11/29/05

IN RE: PETITION FOR SPECIAL HEARING S/side of Turkey Point Road, 700 ft. w/of c/l of Rockaway Beach Road 15th Election District 6th Councilmanic District **(2315 & 2317 Turkey Point Road)** Jeffrey A. & Carole C. Creamer Petitioners/Property Owners	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO. 06-044 & 045-SPH

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner on a Petition for Special Hearing for the properties located at 2315 and 2317 Turkey Point Road in the Bowleys Quarters area of Baltimore County. Petitions were filed by Jeffrey A. Creamer in Case No. 06-043-SPH and Carole C. Creamer in Case No 06-044-SPH, legal owners/petitioners. Special Hearing relief requested is the same for both Case No. 06-044 SPH and 06-045-SPH pursuant to Section 500.7 of the Baltimore County Zoning Regulations (BCZR), to determine that each lot is an existing lot of record; that it is not an undersized lot as defined in the BCZR, Section 4A03.1, Growth Management Plan for Bowleys Quarters and Back River Neck areas.

The properties were originally posted with Notice of Hearing on August 29, 2005 but were postponed as the result of a failure to post 2315 Turkey Point Road (06-045-SPH) with public notice of the hearing. Both properties were then re-posted with Notice of Hearing on October 24, 2005, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning hearing was published in "The Jeffersonian" newspaper on August 30, 2005, to notify any interested persons of the scheduled hearing date.

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Applicable Law

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

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

Zoning Advisory Committee Comments

The Zoning Advisory Committee Comments are made part of the record of this case and contain the following highlights: ZAC comments were received from the Office of Planning dated August 29, 2005, and the Department of Environmental Protection and Resource Management dated September 7, 2005, and the Bureau of Development Plans Review dated August 10 2005, copies of which are made a part of the file.

Interested Persons

Appearing at the hearing on behalf of the requested special hearing relief were Jim Patton, P.E., Robert Creamer, Howard French, Wayne Wunder, Jeffrey A. and Carole C. Creamer, legal owners/petitioners. C. William Clark, Esquire represented the Petitioners. Appearing in opposition to the request at the hearing were Michael and Robin Ferro and Joanne Markel. Francis Borgerding represented the protestants. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

Case No. 06-044 SPH and 06-045-SPH are companion cases involving adjacent lots zoned DR 3.5. By agreement, both cases were heard concurrently and all testimony and

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evidence admitted in either case applies equally to the other. See Petitioners' Exhibits 1A and 1B.

Mr. Clark proffered that Jeffrey Creamer owns the lot at 2317 Turkey Point Road, which is improved by a single family home. His wife, Carole Creamer, owns the lot at 2315 Turkey Point Road, which is improved by a shed. These Petitioners purchased these lots in September 2002 in separate deeds as shown in Petitioner' Exhibits 2 and 4. The Petitioners would like to raze the existing home, and sell both lots as building lots. Both lots are 50 feet wide. The applicable DR 3.5 regulations require 70-foot wide lots.

Status of the Case

The Petitioners previously requested that this Commission approve these lots as buildable undersize lots pursuant to Section 304 of the BCZR. This case does not have a case number as customarily occurs but rather is controlled by property address. The protestants in the prior case (and this case) live next door to the lot owned by Carole Creamer and argued that land was available to Carole Creamer through her husband so that the request should be denied. In an Order dated May 10, 2004, this Deputy Zoning Commissioner denied the Petitioners' requests on the basis that two (2) new homes on these lots were not appropriate considering the pattern of development of the neighborhood.

The Petitioners appealed this Commission's May 10, 2004 decision to the Board of Appeals during which the Petitioner apparently brought up a new argument. They opined that these lots are not undersized after all because they are located in the Bowleys Quarters/Back River Neck Growth Management Area, which is controlled by Section 4A03 of the BCZR. Section 4A03.1 defines undersize lot, which the Petitioner contends does not apply to these properties. Apparently in response to this new argument, the Board continued the appeal and

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allowed the Petitioners to make this argument first before this Commission. The Petitioners filed for the subject hearing.

In the meantime, the protestants also have a new argument for consideration. In the case of *Friends of the Ridge v Baltimore Gas and Electric Company*, 352 Md.645, 724 A.2d 34 (1999) the Court of Appeals announced the doctrine of zoning merger in Maryland. In May 2005 in the subsequent case of *Remes v Montgomery County* 387 Md 52, 874 A 2d 470 (2005), the Court applied the zoning merger doctrine to two (2) undersize lots preventing the sale of one (1) of the lots for a new home. The protestants now argue that the history of the lots show that these lots have merged according to the zoning merger doctrine.

The Subject Case

Petitioner Jeffrey Creamer testified that he owns lot 11 and his wife Carole Creamer owns lot 10 in the Plat of "Turkey Point Farm" subdivision. See Petitioners' Exhibit 6. He would like to raze the single family home on lot 11 and sell both lots as waterfront lots on which two (2) new homes could be built. The lots comply with all the zoning regulations of the DR 3.5 zone except lot width, which is 50 feet for each lot. The DR 3.5 regulations allow 70 feet of lot width.

He admitted that lot 10 has an accessory shed, that there is a common bulkhead and one (1) pier serving both lots. He indicated that each lot was assessed separately by the State Department of Assessments and Taxation (SDAT).

James Patton, registered professional engineer, was accepted as an expert witness. He indicated that the Turkey Point Farm subdivision was recorded in the land records in 1917. He noted that both lots are 50 feet wide but over 260 feet long. As a result, both easily exceed the lot size specified by the DR 3.5 zone. Public water and sewer are available for both lots.

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He noted that Section 304 of the BCZR which controls use of undersize single family lots in the County except lots in the Turkey Point/Back River Neck Growth Management Area as provided in Section 4A03. He indicated that both lots are located in this area as shown by the map associated with this growth management legislation.

He noted that growth allocations specified in Section 4A03.13 (RC-5) and 4A03.14 (RC 20) do not apply to the subject properties, as they are zoned DR 3.5. He opined that these lots do not fit the definition of "undersized lots" in Section 4A03.1 as they exceed the area requirements and the new homes proposed meet the height and setback regulations. As such, these lots are controlled by Section 4A03.4A as variances are not required for the construction of the dwelling, the owner will connect to public sewer, the dwellings will meet the design requirements, and no further subdivision is requested.

He further opined that these lots are lots of record before August 6, 1999, and again that neither are undersized from an area standpoint. He denied that Section 1B02.3.C.1 (the small lot table) apples to these lots which specifies the lot width in DR 3.5 zones must be 70 feet. In support of this position, he noted that Baltimore County has adopted density zoning and does not specify lot widths for any of the DR zones either in the zoning regulations or the CMDP policy manual. Instead, the County regulates the distance between dwellings but not lot width. Again, he asserted that the definition of "undersized lots" in Section 4A03.1 does not mention lot width.

Mr. Ferro testified in opposition to the request. He pointed out that to his knowledge many other owners of lots 50 feet in width have had to request and be granted variances to build on these lots. In addition, he presented a deed, which shows that the owner prior to the Petitioners held both lots in the same name. See Protestants Exhibits 1 and 2. He further presented a copy of the Zoning Commissioner's Policy Manual Section 101, which defines

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ownership as having a financial interest by a spouse. See Protestant's Exhibit 5. He noted that the two (2) lots were offered for sale by the prior owner together as shown by the multiple listing of the sale in Protestant's Exhibits 6 A and B.

From his personal knowledge having lived next to the subject properties for the past 16 years, he noted that both lots were always used as one residence, with the house on one (1) lot and a shed, swimming pool, privacy fence around the pool and boat on the other lot. He also noted that there is one (1) bulkhead which serves both lots where each meet the water and one (1) pier for both lots. Finally, he indicated that whenever the prior owner would have family gatherings-family members would park on both lots.

He presented several letters and a petition signed by neighbors in opposition to the petitioner's request. He opined that the new home on lot 10 would interfere with his family's privacy and would not be in character with the neighborhood. His wife, Robin Ferro, agreed with her husband's testimony and expressed concern that the new house would affect her use of her home.

Ms. Markel, a nearby neighbor, expressed her concern that having one (1) house on each 50-foot lot would change the character of the neighborhood, which has been developed primarily with one (1) house on two (2) lots. Mr. Creamer testified in rebuttal that the original 72 waterfront lots in the subdivision now are 52 lots and that 28 of this 52 are on 50-foot wide lots. He admitted that most of the homes on one 50-foot lot are located on Rockaway Beach Road and not Turkey Point Road.

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Findings of Fact and Conclusions of Law

Undersized Lot Issue

The Petitioner's arguments are unique. To my knowledge no one has ever interpreted Section 4A03 the way the Petitioners so brilliantly have. In my experience, these lots have always been considered in context of the small lot table of Section 1B02.3.C.1. It just shows there can be something new even in the world of zoning.

I agree with the Petitioner that the lots are lots of record certainly as of August, 1999. Therefore, I will confirm the Petitioner's request in this regard. I also agree that these lots are within the boundaries of the Bowley's Quarters/Back River Neck Road Growth Management area and are subject to the provisions of Section 4A03.

However, whether these lots are "undersize" is far from clear. First, Section 304 provides that a single-family dwelling may be erected on isolated undersized lots according to listed criteria. I think it is important to begin with the overview of this section that provides an administrative mechanism to build on these small isolated lots. Section 304 is primarily an administrative scheme. If the lot meets the criteria, and no one protests the administrative proceeding, the owner can obtain a building permit. While there is a provision for a public hearing if someone protests, the building permit can be issued in the ordinary course of County business.

However, in 1999 the County Council did not want to allow building permits in the Bowleys Quarters/Back River Neck area in the ordinary course of County business. The Council enacted a moratorium on building permits and wanted to be sure that permits were not issued administratively in this area unless new criteria would be met. Consequently, the Council enacted an exception to Section 304 sending permit applications in this area into a special

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process. The initial legislation establishing the moratorium and new process was first enacted by Bill 64-99 attached as Exhibit A hereto. This Bill gives the background for the legislation as follows:

"WHEREAS, in response to certain health considerations resulting from failed septic systems, the County has authorized a capital project for the extension of public sewer service to limited portions of the Bowleys Quarters and Back River Neck area of the 5th Councilmanic District depicted on the map attached as Exhibit A; and

WHEREAS, the capital project authorized by the County was only intended to provide sufficient sewer capacity to support existing residences served by private septic systems; and

WHEREAS, the extension of sewer service under the capital project is now anticipated to result in potential excess sewer capacity beyond that necessary to address public health concerns resulting from failed septic systems; and

WHEREAS, the County Council requested the Planning Board in Council Resolution No. 10-99 to recommend land use and growth management controls for certain properties in the Back River Neck and Bowleys Quarters areas of the County; and

WHEREAS, the County Council, by the adoption of Bill No. 14-99, temporarily suspended the authority to issue building permits for unimproved, residentially-zoned property lying within certain sections of the Back River Neck or Bowleys Quarters areas of the 5th Councilmanic District; and

WHEREAS, the Planning Board adopted a report on June 3, 1999 containing certain recommendations concerning the extension of public sewer service to existing and future development of residentially-zoned property lying within the Back River Neck and Bowleys Quarters areas of the 5th Councilmanic District; and

WHEREAS, the County Council believes legislation is necessary to implement a public sewer service and growth management policy for existing and future development of residentially-zoned property lying within certain sections of the Back River Neck or Bowleys Quarters areas of the 5th Councilmanic District; and

WHEREAS, the County Council held a public hearing on the Planning Board report on July 6, 1999; and

WHEREAS, the County Council believes that this legislation is necessary to protect the public health and to preserve the fragile environment of these areas; now, therefore"

Obviously, the Council was concerned that there would be rampant development in this area if the sewer lines intended to relieve failing septic systems on the waterfront were used by

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lot owners to build homes on vacant lots. The Bill background refers to a Planning Board Report of June 3, 1999 which dealt with this issue and is attached hereto as Exhibit B. The Planning Board Report established a pecking order for lot owners to hook up to the new sewer lines. Serving undersized lots was third on the list as shown. It is instructive to note that part C 1 notes that undersized lots include DR 3.5 lots of less than 70 feet in width and 10,000 sq. feet in area. These come from the small lot table of Section 1B02.3.C.1. It is also interesting to note that the Planning Board Report encourages combining small lots to meet the zoning regulations.

It is clear to me that the intent of Section 4A03 is simply to control growth. In reviewing the legislative history of this Section, I see no evidence that the Council intended to establish some new and very special zoning regulations for Bowleys Quarters/ Back River Neck area. The Council did not want the provisions of Section 304 to allow an end run around the growth management legislation and so added the exception in the first paragraph of Section 304.1.

It is equally clear to me that the Council thought it was adopting the undersize lot description of Section 304 in the subject legislation. Comparing Section 304 and Section 4A03.4 B, we see both have provisions that the owners do not own sufficient adjoining land, require lots of record before established dates, etc. But then things go poorly.

Section 304.1.B specifies that all other requirements of the height and area regulations are complied with. Clearly, this refers to the proposed dwelling on the lot. However, Section 4A03.1 defines undersized lot as a lot that "does not meet area, height or setback requirements". What on earth would it mean to have a lot meet height requirements? Does the Council want to take the height above sea level into account? Does this refer to how high the trees on the lots have grown? Clearly, this is not the intent of the legislation. There are no regulations on the

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height of lots in the BCZR or elsewhere. In the haste to pass the moratorium and establish the building permit process, the legislation regarding undersized lots did not make common sense.

Just as clearly, the words in Section 4A03.1 having to do with height and setback requirements refer to the proposed building on the lot just as subsection B of Section 304.1 refer to the proposed building on the lot.

This leaves us with the key question raised by the Petitioners. In their view, the Council left out the words lot width because they wanted to establish a new scheme of zoning in this area. They argue the Council is aware of our density zoning concept and, consistent with that philosophy, did not specify lot width.

On the other hand, it may be that the Council simply forgot to include "lot width' in the definition of "undersized lot" for this area. They obviously were following the provisions of Section 304 as a model to define undersize lot and Section 304 mentions under width lots as undersize.

To answer this question, again I look to the purpose of the legislation. What I see is a growth management bill, not a zoning bill. I see nothing in the background of the legislation that leads me to believe the Council intended to break with the many years of undersize lot cases to establish new criteria in this tiny portion of Baltimore County. To adopt the Petitioner's argument, I would have to see some uproar from the Council and/or the Planning Board that under width lots should no longer be considered undersize lots. But there is nothing to suggest the Council was addressing anything but growth management issues in the enacting legislation.

I do not believe the Council wanted to create some very special legislation defining undersized lots in a different way from the rest of the County in this comparatively tiny enclave.

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Defining undersized lots differently in this small area would not in any way I can imagine further the obvious goals of growth management in the area.

Consequently, I will deny the Petitioners' requests to declare the subject lots are not undersize. I hold that the small lot table of Section 1B02.3.C.1 applies to these lots and that the lots do not meet the 70-foot width required under the DR 3.5 regulations.

Zoning Merger Issue

The protestants have provided ample proof that the prior owner used both lots such that there was an intention to merge these lots. The shed on lot 10 would require a permit and a special hearing to allow an accessory building on a lot without a principal building unless the lots were merged. Similarly, the swimming pool on lot 10 and associated fence requires permits and special hearing to allow these accessory uses. I note that a similar pool was placed on the adjacent lot in the *Remes* case and found to be evidence of merger by the Court of Appeals. One (1) bulkhead, which always requires permits and one (1) pier, serve both lots. I find that the weight of evidence is overwhelming that the Petitioner's predecessor in title intended to merge the lots. Consequently, there is only one 100 x 260 foot lot for zoning purposes. As such I must deny the Petitioner's request to declare that the subject lots are not undersize. In fact they are not separate lots at all for zoning purposes.

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

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 29 day of November, 2005, that the Petitioners' request for special hearing relief

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By D. Lawrence Schmidt

filed pursuant to Sections 500.7 of the Baltimore County Zoning Regulations (BCZR), to determine that the lot is an existing lot of record is hereby GRANTED; and

IT IS FURTHER ORDERED that the Petitioners' request to confirm that these lots are not an undersized lot as defined in BCZR, Section 4A03.1, Growth Management Plan for Bowleys Quarters and Back River Neck areas is hereby DENIED.

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

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:dlw

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Date 11-29-05
By [illegible]

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: #06-044-SPH
2317 Turkey Point Road
S/side of Turkey Point Road, 700' feet west of centerline of Rockaway Beach Road
15th Election District — 6th Councilmanic District
Legal Owner(s): Jeffrey A. Creamer

Special Hearing: to determine that the lot is an existing lot of record, that it is not an undersized lot as defined in BCZR 4A03.1 Growth Management Plan for Bowleys Quarters and Back River Neck areas, and such other items related to the use of the lot for single family residence as may be presented at the hearing.

Hearing: Wednesday, September 14, 2005 at 9:00 a.m. in Room 106, County Office Building, 111 W. Chesapeake 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 8/766 August 30 64844

CERTIFICATE OF PUBLICATION

8/31, 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 8/30/2005.

- ☒ The Jeffersonian
- ☐ Arbutus Times
- ☐ Catonsville Times
- ☐ Towson Times
- ☐ Owings Mills Times
- ☐ NE Booster/Reporter
- ☐ North County News

S. Wilkinson

LEGAL ADVERTISING

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: 06-044-SPH

Petitioner: JEFFORY CROAMER

Address or Location: ~~1779 SHA~~ 2317 TURKEY POINT ROAD

PLEASE FORWARD ADVERTISING BILL TO:

Name: JEFFORY CROAMER

Address: 1779 SHAFTSBURY AVE
CROFTON, MD
21114

Telephone Number: 410-451-3013

Revised 2/20/98 - SCJ

Thomas J. Renner
William P. Englehart, Jr.
Robert L. Hanley, Jr.
Robert S. Glushakow
Douglas L. Burgess
C. William Clark
Catherine A. Potthast
E. Bruce Jones**
Cornelia M. Koetter*

* Also admitted in D.C.
**Also admitted in New Jersey

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(Retired 2000)

RALPH E. DEITZ
(1918-1990)

7-4-I
Appeal Hearing

RECEIVED
JUN 10 2004
ZONING COMMISSIONER

June 9, 2004

VIA HAND DELIVERY

Mr. Timothy M. Kotroco, Director
Department of Permits
and Development Management
111 West Chesapeake Avenue
Towson, Md 21204

RE: 2315 Turkey Point Road
Jeffrey Creamer, Petitioner

Dear Mr. Kotroco:

Enclosed herein please find an Appeal for immediate filing in connection with the above-captioned case.

Also enclosed please find this firm's check in the amount of $300.00 payable to Baltimore County, Maryland for the fee to file this Appeal.

If you have any questions, please contact me. Thank you for your anticipated cooperation.

Until then, I remain

Very truly yours,

C. William Clark

CWC/jkc

Enclosures
cc: Jeffrey Creamer
John V. Murphy
Peter Max Zimmerman, Esquire
Robin and Michael Ferro

NOLAN, PLUMHOFF & WILLIAMS, CHARTERED 16421

DATE : Jun 9/2004 C/A ACCOUNT
CHE # : 16421
AMOUNT: $300.00
ACCOUNT: GENERAL - 2
PAID TO: Baltimore County - Maryland

Appeal Filing Fee

CLIENT: 8855 - Jeffery Creamer
MATTER: 8855-1

16421
16421

NOLAN, PLUMHOFF & WILLIAMS, CHARTERED
C.A. ACCOUNT
NOTTINGHAM CENTER SUITE 700 502 WASHINGTON AVENUE
TOWSON, MD 21204-4528
(410) 823-7800

MERCANTILE-SAFE DEPOSIT & TRUST COMPANY
BALTIMORE, MARYLAND 21090 91
7-61-520

Three Hundred ********** 00/100
DATE AMOUNT

Jun 9/2004 $300.00

Details on back.

PAY TO THE ORDER OF Baltimore County - Maryland

Appeal Filing Fee

VOID IF NOT PRESENTED WITHIN 60 DAYS FROM DATE OF ISSUE

C. William Clark MP
AUTHORIZED SIGNATURE

Security Features Included.

⑈00016421⑈ ⑆052000618⑆ 6306721⑈

NOLAN, PLUMHOFF & WILLIAMS, CHARTERED 16421

DATE : Jun 9/2004 C/A ACCOUNT
CHE # : 16421
AMOUNT: $300.00
ACCOUNT: GENERAL - 2
PAID TO: Baltimore County - Maryland
Appeal Filing Fee
8855 - Jeffery Creamer
MATTER: 8855-1
LAWYER: C. William Clark
1779 Shaftsbury Avenue

Crofton
MD
21114
2315 Turkey Point Road- Undersized Lot

** GENERAL BALANCES **
UNBILLED DISBS: 0.00
A/R BALANCE : 0.00

** TRUST BALANCES **

TRUST BALANCE : 0.00

DELUXE BUSINESS FORMS 1+800-328-0304 www.deluxeforms.com

NOLAN, PLUMHOFF & WILLIAMS, CHARTERED

17923

DATE : Dec 28, 2005 C/A ACCOUNT
CHE # : 17923
AMOUNT: $200.00
ACCOUNT: GENERAL - 2
PAID TO: Baltimore County, Maryland

filing fee for appeals

CLIENT: 8855 - Jeffery Creamer
MATTER: 8855-1

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 1045

DATE 1/12/06 ACCOUNT 001-006-6150

AMOUNT $ 200.00

RECEIVED FROM: Nolan Plumhoff

FOR: Appeals (2) -06-044-SPH +
06-045-SPH

DISTRIBUTION
WHITE - CASHIER · PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
1/13/2006	1/12/2006	15:24:02	2

REG W502 MAIL JEVA JEE
=>RECEIPT # 449511 1/12/2006 OFLN
Dept 5 528 ZONING VERIFICATION
CR NO. 001045
Recpt Tot $200.00
$200.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

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

August 2, 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: 06-044-SPH
2317 Turkey Point Road
S/side of Turkey Point Road, 700 feet west of centerline of Rockaway Beach Road
15th Election District – 6th Councilmanic District
Legal Owner: Jeffrey A. Creamer

Special Hearing to determine that the lot is an existing lot of record, that it is not an undersized lot as defined in BCZR 4A03.1 Growth Management Plan for Bowleys Quarters and Back River Neck areas, and such other items related to the use of the lot for single family residence as may be presented at the hearing.

Hearing: Wednesday, September 14, 2005 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson 21204

Timothy Kotroco
Director

TK:klm

C: C. William Clark, 502 Washington Avenue, Towson 21204
Jeffrey Creamer, 1779 Shaftsbury Avenue, Crofton 21114

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, AUGUST 30, 2005.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY
Tuesday, August 30, 2005 Issue - Jeffersonian

Please forward billing to:
Jeffrey A. Creamer
1779 Shaftsbury Avenue
Crofton, MD 21114

410-451-3013

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WILLIAM WISEMAN
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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(2) 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

October 12, 2006

NOTICE OF DELIBERATION

IN THE MATTER OF:

JEFFREY A CREAMER –Case No. 06-044-SPH
CAROLE CREAMER – Case No. 06-045-SPH
Carole Creamer and Jeffrey Creamer – Case No. CBA-04-137

Having heard this matter on 10/11/06, public deliberation has been scheduled for the following date /time:

DATE AND TIME : **WEDNESDAY, DECEMBER 6, 2006 at 9:00 a.m.**

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

NOTE: Closing briefs are due on Friday, October 27, 2006
(Original and three [3] copies)

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.
TO ALL PARTIES.

Kathleen C. Bianco
Administrator

---

c: Counsel for Appellant /Petitioner : C. William Clark, Esquire
Appellant /Petitioner : Jeffrey Creamer
Legal Owner : Carole Creamer
Jim Patton, P.E. /Patton Consultants, Ltd.
Robert Creamer
Howard V. French
Wayne Wunder

Counsel for Protestants : Francis X. Borgerding, Jr., Esquire
Protestants : Robin and Michael Ferro
Joanne Markel

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

FYI: 3-5-7

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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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

May 16, 2006

NOTICE OF POSTPONEMENT & REASSIGNMENT

CASE #: 06-044-SPH — **IN THE MATTER OF: JEFFREY A. CREAMER –Legal Owner /Petitioner**
2317 Turkey Point Road 15th E; 6th C

and

CASE #: 06-045-SPH — **IN THE MATTER OF: CAROLE A. CREAMER –Legal Owner /Petitioner**
2315 Turkey Point Road 15th E; 6th C

11/29/2005 – D.Z.C.'s decision in which determination that lot is an existing lot of record was GRANTED and that it is not an undersized lot per BCZR 4A03.1 Growth Management Plan for Bowleys Quarters and Back River Neck areas was DENIED.

and

CASE #: CBA-04-137 — **IN THE MATTER OF: CAROLE CREAMER – Legal Owner; JEFFREY CREAMER – Petitioner** 2315 Turkey Point Road 15th E; 6th C

5/10/04 – D.Z.C.'s Order on Reconsideration /Application for Undersized Lot was DENIED.

which was scheduled to be heard on 6/29/06 has been POSTPONED at the request of Counsel for Protestants and, upon confirmation of dates with Counsel to this matter, has been

REASSIGNED FOR: **WEDNESDAY, OCTOBER 11, 2006 at 10 a.m. /Day #1 and**
THURSDAY, OCTOBER 12, 2006 at 10 a.m. / Day #2

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 : C. William Clark, Esquire
Appellant /Petitioner : Jeffrey Creamer
Legal Owner : Carole Creamer
Jim Patton, P.E. /Patton Consultants, Ltd.
Robert Creamer
Howard V. French
Wayne Wunder

Counsel for Protestants : Francis X. Borgerding, Jr., Esquire
Protestants : Robin and Michael Ferro
Joanne Markel

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

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CBCA / FLOOD

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at 2317 TURKEY POINT ROAD
which is presently zoned DPE-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 Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

(SEE ATTACHED)

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

N/A
Name - Type or Print

Signature

Address Telephone No.

City State Zip Code

Attorney For Petitioner:

C. WILLIAM CLARK
Name - Type or Print

Signature

NOLAN PLUMHOFF WILLIAMS
Company

502 WASHINGTON AVE 410-823-7800
Address Telephone No.

TOWSON MD 21204
City State Zip Code

Legal Owner(s):

JEFFREY A. CREAMER
Name - Type or Print

Signature

Name - Type or Print

Signature

1779 SHAFTSBURY AVE. 410-451-3013
Address Telephone No.

CROFTON, MD. 21114
City State Zip Code

Representative to be Contacted:

C. WILLIAM CLARK
Name

Address Telephone No.

City State Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By BR **Date** 7/22/05

Case No. 06-044-SPH

REV 9/15/98

ORDER RECEIVED FOR FILING
Date 7-29-05
By D. Supple

ATTACHMENT TO
PETITION FOR SPECIAL HEARING
2317 TURKEY POINT ROAD

To determine that the lot is an existing lot of record; that it is not an undersized lot as defined in BCZR Section 4A03.1 Growth Management Plan for Bowleys Quarters and Back River Neck areas, and such other items related to the use of the lot for a single family residence as may be presented at the hearing.

#044

PATTON
Patton Consultants Ltd. Engineering & Site Planning

ZONING DESCRIPTION FOR 2317 TURKEY POINT ROAD

Beginning at a point on the SOUTH Side of TURKEY POINT ROAD which is FIFTY (50) feet wide at the distance of 700 feet +/- west of the centerline of the nearest improved intersecting street ROCKAWAY BEACH ROAD which is FIFTY (50) wide. Being Lot # 11 Tax Map 58 Parcel #211 in the subdivision of TURKEY POINT FARM as recorded in Baltimore County Plat Book # 4, Folio 171, containing 13,500 square feet. Also known as 2317 TURKEY POINT ROAD and located in the 15 Election District, 6th Councilmanic District.

STATE OF MARYLAND
JAMES STEPHEN PATTON
No. 9493
REGISTERED
PROFESSIONAL ENGINEER

305 West Chesapeake Avenue, Suite 206, Towson, Maryland 21204
410-296-2140 Fax 410-296-0419

#044

PLEASE SCHEDULE BACK-TO-BACK HEARINGS FOR CASES #06-044-SPH AND #06-045-SPH. THANK YOU.

RECEIVED

NOV - 2 2005

ZONING COMMISSIONER

CERTIFICATE OF POSTING

RE: Case No.: 06-044-SPH

Petitioner/Developer: JEFFREY A. CREAMER

Date of Hearing/Closing: NOV 8, 2005

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

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

Ladies and Gentlemen:

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

2317 TURKEY PT. RD

The sign(s) were posted on 10-24-05
(Month, Day, Year)

Sincerely,

Robert Black 10-26-05
(Signature of Sign Poster) **(Date)**

SSG Robert Black

(Print Name)

1508 Leslie Road

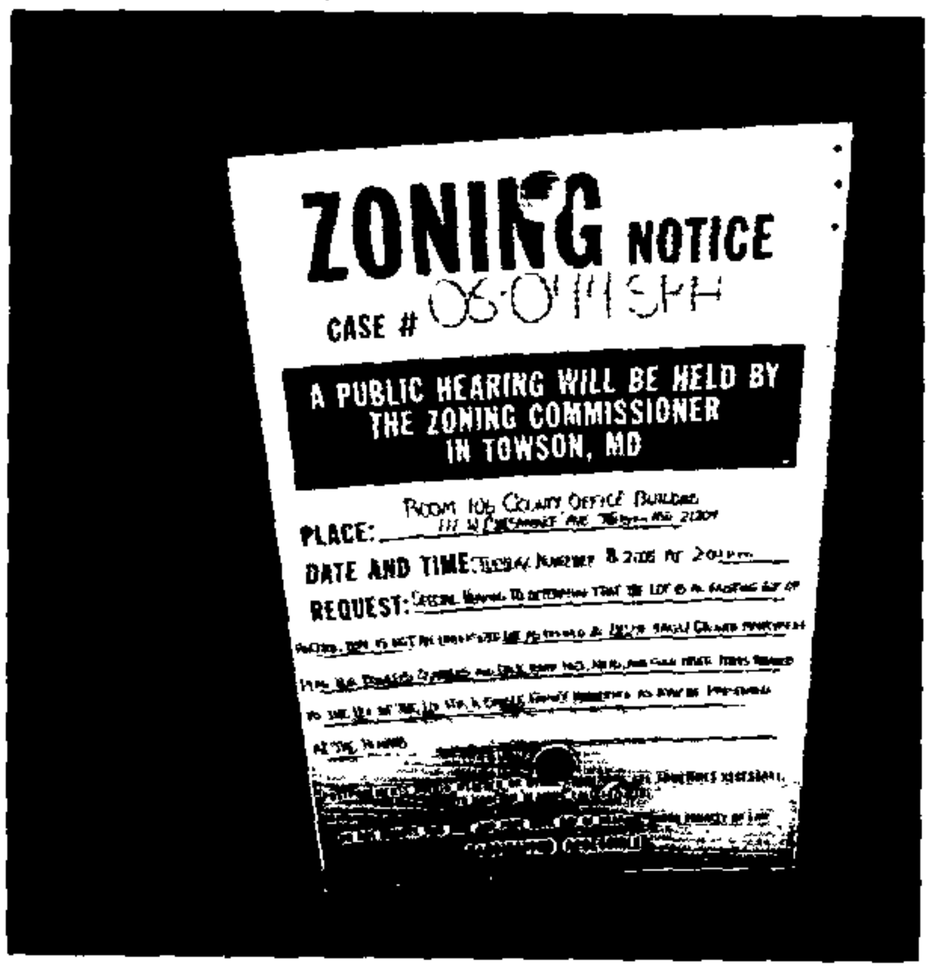
(Address)

Dundalk, Maryland 21222

(City, State, Zip Code)

(410) 282-7940

(Telephone Number)



CERTIFICATE OF POSTING

RE: Case No.: 06-044-SPH

Petitioner/Developer: JEFFREY A CREAMER

Date of Hearing/Closing: SEPT 14, 2005

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

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

Ladies and Gentlemen:

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

2317 TURKEY PT. ROAD

The sign(s) were posted on 8-29-05
(Month, Day, Year)

Sincerely,

Robert Black 8-30-05
(Signature of Sign Poster) (Date)

SSG Robert Black

(Print Name)

1508 Leslie Road

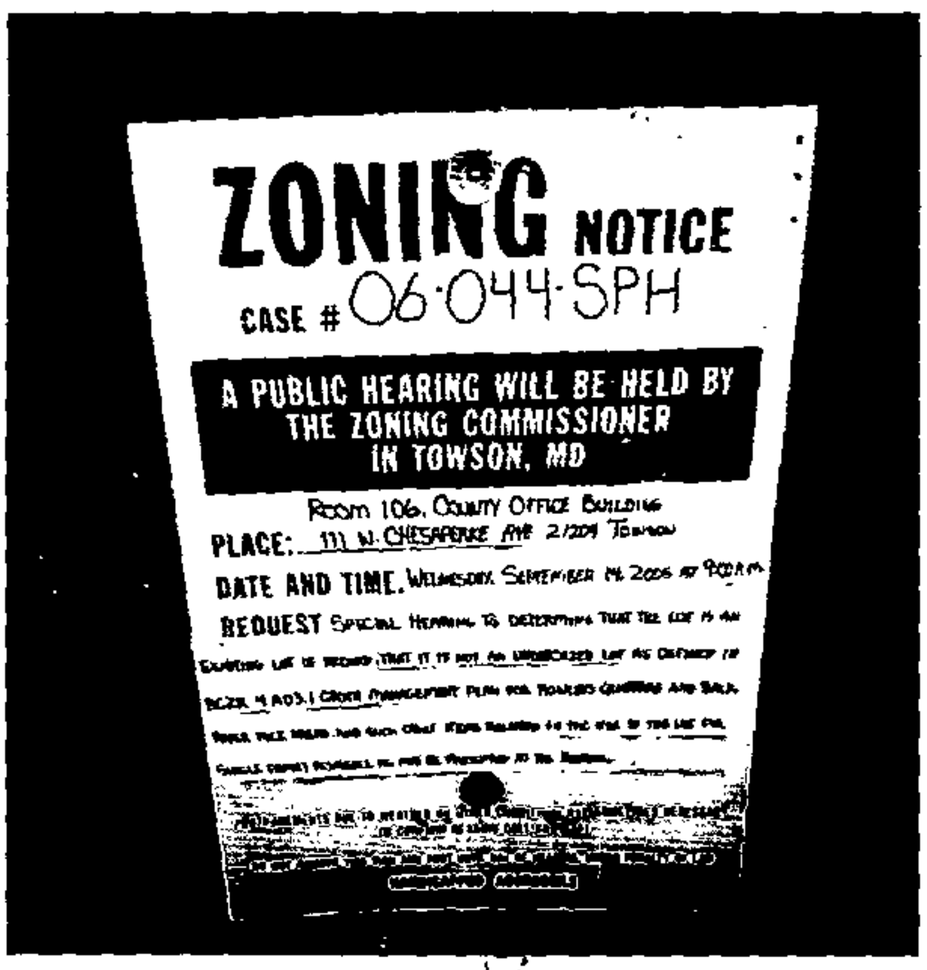
(Address)

Dundalk, Maryland 21222

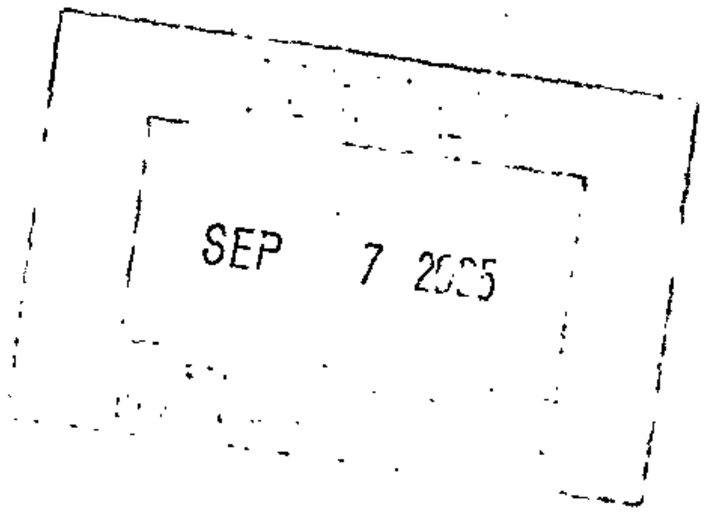
(City, State, Zip Code)

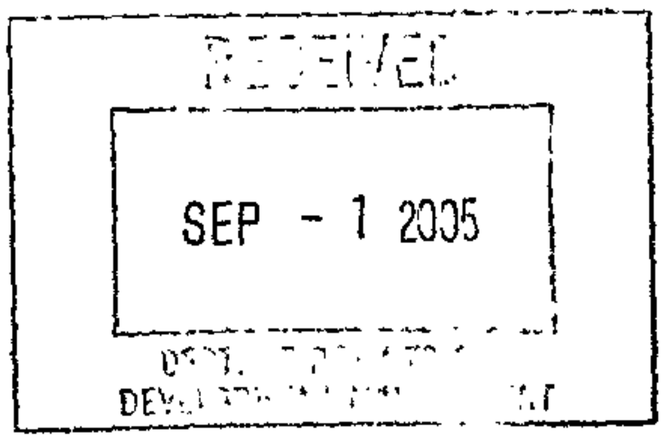
(410) 282-7940

(Telephone Number)



2317 TURKEY PT.


SEP 7 2005


RECEIVED
SEP - 1 2005

APPEAL SIGN POSTING REQUEST

CASE NO. 06-044-SPH

2317 TURKEY POINT ROAD

15TH ELECTION DISTRICT APPEALED: 12/28/05

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.: 06-044-SPH

LEGAL OWNER: JEFFREY A. CREAMER

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

2317 TURKEY POINT ROAD
S/S TURKEY POINT ROAD, 800' E OF
ROCKAWAY BEACH ROAD

The sign was posted on 2/2, 2006.

By: _____
(Signature of Sign Poster)

Jeff Radcliffe
(Print Name)

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

September 5, 2005

C. William Clark
Nolan, Plumhoff & Williams
502 Washington Avenue
Towson, Maryland 21204

Dear Mr. Clark

RE: Case Number: 06-044-SPH, 2317 Turkey Point Road

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on July 22, 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
Jeffrey A. Creamer 1779 Shaftsbury Avenue Crofton 21114

Printed on Recycled Paper

BW 9/14

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: August 29, 2005

RECEIVED

AUG 31 2005

ZONING COMMISSIONER

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

SUBJECT: Zoning Advisory Petition(s): **Case(s) 6-044- Special Hearing** ***(see case 6-045)***
2317 Turkey Point Road

The Office of Planning has reviewed the subject request and has determined that the petitioner owns *sufficient adjoining land to conform to the minimum width and area requirements* and therefore does not meet the standards stated in Section 304.1.C of the BCZR. However, there appears to be several existing undersized lots in the neighborhood. As such, this office does not oppose the petitioner's request.

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

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

For further questions or additional information concerning the matters stated herein, please contact David Pinning with the Office of Planning at 410-887-3480.

Prepared By: Curtis Lewis

Division Chief: Lynn Lanham

CM/LL

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: August 10, 2005

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

SUBJECT: Zoning Advisory Committee Meeting
For August 15, 2005
Item No. 044

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

For any new construction-

The flood protection elevation for this site is 10.4.

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

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

The building engineer shall require a permit for this project.

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

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

DAK:CEN:clw
cc: File
ZAC-ITEM NO 044-08102005.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

August 3, 2005

ATTENTION: Zoning Review planners

Distribution Meeting of: August 8, 2005

Item No.: 044, 045, 046, 047, 048, 049, 050, 051, 052, 053, 054, 055, 056, 057, 058, 059, 060, 061, 062, 063, 064, 065 and 066.

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

1. The Fire Marshal's Office has no comments at this time.

Acting Lieutenant Don W. Muddiman
Fire Marshal's Office
410-887-48810
MS-1102F

cc: File

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

State Highway Administration
Driven to Excel
Maryland Department of Transportation

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

Date: 8.2.05

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

RE: Baltimore County
Item No. 044 BPR

Dear. Ms. Matthews:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not affected by any State Highway Administration projects.

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

Very truly yours,

Steven D. Foster, Chief
Engineering Access Permits Division

Apr 11/8

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

RECEIVED

OCT 21 2005

ZONING COMMISSIONER

TO: Timothy M. Kotroco

FROM: R. Bruce Seeley

DATE: September 7, 2005

SUBJECT: Zoning Item # 06-044
Address 2917 Turkey Point Road
Creamer Property

Zoning Advisory Committee Meeting of August 8, 2005

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

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

Additional Comments:

This property must comply with the Limited Development Area (LDA) and the Buffer Management Area (BMA) sections of the Critical Area regulations. Impervious surfaces are limited to 25% of the lot and no structures may be built in the one hundred foot (100') buffer unless there are no alternate locations outside the buffer and adequate mitigation is provided.

Reviewer: Glenn Shaffer Date: September 1, 2005

S:\Devcoord\ZAC06-044.doc

Department of Permits and Development Management

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

Baltimore County

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

January 13, 2006

C. William Clark, Esquire
Nolan, Plumhoff & Williams
Suite 700, Nottingham Centre
502 Washington Avenue
Towson, MD 21204

Dear Mr. Clark:

RE: Case 06-044-SPH: 2317 Turkey Point Road

Please be advised that we received your appeal of the above-referenced case on December 28, 2005. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

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

Sincerely,

Timothy Kotroco

Timothy Kotroco
Director

RECEIVED
JAN 13 2006
BALTIMORE COUNTY
BOARD OF APPEALS

TK:raj

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, *Director of PDM*
People's Counsel
Mr. & Mrs. Jeffrey A. Creamer, 1779 Shaftsburg Avenue, Crofton, MD 21114
Mr. Jim Patton, P.E., *Patton Consultants*, Ltd., 780 Elkridge Landing Rd., #104, Linthicum, MD 21090
Mr. Robert Creamer, 91 Dunkirk Road, Baltimore, MD 21222
Mr. Howard V. French, 320 Greyhound Road, Essex, MD 21221
Mr. Wayne Wunder, 2322 *Turkey Point Road*, Essex, MD 21221
Francis X. Borgerding, Jr., Esquire, 409 Washington Avenue, Suite 600, Towson, MD 21204
Mr. & Mrs. Michael Ferro, 2313 Turkey Point Road, Baltimore, MD 21221
Ms. Joanne Markel, 2321 *Turkey Point Road*, Baltimore, MD 21221

Printed on Recycled Paper

APPEAL

Petition for Special Hearing
2317 Turkey Point Road
S/S Turkey Point Road, 800' E of Rockaway Beach Road
15th Election District, 6th Councilmanic District
Jeffrey A. Creamer – Owner

Case No.: 06-044-SPH

Petition for Special Hearing (July 22, 2005)

Zoning Description of Property

Notice of Zoning Hearing (August 2, 2005)

Certification of Publication (August 30, 2005) – The Jeffersonian

Certificates of Posting (August 29, 2005 & October 24, 2005) by Robert Black

Entry of Appearance by People's Counsel (August 5, 2005)

Petitioner(s) Sign-In Sheet

Protestant(s) Sign-In Sheet - None

Citizen(s) Sign-In Sheet –

Zoning Advisory Committee Comments

Petitioners' Exhibits:

1A Site Plan to Accompany 2317 Turkey Point Road
1B Site Plan to Accompany 2315 Turkey Point Road
2 Deed signed 9/11/02 between Antoinette J. Schield & Jacqueline C. Stump,Co-Personal Reps of the Estate of Lillian A. Kleinsmith and Jeffrey A. Creamer for Lot #11
3A –3E Photographs of Property
4 Deed signed 9/11/02 between Antoinette J. Schield, Jacqueline C. Stump & Lynn L. Collins and Carole A. Creamer for Lot #10
5 Resume of James S. Patton, P.E.
6 Plat for "turkey Point Farm", Rockaway Beach
7 Photocopy of Sec. 304 – 307 of the B.C.Z.R.
8 Photocopy of Sec. 4A03.1 – 4A03.5 of the B.C.Z.R.
9 B.C.Z.R. – Definitions (Laboratory – Medical Practitioner)

Protestants' Exhibits:

1. Deed dated June 27, 1952 between Katherine E. Kilchenstein and Mildred E. Belsinger & Herman Belsinger and William J. Kleinsmith and Lillian A. Kleinsmith.
2. Deed dated September 3, 1969 between Lillian R. Klingel and William J. Kleinsmith & Lillian A. Kleinsmith.
3. Deed dated November 15, 1994 between Lillian A. Kleinsmith and Lillian A. Kleinsmith.

4A Deed dated September 11, 2002 between Antoinette J. Schield, Jacqueline C. Stump & Lynne L. Collins and Carole C. Creamer.
4B Deed dated September 11, 2002 between Antoinette J. Schield, Jacqueline C. Stump, Co-Personal Representatives of the Estate of Lillian A. Kleinsmith and Jeffrey A. Creamer.
5 Zoning Commissioner's Policy Manual – Sec. 101 – Definitions
6A Advance Realty, Inc. real estate listing for 2317 Turkey Point Road
6B Advance Realty, Inc. real estate listing for both 2315 & 2317 Turkey Point Road
7A-7I Photographs
8 Petition (Exhibit "M") opposing construction of new dwelling on undersized lot
9 May 12, 2004 letter to C. William Clark, Esquire from John V. Murphy, Deputy Zoning Commissioner
10 (A-B) Photographs
11 (A-D) Letters of Opposition
12 (A-B) Photographs
13 Letter of opposition from Charles Markel

Miscellaneous (Not Marked as Exhibit)

1. Letter from Pat Keller to Councilman Kamenetz (6/8/1999)
2. Appeal dated June 9, 2004 for decision on undersized lot: 2315 Turkey Point Road
3. County Council Bill No. 28-01
4. County Council Bill No. 64-99
5. Bill 28-01 (Page 1)
6. Growth Management, Sec. 4A03 (Pages 4A-15 thru 4A-18
7. October 12, 2005 request for postponement from C. William Clark, Esquire
8. October 20, 2005 letter to C. William Clark, Esquire from Zoning Commissioner William J. Wiseman, III rescheduling hearing on November 8, 2005

Deputy Zoning Commissioner's Order with exhibits (11/29/05)

Notice of Appeal received on December 28, 2005 by C. William Clark, Esquire

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
C. William Clark, Esq., Nolan, Plumhoff & Williams, Suite 700, Nottingham Centre 502 Washington Avenue, Towson, MD 21204
Mr. & Mrs. Jeffrey A. Creamer, 1779 Shaftsburg Avenue, Crofton, MD 21114
Mr. Jim Patton, P.E., Patton Consultants, Ltd., 780 Elkridge Landing Rd., #104, Linthicum, MD 21090
Mr. Robert Creamer, 91 Dunkirk Road, Baltimore, MD 21222
Mr. Howard V. French, 320 Greyhound Road, Essex, MD 21221
Mr. Wayne Wunder, 2322 Turkey Point Road, Essex, MD 21221
Francis X. Borgerding, Jr., Esquire, 409 Washington Avenue, Suite 600, Towson, MD 21204
Mr. & Mrs. Michael Ferro, 2313 Turkey Point Road, Baltimore, MD 21221
Ms. Joanne Markel, 2321 Turkey Point Road, Baltimore, MD 21221

date sent January ~~10~~ 13, 2006, raj

APPEAL

Petition for Special Hearing
2317 Turkey Point Road
S/S Turkey Point Road, 800' E of Rockaway Beach Road
15th Election District, 6th Councilmanic District
Jeffrey A. Creamer – Owner

Case No.: 06-044-SPH

RECEIVED
JAN 13 2006
BALTIMORE COUNTY
BOARD OF APPEALS

RECEIVED
BALTIMORE COUNTY
BOARD OF APPEALS

✓ Petition for Special Hearing (July 22, 2005)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (August 2, 2005)

✓ Certification of Publication (August 30, 2005) – The Jeffersonian

✓ Certificates of Posting (August 29, 2005 & October 24, 2005) by Robert Black

✓ Entry of Appearance by People's Counsel (August 5, 2005)

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Protestant(s) Sign-In Sheet - None

✓ Citizen(s) Sign-In Sheet –

✓ Zoning Advisory Committee Comments

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✓ 5 Resume of James S. Patton, P.E.
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Miscellaneous (Not Marked as Exhibit)
1. Letter from Pat Keller to Councilman Kamenetz (6/8/1999) ✓
2. Appeal dated June 9, 2004 for decision on undersized lot: 2315 Turkey Point Road ✓
3. County Council Bill No. 28-01
4. County Council Bill No. 64-99
5. Bill 28-01 (Page 1)
6. Growth Management, Sec. 4A03 (Pages 4A-15 thru 4A-18
7. October 12, 2005 request for postponement from C. William Clark, Esquire
8. October 20, 2005 letter to C. William Clark, Esquire from Zoning Commissioner William J. Wiseman, III rescheduling hearing on November 8, 2005

✓ Deputy Zoning Commissioner's Order with exhibits (11/29/05)

✓ Notice of Appeal received on December 28, 2005 by C. William Clark, Esquire

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
C. William Clark, Esq., Nolan, Plumhoff & Williams, Suite 700, Nottingham Centre 502 Washington Avenue, Towson, MD 21204
Mr. & Mrs. Jeffrey A. Creamer, 1779 Shaftsburg Avenue, Crofton, MD 21114
Mr. Jim Patton, P.E., Patton Consultants, Ltd., 780 Elkridge Landing Rd., #104, Linthicum, MD 21090
Mr. Robert Creamer, 91 Dunkirk Road, Baltimore, MD 21222
Mr. Howard V. French, 320 Greyhound Road, Essex, MD 21221
Mr. Wayne Wunder, 2322 Turkey Point Road, Essex, MD 21221
Francis X. Borgerding, Jr., Esquire, 409 Washington Avenue, Suite 600, Towson, MD 21204
Mr. & Mrs. Michael Ferro, 2313 Turkey Point Road, Baltimore, MD 21221
Ms. Joanne Markel, 2321 Turkey Point Road, Baltimore, MD 21221

13
date sent January ~~10~~. 2006. rai

RE: PETITION FOR SPECIAL HEARING 2317 Turkey Point Road; S/side Turkey Point Rd, 700' W c/line Rockaway Beach Road 15th Election & 6th Councilmanic Districts Legal Owner(s): Jeffrey A. Creamer Petitioner(s)	*	BEFORE THE
	*	ZONING COMMISSIONER
	*	FOR
	*	BALTIMORE COUNTY
	*	06-044-SPH

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

ENTRY OF APPEARANCE

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

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

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of August, 2005, a copy of the foregoing Entry of Appearance was mailed to C. William Clark, Esquire, Nolan, Plumhoff & Williams, Chtd., 502 Washington Avenue, Suite 700, Towson, MD 21204 , Attorney for Petitioner(s).

RECEIVED
AUG 05 2005
Per

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

Zoning Commissioner

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

Baltimore County

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

October 20, 2005

C. William Clark, Esquire
Nolan, Plumhoff & Williams
502 Washington Avenue
Towson, Maryland 21204

RE: PETITIONS **FOR SPECIAL HEARING**
(2317 & 2315 Turkey Point Road)
Jeffrey A. Creamer & Carole C. Creamer, Respective Property Owners/Petitioners
Cases Nos. 06-044-SPH and 06-045-SPH

Dear Mr. Clark:

This letter is to confirm that the above-captioned matters, which were scheduled for a public hearing on Wednesday, September 14, 2005, were postponed as the result of a failure to post one of the properties with public notice of the hearing. Since the parcels are adjoining lots owned by related individuals, it was agreed that both cases would be postponed and rescheduled at my earliest convenience. By agreement of the parties, the cases have been rescheduled for a public hearing on Tuesday, November 8, 2005 at 2:00 PM in Room 106 of the County Office Building. Accordingly, please arrange to have the properties posted with notice of the new hearing date, time and location by no later than Monday, October 24, 2005. Since the property in Case No. 06-045-SPH was posted and advertised for the first hearing, it will only be necessary to re-post that property. However, the property in Case No. 06-044-SPH must be advertised in addition to being re-posted.

As you know, I recently was made aware that the property known as 2315 Turkey Point Road was the subject of a prior zoning hearing before Deputy Zoning Commissioner John V. Murphy. In that matter, the Petitioners filed jointly for relief, seeking approval of that property as an undersized lot, pursuant to Section 304 of the B.C.Z.R. By his Order dated May 10, 2004, Deputy Commissioner Murphy denied the request. Under the circumstances, I believe it appropriate that Deputy Commissioner Murphy hear these cases and he has been scheduled to do so on November 8, 2005.

Thank you for your consideration in this matter and should you have any questions on the subject, please do not hesitate to call me.

Very truly yours,

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:bjs

cc: Mr. & Mrs. Jeffrey A. Creamer, 1779 Shaftsbury Avenue, Crofton, Md. 21114
Francis X. Borgerding, Jr., Esquire, 409 Washington Avenue, Suite 600, Towson, Md. 21204
Deputy Commissioner John V. Murphy
Ms. Kristen Matthews, DPDM; People's Counsel; Case File

C. William Clark

(410) 823-7850

email
cwclark@nolanplumhoff.com

Law Offices
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
(410) 823-7800
TELEFAX: (410) 296-2765
email: npw@nolanplumhoff.com
Web: www.nolanplumhoff.com

J. EARLE PLUMHOFF
(1940-1988)

NEWTON A. WILLIAMS
(RETIRED 2000)

RALPH E. DEITZ
(1918-1990)

RECEIVED
OCT 12 2005
ZONING COMMISSIONER

October 12, 2005

VIA HAND DELIVERY

John V. Murphy, Deputy Zoning Commissioner
Suite 405 County Courts Building
401 Bosley Avenue
Towson, MD 21204

11/7 at 11/8 @ 2pm ?

Re: 2315 and 2317 Turkey Point Road
Case Nos: 06-044 SPH and 06-045 SPH

Dear Mr. Murphy:

Presently, the above two cases are scheduled for a Hearing on Wednesday, October 26, 2005 at 2: 00 p.m. Pursuant to our telephone conversation this morning, this letter is to confirm that the property located at 2317 Turkey Point Road has not been posted or advertised to the general public. Therefore, I must request that this Hearing be postponed. I will contact Betty tomorrow to obtain new dates in which this Hearing may be conducted.

Please contact me if you have any questions or require any additional information. Thank you.

Very truly yours,

C. William Clark

CWC/jkc

cc: Frank X. Borgending, Esquire
Mr. and Mrs. Jeffrey A. Creamer

C. William Clark

(410) 823-7850

email
cwclark@nolanplumhoff.com

Law Offices
NOLAN, PLUMHOFF & WILLIAMS
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Web: www.nolanplumhoff.com

J. EARLE PLUMHOFF
(1940-1988)

NEWTON A. WILLIAMS
(RETIRED 2000)

RALPH E. DEITZ
(1918-1990)

October 27, 2006

VIA HAND DELIVERY

Baltimore County Board of Appeals
ATTN: Kathy Bianco
Old Courthouse Room 49
400 Washington Avenue
Towson, MD 21204

Re: 2315 and 2317 Turkey Point Road
Jeffery Creamer, Petitioner
Carole C. Creamer, Petitioner
Case No: 06-044-SPH, 06-045-SPH, and CBA-04-137

Dear Ms. Bianco:

Enclosed herein please find a Memorandum of Petitioners Jeffrey A. Creamer and Carole C. Creamer in reference to the above property.

If you have any questions or concerns regarding this matter, please contact my office.

Thank you for your attention to this matter.

Very truly yours,

C. William Clark

CWC/jkc

Enclosures

cc: Jeffrey and Carole Creamer
Peter Max Zimmerman, Esquire
Francis X. Borgerding, Jr., Esquire

I put the exhibits in the proper places in the file LSW 12/5/06

RECEIVED
OCT 27 2006
BALTIMORE COUNTY
BOARD OF APPEALS

FRANCIS X. BORGERDING, JR.

Attorney at Law

MERCANTILE BUILDING - SUITE 600
409 WASHINGTON AVENUE
TOWSON, MARYLAND 21204
(410) 296-6820
FAX (410) 296-6884

May 3, 2006

County Board of Appeals of Baltimore County
Old Courthouse - Roojm 49
400 Washington Avenue
Towson, Maryland 21204

RE: In the Matter of Jeffrey A. Creamer, Legal Owner, Petitioner
2317 Turkey Point Road
Case No.: 06-044-SPH
and
In the Matter of Carole A. Creamer, Legal Owner, Petitioner
2315 Turkey Point Road
Case No.: 06-045-SPH
and
In the Matter of Carole Creamer, Legal Owner,
Jeffrey Creamer, Petitioner
2315 Turkey Point Road
Case No.: CBA-04-137

RECEIVED
MAY 05 2006
BALTIMORE COUNTY
BOARD OF APPEALS

Dear Sir/Madam:

I am writing to request a postponement of the above-referenced cases now scheduled for hearing before the Board on Thursday, June 29, 2006, at 10:00 a.m. The reason for my request for postponement is I will be out of the state on vacation on June 29, 2006. I apologize for any inconvenience this request may cause. If you have any questions in relation to this request, please do not hesitate to contact me.

Very truly yours,

FRANCIS X. BORGERDING, JR.

FXBJr:bjk
cc: C. William Clark, Esquire
Office of People's Counsel

PLEASE PRINT CLEARLY

CASE NAME 06-044 / 06-045
CASE NUMBER CREAMER
DATE 11/8/05

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Jeffrey A. Creamer	1779 Shaftsbury Ave	Crofton, MD 21114	
Carole C. Creamer	" "		
Jim Patton	780 Elkridge Landing Rd #109	Linthicum MD. 21090	Cell 410. 960. 8280 410. 691. 0205 fax 410. 691. 0207 jsp@pattonengineers.net
Robert H. Kramick	91 Dunkirk Rd	Baltimore MD. 21222	
Howard V French	320 Greyhound Rd	Essex MD 21221	
Wayne Wunder	2322 Turkey Point Rd	Essex Md 21221	
C. William Clark	502 Washington Ave	Towson, MD 21286	

PLEASE PRINT CLEARLY

CASE NAME_____
CASE NUMBER_____
DATE_____

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Francis X. Borgerding, Jr.	409 Washington ave suite 600	Towson, md 21204	
Michael Ferro	2313 Turkey PT. Rd	Balto MD 21221	
Robin Ferro	2313 Turkey Point Rd	Balto Md 21221	
JOANNE MARKEL	2321 TURKEY Point Road	BALT 21221	

Plat to accompany Petition for Zoning ☐ Variance ☒ Special Hearing

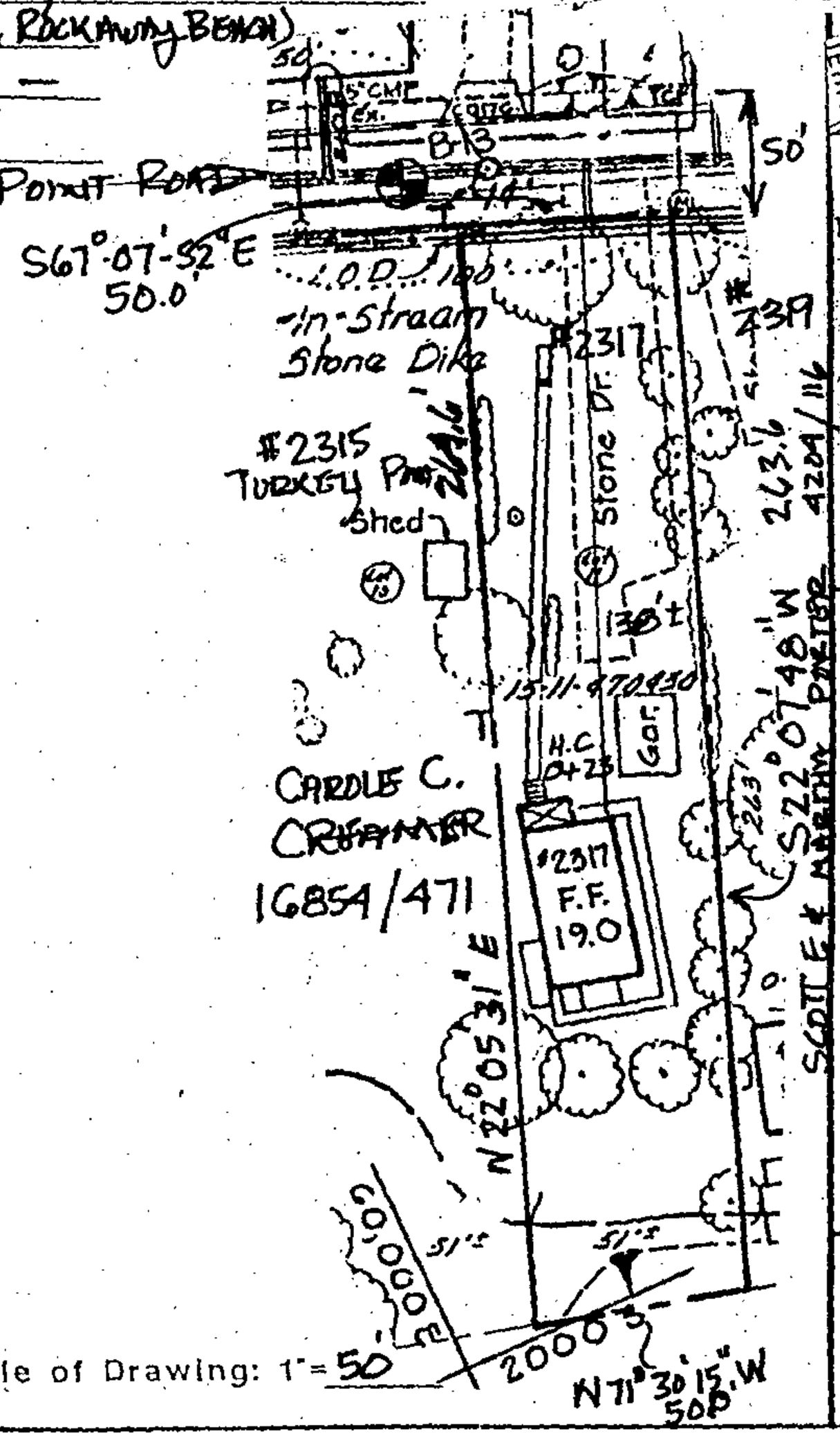
PROPERTY ADDRESS: 2317 TURKEY POINT ROAD

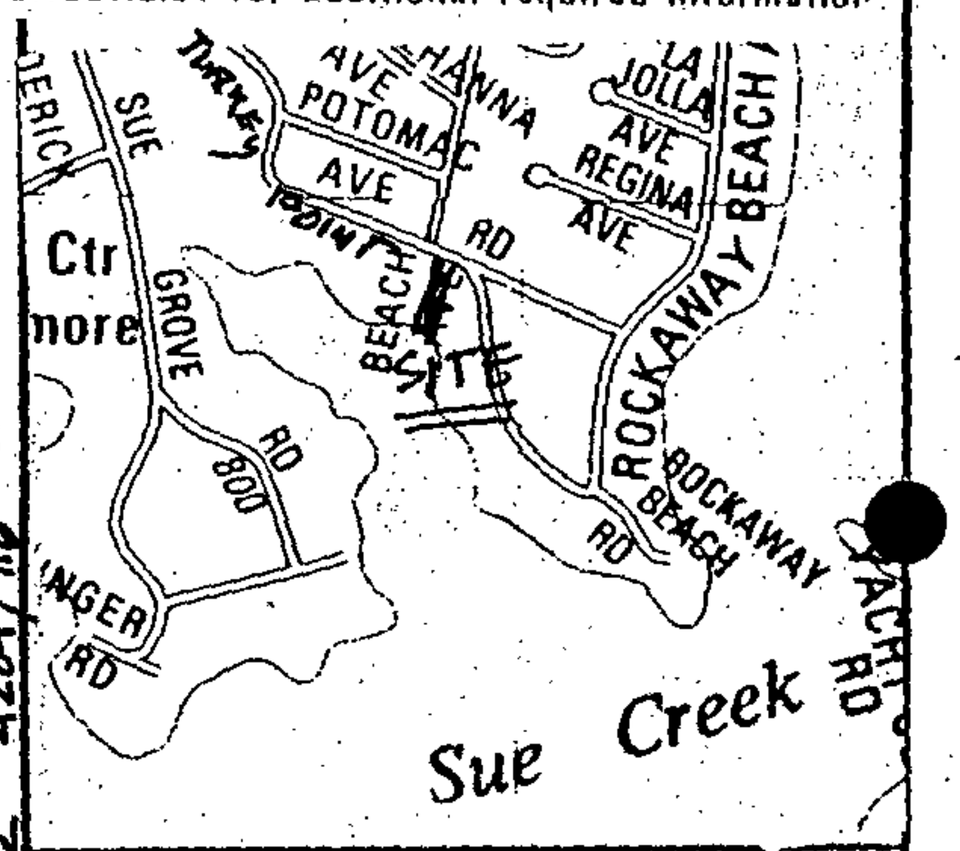
see pages 5 & 6 of the CHECKLIST for additional required information

Subdivision name: TURKEY POINT FARM (NKA ROCKAWAY BEACH)

plat book# 4 ,folio# 171 ,lot# 11 ,section# —

OWNER: JEFFERY A. CREAMER





LOCATION INFORMATION

Election District: 15th

Councilmanic District: 6th

1"-200' scale map#: SE 1-K

Zoning: DR-3.5

Lot size: 0 acreage 13,500± square feet

	public	private
SEWER:	☒	☐
WATER:	☒	☐

Chesapeake Bay Critical Area: ☒ ☐

Prior Zoning Hearings: NONE OF RECORD.

Zoning Office USE ONLY!

reviewed by:	ITEM #:	CASE#:
AN	044	06-044-SPH

Ref # 1A

North

date: 6/30/06

prepared by: PATON CONSULTANTS, LTD Scale of Drawing: 1"=50'

1000

ROAD

TURKEY

REGINA AVE.

BEECH AVE.

SITE

2315

2317

2312

TURKEY POINT ROAD

AVE B

BL

S2,000

PIERS

PIERS

D.R 3.5

PIERS

PIERS

BEACH ROAD

ROCKAWAY

PIER

PIER

PIER

PIER

D.R.3.5

PIERS

PIER

PIER

PIERS

PIERS

PIER

S3,000

SE 1-K

Rm 123

ZONING MAP
SE-1-K

#044

DEED

THIS DEED made this 11 day of SEPTEMBER 2002 by and **between Antoinette J. Schield and , Jacqueline C. Stump, Co-Personal Representatives of the Estate of Lillian A. Kleinsmith** (see Estate No. 120720, Register of Wills for Baltimore County, Maryland), the first party, "Grantors", and **Jeffrey A. Creamer**, party of the second part, "Grantee"

NOW, THEREFORE WITNESSETH, that for and in consideration of the sum of $130,000.00, the said parties of the first part do hereby grant and convey unto the said parties of the second part, as sole owner, in fee simple, the following described land and premises in Baltimore County, Maryland:

Lot numbered Eleven (11) on the Plat of "Turkey Point Farm", now known as Rockaway Beach, which plat is duly recorded among the land records of Baltimore County, Maryland in Plat Book W.P.C. No. 4, at folio 171. With improvements known as 2317 Turkey Point Road.
BEING the same property acquired by William J. Kleinsmith and Lillian A. Kleinsmith by deed dated June 27, 1952, recorded in Liber 2133, folio 149. The said William J. Kleinsmith, having died on March 13, 1991. The said Lillian Kleimsith died on March 18, 2002, thereby vesting title in her Co-Personal Representatives, the Grantors herein.

TOGETHER with all and singular the ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the said parties of the first part, of, in, to, or out of the said land and premises.

TO HAVE AND HOLD the property hereby conveyed unto the parties of the second part, his personal representatives, heirs and assigns, in fee simple, forever.

AND the said parties of the first part covenants that they shall execute such further assurances of said land as may be requisite.

WITNESS the hands and seals of the Grantors.

WITNESS:

Antoinette J. Schield Co Personal Representative (Seal)
Antoinette J. Schield, Co-Personal Representative

Jacqueline C Stump, Co Personal Representative (Seal)
Jacqueline C. Stump, Co-Personal Representative

Pet #2

STATE OF MARYLAND, COUNTY OF Baltimore, to wit:

I HEREBY CERTIFY that on this 11th day of September, 2002, before the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared **Antoinette J. Schield**, Co-Personal Representative of the Estate of Lillian A. Kleinsmith, personally well known to me (or satisfactorily proven) as the person whose names is subscribed to the within Deed and she signed the same in my presence.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: 10/1/04

STATE OF MARYLAND, COUNTY OF Baltimore, to wit:

I HEREBY CERTIFY that on this 11th day of September 2002, before the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared **Jacqueline C. Stump**, Co-Personal Representative of the Estate of Lillian A. Kleinsmith, personally well known to me (or satisfactorily proven) as the person whose names is subscribed to the within Deed and she signed the same in my presence.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: 10/1/04

I HEREBY CERTIFY that the within deed was prepared under my supervision and I am an attorney duly admitted to practice before the Court of Appeals of Maryland.

Andrew O. Levy

After recording mail to:
Carol C. Creamer
1779 Shaftsbury Avenue
Crofton, MD 21114

CTIA FILE C0209056

State of Maryland Land Instrument Intake Sheet

☐ Baltimore City ☒ County: Baltimore

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office only.

(Type or Print in Black Ink Only—All Copies Must Be Legible)

Space reserved for Recording Voucher

DMP FD SURE $ 5.00
RECORDING FEE 20.00
TOTAL 25.00
Rcpt# BA84 Rcpt # 9699
SM LL Blk # 2395
SEP 23, 2002 02:30 PM

C02-09-056

1 Type(s) of Instruments (☐ Check Box if Addendum Intake Form is Attached.)

☒ Deed	☐ Mortgage	☐ Other	☐ Other	
☐ Deed of Trust	☐ Lease	☐	☐	

2 Conveyance Type Check Box

☐ Improved Sale Arms-Length [1]	☐ Unimproved Sale Arms-Length [2]	☐ Multiple Accounts Arms-Length [3]	☐ Not an Arms-Length Sale [9]

3 Tax Exemptions (if Applicable) Cite or Explain Authority

Recordation	
State Transfer	
County Transfer	

4 Consideration and Tax Calculations

Consideration Amount		Finance Office Use Only — Transfer and Recordation Tax Consideration	
Purchase Price/Consideration	$ 130,000.00	Transfer Tax Consideration	$
Any New Mortgage	$ 130,000.00	X ( ) % =	$
Balance of Existing Mortgage	$	Less Exemption Amount −	$ —
Other:	$	Total Transfer Tax =	$ 1950.00
Other:	$	Recordation Tax Consideration	$ 650.00
Full Cash Value	$	X ( ) per $500 =	$
		TOTAL DUE	$

5 Fees

Amount of Fees	Doc. 1	Doc. 2
Recording Charge	$ 20.00	$
Surcharge	$ 5.00	$
State Recordation Tax	$ 650.00	$
State Transfer Tax	$ 650.00	$
County Transfer Tax	$ 1950.00	$
Other	$	$
Other	$	$

Agent: [illegible]
Tax Bill: FY 1875310
C.B. Credit: —
Ag. Tax/Other: N

6 5 20 650

6 Description of Property
SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG
15	15-11-470450	2133/149			☐ (5)

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR(3c)	Plat Ref.	SqFt/Acreage (4)
Rockaway Beach	11			4/171	

Location/Address of Property Being Conveyed (2): 2317 Turkey Point Rd, Baltimore, Md 21221

Other Property Identifiers (if applicable) | Water Meter Account No.

Residential ☒ or Non-Residential ☐ | Fee Simple ☒ or Ground Rent ☐ | Amount:
Partial Conveyance? ☐ Yes ☒ No | Description/Amt. of SqFt/Acreage Transferred:
If Partial Conveyance, List Improvements Conveyed:

JR TAX STATE 650.00
TOTAL 650.00
Rcpt# BA84 Rcpt # 9699
SM LL Blk # 2396
Sep 23, 2002 02:31 PM

7 Transferred From

Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
Antoinette J. Schield Jacqueline C. Stump	
Doc. 1 - Owner(s) of Record, if Different from Grantor(s)	**Doc. 2 - Owner(s) of Record, if Different from Grantor(s)**

8 Transferred To

Doc. 1 - Grantee(s) Name(s)	Doc. 2 - Grantee(s) Name(s)
Jeffrey A. Creamer	

New Owner's (Grantee) Mailing Address

9 Other Names to Be Indexed

Doc. 1 - Additional Names to be Indexed (Optional)	Doc. 2 - Additional Names to be Indexed (Optional)

10 Contact/Mail Information

Instrument Submitted By or Contact Person
Name: Heather L. Roe
Firm: Capitol Title
Address: 2200 Defense Hwy
Crofton, Md 21114 Phone: (410)721-3340

☐ Return to Contact Person
☐ Hold for Pickup
☒ Return Address Provided

11 IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER

Assessment Information
☒ Yes ☐ No Will the property being conveyed be the grantee's principal residence?
☐ Yes ☒ No Does transfer include personal property? If yes, identify:
☐ Yes ☒ No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

Assessment Use Only - Do Not Write Below This Line

☐ Original Verification ☐ Agricultural Verification ☐ Whole ☐ Part ☐ Tran. Process Verification

Transfer Number: Date Received: Deed Reference: Assigned Property No.:

Year	19	19	Geo.	Map	Sub		Block
Land			Zoning	Grid	Plat		Lot
Building			Use	Parcel	Section		Occ. Cd.
Total			Town Cd.	Ex. St.	Ex. Cd.		

REMARKS:

Distribution: White - Clerk's Office
Canary - SDAT
Pink - Office of Finance
Goldenrod - Preparer
ACC-CC-300 (6/95)

County Validation

PAID RECEIPT
BALTIMORE COUNTY, Maryland
CA .00 $2,600.00
RECEIPT NO 1663984 9/19/2002 DFLN
RECORDATION TAXES
REG-W501 WALKER, JRIC JNR DRAWER 1
9/19/2002 08:19:38
TIME ACTUAL
BUSINESS

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT

I HEREBY CERTIFY that the aforegoing is a true copy of the original

This Deed taken from the records of said Circuit Court as

appears in Liber SM No. 16854

475 477 etc of the land

records of Baltimore County.

IN TESTIMONY WHEREOF I hereto set my hand

and affix the seal of the Circuit Court for

Baltimore, County

this 23rd day of MAY 2008

Clerk of the Circuit Court of Baltimore County



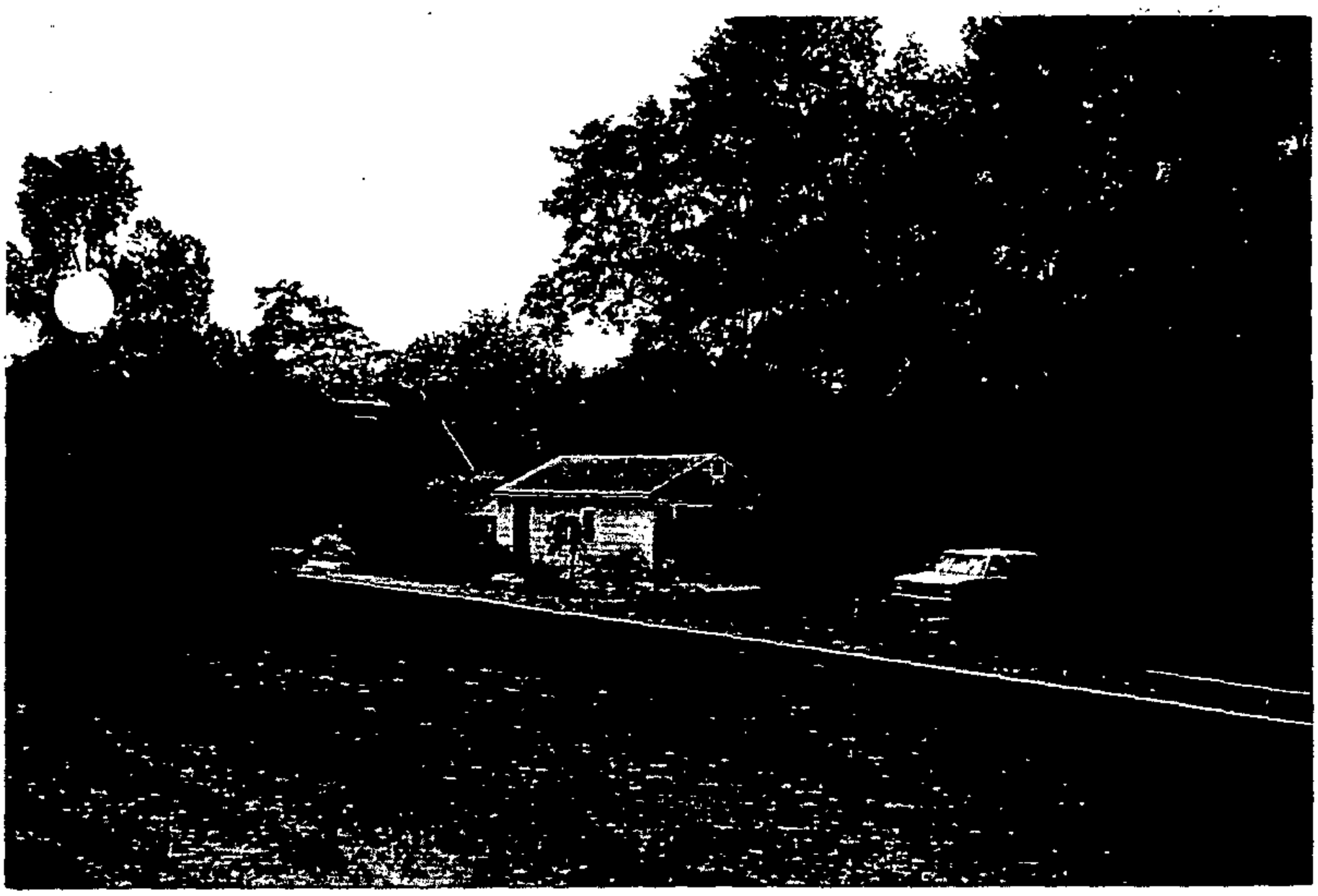
Pet 3A



Pet 3 B



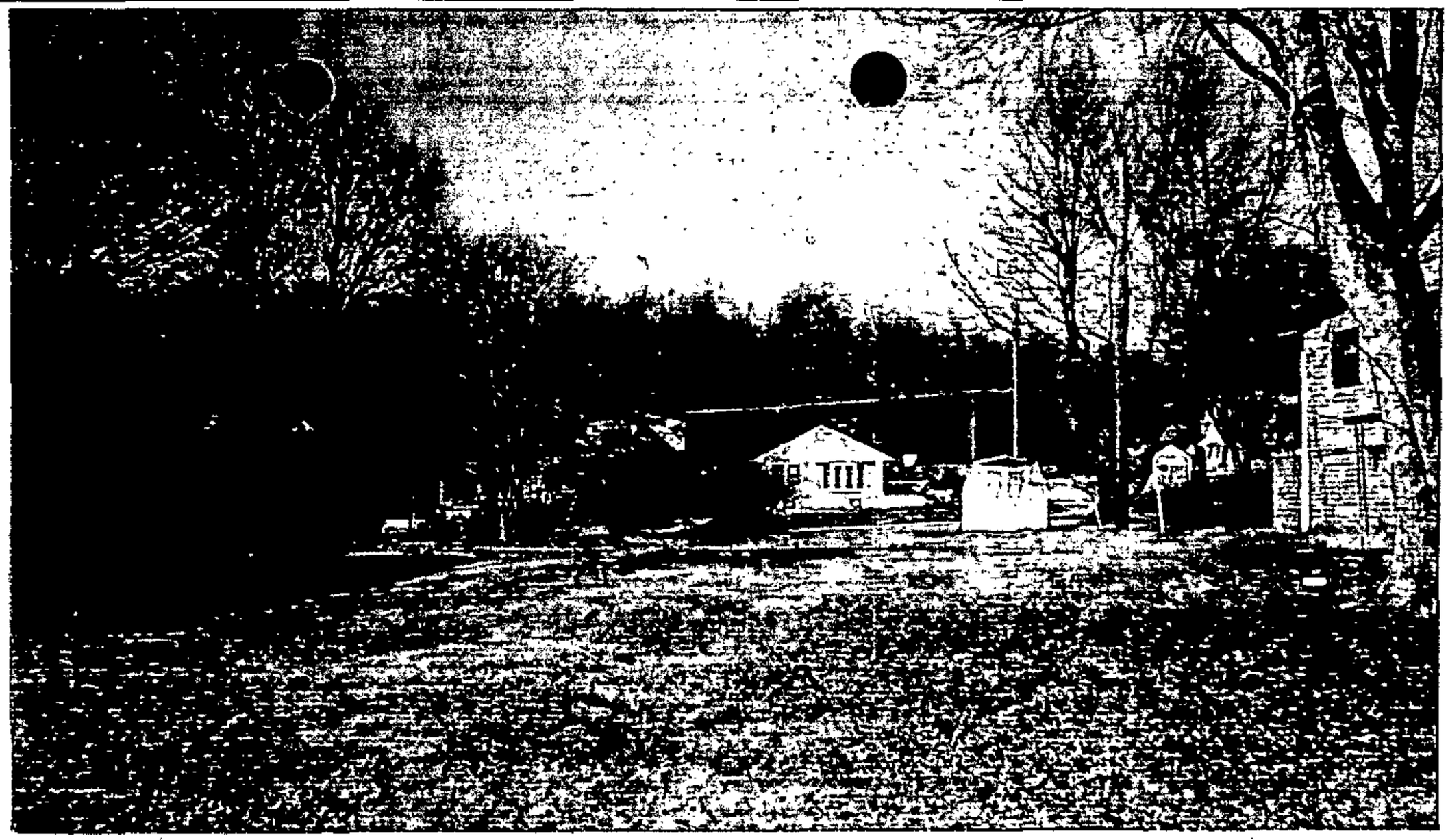
Ref 3 C

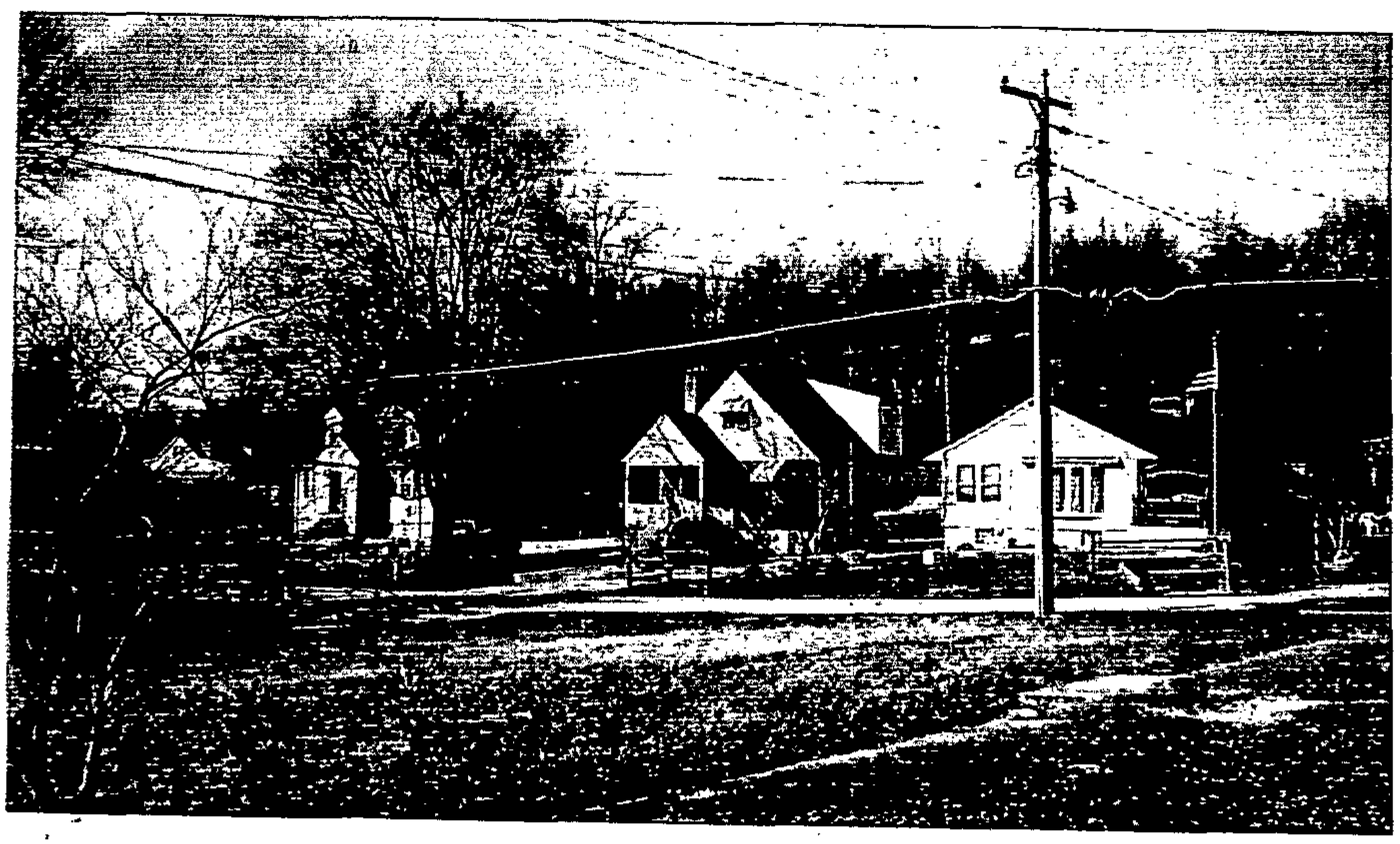


Ref 3D



Pol 3E

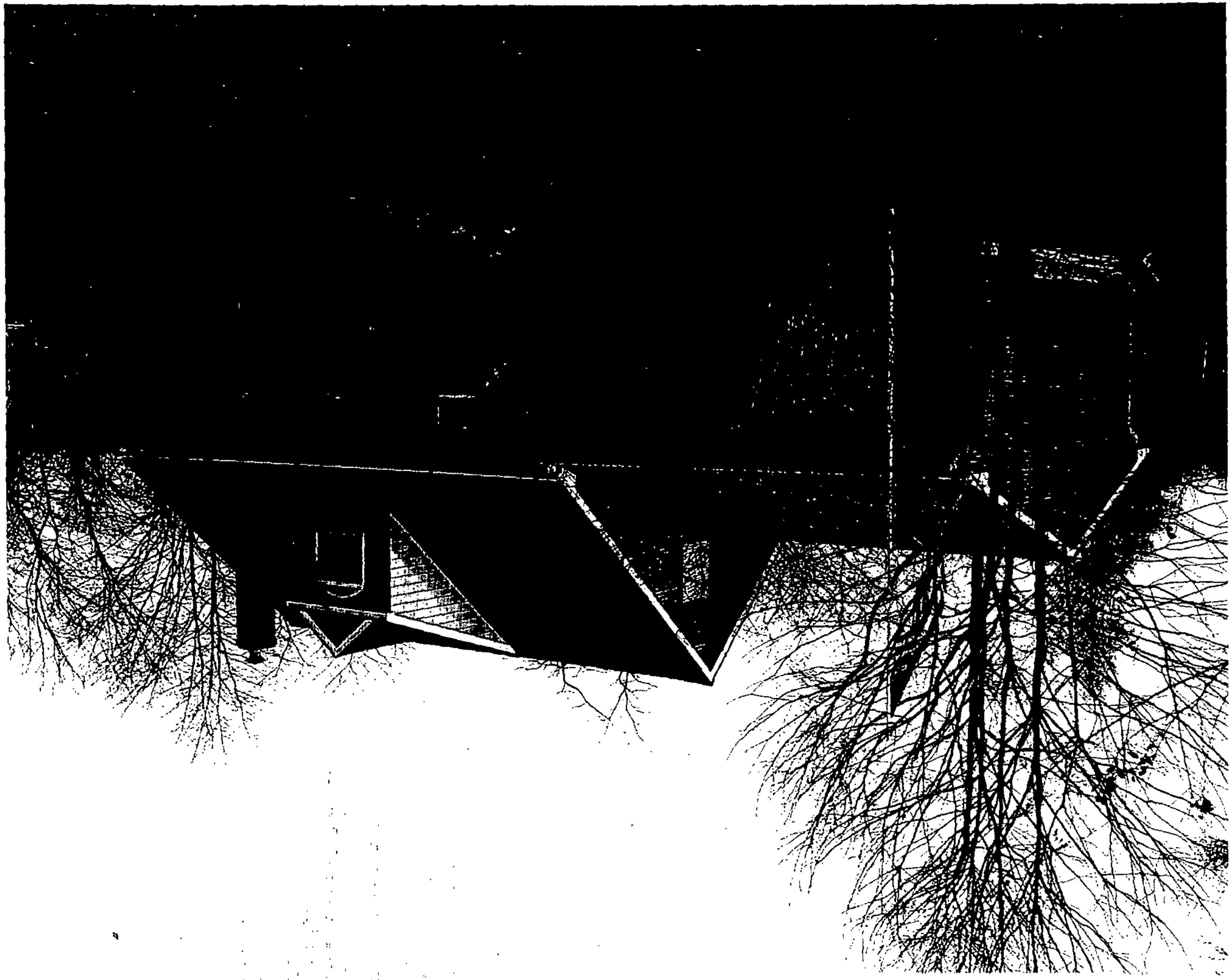












DEED

THIS DEED made this 11 day of SEPTEMBER, 2002 by and between **Antoinette J. Schield (also, erroneously referred to of record as Antoinette J. Scheild), Jacqucline C. Stump and Lynne L. Collins**, parties of the first part, "Grantors", and **Carole C. Creamer**, party of the second part, "Grantee"

NOW, THEREFORE WITNESSETH, that for and in consideration of the sum of $110,000.00, the said parties of the first part do hereby grant and convey unto the said parties of the second part, as sole owner, in fee simple, the following described land and premises in Baltimore County, Maryland:

> Lot numbered Ten (10) on the Plat of "Turkey Point Farm", now known as Rockaway Beach, which plat is duly recorded among the land records of Baltimore County, Maryland in Plat Book W.P.C. No. 4, at folio 171.
> BEING the same property conveyed by Lilliam A. Kleinsmith to herself, for life, with remainder under the Grantors (the Remainderman) named herein. The said Lillian Kleimsith died on March 18, 2002, thereby vesting title in the remainderman, the Grantors herein.

TOGETHER with all and singular the ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the said parties of the first part, of, in, to, or out of the said land and premises.

TO HAVE AND HOLD the property hereby conveyed unto the parties of the second part, her personal representatives, heirs and assigns, in fee simple, forever.

AND the said parties of the first part covenants that they shall execute such further assurances of said land as may be requisite.

WITNESS the hands and seals of the Grantors.

WITNESS:

Antoinette J. Schield (Seal)
Antoinette J. Schield,

Jacqueline C. Stump (Seal)
Jacqueline C. Stump,

Lynn L. Collins (Seal)
Lynn L. Collins

Ret'd 4

STATE OF MARYLAND, COUNTY OF Balto, to wit:

I HEREBY CERTIFY that on this 11th day of September, 2002, before the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared **Antoinette J. Schield**, personally well known to me (or satisfactorily proven) as the person whose names is subscribed to the within Deed and she signed the same in my presence.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: 10/1/04

MARY E. GERHARDT NOTARY PUBLIC BALTIMORE COUNTY

STATE OF MARYLAND, COUNTY OF Balto, to wit:

I HEREBY CERTIFY that on this 11th day of September, 2002, before the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared **Jacqueline C. Stump,** personally well known to me (or satisfactorily proven) as the person whose names is subscribed to the within Deed and she signed the same in my presence.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: 10/1/04

MARY E. GERHARDT NOTARY PUBLIC BALTIMORE COUNTY

STATE OF MARYLAND, COUNTY OF Balto, to wit:

I HEREBY CERTIFY that on this 11th day of September, 2002, before the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared **Lynn L. Collins,** personally well known to me (or satisfactorily proven) as the person whose names is subscribed to the within Deed and she signed the same in my presence.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: 10/1/04

MARY E. GERHARDT NOTARY PUBLIC BALTIMORE COUNTY

I HEREBY CERTIFY that the within deed was prepared under my supervision and I am an attorney duly admitted to practice before the Court of Appeals of Maryland.

Andrew G. Levy

After recording mail to:
Carol C. Creamer
1779 Shaftsbury Avenue
Crofton, MD 21114

CTIA FILE C0207198

16854 474

State of Maryland Land Instrument Intake Sheet

☐ Baltimore City ☒ County: Baltumore

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office only.

(Type or Print in Black Ink Only—All Copies Must Be Legible)

Space Reserved for Recording Data Only

1 Type(s) of Instruments	(☐ Check Box if Addendum Intake Form is Attached.)				
	☒ Deed	☐ Mortgage	☐ Other	☐ Other	
	☐ Deed of Trust	☐ Lease			
2 Conveyance Type Check Box	☐ Improved Sale Arms-Length [1]	☐ Unimproved Sale Arms-Length [2]	☐ Multiple Accounts Arms-Length [3]	☐ Not an Arms-Length Sale [9]	
3 Tax Exemptions (if Applicable) Cite or Explain Authority	Recordation				
	State Transfer				
	County Transfer				

4 Consideration and Tax Calculations	Consideration Amount		Finance Office Use Only — Transfer and Recordation Tax Consideration	
	Purchase Price/Consideration	$ 110,000.00	Transfer Tax Consideration	$
	Any New Mortgage	$	X ( ) % =	$
	Balance of Existing Mortgage	$	Less Exemption Amount −	$ —
	Other:	$	Total Transfer Tax =	$ 1650.00
	Other:	$	Recordation Tax Consideration	$
	Full Cash Value	$	X ( ) per $500 =	$ 550.00
			TOTAL DUE	$

5 Fees	Amount of Fees	Doc. 1	Doc. 2
	Recording Charge	$ 20.00	$ 6
	Surcharge	$ 5.00	$ 5
	State Recordation Tax	$ 550.00	$ 20
	State Transfer Tax	$ 550.00	$ 20
	County Transfer Tax	$ 1650.00	$ 50
	Other	$	$
	Other	$	$

Agent: BV

Tax Bill: FY 343.39ok

C.B. Credit: —

Ag. Tax/Other: N

6 Description of Property	District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG
SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).	15	15-11-470451	10890/346			☐ (5)

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR(3c)	Plat Ref.	SqFt/Acreage (4)
Rockaway Beach	10			4/171	

Location/Address of Property Being Conveyed (2)

~~Lot 10~~ 2317 Turkey Point Rd, Baltimore, MD 21221

Other Property Identifiers (if applicable) | Water Meter Account No.

Residential ☒ or Non-Residential ☐ | Fee Simple ☒ or Grount Rent ☐ | Amount:

Partial Conveyance? ☐ Yes ☒ No | Description/Amt. of SqFt/Acreage Transferred:

If Partial Conveyance, List Improvements Conveyed:

7 Transferred From	Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
	Antoinette J. Schield Jacqueline C. Strump	
	Doc. 1 - Owner(s) of Record, if Different from Grantor(s)	Doc. 2 - Owner(s) of Record, if Different from Grantor(s)
	Lynne L. Collins	
8 Transferred To	*Doc. 1 - Grantee(s) Name(s)*	*Doc. 2 - Grantee(s) Name(s)*
	Carole C. Creamer	
	New Owner's (Grantee) Mailing Address	
	Same	

9 Other Names to Be Indexed	Doc. 1 - Additional Names to be Indexed (Optional)	Doc. 2 - Additional Names to be Indexed (Optional)

10 Contact/Mail Information	Instrument Submitted By or Contact Person	
	Name: Heather L. Roe	☐ Return to Contact Person
	Firm: Capitol Title	☐ Hold for Pickup
	Address: 2200 Defense Hwy Crofton, MD 21114 Phone: (410) 721-3340	☒ Return Address Provided

11 IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER

Assessment Information

☒ Yes ☐ No Will the property being conveyed be the grantee's principal residence?

☐ Yes ☒ No Does transfer include personal property? If yes, identify:

☐ Yes ☒ No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

Assessment Use Only - Do Not Write Below This Line

☐ Additional Verification ☐ Agricultural Verification ☐ Whole ☐ Part ☐ Tran. Process Verification

Transfer Number: Date Received: Deed Reference: Assigned Property No.:

Year	19	19	Geo.	Map	Sub	Block
Land			Zoning	Grid	Plat	Lot
Building			Use	Parcel	Section	Occ. Cd.
Total			Town Cd.	Ex. St.	Ex. Cd.	

REMARKS:

Distribution: White - Clerk's Office
Canary - SDAT
Pink - Office of Finance
Goldenrod - Preparer
AOC-CC-300 (6/95)

CHF FD SURE $ 5.00
RECORDING FEE 20.00
TR TAX STATE 550.00
TOTAL 575.00
Rept# BA84 Rcpt # 3698
SH LL Blk # 2333
Sep 23, 2002 02:26 PM

C02-07-198

PAID RECEIPT
BUSINESS TIME
9/19/2002 08:14:29
REG WBOI WALKIE JRIC JMR DRAWER 1
9/19/2002 >RECEIPT # 10629
9/19/2002 DELN
RECORDATION TAXES
Dept 7 (01)
Total
BALTIMORE COUNTY, MARYLAND
CA 00 $2,200.00

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT

I HEREBY CERTIFY that the aforegoing is a true copy of the original This Deed taken from the records of said Circuit Court as recorded in Liber SM No. 16954 Folio 421 424 one of the land records of Baltimore County.

IN TESTIMONY WHEREOF I hereto set my hand and affix the seal of the Circuit Court for Baltimore, County this 23rd day of Dec 2005

Clerk of the Circuit Court of Baltimore County

RESUME

JAMES S. PATTON, P.E.,
PRESIDENT, PATTON CONSULTANTS LTD.

Mr. Patton has over thirty five (35) years experience in site engineering, site development services, and land planning for a wide variety of public and private clients. His experience in the private sector has been in residential, commercial, and industrial site development. His public works experience is very broad, as he served as an officer in the U. S. Navy Civil Engineering Corps and as City Engineer for Washington, PA. In addition, he has provided site engineering and planning services to many local school boards, hospitals, colleges, and institutions in their development and construction programs.

He has been responsible for projects ranging in size and scope from a few thousand square feet to areas of more than a thousand acres. These projects have included storm water management, water distribution, sanitary sewer, streets, roads, parking areas, grading, wetlands and critical areas, and erosion control. His background includes new development, expansion, restoration, renewal and revitalization.

Site Plan approvals and obtaining permits for site development is a major focus. The ability to overview the various elements of site development such as zoning, environmental concerns, and utilities has been and is an important function performed by Mr. Patton in obtaining approvals and expediting the development of a site or project.

EDUCATION:

SWARTHMORE COLLEGE	Bachelor of Science, Civil Engineering
UNIVERSITY OF PENNSYLVANIA	Master of City Planning

LICENSES/CERTIFICATIONS:

PROFESSIONAL ENGINEER	Pennsylvania, West Virginia (inactive) and Maryland
EXPERT WITNESS	Baltimore County Circuit Court; Baltimore County District Court; Board of Appeals and Zoning Commissioner; Anne Arundel County Zoning Commission; City of Baltimore Zoning Commissioner. Circuit Court Washington County, PA.
COMPREHENSIVE PLANNER	New York, Pennsylvania, West Virginia, and Delaware.

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PROFESSIONAL EXPERIENCE:

PRINCIPAL/PRESIDENT (1990 - Present)
PATTON CONSULTANTS, LTD.

Site evaluation and feasibility, land development, consulting, project management, zoning issues, expert testimony, and governmental approvals and permitting.

CHIEF OF CIVIL ENGINEERING (1988 - 1990)
LPJ, INC.

Began the civil engineering department and provided directions to projects as subconsultant primarily to the architectural community.

VICE-PRESIDENT, CIVIL ENGINEERING (1987 - 1988)
MARSHALL-CRAFT ASSOCIATES, INC.

Principal in charge of the site planning and engineering for this major architectural firm. Projects included industrial, elderly housing, publishing, public utilities, and residential sub-division.

VICE-PRESIDENT (1986 - 1987)
DAFT - McCUNE - WALKER

Project management, permitting and processing site development projects through governmental agencies for this major land development consulting, land surveying, and civil engineering firm.

CHIEF OF SITE DEVELOPMENT (1984 - 1986)
D.S. THALER AND ASSOCIATES, INC.

Site evaluation and land development project management for this Baltimore County engineer.

PRINCIPAL (1982 - 1983)
JAMES S. PATTON ASSOCIATES, INC.

Historic restoration, financial institution feasibility studies, site plans, and site engineering for clients and personal projects in the City of Baltimore, Harford, Howard, Frederick and Anne Arundel Counties.

PRINCIPAL/PRESIDENT (1971 - 1982)
WASHINGTON CENTER FOR DESIGN, LTD.

As Principal of this organization, he was responsible for marketing and providing planning, site engineering and land development consulting services to a clientele of multi-national and local corporations, financial institutions, developers, and thirteen (13) southwestern Pennsylvania municipalities.

DIRECTOR, PITTSBURGH OFFICE (1968 - 1971)
KENDREE AND SHEPARD
PLANNING CONSULTANTS, INC.

Directed comprehensive planning program, the preparation of urban renewal plans, and consulted on zoning and land development for cities in West Virginia, Pennsylvania, New York, and Delaware.

OFFICER (Ensign-Lieutenant) (1965 - 1968)
U. S. NAVY CIVIL ENGINEERING CORPS

Served as Manpower Planning Officer for Public Works and Facilities Engineering at the Navy Department, Washington, D.C. and as Assistant Resident Officer in Charge of Construction, U.S. Naval Base, Guantanamo Bay during a period when construction volume exceed $44,000,000.

PROJECTS AND CLIENTS - PARTIAL LIST

RESIDENTIAL:

Sunset Knoll, Baltimore Co.	-	Sunset Knoll Associates
Silver Spring Station, Baltimore Co.	-	The Strutt Group
Walnut Ridge, Washington, Co.	-	Walnut Ridge, Inc.
McDonogh Township, Baltimore Co.	-	Greenabaum Partnership
Watermark Condos., Columbia, MD.	-	General American
Claybrooke, Baltimore Co.	-	Fairwinds Devlp. LLC
Claybrooke II, Baltimore, Co.	-	" " "
Oakdale, Baltimore Co.		
Gunview Farms II, Baltimore Co.		
Glenside Farms, Baltimore Co.		
Westchester Avenue, Baltimore Co.	-	Fairwinds Management
Burton Residence, A. A. Co.	-	Gibson Island, MD.
Gailliard Residence, A. A. Co.	-	" " "
Fowler Residence, A. A. Co.	-	" " "
Coupland Residence, A. A. Co.	-	" " "
Hoehn-Saric Residence, A. A. Co.	-	" " "
Baltimore Co. MD. Land Preservation	-	8 Agricultural Area Farms

COMMERCIAL:

McDonald's	-	Washington, PA. - (2 Sites)
Elby's Big Boy	-	Mt. Lebanon, PA. - (3 Sites)
Kentucky Fried Chicken	-	Belair Road.
Sambo's	-	Washington, PA.
Dairy Queen	-	Baltimore Co.
MD. National Bank (Now Nations Bank)	-	Baltimore Co. - 3 Sites)
Foster Brothers Hardware	-	Hereford, MD.
Coastal Crane Service	-	Baltimore Co.
Comfort Suites @ BWI	-	Anne Arundel County
Super "8" Motel	-	Harford County
Pennwood Property, Inc.	-	
W. C. Pinkard & Co.	-	
Westinghouse Corporation	-	
Greystone Golf Course	-	
Union National Bank of Pittsburgh (Now National City)	-	Four (4) Sites
Pittsburgh National Bank (Now PNC)	-	Three (3) Sites
Dulaney Center	-	Towson, MD.
Hechinger	-	Two (2) Sites
Suburban Sales & Rental	-	Baltimore Co. - (2 Sites)

INDUSTRIAL:

G. Heilman Brewery, Baltimore Co.	-	G. Heilman, Lacrosse, Wisc.
Port East Transfer	-	
Point Breeze Maritime Center	-	Creaney & Smith
North Point Industrial Center	-	Creaney & Smith
Benson Industrial Center	-	Meisel & Cohen
Westinghouse	-	W. C. Pinkard
Prime Technology	-	Baltimore Co.
Browning-Ferris Industries	-	Baltimore Co.
William H. Knott, Inc.	-	Baltimore Co.
Tate Andale	-	Baltimore Co.
Greif Brothers	-	Baltimore Co.
Stoney Run Industrial Park	-	A. A. Co.

GOVERNMENTAL & INSTITUTIONAL:

Bradford, PA.	-	Urban Renewal Plans
Jamestown, NY.	-	Urban Renewal Plans
Washington, PA.	-	Consulting City Engineer Various Plans & Construction Plans
Wilmington, Del.	-	Midtown Urban Renewal Area
Pittsburgh, PA.	-	Various Street/Circulation Studies
Mt. Lebanon, PA.	-	CBD Beautification & Circulation Plans
Baltimore County, MD. Economic Development General Services Administration	-	On-Call Site Engineer for Revitalization Commission Fish & Wildlife Service Annapolis Field Office
Gibson Island Corp & Yacht Squadron	-	On-Site Sanitary Sewage Disposal

EDUCATIONAL:

Harford County, MD. School District	-	Storm Water Management
" " " " "	-	Church Creek School
" " " " "	-	Harford Glen
" " " " "	-	St. Clements Learning Center
" " " " "	-	Woodbridge Center
" " " " "	-	Churchville Elementary
Mount St. Mary's College	-	Campus Maintenance Facility
McDonough School	-	Entrance, Parking & Walkways
Washington & Jefferson College	-	Campus Plan
University of Pittsburgh-Bradford Campus	-	Campus Plan
Hood College	-	Athletic Complex
Anne Arundel Co. School District	-	Meade Middle School
St. Paul's School for Boys	-	Chapel
St. Paul's School for Boys	-	Athletic Center
St. Paul's School for Boys	-	Upper School
St. Paul's School for Boys	-	Lower Athletic Fields

MEDICAL FACILITIES:

Belitsos Medical Center	-	Medical Center
Trinity Geriatrics	-	Retirement Home
Windsor Ridge	-	Retirement Center
64 Reisterstown Road	-	Assisted Living
639 Main Street	-	Assisted Living
Newport/York Road	-	Assisted Living
Pasadena Dental Center	-	Pasadena, A.A.Co.

COMMUNICATION TOWERS:

Bell	Mobile	Tower		
■	■	■	-	Harford Road
■	■	■	-	Highlandtown (Pulaski Highway)
■	■	■	-	Poplar Grove
■	■	■	-	Woodberry
■	■	■	-	Pikesville
■	■	■	-	Gardenville
■	■	■	-	Clifton Park
■	■	■	-	Patterson Park
■	■	■	-	Russell Street
■	■	■	-	Montebello

Courtesy of Vicky Hupfeld

Status	ML#	Address	List Price	City	Adv Subdivision	Style	Type	BR	FB	HB	Lvls	Fpl	Bsmt	Lot
Sold	BC4392699	2317 TURKEY POINT RD	$260,000	Essex	Rockaway Beach	Rancher	Detached	3	2		0	0	Yes	13,1

Advance Realty, Inc.
Vicky Hupfeld/Realtor
Home Office: 410-335-1429
Home Fax: 410-335-1427
Cell: 410-241-0221
vhupfeld@mris.com

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Information is believed to be accurate, but should not be relied upon without verification.
Accuracy of square footage, lot size and other information is not guaranteed.

Pro 6A

Courtesy of Vicky Hupfeld

Tax ID #	Property Address	Subdivision	City	Zip	Absent	Owner Name	First Name	Owner Other	Living Area	Total Taxe
04151511470450	2317 Turkey Point Rd	Rockaway Beach	Essex	21221	Yes	Creamer	Jeffrey A		700	$1,70
04151511470451	2315 Turkey Point Rd	Rockaway Beach	Essex	21221	Yes	Creamer	Carole C			$93

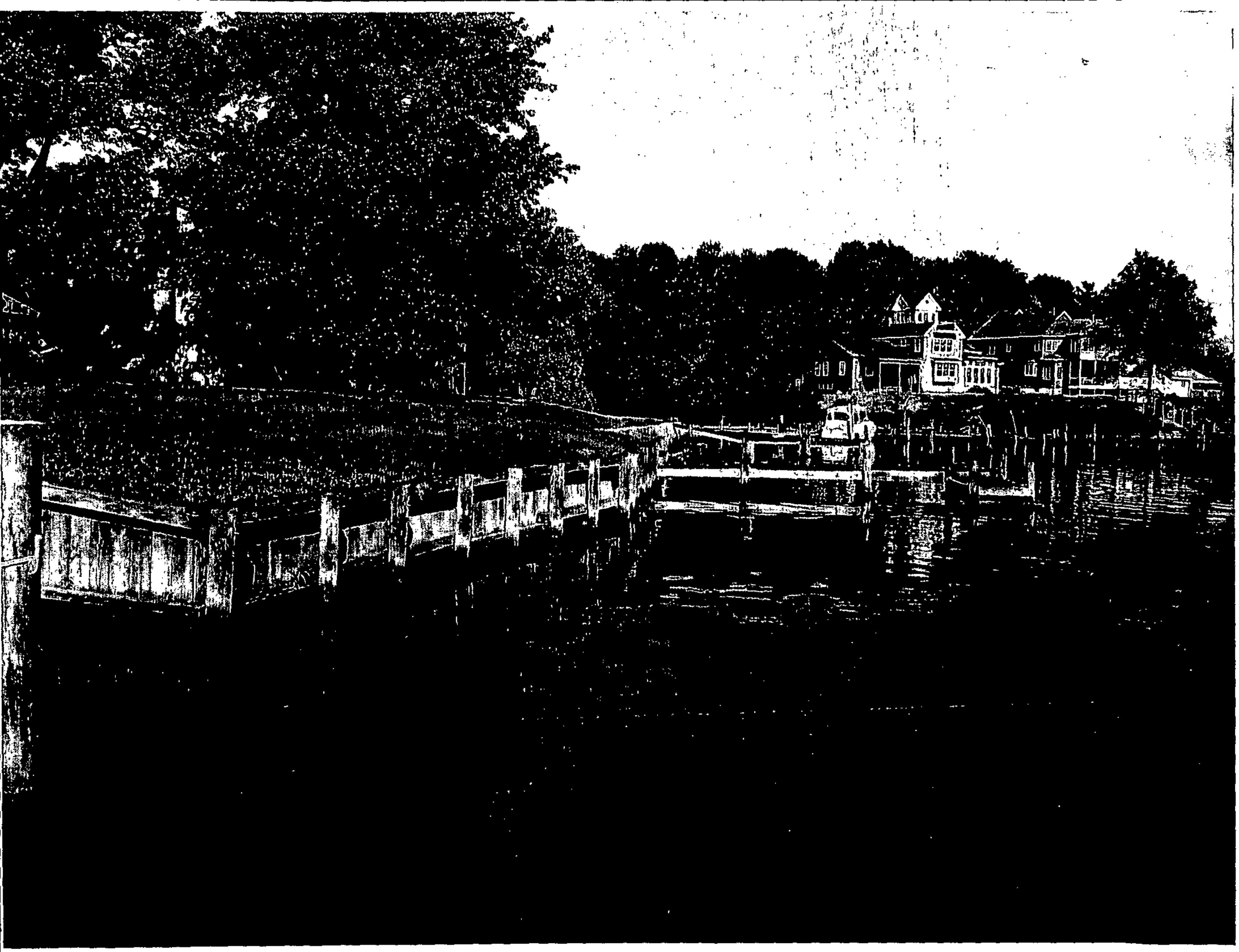
Advance Realty, Inc.
Vicky Hupfeld/Realtor
Home Office: 410-335-1429
Home Fax: 410-335-1427
Cell: 410-241-0221
vhupfeld@mris.com

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Accuracy of square footage, lot size and other information is not guaranteed.

6B













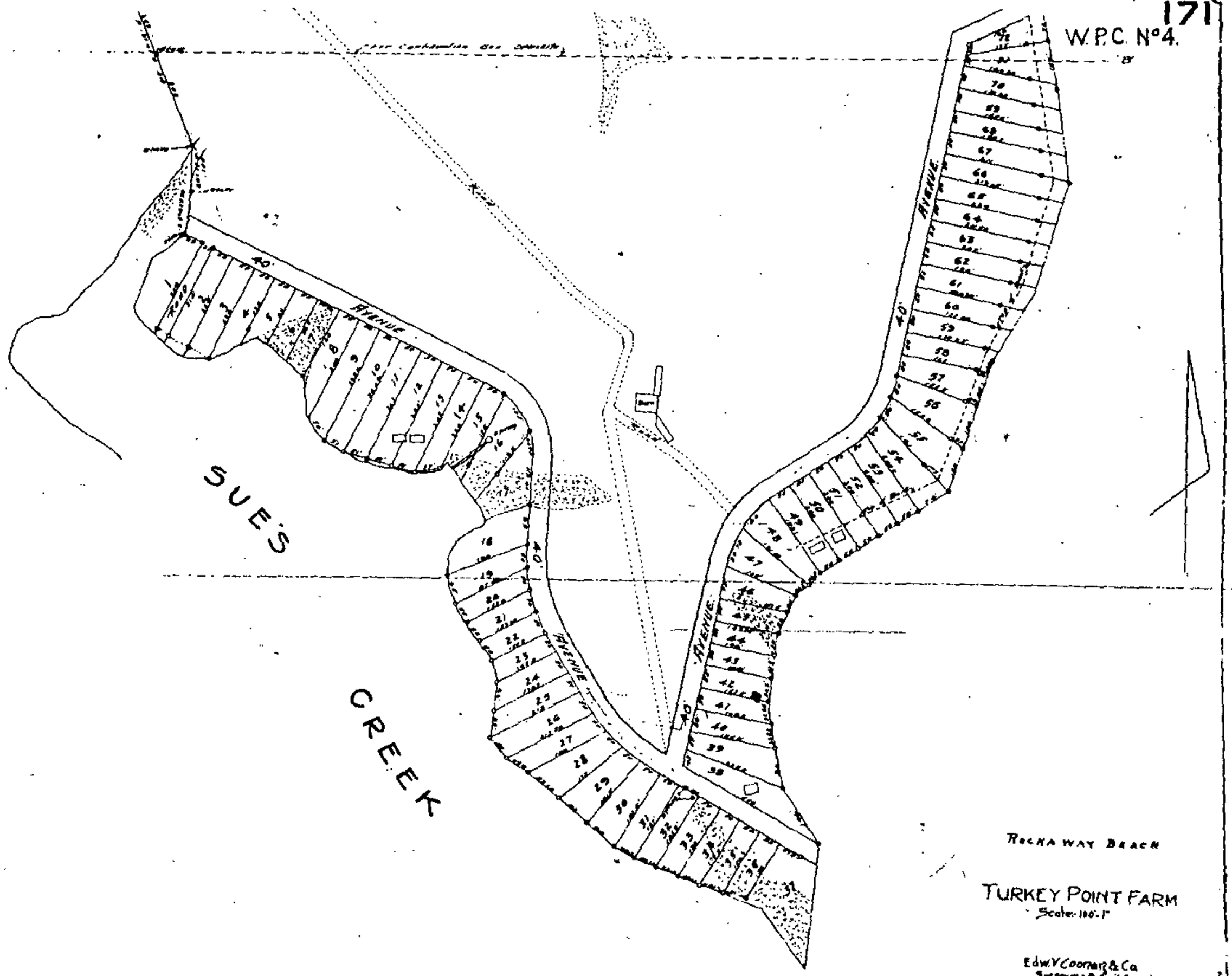






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W.P.C. No 4.



Plat accompanying Deed
from
James Young & wf
to
Rockaway Beach Realty Co
Rec'd Sept 9, 1915
Book 1178 P. Cty Clerk

ROCKAWAY BEACH

TURKEY POINT FARM
Scale: 100 = 1"

Edw. V. Coonan & Co
Surveyors & Civil Engrs
231 Courtland St.

Plat 6

all improved lots within 200 feet on each side thereof, provided that no dwelling shall be required to be set back more than 60 feet in D.R.2 Zones, 50 feet in D.R.3.5 Zones and 40 feet in D.R.5.5 Zones. In no case, however, shall nonresidential principal buildings have front yards of less depth than those specified therefor in the area regulations for D.R.2, D.R.3.5 and D.R.5.5 Zones respectively. **[Resolution, November 21, 1956]**

303.2 In B.L., B.M. and B.R. Zones, the front yard depth of any building hereafter erected shall be the average of the front yard depths of the lots immediately adjoining on each side, provided such adjoining lots are improved with permanent commercial buildings constructed of fire-resisting materials situate within 100 feet of the joint side property line, but where said immediately adjoining lots are not both so improved, then the depth of the front yard of any building hereafter erected shall be not less than the average depth of the front yards of all lots within 100 feet on each side thereof which are improved as described above.

Section 304
Use of Undersized Single-Family Lots
[BCZR 1955; Bill No. 47-1992]

304.1 **[Bill Nos. 64-1999; 28-2001]** Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;

B. All other requirements of the height and area regulations are complied with; and

C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

304.2 Building permit application.

A. Any person desiring to erect a dwelling pursuant to the provisions of this section shall file with the Department of Permits and Development Management, at the time of application for a building permit, plans sufficient to allow the Office of Planning to prepare the guidelines provided in Subsection B below. Elevation drawings may be required in addition to plans and drawings otherwise required to be submitted as part of the application for a building permit. Photographs representative of the neighborhood where the lot or tract is situated may be required by the Office of Planning in order to determine appropriateness of the proposed new building in relation to existing structures in the neighborhood.

B. At the time of application for the building permit, as provided above, the Director of the Department of Permits and Development Management shall request comments from the Director of the Office of Planning (the "Director"). Within 15 days of receipt of a request from the Director of the Department of Permits and Development Management, the Director shall provide to the

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

1. Site design. New buildings shall be appropriate in the context of the neighborhood in which they are proposed to be located. Appropriateness shall be evaluated on the basis of new building size, lot coverage, building orientation and location on the lot or tract.

2. Architectural design. Appropriateness shall be evaluated based upon one or more of these architectural design elements or aspects:

   a. Height.

   b. Bulk or massing.

   c. Major divisions, or architectural rhythm, of facades.

   d. Proportions of openings such as windows and doors in relation to walls.

   e. Roof design and treatment.

   f. Materials and colors, and other aspects of facade texture or appearance.

3. Design amendments. The Director may recommend approval, disapproval or modification of the building permit to conform with the recommendations proposed by the Office of Planning.

304.3 Public notice. Upon application for a building permit pursuant to this section, the subject property shall be posted conspicuously under the direction of the Department of Permits and Development Management with notice of the application for a period of at least 15 days.

304.4 Public hearing. Within the fifteen-day posting period: (1) Any owner or occupant within 1,000 feet of the lot may file a written request for a public hearing with the Department of Permits and Development Management, or (2) the Director of Permits and Development Management may require a public hearing. The Department of Permits and Development Management shall notify the applicant within 20 days of the receipt of a request for a public hearing. A hearing before the Zoning Commissioner shall be scheduled within 30 days from receipt of the request for public hearing. At the public hearing, the Zoning Commissioner shall make a determination whether the proposed dwelling is appropriate.

304.5 Final approval.

A. The Director of the Department of Permits and Development Management may issue the building permit; or

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

C. If the Department of Permits and Development Management has not notified the applicant of a determination pursuant to the provisions of this section, or has not notified the applicant pursuant to Section 304.4 above of the intention to require a public hearing, the dwelling shall be considered appropriate for purposes of this section.

304.6 The decision of the Zoning Commissioner or the Director of the Department of Permits and Development Management may be appealed, in which case the hearing shall be scheduled by the Board of Appeals within 45 days from receipt of the request.

304.7 The Director of the Department of Permits and Development Management shall establish appropriate fee schedules.

Section 305
Replacement of Destroyed or Damaged Dwellings
[BCZR 1955; repealed by Bill No. 124-1991; re-enacted by Bill No. 214-1991]

In case of complete or partial casualty loss by fire, windstorm, flood or otherwise of an existing dwelling that does not comply with height or area requirements of the zone in which it is located, such dwelling may be restored, provided area or height deficiencies of the dwelling before the casualty are not increased in any respect, and such restoration is subject to the limitations imposed by Section 104.2 of the Baltimore County Zoning Regulations.

Section 306
Minor Public Utility Structures
[BCZR 1955; Resolution, November 21, 1956; Bill No. 32-2004]

Minimum lot area regulations in any zone shall not apply to:

A. Repeater, booster or transformer stations;

B. Bus shelters, Class A or B; or

C. Small community dial offices.

Section 307
Variances
[BCZR 1955; Bill Nos. 107-1963; 32-1988; 2-1992; 9-1996]

307.1 The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore,

Section 4A03
Growth Management Plan for Bowleys Quarters and Back River Neck Areas[3]
[Bill No. 28-2001]

4A03.1 Definitions. In this section the following words have the meanings indicated.

SUBDIVISION — The division of property into two or more lots.

UNDERSIZED LOT — An unimproved platted lot or a lot of record on or before August 6, 1999, that does not meet the area, height or setback requirements in these Zoning Regulations to allow the construction of a dwelling.

4A03.2 Application. Except as provided in Sections 4A03.13 and 4A03.14, this section applies to property zoned D.R. or R.C.5 and located in the Bowleys Quarters and Back River Neck areas defined in the map attached as Exhibit A and incorporated by reference in this section.[4] **[Bill Nos. 60-2003; 15-2004]**

4A03.3 Connection to public sewer. A property owner with a dwelling in existence on or before August 6, 1999, or with a nonexpired building permit that was issued on or before February 16, 1999 shall be required to connect to a public sewer if the property is:

A. Zoned D.R. or R.C. 5; and

B. Served by public sewer with adequate capacity.

4A03.4 Building permits.

A. Except as provided in Paragraph B of this subsection, a building permit may be issued for the construction of a dwelling on an unimproved platted lot or lot of

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3 **Editor's Note: This topic was originally added as Section 206 by Bill No. 64-1999. Sections 3 through 7 of Bill No. 64-1999, as amended by Bill No. 28-2001, provided as follows:**

Section 3. Consistent with the county's Water and Sewer Plan, public sewer service may not be extended to property zoned R.C. 20 in area depicted in the map attached as Exhibit A except:

(1) For properties with a dwelling in existence on or before August 6, 1999, to which public sewer is extended;
(2) As provided in § 35-177 of the Code; and
(3) For properties that have been transferred in accordance with Section 1A05.5 of the Baltimore County Zoning Regulations to which public sewer is extended.

Section 4. This Act may not be construed to:

(1) Require the county to extend public sewer capacity to any property; or
(2) Prohibit the Department of Environmental Protection and Resource Management from issuing permits for on-site disposal systems in accordance with the Baltimore County Code for properties zoned R.C. 20.

Section 5. The Department of Public Works, in consultation with the Departments of Planning, Permits and Development Management, and Environmental Protection and Resource Management, shall report annually to the County Council, beginning in July of 2000, on the capacity of the public sewer in the Back River Neck and Bowleys Quarters areas depicted in the map attached as Exhibit A and the potential for the connection of public sewer to properties that are not zoned D.R., R.C. 5, or R.C. 20.

Section 6. Section 4A03.4.A.4 of the Baltimore County Zoning Regulations does not apply to property that is zoned D.R. and has an approved development plan on or before May 28, 1999, except that the minimum lot size requirement for the approved development plan shall be 12,000 square feet.

Section 7. Section 4A03.11 of the Baltimore County Zoning Regulations does not apply to a property owner who has a pending application for growth allocation under § 26-123 of the Baltimore County Code on or before July 6, 1999.

4 **Editor's Note: Said map is on file in the County offices.**

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LABORATORY — A building or group of buildings used primarily for applied and development research where the product-testing process is a major function of the operation, but where the operation does not involve any mass manufacturing. **[Bill No. 76-1964]**

LANDSCAPE SERVICE OPERATION — An operation primarily engaged in the designing, installing, planting or maintaining of lawns, gardens or other plantings at off-site commercial or residential uses. **[Bill No. 41-1992]**

LOCALLY GROWN PRODUCE — Crops which have been produced in Baltimore County or its immediate vicinity. The following areas shall be considered as immediate vicinity: Maryland, Pennsylvania, West Virginia and Delaware. **[Bill No. 41-1992]**

LOT, CORNER — A lot abutting on and at the intersection of two or more streets.

LOT DEPTH — The mean horizontal distance between the front and rear lot lines.

LOT, INTERIOR — A lot other than a corner or through lot.

LOT OF RECORD — A parcel of land with boundaries as recorded in the land records of Baltimore County on the same date as the effective date of the zoning regulation which governs the use, subdivision or other condition thereof. **[Bill No. 100-1970]**

LOT, THROUGH — A lot having its front and rear yards each abutting on a street.

MARINA — A modern boat basin, restricted to recreational marine craft of all types, with facilities for one or more of the following: berthing, launching and securing such craft, and permitting incidental minimum provision for refueling and emergency servicing, as well as the incidental sale of boats and also land (out-of-water) storage as provided in Section 417.7. **[Bill Nos. 64-1963; 149-1992]**[17]

MEDICAL OFFICE — A place for the treatment of outpatients by one or more medical practitioners. This term does not include a veterinarian's office, medical clinic, ambulatory care center, diagnostic center, birthing center or dialysis satellite unit. The term does not include ambulatory surgical facilities. **[Bill No. 37-1988]**

MEDICAL PRACTITIONER [Bill Nos. 37-1988; 29-1998; 9-1999]:

A. A physician, dentist, optometrist, chiropractor, podiatrist, psychologist, physical therapist, nurse, massage therapist as defined by § 24-441 of the Baltimore County Code or other similar health professional licensed by the state.[18]

B. A physician, dentist, optometrist, chiropractor, podiatrist, psychologist, physical therapist, nurse, massage therapist or other similar health professional licensed or certified by the state.[19]

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17 **Editor's Note: The former definition of "medical clinic," which immediately followed this definition, was repealed by Bill No. 39-2002.**

18 **Editor's Note: Section 8 of Bill No. 9-1999 provided that this definition shall take effect on 2-22-1999, and shall remain in effect until the State Board of Chiropractic Examiners notifies the County Council, in writing, that the Board is certifying massage therapists.**

19 **Editor's Note: Section 9 of Bill No. 9-1999 provided that this definition shall take effect at that time when the definition as provided in Subsection A shall no longer have any force or effect.**

Pet #9

November 2, 2005

Zoning Commissioner,

I am writing this letter because I would like to see the two lots at 2315 & 2317 Turkey Point Road used in the construction of 1 single family home. I think the use of these lots for two full size homes would ruin the open space in this area. The spacing of housing in this area is due to the fact that all the houses in this area are constructed on multiple lots. I am strongly against the development of two homes since there is ample space for Mr. And Mrs. Creamer to build one large home that would remain in line with the other homes an keep the with the aesthetics of the neighborhood.

Thank you,

Mr. And Mrs. Gary Ledley
Gary C Ledley
Carrie L. Ledley
2304 Turkey Pt. Rd.
Balto Md. 21221

Pro 11 A

7/2/05

Baltimore Zoning Regulations

re: Property location

2317 Turkey Pt Rd.

We the homeowners residing at 2310 Turkey Pt Rd, strongly oppose the overdevelopment of the property at 2317 Turkey Pt Rd.

We enjoy our waterview property. We purchased "waterview" property 25 years ago.

I can sit on my porch, with my grandchildren, and we have a clear view of Lee Creek. We can watch the crabbing boats coming and going. We can see and hear the ducks in the spring.

We are happy to be getting new neighbors. This is a good neighborhood. Part of the beauty is the water

P.10 11B

11-4-05

Dear Sir / Madame,

Due to the nature of the job(s) we hold, we will not be arriving to count today. We are though opposed of the building of (2) houses across the street on the undeveloped lots. We reside at 2312 Turkey Point Rd. and we enjoy the view across the street to see the water. If the zoning board approves this then the neighborhood will deminish, and all the waterview/front houses will drop. Please take into consideration the families that have lived down here for 10 or more years.

Sincerely
Mr. & Mrs. Backer

#11C
P.20

To: Hearing Officer
Re: 2315 & 2317 Turkey Point Rd.

After reviewing the documentation provided by Mr. and Mrs. Ferro, residents of 2313 Turkey Point Rd., I am convinced that construction on two 50 ft. lots at the addresses above should be limited to one dwelling unit as required by law.

The plan for two homes originally was presented to Rockaway Beach Improvement Assn. as a case of hardship where an elderly and handicapped brother and sister desired to live next door to each other.

County documents show this to be misleading, as the Creamers are husband and wife, and no justification for two homes, other than resale and profit, is evident. The county law which requires adjoining lots to be combined to equal at least 70 feet frontage ensures attractive and compatible construction in the neighborhood.

Therefore, I encourage Baltimore County to uphold the previous decision of one dwelling on the combined lots.

Sincerely,
Jackie Nickel
721 Rockaway Beach Ave.
Essex, MD 21221

PAO
11 D

WILLIAM I. NORRIS—ATTORNEYS AT LAW
AND
WILLIAM I. NORRIS, JR.

LIBER 2133 PAGE 149

FEE SIMPLE DEED—CODE—CITY OR COUNTY—TENANCY BY THE ENTIRETY

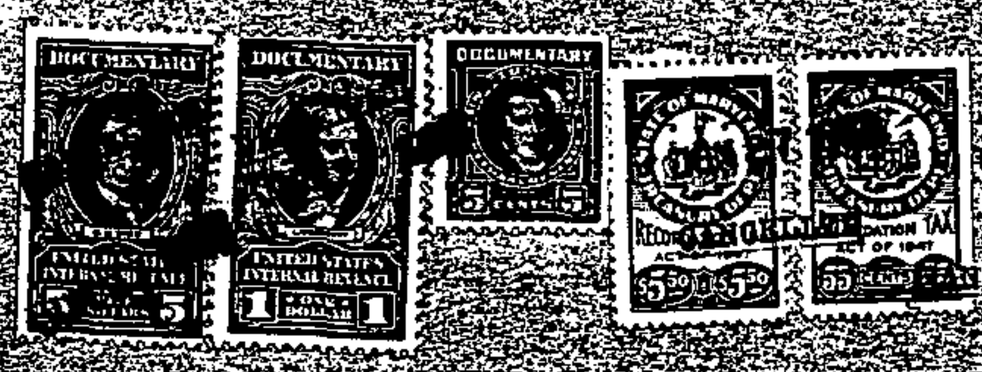
This Deed, Made this 27th day of June

in the year one thousand nine hundred and fifty-two by KATHERINE E. KILCHENSTEIN, widow, MILDRED E. BELSINGER and HERMAN BELSINGER, her husband, of the County of Baltimore, in the State of Maryland, parties of the first part, and WILLIAM J. KLEINSMITH and LILLIAN A. KLEINSMITH, his wife, of Baltimore City, in the State of Maryland, parties of the second part,

WITNESSETH, That in consideration of five dollars and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said parties of the first part do grant and convey unto the said parties of the second part, as tenants by the entireties, their assigns, the survivor of them, his or her heirs and assigns in fee simple, all th at lot of ground situate, lying and being in Baltimore County and described as follows, that is to say:

KNOWN and described as lot Numbered 11, on the Plat of Turkey Point Farm, now known as Rockaway Beach, which Plat is duly recorded among the Land Records of Baltimore County, in Plat Book W.P.C. No. 4 folio 171.

BEING the same lot of ground which by deed dated February , 1952 and recorded among the Land Records of Baltimore County, in Liber G.L.B. No. 2078 folio 162 &c., was conveyed by Clayton W. Bordley Inc., unto Katherine E. Kilchenstein and Mildred E. Belsinger.



TOGETHER with the buildings and improvements thereon erected, made or being; and *all and every*, the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or in any wise appertaining.

TO HAVE AND TO HOLD said lot of ground and premises above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said parties of the second part, as tenants by the entireties, their assigns, the survivor of them, his or her heirs and assigns, in fee-simple.

And the said Grantors hereby covenant that they will warrant specially the property hereby granted and conveyed, and that they will execute such further assurances of said property as may be requisite.

Witness the hand s and seal s of the said grantors .

TEST:

Vera C. Bushong
Vera C. Bushong

Katherine E. Kilchenstein (SEAL)
Katherine E. Kilchenstein

Mildred E. Belsinger (SEAL)
Mildred E. Belsinger

Herman Belsinger (SEAL)
Herman Belsinger

(SEAL)

STATE OF MARYLAND, City of Baltimore, *to wit:*

I HEREBY CERTIFY, That on this 27th day of June

in the year one thousand nine hundred and fifty-two before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City aforesaid, personally appeared Katherine E. Kilchenstein, widow, Mildred E. Belsinger and Herman Belsinger, her husband, the within named grantors and they acknowledged the foregoing Deed to be their act.

As witness my hand and Notarial Seal:

Vera C Bushong
Notary Public.

REC'D FOR RECORD June 28-1952-11 30 AM & RECORDED IN THE LAND RECORDS OF BALTIMORE COUNTY, LIBER G.L.B. 2133 FOLIO 149 GEORGE L. BYERLY, CLERK.

THIS DEED, Made this 3rd day of September, in the year one thousand nine hundred and sixty-nine, by and between LILLIAN R. KLINGEL, widow, of Baltimore County, State of Maryland, of the first part, and WILLIAM J. KLEINSMITH and LILLIAN A. KLEINSMITH, his wife, of the County and State aforesaid, parties of the second part.

WITNESSETH, that in consideration of the sum of Five Dollars ($5.00), and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said Lillian R. Klingel, widow, in pursuance of the powers hereinafter named, does hereby grant and convey unto the said William J. Kleinsmith and Lillian A. Kleinsmith, his wife, as tenants by the entireties, their heirs and assigns, and the survivor of them, his or her heirs and assigns, in fee simple, all that lot of ground, situate, lying and being in the 15th Election District of Baltimore County, State of Maryland, and described as follows, that is to say:

BEING known and designated as Lot 10 on the Plat of Turkey Point Farm (now known as Rockaway Beach), which Plat is recorded among the Land Records of Baltimore County in Plat Book W.P.C. No. 4, folio 171.

BEING the same lot of ground which by Deed dated June 9, 1962, and recorded among the Land Records of Baltimore County in Liber W.J.R. No. 4001, folio 184 was granted and conveyed by Henry R. Adams and Marie C. Adams, his wife, to Adam L. Klingel, Sr. and Lillian R. Klingel, his wife, or the survivor of them, for life, with full power of sale, mortgage, etc. The said Adam L. Klingel, Sr. died on or about August 6, 1969, leaving surviving his wife, the Grantor herein. This Deed is executed in pursuance of the aforesaid powers.

TOGETHER with the buildings and improvements thereupon erected, made or being and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or anywise appertaining.

T.Y. $ 2.00 REC. # STATE PROPERTY TRANSFER SEP 5 '69 CLERK

$1.00 $.50 $.50 $2.00 $2.00 $1.00 $1.00

PAID 87628 SEP 4 90.00 MSC

Page #2

TO HAVE AND TO HOLD the said lot of ground and premises above-described and mentioned, and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining, unto and to the proper use and benefit of the said parties of the second part, as tenants by the entireties, their heirs and assigns, and the survivor of them, his or her heirs and assigns, in fee simple.

AND the said party of the first part hereby covenants that she has not done or suffered to be done any act, matter or thing whatsoever to encumber the property hereby conveyed; that she will warrant specially the property granted, and that she will execute such further assurances of the same as may be requisite.

WITNESS the hand and seal of said Grantor.

TEST:

Lillian R. Klingel (SEAL)
Lillian R. Klingel

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, that on this 3 day of April, 1969, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Lillian R. Klingel, widow, the Grantor named within, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained, and in my presence signed and sealed the same.

AS WITNESS my hand and Notarial Seal.

Notary Public

Rec'd for record SEP 5 1969 at 10 01 A
Per Orville T. Cosnell, Clerk
Mail to Hoffman & Schoenberger
Receipt No. 20935 $ 7-2-$00

THIS DEED, made this 15th day of December, 1994, by and between LILLIAN A. KLEINSMITH, of Baltimore County, State of Maryland, of the first part, and LILLIAN A. KLEINSMITH, of the second part.

WITNESSETH, that for NO CONSIDERATION, the said LILLIAN A. KLEINSMITH does grant and convey unto the said LILLIAN A. KLEINSMITH, for and during the term of her natural life, and with full and absolute powers in her and remainder over, as hereinafter provided, and subject to the powers and limitations hereinafter mentioned, all that lot of ground situate, lying and being in the 15th Election District of Baltimore County, State of Maryland, and described as follows, that is to say:

> BEING known and designated as Lot 10 on the Plat of Turkey Point Farm (now known as Rockaway Beach), which Plat is recorded among the Land Records of Baltimore County in Plat Book W.P.C. No. 4, folio 171. The improvements thereon being known as 2317 Turkey Point Road.
>
> BEING the same lot of ground which by Deed dated September 3, 1969, and recorded among the Land Records of Baltimore County in Liber O.T.G. No. 5032, folio 048, was granted and conveyed by Lillian R. Klingel, widow, unto William J. Kleinsmith and Lillian A. Kleinsmith, his wife; the said William J. Kleinsmith having departed this life on or about March 13, 1991, thereby vesting title in the name of Lillian A. Kleinsmith, the Grantor herein.

TOGETHER with the buildings and improvements thereupon erected, made or being and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or anywise appertaining.

TO HAVE AND TO HOLD the said lot of ground and premises unto and to the use of LILLIAN A. KLEINSMITH for the term of her natural life with full power and the authority to her to sell, lease, convey, mortgage or otherwise dispose of said property or any part thereof, or any interest therein, including the absolute interest therein, including both life estate and remainder at any time during her natural life, except by Last Will and Testament, and the proceeds of any sale or lease thereof or money borrowed or secured by any mortgage thereof to take and expend or dispose of

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE
SIGNATURE JE DATE 12-24-94

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Baltimore County
JE 12-24-94

TRANSFER TAX NOT REQUIRED
Director of Finance
BALTIMORE COUNTY, MARYLAND
per Jay Burgee
Date 12-28-94 Sec. 31 196 G

Exhibit K

P/O #3

in such manner as she sees fit or to consume for her own purposes without obligation on the part of the purchaser, mortgagee, lessee or grantee to see to the application of the purchase money or money so borrowed or any money which may be the proceeds of any sale, mortgage, lease or disposition of any part of or any interest in said property, and from and immediately after the death of the said **LILLIAN A. KLEINSMITH** as to so much thereof or any interest therein as shall not have been disposed of by her then unto **ANTOINETTE J. SCHEILD, JACQUELINE C. STUMP** and **LYNN L. COLLINS**, as joint tenants and not as tenants in common, the survivor of them and the survivor's heirs and assigns, in fee simple.

AND the said **LILLIAN A. KLEINSMITH** hereby covenants that she has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that she will warrant specially the property hereby granted; and that she will execute such further assurances of the same as may be requisite.

WITNESS the hand and seal of said Grantor.

WITNESS:

Lillian A. Kleinsmith (SEAL)
LILLIAN A. KLEINSMITH

STATE OF MARYLAND, COUNTY OF BALTIMORE, To wit:

I HEREBY CERTIFY that on this 15th day of Dec, 1994, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore County aforesaid, personally appeared **LILLIAN A. KLEINSMITH**, the Grantor named in the above Deed, and she acknowledged the foregoing Deed to be her act.

AS WITNESS my hand and Notarial Seal.

Barbara A. [illegible]
NOTARY PUBLIC

My Commission Expires: 11/1/95

This is to certify that the within instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

MYLES F. FRIEDMAN

010890.349

State of Maryland Land Instrument Intake Sheet

County: BALTIMORE

Information provided is for the use of the Clerk's Office and State Department of Assessments and Taxation only.

(Type or Print in Black Ink Only—All Copies Must Be Legible)

1 Type(s) of Instruments

Multiple instruments of the same transaction should be numbered to correspond with Sections 2, 6, 7, and 8. Number documents in the order to be recorded.

(☐ Check Box If Addendum Intake Form is Attached.)

X	Deed	☐	Lease	☐	Other
☐	Deed of Trust	☐	Contract		
☐	Mortgage	☐	Land Installment Cont.		

2 Consideration and Fees

Consideration Amount/Recordation Fees	Doc. 1	Doc. 2
Consideration, Including Assumed Indebtedness	$ 0.00	$
Recording Charge	$ 20.00	$
Surcharge	$ 5.00	$
State Recordation Tax	$ 0.00	$ .20
State Transfer Tax	$ 0.00	$
County Transfer Tax (If Applicable)	$ 0.00	$ .5
Other	$ 0.00	$
Total Fees	$ 25.00	$

3 Exemptions (If Applicable) Cite or Explain Authority

Recordation Tax Exemption: Creation of life estate with remainder to children..

State Transfer Tax Exemption:

County Transfer Tax Exemption:

Space Reserved for Circuit Court Clerk Recording Validation

IMP FEE SURE 3 5.00
RECORDING FEE 20.00
TOTAL 25.00
Rest BA03 Rcpt # 1370
SM SM Blk # 23
Jan 03, 1995 10:57 am

4 Contact/Mail Information

Instrument Submitted By or Contact Person

Name: MYLES F. FRIEDMAN
Firm: FRIEDMAN, GARCIA & FRIEDMAN
Address: 215 Dunkirk Building - 2 Dunmanway
Dundalk, MD 21222
Phone: (410) 284-6060

Return Instrument To (Check Applicable Box Below or Provide Appropriate Address)

X Return to Contact Person as Provided Above ☐ Hold for Pick Up ☐ Address Provided on Instrument

Name:
Address:

5 Description of Property

SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i)

District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG (5)
15	15-11-470451	5032/048			

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR(3c)	Plat Ref.	Sq.Ft./Acreage (4)
Rockaway Beach	10				

Location/Address of Property Being Conveyed (2): 2317 Turkey Point Road

Partial Conveyance? ☐ Yes X No Description/Amt. of Sq.Ft./Acreage Transferred:

If Partial Conveyance, List Improvements Conveyed:

6 Transferred From

Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
LILLIAN A. KLEINSMITH	XXXXXXXXXXXXXXXXXXXX
Doc. 1 - Owner(s) of Record, if Different from Grantor(s)	Doc. 2 - Owner(s) of Record, if Different from Grantor(s)

7 Transferred To

Doc. 1 - Grantee(s) Name(s)	Doc. 2 - Grantee(s) Name(s)
LILLIAN A. KLEINSMITH	

8 Other Names to Be Indexed

Doc. 1 - Additional Names to be Indexed (Optional)	Doc. 2 - Additional Names to be Indexed (Optional)

9 Special Instructions

Special Recording Instructions (If any):

10 Conveyance Type Check Box

☐ Private Sale with Improvements /1/ ☐ Private Sale Unimproved /2/ ☐ Multiple Accounts/ Property /3/ X All Other /4/

11 Assessment Information

IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER.

X Yes ☐ No Will the property being conveyed be the grantee's principal residence?

☐ Yes X No Does transfer include personal property? If yes, identify:

☐ Yes X No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

New Owner's (Grantee) Mailing Address: 2317 Turkey Point Road
Baltimore, MD 21221

Assessment Use Only - Do Not Write Below This Line

☐ Terminal Verification ☐ Agricultural Verification Whole Part ☐ Tran. Process Verification

Transfer Number: Date Received:

	19	19
Year		
Land		
Buildings		
Total		

Deed Reference: Geo, Zoning, Use, Town Cd., Map, Grid, Parcel, Ex. St.

Assigned Property No.: Sub, Plat, Section, Ex. Cd., Block, Lot, Occ. Cd.

REMARKS:

Distribution: White - Clerk's Office | Canary - SDAT | Pink - Preparer

AOC-CC-200 (7/94)

DEED

THIS DEED made *this* 11 day of SEPTEMBER, 2002 by and between **Antoinette J. Schield (also, erroneously referred to of record as Antoinette J. Scheild), Jacqueline C. Stump and Lynne L. Collins**, parties *of the first part*, "Grantors", and **Carole C. Creamer**, party of the second part, "Grantee"

NOW, THEREFORE WITNESSETH, that for and in consideration of the sum of $110,000.00, the said parties of the first part do hereby grant and convey *unto the said parties of the second* part, as sole owner, in fee simple, the following described land and premises in Baltimore County, Maryland:

Lot numbered Ten (10) on the Plat of "Turkey Point Farm", now known as Rockaway Beach, *which plat is duly recorded* among the land records of Baltimore County, Maryland in Plat Book W.P.C. No. 4, at folio 171.
BEING the same property *conveyed by* Lillian A. Kleinsmith to herself, for life, with remainder under the Grantors (the Remainderman) named herein. The said Lillian Kleimsith died on March 18, 2002, thereby vesting title in the remainderman, the Grantors herein.

TOGETHER with all and singular the ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the said parties of the first part, of, in, to, or out of the said land and premises.

TO HAVE AND HOLD the property hereby conveyed unto the parties of the second part, her personal representatives, *heirs and assigns*, in fee simple, forever.

AND the said parties of the first part covenants that they shall execute such further assurances of said land as may be requisite.

WITNESS the hands and seals of the Grantors.

WITNESS:

Antoinette J. Schield (Seal)
Antoinette J. Schield,

Jacqueline C. Stump (Seal)
Jacqueline C. Stump,

Lynn L. Collins (Seal)
Lynn L. Collins

Pro 4A

E

STATE OF MARYLAND, COUNTY OF Balto, to wit:

I HEREBY CERTIFY that on this 11th day of Sept, 2002, before the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared **Antoinette J. Schield**, personally well known to me (or satisfactorily proven) as the person whose names is subscribed to the within Deed and she signed the same in my presence.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: 10/1/04

STATE OF MARYLAND, COUNTY OF Balto, to wit:

I HEREBY CERTIFY that on this 11th day of Sept, 2002, before the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared **Jacqueline C. Stump**, personally well known to me (or satisfactorily proven) as the person whose names is subscribed to the within Deed and she signed the same in my presence.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: 10/4/04

STATE OF MARYLAND, COUNTY OF Balto, to wit:

I HEREBY CERTIFY that on this 11th day of Sept, 2002, before the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared **Lynn L. Collins**, personally well known to me (or satisfactorily proven) as the person whose names is subscribed to the within Deed and she signed the same in my presence.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: 10/1/04

I HEREBY CERTIFY that the within deed was prepared under my supervision and I am an attorney duly admitted to practice before the Court of Appeals of Maryland.

Andrew G. Levy

After recording mail to:
Carol C. Creamer
1779 Shaftsbury Avenue
Crofton, MD 21114

CTIA FILE C0207198

16854 474

State of Maryland Land Instrument Intake Sheet

☐ Baltimore City ☒ County: Baltimore

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office only.

(Type or Print in Black Ink Only—All Copies Must Be Legible)

CHP FD SURE $ 5.00
RECORDING FEE 20.00
TR TAX STATE 550.00
TOTAL 575.00
Rcpt# 84484 Rcpt # 9698
LL Blk # 2333
Sep 23, 2002 02:26 PM

C02-07-198

1 Type(s) of Instruments (☐ Check Box if Addendum Intake Form is Attached.)
☒ Deed ☐ Deed of Trust ☐ Mortgage ☐ Lease ☐ Other ☐ Other

2 Conveyance Type Check Box ☐ Improved Sale Arms-Length [1] ☐ Unimproved Sale Arms-Length [2] ☐ Multiple Accounts Arms-Length [3] ☐ Not an Arms-Length Sale [9]

3 Tax Exemptions (If Applicable) Cite or Explain Authority: Recordation; State Transfer; County Transfer

4 Consideration and Tax Calculations

Consideration Amount	
Purchase Price/Consideration	$ 110,000.00
Any New Mortgage	$
Balance of Existing Mortgage	$
Other:	$
Other:	$
Full Cash Value	$

Finance Office Use Only — Transfer and Recordation Tax Consideration	
Transfer Tax Consideration	$
X ( ) % =	$
Less Exemption Amount –	$
Total Transfer Tax =	$ 1650.00
Recordation Tax Consideration	$
X ( ) per $500 =	$ 550.00
TOTAL DUE	$

5 Fees

Amount of Fees	Doc. 1	Doc. 2
Recording Charge	$ 20.00	$
Surcharge	$ 5.00	$
State Recordation Tax	$ 550.00	$
State Transfer Tax	$ 550.00	$
County Transfer Tax	$ 1650.00	$
Other	$	$
Other	$	$

Agent:
Tax Bill: FY 343.39
C.B. Credit:
Ag. Tax/Other:

6 Description of Property SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG ☐ (5)
15	15-11-470451	10890/346			

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR(3c)	Plat Ref.	SqFt/Acreage (4)
Rockaway Beach	10			9/171	

Location/Address of Property Being Conveyed (2): ~~Lot 10~~ 2317 Turkey Point Rd, Baltimore, MD 21221

Other Property Identifiers (if applicable) | Water Meter Account No.

Residential ☒ or Non-Residential ☐ | Fee Simple ☒ or Ground Rent ☐ Amount:

Partial Conveyance? ☐ Yes ☒ No | Description/Amt. of SqFt/Acreage Transferred:

If Partial Conveyance, List Improvements Conveyed:

7 Transferred From

Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
Antoinette J. Schield Jacqueline C. Stump	
Doc. 1 - Owner(s) of Record, if Different from Grantor(s)	**Doc. 2 - Owner(s) of Record, if Different from Grantor(s)**
Lynne L. Collins	

8 Transferred To

Doc. 1 - Grantee(s) Name(s)	Doc. 2 - Grantee(s) Name(s)
Carole C. Creamer	

New Owner's (Grantee) Mailing Address: Same

9 Other Names to Be Indexed

Doc. 1 - Additional Names to be Indexed (Optional)	Doc. 2 - Additional Names to be Indexed (Optional)

10 Contact/Mail Information

Instrument Submitted By or Contact Person
Name: Heather L. Roe
Firm: Capitol Title
Address: 2200 Defense Hwy Crofton, MD 21114 Phone: (410) 721-3340

☐ Return to Contact Person
☐ Hold for Pickup
☒ Return Address Provided

11 IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER

Assessment Information
☒ Yes ☐ No Will the property being conveyed be the grantee's principal residence?
☐ Yes ☒ No Does transfer include personal property? If yes, identify:
☐ Yes ☒ No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

Assessment Use Only - Do Not Write Below This Line

☐ Original Verification ☐ Agricultural Verification ☐ Whole ☐ Part ☐ Tran. Process Verification

Transfer Number:	Date Received:		Deed Reference:		Assigned Property No.:	
	19	19	Geo.	Map	Sub	Block
			Zoning	Grid	Plat	Lot
			Use	Parcel	Section	Occ. Cd.
			Town Cd.	Ex. St.	Ex. Cd.	

REMARKS:

Distribution: White - Clerk's Office; Canary - SDAT; Pink - Office of Finance; Goldenrod - Preparer

AOC-CC-300 (6/95)

DEED

THIS DEED made this 11 day of SEPTEMBER 2002 by and **between Antoinette J. Schield and , Jacqueline C. Stump, Co-Personal Representatives of the Estate of Lillian A. Kleinsmith** (see Estate No. 120720, Register of Wills for Baltimore County, Maryland), the first party, "Grantors", and **Jeffrey A. Creamer**, party of the second part, "Grantee"

NOW, THEREFORE WITNESSETH, that for and in consideration of the sum of $130,000.00, the said parties of the first part do hereby grant and convey unto the said parties of the second part, as sole owner, in fee simple, the following described land and premises in Baltimore County, Maryland:

Lot numbered Eleven (11) on the Plat of "Turkey Point Farm", now known as Rockaway Beach, which plat is duly recorded among the land records of Baltimore County, Maryland in Plat Book W.P.C. No. 4, at folio 171. With improvements known as 2317 Turkey Point Road.
BEING the same property acquired by William J. Kleinsmith and Lillian A. Kleinsmith by deed dated June 27, 1952, recorded in Liber 2133, folio 149. The said William J. Kleinsmith, having died on March 13, 1991. The said Lillian Kleimsith died on March 18, 2002, thereby vesting title in her Co-Personal Representatives, the Grantors herein.

TOGETHER with all and singular the ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the said parties of the first part, of, in, to, or out of the said land and premises.

TO HAVE AND HOLD the property hereby conveyed unto the parties of the second part, his personal representatives, heirs and assigns, in fee simple, forever.

AND the said parties of the first part covenants that they shall execute such further assurances of said land as may be requisite.

WITNESS the hands and seals of the Grantors.

WITNESS:

Antoinette J. Schield Co Personal Representative (Seal)
Antoinette J. Schield, Co-Personal Representative

Jacqueline C Stump, Co Personal Representative (Seal)
Jacqueline C. Stump, Co-Personal Representative

Pro 4B

STATE OF MARYLAND, COUNTY OF Baltimore, to wit:

I HEREBY CERTIFY that on this 11th day of September, 2002, before the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared **Antoinette J. Schield**, Co-Personal Representative of the Estate of Lillian A. Kleinsmith, personally well known to me (or satisfactorily proven) as the person whose names is subscribed to the within Deed and she signed the same in my presence.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: 10/1/04

STATE OF MARYLAND, COUNTY OF Baltimore, to wit:

I HEREBY CERTIFY that on this 11th day of September 2002, before the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared ***Jacqueline C. Stump***, Co-Personal Representative of the Estate of Lillian A. Kleinsmith, personally well known to me (or satisfactorily proven) as the person whose names is subscribed to the within Deed and she signed the same in my presence.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: 10/1/04

I HEREBY CERTIFY that the within deed was prepared under my supervision and I am an attorney duly admitted to practice before the Court of Appeals of Maryland.

Andrew G. Levy

After recording mail to:
Carol C. Creamer
1779 Shaftsbury Avenue
Crofton, MD 21114

CTIA FILE C0209056

16854 477

State of Maryland Land Instrument Intake Sheet

☐ Baltimore City ☒ County: Baltimore

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office only.

(Type or Print in Black Ink Only—All Copies Must Be Legible)

Space reserved for Recorder's Voucher

1 Type(s) of Instruments	(☐ Check Box if Addendum Intake Form is Attached.)				
	☒ Deed	☐ Mortgage	☐ Other	☐ Other	
	☐ Deed of Trust	☐ Lease			
2 Conveyance Type Check Box	☐ Improved Sale Arms-Length [1]	☐ Unimproved Sale Arms-Length [2]	☐ Multiple Accounts Arms-Length [3]	☐ Not an Arms-Length Sale [9]	
3 Tax Exemptions (if Applicable) Cite or Explain Authority	Recordation				
	State Transfer				
	County Transfer				

4 Consideration and Tax Calculations	Consideration Amount		Finance Office Use Only — Transfer and Recordation Tax Consideration	
	Purchase Price/Consideration	$ 130,000.00	Transfer Tax Consideration	$
	Any New Mortgage	$ 39,000.00	X ( ) % =	$
	Balance of Existing Mortgage	$	Less Exemption Amount −	$ —
	Other:	$	Total Transfer Tax =	$ 1950.00
	Other:	$	Recordation Tax Consideration	$ 650.00
	Full Cash Value	$	X ( ) per $500 =	$
			TOTAL DUE	$

5 Fees	Amount of Fees	Doc. 1	Doc. 2
	Recording Charge	$ 20.00	$
	Surcharge	$ 5.00	$
	State Recordation Tax	$ 650.00	$
	State Transfer Tax	$ 650.00	$
	County Transfer Tax	$ 1950.00	$
	Other	$	$
	Other	$	$

20 5 650 650 1950

Agent: [illegible]

Tax Bill: FY 1875310

C.B. Credit: —

Ag. Tax/Other: N

6 Description of Property SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).	District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG ☐ (5)
	15	15-11-470450	2133/149			
	Subdivision Name	Lot (3a)	Block (3b)	Sect/AR(3c)	Plat Ref.	SqFt/Acreage (4)
	Rockaway Beach	11			4/171	
	Location/Address of Property Being Conveyed (2)					
	2317 Turkey Point Rd, Baltimore, Md 21221					
	Other Property Identifiers (if applicable)				Water Meter Account No.	
	Residential ☒ or Non-Residential ☐	Fee Simple ☒ or Ground Rent ☐	Amount:			
	Partial Conveyance? ☐ Yes ☒ No	Description/Amt. of SqFt/Acreage Transferred:				
	If Partial Conveyance, List Improvements Conveyed:					

7 Transferred From	Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
	Antoinette J. Schield	
	Jacqueline C. Stump	
	Doc. 1 - Owner(s) of Record, if Different from Grantor(s)	Doc. 2 - Owner(s) of Record, if Different from Grantor(s)

8 Transferred To	Doc. 1 - Grantee(s) Name(s)	Doc. 2 - Grantee(s) Name(s)
	Jeffrey A. Creamer	
	New Owner's (Grantee) Mailing Address	

9 Other Names to Be Indexed	Doc. 1 - Additional Names to be Indexed (Optional)	Doc. 2 - Additional Names to be Indexed (Optional)

10 Contact/Mail Information	Instrument Submitted By or Contact Person	
	Name: Heather L. Roe	☐ Return to Contact Person
	Firm: Capital Title	☐ Hold for Pickup
	Address: 8200 Defense Hwy Crofton, MD 21114 Phone: 410 721-3340	☒ Return Address Provided

11 IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER

Assessment Information

☒ Yes ☐ No Will the property being conveyed be the grantee's principal residence?

☐ Yes ☒ No Does transfer include personal property? If yes, identify:

☐ Yes ☒ No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

Assessment Use Only - Do Not Write Below This Line

☐ Original Verification ☐ Agricultural Verification ☐ Whole ☐ Part ☐ Trans. Process Verification

Transfer Number:	Date Received:	Deed Reference:		Assigned Property No.:	
Year: 02	19	19	Geo.	Map	Sub	Block
			Zoning	Grid	Plat	Lot
			Use	Parcel	Section	Occ. Cd.
			Town Cd.	Ex. St.	Ex. Cd.	

Distribution: White - Clerk's Office; Canary - SDAT; Pink - Office of Finance; Goldenrod - Preparer

AOC-CC-300 (6/95)

RECEIPT # 106288 9/19/2002 DRAWER 1 CA $2,600.00 PAID RECEIPT

RECORDATION TAXES 1950.00

NON-COUNTY TRANSFER TAX 1950.00

STATE RECORDATION TAX 650.00

STATE TRANSFER TAX 650.00

RECORDING FEE 20.00

SURCHARGE 5.00

TOTAL 2625.00

Tax ID: 15-11-470450

Grantor: SCHIELD ANTOINETTE J & JACQUELINE C STUMP

Grantee: CREAMER JEFFREY A

Book: 16854 Page: 477

Type: CONVEYANCE

Recorded: 9/19/2002 at 08:19:38

Clerk: KATHY

Comment: 2317 TURKEY POINT RD

LNP FD SURE $ 5.00
RECORDING FEE 20.00
TOTAL 25.00
Rcpt # 9499
Blk # 2395
Sep 23, 2002 02:38 PM

C02-09-056

SECTION 101 - DEFINITIONS

OWNERSHIP: means any financial interest of the applicant in the subject properties. A financial interest exists if in the case of:

(1) an individual - a spouse or other family member;
(2) a partnership - any one or all partners in the partnership;
(3) a corporation - any one or all officers in the corporation;
(4) a joint venture - any one or all participants in the joint venture;
(5) a trusteeship - any one or all trustees in the trusteeship; and
(6) a personal representative or other legal entity.

pg #5

Opposition To:

"Request to construct a new dwelling on undersized lot"

The residents, and property owners, as signed below, strongly oppose the request to build a new house on Lot 10, (which would be 2315 Turkey Point Road). It is known that this lot is not orphaned, but has contiguous ownership to Lot 11, (which is now 2317 Turkey Point Road), by the same family. These lots were sold together in 2003. It is our understanding that present zoning requirements stipulate a 70' wide lot to build a new single-family dwelling. This far exceeds the 50' width, of one lot, but is well within the 100', of the two adjoined lots. It is the communities wish to have the lots (10 & 11) remain together, as one property, to preserve the present spacing and openness of the area. We have been besieged by building and development ever since the public sewerage was installed. Please stop some of this gratuitous building, and slow the over-crowding which is ruining this area. This lot is "critical area", and not only does it impact the streets, sewerage and water, but also impacts an already overcrowded waterway.

The description of lot 10 as stated in the previous Deed dated 11-15-94, states the following:

"Being known and designated as Lot 10 on the Plat of Turkey Point Farm (now known as Rockaway Beach), which is recorded among the Land Records of Baltimore County in Plat Book W.P.C. No. 4, Folio 171. **The improvements thereon being known as 2317 Turkey Point Road.** (Copy of deed attached as Exhibit A).

Name	Signature	Address
Jim & Stephanie Wacker		2312 Turkey Pt. Rd
Leo & Nancy Schuetz		2316 Turkey Pt. Rd
Charles J. Wright		2318 Turkey Pt. Rd.
Earl & Doris Burkert		2325 Turkey Pt. Rd
Don Bromwell		2326 Turkey Pt Rd
Lisa Neal		626 Rockaway Beach Ave
J. Tr Porter		2319 Turkey Pt. Rd
Nancy Kapp		2311 Turkey Pt Rd
Michael Kapp		2310 Turkey Pt Rd
Edna Bechtel		703 Rockaway Beach Ave
John Bechtel		707 Rockaway Beach Ave
Lisa Rueth		719 Rockaway Beach Ave
Jacob J. Heiland Jr.		2424 Beach Ave
Renee Hacks		2427 Beach Ave.
Kathleen Seifert		707 Rockaway Beach Ave
Mark J. Mark		2311 Turkey Point Rd

PAGE 8 #1

Exhibit M

Christopher Boggs	2327 TURKEY POINT Rd
JOSEPH GOUGHLIN	852 Sue Grove Rd
[redacted]	[redacted]
Ed Bennett	2600 Bauerschmidt Dr
Bill Miller	2710 Bauerschmidt Dr.
[illegible]	2222 Bauerschmidt Dr
Rachell Sartin	2227 Bauerschmidt dr
Karen Liventis	2702 Bauerschmidt Dr.
Charles + Evelyn Lee	610 Greyhound Rd 21221
Ed Young	1912 OLD TURKEY POINT RD 21221
[illegible]	711 Rockaway Rd 21221
Richard W Deno	2313 Turkey POINT ROAD 21221
Ruth L. Deno	2313 Turkey Pt Rd

Zoning Commissioner

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

Baltimore County

James T. Smith, Jr., County Executive
Lawrence E. Schmidt, Zoning Commissioner

May 12, 2004

C. William Clark, Esquire
Nolan, Plumhoff & Williams
502 Washington Avenue, Suite 700
Towson, Maryland 21204

Re: Petition for Undersized Lot
Property: 2315 Turkey Point Road

Dear Mr. Clark:

Enclosed please find the decision rendered in the above-captioned case. The petition for approval of an undersized lot has been denied in accordance with the enclosed Order.

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

Very truly yours,

John V. Murphy
Deputy Zoning Commissioner

JVM:raj
Enclosure

c: Carole & Jeffrey Creamer
1779 Shaftsbury Avenue
Crofton, MD 21114

Robin & Michael Ferro
2313 Turkey Point Road
Baltimore, MD 21221

Post 9

My name is Charles Markel. I live at 2321 Turkey Point Road. The subject property is two doors away from me.

I would like to say that I object to the building of two houses, one on each lot at 2315 and 2317, since the proposed houses would be too crammed in the limited area, the proposed drawings look like warehouses and would not fit in to the houses already in the neighborhood, and all of this goes against the laws for development. Also, I have been informed that the infrastructure (sewer, schools, etc.) have only allotted a certain amount of development.

I have two lots, 2321 and 2323. When I was building my house in 1999, which was before the laws changed, I was prohibited from building more than one house on the two lots. The first thing I was told by the County when I applied for my building permit was that I could not build two houses. This was also reiterated by Vince Gardina from the County Council.

My feeling is that a single family house should be built on the two lots and have only one owner. I also believe that if this is allowed to proceed, then it will set a precedent and many other houses will be allowed on undersized lots.

Charles S Markel

PUD #13

Zoning Commissioner

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

Baltimore County

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

November 29, 2005

C. William Clark, Esquire
Nolan, Plumhoff & Williams
502 Washington Avenue
Towson, Maryland 21204

Re: Petition for Special Hearing
Case No. 06-044-SPH & 06-045-SPH
Property: 2315 & 2317 Turkey Point Road

Dear Mr. Clark:

Enclosed please find the decision rendered in the above-captioned case.

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

Very truly yours,

John V. Murphy
Deputy Zoning Commissioner

JVM:dlw
Enclosure

c: Mr. & Mrs. Jeffrey A. Creamer, 1779 Shaftsbury Avenue, Crofton, MD 21114
Mr. Jim Patton, P.E., Patton Consultants, Ltd., 780 Elkridge Landing Rd., #104, Linthicum, MD 21090
Mr. Robert Creamer, 91 Dunkirk Road, Baltimore, MD 21222
Mr. Howard V. French, 320 Greyhound Road, Essex, MD 21221
Mr. Wayne Wunder, 2322 Turkey Point Road, Essex, MD 21221
Francis X. Borgerding, Jr., Esquire, 409 Washington Avenue, Suite 600, Towson, MD 21204
Mr. & Mrs. Michael Ferro, 2313 Turkey Point Road, Baltimore, MD 21221
Ms. Joanne Markel, 2321 Turkey Point Road, Baltimore, MD 21221
People's Counsel; Case File ; CBCA

EXHIBIT A

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 1999, Legislative Day No. 14

Bill No. 64-99

Mr. Kevin Kamenetz, Chairman
By Request of County Executive

By the County Council, July 6, 1999

A BILL
ENTITLED

AN ACT concerning

Public Sewer Service and Building Permits

FOR the purpose of requiring certain property owners in certain areas to connect to the public sewer under certain circumstances; authorizing the issuance of building permits in certain areas under certain circumstances; prohibiting the extension of public sewer service to certain properties under certain circumstances; prohibiting certain property owners from receiving building permits under certain provisions; requiring a certain department to report to the County Council annually; providing for the construction of this Act; and generally relating to the building permits and the extension of public sewer service.

BY repealing and reenacting, with amendments

Section 35-177
Article IV - Metropolitan District
Title 35 - Water and Sewers
Baltimore County Code, 1988

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

ORDER RECEIVED FOR FILING
Date 11-29-05
By

BY repealing and reenacting, with amendments

Section 304.1
Baltimore County Zoning Regulations

BY adding

Section 206
Baltimore County Zoning Regulations

WHEREAS, in response to certain health considerations resulting from failed septic systems, the County has authorized a capital project for the extension of public sewer service to limited portions of the Bowleys Quarters and Back River Neck area of the 5th Councilmanic District depicted on the map attached as Exhibit A; and

WHEREAS, the capital project authorized by the County was only intended to provide sufficient sewer capacity to support existing residences served by private septic systems; and

WHEREAS, the extension of sewer service under the capital project is now anticipated to result in potential excess sewer capacity beyond that necessary to address public health concerns resulting from failed septic systems; and

WHEREAS, the County Council requested the Planning Board in Council Resolution No. 10-99 to recommend land use and growth management controls for certain properties in the Back River Neck and Bowleys Quarters areas of the County; and

WHEREAS, the County Council, by the adoption of Bill No. 14-99, temporarily suspended the authority to issue building permits for unimproved, residentially-zoned property lying within certain sections of the Back River Neck or Bowleys Quarters areas of the 5th Councilmanic District; and

WHEREAS, the Planning Board adopted a report on June 3, 1999 containing

certain recommendations concerning the extension of public sewer service to existing and future development of residentially-zoned property lying within the Back River Neck and Bowleys Quarters areas of the 5th Councilmanic District; and

WHEREAS, *the County Council believes legislation is necessary to implement a* public sewer service and growth management policy for existing and future development of residentially-zoned property lying within certain sections of the Back River Neck or Bowleys Quarters areas of the 5th Councilmanic District; and

WHEREAS, the County Council held a public hearing on the Planning Board report on July 6, 1999; and

WHEREAS, the County Council believes that this legislation is necessary to protect the public health and to preserve the fragile environment of these areas; now, therefore

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That Section 35-177 of Article IV - Metropolitan District of Title 35 - Water and Sewers of the Baltimore County Code, 1988, as amended, be and is hereby repealed and reenacted, with amendments, to read as follows:

Sec. 35-177. When connection to sewerage system not compelled.

EXCEPT AS PROVIDED IN §206 OF THE BALTIMORE COUNTY ZONING REGULATIONS, [No] NO property owner having a well-maintained and properly functioning soil absorption system shall be required to abandon said system and connect to a public sewer. However, if the directors of the departments of environmental protection and resource management and public works determine that it is necessary, for the

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protection of the public health, for the public sewer system to be extended to serve existing housing units, pursuant to this title, the county shall be able to order the property owners of said housing units to make connection to said public sewer system, pursuant and subject to this title. Failure by a property owner to comply with such order shall be deemed a misdemeanor and subject the property owner to a fine of five hundred dollars ($500.00) for each month during which such connection shall not be made.

SECTION 2. AND BE IT FURTHER ENACTED, That Section 304.1 of the Baltimore County Zoning Regulations be and is hereby repealed and reenacted, with amendments, to read as follows:

Section 304. Use of Undersized Single-Family Lots

304.1 EXCEPT AS PROVIDED IN §206, [A] A one-family detached or semi-detached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;

B. All other requirements of the height and area regulations are complied with; and

C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

SECTION 3. AND BE IT FURTHER ENACTED, That Section 206 of the Baltimore County Zoning Regulations be and is hereby added to read as follows:

SECTION 206. GROWTH MANAGEMENT PLAN FOR BOWLEYS QUARTERS AND BACK RIVER NECK AREAS.

206.1 DEFINITIONS.

IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(1) "SUBDIVISION" MEANS THE DIVISION OF PROPERTY INTO TWO OR MORE LOTS.

(2) "UNDERSIZED LOT" MEANS AN UNIMPROVED PLATTED LOT OR A LOT OF RECORD ON OR BEFORE AUGUST 6, 1999 THAT DOES NOT MEET THE AREA, HEIGHT, OR SETBACK REQUIREMENTS IN THESE REGULATIONS TO ALLOW THE CONSTRUCTION OF A DWELLING.

~~206.3~~ 206.2 APPLICATION.

THIS SECTION APPLIES TO PROPERTY ZONED DR OR RC 5 AND LOCATED IN THE BOWLEYS QUARTERS AND BACK RIVER NECK AREAS DEFINED IN THE MAP ATTACHED AS EXHIBIT A AND INCORPORATED BY REFERENCE IN THIS SECTION.

~~206.4~~ 206.3 CONNECTION TO PUBLIC SEWER.

A PROPERTY OWNER WITH A DWELLING IN EXISTENCE ON OR BEFORE AUGUST 6, 1999 OR WITH A NON-EXPIRED BUILDING PERMIT THAT WAS ISSUED ON OR BEFORE FEBRUARY 16, 1999 SHALL BE REQUIRED TO CONNECT TO A PUBLIC SEWER IF THE PROPERTY IS:

(1) ZONED DR OR RC 5; AND

(2) SERVED BY PUBLIC SEWER WITH ADEQUATE CAPACITY.

~~206.5~~ 206.4 BUILDING PERMITS.

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(A)(1) EXCEPT AS PROVIDED IN ~~SUBPRAGRAPH (2)~~ PARAGRAPH (B) OF THIS PARAGRAPH, A BUILDING PERMIT MAY BE ISSUED FOR THE CONSTRUCTION OF A DWELLING ON AN UNIMPROVED PLATTED LOT OR LOT OF RECORD THAT MEETS ALL OF THE ZONING REQUIREMENTS SUBJECT TO THE FOLLOWING CONDITIONS:

(I) VARIANCES ARE NOT REQUIRED FOR THE CONSTRUCTION OF THE DWELLING;

(II) THE PROPERTY OWNER CONNECTS TO A PUBLIC SEWER WHERE AVAILABLE AND WITH ADEQUATE CAPACITY;

(III) THE DWELLING MEETS THE DESIGN REQUIREMENTS PROVIDED FOR IN THIS SECTION; AND

(IV) EXCEPT FOR MINOR SUBDIVISIONS, NO FURTHER SUBDIVISION OF THE LOT IS ALLOWED.

(B) A BUILDING PERMIT MAY BE ISSUED FOR THE CONSTRUCTION OF A DWELLING ON AN UNDERSIZED LOT SUBJECT TO THE FOLLOWING CONDITIONS:

(1) THE OWNER OF THE LOT DOES NOT OWN SUFFICIENT ADJOINING LAND THAT IF COMBINED WITH THE ADJOINING LAND WOULD ALLOW THE PROPERTY OWNER TO CONFORM TO THE CURRENT ZONING REQUIREMENTS;

(2) NO FURTHER SUBDIVISION OF THE LOT IS ALLOWED;

(3) THE PROPERTY OWNER OBTAINS A VARIANCE AS

PROVIDED FOR IN §307 OF THESE REGULATIONS; AND

(4) THE PROPERTY OWNER CONNECTS TO A PUBLIC SEWER WHERE AVAILABLE AND WITH ADEQUATE CAPACITY.

~~206.6~~ 206.5 BUILDING PERMIT APPLICATION

(A)(1)ANY PERSON DESIRING TO ERECT A DWELLING IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION SHALL FILE WITH THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT, AT THE TIME OF APPLICATION FOR A BUILDING PERMIT, PLANS SUFFICIENT TO ALLOW THE OFFICE OF PLANNING TO PREPARE THE GUIDELINES PROVIDED IN PARAGRAPH (B) BELOW.

(2) ELEVATION DRAWINGS MAY BE REQUIRED IN ADDITION TO PLANS AND DRAWINGS OTHERWISE REQUIRED TO BE SUBMITTED AS PART OF THE APPLICATION FOR A BUILDING PERMIT.

(3) PHOTOGRAPHS REPRESENTATIVE OF THE NEIGHBORHOOD WHERE THE LOT OR TRACT IS situated MAY BE REQUIRED BY THE OFFICE OF PLANNING IN ORDER TO DETERMINE THE APPROPRIATENESS OF THE PROPOSED NEW BUILDING IN RELATION TO EXISTING STRUCTURES IN THE NEIGHBORHOOD.

(B)(1)AT THE TIME OF APPLICATION FOR THE BUILDING PERMIT, AS PROVIDED ABOVE, THE DIRECTOR OF PERMITS AND DEVELOPMENT

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By

MANAGEMENT SHALL REQUEST COMMENTS FROM THE ~~DIRECTOR~~ DIRECTORS OF THE OFFICE OF PLANNING ~~(THE "DIRECTOR")~~ AND THE DEPARTMENTS OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT AND PUBLIC WORKS.

(2)WITHIN 15 DAYS AFTER RECEIPT OF A REQUEST FROM THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT, THE ~~DIRECTOR~~ DIRECTORS SHALL PROVIDE TO THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT WRITTEN RECOMMENDATIONS CONCERNING THE APPLICATION WITH REGARD TO THE FOLLOWING:

(I) SITE DESIGN. NEW BUILDINGS SHALL BE APPROPRIATE IN THE CONTEXT OF THE NEIGHBORHOOD IN WHICH THEY ARE PROPOSED TO BE LOCATED. APPROPRIATENESS SHALL BE EVALUATED ON THE BASIS OF NEW BUILDING SIZE, LOT COVERAGE, BUILDING ORIENTATION AND LOCATION ON THE LOT OR TRACT.

(II) ARCHITECTURAL DESIGN. APPROPRIATENESS SHALL BE EVALUATED BASED ON ONE OR MORE OF THESE ARCHITECTURAL DESIGN ELEMENTS OR ASPECTS:

1. HEIGHT;

2. BULK OR MASSING;

3. MAJOR DIVISIONS, OR ARCHITECTURAL

RHYTHM, OF FACADES;

4. PROPORTIONS OF OPENINGS SUCH AS WINDOWS AND DOORS IN RELATION TO WALLS;

5. ROOF DESIGN AND TREATMENT; AND

6. MATERIALS AND COLORS, AND OTHER ASPECTS OF FACADE TEXTURE OR APPEARANCE.

(III) DESIGN AMENDMENTS. THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT MAY RECOMMEND APPROVAL, DISAPPROVAL OR MODIFICATION OF THE BUILDING PERMIT ~~TO CONFORM WITH~~ AFTER CONSIDERATION OF THE RECOMMENDATIONS PROPOSED BY THE ~~OFFICE OF PLANNING~~ DIRECTORS.

~~206.7~~ 206.6 PUBLIC NOTICE.

FOR UNDERSIZED LOTS, ON APPLICATION FOR A BUILDING PERMIT IN ACCORDANCE WITH THIS SECTION, THE SUBJECT PROPERTY SHALL BE POSTED CONSPICUOUSLY UNDER THE DIRECTION OF THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT WITH NOTICE OF THE APPLICATION FOR A PERIOD OF AT LEAST 15 DAYS.

~~206.6~~ 206.7 PUBLIC HEARING.

(A) THIS SUBSECTION APPLIES TO UNDERSIZED LOTS.

(B) WITHIN THE FIFTEEN-DAY POSTING PERIOD:

(1) ANY OWNER OR OCCUPANT WITHIN 1,000 FEET OF THE LOT MAY FILE A WRITTEN REQUEST FOR A PUBLIC HEARING WITH

ORDER RECEIVED FOR FILING
Date 1-26-05
By

THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT; OR

(2) THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT MAY REQUIRE A PUBLIC HEARING.

(C) THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT SHALL NOTIFY THE APPLICANT WITHIN 20 DAYS AFTER THE RECEIPT OF A REQUEST FOR A PUBLIC HEARING.

(D) THE ZONING COMMISSIONER SHALL HOLD THE PUBLIC HEARING WITHIN 30 DAYS AFTER RECEIVING THE REQUEST FOR A PUBLIC HEARING.

(E) AT THE PUBLIC HEARING, THE ZONING COMMISSIONER SHALL DETERMINE WHETHER THE PROPOSED DWELLING IS APPROPRIATE.

206.8 FINAL APPROVAL.

(A) THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT MAY:

(1) ISSUE THE BUILDING PERMIT; OR

(2) FOR UNDERSIZED LOTS, NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, REQUIRE A PUBLIC HEARING BEFORE THE ZONING COMMISSIONER IN ACCORDANCE WITH THIS SECTION.

(B) IF THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT HAS NOT NOTIFIED THE APPLICANT OF A DETERMINATION IN ACCORDANCE WITH THE PROVISIONS OF THIS

SECTION, OR HAS NOT NOTIFIED THE APPLICANT IN ACCORDANCE WITH SECTION 206.7 ABOVE OF THE INTENTION TO REQUIRE A PUBLIC HEARING, THE DWELLING SHALL BE DEEMED APPROPRIATE FOR PURPOSES OF THIS SECTION.

206.9 APPEALS

THE DECISION OF THE ZONING COMMISSIONER OR THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT MAY BE APPEALED, IN WHICH CASE THE BOARD OF APPEALS SHALL HOLD THE HEARING WITHIN 45 DAYS AFTER RECEIPT OF THE REQUEST.

206.10 FEES

THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT SHALL ESTABLISH APPROPRIATE FEE SCHEDULES.

206.11 GROWTH ALLOCATION NOT APPLICABLE.

A PROPERTY OWNER WHO IS REQUIRED TO CONNECT TO PUBLIC SEWER AS PROVIDED FOR IN THIS SECTION MAY NOT APPLY FOR GROWTH ALLOCATION UNDER §26-123 OF THE BALTIMORE COUNTY CODE.

206.12 REGULATIONS

THE DEPARTMENT OF PUBLIC WORKS IN CONSULTATION WITH THE OFFICE OF PLANNING, AND DEPARTMENTS OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT AND PERMITS AND DEVELOPMENT MANAGEMENT, MAY ADOPT REGULATIONS IN ACCORDANCE WITH TITLE 2, ARTICLE 8 OF THE BALTIMORE COUNTY CODE, TO CARRY OUT THE PROVISIONS OF THIS SECTION.

ORDER RECEIVED FOR FILING
Date 11-26-15
By

SECTION 3. AND BE IT FURTHER ENACTED, That, consistent with the County's Water and Sewer Plan, public sewer service may not be extended to property zoned RC 20 in area depicted in the map attached as Exhibit A except:

(1) For properties with a dwelling in existence on or before August 6, 1999 to which public sewer is extended;

(2) As provided in §35-177 of the Code; and

(3) For properties that have been transferred in accordance with §1A05.5 of the Baltimore County Zoning Regulations to which public sewer is extended.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act may not be construed to:

(1) Require the County to extend public sewer capacity to any property; or

(2) Prohibit the Department of Environmental Protection and Resource Management from issuing permits for on-site disposal systems in accordance with the Baltimore County Code for properties zoned RC 20..

SECTION 5. AND BE IT FURTHER ENACTED, That the Department of Public Works, in consultation with the Departments of Planning, Permits and Development Management, and Environmental ~~and Resource~~ Protection and Resource Management, shall report annually to the County Council, beginning in July of 2000, on the capacity of the public sewer in the Back River Neck and Bowleys Quarters areas depicted in the map attached as Exhibit A and the potential for the connection of public sewer to properties that are not zoned DR, RC 5, or RC 20.

SECTION 6. AND BE IT FURTHER ENACTED, That §206.5(A)(1)(IV) does not apply to property that is zoned DR and has an approved development plan on or before May 28, 1999 except that the minimum lot size requirement for the approved development plan shall be

12,000 square feet.

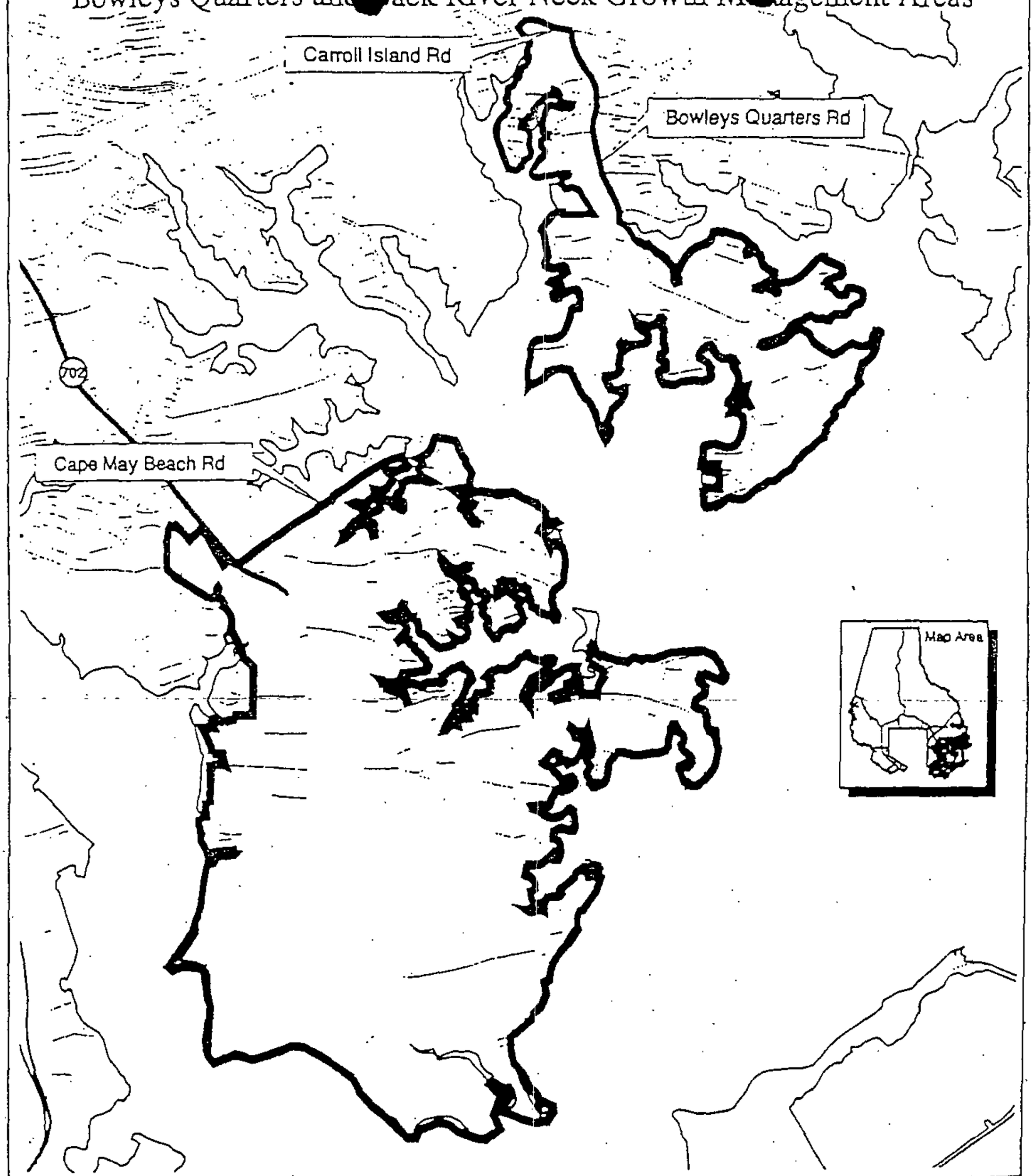
SECTION 7. AND BE IT FURTHER ENACTED, That §206.11 does not apply to a property owner who has ~~applied~~ a pending application for growth allocation under §26-123 of the Baltimore County Code on or before ~~the effective date of this Act~~ July 6, 1999.

SECTION 8. AND BE IT FURTHER ENACTED, That this Act, having been passed by the affirmative vote of five members of the County Council, shall take effect August 6, 1999.

b06499.wpd

ORDER RECEIVED FOR FILING
Date 11-29-05
By Dawn Stahl

Bowleys Quarters and Back River Neck Growth Management Areas



LEGEND

Interstates

Secondary and Local Roads

Impacted Area Line

0.5 0 0.5 1 Miles

DATA SOURCES:
Roads:
Baltimore Metropolitan Council (1:24000)

March 1998

Prepared for:
Baltimore County Office of Planning
401 Bosley Avenue
Towson, MD 21204

Baltimore County Office of Planning
OIT - GIS Services Unit

EXHIBIT B

Baltimore County
Planning Board

401 Bosley Avenue
Towson, Maryland 21204
(410) 887-3495
Fax: (410) 887-5862

June 8, 1999

The Hon. Kevin Kamenetz
Chairman, Baltimore County Council
The Court House
Towson, MD 21204

Re: Growth Management - Council Resolution 10-99

Dear Councilman Kamenetz:

Enclosed is Part 1 of a Final Report by the Baltimore County Planning Board adopted unanimously on June 3, 1999, and submitted in accordance with Section 26-123(c) of the County Code. Part 2, which is expected to follow later in June, will address design guidelines for new development and redevelopment in the study area.

The Planning Board recommends that sewer capacity in Bowleys Quarters and the Back River Neck Peninsula be allocated according to the priority system described in the report. Recognizing that some properties abutting sewer lines may not be able to be connected to the sewer system (either because of county policy or because there is not enough capacity in the system) the Planning Board also recommends that Baltimore County consider the equitability of requiring owners of those properties to pay the front foot assessment. The Board requests that the county study possible alternatives for properties that cannot connect to sewer, including abatement of the sewerage front foot assessment or, if this is not feasible, the abatement of real estate taxes.

The Planning Board recommends that Baltimore County not only continue to *compel* the combination of undersized adjoining lots in *common* ownership, but also e*ncourage* the combination of undersized lots in *separate* ownership. Some possible ways to facilitate lot consolidation are:

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Date 11-29-05
By

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- Create a special, expedited process in the development regulations to consolidate lots. (Currently these encounter the burden of being processed as "subdivisions".)

- Determine the feasibility of waiving Baltimore County's real estate transfer tax when the purpose of transfer is to consolidate lots.

- Develop an educational campaign and information clearinghouse, including an informational brochure for citizens.

- Provide special training for personnel of Baltimore County government to assist property owners with the lot consolidation process.

Finally, the Planning Board requests that, once the sewerage policies are decided, permits be issued as a first priority for property owners who have already applied for permits and been waiting because of the moratorium.

The Planning staff will be pleased to assist the Council in the consideration of this matter.

Sincerely,

Pat Keller

Arnold F. 'Pat' Keller, III
Secretary

AFK:JM:rlh

Enclosure

c: Members, Baltimore County Council
John Wasilisin, Administrative Officer
Thomas Peddicord, Legislative Counsel/Secretary
Brian Rowe, County Auditor
Virginia Barnhart, County Attorney
Arnold Jablon, Director, Permits & Development Management
Charles R. Olsen, Director, DPW
George Perdikakis, Director, DEPRM
Lawrence Schmidt, Zoning Commissioner
Peter Max Zimmerman, People's Counsel
Patrick Roddy, Assistant County Attorney
Robert J. Barrett, Spec. Asst. to the County Executive

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Date 11-29-05
By

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Proposals for Growth Management
Bowleys Quarters and Back River Neck Peninsula
(Response to County Council Resolution No. 10-99)

The following recommendations apply to the study areas identified in County Council Resolution No. 10-99 and depicted on the attached map.

I. OBJECTIVES

- Develop clear and consistent standards that provide certainty for all interested parties.
- Improve water quality by relieving failing septic systems, and preventing the failure of older, marginal septic systems.
- Recognize legitimate rights to develop property.
- Conserve and enhance residential communities.
- Develop procedures and guidelines which are consistent with the goals and objectives of the Baltimore County Master Plan, the Maryland Rural Legacy Act, the Baltimore County Coastal Rural Legacy Program, the Chesapeake Bay Critical Areas Program, the Special Area Management Plan, and the protection of the natural environment.

II. CATEGORIES FOR SEWER SERVICE

Following is a list of development categories that could connect to public sewer, in order of priority. Each category includes proposed requirements and actions that would help to achieve the objectives. (Note that new development, redevelopment and certain renovations are subject to Chesapeake Bay Critical Areas requirements and other environmental regulations, and could also be subject to design standards or guidelines to be considered by the Planning Board in conjunction with this proposal.) The public sewer system would:

A. Expeditiously serve, as a first priority, all existing dwellings with failing or non-failing septic systems, regardless of zone or lot size. In no case should connections for existing dwellings be delayed in order to connect new development. Capacity should be reserved to ensure that all existing dwellings are connected.

1. Require all existing dwellings to connect to public sewer.
2. Connect all dwellings existing before February 15, 1999; reserve adequate capacity.
3. Determine that a structure is a livable dwelling (not a shed, chicken coop, etc.); otherwise, treat as an unimproved property.

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Date 11-29-05
By

B. Serve unimproved lots or parcels that meet existing zoning standards in DR zones, including:

1. Residential lots shown on a valid record plat created as part of a subdivision process enacted by the Baltimore County Council or the Board of County Commissioners, involving development plan review by appropriate agencies, dedication of rights or way for streets and other public facilities, and compliance with all other applicable county regulations and requirements (see Title 26, Article V, Development Regulations of the Baltimore County Code, 1988, as amended, for the current process); and

2. Recorded lots or parcels (most very old) created through metes and bounds descriptions or lot recordation before any plan review process was enacted by the Baltimore County Council or the Board of County Commissioners . . . etc., (see B.1). Connect sewer, provided that lots meet the minimum site standards (area, width, and yard setbacks) of Sec. 1B02.3, of the Baltimore County Zoning Regulations (BCZR).

C. Serve recorded unimproved *undersized* lots, or tracts of undersized lots in single ownership, in all DR zones, subject to Sec. 304 *and* Sec. 307 of the BCZR.

1. Combine lots in common ownership to meet minimum requirements for lot area and lot width (Sec. 1B02.3). (Minimum lot area and width are, respectively, 10,000 square feet and 70 feet in DR 3.5; and 6,000 square feet and 55 feet in DR 5.5.); *and*

2. Obtain variances if lot fails to meet front, rear, and side yard setbacks.

3. Lots less than 50 feet in width at the building line are strongly discouraged and may not be supported.

D. Serve existing unimproved lots or parcels in RC 5 and RC 20 zones which conform to the current zoning standards, but no service to new subdivisions except as provided in No. 3 below. Lots to be served include:

1. Residential lots created as part of a subdivision process enacted by the Baltimore County Council or the Board of County Commissioners, etc., . . . (see B.1), and shown on a valid record plat which was effective on February 15, 1999; and

2. Lots or parcels (most very old) created through metes and bounds descriptions or lot recordation before any plan review process was enacted by the Baltimore County Council or the Board of County Commissioners, etc., . . . (See B.1). Connect sewer provided that lots meet the minimum area and setbacks of Section 1A04.3 for RC 5 or the minimum setbacks of Sec. 1A05.4 for RC 20, BCZR.

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Date 6-29-99
By

3. Lots created in RC 20 zones through a bona-fide intra-family transfer in accordance with Sec. 1A05.5 of the Baltimore County Zoning Regulations.

E. Serve recorded unimproved *undersized* lots, or tracts of undersized lots in single ownership, in all RC 5 zones subject to Sec. 304 *and* Sec. 307 of the BCZR, and recorded unimproved lots in RC 20 zones that fail to meet setbacks, subject to Sec. 307.

1. Combine lots in common ownership to meet the minimum lot area requirement of one acre, and

2. Obtain variances if lot fails to meet front, rear, and side yard setbacks.

3. Lots less than 50 feet in width at the building line are strongly discouraged and may not be supported.

F. After the effective date of this legislation, Chesapeake Bay Critical Area Growth Allocation should not be approved, within the study area, for conversion from Resource Conservation Area.

ORDER RECEIVED FOR FILING
Date 11-29-05
By

Bowleys Quarters and Back River Neck Study Areas



LEGEND

Interstates

Secondary and Local Roads

Study Area

0.5 0 0.5 1 Miles

DATA SOURCES:
Roads:
Baltimore Metropolitan Council (1:24000)

March 1999

Prepared for
Baltimore County Office of Planning
401 Bosley Avenue
Towson, MD 21204

Baltimore County Office of Planning
OIT - GIS Services Unit

ORDER RECEIVED FOR FILING
Date 11-29-05
By

IN RE: PETITION FOR APPROVAL OF UNDERSIZED LOT S/S of Turkey Point Road, 800 ft. E corner of Rockaway Beach Avenue 15th Election District 6th Councilmanic District (2315 Turkey Point Road) Carole Creamer, *Legal Owner* **and** Jeffrey Creamer, *Petitioners*	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY Undersized Lot

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for approval of an undersized lot filed by the legal owner of the subject property, Carole Creamer by her husband, Jeffrey Creamer. The property is located at 2315 Turkey Point Road in the eastern area of Baltimore County. Approval of the undersized lot was made pursuant to Section 304 of the Baltimore County Zoning Regulations (B.C.Z.R.) for application to construct a dwelling on an undersized lot. The property was posted with Notice of Hearing on February 28, 2004 and a formal Demand for Hearing was subsequently filed on March 11, 2004 by Richard Ferro, an adjacent property owner. Pursuant to the statute the case was set for hearing before this Commission on April 27, 2004.

The property was posted with Notice of Hearing on April 10, 2004, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning Hearing was published in "The Jeffersonian" newspaper on April 13, 2004 to notify any interested persons of the scheduled hearing date.

Applicable Law

Section 304 .1 and 304. 4 of the Baltimore County Zoning Regulations

Sec. 304.1[Bill Nos. 64-1999; 28-2001] Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

A.Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;
B.All other requirements of the height and area regulations are complied with; and
C.The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

Sec. 304.4 Public hearing. Within the fifteen-day posting period: (1) Any owner or occupant within 1,000 feet of the lot may file a written request for a public hearing with the Department of Permits and Development Management, or (2) the Director of Permits and Development Management may require a public hearing. The Department of Permits and Development Management shall notify the applicant within 20 days of the receipt of a request for a public hearing. A hearing before the Zoning Commissioner shall be scheduled within 30 days from receipt of the request for public hearing. At the public hearing, the Zoning Commissioner shall make a determination whether the proposed dwelling is appropriate.

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: None.

Interested Persons

Appearing at the hearing on behalf of the request were Carole Creamer and Jeffrey Creamer, Petitioners. C. William Clark, Esq. represented the Petitioners. Robin Ferro and Michael Ferro appeared at the hearing in opposition to the requested approval. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

Testimony and evidence indicated that the property, which is the subject of this request, is zoned D.R. 3.5 which requires a 70 ft. wide lot pursuant to the small lot chart of Section 1B02.3.C.1 of the B.C.Z.R. This lot is 50 ft. wide and improved only by a small shed. Mr. Clark proffered that the Petitioner would like to sell the lot as a buildable waterfront lot. The lot is served by both public water and sewer. The building setback envelope is shown on Petitioner's Exhibit No. 2. The new home would meet all County regulations required under the DR 3.5 zoning except for the lot width.

Mr. Clark offered a deed dated September 11, 2002 showing that Carole Creamer purchased the property in her name alone. He further offered that this lot was Lot No. 10 of the "Turkey Point Farm" (now Rockaway Beach) subdivision which was recorded in the Land Records of Baltimore County in 1915, as shown on Petitioner's Exhibit No. 4. He noted that the lots on Sue Creek were all the typical 50 ft. wide lots of that era. Petitioner's Exhibit No. 5 is a deed for the lot and home next door at 2317 Turkey Point Road, which deed indicates that this property is owned by Petitioner Jeffrey Creamer, Carole Creamer's husband. A photograph of this property and the Creamer home is given in Petitioner's Exhibit No. 6A. Mr. Clark proffered that this home was in poor condition. Consequently, the Petitioner would like to raze this home and build another more suitable for the family. Finally, the Petitioner presented Exhibit No. 8 which is a rendering of the home that they propose to build on the subject property that shows the garage facing the street and side entrance.

The protestants, Mr. and Mrs. Ferro live next to the subject property at 2313 Turkey Point Road. They presented SDAT records that showed that 2315 Turkey Point road is owned by Carole Creamer, that 2317 Turkey Point Road is owned by Jeffrey Creamer, and that both properties were purchased on the same day in 2002. Protestant's Exhibit No. 4 is a deed dated November 15, 1994 from Lillian Kleinsmith to herself reserving a life estate. However, although the deed shows it involves Lot No. 10, the improvements are noted in the deed as being known as 2317 Turkey Point Road (not 2315 Turkey Point Road). The Protestants also placed on the record a copy of the Zoning Commissioner's Policy Manual regarding Section 304 of the B.C.Z.R. concerning elevations and floor plans for the new home to be constructed. Finally, the Protestants presented the Baltimore County GIS map of the area. See protestants' Exhibit No. 7.

Mr. Ferro argued that the Section 304.1 C of the B.C.Z.R. and Zoning Commissioner's Policy Manual, Section 304, prohibited approval of the undersized lot because the adjoining land was owned by the Petitioner's husband and could be used to conform to the lot width requirements by

combining lots. He noted that the bulkhead on Sue Creek for Lots 10 and 11 was one structure, that the pier on the line between Lots 10 and 11 served both lots, that the shed on lot 10 was part of lot 11, and that both lots were sold together in 1994. He was also concerned about water runoff onto his property if the new home were built, about the side entrance of the proposed home and the Petitioner's site plan (Exhibit No. 2) which he said showed encroachments onto his property. He also presented a petition signed by neighbors opposed to the approval.

Mr. Creamer testified that the community association had taken no position in regard to this application, and that Lots 10 and 11 were in separate ownership. He denied that water from this lot would flow onto the Ferro lot, and asserted that many homes in the neighborhood had garages facing the street with side entrances.

Findings of fact and conclusions of law

Mr. Clark argued that Section 304 of the Zoning Commissioner's Policy Manual is no longer applicable to such cases as it is not supported by the regulations and is out-of-date. Specifically, he notes that Section 304 of the regulations makes no mention of any "six year rule" which arises in the Policy Manual only. He notes that the deeds show separate ownership and that Carole Creamer does not own sufficient adjoining land to conform to the regulations and so does not violate Section 304.1 C of the B.C.Z.R.

While I understand Mr. Clark's argument regarding the six year rule in the Zoning Commissioner's Policy Manual, I do not agree that the Policy Manual is without force or effect. As can be seen by reading The Policy Manual, it was written and adopted to prevent abuses that unfortunately developed in some areas where petitioners would put adjacent lots in different names as a subterfuge of the regulation in order to avoid Section 304.1.C of the B.C.Z.R. That reason is still very much of concern generally and was adopted by the Zoning Commission to interpret and explain the section of 304.1.C.

As the Policy states, it is not a rule but a guideline. It is input to a case by case determination of whether the Petitioners have acted in good faith. On its face, the present Petitioner violates the six-year rule. They have waited only two years to apply for a building permit. However, I have no evidence to support this, nor do I believe that the instant Petitioners had hatched some scheme to violate the policy. I have no evidence that the Petitioners placed the title of the two lots in separate names to confound the regulations. I do not find application of the six-year rule dispositive of this case.

Rather, when I look at the criteria given in Section 304.4, I note that I am only charged with finding whether or not the proposed dwelling is "appropriate". I find that it is not "appropriate" in this case, not because the orientation of the home, nor the possibility of water runoff onto the protestants property, nor because of the common use of Lots 10 and 11 as argued by the protestants. I find that putting a new home on a 50 ft. wide lot is not appropriate in this neighborhood because the neighborhood has not in fact been developed that way. I say this even though I recognize that the old 1915 subdivision was laid out in 50 ft. wide lots. However, unlike many similar waterfront subdivisions, this subdivision was actually developed using double lots. That fact is best shown by Protestant's Exhibit No. 7. A review of the County's GIS map shows the double lot development of the area. Sometimes the buildings are placed on the property line between double lots. Sometimes the buildings simply encroach on the adjacent lot. Finally, other situations show, as is the case here, the building on one lot and an accessory building on the other. But, in general, I find that the area has been developed in double 50 ft. lots. In my opinion, to start a single lot development now, as the Petitioners request, after many years of double lot development would change the character of the neighborhood. I do not think this is appropriate.

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

THEREFORE, IT IS ORDERED, this 10 day of May, 2004, by this Deputy Zoning Commissioner, that the Petitioner's request for approval an undersized lot pursuant to Section 304 of the Baltimore County Zoning Regulations (B.C.Z.R), for application to construct a dwelling on an undersized lot, be and is hereby Denied.

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

John V. Murphy

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:raj

RE: APPLICATION FOR UNDERSIZED LOT 2315 Turkey Point Road; S/S of Turkey Point Road, 800' E corner of Rockaway Beach Avenue 15th Election District, 6th Councilmanic District	*	BEFORE THE COUNTY BOARD OF APPEALS
	*	FOR
Legal Owner: Carole and Jeffrey Creamer	*	BALTIMORE COUNTY
Petitioner(s)	*	Case No. CBA-04-13

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BALTIMORE COUNTY
BOARD OF APPEALS

* * * * * * * * * * *

Memorandum of People's Counsel for Baltimore County

People's Counsel files this memorandum with the County Board of Appeals:

I

This office has previously filed its entry of appearance in this case. The petition is for approval under BCZR 304 for an undersized lot at 2315 Turkey Point Road. The property is in the Chesapeake Bay Critical Area. It is also in the Back River Growth Management area. The current BCZR 304 is attached as Exhibit 1.

Petitioner is Jeffrey Creamer. His wife, Carole Creamer, owns the lot now denominated as 2315 Turkey Point Road. This is only part of the story. The Creamers purchased, respectively, adjoining lots (now being called 2315 and 2317 Turkey Point Road) on September 23, 2002 from remaindermen of the Kleinsmith family. In other words, Jeffrey owns what is now being called 2317. In actuality, the adjoining lots had been in unified ownership and used for one existing residence called 2317 Turkey Point Road for many years. Petitioners have purchased the lots in split fashion in order to try to develop a second house. See SDAT Printouts. Exhibit 2.

The D.R. 3.5 zone requires a minimum road frontage of 70 feet for existing lots. BCZR 102.3.C. Together, the two lots have road frontage of 100 feet, more than enough to meet the law. In splitting the property, however, Petitioner seeks to develop in a way so that both new lots have frontage of 50 feet each. This does not satisfy the standard.

The Petition presents significant questions concerning the law of undersized lots under Section 304 of the Baltimore County Zoning Regulations. A core question is whether the property is eligible for undersized lot approval without a variance. A secondary question is whether the Petition satisfies the law in any event.

In 1955, the County Council established BCZR 304 as the essential standard for the approval of lots undersized as to area or width at the building line. Exhibit 3. In order to qualify, a lot had to be recorded or approved before March 30, 1955; had to meet all other height and area requirements; and had to be in a situation where the owner did not own sufficient adjoining land to conform to the width and area requirements. The developer of an undersized lot which does not meet these criteria would have to apply for and obtain approval of a variance under BCZR 307.

In 1992, the Council in Bill 47 amended this law, retained the original BCZR 304 as 304.1 and added new BCZR 304.2. Exhibit 4. The thrust of this Bill was to provide, in BCZR 304.2, for a new and detailed compatibility review for lots meeting the basic criteria. This established a stricter standard of review for all undersized lots. As the Planning Board Report which preceded the Bill made clear, property owners desirous of developing undersized lots which did not meet the basic criteria could still apply for variances. Exhibit 5, Planning Board Report dated November 7, 1991.

In 1999 and 2001, the Council added Bills 64 and 28, respectively, which refer to the Back River/Bowleys Quarters Growth Management Law standards. The Petition, therefore, is subject to both Critical Area and Growth Management Area standards.

II

This case does not qualify under BCZR 304 without a variance. As of 1955, and until 2002, the two lots at issue were in the same ownership. Even now, the husband and wife own the two lots, respectively. There is no dispute that there is sufficient land on the two adjoining lots so that the area and width regulations are satisfied.

It is People's Counsel's position that the 1955 law envisaged that satisfaction of the ownership criterion of BCZR 304 would be based on ownership status at the time of enactment, March 30, 1955. It would undermine the law to allow a property owner of several lots to split them for sale so that the contract purchasers can claim they do not own sufficient adjoining land to comply. That is effectively a sham.

It is particularly aggravating that the two lots were occupied together in one ownership for a very long period of time, at least approaching fifty years, the "split sale" is of recent vintage, and the split itself is a false split involving the same family.

There is reference in the Deputy Zoning Commissioner's opinion to a Zoning Policy which allows a purchaser in a "split sale" to claim after six years that there is not sufficient land to comply with the regulations. The Petitioner cannot even comply with this policy. In any event, this policy itself is inconsistent with the law. There is no authority for such a grace period. If there was sufficient property in single ownership to comply with the law as of 1955, the law cannot be avoided by a subsequent split sale at

any time. A policy cannot stand where it is inconsistent with the letter and spirit of applicable law. See Christ v. Department of Natural Resources 335 Md. 427, 437 (1994).

The Creamers could have applied for a variance, before or after a "split sale." There then would have come into play the review and scrutiny based on the BCZR 307 variance standards. In attempting to sidestep the variance law, they have filed a defective and fatally flawed petition.

III

The Deputy Zoning Commissioner pointed out that, even if the Petition were eligible for consideration under BCZR 304 without a variance, the proposal is not "appropriate" under the BCZR 304.2 standards. In this connection, he observed that the proposal does not fit or conform to the development pattern of the neighborhood. This additional concern weighs against approval. A review of the 2004 Zoning Map, Exhibit 6, would appear to bear out his observation.

IV

The Petition must also satisfy Chesapeake Bay Critical Area standards. Nothing in the record shows that the proposal is consistent with the law in this regard.

Conclusion

For these reasons, the Petition is legally insufficient and does not satisfy the relevant standards. As the Petitioner and a neighboring citizen in opposition are both represented by counsel, we will leave it to them to develop the facts, which we expect to be largely undisputed. We reserve the right to file a supplemental memorandum to the extent necessary and appropriate.

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of March, 2005, a copy of the foregoing Memorandum of People's Counsel for Baltimore County was mailed to Francis X. Borgerding, Jr, Esquire, 409 Washington Avenue, St 600, Towson, MD, 21204, and to C. William Clark, Esquire, Nolan, Plumhoff & Williams, Chtd., 502 Washington Avenue, Suite 700, Towson, MD 21204, Attorney for Petitioner(s).

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

1/31/07

IN THE MATTER OF THE APPLICATION OF JEFFREY A. CREAMER. - PETITIONER FOR SPECIAL HEARING ON PROPERTY LOCATED AT 2317 TURKEY POINT ROAD, S/S TURKEY POINT RD, 700' W OF C/L ROCKAWAY BEACH ROAD 15TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Case No. 06-044-SPH
AND	*	and
IN THE MATTER OF THE APPLICATION OF CAROLE A. CREAMER – PETITIONER FOR SPECIAL HEARING ON PROPERTY LOCATED AT 2315 TURKEY POINT ROAD, 700' W OF C /L ROCKAWAY BEACH ROAD 15TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT	*	Case No. 04-160-SPH and Case No. CBA-04-137
AND	*	
IN THE MATTER OF CAROLE AND JEFFREY CREAMER - LEGAL OWNERS – APPLICATION FOR UNDERSIZED LOT – 2315 TURKEY POINT ROAD, S/S OF TURKEY POINT ROAD, 800' E CORNER OF ROCKAWAY BEACH AVENUE 15TH ELECTION DISTRICT 6TH COUNCILMANIC DISTRICT	*	

* * * * * * *

OPINION

This matter is before the Board on an appeal of the decision of the Deputy Zoning Commissioner (DZC) in which the DZC determined that a lot was an existing lot of record and thereafter denied the request to confirm that two lots were not undersized lots as defined by the *Baltimore County Zoning Regulations*.

Background

The two properties are located at 2315 and 2317 Turkey Point Road in the Bowleys Quarters area of Baltimore County. Petitions were filed by Jeffrey A. Creamer in Case No. 06-044-SPH (2317 Turkey Point Road) and Carole C. Creamer in Case No. 06-045-SPH (2315 Turkey Point Road), Legal Owners /Petitioners. The special hearing relief requested was the

same for both lots pursuant to § 500.7 of the *Baltimore County Zoning Regulations* (BCZR) to determine that each lot is an existing lot of record and that it is not an undersized lot as defined by the BCZR, § 4A03.1; Growth Management Plan for Bowleys Quarters and Back River Neck areas. Case No. CBA-04-137 is an appeal of a decision of the Deputy Zoning Commissioner wherein the DZC denied a request for approval of an undersized lot pursuant to § 304 of the BCZR and for an application to construct a dwelling on an undersized lot.

A hearing was held before the Board on October 11, 2006. Petitioners were represented by C. William Clark, Esquire. The Protestants were represented by Francis X. Borgerding, Jr., Esquire. Testimony and evidence was taken on that day, and briefs were submitted by both parties on October 27, 2006. Public deliberation was held on December 6, 2006.

Facts

The Petitioners previously requested that the DZC approve the two lots in question as buildable undersized lots pursuant to § 304 of the BCZR. The Protestants in Case No. CBA-04-137 lived next door to the lot owned by Carole Creamer and argued that the land was available to Carole Creamer through her husband so that the request should be denied. In an order dated May 10, 2004, the DZC denied the Petitioners' request on the basis that the two new homes on the lots were not appropriate considering the pattern of development in the neighborhood.

Petitioners appealed the DZC's May 10, 2004 decision to the Board of Appeals. Before the Board, Petitioners raised a new argument, stating that the lots were not undersized after all because they were located in the Bowleys Quarters /Back River Neck Growth Management Area, which was controlled by § 4A03 of the BCZR. Section 4A03.1 defines undersized lot, which the Petitioner contends does not apply to these properties. The Board continued the appeal and allowed the Petitioners to make this argument first before the DZC. The Petitioners filed for hearing before the DZC.

In the meantime, the Protestants raised a new argument for consideration. In the case of *The Friends of the Ridge v. Baltimore Gas and Electric Co.*, 352 Md. 645, 724 A.2d 34 (1999), the Court of Appeals announced the doctrine of zoning merger in Maryland. In May 2005, in a subsequent case of *Remes v. Montgomery County*, 387 Md. 52, 874 A.2d 470 (2005), the Court applied the zoning merger doctrine to two undersized lots preventing the sale of one of the lots for a new home. The Protestants now argue that the history of the lot showed that these lots have merged according to the zoning merger doctrine. Subsequently, Mr. and Mrs. Creamer filed the cases 06-044-SPH and 06-045-SPH for a special hearing to determine whether the existing lots are lots of record and whether or not they are undersized lots.

Petitioner Jeffrey Creamer testified that he purchased the lot known as 2317 Turkey Point Road on September 11, 2002. He acknowledged that the lot in question was rectangular with a 50-foot lot width. He stated that he titled the lot in his own name, and that the lot purchased by his wife on the same date, known as 2315 Turkey Point Road, was put in his wife's name to keep his options open with regard to future development and for estate purposes. Mr. Creamer acknowledged that prior to his retirement he had worked in the area of real estate development. He stated that he and his wife had been married since the 1950s and wanted to purchase the properties to build homes on each of the lots.

Mr. Creamer acknowledged that no one has lived on the property since he purchased the property in 2002. He also acknowledged that the lot known as 2315 Turkey Point Road has a shed on it, and both 2317 and 2315 Turkey Point Road share a common bulkhead on the river. There is a pier at 2317 Turkey Point Road, which at the present time services both 2317 and 2315 Turkey Point Road.

Carole Creamer testified in support of the Petitioner and indicated that she had purchased 2315 Turkey Point Road on September 11, 2002. She claimed that if the Petitioners were

successful in obtaining the relief requested she intended to leave 2315 to her side of the family and her husband will leave 2317 to his side of the family. Ms. Creamer indicated that she had been married to her husband since the 1950s and remained married up to the present time. She was not aware of the prior history of the property as to how the two parcels had been utilized. She did acknowledge that an existing shed was located on 2315 and at the time of her purchase of the property and is still located on the property. She stated that the properties have separate tax bills and that taxes on the property are paid through a joint checking account which she and her husband hold.

James Patton, a civil engineer with Patton Consultants, Ltd., was called as an expert witness on behalf of the Petitioners. He stated that he was familiar with Baltimore County's zoning regulations and was qualified as an expert in zoning regulations and development regulations in Baltimore County.

Mr. Patton testified that Lot 10 (2315) is 50 feet in width and 260 feet in depth, and is a waterfront lot fronting on Sue Creek. It totals 13,342 sq. ft. in area.

Lot 11 (2317) is also 50 feet wide and 260 feet in depth, and totals approximately 13,500 sq. ft. Both lots are served by public sewer and water. Mr. Patton testified that it was his opinion that § 304 of the BCZR did not apply in this case, because § 304 contains an exception for properties subject to BCZR § 4A03, which is the section of the BCZR entitled, "Growth Management Plan for Bowleys Quarters and Back River Neck Areas." Since the properties owned by the Creamers lie within the area designated by the map for the County plan, Mr. Patton believed that § 4A03, *et seq*, controlled and not § 304.

Patton stated that § 4A03 contains two definitions, one of which is for an undersized lot. Section 4A03.1 was presented to the Board and contains the definition of undersized lot as follows:

> An unimproved platted lot or a lot of record on or before August 6, 1999, that does not meet the area, height or setback requirements in these zoning regulations to allow the construction of a dwelling.

It was Mr. Patton's opinion that, under § 4A03.4, a building permit may be issued for the construction of a dwelling on an unimproved lot or lot of record that meets certain requirements. These requirements include that variances are not required, that the property owner connects to a public sewer, public water, or both, that the dwelling meets the design requirements provided for in that section, and no further subdivision of the lot is allowed. Patton testified that each of the Creamers lots constitutes a "lot of record" as defined by the BCZR and that the lots were part of the original plat of Turkey Point now known as Rockaway Beach, as shown in the plat which was recorded in 1915 (Petitioner's Exhibit #14). These two lots were lots of record prior to August 6, 1999. Mr. Patton further stated that the proposed dwelling on Carole Creamer's property would meet the area, height, and setback requirements to allow for construction of a dwelling. He noted that the definition contained in § 4A03.1 for an undersized lot does not use the words "width at the building line less than that required by the area regulations" as does § 304.1 of the BCZR. Thus, in Mr. Patton's view, each of the lots owned by the Creamers are not "undersized lots" pursuant to the definition contained in § 4A03.1 since all the requirements of § 4A03.4 are met.

In Mr. Patton's opinion, § 4A03.4B would not apply to the lots in question since he contends that that section covers the construction of a dwelling on "an undersized lot" in the Bowleys Quarters /Back River Neck area. One of the conditions in § 4A03.4B is that the owner of the lot "does not own sufficient adjoining land that if combined with the adjoining land would allow the property owner to conform to the current zoning requirements."

Mr. Patton also was questioned with respect to § 1B02.3 of the BCZR which consists of special regulations for certain existing developments or subdivisions and for small lots or tracts

in D.R. zones. Patton stated that in his view the property as owned by the Creamers met the definition contained in § 1B02.3A.5 and were lots in single ownership in a duly recorded subdivision plat not approved by the Baltimore County Board or Planning Commission. He stated that the subdivision plat for Turkey Point Farm was not approved by the County Planning Board or Planning Commission because it was approved in 1915, long before the existence of those government entities. The development standard for small lots or tracts is contained in § 1B02.3C which dictates that any lot described in § A.3 orA.4 shall comply with the requirements of a table for which the D.R. 3.5 zone requires a minimum lot width of 70 feet. Although these lots are zoned D.R. 3.5, in Mr. Patton's opinion the table does not apply to lots described in section A.5 of § 1B02.3. In Mr. Patton's opinion, in accordance with the residential zoning scheme, there is no minimum lot width for a D.R. zoned property that meets the description contained in § 1B02.3A.5. He stated that with approximately 13,500 sq. ft. of area in each lot, each is accorded a density unit. The Creamers' lots are such lots and in support of his position, Mr. Patton offered the decision of the County Board of Appeals in Case No. 05-239-A entitled *F&M Enterprises*. This decision holds that lots described in subsection A.5 do not need to meet the 70-foot width requirement contained in the table. Accordingly, Mr. Patton was of the opinion that each of the Creamers' lots are buildable lots and that a building permit should be authorized for each of them since the development of the 50-foot lots comports with the majority of the lots developed in Turkey Point.

The Protestants called as a witness Carl Maynard who indicated he had been involved with the Back River Neck Community Association for approximately 20 years. He had served as the organization's vice president for 4 years and the organization's president for 5 years. He had been appointed to the committee to make recommendations for the enactment of Bill 64-99 which became § 4A03 of the BCZR, the Growth Management Plan for Bowleys Quarters and

Back River Neck Areas. Mr. Maynard indicated that the 70-foot lot width requirements in D.R. 3.5 zones were discussed before the committee. He stated that the committee was concerned about lot width requirements and did not intend to negate lot width requirements as part of the eventual bill passed by the County Council.

John Lewis, who was subpoenaed to testify before the Board, indicated that he was a Planner II with the Baltimore County Office of Permits and Development Management (PDM). He is the Senior Planner in PDM and is under Carl Richards, his immediate supervisor, who reports to Timothy Kotroco, the Director of PDM. In Mr. Lewis's opinion, the term "area regulations" is used in the BCZR to encompass lot width requirements regardless of whether the words "lot width" are specifically used. Mr. Lewis felt that the Petitioners' lots were undersized lots as defined under § 4A03.1 of the BCZR and that they did not meet the area requirements. In addition, in relation to § 4A03.1A of the BCZR, Mr. Lewis stated that he felt Petitioner's lots would need variances as they are 50 feet in width and are in a D.R. 3.5 zone, which requires a 70-foot lot width. He also stated that after reviewing § 4A03.4A.1, he believed that the Petitioners' lots failed to meet all the "zoning requirements" and accordingly require variance relief to be declared buildable pursuant to § 307 of the BCZR. He also felt that the Petitioners' lots failed to meet the requirements of § 4A03.4B.1 because the Petitioners do own sufficient adjoining land that would allow conformance with the current zoning requirements. In his opinion, Mr. and Mrs. Creamer as husband and wife are considered a single owner of the land.

Mr. Lewis also commented on the fact that § 304.1, which reads, except as provided in section 4A03, "does not negate the requirements of section 304 of the BCZR or section 1B02.3.C unless specifically stated in section 4A03." Mr. Lewis also stated that he reviewed § 1B02.3 of the BCZR and indicated it was his belief that Petitioners' lots must comply with the requirements of § 1B02.3C.1 referred to as the "small lot table" which requires lots in D.R. 3.5 zones to have a

minimum lot width of 70 feet. Lewis indicated that he believed that Petitioners' lots fall under § 1B02.3A.3 which reads:

> Any lot or lots in single ownership which is not in an existing development or subdivision as described in subsection A.1 or A.2 and which is too small in gross area to accommodate six dwelling or density units in accordance with the maximum permitted density in DR zones in which such tract is located.

Mr. Lewis noted that Petitioners' lots would not have sufficient density for six dwelling or density lots. He also indicated that Petitioners' lots could fall under § 1B02.3A.5 which reads:

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

Section 101 of the BCZR indicates that "or" shall mean and/or as modified by the use of the word "either" or unless the context otherwise clearly indicates another meaning.

Mr. Lewis noted that if a variance was needed from lot width requirements of § 1B02.3, a variance would be requested pursuant to § 307 of the BCZR, which allows variances from "height and area regulations." Lewis stated that throughout his tenure with Baltimore County lot width variances have been accepted pursuant to § 307 of the BCZR notwithstanding the fact that that section does not specifically mention the words "lot width." He stated that it has been his office's consistent interpretation of the zoning regulations that lot width requirements are included when the term "area regulations" is used in the BCZR. He stated that he had discussed this interpretation with his immediate supervisor, Carl Richards, prior to his testimony to verify that he shared the same interpretation. When asked for his interpretation as to § 304 of the BCZR, Mr. Lewis expressed an opinion that the Petitioners' lots failed to meet the requirements of § 304.1B and C in that they failed to meet the area regulations as required in subsection B and that the owner owns sufficient adjoining land to comply with width and area requirements as required in § 304.1C. In support of this position, Mr. Lewis was shown a copy of a section of the Zoning Commissioner's Policy Manual, which defines ownership and indicated that ownership

means, "any financial interest of the applicant in the subject properties. A financial interest exists if in the case of: (1) an individual – a spouse or other family member."

Mr. Lewis also indicated that a special hearing would be required for a shed on an unimproved lot next to an improved lot as the shed would constitute an accessory structure which would fail to comply with the definition of an accessory structure in § 101 of the BCZR. That definition indicates that an accessory structure is "a structure which…(c) is located on the same lot as the principal use or structure served; …." and a shed on an unimproved lot which served the adjacent improved lot would not qualify as an accessory structure. Mr. Lewis also stated that if a pool were placed on the unimproved lot next to an improved lot, a special hearing would be required under the same principle.

Protestants then called Mr. Michael Ferro, owner of the property located at 2313 Turkey Point Road. Mr. Ferro stated that he had lived at that address with his wife for approximately 16 years. He testified that he had researched the ownership of 2315 and 2317 Turkey Point Road prior to the Creamers purchase. Protestants submitted as exhibits #7 through 11 a chain of deeds for Petitioners' lots starting June 27, 1952. The deeds show that in 1952, Lot 11 (2317) was purchased by William J. Klinesmith and his wife, Lillian A. Klinesmith. The second deed showed that Mr. and Mrs. Klinesmith purchased Lot 10 (2315) on September 3, 1969.

A third deed dated November 15, 1994 from Mrs. Klinesmith to herself indicated that Mr. Klinesmith had died and that Mrs. Klinesmith was conveying Lot 10 to herself with the remainder to Antoinette J. Schield, Jacqueline C. Stump, and Lynn L. Collins as joint tenants. The next deed showed that Carole Creamer purchased Lot 10 from Antoinette J. Schield, et al, on September 11, 2002. The next deed showed that on the same date Jeffrey Creamer purchased Lot 11 from the personal representative of the Estate of Lillian A. Klinesmith.

Mr. Ferro further testified about the utilization of Petitioners' lots prior to their ownership and entered a series of photographs, each showing the utilization by the Klinesmith family during their ownership of the property. Ferro testified that there had been an original shed on what is now known as 2315 Turkey Point Road since prior to the time he purchased his property 16 years ago. He noted that there was an original shed on the property at the time of the purchase of his property which was eventually removed and subsequently a new shed was immediately constructed. He indicated that the prior shed and the present shed had always been used to serve the improved lot known as 2317 Turkey Point Road.

Mr. Ferro also testified about the placement of a pool on the lot known as 2315 Turkey Point Road. It was present on the property when he purchased his home, and he submitted a photograph showing the pool and a privacy fence for the pool, which was placed on 2315 Turkey Point Road. He testified that the Klinesmiths frequently used the pool on the lot at 2315 Turkey Point Road and also used the lot for picnics, to park cars, and to store boats. Additionally, Mr. Ferro noted that 2315 and 2317 share a common bulkhead constructed by the prior owners of the property and that the two properties have one pier located at 2317 Turkey Point Road. He submitted photographs in support of these contentions. Mr. Ferro stated that he was opposed to the construction of two homes on the two lots because he felt that having a house on each of the lots would have a major impact on the property and privacy which he enjoys and would lead to increased drainage problems in relation to his property, since they would not be set back in line with other houses in the area. He felt that a house at 2315 Turkey Point Road would lead to privacy concerns as the windows of any house would look directly into the windows of his house. He stated that the majority of the homes along Turkey Point Road, both waterfront and on Turkey Point Road, were not on undersized or 50-foot wide lots.

Mrs. Robin Ferro testified in support of her husband's position with respect to the opposition for building separate homes on 2315 and 2317 Turkey Point Road. In addition, Ms. Joanne Markel, who lives at 2321 Turkey Point Road, testified in opposition, stating that when she purchased her property with her husband it consisted of two unimproved 50-foot lots, and it was her understanding that she would only be allowed to build one house on the two lots when she talked to Baltimore County to obtain her building permit.

Finally, the Protestants argue that, under the case of *Remes v. Montgomery County*, 387 Md. 52, 874 A.2d 470 (2005), the two lots in question have been merged for zoning purposes. They cite the fact that the lots were utilized for the construction of a swimming pool on lot 2315 as well as a shed servicing lot 2317. In addition, they cite the fact that a common bulkhead was constructed for both lots, and a pier from 2317 services both lots 2315 and 2317. Finally, the accessory pool at 2315 was constructed with a privacy fence and the vacant lot was used for picnics and to store boats on 2315.

Decision

Section 304 of the BCZR states as follows:

> Except as provided in section 4A03, a one family detached or semi-detached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:
>
> A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;
>
> B. All other requirements of the height and area regulations are complied with; and
>
> C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in this regulations.

Although the Petitioners contend that § 4A03 is an exception to § 304, the Board does not agree with that interpretation. Section 4A03 of the zoning regulations was passed to control the growth management in both Bowleys Quarters and the Back River Neck areas. The Board

cannot agree that the lots in question, 2315 and 2317 Turkey Point Road, are considered "undersized lots" within the definition of § 4A03.1 and therefore exempt from the requirements of § 4A03.B4.

The definition of "undersized lot" in § 4A03.1 states:

> Undersized lot – An unimproved platted lot or lot of record on or before August 6, 1999 that does not meet the area, height or setback requirements in these zoning regulations to allow the construction of a dwelling.

Petitioners contend that the word "width" was intentionally left out of the definition, thereby exempting lots with less than the 70-foot width requirement from the requirements of § 4A03.4. The Board would note that in order to find the area of a piece of property, one must multiply the width by the depth in order to get the square footage of a piece of property. Therefore, the Board considers that area covers width as well as depth. In addition, the Board notes that even the Petitioners' witness, Mr. Patton, as well as Mr. Lewis from the County Department of Permits and Development Management, would agree that if a variance was needed from lot width requirements of § 1B02.3, a variance would be requested pursuant to § 307 of the BCZR, which allows variances from "height and area regulations." This is true notwithstanding the fact that § 307 does not specifically mention the words "lot width."

The Board also feels that the lots in question are subject to § 4A03.4B, which states:

> A building permit may be issued for the construction of a dwelling on an undersized lot subject to the following conditions:
>
> 1. The owner of the lot does not own sufficient adjoining land that, if combined with the adjoining land, would allow the property owner to conform to the current zoning requirements;....

The Board also considers the Zoning Commissioner's Policy Manual which defined ownership and indicated that "ownership" means "any financial interest of the applicant in the subject property." It also stated that a financial interest existed in the case of "an individual – a

spouse or other family member." Thus, Mr. and Mrs. Creamer would be considered to have one financial interest in both properties.

Next, the Board will address the question with respect to § 1B02.3 of the BCZR, the density residential zone regulations. Section 1B02.3 states as follows:

> Special regulations for certain existing developments or subdivisions and for small lots or tracts in DR zones.
>
> a. In DR zones, contrary positions of this article notwithstanding, the provisions of or pursuant to this subsection shall apply to the use, occupancy and development; alteration or expansion of structures upon and administrative procedures with respect to:
>
> 1. Any lot which is in a recorded residential subdivision approved by the Baltimore County Planning Board or Planning Commission and which has been used, occupied or improved in accordance with the approved subdivision plan;
>
> 2. . Any land in a subdivision tract which was laid out in accordance with the regulations or residence zoning classification now rescinded for which a subdivision plan tentatively approved by the Planning Board remains in effect and which has not been used, occupied or improved in accordance with such plan;
>
> 3. Any lot or tract of lots in single ownership which is not in an existing development or subdivision, as described in subsection A.1 or A.2, and which is too small in gross area to accommodate 6 dwelling or density units in accordance with the maximum permitted density in a DR zone in which such tract is located;
>
> 4. Any lot or tract of lots in single ownership which is not in an existing development or subdivision, as described in subsection A.1 or A.2 and which is less than ½ acre in area, regardless of the number of dwelling or density units permitted at the maximum permitted density in the zone in which it is located; or
>
> 5. Any lot or tract of lots in single ownership which is a duly recorded subdivision plat not approved by the Baltimore County planning board or planning commission.
>
> *******
>
> c. Development standard for small lots or tracts
>
> 1. Any dwelling hereafter constructed on a lot or tract described in subsection A3 or A4 shall comply with the requirements of the following table:....
>
> **The table is omitted from this decision. However, the zoning classification of D.R. 3.5 requires a minimum net lot area per dwelling unit of 10,000 sq. ft. and a minimum lot width of 70 feet.**

2. Other standards for development of small lots on tracts so described shall be as set forth in provisions adopted pursuant to the authority of § 504.

It is true that the Board in *F&M Enterprises*, Case No. 05-239-A, held that lots described in subsection A5 of § 1B02.3 do not need to meet the 70-foot width requirements contained in the table. It should be noted that there was no allegation made that the lots in question in that case met the other subsections of § 1B02.3A. However, in this situation, lots 10 and 11 in the Turkey Point plat do meet the requirements of § 1B02.3 in that even if you consider the lots to be in single ownership the area is too small to accommodate six dwelling or density units in accordance with the maximum permitted density in the D.R. zone. In addition, the lots meet the requirements of subsection 4, which states, "any lot or tract of lots in single ownership which is not in an existing development or subdivision as described in subsection A1 or A2 and which is less than ½ acre in area regardless of the number of dwelling or density units permitted at the maximum permitted density in the zone in which it is located." Even if the lots are considered in single ownership, both lots are less than ½ acre, which is 21,780 sq. ft. Both lots are approximately 13,500 sq. ft. and therefore would not meet the requirement of the ½ acre in area under § 1B02.3.4. Therefore, since both lots meet § 1B02.3A3 and A4, they would be subject to the requirements of the table in § 1B02.3C.1.

Finally, the Board considers that the doctrine of merger has occurred in that the lots have been considered one lot for a considerable period of time prior to the purchase of the two lots by the Creamers in 2002. Mr. and Mrs. Klinesmith, the former owners, purchased lot #10 on September 3, 1969. They used the lot under common ownership even though there had never been a re-platting of the lots. They held picnics on lot 10 and constructed an out of the ground swimming pool on that lot and also a privacy fence around the pool. In addition, they constructed a shed on lot 10 in which they stored various pieces of equipment that was used for both lots. The Klinesmiths stored boats and parked cars on lot 10 (2315) for their own

convenience. In addition, the owners constructed a bulkhead on lots 10 and 11 (2315 and 2317) as well as a pier from 2317 which serviced both lots. In the opinion of the Board, this is sufficient to cause a merger under the theory set forth by the Court of Appeals in *Remes v. Montgomery County, Maryland*, 387 Md. 30 (2005).

ORDER

IT IS THEREFORE this 31st day of January, 2007, by the Board of Appeals for Baltimore County,

ORDERED that the request for special hearing in Case No. 06-044-SPH and Case No. 06-045-SPH, as well as the request for an approval of an undersized lot pursuant to § 304 of the BCZR filed in Case No. CBA-04-137 be and 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 Wescott, Chairman /2006

Margaret Brassil, Ph.D.

Edward W. Crizer, Jr.

10/27/06

3-3-7

(3)

IN RE: PETITION FOR APPROVAL OF UNDERSIZED LOT	*	**BEFORE THE**
	*	
IN THE MATTER OF:		
JEFFREY A. CREAMER	*	**COUNTY BOARD OF APPEALS**
Legal Owner and Petitioner		
2317 Turkey Point Road	*	
Case No: 06-044-SPH		
	*	**FOR BALTIMORE COUNTY**
IN THE MATTER OF:		
CAROLE C. CREAMER	*	
Legal Owner and Petitioner		
2315 Turkey Point Road		
Case No: 06-045-SPH	*	
IN THE MATTER OF:	*	
CAROLE CREAMER, Legal Owner;		
JEFFREY CREAMER, Petitioner	*	
2315 Turkey Point Road		
Case No: CBA-04-137	*	

RECEIVED
OCT 27 2006
BALTIMORE COUNTY
BOARD OF APPEALS

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

MEMORANDUM OF PETITIONERS JEFFREY A. CREAMER AND CAROLE C. CREAMER

Jeffrey A. Creamer, Petitioner, and Carole C. Creamer, Petitioner, by C. William Clark and Nolan, Plumhoff & Williams, Chartered, their counsel, submits this post hearing Memorandum in support of their Petition and for reasons says as follows:

Jeffrey A. Creamer filed a Petition for Special Hearing in connection with property he owns at 2317 Turkey Point Road, which was assigned Case No. 06-044-SPH. Carole C. Creamer filed a Petition for Special Hearing in connection with property she owns known as 2315 Turkey Point Road, which was assigned Case No. 06-045-SPH. Each of the Petitioners filed an appeal from the November 29, 2005, Deputy Zoning Commissioner's decision denying the determination that each of their lots was not an undersized lot under Section 4A03.1 of the Baltimore County Zoning Regulations. Furthermore, Jeffrey Creamer filed a Petition on behalf of Carole Creamer in

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

connection with the property of 2315 Turkey Point Road pursuant to the direction of the Zoning Review section of the Department of Permits and Development Management, which was assigned Case No. CBA-04-137. An appeal was taken from the Deputy Zoning Commissioner's Order that the application for an undersized lot was denied.

A. FACTS

The subject property owned by Jeffrey A. Creamer known as 2317 Turkey Point Road consists of a lot approximately 50 feet in width and approximately 264.6 feet in depth that fronts on Sue Creek and abuts Turkey Point Road in the Rockaway Beach area of Baltimore County, Maryland. The property is zoned D.R.3.5 and contains approximately 13,500 square feet. The property is improved with a dwelling, the address of which is known as 2317 Turkey Point Road. The property has public sewer and water. (Petitioners' Exhibit 12). Mr. Creamer acquired the property on September 11, 2002, by a deed, which refers to the property as being "Lot numbered Eleven (11) on the Plat of "Turkey Point Farm," now known as Rockaway Beach. (Petitioners' Exhibit 1). He acquired the property from Antoinette J. Schield and Jacqueline C. Stump, Co-Personal Representatives of the Estate of Lillian Kleinsmith. The property is separately taxed by Baltimore County, Maryland and is known as Parcel Number 15-11-470450. (Petitioners' Exhibit 2 and Petitioners' Exhibit 3).

The subject property owned by Carole Creamer is adjacent to the property owned by Jeffrey Creamer, her husband. Her property is approximately 50 feet wide and approximately 264.6 feet in depth, abutting upon Sue Creek and adjacent to Turkey Point Road. It is unimproved, but Mrs. Creamer proposes to construct a dwelling upon the property. The property has been assigned number 2315 Turkey Point Road. It is zoned D.R.3.5 and contains approximately 13,342 square

feet. The property has public sewer and water. (Petitioners' Exhibit 11). Mrs. Creamer acquired the property on September 11, 2002, by deed from Antoinette J. Schield and Jacqueline C. Stump and Lynn L. Collins. The deed describes it as ..."Lot numbered Ten (10) on the Plat of "Turkey Point Farm," now known as Rockaway Beach.... The property is separately taxed by Baltimore County, Maryland and has been assigned Parcel Number 15-11-470451. (Petitioners' Exhibit 9 and 10). Elevation drawings for the proposed dwelling were admitted as Petitioners' Exhibit No. 7. The house as proposed will be set back ten (10) feet on one side and fifteen (15) feet on the opposite side from the adjoining property owners. The building is proposed to be set back 115 feet from the boundary of the property adjacent to Sue Creek at a distance of 94 feet from the boundary of the property that abuts Turkey Point Road. (Petitioners' Exhibit 11). No variances for the construction of this dwelling are requested. As seen from Petitioners' Exhibit No. 7, the front of the house as shown by the interior floor plans, is oriented to Sue Creek and the rear of the house is oriented to Turkey Point Road. (Petitioners' Exhibit 18).

The properties owned by the Creamers are located inside the boundaries of the county's Bowleys Quarters Back River Critical Areas Map.

B. <u>PETITIONERS' EVIDENCE REGARDING BUILDABLE LOTS</u>

Mr. and Mrs. Creamer testified that they acquired the properties on Turkey Point Road in order to have waterfront property to enjoy with their families, who were returning back to the State of Maryland. For estate planning reasons, and because Mr. Creamer had some experience as a developer of real property, they decided to keep the titles to the properties separate from one another since they were acquiring title from separate owners on separate deeds. From and after the acquisition of the properties in 2002, the Creamers have kept the title to the two (2) lots and their

respective separate ownership and have separately paid the taxes thereon. No one has lived in the house on Mr. Creamer's property, although they have used the properties on the weekends.

At the time of acquisition, the property owned by Carole Creamer had a small wooden shed on the property, which still remains. Mr. Creamer testified that he believed that at one time a house existed on Lot 10, which had been removed and that a portion of a concrete walkway for that house still remains. After settlement, the Creamers commissioned a survey to be done. The survey of Lot 10, which was admitted as Petitioners' Exhibit 24, shows the existence of a shed and the broken walkway. Furthermore, the survey also showed a wood bulkhead that extends in front of both properties and a wooden pier that extends in front of Lot 11, which is owned by Mr. Creamer. Mr. Creamer testified that it is common for adjoining property owners to go together when a bulkhead is constructed so as to have a uniform bulkhead across properties so that water doesn't get in behind the bulkheads and erode them. He testified that in his experience property owners divide the cost of the bulkheads proportionate to their ownership of the lot.

Petitioners called James Patton, a Professional Engineer, with a Masters in Planning, who qualified as an expert witness in the Baltimore County Zoning Regulations and Development Regulations. Mr. Patton testified about the work he did to familiarize himself with the properties in question, including a review of the deeds, tax bills, a site visit, a review of other documents as will be discussed below, and the preparation of site plans to accompany the Petitions. (Petitioners' Exhibit 11 and 12). Mr. Patton testified that he was not representing Mr. and Mrs. Creamer at the time that Mr. Creamer filed a Petition for Approval of an Undersized Lot as directed by Zoning Review section of PADM, which was assigned Case No. CBA-04-137. Through Mr. Patton, Petitioners introduced a copy of Section 304 of the Baltimore County Regulations. (Petitioners'

Exhibit 16). Mr. Patton rendered an opinion that Section 304 does not apply to either of the subject properties owned by the Creamers and said Section 304.1 contains the following words: "E. Except as provided in Section 4A03, ..." which is the section of the Baltimore County Zoning Regulations entitled, Growth Management Plan for Bowleys Quarters and Back River Neck Areas.

Since the properties owned by the Creamers lie within the area designated by the map for that county plan, Mr. Patton believes that Section 4A03, *et. seq.*, controls, and not Section 304. (Petitioners' Exhibit 17, Section 4A03 of the Baltimore County Zoning Regulations). Section A403.1 contains two definitions, one of which is for an "Undersized Lot." Mr. Patton testified that pursuant to Section 4A03.4, a building permit may be issued for the construction of a dwelling on an unimproved platted lot or lot of record that meets certain requirements. Those requirements include that variances are not required, that the property owner connects to a public sewer, public water or both, the dwelling meets the design requirements provided for this section, and no further subdivision lot is allowed. Mr. Patton testified that the properties owned by the Creamers meet all of those requirements. Mr. Patton testified that each of the Creamers' lots constitutes a "lot of record" as defined by Baltimore County Zoning Regulations (See Petitioners' Exhibit 19), and that the lots were part of the original plat of Turkey Point now known as Rockaway Beach, as shown by Petitioners' Exhibit 14, which plat was recorded in 1915. Thus, these two (2) lots of record were recorded prior to August 6, 1999. Further, Mr. Patton testified that in the D.R.3.5 Zone, a proposed dwelling on Carole Creamer's property meets the area, height, and setback requirements to allow for construction of a dwelling. Mr. Patton noted that the definition contained in Section 4A03.1 for undersized lot does not use the words "width at the building line less than that required by the area regulations" as does Section 304.1 of the BCZR. Thus, in Mr. Patton's view, each of the lots owned

by the Creamers are not "undersized lots" pursuant to the definition contained in Section 4A03.1 and since all of the other requirements of Section 4A03.4 are met, a building permit may be issued for the construction of a dwelling on each of those lots. Mr. Patton testified that Section 4A03.4.B does not apply since it governs the construction of a dwelling on an "undersized lot" in the Bowleys Quarters Back River Neck Area. In support of his views, Mr. Patton referred to Bill No. 64-99 (Petitioners' Exhibit 20), which is the bill by which the County Council amended both Section 304.1 and created Section 260, which then became Section 4A03 of the Baltimore County Zoning Regulations. By reference to Petitioners' Exhibit 20, one can see that the Council had before it at the time that it added the language in Section 304.1 that excepts the areas in Bowleys Quarters and Back River Neck from the application of that section. In addition to the language in Section 304.1 regarding lots having an area or width at the building line less than that required by the area regulation, it also had before it the definition for "undersized lot" for those areas in Bowleys Quarters and Back River Neck, which it enacted that bill. That definition does not have the language "width at the building line less than that required."

Next Mr. Patton turned to the provisions contained in Section 1B02.3, which consists of special regulations for certain existing developments or subdivisions and for small lots or tracts in D.R. Zones. Mr. Patton testified that in his view, the properties owned by the Creamers met the definition contained in Section 1B02.3A.5, and, in the parlance of that section, were lots in single ownership in a duly recorded subdivision plat not approved by the Baltimore County Board or Planning Commission. The subdivision plat for Turkey Point Farm was not approved by the County Planning Board or Planning Commission because it was approved in 1915 long before the existence of those governmental entities. The development standard for small lots or tracts are contained in

Section 1B02.3.C., which dictates that any lot described in §§A.3 or A.4 shall comply with requirements of a table which for the D.R.3.5 Zone requires a minimum lot width of 70 feet. The table does not, however, according to Mr. Patton, apply. By its express language, it does not apply to lots that are described in §§A.5 of Section 1B02.3. Thus, in Mr. Patton's opinion, in accordance with the density residential zoning scheme, there is no minimum lot width for a D.R. zoned property that meets the description contained in Section 1B02.3.A.5. Mr. Patton testified that with approximately 13,500 square feet of area in each lot, each is accorded a density unit. The Creamers lots are such lots. In support of his opinion, Mr. Patton offered a recent decision of the County Board of Appeals in Case No. 05-239A entitled, F&M Enterprises (See Petitioners' Exhibit No. 22), which holds that lots described in Subsection A.5 do not need to meet the 70-foot width requirement contained in the table. Accordingly, for the reasons explained above, Mr. Patton opined that each of the Creamer's lots are buildable lots and that a building permit should be authorized for each of them, since the development of these 50-foot lots comports with the majority of the lots developed in Turkey Point. (Petitioner's Exhibit No. 23 A-C)

C. <u>PROTESTANTS' EVIDENCE REGARDING BUILDABLE LOTS</u>

Protestants called to the stand John Lewis, a Baltimore County employee who works in the Zoning Plans Review section of the Department of Permits and Development Management. He was not offered as an expert witness but he rendered his opinions as such, even though he acknowledged that he was one (1) of approximately ten (10) such reviewers, each of whom might have different views concerning matters about which he testified. Furthermore, he testified that he was subject to the supervision of Carl Richards, who is the Supervisor of that section, and who reports to Timothy Kotroco, the Director of PADM. Mr. Lewis testified that he believed that Section 304 does

apply to the Petitioners' lots and that the words "except as provided in Section 4A03..." mean that if there is a more specific provision of Section 4A03, it applies, but if there is not a more specific section in 4A03, then Section 304 applies. Mr. Lewis testified that in his opinion, the Creamers' lots have a width at the building line less than required by the area regulations, that they do not comply with the requirements of the height and area regulations and that a variance is required. A property owner can petition for variance under Section 307 of the Baltimore County Zoning Regulations. As to Section 4A03, the Baltimore County Zoning Regulations, Mr. Lewis says that in his opinion the Creamers' lots are undersized lots because they do not meet the area requirement, which he believes includes a 70-foot width at the building line even though that language does not appear in the definition of "undersized lot" in Section 4A03.1. With regard to Section 1B02.3 of the BCZR, Mr. Lewis testified that in his view the lots owned by the Creamers meet the description in both Section 1B02.3A.3 and 1B02.3A.5. In his view the Creamers' lots are in "single ownership," which is not in an existing division or subdivision as described in A.1 or A.2 and which is too small in gross area to accommodate six (6) density units. Since the Creamers' lots fit the description of A.3, in Mr. Lewis' view, then they are required to meet the requirements for the small lots contained in Section 1B02.3.C.1, which requires a 70-foot width at the building line in a D.R.3.5 Zone.

D. ARGUMENT

With regard to Mr. Lewis' testimony and opinions concerning Section 1B02.3, he wrongly concludes that the lots owned by Mr. and Mrs. Creamer meet the definition in 1B02.3.A.3. First, the lots considered together are not in "single ownership" as that term should be construed. As Mr. Lewis acknowledged in cross examination, the Baltimore County Zoning Regulations do not contain

a definition of "single ownership". As Mr. Lewis acknowledged, the BCZR provides that for any word or term not defined in Section 101, the word or term shall have the ordinarily accepted definition as set forth in the most recent edition of Webster's Third New International Dictionary. (Protestants' Exhibit 3). Attached hereto and marked as Exhibit No. 1 to this memorandum are the relevant pages taken from that dictionary kept and maintained in the office of the Zoning Commissioner. The word "ownership" means the "state, relation or fact of being an owner: lawful claim or title." "Owner" means one that "owns: one that has the legal or rightful title whether the possessor or not". The word "single" means "unattended or unaccompanied by others: solitaire; consisting of or having only one part, feature, or portion as opposed to or contrasted with double or complex", as amongst its many definitions and uses. Clearly, married spouses are permitted by law to own property separately in their own names. Given the definitions contained in Webster's Dictionary and the direction of the BCZR that the word or term not defined shall have the ordinary accepted definition, the term "single ownership" in the context of this case, means that where the deed is titled in the name of one person, it is to be that one person, and that one person alone, who is to be viewed as the owner of the lot. The history of the ownership of the lots also shows that they were never merged by legal title and have always been on separate deeds. At the time of the conveyances to Mr. and to Mrs Creamer, the properties were owned separately by different owners. A review of the deed for Mr. Creamers's lot shows that it was owned by the Estate of Lillian A. Kleinsmith as of September 11, 2002 when it was deeded to Mr. Creamer. As of the same date, when Lot No. 10 was conveyed to Carol Creamer, it was owned by Antoinette J. Schield, Jacqueline C. Stump and Lynn L. Collins.

Mr. Lewis referred to a section of the Zoning Commissioners Policy Manual which was admitted as Protestants' Exhibit No. 4 which has been adopted by the Zoning Commissioner as a definition of "ownership," and apparently has been applied by Mr. Lewis' department over the years. In his view, the lots owned by Mr. and Mrs. Creamer should be combined and considered as "single ownership" because of their marital status. However, that definition has not been adopted by the County Council, is not part of the Baltimore County Zoning Regulations, and is not binding upon the County Board of Appeals. A long standing practice of interpretation by an administrative agent of a statute will be given no effect if the agency's construction is contrary to the statutes unambiguous meaning. See *Beth Tfiloh v. Glyndon Community Association*, 157Md. App. 97 (2003). Section 101, containing the Definitions for the Baltimore County Zoning Regulations, does not permit the Zoning Commissioner to adopt definitions that have not been defined in the Section, but rather clearly provides that any word or term not defined in the Section shall have the ordinarily accepted definition as set forth in the designated dictionary. The definitions of "ownership" contained in Protestants' Exhibit No. 4 do not conform to the ordinarily accepted definition set forth in that dictionary, and in fact, expand the definition of "ownership" beyond that which would be ordinarily accepted as shown by an examination of the language contained in that dictionary, since, among other things, it includes within its' purported definition of "ownership" the phrase "an individual," including a spouse or other family member. A copy of *Beth Tfiloh v. Glyndon Community Association (Id.)* is attached hereto incorporating herein by reference marked as Exhibit No. 2.

Secondly, the subject lots are in an existing development or subdivision known as Turkey Point Farms or Rockaway Beach. 1B02.3.A.3 governs those lots which are <u>not</u> in an existing

development or subdivision as described in Section A.1 or A.2. Section A.1 describes lots which are in a recorded residential subdivision approved by the Baltimore County Planning Board or Planning Commission and which has been used, occupied or improved in accordance with the approval plan. Mr. Lewis did not testify that the Planning Board or Planning Commission approved the Turkey Point Farms Subdivision. Clearly, they could not since the plat was recorded in 1915. Section A.2 deals with subdivision tracts laid out in accordance with regulations of residential zoning classifications now rescinded. Clearly, that is not applicable either. The Protestant's offered, as Protestant's Exhibit No. 6, the BCZR definition for "or". However, that does not provide support for the argument that a lot may fall within the description in A.3 "or" A.5 since the word "or" only appears in one section: at the end of Section A.3. It only means that a lot may fall with the description of A.3 or A.4. Section A.5 stands alone.

The language of Section A.5 differs in a significant way from Section A.3. Section A.5 reads as follows:

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

The words "duly recorded" and "plat" do not appear in Section A.3, nor in the two sections referenced there which are Sections A.1 and A.2. In construing the BCZR, which is a statute enacted by the County Council, some meaning must be given to these additional words. Clearly, the Creamer's lots fall within the description of Section A.5 as they are on the duly recorded plat of Turkey Point Farm know as Rockaway Beach. By omitting lots meeting the A.5 requirements from the requirements of the table contained in 1B02.3.C.1, the County Council meant to permit development of lots such as the Creamer's lots but only if they met the definition contained in

Section A.5. Otherwise, no reason exists for the Council to have excluded lots meeting the description in Section A.5 from the table. Furthermore, Sections A.1, A.2 and A.3 discuss and contemplate plans, not plats, approved or not approved by the Planning Board or Planning Commission. The inference is that Section A.3 covers lots or tracts in an existing subdivision created during the existence of the Planning Board or Planning Commission but did not need approval. Subdivision could have occurred by means other than by plans such as subdivisions created by deeds containing metes and bounds descriptions of the lots, which is not as specific a category as those created by a "duly recorded subdivision plat". The converse of Mr. Lewis' reading of Section A.3 is that lots in single ownership, not in an existing development or subdivision, and which are large enough to accommodate six dwellings or more, do not have to meet the table requirements contained in Section C.1. Thus, if one has enough land to build 6 or more units and if the acreage is more than one-half acre, then one can build them on lots narrower than those permitted in the table, which in the D.R. 3.5 zone requires 70' of lot width. One could build more houses on lots narrower in width and place them closer together, in effect clustering them together, which defeats one purpose of the "small lot" table. Such an interpretation leads to an absurd result which the Council could not have meant to allow.

However, if one reads the sections as does Mr. Patton, only those lots on duly recorded subdivision plats not approved by the Planning Board or Planning Commission merit exclusion from the table, most likely a smaller number of lots on clearly defined boundaries. Considered separately, each of the Creamer's lots meet the requirements of Section 1B02.3.A.5 and should be approved as buildable lots.

Giving force and effect to the words "Except as provided in Section 4A03." contained in Section 304 of the BCZR, one must conclude that Section 4A03 governs the buildability of lots within the map area of Bowleys Quarters and Back River Neck where the lots lie. In Section 4A03.4 A the building permit may be issued for the construction of a dwelling on an unimproved lot of record that meets all of the zoning requirements subject to the following conditions. As Mr. Patton testified, each of the Creamer's lots constitutes "a lot of record" for which no variances are required, they connect to public sewer and public water, and with the agreement of the Petitioners to submit building elevations and comply with the Office of Planning and Requirements, we meet the conditions of that section since no further subdivision of the lot would be allowed. No variances are required for the construction of the dwelling which is the final of those requirements. Each of the lots are not "undersized lots" as defined in that section because they meet the area, height and set back requirements and were lots of record on or before August 6, 1999. The preamble of Bill 64-99 which created sections now numbered Section 4A03 et. seq. of the BCZR, lists among the purposes of the act "authorizing the issuance of building permits in certain areas under certain circumstances." Since the County Council had before it, at the same time, the amendment to Section 304 which added the words "except as provided in Section 206 (now 4A03). . .", the language contained in Section 304.1 which provides that a dwelling may be erected on a lot having an "area or width at the building line less than that required by the area regulations" and also had before it, the newly created definition of "undersized lot" which does not mirror the language of Section 304.1 that lots having a "width at the building line less than that required by the area regulations", one must infer that the County Council did not intend for the definition of "undersized lot" in Section 4A03 to be the same as the provisions made in Section 304.1 for the "use of Undersized

Single-Family Lots." If the County Council meant for the "undersized lot" as defined in Section 4A03 to be one where the lot had a "width at the building line less than that required by the area regulations", all it had to do was say so. Furthermore, in the report from the Office of Planning and Planning Board including the Proposals for Growth Management on page two, section II B2, the recommendations include serving unimproved lots or parcel that meet existing zoning standards in DR zones including Recorded Lots or Parcels (most very old) created through metes and bounds descriptions or lot recordation before any plan review process was enacted by the County Council or the County Board of Commissioners. It goes on to provide that "Connect sewer, provided that lots meet the minimum site standards (area, width, and yard set backs) of Section1B02.3, of the Baltimore County Zoning Regulations (BCZR)." (Protestant's Exhibit No. 2)

First, that proposal recognizes that there is a difference between area and width requirements of Section 1B02.3. Second, the proposal does not include creating a new and different definition for "undersized lots" in the Bowleys Quarters and Back River Neck Peninsula areas. By the time the bill got to the County Council, such a definition was created and included by the County Council. That definition in Section 4A03 does not include "width" of the lot as being a minimum site standard that must be met. The clear inference to be drawn is that the County Council recognized that there are many lots in the Bowleys Quarters and Back River Neck Peninsula area that were perfectly acceptable for building that did not meet the "width" standard of Section 1B02.3 and created a definition and a scheme of legislation that distinguishes between those lots that do not meet the area, height and set back requirements and those lots that do irrespective of the width at the building line. The County Council, in its wisdom, must have additionally considered that the

residential zoning regulations are based on deposits per acre and not on minimum lot dimensions. Thus, the Board of Appeals should adopt the testimony, evidence and opinions of James Patton, the Petitioners' expert witness, that each of the Creamer's lots constitutes a buildable lot under Section 4A03.

Protestants offered a copy of the unreported opinion in the case of *Mardo Homes, Inc. v. Baltimore County, MD.* Petitioners objected to the introduction of that Exhibit and referred the Board of Appeals to Maryland Rule 1-104 (a), a copy of which is attached hereto and is marked as Exhibit No. 3 to the effect that an unreported opinion of the Court of Special Appeals is neither precedent within the rule of stare decisis nor persuasive authority. Furthermore, it is clear upon review of that decision that the lots in question were owned by Mardo Homes, Inc., considered together and thus were in "single ownership". The opinion does not discuss the difference between "plans" and "duly recorded plats" and does not address or resolve the arguments Petitioners make here. Finally, the decision predates the adoption of Section 4A03 governing lots in Bowleys Quarters and Back River Neck.

E. DOCTRINE OF MERGER

(1) APPLICABLE LAW

Protestants no doubt will contend that under the Doctrine of Merger, if the board finds that the Creamer's lots are in "single ownership", those lots have nonetheless been merged for zoning purposes due to the use of those lots by the prior owners. The leading case in this matter is *Remes v. Montgomery County*, 387 Md. 52, 874 A.2d 470 (2005), a copy of which is attached to this Memorandum, marked as Exhibit No. 4. The Court in *Remes* discussed and relied in part on the

case of *Friends of Ridge v. BG&E*, 352 Md. 645 (1999), a case arising in Baltimore County. In *Remes*, the Court wrote:

> We indicated in *Ridge* that merger may be derived from the common owner's intent, as evidenced by "integrat[ing] or utiliz[ing] the contiguous lots in the service of a single structure or project. . ." *Id.* at 658, 724 A.2d at 40 (alterations added). Intent is to be derived from the facts. *Id.* at 659, 724 A2d at 41; see also *Rouse-Fairwood Devel. Ltd. Partnership v. Supervisor of Assessments for Prince George's County*, 138 Md. App. 589, 630, 773 A.2d 535, 559 (2001); *Iannuccci v. Zoning Bd. of Appeals*, 25 Conn.App. 85, 87, 592 A.2d 970, 971 (1991) (stating that intent of the owner "may be inferred from his conduct with respect to the land and the use which he makes of it"). In reviewing scenarios from varying jurisdictions, we noted that "[s]ome cases discuss automatic merger, but most require that the intent of the owner to merge the parcels be expressed, though little evidence of that intent is required." *Ridge*, 352 Md. at 653, 724 A.2d at 38. *Remes*, *Id.* p. 66.

In *Friends of Ridge*, the Court cited with approval the case of *Appeal of Gregor, 156 Pennsylvania Commw.* 418, 423-424, 627 A.2d. 308, 310-311 (1993) as follows:

> ". . . The burden is placed upon the party who asserts a physical merger to establish the landowner's intent to integrate the adjoining lots into one large parcel. (citations omitted)" *Friends of Ridge, Id.* 657.

(2) ARGUMENT

Protestants carry the burden of establishing that Mr. and Mrs. Klinesmith, at the time that they owned the subject lots in common, intended to merge the lots into one larger lot. Protestants offered evidence of the fact that an above ground swimming pool was located on Lot 10 for a period of years. However, Mr. Ferro acknowledged that after Mr. Klinesmith died, which one can read in the deeds, was March 13, 1991, that the swimming pool was removed. Furthermore, Protestants suggested that during a period of time when Mr. Klinesmith lived, one or two boats were kept on temporary trailers which were mobile on Lot 10. A shed was kept on the one lot, which ultimately

was removed and replaced by another shed. It does not appear that the shed had a foundation nor was permanently attached to the ground. Finally, Protestants pointed to a bulkhead which extends across both properties and to appear which from the survey, admitted as Petitioner's Exhibit 24, clearly is centrally located behind Lot 11. Protestants offered no evidence as to the granting of any permits for the bulkhead or shed, and did not refute Mr. Creamer's testimony that it is common for waterfront property owners to join together in building a bulkhead and dividing the cost in order to have a more uniform bulkhead across their properties.

The facts of the *Remes* case upon which the Court derived the common owners intent to utilize the contiguous lots in the service of a single structure or project, results from the fact that when the property owners constructed their home, the semi-circular driveway serving the home on one of the lots was constructed by, over and through both of the subject lots. A permit was located indicating that a building permit was issued for the construction of a swimming pool on the one lot "as an accessory to their use of the home" on the other lot. Subsequent to that, a building permit was issued for the construction of an addition to the home on the one lot. The addition extended 13 feet into a 20 foot rear set back of the adjoining lot. The construction changed the side and rear yards of the lot containing the home resulting in encroachments into the set back requirements of the adjoining lot. *Remes, Id.* at 57, 58. Following the deaths of the original owners, the latter's estate deeded the property to the owners' son and in the deed, described the property as including both lots and the improvements thereon being known as and giving one address for the properties. Both the lots had been assessed as one lot for tax assessment purposes. *Remes, Id.* at 58.

The facts of the *Remes* case demonstrate a clear intent on the part of the one-time property owners to merge the two lots as expressed in permit application and the construction of structures including a swimming pool[1] and the construction of the driveway and the addition to the house which encroached into the adjoining lot. No similar evidence exists in this case since the structures placed on Lot 10 were not permanent structures affixed to the ground, and which later were moved, relocated and changed. The evidence offered by the Protestants falls far short of demonstrating a clear intent on the part of the Klinesmith's to merge the lots based upon the factual underpinning of the Court's decision in *Remes*.

CONCLUSION

For the foregoing reason, the Petitioners request that the County Board of Appeals grant the Petitioner's Request for a Special Hearing in Cases No. 06-044-SPH and 06-045-SPH and determine that each of the lots owned by Mr. and Mrs. Creamer constitutes a buildable lot and at the same have not been merged for zoning purposes under the applicable law.

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[1] which most likely would be an in-ground swimming pool requiring a permit, whereas an above ground swimming pool does not require a permit

CERTIFICATION OF SERVICE

I HEREBY CERTIFY that this on this 27th day of October, 2006, the foregoing Memorandum was mailed, first class, postage prepaid, to the following:

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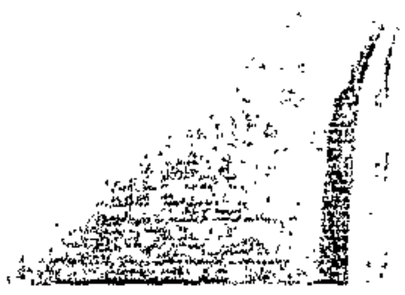
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A

cgs electromagnetic units (*ab-*
Afro-Asiatic languages . . . . . .
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measures and weights . . . . . .

Color:
Two plates in color . . . .
Constellations and Stars—N
Constellations and Stars—S

ovi-ti-sac \ō-ˌvi-tə-ˈsak\ *n* : a sac containing ova

ovi-tes-tis \ˌō-vi-ˈtes-təs\ *n* : a hermaphrodite gland

ovi-tis \ō-ˈvī-təs\ *n* : inflammation of the ovary

ovi-tra-cheal \ˌō-vi-ˈtrā-kē-əl\ *adj* : of or relating to the ovary and trachea

ovi-trap \ˈō-vi-ˌtrap\ *n* : a trap for insect eggs

ovi-va-ry \ˌō-və-ˈvā-rē\ *n* : a device for collecting insect eggs

ovi-vi-pa-rous \ˌō-və-ˈvi-pə-rəs\ *adj* [NL *oviparus* + *viviparus*] : producing young that hatch from eggs developed within the body — **ovi-vi-pa-rous-ly** *adv* — **ovi-vi-pa-rous-ness** *n* — **ovi-vip-a-ri-ty** \ˌō-və-və-ˈpa-rə-tē\ *n*

ovo- *comb form* [NL, fr. L *ovum* egg] : egg : ovum

ovo-al-bu-min \ˌō-vō-al-ˈbyü-mən\ *n* : albumin of egg white

ovo-cen-tral \ˌō-vō-ˈsen-trəl\ *adj* : having the nucleus in the center of the egg

ovo-cyte \ˈō-və-ˌsīt\ *n* : a female germ cell

ovo-fla-vin \ˌō-vō-ˈflā-vən\ *n* : riboflavin from egg white

ovo-gen-e-sis \ˌō-vō-ˈje-nə-səs\ *n* : oogenesis

ovo-gen-ic \-ˈjen-ik\ *adj* : oogenetic

ovo-glob-u-lin \-ˈglä-byə-lən\ *n* : a globulin from egg white

ovo-go-nium \-ˈgō-nē-əm\ *n* : oogonium

ovo-id \ˈō-ˌvȯid\ *adj* [F *ovoïde*, fr. *ovo-* + *-oïde* -oid] : shaped like an egg — **ovoid** *n* — **ovoi-dal** \ō-ˈvȯid-ᵊl\ *adj* — **ovoi-dal-ly** *adv*

ovo-lac-tal-bu-min \ˌō-vō-ˌlak-təl-ˈbyü-mən\ *n* : albumin from egg white and milk

ovo-lac-to-ve-ge-tar-i-an \-ˌlak-tō-ˌvej-ə-ˈter-ē-ən\ *n* : a vegetarian who eats eggs and milk products

ovo-lem-ma \-ˈlem-ə\ *n* : the vitelline membrane of an egg

ovo-lo \ˈō-və-ˌlō\ *n* [It, dim. of *uovo* egg, fr. L *ovum*] : a convex molding

ovo-mu-cin \-ˈmyü-sən\ *n* : a mucin from egg white

ovo-mu-coid \-ˈmyü-ˌkȯid\ *n* : a mucoid from egg white

ovo-ni-tel-la \ˌō-vō-nə-ˈtel-ə\ *n* : a genus of green algae (family Oedogoniaceae)

ovo-ni-tro-phil \-ˈnī-trə-ˌfil\ *n* : a nitrogen-loving plant

ovo-ni-tro-phyte \-ˈnī-trə-ˌfīt\ *n* : ONITROPHIL

ovo-ni-tro-phyt-ic \-ˌnī-trə-ˈfi-tik\ *adj* : ONITROPHILOUS

ovo-ni-tro-phy-tism \-ˈnī-trə-ˌfī-tiz-əm\ *n* : ONITROPHILISM

ovo-ni-tro-phy-tous \-ˈnī-trə-ˌfī-təs\ *adj* : ONITROPHILOUS

**ovo-ni-tro-phyt-

hunt separately (~ out *a young cow*) **2** *obs* : to lead aside : SEQUESTER, WITHDRAW (I have *~ed* thee alone —*Shak.*) **3 a** : to select or distinguish (a person or thing) from a number or group (walks up to the line and *~s* every 10th man) — *usu.* used with *out* (*~s out for special* praise the guidebook to Wells cathedral —Fyke Johnson) **b** : to select or distinguish (a person or thing) for especial attention or comment — usu. used with *out* (something about his person that *singled* him out from the rest of the *punctual* moving crowd —E.V. Lucas) (had *singled* him out as his successor —John Buchan) (all I can do is to ~ out a *few of the* basic ideas —A.W. Hummel) **4** *Brit* : to thin (seedlings) so as to leave space between the plants **5 a** *archaic* : to reduce to only one : CONCENTRATE **b** : to reduce (as a doubled rope) from a number of parts to one **6 a** : to advance (a *base runner*) by a one-base *hit* (*singled* him to third base) **b** : to bring about the scoring of (a run) by a one-base *hit* — *vi* **1** *archaic* : to separate *oneself from* others : proceed alone **2** : to thin out seedlings **3** : to take in all lights of *mooring lines* on a ship except *single* lines preparatory to getting under way — usu. used with *up* **4** : to make a one-base hit (*singled* to center and *knocked in* two more runs —James Thurber) (*singled* behind his catcher —John Drebinger)

²single \"\ *adv* : SINGLY

single-acting \'ˌ--ˈ--\ *adj* : acting in one direction *only* (a *single-acting* plunger)

single-action \'ˌ--ˈ--\ *adj* **1** : SINGLE-ACTING **2** *of a firearm* : that requires cocking *before* each shot

single-banked \'ˌ--ˈbaŋkt, -ˈsiŋ-\ *adj* : having a single *bank or* row: as **a** : having a *single row* of oarsmen or one on each thwart with the oars alternating on each side **b** : having *but* one tier of oarsmen (as a *unireme*) — compare DOUBLE-BANKED

singlebar \'ˌ--ˌ\ *n* [*²single + bar*] : SINGLETREE

single-barrel \'ˌ--ˈ--\ *n* : a single-barreled gun

single-barreled \'ˌ--ˈbarəld *also* -bər-\ *adj, of a gun* : having *one* barrel

single-base powder \'ˌ--ˈ--\ *n* : *an explosive* powder or propellant that contains nitrocellulose as the only essential component — compare DOUBLE-BASE POWDER

single bill *or* **single bond** *n* **1** : a bill or bond for the future payment of money with no annexed *condition* **2** : a bill on which a *single party* is to be heard in a judicial proceeding

single bond *n* : SIMPLE BOND

single-breasted \'ˌ--ˈ--\ *adj, of a coat or jacket* : having a center closing with one row of buttons and *no lap* — compare DOUBLE-BREASTED

single brilliant *n* : a brilliant with 16 facets *above* the girdle and 12 or 16 facets *below*

single-chamber \'ˌ--ˈ--\ *adj* : having a single *chamber* : UNICAMERAL (*a single-chamber* legislature)

single-coated \'ˌ--ˈkōd-əd\ *adj, of paper or board* : *coated* only once on *one or both* sides

single comb *n* : a comb on a fowl having the form of *an erect* or pendant median *serrated* crest — see COMB illustration

single corner *n* : one of the two diagonally opposed corners of a checkerboard that *have a single* dark or playing square

single counterpoint *n* : counterpoint in which the added part lies uniformly above or *below* the cantus firmus

single-crop \'ˌ--ˈ--\ *vt* : to practice one-crop farming : grow a single crop on the same *land repeatedly* — *vt* : to use (land) in a one-crop system (*single-cropping* their lands with wheat —*Rev. of Reviews*)

single cross *n* : the heterotic first generation hybrid between two selected and usu. inbred *lines* (*many* commercial hybrid *seeds are single crosses*) — compare DOUBLE CROSS, HETEROSIS, TOPCROSS

single cut *n* : a simplified brilliant cut used on small stones — see CUT illustration

single-cut file \'ˌ--ˈ--\ *n* : a file having a single parallel series of diagonal cuts across its face

single doubler *n* : DOUBLER 2a

single-end-ed \'ˌ--ˈendəd\ *adj* : having *the* principal or working *portion at* one end only (a *single-ended* boiler)

single entry *n* : a method or system of bookkeeping that recognizes *only one* side of a business transaction and usu. consists only of a record of cash and personal *accounts* with debtors *and creditors* — compare DOUBLE ENTRY

single-entry table *n* : a mathematical table in *which* a tabulated function depends *on* but one independent variable

single escheat *n, Scots law* : escheat to the crown of *one's* movable estate

single-eye \'ˌ--ˈ--\ *adj* : having only one bud (a *single-eye* cutting)

single-eyed \'ˌ--ˈ--\ *adj* **1** : having a clear honest eye : SINCERE **2** : having but one eye *or the sight* of one eye

¹single file *n* : a line of persons, animals, or things moving one behind another; *also* : a *single row* — called also *Indian file* (marching in *single file*)

²single file *adv* : in a single *line* (*traffic is* slowed by having *to crawl single file* through the doors in the ... barricades —Mollie Panter-Downes)

single-file \'ˌ--ˈ--\ *vi* [fr. *single file*, n.] : to walk or move in single file (all *single-filed* past the ... bed —J.D.Salinger) (*single-filing* down the St. George's channel to Liverpool —Gordon Webber)

single fish *n* : a single fish joint

¹single-foot \'ˌ--ˌ\ *n, pl* **single-foots** : ²RACK *b*

²single-foot \"\ *vi, of a horse* : to go at a rack (has seen him *single-foot* up to a wall and go over *clear* —Allan Forbes & R.M.Eastman) — **single-footer** \'ˌ--ˌ--\ *n*

single-framed roof \'ˌ--ˈ--\ *n* : a roof in *which opposite* rafters are *tied together* by the upper floor frame or by boards nailed across horizontally

single-gear \'ˌ--ˈ--\ *vt* : to gear directly (as by belting or a single pair or train of gear wheels) without the use *of any* additional speed-reducing mechanism

¹single-handed \'ˌ--ˈ--\ *also* **single-hand** \'ˌ--ˈ--\ *adj* **1** : managed or done *by one* person or with one on a side (account of his *single-handed* journeys in the sixties —*Brit. Bk. News*) (a cannon *used* ... in his *single-handed* defense of the local coastline —*Amer. Guide Series: Conn.*) (*fighting* in *single-handed* combat) **2** : working alone or unassisted by others (reference book ... for the *single-handed* cook with a family to feed —*Margaret* Lane) (people who are *single-handed* or too old to manage holdings —A.D.Rees) **3** : used or adapted for *using with* one hand (*single-handed fishing* rod) **4** : having or using only one hand (a *single-handed* billiard player) — **single-hand-ed-ness** *n* -ES

²single-handed \"\ *adv* : with or by oneself or without assistance (fought his own *cause in* both war and politics *single-handed* —*adv*) (had to build his little log hut *single-handed* —A.F.Harlow)

single-hand-ed-ly *adv* : in a single-handed manner (undertook the superhuman task *of single-handedly* creating a *historical* dictionary —Robert Pick)

single-hearted \'ˌ--ˈ--\ *adj* **1** : SINGLE 7a (the perfect, *single-hearted*, crusading knight —H.O.Taylor) **2** : characterized by or resulting from *sincerity and* unity of purpose or dedication (such a task requires an expenditure of time and energy, a *single-hearted* consecration —B.N.Cardozo) (the man who seizes on one deep-reaching idea ... and with *single-hearted* fervor forces it upon the world —P.E.More) (*her lifelong, single-hearted*, and unshakable conviction —Albert Lynd)

single-heart-ed-ly *adv* : in a single-hearted manner (works nobly and *single-heartedly*)

single-heart-ed-ness *n* -ES : the quality or state of being single-hearted (fervent saint who sang because *he* suffered, and *whose* mysticism was tinged with kindly *single-heartedness* —Frances P. Keyes)

single jack *n* : a short-handled hammer weighing about four pounds and used in hand drilling

single jacker *n* : *a miner* using a single jack

single knot *n* : OVERHAND KNOT

single-leaf \'ˌ--ˌ\ *or* **single-leaf pine** *or* **single-leaf pinyon** : PINYON *b*

single-line \'ˌ--ˈ--\ *adj* : *confining* commercial activity to one line of goods (a *single-line* manufacturer) (a *single-line* representative)

single-loader \'ˌ--ˈlōdə(r)\ *n* : a firearm in which each charge is inserted separately

single man *n* : a checker that may be moved only forward — compare KING

single-member district \'ˌ--ˈ--\ *also* **single-member constituency** *n* : an electoral *district or* constituency having a *single* representative in a legislative body rather than two or more — compare LIST SYSTEM, PROPORTIONAL REPRESENTATION

single-minded \'ˌ--ˈ--\ *adj* **1** : SINGLE 7a (a dedicated, *single-minded* man —*Time*) (an honest, farsighted, *single-minded and* liberal statesman —J.F.Gore) — opposed to *double-minded* **2** : SINGLE-HEARTED 2 (*his single-minded*, selfless devotion to the liberation of his country —H.H. Fisher) (had a *single-minded* love of God *and* a catholic love of humanity —W.L.Sperry) **3** : having one unifying purpose (with all the emotional ferocity and energy *of genius*, was *single-minded for victory* —J.H.Plumb) (his *single-minded* concern with the political dimension —Martin *Price*) (*affable* manner covered a *single-minded* ruthlessness —*Time*)

single-mind-ed-ly *adv* : in a single-minded manner

single-mind-ed-ness *n* -ES : the quality or state of being single-minded (had a passionate *single-mindedness which their* divided minds and *loyalties* lacked —W.L.Sperry)

single money *n, obs* : small currency : SMALL CHANGE

single-name paper \'ˌ--ˈ--\ *n* : a promissory note with no endorsement other than the signature of the maker

sin-gle-ness *n* -ES [*single + -ness*] **1** : sincerity and honesty in *design* or intent : STRAIGHTFORWARDNESS (a man the *~ of* whose motives could not be *questioned* —Winston Churchill) (*those* who with *~* of mind try to do God's will —*Interpreter's Bible*) **2** : the state of being *unmarried* : CELIBACY (traces *the trends* in nuptiality and *~* —*Population Index*) **3** : the fact of being single or one of a kind *or group* : ONENESS (the *~ of a small operation* ... lost in the confusion of dozens of outfits —H.D.Skidmore) **4** : the *condition of* standing or remaining *alone* or apart (the vulnerability of *~* will disappear before unity of effort —Douglas *MacArthur*) **5** : the quality *of concentrating* on one central objective (the *~* of our aim generates a tremendous sense *of solidarity* —F.A. Perry)

single nickel salt *n* : NICKEL SULFATE

single-nose \'ˌ--ˈ--\ *adj* : having only one growing point and usu. producing a single flower stalk (a *single-nose narcissus* bulb) — compare *DOUBLE-NOSE*

single-pass \'ˌ--ˈ--\ *vt* : to pass (gases) once across *the tubes* of a boiler

single-phase \'ˌ--ˈ--\ *adj* : of or relating to a circuit *energized* by a single alternating *electromotive* force with the currents in the two wires differing in phase by 180 degrees or a half cycle

single-phaser \'ˌ--ˈ--\ *n* : a single-phase machine

single-phasing \'ˌ--ˈ--\ *n -s* : the operation of a polyphase *motor* on single-phase supply

single-pole switch \'ˌ--ˈ--\ *n* : *an electric* switch having only *one* blade and one contact

single premium *n* : the sum that *would meet* in a single payment the cost of a life insurance policy for the entire policy term

single-punch \'ˌ--ˈ--\ *vt* : to punch one hole at a time in

single-rail crane \'ˌ--ˈ--\ *n* : WALKING CRANE

single-rail track circuit *n* : a track circuit comprising two running rails with one divided *into sections* by insulated joints *and the other* used as a common return

single rhyme *n* : a monosyllabic rhyme

single-rivet \'ˌ--ˈ--\ *vt* : to secure (a joint) by a single row of rivets or by a single row on each *side of the seam* of a butt joint

singles *pl of* SINGLE, *pres 3d sing of* SINGLE

singles court *n* : a court (as for tennis) laid out for only two players

single-screw \'ˌ--ˈ--\ *adj* : having one screw propeller (a *single-screw* ship) — compare TWIN-SCREW

single-seater \'ˌ--ˈ--\ *n* : a vehicle (as an airplane) with a single seat

single-seed cucumber \'ˌ--ˈ--\ *n* : STAR CUCUMBER

single shear *n* : shear along one surface only

single-shear steel *n* : SHEAR STEEL

single-shot \'ˌ--ˈ--\ *adj* : capable of firing only one shot without reloading

single-shot pistol *n* : a pistol that can be loaded with only one cartridge at a time and *that* is used chiefly in target *practice* — compare AUTOMATIC PISTOL

single-side-band modulation \'ˌ--ˈ--ˌ--\ *n* : a modulation used in a radio or telephone carrier in which the normal carrier signal is eliminated and *one of the* two modulation side bands *is removed* usu. by filtering

single-side-band transmission *n* : *carrier suppression* in *which the power* associated essentially with one side band is not transmitted

single-space \'ˌ--ˈ--\ *vt* : to type (copy) leaving no blank line spaces (*single-space* the list *of services, but* leave a double space *both before* and after —D.D.Lessenberry & T.J.Crawford) — *vi* : to type on every line space

single spanish burton *n, usu cap 2d S* : a tackle with three single blocks

single spruce *n* : WHITE SPRUCE 1a

single-stage \'ˌ--ˈ--\ *adj* : of one stage only : *complete in one* rather than in *two or more* operations (*single-stage* turbine) (*single-stage* rocket) (*single-stage* trigger)

single standard *n* **1** : MONOMETALLISM **2** : a set of principles that apply equally to all members of a group; *specif* : a code of morals that applies *the same* standards of sexual behavior *to* both men and women — compare DOUBLE STANDARD

singlestick \'ˌ--ˌ\ *n* [*single + stick*] **1** : fighting or fencing with a one-handed wooden stick or sword (the crisp click *of* sportsmen at *~* —Lawrence Durrell) **2** : the weapon used *in* singlestick combat

singlesticker \'ˌ--ˌ--\ *n* [*single + stick + -er*] : a single-masted vessel : SLOOP, CUTTER

single stitch *n* : a bookbinder's *stitch* made by passing a single *loop* through the center of the matter to be secured and tying

single-surfaced \'ˌ--ˈ--\ *adj* : *having* one finished surface (*single-surfaced* airplane wing)

sin-glet \'siŋglət, *usu* -ədˌ+V\ *n -s* [*single + -et*] **1** *a dial chiefly Brit* : an unlined waistcoat **b** *chiefly Brit* : an undershirt or athletic jersey (his coppery-brown torso that was only *partly covered* by the torn *~* —Vance Palmer) (athletes, stripped to their *~s* and shorts, raced, cycled and pole-jumped —H.V.Morton) **2 a** : an atomic, molecular, or nuclear energy level with a spin of zero **b** : a spectrum line *that is not* resolved into components by even the highest dispersion

single-tap \'ˌ--ˈ--\ *n* : a trilled r made by a single flip of the point of the tongue against the *teethridge* (as in the *southern British* pronunciation of *very* sometimes spelled *veddy*)

sin-gle-tary pea \'siŋgəlˌterē-\ *n* [*singletary* prob. fr. *¹single + -tary* (as in *solitary*); fr. its being *an escape*] : a weak-stemmed *and* usu. decumbent winter annual legume (*Lathyrus hirsutus*) native to the Mediterranean *region* but long established *as an escape* in the southern U.S. and more recently cultivated as a cover and pasture crop — *called* also *Caley pea, rough pea, wild winterpea*

single tax *n* : a tax to be levied on a single *object as the* sole source of *public revenue* esp. by taking the entire economic rent of land

single taxer *n* : *an* advocate of a single-tax system

single-throw switch \'ˌ--ˈ--\ *n* : a switch (as on *an electrical* switchboard) *that by one* operation engages a set of fixed contacts

sin-gle-ton \'siŋgəlt*ə*n, -ˌtōn\ *n -s* [fr. E *¹single + F -eton* (dim. suffix)] **1** : a card (as in bridge) that is the *only one of* its suit orig. held in *a hand* — compare DOUBLETON **2** : an animal born *alone* (June the spotted *fawns are* born, usually *~s*, but rarely twins —W.A.Weber)

single-tongue \'ˌ--ˈ--\ *vi* [*¹single + tongue*, v.] : to articulate *notes* on a wind instrument by repeated single *articulations* (as *t, t*) — compare DOUBLE-TONGUE

single-track \'ˌ--ˈ--\ *adj* **1** : having but one track (a *single-track* railroad) **2** : (acking *intellectual* range, receptiveness, *or flexibility* : ONE-TRACK (with a *single-track* mind devoted solely to his duty —Leo Crane)

single transferable vote *n* : a vote on a ballot that can be transferred from a candidate *of first choice* who has already *obtained* the necessary quota of votes for election to a candidate marked by the voter as *second or third* choice in order that every *vote* may count toward the election of a candidate — compare HARE SYSTEM

sin-gle-tree \'siŋgəl(ˌ)trē, -ˌtri\ *n* [*¹single + tree*] **1** : WHIFFLETREE **2** : a heavy horizontal bar sometimes used to spread the loop *of a* hoisting chain to prevent crushing the load

single-valued \'ˌ--ˈ--(ˌ)d\ *adj* : having *only one* value for any one value *of the* argument (a *single-valued* function)

single vote *or* **single nontransferable vote** *n* : a simple form of proportional representation by which each voter casts his ballot for one candidate only

single whip *n* : a *purchase* consisting of a single block and a small rope for lifting light articles — compare DOUBLE WHIP

single wicket *n* : *a variation* of cricket that is played on a pitch with a single batting end having three stumps *and* a bowling end usu. marked by *one* stump with all bowling *being* done from the same end and but one batsman being in at a time

single wingback formation *or* **single wing** *n* : an offensive football formation to the *left or right* in which a back plays *just* outside of and a yard behind one of the ends, the blocking back is on the same side of the *center* and usu. a yard behind *the guard*, and the two other backs are four of five yards behind a balanced or unbalanced *line* and in a position to receive a direct snap from the center

singling *n -s* [fr. gerund of *¹single*] **1** : *the act or* process of one that *singles* **2 singlings** *pl* : the crude product that first passes over in distilling : the low wine *that is usu.* redistilled at a lower *temperature* **3** : a defect in the plying of yarns caused by the omission of one or more *strands*

sin-gly \'siŋg(ə)lē, -li\ *adv* [ME *senglely*, fr. *sengle* single + *-ly* — more at SINGLE] **1 a** : by or *with oneself* : as an individual person *or thing* : SEPARATELY (they come *~* or in scattered groups —*Amer. Guide Series: Pa.*) (*the tree-living* primate mother *and her ~* born infant —Weston La Barre) **b** : without the assistance or support of others : SINGLE-HANDEDLY (either *~ or in* cooperation, have carried on noteworthy educational activities —*Amer. Guide Series: Oregon*) (*~* and successfully opposed the ... proposal for a *drastic* shortening of hours in industry —*Current Biog.*) **2** *archaic* : as or by a *single unit* : EXCLUSIVELY, SOLELY **3** : STRAIGHTFORWARDLY, HONESTLY, SINCERELY (having its accomplishment *~* in mind —F.J.Haskin)

sing-pho \'siŋˌpō\ *n, pl* **singpho** *or* **singphos** *usu cap* : CHINGPAW

sings *pres 3d sing of* SING, *pl of* SING

¹sing-sing \'siŋˌsiŋ\ *n -s* (*Malinke si-nsing* antelope) : a West African waterbuck (*Kobus defassa unctuosus*) distinguished by rather long sandy brown *distinctly greasy* hair

²sing-sing \"\ *n* [redupl. of *¹sing*] : an Oceanian ceremony of singing and dancing

¹singsong \'ˌ--ˌ\ *n* [*¹sing + song*] **1 a** : a verse selection with marked and regular rhythm and rhyme : a jingling song or ballad **b** : verse of such characteristics (the *~* of the epic, its repetitious phrases and familiar story —*College English*) **2** *chiefly Brit* : SING 1a (food, refreshments, entertainment, and a *~* combined to make it a highly enjoyable *evening* —*Crow's nest*) **3** : a voice delivery characterized by a narrow range of pitch or a mechanically repetitious pitch *variation* (began in the *~* of *a professional* guide —Donn Byrne) (the *~* of ... campaign oratory —Max Ascoli) (the *successful* with his rapid *~* —*Amer. Guide Series: Tenn.*) (speaking English in a Welsh *~* —John Barkham)

²singsong \"\ *adj* **1** : making or delivering singsong (is known as a *~* poet) **2** : characterized by the light *or trivial* usu. monotonously *expressed* (writes *~* verse) (cases of long-windedness, foggy meanings, clichés, and *~* phrases —Stuart Chase) **3** : *having* a monotonous cadence or rhythm : marked by a singsong (story in a *deliberately* rhythmical, *~* prose —*New Yorker*) (cultivated a *~* manner *of speaking* —Thomas Pyles) (the *~* orchestration from a *loud* radio sawed the air —Kathryn *Grondahl*)

³singsong \"\ *vb* -ED/-ING/-S *vt* **1** : to move by or as *if* by means of a singsong or *chant* (watched coolies *~* a dismantled truck up (the cliff —*Time*) **2** : to speak, chant, or declaim in singsong (the class *~ing the number* tables) (*~ed* her *way through* Shakespeare with a ... native-born inflection —Joan Comay) — *vi* : to speak, chant, *or* sing in a singsong manner (*droning* on and on, his voice *~ing* almost unrecognizably —Norman Mailer) (vendors *~ed up* and down the platform —*Jobo* Nakamura)

singsong girl *n* : a Chinese girl engaged *in* professional entertainment similar to that performed by the geisha

sing-songy \'ˌsiŋˌsōŋē, -gi *also* -ˌsəŋ-\ *adj* [*singsong + -y*] : suggestive *of singsong*

sing-spiel \'siŋˌspēl, 'ziŋˌshpēl\ *n, usu cap* [*G, fr. singen* to sing (fr. OHG *singan*) + *spiel* play, fr. OHG *spil* — more at SING, SPIEL] : a somewhat dramatic musical *work popular* in Germany esp. *in the latter* part of the 18th century, usu. comic in nature, and characterized by spoken *dialogue* interspersed with *popular or* folk songs — compare BALLAD OPERA

sing-spi-ra-tion \ˌsiŋgəpə'rāshən\ *n -s* [*¹sing + inspiration*] : a song service featuring the group singing of hymns conducted esp. by revivalistic *churches* and often followed by a *sermon*

¹sin-gu-lar \'siŋgyələ(r)\ *adj* [*ME singuler*, fr. MF *singulier*, *singulier*, fr. L *singularis* single, solitary, singular, fr. *singulus* one only, individual + *-aris -ar* — more at SINGLE] **1 a** : of *or* relating to a separate person or thing : INDIVIDUAL (every fact in the world might be *~*, *that* is, unlike any other fact *and sole* of its kind —William James) (assumption that the *~* person can be understood *apart from* his culture —*Amer. Polit. Sci. Rev.*) (saw that each weed was a *~* knife —Stephen Crane) (to all and *~* to whom *these* presents shall come, *greetings*) **b** : of, relating to, or being a word form denoting one person, thing, or instance (one *subject* usually takes a *~* verb) — *opposed to plural*; compare DUAL **c** : of or relating to a single instance or to *something* considered by itself : applied *to only* one individual (a *~* term) (a *~* proposition) — opposed to *general* **d** (1) : of *or relating to* a single or individual *unit* (convey several parcels of land all and *~*) (2) : of, relating to, or affecting a *particular* property or one or *more separate* interests or rights in property as distinguished from the entire body of a *decedent's* estate or any interest *or right* in property acquired otherwise than by inheritance — compare SINGULAR SUCCESSION **2 a** *obs* : set apart or *distinguished* by superiority : EMINENT **b** : of considerable extent of worth : EXTRAORDINARY, EXCEPTIONAL (achieved *a ~* mechanical triumph that won him wide renown —Sherwood Anderson) (a *~* poetic *achievement* —H. W.V.Lange) (*holds a ~* regard for his people) (his death is a *~* loss) **c** *obs* : especially helpful or *efficacious* : BENEFICIAL **3** *archaic* **a** : *consisting of* one only **b** : having but one on each side (those in his high place light no *~* combats —Sir Walter Scott) **4 a** : of *unusual* quality : UNCOMMON, UNIQUE (various speculations put forward in explanation of the *~ phenomena* of this remarkable *place* —Harry Luke) (a work of *~* originality and analytical power —*Economica*) (*that woman of ~* mystery, the *Mona Lisa* —Elizabeth Janeway) **b** : RARE, VALUABLE (a man of *~* charm and sterling character —*D.S. Muzzey*) (an effect *of ~* grace and delicacy —*Amer. Guide Series: Maine*) (of *~* and exquisite workmanship) **5 a** : being at variance with *others* : DIFFERING, CONTRARY (am *dog* ... of the color of choco to say, the one dangerous and *little* volume preserved it from (hit upon the *~* expedient *of dis justice to* order to reduce the de nett) **c** ; possessing various uni (*a ~ point or* integral in a diff STRANGE

²singular \"\ *n -s* [L *singularis*] **1** : the singular number, the in or a word *in that form* (that th in terms of *~* and plural —Westc *they*) **2 a** *archaic* : a single per DIVIDUAL (eloquence would be bu converse only *with ~s* —Ben Jor considered by itself or as a sin PROPOSITION — usu. *used* in pl. been *~s*, no one of them occurr (an accepted *principle in* the r intellect and science are of unive of *~s* —G.P.Klubertanz) **c** (1) *o* company of wild boars

singular integral *n* : SINGULAR SO

sin-gu-lar-ism \'siŋgyələˌrizəm\ derives the universe from a single *pluralism*; compare MONISM

sin-gu-lar-i-ty \ˌsiŋgyəˈlarəd-ē, -rə singularité, fr. MF *singularité*, fr. fr. L *singularis* single, singular + SINGULAR] **1** : something that is (for the Aristotelian, knowledge experience *with singularities*) **2** or eccentricity in manner or beh and speech *make* life a burden for —Sacheverell Sitwell) (even our ness for *us ... as* if they were Swinnerton) **b** : a unique or development (*some* natural prod soil and situation —Adam Smit feature or characteristic (forgott lost to memory, significances on things and many more *singularities* of plant names —*Notes & Queri* of being singular (*the amount* people of the country —*New R* presses its *~* even in *handwritin* individuality approaches *~*, it ... (the *~* of an analytic function)

sin-gu-lar-iza-tion \ˌ--ˌlərˈzāsh process of singularizing : the sta

sin-gu-lar-ize \'siŋgyələˌrīz\ *vt -ED* : to make singular; as **a** : DISTI (*the rule that* never by display display of brave or noble behav standing *out* —Albert Hubbell) people that we place our confic *singularized* vocation of each one *west*)

sin-gu-lar-ly *adv* ME *singulerly* — more at SINGULAR] : in a sin effective *component* of these fe of *~* frank temperament —Robe woman —Rudyard *Kipling*) (hat vanished at the approach of s (majority *of these high* altitude Douglas Carruthers)

sin-gu-lar-ness *n -ES* : SINGULAR

singular point *n* : a point of the partial derivatives *are zero*

singular proposition *n* : a prop a proper name or a *descriptive p* one individual

singular solution *n* : *a mathem* no arbitrary constant and is not a also *singular integral*

singular square matrix *n* : a squ is zero

singular statement *n* : a staten stants and no variables — contr

singular succession *n, chiefly Sc* particular object or property — *succession*

singular syllogism *n* : a syllog *singular term*

singular universal *n* : CONCRET

sin-gu-lit \'siŋgyələt\ *n -s* [L *sing* thrilling cries, *with sobs* and *~s* used in pl.

sin-gul-ti-ent \siŋ'gəltēənt\ *adj* pres. part. of *singultire* to hiccup] *archaic* : SOBBING (*wa* breath —Lewis Morris)

sin-gul-tus \-təs\ *n -ES* [L] : *hi*

sinh *abbr* [*sine + hyperbolic*] hy

¹sin-ha-lese \ˌsin(h)əˈlēz, -ēs\ *-in(h)ə-*\ *or* **sin-ga-lese** \-in(g)ə- or **cin-gha-lese** \-ŋgə-, -ŋ(h)ə- *Sri Lanka*, island in the Indian oc continent + E *-ese* (adj. suffix)] *teristic of* the Sinhalese **2** : of, of the Sinhalese language

²sinhalese \"\ *also* **singhalese cingalese** \"\ *or* **cinghalese** \ *Simkala Sri Lanka* + E *-ese* (n. habiting the island of Sri Lanka a *of its population* **b** : a memb Indic language of the Sinhalese language *of Sri Lanka*

sin-ha-lite \'sin(h)əˌlīt\ *n -s* [*-ite*; fr. *the fact* that the gems came from Sri Lanka] : a miner aluminum *borate that* is structur occas. used as a gem

sin-ha-san \sinˈhäˌsən, -ˈhas-\ *n* seat] : a throne often depicted shape of lions and *designed* as a

sin-ic \'sinik, -nēk\ *adj, usu cap* pl., Chinese + *L -icus -ic* — *m* SINITIC

sin-i-cism \'sinəˌsizəm\ *n -s usu* thing (as a manner or custom) pe

sin-i-ci-za-tion \ˌsinəsəˈzāshən, - or process of sinicizing : the st

sin-i-cize \'sinəˌsīz\ *vt -ED/-ING/* ; to modify by Chinese influenc Mongol family —*Times Lit. Sup.*

sinico- *comb form, usu cap* [*sinic* Japanese) (*Sinico-Russian*)

sin-i-co-japanese \ˌsinəˌkō-, -nē as adapted and used in *Japane* Japanese modeled on the Chi many Chinese words and *idioms*

sin-i-fi-ca-tion \ˌsinəfəˈkāshən\ *-i- + -fication*] : SINICIZATION

sin-i-fy \'sinəˌfī\ *vt -ED/-ING/-ES of.* + E *-ify*] : SINICIZE (writers popu *and short* story by *~ing* it —*Tim*

sin-i-grin \'sinəgrən\ *n -s* [ISV *genus of* black mustard seed] + $CH_2{=}CHCH_2C(SC_6H_{11}O_5){=}N$ *of black mustard* (*Brassica nigra* enzymatic hydrolysis by myros *hydrogen* sulfate, and allyl iso

"grandfathered" marinas to use their moorings to do what the State Boat Act and accompanying regulations prohibit—infringe on the rights of riparian property owners to use their licensed shorelines for wild waterfowl hunting by surrounding their licensed blinds with boats. Because the local boat mooring ordinance permits an activity prohibited by the state boat mooring laws, it is preempted by conflict.

[20] For much the same reason that the local amended boat mooring ordinance is not impliedly preempted by the state wild waterfowl hunting laws, it is not preempted by the "prohibit-permit" type of conflict with those laws. In *Holiday Point Marina, supra,* the Court examined whether the local zoning ordinance imposing a minimum distance between certain marina facilities and shellfish beds was preempted by conflict by the state legislation over tidal wetlands, water quality, and shellfish, and held that it was not because the local and state legislation "regulate[d] entirely separate and distinct activities." 349 Md. at 211, 707 A.2d 829.

> The local ordinance restricts the location of marina facilities, whereas the state document restricts the harvesting of shellfish. While both may be designed to further the ultimate public policy of protecting consumers from shellfish that may be dangerous to health, the local ordinance and the state document employ wholly different means to further such public policy.

Id.

Likewise, in the case at bar, the state wild waterfowl legislation regulates the time, location, and manner in which people may hunt wild waterfowl in Maryland, and provides certain preferences for doing so to riparian property owners, while the local ordinance regulates the use of boat mooring s in the waters of Kent County. In the words of the t of Appeals, these are "entirely separate and distinct ties." The local ordinance restricts the placement of ing buoys. It does not purport to place limitations on waterfowl hunting.

tabbies
EXHIBIT
2

We agree with the circuit court, however, that even though the fields of legislation are not the same, that is, boat mooring and wild waterfowl hunting, the amended local boat mooring regulation in this case frustrates the purpose of the state blind site licensing laws by preventing holders of licensed shorelines from using them during part of the wild waterfowl hunting season. The full purpose of the state wild waterfowl hunting laws set forth in NR 10–601 *et seq.* is to with strict regulation allow priorities of people, with riparian property rights having top preference, to license shorelines for hunting on their waters, by them or by others, during the season designated by the DNR. The amended local ordinance in this case stands as an obstacle to that purpose, because it effectively prevents the license holders from being able to use their blind sites.

Accordingly, for the reasons we have explained, the circuit court properly ruled that the amendment to KCC section 68–10(G), to the extent it allows group moorings outside the extended property lines of the permittee, during any part of the wild waterfowl hunting season as designated by the DNR, is preempted by conflict with state law.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY THE APPELLANTS.

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831 A.2d 93

BETH TFILOH CONGREGATION OF BALTIMORE CITY, INC.

v.

GLYNDON COMMUNITY ASSOCIATION, INC.

No. 1705, Sept. Term, 2002.

Court of Special Appeals of Maryland.

Aug. 28, 2003.

Congregation planning to build a new school and synagogue applied for an exemption from the development process.

County department of permits and development management (PDM) denied the request, and congregation appealed. The county board of appeals granted the exemption, and community association petitioned for judicial review. The Circuit Court, Baltimore County, Bolinger, J., held that congregation could not appeal from PDM's denial, and congregation appealed. The Court of Special Appeals, Salmon, J., held that: (1) denial of congregation's request for an exemption was an operative event from which congregation could immediately appeal, and (2) PDM was required to issue the exemption to the congregation under the county code.

Judgment of Circuit Court reversed, and case remanded with instructions.

1. **Zoning and Planning** ⇐440.1

Decision by county department of permits and development management (PDM) to deny congregation an exemption from county's development process pursuant to county code for building a new school and synagogue was an operative event which congregation could immediately appeal to county board of appeals, even though development process had not been completed; state code authorizing counties to establish boards of appeals unequivocally gave parties the right to appeal from the denial of an exemption, letter from PDM denying exemption clearly advised that a final decision had been made, and if congregation had waited until development process had been completed, congregation's right to appeal under county code would have expired. West's Ann.Md.Code, Art. 25A, § 5(U).

2. **Administrative Law and Procedure** ⇐683

The function of the Court of Special Appeals, when reviewing an agency's decision, is essentially to repeat the task that was performed or should have been performed by the circuit court.

3. **Zoning and Planning** ⇐388

Even if county department of permits and development management (PDM) and development review committee (DRC) had a longstanding practice of denying valid exemption requests from the county development process under the county code when there was a measurable degree of community interest in a proposed development, congregation intending to build new school and synagogue was entitled to the exemption, as denial of exemption was contrary to the plain meaning of the county code; code provided that an exemption would be granted if proposed development was on a lot of record, proposed development was on a lot of record, and code did not contain a requirement that community interest be considered in the granting of an exemption.

G. Scott Barhight (Dino C. La Fiandra, Whiteford, Taylor & Preston, L.L.C., on brief), Towson, for appellant.

Gary R. Jones (Baxter, Baker, Sidle, Conn & Jones, P.A., on brief), Baltimore, for appellee.

Argued before SALMON, SONNER, and EYLER, DEBORAH S., JJ.

SALMON, J.

Appellant, Beth Tfiloh Congregation, Inc., of Baltimore City,[1] makes two primary arguments in this appeal. First, it claims that the Circuit Court for Baltimore County erred when it ruled that the Baltimore County Board of Appeals lacked jurisdiction to hear the appeal that it filed and, second, that the Board of Appeals' decision to grant it an exemption provided for by section 26–171 of the Development Regulations of the Baltimore County Code ("BCC") (1988) was correct as a matter of law. Appellee, the Glyndon Community Association, Inc., a Baltimore County neighborhood community group, disagrees with the first of appellant's contentions. It

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1. Despite the name, the synagogue is now located in Baltimore County.

also disagrees with the second contention, although in a much more equivocal fashion.

I. *BACKGROUND REGARDING CERTAIN BALTIMORE COUNTY ZONING PROCEDURES*

Those in Baltimore County who propose to develop property ordinarily must submit development plans, which are scrutinized in accordance with a "Development Process" that is spelled out in BCC section 26–201 *et seq.* The Development Process requires the developer to fulfill numerous requirements, including preparation of a concept plan, attendance at an initial meeting with certain county agencies (Concept Plan Conference), a community input meeting, a second meeting with county agencies (Development Plan Conference), and a Hearing Officer's Hearing at which the Hearing Officer may, at his or her option, impose conditions that must be met in order to secure plan approval. *See* BCC §§ 26–201—26–205.

There are, however, nineteen enumerated grounds upon which the developer may qualify for an exemption from the Development Process. *See* BCC § 26–171. Qualification for an exemption is important because an exemption allows the developer to avoid the numerous and sometimes onerous requirements of the Development Process. Examples of categories that are exempt from the Development Process under BCC section 26–171 include applicants who propose to develop a "lot of record," subdivide land into three or fewer lots, or development of minor commercial structures.

Baltimore County adopted a Development Management Policy Manual (the "Manual") on July 1, 1993, that, among other things, governs the processing of plans such as those presented by appellant. The Manual creates an interagency committee, the Development Review Committee ("DRC"), whose task it is, upon request by a developer, (1) to evaluate plans to determine what laws and processes must be followed in order to secure plan approval, or (2) to consider the proposed project to determine if it is entitled to an exemption from the development review and approval process. Under policies 1b and 1c of the Manual, the DRC's review is to be performed at the earliest stage of the development approval process.

II. *THE SUBJECT CASE*

Appellant operates a school and a synagogue in Baltimore County. It submitted development plans to the Baltimore County Department of Permits and Development Management ("PDM"), in which it proposed building a new two-story school building and a 1,500 seat synagogue with associated parking lot at a site located at 407 Central Avenue in Glyndon, Maryland.

Appellant applied to the PDM for an exemption allowed by BCC section 26–171(a)(2). In its exemption request, appellant pointed out that the proposed development site was a "lot of record," and therefore its development plan was exempted from the "Development Review and Approval Process" outlined in BCC sections 26–201 through 26–220.

The PDM referred appellant's proposal and exemption request to the DRC, which, after a review of the plans, recommended that the PDM deny the exemption. The PDM accepted the DRC's recommendation. On January 4, 2001, the Director of the PDM notified appellant of the denial.

Appellant appealed the PDM's decision to the Baltimore County Board of Appeals (the "Board"), which took testimony on December 4, 2001. At the hearing, appellee contended that the Board had no jurisdiction to hear an appeal from the denial of an exemption. The Board ruled that it did have jurisdiction and proceeded to overturn the PDM's decision and grant the exemption. In reaching the decision, the Board concluded that appellant's property met the definition of a "lot of record" and therefore appellant was entitled to the exemption provided for in BCC section 26–171(a)(2).

Appellee filed in the Circuit Court for Baltimore County a petition for judicial review of the Board's decision. It alleged that the PDM's decision to deny the exemption was not an

appealable event and therefore the Board lacked subject matter jurisdiction to make the decision.

The circuit court agreed with appellee. Relying primarily on our decision in *Meadows of Greenspring Homeowners Ass'n, Inc. v. Foxleigh Enters., Inc.*, 133 Md.App. 510, 758 A.2d 611 (2000) ("*Foxleigh*"), the circuit court held that the PDM's denial of the exemption was not an

> operative event which would determine in this case whether appellant's proposed plan would be granted a license or permit, and did not determine the conditions or scope of that license or permit.

Therefore, according to the circuit court, appellant could not appeal from the PDM's decision to deny the exemption.

III. *THE PARTIES' CONTENTIONS*

Baltimore County is a charter county. Article 25A, section 5(U), of the Maryland Annotated Code (1957, 2001 Repl.Vol.), gives charter counties power to create "a county board of appeals." Article 25A, section 5(U), reads,

> (U) *County Board of Appeals*
>
> To enact local laws providing (1) for the establishment of a county board of appeals whose members shall be appointed by the county council; . . . and (4) for the decision by the board on petition by any interested person and after notice and opportunity for hearing and on the basis of the record before the board, of such of the following matters arising (either originally or on review of the action of an administrative officer or agency) under any law, ordinance, or regulation of, or subject to amendment or repeal by, the county council, as shall be specified from time to time by such local laws enacted under this subsection: An application for a zoning variation or exception of amendment of a zoning ordinance map; *the issuance, renewal, denial, revocation, suspension, annulment, or modification of any license, permit, approval, exemption, waiver, certificate, registration, or other form of permission or any adjudicatory order*; and the assessment of any special benefit tax: Provided, that upon any decision by the county board of appeals it shall file an opinion which shall include a statement of the facts found and the grounds for its decision. Any person aggrieved by the decision of the board and a party to the proceeding before it may appeal to the circuit court for the county which shall have power to affirm the decision of the board, or if such decision is not in accordance with law, to modify or reverse such decision, with or without remanding the case for rehearing as justice may require. Any party to the proceeding in the circuit court aggrieved by the decision of the court may appeal from the decision to the Court of Special Appeals in the same manner as provided for in all civil cases.

(Emphasis added.)

Baltimore County's Charter (the "Charter") created a Board of Appeals. Article VI, section 602(d), of the Charter, in pertinent part, reads:

> *Appeals from executive, administrative and adjudicatory orders.* The county board of appeals shall hear and decide appeals from all other administrative and adjudicatory orders as may from time to time be provided by [a]rticle 25A of the Annotated Code of Maryland (1957 Edition), as amended, or by legislative act of the county council not inconsistent therewith.

Appellant stresses that (1) section 602(d) of the Charter granted the Board the same broad jurisdictional authority allowed by article 25A, section 5(U), and (2) section 5(U) grants a right of appeal to the Board upon the "denial" of any "exemption." Therefore, appellant argues, the PDM's denial of its application for a BCC section 26–171 exemption qualified as an appealable event.

Appellant, relying upon language in *United Parcel Service v. People's Counsel*, 336 Md. 569, 583–84, 650 A.2d 226 (1994) ("*UPS*"), argues:

> [F]unctionally, PDM's decision is one which finally decides if the exemption will be granted. The decision is a final act, and thus qualifies as an "operative event" under *UPS*.

Appellant further contends that the Board correctly applied the relevant law and that the record developed before the Board contained unrebutted evidence that supported the Board's decision to grant the exemption.

Appellee agrees that section 602(d) of the Charter *does* grant the Board the right to hear appeals from the denial of an exemption. Nevertheless, appellee argues that the appeal cannot be heard by the Board until the development process has been completed. In other words, appellee's position is that, even if the PDM wrongfully denies an exemption that would have allowed the developer to avoid the numerous steps in the "Development Process," the developer must nevertheless complete that process before seeking review of the denial. According to appellee, the circuit court properly construed the applicable Maryland law to preclude the Board from entertaining appellant's appeal because the PDM's January 4, 2001, decision was not an "operative event."

Appellee phrases its argument as follows,

> [The PDM Director's letter denying the exemption did] not make any decision and is not an order. It [did] not issue or modify any license, permit, or approval. Instead, it merely inform[ed] Beth Tfiloh that in order for its plan to be approved, it must provide more information and proceed through the entire development review process . . . [and] by ordering that it advance through the development process, . . . [the] letter [denying the exemption did] not constitute an operative event, and therefore, is not a final, appealable action.

Appellee also argues that, even if the Board had jurisdiction to hear the appeal, it erred by granting the requested exemption. This argument is made even though appellee does not dispute (1) that the Board had before it substantial evidence from which it could find that the property that appellant sought to develop was "a lot of record" or (2) that the owner of "a lot of record" is entitled to an exemption from the "Development Process." Nevertheless, appellee contends that this denial of the exemption was justified because there was a great deal of "community interest" (read controversy) concerning appellant's proposed development plan. This is important, according to appellee, because the DRC has a "longstanding policy" of denying exemptions requests when development proposals are met with a "measurable degree of community interest." Appellee argues,

> It is well settled that an agency's interpretation of its own administrative regulation is of controlling weight unless it is plainly erroneous or inconsistent with the regulation. [citing *Ideal Fed. Savings Bank v. Murphy,* 339 Md. 446, 461, 663 A.2d 1272 (1995); *Morris v. Prince George's County,* 319 Md. 597, 614, 573 A.2d 1346 (1990)].

IV. ANALYSIS

A.

Did the Board have jurisdiction to hear appellant's appeal of the PDM's decision?

BCC section 26–132 reads,

> (a) Any person or persons, jointly or severally, or any taxpayer aggrieved or feeling aggrieved by any *decision* or *order* of the zoning commissioner or the director of zoning administration and development management shall have the right to appeal therefrom to the county board of appeals.
>
> * * *
>
> Notice of such appeals shall be filed, in writing, with the director within thirty (30) days from the date of any final order appealed, together with the required fee as provided in the zoning regulations.

(Emphasis added.)

Because both parties agree that the Board has jurisdiction to hear appeals from the denial of an exemption, the question becomes: *When* is the Board allowed to exercise that jurisdiction? Appellee, relying primarily on *Foxleigh, supra,* and *UPS, supra,* contends that such jurisdiction does not vest until the Development Process has been completed.

The *UPS* case involved a zoning dispute concerning property in Baltimore County upon which UPS wished to build a large parcel distribution facility. *Id.* at 571–72, 650 A.2d 226. To build the facility, UPS needed a building permit and to obtain the permit, it was required to submit an application to the Zoning Commissioner, who was empowered to determine whether the application was in proper form and whether the proposed use complied with the zoning regulations then in effect. *Id.* at 572, 650 A.2d 226. If the Zoning Commissioner "approve[d] the application, and all other requirements [were] met, the Building Engineer [could] then issue a building permit." *Id.* UPS applied for a building permit, and on July 3, 1986, the permit was approved by the Zoning Commissioner. *Id.* at 573, 650 A.2d 226. The building engineer issued a permit to UPS about six weeks later. *Id.*

On January 11, 1987, after UPS had commenced construction, Paul Hupfer, a citizen who lived near the construction site, wrote to the Zoning Commissioner complaining that the facility UPS was building required a special exception, which UPS had neglected to obtain. *Id.* The Zoning Commissioner responded to Hupfer in a letter dated January 17, 1987, in which he advised that a building permit had already been issued and that a special exception was not required. *Id.* at 573–74, 650 A.2d 226.

Hupfer, joined by two citizens' associations, filed an appeal to the Board of Appeals from the Zoning Commissioner's "letter decision" dated January 17, 1987. *Id.* at 574, 650 A.2d 226. UPS contested the Board's jurisdiction to hear the appeal, contending that the appeal was untimely because it was not filed within thirty days of the issuance of the permit. *Id.* The Board agreed with the protestants that it had jurisdiction but went on to rule that no special exception was required. *Id.* at 575, 650 A.2d 226. The circuit court agreed that the Board had jurisdiction to decide the issue but reversed the Board's decision that no special exception was needed. *Id.*

In *UPS*, the Court of Appeals considered the issue of whether the January 17, 1987, letter from the Zoning Commissioner constituted an "appealable event" within the meaning of article 25A, section 5(U), which had been "incorporated by reference into [section] 602(d) of the Baltimore County Charter." *Id.* at 581–82, 650 A.2d 226. The Court held that the words "issuance, renewal, denial, revocation, suspension, annulment, or modification," as used in article 25, section 5(U), "obviously refer to an operative event which determines whether the applicant will have a license or permit, and the conditions or scope of the license or permit." *Id.* at 583–84, 650 A.2d 226. The Court went on to say,

> The plain import of the words would not include a statement simply confirming that a license or permit was issued or denied in the past or defending a past issuance or denial of a license or permit. In the context, the phrase "approval . . . or other form of permission," on which the protestants place so much reliance, seems to have been designed simply to encompass all forms of licensing regardless of what the particular license or permit may be called. Nevertheless, the appealable event is the issuance, renewal, revocation, etc. of the license or permit. In the present case, this appealable event occurred in 1986 when the application for a building permit was approved and the permit was issued.
>
> If Art. 25A, § 5(U), were construed to grant an appeal to a board of appeals from an administrative official's reaffirmation or statement that a license or permit had been properly issued or properly denied in the past, an applicant or a protestant could circumvent entirely the statutory time limits for taking appeals. In *Nat'l Institutes Health Federal Credit Union v. Hawk*, 47 Md.App. 189, 195, 422 A.2d 55, 58–59 (1980), *cert. denied*, 289 Md. 738 (1981), the Court of Special Appeals, quoting the hearing examiner, explained:
>
> " 'The "decision" which is the subject of [the] Appeals . . . is not a final administrative decision, order or determination. It is at most a reiteration or reaffirmation of the final administrative decision or order of the department granting the original Use and Occupancy Certificate. . . . If this were

not the case an inequitable, if not chaotic, condition would exist. All that an appellant would be required to do to preserve a continuing right of appeal would be to maintain a continuing stream of correspondence, dialogue, and requests ... with appropriate departmental authorities even on the most minute issues of contention with the ability to pursue a myriad of appeals ad infinitum.' "

Id. at 584–85, 650 A.2d 226 (footnote omitted).

Appellee utilizes the above language and argues,

> The appealability of an action pursuant to the Annotated Code of Maryland, [a]rticle 25A, § 5(U)[,] turns on the occurrence of an "operative event." And "operative event" determines whether the applicant will have a license or permit [or exemption]. An "operative event" also determines the conditions or scope of the license or permit [or exemption]. *United Parcel,* 336 Md. at 583–84, 650 A.2d 226.

(Bracketed material in original.)

[1] We agree with appellee that whether an operative event has occurred depends upon whether the applicant will have "a license ... permit ... [or exemption]." But in the case at hand, the PDM *did* decide whether the applicant would have an exemption from the Development Process. As for appellee's reliance upon *UPS* for the proposition that to be an "operative event" the action of the agency must "also determine the condition or scope of the license or permit [or exemption]," that reliance is misplaced. The *UPS* Court did not address the rule applicable when an administrative agency denies an exemption. And, in any event, when an exemption is denied, the "scope" of a denial is never an issue.

The trial court, unlike appellee,[2] relied upon the exact language set forth in the following sentence in the *UPS*

2. Appellee, unlike the trial court, includes bracketed material when it quotes from the *UPS* case. Moreover, unlike the trial judge, appellee agrees that the Board can hear an appeal from the denial of an exemption. But, as mentioned *supra*, it claims the appeal was filed too soon.

decision, which was also quoted in the *Foxleigh* decision: "The words [as used in article 25A, section 5(U)] 'issuance, renewal, denials, revocation, suspension, annulment, or modification' obviously refer to an operative event that determines whether the applicant will have a license or permit, and the conditions or scope of that license or permit." *Id.* at 583–84, 650 A.2d 226. Taken literally, this sentence would be dispositive of this case—and the disposition would be in favor of appellee. But the sentence must be read in context. In *UPS*, the Court was not dealing with the denial of an exemption and article 25, section 5(U), excluding all unnecessary words, unequivocally gives a party the right to appeal to the Board from "the ... denial ... of any license, permit, approval, *exemption* ... or other form of permission or any adjudicatory order." (Emphasis added.) Read in context, it is obvious that the Board has the power to hear appeals from a decision denying an exemption even if the decision appealed does not involve a determination of whether someone "will have a license or permit." In sum, we are convinced the language from the *UPS* case relied upon by the trial court is taken out of context. Our conviction in this regard is bolstered by other language in the *UPS* case.

In *UPS*, the Court also said,

> Like other "time for appeal" provisions, BCC § 26–132 neither contains the word "accrues" nor speaks in terms of accrual. Moreover, there is no language in § 26–132 which could furnish the basis for a flexible doctrine like the discovery rule. Rather, the time for appeal begins to run from a fixed date. *In mandatory language, the Baltimore County statute states that a notice of appeal "shall" be filed within thirty days of the decision from which the appeal is taken.* Under language like that set forth in BCC § 26–132, this Court has consistently held that, where the notice of appeal was not filed within the prescribed period *after the final decision from which the appeal was taken, the appel-*

late tribunal had no authority to decide the case on its merits. See, e.g., Dabrowski v. Dondalski, 320 Md. 392, 397–398, 578 A.2d 211, 214–215 (1990); *Walbert v. Walbert*, 310 Md. 657, 662, 531 A.2d 291, 293 (1987), and cases there cited.

Id. at 580, 650 A.2d 226 (emphasis added).

In the case at hand, the appeal to the Board was taken within thirty days of the decision by the PDM to deny the exemption. And, as shown above, BCC section 26–132 of the Code was interpreted in the *UPS* case as meaning that a party has only "thirty days of the *decision* from which the appeal [is] taken" to file an appeal. *Id.* (emphasis added). If appellant had waited—as appellee says it should have—until after the Development Process had been completed, the appeal would have been filed far too late because it would have been filed more than thirty days after the decision to deny the exemption was made.[3]

Appellee also places great reliance on *Foxleigh, supra*, which, in turn, placed heavy reliance on the *UPS* case. In order to understand *Foxleigh*, it is important to understand certain aspects of Baltimore County zoning procedures. Appellant, in its brief, gives a good summary of those procedures, *viz:*

> a) *Requests for Amendments to Previously Approved Plans*
>
> If a request for amendment to a previously approved plan is received, the DRC [Development Review Committee] first evaluates which development law applies. Baltimore County Code § 26–169 and § 26–211, "grandfather," for the benefit of the developer, certain projects which have been approved pursuant to an earlier development process than the one which is currently in effect. Under the regulations presently in effect, which went into effect in 1992, development approval requires a community input meeting and a

3. It plainly would have taken more than thirty days after notification of the denial of the exemption request for appellant to have negotiated the numerous hurdles in the Development Process.

hearing officer's hearing. Baltimore County Code, 1988 ed., § 26–201, *et seq.* This is referred to as the "Development Process." Between 1892 and 1992 there was a process in effect known as the "CRG Process." The CRG Process involved a public meeting by county agencies and ultimate approval or disapproval of the plan by the Directors of the Department of Public Works and the Office of Planning. Baltimore County Code, 1978 ed., 1988 supp., Public Works and the Office of Planning. Baltimore County Code, 1978 ed., 1988 supp., § 22–52 *et seq.* Prior to 1982, there was only a subdivision review process. The subdivision process, often referred to as the "JSPC Process," ["Joint Subdivision Planning Committee"] involved a planning board approval of a subdivision plat. Baltimore County Code, 1978 ed., § 22–40, *et seq.*

Subdivision approval is required for plat recordation, which, in turn, is required to legally transfer title of real property.... Development approval, by CRG Process or Development Process, as the case may be, is required for "development," which is currently defined generally as building or the preparation of land for building. Baltimore County Code, 1978 ed., 1988/89 Supp....

Pursuant to the grandfathering provisions of Baltimore County Code § 26–109 and § 26–211, with regard to development approval, a property acquired a right to further development approval in accordance with those procedures which governed the first development (or subdivision) approval thereon. This is beneficial to an owner of property with a previously approved subdivision or development because it is generally accepted that the current Development Process is more onerous than the earlier CRG Process or the JSPC Process.

Accordingly, if a developer seeks development approval for a tract or parcel in the first instance, i.e., before there has been any previous subdivision or development on the property, then clearly, neither § 26–169 nor § 26–211 grandfathers the property into any prior development approval process and the current Development Process gov-

erns. In such cases the developer is bound to proceed in accordance with the development approval procedures presently provided for in § 26–201, *et seq.*, unless the developer is otherwise exempt from these requirements under § 26–171.... Equally clear is that if a developer approaches the DRC with a change or amendment to a plan which was first approved by the CRG Process or by the JSPC Process, then the DRC must find that the appropriate earlier process applies....

If the DRC determines that the proposed project is an amendment to a plan previously approved pursuant to an earlier process, i.e., the CRG Process or the JSPC Process, then the amendment is characterized as either a "refinement" or a "material amendment."

Refinements to CRG plans are processed administratively.... These plans are circulated to the Department of Public Works and the Office of Planning, each of which must approve the refinement.... Ultimately, the Director of Public Works and the Director of Planning will approve the refined plan. Refinements to JSPC plans are processed administratively by the Director of Planning, pursuant to Baltimore County Code, 1968 ed., § 22–33.

Material amendments to CRG Plans require approval by the Director of Public Works and the Director of Planning, after a public meeting of the county agencies known as the CRG Meeting. Material amendments to a JSPC Plan would require approval by the Baltimore County Planning Board, after a public hearing.

When an applicant submits a request for amendment to a previously approved plan, the first issue the DRC must decide is what development law applies. If the DRC determines that the plan had been approved under one of the earlier processes, it then determines which process it was approved under; it next determines whether the proposed amendment is a material change to, or a refinement of, the existing approved plan.

In *Foxleigh*, the developer (Foxleigh Enterprises, Inc.) had a previous plan approved in 1983 by the County Review Group ("CRG"). 133 Md.App. at 512, 758 A.2d 611. About fifteen years later, in April 1998, the developer submitted to the DRC a proposed plan for development of the same property. *Id.* The developer sought the DRC's agreement "that the [proposed] plan constitutes a refinement to a previously approved CRG ... plan." *Id.* Various neighborhood property owners contended that Foxleigh's proposed plan was not a "refinement" to a previous plan and therefore "should be processed under the current development regulations by DRC review, not CRG review." *Id.*

The DRC held a public meeting after which Arnold Jablon, the Director of PDM, wrote a letter, which stated,

> *Pursuant to [a]rticle 25A, [s]ection 5(U) of the Annotated Code of Maryland, and as provided in [s]ection 602(d) of the Baltimore County Charter, and [s]ection 26–132 of the Baltimore County Code, this letter constitutes an administrative order and decision* on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver or other form of permission you filed with this department....
>
> The DRC has, in fact, met in an open meeting on April 27, 1998, and determined that your project is a material change to the CRG. Please submit new plans, so a new CRG can be scheduled. (Emphasis added.)

Id. at 513, 758 A.2d 611.

The neighboring property owners filed an appeal to the Board of Appeals from Mr. Jablon's decision. *Id.* Foxleigh filed a motion to dismiss the appeal, arguing that Jablon's letter was not a final administrative action from which an appeal could be taken. *Id.* at 513–14, 758 A.2d 611. The Board agreed with Foxleigh, saying,

> [T]he May 12, 1998 letter describes a CRG plan as opposed to a DRC plan. As a result, it is not governed by the DRC but the CRG per [s]ections 26–169 and 26–211 of the [Maryland Annotated] Code. As such, Mr. Jablon's role differs from that which he arguably may exercise under the DRC. The CRG process provides for an appeal at the time

> the plan is approved, not at the juncture at which Developer [Foxleigh] is advised to submit a plan. That time had not yet occurred at the time of the instant appeal. The instant appeal thus is not ripe and does not constitute a final act from which an appeal lies.

Id. at 514, 758 A.2d 611.

A petition for judicial review was filed by the neighboring property owners, after which the Board's decision was affirmed. *Id.* On appeal to this Court, we addressed the issue of whether Mr. Jablon's letter advising that Foxleigh's plans would come under the less stringent CRG review rather than the far more onerous DRC review procedures was an administrative order that could be appealed to the Board. We said,

> We find this case sufficiently analogous to *United Parcel.* Jablon's letter was not an "operative event" that determined that Foxleigh's proposed plan will be granted a license or permit, and did not determine the conditions or scope of that license or permit. Rather, Jablon's letter merely informed Foxleigh that the proposed plan must be reviewed by the CRG.

Id. at 516, 758 A.2d 611.

Later, we further explained,

> *Appellants' argument fails to recognize that Jablon's letter does not make any decision and is not an order.* It does not issue or modify any license, permit, or approval. Jablon's letter only informs Foxleigh that the proposed plan is a material change from the previously approved plan and that, in order to be approved, new plans must be submitted for consideration. At the time of Jablon's letter and at the time this appeal was filed with the Board of Appeals, Foxleigh could have decided not to submit new plans. Or, if it submitted new plans, the CRG could have approved or disapproved them. Therefore, as the Board of Appeals concluded, the appeal was not ripe.
>
> Furthermore, that Jablon's letter stated that it was an administrative order and decision does not automatically make it an appealable decision. As this Court stated in *Art Wood* [*v. Wiseburg,* 88 Md.App. 723, 596 A.2d 712 (1991)]:
>
> > Whether the CRG's action was authorized by the B.C.C. must be determined by the content or effect of that action rather than by the name or description given it by the CRG.... [The] question [of] whether a judgment, order, or decree is final and appealable is not determined by the name or description which the court below gives it, but is to be decided by the appellate court on a consideration of the essence of what is done thereby.
>
> 88 Md.App. at 732–33, 596 A.2d 712 (citations omitted).

Foxleigh, 133 Md.App. at 518–19, 758 A.2d 611 (emphasis added).

Appellee contends that this case is "similar" to *Foxleigh* because the letter to appellant advising that it was not entitled to an exemption "does not make any decision and is not an order." We disagree. While the letter from PDM, arguably, was not an "order," it clearly advised that a final "decision" had been made. *Foxleigh* is inapposite because it did not concern the denial of an exemption. This is of crucial importance because article 25A, section 5(U), allows the Board to hear appeals from the "denial ... of any exemption...." In contrast to the specific language in section 5(U) allowing an appeal to the Board from the denial of an exemption, nothing in section 5(U) allowed an appeal from the type of ruling sought to be reviewed in *Foxleigh.*

For the foregoing reasons, we agree with the Board and hold that it did have jurisdiction to hear appellant's appeal from the denial of the exemption.

B.

Was the Board's Decision to Grant the Exemption Supported by Substantial Evidence?

[2] The circuit court did not address whether the Board's decision was supported by substantial evidence. The court's determination that the Board had no jurisdiction obviated its

need to do so. Even though the circuit court did not make that determination, we shall do so because the function of this Court, when reviewing an agency's decision, is essentially to repeat the task that was performed or should have been performed by the circuit court. *See Red Roof Inns, Inc. v. People's Counsel for Baltimore County,* 96 Md.App. 219, 224, 624 A.2d 1281 (1993).

In rendering its decision, the Board noted that the DRC Director "admitted [in his testimony] that the lot in question, upon which [appellant] sought [an] exemption, appeared to be a closed lot and therefore a lot of record as applied by the DRC with respect to § 26–171(a)(2)." The Board pointed out that BCC section 26–171 spells out, in no uncertain terms, when an applicant is entitled to an exemption, and nothing in that Code section suggests that an exemption can be denied if the requirements of BCC section 26–171 have been met. The Board concluded that because BCC section 26–171(a)(2) provides that an exemption *shall* be granted if the improvement is to be made on a lot of record, appellant was entitled to an exemption.

Appellant contends that the Board acted correctly in granting the exemption because

> as a matter of fact, the Board accepted the testimony of Steven Warfield, [appellant's] engineer, and especially that of Donald Rascoe, the Chairman of the DRC, that the property is a "lot of record." This factual conclusion is amply supported by the uncontradicted testimony of Warfield and Rascoe.

According to appellant, upon a finding that the proposed development was to occur on a "lot of record," it was statutorily entitled to the exemption without further ado.

As mentioned *supra*, appellees do not dispute that the evidence presented to the Board shows that the property was a "lot of record," nor does appellee take issue with the fact that BCC section 26–171(a)(2) grants the developer the right to an exemption if the property is on a lot of record. Instead, appellee contends that the Board erred in granting the exemption because the decision "ignore[d] the DRC's internal, stated policy regarding the administration of exemption requests when proposals face a measurable degree of community interest." According to appellee, the Board erroneously overruled the agency's decision to deny the exemption in light of the measurable community interest in the proposal. To support its position, appellee directs our attention to provisions contained in an internal agency manual (the Development Management Policy Manual) and a portion of a related memorandum dated March 4, 1994.

[3] Although we have considerable doubt that it is true, we shall assume, *arguendo,* that (1) both the PDM and DRC have a longstanding practice of denying valid exemption requests whenever there is "measurable degree of community interest" in the proposed development and (2) the Development Management Policy Manual can be correctly interpreted to mean that requests for exemption should be denied whenever there exists "measurable degree of community interest." Even with those assumptions, denial was improper because it is contrary to the plain meaning of BCC section 26–171(a)(2). *Atlantic, Gulf & Pac. v. State Dep't of Assessments & Taxation,* 252 Md. 173, 183, 249 A.2d 180 (1969)(Construction of a statute by an administrative agency administering the statute will be given no effect if the agency's construction is contrary to the statute's unambiguous meaning.).

BCC section 26–171 reads in relevant part:

> (a) The following development is exempt from division 2 of this article....
>
> (2) The building or preparation of land for building *on a lot of record* lawfully in effect at the time of the building or preparation of the land for building if the lot of record did not result from a subdivision of land exempt under section 26–170.

(Emphasis added.)

This section contains no requirement that community interest be considered in the granting of an exemption. Moreover, it is not contended that the exception ("if the lot of record did

not result from a subdivision of land exempt under BCC section 26–170") was applicable. Therefore, the Board's decision not to consider the PDM's internal policy was legally correct.

The Board's decision that appellant was entitled to an exemption should have been affirmed.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY REVERSED; CASE REMANDED TO THE CIRCUIT COURT WITH INSTRUCTION TO AFFIRM THE DECISION OF THE BALTIMORE COUNTY BOARD OF APPEALS; COSTS TO BE PAID BY APPELLEE.

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831 A.2d 453

John S. BRICKER, Jr.

v.

Larry WARCH et al.

No. 2665, Sept. Term, 2001.

Court of Special Appeals of Maryland.

May 1, 2003.

Reconsideration Denied July 14, 2003.

Claimant who had prevailed against charges of insurance fraud brought action against liability insurer and claims handler to recover for malicious prosecution and breach of contract under the medical payments coverage. Claimant added buyer of insurer's commercial division as a party defendant. The Circuit Court, Howard County, Dennis M. Sweeney, J., entered summary judgment in favor of insurer and handler on malicious prosecution claim, dismissed buyer as party, but denied summary judgment on breach of contract claim. Claimant appealed. The Court of Special Appeals, Adkins, J., dismissed appeal as premature in unreported opinion. The Circuit Court, Dennis M. Sweeney, J., then entered judgment in favor of insurer on contract claim at close of claimant's evidence. Claimant appealed. The Court of Special Appeals, Moylan, J., held that: (1) the buyer was not liable; (2) immunity from civil liability for reporting suspected insurance fraud is not limited to the first such report and applies to any subsequent report to a different agency or body of government; (3) the handler acted in good faith in reporting suspected fraud and enjoyed immunity from liability; and (4) the claimant failed to establish that fall on insured's property caused his damages.

Affirmed.

Rule-making powers of courts are now governed by rule, not by general or local statutes. Bastian v. Watkins, 230 Md. 325, 187 A.2d 304 (1963).

And such local rules as are made must not be inconsistent with rules of Court of Appeals or any statute now or hereafter in force. Bastian v. Watkins, 230 Md. 325, 187 A.2d 304 (1963).

Inconsistent local rules yield. — Where there is an inconsistency between a local rule and the Maryland Rules, the local rule would yield. Piersma v. Seitz, 10 Md. App. 439, 271 A.2d 199 (1970), aff'd, 262 Md. 61, 276 A.2d 666 (1971).

Local rules relating to sales subject to ratification by court. — Foreclosure under a deed of trust employs the procedures set forth in former Rule BR6 (see now Rule 14-305); consequently, even though foreclosures are not "judicial sales," it appears that this Rule does not invalidate local rules that relate to sales subject to ratification by a court. Bunn v. Kuta, 109 Md. App. 53, 674 A.2d 26 (1996), cert. denied, 343 Md. 332, 681 A.2d 68 (1996).

Rules have force of law. Hauver v. Dorsey, 228 Md. 499, 180 A.2d 475 (1962); State v. Diggs, 24 Md. App. 681, 332 A.2d 283 (1975).

Subject only to power of legislature to provide otherwise. Hauver v. Dorsey, 228 Md. 499, 180 A.2d 475 (1962).

The rules have the force of law until rescinded, changed or modified by the General Assembly. State v. Diggs, 24 Md. App. 681, 332 A.2d 283 (1975).

Or power of Court of Appeals. — The rules have the force of law until rescinded, changed or modified by the Court of Appeals. State v. Diggs, 24 Md. App. 681, 332 A.2d 283 (1975).

And they replace inconsistent legislative provisions. — See Hauver v. Dorsey, 228 Md. 499, 180 A.2d 475 (1962).

Rules founded upon good common sense. — The rules have been founded not solely upon a fetish for standardized procedure, but more often than not, good common sense. Renshaw v. State, 25 Md. App. 270, 333 A.2d 363, aff'd, 276 Md. 259, 347 A.2d 219 (1975).

Method of adopting local rules not provided for. — Neither present Rule 1-102 nor the immediately-preceding version of former Rule 1 f contain any express provisions as to how local or circuit rules are to be adopted. Walker v. Haywood, 65 Md. App. 1, 498 A.2d 1198 (1985).

Quoted in Walker v. Haywood, 65 Md. App. 1, 498 A.2d 1198 (1985); Fowler v. Fitzgerald, 82 Md. App. 166, 570 A.2d 866 (1990).

Cited in Montgomery County v. McNeece, 311 Md. 194, 533 A.2d 671 (1987).

Rule 1-103. Method of citation.

These rules may be cited collectively as "Md. Rules." A specific rule may be cited as "Rule" followed by the rule number.

Source. — This Rule is derived from former Rule 3 d.

Rule 1-104. Unreported opinions.

(a) **Not authority.** An unreported opinion of the Court of Appeals or Court of Special Appeals is neither precedent within the rule of stare decisis nor persuasive authority.

(b) **Citation.** An unreported opinion of either Court may be cited in either Court for any purpose other than as precedent within the rule of stare decisis or as persuasive authority. In any other court, an unreported opinion of either Court may be cited only (1) when relevant under the doctrine of the law of the case, res judicata, or collateral estoppel, (2) in a criminal action or related proceeding involving the same defendant, or (3) in a disciplinary action involving the same respondent. A party who cites an unreported opinion shall attach a copy of it to the pleading, brief, or paper in which it is cited. (Added Nov. 12, 2003, effective Jan. 1, 2004.)

Source. — This Rule is former Rule 8-114 and is derived from former Rules 1092 c and 891 a 2.

EXHIBIT 3 tabbies

lawful basis for the finding of contempt on October 9, 2003. The Order for Constructive Civil Contempt filed on October 9, 2003, must be vacated. Our vacation of that Order does not, of course, affect in any way appellant's on-going obligation to pay the child support and payments on the arrearage that previously had been established and ordered.

ORDER FOR CONSTRUCTIVE CIVIL CONTEMPT ENTERED BY CIRCUIT COURT FOR HOWARD COUNTY AND FILED OCTOBER 9, 2003, VACATED; COSTS TO BE PAID BY APPELLEE.

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874 A.2d 470

David H. REMES

v.

MONTGOMERY COUNTY, Maryland, et al.

No. 122, Sept. Term, 2004.

Court of Appeals of Maryland.

May 12, 2005.

Reconsideration Denied June 15, 2005.

Background: Resident sought judicial review of county Board of Appeals decision that upheld issuance of a building permit on another lot on grounds the lot had merged for zoning purposes with a contiguous lot. The Circuit Court, Montgomery County, Durke G. Thompson, J., affirmed the Board of Appeals decision. Resident petitioned for writ of certiorari, which was granted.

Holdings: The Court of Appeals, Cathell, J., held that:

(1) vacant lot merged with adjacent lot for zoning purposes by operation of law;

(2) zoning merger doctrine not required to be applied only prospectively; and

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EXHIBIT
4

(3) lots that remained combined, or encumbered by doctrine of zoning merger at the time court recognized doctrine were subject to its effects.

Reversed and remanded with instructions.

1. Zoning and Planning ⇐254

Vacant residential lot merged for zoning purposes by operation of law with adjacent developed lot, which precluded issuance of a building permit for the vacant lot, even though there had never been a formal replatting by the common owner of the lots; when under common ownership, vacant lot was used to satisfy setback requirements for structure on developed lot, owner installed a swimming pool on vacant lot as an accessory use to the developed lot, owner built a curved driveway that traversed both lots, and merger for zoning purposes did not affect subdivision of lots.

2. Zoning and Planning ⇐1.5

Zoning and subdivision are normally separate and distinct regulatory entities.

3. Zoning and Planning ⇐254

The doctrine of zoning merger deals with zoning limitations and uses, not with title.

4. Zoning and Planning ⇐254

Zoning merger does not cause a nullification of any subdivision that has previously occurred; it merely consolidates lots insofar as the determination of what can be constructed upon that land, or what uses can be made of it, bearing in mind the requirement that one must comply with zoning requirements including area and setback.

5. Zoning and Planning ⇐254

Regarding the effect of zoning merger on contiguous lots, for title purposes, the platted lot lines may remain, but by operation of law a single parcel emerges for zoning purposes.

6. Zoning and Planning ⇐381.5

In applying for a building permit, the applicant must comply with both zoning and subdivision requirements.

7. Zoning and Planning ⇐1.5

Zoning differs from planning; the latter of which embodies the requirements of subdivision.

8. Zoning and Planning ⇐1.5

Zoning dictates what one can build on, or how one may use his property while subdivision or planning determines how the land is divided.

9. Zoning and Planning ⇐254

Doctrine of zoning merger was not a change in common law that was contrary to public policy of the state that required prospective application only from action challenging issuance of a building permit for a lot that merged with a contiguous lot for zoning purposes; doctrine of zoning merger was not a change in the common law, and there was no recognized public policy with which the doctrine interfered.

10. Common Law ⇐11

Courts ⇐100(1)

Changes in the common law are generally applied prospectively, as well as to the case triggering that change in the common law.

11. Zoning and Planning ⇐254

Lots that remained combined, or encumbered by the doctrine of zoning merger at the time of recognition of the doctrine in *Friends of the Ridge v. Baltimore Gas & Elec. Co.*, and since, are clearly subject to its effects.

12. Common Law ⇐11

The Court of Appeals will hesitate to apply a change to the common law in the case before it where such a change would be contrary to a public policy set forth by the General Assembly.

13. Zoning and Planning ⇐321

One of the primary goals of zoning and subdivision controls is to avoid the creation of nonconforming lot, and uses, and to restrict undersized parcels, not oversized parcels.

14. Zoning and Planning ⇐254

Under the doctrine of zoning merger, a common owner of property who constructs a building on one lot which incorporates space from an adjacent lot in order to fulfill setback requirements still maintains two separate lots for title purposes.

David H. Remes (Douglas M. Bregman and Heather Libman Blauer of Bregman, Berbert, Schwartz & Gilday, L.L.C., Bethesda, MD), on brief, for appellant.

Marc P. Hansen, Chief Counsel (Charles W. Thompson, Jr., County Atty., Karen L. Federman Henry, Principal Counsel for Appeals, and Malcolm F. Spicer, Jr., Asst. County Atty., Rockville, MD), all on brief; Debra Yerg Daniel, Associate General Counsel (Adrian R. Gardner, General Counsel, and Michele Rosenfeld, Associate General Counsel, the Maryland-National Capital Park and Planning Com'n, Silver Spring, MD), all on brief; William Kominers (Philip T. Evans and Erica A. Leatham of Holland & Knight, L.L.P., Bethesda, MD), all on brief, for appellees.

Argued before BELL, C.J., RAKER, CATHELL, BATTAGLIA, GREENE, and JOHN C. ELDRIDGE (Retired, Specially Assigned) and LAWRENCE F. RODOWSKY (Retired, Specially Assigned), JJ.

CATHELL, Judge.

In this case, David H. Remes, petitioner, owner of a home located in Silver Spring, seeks to establish whether directly-adjacent property, which formerly was owned by Jonathan C. Duffie, and was later transferred by Mr. Duffie to Design–Tech Builders, Inc. ("Design–Tech"), respondent, is deemed to have merged for zoning purposes under the common-law

principles described in *Friends of the Ridge v. Baltimore Gas & Elec. Co.*, 352 Md. 645, 724 A.2d 34 (1999).

Under the circumstances of this case, the Court is called upon to determine if Design–Tech was properly granted a building permit by the Montgomery County Division of Permitting Services ("DPS") and whether the Montgomery County Board of Appeals ("the Board" or "the County"), respondent, properly interpreted the relevant provisions of the Montgomery County Code, Subdivision Regulations, and Zoning Ordinance in respect to the issuance of a building permit. Our review shall address the following questions:

1. Did the Montgomery County Board of Appeals correctly rule that two contiguous lots had not undergone a zoning merger and a building permit for one of the lots was, therefore, properly issued?
2. Did the Montgomery County Board of Appeals correctly find that a single-family dwelling proposed to be built on one lot did not exceed the height requirements of the Montgomery County Zoning Ordinance? [1]

We hold that the Board of Appeals incorrectly failed to find that Lot 11 and Lot 12 had merged for zoning purposes. Because we hold that there occurred a zoning merger of Lot 11 and Lot 12 notwithstanding the provisions of Montgomery County Code § 50–8, it is unnecessary to reach a determination whether the Board properly approved a cellar as a non-counting story in calculating the permissible height of the applicant's proposed single-family dwelling.[2]

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1. In Montgomery County height is apparently determined by first establishing the "natural grade."

2. We note however that "natural grade" would include the grade of the land prior to any work in respect to the use that is the subject of an application. In virtually every subdivision of land, the land is prepared and graded long before the lots are conveyed and prior to applications for individual permits. Over time, farming changes the grades that theretofore existed. Grades may have been changed centuries before. In many instances it would be impossible to determine a purely "natural grade." Natural grade as used in most land use regulations, subject to constitutional requirements, normally might mean the grade, however created, that legally exists or was or could be legally created, prior to or at the time of any land preparation for a specific project that is the subject of the application at issue; otherwise no building permits could ever be issued.

I. Facts and Procedural History

This case involves property in the Woodside Park neighborhood of Silver Spring, Maryland, consisting of several parcels created by a 1945 subdivision and located in an R–60 zone which allows single-family detached residential homes. The primary parcels at issue, as originally laid out in the subdivision, are Lot 12, a corner lot with access both to Noyes Drive toward the north and to Fairview Road toward the east, acquired by husband and wife, Ralph J. Duffie and Violette P. Duffie ("elder Duffies") in 1951 on which they constructed their home, and its westerly adjacent neighboring lot, Lot 11, acquired by the elder Duffies in 1954. A semi-circular driveway serving the home on Lot 12 was constructed by the Duffies over and through both Lot 11 and Lot 12. A Montgomery County Department of Permitting Services permit card, found among DPS' records, indicates that a building permit was also issued in June 1959 to the elder Duffies, for construction of a swimming pool [3] on Lot 11 as an accessory use to their home on Lot 12, and a building permit was issued to the Duffies in October 1963, presumably for the construction of an addition to the Lot 12 home. At the time of its original construction around 1951, the Lot 12 home had the required seven-foot [4] side yard setback and twenty-foot rear yard setback. The 1963 addition extended thirteen feet into the twenty-foot rear setback. This construction changed the

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3. There is some evidence in the record that, as of January 2003, the pool may have been demolished.

4. The elder Duffies' home apparently was constructed according to the provisions of Montgomery County's 1950 Zoning Ordinance. The 1954 zoning ordinance established a minimum side yard setback of *eight* feet and maintained the twenty foot rear yard setback requirement. The current zoning ordinance, likewise, requires lots in this zone to have an eight-foot side yard set back and a twenty foot rear yard setback. *See* Montgomery County Zoning Ordinance § 59–C–1.323(b), regarding setback from the adjoining lot.

side and rear yards of Lot 12, resulting in encroachments into the setback requirements on the Lot 11 side of the house.

Following the deaths of Violette Duffie in 1988 and Ralph Duffie in 1999, their son, Jonathan C. Duffie, ("Mr. Duffie"), as Personal Representative of the latter's estate, deeded the property to himself. This "Personal Representative's Deed," dated August 31, 2001, describes the subject property, in relevant part, as follows:

> "Lot numbered eleven (11) and twelve (12) of a resubdivision of original Lot numbered two (2) in Block lettered 'A–2' of the subdivision known as 'Woodside Park', as per plat of said resubdivision recorded in Plat Book 26, folio 1614, in the Land Records of Montgomery County, Maryland.
>
> . . .
>
> "The improvements thereon being known as *8920 Fairview Road.*"

Apparently, up until the 2003 request to separate Lot 11 and Lot 12 for tax assessment purposes, both lots had been assessed as one lot under the single address of 8920 Fairview Road. More important even is that the use of the swimming pool on subdivision Lot 11 was initially described as an accessory structure to the house on Lot 12, and remained in that status at least through the 2001 reassessment. Accordingly, at least in 1959, the relevant governmental officials considered the swimming pool on Lot 11 as an accessory use to the structure on Lot 12. At that time the Montgomery County Zoning Ordinance defined accessory use as "a use of a building, lot, or portion thereof, which is customarily incidental and subordinate to the principal use of the main building or lot." *See* Montgomery County Zoning Ordinance (1958) § 107–2, Definitions. In 1960, and since, the definition was changed to read "building lot, or portion thereof." Even after the 1960 amendment, which deleted the comma between building and lot, the relevant governmental officials continued to treat the swimming pool as an accessory use to the home on Lot 12.

On December 10, 2002, DPS, the agency, one of whose functions is to determine whether a proposed development complies with the zoning ordinance,[5] issued to Design–Tech Builders, Inc., respondent, a building permit for construction of a single-family dwelling on Lot 11, Block A–2, Woodside Park, 1102 Noyes Drive, Silver Spring. At that time Design–Tech was not the owner of the lot. On January 8, 2003, petitioner noted an "Appeal Charging Error in Administrative Action or Determination" to respondent Montgomery County Board of Appeals asserting that DPS had issued erroneously a building permit for 1102 Noyes Drive/8920 Fairview Road for the following reasons:

> "1. The permit authorizes construction of a second building on a single lot, in violation of Code § 59–A–5.2.
>
> 2. The permit authorizes construction of a building that violates the building height limitation of Code § 59–C–1.327(a), in that (a) the height is greater than 35′ when measured along the average elevation of the front of the building; and (b) the height exceeds 2½ stories, in that the lowest level is a basement (and therefore a story), not a cellar, as those terms are defined in the Code, § 59–A–2.1."

Mr. Duffie executed a deed dated January 15, 2003, to convey Lot 11 to Design–Tech and this transfer was recorded in the Land Records of Montgomery County on January 30, 2003. Design–Tech intended to build on the property a single-family dwelling, similar to that which it had constructed on at least thirteen other lots in the locality. Following this transfer, the respondents requested that the Maryland Department of Assessments and Taxation reassess the parcel as two separate lots. The lots had been assessed and billed as a single account since at least 1974. The Department then requested that Mr. Duffie and Design–Tech provide appropri-

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5. Montgomery County Code § 8–26, "conditions of permit," requires the permit issuing agency to establish that the building complies with zoning regulations.

ate information in order that Lot 11 could be assessed separately.

Petitioner (and his wife) filed a Complaint for Declaratory and Injunctive Relief in the Circuit Court for Montgomery County on January 29, 2003, seeking to declare Lot 11 and Lot 12 merged and seeking also to rescind the sale of Lot 11 from Mr. Duffie to Design–Tech, and enjoin any further sale of Lot 11. This declaratory judgment action was stayed during the pendency of the administrative appeal before the Board of Appeals.

The Board of Appeals held hearings on Mr. Remes' appeal of DPS' issuance of a building permit, in which Design–Tech intervened, on February 26 and March 5, 2003. After hearing the testimony of several witnesses, the Board issued a written opinion on May 29, 2003, denying the administrative appeal and concluding that Lot 11 and Lot 12 had not merged. In its conclusions of law, the Board of Appeals stated, *inter alia:*

> "Lot 11 is a properly recorded lot, which is independent of Lot 12. [Petitioner] argues that Lots 11 and 12 merged into one lot, while DPS and Design–Tech argue that Lots 11 and 12 were complementary but independent lots. The Board agrees with DPS and Design–Tech. Although [petitioner] did establish that the Duffies may have intended to treat Lots 11 and 12 as one single lot, the Board does not agree that their intentions are determinative of the issue." [Alterations added.]

The Board then quoted extensively from Design–Tech's Memorandum of Law:

> " 'Montgomery County has codified the procedures for the formal combination, assembly or other "merger" of already recorded lots (or unrecorded parcels) in Chapter 50 of the Montgomery County Code. The procedure culminates with the recordation of a new plat describing the newly created, "merged" lots to effectuate any assembly. Lot 11, as shown on the permit plans, is a recorded lot pursuant to a plat recorded in 1945 in Plat Book 26 at Plat Number 1614. Since that time, no additional subdivision or resubdivision procedures were initiated and no new plat was recorded; therefore, Lot 11 remains a valid subdivided, individual lot with the ability to support a building permit and related residential structure.'
>
> "The Board also believes that [petitioner's] reliance on *Friends of the Ridge v. Balt. Gas & Elec. Company,* 352 Md. 645, 724 A.2d 34 (1999) is misplaced. In *Ridge,* the Court of Appeals held that **for zoning purposes,** adjacent lots held by the same owner could merge by operation of law as a result of the intentions and actions of the owner. But Judge Catthel [sic] stated unequivocally in *Ridge* that subdivision is not zoning, that zoning ordinances do not create lots, and that the construction of structures over more than one parcel would not affect lot lines. He stated first: 'We have often held that subdivision is not zoning.' *Ridge,* at 648, n. 4, 724 A.2d 34. He later states: 'Zoning ordinances . . . **do not create lots** (emphasis in original).' *Ridge,* at 651, 724 A.2d 34. He finally states: '. . . the construction of structures extending over more than one parcel or lot would not, in our view, affect the boundary lines (or lot lines) of the two parcels. They remain in place until a deed of conveyance or a new subdivision . . . is created.' *Ridge,* at 661, 724 A.2d 34.
>
> "Unlike *Ridge,* this is not a zoning variance case, it is a building permit case. The only issue for permit purposes is whether the lot was a properly recorded lot which met the development standards of the zone.[6] Lot 11 is a properly

6. This is not so. Compliance with the requirements of zoning and zoning codes, where they exist, are generally necessary before permits may be issued. The Montgomery County Zoning Ordinance provides as follows:

> " **§ 59–A–3.1. Building permit.**
>
> (a) **Building permits generally.** A building permit must be issued by the director before any building or other structure can be erected, moved, structurally altered, added to, or enlarged and before any excavation can be started. A building permit is not required for any building or structure to be used exclusively for purposes of agriculture upon land used exclusively for agriculture. However, a building permit is required for any building or structure to be used for a purpose that is not exclusively agricultural in nature, including spe-

recorded lot, and no plat has ever identified the 'merger' of Lots 11 and 12 into a third larger lot. Therefore, based upon the subdivision plat recorded in the land records of this County, we believe that Lot 11 is a properly recorded independent lot." [Alteration added.] [Bolding original.] [Footnote added.]

The Board of Appeals declined Mr. Remes' request for reconsideration of its decision.

On June 27, 2003, petitioner filed a petition for judicial review in the Circuit Court for Montgomery County of the Board of Appeals' decision. The Montgomery County Planning Board of the Maryland–National Capital Park and Planning Commission ("MNCPPC"), in its capacity as the general oversight body for the physical development of the Capital region, sought to intervene as an additional respondent in this judicial review and the Circuit Court granted this request on December 17, 2003. Following a March 22, 2004, hearing, the Circuit Court issued an order on April 5, 2004, affirming the Board of Appeals' decision. On May 6, 2004, petitioner noted an appeal to the Court of Special Appeals. Before the intermediate appellate court could hear the case, this Court, on its own initiative, issued a writ of certiorari. *Remes v. Montgomery County*, 384 Md. 581, 865 A.2d 589 (2005).

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cial exception uses, even though located on otherwise agricultural land, and (ii) any equestrian facility building or structure intended for use by participants or spectators at an equestrian event.

(b) A building permit may be issued only for proposed work that conforms to the uses and amount of development authorized under this chapter or *other applicable law* and for which the adequacy of public facilities is determined after:

(1) Review of a preliminary plan of subdivision or site plan if required under this chapter or chapter 50 [subdivision regulations]; or

(2) Building permit review if required under chapter 8 [Buildings]."

[Alterations added.] [Emphasis added.]

Moreover, as we explained *supra*, compliance with zoning requirements is a function of the permitting process under the Montgomery County Code. The permit application procedure, is further explained in Chapter 8, Buildings, of the Montgomery County Code. *See infra*.

II. Discussion

[1] Much of the debate in the instant case arises from an issue this Court raised, but did not have need to address, in our *Friends of the Ridge* opinion. Specifically, we there surmised:

"An owner of contiguous parcels who erects a structure in what would ordinarily be a setback of one of the individual parcels might, under this doctrine, *although we do not now decide it*, also cause a combination of lots thus restricting the future alienability of the unbuilt upon parcel because the conveyance of that parcel would cause the property upon which the structure is built to be in violation of the ordinance. Such an owner would also risk being forced to bring that parcel into conformity by removing the structure from the setback."

352 Md. at 658 n. 11, 724 A.2d at 41 n. 11 (emphasis added).

While petitioner operates under the belief that Lot 11 and Lot 12 have merged for zoning purposes, the respondents, and specifically Montgomery County, in oral argument, succinctly summarized their position as follows:

"Montgomery County asks the Court not to extend the *Ridge* doctrine in situations where a developer has borrowed open space from an adjacent lot to satisfy setback requirements on the lot being developed. *Ridge*, in footnote eleven, leaves that issue for another day, and I guess this is the day." [7]

A. Zoning Merger

Petitioner grounds his argument that Lot 11 and Lot 12 have "functionally" merged for zoning purposes pursuant to our decision in *Friends of the Ridge v. Baltimore Gas & Elec.*

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7. We are unaware of a legal rationale for "borrowing open space" from adjacent lots. How do you borrow open space? More importantly, under circumstances such as exist here, how is it "repaid" or returned? If Lot 11 is considered a separate unrestricted lot, from where does the "pay back" come? What would happen is that the open space "borrowed" would never be returned, thus creating an illegal non-conforming use on Lot 12 from the point in time when Lot 11 separated.

Co., 352 Md. 645, 724 A.2d 34 (1999), wherein we recognized the existence of the doctrine of zoning merger in Maryland. We described zoning merger to be the merger for zoning purposes of two or more lots held in common ownership where one lot is used in service to one or more of the other common lots solely to meet zoning requirements. Petitioner argues that *Ridge* is an equitable doctrine that seeks to prevent lots from being broken up in such a way that would create zoning violations. In *Ridge*, respondent Baltimore Gas and Electric Company ("BG&E") sought to increase the capacity of its electric substation. In order to effectuate this expansion, BG&E acquired additional parcels of land contiguous with the parcel on which the existing substation was located and BG&E attempted *to create* a new resubdivision. It was argued that its attempt to create a formal resubdivision was inadequate. We did not address that particular controversy, resolving the case on the assumption that no proper formal resubdivision had occurred.

[2] BG&E sought and was granted a public utility special exception to operate a larger capacity substation. BG&E also applied for a variance from the side yard setback requirements. In considering BG&E's request, the Baltimore County Board of Appeals determined that the variance criteria of the Baltimore County Zoning Ordinance did not apply. In response to the *Ridge* petitioners' concerns with the propriety of BG&E's lot consolidation, we stated that, as to *Ridge*, "[w]e are concerned here only with the applicability of the zoning ordinance's variance provisions and not Baltimore County subdivision regulations." *Id.* at 649–50, 724 A.2d at 36.[8] We sustained the Board of Appeals' conclusion, reasoning that there was no need for BG&E to obtain a variance from the zoning regulations[9] because BG&E's intended use of its three

8. As we have generally stated, zoning and subdivision are normally separate and distinct regulatory entities. *See Ridge*, 352 Md. at 650 n. 4, 724 A.2d at 36 n. 4 ("We often have held that subdivision is not zoning.").

9. But for the land area requirement of the increased substation sought by Baltimore Gas & Electric, there is no indication that the lots acquired by BG&E were undersized or otherwise substandard, in and of themselves.

contiguous parcels as one parcel effectively overcame the conditions triggering the need for a variance. Thus, BG&E was permitted to use the entire parcel for its substation expansion, provided that its proposal met the setback requirements as measured from the exterior property lines of the combined parcel. Specifically, this Court held, "unless the ordinance's language specifically and clearly prohibits it, an owner of contiguous parcels of real property . . . is free to combine them into larger and fewer parcels without violating the *zoning* code." *Id.* at 648, 724 A.2d at 35–36.[10] In reaching our resolution, we examined the mechanisms triggering the doctrine of zoning merger in other jurisdictions and observed that merger had been applied to "prohibit[ ] the use of individual substandard parcels if contiguous parcels have been, at any relevant time, in the same ownership and at the time of that ownership, the combined parcel was not substandard." *Id.* at 653, 724 A.2d at 38. We also stated:

> "We see no reason why a doctrine that seeks to prevent the proliferation or use of nonconforming, undersized lots by holding that they have been combined or merged into a larger parcel should not, as far as zoning is concerned, be applied properly to permit the creation, *through the combining by use of a larger parcel from already conforming smaller parcels*, without the necessity of official action or conveyancing."

Id. at 654, 724 A.2d at 38 (emphasis added).

[3] The facts of the instant case, as one may suppose, present issues somewhat differently than the facts in *Ridge*. In *Ridge*, BG&E, as the "developer," sought a conclusion that its three lots *had merged* for zoning purposes so that it might possess a land assemblage of sufficient size, with sufficient setbacks to allow it to enlarge its electricity substation. In

10. When we referred to the "ordinance" in this statement we were referring to the zoning ordinance, not subdivision regulations.

the case at bar, respondents seek the conclusion that Lot 11 and Lot 12 *have not merged,* for varying reasons including that informal lot consolidation, according to respondents, is not available other then by formal plat submission in Montgomery County and so that Mr. Duffie might sell Lot 11 to Design–Tech, the "developer," who seeks to build a single-family dwelling on this piece of land.[11]

We indicated in *Ridge* that merger may be derived from the common owner's intent, as evidenced by "integrat[ing] or utiliz[ing] the contiguous lots in the service of a single structure or project...." *Id.* at 658, 724 A.2d at 40 (alterations added). Intent is to be derived from the facts. *Id.* at 659, 724 A.2d at 41; *see also Rouse–Fairwood Devel. Ltd. Partnership v. Supervisor of Assessments for Prince George's County,* 138 Md.App. 589, 630, 773 A.2d 535, 559 (2001); *Iannucci v. Zoning Bd. of Appeals,* 25 Conn.App. 85, 87, 592 A.2d 970, 971 (1991) (stating that intent of the owner "may be inferred from his conduct with respect to the land and the use which he makes of it"). In reviewing scenarios from varying jurisdictions, we noted that "[s]ome cases discuss automatic merger, but most require that the intent of the owner to merge the parcels be expressed, though little evidence of that intent is required." *Ridge,* 352 Md. at 653, 724 A.2d at 38.

[4, 5] Petitioner contends that, in applying *Ridge* to the instant case, Lot 11 and Lot 12 remain separate for subdivision purposes, but are combined for zoning purposes. This is, indeed, a correct articulation of the thrust of zoning merger: zoning merger does not cause a nullification of any subdivision that has previously occurred. It merely consolidates lots insofar as the determination of what can be constructed upon that land, or what uses can be made of it, bearing in mind the requirement that one must comply with zoning requirements including area, setback, etc. "For title purposes, the platted lot lines may remain, but by operation of law a single parcel

11. The doctrine of zoning merger deals with zoning limitations and uses, not with title.

emerges for zoning purposes." *Ridge,* 352 Md. at 658, 724 A.2d at 34.

[6] Respondents urge that merger in Montgomery County may arise only from a formal replatting. Thus, according to the respondents, other indicia of merger such as common ownership, contiguous parcels, use of one or more lots in service of another, offer no evidentiary import and are of little moment in Montgomery County. They are incorrect. The respondents read this Court's decision in *Ridge* as narrowly focused on the realm of zoning, and to this effect, Montgomery County insists that "the Court limited its ruling to the zoning requirements and did not address the subdivision perspective of creating lots." The respondents' assertion illustrates a point, that we emphasized in *Ridge,* and that bears repeating: zoning merger is not a resubdivision. When zoning merger occurs, the lots remain divided. Thus, zoning merger, in effect, is an adjustment of zoning requirements. It has no effect on subdivision. Title examiners regularly consider aspects of zoning when examining titles in order to be able to indicate to purchasers the uses that can be made of a property. Those uses have no effect on subdivision regulation. One must comply with *both* zoning and subdivision requirements. In the present case, the applicant cannot meet zoning requirements because of the doctrine of zoning merger and thus, while Lot 11 may be sold, it cannot be used, absent zoning variances or other zoning relief, if any.

Simply because an applicant submits documents articulating plan specifications, engineering details, and a plot diagram showing details of the building to be erected [12] does not

12. Montgomery County Code, Chapter 8, Buildings, mandates, in relevant part, the required components for permit application as follows:

"**§ 8–24. Application for permit.**

...

(f) *Plot diagram.* There shall also be filed in duplicate with each application for a building or occupancy permit, a plot plan drawn to scale showing:

(1) The lot upon which the proposed building is to be erected, lot dimensions, lot and block numbers and subdivision name, if any...."

remove the fact that the instant lot may be part of some larger zoning configuration—a configuration that arose through a common owner's use of the property, if not through schematics. Each case must be examined on its own. In the case at bar, there is ample evidence to conclude the elder Duffies intended to use their Lot 11 and Lot 12 as one property for zoning purposes: the pool on Lot 11 violates (or violated) the prescribed setbacks from the street and from Lot 12, unless it was dedicated for zoning purposes to Lot 12, and from the time of its creation was thus an accessory use to the structure or use of Lot 12; the additions to the house on Lot 12 encroach upon that lot's setbacks; the circular driveway traverses both Lot 11 and Lot 12; until very recently the lots were assessed for tax purposes as a single parcel; and the subsequent personal representative's deed conveying Lot 11 and Lot 12 to Mr. Duffie described a single lot comprised of two lots, in that it reads "Lot numbered eleven (11) and twelve (12)." [13] Thus, petitioner maintains that the building permit for the construction of a single-family dwelling on Lot 11 was issued in error and its issuance violates the current relevant provisions of the Montgomery County Zoning Ordinance, which prohibit a second single-family dwelling on a single lot, as follows:

"§ 59–A–5.2. Buildings to be located on lots.

Every building hereafter erected shall be located on a lot, as herein defined; and, except as provided in this chapter, there shall be not more than one single-family dwelling on one lot.

§ 59–A–5.3. Yards and open spaces generally.

No building shall be erected, nor shall any existing building be altered, enlarged, moved or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner not in conformity with the yard, lot, area and building location regulations hereinafter designated for the zone in which such building or open space is located, except as otherwise specifically provided.

No yard or other open space provided about any building for the purpose of complying with the provisions of this chapter shall be considered as a yard or open space for any other building; and no yard or other open space of a building on one lot shall be considered as a yard or open space for a building on any other lot." [14]

Section 8–26 further provides, among the several conditions associated with issuance of a building permit, that the building must meet the zoning requirements. This section states, in relevant part:

"**§ 8–26. Conditions of permit.**

. . .

(g) *Compliance with zoning regulations.* The building or structure must comply with all applicable zoning regulations, including all conditions and development standards attached to a site plan approved under Chapter 59 [subdivision regulations]. The issuance of a permit by the Department for the building or structure does not affect an otherwise applicable zoning regulation." [Alteration added.]

13. Design–Tech urges that the Personal Representative's Deed contains a typographical error in denominating the lots and that the single taxation was simply a matter of convenience. The actuality of either of these possibilities is not dispositive.

14. The elder Duffies acquired Lot 12 in 1951 and Lot 11 in 1954. The 1955 version of this section of the zoning ordinance, adopted originally in December 1953 and effective January 1, 1954, provided as follows:

"**§ 107–4. General regulations.**

. . .

(c) *Area.*

(1) No building shall be erected, nor shall any existing building be altered, enlarged, moved or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner, except in conformity with the yard, lot, area and building location regulations hereinafter designated for the zone in which such building or open space is located, except as otherwise specifically provided.

(2) No yard or other open space provided about any building, for the purpose of complying with the provisions of this chapter, shall be considered as a yard or open space for any other building; and no yard or other open space on one lot shall be considered as a yard or open space for a building on any other lot."

Thus, the only way that the permit for the addition to the structure on Lot 12 (as well as the pool) could have been legally issued was for the two lots to have been considered one parcel for zoning purposes.

The 1958 version of the zoning ordinance, adopted May 1958 and effective June 1958, is slightly altered from its predecessor:

"**§ 107–4. GENERAL REGULATIONS.**

. . .

B. Montgomery County's Zoning Ordinance and Subdivision Regulations

Montgomery County is somewhat unique in the source and exercise of its municipal authority to regulate the use of land. As this Court explained in *Pan American Health Organ. v. Montgomery County,* 338 Md. 214, 657 A.2d 1163 (1995):

> "Montgomery County is a charter county under the Home Rule Amendment. *See* MD. CONST. art. XI–A. Section 5 of Maryland Code (1957, [2001] Repl. Vol., [ ]) Article 25A, known as the Express Powers Act, enumerates the powers that are granted to and conferred upon any county that forms a charter under the provisions of the Home Rule Amendment.
>
> Montgomery County's zoning power, however, derives exclusively from the Regional District Act [enacted by Chapter 448, Acts of 1927].... [Amended] in 1939 and currently codified in Article 28 of the Maryland Code, creates the Regional District, which now encompasses all of Montgomery County and most of Prince George's County. Maryland Code (1957, [1997] Repl. Vol., [2001] Cum. Supp.) Art. 28, § 7–103.

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c. Area.

(1) Yards and open spaces.

(a) No building shall be erected, nor shall any existing building be altered, enlarged, moved or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner not in conformity with the yard, lot, area, and building location regulations hereinafter designated for the zone in which such building or open space is located, except as otherwise specifically provided.

(b) No yard or other open space provided about any building for the purpose of complying with the provisions of this Ordinance shall be considered as a yard or open space for any other building; and no yard or other open space *of a building* on one lot shall be considered as a yard or open space for a building on any other lot." [Alteration emphasized.]

As indicated, the essential language of this section of the current zoning ordinance is unchanged from that found in the 1958 version. *Compare,* § 107–4(b) (1958), *supra,* with the current Montgomery County Zoning Ordinance § 59–A–5.3 (b), *supra.*

> The Regional District Act establishes two mechanisms for land use planning. The first mechanism is through zoning. Under the Regional District Act, the county councils of Montgomery and Prince George's Counties each serve as 'the district council for that portion of the regional district lying within [the] county.' Art. 28, § 8–101(a). Each district council 'may by ordinance adopt and amend the text of the zoning ordinance and may by resolution or ordinance adopt and amend the map or maps accompanying the zoning ordinance text.' *Id.* § 8–101(b)(2). Thus, the Montgomery County Council has been designated as the District Council and has broad authority to adopt and amend the text of the zoning ordinance to regulate 'the location and uses of buildings and structures.' Art. 28, § 8–101(b)(2)(v).
>
> The second mechanism is known as the mandatory referral process. Under the Regional District Act, the Maryland–National Capital Park and Planning Commission ('M–NCPPC') is empowered to adopt 'a general plan for the physical development of the [Regional] District.' 1939 Maryland Laws ch. 714, § 4, at 1489 (codified as amended at Art. 28, § 7–108). Section 7–112 of Article 28 (the 'mandatory referral provision') provides that proposals for certain public projects shall be referred to the M–NCPPC for nonbinding review."

Pan American Health, 338 Md. at 217–18, 657 A.2d at 1164–65 (footnote omitted) (some alterations added) (some citations omitted). Thus, Montgomery County's zoning authority arises from the Regional District Act, and is regulated by the provisions of the Montgomery County Code.

The respondents offer two primary objections to Mr. Remes' contention that Lot 11 and Lot 12 have merged. First, the respondents urge that lot merger, by any method other than formal plat submission, is unavailable according to the Montgomery County Code.[15] Second, the respondents

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15. Respondents contend that Montgomery County's building code, subdivision regulations, and zoning ordinance each contain language specifically prohibiting the merger conclusion advanced by Mr. Remes. The

maintain that merger is intended to combine substandard, undersized, or nonconforming lots,[16] not to rectify setback encroachments and, because at no time have Lot 11 and Lot 12 been deemed substandard according to any of the iterations of Montgomery County's Zoning Ordinance development standards,[17] the issue before this Court, according to the respondents, thus, is not one of merger, but rather a question of whether the Montgomery County Department of Permitting Services properly issued a building permit for Lot 11. As a corollary to the latter argument, the County notes that County law, dating back at least to the mid 1950's "has prohibited the use of an adjoining lot to satisfy zoning setback require-

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County adds that these articulated prohibitions serve two important purposes: First, the language prevents the County's Department of Permitting Services from bearing the burden of having to consider the circumstances of surrounding lots, as well as the propriety of granting the permit in light of any surrounding lots, when presented with a permit application. Second, persons looking to buy vacant property are not left to perform exhaustive title searches solely to determine if the lot of interest has ever been in common ownership with surrounding lots and there may have been created zoning encumbrances arising from the uses of surrounding lots.

However, we have not been directed to any language in the zoning code that prohibits the applicability of the doctrine of zoning merger. As far as we have been made aware, there is nothing in the Montgomery County Zoning Ordinance that would prohibit the County (or whatever appropriate entity) from amending its *zoning* code to prohibit zoning merger. Such a prohibition must be done carefully in order that the problem of the creation of non-conforming uses be properly addressed and resolved. Modifications of subdivision regulations, without the modification of zoning ordinances, normally would not suffice. Zoning and subdivision are typically separate concepts.

16. This idea is apparently based on our statement in *Ridge:*

"As far as we can discern, the zoning doctrine of lot merger has never been applied in any jurisdiction to limit the creation of parcels that exceed minimum dimensional requirements; merger has been applied only to prohibit the later creation of undersized parcels."

Id. at 653, 724 A.2d at 38. The attempt to limit merger might, under some circumstances, raise constitutional issues.

17. The current development standards are found in Montgomery County's Zoning Ordinance, at Chapter 59 of the Montgomery County Code. Lot 11 and Lot 12 are located in the R–60 Zone allowing single-family detached residential dwellings and requiring a minimum lot area of at least six thousand square feet.

ments...." Thus, even if the elder Duffies might have imagined that Lot 11 would "absorb" the setback deficiencies by their Lot 11 pool and Lot 12 home additions, the setback requirements delineated in Montgomery County's zoning ordinance prohibit such adjacent lot encumbrance and Lot 11 never *actually* fulfilled this role in service of Lot 12. What respondents fail to acknowledge is that the zoning merger that occurred in this case forestalled the creation of a non-conformity on Lot 12. Without the use of Lot 11 as accessory to Lot 12, the uses of both lots would have violated the zoning ordinance.

Mr. Remes urges that *Ridge* mandates that the owner of Lot 11 and Lot 12 make a choice: either formally combine the parcels so as to enable Lot 11 to satisfy the appropriate setbacks for the structure on Lot 12, or cure the setback deficiencies on Lot 12 and then subdivide the merged Lot 11 and Lot 12. Thus, petitioner argues that the fact that neither Lot 11 nor Lot 12 have ever been deemed undersized is relevant only to the issue of remedy; it has no bearing on whether these are merger-eligible lots. He is correct. Petitioner further maintains that the *Ridge* doctrine applies without regard to the *positive* law of a municipality, *i.e.*, what affirmative steps the local *subdivision* regulations might require in order to recognize a formal zoning merger of lots, because the underlying policy of *Ridge* seeks to protect zoning requirements, requirements which are separate and apart from subdivision regulations. Again he is correct.

[7, 8] As we explained in *Ridge*, zoning differs from planning; the latter of which embodies the requirements of subdivision. We stated:

"Zoning does not create parcels of real property. What zoning ordinances normally do, with respect to residential districts, is establish dimensional minimums, such as minimal lot, parcel or tract size, yard sizes (the distance between buildings and property lines), and the height of structures. In addition, such ordinances specify the number of residential units that may be placed upon the area of a tract or

parcel (density), ancillary requirements such as parking minimums, bathroom minimums, and square footage minimums of buildings. Additionally, zoning ordinances can, to some extent, regulate uses of property, as distinct from dimensional requirements."

Id. at 650–651, 724 A.2d at 37. Effectively, zoning dictates what one can build on, or how one may use his property while subdivision or planning determines how the land is divided. It is entirely possible that subdivision regulations are utilized to create separate lots while, at the same time, zoning principles establish limitations on the uses of lots, limitations that can extend across lot lines.

The respondents vigorously exhort that zoning merger "by operation of law," *see Ridge*, 352 Md. at 658, 724 A.2d at 40, is unavailable in Montgomery County. In arguing that *Ridge* is inapposite, the County states that "[u]nlike Baltimore County, Montgomery County law clearly prohibits subdivision by intent, requiring instead that a property owner submit a plat for recording in the land records to combine or divide land." The County points to the language of current Montgomery County Code § 50–8, found in the chapter governing subdivision of land, which provides as follows:

"§ 50–8. **[ ]-Filing and approval of plats.**

Whenever any subdivision or resubdivision of land is proposed to be made within the district, and before any contract for the sale of or any offer to sell such subdivision is made, or before any development or construction of any building takes place within a subdivision or any part thereof, the subdivider thereof or his agent shall file, in accordance with procedure prescribed in this chapter, a plat of the proposed subdivision with the board for its approval and the approved record plat shall be recorded in the land records of the county, except as provided in section 50–9 [exceptions to platting requirements]." [Alterations added.]

Montgomery County further contends that given its "long history of imposing exacting requirements for subdivision, which includes requirements for combining or dividing parcels,

the doctrine of merger stands diametrically opposed to the clear dictates of County law." According to the County, then, the owner's intent—and presumably the owner's actual use—plays no part in a finding of merger (or resubdivision) unless there has been a formal adjudication by the County's land use regulatory authority.

In a related argument Design–Tech suggests that the elder Mr. Duffie could not have intended to merge the lots when the common law of this State did not formally recognize zoning merger until such time as the filing of *Ridge* on February 11, 1999. Specifically, Design–Tech states in a footnote:

"Even if this Court were to extend *Ridge* in favor of [petitioner's] position in this case, it would be inappropriate to give such a ruling a retroactive application to cover the actions taken by the owner of Lot 11 and Lot 12 in the 1950's and 1960's. *See, e.g. Julian v. Christopher*, 320 Md. 1, 10–11, 575 A.2d 735, 739–40 (1990); *Kelley v. R.G. Indus., Inc.*, 304 Md. 124, 140, 497 A.2d 1143, 1150–51 (1985) (changes to common law are generally restricted to prospective application)." [Alteration added.]

In essence, Design–Tech seems to be arguing that zoning merger, since it is based, in part, on the owner's intent, must run with the person, and not with the land; alternatively, Design–Tech may be arguing for zoning merger to come into Montgomery County, but only *after* Design–Tech buys Lot 11 and builds its house, *i.e.*, *prospectively*.

The facts indicate that the elder Mr. Duffie died on August 16, 1999, and Mr. Duffie (the son) did not convey Lot 11 and Lot 12 to himself until August 31, 2001. There is no indication that, in those intervening two years, there were any changes on Lot 11 or Lot 12 that altered or ameliorated the encroachments or that removed one lot from the service of the other. Thus, technically, there was a period, after *Ridge*, and before the elder Mr. Duffie's death, during which the elder Mr. Duffie held both lots. Also, for two years following his death the lots were not yet deeded (by personal representative's deed) to Mr. Duffie (the son). During those two years, the

encroachments (*i.e.*, the use of Lot 11 in service of the needed Lot 12 setbacks) remained.

In addition, the cases cited by Design–Tech do not support the position of prospective application of the common law. *Julian v. Christopher*, 320 Md. 1, 10–11, 575 A.2d 735, 739–40 (1990), was a case dealing with contractual restrictions on the alienability of leasehold interests in which this Court stated:

> "In appropriate cases, courts may 'in the interest of justice' give their decisions only prospective effect. Contracts are drafted based on what the law is; to upset such transactions even for the purpose of improving the law could be grossly unfair. Overruling prospectively is particularly appropriate when we are dealing with decisions involving contract law. The courts must protect an individual's right to rely on existing law when contracting. Ordinarily decisions which change the common law apply prospectively, as well as to the litigants before the court."

Design–Tech also cited this Court's opinion in *Kelley v. R.G. Indus., Inc.*, 304 Md. 124, 161, 497 A.2d 1143, 1161–62 (1985) (a products liability case prompting changes to Maryland common law tort principles in respect to gun manufacturers' offering of "Saturday Night Specials"). We stated:

> "One final matter warrants discussion, namely the effective date of the modification in Maryland common law tort principles which is set forth in Part III of this opinion. Ordinarily in a case such as this, which changes common law principles applicable to civil actions sounding in tort, we would apply the change to the case before us and prospectively to all such causes of action accruing after the date of the case before us."

Kelley, 304 Md. at 161, 497 A.2d at 1161–62 (citation omitted). In *Kelley*, this Court determined that, based upon the particular circumstances in that case in respect to the Court's recognition that the wrongful conduct was related to the gun manufacturers' *marketing* of their product, the changes to the common law of tort effected by *Kelley* would not apply to all causes of action arising from a gunshot wound inflicted by a "Saturday Night Special," but would apply to the *Kelley* plaintiff as well as to other causes of action accruing after the date of the *Kelley* mandate. *Julian* and *Kelley* were a contract case and a products liability case, respectively; they do not apply to the facts of the instant case and do not support Design–Tech's position.

[9–12] Generally, changes in the common law are applied prospectively, as well as to the case triggering that change in the common law. In *Boblitz v. Boblitz*, 296 Md. 242, 462 A.2d 506 (1983), this Court abrogated the common law of interspousal immunity and applied the abrogation to *Boblitz* as well as to all such cases accruing after the filing of the *Boblitz* opinion. *Id.* at 275, 462 A.2d at 522. *But see Williams v. State*, 292 Md. 201, 217, 438 A.2d 1301, 1309 (1981) (noting that "particularly in criminal cases, changes in the common law ordinarily should have only prospective effect when considerations of fairness are present"). The Court will hesitate to apply a change to the common law in the case before it where such a change would be contrary to a public policy set forth by the General Assembly. *See Harrison v. Montgomery County Bd. of Educ.*, 295 Md. 442, 460, 456 A.2d 894, 903 (1983) (stating that the Court "has been particularly reluctant to alter a common law rule in the face of indications that to do so would be contrary to the public policy of the State"). *See also Murphy v. Baltimore Gas & Elec. Co.*, 290 Md. 186, 428 A.2d 459 (1981), overruled on other grounds by *Baltimore Gas & Elec. Co. v. Flippo*, 348 Md. 680, 705 A.2d 1144 (1998); *Condore v. Prince George's County*, 289 Md. 516, 532, 425 A.2d 1011, 1019 (1981). We perceive no such declared public policy that should prevent us from finding a zoning merger where two lots held in common ownership were clearly used in the service of one another in order to satisfy zoning requirements and subsequent to *Ridge* remained in that category.[18]

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18. We do not need to, nor do we now address, the situation where lots may have been combined in the past, but legally separated before our decision in *Ridge*. If that were the present case, which it is not, respondents' argument *might be* more persuasive. However, lots that

Moreover, as we perceive it, *Ridge* was a statement of the common law, not a change. The issue had not theretofore arisen, or been specified or articulated in our prior cases. *Ridge* was merely the first case to determine that zoning merger existed in Maryland.

Montgomery County goes on to state that "[b]y definition, subdivision includes both the division of land into one or more lots and the assembly of one or more lots or parcels into a larger one. [Montgomery County] Code § 50–1. [According to the County, t]o combine lots in Montgomery County, a property owner must prepare and submit a plat showing the resubdivision. When the Planning Board approves it, the plat is then recorded in the County land records. [Montgomery County] Code § 50–8" (alterations added). The terms "subdivision" and "resubdivision" are defined in the current Montgomery County Subdivision Regulations as follows:

"**§ 50–1. Definitions.**

. . .

Resubdivision: A change in any lot line of a recorded lot or parcel of land. Resubdivision includes the assembly of recorded lots or parts of lots. A resubdivision is a subdivision.

. . .

Subdivision: The division or assemblage of a lot, tract or parcel of land into one (1) or more lots, plots, sites, tracts, parcels or other divisions for the purpose, whether immediate or future, of sale or building development and, when appropriate to the context, relating to the process of subdividing or to the land or area subdivided; provided, that the definition of subdivision shall not include a bona fide division or partition of exclusively agricultural land not for development purposes. A resubdivision is a subdivision."

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remained combined, or encumbered by the doctrine of zoning merger at the time of *Ridge*, and since, are clearly subject to its effects.

The respondents endeavor to distinguish the facts of the case *sub judice* from the circumstances in *Friends of the Ridge*, observing that Baltimore County, the locus of *Ridge*, had no statute or ordinance specifically prohibiting that merger.[19] The text of the relevant provisions of the Baltimore County Code are set out in the margin. We fail to perceive the degree of distinction between the Baltimore County and the Montgomery County provisions urged on the Court by respondents. Both, regardless of labels, address division of parcels and combining of parcels. Thus, the crux of the respondents' position is that no merger "by operation of law" occurred because the common owner of Lot 11 and Lot 12 did not undertake a formal "anti-subdivision" process to consolidate the lots as contemplated by Montgomery County's subdivision

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19. The Baltimore County Code, Planning, Zoning and Subdivision Control Article, Development Title, includes the following relevant subdivision provisions:

"**§ 32–4–101. Definitions.**

. . .

(p) *Development.* 'Development' means:

. . .

(3) The combination of any two or more lots, tracts, or parcels of property for any purpose;

. . .

(yy) *Subdivision.* 'Subdivision' means:

(1) The division of property into two or more lots; or

(2) The combination of lots, parcels, tracts, or other units of property previously divided for the purpose, whether immediate or future, of sale, rental, or building development.

"**§ 32–4–108. Prohibition on Transfer of Land.**

(a) *In general.* A person may not convey a lot, parcel, or tract of a subdivision unless a plat, if required, has been recorded in accordance with this title and the plat is effective at the time of the conveyance.

. . .

"**§ 32–4–201. In General.**

Except as provided in §§ 32–4–105 [Agricultural exemptions], 32–4–106 [Limited exemptions], and 32–4–107 [Waivers] of this title, an approved Development Plan is required for a development and a plat is required for a subdivision. [Alterations added.]

. . .

"**§ 32–4–271. Required.**

(a) *In general.* The applicant shall prepare a plat in accordance with the approved Development Plan for any subdivision."

regulations.[20] Simply because a formal combination of Lot 11 and Lot 12 did not occur as contemplated by the Montgomery County Code, however, does not lead us to the necessary conclusion that these lots for zoning limitations are not subject to the doctrine of zoning merger. The issue is not subdivision combination but zoning merger.

The respondents assert that the mandatory language of Montgomery County Code § 50–8 ("the subdivider thereof or his agent shall file ....") precludes any use of the land that is inconsistent with the filed subdivision plat. As we have indicated, however, zoning concerns one's use of land, not how it is formally divided. The MNCPPC points to the intermediate appellate court's decision in *Lee v. Maryland National Capital Park and Planning Comm'n*, 107 Md.App. 486, 668 A.2d 980 (1995), an opinion which pre-dates this Court's *Ridge* opinion, as dispositive of the availability of merger by operation of law in Montgomery County. In *Lee* the MNCPPC approved "the resubdivision [*i.e.*, a *subsequent* subdivision] of two lots in the Glen Hills area into six lots." *Id.* at 488–89, 668 A.2d at 982 (alteration added).[21] Following a petition for

20. Montgomery County also questions its ability to prosecute and/or remedy any "unapproved" merger of Lot 11 and Lot 12 and subsequent construction undertaken by the property's owner decades ago, noting that Md.Code (1973, 1998 Repl. Vol.), § 5–114 of the Courts and Judicial Procedure Article sets a statute of limitations as follows:

"**§ 5–114. Setback line restrictions.**

...

(b) *In general.* ...

(2) A governmental entity may not initiate an action or proceeding arising out of a failure of a building or structure to comply with a setback line restriction more than 3 years after the date on which the violation first occurred if the building or structure was constructed or reconstructed:

(i) In compliance with an otherwise valid building permit, except that the building permit wrongfully permitted the building or structure to violate a setback line restriction; or

(ii) Under a valid building permit, and the building or structure failed to comply with a setback line restriction accurately reflected in the permit."

21. This was the opposite of combining two parcels into a larger parcel through zoning merger.

judicial review in the Circuit Court for Montgomery County brought by neighboring landowners who argued that the resubdivision was not consistent with the rural character of the neighborhood, the circuit court affirmed. The neighbors appealed and the intermediate appellate court reversed, holding that although the MNCPPC *considered* the seven statutory subdivision criteria found in Montgomery County Code § 50–29(b)(2),[22] there was not substantial evidence that the Board found that the proposed subdivision *complied* with all seven criteria. *Lee*, 107 Md.App. at 495, 668 A.2d at 985. The Court of Special Appeals explained:

> "Compliance with the criteria ensures that the lots will be of the same character as existing lots in the neighborhood, block, or subdivision. To prove that the seven criteria have been met, lots need not be cookie cutter matches to existing lots in the neighborhood. The correlation, however, between area, size, shape, street frontage, alignment, width, and suitability for residential use of the proposed resubdivided lots and existing lots must be high in order to meet the requirements of section 50–29."

Id. Lee is inapposite. As we have emphasized repeatedly, merger of the type here present is a function of, and limited to, zoning. To find zoning merger in the case *sub judice* affects no change to the decades-long status quo of the formal dimensions of Lot 11 and Lot 12; it merely affects the uses to which Lot 11 and Lot 12 may be put.

The County's position specifically, and the other respondents' position generally, suggests their belief that those

22. These seven subdivision criteria are as follows:

"**§ 50–29. Lot design.**

...

(b) *Additional requirements for residential lots.*

...

(2) *Resubdivision.* Lots on a plat for the resubdivision of any lot, tract or other parcel of land that is a part of an existing subdivision previously recorded in a plat book shall be of the same character as to [1] street frontage, [2] alignment, [3] size, [4] shape, [5] width, [6] area and [7] suitability for residential use as other lots within the existing block, neighborhood or subdivision." [Alterations added.]

actions which are not legislated do not happen. Montgomery County's having legislated a formal process for land subdivision does not necessarily mean that such results, *i.e.*, a limitation on uses, might not otherwise come about. We stated in *Ridge:* "We shall hold that a landowner who clearly desires to combine or merge several parcels or lots of land into one larger parcel may do so. One way he or she may do so is to integrate or utilize the contiguous lots in the service of a single structure or project...." [23] *Id.* at 658, 724 A.2d at 40. That is precisely what the elder Duffies did when, in making additions to their home and in constructing a pool on a lot adjacent to their home, they employed Lot 11 in the service of Lot 12 for zoning purposes. Their *use* of Lot 11 and Lot 12 in concert is consistent with zoning merger. That they did not undertake to submit a formal replatting to the County [24] does not vitiate the manner in which they *used* their property.

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23. For instance, there is no indication that the elder Duffies constructed a swimming pool on Lot 11, the contiguous parcel to Lot 12 on which their family home was located, to serve other than the elder Duffies' home located on Lot 12. Moreover, the circular driveway transversed both lots.

24. The 1955 Montgomery County Subdivision Regulations contain the following provision:

"**§ 106–2. Procedure for preparation and filing of plats.**

(a) Whenever any subdivision of land is proposed to be made, and before any contract for the sale of, or any offer to sell such subdivision or any part thereof is made, the subdivider thereof or his agent shall file a plat of the proposed subdivision with the commission for its approval. Such plat and all procedure relating thereto shall, in all respects, be in full compliance with the provisions of the regulations set out in this chapter.

(b) The subdivider shall prepare a preliminary subdivision plat...." [Footnote omitted.]

The 1965 Montgomery County Subdivision Regulations reflect changes made to the regulations in 1961. Specifically, the words "or resubdivision" were added as follows:

"**§ 104–7. Filing and recording of plats required.**

Whenever any subdivision *or resubdivision* of land is proposed to be made within the district, and before any contract for the sale of or any offer to sell such subdivision is made, or before any development or construction of any building take place within a subdivision or any part thereof, the subdivider thereof or his agent shall file, in accordance with procedure described in this chapter, a plat of the proposed subdivision with the board for its approval and the approved record plat shall be recorded in the land records of the county...." [Alteration emphasized.] [Footnote omitted.]

"Resubdivision" is not found among the definitions in either the 1955 or the 1965 subdivision regulations.

1. What becomes of Lot 12 in the absence of Lot 11?

[13] Another question that would be left wanting, should this Court approve the agencies' approval of a building permit issued for Lot 11, is what becomes of Lot 12? We begin by noting that one of the primary goals of zoning and subdivision controls is to avoid the creation of nonconforming lots (and uses) and "to restrict undersize parcels, not oversized parcels." *Ridge,* 352 Md. at 653, 724 A.2d at 34; *see Fred McDowell, Inc. v. Wall Twp. Bd. of Adjustment,* 334 N.J.Super. 201, 224, 757 A.2d 822, 835 (App.Div.2000) (invoking *Loechner v. Campoli,* 49 N.J. 504, 231 A.2d 553 (1967), New Jersey's seminal zoning merger case which we discussed in *Ridge,* and stating "merger is employed to further the goal of bringing (or keeping) nonconforming lots into conformity with the zoning ordinance and thereby serving the overall goals of the master plan"). Thus, based on the setback encroachments existing as a result of the structures on Lot 12, the proposed construction on Lot 11 would make Lot 12, if in separate ownership, a new and illegal nonconforming lot, unless, under the doctrine of zoning merger, the uses of Lot 11 are appropriately limited.

Montgomery County notes that a single building may not extend across lot lines, even internal lot lines.[25] It is not

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25. The subdivision regulations provide, in relevant part:

"**§ 50–20. Limitations on issuance of building permits.**

...

(b) A building permit may not be approved for the construction of a dwelling or other structure, except those strictly for agricultural use, which is located on more than one (1) lot, *which crosses a lot line,* which is located on the unplatted remainder of a resubdivided lot, or which is located on an outlot...." [Emphasis added.]

The constitutionality of this provision in the Montgomery County Code is not before us.

In the instant case, the structure on Lot 12 does not traverse the lot line delineating Lot 11 and Lot 12, but rather the structure on Lot 12 extends so as to fail to have sufficient setbacks from Lot 11. We note

disputed that Lot 11, with an area of eight thousand square feet, if considered in a vacuum, exceeds the minimum six thousand square feet lot size required in the R–60 zone, and satisfies the setback requirements. On the other hand, Lot 12, *while of sufficient area for the zone,*[26] *does not, by itself,* without the use of Lot 11, possess the required side yard and rear yard setbacks on account of the configuration of the structures constructed upon it. To allow Lot 11 to be used, as proposed, thus creates an illegal nonconformance as to Lot 12 and, by implication, grants an improper variance as to the rear yard setback for Lot 12.[27] Should this Court permit Lot 11 to be so used and a home constructed thereon, what becomes of Lot 12's ability to comply with the existing rear yard and side yard setback requirements? Such action effectively waives the zoning requirements as to Lot 12.

The County, apparently recognizing that if its position were to be accepted by this Court it will have permitted the creation of an illegal nonconforming use, seeks to relieve the Court of concern, assuring that "this Court need [ ][not] apply *Ridge* to prevent a nonconforming use that might result from an owner treating merged lots as separate.... Based on the setback requirements and the longstanding rejection of attempts to treat adjoining lots as one without formal resubdivision, the encroachment of the [elder Duffies'] addition into the setbacks remains a matter for DPS to handle through enforcement or when the owner of that lot seeks an additional building permit in the future" [28] (alterations added).

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that a building that goes right to the lot line is the same thing as crossing the lot line for zoning purposes. That is, the setback requirements are still violated.

26. Lot 12 measures 11,182 square feet-well in excess of the R–60 zone's required 6,000 square foot lot size.

27. We do not comment as to whether variance procedures can be used to obtain a variance for Lot 12.

28. The County has already expressed, however, its doubt about its ability to prosecute a code violation that occurred more than three

The Court must consider, however, the possibility that a Montgomery County landowner of multiple lots might utilize a "parcel A" to assuage zoning violations on an adjacent companion (and thus, nonconforming) "parcel B," and later benefit from the sale of "parcel A" *without correcting conditions* causing the nonconformance of "parcel B." Moreover, in relying on merger arising only from a formal resubdivision platting, a common owner might "fly under the radar" by simply refraining from submitting a new resubdivision plat. That is, the owner would assert zoning merger for purposes of complying with zoning requirements, but two lots for purposes of subdivision and sale (free of zoning limitations). In this way, the common owner could flip-flop between his or her adjacent parcels, thwarting the intent of the land development regulations and, perhaps more egregiously, skirting Montgomery County's "exacting requirements for subdivision." The owner would have the benefit of avoiding zoning violations by treating the parcels as merged for zoning purposes, but later seek benefit from the sale of two separate valuable parcels of land. That is exactly what is occurring in the instant case.

2. Title to Lot 11 and Lot 12

Mr. Duffie acquired title to a lot composed of Lots 11 and 12 from his father's estate. At that time zoning merger had already occurred. The respondents contend that, should we find zoning merger of Lot 11 and Lot 12, our decision will wreak havoc on the title search procedures that a landowner who seeks to buy property must undertake. That is, the respondents urge that there must be an exhaustive title search in order to determine if two or more lots were ever held in common ownership and may have been used in a manner suggesting zoning merger. Such a practice, according to respondents, can lead to clouds on title and undermine zoning and subdivision laws. As stated by the MNCPPC, "every situation involving the application of the merger doctrine for

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years ago. *See* Md. Code (1973, 1998 Repl. Vol.), § 5–114 of the Courts and Judicial Procedure Article, addressing setback line restrictions.

subdivision matters could potentially involve a factual dispute over whether a prior or current owner ever 'desired' [*i.e.*, intended] to merge the lots" (alteration added).

[14] As we have indicated previously, a common owner of property who constructs a building on one lot which incorporates space from an adjacent lot in order to fulfill setback requirements still maintains two separate lots for title purposes. *See Ridge*, 352 Md. at 658, 724 A.2d at 34. *See also Rouse-Fairwood Devel. Ltd. Partnership v. Supervisor of Assessments for Prince George's County*, 138 Md.App. at 630, 773 A.2d at 559 (stating that this Court, in *Ridge* "observed that lots do not remain separate merely because they appear separately on a subdivision plan").

Surveys are available to answer many of the title questions that might arise. Surveys routinely disclose encroachments. Surveys can as easily determine setback violations on abutting properties. The records of the administrative entities are public records and thus, available; land records of adjacent lots are also available (they were clearly available in the present case—they are, for the most part, in the record); title insurance is likewise available in most instances; actions in ejectment, quia timet[29] and the like are available. If disputes arising from encroachments or setback violations lead to claims of adverse possession or an action for ejectment, the parties generally seek judicial review in an effort to remove any such clouds on title. The same can be done via declaratory judgment actions in respect to the factual applicability of zoning merger emanating from adjacent properties. The task, for competent title attorneys, is not insurmountable.

It would not be necessary as respondents speculate to trace title to an indefinite time for, as we have indicated, there are

29. "A legal doctrine that allows a person to seek equitable relief from future probable harm to a specific right or interest." BLACK'S LAW DICTIONARY 1281 (8th ed. 2004).

"[A]nd again, that equity will not allow a title, otherwise clear, to be clouded by a claim which cannot be enforced in law or equity." *Holland v. City of Baltimore*, 11 Md. 186, 197 (1857) (alteration added).

avenues which may be used to resolve the infrequent title questions that may arise. As petitioner suggests, DPS might revise its permit application to determine whether the subject lot is presently, or was formerly, held in common ownership with a contiguous lot. In the instant case, Lot 11 and Lot 12 apparently were still held by Mr. Duffie when Design–Tech obtained its building permit.[30]

III. Conclusion

We find that Lot 11 and Lot 12 are merged for zoning purposes. Accordingly, we reverse the Board of Appeals' rejection of petitioner's contention that the building permit for Lot 11 was erroneously granted. Lot 11 and Lot 12 were under common ownership, and at the time of that common ownership, they were used in service to one another. The permit should not have issued, absent further zoning action. In order for Lot 11 to be utilized separate and apart from Lot 12, there would have to be a resubdivision of the combined lot, creating two lots both of which meet the requirements of both the zoning ordinance and the subdivision regulations. In that process it may well be necessary to seek zoning variances as to setbacks, or to remove the setback encroachments of the structure on Lot 12.

As we have found that Lot 11 and Lot 12 have merged for zoning purposes, we do not resolve the issue of whether the base level of the single-family home proposed by Design–Tech was a cellar or a basement. *See supra* note 1.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY REVERSED. CASE REMANDED TO THAT COURT WITH DIRECTIONS TO REVERSE THE DECISION OF THE BOARD OF APPEALS AND DIRECT THE BOARD TO ISSUE AN ORDER CONSIS-

30. Design–Tech obtained a building permit in December 2002. The deed from Mr. Duffie to Design–Tech was executed in January 2003. At all times relevant hereto Design–Tech needed to have looked no farther than Mr. Duffie, its immediate predecessor in title, in order to assess the potential that zoning merger might have occurred.

TENT WITH OUR OPINION. COSTS TO PAID BY THE RESPONDENTS.

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874 A.2d 897

ATTORNEY GRIEVANCE COMMISSION

v.

Norman Joseph LEE, III.

Misc. Docket AG No. 8, Sept. Term, 2004.

Court of Appeals of Maryland.

May 12, 2005.

Background: Attorney Grievance Commission filed petition for disciplinary action against attorney. The Circuit Court for [redacted]more County, Vicki Ballou–Watts, J., found violations of rules of professional conduct, and attorney filed exceptions.

Holdings: The Court of Appeals, Harrell, J., held that:

(1) complainant's statements at peer review stage of proceedings were absolutely confidential and privileged;

(2) prison mail records discovered after evidentiary hearing amounted to new material evidence justifying remand.

Matter remanded.

Raker, J., concurred with opinion.

1. Attorney and Client ⇐47.1
Witnesses ⇐184(1)

Complainant's statements at peer review stage of [redacted]rney grievance proceeding were absolutely confidential and privileged and were unavailable to impeach complainant's testimony at subsequent evidentiary hearing. Md.Rule 16–723(a).

2. Attorney and Client ⇐47.1
Witnesses ⇐184(1)

All statements made at a Peer Review Panel proceeding, no matter who the declarant is, remain confidential and privileged and thus unavailable for use to impeach the declarant as a witness at a subsequent evidentiary hearing in the attorney disciplinary process. Md.Rule 16–723(a).

10/17/06

RE:	PETITION FOR SPECIAL HEARING 2317 Turkey Point Road; S/side Turkey Point Rd., 700' W c/line Rockaway Beach Road, 15th Election & 6th Councilmanic Districts Legal Owner(s): Jeffrey A. Creamer Petitioner	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY Case No.: 06-044-SPH

* * * * * * * *

RE:	PETITION FOR SPECIAL HEARING 2315 Turkey Point Road; S/side Turkey Point Rd., 700' W c/line Rockaway Beach Road, 15th Election & 6th Councilmanic Districts Legal Owner(s): Carole A. Creamer Petitioner	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY Case No.: 06-045-SPH

* * * * * * * *

RE:	APPLICATION FOR UNDERSIZED LOT 2315 Turkey Point Road; S/S of Turkey Point Road, 800' E corner of Rockaway Beach Avenue, 15th Election District & 6th Councilmanic Districts Legal Owners: Carole and Jeffrey Creamer Petitioners	*	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY Case No.: CBA-04-137

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

PROTESTANTS' MEMORANDUM

Michael and Robin Ferro, by and through attorney, Francis X. Borgerding, Jr., herein files this Memorandum in support of their opposition to the relief requested in the above-captioned cases and says:

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OCT 2 1 2006
BALTIMORE COUNTY
BOARD OF APPEALS

STATEMENT OF THE CASE

This matter comes before the Board of Appeals from the May 12, 2004 decision of the Deputy Zoning Commissioner for Baltimore County to deny the Petitioners' request for approval of an undersized lot. The request was made pursuant to Section 304 of the Baltimore County Zoning Regulations (herein "BCZR") for application to construct a dwelling on an undersized lot. This matter also comes before the Board from the November 29, 2005 decision of the Deputy Zoning Commissioner which granted Petitioners' request for special hearing pursuant to Section 500.7 of the BCZR to determine the lots at issue are existing lots of record and denied Petitioners' request to confirm that the lots at issue are not undersized lots as defined in the BCZR Section 4A03.1 Growth Management Plan for Bowleys Quarters Back River Neck Area. The Petitioners, Jeffrey and Carol Creamer, took appeal from the Deputy Zoning Commissioner's Decisions to this Honorable Board.

Testifying on behalf of the Petitioner in the above-referenced cases were Jeffrey Creamer, Carol Creamer and James Patton of Patton Consultants Limited. Protestants subpoenaed John Lewis of Baltimore County Office of Permits and Development Management. In addition, Carl Maynard, officer and member of the Back River Neck Community Association, Michael Ferro, Robin Ferro and Joanne Markel testified in opposition to the Petitioners' requested relief. Jackie Nickel, who lives in the area of the subject properties, had attended the hearing before the Board but had to leave before she was called to testify. A letter written by Mrs. Nickel in relation to her opposition to the proposed request was submitted as Protestants' Exhibit No. 21.

Jeffrey Creamer testified that he purchased a lot known as 2317 Turkey Point Road on September 11, 2002. See Petitioners' Exhibit No. 1. Mr. Creamer acknowledged that the lot in question was rectangular with a 50 foot lot width. On cross-examination, Mr. Creamer indicated that he titled the lot known as 2317 Turkey Point Road in his own name, however, the lot known as 2315 was put in his wife's name to keep his options open with regard to future development and for estate purposes. Mr. Creamer indicated that prior to this retirement, he had worked in the area of real estate development. Mr. Creamer acknowledged that he married his wife, Carol, in the 1950's and remained married to her since that time. In addition, Mr. Creamer indicated that no one has lived on the property since his purchase of the property in 2002. Mr. Creamer acknowledged that the lot known as 2315 Turkey Point Road has a shed on it and a common bulkhead between 2317 and 2315 Turkey Point Road. Further, that there is one pier located on 2317 Turkey Point Road. Mr. Creamer indicated that he had not researched the history of the ownership of 2317 Turkey Point Road prior to his ownership of the property. In addition, Mr. Creamer acknowledged that he had not researched the utilization of the property prior to his purchase of the property in 2002.

Carol Creamer also testified in support of Petitioners' relief. Mrs. Creamer indicated she purchased the property known as 2315 Turkey Point Road on September 11, 2002 per the Deed entered into evidence as Petitioners' Exhibit No. 8. Mrs. Creamer claimed that if the Petitioners were successful in gaining relief she will leave 2315 to her side of the family and her husband will leave 2317 to his side of the family. On cross-examination Mrs. Creamer indicated that she was married to her husband in the 1950's and remained married since that time. Mrs. Creamer testified that she had not researched the history of

the ownership of the property prior to her purchase of the property. She indicated that she purchased the property in her own name and she deferred decisions of that nature to her husband pursuant to his real estate background. Mrs. Creamer testified that she was not familiar with the utilization of the property prior to the time of her purchase. She acknowledged that existing shed was located on the property at the time of her purchase of the property which has remained on the property since that time. Mrs. Creamer indicated she was not familiar how long the shed, presently on the property, was on the property prior to her purchase of 2315 Turkey Point Road. In addition, Mrs. Creamer acknowledged that although the properties have separate tax bills, taxes on the property are paid through a joint checking account, which she and her husband hold.

James Patton testified for the Petitioners as an expert. Mr. Patton's testimony centered around his contention that the 70 foot lot width requirement for lots in D.R. 3.5, pursuant to Section 1B02.3 of the BCZR and the requirements of Section 304 of the BCZR do not apply with the Petitioners' lots, which are zoned D.R. 3.5 and are located in the area subject to Section 4A03.1 of the BCZR known as the Growth Management Plan for Bowleys Quarters Back River Neck Area. Mr. Patton's contention relies on the language in Section 304 of the BCZR which begins "Except as provided in Section 4A03", which he contends negates the requirements of Section 304 as well as 1B02 of the BCZR in relation to the Petitioners' lots. Mr. Patton further contends that since, in his opinion, Petitioners' lots do not meet the definition of undersized lots provided in Section 4A03.1 of the BCZR the lots are not undersized and, therefore, are entitled to building permits under Section 4A03.4 of the BCZR.

Mr. Patton's opinion that the Petitioners' lots are not undersized lot per Section

4A03.1 of the BCZR, relies upon his contention that the use of the words "area... requirements" in the definition of undersized lot, Section 4A03.1 of the BCZR does not encompass lot width requirements. On cross-examination, Mr. Patton acknowledged, however, that if he were to request a lot width variance under Section 1B02.3 for a lot in Baltimore County he would do so pursuant to Section 307 of the BCZR which allows variances from "area or height regulations". Mr. Patton acknowledged that said section uses the word "area... regulations" not specifically lot width regulations. Further, Mr. Patton contended that the Petitioners' lots meet the requirements of 4A03.4A1 of the BCZR, which conditions permit approval for lots of record on meeting "all of the zoning requirements" and "1) Variances are not required for construction of a dwelling". Mr. Patton's opinion is notwithstanding the fact that the Petitioners' lots are zoned D.R. 3.5 and have 50 foot lot widths which is violative of Section 1B02.3 of the BCZR.

Mr. Patton indicated it was his contention that Section 4A03 of the BCZR, when enacted, negated the lot width requirements of Section 1B03.C and Section 304 for lots in the affected area. On cross-examination, however, Mr. Patton acknowledged that the Baltimore County Council enacted resolution of 10-99 requesting the Planning Board prepare recommendations to the County Council prior to their enacting the present Section 4A03 of the BCZR. Said report was entered into evidence as Protestants' Exhibit No. 2. Mr. Patton acknowledged that Section II.C reads in pertinent part when referring to the proposed Public Sewer System.

> C. Serve recorded unimproved *undersized* lots, or tracts of undersized lots in single ownership, in all DR zones, subject to Sec. 304 *and* Sec. 307 of the BCZR.

1. Combine lots in common ownership to meet minimum requirements for lot area and lot width (Sec. 1B02.3). (Minimum lot area and width are, respectively, 10,000 square feet and 70 feet in DR 3.5, and 6,000 square feet and 55 feet in DR 5.5.); and

2. Obtain variances if lot fails to meet front, rear, and side yard setbacks.

3. Lots less than 50 feet in width at the building line are strongly discouraged and may not be supported."

Mr. Patton acknowledged that the Petitioners' case is the fist time he has rendered an opinion for a client contending that lot width requirements do not apply to DR 3.5 lots in the area subject to 4A03.1 of the BCZR.

In relation to Section 304 of the BCZR, Mr. Patton indicated that the Petitioners may have difficulty meeting Section 304.1C which requires that "the owner of the lot does not own sufficient adjoining land to the width and the area requirements contained in these regulations."

Testifying in opposition to Petitioners' proposed relief was Carl Maynard. Mr. Maynard indicated he had been involved with the Back River Neck Community Association for approximately 20 years. During that time he had served as the organization's vice-president for four years and the organization's president for five years. Mr. Maynard testified that he was appointed to the Committee formed by Councilman, Vincent Gardina, to make recommendations prior to the enactment of Council Bill 64-99 which became Section 4A03 of the BCZR, the Growth Management Plan for Bowleys Quarters and Back River Neck areas. Mr. Maynard indicated several citizens as well as an attorney and the directors of the Baltimore County Department of Environmental Protection and Resource Management and Baltimore County Office of Planning were appointed to the Committee. Mr. Maynard indicated that the Committee was formed because Baltimore County was

going to be introducing sewer and water into the areas at issue which are located in critical areas adjacent to the Chesapeake Bay. Further, the County Council wanted to formulate a growth management plan for introducing sewer and water into the area.

With regard to the work of the Committee, Mr. Maynard indicated that the 70 foot lot width requirements in DR 3.5 zones were discussed before the Committee. Further, Mr. Maynard stated that the Committee was concerned about lot width requirements and did not intend to negate lot width requirements as part of the eventual Bill passed by the County Council.

John Lewis, who was subpoenaed to testify before the Board indicated he holds the position of Planner 2 with the Baltimore County Office of Permits and Development Management. Mr. Lewis indicated that he was the lead or senior Planner in the office. Mr. Lewis indicated he started with Baltimore County Office of Permits and Development Management in 1986 and has held the position of Planner since 1990. He indicated that the only individual with longer tenure in the office is Carl Richard, his immediate supervisor, who reports to Timothy Kotroco, the Director of the Office of Permits and Development Management. Mr. Lewis indicated that the responsibilities of his position include reviewing land use proposals presented by property owners or their representatives and checking compliance with the BCZR. As such, Mr. Lewis testified that he is familiar with the provisions of the BCZR.

Mr. Lewis indicated that he was in the hearing room when James Patton testified and, therefore, heard his testimony. Mr. Lewis reviewed Section 304 of the BCZR, Protestants' Exhibit No. 1, Section 1B02.3.C of the BCZR, Petitioners' Exhibit No. 21 and Section 307 of the BCZR, Protestants' Exhibit No. 1, as well as Section 4A03.1 of the

BCZR, Petitioners' Exhibit No. 17.

The substance of Mr. Lewis' opinions contradicted James Patton's opinions, as related to the Petitioners' requested relief. The difference of opinions stems from Mr. Lewis' opinion that when the term "area... regulations" are used in the BCZR that they encompass lot width requirements regardless of whether the words "lot width" are used specifically. Accordingly, Mr. Lewis opines that Petitioners' lots are undersized lots as defined under Section 4A03.1 of the BCZR in that they do not meet the "area... requirements". In addition, in relation to Section 4A03.A1 of the BCZR, Mr. Lewis opined that Petitioners' lots would need variances as they are 50 foot in width and are in a DR 3.5 zone which requires a 70 foot lot width. After reviewing Section 4A03.4.A.1, Mr. Lewis testified that he believed that the Petitioners' lots failed to meet "all of the zoning requirements" and accordingly required variance relief to be declared buildable pusuant to Section 307 of the BCZR. In addition, Mr. Lewis opined that the Petitioners' lots failed to meet the requirements of Section 4A03.4.B1 because the Petitioners do own sufficient adjoining land that would allow conformance with the current zoning requirements.

When reviewing Section 304 of the BCZR, Mr. Lewis opined that the wording at the beginning of Section 304.1 which reads: "Except as provided in Section 4A03 "does not negate the requirements of Section 304 of the BCZR or Section 1B02.3.C unless specifically stated in Section 4A03. Mr. Lewis reviewed Section 1B02.3 of the BCZR and indicated that it was his belief that the Petitioners' lots must comply with the requirements of Section 1B02.3C1 referred to as the small lot table which requires lots in DR 3.5 to have a minimum lot width of 70 feet. Mr. Lewis indicated he believed that Petitioners' lots fall under 1B02.3A3 which reads:

> "Any lot or tract of lots in single ownership which is not in an existing development or subdivision, as described in Subsection A.1 or A.2 and which is too small in gross area to accommodate six dwelling or density units in accordance with the maximum permitted density in DR zones in which such tract is located."

As Mr. Lewis noted that Petitioners' lots would not have sufficient density for six dwellings or density units. Mr. Lewis also indicated that Petitioners' lots could fall under 1B02.3A5 which reads:

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

Section 101 of the BCZR indicates that "or" shall mean and/or as modified by the use of the word "either" or unless the context otherwise clearly indicates another meaning. Protestants' Exhibit No. 6.

Mr. Lewis noted that if a variance was needed from a lot width requirements of Section 1B02.3 a variance would be requested pursuant to Section 307 of the BCZR, a copy of which was entered as Protestants' No. 1, which allows variances from "height and area regulations". Mr. Lewis testified that throughout the tenure with Baltimore County that lot width variances have been accepted pursuant to Section 307 of the BCZR notwithstanding the fact that the Section does not specifically mention the words "lot width". Further, Mr. Lewis testified that his office's consistent interpretation of the zoning regulations has been that lot width requirements are included when the term "area regulations" is used in the BCZR. Although Mr. Lewis acknowledged he was testifying as to his own opinion he indicated that he had discussed this interpretation with his immediate supervisor, Carl Richard, prior to his testimony to verify that he shared the same interpretation. When asked for his interpretation of Section 304 of the BCZR, Mr. Lewis

expressed an opinion that the Petitioners' lots failed to meet the requirements of Section 304.1B and C in that they failed to meet the area regulations as required in Section B and that the owner owned sufficient adjoining land to comply with width and area requirements as required in Section 304.1C. See Protestants' Exhibit No. 4, a copy of the section of the Zoning Commissioner's Policy Manual which defined ownership and indicated that ownership means "any financial interest of the applicant in the subject properties. A financial interest exists if in the case of:

(1) An individual - a spouse or other family member..."

Mr. Lewis indicated that a special hearing would be required for a shed on an unimproved lot next to an improved lot as the shed would constitute an accessory structure which would fail to comply with the definition of an accessory structure in Section 101 of the BCZR maked as Protestants' Exhibit No. 5. Said definition indicates in pertinent part that an accessory structure is a "structure which: ... (c) is located on the same lot as the principal use or structure served; and..." A shed on an unimproved lot would serve the adjacent improved lot. Mr. Lewis also opined that if a pool were placed on the unimproved lot next to an improved lot a special hearing would be required under the same principal. On cross-examination Mr. Lewis indicated that his opinion as to the necessity of a special hearing for a shed on an unimproved lot would not change whether the shed was built with permanent footers or not.

Also testifying in opposition to the request for relief were Michael Ferro, owner of property located at 2313 Turkey Point Road. Mr. Ferro testified that he lived at that address with his wife and had lived at that location for approximately 16 years. Mr. Ferro testified that he had researched the ownership of the subject property prior to the

Creamers' purchase. Entered as Protestants' Exhibit Nos. 7 through 11 were a chain of Deeds for the Petitioners' lots starting June 27, 1952 through Petitioners' purchase of each of the lots on September 11, 2002. Mr. Ferro testified about utilization of Petitioners' lots prior to their ownership and re-entered a series of photographs marked as Protestants' Exhibit Nos. 12A through I which were originally entered as Protestants' 7A-I before the Deputy Zoning Commissioner for Baltimore County. Mr. Ferro testified that there was an original shed on what is now known as 2315 Turkey Point Road since prior to the purchase of his property 16 years ago. Mr. Ferro noted that there was an original shed on the property at the time of his purchase of his property which was eventually removed and subsequently a new shed was immediately constructed. Mr. Ferro indicated that the prior and present shed have always been used to serve the improved lot known as 2317 Turkey Point Road.

Mr. Ferro also testified about the placement of a pool on the lot known as 2315 Turkey Point Road, which was present on the property when he purchased his home. Mr. Ferro also indicated that a privacy fence for the pool was placed on 2315 Turkey Point Road. Mr. Ferro testified that the owners prior to the Creamers frequently used the lot known as 2315 Turkey Point Road for picnics to park cars and store boats. Additionally, Mr. Ferro noted that 2315 and 2317 share a common bulkhead constructed by the prior owners of the property and that two properties have one pier located on 2317 Turkey Point Road. Mr. Ferro also entered into evidence as Protestants' Exhibit Nos. 13a&b, 14a&b and 15a&b photographs depicting his own house as well as some of the water drainage problems which presently exist. Mr. Ferro indicated that he was opposed to the Petitioners' relief for permission to have two buildable lots because he felt that having a house on

each of the lots would: have a major impact on his property and privacy, would lead to increased drainage problems in relation to his property, would not be set back in line with other houses in the area. Mr. Ferro stated that a house on 2315 Turkey Point Road would lead to privacy concerns as the windows of any house would look directly into the windows of his house. Mr. Ferro testified that the majority of the houses along Turkey Point Road both waterfront and continuing on Turkey Point Road were not on undersized or 50 foot wide lots. Mr. Ferro presented a petition opposing the Petitioners' relief signed by many neighbors entered as Protestants' Exhibit No. 18. In addition, marked as Protestants' Exhibits 19A-D, Mr. Ferro identified individual letters from neighbors in opposition to the Petitioners' proposed relief. Mr. Ferro testified that if the Petitioners' relief is granted, he felt it would be harmful to the health, safety and welfare of the community. Mr. Ferro indicated that he did not believe a house was ever located on the lot known as 2315 Turkey Point Road.

Robin Ferro also testified and reiterated her opposition to the Petitioners' requested relief. She adopted her husband's testimony and also indicated her strong feelings in opposition to the requested relief. In addition, Mrs. Ferro indicated that she did not believe that the pool on what is known as Lot 2315 Turkey Point Road was taken down except when it was permanently removed. Joanne Markel who lives at 2321 Turkey Point Road also testified in opposition to the Petitioners' requested relief. Mrs. Markel indicated that when she purchased her property in 1999 with her husband, it consisted of two unimproved 50 foot lots. Mrs. Markel testified that it was her understanding when dealing with Baltimore County in an effort to obtain a building permit for her property, that she would only be allowed to build one house on the two lots. Mrs. Markel indicated that she believed

that granting Petitioners' requested relief would not be appropriate for the area and would overcrowd the area. Jackie Nickel, a member of the Rockaway Beach Community Association was also present at the Board's hearing but had to leave prior to being called to testify. Marked as Protestants' Exhibit No. 21 is a letter written by Mrs. Nickel in opposition to the Petitioners' requested relief.

QUESTIONS PRESENTED

1. Whether the special hearings requested by Petitioners in case number 06-044SPH and 06-045SPH, pursuant to Section 500.7 of the BCZR to determine that each lot is an existing lot of record; that is not an undersized lot as defined in BCZR Section 4A03.1, Growth Management Plan Bowleys Quarters and Back River Neck Areas should be approved?

2. Whether Petitioners' request for approval for application for an undersized lot, pursuant to Section 304 of the BCZR in relation to the property known as 2315 Turkey Point Road should be approved?

ARGUMENT

I. PETITIONERS' REQUESTED SPECIAL HEARING FOR A DETERMINATION THAT THE LOTS IN QUESTION ARE EXISTING LOTS OF RECORD AND THAT THEY ARE NOT UNDERSIZED LOTS PER SECTION 4A03.1 OF THE BCZR GROWTH MANAGEMENT PLAN FOR BOWLEYS QUARTERS BACK RIVER NECK AREAS SHOULD BE DENIED

Notwithstanding the testimony of James Patton on behalf of the Petitioners, the overwhelming evidence before the Board indicates that the Petitioners' lots are undersized pursuant to Section 4A03.1 and further do not meet the requirements of Section 1B02.3.C or Section 304 of the BCZR.

Although James Patton testified that the Petitioners' lots were not undersized pursuant to the definition of undersized lot in Section 4A03 of the BCZR, Mr. Patton conceded that there is nothing in Section 4A03 which by its wording specifically exempts the requirements of Section 304 or 1B02.3.C of the BCZR. Further, Mr. Patton claimed that the Petitioners' lots are not undersized lots pursuant to 4A03.1 of the BCZR because the lots meet, in his opinion, "area" regulations. Mr. Patton stated that, in his opinion, because the Code does not specifically mention lot width in the definition of undersized lot in Section 4A03.1 all such requirements elsewhere in the BCZR are negated. Mr. Patton conceded, however, that if one were to attempt to variance lot width requirements per the BCZR, they would do so under Section 307 of the BCZR which allows a variance of "height and area" requirements but does not specifically indicate that lot width requirements can be varianced. Mr. Patton indicated on cross-examination that the present case is the first time he has rendered such an opinion. In addition, Mr. Patton acknowledged that the Planning Board report prepared at the request of the Baltimore County Council prior to enactment of Section 4A03 of the BCZR references the requirements of Section 304 of the BCZR specifically refers to Section 1B02.3 and the 70 foot lot width requirement in DR 3.5.

Carl Maynard, a member and officer of the Back River Neck Improvement Association, who was a member of the Committee appointed by Councilman Vincent Gardina to review growth management in the Bowleys Quarters Back River Neck areas in conjunction with extension of water and sewer to the area testified. The Committee made recommendations to the County Council prior to the enactment to the now codified Section 4A03 of the BCZR. Mr. Maynard testified that 70 foot lot width requirement was of concern to the Committee and that he was not aware of any intention to negate that requirement.

John Lewis, Planner with the Baltimore County Office of Permits and Development Management, directly contradicted James Patton's testimony and indicated his opinion that the lots are undersized lots pursuant to the definition in Section 4A03.1 of the BCZR due to their failure to meet "area" requirements which, in his opinion, include lot width requirements. Further, Mr. Lewis indicated it is his opinion that Petitioners' lots are not eligible for building permits under Section 4A03 of the BCZR as they fail to meet the requirements of Section 4A03.4.A in that they do not meet "all the zoning requirements" and variances are required for the construction of a dwelling. In addition, they fail to meet the requirements of Section 4A03.4.B of the regulations in that, in his opinion, common ownership of adjoining land exists and a variance has not been obtained for the lot width requirement pursuant to Section 307 of the BCZR. Mr. Lewis was also clear that he believes Petitioners' lots are subject to the requirements of Section 1B02.3 of the zoning regulations which require minium lot width of 70 feet as the lots are zoned DR 3.5 and further that Petitioners' lots are subject to Section 304 of the BCZR. Mr. Lewis testified that the Petitioners' lots fall under 1B02.3A3 of the BCZR or 1B02.3A5. Pursuant to 1B02.3.C1 of the BCZR, lots under Subsection A.3 shall comply with the requirements of the "small lot table". Protestants assert that lots falling under Subsection A.5 must comply with the "small lot table". See Protestants' Exhibit No. 22. Mardo Homes, Inc. v. Baltimore County, Maryland before the Court of Special Appeals of Maryland.

There is insufficient evidence to conclude that the Baltimore County Council when enacting Bill No. 64-99 which became 4A03 of the BCZR intended to negate the requirements of lot width found in 1B02.3 by creating a definition of undersized lot for the Growth Management Plan. Although this matter is under de novo review before the Board

of Appeals, the Deputy Zoning Commissioner for Baltimore County, after preparing a detailed opinion below, reached the above conclusion. Protestants assert that record before the Board of Appeals merits the same conclusion. Protestants note and adopt the arguments of Peoples' Counsel for Baltimore County who also filed a memorandum in opposition to the Petitioners' requested relief.

Even assuming arguendo the Petitioners are entitled to the relief they seek under the Petitions for Special Hearing it is clear that under the case of Remes v. Montgomery County, 387 Md. 52, 874 A.2d 470 (2005) that lots known as 2315 Turkey Point Road and 2317 Turkey Point Road have merged for zoning purposes. Protestants, Michael and Robin Ferro, who have lived next door to the lots in question for sixteen years testified about the utilization of the lots during the Creamers' ownership, as well as the previous owners of the property. It is clear that the original accessory shed structure was on the vacant lot at 2315 Turkey Point Road prior to the Ferros purchasing their property sixteen years ago. Said original shed and the subsequent shed placed on the property were accessory structures on the vacant lot which served the improved lot on 2317 Turkey Point Road. Additionally, the previous owners of 2317 Turkey Point Road placed an accessory pool on 2315 Turkey Point Road, with a privacy fence. The vacant lot was used and store boats on 2315 Turkey Point Road. In addition, a common bulkhead was in place between 2315 Turkey Point Road and 2317 Turkey Point Road which is not connected to adjoining properties on either side. There is one pier serving the two lots at 2317 Turkey Point Road. It is clear that there has been an intention to use the two lots as one.

It is also clear in the testimony of Mr. Lewis that the accessory shed and pool structures which were placed on the vacant 2315 Turkey Point Road require approval from

Baltimore County through a special hearing to maintain the accessory structures on a vacant lot which did not have a principal use or structure. See Protestants' Exhibit No. 5, the definition of accessory structure.

The record before the Board supports a finding by the Board that the Petitioners' lots have merged through the doctrine of zoning merger per Remes v. Montgomery County, supra. Under the zoning merger doctrine once the doctrine applies the Creamers are now unable to separate the two lots as requested.

II. PETITIONERS' REQUEST FOR APPROVAL FOR APPLICATION FOR AN UNDERSIZED LOT, PURSUANT TO SECTION 304 OF THE BCZR SHOULD BE DENIED

The weight of the evidence before the Board of Appeals indicates that the Petitioners have failed to meet their burden of proof with regard to their alternative request for application for an undersized lot, pursuant to Section 304 of the BCZR. Per the testimony of John Lewis, Petitioners fail to meet the requirements of Section 304.1B in that they failed to meet all the area regulations due to the lots 50 foot lot width. In addition, the Deeds entered into evidence as Protestants' Exhibit Nos. 7-9 make clear that the subject lots were held in common ownership prior to their purchase by Carol and Jeffrey Creamer until September 11, 2002. Mr. Creamer indicated in his testimony that he retired from a career in real estate development. He indicated he titled the properties to keep options open and for estate purposes. The properties' separate titling by husband and wife does not constitute separate ownership under the BCZR. The Zoning Commissioner's Policy Manual entered as Protestants' Exhibit No. 4 speaks directly to the issue of common ownership with a spouse. In addition, John Lewis indicated that under the circumstances of this case his opinion would be that the lots are held in common ownership. Even the

Petitioners' expert, James Patton, conceded that Petitioners may have problems meeting the requirements of Section 304.1C.

Protestants, Michael and Robin Ferro, testified extensively as to why they do not believe the proposed dwellings on each of the lots in question would be appropriate for the neighborhood. In addition, the Protestants forwarded a Petition signed by numerous area property owners in opposition to the Petitioners' requested relief. Protestants' Exhibit No. 18, as well as several individual letters in opposition. Protestants' Exhibit Nos. 19-20.

The evidence before the Board establishes that Petitioners have failed to meet their burden of proof that they are entitled to relief under Section 304 of the BCZR.

Even assuming, for the sake of argument, Petitioners could meet their burden of proof under Section 304 of the BCZR, the doctrine of zoning merger, per the case of Remes v. Montgomery County, 387 52 874 A.2d 470 (2005) case prohibits approval of 2315 as a separate buildable lot, as discussed above.

CONCLUSION

As indicated above, the Petitioners' requested Petitions for Special Hearing, case number 06-044SPH and 06-045SPH as well as Petitioners' request for approval of an undersized lot, pursuant to Section 304 of the BCZR filed in case number CBA04-137 should be denied.

Respectfully submitted,

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410-296-6820

ATTORNEY FOR MICHAEL & ROBIN FERRO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 27th day of October, 2006, a copy of the foregoing was mailed, first-class postage prepaid, to:

C. William Clark, Esquire
Nolan, Plumhoff & Williams
502 Washington Avenue
Towson, Maryland 21204
Attorney for Petitioners

Peter Max Zimmerman, Esquire
Office of People's Counsel
Room 47, Old Court House
400 Washington Avenue
Towson, Maryland 21204

FRANCIS X. BORGERDING, JR.

lawful basis for the finding of contempt on October 9, 2003. The Order for Constructive Civil Contempt filed on October 9, 2003, must be vacated. Our vacation of that Order does not, of course, affect in any way appellant's on-going obligation to pay the child support and payments on the arrearage that previously had been established and ordered.

ORDER FOR CONSTRUCTIVE CIVIL CONTEMPT ENTERED BY CIRCUIT COURT FOR HOWARD COUNTY AND FILED OCTOBER 9, 2003, VACATED; COSTS TO BE PAID BY APPELLEE.

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874 A.2d 470

David H. REMES

v.

MONTGOMERY COUNTY, Maryland, et al.

No. 122, Sept. Term, 2004.

Court of Appeals of Maryland.

May 12, 2005.

Reconsideration Denied June 15, 2005.

Background: Resident sought judicial review of county Board of Appeals decision that upheld issuance of a building permit on another lot on grounds the lot had merged for zoning purposes with a contiguous lot. The Circuit Court, Montgomery County, Durke G. Thompson, J., affirmed the Board of Appeals decision. Resident petitioned for writ of certiorari, which was granted.

Holdings: The Court of Appeals, Cathell, J., held that:

(1) vacant lot merged with adjacent lot for zoning purposes by operation of law;

(2) zoning merger doctrine not required to be applied only prospectively; and

(3) lots that remained combined, or encumbered by doctrine of zoning merger at the time court recognized doctrine were subject to its effects.

Reversed and remanded with instructions.

1. Zoning and Planning ⇐254

Vacant residential lot merged for zoning purposes by operation of law with adjacent developed lot, which precluded issuance of a building permit for the vacant lot, even though there had never been a formal replatting by the common owner of the lots; when under common ownership, vacant lot was used to satisfy setback requirements for structure on developed lot, owner installed a swimming pool on vacant lot as an accessory use to the developed lot, owner built a curved driveway that traversed both lots, and merger for zoning purposes did not affect subdivision of lots.

2. Zoning and Planning ⇐1.5

Zoning and subdivision are normally separate and distinct regulatory entities.

3. Zoning and Planning ⇐254

The doctrine of zoning merger deals with zoning limitations and uses, not with title.

4. Zoning and Planning ⇐254

Zoning merger does not cause a nullification of any subdivision that has previously occurred; it merely consolidates lots insofar as the determination of what can be constructed upon that land, or what uses can be made of it, bearing in mind the requirement that one must comply with zoning requirements including area and setback.

5. Zoning and Planning ⇐254

Regarding the effect of zoning merger on contiguous lots, for title purposes, the platted lot lines may remain, but by operation of law a single parcel emerges for zoning purposes.

6. Zoning and Planning ⇐381.5

In applying for a building permit, the applicant must comply with both zoning and subdivision requirements.

7. Zoning and Planning ⇐1.5

Zoning differs from planning; the latter of which embodies the requirements of subdivision.

8. Zoning and Planning ⇐1.5

Zoning dictates what one can build on, or how one may use his property while subdivision or planning determines how the land is divided.

9. Zoning and Planning ⇐254

Doctrine of zoning merger was not a change in common law that was contrary to public policy of the state that required prospective application only from action challenging issuance of a building permit for a lot that merged with a contiguous lot for zoning purposes; doctrine of zoning merger was not a change in the common law, and there was no recognized public policy with which the doctrine interfered.

10. Common Law ⇐11

Courts ⇐100(1)

Changes in the common law are generally applied prospectively, as well as to the case triggering that change in the common law.

11. Zoning and Planning ⇐254

Lots that remained combined, or encumbered by the doctrine of zoning merger at the time of recognition of the doctrine in *Friends of the Ridge v. Baltimore Gas & Elec. Co.*, and since, are clearly subject to its effects.

12. Common Law ⇐11

The Court of Appeals will hesitate to apply a change to the common law in the case before it where such a change would be contrary to a public policy set forth by the General Assembly.

13. Zoning and Planning ⇐321

One of the primary goals of zoning and subdivision controls is to avoid the creation of nonconforming lot, and uses, and to restrict undersized parcels, not oversized parcels.

14. Zoning and Planning ⇐254

Under the doctrine of zoning merger, a common owner of property who constructs a building on one lot which incorporates space from an adjacent lot in order to fulfill setback requirements still maintains two separate lots for title purposes.

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Argued before BELL, C.J., RAKER, CATHELL, BATTAGLIA, GREENE, and JOHN C. ELDRIDGE (Retired, Specially Assigned) and LAWRENCE F. RODOWSKY (Retired, Specially Assigned), JJ.

CATHELL, Judge.

In this case, David H. Remes, petitioner, owner of a home located in Silver Spring, seeks to establish whether directly-adjacent property, which formerly was owned by Jonathan C. Duffie, and was later transferred by Mr. Duffie to Design–Tech Builders, Inc. ("Design–Tech"), respondent, is deemed to have merged for zoning purposes under the common-law

principles described in *Friends of the Ridge v. Baltimore Gas & Elec. Co.*, 352 Md. 645, 724 A.2d 34 (1999).

Under the circumstances of this case, the Court is called upon to determine if Design–Tech was properly granted a building permit by the Montgomery County Division of Permitting Services ("DPS") and whether the Montgomery County Board of Appeals ("the Board" or "the County"), respondent, properly interpreted the relevant provisions of the Montgomery County Code, Subdivision Regulations, and Zoning Ordinance in respect to the issuance of a building permit. Our review shall address the following questions:

1. Did the Montgomery County Board of Appeals correctly rule that two contiguous lots had not undergone a zoning merger and a building permit for one of the lots was, therefore, properly issued?
2. Did the Montgomery County Board of Appeals correctly find that a single-family dwelling proposed to be built on one lot did not exceed the height requirements of the Montgomery County Zoning Ordinance? [1]

We hold that the Board of Appeals incorrectly failed to find that Lot 11 and Lot 12 had merged for zoning purposes. Because we hold that there occurred a zoning merger of Lot 11 and Lot 12 notwithstanding the provisions of Montgomery County Code § 50–8, it is unnecessary to reach a determination whether the Board properly approved a cellar as a non-counting story in calculating the permissible height of the applicant's proposed single-family dwelling.[2]

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1. In Montgomery County height is apparently determined by first establishing the "natural grade."

2. We note however that "natural grade" would include the grade of the land prior to any work in respect to the use that is the subject of an application. In virtually every subdivision of land, the land is prepared and graded long before the lots are conveyed and prior to applications for individual permits. Over time, farming changes the grades that theretofore existed. Grades may have been changed centuries before. In many instances it would be impossible to determine a purely "natural grade." Natural grade as used in most land use regulations, subject to constitutional requirements, normally might mean the grade, however created, that legally exists or was or could be legally created, prior to or at the time of any land preparation for a specific project that is the subject of the application at issue; otherwise no building permits could ever be issued.

I. Facts and Procedural History

This case involves property in the Woodside Park neighborhood of Silver Spring, Maryland, consisting of several parcels created by a 1945 subdivision and located in an R–60 zone which allows single-family detached residential homes. The primary parcels at issue, as originally laid out in the subdivision, are Lot 12, a corner lot with access both to Noyes Drive toward the north and to Fairview Road toward the east, acquired by husband and wife, Ralph J. Duffie and Violette P. Duffie ("elder Duffies") in 1951 on which they constructed their home, and its westerly adjacent neighboring lot, Lot 11, acquired by the elder Duffies in 1954. A semi-circular driveway serving the home on Lot 12 was constructed by the Duffies over and through both Lot 11 and Lot 12. A Montgomery County Department of Permitting Services permit card, found among DPS' records, indicates that a building permit was also issued in June 1959 to the elder Duffies, for construction of a swimming pool [3] on Lot 11 as an accessory use to their home on Lot 12, and a building permit was issued to the Duffies in October 1963, presumably for the construction of an addition to the Lot 12 home. At the time of its original construction around 1951, the Lot 12 home had the required seven-foot [4] side yard setback and twenty-foot rear yard setback. The 1963 addition extended thirteen feet into the twenty-foot rear setback. This construction changed the

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3. There is some evidence in the record that, as of January 2003, the pool may have been demolished.

4. The elder Duffies' home apparently was constructed according to the provisions of Montgomery County's 1950 Zoning Ordinance. The 1954 zoning ordinance established a minimum side yard setback of *eight* feet and maintained the twenty foot rear yard setback requirement. The current zoning ordinance, likewise, requires lots in this zone to have an eight-foot side yard set back and a twenty foot rear yard setback. *See* Montgomery County Zoning Ordinance § 59–C–1.323(b), regarding setback from the adjoining lot.

side and rear yards of Lot 12, resulting in encroachments into the setback requirements on the Lot 11 side of the house.

Following the deaths of Violette Duffie in 1988 and Ralph Duffie in 1999, their son, Jonathan C. Duffie, ("Mr. Duffie"), as Personal Representative of the latter's estate, deeded the property to himself. This "Personal Representative's Deed," dated August 31, 2001, describes the subject property, in relevant part, as follows:

> "Lot numbered eleven (11) and twelve (12) of a resubdivision of original Lot numbered two (2) in Block lettered 'A–2' of the subdivision known as 'Woodside Park', as per plat of said resubdivision recorded in Plat Book 26, folio 1614, in the Land Records of Montgomery County, Maryland.
>
> . . .
>
> "The improvements thereon being known as *8920 Fairview Road.*"

Apparently, up until the 2003 request to separate Lot 11 and Lot 12 for tax assessment purposes, both lots had been assessed as one lot under the single address of 8920 Fairview Road. More important even is that the use of the swimming pool on subdivision Lot 11 was initially described as an accessory structure to the house on Lot 12, and remained in that status at least through the 2001 reassessment. Accordingly, at least in 1959, the relevant governmental officials considered the swimming pool on Lot 11 as an accessory use to the structure on Lot 12. At that time the Montgomery County Zoning Ordinance defined accessory use as "a use of a building, lot, or portion thereof, which is customarily incidental and subordinate to the principal use of the main building or lot." *See* Montgomery County Zoning Ordinance (1958) § 107–2, Definitions. In 1960, and since, the definition was changed to read "building lot, or portion thereof." Even after the 1960 amendment, which deleted the comma between building and lot, the relevant governmental officials continued to treat the swimming pool as an accessory use to the home on Lot 12.

On December 10, 2002, DPS, the agency, one of whose functions is to determine whether a proposed development complies with the zoning ordinance,[5] issued to Design–Tech Builders, Inc., respondent, a building permit for construction of a single-family dwelling on Lot 11, Block A–2, Woodside Park, 1102 Noyes Drive, Silver Spring. At that time Design–Tech was not the owner of the lot. On January 8, 2003, petitioner noted an "Appeal Charging Error in Administrative Action or Determination" to respondent Montgomery County Board of Appeals asserting that DPS had issued erroneously a building permit for 1102 Noyes Drive/8920 Fairview Road for the following reasons:

> "1. The permit authorizes construction of a second building on a single lot, in violation of Code § 59–A–5.2.
>
> 2. The permit authorizes construction of a building that violates the building height limitation of Code § 59–C–1.327(a), in that (a) the height is greater than 35' when measured along the average elevation of the front of the building; and (b) the height exceeds 2½ stories, in that the lowest level is a basement (and therefore a story), not a cellar, as those terms are defined in the Code, § 59–A–2.1."

Mr. Duffie executed a deed dated January 15, 2003, to convey Lot 11 to Design–Tech and this transfer was recorded in the Land Records of Montgomery County on January 30, 2003. Design–Tech intended to build on the property a single-family dwelling, similar to that which it had constructed on at least thirteen other lots in the locality. Following this transfer, the respondents requested that the Maryland Department of Assessments and Taxation reassess the parcel as two separate lots. The lots had been assessed and billed as a single account since at least 1974. The Department then requested that Mr. Duffie and Design–Tech provide appropri-

5. Montgomery County Code § 8–26, "conditions of permit," requires the permit issuing agency to establish that the building complies with zoning regulations.

ate information in order that Lot 11 could be assessed separately.

Petitioner (and his wife) filed a Complaint for Declaratory and Injunctive Relief in the Circuit Court for Montgomery County on January 29, 2003, seeking to declare Lot 11 and Lot 12 merged and seeking also to rescind the sale of Lot 11 from Mr. Duffie to Design–Tech, and enjoin any further sale of Lot 11. This declaratory judgment action was stayed during the pendency of the administrative appeal before the Board of Appeals.

The Board of Appeals held hearings on Mr. Remes' appeal of DPS' issuance of a building permit, in which Design–Tech intervened, on February 26 and March 5, 2003. After hearing the testimony of several witnesses, the Board issued a written opinion on May 29, 2003, denying the administrative appeal and concluding that Lot 11 and Lot 12 had not merged. In its conclusions of law, the Board of Appeals stated, *inter alia:*

"Lot 11 is a properly recorded lot, which is independent of Lot 12. [Petitioner] argues that Lots 11 and 12 merged into one lot, while DPS and Design–Tech argue that Lots 11 and 12 were complementary but independent lots. The Board agrees with DPS and Design–Tech. Although [petitioner] did establish that the Duffies may have intended to treat Lots 11 and 12 as one single lot, the Board does not agree that their intentions are determinative of the issue." [Alterations added.]

The Board then quoted extensively from Design–Tech's Memorandum of Law:

" 'Montgomery County has codified the procedures for the formal combination, assembly or other "merger" of already recorded lots (or unrecorded parcels) in Chapter 50 of the Montgomery County Code. The procedure culminates with the recordation of a new plat describing the newly created, "merged" lots to effectuate any assembly. Lot 11, as shown on the permit plans, is a recorded lot pursuant to a plat recorded in 1945 in Plat Book 26 at Plat Number 1614. Since that time, no additional subdivision or resubdivision

procedures were initiated and no new plat was recorded; therefore, Lot 11 remains a valid subdivided, individual lot with the ability to support a building permit and related residential structure.'

"The Board also believes that [petitioner's] reliance on *Friends of the Ridge v. Balt. Gas & Elec. Company,* 352 Md. 645, 724 A.2d 34 (1999) is misplaced. In *Ridge,* the Court of Appeals held that **for zoning purposes,** adjacent lots held by the same owner could merge by operation of law as a result of the intentions and actions of the owner. But Judge Catthel [sic] stated unequivocally in *Ridge* that subdivision is not zoning, that zoning ordinances do not create lots, and that the construction of structures over more than one parcel would not affect lot lines. He stated first: 'We have often held that subdivision is not zoning.' *Ridge,* at 648, n. 4, 724 A.2d 34. He later states: 'Zoning ordinances . . . **do not create lots** (emphasis in original).' *Ridge,* at 651, 724 A.2d 34. He finally states: '. . . the construction of structures extending over more than one parcel or lot would not, in our view, affect the boundary lines (or lot lines) of the two parcels. They remain in place until a deed of conveyance or a new subdivision . . . is created.' *Ridge,* at 661, 724 A.2d 34.

"Unlike *Ridge,* this is not a zoning variance case, it is a building permit case. The only issue for permit purposes is whether the lot was a properly recorded lot which met the development standards of the zone.[6] Lot 11 is a properly

6. This is not so. Compliance with the requirements of zoning and zoning codes, where they exist, are generally necessary before permits may be issued. The Montgomery County Zoning Ordinance provides as follows:

" **§ 59–A–3.1. Building permit.**

(a) **Building permits generally.** A building permit must be issued by the director before any building or other structure can be erected, moved, structurally altered, added to, or enlarged and before any excavation can be started. A building permit is not required for any building or structure to be used exclusively for purposes of agriculture upon land used exclusively for agriculture. However, a building permit is required for any building or structure to be used for a purpose that is not exclusively agricultural in nature, including spe-

recorded lot, and no plat has ever identified the 'merger' of Lots 11 and 12 into a third larger lot. Therefore, based upon the subdivision plat recorded in the land records of this County, we believe that Lot 11 is a properly recorded independent lot." [Alteration added.] [Bolding original.] [Footnote added.]

The Board of Appeals declined Mr. Remes' request for reconsideration of its decision.

On June 27, 2003, petitioner filed a petition for judicial review in the Circuit Court for Montgomery County of the Board of Appeals' decision. The Montgomery County Planning Board of the Maryland–National Capital Park and Planning Commission ("MNCPPC"), in its capacity as the general oversight body for the physical development of the Capital region, sought to intervene as an additional respondent in this judicial review and the Circuit Court granted this request on December 17, 2003. Following a March 22, 2004, hearing, the Circuit Court issued an order on April 5, 2004, affirming the Board of Appeals' decision. On May 6, 2004, petitioner noted an appeal to the Court of Special Appeals. Before the intermediate appellate court could hear the case, this Court, on its own initiative, issued a writ of certiorari. *Remes v. Montgomery County*, 384 Md. 581, 865 A.2d 589 (2005).

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cial exception uses, even though located on otherwise agricultural land, and (ii) any equestrian facility building or structure intended for use by participants or spectators at an equestrian event.

(b) A building permit may be issued only for proposed work that conforms to the uses and amount of development authorized under this chapter *or other applicable law* and for which the adequacy of public facilities is determined after:

(1) Review of a preliminary plan of subdivision or site plan if required under this chapter or chapter 50 [subdivision regulations]; or

(2) Building permit review if required under chapter 8 [Buildings]."

[Alterations added.] [Emphasis added.]

Moreover, as we explained *supra*, compliance with zoning requirements is a function of the permitting process under the Montgomery County Code. The permit application procedure, is further explained in Chapter 8, Buildings, of the Montgomery County Code. *See infra*.

II. Discussion

[1] Much of the debate in the instant case arises from an issue this Court raised, but did not have need to address, in our *Friends of the Ridge* opinion. Specifically, we there surmised:

"An owner of contiguous parcels who erects a structure in what would ordinarily be a setback of one of the individual parcels might, under this doctrine, *although we do not now decide it*, also cause a combination of lots thus restricting the future alienability of the unbuilt upon parcel because the conveyance of that parcel would cause the property upon which the structure is built to be in violation of the ordinance. Such an owner would also risk being forced to bring that parcel into conformity by removing the structure from the setback."

352 Md. at 658 n. 11, 724 A.2d at 41 n. 11 (emphasis added).

While petitioner operates under the belief that Lot 11 and Lot 12 have merged for zoning purposes, the respondents, and specifically Montgomery County, in oral argument, succinctly summarized their position as follows:

"Montgomery County asks the Court not to extend the *Ridge* doctrine in situations where a developer has borrowed open space from an adjacent lot to satisfy setback requirements on the lot being developed. *Ridge*, in footnote eleven, leaves that issue for another day, and I guess this is the day." [7]

A. Zoning Merger

Petitioner grounds his argument that Lot 11 and Lot 12 have "functionally" merged for zoning purposes pursuant to our decision in *Friends of the Ridge v. Baltimore Gas & Elec.*

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7. We are unaware of a legal rationale for "borrowing open space" from adjacent lots. How do you borrow open space? More importantly, under circumstances such as exist here, how is it "repaid" or returned? If Lot 11 is considered a separate unrestricted lot, from where does the "pay back" come? What would happen is that the open space "borrowed" would never be returned, thus creating an illegal non-conforming use on Lot 12 from the point in time when Lot 11 separated.

Co., 352 Md. 645, 724 A.2d 34 (1999), wherein we recognized the existence of the doctrine of zoning merger in Maryland. We described zoning merger to be the merger for zoning purposes of two or more lots held in common ownership where one lot is used in service to one or more of the other common lots solely to meet zoning requirements. Petitioner argues that *Ridge* is an equitable doctrine that seeks to prevent lots from being broken up in such a way that would create zoning violations. In *Ridge*, respondent Baltimore Gas and Electric Company ("BG&E") sought to increase the capacity of its electric substation. In order to effectuate this expansion, BG&E acquired additional parcels of land contiguous with the parcel on which the existing substation was located and BG&E attempted *to create* a new resubdivision. It was argued that its attempt to create a formal resubdivision was inadequate. We did not address that particular controversy, resolving the case on the assumption that no proper formal resubdivision had occurred.

[2] BG&E sought and was granted a public utility special exception to operate a larger capacity substation. BG&E also applied for a variance from the side yard setback requirements. In considering BG&E's request, the Baltimore County Board of Appeals determined that the variance criteria of the Baltimore County Zoning Ordinance did not apply. In response to the *Ridge* petitioners' concerns with the propriety of BG&E's lot consolidation, we stated that, as to *Ridge*, "[w]e are concerned here only with the applicability of the zoning ordinance's variance provisions and not Baltimore County subdivision regulations." *Id.* at 649–50, 724 A.2d at 36.[8] We sustained the Board of Appeals' conclusion, reasoning that there was no need for BG&E to obtain a variance from the zoning regulations[9] because BG&E's intended use of its three

8. As we have generally stated, zoning and subdivision are normally separate and distinct regulatory entities. *See Ridge*, 352 Md. at 650 n. 4, 724 A.2d at 36 n. 4 ("We often have held that subdivision is not zoning.").

9. But for the land area requirement of the increased substation sought by Baltimore Gas & Electric, there is no indication that the lots acquired by BG&E were undersized or otherwise substandard, in and of themselves.

contiguous parcels as one parcel effectively overcame the conditions triggering the need for a variance. Thus, BG&E was permitted to use the entire parcel for its substation expansion, provided that its proposal met the setback requirements as measured from the exterior property lines of the combined parcel. Specifically, this Court held, "unless the ordinance's language specifically and clearly prohibits it, an owner of contiguous parcels of real property ... is free to combine them into larger and fewer parcels without violating the *zoning* code." *Id.* at 648, 724 A.2d at 35–36.[10] In reaching our resolution, we examined the mechanisms triggering the doctrine of zoning merger in other jurisdictions and observed that merger had been applied to "prohibit[ ] the use of individual substandard parcels if contiguous parcels have been, at any relevant time, in the same ownership and at the time of that ownership, the combined parcel was not substandard." *Id.* at 653, 724 A.2d at 38. We also stated:

> "We see no reason why a doctrine that seeks to prevent the proliferation or use of nonconforming, undersized lots by holding that they have been combined or merged into a larger parcel should not, as far as zoning is concerned, be applied properly to permit the creation, *through the combining by use of a larger parcel from already conforming smaller parcels*, without the necessity of official action or conveyancing."

Id. at 654, 724 A.2d at 38 (emphasis added).

[3] The facts of the instant case, as one may suppose, present issues somewhat differently than the facts in *Ridge*. In *Ridge*, BG&E, as the "developer," sought a conclusion that its three lots *had merged* for zoning purposes so that it might possess a land assemblage of sufficient size, with sufficient setbacks to allow it to enlarge its electricity substation. In

10. When we referred to the "ordinance" in this statement we were referring to the zoning ordinance, not subdivision regulations.

the case at bar, respondents seek the conclusion that Lot 11 and Lot 12 *have not merged,* for varying reasons including that informal lot consolidation, according to respondents, is not available other then by formal plat submission in Montgomery County and so that Mr. Duffie might sell Lot 11 to Design-Tech, the "developer," who seeks to build a single-family dwelling on this piece of land.[11]

We indicated in *Ridge* that merger may be derived from the common owner's intent, as evidenced by "integrat[ing] or utiliz[ing] the contiguous lots in the service of a single structure or project...." *Id.* at 658, 724 A.2d at 40 (alterations added). Intent is to be derived from the facts. *Id.* at 659, 724 A.2d at 41; *see also Rouse-Fairwood Devel. Ltd. Partnership v. Supervisor of Assessments for Prince George's County,* 138 Md.App. 589, 630, 773 A.2d 535, 559 (2001); *Iannucci v. Zoning Bd. of Appeals,* 25 Conn.App. 85, 87, 592 A.2d 970, 971 (1991) (stating that intent of the owner "may be inferred from his conduct with respect to the land and the use which he makes of it"). In reviewing scenarios from varying jurisdictions, we noted that "[s]ome cases discuss automatic merger, but most require that the intent of the owner to merge the parcels be expressed, though little evidence of that intent is required." *Ridge,* 352 Md. at 653, 724 A.2d at 38.

[4, 5] Petitioner contends that, in applying *Ridge* to the instant case, Lot 11 and Lot 12 remain separate for subdivision purposes, but are combined for zoning purposes. This is, indeed, a correct articulation of the thrust of zoning merger: zoning merger does not cause a nullification of any subdivision that has previously occurred. It merely consolidates lots insofar as the determination of what can be constructed upon that land, or what uses can be made of it, bearing in mind the requirement that one must comply with zoning requirements including area, setback, etc. "For title purposes, the platted lot lines may remain, but by operation of law a single parcel

11. The doctrine of zoning merger deals with zoning limitations and uses, not with title.

emerges for zoning purposes." *Ridge,* 352 Md. at 658, 724 A.2d at 34.

[6] Respondents urge that merger in Montgomery County may arise only from a formal replatting. Thus, according to the respondents, other indicia of merger such as common ownership, contiguous parcels, use of one or more lots in service of another, offer no evidentiary import and are of little moment in Montgomery County. They are incorrect. The respondents read this Court's decision in *Ridge* as narrowly focused on the realm of zoning, and to this effect, Montgomery County insists that "the Court limited its ruling to the zoning requirements and did not address the subdivision perspective of creating lots." The respondents' assertion illustrates a point, that we emphasized in *Ridge,* and that bears repeating: zoning merger is not a resubdivision. When zoning merger occurs, the lots remain divided. Thus, zoning merger, in effect, is an adjustment of zoning requirements. It has no effect on subdivision. Title examiners regularly consider aspects of zoning when examining titles in order to be able to indicate to purchasers the uses that can be made of a property. Those uses have no effect on subdivision regulation. One must comply with *both* zoning and subdivision requirements. In the present case, the applicant cannot meet zoning requirements because of the doctrine of zoning merger and thus, while Lot 11 may be sold, it cannot be used, absent zoning variances or other zoning relief, if any.

Simply because an applicant submits documents articulating plan specifications, engineering details, and a plot diagram showing details of the building to be erected[12] does not

12. Montgomery County Code, Chapter 8, Buildings, mandates, in relevant part, the required components for permit application as follows:

"**§ 8-24. Application for permit.**

...

(f) *Plot diagram.* There shall also be filed in duplicate with each application for a building or occupancy permit, a plot plan drawn to scale showing:

(1) The lot upon which the proposed building is to be erected, lot dimensions, lot and block numbers and subdivision name, if any...."

remove the fact that the instant lot may be part of some larger zoning configuration—a configuration that arose through a common owner's use of the property, if not through schematics. Each case must be examined on its own. In the case at bar, there is ample evidence to conclude the elder Duffies intended to use their Lot 11 and Lot 12 as one property for zoning purposes: the pool on Lot 11 violates (or violated) the prescribed setbacks from the street and from Lot 12, unless it was dedicated for zoning purposes to Lot 12, and from the time of its creation was thus an accessory use to the structure or use of Lot 12; the additions to the house on Lot 12 encroach upon that lot's setbacks; the circular driveway traverses both Lot 11 and Lot 12; until very recently the lots were assessed for tax purposes as a single parcel; and the subsequent personal representative's deed conveying Lot 11 and Lot 12 to Mr. Duffie described a single lot comprised of two lots, in that it reads "Lot numbered eleven (11) and twelve (12)." [13] Thus, petitioner maintains that the building permit for the construction of a single-family dwelling on Lot 11 was issued in error and its issuance violates the current relevant provisions of the Montgomery County Zoning Ordinance, which prohibit a second single-family dwelling on a single lot, as follows:

"§ 59–A–5.2. Buildings to be located on lots.

Every building hereafter erected shall be located on a lot, as herein defined; and, except as provided in this chapter, there shall be not more than one single-family dwelling on one lot.

§ 59–A–5.3. Yards and open spaces generally.

No building shall be erected, nor shall any existing building be altered, enlarged, moved or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner not in conformity with the yard, lot, area and building location regulations hereinafter designated for the zone in which such building or open space is located, except as otherwise specifically provided.

No yard or other open space provided about any building for the purpose of complying with the provisions of this chapter shall be considered as a yard or open space for any other building; and no yard or other open space of a building on one lot shall be considered as a yard or open space for a building on any other lot." [14]

Section 8–26 further provides, among the several conditions associated with issuance of a building permit, that the building must meet the zoning requirements. This section states, in relevant part:

"**§ 8–26. Conditions of permit.**

. . .

(g) *Compliance with zoning regulations.* The building or structure must comply with all applicable zoning regulations, including all conditions and development standards attached to a site plan approved under Chapter 59 [subdivision regulations]. The issuance of a permit by the Department for the building or structure does not affect an otherwise applicable zoning regulation." [Alteration added.]

13. Design-Tech urges that the Personal Representative's Deed contains a typographical error in denominating the lots and that the single taxation was simply a matter of convenience. The actuality of either of these possibilities is not dispositive.

14. The elder Duffies acquired Lot 12 in 1951 and Lot 11 in 1954. The 1955 version of this section of the zoning ordinance, adopted originally in December 1953 and effective January 1, 1954, provided as follows:

"**§ 107–4. General regulations.**

. . .

(c) *Area.*

(1) No building shall be erected, nor shall any existing building be altered, enlarged, moved or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner, except in conformity with the yard, lot, area and building location regulations hereinafter designated for the zone in which such building or open space is located, except as otherwise specifically provided.

(2) No yard or other open space provided about any building, for the purpose of complying with the provisions of this chapter, shall be considered as a yard or open space for any other building; and no yard or other open space on one lot shall be considered as a yard or open space for a building on any other lot."

Thus, the only way that the permit for the addition to the structure on Lot 12 (as well as the pool) could have been legally issued was for the two lots to have been considered one parcel for zoning purposes.

The 1958 version of the zoning ordinance, adopted May 1958 and effective June 1958, is slightly altered from its predecessor:

"**§ 107–4. GENERAL REGULATIONS.**

. . .

B. Montgomery County's Zoning Ordinance and Subdivision Regulations

Montgomery County is somewhat unique in the source and exercise of its municipal authority to regulate the use of land. As this Court explained in *Pan American Health Organ. v. Montgomery County,* 338 Md. 214, 657 A.2d 1163 (1995):

> "Montgomery County is a charter county under the Home Rule Amendment. *See* MD. CONST. art. XI–A. Section 5 of Maryland Code (1957, [2001] Repl. Vol., [ ]) Article 25A, known as the Express Powers Act, enumerates the powers that are granted to and conferred upon any county that forms a charter under the provisions of the Home Rule Amendment.
>
> Montgomery County's zoning power, however, derives exclusively from the Regional District Act [enacted by Chapter 448, Acts of 1927].... [Amended] in 1939 and currently codified in Article 28 of the Maryland Code, creates the Regional District, which now encompasses all of Montgomery County and most of Prince George's County. Maryland Code (1957, [1997] Repl. Vol., [2001] Cum. Supp.) Art. 28, § 7–103.

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c. Area.

(1) Yards and open spaces.

(a) No building shall be erected, nor shall any existing building be altered, enlarged, moved or rebuilt, nor shall any open space surrounding any building be encroached upon or reduced in any manner not in conformity with the yard, lot, area, and building location regulations hereinafter designated for the zone in which such building or open space is located, except as otherwise specifically provided.

(b) No yard or other open space provided about any building for the purpose of complying with the provisions of this Ordinance shall be considered as a yard or open space for any other building; and no yard or other open space *of a building* on one lot shall be considered as a yard or open space for a building on any other lot." [Alteration emphasized.]

As indicated, the essential language of this section of the current zoning ordinance is unchanged from that found in the 1958 version. *Compare,* § 107–4(b) (1958), *supra,* with the current Montgomery County Zoning Ordinance § 59–A–5.3 (b), *supra.*

> The Regional District Act establishes two mechanisms for land use planning. The first mechanism is through zoning. Under the Regional District Act, the county councils of Montgomery and Prince George's Counties each serve as 'the district council for that portion of the regional district lying within [the] county.' Art. 28, § 8–101(a). Each district council 'may by ordinance adopt and amend the text of the zoning ordinance and may by resolution or ordinance adopt and amend the map or maps accompanying the zoning ordinance text.' *Id.* § 8–101(b)(2). Thus, the Montgomery County Council has been designated as the District Council and has broad authority to adopt and amend the text of the zoning ordinance to regulate 'the location and uses of buildings and structures.' Art. 28, § 8–101(b)(2)(v).
>
> The second mechanism is known as the mandatory referral process. Under the Regional District Act, the Maryland–National Capital Park and Planning Commission ('M–NCPPC') is empowered to adopt 'a general plan for the physical development of the [Regional] District.' 1939 Maryland Laws ch. 714, § 4, at 1489 (codified as amended at Art. 28, § 7–108). Section 7–112 of Article 28 (the 'mandatory referral provision') provides that proposals for certain public projects shall be referred to the M–NCPPC for nonbinding review."

Pan American Health, 338 Md. at 217–18, 657 A.2d at 1164–65 (footnote omitted) (some alterations added) (some citations omitted). Thus, Montgomery County's zoning authority arises from the Regional District Act, and is regulated by the provisions of the Montgomery County Code.

The respondents offer two primary objections to Mr. Remes' contention that Lot 11 and Lot 12 have merged. First, the respondents urge that lot merger, by any method other than formal plat submission, is unavailable according to the Montgomery County Code.[15] Second, the respondents

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15. Respondents contend that Montgomery County's building code, subdivision regulations, and zoning ordinance each contain language specifically prohibiting the merger conclusion advanced by Mr. Remes. The

maintain that merger is intended to combine substandard, undersized, or nonconforming lots,[16] not to rectify setback encroachments and, because at no time have Lot 11 and Lot 12 been deemed substandard according to any of the iterations of Montgomery County's Zoning Ordinance development standards,[17] the issue before this Court, according to the respondents, thus, is not one of merger, but rather a question of whether the Montgomery County Department of Permitting Services properly issued a building permit for Lot 11. As a corollary to the latter argument, the County notes that County law, dating back at least to the mid 1950's "has prohibited the use of an adjoining lot to satisfy zoning setback require-

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County adds that these articulated prohibitions serve two important purposes: First, the language prevents the County's Department of Permitting Services from bearing the burden of having to consider the circumstances of surrounding lots, as well as the propriety of granting the permit in light of any surrounding lots, when presented with a permit application. Second, persons looking to buy vacant property are not left to perform exhaustive title searches solely to determine if the lot of interest has ever been in common ownership with surrounding lots and there may have been created zoning encumbrances arising from the uses of surrounding lots.

However, we have not been directed to any language in the zoning code that prohibits the applicability of the doctrine of zoning merger. As far as we have been made aware, there is nothing in the Montgomery County Zoning Ordinance that would prohibit the County (or whatever appropriate entity) from amending its zoning code to prohibit zoning merger. Such a prohibition must be done carefully in order that the problem of the creation of non-conforming uses be properly addressed and resolved. Modifications of subdivision regulations, without the modification of zoning ordinances, normally would not suffice. Zoning and subdivision are typically separate concepts.

16. This idea is apparently based on our statement in *Ridge:*

"As far as we can discern, the zoning doctrine of lot merger has never been applied in any jurisdiction to limit the creation of parcels that exceed minimum dimensional requirements; merger has been applied only to prohibit the later creation of undersized parcels."

Id. at 653, 724 A.2d at 38. The attempt to limit merger might, under some circumstances, raise constitutional issues.

17. The current development standards are found in Montgomery County's Zoning Ordinance, at Chapter 59 of the Montgomery County Code. Lot 11 and Lot 12 are located in the R-60 Zone allowing single-family detached residential dwellings and requiring a minimum lot area of at least six thousand square feet.

ments...." Thus, even if the elder Duffies might have imagined that Lot 11 would "absorb" the setback deficiencies by their Lot 11 pool and Lot 12 home additions, the setback requirements delineated in Montgomery County's zoning ordinance prohibit such adjacent lot encumbrance and Lot 11 never *actually* fulfilled this role in service of Lot 12. What respondents fail to acknowledge is that the zoning merger that occurred in this case forestalled the creation of a non-conformity on Lot 12. Without the use of Lot 11 as accessory to Lot 12, the uses of both lots would have violated the zoning ordinance.

Mr. Remes urges that *Ridge* mandates that the owner of Lot 11 and Lot 12 make a choice: either formally combine the parcels so as to enable Lot 11 to satisfy the appropriate setbacks for the structure on Lot 12, or cure the setback deficiencies on Lot 12 and then subdivide the merged Lot 11 and Lot 12. Thus, petitioner argues that the fact that neither Lot 11 nor Lot 12 have ever been deemed undersized is relevant only to the issue of remedy; it has no bearing on whether these are merger-eligible lots. He is correct. Petitioner further maintains that the *Ridge* doctrine applies without regard to the *positive* law of a municipality, *i.e.*, what affirmative steps the local *subdivision* regulations might require in order to recognize a formal zoning merger of lots, because the underlying policy of *Ridge* seeks to protect zoning requirements, requirements which are separate and apart from subdivision regulations. Again he is correct.

[7, 8] As we explained in *Ridge,* zoning differs from planning; the latter of which embodies the requirements of subdivision. We stated:

"Zoning does not create parcels of real property. What zoning ordinances normally do, with respect to residential districts, is establish dimensional minimums, such as minimal lot, parcel or tract size, yard sizes (the distance between buildings and property lines), and the height of structures. In addition, such ordinances specify the number of residential units that may be placed upon the area of a tract or

parcel (density), ancillary requirements such as parking minimums, bathroom minimums, and square footage minimums of buildings. Additionally, zoning ordinances can, to some extent, regulate uses of property, as distinct from dimensional requirements."

Id. at 650–651, 724 A.2d at 37. Effectively, zoning dictates what one can build on, or how one may use his property while subdivision or planning determines how the land is divided. It is entirely possible that subdivision regulations are utilized to create separate lots while, at the same time, zoning principles establish limitations on the uses of lots, limitations that can extend across lot lines.

The respondents vigorously exhort that zoning merger "by operation of law," *see Ridge*, 352 Md. at 658, 724 A.2d at 40, is unavailable in Montgomery County. In arguing that *Ridge* is inapposite, the County states that "[u]nlike Baltimore County, Montgomery County law clearly prohibits subdivision by intent, requiring instead that a property owner submit a plat for recording in the land records to combine or divide land." The County points to the language of current Montgomery County Code § 50–8, found in the chapter governing subdivision of land, which provides as follows:

"§ 50–8. [ ]-**Filing and approval of plats.**

Whenever any subdivision or resubdivision of land is proposed to be made within the district, and before any contract for the sale of or any offer to sell such subdivision is made, or before any development or construction of any building takes place within a subdivision or any part thereof, the subdivider thereof or his agent shall file, in accordance with procedure prescribed in this chapter, a plat of the proposed subdivision with the board for its approval and the approved record plat shall be recorded in the land records of the county, except as provided in section 50–9 [exceptions to platting requirements]." [Alterations added.]

Montgomery County further contends that given its "long history of imposing exacting requirements for subdivision, which includes requirements for combining or dividing parcels,

the doctrine of merger stands diametrically opposed to the clear dictates of County law." According to the County, then, the owner's intent—and presumably the owner's actual use—plays no part in a finding of merger (or resubdivision) unless there has been a formal adjudication by the County's land use regulatory authority.

In a related argument Design–Tech suggests that the elder Mr. Duffie could not have intended to merge the lots when the common law of this State did not formally recognize zoning merger until such time as the filing of *Ridge* on February 11, 1999. Specifically, Design–Tech states in a footnote:

"Even if this Court were to extend *Ridge* in favor of [petitioner's] position in this case, it would be inappropriate to give such a ruling a retroactive application to cover the actions taken by the owner of Lot 11 and Lot 12 in the 1950's and 1960's. *See, e.g. Julian v. Christopher*, 320 Md. 1, 10–11, 575 A.2d 735, 739–40 (1990); *Kelley v. R.G. Indus., Inc.*, 304 Md. 124, 140, 497 A.2d 1143, 1150–51 (1985) (changes to common law are generally restricted to prospective application)." [Alteration added.]

In essence, Design–Tech seems to be arguing that zoning merger, since it is based, in part, on the owner's intent, must run with the person, and not with the land; alternatively, Design–Tech may be arguing for zoning merger to come into Montgomery County, but only *after* Design–Tech buys Lot 11 and builds its house, *i.e., prospectively.*

The facts indicate that the elder Mr. Duffie died on August 16, 1999, and Mr. Duffie (the son) did not convey Lot 11 and Lot 12 to himself until August 31, 2001. There is no indication that, in those intervening two years, there were any changes on Lot 11 or Lot 12 that altered or ameliorated the encroachments or that removed one lot from the service of the other. Thus, technically, there was a period, after *Ridge,* and before the elder Mr. Duffie's death, during which the elder Mr. Duffie held both lots. Also, for two years following his death the lots were not yet deeded (by personal representative's deed) to Mr. Duffie (the son). During those two years, the

encroachments (*i.e.*, the use of Lot 11 in service of the needed Lot 12 setbacks) remained.

In addition, the cases cited by Design–Tech do not support the position of prospective application of the common law. *Julian v. Christopher*, 320 Md. 1, 10–11, 575 A.2d 735, 739–40 (1990), was a case dealing with contractual restrictions on the alienability of leasehold interests in which this Court stated:

> "In appropriate cases, courts may 'in the interest of justice' give their decisions only prospective effect. Contracts are drafted based on what the law is; to upset such transactions even for the purpose of improving the law could be grossly unfair. Overruling prospectively is particularly appropriate when we are dealing with decisions involving contract law. The courts must protect an individual's right to rely on existing law when contracting. Ordinarily decisions which change the common law apply prospectively, as well as to the litigants before the court."

Design–Tech also cited this Court's opinion in *Kelley v. R.G. Indus., Inc.*, 304 Md. 124, 161, 497 A.2d 1143, 1161–62 (1985) (a products liability case prompting changes to Maryland common law tort principles in respect to gun manufacturers' offering of "Saturday Night Specials"). We stated:

> "One final matter warrants discussion, namely the effective date of the modification in Maryland common law tort principles which is set forth in Part III of this opinion. Ordinarily in a case such as this, which changes common law principles applicable to civil actions sounding in tort, we would apply the change to the case before us and prospectively to all such causes of action accruing after the date of the case before us."

Kelley, 304 Md. at 161, 497 A.2d at 1161–62 (citation omitted). In *Kelley*, this Court determined that, based upon the particular circumstances in that case in respect to the Court's recognition that the wrongful conduct was related to the gun manufacturers' *marketing* of their product, the changes to the common law of tort effected by *Kelley* would not apply to all causes of action arising from a gunshot wound inflicted by a "Saturday Night Special," but would apply to the *Kelley* plaintiff as well as to other causes of action accruing after the date of the *Kelley* mandate. *Julian* and *Kelley* were a contract case and a products liability case, respectively; they do not apply to the facts of the instant case and do not support Design–Tech's position.

[9–12] Generally, changes in the common law are applied prospectively, as well as to the case triggering that change in the common law. In *Boblitz v. Boblitz*, 296 Md. 242, 462 A.2d 506 (1983), this Court abrogated the common law of interspousal immunity and applied the abrogation to *Boblitz* as well as to all such cases accruing after the filing of the *Boblitz* opinion. *Id.* at 275, 462 A.2d at 522. *But see Williams v. State*, 292 Md. 201, 217, 438 A.2d 1301, 1309 (1981) (noting that "particularly in criminal cases, changes in the common law ordinarily should have only prospective effect when considerations of fairness are present"). The Court will hesitate to apply a change to the common law in the case before it where such a change would be contrary to a public policy set forth by the General Assembly. *See Harrison v. Montgomery County Bd. of Educ.*, 295 Md. 442, 460, 456 A.2d 894, 903 (1983) (stating that the Court "has been particularly reluctant to alter a common law rule in the face of indications that to do so would be contrary to the public policy of the State"). *See also Murphy v. Baltimore Gas & Elec. Co.*, 290 Md. 186, 428 A.2d 459 (1981), overruled on other grounds by *Baltimore Gas & Elec. Co. v. Flippo*, 348 Md. 680, 705 A.2d 1144 (1998); *Condore v. Prince George's County*, 289 Md. 516, 532, 425 A.2d 1011, 1019 (1981). We perceive no such declared public policy that should prevent us from finding a zoning merger where two lots held in common ownership were clearly used in the service of one another in order to satisfy zoning requirements and subsequent to *Ridge* remained in that category.[18]

18. We do not need to, nor do we now address, the situation where lots may have been combined in the past, but legally separated before our decision in *Ridge*. If that were the present case, which it is not, respondents' argument *might be* more persuasive. However, lots that

Moreover, as we perceive it, *Ridge* was a statement of the common law, not a change. The issue had not theretofore arisen, or been specified or articulated in our prior cases. *Ridge* was merely the first case to determine that zoning merger existed in Maryland.

Montgomery County goes on to state that "[b]y definition, subdivision includes both the division of land into one or more lots and the assembly of one or more lots or parcels into a larger one. [Montgomery County] Code § 50–1. [According to the County, t]o combine lots in Montgomery County, a property owner must prepare and submit a plat showing the resubdivision. When the Planning Board approves it, the plat is then recorded in the County land records. [Montgomery County] Code § 50-8" (alterations added). The terms "subdivision" and "resubdivision" are defined in the current Montgomery County Subdivision Regulations as follows:

"**§ 50–1. Definitions.**

. . .

Resubdivision: A change in any lot line of a recorded lot or parcel of land. Resubdivision includes the assembly of recorded lots or parts of lots. A resubdivision is a subdivision.

. . .

Subdivision: The division or assemblage of a lot, tract or parcel of land into one (1) or more lots, plots, sites, tracts, parcels or other divisions for the purpose, whether immediate or future, of sale or building development and, when appropriate to the context, relating to the process of subdividing or to the land or area subdivided; provided, that the definition of subdivision shall not include a bona fide division or partition of exclusively agricultural land not for development purposes. A resubdivision is a subdivision."

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remained combined, or encumbered by the doctrine of zoning merger at the time of *Ridge*, and since, are clearly subject to its effects.

The respondents endeavor to distinguish the facts of the case *sub judice* from the circumstances in *Friends of the Ridge*, observing that Baltimore County, the locus of *Ridge*, had no statute or ordinance specifically prohibiting that merger.[19] The text of the relevant provisions of the Baltimore County Code are set out in the margin. We fail to perceive the degree of distinction between the Baltimore County and the Montgomery County provisions urged on the Court by respondents. Both, regardless of labels, address division of parcels and combining of parcels. Thus, the crux of the respondents' position is that no merger "by operation of law" occurred because the common owner of Lot 11 and Lot 12 did not undertake a formal "anti-subdivision" process to consolidate the lots as contemplated by Montgomery County's subdivision

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19. The Baltimore County Code, Planning, Zoning and Subdivision Control Article, Development Title, includes the following relevant subdivision provisions:

"**§ 32–4–101. Definitions.**

. . .

(p) *Development.* 'Development' means:

. . .

(3) The combination of any two or more lots, tracts, or parcels of property for any purpose;

. . .

(yy) *Subdivision.* 'Subdivision' means:

(1) The division of property into two or more lots; or

(2) The combination of lots, parcels, tracts, or other units of property previously divided for the purpose, whether immediate or future, of sale, rental, or building development.

"**§ 32–4–108. Prohibition on Transfer of Land.**

(a) *In general.* A person may not convey a lot, parcel, or tract of a subdivision unless a plat, if required, has been recorded in accordance with this title and the plat is effective at the time of the conveyance.

. . .

"**§ 32–4–201. In General.**

Except as provided in §§ 32–4–105 [Agricultural exemptions], 32–4–106 [Limited exemptions], and 32–4–107 [Waivers] of this title, an approved Development Plan is required for a development and a plat is required for a subdivision. [Alterations added.]

. . .

"**§ 32–4–271. Required.**

(a) *In general.* The applicant shall prepare a plat in accordance with the approved Development Plan for any subdivision."

regulations.[20] Simply because a formal combination of Lot 11 and Lot 12 did not occur as contemplated by the Montgomery County Code, however, does not lead us to the necessary conclusion that these lots for zoning limitations are not subject to the doctrine of zoning merger. The issue is not subdivision combination but zoning merger.

The respondents assert that the mandatory language of Montgomery County Code § 50–8 ("the subdivider thereof or his agent shall file ....") precludes any use of the land that is inconsistent with the filed subdivision plat. As we have indicated, however, zoning concerns one's use of land, not how it is formally divided. The MNCPPC points to the intermediate appellate court's decision in *Lee v. Maryland National Capital Park and Planning Comm'n*, 107 Md.App. 486, 668 A.2d 980 (1995), an opinion which pre-dates this Court's *Ridge* opinion, as dispositive of the availability of merger by operation of law in Montgomery County. In *Lee* the MNCPPC approved "the resubdivision [*i.e.*, a *subsequent* subdivision] of two lots in the Glen Hills area into six lots." *Id.* at 488–89, 668 A.2d at 982 (alteration added).[21] Following a petition for judicial review in the Circuit Court for Montgomery County brought by neighboring landowners who argued that the resubdivision was not consistent with the rural character of the neighborhood, the circuit court affirmed. The neighbors appealed and the intermediate appellate court reversed, holding that although the MNCPPC *considered* the seven statutory subdivision criteria found in Montgomery County Code § 50–29(b)(2),[22] there was not substantial evidence that the Board found that the proposed subdivision *complied* with all seven criteria. *Lee*, 107 Md.App. at 495, 668 A.2d at 985. The Court of Special Appeals explained:

> "Compliance with the criteria ensures that the lots will be of the same character as existing lots in the neighborhood, block, or subdivision. To prove that the seven criteria have been met, lots need not be cookie cutter matches to existing lots in the neighborhood. The correlation, however, between area, size, shape, street frontage, alignment, width, and suitability for residential use of the proposed resubdivided lots and existing lots must be high in order to meet the requirements of section 50–29."

Id. Lee is inapposite. As we have emphasized repeatedly, merger of the type here present is a function of, and limited to, zoning. To find zoning merger in the case *sub judice* affects no change to the decades-long status quo of the formal dimensions of Lot 11 and Lot 12; it merely affects the uses to which Lot 11 and Lot 12 may be put.

The County's position specifically, and the other respondents' position generally, suggests their belief that those

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20. Montgomery County also questions its ability to prosecute and/or remedy any "unapproved" merger of Lot 11 and Lot 12 and subsequent construction undertaken by the property's owner decades ago, noting that Md.Code (1973, 1998 Repl. Vol.), § 5–114 of the Courts and Judicial Procedure Article sets a statute of limitations as follows:

> **"§ 5–114. Setback line restrictions.**
>
> ...
>
> (b) *In general.* ...
>
> (2) A governmental entity may not initiate an action or proceeding arising out of a failure of a building or structure to comply with a setback line restriction more than 3 years after the date on which the violation first occurred if the building or structure was constructed or reconstructed:
>
> (i) In compliance with an otherwise valid building permit, except that the building permit wrongfully permitted the building or structure to violate a setback line restriction; or
>
> (ii) Under a valid building permit, and the building or structure failed to comply with a setback line restriction accurately reflected in the permit."

21. This was the opposite of combining two parcels into a larger parcel through zoning merger.

22. These seven subdivision criteria are as follows:

> **"§ 50–29. Lot design.**
>
> ...
>
> (b) Additional requirements for residential lots.
>
> ...
>
> (2) *Resubdivision.* Lots on a plat for the resubdivision of any lot, tract or other parcel of land that is a part of an existing subdivision previously recorded in a plat book shall be of the same character as to [1] street frontage, [2] alignment, [3] size, [4] shape, [5] width, [6] area and [7] suitability for residential use as other lots within the existing block, neighborhood or subdivision." [Alterations added.]

actions which are not legislated do not happen. Montgomery County's having legislated a formal process for land subdivision does not necessarily mean that such results, *i.e.*, a limitation on uses, might not otherwise come about. We stated in *Ridge:* "We shall hold that a landowner who clearly desires to combine or merge several parcels or lots of land into one larger parcel may do so. One way he or she may do so is to integrate or utilize the contiguous lots in the service of a single structure or project...." [23] *Id.* at 658, 724 A.2d at 40. That is precisely what the elder Duffies did when, in making additions to their home and in constructing a pool on a lot adjacent to their home, they employed Lot 11 in the service of Lot 12 for zoning purposes. Their *use* of Lot 11 and Lot 12 in concert is consistent with zoning merger. That they did not undertake to submit a formal replatting to the County [24] does not vitiate the manner in which they *used* their property.

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23. For instance, there is no indication that the elder Duffies constructed a swimming pool on Lot 11, the contiguous parcel to Lot 12 on which their family home was located, to serve other than the elder Duffies' home located on Lot 12. Moreover, the circular driveway transversed both lots.

24. The 1955 Montgomery County Subdivision Regulations contain the following provision:

"**§ 106–2. Procedure for preparation and filing of plats.**

(a) Whenever any subdivision of land is proposed to be made, and before any contract for the sale of, or any offer to sell such subdivision or any part thereof is made, the subdivider thereof or his agent shall file a plat of the proposed subdivision with the commission for its approval. Such plat and all procedure relating thereto shall, in all respects, be in full compliance with the provisions of the regulations set out in this chapter.

(b) The subdivider shall prepare a preliminary subdivision plat...." [Footnote omitted.]

The 1965 Montgomery County Subdivision Regulations reflect changes made to the regulations in 1961. Specifically, the words "or resubdivision" were added as follows:

"**§ 104–7. Filing and recording of plats required.**

Whenever any subdivision *or resubdivision* of land is proposed to be made within the district, and before any contract for the sale of or any offer to sell such subdivision is made, or before any development or construction of any building take place within a subdivision or any part thereof, the subdivider thereof or his agent shall file, in accordance with procedure described in this chapter, a plat of the proposed subdivision with the board for its approval and the approved record plat shall be recorded in the land records of the county...." [Alteration emphasized.] [Footnote omitted.]

"Resubdivision" is not found among the definitions in either the 1955 or the 1965 subdivision regulations.

1. What becomes of Lot 12 in the absence of Lot 11?

[13] Another question that would be left wanting, should this Court approve the agencies' approval of a building permit issued for Lot 11, is what becomes of Lot 12? We begin by noting that one of the primary goals of zoning and subdivision controls is to avoid the creation of nonconforming lots (and uses) and "to restrict undersize parcels, not oversized parcels." *Ridge,* 352 Md. at 653, 724 A.2d at 34; *see Fred McDowell, Inc. v. Wall Twp. Bd. of Adjustment,* 334 N.J.Super. 201, 224, 757 A.2d 822, 835 (App.Div.2000) (invoking *Loechner v. Campoli,* 49 N.J. 504, 231 A.2d 553 (1967), New Jersey's seminal zoning merger case which we discussed in *Ridge,* and stating "merger is employed to further the goal of bringing (or keeping) nonconforming lots into conformity with the zoning ordinance and thereby serving the overall goals of the master plan"). Thus, based on the setback encroachments existing as a result of the structures on Lot 12, the proposed construction on Lot 11 would make Lot 12, if in separate ownership, a new and illegal nonconforming lot, unless, under the doctrine of zoning merger, the uses of Lot 11 are appropriately limited.

Montgomery County notes that a single building may not extend across lot lines, even internal lot lines.[25] It is not

25. The subdivision regulations provide, in relevant part:

"**§ 50–20. Limitations on issuance of building permits.**

...

(b) A building permit may not be approved for the construction of a dwelling or other structure, except those strictly for agricultural use, which is located on more than one (1) lot, *which crosses a lot line,* which is located on the unplatted remainder of a resubdivided lot, or which is located on an outlot...." [Emphasis added.]

The constitutionality of this provision in the Montgomery County Code is not before us.

In the instant case, the structure on Lot 12 does not traverse the lot line delineating Lot 11 and Lot 12, but rather the structure on Lot 12 extends so as to fail to have sufficient setbacks from Lot 11. We note

disputed that Lot 11, with an area of eight thousand square feet, if considered in a vacuum, exceeds the minimum six thousand square feet lot size required in the R–60 zone, and satisfies the setback requirements. On the other hand, Lot 12, while of sufficient area for the zone,[26] does not, *by itself*, without the use of Lot 11, possess the required side yard and rear yard setbacks on account of the configuration of the structures constructed upon it. To allow Lot 11 to be used, as proposed, thus creates an illegal nonconformance as to Lot 12 and, by implication, grants an improper variance as to the rear yard setback for Lot 12.[27] Should this Court permit Lot 11 to be so used and a home constructed thereon, what becomes of Lot 12's ability to comply with the existing rear yard and side yard setback requirements? Such action effectively waives the zoning requirements as to Lot 12.

The County, apparently recognizing that if its position were to be accepted by this Court it will have permitted the creation of an illegal nonconforming use, seeks to relieve the Court of concern, assuring that "this Court need [ ][not] apply *Ridge* to prevent a nonconforming use that might result from an owner treating merged lots as separate.... Based on the setback requirements and the longstanding rejection of attempts to treat adjoining lots as one without formal resubdivision, the encroachment of the [elder Duffies'] addition into the setbacks remains a matter for DPS to handle through enforcement or when the owner of that lot seeks an additional building permit in the future" [28] (alterations added).

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that a building that goes right to the lot line is the same thing as crossing the lot line for zoning purposes. That is, the setback requirements are still violated.

26. Lot 12 measures 11,182 square feet-well in excess of the R–60 zone's required 6,000 square foot lot size.

27. We do not comment as to whether variance procedures can be used to obtain a variance for Lot 12.

28. The County has already expressed, however, its doubt about its ability to prosecute a code violation that occurred more than three years ago. *See* Md. Code (1973, 1998 Repl. Vol.), § 5–114 of the Courts and Judicial Procedure Article, addressing setback line restrictions.

The Court must consider, however, the possibility that a Montgomery County landowner of multiple lots might utilize a "parcel A" to assuage zoning violations on an adjacent companion (and thus, nonconforming) "parcel B," and later benefit from the sale of "parcel A" without correcting conditions causing the nonconformance of "parcel B." Moreover, in relying on merger arising only from a formal resubdivision platting, a common owner might "fly under the radar" by simply refraining from submitting a new resubdivision plat. That is, the owner would assert zoning merger for purposes of complying with zoning requirements, but two lots for purposes of subdivision and sale (free of zoning limitations). In this way, the common owner could flip-flop between his or her adjacent parcels, thwarting the intent of the land development regulations and, perhaps more egregiously, skirting Montgomery County's "exacting requirements for subdivision." The owner would have the benefit of avoiding zoning violations by treating the parcels as merged for zoning purposes, but later seek benefit from the sale of two separate valuable parcels of land. That is exactly what is occurring in the instant case.

2. Title to Lot 11 and Lot 12

Mr. Duffie acquired title to a lot composed of Lots 11 and 12 from his father's estate. At that time zoning merger had already occurred. The respondents contend that, should we find zoning merger of Lot 11 and Lot 12, our decision will wreak havoc on the title search procedures that a landowner who seeks to buy property must undertake. That is, the respondents urge that there must be an exhaustive title search in order to determine if two or more lots were ever held in common ownership and may have been used in a manner suggesting zoning merger. Such a practice, according to respondents, can lead to clouds on title and undermine zoning and subdivision laws. As stated by the MNCPPC, "every situation involving the application of the merger doctrine for

subdivision matters could potentially involve a factual dispute over whether a prior or current owner ever 'desired' [*i.e.*, intended] to merge the lots" (alteration added).

[14] As we have indicated previously, a common owner of property who constructs a building on one lot which incorporates space from an adjacent lot in order to fulfill setback requirements still maintains two separate lots for title purposes. *See Ridge*, 352 Md. at 658, 724 A.2d at 34. *See also Rouse–Fairwood Devel. Ltd. Partnership v. Supervisor of Assessments for Prince George's County*, 138 Md.App. at 630, 773 A.2d at 559 (stating that this Court, in *Ridge* "observed that lots do not remain separate merely because they appear separately on a subdivision plan").

Surveys are available to answer many of the title questions that might arise. Surveys routinely disclose encroachments. Surveys can as easily determine setback violations on abutting properties. The records of the administrative entities are public records and thus, available; land records of adjacent lots are also available (they were clearly available in the present case—they are, for the most part, in the record); title insurance is likewise available in most instances; actions in ejectment, quia timet [29] and the like are available. If disputes arising from encroachments or setback violations lead to claims of adverse possession or an action for ejectment, the parties generally seek judicial review in an effort to remove any such clouds on title. The same can be done via declaratory judgment actions in respect to the factual applicability of zoning merger emanating from adjacent properties. The task, for competent title attorneys, is not insurmountable.

It would not be necessary as respondents speculate to trace title to an indefinite time for, as we have indicated, there are

29. "A legal doctrine that allows a person to seek equitable relief from future probable harm to a specific right or interest." BLACK'S LAW DICTIONARY 1281 (8th ed. 2004).

"[A]nd again, that equity will not allow a title, otherwise clear, to be clouded by a claim which cannot be enforced in law or equity." *Holland v. City of Baltimore*, 11 Md. 186, 197 (1857) (alteration added).

avenues which may be used to resolve the infrequent title questions that may arise. As petitioner suggests, DPS might revise its permit application to determine whether the subject lot is presently, or was formerly, held in common ownership with a contiguous lot. In the instant case, Lot 11 and Lot 12 apparently were still held by Mr. Duffie when Design–Tech obtained its building permit.[30]

III. Conclusion

We find that Lot 11 and Lot 12 are merged for zoning purposes. Accordingly, we reverse the Board of Appeals' rejection of petitioner's contention that the building permit for Lot 11 was erroneously granted. Lot 11 and Lot 12 were under common ownership, and at the time of that common ownership, they were used in service to one another. The permit should not have issued, absent further zoning action. In order for Lot 11 to be utilized separate and apart from Lot 12, there would have to be a resubdivision of the combined lot, creating two lots both of which meet the requirements of both the zoning ordinance and the subdivision regulations. In that process it may well be necessary to seek zoning variances as to setbacks, or to remove the setback encroachments of the structure on Lot 12.

As we have found that Lot 11 and Lot 12 have merged for zoning purposes, we do not resolve the issue of whether the base level of the single-family home proposed by Design–Tech was a cellar or a basement. *See supra* note 1.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY REVERSED. CASE REMANDED TO THAT COURT WITH DIRECTIONS TO REVERSE THE DECISION OF THE BOARD OF APPEALS AND DIRECT THE BOARD TO ISSUE AN ORDER CONSIS-

30. Design–Tech obtained a building permit in December 2002. The deed from Mr. Duffie to Design–Tech was executed in January 2003. At all times relevant hereto Design–Tech needed to have looked no farther than Mr. Duffie, its immediate predecessor in title, in order to assess the potential that zoning merger might have occurred.

TENT WITH OUR OPINION. COSTS TO PAID BY THE RESPONDENTS.

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874 A.2d 897

ATTORNEY GRIEVANCE COMMISSION

v.

Norman Joseph LEE, III.

Misc. Docket AG No. 8, Sept. Term, 2004.

Court of Appeals of Maryland.

May 12, 2005.

Background: Attorney Grievance Commission filed petition for disciplinary action against attorney. The Circuit Court for Baltimore County, Vicki Ballou–Watts, J., found violations of rules of professional conduct, and attorney filed exceptions.

Holdings: The Court of Appeals, Harrell, J., held that:

(1) complainant's statements at peer review stage of proceedings were absolutely confidential and privileged;

(2) prison mail records discovered after evidentiary hearing amounted to new material evidence justifying remand.

Matter remanded.

Raker, J., concurred with opinion.

1. Attorney and Client ⇐47.1
Witnesses ⇐184(1)

Complainant's statements at peer review stage of attorney grievance proceeding were absolutely confidential and privileged and were unavailable to impeach complainant's testimony at subsequent evidentiary hearing. Md.Rule 16–723(a).

2. Attorney and Client ⇐47.1
Witnesses ⇐184(1)

All statements made at a Peer Review Panel proceeding, no matter who the declarant is, remain confidential and privileged and thus unavailable for use to impeach the declarant as a witness at a subsequent evidentiary hearing in the attorney disciplinary process. Md.Rule 16–723(a).

9/25/06

RE: PETITION FOR SPECIAL HEARING * BEFORE THE COUNTY
2317 Turkey Point Road; S/side Turkey Point
Rd, 700' W c/line Rockaway Beach Road * BOARD OF APPEALS
15th Election & 6th Councilmanic Districts
Legal Owner(s): Jeffrey A. Creamer * FOR
Petitioner(s)
* BALTIMORE COUNTY

* 06-044-SPH

* * * * * * * * * *

RECEIVED
SEP 25 2006
BALTIMORE COUNTY
BOARD OF APPEALS

RE: PETITION FOR SPECIAL HEARING * BEFORE THE COUNTY
2315 Turkey Point Road; S/side Turkey Point
Rd, 750' W c/line Rockaway Beach Road * BOARD OF APPEALS
15th Election & 6th Councilmanic Districts
Legal Owner(s): Carole A. Creamer * FOR
Petitioner(s)
* BALTIMORE COUNTY

* 06-045-SPH

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

MEMORANDUM OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY

These companion special hearing cases come to the County Board of Appeals (CBA) for resolution of a legal issue. Our office is interested in this issue, which is one of first impression.

It deals with the interrelationship of the traditional laws governing undersized lots in the D.R. Zones and the more recent law governing growth management in the Back River Neck and Bowleys Quarters areas. In essence, we agree with the attached Deputy Zoning Commissioner's November 29, 2005 opinion that the Back River Growth Management law does not preempt or provide an exclusion from the traditional law.

Remarkably, the present cases come in as a sequel to previous CBA Case No. 04-137, which centered on approval of an undersized lot under BCZR 1B02.3.C and 304. The Deputy Zoning Commissioner (DZC) there denied approval in the attached Opinion dated May 10, 2004, and Petitioners appealed. Prior to the CBA hearing, our office filed the attached memorandum on March 22, 2005. We pointed out that variances were required for the development of the subject undersized lots acquired by Petitioners. We also observed that Petitioners' attempt to split ownership between husband and wife is a façade and that it is necessary to consider the assembled lots as one property. Accordingly, we opposed the approval of the undersized lot at issue.

When the case came on for hearing in 2005, Petitioners made a new claim. They asserted that their lots are not undersized based on the "undersized lot" definition in the more recent growth management law governing the Back River Neck area. They argued that the new law controls and preempts existing county law. In light of this argument, the CBA granted a continuance to allow Petitioners to file a Petition for Special Hearing to bring this legal issue to the attention of the Deputy Zoning Commissioner.

There followed the filing of the petitions in the present cases, numbered 06-044-SPH and 06-045-SPH. These are cognizable under BCZR 500.7 and are equivalent to requests for declaratory judgment. See Antwerpen v. Baltimore County 163 Md. App. 194, 209 (2005). The DZC conducted an evidentiary hearing and wrote the thorough opinion dated November 29, 2005. This is the subject of the present appeal.

The two appeals are consolidated and scheduled for hearing on October 11, 2006. First of all, our office reiterates the position taken in Case No. 04-137. Secondly, our

discussion of the new issues raised by special hearing is set forth here. The bottom line is that each proposed lot is subject to the special regulations applicable to small lots under BCZR 1B02.3; that each proposed lot is undersized because deficient as to front lot width under the Small Lot Table; that each proposed lot would require a variance in order to be approved, but no such application has been filed; and that, in any event, the existing two lots have merged, so that an application to resubdivide would also be required.

In the new cases, Petitioners claim that the traditional application of the small lot table under BCZR 1B02.3 has no application to their property because the separate Back River Neck Growth Management law codified in BCZR 4A03 is exclusive and effectively exempts their adjoining lots. We disagree.

To begin with, each of their two 50-foot lots is deficient for failure to meet the 70-foot minimum lot width requirement in the D.R. 3.5 Zone delineated in the BCZR 1B02.3.C table. It is noteworthy that Bill 100, 1970 established the various special regulations and area standards for existing lots in the D.R. Zones.

Typically, Petitioners seeking to deviate from these standards have filed petitions for variances. The only exception to this rule would be for property owners who owned just a single substandard lot at the time of enactment of the special regulations for existing lots. In that event, a separate law on undersized lots codified in BCZR 304 has allowed approval of a single substandard lot upon satisfaction of detailed standards. One of the key standards is that the Petitioner does not own sufficient adjoining land to conform to the regulations. We explained this in detail in our prior (attached) memorandum.

Of course, Petitioners here do own sufficient adjoining land to meet the regulations by building one dwelling. However, they desire to build two dwellings, one on each undersized lot. In order to justify this request, they invoke the law establishing the "Growth Management Plan for the Bowleys Quarters and Back River Neck Areas," the "GMP Law."

The County Council first enacted the GMP Law in Bill 64-99 and recodified it as BCZR 4A03 in Bill 28-2001. Petitioners emphasize the definition of undersized lot in BCZR 4A03.1 refers to lot "area, height or setback" but not to lot "width". They argue, therefore, that the BCZR 4A03.4 restrictions on undersized lots do not relate to width deficiencies. In other words, they assert a deficiency as to width under BCZR 1B02.3.C is irrelevant because the newer GMP Law does not concern itself with lot width.

The Deputy Zoning Commissioner correctly and thoroughly explained that the GMP Law is an additional vehicle to control growth in the Bowleys Quarters and Back River Neck area. In this context, it supplements and does not supplant the zoning restrictions applicable countywide to D.R. Zones and other zones. Bill 64-99 was never intended to be a vehicle to avoid or circumvent other relevant laws.

Among other things, the DZC recited the prefatory clauses to Bill 64-99, which include a reference to the Planning Board Report dated June 3, 1999. This Report, a Protestant's Exhibit, recommends provision of public sewer service to recorded unimproved undersized lots, subject to certain conditions. The following condition 2.C.1 is particularly relevant:

"II. SEWER SERVICE

"C. Serve recorded unimproved *undersized* lots, or tracts of undersized lots in single ownership, in all DR zones, subject to Sec. 304 and Sec. 307 of the BCZR.

1. Combine lots in common ownership to meet minimum requirements for lot area and lot width (Sec. 1B02.3). (Minimum lot area and width are, respectively, 10,000 square feet and 70 feet in DR 3.5, and 6,000 square feet and 55 feet in DR 5.5; and"

Furthermore, the reference to "area" in the BCZR 4A03 definition of undersized lot is itself broad enough to include the dimension of width. Indeed, a width standard is one type of area standard. For example, the BCZR 307.1 allowance of variances from "height and area regulations" has traditionally been interpreted to allow variances from width standards. No one has ever argued that BCZR 307.1 excludes variances from width standards just because the word "width" is not mentioned explicitly. Rather, the word "area" has reasonably been interpreted to include "width."

For all these reasons, the Petitioners' property is subject to the BCZR 1B02.3 special regulations as to existing lots and to the standards delineated in the 1B02.3.C Small Lot Table. Therefore, the DZC correctly denied the Petition for Special Hearing.

The DZC also correctly ruled that the lots at 2315 and 2317 Turkey Point Road have merged by virtue of the shed, swimming pool, fence, bulkhead, and pier associated with both lots. In this context, he properly applied the merger doctrine in accordance with Remes v. Montgomery County 387 Md. 52 (2005). As a result, there is currently as a matter of zoning law a single lot at the two addresses.

The bottom line is that in order to develop two lots on this property, the Petitioners would have to seek variances for each proposed new lot as well as approval to resubdivide the existing single merged lot. They have not done so.

Their present petitions, properly understood, seek to circumvent the clear legal requirements. The CBA should emphatically deny them.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S. Demilio/RMW

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 25th day of September, 2006, a copy of the foregoing Memorandum of People's Counsel for Baltimore County was mailed to Francis X. Borgerding, Jr, Esquire, 409 Washington Avenue, St 600, Towson, MD, 21204, and to C. William Clark, Esquire, Nolan, Plumhoff & Williams, Chtd., 502 Washington Avenue, Suite 700, Towson, MD 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

September 25, 2006

RECEIVED
SEP 25 2006
BALTIMORE COUNTY
BOARD OF APPEALS

Kathleen Bianco, Administrator
County Board of Appeals
of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

Re: In the Matter of the: Jeffrey & Carole Creamer
Case No.: 06-044-SPH & 06-045-SPH

Dear Ms. Bianco:

Enclosed please find Memorandum of People's Counsel for Baltimore County with attachments along with three copies of such for filing with regard the above-referenced case.

Thank you for your consideration.

Sincerely,

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ\rmw
Enclosures

cc: Francis X. Borgerding, Jr, Esquire (w/o attachments)
C. William Clark, Esquire (w/o attachments)

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 1999, Legislative Day No. 14

Bill No. 64-99

Mr. Kevin Kamenetz, Chairman
By Request of County Executive

By the County Council, July 6, 1999

A BILL
ENTITLED

AN ACT concerning

Public Sewer Service and Building Permits

FOR the purpose of requiring certain property owners in certain areas to connect to the public sewer under certain circumstances; authorizing the issuance of building permits in certain areas under certain circumstances; prohibiting the extension of public sewer service to certain properties under certain circumstances; prohibiting certain property owners from receiving building permits under certain provisions; requiring a certain department to report to the County Council annually; providing for the construction of this Act; and generally relating to the building permits and the extension of public sewer service.

BY repealing and reenacting, with amendments

Section 35-177
Article IV - Metropolitan District
Title 35 - Water and Sewers
Baltimore County Code, 1988

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

BY repealing and reenacting, with amendments

Section 304.1
Baltimore County Zoning Regulations

BY adding

Section 206
Baltimore County Zoning Regulations

WHEREAS, in response to certain health considerations resulting from failed septic systems, the County has authorized a capital project for the extension of public sewer service to limited portions of the Bowleys Quarters and Back River Neck area of the 5th Councilmanic District depicted on the map attached as Exhibit A; and

WHEREAS, the capital project authorized by the County was only intended to provide sufficient sewer capacity to support existing residences served by private septic systems; and

WHEREAS, the extension of sewer service under the capital project is now anticipated to result in potential excess sewer capacity beyond that necessary to address public health concerns resulting from failed septic systems; and

WHEREAS, the County Council requested the Planning Board in Council Resolution No. 10-99 to recommend land use and growth management controls for certain properties in the Back River Neck and Bowleys Quarters areas of the County; and

WHEREAS, the County Council, by the adoption of Bill No. 14-99, temporarily suspended the authority to issue building permits for unimproved, residentially-zoned property lying within certain sections of the Back River Neck or Bowleys Quarters areas of the 5th Councilmanic District; and

WHEREAS, the Planning Board adopted a report on June 3, 1999 containing

certain recommendations concerning the extension of public sewer service to existing and future development of residentially-zoned property lying within the Back River Neck and Bowleys Quarters areas of the 5th Councilmanic District; and

WHEREAS, the County Council believes legislation is necessary to implement a public sewer service and growth management policy for existing and future development of residentially-zoned property lying within certain sections of the Back River Neck or Bowleys Quarters areas of the 5th Councilmanic District; and

WHEREAS, the County Council held a public hearing on the Planning Board report on July 6, 1999; and

WHEREAS, the County Council believes that this legislation is necessary to protect the public health and to preserve the fragile environment of these areas; now, therefore

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, That Section 35-177 of Article IV - Metropolitan District of Title 35 - Water and Sewers of the Baltimore County Code, 1988, as amended, be and is hereby repealed and reenacted, with amendments, to read as follows:

Sec. 35-177. When connection to sewerage system not compelled.

EXCEPT AS PROVIDED IN §206 OF THE BALTIMORE COUNTY ZONING REGULATIONS, [No] NO property owner having a well-maintained and properly functioning soil absorption system shall be required to abandon said system and connect to a public sewer. However, if the directors of the departments of environmental protection and resource management and public works determine that it is necessary, for the

protection of the public health, for the public sewer system to be extended to serve existing housing units, pursuant to this title, the county shall be able to order the property owners of said housing units to make connection to said public sewer system, pursuant and subject to this title. Failure by a property owner to comply with such order shall be deemed a misdemeanor and subject the property owner to a fine of five hundred dollars ($500.00) for each month during which such connection shall not be made.

SECTION 2. AND BE IT FURTHER ENACTED, That Section 304.1 of the Baltimore County Zoning Regulations be and is hereby repealed and reenacted, with amendments, to read as follows:

Section 304. Use of Undersized Single-Family Lots

304.1 EXCEPT AS PROVIDED IN §206, [A] A one-family detached or semi-detached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;

B. All other requirements of the height and area regulations are complied with; and

C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

SECTION 3. AND BE IT FURTHER ENACTED, That Section 206 of the Baltimore County Zoning Regulations be and is hereby added to read as follows:

SECTION 206. GROWTH MANAGEMENT PLAN FOR BOWLEYS QUARTERS AND BACK RIVER NECK AREAS.

206.1 DEFINITIONS.

IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(1) "SUBDIVISION" MEANS THE DIVISION OF PROPERTY INTO TWO OR MORE LOTS.

(2) "UNDERSIZED LOT" MEANS AN UNIMPROVED PLATTED LOT OR A LOT OF RECORD ON OR BEFORE AUGUST 6, 1999 THAT DOES NOT MEET THE AREA, HEIGHT, OR SETBACK REQUIREMENTS IN THESE REGULATIONS TO ALLOW THE CONSTRUCTION OF A DWELLING.

~~206.3~~ 206.2 APPLICATION.

THIS SECTION APPLIES TO PROPERTY ZONED DR OR RC 5 AND LOCATED IN THE BOWLEYS QUARTERS AND BACK RIVER NECK AREAS DEFINED IN THE MAP ATTACHED AS EXHIBIT A AND INCORPORATED BY REFERENCE IN THIS SECTION.

~~206.4~~ 206.3 CONNECTION TO PUBLIC SEWER.

A PROPERTY OWNER WITH A DWELLING IN EXISTENCE ON OR BEFORE AUGUST 6, 1999 OR WITH A NON-EXPIRED BUILDING PERMIT THAT WAS ISSUED ON OR BEFORE FEBRUARY 16, 1999 SHALL BE REQUIRED TO CONNECT TO A PUBLIC SEWER IF THE PROPERTY IS:

(1) ZONED DR OR RC 5; AND

(2) SERVED BY PUBLIC SEWER WITH ADEQUATE CAPACITY.

~~206.5~~ 206.4 BUILDING PERMITS.

(A)(1) EXCEPT AS PROVIDED IN ~~SUBPARAGRAPH (2)~~ PARAGRAPH (B) OF THIS PARAGRAPH, A BUILDING PERMIT MAY BE ISSUED FOR THE CONSTRUCTION OF A DWELLING ON AN UNIMPROVED PLATTED LOT OR LOT OF RECORD THAT MEETS ALL OF THE ZONING REQUIREMENTS SUBJECT TO THE FOLLOWING CONDITIONS:

(I) VARIANCES ARE NOT REQUIRED FOR THE CONSTRUCTION OF THE DWELLING;

(II) THE PROPERTY OWNER CONNECTS TO A PUBLIC SEWER WHERE AVAILABLE AND WITH ADEQUATE CAPACITY;

(III) THE DWELLING MEETS THE DESIGN REQUIREMENTS PROVIDED FOR IN THIS SECTION; AND

(IV) EXCEPT FOR MINOR SUBDIVISIONS, NO FURTHER SUBDIVISION OF THE LOT IS ALLOWED.

(B) A BUILDING PERMIT MAY BE ISSUED FOR THE CONSTRUCTION OF A DWELLING ON AN UNDERSIZED LOT SUBJECT TO THE FOLLOWING CONDITIONS:

(1) THE OWNER OF THE LOT DOES NOT OWN SUFFICIENT ADJOINING LAND THAT IF COMBINED WITH THE ADJOINING LAND WOULD ALLOW THE PROPERTY OWNER TO CONFORM TO THE CURRENT ZONING REQUIREMENTS;

(2) NO FURTHER SUBDIVISION OF THE LOT IS ALLOWED;

(3) THE PROPERTY OWNER OBTAINS A VARIANCE AS

PROVIDED FOR IN §307 OF THESE REGULATIONS; AND

(4) THE PROPERTY OWNER CONNECTS TO A PUBLIC SEWER WHERE AVAILABLE AND WITH ADEQUATE CAPACITY.

~~206.6~~ 206.5 BUILDING PERMIT APPLICATION

(A)(1)ANY PERSON DESIRING TO ERECT A DWELLING IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION SHALL FILE WITH THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT, AT THE TIME OF APPLICATION FOR A BUILDING PERMIT, PLANS SUFFICIENT TO ALLOW THE OFFICE OF PLANNING TO PREPARE THE GUIDELINES PROVIDED IN PARAGRAPH (B) BELOW.

(2) ELEVATION DRAWINGS MAY BE REQUIRED IN ADDITION TO PLANS AND DRAWINGS OTHERWISE REQUIRED TO BE SUBMITTED AS PART OF THE APPLICATION FOR A BUILDING PERMIT.

(3) PHOTOGRAPHS REPRESENTATIVE OF THE NEIGHBORHOOD WHERE THE LOT OR TRACT IS SITUATED MAY BE REQUIRED BY THE OFFICE OF PLANNING IN ORDER TO DETERMINE THE APPROPRIATENESS OF THE PROPOSED NEW BUILDING IN RELATION TO EXISTING STRUCTURES IN THE NEIGHBORHOOD.

(B)(1)AT THE TIME OF APPLICATION FOR THE BUILDING PERMIT, AS PROVIDED ABOVE, THE DIRECTOR OF PERMITS AND DEVELOPMENT

DIRECTORS OF THE OFFICE OF PLANNING ~~(THE "DIRECTOR")~~ AND THE DEPARTMENTS OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT AND PUBLIC WORKS.

(2)WITHIN 15 DAYS AFTER RECEIPT OF A REQUEST FROM THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT, THE ~~DIRECTOR~~ DIRECTORS SHALL PROVIDE TO THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT WRITTEN RECOMMENDATIONS CONCERNING THE APPLICATION WITH REGARD TO THE FOLLOWING:

(I) SITE DESIGN. NEW BUILDINGS SHALL BE APPROPRIATE IN THE CONTEXT OF THE NEIGHBORHOOD IN WHICH THEY ARE PROPOSED TO BE LOCATED. APPROPRIATENESS SHALL BE EVALUATED ON THE BASIS OF NEW BUILDING SIZE, LOT COVERAGE, BUILDING ORIENTATION AND LOCATION ON THE LOT OR TRACT.

(II) ARCHITECTURAL DESIGN. APPROPRIATENESS SHALL BE EVALUATED BASED ON ONE OR MORE OF THESE ARCHITECTURAL DESIGN ELEMENTS OR ASPECTS:

1. HEIGHT;

2. BULK OR MASSING;

3. MAJOR DIVISIONS, OR ARCHITECTURAL

RHYTHM, OF FACADES;

4. PROPORTIONS OF OPENINGS SUCH AS WINDOWS AND DOORS IN RELATION TO WALLS;

5. ROOF DESIGN AND TREATMENT; AND

6. MATERIALS AND COLORS, AND OTHER ASPECTS OF FACADE TEXTURE OR APPEARANCE.

(III) DESIGN AMENDMENTS. THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT MAY RECOMMEND APPROVAL, DISAPPROVAL OR MODIFICATION OF THE BUILDING PERMIT ~~TO CONFORM WITH~~ AFTER CONSIDERATION OF THE RECOMMENDATIONS PROPOSED BY THE ~~OFFICE OF PLANNING~~ DIRECTORS.

~~206.7~~ 206.6 PUBLIC NOTICE.

FOR UNDERSIZED LOTS, ON APPLICATION FOR A BUILDING PERMIT IN ACCORDANCE WITH THIS SECTION, THE SUBJECT PROPERTY SHALL BE POSTED CONSPICUOUSLY UNDER THE DIRECTION OF THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT WITH NOTICE OF THE APPLICATION FOR A PERIOD OF AT LEAST 15 DAYS.

~~206.6~~ 206.7 PUBLIC HEARING.

(A) THIS SUBSECTION APPLIES TO UNDERSIZED LOTS.

(B) WITHIN THE FIFTEEN-DAY POSTING PERIOD:

(1) ANY OWNER OR OCCUPANT WITHIN 1,000 FEET OF THE LOT MAY FILE A WRITTEN REQUEST FOR A PUBLIC HEARING WITH

THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT; OR

(2) THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT MAY REQUIRE A PUBLIC HEARING.

(C) THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT SHALL NOTIFY THE APPLICANT WITHIN 20 DAYS AFTER THE RECEIPT OF A REQUEST FOR A PUBLIC HEARING.

(D) THE ZONING COMMISSIONER SHALL HOLD THE PUBLIC HEARING WITHIN 30 DAYS AFTER RECEIVING THE REQUEST FOR A PUBLIC HEARING.

(E) AT THE PUBLIC HEARING, THE ZONING COMMISSIONER SHALL DETERMINE WHETHER THE PROPOSED DWELLING IS APPROPRIATE.

206.8 FINAL APPROVAL.

(A) THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT MAY:

(1) ISSUE THE BUILDING PERMIT; OR

(2) FOR UNDERSIZED LOTS, NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, REQUIRE A PUBLIC HEARING BEFORE THE ZONING COMMISSIONER IN ACCORDANCE WITH THIS SECTION.

(B) IF THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT HAS NOT NOTIFIED THE APPLICANT OF A DETERMINATION IN ACCORDANCE WITH THE PROVISIONS OF THIS

SECTION, OR HAS NOT NOTIFIED THE APPLICANT IN ACCORDANCE WITH SECTION 206.7 ABOVE OF THE INTENTION TO REQUIRE A PUBLIC HEARING, THE DWELLING SHALL BE DEEMED APPROPRIATE FOR PURPOSES OF THIS SECTION.

206.9 APPEALS

THE DECISION OF THE ZONING COMMISSIONER OR THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT MAY BE APPEALED, IN WHICH CASE THE BOARD OF APPEALS SHALL HOLD THE HEARING WITHIN 45 DAYS AFTER RECEIPT OF THE REQUEST.

206.10 FEES

THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT SHALL ESTABLISH APPROPRIATE FEE SCHEDULES.

206.11 GROWTH ALLOCATION NOT APPLICABLE.

A PROPERTY OWNER WHO IS REQUIRED TO CONNECT TO PUBLIC SEWER AS PROVIDED FOR IN THIS SECTION MAY NOT APPLY FOR GROWTH ALLOCATION UNDER §26-123 OF THE BALTIMORE COUNTY CODE.

206.12 REGULATIONS

THE DEPARTMENT OF PUBLIC WORKS IN CONSULTATION WITH THE OFFICE OF PLANNING, AND DEPARTMENTS OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT AND PERMITS AND DEVELOPMENT MANAGEMENT, MAY ADOPT REGULATIONS IN ACCORDANCE WITH TITLE 2, ARTICLE 8 OF THE BALTIMORE COUNTY CODE, TO CARRY OUT THE PROVISIONS OF THIS SECTION.

SECTION 3. AND BE IT FURTHER ENACTED, That, consistent with the County's Water and Sewer Plan, public sewer service may not be extended to property zoned RC 20 in area depicted in the map attached as Exhibit A except:

(1) For properties with a dwelling in existence on or before August 6, 1999 to which public sewer is extended;

(2) As provided in §35-177 of the Code; and

(3) For properties that have been transferred in accordance with §1A05.5 of the Baltimore County Zoning Regulations to which public sewer is extended.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act may not be construed to:

(1) Require the County to extend public sewer capacity to any property; or

(2) Prohibit the Department of Environmental Protection and Resource Management from issuing permits for on-site disposal systems in accordance with the Baltimore County Code for properties zoned RC 20.

SECTION 5. AND BE IT FURTHER ENACTED, That the Department of Public Works, in consultation with the Departments of Planning, Permits and Development Management, and Environmental ~~and Resource~~ Protection and Resource Management, shall report annually to the County Council, beginning in July of 2000, on the capacity of the public sewer in the Back River Neck and Bowleys Quarters areas depicted in the map attached as Exhibit A and the potential for the connection of public sewer to properties that are not zoned DR, RC 5, or RC 20.

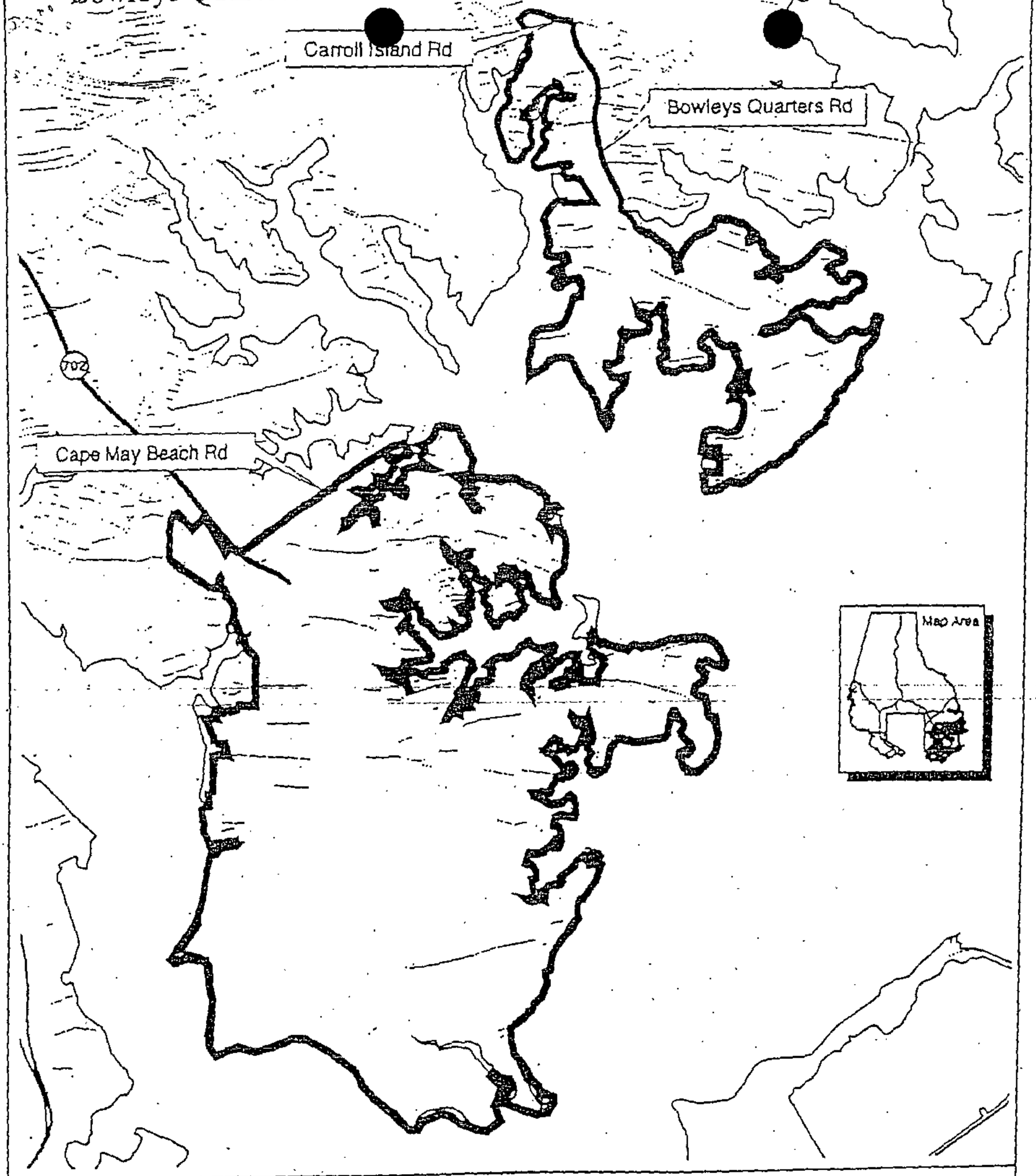
SECTION 6. AND BE IT FURTHER ENACTED, That §206.5(A)(1)(IV) does not apply to property that is zoned DR and has an approved development plan on or before May 28, 1999 except that the minimum lot size requirement for the approved development plan shall be

12,000 square feet.

SECTION 7. AND BE IT FURTHER ENACTED, That §206.11 does not apply to a property owner who has ~~applied~~ a pending application for growth allocation under §26-123 of the Baltimore County Code on or before ~~the effective date of this Act~~ July 6, 1999.

SECTION 8. AND BE IT FURTHER ENACTED, That this Act, having been passed by the affirmative vote of five members of the County Council, shall take effect August 6, 1999.

Bowleys Quarters and Back River Neck Growth Management Areas



LEGEND

Interstates

Secondary and Local Roads

Impacted Area Line

0.5 0 0.5 1 Miles

DATA SOURCES:
Roads:
Baltimore Metropolitan Council (1:24000)

March 1998

Baltimore County Office of Planning
401 Bosley Avenue
Towson, MD 21204

Baltimore County Office of Planning
OIT - GIS Services Unit

EXHIBIT B

Baltimore County
Planning Board

401 Bosley Avenue
Towson, Maryland 21204
(410) 887-3495
Fax: (410) 887-5862

June 8, 1999

The Hon. Kevin Kamenetz
Chairman, Baltimore County Council
The Court House
Towson, MD 21204

Re: Growth Management - Council Resolution 10-99

Dear Councilman Kamenetz:

Enclosed is Part 1 of a Final Report by the Baltimore County Planning Board adopted unanimously on June 3, 1999, and submitted in accordance with Section 26-123(c) of the County Code. Part 2, which is expected to follow later in June, will address design guidelines for new development and redevelopment in the study area.

The Planning Board recommends that sewer capacity in Bowleys Quarters and the Back River Neck Peninsula be allocated according to the priority system described in the report. Recognizing that some properties abutting sewer lines may not be able to be connected to the sewer system (either because of county policy or because there is not enough capacity in the system) the Planning Board also recommends that Baltimore County consider the equitability of requiring owners of those properties to pay the front foot assessment. The Board requests that the county study possible alternatives for properties that cannot connect to sewer, including abatement of the sewerage front foot assessment or, if this is not feasible, the abatement of real estate taxes.

The Planning Board recommends that Baltimore County not only continue to *compel* the combination of undersized adjoining lots in *common* ownership, but also e*ncourage* the combination of undersized lots in *separate* ownership. Some possible ways to facilitate lot consolidation are:

- Create a special, expedited process in the development regulations to consolidate lots. (Currently these encounter the burden of being processed as "subdivisions".)

- Determine the feasibility of waiving Baltimore County's real estate transfer tax when the purpose of transfer is to consolidate lots.

- Develop an educational campaign and information clearinghouse, including an informational brochure for citizens.

- Provide special training for personnel of Baltimore County government to assist property owners with the lot consolidation process.

Finally, the Planning Board requests that, once the sewerage policies are decided, permits be issued as a first priority for property owners who have already applied for permits and been waiting because of the moratorium.

The Planning staff will be pleased to assist the Council in the consideration of this matter.

Sincerely,

Pat Keller

Arnold F. 'Pat' Keller, III
Secretary

AFK:JM:rlh

Enclosure

c: Members, Baltimore County Council
John Wasilisin, Administrative Officer
Thomas Peddicord, Legislative Counsel/Secretary
Brian Rowe, County Auditor
Virginia Barnhart, County Attorney
Arnold Jablon, Director, Permits & Development Management
Charles R. Olsen, Director, DPW
George Perdikakis, Director, DEPRM
Lawrence Schmidt, Zoning Commissioner
Peter Max Zimmerman, People's Counsel
Patrick Roddy, Assistant County Attorney
Robert J. Barrett, Spec. Asst. to the County Executive

Proposals for Growth Management
Bowleys Quarters and Back River Neck Peninsula
(Response to County Council Resolution No. 10-99)

The following recommendations apply to the study areas identified in County Council Resolution No. 10-99 and depicted on the attached map.

I. OBJECTIVES

- Develop clear and consistent standards that provide certainty for all interested parties.
- Improve water quality by relieving failing septic systems, and preventing the failure of older, marginal septic systems.
- Recognize legitimate rights to develop property.
- Conserve and enhance residential communities.
- Develop procedures and guidelines which are consistent with the goals and objectives of the Baltimore County Master Plan, the Maryland Rural Legacy Act, the Baltimore County Coastal Rural Legacy Program, the Chesapeake Bay Critical Areas Program, the Special Area Management Plan, and the protection of the natural environment.

II. CATEGORIES FOR SEWER SERVICE

Following is a list of development categories that could connect to public sewer, in order of priority. Each category includes proposed requirements and actions that would help to achieve the objectives. (Note that new development, redevelopment and certain renovations are subject to Chesapeake Bay Critical Areas requirements and other environmental regulations, and could also be subject to design standards or guidelines to be considered by the Planning Board in conjunction with this proposal.) The public sewer system would:

A. **Expeditiously serve, as a first priority, all existing dwellings with failing or non-failing septic systems, regardless of zone or lot size. In no case should connections for existing dwellings be delayed in order to connect new development. Capacity should be reserved to ensure that all existing dwellings are connected.**

1. Require all existing dwellings to connect to public sewer.
2. Connect all dwellings existing before February 15, 1999; reserve adequate capacity.
3. Determine that a structure is a livable dwelling (not a shed, chicken coop, etc.); otherwise, treat as an unimproved property.

B. Serve unimproved lots or parcels that meet existing zoning standards in DR zones, including:

1. Residential lots shown on a valid record plat created as part of a subdivision process enacted by the Baltimore County Council or the Board of County Commissioners, involving development plan review by appropriate agencies, dedication of rights or way for streets and other public facilities, and compliance with all other applicable county regulations and requirements (see Title 26, Article V, Development Regulations of the Baltimore County Code, 1988, as amended, for the current process); and

2. Recorded lots or parcels (most very old) created through metes and bounds descriptions or lot recordation before any plan review process was enacted by the Baltimore County Council or the Board of County Commissioners . . . etc., (see B.1). Connect sewer, provided that lots meet the minimum site standards (area, width, and yard setbacks) of Sec. 1B02.3, of the Baltimore County Zoning Regulations (BCZR).

C. Serve recorded unimproved *undersized* lots, or tracts of undersized lots in single ownership, in all DR zones, subject to Sec. 304 *and* Sec. 307 of the BCZR.

1. Combine lots in common ownership to meet minimum requirements for lot area and lot width (Sec. 1B02.3). (Minimum lot area and width are, respectively, 10,000 square feet and 70 feet in DR 3.5, and 6,000 square feet and 55 feet in DR 5.5.); *and*

2. Obtain variances if lot fails to meet front, rear, and side yard setbacks.

3. Lots less than 50 feet in width at the building line are strongly discouraged and may not be supported.

D. Serve existing unimproved lots or parcels in RC 5 and RC 20 zones which conform to the current zoning standards, but no service to new subdivisions except as provided in No. 3 below. Lots to be served include:

1. Residential lots created as part of a subdivision process enacted by the Baltimore County Council or the Board of County Commissioners, etc., . . . (see B.1), and shown on a valid record plat which was effective on February 15, 1999; and

2. Lots or parcels (most very old) created through metes and bounds descriptions or lot recordation before any plan review process was enacted by the Baltimore County Council or the Board of County Commissioners, etc., . . . (See B.1). Connect sewer provided that lots meet the minimum area and setbacks of Section 1A04.3 for RC 5 or the minimum setbacks of Sec. 1A05.4 for RC 20, BCZR.

3. Lots created in RC 20 zones through a bona-fide intra-family transfer in accordance with Sec. 1A05.5 of the Baltimore County Zoning Regulations.

E. Serve recorded unimproved *undersized* lots, or tracts of undersized lots in single ownership, in all RC 5 zones subject to Sec. 304 *and* Sec. 307 of the BCZR, and recorded unimproved lots in RC 20 zones that fail to meet setbacks, subject to Sec. 307.

1. Combine lots in common ownership to meet the minimum lot area requirement of one acre, and

2. Obtain variances if lot fails to meet front, rear, and side yard setbacks.

3. Lots less than 50 feet in width at the building line are strongly discouraged and may not be supported.

F. After the effective date of this legislation, Chesapeake Bay Critical Area Growth Allocation should not be approved, within the study area, for conversion from Resource Conservation Area.


Map Area
LEGEND
Interstate
Secondary and Local Roads
Study Area
0.5 0 0.5 1 Miles
DATA SOURCES:
Roads:
Baltimore Metropolitan Council (1:24000)
March 1998
Baltimore County Office of Planning
401 Bosley Avenue
Towson, MD 21204
Baltimore County Office of Planning
OIT - GIS Services Unit

all improved lots within 200 feet on each side thereof, provided that no dwelling shall be required to be set back more than 60 feet in D.R.2 Zones, 50 feet in D.R.3.5 Zones and 40 feet in D.R.5.5 Zones. In no case, however, shall nonresidential principal buildings have front yards of less depth than those specified therefor in the area regulations for D.R.2, D.R.3.5 and D.R.5.5 Zones respectively. **[Resolution, November 21, 1956]**

303.2 In B.L., B.M. and B.R. Zones, the front yard depth of any building hereafter erected shall be the average of the front yard depths of the lots immediately adjoining on each side, provided such adjoining lots are improved with permanent commercial buildings constructed of fire-resisting materials situate within 100 feet of the joint side property line, but where said immediately adjoining lots are not both so improved, then the depth of the front yard of any building hereafter erected shall be not less than the average depth of the front yards of all lots within 100 feet on each side thereof which are improved as described above.

Section 304
Use of Undersized Single-Family Lots
[BCZR 1955; Bill No. 47-1992]

304.1 **[Bill Nos. 64-1999; 28-2001]** Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;

B. All other requirements of the height and area regulations are complied with; and

C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

304.2 Building permit application.

A. Any person desiring to erect a dwelling pursuant to the provisions of this section shall file with the Department of Permits and Development Management, at the time of application for a building permit, plans sufficient to allow the Office of Planning to prepare the guidelines provided in Subsection B below. Elevation drawings may be required in addition to plans and drawings otherwise required to be submitted as part of the application for a building permit. Photographs representative of the neighborhood where the lot or tract is situated may be required by the Office of Planning in order to determine appropriateness of the proposed new building in relation to existing structures in the neighborhood.

B. At the time of application for the building permit, as provided above, the Director of the Department of Permits and Development Management shall request comments from the Director of the Office of Planning (the "Director"). Within 15 days of receipt of a request from the Director of the Department of Permits and Development Management, the Director shall provide to the

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

1. Site design. New buildings shall be appropriate in the context of the neighborhood in which they are proposed to be located. Appropriateness shall be evaluated on the basis of new building size, lot coverage, building orientation and location on the lot or tract.

2. Architectural design. Appropriateness shall be evaluated based upon one or more of these architectural design elements or aspects:

   a. Height.

   b. Bulk or massing.

   c. Major divisions, or architectural rhythm, of facades.

   d. Proportions of openings such as windows and doors in relation to walls.

   e. Roof design and treatment.

   f. Materials and colors, and other aspects of facade texture or appearance.

3. Design amendments. The Director may recommend approval, disapproval or modification of the building permit to conform with the recommendations proposed by the Office of Planning.

304.3 Public notice. Upon application for a building permit pursuant to this section, the subject property shall be posted conspicuously under the direction of the Department of Permits and Development Management with notice of the application for a period of at least 15 days.

304.4 Public hearing. Within the fifteen-day posting period: (1) Any owner or occupant within 1,000 feet of the lot may file a written request for a public hearing with the Department of Permits and Development Management, or (2) the Director of Permits and Development Management may require a public hearing. The Department of Permits and Development Management shall notify the applicant within 20 days of the receipt of a request for a public hearing. A hearing before the Zoning Commissioner shall be scheduled within 30 days from receipt of the request for public hearing. At the public hearing, the Zoning Commissioner shall make a determination whether the proposed dwelling is appropriate.

304.5 Final approval.

A. The Director of the Department of Permits and Development Management may issue the building permit; or

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

C. If the Department of Permits and Development Management has not notified the applicant of a determination pursuant to the provisions of this section, or has not notified the applicant pursuant to Section 304.4 above of the intention to require a public hearing, the dwelling shall be considered appropriate for purposes of this section.

304.6 The decision of the Zoning Commissioner or the Director of the Department of Permits and Development Management may be appealed, in which case the hearing shall be scheduled by the Board of Appeals within 45 days from receipt of the request.

304.7 The Director of the Department of Permits and Development Management shall establish appropriate fee schedules.

Section 305
Replacement of Destroyed or Damaged Dwellings
[BCZR 1955; repealed by Bill No. 124-1991; re-enacted by Bill No. 214-1991]

In case of complete or partial casualty loss by fire, windstorm, flood or otherwise of an existing dwelling that does not comply with height or area requirements of the zone in which it is located, such dwelling may be restored, provided area or height deficiencies of the dwelling before the casualty are not increased in any respect, and such restoration is subject to the limitations imposed by Section 104.2 of the Baltimore County Zoning Regulations.

Section 306
Minor Public Utility Structures
[BCZR 1955; Resolution, November 21, 1956; Bill No. 32-2004]

Minimum lot area regulations in any zone shall not apply to:

A. Repeater, booster or transformer stations;

B. Bus shelters, Class A or B; or

C. Small community dial offices.

Section 307
Variances
[BCZR 1955; Bill Nos. 107-1963; 32-1988; 2-1992; 9-1996]

307.1 The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore,

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

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View Map
New Search
Ground Rent

Account Identifier: District - 15 Account Number - 1511470451

Owner Information

Owner Name: CREAMER CAROLE C

Mailing Address: 1779 SHAFTSBURY AVE
CROFTON MD 21114-2018

Use: RESIDENTIAL
Principal Residence: NO
Deed Reference: 1) /16854/ 471
2)

Location & Structure Information

Premises Address
2315 TURKEY POINT RD

Legal Description
TURKEY POINT RD
ROCKAWAY BEACH

WATERFRONT

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No: / Plat Ref:
98	15	211					10	82	4/ 171

Special Tax Areas
Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		13,200.00 SF	34

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2004	As Of 07/01/2005
Land:	74,800	74,800		
Improvements:	0	0		
Total:	74,800	74,800	74,800	74,800
Preferential Land:	0	0	0	0

Transfer Information

Seller: KLEINSMITH LILLIAN A	**Date:** 09/23/2002	**Price:** $110,000	
Type: NOT ARMS-LENGTH	**Deed1:** /16854/ 471	**Deed2:**	
Seller: KLEINSMITH LILLIAN A	**Date:** 01/03/1995	**Price:** $0	
Type: NOT ARMS-LENGTH	**Deed1:** /10890/ 346	**Deed2:**	
Seller:	**Date:**	**Price:**	
Type:	**Deed1:**	**Deed2:**	

Exemption Information

Exh. 2

Partial Exempt Assessments	Class	07/01/2004	07/01/2005
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO

Exempt Class:

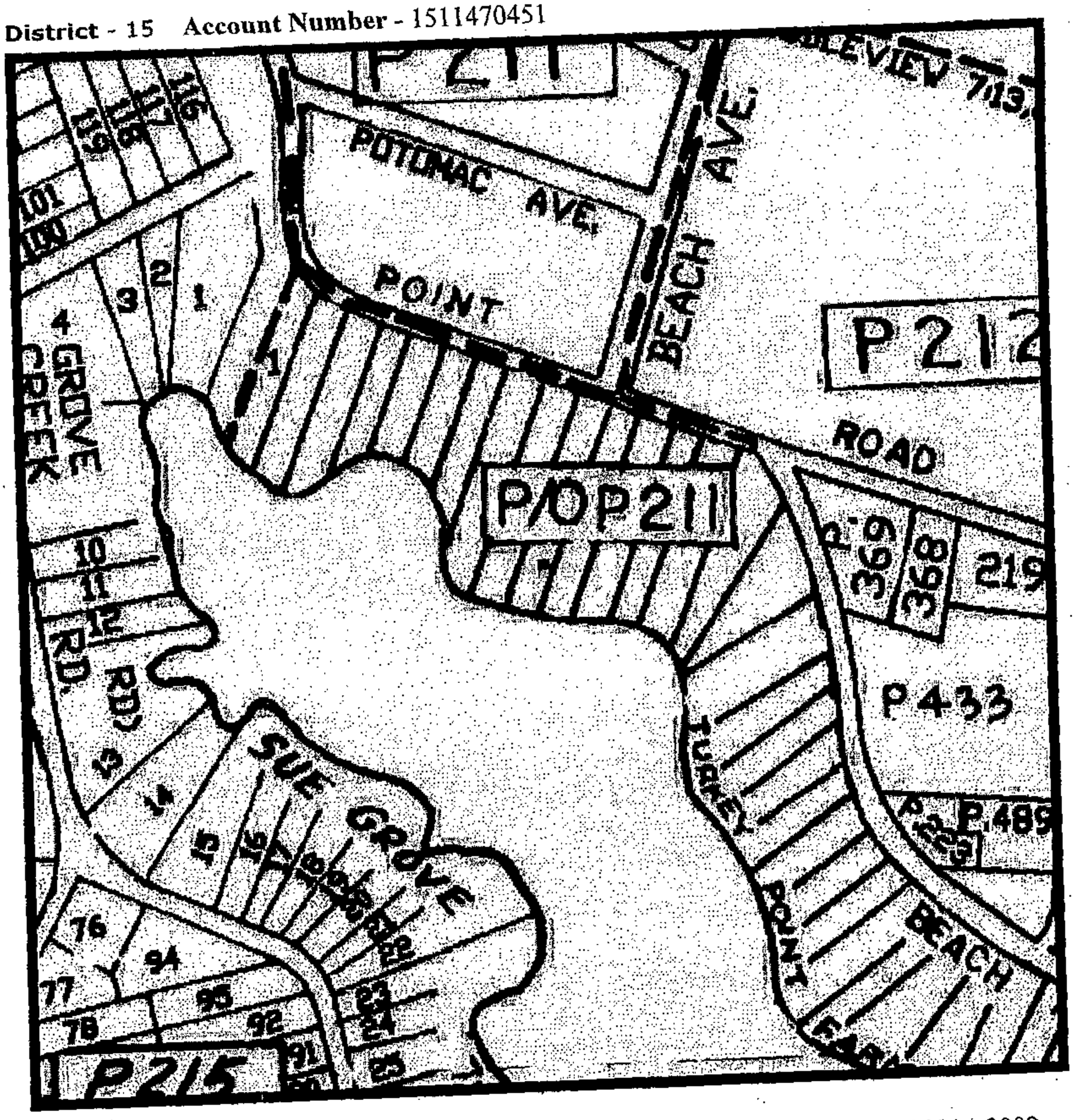
Special Tax Recapture:

* NONE *

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

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District - 15 Account Number - 1511470451



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

10/29/2004 2:46 PM

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

Go Back
View Map
New Search
Ground Rent

Account Identifier: District - 15 Account Number - 1511470450

Owner Information

Owner Name: CREAMER JEFFREY A

Mailing Address: 1779 SHAFTSBURY AVE
CROFTON MD 21114-2018

Use: RESIDENTIAL
Principal Residence: NO
Deed Reference: 1) /16854/ 475
2)

Location & Structure Information

Premises Address
2317 TURKEY POINT RD

Legal Description
WATERFRONT ROCKAWAY BEACH

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
98	15	211					11	82	Plat Ref: 4/ 171

Special Tax Areas
Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1931	700 SF	13,150.00 SF	34

Stories	Basement	Type	Exterior
1	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2004	As Of 07/01/2005
Land:	98,780	98,780		
Improvements:	35,410	38,960		
Total:	134,190	137,740	136,556	137,740
Preferential Land:	0	0	0	0

Transfer Information

Seller: KLEINSMITH WILLIAM J	**Date:** 09/23/2002	**Price:** $130,000	
Type: IMPROVED ARMS-LENGTH	**Deed1:** /16854/ 475	**Deed2:**	
Seller:	**Date:**	**Price:**	
Type:	**Deed1:**	**Deed2:**	
Seller:	**Date:**	**Price:**	
Type:	**Deed1:**	**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2004	07/01/2005
County	000	0	0
State	000	0	0
Municipal	000	0	0

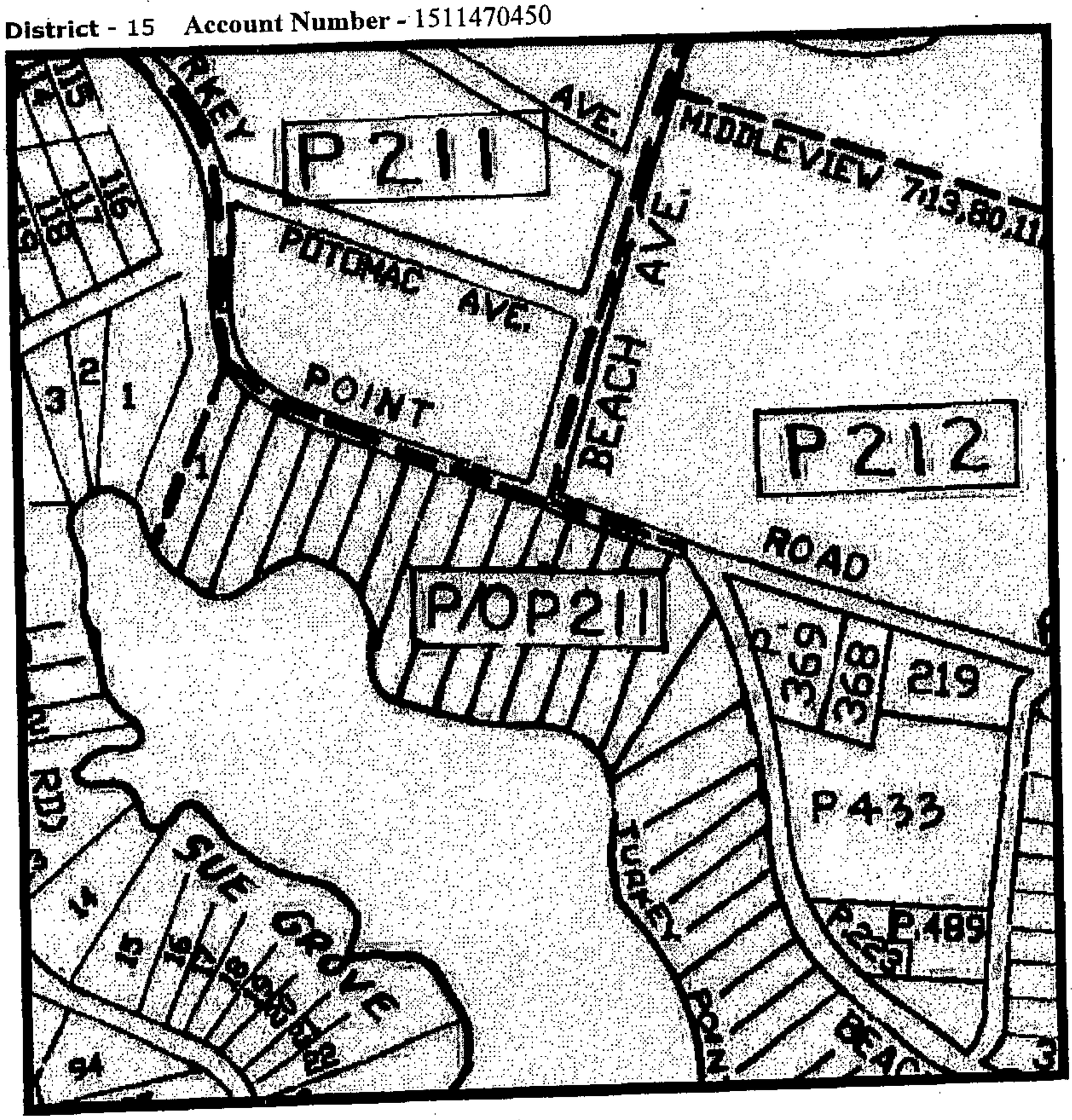
Tax Exempt: NO

Exempt Class:

Special Tax Recapture:

* NONE *

District - 15 **Account Number - 1511470450**



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

BALTIMORE COUNTY

ZONING REGULATIONS

ADOPTED BY

COUNTY COMMISSIONERS

OF

BALTIMORE COUNTY

March 30, 1955, in accordance with Title 30, Section 532 (c) of the Code of Public Local Laws of Baltimore County (1955 Edition).

1955

Michael J. Birmingham
President

Robert B. Hamill
Augustine J. Muller
County Commissioners of Baltimore County

Francis T. Peach
County Solicitor

George M. Berry
Deputy Solicitor

Wilsie H. Adams
Zoning Commissioner

Exh. 3

C. William Clark

(410) 823-7850

email
cwclark@nolanplumhoff.com

Law Offices
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, NOTTINGHAM CENTRE
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TOWSON, MARYLAND 21204-4528
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TELEFAX: (410) 296-2765
email: npw@nolanplumhoff.com
Web: www.nolanplumhoff.com

J. EARLE PLUMHOFF
(1940-1988)

NEWTON A. WILLIAMS
(RETIRED 2000)

RALPH E. DEITZ
(1918-1990)

December 28, 2005

VIA HAND DELIVERY

Mr. Timothy M. Kotroco, Director
Department of Permits
and Development Management
111 West Chesapeake Avenue
Towson, Maryland 21204

Re: 2315 Turkey Point Road/ Jeffery Creamer, Petitioner, Case No. 06-045 SPH
2317 Turkey Point Road/ Carole Creamer, Petitioner, Case No. 06-045 SPH

Dear Mr. Kotroco:

Enclosed herein please find two Appeals to be filed from the Deputy Zoning Commissioner's Decisions in reference to the above properties. Also enclosed is this firm's check in the amount of $600.00 for the filing the same.

If you have any questions or concerns regarding this matter, please contact my office.

Thank you for your attention to this matter.

Very truly yours,

C. William Clark

CWC/jkc

Enclosures

cc: Jeffrey Creamer
John V. Murphy
Peter Max Zimmerman, Esquire
Robin and Michael Ferro

Y:\JENNIFERDATA\WPDOCS\BUD\CWC\ZONING-CLIENTS\Creamer\BdAppealsltr5.wpd

RECEIVED
DEC 28 2006
Per.....

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

LEGISLATIVE SESSION 1991, LEGISL[redacted] DAY NO. 1

RESOLUTION NO. 1-91

MR. MELVIN G. MINTZ, COUNCILMAN

BY THE COUNTY COUNCIL, JANUARY 7, 1991

A Resolution of the Baltimore County Council to request the Planning Board to consider proposing amendments to the Baltimore County Zoning Regulations in order to provide for a special hearing in cases where residential development will take place on vacant lots within subdivisions approved and substantially built before the 1945 adoption or after 1945 but before the 1955 revision of the Baltimore County Zoning Regulations.

WHEREAS, the Baltimore County Zoning Regulations currently permit development by right on vacant lots within subdivisions approved and substantially built before 1945, the year that the County's first Zoning Regulations became effective; and

WHEREAS, the Zoning Regulations were revised in 1955 to require minimum lot sizes for residential uses; and

WHEREAS, the lack of a requirement for a special hearing in the case of subdivisions approved before 1945 or between 1945 and 1955 permits new homes to be built by right, provided all County regulations are met; and

WHEREAS, permitting new homes by right may allow development to occur which is not harmonious with the character, scale or size of existing development in these older subdivisions; and

WHEREAS, it is in the interests of the citizens of Baltimore County to allow for a special review process in these cases to assure that new residential units will respect existing development, in order to preserve the character and maintain property values in older neighborhoods; and

WHEREAS, the 1989-2000 Master Plan calls for review procedures to assure that new development is compatible with existing communities.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the Baltimore County Planning Board be and it is hereby requested to consider proposing amendments to the Baltimore County Zoning Regulations in order to permit development of

v[illegible]t lots within subdivisions approved and substantially built before 1945 or after 1945 but before 1955 only upon [illegible] special hearing of the Zoning Commissioner and a finding that such development will harmonize or will not detract from the scale and appearance of existing homes.

From the Zoning Regulations:

1B02.3 -- Special Regulations for Certain Existing Developments or Subdivisions and for Small Lots or Tracts in D.R. Zones. [Bill No. 100, 1970.]

A. In D.R. zones, contrary provisions of this article notwithstanding, the provisions of or pursuant to this subsection shall apply to the use, occupancy, and development of, the alteration or expansion of structures upon, and administrative procedures with respect to: [Bill No. 100, 1970.]

1. Any lot which is in a recorded residential subdivision approved by the Baltimore County Planning Board or Baltimore County Planning Commission and which has been used, occupied, or improved in accordance with the approved subdivision plan; [Bill No. 100, 1970.]

2. Any land in a subdivision tract which was laid out in accordance with the regulations of residence zoning classifications now rescinded, for which a subdivision plan tentatively approved by the Planning Board remains in effect, and which has not been used, occupied, or improved in accordance with such plan; [Bill No. 100, 1970.]

3. Any lot, or tract of lots in single ownership, which is not in an existing development or subdivision as described in Subparagraph 1 or 2 and which is too small in gross area to accommodate six dwelling or density units in accordance with the maximum permitted density in the D.R. zone in which such tract is located; or (13) [Bill No. 100, 1970.]

4. Any lot, or tract of lots in single ownership, which is not in an existing development or sub- division as described in Subparagraph 1 or 2 and which is less than one-half acre in area, regardless of the number of dwelling or density units that would be permitted at the maximum permitted density in the zone in which it is located. (14) [Bill No. 100, 1970.]

5. Any lot, or tract of lots in single ownership which is in a duly recorded subdivision plat not approved by the Baltimore County Planning Board or Planning Commission. [Bill No. 100, 1970.]

B. Standards Applicable to Existing Developments Etc. The minimum standards for net area, lot width, front-yard depth, single-side-yard width, sum of widths of both side yards, rear-yard depth, and height with respect to each use in a development described in Subparagraph A.1, above, shall be as prescribed by the zoning regulations applicable to such use at the time the plan was approved by the Planning Board or Commission; however, the same or similar standards may be codified and comparable bulk (height or area) standards for different permitted uses may be established and codified under Section 504, and these standards shall thereupon control in such existing developments. Development of any subdivision described in Subparagraph A.2 shall be in accordance with the tentatively approved subdivision plan therefor. Standards for development of lots or tracts described in Subparagraphs A.3, A.4 or A.5 shall be as set forth in Paragraph C, below. [Bill No. 100, 1970.]

C. Development Standards for Small Lots or Tracts. [Bill No. 100, 1970.]

1. Any dwelling hereafter constructed on a lot or tract described in Subparagraph A.3 or A.4 shall comply with the requirements of the following table:

Zoning Classification	Minimum Net Lot Area per Dwelling Unit	Minimum Lot Widths, in Feet	Minimum Front-Yard Depth, in Feet	Minimum Width of Individual Side Yard, in Feet	Minimum Sum of Side-Yard Widths, in Feet	Minimum Rear-Yard Depth, in Feet
D.R. 1	40,000 square feet	150	50	20	50	50
D.R. 2	20,000 square feet	100	40	15	40	40
D.R. 3.5	10,000 square feet	70	30	10	25	30
D.R. 5.5	6,000 square feet	55	25	10	—	30
D.R. 10.5	3,000 square feet	20	10	10	—	50
D.R. 16	2,500 square feet	20	10	25	—	30

[Bill No. 100, 1970.]

2. Other standards for development of small lots on tracts as so described shall be set forth in provisions adopted pursuant to the authority of Section 504. [Bill No. 100, 1970.]

D. An amendment to any part of a development plan involving only property subject to the provisions of this subsection shall not be subject to the provisions of Paragraph D (16) of Subsection 1B01.3. [Bill No. 100, 1970.]

From ENDNOTES - ARTICLE 1B:

13. Thus (with conjunction) in Bill No. 100, 1970.

14. Thus (period; without conjunction) in Bill No. 100, 1970.

15. Thus (plural) in Bill No. 100, 1970.

16. Although the provision referred to was Paragraph D as set forth in the Planning Board's final report recommending the legislation on which Bill No. 100, 1970 was based, when drafted into law the subject matter of the provision was transferred to Subparagraph 7 of Paragraph A.

From the Zoning Regulations:

Section 304 -- USE OF UNDERSIZED SINGLE-FAMILY LOTS [B.C.Z.R., 1955.]

A one-family dwelling may be erected on a lot having an area or width at the building line less than that required by the height and area regulations, provided: [B.C.Z.R., 1955.]

a. That such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to adoption of these Regulations; and [B.C.Z.R., 1955.]

b. That all other requirements of the height and area regulations are complied with; and [B.C.Z.R., 1955.]

c. That the owner of the lot does not own sufficient adjoining land to conform substantially to the width and area requirements. [B.C.Z.R., 1955.]

ATTACHMENT 3

RECOMMENDED PROCESS FOR REVIEW OF APPROPRIATENESS OF RESIDENTIAL DEVELOPMENT OF UNDERSIZED LOTS PURSUANT TO B.C.Z.R. SECTION 304

STEP

1. Owner/Builder petitions for determination of appropriateness by the Zoning Commissioner pursuant to amended Section 304.

2. Zoning Commissioner, upon accepting petition, refers it, with site plan and elevation drawings, to the Director of the Office of Planning & Zoning for review and comments.

3. Director of OPZ forwards comments to Zoning Commissioner within 15 days of date petition was accepted.

4. Zoning Commissioner posts public notice upon the property, giving 15 days from posting for any owner or occupant within 1,000' of the undersized lot to request a public hearing.

5. Pursuant to amended Section 304, either:

   A. No request is received for a public hearing, and the Zoning Commissioner determines by administrative action whether or not the dwelling would be appropriate; or,

   B. No request is received for a public hearing, but the Zoning Commissioner chooses to hold a public hearing to determine whether or not the dwelling would be appropriate, with hearing held within 50 days of acceptance of the petition; or,

   C. A public hearing is requested and held within 45 days of acceptance of the petition, at which the Zoning Commissioner determines whether or not the dwelling would be appropriate.

6. Appeal may be taken from the Zoning Commissioner's determination of incompatibility, per County Code Section 22-32.

ADVISORY GROUP

The following contributed to preparation of this report as members of the Advisory Group on Residential Development of Undersized Lots:

Name	Representing
Gail LeCompte	Hon. Berchie Manley, First District
Adele Kass	Hon. Melvin Mintz, Second District
Jennifer Macek	Hon. Dutch Ruppersberger, Third District
Tracy Gingher	Hon. William Howard, Sixth District
Valerie Brown	Bare Hills
Julia Chestnut	Cherry Heights
Ton Kelly	Greater Timonium
Bud McManus	Overlea
Mike Beccio	Home Builders Association (HBAM)
Tom Carski	HBAM
John Ciresi	HBAM
John Cozelski	HBAM
John Stewart	Overlea

Membership in the Advisory Group does not necessarily indicate that the recommendations contained in this report fully represent the views and opinions of each member.

12/28/05

IN RE: PETITION FOR APPROVAL OF UNDERSIZED LOT	*	**BEFORE THE**
	*	**DEPUTY**
S/S of Turkey Point Road,		
800 ft E.	*	**ZONING COMMISSIONER**
Corner of Rockaway Beach Avenue		
15th Election District	*	**OF**
6th Councilmanic District		
	*	**BALTIMORE COUNTY**
(2315 Turkey Point Road)		
	*	
Jeffrey Creamer, Legal Owner and		
Petitioner	*	**2317 Turkey Point Road**
Case No: 06-044 SPH		

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

APPEAL

Jeffrey Creamer, Property Owner and Petitioner, by C. William Clark and Nolan, Plumhoff & Williams, Chartered, their attorneys, file this Appeal to the Board of Appeals from the zoning decision of Deputy Zoning Commissioner Murphy and appeal specifically:

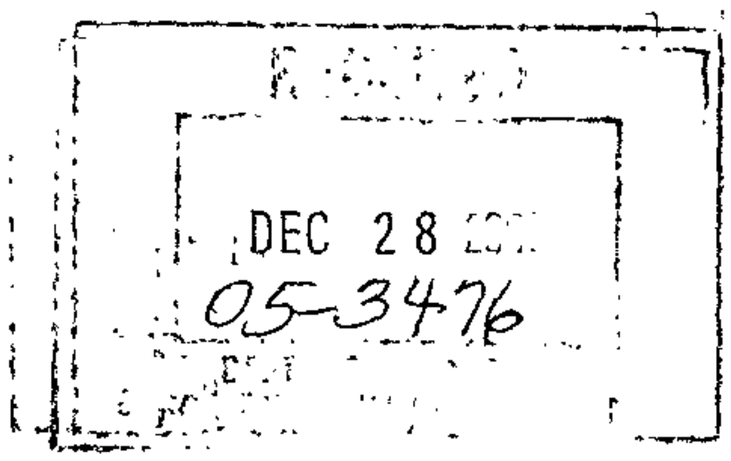
The decision denying the Petitioners request for Special Hearing Relief to confirm that this lot is a lot of record is not an undersized lot as defined in BCZR, Section 4A03.1 as contained in the attached copy of the Findings of Fact and Conclusions of Law issued by the Deputy Zoning Commissioner on November 29, 2005.

Respectfully submitted,

C. William Clark
Nolan, Plumhoff & Williams, Charted
502 Washington Avenue, Suite 700
Towson, MD 21202
(410) 823-7800

Attorneys for Carole and Jeffrey Creamer

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED


DEC 28
05-3476

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this on this 28 day of December, 2005, the foregoing Appeal was mailed, first class, postage prepaid, to the following:

John V. Murphy
Deputy Zoning Commissioner
Suite 405, County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

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

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

C. William Clark

Y:\JENNIFERDATA\WPDOCS\BUD\CWC\ZONING-CLIENTS\Creamer\Appeal2.wpd

LAW OFFICES
NOLAN, PLUMHOFF
& WILLIAMS,
CHARTERED

Legislative Project No. 91-2

PROPOSED AMENDMENTS TO THE BALTIMORE COUNTY ZONING REGULATIONS REGARDING RESIDENTIAL DEVELOPMENT OF UNDERSIZED LOTS IN EXISTING SUBDIVISIONS

A Final Report of the Baltimore County
Planning Board
November 7, 1991

PROJECT DESCRIPTION

Council Resolution No. 1-91 (Attachment 1) requests the Planning Board to consider proposing amendments to the Baltimore County Zoning Regulations in order to provide a special hearing process for cases of residential development proposed on vacant lots within subdivisions approved before enactment of the 1955 Zoning Regulations.

The Resolution specifically requests that the Planning Board consider amendments which would allow a special review process to assure that new housing otherwise buildable by right would be harmonious with the character, scale or size of existing development in older established subdivisions, consistent with the Master Plan policy that new development be compatible with existing communities.

DISCUSSION

The Zoning Regulations (B.C.Z.R.) require that most undersized lots or tracts in Density Residential (D.R.) zones be developed according to a special set of standards (Attachment 2). These standards are also applicable to any lot in a residential subdivision which was created without approval of the Planning Board or its predecessor, the Planning Commission, unless the lot is "grandfathered" under Section 304 of the Zoning Regulations.

Any residential development of an undersized lot zoned D.R. which does not meet the development standards shown on Attachment 2, nor qualify as a developable lot pursuant to Section 304, is subject to approval by the Zoning Commissioner as a variance. This approval process, with a public hearing on a request for a variance, can sometimes serve to allow community residents' concerns about appropriateness of a proposed building within their existing neighborhoods to be stated. However, because the Zoning Commissioner must rule on the bases of "practical difficulty" or "unreasonable hardship", and may only grant a variance not injurious to public health, safety, and welfare, a variance hearing is not intended to address or resolve the compatibility issue for in-fill housing.

There is no process for assuring consideration of compatibility of a new residential structure and an existing residential community where a lot or small tract meets these B.C.Z.R. standards, or if it is a "grandfathered" undersized lot. As a result, it is currently possible for an in-fill construction project of one or more houses to be entirely inappropriate for the existing residential community surrounding it, yet completely beyond review for its impact upon neighboring homes. (This excludes technical review for matters such as traffic or sewer capacity.) This leaves the community vulnerable to a form of physical disruption which can reduce its aesthetic quality, and thereby its "curb appeal" as a desirable place to live, ultimately affecting real estate values adversely in the immediate area. The Council Resolution reflects a need to address the issue.

The Baltimore County Master Plan 1989-2000 specifically suggests that the issue of incompatible in-fill residential development in older communities be addressed. In its section entitled "Community Development: Community Planning, Conservation and Enhancement", the Master Plan 1989-2000 recommends:

> To ensure that new development is compatible with the existing residential community, establish and adopt criteria for compatibility and procedures for review and approval which are acceptable to both development and community interests. A compatibility review should be required for infill development in community conservation areas.

One of the reasons lots without adequate set-backs (other than those "grandfathered" by Section 304) are subject to public hearings before the Zoning Commissioner is that the proximity of buildings on undersized lots can generate a great impact upon other lots and buildings already in place. A petitioner proposing to build on an undersized lot may offer to mitigate the impact of the proposed building(s) by careful attention to placement upon the lot, to landscaping and buffering, and occasionally to building design in terms of facade or exterior features. However, the nature of what is offered and of what is approved as condition(s) for a variance does remain subject to case-by-case negotiation and agreement.

Most existing residential neighborhoods in Baltimore County are distinguishable by way of one or more predominant architectural styles or building (house) types. A logical or reasonable approach to the compatibility issue would thus be a requirement for a generalized review, using the residential development standards of the as-built neighborhood in which the in-fill lots are located, by the Director of the Office of Planning and Zoning. In this way, proposed construction could be encouraged to conform to enhanced design standards, while maintaining an appropriate appearance complementary to and compatible with existing housing styles in the community. Results of the review would then be considered by the Zoning Commissioner in an administrative determination or special hearing on the

appropriateness of the proposed construction. The review would be similar to the one conducted for new Class B office buildings in Residential Office zones, where most other uses are established dwellings.

A fundamental concern with regard to imposition of a compatibility review requirement is whether the correct balance of individual property owners' right to build their own housing, versus established communities' right to protection from incompatible new development, would justify a compatibility requirement for an otherwise fully permitted type of construction, i.e. residential, on lots or tracts of lots which meet all zoning requirements, particularly for lot area, width, set-backs, or compliance with Residential Transition Area (RTA) requirements. Although the Council Resolution calls for a review process for all applications to construct housing on lots recorded before 1955, it is the opinion of the Planning Board that only undersized lots, i.e. those subject to the provisions of Section 304, located in Density Residential (D.R.) zones could convincingly justify a compatibility review requirement. This is because of the greater proximity of proposed new housing on undersized lots to other housing in the established residential community, and the current absence of any forum for review of construction proposed on these "grandfathered" lots.

The Planning Board is also concerned with potential delay in issuance of building permits inherent in any additional requirement for approval of building plans. For this reason, specific time limits for review are recommended. The proposed review procedure is summarized on Attachment 3.

The legislative proposals which follow would amend current Section 304 of the Zoning Regulations, to require that small-scale individual lot construction meet minimum design and compatibility standards in established residential communities. A person proposing to build a house on an undersized "grandfathered" lot would petition the Zoning Commissioner for a determination of appropriateness. The Director of the Office of Planning and Zoning would, upon request of the Zoning Commissioner, comment on whether proposed residential construction would be inappropriate, in terms of site design and architectural design, in the context of the existing established residential community.

The Director's comments would be forwarded to the Zoning Commissioner for consideration during an administrative determination or special hearing. The hearing process would be provided in revised Section 304, i.e. a public hearing if a request for a public hearing would be made by an owner or occupant of property within 1,000' of the subject undersized lot, or a public hearing held at the initiative of the Zoning Commissioner. (It should be noted that Section 22-26(b) of the Baltimore County Code empowers the Zoning Commissioner to initiate a public hearing even if no formal request for one has been received from a concerned citizen, when a variance petition

"involves an owner occupied lot zoned residential", or to grant such a variance without public hearing if no one requests a hearing. This procedure would be similar.)

RECOMMENDATION

Baltimore County Zoning Regulations should be amended at Section 304 to provide for determination by the Zoning Commissioner of appropriateness or inappropriateness of residential development of certain undersized lots and tracts, as follows. New material is shown in **bold face**, and deleted material is enclosed in brackets: { }.

Re-enact the following section of the Zoning Regulations, with amendments as shown:

Section 304 -- USE OF UNDERSIZED SINGLE-FAMILY LOTS [B.C.Z.R., 1955.]

304.1 **A one-family detached** dwelling may be erected on a lot having an area or width at the building line less than that required by the {height and} area regulations **contained in these regulations, provided that:** [B.C.Z.R., 1955.]

A. {a. That} such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to {adoption of these Regulations} **March 30, 1955**; and [B.C.Z.R., 1955.]

B. {b. That} all other requirements of the height and area regulations are complied with; and [B.C.Z.R., 1955.]

C. {c. That} the owner of the lot does not own sufficient adjoining land to conform {substantially} to the width and area requirements {.} [B.C.Z.R., 1955.] **contained in these regulations; and**

D. **The Zoning Commissioner shall have determined that, in any zone other than a Resource Conservation (R.C.) zone, the proposed dwelling will not be inappropriate in relation to the immediate residential neighborhood in which such lot is located.**

304.2 Any person desiring to erect a dwelling pursuant to the provisions of this Section shall petition the Zoning Commissioner for a determination that any improvements proposed would not be inappropriate to the immediate residential neighborhood in which the lot is located.

A. The petitioner shall provide, as an attachment to the petition, plans sufficiently prepared to allow a determination in accordance with the guidelines provided in Subsection 304.2.B below. Elevation drawings shall be submitted in addition to plans and drawings otherwise required to be submitted as part

of the application for a building permit. Photographs representative of the neighborhood where the lot or tract is situated may be required by the Zoning Commissioner in order to determine appropriateness of the proposed new building in relation to existing structures in the neighborhood.

B. Upon acceptance of a formal petition for a determination of appropriateness as provided above, the Zoning Commissioner shall request comments from the Director of the Office of Planning and Zoning (the Director). Within fifteen (15) days of receipt of a request from the Zoning Commissioner, the Director shall provide to the Zoning Commissioner written comments concerning the petition with regard to the following:

1. Site design: New buildings shall be appropriate in the context of the neighborhood in which they are proposed to be located. Appropriateness shall be evaluated on the basis of new building size, lot coverage, building orientation and location on the lot or tract.

2. Architectural design: Appropriateness shall be evaluated based upon one or more of these architectural design elements or aspects:

   a. height;

   b. bulk or massing;

   c. major divisions, or architectural rhythm, of facades;

   d. proportions of openings such as windows and doors in relation to walls;

   e. roof design and treatment; and,

   f. materials and colors, and other aspects of facade texture or appearance.

3. Design amendments: The Director may recommend amendments to the plans or any part thereof which would have the effect of removing inappropriate design elements, and may recommend that a determination be made conditional upon amendments which would incorporate the Director's recommendations in the plans.

304.3 Public notice. Upon accepting a petition pursuant to this Section, the Zoning Commissioner shall post conspicuously upon the lot public notice of the petition for a period of at least fifteen (15) days. Within the fifteen (15) day posting period, any owner or occupant within 1,000 feet of the lot may file a written request for a public hearing with the

Zoning Commissioner, and such hearing shall be scheduled within thirty (30) days from receipt of the request for public hearing.

304.4 Procedures for determination.

A. The Zoning Commissioner shall determine whether the proposed dwelling is inappropriate, and notify the petitioner of said determination within twenty (20) days of acceptance of the petition, unless a request for a public hearing shall have been filed pursuant to Subsection 304.3 above. If the Director has recommended design amendments, the Zoning Commissioner may determine that the proposed dwelling is not inappropriate subject to the petitioner's incorporating in the building plans the amendments recommended by the Director. In the notification from the Zoning Commissioner, the petitioner shall be informed that a public hearing may be requested by the petitioner to appeal the Commissioner's determination, in which case the hearing shall be scheduled within forty-five (45) days from receipt of the request.

B. If a written request for a public hearing is not filed, and notwithstanding any provision herein to the contrary, the Zoning Commissioner may hold a public hearing where a determination shall be made whether the proposed dwelling is inappropriate, provided that the Zoning Commissioner shall have notified the petitioner within twenty (20) days of acceptance of the petition of the Commissioner's intention to hold said public hearing. The public hearing shall be scheduled within thirty (30) days of the Zoning Commissioner's notification to the petitioner.

C. If a written request for a public hearing is not filed, and if the Zoning Commissioner shall not have notified the petitioner of a determination pursuant to the provisions of this Section, or shall not have notified the petitioner pursuant to Subsection 304.4.B above of his intention to hold a public hearing, the dwelling shall be considered appropriate for purposes of this Section.

401 Bosley Avenue
Towson, MD 21204

887-3211

November 13, 1991

The Honorable Douglas B. Riley
Chairman, Baltimore County Council
Court House
Towson, MD 21204

Dear Councilman Riley:

Enclosed is a final report of the Baltimore County Planning Board, adopted November 7, 1991, which I am submitting to you in accordance with Section 26-123(c) of the Baltimore County Code, 1988.

The report is in response to County Council Resolution 1-91, and recommends that amendments be made to the Zoning Regulations for purposes of establishing a special review process for residential development of undersized lots.

Sincerely,

P. David Fields

P. David Fields, Secretary
Baltimore County Planning Board

PDF/MCF/mjm
FINAL.RPT/TXTMJM

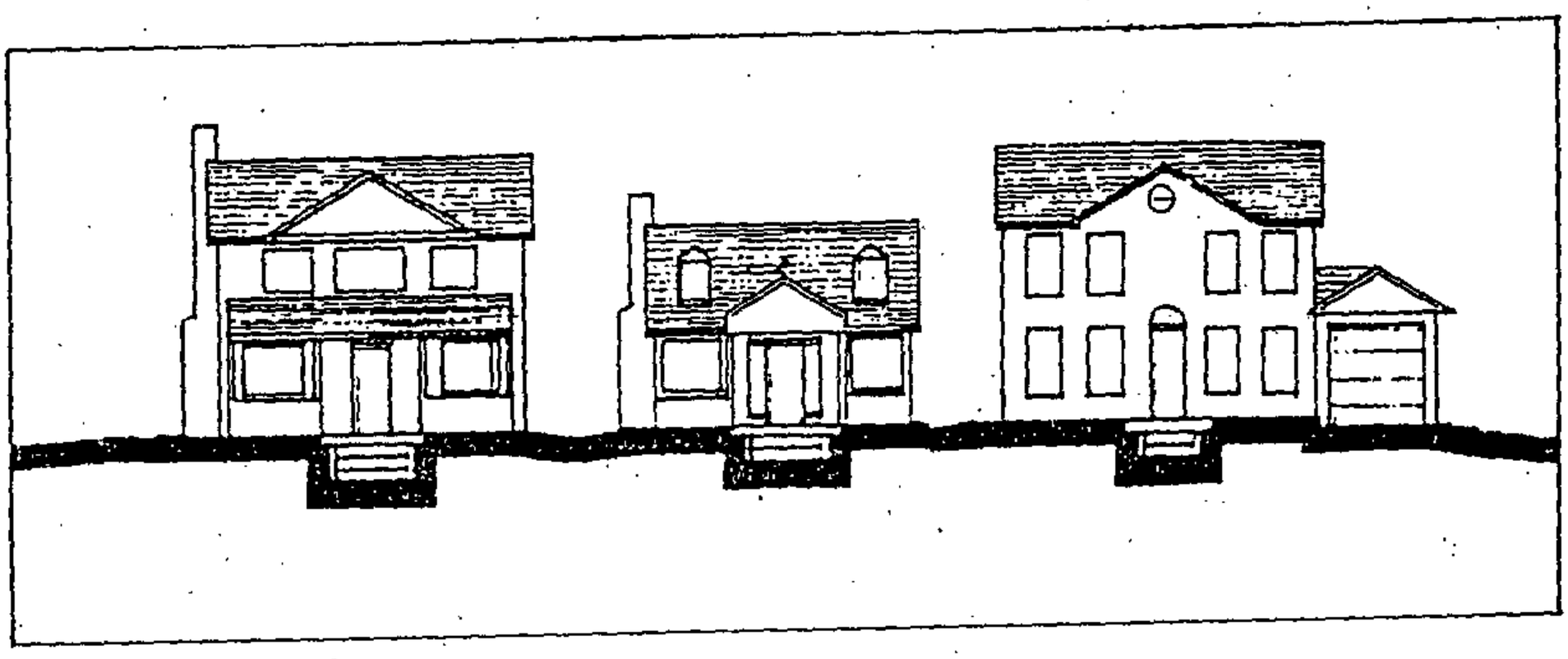
Enclosures

cc: The Honorable Roger B. Hayden, County Executive
Members, Baltimore County Council
Merreen E. Kelly, Administrative Officer
Thomas Peddicord, Legislative Counsel/Secretary
Lawrence Schmidt, Zoning Commissioner
H. Emslie Parks, County Attorney
Harold G. Reid, Chairman of the Planning Board
Louis Waidner, Executive Assistant
Patrick Roddy, Director, Legislative Relations
Arnold Jablon, Director, ZADM
Phyllis Cole Friedman, People's Counsel

Exh. 5

Proposed Amendments To
The Baltimore County
Zoning Regulations
Regarding

RESIDENTIAL DEVELOPMENT OF



UNDERSIZED LOTS IN EXISTING SUBDIVISIONS

A Final Report Of
The Baltimore County
Planning Board

November 7, 1991

ISSUED: 5/01/92 EFFECTIVE: 6/25/92

NTY COUNCIL OF BALTIMORE COUNTY, MARYLAND

LEGISLATIVE SESSION 1992, LEGISLATIVE DAY NO. 7

BILL NO. 47-92

MR. MELVIN G. MINTZ, COUNCILMAN

BY THE COUNTY COUNCIL, APRIL 6, 1992

A BILL ENTITLED

AN ACT concerning

Undersized Single-Family Lots

FOR the purpose of amending the Zoning Regulations in order to require that small scale individual lot construction must meet certain minimum design and compatibility standards in established residential communities, and requiring that a petition be filed, notice be given, and a hearing be provided in order to make certain determinations as to the appropriateness of the construction.

BY repealing and re-enacting, with amendments,

Section 304

Baltimore County Zoning Regulations, as amended

WHEREAS, the Baltimore County Council has received a final report from the Planning Board, dated November 7, 1991, concerning the subject legislation and has held a public hearing thereon, on March 10, 1992, now, therefore

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that Section 304 of the Baltimore County Zoning Regulations, as amended, be and it is hereby repealed and re-enacted, with amendments, to read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

Exh. 4

SECTION 304 Use of Undersized Single-Family Lots

304.1 A one-family DETACHED OR SEMI-DETACHED dwelling may be erected on a lot having an area or width at the building line less than that required by the {height and} area regulations {, provided:} CONTAINED IN THESE REGULATIONS IF:

a. {That} such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to {adoption of these Regulations; and} MARCH 30, 1955; AND

b. {That} all other requirements of the height and area regulations are complied with; and

c. {That} the owner of the lot does not own sufficient adjoining land to conform {substantially} to the width and area requirements CONTAINED IN THESE REGULATIONS.

304.2.(A) ANY PERSON DESIRING TO ERECT A DWELLING PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL FILE WITH THE OFFICE OF ZONING ADMINISTRATION, AT THE TIME OF APPLICATION FOR A BUILDING PERMIT, PLANS SUFFICIENT TO ALLOW THE OFFICE OF PLANNING AND ZONING TO PREPARE RECOMMENDATIONS IN ACCORDANCE WITH THE GUIDELINES PROVIDED IN SUBSECTION (B) BELOW. ELEVATION DRAWINGS MAY BE REQUIRED IN ADDITION TO PLANS AND DRAWINGS OTHERWISE REQUIRED TO BE SUBMITTED AS PART OF THE APPLICATION FOR A BUILDING PERMIT. PHOTOGRAPHS REPRESENTATIVE OF THE NEIGHBORHOOD WHERE THE LOT OR TRACT IS SITUATED MAY BE REQUIRED BY THE OFFICE OF PLANNING AND ZONING IN ORDER TO DETERMINE APPROPRIATENESS OF THE PROPOSED NEW BUILDING IN RELATION TO EXISTING STRUCTURES IN THE NEIGHBORHOOD.

(B) AT THE TIME OF APPLICATION FOR THE BUILDING PERMIT, AS PROVIDED ABOVE, THE DIRECTOR OF ZONING ADMINISTRATION SHALL REQUEST COMMENTS FROM THE DIRECTOR OF THE OFFICE OF PLANNING AND ZONING (THE DIRECTOR). WITHIN FIFTEEN (15) DAYS OF RECEIPT OF A REQUEST FROM THE DIRECTOR OF ZONING ADMINISTRATION, THE DIRECTOR SHALL PROVIDE TO THE OFFICE OF ZONING ADMINISTRATION WRITTEN RECOMMENDATIONS CONCERNING THE APPLICATION WITH REGARD TO THE FOLLOWING:

1. 1. SITE DESIGN: NEW BUILDINGS SHALL BE APPROPRIATE IN THE
2. CONTEXT OF THE NEIGHBORHOOD IN WHICH THEY ARE PROPOSED TO BE LOCATED.
3. APPROPRIATENESS SHALL BE EVALUATED ON THE BASIS OF NEW BUILDING SIZE, LOT
4. COVERAGE, BUILDING ORIENTATION AND LOCATION ON THE LOT OR TRACT.
5. 2. ARCHITECTURAL DESIGN: APPROPRIATENESS SHALL BE EVALUATED
6. BASED UPON ONE OR MORE OF THESE ARCHITECTURAL DESIGN ELEMENTS OR ASPECTS:
7. I. HEIGHT;
8. II. BULK OR MASSING;
9. III. MAJOR DIVISIONS, OR ARCHITECTURAL RHYTHM, OF FACADES;
10. IV. PROPORTIONS OF OPENINGS SUCH AS WINDOWS AND DOORS IN
11. RELATION TO WALLS;
12. V. ROOF DESIGN AND TREATMENT; AND,
13. VI. MATERIALS AND COLORS, AND OTHER ASPECTS OF FACADE
14. TEXTURE OR APPEARANCE.
15. 3. DESIGN AMENDMENTS: THE DIRECTOR MAY RECOMMEND APPROVAL,
16. DISAPPROVAL, OR MODIFICATION OF THE BUILDING PERMIT TO CONFORM WITH THE
17. RECOMMENDATIONS PROPOSED BY THE OFFICE OF PLANNING AND ZONING.
18. 304.3 PUBLIC NOTICE. UPON APPLICATION FOR A BUILDING PERMIT PURSUANT TO
19. THIS SECTION, THE SUBJECT PROPERTY SHALL BE POSTED CONSPICUOUSLY UNDER THE
20. DIRECTION OF THE OFFICE OF ZONING ADMINISTRATION WITH NOTICE OF THE APPLICATION
21. FOR A PERIOD OF AT LEAST FIFTEEN (15) DAYS. ~~WITHIN THE FIFTEEN (15) DAY~~
22. ~~POSTING PERIOD, ANY OWNER OR OCCUPANT WITHIN 1,000 FEET OF THE LOT MAY FILE A~~
23. ~~WRITTEN REQUEST FOR A PUBLIC HEARING WITH THE OFFICE OF ZONING ADMINISTRATION,~~
24. ~~AND A HEARING SHALL BE SCHEDULED WITHIN THIRTY (30) DAYS FROM RECEIPT OF THE~~
25. ~~REQUEST FOR PUBLIC HEARING. THE OFFICE OF ZONING ADMINISTRATION SHALL ESTABLISH~~
26. ~~APPROPRIATE FEE SCHEDULES.~~

~~304.4 FINAL APPROVAL.~~

~~(A) IF NO WRITTEN REQUEST FOR A PUBLIC HEARING IS FILED, THE DIRECTOR OF ZONING ADMINISTRATION MAY ISSUE THE BUILDING PERMIT, IN ACCORDANCE WITH SECTION 304.2.B. THE DECISION OF THE DIRECTOR OF ZONING ADMINISTRATION MAY BE APPEALED, IN WHICH CASE THE HEARING SHALL BE SCHEDULED BY THE BOARD OF APPEALS WITHIN FORTY-FIVE (45) DAYS FROM RECEIPT OF THE REQUEST.~~

~~(B) IF A WRITTEN REQUEST FOR A PUBLIC HEARING IS NOT FILED, AND NOT WITHSTANDING ANY PROVISION HEREIN TO THE CONTRARY, THE DIRECTOR OF ZONING ADMINISTRATION MAY REQUIRE A PUBLIC HEARING BEFORE THE ZONING COMMISSIONER WHERE A DETERMINATION SHALL BE MADE WHETHER THE PROPOSED DWELLING IS APPROPRIATE. THE OFFICE OF ZONING ADMINISTRATION MUST NOTIFY THE APPLICANT WITHIN TWENTY (20) DAYS OF ACCEPTANCE OF THE APPLICATION OF THE DIRECTOR'S INTENTION TO REQUIRE A PUBLIC HEARING. THE PUBLIC HEARING SHALL BE SCHEDULED BEFORE THE ZONING COMMISSIONER WITHIN THIRTY (30) DAYS OF THE DIRECTOR OF ZONING ADMINISTRATION'S NOTIFICATION TO THE APPLICANT.~~

~~(C) IF A WRITTEN REQUEST FOR A PUBLIC HEARING IS NOT FILED, AND IF THE OFFICE OF ZONING ADMINISTRATION HAS NOT NOTIFIED THE APPLICANT OF A DETERMINATION PURSUANT TO THE PROVISIONS OF THIS SECTION, OR HAS NOT NOTIFIED THE APPLICANT PURSUANT TO SUBSECTION (B) ABOVE OF THE INTENTION TO REQUIRE A PUBLIC HEARING, THE DWELLING SHALL BE CONSIDERED APPROPRIATE FOR PURPOSES OF THIS SECTION.~~

304.4 PUBLIC HEARING.

WITHIN THE FIFTEEN (15) DAY POSTING PERIOD: 1) ANY OWNER OR OCCUPANT WITHIN 1,000 FEET OF THE LOT MAY FILE A WRITTEN REQUEST FOR A PUBLIC HEARING WITH THE OFFICE OF ZONING ADMINISTRATION, OR 2) THE DIRECTOR OF ZONING ADMINISTRATION MAY REQUIRE A PUBLIC HEARING. THE OFFICE OF ZONING ADMINISTRATION SHALL NOTIFY THE APPLICANT WITHIN TWENTY (20) DAYS OF THE RECEIPT OF A REQUEST FOR A PUBLIC HEARING. A HEARING BEFORE THE ZONING COMMISSIONER SHALL BE

SCHEDULED WITHIN THIRTY (30) DAYS FROM RECEIPT OF THE REQUEST FOR PUBLIC HEARING. AT THE PUBLIC HEARING, THE ZONING COMMISSIONER SHALL MAKE A DETERMINATION WHETHER THE PROPOSED DWELLING IS APPROPRIATE.

304.5 FINAL APPROVAL.

(A) THE DIRECTOR OF ZONING ADMINISTRATION MAY ISSUE THE BUILDING PERMIT; OR

(B) NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, THE DIRECTOR OF ZONING ADMINISTRATION MAY REQUIRE A PUBLIC HEARING BEFORE THE ZONING COMMISSIONER PURSUANT TO 304.4 ABOVE; OR

(C) IF THE OFFICE OF ZONING ADMINISTRATION HAS NOT NOTIFIED THE APPLICANT OF A DETERMINATION PURSUANT TO THE PROVISIONS OF THIS SECTION, OR HAS NOT NOTIFIED THE APPLICANT PURSUANT TO SUBSECTION 304.4 ABOVE OF THE INTENTION TO REQUIRE A PUBLIC HEARING, THE DWELLING SHALL BE CONSIDERED APPROPRIATE FOR PURPOSES OF THIS SECTION.

304.6 THE DECISION OF THE ZONING COMMISSIONER OR THE DIRECTOR OF ZONING ADMINISTRATION MAY BE APPEALED, IN WHICH CASE THE HEARING SHALL BE SCHEDULED BY THE BOARD OF APPEALS WITHIN FORTY-FIVE (45) DAYS FROM RECEIPT OF THE REQUEST.

304.7 THE DIRECTOR OF ZONING ADMINISTRATION SHALL ESTABLISH APPROPRIATE FEE SCHEDULES.

SECTION 2. AND BE IT FURTHER ENACTED, that this Act shall take effect forty-five days after its enactment.

JEFFREY AND CAROLE CREAMER - UNDERSIZED LOT
FILE MATERIAL RECEIVED FROM MR. FERRO 10/29/04

COPY OF DEPUTY ZONING COMMISSIONER'S DECISION

OPPOSITION - LIST OF EXHIBITS

OPPOSITION TO VARIANCE REQUEST - Issue 1

OPPOSITION TO VARIANCE REQUEST - Issue 2

OPPOSITION TO VARIANCE REQUEST - Issue 3

OPPOSITION TO VARIANCE REQUEST - Issue 4

OPPOSITION TO VARIANCE REQUEST - Issue 5

OPPOSITION TO VARIANCE REQUEST - Issue 6

OPPOSITION TO VARIANCE REQUEST - Issue 7

REAL PROPERTY DATA SEARCH /EXHIBIT A

REAL PROPERTY DATA SEARCH /EXHIBIT B

§304 /USE OF UNDERSIZED SINGLE-FAMILY LOTS /BCZR /EXHIBIT C

LOT 10 TURKEY POINT ROAD /GIS MAP /EXHIBIT D

LOT 11 TURKEY POINT ROAD /GIS MAP /EXHIBIT E

§ 1B02 BCZR /EXHIBIT F

PROPOSED SITE PLAN /2315 TURKEY POINT ROAD /EXHIBIT G

EAST ELEVATION /EXHIBIT H

FLOOR PLAN /EXHIBIT I

§304.2 BCZR /EXHIBIT J

DEED /LILLIAN KLEINSMITH /EXHIBIT K

REAL PROPERTY DETAIL /EXHIBIT L

OPPOSITION TO REQUEST TO CONSTRUCT NEW DWELLING ON UNDERSIZED LOT /EXHIBIT M

PICTURE OF BULKHEAD WHICH SPANS LOTS 10 AND 11 /EXHIBIT N

ZONING COMMISSIONER'S POLICY MANUAL /§ 304 /EXHIBIT O

Zoning Commissioner

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

Baltimore County

James T. Smith, Jr., County Executive
Lawrence E. Schmidt, Zoning Commissioner

May 12, 2004

RECEIVED
OCT 2 9 2004
BALTIMORE COUNTY
BOARD OF APPEALS

C. William Clark, Esquire
Nolan, Plumhoff & Williams
502 Washington Avenue, Suite 700
Towson, Maryland 21204

Re: Petition for Undersized Lot
Property: 2315 Turkey Point Road

Dear Mr. Clark:

Enclosed please find the decision rendered in the above-captioned case. The petition for approval of an undersized lot has been denied in accordance with the enclosed Order.

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

Very truly yours,

John V. Murphy
Deputy Zoning Commissioner

JVM:raj
Enclosure

c: Carole & Jeffrey Creamer
1779 Shaftsbury Avenue
Crofton, MD 21114

Robin & Michael Ferro
2313 Turkey Point Road
Baltimore, MD 21221

1 ST Hearing decision

IN RE: PETITION FOR APPROVAL OF UNDERSIZED LOT S/S of Turkey Point Road, 800 ft. E corner of Rockaway Beach Avenue 15th Election District 6th Councilmanic District (2315 Turkey Point Road) Carole Creamer, *Legal Owner* **and** Jeffrey Creamer, *Petitioners*	*	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY Undersized Lot

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for approval of an undersized lot filed by the legal owner of the subject property, Carole Creamer by her husband, Jeffrey Creamer. The property is located at 2315 Turkey Point Road in the eastern area of Baltimore County. Approval of the undersized lot was made pursuant to Section 304 of the Baltimore County Zoning Regulations (B.C.Z.R.) for application to construct a dwelling on an undersized lot. The property was posted with Notice of Hearing on February 28, 2004 and a formal Demand for Hearing was subsequently filed on March 11, 2004 by Richard Ferro, an adjacent property owner. Pursuant to the statute the case was set for hearing before this Commission on April 27, 2004.

The property was posted with Notice of Hearing on April 10, 2004, for 15 days prior to the hearing, in order to notify all interested citizens of the requested zoning relief. In addition, a Notice of Zoning Hearing was published in "The Jeffersonian" newspaper on April 13, 2004 to notify any interested persons of the scheduled hearing date.

Applicable Law

Section 304 .1 and 304. 4 of the Baltimore County Zoning Regulations

Sec. 304.1[Bill Nos. 64-1999; 28-2001] Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

A.Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;
B.All other requirements of the height and area regulations are complied with; and
C.The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

Sec. 304.4 Public hearing. Within the fifteen-day posting period: (1) Any owner or occupant within 1,000 feet of the lot may file a written request for a public hearing with the Department of Permits and Development Management, or (2) the Director of Permits and Development Management may require a public hearing. The Department of Permits and Development Management shall notify the applicant within 20 days of the receipt of a request for a public hearing. A hearing before the Zoning Commissioner shall be scheduled within 30 days from receipt of the request for public hearing. At the public hearing, the Zoning Commissioner shall make a determination whether the proposed dwelling is appropriate.

Zoning Advisory Committee Comments

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: None.

Interested Persons

Appearing at the hearing on behalf of the request were Carole Creamer and Jeffrey Creamer, Petitioners. C. William Clark, Esq. represented the Petitioners. Robin Ferro and Michael Ferro appeared at the hearing in opposition to the requested approval. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

Testimony and Evidence

Testimony and evidence indicated that the property, which is the subject of this request, is zoned D.R. 3.5 which requires a 70 ft. wide lot pursuant to the small lot chart of Section 1B02.3.C.1 of the B.C.Z.R. This lot is 50 ft. wide and improved only by a small shed. Mr. Clark proffered that the Petitioner would like to sell the lot as a buildable waterfront lot. The lot is served by both public water and sewer. The building setback envelope is shown on Petitioner's Exhibit No. 2. The new home would meet all County regulations required under the DR 3.5 zoning except for the lot width.

Mr. Clark offered a deed dated September 11, 2002 showing that Carole Creamer purchased the property in her name alone. He further offered that this lot was Lot No. 10 of the "Turkey Point Farm" (now Rockaway Beach) subdivision which was recorded in the Land Records of Baltimore County in 1915, as shown on Petitioner's Exhibit No. 4. He noted that the lots on Sue Creek were all the typical 50 ft. wide lots of that era. Petitioner's Exhibit No. 5 is a deed for the lot and home next door at 2317 Turkey Point Road, which deed indicates that this property is owned by Petitioner Jeffrey Creamer, Carole Creamer's husband. A photograph of this property and the Creamer home is given in Petitioner's Exhibit No. 6A. Mr. Clark proffered that this home was in poor condition. Consequently, the Petitioner would like to raze this home and build another more suitable for the family. Finally, the Petitioner presented Exhibit No. 8 which is a rendering of the home that they propose to build on the subject property that shows the garage facing the street and side entrance.

The protestants, Mr. and Mrs. Ferro live next to the subject property at 2313 Turkey Point Road. They presented SDAT records that showed that 2315 Turkey Point road is owned by Carole Creamer, that 2317 Turkey Point Road is owned by Jeffrey Creamer, and that both properties were purchased on the same day in 2002. Protestant's Exhibit No. 4 is a deed dated November 15, 1994 from Lillian Kleinsmith to herself reserving a life estate. However, although the deed shows it involves Lot No. 10, the improvements are noted in the deed as being known as 2317 Turkey Point Road (not 2315 Turkey Point Road). The Protestants also placed on the record a copy of the Zoning Commissioner's Policy Manual regarding Section 304 of the B.C.Z.R. concerning elevations and floor plans for the new home to be constructed. Finally, the Protestants presented the Baltimore County GIS map of the area. See protestants' Exhibit No. 7.

Mr. Ferro argued that the Section 304.1 C of the B.C.Z.R. and Zoning Commissioner's Policy Manual, Section 304, prohibited approval of the undersized lot because the adjoining land was owned by the Petitioner's husband and could be used to conform to the lot width requirements by

combining lots. He noted that the bulkhead on Sue Creek for Lots 10 and 11 was one structure, that the pier on the line between Lots 10 and 11 served both lots, that the shed on lot 10 was part of lot 11, and that both lots were sold together in 1994. He was also concerned about water runoff onto his property if the new home were built, about the side entrance of the proposed home and the Petitioner's site plan (Exhibit No. 2) which he said showed encroachments onto his property. He also presented a petition signed by neighbors opposed to the approval.

Mr. Creamer testified that the community association had taken no position in regard to this application, and that Lots 10 and 11 were in separate ownership. He denied that water from this lot would flow onto the Ferro lot, and asserted that many homes in the neighborhood had garages facing the street with side entrances.

Findings of fact and conclusions of law

Mr. Clark argued that Section 304 of the Zoning Commissioner's Policy Manual is no longer applicable to such cases as it is not supported by the regulations and is out-of-date. Specifically, he notes that Section 304 of the regulations makes no mention of any "six year rule" which arises in the Policy Manual only. He notes that the deeds show separate ownership and that Carole Creamer does not own sufficient adjoining land to conform to the regulations and so does not violate Section 304.1 C of the B.C.Z.R.

While I understand Mr. Clark's argument regarding the six year rule in the Zoning Commissioner's Policy Manual, I do not agree that the Policy Manual is without force or effect. As can be seen by reading The Policy Manual, it was written and adopted to prevent abuses that unfortunately developed in some areas where petitioners would put adjacent lots in different names as a subterfuge of the regulation in order to avoid Section 304.1.C of the B.C.Z.R. That reason is still very much of concern generally and was adopted by the Zoning Commission to interpret and explain the section of 304.1.C.

As the Policy states, it is not a rule but a guideline. It is input to a case by case determination of whether the Petitioners have acted in good faith. On its face, the present Petitioner violates the six-year rule. They have waited only two years to apply for a building permit. However, I have no evidence to support this, nor do I believe that the instant Petitioners had hatched some scheme to violate the policy. I have no evidence that the Petitioners placed the title of the two lots in separate names to confound the regulations. I do not find application of the six-year rule dispositive of this case.

Rather, when I look at the criteria given in Section 304.4, I note that I am only charged with finding whether or not the proposed dwelling is "appropriate". I find that it is not "appropriate" in this case, not because the orientation of the home, nor the possibility of water runoff onto the protestants property, nor because of the common use of Lots 10 and 11 as argued by the protestants. I find that putting a new home on a 50 ft. wide lot is not appropriate in this neighborhood because the neighborhood has not in fact been developed that way. I say this even though I recognize that the old 1915 subdivision was laid out in 50 ft. wide lots. However, unlike many similar waterfront subdivisions, this subdivision was actually developed using double lots. That fact is best shown by Protestant's Exhibit No. 7. A review of the County's GIS map shows the double lot development of the area. Sometimes the buildings are placed on the property line between double lots. Sometimes the buildings simply encroach on the adjacent lot. Finally, other situations show, as is the case here, the building on one lot and an accessory building on the other. But, in general, I find that the area has been developed in double 50 ft. lots. In my opinion, to start a single lot development now, as the Petitioners request, after many years of double lot development would change the character of the neighborhood. I do not think this is appropriate.

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

THEREFORE, IT IS ORDERED, this 10 day of May, 2004, by this Deputy Zoning Commissioner, that the Petitioner's request for approval an undersized lot pursuant to Section 304 of the Baltimore County Zoning Regulations (B.C.Z.R), for application to construct a dwelling on an undersized lot, be and is hereby Denied.

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

John V. Murphy

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:raj

Opposition – List of Exhibits

(exhibit A) MDAT Property Record
Ownership of subject property 2315 Turkey Pt. Rd.
Lot 10 15-11-470451
Carole C. Creamer 1779 Shaftsbury Ave Crofton MD

(exhibit B) MDAT Property Record
Ownership of adjoining property 2317 Turkey Pt. Rd.
Lot 11 15-11-470450
Jeffrey Creamer 1779 Shaftsbury Ave Crofton MD

(exhibit C) B.C.Z.R. Section 304.1.C
"Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than required by the area regulations contained in the regulations if:

C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

(exhibit D) G.I.S. Map showing subject property Lot 10

(exhibit E) G.I.S. Map showing adjoining property Lot 11
Also shows new dwelling on area map.

(exhibit F) B.C.Z.R. Section 1B02.3.C.1

D.R. 3.5	Minimum Lot Width	70 Feet
D.R. 3.5	Minimum Front Yard Depth	30 Feet
D.R. 3.5	Minimum Rear Yard Depth	30 Feet

(exhibit G)	Site plan submitted by Petitioners Shows property layout w/front sidewalk location.
(exhibit H)	Site plan submitted by Petitioners Shows East Elevation w/front door location
(exhibit I)	Site plan submitted by Petitioners Shows interior floor plan w/front door location
(exhibit J)	B.C.Z.R. Section 304.2 1 1. Site design. New buildings shall be appropriate in the context of the neighborhood in which they are proposed to be located. Appropriateness shall be evaluated on the basis of new building size, lot coverage, building orientation, and location on the lot or tract.
(exhibit K)	Deed from November 15, 1994, 1st Page: Describing Lot 10 clearly stating "The improvements thereon being known as 2317 Turkey Point Road. 4th Page: Description of Property (Item 5) Location/Address of Property Being Conveyed – 2317 Turkey Point Road.
(exhibit L)	Real Property Detail from Baltimore County Legal Description of lot 10 – 2317 Turkey Pt. Rd
(exhibit M)	Petition signed by local residents: Opposing the construction of a new house on lot 10, 2315 Turkey Point Road
(exhibit N)	Photo showing structural bulkhead spanning lots 10 &11
(exhibit O)	Zoning Commisioner's Policy Manual Section 304 "Use of undersized single-family lots" "Six Year Rule stipulation"

Opposition to Variance Request – Issue 1

Petition to Build On an Undersized Lot	*	Property Location 2315 Turkey Point Rd.

Objection: Petitioners, Carole & Jeffrey Creamer, have sufficient land to comply with Baltimore County zoning regulations, with regards to lot width.

Applicable Law: B.C.Z.R. Section 304.1.C (exhibit C)

"Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than required by the area regulations contained in the regulations if:

C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

Facts:

MDAT Property Record (exhibit A)
Ownership of subject property 2315 Turkey Pt. Rd.
Lot 10 15-11-470451
Carole C. Creamer 1779 Shaftsbury Ave Crofton MD

MDAT Property Record (exhibit B)
Ownership of adjoining property 2317 Turkey Pt. Rd.
Lot 11 15-11-470450
Jeffrey Creamer 1779 Shaftsbury Ave Crofton MD

G.I.S. Map (exhibit D)
Showing subject property Lot 10

G.I.S. Map (exhibit E)
Showing adjoining property Lot 11

Comments: Petitioners (Carole & Jeffrey Creamer) own the adjoining properties of 2315 & 2317 with a combined width of 100' and can comply with the 70' width requirement.

Opposition to Variance Request – Issue 2

Petition to Build	*	Property Location
On an Undersized Lot	*	2315 Turkey Point Rd.

Objection: Proposed dwelling does not meet requirements for minimum front yard, or rear yard depth.

Applicable Law:
B.C.Z.R. Section 1B02.3.C.1 (exhibit F)
D.R. 3.5 Minimum Front Yard Depth 30 Feet
D.R. 3.5 Minimum Rear Yard Depth 30 Feet

Facts:
Site plan submitted by Petitioners (exhibit G)
Shows property layout w/front sidewalk location.

Site plan submitted by Petitioners (exhibit H)
Shows East Elevation w/front door location

Site plan submitted by Petitioners (exhibit I)
Shows interior floor plan w/front door location

Comments:
The proposed plan is **15** feet short of the established minimum for front yard depth, and **20** feet short of minimum rear yard depth.

Opposition to Variance Request – Issue 3

Petition to Build On an Undersized Lot	*	**Property Location 2315 Turkey Point Rd.**

Objection: Proposed dwelling is oriented in a manner, which is un-appropriate, in relation to established houses in the area.

Applicable Law: B.C.Z.R. Section 304.2 1 (exhibit J)
1. Site design. New buildings shall be appropriate in the context of the neighborhood in which they are proposed to be located. Appropriateness shall be evaluated on the basis of new building size, lot coverage, building orientation, and location on the lot or tract.

Facts: Site plan submitted by Petitioners (exhibit G)
Shows dwelling layout w/front sidewalk

Site plan submitted by Petitioners (exhibit H)
Shows East Elevation w/front door location

Site plan submitted by Petitioners (exhibit I)
Shows interior floor plan w/front door location

Comments: The proposed house will not face the street, or water, both of which are customary in this area. It is proposed in a manner, in which it's front faces what are the sides of established houses.

Opposition to Variance Request – Issue 4

Petition to Build On an Undersized Lot	*	**Property Location 2315 Turkey Point Rd.**

Objection: Proposed dwelling is positioned on the lot in a manner, which is un-appropriate, in relation to established houses in the area.

Applicable Law: B.C.Z.R. Section 304.2 1 (exhibit J)
1. Site design. New buildings shall be appropriate in the context of the neighborhood in which they are proposed to be located. Appropriateness shall be evaluated on the basis of new building size, lot coverage, building orientation, and location on the lot or tract.

Facts: G.I.S. Map (exhibit E)
Showing subject property Lot 10 with proposed new dwelling position

Comments: Due to Critical Area restrictions a new dwelling will have to be located in a position, which does follow the present alignment of established houses. This places the house in an awkward position to other homes. It also places the area in which we park our car, approximately 10 feet away from what would be the petitioners kitchen window.

Opposition to Variance Request – Issue 5

Petition to Build	*	**Property Location**
On an Undersized Lot	*	**2315 Turkey Point Rd.**

Objection: Local residents, including all residents, which live adjacent to the subject property, are opposed to this construction.

Applicable Law:

Facts: Petition signed by local residents: (exhibit M) Opposing the construction of a new house on lot 10, 2315 Turkey Point Road.

Comments: Surrounding and concerned neighbors would prefer a single dwelling on the combined lots, which would be more in harmony with the existing houses.

This approach, would be more environmentally friendly, and pose less of an impact on these lots, which are located in a "Critical area" and "Buffer Zone".

This would also prevent another pier from being built and allowing 3 more additional boats in a small creek (Sue Creek), which already has an over-abundance of yachts clubs, marina's, and private piers.

Opposition to Variance Request – Issue 6

Petition to Build	*	**Property Location**
On an Undersized Lot	*	**2315 Turkey Point Rd.**

Objection: This property has been always been part of 2317 Turkey Point Road, and has permanent established structures, which are common to both lots.

Applicable Law:

Facts: Site plan submitted by Petitioners (exhibit G)
Shows the permanent wood bulkhead, which is a contiguous structure serving both lots 10 & 11.

Real Property Detail from Baltimore Cty. (exhibit L)
Legal Description of lot 10 – 2317 Turkey Pt. Rd.

Deed from November 15, 1994, (exhibit K)
1st Page: Describing Lot 10 clearly stating "The improvements thereon being known as 2317 Turkey Point Road.
4th Page: Description of Property (Item 5)
Location/Address of Property Being Conveyed – 2317 Turkey Point Road.

Comments: This property has always been part of 2317 Turkey Point Road. It was sold as a single unit to the petitioners. It's improvements, namely a storage shed, and structural bulkhead, are permanent improvements of 2317.

Opposition to Variance Request – Issue 7

Petition to Build On an Undersized Lot	*	Property Location 2315 Turkey Point Rd.

Objection: This additional house, and the subsequent reconstruction of the existing house, on Lot 11, 2317 Turkey Point Road, will, further exacerbate existing drainage, and basement dampness problems.

Applicable Law:

Facts:

MDAT Property Record (exhibit B)
Enclosed Square footage – Existing house 700 Sq Ft.
Lot 11 15-11-470450
Jeffrey Creamer 1779 Shaftsbury Ave Crofton MD

G.I.S. Map (exhibit D)
Showing subject property Lot 10. Map depicts lines of elevation for purposes of establishing floodplains. 8 foot line is noted on map.

Site plan submitted by Petitioners (exhibit G)
Lists impervious surface for lot 10 alone at 1,681 Sq. Ft.

Comments: Lines of elevation show that the subject property, Lot 10, and the adjoining property Lot 11, are approximately 2-4 feet higher than our property. Impervious surface area will go from an existing approximate of 1000 Sq. Feet, to about 3400 Sq. Feet. This is a 340 % increase. This does not include the two additional gravel parking area's which at this time do not exist, and will in the future become, impervious surface.

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 -** 15 **Account Number -** 1511470451

Owner Information

Owner Name: CREAMER CAROLE C

Mailing Address: 1779 SHAFTSBURY AVE
CROFTON MD 21114-2018

Use: RESIDENTIAL
Principal Residence: NO
Deed Reference: 1) /16854/ 471
2)

Location & Structure Information

Premises Address
2315 TURKEY POINT RD

Legal Description
TURKEY POINT RD
ROCKAWAY BEACH

WATERFRONT

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
98	15	211					10	82	Plat Ref: 4/ 171

Special Tax Areas
Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		13,200.00 SF	34

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2004	As Of 07/01/2005
Land:	74,800	74,800		
Improvements:	0	0		
Total:	74,800	74,800	74,800	74,800
Preferential Land:	0	0	0	0

Transfer Information

Seller: KLEINSMITH LILLIAN A	Date: 09/23/2002	Price: $110,000	
Type: NOT ARMS-LENGTH	Deed1: -/16854/-471	Deed2:	
Seller: KLEINSMITH LILLIAN A	Date: 01/03/1995	Price: $0	
Type: NOT ARMS-LENGTH	Deed1: /10890/ 346	Deed2:	
Seller:	Date:	Price:	
Type:	Deed1:	Deed2:	

Exemption Information

Partial Exempt Assessments	Class	07/01/2004	07/01/2005
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
* NONE *

Exhibit A

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** - 15 **Account Number** - 1511470450

Owner Information

Owner Name: CREAMER JEFFREY A

Mailing Address: 1779 SHAFTSBURY AVE
CROFTON MD 21114-2018

Use: RESIDENTIAL
Principal Residence: NO
Deed Reference: 1) /16854/ 475
2)

Location & Structure Information

Premises Address
2317 TURKEY POINT RD

Legal Description
WATERFRONT
ROCKAWAY BEACH

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
98	15	211					11	82	Plat Ref: 4/ 171

Special Tax Areas
Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1931	700 SF	13,150.00 SF	34

Stories	Basement	Type	Exterior
1	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2004	As Of 07/01/2005
Land:	98,780	98,780		
Improvements:	35,410	38,960		
Total:	134,190	137,740	136,556	137,740
Preferential Land:	0	0	0	0

Transfer Information

Seller: KLEINSMITH WILLIAM J	Date: 09/23/2002	Price: $130,000
Type: IMPROVED ARMS-LENGTH	Deed1: /16854/-475	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:
Seller:	Date:	Price:
Type:	Deed1:	Deed2:

Exemption Information

Partial Exempt Assessments	Class	07/01/2004	07/01/2005
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Exhibit B

all improved lots within 200 feet on each side thereof, provided that no dwelling shall be required to be set back more than 60 feet in D.R.2 Zones, 50 feet in D.R.3.5 Zones and 40 feet in D.R.5.5 Zones. In no case, however, shall nonresidential principal buildings have front yards of less depth than those specified therefor in the area regulations for D.R.2, D.R.3.5 and D.R.5.5 Zones respectively. **[Resolution, November 21, 1956]**

303.2 In B.L., B.M. and B.R. Zones, the front yard depth of any building hereafter erected shall be the average of the front yard depths of the lots immediately adjoining on each side, provided such adjoining lots are improved with permanent commercial buildings constructed of fire-resisting materials situate within 100 feet of the joint side property line, but where said immediately adjoining lots are not both so improved, then the depth of the front yard of any building hereafter erected shall be not less than the average depth of the front yards of all lots within 100 feet on each side thereof which are improved as described above.

Section 304
Use of Undersized Single-Family Lots
[BCZR 1955; Bill No. 47-1992]

304.1 **[Bill Nos. 64-1999; 28-2001]** Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;

B. All other requirements of the height and area regulations are complied with; and

C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

304.2 Building permit application.

A. Any person desiring to erect a dwelling pursuant to the provisions of this section shall file with the Department of Permits and Development Management, at the time of application for a building permit, plans sufficient to allow the Office of Planning to prepare the guidelines provided in Subsection B below. Elevation drawings may be required in addition to plans and drawings otherwise required to be submitted as part of the application for a building permit. Photographs representative of the neighborhood where the lot or tract is situated may be required by the Office of Planning in order to determine appropriateness of the proposed new building in relation to existing structures in the neighborhood.

B. At the time of application for the building permit, as provided above, the Director of the Department of Permits and Development Management shall request comments from the Director of the Office of Planning (the "Director"). Within 15 days of receipt of a request from the Director of the Department of Permits and Development Management, the Director shall provide to the

Exhibit C

Lot 10 TURKEY POINT ROAD



em:
Plane:
ontal Datum
el:
l Datum

ture: March 1995
ture : 1" = 100'

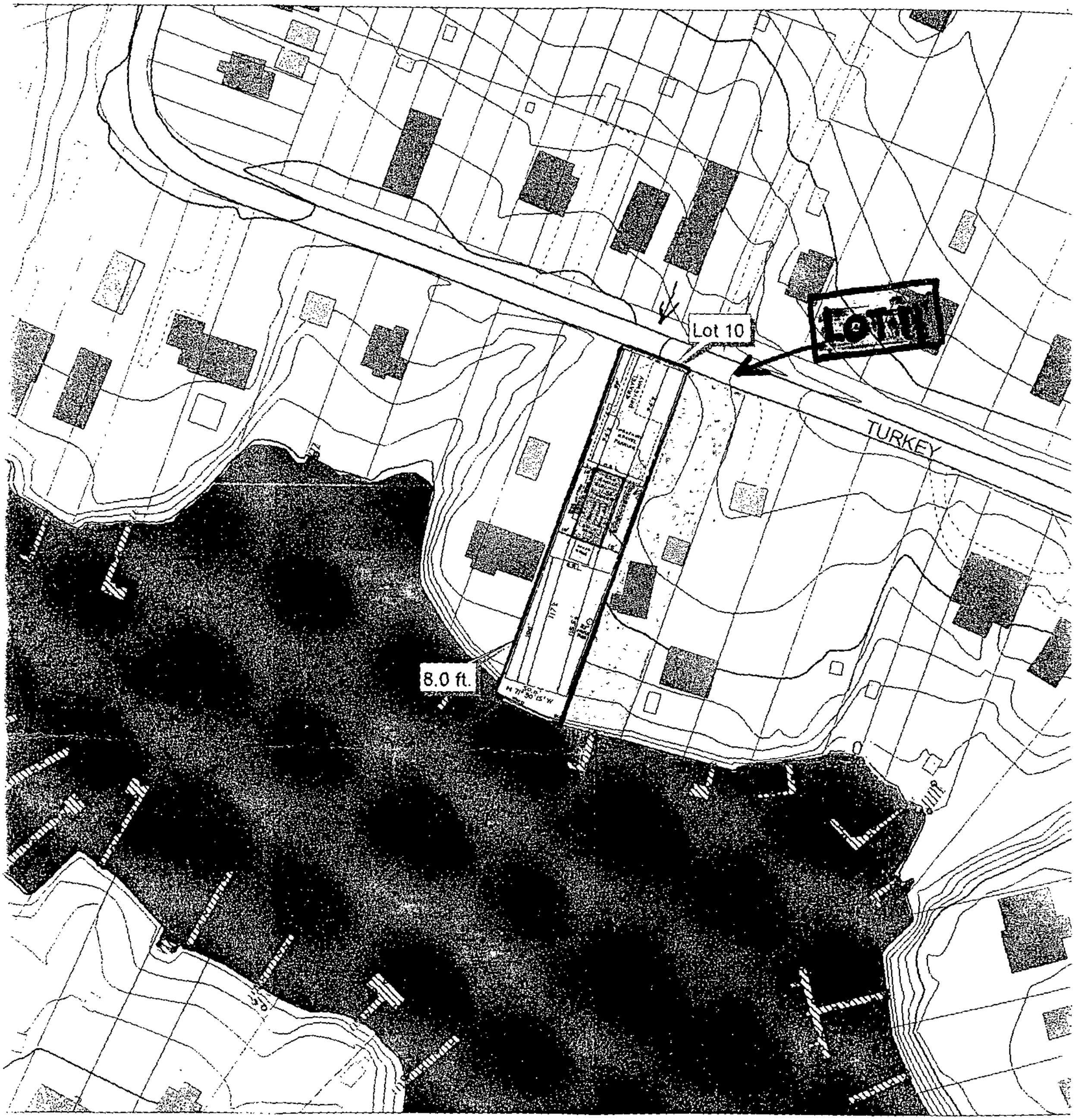
NOTE:
Floodplain Elevation Data from FEMA Flood Insurance Rate Map 240010-0445C *is based on* Baltimore Co. Datum.
Add 1.7 feet vertically to NAVD88 elevation to approximate BCD elevation

Exhibit D

Baltimore County, MD
Department of Public Works
GIS Services

100

Lot 11 TURKEY POINT ROAD



Item:
Plane:
Zontal Datum
ject:
al Datum

ature: March 1995
cture : 1" = 100'

NOTE:
Floodplain Elevation Data from FEMA Flood Insurance Rate Map 240010-0445C is based on Baltimore Co. Datum.
Add 1.7 feet vertically to NAVD88 elevation to approximate BCD elevation.

Exhibit E

Baltimore County, MD
Department of Public Works
GIS Services

100

Zoning Classification	Minimum Net Lot Area per Dwlling Unit (sq. ft.)	Minimum Lot Width (feet)	Minimum Front Yard Depth (feet)	Minimum Width of Individual Side Yard (feet)	Minimum Sum of Side Yard Widths (feet)	Minimum Rear Yard Depth (feet)
D.R.1	40,000	150	50	20	50	50
D.R.2	20,000	100	40	15	40	40
D.R.3.5	10,000	70	30	10	25	30
D.R.5.5	6,000	55	25	10	--	30
D.R.10.5	3,000	20	10	10	--	50
D.R.16	2,500	20	10	25	--	30

2. Other standards for development of small lots on tracts as so described shall be as set forth in provisions adopted pursuant to the authority of Section 504.

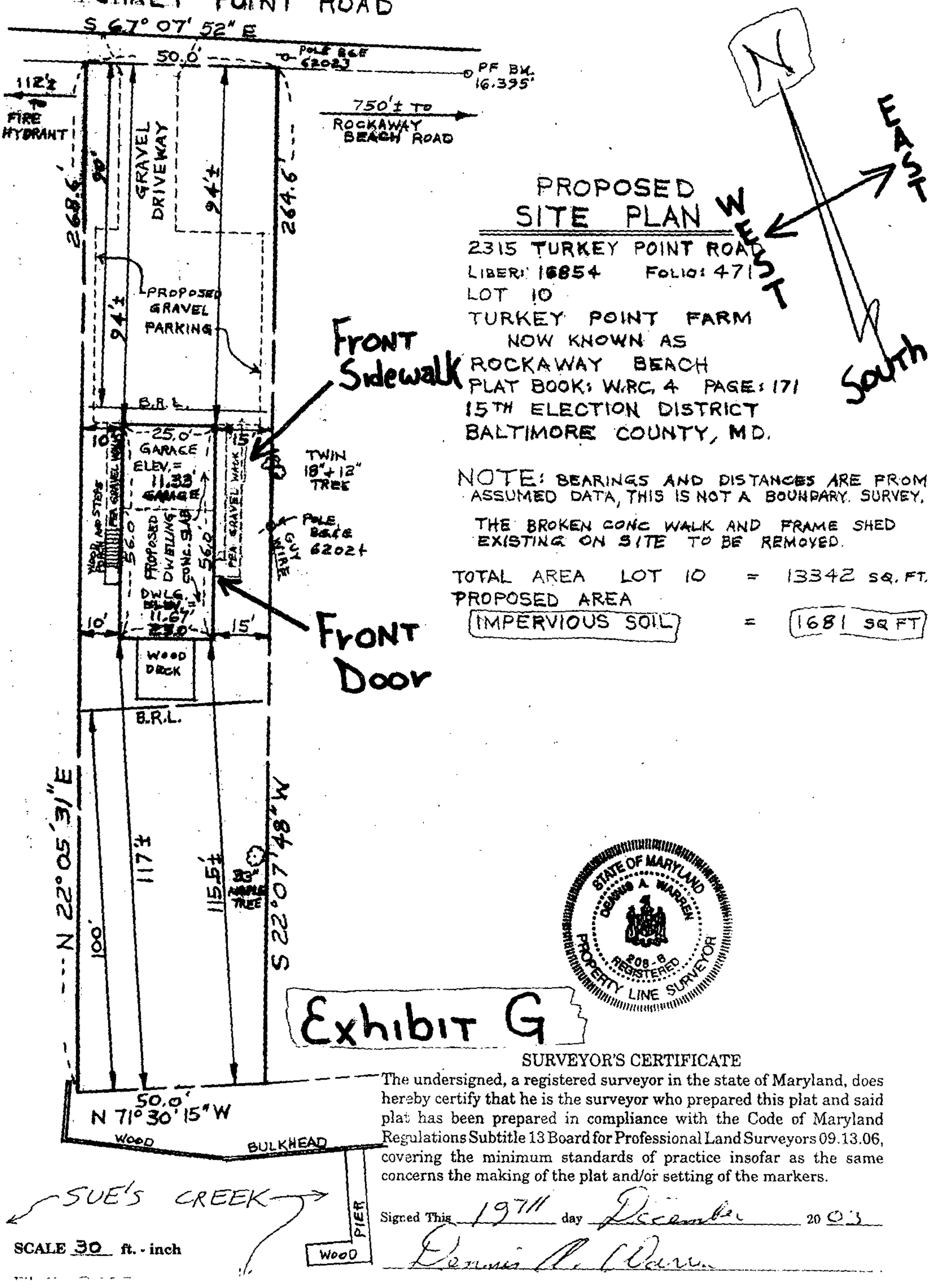
D. An amendment to any part of a development plan involving only property subject to the provisions of this subsection shall not be subject to the provisions of Section 1B01.3.A.7.

Exhibit F

Dennis A. Warren 2129 Redthorn Road Middle River, Maryland 21220 410-687-0196

TITLE REFERENCE

GRANTOR: ANTOINETTE J. SCHIELD, JACQUCLINE C. STUMP AND LYNNE L. COLLINS
GRANTEE: CAROLE C. CREAMER
DEED DATED: SEPTEMBER 11, 2002



PROPOSED SITE PLAN

2315 TURKEY POINT ROAD
LIBER: 16854 FOLIO: 471
LOT 10
TURKEY POINT FARM
NOW KNOWN AS
ROCKAWAY BEACH
PLAT BOOK: W.R.C. 4 PAGE: 171
15TH ELECTION DISTRICT
BALTIMORE COUNTY, MD.

NOTE: BEARINGS AND DISTANCES ARE FROM ASSUMED DATA, THIS IS NOT A BOUNDARY SURVEY.

THE BROKEN CONC WALK AND FRAME SHED EXISTING ON SITE TO BE REMOVED.

TOTAL AREA LOT 10 = 13342 SQ. FT.
PROPOSED AREA
IMPERVIOUS SOIL = 1681 SQ FT

STATE OF MARYLAND DENNIS A. WARREN 208-B REGISTERED PROPERTY LINE SURVEYOR

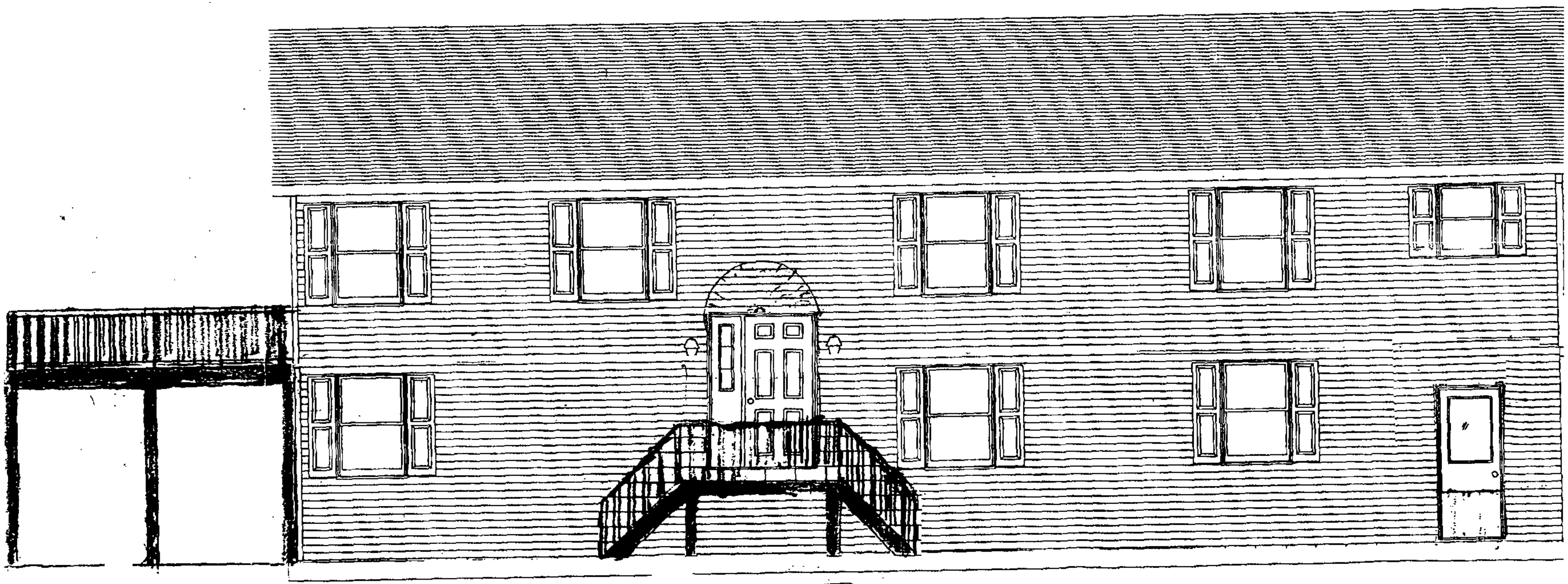
Exhibit G

SURVEYOR'S CERTIFICATE

The undersigned, a registered surveyor in the state of Maryland, does hereby certify that he is the surveyor who prepared this plat and said plat has been prepared in compliance with the Code of Maryland Regulations Subtitle 13 Board for Professional Land Surveyors 09.13.06, covering the minimum standards of practice insofar as the same concerns the making of the plat and/or setting of the markers.

Signed This 19TH day December 20 03

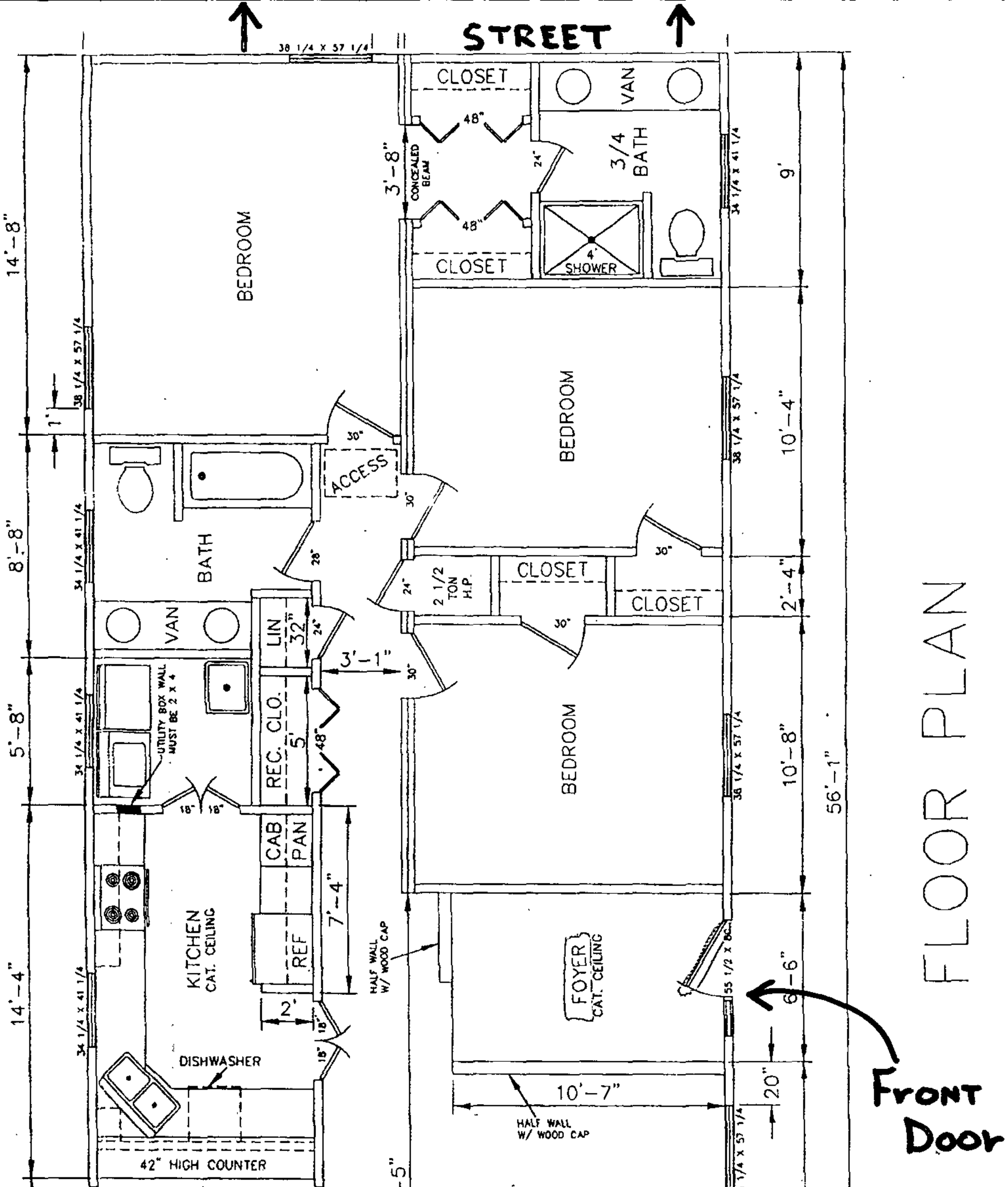
Dennis A. Warren



EAST ELEVATION

Exhibit H

(see exhibit G for EAST-WEST position)



FLOOR PLAN

Front Door

Exhibit I

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

1. Site design. New buildings shall be appropriate in the context of the neighborhood in which they are proposed to be located. Appropriateness shall be evaluated on the basis of new building size, lot coverage, building orientation and location on the lot or tract.

2. Architectural design. Appropriateness shall be evaluated based upon one or more of these architectural design elements or aspects:

   a. Height.

   b. Bulk or massing.

   c. Major divisions, or architectural rhythm, of facades.

   d. Proportions of openings such as windows and doors in relation to walls.

   e. Roof design and treatment.

   f. Materials and colors, and other aspects of facade texture or appearance.

3. Design amendments. The Director may recommend approval, disapproval or modification of the building permit to conform with the recommendations proposed by the Office of Planning.

304.3 Public notice. Upon application for a building permit pursuant to this section, the subject property shall be posted conspicuously under the direction of the Department of Permits and Development Management with notice of the application for a period of at least 15 days.

304.4 Public hearing. Within the fifteen-day posting period: (1) Any owner or occupant within 1,000 feet of the lot may file a written request for a public hearing with the Department of Permits and Development Management, or (2) the Director of Permits and Development Management may require a public hearing. The Department of Permits and Development Management shall notify the applicant within 20 days of the receipt of a request for a public hearing. A hearing before the Zoning Commissioner shall be scheduled within 30 days from receipt of the request for public hearing. At the public hearing, the Zoning Commissioner shall make a determination whether the proposed dwelling is appropriate.

304.5 Final approval.

A. The Director of the Department of Permits and Development Management may issue the building permit; or

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

Exhibit J

THIS DEED, made this 15th day of December, 1994, by and between LILLIAN A. KLEINSMITH, of Baltimore County, State of Maryland, of the first part, and LILLIAN A. KLEINSMITH, of the second part.

WITNESSETH, that for NO CONSIDERATION, the said LILLIAN A. KLEINSMITH does grant and convey unto the said LILLIAN A. KLEINSMITH, for and during the term of her natural life, and with full and absolute powers in her and remainder over, as hereinafter provided, and subject to the powers and limitations hereinafter mentioned, all that lot of ground situate, lying and being in the 15th Election District of Baltimore County, State of Maryland, and described as follows, that is to say:

BEING known and designated as Lot 10 on the Plat of Turkey Point Farm (now known as Rockaway Beach), which Plat is recorded among the Land Records of Baltimore County in Plat Book W.P.C. No. 4, folio 171. The improvements thereon being known as 2317 Turkey Point Road.

BEING the same lot of ground which by Deed dated September 3, 1969, and recorded among the Land Records of Baltimore County in Liber O.T.G. No. 5032, folio 048, was granted and conveyed by Lillian R. Klingel, widow, unto William J. Kleinsmith and Lillian A. Kleinsmith, his wife; the said William J. Kleinsmith having departed this life on or about March 13, 1991, thereby vesting title in the name of Lillian A. Kleinsmith, the Grantor herein.

TOGETHER with the buildings and improvements thereupon erected, made or being and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or anywise appertaining.

TO HAVE AND TO HOLD the said lot of ground and premises unto and to the use of LILLIAN A. KLEINSMITH for the term of her natural life with full power and the authority to her to sell, lease, convey, mortgage or otherwise dispose of said property or any part thereof, or any interest therein, including the absolute interest therein, including both life estate and remainder at any time during her natural life, except by Last Will and Testament, and the proceeds of any sale or lease thereof or money borrowed or secured by any mortgage thereof to take and expend or dispose of

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE
SIGNATURE _____ DATE 12-29-94

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Baltimore County
BY JE 12-29-94

TRANSFER TAX NOT REQUIRED
Director of Finance
BALTIMORE COUNTY, MARYLAND
Per Joy Burger
Date 12-29-94 Sec. 307.1(G)

Exhibit K

in such manner as she sees fit or to consume for her own purposes without obligation on the part of the purchaser, mortgagee, lessee or grantee to see to the application of the purchase money or money so borrowed or any money which may be the proceeds of any sale, mortgage, lease or disposition of any part of or any interest in said property, and from and immediately after the death of the said **LILLIAN A. KLEINSMITH** as to so much thereof or any interest therein as shall not have been disposed of by her then unto **ANTOINETTE J. SCHEILD, JACQUELINE C. STUMP** and **LYNN L. COLLINS**, as joint tenants and not as tenants in common, the survivor of them and the survivor's heirs and assigns, in fee simple.

AND the said **LILLIAN A. KLEINSMITH** hereby covenants that she has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that she will warrant specially the property hereby granted; and that she will execute such further assurances of the same as may be requisite.

WITNESS the hand and seal of said Grantor.

WITNESS:

_____ Lillian A. Kleinsmith (SEAL)
LILLIAN A. KLEINSMITH

STATE OF MARYLAND, COUNTY OF BALTIMORE, To wit:

I HEREBY CERTIFY that on this 15th day of Dec, 1994, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore County aforesaid, personally appeared **LILLIAN A. KLEINSMITH**, the Grantor named in the above Deed, and she acknowledged the foregoing Deed to be her act.

AS WITNESS my hand and Notarial Seal.

_____
NOTARY PUBLIC

My Commission Expires: 11/1/95

This is to certify that the within instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

Myles F. Friedman

MYLES F. FRIEDMAN

010890.349

State of Maryland Land Instrument Intake Sheet
County: BALTIMORE

Information provided is for the use of the Clerk's Office and State Department of Assessments and Taxation only.

(Type or Print in Black Ink Only—All Copies Must Be Legible)

1 Type(s) of Instruments

Multiple instruments of the same transaction should be numbered to correspond with Sections 2, 6, 7, and 8. Number documents in the order to be recorded.
(☐ Check Box if Addendum Intake Form is Attached.)

X	Deed		Lease		Other
	Deed of Trust		Contract		
	Mortgage		Land Installment Cont.		

2 Consideration and Fees

Consideration Amount/Recordation Fees	Doc. 1	Doc. 2
Consideration, Including Assumed Indebtedness	$ 0.00	$
Recording Charge	$ 20.00	$
Surcharge	$ 5.00	$
State Recordation Tax	$ 0.00	$ .20
State Transfer Tax	$ 0.00	$
County Transfer Tax (if Applicable)	$ 0.00	$ .5
Other	$ 0.00	$
Total Fees	$ 25.00	$

3 Exemptions (if Applicable) Cite or Explain Authority

Recordation Tax Exemption:	Creation of life estate with remainder to children.
State Transfer Tax Exemption:	
County Transfer Tax Exemption:	

4 Contact/Mail Information

Instrument Submitted By or Contact Person

Name: MYLES F. FRIEDMAN
Firm: FRIEDMAN, GARCIA & FRIEDMAN
Address: 215 Dunkirk Building - 2 Dunmanway
Dundalk, MD 21222
Phone: (410) 284-6060

Return Instrument To (Check Applicable Box Below or Provide Appropriate Address)

[X] Return to Contact Person as Provided Above [ ] Hold for Pick Up [ ] Address Provided on Instrument
Name:
Address:

5 Description of Property

SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOC (5)
15	15-11-470451	5032/048			

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR(3c)	Plat Ref.	Sq.Ft./Acreage (4)
Rockaway Beach	10				

Location/Address of Property Being Conveyed (2)
2317 Turkey Point Road
Partial Conveyance? [ ] Yes [X] No Description/Amt. of Sq.Ft./Acreage Transferred:

If Partial Conveyance, List Improvements Conveyed:

6 Transferred From

Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
LILLIAN A. KLEINSMITH	XXXXXXXXXXXXXXXXXXXXXX
Doc. 1 - Owner(s) of Record, if Different from Grantor(s)	**Doc. 2 - Owner(s) of Record, if Different from Grantor(s)**

7 Transferred To

Doc. 1 - Grantee(s) Name(s)	Doc. 2 - Grantee(s) Name(s)
LILLIAN A. KLEINSMITH	

8 Other Names to Be Indexed

Doc. 1 - Additional Names to be Indexed (Optional)	Doc. 2 - Additional Names to be Indexed (Optional)

9 Special Instructions

Special Recording Instructions (if any)

10 Conveyance Type Check Box

[ ] Private Sale with Improvements /1/ [ ] Private Sale Unimproved /2/ [ ] Multiple Accounts/ Property /3/ [X] All Other /9/

11 Assessment Information

IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER

[X] Yes [ ] No Will the property being conveyed be the grantee's principal residence?
[ ] Yes [X] No Does transfer include personal property? If yes, identify:
[ ] Yes [X] No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

New Owner's (Grantee) Mailing Address: 2317 Turkey Point Road
Baltimore, MD 21221

Space Reserved for Circuit Court Clerk Recording Validation

IMP FD SURF $ 5.00
RECORDING FEE 20.00
TOTAL 25.00
Rest# BA03 Rcpt # 1378
SM SM Blk # 23
Jan 03, 1995 10:57 am

Assessment Use Only - Do Not Write Below This Line

[ ] Terminal Verification [ ] Agricultural Verification Whole Part [ ] Tran. Process Verification
Transfer Number: Date Received: Deed Reference: Assigned Property No.:

	19	19					
Year			Geo.	Map		Sub	Block
Land			Zoning	Grid		Plat	Lot
Buildings			Use	Parcel		Section	Occ. Cd.
Total			Town Cd.	Ex. St.		Ex. Cd.	

REMARKS:

Distribution: White - Clerk's Office | Canary - SDAT | Pink - Preparer

AOC-CC-200 (7/94)

Real Property Detail

Ownership and Address Information

Parcel ID	15-11-470451
Owner Name	Creamer Carole C
Owner Address	2317 Turkey Point Rd , Baltimore , MD 21221
Property/Situs Address	2317 Turkey Point Rd
District	15
Property Class	34 Waterfront/Residential
Activity	Not Semi Annual Eligible
Miscellaneous	

Legal Description

2317 TURKEY POINT RD

Assessment Information

Full Year	74,800

Tax rate for Full Year: County $1.11500 , State $.13200, per $100 of Assessed Value

Tax Receivable Amounts

Bill Date: 7/01/03

	Original	Paid Outstanding		First SA	Second SA
Taxes/Charges	1,202.45	1,202.45	.00	.00	.00
Fees	.00	.00	.00	.00	
Gross	1,202.45	1,202.45	.00	.00	.00
Discount Applied	(8.34)	(8.34)			
New Discount			(.00)	(.00)	
Interest Applied	.00	.00			
New Interest			.00	.00	.00
Total	1,194.11	1,194.11	.00	.00	.00

Date to calculate interest amount owed (mm/dd/yyyy): 10/21/2004 Recalculate

If the recalculation process does not change the amount due, please contact the Office of Budget and Finance for further assistance.

More Detail New Search

Exhibit L

2

Opposition To:

"Request to construct a new dwelling on undersized lot"

The residents, and property owners, as signed below, strongly oppose the request to build a new house on Lot 10, (which would be 2315 Turkey Point Road). It is known that this lot is not orphaned, but has contiguous ownership to Lot 11, (which is now 2317 Turkey Point Road), by the same family. These lots were sold together in 2003. It is our understanding that present zoning requirements stipulate a 70' wide lot to build a new single-family dwelling. This far exceeds the 50' width, of one lot, but is well within the 100', of the two adjoined lots. It is the communities wish to have the lots (10 & 11) remain together, as one property, to preserve the present spacing and openness of the area. We have been besieged by building and development ever since the public sewerage was installed. Please stop some of this gratuitous building, and slow the over-crowding which is ruining this area. This lot is "critical area", and not only does it impact the streets, sewerage and water, but also impacts an already overcrowded waterway.

The description of lot 10 as stated in the previous Deed dated 11-15-94, states the following:

"Being known and designated as Lot 10 on the Plat of Turkey Point Farm (now known as Rockaway Beach), which is recorded among the Land Records of Baltimore County in Plat Book W.P.C. No. 4, Folio 171. **The improvements thereon being known as 2317 Turkey Point Road.** (Copy of deed attached as Exhibit A).

Name	Signature	Address
Jim & Stephanie Wacker		2312 Turkey Pt. Rd
Leo & Nancy Schneider		2316 Turkey Pt. Rd
Charles J. Wright		2318 Turkey Pt. Rd.
Earl & Dixie Burkhart		2325 Turkey Pt. Rd
Tim Bromwell		2326 Turkey Pt Rd
Lisa Neal		626 Rockaway Beach Ave
L Tru Porter		2319 Turkey Pt. Rd
Nancy Kann		2311 Turkey Pt Rd
Michael L Kann		2310 Turkey Pt Rd
Donna L Kann		705 Rockaway Beach Ave
John Barbara		717 Rockaway Beach Ave
Erik Neal		719 Rockaway Beach Ave
Jacob J Neland J.		2429 Beach Ave
Kaye Hacks		2427 Beach Ave.
Kathleen Dysert		707 Rockaway Beach Ave
Michael J Mark		2301 Turkey Point Rd

Exhibit M

#1

Christopher Boggs	2321 TURKEY POINT Rd
JOSEPH COUGHLIN	852 Sue Grove Rd
~~[redacted]~~	~~2035 Sue Grove Dr~~
Ed Bennett	2600 Bauernschmidt Dr
Bill Miller	2710 Bauernschmidt Dr.
[illegible]	2222 Bauernschmidt Dr
Rachelle Santos	2222 Bauernschmidt dr.
Karen Leventis	2702 Bauernschmidt Dr.
Charles + Evelyn Rice	610 Greyhound Rd 21221
Ed Young	1912 OLD TURKEY POINT RD 21221
[illegible]	711 Rockaway Beach 21221
Richard W Deno	2313 Turkey POINT ROAD 21221
Ellen L. Deno	2313 Turkey Pt Rd

B



Picture of bulkhead which spans Lots 10 & 11

Exhibit N

SECTION 304 -- USE OF UNDERSIZED SINGLE-FAMILY LOTS - Prior to the application for a building permit, the applicant must provide satisfactory documentation. The applicant may be required to furnish:

a. a copy of the pre-1955 deed or subdivision plat;
b. (no additions)
c. contiguous ownership

It is obvious that Section 304 of the Baltimore County Zoning Regulations recognizes the existence of parcels of property that did not meet the minimum lot sizes mandated at the time the minimum lot size regulations were passed. To do otherwise would have the effect of rendering such undersized lots useless, and such legislation would be unconstitutional.

1. Section 304 B.C.Z.R., however, is silent as to when contiguous ownership would serve as a bar to its implementation, i.e., contiguous ownership in existence only at the time this regulation was passed or contiguous ownership in existence at that time and at any time thereafter.

2. It is therefore important to consider the intent of the owner who attempts to invoke the applicability of Section 304 BCZR. Each situation must be judged individually by the particular facts and circumstances presented. If the intent to avoid the regulations is obvious, Section 304c. cannot be invoked and variances must be required. An obvious method used is called "checkerboarding". The owner of a tract of land consisting of undersized lots makes conveyances of certain lots in order to create a pattern of ownership which qualifies each parcel as an undersized lot in a single and separate ownership, thereby avoiding the necessity of public hearing and notice for a variance. Often this is done by transferring title to members of the owner's family or to his business associates, e.g., to officers of the corporation which purchased the tract. Another method is to sell adjoining undersized lots which were recently purchased to individual, bona fide buyers. This would permit the new owner of a single undersized lot to build without a variance, where such permission would not have been granted to the owner of the entire tract.

3. If a single owner of contiguous undersized lots has purchased the property in good faith and without any intent to avoid the area requirements, 304c. may be used to allow the owner to build pursuant thereto. Good faith also must be determined by the facts and circumstances of each situation, but such factors as dates of purchase of the parcels, the purpose of the purchase, the intent of the purchase, can be utilized to so determine. This office has traditionally applied the "six year rule" to determine good faith, and that rule shall be one criteria to be used. The rule holds that if the single owner of an undersized lot contiguous to another parcel owned by him has transferred ownership of one to another, 304c. would apply if such new ownership has been held for a period of at least six years. This rule shall not preclude exceptions where it is clear, and equitable, that single ownership of contiguous property was not intended to avoid area requirements.

4. Ownership Information Including:

(i) a property tax computer printout for all adjacent properties, in addition to the subject property;

(ii) copies of the deeds for all adjacent properties, in addition to the subject property; and

(iii) a notarized affidavit stating that the applicant has had no financial interests for the prior six years in any adjacent properties.

Interpretation: The Zoning Commissioner retains the right Section 500.6 B.C.Z.R. to interpret whether the spirit and intent of these Regulations are being adhered to on a case-by-case basis (see Section 101 - Ownership Z.C.P.M., Page 1-23)

Exhibit O

JEFFREY AND CAROLE CREAMER - UNDERSIZED LOT
FILE MATERIAL RECEIVED FROM C WILLIAM CLARK, ESQ., 10/26/04

- ✓ PETITIONER'S EXHIBIT 1 /PLAT TO ACCOMPANY PETITION
- ✓ PETITIONER'S EXHIBIT 2 /PROPOSED SITE PLAN
- ✓ PETITIONER'S EXHIBIT 3 /DEED DATED SEPTEMBER 11, 2002
- ✓ PETITIONER'S EXHIBIT 4 /PLAT ACCOMPANYING DEED
- ✓ PETITIONER'S EXHIBIT 5 /DEED DATED NOVEMBER 15, 1994 /KLEINSMITH
- ✓ PETITIONER'S EXHIBIT 6A AND 6B /PHOTOGRAPHS
- ✓ PETITIONER'S EXHIBIT 7A THROUGH 7C /PHOTOGRAPHS
- ✓ PETITIONER'S EXHIBIT 8 /NORTH (STREET) ELEVATION; SOUTH (WATER) END ELEVATION; EAST ELEVATION; WEST ELEVATION; AND FLOOR PLAN

C. William Clark

(410) 823-7850

email
cwclark@nolanplumhoff.com

Law Offices
NOLAN, PLUMHOFF & WILLIAMS
CHARTERED
SUITE 700, NOTTINGHAM CENTRE
502 WASHINGTON AVENUE
TOWSON, MARYLAND 21204-4528
(410) 823-7800
TELEFAX: (410) 296-2765
email: npw@nolanplumhoff.com
Web: www.nolanplumhoff.com

J. EARLE PLUMHOFF
(1940-1988)

NEWTON A. WILLIAMS
(RETIRED 2000)

RALPH E. DEITZ
(1918-1990)

October 25, 2004

RECEIVED
OCT 26 2004
BALTIMORE COUNTY
BOARD OF APPEALS

VIA HAND DELIVERY

Baltimore County Board of Appeals
ATTN: Kathy Bianco
Old Courthouse Room 49
400 Washington Avenue
Towson, MD 21204

Re: 2315 Turkey Point Road
IN THE MATTER OF: Carole and Jeffrey Creamer, Petitioners
Case No.: CBA-04-137

Dear Ms. Bianco:

In response to your request of September 30, 2004, enclosed please find the Petitioners' Exhibits 1-8. Thank you for your efforts in attempting to reconstruct the exhibits and material submitted on April 27, 2004 at the Deputy Zoning Commissioner's hearing.

If you have any questions or concerns please do not hesitate to contact my office.

Thank you for your attention to this matter.

Very truly yours,

C. William Clark

CWC/jkc

Enclosures

cc: Jeffrey Creamer
John V. Murphy
Peter Max Zimmerman, Esquire
Robin and Michael Ferro

PLAT TO ACCOMPANY PETITION FOR ZONING ☐ VARIANCE ☐ SPECIAL HEARING

PROPERTY ADDRESS 2315 Turkey Point Rd.

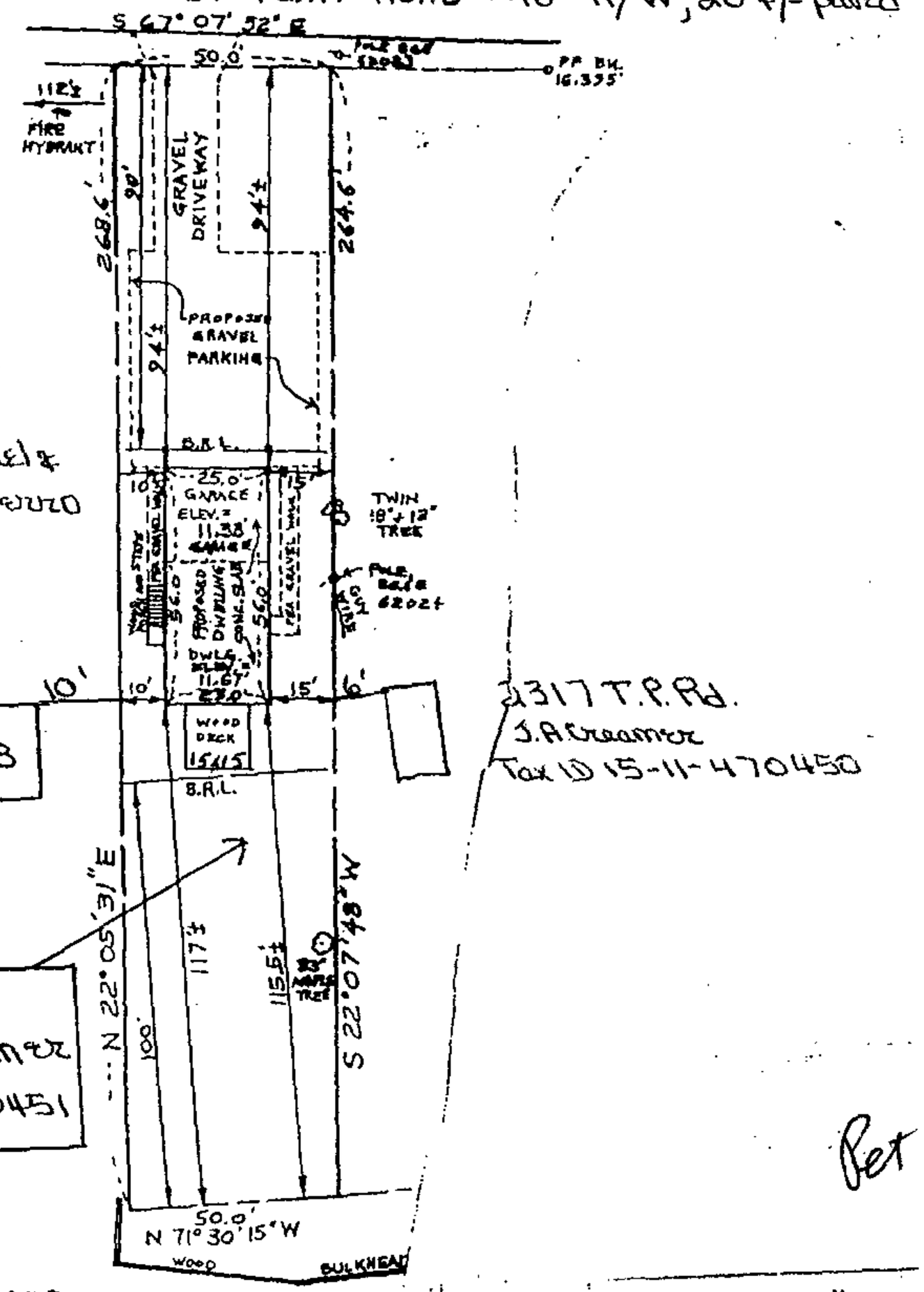
SUBDIVISION NAME Turkey Point Farm

PLAT BOOK # 4 FOLIO # 171 LOT # 10 SECTION # ___

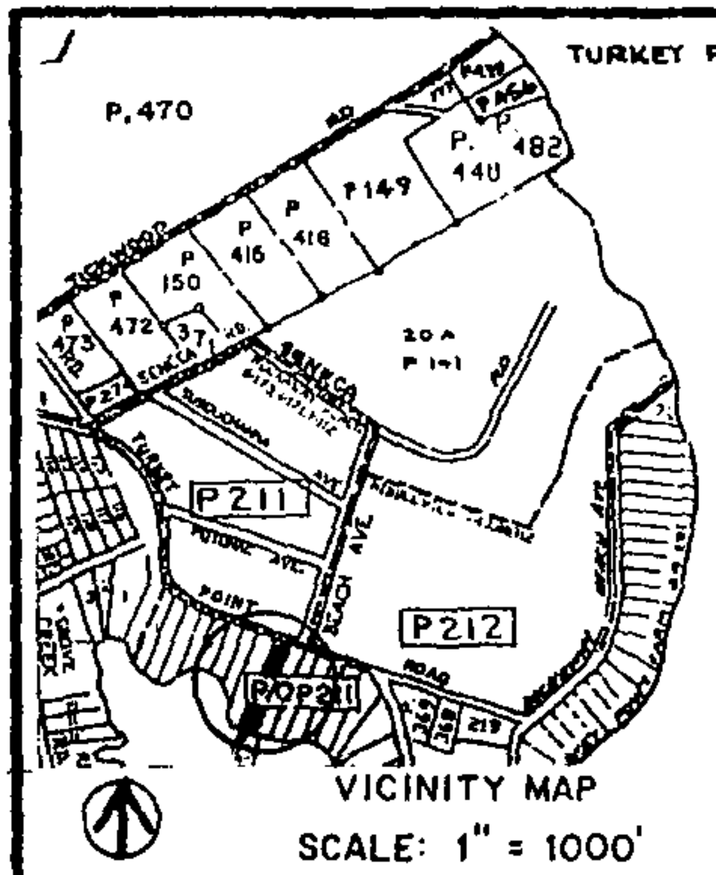
OWNER Carole C. Creamer

SEE PAGES 5 & 6 OF THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION

Feb. 16, 2004



Pet Exh 1



LOCATION INFORMATION

ELECTION DISTRICT 15

COUNCILMANIC DISTRICT

1" = 200' SCALE MAP #

ZONING

LOT SIZE .31 ACREAGE 13,342 SQUARE FEET

	PUBLIC	PRIVATE
SEWER	☑	☐
WATER	☑	☐

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

PRIOR ZONING HEARING NONE

ZONING OFFICE USE ONLY

REVIEWED BY ITEM # CASE #

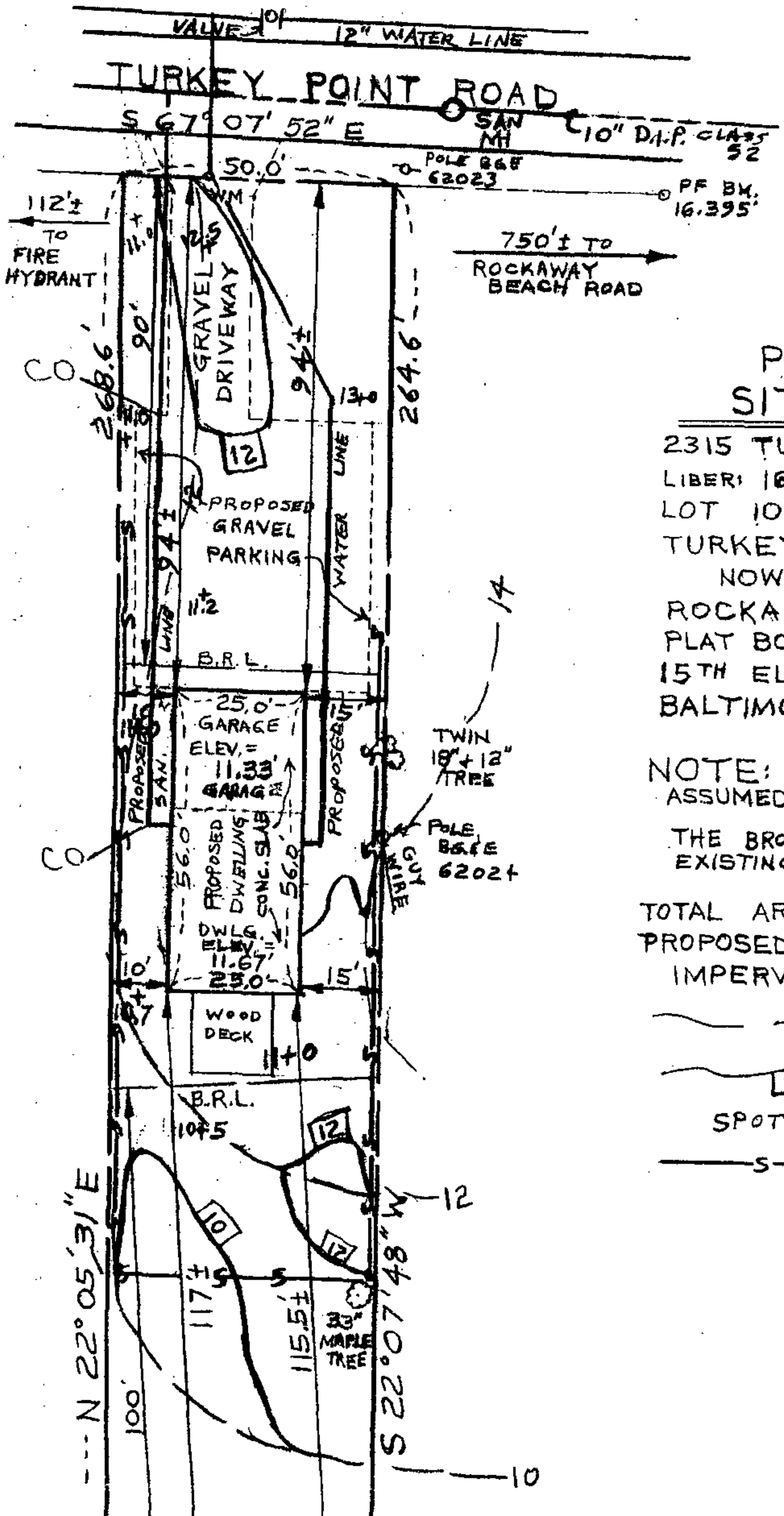
PREPARED BY J CREAMER

SCALE OF DRAWING: 1" = 50'

Dennis A. Warren *2129 Rockhorn Road* *Middle River, Maryland 21220* *410-687-0196*

TITLE REFERENCE

GRANTOR: ANTOINETTE J. SCHIELD, JACQUCLINE C. STUMP AND LYNNE L. COLLINS
GRANTEE: CAROLE C. CREAMER
DEED DATED: SEPTEMBER 11, 2002



PROPOSED SITE PLAN

2315 TURKEY POINT ROAD
LIBER: 16854 FOLIO: 471
LOT 10
TURKEY POINT FARM
NOW KNOWN AS
ROCKAWAY BEACH
PLAT BOOK: W.R.C. 4 PAGE: 171
15TH ELECTION DISTRICT
BALTIMORE COUNTY, MD.

NOTE: BEARINGS AND DISTANCES ARE FROM ASSUMED DATA, THIS IS NOT A BOUNDARY SURVEY.

THE BROKEN CONC WALK AND FRAME SHED EXISTING ON SITE TO BE REMOVED.

TOTAL AREA LOT 10 = 13342 SQ. FT.
PROPOSED AREA
IMPERVIOUS SOIL = 1681 SQ FT

= CONTOUR LINES
= PROPOSED CONTOURS
SPOT ELEVATIONS = No.+
—S—S— = SILT FENCE

SCALE 30 ft. - inch

File No. 2002-200

Pet Exh 2

SURVEYOR'S CERTIFICATE

The undersigned, a registered surveyor in the state of Maryland, does hereby certify that he is the surveyor who prepared this plat and said plat has been prepared in compliance with the Code of Maryland Regulations Subtitle 13 Board for Professional Land Surveyors 09.13.06, covering the minimum standards of practice insofar as the same concerns the making of the plat and/or setting of the markers.

Signed This 5th day March 20 03

NOTE: this plat cannot be used to establish property lines or corners

DEED

THIS DEED made this 11 day of SEPTEMBER, 2002 by and between **Antoinette J. Schield (also, erroneously referred to of record as Antoinette J. Scheild), Jacqueline C. Stump and Lynne L. Collins**, parties of the first part, "Grantors", and **Carole C. Creamer**, party of the second part, "Grantee"

NOW, THEREFORE WITNESSETH, that for and in consideration of the sum of $110,000.00, the said parties of the first part do hereby grant and convey unto the said parties of the second part, as sole owner, in fee simple, the following described land and premises in Baltimore County, Maryland:

Lot numbered Ten (10) on the Plat of "Turkey Point Farm", now known as Rockaway Beach, which plat is duly recorded among the land records of Baltimore County, Maryland in Plat Book W.P.C. No. 4, at folio 171.
BEING the same property conveyed by Lilliam A. Kleinsmith to herself, for life, with remainder under the Grantors (the Remainderman) named herein. The said Lillian Kleimsith died on March 18, 2002, thereby vesting title in the remainderman, the Grantors herein.

TOGETHER with all and singular the ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the said parties of the first part, of, in, to, or out of the said land and premises.

TO HAVE AND HOLD the property hereby conveyed unto the parties of the second part, her personal representatives, heirs and assigns, in fee simple, forever.

AND the said parties of the first part covenants that they shall execute such further assurances of said land as may be requisite.

WITNESS the hands and seals of the Grantors.

WITNESS:

Antoinette J. Schield (Seal)
Antoinette J. Schield,

Jacqueline C. Stump (Seal)
Jacqueline C. Stump,

Lynn L. Collins (Seal)
Lynn L. Collins

Pet Exh 3

Assessment Information ☐ Yes ☒ No Does transfer include personal property? If yes, identify

STATE OF MARYLAND, COUNTY OF Balto, to wit:

I HEREBY CERTIFY that on this 11th day of September, 2002, before the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared **Antoinette J. Schield**, personally well known to me (or satisfactorily proven) as the person whose names is subscribed to the within Deed and she signed the same in my presence.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: 10/1/04

STATE OF MARYLAND, COUNTY OF Balto, to wit:

I HEREBY CERTIFY that on this 11th day of September, 2002, before the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared **Jacqueline C. Stump**, personally well known to me (or satisfactorily proven) as the person whose names is subscribed to the within Deed and she signed the same in my presence.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: 10/1/04

STATE OF MARYLAND, COUNTY OF Balto, to wit:

I HEREBY CERTIFY that on this 11th day of September, 2002, before the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared **Lynn L. Collins**, personally well known to me (or satisfactorily proven) as the person whose

I HEREBY CERTIFY that the within deed was prepared under my supervision and I am an attorney duly admitted to practice before the Court of Appeals of Maryland.

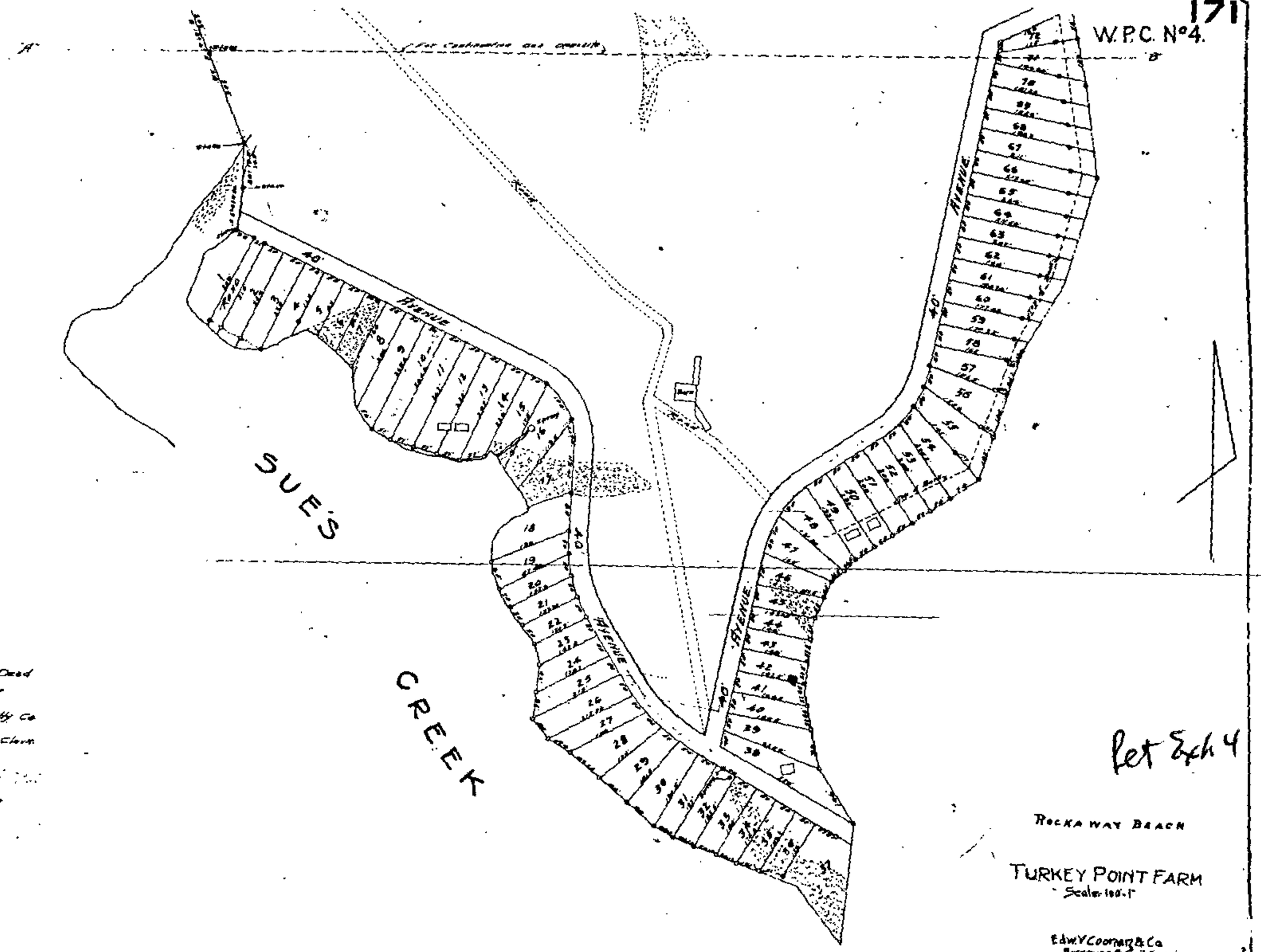
Andrew G. Levy

After recording mail to:
Carol C. Creamer
1779 Shaftsbury Avenue
Crofton, MD 21114

CTIA FILE C0207198

171

W.P.C. No 4.



Plat accompanying Deed
from
Clarence Young & wf.
to
Rockaway Beach Realty Co
Filed Sept 9: 1915
Test: Wm F Culy Clerk

Plat Exh 4

ROCKAWAY BEACH

TURKEY POINT FARM
Scale: 100-1"

Edw V Coomaraz & Co
Surveyors & Civil Engrs
261 Courtland St

THIS DEED, made this 15th day of December, 1994, by and between LILLIAN A. KLEINSMITH, of Baltimore County, State of Maryland, of the first part, and LILLIAN A. KLEINSMITH, of the second part.

WITNESSETH, that for NO CONSIDERATION, the said LILLIAN A. KLEINSMITH does grant and convey unto the said LILLIAN A. KLEINSMITH, for and during the term of her natural life, and with full and absolute powers in her and remainder over, as hereinafter provided, and subject to the powers and limitations hereinafter mentioned, all that lot of ground situate, lying and being in the 15th Election District of Baltimore County, State of Maryland, and described as follows, that is to say:

BEING known and designated as Lot 10 on the Plat of Turkey Point Farm (now known as Rockaway Beach), which Plat is recorded among the Land Records of Baltimore County in Plat Book W.P.C. No. 4, folio 171. The improvements thereon being known as 2317 Turkey Point Road.

BEING the same lot of ground which by Deed dated September 3, 1969, and recorded among the Land Records of Baltimore County in Liber O.T.G. No. 5032, folio 048, was granted and conveyed by Lillian R. Klingel, widow, unto William J. Kleinsmith and Lillian A. Kleinsmith, his wife; the said William J. Kleinsmith having departed this life on or about March 13, 1991, thereby vesting title in the name of Lillian A. Kleinsmith, the Grantor herein.

TOGETHER with the buildings and improvements thereupon erected, made or being and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or anywise appertaining.

TO HAVE AND TO HOLD the said lot of ground and premises unto and to the use of LILLIAN A. KLEINSMITH for the term of her natural life with full power and the authority to her to sell, lease, convey, mortgage or otherwise dispose of said property or any part thereof, or any interest therein, including the absolute interest therein, including both life estate and remainder at any time during her natural life, except by Last Will and Testament, and the proceeds of any sale or lease thereof or money borrowed or secured by any mortgage thereof to take and expend or dispose of

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE

SIGNATURE _____ DATE 12-28-94

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Baltimore County
12-24-94

By

TRANSFER TAX NOT REQUIRED
Director of Finance
BALTIMORE COUNTY, MARYLAND
Per Joy Burgoon
Date 12-28-94 Sec. 31 13A G

Per Exh E

Exhibit D



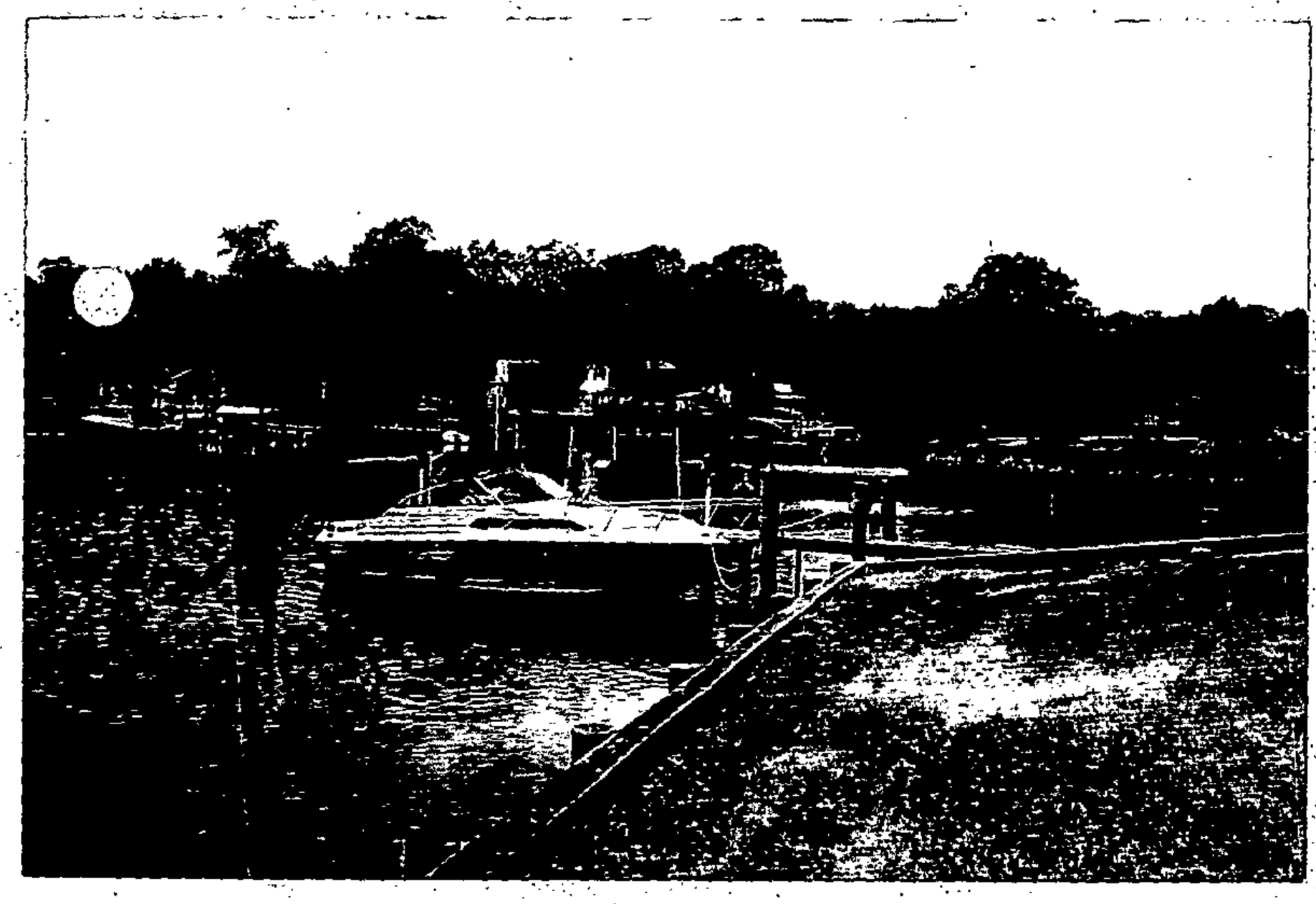


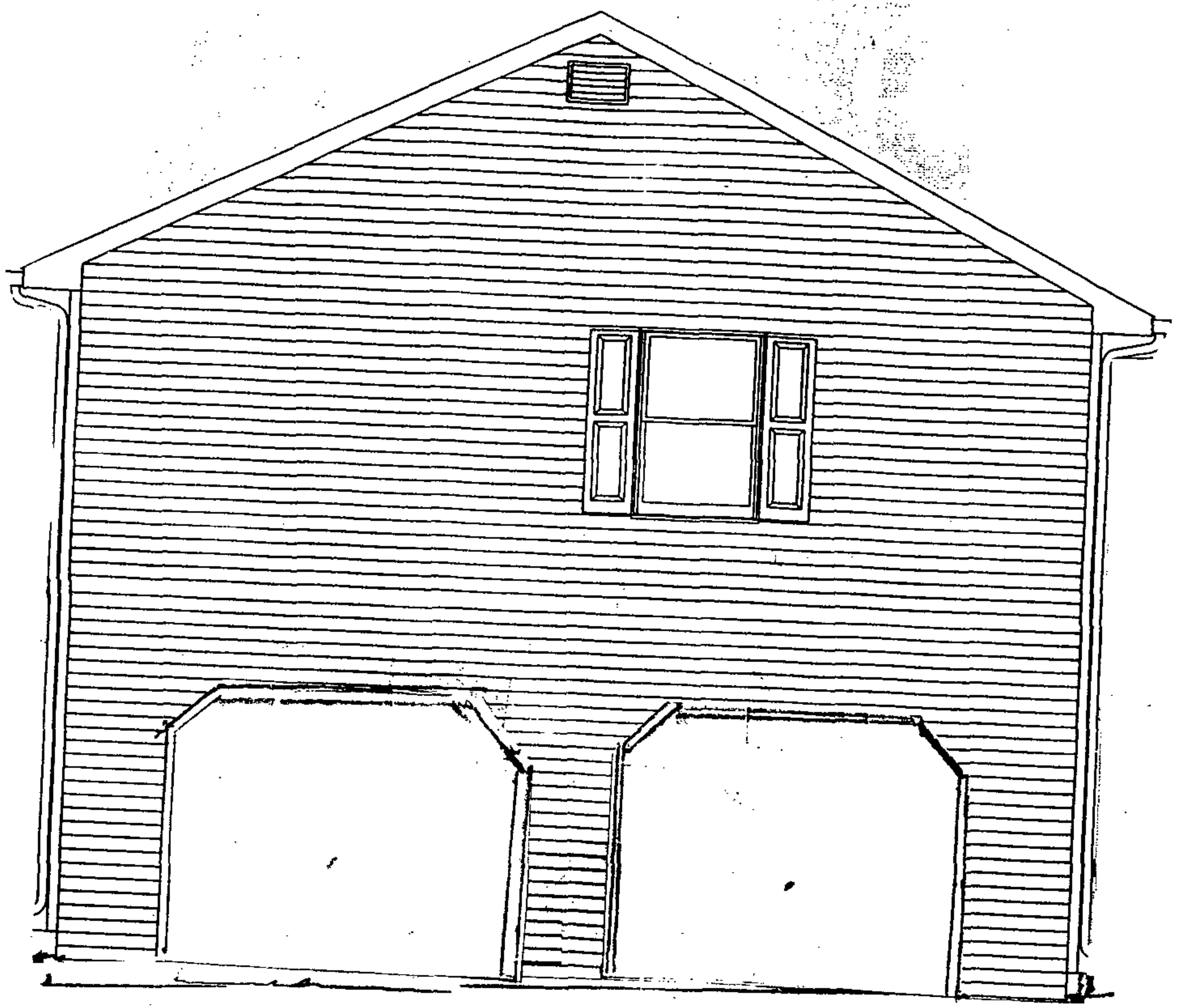


E Pet. Ex. 7A

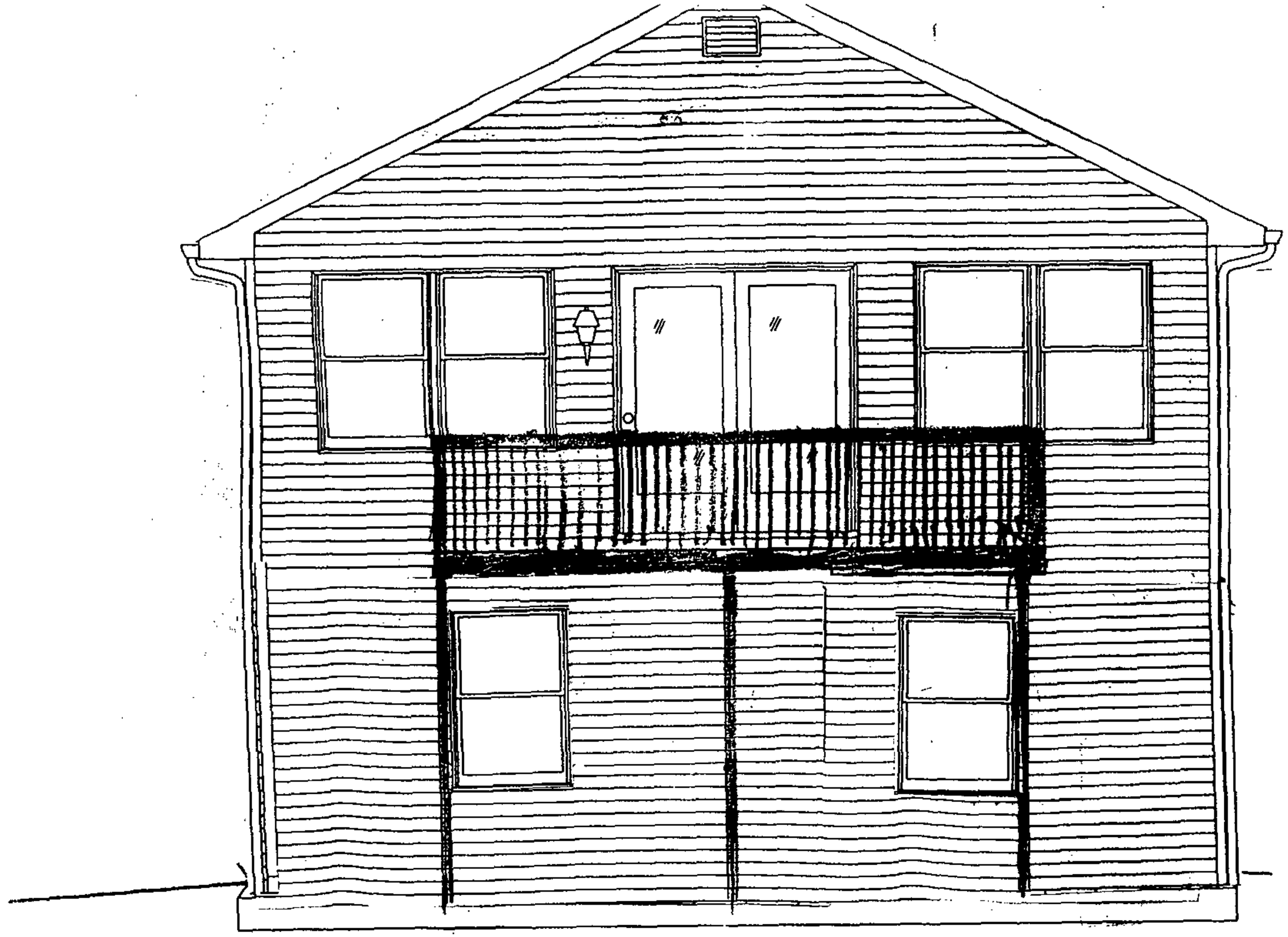


Pet. Ex. 7B

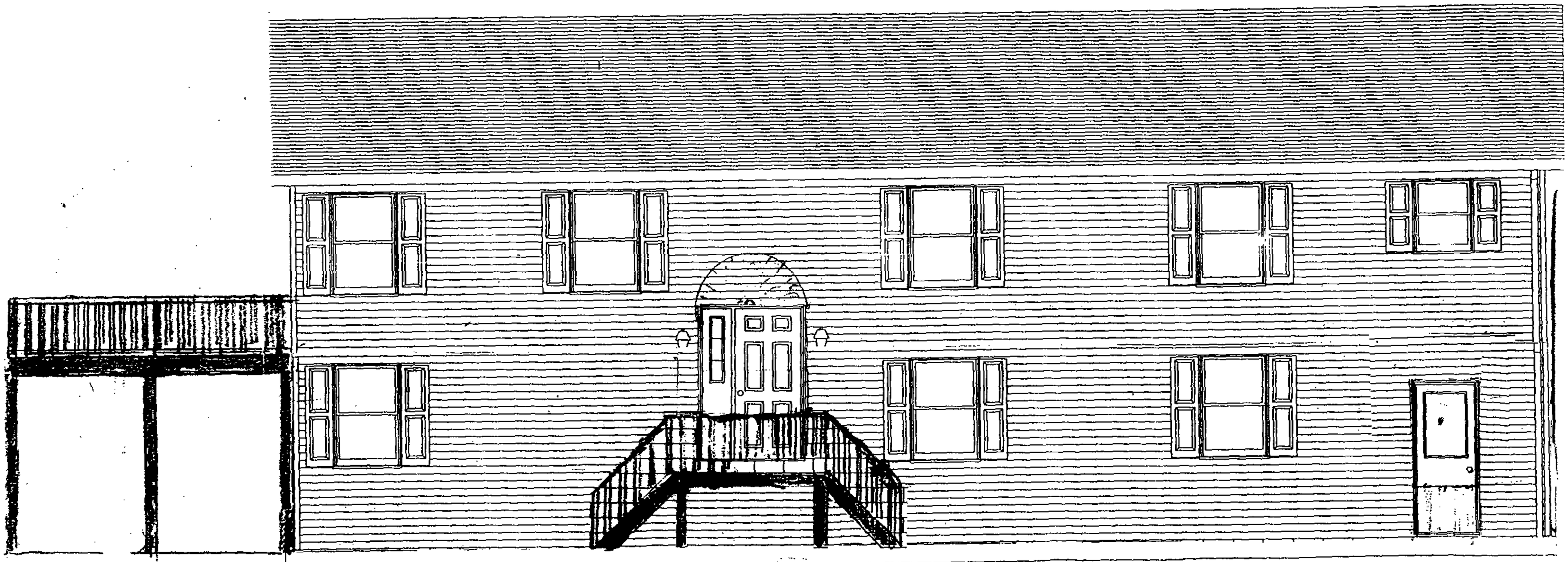




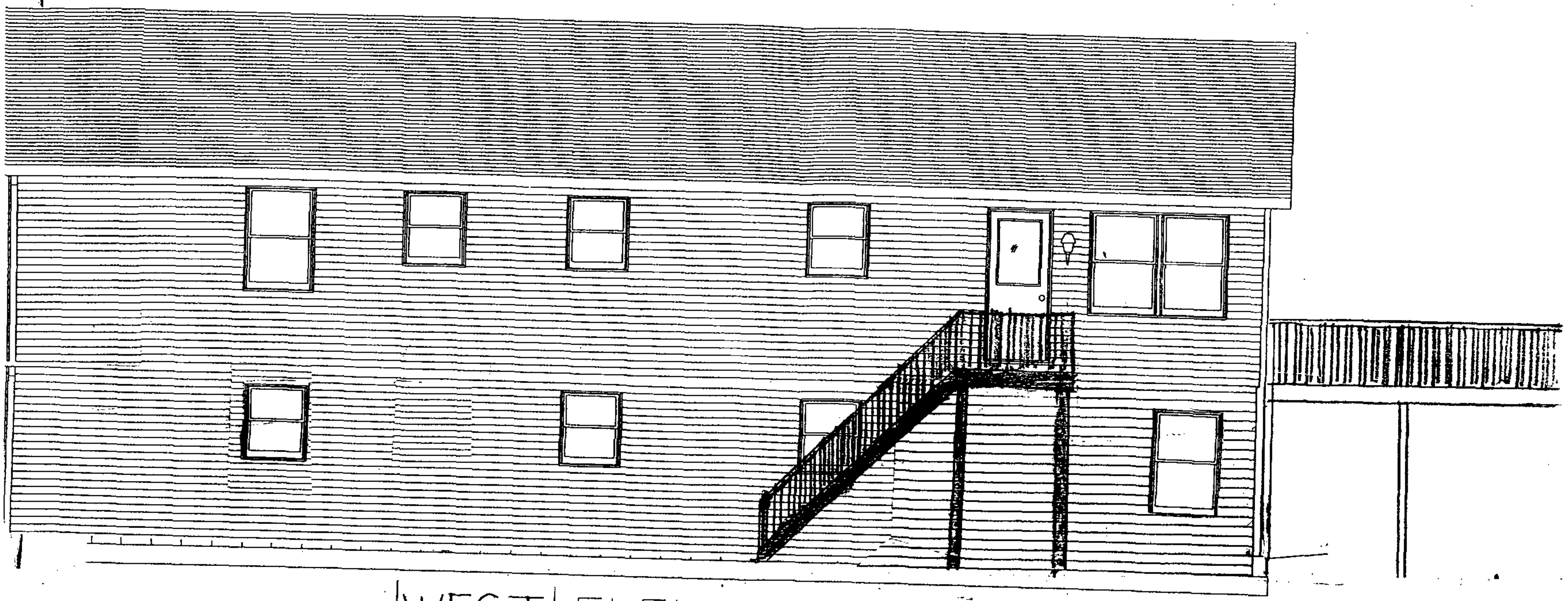
NORTH (STREET) ELEVATION



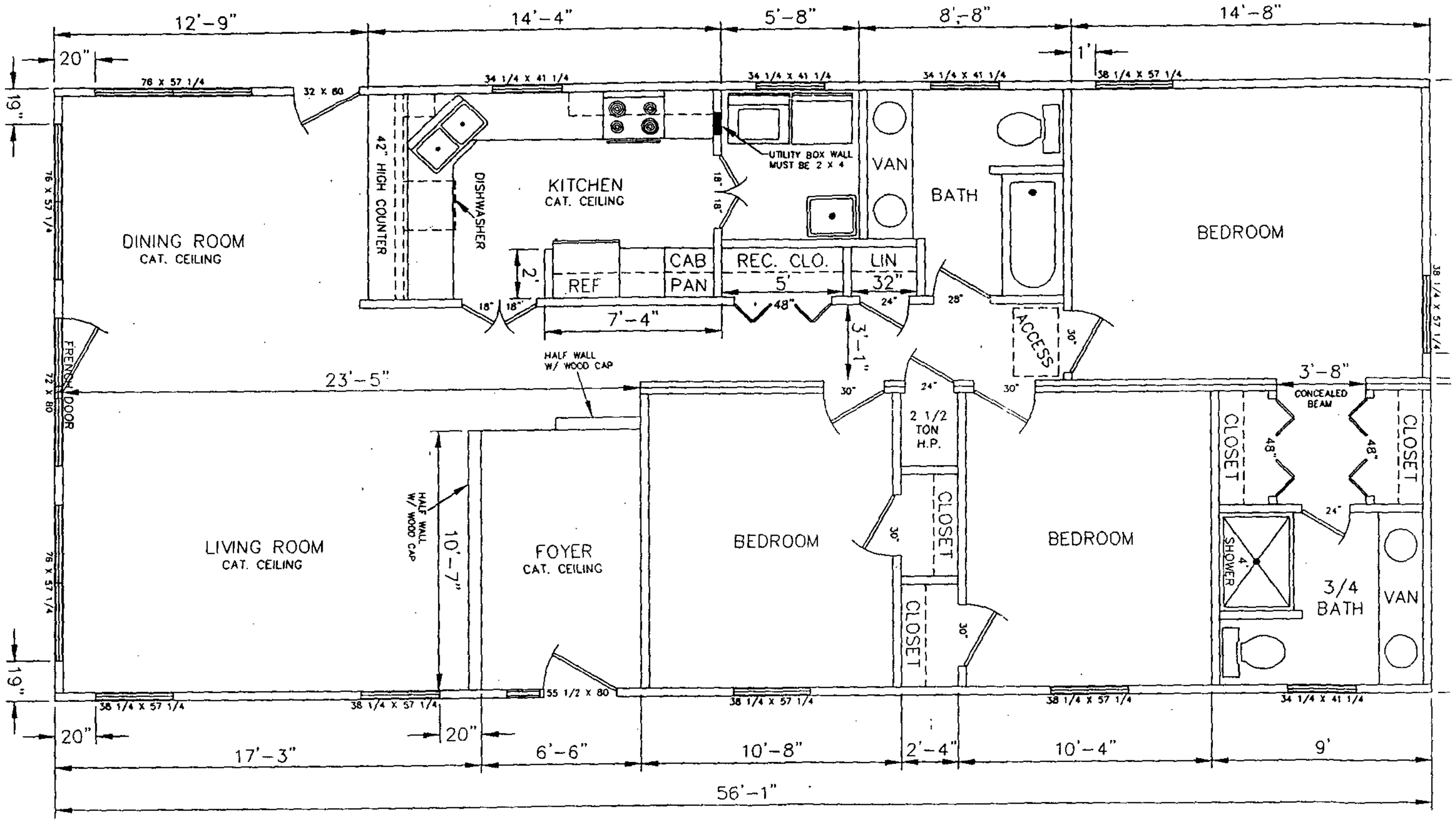
SOUTH (WATER) END ELEVATION



EAST ELEVATION



WEST ELEVATION


12'-9"
14'-4"
5'-8"
8'-8"
14'-8"
20"
19"
1"
76 X 57 1/4
32 X 80
34 1/4 X 41 1/4
34 1/4 X 41 1/4
34 1/4 X 41 1/4
38 1/4 X 57 1/4
UTILITY BOX WALL MUST BE 2 X 4
VAN
BATH
BEDROOM
DINING ROOM
CAT. CEILING
42" HIGH COUNTER
DISHWASHER
KITCHEN
CAT. CEILING
18"
18"
2'
REF
CAB
PAN
REC. CLO.
5'
LIN
32"
18"
18"
7'-4"
48"
24"
28"
3'-1"
ACCESS
30"
30"
76 X 57 1/4
FRENCH DOOR
72 X 80
23'-5"
HALF WALL W/ WOOD CAP
24"
2 1/2 TON H.P.
30"
3'-8"
CONCEALED BEAM
38 1/4 X 57 1/4
CLOSET
48"
48"
CLOSET
24"
SHOWER
4'
3/4 BATH
VAN
LIVING ROOM
CAT. CEILING
HALF WALL W/ WOOD CAP
10'-7"
FOYER
CAT. CEILING
BEDROOM
30"
CLOSET
CLOSET
30"
BEDROOM
76 X 57 1/4
19"
38 1/4 X 57 1/4
38 1/4 X 57 1/4
55 1/2 X 80
38 1/4 X 57 1/4
38 1/4 X 57 1/4
34 1/4 X 41 1/4
20"
20"
17'-3"
6'-6"
10'-8"
2'-4"
10'-4"
9'
56'-1"

FLOOR PLAN

Petitioners Exhibits

1. Deed 2317
2. Property Tax Bill
3. MDAT
4. A + B Pictures of 2317 Turkey Point Rd
5. A - C Pictures of Neighbors & Bulkhead
6. A - Q Pictures
7. House Plans
8. Deed 2315
9. Property Tax Bill
10. MDAT
11. Lot 10 Plat to accompany Petition
12. Lot 11 Plat to accompany Petition
13. Zoning Map
14. Plat accompanying Deed
15. Recomprendation Form 2 pages
16. Section 304 of BCZR
17. Section 4A03 of BCZR
18. Bowleys Quarters - Back River Critical Areas Map
19. BCZR Definitions
20. Bill No. 64-99
21. 1B02.3 Density Zones
22. F + M Enterprises Desisions 05-239-A
23. A-C Sewer Maps for Rockaway Beach Area
24 Site Plan

DEED

THIS DEED made this 11 day of SEPTEMBER 2002 by and **between Antoinette J. Schield and , Jacqueline C. Stump, Co-Personal Representatives of the Estate of Lillian A. Kleinsmith** (see Estate No. 120720, Register of Wills for Baltimore County, Maryland), the first party, "Grantors", and **Jeffrey A. Creamer**, party of the second part, "Grantee"

NOW, THEREFORE WITNESSETH, that for and in consideration of the sum of $130,000.00, the said parties of the first part do hereby grant and convey unto the said parties of the second part, as sole owner, in fee simple, the following described land and premises in Baltimore County, Maryland:

> Lot numbered Eleven (11) on the Plat of "Turkey Point Farm", now known as Rockaway Beach, which plat is duly recorded among the land records of Baltimore County, Maryland in Plat Book W.P.C. No. 4, at folio 171. With improvements known as 2317 Turkey Point Road.
> BEING the same property acquired by William J. Kleinsmith and Lillian A. Kleinsmith by deed dated June 27, 1952, recorded in Liber 2133, folio 149. The said William J. Kleinsmith, having died on March 13, 1991. The said Lillian Kleimsith died on March 18, 2002, thereby vesting title in her Co-Personal Representatives, the Grantors herein.

TOGETHER with all and singular the ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the said parties of the first part, of, in, to, or out of the said land and premises.

TO HAVE AND HOLD the property hereby conveyed unto the parties of the second part, his personal representatives, heirs and assigns, in fee simple, forever.

AND the said parties of the first part covenants that they shall execute such further assurances of said land as may be requisite.

WITNESS the hands and seals of the Grantors.

WITNESS:

Antoinette J. Schield Co Personal Representative (Seal)
Antoinette J. Schield, Co-Personal Representative

Jacqueline C Stump, Co Personal Representative (Seal)
Jacqueline C. Stump, Co-Personal Representative

Pet. Ex #1

STATE OF MARYLAND, COUNTY OF Baltimore, to wit:

I HEREBY CERTIFY that on this 11th day of September, 2002, before the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared **Antoinette J. Schield**, Co-Personal Representative of the Estate of Lillian A. Kleinsmith, personally well known to me (or satisfactorily proven) as the person whose names is subscribed to the within Deed and she signed the same in my presence.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: 10/1/04

STATE OF MARYLAND, COUNTY OF Baltimore, to wit:

I HEREBY CERTIFY that on this 11th day of September 2002, before the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared **Jacqueline C. Stump**, Co-Personal Representative of the Estate of Lillian A. Kleinsmith, personally well known to me (or satisfactorily proven) as the person whose names is subscribed to the within Deed and she signed the same in my presence.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: 10/1/04

I HEREBY CERTIFY that the within deed was prepared under my supervision and I am an attorney duly admitted to practice before the Court of Appeals of Maryland.

Andrew G. Levy

After recording mail to:
Carol C. Creamer
1779 Shaftsbury Avenue
Crofton, MD 21114

CTIA FILE C0209056

16854 477

State of Maryland Land Instrument Intake Sheet

☐ Baltimore City ☒ County: Baltimore

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office only.

(Type or Print in Black Ink Only—All Copies Must Be Legible)

Space Reserved for Recording Validation

IMP FD SURE $ 5.00
RECORDING FEE 20.00
TOTAL 25.00
Reg# BA04 Rcpt # 9699
SM LL Blk # 2395
Sep 23, 2002 02:30 PM

C02-09-056

1 Type(s) of Instruments (☐ Check Box if Addendum Intake Form is Attached.)

I Deed	☐ Mortgage	☐ Other	☐ Other	
☐ Deed of Trust	☐ Lease	☐	☐	

2 Conveyance Type Check Box

☐ Improved Sale Arms-Length *[1]*	☐ Unimproved Sale Arms-Length *[2]*	☐ Multiple Accounts Arms-Length *[3]*	☐ Not an Arms-Length Sale *[9]*

3 Tax Exemptions (if Applicable) Cite or Explain Authority

Recordation	
State Transfer	
County Transfer	

4 Consideration and Tax Calculations

Consideration Amount		Finance Office Use Only — Transfer and Recordation Tax Consideration	
Purchase Price/Consideration	$ 130,000.00	Transfer Tax Consideration	$
Any New Mortgage	$ 130,000.00	X ( ) % =	$
Balance of Existing Mortgage	$	Less Exemption Amount –	$ —
Other:	$	Total Transfer Tax =	$ 1950.00
Other:	$	Recordation Tax Consideration	$ ~~650.00~~
		X ( ) per $500 =	$ 650.00
Full Cash Value	$	TOTAL DUE	$

5 Fees

Amount of Fees	Doc. 1	Doc. 2
Recording Charge	$ 20.00	$
Surcharge	$ 5.00	$
State Recordation Tax	$ 650.00	$
State Transfer Tax	$ 650.00	$
County Transfer Tax	$ 1950.00	$
Other	$	$
Other	$	$

Agent: JR

Tax Bill: FY 1875310

C.B. Credit: —

Ag. Tax/Other: N

20 5 650 650 1950

6 Description of Property SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG
15	15-11-470450	2133/149			☐ (5)

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR(3c)	Plat Ref.	SqFt/Acreage (4)
Rockaway Beach	11			4/171	

Location/Address of Property Being Conveyed (2): 2317 Turkey Point Rd, Baltimore, Md 21221

Other Property Identifiers (if applicable):

Water Meter Account No.:

JR TAX STATE 650.00
TOTAL 650.00
Reg# BA04 Rcpt # 9699
SM LL Blk # 2396
Sep 23, 2002 02:31 PM

Residential ☒ or Non-Residential ☐ | Fee Simple ☒ or Ground Rent ☐ | Amount:

Partial Conveyance? ☐ Yes ☒ No | Description/Amt. of SqFt/Acreage Transferred:

If Partial Conveyance, List Improvements Conveyed:

7 Transferred From

Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
Antoinette J. Schield Jacqueline C. Stump	
Doc. 1 - Owner(s) of Record, if Different from Grantor(s)	**Doc. 2 - Owner(s) of Record, if Different from Grantor(s)**

8 Transferred To

Doc. 1 - Grantee(s) Name(s)	Doc. 2 - Grantee(s) Name(s)
Jeffrey A. Creamer	

New Owner's (Grantee) Mailing Address:

9 Other Names to Be Indexed

Doc. 1 - Additional Names to be Indexed (Optional)	Doc. 2 - Additional Names to be Indexed (Optional)

10 Contact/Mail Information

Instrument Submitted By or Contact Person

Name: Heather L. Roe
Firm: Capitol Title
Address: 3200 Defense Hwy
Crofton, MD 21114 Phone: (410) 721-3340

☐ Return to Contact Person
☐ Hold for Pickup
☒ Return Address Provided

11 IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER

Assessment Information

☒ Yes ☐ No Will the property being conveyed be the grantee's principal residence?
☐ Yes ☒ No Does transfer include personal property? If yes, identify:
☐ Yes ☒ No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

Assessment Use Only - Do Not Write Below This Line

☐ Final Verification ☐ Agricultural Verification ☐ Whole ☐ Part ☐ Tran. Process Verification

Transfer Number: Date Received: Deed Reference: Assigned Property No.:

	19	19					
Year			Geo.	Map	Sub		Block
Land			Zoning	Grid	Plat		Lot
Building			Use	Parcel	Section		Occ. Cd.
Total			Town Cd.	Ex. St.	Ex. Cd.		

REMARKS:

Distribution: *White - Clerk's Office*
Canary - SDAT
Pink - Office of Finance
Goldenrod - Preparer
AOC-CC-300 (6/95)

PAID RECEIPT
BUSINESS 9/19/2002
ACTUAL TIME 09:19:38
REG W501 WALKER JRIC JMR DRAWER 1
>RECEIPT # 106584 9/19/2002 OFLN
RECORDATION TAXES
DEPT # 2,600.00
ACCOUNT NO 15-11-470450
CA .00
COUNTY, Maryland

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT

I HEREBY CERTIFY that the aforegoing is a true copy of the original This Deed taken from the records of said Circuit Court as recorded in Liber SM No. 16854 Folio 475 477 etc of the Land Records of Baltimore County.

AS TESTIMONY WHEREOF I hereto set my hand and affix the seal of the Circuit Court for Baltimore, County this 23rd day of Mar 2005

Clerk of the Circuit Court of Baltimore County

MAKE CHECKS
PAYABLE TO:
BALTIMORE COUNTY, MD.

BALTIMORE COUNTY, MARYLAND
STATE AND COUNTY REAL PROPERTY TAX BILL

TAXPAYER'S COPY
DETACH AND RETAIN
TELEPHONE: 410-887-2403

PARCEL NUMBER	YEAR	CYCLE	BILL DATE	ELECTION DISTRICT
15-11-470450	2007	FY	07/01/2006	15

ASSESSMENT: 163,970

LEVY PERIOD: JULY 1,2006-JUNE 30,2007

CHARGES			RATE PER $100	TAXES/CHARGES
SEWER BENEFIT	100.00	COUNTY TAX	1.10	1,803.67
SEWER SERVICE	209.32	STATE TAX	.112	183.65
WATER BENEFIT		CHARGES		521.25
WATER DISTRIBUTION				
CONSTRUCTION LOAN	181.93			
BAY RESTORATION FEE	30.00			
TOTAL CHARGES	521.25			

PROPERTY STATUS: NOT A PRINCIPAL RESIDENCE

OWNER'S NAME AND ADDRESS
CREAMER JEFFREY A
1779 SHAFTSBURY AVE
CROFTON MD 21114

PROPERTY DESCRIPTION
ROCKAWAY BEACH
02817 TURKEY POINT
1-123362

LOT	BLOCK	SEC	PLAT	BOOK	FOLIO
11				04	171

CONSTANT YIELD 1.067 DIFFERENCE 0.033

GROSS BILL 2,508.57
INTEREST/DISCOUNT 18.04
NET TOTAL 2490.53

BALTIMORE COUNTY, MARYLAND
STATE AND COUNTY REAL PROPERTY TAXES

PLEASE RETURN THIS PART WITH YOUR FIRST SEMIANNUAL PAYMENT

MAIL TO: BALTIMORE COUNTY
P.O. BOX 64281
BALTO. MD. 21264-4281

PARCEL NUMBER	YEAR	CYCLE	BILL DATE	
15-11-470450	2007	FY	07/01/2006	1-123362

OWNER'S NAME AND ADDRESS	FIRST SEMIANNUAL PAYMENT CHARGES	IF PAID BY	DISCOUNT	PAY THIS AMOUNT
**********				
*				*
* SEMIANNUAL PAYMENT ELIGIBILITY :				*

You may pay this bill at the Office Of Budget and Finance, Taxpayer Services Section, 400 Washington Ave., Court House, Room 150, Towson, Maryland 21204, Monday through Friday between the hours of 8:00 a.m. and 4:30 p.m. You may pay this bill by touch-tone phone using a MasterCard or Discover credit card - Call 410- 887-2403 - available 24 hours a day except for daily scheduled maintenance. See enclosed brochure for IVR convenience fees.

For tax bills dated July 1, a discount of 1% of the Baltimore County tax will be allowed for a July payment or a 1/2% discount for an August payment. The gross amount is payable during the month of September. This bill becomes delinquent on October 1 and is subject to interest at the rate of 1% per month, until paid. For Full Year bills dated other than July 1, a discount of 1% of the county tax will be allowed, provided the net bill is paid within 30 days from the billing date. After 30 days, interest at the rate of 1% per month can be added until paid. Discounts, interest and penalties are calculated on the net amount of the bill after any credits have been applied.

This bill is due when rendered. If you have appealed your assessment and the appeal is still pending you must pay this bill in order to avoid interest and penalties. Should your appeal result in a reduction in the amount of tax due, the overpayment will be refunded to you.

Failure to receive a bill does not excuse the payment of taxes, interest or penalties. Properties are subject to sale for delinquent taxes if taxes remain unpaid at the time of the annual tax sale.

If you have a mortgage on your property, it is your responsibility to send or deliver this bill to your bank, building association or other lending institution if that organization pays your taxes.

Cashier's Use Only

A returned check charge of $35.00 will be assessed on each bill which is paid with a check that is returned by the bank or financial institution on which it is drawn. DO NOT POSTDATE CHECKS.

There is a complete exemption from real property taxes on the dwelling house owned by disabled veterans or their surviving spouse, where there is a service-connected disability which is 100% disabling and permanent in character. For further information, call the Assessment Office at 410-512-4905

SEMIANNUAL

Cashier's Use Only

Return this part with your ***first*** *semiannual payment if you elect to pay your* Real Property Taxes in **two** semiannual payments. You will receive a bill for the second payment in December if your first semiannual payment was

MAKE CHECKS
PAYABLE TO:
BALTIMORE COUNTY, MD.

BALTIMORE COUNTY, MARYLAND
STATE AND COUNTY REAL PROPERTY TAX BILL

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PARCEL NUMBER	YEAR	CYCLE	BILL DATE	ELECTION DISTRICT
15-11-470450	2007	FY	07/01/2006	15

ASSESSMENT: 163,970

LEVY PERIOD: JULY 1,2006-JUNE 30,2007

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SEWER BENEFIT	100.00
SEWER SERVICE	209.32
WATER BENEFIT	
WATER DISTRIBUTION	
CONSTRUCTION LOAN	181.93
BAY RESTORATION FEE	30.00
TOTAL CHARGES	521.25

PROPERTY STATUS
NOT A PRINCIPAL RESIDENCE

	RATE PER $100	TAXES/CHARGES
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02317 TURKEY POINT
1-123362

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11				04	171

CONSTANT YIELD 1.067 DIFFERENCE 0.033

VICE Lot 11 24 90.53 #11

GROSS BILL 2,508.57
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BALTIMORE COUNTY, MARYLAND
STATE AND COUNTY REAL PROPERTY TAXES

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MAIL TO: BALTIMORE COUNTY
P.O. BOX 64281
BALTO. MD. 21264-4281

PARCEL NUMBER	YEAR	CYCLE	BILL DATE	
15-11-470450	2007	FY	07/01/2006	1-123362

OWNER'S NAME AND ADDRESS	FIRST SEMIANNUAL PAYMENT CHARGES	IF PAID BY	DISCOUNT	PAY THIS AMOUNT
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Cashier's Use Only

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BALTIMORE COUNTY, MD.

BALTIMORE COUNTY, MARYLAND
STATE AND COUNTY REAL PROPERTY TAX BILL

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02517 TURKEY POINT

1-123362

LOT	BLOCK	SEC	PLAT	BOOK	FOLIO
11				04	171

CONSTANT YIELD 1.067 DIFFERENCE 0.033

VLC 24 90.53 #11

GROSS BILL 2,508.57
INTEREST/DISCOUNT 18.04
NET TOTAL 490.53

BALTIMORE COUNTY, MARYLAND
STATE AND COUNTY REAL PROPERTY TAXES

PLEASE RETURN THIS PART WITH YOUR FIRST SEMIANNUAL PAYMENT

MAIL TO: BALTIMORE COUNTY
P.O. BOX 64281
BALTO. MD. 21264-4281

PARCEL NUMBER	YEAR	CYCLE	BILL DATE	
15-11-470450	2007	FY	07/01/2006	1-123362

OWNER'S NAME AND ADDRESS	FIRST SEMIANNUAL PAYMENT CHARGES	IF PAID BY	DISCOUNT	PAY THIS AMOUNT
**********				
*				*
* SEMIANNUAL PAYMENT ELIGIBILITY :				*

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SEMIANNUAL

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Cashier's Use Only

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 -** 15 **Account Number -** 1511470450

Owner Information

Owner Name:	CREAMER JEFFREY A	**Use:**	RESIDENTIAL
		Principal Residence:	NO
Mailing Address:	1779 SHAFTSBURY AVE CROFTON MD 21114-2018	**Deed Reference:**	1) /16854/ 475 2)

Location & Structure Information

Premises Address	Zoning	Legal Description
2317 TURKEY POINT RD	WATERFRONT	ROCKAWAY BEACH

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:	
98	15	211					11	82	Plat Ref:	4/ 171

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1931	700 SF	13,150.00 SF	34

Stories	Basement	Type	Exterior
1	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2003	As Of 07/01/2004
Land:	98,780	98,780		
Improvements:	35,410	38,960		
Total:	134,190	137,740	135,373	136,556
Preferential Land:	0	0	0	0

Transfer Information

Seller:	KLEINSMITH WILLIAM J	**Date:**	09/23/2002	**Price:**	$130,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/16854/ 475	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Pet. Ex. #3

Plat to accompany Petition for Zoning ☐ Variance ☒ Special Hearing

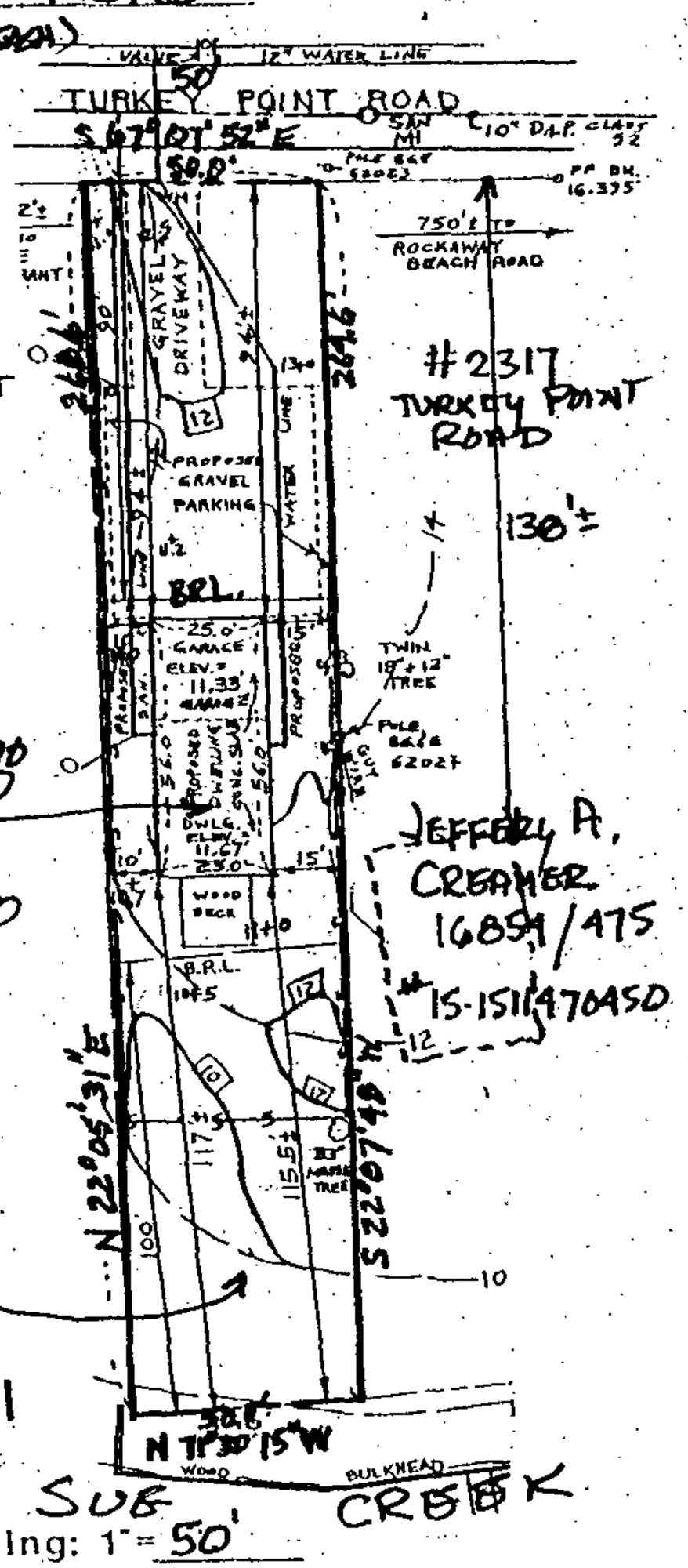
PROPERTY ADDRESS: 2315 TURKEY POINT ROAD

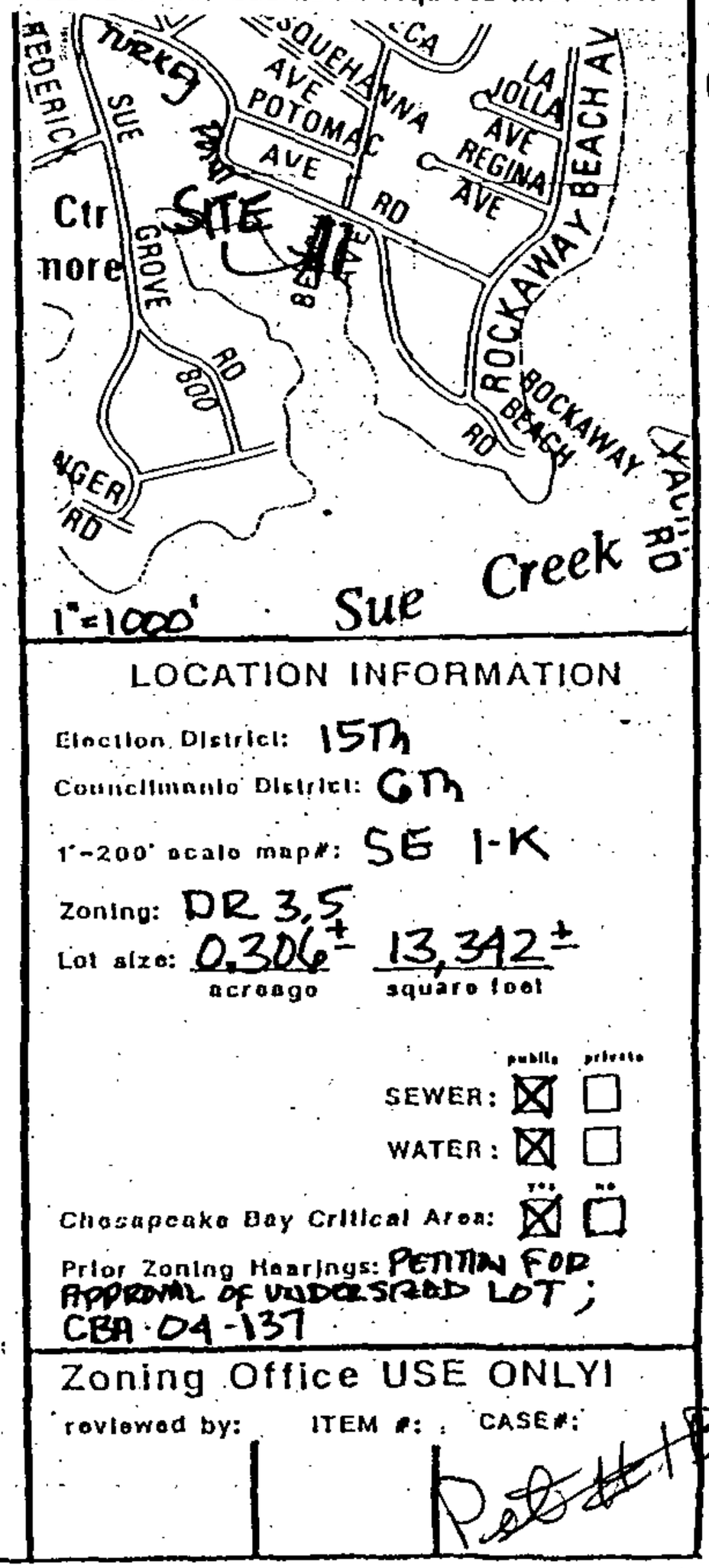
see pages 5 & 6 of the CHECKLIST for additional required information

Subdivision name: TURKEY POINT FARM (AKA ROCKAWAY BEACH)

plat book# 4 ,folio# 171 ,lot# 10 ,section# —

OWNER: CAROLE C. CREAMER





LOCATION INFORMATION

Election District: 15th

Councilmanic District: 6th

1"-200' scale map#: SE 1-K

Zoning: DR 3.5

Lot size: 0.306± acreage 13,342± square feet

	public	private
SEWER:	☒	☐
WATER:	☒	☐
Chesapeake Bay Critical Area:	*** ☒	** ☐

Prior Zoning Hearings: PETITION FOR APPROVAL OF UNDERSIZED LOT; CBA-04-137

Zoning Office USE ONLY!

reviewed by: ITEM #: CASE#:

Pet #1B

North

date: 4/30/05

prepared by: PATTON CONSULTANTS, LTD Scale of Drawing: 1"= 50'

Pet #7

DEED

THIS DEED made this 11 day of SEPTEMBER, 2002 by and between **Antoinette J. Schield (also, erroneously referred to of record as Antoinette J. Scheild), Jacqueline C. Stump and Lynne L. Collins**, parties of the first part, "Grantors", and **Carole C. Creamer**, party of the second part, "Grantee"

NOW, THEREFORE WITNESSETH, that for and in consideration of the sum of $110,000.00, the said parties of the first part do hereby grant and convey unto the said parties of the second part, as sole owner, in fee simple, the following described land and premises in Baltimore County, Maryland:

> Lot numbered Ten (10) on the Plat of "Turkey Point Farm", now known as Rockaway Beach, which plat is duly recorded among the land records of Baltimore County, Maryland in Plat Book W.P.C. No. 4, at folio 171.
> BEING the same property conveyed by Lilliam A. Kleinsmith to herself, for life, with remainder under the Grantors (the Remainderman) named herein. The said Lillian Kleimsith died on March 18, 2002, thereby vesting title in the remainderman, the Grantors herein.

TOGETHER with all and singular the ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the said parties of the first part, of, in, to, or out of the said land and premises.

TO HAVE AND HOLD the property hereby conveyed unto the parties of the second part, her personal representatives, heirs and assigns, in fee simple, forever.

AND the said parties of the first part covenants that they shall execute such further assurances of said land as may be requisite.

WITNESS the hands and seals of the Grantors.

WITNESS:

Antoinette J. Schield (Seal)
Antoinette J. Schield,

Jacqueline C Stump (Seal)
Jacqueline C. Stump,

Lynn L Collins (Seal)
Lynn L. Collins

Pet. Ex #8

STATE OF MARYLAND, COUNTY OF Balto, to wit:

I HEREBY CERTIFY that on this 11th day of September, 2002, before the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared **Antoinette J. Schield**, personally well known to me (or satisfactorily proven) as the person whose names is subscribed to the within Deed and she signed the same in my presence.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: 10/1/04

STATE OF MARYLAND, COUNTY OF Balto, to wit:

I HEREBY CERTIFY that on this 11th day of September, 2002, before the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared **Jacqueline C. Stump,** personally well known to me (or satisfactorily proven) as the person whose names is subscribed to the within Deed and she signed the same in my presence.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: 10/1/04

STATE OF MARYLAND, COUNTY OF Balto, to wit:

I HEREBY CERTIFY that on this 11th day of September, 2002, before the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared **Lynn L. Collins**, personally well known to me (or satisfactorily proven) as the person whose names is subscribed to the within Deed and she signed the same in my presence.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: 10/1/04

I HEREBY CERTIFY that the within deed was prepared under my supervision and I am an attorney duly admitted to practice before the Court of Appeals of Maryland.

Andrew G. Levy

After recording mail to:
Carol C. Creamer
1779 Shaftsbury Avenue
Crofton, MD 21114

CTIA FILE C0207198

State of Maryland Land Instrument Intake Sheet

☐ Baltimore City ☒ County: Baltumore

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office only.

(Type or Print in Black Ink Only—All Copies Must Be Legible)

Space Reserved for Clerk of Circuit Court Recording Voucher

LMF FD SURC $ 5.00
RECORDING FEE 20.00
TR TAX STATE 550.00
TOTAL 575.00
Rcpt# BA04 Rcpt # 9698
BY LL Blk # 2393
Sep 23, 2002 02:26 PM

C02-07-198

1 Type(s) of Instruments (☐ Check Box if Addendum Intake Form is Attached.)

☒ Deed ☐ Deed of Trust | ☐ Mortgage ☐ Lease | ☐ Other ☐ Other | ☐ Other ☐ Other

2 Conveyance Type Check Box

☐ Improved Sale Arms-Length *[1]* | ☐ Unimproved Sale Arms-Length *[2]* | ☐ Multiple Accounts Arms-Length *[3]* | ☐ Not an Arms-Length Sale *[9]*

3 Tax Exemptions (if Applicable) Cite or Explain Authority

Recordation	
State Transfer	
County Transfer	

4 Consideration and Tax Calculations

Consideration Amount	
Purchase Price/Consideration	$ 110,000.00
Any New Mortgage	$
Balance of Existing Mortgage	$
Other:	$
Other:	$
Full Cash Value	$

Finance Office Use Only — Transfer and Recordation Tax Consideration	
Transfer Tax Consideration	$
X ( ) % =	$
Less Exemption Amount −	$ —
Total Transfer Tax =	$ 1650.00
Recordation Tax Consideration	$
X ( ) per $500 =	$ 550.00
TOTAL DUE	$

5 Fees

Amount of Fees	Doc. 1	Doc. 2
Recording Charge	$ 20.00	$
Surcharge	$ 5.00	$
State Recordation Tax	$ 550.00	$
State Transfer Tax	$ 550.00	$
County Transfer Tax	$ 1650.00	$
Other	$	$
Other	$	$

Agent: DV

Tax Bill: FY 343.39ok

C.B. Credit: —

Ag. Tax/Other: N

6 Description of Property

SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG ☐ (5)
15	15-11-470451	10890/346			

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR(3c)	Plat Ref.	SqFt/Acreage (4)
Rockaway Beach	10			4/171	

Location/Address of Property Being Conveyed (2)

~~Lot 10~~ 2317 Turkey Point Rd, Baltimore, MD 21221

Other Property Identifiers (if applicable) | Water Meter Account No.

Residential ☒ or Non-Residential ☐ | Fee Simple ☒ or Ground Rent ☐ Amount:

Partial Conveyance? ☐ Yes ☒ No | Description/Amt. of SqFt/Acreage Transferred:

If Partial Conveyance, List Improvements Conveyed:

7 Transferred From

Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
Antoinette J. Schield Jacqueline C. Strump	
Doc. 1 - Owner(s) of Record, if Different from Grantor(s)	**Doc. 2 - Owner(s) of Record, if Different from Grantor(s)**
Lynne L. Collins	

8 Transferred To

Doc. 1 - Grantee(s) Name(s)	Doc. 2 - Grantee(s) Name(s)
Carole C. Creamer	

New Owner's (Grantee) Mailing Address

Same

9 Other Names to Be Indexed

Doc. 1 - Additional Names to be Indexed (Optional)	Doc. 2 - Additional Names to be Indexed (Optional)

10 Contact/Mail Information

Instrument Submitted By or Contact Person

Name: Heather L. Roe
Firm: Capitol Title
Address: 2200 Defense Hwy
Crofton, MD 21114 Phone: (410) 721-3340

☐ Return to Contact Person
☐ Hold for Pickup
☒ Return Address Provided

11 Assessment Information

IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER

☒ Yes ☐ No Will the property being conveyed be the grantee's principal residence?
☐ Yes ☒ No Does transfer include personal property? If yes, identify:
☐ Yes ☒ No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

Assessment Use Only - Do Not Write Below This Line

☐ Terminal Verification ☐ Agricultural Verification ☐ Whole ☐ Part ☐ Tran. Process Verification

Transfer Number: Date Received: Deed Reference: Assigned Property No.:

	19	19	Geo.	Map	Sub	Block
Year			Zoning	Grid	Plat	Lot
Land			Use	Parcel	Section	Occ. Cd.
Building			Town Cd.	Ex. St.	Ex. Cd.	
Total						

REMARKS:

Distribution: White - Clerk's Office
Canary - SDAT
Pink - Office of Finance
Goldenrod - Preparer
AOC-CC-300 (6/95)

PAID RECEIPT
CLERK TIME
BUSINESS
9/19/2002 08:14:29
REG WSO1 WALKIN JRIC JMR DRAWER 1
RECEIPT # 106290 9/19/2002 DELN
RECORDATION TAXES
Dept. Amt.
Total
Building
Land
RECPT FEE
$2,200.00 CA
Baltimore County Maryland

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT

I HEREBY CERTIFY that the aforegoing is a true copy of the original This Deed taken from the records of said Circuit Court as recorded in Liber SM No. 16954 Folio 421 424 one of the land records of Baltimore County.

IN TESTIMONY WHEREOF I hereto set my hand and affix the seal of the Circuit Court for Baltimore, County this 23rd day of Mar 2005

Clerk of the Circuit Court of Baltimore County

MAKE CHECKS
PAYABLE TO:
BALTIMORE COUNTY, MD.

BALTIMORE COUNTY, MARYLAND
STATE AND COUNTY REAL PROPERTY TAX BILL

TAXPAYER'S COPY
DETACH AND RETAIN
TELEPHONE: 410-887-2403

PARCEL NUMBER	YEAR	CYCLE	BILL DATE	ELECTION DISTRICT
15-11-470451	2007	FY	07/01/2006	15

ASSESSMENT: 90,800

LEVY PERIOD: JULY 1,2006-JUNE 30,2007

PROPERTY STATUS: NOT A PRINCIPAL RESIDENCE

CHARGES	
SEWER BENEFIT	100.00
SEWER SERVICE	
WATER BENEFIT	
WATER DISTRIBUTION	68.72
CONSTRUCTION LOAN	109.93
BAY RESTORATION FEE	
TOTAL CHARGES	278.65

	RATE PER $100	TAXES/CHARGES
COUNTY TAX	1.10	998.80
STATE TAX	.112	101.70
CHARGES		278.65

OWNER'S NAME AND ADDRESS
CREAMER CAROLE C
1779 SHAFTSBURY AVE
CROFTON MD 21114

PROPERTY DESCRIPTION
ROCKAWAY BEACH
0025 TURKEY POINT
1-123363

LOT	BLOCK	SEC	PLAT	BOOK	FOLIO
10				04	171

CONSTANT YIELD 1.067 DIFFERENCE 0.033

GROSS BILL 1,379.15
INTEREST/DISCOUNT 9.99
NET TOTAL 1369.16

BALTIMORE COUNTY, MARYLAND
STATE AND COUNTY REAL PROPERTY TAXES

PLEASE RETURN THIS PART WITH YOUR FIRST SEMIANNUAL PAYMENT

MAIL TO: BALTIMORE COUNTY
P.O. BOX 64281
BALTO. MD. 21264-4281

PARCEL NUMBER	YEAR	CYCLE	BILL DATE	
15-11-470451	2007	FY	07/01/2006	1-123363

OWNER'S NAME AND ADDRESS	FIRST SEMIANNUAL PAYMENT CHARGES	IF PAID BY	DISCOUNT	PAY THIS AMOUNT
SEMIANNUAL PAYMENT ELIGIBILITY :			VLG	1369.16

Ref Ex 9

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Cashier's Use Only

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FIRST SEMIANNUAL PAYMENT CHARGES: VLB

IF PAID BY

DISCOUNT

PAY THIS AMOUNT: 1371.16

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Real Property Data Search

Go Back
View Map
New Search
Ground Rent

Account Identifier: **District** - 15 **Account Number** - 1511470451

Owner Information

Owner Name: CREAMER CAROLE C

Mailing Address: 1779 SHAFTSBURY AVE
CROFTON MD 21114-2018

Use: RESIDENTIAL
Principal Residence: NO
Deed Reference: 1) /16854/ 471
2)

Location & Structure Information

Premises Address
2315 TURKEY POINT RD

Zoning
WATERFRONT

Legal Description
TURKEY POINT RD
ROCKAWAY BEACH

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Group	Plat No:
98	15	211					10	82	Plat Ref: 4/ 171

Special Tax Areas
Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		13,200.00 SF	34

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2003	Phase-in Assessments As Of 07/01/2003	As Of 07/01/2004
Land:	74,800	74,800		
Improvements:	0	0		
Total:	74,800	74,800	74,800	74,800
Preferential Land:	0	0	0	0

Transfer Information

Seller:	KLEINSMITH LILLIAN A	**Date:**	09/23/2002	**Price:**	$110,000
Type:	NOT ARMS-LENGTH	**Deed1:**	/16854/ 471	**Deed2:**	
Seller:	KLEINSMITH LILLIAN A	**Date:**	01/03/1995	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/10890/ 346	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

Partial Exempt Assessments	Class	07/01/2003	07/01/2004
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Pet. Ex #10

Plat to accompany Petition for Zoning ☐ Variance ☒ Special Hearing

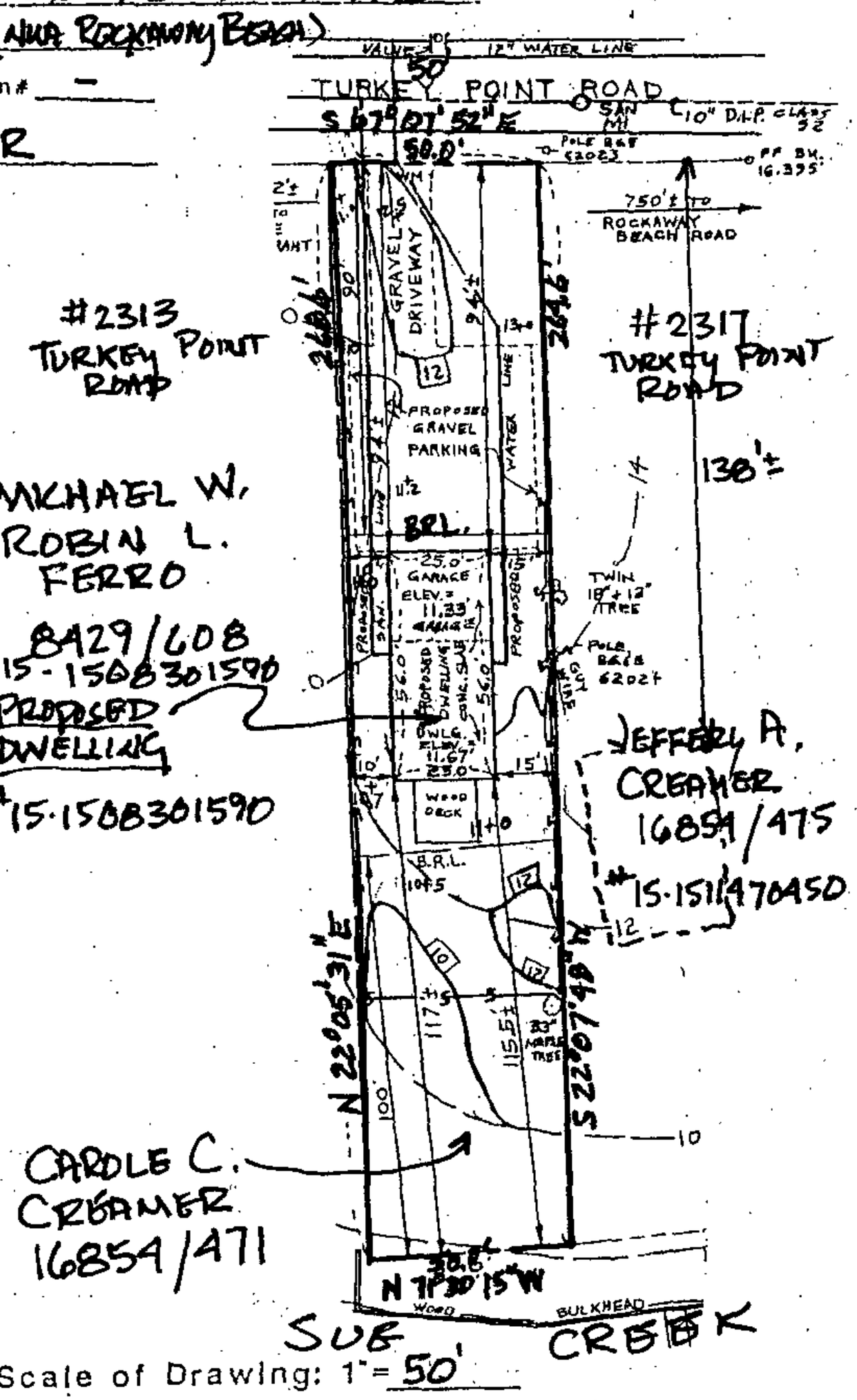
PROPERTY ADDRESS: 2315 TURKEY POINT ROAD

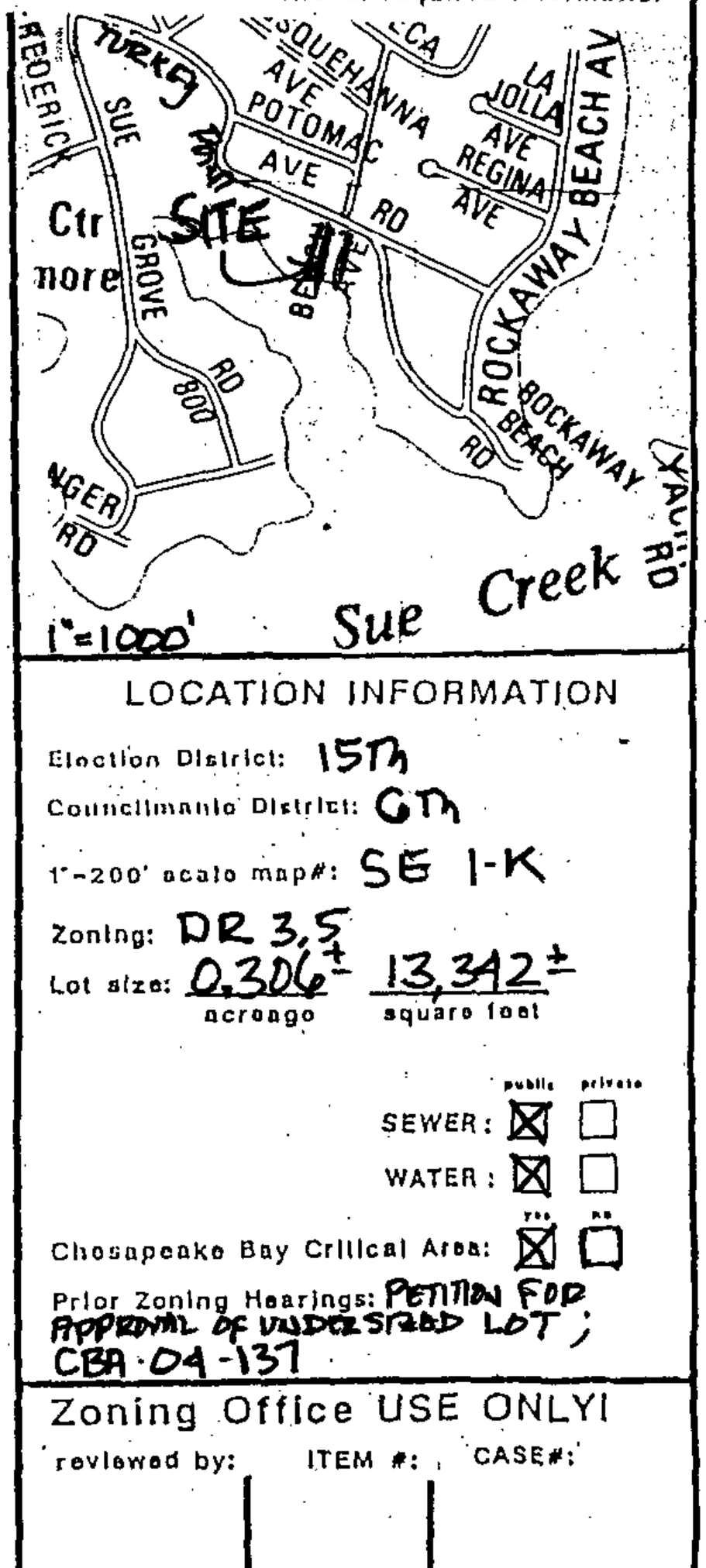
see pages 5 & 6 of the CHECKLIST for additional required information

Subdivision name: TURKEY POINT FARM (AKA ROCKAWAY BEACH)

plat book# 4 ,folio# 171 ,lot# 10 ,section# –

OWNER: CAROLE C. CREAMER





LOCATION INFORMATION

Election District: 15th

Councilmanic District: 6th

1"=200' scale map#: SE 1-K

Zoning: DR 3.5

Lot size: 0.306± acreage 13,342± square feet

	public	private
SEWER:	☒	☐
WATER:	☒	☐

	yes	no
Chesapeake Bay Critical Area:	☒	☐

Prior Zoning Hearings: PETITION FOR APPROVAL OF UNDERSIZED LOT; CBA-04-137

Zoning Office USE ONLY!

reviewed by: ITEM #: CASE#:

North

date: 6/30/05

prepared by: PATUXENT CONSULTANTS, LTD Scale of Drawing: 1"= 50'

Pet. Ex #11 ~~Ext. 15~~

Plat to accompany Petition for Zoning ☐ Variance ☒ Special Hearing

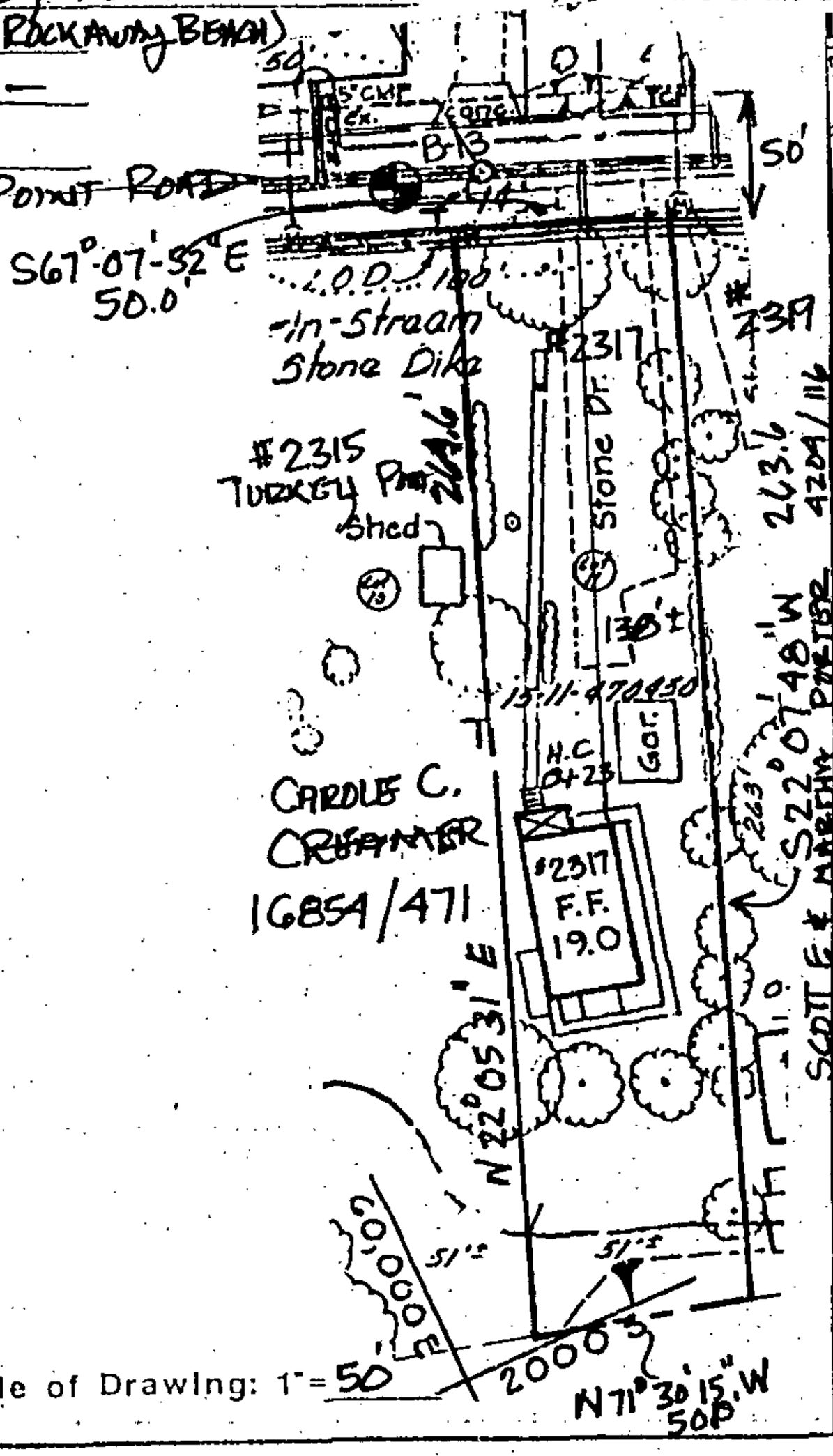
PROPERTY ADDRESS: 2317 TURKEY POINT ROAD

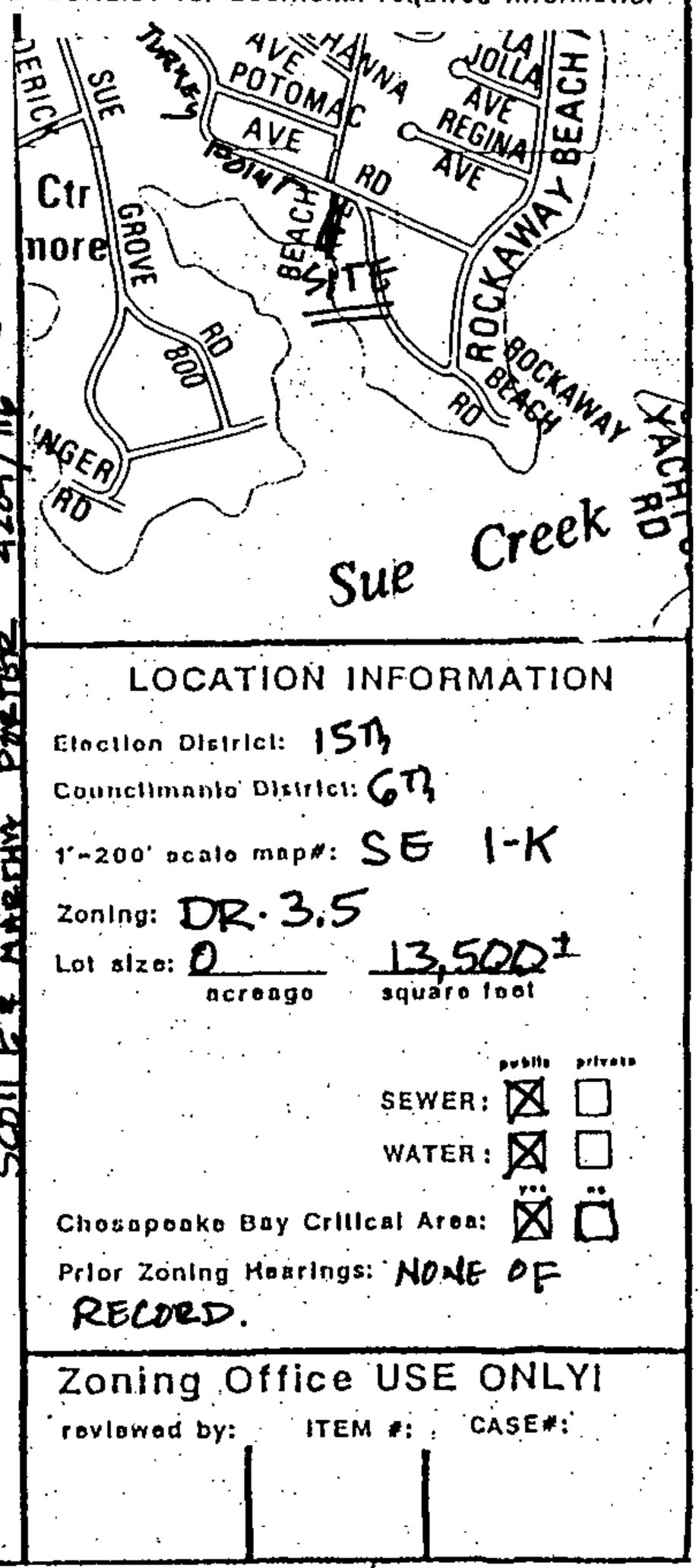
see pages 5 & 6 of the CHECKLIST for additional required information

Subdivision name: TURKEY POINT FARM (AKA ROCKAWAY BEACH)

plat book# 4 ,folio# 171 ,lot# 11 ,section# —

OWNER: JEFFERY A. CRAMER





LOCATION INFORMATION

Election District: 15th

Councilmanic District: 6th

1"-200' scale map#: SE 1-K

Zoning: DR-3.5

Lot size: 0 acreage 13,500± square feet

	public	private
SEWER:	☒	☐
WATER:	☒	☐
Chesapeake Bay Critical Area:	☒	☐

Prior Zoning Hearings: NONE OF RECORD.

Zoning Office USE ONLY!

reviewed by: ITEM #: CASE#:

North

date: 6/30/05

prepared by: PATTON CONSULTANTS, LTD Scale of Drawing: 1"=50'

Pet. Ex #12

1000

ROAD

TURKEY

REGINA AVE.

BEECH AVE.

SITE

AVE.

TURKEY POINT ROAD

BL

2315

2317

2312

S2,000

PIERS

PIERS

D.R 3.5

PIERS

PIERS

PIER

D.R.3.5

PIERS

BEACH ROAD

ROCKAWAY

PIER

PIER

PIER

PIERS

PIERS

PIER

PIER

S3,000

SE 1-K

Rm 123

Pet. Ex #13

ZONING MAP
SE-1-K

W.P.C. No 4. 171

SUE'S CREEK

40' AVENUE

Plat accompanying Deed from Thomas Young to Rockaway Beach Realty Co Filed Sept 9. 1915 Town. Wm. P. Cole Clerk.

ROCKAWAY BEACH

TURKEY POINT FARM
Scale: 100'-1"

Edw. V. Coonan & Co.
Surveyors & Civil Engrs
231 Courtland St.

Pet. #14

INTER-OFFICE CORRESPONDENCE
RECOMMENDATION FORM

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

Permit or Case No. _____

Residential Processing Fee Paid
($50.00)

Accepted by CTM
Date 2/17/09

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

RE: Undersized Lots

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

MINIMUM APPLICANT SUPPLIED INFORMATION:

JEFFREY A. CREAMER 1779 Shaftsbury Ave. Crofton, MD 21114 (410) 451-3013
Print Name of Applicant — Address — Telephone Number

Lot Address 2315 Turkey Point Rd. Election District 15 Councilmanic District ___ Square Feet 13,342

Lot Location: N E S W side/corner of Turkey Point Rd. (street) 800 feet from N E S W corner of Rockaway Beach Ave. (street)

Land Owner: Carole C. Creamer Tax Account Number 15-11-4704451

Address: 1779 Shaftsbury Ave. Crofton, MD 21114 Telephone Number (410) 451-3013

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

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

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

6. Current Zoning Classification: D.R. - 3.5

TO BE FILLED IN BY THE OFFICE OF PLANNING ONLY!

RECOMMENDATIONS / COMMENTS:

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

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

Date: _____

Revised 2/05/02

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

Pet. Ex #15

Department of Permits and Development Management (PDM)
County Office Building
111 West Chesapeake Avevnue
Towson, Maryland 21204

The application for your proposed Building Permit application has been reviewed and is accepted for filing by LLOYD MOXLEY (name of planner) on 2/17/04 Date (A).

A sign indicating the proposed building must be posted on the property for fifteen (15) days before a decision can be rendered. The cost of filing is $50.00. This fee is subject to change. Confirm all current fees prior to filing the application.

In the absence of a request for public hearing during the 15-day posting period, a decision can be expected within approximately four weeks. However, if a valid demand is received by the closing date, then the decision shall only be rendered after the required public special hearing.

*SUGGESTED POSTING DATE 2/29/04 D (15 Days Before C)

DATE POSTED _____

HEARING REQUESTED? YES____ NO____ - DATE _____

CLOSING DAY (LAST DAY FOR HEARING DEMAND) 3/15/04 C (B-3 Work Days)

TENTATIVE DECISION DATE 3/18/04 B (A + 30 Days)

*Usually within 15 days of filing

CERTIFICATE OF POSTING

District: _____

Location of Property: _____

_____

Posted by: _____ Date of Posting: _____
Signature

Number of Signs: _____

Revised 2/25/99

all improved lots within 200 feet on each side thereof, provided that no dwelling shall be required to be set back more than 60 feet in D.R.2 Zones, 50 feet in D.R.3.5 Zones and 40 feet in D.R.5.5 Zones. In no case, however, shall nonresidential principal buildings have front yards of less depth than those specified therefor in the area regulations for D.R.2, D.R.3.5 and D.R.5.5 Zones respectively. **[Resolution, November 21, 1956]**

303.2 In B.L., B.M. and B.R. Zones, the front yard depth of any building hereafter erected shall be the average of the front yard depths of the lots immediately adjoining on each side, provided such adjoining lots are improved with permanent commercial buildings constructed of fire-resisting materials situate within 100 feet of the joint side property line, but where said immediately adjoining lots are not both so improved, then the depth of the front yard of any building hereafter erected shall be not less than the average depth of the front yards of all lots within 100 feet on each side thereof which are improved as described above.

Section 304
Use of Undersized Single-Family Lots
[BCZR 1955; Bill No. 47-1992]

304.1 **[Bill Nos. 64-1999; 28-2001]** Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;

B. All other requirements of the height and area regulations are complied with; and

C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

304.2 Building permit application.

A. Any person desiring to erect a dwelling pursuant to the provisions of this section shall file with the Department of Permits and Development Management, at the time of application for a building permit, plans sufficient to allow the Office of Planning to prepare the guidelines provided in Subsection B below. Elevation drawings may be required in addition to plans and drawings otherwise required to be submitted as part of the application for a building permit. Photographs representative of the neighborhood where the lot or tract is situated may be required by the Office of Planning in order to determine appropriateness of the proposed new building in relation to existing structures in the neighborhood.

B. At the time of application for the building permit, as provided above, the Director of the Department of Permits and Development Management shall request comments from the Director of the Office of Planning (the "Director"). Within 15 days of receipt of a request from the Director of the Department of Permits and Development Management, the Director shall provide to the

Pet. Ex #16

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

1. Site design. New buildings shall be appropriate in the context of the neighborhood in which they are proposed to be located. Appropriateness shall be evaluated on the basis of new building size, lot coverage, building orientation and location on the lot or tract.

2. Architectural design. Appropriateness shall be evaluated based upon one or more of these architectural design elements or aspects:

   a. Height.

   b. Bulk or massing.

   c. Major divisions, or architectural rhythm, of facades.

   d. Proportions of openings such as windows and doors in relation to walls.

   e. Roof design and treatment.

   f. Materials and colors, and other aspects of facade texture or appearance.

3. Design amendments. The Director may recommend approval, disapproval or modification of the building permit to conform with the recommendations proposed by the Office of Planning.

304.3 Public notice. Upon application for a building permit pursuant to this section, the subject property shall be posted conspicuously under the direction of the Department of Permits and Development Management with notice of the application for a period of at least 15 days.

304.4 Public hearing. Within the fifteen-day posting period: (1) Any owner or occupant within 1,000 feet of the lot may file a written request for a public hearing with the Department of Permits and Development Management, or (2) the Director of Permits and Development Management may require a public hearing. The Department of Permits and Development Management shall notify the applicant within 20 days of the receipt of a request for a public hearing. A hearing before the Zoning Commissioner shall be scheduled within 30 days from receipt of the request for public hearing. At the public hearing, the Zoning Commissioner shall make a determination whether the proposed dwelling is appropriate.

304.5 Final approval.

A. The Director of the Department of Permits and Development Management may issue the building permit; or

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

C. If the Department of Permits and Development Management has not notified the applicant of a determination pursuant to the provisions of this section, or has not notified the applicant pursuant to Section 304.4 above of the intention to require a public hearing, the dwelling shall be considered appropriate for purposes of this section.

304.6 The decision of the Zoning Commissioner or the Director of the Department of Permits and Development Management may be appealed, in which case the hearing shall be scheduled by the Board of Appeals within 45 days from receipt of the request.

304.7 The Director of the Department of Permits and Development Management shall establish appropriate fee schedules.

Section 305
Replacement of Destroyed or Damaged Dwellings
[BCZR 1955; repealed by Bill No. 124-1991; re-enacted by Bill No. 214-1991]

In case of complete or partial casualty loss by fire, windstorm, flood or otherwise of an existing dwelling that does not comply with height or area requirements of the zone in which it is located, such dwelling may be restored, provided area or height deficiencies of the dwelling before the casualty are not increased in any respect, and such restoration is subject to the limitations imposed by Section 104.2 of the Baltimore County Zoning Regulations.

Section 306
Minor Public Utility Structures
[BCZR 1955; Resolution, November 21, 1956; Bill No. 32-2004]

Minimum lot area regulations in any zone shall not apply to:

A. Repeater, booster or transformer stations;

B. Bus shelters, Class A or B; or

C. Small community dial offices.

Section 307
Variances
[BCZR 1955; Bill Nos. 107-1963; 32-1988; 2-1992; 9-1996]

307.1 The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore,

Section 4A03
Growth Management Plan for Bowleys Quarters and Back River Neck Areas[3]
[Bill No. 28-2001]

4A03.1 Definitions. In this section the following words have the meanings indicated.

SUBDIVISION — The division of property into two or more lots.

UNDERSIZED LOT — An unimproved platted lot or a lot of record on or before August 6, 1999, that does not meet the area, height or setback requirements in these Zoning Regulations to allow the construction of a dwelling.

4A03.2 Application. Except as provided in Sections 4A03.13 and 4A03.14, this section applies to property zoned D.R. or R.C.5 and located in the Bowleys Quarters and Back River Neck areas defined in the map attached as Exhibit A and incorporated by reference in this section.[4] **[Bill Nos. 60-2003; 15-2004]**

4A03.3 Connection to public sewer or water. A property owner with a dwelling in existence on or before February 19, 2006, or with a nonexpired building permit that was issued on or before February 19, 2006, shall be required to connect to a public sewer, public water or both if the property is: **[Bill No. 5-2006]**

A. Zoned D.R. or R.C. 5; and

B. Served by public sewer, public water or both with adequate capacity.

4A03.4 Building permits. **[Bill No. 5-2006]**

A. Except as provided in Paragraph B of this subsection, a building permit may be issued for the construction of a dwelling on an unimproved platted lot or lot of

---

3 **Editor's Note: This topic was originally added as Section 206 by Bill No. 64-1999. Sections 3 through 7 of Bill No. 64-1999, as amended by Bill No. 28-2001, provided as follows:**

Section 3. Consistent with the county's Water and Sewer Plan, public sewer service may not be extended to property zoned R.C. 20 in area depicted in the map attached as Exhibit A except:

(1) For properties with a dwelling in existence on or before August 6, 1999, to which public sewer is extended;

(2) As provided in § 35-177 of the Code; and

(3) For properties that have been transferred in accordance with Section 1A05.5 of the Baltimore County Zoning Regulations to which public sewer is extended.

Section 4. This Act may not be construed to:

(1) Require the county to extend public sewer capacity to any property; or

(2) Prohibit the Department of Environmental Protection and Resource Management from issuing permits for on-site disposal systems in accordance with the Baltimore County Code for properties zoned R.C. 20.

Section 5. The Department of Public Works, in consultation with the Departments of Planning, Permits and Development Management, and Environmental Protection and Resource Management, shall report annually to the County Council, beginning in July of 2000, on the capacity of the public sewer in the Back River Neck and Bowleys Quarters areas depicted in the map attached as Exhibit A and the potential for the connection of public sewer to properties that are not zoned D.R., R.C. 5, or R.C. 20.

Section 6. Section 4A03.4.A.4 of the Baltimore County Zoning Regulations does not apply to property that is zoned D.R. and has an approved development plan on or before May 28, 1999, except that the minimum lot size requirement for the approved development plan shall be 12,000 square feet.

Section 7. Section 4A03.11 of the Baltimore County Zoning Regulations does not apply to a property owner who has a pending application for growth allocation under § 26-123 of the Baltimore County Code on or before July 6, 1999.

4 **Editor's Note: Said map is on file in the County offices.**

Pet. Ex. #17

record that meets all of the zoning requirements subject to the following conditions:

1. Variances are not required for the construction of the dwelling;

2. The property owner connects to a public sewer, public water or both where available and with adequate capacity;

3. The dwelling meets the design requirements provided for in this section; and

4. Except for minor subdivisions, no further subdivision of the lot is allowed.

B. A building permit may be issued for the construction of a dwelling on an undersized lot subject to the following conditions:

1. The owner of the lot does not own sufficient adjoining land that if combined with the adjoining land would allow the property owner to conform to the current zoning requirements;

2. No further subdivision of the lot is allowed;

3. The property owner obtains a variance as provided for in Section 307 of these Zoning Regulations if in the D.R. Zone or the property owner obtains special hearing relief in accordance with Section 1A04.3.B.1.b of these Zoning Regulations if in the R.C. 5 Zone; and

4. The property owner connects to a public sewer, public water, or both where available and with adequate capacity.

4A03.5 Building permit application.

A.

1. Any person desiring to erect a dwelling in accordance with the provisions of this section shall file with the Department of Permits and Development Management, at the time of application for a building permit, plans sufficient to allow the Office of Planning to prepare the guidelines provided in Paragraph B of this subsection.

2. Elevation drawings may be required in addition to plans and drawings otherwise required to be submitted as part of the application for a building permit.

3. Photographs representative of the neighborhood where the lot or tract is situated may be required by the Office of Planning in order to determine the appropriateness of the proposed new building in relation to existing structures in the neighborhood.

B.

1. At the time of application for the building permit, as provided above, the Director of Permits and Development Management shall request comments

from the Directors of the Office of Planning and the Departments of Environmental Protection and Resource Management and Public Works.

2. Within 15 days after receipt of a request from the Director of Permits and Development Management, the Directors shall provide to the Department of Permits and Development Management written recommendations concerning the application with regard to the following:

A. Site design. New buildings shall be appropriate in the context of the neighborhood in which they are proposed to be located. Appropriateness shall be evaluated on the basis of new building size, lot coverage, building orientation and location on the lot or tract.

B. Architectural design. Appropriateness shall be evaluated based on one or more of these architectural design elements or aspects:

[1] Height;

[2] Bulk or massing;

[3] Major divisions, or architectural rhythm, of facades;

[4] Proportions of openings such as windows and doors in relation to walls;

[5] Roof design and treatment; and

[6] Materials and colors, and other aspects of facade texture or appearance.

C. Design amendments. The Director of Permits and Development Management may recommend approval, disapproval or modification of the building permit after consideration of the recommendations proposed by the Directors.

4A03.6 Public notice. For undersized lots, on application for a building permit in accordance with this section, the subject property shall be posted conspicuously under the direction of the Department of Permits and Development Management with notice of the application for a period of at least 15 days.

4A03.7 Public hearing.

A. This subsection applies to undersized lots.

B. Within the fifteen-day posting period:

1. Any owner or occupant within 1,000 feet of the lot may file a written request for a public hearing with the Department of Permits and Development Management; or

2. The Director of Permits and Development Management may require a public hearing.

C. The Department of Permits and Development Management shall notify the applicant within 20 days after the receipt of a request for a public hearing.

D. The Zoning Commissioner shall hold the public hearing within 30 days after receiving the request for a public hearing.

E. At the public hearing, the Zoning Commissioner shall determine whether the proposed dwelling is appropriate.

4A03.8 Final approval.

A. The Director of Permits and Development Management may:

1. Issue the building permit; or

2. For undersized lots, notwithstanding any provision to the contrary, require a public hearing before the Zoning Commissioner in accordance with this section.

B. If the Department of Permits and Development Management has not notified the applicant of a determination in accordance with the provisions of this section, or has not notified the applicant in accordance with Subsection 4A03.7 of the intention to require a public hearing, the dwelling shall be deemed appropriate for purposes of this section.

4A03.9 Appeals. The decision of the Zoning Commissioner or the Director of Permits and Development Management may be appealed, in which case the Board of Appeals shall hold the hearing within 45 days after receipt of the request.

4A03.10 Fees. The Director of Permits and Development Management shall establish appropriate fee schedules.

4A03.11 Growth allocation not applicable. A property owner who is required to connect to public sewer, public water or both as provided for in this section may not apply for growth allocation under Article 32, Title 9 of the Baltimore County Code. **[Bill No. 5-2006]**

4A03.12 Regulations. The Department of Public Works, in consultation with the Office of Planning, the Department of Environmental Protection and Resource Management and the Department of Permits and Development Management, may adopt regulations in accordance with Article 3, Title 7 of the Baltimore County Code, to carry out the provisions of this section. **[Bill No. 5-2006]**

4A03.13 Growth allocation: Back River Neck District. **[Bill No. 60-2003]**

A. This subsection applies to property that:

1. Is zoned R.C. 5;

2. Is located in the Back River Neck District defined in the map attached as Exhibit A and incorporated by reference in this section;[5] and

3. Receives growth allocation in accordance with the Baltimore County Code and the State Critical Area Law.

---

5 **Editor's Note: Said map is on file in the County offices.**

B.

1. In this subsection "villa" means a group of five or less attached dwelling units that have been constructed together in a lateral row surrounded by yard space and in which each dwelling unit is separated from another by a party wall.

2. A "single-family villa" refers to any one dwelling within the attached group.

C. Villas are permitted as of right only on property that is included in this subsection as provided for in Paragraph A of this subsection.

D. Except as specifically exempted by this subsection, a property subject to this subsection is required to comply with all of the other provisions of this section.

E. Notwithstanding Subsection 4A03.11 of this section, a property owner who is required to connect to public sewer, public water or both as provided for in this section may apply for growth allocation under Article 32, Title 9 of the Baltimore County Code. **[Bill No. 137-2004; 5-2006]**

F. A development plan and amendments to a development plan:

1. Are not required to comply with:

a. Subsections 4A03.4.A.1, 3, and 4 and B.1, 2, and 3 and 4A03.5 of this section;

b. Section 102.4 of the Zoning Regulations;

c. Section 104 of the Zoning Regulations, except that nonconforming uses may continue and be relocated on the property outside of the original footprints;

d. Section 1A04.3 of the Zoning Regulations, except that a structure on property that is included in this subsection is subject to the height regulation;

e. The open space requirements in § 32-6-108 of the Baltimore County Code and the Local Open Space Manual; and **[Bill No. 137-2004]**

f. The panhandle driveway requirements in § 32-4-409 of the Baltimore County Code; **[Bill No. 137-2004]**

2. May include the following provisions:

a. Panhandles shall be permitted without being subject to the comprehensive Manual of Development Policies;

b. Existing road paving is not required to be widened;

c. Curbs, gutters, or sidewalks are not required; and

d. Any provision regarding full cul-de-sacs do not apply if modified turnaround areas are constructed or otherwise available on any affected roads.

G. A development plan:

1. Shall comply with the development review and approval process as provided for in Article 32 of the Baltimore County Code; **[Bill No. 137-2004]**

2. Is not eligible for a limited exemption from the development review and approval process under § 32-4-106 of the Baltimore County Code; and **[Bill No. 137-2004]**

3. Shall include a pattern book assuring that the development achieves a high quality of design.

4A03.14.R.C. 20 Properties. **[Bill No. 15-2004; 5-2006]**

A. This subsection applies to property zoned R.C. 20 and located in the Bowleys Quarters and Back River Neck areas as provided in Subsection 4A03.2 of this section.

B. A property owner may connect to the public sewer, public water or both subject to the following conditions:

1. Variances are not required for the construction of the dwelling;

2. Public sewer, public water or both are available and have adequate capacity;

3. It is technically feasible to connect to the public sewer or public water;

4. The lot for which the connection is sought has received all required permits, including a building permit and federal, state and county environmental approvals;

5. The lot existed on or before January 1, 2003, or the portion of the lot lying within the R.C. 20 Zone was not occupied by a dwelling as of January 1, 2003;

6. Except for bona fide intrafamily transfers as provided for in § 1A05.5 of the Baltimore County Zoning Regulations, and subdivisions predominantly involving portions of the lot not zoned R.C. 20, no further subdivision of the lot is allowed;

7. Except for bona fide intrafamily transfers as provided for in § 1A05.5 of the Baltimore County Zoning Regulations, only one connection for public sewer, public water or both per lot is allowed for one single-family dwelling in an R.C. 20 Zone;

8. The dwelling meets all of the design requirements as provided for in this section; and

9. If the lot is undersized, then the property owner must meet the conditions in § 4A03.4.B.1 and 3.

C. The determination of whether it is technically feasible to connect to public sewer, public water or both shall be in the sole discretion of the Director of the

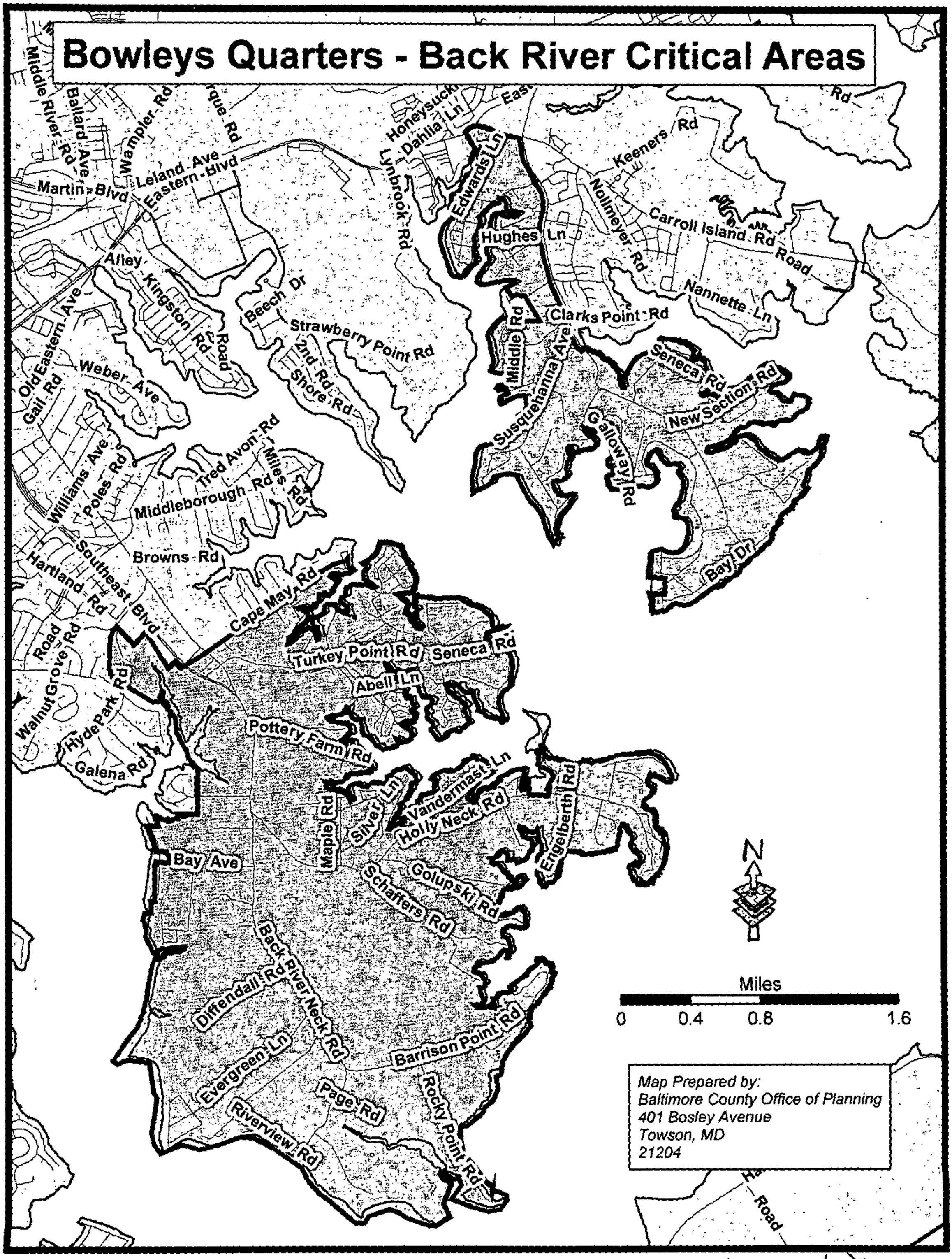
Department of Public Works. The Director shall develop a policy for allocating the cost of public sewer or public water service or both authorized under this section.

D. Public [sewer][6] and public water service or both shall be provided to properties that have been transferred in accordance with § 1A05.5 of the Baltimore County Zoning Regulations subject to the conditions in Paragraph B of this subsection.

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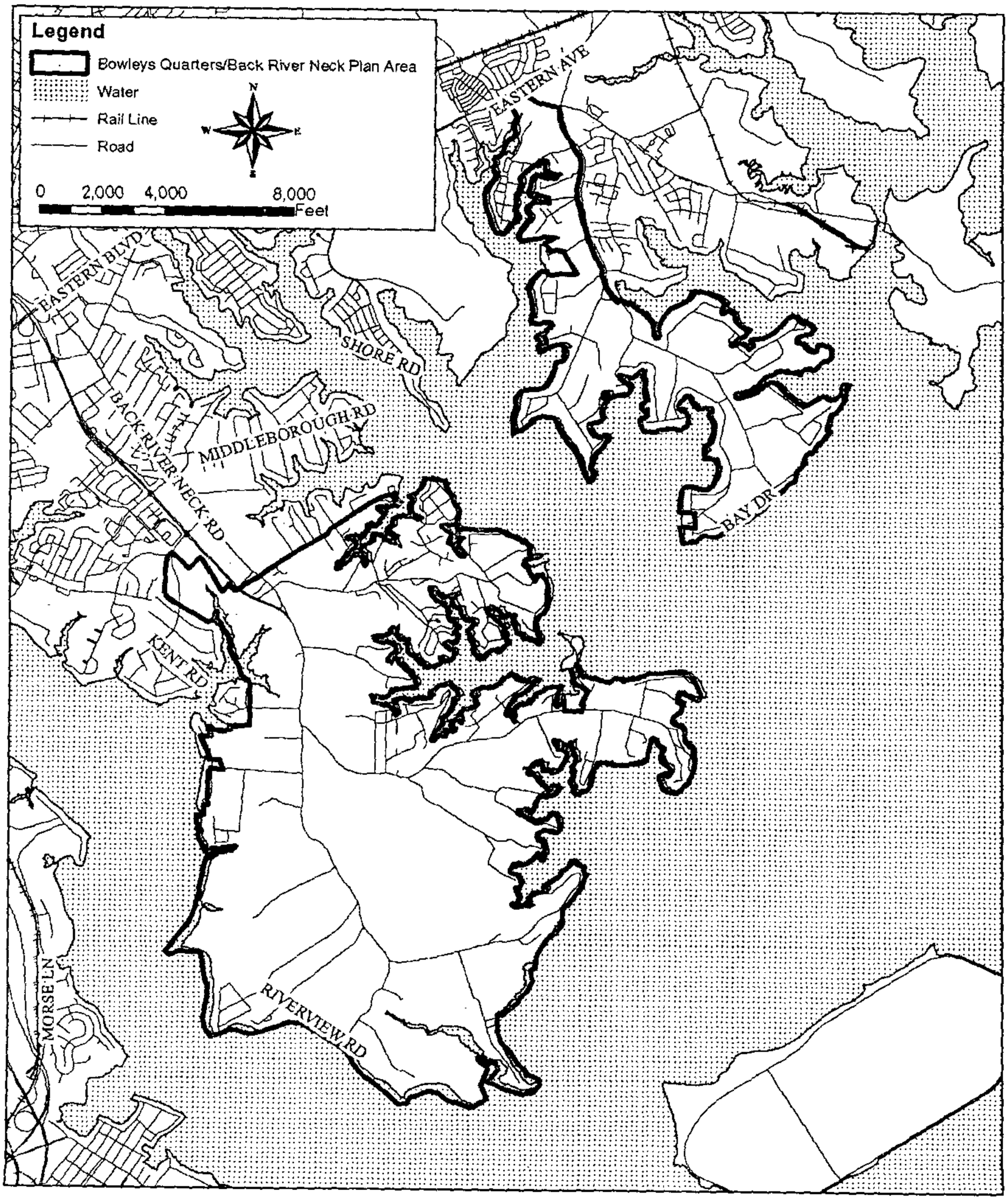
6 **Editor's Note: The word "sewer" was inadvertently omitted from Bill No. 5-2006, although it was the legislative intent of the County that it be included herein.**

Bowleys Quarters - Back River Critical Areas



Pet. Ex #18

Bowley's Quarters/Back River Neck Plan Area



Adopted Community Plans

Community plans adopted by the Baltimore County Council can contain specific development requirements that are incorporated into the zoning regulations.

Community Plan	Code/Bill No.	Requirements	Map Page No.
South Perry Hall - White Marsh	BCZR, Section 260.2.D [Bill Nos. 34-2001; 58-2001]	The minimum width for any single-family detached lot located in the area north of Ridge Road is 75 feet. This does not apply to alternative site design dwellings.	89
Middle River - Bird River	BCZR, Section 260.2.E [Bill Nos. 34-2001; 58-2001]	For any single-family detached lot, the minimum width is 75 feet; the minimum front yard setback is 20 feet; and the minimum rear yard setback is 40 feet.	90
Bowleys Quarters and Back River Neck	BCZR, Section 4A03.5.A; 4A03.5.B [Bill 28-2001; 60-2003; 15-2004] BCZR, Section 4A03.14.B.8 [Bill 15-2004]	Specific site design, architectural design and design amendment standards for new dwellings on property zoned DR, RC-5 or RC-20.	91
Back River Neck District	BCZR, Section 4A03.13 [Bill No. 60-2003]	Pattern book assuring that the development achieves a high quality of design is required for villas on properties zoned RC5.	92

LABORATORY — A building or group of buildings used primarily for applied and development research where the product-testing process is a major function of the operation, but where the operation does not involve any mass manufacturing. **[Bill No. 76-1964]**

LANDSCAPE SERVICE OPERATION — An operation primarily engaged in the designing, installing, planting or maintaining of lawns, gardens or other plantings at off-site commercial or residential uses. **[Bill No. 41-1992]**

LOCALLY GROWN PRODUCE — Crops which have been produced in Baltimore County or its immediate vicinity. The following areas shall be considered as immediate vicinity: Maryland, Pennsylvania, West Virginia and Delaware. **[Bill No. 41-1992]**

LOT, CORNER — A lot abutting on and at the intersection of two or more streets.

LOT DEPTH — The mean horizontal distance between the front and rear lot lines.

LOT, INTERIOR — A lot other than a corner or through lot.

LOT OF RECORD — A parcel of land with boundaries as recorded in the land records of Baltimore County on the same date as the effective date of the zoning regulation which governs the use, subdivision or other condition thereof. **[Bill No. 100-1970]**

LOT, THROUGH — A lot having its front and rear yards each abutting on a street.

MARINA — A modern boat basin, restricted to recreational marine craft of all types, with facilities for one or more of the following: berthing, launching and securing such craft, and permitting incidental minimum provision for refueling and emergency servicing, as well as the incidental sale of boats and also land (out-of-water) storage as provided in Section 417.7. **[Bill Nos. 64-1963; 149-1992]**[17]

MEDICAL OFFICE — A place for the treatment of outpatients by one or more medical practitioners. This term does not include a veterinarian's office, medical clinic, ambulatory care center, diagnostic center, birthing center or dialysis satellite unit. The term does not include ambulatory surgical facilities. **[Bill No. 37-1988]**

MEDICAL PRACTITIONER [Bill Nos. 37-1988; 29-1998; 9-1999]:

A. A physician, dentist, optometrist, chiropractor, podiatrist, psychologist, physical therapist, nurse, massage therapist as defined by § 24-441 of the Baltimore County Code or other similar health professional licensed by the state.[18]

B. A physician, dentist, optometrist, chiropractor, podiatrist, psychologist, physical therapist, nurse, massage therapist or other similar health professional licensed or certified by the state.[19]

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17 **Editor's Note: The former definition of "medical clinic," which immediately followed this definition, was repealed by Bill No. 39-2002.**

18 **Editor's Note: Section 8 of Bill No. 9-1999 provided that this definition shall take effect on 2-22-1999, and shall remain in effect until the State Board of Chiropractic Examiners notifies the County Council, in writing, that the Board is certifying massage therapists.**

19 **Editor's Note: Section 9 of Bill No. 9-1999 provided that this definition shall take effect at that time when the definition as provided in Subsection A shall no longer have any force or effect.**

Pet. Ex. #19 04 – 15 – 2005

(A)(1) EXCEPT AS PROVIDED IN ~~SUBPRAGRAPH (2)~~ PARAGRAPH (B) OF THIS PARAGRAPH, A BUILDING PERMIT MAY BE ISSUED FOR THE CONSTRUCTION OF A DWELLING ON AN UNIMPROVED PLATTED LOT OR LOT OF RECORD THAT MEETS ALL OF THE ZONING REQUIREMENTS SUBJECT TO THE FOLLOWING CONDITIONS:

(I) VARIANCES ARE NOT REQUIRED FOR THE CONSTRUCTION OF THE DWELLING;

(II) THE PROPERTY OWNER CONNECTS TO A PUBLIC SEWER WHERE AVAILABLE AND WITH ADEQUATE CAPACITY;

(III) THE DWELLING MEETS THE DESIGN REQUIREMENTS PROVIDED FOR IN THIS SECTION; AND

(IV) EXCEPT FOR MINOR SUBDIVISIONS, NO FURTHER SUBDIVISION OF THE LOT IS ALLOWED.

(B) A BUILDING PERMIT MAY BE ISSUED FOR THE CONSTRUCTION OF A DWELLING ON AN UNDERSIZED LOT SUBJECT TO THE FOLLOWING CONDITIONS:

(1) THE OWNER OF THE LOT DOES NOT OWN SUFFICIENT ADJOINING LAND THAT IF COMBINED WITH THE ADJOINING LAND WOULD ALLOW THE PROPERTY OWNER TO CONFORM TO THE CURRENT ZONING REQUIREMENTS;

(2) NO FURTHER SUBDIVISION OF THE LOT IS ALLOWED;

(3) THE PROPERTY OWNER OBTAINS A VARIANCE AS

PROVIDED FOR IN §307 OF THESE REGULATIONS; AND

(4) THE PROPERTY OWNER CONNECTS TO A PUBLIC SEWER WHERE AVAILABLE AND WITH ADEQUATE CAPACITY.

~~206.6~~ 206.5 BUILDING PERMIT APPLICATION

(A)(1)ANY PERSON DESIRING TO ERECT A DWELLING IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION SHALL FILE WITH THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT, AT THE TIME OF APPLICATION FOR A BUILDING PERMIT, PLANS SUFFICIENT TO ALLOW THE OFFICE OF PLANNING TO PREPARE THE GUIDELINES PROVIDED IN PARAGRAPH (B) BELOW.

(2) ELEVATION DRAWINGS MAY BE REQUIRED IN ADDITION TO PLANS AND DRAWINGS OTHERWISE REQUIRED TO BE SUBMITTED AS PART OF THE APPLICATION FOR A BUILDING PERMIT.

(3) PHOTOGRAPHS REPRESENTATIVE OF THE NEIGHBORHOOD WHERE THE LOT OR TRACT IS SITUATED MAY BE REQUIRED BY THE OFFICE OF PLANNING IN ORDER TO DETERMINE THE APPROPRIATENESS OF THE PROPOSED NEW BUILDING IN RELATION TO EXISTING STRUCTURES IN THE NEIGHBORHOOD.

(B)(1)AT THE TIME OF APPLICATION FOR THE BUILDING PERMIT, AS PROVIDED ABOVE, THE DIRECTOR OF PERMITS AND DEVELOPMENT

MANAGEMENT SHALL REQUEST COMMENTS FROM THE ~~DIRECTOR~~ DIRECTORS OF THE OFFICE OF PLANNING ~~(THE "DIRECTOR")~~ AND THE DEPARTMENTS OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT AND PUBLIC WORKS.

(2)WITHIN 15 DAYS AFTER RECEIPT OF A REQUEST FROM THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT, THE ~~DIRECTOR~~ DIRECTORS SHALL PROVIDE TO THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT WRITTEN RECOMMENDATIONS CONCERNING THE APPLICATION WITH REGARD TO THE FOLLOWING:

(I) SITE DESIGN. NEW BUILDINGS SHALL BE APPROPRIATE IN THE CONTEXT OF THE NEIGHBORHOOD IN WHICH THEY ARE PROPOSED TO BE LOCATED. APPROPRIATENESS SHALL BE EVALUATED ON THE BASIS OF NEW BUILDING SIZE, LOT COVERAGE, BUILDING ORIENTATION AND LOCATION ON THE LOT OR TRACT.

(II) ARCHITECTURAL DESIGN. APPROPRIATENESS SHALL BE EVALUATED BASED ON ONE OR MORE OF THESE ARCHITECTURAL DESIGN ELEMENTS OR ASPECTS:

1. HEIGHT;

2. BULK OR MASSING;

3. MAJOR DIVISIONS, OR ARCHITECTURAL

RHYTHM, OF FACADES;

4. PROPORTIONS OF OPENINGS SUCH AS WINDOWS AND DOORS IN RELATION TO WALLS;

5. ROOF DESIGN AND TREATMENT; AND

6. MATERIALS AND COLORS, AND OTHER ASPECTS OF FACADE TEXTURE OR APPEARANCE.

(III) DESIGN AMENDMENTS. THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT MAY RECOMMEND APPROVAL, DISAPPROVAL OR MODIFICATION OF THE BUILDING PERMIT ~~TO CONFORM WITH~~ AFTER CONSIDERATION OF THE RECOMMENDATIONS PROPOSED BY THE ~~OFFICE OF PLANNING~~ DIRECTORS.

~~206.7~~ 206.6 PUBLIC NOTICE.

FOR UNDERSIZED LOTS, ON APPLICATION FOR A BUILDING PERMIT IN ACCORDANCE WITH THIS SECTION, THE SUBJECT PROPERTY SHALL BE POSTED CONSPICUOUSLY UNDER THE DIRECTION OF THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT WITH NOTICE OF THE APPLICATION FOR A PERIOD OF AT LEAST 15 DAYS.

~~206.6~~ 206.7 PUBLIC HEARING.

(A) THIS SUBSECTION APPLIES TO UNDERSIZED LOTS.

(B) WITHIN THE FIFTEEN-DAY POSTING PERIOD:

(1) ANY OWNER OR OCCUPANT WITHIN 1,000 FEET OF THE LOT MAY FILE A WRITTEN REQUEST FOR A PUBLIC HEARING WITH

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 1999, Legislative Day No. 14

Bill No. 64-99

Mr. Kevin Kamenetz, Chairman
By Request of County Executive

By the County Council, July 6, 1999

A BILL
ENTITLED

AN ACT concerning

Public Sewer Service and Building Permits

FOR the purpose of requiring certain property owners in certain areas to connect to the public sewer under certain circumstances; authorizing the issuance of building permits in certain areas under certain circumstances; prohibiting the extension of public sewer service to certain properties under certain circumstances; prohibiting certain property owners from receiving building permits under certain provisions; requiring a certain department to report to the County Council annually; providing for the construction of this Act; and generally relating to the building permits and the extension of public sewer service.

BY repealing and reenacting, with amendments

Section 35-177
Article IV - Metropolitan District
Title 35 - Water and Sewers
Baltimore County Code, 1988

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

Pet. Ex #20

protection of the public health, for the public sewer system to be extended to serve existing housing units, pursuant to this title, the county shall be able to order the property owners of said housing units to make connection to said public sewer system, pursuant and subject to this title. Failure by a property owner to comply with such order shall be deemed a misdemeanor and subject the property owner to a fine of five hundred dollars ($500.00) for each month during which such connection shall not be made.

SECTION 2. AND BE IT FURTHER ENACTED, That Section 304.1 of the Baltimore County Zoning Regulations be and is hereby repealed and reenacted, with amendments, to read as follows:

Section 304. Use of Undersized Single-Family Lots

304.1 EXCEPT AS PROVIDED IN §206, [A] A one-family detached or semi-detached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;

B. All other requirements of the height and area regulations are complied with; and

C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

SECTION 3. AND BE IT FURTHER ENACTED, That Section 206 of the Baltimore County Zoning Regulations be and is hereby added to read as follows:

SECTION 206. GROWTH MANAGEMENT PLAN FOR BOWLEYS QUARTERS AND BACK RIVER NECK AREAS.

206.1 DEFINITIONS.

IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(1) "SUBDIVISION" MEANS THE DIVISION OF PROPERTY INTO TWO OR MORE LOTS.

(2) "UNDERSIZED LOT" MEANS AN UNIMPROVED PLATTED LOT OR A LOT OF RECORD ON OR BEFORE AUGUST 6, 1999 THAT DOES NOT MEET THE AREA, HEIGHT, OR SETBACK REQUIREMENTS IN THESE REGULATIONS TO ALLOW THE CONSTRUCTION OF A DWELLING.

~~206.3~~ 206.2 APPLICATION.

THIS SECTION APPLIES TO PROPERTY ZONED DR OR RC 5 AND LOCATED IN THE BOWLEYS QUARTERS AND BACK RIVER NECK AREAS DEFINED IN THE MAP ATTACHED AS EXHIBIT A AND INCORPORATED BY REFERENCE IN THIS SECTION.

~~206.4~~ 206.3 CONNECTION TO PUBLIC SEWER.

A PROPERTY OWNER WITH A DWELLING IN EXISTENCE ON OR BEFORE AUGUST 6, 1999 OR WITH A NON-EXPIRED BUILDING PERMIT THAT WAS ISSUED ON OR BEFORE FEBRUARY 16, 1999 SHALL BE REQUIRED TO CONNECT TO A PUBLIC SEWER IF THE PROPERTY IS:

(1) ZONED DR OR RC 5; AND

(2) SERVED BY PUBLIC SEWER WITH ADEQUATE CAPACITY.

~~206.5~~ 206.4 BUILDING PERMITS.

THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT; OR

(2) THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT MAY REQUIRE A PUBLIC HEARING.

(C) THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT SHALL NOTIFY THE APPLICANT WITHIN 20 DAYS AFTER THE RECEIPT OF A REQUEST FOR A PUBLIC HEARING.

(D) THE ZONING COMMISSIONER SHALL HOLD THE PUBLIC HEARING WITHIN 30 DAYS AFTER RECEIVING THE REQUEST FOR A PUBLIC HEARING.

(E) AT THE PUBLIC HEARING, THE ZONING COMMISSIONER SHALL DETERMINE WHETHER THE PROPOSED DWELLING IS APPROPRIATE.

206.8 FINAL APPROVAL.

(A) THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT MAY:

(1) ISSUE THE BUILDING PERMIT; OR

(2) FOR UNDERSIZED LOTS, NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, REQUIRE A PUBLIC HEARING BEFORE THE ZONING COMMISSIONER IN ACCORDANCE WITH THIS SECTION.

(B) IF THE DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT HAS NOT NOTIFIED THE APPLICANT OF A DETERMINATION IN ACCORDANCE WITH THE PROVISIONS OF THIS

SECTION, OR HAS NOT NOTIFIED THE APPLICANT IN ACCORDANCE WITH SECTION 206.7 ABOVE OF THE INTENTION TO REQUIRE A PUBLIC HEARING, THE DWELLING SHALL BE DEEMED APPROPRIATE FOR PURPOSES OF THIS SECTION.

206.9 APPEALS

THE DECISION OF THE ZONING COMMISSIONER OR THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT MAY BE APPEALED, IN WHICH CASE THE BOARD OF APPEALS SHALL HOLD THE HEARING WITHIN 45 DAYS AFTER RECEIPT OF THE REQUEST.

206.10 FEES

THE DIRECTOR OF PERMITS AND DEVELOPMENT MANAGEMENT SHALL ESTABLISH APPROPRIATE FEE SCHEDULES.

206.11 GROWTH ALLOCATION NOT APPLICABLE.

A PROPERTY OWNER WHO IS REQUIRED TO CONNECT TO PUBLIC SEWER AS PROVIDED FOR IN THIS SECTION MAY NOT APPLY FOR GROWTH ALLOCATION UNDER §26-123 OF THE BALTIMORE COUNTY CODE.

206.12 REGULATIONS

THE DEPARTMENT OF PUBLIC WORKS IN CONSULTATION WITH THE OFFICE OF PLANNING, AND DEPARTMENTS OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT AND PERMITS AND DEVELOPMENT MANAGEMENT, MAY ADOPT REGULATIONS IN ACCORDANCE WITH TITLE 2, ARTICLE 8 OF THE BALTIMORE COUNTY CODE, TO CARRY OUT THE PROVISIONS OF THIS SECTION.

SECTION 3. AND BE IT FURTHER ENACTED, That, consistent with the County's Water and Sewer Plan, public sewer service may not be extended to property zoned RC 20 in area depicted in the map attached as Exhibit A except:

(1) For properties with a dwelling in existence on or before August 6, 1999 to which public sewer is extended;

(2) As provided in §35-177 of the Code; and

(3) For properties that have been transferred in accordance with §1A05.5 of the Baltimore County Zoning Regulations to which public sewer is extended.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act may not be construed to:

(1) Require the County to extend public sewer capacity to any property; or

(2) Prohibit the Department of Environmental Protection and Resource Management from issuing permits for on-site disposal systems in accordance with the Baltimore County Code for properties zoned RC 20.

SECTION 5. AND BE IT FURTHER ENACTED, That the Department of Public Works, in consultation with the Departments of Planning, Permits and Development Management, and Environmental ~~and Resource~~ Protection and Resource Management, shall report annually to the County Council, beginning in July of 2000, on the capacity of the public sewer in the Back River Neck and Bowleys Quarters areas depicted in the map attached as Exhibit A and the potential for the connection of public sewer to properties that are not zoned DR, RC 5, or RC 20.

SECTION 6. AND BE IT FURTHER ENACTED, That §206.5(A)(1)(IV) does not apply to property that is zoned DR and has an approved development plan on or before May 28, 1999 except that the minimum lot size requirement for the approved development plan shall be

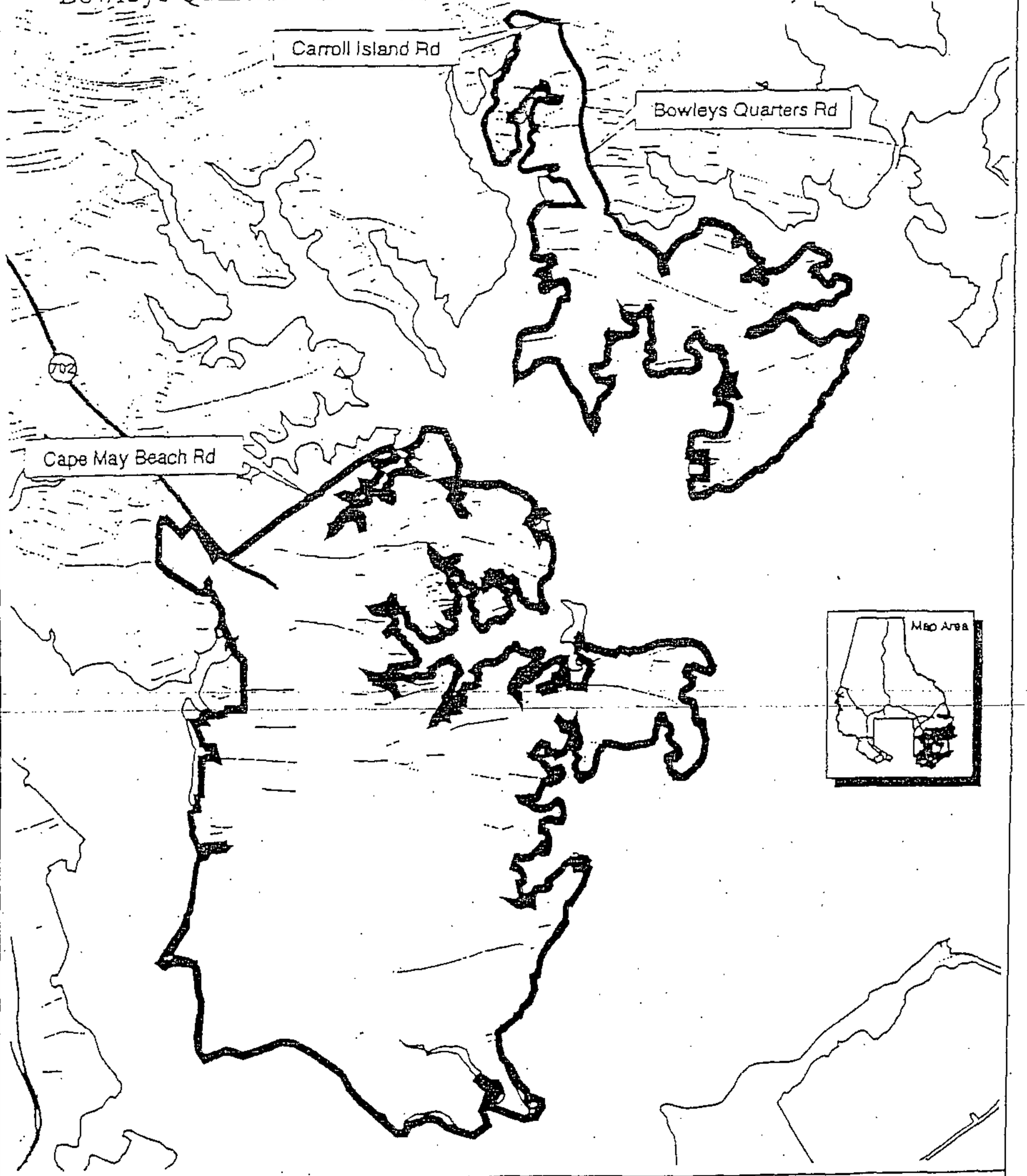
12,000 square feet.

SECTION 7. AND BE IT FURTHER ENACTED, That §206.11 does not apply to a property owner who has ~~applied~~ a pending application for growth allocation under §26-123 of the Baltimore County Code on or before ~~the effective date of this Act~~ July 6, 1999.

SECTION 8. AND BE IT FURTHER ENACTED, That this Act, having been passed by the affirmative vote of five members of the County Council, shall take effect August 6, 1999.

b06499.wpd

Bowleys Quarters and Back River Neck Growth Management Areas



LEGEND

- Interstates
- Secondary and Local Roads
- Impacted Area Line

0.5 0 0.5 1 Miles

DATA SOURCES:
Roads:
Baltimore Metropolitan Council (1:24000)

March 1998

Produced by:
Baltimore County Office of Planning
401 Bosley Avenue
Towson, MD 21204

Baltimore County Office of Planning
OIT - GIS Services Unit

Baltimore County
Planning Board

401 Bosley Avenue
Towson, Maryland 21204
(410) 887-3495
Fax: (410) 887-5862

June 8, 1999

The Hon. Kevin Kamenetz
Chairman, Baltimore County Council
The Court House
Towson, MD 21204

Re: Growth Management - Council Resolution 10-99

Dear Councilman Kamenetz:

Enclosed is Part 1 of a Final Report by the Baltimore County Planning Board adopted unanimously on June 3, 1999, and submitted in accordance with Section 26-123(c) of the County Code. Part 2, which is expected to follow later in June, will address design guidelines for new development and redevelopment in the study area.

The Planning Board recommends that sewer capacity in Bowleys Quarters and the Back River Neck Peninsula be allocated according to the priority system described in the report. Recognizing that some properties abutting sewer lines may not be able to be connected to the sewer system (either because of county policy or because there is not enough capacity in the system) the Planning Board also recommends that Baltimore County consider the equitability of requiring owners of those properties to pay the front foot assessment. The Board requests that the county study possible alternatives for properties that cannot connect to sewer, including abatement of the sewerage front foot assessment or, if this is not feasible, the abatement of real estate taxes.

The Planning Board recommends that Baltimore County not only continue to *compel* the combination of undersized adjoining lots in *common* ownership, but also e*ncourage* the combination of undersized lots in *separate* ownership. Some possible ways to facilitate lot consolidation are:

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on Recycled Paper

- Create a special, expedited process in the development regulations to consolidate lots. (Currently these encounter the burden of being processed as "subdivisions".)

- Determine the feasibility of waiving Baltimore County's real estate transfer tax when the purpose of transfer is to consolidate lots.

- Develop an educational campaign and information clearinghouse, including an informational brochure for citizens.

- Provide special training for personnel of Baltimore County government to assist property owners with the lot consolidation process.

Finally, the Planning Board requests that, once the sewerage policies are decided, permits be issued as a first priority for property owners who have already applied for permits and been waiting because of the moratorium.

The Planning staff will be pleased to assist the Council in the consideration of this matter.

Sincerely,

Pat Keller

Arnold F. 'Pat' Keller, III
Secretary

AFK:JM:rlh

Enclosure

c: Members, Baltimore County Council
John Wasilisin, Administrative Officer
Thomas Peddicord, Legislative Counsel/Secretary
Brian Rowe, County Auditor
Virginia Barnhart, County Attorney
Arnold Jablon, Director, Permits & Development Management
Charles R. Olsen, Director, DPW
George Perdikakis, Director, DEPRM
Lawrence Schmidt, Zoning Commissioner
Peter Max Zimmerman, People's Counsel
Patrick Roddy, Assistant County Attorney
Robert J. Barrett, Spec. Asst. to the County Executive

1B02.3 Special regulations for certain existing developments or subdivisions and for small lots or tracts in D.R. Zones.

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

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

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

3. Any lot or tract of lots in single ownership which is not in an existing development or subdivision, as described in Subsection A.1 or A.2, and which is too small in gross area to accommodate six dwelling or density units in accordance with the maximum permitted density in the D.R. Zone in which such tract is located;

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

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

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

C. Development standards for small lots or tracts.

1. Any dwelling hereafter constructed on a lot or tract described in Subsection A.3 or A.4 shall comply with the requirements of the following table:

Pet. Ex #21

Zoning Classification	Minimum Net Lot Area per Dwlling Unit (sq. ft.)	Minimum Lot Width (feet)	Minimum Front Yard Depth (feet)	Minimum Width of Individual Side Yard (feet)	Minimum Sum of Side Yard Widths (feet)	Minimum Rear Yard Depth (feet)
D.R.1	40,000	150	50	20	50	50
D.R.2	20,000	100	40	15	40	40
D.R.3.5	10,000	70	30	10	25	30
D.R.5.5	6,000	55	25	10	--	30
D.R.10.5	3,000	20	10	10	--	50
D.R.16	2,500	20	10	25	--	30

2. Other standards for development of small lots on tracts as so described shall be as set forth in provisions adopted pursuant to the authority of Section 504.

D. An amendment to any part of a development plan involving only property subject to the provisions of this subsection shall not be subject to the provisions of Section 1B01.3.A.7.

FILE

IN THE MATTER OF
THE APPLICATION OF
F & M ENTERPRISES, INC. - PETITIONER
FOR ZONING VARIANCE ON PROPERTY
LOCATED ON THE E/S MARINE AVENUE
346' N C/L SPARROWS POINT ROAD
(2623 MARINE AVE, UNDERSIZED LOT 1)
AND 445' N C/L SPARROWS POINT ROAD
(2623 MARINE AVE, UNDERSIZED LOT 2)

15TH ELECTION DISTRICT
7TH COUNCILMANIC DISTRICT

* BEFORE THE
* COUNTY BOARD OF APPEALS
* OF
* BALTIMORE COUNTY
* CASE NO. 05-239-A and
CASE NO. 05-240-A
*

* * * * * * * * *

OPINION

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

Facts

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

Pet. Ex #22

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

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

Testimony

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

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

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

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

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

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

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

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

Applicable Law

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

> A. In D.R. Zones, contrary provisions of this article notwithstanding, the provisions of or pursuant to this subsection shall apply to the use, occupancy and development of; alteration or expansion of structures upon; and administrative procedures with respect to:
>
> 1. Any lot which is in a recorded residential subdivision approved by the Baltimore County Planning Board or Planning Commission and which has been used, occupied or improved in accordance with the approved subdivision plan;
>
> 2. Any land in a subdivision tract which was laid out in accordance with the regulations of residence zoning classifications now rescinded, for which a subdivision plan tentatively approved by the Planning Board remains in effect and which has not been used, occupied or improved in accordance with such plan;
>
> 3. Any lot or tract of lots in single ownership which is not in an existing development or subdivision, as described in Subsection A.1 or A.2, and which is too small in gross area to accommodate six dwelling or density units in

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

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

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

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

C. Development standards for small lots or tracts.

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

2. Other standards for development of small lots on tracts as so described shall be as set forth in provisions adopted pursuant to the authority of Section 504.

D. An amendment to any part of a development plan involving only property subject to the provisions of this subsection shall not be subject to the provisions of Section 1B01.3.A.7.

Decision

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

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

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

> Development of any subdivision described in Subsection A.2 shall be in accordance with the tentatively approved subdivision plan therefore, Standards for development of lots or tracts described in Subsection A.3, A.4 or A.5 shall be as set forth in Subsection C below.

Subsection C states,

> 1. Any dwelling hearafter constructed on a lot or tract described in Subsection A.3 or A.4 shall comply with the following table **(table not included here)**.

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

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

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

ORDER

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

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

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Panel Chair

Mike Mohler

Margaret Brassil, Ph.D.

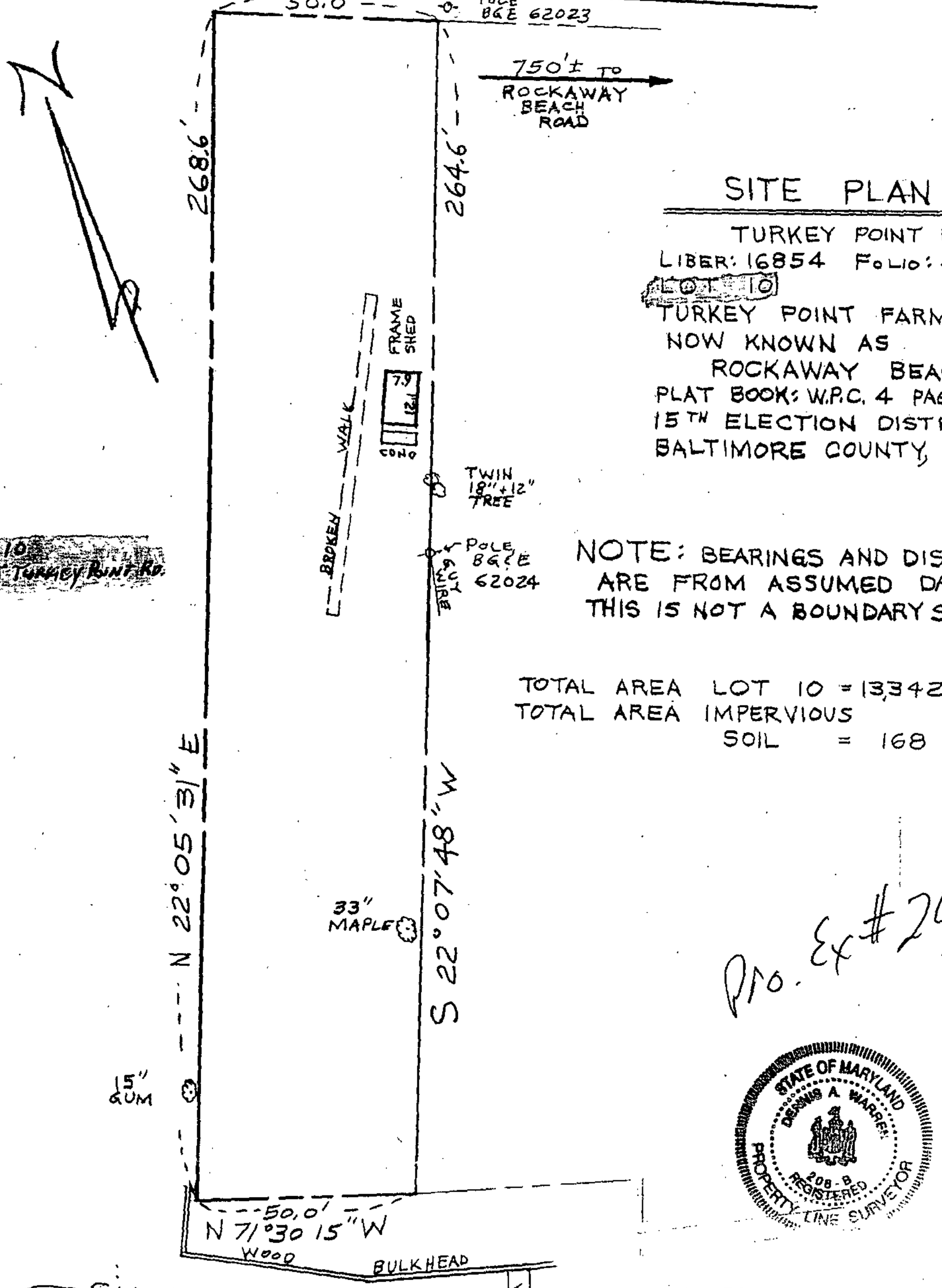
Dennis A. Warren 2129 Hedithorn Road Middle River, Maryland 21220 410-687-0196

SITE PLAN

TURKEY POINT ROAD
LIBER: 16854 FOLIO: 471
LOT 10
TURKEY POINT FARM
NOW KNOWN AS
ROCKAWAY BEACH
PLAT BOOK: W.P.C. 4 PAGE: 171
15TH ELECTION DISTRICT
BALTIMORE COUNTY, MD.

NOTE: BEARINGS AND DISTANCES ARE FROM ASSUMED DATA, THIS IS NOT A BOUNDARY SURVEY.

TOTAL AREA LOT 10 = 13,342 SQ.FT.
TOTAL AREA IMPERVIOUS
SOIL = 168 SQ. FT.



SCALE 30 ft. - inch

File No. 2002-200
38 c 13

SURVEYOR'S CERTIFICATE

The undersigned, a registered surveyor in the state of Maryland, does hereby certify that he is the surveyor who prepared this plat and said plat has been prepared in compliance with the Code of Maryland Regulations Subtitle 13 Board for Professional Land Surveyors 09.13.06, covering the minimum standards of practice insofar as the same concerns the making of the plat and/or setting of the markers.

Signed This 4th day November 20 02

Dennis A. Warren

STATE OF MARYLAND
DENNIS A. WARREN
208 - B
REGISTERED
PROPERTY LINE SURVEYOR

Pro. Ex #24

Protestants Exhibits

1. 304.1 BCZR
2. Planning Board Report
3. Section 101 Definitions
4. Zoning Commissioners Policy Manual (ZCPM)
5. BCZR Definitions (Building)
6. BCZR Definitions (OR)
7. Deed for lot 11
8. Deed for lot 10
9. Nov 15th 1994 Deed
10. Sept. 11, 2002 Deed Lot 10
11. Sept. 11, 2002 Deed Lot 11
12. A-I Pictures
13 A + B Pictures
14 A + B Pictures
15 A + B Pictures of water
16. Plat w/ orange + yellow
17. A GIS
18 Petition from Community
19. Letters from Community
20. Letter from Charles Markel
21. Letter from Jackie Nickel
22. Mardo Homes Inc. v Balto. Co.

all improved lots within 200 feet on each side thereof, provided that no dwelling shall be required to be set back more than 60 feet in D.R.2 Zones, 50 feet in D.R.3.5 Zones and 40 feet in D.R.5.5 Zones. In no case, however, shall nonresidential principal buildings have front yards of less depth than those specified therefor in the area regulations for D.R.2, D.R.3.5 and D.R.5.5 Zones respectively. **[Resolution, November 21, 1956]**

303.2 In B.L., B.M. and B.R. Zones, the front yard depth of any building hereafter erected shall be the average of the front yard depths of the lots immediately adjoining on each side, provided such adjoining lots are improved with permanent commercial buildings constructed of fire-resisting materials situate within 100 feet of the joint side property line, but where said immediately adjoining lots are not both so improved, then the depth of the front yard of any building hereafter erected shall be not less than the average depth of the front yards of all lots within 100 feet on each side thereof which are improved as described above.

Section 304
Use of Undersized Single-Family Lots
[BCZR 1955; Bill No. 47-1992]

304.1 **[Bill Nos. 64-1999; 28-2001]** Except as provided in Section 4A03, a one-family detached or semidetached dwelling may be erected on a lot having an area or width at the building line less than that required by the area regulations contained in these regulations if:

A. Such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to March 30, 1955;

B. All other requirements of the height and area regulations are complied with; and

C. The owner of the lot does not own sufficient adjoining land to conform to the width and area requirements contained in these regulations.

304.2 Building permit application.

A. Any person desiring to erect a dwelling pursuant to the provisions of this section shall file with the Department of Permits and Development Management, at the time of application for a building permit, plans sufficient to allow the Office of Planning to prepare the guidelines provided in Subsection B below. Elevation drawings may be required in addition to plans and drawings otherwise required to be submitted as part of the application for a building permit. Photographs representative of the neighborhood where the lot or tract is situated may be required by the Office of Planning in order to determine appropriateness of the proposed new building in relation to existing structures in the neighborhood.

B. At the time of application for the building permit, as provided above, the Director of the Department of Permits and Development Management shall request comments from the Director of the Office of Planning (the "Director"). Within 15 days of receipt of a request from the Director of the Department of Permits and Development Management, the Director shall provide to the

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

1. Site design. New buildings shall be appropriate in the context of the neighborhood in which they are proposed to be located. Appropriateness shall be evaluated on the basis of new building size, lot coverage, building orientation and location on the lot or tract.

2. Architectural design. Appropriateness shall be evaluated based upon one or more of these architectural design elements or aspects:

   a. Height.

   b. Bulk or massing.

   c. Major divisions, or architectural rhythm, of facades.

   d. Proportions of openings such as windows and doors in relation to walls.

   e. Roof design and treatment.

   f. Materials and colors, and other aspects of facade texture or appearance.

3. Design amendments. The Director may recommend approval, disapproval or modification of the building permit to conform with the recommendations proposed by the Office of Planning.

304.3 Public notice. Upon application for a building permit pursuant to this section, the subject property shall be posted conspicuously under the direction of the Department of Permits and Development Management with notice of the application for a period of at least 15 days.

304.4 Public hearing. Within the fifteen-day posting period: (1) Any owner or occupant within 1,000 feet of the lot may file a written request for a public hearing with the Department of Permits and Development Management, or (2) the Director of Permits and Development Management may require a public hearing. The Department of Permits and Development Management shall notify the applicant within 20 days of the receipt of a request for a public hearing. A hearing before the Zoning Commissioner shall be scheduled within 30 days from receipt of the request for public hearing. At the public hearing, the Zoning Commissioner shall make a determination whether the proposed dwelling is appropriate.

304.5 Final approval.

A. The Director of the Department of Permits and Development Management may issue the building permit; or

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

C. If the Department of Permits and Development Management has not notified the applicant of a determination pursuant to the provisions of this section, or has not notified the applicant pursuant to Section 304.4 above of the intention to require a public hearing, the dwelling shall be considered appropriate for purposes of this section.

304.6 The decision of the Zoning Commissioner or the Director of the Department of Permits and Development Management may be appealed, in which case the hearing shall be scheduled by the Board of Appeals within 45 days from receipt of the request.

304.7 The Director of the Department of Permits and Development Management shall establish appropriate fee schedules.

Section 305
Replacement of Destroyed or Damaged Dwellings
[BCZR 1955; repealed by Bill No. 124-1991; re-enacted by Bill No. 214-1991]

In case of complete or partial casualty loss by fire, windstorm, flood or otherwise of an existing dwelling that does not comply with height or area requirements of the zone in which it is located, such dwelling may be restored, provided area or height deficiencies of the dwelling before the casualty are not increased in any respect, and such restoration is subject to the limitations imposed by Section 104.2 of the Baltimore County Zoning Regulations.

Section 306
Minor Public Utility Structures
[BCZR 1955; Resolution, November 21, 1956; Bill No. 32-2004]

Minimum lot area regulations in any zone shall not apply to:

A. Repeater, booster or transformer stations;

B. Bus shelters, Class A or B; or

C. Small community dial offices.

Section 307
Variances
[BCZR 1955; Bill Nos. 107-1963; 32-1988; 2-1992; 9-1996]

307.1 The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore,

Commissioner shall require public notice to be given and shall hold a public hearing upon any application for a variance in the same manner as in the case of a petition for reclassification.[4] Any order by the Zoning Commissioner or the County Board of Appeals granting a variance shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance.

Section 308
Variances and Special Exceptions for Radiation Fallout Shelters
[Bill Nos. 87-1961; 19-1962]

Radiation fallout shelters may be erected and constructed in accordance with specifications published by the Office of Civil and Defense Mobilization of the United States Government for one of the shelter types or designs approved by said agency as being effective for affording protection from radiation fallout, and the Zoning Commissioner may grant variances from area and height regulations and may make special exceptions to the Zoning Regulations where strict compliance with those regulations would result in practical difficulty or unreasonable hardship, and where the owner of the lot does not own sufficient adjoining land to conform strictly to the width and area requirements. However, any such variance or special exception shall be granted by the Zoning Commissioner only if in harmony with the general purpose and intent of the Zoning Regulations. All decisions of the Zoning Commissioner with respect to such matters shall be subject to appeal to the Board of Appeals. Every radiation fallout shelter which may be erected and constructed under this section shall be used only for the purpose of protection from radiation fallout, and not for normal residential, commercial or industrial uses.

---

4 Editor's Note: Apparently conflicts with certain provisions found in the Baltimore County Code 1988 Edition, as revised, which prescribe requirements with respect to notice and hearing regarding conventional reclassification petitions that differ from those which it prescribes regarding variance petitions. See the Appendices of this volume for excerpts from the Baltimore County Code. See Section 26-127 for authority of the Zoning Commissioner to grant variances, and Section 26-117 for provision regarding conflicts between Title 26 and the Zoning Regulations.

Baltimore County
Planning Board

401 Bosley Avenue
Towson, Maryland 21204
(410) 887-3495
Fax: (410) 887-5862

June 8, 1999

The Hon. Kevin Kamenetz
Chairman, Baltimore County Council
The Court House
Towson, MD 21204

Re: Growth Management - Council Resolution 10-99

Dear Councilman Kamenetz:

Enclosed is Part 1 of a Final Report by the Baltimore County Planning Board adopted unanimously on June 3, 1999, and submitted in accordance with Section 26-123(c) of the County Code. Part 2, which is expected to follow later in June, will address design guidelines for new development and redevelopment in the study area.

The Planning Board recommends that sewer capacity in Bowleys Quarters and the Back River Neck Peninsula be allocated according to the priority system described in the report. Recognizing that some properties abutting sewer lines may not be able to be connected to the sewer system (either because of county policy or because there is not enough capacity in the system) the Planning Board also recommends that Baltimore County consider the equitability of requiring owners of those properties to pay the front foot assessment. The Board requests that the county study possible alternatives for properties that cannot connect to sewer, including abatement of the sewerage front foot assessment or, if this is not feasible, the abatement of real estate taxes.

The Planning Board recommends that Baltimore County not only continue to *compel* the combination of undersized adjoining lots in *common* ownership, but also *encourage* the combination of undersized lots in *separate* ownership. Some possible ways to facilitate lot consolidation are:

Protestants Ex. #2

Printed with Soybean Ink

- Create a special, expedited process in the development regulations to consolidate lots. (Currently these encounter the burden of being processed as "subdivisions".)

- Determine the feasibility of waiving Baltimore County's real estate transfer tax when the purpose of transfer is to consolidate lots.

- Develop an educational campaign and information clearinghouse, including an informational brochure for citizens.

- Provide special training for personnel of Baltimore County government to assist property owners with the lot consolidation process.

Finally, the Planning Board requests that, once the sewerage policies are decided, permits be issued as a first priority for property owners who have already applied for permits and been waiting because of the moratorium.

The Planning staff will be pleased to assist the Council in the consideration of this matter.

Sincerely,

Pat Keller

Arnold F. 'Pat' Keller, III
Secretary

AFK:JM:rlh

Enclosure

c: Members, Baltimore County Council
John Wasilisin, Administrative Officer
Thomas Peddicord, Legislative Counsel/Secretary
Brian Rowe, County Auditor
Virginia Barnhart, County Attorney
Arnold Jablon, Director, Permits & Development Management
Charles R. Olsen, Director, DPW
George Perdikakis, Director, DEPRM
Lawrence Schmidt, Zoning Commissioner
Peter Max Zimmerman, People's Counsel
Patrick Roddy, Assistant County Attorney
Robert J. Barrett, Spec. Asst. to the County Executive

Proposals for Growth Management
Bowleys Quarters and Back River Neck Peninsula
(Response to County Council Resolution No. 10-99)

The following recommendations apply to the study areas identified in County Council Resolution No. 10-99 and depicted on the attached map.

I. OBJECTIVES

- Develop clear and consistent standards that provide certainty for all interested parties.
- Improve water quality by relieving failing septic systems, and preventing the failure of older, marginal septic systems.
- Recognize legitimate rights to develop property.
- Conserve and enhance residential communities.
- Develop procedures and guidelines which are consistent with the goals and objectives of the Baltimore County Master Plan, the Maryland Rural Legacy Act, the Baltimore County Coastal Rural Legacy Program, the Chesapeake Bay Critical Areas Program, the Special Area Management Plan, and the protection of the natural environment.

II. CATEGORIES FOR SEWER SERVICE

Following is a list of development categories that could connect to public sewer, in order of priority. Each category includes proposed requirements and actions that would help to achieve the objectives. (Note that new development, redevelopment and certain renovations are subject to Chesapeake Bay Critical Areas requirements and other environmental regulations, and could also be subject to design standards or guidelines to be considered by the Planning Board in conjunction with this proposal.) The public sewer system would:

A. Expeditiously serve, as a first priority, all existing dwellings with failing or non-failing septic systems, regardless of zone or lot size. In no case should connections for existing dwellings be delayed in order to connect new development. Capacity should be reserved to ensure that all existing dwellings are connected.

1. Require all existing dwellings to connect to public sewer.
2. Connect all dwellings existing before February 15, 1999; reserve adequate capacity.
3. Determine that a structure is a livable dwelling (not a shed, chicken coop, etc.); otherwise, treat as an unimproved property.

B. **Serve unimproved lots or parcels that meet existing zoning standards in DR zones, including:**

1. Residential lots shown on a valid record plat created as part of a subdivision process enacted by the Baltimore County Council or the Board of County Commissioners, involving development plan review by appropriate agencies, dedication of rights or way for streets and other public facilities, and compliance with all other applicable county regulations and requirements (see Title 26, Article V, Development Regulations of the Baltimore County Code, 1988, as amended, for the current process); and

2. Recorded lots or parcels (most very old) created through metes and bounds descriptions or lot recordation before any plan review process was enacted by the Baltimore County Council or the Board of County Commissioners . . . etc., (see B.1). Connect sewer, provided that lots meet the minimum site standards (area, width, and yard setbacks) of Sec. 1B02.3, of the Baltimore County Zoning Regulations (BCZR).

C. **Serve recorded unimproved *undersized* lots, or tracts of undersized lots in single ownership, in all DR zones, subject to Sec. 304 *and* Sec. 307 of the BCZR.**

1. Combine lots in common ownership to meet minimum requirements for lot area and lot width (Sec. 1B02.3). (Minimum lot area and width are, respectively, 10,000 square feet and 70 feet in DR 3.5, and 6,000 square feet and 55 feet in DR 5.5.); *and*

2. Obtain variances if lot fails to meet front, rear, and side yard setbacks.

3. Lots less than 50 feet in width at the building line are strongly discouraged and may not be supported.

D. **Serve existing unimproved lots or parcels in RC 5 and RC 20 zones which conform to the current zoning standards, but no service to new subdivisions except as provided in No. 3 below. Lots to be served include:**

1. Residential lots created as part of a subdivision process enacted by the Baltimore County Council or the Board of County Commissioners, etc., . . . (see B.1), and shown on a valid record plat which was effective on February 15, 1999; and

2. Lots or parcels (most very old) created through metes and bounds descriptions or lot recordation before any plan review process was enacted by the Baltimore County Council or the Board of County Commissioners, etc., . . . (See B.1). Connect sewer provided that lots meet the minimum area and setbacks of Section 1A04.3 for RC 5 or the minimum setbacks of Sec. 1A05.4 for RC 20, BCZR.

3. Lots created in RC 20 zones through a bona-fide intra-family transfer in accordance with Sec. 1A05.5 of the Baltimore County Zoning Regulations.

E. Serve recorded unimproved *undersized* lots, or tracts of undersized lots in single ownership, in all RC 5 zones subject to Sec. 304 *and* Sec. 307 of the BCZR, and recorded unimproved lots in RC 20 zones that fail to meet setbacks, subject to Sec. 307.

1. Combine lots in common ownership to meet the minimum lot area requirement of one acre, and

2. Obtain variances if lot fails to meet front, rear, and side yard setbacks.

3. Lots less than 50 feet in width at the building line are strongly discouraged and may not be supported.

F. After the effective date of this legislation, Chesapeake Bay Critical Area Growth Allocation should not be approved, within the study area, for conversion from Resource Conservation Area.

Bowleys Quarters and Back River Neck Study Areas



LEGEND

Interstates

Secondary and Local Roads

Study Area

0.5 0 0.5 1 Miles

DATA SOURCES:
Roads:
Baltimore Metropolitan Council (1:24000)

March 1999

Prepared for:
Baltimore County Office of Planning
401 Bosley Avenue
Towson, MD 21204

Baltimore County Office of Planning
OIT - GIS Services Unit

Section 101
Definitions
[BCZR 1955]

Words used in the present tense include the future; words in the singular number include the plural number; the word "shall" is mandatory. For the purposes of these regulations, certain terms and words are defined below. **[Bill No. 149-1987]**

Any word or term not defined in this section shall have the ordinarily accepted definition as set forth in the most recent edition of Webster's Third New International Dictionary of the English Language, Unabridged. **[Bill No. 149-1987]**

ACCESSORY BUILDING — One which is subordinate and customarily incidental to and on the same lot with a main building. A trailer shall not be considered an accessory building. A structure connected to a principal building by a covered passageway or with one wall in common shall not be considered an accessory building.

ACCESSORY USE OR STRUCTURE — A use or structure which: (a) is customarily incident and subordinate to and serves a principal use or structure; (b) is subordinate in area, extent or purpose to the principal use or structure; (c) is located on the same lot as the principal use or structure served; and (d) contributes to the comfort, convenience or necessity of occupants, business or industry in the principal use or structure served; except that, where specifically provided in the applicable regulations, accessory off-street parking need not be located on the same lot. An accessory building, as defined above, shall be considered an accessory structure. A trailer may be an accessory use or structure if hereinafter so specified. An ancillary use shall be considered as an accessory use; however, a use of such a nature or extent as to be permitted as a "use in combination" (with a service station) shall be considered a principal use. **[Bill Nos. 100-1970; 26-1988]**[5]

AFTER-HOURS CLUB — A commercial establishment whose principal business is the provision of live or recorded entertainment, with or without a dance floor, which is open primarily between 11:00 p.m. and 4:00 a.m. and which does not have a Baltimore County liquor license. An after-hours club is not a nightclub as defined in the Zoning Regulations or the Building Code of Baltimore County, Maryland. **[Bill No. 85-1994]**

AGRICULTURE, COMMERCIAL — The use of land, including ancillary structures and buildings, to cultivate plants or raise or keep animals for income, provided that the land also qualifies for farm or agricultural use assessment pursuant to Section 8-209 of the Tax-Property Article of the Annotated Code of Maryland, as amended. Commercial agriculture includes the production of field crops, dairying, pasturage agriculture, horticulture, floriculture, aquaculture, apiculture, viticulture, forestry, animal and poultry husbandry, horse breeding and horse training and also includes ancillary activities such as processing, packing, storing, financing, managing, marketing or distributing, provided that any such activity shall be secondary to the principal agricultural operations. **[Bill No. 51-1993]**

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5 **Editor's Note: The definition of "acreage, gross residential" which originally followed this definition was repealed by Bill No. 100-1970.**

Pro. Ex # 3

IN RE: Zoning Commissioner's Policy Manual (ZCPM)

PURSUANT TO: Sections 2-416 thru 422 and 26-135 of the Baltimore County Code

WHEREAS, on August 13, 1990, Baltimore County Council Bill No. 88-90 became effective establishing a Code of Baltimore County Regulations and the method for adoption and amendment of same; and

WHEREAS, on March 26, 1992, the Zoning Commissioner's Policy Manual (ZCPM) amendments received the approval of the County Attorney; and

WHEREAS, a public hearing was scheduled, and advertised in two newspapers of general circulation, and copies of the amendments to the Zoning Commissioner's Policy Manual (ZCPM) were made available for review; and

WHEREAS, on May 13, 1992, the Director of the Office of Zoning Administration and Development Management held a Public Hearing on the Zoning Commissioner's Policy Manual (ZCPM); and

WHEREAS, there being no adverse testimony submitted either written or verbal; and

NOW THEREFORE, IT IS ORDERED by the Director of the Office of Zoning Administration and Development Management, this 13th day of May, 1992, that the Zoning Commissioner's Policy Manual as Amended, be and is hereby **ADOPTED** and shall be incorporated into the Code of Baltimore County Regulations.

Arnold Jablon, Director
Zoning Administration &
Development Management

Pro. Ex # 4

SECTION 101 - DEFINITIONS

OWNERSHIP: means any financial interest of the applicant in the subject properties. A financial interest exists if in the case of:

(1) an individual - a spouse or other family member;
(2) a partnership - any one or all partners in the partnership;
(3) a corporation - any one or all officers in the corporation;
(4) a joint venture - any one or all participants in the joint venture;
(5) a trusteeship - any one or all trustees in the trusteeship; and
(6) a personal representative or other legal entity.

more than 10,000 barrels of malt beverage per year. For the purposes of these regulations, a standard restaurant with a state Class 7 license shall be defined as a Class 7 brewery. **[Bill No. 185-1995]**

BUILDING — A structure enclosed within exterior walls or fire walls for the shelter, support or enclosure of persons, animals or property of any kind.

BUILDING HEIGHT — The height of the highest point on a building or other structure as measured by the vertical distance from the highest point on the structure to the horizontal projection of the closest point at exterior grade. In instances where it is obvious that the exterior grade has been artificially built up above natural or surrounding finished grade, the vertical distance will be measured by projecting the natural or surrounding finished exterior grade to the closest point (foundation wall). **[Bill No. 151-1988]**

BUILDING LINE — The line established by law beyond which a building shall not extend.

BUILDING MATERIALS STORAGE AND SALES YARD — The use of any space, whether inside or outside a building used principally for the storage or sale of building materials or supplies. **[Bill No. 149-1987]**

BUS SHELTER, CLASS A — A transit facility without advertising that is an inherent part of the Maryland Transit Administration's bus system that protects users from the weather while waiting for a bus. **[Bill No. 32-2004]**

BUS SHELTER, CLASS B — A transit facility with advertising that is an inherent part of the Maryland Transit Administration's bus system that protects users from the weather while waiting for a bus. **[Bill No. 32-2004]**

BUS TERMINAL — A station for common carrier vehicles having a carrying capacity of 10 or more passengers. In addition to providing passenger services such as ticket sales, boarding and alighting, a bus terminal has areas for short-term storage of busses during layover periods not exceeding one night. This definition does not include mass transit administration vehicles or Baltimore County public school busses. **[Bill No. 91-1990]**

CAMPGROUND — A tract of land upon which two or more campsites are located, established or maintained for occupancy by camping units as temporary living quarters for recreation, education or vacation purposes. **[Bill Nos. 73-2000; 74-2000]**

CAMPING UNIT — A tent, cabin, lean-to, recreational vehicle or similar structure established or maintained and operated in a campground as temporary living quarters for recreation, education or vacation purposes. **[Bill Nos. 73-2000; 74-2000]**

CAMPSITE — Any plot of land within a campground intended for exclusive occupancy by a camping unit or units, occupied by a camper. **[Bill Nos. 73-2000; 74-2000]**

CAR WASH — An area of land and/or a structure with machine or hand-operated facilities used for the cleaning, washing, polishing or waxing of motor vehicles as a principal or accessory use. **[Bill Nos. 108-1964; 172-1993]**

CAR WASH, FULL-SERVICE — A car wash providing automated exterior washing or waxing services, or which provides cleaning, washing, waxing, drying or interior cleaning by hand. For the purpose of these regulations, a facility which provides complete interior

Pro. Ex #5

portions of stormwater management facilities do not constitute common open space. **[Bill Nos. 98-1975; 62-1978; 167-1980]**

OPEN SPACE TRACT, LOCAL — Land provided in residential subdivisions and necessary and desirable for the local recreational needs of residents of such subdivisions for such recreation types of spaces as play lots, local play areas, small parks, stream valley parks, natural woods, areas of unusual natural scenic beauty, recreational walkways and pathways and special street center islands, but the term "local open space tract" shall not include the larger open space park and playfield areas of the type which serve larger than local need and which are incorporated in the master plan. **[Bill No. 106-1963]**

OR — The word "or" shall mean "and/or" unless modified by use of the word "either" or unless the context otherwise clearly indicates another meaning. **[Bill No. 111-1968]**

OUT-OF-WATER STORAGE FACILITY, CLASS A — A cradle, block or berth for the land storage of one or more recreational boats, which does not provide for the vertical stacking of such vessels. **[Bill No. 149-1992]**

OUT-OF-WATER STORAGE FACILITY, CLASS B — Cradles or berths for the land storage of boats that allow boats to be stored on multi-level racks, not exceeding a height of three levels. A Class B out-of-water storage facility shall be considered a structure whether it is fully or partially enclosed or open. **[Bill No. 149-1992]**

PANHANDLE DRIVEWAY — The paved roadway which is located within the in-fee strip area of one or more abutting panhandle lots and provides vehicular access to the local street or to a collector street. A "use in common" agreement is established if the panhandle driveway serves two or more abutting panhandle lots. **[Bill No. 172-1989]**

PANHANDLE LOT — A lot so shaped and situated that its only frontage or access to the local or collector street is a narrow in-fee strip of land which contains a driveway and may contain water and sewer lines and other utilities. **[Bill No. 172-1989]**

PARKING BAY ON A STREET — See Parking Space, Off-Street. **[Bill No. 26-1988]**

PARKING SPACE, OFF-STREET — A parking space of such dimensions as may be prescribed by these Zoning Regulations and located on a lot or in a parking bay on a street. As used in this definition, a "parking bay on a street" is a length of paving which is laid out next to and along the paved traveled way of a street and which serves as a parking facility for a residential use; it is not a parking lane. **[Bill No. 26-1988]**

PAWNSHOP — A business which loans money on deposits of personal property, other than securities or printed evidences of indebtedness, or deals in the purchase or possession of personal property on condition of selling the same back to the pledgor or depositor. A pawnshop is licensed by the state as a dealer and defined by the state as a pawnbroker. For the purposes of these regulations, a business operated by a dealer who loans money on deposits of secondhand precious metals and gems only shall not be considered a pawnshop, provided the dealer does not loan money on deposits of any other kind of personal property. **[Bill Nos. 14-1995; 112-1995]**

PET SHOP — A store for the sale of dogs, cats, birds, tropical fish and/or other domesticated pets, and related supplies and equipment. **[Bill No. 85-1967]**

Pro. Ex. #6

WILLIAM I. NORRIS—ATTORNEYS AT LAW
AND
WILLIAM I. NORRIS, JR.

LIBER 2133 PAGE 149

FEE SIMPLE DEED—CODE—CITY OR COUNTY—TENANCY BY THE ENTIRETY.

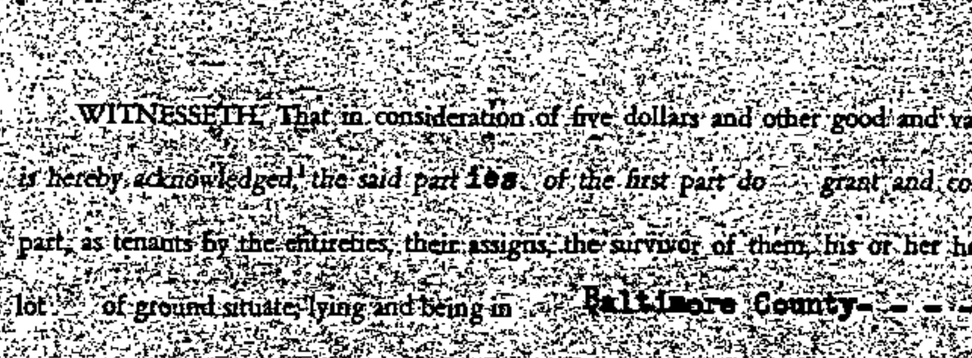
This Deed, Made this 27th - - - - - - - - - day of June - - - - - - -

in the year one thousand nine hundred and fifty-two - - - - - - - by KATHERINE E. KILCHENSTEIN, widow, MILDRED E. BELSINGER and HERMAN BELSINGER, her husband, of the County of Baltimore, in the State of Maryland, parties of the first part, and WILLIAM J. KLEINSMITH and LILLIAN A. KLEINSMITH, his wife, of Baltimore City, in the State of Maryland, parties of the second part.

WITNESSETH, That in consideration of five dollars and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said part ies of the first part do grant and convey unto the said parties of the second part, as tenants by the entireties, their assigns, the survivor of them, his or her heirs and assigns in fee simple, all th at lot of ground situate, lying and being in Baltimore County- and described as follows, that is to say:

KNOWN and described as lot Numbered 11, on the Plat of Turkey Point Farm, now known as Rockaway Beach, which Plat is duly recorded among the Land Records of Baltimore County, in Plat Book W.P.C.No. 4 folio 171.

BEING the same lot of ground which by deed dated February , 1952 and recorded among the Land Records of Baltimore County, in Liber G.L.B. No. 2078 folio 162 &c., was conveyed by Clayton W.Bordley Inc., unto Katherine E. Kilchenstein and Mildred E. Belsinger.



Pro. Ex #7

TOGETHER with the buildings and improvements thereon erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or in any wise appertaining.

TO HAVE AND TO HOLD said lot of ground and premises above described and mentioned, and hereby intended to be conveyed; together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said parties of the second part, as tenants by the entireties, their assigns, the survivor of them, his or her heirs and assigns, in fee-simple.

And the said Grantors hereby covenant that they will warrant specially the property hereby granted and conveyed, and that they will execute such further assurances of said property as may be requisite.

Witness the hands and seals of the said grantors.

TEST:

Vera C. Bushong
Vera C. Bushong

Katherine E. Kilchenstein (SEAL)
Katherine E. Kilchenstein

Mildred E. Belsinger (SEAL)
Mildred E. Belsinger

Herman Belsinger (SEAL)
Herman Belsinger

(SEAL)

STATE OF MARYLAND, City of Baltimore, *to wit:*

I HEREBY CERTIFY, That on this 27th day of June

in the year one thousand nine hundred and fifty-two before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore City

aforesaid, personally appeared Katherine E. Kilchenstein, widow, Mildred E. Belsinger and Herman Belsinger, her husband, the within named grantors and they acknowledged the foregoing Deed to be their act.

As witness my hand and Notarial Seal:

Vera C. Bushong
Notary Public.

REC'D FOR RECORD June 28-1952-11 30 A.M. & RECORDED IN THE LAND RECORDS OF BALTIMORE COUNTY, LIBER G.L.B. 2133 FOLIO 149 GEORGE L. BYERLY, CLERK.

THIS DEED, Made this 3rd day of September, in the year one thousand nine hundred and sixty-nine, by and between LILLIAN R. KLINGEL, widow, of Baltimore County, State of Maryland, of the first part, and WILLIAM J. KLEINSMITH and LILLIAN A. KLEINSMITH, his wife, of the County and State aforesaid, parties of the second part.

WITNESSETH, that in consideration of the sum of Five Dollars ($5.00), and other good and valuable considerations, the receipt whereof is hereby acknowledged, the said Lillian R. Klingel, widow, in pursuance of the powers hereinafter named, does hereby grant and convey unto the said William J. Kleinsmith and Lillian A. Kleinsmith, his wife, as tenants by the entireties, their heirs and assigns, and the survivor of them, his or her heirs and assigns, in fee simple, all that lot of ground, situate, lying and being in the 15th Election District of Baltimore County, State of Maryland, and described as follows, that is to say:

BEING known and designated as Lot 10 on the Plat of Turkey Point Farm (now known as Rockaway Beach), which Plat is recorded among the Land Records of Baltimore County in Plat Book W.P.C. No. 4, folio 171.

BEING the same lot of ground which by Deed dated June 9, 1962, and recorded among the Land Records of Baltimore County in Liber W.J.R. No. 4001, folio 184 was granted and conveyed by Henry R. Adams and Marie C. Adams, his wife, to Adam L. Klingel, Sr. and Lillian R. Klingel, his wife, or the survivor of them, for life, with full power of sale, mortgage, etc. The said Adam L. Klingel, Sr. died on or about August 6, 1969, leaving surviving his wife, the Grantor herein. This Deed is executed in pursuance of the aforesaid powers.

TOGETHER with the buildings and improvements thereupon erected, made or being and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages, to the same belonging, or anywise appertaining.

TAX $ 20.00 STATE PROPERTY TRANSFER REC. # SEP 5 '69 CLERK

RECORDATION TAX ACT OF 1967 $5.00 $5.00

RECORDATION TAX ACT OF 1967 $2.00 $2.00

RECORDATION TAX ACT OF 1967 $1.00 $1.00

HOLBERGER & TO 21204

PAID BACO 7 6 28 SEP 4 90.00 MSC

Pro. Ex #8

Pltf #2

TO HAVE AND TO HOLD the said lot of ground and premises above-described and mentioned, and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining, unto and to the proper use and benefit of the said parties of the second part, as tenants by the entireties, their heirs and assigns, and the survivor of them, his or her heirs and assigns, in fee simple.

AND the said party of the first part hereby covenants that she has not done or suffered to be done any act, matter or thing whatsoever to encumber the property hereby conveyed; that she will warrant specially the property granted, and that she will execute such further assurances of the same as may be requisite.

WITNESS the hand and seal of said Grantor.

TEST:

Lillian R Klingel (SEAL)
Lillian R. Klingel

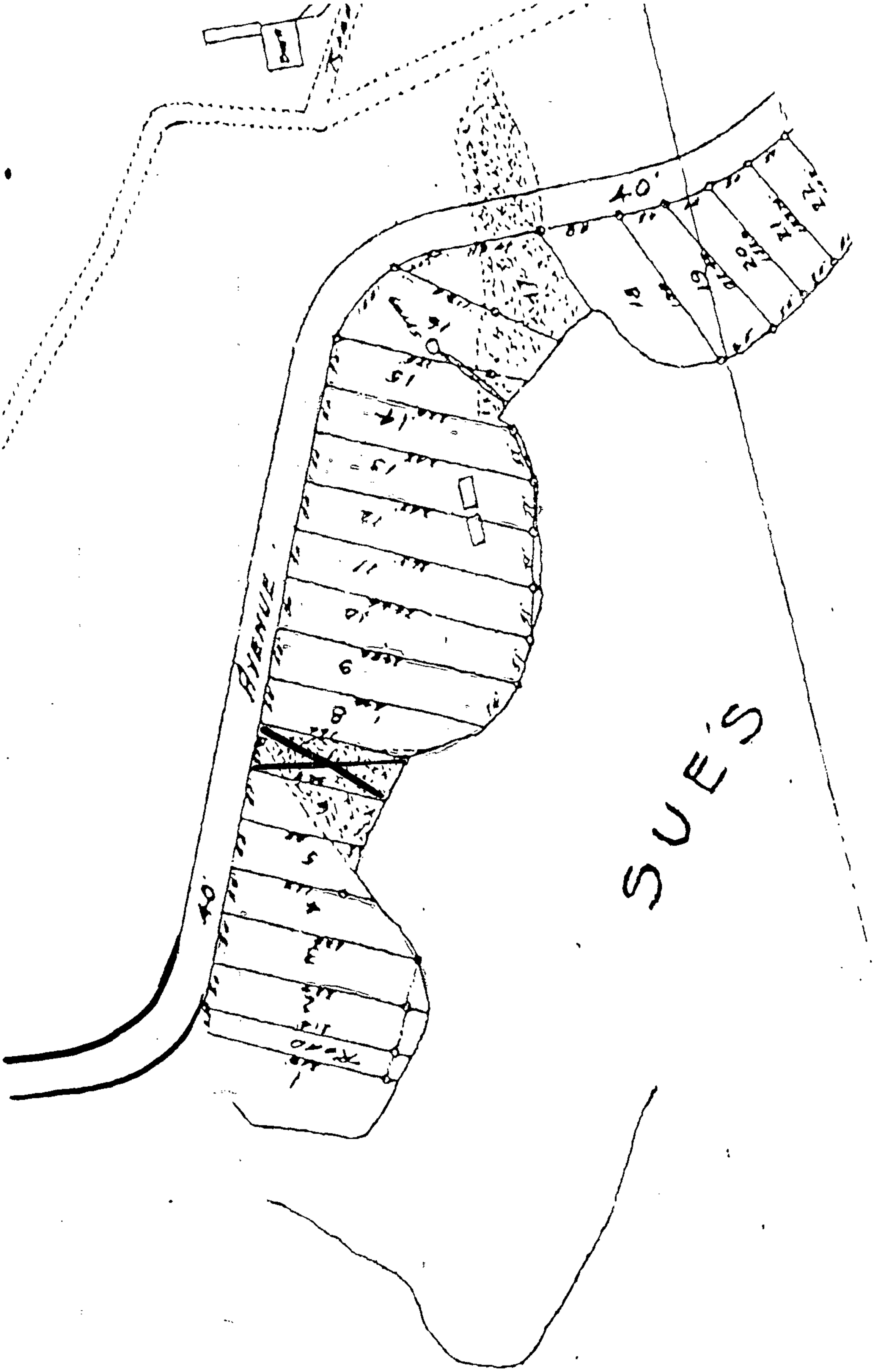
STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, that on this 3 day of Sept, 1969, before me, the subscriber, a Notary Public of the State and County aforesaid, personally appeared Lillian R. Klingel, widow, the Grantor named within, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that she executed the same for the purposes therein contained, and in my presence signed and sealed the same.

AS WITNESS my hand and Notarial Seal.

Notary Public

Rec'd for record SEP 5 1969 at 10 01 A M
Per Orville T. Gosnell, Clerk
Mail to Holman Schoenberger
Receipt No. 26935 $ 1-2-80



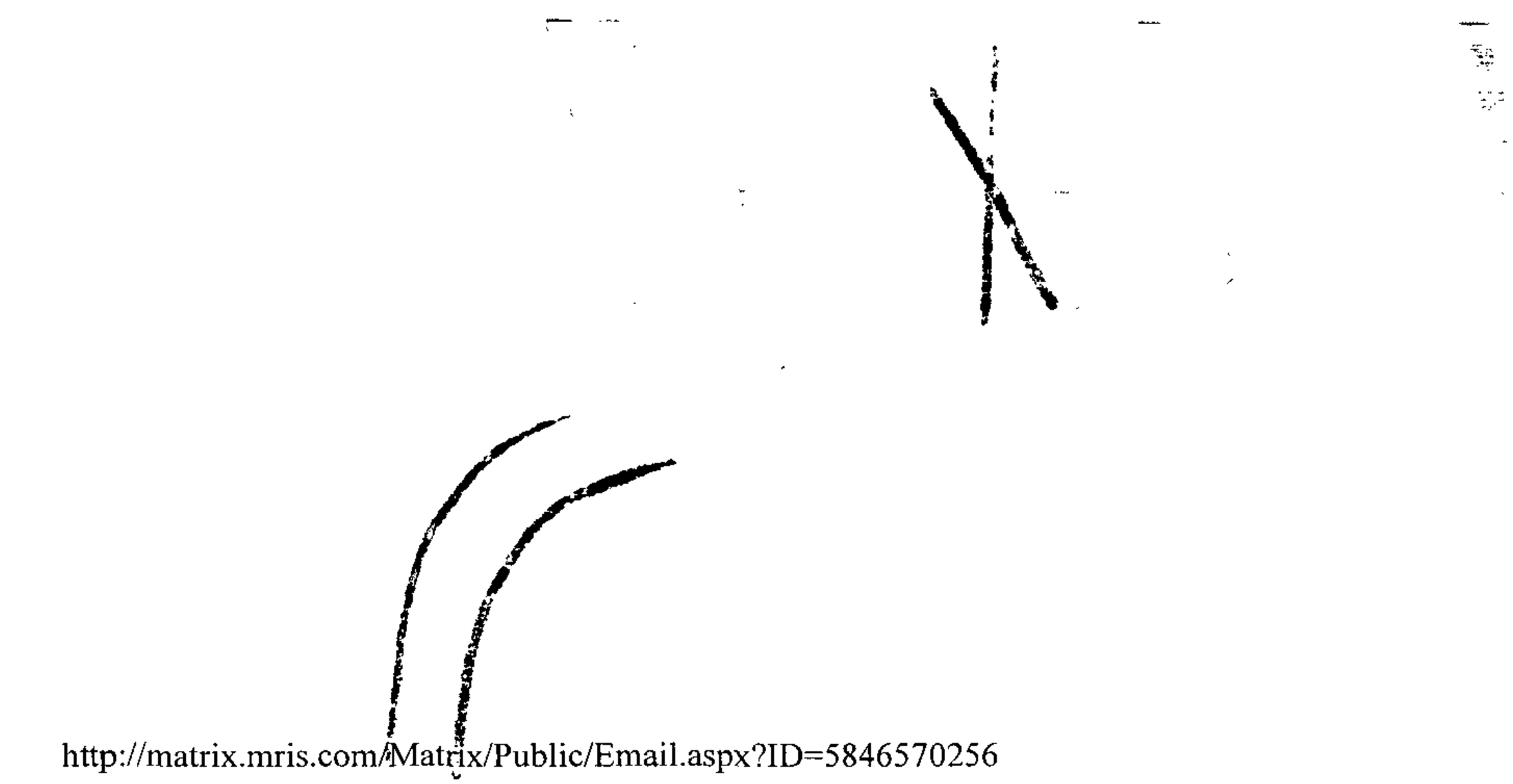
Pro. Ex # 16

Courtesy of Vicky Hupfeld

	Status	ML#	Address	List Price	City	Adv Subdivision	Style	T
	Sold	BC4392699	2317 TURKEY POINT RD	$260,000	Essex	Rockaway Beach	Rancher	D

Advance Realty, Inc.
Vicky Hupfeld/Realtor
Home Office: 410-335-1429
Home Fax: 410-335-1427
Cell: 410-241-0221
vhupfeld@mris.com

© 2005 Metropolitan Regional Information Systems, Inc.
Information is believed to be accurate, but should not be relied upon without verificatio
Accuracy of square footage, lot size and other information is not guaranteed.



Lot 10 TURKEY POINT ROAD



em:
Plane:
ontal Datum
r:
Datum

ource: March 1995

NOTE:
Floodplain Elevation Data from
FEMA Flood Insurance Rate Map
240010-0445C is based on
Baltimore Co. Datum.
Add 1.7 feet vertically to NAVD88

Exhibit D

Baltimore County, MD
Department of Public Works
GIS Services

100

Pro. Ex #17a.

1/25/05

Baltimore County Zoning Regulations

Pet: Property Owner

2317 Turkey Pt Rd.

We the homeowners residing at
2310 Turkey Pt Rd, strongly oppose
the redevelopment of the property
at 2317 Turkey Pt Rd.

We enjoy our waterview property.
We purchased "waterview" property
25 years ago.

I can sit on my porch, with
my grandchildren, and we have
a clear view of Lee Creek. We
can watch the crabbing boats
coming and going. We can see and
hear the ducks in the spring.

We are happy to be getting new
neighbors. This is a good neighborhood
Part of the beauty is the water.

Pro. Ex #19

of the property is allowed to be
overdeveloped and to be exempt
from Zoning laws + regulations, we
will lose the beauty of our
waterview home.

We certainly welcome are
beautiful new home at 2317, &
~~the~~ lot meant for 1 home.

If we bend the rules for one
then we will do it again + again.
Laws are laws, please don't bend
the rules for this overdevelopment
at 2317 Turkey Pt.

Thank you for your anticipated
enforcement of the laws and
Zoning regulations.

Sincerely,
Michael + Nancy Farr

November 2, 2005

Zoning Commissioner,

I am writing this letter because I would like to see the two lots at 2315 & 2317 Turkey Point Road used in the construction of 1 single family home. I think the use of these lots for two full size homes would ruin the open space in this area. The spacing of housing in this area is due to the fact that all the houses in this area are constructed on multiple lots. I am strongly against the development of two homes since there is ample space for Mr. And Mrs. Creamer to build one large home that would remain in line with the other homes an keep the with the aesthetics of the neighborhood.

Thank you,

Mr. And Mrs. Gary Ledley

Gary L Ledley
Carrie L. Ledley
2304 Turkey Pt Rd.
Balto Md. 21221

11-4-05

Dear Sir / Madame,

Due to the nature of the job(s) we hold, we will not be arriving to count today. We are though opposed of the building of (2) houses across the street on the undivided lots. We reside at 2312 Turkey Point Rd. and we enjoy the view across the street to see the water. If the zoning board approves this then the neighborhood will deminish, and all the waterview/front houses will drop. Please take into consideration the families that have lived down here for 10 or more years.

Sincerely
Mr. & Mrs. Backer

My name is Charles Markel. I live at 2321 Turkey Point Road. The subject property is two doors away from me.

I would like to say that I object to the building of two houses, one on each lot at 2315 and 2317, since the proposed houses would be too crammed in the limited area, the proposed drawings look like warehouses and would not fit in to the houses already in the neighborhood, and all of this goes against the laws for development. Also, I have been informed that the infrastructure (sewer, schools, etc.) have only allotted a certain amount of development.

I have two lots, 2321 and 2323. When I was building my house in 1999, which was before the laws changed, I was prohibited from building more than one house on the two lots. The first thing I was told by the County when I applied for my building permit was that I could <u>not</u> build two houses. This was also reiterated by Vince Gardina from the County Council.

My feeling is that a single family house should be built on the two lots and have only one owner. I also believe that if this is allowed to proceed, then it will set a precedent and many other houses will be allowed on undersized lots.

Charles Markel

PLO #13

My name is Charles Markel. I live at 2321 Turkey Point Road. The subject property is two doors away from me.

I would like to say that I object to the building of two houses, one on each lot at 2315 and 2317, since the proposed houses would be too crammed in the limited area, the proposed drawings look like warehouses and would not fit in to the houses already in the neighborhood, and all of this goes against the laws for development. Also, I have been informed that the infrastructure (sewer, schools, etc.) have only allotted a certain amount of development.

I have two lots, 2321 and 2323. When I was building my house in 1999, which was before the laws changed, I was prohibited from building more than one house on the two lots. The first thing I was told by the County when I applied for my building permit was that I could <u>not</u> build two houses. This was also reiterated by Vince Gardina from the County Council.

My feeling is that a single family house should be built on the two lots and have only one owner. I also believe that if this is allowed to proceed, then it will set a precedent and many other houses will be allowed on undersized lots.

Charles A Markel

Pro # 13

Pro Ex # 20

To: Hearing Officer
Re: 2315 & 2317 Turkey Point Rd.

After reviewing the documentation provided by Mr. and Mrs. Ferro, residents of 2313 Turkey Point Rd., I am convinced that construction on two 50 ft. lots at the addresses above should be limited to one dwelling unit as required by law.

The plan for two homes originally was presented to Rockaway Beach Improvement Assn. as a case of hardship where an elderly and handicapped brother and sister desired to live next door to each other.

County documents show this to be misleading, as the Creamers are husband and wife, and no justification for two homes, other than resale and profit, is evident. The county law which requires adjoining lots to be combined to equal at least 70 feet frontage ensures attractive and compatible construction in the neighborhood.

Therefore, I encourage Baltimore County to uphold the previous decision of one dwelling on the combined lots.

Sincerely,
Jackie Nickel
721 Rockaway Beach Ave.
Essex, MD 21221

Pro. Ex. # 21

Copy given to Mr. Hyland by C.A.

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 120

September Term, 1977

BUILDING PERMITS #63255 and #63256

MARDO HOMES, INC., ET AL.

v.

BALTIMORE COUNTY, MARYLAND

Davidson,
Melvin,
Wilner,
JJ.

PER CURIAM

Filed: November 22, 1977

Pro. Ex # 22

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

In this appeal we are called upon to decide whether the Circuit Court for Baltimore County (Brannan, J.) was correct in affirming a decision of the Baltimore County Board of Appeals, denying building permits for two lots owned by appellant, Mardo Homes, Inc. Our conclusion in this regard is dependant upon our construction of Article 1B, Section 1B02.3 of the Baltimore County Zoning Regulations, and our determination as to whether appellant's lots are lots as described in subparagraphs A.3, A.4, and/or A.5 of that regulation. If the lots are A.3 and A.4 (as well as A.5) lots, then they are subject to certain minimum width requirements which they admittedly do not meet. If they are exclusively A.5 lots, then they are not subject to these requirements, and the denial of the permits can only be regarded as arbitrary and capricious.

The facts underlying this controversy are not in dispute, and may be quoted from Judge Brannan's opinion:

> "This case involves a timely appeal from the March 5th 1976 order of the Baltimore County Board of Appeals, which affirmed denial of two building permits by the Department of Permits and Licenses of Baltimore County.
>
> "The Appellants had applied for building permits No. 63255 and 63256 for construction of homes on two lots. Each lot measures 50 feet in width by 135 feet in depth. The zoning on the property is D.R. 5.5, and the lots in question are among 284 lots owned by the Appellants in a subdivision, the subdivision plat of which was recorded in March, 1929, some 16 years prior to the advent of zoning in Baltimore County. There was no approval of this subdivision plat by the Baltimore County Planning Board since the Planning Board was not in existence at that time.
>
> "Interspersed throughout and among the lots which the Appellants own and intend to develop are approximately 100 existing detached houses owned by single families. Appellants contended at the Board of Appeals that they should be allowed to erect dwelling units on lots with 50 foot widths

rather than the newly mandated 55 foot width, and that if they were forced to build with a 55 foot width requirement, they would lose the use of 41 lots."

As Judge Brannan noted further on in his opinion, the question here is clearly one of statutory construction.[1]

I

The regulation to be construed provides as follows:

"1B02.3 -- Special Regulations for Certain Existing Developments or Subdivisions and for Small Lots or Tracts in D.R. Zones.

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

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

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

---

1. The construction or interpretation of a statute is a question of law, not of fact. On this issue we are not, therefore, governed by the fairly debatable standard. Kassab v. Burkhardt, 34 Md. App. 699, 704, 368 A. 2d 1064 (1977).

3. Any lot, or tract of lots in single ownership, which is not in an existing development or subdivision as described in subparagraph 1 or 2 and which is too small in gross area to accommodate six dwelling or density units in accordance with the maximum permitted density in the D.R. zone in which such tract is located; or

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

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

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

C. Development Standards for Small Lots or Tracts.

1. Any dwelling hereafter constructed on a lot or tract described in subparagraph A.3 or A.4 shall comply with the requirements of the following table:

Zoning Classification	Minimum Net Lot Area per Dwelling Unit	Minimum Lot Widths,[5] in Feet	Minimum Front-Yard Depth, in Feet	Minimum Width of Individual Side Yard, in Feet	Minimum Sum of Side-Yard Widths, in Feet	Minimum Rear-Yard Depth, in Feet
D.R. 1	40,000 square feet	150	50	20	50	50
D.R. 2	20,000 square feet	100	40	15	40	40
D.R. 3.5	10,000 square feet	70	30	10	25	30
D.R. 5.5	6,000 square feet	55	25	10	—	30
D.R. 10.5	3,000 square feet	20	10	10	—	50
D.R. 16	2,500 square feet	20	10	25	—	30

2. Other standards for development of small lots or tracts as so described shall be as set forth in provisions adopted pursuant to the authority of Section 504.

D. An amendment to any part of a development plan involving only property subject to the provisions of this subsection shall not be subject to the provisions of Paragraph D of subsection 1B01.3."

It is readily apparent that, while paragraph *B* states that "[s]tandards for development of lots or tracts described in subparagraphs A.3, A.4 or A.5 shall be as set forth in Paragraph C. below" (*Emphasis added*), paragraph C states only that, "Any dwelling hereafter constructed on a lot or tract described in subparagraph A.3 or A.4 shall comply with the requirements of the following table . . . . " No provision is made for dwellings constructed on a lot or tract described in subparagraph A.5. Although subparagraph C.2 states that "[o]ther standards for development of small lots or tracts as so described shall be as set forth in provisions adopted pursuant to the authority of Section 504," no such provisions were ever adopted. Thus, it would appear that any lot or tract which falls exclusively within subparagraph A.5 would have no applicable development

requirements.

Appellants contend that their lots are exclusively lots described in subparagraph A.5 and, therefore, that there are no development requirements applicable to these lots. Thus, appellants conclude that the Department of Permits and Licenses erred in denying their permits on the ground that the minimum lot width requirement was not met. If appellants are correct in their assertion that there are no development requirements applicable to their lots, then they are correct in their conclusion that the permits should have been issued.

Baltimore County (appellee) contends, however, that appellants' lots are not only lots described in subparagraph A.5, but are also lots described in subparagraphs A.3 and A.4. Thus, Baltimore County contends that as the lots are zoned D.R.5.5, the 55 foot minimum lot width set out in the table, and made applicable to lots described in subparagraph A.3 or A.4, is applicable to appellants' lots. As appellants' lots are only 50 feet wide, appellee contends that the denial of the permits was not arbitrary or capricious, but rather entirely proper.

The basic principles of statutory construction were comprehensively set out by the Court of Appeals in State v. Fabritz, 276 Md. 416, 421-22, 348 A. 2d 275 (1975), cert. denied, 425 U.S. 942 (1976):

> "The cardinal rule in the construction of statutes is to effectuate the real and actual intention of the Legislature. Purifoy v. Merc.-Safe Dep. & Trust, 273 Md. 58, 327 A. 2d 483 (1974); Scoville Serv., Inc. v. Comptroller, 269 Md. 390, 306 A. 2d 534 (1973); Height v. State, 225 Md. 251, 170 A. 2d 212 (1961). Equally well settled is the principle that statutes are to be construed reasonably with reference to the purpose to be accomplished, Walker v. Montgomery County, 244 Md. 98, 223 A. 2d 181 (1966), and in light of the evils or mischief sought to be remedied, Mitchell v. State,

115 Md. 360, 80 A. 2d 1020 (1911); in other words, every statutory enactment must be 'considered in its entirety, and in the context of the purpose underlying [its] enactment,' Giant of Md. v. State's Attorney, 267 Md. 501 at 509, 298 A. 2d 427, at 432 (1973). Of course, a statute should be construed according to the ordinary and natural import of its language, since it is the language of the statute which constitutes the primary source for determining the legislative intent. Grosvenor v. Supervisor of Assess., 271 Md. 232, 315 A. 2d 758 (1974); Height v. State, supra. Where there is no ambiguity or obscurity in the language of a statute, there is usually no need to look elsewhere to ascertain the intention of the Legislature. Purifoy v. Merc.-Safe Deposit & Trust, supra. Thus, where statutory language is plain and free from ambiguity and expresses a definite and sensible meaning, courts are not at liberty to disregard the natural import of words with a view towards making the statute express an intention which is different from its plain meaning. Gatewood v. State, 244 Md. 609, 224 A. 2d 677 (1966). On the other hand, as stated in Maguire v. State, 192 Md. 615, 623, 65 A. 2d 299, 302 (1949), '[a]dherence to the meaning of words does not require or permit isolation of words from their context '***[since] the meaning of the plainest words in a statute may be controlled by the context . . . . ' ' In construing statutes, therefore, results that are unreasonable, illogical or inconsistent with common sense should be avoided whenever possible consistent with the statutory language, with the real legislative intention prevailing over the intention indicated by the literal meaning. B. F. Saul Co. v. West End Park, 250 Md. 707, 246 A. 2d 591 (1968); Sanza v. Md. Board of Censors, 245 Md. 319, 226 A. 2d 317 (1967); Height v. State, supra.

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

Subparagraph A.3 lots include any lot which is not in an existing development or subdivision as described in subparagraph 1 or 2 [that is, a subdivision for which a plan has been approved (A.1) or tentatively approved and remains in effect (A.2)] and which is too small to accommodate six dwellings or density

units under present zoning. It is undisputed that appellants' lots are not in an existing subdivision as described in subparagraph 1 or 2 (i.e., one for which a plan has been approved or tentatively approved) and that they are too small to accommodate six dwelling or density units under present zoning. Thus, appellants' lots come within the clear and unambiguous description contained in subparagraph A.3. With respect to subparagraph A.4, appellants' lots again are not lots in an existing development or subdivision as described in subparagraph 1 or 2, and are each less than one-half acre in area. Thus, appellants' lots are also lots described in subparagraph A.4. While appellants' lots come within the description contained in subparagraphs A.5 as well, this does not in any way negate the fact that they also come within the clear and unambiguous descriptions contained in subparagraphs A.3 and A.4.[2]

Appellants advance a different interpretation of paragraph A in support of their contention that their lots are exclusively A.5 lots. Appellants contend that:

2.

Appellee Baltimore County has attempted to show a longstanding administrative interpretation that A.3, A.4 and A.5 category lots sometimes overlap. Appellants have attempted to negate this showing. As we have found the plain wording of the statute to be clear and unambiguous, we need not look to administrative interpretation. Purifoy v. Mercantile-Safe Deposit and Trust Company, supra. We note, however, that the interpretation of the statute by James E. Dyer, Deputy Zoning Commissioner of Baltimore County, described by the Board of Appeals "as probably the foremost authority . . . on our regulations," comports with our own.

> "A1 deals with lots in recorded and approved subdivisions, A2 deals in tentatively approved subdivisions, A3 and A4 deal with lots not in an existing subdivision, and A5 deals with lots in a recorded subdivision not approved by the Baltimore County Planning Board or Planning Commission. A3 and A4 clearly deal with lots not in existing subdivisions, and A5 deals with lots in recorded subdivisions."

This interpretation ignores the plain wording of subparagraphs A.3 and A.4. Categories A.3 and A.4 include more than lots not in existing subdivisions. They include lots "not in an existing development or subdivision as described in Subparagraph 1 and 2" (Emphasis added), that is, lots not in an existing development or subdivision with approved (see subparagraph A.1) or tentatively approved (see subparagraph A.2) plans. As previously noted, appellants' lots are not in an existing subdivision with approved or tentatively approved plans. They come, therefore, within the definition of A.3 and A.4 lots.

II

Having concluded that appellants' lots are A.3 and A.4 (as well as A.5) lots and, therefore, subject to the 55 foot minimum width requirement, we must next determine whether appellants should nevertheless have been granted a permit pursuant to Baltimore County Zoning Regulations, Article 2, Section 304. That Section provides:

> "Section 304 -- USE OF UNDERSIZED SINGLE-FAMILY LOTS
>
> A one-family dwelling may be erected on a lot having an area or width at the building line less than that required by the height and area regulations, provided:
>
> a. That such lot shall have been duly recorded either by deed or in a validly approved subdivision prior to adoption of these Regulations; and

b. That all other requirements of the height and area regulations are complied with; and

c. That the owner of the lot does not own sufficient adjoining land to conform substantially to the width and area requirements."

The lower court, the Board of Appeals and the Zoning Department all found that the lots in question are adjoined by land on either side, owned by the appellants, of sufficient size to conform to the lot width requirements. This finding, far from being "clearly erroneous" is not even in dispute. Accordingly, Article 2, Section 304 affords appellants no solace. See Article 2, § 304(c).

Having concluded that appellants' lots are subject to the 55 foot minimum width requirement contained in Baltimore County Zoning Regulations, Article 1B, Section 1B02.3, and that appellants' lots do not meet this requirement, it follows that the permits were properly denied.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

0108[illegible]90.346

THIS DEED, made this 15th day of December, 1994, by and between LILLIAN A. KLEINSMITH, of Baltimore County, State of Maryland, of the first part, and LILLIAN A. KLEINSMITH, of the second part.

WITNESSETH, that for NO CONSIDERATION, the said LILLIAN A. KLEINSMITH does grant and convey unto the said LILLIAN A. KLEINSMITH, for and during the term of her natural life, and with full and absolute powers in her and remainder over, as hereinafter provided, and subject to the powers and limitations hereinafter mentioned, all that lot of ground situate, lying and being in the 15th Election District of Baltimore County, State of Maryland, and described as follows, that is to say:

> BEING known and designated as Lot 10 on the Plat of Turkey Point Farm (now known as Rockaway Beach), which Plat is recorded among the Land Records of Baltimore County in Plat Book W.P.C. No. 4, folio 171. The improvements thereon being known as 2317 Turkey Point Road.
>
> BEING the same lot of ground which by Deed dated September 3, 1969, and recorded among the Land Records of Baltimore County in Liber O.T.G. No. 5032, folio 048, was granted and conveyed by Lillian R. Klingel, widow, unto William J. Kleinsmith and Lillian A. Kleinsmith, his wife; the said William J. Kleinsmith having departed this life on or about March 13, 1991, thereby vesting title in the name of Lillian A. Kleinsmith, the Grantor herein.

TOGETHER with the buildings and improvements thereupon erected, made or being and all and every the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or anywise appertaining.

TO HAVE AND TO HOLD the said lot of ground and premises unto and to the use of LILLIAN A. KLEINSMITH for the term of her natural life with full power and the authority to her to sell, lease, convey, mortgage or otherwise dispose of said property or any part thereof, or any interest therein, including the absolute interest therein, including both life estate and remainder at any time during her natural life, except by Last Will and Testament, and the proceeds of any sale or lease thereof or money borrowed or secured by any mortgage thereof to take and expend or dispose of

AGRICULTURAL TRANSFER TAX
NOT APPLICABLE
SIGNATURE JE DATE 12-28-94

RECEIVED FOR TRANSFER
State Department of
Assessments & Taxation
for Baltimore County
JE 12-29-94

TRANSFER CANNOT BE RECORDED
Director of Finance
BALTIMORE COUNTY, MARYLAND
Per Jay Burgos
Date 12-28-94 Sec. 3A 13A C

Exhibit K

Pro. Ex #9

in such manner as she sees fit or to consume for her own purposes without obligation on the part of the purchaser, mortgagee, lessee or grantee to see to the application of the purchase money or money so borrowed or any money which may be the proceeds of any sale, mortgage, lease or disposition of any part of or any interest in said property, and from and immediately after the death of the said **LILLIAN A. KLEINSMITH** as to so much thereof or any interest therein as shall not have been disposed of by her then unto **ANTOINETTE J. SCHEILD, JACQUELINE C. STUMP** and **LYNN L. COLLINS**, as joint tenants and not as tenants in common, the survivor of them and the survivor's heirs and assigns, in fee simple.

AND the said **LILLIAN A. KLEINSMITH** hereby covenants that she has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that she will warrant specially the property hereby granted; and that she will execute such further assurances of the same as may be requisite.

WITNESS the hand and seal of said Grantor.

WITNESS:

Lillian A. Kleinsmith (SEAL)
LILLIAN A. KLEINSMITH

STATE OF MARYLAND, COUNTY OF BALTIMORE, To wit:

I HEREBY CERTIFY that on this 15th day of Dec, 1994, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore County aforesaid, personally appeared **LILLIAN A. KLEINSMITH**, the Grantor named in the above Deed, and she acknowledged the foregoing Deed to be her act.

AS WITNESS my hand and Notarial Seal.

Barbara A. Hoffman
NOTARY PUBLIC

My Commission Expires: 11/1/95

This is to certify that the within instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

MYLES F. FRIEDMAN

010890.349

State of Maryland Land Instrument Intake Sheet

County: BALTIMORE

Information provided is for the use of the Clerk's Office and State Department of Assessments and Taxation only.

(Type or Print in Black Ink Only—All Copies Must Be Legible)

1 Type(s) of Instruments

Multiple Instruments of the same transaction should be numbered to correspond with Sections 2, 6, 7, and 8. Number documents in the order to be recorded.

( ) Check Box if Addendum Intake Form is Attached.

[X] Deed	[ ] Lease	[ ] Other	
[ ] Deed of Trust	[ ] Contract		
[ ] Mortgage	[ ] Land Installment Cont.		

2 Consideration and Fees

Consideration Amount/Recordation Fees	Doc. 1	Doc. 2
Consideration, Including Assumed Indebtedness	$ 0.00	$
Recording Charge	$ 20.00	$
Surcharge	$ 5.00	$
State Recordation Tax	$ 0.00	$ .10
State Transfer Tax	$ 0.00	$
County Transfer Tax (if Applicable)	$ 0.00	$ .5
Other	$ 0.00	$
Total Fees	$ 25.00	$

3 Exemptions (If Applicable) Cite or Explain Authority

Recordation Tax Exemption: Creation of life estate with remainder to children.

State Transfer Tax Exemption:

County Transfer Tax Exemption:

Space Reserved for Circuit Court Clerk Recording Validation

IMP FEE SURE $ 5.00
RECORDING FEE 20.00
TOTAL 25.00
Rec# BA83 Rcpt # 1378
SM SM Blk # 29
Jan 03, 1995 10:57 am

4 Contact/Mail Information

Instrument Submitted By or Contact Person

Name: MYLES F. FRIEDMAN
Firm: FRIEDMAN, GARCIA & FRIEDMAN
Address: 215 Dunkirk Building - 2 Dunmanway
Dundalk, MD 21222
Phone: (410) 284-6060

Return Instrument To (Check Applicable Box Below or Provide Appropriate Address)

[X] Return to Contact Person as Provided Above [ ] Hold for Pick Up [ ] Address Provided on Instrument

Name:
Address:

5 Description of Property

SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG (5)
15	15-11-470451	5032/048			

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR(3c)	Plat Ref.	Sq.Ft./Acreage (4)
Rockaway Beach	10				

Location/Address of Property Being Conveyed (2): 2317 Turkey Point Road

Partial Conveyance? [ ] Yes [X] No Description/Amt. of Sq.Ft./Acreage Transferred:

If Partial Conveyance, List Improvements Conveyed:

6 Transferred From

Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
LILLIAN A. KLEINSMITH	XXXXXXXXXXXXXXXXXXXX
Doc. 1 - Owner(s) of Record, if Different from Grantor(s)	Doc. 2 - Owner(s) of Record, if Different from Grantor(s)

7 Transferred To

Doc. 1 - Grantee(s) Name(s)	Doc. 2 - Grantee(s) Name(s)
LILLIAN A. KLEINSMITH	

8 Other Names to Be Indexed

Doc. 1 - Additional Names to be Indexed (Optional)	Doc. 2 - Additional Names to be Indexed (Optional)

9 Special Instructions

Special Recording Instructions (if any):

10 Conveyance Type Check Box

[ ] Private Sale with Improvements /1/ [ ] Private Sale Unimproved /2/ [ ] Multiple Accounts/ Property /3/ [X] All Other /9/

11 Assessment Information

IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER.

[X] Yes [ ] No Will the property being conveyed be the grantee's principal residence?
[ ] Yes [X] No Does transfer include personal property? If yes, identify:
[ ] Yes [X] No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

New Owner's (Grantee) Mailing Address: 2317 Turkey Point Road
Baltimore, MD 21221

Assessment Use Only - Do Not Write Below This Line

[ ] Terminal Verification [ ] Agricultural Verification Whole Part [ ] Tran. Process Verification

Transfer Number: Date Received: Deed Reference: Assigned Property No.:

	Year 19	19					
Land			Geo.	Map	Sub	Block	
Buildings			Zoning	Grid	Plat	Lot	
Total			Use	Parcel	Section	Occ. Cd.	
			Town Cd.	Ex. St.	Ex. Cd.		

REMARKS:

Distribution: White - Clerk's Office | Canary - SDAT | Pink - Preparer

AOC-CC-200 (7/94)

DEED

THIS DEED made this 11 day of SEPTEMBER, 2002 by and between **Antoinette J. Schield (also, erroneously referred to of record as Antoinette J. Scheild), Jacqueline C. Stump and Lynne L. Collins,** parties of the first part, "Grantors", and **Carole C. Creamer,** party of the second part, "Grantee"

NOW, THEREFORE WITNESSETH, that for and in consideration of the sum of $110,000.00, the said parties of the first part do hereby grant and convey unto the said parties of the second part, as sole owner, in fee simple, the following described land and premises in Baltimore County, Maryland:

> Lot numbered Ten (10) on the Plat of "Turkey Point Farm", now known as Rockaway Beach, which plat is duly recorded among the land records of Baltimore County, Maryland in Plat Book W.P.C. No. 4, at folio 171.
> BEING the same property conveyed by Lilliam A. Kleinsmith to herself, for life, with remainder under the Grantors (the Remainderman) named herein. The said Lillian Kleimsith died on March 18, 2002, thereby vesting title in the remainderman, the Grantors herein.

TOGETHER with all and singular the ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the said parties of the first part, of, in, to, or out of the said land and premises.

TO HAVE AND HOLD the property hereby conveyed unto the parties of the second part, her personal representatives, heirs and assigns, in fee simple, forever.

AND the said parties of the first part covenants that they shall execute such further assurances of said land as may be requisite.

WITNESS the hands and seals of the Grantors.

WITNESS:

Antoinette J. Schield (Seal)
Antoinette J. Schield,

Jacqueline C Stump (Seal)
Jacqueline C. Stump,

Lynn L Collins (Seal)
Lynn L. Collins

Pro. Ex #10

STATE OF MARYLAND, COUNTY OF Balto, to wit:

I HEREBY CERTIFY that on this 11th day of September, 2002, before the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared **Antoinette J. Schield**, personally well known to me (or satisfactorily proven) as the person whose names is subscribed to the within Deed and she signed the same in my presence.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: 10/1/04

STATE OF MARYLAND, COUNTY OF Balto, to wit:

I HEREBY CERTIFY that on this 11th day of September, 2002, before the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared **Jacqueline C. Stump,** personally well known to me (or satisfactorily proven) as the person whose names is subscribed to the within Deed and she signed the same in my presence.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: 10/1/04

STATE OF MARYLAND, COUNTY OF Balto, to wit:

I HEREBY CERTIFY that on this 11th day of September, 2002, before the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared **Lynn L. Collins**, personally well known to me (or satisfactorily proven) as the person whose names is subscribed to the within Deed and she signed the same in my presence.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: 10/1/04

I HEREBY CERTIFY that the within deed was prepared under my supervision and I am an attorney duly admitted to practice before the Court of Appeals of Maryland.

Andrew G. Levy

After recording mail to:
Carol C. Creamer
1779 Shaftsbury Avenue
Crofton, MD 21114

CTIA FILE C0207198

State of Maryland Land Instrument Intake Sheet

☐ Baltimore City ☒ County: Baltimore

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office only.

(Type or Print in Black Ink Only—All Copies Must Be Legible)

Clerk's Recording Section

DNP FD SURC $ 5.00
RECORDING FEE 20.00
TR TAX STATE 550.00
TOTAL 575.00
Rcpt # BA04 Rcpt # 9638
CA LL Blk # 2393
Sep 23, 2002 02:26 PM

C02-07-198

1 Type(s) of Instruments (☐ Check Box if Addendum Intake Form is Attached.)

☒ Deed ☐ Mortgage ☐ Other ☐ Other
☐ Deed of Trust ☐ Lease

2 Conveyance Type Check Box

☐ Improved Sale Arms-Length [1] ☐ Unimproved Sale Arms-Length [2] ☐ Multiple Accounts Arms-Length [3] ☐ Not an Arms-Length Sale [9]

3 Tax Exemptions (if Applicable) Cite or Explain Authority

Recordation
State Transfer
County Transfer

4 Consideration and Tax Calculations

Consideration Amount		Finance Office Use Only — Transfer and Recordation Tax Consideration	
Purchase Price/Consideration	$ 110,000.00	Transfer Tax Consideration	$
Any New Mortgage	$	X ( ) % =	$
Balance of Existing Mortgage	$	Less Exemption Amount –	$ —
Other:	$	Total Transfer Tax =	$ 1650.00
Other:	$	Recordation Tax Consideration	$
Full Cash Value	$	X ( ) per $500 =	$ 550.00
		TOTAL DUE	$

5 Fees

Amount of Fees	Doc. 1	Doc. 2
Recording Charge	$ 20.00	$
Surcharge	$ 5.00	$
State Recordation Tax	$ 550.00	$
State Transfer Tax	$ 550.00	$
County Transfer Tax	$ 1650.00	$
Other	$	$
Other	$	$

Agent:
Tax Bill: FY 343.39
C.B. Credit:
Ag. Tax/Other: N

6 Description of Property SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG ☐ (5)
15	15-11-470451	10890/346			

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR(3c)	Plat Ref.	SqFt/Acreage (4)
Rockaway Beach	10			4/171	

Location/Address of Property Being Conveyed (2)
~~23/7~~ ~~Lot 10~~ Turkey Point Rd, Baltimore, MD 21221

Other Property Identifiers (if applicable) | Water Meter Account No.

Residential ☒ or Non-Residential ☐ | Fee Simple ☒ or Ground Rent ☐ Amount:

Partial Conveyance? ☐ Yes ☒ No | Description/Amt. of SqFt/Acreage Transferred:

If Partial Conveyance, List Improvements Conveyed:

7 Transferred From

Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
Antoinette J. Schield Jacqueline C. Strump	
Doc. 1 - Owner(s) of Record, if Different from Grantor(s)	**Doc. 2 - Owner(s) of Record, if Different from Grantor(s)**
Lynne L. Collins	

8 Transferred To

Doc. 1 - Grantee(s) Name(s)	Doc. 2 - Grantee(s) Name(s)
Carole C. Creamer	

New Owner's (Grantee) Mailing Address
Same.

9 Other Names to Be Indexed

Doc. 1 - Additional Names to be Indexed (Optional)	Doc. 2 - Additional Names to be Indexed (Optional)

10 Contact/Mail Information

Instrument Submitted By or Contact Person
Name: Heather L. Roe
Firm: Capitol Title
Address: 2200 Defense Hwy
Crofton, MD 21114 Phone: (410) 721-3340

☐ Return to Contact Person
☐ Hold for Pickup
☒ Return Address Provided

11 IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER

Assessment Information

☒ Yes ☐ No Will the property being conveyed be the grantee's principal residence?
☐ Yes ☒ No Does transfer include personal property? If yes, identify:
☐ Yes ☒ No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

Assessment Use Only - Do Not Write Below This Line

☐ Original Verification ☐ Agricultural Verification ☐ Whole ☐ Part ☐ Tran. Process Verification

Transfer Number:	Date Received:		Deed Reference:		Assigned Property No.:	
Year	19	19	Geo.	Map	Sub	Block
Recording			Zoning	Grid	Plat	Lot
Document Fee			Use	Parcel	Section	Occ. Cd.
Total			Town Cd.	Ex. St.	Ex. Cd.	

REMARKS:

Distribution: White - Clerk's Office
Canary - SDAT
Pink - Office of Finance
Goldenrod - Preparer
AOC-CC-300 (6/95)

PAID RECEIPT
BUSINESS
9/19/2002 08:14:29
REG #801 WALKER, JRIC JNR BROKER
9/19/2002 DEPT
Howard County, Maryland
$2,200.00 CA
00
RECORDATION TAXES
Recording # 16854
Liber 16854 Folio 471
Total
Dept
REMARKS:

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT

I HEREBY CERTIFY that the aforegoing is a true copy of the original

This DEED taken from the records of said Circuit Court as

recorded in Liber SM No. 16954

Folio 471 474 one of the Land

records of Baltimore County.

IN TESTIMONY WHEREOF I hereto set my hand

and affix the seal of the Circuit Court for

Baltimore County

this 23rd day of Nov 2005

Clerk of the Circuit Court of Baltimore County

DEED

THIS DEED made this 11 day of SEPTEMBER 2002 by and **between Antoinette J. Schield and , Jacqueline C. Stump, Co-Personal Representatives of the Estate of Lillian A. Kleinsmith** (see Estate No. 120720, Register of Wills for Baltimore County, Maryland), the first party, "Grantors", and **Jeffrey A. Creamer**, party of the second part, "Grantee"

NOW, THEREFORE WITNESSETH, that for and in consideration of the sum of $130,000.00, the said parties of the first part do hereby grant and convey unto the said parties of the second part, as sole owner, in fee simple, the following described land and premises in Baltimore County, Maryland:

Lot numbered Eleven (11) on the Plat of "Turkey Point Farm", now known as Rockaway Beach, which plat is duly recorded among the land records of Baltimore County, Maryland in Plat Book W.P.C. No. 4, at folio 171. With improvements known as 2317 Turkey Point Road.
BEING the same property acquired by William J. Kleinsmith and Lillian A. Kleinsmith by deed dated June 27, 1952, recorded in Liber 2133, folio 149. The said William J. Kleinsmith, having died on March 13, 1991. The said Lillian Kleimsith died on March 18, 2002, thereby vesting title in her Co-Personal Representatives, the Grantors herein.

TOGETHER with all and singular the ways, easements, rights, privileges and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the said parties of the first part, of, in, to, or out of the said land and premises.

TO HAVE AND HOLD the property hereby conveyed unto the parties of the second part, his personal representatives, heirs and assigns, in fee simple, forever.

AND the said parties of the first part covenants that they shall execute such further assurances of said land as may be requisite.

WITNESS the hands and seals of the Grantors.

WITNESS:

Antoinette J. Schield Co Personal Representative (Seal)
Antoinette J. Schield, Co-Personal Representative

Jacqueline C Stump, Co Personal Representative (Seal)
Jacqueline C. Stump, Co-Personal Representative

Pro. Ex # 11

STATE OF MARYLAND, COUNTY OF Baltimore, to wit:

I HEREBY CERTIFY that on this 11th day of October, 2002, before the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared **Antoinette J. Schield**, Co-Personal Representative of the Estate of Lillian A. Kleinsmith, personally well known to me (or satisfactorily proven) as the person whose names is subscribed to the within Deed and she signed the same in my presence.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: 10/1/04

STATE OF MARYLAND, COUNTY OF Baltimore, to wit:

I HEREBY CERTIFY that on this 11th day of October 2002, before the undersigned officer, a Notary Public in and for the State and County aforesaid, personally appeared **Jacqueline C. Stump**, Co-Personal Representative of the Estate of Lillian A. Kleinsmith, personally well known to me (or satisfactorily proven) as the person whose names is subscribed to the within Deed and she signed the same in my presence.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: 10/1/04

I HEREBY CERTIFY that the within deed was prepared under my supervision and I am an attorney duly admitted to practice before the Court of Appeals of Maryland.

Andrew G. Levy

After recording mail to:
Carol C. Creamer
1779 Shaftsbury Avenue
Crofton, MD 21114

CTIA FILE C0209056

0016854 477

State of Maryland Land Instrument Intake Sheet

☐ Baltimore City ☒ County: Baltimore

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office only.

(Type or Print in Black Ink Only—All Copies Must Be Legible)

Space Reserved for Recorder's Validator

IMP FD SURE $ 5.00
RECORDING FEE 20.00
TOTAL 25.00
Rept# 84084 Rcpt # 36399
SM LL Blk # 2395
Sep 23, 2002 02:30 PM

C02-09-056

1 Type(s) of Instruments (☐ Check Box if Addendum Intake Form is Attached.)

☒ Deed ☐ Deed of Trust ☐ Mortgage ☐ Lease ☐ Other ☐ Other

2 Conveyance Type Check Box

☐ Improved Sale Arms-Length [1] ☐ Unimproved Sale Arms-Length [2] ☐ Multiple Accounts Arms-Length [3] ☐ Not an Arms-Length Sale [9]

3 Tax Exemptions (if Applicable) Cite or Explain Authority

Recordation
State Transfer
County Transfer

4 Consideration and Tax Calculations

Consideration Amount	
Purchase Price/Consideration	$ 130,000.00
Any New Mortgage	$ 130,000.00
Balance of Existing Mortgage	$
Other:	$
Other:	$
Full Cash Value	$

Finance Office Use Only — Transfer and Recordation Tax Consideration		
Transfer Tax Consideration	$	
X ( )% =	$	
Less Exemption Amount –	$	—
Total Transfer Tax =	$	1950.00
Recordation Tax Consideration	$	130
X ( ) per $500 =	$	650.00
TOTAL DUE	$	
Agent:		
Tax Bill: FY 1875310		
C.B. Credit: —		
Ag. Tax/Other: N		

5 Fees

Amount of Fees	Doc. 1	Doc. 2
Recording Charge	$ 20.00	$
Surcharge	$ 5.00	$
State Recordation Tax	$ 650.00	$
State Transfer Tax	$ 650.00	$
County Transfer Tax	$ 1950.00	$
Other	$	$
Other	$	$

20 5 650 650

6 Description of Property SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG
15	15-11-470450	2133/149			☐ (5)

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR(3c)	Plat Ref.	SqFt/Acreage (4)
Rockaway Beach	11			4/171	

Location/Address of Property Being Conveyed (2): 9317 Turkey Point Rd, Baltimore, Md 21221

Other Property Identifiers (if applicable)

Water Meter Account No.

Residential ☒ or Non-Residential ☐ Fee Simple ☒ or Ground Rent ☐ Amount:

Partial Conveyance? ☐ Yes ☒ No Description/Amt. of SqFt/Acreage Transferred:

If Partial Conveyance, List Improvements Conveyed:

IR TAX STATE 650.00
TOTAL 650.00
Rept# 84084 Rcpt # 36399
SM LL Blk # 2395
Sep 23, 2002 02:31 pm

7 Transferred From

Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
Antoinette J. Schield Jacqueline C. Stump	
Doc. 1 - Owner(s) of Record, if Different from Grantor(s)	**Doc. 2 - Owner(s) of Record, if Different from Grantor(s)**

8 Transferred To

Doc. 1 - Grantee(s) Name(s)	Doc. 2 - Grantee(s) Name(s)
Jeffrey A. Creamer	

New Owner's (Grantee) Mailing Address

9 Other Names to Be Indexed

Doc. 1 - Additional Names to be Indexed (Optional)	Doc. 2 - Additional Names to be Indexed (Optional)

10 Contact/Mail Information

Instrument Submitted By or Contact Person
Name: Heather L. Roe
Firm: Capitol Title
Address: 2200 Defense Hwy
Crofton, Md 21114 Phone: (410)721-3340

☐ Return to Contact Person
☐ Hold for Pickup
☒ Return Address Provided

11 Assessment Information

IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER

☒ Yes ☐ No Will the property being conveyed be the grantee's principal residence?
☐ Yes ☒ No Does transfer include personal property? If yes, identify:
☐ Yes ☒ No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

Assessment Use Only - Do Not Write Below This Line

☐ Original Verification ☐ Agricultural Verification ☐ Whole ☐ Part ☐ Tran. Process Verification

Transfer Number: Date Received: Deed Reference: Assigned Property No.:

Year	19	19	Geo.	Map	Sub	Block
Land			Zoning	Grid	Plat	Lot
Building			Use	Parcel	Section	Occ. Cd.
Total			Town Cd.	Ex. St.	Ex. Cd.	

REMARKS:

Distribution: White - Clerk's Office
Canary - SDAT
Pink - Office of Finance
Goldenrod - Preparer
AOC-CC-300 (6/95)

Book 16854 Page 477

STATE OF MARYLAND, BALTIMORE COUNTY, TO WIT

I HEREBY CERTIFY that the aforegoing is a true copy of the original

This Deed taken from the records of said Circuit Court as

appears on Folio 5m No. 16859

425 427 one of the land

records of Baltimore County.

AS TESTIMONY WHEREOF I hereto set my hand

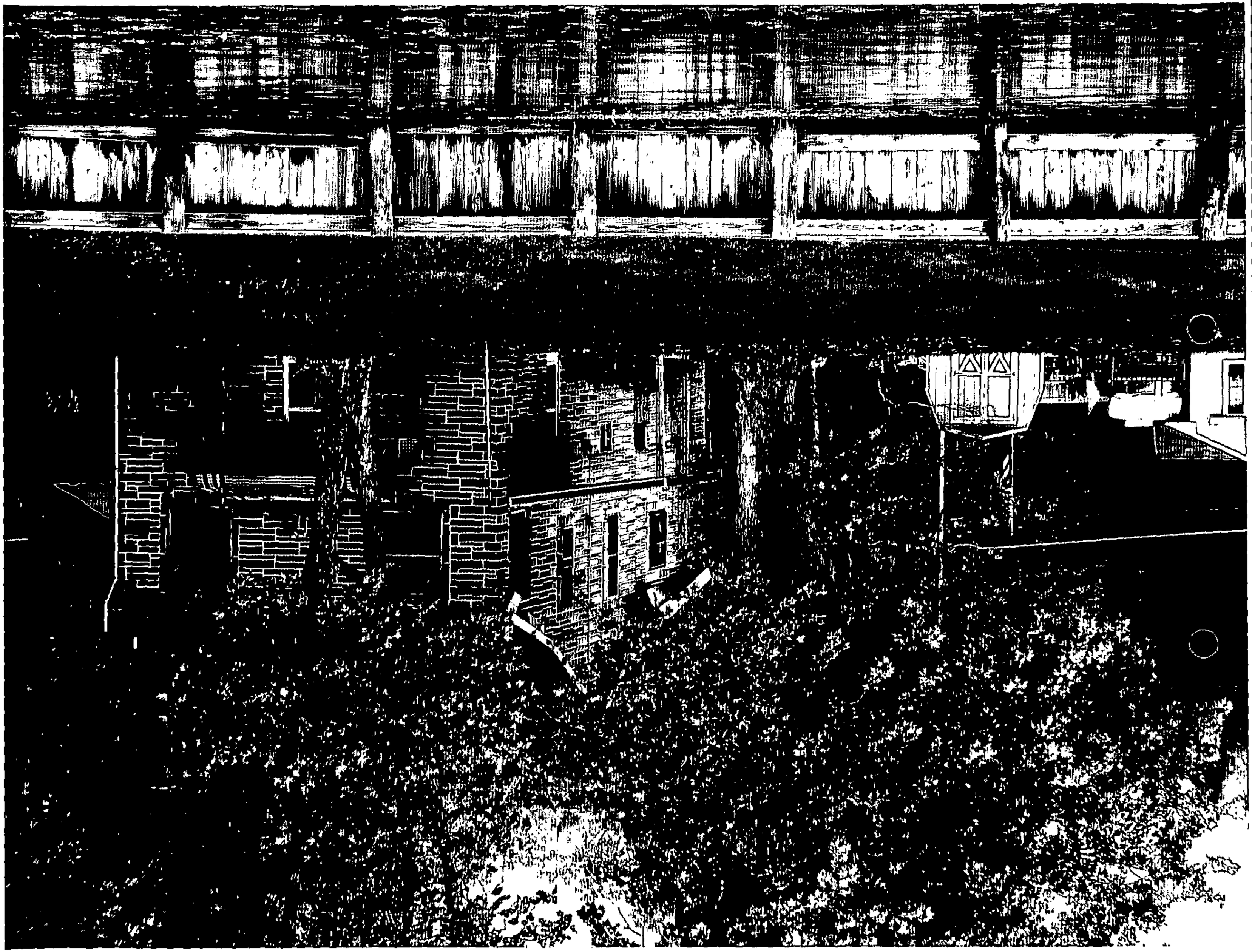
and affix the seal of the Circuit Court for

Baltimore County

this 23rd day of May 2008

Clerk of the Circuit Court of Baltimore County







BOA Prot 12c

Prot #7c



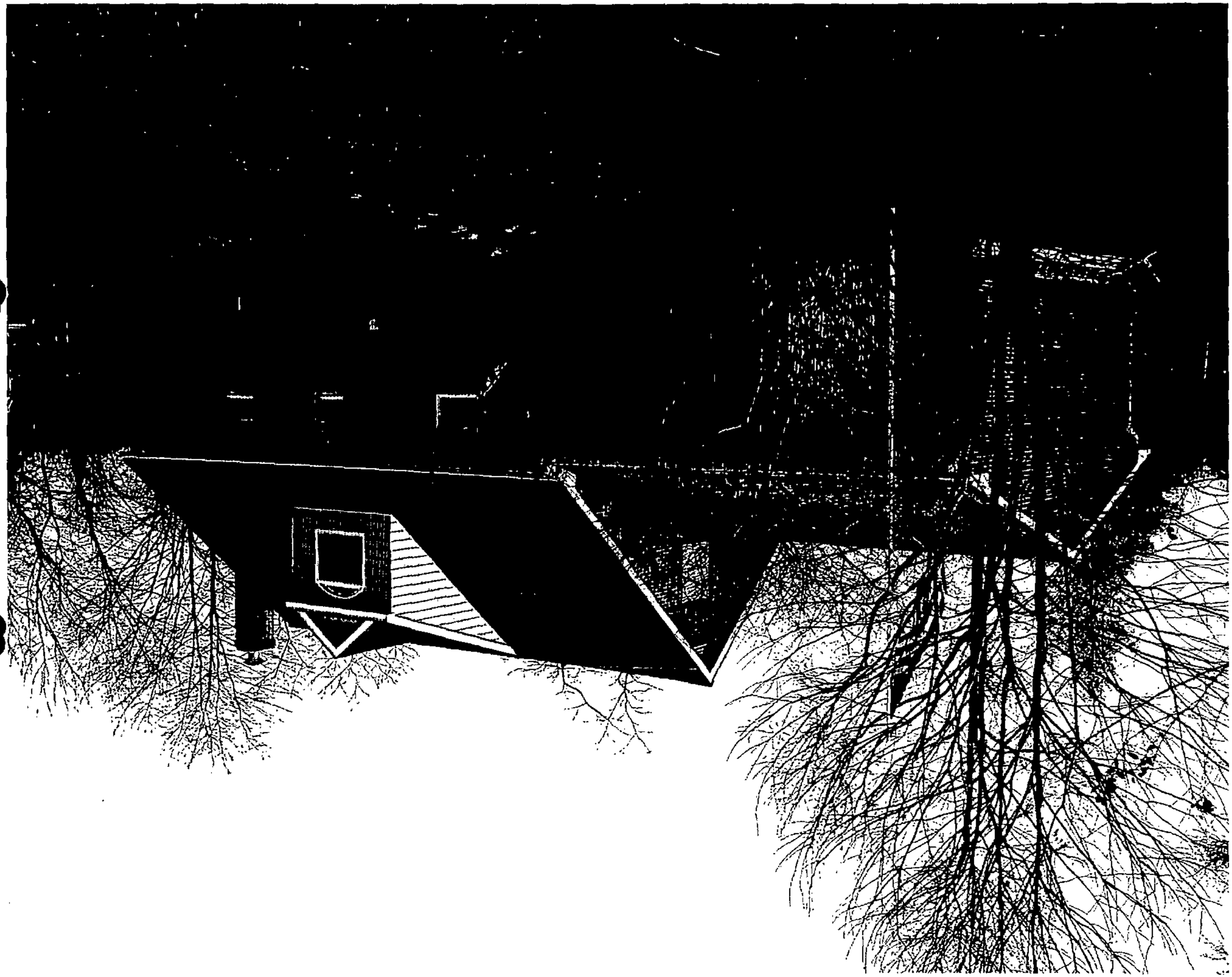


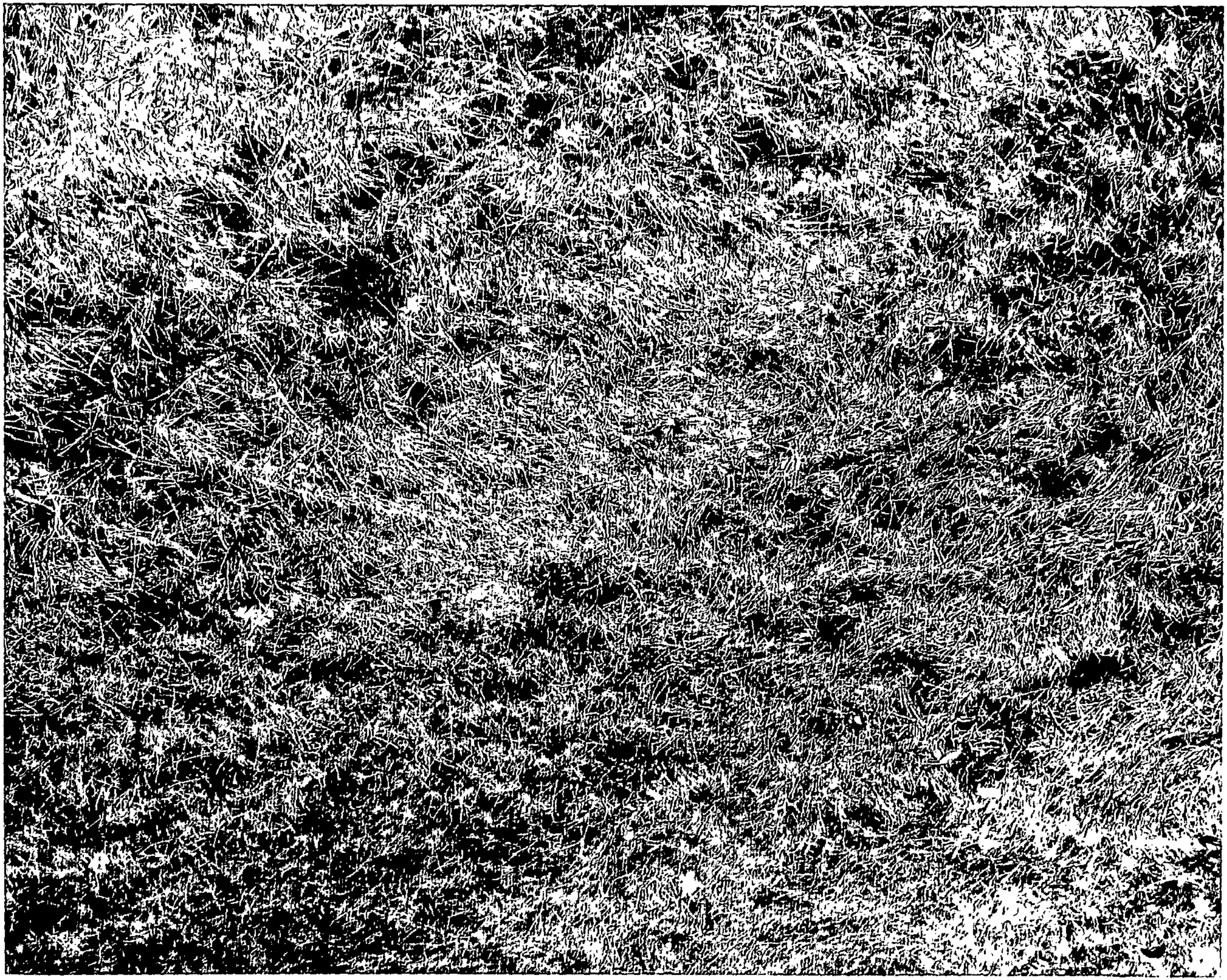
BOA Prot #12e

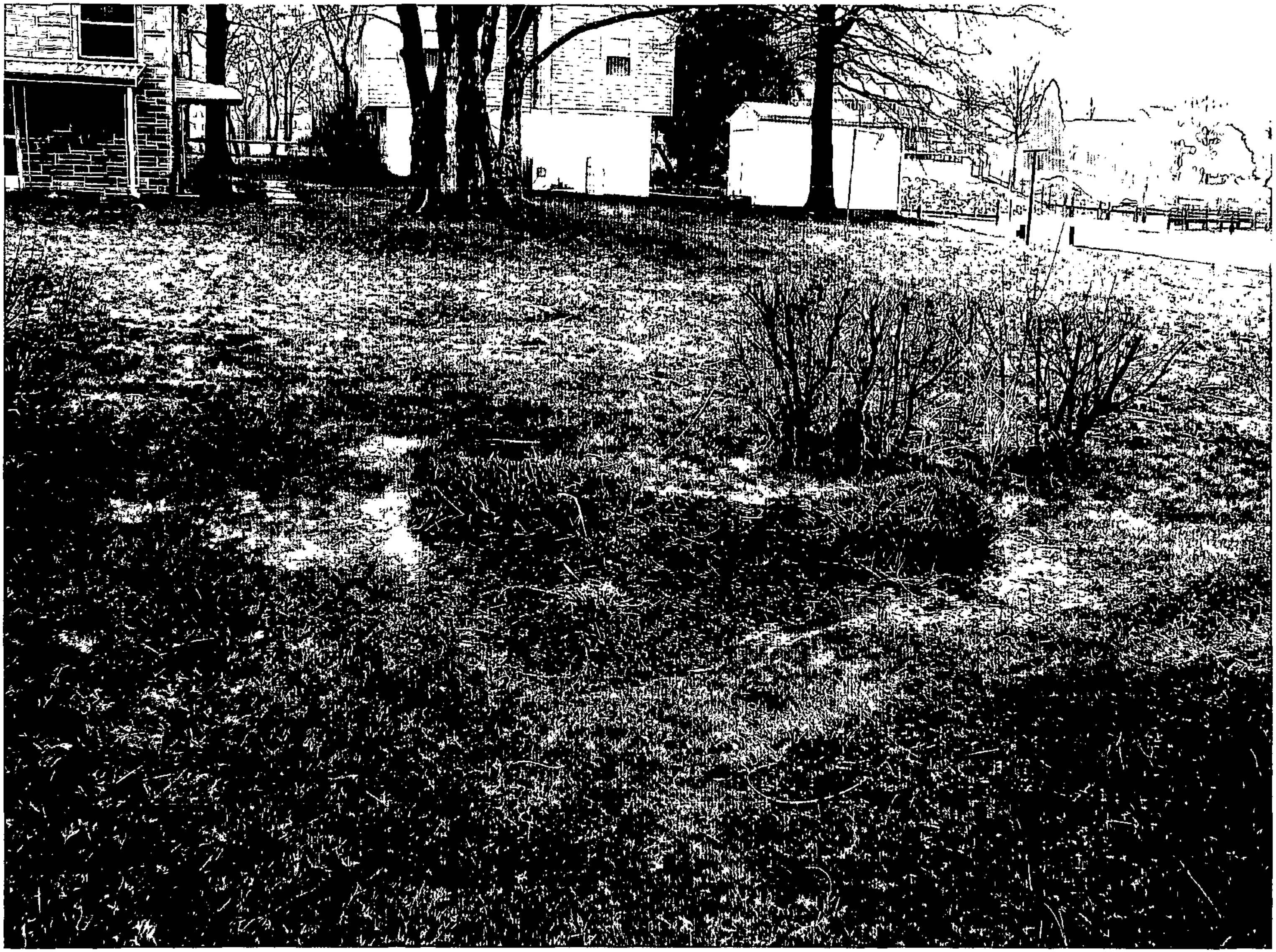
Prot #7e











Opposition To:
"Request to construct a new dwelling on undersized lot"

The residents, and property owners, as signed below, strongly oppose the request to build a new house on Lot 10, (which would be 2315 Turkey Point Road). It is known that this lot is not orphaned, but has contiguous ownership to Lot 11, (which is now 2317 Turkey Point Road), by the same family. These lots were sold together in 2003. It is our understanding that present zoning requirements stipulate a 70' wide lot to build a new single-family dwelling. This far exceeds the 50' width, of one lot, but is well within the 100', of the two adjoined lots. It is the communities wish to have the lots (10 & 11) remain together, as one property, to preserve the present spacing and openness of the area. We have been besieged by building and development ever since the public sewerage was installed. Please stop some of this gratuitous building, and slow the over-crowding which is ruining this area. This lot is "critical area", and not only does it impact the streets, sewerage and water, but also impacts an already overcrowded waterway.

The description of lot 10 as stated in the previous Deed dated 11-15-94, states the following:

"Being known and designated as Lot 10 on the Plat of Turkey Point Farm (now known as Rockaway Beach), which is recorded among the Land Records of Baltimore County in Plat Book W.P.C. No. 4, Folio 171. **The improvements thereon being known as 2317 Turkey Point Road.** (Copy of deed attached as Exhibit A).

Name	Signature	Address
Jim & Stephanie Wacker		2312 Turkey Pt. Rd
Les & Nancy Schleeter		2316 Turkey Pt Rd
Charles J. Wright Jr		2318 Turkey Pt. Rd.
Earl & Dori Burkett		2325 Turkey Pt. Rd
Kim Simmonds		2326 Turkey Pt Rd
Tim Neal		626 Rockaway Beach Ave
Tim Porter		2319 Turkey Pt Rd
Tracy Kaas		2311 Turkey Pt Rd
Michael Baker		2310 Turkey Pt Rd
Erin M. Kimmel		705 Rockaway Beach Ave
John Barbera		710 Rockaway Beach Ave
Tim Neal		719 Rockaway Beach Ave
Jacob J. Neland Jr.		2429 Beach Ave
Kim Hacker		2427 Beach Ave.
Kathleen Neal		707 Rockaway Beach Ave
Chas. J. Merkel		2311 Turkey Point Rd

Pro. Ex. #18 #1

Christopher Boggs	2327 TURKEY POINT Rd
JOSEPH GOUGHLIN	852 Sue Grove Rd
[illegible]	2055 [illegible] Dr
Ed Bennett	2600 Bauernschmidt Dr
Bill Miller	2710 Bauernschmidt Dr.
[illegible]	2222 Bauernschmidt Dr
Rachelle Sartain	2227 Bauernschmidt dr.
Karen Leventis	2702 Bauernschmidt Dr.
Charles + Evelyn Rose	610 Greyhound Rd 21221
Ed Young	1912 OLD TURKEY POINT RD 21221
[illegible]	711 Rockaway Beach 21221
Richard W Demo	2313 Turkey POINT ROAD 21221
Ellen L Demo	2313 Turkey Pt Rd

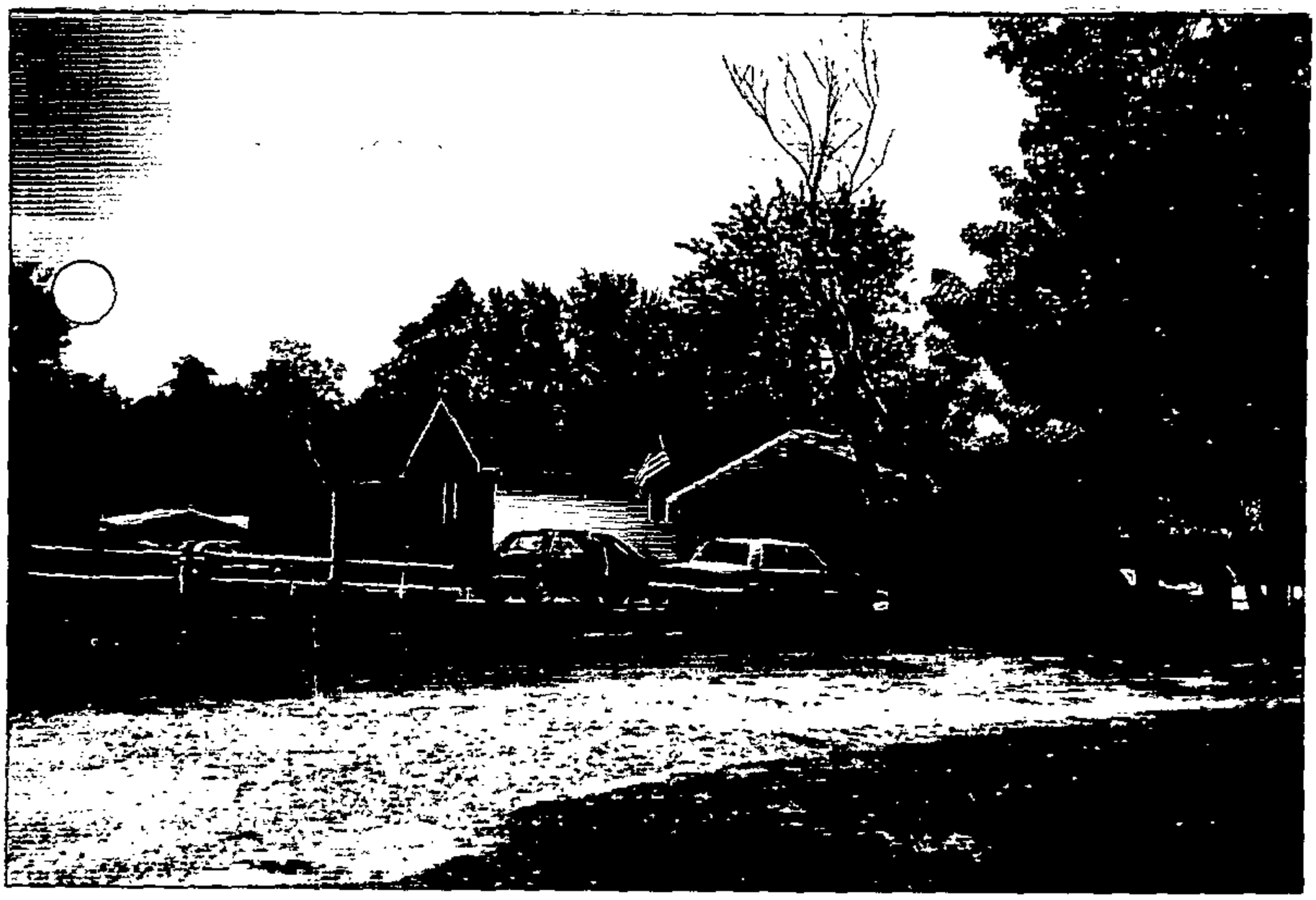


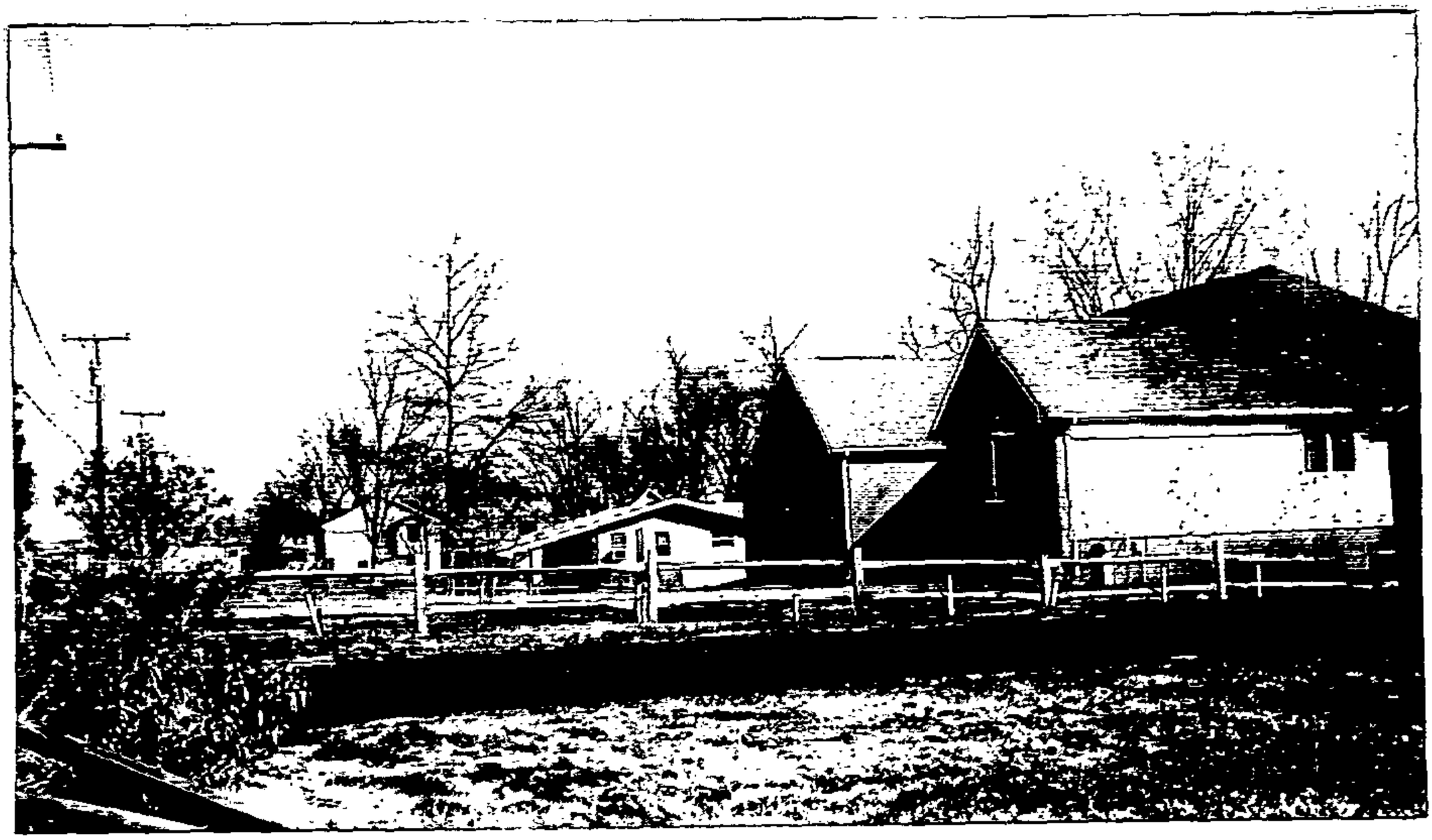






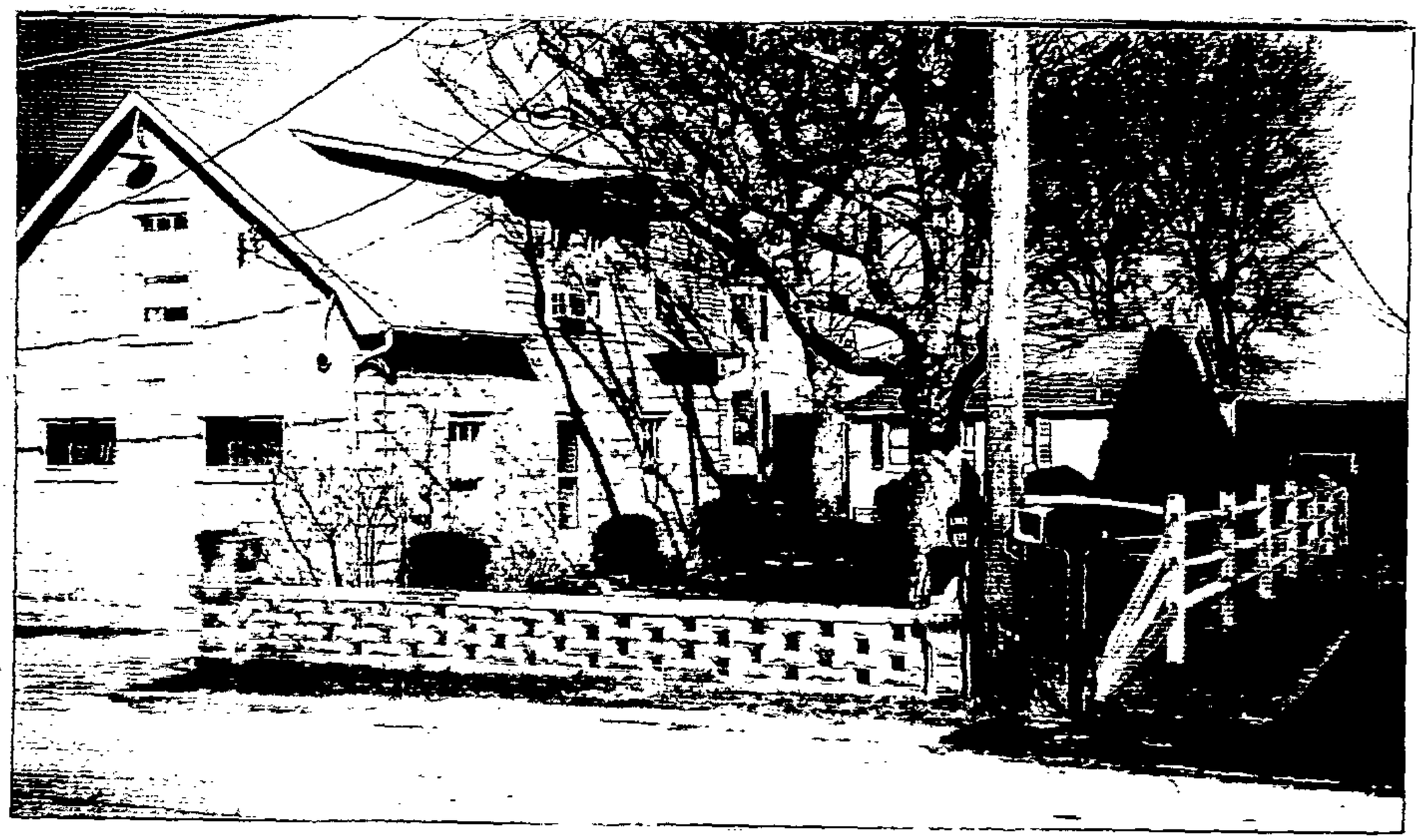














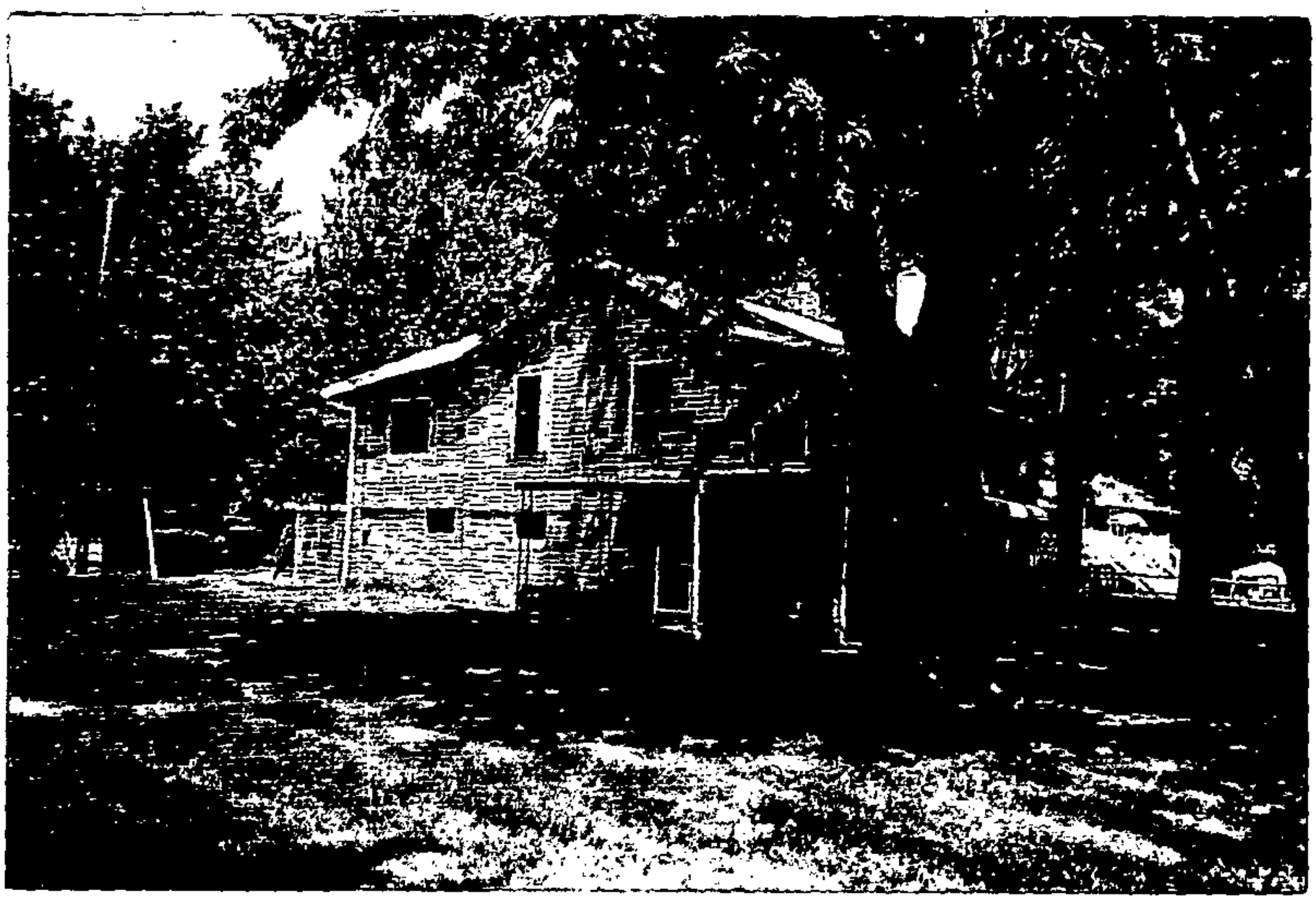







SPEED
LIMIT
25



















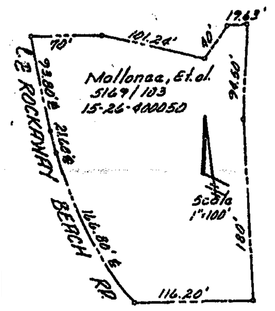


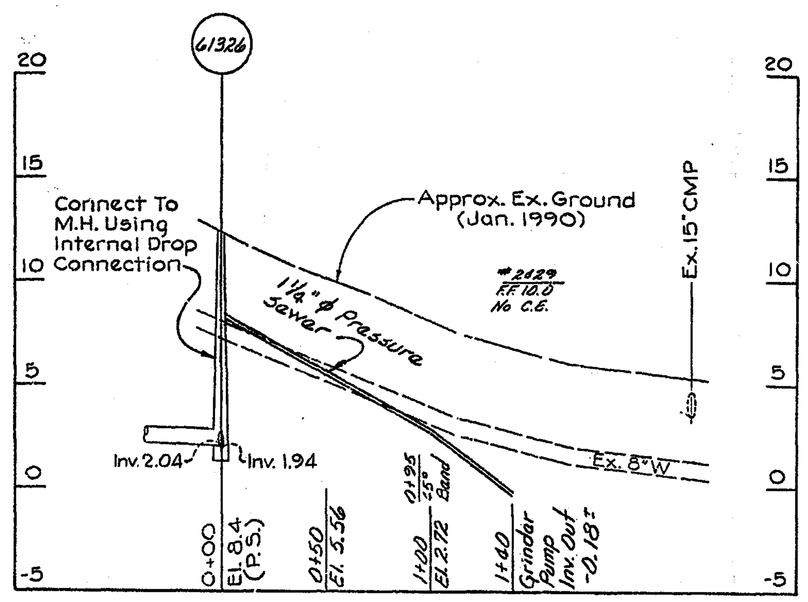


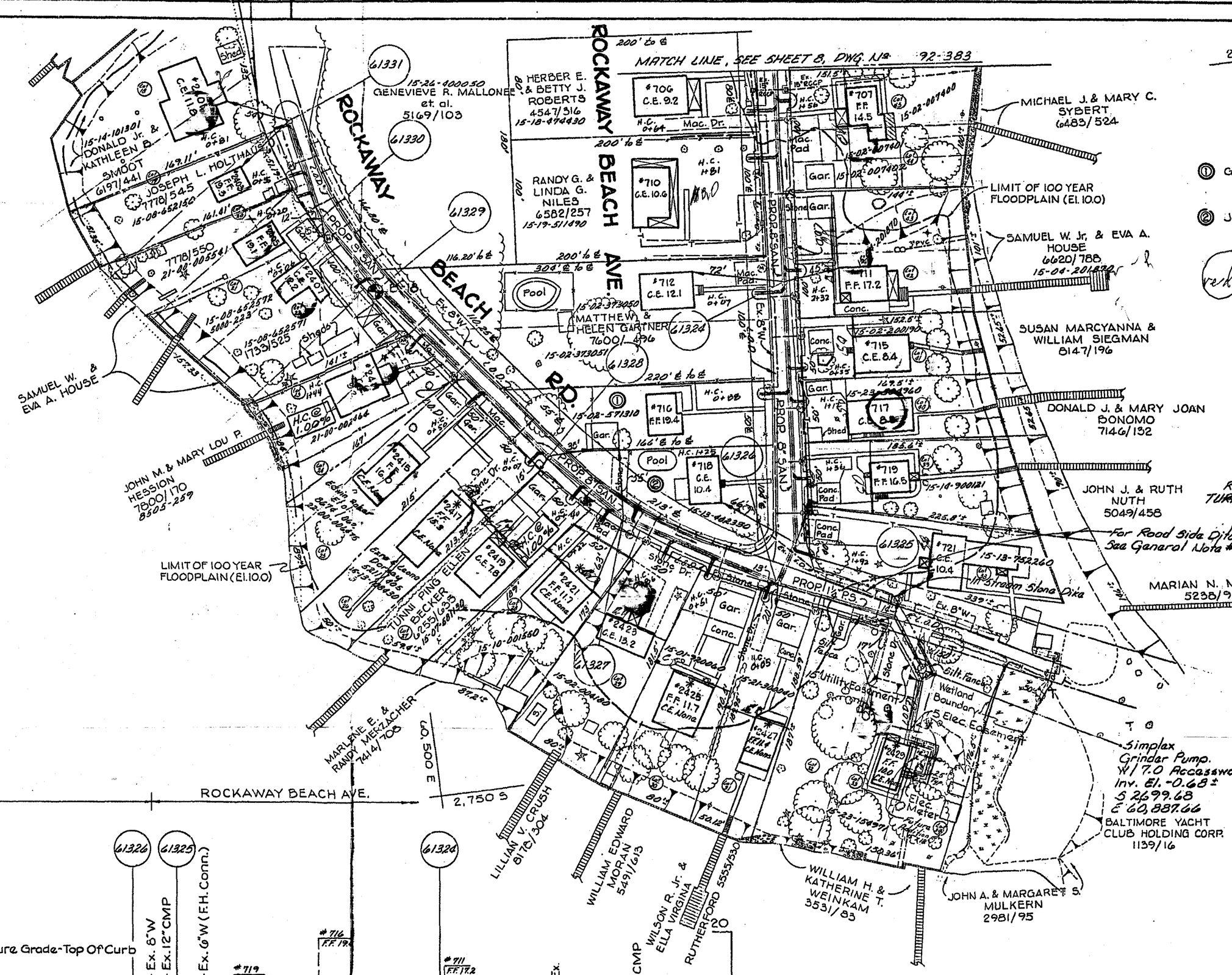
NUMBER OF HOUSE CONNECTIONS REQUIRED - 24
SINGLE STACK - 0
SINGLE - 23
GRINDER PUMP - 1

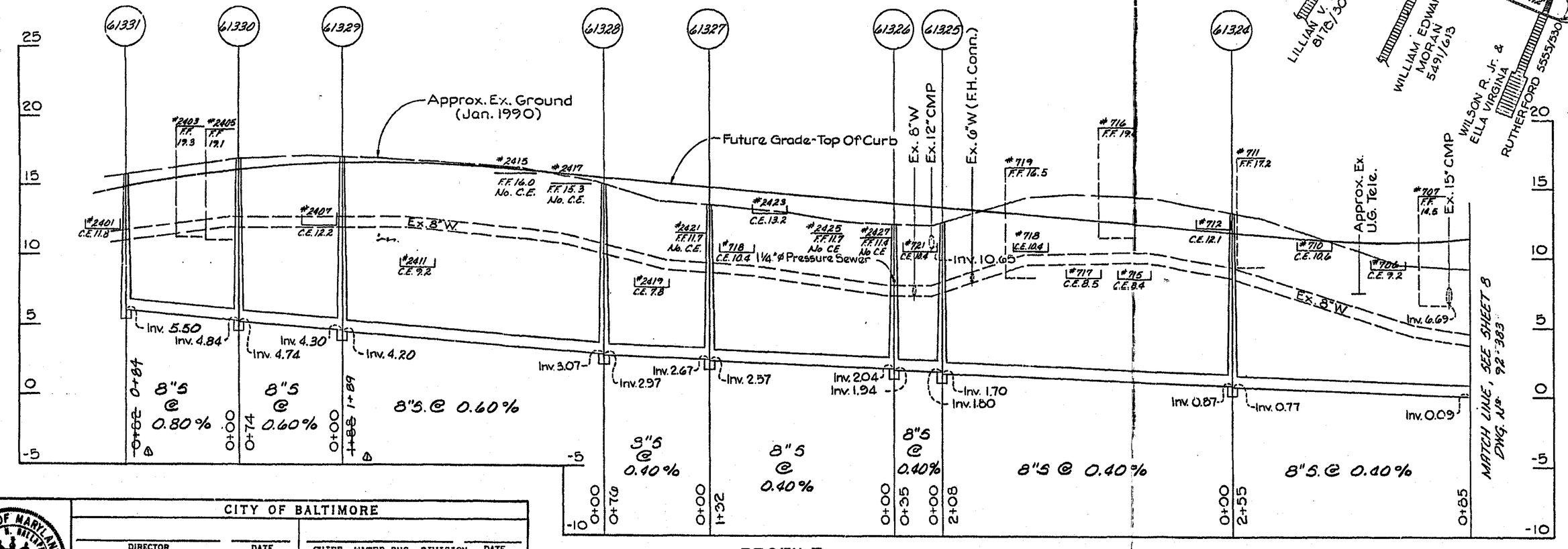
In accordance with the Baltimore County Plumbing Code, Section 6.6.1., the homeowners are responsible for the installation of an approved backflow valve on their house discharge lines for the following addresses:

#2409 Rockaway Beach Road	#712 Rockaway Beach Avenue
#2411 Rockaway Beach Road	#2401 Rockaway Beach Road
#2425 Rockaway Beach Road	#2407 Rockaway Beach Road
#2427 Rockaway Beach Road	#2419 Rockaway Beach Road
#706 Rockaway Beach Avenue	#2421 Rockaway Beach Road
#710 Rockaway Beach Avenue	
#715 Rockaway Beach Avenue	
#717 Rockaway Beach Avenue	
#718 Rockaway Beach Avenue	
#721 Rockaway Beach Avenue	









* SERVICE TO FIRST FLOOR ONLY
# 2415 Rockaway Beach Rd.
# 2417 " " "
# 2421 " " "
# 2425 " " "
# 2427 " " "
# 2429 " " "

SOIL CONSERVATION
APPROVED FOR SEDIMENT CONTROL
4-29-93
4-29-93
A-1 6-14-93 WMQC

CITY OF BALTIMORE

DIRECTOR DEPT. OF PUBLIC WORKS — DATE
CHIEF, WATER ENG. DIVISION BUR. OF WATER AND WASTEWATER — DATE

DATE	RIGHT OF WAY	REF.	ROAD PERMIT AND GRADES	P. W. A. DIR. NO.	CONTRACT NO.	REVISED AS PER RECORD PRINT J.O.	DRAFTSMAN	DATE
	R/W 89-329		PERMIT REQUESTED PERMIT NUMBER 6-19-50 GRADE ESTABLISHED PROFILE NUMBER 50-026	8158	93127 SX1	1-17-33	S. HALE	10/12/98

STATE OF MARYLAND — THOMAS B. WATSON — No. 10966 — REGISTERED PROFESSIONAL ENGINEER — SEAL

		BUREAU OF ENGINEERING	HIGHWAYS	STRUCTURES	STORM DRAINS	WATER	SEWER	FIELD ENGINEER
DESIGNED DAV								
DRAWN CDT/DLM	ENGINEER T.M. Dudley Pdl.	REVIEWED	RLD		R&W	U.N.	GAK	LEP
CHECKED TJM	DATE 1/24/92 LIC. NO. 10966	DATE	6/15/92		6/15/92	6/15/92	6/15/92	7/6/92

BUREAU OF ENGINEERING — APPROVED [signature] CHIEF — DATE 7/6/92
DEPARTMENT OF PUBLIC WORKS — APPROVED [signature] DIRECTOR — DATE 7/7/92

LEVEL BK.	KEY SHEET	DATE	REVISION	BY
	ZZ-NW	3/28/94	Revised Prop. Lines	R.P.K.
DETAIL BK.	POSITION SHEET	11/15/96	As Built	S.E.H.
	3 SE 41			

SCALE — PLAN: 1"=50' — PROFILE: HOR. 1"=50' VERT. 1"=5'

BALTIMORE COUNTY DEPARTMENT OF PUBLIC WORKS BUREAU OF ENGINEERING
8" SANITARY SEWER & EROSION & SEDIMENT CONTROL
ROCKAWAY BEACH ROAD, ROCKAWAY BEACH AVE.
SUBDIVISION "Middle Back River Neck Area" — EL. DISTRICT NO. 15-C5 — BALTIMORE COUNTY TAX MAP NUMBER 1

93127 SX1

BEAVIN COMPANY Engineers - Surveyors BALTIMORE MARYLAND — JOB ORDER NO. 1-17-33
SHEET 9 OF 27
DWG. NO. 92-384
FILE:

MICROFILMED

NUMBER OF HOUSE CONNECTIONS REQUIRED - 21
SINGLE STACK - 12
SINGLE - 7
OUT OF MH - 2

23E

PORTION OF ROCKAWAY BEACH 6-173

REVISED PLAT OF MIDDLEVIEW PORTION OF ROCKAWAY BEACH 7-112

TURKEY POINT ROAD

ROCKAWAY BEACH AVE

MATCH LINE, SEE SHEET 8-12 DWG. No. 92-381

For Continuation See Dwg. 92-383, File 1 Sheet 8

For Continuation See Dwg. 92-383, File 1 Sheet 8

WAYNE R. & CAROL H. WUNDER 6728/67 — 15-23-153850 — 15-23-153451

RICHARD G. & IRENE D. BEATTY 5358/290 — 15-23-151310

JERRY D. & JOSEPHINE OWENS 6220/241 — 15-23-1022702 — 15-23-1022701

ROBERT J. & CAROLYN S. PILAR 7952/95 — 15-23-154220

ROBERT E. & DIANE L. FORD 5551/655 — 15-23-003100

ROBERT A. & CATHERINE E. FORD 5464/630 — 15-02-451060

EDWARD N. & NELLIE L. SUTTON 4089/469 — 15-19-850850

HOWARD M. & ELIZABETH F. HENNING 7645/350 — 15-02-571311

GARY E. & CAROLE L. LEDLEY 5230/321 — 15-02-201380

ROBERT B. & GENEVIEVE B. LLUPRIO 6841/806 — 15-18-870040

NANCY L. RYCHWALSKI 7563/610 — 15-18-870040

WILLIAM K. FREYER 3729/520

WILLIAM L. & JEAN M. TORBERT 2902/67

Charles & Gloria Justice 15-23-231190 6523/573

Charles & Gloria Justice 17-02-023515 6259/422

Wetland Boundary

Tree Conservation Area

Silt Fence

Stone Dr.

Stone Drive

Mac. Drive

Mac. Parking Lot

Conc. Walk

Conc. Pad

Wood Deck

Shed

Garage

Patio

Flag Pole

Septic

Woods

Wetland Boundary

Ex. 12"W

PROP. 8" SAN.

PROP. B'WALK

Ex. 8" SAN.

Ex. 6" W

Mac. Berm

Mac. Lot

Ex. 12" W

Mac. Lot

Wetland Boundary

B/W-15

In-Stream Stone Dike, Placed Just Prior to Ex. 12" Dr.

In-Stream Stone Dike

Place Filter Cloth, Clear Opening of 6" P.V.C. & Place Small Stone Over Fabric, Clean as Needed. Cost to be Included in other Items Bid.

For Road Side Ditch See General Note #17

TURKEY POINT FARM ROCKAWAY BEACH 4-171

LIMIT OF 100 YEAR FLOODPLAIN (El. 10.0)

Tax Ditch

Ex. 12" CMP

Ex. 6" W (F.H. Conn.)

Ex. 12" CMP

Ex. 6" W (F.H. Conn.)

Ex. 12" CMP

Ex. 8" W

Approx. Ex. Ground (Jan. 1990)

Future Grade - Top Of Curb

Ex 12" W

Inv. 9.00

Inv. 8.16

Inv. 15.0

Inv. 14.73

Inv. -0.68 8" San. Rockaway Beach Ave. (N)

Inv. -0.78

Inv. -0.68 8" San. Rockaway Beach Ave. (S)

6" H.C. Inv. 3.30

6" H.C. Inv. 0.00

6" Type "A" Drop

6" Type "B" Drop

8" San., See Dwg. 92-381 (Sh. 6) Inv. -0.72

10" San. See Dwg. 92-381 (Sh. 6)

Inv. -6.60'

Inv. -6.50

Inv. -6.30

Inv. -6.20

Inv. -5.35

Inv. -5.25

Inv. -4.21

Inv. -4.11

Inv. 2.48

Inv. -2.38

10" D.I.P. Class 52 @ 0.40%

10" D.I.P. Class 52 @ 0.40%

10" D.I.P. Class 52 @ 0.40%

10" D.I.P. Class 52 @ 0.40%

0+00

0+50

0+78

2+12

0+00

0+10

2+76.8

0+00

4+08.5

0+00

4+01.5

In accordance with the Baltimore County Plumbing Code, Section 6.6.1., the homeowners are responsible for the installation of an approved backflow valve on their house discharge lines for the following addresses:

#2307 Turkey Point Road
#2308 Turkey Point Road
#2310 Turkey Point Road
#2312 Turkey Point Road
#2313 Turkey Point Road
#2327 Turkey Point Road
#2331 Turkey Point Road

PROFILE

CITY OF BALTIMORE

DIRECTOR DEPT. OF PUBLIC WORKS — DATE

CHIEF, WATER ENG. DIVISION BUR. OF WATER AND WASTEWATER — DATE

SEAL

DATE	RIGHT OF WAY	REF.	ROAD PERMIT AND GRADES	P. W. A. DIR. NO.	CONTRACT NO.	REVISED AS PER RECORD PRINT		
						J.O.	DRAFTSMAN	DATE
	R/W 89-329		PERMIT REQUESTED	8158	93127 SX1	1-17-33	S.HALE	10/13/98
			PERMIT NUMBER					
			GRADE ESTABLISHED 6-19-50					
			PROFILE NUMBER 50-025					

		BUREAU OF ENGINEERING	HIGHWAYS	STRUCTURES	STORM DRAINS	WATER	SEWER	FIELD ENGINEER
DESIGNED DAV								
DRAWN CDT	ENGINEER T.N. DuBois Pe	REVIEWED	RCB		RL	OK!	GAK	LEP
CHECKED TJM	DATE 1/24/92 LIC. NO. 10466	DATE	6/16/92		6/15/92	6/15/92	6/15/92	7/6/92

BUREAU OF ENGINEERING — APPROVED Ronald C. Anderson CHIEF — DATE 7/6/92

DEPARTMENT OF PUBLIC WORKS — APPROVED Glenn F. Orem DIRECTOR — DATE 7/7/92

LEVEL BK. — DETAIL BK.

KEY SHEET E-NE, ZZ-NW
POSITION SHEET 2 SE 40, 41; 3 SE 41

DATE	REVISION	BY
3/23/94	Revised Prop. Lines	RAE
10/13/98	AS BUILT	SEH

SCALE — PLAN: 1"=50' — PROFILE: HOR. 1"=50' VERT. 1"=5'

SOIL CONSERVATION
APPROVED FOR SEDIMENT CONTROL
Curtis A. Sewell 4-29-93 DATE
4-29-93 DATE

R-1 6-14-93 W/R QC.

BEAVIN COMPANY Engineers - Surveyors BALTIMORE, MARYLAND

JOB ORDER NO. 1-17-33

BALTIMORE COUNTY DEPARTMENT OF PUBLIC WORKS BUREAU OF ENGINEERING

8" SANITARY SEWER & EROSION & SEDIMENT CONTROL
TURKEY POINT ROAD

SUBDIVISION Middle Back River Neck Area. EL. DISTRICT NO. 15-C5

BALTIMORE COUNTY TYPE NUMBER 1

SHEET 7 OF 27

DWG. NO. 92-382

FILE: /

93127 SX1

For Continuation See Dwg. 92-382 File 1 Sheet 7

NUMBER OF HOUSE CONNECTIONS REQUIRED - 30
SINGLE STACK - 10
SINGLE - 19
OUT OF MH - 1

REVISED PLAT OF MIDDLEVIEW ROCKAWAY BEACH 7/112

ADDITION to MIDDLEVIEW 7/113

TURKEY PT. RD.

ROCKAWAY BEACH AVE.

ROCKAWAY BEACH

WILLIAM R. Sr. & EVELYN G. LAMP 9372/696

ANNABELLE Z. & ELMER S. REICHEL 1689/283

ROSE COMI 7740/129 et al. 15-03-870050

JAMES G. & MARIE A. KUYAWA 4242/562

ELIZABETH M. LINZ et al. 15-12-900131 3030/486

Linz 15-12-900131 3030/486

Bougher 6057 & 529 15-23-000780

Martin 15-12-002871

Siagman 5257/789 15-19-915110

Korby 2824/511 15-11-150300

Wetlands

Ex. 6"W

PROP. 8" SAN.

Ex. 8"W

Ex. 6"TCP

Inv. 18.10

Ex. 18" CMP

Future Grade-Top Of Curb

Approx. Ex. Ground (Jan. 1990)

Inv. 10.97

6" H.C. Inv. 7.13

Inv. 7.09

Inv. 2.93

Inv. 3.08

Inv. 0.78

Inv. 0.88

Inv. 1.28

Inv. 1.38

Inv. -0.25

Inv. 0.09

Inv. -0.35

Inv. -0.66

Inv. -0.26

Inv. -0.78

Inv. -0.16

8" D.I.P. Class 52 @ 0.40% Inv. -0.78 8' San. Turkey Point Rd. See Profile Sht. No. 7

8" D.I.P. Class 52 @ 0.40 %

8" D.I.P. Class 52 @ 1.00 %

8" S @ 0.40 %

MATCH LINE, SEE SHEET 9 DWG. NO. 384

LIMIT OF 100 YEAR FLOODPLAIN (EL. 10.0)

① Charles & Gloria Justice 15-03-231190 6503/573

② Charles & Gloria Justice 17-00-003515 6259/422

61,000 E

22,500 S

In accordance with the Baltimore County Plumbing Code, Section 6.6.1., the homeowners are responsible for the installation of an approved backflow valve on their house discharge lines for the following addresses:

#615 Rockaway Beach Avenue
#619 Rockaway Beach Avenue
#625 Rockaway Beach Avenue
#627 Rockaway Beach Avenue
#629A Rockaway Beach Avenue
#631 Rockaway Beach Avenue
#633 Rockaway Beach Avenue
#635 Rockaway Beach Avenue
#637 Rockaway Beach Avenue
#645 Rockaway Beach Avenue
#645A Rockaway Beach Avenue
#702 Rockaway Beach Avenue

PROFILE

CITY OF BALTIMORE

DIRECTOR DEPT. OF PUBLIC WORKS — DATE

CHIEF, WATER ENG. DIVISION — DATE
BUR. OF WATER AND WASTEWATER

DATE	RIGHT OF WAY	REF.	ROAD PERMIT AND GRADES	P. W. A. DIR. NO.	CONTRACT NO.	REVISED AS PER RECORD PRINT		
						J.O.	DRAFTSMAN	DATE
	R/W 89-329		PERMIT REQUESTED PERMIT NUMBER GRADE ESTABLISHED 6-19-50 PROFILE NUMBER 50-026	8158	93127 5X1	1-17-33	S. HALE	10/13/98

SEAL

		BUREAU OF ENGINEERING	HIGHWAYS	STRUCTURES	STORM DRAINS	WATER	SEWER	FIELD ENGINEER
DESIGNED DAV								
DRAWN CDT	ENGINEER T.N. DallaPalu	REVIEWED	RBB	X	R&C	WJL	GAK	LEP
CHECKED TJM	DATE 1/29/92 LIC. NO. 10966	DATE	6/15/92		6/15/92	6/15/92	6/15/92	7/6/92

BUREAU OF ENGINEERING
APPROVED Paul D. Hudson CHIEF
DATE 7/6/92

DEPARTMENT OF PUBLIC WORKS
APPROVED Glenn F. Mello DIRECTOR
DATE 7/7/92

SOIL CONSERVATION
APPROVED FOR SEDIMENT CONTROL
Quentin A. Cornwell 4-29-93
DATE 4-29-93

R-1 6-14-93 QC.

93127 5X1

LEVEL BK.	KEY SHEET			
	ZZ-NW	3-24-94	Revised Prop. Lines	RRF
DETAIL BK.		6-13-94	Add 50' DIP, Move Two MH's	RRF
	POSITION SHEET	10/13/98	AS BUILT	S.E.H.
	2 SE 41 3 SE 41	DATE	REVISION	BY

SCALE
PLAN: 1"=50'
PROFILE: HOR. 1"=50' VERT. 1"=5'

BALTIMORE COUNTY DEPARTMENT OF PUBLIC WORKS BUREAU OF ENGINEERING
8" SANITARY SEWER & EROSION & SEDIMENT CONTROL
ROCKAWAY BEACH AVE.
SUBDIVISION "Middle Back River Neck Area" EL. DISTRICT NO. 15-C5
BALTIMORE COUNTY TYPE NUMBER 1

BEAVIN COMPANY
Engineers · Surveyors
BALTIMORE, MARYLAND

JOB ORDER NO. 1·17·33
SHEET 8 OF 27
DWG. NO. 92-383
FILE: 7