href="https://www.mar.com">https://www.mar.com</a>; "Wendy Rubin Fitzgerald" swrubin@agmfinancial com holes and a strong and To: SCROSS 20 Cleckner Scrobert.cleckner@whiting-turnecsom ≥: 4 Fife Hubbard PFHubbard@comcast.net>; "Ed Hord" Sent: JWOOL MAN CP 8.jpg; CP 2.jpg; CP 3.jpg

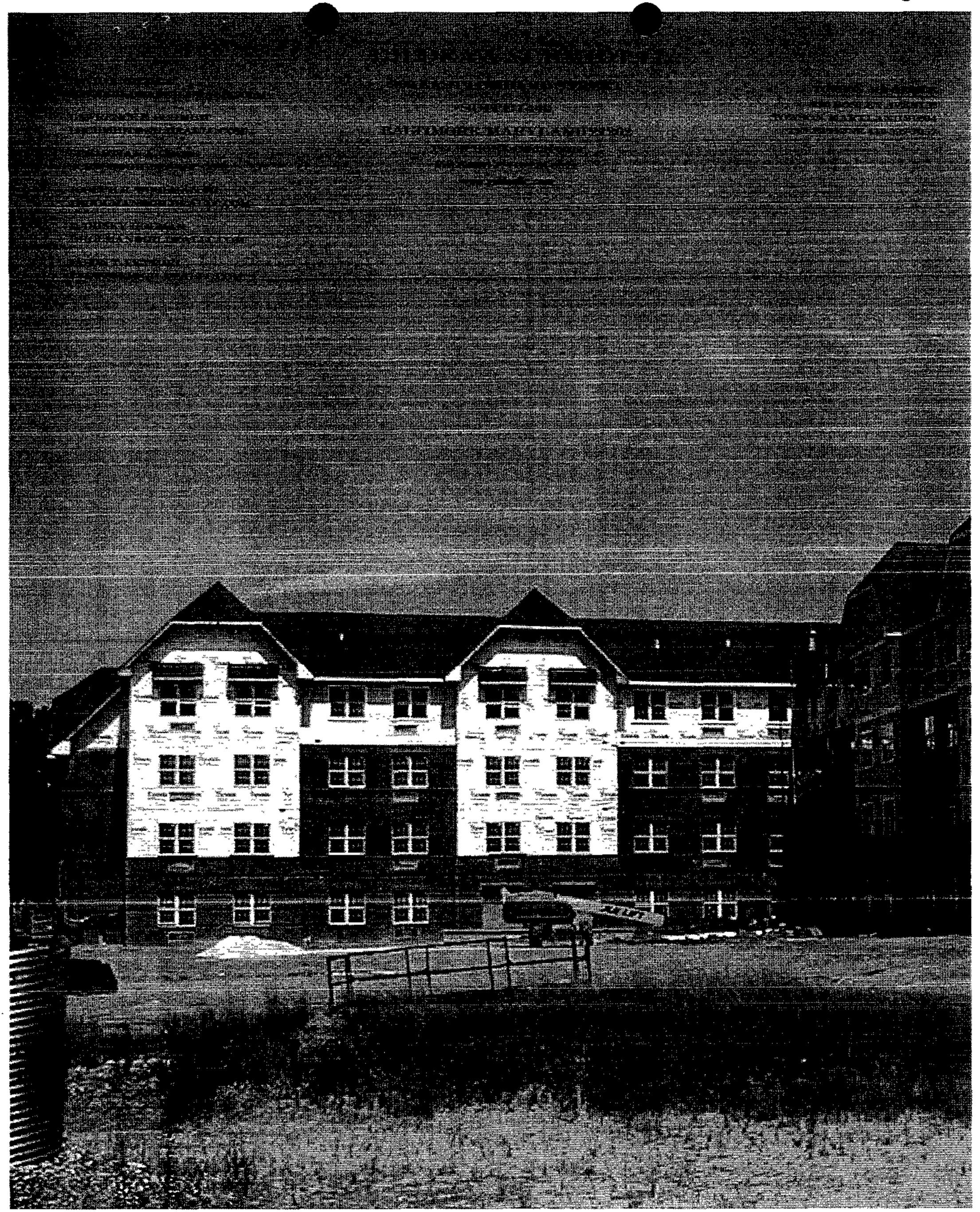
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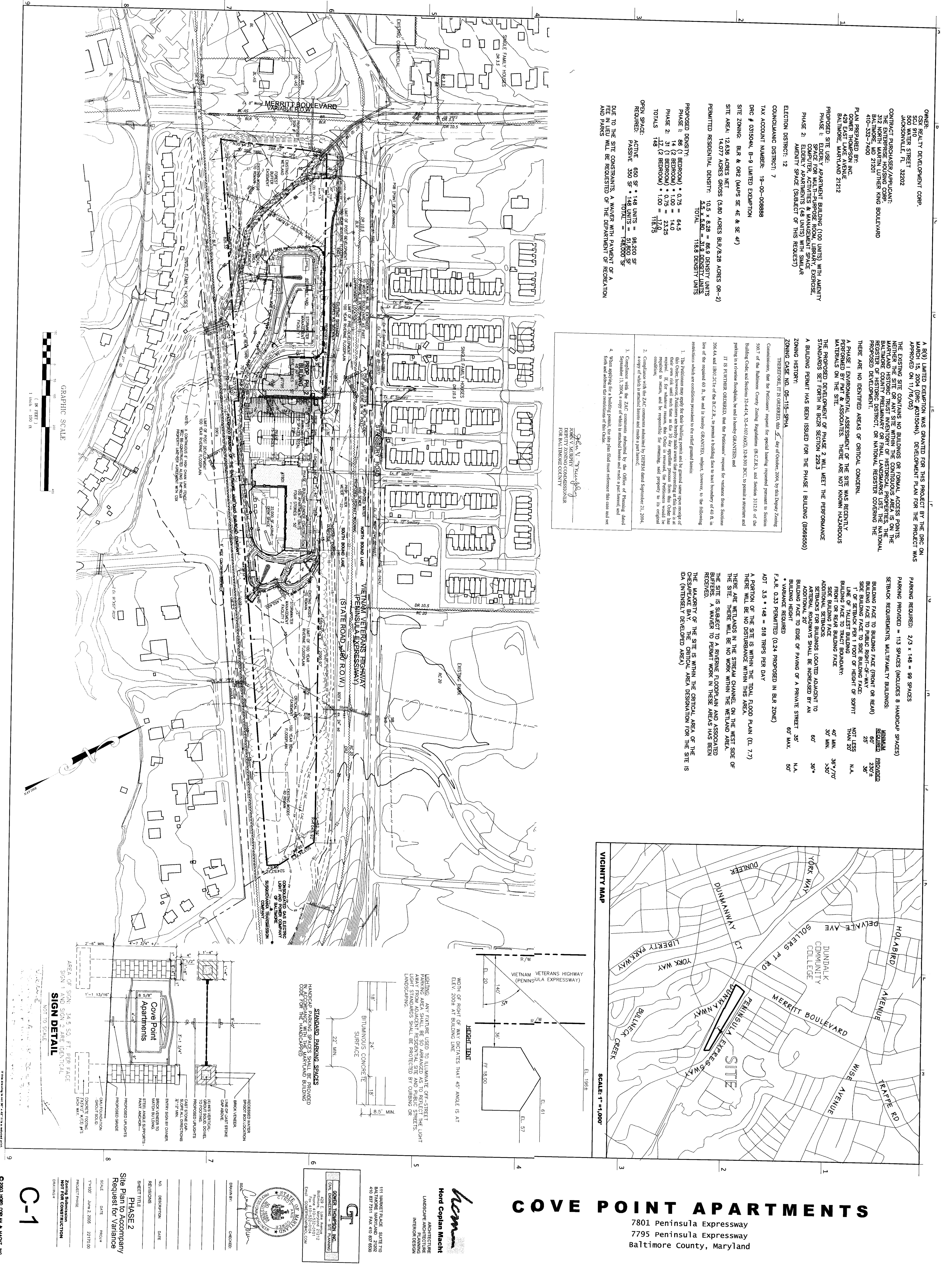
Here's how as good project looks on a sunny morning! The model is available, all clean and shiny. Common room is full of doors at the moment.

Siding should finish next week. Landscaping discussion assumes stabilizing and some sod but most planting to be done in October.









OVE POINT APARTMEN
7801 Peninsula Expressway

Hord Copian Macht

ARCHITECTURE
LANDSCAPE ARCHITECTURE

111 MARKET PLACE SUITE 710 BALTIMORE MARYLAND 21202 410 837 7311 FAX 410 837 6530

GOWER THOMPSON INC.

IVIL ENGINEERING - SITE PLANNING

429 E. Lake Avenue

Baltimore, Maryland 21212

Phone 410-532-0101

Fax 410-532-0104

NO. DESCRIPTION DATE
REVISIONS

SHEET TITLE

Zoning Map

CALE DATE PROJ.#

"=200' July 30, 2004 22170.00

PROJECT PHASE

Development Plan Subn

Development Plan Submission NOT FOR CONSTRUCTION

DRAWING #

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