IN RE: PETITIONS FOR SPECIAL HEARING AND VARIANCE S side of Lynch Road, 60 ft. wide, w of c/l of Marsdale Rd., 60' wide 12th Election District

7th Councilmanic District (2001-2035 Lynch Road)

Hidden Cove Apartments, LLC Petitioners \* BEFORE THE

\* DEPUTY ZONING COMMISSIONER

\* FOR

\* BALTIMORE COUNTY

\* CASE NO. 06-107-SPHA

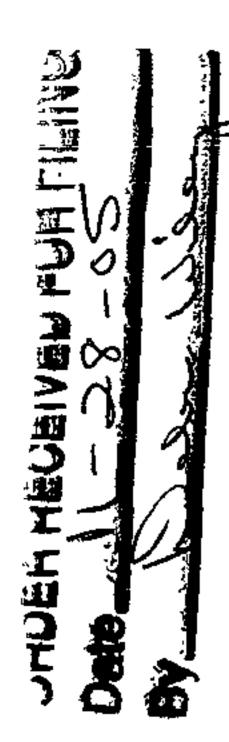
\* \* \* \* \* \* \* \* \*

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Special Hearing and Variance filed by the legal owners of the subject property, Hidden Cove Apartments, LLC, Owners and P& S Homes, Inc., Contract Purchaser. The Petitioners are requesting Special Hearing and Variance relief for property owned at 2001-2035 Lynch Road in the Dundalk area of Baltimore County.

The Special Hearing request is filed pursuant to Sections 500.6 and 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.):

- To confirm that density (RA) for the subject as existed at the time of an approved preliminary plan remains and is applicable to the proposed development (See B.C.Z.R., 1963, Residential Apt, Section 217.7).
- To confirm the application of the DR 5.5 regulations as to use, bulk and area standards for the proposed development.
- Pursuant to above Sections and Section 32-4-107 (Baltimore County Code), to permit construction in a Tidal Flood Zone A.
- To amend an approved preliminary plan for "Bear Creek Towne".
- To confirm, pursuant to Section 409 of the B.C.Z.R., that no parking spaces are required for a proposed community pier.
  - To confirm that the Residential Transition Area (RTA) standards are not applicable to the proposed addition.
- For such other and further Special Hearing relief as the Zoning Commissioner may require.



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The Variance request is filed pursuant to Section 1A04.3.B.2.b of the B.C.Z.R.:

- To permit a setback of as little as 18 feet from a dwelling to a use division line in lieu of the required 25 feet, pursuant to Sections 102.2 and 1B01.2C.1 of the B.C.Z.R. for proposed dwelling on Lot 2.
- To permit as little as 0 sq. feet contiguous private yard area per dwelling on proposed Lot 2 in lieu of the 500 feet required by Section 504.2 B.C.Z.R., Page 27 (CMDP).
- To permit proposed deck extensions of 10 feet in lieu of the maximum permitted 7.5 feet, pursuant to Section 301 of the B.C.Z.R. for proposed dwellings on Lot 2.
- To permit a front setback of 13 feet in lieu of the required 25 feet pursuant to Section 1B01.2C.1 of the B.C.Z.R. for proposed unit #1 on Lot 2.
- To permit a side setback of 8 feet in lieu of the required 15 feet pursuant to Section 1B01.2C.1 of the B.C.Z.R. for proposed unit #5 of Lot 2.

The property was posted with Notice of Hearing on October 2, 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 October 4, 2005, to notify any interested persons of the scheduled hearing date.

### **Amended Petition**

Subsequent to the hearing in a letter dated November 18, 2005, the Petitioner withdrew its request for Variance without prejudice.

### Applicable Law

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

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

Section 307 of the B.C.Z.R. - Variances.

"The Zoning Commissioner of Baltimore County and the County Board of Appeals, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where

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

### **Zoning Advisory Committee Comments**

The Zoning Advisory Committee (ZAC) Comments are made part of the record of this case and contain the following highlights: A ZAC comment was received from the Office of Planning dated September 22, 2005, a copy of which is attached hereto and made a part hereof.

### **Interested Persons**

Appearing at the hearing on behalf of the requested Special Hearing and Variance relief were Richard Matz, professional engineer, who prepared the site plan and Thomas Scherr, for the corporate Petitioner. Lawrence E. Schmidt, Esq. represented the Petitioners. There were no protestants or interested citizens in attendance at the hearing. People's Counsel, Peter Max Zimmerman, entered the appearance of his office in this case.

### Testimony and Evidence

Mr. Schmidt proffered that the entire tract contains 48 acres and is divided into two (2) sections which he designated using the existing tax map parcel numbers. Parcel 301 contains 30.7 acres and parcel 64 contains 17.48 acres. Eventually, the Petitioner proposes to resubdivide the property into two (2) lots of 35.7 acres, which will contain all the structures and a second lot with 10.23 acres containing the HOA area.

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The overall tract is split-zoned DR 16 and DR 5.5 along the parcel 301 and parcel 64 boundary. Parcel 301 is zoned DR 16 with apartments known as the Hidden Cove Apartments. However, the Petitioner proposes to use a small portion of Parcel 301 for the road servicing the new development and part of seven (7) new condo units. Parcel 64 is zoned DR 5.5 and will contain the remaining condominium units. See Petitioner's Exhibit 6 for details of the new development and Exhibit 1 for the overall plan. Parcel 64 is essentially a peninsula jutting out into Bear Creek, a tributary of the Chesapeake Bay. The new development would be separated from Bear Creek by an extensive forest buffer area.

Mr. Schmidt presented Exhibit 2, the preliminary development plan known as Bear Creek Towne, which was approved by the County in 1966. It shows the Hidden Cove Apartments on parcel 301 were approved but the proposed development on parcel 64 "x" out and presumably not approved. The companion subdivision plat, Exhibit 3, was recorded in 1967 and reflects the County's decision not to approve the waterfront development on parcel 64 but to approve only the apartment complex on parcel 301.

The Special Hearing issues are as follows:

• To confirm that density (RA) for the subject as existed at the time of an approved preliminary plan remains and is applicable to the proposed development (See B.C.Z.R., 1963, Residential Apt, Section 217.7).

Mr. Schmidt indicated that the development plan and subdivision were approved under the RA, Residence, Apartment (1955 regulations), which allowed 18 apartments per acre net density. As such, 554 apartments would be allowed. The Hidden Cove Apartments has 504 apartments actually built leaving 50 apartments unused. The Petitioner would like to use seven (7) of the 50 left over apartments for this project.

In the alternative, the Petitioner argues that if one looks at the 30.7 acres of DR 16 having density of 16 units per acre, 492 density units would be allowed. 17.48 acres of DR 5.5 would allow 96 density units for a total of 588 units allowed. The existing apartment complex has 504 units and the Petitioner proposes 39 units for a total of 543 units proposed. Again, the overall density is not exceeded as there are 45 units remaining.

Finally, he argues that the bulk of the new condo units lie within the DR 5.5 zone. 39 new units are proposed. 96 units are allowed in the DR 5.5 zone. Consequently, the seven (7) condos, which are split by the zoning boundary line, should be attributed to the DR 5.5 zone even though parts of these units lie across the zone boundary.

 To confirm the application of the DR 5.5 regulations as to use, bulk and area standards for the proposed development.

Mr. Schmidt proffered that given the great bulk of the units are in the DR 5.5 zone, the DR 5.5 regulations are the applicable regulations for this new development.

• Pursuant to above Sections and Section 32-4-107 (Baltimore County Code), to permit construction in a Tidal Flood Zone A.

Mr. Schmidt proffered that units 1 through 11 are located in tidal flood zone A which require a waiver under Section 32-4-107 of the BCC. Mr. Matz drew the demarcation line between flood zone A and B on Petitioner's Exhibit 1 in pink highlighter. He noted that this was not a riverine flood area where new buildings are prohibited but rather a tidal flood area, which can be approved for new construction if the first floor of the residence is above the flood tide height, which he indicated in this case, is 11.4 feet. He presented Exhibit 4, the elevations for units 1 through 11, which shows only garages on the ground floor. Finally, Mr. Matz indicated that whatever fill is placed in the flood zone to build these units would not increase the flood levels as this fill is insignificant compared to the tidal flood area.

To amend an approved preliminary plan for "Bear Creek Towne".

Mr. Schmidt indicated that the Zoning Office would like the preliminary plan for "Bear Creek Towne" to be amended to reflect the proposed development. Seven (7) condos and the service road would be added to the old plan.

 To confirm, pursuant to Section 409 of the B.C.Z.R., that no parking spaces are required for a proposed community pier.

Mr. Matz indicated that he asked the Department of Environmental Protection and Resource Management (DEPRM) in an initial submission to allow some parking near the proposed pier. However, because the pier would be used only by residents of the 39 units, and the parking lot would be located in the forest buffer area, DEPRM declined to allow that request. He pointed out however that the HOA could and likely would assign a few parking spaces as shown in orange highlighter on Exhibit 1 for residents who had heavy items to carry to their boats moored at the community pier. In any case, the pier would not be open to the public.

• To confirm that the Residential Transition Area (RTA) standards are not applicable to the proposed addition.

Mr. Matz points out that there are no single-family detached, semi detached or duplex dwellings within 150 feet of the proposed development. Nor is the undeveloped tract less than two (2) acres. Consequently, no RTA is generated.

### Findings of Fact and Conclusions of Law

To confirm that density (RA) for the subject as existed at the time of an approved preliminary plan remains and is applicable to the proposed development (See B.C.Z.R., 1963, Residential Apt, Section 217.7).

In regard to the issue to confirm that density (RA) for the subject as existed at the time of an approved preliminary plan remains and is applicable to the proposed development (See

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B.C.Z.R., 1963, Residential Apt, Section 217.7), I find that the subdivision plat was approved in 1967 allowing 504 apartments. 504 are built. A question arose how the County allowed 504 units when the applicable density is DR 16, and area 30.807. This would result in 492 units. However, I believe from reviewing the 1955 regulations that the extra twelve units were granted by the bonus density given to apartments over three stories tall. The regulations give ½ a density unit per floor over three stories. I conclude that the development plan must have shown 24 floors over three (3) stories in the entire complex.

That said, I would attribute the seven (7) partial units in this subject plan to the DR 5.5 zone and grant the requested relief. The overall density of the DR 5.5 zone would allow 96 units whole the developer proposed 39 units. The great majority of the units are in the DR 5.5 zone. There is no density problem in this request. I understand that much of the DR 5.5 zoned area is required to be kept as forest buffer by the present regulations. No further development will occur once the 39 units are built.

• To confirm the application of the DR 5.5 regulations as to use, bulk and area standards for the proposed development.

I agree with Mr. Schmidt that no development was granted in 1967 on parcel 64 and that if this parcel is to be developed now, the DR 5.5 regulations apply. I realize again that seven (7) units are in the DR 16 zone but as I have attributed these seven (7) to the DR 5.5 zone, the use, bulk and area standards of the DR 5.5 zone apply.

 Pursuant to above Sections and Section 32-4-107 (Baltimore County Code), to permit construction in a Tidal Flood Zone A.

As Mr. Matz points out, the first floor of the new 11 units is above the tidal flood level being used for storage only. The living space will be above the flood level. I agree that this tiny amount of fill as compared to the tidal flood area will not increase flood levels. This is not

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a riverine flood area where building in the flood zone can greatly increase the level. Said another way, these 11 units are not going to change the flood level of Chesapeake Bay.

I find that good cause has been shown, and that the Petitioner would suffer exceptional hardship if the waiver were not granted. For the reasons cited above, these 11 units would not increase flood heights, impact public safety, incur extraordinary public expense, create nuisances, cause fraud, or conflict with other laws. Consequently, I grant this request.

• To amend an approved preliminary plan for "Bear Creek Towne".

I agree with the Zoning Office the preliminary plan for "Bear Creek Towne" should be amended as a housekeeping item to reflect the seven (7) new condos and service road.

• To confirm, pursuant to Section 409 of the B.C.Z.R., that no parking spaces are required for a proposed community pier.

There is a very long distance between some condo units and the community pier. As mentioned at the hearing, the HOA will have their hands full trying to juggle demands for parking near the pier and homeowner's rightful parking for their condo. However, I note that overall 90 parking spaces are required for the condos and 98 are proposed. Hopefully, the HOA will be able to assign some of these eight (8) extra spaces to the pier. I will grant this request.

• To confirm that the Residential Transition Area (RTA) standards are not applicable to the proposed addition.

I agree that no RTA is generated. The purpose to the RTA legislation is assure similar housing types are built adjacent to one another or that screening be provided where the housing types are dissimilar. However, not all housing types are protected. As Mr. Matz points out, there are no housing types within 150 feet to trigger a RTA nor is the undeveloped parcel less than two (2) acres. Consequently, I find that a RTA is not applicable to this situation.

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' Special Hearing request should be granted.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 28 day of November, 2005, that the Petitioners' request for Special Hearing relief filed pursuant to 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.), to approve:

- 1. That the density of units 5, 6, 17, 18, 29, 30, and 39 partially located on parcel 301 are to be attributed to parcel 64 and its DR 5.5 zoning; and
- To confirm the application of the DR 5.5 regulations as to use, bulk and area standards for the proposed development.
- Pursuant to above Sections and Section 32-4-107 (Baltimore County Code), to permit construction in a Tidal Flood Zone A.
- To amend an approved preliminary plan for "Bear Creek Towne".
- To confirm, pursuant to Section 409 B.C.Z.R., that no parking spaces are required for a proposed community pier.
- 2. To confirm that the Residential Transition Area (RTA) standards are not applicable to the proposed addition.

be and are hereby GRANTED subject to the following restrictions:

1. Compliance with the ZAC comments made by the Office of Planning, dated September 22, 2005, a copy of which is attached hereto and made a part hereof; and

IT IS FURTHER ORDERED that the Petitioner's request for variance having been withdrawn is dismissed without prejudice.

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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# 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 28, 2005

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

Re: Petition for Special Hearing and Variance

Case No. 06-107-SPHA

Properties: Bear Creek (Parcels 301 + 64)

2001-2035 Lynch Road

Dear Mr. Schmidt:

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: Thomas G. Scherr, P&S Homes, Inc., 701 Fern Valley Circle, Baltimore, MD 21228 Richard E. Matz, Colbert, Matz, Rosenfelt, Inc., 2835 Smith Avenue, Suite G, Baltimore, MD 21209

Chesapeake Bay Critical Area Commission, 1804 West Street, Suite 100, Annapolis, MD 21401

People's Counsel; Case File



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



# Petition for Variance

# to the Zoning Commissioner of Baltimore County

for the property located at: Bear Creek (Parcels 301 + 64) 2001-2035 Lynch Road which is presently zoned: DR 5.5 and DR 16

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

Please see attached.

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

To be presented at hearing.

Property is to be posted and advertised as prescribed by the zoning regulations.

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

Legal Owner(s):

UNAVAILABLE FOR HEARING

Date 8122105

DIT.

Reviewed By

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:

Gase No. 06-107-SPHA

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P&S Homes, Inc.			Hidden Cove Apartments, LLC	
Name - Type or Print		Na	ame - Type or Print	<del></del>
Thomas Solver			C4 11 1	
Signature Tom Scherr	_	<del></del>	Signature ///	<u> </u>
701 Fern Valley Circle		(410) 744-8589	Steven Michael, Author	zed Representativ
Address		Telephone No.	Name - Type or Print	zen keptesentativ
Baltimore, MD 21228		•	, , , , , , , , , , , , , , , , , , ,	•
City	State	Zip Code	Signature	, <u>, , , , , , , , , , , , , , , , , , </u>
Attorney For Petitioner:		_	1950 Old Gallows Road, 6th Floor	(703) 902-2000
T. 77 0 1 11			Address	Telephone No.
Lawrence E. Schmidt			Vienna, VA 22782-3933	
Name - Type or Print	-//	n/// Ci	ty State	Zip Code
Signature Signature	1/18		Representative to be Contac	ted:
Gildea & Schmidt, LLC		V	Th. 1 1 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	
	<u></u>		Richard Matz (Colbert, Matz, Rose	nfelt Inc.)
Company			Name	
300 East Lombard Street, Suite 14	40	410-234-0070	2835 Smith Avenue, Suite G	(410) 653-3838
Address		Telephone No.	Address	Telephone No.
Baltimore	MD	21202	Baltimore, MD 21209	
Сіу	State	Zip Code	City	tate Zip Code
			OFFICE USE ONLY	
	V.10		ESTIMATED LENGTH OF HEARING	

### **ATTACHMENT TO PETITION FOR VARIANCE**

- 1. To permit a setback of as little as 18 feet from a dwelling to a use division line in lieu of the required 25 feet, pursuant to Sections 102.2 and 1B01.2.C.1 of the BCZR for proposed dwelling on Lot 2;
- 2. If determined necessary by the Zoning Commissioner, to permit as little as 0 sq. feet contiguous private yard area per dwelling on proposed Lot 2 in lieu of the 500 feet required by Section 504.2 (BCZR), Page 27 (CMDP);
- 3. To permit proposed deck extensions of 10 feet in lieu of the maximum permitted 7.5 feet, pursuant to Section 301 of the BCZR for proposed dwellings on Lot 2;
- 4. To permit a front setback of 13 feet in lieu of the required 25 feet pursuant to Section 1B01.2.C.1 of the BCZR for proposed unit #1 on Lot 2;
- 5. To permit a side setback of 8 feet in lieu of the required 15 feet pursuant to Section 1B01.2.C.1 of the BCZR for proposed unit #5 of Lot 2; and
- 6. For such other and further Variance relief as the Zoning Commissioner may require.



# Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

for the property located at Bear Creek (Parcels 301 + 64) 2001-2035 Lynch Road which is presently zoned DR 5.5 and DR 16

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

Please see attached.

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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.

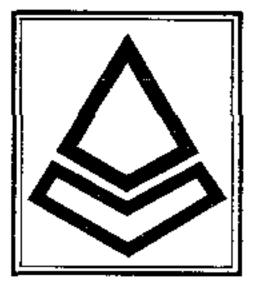
#### Contract Purchaser/Lessee: <u>Legal Owner(s):</u> P&S Homes, Inc. Hidden Cove Apartments, LLC Name - Type or Print Name - Type or Print Signature Tom Schem 701 Fern Valley Circle (410)-744-8589 Authorized Address Telephone No. Name - Type or Print Baltimore, MD 21228 City State Zip Code Signature Attorney For Petitioner: 1950 Old Gallows Road, 6th Floor (703) 902-2000 Address Telephone No. Lawrence E. Schmidt Vienna, VA 22782-3933 Name - Type or Print City State Zip Code Representative to be Contacted: Signature Lawrence E. Schmidt Gildea & Schmidt, LLC Richard Matz (Colbert, Matz, Rosenfelt Inc.) Company Name 300 East Lombard Street, Suite 1440 410-234-0070 2835 Smith Avenue, Suite G (410) 653-3838 Address Telephone No. Address Telephone No. **Baltimore** MD 21202 Baltimore, MD 21209 City State Zip Code City State Zıp Code OFFICE USE ONLY ESTIMATED LENGTH OF HEARING \_\_\_ Qase No. 06-107-SPHA UNAVAILABLE FOR HEARING \_ Reviewed By D.T. Date 8 22 05

# ATTACHEMENT TO PETITION FOR SPECIAL HEARING

- 1. Pursuant to Sections 500.6 and 500.7 of the BCZR, to confirm that density (RA) for the subject property as existed at the time of an approved preliminary plan remains and is applicable to the proposed development (See BCZR, 1963, Residential Apt, Section 217.7)
- 2. Pursuant to Sections 500.6 and 500.7 of the BCZR, to confirm the application of the DR 5.5 regulations as to use, bulk and area standards for the proposed development.
- 3. Pursuant to Sections 500.6 and 500.7 of the BCZR and Section 32-4-107 (Baltimore County Code) to permit construction in a Tidal Flood Zone A.
- 4. If determined necessary by the Zoning Commissioner, to amend an approved preliminary plan for "Bear Creek Towne".
- 5. To confirm, pursuant to Section 409 BCZR, that no parking spaces are required for a proposed community pier.
- 6. To confirm that the Residential Transition Area (RTA) standards are not applicable to the proposed addition.
- 7. For such other and further Special Hearing relief as the Zoning Commissioner may require.

# Colbert Matz Rosenfelt, Inc.

Civil Engineers • Surveyors • Planners



### ZONING DESCRIPTION BEAR CREEK

Beginning at a point on the south side of Lynch Road, which is 60 feet wide, at the distance of 30 feet, more or less, west of the centerline of Marsdale Road, which is 60 wide, thence the following courses and distances:

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S47°41'27"E 237.28;
S48°31'27"E 1423.00;
S57°30'27"E 100.50;
S45°45'27"E 13.13;
A Curve To The Right With A Length Of 73.51' And A Radius Of 50.00
S48°15'27"E 88.97;
N41°44'33"E 27.75;
S11°32'53"E 136.53;
S51°26'33"E 21.28;
S06°27'37"E 36.52;
S35°28'05"E 82.74;
S63°00'11"W 92.67;
S67°53'55"W 105.46;
S56°08'49"W 186.99;
A Curve To The Left With A Length Of 179.65' And A Radius Of 146.45'
A Curve To The Right With A Length Of 98.65' And A Radius Of 65.25
S73°28'17"W 65.78;
A Curve To The Left With A Length Of 59.47' And A Radius Of 70.50'
N58°12'08"W 56.69;
N76°52'44"W 126.96;
N79°27'33"W 108.10;
N68°33'51"W 118.78;
N51°44'53"W 59.62;
N70°33'34"W 78.73;
N59°10'09"W 80.67;
N18°32'32"W 93.33;
N41°41'45"W 133.90;
N04°37'43"W 37.62;
A Curve To The Left With A Length Of 47.38' And A Radius of 50.50
N58°22'50"W 35.70;
N75°17'38"W 104.25;
S86°43'08"W 147.38;
N83°07'03"W 154.07;
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ZONING DESCRIPTION BEAR CREEK PAGE 2

N74°21'02"W 128.32; S59°28'40"W 29.83; N83°03'45"W 129.84; N68°42'00"W 171.31; N54°00'42"W 79.90; N30°12'53"E 467.04, thence N30°12'50"E 980.19 to the Point of Beginning.

As recorded in Deed Liber 13334, folio 306, and containing 48.799 acres. Also known as Hidden Cove Apartments and located in the 12<sup>th</sup> Election District.



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#### MOTICE 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: #06-107-SPHA

2001-2035 Lynch Road, Bear Creek (Parcels 301 & 64) S/side of Lynch Road, 30 feet west of centerline of Marsdale Road

12th Election District - 7th Councilmanic District Legal Owner(s): Hidden Cove Apartments, LLC, Steven Michael, Authorized Representative

Contract Purchaser: P&S Homes, Inc., Thomas Scherr Special Hearing: to confirm that density (RA) for the subject property as existed at the time of an approved preliminary plan remains and is applicable to the proposed development, to confirm the application of the D.R. 5.5 regulations as to use, bulk and area standards for the proposed development to permit construction in a Tidal Flood Zone A, to amend an approved preliminary plan for Bear Creek Towne," to confirm that no parking spaces are required for a proposed addition and for such other and further Special Hearing relief as the Zoning Commissioner may require. Variance: to permit a setback of as little as 18 feet from a dwelling to a use division line in lieu of the required 25 feet and for proposed dwelling on Lot 2, to permit as little as 0 square feet contiguous private yard area per dwelling on proposed Lot 2 in lieu of the 500 feet required, to permit proposed deck extensions of 10 feet in lieu of the maximum permitted 7.5 feet for proposed dwellings on Lot 2, to permit a front setback of 13 feet in lieu of the required 25 feet for proposed unit #1 on Lot 2, to permit a side setback of 8 feet in lieu of the required 15 feet for proposed unit #5 of Lot 2 and for such other and further Variance relief as the Zoning Commissioner may require. Hearing: Wednesday, October 19, 2005 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

WILLIAM J. WISEMAN, III

Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible, for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.

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

JT/10/610 Oct. 4 69679

## CERTIFICATE OF PUBLICATION

10/6,2005
THIS IS TO CERTIFY, that the annexed advertisement was published
in the following weekly newspaper published in Baltimore County, Md.,
once in each ofsuccessive weeks, the first publication appearing on $104_{,20}5$
on 1014 ,20 <u>05.</u>
The Jeffersonian
☐ Arbutus Times ☐ Catonsville Times
☐ Towson Times
Owings Mills Times
☐ NE Booster/Reporter
☐ North County News

LEGAL ADVERTISING

# CERTIFICATE OF POSTING

ATTENTION:	KRISTEN	MATTHEWS
------------	---------	----------

Date October 5, 2005

RE. Case Number 06-107-5PHA

Petitioner/Developer. THOMAS SCHERR/RICHARD MATZ

Date of Hearing) Closing October 19, 2005

This is to certify under the penalties of perjury that the necessary sign(s) required by law

Were posted conspicuously on the property located at 2001-2035 LYNCH ROAD,

BEAR CREEK (PARCELS 301+64) I SET OF SIGNS AT ENTRANCE TO

APARTMENTS AT PAULETTE ROAD - AND-ISET OF SIGNS AT ENDOF

LYNCH ROAD (ON-SITE)

The sign(s) were posted on

October 2, 2005

SEE ATTACHED PHOTOS

(Signature of Sign Poster)

ATTACH PHOTOGRAPH OF SIGH POSTED ON PROPERTY HERE Printed Name of Sign Poster)

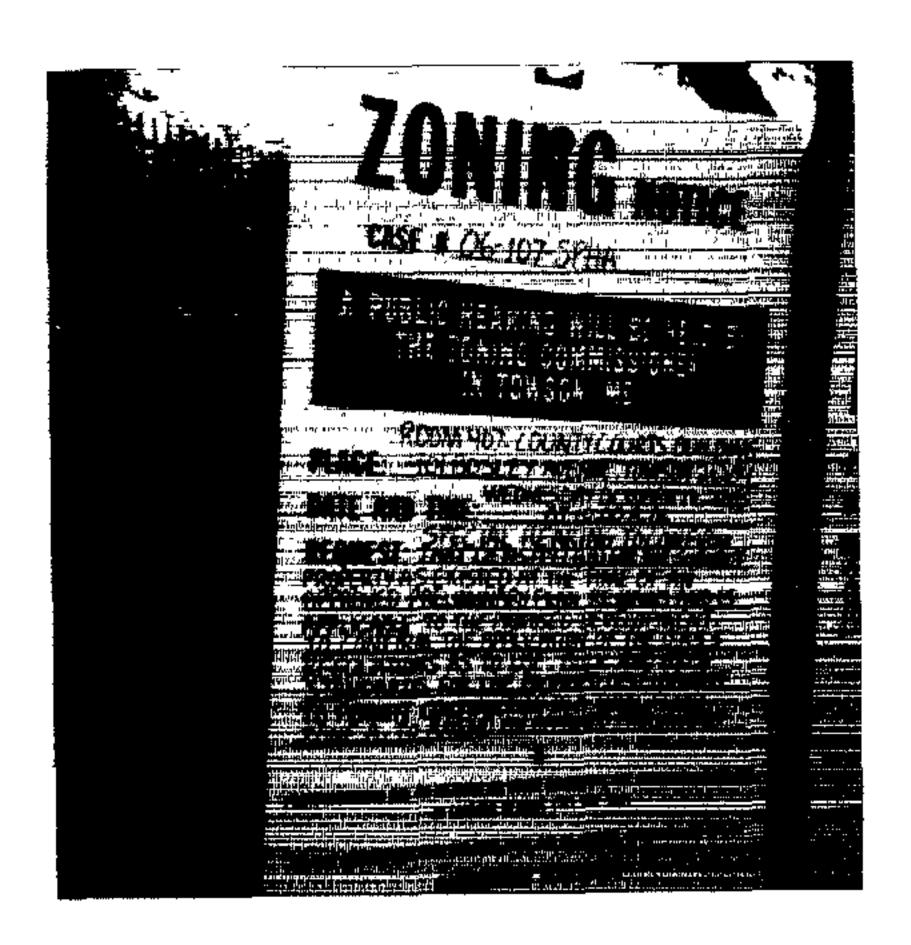
523 PENNY LANE
(Street Address of Sign Poster)

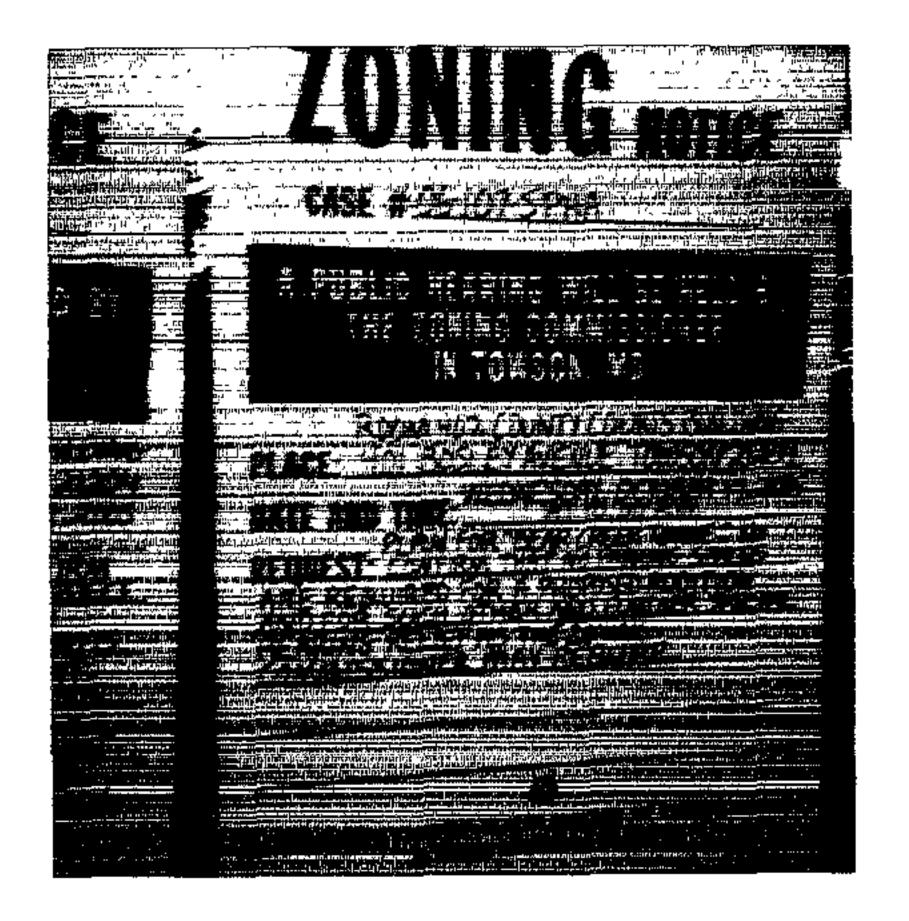
HUNT VALLEY MD 2103
(City, State, Zip Code of Sign Poster)

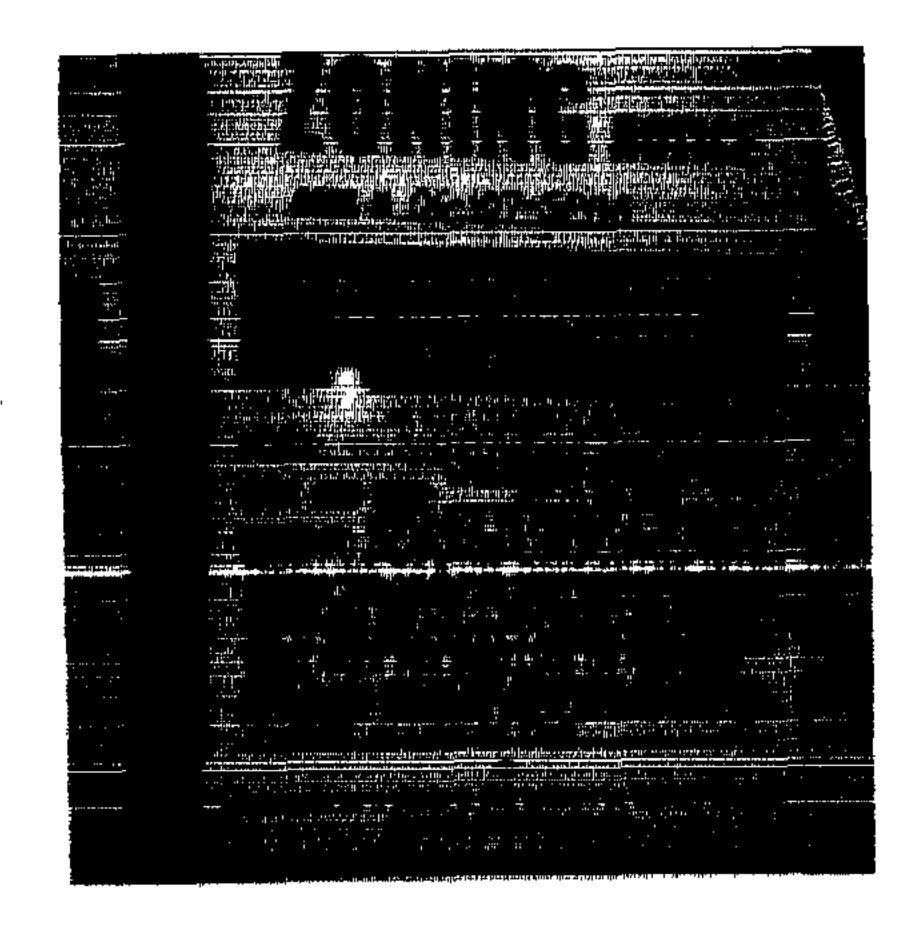
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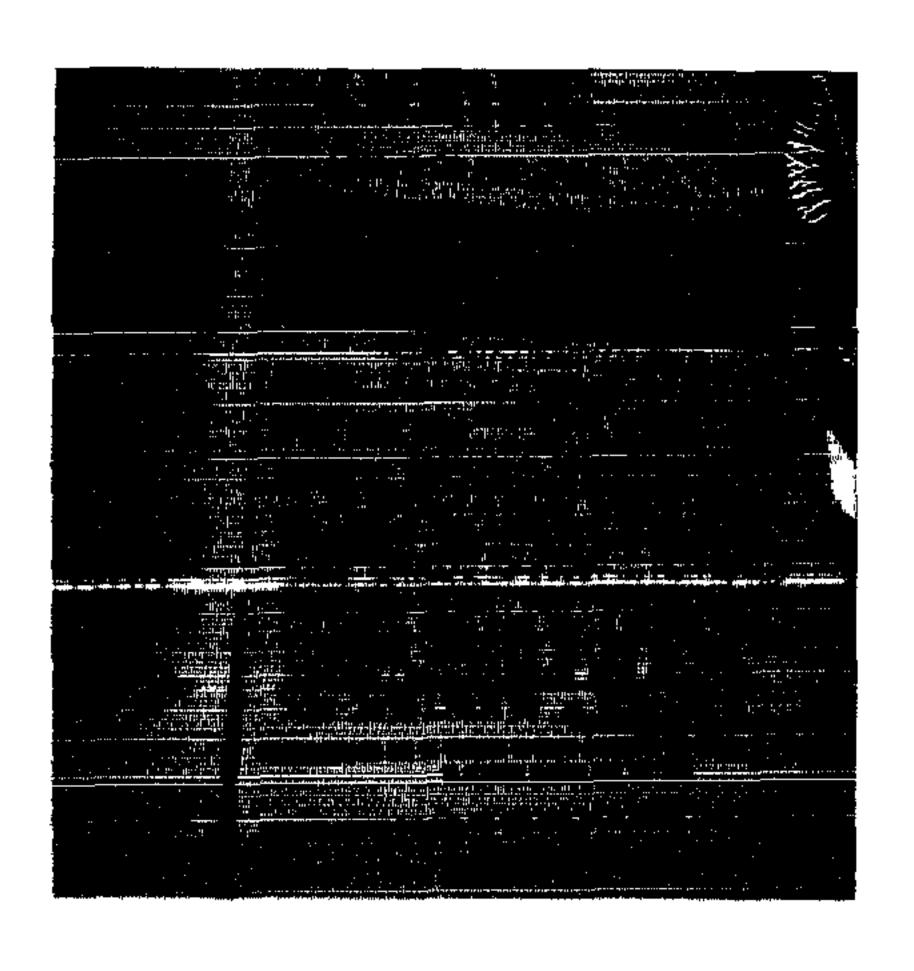
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# 1 Set Posted Entrance to Apartments.

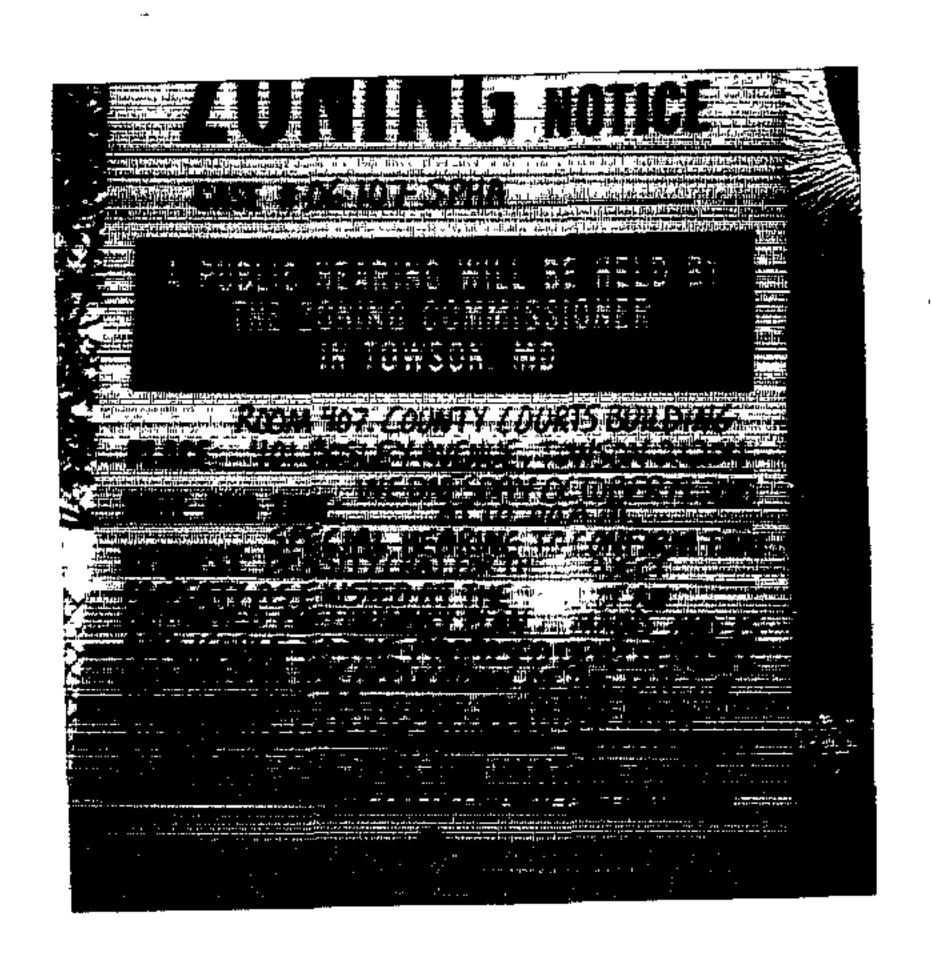




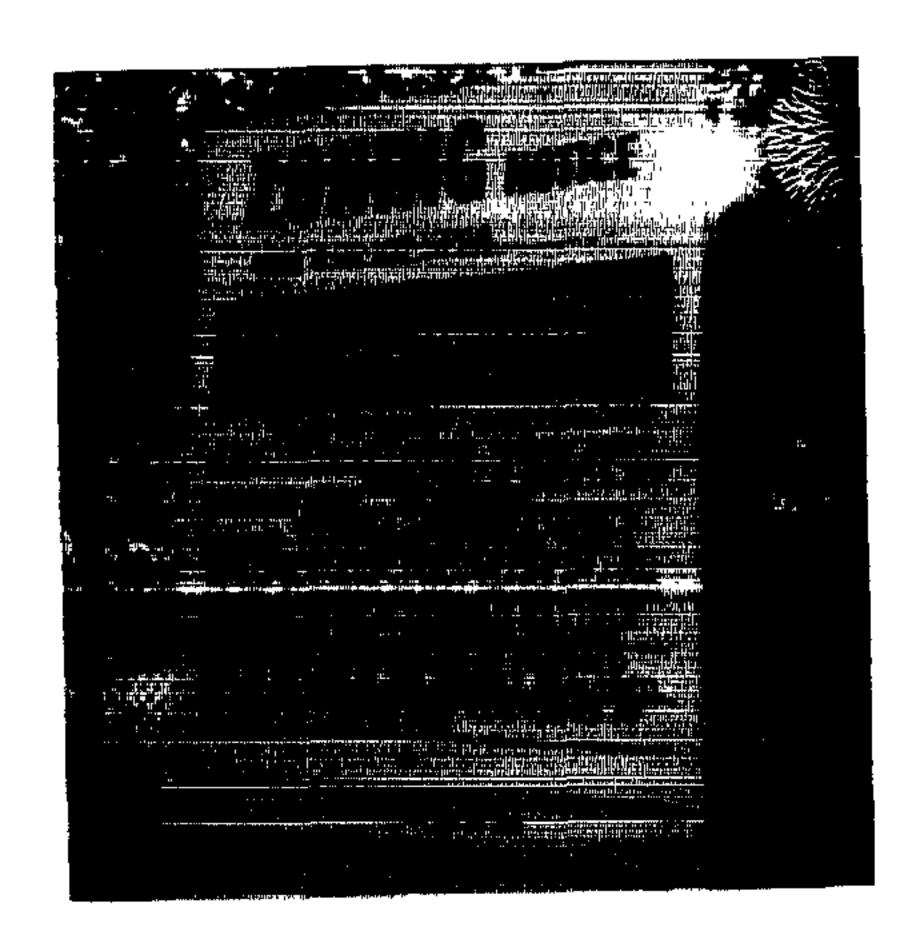


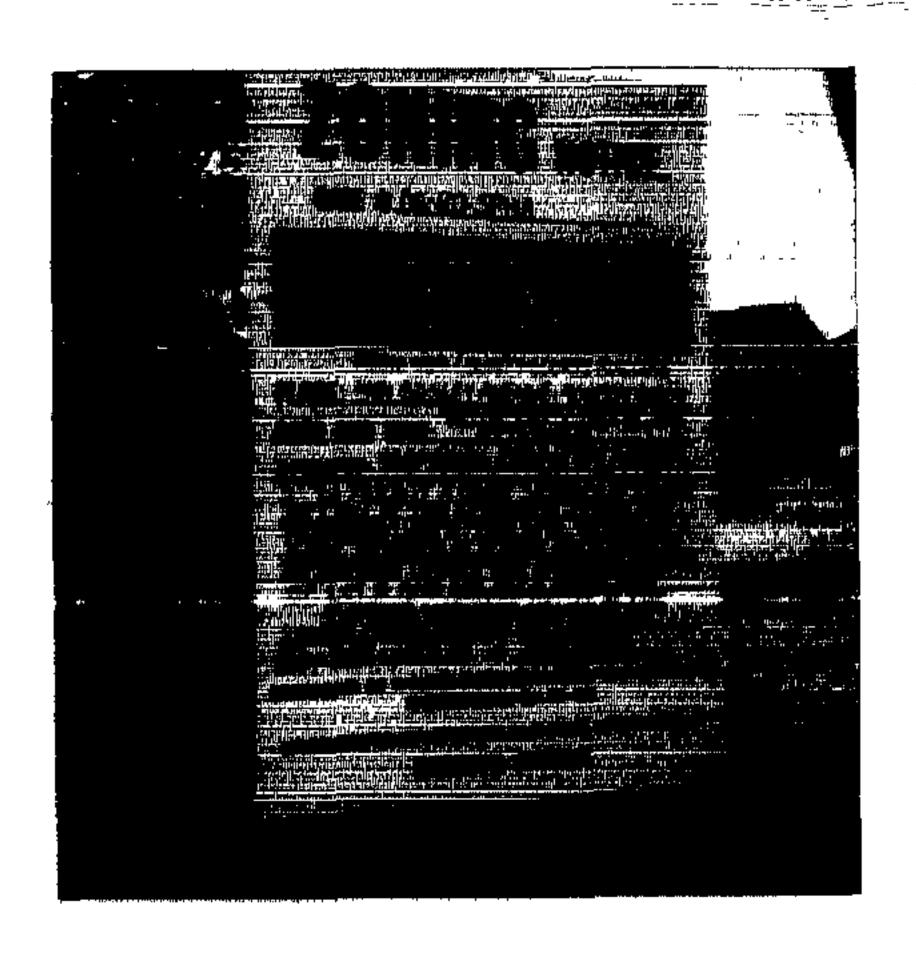


# . 1. Set forted at End of Finch Road









# Department of Permits a 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

September 6, 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: 06-107-SPHA

2001-2035 Lynch Road, Bear Creek (Parcels 301 & 64) S/side of Lynch Road, 30 feet west of centerline of Marsdale Road 12<sup>th</sup> Election District – 7<sup>th</sup> Councilmanic District

Legal Owners: Hidden Cove Apartments, LLC, Steven Michael, Authorized Representative

Contract Purchaser: P&S Homes, Inc., Thomas Scherr

Special Hearing to confirm that density (RA) for the subject property as existed at the time of an approved preliminary plan remains and is applicable to the proposed development, to confirm the application of the D.R. 5.5 regulations as to use, bulk and area standards for the proposed development to permit construction in a Tidal Flood Zone A, to amend an approved preliminary plan for "Bear Creek Towne," to confirm that no parking spaces are required for a proposed addition and for such other and further Special Hearing relief as the Zoning Commissioner may require. Variance to permit a setback of as little as 18 feet from a dwelling to a use division line in lieu of the required 25 feet and for proposed dwelling on Lot 2, to permit as little as 0 square feet contiguous private yard area per dwelling on proposed Lot 2 in lieu of the 500 feet required, to permit proposed deck extensions of 10 feet in lieu of the maximum permitted 7.5 feet for proposed dwellings on Lot 2, to permit a front setback of 13 feet in lieu of the required 25 feet for proposed unit #1 on Lot 2, to permit a side setback of 8 feet in lieu of the required 15 feet for proposed unit#5 of Lot 2 and for such other and further Variance relief as the Zoning Commissioner may require.

Hearing: Wednesday, October 19, 2005 at 10:00 a.m. in Room 407, County Courts Building,

401 Bosley Avenue, Towson 21204

Timothy Kotroco Director

TK:klm

C: Lawrence Schmidt, 300 E. Lombard St., Ste. 1440, Baltimore 21202 Steven Michael, 1950 Old Gallows Rd., 6<sup>th</sup> Fl., Vienna VA 22782-3933 Thomas Scherr, 701 Fern Valley Circle, Baltimore 21228 Richard Matz, 2835 Smith Avenue, Ste. G, Baltimore 21209

- NOTES: (1) THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, OCTOBER 4, 2005.
  - (2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
  - (3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

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





## ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The <u>Baltimore County Zoning Regulations</u> (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is ubject 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: 06-107-SPHA
Petitioner: P+S Homes INC.
Address or Location: 2001-2035 Lynch RD.
PLEASE FORWARD ADVERTISING BILL TO:
Name: LAWRENCE E. SCHMIDT, ESQUIRE
Address: GINDEA + SCHMIOT LLC
300 E. LOMBARD ST., SUITE 1440
BALTIMORE MO 21202
Telephone Number: 410- 234-0070

## Department of Permits are Development Management

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





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

October 17, 2005

Lawrence E. Schmidt Gildea & Schmidt 300 East Lombard Street, Ste. 1440 Baltimore, Maryland 21202

Dear Mr. Schmidt:

RE: Case Number: 0006-107-SPHA

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

U. Calling Cours, Cal

W. Carl Richards, Jr. Supervisor, Zoning Review

WCR: clb

**Enclosures** 

c: People's Counsel P & S Homes, Inc. Thomas Scherr 701 Fern Valley Circle Baltimore 21228 Hidden Cove Apartments, LLC. Steven Michael 1950 Gallows Road, Vienna VA 22782-3933 Richard Matz 2835 Smith Avenue, Ste. G. Baltimore 21209



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

• RECEIVED

**DATE:** September 22, 2005



# BALTIMORE COUNTY, MARYLAND SEP 2 6 2005

# INTER-OFFICE CORRESPONDENCE ON GOVERNOON OF THE CONTRACTOR OF THE

TO:

Timothy M. Kotroco, Director

Department of Permits and Development Management

FROM:

Arnold F. 'Pat' Keller, III

Director, Office of Planning

**SUBJECT:** 

2001-2035 Lynch Road (Bear Creek parcels 301 and 64)

INFORMATION:

Item Number:

6-107

Petitioner:

Hidden Cove Apartments, LLC

-Zoning:

DR 5.5 and DR 16

Requested Action:

Special Hearing and Variance

The subject property has already been submitted to the county as a concept plan. The concept conference was held on 10/4/2004. To date, a development plan conference has not been scheduled. The comments and recommendations listed below echo some of the comments and recommendations of the concept plan conference, which should be reflected on the subsequent development plan.

In addition to the aforementioned the development plan must comply with the eight compatibility objectives listed under Section 32-4-402(d)(1-8). This development is subject to Section 260 of the Baltimore County Zoning Regulations. This section requires the Director of the Office of Planning to make a finding to the Hearing Officer for all residential development of four lots or more in Baltimore County that is located within the Urban/Rural Demarcation Line.

The Hearing Officer or the Director of Permits and Development Management, as applicable, shall onsider the findings presented by the Director of the Office of Planning or the Director's designee before development plan is approved.

### SUMMARY OF RECOMMENDATIONS:

The Office of Planning does not oppose the petitioner's request for special hearing and variances provided the following conditions are met prior to or at the time of the development plan submittal for the subject property:

CHOCK RECEIVED FOR THINKS

- 1. Provide elevations (all sides) of the proposed townhouses to this department for review and approval in the form of a pattern book.
- 2. The sides of the units that face Case Road shall include double windows, doors, etc., and shall not be left as a blank wall. Place a note on the plan addressing this issue.
- 3. Show an enlarged detailed plan for the front courtyard areas to include pedestrian walkways, building entrances, special paving, landscaping, and lighting.
- 4. Connect both visitors parking areas with a 5-foot sidewalk. In addition, connect the proposed paved walkways between the units to this sidewalk.
- 5. Illustrate how the proposed units work through a grading plan showing any required steps and walls.
- 6. Provide information concerning material types and color with the building elevations.
- 7. Clearly illustrate the location, height, and building materials of the wing walls on the plan.

In addition to the aforementioned this office defers to the Departments of Recreation and Parks, DEPRM, and the Office of Zoning Review for the requests that are under the purview of those respective agencies.

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

Prepared by:

Division Chief:

AFK/LL: CM

FOR RECEIVED FOR THE STATE OF T

W-\DEVREV\ZAC\6-107.doc



Robert L. Ehrlich, Jr., Governor Michael S Steele, Lt. Governor Robert L. Flanagan, Secretary Neil J. Pedersen, Administrator

### Maryland Department of Transportation

Date: 8.30.05

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

RE: Baltim

Baltimore County
Item No. 1677

DV

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

## Fire Department

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





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

September 1, 2005

ATTENTION: Zoning Review Planners

Distribution Meeting of: September 12, 2005

Item# 6-106-X 6-107-SPHA

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.

. **Proposed buildings** shall be designed and constructed so as to meet the applicable provisions of the Baltimore County Fire Prevention Code.

Lieutenant J.D.Mezick Fire Marshal's Office (0)410-887-4881 (C)443-829-2946 MS-1102F

cc: File



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

RE: PETITION FOR SPECIAL HEARING

AND VARIANCE

\*

Bear Creek (Parcels 301 & 64) 2001-2035

Lynch Rd, S/side Lynch 30' W c/line Marsdale Ave

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

Legal Owner(s): Hidden Cove Apartments by

Steven Michael Authorized Member

Contract Purchaser(s): P&S Homes Thomas Scherr

Petitioner(s)\*

BEFORE THE

ZONING COMMISSIONER

FOR

BALTIMORE COUNTY

06-107-SPHA

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

### 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

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 30th day of August, 2005, a copy of the foregoing Entry of Appearance was mailed to Richard E. Matz, PE, Colbert Matz Rosenfelt, Inc, 2835 Smith Avenue, Suite G, Baltimore, MD 21209 and Lawrence E. Schmidt, Esquire, Gildea & Schmidt LLC, 300 E. Lombard Street, Suite 1440, Baltimore, MD 21202, Attorney for Petitioner(s).

RECEIVED

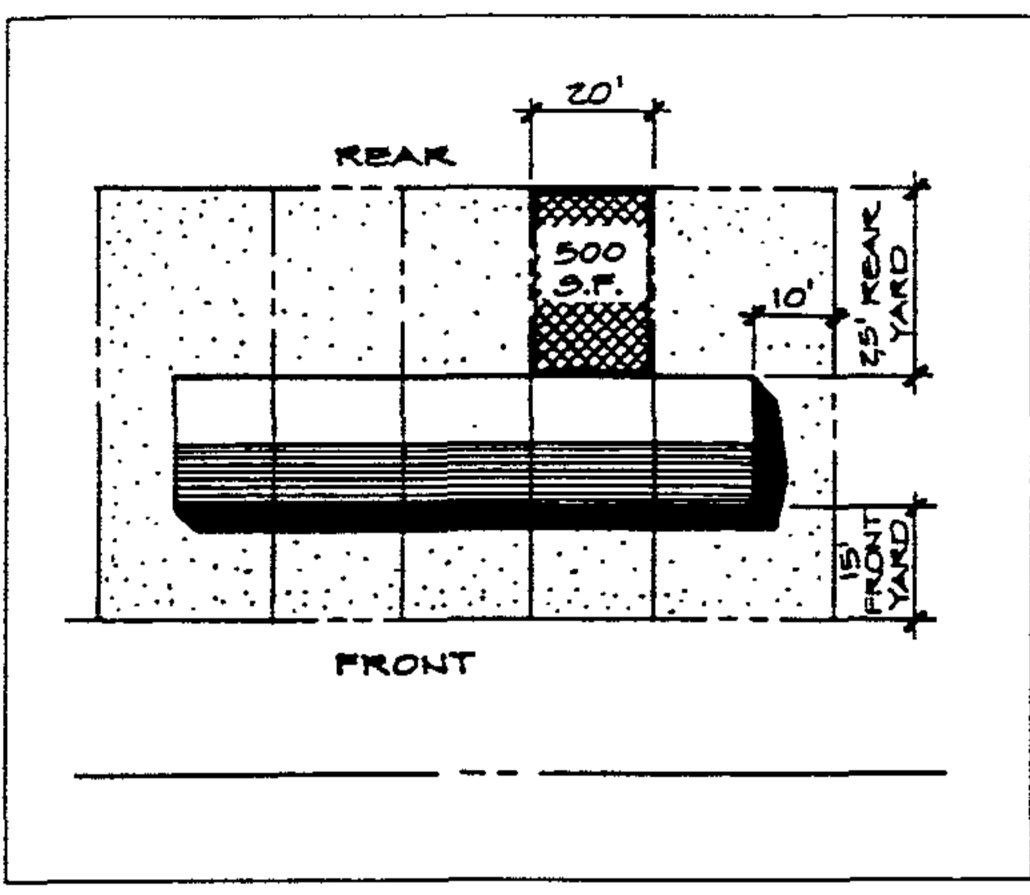
AUG 3 U 2005

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

Mapdimemon

Per.....

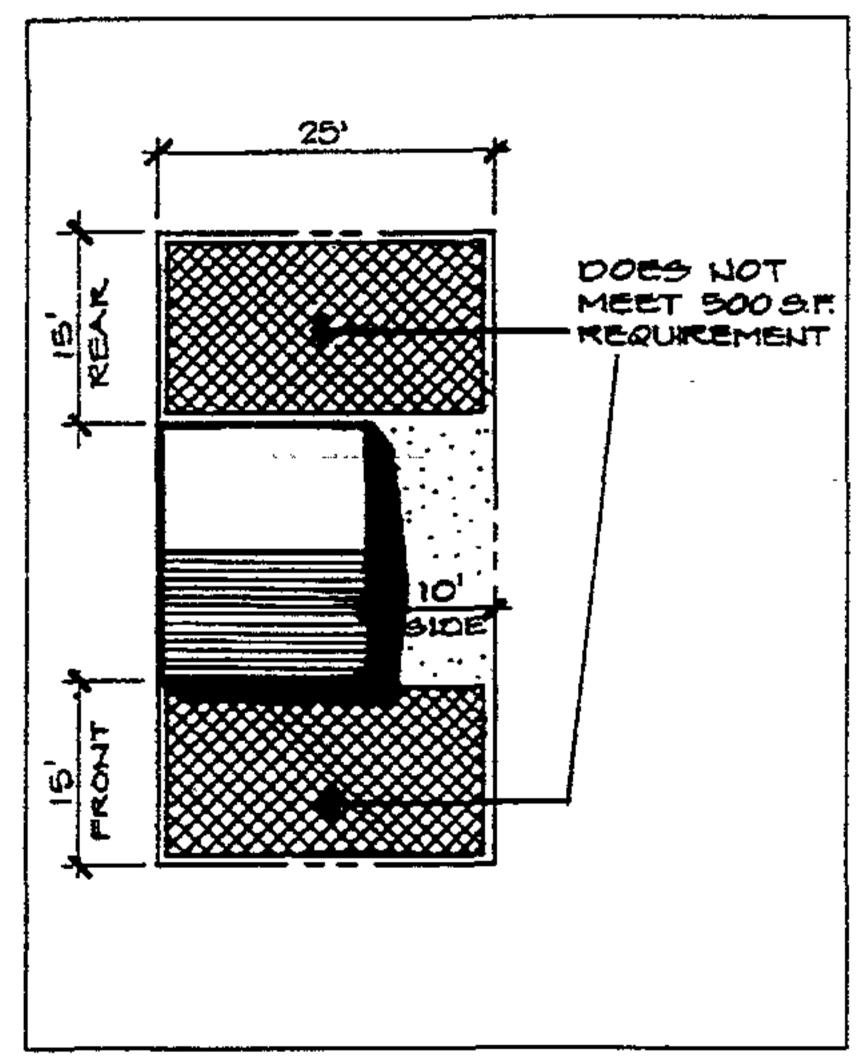


Example A: Private yard space--requirement met

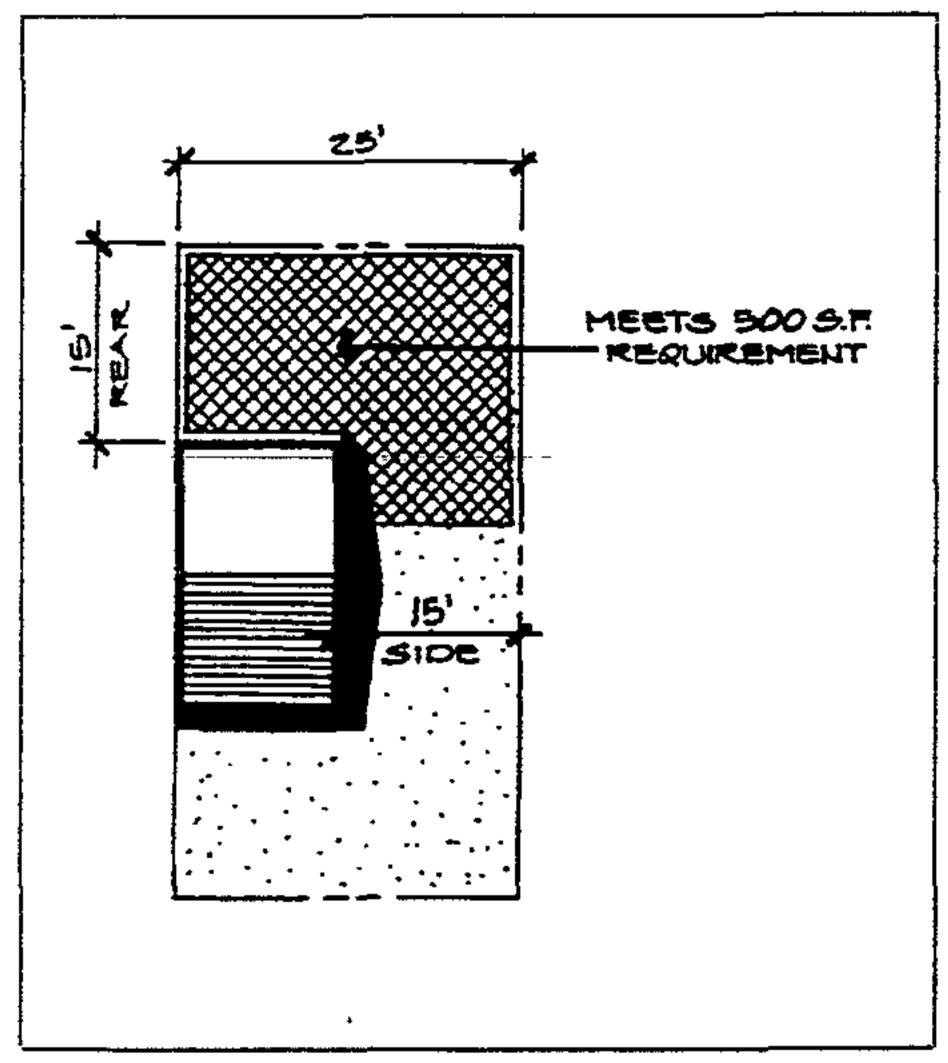
### Private Yard Areas

A minimum private yard area of 500 contiguous square feet with a minimum 15 foot dimension is required to ensure adequate yard space for every housing type except multi-family buildings and back-to-back group houses, which are separately regulated. Either the side or rear yard or some combination of both may be used to meet this requirement and may include decks and/or patios but not structures which might be enclosed.

Coach and back-to-back units shall have a 500 square foot front or side yard with a minimum dimension of 15 feet which may include driveways and walks.



Example B: Private yard space--requirement not met



Example C: Private yard space--requirement met

### R. A. ZONE

- 217.2—Front Yard—For apartment houses, offices and office buildings, the front building line shall be not less than 30 feet from the front lot line and not less than 60 feet from the center line of the front street.
- 217.3—Side Yards—For apartment houses, offices, and office buildings, not less than 25 feet from any building to a side property line.
- 217.4—Rear Yard—For apartment houses, offices, and office buildings, not less than 30 feet from any building to the rear property line.
- 217.5—Where more than one apartment building is placed on a lot, there shall be not less than 60 feet between the long dimensions of any buildings or building groups regardless of relation between front and rear facades; not less than 25 feet between the ends of buildings, except that if opposing end walls contain windows that provide over 25% of the light and ventilation to one or more living rooms, the minimum distance between ends of buildings shall be 40 feet.
- 217.6 Offstreet Parking (see Section 409) Not more than 50% of any yard area may be used for parking.
- 217.7 Density Gross and net densities, as defined in Section 101, shall not exceed respectively 16 and 18 families per acre, except that for any building over three stories there may be an increase of one-half family per acre per floor.

300 EAST LOMBARD STREET

**SUITE 1440** 

BALTIMORE, MARYLAND 21202 TELEPHONE 410-234-0070

FACSIMILE 410-234-0072
www.gildeallc.com

TOWSON, MD OFFICE 220 BOSLEY AVENUE TOWSON, MARYLAND 21204

TELEPHONE 410-337-7057

OCT 2 7 2005

October 25, 2005

Sent Via Facsimile and Regular Mail

DAVID K. GILDEA

LAWRENCE E. SCHMIDT

SEBASTIAN A. CROSS

D. DUSKY HOLMAN

JASON T. VETTORI

DAVIDGILDEA@GILDEALLC.COM

LSCHMIDT@GILDEALLC.COM

JWOOLMAN@GILDEALLC.COM

DHOLMAN@GILDEALLC.COM

JVETTORI@GILDEALLC.COM

SCROSS@GILDEALLC.COM

JOSEPH R. WOOLMAN, III

Deputy Commissioner John V. Murphy Baltimore County 401 Bosley Avenue, 4th Floor Towson, MD 21204

Re: P&S Development/2001-2035 Lynch Road (Parcels 30 & 64)

Case No.: 06-107-SPHA

Dear Deputy Commissioner Murphy:

This is to follow up the public hearing held on the Petitions for Special Hearing and Variance for the above matter on October 19, 2005 and, specifically, in response to your comments made in open hearing.

As you recall, the Petitioner has requested Special Hearing and Variance relief attendant to its proposed subdivision of the property with 39 condominium units. At the hearing on those Petitions, substantial evidence was offered on the issues presented. Additionally, there were no protestants or other persons who appeared at the hearing in opposition to the requests and there are no adverse Zoning Advisory Committee comments. Thus, there is no evidence in the record contrary to the Petitions.

It is my understanding that sufficient evidence was presented to support the request under the Petition for Special Hearing. If you are not inclined to favorably rule upon that Petition, I would respectfully request that you contact me so that additional clarification and/or argument can be offered.

As to the Petition for Zoning Variance, I understand, however, that you have concerns regarding the relief requested. Specifically, you have identified an issue relating to Variance No. 1, which seeks relief to allow 18 feet from a dwelling to a zoning use division line in lieu of 25 feet. You have indicated that this request constitutes a "blanket" variance and might not be permitted under the doctrine of "self imposed hardship."

FAX to Vary Schnudt for review

•

The requirement from which the Variance is sought is contained in Section 1B01.2.c.1 of the BCZR and is found on page 1B-14. As you know, Article 1B of the BCZR governs the standards for the Density Residential (D.R.) zone. The subject property is zoned DR-5.5.

The chart contained on page 1b-14 of the BCZR identifies the setback requirements for "group houses." A group house is defined in Section 101 of the BCZR as "a group of not less than three attached dwelling units which have been constructed together in a lateral row surrounded by yard space, each dwelling unit separated from another by a party wall." The condominium units proposed in this case are clearly group houses, as defined.

As I noted at the hearing, the regulations contained within the chart on page 1b-14 establish requirements as they relate to setbacks. I particularly emphasize the fact that the chart notes that setbacks are required to street rights-of-way, property lines and tract boundaries. The chart does not identify any requirement as to distances to a zoning division line or between units, nor establish a linear requirement for the depth of required yard areas. I point this out, particularly in view of the fact that other Sections within the BCZR, in fact, require minimum linear yard areas (see e.g. 1B02.3C). Additionally, past and/or current provisions of the CMDP impose certain requirements insofar as distances between buildings, from windows to windows, etc.

Obviously, the drafters of the BCZR were aware of these possibilities. That is, the BCZR could have been drafted so as to require distances between units, distances between facing windows, etc. However, the drafters of the BCZR specifically chose not to enact such a requirement. Thus, the requirements as contained in the chart on page 1b-14 of the BCZR establishes only requirements as to tract boundaries, street rights-of-way and lot lines.

Thus, I respectfully submit that variance relief is not required in this case; in that, although the facing units are but 36 feet apart, they meet the required setbacks as to property lines, tract boundaries and street rights-of-way<sup>1</sup>. I would, therefore, ask that you follow the literal language as set forth in the BCZR.

I am aware, of course, of the long standing application of the BCZR as it relates to circumstances such as this. The Zoning Office has in the past relied upon the language contained in Section 102.2 of the BCZR. That Section states, "No yard space or minimum area required for a building or use shall be considered as any part of the yard space or minimum area for another building or use." Although that Section nowhere uses the term "lot line" or "property line," the Zoning Office has traditionally equated a zoning division use line as a lot line for the purposes of establishing setbacks. This practice is reflected in the Zoning Commissioner's Policy Manual, specifically that Section which addresses Section 102.2 of the BCZR and is found on page 1-42.1 of the Manual. I refer that Section to you and trust that you will review it. I do, however, point out the following language as contained therein. Specifically, within subsection A2, the regulation reads that "... the Zoning Commissioner may require that a line of division either a lease line or a zoning use division line between each use be shown on the plat." I emphasize the word "may" as used therein, as it is obviously within the discretion of the Zoning Commissioner to determine whether a use division line is

<sup>1</sup> Except for two units as noted in the Petition for Variance that need relief from street rights-of-way.

appropriate in any particular instances. Thus, the zoning use division line is not mandatory and is to be applied only if the Zoning Commissioner requires. Further, I point out subsection 8A.2.b, which states "this determination may be subject to a Special Hearing at the discretion of the Zoning Commissioner." I ask that you particularly note that this determination is to be made through a Special Hearing, not a Petition for Variance.

Given your express concerns regarding "blanket variances" and "self imposed hardship," I respectfully suggest that you may grant relief through the Petition for Special Hearing to allow the 36 feet distance between buildings shown on the plan. I point out that the Petition for Special Hearing as filed, requested "For such other and further Special Hearing relief as the Zoning Commissioner may require," thereby providing the opportunity to address these issues through the Special Hearing. Moreover, as you are aware, the criteria for Special Hearing relief is different than the criteria for Zoning Variance. It is not necessary for you to consider whether the property is unique, if a hardship is self imposed or if a series of Variances for multiple units are requested. Rather, you need only consider whether a use division line is appropriate and, if so, whether that line is appropriate in this case.

I also wanted to clarify the argument regarding Variance No. 2, regarding the required private yard area. A close reading of page 27 of the CMDP discloses that the yard need not be a grassy area or have any other geographic characteristic. Indeed, the yard may include a deck and/or patio. In this case, the units do provide in excess of 500 square feet of adjacent yard area; however, it is paved. Moreover, the subdivision abuts the large open and undisturbed area that constitutes the Chesapeake Critical Area Buffer. Thus, Variance relief may not be required.

As to the other two Variances, they relate to specific units and identify unique characteristics of the subject unit.

If you are favorably inclined to adopt the arguments contained herein, I would request that you issue an Order at your earliest convenience in accordance with the above. However, if you remain unpersuaded, I would request the courtesy that you contact me first before issuing an Order. I have undertaken some preliminary research upon the issue of "blanket variances" and "self imposed hardship" and would be inclined to submit a written memorandum on these issues. However, this would not be necessary if you are inclined to approve the plan as submitted through the process outlined herein above. With kind regards, I am

Very truly yours,

Lawrence E. Schmidt

LES: dls

CC:

Thomas G. Scherr, P&S Development Company Richard E. Matz, Colbert Matz Rosenfelt, Inc. D. Dusky Holman, Esquire David K. Gildea, Esquire

DAVIDGILDEA ØGILDEALLC COM

300 EAST LOMBARD STREET

**SUITE 1440** 

BALTIMORE, MARYLAND 21202

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

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

TOWSON, MD OFFICE

SEBASTIAN A. CROSS SCROSS@GILDEALLC.COM

LAWRENCE E. SCHMIDT

JOSEPH R. WOOLMAN, III JWOOLMAN@GILDEALLC.COM

LSCHMIDT@GILDEALLC.COM

D. DUSKY HOLMAN DHOLMAN@GILDEALLC.COM

JASON T. VETTORI
JVETTORI@GILDEALLC.COM

November 18, 2005

### Sent Via Facsimile and Regular Mail

Deputy Commissioner John V. Murphy Baltimore County 401 Bosley Avenue, 4th Floor Towson, MD 21204

Re: P&S Development/2001-2035 Lynch Road (Parcels 30 & 64)

Case No.: 06-107-SPHA

Dear Deputy Commissioner Murphy:

This is in reference to the above matter and the pending Petitions for Special Hearing and Variance previously filed.

On behalf of the Petitioners, P&S Homes, Inc. and Hidden Cove Apartments, LLC, kindly withdraw the Petition for Variance, without prejudice. Kindly note however that the Petition for Special Hearing is not withdrawn. Therefore, I would appreciate your issuance of Findings and Facts and Conclusion of Law/Order on that Petition. As you recall, this matter came in before you in open hearing on October 19, 2005.

Your past courtesies are appreciated. With kind regards, I am

Very truly yours,

Lawrence E. Schmidt

LES: dls

CC: Thomas G. Scherr, P&S Development Company

Richard E. Matz, Colbert Matz Rosenfelt, Inc.

D. Dusky Holman, Esquire David K. Gildea, Esquire

DAVIDER GILDER DAVIDGILDER GILDERLIC.COM
300 EAST LOMBARD STREET

**SUITE 1440** 

BALTIMORE, MARYLAND 21202

TELEPHONE 410-884-0070 FACSIMILE 410-994-0072 www.gildeolic.com TOWSON, MD OFFICE 220 BOSLEY AVENUE TOWSON, MARYLAND 81204 TELEPHONE 410-887-7067

Joseph R. Woolman. III JWOOLMANGGILDEALLC.COM

SCROSSOGILDEALLC.COM

LECHMINT GILDWALLCOOM

LAWRENCE E SCHMIDT

SEBASTIAN A. CROSS

D. Dusky holman Dholmanegildeallc.com

Jason t Vettori Jvettoriagildealic.com

### FACSIMILE COVER SHEET

TO: Deputy Commissioner Murphy Thomas Scherr Richard Matz	FAX NO.: (410) 887- 3468 (410) 744-7906 (410) 653-7953
FROM: Lawrence E. Schmidt	DATE: 11-18-05
	NO. OF PAGES: 2 (INCLUDING COVER)
REGARDING:	

P&S Development/2001-2035 Lynch Road (Parcels 30 \$ 64) Case No. 06-107-SPHA

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300 EAST LOMBARD STREET

**SUITE 1440** 

BALTIMORE, MARYLAND 21202

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

TOWSON, MD OFFICE 220 BOSLEY AVENUE

TOWSON, MARYLAND 21204 TELEPHONE 410-337-7057

photos proposed in the season.

October 25, 2005

Sent Via Facsimile and Regular Mail

Deputy Commissioner John V. Murphy **Baltimore County** 401 Bosley Avenue, 4th Floor Towson, MD 21204

Re:

P&S Development/2001-2035 Lynch Road (Parcels 30 & 64)

Case No.: 06-107-SPHA

Dear Deputy Commissioner Murphy:

This is to follow up the public hearing held on the Petitions for Special Hearing and Variance for the above matter on October 19, 2005 and, specifically, in response to your comments made in open hearing.

As you recall, the Petitioner has requested Special Hearing and Variance relief attendant to its proposed subdivision of the property with 39 condominium units. At the hearing on those Petitions, substantial evidence was offered on the issues presented. Additionally, there were no protestants or other persons who appeared at the hearing in opposition to the requests and there are no adverse Zoning Advisory Committee comments. Thus, there is no evidence in the record contrary to the Petitions.

It is my understanding that sufficient evidence was presented to support the request under the Petition for Special Hearing. If you are not inclined to favorably rule upon that Petition, I would respectfully request that you contact me so that additional clarification and/or argument can be offered.

As to the Petition for Zoning Variance, I understand, however, that you have concerns regarding the relief requested. Specifically, you have identified an issue relating to Variance No. 1, which seeks relief to allow 18 feet from a dwelling to a zoning use division line in lieu of 25 feet. You have indicated that this request constitutes a "blanket" variance and might not be permitted under the doctrine of "self imposed hardship."

DAVID K. GILDEA

DAVIDGILDEA@GILDEALLC.COM

LSCHMIDT@GILDEALLC.COM

JWOOLMAN@GILDEALLC.COM

DHOLMAN@GILDEALLC COM

JVETTORI@GHLDEALLC.COM

SCROSS@GILDEALLC.COM

JOSEPH R. WOOLMAN, III

LAWRENCE E. SCHMIDT

SEBASTIAN A. CROSS

D DUSKY HOLMAN

JASON T. VETTORI

The requirement from which the Variance is sought is contained in Section 1B01.2.c.1 of the BCZR and is found on page 1B-14. As you know, Article 1B of the BCZR governs the standards for the Density Residential (D.R.) zone. The subject property is zoned DR-5.5.

The chart contained on page 1b-14 of the BCZR identifies the setback requirements for "group houses." A group house is defined in Section 101 of the BCZR as "a group of not less than three attached dwelling units which have been constructed together in a lateral row surrounded by yard space, each dwelling unit separated from another by a party wall." The condominium units proposed in this case are clearly group houses, as defined.

As I noted at the hearing, the regulations contained within the chart on page 1b-14 establish requirements as they relate to setbacks. I particularly emphasize the fact that the chart notes that setbacks are required to street rights-of-way, property lines and tract boundaries. The chart does not identify any requirement as to distances to a zoning division line or between units, nor establish a linear requirement for the depth of required yard areas. I point this out, particularly in view of the fact that other Sections within the BCZR, in fact, require minimum linear yard areas (see e.g. 1B02.3C). Additionally, past and/or current provisions of the CMDP impose certain requirements insofar as distances between buildings, from windows to windows, etc.

Obviously, the drafters of the BCZR were aware of these possibilities. That is, the BCZR could have been drafted so as to require distances between units, distances between facing windows, etc. However, the drafters of the BCZR specifically chose not to enact such a requirement. Thus, the requirements as contained in the chart on page 1b-14 of the BCZR establishes only requirements as to tract boundaries, street rights-of-way and lot lines.

Thus, I respectfully submit that variance relief is not required in this case; in that, although the facing units are but 36 feet apart, they meet the required setbacks as to property lines, tract boundaries and street rights-of-way<sup>1</sup>. I would, therefore, ask that you follow the literal language as set forth in the BCZR.

I am aware, of course, of the long standing application of the BCZR as it relates to circumstances such as this. The Zoning Office has in the past relied upon the language contained in Section 102.2 of the BCZR. That Section states, "No yard space or minimum area required for a building or use shall be considered as any part of the yard space or minimum area for another building or use." Although that Section nowhere uses the term "lot line" or "property line," the Zoning Office has traditionally equated a zoning division use line as a lot line for the purposes of establishing setbacks. This practice is reflected in the Zoning Commissioner's Policy Manual, specifically that Section which addresses Section 102.2 of the BCZR and is found on page 1-42.1 of the Manual. I refer that Section to you and trust that you will review it. I do, however, point out the following language as contained therein. Specifically, within subsection A2, the regulation reads that "... the Zoning Commissioner may require that a line of division either a lease line or a zoning use division line between each use be shown on the plat." I emphasize the word "may" as used therein, as it is obviously within the discretion of the Zoning Commissioner to determine whether a use division line is

Except for two units as noted in the Petition for Variance that need relief from street rights-of-way.

appropriate in any particular instances. Thus, the zoning use division line is not mandatory and is to be applied only if the Zoning Commissioner requires. Further, I point out subsection 8A.2.b, which states "this determination may be subject to a Special Hearing at the discretion of the Zoning Commissioner." I ask that you particularly note that this determination is to be made through a Special Hearing, not a Petition for Variance.

Given your express concerns regarding "blanket variances" and "self imposed hardship," I respectfully suggest that you may grant relief through the Petition for Special Hearing to allow the 36 feet distance between buildings shown on the plan. I point out that the Petition for Special Hearing as filed, requested "For such other and further Special Hearing relief as the Zoning Commissioner may require," thereby providing the opportunity to address these issues through the Special Hearing. Moreover, as you are aware, the criteria for Special Hearing relief is different than the criteria for Zoning Variance. It is not necessary for you to consider whether the property is unique, if a hardship is self imposed or if a series of Variances for multiple units are requested. Rather, you need only consider whether a use division line is appropriate and, if so, whether that line is appropriate in this case. It is not necessary for your to consider whether that line is appropriate in this case.

I also wanted to clarify the argument regarding Variance No. 2, regarding the required private yard area. A close reading of page 27 of the CMDP discloses that the yard need not be a grassy area or have any other geographic characteristic. Indeed, the yard may include a deck and/or patio. In this case, the units do provide in excess of 500 square feet of adjacent yard area; however, it is paved. Moreover, the subdivision abuts the large open and undisturbed area that constitutes the Chesapeake Critical Area Buffer. Thus, Variance relief may not be required.

As to the other two Variances, they relate to specific units and identify unique characteristics of the subject unit.

If you are favorably inclined to adopt the arguments contained herein, I would request that you issue an Order at your earliest convenience in accordance with the above. However, if you remain unpersuaded, I would request the courtesy that you contact me first before issuing an Order. I have undertaken some preliminary research upon the issue of "blanket variances" and "self imposed hardship" and would be inclined to submit a written memorandum on these issues. However, this would not be necessary if you are inclined to approve the plan as submitted through the process outlined herein above. With kind regards, I am

Very truly yours,

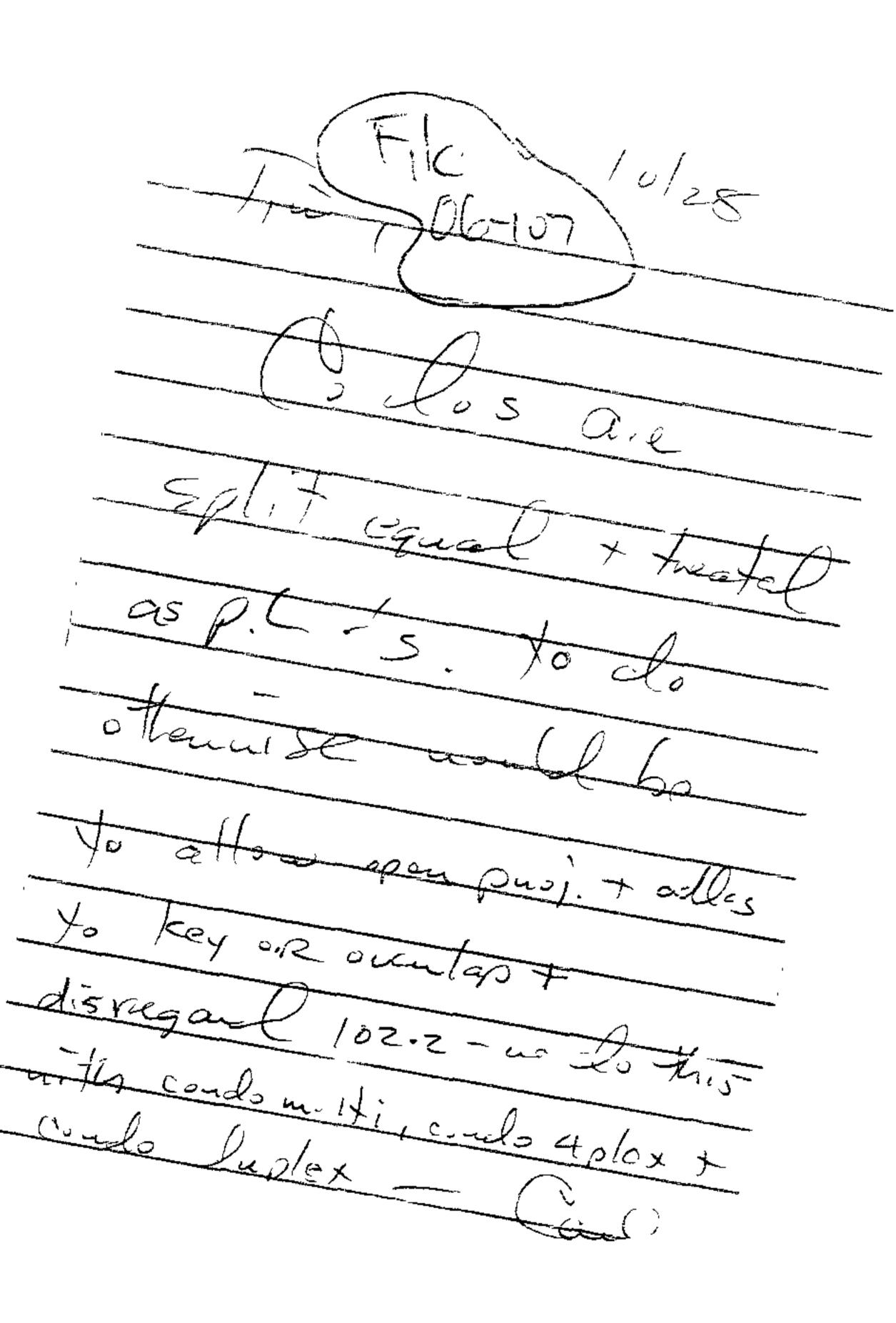
Lawrence E. Schmidt

LES: dls

C: Thomas G. Scherr, P&S Development Company Richard E. Matz, Colbert Matz Rosenfelt, Inc. D. Dusky Holman, Esquire

David K. Gildea, Esquire

Bcc: Timothy Kotroco




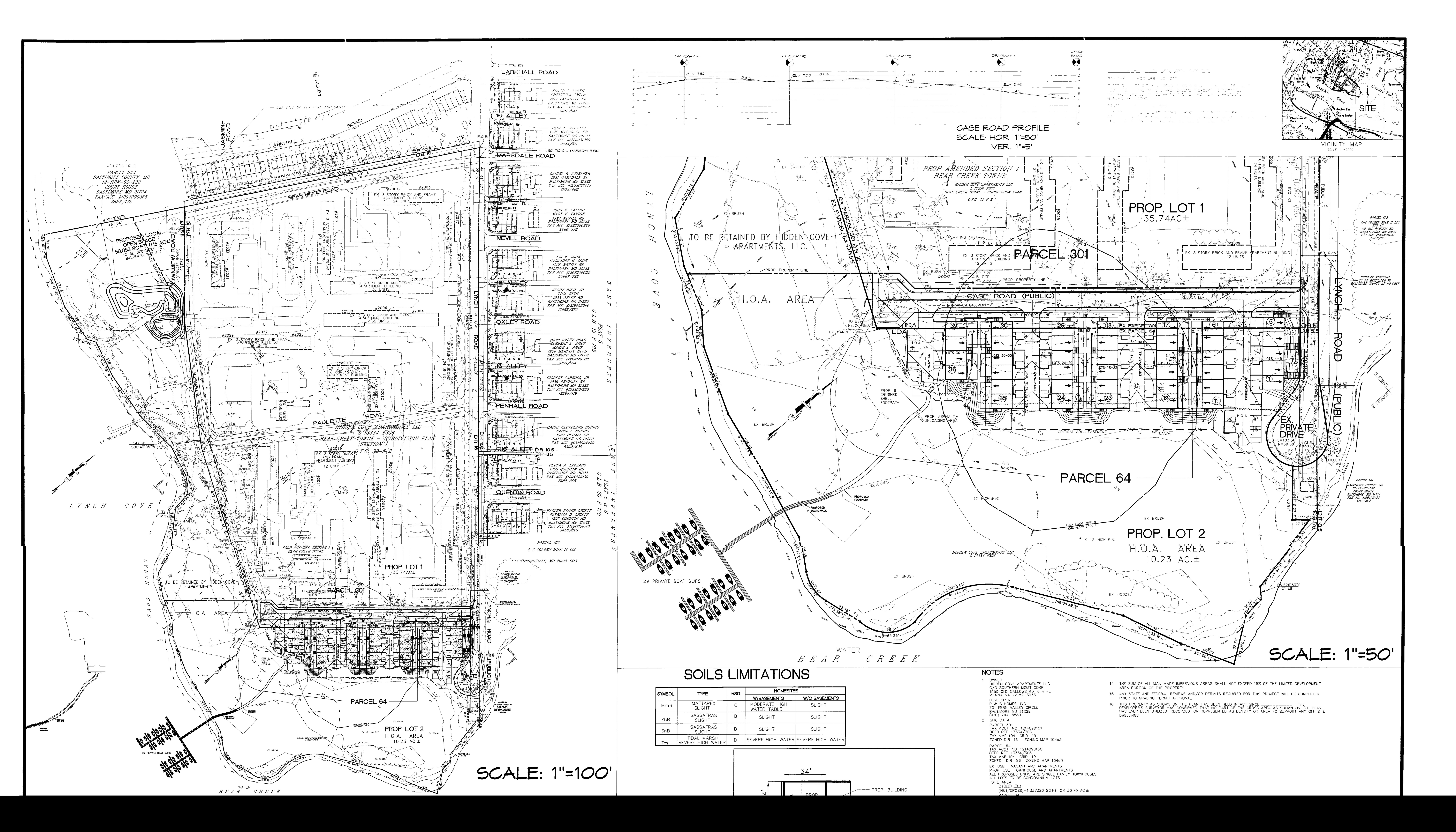
PLEASE PRINT CLEARLY

CASE NAME CONTON

PETITIONER'S SIGN-IN SHEET

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LCB = 534°40'22"E £37,820.36 } . \$15,764.37 } ----514,602.41 L. E 36,499.03 \$15,877.20 {E37,906.51 { \$41°59:35"W 30.00" { \$15,899.50 {E37,886.44 5 (4,G28,8G) 7 E 3G,483,48) N47° 26' 25' W. 20 MINIMUM SET BACK LINE R: 50.00 L: 73.53 T: 45.22 Chd: 67.08 LCB: N.8°03'23"E DENSITY CALCULATIONS PRESENT ZONING OF PROPERTY: 'RA' GROSS RESIDENTIAL AREA: \_ 48.799 Ac. NET RESIDENTIAL AREA: 47.875 Ac. GROSS ACREAGE, SECTION 1: 30.807 Ac. (5 15,935.7G (E 36 632.99 TOTAL NO. APARTMENTS, SECTION 1: 504 (S 15 701.5B (E 36 289, 20 JERRY WOLMAN & HENRY 5. SNYDER 4625-132 0.T.S. 32 FOLIO 2 JAN 30 1967 at . AM: O.T.G. No.\_\_\_\_folio\_\_\_\_\_\_
Come of the \_\_\_\_ Records of Baltimore County and examined, per COORDINATES ARE REFERRED TO THE BALTIMORE COUNTY METROPOLITAN DISTRICT TRAVERSE AND BASED ON POINTS APPROVED AS TO ALIGNMENT AND LOCATION OF STREETS THE STREETS AND/OR ROADS AS SHOWN HEREON THE SUBDIVISION PLAN CIRCLE OF STORY OF THE ATTEMPT OF STORY OF STORY OF STORY WASHING ON THE REQUIRED OF THE ATTEMPT OF STORY OF MARKET ON THE STORY OF JERUME B WOLFF & ASSUCIATES, INC. OF ALLE SECTION OF THE SECTION OF THE SECTIONS BEAR CREEK TOWNE EPPROVED BY 6/15 TO THE ATTIMENT HE HELLER GEORGE WRIGAM STEPHENS IR & 1 TOTATES, INC. Bear Cluc. C# THE DIFFE TO WITHOUT THIS PEAT TO ATTACHED, THEM BALTO. CO. MD. E LECT DIST. Nº 12 CONSCIENC ENGINEERS & LAND SUBJECTERS REG. No. 2286 SCALE 1=100 TOWSON, MARYLARD 21284 DATE AUG.10,1966 PPROVED BY BALTO, CO. REALTH DEPARTMENT - 126603CR REVISED: JAN 3, 1967 Geting WATER 1-26-67

DATE: 1-26-67 OWNER - BEAR INC. BMK CIME 8555 IGHA STREET N.W. 1118/61 SILVER SPRING ,MD. W28 2211939-3184

