IN RE: PETITIONS FOR SPECIAL EXCEPTION AND VARIANCE – NE/S Greens Lane, 225' SE of the c/l Liberty Road **(8938 Greens Lane)** 2nd Election District 4th Council District	*	BEFORE THE
	*	ZONING COMMISSIONER
	*	OF BALTIMORE COUNTY
	*	Case No. 06-009-XA
Sharonda Ellerby Petitioner	*	

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Special Exception and Variance filed by the owner of the subject property, Sharonda Ellerby. As originally filed, the Petitioner requests a special exception to allow the office of a professional in a residential zone, pursuant to Section 1B01.1.C.12 of the Baltimore County Zoning Regulations (B.C.Z.R.). In addition, as originally filed, the Petitioner requested a variance from Section 1B01.1.C.12 to permit the office of an Accountant to occupy 41% (539.2 sq.ft.) of the total square footage of the dwelling in lieu of the maximum allowed 25% (322 sq.ft.). However at the hearing and preliminary to receiving testimony and evidence, the Petitioner submitted an amended site plan reflecting a reduction in the proposed office space to 215 sq.ft. (17%) rather than the 41% (539.2 sq.ft.) as originally requested and withdrew the Petition for Variance. Thus, the hearing then proceeded on the merits of the special exception request and a redlined plan depicting the subject property and amended relief was accepted into evidence and marked as Petitioner's Exhibit 1.

Appearing at the requisite public hearing in support of the request were Sharonda Ellerby, property owner, Vincent J. Moskunas, the Surveyor who prepared the site plan for this property, and Herbert Burgunder, III, Esquire, attorney for the Petitioner. There were no Protestants or other interested persons present.

Testimony and evidence offered disclosed that the subject property is an irregular shaped parcel located on the east side of Greens Lane, just south of its intersection with Liberty

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Date 9/16/05
By

Road in Randallstown. The property contains a gross area of 0.167 acres (7,291 sq.ft.), more or less, zoned D.R.3.5, and is improved with a two-story single-family dwelling, known as 8938 Greens Lane. Also on the property is a macadam-paved parking lot capable of providing five parking spaces. Although the property is zoned D.R.3.5, it is located on the fringe of R.O. zoned property used commercially on the northwest side, B.L. zoned property is located at the intersection within 300 feet of the subject property, and a dental office exists on the adjacent property. Randallstown Elementary School is located nearby.

The Petitioner has owned and resided on the subject property since December 2004 and is desirous of utilizing a portion of the dwelling as office space for her tax accounting business. Testimony indicated that Ms. Ellerby has a Bachelor's Degree in Accounting and has taken advanced continuing education programs in accounting, bookkeeping, and income tax preparation; however, she is not a Certified Public Accountant (CPA). Ms. Ellerby has apparently been operating as a Tax Consultant for some time and is recognized as a Professional Tax Preparer by the IRS. She currently provides tax accounting services for approximately 500 clients. Ms. Ellerby anticipates office hours of 9:00 AM to 5:00 PM, Monday through Friday, and 8:00 AM to 4:00 PM on Saturdays, with no hours on Sundays, and that she will have one non-resident employee assisting her in the business. As shown on the redlined site plan, the office will occupy an 11.2' x 13.5' space in the rear, first floor of the building, with another smaller room, 8' x 8' in dimension, serving as a copy room.

On behalf of the Petitioner, Mr. Burgunder submitted a Petition In Support of the proposal signed by five adjacent residents (Petitioner's Exhibit 2). Although there were no Protestants or other interested persons present, I was informed immediately prior to the hearing that David Green, a representative of Baltimore County's Office of Planning had planned to attend but due to a personal matter was unavailable. Mr. Curtis Murray, another representative in the Office of Planning, provided signed letters from the Presidents of both the Oakwood Village Community Association, Inc. and Fieldstone Community Group, Inc. indicating their opposition to

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the request. These community organizations also oppose any further commercial infringement into this historic residential community (Protestant's Exhibits 1 and 2).

Following the hearing, Counsel for the Petitioner submitted written memoranda in lieu of closing argument.

Section 1B01.1.C.12 of the B.C.Z.R. permits, by special exception, "Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians, or other professional persons, providing that any such office or studio is established within the same building as that serving as the professional person's primary residence; does not occupy more than 25% of the total floor area of such residence; and does not involve the employment of more than one (1) non-resident professional associate, nor two (2) other non-resident employees."

After due consideration of all of the testimony and evidence presented in this case, I find that Ms. Ellerby does not meet the standards anticipated in Section 1B01.1.C.12 of the B.C.Z.R. A Certified Public Accountant may well be a "professional person" as required by that Section; however, in my judgment, a tax preparer, no matter how well-experienced, does not meet the licensing and educational requirements most commonly associated with a professional occupation. The identical issue presented herein was previously considered and denied by former Zoning Commissioner Lawrence E. Schmidt in prior Case No. 01-045-SPHXA.

The Petitioner is a remarkable young lady and I am saddened that my decision could not be more favorable as the undisputed testimony is persuasive that Ms. Ellerby meets many of the requirements of the aforementioned Section. The subject dwelling serves as her primary residence, the proposed office area will not occupy more than 25% of the total floor area of the building, and Ms. Ellerby does not propose the employment of more than one (1) non-resident associate. Additionally, testimony and evidence presented was sufficient to satisfy the standards set forth in Section 502.1 of the B.C.Z.R. Essentially, that Section requires an examination as to whether the proposed use will be detrimental to the health, safety and general welfare of the surrounding locale. In this case, I would find that the Petitioner meets those requirements and that the use of the subject property as a dwelling with a professional office would not adversely impact

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adjacent properties. Indeed, this property, given its location, is an appropriate site for a professional person to establish an office therein. Similar uses abut the subject property, or are nearby. Moreover, traffic would logically flow from Liberty Road to Greens Lane and into the parking lot on the subject site without circulating into the adjacent community. For all of these reasons, a finding that the use of the property as a dwelling with a professional office complies with the standards set out in Section 502.1 of the B.C.Z.R. is warranted. Irrespective of these findings, however, Ms. Ellerby's occupation as a tax preparer is not considered a professional person within the context of the regulations and thus, I am compelled to deny the request.

Pursuant to the advertisement, posting of the property, and public hearing on these Petitions held, and for the reasons set forth herein, the relief requested shall be denied

THEREFORE, IT IS ORDERED, by the Zoning Commissioner for Baltimore County, this 16th day of September 2005, that the Petition for Special Exception to approve the use of the subject property for office use of a professional, pursuant to Section 1B01.1.C.12 of the Baltimore County Zoning Regulations (B.C.Z.R.), in accordance with the Petitioners' Exhibit 1, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from Section 1B01.1.C.12 of the B.C.Z.R. to allow the office of an Accountant to occupy 41% (539.2 sq.ft.) of the total square footage of the dwelling in lieu of the maximum allowed 25% (322 sq.ft.) be and is hereby DISMISSED AS MOOT.

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

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:bjs

ORDER RECEIVED FOR FILING
Date 9/16/05
By

IN THE MATTER OF THE APPLICATION OF SHARONDA ELLERBY – LEGAL OWNER FOR SPECIAL EXCEPTION AND VARIANCE ON PROPERTY LOCATED ON THE NE/S OF GREENS LANE, 225' SE OF C/L LIBERTY RD. (8938 GREENS LANE)	* * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
2ND ELECTION DISTRICT 4TH COUNCILMANIC DISTRICT	*	Case No. 06-009-XA

* * * * * * * * *

OPINION

This case comes before the Baltimore County Board of Appeals as an appeal of the Zoning Commissioner's order in which a Petition for Special Exception to allow a professional office in a residence zone was denied and the variance request dismissed as moot. The variance request was withdrawn prior to the Zoning Commissioner's hearing.

A *de novo* public hearing on the request for special exception only was held before this Board on April 19, 2006. The Petitioner, Sharonda Ellerby, was represented by Herbert Burgunder III. The Office of People's Counsel was represented by Carole S. Demilio, Deputy People's Counsel. A public deliberation was held on May 17, 2006.

Testimony and Evidence

Ms. Ellerby bought a single-family house at 8938 Greens Lane, just off of Liberty Road, in November 2004. The house is her primary residence, which she shares with two children. Her request for special exception is to use her house as an office for her tax preparer business. The house shares a parking lot with a law office, which fronts on Liberty Road. Prior to using her house for her business, she leased an office for 3 years at 3837 Naylors Lane.

Petitioners Exhibit 2, the Plan to Accompany the Petition for Special Exception and Variance, shows Ms. Ellerby's house marked in green and the parking lot between her residence and the commercial building on Liberty Road. The design for the first floor of the house shows a

room near the back of the house marked for "office" and a second room for "copy room." The two rooms together total 215.2 square feet, or about 17 percent of the dwelling space.

Ms. Ellerby testified that she hires an assistant for about 4 months of the year to answer phones and make copies during tax season. She stated that she has about 250 clients, whom she sees primarily between January and April, by appointment only. She currently does not have a business sign in front of the house, but indicated she would want to put one up if the variance were granted.

Ms. Ellerby presented a number of documents (Petitioner's Exhibit 1) to support her contention that her business is a "professional business" according to § 1B01.1.C.12 of the *Baltimore County Zoning Regulations* (BCZR). These documents included a copy of her Department of the Treasury, Internal Revenue Service "Preparer's Tax Identification Number"; copies of IRS internet pages describing the Preparer's Tax Identification Number and "E-services"; a copy of a diploma from the Accounting and Booking Center, Baltimore, MD, indicating Ms. Ellerby had fulfilled the required 39 hours of basic accounting and bookkeeping programs; a certificate for completing a 6-week income tax course by Jackson Hewitt; and an IRS publication describing "the standards of conduct and scope of authority and the circumstances and conditions under which an individual preparer of tax returns may exercise, without enrollment, the privilege of limited practice as a taxpayer's representative before the Internal Revenue Service…."

Upon cross-examination, Ms. Ellerby was asked whether she was an "enrolled agent" able to represent clients before the IRS. Ms. Ellerby replied she did not know the definition of an "enrolled agent," but was not one. She also replied that she had not worked for the IRS or taken any IRS exams.

David Green, from the Baltimore County Office of Planning, testified for People's Counsel. He is a senior planner in the Office of Planning and makes land use decisions in the Fourth District. He testified that People's Counsel Exhibit 3 was the official comment of his office dated July 21, 2005. The Memo stated that the Office of Planning had reviewed the request for special exception and found "there are no existing special circumstances or conditions that are peculiar to the subject property where strict compliance of the BCZR would result in practical difficulty or unreasonable hardship." The Memo goes on to state that the property was located in a community conservation revitalization area, that, if granted, the special exception would "increase traffic, signage and encourage more commercial encroachment" into an adjoining residential area. Mr. Green testified that there was adequate commercial zoning along Liberty Road and the encroachment of a business into the residential area would destroy the character of the neighborhood.

People's Counsel Exhibit 4 is an aerial of the area showing the Ellerby house at the edge of a large residential area zoned D.R. 3.5 (People's Counsel Exhibit 5). Across Greens Lane from Ms. Ellerby's house is the Randallstown Elementary School. Mr. Green further testified that a business use would not be compatible with a residential area adjoining a school, that the additional traffic generated would be detrimental to the school. In addition, the commercial use was inconsistent with the zoning classification of D.R. 3.5, which is intended for residential not commercial use.

During cross-examination, Mr. Green testified that the school bus turns into the school at the street opposite Ms. Ellerby's house, and that 17 percent of the school children walk to school. He also stated that putting a business into a strictly residential area affects the vitality of the neighborhood, thus affecting the general health safety, and welfare of the neighborhood.

Opinion

This case presented two issues. First, did Ms. Ellerby's business as a tax preparer meet the standards of "professional business" as stated in BCZR 1B01.1C.12? Second, if it did meet those standards, did Ms. Ellerby's petition meet the criteria of § 501.2 for granting special exceptions?

Regarding the first issue, Section 1B01.1C.12 permits by special exception:

> Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians, or other professional persons, providing that any such office or studio is established within the same building as that serving as the professional person's primary residence; does not occupy more than 25% of the total floor area of such residence; and does not involve the employment of more than one (1) nonresident professional associate, nor two (2) other non-resident employees.

The Board reviewed the evidence submitted by Petitioner and considered People's Counsel's argument that the expansion of the definition of professional status would be the same as rezoning the property. Where the zoning regulations do not specifically define a term, we are required to refer to *Webster's Third New International Dictionary*, as Judge Susan Souder did in *Jorge Escalante v. County Board of Appeals for Baltimore County (2002)* In that case, Judge Souder cites this definition of "profession":

> 4a: a calling requiring specialized knowledge and often long and intensive preparation including instruction in skills and methods as well as in the scientific, historical, or scholarly principles underlying such skills and methods, maintaining by force of organization or concerted opinion high standards of achievement and conduct, and committing its members to continued study and to a kind of work which as for its primer purpose the rendering of a public service.

This definition fits the enumerated occupations of "doctor, dentist, lawyer," etc. in the BCZR. But, licensed jobs such as Ms. Ellerby's, or a real estate broker as in *Escalante,* are, in

the words of *American Law of Zoning* Section 13.10 (also cited in Judge Souder's opinion), "businesses" rather than professions, and therefore are not covered by this special exception. We agree with People's Counsel and with Judge Souder that to expand the definition of "profession" would be to open up residential areas to a myriad of businesses claiming professional status and thus erase the distinction between commercial and residential areas. As Mr. Green pointed out in his testimony, there are many nearby commercial zones and the market is not so tight as to preclude Ms. Ellerby from locating her business in one.

The second issue concerned whether Petitioner met the § 501.2 burden in order to be granted a special exception. Although this is now moot since she does not qualify as a profession, we will address it.

The Court of Special Appeals states in *Schultz v. Pritts* that the applicant bears the burden of proving her use meets the "prescribed standards and requirements." *Schultz v. Pritts* 291 Md.1, 432 A.2d 1319 (1981). The applicant has to prove to the Board that the use "would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest." If the applicant satisfies the Board on these points then "he has met his burden" (*Schultz v. Pritts, supra,* at 11).

Thus, it is Petitioner's burden to provide credible, affirmative evidence and testimony that her proposed use is not detrimental to the neighborhood and meets *each* of the nine criteria set forth in § 502.1. In addition, the Petitioner must satisfy the *Schultz v. Pritts* standard that her particular use at this particular location would not have "any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone" (*Schultz v. Pritts, supra,* at 22).

In this case, Petitioner provided no evidence or testimony to satisfy 502.1 or the *Schultz v. Pritts* requirement. During cross-examination, counsel for Petitioner tried to have People's

Counsel's witness testify on Ms. Ellerby's behalf. But, in fact, Mr. Green provided credible testimony that this business in this location, across from a school and in the middle of a residential neighborhood, would be detrimental to the health, safety, and welfare of the area, was inconsistent with the zone, and would negatively impact traffic—three of the nine criteria. *Schultz v. Pritts* states: "These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied" (at 12).

Therefore, since Petitioner has failed both to prove her business is a profession under the requirements of BCZR § 1B01.1C.12 and to provide credible evidence that her business met the special exception 502.1 criteria, this Board denies Petitioner's request to use her house as an office.

ORDER

THEREFORE, IT IS ORDERED, by the Baltimore County Board of Appeals, this 28th day of March, 2007, that the Petition for Special Exception filed in Case No. 06-009-XA be and the same is hereby **DENIED**.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Panel Chairman

Lawrence M. Stahl

Margaret Brassil, Ph.D.

Petition for Special Exception

to the Zoning Commissioner of Baltimore County

for the property located at 8938 Greens Lane

which is presently zoned D.R.3.5

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 Special Exception under the Zoning Regulations of Baltimore County, to use the herein described property for OFFICE OF A PROFESSIONAL IN A RESIDENTIAL ZONE PER SEC. 1B01.1C.12 BCZR

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above Special Exception, 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:

Herbert Burgunder III
Name - Type or Print

Signature

Company

1501 Sulgrave Avenue, Suite 207
Address Telephone No.

Baltimore, Maryland 21209 410-664-6500
City State Zip Code

Legal Owner(s):

Sharonda Ellerby
Name - Type or Print

Sharonda Ellerby
Signature

Name - Type or Print

Signature

8938 Greens Lane 410 655-1420
Address Telephone No.

Randallstown. MD 21133
City State Zip Code

Representative to be Contacted:

Site Rite Surveying, Inc
Name

200 E. Joppa Road Rm 101 410 828 9060
Address Telephone No.

Towson, MD 21286
City State Zip Code

Case No. 06-009-XA

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By TAA Date 06-30-05

REV 09/15/98

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 8938 Greens Lane
which is presently zoned DR3.5

This Petition shall be filed with the Department of Permits and Development Management. The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s) 1B01.1C.12 TO PERMIT AN OFFICE OF AN ACCOUNTANT TO OCCUPY 41% (539.2 SQ FT.) IN LIEU OF THE REQUIRED 25% (322 SQ FT.) OF THE RESIDENCE

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

Size of house would not permit business to operate if limited to 25% of floor area.

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

Legal Owner(s):

Sharonda Ellerby
Name - Type or Print

Sharonda Ellerby
Signature

Name - Type or Print

Signature

8938 Greens Lane 410 655-1420
Address — Telephone No.

Randallstown MD 21133
City — State — Zip Code

Attorney For Petitioner:

Herbert Burgunder III
Name - Type or Print

HB
Signature

Company

1501 Sulgrave Avenue, Suite 207
Address — Telephone No.

Baltimore, Maryland 21209 410-664-6500
City — State — Zip Code

Representative to be Contacted:

Site Rite Surveying Inc
Name

200 E. Joppa Road Rm 101 410 828 9060
Address — Telephone No.

Towson MD 21286
City — State — Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Case No. 06-009-XA

Reviewed By SDA Date 06-30-05

REV 9/15/98

ZONING DESCRIPTION
#8938 GREENS LANE

BEGINNING at a point on the northeast side of Greens Lane which is 30 feet wide at the distance of 225 feet southeast of the centerline of Liberty Road which is 80 feet wide. As recorded in Deed Liber 21135, folio 583 and running thence N42°45'E, 76.66 feet from the centerline of Greens Lane; thence S45°19'E, 100.52 feet; thence S45°45'W, 122.27 feet to the centerline of Greens Lane and thence along the said centerline N21°15'W, 111.17 feet to the point of beginning, containing 7,291 square feet, more or less. Also known as #8938 Greens Lane and located in the 2nd Election District, 4th Councilmanic District.

STATE OF MARYLAND
MICHAEL VINCENT MOSKUNAS
NO. 21175
PROFESSIONAL LAND SURVEYOR

Michael V. Moskunas

Michael V. Moskunas
Reg. No. 21175

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

OG-009-XA

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 446935

DATE 06-30-05 ACCOUNT R.001.006.6150

AMOUNT $ 705.00

RECEIVED FROM: ELLERBY'S UNLIMITED TAX SERVICES INC. 8938 GREENS LN.

FOR: SPECIAL EXCEPTION & VARIANCE

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

Security enhanced document. See back for details.

ELLERBY'S UNLIMITED TAX SERVICES INC.
410-655-1420
8938 GREENS LN
RANDALLSTOWN, MD 21133-4208

11-03

1181

DATE 6-21-05

7-163/520 MD
8130

PAY TO THE ORDER OF Baltimore County $ 705.00

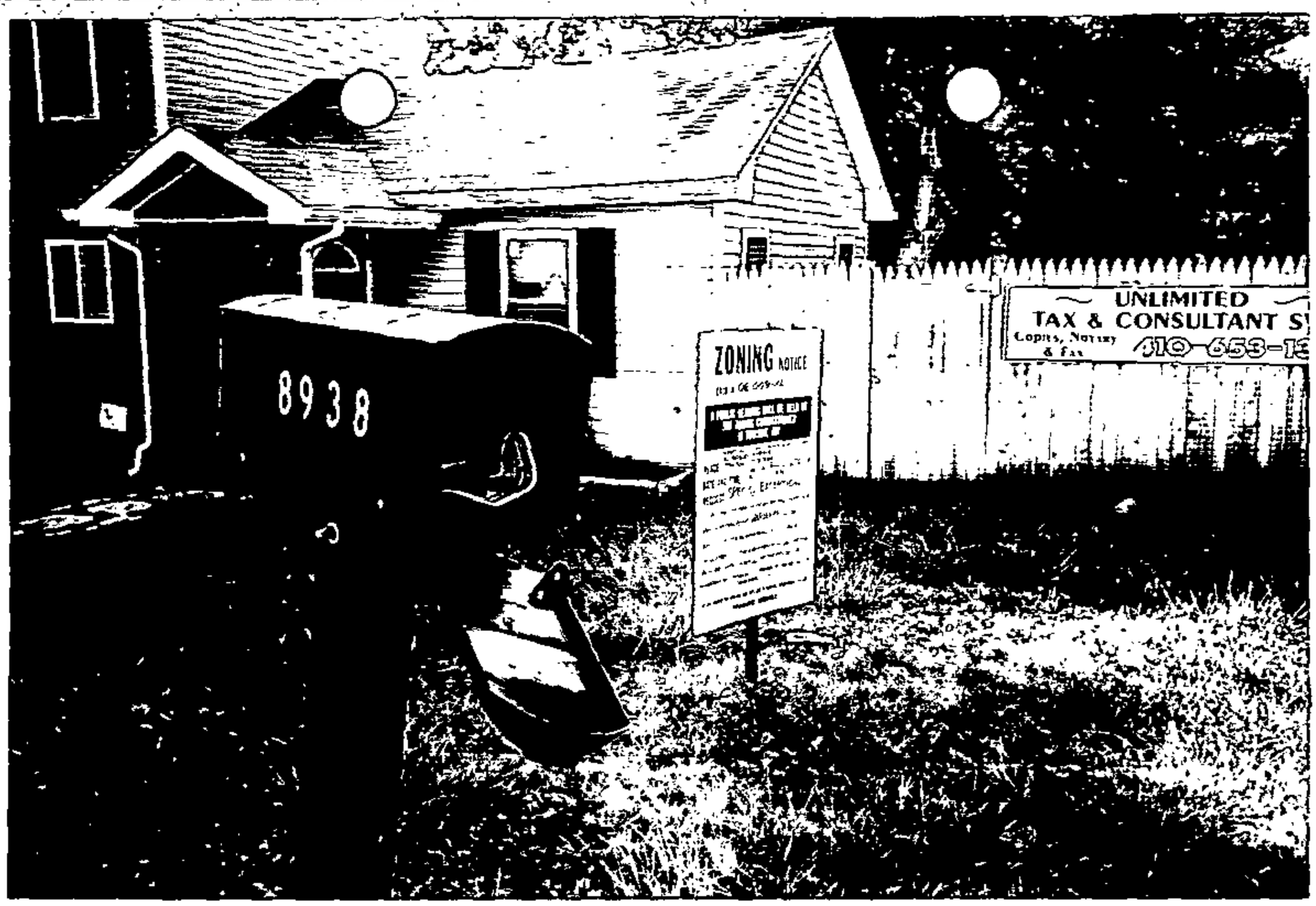
Seven hundred five 00/00 DOLLARS

Bank of America

ACH R/T 052001633

FOR Petition Shaunda Ellerby

⑈001181⑈ ⑆052001633⑆ 0039175481 31⑈



APPEAL SIGN POSTING REQUEST

CASE NO. 06-009-XA

8938 GREENS LANE

2ND ELECTION DISTRICT APPEALED: 10/17/05

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

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

CERTIFICATE OF POSTING

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

Attention: Kathleen Bianco
Administrator

CASE NO.: 06-009-XA

LEGAL OWNER: SHARONDA ELLERBY

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

8938 GREENS LANE map 24 E12

The sign was posted on 1/27, 2005

By: Jeff Radcliffe
(Signature of Sign Poster)

Jeff Radcliffe
(Print Name)

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: #06-009-XA
8938 Greens Lane
N/east side of Greens Lane s/east side of centerline of Liberty Road
2nd Election District — 4th Councilmanic District
Legal Owner(s): Sharonda Ellerby

Special Exception: to allow the office of an accountant in a residential zone. **Variance:** to permit an office of a professional to occupy 41% (536.2 sq. ft.) of their residence in lieu of the required 25% (322 sq. ft.) of the residence.

Hearing: Tuesday, August 30, 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 8/676 August 16 62946

CERTIFICATE OF PUBLICATION

8/17/, 2005

THIS IS TO CERTIFY, that the annexed advertisement was published in the following weekly newspaper published in Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 8/16/, 2005.

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

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No.: 06-009-XA

Petitioner/Developer: SHARONDA ELLERBY

Date of Hearing/Closing: AUG. 30, 2005

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

Attention: **Christen Matthews**

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 propery located at

8938 GREENS LANE

The sign(s) were posted on AUGUST 15, 2005
(Month, Day, Year)

Sincerely,

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

GARLAND E. MOORE
(Printed Name)

3225 RYERSON CIRCLE
(Address)

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

(410) 242-4263
(Telephone Number)

ZONING NOTICE

CASE # 06-009-XA

A PUBLIC HEARING WILL BE HELD BY THE ZONING COMMISSIONER IN TOWSON, MD

PLACE: ROOM 407, COUNTY COURTS BUILDING 401 BOSLEY AVENUE TOWSON MD. 21204

DATE AND TIME: TUESDAY, AUGUST 30, 2005 AT 10:00 A.M.

REQUEST: SPECIAL EXCEPTION

TO ALLOW THE OFFICE OF AN ACCOUNTANT IN A RESIDENTIAL ZONE. VARIANCE TO PERMIT AN OFFICE OF A PROFESSIONAL TO OCCUPY 41% (536.2 SQ.FT.) OF THEIR RESIDENCE IN LIEU OF THE REQUIRED 25% (372 SQ.FT.) OF THE RESIDENCE

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY. TO CONFIRM HEARING CALL 887-3391

DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING, UNDER PENALTY OF LAW

HANDICAPPED ACCESSIBLE

RECEIVED
AUG 16 2005
DEPT. OF PERMITS AND DEVELOPMENT MANAGEMENT

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: OG-009-XA

Petitioner: Sharonda Ellerby

Address or Location: 8938 Greens Lane

PLEASE FORWARD ADVERTISING BILL TO:

Name: Sharonda Ellerby

Address: 8938 Greens Lane
Randallstown, MD 21133

Telephone Number: 410 655-1420

OG-009-XA

TO: PATUXENT PUBLISHING COMPANY
Tuesday, August 16, 2005 Issue - Jeffersonian

Please forward billing to:
Sharonda Ellerby
8938 Greens Lane
Randallstown, MD 21133

410-655-1420

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: 06-009-XA
8938 Greens Lane
N/east side of Greens Lane s/east side of centerline of Liberty Road
2nd Election District – 4th Councilmanic District
Legal Owner: Sharonda Ellerby

Special Exception to allow the office of an accountant in a residential zone. Variance to permit an office of a professional to occupy 41% (536.2 sq. ft.) of their residence in lieu of the required 25% (322 sq. ft.) of the residence.

Hearing: Tuesday, August 30, 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

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

July 13, 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: 06-009-XA
8938 Greens Lane
N/east side of Greens Lane s/east side of centerline of Liberty Road
2nd Election District – 4th Councilmanic District
Legal Owner: Sharonda Ellerby

Special Exception to allow the office of an accountant in a residential zone. Variance to permit an office of a professional to occupy 41% (536.2 sq. ft.) of their residence in lieu of the required 25% (322 sq. ft.) of the residence.

Hearing: Tuesday, August 30, 2005 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: Herbert Burgunder, III, 1501 Sulgrave Avenue, Ste. 207, Baltimore 21209
Sharonda Ellerby, 8938 Greens Lane, Randallstown MD 21133
Site Rite Surveying, Inc., 200 E. Joppa Road, Rm. 101, Towson 21286

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, AUGUST 15, 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.

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

February 14, 2006

NOTICE OF ASSIGNMENT

CASE #: 06-009-XA

IN THE MATTER OF: SHARONDA ELLERBY – Legal Owner / Petitioner 8938 Greens Lane 2nd E; 4th C

9/16/05 - Z.C.'s Order in which Petition for Special Exception was DENIED; variance request DISMISSED as moot.

ASSIGNED FOR: **WEDNESDAY, APRIL 19, 2006 at 10:00 a.m.**

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

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

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

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

Kathleen C. Bianco
Administrator

---

c: Counsel for Appellant /Petitioner : Herbert Burgunder III, Esquire
Appellant /Petitioner : Sharonda Ellerby

Vincent Moskunas /Site Rite Surveying

Patricia Clark, President /Fieldstone Community Group, Inc.
Tanya Williams, President /Oakwood Community Assn., Inc.

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

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on Recycled Paper

County Board of Appeals of Baltimore County

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

April 20, 2006

NOTICE OF DELIBERATION

IN THE MATTER OF:

SHARONDA ELLERBY – Legal Owner /Petitioner
Case No. 06-009-XA

Having heard this matter on 4/19/06, public deliberation has been scheduled for the following date /time:

DATE AND TIME : WEDNESDAY, MAY 17, 2006 at 9:30 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

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

Kathleen C. Bianco
Administrator

c: Counsel for Appellant /Petitioner : Herbert Burgunder III, Esquire
Appellant /Petitioner : Sharonda Ellerby

Vincent Moskunas /Site Rite Surveying

Patricia Clark, President /Fieldstone Community Group, Inc.
Tanya Williams, President /Oakwood Community Assn., Inc.

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

FYI: 3-2-5

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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

August 22, 2005

Herbert Burgunder III
1501 Sulgrave Avenue, Ste. 207
Baltimore, Maryland 21209

Dear Mr. Burgunder:

RE: Case Number: 06-009-XA, 8938 Greens Lane

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on June 30, 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
Sharonda Ellerby 8938 Greens Lane Randallstown 21133
Site Rite Surveying Inc. 200 E. Joppa Road Rm. 101 Towson 21286

BW
8/30

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: July 21, 2005

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

RECEIVED

JUL 22 2005

ZONING COMMISSIONER

SUBJECT: 8938 Greens Lane

INFORMATION:

Item Number: 6-009

Petitioner: Sharonda Ellerbe

Zoning: DR 3.5

Requested Action: Special Exception

SUMMARY OF RECOMMENDATIONS:

The Office of Planning reviewed the petitioner's request and determined that there are no existing special circumstances of conditions that are peculiar to the subject property where strict compliance of the BCZR would result in practical difficulty or unreasonable hardship.

The subject property is located in a Master Plan designated community conservation revitalization area. Furthermore, the requested special exception could create an increase in traffic, signage and encourage more commercial encroachment into adjacent residential neighborhoods and become detrimental to the enjoyment of surrounding residential uses.

The Fieldstone Community has worked hard to maintain the residential character of this community. As such, this office recommends that the petitioner's request be **DENIED**.

For further information concerning the matters stated herein, please contact Dave Green at 410-887-3480.

Prepared by: Cindis Murray

Section Chief: Lyn Lanham

AFK/LL: CM

W:\DEVREV\ZAC\6-009.doc

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

July 14,2005

ATTENTION: Zoning Review planners

Distribution Meeting of: July 18,, 2005

Item No.:002,004,005,009,010,012

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.

3. 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.

Acting Lieutenant David S. Heath
Fire Marshal's Office
(O)410-887-4881
MS-1102F

cc: File

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

SHA
State Highway Administration
Driven to Excel
Maryland Department of Transportation

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

Date: 7.15.05

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

RE: Baltimore County
Item No. 009 JRA

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

INTEROFFICE CORRESPONDENCE

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

DATE: July 25, 2005

DAK

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

SUBJECT: Zoning Advisory Committee Meeting
For July 25, 2005
Item No. 009

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

The right-of-way for Greens Lane is 60-foot. Setbacks shall be adjusted accordingly.

DAK:CEN:clw
cc: File
ZAC-ITEM NO 009-07252005.doc

RE:	PETITION FOR SPECIAL EXCEPTION AND VARIANCE	*	BEFORE THE
	8938 Greens Lane; NE/side Greens Lane, SE/side c/line Liberty Road	*	ZONING COMMISSIONER
	2nd Election & 4th Councilmanic Districts	*	FOR
	Legal Owner(s): Sharonda Ellerby Petitioner(s)	*	BALTIMORE COUNTY
		*	05-09-XA

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

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 18th day of July, 2005, a copy of the foregoing Entry of Appearance was mailed to Site Rite Surveying, Inc, 200 E Joppa Road, Suite 101, Towson, MD 21286 and Herbert Burgunder, III, Esquire, 1501 Sulgrave Avenue, Suite 207, Baltimore, MD 21209, Attorney for Petitioner(s).

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

RECEIVED
JUL 18 2005
Per.....

Department of Permits and Development Management

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

Baltimore County

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

November 21, 2005

Sharonda Ellerby
8938 Greens Lane
Randallstown, MD 21133

Dear Ms. Ellerby:

RE: Case: 06-009-XA, 8938 Greens Lane

Please be advised that an appeal of the above-referenced case was filed in this office on October 17, 2005 on your behalf by Herbert Burgunder. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

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

Sincerely,

Timothy Kotroco

Timothy Kotroco
Director

TK:klm

c: William J. Wiseman, III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Herbert Burgunder, 1501 Sulgrave Avenue, Ste. 207, Baltimore 21209
Vincent Moskunas, 200 E. Joppa Road, Rm. 101, Baltimore 21286
Patricia Clark, 3603 Stoneybrook Road, Randallstown 21133-4277
Tanya Williams, 8940 Harkate Way, Randallstown 21133

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APPEAL

Petition for Special Exception and Variance
8938 Greens Lane
NE/S Greens Lane, 225' SE of c/l Liberty Road
2nd Election District – 4th Councilmanic District
Legal Owners: Sharonda Ellerby

Case No.: 06-009-XA

✓ Petition for Special Hearing & Special Exception (June 30, 2005)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (July 13, 2005)

✓ Certification of Publication (The Jeffersonian – August 16, 2005)

✓ Certificate of Posting (August 15, 2005) by Garland E. Moore

✓ Entry of Appearance by People's Counsel (July 18, 2005)

- Petitioner(s) Sign-In Sheet – One Sheet
- Protestant(s) Sign-In Sheet – None
- Citizen(s) Sign-In Sheet - None

✓ Zoning Advisory Committee Comments

RECEIVED
NOV 23 2005
BALTIMORE COUNTY
BOARD OF APPEALS

Petitioners' Exhibit
1. Site Plan
2. Petition showing supporting Residents
3. Petitioner's Deed (3a); MDA & T (3B – D)
4. Aerial Map
5. Legal Memo reflecting status of tax preparer (September 6, 2005)

Protestants' Exhibits
1. Letter from Fieldstone Community Group (8-17-05)
2. Letter from Oakwood Village Community Association (9-1-05)

Miscellaneous (Not Marked as Exhibit)
1. Memorandum from Councilman Oliver regarding Fieldstone Community Group

✓ Zoning Commissioner's Order (Special Exception – DENIED; Variance – DISMISSED AS MOOT – September 16, 2005)

Notice of Appeal received on October 17, 2005 from Herbert Burgunder on behalf of Petitioner

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner
Timothy Kotroco, Director of PDM
Sharonda Ellerby, 8938 Greens Lane, Randallstown 21133
Herbert Burgunder, 1501 Sulgrave Avenue, Ste. 207, Baltimore 21209
Vincent Moskunas, 200 E. Joppa Rd., Ste. 101, Towson 21286
Patricia Clark, 3603 Stoneybrook Road, Randallstown 21133-4227
Tanya Williams, 8940 Harkate Way, Randallstown 21133

date sent November 22, 2005, klm

Case No. 06-009-XA

In the Matter of: Sharonda Ellerby
8938 Greens Lane 2nd E; 4th C

SE –To allow the office of a professional in a residential zone;
VAR – WITHDRAWN AT HEARING BEFORE ZC PRIOR TO RECEIPT OF TESTIMONY AND EVIDENCE.

9/16/05 - Z.C.'s Order in which Petition for Special Exception was DENIED; variance request DISMISSED as moot.

2/14/06 - Notice of Assignment sent to following; assigned for hearing on Wednesday, April 19, 2006 at 10:00 a.m.:

Herbert Burgunder III, Esquire
Sharonda Ellerby
Vincent Moskunas /Site Rite Surveying
Patricia Clark, President /Fieldstone Community Group, Inc.
Tanya Williams, President /Oakwood Community Assn., Inc.
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Curtis Murray /Planning
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

4/19/06 – Board convened for hearing (Wescott, Stahl, Brassil); concluded hearing this date; cited cases referenced at hearing to be provided by counsel; deliberation to be assigned and notice sent; no memos to be filed in this matter.

4/20/06 – Notice of Deliberation sent to parties; assigned for Wednesday, May 17, 2006 at 9:30 a.m. FYI copy to 3-2-5).
-- Copies of decisions (3) referenced at hearing provided by Ms. Demilio; sent via USPS to Wescott, Stahl, Brassil this date (Escalante /CCt and Board; Moore /Zoning Commissioner).

4/25/06 – Memorandum filed by Mr. Burgunder as cover to New York Appellate decisions in Teague, Delpriore, Osborn, and Geiffert; Louisiana decision in Audobon; Montgomery Co., Maryland, in Borchers; and District of Columbia in Colker.
-- Letter to Mr. Burgunder – upon confirmation with Board, returned the Memorandum to him – keeping the copies to be forwarded to the Board members. As stated above and as indicated by the Board at the conclusion of the hearing on 4/19/06, memos were not to be filed in this matter; rather, only copies of relevant and cited cases were to be provided for the Board. Copy of letter provided to Ms. Demilio.

5/17/06 – Board convened for public deliberation (3-2-5); unanimous decision – accountant not found to be a "professional" under the law; requested zoning relief is DENIED. Written Opinion and Order to be issued; appellate period to run from date of written Order. (5)

County Board of Appeals of Baltimore County

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

April 25, 2006

Herbert Burgunder III, Esquire
Mt. Washington Center
1501 Sulgrave Avenue
Suite 207
Baltimore, MD 21209

RE: *In the Matter of: Sharonda Ellerby –*
Legal Owner /Petitioner / Case No. 06-009-XA

Dear Mr. Burgunder:

At the conclusion of the hearing in the subject matter on April 19, 2006, it was agreed that counsel would provide to the Board copies of relevant opinions prior to public deliberation. The Board also indicated at that time that written Memoranda would be not submitted in this matter.

Therefore, while copies of the various opinions provided by you, and by Ms. Demilio, have been forwarded to the Board as agreed, I am returning to you the Memorandum filed this date for the reason as stated above.

Should you have any questions, I can be reached at 410-887-3180.

Very truly yours,

Kathleen C. Bianco
Administrator

Enclosure

c: Carole S. Demilio, Deputy People's Counsel
for Baltimore County

FILE

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on Recycled Paper

COPY

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: SHARONDA ELLERBY
8938 GREENS LANE
Case No.: 06-009-XA

DATE: May 17, 2006

BOARD/PANEL Lawrence S. Wescott, Chairman
Lawrence W. Stahl
Dr. Margaret Brassil

RECORDED BY: Linda B. Fliegel/Legal Secretary

PURPOSE: Petition for Special Exception and Variance – Office of a professional in a residential zone. - 1B01.1C.12 B.C.Z.R.

Petition for Variance – 1B01.1C.12 B.C.Z.R. to permit an office of an accountant to occupy 41% of building in lieu of the required 25%. (Size of house would not permit business to operate if limited to 25% of floor area.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- Whether or not the Special Exception should be granted to an accountant as a professional office in a D.R.3.5. Zone?
- Business does not meet criteria set out in the code as a professional business.
- This area is a residential area with a business zoned area which is nearby.
- Webster's Dictionary defines a professional as follows: "characterized by or conforming to the technical or ethical standards of a profession." This would have the expectation for a standard of conduct, scope of authority, and would meet very specific criteria, such as a professional who would be allowed to appear before the Internal Revenue Service. The IRS recognizes the difference.
- A former Memorandum/Opinion issued by The Honorable Judge Susan Souder regarding the Jorge Escalante matter, case no. 03-C-02-1391, was referenced.
- It was felt that the business of an accountant did not meet with the definition/standard of a professional.
- If this request was granted it could open up the door to allow all types of home businesses.
- This request is inconsistent with the zoning regulations.
- Increased traffic, additional signage, etc., would be distracting. Not in the best interest of the area.
- Experts made very clear what a R.O. Zone was.
- There is no good reason to expand the R.O. Zone.

DECISION BY BOARD MEMBERS:

FINAL DECISION: After a thorough review of the facts, testimony, and law in the matter, the Board unanimously decided to *DENY* the Petitioner's request for zoning relief.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place that date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted

Linda B. Fliegel

Linda B. Fliegel
County Board of Appeals

File

Memorandum

To: Mr. Timothy Kotroco, Director
Permits and Development Management

From: Councilman Ken Oliver KNO

Re: 8938 Greens Lane, (06-009-XA)

Date: August 25, 2005

Attached, please find a copy of the communication that I received from the Fieldstone Community Group, regarding the above referenced subject matter for your necessary action. I would appreciate it if you will ensure that this will be duly noted.

Please feel free to contact my office at (410) 887-3389, should you have any questions or concerns.

Thank you, as always, for your attention and cooperation.

KO:clp

Attachment

RECEIVED
AUG 26 2005
05-2534

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
REQUESTED OPINIONS – IN THE MATTER OF:
SHARONDA ELLERBY

DATE: April 20, 2006

FROM: Kathi

SUBJECT: Copies of Opinions – referenced at hearing 4/19/06

TO: **L. Wescott**
L. Stahl
M. Brassil

FILE

FYI –

Carole Demilio has provided copies of the attached decisions referenced at the hearing held in the subject matter on Wednesday, April 19, 2006.

Deliberation has been assigned for Wednesday, May 17, 2006 at 9:30 a.m. (a copy of that notice was forwarded to you when sent out).

kathi

Attachments (3)

LAW OFFICES OF
HERBERT BURGUNDER III

MT. WASHINGTON CENTER
1501 SULGRAVE AVENUE • SUITE 207
BALTIMORE, MARYLAND 21209
410-664-6500 • FAX: 410-664-6501

October 17, 2005

BY HAND-DELIVERY
Ms. Kristen Matthews
Baltimore County
Department of Permits & Development and Management
111 West Chesapeake Avenue, Suite 105
Towson, Maryland 21204

Re: Appeal of Decision – Case No. 06-009-XA

Dear Ms. Matthews:

As we discussed, Petitioner, Ms. Sharonda Ellerby, notes her appeal of the decision issued by Zoning Commissioner William J. Wiseman, III. Also enclosed is a check for $400 made payable to Baltimore County.

Mr. Wiseman's decision was made on September 16, 2005. The thirtieth day following that decision was Sunday, October 16, 2005. Today represents the first business day after the thirtieth day. Please accept this Appeal as timely filed.

Sincerely,

HB3

Herbert Burgunder III

HB3:lg
Enclosure
cc: Ms. Sharonda Ellerby (w/out enclosure)
William J. Wiseman, III, Esquire (w/out enclosure)

RECEIVED
OCT 17 2005
Per. KLM

HERBERT BURGUNDER III
HB3@HB3LAW.COM

LAW OFFICES OF
HERBERT BURGUNDER III

MT. WASHINGTON CENTER
1501 SULGRAVE AVENUE • SUITE 207
BALTIMORE, MARYLAND 21209
410-664-6500 • FAX: 410-664-6501

L. SKYE MACLEOD
OF COUNSEL
LSM@HB3LAW.COM

April 25, 2006

BY HAND-DELIVERY
Baltimore County Board of Appeals
Old Courthouse, Basement
400 Washington Avenue, Room 49
Towson, Maryland 21204

Re: 8938 Greens Lane, Case No. 06-009-XA

Dear Clerk:

Enclosed for filing is a Memorandum for the above-referenced case. If you have any questions, please do not hesitate to call me.

Sincerely,

HB3

Herbert Burgunder III

HB3:lg
Enclosures
cc: Ms. Sharonda Ellerby (w/out encls.)
Carole S. Demilio, Esquire (w/encls.)

PLEASE PRINT CLEARLY

CASE NAME 8938 GREENS LANE
CASE NUMBER 06-009XA
DATE 8-30-05

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Shaunda Ellerby	8938 Greens Lane	Randallstown, MD 21133	-
VINCENT J. MOSKUNAS SITE RITE SURVEYING, INC.	200 E. TOPPA RD.	TOWSON, MD. 21286	VJMMVM@AOL.COM
Herbert Burgundy	1501 Sulgrave Avenue 207	Baltimore MD 21209	hbz@hbzlaw.com

Click here for a plain text ADA compliant screen.

Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search
Ground Rent

Account Identifier: **District** - 02 **Account Number** - 0204000102

Owner Information

Owner Name:	ELLERBY SHARONDA M	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	8938 GREENS LN RANDALLSTOWN MD 21133-4208	**Deed Reference:**	1) /21135/ 583 2)

Location & Structure Information

Premises Address
8938 GREENS LN

Legal Description
.1674 AC
8938 GREENS LN
100FT S OF LIBERTY RD

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assesment Area	Plat No:
77	8	66						1	Plat Ref:

Special Tax Areas **Town** **Ad Valorem** **Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1931	863 SF	7,291.00 SF	04

Stories	Basement	Type	Exterior
1	NO	STANDARD UNIT	FRAME

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	31,290	43,290		
Improvements:	24,710	27,230		
Total:	56,000	70,520	65,680	70,520
Preferential Land:	0	0	0	0

Transfer Information

Seller:	DELOREAN LLC	**Date:**	12/15/2004	**Price:**	$139,900
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/21135/ 583	**Deed2:**	
Seller:	GROSSFELD HOWARD M	**Date:**	01/29/2004	**Price:**	$44,500
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/19507/ 339	**Deed2:**	
Seller:	GROSSFELD HOWARD M	**Date:**	06/26/2003	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/18285/ 637	**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2005	07/01/2006
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

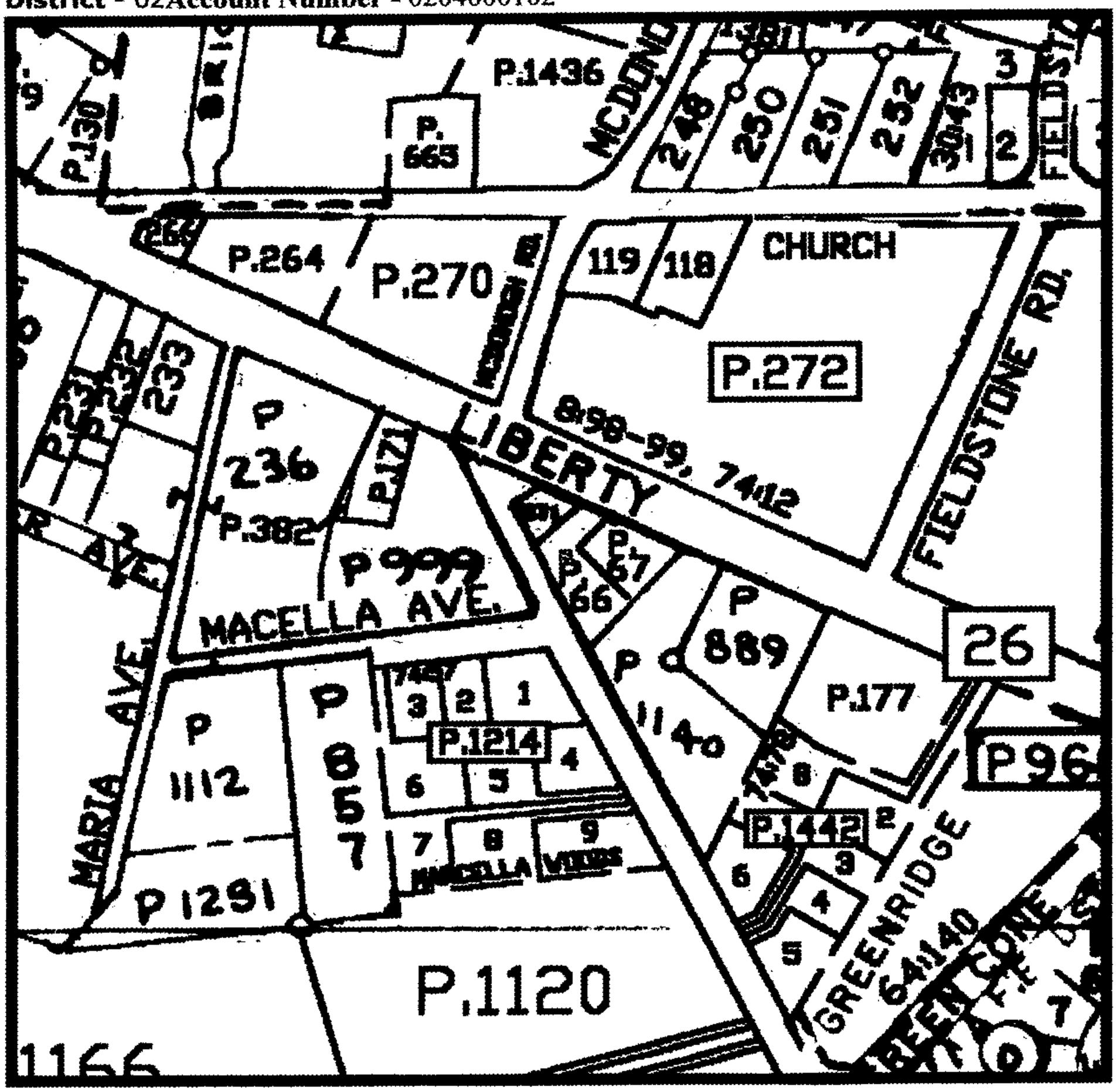
Special Tax Recapture:

* NONE *

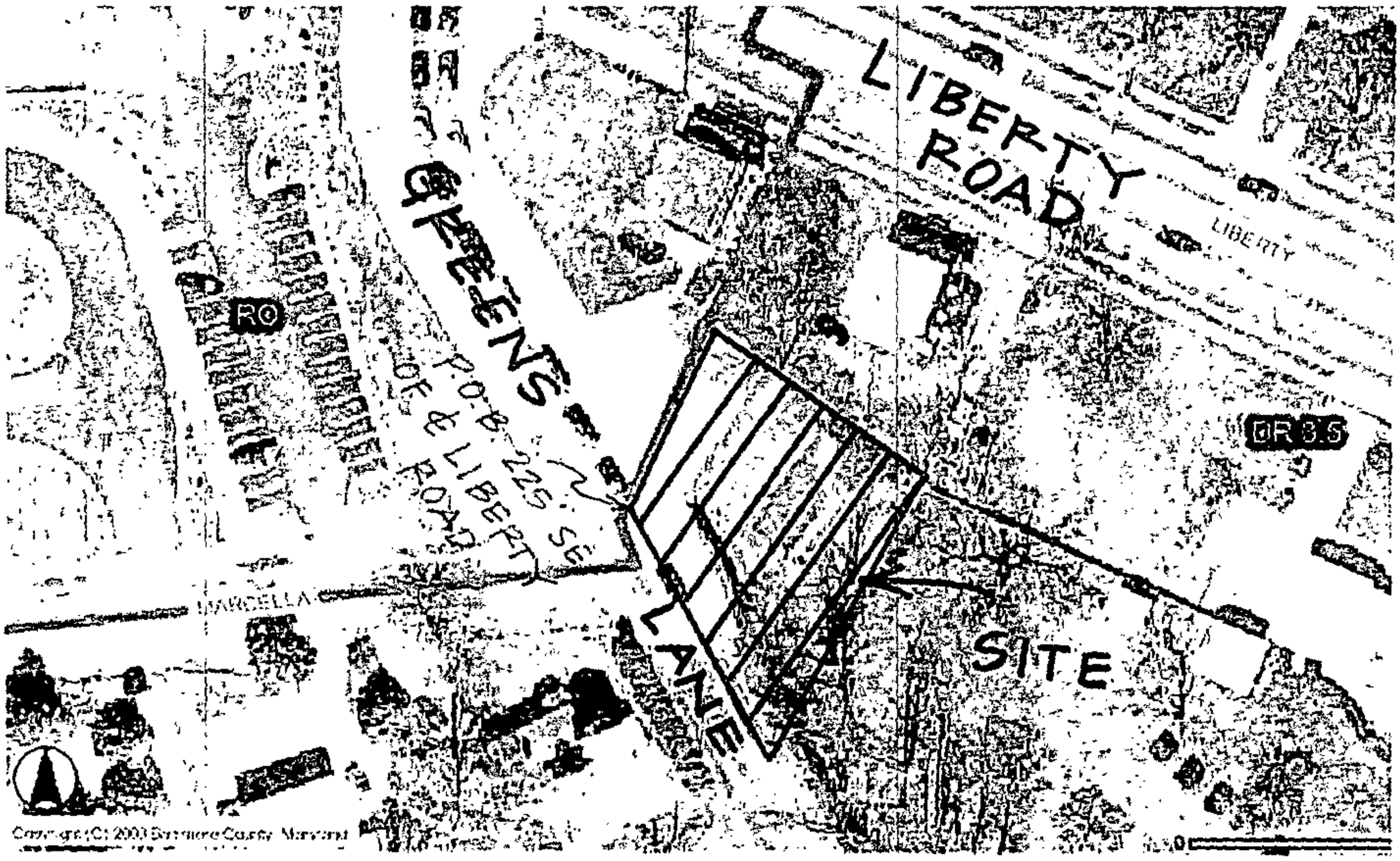
Maryland Department of Assessments and Taxation
BALTIMORE COUNTY
Real Property Data Search

Go Back
View Map
New Search

District - 02**Account Number** - 0204000102

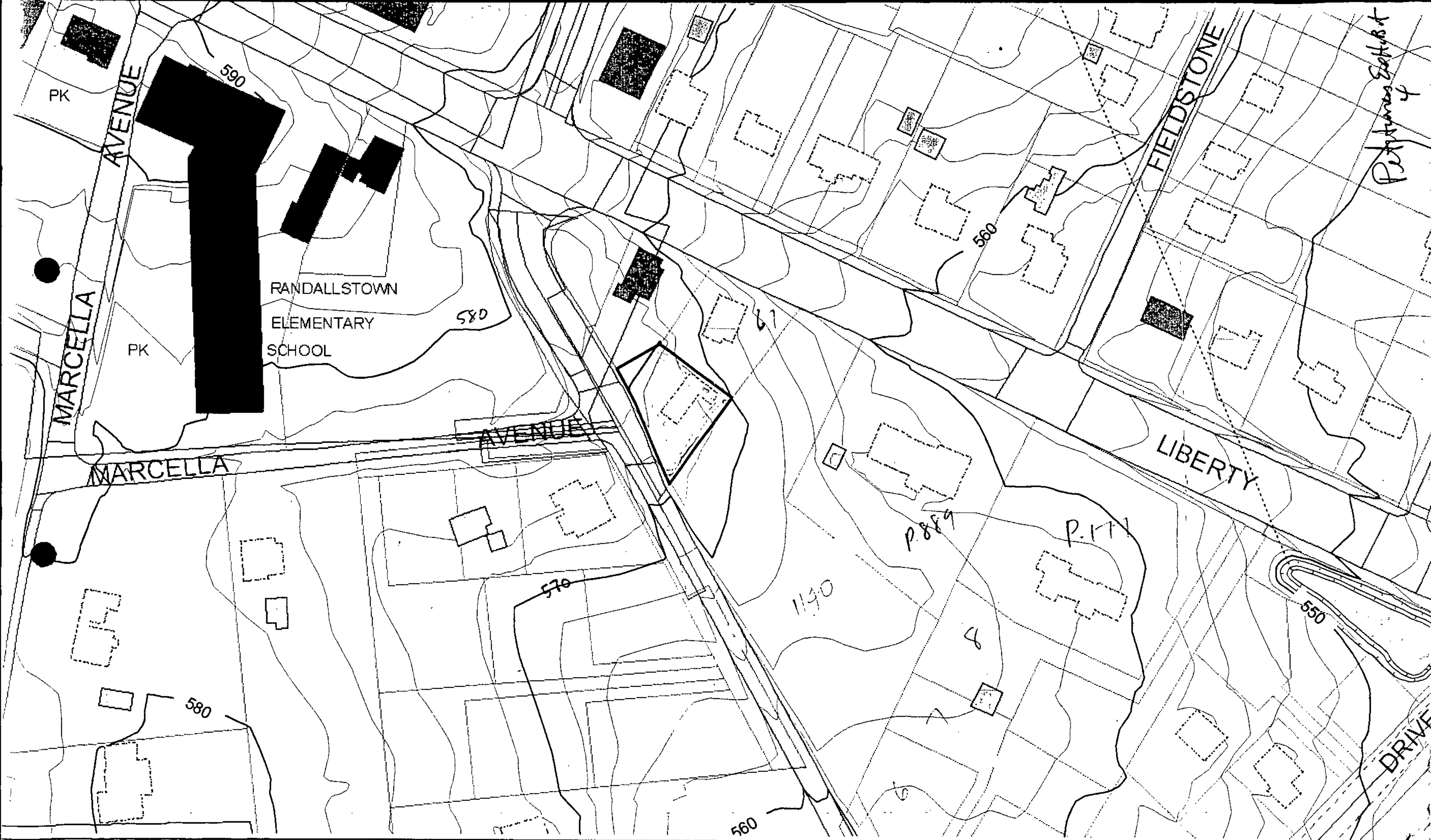


Property maps provided courtesy of the Maryland Department of Planning ©2004.
For more information on electronic mapping applications, visit the Maryland Department of Planning web site at www.mdp.state.md.us/webcom/index.html



Zoning Map
#8938 Greens Lane
Special Exception / Variance
June 22nd, 2005

06-009-XA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District of Columbia Court of Appeals Reports

COLKER v. D.C. BOARD OF ZONING ADJUSTMENT, *474 A.2d 820* (D.C. 1983)

Solomon S. COLKER, Petitioner, v. DISTRICT OF COLUMBIA BOARD OF ZONING ADJUSTMENT, Respondent.

No. 83-35.

District of Columbia Court of Appeals.

Argued September 13, 1983.

Decided September 16, 1983.[fn*]

[fn*] The original disposition of this case was by an unpublished Memorandum Opinion and Judgment. Respondent's motion for publication was granted by the court.

Allen V. Farber, Washington, D.C., for petitioner.

Leo N. Gorman, Asst. Corp. Counsel, Washington, D.C., with whom Judith W. Rogers, Corp. Counsel, Washington, D.C., at the time the brief was filed, and Charles L. Reischel, Deputy Corp. Counsel, Washington, D.C., were on brief, for respondent.

Before NEBEKER, PRYOR and BELSON, Associate Judges.

PER CURIAM:

This is a petition for review of a decision of the District of Columbia Board of Zoning Adjustment (BZA) denying petitioner's application for a certificate of occupancy for premises located in a Special Purpose (SP) zone. The BZA found that petitioner was not a "similar professional person" within the meaning of § 4101.44 of the Zoning Regulations. We affirm.

Petitioner, Solomon S. Colker, is the founder and chief officer of S.S. Colker & Associates, Inc. On behalf of his corporation, Colker applied for a certificate of occupancy to use as an office certain premises located at 1330 New Hampshire Avenue, N.W. The building is in an SP-2 zone in which use is permitted for an "[o]ffice for a *chancery, international agency, non-profit organization,* labor union, architect, dentist, doctor, engineer, lawyer or similar professional person" (underscoring in original). 11 DCMR § 4104.44 (1982). Colker contends that he is a "similar professional person" within the meaning of the regulation, but the BZA ruled otherwise.

A prior decision of this court affirmed the BZA's ruling that in order to be a "similar professional person," a person must

(1) have professional education, (2) be bound by a code of ethics and some principles of practice through a professional organization, and (3) be professionally licensed. *See Keefe Co. v. District of Columbia Board of Zoning Adjustment,* **409 A.2d 624**, **625-26** (D.C. 1979). Colker is licensed by the state of Maryland as a certified public accountant and is chartered as a financial analyst by the Institute of Chartered Financial Analysts. However, he sought a certificate of occupancy for use as an "accountant, financial analyst and economist." *See* Board of Zoning Order No. 13714 (January 18, 1983). Neither financial analysts nor economists are subject to professional

Page 821

licensing, nor are economists bound by a professional code of ethics. Thus, in two of his three professed categories of endeavor, Colker cannot meet the criteria for a "similar professional person."

Colker might quality as a "similar professional person" if he restricted himself to activities customarily performed by a certified public accountant. However, Colker offers his clients a variety of financial consulting services. His firm also specializes in providing expert testimony in regulatory and judicial proceedings. At the hearing before the BZA, Colker asserted that he did not hold himself out as a practicing certified public accountant.

The thrust of Colker's position seems to be that since he qualifies as a "similar professional person" in one field permitted in the SP zone, he should be allowed to carry on a business in other fields not permitted in that zone. We find the BZA's rejection of that position neither arbitrary nor inconsistent with the regulation. Accordingly, the decision of the District of Columbia Board of Zoning Adjustment is

Affirmed.

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New York Appellate Division Reports

MATTER OF OSBORN v. PLANNING BOARD, *146 A.D.2d 838* [3d Dept 1989]

In the Matter of BETSY J. OSBORN et al., Respondents, v. PLANNING BOARD OF THE TOWN OF COLONIE et al., Appellants.

Appellate Division of the Supreme Court of New York, Third Department.

January 5, 1989

Appeal from the Supreme Court, Albany County (Bradley, J.).

Mahoney, P.J.

Petitioners are Betsy J. Osborn and her husband, Daniel L. Orne. In June 1986, they submitted a proposed commercial site plan and an application for a building and zoning permit to respondent Planning Board of the Town of Colonie (hereinafter
Page 839
respondent) seeking to use a portion of their home as a professional office. The single-family residence and property is in an area zoned as residence A-1, in which certain accessory uses, including use of the house for "[a]ny profession or customary home occupation", are allowed.

Osborn is a certified social worker who is licensed by the Department of Education. In petitioners' application for a building and zoning permit, Osborn stated her intention to establish an office in her home to conduct client consultations in family therapy lasting approximately 50 minutes in length. Less than 20% of petitioners' residence would be used for office space and Osborn would have no employees. Parking space for one automobile would be available during the hours of consultation.

In a letter dated August 1, 1986, respondent stated that the proposed office was not permitted either as a primary or accessory use in a residence A-1 district and that no action could therefore be taken on the application. After respondent failed to take any action on petitioners' application following public hearings on October 14, 1986 and November 25, 1986, petitioners commenced a proceeding pursuant to CPLR article 78 seeking a judgment in the nature of mandamus to compel respondent to issue a determination on their application. The petition was granted and respondent was directed to render a decision. By letter dated February 11, 1988, respondent denied petitioners' application. Petitioners then commenced the instant article 78 proceeding to annul the determination. Supreme Court, after a hearing, annulled respondent's decision and ordered it to issue site plan and accessory use approval to petitioners. This appeal by respondent ensued.

We affirm. Petitioners' residence is located in an area zoned as residence A-1. Pursuant to Town of Colonie Zoning Code § 190-9 (hereinafter the Code), certain accessory uses are permitted in

residence A-1 districts, including, "Any profession or customary home occupation, provided that the same is carried on in the dwelling occupied as the private family residence". The Code defines "accessory use" as, "A use customarily incident and accessory to the principal use or building and located on the same lot therewith." It defines "home occupation" as, "Any use customarily conducted * * * within a dwelling * * * which use is clearly incidental and secondary to the use of the dwelling * * * and does not change the residential character of the exterior thereof". Since respondent concedes that Osborn is a professional and that her proposed use of the office is the type of use contemplated by

Page 840

the "home occupation" portion of the Code, the sole issue is whether Osborn's intended use qualifies as an "accessory use".

In interpreting the Code's definition of "accessory use", respondent relies upon the fact that Osborn's proposed office use is not customarily incident and accessory to the residential use. We disagree. Accessory use is generally judged by the nature of the dominant use or whether the applicant also resides in the premises *(Matter of Schwartz v Chave,* **53 Misc.2d 1007, 1008**). Indeed, section 190-9 of the Code specifically permits accessory uses in residential districts provided that the profession or customary home occupation is conducted in the house occupied by the worker. It is well recognized that a professional office can constitute an accessory use in a residence *(see,* 12 N.Y. Jur 2d, Buildings, Zoning, and Land Controls, § 195, at 193).

Here, Osborn's proposed use for the practice of her profession is not the dominant use of the premises as she intends to see only one patient at a time and off-street parking is provided for that patient. The primary use of the dwelling for living purposes is unchanged by the proposed secondary use, which neither changes the residential character of the exterior nor results in the display of commodities for sale or the rendering of services other than those of Osborn's profession. It is not unusual or unprecedented for professional offices to be used on a full-time basis as an accessory use of a residence, particularly where, as here, petitioners have fulfilled all the requirements of the ordinance. Since the proposed use is clearly an "accessory use" and petitioners have satisfied all the requirements and conditions set forth by the town's zoning laws, they are entitled to approval of the plan to use their residence for a professional home office for Osborn *(see,* 1 Anderson, New York Zoning Law and Practice § 12.07, at 601 [3d ed]).

Judgment affirmed, with costs. Mahoney, P.J., Kane, Casey, Weiss and Mercure, JJ., concur.

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New York Court of Appeals Reports

MATTER OF GEIFFERT v. MEALEY, *293 N.Y. 583* (1944)

59 N.E.2d 414

In the Matter of ALFRED GEIFFERT, JR., Appellant, against CARROLL E. MEALEY et al., Constituting the State Tax Commission, Respondents.

Court of Appeals of the State of New York.

Argued November 29, 1944

Decided December 30, 1944

Appeal from the Supreme Court, Appellate Division, Third Department.

Elliot F. Glassberg for appellant.

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Nathaniel L. Goldstein, Attorney-General (*John C. Crary, Jr., Orrin G. Judd, Wendell P. Brown* and *Henry S. Manley* of counsel), for respondents.

CONWAY, J.

This is a proceeding under article 78 of the Civil Practice Act, to review a determination of the State Tax Commission imposing unincorporated business taxes upon petitioner for the years 1938, 1939 and 1940, under Tax Law, article 16-A.

The petitioner is a landscape architect and the question presented for our determination is whether that calling, as practiced by petitioner, may be termed a profession within the meaning of Tax Law, section 386. That section, in part, provides that words "unincorporated business" exclude "the practice of law, medicine, dentistry, architecture which under existing law cannot be conducted under corporate structure, and any other case in which more than eighty per centum of the gross income is derived from the personal services actually rendered by the individual or the members of the partnership or other entity in the practice of any *other profession* and in which capital is not a material income producing factor." (Emphasis supplied.)

It is conceded that petitioner uses no capital save for office equipment, payment of salaries and office rent in advance of collection of his fees, and it is not contended that petitioner's income as landscape architect is derived from sources other than personal services. Finally, it is frankly acknowledged that the "skill of the petitioner, and the importance of the projects upon which he has worked, are unquestioned upon the present record." For the purpose of this opinion, it will be unnecessary to list the projects. Thus the sole question presented is whether landscape architecture is one of the "other" professions

contemplated by the statute.

The petitioner was a pioneer in the field. Now a number of universities and colleges, some in the East and some in the West,
Page 585
have formal courses of study leading to degrees in landscape architecture. Among those in the east are Harvard, Cornell, Pennsylvania State, Ohio State and University of Illinois. There are three others on the Pacific Coast, whose names were not given in the testimony. Two degrees are obtainable, depending upon the institution of learning, namely, Bachelor of Science in Landscape Architecture and Master of Landscape Architecture. We quote a description of the course of study leading to the degree of Bachelor of Landscape Architecture at Cornell University, as outlined by one of the witnesses: "The course is a five year one given under the *College of Architecture*. The studies of landscape architecture take in the identical courses with the architect school through the first two years and the third year they start specializing in more or less landscape architecture planting, as well as courses in civil engineering under the *College of Engineering*, which comprise surveying, mechanics, concrete construction. Along with that goes a course in physics, chemistry, geometry, calculus and several other mathematical sources [courses] which I do not remember. We also studied under the *College of Horticulture*. The balance of the course we studied history of architecture, history of landscape architecture; naturally languages and throughout the designated course we took problems similar to the same problems as architects do. That, in brief, gives you the general description of the course." (Emphasis supplied.) Landscape architecture appears to lie between the professions of architecture and engineering and to require familiarity with both.

Petitioner has no degree because none was given when he was pioneering, but that is not important here because of the extent, variety and importance of his work. He has collaborated on the articles on landscape architecture for the Encyclopedia Britannica and the Encyclopedia of Horticulture. He is a member of the American Society of Landscape Architects, and has been secretary and trustee of the national organization of that society as well as president of its New York chapter. He has lectured on landscape architecture at Yale, Harvard, Princeton, Cornell and Ohio State Universities.

A general definition of a profession was outlined in *People ex rel. Tower* v. *State Tax Commission* (LEWIS, J., **282 N.Y. 407**), in which we held that customhouse brokers were not
Page 586
exempt from the unincorporated business tax. There we said (p. 412): "We find nothing in the record to prove that the service rendered by a customhouse broker requires *knowledge of an advanced type in a given field of science or learning gained by a prolonged course of specialized instruction and study*. Such a requirement we regard as implicit in the term `professional' when given its legal application and it is read in its context in the statute here involved." (Emphasis supplied).

Another definition will be found in the following regulation of the State Tax Commission:

"What is a profession? In general, it may be said that a profession includes any occupation or vocation in which a professed knowledge of some department of science or learning is used by its practical application to the affairs of others, either advising, guiding or teaching them, and in serving their interests or welfare in the practice of an art founded on it. The word implies attainments in professional knowledge, as distinguished from mere skill, and the application of such knowledge to uses for others as a vocation.

"The Commission presently recognizes only the following as professions. It will weigh the representations made by or on behalf of other occupations or vocations when presented: a. Accounting b. Certified shorthand reporting c. Chiropody d. Dental hygiene e. Engineering f. Optometry g. Osteopathy h. Pharmacy i. Physiotherapy j. Teaching k. Veterinary medicine and surgery." (State Tax Commission, Personal Income Tax Regulations, Manual 40, p. 225.)

We recently weighed "the representations made by or on behalf of" industrial designing in *Matter of Teague* v. *Graves* (**261 App. Div. 652**, affd. **287 N.Y. 549**). We noted that the activity of industrial designer (engineering) was recognized as a profession in many universities and colleges and that the qualifications of the petitioner in that proceeding measured up to all the standards of a profession. As to the fact that the petitioner there had no degree, the Appellate Division (261 App. Div. at pp. 654-5) used language peculiarly apposite here: "The graduates from the universities, institutes and schools who will have scholastic degrees as industrial designers doubtless will be regarded as professional men. It is paradoxical that petitioner and his present associates now engaged in the field,
Page 587
who are lecturing in these courses and teaching these students, should be classified otherwise."

The *Teague* case cannot be distinguished from the instant one and is in line with the necessity for recognizing in the law, as in our universities, new professions which have been called into being to take care of modern requirements of our expanding civilization.

The order of the Appellate Division should be reversed and the determination of the State Tax Commission annulled, with costs in all courts.

LEHMAN, Ch. J., LOUGHRAN, RIPPEY, LEWIS, DESMOND and THACHER, JJ., concur.

Order reversed, etc.

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New York Appellate Division Reports

MATTER OF TEAGUE v. GRAVES, 261 App. Div. 652 (1941)

27 N.Y.S.2d 762

In the Matter of the Application of WALTER D. TEAGUE, Petitioner, for an Order (in the Nature of Certiorari) to MARK GRAVES and Others, Constituting the State Tax Commission of the State of New York, Respondents.

Appellate Division of the Supreme Court of New York, Third Department.

April 30, 1941.

Appeal from Supreme Court, RUSSELL, J.

William C. Mayer and *Austrian & Lance* [*William C. Mayer, Saul J. Lance* and *George H. Schwartz* of counsel], for the petitioner.

John J. Bennett, Jr., Attorney-General [*Wendell P. Brown* and *John H. Spain, Assistant Attorneys-General,* of counsel], for the respondents.

HILL, P.J.

Petitioner brings this proceeding under article 78 of the Civil Practice Act to review a determination of the State Tax Commission which imposed a tax upon him under article 16-A of the Tax Law, measured by the amount of his income as an industrial designer, upon a finding that he was engaged in an unincorporated business within the purview of the Tax Law. A

Page 653

tax of four per centum, in addition to all other taxes, is imposed upon any unincorporated business wholly or partly carried on within this State. (Tax Law, § 386-a.) Petitioner is taxable thereunder unless he comes within the exemption contained in section 386, "exclude the practice of law, medicine, dentistry, architecture which under existing law cannot be conducted under corporate structure, and any other case in which more than eighty per centum of the gross income is derived from the personal services actually rendered by the individual * * * in the practice of any other profession and in which capital is not a material income producing factor."

Petitioner asserts that he is engaged in the profession of industrial designing and is within the exemption quoted. The Commission has determined that he is engaged in a trade, business or occupation which, if conducted or engaged in by a corporation, would be taxable. A regulation[fn*] adopted by the Commission provides that the only professions which it will recognize, other than law, medicine, dentistry and architecture, excluded by the act (§ 386), are accounting, certified shorthand reporting, chiropody, dental hygiene, engineering, optometry, osteopathy,

pharmacy, physiotheraphy, teaching and veterinary medicine and surgery. However, as the language of the section would seem to require, the regulation further provides that the Commission will "weigh the representations made by or on behalf of other occupations or vocations when presented" to determine whether they are professions included in the exemption. Taxes for the years 1935, 1936 and 1937 are involved in this proceeding.

Industrial designing as a separate field of endeavor has been developed recently by a small group, which includes petitioner. However, it is now recognized by many institutions of learning. Pratt Institute, Carnegie Institute of Technology, the Universities of Illinois, Michigan and New York now include it in their curriculums. In most instances it is a four-year course leading to a degree of bachelor of arts in industrial design. California and Rhode Island also have schools of design. The petitioner has lectured in many of these courses. He was a member of the Board of Design of the New York World's Fair, representing industrial designing.

Petitioner was "called upon" by the New York, New Haven and Hartford Railroad to work with its engineering staff and the builders of its new streamline coaches in connection with "the details of the interior and exterior design so far as it affected appearance, and the joint efforts * * * resulted in a design as attractive as it is unusual." (*Railway Mechanical Engineer*, Feb.

Page 654

1935, p. 43.) The September, 1937, *Architectural Record* contains an article concerning the standardization of gasoline service stations erected by the Texas Company (p. 69). "The Texas Company, convinced of the value of a more fundamental solution, retained Walter Dorwin Teague, industrial designer, to study the problem and produce a standardized design for Texaco stations which would meet all geographic, economic and operating requirements." The designs prepared by petitioner were used for more than 1,000 stations. He designed the interiors of the Ford Motor Company exhibits at four recent exhibitions, including those in New York and San Francisco. His designs have been used by DuPont, United States Steel, Eastman Kodak, Consolidated Edison, National Cash Register Company, A.B. Dick Company, Steuben Division of the Corning Glass Works, and other nationally known producers. He is the author of a book entitled "Design This Day," published by Harcourt, Brace & Company of New York, a well-written work of 284 pages with 128 photographic illustrations, among them the Parthenon, cathedrals at Chartres, Rheims, St. Peters, famous bridges, interiors past and present, the Trylon and Perisphere at the New York World's Fair, and automobiles past and recent. These are discussed in his text and the relation of the ancient to the present featured, as is the relation of the form of the structures to their intended functions. It is difficult to select from this volume a brief statement to epitomize the field of activity of the claimed profession. I quote a paragraph from pages 64 and 65, which is an approximation: "The profession of industrial design in its brief career has developed a technique for analyzing the function of a product, and has set up standards for judging functional fitness. It has applied these methods and standards to innumerable objects ranging from domestic and office appliances to automobiles, ships

and trains; and to industrial and commercial buildings, offices and shops, and the expositions in which industry explains itself to the public. It has set up a procedure which must be followed in devising housing that shall approximate our cars in efficiency and low cost; in developing a system of transportation whereby our planes, trucks, cars, highways and railroads can be co-ordinated into one smoothly functioning system for the distribution of goods and people; and in creating forms of community living which shall supersede the present unworkable town and city plan." The entries in the income tax report give some indication of petitioner's relation with his clients, "Income from personal services, Fees, $108,983.33; Overhead repaid by clients, $64,311.76."

The graduates from the universities, institutes and schools who will have scholastic degrees as industrial designers doubtless will
Page 655
be regarded as professional men. It is paradoxical that petitioner and his present associates now engaged in the field, who are lecturing in these courses and teaching these students, should be classified otherwise.

Licensing by the State and supervision of activities are unsatisfactory standards by which to classify the nature of the occupation. Few fields of business are free from supervision, and the licensing of liquor dealers, auctioneers, undertakers and others by the State, and plumbers and electricians by municipalities, does not make professions of those vocations.

The Supreme Court of the United States, in *United States* v. *Laws* (**163 U.S. 258**), determined that the employment of a chemist in Germany by the operator of a sugar plantation in Louisiana did not violate the contract labor statutes of the United States, for the reason that a chemist was a professional man, the opinion stating (p. 266): "`Formerly, theology, law and medicine were specifically known as *the professions;* but as the applications of science and learning are extended to other departments of affairs, other vocations also receive the name. The word implies professed attainments in special knowledge as distinguished from mere skill. A practical dealing with affairs as distinguished from mere study or investigation; and an application of such knowledge to uses for others as a vocation, as distinguished from its pursuit for its own purposes.' There are professors of chemistry in all the chief colleges of the country. It is a science the knowledge of which is to be acquired only after patient study and application. The chemist who places his knowledge acquired from a study of the science to the use of others as he may be employed by them, and as a vocation for the purpose of his own maintenance, must certainly be regarded as one engaged in the practice of a profession which is generally recognized in this country."

People v. *Kelly* (**255 N.Y. 396**) determined that under a zoning law the teaching of singing or music was a profession and not a trade or industry. "The arguments of counsel apparently concede that the exclusions would not reach out to the doctor, the dentist or the lawyer consulting clients at home; but no distinction can be drawn for the purposes here involved between

these professions and those of the musician, artist or teacher" (p. 400). Webster defines "profession" as "a calling in which one professes to have acquired some special knowledge used by way either of instructing, guiding, or advising others or of serving them in some art." Petitioner's vocation is a profession rather than a trade or business.

Under the view which I take, the special objection made to the tax for the year 1935 is not important. However, it seems
Page 656
that under the statute the notice of the assessment was not given within the time prescribed.

The determination should be annulled.

CRAPSER, BLISS and FOSTER, JJ., concur; HEFFERNAN, J., dissents in an opinion.

[fn*] Personal Income Tax Regulations 40, p. 225. — [REP.

HEFFERNAN, J. (dissenting).

The principal question for determination is whether petitioner's gross income for the years 1935-1937, inclusive, was to the extent of more than eighty per cent derived from personal services actually rendered by him in the practice of a profession in which capital was not a material income-producing factor.

Petitioner asserts that for the years in question he was engaged in the practice of a profession within the meaning of section 386 Tax of the Tax Law and that, consequently, he is exempt from the unincorporated business tax.

Originally the word "profession" was limited to the three learned professions, divinity, medicine and the law. To this group that of arms was later added. In our day the term has become very elastic and we have traveled far beyond the well-known classical professions of earlier days. The denotation of the word "profession" has been extremely liberalized. Quite a variety of occupations are recognized as professions both by statute and the regulations of the State Tax Commission.

It is difficult if not impossible to lay down any strict legal definition of the term because the line of demarcation may vary from time to time. Scientific learning and knowledge, however, are essential requisites in any occupation which may properly be regarded as a profession. I am convinced that the term professional employment can only relate to those occupations universally classed as professions, the general duties and characters of which courts must be expected to understand judicially.

The occupation of petitioner is termed by him as industrial designing. His formal education consisted of a high school course followed by three and one-half years' training in the Art Students' League. He has become successful in his chosen field of endeavor. He has designed photographic equipment, optical goods, meteorological and thermal instruments, glassware, mimeograph machines, motor cars, gas ranges, gas-heating and

air-conditioning equipment, light-weight coaches, cash registers, internal grinders, refrigerators, vacuum cleaners and many other appliances.

Petitioner makes no claim that he is authorized to practice as a licensed architect or a graduate engineer. In fact, he has no degree from any school as an industrial designer. Our State Department

Page 657

of Education issues no license to an industrial designer. It is conceded that no legal reason exists why petitioner's business cannot be incorporated. It seems to me that petitioner's calling cannot possibly be regarded as the practice of a profession. He is neither an architect nor an engineer nor has he had any extensive course of specialized instruction and study in a given field of science. A background of practical training and education does not of itself raise the dignity of his occupation to that of a profession. We are not justified in extending by judicial construction an exemption statute so as to cover a business evidently not intended by the Legislature to be so embraced.

The courts have held that life insurance agents (*Matter of Recht* v. *Graves*, **257 App. Div. 889**; leave to appeal denied, **281 N.Y. 886**), insurance brokers (*Matter of Otis* v. *Graves*, **259 App. Div. 957**), undertakers and embalmers (*O'Reilly* v. *Erlanger*, 108 id. 318), custom house brokers (*People ex rel. Tower* v. *State Tax Comm.*, 257 id. 1064; affd., **282 N.Y. 407**; *People ex rel. Robinson* v. *Graves*, **259 App. Div. 956**; leave to appeal denied, **284 N.Y. 821**) and textile brokers (*People ex rel. Seidman* v. *Graves*, **260 App. Div. 898**) are not professionals. It is obvious to us that the practice of a profession implies a vocation requiring higher education and learning.

The determination of the State Tax Commission should be confirmed, with fifty dollars costs and disbursements.

Determination annulled, with fifty dollars costs.

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New York Appellate Division Reports

MATTER OF DELPRIORE *v.* BALL, *281 App. Div. 214* (1953)

118 N.Y.S.2d 53

In the Matter of ADELAIDE M. DELPRIORE, Appellant, against RICHARD BALL et al., Constituting the ZONING BOARD OF APPEALS OF THE TOWN OF AMHERST, COUNTY OF ERIE, Respondents.

Appellate Division of the Supreme Court of New York, Fourth Department.

January 7, 1953.

Appeal from Supreme Court, Erie County, ALONZO G. HINKLEY, Off. Ref.

Robert D. Fernbach for appellant.

Leland G. Davis for respondents.

Per Curiam.

Appellant resides at 95 Ivyhurst Road in the town of Amherst. In the basement of her home, which is located in a Class "A" residential district in said town, she gives instructions in dancing to young children, individually and in groups of not to exceed ten pupils. This work is carried on through appellant's own individual efforts. The permitted uses recognized in a Class "A" residential district are stated in paragraph 3 of subdivision 1 of section IV of the zoning ordinance of the town. Paragraph 3 reads: "Residence containing professional office or studio or [sic] resident doctor, dentist, artist, musician or other person engaged in comparable professional service."

Following complaints from other residents of the street upon which appellant lives to the effect that her activities would cause deterioration in the residential character of the neighborhood and that the increased traffic and parking upon the street resulting from such activities created a hazardous condition upon the street, the building commissioner of said town directed appellant to discontinue the use of her home for the giving of dancing instruction upon the ground that said premises were being used

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contrary to the zoning ordinances. That determination was thereafter upheld and affirmed by the Zoning Board of Appeals. Upon appeal to the Special Term, the proceeding was, upon stipulation of the parties, referred to an Official Referee to hear, try and determine. The learned Official Referee held that dancing was an art and that the teaching of such an art was a profession within the meaning of paragraph 3 of subdivision 1 of section IV of the town zoning ordinance, but felt constrained to sustain the determination of said board upon the ground that he

could not substitute his judgment for that of the board, which in effect held that appellant was engaged in a business rather than a profession because she advertised for pupils and thereby forfeited her standing as an artist engaged in professional work. The Official Referee found that such finding was not arbitrary, capricious or unlawful. We feel that the Official Referee was in error in arriving at such conclusion. The question for determination was not a factual question but rather one of law.

The question posed is, was appellant using her home in contravention of the permitted uses recognized in a Class "A" residential district? The determination of that question involves the individual professional activities of appellant *within* her home. Appellant's solicitation of pupils through the medium of advertising did not, in our opinion, transform a permitted use into a forbidden use nor did the resulting traffic problems work such a transformation.

The order should be reversed on the law and facts, with $50 costs and disbursements and determination of the Zoning Board of Appeals of the Town of Amherst annulled.

All concur. Present: TAYLOR, P.J., McCURN, VAUGHAN, KIMBALL and PIPER, JJ.

Order reversed on the law and facts with $50 costs and disbursements and determination of the Zoning Board of Appeals of the Town of Amherst annulled.

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aesthetic character of such districts by prohibiting advertising of lawful home occupations may run afoul of constitutional protection of commercial speech. The First Amendment prohibits governmental restraints on commercial expression unless such restraint is essential to achieve an important governmental objective. It has been held, for instance, that regulation of advertising for the purpose of inhibiting the expansion of a home occupation to a point where it would be inappropriate in a residential area cannot withstand a constitutional challenge.[4] However, a municipality may place reasonable restrictions on the size of on-premises advertising signs.[5]

§ 33:14 Professional uses—Defining professional use

Where the language of the ordinance sustains a construction that the use of a residence is permitted for professional purposes other than those specifically listed therein, the question arises as to what is a profession. A number of court decisions have given the term a limited and somewhat literal construction based on the presumed intent of the ordinance. For example, the District of Columbia Court of Appeals upheld a zoning board's determination that a businessman who describe his occupation as "accountant, financial analyst and economist" did not qualify as a "professional person" entitled to a certificate of occupancy in a special purpose zone. The zoning regulation permitted office use for a

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ing sessions per week and two weekly group sessions for nine individuals, plus weekend group sessions for fifteen people approximately10times a year. The court held that although counseling services qualify as a customary home occupation, the intensity of the use, particularly the periodic use of a home for overnight counseling sessions for fifteen people, was not incidental to the residential use. See also City of Rockford v. Eisenstein, 63 Ill. App. 2d 128, 211 N.E.2d 130 (2d Dist. 1965) (dance studio, in which classes were conducted up to five times a day, six days a week, for two to eight students per class, held a permitted accessory use); Village of Riverside v. Kuhne, 335 Ill. App. 547, 82 N.E.2d 500 (1st Dist. 1948) (real estate business, which involved repeated contacts with customers in the home, and which was promoted with newspaper advertising and a front yard sign, not permitted).

And see Baker v. Town of Woolwich, 517 A.2d 64 (Me. 1987) (auto body repair business did not constitute a "business operated from a home" within exception to town's residential zoning restrictions because primary use of premises was commercial as opposed to residential).

[4]See Burger v. Board of Trustees of Montville Tp., 58 Ohio Misc. 21, 12 Ohio Op. 3d 222, 389 N.E.2d 866 (C.P. 1978), in which a zoning ordinance which prohibited the use of newspaper, radio or television service to advertise home occupations was held void as violative of the First Amendment.

For a full discussion of the subject of commercial expression and the First Amendment, see § 17:4, supra.

[5]For a discussion of on-premises advertising see § 17:19, supra.

"chancery, international agency, non-profit organization, labor union, architect, dentist, doctor, engineer, lawyer, or similar professional person." An earlier decision of the court had affirmed the board's ruling that a "professional person" must: (1) have professional education; (2) be bound by a code of ethics and principles of practice by a professional organization; and (3) be professionally licensed. Although an accountant could meet these standards, neither financial analysts nor economists are subject to licensing, and economists are not bound by a formal code of ethics. The court agreed with the zoning board's position that qualification as a "professional person" in one field should not allow an applicant to carry on a business in other fields as well.[1]

Similarly, the term "professional men" has been held to relate to those who have "occupations or callings which required learned and special preparation in the acquisition of securing knowledge and skill, necessary to a proper understanding of and successful management of such occupations", such as medicine, law, divinity, and the profession of arms as distinguished from a merchant, blacksmith, carpenter, or tailor.[2] Noting that the word "profession" denotes "professed attainments in special knowledge as distinguished from mere skill", a court held that the business of real estate broker is not a professional occupation.[3]

However, other court decisions have given the term "professional" a more liberal construction holding that the following are persons engaged in professions:

(1) a nurse, whether trained, practical or registered;[4]

[Section 33:14]

[1]Colker v. District of Columbia Bd. of Zoning Adjustment, 474 A.2d 820 (D.C. 1983). And see, to the same effect, People v. Island Wide Ins. Brokerage, Inc., 177 Misc. 2d 668, 676 N.Y.S.2d 860 (Dist. Ct. 1998).

[2]Glundal v. White, 41 A.D.2d 887, 342 N.Y.S.2d 862 (4th Dep't 1973) (holding that color separation and the preparation of color negatives was not a professional office use within the intent of the ordinance).

[3]Dlugos v. Zoning Bd. of Appeals of Trumbull, 36 Conn. Supp. 217, 416 A.2d 180 (Super. Ct. 1980) (citing this treatise and numerous decisions of other jurisdictions). And see People v. Cully Realty, Inc., 109 Misc. 2d 169, 442 N.Y.S.2d 847 (App. Term 1981) (the business of real estate broker was not authorized under an ordinance allowing, as home occupations, use by "a physician, lawyer, architect, teacher or similar professional person residing on the premises").

And see Narbonne v. Town of Rye, 130 N.H. 70, 534 A.2d 388 (1987) (stained glass business not permitted as office of recognized profession).

[4]Mayor and City Council of Baltimore v. Smith, 168 Md. 458, 177 A. 903 (1935).

(2) a rabbi (and thus entitled to use his home for religious ceremonies);[5]
(3) a chemist;[6]
(4) an engineer;[7]
(5) a Christian Science practitioner;[8]
(6) a landscape artist; providing however, his activities do not deteriorate into commercialism;[9]
(7) an industrial designer;[10]
(8) a dance;[11]
(9) or voice[12]
(10) teacher; and
(11) a social worker.[13]

While these decisions generally are based on the presumed intent of the ordinance, some of these cases involve taxes on business while exempting professions, and therefor are not decided on zoning principles.[14]

III. RECREATIONAL ACCESSORY USES

§ 33:15 Generally

Many zoning ordinances still use the "customary incidental" language previously discussed in dealing with the types and

[5]Sexton v. Bates, 17 N.J. Super. 246, 85 A.2d 833 (Law Div. 1951), judgment aff'd, 21 N.J. Super. 329, 91 A.2d 162 (App. Div. 1952); Ritter v. Jersey City Dist. Missionary Soc. of M.E. Church, 105 N.J. Eq. 122, 147 A. 195 (Ch. 1929).

[6]U.S. v. Laws, 163 U.S. 258, 266, 16 S. Ct. 998, 41 L. Ed. 151 (1896).

[7]Commonwealth ex rel. v. Fitler, Mayor of Philadelphia, et al., 10 Pa. C.C. 144, 1891 WL 3269 (Pa. C.P. 1891); Hawaii Consolidated Ry. v. Borthwick, 34 Haw. 269, 1937 WL 4458 (1937).

[8]Audubon Area Zoning Ass'n v. Krushevski, 82 So. 2d 460 (La. Ct. App., Orleans 1955).

[9]Geiffert v. Mealey, 293 N.Y. 583, 59 N.E.2d 414 (1944).

[10]Teague v. Graves, 261 A.D. 652, 27 N.Y.S.2d 762 (3d Dep't 1941), order aff'd, 287 N.Y. 549, 38 N.E.2d 222 (1941).

[11]Delpriore v. Ball, 281 A.D. 214, 118 N.Y.S.2d 53 (4th Dep't 1953), order aff'd, 306 N.Y. 775, 118 N.E.2d 478 (1954); Stewart v. Humphries, 58 Ohio Op. 334, 132 N.E.2d 758 (Ct. App. 5th Dist. Delaware County 1955).

[12]People ex rel. Fullam v. Kelly, 255 N.Y. 396, 175 N.E. 108 (1931).

[13]Osborn v. Planning Bd. of Town of Colonie, 146 A.D.2d 838, 536 N.Y.S.2d 244, 245 (3d Dep't 1989).

[14]See Incorporated Village of Laurel Hollow v. Laverne Originals, Inc., 283 A.D. 795, 128 N.Y.S.2d 326 (2d Dep't 1954), judgment aff'd, 307 N.Y. 784, 121 N.E.2d 618 (1954) (interior design held a professional use).

Louisiana Case Law

AUDUBON AREA ZONING ASSOCIATION v. KRUSHEVSKI, *82 So.2d 460* (1955)

AUDUBON AREA ZONING ASSOCIATION ET AL. v. ABRAHAM KRUSHEVSKI.

No. 20551.

Court of Appeal of Louisiana, Orleans.

June 15, 1955.

Rehearing Denied October 10, 1955.

Writ of Certiorari Denied December 12, 1955.

APPEAL FROM CIVIL DISTRICT COURT, PARISH OF ORLEANS, DIVISION "C", NO. 333 318, STATE OF LOUISIANA, HONORABLE L.H. YARRUT, J.
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William J. Daly, New Orleans, for defendant-appellant.

Montgomery, Barnett, Brown & Sessions, John W. Read, New Orleans, for appellees.

REGAN, Judge.

The plaintiffs, Audubon Area Zoning Association, and the following members thereof, Eugene D. Saunders, Lawrence A. Molony, W.D. Roussel, Thorne Himel, Percy Monroe and Dr. Edward L. Levert, owners and occupants of property situated in Webster Street, instituted this suit endeavoring to enjoin the defendant, Abraham Krushevski, from using his property designated by the municipal Nos. 1565-67 Webster Street, in the City of New Orleans, as a three family dwelling in contravention of the provisions of Ordinance No. 18,565, adopted by the Commission Council of the City of New Orleans on July 3, 1953, otherwise designated, for the purpose of brevity, as the Comprehensive Zoning Law of 1953.

Defendant answered and asserted on "information and belief" that the premises were designed for and subsequently erected as a triplex and were being used as such on June 6, 1929, the effective date of Ordinance No. 11,302, C.C.S., which was then the Comprehensive Zone Law of the City of New Orleans, particularly Section 10 (b) thereof, and that, as a consequence, a valid nonconforming use was established which now entitles him to continue to use the building as a three family dwelling.

From a judgment in favor of plaintiffs, defendant has prosecuted this appeal.

The record, while relatively voluminous, reveals these uncontraverted facts.

G.W. Prutsman, who erected the dwelling testified on behalf of

the plaintiffs without equivocation that the building was designed and ultimately constructed as a basement duplex or two family dwelling during the year of 1926 or 1927 and that the premises were used as such until either the year 1932 or 1933 when financial difficulties ensued causing he and his wife to move from the upper apartment into the basement of the building and, it was at this time that they installed cooking and bathing facilities therein.

His wife, Mrs. G.W. Prutsman, was subpoenaed by and appeared to testify on behalf of the defendant. She related that the building was erected about 1926 and, to the best of her recollection, she and her husband resided in the upper apartment for about six years when economic reverses caused them to move into the basement thereof. She stated that the basement was not used as an apartment or as a dwelling during the aforementioned period of six years, but that she did use a portion thereof, which was divided into three rooms, as an office in which she conducted the activities of a Christian Science practitioner. In conclusion she asserted that the construction of an office in the basement was both contemplated and specified in the original plan of the building.

In substantiation of the foregoing testimony there appears in the record a photostatic copy of the building contract entered into between G.W. Prutsman and the Audubon
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Homestead Associated, dated July 29, 1927, which reveals that Prutsman agreed, at that time, to erect a basement duplex in Webster Street which, upon completion, was designated by the municipal Nos. 1565-67.

The Comprehensive Zone Law of the City of New Orleans, Ordinance No. 11,302, C.C.S., divides the metropolis into fifteen districts designated alphabetically "A through L" and enumerates the use to which the property may be subjected in the respective districts. The defendant's property is situated in an "A" Residence District. The pertinent use regulations for such a district are set forth in Section 3 thereof and a triplex or three family dwelling is not included as a permissible use unless a three family dwelling or triplex qualified, on June 6, 1929, as a legal non-conforming use in accordance with Section 10 (b) thereof.

Ordinance No. 18,565, C.C.S., the present zoning law of the City of New Orleans, adopted July 3, 1953, reenacted Ordinance No. 11,302 insofar as the pertinent issues in this case are concerned and unless the defendant has established a legal non-conforming use as of June 6th, 1929, the plaintiffs are clearly entitled to an injunction restraining him from continuing to use the building as a triplex.

By agreement of counsel it was stipulated that the building was being used as a triplex at the time of the institution of the suit and, on the date of the trial, thus the only question posed for our consideration is one of fact and that is whether the premises owned by the defendant were being used as a triplex on June 6, 1929, the effective date of Ordinance No. 11,302, C.C.S.

The trial court resolved this question of fact in favor of the plaintiffs and our examination of the record convinces us that its conclusions are correct.

Defendant, in the last analysis, insists that since Mrs. Prutsman admitted that she used a portion of the basement to house her offices as a Christian Science practitioner both before and after June 6, 1929, a non-conforming use was thus established and, therefore, the defendant now has a legal right to continue to use the building as a three family dwelling.

We are of the opinion that the use of a portion of the basement by Mrs. Prutsman to house her offices as a Christian Science practitioner was not in violation of Ordinance No. 11,302, C.C.S., in view of Section 3 (11) (a) thereof which reads:

> "Certain auxiliary uses customarily conducted in dwellings and homes, namely, the office of a physician, surgeon, dentist *or other professional persons;* provided no person shall engage in such professional occupation other than the members of the family who reside on the premises; * * *." (Italics ours.)

Webster's New Collegiate Dictionary defines "practitioner" as follows:

> "One who practices; esp. one who practices a profession. 2. Christian Science. An authorized healer."

We believe that the phrase "or other professional persons" contained in Section 3 of the ordinance fully encompasses the occupation in which Mrs. Prutsman was engaged and, therefore, she was conforming to rather than violating the provisions of the ordinance, consequently, a non-conforming status was not established for the benefit of the property at the time of the adoption of the ordinance in June, 1929.

We said in City of New Orleans v. Buffa, La.App., 1953, **69 So.2d 140**, 143, and we again reiterate:

> "We are fully cognizant of the prevailing philosophy of the law that a Zoning Ordinance, being in derogation of the rights of private ownership, curtailing and limiting the use of property, must be strictly construed in behalf of the owner thereof and where exemptions appear in favor of the property owner they should be liberally construed in his favor. We believe that this philosophy of the law is more than
> **Page 463**
> a pious formula, to be sanctimoniously observed or repeated at the opening of an opinion and forgotten at the end. However, the very composition of the record militates against the application of this reasoning to this case."

For the reasons assigned the judgment appealed from is

affirmed.

Affirmed.

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Maryland Court of Special Appeals Reports

BORCHERS v. HYRCHUK, *126 Md. App. 10* (1999)

727 A.2d 388

DALE BORCHERS v. RONALD HYRCHUK, ET AL.

No. 821, September Term, 1998

Court of Special Appeals of Maryland.

April 7, 1999

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Appeal from the Circuit Court, Montgomery County, Vincent Ferretti, Jr., J.

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[EDITORS' NOTE: THIS PAGE CONTAINS HEADNOTES. HEADNOTES ARE NOT AN OFFICIAL PRODUCT OF THE COURT, THEREFORE THEY ARE NOT DISPLAYED.]

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Robert N. Levin (Levin & Tepper, on the brief), Bethesda, for appellant.

Deborah M. Wheilihan (David B. Stratton and Jordan, Coyne & Savits, LLP, on the brief), Washington, DC, for Hyrchuk.

Lauri E. Cleary (Stanley J. Reed, J. Bradford McCulloch and Lerch, Early & Brewer, Chartered, on the brief), Bethesda, for Potomac Conference of Seventh-Day Adventists.

Argued before EYLER, KENNEY, and PAUL E. Alpert (Ret., specially assigned), JJ.

PAUL E. ALPERT, Judge (Ret., specially assigned).

Appellant, Dale Borchers, sued appellees, Ronald Hyrchuk and Potomac Conference of the Seventh-Day Adventist Church ("Potomac Conference"), in the Circuit Court for Montgomery County for marital counseling malpractice, clergy malpractice, gross negligence, negligent hiring, intentional infliction of emotional distress, and breach of contract.[fn1] Potomac Conference moved to dismiss the counts against it on the ground that they failed to state claims upon which relief could be granted. The circuit court granted the motion in part — dismissing the marital counseling malpractice and negligent hiring claims without prejudice, and dismissing all of the other claims with prejudice. Borchers then filed an amended complaint against both Hyrchuk and Potomac Conference which asserted a single claim for marital counseling malpractice. Potomac Conference moved to dismiss the amended complaint for failure to state a claim, and Hyrchuk moved for summary judgment on the amended complaint. The circuit court granted those motions, and this appeal followed.

ISSUES

Potomac Conference raises a threshold issue, which we rephrase:
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I. Whether Borchers abandoned the claims in her initial complaint, other than the one for marital counseling malpractice, when she filed her amended complaint?

Borchers, in turn, raises five issues, which we rephrase:

II. Whether the circuit court erred when it dismissed her claim for intentional infliction of emotional distress?

III. Whether the circuit court erred when it dismissed her marital counseling malpractice claim?

IV. Whether the circuit court erred when it dismissed her clergy malpractice claim?

V. Whether the circuit court erred when it dismissed her gross negligence claim?

VI. Whether the circuit court erred when it found that there was no vicarious liability on the part of Potomac Conference?

FACTS

This case arises out of a sexual relationship that occurred in the summer of 1994 between Borchers, who was then an employee at a camp operated by Potomac Conference, and Hyrchuk, who was a pastor at that camp. Borchers claims that she was having marital difficulties at the time, and that when she sought advice from Hyrchuk, he exploited his position to initiate a sexual relationship with her.

Additional facts will be presented in the discussion of the issues.

DISCUSSION

I. Abandonment

Potomac Conference argues that when Borchers filed her amended complaint, which stated only a cause of action for marital counseling malpractice and did not refer back to the initial complaint, she abandoned all of the claims in her initial complaint, other than the one for marital counseling malpractice. The problem with this assertion is that when the circuit
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court granted Potomac Conference's motion to dismiss the first complaint, it did so with prejudice for all but two of the counts in that complaint; the only claims in the initial complaint for which Borchers was given leave to amend were the ones for marital counseling malpractice and negligent hiring. In a situation like this, only those claims for which leave to amend was granted should be restated in an amended complaint; the failure to assert

in the amended complaint the claims that were dismissed with prejudice does not constitute a waiver or abandonment of those claims on appeal. *See Thomas v. Ford Motor Credit Corporation*, **48 Md. App. 617**, 628 (1981) (Where, following grant of demurrer to all but one count of first declaration, buyer filed amended declaration reiterating allegations of count in first declaration to which demurrer was overruled, without any reference to previous declaration, plaintiff withdrew only remaining count of previous declaration). Accordingly, by filing her amended complaint, Borchers only waived the negligent hiring claim, **[fn2]** the dismissal of which she does not contest in this appeal; but she clearly did not abandon the other claims asserted in her initial complaint.

II. Intentional Infliction of Emotional Distress

Borchers argues that the circuit court erred when it dismissed her intentional infliction of emotional distress count on the ground that it failed to state a claim upon which relief could be granted. We disagree.

In reviewing a grant of a motion to dismiss for failure to state a claim, "we must assume the truth of all relevant and material facts that are well pleaded and all inferences which can be reasonably drawn from those pleadings[,]" and then determine the legal sufficiency of those allegations. *Figueiredo-Torres v. Nickel*, **321 Md. 642**, 647 (1991)
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(quoting *Sharrow v. State Farm Mutual Automobile Insurance Company*, **306 Md. 754**, 768 (1986)). In our performance of this review, "any ambiguity or uncertainty in the allegations bearing on whether the complaint states a cause of action must be construed against the pleader." *Id.*

With respect to the tort of intentional infliction of emotional distress, Borchers alleged the following:

5. Mrs. Borchers and her husband are lifetime members of the Seventh-Day Adventist Church. Mrs. Borchers worked at a summer day camp operated by Sligo Church during the summer of 1994. She had worked at the camp for several summers before that.

6. During the summer of 1994, Pastor Hyrchuk was employed as the Director of the summer camp and was Mrs. Borchers' supervisor.

7. At all times relevant hereto, Pastor Hyrchuk was employed as a Pastor of Defendant Sligo Church and acted under its supervision but he was officially an employee of the Potomac Conference and his pay check came from that entity which also had supervisory powers over his activities.

8. Mrs. Borchers and her husband were experiencing marital difficulties during the summer of 1994. In or about July of 1994, Mrs. Borchers approached Pastor Hyrchuk for counseling in regard to her marital situation.

9. Rather than ministering to Mrs. Borchers' emotional and

spiritual needs or providing proper marital counseling, Pastor Hyrchuk undertook a campaign of seduction of Mrs. Borchers taking advantage of her vulnerability and her trust in him and the Seventh-Day Adventist Church that he represented. Rather than advising her on how she might improve her marriage, Pastor Hyrchuk introduced her to a novel, "Bridges of Madison County" in which a married woman enters into a poetically portrayed sexual relationship with another man to the – fictional – benefit of all parties concerned and persuaded her that they should emulate the conduct so portrayed. Being emotionally distraught and

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depressed, Mrs. Borchers succumbed to Pastor Hyrchuk's campaign.

10. In late July and early August of 1994, Pastor Hyrchuk's invidious campaign succeeded and he had sexual intercourse with Mrs. Borchers on two occasions, once in a meeting room at the Sligo church.

11. At all times relevant hereto Pastor Hyrchuk knew of and used Mrs. Borchers emotional vulnerability and confidential information that she entrusted to him to take advantage of her.

12. The misconduct of Pastor Hyrchuk knew of and used Mrs. Borchers [sic] emotional vulnerability and confidential information that she entrusted to him to take advantage of her.

13. At all times relevant hereto Pastor Hyrchuk was acting within the scope of his employment as an employee of the Church Defendants and they are vicariously liable for his actions.

14. On information and belief, the church Defendants were aware of Pastor Hyrchuk's proclivities for sexual misconduct and they were negligent in retaining him in the sensitive and powerful positions in which they placed him.

* * *

40. Plaintiff realleges all of the foregoing and incorporates the same by reference.

41. Pastor Hyrchuk's conduct was intentional or reckless in that, among other things, he knew of Mrs. Borchers [sic] previous emotional state and the almost certain adverse outcome to her of the seduction that he pursued.

42. Pastor Hyrchuk's conduct was extreme and outrageous and violated all standards of civilized conduct expected of a counselor and a clergyman in whom persons in Mrs. Borchers' emotionally vulnerable position had a right to place confidence.

43. The outrageous conduct of Pastor Hyrchuk was causally related to the emotional distress experienced by Mrs. Borchers.

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44. The emotional distress that she experienced, which has been diagnosed to include post-traumatic stress disorder, is severe, long lasting and extremely damaging to her and her family.

To sustain a claim for intentional infliction of emotional distress, a plaintiff must establish that: 1) the defendant's conduct was intentional or reckless; 2) his conduct was extreme and outrageous; 3) there was a causal connection between the defendant's wrongful conduct and the emotional distress suffered; and 4) the emotional distress was severe. *Harris v. Jones*, **281 Md. 560**, 566 (1977). In this case, there is no question that the allegations of the complaint satisfy the requirements of intentional conduct, a causal connection, and severe emotional distress. The only question is whether Hyrchuk's alleged conduct having sex with Borchers after she approached him for help with her marital problems – was extreme and outrageous.

In determining whether Hyrchuk's alleged conduct was extreme and outrageous, we note initially that, in order to meet the requirements of the tort, the defendant's conduct must have been so outrageous that it goes "beyond all possible bounds of decency, and [is] regarded as atrocious, and utterly intolerable in a civilized community." *Continental Casualty Co. v. Mirabile*, **52 Md. App. 387**, 403 (1982) (quoting *Restatement (Second) of Torts* § 46, comment d (1965)). It is also important to remember the warning that the "tort of intentional infliction of emotional distress is rarely viable, and is `to be used sparingly . . .'" *Bagwell v. Peninsula Regional Medical Center*, **106 Md. App. 470**, 514 (1995) (quoting *Kentucky Fried Chicken National Management Co. v. Weathersby*, **326 Md. 663**, 670 (1992)). That said, we also note the long-standing principle that "the extreme and outrageous character of the defendant's conduct may arise from his abuse of a position, or relation with another person which gives him actual or apparent authority over him, or power to affect his interests." *Harris*, 281 Md. at 569 (quoting *Restatement (Second) of Torts*

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§ 46, comment e (1965)). *See also Figueiredo-Torres*, 321 Md. at 654; *Kentucky Fried Chicken*, 326 Md. at 677 (Both quoting the same); Richard T. Gilbert & Paul T. Gilbert, *Maryland Tort Law Handbook* § 16.1.3, pgs. 183-84 (1992) (Noting that "[o]rdinarily, liability will not extend to mere insults, threats or indignities; also noting that "[a] caveat to that general statement is that, if the actor is in a special relationship to the plaintiff, such as employer to employee, the plaintiff may be entitled to a greater degree of protection from certain acts than if he were a mere stranger."). Following this principle, the *Harris* Court stated that "[i]n cases where the defendant is in a peculiar position to harass the plaintiff, and cause emotional distress, his conduct will be carefully scrutinized by the courts." *Id.*

Certainly, it is these latter concerns which led the Court of Appeals to hold, in *Figueiredo-Torres*, that the plaintiff had stated a cause of action for intentional infliction of emotional distress. There, the plaintiff alleged that he had gone with his wife to see the defendant – a professional psychologist – for marriage counseling; he also alleged that, in the course of treatment, the psychologist had begun a sexual relationship with the wife, thus causing the dissolution of the plaintiff's marriage. In stating its holding, the Court focused on the nature of the officially-sanctioned treatment relationship between the plaintiff and the defendant:

> Coming from a stranger, or even a friend, this conduct may not be outrageous; but we are not prepared to state as a matter of law that such behavior by a psychologist which takes advantage of the patient's known emotional problems is not extreme and outrageous conduct sufficient to support an intentional infliction of emotional distress claim.

321 Md. at 655.

These same concerns also animated the *dicta* from *Homer v. Long*, **90 Md. App. 1** (1992), which is cited by Borchers. There, the plaintiff sued a psychiatrist who, while treating only the plaintiff's wife, allegedly commenced an affair with her. In passing, this Court noted that the psychiatrist's "conduct, as alleged, would be extreme and outrageous
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to [the wife], who, so far at least, has not chosen to complain of it." *Id.* at 13.

In spite of the holding in *Figueireido-Torres* and the *dicta* in *Homer*, they do not warrant reversal of this case because of an important distinction: those cases involved officially-sanctioned treatment relationships between the relevant parties; this case, by contrast, does not involve such a relationship. The existence of such a relationship, we believe, places cases like *Figueiredo-Torres* and *Homer* into that rare category where the conduct alleged is extreme enough to merit recovery for intentional infliction of emotional distress. The absence of the special relationship, by contrast, makes this case more like the one of the "friend" referred to by the *Figueiredo-Torres* Court — not quite extreme enough to meet the tort's stringent standard. Thus, in spite of Borchers's allegation that Hyrchuk provided spiritual treatment for her, and her allegation that he "knew of and used Mrs. Borchers [sic] emotional vulnerability and confidential information that she entrusted to him to take advantage of her[,]" her complaint did not state a viable claim for intentional infliction of emotional distress.

II. Marital Counseling Malpractice

Borchers also argues that the circuit court erred when it dismissed, for failure to state a viable cause of action, her claim for marital counseling malpractice. Again, we disagree.

In her amended complaint, **[fn3]** which contained Borchers's marital counseling claim, she alleged the following:

> 13. As part of the formal education of Seventh-Day Adventist pastors, aspiring pastors receive training in
> **Page 21**
> counseling at Seventh-Day Adventist colleges and then again at Seventh-Day Adventist seminaries. Further, Seventh-Day Adventist pastors receive in-service training in counseling. Defendant Hyrchuk received such training in counseling as part of his formal education and in-service training.
>
> 14. The Seventh-Day Adventist Church, including the Potomac Conference[,] encourages its members who are experiencing marital difficulties to seek counseling from its pastors. The

Potomac Conference encouraged its parishioners to seek counseling from its pastors when the parishioners were experiencing emotional distress, including emotional distress associated with marital difficulties.

15. All pastors in the Seventh-Day Adventist Church are expected to respond to requests for counseling by providing appropriate counseling.

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16. The relationship between such a counselor and a person seeking counseling is confidential in nature and is fraught with the danger of undue influence and the phenomena known as transference and counter-transference.

17. Defendant Hyrchuk held himself out to Mrs. Borchers as being an appropriate person to provide her with marital and emotional counseling.

18. As a counselor from whom Mrs. Borchers sought counseling and who held himself out to be a . . . counselor she could confide her problems to, Pastor Hyrchuk had a duty not to act to injure her or to take advantage of her emotional vulnerability.

19. Pastor Hyrchuk was negligent in that he did not use that degree of care and skill which a reasonably competent professional person acting as a counselor . . . in similar circumstances, would use.

The question here is whether these allegations were sufficient to establish a professional counselor-patient relationship between Hyrchuk and Borchers such that Hyrchuk owed Borchers "that degree of care and skill which is expected of a reasonably competent practitioner in the same class to which he belongs, acting in the same or similar circumstances." *Shilkret v. Annapolis Emergency Hospital*, **276 Md. 187**, 200 (1975). The problem with these allegations is that although they assert that Seventh-Day Adventist pastors receive "counseling" training, that Hyrchuk received such training, and that Hyrchuk held himself out to Borchers as a suitable person to provide marital counseling, they do not state the type of counseling training received, whether it is extensive or cursory, or whether there is an official recognition or certification of the program for such pastors by the church hierarchy. Certainly, there is no allegation of government acknowledgment or licensing. Thus, we hold that the allegations in the amended complaint were not sufficient to establish a professional counselor-patient relationship between Hyrchuk and Borchers, *Cf. Figueiredo-Torres*, 321 Md. at 649-50 (Where complaint alleged that licensed psychologist held himself out as having expertise in the fields

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of marriage-counseling, individual therapy, and family therapy, that psychologist undertook to counsel plaintiff and his wife, and that therapy sessions were designed to help marital problems and conflicts, those allegations were sufficient to establish the existence of a psychologist-patient relationship such that psychologist owed plaintiff a duty of care expected of a reasonably competent practitioner in the same class and acting

under the same or similar circumstances); and the circuit court did not err when it dismissed the marital counseling malpractice claim.

IV. Clergy Malpractice

In the second count of her initial complaint, entitled "Clerical Malpractice," Borchers alleged that Hyrchuk "was negligent in that he did not use that degree of care and skill which a reasonably competent clergyman acting in similar circumstances would use." The circuit court dismissed this count on the ground that Maryland does not recognize the tort of clergy malpractice. Borchers now asks us to recognize the viability of that tort, but we decline to do so.

Our reasons for refusing to recognize clergy malpractice as a cognizable tort in Maryland revolve primarily around our adjudicatory role. As the state's intermediate appellate court, our primary function is to correct error, and not to pronounce new substantive legal rules. Further, when we do pronounce such rules, it is important that our pronouncements have at least some basis in either previous rulings of the Court of Appeals or statute. Neither the Court of Appeals nor the General Assembly have ever indicated that they would recognize the tort of clergy malpractice; and in the absence of such authority, it would be improper for us to recognize such a tort here.

In addition, there are good reasons for declining to recognize the tort of clergy malpractice. As the Supreme Court of New Jersey discussed in *F.G. v. MacDonell*, **696 A.2d 697** (N.J. 1997), "such a claim requires definition of the relevant standard of care[,] and "[d]efining that standard could embroil courts in establishing the training, skill, and standards

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applicable for members of the clergy in a variety of religions with widely varying beliefs." *Id.* at 703. In addition, "defining such a standard would require courts to identify the beliefs and practices of the relevant religion and then to determine whether the clergyman had acted in accordance with them." *Id.* These requirements, quite obviously, have a large potential to restrain the free exercise of religion; and largely for this reason, no other courts in the United States (including New Jersey) have recognized the tort of clergy malpractice. *Id. See also Dausch v. Rykse*, **52 F.3d 1425**, 1432 n. 4 (7th Cir. 1994) (Listing state supreme court decisions holding no cause of action for clergy malpractice).

V. Gross Negligence

Borchers also argues that the circuit court erred when it dismissed her gross negligence claim. Again, we disagree.

In that claim, Borchers made the following allegations:

31. Plaintiff realleges all of the foregoing and incorporates the same by reference.

32. Pastor Hyrchuk's negligence aforesaid was gross negligence in that he acted with malice and reckless disregard

> of the consequences to Mrs. Borchers, said gross negligence being the direct, proximate and foreseeable cause of her injuries which include severe emotional distress and further stress of her marriage.

The problem with this count, as the circuit court correctly concluded, is that it simply restates the earlier claims for marital counseling malpractice and clergy malpractice. For the reasons stated earlier in this opinion, those claims were properly dismissed. Thus, the gross negligence claim was also properly dismissed.

VI. Vicarious Liability

Finally, Borchers argues that the circuit court erred in ruling that Potomac Conference was not vicariously liable for Hyrchuk's alleged torts. In light of the foregoing discussion, however, it is not necessary to address this issue.
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JUDGMENT AFFIRMED. APPELLANT TO PAY THE COSTS.

[fn1] The negligent hiring claim was asserted against Potomac Conference only. All other claims were asserted against both appellees.

[fn2] Again, in its dismissal of Borchers's initial complaint, the circuit court only granted her leave to amend the claims for marital counseling malpractice and negligent hiring. Thus, her failure to assert the negligent hiring claim in the second complaint without any reference to the initial complaint constituted a waiver of that claim.

[fn3] As to the amended complaint, the court granted summary judgment and stated in pertinent part:

> I do not think the allegations are enough to raise those issues. I think that at best what the allegations show is that these two people worked together, that as a result of working together, she knew him, she was having problems that she asked him to talk to her about them, to counsel her, that there is no allegation that he held himself out as a "professional counselor".
>
> There just is not any allegation that he did that, and I think that is what he has to do, because the law does not posit any duty on him that will be enforced by a court of law and provide for damages for the breach of that duty unless he held himself out as a counselor other than as a religious figure.

In *Cheney v. Bell Nat'l Life Ins.*, **70 Md. App. 163**, 166 (1987), *aff'd*, **315 Md. 761** (1989), then Chief Judge Richard P. Gilbert said for the Court:

> The purpose of Rule 2-501 is to prevent the unnecessary expenditure of time and money in preparing for trial when there is no genuine dispute of material facts, and the moving party is entitled to judgment as a matter of law.

Along the same vein and speaking for the Court of Appeals in *Goodwich v. Sinai Hosp. of Baltimore*, **343 Md. 185**, 205-206 (1996), Judge Robert M. Bell (now Chief Judge) said:

> Summary judgment is not a substitute for trial. Stated differently, its purpose is not to try the case or resolve factual disputes. Rather, the procedure is designed to determine whether a factual controversy exists requiring a trial. Thus, in keeping with Maryland law, the trial judge is not allowed to weigh evidence. This principle is also expressed in federal case law. ("[A]t the summary judgment stage the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.").

(Citations omitted.)

The trial judge merely reasoned that even if the material facts were proven, there was no genuine issue to be tried and that Hyrchuk was entitled to judgment as a matter of law.

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IN THE MATTER OF JORGE ESCALANTE Appellant	*	IN THE
	*	CIRCUIT COURT
	*	FOR
COUNTY BOARD OF APPEALS, FOR BALTIMORE COUNTY Appellee	*	BALTIMORE COUNTY Case No. 03-C-02-1391

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

00-184-X

MEMORANDUM OPINION

This matter came before the Court as an appeal filed by Jorge Escalante, Appellant, from an Order of the County Board of Appeals of Baltimore County ("Board") on January 9, 2002, which denied Apellant's Petition for Special Exception for a professional office in a residential property zoned density residential (D.R.) 5.5. Arguments were heard on October 1, 2002. For the reasons discussed herein, the decision of the Board is hereby affirmed.

BACKGROUND

Appellant, a licensed real estate broker, purchased the property at issue, 3106 Sixth Avenue, in October 1998. T. 32. Although other properties nearby are zoned to accommodate businesses, the property at issue is zoned D.R. 5.5.[1] T. 12-13. Office use is prohibited in residential zones except as an accessory home occupation, or as a professional office exception as provided for under Baltimore County Zoning Regulations (BCZR) 502.1.

Without obtaining a special exception, Appellant proceeded to convert the property into a residential office

[1] Zoning across from the property on Joppa Road include the Carney Village Shopping Center, which is zoned a combination of Business (B.L. and B.L.-A.S.), and five separate structures zoned Residential Offices (R.O. or R.O.A.). Immediately to the rear of the Appellant's property is a real estate office located in a R-O zone at 3117 Joppa Road.

FILED OCT 8 2002

by making renovations to the property, which included paving the part of the yard for a parking lot and constructing a privacy fence around the rear side of the house. After renovations were complete, Appellant unsuccessfully tried to have the property rezoned to Residential Offices (R-O or R-O-A) during the 2000 Comprehensive Map Process. The issue was specifically considered by the County Council, which elected to retain the D.R. 5.5 zoning. *See* People's Counsel Exhibit 3A, 3B, and 3C.

Appellant then sought a special exception under the guise of professional office, which was denied by the Zoning Commissioner. Appellant appealed to the Board, which also denied Appellant's petition for special exception on the grounds that a real estate broker is not a "professional" within the meaning of BCZR 1B01.1.C.12. Moreover, the Board concluded that Appellant had failed to meet his burden of proof, under BCZR § 502.1, to show that the proposed use would not be detrimental to the character of the community. *See* Opinion of the County Board of Appeals of Baltimore County p. 5-6.

Appellant timely filed for appeal and presents the following questions for review by the Court:

1. Did the Board of Appeals err as a matter of law when it denied the special exception on the basis that a real estate broker is not a "professional" within the meaning of BCZR 1B01.1.C.12?

2. Was the Board's conclusion that Appellant had not met his burden of proof under BCZR § 502.1 supported by substantial evidence?

3. In denying Appellant's Petition for Special Exception, was the decision of the Board arbitrary and capricious in light of the evidence presented at the hearing?

STANDARD OF REVIEW

The scope of judicial review is extremely narrow under the Administrative Procedure Act (APA), codified as MD. CODE ANN., STATE GOV'T § 10-201 *et seq.* *Liberty Nursing Center v. Department of Health and Mental Hygiene,* 330 Md. 433, 442, 624 A.2d 941, 945 (1993). The Court's review is limited to whether the Board's order is in accordance with the law. *Mortimer v. Howard Research and Dev. Comp.,* 83 Md. App. 432, 441, 575 A.2d 750 (1990). Furthermore, the Court of Appeals has stated that "the court may set aside, as 'not in accordance with law,' a decision of an agency which is arbitrary, illegal, or capricious." *Id., citing Levy v. Seven Slade, Inc.,* 234 Md. 145, 149, 198 A.2d 267 (1964).

In making a determination as to whether the Board's decision is not in accordance with the law, arbitrary, illegal, or capricious, the Court is limited to the record and must not make an independent *de novo* assessment of the evidence. *Zeitschel v. Board of Education,* 274 Md. 69, 82, 332 A.2d 906, 913 (1975). Rather, the Court must defer to the agency's factual findings and inferences as supported by substantial evidence. *United Parcel v. People's Counsel,* 336 Md. 569, 577, 650 A.2d 226, 230 (1994).

Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Caucus v. Maryland Securities,* 320 Md. 313, 324, 577 A.2d 783, 788 (1990). If there is substantial evidence on the record to support an agency's factual determinations, the Court must affirm the agency's decision, which is considered *prima facie* correct, and presumed to be valid. *Motor Vehicle Administration v. Karwacki,* 340 Md. 271, 280, 666 A.2d 511 (1995).

Where the need for judicial interpretation of an exemption statute arises, it is generally accepted that exemption statutes are to be strictly construed in favor of the State. *See Supervisor Of Assmts. v. Trustees of Bosley Methodist Church Graveyard,* 293 Md. 208, 443 A.2d 91 (1982). However, "a strict construction does not preclude a fair one. Rather it still contemplates a construction that effectuates the legislative intent and objectives; 'it does not require that an usual or unreasonable meaning be given to the words used in an exemption statute." *Pleasants Investments Limited Partnership v. State Dep't of Assessments & Taxation,* 141 Md. App. 481, 492, 786 A.2d 13 (2001) citing *Supervisor of Assessments v. Keeler,* 362 Md. 198, 207, 764 A.2d 821 (2001) (citations omitted). As the Court of Special Appeals stated in *Maryland-National Capital Park & Planning Comm'n v. State Dep't of Assessments & Taxation,* 110 Md. App. 677, 690, 678 A.2d 602 (1996), *aff'd,* 348 Md. 2, 702 A.2d 690 (1997) (citations omitted), "In the final analysis, the real legislative intent prevails. The burden of showing that an exemption is allowed under the law falls upon the claimant."

Accordingly, the Court's analysis of the Board's decision in the instant case is three-fold. First, the Court must decide whether the Board recognized and applied the correct principles of law governing this case. Second, the Court must examine the Board's factual findings to determine if they are supported by substantial evidence. Third, the Court must examine how the Board applied the law to the facts. The test of appellate review at this junction is whether a reasoning mind could reasonably have reached the conclusion reached by the Board, given the

facts and proper application of the controlling legal principles.

DISCUSSION

Did the Board of Appeals err as a matter of law when it denied the special exception on the basis that a real estate broker is not a "professional" within the meaning of BCZR 1B01.1.C.12?

Appellant contends that because a real estate broker must complete 90 hours of training, take 15 hours of continuing education every two years, be licensed, be subject to a code of ethics, and is regulated as a "profession" under the Maryland Business and Professional Occupations Article, a real estate broker is a "professional" under the definition provided by *Webster's Third New International Dictionary of the English Language, Unabridged,* which must be consulted when a term such as "professional" is not defined within the BCZR.[2] *See* Bill 149-1987. Therefore, his proposed use of the property as a real estate broker's office should be considered a "professional office" use within the meaning of BCZR 1B01.1.C.12.[3]

---

[2]*Webster's Third New International Dictionary of the English Language, Unabridged* (1981) defines "professional" as:

> A. Of relating to, or characteristic of a professional; or, B. Engaged in one of the learned professions or in an occupation requiring a high level of proficiency characterized by or conforming to the technical or ethical standards of a profession or an occupation manifesting fine artistry or workmanship based on sound knowledge and conscientiousness reflecting the results of education, training, and expertise.

[3]BCZR 1B01.1.C.12 permits by special exception:

> Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians, or other *professional persons,* providing that any such office or studio is established within the same building as that serving as the professional person's primary residence; does not occupy more than 25% of the total floor area of such residence; and does not involve the employment

The Court notes that with exception to *In Re Richard A. Dalla Tezza* Case No. 85-78-X, which is a decision of the Zoning Commissioner of Baltimore County and is therefore not binding on the Court, Maryland case law has not addressed the matter *sub judice*. However, other jurisdictions have addressed this exact issue, and in every instance known to the Court, the courts have unanimously ruled in the negative - that despite the licensing requirements, code of ethics, inclusion of real estate brokers in state professional acts or codes, and training undertaken by such individuals, real estate brokers are not "professionals." *See Seaman v. Zoning Board of Appeals of Holliston,* 340 Mass. 488, 165 NE2d 97 (1960); *Jones v. Robertson,* 79 Cal. App. 2d 813, 180 P.2d 929 (1947); *Cummings v. Pennsylvania Fire Insurance Co.,* 153 Iowa 579, 134 N.W. 79, Ann.Cas. 1913E 235, 37 L.R.A.N.S. 1169; *Pennock v. Fuller,* 41 Mich. 153, 2 N.W. 176, 32 Am. Rep. 148; *Building Commissioner of Town of Brookline v. McManus,* 263 Mass. 270, 160 N.E. 887 (1928); *Dlugos v. Zoning Board of Appeals of Trumbull,* 36 Conn. Supp. 217, 416 A.2d 180 (1980). The view expressed by the courts is best summarized in the *American Law of Zoning* § 13.10, which states in part:

> The difficult problems arise when no mention is made of this [real estate office] use and a real estate broker seeks to establish a home office in a residential district urging that such a use is a customary home occupation or that a realtor is a professional person within the meaning of a regulation permitting professional offices. Both grounds for maintaining real-estate offices in residential districts have been rejected by the courts.

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of more than one nonresident professional associate nor two other nonresident employees. [Bill Nos. 105-1982;65-1999]

> A real-estate broker is not a professional person, as that term is employed in regulations permitting professional persons to establish home offices. While it is recognized that realtors possess some professional characteristics, these are not dominant. A real-estate broker is a business man rather than a professional person. The fact that realtors are licensed by the state does not constitute the business of selling real estate a profession within the meaning of the zoning regulations.

Furthermore, even if the Court was to blindly adopt the definition of a "professional" and "profession" as provided for in *Webster's Third New International Dictionary*, and without regard for the rules of statutory construction as contended by Appellant, the Court would arrive at the same conclusion that the Supreme Court of Nebraska did in *Tylle v. Zoucha*, 226 Neb. 476, 412 N.W.2d 438 (1987). In considering whether a real estate broker could be considered a "professional" for the purposes of the statute of limitations, the Supreme Court of Nebraska in *Tylle* adopted the same definition of "profession" as proposed by Appellant in the matter *sub judice*:

> 4a: a calling requiring specialized knowledge and often long and intensive preparation including instruction in skills and methods as well as in the scientific, historical, or scholarly principles underlying such skills and methods, maintaining by force of organization or concerted opinion high standards of achievement and conduct, and committing its members to continued study and to a kind of work which has for its prime purpose the rendering of a public service.

Tylle, 226 Neb. at 440 citing *Webster's Third New International Dictionary, Unabridged* 1811 (1981). In adopting this definition and concluding that under this definition a real-estate broker could not be considered a professional, the court commented:

> The definition stresses the long and intensive program of preparation to practice one's chosen occupation traditionally only with professions...This definition also does not rely on the mere possessions of a license. To rely solely on the possessions of a license distorts the definition, as it would include many occupations which were traditionally not considered to be professions simply because they were licensed.

Id. at 441.[4]

---

[4] The Court notes that besides the definition of a "professional" and "profession", Appellant has not submitted any case law in support of his contention that a real-estate broker is a "professional". Cases cited by Appellant only go to support the position that the regulation of real-estate brokers under MD CODE ANN., BUS. OCC. & PROF. §§ 17-101 through 17-701 are recognized by the courts, which have held that the regulations are constitutional.

CONCLUSION

Having reviewed the case law, the weight of which is clearly against Appellant's position, the Court finds the *Tylle* case to be most persuasive and on point. The Court, therefore, concludes that a real-estate broker is not a judicially recognized "professional" within the meaning of the zoning ordinances. In so concluding, Appellant, as a nonprofessional, is not qualified to apply for a special exception for the operation of a professional office in a residential zone under BCZR 1B01.1.C.12, and thus, it is not necessary for the Court to address the remaining issues.

10/8/02
Date

Susan Souder
Judge Susan Souder

CC: Peter Max Zimmerman, Esq.
Carole S. Demilio, Esq.
Michael Tanczyn, Esq.

IN THE MATTER OF JORGE ESCALANTE Appellant	*	IN THE
	*	
	*	CIRCUIT COURT
	*	FOR
COUNTY BOARD OF APPEALS, FOR BALTIMORE COUNTY	*	BALTIMORE COUNTY
Appellee	*	Case No. 03-C-02-1391

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

RULING

This matter came before the Court as an appeal filed by Jorge Escalante, Appellant, from an Order of the County Board of Appeals of Baltimore County ("Board") in Case No. 00-184-X on January 9, 2002, which denied Apellant's Petition for Special Exception for a professional office in a residential property zoned density residential (D.R.) 5.5. Arguments were heard on October 1, 2002. Upon consideration of the entire record, arguments of counsel, and for the reasons set forth in the Memorandum Opinion filed concurrently herewith, it is thereupon the 8th day of October, 2002, by the Circuit Court for Baltimore County, Maryland,

ORDERED, that the decision of the Board shall be and the same is hereby **AFFIRMED**.

Susan Souder

Judge Susan Souder

CC: Peter Max Zimmerman, Esq.
Carole S. Demilio, Esq.
Michael Tanczyn, Esq.

FILED OCT 8 2002

PO

IN THE MATTER OF THE APPLICATION OF JORGE ESCALANTE –PETITIONER FOR SPECIAL EXCEPTION ON PROPERTY LOCATED ON THE SW/CORNER JOPPA ROAD AND SIXTH AVENUE (3106 SIXTH AVENUE)	* * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
11th ELECTION DISTRICT 6th COUNCILMANIC DISTRICT	*	Case No. 00-184-X

* * * * * * * * *

OPINION

Background

This matter is before the Board on an appeal from a decision of the Zoning Commissioner of Baltimore County denying a special exception for a professional office (real estate broker) on a residential property owned by Mr. Escalante at 3106 Sixth Avenue in Carney, Baltimore County, Maryland. Mr. Escalante was represented by Michael P. Tanczyn, Esquire. Deputy People's Counsel Carole S. Demilio opposed the Petition for Special Exception. The hearing was held before the Board on November 6, 2001. The parties filed briefs with the Board, which were submitted by close of business on December 3, 2001. A public deliberation was held on December 19, 2001.

Facts

The Petitioner is the owner of 3106 Sixth Avenue which he purchased in October 1998. This is a .22 acre corner lot located on the southwest corner of Joppa Road and Sixth Avenue just east of Harford Road and Avondale Road. The property is zoned D.R. 5.5. The zoning across Joppa Road for five separate structures immediately east of the Carney Village Shopping Center is R-O. The Carney Village Shopping Center is zoned a combination of B.L. and B.L.-A.S. The

property immediately adjacent to the rear of the site, known as 3117 Joppa Road, is zoned R-O and is improved with a 2 ½ story frame structure which is used as a real estate office.

Mr. Escalante indicated that he had transferred the property to his mother. He also testified that he purchased the property after it had been vacant for several years. The property was in very great disrepair and he made major improvements, gutting the interior of the structure and refurbishing all of the rooms. The house is a split-level house, and Mr. Escalante has made an office in the basement of the house. He presented a drawing of the house and indicated that he had taken measurements of each room and that the office did not occupy more than 25 percent of the total space of the home. Mr. Escalante has also paved the front part of the yard of the home to make a parking lot for approximately two cars. He has constructed a privacy fence around the rear and side of the home to shield the office and driveway from the neighbors. Mr. Escalante is a real estate broker with a broker's license. He employs one sales person and a nonprofessional individual in the office.

Mr. Escalante performed the renovations on the home and constructed the office without obtaining a special exception. He tried unsuccessfully to have the site rezoned to R-O or R-O-A in the 2000 Comprehensive Map Process. It was a specific issue considered by the County Council, and the Council elected to retain the D.R. 5.5 zoning. He stated that he tried to sell the property after the decision by the Zoning Commissioner but has been unable to sell. He owns several other pieces of property, one at 3128 E. Joppa Road, which has two apartments, and a piece of property on Harford Road which he used as an insurance sales office for a period of time but is now vacant.

Hubert Malmud, a licensed property line surveyor, testified on behalf of Mr. Escalante with respect to the zoning of various pieces of property in the surrounding area. He testified that

he had driven around the surrounding neighborhoods, and it was his opinion that there would be no congestion in the roads or alleys as a result of the operation of a real estate office at the subject site. He also indicated with generally "yes" or "no" answers with respect to the other criteria set forth in § 502.1 of the *Baltimore County Zoning Regulations* (BCZR) in order to meet the requirements for a special exception.

Marilyn Ryan, a neighbor living at 3014 Sixth Avenue, testified on behalf of the People's Counsel. She felt that if the special exception was allowed it would be encroaching into the community of Thornwood Park in which she lives. In addition, she stated that it is difficult to get onto Joppa Road from the subject property site and that individuals would probably be turning right coming out of the driveway of Mr. Escalante's home, and would be going through the community in order to gain access to Joppa Road from another avenue.

Ruth Baisden, President of the Greater Parkville Community Council, testified that it was the position of their association that the house was not an appropriate site for a real estate office. It was her position that there were a number of offices available along Joppa Road where a real estate business could be located.

Decision

Offices and other commercial uses are prohibited in residential zones with the two exceptions of a home occupation and a professional office. The home occupation is not in question in this situation. The Petitioner contends that Mr. Escalante is a professional and therefore qualifies for the special exception under the professional office criteria, not using more than 25 percent of the home for his business. The issue is whether or not a real estate broker can be considered a professional within the meaning of the *Baltimore County Zoning Regulations* (BCZR).

Section 1B01.1.C.12 permits, by special exception:

> Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians, or other professional persons, providing that any such office or studio is established within the same building as that serving as the professional person's primary residence; does not occupy more than 25 percent of the total floor area of such residence; and does not involve the employment of more than one nonresident professional associate, nor two other nonresident employees.

Counsel for Mr. Escalante argues that he falls within the definition of "other professional persons" as set forth in the above section. He cites the fact that Mr. Escalante has a Bachelor of Science degree from the University of Lima, Peru, in Business Administration and has completed 36 of 48 credits towards an MBA degree at Johns Hopkins University. He began his own business in March of 1998 and his co-employee is his fiancée who is a licensed real estate agent. Counsel cites the fact that, as a real estate broker, Mr. Escalante was required to attend 90 hours of training, and is required to take 15 hours of continuing education every two years in order to keep up his real estate broker's license. If he fails to take the continuing education courses, his license becomes inactive and he is not allowed to conduct business.

Counsel also states the fact that real estate brokers are governed by the Maryland Real Estate Brokers Act and the State Real Estate Commission, which has the power to license, discipline and renew licenses and monitor the continuing education programs. He cites the fact that a real estate broker is required to have continuing education in the relevant changes to Federal, State and local Fair Housing Laws, including fair housing advertising. The broker must attend courses on these matters conducted by the Maryland Association of Realtors or member boards or the Real Estate Brokers of Baltimore City, or other similar professional associations.

Counsel also contends that the decision rendered by the Zoning Commissioner *In the Matter of Richard A. Dalla Tezza,* in Case No. 85-78-X, which denied a special exception for a

real estate broker based on the fact that the definition of "other professional" in the County's zoning regulations did not include a real estate broker, is not relevant at the present time. He cites the fact that the *Baltimore County Zoning Regulations* now require that, where a definition is not included within the regulations, the *Webster's Third New International Dictionary of the English Language, Unabridged* must be consulted for the definition. He cites the definition of a "professional" as set forth in *Webster's International Dictionary* and relies in part on a section of that definition.

The Board has reviewed the testimony given at the hearing and the briefs submitted by the parties. The Board is persuaded by the excerpts from the *American Law of Zoning*, § 13.10, cited by the Deputy People's Counsel. That states in part:

> Problems arise when no mention is made of this use. And a real estate broker seeks to establish a home office in a residential office urging that such a use is a customary home occupation or that a realtor is a professional person within the meaning of the regulation permitting professional offices. Both grounds for maintaining real estate offices in residential districts have been rejected by the courts.
>
> A real estate broker is not a professional person, as that term is employed in regulations permitting professional persons to establish home offices. While it is recognized that realtors possess some professional characteristics, these are not dominant. A real estate broker is a businessman rather than a professional person. The fact that realtors are licensed by the State does not constitute the business of selling real estate a professional within the meaning of the zoning regulations....

Even the definition as set forth by the Petitioner in his brief, citing *Webster's Third New International Dictionary of the English Language, Unabridged*, supports the fact that a real estate broker is not a professional. Professional is therein defined as:

> A. Of, relating to, or characteristic of a professional; or, B. Engaged in one of the learned professions or in an occupation requiring a high level of training and proficiency characterized by or conforming to the technical or ethical standards of a profession or an occupation manifesting fine artistry or workmanship based on

sound knowledge and conscientiousness reflecting the results of education, training, and experience.

All of the professions cited in the zoning regulations which allow for a professional office in the home are professions requiring extensive education and professional training. The 90 hours of real estate courses required to obtain a broker's license do not qualify for the status of a professional as compared to a doctor, engineer, or lawyer. Many individuals are considered, and may be called, professionals, such as professional athletes, professional truck drivers, and other various occupations. Other occupations require licenses in order to perform their jobs, but could not be considered professionals, such as beauticians, electricians, and plumbers. The Board is aware that the *Della Tezza* decision was decided in October 1984, and no effort has been made by the Baltimore County Council to change the definition of "professional" to include real estate brokers in the occupations set forth in BCZR § 1B01.1.C.12. It is not for this Board to change the definition to include real estate brokers. Therefore, the special exception is denied.

While it is not necessary for the Board to reach the question of whether or not the use would meet the requirements of § 502.1 of the BCZR, the Board does note that Mr. Malmud testified as to the criteria, and did discuss the traffic aspects of the requirements. However, with respect to the other requirements of § 502.1, he did give conclusory "yes" or "no" answers without supporting facts. The Board considers that this does not meet the test of sufficient evidence as stated by the Court in *People's Counsel v. Beachwood*, 107 Md.App. 627, 649-51 (1995): "A self evident reason for rejecting as an effective catalyst as expert opinion that a mistake was made is the fact that the opinion is merely conclusory or is at best quasi-conclusory.... The opinion of an expert is of little or no weight in the absence of strong supporting facts."

ORDER

THEREFORE, IT IS ORDERED, by the Baltimore County Board of Appeals, this 7th day of January, 2002, that the Petition for Special Exception seeking approval of a professional office in a residential property zoned D.R. 5.5 be and the same is hereby **DENIED.**

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence S. Wescott, Chairman

Melissa Moyer Adams

C. Lynn Barranger

Please Sign

This is a petition to allow the office of an accountant in a residential zone. To permit an office of a professional to occupy 41% of their residence for accounting services at 8938 Greens Lane. If zoning is approved their will not be an increase in traffic, signage, nor will this encourage more commercial encroachment into the neighborhood.

Name	Address	Phone
1. VIVERS WANGUTHI	8929 LIBERTY RD,	410-922-3831
2. Ronald Hanson	9001 MARCELLA	410-521-5544
3. MARY JOHNSON	9005 MARCELLA	410 6550948
4. LYNN FULMORE	8922 Greens Lane	4104961075
5. Genny Murray	3500 Green Gar Dr	410-496-0764
6.		
7.		
8.		

Thank You,

Sharonda Ellerby
8938 Greens Lane
Randallstown, MD 21133
410.655.1420

PETITIONER'S
EXHIBIT NO. 2

36 pages of "Schools"

PC 1

GUIDE TO PROGRAMS OFFERED BY MARYLAND PRIVATE CAREER SCHOOLS IN FY 2004

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from the FY 2004 Annual Reports of Private Career Schools

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(http://www.mhec.state.md.us/career/pcs/index.asp).

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INTRODUCTION

Maryland's private career schools offer over 350 training programs designed to prepare graduates for a variety of careers. This guide was produced to assist prospective students in making informed choices when selecting training. The guide provides information on programs offered by private career schools as of June 30, 2004. The data were compiled by the Maryland Higher Education Commission based on information submitted in the FY 2004 Annual Reports of Private Career Schools. If a school modified a program or added a new program after July 1, 2004, the information is not listed in this guide. Please contact the schools for the most current program information.

For comparative purposes, programs are organized by type of training. For example, programs in the field of allied health, computers, or cosmetology are grouped together. Identified for each program are program length, total cost, and annual enrollment in FY 2004. Program performance data are presented including the completion rate and either the employment rate of program graduates or, if applicable, the passage rate of program graduates on any required professional licensing exams.

Contact information for each school is provided including the address and telephone number. The guide also identifies whether the school is accredited by an agency recognized by the U.S. Department of Education.

This document is available on the Maryland Higher Education Commission website at http://www.mhec.state.md.us/career/pcs.

KEY TO DATA REPORTED FOR FY 2004 (July 1, 2003 – June 30, 2004)

*	Approved for educational benefits for veterans and other eligible dependents
Total Cost:	Cost of tuition, registration, books, equipment, and any other fees in FY 2004
Completion Rate:	# students who successfully completed the program / # students scheduled to complete the program in FY 2004
Job Placement Rate:	# of program completers who obtained training-related employment / # program completers in FY 2004
License Pass Rate:	# of program completers who passed any required licensing exam / # program completers who took any required licensing exam in FY 2004
W:	Written portion of licensing exam
P:	Practical portion of licensing exam
Not Available for Placement:	Program completers who elected not to seek job-related employment
Annual Enrollment:	Total # students enrolled in FY 2004

BALTIMORE COUNTY

The following programs are available in *Baltimore County*: Accounting and Bookkeeping; Allied Health; Audio/Visual arts; Beauty Industry; Computer; Real Estate; Tax; Teacher Training; Truck Driving; All Other;

ACCOUNTING AND BOOKKEEPING

PRIVATE CAREER SCHOOL	PROGRAM TITLES	TOTAL HOURS	TOTAL COST
The Accounting and Bookkeeping Center, Inc. 6600 York Road, Suite 107 Baltimore, MD 21212 410-828-1902	*ABA1: Basic Accounting and Bookkeeping*	39	$704
	ABA2: Advanced Small Business Accounting Applications	24	$704
	ABA3: Advanced Bookkeeping Applications for Large Organizations	21	$604

ALLIED HEALTH

AccuTech Career Institute

5310 Spectrum Drive
Frederick, MD 21703
301-694-0211
Accredited

Program: **Medical Assistant (720 hrs) ***
Total Cost: $10,995.00
Completion Rate: 45%
Job Placement Rate: 64%
Not Available for Placement: 6
Annual Enrollment: 169

Adventist HealthCare: Health Careers Training Center

501 Sligo Avenue
Silver Spring, MD 20910
301-585-7006
Non-Accredited

Program: **Geriatric Nursing Assistant (136 hrs)**
Total Cost: $1,035.00
Completion Rate: 91%
License Pass Rate: 97% (W), 71% (P)
Annual Enrollment: 160

All-State Career School

2200 Broening Hwy, Suite 160
Baltimore, MD 21224
410-631-1818
Accredited

Program: **Medical Assisting (720 hrs)***
Total Cost: $8,145.00
Completion Rate: NEW PROGRAM
Job Placement Rate: NEW PROGRAM
Not Available for Placement: NEW PROGRAM
Annual Enrollment: 80

Program: **Medical Billing and Coding Administrator (720 hrs)***
Total Cost: $8,145.00
Completion Rate: NEW PROGRAM
Job Placement Rate: NEW PROGRAM
Not Available for Placement: NEW PROGRAM
Annual Enrollment: 68

American Red Cross, Central Maryland Chapter

4800 Mt. Hope Drive
Baltimore, MD 21215
410-764-4609
Non-Accredited

Program: **Foundations for Caregiving- Nurse Assistant Training (114 hrs)**
Total Cost: $565.00
Completion Rate: 81%
Job Placement Rate: 35%
Not Available for Placement: 9
Annual Enrollment: 293

Americare School of Allied Health-Silver Spring

11141 Georgia Avenue, Suite 418
Wheaton, MD 20902
301-933-4660
Accredited

Program: **Medical Assistant (900 hrs)**
Total Cost: $8,500.00
Completion Rate: 85%
Job Placement Rate: 57%
Not Available for Placement: 2
Annual Enrollment: 50

Program: **Nurse Assistant (120 hrs)**
Total Cost: $1,175.00
Completion Rate: 89%
License Pass Rate: 86% (W), 56% (P)
Annual Enrollment: 622

Bethel Healthcare Institute, Inc.

5617 Ager Road
Hyattsville, MD 20782
301-559-0200
Non-Accredited

Program: **Certified Nursing Assistant/Geriatric Nursing Assistant (120 hrs)**
Total Cost: $1,090.00
Completion Rate: NEW PROGRAM
Job Placement Rate: NEW PROGRAM
Not Available for Placement: NEW PROGRAM
Annual Enrollment: 11

PC2

• 1983 (P.L. 97-449)

P.L. 97-449, §5(e):

Amended Code Sec. 7701(a)(33) by striking out in subparagraph (F) "part III of the Interstate Commerce Act" and substituting "subchapter III of chapter 105 of title 49"; and by striking out in subparagraph (H) "part I of the Interstate Commerce Act" and substituting "subchapter I of chapter 105 of title 49". Effective 1-12-83.

• 1976, Tax Reform Act of 1976 (P.L. 94-455)

P.L. 94-455, §1906(b)(13)(A):

Amended 1954 Code by substituting "Secretary" for "Secretary or his delegate" each place it appeared. Effective 2-1-77.

(34) [Repealed.]

Amendments

• 1984, Deficit Reduction Act of 1984 (P.L. 98-369)

P.L. 98-369, §412(b)(11):

Amended Code Sec. 7701(a) by repealing paragraph (34). Effective with respect to tax years beginning after 12-31-84. Prior to amendment, it read as follows:

(34) Estimated Income Tax.—The term "estimated income tax" means—

(A) in the case of an individual, the estimate tax as defined in section 6015(d), or

(B) in the case of a corporation, the estimated tax as defined in section 6154(c).

• 1981, Economic Recovery Tax Act of 1981 (P.L. 97-34)

P.L. 97-34, §725(c)(4):

Amended Code Sec. 7701(a)(34) by striking out "6015(c)" and inserting "6015(d)". Effective 1-1-81.

• 1964, Revenue Act of 1964 (P.L. 88-272)

P.L. 88-272, §234(b)(3):

Amended Code Sec. 7701(a) by adding paragraph (33). Effective with respect to tax years beginning after 12-31-63.

• 1968, Revenue and Expenditure Control Act of 1968 (P.L. 90-364)

P.L. 90-364, §103(e)(6):

Amended Code Sec. 7701(a)(34) by substituting "section 6154(c)" for "section 6016(b)" in subparagraph (B). Effective with respect to tax years beginning after 12-31-67. However, the amendment is to be taken into account only as of 5-31-68.

• 1966, Tax Adjustment Act of 1966 (P.L. 89-368)

P.L. 89-368, §102(c)(5):

Added Code Sec. 7701(a)(34). Effective 1-1-67.

(35) ENROLLED ACTUARY.—The term "enrolled actuary" means a person who is enrolled by the Joint Board for the Enrollment of Actuaries established under subtitle C of the title III of the Employee Retirement Income Security Act of 1974.

Amendments

• 1974, Employee Retirement Income Security Act of 1974 (P.L. 93-406)

P.L. 93-406, §3043:

Amended Code Sec. 7701(a) by adding paragraph (35). Effective 9-2-74.

(36) INCOME TAX RETURN PREPARER.—

(A) IN GENERAL.—The term "income tax return preparer" means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by subtitle A or any claim for refund of tax imposed by subtitle A. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of such return or claim for refund.

(B) EXCEPTIONS.—A person shall not be an "income tax return preparer" merely because such person—

(i) furnishes typing, reproducing, or other mechanical assistance,

(ii) prepares a return or claim for refund of the employer (or of an officer or employee of the employer) by whom he is regularly and continuously employed,

(iii) prepares as a fiduciary a return or claim for refund for any person, or

(iv) prepares a claim for refund for a taxpayer in response to any notice of deficiency issued to such taxpayer or in response to any waiver of restriction after the commencement of an audit of such taxpayer or another taxpayer if a determination in such audit of such other taxpayer directly or indirectly affects the tax liability of such taxpayer.

Amendments

• 1978, Revenue Act of 1978 (P.L. 95-600)

P.L. 95-600, §701(cc)(2):

Amended Code Sec. 7701(a)(36)(iii). Effective with respect to documents prepared after 12-31-76. Prior to amendment, Code Sec. 7701(b)(36)(iii) read:

"(iii) prepares a return or claim for refund for any trust or estate with respect to which he is a fiduciary, or"

• 1976, Tax Reform Act of 1976 (P.L. 94-455)

P.L. 94-455, §1203(a):

Added Code Sec. 7701(a)(36). Effective for documents prepared after 12-31-76.

David Green - Board of Appeal - Case 06-009

PC6

From: "Pat Clark" <patclark07@comcast.net>
To: "David Green" <dagreen@co.ba.md.us>
Date: 4/15/2006 12:10 PM
Subject: Board of Appeal - Case 06-009

The Fieldstone Community Group's comments for the hearing scheduled for April 19, 2006, for Board of Appeal Case 06-009 follows:

The Fieldstone Community Group, Inc., (a community of 250 homes) which boarders 8938 Greens Lane, is against a special zoning exception to allow the office of an "accountant" in a residential zone. As you know, we have been working very hard to make our older and historical residential community a better place to live. We need to keep our residential community safe from any additional commercial infringement. For these reasons we are asking the Zoning Commissioner to deny this request for rezoning.

Pat Clark, President
Fieldstone Community Group, Inc.
3603 Stoneybrook Road
Randallstown, MD 21133
410-922-0302
patclark07@comcast.net

Susie Cowyn
8513 Greens lane

PC7

Oakwood Village Community ASSOCIATION

RESOLVED: . That the position of the President Oakwood Village Association as adopted by the (Board of Directors) (Zoning Committee) on the zoning matter known as: Case # 06009

would not like to see anything in our Community.

is that:

AS WITNESS OUR HANDS AND SEAL THIS 18th day of April, 2006.

ATTEST:

Oakwood Village Community Association

Secretary

Tanya Williams
President

Vivian S Parson — 8944 Harkate Way
Tony Miller — 8940 Harkate Way
Ronald S Faison — 8944 Harkate Way
Mr + Mrs. Frank Barnett — 8816 Harkate Way
Susie Byrd — 8819 Harkate Way
Mr + Mrs David Forbes — 8836 Harkate way
Martha Moody — 8825 Greens Lane
Julia Martino — 8902 Harkate Way
Colleen Grisham — 8823 Harkate Way
James L. Hicks — 9013 Marley Dr.
James Elbeck — 8843 Harkate Way
Judy Gwynn — 8513 Greens Ln.
William Tarrant — 8901 Greens Ln
Tina Tarrant — 8901 Greens Ln
Clarence & Margaret Webb — 8823 Greens Ln
Lee Moody — 8825 Greens Lane
Larry Moody — 8825 Greens Ln,
Harvey Harris — 8790 Harkate Way

Pet 1

This card is the property of the Internal Revenue Service (IRS). Use of this card signifies agreement to the current conditions set forth by the IRS.

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Bensalem, PA 19020

Contact the Philadelphia Service Center on (215) 516-4846 regarding this card.

Department of the Treasury
Internal Revenue Service

Form **12445** (9-1999)
Catalog Number 28553M
www.irs.gov

Department of the Treasury
Internal Revenue Service

Preparer's Tax Identification Number

P00425395

This number has been established for

SHARONDA ELLERBY

To be used on tax returns prepared for compensation.

Signature

Internal Revenue Service IRS.gov

DEPARTMENT OF THE TREASURY

What are the e-services products?

Currently, the following products are available:

Registration
All tax professionals who wish to use e-services products must register on-line as individuals to create an electronic account. The registration process is a one time automated process where the user selects a username, password and PIN. An on screen acknowledgment confirms that you've successfully completed the initial registration process.

Preparer Tax Identification Number (PTIN) Application
A paid tax professional may choose to use a PTIN, instead of his or her SSN, on returns that are prepared for clients. The PTIN application enables a preparer to apply for and receive online a PTIN or look up a forgotten PTIN. An actual PTIN card can be sent to you if requested.

Online *e-file* Application
A new *e-file* Application process combines the now obsolete Form 9041, Application for Electronic/Magnetic Media Filing of Business and Employee Plan Returns, and Form 8633, Application to Participate in the IRS *e-file* Program, into an integrated application available both online and via paper, using the new Form 8633. The online *e-file* application allows the application to be saved in progress and an acknowledgement of completion sent via email. Applications can be maintained and updated electronically and a new delegation of authority feature allows principals or responsible officials of the firm/organization to delegate e-services to their employees.

Taxpayer Identification Number (TIN) Matching
TIN Matching is a pre-filing service offered to payers and/or authorized agents who submit any of six information returns subject to backup withholding (Forms 1099-B, INT, DIV, OID, PATR, and MISC). With *Interactive TIN Matching* authorized payers can match up to 25 payee TIN and name combinations against IRS records prior to submitting an information return. *Bulk TIN Matching* allows payers and/or authorized agents filing any of the six information returns to match up to 100,000 TIN and name combinations. In order to participate in TIN Matching, payers must be listed in the IRS Payer Account File (PAF) database. If your firm has not filed information returns with the IRS in one of the past two tax years, the application will not be available to you at this time.

Tax Professionals who are active participants in the IRS *e-file* program and e-file five or more accepted individual or business returns in a season are eligible to use the following incentive products:

Disclosure Authorization
Eligible tax professionals may complete authorization forms, view and modify existing forms, and receive acknowledgement of accepted submissions immediately--all online. Disclosure Authorization allows tax professionals to electronically submit Form 2848, Power of Attorney and Declaration of Representative, and Form 8821, Tax Information Authorization. This e-service expedites processing and issues a real-time acknowledgment of accepted submissions.

Electronic Account Resolution
Electronic Account Resolution allows tax professionals to expedite closure on

clients' account problems by electronically sending/receiving account related inquiries. Tax professionals may inquire about individual or business account problems, refunds, installment agreements, missing payments or notices. Tax professionals must have a power of attorney on file before accessing a client's account. The IRS response is delivered to an electronic secure mailbox within 3 business days.

Transcript Delivery System
Eligible tax professionals may use Transcript Delivery System to request and receive account transcripts, wage and income documents, tax return transcripts, and verification of non-filing letters. A new product (the Record of Account) combines both the Return Transcript and Account Transcript in one product. Tax Professionals can request the products for both individual and business taxpayers. Use the TDS application to resolve your clients' need for return and account information quickly, in a secure, online session. Tax professionals must have a Power of Attorney authorization on file with the IRS before accessing a client's account (or use Disclosure Authorization to file an authorization on a new client and obtain TDS information immediately).

Internal Revenue Service IRS.gov

DEPARTMENT OF THE TREASURY

e-services - Online Tools for Tax Professionals

e-Services and Modernized e-File will not be available from 1am EST Monday, September 5, 2005 through 8am EST Tuesday, September 6, 2005 due to an annual power outage. We apologize for any inconvenience.

Already Registered? Login ***Not Yet Registered?*** Registration Services

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e-services is a suite of web-based products that will allow tax professionals and payers to conduct business with the IRS electronically. These services are available 24 hours a day, 7 days a week from just about any computer with an internet connection.

e-services is not available to the general public. Only approved IRS business partners, such as e-filing tax professionals and payers, are eligible to participate in e-services.

All tax professionals are encouraged to register for e-services. We offer:

- Registration
- Preparer Tax Identification Number (PTIN) Application
- Online e-file Application

For those e-file providers who have e-filed 5 or more returns, we offer these incentive products:

- Disclosure Authorization (DA)
- Electronic Account Resolution (EAR)
- Transcript Delivery System (TDS)

For payers of income subject to backup withholding, Taxpayer Identification Number (TIN) Matching is available to you.

Details on the e-services products

What should I do if my password has expired?
If your password has expired, you must use the Forgotten Password or PIN link on the login page.

Who should I contact if I'm having difficulty accessing an e-services application or if I need to report a problem?
There are FAQs and on-line tutorials for all e-services products. However, if you still need assistance after using the on-line resources, you can contact the **e-help Desk at 1-866-255-0654** (512-416-7750 for international calls).

e-services has recently modified its Online Privacy Policy to address our use of data for conducting anonymous, voluntary surveys.

Review the e-services Terms and Conditions.

IRS e-file Made Easy - A Tax Professional's One-Stop e-file and e-Pay Shop

Your link to all things e-file and e-pay - Designed as an easy to follow, one-stop resource center for IRS e-file and e-payment information. We've included everything you'll need to get started in IRS e-file as well as links to other valuable information for tax professionals.

Department
of the
Treasury
Internal
Revenue
Service

Publication 470 (Rev. 1-82)

Limited Practice Without Enrollment

26 CFR 601.502: Requirements for conference-recognition to practice and, in certain cases, power of attorney or tax information authorization. (Also 31 CFR Part 10, Section 10.7: Limited practice without enrollment.)

Rev. Proc. 81-38

Section 1. Purpose

The purpose of this revenue procedure is to prescribe the standards of conduct, the scope of authority, and the circumstances and conditions under which an individual preparer of tax returns may exercise, without enrollment, the privilege of limited practice as a taxpayer's representative before the Internal Revenue Service, pursuant to section 10.7(a)(7) of Treasury Department Circular No. 230, [1966-2 C.B. 1171] (31 CFR Part 10).

Sec. 2. Changes

This revenue procedure modifies Rev. Proc. 68-20, 1968-1 C.B. 812, to reflect changes in titles based on the Internal Revenue Service's reorganization effective July 2, 1978, and applicable revisions to Treasury Department Circular No. 230, [19671-C.B. 433; 1970-2 C.B. 644] relating to practice before the Internal Revenue Service.

Sec. 3. Applicability

.01 This revenue procedure, issued pursuant to section 10.7(a)(7) of Circular 230, applies to all unenrolled individual preparers of returns who seek to represent taxpayers, within the United States, before examining officers in the Examination Division of an Office of a District Director of Internal Revenue or in the Office of International Operations. Any reference herein to the District Director will be construed, where appropriate, to include the Office of International Operations or the Director of International Operations.

.02 This revenue procedure does not apply to attorneys, certified public accountants, or agents who are enrolled to practice before the Internal Revenue Service. The rules governing the practice of such persons before the Service are contained in the provisions of Circular 230.

Sec. 4. Scope of Authority

.01 An unenrolled individual who signs a return as its preparer may act as the taxpayer's representative if accompanied by the taxpayer, or by filing a written authorization from the taxpayer as provided herein in section 6. Such representation is limited to practice before the Appeals offices nor before examining officers of the Examination Division in the offices of District Directors and in the Office of International Operations, and may only encompass matters concerning the tax liability of the taxpayer for the taxable year covered by that return, subject to the limitations herein prescribed.

.02 Privilege of limited practice before the Internal Revenue Service is limited to any person who is not under disbarment or suspension from practice before the Internal Revenue Service or from practice of the person's profession by any other authority (in the case of attorneys, certified public accountants, public accountants, or actuaries).

.03 An unenrolled individual who prepared a return that provides no space on the prescribed form for signature of the preparer, or who prepared a return with respect to which the instructions or regulations do not require that it be signed by the preparer, may appear as the taxpayer's representative, if properly authorized, as set forth in section 4.01.

.04 If the unenrolled preparer appears before the examining officers without the taxpayer, written authorization from the taxpayer for such representation as provided in section 6 must be filed with the examining officer along with a declaration that he or she is not currently under suspension or disbarment from practice before the Internal Revenue Service. The unenrolled preparer may also be required to furnish satisfactory identification.

.05 The unenrolled preparer will be expected to recognize questions, issues and factual situations of such difficulty as to require additional expert assistance and to suggest to the taxpayer that the taxpayer seek such assistance.

.06 If a carryback or carryfoward, or both, are involved in a tax return, the unenrolled preparer will not be recognized as the taxpayer's representative with respect to the taxable year in which the carryback or carryforward arose unless that person prepared and signed a return for that year or years.

.07 The privilege to practice as a taxpayer's representative in accordance with this revenue's procedure shall not constitute enrollment nor a finding of eligibility for enrollment.

Sec. 5. Limitations of the Privilege of Limited Practice

.01 Privilege of limited practice without enrollment afforded an individual preparer of returns is restricted to representation before the examining officer stated in section 4.04. No unenrolled preparer shall represent or correspond as the taxpayer's representative before the Appeals offices nor before the officials in the National Office.

.02 In addition, the following acts on behalf of the taxpayer are beyond the scope of authority permitted an unenrolled preparer:

(a) Executing claims for refund;
(b) Receiving checks in payment of any refund of Internal Revenue taxes, penalties, or interest;
(c) Executing consents to extend the statutory period for assessment or collection of a tax;
(d) Executing closing agreements with respect to a tax liability or specific matter; and
(e) Executing waivers of restriction on assessment or collection of a deficiency in tax.

Sec. 6. Form of Authorization From the Taxpayer and Declaration by the Representative

.01 Internal Revenue Service Form 2848-D, Authorization and Declaration, which can be obtained from local Internal Revenue Service offices, may be used in meeting the authorization and declaration requirements in section 4.04 of this revenue procedure. Part I of Form 2848-D is the taxpayer's authorization for the representative to receive and inspect confidential tax information and act as the taxpayer's representative before the Internal Revenue Service and to make written or oral presentations of fact or argument on behalf of the taxpayer for the specified tax matter(s). Part II is the representative's declaration that the representative is not currently under suspension or disbarment from practice before the Internal Revenue Service and is authorized to represent the taxpayer as a certified public accountant, attorney, enrolled agent, unenrolled return preparer, etc.

.02 The use of technical language in the preparation of an authorization is not necessary, but the instrument must clearly indicate that the designated unenrolled preparer is authorized to represent the taxpayer before the Internal Revenue Service

and specify the return prepared to which the authority relates. The authorization must also clearly set forth the taxpayer's name and address, the name and mailing address of the unenrolled preparer and must be signed by the taxpayer or taxpayers.

Sec. 7. Ethics and Conduct

.01 An unenrolled preparer shall act in such manner as not to commit any act of disreputable conduct. Disreputable conduct includes, but is not limited to, the items contained in section 10.51 of Circular 230.

.02 An unenrolled preparer shall not charge an unconscionable fee for representation of a client in any matter before the Internal Revenue Service.

.03 An unenrolled preparer shall not neglect or refuse to submit records or information in any matter before the Internal Revenue Service upon proper and lawful request by a duly authorized officer or employee of the Service; and the unenrolled preparer shall not interfere, or attempt to interfere, with any proper and lawful efforts by the officers of employees of the Service to obtain information, unless the preparer believes in good faith and on reasonable grounds that the request for, or effort to obtain, such record or information is of doubtful legality.

.04 Any unenrolled preparer who knows that the client has not complied with the revenue law, or that the client has made an error in or omission from any return, document, affidavit, or other paper that the client is required by law to execute in connection with any matter administered by the Service, shall advise the client promptly of the fact of the noncompliance, error, or omission.

.05 An unenrolled preparer shall exercise due diligence in preparing or assisting in the preparation, approving, and filing of returns, documents, affidavits, or other papers relating to Internal Revenue Service matters. The preparer shall also exercise due diligence in determining (1) the correctness of oral and written representations made by the preparer to the Service, and (2) the correctness of representations made by the preparer to the client with reference to any matter administered by the Service.

.06 An unenrolled preparer shall not unreasonably delay the prompt disposition of any matter before the Internal Revenue Service.

.07 An unenrolled preparer, as a Notary Public, shall not take acknowledgements, administer oaths, certify papers, or perform any official act in connection with matters relating to the client's tax liabilities, or in connection with any other matter in which the preparer may in any way have given assistance or been employed. In addition, the preparer may not take any acknowledgements, oaths, or certification as a Notary Public relating to any tax return, protest, or other document that the preparer has prepared or that the preparer has assisted in preparing. (26 OP. Atty. Gen. 236.)

.08 An unenrolled preparer shall not procure, or attempt to procure, directly or indirectly, from Government records or Government sources, information of any kind that is not made available by proper authority.

.09 An unenrolled preparer shall not represent conflicting interests in the preparer's limited practice before the Service, except by express consent of all directly interested parties after full disclosure has been made.

Sec. 8. Solicitation and Advertising

.01 An unenrolled preparer shall not make, directly or indirectly, an uninvited solicitation of employment, except as noted below, in matters relating to the Internal Revenue Service. Solicitation includes, but is not limited to, in-person contacts, telephone communications, and personal mailings directed to the specific circumstances unique to the recipient. This restriction does not apply to (1) seeking new business from an existing or former client in a related matter or (2) solicitation by mailings, the contents of which are designed for the general public.

.02 No unenrolled preparer shall, with respect to any Internal Revenue Service matter, in any way use or participate in the use of any form of public communication containing false, fraudulent, misleading, deceptive, unduly influencing, coercive, or unfair statement or claim. This prohibition includes, but is not limited to, statements pertaining to the quality of services rendered unless subject to factual verification, claims of specialized expertise not authorized by state or federal agencies having jurisdiction over the preparer, and the statements or suggestions that the ingenuity and/or prior record of a representative rather than the merit of the matter are principal factors likely to determine the result of the matter.

.03 An unenrolled preparer may, in a dignified manner, publish, use, or broadcast through any means of communication:

(a) The name, address, telephone number and office hours of the preparer or firm;
(b) The names of individuals associated with the firm;
(c) A factual description of the services offered;
(d) That certain credit cards and other credit arrangements will be accepted;
(e) Foreign language ability;
(f) Appropriate fee information; and
(g) Other facts relevant to the selection of an unenrolled preparer, which are not prohibited by the provisions of this revenue procedure.

Sec. 9. Persons Ineligible To Practice Under This Revenue Procedure

.01 The following persons shall be ineligible to exercise the privilege of limited practices before the Internal Revenue Service:

(a) Any individual who has been convicted of any criminal offense under the Revenue Laws of the United States or any offense involving dishonesty or breach of trust within 5 years of the date of attempt to exercise the privilege. Individuals who have been so convicted more than 5 years before the date of attempt to exercise the privilege may be permitted to practice upon showing of evidence of rehabilitation satisfactory to the Director of the Examination Division;
(b) Any individual who is under disbarment or suspension from practice as an attorney, certified public accountant, public accountant, or actuary by any duly constituted authority of any state, possession, territory, Commonwealth, the District of Columbia, any federal court of record, or any federal agency, body or board;
(c) Any individual who is disbarred or suspended from practice before the Internal Revenue Service;
(d) Any individual whose application for enrollment to practice before the Internal Revenue Service has been denied;
(e) Any individual who refuses or has refused to comply with this revenue procedure;
(f) Any individual whose conduct or practices have been or are such as to constitute a violation of SEC.7 or 8 of this revenue procedure;
(g) Any individual who is an officer or employee of the United States or of the District of Columbia; and
(h) Any individual who is an officer or employee of any state or any subdivision thereof, whose duties authorize such individual to investigate, pass upon, or act with respect to tax matters of that state or subdivision, if such employment may make or makes available to the individual facts or information applicable to federal tax matters.

.02 In addition, corporations, associations, partnerships, or other business entities are ineligible to practice before the Internal Revenue Service.

Sec. 10. Rules Governing Recognition of Unenrolled Preparers

.01 Any examining officer, or other Service officer or employee who has reason to believe that an unenrolled preparer's conduct has been or is such as would render the preparer ineligible to appear as the taxpayer's representative before the Internal Revenue Service, shall communicate this information to the District Director of the taxpayer.

.02 In administering this revenue procedure, each District Director exercises original jurisdiction in determining whether an unenrolled preparer is eligible to appear as a taxpayer's representative. When the District Director receives information, either before or after an unenrolled preparer has been recognized, indicating that the preparer's conduct , practice, or employment has been or may be such as to render the preparer ineligible to represent taxpayers, the District Director will issue a written notice to the unenrolled preparer of proposed determination of ineligibility. This notice will contain information sufficient to apprise the unenrolled preparer of the basis for the proposed determination of ineligibility and will contain a request for a written reply within 30 days, and advise as to whether a conference is desired with the District Director of the District Director's delegate. if the unenrolled preparer fails to reply, or upon review if a reply is filed, or after a conference if one is held, the District Director will notify the unenrolled preparer in writing of the District Director's final determination. When warranted, the determination will state the unenrolled preparer is ineligible to exercise the privilege of limited practice before the Service and that the District Director's determination may be appealed to the Director, Examination Division. A copy of each final determination of ineligibility issued by the District Director will be fowarded to the Director, Examination Division, National Office, Internal Revenue Service, together with copies of the notice of proposed determination of ineligibility, the unenrolled prepare's reply, if one is filed, and any other related papers or documents.

.03 An unenrolled preparer who wishes to appeal a District Director's final determination

of ineligibility may, within 30 days of receipt of the final determination, submit a signed, written appeal together with the preparer's reasons in support of it, addressed to the Internal Revenue Service, Assistant Commissioner (Compliance), Director, Examination Division, Attention: CP:E:E:C,[*] 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Upon filing of the written appeal, and the reasons in support of it, the unenrolled preparer, upon request, will be afforded the opportunity of a conference with the Director, Examination Division or the Director's designee. A decision will then be rendered by the Director, Examination Division or the Director's designee affirming, reversing, or modifying the decision of the District Director upon such terms and conditions as seem warranted under the facts and circumstances of the particular appeal. The decision of the Director, Examination Division or the Director's designee on this appeal will be final.

.04 Whenever an unenrolled preparer's or conduct has been or is such as would render the preparer ineligible to appear as the taxpayer's representative before the Internal Revenue Service, Service employees will continue to recognize the representative until a final determination of ineligibility has been issued by the District Director, and either the time for appeal has expired, or all appeals have been exhausted. However, recognition will not be continued where Service employees determine, or receive instructions from the District Director or the District Director's designee, that the representative should not be recognized because significant rights or interests of the taxpayer or Internal Revenue Service could be substantially harmed by continued recognition.

Sec. 11. Special Orders

.01 The Director, Examination Division may issue such special orders as the Director may deem proper in any matter within the purview of this revenue procedure,

.02 The unenrolled preparer who has been determined ineligible for limited practice before the Internal Revenue Service may request, after 1 year following the notice of final determination of ineligibility or decision on appeal, that the preparer's eligibility for limited practice be reinstated. Requests for reinstatement will be made to the District Director who may modify or revoke any previous determination. The District Director will consider the nature of the violation that resulted in ineligilbitly, the period of ineligibility, and the preparer's current adherence to the standards of ethics and conduct established by this revenue procedure in evaluating the request for reinstatement to limited practice. The consideration of a request for reinstatement will not be a reevaluation of any original determination of ineligibilty.

Sec.12. Inquiries

Inquiries from unenrolled preparers and Service personnel regarding this revenue procedure should be addressed to the Internal Revenue Service, Assistant Commissioner (Compliance), Director, Examination Division, Attention: CP:E:E:C, [*] 1111 Constitution Avenue, N.W., Washington, D.C., 20224.

Sec.13. Effect on Other Documents

Rev. Proc. 68-20 is modified and, as modified, is superseded.

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*Now designated as CP:E:E:S

(Reprinted from Internal Revenue Bulletin No. 1981-35, dated August 31, 1981)

Internal Revenue Service
Andover Submission Processing Campus
310 Lowell Street
Andover, MA 01812

Department of the Treasur
Date: December 07, 2004
Phone:
1-866-255-0654 (toll-free

ELLERBYS UNLIMITED TAX SERVICES
SHARONDA ELLERBY
3837 NAYLORS LANE
PIKESVILLE, MD 21208

Dear SHARONDA ELLERBY:

We are pleased to inform you that your firm may continue to participate in IRS e-file as an Authorized IRS e-file Provider. Your Electronic Filing Identification Number (EFIN) is 527735. Please protect and safeguard this number.

This acceptance letter is not an endorsement of the quality of services you provide or any software you use and/or develop. You may not state in any advertising or contact with your clients that the software you use and/or develop is "approved" or "endorsed" by the IRS.

If you have not already registered for e-services, we encourage you to do so by choosing the e-services link under tax professionals on our website at www.irs.gov. Once you have registered you will be able to view and update your e-file application online. Please ensure your information is correct in accordance with the section titled "Reporting Changes" located in the Publication 3112, IRS e-file Application and Participation.

Refer to the above publication for other important information, such as the use of your EFIN, rules and requirements for participation in IRS e-file, and a list of other publications with information regarding e-file of returns.

Thank you for your continued interest in IRS e-file. We are looking forward to working with you. For assistance, call IRS e-help toll free at 1-866-255-0654, Monday through Friday, between the hours of 7:30 a.m. and 6:00 p.m. (ET).

Sincerely,

Carol J. Stender-Larkin

Carol J. Stender-Larkin
Submission Processing Field Director

Letter 2461-A (SC) Rev 10/2004

THE ACCOUNTING AND BOOKKEEPING CENTER
BALTIMORE, MD

Awards this

Diploma

in recognition of having successfully fulfilled all requirements of the Basic Accounting and Bookkeeping Program (39 Clock Hours) to

Sharonda M. Ellerby

5/7/04
Date of Completion

Andrew Schiff
Andrew D. Schiff, PhD, CPA
President

A private post-secondary career school approved by the Maryland Higher Education Commission

Certificate of Completion

This will certify that

Sharonda Ellerby

has successfully completed the

Jackson Hewitt Income Tax Course

6 week course

November 20, 2003

Date Completed

Dina Stasik

Instructor

JACKSON HEWITT® TAX SERVICE

#6803 05/02

THE ACCOUNTING AND BOOKKEEPING CENTER
6600 York Road, Suite 107
Towson, MD 21212
410-828-1902 (voice), 410-823-8840 (fax)

May 7th, 2004

Dear Sir or Madam:

Ms. Sharonda M. Ellerby has completed a program of study in accounting and bookkeeping applications, and has been awarded a Diploma as evidence of her achievement. This program is approved by the Maryland Higher Education Commission.

The program that she has completed covers accounts receivable, accounts payable and payroll processing, as well as full-charge bookkeeping through the preparation of financial statements. Realistic case studies based on actual businesses are utilized throughout the program. In addition, Ms. Ellerby has acquired skills in the use of Microsoft Excel spreadsheet software and computerized accounting software packages.

Ms. Ellerby consistently displayed a thorough understanding of the course material. She was well prepared, punctual, and showed a high level of professionalism. I believe that she is well-qualified for a challenging position in bookkeeping or accounting, and strongly recommend that she be given an opportunity to demonstrate her qualifications in a personal interview.

If you have any further questions about her performance or the skills that she has mastered, please do not hesitate to contact me.

Very truly yours,

Andrew Schiff

Andrew Schiff, PhD, CPA
President

Return to:
John S. Smith
Attorney At Law
7310 Ritchie Highway #705
Glen Burnie, MD 21061 File: 11-06-04

THIS DEED, made this 10th day of December in the year two thousand and four, by and between Delorean LLC, grantor, and party of the first part, and Sharonda M. Ellerby, grantee and party of the second part.

WITNESSETH: that in consideration of the sum of One Hundred Thirty Nine Thousand Nine Hundred Dollars ($139,900.00), the receipt of which is hereby acknowledged, the said party of the first part does hereby grant and convey to the party of the second part, her successors and assigns, in fee simple all that lot of ground situate and being in Baltimore County, State of Maryland known as 8938 Greens Lane, and more particularly described as follows:

21161/546
Sq. Ft. 111.7'
deed

BEGINNING for the same in the center of Greens Lane at the beginning of the third line of a parcel of land which by a Deed dated December 5, 1949 and recorded among the Land Records of Baltimore County in Liber T.B.S. No. 1802, folio 416, was conveyed by Mary C. Stang to Everett B. Gary and thence running with and binding on said third line and in the center of Green Lane South 21 degrees 15 minutes East 111.17 feet, thence leaving said Lane and binding on a part of the last line of said parcel of land North 42 degrees 45 minutes East 122.27 feet to an iron pipe, thence leaving said outline and running for a line of division, North 45 degrees 19 minutes West 100.52 feet to a pipe set in the second line of the aforesaid parcel of land which was conveyed by Stang to Gary and thence binding on a part of said second line South 42 degrees 45 minutes West 76.66 feet to the place of beginning. The improvements thereon being known as No. 8938 Greens Lane.

Being the same lot of ground described in a Deed dated January 19, 2004 recorded among the land records of Baltimore County in Liber 19507, Folio 339 from Howard M. Grossfeld to the grantor herein.

TOGETHER with the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

TO HAVE AND TO HOLD to the said party of the second part, her successors and assigns, in fee simple.

AND THE SAID PARTY of the first part hereby covenants that it has not done or suffered any act, matter or things whatsoever to encumber the property hereby conveyed and that it will warrant specially the property hereby granted and execute such further assurances of the same as may be requisite.

PETITIONER'S
EXHIBIT NO. 3A

LAW OFFICES OF
HERBERT BURGUNDER III

MT. WASHINGTON CENTER
1501 SULGRAVE AVENUE • SUITE 207
BALTIMORE, MARYLAND 21209
410-664-6500 • FAX: 410-664-6501

September 6, 2005

RECEIVED
SEP 8 2005
ZONING COMMISSIONER

BY HAND-DELIVERY
William J. Wiseman, III
Zoning Commissioner
Baltimore County
401 Bosley Avenue, Room 405
Towson, Maryland 21204

Re: 8938 Greens Lane, Case No. 06-009-XA

Dear Mr. Wiseman:

Baltimore County Zoning Regulations §1B01.1.C(12) permits offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians, or other professional persons. You asked whether a tax preparer was a professional person. Under the Baltimore County Zoning Regulations, a tax preparer such as Ms. Sharonda Ellerby is a professional person.

You specifically referenced Colker v. District of Columbia Board of Zoning Adjustment, 474 A.2d 820 (1983), a D.C. case that set standards for determining the meaning of "similar professional person" under the D.C. Zoning Regulations. The D.C. Zoning Regulations included in the definition of permitted uses "an office for a chancery, international agency, non-profit organization, [and a] labor union." The Baltimore County Zoning Regulations do not include those types of uses, but they do include artists and musicians. Under the Colker case, to be a "similar professional person," the person had to (1) have professional education; (2) be bound by a code of ethics; and (3) be professionally licensed.

Ms. Ellerby has professional education. In addition to a Bachelor's of Science in accounting, Ms. Ellerby has advanced professional education from the Accounting and Bookkeeping Center (a copy of her diploma is attached). Also attached is a letter from the President of the Accounting and Bookkeeping Center. Ms. Ellerby participated in a program that is approved by the Maryland Higher Education Commission. In addition to her formal course of study, Ms. Ellerby also completed an income tax course from Jackson Hewitt (a copy of the Certificate of Completion is attached). All of this post-graduate education was specific to her profession as a tax preparer.

Ms. Ellerby's work as a tax preparer is governed by IRS Publication 470, Limited Practice Without Enrollment. Section 7 of Publication 470 sets forth a code of ethics and

Rec'd as Petitioner Exhibit 5

conduct. There are also rules for solicitation and advertising. This is the code of ethics that binds Ms. Ellerby in her profession.

Finally, Ms. Ellerby is considered a professional with a license by the IRS. Attached is a copy of her Preparer's Tax Identification Number ("PTIN") card. Also attached is a letter from the IRS describing Ms. Ellerby as an authorized e-file provider. As you can see from the attached information sheet from the IRS, "a paid tax professional may choose to use a PTIN." Ms. Ellerby is a paid tax professional who has chosen to use a PTIN.

Ms. Ellerby meets the heightened requirements of Colker to be a professional person. As viewed by the IRS, Ms. Ellerby is a professional tax preparer. Ms. Ellerby qualifies as a professional person under the Baltimore County Zoning Regulations for use of her home as an office.

Your consideration of this matter is greatly appreciated.

Sincerely,

HB

Herbert Burgunder III

HB3:bh
Enclosures
cc: Ms. Sharonda Ellerby (w/out encls.)
Mr. Vince Moskunas (w/out encls.)

FILE

FIELDSTONE
Community Group Inc.
3603 Stoneybrook Road, Randallstown MD 21133-4227
410-922-0302 / patclark07@comcast.net

August 17, 2005

Mr. Timothy M. Kotroco
Director, Permits & Development Management
County Office Building
111 West Chesapeake Avenue, Suite 105
Towson, Maryland 21204

Dear Mr. Kotroco:

Re: 06-009-XA (8938 Greens Lane)

This letter is in regard to the above-referenced zoning matter, which is due to come before the Zoning Commissioner on August 30, 2005. The Fieldstone Community Group, Inc., which boarders 8938 Greens Lane, is against a special zoning exception to allow the office of an accountant in a residential zone. If this zoning were allowed it would open up the door for anyone to start a business in their residential home and allot more space than the required 25% square foot limit.

We have been working very hard to make our older and historical residential community a better place to live. We are asking the Zoning Commissioner to deny this request for rezoning in order to keep the surrounding residential community safe from commercial infringement.

Thank you for your time and consideration of this matter.

Sincerely yours,

Patricia Clark

Patricia Clark
President, Fieldstone Community Group, Inc.

cc: Kenneth N. Oliver
Councilman, Fourth District

Protestant Exhibit 1

DW 8/30

Oakwood Village Community Association, Inc.

8940 Hankste Way, Randallstown MD 21133 Tanya Williams, President - 410-521-8668

September 1, 2005

Mr. Timothy M. Kotroco
Director, Permits & Development Management
County Office Building
111 West Chesapeake Avenue, Suite 105
Towson, Maryland 21204

Dear Mr. Kotroco:

Re: 06-009-XA (8938 Greens Lane)

This letter is in regard to the above-referenced zoning matter, which was to come before the Zoning Commissioner on August 30, 2005. The Oakwood Village Community Association, Inc. which boarders 8938 Greens Lane, is against a special zoning exception to allow the office of an accountant in the residential zone. If this zoning were allowed it would open up the door for anyone to start a business in their residential hone and a lot more space than the required 25% square foot limit,

We have been working very hard to make our older and historical residential community a better place to live. We are asking the Zoning Commissioner to deny this request for rezoning in order to keep the surrounding residential community safe for commercial infringement.

Thank you for your time and consideration of this matter.

Sincerely yours,

Tanya Williams

Tanya Williams
President, Oakwood Community Association, Inc.

cc: Kenneth N. Oliver
Councilman, Fourth District

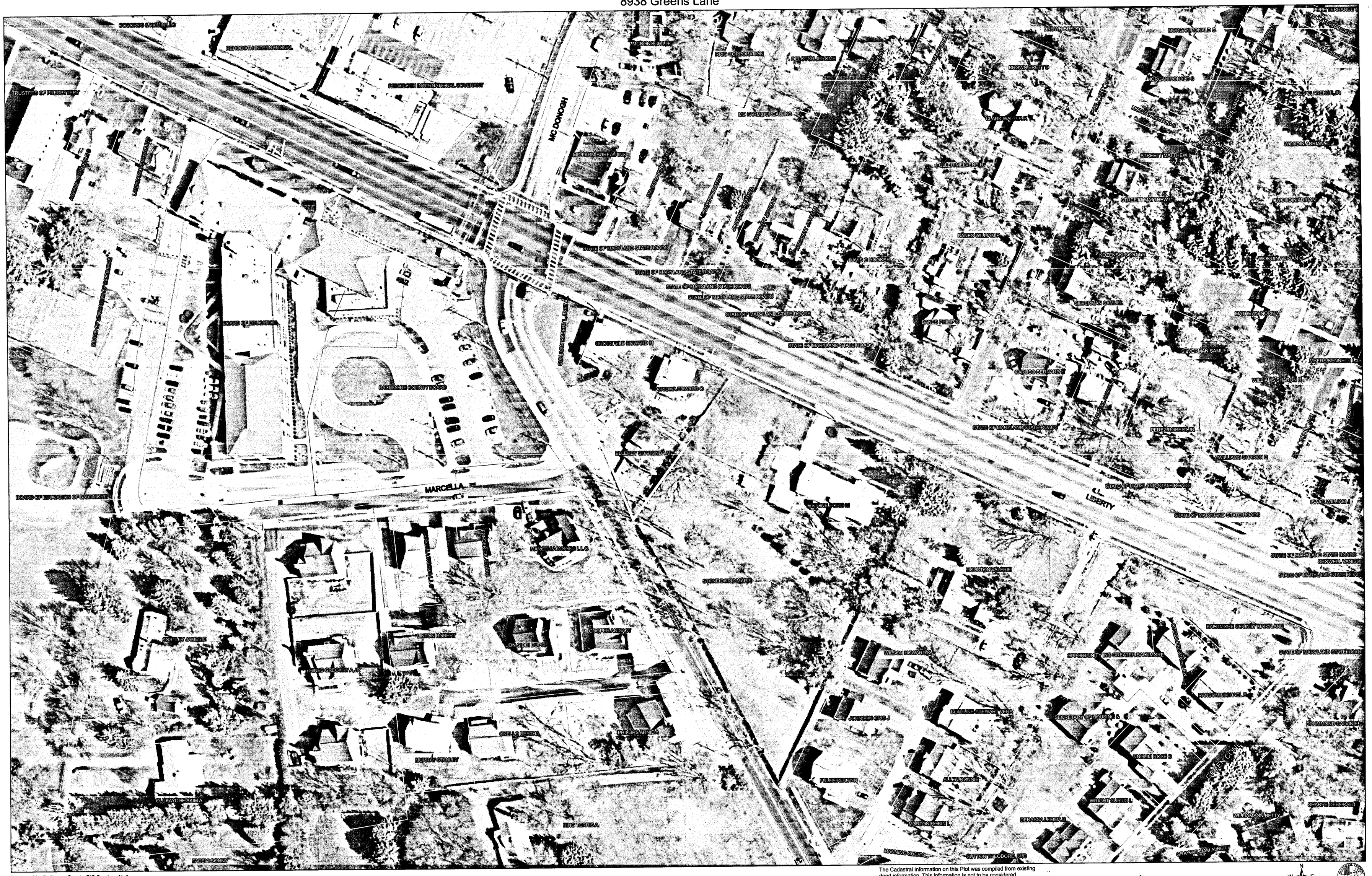
Protestants Exhibit 2

Case No.: 06-009 XA

Exhibit Sheet

	Petitioner/Developer	Protestant
No. 1	Site Plan	Letter 8/17/05 Fieldstone Community Grp.
No. 2	(5) Supporting Residence in Local	Letter 9-1-05 Oakwood Village Community Assoc.
No. 3	Petitioners Deed -3A MDA&T - 3B - 3C 3D	
No. 4	Aerial Map — Zones Surrounding	
No. 5	Legal Memo — Status of tax Preparer	
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

8938 Greens Lane



Produced by Baltimore County GIS Services Unit
Date: April 10, 2006
Date of Imagery: 2005

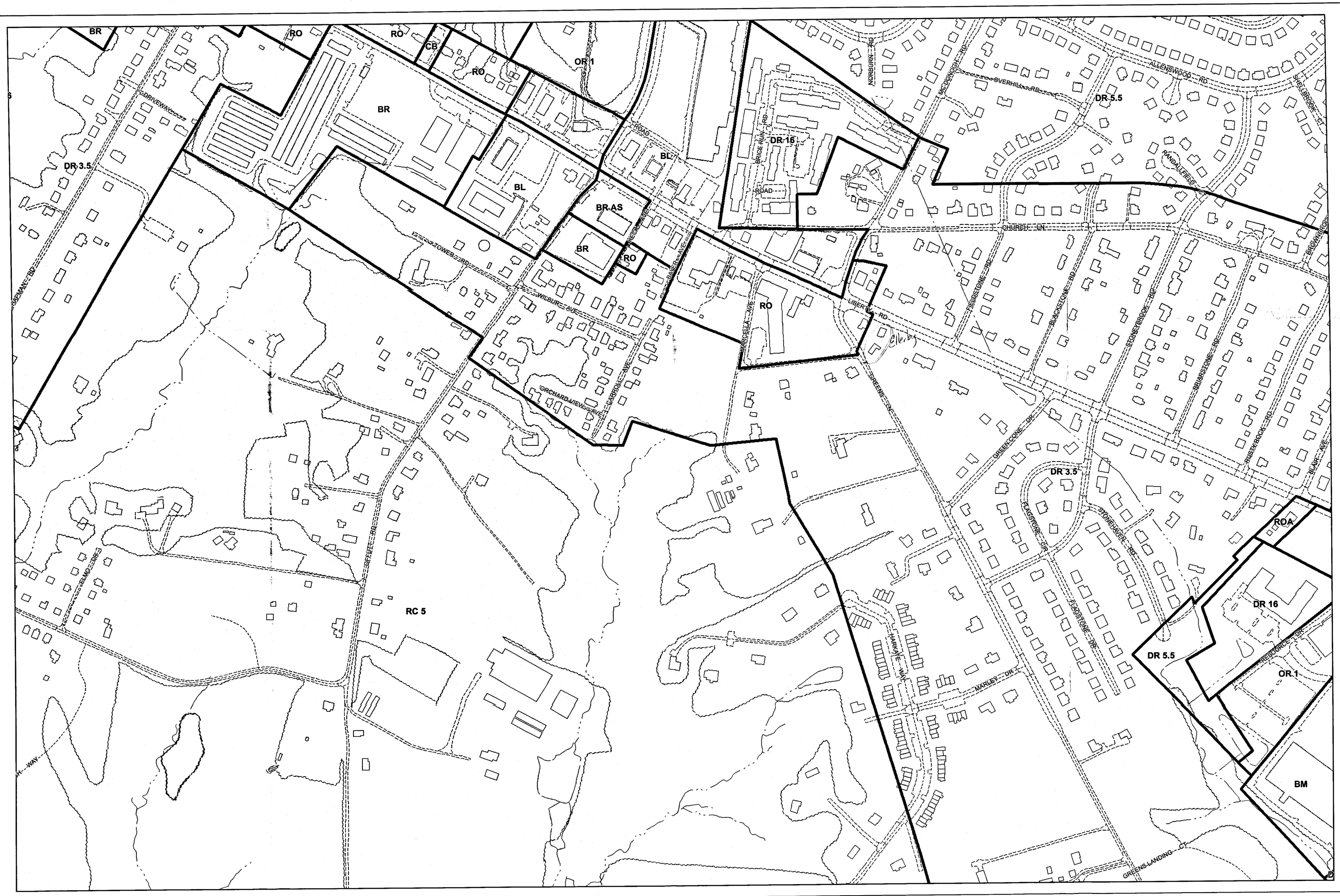
1 inch equals 50 feet

The Cadastral Information on this Plot was compiled from existing deed information. This Information is not to be considered authoritative. The Survey Information was not field checked and Certified by a licensed land surveyor.

N
W E
S

RC#4

PC#5



Plan Sheet: *077A2*

Note:
The zoning depicted in this application incorporates the actions associated with County Council Bills 82-04, 83-04, 84-04, 85-04, 86-04, 87-04, 88-04, and 89-04 adopted by the County Council on August 31, 2004. The action associated with County Council Bill 130-04 adopted on December 6, 2004 is also depicted. In addition, County Board of Appeals actions from MC 05-01, MC 05-02, MC 05-03, and MC 05-04 on February 9, 2005 are represented in this application.

Legend

Zoning — Streams — Vegetation
Buildings — Roads — Rail Lines

Baltimore County
Office of Planning and Zoning
Official Zoning Map

076B1	076C1	077A1	077B1	077C1
076B2	076C2	077A2	077B2	077C2
076B3	076C3	077A3	077B3	077C3

Scale

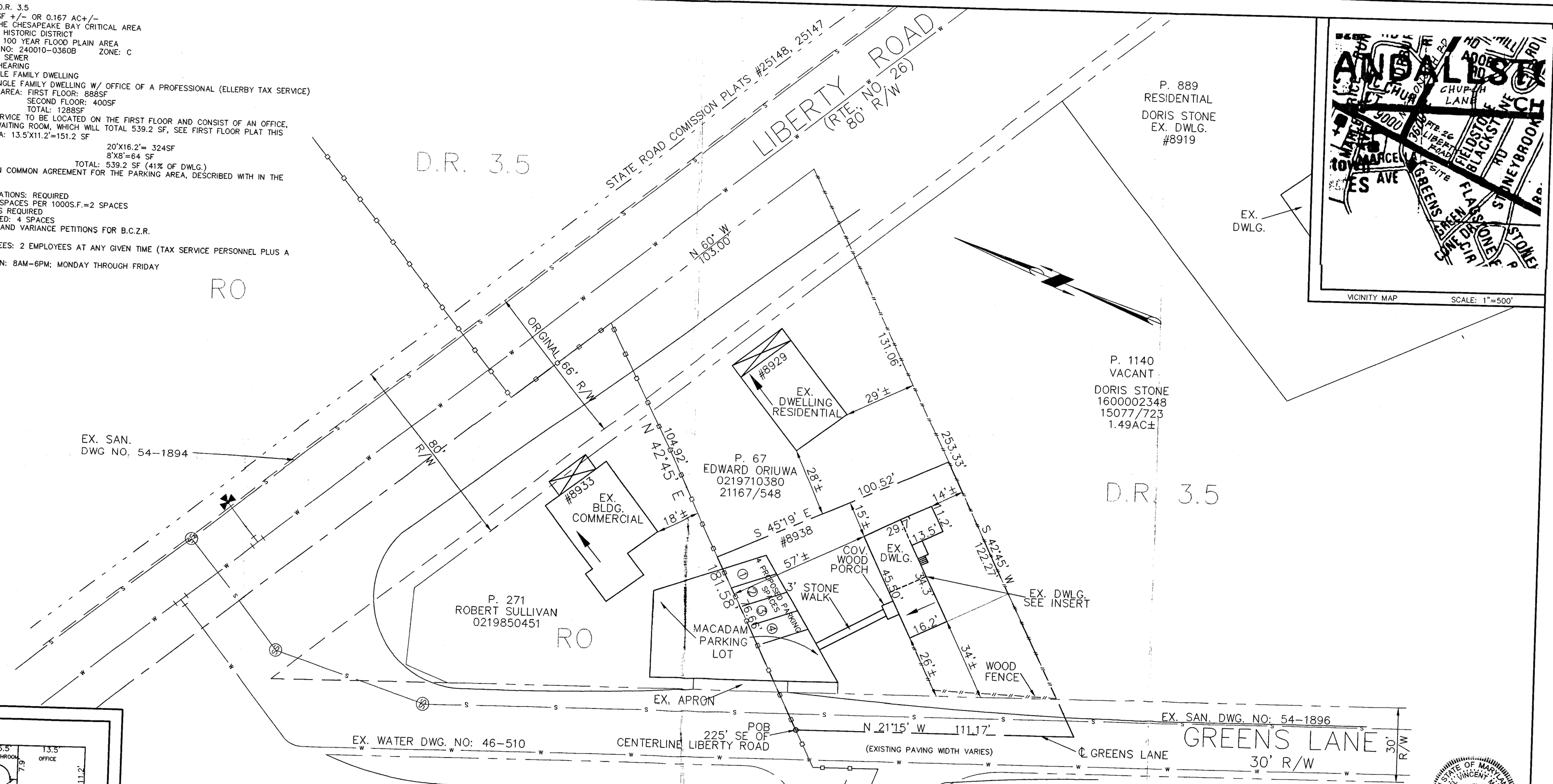
1" = 200'

0 100 200 400 Feet

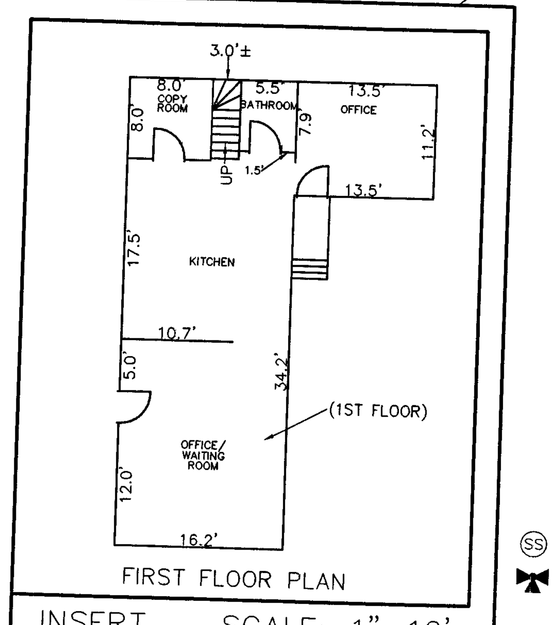
1

Data Sources:
Planametric Data - Baltimore County OIT/GIS Services Unit 1:2400, from 1995/96 photography
Zoning - Baltimore County Office of Planning 1:2400, 2004

GENERAL NOTES:
1.EXISTING ZONING: D.R. 3.5
2.LOT AREA: 7,291 SF +/- OR 0.167 AC+/-
3.NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA
4.NOT LOCATED IN A HISTORIC DISTRICT
5.NOT LOCATED IN A 100 YEAR FLOOD PLAIN AREA
COMMUNITY PANEL NO: 240010-0360B ZONE: C
6.PUBLIC WATER AND SEWER
7.NO PRIOR ZONING HEARING
8.EXISTING USE: SINGLE FAMILY DWELLING
PROPOSED USE: SINGLE FAMILY DWELLING W/ OFFICE OF A PROFESSIONAL (ELLERBY TAX SERVICE)
9.EXISTING DWELLING AREA: FIRST FLOOR: 888SF
SECOND FLOOR: 400SF
TOTAL: 1288SF
10.OFFICE FOR TAX SERVICE TO BE LOCATED ON THE FIRST FLOOR AND CONSIST OF AN OFFICE, COPY ROOM, AND WAITING ROOM, WHICH WILL TOTAL 539.2 SF, SEE FIRST FLOOR PLAT THIS SHEET: OFFICE AREA: 13.5'X11.2'=151.2 SF
20'X16.2'= 324SF
8'X8'=64 SF
TOTAL: 539.2 SF (41% OF DWLG.)
11.THERE IS NO USE IN COMMON AGREEMENT FOR THE PARKING AREA, DESCRIBED WITH IN THE PROPERTY DEED.
12.A. PARKING CALCULATIONS: REQUIRED
OFFICE SPACE: 3.3 SPACES PER 1000S.F.=2 SPACES
DWELLING: 2 SPACES REQUIRED
B. PARKING PROPOSED: 4 SPACES
13.SPECIAL EXCEPTION AND VARIANCE PETITIONS FOR B.C.Z.R. SECTION 1B01.1.C.12
14.NUMBER OF EMPLOYEES: 2 EMPLOYEES AT ANY GIVEN TIME (TAX SERVICE PERSONNEL PLUS A SECRETARY)
15.HOURS OF OPERATION: 8AM-6PM; MONDAY THROUGH FRIDAY



VICINITY MAP SCALE: 1"=500'



FIRST FLOOR PLAN

INSERT SCALE: 1"=10'

LEGEND

SANITARY SEWER MANHOLE
FIRE HYDRANT
WATERLINE
SEWER LINE
WOOD FENCE
ZONING LINE
PROPERTY LINE

OWNER
SHARONDA ELLERBY
8938 GREENS LANE
RANDALLSTOWN, MD 21133
(410) 655-1420

STATE OF MARYLAND MICHAEL VINCENT MINKUNCE PROFESSIONAL LAND SURVEYOR NO. 21175

PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION & VARIANCE

RANDALLSTOWN BALTIMORE COUNTY, MD

#8938 GREENS LANE
TAX MAP: 77 GRID: 8 PARCEL: 66
TAX ACCT NO: 0204000102
DEED REF: 21135/583
ELECTION DISTRICT: 2C4

DATE	REVISION

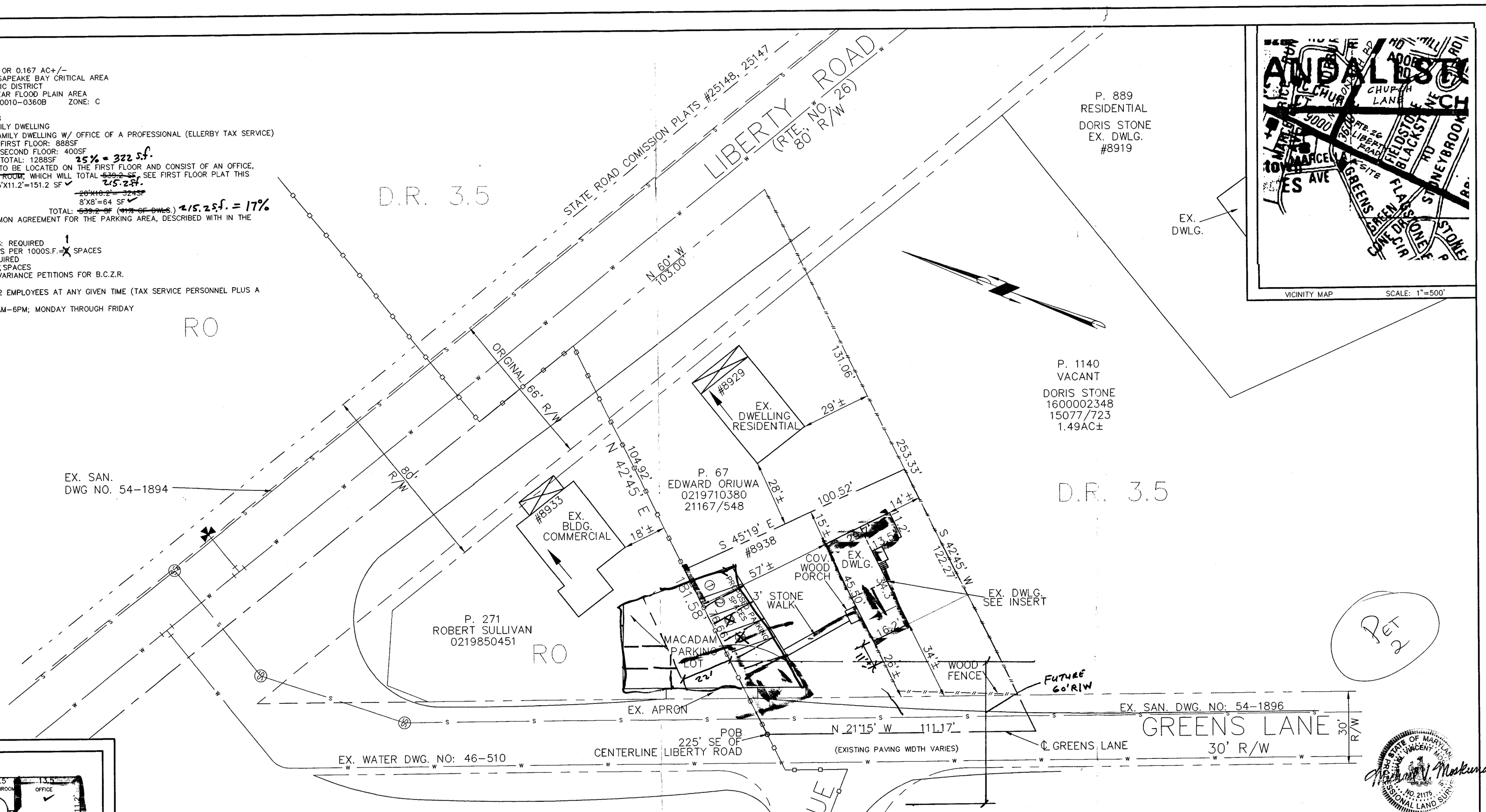
DATE: 06/21/05
SCALE: 1"=20'
DRAWN BY: KAK
CHECKED BY: KJM

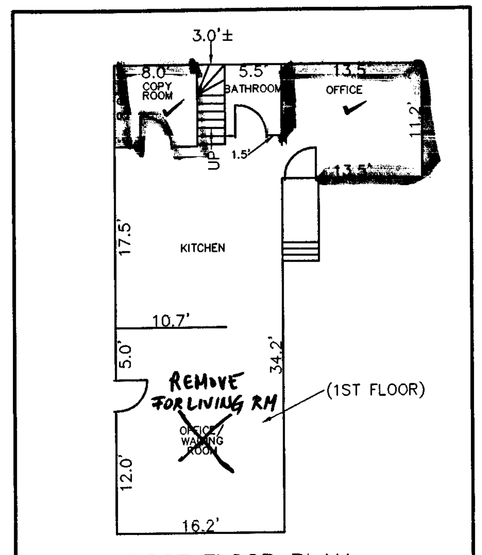
siterite SURVEYING
200 E. JOPPA RD
SUITE 101
TOWSON, MD 21286
T: (410)828-9060
F: (410)828-9066

SHEET NO.: 1 OF 1
DWG. NO.: 9105

06-009-XA

GENERAL NOTES:
1.EXISTING ZONING: D.R. 3.5
2.LOT AREA: 7,291 SF +/- OR 0.167 AC+/-
3.NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA
4.NOT LOCATED IN A HISTORIC DISTRICT
5.NOT LOCATED IN A 100 YEAR FLOOD PLAIN AREA
COMMUNITY PANEL NO: 240010-0360B ZONE: C
6.PUBLIC WATER AND SEWER
7.NO PRIOR ZONING HEARING
8.EXISTING USE: SINGLE FAMILY DWELLING
PROPOSED USE: SINGLE FAMILY DWELLING W/ OFFICE OF A PROFESSIONAL (ELLERBY TAX SERVICE)
9.EXISTING DWELLING AREA: FIRST FLOOR: 888SF
SECOND FLOOR: 400SF
TOTAL: 1288SF 25% = 322 S.F.
10.OFFICE FOR TAX SERVICE TO BE LOCATED ON THE FIRST FLOOR AND CONSIST OF AN OFFICE, COPY ROOM, ~~AND WAITING ROOM~~, WHICH WILL TOTAL ~~539.2 SF~~ 215.2 S.F. SEE FIRST FLOOR PLAT THIS SHEET: OFFICE AREA: 13.5'X11.2'=151.2 SF ✓
~~20'X16.2'= 324SF~~
8'X8'=64 SF ✓
TOTAL: ~~539.2 SF (41% OF DWLG.)~~ 215.2 S.F. = 17%
11.THERE IS NO USE IN COMMON AGREEMENT FOR THE PARKING AREA, DESCRIBED WITH IN THE PROPERTY DEED.
12.A. PARKING CALCULATIONS: REQUIRED
OFFICE SPACE: 3.3 SPACES PER 1000S.F.=~~X~~ 1 SPACES
DWELLING: ~~1X~~ SPACES REQUIRED
B. PARKING PROPOSED: ~~2X~~ SPACES
13.SPECIAL EXCEPTION AND VARIANCE PETITIONS FOR B.C.Z.R. SECTION 1B01.1.C.12
14.NUMBER OF EMPLOYEES: 2 EMPLOYEES AT ANY GIVEN TIME (TAX SERVICE PERSONNEL PLUS A SECRETARY)
15.HOURS OF OPERATION: 8AM-6PM; MONDAY THROUGH FRIDAY





FIRST FLOOR PLAN

INSERT SCALE: 1"=10'

STATE ROAD COMMISSION
PLAT #35820
BALTIMORE COUNTY ROAD DWG. NO. 87-0231

LEGEND

SS SANITARY SEWER MANHOLE
FIRE HYDRANT
WATERLINE
SEWER LINE
WOOD FENCE
ZONING LINE
PROPERTY LINE

OWNER
SHARONDA ELLERBY
8938 GREENS LANE
RANDALLSTOWN, MD 21133
(410) 655-1420

PLAN TO ACCOMPANY PETITION
FOR SPECIAL EXCEPTION & VARIANCE
RANDALLSTOWN BALTIMORE COUNTY, MD

#8938 GREENS LANE
TAX MAP: 77 GRID: 8 PARCEL: 66
TAX ACCT NO: 0204000102
DEED REF: 21135/583
ELECTION DISTRICT: 2C4

DATE	REVISION		
8/30/05	REDUCED OFFICE REMOVED WAITING ROOM	DATE: 06/21/05	SCALE: 1"=20'
		DRAWN BY: KAK	CHECKED BY: VJM

siterite SURVEYING
200 E. JOPPA RD
SUITE 101
TOWSON, MD 21286
T: (410)828-9060
F: (410)828-9066

SHEET NO.: 1 OF 1
DWG. NO.: 9105

STATE OF MARYLAND VINCENT J. MASKUNAS No. 21175 PROFESSIONAL LAND SURVEYOR

GENERAL NOTES:
1. EXISTING ZONING: D.R. 3.5
2. LOT AREA: 7,291 SF +/- OR 0.167 AC+/-
3. NOT LOCATED IN THE CHESAPEAKE BAY CRITICAL AREA
4. NOT LOCATED IN A HISTORIC DISTRICT
5. NOT LOCATED IN A 100 YEAR FLOOD PLAIN AREA
   COMMUNITY PANEL NO: 240010-0360B ZONE: C
6. PUBLIC WATER AND SEWER
7. NO PRIOR ZONING HEARING
8. EXISTING USE: SINGLE FAMILY DWELLING
   PROPOSED USE: SINGLE FAMILY DWELLING W/ OFFICE OF A PROFESSIONAL (ELLERBY TAX SERVICE)
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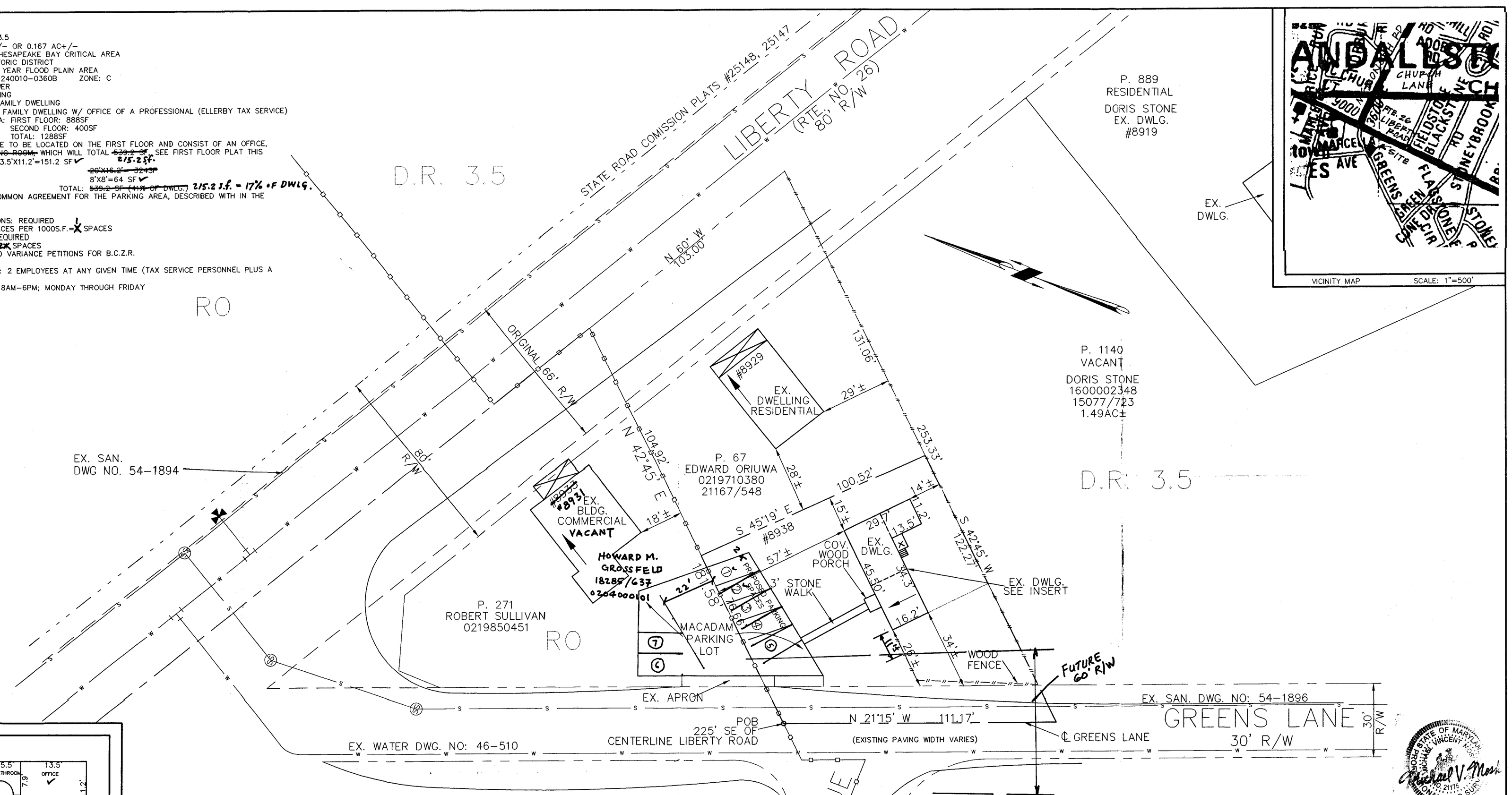
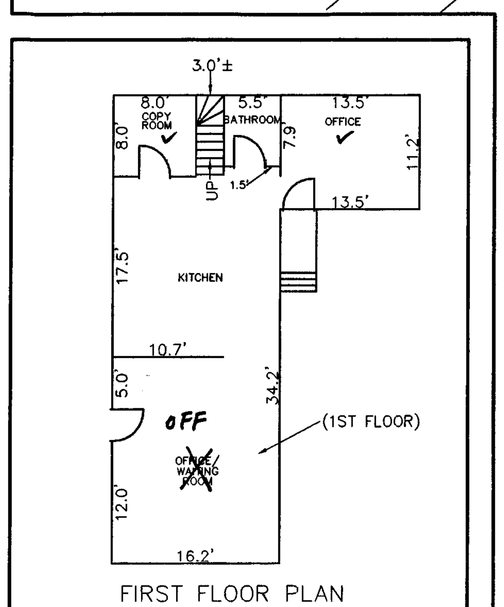
12. A. PARKING CALCULATIONS: REQUIRED
    OFFICE SPACE: 3.3 SPACES PER 1000S.F.= 1 SPACES
    DWELLING: 1 SPACES REQUIRED
    B. PARKING PROPOSED: 2 SPACES
13. SPECIAL EXCEPTION AND VARIANCE PETITIONS FOR B.C.Z.R. SECTION 1B01.1.C.12
14. NUMBER OF EMPLOYEES: 2 EMPLOYEES AT ANY GIVEN TIME (TAX SERVICE PERSONNEL PLUS A SECRETARY)
15. HOURS OF OPERATION: 8AM-6PM; MONDAY THROUGH FRIDAY





FIRST FLOOR PLAN

INSERT SCALE: 1"=10'

LEGEND

- (SS) SANITARY SEWER MANHOLE
- FIRE HYDRANT
- WATERLINE
- SEWER LINE
- WOOD FENCE
- ZONING LINE
- PROPERTY LINE

OWNER
SHARONDA ELLERBY
8938 GREENS LANE
RANDALLSTOWN, MD 21133
(410) 655-1420

PLAN TO ACCOMPANY PETITION FOR SPECIAL EXCEPTION ~~& VARIANCE~~

RANDALLSTOWN — BALTIMORE COUNTY, MD

#8938 GREENS LANE
TAX MAP: 77 GRID: 8 PARCEL: 66
TAX ACCT NO: 0204000102
DEED REF: 21135/583
ELECTION DISTRICT: 2C4

PETITIONER'S EXHIBIT NO. 1

DATE	REVISION
8/30/05	REDUCED OFFICE AREA REMOVED WAITING ROOM

DATE: 06/21/05
SCALE: 1"=20'
DRAWN BY: KAK
CHECKED BY: VJM

siterite SURVEYING
200 E. JOPPA RD
SUITE 101
TOWSON, MD 21286
T: (410)828-9060
F: (410)828-9066

SHEET NO.: 1 OF 1
DWG. NO.: 9105