11/18/05

IN RE: PETITION FOR VARIANCE N/W side of Taylor Avenue, 285 ft. s/east of c/l of McTavis Avenue 13th Election District 1st Councilmanic District **(1206 Taylor Avenue)** Link-Link, LLC, Legal Owner	* * * * *	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NO. 06-166-A

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Variance filed by the legal owner of the subject property, Link-Link, LLC, by William C. Link, Authorized Person. The variance request is for property located at 1206 Taylor Avenue in the southwestern part of Baltimore County. The variance requested is from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a lot width of 50 ft. in lieu of the minimum of 55.

Notice of the hearing was given to the public by posting the property with notice of the hearing date and time on October 16, 2005 and by publication in "The Jeffersonian" newspaper on October 18, 2005.

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 October 20, 2005, a copy of which is attached hereto and made a part hereof.

Interested Persons

Appearing at the hearing on behalf of the variance request were Rick Collins, P. E. who prepared the Plat to Accompany and William C. Link, authorized member of the corporate Petitioner. Joseph R. Woolman, III, Esq. represented the Petitioner. Tonya Crowl-Gifford and Roderick Schuh, adjacent property owners, appeared at the hearing in opposition to the request.

ORDER RECEIVED FOR FILING
Date 11-18-05
By

The protestants were represented by Ben Bronstein, Esq. Peter Max Zimmerman, Peoples Counsel, entered his appearance in this case.

Applicable Law

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

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

Preliminary Matter

At the outset Mr. Woolman argued that this case should proceed under Section 304 of the B.C.Z.R. This sections provides:

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.

He noted that pursuant to the administrative process outlined in Section 304.2, the Petitioner applied for a building permit and dutifully posted the property as required by the regulations, Section 304.3. Apparently, the adjoining property owner then filed a written request for public

ORDER RECEIVED FOR FILING
Date 11-18-05
By

hearing. As such, Mr. Woolman contends that the hearing should be in accord with Section 304.4 of the B.C.Z.R. and not a variance. The standard of proof is substantially different in a Section 304.4 hearing as compared to a variance. He indicated that the Zoning Office insisted on this case being heard as a variance.

Testimony and Evidence

Mr. Woolman proffered in the alternative to a Section 304.4 hearing, that the subject property is composed of lots 298 and 299 of the Widmore Park Subdivision which was recorded in the land records of the County in 1922. See subdivision plat of Widmore Park Subdivision, Petitioner's Exhibit 2. The two lots together contain 6,250 sq. feet and are zoned DR 5.5. The lots are presently vacant. Together these lots are 50 feet wide. See the Plat to Accompany, Exhibit 1. The DR 5.5 regulations require 55 feet. Consequently, the Petitioner requests a variance for the width.

In regard to his request to proceed under Section 304.4, Mr. Woolman proffered that together the two lots meet each requirement of this Section as the lots were created before March 30, 1955, that together the proposed home meets all County regulations save lot width and the Petitioner owns no adjoining land to conform to the width regulations. He further opined that granting this permit is appropriate because this new home would be compatible with the pattern of development of the neighborhood as many homes in the area are built on two 25-foot wide lots. In support of this contention he submitted extensive photographs of similar homes in the neighborhood as Petitioner's Exhibit 3 and State Department of Assessments and Taxation (SDAT) records in Petitioner's Exhibit 6.

He noted that the Petitioner sold the house at 1204 Taylor Avenue to the Protestants whose property comprises a home straddling lots 296 and 297 as well as four (4) lots behind the subject

ORDER RECEIVED FOR FILING
Date 11-18-05
By

property. These latter lots are numbers 342 through 345. At the same time as he listed the Protestant's property for sale, he also listed the subject property for sale.

Mr. Williams, the Petitioner's engineer, indicated that the Petitioner owned all eight (8) lots prior to the sale to the protestants. When asked if the protestant's lots 296 and 297 were under width, he indicated together they were 50 feet in width and did not meet the 55-foot minimum required by the DR 5.5 zoning. He also noted that the four (4) lots in the rear are zoned industrial.

Mr. Link confirmed that his company owned all eight (8) lots prior to sale of six (6) lots to the protestants. See Protestant's Exhibits 2A, 2B and 2 C. He confirmed that there was a garage on the rear of the protestant's home, as well as patio on the side of the garage. Finally, he confirmed that there was a swimming pool and shed on the four (4) rear lots that he indicated were purchased from his company at the time the sale of the protestants home. There is a picket fence separating the rear from the front lots. He was not sure that there was a bomb shelter on lot 298 but agreed to fill or remove any part of the bomb shelter found on the protestant's property.

Mr. Schuh, one of the protestants and co-owner of lots 296 and 297, testified that he received a location survey as part of the settlement of the sale of his home with the Petitioner, Protestant's Exhibit 4. The survey shows a swimming pool on lot 343 and 342 and the paper alley separating the front and rear lots. He also found a bomb shelter on lot 298, which has an underground access tunnel leading from the Protestant's basement. He presented his assessment of the size and location of the bomb shelter on Protestant's Exhibit 3. Mr. Schuh admitted that he was aware of the offered sale of lots 296 and 297 at the time the protestant's purchased their property.

Findings of Fact and Conclusions of Law

In regard to the issue of proceeding under Section 304 rather than under the variance statute, I agree with the Zoning Office this needs to be a variance hearing because the Petitioner owned sufficient land adjacent to the subject lots (lots 296 and 297) within the last six (6) years which

ORDER RECEIVED FOR FILING
Date 11-18-05
By

could have been used to conform to the width requirement. See Zoning Commissioner's Policy Manual, Section 304. I realize the Petitioner did not own the adjacent property when the case was filed. However, the Policy Manual sets a six-year separation before the petitioner is viewed as not having adjacent property.

In regard to the main issue of variance relief, the initial question is whether or not the eight (8) lots were merger for zoning purposes under the zoning merger doctrine enunciated in *Friends of the Ridge v Baltimore Gas and Electric Company*, 352 Md.645, 724 A.2d 34 (1999) and *of Remes v Montgomery County* 387 Md 52, 874 A 2d 470 (2005). I find from the evidence presented, the eight (8) lots merged by action of a predecessor in title to the Petitioner. The predecessor erected a swimming pool, shed, fence and bomb shelter on adjacent lots, which clearly showed his intention to treat the eight (8) lots as a whole. These are the kind of improvements which show an intent to merge. Many require permits which are the kind of overt action by an owner in a public forum which indicate an intent to merge. In addition, as Mr. Bronstein points out, sale of lot 298 will make the protestant's 50-foot lot non-conforming.

The question next is whether the Petitioner can undo the merger by offering them for sale separately. My research of cases from other states, which have adopted the zoning merger doctrine, does not show that subsequent owners can undo a prior merger. I know of no Maryland appellate case that has directly addressed the issue but I note that if the owner in the *Remes* case could simply have declared by statement or action an end to the merger, there would not have been an appellate decision. Consequently, I find that the Petitioner cannot now undo the merger by attempting to sell lots 298 and 299. As the lots have merged from a zoning standpoint, I must deny the requested variance as there are no internal lot lines (from a zoning standpoint) against which variances can be granted.

ORDER RECEIVED FOR FILING
Date 11-18-05
By Debra Wiley

That said, I see great difficulty ahead for the Petitioner. The *Remes* case specifies the next step after finding lots have merged is to resubdivide the property. If there are three (3) undersized lots that are resubdivided, perhaps the regulations will allow two (2) lots. The owner has some use of its property albeit in a diminished capacity. In *Remes* there were two (2) lots which merged. How resubdivision would apply in this case is not clear to me. But at least the owner's interest was the same for both lots.

Here the protestants own 3/4 of the merged lot (the eight (8) lots combined) and the Petitioner owns 1/4 of the merged lot. They have opposite interests and goals. I cannot imagine the protestants will join in to apply for resubdivision much less cooperate in any way with that process. This leads me to worry what use the Petitioner can make of the two (2) remaining lots. I will not attempt to prejudge another case that may come to this Commission from the Petitioner.

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

THEREFORE, IT IS ORDERED, this 18 day of November, 2005, by this Deputy Zoning Commissioner, that the Petitioner's request for variance from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.), to permit a lot width of 50 ft. in lieu of the minimum of 55, be and it is hereby DENIED.

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

ORDER RECEIVED FOR FILING
Date 11-18-05
By

JVM:dlw

John V. Murphy
JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
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

November 15, 2005

Joseph R. Woolman, III
Gildea & Schmidt
300 East Lombard Street, Suite 1440
Baltimore, Maryland 21202

Re: Petition for Variance
Case No. 06-166-A
Properties: 1206 Taylor Avenue

Dear Mr. Woolman:

Enclosed please find the decision rendered in the above-captioned cases. The petition for Variance 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

John V. Murphy
Deputy Zoning Commissioner
for Baltimore County

JVM:dlw
Enclosure

c: Link-Link, LLC, William C. Link, 2625 Old Washington Road, Westminster, MD 21157
Rick Williams, 66 E. Main St., Westminster, MD 21157
Benjamin Bronstein, Esq., 29 W. Susquehanna Avenue, Suite 205, Towson, Maryland 21204
Tonya Crowl-Gifford, 1204 Taylor Avenue, Halethorpe, MD 21227
Roderick T. Schuh, 1204 Taylor Avenue, Halethorpe, MD 21227
People's Counsel; Case File

Printed on Recycled Paper

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 1206 Taylor Ave.

which is presently zoned DR 5.5

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

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.

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address — Telephone No.

City — State — Zip Code

Legal Owner(s):

Link-Link, LLC
Name - Type or Print

Signature

William C. Link
Name - Type or Print

Signature

2625 Old Washington Rd.
Address — Telephone No.

Westminster MD 21157
City — State — Zip Code

Attorney For Petitioner:

Joseph R. Woolman III
Name - Type or Print

Gildea & Schmidt, LLC
Signature

Company

300 E. Lombard St.
Address — Telephone No.

Baltimore, MD 21202
City — State — Zip Code

Representative to be Contacted:

Joseph R. Woolman, III
Name

Address — Telephone No.

City — State — Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

UNAVAILABLE FOR HEARING

Case No. 06-166-A

REV 9/15/98

Reviewed By JR Date 9/19/05

ORDER RECEIVED FOR FILING
Date 11-18-05
By

1B02.3.C.1 (BCZR) to permit a lot width of 50 ft. in lieu of the minimum required 55 ft.

Description

To Accompany Petition for Zoning Waiver

0.143 Acre Parcel

1206 Taylor Avenue

Lots 296 & 297, Plat of Whittemore Park

West Side of Taylor Avenue

Thirteenth Election District, Baltimore County, Maryland

Beginning at a point on the northwest side of Taylor Avenue, a 50 foot right-of-way, at a distance of 285 feet, more of less, southeasterly along the centerline of Taylor Avenue from the intersection with McTavish Avenue, a 40 foot right-of-way.
Being Lots 296 and 297 in the subdivision of Whittemore Park as recorded in Baltimore County Plat Book 7, Folio 159, containing 0.143 acres of land, more or less. Also known as 1206 Taylor Avenue, and located in the Thirteenth Election District, and First Councilmanic District.

THIS DESCRIPTION HAS BEEN PREPARED FOR ZONING PURPOSES ONLY, AND IS NOT INTENDED TO BE USED FOR CONVEYANCE.

September 17, 2005

Project No. 05086.1

STATE OF MARYLAND
JAMES LEROY MATHIAS
No. 11039
PROFESSIONAL LAND SURVEYOR
9-17-05

#166

CERTIFICATE OF POSTING

ATTENTION: KRISTEN MATTHEWS

Date: October 16, 2005

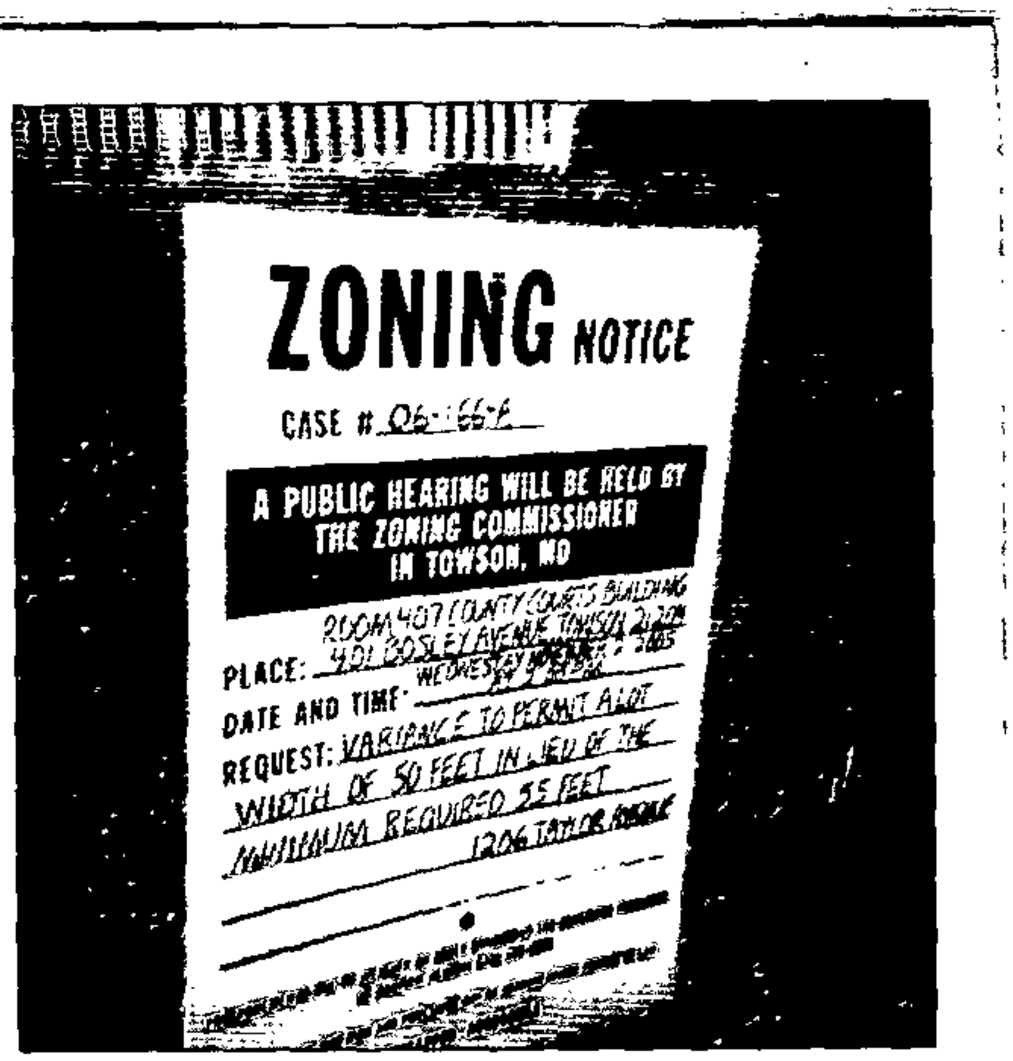
RE: Case Number 06-166-A

Petitioner/Developer: JOSEPH WOOLMAN/WILLIAM LINK/RICK WILLIAMS

Date of (Hearing)/Closing: NOVEMBER 2, 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 1205 TAYLOR AVENUE

The sign(s) were posted on October 16, 2005
(Month, Day, Year)



Linda O'Keefe
(Signature of Sign Poster)

LINDA O'KEEFE
(Printed Name of Sign Poster)

523 PENNY LANE
(Street Address of Sign Poster)

HUNT VALLEY MD 21030
(City, State, Zip Code of Sign Poster)

410-666-5366
(Telephone Number of Sign Poster)

RECEIVED
OCT 18 2006

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 2539

DATE 1/3/06 ACCOUNT 001-006-6150

AMOUNT $ ~~[illegible]~~ 400.00

RECEIVED FROM: Gildea + Schmidt

FOR: Appeal - Case No. 06-166-A

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRJ
1/04/2006	1/03/2006	15:34:33	6

REG 0503 CALKINS 0003 0001
>>RECEIPT # 403369 1/03/2006 CFLN
Dept 5 528 ZONING VERIFICATION
CR NO. 002539
Recpt Tot $400.00
$400.00 CK $0.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

APPEAL SIGN POSTING REQUEST

CASE NO. 06-166-A

1206 TAYLOR AVENUE

13th ELECTION DISTRICT APPEALED: 12/19/05

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.: 06-166-A

LEGAL OWNER: LINK-LINK, LLC

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

1206 TAYLOR AVENUE
N/W SIDE OF TAYLOR AVENUE, 285 FT. S/EAST OF C/L OF
MC TAVISH AVENUE

The sign was posted on 3-23, 2006. MAP 42 B5

By: _____
(Signature of Sign Poster)

JASON SEIDELMAN
(Print Name)

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: 06-166-A

Petitioner: LINK-LINK

Address or Location: 1206 Taylor Avenue

PLEASE FORWARD ADVERTISING BILL TO:

Name: Bill Link

Address: 2625 Old Washington Rd
Westminster, MD 21157

Telephone Number: 410-977-1200

Revised 7/11/05 - SCJ

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: #06-166-A
1206 Taylor Avenue
N/west side of Taylor Avenue, 285 feet s/east of centerline of McTavis Avenue
13th Election District
1st Councilmanic District
Legal Owner(s): Link-Link, Inc.
Variance: to permit a lot width of 50 feet in lieu of the minimum required 55 feet.
Hearing: Wednesday, November 2, 2005 at 2:00 p.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/10/699 Oct 18 71608

CERTIFICATE OF PUBLICATION

10/20/, 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 10/18/, 2005.

- [x] 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

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

October 3, 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: 06-166-A
1206 Taylor Avenue
N/west side of Taylor Avenue, 285 feet s/east of centerline of McTavis Avenue
13th Election District – 1st Councilmanic District
Legal Owners: Link-Link, Inc.

Variance to permit a lot width of 50 feet in lieu of the minimum required 55 feet.

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

Timothy Kotroco

Timothy Kotroco
Director

TK:klm

C: Joseph Woolman, Gildea & Schmidt, 300 E. Lombard St., Baltimore 21202
William Link, 2625 Old Washington Road, Westminster 21157

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, OCTOBER 18, 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, October 18, 2005 Issue - Jeffersonian

Please forward billing to:
Bill Link
2625 Old Washington Road
Westminster, MD 21157

410-977-1700

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: 06-166-A
1206 Taylor Avenue
N/west side of Taylor Avenue, 285 feet s/east of centerline of McTavis Avenue
13th Election District – 1st Councilmanic District
Legal Owners: Link-Link, Inc.

Variance to permit a lot width of 50 feet in lieu of the minimum required 55 feet.

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

WILLIAM J WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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

County Board of Appeals of Baltimore County

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

June 1, 2006

NOTICE OF DELIBERATION

IN THE MATTER OF:

LINK-LINK, INC. - Legal Owner /Petitioner
Case No. 06-166-A

Having heard this matter on 5/31/06, public deliberation has been scheduled for the following ~~date /time~~:

Should be 9:00 am

DATE AND TIME : **THURSDAY, AUGUST 17, 2006 at ~~10:00 a.m.~~** 9:00 am

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

Caught after mail went out - Sent amended notice dated 6/02/06

NOTE: Closing briefs are due on Monday, July 10, 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.

Kathleen C. Bianco
Administrator

---

c: Counsels for Appellant /Petitioner : Joseph R. Woolman III, Esquire
Appellant //Petitioner : Link-Link, LLC /William C. Link
Rick Collins, P.E.

Counsel for Protestants : Benjamin Bronstein, Esquire
Protestants : Tonya Crowl-Gifford
Roderick T. Schuh

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

FYI: 2-5-6

Printed with Soybean Ink
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

April 6, 2006

NOTICE OF ASSIGNMENT

CASE #: 06-166-A **IN THE MATTER OF: LINK-LINK, LLC –Legal Owner/ Petitioner** 1206 Taylor Avenue
13th Election District; 1st Councilmanic District

11/18/2005 -D.Z.C.'s Order in which requested variance relief was DENIED.

ASSIGNED FOR: **WEDNESDAY, MAY 31, 2006 at 10:00 a.m.**

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

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

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

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

Kathleen C. Bianco
Administrator

---

c: Counsels for Appellant /Petitioner : Joseph R. Woolman III, Esquire
Appellant //Petitioner : Link-Link, LLC /William C. Link
Rick Collins, P.E.

Counsel for Protestants : Benjamin Bronstein, Esquire
Protestants : Tonya Crowl-Gifford
Roderick T. Schuh

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

Printed with Soybean Ink
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

January 16, 2007

NOTICE OF PUBLIC DELIBERATION
- BY REQUEST OF THE BOARD

IN THE MATTER OF:

LINK-LINK, INC. - Legal Owner /Petitioner
Case No. 06-166-A

The Board members who comprised the panel for the subject matter have scheduled an additional date for deliberation in this case to discuss issues that arose during the drafting of their final opinion and order. This discussion /public deliberation has been scheduled for:

DATE AND TIME : WEDNESDAY, FEBRUARY 21, 2007 at 9:00 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

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

Kathleen C. Bianco
Administrator

c: Counsels for Appellant /Petitioner : Joseph R. Woolman III, Esquire
Appellant //Petitioner : Link-Link, LLC /William C. Link
Rick Collins, P.E.

Counsel for Protestants : Benjamin Bronstein, Esquire
Protestants : Tonya Crowl-Gifford
Roderick T. Schuh

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

FYI: 2-5-6

Printed with Soybean Ink
on Recycled Paper

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

October 31, 2005

Joseph R. Woolman III
Gildea & Schmidt
300 East Lombard Street
Baltimore, Maryland 21202

Dear Mr. Woolman:

RE: Case Number: 06-166-A, 1206 Taylor Avenue

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on September 19, 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
Link-Link, LLC William C. Link 2625 Old Washington Road Westminster 211573

Printed on Recycled Paper

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: September 27, 2005

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

SUBJECT: Zoning Advisory Committee Meeting
For October 10, 2005
Item Nos. 155, 156, 157, 159, 160, 161, 162, 163, 164, 165.and 166

The Bureau of Development Plans Review has reviewed the subject zoning items, and we have no comments.

DAK:CEN:clw
cc: File
ZAC-NO COMMENTS-09272005.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

September 22, 2005

ATTENTION: Zoning review planners

Distribution Meetings of: **October 3**, 2005

Item No.: **155-166**

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.

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

Lieutenant J.D.Mezick
Fire Marshal's Office
410-887-4880
MS-1102F

cc: File

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: October 20, 2005

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

SUBJECT: 1206 Taylor Avenue

INFORMATION:

Item Number: 6-166

Petitioner: Link-Link, LLC

Zoning: DR 5.5

Requested Action: **Variance**

SUMMARY OF RECOMMENDATIONS:
The Office of Planning does not oppose the petitioner's request provided the following conditions are met:

1. Revise the plan to locate the driveway (single-car width) near the side lot line (not positioned in front of the dwelling). Also, increase the driveway length to 40 feet in order to accommodate two cars end to end. If there is not enough length forward of the front building face, part of the driveway can be oriented along the side of the dwelling. If the aforementioned additional space is required, the side yard on the opposite side of the dwelling can be reduced to 10 feet (i.e. to accommodate the driveway on the other side of the property). The driveway should be constructed of concrete that matches the existing driveways for other dwellings in the vicinity of this property.
2. The dwelling should be consistent with the architectural elevations submitted on 4/20/2005, in conjunction with an Undersized Lot Application for the subject property.
3. Amend the vicinity map to display "Washington Boulevard" as "Southwestern Boulevard."

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

W:\DEVREV\ZAC\6-166.doc

Prepared by: _____

Division Chief: _____

AFK/LL: CM

W:\DEVREV\ZAC\6-166.doc

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

SHA
Driven to Excel
State Highway Administration
Maryland Department of Transportation

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

Date: 9.21.05

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

RE: Baltimore County
Item No. 166 BPR

Dear. Ms. Matthews:

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

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

Very truly yours,

S. D. Foster

Steven D. Foster, Chief
Engineering Access Permits Division

RE:	PETITION FOR VARIANCE 1206 Taylor Avenue; NW/side Taylor Avenue, 285' SE c/line McTavis Avenue 13th Election & 1st Councilmanic Districts Legal Owner(s): Link-Link, Inc by William C. Link Petitioner(s)	* * * * * * *	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 06-166-A

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

ENTRY OF APPEARANCE

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

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

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

RECEIVED
SEP 23 2005
Per.....

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 23rd day of September, 2005, a copy of the foregoing Entry of Appearance was mailed to, Joseph R. Woolman,III, Esquire, , Gildea & Schmidt LLC, 300 E. Lombard Street, Suite 1440, Baltimore, MD 21202 , Attorney for Petitioner(s).

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

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 6, 2006

Joseph R. Woolman, III, Esquire
Gildea & Schmidt, LLC
300 E. Lombard Street, Suite 1440
Baltimore, MD 21202

RECEIVED
JAN 06 2006
BALTIMORE COUNTY
BOARD OF APPEALS

Dear Mr. Woolman:

RE: Case : 06-166-A, 1206 Taylor Avenue

Please be advised that we received your appeal of the above-referenced case on December 19, 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

TK:raj

c: John V. Murphy, Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Link-Link, LLC, William C. Link, 2625 Old Washington Rd., Westminster, MD 21157
Rick Williams, 66 E. Main St., Westminster, MD 21157
Benjamin Bronstein, Esq., 29 W. Susquehanna Ave., Ste. 205, Towson, MD 21204
Tonya Crowl-Gifford, 1204 Taylor Ave., Halethorpe, MD 21227
Roderick T. Schuh, 1204 Taylor Ave., Halethorpe, MD 21227

APPEAL

Petition for Variance
1206 Taylor Avenue
N/W side of Taylor Avenue, 285 ft. s/east
of c/l of McTavish Avenue
13th Election District, 1st Councilmanic District
Link-Link, LLC - Owner

Case No.: 06-166-A

Petition for Variance (9/19/05)

Zoning Description of Property

Notice of Zoning Hearing (October 3, 2005)

Certification of Publication (October 18, 2005 – The Jeffersonian)

Certificate of Posting (October 16, 2005) by Linda O'Keefe

Entry of Appearance by People's Counsel (September 23, 2005)

Petitioner(s) Sign-In Sheet – One Sheet

Protestant(s) Sign-In Sheet
None in File

Citizen(s) Sign-In Sheet – One Sheet

Zoning Advisory Committee Comments

Petitioners' Exhibits
1. Site Plan to Accompany
2. Drawing of Whittemore Park Subdivision
3 A-J Photographs of houses in development
4 MD Dept. Assess. & Tax. Property Search – 1206 Taylor Ave.
5 MD Dept. Assess. & Tax. Property Search – 1204 Taylor Ave.
6A MD Dept. Assess. & Tax. Property Search – 1201 Taylor Ave.
6B MD Dept. Assess. & Tax. Property Search – 1203 Taylor Ave.
6C MD Dept. Assess. & Tax. Property Search – 1209 Taylor Ave.
6D MD Dept. Assess. & Tax. Property Search – 1224 Taylor Ave.
6E MD Dept. Assess. & Tax. Property Search – 1225 Taylor Ave.
6F MD Dept. Assess. & Tax. Property Search – 1219 Taylor Ave.
6G MD Dept. Assess. & Tax. Property Search – 1216 Taylor Ave.
6H MD Dept. Assess. & Tax. Property Search – 1218 Taylor Ave.
6I MD Dept. Assess. & Tax. Property Search – 1215 Taylor Ave.
6J MD Dept. Assess. & Tax. Property Search – 1211 Taylor Ave.
6K MD Dept. Assess. & Tax. Property Search – 1207 Taylor Ave.
7 (MRISI) Real Estate Listing Info. for 1204 Taylor Ave., Halethorpe, MD 21227

Protestants' Exhibits:
1. Copy of 3-page Deed between Link-Link, LLC and Roderick T. Schuh & Tonya Crowl-Gifford
2A MD Dept. Assess. & Tax. Property Search – 1206 Taylor Ave. – Lots 298 & 299
2B MD Dept. Assess. & Tax. Property Search – 1204 Taylor Ave. – Lots 342, 33, 344, 345
2C MD Dept. Assess. & Tax. Property Search – 1209 Taylor Ave. – Lots 296, 297
3 Photocopy of Photograph – 1204 Taylor Ave.
4 Location Drawing for 1204 Taylor Avenue

Deputy Zoning Commissioner's Order (11/18/05) DENIED

Notice of Appeal/Petition received on December 19, 2005 from Joseph R. Woolman, III, Esq.

c: People's Counsel of Baltimore County, MS #2010
Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Joseph R. Woolman, III, Esquire, Gildea & Schmidt, LLC, 300 E. Lombard Street, Suite 1440, Baltimore, MD 21202
Link-Link, LLC, William C. Link, 2625 Old Washington Rd., Westminster, MD 21157
Rick Williams, 66 E. Main St., Westminster, MD 21157
Benjamin Bronstein, Esq., 29 W. Susquehanna Ave., Ste. 205, Towson, MD 21204
Tonya Crowl-Gifford, 1204 Taylor Ave., Halethorpe, MD 21227
Roderick T. Schuh, 1204 Taylor Ave., Halethorpe, MD 21227

date sent January 6, 2006,raj

Case No. 06-166-A

In the Matter of: Link-Link, LLC – Legal Owner /Petitioner
1206 Taylor Avenue

VAR – To permit lot width of 50' ilo minimum of 55'permit 50'.

11/18/2005 -D.Z.C.'s Order in which requested variance relief was **DENIED**

1/20/06 – Entry of appearance filed by Benjamin Bronstein, Esquire – entering appearance on behalf of Tonya Crowl-Gifford and Roderick T. Schuh, Protestants in this matter. File noted.

4/06/06 --Notice of Assignment sent to following; assigned for hearing on Wednesday, May 31, 2006 at 10:00 a.m.:

Joseph R. Woolman III, Esquire
Link-Link, LLC /William C. Link
Rick Collins, P.E.
Benjamin Bronstein, Esquire
Tonya Crowl-Gifford
Roderick T. Schuh
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

5/31/06 – Board convened for hearing (Stahl, Brassil, Witt); concluded hearing this date; memos due on 7/10/06; deliberation to take place on 8/17/06; notice to be sent.

6/01/06 – Notice of Deliberation sent to parties; deliberation assigned for Thursday, August 17, 2006 at 9:00 a.m. INCORRECT TIME ON NOTICE – REFLECT 10 A.M. IN LIEU OF CORRECT 9 A.M. TIME; AMENDED NOTICE TO BE SENT IN 6/02/06 MAIL.

6/02/06 – Amended Notice of Deliberation sent to parties to correct time shown; no change in date; deliberation assigned for Thursday, August 17, 2006 **at 9:00 a.m. FYI copy to Board – amended copy only.**

7/10/06 – Memos filed by counsel (B. Bronstein and J. Woolman).

8/17/06 – Board convened for public deliberation (2-5-6). To be remanded back to ZC for consideration of variance as requested in Mr. Woolman's memo; written opinion and order to be written; appellate period to run from date of written Order. (6)

County Board of Appeals of Baltimore County

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

September 11, 2007

Lawrence S. Schmidt, Esquire
Gildea & Schmidt, LLC
600 Washington Avenue – Suite 200
Towson, MD 21204

RE: Circuit Court Civil Action No. 03-C-07-009629
Petition for Judicial Review
Link-Link, LLC
Case No.: 06-166-A

Dear Mr. Schmidt:

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the Cross Petition for Judicial Review, which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days. The cost of the transcript of the record must be paid by you and must be paid in time to transmit same to the Circuit Court within the sixty day timeframe, as stated in the Maryland Rules.

The Court Reporter that you need to contact to obtain the transcript and make arrangement for payment is as follows:

CAROLYN PEATT
TELEPHONE: 410-486-8209
Dates of Hearing: May 31, 2006

Please have the transcript to the Board of Appeals prior to October 18, 2007 for filing in the Circuit Court.

Enclosed is a copy of the Second Certificate of Notice.

Very truly yours,

Linda B. Fliegel

Linda B. Fliegel
Legal Secretary

/lbf
Enc.
c: Benjamine Bronstein, Esq.
William C. Link/Link-Link, LLC

Printed with Soybean Ink
on Recycled Paper

BOARD OF APPEALS OF BALTIMORE COUNTY
SECOND MINUTES OF DELIBERATION

IN THE MATTER OF: Link-Link
1206 TAYLOR AVE
CASE NO.: O6-166-A
13TH E: 1ST C

DATE: February 21, 2007

BOARD/PANEL Lawrence M. Stahl, Chairman
Dr. Margaret Brassil
Robert Witt

RECORDED BY: Linda B. Fliegel/Legal Secretary

PURPOSE: To deliberate a petition for variance to permit a lot width of 50' in lieu of the required 55'.

NOTE: The Board members who comprised the panel for the subject matter have scheduled an additional date for deliberation in this case to discuss issues that arose during the drafting of their final opinion and order.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

Some of the questions that were raised by the Board are as follows:

1. Was there a merger of the property?
2. Can the owner build on the two lots?
3. Does the Petitioner meet the requirements under 304?
4. Is this a buildable lot?
5. By doing away with the lot lines, as a result of the merger, where would you measure from since there are now no established lot lines?

- This is a second deliberation of the Link-Link case.
- Instead of remanding this case back to the zoning commissioner, the Board must make a decision.
- The lots are zoned D.R.5.5.
- Lots number 298 and 299 are the lots in questions.
- It indeed appears, from a zoning standpoint, that all eight lots have been merged.
- As a result of the merging of the lots a zoning variance could not be granted.
- There is a bomb shelter that runs *under ground* from the house, which is located on one lot, to a second lot. In addition, the patio seems to cross over to the other lot as well.
- As a result of the merger, all of the setback lines have been changed.
- There are no lines that can clearly be established for setbacks.
- Because there was a merger of all eight lots the Petitioner cannot come back to the County and request a variance on two of the eight lots.
- Any separation of two lots from the eight that have bee together merged would require the Petitioner to go through the DRC process.

Link-Link
1206 Taylor Avenue
Deliberation Minutes
February 21, 2007

- The *Remes v. Montogmery County* case was discussed and the applicability to this case.
- The Petitioner clearly does not meet the criteria under Sec. 304 of the BCZR.
- Any practical difficulty was self-imposed by the Petitioner.

DECISION BY BOARD MEMBERS: The Board decided that the Petitioner did not meet the criteria under Sec. 304 of the BCZR.

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

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

Respectfully Submitted

Linda B. Fliegel

Linda B. Fliegel
County Board of Appeals

BOARD OF APPEALS OF BALTIMORE COUNTY

MINUTES OF DELIBERATION

IN THE MATTER OF: **LINK-LINK, INC- LEGAL OWNER/PETITIONER**
Case No. 06-0166-A

DATE: August 17, 2006

BOARD/PANEL Laurence Stahl (chairman)
Margaret Brassil
Robert Witt

RECORDED BY: Patricia Sigal

PURPOSE: To deliberate the decision of a denial of a Variance.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- Request to approve unerdsized lot, in accordance with zoning law DR 5.5 which states regulation 55 feet.
- Discussed weather or not there was a merger. And was the lot subdivided when it was sold?
- There was no discussion of uniquness in variance
- Should be a 304 case not a variance case
- Board members believe there was a merger before the sale
- Link-Link is appealing the denial of variance
- PDM process discussed/ no record of Link-Link attempting a PDM
- Board members agree that there is no case for a variance.
- Discussed a remand back to a 304.

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

Respectfully Submitted

_____

Patricia Sigal - Temp
County Board of Appeals

Date 8/17/06

Board - Margaret Bragoul
Laurence Stahl (chair)
Robert Witt

Recorded by - Patti Siegal

Purpose - ① Request to appeal 4-Remand under Sign lot
zone DR-5.5 - Regulation 5.5-feet
Variance Denied Request for undersized lot
b/c zoning merger issue
② - Where a merger?
③ If were merger - Subdivision when lot sold?

- Read transcripts
- no testimony
- audience
- no discussion of uniqueness in variance
- ?304.4 not a variance case / maybe
- believe there was a merger prior to sale
- Link appealing denial of case variance
- PDM process discussed / no record of attempting a PDM

- zoning request to clear for undersized lot
- agree no case for variance
- if petitioner wants to continue suggest them to go back to a 304
- 304.4 discussed

→

BENJAMIN BRONSTEIN
ATTORNEY AT LAW
SUSQUEHANNA BUILDING, SUITE 205
29 WEST SUSQUEHANNA AVENUE
TOWSON, MARYLAND 21204
(410) 296-0200
FAX: (410) 296-3719
Benbronstein@terralaw.net

January 19, 2006

Board of Appeals for Baltimore County
ATTN: Kathleen C. Bianco, Administrator
400 Washington Avenue
Room 49
Towson, Maryland 21204

RE: Case # 06-166-A
1206 Taylor Avenue

Dear Ms. Bianco:

Please enter my appearance on behalf of Tonya Crowl-Gifford and Roderick T. Schuh who own 1204 Taylor Avenue and are protestants in the above-entitled case. Kindly advise me as to the date of hearing and forward any notices to me.

Very truly yours,

Benjamin Bronstein

BB/mlh

cc: Joseph R. Woolman, III, Esquire
Tonya Crowl-Gifford
Roderick T. Schuh

RECEIVED
JAN 2 0 2006
BALTIMORE COUNTY
BOARD OF APPEALS

FAX COVER SHEET

For You, For Baltimore County

Census 2000

Count Yourself in Maryland's Future!

Date: May 10, 2006

Number of Pages including cover sheet: 2

To: Debbie

Phone:

Fax # 410-234-0072

c:

From: Linda Fliegel
County Board of Appeals
400 Washington Ave., Rm. 49
Towson, MD 21204

Phone: (410) 887-3180

Fax # (410) 887-3182

REMARKS: ☐ Urgent ☐ For your review ☐ Reply ASAP ☐ Please comment

Sign posting 06-166-A

Link Link, LLC

SENDING REPORT

May. 10 2006 01:34PM

YOUR LOGO : BOARDOFAPPEALS
YOUR FAX NO. : 4108873182

NO.	OTHER FACSIMILE	START TIME	USAGE TIME	MODE	PAGES	RESULT
01	94102340072	May. 10 01:31PM	03'22	SND	02	OK

TO TURN OFF REPORT, PRESS 'MENU' #04.
THEN SELECT OFF BY USING '+' OR '-'.

FOR FAX ADVANTAGE ASSISTANCE, PLEASE CALL 1-800-HELP-FAX (435-7329).

(410) 234-0072

Debbie called to say that her client, Lisa Link, wondered when the property was going to be posted. I told her I would check file to see since the hearing is 5/31. I noted that sign was posted & she asked that we fax her a copy of sign posting confirmation.

PLEASE PRINT CLEARLY

CASE NAME
CASE NUMBER 06-166-A
DATE

PETITIONER'S SIGN-IN SHEET

Hearing 11/2/05

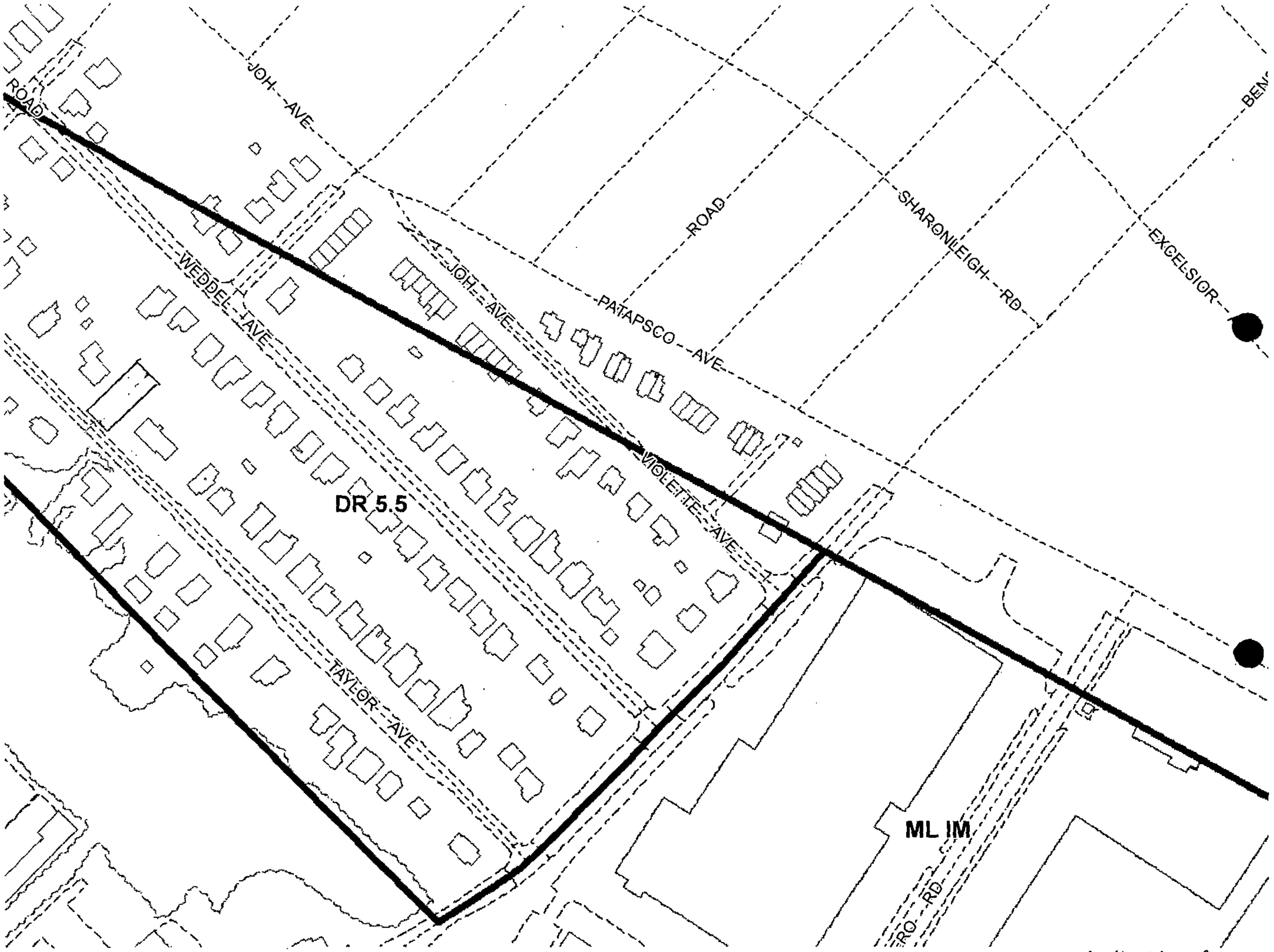
NAME	ADDRESS	CITY, STATE, ZIP	E-MAIL
Joe Woolman	300 E. Lombard St. Ste. 1440	Balt., MD 21202	jwoolman@gikdeallc.com
Rick Williams	66 E Main St.	Westminster Md	rwilliams@demario design.US
Bill Link	2625 OLD WASHINGTON RD	WESTMINSTER, MD	

PLEASE PRINT CLEARLY

CASE NAME
CASE NUMBER 06-166-A
DATE

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E-MAIL
Ben Bronstein	29 W Susquehanna Ave	Towson Md 21204	bronstein@teralaw.net
Tony A Crowl-Gifford	1204 Taylor Ave	Halethorpe MD 21227	tcrowlgifford@verizon.net
Roderick T. Schuh	1204 Taylor Ave	Halethorpe MD 21227	hposer@earthlink.net



#166 map # 102 A2

PLAT TO ACCOMPANY PETITION FOR ZONING ☒ VARIANCE ☐ SPECIAL HEARING

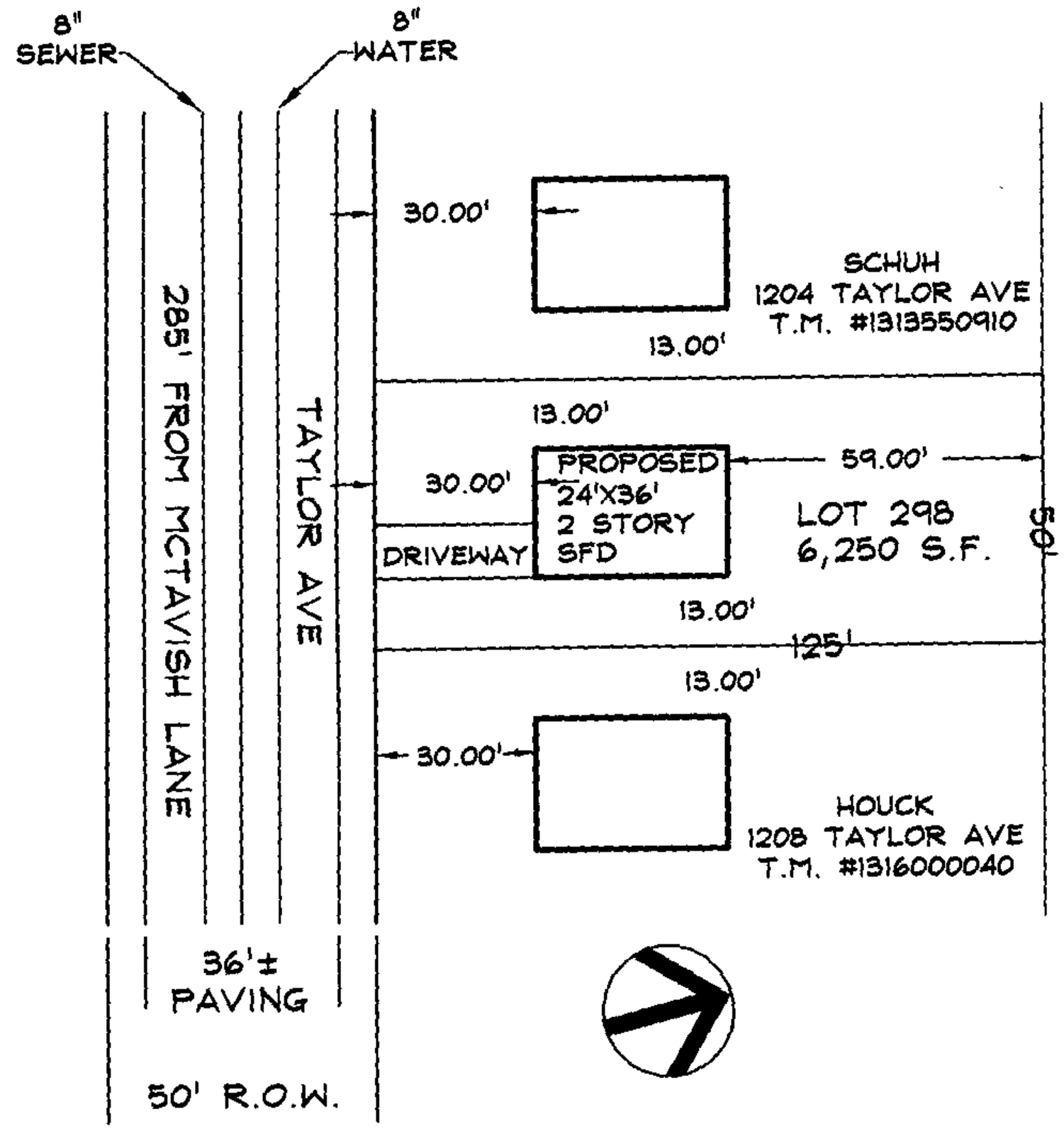
SEE PAGES 5 & 6 OF THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION

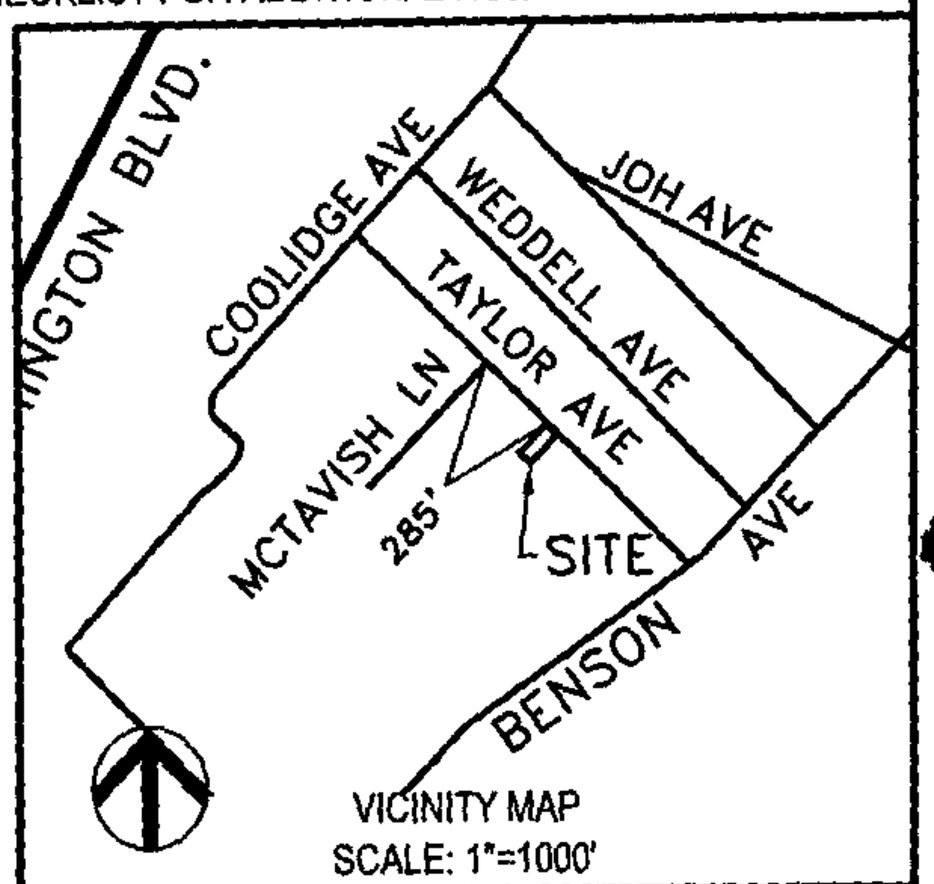
PROPERTY ADDRESS 1206 TAYLOR AVE

SUBDIVISION NAME WHITTEMORE PARK

PLAT BOOK # 07 FOLIO # 159 LOT # 298 SECTION # ____

OWNER LINK/ SINGER LLC 2625 WASHINGTON RD. WESTMINSTER, MD 21157





VICINITY MAP
SCALE: 1"=1000'

LOCATION INFORMATION

ELECTION DISTRICT 13

COUNCILMANIC DISTRICT 1

1"=200' SCALE MAP # 1 .02 A2

ZONING DR 5.5

LOT SIZE 0.144 ACREAGE 6250 SQUARE FEET

SEWER	☒	☐
WATER	☒	☐

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

PRIOR ZONING HEARING NONE

LOCATION INFORMATION

REVIEWED BY	ITEM #	CASE #
GN	166	06-166-A

PREPARED BY DEMARIO DESIGN CONSULTANTS, INC.

SCALE OF DRAWING: 1" = 40'

Pet Exh. 1.

Verified 5-31-06

Protestants
Exhibits

06-166-A

Prot 1 A-B — Panorama of Photos

2 — Panorama of Photos

3 — Plat with seal 5/24/06
1204 Taylor Ave

4 — Plat, done by Protestant
larger version of Prot 3

Prot 5 A-D — Photos

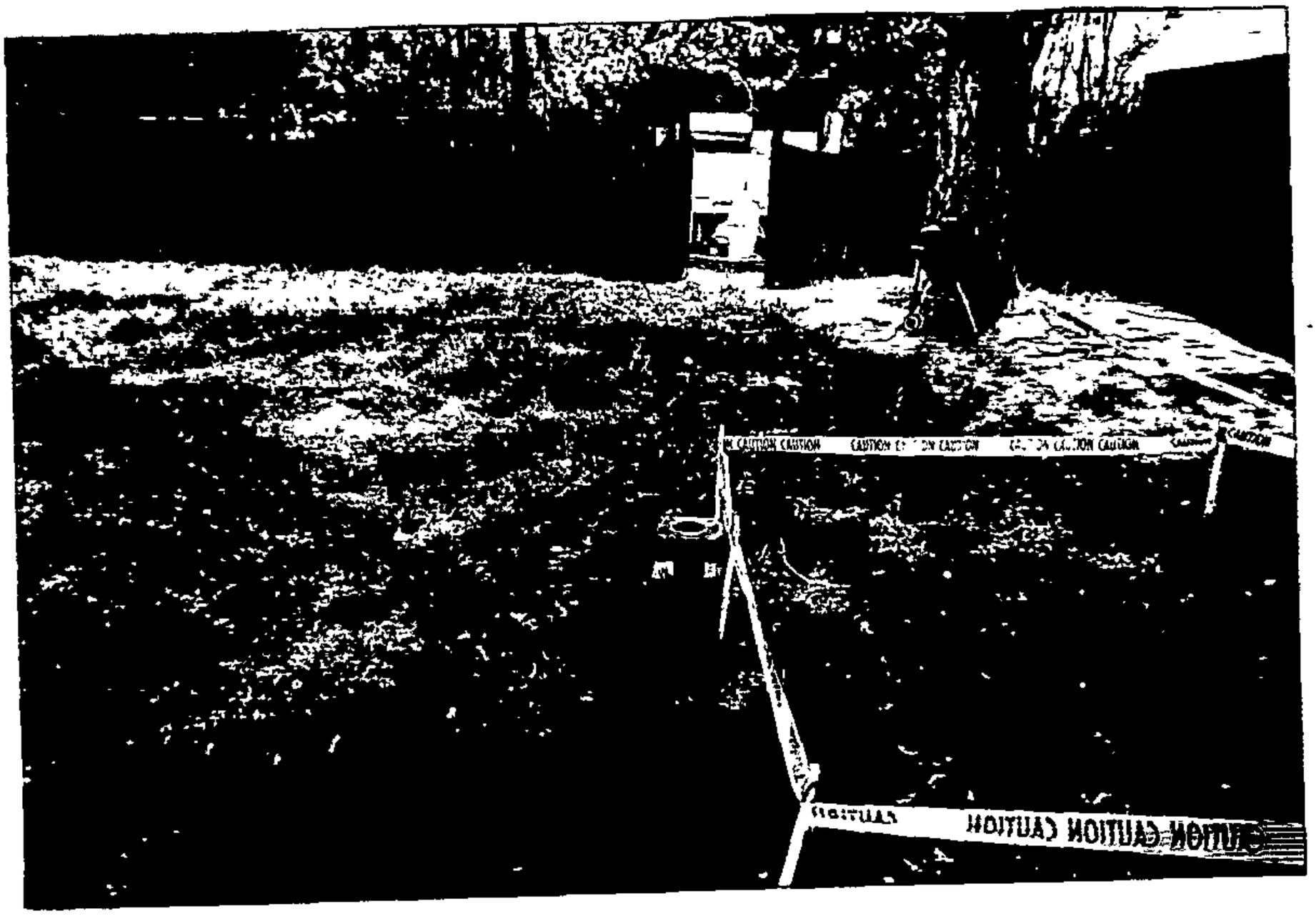
Prot 6 A-B — Photos

Protestants

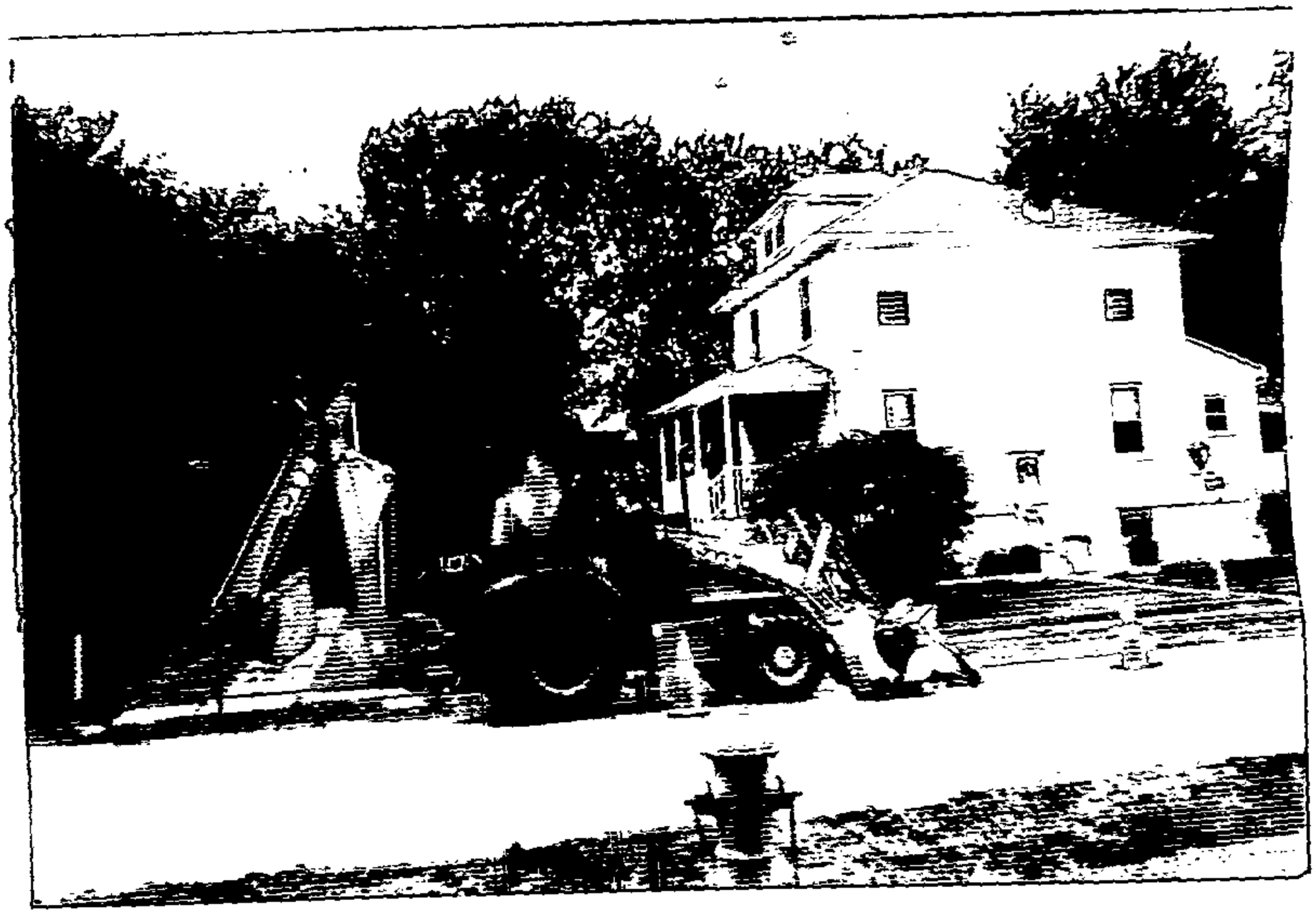
5-A to 5-D
6-A to 6B } 6 photos

Link-Link, Inc.

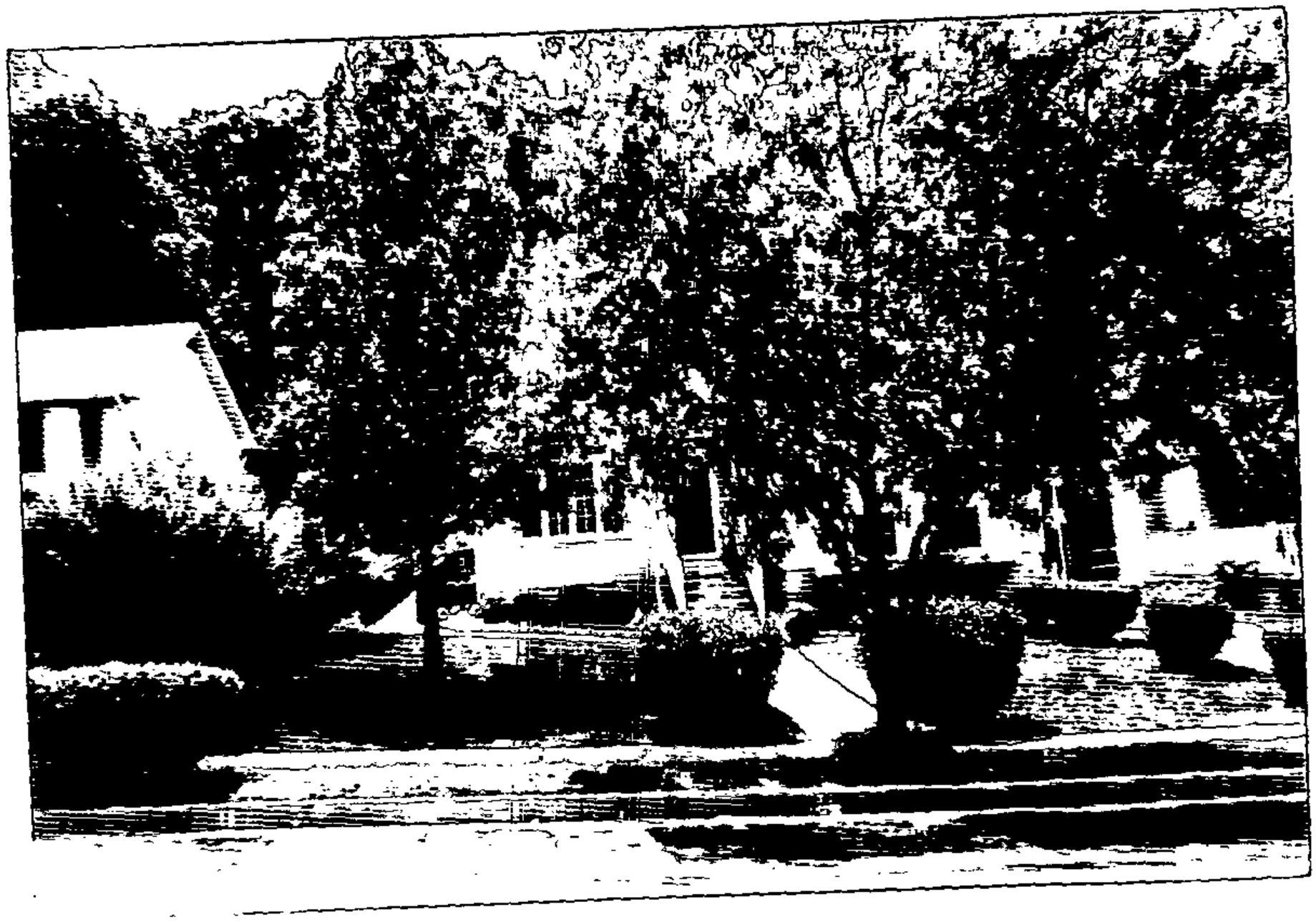
06-166-A


CAUTION CAUTION CAUTION

CAUTION CAUTION CAUTION

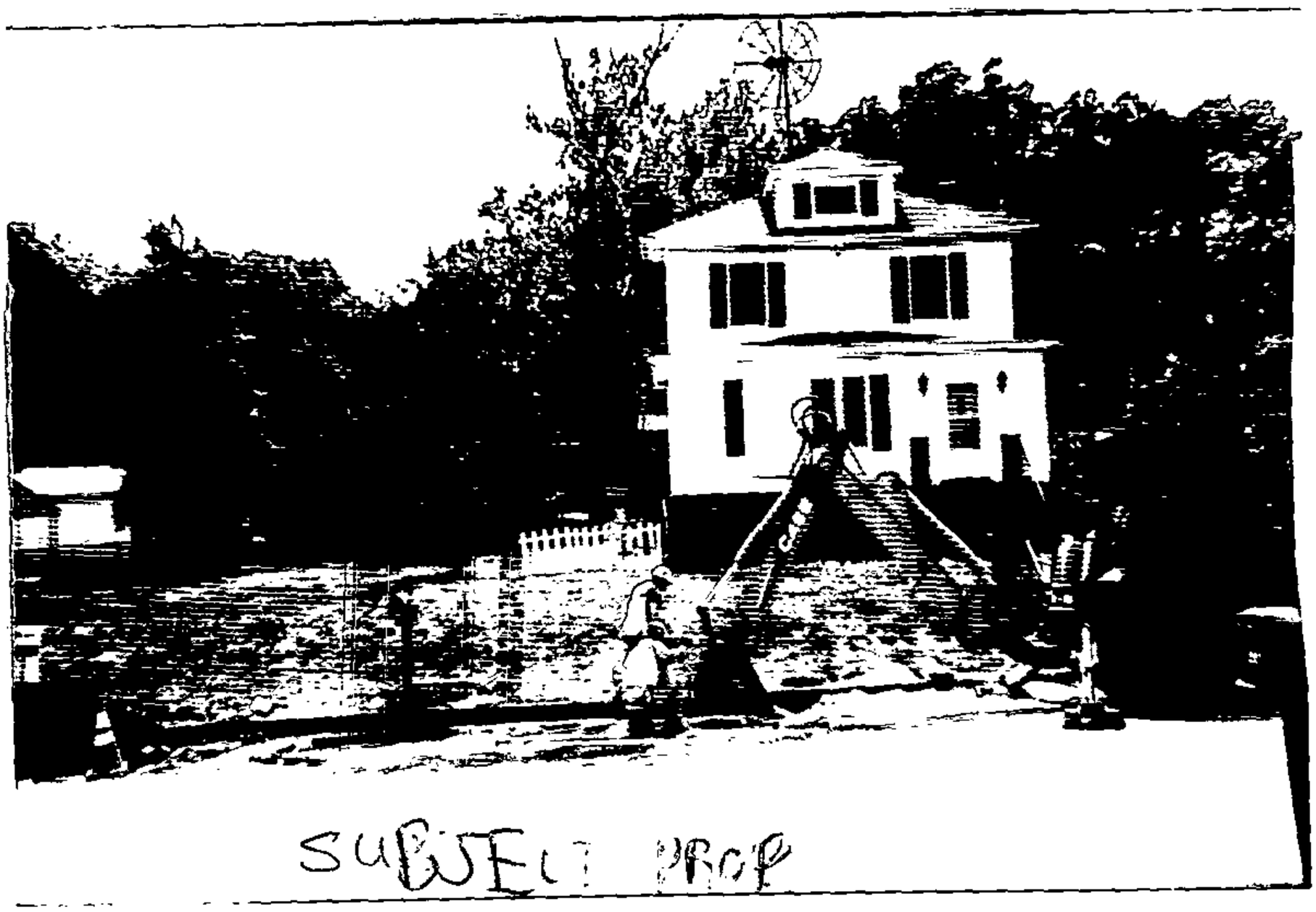


DAILY'S
BGE



2528

DAILY'S


SUBJECT PROP

NO
PARKING
ON
SIDEWALK

DAILY'S

2688
CAT

OPPOSITE

Verified Exhibits

Petitioner Exhibits

Link - Link

CBA 06-166-A

Ex 1 — 1922 Subdivision Whitmore Dev

Ex 2 — Petitioners Plat to accompany Variance Petition

Ex 3 A-m — SDAT Documents

Ex 4 A-I — Photos

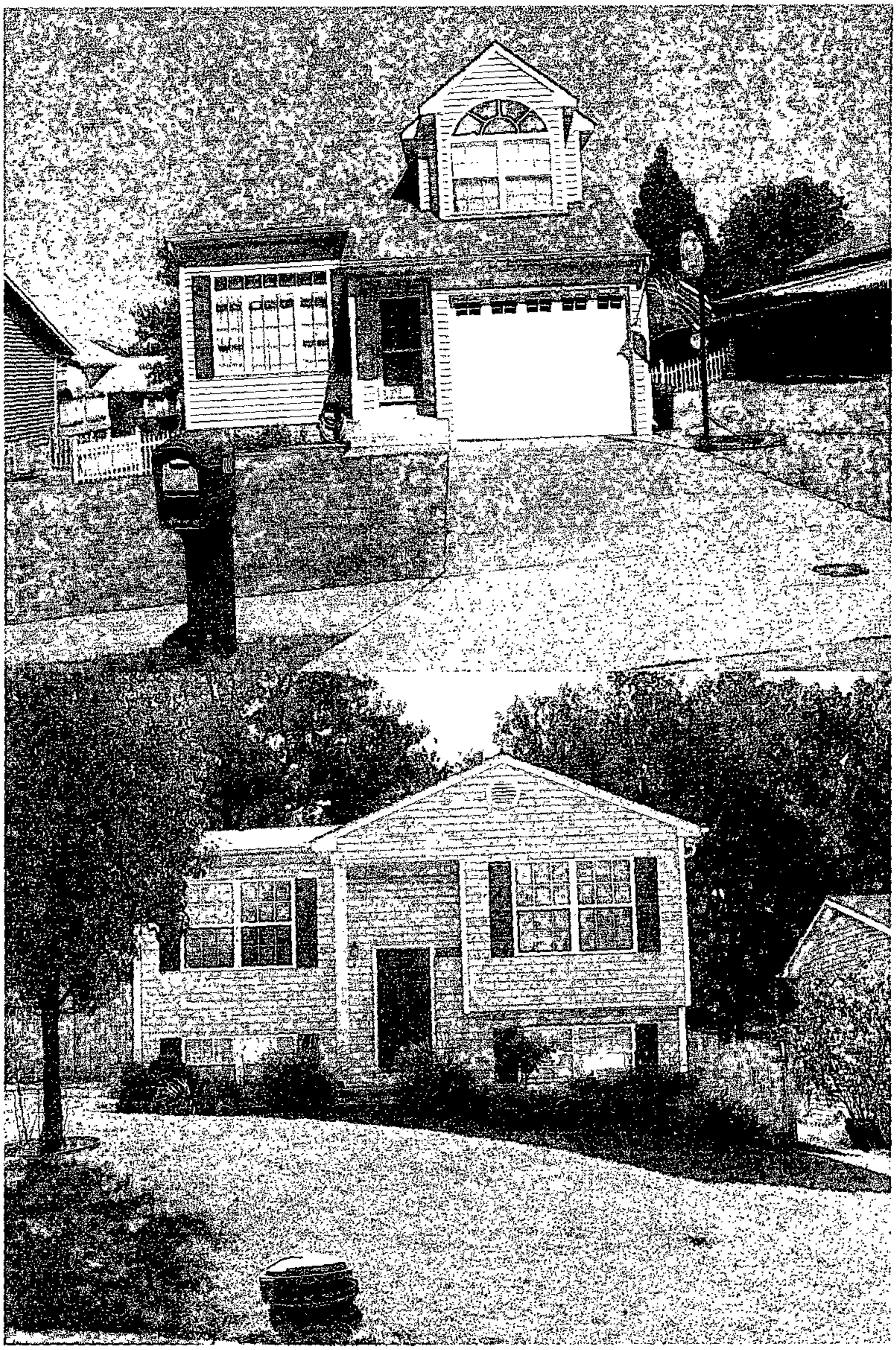
Ex 5 — Real estate Synopsis

Ex 6 — Deed

Pet. 3 4
#1225

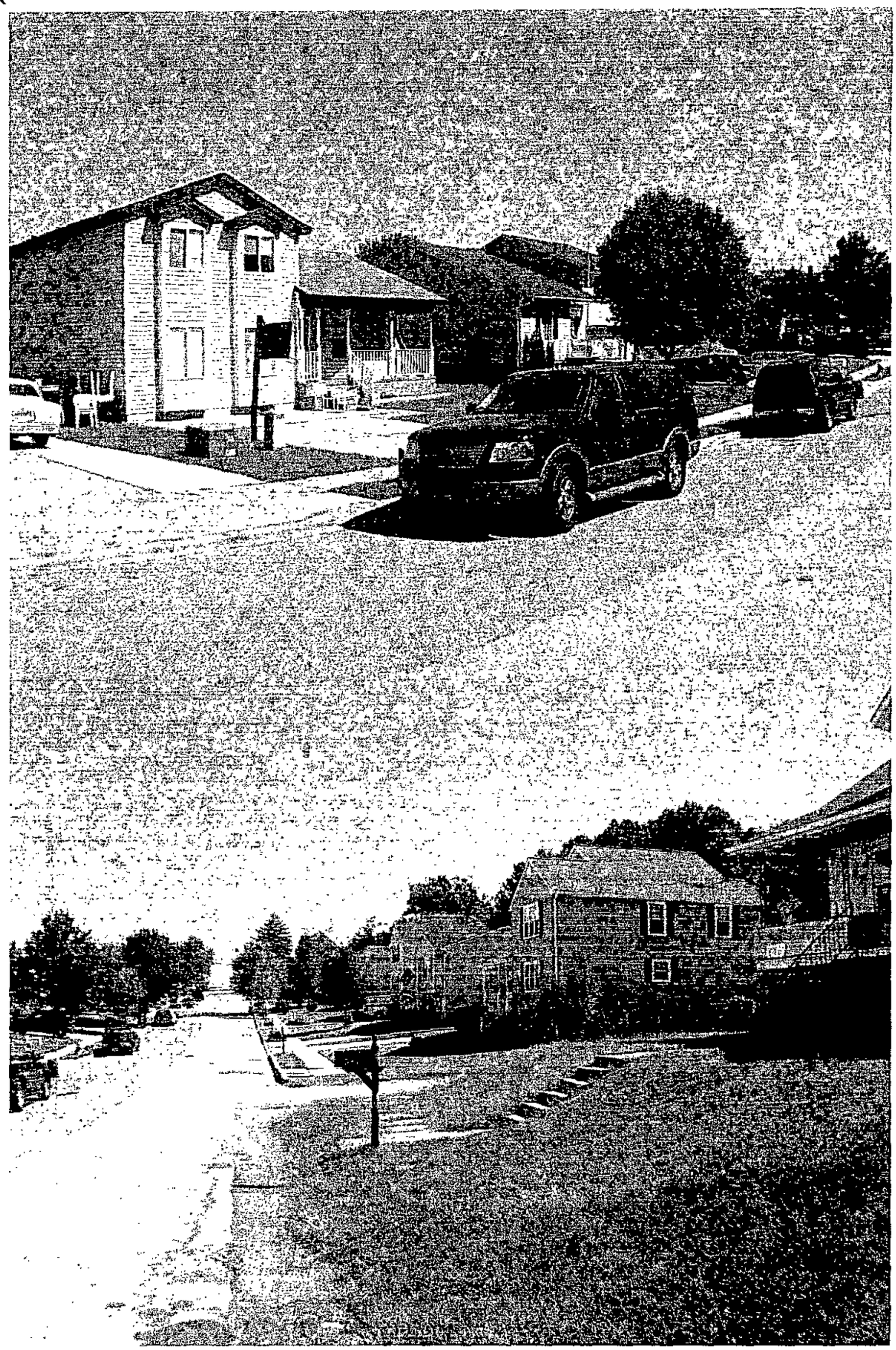
CBA PET
4A

1224



#3B
1219

CBA
4B



LOOKING UP THE STREET FROM LOT

Ret.
#3 C

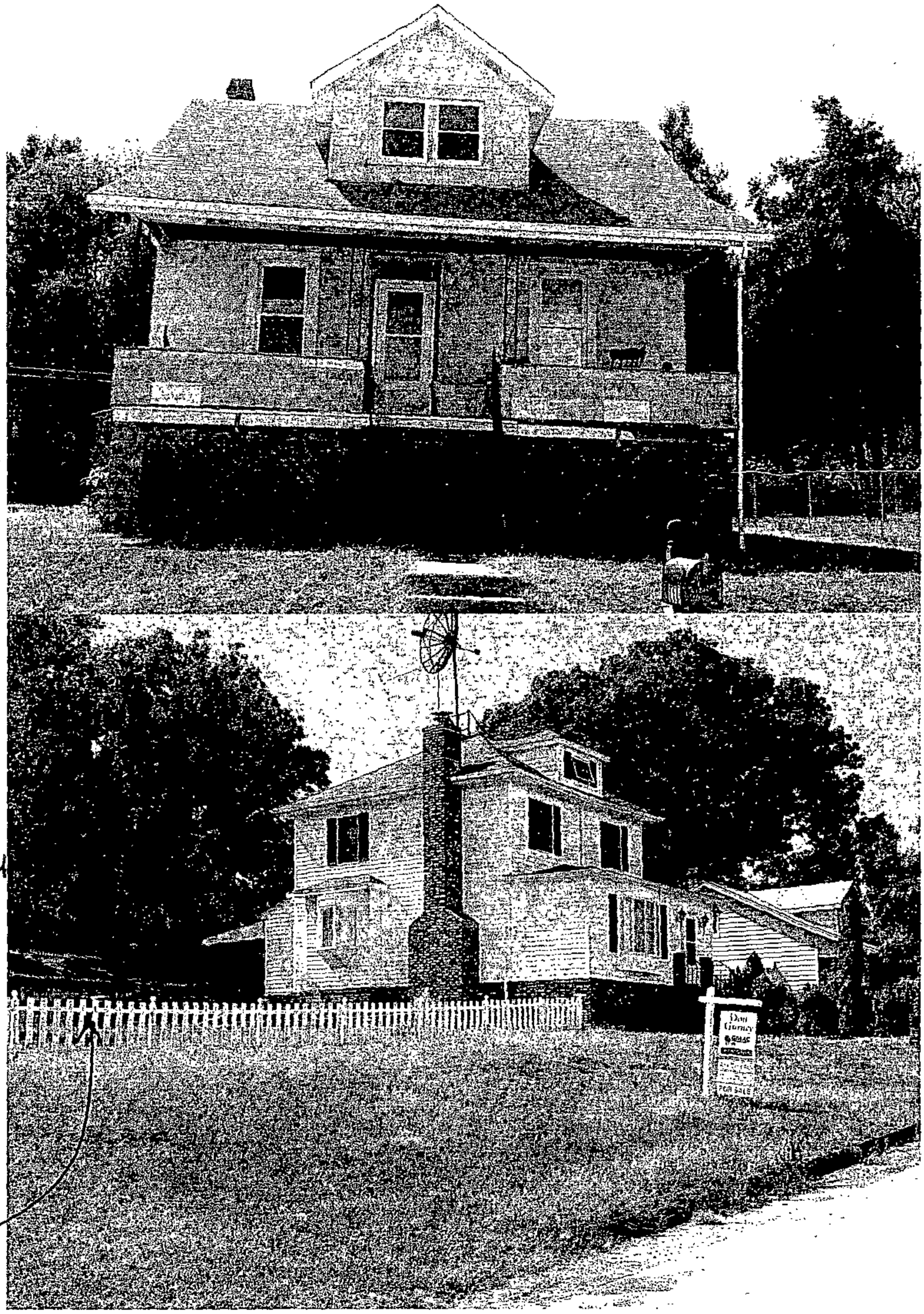
CBA
4C

1216

1218

Pet. #3D
#1208

CBA
4D

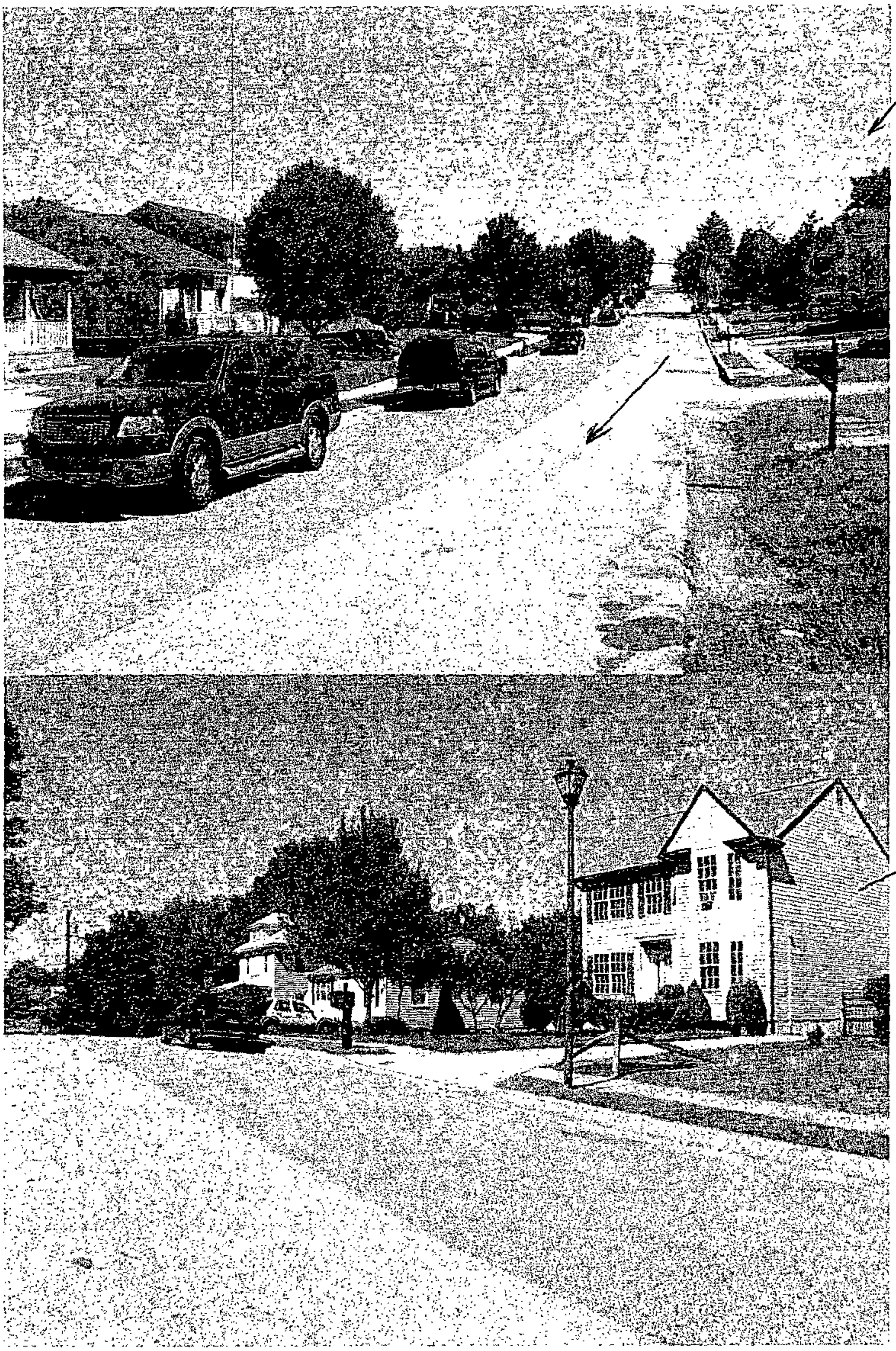


1304
Pro
address

LOT

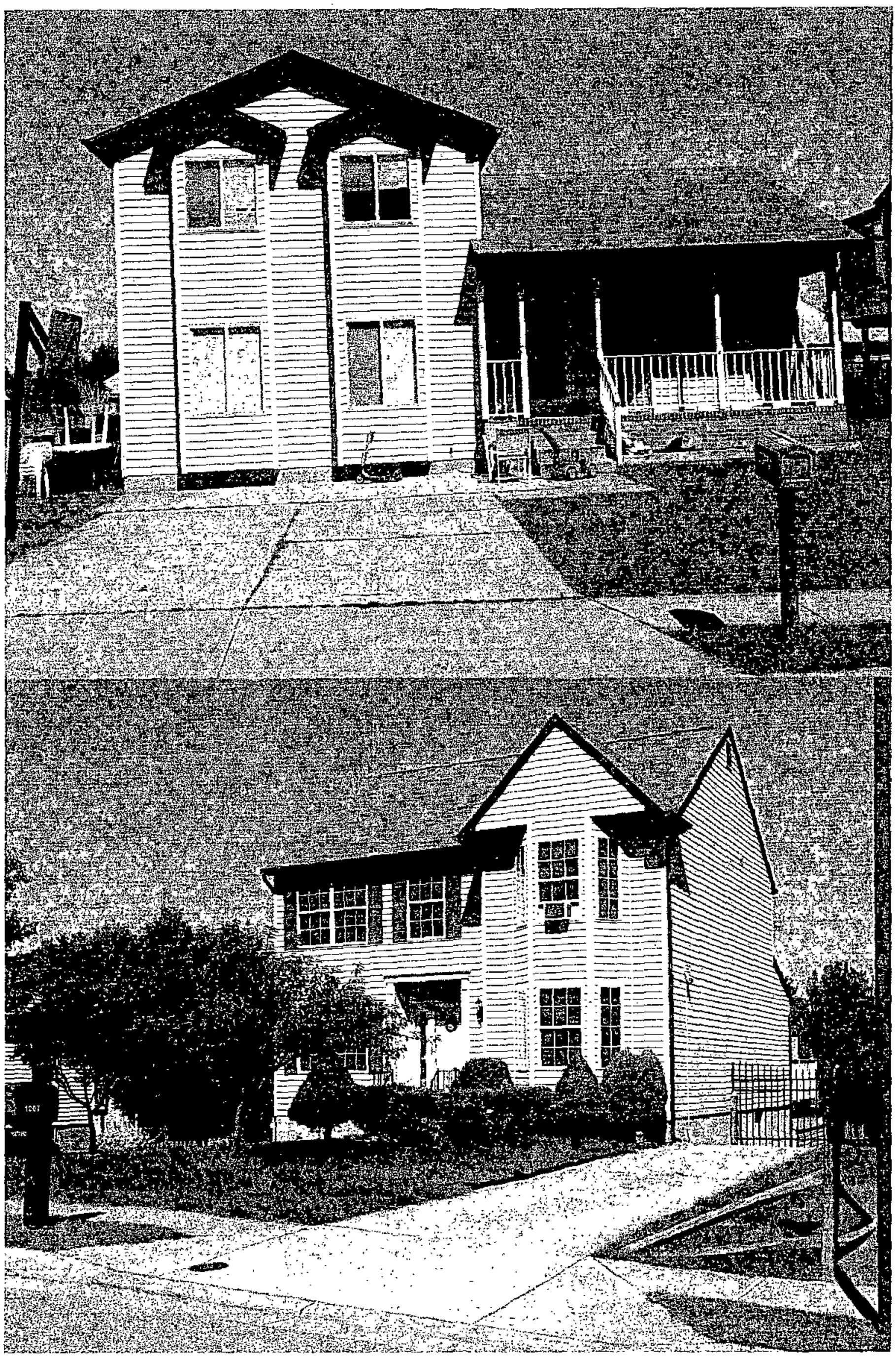
#3E

CBA
4E



#3F
#1211

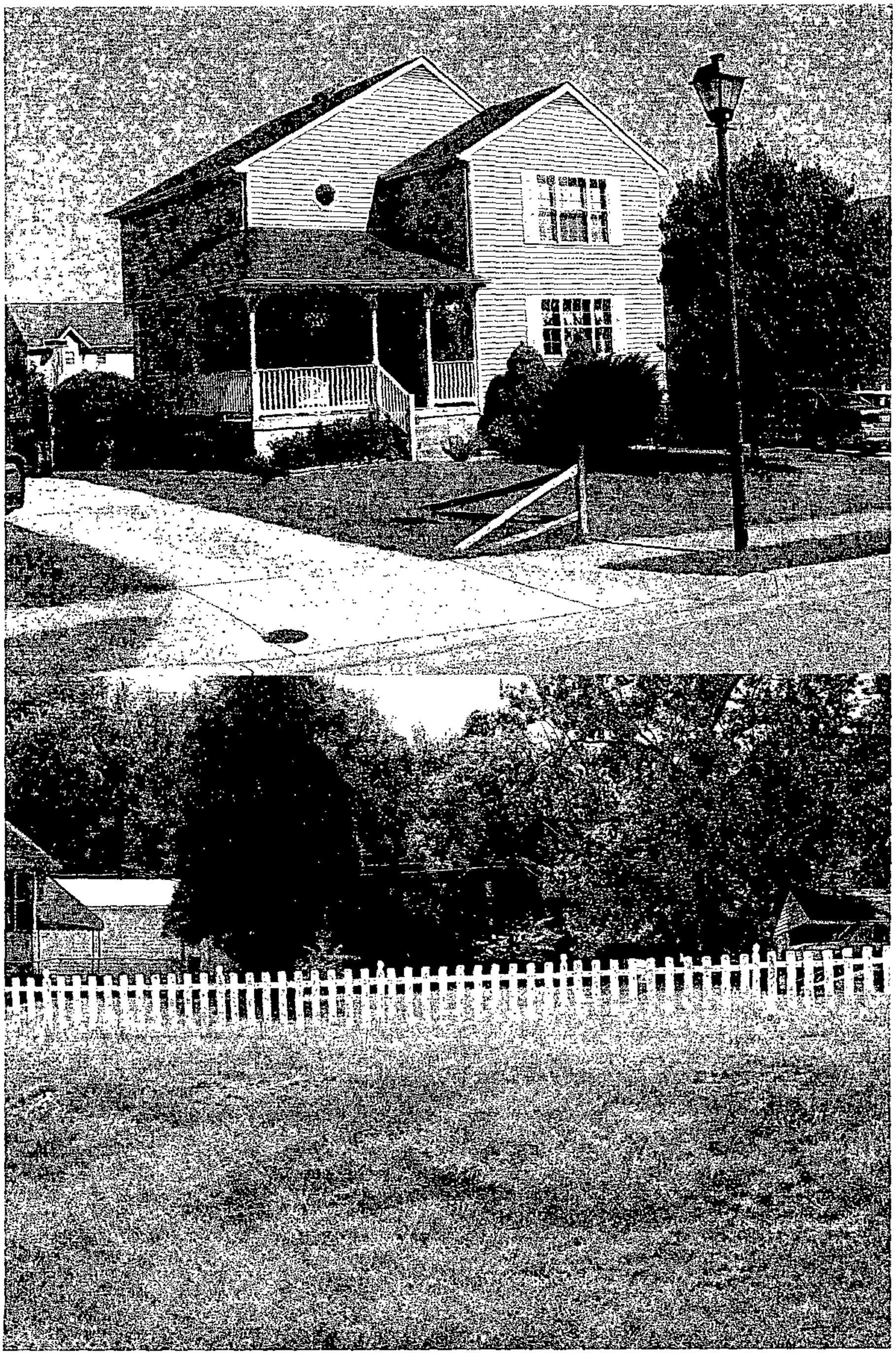
CBA
4F



#
1207

#3G #1209

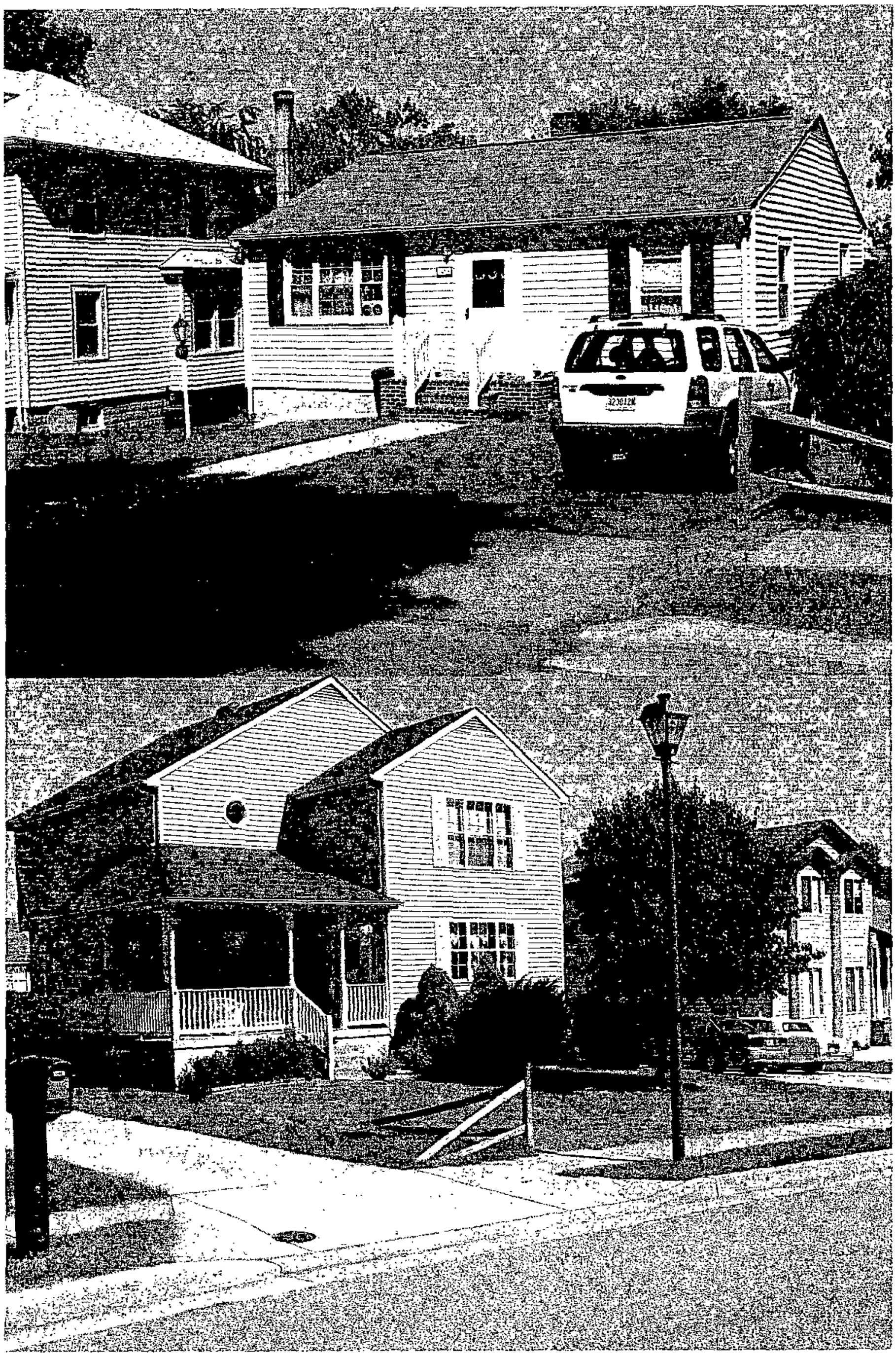
CBA 4G



LOT
FROM THE STREET

#3 1d

CBA
4H

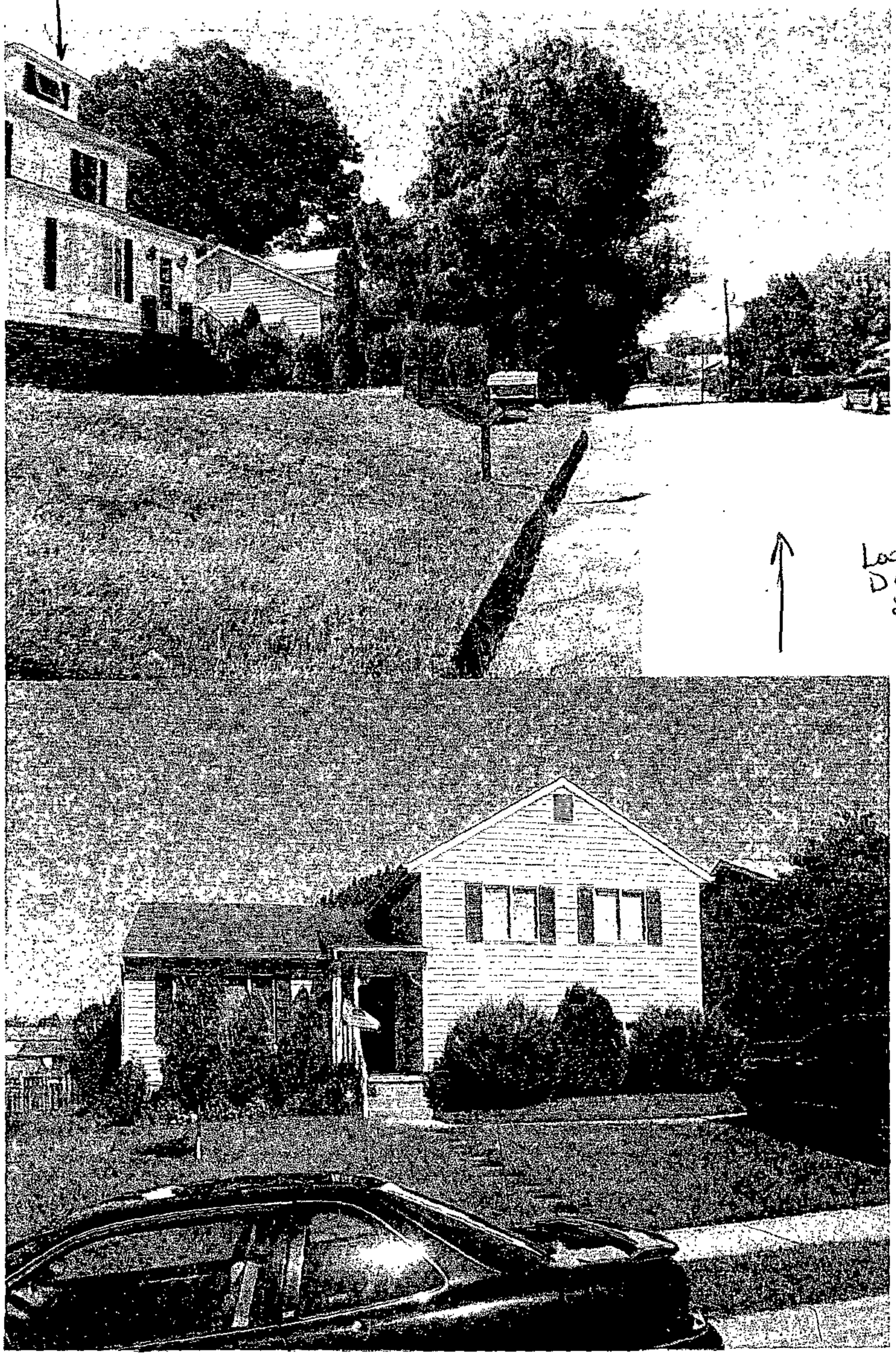


#1203

#1209

#3E 1204

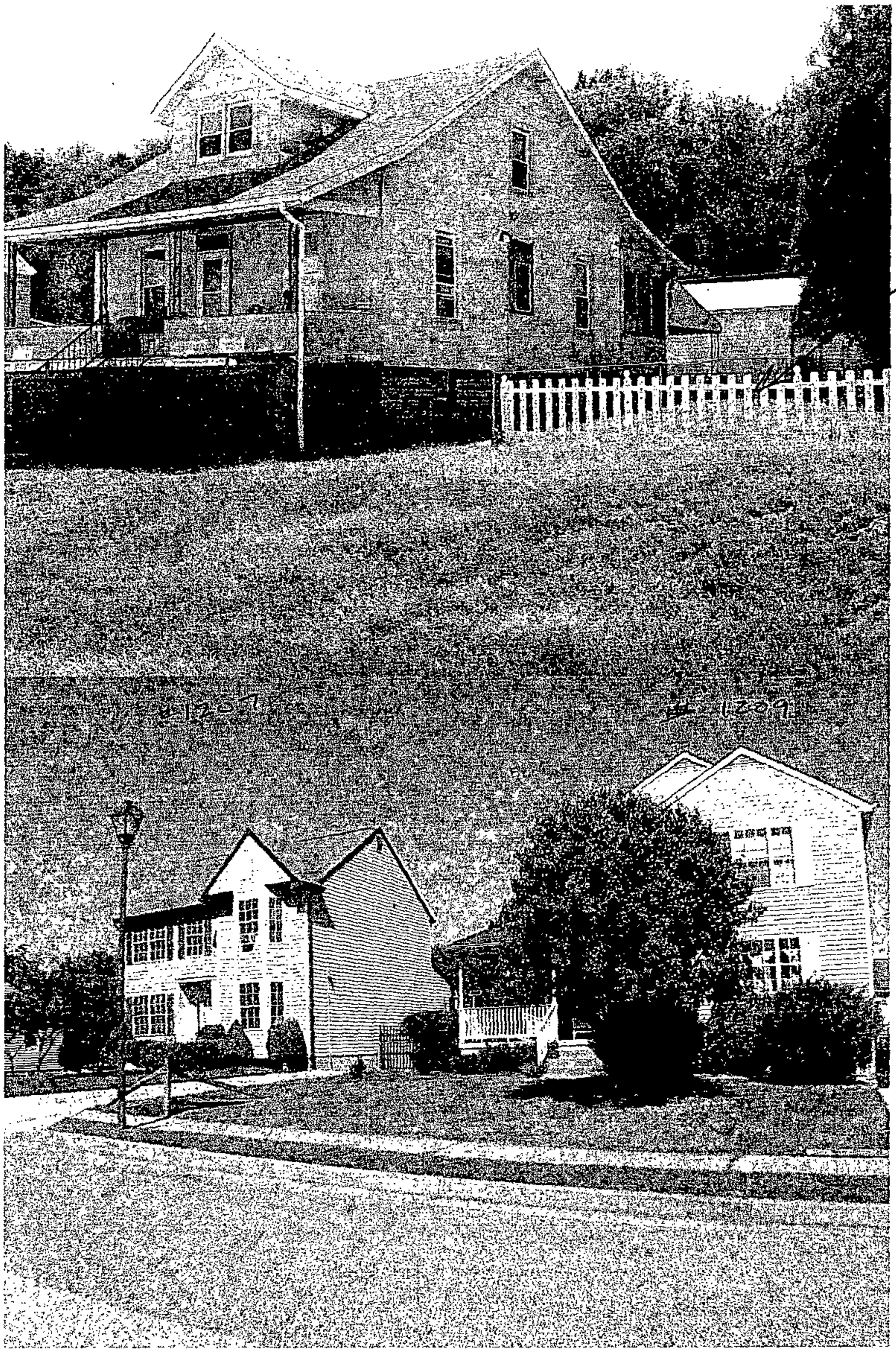
CBA
4I



#3 J

#1208

CBA
4J



Lot

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

3A

Account Identifier: **District** - 13 **Account Number** - 1313550911

Owner Information

Owner Name:	LINK-LINK,LLC	**Use:**	RESIDENTIAL
		Principal Residence:	NO
Mailing Address:	2625 OLD WASHINGTON ROAD WESTMINSTER MD 21157-7543	**Deed Reference:**	1) 2)

Location & Structure Information

Premises Address
1206 TAYLOR AVE

Legal Description
LT 298-299
TAYLOR AV
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					298	1	Plat Ref: 7/ 159

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		6,250.00 SF	04

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	23,750	23,750		
Improvements:	0	0		
Total:	23,750	23,750	23,750	23,750
Preferential Land:	0	0	0	0

Transfer Information

Seller:	HOYLE DONALD	**Date:**	04/12/2005	**Price:**	$40,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**		**Deed2:**	
Seller:	HOYLE ROSE	**Date:**	05/03/2002	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/16374/ 554	**Deed2:**	
Seller:	HOYLE DONALD	**Date:**	03/13/2000	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/14350/ 295	**Deed2:**	

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Pet #4

CBA 3B

Pet. #5

Real Property Search - Individual Report

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 - 13 Account Number - 1313550910

Owner Information

Owner Name:	SCHUH RODERICK T CROWL-GIFFORD TONYA	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	1204 TAYLOR AVE HALETHORPE MD 21227-1423	**Deed Reference:**	1) /22093/ 471 2)

Location & Structure Information

Premises Address
1204 TAYLOR AVE

Legal Description
LTS 296,297
1204 TAYLOR AVE
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					296	1	Plat Ref: 7/ 159

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1928	1,556 SF	6,250.00 SF	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2004	Phase-In Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	31,250	31,250		
Improvements:	69,940	76,000		
Total:	101,190	107,250	105,230	107,250
Preferential Land:	0	0	0	0

Transfer Information

Seller:	LINK-LINK,LLC	**Date:**	06/23/2005	**Price:**	$322,000
Type:	MULT ACCTS ARMS-LENGTH	**Deed1:**	/22093/ 471	**Deed2:**	
Seller:	HOYLE DONALD	**Date:**	04/12/2005	**Price:**	$240,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**		**Deed2:**	
Seller:	HOYLE ROSE	**Date:**	05/03/2002	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/16374/ 554	**Deed2:**	

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Pet. #5

Pet. 6 A CBA 3C

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 - 13 Account Number - 1303471230

Owner Information

Owner Name: CONNELLY PAUL G
CONNELLY ROBERTA B

Mailing Address: 1201 TAYLOR AV
BALTIMORE MD 21227

Use: RESIDENTIAL
Principal Residence: YES
Deed Reference: 1) / 5111/ 392
2)

Location & Structure Information

Premises Address
1201 TAYLOR AVE

Legal Description
LT 289-290
225 N PEARALL AV
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					289	1	Plat Ref: 7/ 159

Special Tax Areas
Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1941	1,452 SF	6,250.00 SF	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	31,250	31,250		
Improvements:	68,970	75,040		
Total:	100,220	106,290	104,266	106,290
Preferential Land:	0	0	0	0

Transfer Information

Seller:	COOK RICHARD A	Date:	07/24/1970	Price:	$15,500
Type:	IMPROVED ARMS-LENGTH	Deed1:	/ 5111/ 392	Deed2:	
Seller:		Date:		Price:	
Type:		Deed1:		Deed2:	
Seller:		Date:		Price:	
Type:		Deed1:		Deed2:	

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
* NONE *

Pet # 6 A

Pet. 6 B

CBA 3D

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** - 13 **Account Number** - 1302571000

Owner Information

Owner Name:	BOWERS THURMAN E BOWERS DOROTHY T	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	1203 TAYLOR AV BALTIMORE MD 21227	**Deed Reference:**	1) / 3585/ 149 2)

Location & Structure Information

Premises Address
1203 TAYLOR AVE

Legal Description
LT 287,288
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					287	1	Plat Ref: 7/ 159

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1945	890 SF	6,250.00 SF	04

Stories	Basement	Type	Exterior
1	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	31,250	31,250		
Improvements:	54,400	58,210		
Total:	85,650	89,460	88,190	89,460
Preferential Land:	0	0	0	0

Transfer Information

Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

UB

Pet. 6 L CBA 3E

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 - 13 Account Number - 2000002919

Owner Information

Owner Name: RUCK LENA

Mailing Address: 1209 TAYLOR AVE
BALTIMORE MD 21227-1424

Use: RESIDENTIAL
Principal Residence: YES
Deed Reference: 1) /19416/ 413
2)

Location & Structure Information

Premises Address
1209 TAYLOR AVE

Legal Description
.17 AC
1209 TAYLOR AVE
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136			2	2	71	1	Plat Ref: 52/ 100

Special Tax Areas
Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1989	1,874 SF	7,552.00 SF	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	32,130	32,130		
Improvements:	140,910	151,890		
Total:	173,040	184,020	180,360	184,020
Preferential Land:	0	0	0	0

Transfer Information

Seller:	Type:	Date:	Deed1:	Price:	Deed2:
KOLB LAWRENCE M	IMPROVED ARMS-LENGTH	01/09/2004	/19416/ 413	$249,900	
KOLB ANTHONY R	NOT ARMS-LENGTH	10/15/2003	/18958/ 547	$0	
KOLB LAWRENCE M	NOT ARMS-LENGTH	12/14/1999	/14203/ 333	$0	

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:
* NONE *

6C

CBA 3F Pet. c

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** - 13 **Account Number** - 2000002926

Owner Information

Owner Name:	FERGUSON CAROLYN E	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	1224 TAYLOR AVE BALTIMORE MD 21227-1423	**Deed Reference:**	1) /19668/ 50 2)

Location & Structure Information

Premises Address
1224 TAYLOR AVE

Legal Description
.17 AC
1224 TAYLOR AVE
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					78	1	Plat Ref: 52/ 100

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1994	1,094 SF	7,552.00 SF	04

Stories	Basement	Type	Exterior
SPFOY		SPLIT FOYER	SIDING

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	32,130	32,130		
Improvements:	113,420	121,050		
Total:	145,550	153,180	150,636	153,180
Preferential Land:	0	0	0	0

Transfer Information

Seller:	BARNCORD ROGER A	**Date:**	02/27/2004	**Price:**	$215,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/19668/ 50	**Deed2:**	
Seller:	INTERSTATE VENTURES INC	**Date:**	02/28/1995	**Price:**	$146,050
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/10954/ 669	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

60

Pet 6 E CBA 3G

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** - 13 **Account Number** - 2000002911

Owner Information

Owner Name: WAINIO GARY M
WAINIO WENDY A

Mailing Address: 1225 TAYLOR AVE
BALTIMORE MD 21227-1424

Use: RESIDENTIAL

Principal Residence: YES

Deed Reference: 1) /14882/ 728
2)

Location & Structure Information

Premises Address
1225 TAYLOR AVE

Legal Description
.16 AC
1225 TAYLOR AVE
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					63	1	Plat Ref: 52/ 100

Special Tax Areas

Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1994	1,444 SF	7,125.00 SF	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	32,030	32,030		
Improvements:	115,630	124,800		
Total:	147,660	156,830	153,772	156,830
Preferential Land:	0	0	0	0

Transfer Information

Seller:	INTERSTATE VENTURES INC	Date:	12/26/2000	Price:	$166,000
Type:	IMPROVED ARMS-LENGTH	Deed1:	/14882/ 728	Deed2:	
Seller:		Date:		Price:	
Type:		Deed1:		Deed2:	
Seller:		Date:		Price:	
Type:		Deed1:		Deed2:	

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

LE

Real Property Search - Individual Repor. Rel 6 r CBA3H

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** - 13 **Account Number** - 2000002914

Owner Information

Owner Name:	WILSON GERALDINE D WELSH GEORGE D/SUSAN A	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	1219 TAYLOR AV BALTIMORE MD 21227-1424	**Deed Reference:**	1) /15123/ 481 2)

Location & Structure Information

Premises Address
1219 TAYLOR AVE

Legal Description
.17 AC
1219 TAYLOR AVE
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					66	1	Plat Ref: 52/ 100

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1989	1,674 SF	7,552.00 SF	04

Stories	Basement	Type	Exterior
2	NO	SPLIT LEVEL	SIDING

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	32,130	32,130		
Improvements:	120,380	130,210		
Total:	152,510	162,340	159,062	162,340
Preferential Land:	0	0	0	0

Transfer Information

Seller:	LEWIS GINA E	**Date:**	04/16/2001	**Price:**	$163,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/15123/ 481	**Deed2:**	
Seller:	INTERSTATE VENTU RES INC	**Date:**	01/30/1990	**Price:**	$132,500
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/ 8390/ 508	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

6F

Ret 6 CBA 3I

Real Property Search - Individual Report

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 - 13 Account Number - 2000002922

Owner Information

Owner Name: BRINKMAN DENISE LYNN

Mailing Address: 1216 TAYLOR AVE
BALTIMORE MD 21227-1423

Use: RESIDENTIAL
Principal Residence: YES
Deed Reference: 1) /21997/ 505
2)

Location & Structure Information

Premises Address
1216 TAYLOR AVE

Legal Description
.17 AC
1216 TAYLOR AVE
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					74	1	Plat Ref: 52/ 100

Special Tax Areas

Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1996	1,094 SF	7,287.00 SF	04

Stories	Basement	Type	Exterior
SPFOY		SPLIT FOYER	SIDING

Value Information

	Base Value	Value As Of 01/01/2004	Phase-In Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	32,070	32,070		
Improvements:	110,840	118,380		
Total:	142,910	150,450	147,936	150,450
Preferential Land:	0	0	0	0

Transfer Information

Seller:	BRINKMAN ROBERT REID,JR	**Date:**	06/08/2005	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/21997/ 505	**Deed2:**	
Seller:	INTERSTATE VENTURES INC	**Date:**	12/31/1996	**Price:**	$145,420
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/11964/ 293	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Pet 6.1 3J

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** - 13 **Account Number** - 2000002923

Owner Information

Owner Name:	KRUG LAWRENCE H,3RD KRUG CHERI L	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	1218 TAYLOR AV BALTIMORE MD 21227	**Deed Reference:**	1) / 8375/ 674 2)

Location & Structure Information

Premises Address
1218 TAYLOR AVE

Legal Description
.17 AC
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					75	1	Plat Ref: 52/ 100

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1989	1,422 SF	7,561.00 SF	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	32,140	32,140		
Improvements:	109,700	118,250		
Total:	141,840	150,390	147,540	150,390
Preferential Land:	0	0	0	0

Transfer Information

Seller:	INTERSTATE VENTU RES INC	**Date:**	01/12/1990	**Price:**	$123,245
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/ 8375/ 674	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

6/7

Ret - I 3K

Real Property Search - Individual Report

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 - 13 Account Number - 2000002916

Owner Information

Owner Name:	LAWLESS JOSEPH J,4TH LAWLESS SANDRA	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	1215 TAYLOR AVE BALTIMORE MD 21227	**Deed Reference:**	1) /11038/ 77 2)

Location & Structure Information

Premises Address
1215 TAYLOR AVE

Legal Description
.17 AC
1215 TAYLOR AVE
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136			2	2	68	1	Plat Ref: 52/ 100

Special Tax Areas
Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1990	1,880 SF	7,552.00 SF	04

Stories	Basement	Type	Exterior
2	NO	SPLIT LEVEL	SIDING

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	32,130	32,130		
Improvements:	114,260	124,570		
Total:	146,390	156,700	153,262	156,700
Preferential Land:	0	0	0	0

Transfer Information

Seller:	NICHOLS DUANE M,SR	**Date:**	05/09/1995	**Price:**	$138,500
Type:	NOT ARMS-LENGTH	**Deed1:**	/11038/ 77	**Deed2:**	
Seller:	INTERSTATE VENTU RES INC	**Date:**	03/20/1990	**Price:**	$121,300
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/ 8431/ 842	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

6K

Real Property Search - Individual Report

Per B J 3L

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** - 13 **Account Number** - 2000002918

Owner Information

Owner Name:	NEMEC ROBERT M NEMEC MARGARET A	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	1211 TAYLOR AV BALTIMORE MD 21227	**Deed Reference:**	1) / 9213/ 726 2)

Location & Structure Information

Premises Address
1211 TAYLOR AVE

Legal Description
.17 AC
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					70	1	Plat Ref: 52/ 100

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1992	1,934 SF	7,552.00 SF	04

Stories	Basement	Type.	Exterior
2	YES	SPLIT LEVEL	SIDING

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	32,130	32,130		
Improvements:	126,710	136,660		
Total:	158,840	168,790	165,472	168,790
Preferential Land:	0	0	0	0

Transfer Information

Seller:	INTERSTATE VENTU RES INC	**Date:**	06/08/1992	**Price:**	$144,320
Type:	NOT ARMS-LENGTH	**Deed1:**	/ 9213/ 726	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

6

Real Property Search - Individual Report

Rec. 6. CBA 3M

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 - 13 Account Number -** 2000002920

Owner Information

Owner Name:	CATTERTON HERBERT W CATTERTON VALENSE C	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	1207 TAYLOR AV BALTIMORE MD 21227	**Deed Reference:**	1) / 8695/ 733 2)

Location & Structure Information

Premises Address
1207 TAYLOR AVE

Legal Description
.23 AC
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					72	1	Plat Ref: 52/ 100

Special Tax Areas

Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1990	1,812 SF	10,202.00 SF	04

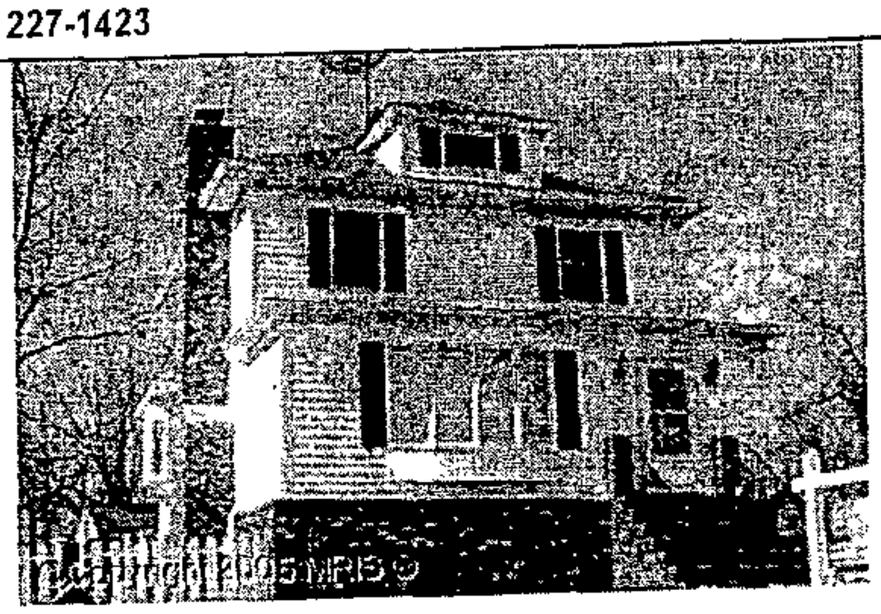
Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	

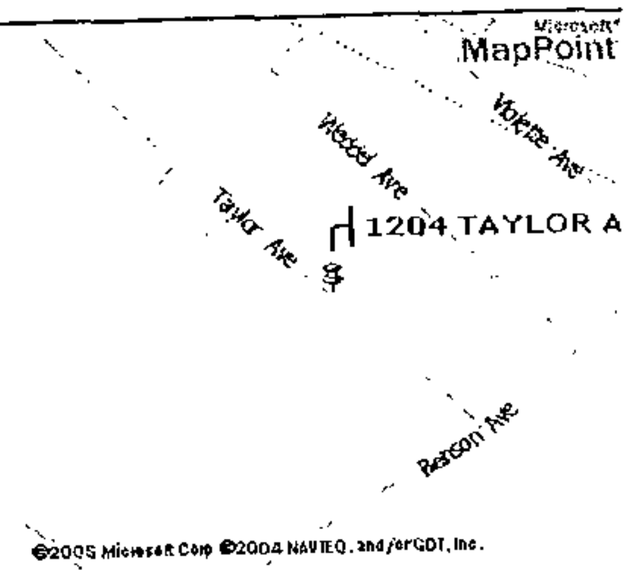
CBA PET 5 (34)

BC5198260
Residential
1204 TAYLOR AVE HALETHORPE, MD 21227-1423

Metropolitan Regional Information Systems, Inc.
Synopsis - Agent

Status: ACTIVE
List Price: $299,900
Ownership: Fee Simple - Sale
BR/FB/HB: 4/2/0
Lot AC/SF: 0.14 / 6,250.00
Lvls/Fpls: 4 / 1
Tot Fin SF:
Year Built: 1928
Total Tax: $1,287
Tax Yr: 2004
Ground Rent:
Style: Colonial
Type: Detached





Legal Sub: *Whittemore Park*
Adv. Sub: Whittemore Park
Model: COLONIAL

HOA Fee: /mo pd
C/C Fee: /mo pd
C/C Proj Name:

Tax Map:
Liber: 7
Folio: 159
Parcel: 136
Block/Square:
Lot: 296
Map Coord: 42B5 **Area:**

	Total	Main	Upr1	Upr2	Lwr1	Lwr2
BR	4	0	2	1	1	0
FB	2	0	1	0	1	0
HB	0	0	0	0	0	0

Schools:
ES:
MS:
HS:

Master Bdrm: 20 x 11 Upper 1
Master Bdrm 2:
First Bdrm:
Second Bdrm: 13 x 10 Upper 1
Third Bdrm: 12 x 12 Upper 2
Fourth Bdrm:
Fifth Bdrm:
Living Rm: 12 x 18 Main
Dining Rm: 17 x 13 Main
Kitchen: 16 x 13 Main
Brkfast Rm:
Family Rm: 15 x 10 Lower 1
Rec Rm:
Den:
Library:
Sitting:
Othr Rm 1: Lower 1
Othr Rm 2:
Exposure:
Roofing: Shingle-Asphalt
Othr Rm 3:
Foyer :
Garage:
Carport:
Unfinished:

Exterior: Deck, Fenced - Partially
Exterior Const: Brick, Brick and Siding, Vinyl Siding
Other Structures: Shed
Lot Desc: Additional Lot(s)
Basement: Yes, Full, Fully Finished, Improved
Parking: Drvwy/Off Str, Garage
Heating System: Forced Air
Water: Public
Cooling System: Ceiling Fan(s), Central A/C
Sewer/Septic: Public Sewer

Gar/Crpt/Assgd Spaces: 3//
Heating Fuel: Natural Gas
Hot Water: Natural Gas
Cooling Fuel: Electric
Soil Type:

Appliances: Dishwasher, Dryer, Exhaust Fan, Oven/Range-Electric, Range hood, Refrigerator, Washer
Amenities: Attic-Stairs Fixed, FP Glass Doors, FP Mantels, Home Warranty, Shades/Blinds, W/W Carpeting
HOA/C/C Amenities:

List Date: 31-Mar-2005 **Update Date:** 04-Apr-2005 **DOM-MLS:** 32 **DOM-Prop:** 52

Remarks: CHARM*CHARM*CHARM AND A BRAND NU KIT 2DIE4*SEP DR*LRG LR w/BRK FP*LNDRY OFF KIT*2BAY WNDWS*LRG BRs*3RD BR COULD BN LL OR N BIG,FIN ATTIC*LL COULD B N-LAW w/2ND FULL KIT*NU LL FB*HUGE UPSTR BA*NU WNDWS ON MAIN LVL*OUTSIDE IS JUST AS NICE AS IN w/BEAUT BRKWORK*3CAR DET GAR&TONS OF PKING* AWESOME COVERED DECK&COVERED STG UNDER DECK*ADDITIONAL LOT BEHIND GAR IS ALSO FOR SALE SEPERATELY*A KEEPER!

Directions: RTE. 1 NORTH TO LEFT ON SULPHER SPRING TO RIGHT ON BENSON TO LEFT ON TAYLOR...HOME ON LEFT :)

Show Instructions: Call 1st-Contact, All Days, 10 AM - 9 PM

Listing Co: LONG & FOSTER REAL ESTATE, INC., LNG45
Listing Agent: DONNA MACBRAYNE
Office: (410) 461-1456
Alt. Agent: Richard Proctor
Owners: CALL C/O LONG&FOSTER
Show Contacts: CALL CSS FOR SHOWINGS
Sub Comp: 2.5% **Buy Comp:** 2.5%

Phone: (410) 461-1456
Home: (410) 458-3301
Pager: (410) 458-3301
Office: (410) 461-1456

Fax: (410) 750-8781
Fax:
Cell: (410) 458-3301
Home: (410) 458-3290
Home: (410) 461-1456
Home: (866) 891-7469

Add'l: **Dual:** Y **DesR:** N **VarC:** N

Pet #7

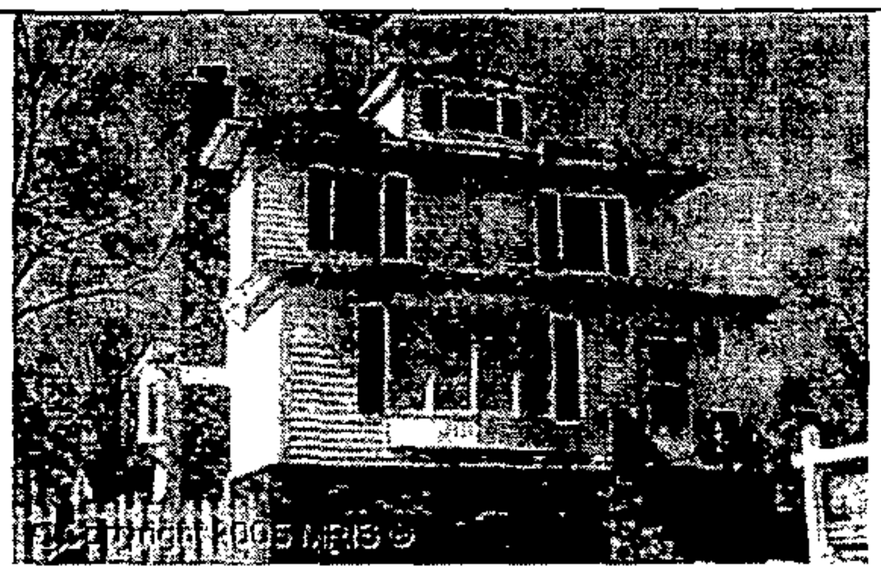
(c) 2005 Metropolitan Regional Information Systems, Inc.
Information is believed to be accurate, but should not be relied upon without verification.
Accuracy of square footage, lot size and other information is not guaranteed.

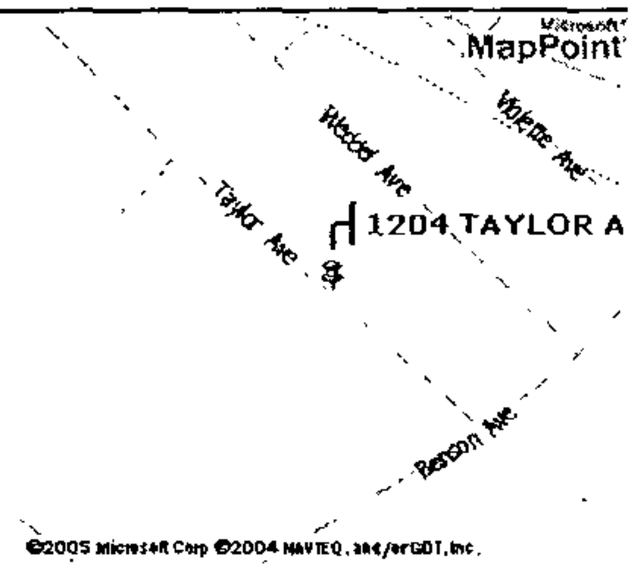
BC5198260
Residential
1204 TAYLOR AVE HALETHORPE, MD 21227-1423

Metropolitan Regional Information Systems, Inc.
Synopsis - Agent

02-May-2005
9:58 am

Status: ACTIVE
List Price: $299,900
Ownership: Fee Simple - Sale
BR/FB/HB: 4/2/0
Lot AC/SF: 0.14 / 6,250.00
Lvls/Fpls: 4 / 1
Tot Fin SF:
Year Built: 1928
Total Tax: $1,287
Tax Yr: 2004
Ground Rent:
Style: Colonial
Type: Detached





Legal Sub: Whittemore Park
Adv. Sub: Whittemore Park
Model: COLONIAL

HOA Fee: /mo pd
C/C Fee: /mo pd
C/C Proj Name:

Tax Map:
Liber: 7
Folio: 159
Parcel: 136
Block/Square:
Lot: 296
Map Coord: 42B5 **Area:**

	Total	Main	Upr1	Upr2	Lwr1	Lwr2	Schools:
BR	4	0	2	1	1	0	ES:
FB	2	0	1	0	1	0	MS:
HB	0	0	0	0	0	0	HS:

Master Bdrm:	20 x 11 Upper 1	**Fifth Bdrm:**		**Rec Rm:**	**Othr Rm 3:**
Master Bdrm 2:		**Living Rm:**	12 x 18 Main	**Den:**	**Foyer :**
First Bdrm:		**Dining Rm:**	17 x 13 Main	**Library:**	**Garage:**
Second Bdrm:	13 x 10 Upper 1	**Kitchen:**	16 x 13 Main	**Sitting:**	**Carport:**
Third Bdrm:	12 x 12 Upper 2	**Brkfast Rm:**		**Othr Rm 1:** Lower 1	**Unfinished:**
Fourth Bdrm:		**Family Rm:**	15 x 10 Lower 1	**Othr Rm 2:**	

Exterior: Deck, Fenced - Partially
Exterior Const: Brick, Brick and Siding, Vinyl Siding
Other Structures: Shed
Lot Desc: Additional Lot(s)
Basement: Yes, Full, Fully Finished, Improved
Parking: Drvwy/Off Str, Garage
Heating System: Forced Air
Water: Public
Cooling System: Ceiling Fan(s), Central A/C
Sewer/Septic: Public Sewer

Exposure:
Roofing: Shingle-Asphalt
Gar/Crpt/Assgd Spaces: 3//
Heating Fuel: Natural Gas
Hot Water: Natural Gas
Cooling Fuel: Electric
Soil Type:

Appliances: Dishwasher, Dryer, Exhaust Fan, Oven/Range-Electric, Range hood, Refrigerator, Washer
Amenities: Attic-Stairs Fixed, FP Glass Doors, FP Mantels, Home Warranty, Shades/Blinds, W/W Carpeting
HOA/C/C Amenities:

List Date: 31-Mar-2005 **Update Date:** 04-Apr-2005 **DOM-MLS:** 32 **DOM-Prop:** 52

Remarks: CHARM*CHARM*CHARM AND A BRAND NU KIT 2DIE4*SEP DR*LRG LR w/BRK FP*LNDRY OFF KIT*2BAY WNDWS*LRG BRs*3RD BR COULD BN LL OR N BIG,FIN ATTIC*LL COULD B N-LAW w/2ND FULL KIT*NU LL FB*HUGE UPSTR BA*NU WNDWS ON MAIN LVL*OUTSIDE IS JUST AS NICE AS IN w/BEAUT BRKWORK*3CAR DET GAR&TONS OF PKING* AWESOME COVERED DECK&COVERED STG UNDER DECK*ADDITIONAL LOT BEHIND GAR IS ALSO FOR SALE SEPERATELY*A KEEPER!

Directions: RTE. 1 NORTH TO LEFT ON SULPHER SPRING TO RIGHT ON BENSON TO LEFT ON TAYLOR...HOME ON LEFT :)

Show Instructions: Call 1st-Contact, All Days, 10 AM - 9 PM

Listing Co: LONG & FOSTER REAL ESTATE, INC., LNG45
Listing Agent: DONNA MACBRAYNE
Office: (410) 461-1456
Alt. Agent: Richard Proctor
Owners: CALL C/O LONG&FOSTER
Show Contacts: CALL CSS FOR SHOWINGS

Phone: (410) 461-1456
Home: (410) 458-3301
Pager: (410) 458-3301
Office: (410) 461-1456

Fax: (410) 750-8781
Fax:
Cell: (410) 458-3301
Home: (410) 458-3290
Home: (410) 461-1456
Home: (866) 891-7469

Sub Comp: 2.5% **Buy Comp:** 2.5% **Add'l:** **Dual:** Y **DesR:** N **VarC:** N

(c) 2005 Metropolitan Regional Information Systems, Inc.
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.

Pet #7

0022093 471

① 23016-BLO

CBA Pat 6

This Deed, MADE THIS 25th day of May in the year Two Thousand Five by and between Link-Link, LLC, a Maryland Limited Liability Company, party of the first part, and Roderick T. Schuh and Tonya Crowl-Gifford, parties of the second part.

Witnesseth, That in consideration of the sum of Three Hundred Twenty Two Thousand Dollars and NO Cents ($322,000.00), the receipt of which is hereby acknowledged, the said party of the first part does grant and convey to the said parties of the second part, in fee simple, that parcel of ground situated in Baltimore County, Maryland and described as follows, that is to say:

See Exhibit A attached hereto and made a part hereof

BEING the same parcel of ground which by deed dated March 23, 2005 and recorded among the Land Records of Baltimore County, Maryland in Liber No. 21702, folio 294 was granted and conveyed by Donald Hoyle unto Link-Link, LLC, the Grantor herein.

ALSO BEING the same parcel of ground which by deed dated March 23, 2005 and recorded in the Land Records of Baltimore County, Maryland in Liber No. 21702 folio 304 was granted and conveyed by Donald Hoyle unto Link-Link, LLC, the Grantor herein.

The Fountainhead Title Group

AFFIDAVIT OF INDIVIDUAL(S)
TO QUALIFY FOR TAX EXEMPTION FOR FIRST TIME MARYLAND HOMEBUYER(S)

Grantee(s) hereby make oath or affirm under penalties of perjury that the following statements are true:

1.The undersigned individuals and each of them has/have never before owned an interest in residential real property located in the State of Maryland; and

2. The property described in the Deed to which this affidavit is attached is improved by a residence which will be occupied as my/our principal residence; and

3. I/we am/are fully qualified to make this affidavit.

4. This affidavit is made to qualify Grantee(s) for benefits under TP section 13-203.

This is to certify the within instrument was prepared under the supervision of an Attorney duly admitted to practice before the Court of Appeals of the State of Maryland.

REVIEWED SDAT
BY 6-23-05 DATE

Edward J. Brush
Edward J. Brush, Esquire

EXHIBIT "A"

BEING KNOWN AND DESIGNATED as Lot Nos. 296 and 297 as shown on the Plat of Whitmore Park, said plat being recorded among the Land Records of Baltimore County in Plat Book W.P.C. No. 7, folio 76; See also revised plat of Whitmore Park recorded among the aforesaid Land Records in Plat Book No. 7, folio 159; said Lots of Ground and the improvements thereon being known as No. 1204 Taylor Avenue.

Account No. 1313550910

ALSO BEING KNOWN AND DESIGNATED as Lot Nos. 342, 343, 344, 345 as shown on the Plat of Whitmore Park, said plat being recorded among the Land Records of Baltimore County in Plat Book W.P.C. NO. 7, folio 76; See also revised plat of Whitmore Park recorded among the aforesaid Land Records in Plat Book No. 7, folio 159.

Account No. 1313550912

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

TO HAVE AND TO HOLD the said described lot of ground and premises to the said parties of the second part as joint tenants, their assigns, the survivor of them and the survivor's personal representatives, heirs and assigns, in fee simple.

BUYERS INITIAL HERE TCG _____ _____

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

WITNESS the name and seal of said Limited Liability Company and the signature of the authorized/managing member thereof and the hand(s) and seal(s) of said Grantee(s).

Attest: Link-Link, LLC

_____ _____(SEAL)
By: William Link, Member

_____ _____(SEAL)
Roderick Schuh

_____ _____(SEAL)
Tonya Crowe Gifford

State of Maryland, County of Baltimore County, to wit:

I Hereby Certify, That on this 25th day of May in the year Two Thousand Five, before me, the subscriber, a Notary Public of the State of Maryland, County of personally appeared William Link, who acknowledged himself/herself to be the Authorized/Managing Member of Link-Link, LLC, a Maryland Limited Liability Company, and that he/she as such Authorized/Managing Member being authorized so to do, executed the aforegoing instrument for the purposes therein contained, by signing in my presence, the name of the LLC by himself/herself as such Authorized/Managing Member.

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

My Commission Expires: _____, _____

HAL J. RESNICK
NOTARY PUBLIC STATE OF MARYLAND
HOWARD COUNTY
MY COMMISSION EXPIRES 1/28/2008

State Of Maryland, County Of Baltimore County, to wit:

I Hereby Certify, That on this 25th day of May in the year Two Thousand Five, before me, the subscriber, a Notary Public of the State of Maryland, County of Howard personally appeared Roderick Schuh and Tonya Crowl-Gifford known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged the foregoing Deed to be their act, and in my presence signed and sealed the same.

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

_____

HAL J. RESNICK
NOTARY PUBLIC STATE OF MARYLAND
HOWARD COUNTY
MY COMMISSION EXPIRES 1/28/2008

My Commission Expires: _____, _____

AFTER RECORDING, RETURN TO:

Roderick Schuh and Tonya Crowl-Gifford
1204 Taylor Avenue
Halethorpe, MD 21227

File Number: **23016BLD**

EXHIBIT
ATTACHED TO DEED OF CONVEYANCE

AFFIDAVIT OF INDIVIDUAL(S)
TO QUALIFY FOR TAX EXEMPTION FOR FIRST TIME MARYLAND HOMEBUYER(S)

Grantee(s) hereby make oath or affirm under penalties of perjury that the following statements are true:

1. The undersigned individual(s) and each of them has/have never before owned in the State of Maryland residential real property that has been the individuals principal residence; and

2. The property described in the Deed to which this affidavit is attached is improved by a residence which will be occupied as my/our principal residence; and

3. I/we am/are fully qualified to make this affidavit.

4. This affidavit is made to qualify Grantee(s) for benefits under TP section 13-203.

WITNESS the hand(s) and seal(s) of said Grantee(s) by his/her/agent this affidavit being executed based upon diligent inquiry.

Test:

_____ Tonya Crowl-Gifford (SEAL)

_____ Roderick T. Schuh (SEAL)

STATE OF Maryland, COUNTY OF Howard, to wit:

I HEREBY CERTIFY, that on this 25 day of May, 2005, before me, the subscriber, a Notary Public in and for the County/City of Howard, appeared Tonya Crowl-Gifford + Roderick Schuh, personally known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged the foregoing to be their act, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal.

Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF MARYLAND
HOWARD COUNTY
MY COMMISSION EXPIRES 1/28/2008

FTG File No.:_____

AFFIDAVIT

Roderick Schuh & Tonya Crowl-Gifford Grantee(s), in the Deed dated May 25, 2005, from Link-Link, LLC hereby certify under the penalties of perjury, that the land conveyed in said Deed, known as 1204 Taylor Avenue, Halethrope, MD 21227 is residentially improved, owner-occupied real property and that the residence thereon will be occupied by me/us for the next 7 out of 12 months.

As Witness our hands and seals this 25 day of May, 2005.

(SEAL)
TONYA CROWL-GIFFORD

(SEAL)
RODERICK SCHUH

(SEAL)

(SEAL)

STATE OF MARYLAND
COUNTY OF Howard, to wit:

I HEREBY CERTIFY, That on this 25 day of May, 2005, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared Tonya Crowl-Gifford + Roderick Schuh, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within Affidavit, and having been duly sworn, executed the same in my presence.

In Witness Whereof, I hereunto set my hand and official seal.

Notary Public

My Commission Expires:

PAUL J. RESNICK
NOTARY PUBLIC STATE OF MARYLAND
HOWARD COUNTY
MY COMMISSION EXPIRES 1/28/2008

0022093 477

State of Maryland Land Instrument Intake Sheet

[] Baltimore City [X] County: Baltimore County

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)

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

1 Deed	Mortgage	Other	Other
2 Deed of Trust	Lease	3 2nd D/T	

2 Conveyance Type Check Box

X Improved Sale Arm-Length[1]	Unimproved Sale Arms-Length[2]	Multiple Account Arms-Length[3]	Not an Arms-Length Sale[9]

3 Tax Exemptions (if applicable) Cite or Explain Authority

Recordation	
State Transfer	First Time Maryland Homebuyer
County Transfer	Owner Occupied

INFO SURE $ 20.00
RECORDING FEE 20.00
TR TAX STATE 805.00
TOTAL 845.00
Rest WARD Rcpt # 8574
SH CR Blk # 5210
Jun 23, 2005 02:25 PM

4 Consideration and Tax Calculations

Rev'd by SDAT

Consideration Amount		Finance Office Use Only	
Purchase Price/Consideration	$ 322,000.00	Transfer and Recordation Tax Consideration	
Any New Mortgage	$ 257,600.00	Transfer Tax Consideration	$
Balance of Existing Mortgage	$	X( )% =	$
Other: 2nd Deed of Trust	$ 64,400.00	Less Exemption Amount -	$
		Total Transfer Tax =	$
Other:	$	Recordation Tax Consideration	$
		X( ) per $500 =	$
Full Cash Value	$	TOTAL DUE	$

5 Fees

Amount of Fees	Doc. 1	Doc. 2
Recording Charge	$ 20.00	$ 20.00
Surcharge	$ 20.00	$ 20.00
State Recording Tax	$ 1610.00	$
State Transfer Tax	$ 805.00	$
County Transfer Tax	$ 4500.00	$
Other	$	$
Other	$	$

Agent:
Tax Bill:
C.B. Credit:
A.G. 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 3-10(g)(3)(i).

District	Property Tax ID No.(1)	Grantor Liber/Follo	Map	Parcel No.	Var. LOG [X] (5)
13	13-13-550910	21702/294			

Subdivision Name	Lot (3a)	Block(3b)	Sect/AR(3c)	Plat Ref.	SqFt/Acreage(4)
13-13-550912					

Location/Address of Property Being Conveyed (2): 1204 Taylor Avenue, Halethorpe, MD 21227

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

Residential [X] or Non-Residential [ ] | Fee Simple [X] or Ground Rent [ ] Amount: $ 20

Partial Conveyance? [ ] Yes [X] No | Description/Amt. of SqFt/Acreage Transferred: 805.00

If Partial Conveyance, List Improvements Conveyed:

7 Transferred From

Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
Link-Link, LLC	Roderick T. Schuh
	Tonya Crowl-Gifford
Doc. 1 - Owner(s) of Record, if Different form Grantor(s)	Doc. 2 - Owner(s) of Record, if Different form Grantor(s)

8 Transferred To

Doc. 1 - Grantee(s) Name(s)	Doc. 2 - Grantee(s) Name(s)
Roderick Schuh	Jack Adams, Trustee
Tonya Crowl-Gifford	
New Owner's (Grantee) Mailing Address	
same as property	

9 Other Names To Be Indexed

Doc. 1 - Additional Name(s) to be Indexed (Optional)	Doc. 2 - Additional Name(s) to be Indexed (Optional)
	JPMorgan Chase Bank, N.A.

10 Contact/Mail Information

Instrument Submitted By or Contact Person

Name: Michele Lohoefer 6/1 FILE: 23016BLD
Firm: The Fountainhead Title Group
Address: 10025 Governor Warfield Parkway
Columbia, MD 21044 (410) 381-5300

[ ] Return to Contact Person
[ ] Hold for Pickup
[X] Return Address Provided

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

Assessment Information

[X] Yes [ ] No Will the property being conveyed be the grantee's principal residence?
[ ] Yes [X] No Does transfer include personal property? If yes, identity:
[ ] Yes [X] 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				
Land			Geo	Map	Sub	Block
Buildings			Zoning	Grid	Plat	Lot
Total			Use	Parcel	Section	Occ. Cd.
REMARKS			Town Cd.	Ex.	Ex.	

RECORDATION TAX NOT REQUIRED
Director of Budget and Finance
BALTIMORE COUNTY, MARYLAND
T.P. ART 12-108

DOC # 1 2 3 4 5 6

Initial:

Date 6/23/2005

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

DUPLICATE PAID RECEIPT
RECORDATION
ACTUAL TIME DRW
6/23/2005 14:11:49 4
KMCM KXM
OFLN 6/23/2005 RECORDATION TAXES
$6,110.00 CK $.00 CA
Baltimore County, Maryland

Addendum
State of Maryland Land Instrument Intake Sheet
[] Baltimore City [X] County: Baltimore County

The addendum form should be used when one transaction involves more than two instruments. Each instruments should be itemized in accordance with Section No. 1 of the Intake Sheet.

(Type or Print in Black Ink Only - All Copies Must Be Legible) FILE: 23016BLD

5 (Continued)	Amount of Fees	Doc. 3	Doc. 4	Doc. 5	Doc. 6
	Recording Charge	$ 20.00	$	$	$
	Fees Surcharge	$ 20.00	$	$	$
	State Recording Tax	$	$	$	$
	State Transfer Tax	$	$	$	$
	County Transfer Tax	$	$	$	$
	Other	$	$	$	$
	Other	$	$	$	$

7 (Continued) Transferred From	Doc. 3 - Grantor(s) Name(s)	Doc. 4 - Grantor(s) Name(s)
	Roderick T. Schuh	
	Tonya Crowl Gifford	
	Doc. 5 - Grantor(s) Name(s)	**Doc. 6 - Grantor(s) Name(s)**
	Doc. 3 - Owner(s) of Record, if Different form Grantor(s)	**Doc. 4 - Owner(s) of Record, if Different form Grantor(s)**
	Doc. 5 - Owner(s) of Record, if Different form Grantor(s)	**Doc. 6 - Owner(s) of Record, if Different form Grantor(s)**

8 (Continued) Transferred To	Doc. 3 - Grantee(s) Name(s)	Doc. 4 - Grantee(s) Name(s)
	Jack Adams, Trustee	
	Doc. 5 - Grantee(s) Name(s)	**Doc. 6 - Grantee(s) Name(s)**

9 (Continued) Other Names To Be Indexed	Doc. 3 - Additional Name(s) to be Indexed (Optional)	Doc. 4 - Additional Name(s) to be Indexed (Optional)
	JPMorgan Chase Bank, N.A.	
	Doc. 5 - Additional Name(s) to be Indexed (Optional)	**Doc. 6 - Additional Name(s) to be Indexed (Optional)**

Special Instructions	*Special Recording Instructions (if any)*

13-13-SS0910
13-13-SS0912

RECORDATION TAX NOT REQUIRED
Director of Budget and Finance
BALTIMORE COUNTY, MARYLAND
T.P. ART 12-108

DOC # 2 3 4 5 6

Initial: _____

Date 6/23/2005

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

0022093 471

① 2301680

This Deed, MADE THIS 25th day of May in the year Two Thousand Five by and between Link-Link, LLC, a Maryland Limited Liability Company, party of the first part, and Roderick T. Schuh and Tonya Crowl-Gifford, parties of the second part.

Witnesseth, That in consideration of the sum of Three Hundred Twenty Two Thousand Dollars and NO Cents ($322,000.00), the receipt of which is hereby acknowledged, the said party of the first part does grant and convey to the said parties of the second part, in fee simple, that parcel of ground situated in Baltimore County, Maryland and described as follows, that is to say:

See Exhibit A attached hereto and made a part hereof

BEING the same parcel of ground which by deed dated March 23, 2005 and recorded among the Land Records of Baltimore County, Maryland in Liber No. 21702, folio 294 was granted and conveyed by Donald Hoyle unto Link-Link, LLC, the Grantor herein.

ALSO BEING the same parcel of ground which by deed dated March 23, 2005 and recorded in the Land Records of Baltimore County, Maryland in Liber No. 21702 folio 304 was granted and conveyed by Donald Hoyle unto Link-Link, LLC, the Grantor herein.

The Fountainhead Title Group

AFFIDAVIT OF INDIVIDUAL(S)
TO QUALIFY FOR TAX EXEMPTION FOR FIRST TIME MARYLAND HOMEBUYER(S)

Grantee(s) hereby make oath or affirm under penalties of perjury that the following statements are true:

1. The undersigned individuals and each of them has/have never before owned an interest in residential real property located in the State of Maryland; and

2. The property described in the Deed to which this affidavit is attached is improved by a residence which will be occupied as my/our principal residence; and

3. I/we am/are fully qualified to make this affidavit.

4. This affidavit is made to qualify Grantee(s) for benefits under TP section 13-203.

This is to certify the within instrument was prepared under the supervision of an Attorney duly admitted to practice before the Court of Appeals of the State of Maryland.

REVIEWED SDAT
BY 6-23-05
DATE

Edward J. Brush
Edward J. Brush, Esquire

Pro #1

EXHIBIT "A"

BEING KNOWN AND DESIGNATED as Lot Nos. 296 and 297 as shown on the Plat of Whitmore Park, said plat being recorded among the Land Records of Baltimore County in Plat Book W.P.C. No. 7, folio 76; See also revised plat of Whitmore Park recorded among the aforesaid Land Records in Plat Book No. 7, folio 159; said Lots of Ground and the improvements thereon being known as No. 1204 Taylor Avenue.

Account No. 1313550910

ALSO BEING KNOWN AND DESIGNATED as Lot Nos. 342, 343, 344, 345 as shown on the Plat of Whitmore Park, said plat being recorded among the Land Records of Baltimore County in Plat Book W.P.C. NO. 7, folio 76; See also revised plat of Whitmore Park recorded among the aforesaid Land Records in Plat Book No. 7, folio 159.

Account No. 1313550912

0022093 473

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

TO HAVE AND TO HOLD the said described lot of ground and premises to the said parties of the second part as joint tenants, their assigns, the survivor of them and the survivor's personal representatives, heirs and assigns, in fee simple.

BUYERS INITIAL HERE TCG _____ _____

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

WITNESS the name and seal of said Limited Liability Company and the signature of the authorized/managing member thereof and the hand(s) and seal(s) of said Grantee(s).

Attest: Link-Link, LLC

_____ _____ (SEAL)
By: William Link, Member

_____ _____ (SEAL)
Roderick Schuh

_____ _____ (SEAL)
Tonya Crowe Gifford

State of Maryland, County of Baltimore County, to wit:

I Hereby Certify, That on this 25th day of May in the year Two Thousand Five, before me, the subscriber, a Notary Public of the State of Maryland, County of personally appeared William Link, who acknowledged himself/herself to be the Authorized/Managing Member of Link-Link, LLC, a Maryland Limited Liability Company, and that he/she as such Authorized/Managing Member being authorized so to do, executed the aforegoing instrument for the purposes therein contained, by signing in my presence, the name of the LLC by himself/herself as such Authorized/Managing Member.

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

PLAT TO ACCOMPANY PETITION FOR ZONING ☒ VARIANCE ☐ SPECIAL HEARING

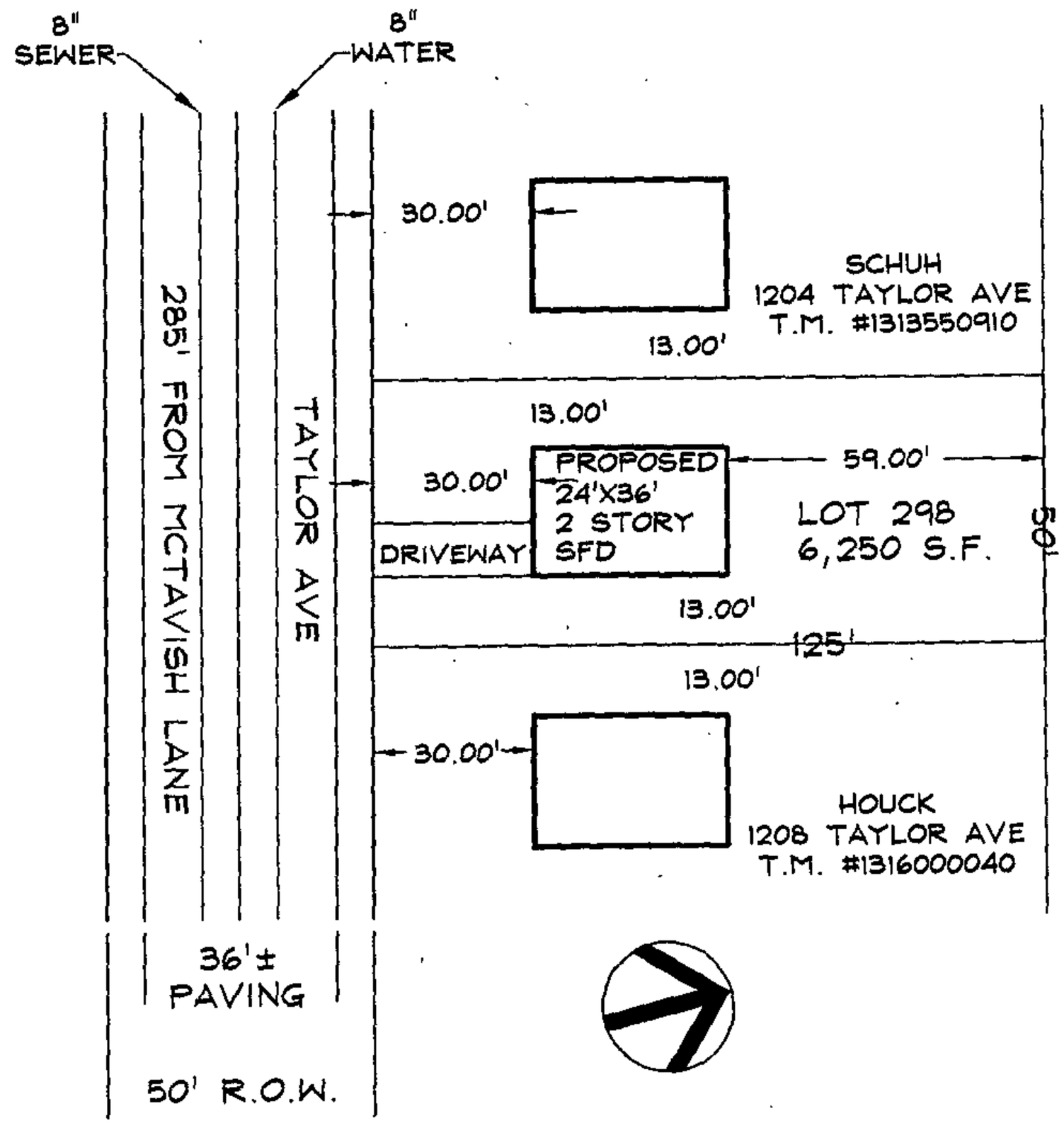
SEE PAGES 5 & 6 OF THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION

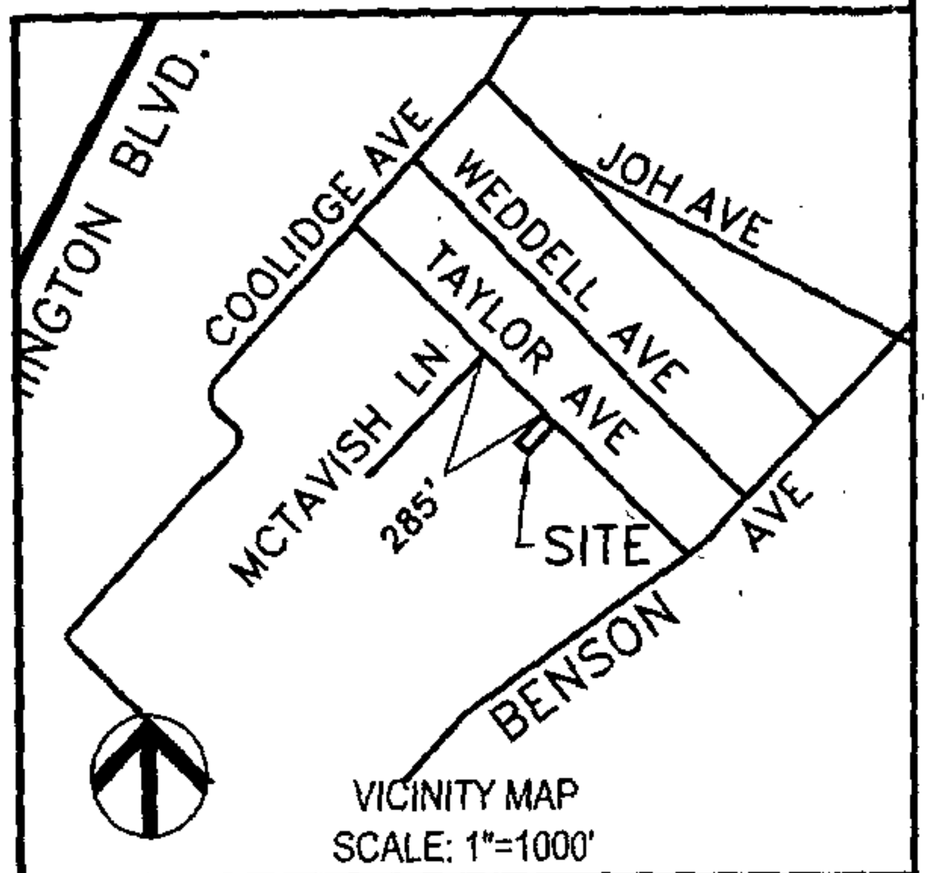
PROPERTY ADDRESS 1206 TAYLOR AVE

SUBDIVISION NAME WHITTEMORE PARK

PLAT BOOK # 07 FOLIO # 159 LOT # 298 SECTION # ____

OWNER LINK/ SINGER LLC 2625 WASHINGTON RD.
WESTMINSTER, MD 21157





VICINITY MAP
SCALE: 1"=1000'

LOCATION INFORMATION

ELECTION DISTRICT 13

COUNCILMANIC DISTRICT 1

1"=200' SCALE MAP # 1 .02 A2

ZONING DR 5.5

LOT SIZE 0.144 ACREAGE 6250 SQUARE FEET

SEWER	☒	☐
WATER	☒	☐

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

PRIOR ZONING HEARING NONE

LOCATION INFORMATION

REVIEWED BY	ITEM #	CASE #
[illegible]	166	06-166-A

PREPARED BY DEMARIO DESIGN CONSULTANTS, INC.

SCALE OF DRAWING: 1" = 40'

CBA Pet. Ex 2 Pet #1

PLAT TO ACCOMPANY PETITION FOR ZONING ☒ VARIANCE ☐ SPECIAL HEARING

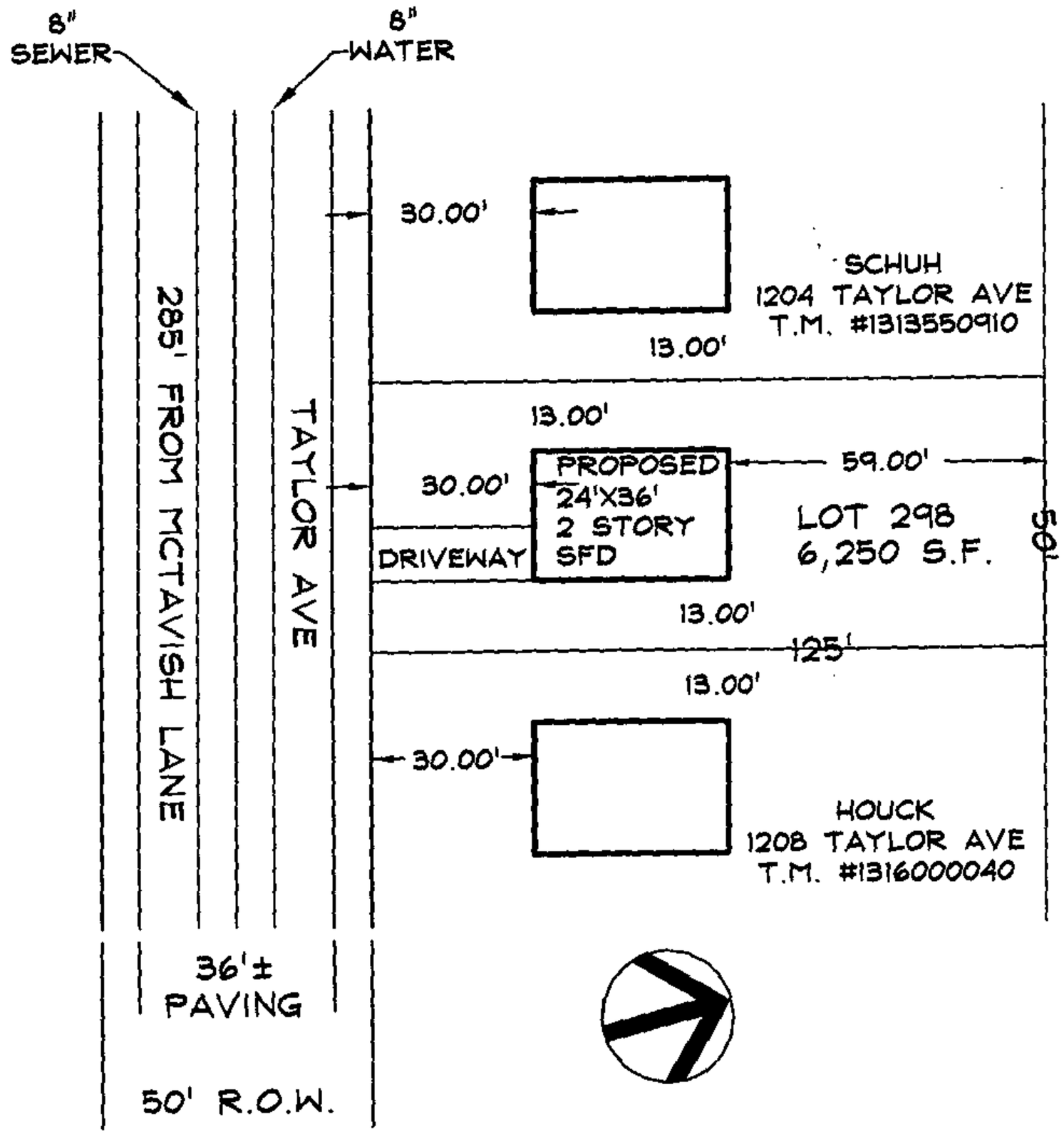
SEE PAGES 5 & 6 OF THE CHECKLIST FOR ADDITIONAL REQUIRED INFORMATION

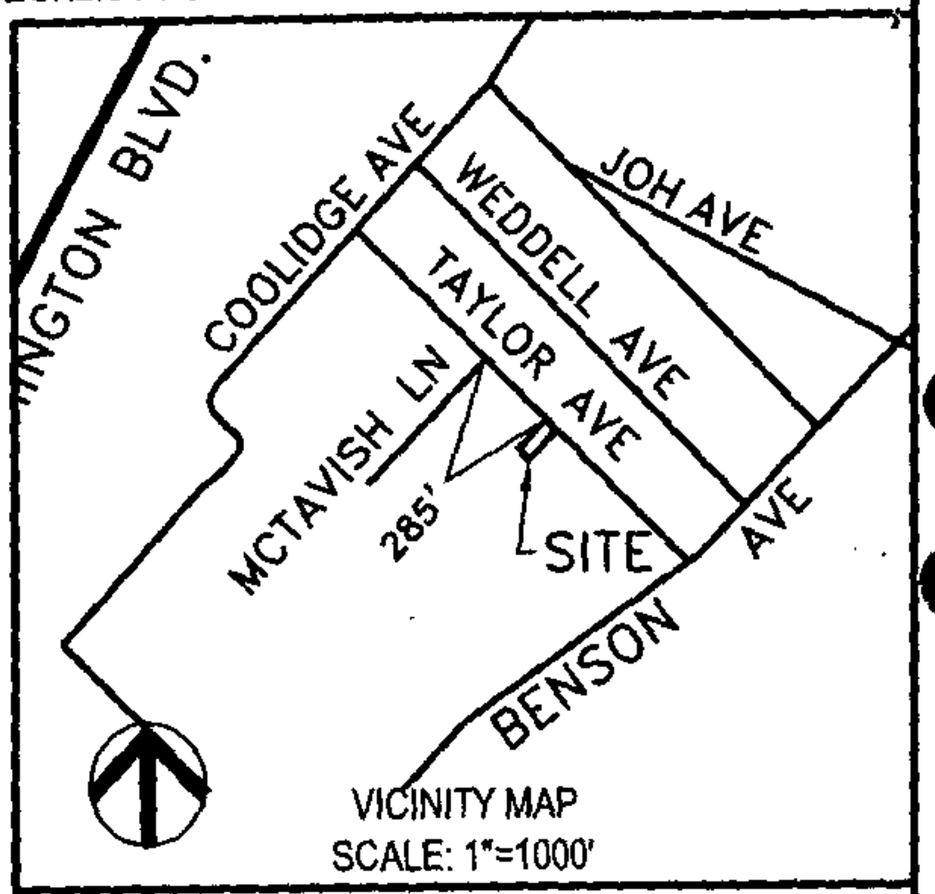
PROPERTY ADDRESS 1206 TAYLOR AVE

SUBDIVISION NAME WHITTEMORE PARK

PLAT BOOK # 07 FOLIO # 159 LOT # 298 SECTION # ____

OWNER LINK/ SINGER LLC 2625 WASHINGTON RD. WESTMINSTER, MD 21157





VICINITY MAP
SCALE: 1"=1000'

LOCATION INFORMATION

ELECTION DISTRICT 13

COUNCILMANIC DISTRICT 1

1"=200' SCALE MAP # 1 [illegible]02 A2

ZONING DR 5.5

LOT SIZE 0.144 ACREAGE 6250 SQUARE FEET

SEWER	☒	☐
WATER	☒	☐

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

PRIOR ZONING HEARING NONE

LOCATION INFORMATION

REVIEWED BY	ITEM #	CASE #
AH	166	06-166-A

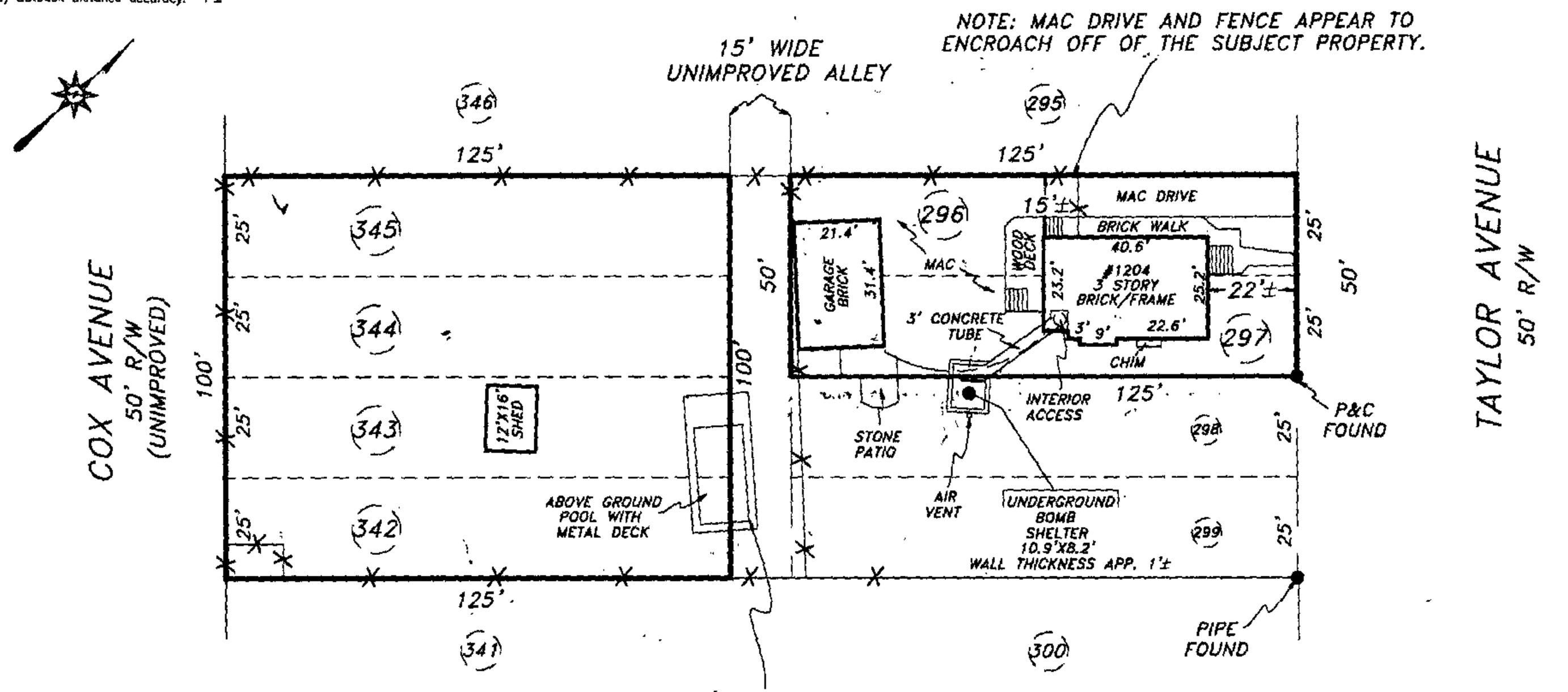
PREPARED BY DEMARIO DESIGN CONSULTANTS, INC.

SCALE OF DRAWING: 1" = 40'

Pet #1

NOTES:

1) B.R.L. information, if shown, was obtained from existing record plat or local agencies and is not guaranteed by NTT, Inc.
2) Building line and/or Flood Zone information is subject to the interpretation of the originator.
3) NTT, Inc. does not certify to unshown or unrecorded encroachments or overlaps.
4) Property markers NOT found, or guaranteed by this location.
5) Setback distance accuracy: 1'±



NOTE: ABOVE GROUND POOL WITH METAL DECK APPEARS TO LIE WITHIN THE UNIMPROVED 15' ALLEY.

Subject property is shown in Zone C on the FIRM Map of Baltimore County, Maryland on Community Panel 240010 0395 B.Effective MARCH 2, 1981

BOMB SHELTER LIES UNDER LOTS 297 AND 298.

UNDERGROUND INSPECTION INDICATES ACCESS LIMITED TO #1204 TAYLOR AVENUE

This is to certify that I have surveyed the property shown hereon, being known as LOTS 296, 297 & 342, 343, 344, & 345 AS SHOWN ON PLAT OF "WHITTEMORE PARK" and recorded among the land records of Baltimore County, Maryland in Plat 7 ,folio 159 for the purpose of locating the improvements thereon.

* This plat is of benefit to the consumer only insofar as it is required by a lender or a title insurance company or its agent in connection with contemplated transfer, financing, or refinancing purposes.
* This plat is not to be relied upon for the establishment of location of fences, garages, buildings, or other existing or future structures.
* This plat does not provide for the accurate identification of property boundary lines, but such identification may not be required for the transfer of title or for securing financing or refinancing.

STATE OF MARYLAND
JAMES C. HUDGINS
No. 96
REGISTERED PROPERTY LINE SURVEYOR

J. Carl Hudgins PLS #96

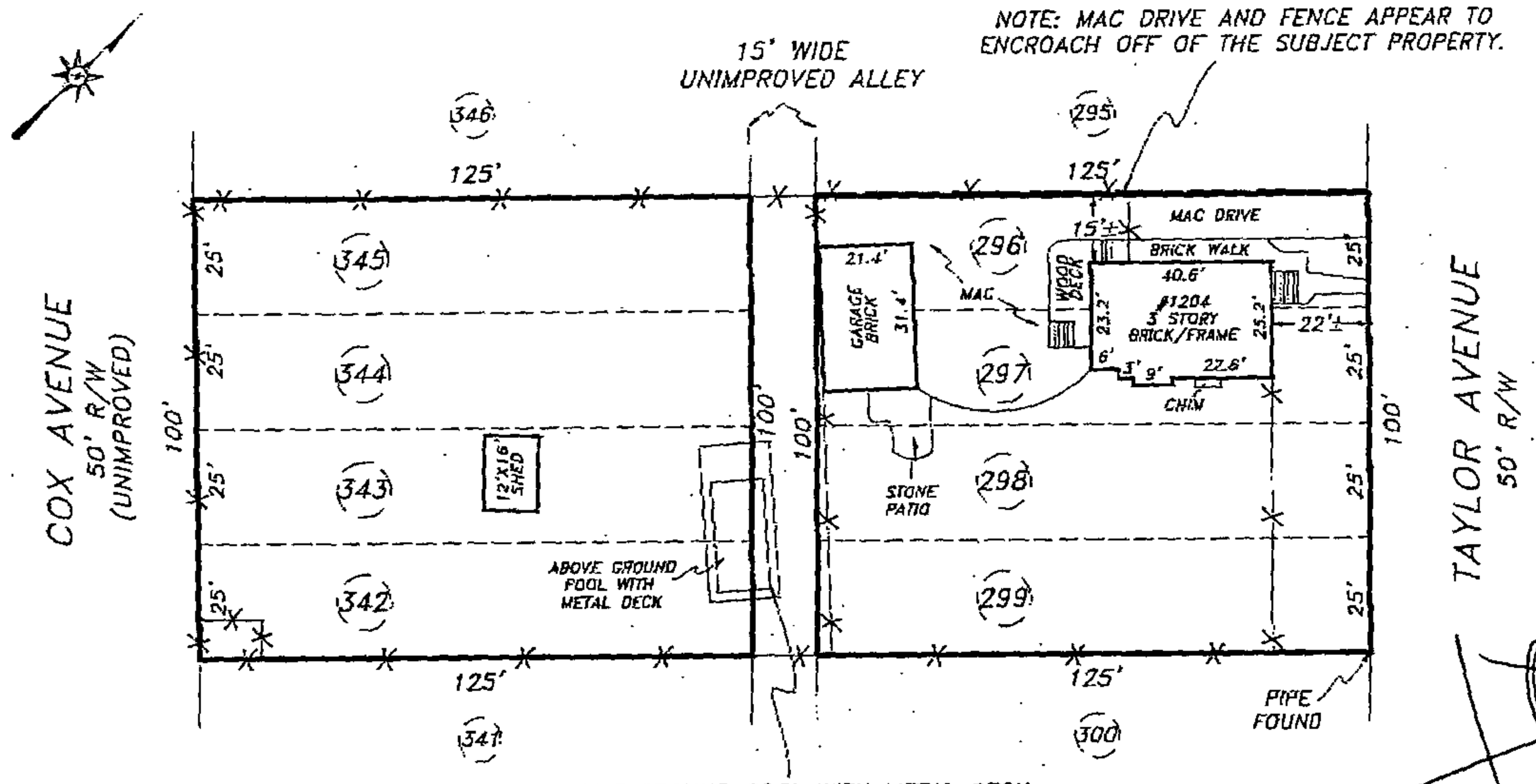
LOCATION DRAWING
1204 TAYLOR AVENUE
13th ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

NTT Associates, Inc.
16205 Old Frederick Road
Mt. Airy, Maryland 21771
Ph. (410)442-2031
Fax No. (410)442-1315

Scale:	1" = 40'
Date:	5/24/06
Field By:	DBM
Drawn By:	DBM
File #	SCHUH/CROWL

CBA Prot 3

NOTES:
1) G.R.L. information, if shown, was obtained from existing record plat or local agencies and is not guaranteed by NTT, Inc.
2) Building line and/or Flood Zone information is subject to the interpretation of the originator.
3) NTT, Inc. does not certify to unshown or unrecorded encroachments or overlaps.
4) Property markers NOT found, or guaranteed by this location.
5) Setback distance accuracy: 1'±



Subject property is shown in Zone C on the FIRM Map of Baltimore County, Maryland on Community Panel 240010 0395 B.Effective MARCH 2, 1981

This is to certify that I have surveyed the property shown hereon, being known as LOTS 296, 297 298, 299, 342, 343, 344, & 345 AS SHOWN ON PLAT OF "WHITTEMORE PARK" and recorded among the land records of Baltimore County, Maryland in Plat 7 ,folio 159 for the purpose of locating the improvements thereon.

* This plat is of benefit to the consumer only insofar as it is required by a lender or a title insurance company or its agent in connection with contemplated transfer, financing, or refinancing purposes
* This plat is not to be relied upon for the establishment of location of fences, garages, buildings, or other existing or future structures.
* This plat does not provide for the accurate identification of property boundary lines, but such identification may not be required for the transfer of title or for securing financing or refinancing.

STATE OF MARYLAND
JAMES C. HUDGINS
No. 96
REGISTERED PROPERTY LINE SURVEYOR

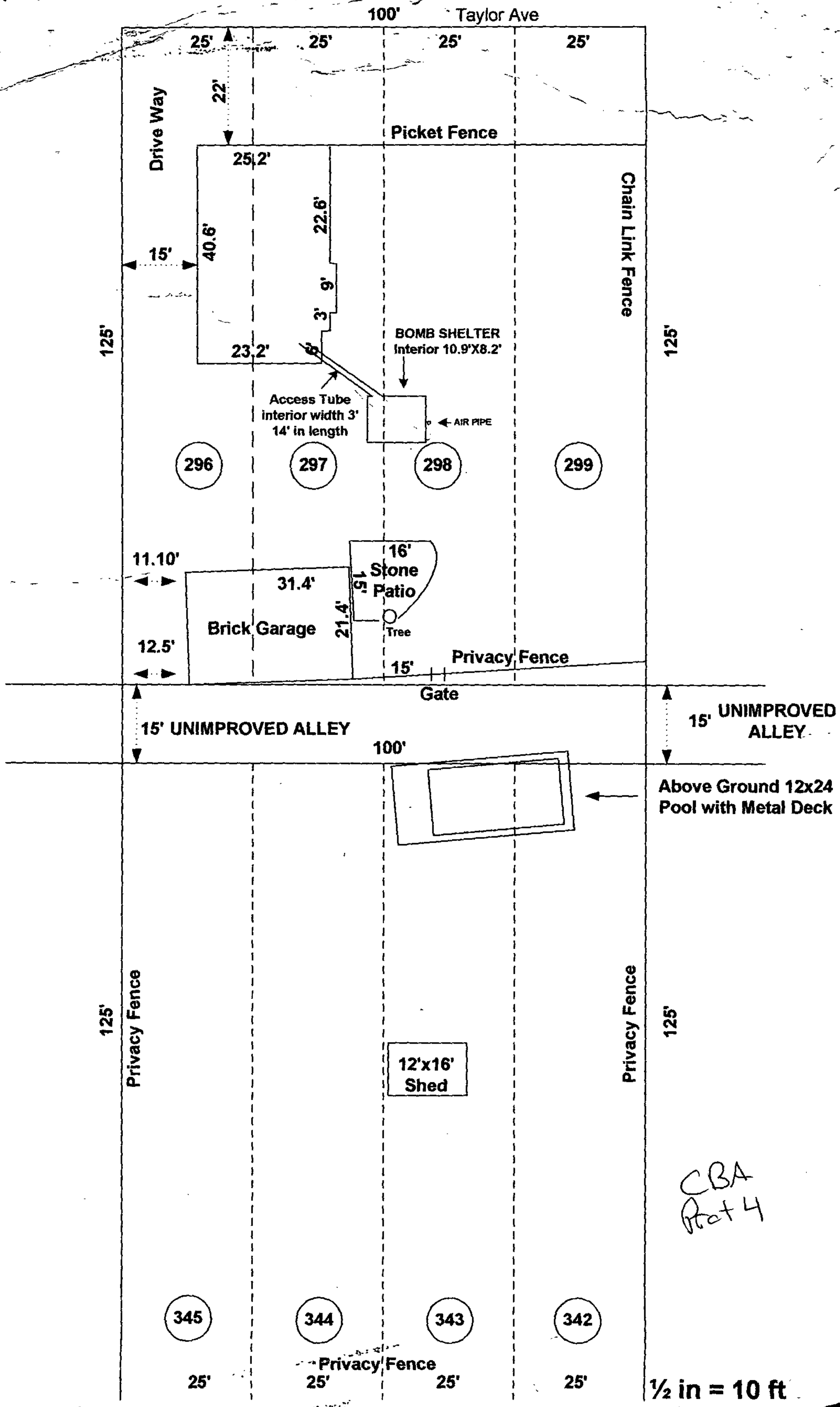
J. Carl Hudgins PLS #96

LOCATION DRAWING
1204 TAYLOR AVENUE
13th ELECTION DISTRICT
BALTIMORE COUNTY, MARYLAND

NTT Associates, Inc.
16205 Old Frederick Road
Mt. Airy, Maryland 21771
Ph. (410)442-2031
Fax No. (410)442-1315

Scale:	1"= 40'
Date:	5/24/05
Field By:	DBM
Drawn By:	DBM
File #	23016BLD

Proof #


100'
Taylor Ave
25'
25'
25'
25'
22'
Drive Way
Picket Fence
25.2'
40.6'
22.6'
15'
9'
3'
125'
Chain Link Fence
125'
23.2'
6'
BOMB SHELTER
Interior 10.9'X8.2'
Access Tube
interior width 3'
14' in length
AIR PIPE
296
297
298
299
11.10'
31.4'
16'
Stone
Patio
15'
21.4'
Brick Garage
Tree
12.5'
15'
Privacy Fence
Gate
15' UNIMPROVED ALLEY
15' UNIMPROVED
ALLEY
100'
Above Ground 12x24
Pool with Metal Deck
125'
Privacy Fence
12'x16'
Shed
Privacy Fence
125'
345
344
343
342
Privacy Fence
25'
25'
25'
25'
½ in = 10 ft

CBA
Rot 4

Click here for a plain text ADA compliant screen.

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

Account Identifier: **District** - 13 ***Account Number*** - 1313550911

Owner Information

Owner Name:	LINK-LINK,LLC	**Use:**	RESIDENTIAL
		Principal Residence:	NO
Mailing Address:	2625 OLD WASHINGTON ROAD WESTMINSTER MD 21157-7543	**Deed Reference:**	1) 2)

Location & Structure Information

Premises Address
1206 TAYLOR AVE

Legal Description
LT 298-299
TAYLOR AV
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	*Subdivision*	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					298	1	Plat Ref: 7/ 159

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

Primary Structure Built	*Enclosed Area*	Property Land Area	County Use
0000		6,250.00 SF	04

Stories	Basement	Type	*Exterior*

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	23,750	23,750		
Improvements:	0	0		
Total:	23,750	23,750	23,750	23,750
Preferential Land:	0	0	0	0

Transfer Information

Seller: HOYLE DONALD	**Date:** 04/12/2005	**Price:** $40,000
Type: IMPROVED ARMS-LENGTH	**Deed1:**	**Deed2:**
Seller: HOYLE ROSE	**Date:** 05/03/2002	**Price:** $0
Type: NOT ARMS-LENGTH	**Deed1:** /16374/ 554	**Deed2:**
Seller: HOYLE DONALD	**Date:** 03/13/2000	**Price:** $0
Type: NOT ARMS-LENGTH	**Deed1:** /14350/ 295	**Deed2:**

Exemption Information

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

Pro #2A

Click here for a plain text ADA compliant screen.

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

Account Identifier: **District** - 13 **Account Number** - 1313550912

Owner Information

Owner Name:	SCHUH RODERICK T CROWL-GIFFORD TONYA	**Use:**	INDUSTRIAL
		Principal Residence:	NO
Mailing Address:	1204 TAYLOR AVE HALETHORPE MD 21227-1423	**Deed Reference:**	1) /22093/ 471 2)

Location & Structure Information

Premises Address
COX AVE

Legal Description
LTS 342,343,344,345
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					342	2	Plat Ref: 7/ 159

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		.28 AC	07

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2005	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	40,100	40,100		
Improvements:	0	0		
Total:	40,100	40,100	40,100	40,100
Preferential Land:	0	0	0	0

Transfer Information

Seller: LINK-LINK,LLC	**Date:** 06/23/2005	**Price:** $322,000
Type: MULT ACCTS ARMS-LENGTH	**Deed1:** /22093/ 471	**Deed2:**
Seller: HOYLE DONALD	**Date:** 04/12/2005	**Price:** $19,999
Type: IMPROVED ARMS-LENGTH	**Deed1:**	**Deed2:**
Seller: HOYLE ROSE	**Date:** 05/03/2002	**Price:** $0
Type: NOT ARMS-LENGTH	**Deed1:** /16374/ 554	**Deed2:**

Exemption Information

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

Pro 2B

Click here for a plain text ADA compliant screen.

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

Account Identifier: **District -** 13 **Account Number -** 1313550910

Owner Information

Owner Name:	SCHUH RODERICK T CROWL-GIFFORD TONYA	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	1204 TAYLOR AVE HALETHORPE MD 21227-1423	**Deed Reference:**	1) /22093/ 471 2)

Location & Structure Information

Premises Address
1204 TAYLOR AVE

Legal Description
LTS 296,297
1204 TAYLOR AVE
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					296	1	**Plat Ref:** 7/ 159

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1928	1,556 SF	6,250.00 SF	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	31,250	31,250		
Improvements:	69,940	76,000		
Total:	101,190	107,250	105,230	107,250
Preferential Land:	0	0	0	0

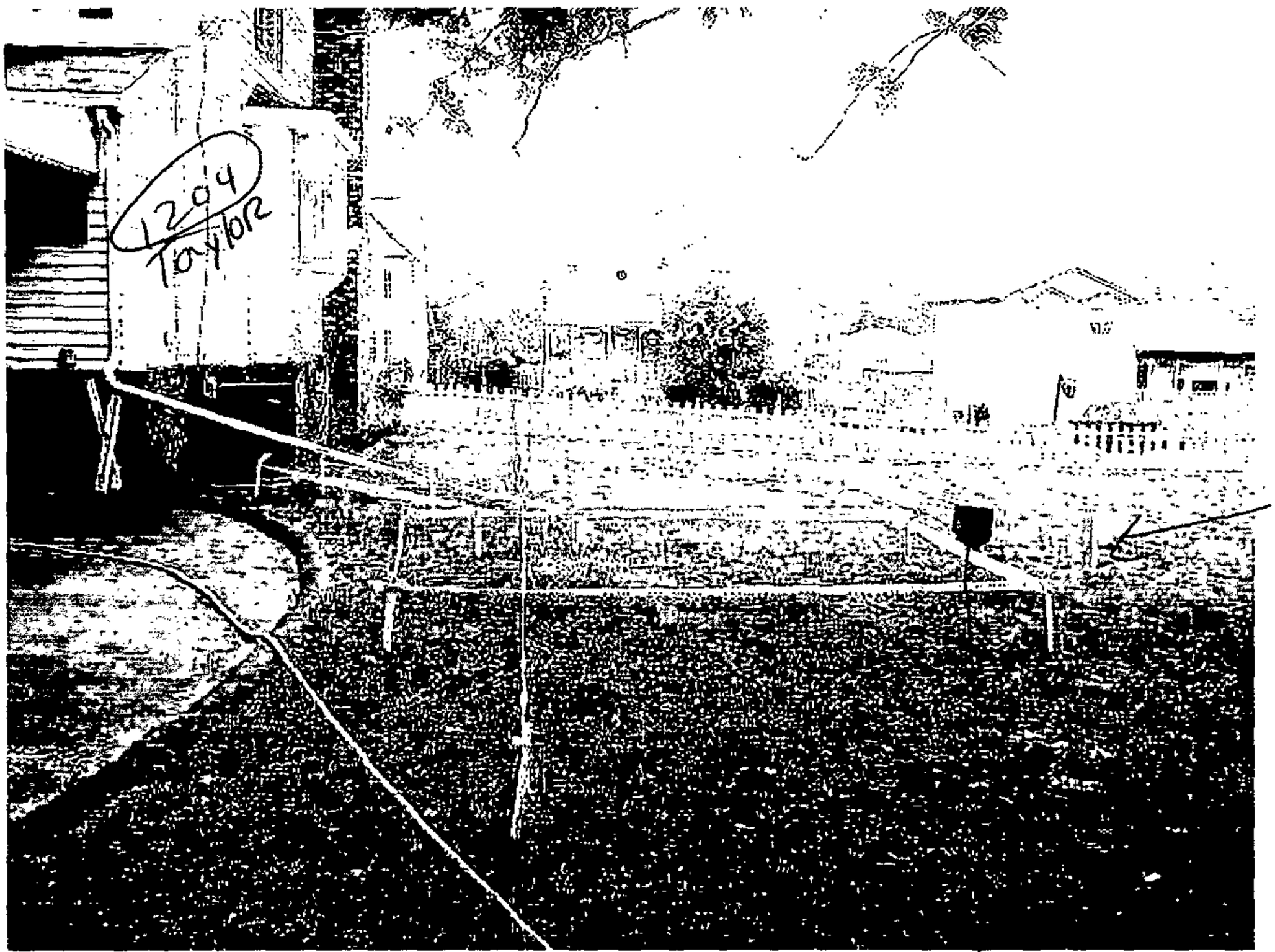
Transfer Information

Seller: LINK-LINK,LLC	**Date:** 06/23/2005	**Price:** $322,000
Type: MULT ACCTS ARMS-LENGTH	**Deed1:** /22093/ 471	**Deed2:**
Seller: HOYLE DONALD	**Date:** 04/12/2005	**Price:** $240,000
Type: IMPROVED ARMS-LENGTH	**Deed1:**	**Deed2:**
Seller: HOYLE ROSE	**Date:** 05/03/2002	**Price:** $0
Type: NOT ARMS-LENGTH	**Deed1:** /16374/ 554	**Deed2:**

Exemption Information

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

Page 2



296 - 297
Schuh
Crowl-Gifford

Link-Link
298-299
1206

Air hole
for Bomb
Shelter

Pro #3

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** - 13 **Account Number** - 1313550911

Owner Information

Owner Name:	LINK-LINK,LLC	**Use:**	RESIDENTIAL
		Principal Residence:	NO
Mailing Address:	2625 OLD WASHINGTON ROAD WESTMINSTER MD 21157-7543	**Deed Reference:**	1) 2)

Location & Structure Information

Premises Address
1206 TAYLOR AVE

Legal Description
LT 298-299
TAYLOR AV
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					298	1	Plat Ref: 7/ 159

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000		6,250.00 SF	04

Stories	Basement	Type	Exterior

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	23,750	23,750		
Improvements:	0	0		
Total:	23,750	23,750	23,750	23,750
Preferential Land:	0	0	0	0

Transfer Information

Seller:	HOYLE DONALD	**Date:**	04/12/2005	**Price:**	$40,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**		**Deed2:**	
Seller:	HOYLE ROSE	**Date:**	05/03/2002	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/16374/ 554	**Deed2:**	
Seller:	HOYLE DONALD	**Date:**	03/13/2000	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/14350/ 295	**Deed2:**	

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Pet #4

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** - 13 **Account Number** - 1313550910

Owner Information

Owner Name:	SCHUH RODERICK T CROWL-GIFFORD TONYA	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	1204 TAYLOR AVE HALETHORPE MD 21227-1423	**Deed Reference:**	1) /22093/ 471 2)

Location & Structure Information

Premises Address
1204 TAYLOR AVE

Legal Description
LTS 296,297
1204 TAYLOR AVE
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					296	1	Plat Ref: 7/ 159

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1928	1,556 SF	6,250.00 SF	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	31,250	31,250		
Improvements:	69,940	76,000		
Total:	101,190	107,250	105,230	107,250
Preferential Land:	0	0	0	0

Transfer Information

Seller:	LINK-LINK,LLC	**Date:**	06/23/2005	**Price:**	$322,000
Type:	MULT ACCTS ARMS-LENGTH	**Deed1:**	/22093/ 471	**Deed2:**	
Seller:	HOYLE DONALD	**Date:**	04/12/2005	**Price:**	$240,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**		**Deed2:**	
Seller:	HOYLE ROSE	**Date:**	05/03/2002	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/16374/ 554	**Deed2:**	

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Pet #5

Pet 6 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 - 13 Account Number -** 1303471230

Owner Information

Owner Name:	CONNELLY PAUL G CONNELLY ROBERTA B	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	1201 TAYLOR AV BALTIMORE MD 21227	**Deed Reference:**	1) / 5111/ 392 2)

Location & Structure Information

Premises Address
1201 TAYLOR AVE

Legal Description
LT 289-290
225 N PEARALL AV
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					289	1	Plat Ref: 7/ 159

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1941	1,452 SF	6,250.00 SF	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	31,250	31,250		
Improvements:	68,970	75,040		
Total:	100,220	106,290	104,266	106,290
Preferential Land:	0	0	0	0

Transfer Information

Seller:	COOK RICHARD A	**Date:**	07/24/1970	**Price:**	$15,500
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/ 5111/ 392	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Pet # 6 A

Pet. 6 B

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** - 13 **Account Number** - 1302571000

Owner Information

Owner Name:	BOWERS THURMAN E BOWERS DOROTHY T	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	1203 TAYLOR AV BALTIMORE MD 21227	**Deed Reference:**	1) / 3585/ 149 2)

Location & Structure Information

Premises Address
1203 TAYLOR AVE

Legal Description
LT 287,288
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					287	1	Plat Ref: 7/ 159

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1945	890 SF	6,250.00 SF	04

Stories	Basement	Type	Exterior
1	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	31,250	31,250		
Improvements:	54,400	58,210		
Total:	85,650	89,460	88,190	89,460
Preferential Land:	0	0	0	0

Transfer Information

Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

W B

Pet. 6

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** - 13 **Account Number** - 2000002919

Owner Information

Owner Name:	RUCK LENA	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	1209 TAYLOR AVE BALTIMORE MD 21227-1424	**Deed Reference:**	1) /19416/ 413 2)

Location & Structure Information

Premises Address
1209 TAYLOR AVE

Legal Description
.17 AC
1209 TAYLOR AVE
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136			2	2	71	1	Plat Ref: 52/ 100

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1989	1,874 SF	7,552.00 SF	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	32,130	32,130		
Improvements:	140,910	151,890		
Total:	173,040	184,020	180,360	184,020
Preferential Land:	0	0	0	0

Transfer Information

Seller:	KOLB LAWRENCE M	**Date:**	01/09/2004	**Price:**	$249,900
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/19416/ 413	**Deed2:**	
Seller:	KOLB ANTHONY R	**Date:**	10/15/2003	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/18958/ 547	**Deed2:**	
Seller:	KOLB LAWRENCE M	**Date:**	12/14/1999	**Price:**	$0
Type:	NOT ARMS-LENGTH	**Deed1:**	/14203/ 333	**Deed2:**	

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

6C

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** - 13 **Account Number** - 2000002926

Owner Information

Owner Name:	FERGUSON CAROLYN E	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	1224 TAYLOR AVE BALTIMORE MD 21227-1423	**Deed Reference:**	1) /19668/ 50 2)

Location & Structure Information

Premises Address
1224 TAYLOR AVE
1224 TAYLOR AVE

Legal Description
.17 AC
1224 TAYLOR AVE
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					78	1	Plat Ref: 52/ 100

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1994	1,094 SF	7,552.00 SF	04

Stories	Basement	Type	Exterior
SPFOY		SPLIT FOYER	SIDING

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	32,130	32,130		
Improvements:	113,420	121,050		
Total:	145,550	153,180	150,636	153,180
Preferential Land:	0	0	0	0

Transfer Information

Seller:	BARNCORD ROGER A	**Date:**	02/27/2004	**Price:**	$215,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/19668/ 50	**Deed2:**	
Seller:	INTERSTATE VENTURES INC	**Date:**	02/28/1995	**Price:**	$146,050
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/10954/ 669	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

60

Pet 6 E

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 - 13 Account Number - 2000002911

Owner Information

Owner Name: WAINIO GARY M
WAINIO WENDY A

Mailing Address: 1225 TAYLOR AVE
BALTIMORE MD 21227-1424

Use: RESIDENTIAL
Principal Residence: YES
Deed Reference: 1) /14882/ 728
2)

Location & Structure Information

Premises Address
1225 TAYLOR AVE

Legal Description
.16 AC
1225 TAYLOR AVE
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					63	1	Plat Ref: 52/ 100

Special Tax Areas
Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1994	1,444 SF	7,125.00 SF	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	32,030	32,030		
Improvements:	115,630	124,800		
Total:	147,660	156,830	153,772	156,830
Preferential Land:	0	0	0	0

Transfer Information

Seller:	INTERSTATE VENTURES INC	Date: 12/26/2000	Price: $166,000
Type:	IMPROVED ARMS-LENGTH	Deed1: /14882/ 728	Deed2:
Seller:		Date:	Price:
Type:		Deed1:	Deed2:
Seller:		Date:	Price:
Type:		Deed1:	Deed2:

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

VE

Real Property Search - Individual Report Rel 6

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 - 13 Account Number -** 2000002914

Owner Information

Owner Name:	WILSON GERALDINE D WELSH GEORGE D/SUSAN A	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	1219 TAYLOR AV BALTIMORE MD 21227-1424	**Deed Reference:**	1) /15123/ 481 2)

Location & Structure Information

Premises Address
1219 TAYLOR AVE

Legal Description
.17 AC
1219 TAYLOR AVE
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					66	1	Plat Ref: 52/ 100

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1989	1,674 SF	7,552.00 SF	04

Stories	Basement	Type	Exterior
2	NO	SPLIT LEVEL	SIDING

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	32,130	32,130		
Improvements:	120,380	130,210		
Total:	152,510	162,340	159,062	162,340
Preferential Land:	0	0	0	0

Transfer Information

Seller:	LEWIS GINA E	**Date:**	04/16/2001	**Price:**	$163,000
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/15123/ 481	**Deed2:**	
Seller:	INTERSTATE VENTU RES INC	**Date:**	01/30/1990	**Price:**	$132,500
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/ 8390/ 508	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

6F

Ret 6

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 - 13 Account Number - 2000002922

Owner Information

Owner Name: BRINKMAN DENISE LYNN

Mailing Address: 1216 TAYLOR AVE
BALTIMORE MD 21227-1423

Use: RESIDENTIAL
Principal Residence: YES
Deed Reference: 1) /21997/ 505
2)

Location & Structure Information

Premises Address
1216 TAYLOR AVE

Legal Description
.17 AC
1216 TAYLOR AVE
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					74	1	Plat Ref: 52/ 100

Special Tax Areas
Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1996	1,094 SF	7,287.00 SF	04

Stories	Basement	Type	Exterior
SPFOY		SPLIT FOYER	SIDING

Value Information

	Base Value	Value As Of 01/01/2004	Phase-In Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	32,070	32,070		
Improvements:	110,840	118,380		
Total:	142,910	150,450	147,936	150,450
Preferential Land:	0	0	0	0

Transfer Information

Seller:	BRINKMAN ROBERT REID,JR	Date:	06/08/2005	Price:	$0
Type:	NOT ARMS-LENGTH	Deed1:	/21997/ 505	Deed2:	
Seller:	INTERSTATE VENTURES INC	Date:	12/31/1996	Price:	$145,420
Type:	IMPROVED ARMS-LENGTH	Deed1:	/11964/ 293	Deed2:	
Seller:		Date:		Price:	
Type:		Deed1:		Deed2:	

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Real Property Search - Individual Report

Pch

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** - 13 **Account Number** - 2000002923

Owner Information

Owner Name:	KRUG LAWRENCE H,3RD KRUG CHERI L	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	1218 TAYLOR AV BALTIMORE MD 21227	**Deed Reference:**	1) / 8375/ 674 2)

Location & Structure Information

Premises Address
1218 TAYLOR AVE

Legal Description
.17 AC
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					75	1	Plat Ref: 52/ 100

Special Tax Areas
Town
Ad Valorem
Tax Class

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1989	1,422 SF	7,561.00 SF	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	32,140	32,140		
Improvements:	109,700	118,250		
Total:	141,840	150,390	147,540	150,390
Preferential Land:	0	0	0	0

Transfer Information

Seller:	INTERSTATE VENTU RES INC	**Date:**	01/12/1990	**Price:**	$123,245
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/ 8375/ 674	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Gt

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 - 13 Account Number - 2000002916

Owner Information

Owner Name:	LAWLESS JOSEPH J,4TH LAWLESS SANDRA	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	1215 TAYLOR AVE BALTIMORE MD 21227	**Deed Reference:**	1) /11038/ 77 2)

Location & Structure Information

Premises Address
1215 TAYLOR AVE

Legal Description
.17 AC
1215 TAYLOR AVE
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136			2	2	68	1	Plat Ref: 52/ 100

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1990	1,880 SF	7,552.00 SF	04

Stories	Basement	Type	Exterior
2	NO	SPLIT LEVEL	SIDING

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	32,130	32,130		
Improvements:	114,260	124,570		
Total:	146,390	156,700	153,262	156,700
Preferential Land:	0	0	0	0

Transfer Information

Seller:	NICHOLS DUANE M,SR	**Date:**	05/09/1995	**Price:**	$138,500
Type:	NOT ARMS-LENGTH	**Deed1:**	/11038/ 77	**Deed2:**	
Seller:	INTERSTATE VENTU RES INC	**Date:**	03/20/1990	**Price:**	$121,300
Type:	IMPROVED ARMS-LENGTH	**Deed1:**	/ 8431/ 842	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Real Property Search - Individual Report

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** - 13 **Account Number** - 2000002918

Owner Information

Owner Name:	NEMEC ROBERT M NEMEC MARGARET A	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	1211 TAYLOR AV BALTIMORE MD 21227	**Deed Reference:**	1) / 9213/ 726 2)

Location & Structure Information

Premises Address
1211 TAYLOR AVE

Legal Description
.17 AC
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					70	1	Plat Ref: 52/ 100

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1992	1,934 SF	7,552.00 SF	04

Stories	Basement	Type	Exterior
2	YES	SPLIT LEVEL	SIDING

Value Information

	Base Value	Value As Of 01/01/2004	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	32,130	32,130		
Improvements:	126,710	136,660		
Total:	158,840	168,790	165,472	168,790
Preferential Land:	0	0	0	0

Transfer Information

Seller:	INTERSTATE VENTU RES INC	**Date:**	06/08/1992	**Price:**	$144,320
Type:	NOT ARMS-LENGTH	**Deed1:**	/ 9213/ 726	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

* NONE *

Real Property Search - Individual Report

Rec. 6

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** - 13 **Account Number** - 2000002920

Owner Information

Owner Name:	CATTERTON HERBERT W CATTERTON VALENSE C	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	1207 TAYLOR AV BALTIMORE MD 21227	**Deed Reference:**	1) / 8695/ 733 2)

Location & Structure Information

Premises Address
1207 TAYLOR AVE

Legal Description
.23 AC
WHITTEMORE PARK

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
102	13	136					72	1	Plat Ref: 52/ 100

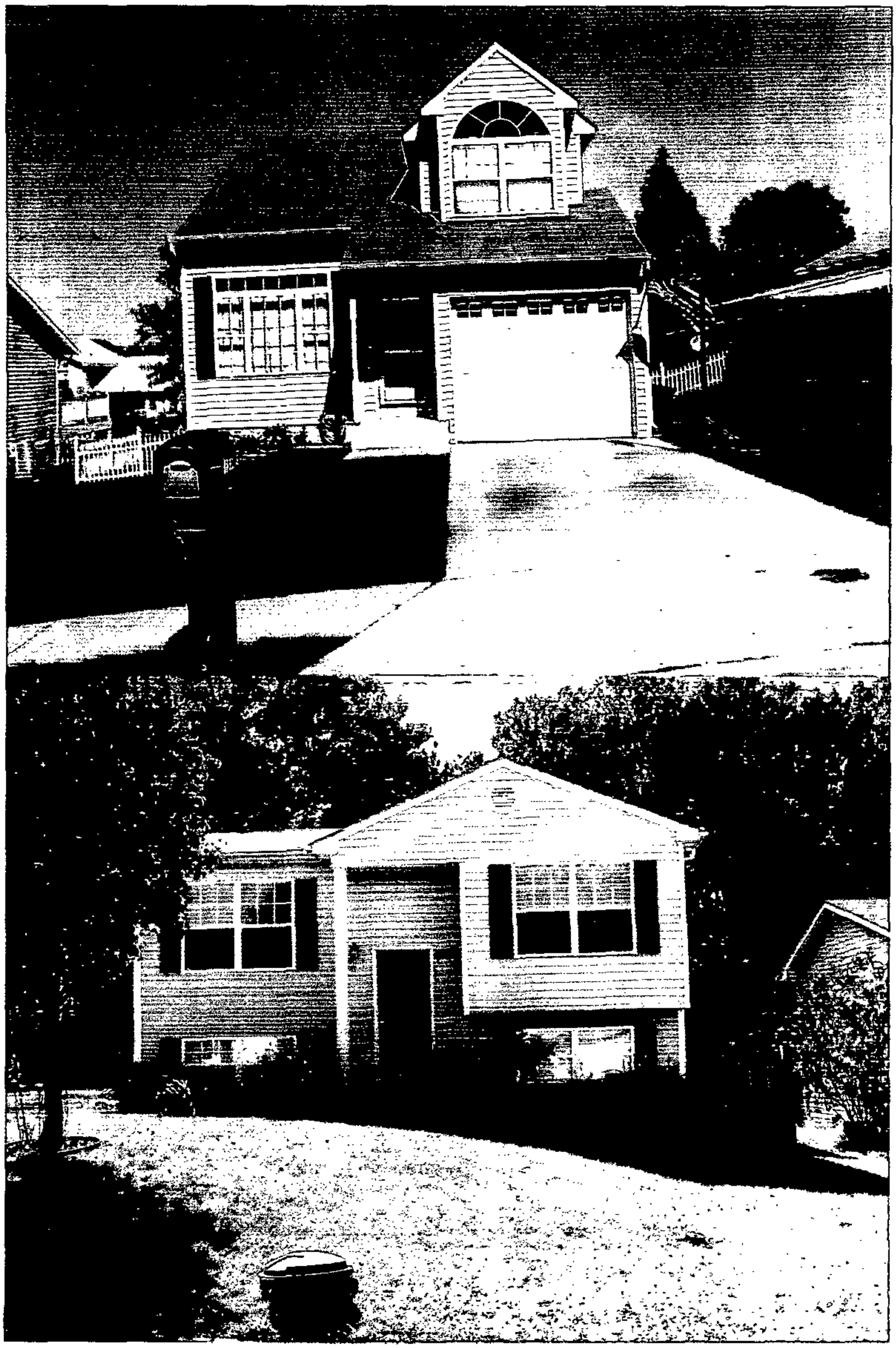
Special Tax Areas **Town** **Ad Valorem** **Tax Class**

Primary Structure Built	Enclosed Area	Property Land Area	County Use
1990	1,812 SF	10,202.00 SF	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	

Pet. 3 A
#1225

1224



#3 B
1219

LOOKING UP THE STREET FROM LOT

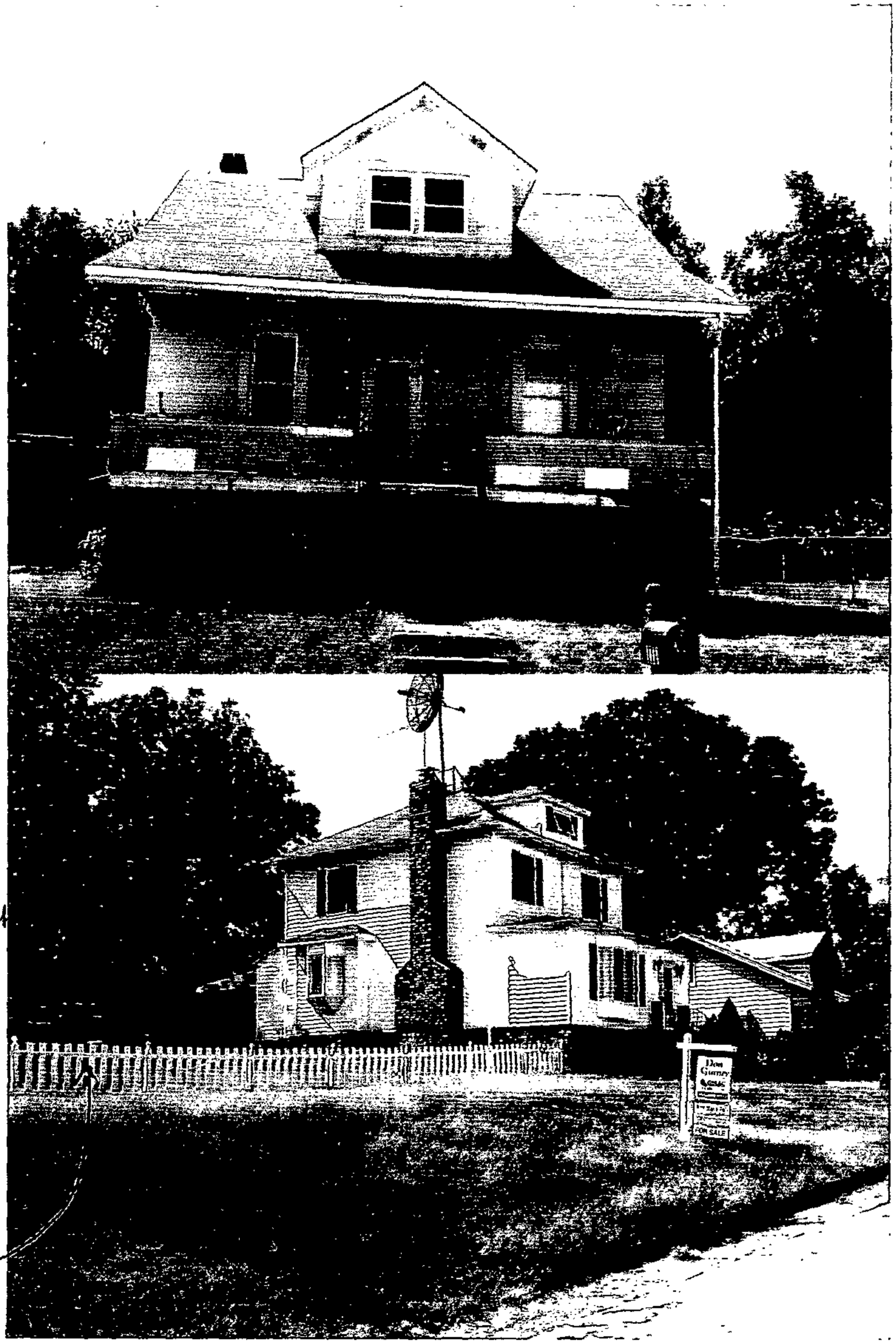
Ret.

#3 C

1216

1218

Pet. #3D
#1208

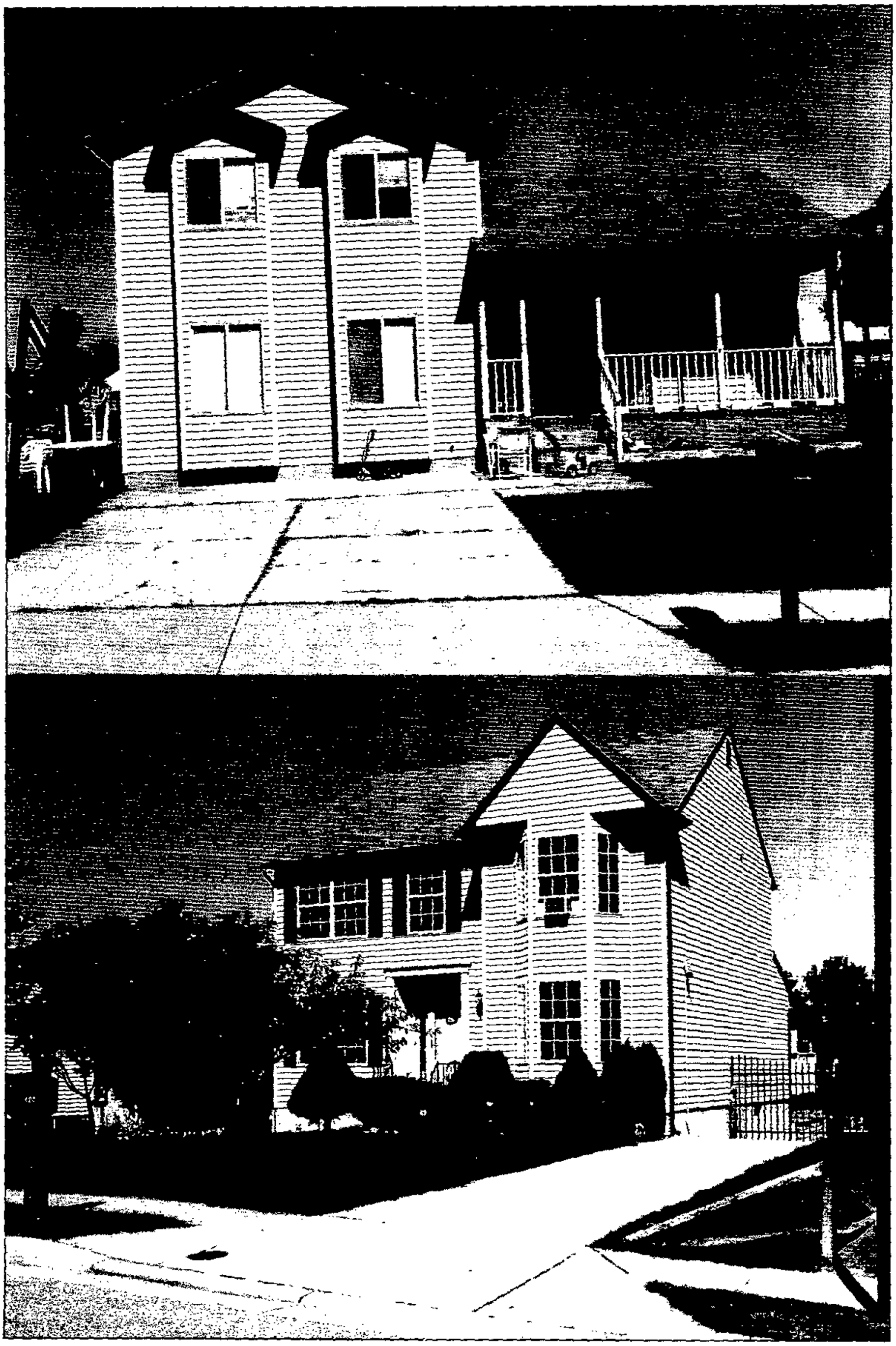


1304
Pro
address

LOT

#3E

#3F
#1211



#
1207

#3G

#1209

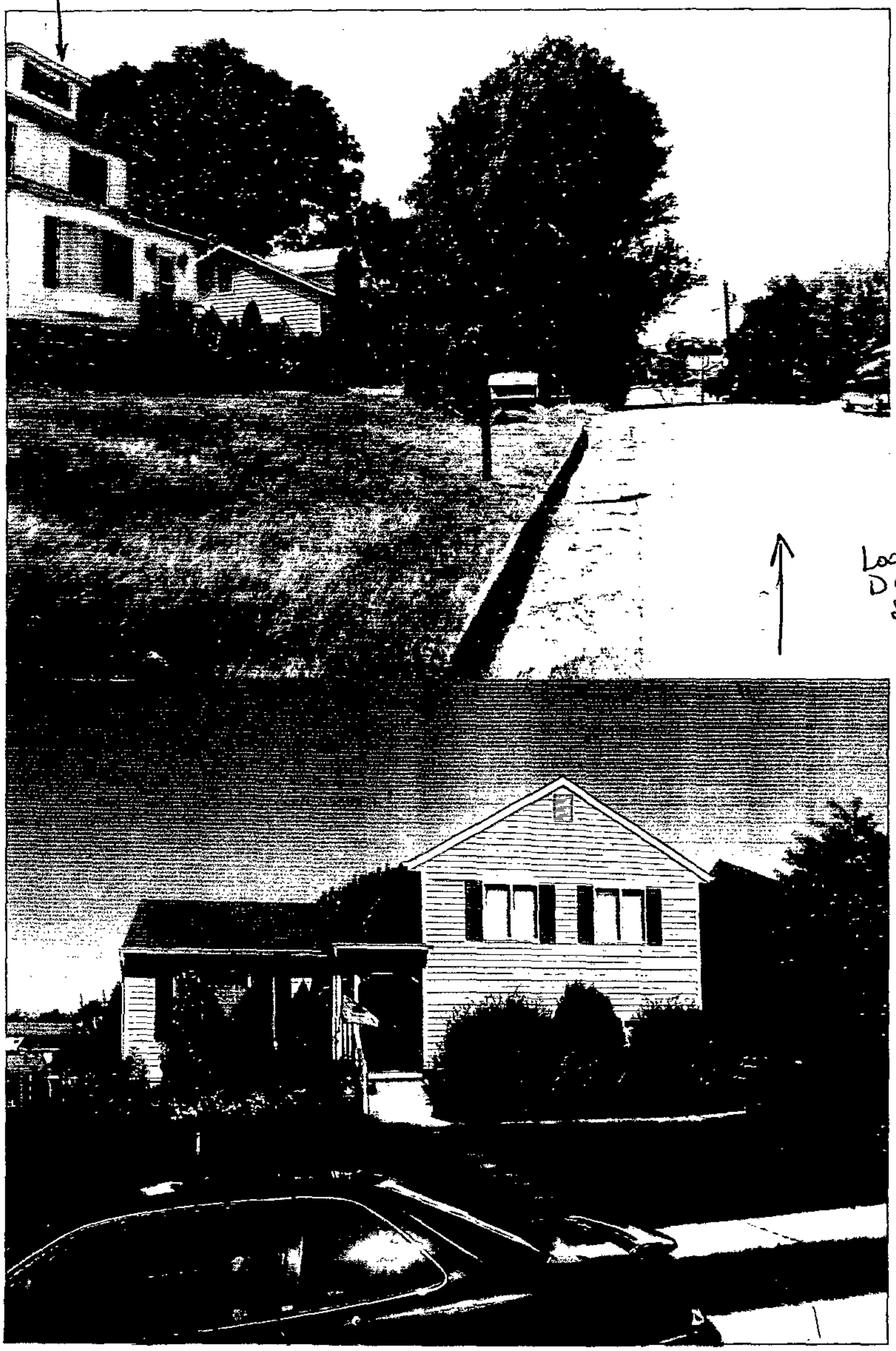
LOT
FROM THE STREET

#311

1203

1209

#3C 1204

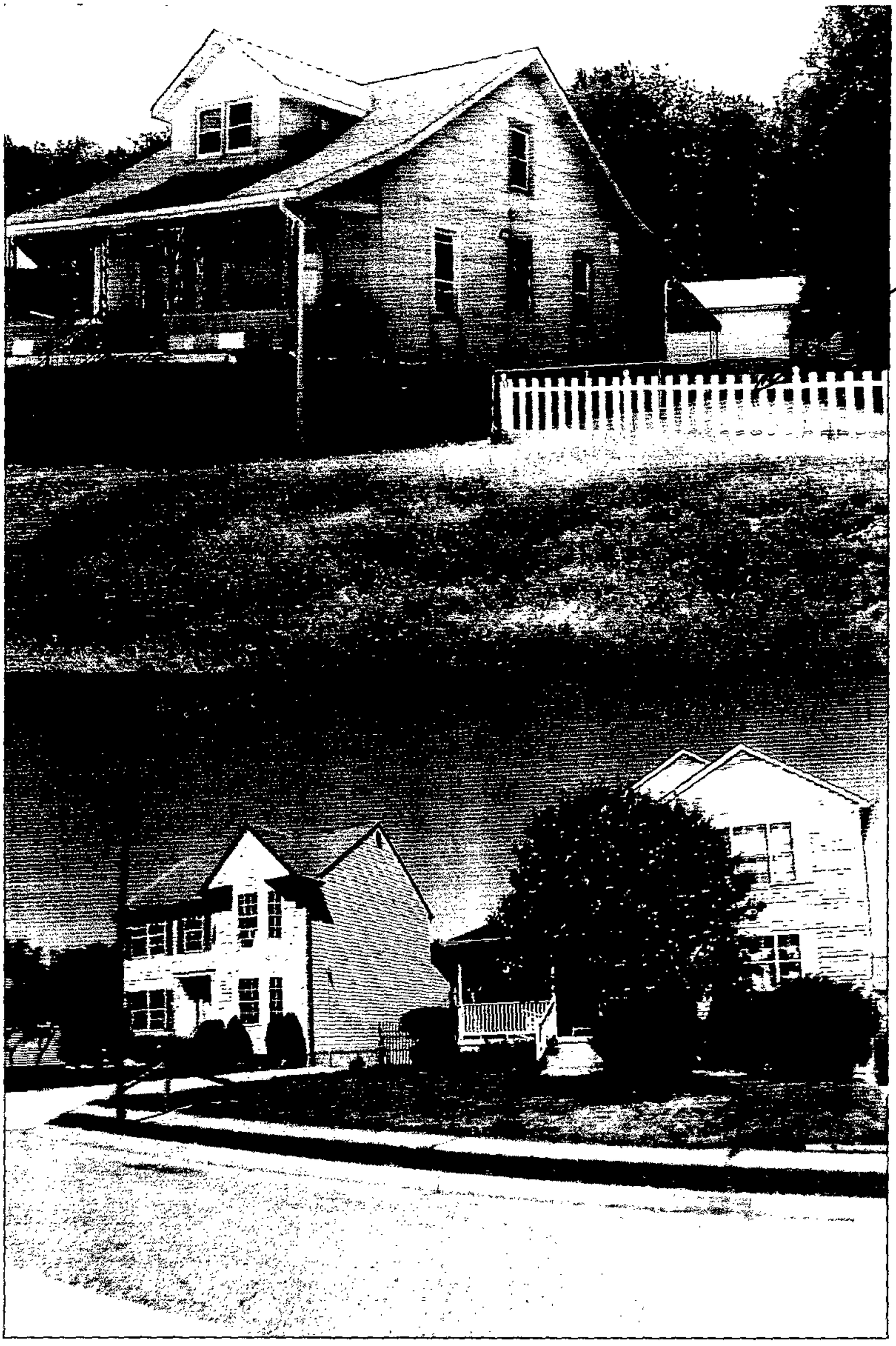


LOOKING DOWN THE STREET TOWARDS LOT

#1215

#3C

#1208



LOT

12/4/08

MANDATE

Court of Special Appeals

Maryland Relay Service
1-800-735-2258
TT/VOICE

No. 00713, September Term, 2008

Link-Link, LLC
vs.
Tonya Crowl-Gifford et al.

JUDGMENT: December 1, 2008: Notice of Dismissal of appeal filed by counsel for the appellant. Appeal dismissed. MD Rule 8-601(a).

December 04, 2008: Mandate issued.

From the Circuit Court: for **BALTIMORE COUNTY**
03C070009629

STATEMENT OF COSTS:

Appellant(s):

Lower Court Costs-	60.00
Steno Costs of Appellant-	75.00
Filing Fee of Appellant-	50.00

FILED FEB 17 2009

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Court of Special Appeals. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Special Appeals, this **fourth** *day of* **December** **2008**

Leslie D. Gradet
Clerk of the Court of Special Appeals

COSTS SHOWN ON THIS MANDATE ARE TO BE SETTLED BETWEEN COUNSEL AND NOT THROUGH THIS OFFICE.

Link-Link LLC	*	IN THE
	*	COURT OF SPECIAL APPEALS
vs.	*	OF
	*	MARYLAND
Baltimore County, Maryland, et al.	*	Case No. 00713 September Term, 2008

* *

NOTICE OF DISMISSAL

Link-Link LLC, Appellant, pursuant to Rule 8-601(a), hereby dismisses the above captioned appeal.

LAWRENCE E. SCHMIDT
Gildea & Schmidt, LLC
600 Washington Avenue
Suite 200
Towson, MD 21204
Attorney for Appellant

RECEIVED
CLERK'S OFFICE
2008 DEC -1 P 4: 21
LESLIE D. GRADET, CLERK
COURT OF SPECIAL APPEALS

4/28/08

IN THE	*	IN THE
MATTER OF	*	CIRCUIT COURT
LINK-LINK, LLC	*	FOR
	*	BALTIMORE COUNTY
	*	CASE NO. 03 C 07 009629

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

JUDGMENT ORDER

For the reasons stated in this Court's Memorandum Opinion dated April 28, 2008, it is hereby ORDERED, this 28th day of April, 2008, that the decision of the Baltimore County Board of Appeals in Case No. 06-166-A dated July 26, 2007 is AFFIRMED.

4/28/08
Date

Kathleen Gallogly Cox
Judge

Clerk: Please send copies to all parties of record.

True Copy Test
SUZANNE MENSH, Clerk
Per Shelly Pruitt
Assistant Clerk

FILED MAY 0 5 2008

4/28/08

IN THE	*	IN THE
MATTER OF	*	CIRCUIT COURT
LINK- LINK, LLC	*	FOR
	*	BALTIMORE COUNTY
	*	CASE NO. 03 C 07 009629

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

OPINION

This matter came before the Court on April 17, 2008, on appeal from a decision of the County Board of Appeals for Baltimore County. The Court has considered the record from the administrative proceedings, together with the memoranda of the parties and the arguments of counsel, in determining the merits.

I. Procedural and Factual Background

The facts in his case were essentially stipulated in the administrative proceedings, and are not in dispute. In March 2005, Appellant Link-Link, LLC ("Link-Link") acquired eight (8) lots in the Whittemore Park subdivision in Baltimore County. This subdivision was established in 1922, and is laid out in lots that are twenty-five feet wide. Given the narrow lots, much of the community has been developed and built out by combining two lots to construct a single family dwelling. The front four lots acquired by Appellant, Nos. 296-299, are zoned for residential use, and the rear four lots, Nos. 342-345, are zoned for industrial use. An unimproved alley runs between the front and the rear lots.

FILED MAY 0 6 2008

In May 2005, approximately two months after purchase, Appellant sold six of the eight lots, Nos. 296, 297, and 342-345, to Appellees Tonya Crowl-Gifford and Roderick Schuh. At that time, lots 298 and 299 were listed separately for sale.

The residential lots purchased by the Appellees are improved with a large frame house and garage that were built in approximately 1928. These structures essentially straddle the lot lines for lots 296 and 297. In addition, there is a stone patio that runs over the Appellee's lot line onto lot 298 that is owned by Appellants. Similarly, there is an underground bomb shelter that extends into lot 298. There is an above ground pool and deck, along with a shed on lots 342 and 343 in the rear. There also was a fence that enclosed the four front lots, and another fence that enclosed the four rear lots.

Lots 298 and 299 collectively are fifty feet wide, and therefore do not meet the fifty-five foot lot width requirement applicable for D.R. 5.5 property.[1] These lots otherwise meet all requirements of the height and area regulations within the BCZR for the property.

Appellant sought to construct a single family home on lots 298 and 299. Pursuant to BCZR 304.1, Appellant filed an Application for Building Permit and a plat to accompany a Petition for Undersized Lot with the Department of Permits and Development Management. Appellant was instructed to forego that process and file a Petition for Variance to the Zoning Commission to permit a fifty foot lot width. Appellant pursued both avenues for approval of the construction. Ultimately the Deputy Zoning Commissioner denied the requested relief under either theory. The County Board of Appeals also denied the requested relief. This appeal followed.

---

[1] Appellees' lots 296 and 297 are also fifty feet wide, and therefore do not meet the current minimum width requirements.

II. Decision of the County Board of Appeals

The County Board of Appeals first addressed the doctrine of zoning merger, as then articulated by the Court of Appeals in *Friends of the Ridge, et. al. v. Baltimore Gas and Electric Company,* 352 Md. 645 (1999), and clarified in *Remes v. Montgomery County,* 387 Md. 52 (2005). As the Board noted, the doctrine of merger is intended to prevent the proliferation or use of nonconforming undersized lots by holding that they have been combined or merged into a larger parcel. In analyzing the doctrine, the Board looked to both intent and the use of the properties by prior owners. In that regard, the Board held:

> It is clear that a merger of the eight lots had taken placem perhaps not by Mr. Link, but by the previous owner or owners. The primary evidence is the underground bomb shelter, which extends from the dwelling across the lot line between 297 and 298. There is nothing "alleged" about this shelter; . . . The second piece of evidence is the stone patio, which was also built across the same lot line. Lot 298, in the words of *Remes*, has been, and still is, used in service to lot 297. But perhaps the most important evidence is the way the eight lots were used together. There are accessory uses on Lot 343 and across 343 and 342. There are fences extending around the perimeter of the entire parcel of land, including a picket fence across the front of Lots 296, 297, 298, and 299 along Taylor Avenue.

Therefore the Board found that the eight lots were used together as a single merged lot, and zoning merger had occurred.

The Board also found that Appellant had not subdivided the property when it sold off six of the eight lots, as he did not comply with the County requirements for a valid subdivision. Finally, the Board held that Appellant was not entitled to a variance, as no evidence was presented concerning the uniqueness of the property, as required by BCZR §307 and *Cromwell v. Ward,* 102 Md. App. 691 (1995). Even if there were evidence of

uniqueness, the Board held that the variance request would still be denied, under the doctrine of self-inflicted hardship.

III. Standard of Review

On appeal from the decision of an administrative agency, including review of a zoning decision, the determination below should be affirmed if it is not based upon an error of law, and if the agency's conclusions are reasonably based upon the record. *See, People's Counsel v. Maryland Marine*, 316 Md. 491, 196-197 (1989) and cases cited therein. This standard prohibits a reviewing court from substituting its judgment for the expertise of the administrative agency. That deference, however, is not accorded if the reviewing court determines that the decision below is based upon an erroneous conclusion of law. *See, Belvoir Farms v. North*, 355 Md. 259, 267-268 (1999) and cases cited therein.

In order for a reviewing court to uphold the decision of an administrative board, the Court must determine whether reasoning minds reasonably could have reached the factual conclusions made by the board. *See Eberle v. Bell*, 103 Md. App. 160, 166 (1975) and cases cited therein. The reviewing court, however, must not simply substitute its factual determinations for that of the board or agency. *See, Supervisor of Assessments v. Ely*, 272 Md. 77 (1974).

As noted by the Court of Appeals in the zoning context, "It is a clearly established rule in the law of zoning that a court may not substitute its judgment for that of the Zoning Board." *Stansbury v. Jones*, 372 Md. 172, 182 (2002)(citations omitted). Indeed, "the zoning agency is considered to be the expert in the assessment of the evidence, not

the court." *Bowman Group v. Moser,* 112 Md. App. 694, 699 (1996), *cert. denied,* 344 Md. 568 (1997).

In *White v. North,* 356 Md. 31, 44 (1999(, the Court clarified the process of judicial review in zoning and stated:

> In judicial review of zoning matters, including special exceptions and variances, "the correct test to be applied is whether the issue before the administrative body is 'fairly debatable,' that is, whether its determination is based upon evidence from which reasonable persons could come to different conclusions." For its conclusion to be fairly debatable, the administrative agency overseeing the variance decision must have "substantial evidence" on the record supporting its decision.

IV. Legal Analysis

The central matter at issue is whether the doctrine of merger applies. The doctrine of merger in zoning was first analyzed by the Court of Appeals in *Friends of the Ridge v. BG&E, supra.* The Court generally defined the principal as follows:

> The doctrine of merger ... generally prohibits the use of individual substandard parcels if contiguous parcels have been, at any relevant time, in the same ownership and at the time of that ownership, the combined parcel was not substandard. In other words, if several contiguous parcels, each of which do not comply with the present zoning, are in single ownership and, as combined, the single parcel is usable without violating zoning provisions, one of the separate, nonconforming parcels may not then or thereafter be considered nonconforming, nor may a variance be granted for that separate parcel.

In *Friends of the Ridge,* the Court applied this merger doctrine to permit BGE to combine or merge several contiguous lots in the service of a single project, thus allowing the construction of structures over interior lot lines.

In *Friends of the Ridge, supra.* at 654-655, the Court cited with approval *Loechner v. Campoli,* 49 N.J. 504, 231 A.2d 553 (1967), as one of the seminal zoning cases discussing merger. The facts in *Loechner* are similar to those in the present case in

many respects. In *Loechner,* Mrs. Loechner and her late husband acquired three lots and erected a single home ont hose lots. Mr. Loechner later acquired two adjoining lots, which remained vacant. Upon his death, his widow contracted to sell the latter two lots to an individual, who then applied for permits to build on the lots. The New Jersey Supreme Court held that the acquisition of title by Mrs. Loechner to all of these contiguous lots created one tract of land consisting of five separate lots. As such, the off-conveyance of the lots constituted a resubdivision of the parcel.

Zoning merger was next addressed by the Court of Appeals in *Remes v. Montgomery County, supra.* In *Remes,* individuals purchased a lot adjacent to their home, which was later used, in part, for a circular drive for the home and for a pool. The owners then conveyed the lot to a developer who sought permits to construct a home. Neighboring landowners sued to enjoin the construction, on the theory that the two lots merged when owned in common by the prior owner. The Court ultimately agreed that even though the two lots remained separate for subdivision purposes, they had merged for zoning purposes, as they were previously under common ownership and were used in service to one another. Thus the Court held that permits could not issue, absent other zoning action.

Most recently, the Court of Special Appeals examined this doctrine in *Mueller v. People's Counsel for Baltimore County,* 177 Md. App. 43 (2007). The Muellers purchased Lot 66 and constructed a summer home on it in 1948. Thereafter, in 1960, they purchased an adjacent lot. Both lots were re-deeded to Mrs. Mueller and her son in 1978, and in 1979, the deeds were transferred to the son and his wife. Both lots conformed with the applicable zoning until 1970, when the area was re-zoned. Therefore

in 2004, when the younger Muellers sought to build on the adjacent lot, they needed a variance to approve the undersized parcel.

Testimony in the record established that a boat launch and moveable storage shed were located on the adjacent lot. It further established that the property was utilized for recreational purposes, such as playing ball. However no permanent structures were erected on the property. The Board of Appeals rejected the claim of merger. The Circuit Court reversed, finding merger had occurred. On appeal, the Court of Special Appeals noted that a reviewing Court cannot set aside a factual finding from an administrative agency that if "fairly debatable," i.e. "based upon evidence from which reasonable persons could come to different conclusions." Applying this standard, the Court of Special Appeals affirmed the finding of the Board of Appeals. It further noted:

> Not all uses of an adjacent undeveloped property result in a merger. It is improper and without legal foundation to suggest that Appellants' occasional recreational use of Properety II caused Properties I and II to merge. If the Appellants had brought an undeveloped lot somewhere else in the community, and "p[lay[ed] ball" on it or placed a shed on it, such actions would never be considered merger. Moreover, the mere existence of a shed – not constructed on a foundation and not a structure for which a building permit was sought – cannot be viewed as similar to a permanent improvement benefiting the other parcel or a driveway being built across one lot to access another. The appellants never needed the undeveloped Property II for them to enjoy the use of their developed Property I.

Mueller, supra., also addressed the issue of self-created hardship. As it stressed, a self-created hardship must result from an affirmative action of the landowner, nor from the impact of the zoning ordinance on the property. In *Mueller,* both lots were buildable when they were acquired. The difficulties arose as a consequence of the re-zoning process that occurred years later, not as a result of any action by the landowner.

In applying these principles in the present case, this Court must determine whether reasoning minds could have reached the factual conclusions reached by the Board of Appeals. In applying the doctrine of merger, the Courts have looked both to the intent of the parties and the use of one lot in service to another. Here, the Board found ample evidence of intent, based upon the existence of the stone patio and the bomb shelter that straddle the lot lines between lots 297 and 298. Of greater significance, however, was the finding that the eight lots were used together, as evidenced by the fencing and the accessory uses in two of the back lots. There clearly exists evidence in the record to support these findings, which direct a conclusion that merger occurred.

Similarly, the Board did not err in determining that Appellant failed to present evidence of uniqueness of the property to support a petition for variance. Additionally, the decision to separately convey the two lots was a self-inflicted hardship, thus defeating his claim for variance.

V. Conclusion

For the reasons stated, the Court finds that the evidence in the record supports the findings of the Baltimore County Board of Appeals. Accordingly, the decision to deny Appellant's request for an undersized lot pursuant to BCZR §304 and to deny the Petition for Variance for a lot width of 50 feet is affirmed.

4/28/08
Date

Kathleen Gallogly Cox
Judge

Clerk: Please send copies to all parties of record.

True Copy Test
SUZANNE MENSH, Clerk
Per Shelly Pruitt
Assistant Clerk

GILDEA & SCHMIDT, LLC
600 WASHINGTON AVENUE
SUITE 200
TOWSON, MARYLAND 21204
TELEPHONE 410-821-0070
FACSIMILE 410-821-0071
www.gildeallc.com

DAVID K. GILDEA
LAWRENCE E. SCHMIDT
D. DUSKY HOLMAN

SEBASTIAN A. CROSS
CHARLES B. MAREK, III
JASON T. VETTORI

June 9, 2008

Sent via Overnight Delivery
P.H.C. Clerk, Court of Special Appeals
361 Rowe Blvd.
Annapolis, MD 21401

Re: Link/1206 Taylor Ave.
Case No. 03-C-07-009629 AA

Dear P.H.C. Clerk:

Please find enclosed a copy of the Order and Opinion for the above referenced matter, which was intended to be filed with the Civil Appeal Information Report.

Thank you for your cooperation regarding this matter.

Very truly yours,

For: Lawrence E. Schmidt

LES: jk
Enclosures
CC: Board of Appeals for Baltimore County
Appeals Clerk of the Circuit Court for Baltimore County
Benjamin Bronstein, Esquire

RECEIVED
JUN 10 2008
BALTIMORE COUNTY
BOARD OF APPEALS

COURT OF SPECIAL APPEALS OF MARYLAND

361 Rowe Blvd., Second Floor
Annapolis, MD 21401
410-260-1450

CIVIL APPEAL INFORMATION REPORT (Md. Rules 8-205 & 8-206)

Appeal No. _____
(To be filled in by Clerk, Court of Special Appeals)

Directions: Generally, within 10 days after filing an appeal in a civil case, the appealing party ("appellant") must fill out, sign and file an original of this form by mail or by hand with P.H.C. Clerk, Court of Special Appeals, 361 Rowe Blvd., Annapolis, MD 21401, and send copies of it to all other attorneys and unrepresented parties in the case. Attach all requested items to the original and all copies. Use extra pages if desired. There is no filing fee for this report.

AN APPEAL MAY BE DISMISSED IF THIS FORM IS NOT TIMELY FILED, RULE 8-602(a)(4). Within 7 days of receiving an appellant's information report, each non-appealing party ("appellee") may but need not file one.

Appeals of Juvenile Court cases, and appeals by prisoners relating to their confinement, are exempt from this form.

PLEASE SUPPLY THE FOLLOWING INFORMATION:

1. **Case Caption:** In the Matter of the Petition for Variance by Link-Link LLC

a. Name of party appealing: Link-Link LLC
b. Was this case previously appealed to this Court? ☑ No ☐ Yes;
If "yes," Appeal No. _____, Sept. Term, 20___; Appeal No. _____, Sept. Term, 20___.
c. Are there other cases pending in this Court that are related to this case? ☑ No ☐ Yes;
If "yes," Appeal No. _____, Sept. Term, 20___; Appeal No. _____, Sept. Term, 20___.
d. Are there other cases pending in another court that are related to this case? ☑ No ☐ Yes; if "yes," then:
Case No. _____
Court: _____
Case title: _____

2. **Name, mailing address, email & weekday telephone of parties and attorneys, if any:**

Appellant(s): Link-Link LLC
2625 Old Washington Road
Westminster, MD 21157
410-977-1700

Appellee(s): Tonva Crowl-Gifford & Roderick T. Schuh
1204 Taylor Avenue
Parkville, MD 21234

Attorney(s) for Appellant(s): Lawrence E. Schmidt, Esquire
600 Washington Avenue, Suite 200
Towson, MD 21204
410-821-0070

Attorney(s) for Appellee(s): Benjamin Bronstein, Esquire
29 West Susquehanna Avenue, Suite 205
Towson, MD 21204
410-296-0200

RECEIVED
JUN - 6 2008
BALTIMORE COUNTY
BOARD OF APPEALS

3. **A.D.A. Accommodation/Interpreters for Proceedings in Maryland Appellate Courts**

Will a party or attorney need an A.D.A. accommodation or interpreter? ☑ No ☐ Yes
If "yes," please explain the need and the requested accommodation: _____

4. **Type of civil case:** ☑ administrative appeal, ☐ contract, ☐ declaratory judgment, ☐ domestic, ☐ estate, ☐ foreclosure, ☐ paternity, ☐ tort, ☐ workers' compensation, ☐ other (specify): _____.

5. **Court appealed from: ☑ Circuit ☐ Orphans Court for** Baltimore County

a. Full Case No: 03-C-07-009629 b. Judge's Name: Judge Kathy Gallogy Cox
c. Does the appeal arise from:
A pre-trial motion? ☑ No ☐ Yes; if yes, ☐ Motion with hearing, or ☐ Motion without hearing.
A trial? ☑ No ☐ Yes; if yes, ☐ Jury trial, or ☐ Non-jury trial.
Other? ☐ No ☑ Yes; if yes, (specify):
Administrative Appeal (oral argument on appeal).
d. Is this an appeal of an order granting a motion to dismiss?..... ☑ No ☐ Yes; if yes, go to (f)
e. Is this an appeal of an order granting summary judgment?..... ☑ No ☐ Yes; if yes, go to (f)

If you answered "yes" to (d) or (e), then:
f. Was a hearing requested in writing by any party? ..... ☐ No ☐ Yes; if yes, go to (g)
g. Was a hearing held?..... ☐ No ☐ Yes; if yes, go to (h)
h. Was the hearing recorded?..... ☐ No ☐ Yes; if yes, go to (i) thru (k)

For all cases where there was a hearing and/or trial, please answer (i) through (k):
i. Dates & duration of trial/hearing (days/hours): April 17, 2008 for one hour.

j. Number of exhibits in evidence: Appellant (6 exhibits) & Appellee (8 exhibits) at Board of Appeals
k. If a full transcript of all proceedings will not be ordered or is unnecessary for the appeal, please explain why Rule 8-411 does not apply: N/A

6. **Record Extract**
a. In your view, will the court file, exhibits and transcripts altogether exceed 100 pages? ☐ Yes ☑ No.
b. If "yes," have the attorneys and unrepresented parties discussed using Rules 8-413(b)("Statement of Case in Lieu of Entire Record"), or 8-501(l)("Deferred Record Extract")? ☐ Yes ☐ No; if "no," explain why: _____

7. **Judgments, Orders and/or Rulings in Question**
(ATTACH COPY OF WRITTEN JUDGMENTS, ORDERS &/OR RULINGS BEING APPEALED.)
a. Date of judgments, orders and/or rulings appealed (if different from shown on docket, please explain):
April 28, 2008

b. Describe judgments, orders and/or rulings appealed, including whether such is/are written:

Written Memorandum Opinion (April 28, 2008) and Order (April 28, 2008)

c. Do the judgments, orders and/or rulings end the whole case (all claims) as to all parties? ☑ Yes ☐ No
(If "no," explain how the judgments, orders and/or rulings are appealable under Rule 2-602 and Code, Courts Art., sections 12-301, 12-303: _____

8. **Post-Judgment Motions**

a. Were any motions filed under Rules 2-532, 2-533, or 2-534? ..... ☐ Yes ☑ No

If "yes," please identify each such motion and for each, state:

1. Date(s) filed: _____;
2. Date(s) of ruling(s) on motion(s): _____;
3. Ruling(s) on motion(s): _____

b. Was *in banc* review requested under Rule 2-551? ..... ☐ Yes ☑ No

If "yes," who filed for *in banc* review: _____

9. **Appeal**

(ATTACH COPY OF NOTICE OF APPEAL)

a. Appeal's filing date in circuit court: May 28, 2008;

b. Name of party appealing: Link-Link LLC;

c. Filing fee paid? ☑ Yes ☐ No; if "no," is a motion for waiver and affidavit attached? ☐ Yes ☐ No

d. Is this an appeal under Rule 8-207(a) of an order about: adoption; guardianship terminating parental rights; guardianship of the person; child custody or visitation?..... ☐ Yes ☑ No

e. Is this an appeal of an interlocutory order under Code, Courts Article, section 12-303? ☐ Yes ☑ No

f. Will this be an Expedited Appeal under Rule 8-207(b)?..... ☐ Yes ☑ No

g. State each issue and claim of trial court error that you are appealing. (Appellees may use this space to explain their contentions about an appellant's answer to this question.)

1. The Appellee should be equitably estopped from asserting zoning merger.

2. There has not been a zoning merger of the lots which are now separately owned by the parties.

3. The Appellants property can be used to construct one single family dwelling pursuant to Baltimore County Zoning Regulations ("BCZR") Section 304.

4. BCZR Section 304 is the proper Section of the BCZR to adjudicate the issues in this case.

5. In the alternative, the Appellant should be granted a Zoning Variance pursuant to BCZR Section 307.

10. **Settlement or Scheduling Conference**

(Information disclosed on this form is subject to the confidentiality provision of Rule 8-205(f).)

a. Describe briefly the history and present status of settlement negotiations sufficient to aid the Court of Special Appeals to decide whether to schedule a Pre-Hearing Conference: No formal settlement conference per se, however, parties have appeared in public hearing before the Zoning Commissioner of Baltimore County, the Board of Appeal of Baltimore County and counsel have discussed the case. No settlement has been reached and is unlikely given the positions of the -->

parties.

b. Was this case submitted to any Alternative Dispute Resolution process (arbitration, mediation, settlement conference, etc.)? ☐ Yes ☑ No. If "yes," describe briefly.

c. Would a Pre-Hearing Conference help to narrow or reduce legal issues? ☐ Yes ☑ No
d. Would a Pre-Hearing Conference help plan the handling of large records? ☐ Yes ☑ No
e. Would a Pre-Hearing Conference help plan for other administrative issues? ☐ Yes ☑ No
If "yes" to (c), (d), or (e), please state the issues and summarize your discussions to date with the opposing party/counsel about them.

CERTIFICATE OF SERVICE

I certify that on the date stated below a copy of the foregoing Report was mailed, postage prepaid to:

Benjamin Bronstein, Esquire
29 West Susquehanna Avenue, Suite 205
Towson, MD 21204

Board of Appeals of Baltimore County
The Jefferson Building
105 W. Chesapeake Ave, Suite 203
Towson, MD 21204

June 4, 2008
Date

Signed

CSA1 - Revised June 2004

GILDEA & SCHMIDT, LLC
600 WASHINGTON AVENUE
SUITE 200
TOWSON, MARYLAND 21204
TELEPHONE 410-821-0070
FACSIMILE 410-821-0071
www.gildeallc.com

DAVID K. GILDEA
LAWRENCE E. SCHMIDT
D. DUSKY HOLMAN

SEBASTIAN A. CROSS
CHARLES B. MAREK, III
JASON T. VETTORI

June 4, 2008

Sent via Regular Mail
Ms. Nonna Baksa
401 Bosley Avenue, Room M-08
Towson, MD 21204

Re: Link/1206 Taylor Ave.
Case No. 03-C-07-009629 AA

Dear Ms. Baksa:

This letter serves as the Appellant's request to order the transcript for the above referenced case. The proceedings (oral argument) were held on April 17, 2008 before Judge Cox. Please find enclosed a check for seventy-five dollars ($75.00), which constitutes payment for the transcript. Should you have any questions please contact me. With kind regards, I am

Very truly yours,

Charles B. Marek, III

CBM: jk
Enclosure
CC: Appeals Clerk of the Circuit Court for Baltimore County
P.H.C. Clerk, Court of Special Appeals
Lawrence E. Schmidt, Esquire

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

04/02/08

Case Number: 03-C-07-014862 OC MA
Date Filed: 12/28/2007
Status: Open/Active
Judge Assigned: To Be Assigned,
Location :
CTS Start : 12/28/07 Target : 06/25/09

Howell vs Maryland Dept Of Public Safety And Correctional Services

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Case Folder ID	C07014862V01

INVOLVED PARTIES

Type	Num	Name(Last,First,Mid,Title)	Addr Str/End	Pty. Disp. Addr Update	Entered
PLT	001	Howell, Marvin Party ID: 1212997			12/28/07
		Mail: 3908 Cutty Sark Road Baltimore, MD 21220	12/28/07		12/28/07 DFF
		Attorney: 0804772 Belt, Andrew M 204 Courtland Ave Baltimore, MD 21204 (410)337-6707	Appear: 12/28/2007		12/28/07
DEF	001	Maryland Dept Of Public Safety And Correctional Services Party ID: 1212999			12/28/07
		Mail: 6776 Reisterstown Road Suite 313	12/28/07	12/28/07 DFF	12/28/07 DFF

Baltimore, MD 21215
Serve On: Gary D. Maynard, Sec., Dennis C. Schnepfe, Sec. Of State

Attorney: 0008182 Nathan, Stuart M
Assistant Attorney General
6776 Reisterstown Rd
Suite 313
Baltimore, MD 21215-2341
(410)585-3070

Appear: 02/15/2008 03/21/08

CALENDAR EVENTS

Date Time Fac Event Description Result	ResultDt	By	Result Judge	Text Rec	SA	Jdg	Day	Of Notice	User ID
04/24/08 09:30A CR16 Motion Hearing (Civil)				Y		KGC	01 /01	03/24/08	RC AED

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned.	J	12/28/07	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Entered	Party	Jdg	Ruling	Closed	User ID
0001000	Complaint for Writ of Mandamus with Exhibits	12/28/07	12/28/07	PLT001	TBA			DFF
0002000	Writ of Summons - Civil	12/28/07	12/28/07	DEF001	TBA		12/28/07	DFF
0003000	Motion to Dismiss Complaint for Writ of Mandamus with Exhibits	02/15/08	03/21/08	DEF001	TBA			DFF DFF
0004000	Hearing Notice	03/24/08	03/24/08	000	TBA		03/24/08	RC

SERVICE

Form Name	Issued	Response	Served	Returned	Agency
WRIT OF SUMMONS	12/28/07				Private Process

Form Name	Issued	Response	Served	Returned	Agency
DEF001 Maryland Dept Of Public Safety An					

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
CTOS	Create Tickle On Ser	OPEN	12/28/07	0	no	no			000	000
NCDT	Notice Of Contemplat	OPEN	04/26/08	120	no	no	CTOS	T	000	000
SLMR	Set List For Motions	CANCEL	03/08/08	22	no	no	MDIS	D	003	000

ACCOUNTING SUMMARY

NON-INVOICED OBLIGATIONS AND PAYMENTS

Date	Rcpt/Initials	Acct	Desc	Debit	Credit	Method	Balance
12/28/07	200700032197/CPM	1265	MLSC	.00	25.00	CK	-25.00
12/28/07	200700032197/CPM	1500	Appearance F	.00	20.00	CK	-45.00
12/28/07	200700032197/CPM	1102	CF-Civil Fil	.00	80.00	CK	-125.00
12/28/07		1102	CF-Civil Fil	80.00	.00		-45.00
12/28/07		1265	MLSC	25.00	.00		-20.00
12/28/07		1500	Appearance F	20.00	.00		.00

4/1/08

✓Copy to Lauren
✓Calendar

The Circuit Court for Baltimore County

THIRD JUDICIAL CIRCUIT OF MARYLAND

PATRICIA LUCCHESI
DIRECTOR, CENTRAL ASSIGNMENT

COUNTY COURTS BUILDING
TOWSON, MARYLAND 21204
410-887-4395

APRIL 1, 2008

TO: HONORABLE KATHLEEN GALLOGLY COX

RE: C-07-014862 HOWELL V MARYLAND DEPT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES

DATE: THURSDAY, APRIL 24, 2008

TYPE OF HEARING: MOTION: 1/2 HOUR

THE ABOVE HEARING WILL APPEAR ON YOUR ASSIGNMENT ON THE GIVEN DATE.

IF THIS HEARING SHOULD BE POSTPONED, YOUR OFFICE SHOULD RESCHEDULE THE HEARING FOR ANOTHER DAY. IF THIS HEARING WILL REQUIRE MORE THAN AN HOUR OF COURT TIME, IT WILL BE NECESSARY TO CLEAR THE NEW HEARING DATE WITH CENTRAL ASSIGNMENT.

THANK YOU.

Patricia Lucchesi / AED
PATRICIA LUCCHESI, DIRECTOR

PL/aed

11/21/07

NOTICE OF CIVIL TRACK ASSIGNMENT AND SCHEDULING ORDER

CIRCUIT COURT FOR BALTIMORE COUNTY
CIVIL ASSIGNMENT OFFICE
COUNTY COURTS BUILDING
401 BOSLEY AVENUE
P.O. BOX 6754
TOWSON, MARYLAND 21285-6754

County Board Of Appeals Of Baltimore County
400 Washington Avenue
Old Courthouse Room 49
Towson MD 21204

Assignment Date: 11/21/07

Case Title: In the Matter of Link Link L L C
Case No: 03-C-07-009629 AA

The above case has been assigned to the EXPEDITED APPEAL TRACK. Should you have any questions concerning your track assignment, please contact: Joy M Keller at (410) 887-3233.
You must notify this Coordinator within 15 days of the receipt of this Order as to any conflicts with the following dates:

SCHEDULING ORDER

1. Motions to Dismiss under MD. Rule 2-322(b) are due by..... 12/06/07
2. All Motions (excluding Motions in Limine) are due by..... 01/10/08
3. TRIAL DATE is..... 02/19/08
   Civil Non-Jury Trial; Start Time: 09:30AM; To Be Assigned: 1/2 HOUR ADMINISTRATIVE APPEAL

Honorable John Grason Turnbull II
Judge

Postponement Policy: No postponements of dates under this order will be approved except for undue hardship or emergency situations. All requests for postponement must be submitted in writing with a copy to all counsel/parties involved. All requests for postponement must be approved by the Judge.

Settlement Conference (Room 507): All counsel and their clients MUST attend the settlement conference in person. All insurance representatives MUST attend this conference in person as well. Failure to attend may result in sanctions by the Court. Settlement hearing dates may be continued by Settlement Judges as long as trial dates are not affected. (Call [410] 887-2920 for more information.)

Special Assistance Needs: If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the Americans with Disabilities Act, please contact the Civil Assignment Office at (410)-887-2660 or use the Court's TDD line, (410) 887-3018, or the Voice/TDD M.D. Relay Service, (800) 735-2258.

Voluntary Dismissal: Per Md. Rule 2-506, after an answer or motion for summary judgment is filed, a plaintiff may dismiss an action without leave of court by filing a stipulation of dismissal signed by all parties who have appeared in the action. The stipulation shall be filed with the Clerk's Office. Also, unless otherwise provided by stipulation or order of court, the dismissing party is responsible for all costs of the action.

Court Costs: All court costs MUST be paid on the date of the settlement conference or trial.

Camera Phones Prohibited: Pursuant to Md. Rule 16-109 b.3., cameras and recording equipment are strictly prohibited in courtrooms

RECEIVED
NOV 23 2007
BALTIMORE COUNTY
BOARD OF APPEALS

and adjacent hallways. This means that camera cell phones should not be brought with you on the day of your hearing to the Courthouse.

cc: Lawrence Schmidt Esq
Issue Date 11/21/07

10/11/07

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-07-009629

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
400 Washington Avenue
Old Courthouse Room 49
Towson, MD 21204

RECEIVED
OCT 11 2007
BALTIMORE COUNTY
BOARD OF APPEALS

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

N O T I C E O F R E C O R D

Case Number: 03-C-07-009629 AA
Administrative Agency : 06 166 A
C I V I L

In the Matter of Link Link L L C

Notice

Pursuant to Maryland Rule 7-206(e), you are advised that the Record of Proceedings was filed on the 4th day of October, 2007.

Suzanne Mensh
Clerk of the Circuit Court, per

Date issued: 10/10/07

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
400 Washington Avenue
Old Courthouse Room 49
Towson, MD 21204

RECEIVED
OCT 11 2007
BALTIMORE COUNTY
BOARD OF APPEALS

10/4/07

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
LINK LINK, LLC *
2625 OLD WASHINGTON ROAD
WESTMINSTER, MD 21157 *

FOR JUDICIAL REVIEW OF THE OPINION * CIVIL ACTION
OF THE COUNTY BOARD OF APPEALS No. **3-C-07-9629**
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204

*

IN THE CASE OF:
LINK LINK, LLC *
1206 TAYLOR AVENUE

*

13TH ELECTION DISTRICT
1st COUNCILMANIC DISTRICT *

CASE NO.: CBA-07-110 *

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

PROCEEDINGS BEFORE THE ZONING COMMISSIONER
AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the County Board of Appeals of Baltimore County and, in answer to the Petition for Judicial Review directed against it in this case, herewith transmits the record of proceedings had in the above-entitled matter, consisting of the original papers on file in the Department of Permits and Development Management and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT OF BALTIMORE COUNTY

No. 06-166-A

Sept. 19, 2005 Petition for Variance filed by Link Link, LLC, Legal Owner along with the description of property. The variance request

RECEIVED AND FILED
2007 OCT -4 AM 9:57
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

	was from Sec. 1B02.3.C.a of the BCZR to permit a lot width of 50' in lieu of the minimum required 55'.
Sept. 23, 2005	Entry of Appearance filed by People's Counsel
Oct. 3, 2005	Notice of Zoning Hearing.
Oct. 16, 2005	Certificate of Posting.
Oct. 20, 2005	Certificate of Publication.
Oct. 31, 2005	Zoning Advisory Committee Comments.
Nov. 2, 2005	Hearing held – Sign In Sheets
Nov. 15, 2005	Letter from Deputy Zoning Commissioner, John V. Murphy, to Joseph R. Woolman, III, Esq. stating that the a decision has been rendered in case no. 06-166-A.
Nov. 18, 2005	Deputy Zoning Commissioner's Findings of Fact and Conclusion of Law whereby the Petitioner's request for variance from Sec. 1B02.3.C.1 of the BCZR was DENIED.
Dec. 15, 2005	Petition filed by Joseph R. Woolman, III, Esquire on Petitioner's behalf.
Jan. 6, 2006	Letter from Timothy Kotroco, Dir./PDM, to Mr. Woolman advising him that an appeal has been filed.
Jan. 6, 2006	File received in the Board of Appeals.
Jan. 19, 2006	Entry of Appearance filed by Benjamin Bronstein, Esquire on behalf of Tonya Crowl-Gifford and Roderick T. Schuh who own 1204 Taylor Avenue.
Mar. 23, 2006	Certificate of Posting of Board of Appeals sign.
Apr. 6, 2006	Notice of Assignment issued by the Board – t/d 5/31/06.
May 10, 2006	Fax Cover Sheet from Board of Appeals to Debbie.
May 31, 2006	Hearing held before the Board.

Link-Link, LLC
Circuit Court No.: 3-C-07-9629
Board of Appeals: 06-166-A

Case No.: 06-166-A
Petitioner's Exhibits

1. 1922 Subdivision Whittmore Devel.opment
2. Petitioner's Plat to Accompany Variance
3. SDAT documents A thru M
4. Photes – A thru J
5. Real estate synepsis
6. Deed

Case No.: 06-166-A
Protestant's Exhibits

1. Panorama of photes – A thru B
2. Panorama of Photes
3. Plat with seal 5/24/06 – 1204 Taylor Ave.
4. Plat, done by Protestant, larger version of Protestant's 3
5. Photes – A thru D
6. Photes – A thru B

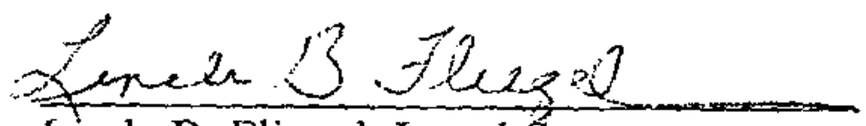
June 1, 2006	Notice of Deliberation issued by the Board of Appeals.
July 10, 2006	Memorandums of Law filed by attorneys for the Petitioner and Protestants. (Memorandums clipped and labeled)
	In House Notes from 1/20/06 through 8/17/2006.
Aug. 17, 2006	Public Deliberation held – See Notes.
Jan. 16, 2007	Notice of Public Deliberation - #2 mailed to parties.
Feb. 21, 2007	Second Public Deliberation held by the Board. (See notes)
July 26, 2007	Board issued its Opinion and Order stating the following:

ORDERED that the Petitioner's request for an undersized lot pursuant to § 304 of the *Baltimore County Zoning Regulations* be and the same is hereby DENIED; and it is further

Link-Link, LLC
Circuit Court No.: 3-C-07-9629
Board of Appeals: 06-166-A

	ORDERED that the Petition for Variance for a lot width ò 50 feet in lieu of the minimum required 55 feet be and the same is hereby DENIED.
Aug. 23, 2007	Copy of a letter from Jason Vettori, Esquire, to the Clerk of the Circuit Court, for filing a Petition for Judicial Review.
Aug. 31, 2007	Copy of the Petition of Judicial Review, along with the case number, received by the Board of Appeals.
Sept. 11, 2007 mailed	Certificate of Notice filed with the Circuit Court and copies to pertinent parties.
Sept. 20, 2007	Transcript received.
Oct. 4, 2007	Record of Proceeding filed with the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.



Linda B. Fliegel, Legal Secretary
County Board of Appeals, Rm 49
Old Courthouse, 400 Washington Ave.
Towson, MD 21204 (410-887-3180)

c: Lawrence E. Schmidt, Esquire
Attorney for Petitioner
Benjamin Bronstein, Esquire
Attorney for Protestants
Office of People's Counsel
Rick Collins, P.E.
Tonya Crowl-Gifford
Roderick T.Schuh

8/23/07

CIRCUIT COURT FOR BALTIMORE COUNTY
Suzanne Mensh
Clerk of the Circuit Court
County Courts Building
401 Bosley Avenue
P.O. Box 6754
Towson, MD 21285-6754
(410)-887-2601, TTY for Deaf: (800)-735-2258
Maryland Toll Free Number (800) 938-5802

Case Number: 03-C-07-009629

TO: COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
400 Washington Avenue
Old Courthouse Room 49
Towson, MD 21204

RECEIVED
AUG 3 1 2007
BALTIMORE COUNTY
BOARD OF APPEALS

PETITION OF: LINK-LINK, LLC 2625 OLD WASHINGTON ROAD WESTMINSTER, MD 21157	*	IN THE CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY Old Courthouse, Room 47, 400 Washington Ave. Towson, MD 21204	* * *	FOR BALTIMORE COUNTY Case No.
IN THE MATTER OF LINK LINK, LLC 1206 TAYLOR AVENUE Case No. 06-166-A	* *	
13TH ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT RE: PETITION FOR VARIANCE	* *	

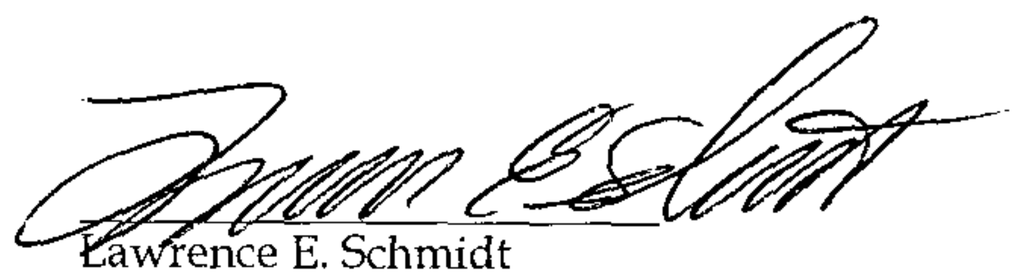
* * * * * * * * * * * * * * * * * *

PETITION FOR JUDICIAL REVIEW

Pursuant to Rule 7-202, Petitioner, Link-Link, LLC, by and through its attorneys, Lawrence E. Schmidt and Gildea & Schmidt, LLC, requests Judicial Review of the Opinion of the County Board of Appeals of Baltimore County in Case No. 06-166-A rendered on July 26, 2007 a copy of which is attached hereto.

Petitioners were parties before the County Board of Appeals and fully participated in the proceedings.

Respectfully submitted:



Lawrence E. Schmidt
Gildea and Schmidt, LLC
600 Washington Avenue
Suite 200
Baltimore, Maryland 21202
410-821-0070
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of August, 2007, a copy of the foregoing Petition for Judicial Review was mailed, postage prepaid, to: Benjamin Bronstien, Esquire, 29 W. Susquehanna Avenue, Suite 205, Towson, Maryland, 21204, and County Board of Appeals, Basement, Old Courthouse, 400 Washington Avenue, Towson, Maryland, 21204.

Lawrence E. Schmidt

GILDEA & SCHMIDT, LLC
600 WASHINGTON AVENUE
SUITE 200
TOWSON, MARYLAND 21204
TELEPHONE 410-821-0070
FACSIMILE 410-821-0071
www.gildeallc.com

DAVID K. GILDEA
LAWRENCE E. SCHMIDT
D. DUSKY HOLMAN

SEBASTIAN A. CROSS
F. GILLIS GREEN
ERIC N. LAMB
CHARLES B. MAREK, III
DAMIAN C. O'DOHERTY
JASON T. VETTORI

ANNAPOLIS, MD OFFICE
95 CATHEDRAL STREET
SUITE 100
ANNAPOLIS, MARYLAND 21401
TELEPHONE 410-295-0070

August 23, 2007

Via Hand Delivery
ATTN: CLERK OF THE COURT
Circuit Court of Baltimore County
County Courts Building
401 Bosley Ave., Towson, MD 21204

Re: Petition for Judicial Review of Link-Link, LLC
CBA No.: 06-166-A

Dear Sir/Madam:

Enclosed herein please find the original and two copies of the Petition for Judicial Review in the above referenced matter, along with a check in the amount of $115 for the filing fee. Please date-stamp the original and a copy, keep the original for your file and return the date-stamped copy to me. In accordance with Md. Rule 7-202(d), please date-stamp the second copy and mail same to the Baltimore County Board of Appeals, the agency whose decision is sought to be reviewed. Please feel free to contact the undersigned with any comments, questions or concerns.

Very truly yours,

Jason T. Vettori

JTV: sf
Enclosures
CC: William Link, Link-Link, LLC
Lawrence E. Schmidt, Esquire

RECEIVED
AUG 24 2007
BALTIMORE COUNTY
BOARD OF APPEALS

9/11/07

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY
*
PETITION OF:
LINK LINK, LLC *
2625 OLD WASHINGTON ROAD
WESTMINSTER, MD 21157 *

FOR JUDICIAL REVIEW OF THE OPINION * CIVIL ACTION
OF THE COUNTY BOARD OF APPEALS No. **3-C-07-9629**
OF BALTIMORE COUNTY *
OLD COURTHOUSE, ROOM 49
400 WASHINGTON AVENUE *
TOWSON, MARYLAND 21204
*
IN THE CASE OF:
LINK LINK, LLC *
1206 TAYLOR AVENUE
*
13TH ELECTION DISTRICT
1st COUNCILMANIC DISTRICT *
06-166-A
CASE NO.: ~~CBA-06-049~~ *

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

CERTIFICATE OF NOTICE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the County Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely:

Lawrence E. Schmidt, Esquire
Gildea and Schmidt, LLC
600 Washington Avenue – Suite 200
Baltimore, MD 21202
Attorney for Petitioner

Benjamin Bronstein, Esquire
Susquehanna Bldg. – Suite 205
29 W. Susquehanna Avenue
Towson, MD 21204
Attorney for Protestants

RECEIVED AND FILED
2007 SEP 11 AM 11: 13
CLERK OF THE CIRCUIT COURT
BALTIMORE COUNTY

William C. Link
c/o Link-Link, LLC
2625 Old Washington Road
Westminster, MD 21157

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.

Linda B. Fliegel

Linda B. Fliegel, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)

I HEREBY CERTIFY that on this 11th day of September, 2007, a copy of the foregoing Certificate of Notice has been mailed to: Lawrence E. Schmidt, Esquire, Gildea & Schmidt, LLC, 600 Washington Avenue – Suite 200, Towson, MD 21204, Benjamin Bronstein, Esquire, 29 W. Susquehanna Avenue, Ste. 205, Towson, MD 21204 and William C. Link, c/o Link-Link, LLC, 2625 Old Washington Road, Westminster, MD 21157.

Linda B. Fliegel

Linda B. Fliegel, Legal Secretary
County Board of Appeals, Room 49
Old Courthouse, 400 Washington Avenue
Towson, MD 21204 (410-887-3180)

County Board of Appeals of Baltimore County

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

September 11, 2007

Lawrence S. Schmidt, Esquire
Gildea & Schmidt, LLC
600 Washington Avenue – Suite 200
Towson, MD 21204

RE: Circuit Court Civil Action No. 03-C-07-009629
Petition for Judicial Review
Link-Link, LLC
Case No.: 06-166-A

Dear Mr. Schmidt:

In accordance with the Maryland Rules, the County Board of Appeals is required to submit the record of proceedings of the Cross Petition for Judicial Review, which you have taken to the Circuit Court for Baltimore County in the above-entitled matter within sixty days. The cost of the transcript of the record must be paid by you and must be paid in time to transmit same to the Circuit Court within the sixty day timeframe, as stated in the Maryland Rules.

The Court Reporter that you need to contact to obtain the transcript and make arrangement for payment is as follows:

CAROLYN PEATT
TELEPHONE: 410-486-8209
Dates of Hearing: May 31, 2006

Please have the transcript to the Board of Appeals prior to October 18, 2007 for filing in the Circuit Court.

Enclosed is a copy of the Second Certificate of Notice.

Very truly yours,

Linda B. Fliegel
Legal Secretary

/lbf
Enc.
c: Benjamine Bronstein, Esq.
William C. Link/Link-Link, LLC

Printed with Soybean Ink
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

September 11, 2007

Benjamin Bronstein, Esq.
29 W. Susquehanna Avenue – Ste. 205
Towson, MD 21204

RE: Circuit Court Civil Action No. 3-C-07-009629
Link-Link, LLC
Board of Appeals Case No.: 06-166-A

Dear Mr. Bronstein:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed on August 23, 2007 in the Circuit Court for Baltimore County, and *received by the Board of Appeals on August 31, 2007,* from the decision of the County Board of Appeals rendered in the above matter. Any party wishing to oppose the petition must file a response within 30 days after the date of this letter, pursuant to the Maryland Rules.

Please note that any documents filed in this matter, including, but not limited to, any other Petition for Judicial Review, **must be filed under Civil Action No.: 3-C-07-009629.**

Enclosed is a copy of the Certificate of Notice.

Very truly yours,

Linda B. Fliegel
Legal Secretary

/lbf
Enclosure
c: Lawrence E. Schmidt, Esq.
William C. Link/Link-Link, LLC
Rick Collins, P.E.
Tonya Crowl-Gifford
Roderick T. Schuh
Office of People's Counsel
William J. Wiseman III/Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Dir./PDM

Printed with Soybean Ink
on Recycled Paper

7/26/07

To file

IN THE MATTER OF LINK LINK, LLC 1206 TAYLOR AVENUE	*	BEFORE THE COUNTY BOARD OF APPEALS
RE: PETITION FOR VARIANCE	*	OF
13TH ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
	*	CASE NO.: 06-166-A

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

OPINION

This case comes before the Baltimore County Board of Appeals as an appeal from the Deputy Zoning Commissioner's Order of November 18, 2005, in which a request for variance was denied. The appeal was filed by William C. Link, owner of Link-Link, LLC, Legal Owner /Petitioner. The subject property is known as 1206 Taylor Avenue, lots 298 and 200 in the Whittemore Park subdivision of Baltimore County. A public *de novo* hearing was held on May 31, 2006.

Petitioner was represented by Joseph R. Woolman, Esquire. Protestants,Tonya Crowl-Gifford and Roderick T. Schuh, were represented by Benjamin Bronstein, Esquire. Protestants reside at 1204 Taylor Avenue, also known as lots 296 and 297 of the Whittemore Park subdivision.

Mr. Woolman and Mr. Bronstein mutually agreed to proffer the testimony and exhibits that had been presented to the Deputy Zoning Commissioner, and in lieu of closing arguments, they submitted written Closing Briefs and Memoranda of Law.

A public deliberation was held on August 17, 2006, at which time the Board voted two to one to remand this case back to the Zoning Commissioner for a new hearing on § 304 of the *Baltimore County Zoning Regulations* (BCZR), for undersized lots, as Petitioner originally

requested. In his Opinion, the Deputy Zoning Commissioner had concluded that Petitioner could not proceed under § 304, because the Petitioner had owned six adjoining lots as recently as May 2005. A second public deliberation was then held on February 21, 2007, to correct the remand error and decide the merits of this case.

Evidence and Testimony

The following evidence and testimony was presented in the proffers by both counsel. Petitioner bought the eight lots in question on March 23, 2005. Lots numbered 342, 343, 344, and 345 have an industrial zoning, and lots 296, 297, 298, and 299 are zoned DR 5.5. On May 25, 2005, Petitioner sold six of the lots to Mr. Schuh and Ms. Crowl-Gifford, retaining lots 298 and 299, which he offered separately for sale at the same time. In his proffer, Mr. Woolman stated that Petitioner had intended to build on these two lots, in a manner consistent with other lots in the area.

The testimony of Mr. Richard Williams, an engineer with Demario Design Consultants, Inc., which was heard below, was proffered. He testified below that the two lots combined were 50 feet wide, and DR 5.5 requires a width of 55 feet, making them undersized. He also testified below that the proposed dwelling would meet all other zoning requirements (see Petitioner Exhibit 2, Plat to Accompany Petition for Zoning Variance).

Mr. Woolman entered Petitioner's Exhibit 1, the plat of the Whittemore Subdivision, recorded in the Baltimore County land records in 1922; Petitioner's Exhibit 6, the Deed for lots 296, 297, 342, 343, 344, and 345; and Petitioner's Exhibit 4, photos of other houses in the area.

In his proffer to the Board and in his Memorandum, Mr. Bronstein stated that the lots his clients bought were improved with a frame house, garage, and stone patio. Protestants' Exhibit 1 is a series of photographs showing a panorama view of the subject property and nearby

properties. Mr. Bronstein stated that, at the time of closing on the property, Protestants were informed that there was a bomb shelter on the property. The bomb shelter and portion of their patio cross the lot line onto Lot 298 (one of the two still owned by Mr. Link). Protestants' Exhibit 5 is a series of photos showing the panel covering the door into the bomb shelter; the metal ladder leading to the bomb shelter; the tunnel to the shelter; and the door into the shelter. Protestants' Exhibits 6A and 6B show the patio and air vent for the bomb shelter, which cross the property lines.

The four rear lots purchased by Protestants are improved with a shed and above-ground pool. Mr. Bronstein entered Protestants' Exhibit 3, a plat of the property prepared under the seal of a property line surveyor. Exhibit 4, which is an enlarged version of Exhibit 3, shows the bomb shelter, air vent, and a portion of the patio all crossing over the lot line between 297 and 298. It also shows an above-ground pool with a metal deck crossing the lot line into the 15-foot paper alley between the front (Taylor Avenue) properties, and the rear properties on Cox Avenue. Protestants also own the paper alley between their lots.

Mr. Bronstein proffered that Protestants' Exhibit 6A shows a fence, as well as the air vent pipe for the bomb shelter. Mr. Bronstein further proffered that at the time his clients bought the property a picket fence stretched across the front of 296, 297, 298 and 299. He also proffered that since the closing, part of this fence was removed by Petitioner.

Opinion

Issue 1: Should this matter be considered under BCZR Section 304.1, as a Petition for an Undersized Lot?

Petitioner filed a Petition for Undersized Lot pursuant to BCZR §304.1 with the Department of Permits and Development Management (PDM). He was told he had to file for a

variance to permit a lot width of 50 feet in lieu of the required 55 feet in the DR 5.5 zone. At the Deputy Zoning Commissioner's hearing, Petitioner requested that the matter be remanded to PDM for consideration of an undersized lot. The Deputy Zoning Commissioner denied this motion and denied the variance because, he ruled, the lots had merged from a zoning standpoint. Petitioner raised this argument again upon appeal, arguing that "the proper venue and procedure for this matter is an undersized lot application, pursuant to BCZR Section 304.1, et seq."

As much as Petitioner would like to believe the matter is that simple, it is not, due to the nature of the eight lots together. Although initially this Board had considered remanding the case for consideration under § 304.1, during a second deliberation we recognized that as a *de novo* Board, we should properly address the merits of the case. This Board found it necessary to discuss the issue of zoning merger first before reaching a finding on § 304.

Issue 2. Have the lots merged from a zoning standpoint?

The doctrine of zoning merger was first addressed by Court of Appeals in *Friends of the Ridge et al. v. Baltimore Gas and Electric Company*, 352 Md. 645, 724 A.2d34 (1999). In that opinion, the Court recognized the existence of the doctrine of zoning merger in Maryland, writing:

> Efforts throughout the country, including Baltimore County, have been to restrict undersize parcels, not oversized parcels. These efforts have resulted in the creation and evolution in zoning of the doctrine of merger, which, in zoning cases, generally prohibits the use of *individual substandard parcels if contiguous parcels have been, at any relevant time, in the same ownership and at the time of that ownership, the combined parcel was not substandard.* (Italics added).

The Court goes on to state that if several contiguous parcels, which individually do not comply with the "present zoning . . . one of the separate, nonconforming parcels may not then *or thereafter* be considered nonconforming, nor may a variance be granted for that separate parcel." The Court further stated that most cases require evidence of the intent of the owner to merge the

parcels. "As far as we can discern, the zoning doctrine of lot merger has . . . been applied only to prohibit the later creation of undersized parcels." The doctrine, in short according to the Court, "seeks to prevent the proliferation or use of nonconforming, undersized lots by holding that they have been combined or merged into a larger parcel. . ."

In *Remes v. Montgomery County,* 387 Md. 52, 874 A.2d 470 (2205), the Court of Appeals addressed issues similar to the case *sub judice*. The question in that case, as here, was whether a property had been merged through the common law doctrine of zoning merger, and if it had, could it be subdivided? In its discussion on zoning merger, the Court, referring to *Ridge,* stated:

> 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.* (Italics added)

The Court then explains how in *Ridge,* BG&E did not need a variance because it was using the contiguous lots together for its expansion and its proposal met the setbacks from the exterior property lines. The point being that, unless there was a specific prohibition in zoning regulations, an owner of contiguous parcels could utilize them all as one parcel without violating the zoning code.

Petitioner argues that there was no merger of his two lots with Protestants' lots, because "the facts in the present case are clearly distinguishable. Petitioner's Lots 298 and 299 are *virtually* vacant, containing only a small portion of a surface patio and *allegedly* an underground portion of a bomb shelter" (italics added). Further, Petitioner argues that "the lack of any encroachment by a dwelling upon the setbacks between Petitioners (sic) and Appellee's lots provide a strong argument against merger."

The facts in this case are very similar to *Remes,* however, and it is clear that a merger of the eight lots had taken place, perhaps not by Mr. Link, but by the previous owner or owners. The primary evidence is the underground bomb shelter, which extends from the dwelling across the lot line between 297 and 298. There is nothing "alleged" about this shelter; it is clearly present on Protestants' Exhibits 3 and 4, the signed and sealed survey, and in the photo presented as Protestants' Exhibit 6A. The second piece of evidence is the stone patio, which was also built across the same lot line. Lot 298, in the words of *Remes,* has been, and still is, used in service to lot 297.

But, perhaps the most important evidence is the way the eight lots were used together. There are accessory uses on Lot 343 and across 343 and 342. There are fences extending around the perimeter of the entire parcel of land, including a picket fence across the front of Lots 296, 297, 297, and 299 along Taylor Avenue (even though Petitioner removed a portion on Lots 298 and 299).

The BCZR defines "accessory use" as follows in § 101:

> 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 . . . . [Bill Nos. 100-1970; 26-1988] (Italics added.)

BCZR §1B01.1.A.18(g) lists swimming pools and sheds among the accessory uses permitted in a D.R. zone.

Since accessory uses are not permitted on lots of their own, but must be on the same lot as the principal structure, as (d) above states, it is clear that all eight lots were used together as a single merged lot, just as *Ridge* permitted. Lots 298, 343, and 342 were all used in service to lot 297. A common law zoning merger had taken place.

Issue 3: Did a subdivision occur when lots were conveyed from Petitioner to Appellee, thus rendering the issue of merger moot?

Petitioner argues that by merely selling off six lots a subdivision occurred. However, Baltimore County has very clear laws regarding subdivision, as specifically addressed in *Baltimore County Code* (BCC) §32 "Planning, Zoning, and Subdivision Control," and, as the Petitioner did not follow the legal process by applying for a Limited Exemption under 32-4-106(a)(1)(x) in order to subdivide his property, any subdivision was invalid.

Petitioner, throughout the Closing Memo, makes his intent very clear. He bought the eight lots believing he could sell off some, have them approved as undersized lots, and build on them. This is stated on page 12 of the memo: "The intent of the parties in this case, clearly, was to subdivide a previously merged lot." But *Baltimore County Code* and Zoning Regulations do not allow the creation of undersized properties. BCC §304 prohibits approval of development on an undersized parcel when the owner owns adjoining lots specifically to avoid the creation of undersized lots. The Court of Appeals in *Ridge* emphasizes that if once-merged lots individually do not comply with the "present zoning," they cannot be utilized individually. Specifically, the Court writes: "As far as we can discern, the zoning doctrine of lot merger. . . has been applied only to prohibit the later creation of undersized parcels."

This Board must conclude, therefore, that the eight lots were merged and were in use together in service of the dwelling on Lots 296 and 297, and since it is illegal under the *Baltimore County Code* and the *Baltimore County Zoning Regulations* to create an undersized parcel, Lots 298 and 299 could not be legally subdivided. They also cannot be approved as undersized lots under §304. Had Petitioner gone through the proper, legal, process for subdivision, he would have learned this prior to selling off six of his eight lots.

Issue 4: Can a variance be granted for construction of a dwelling on Lots 298 and 299?

Although Petitioner did not make an argument for variance in his memo, this case came to us as a variance request, and there is sufficient evidence before us to decide whether or not to grant a variance. In such decisions, the Board relies on BCZR § 307 and the seminal case *Cromwell v. Ward,* 102 Md.App.691, 651, A.2d 424 (1995). Per both of these authorities, findings of uniqueness and hardship are required to grant a variance.

No evidence was presented to us regarding the uniqueness of the property. However, were such evidence to have been presented, and a finding made, we would still have to deny the variance on the grounds of self-inflicted hardship, "[W]here the applicant creates a nonconformity, the board lacks the power to grant a variance" (629 A.2dl quoted at 439).

This is not an easily made decision by the Board, as we recognize it may render Petitioner's property unbuildable. But Petitioner's intention to create an undersized lot and his method of subdividing his property were both in violation of the *Baltimore County Code* and Zoning Regulations. As the Court states in *Cromwell*, "It is not the purpose of variance procedures to effect a legalization of a property owner's intentional or unintentional violations of zoning requirements."

This Board unanimously agrees to deny the variance request. In addition, this Board unanimously denies approval of an undersized lot under § 304 due to the doctrine of zoning lot merger under which the eight lots in question have been merged and utilized as a single lot; and, more specifically, because Lot 298 remains in service to Lot 297 by the existence of an underground bomb shelter and a patio.

ORDER

THEREFORE, IT IS THIS 26th day of July, 2007 by the County

Board of Appeals of Baltimore County

ORDERED that the Petitioner's request for an undersized lot pursuant to § 304 of the *Baltimore County Zoning Regulations* be and the same is hereby **DENIED**; and it is further

ORDERED that the Petition for Variance for a lot width of 50 feet in lieu of the minimum required 55 feet be and the same is hereby **DENIED**.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Margaret Brassil, Ph.D., Chairperson

Lawrence M. Stahl

Robert W. Witt

7/10/06

IN THE MATTER OF: LINK-LINK, LLC Legal Owner/Petitioner 1206 Taylor Avenue	*	BEFORE THE
	*	BOARD OF APPEALS
	*	FOR BALTIMORE COUNTY
13th Election District 1st Councilmanic District	*	CASE NO.: 06-166-A

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

MEMORANDUM OF LAW

Tonya Crowl-Gifford and Roderick Schuh, Appellees, by Benjamin Bronstein, their attorney, files this Memorandum of Law in opposition to the request for variance of Link-Link LLC, and say:

Statement of Facts

This case arises out of property that is contained within Whittemore Park, a 1922 subdivision located in Baltimore County, Maryland. Transcript of hearing before Baltimore County Board of Appeals, May 31, 2006 at page 5 (hereinafter "T."). In 2005, Appellees acquired from Petitioner six lots - Lots 296, 297, 342, 343, 344 and 345 - by deed recorded in the Land Records of Baltimore County in Liber 22093, folio 471. T. p.10-11.

Petitioner retained Lots 298 and 299. T. p.11. In essence, Appellees purchased six lots, two of which front on Taylor Avenue (Lots 296 and 297) and four lots to the rear of those two lots (Lots 342, 343, 344 and 345). The lots that front on Taylor Avenue are zoned D.R. 5.5. T. p.12. The four lots to the rear are zoned industrial. T. p.22-24.

The property purchased by Appellees is improved by a large frame house. T. p.17. In addition, there are other improvements, such as a garage and a stone patio. T. p.17.

At the time of closing, Appellees were informed by Petitioner that there was a bomb shelter on the property. T. p.17. The bomb shelter and a portion of the stone patio are located on

Lot 298 (one of the lots retained by Petitioner). T. p.19-20. A shed and above-ground pool are located on the four rear lots. T. p.23-24.

At the hearing on May 31, 2006, Petitioner submitted a plat. T. at p. 7. The accuracy of this plat was challenged by Appellees. T. p.7. More importantly, the plat was not under seal. T. p.7-8.

Appellees submitted a plat which was prepared under the seal of a property line surveyor. T. p.15-16. This plat shows the bomb shelter and stone patio located, in part, on Lot 298. T. p.19-20. The plat further discloses the existence of garage on the rear of Appellees' property extending onto Lot 298. T.p.21.

Discussion of Authority

1. Under the principles of *Remes v. Montgomery County*, 387 Md. 52, 874 A.2d 470 (2005), Lots 298 and 299 have merged for zoning purposes.

In *Remes*, the Court of Appeals considered a situation factually similar to the present case. *Remes* involved an action by a property owner to establish whether adjacent property was deemed to have merged for zoning purposes under the common-law principles described in *Friends of the Ridge v. Baltimore Gas and Electric Co.*, 352 Md. 645, 724 A.2d 34 (1999).

The *Remes* court observed that under the circumstances of the case before it, the Court was called upon to determine if the owner of the property had been properly granted a building permit. 874 A.2d at 471-72. The property in issue was located in Silver Spring, Maryland and consisted of several parcels created by a 1945 subdivision. Id. at 472.

The original owners, Mr. and Mrs. Duffie, acquired Lot 12 in 1951. They constructed their home on this lot. Id. Lot 11, an adjacent parcel, was acquired by the Duffies in 1954. Id. A semi-circular driveway serving the home on Lot 12 was constructed by the Duffies over and

through both Lot 11 and Lot 12. Id. A building permit was issued to the Duffies in June 1959 for construction of a swimming pool on Lot 11 as an accessory use to their home on Lot 12. Id.

Another building permit was issued to the Diffies in October 1963, presumably for the construction of an addition to the Lot 12 home. Id. At the time of its original construction around 1951, the Lot 12 home had the required seven foot yard setback and twenty foot rear setback. Id. at 472-73. The 1963 addition extended thirteen feet into the twenty foot rear setback. Id. at 473. This construction changed the side and rear yards of Lot 12, resulting in encroachments into the setback requirements on the Lot 11 side of the house. Id.

Following the deaths of Mrs. Duffie in 1988 and Mr. Duffie in 1999, their son, as Personal Representative of his father's estate, deeded the property to himself. Id. This deed described the property, in pertinent part, as:

> "Lot numbered eleven (11) and twelve (12) of a resubdivision of original Lot numbered two (2) in block lettering '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 son 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. Id. at 474. 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. Id.

Mr. Remes filed suit seeking, *inter alia*, a declaratory judgment that Lot 11 and Lot 12 had merged. Id. That action was stayed during the pendency of an administrative appeal Mr. Remes had filed with the Board of Appeals challenging the issuance of a building permit. Id.

The Board of Appeals concluded that Lot 11 and Lot 12 had not merged. Id. This conclusion was affirmed by the Circuit Court. Id. at 475.

In concluding that Lot 11 and Lot 12 had not merged, the Board of Appeals quoted extensively from the Memorandum of Law filed by Design-Tech:

> "Montgomery County had 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 an 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 the [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 the *Ridge* that 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 661, 724 A.2d 34. Unlike *Ridge*, this is not a zoning variance, 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. Lot 11 is a properly 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."

The Court of Appeals granted certiorari on its own motion. Id. at 476. The Court noted that the case before it arose from an issue the Court raised, but not have need to address in the *Friends of the Ridge* opinion. Id. Specifically, the court opined in *Friends of the Ridge*:

> "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

As Judge Cathell noted in his opinion, the facts before the Court in *Remes* were somewhat different from those presented 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. 874 A.2d at 477. In *Remes*, on the other hand, the developer sought the conclusion that Lot 11 and Lot 12 *had not merged*, for varying reasons including that informal lot consolidation, according to the developer, was not available other than by formal plat submission in Montgomery County. Id.

In *Ridge*, the Court of Appeals indicated that merger may be derived from the common owner's intent as evidenced by "integrat[ing] or utliz[ing] the contiguous lots in the service of a single structure or project...." 352 Md. at 658, 724 A.2d at 40. Intent is to be derived from the facts. Id. at 659, 724 A.2d at 41. In reviewing scenarios from varying jurisdictions, the Court noted that some 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. Id. at 653, 724 A.2d at 38.

The court in *Remes* note the contention of the objecting neighbor that, in applying *Ridge* to the facts before it, Lot 11 and Lot 12 remained separate for subdivision purposes, but were combined for zoning purposes, saying:

> "This, 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 emerges for zoning purposes.'" Id. at 478, (quoting from *Ridge*, 352 Md. at 658, 724 A.2d at 34).

In *Remes* court rejected the developer's contention that merger in Montgomery County could arise only from a formal replatting, explaining:

> "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 zoning relief, if any." Id. at 478.

The Court concluded:

"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 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." Id. at 490.

The evidence submitted to this Board establishes that Lot 297 and Lot 298 have merged for zoning purposes. The lots were in common ownership of the Petitioner. Lot 298 was used in service to Lot 297, by physically locating the bomb shelter and the stone patio on Lot 298. This is precisely the same situation presented in *Remes*, where the driveway and swimming pool were located on Lot 12 in service to Lot 11. Under *Ridge* and *Remes*, Lot 297 and 298 have merged as a matter of law.

The *Remes* case is dispositive of the present matter. As in *Remes*, the lots cannot be considered as separate parcels without creating a violation of setback requirements. Under these circumstances, the lots have become one for zoning purposes by the doctrine of zoning merger. *Friends of the Ridge*, supra; *Remes*, supra.

2. Petitioner is not entitled to a variance because there is no evidence in the record to support the granting of such relief.

Section 307.1 of the Baltimore County Zoning Regulations authorizes the Board of Appeals to grant variances. A variance "...shall be granted only if in strict harmony with the spirit and intent of [the zoning regulations] and only in such manner to grant relief without injury to public health, safety and general welfare." Any order granting a variance "...shall contain a finding of fact setting forth and specifying the reason or reasons for making such variance." Id.

Under the leading case of *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995), the variance process is at least a two-step sequential process:

(1) The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of the surrounding properties such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step in a supportable finding of uniqueness or unusualness, then the second step in the process is taken.

(2) The second step is a determination whether an unreasonable hardship (or practical difficulty) resulting from the disproportionate impact of the ordinance caused by the property's uniqueness exists.

It is the uniqueness or peculiarity of the property causing an abnormal impact of the ordinance on the property that must be addressed and found to exist before the unreasonable hardship (or practical difficulties) are considered. The term "unique" in a zoning context means:

> "In the zoning context, the 'unique' aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring property. 'Uniqueness' of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls."

621 A.2d at 433-34.

The uniqueness or peculiarity of the property is one which is not shared by neighboring properties and where the uniqueness of the property results in an extraordinary impact upon it by virtue of the operation of that statute. The uniqueness must exist in conjunction with the ordinance's more severe impact. Id.

Self-inflicted or self-created hardship is never considered proper grounds for a variance. Where an applicant creates nonconformity, the board lacks the power to grant a variance. As stated by the Court:

> "It is not the purpose of variance procedures to effect a legalization of a property owner's intentional or unintentional violation of the zoning requirements." 629 A.2d at 439.

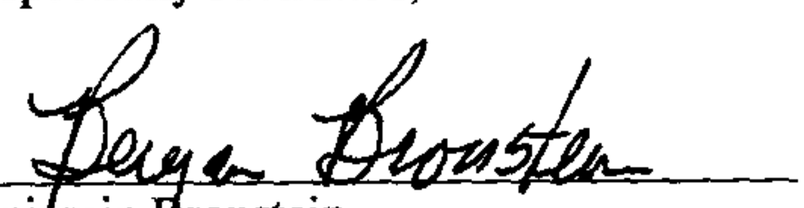
In addition the variance if granted would make the Appellee's property nonconforming.

In the *Cromwell* case, the variance approved should have been denied where the applicant's contractor applied for a building permit, indicating that the structure would be 14 feet high and when completed, stood 21 feet high, violating the zoning ordinance height limit of 15 feet. The Court found that the applicant failed to meet the first step in the two-step process of demonstrating the uniqueness of the property, and stated:

> "Accordingly, it appears clear that the mistake of a county official cannot be the 'practical difficulty' unique to the subject property required in order to authorize the grant of the variance sought and obtained by Ward." Id. at 441.

In the present there is simply no documentary or testimonial evidence before the Board as to any "uniqueness" of the property. The record is absolutely devoid of any basis for granting a variance. As in *Cromwell*, in the absence of any evidence which support a finding the property is "unique" in a zoning context ends the inquiry and the variance must be denied.

Respectfully submitted,

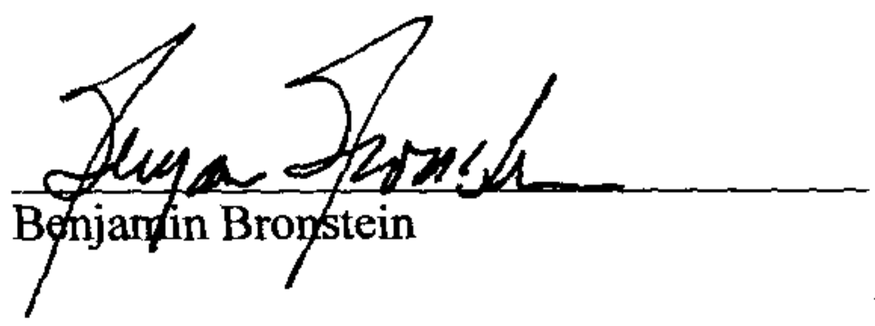


Benjamin Bronstein
Susquehanna Building - Suite 205
29 West Susquehanna Avenue
Towson, Maryland 21204
(410) 296-0200
Attorney for Protestants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 10 day of July 2006, a copy of the foregoing Memorandum of Law was mailed, postage pre-paid to:

Joseph R. Woolman, III, Esquire
300 E. Lombard Street
Suite 1440
Baltimore, MD 21220
Attorney for Appellant/Petitioner



Benjamin Bronstein

BENJAMIN BRONSTEIN
ATTORNEY AT LAW
SUSQUEHANNA BUILDING, SUITE 205
29 WEST SUSQUEHANNA AVENUE
TOWSON, MARYLAND 21204
(410) 296-0200
FAX: (410) 296-3719
Benbronstein@terralaw.net

July 10, 2006

Hand Delivered

Board of Appeals for Baltimore County
ATTN: Kathleen C. Bianco, Administrator
400 Washington Avenue
Room 49
Towson, Maryland 21204

RE: Appeal of Link-Link, LLC
Case # 06-166-A

Dear Ms. Bianco:

In reference to the above-entitled case I am enclosing the following:

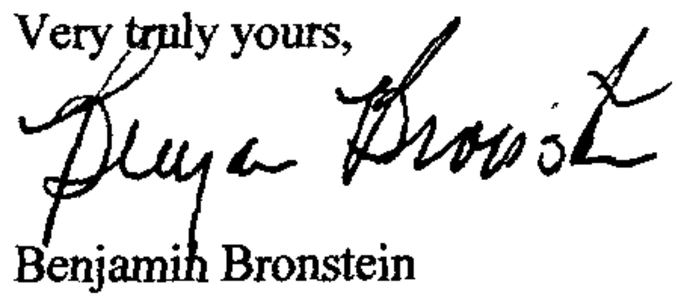
1. Memorandum of Law submitted on behalf of Tonya Crowl-Gifford and Roderick T. Schuh, Appellees in quadruplicate;

2. Transcript of hearing before the County Board of Appeals dated May 31, 2006;

3. Copies of the following citations: *Remes v. Montgomery County*, 387 Md. 52, 874 A.2d 470 (2005), *Friends of the Ridge v. Baltimore Gas and Electric Co.*, 352 Md. 645, 724 A.2d 34 (1999), and *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995).

Thank you for your kind attention to this matter.

Very truly yours,



Benjamin Bronstein

BB/mlh
Enclosures

cc: Joseph R. Woolman, III, Esquire (w/copy of transcript)

RECEIVED
JUL 10 2006
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF:	*	BEFORE THE
LINK-LINK, LLC -	*	COUNTY BOARD OF APPEALS
Legal Owner/Petitioner	*	Of
1206 Taylor Avenue	*	BALTIMORE COUNTY
13th Election District	*	Case No. 06-166-A
1st Counclmanic District	*	May 31, 2006

* * * * *

The above-entitled matter came on for hearing before the County Board of Appeals of Baltimore County at the Old Courthoue, 400 Washington Avenue, Towson, Maryland, at 11 o'clock a.m., May 31, 2006.

* * * * *

Reported by:

C.E. Peatt

BOARD MEMBERS:

LAWRENCE M. STAHL, Chairman
MARGARET BRASSIL, Ph.D.
ROGER WITT

APPEARANCES:

JOSEPH R. WOOLMAN, III, Esquire
On behalf of Petitioner
BENJAMIN BRONSTEIN, Esquire
On behalf of Protestants

PROCEEDINGS
* * * * *

THE CHAIRMAN: Good morning. We're here in the regular meeting of the Board of Appeals for Baltimore County on Wednesday, May 31, 2006.

We're here in matter 06-166-A, in the matter of Link-Link, LLC, legal owner/petitioner, 1206 Taylor Avenue, in the 13th Election District, 1st Councilmanic District.

We're here specifically arising out of a November 18, 2005 Deputy Zoning Commissioner's order in which requested variance relief on the subject property was denied. Counsel, if you will, for the record, please.

MR. WOOLMAN: Good morning. Joseph R. Woolman, III, Gildea & Schmidt, on behalf of the petitioner.

MR. BRONSTEIN: Benjamin Bronstein, 29 West Susquehanna Avenue, Towson, Maryland 21204, and I represent the appellee.

THE CHAIRMAN: Thank you, gentlemen. Okay. Anything preliminary, administrative, before we get into substance?

MR. WOOLMAN: I believe it is helpful, since we got a little bit of a late start, Mr. Bronstein and I will be able to jointly proffer the majority of the facts in this matter.

I don't think there's a real dispute as to the factual base of the case.

I think the dispute is to how the law applies to those facts, so we would both have exhibits that we've both agreed to submit, and I can perhaps, or jointly, we can submit a proffer as to the underlying facts, and there are parties here if there's any questions.

THE CHAIRMAN: Who will testify to other things?

MR. WOOLMAN: If necessary.

THE CHAIRMAN: Mr. Bronstein?

MR. BRONSTEIN: That's fine with me.

THE CHAIRMAN: Just for the record, someone is going to make the proffer, and the other will agree?

MR. BRONSTEIN: Go ahead, Joe.

MR. WOOLMAN: I will make a proffer at this time. What I'll do, and a lot of these exhibits contained in your file are exhibits from below at the Zoning

Commissioner's hearing, and what I will do first is introduce all those exhibits. That will help as I explain the proffer.

THE CHAIRMAN: Why don't we do this? It's a proffer. As you do the proffer, put in whatever you want to put in, and we'll give it a petitioner's number.

When you complete your proffer, Mr. Bronstein, you can then add anything you want to add verbally or in terms of additional exhibits, which will then protestants' exhibits.

MR. BRONSTEIN: That's fine.

MR. WOOLMAN: Very well. This case arises out of property that is contained within the old Whittemore Park subdivision, so the first exhibit would be Petitioner's Exhibit One, which I know Mr. Bronstein has had an opportunity to look at.

It's a 1922 subdivision in Baltimore County, so I will introduce -- or maybe I'll put this on the board.

THE CHAIRMAN: We have to mark it first.

MR. WOOLMAN: This is Whittemore Park, which is the subdivision.

Page 6

1 THE CHAIRMAN: Okay. You can put that up now.
2 That was Petitioner's No. 1.
3 MR. WOOLMAN: Petitioner's 2 will be the plat
4 that accompanied the original petition. That will
5 indicate the subject property.
6 THE CHAIRMAN: That's this petition that we're
7 here on today?
8 MR. WOOLMAN: That's correct.
9 THE CHAIRMAN: Mr. Bronstein?
10 MR. BRONSTEIN: I have no objection.
11 THE CHAIRMAN: So this is the plat to accompany
12 petition, No. 3.
13 MR. WOOLMAN: Petitioner's 3, I would offer them
14 as 3A through M, which are Department of Assessment
15 printouts, which I think counsel had the opportunity to
16 see.
17 They are related to the subject lots as well as
18 some of the other lots in the vicinity.
19 MR. BRASSIL: Petitioner's 3A through 3M.
20 MR. WOOLMAN: I'll put those up.
21 THE CHAIRMAN: Counsel, have you given copies of

Page 7

1 these to Mr. Bronstein?
2 MR. WOOLMAN: Yes, I will.
3 THE CHAIRMAN: Because, as you mention them, the
4 numbers he has should correspond to the numbers we are
5 giving so he knows what we are talking about.
6 MR BRONSTEIN: Is Petitioner's 2 --
7 THE CHAIRMAN: The plat to accompany the
8 petition.
9 MR. BRONSTEIN: Is it under seal?
10 MR. WOOLMAN: Yes, it is. The seal is December
11 28, 1922, that would be --
12 MR. BRONSTEIN: No. The plat to accompany the
13 petition.
14 MR. WOOLMAN: Oh, No. 2? I don't believe so.
15 We can introduce your plat as well, if you'd like. I'll
16 be happy to use yours jointly.
17 MR. BRONSTEIN: Well, I'll introduce it. Go
18 ahead.
19 Just for the record, we object to the accuracy of
20 Petitioner's 2, and the fact it's not under seal, but
21 we'll introduce the plat.

Page 8

1 THE CHAIRMAN: With that understanding. Now,
2 he's done with 3A through M.
3 MR. WOOLMAN: The next would be Petitioner's 4A
4 through I. This is a series of photographs.
5 THE CHAIRMAN: Proffer, if you will, for the
6 record, who took them, when they were taken, and whether
7 they fairly represent what they portray.
8 MR. WOOLMAN: These photographs were taken by my
9 client Mr. Link, probably in October of '05. f Mr. Link
10 were to testify, he would proffer these are photographs
11 of, and they are labeled as to the addresses of several
12 homes contained within the subdivision and the subject
13 property.
14 THE CHAIRMAN: And those photographs do fairly
15 represent and accurately represent --
16 MR. WOOLMAN: They fairly represent the
17 addresses, yes.
18 THE CHAIRMAN: Counsel, rather than give each one
19 of these a number, there's a top and bottom picture.
20 In each of what you have just given us, each page
21 is going to be A, B and C, so that when we refer to them,

Page 9

1 it will be C-top, or C-bottom.
2 MR. WOOLMAN: Understood.
3 THE CHAIRMAN: Thank you. All set.
4 MR. WOOLMAN: Then petitioners -- I think we are
5 on five -- would just be the listing of property next to
6 the subject property when it was for sale.
7 THE CHAIRMAN: 1204 Taylor Avenue.
8 MS. BRASSIL: I have one correction. On
9 Petitioner's No. 4, it's A through J. Not A through I.
10 MR. WOOLMAN: Thank you.
11 THE CHAIRMAN: Anything else?
12 MR. WOOLMAN: The proffer would be that --
13 THE CHAIRMAN: Are you finished with the
14 exhibits?
15 MR. WOOLMAN: Yes.
16 THE CHAIRMAN: Do me a favor. Turn on the lamp.
17 (Discussion held off the record.)
18 MR. BRONSTEIN: May I interject one moment, since
19 we didn't give opening statements? I want to clarify, the
20 question here is, is this a zoning merger.
21 THE CHAIRMAN: Okay.

Page 10

1 MR. BRONSTEIN: So that's what we are talking
2 about.
3 MR. WOOLMAN: I was going to continue the
4 proffer, and then we can both make opening statements
5 after the proffer.
6 THE CHAIRMAN: Yes. Why don't we get everything
7 that everybody can agree on, on the record, and then you
8 can both comment as you see fit as opening, and then we'll
9 go to witnesses.
10 MR. WOOLMAN: The proffer as to the facts would
11 also indicate that if the witnesses were called to
12 testify, they would testify that the parties to this case,
13 my client Mr. Link and the protestants, entered into a
14 contract for the conveyance of land, that land being six
15 of eight lots owned in 2005 by my client Mr. Link.
16 Six of those lots were conveyed by way of deed,
17 and, actually, I would like to introduce the deed as
18 Petitioners' 6, in May of 2005.
19 Particularly, the lots were described as lot 296
20 and 297, and a further description also included lots 342,
21 343, 344, and 345.

Page 11

1 MR. BRONSTEIN: That's the deed?
2 MR. WOOLMAN: Yes.
3 MR. BRONSTEIN: Is there a reference to the deed
4 on there?
5 THE CHAIRMAN: Yes. 0022093, and 471.
6 MR. BRONSTEIN: Folio 471?
7 THE CHAIRMAN: Yes.
8 MR. WOOLMAN: THE proffer would also indicate
9 that lots 298 and 299, the remaining two lots, were
10 offered for sale by my client separately, and that
11 protestants were aware that those two separate lots were
12 offered separately, that protestants did not purchase
13 those two separate lots.
14 And, finally, I would proffer the testimony of
15 Mr. Link would be that his intention was to build on lots
16 299 and 298 consistent with the majority of the building
17 lots in the subdivision.
18 If Mr. Williams the engineer were to testify, I
19 would proffer that --
20 THE CHAIRMAN: Mr. Williams' full name?
21 MR. WOOLMAN: I'm sorry. Richard Williams --

Page 12

1 THE CHAIRMAN: And he is, by trade?
2 MR. WOOLMAN: By trade, a civil engineering with
3 DeMario & Associates.
4 THE CHAIRMAN: Okay.
5 MR. WOOLMAN: He would testify that the plat -- I
6 understand there is an objection as to the plat -- but the
7 plat that accompanied the petition was on the Baltimore
8 County's form for administrative undersized lot
9 application, which is how this case originally proceeded,
10 and he's the one who prepared the plat.
11 He would testify that the lots, the two lots, 298
12 and 299 combined, are fifty feet in width and that the
13 property is zoned D.R. 5.5, and therefore does not meet
14 the fifty-five foot lot width requirement,
15 He would also testify that the proposed dwelling
16 and the lot itself otherwise meets all other zoning
17 regulations, including side, rear and front yard setbacks
18 and lot area.
19 He would further testify that upon applying for
20 an undersized lot application under Baltimore County
21 zoning regulations, Section 304, he was instructed to

Page 13

1 forego that process by representatives of the zoning
2 office and, instead, file a variance, which led us to
3 where we are today.
4 And I believe, unless Mr. Bronstein has anything
5 he would like to add, I believe -- well, there are some
6 conditions on the property, which I am sure you want to
7 include in the proffer as far as structures and --
8 MR. BRONSTEIN: I have things to offer.
9 MR. WOOLMAN: -- so at this time, I will submit
10 this portion of the proffer and let Mr. Bronstein
11 continue.
12 THE CHAIRMAN: Before we go any further, Mr.
13 Bronstein, for the record, as far as we have gone so far,
14 do you join in the proffer?
15 MR. BRONSTEIN: Well, essentially, yes, but there
16 will be some little variances.
17 THE CHAIRMAN: Why don't we begin, Mr. Bronstein,
18 with what's left over --
19 MR. BRONSTEIN: What's left over.
20 THE CHAIRMAN: -- substantially all of it, and
21 then you can go on from there.

Page 14

1 MR. BRONSTEIN: The first thing I would like to
2 do is offer as the appellee's petition, or protestants, a
3 panoramic view.
4 THE CHAIRMAN: Are they all part of the same?
5 MR. BRONSTEIN: One side of the street.
6 THE CHAIRMAN: Are you giving us another panorama
7 also?
8 MR. BRONSTEIN: Yes, and the subject property.
9 THE CHAIRMAN: We'll just treat it as one.
10 MS. BRASSIL: A, B, C, D? Are you going to refer
11 to them separately?
12 MR. BRONSTEIN: No.
13 THE CHAIRMAN: Because if you're are, then we
14 have got to give each photograph a separate number.
15 MR. BRONSTEIN: No. One exhibit with the subject
16 property noted on there.
17 THE CHAIRMAN: Since it's two pieces --
18 MR. BRONSTEIN: Well, we can make it one.
19 THE CHAIRMAN: Why don't we make Panorama 1, two
20 parts, and well mark the back of this panorama in two
21 parts.

Page 15

1 MR. BRONSTEIN: Two is the opposite side of the
2 street.
3 THE CHAIRMAN: So the first panorama is the side
4 of the street that the subject property is on?
5 MR. BRONSTEIN: Right.
6 THE CHAIRMAN: Okay.
7 MR. BRONSTEIN: And Panorama 2 is the opposite
8 side, and the house that is duly opposite my clients'
9 property is so marked.
10 THE CHAIRMAN: Exhibit No. 2 is the panorama
11 across the street. Off the record.
12 (Discussion held off the record.)
13 THE CHAIRMAN: Mr. Bronstein.
14 MR. BRONSTEIN: Protestants' 3 -- that's a word
15 I'm not actually used to in my practice --
16 THE CHAIRMAN: I wasn't going to say that, Mr.
17 Bronstein.
18 MR. BRONSTEIN: Off the record.
19 (Discussion held off the record.)
20 THE CHAIRMAN: Okay. We can go back on the
21 record.

Page 16

1 MR. BRONSTEIN: This is a survey of the subject
2 property.
3 THE CHAIRMAN: So this one is dated March 2 --
4 MR. BRONSTEIN: No, that's not it.
5 THE CHAIRMAN: Dated 5-24-06.
6 MR. BRONSTEIN: Yes. Prepared by NTT Associates.
7 It's a plat under seal of James D. Hutchins, property line
8 surveyor.
9 THE CHAIRMAN: Counsel have copies?
10 MR. BRONSTEIN: Yes.
11 THE CHAIRMAN: That's going to be three.
12 MR. BRONSTEIN: Four, would be a plat essentially
13 predicated on three, but prepared by my client. It's just
14 in a larger scale.
15 THE CHAIRMAN: So it's a larger scale of three.
16 Obviously, this isn't under seal, because your client is
17 not an engineer.
18 MR. BRONSTEIN: My clients are Tonya
19 Crowl-Gifford and Rodney Schuh, who testified that they
20 purchased --
21 THE CHAIRMAN: Are we done with the exhibits?

Page 17

1 MR. BRONSTEIN: Yes, for right now. They
2 purchased the subject property, which was improved by a
3 large frame house, as shown on the plat.
4 And in addition, there are other improvements,
5 and you can see the garage and a stone patio.
6 At the time of closing, they were informed by the
7 petitioners that there was a bomb shelter on the property.
8 No bomb. Just a bomb shelter.
9 And the bomb shelter is shown on the plat. Both
10 three, I think three, and you can clearly see it.
11 And one can see a tunnel there. It is right
12 there.
13 THE CHAIRMAN: Where it says "shelter." Got you.
14 Off the record a second.
15 (Discussion held off the record.).
16 THE CHAIRMAN: Okay. Mr. Bronstein.
17 MR. BRONSTEIN: We would offer a series of
18 photographs totaling four in number, whatever the number
19 is?
20 MS. BRASSIL: We are on five.
21 MR. BRONSTEIN: This shows the --

Page 18

1 THE CHAIRMAN: Give us all the pictures. We'll
2 give them a designation,and then you can talk about them.
3 Any particular order?
4 MR. BRONSTEIN: No.
5 MS. BRASSIL: The next exhibit is Protestants' 5A
6 through D.
7 MR. BRONSTEIN: 5A shows a piece of paneling and
8 a door. The piece of paneling was covering the door when
9 they purchased the property.
10 THE CHAIRMAN: This is in the basement of the
11 property?
12 MR. BRONSTEIN: Yes. 5C is a picture showing a
13 metal ladder --
14 THE CHAIRMAN: So we skip from A to C?
15 MR BRONSTEIN: Yes. Leading to the bomb shelter.
16 THE CHAIRMAN: We're looking at 5C. We are just
17 trying to get an orientation. There appears to be a door
18 at the bottom --
19 MR.SCHUH: No. I'm at the bottom of the ladder,
20 photographing. That is the door that you saw .
21 THE CHAIRMAN: In the previous picture?

Page 19

1 MR. SCHUH: Yes.
2 MR. BRONSTEIN: The next photograph, 5B, is a
3 tunnel leading into the bomb shelter, and the tunnel is
4 shown on the exhibit leading from the house. This is
5 exhibit --
6 MR. SCHUH: I'd also like to state --
7 THE CHAIRMAN: No, no. This is only attorneys.
8 MR. BRONSTEIN: The last photograph is from
9 inside the bomb shelter, a door leading to the tunnel.
10 The plat shows four, twenty-five foot lots. We
11 acknowledge that my client only purchased two of those
12 front twenty-five foot lots.
13 At settlement, they were told that a bottom
14 shelter existed, and after the settlement, they actually
15 found the bomb shelter, and with their children, had a
16 merry adventure.
17 THE CHAIRMAN: Now, the bomb shelter appears to
18 be on another lot?
19 MR. BRONSTEIN: The bomb shelter is shown
20 partially on 297 and partially on -- that would be 298, I
21 believe.

Page 20

1 THE CHAIRMAN: Okay. So it's 297 and 298, and
2 your clients own which ones?
3 MR. BRONSTEIN: 296 and 297. Also shown on lot
4 298 is a stone patio.
5 So the bomb shelter and the stone patio, which
6 are part of 1204, actually are partially constructed on
7 lot 298.
8 THE CHAIRMAN: Mr. Bronstein, also a question,
9 and this may not a subject for a proffer, so I will hold
10 off, but is that stone patio, even the part that's in the
11 298 lot, something that is their patio that they continue
12 to use?
13 MR. BRONSTEIN: Yes.
14 THE CHAIRMAN: Even though they don't
15 theoretically own that property?
16 MR. BRONSTEIN: Yes.
17 THE CHAIRMAN: Counsel?
18 MR. WOOLMAN: Fine.
19 MR. BRONSTEIN: The next photograph is a picture
20 of the stone patio itself.
21 THE CHAIRMAN: Let's give these numbers. We are

Page 21

1 up to?
2 MS. BRASSIL: No. 6.
3 THE CHAIRMAN: How many do you have there?
4 MR. BRONSTEIN: I think just one more. The next
5 one is a photograph of the property showing the fence,
6 which is on the rear of the survey.
7 MS. BRASSIL: That's this one?
8 MR. BRONSTEIN: Yes.
9 THE CHAIRMAN: That's 6A.
10 MR. BRONSTEIN: We would proffer that the picket
11 fence shown on the front, stretched across 296, 297, 298
12 and 299, since the date of closing, part of that picket
13 fence has been removed by petitioners, and that the fence
14 that you see on the last exhibit still remains.
15 So that across the boundary line, beginning of a
16 garage shown on the rear, across the boundary line,
17 extending onto 298 and 299; and that there's a chain link
18 fence on the boundary line, the furthest boundary line of
19 299.
20 Also shown in the survey is a swimming pool on
21 the rear shown on lot 343 and 342 and extending into the

Page 22

1 paper alley, which was purchased by my client, and a shed
2 that is shown on lot 343, a twelve-by-sixteen shed.
3 THE CHAIRMAN: Now, counsel, these are actually
4 now being used by your client?
5 MR. BRONSTEIN: That is correct.
6 THE CHAIRMAN: Do they own title to -- well, I
7 guess we'll find out. Do they own title to 342 and 343?
8 MR. BRONSTEIN: Yes. That was conveyed to them.
9 In other words, they purchased two front lots on Taylor
10 Avenue --
11 THE CHAIRMAN: Which is ninety-six and
12 ninety-seven?
13 MR. BRONSTEIN: Right. And the rear four lots --
14 THE CHAIRMAN: Forty-two to forty-five?
15 MR. BRONSTEIN: Yes.
16 THE CHAIRMAN: So it makes it six.
17 MR. BRONSTEIN: And we would acknowledge and
18 agree that we never purchased the other two lots.
19 THE CHAIRMAN: Even though they do have some use
20 of things that go onto them?
21 MR. BRONSTEIN: And that's the crux of this case.

Page 23

1 THE CHAIRMAN: Just getting the physical facts
2 down. Okay. Go ahead.
3 MR. BRONSTEIN: I think that's the extent of the
4 proffer.
5 THE CHAIRMAN: Okay.
6 MR. BRONSTEIN: Now we can get into argument as
7 to what that means.
8 THE CHAIRMAN: Let's find out first. To the
9 extent of Mr. Bronstein's additional proffer and comments,
10 sir, do you have any objection?
11 MR. WOOLMAN: One small addition in regard to the
12 proffer. That would be Lots 345, 344, 343 and 342 are
13 zoned industrial.
14 THE CHAIRMAN: Again, lots 342 --
15 MR. WOOLMAN: And 343, the rear lots. 342, 343
16 and 344, and 345, the four lots to the rear that contain
17 the shed and the above-ground pool are zoned industrial.
18 THE CHAIRMAN: Do you have a particular zoning
19 classification? There's any number of industrial ones.
20 MR. BRONSTEIN: I don't think it makes much
21 difference.

Page 24

1 MR. WOOLMAN: It really doesn't.
2 THE CHAIRMAN: If you both agree it's not
3 relevant, I don't won't worry about it, but they are
4 industrial in nature?
5 MR. WOOLMAN: Yes.
6 THE CHAIRMAN: Okay. Other than that, counsel?
7 MR. WOOLMAN: That's the only addition I have to
8 Mr. Bronstein's proffer.
9 THE CHAIRMAN: Then we seem to have all the
10 proffers in place, all the exhibits in place.
11 Mr. Woolman, this is a de novo appeal, you're up.
12 Do you want to do opening first?
13 MR. WOOLMAN: Certainly. I will make my opening
14 very brief.
15 The facts of this case present three theories
16 which the petitioner would submit would allow him to use
17 these two lots as a building lot, and I'd like to ask the
18 members of the Board to consider, as the Zoning
19 Commissioner's Policy Manual requests, that the intent of
20 the parties and the facts and the circumstances
21 surrounding this case be taken into serious consideration.

Page 25

1 This case, although it does involve several
2 theories of law, also involves a great deal of equities as
3 well.
4 The first theory which my client attempted to
5 proceed under, without representation, was to apply for
6 the undersized lot application under Section 304 of the
7 Baltimore County zoning regulations.
8 I will later argue that is exactly how this case
9 should still proceed, and request the Board remand this
10 matter to the Department of Permits and Development
11 Management to proceed under that section of the law.
12 The second theory and argument that we will be
13 making is these lots did not merge from a zoning
14 standpoint under the Remes case.
15 The third theory would be that if, assuming
16 arguendo ----
17 THE CHAIRMAN: Whoa. Slow down.
18 MS. BRASSIL: Would you repeat number two,
19 please?
20 MR. WOOLMAN: Certainly. I'm sorry. Number two
21 would be that the lots did not merge from a zoning

Page 26

1 standpoint under the recent case of Remes -- that's
2 R-e-m-e-s -- versus Montgomery County.
3 The third argument that we will be making will be
4 that assuming arguendo that the Board finds the lots did
5 merge from a zoning standpoint, a subdivision occurred
6 when six of the eight lots were conveyed to the
7 protestants and that an interior lot line for zoning
8 purposes was created by that conveyance.
9 And then, finally, I will review for the Board
10 the Zoning Commissioner's Findings of Fact and Conclusions
11 of Law and highlight what errors I believe were made.
12 THE CHAIRMAN: Let me make it a little bit easier
13 for you, as well as Mr. Bronstein.
14 What our intentions are, just based on the facts
15 we're arguing about law and, obviously, we don't do this
16 in a vacuum.
17 We have seen Mr. Murphy's opinion. We are going
18 to ask both of you, in lieu of closing arguments, to
19 submit a memorandum to us which is going to include
20 whatever relevant case law you think we ought apply, not
21 apply, why, why not.

Page 27

1 We are looking for fact witnesses and expert
2 opinions witnesses, if you have any of those, but the
3 conclusions and arguments of law, we'll look forward to
4 seeing that in writing from you.
5 MR. WOOLMAN: Very well. I believe our proffers
6 covered any testimony we would need to support the closing
7 arguments I have highlighted.
8 THE CHAIRMAN: Well, let me ask you this
9 question. Are you then proposing to putting any witnesses
10 on as to any other issue, or are you now down to simply
11 argument?
12 MR. WOOLMAN: I believe simply argument.
13 THE CHAIRMAN: Hold on one second. Mr.
14 Bronstein, do you have any witnesses that you're going to
15 provide at this point, beyond the proffer, or are you down
16 to legal argument?
17 MR. BRONSTEIN: There are some things.
18 THE CHAIRMAN: I'm not trying to limit you. I am
19 trying to make sure everybody does what they need to do.
20 MR. BRONSTEIN: If they are going to argue
21 undersized lot --

Page 28

1 THE CHAIRMAN: I don't know what anybody is going
2 to argue. That's why I'm leaving it up to you guys.
3 MR. BRONSTEIN: With respect to the undersized
4 lot provision, if I can find that --
5 THE CHAIRMAN: While you're looking, it's our
6 intention that if, in fact, there is no more substantive
7 testimony, if neither side wants us to know anything else
8 factually, than we'll be at the end of where we are today,
9 and then it will be just a matter of submitting memoranda.
10 I want to caution and at the same time provide
11 the opportunity for either one of you to put any other
12 testimentary information that you may want to do in front
13 of us.
14 MR. BRONSTEIN: Section 304.1 of the zoning code
15 addresses the undersized single family lot.
16 THE CHAIRMAN: Yes, it does.
17 MR. BRONSTEIN: Paragraph three, or C, says, The
18 owner of the lot does not own sufficient adjoining land to
19 conform to the width and area requirements contained in
20 these regulations.
21 I think the stipulation should be that at one

Page 29

1 time, this property owner did own land sufficient, and
2 conveyed it to my client, and now says, I want the
3 variance.
4 THE CHAIRMAN: Well, before he gets up and does
5 the objection, which I'm sure he's about to do --
6 MR. BRONSTEIN: I don't think, factually, he
7 disagrees.
8 THE CHAIRMAN: Well, I think it's more how you
9 put it, than what you said. Counsel?
10 MR. WOOLMAN: Factually, just that at the time
11 the under-sized lot application was made, Section C was
12 true, he did not own adjoining land at the time he
13 applied.
14 THE CHAIRMAN: Well, if you gentlemen want to
15 characterize it, you can characterize it with witnesses or
16 language in the brief.
17 Can we agree -- and I'm not going to put words in
18 anybody's mouth -- but if we can simply agree to the
19 factual thing from this date until this date, your client
20 owned whatever he owned; and on that date, he sold
21 whatever he sold to them; and on the date this was filed,

Page 30

1 he owned this and they owned that?
2 If you want to give us something phrased that
3 way --
4 MR. WOOLMAN: I do agree with the proffer that
5 at some time prior to the conveyance, he did own adjoining
6 land. I agree with that.
7 THE CHAIRMAN: Well, why don't one of you just
8 phrase it the way I did. Originally, who owned what?
9 MR. WOOLMAN: Originally, my client owned --
10 THE CHAIRMAN: Use lot numbers.
11 MR. WOOLMAN: He owned eight twenty-five foot
12 wide lots in the Whittemore Park subdivision. They're lot
13 numbers 296 through 299, and 342 through 345.
14 THE CHAIRMAN: When did that change?
15 MR. WOOLMAN: That changed, according to the
16 deed -- I forget which exhibit that is, if I could refer
17 to the date on the deed.
18 MS. BRASSIL: I believe it's the 5th of May,
19 2005.
20 MR. WOOLMAN: That six of those eight lots were
21 conveyed to the protestants in this case.

Page 31

1 THE CHAIRMAN: What six were they?
2 MR. WOOLMAN: 298 --
3 THE CHAIRMAN: Ninety-six, ninety-seven --
4 MR. WOOLMAN: I'm sorry. You're right.
5 THE CHAIRMAN: -- and forty-two to forty-five.
6 MR. WOOLMAN: You're correct.
7 THE CHAIRMAN: And in August of --
8 MR. WOOLMAN: 2005, my client applied
9 administratively with the Department of Permits and
10 Development Management, an under-sized lot application
11 under Section 304 of the Baltimore County zoning
12 regulations.
13 THE CHAIRMAN: Can we agree to that chronology?
14 MR. BRONSTEIN: I have one further thing.
15 THE CHAIRMAN: Sure.
16 MR. BRONSTEIN: Assuming arguendo that these two
17 lots were separated, in other words, 298 and 299, for
18 zoning purposes, were not part of my clients' property,
19 that my clients' property would be relegated to a
20 nonconforming use status because it would be a fifty-foot
21 lot as well.

Page 32

1 THE CHAIRMAN: Again, if you guys want to
2 proffer -- we can't characterize anything unless you can
3 agree to the characterization.
4 MR. WOOLMAN: I can't agree to that. That
5 involves a legal conclusion.
6 THE CHAIRMAN: We're talking about a proffer
7 here.
8 MR. BRONSTEIN: It would be a house existing on a
9 fifty-foot --
10 THE CHAIRMAN: well, you can stipulate as to
11 where the house is.
12 MR. WOOLMAN: I will estimate to the fact that
13 the house would exist on a fifty-foot wide lot.
14 MR. BRONSTEIN: Would you stipulate that that's
15 under-sized?
16 MR. WOOLMAN: The fifty-foot lot is undersized in
17 a D.R. 5.5, yes.
18 THE CHAIRMAN: Okay. Anything else? Because
19 we're still, theoretically, in his opening, unless you're
20 finished?
21 MR. WOOLMAN: I just wanted to highlight, without

Page 33

1 getting into the argument.
2 THE CHAIRMAN: So I guess, in a sense, Mr.
3 Bronstein, if you want to make an opening, but, again, my
4 question to you is, if you guys have no further witnesses
5 to present, and the proffer covers all the facts on the
6 ground, then we are about as far as we can get today and
7 we'll just look forward to your memoranda.
8 MR. BRONSTEIN: There's no argument at all, no
9 oral argument?
10 THE CHAIRMAN: No. There's multiple legal issues
11 just from what we have seen from a brief look at Mr.
12 Murphy's opinion issues as to whether or not 304 did or
13 didn't apply.
14 There's Issues as to the whole concept of merger,
15 what happens if, in fact, you have a merger, as opposed to
16 you don't, and that's all law and cases and statute and
17 argument based upon the facts.
18 And if you gentlemen are happy with the facts you
19 have given us, we'll look forward then to how you view the
20 situation, legally.
21 MR. BRONSTEIN: Okay. What time frame do we have

Page 34

1 to submit memoranda?
2 THE CHAIRMAN Routine, thirty days, simultaneous
3 filling. Off the record.
4 (Discussion held off the record.)
5 MR. BRONSTEIN: I would like to have five weeks
6 to submit the memorandum.
7 THE CHAIRMAN: That's fine.
8 MR. WOOLMAN: That's fine.
9 MR. BRONSTEIN: One further thing with respect to
10 Mr. Woolman's statement, that he would like to ferret out
11 the various parts of the Zoning Commissioner's memorandum,
12 that is the opinion that he has disagreement with, I mean,
13 I obviously don't know what he could possibly disagree in
14 there with that, but I would like to submit a reply to
15 that.
16 THE CHAIRMAN: Well, I'm going to simply suggest
17 that you all address whatever issues you feel are
18 relevant, whether they be threshold issues, whether they
19 be statutory, or whether they be issues of whether or not
20 we should be looking at this or looking at that. You
21 know, whether having to include that, or having to include

Page 35

1 that. Just make sure you are very, very clear.
2 And I want to make it very clear to both of you
3 that the only factual information that we are going to
4 face is what was in the proffer that you folks have given
5 us today.
6 You know, that's the only testimony that this
7 Board will have heard. Everything else will be legal
8 argument.
9 MR. WOOLMAN: With that in mind, and I appreciate
10 your caution, I guess one thing I want to be clear on
11 would be, in addition to the proffer, that would be -- and
12 I don't think anybody would have a disagreement with
13 this -- he even alluded to the error that this bomb
14 shelter was properly built -- but the bomb shelter, the
15 patio and the garage, the pool and the shed -- and I'm
16 sure Mr. Bronstein wouldn't disagree because it helps his
17 argument on merger -- all preexisted common ownership and
18 conveyance.
19 THE CHAIRMAN: Prior to your clients' ownership?
20 MR BRONSTEIN: That's correct.
21 THE CHAIRMAN: So the last bit of the proffer is

Page 36

1 the bomb shelter and the pool, fence, patio, and shed
2 predated petitioners' ownership?
3 MR. WOOLMAN: Yes.
4 THE CHAIRMAN: Thank you.
5 MR. BRONSTEIN: Yes.
6 MS. BRASSIL: I have a question. When did the
7 petitioner actually buy the property, and when was it
8 conveyed to the petitioner?
9 MR. LINK: I believe it was February of '05.
10 MR. WOOLMAN: My client would testify it was
11 February OF '05.
12 MS. BRASSIL: Is When he bought it.
13 THE CHAIRMAN: Eight lots.
14 MS. BRASSIL: And I have one more question. The
15 third argument that you wanted to make regarding the six
16 lots, that subdivision occurred when the six lots was
17 conveyed to the protestants, was this argued below before
18 the Zoning Commissioner?
19 MR. WOOLMAN: I do not believe it was, but we're
20 here de novo.
21 THE CHAIRMAN: You don't have any problems with

Page 37

1 that concept, do you, Mr. Bronstein?
2 MR BRONSTEIN: What's that?
3 THE CHAIRMAN: In terms of Ms. Brassil's comment
4 or question.
5 MS. BRASSIL: The third argument he made, that it
6 wasn't made below to the Zoning Commissioner, but he's
7 making it here, that's okay with you?
8 MR. BRONSTEIN: No, not really, but he can make
9 it.
10 THE CHAIRMAN: You won't signed on to it.
11 MR. BRONSTEIN: I don't agree with it.
12 MS. BRASSIL: But you will respond to it in your
13 memo?
14 MR. BRONSTEIN: I guess I will. I mean, let me
15 put it this way, I mean, the fact that he said that, I
16 guess I can remember to include that.
17 THE CHAIRMAN: It will be in your transcript.
18 MR. BRONSTEIN: It's not something I would
19 anticipate as an argument, had he not said so.
20 MS. BRASSIL: But he is, so you will respond?
21 MR BRONSTEIN: Yes.

MR. WOOLMAN: One correction. It was actually March 23, 2005, that the eight lots were conveyed to my client.

THE CHAIRMAN: Thank you. Anything else, gentlemen.

MR. BRONSTEIN: No, sir.

THE CHAIRMAN: Mr. Woolman?

MR. WOOLMAN: Nothing further.

THE CHAIRMAN: We're off the record for a second.

(Discussion held off the record.)

THE CHAIRMAN: Back on the record. I want to thank everybody. This will certainly allow us to move along.

We have proffers, and we thank counsel and the parties for their cooperation, and we'll look forward to reading your submissions.

We are adjourned.

(Hearing concluded.)

* * * * *

INDEX

Petitioner's Ex. No.	Page
No. 1	6
No. 2	6
No. 3A - 3M	6
No. 4A - 4J	8
No. 5	9
No. 6	10

Protestants Ex. No.	Page
No. 1	14
No. 2	15
No. 3	16
No. 4	16
No. 5A - 5D	18
No. 6, 6A	21

-&-
& [2] 3:15 12:3

-'-
'05 [3] 8:9 36:9,11

-0-
0022093 [1] 11:5
06-166-A [2] 1:5 3:6

-1-
1 [4] 6:2 14:19 39:3,11
10 [1] 39:8
11 [1] 1:11
1204 [2] 9:7 20:6
1206 [2] 1:4 3:7
13th [2] 1:5 3:8
14 [1] 39:11
15 [1] 39:12
16 [2] 39:13,14
18 [2] 3:11 39:15
1922 [2] 5:17 7:11
1st [2] 1:6 3:8

-2-
2 [9] 6:3 7:6,14,20 15:7,10 16:3 39:4,12
2005 [6] 3:11 10:15,18 30:19 31:8 38:2
2006 [3] 1:6,11 3:5
21 [1] 39:16
21204 [1] 3:17
23 [1] 38:2
28 [1] 7:11
29 [1] 3:16
296 [4] 10:19 20:3 21:11 30:13
297 [5] 10:20 19:20 20:1 20:3 21:11
298 [12] 11:9,16 12:11 19:20 20:1,4,7,11 21:11 21:17 31:2,17
299 [8] 11:9,16 12:12 21:12,17,19 30:13 31:17

-3-
3 [4] 6:12,13 15:14 39:13
304 [4] 12:21 25:6 31:11 33:12
304.1 [1] 28:14
31 [3] 1:6,11 3:5
342 [7] 10:20 21:21 22:7 23:12,14,15 30:13
343 [7] 10:21 21:21 22:2 22:7 23:12,15,15
344 [3] 10:21 23:12,16
345 [4] 10:21 23:12,16
30:13
3A [4] 6:14,19 8:2 39:5
3M [2] 6:19 39:5

-4-
4 [2] 9:9 39:14
400 [1] 1:10
471 [2] 11:5,6
4A [2] 8:3 39:6
4J [1] 39:6

-5-
5 [1] 39:7
5-24-06 [1] 16:5
5.5 [2] 12:13 32:17
5A [3] 18:5,7 39:15
5B [1] 19:2
5C [2] 18:12,16
5D [1] 39:15
5th [1] 30:18

-6-
6 [7] 10:18 21:2 39:3,4,5,8 39:16
6A [2] 21:9 39:16

-8-
8 [1] 39:6

-9-
9 [1] 39:7

-A-
a.m [1] 1:11
able [1] 4:3
above-entitled [1] 1:8
above-ground [1] 23:17
accompanied [2] 6:4 12:7
accompany [3] 6:11 7:7 7:12
according [1] 30:15
accuracy [1] 7:19
accurately [1] 8:15
acknowledge [2] 19:11 22:17
add [3] 5:8,8 13:5
addition [4] 17:4 23:11 24:7 35:11
additional [2] 5:9 23:9
address [1] 34:17
addresses [3] 8:11,17 28:15
adjoining [3] 28:18 29:12 30:5
adjourned [1] 38:17
administrative [2] 3:20 12:8
administratively [1] 31:9
adventure [1] 19:16
again [3] 23:14 32:1 33:3
agree [12] 4:17 10:7 22:18 24:2 29:17,18 30:4,6 31:13 32:3,4 37:11
agreed [1] 4:9
ahead [3] 4:18 7:18 23:2
alley [1] 22:1
allow [2] 24:16 38:12
alluded [1] 35:13
along [1] 38:13
anticipate [1] 37:19
anybody's [1] 29:18
appeal [1] 24:11
Appeals [3] 1:2,9 3:4
APPEARANCES [1] 2:9
appellee [1] 3:18
appellee's [1] 14:2
application [5] 12:9,20 25:6 29:11 31:10
applied [2] 29:13 31:8
applies [1] 4:7
apply [4] 25:5 26:20,21 33:13
applying [1] 12:19
appreciate [1] 35:9
area [2] 12:18 28:19
argue [3] 25:8 27:20 28:2
argued [1] 36:17
arguendo [3] 25:16 26:4 31:16
arguing [1] 26:15
argument [15] 23:6 25:12 26:3 27:11,12,16 33:1,8,9 33:17 35:8,17 36:15 37:5 37:19
arguments [3] 26:18 27:3,7
arises [1] 5:12
arising [1] 3:10
Assessment [1] 6:14
Associates [2] 12:3 16:6
assuming [3] 25:15 26:4 31:16
attempted [1] 25:4
attorneys [1] 19:7
August [1] 31:7
Avenue [6] 1:4,10 3:8,17 9:7 22:10
aware [1] 11:11

-B-
B [2] 8:21 14:10
Baltimore [8] 1:4,9 3:4 5:17 12:7,20 25:7 31:11
base [1] 4:6
based [2] 26:14 33:17
basement [1] 18:10
begin [1] 13:17
beginning [1] 21:15
behalf [3] 2:10,11 3:15
below [3] 4:21 36:17 37:6
Benjamin [2] 2:11 3:16
beyond [1] 27:15
bit [3] 4:2 26:12 35:21
board [10] 1:2,9 2:1 3:4 5:18 24:18 25:9 26:4,9 35:7
bomb [14] 17:7,8,8,9 18:15 19:3,9,15,17,19 20:5 35:13,14 36:1
bottom [4] 8:19 18:18,19 19:13
bought [1] 36:12
boundary [4] 21:15,16 21:18,18
BRASSIL [16] 2:4 6:19 9:8 14:10 17:20 18:5 21:2 21:7 25:18 30:18 36:6,12 36:14 37:5,12,20
Brassil's [1] 37:3
brief [3] 24:14 29:16 33:11
Bronstein [104] 2:11 3:16,16 4:2,14,15,18 5:7 5:11,15 6:9,10 7:1,6,9,12 7:17 9:18 10:1 11:1,3,6 13:4,8,10,13,15,17,19 14:1,5,8,12,15,18 15:1,5 15:7,13,14,17,18 16:1,4,6 16:10,12,18 17:1,16,17 17:21 18:4,7,12,15 19:2,8 19:19 20:3,8,13,16,19 21:4,8,10 22:5,8,13,15,17 22:21 23:3,6,20 26:13 27:14,17,20 28:3,14,17 29:6 31:14,16 32:8,14 33:3,8,21 34:5,9 35:16,20 36:5 37:1,2,8,11,14,18,21 38:6
Bronstein's [2] 23:9 24:8
build [1] 11:15
building [2] 11:16 24:17
built [1] 35:14
buy [1] 36:7

-C-
C [6] 3:1 8:21 14:10 18:14 28:17 29:11
C-bottom [1] 9:1
C-top [1] 9:1
C.E [1] 1:21
case [14] 1:5 4:6 5:12 10:12 12:9 22:21 24:15 24:21 25:1,8,14 26:1,20 30:21
cases [1] 33:16
caution [2] 28:10 35:10
certainly [3] 24:13 25:20 38:12
chain [1] 21:17
Chairman [123] 2:3 3:3 3:19 4:12,14,16 5:4,19 6:1 6:6,9,11,21 7:3,7 8:1,5,14 8:18 9:3,7,11,13,16,21 10:6 11:5,7,20 12:1,4 13:12,17,20 14:4,6,9,13 14:17,19 15:3,6,10,13,16 15:20 16:3,5,9,11,15,21 17:13,16 18:1,10,14,16 18:21 19:7,17 20:1,8,14 20:17,21 21:3,9 22:3,6,11 22:14,16,19 23:1,5,8,14 23:18 24:2,6,9 25:17 26:12 27:8,13,18 28:1,5 28:16 29:4,8,14 30:7,10 30:14 31:1,3,5,7,13,15 32:1,6,10,18 33:2,10 34:2 34:7,16 35:19,21 36:4,13 36:21 37:3,10,17 38:4,7,9 38:11
change [1] 30:14
changed [1] 30:15
characterization [1] 32:3
characterize [3] 29:15 29:15 32:2
children [1] 19:15
chronology [1] 31:13
circumstances [1] 24:20
civil [1] 12:2
clarify [1] 9:19
classification [1] 23:19
clear [3] 35:1,2,10
clearly [1] 17:10
client [16] 8:9 10:13,15 11:10 16:13,16 19:11 22:1 22:4 25:4 29:2,19 30:9 31:8 36:10 38:3
clients [2] 16:18 20:2
clients' [4] 15:8 31:18 31:19 35:19
closing [4] 17:6 21:12 26:18 27:6
code [1] 28:14
combined [1] 12:12
comment [2] 10:8 37:3
comments [1] 23:9
Commissioner [2] 36:18 37:6
Commissioner's [5] 3:11 5:1 24:19 26:10 34:11
common [1] 35:17
complete [1] 5:7
concept [2] 33:14 37:1
concluded [1] 38:18
conclusion [1] 32:5
conclusions [2] 26:10 27:3
conditions [1] 13:6
conform [1] 28:19
consider [1] 24:18

consideration [1] 24:21
consistent [1] 11:16
constructed [1] 20:6
contain [1] 23:16
contained [4] 4:20 5:13 8:12 28:19
continue [3] 10:3 13:11 20:11
contract [1] 10:14
conveyance [4] 10:14 26:8 30:5 35:18
conveyed [8] 10:16 22:8 26:6 29:2 30:21 36:8,17 38:2
cooperation [1] 38:15
copies [2] 6:21 16:9
correct [4] 6:8 22:5 31:6 35:20
correction [2] 9:8 38:1
correspond [1] 7:4
Councilmanic [1] 3:8
Counclmanic [1] 1:6
counsel [10] 3:13 6:15 6:21 8:18 16:9 20:17 22:3 24:6 29:9 38:14
County [10] 1:2,4,9,9 3:5 5:17 12:20 25:7 26:2 31:11
County's [1] 12:8
Courthoue [1] 1:10
covered [1] 27:6
covering [1] 18:8
covers [1] 33:5
created [1] 26:8
Crowl-Gifford [1] 16:19
crux [1] 22:21

-D-

D [5] 3:1 14:10 16:7 18:6 39:1
D.R [2] 12:13 32:17
date [6] 21:12 29:19,19 29:20,21 30:17
dated [2] 16:3,5
days [1] 34:2
de [2] 24:11 36:20
deal [1] 25:2
December [1] 7:10
deed [6] 10:16,17 11:1,3 30:16,17
DeMario [1] 12:3
denied [1] 3:13
Department [3] 6:14 25:10 31:9
Deputy [1] 3:11
described [1] 10:19
description [1] 10:20
designation [1] 18:2
Development [2] 25:10 31:10
difference [1] 23:21
disagree [2] 34:13 35:16
disagreement [2] 34:12 35:12
disagrees [1] 29:7
Discussion [6] 9:17 15:12,19 17:15 34:4 38:10
dispute [2] 4:5,7
District [4] 1:5,6 3:8,9
doesn't [1] 24:1
done [2] 8:2 16:21
door [5] 18:8,8,17,20 19:9
down [4] 23:2 25:17 27:10,15
duly [1] 15:8
dwelling [1] 12:15

-E-

E [3] 3:1,1 39:1
easier [1] 26:12
eight [6] 10:15 26:6 30:11 30:20 36:13 38:2
either [1] 28:11
Election [2] 1:5 3:8
end [1] 28:8
engineer [2] 11:18 16:17
engineering [1] 12:2
entered [1] 10:13
equities [1] 25:2
error [1] 35:13
errors [1] 26:11
Esquire [2] 2:9,11
essentially [2] 13:15 16:12
estimate [1] 32:12
everybody [3] 10:7 27:19 38:12
Ex [2] 39:2,10
exactly [1] 25:8
exhibit [9] 5:14,15 14:15 15:10 18:5 19:4,5 21:14 30:16
exhibits [9] 4:8,20,21 5:2 5:9,10 9:14 16:21 24:10
exist [1] 32:13
existed [1] 19:14
existing [1] 32:8
expert [1] 27:1
explain [1] 5:2
extending [2] 21:17,21
extent [2] 23:3,9

-F-

f [1] 8:9
face [1] 35:4
fact [7] 7:20 26:10 27:1 28:6 32:12 33:15 37:15
facts [11] 4:3,8,10 10:10 23:1 24:15,20 26:14 33:5 33:17,18
factual [3] 4:6 29:19 35:3
factually [3] 28:8 29:6 29:10
fairly [3] 8:7,14,16
family [1] 28:15
far [4] 13:7,13,13 33:6
favor [1] 9:16
February [2] 36:9,11
feet [1] 12:12
fence [6] 21:5,11,13,13 21:18 36:1
ferret [1] 34:10
fifty [1] 12:12
fifty-five [1] 12:14
fifty-foot [4] 31:20 32:9 32:13,16
file [2] 4:21 13:2
filed [1] 29:21
filling [1] 34:3
finally [2] 11:14 26:9
Findings [1] 26:10
finds [1] 26:4
fine [5] 4:15 5:11 20:18 34:7,8
finished [2] 9:13 32:20
first [8] 5:1,14,19 14:1 15:3 23:8 24:12 25:4
fit [1] 10:8
five [3] 9:5 17:20 34:5
Folio [1] 11:6
folks [1] 35:4
foot [4] 12:14 19:10,12 30:11
forego [1] 13:1
forget [1] 30:16
form [1] 12:8
forty-five [2] 22:14 31:5
forty-two [2] 22:14 31:5
forward [4] 27:3 33:7,19 38:15
found [1] 19:15
four [5] 16:12 17:18 19:10 22:13 23:16
frame [2] 17:3 33:21
front [5] 12:17 19:12 21:11 22:9 28:12
full [1] 11:20
furthest [1] 21:18

-G-

G [1] 3:1
garage [3] 17:5 21:16 35:15
gentlemen [4] 3:19 29:14 33:18 38:5
Gildea [1] 3:15
given [4] 6:21 8:20 33:19 35:4
giving [2] 7:5 14:6
gone [1] 13:13
Good [2] 3:3,14
great [1] 25:2
ground [1] 33:6
guess [5] 22:7 33:2 35:10 37:14,16
guys [3] 28:2 32:1 33:4

-H-

happy [2] 7:16 33:18
heard [1] 35:7
hearing [3] 1:8 5:1 38:18
held [6] 9:17 15:12,19 17:15 34:4 38:10
help [1] 5:2
helpful [1] 4:1
helps [1] 35:16
highlight [2] 26:11 32:21
highlighted [1] 27:7
hold [2] 20:9 27:13
homes [1] 8:12
house [6] 15:8 17:3 19:4 32:8,11,13
Hutchins [1] 16:7

-I-

III [2] 2:9 3:15
improved [1] 17:2
improvements [1] 17:4
include [5] 13:7 26:19 34:21,21 37:16
included [1] 10:20
including [1] 12:17
indicate [3] 6:5 10:11 11:8
industrial [4] 23:13,17 23:19 24:4
information [2] 28:12 35:3
informed [1] 17:6
inside [1] 19:9
instead [1] 13:2
instructed [1] 12:21
intent [1] 24:19
intention [2] 11:15 28:6
intentions [1] 26:14
interior [1] 26:7
interject [1] 9:18
introduce [6] 5:2,18 7:15 7:17,21 10:17
involve [1] 25:1
involves [2] 25:2 32:5
issue [1] 27:10
issues [6] 33:10,12,14 34:17,18,19
itself [2] 12:16 20:20

-J-

J [1] 9:9
James [1] 16:7
Joe [1] 4:18
join [1] 13:14
jointly [3] 4:3,9 7:16
Joseph [2] 2:9 3:14

-K-

knows [1] 7:5

-L-

I'll [1] 5:18
labeled [1] 8:11
ladder [2] 18:13,19
lamp [1] 9:16
land [6] 10:14,14 28:18 29:1,12 30:6
language [1] 29:16
large [1] 17:3
larger [2] 16:14,15
last [3] 19:8 21:14 35:21
late [1] 4:2
law [8] 4:7 25:2,11 26:11 26:15,20 27:3 33:16
LAWRENCE [1] 2:3
leading [4] 18:15 19:3,4 19:9
leaving [1] 28:2
led [1] 13:2
left [2] 13:18,19
legal [6] 1:3 3:7 27:16 32:5 33:10 35:7
legally [1] 33:20
lieu [1] 26:18
limit [1] 27:18
line [6] 16:7 21:15,16,18 21:18 26:7
link [7] 8:9,9 10:13,15 11:15 21:17 36:9
Link-Link [2] 1:2 3:7
listing [1] 9:5
LLC [2] 1:2 3:7
look [6] 5:16 27:3 33:7 33:11,19 38:15
looking [5] 18:16 27:1 28:5 34:20,20
lots [35] 6:17,18 10:15,16 10:19,20 11:9,9,11,13,15 11:17 12:11,11 19:10,12 22:9,13,18 23:12,14,15 23:16 24:17 25:13,21 26:4 26:6 30:12,20 31:17 36:13 36:16,16 38:2

-M-

M [3] 2:3 6:14 8:2
majority [2] 4:3 11:16
makes [2] 22:16 23:20
Management [2] 25:11 31:10

Manual [1] 24:19
March [2] 16:3 38:2
MARGARET [1] 2:4
mark [2] 5:19 14:20
marked [1] 15:9
Maryland [2] 1:11 3:17
matter [7] 1:1,8 3:6,6 4:4 25:10 28:9
may [8] 1:6,11 3:5 9:18 10:18 20:9 28:12 30:18
mean [3] 34:12 37:14,15
means [1] 23:7
meet [1] 12:13
meeting [1] 3:4
meets [1] 12:16
members [2] 2:1 24:18
memo [1] 37:13
memoranda [3] 28:9 33:7 34:1
memorandum [3] 26:19 34:6,11
mention [1] 7:3
merge [3] 25:13,21 26:5
merger [4] 9:20 33:14,15 35:17
merry [1] 19:16
metal [1] 18:13
mind [1] 35:9
moment [1] 9:18
Montgomery [1] 26:2
morning [2] 3:3,14
mouth [1] 29:18
move [1] 38:12
MR.SCHUH [1] 18:19
Ms [15] 9:8 14:10 17:20 18:5 21:2,7 25:18 30:18 36:6,12,14 37:3,5,12,20
multiple [1] 33:10
Murphy's [2] 26:17 33:12

-N-

N [2] 3:1 39:1
name [1] 11:20
nature [1] 24:4
necessary [1] 4:13
need [2] 27:6,19
neither [1] 28:7
never [1] 22:18
next [6] 8:3 9:5 18:5 19:2 20:19 21:4
ninety-seven [2] 22:12 31:3
ninety-six [2] 22:11 31:3
nonconforming [1] 31:20
noted [1] 14:16
Nothing [1] 38:8
November [1] 3:10
novo [2] 24:11 36:20
now [9] 6:1 8:1 17:1 19:17 22:3,4 23:6 27:10 29:2
NTT [1] 16:6
number [8] 5:6 8:19 14:14 17:18,18 23:19 25:18,20
numbers [5] 7:4,4 20:21 30:10,13

-O-

O [1] 3:1
o'clock [1] 1:11
object [1] 7:19
objection [4] 6:10 12:6 23:10 29:5
obviously [3] 16:16 26:15 34:13
occurred [2] 26:5 36:16
October [1] 8:9
off [12] 9:17 15:11,12,18 15:19 17:14,15 20:10 34:3 34:4 38:9,10
offer [4] 6:13 13:8 14:2 17:17
offered [2] 11:10,12
office [1] 13:2
old [2] 1:10 5:13
one [24] 5:15 8:18 9:8,18 12:10 14:5,9,15,18 16:3 17:11 21:4,5,7 23:11 27:13 28:11,21 30:7 31:14 34:9 35:10 36:14 38:1
ones [2] 20:2 23:19
onto [2] 21:17 22:20
opening [7] 9:19 10:4,8 24:12,13 32:19 33:3
opinion [3] 26:17 33:12 34:12
opinions [1] 27:2
opportunity [3] 5:16 6:15 28:11
opposed [1] 33:15
opposite [3] 15:1,7,8
oral [1] 33:9
order [2] 3:11 18:3
orientation [1] 18:17
original [1] 6:4
originally [3] 12:9 30:8 30:9
otherwise [1] 12:16
ought [1] 26:20
own [8] 20:2,15 22:6,7 28:18 29:1,12 30:5
owned [8] 10:15 29:20 29:20 30:1,1,8,9,11
owner [2] 28:18 29:1
owner/petitioner [2] 1:3 3:7
ownership [3] 35:17,19 36:2

-P-

P [1] 3:1
page [3] 8:20 39:2,10
paneling [2] 18:7,8
panorama [6] 14:6,19 14:20 15:3,7,10
panoramic [1] 14:3
paper [1] 22:1
Paragraph [1] 28:17
Park [3] 5:13,20 30:12
part [5] 14:4 20:6,10 21:12 31:18
partially [3] 19:20,20 20:6
particular [2] 18:3 23:18
Particularly [1] 10:19
parties [4] 4:11 10:12 24:20 38:15
parts [3] 14:20,21 34:11
patio [8] 17:5 20:4,5,10 20:11,20 35:15 36:1
Peatt [1] 1:21
perhaps [1] 4:9
Permits [2] 25:10 31:9
petition [7] 6:4,6,12 7:8 7:13 12:7 14:2
petitioner [5] 2:10 3:15 24:16 36:7,8
petitioner's [11] 5:6,14 6:2,3,13,19 7:6,20 8:3 9:9 39:2
petitioners [3] 9:4 17:7 21:13
petitioners' [2] 10:18 36:2
Ph.D [1] 2:4
photograph [5] 14:14 19:2,8 20:19 21:5
photographing [1] 18:20
photographs [5] 8:4,8 8:10,14 17:18
phrase [1] 30:8
phrased [1] 30:2
physical [1] 23:1
picket [2] 21:10,12
picture [4] 8:19 18:12,21 20:19
pictures [1] 18:1
piece [2] 18:7,8
pieces [1] 14:17
place [2] 24:10,10
plat [15] 6:3,11 7:7,12,15 7:21 12:5,6,7,10,16:7,12 17:3,9 19:10
point [1] 27:15
Policy [1] 24:19
pool [4] 21:20 23:17 35:15 36:1
portion [1] 13:10
portray [1] 8:7
possibly [1] 34:13
practice [1] 15:15
predated [1] 36:2
predicated [1] 16:13
preexisted [1] 35:17
preliminary [1] 3:20
prepared [3] 12:10 16:6 16:13
present [2] 24:15 33:5
previous [1] 18:21
printouts [1] 6:15
problems [1] 36:21
proceed [3] 25:5,9,11
proceeded [1] 12:9
process [1] 13:1
proffer [34] 4:3,10,17,19 5:3,5,5,7 8:5,10 9:12 10:4 10:5,10 11:8,14,19 13:7 13:10,14 20:9 21:10 23:4 23:9,12 24:8 27:15 30:4 32:2,6 33:5 35:4,11,21
proffers [3] 24:10 27:5 38:14
properly [1] 35:14
property [24] 3:12 5:13 6:5 8:13 9:5,6 12:13 13:6 14:8,16 15:4,9 16:2,7 17:2 17:7 18:9,11 20:15 21:5 29:1 31:18,19 36:7
proposed [1] 12:15
proposing [1] 27:9
protestants [9] 2:11 10:13 11:11,12 14:2 26:7 30:21 36:17 39:10
protestants' [3] 5:9 15:14 18:5
provide [2] 27:15 28:10
provision [1] 28:4
purchase [1] 11:12
purchased [7] 16:20 17:2 18:9 19:11 22:1,9,18
purposes [2] 26:8 31:18
put [9] 5:5,6,18 6:1,20 28:11 29:9,17 37:15
putting [1] 27:9

-Q-

questions [1] 4:11

-R-

R [3] 2:9 3:1,14
R-e-m-e-s [1] 26:2
rather [1] 8:18
reading [1] 38:16
real [1] 4:5
really [2] 24:1 37:8
rear [7] 12:17 21:6,16,21 22:13 23:15,16
recent [1] 26:1
record [19] 3:13 4:16 7:19 8:6 9:17 10:7 13:13 15:11 15:12,18,19,21 17:14,15 34:3,4 38:9,10,11
refer [3] 8:21 14:10 30:16
reference [1] 11:3
regard [1] 23:11
regarding [1] 36:15
regular [1] 3:4
regulations [5] 12:17 12:21 25:7 28:20 31:12
related [1] 6:17
relegated [1] 31:19
relevant [3] 24:3 26:20 34:18
relief [1] 3:12
remaining [1] 11:9
remains [1] 21:14
remand [1] 25:9
remember [1] 37:16
Remes [2] 25:14 26:1
removed [1] 21:13
repeat [1] 25:18
reply [1] 34:14
Reported [1] 1:20
represent [5] 3:18 8:7 8:15,15,16
representation [1] 25:5
representatives [1] 13:1
request [1] 25:9
requested [1] 3:12
requests [1] 24:19
requirement [1] 12:14
requirements [1] 28:19
respect [2] 28:3 34:9
respond [2] 37:12,20
review [1] 26:9
Richard [1] 11:21
right [5] 15:5 17:1,11 22:13 31:4
Rodney [1] 16:19
ROGER [1] 2:5
Routine [1] 34:2

-S-

S [1] 3:1
sale [2] 9:6 11:10
saw [1] 18:20
says [3] 17:13 28:17 29:2
scale [2] 16:14,15
Schmidt [1] 3:15
Schuh [3] 16:19 19:1,6
seal [5] 7:9,10,20 16:7,16
second [4] 17:14 25:12 27:13 38:9
section [6] 12:21 25:6,11 28:14 29:11 31:11
see [6] 6:16 10:8 17:5,10

17:11 21:14
seeing [1] 27:4
seem [1] 24:9
sense [1] 33:2
separate [3] 11:11,13 14:14
separated [1] 31:17
separately [3] 11:10,12 14:11
series [2] 8:4 17:17
serious [1] 24:21
set [1] 9:3
setbacks [1] 12:17
settlement [2] 19:13,14
several [2] 8:11 25:1
shed [5] 22:1,2 23:17 35:15 36:1
shelter [15] 17:7,8,9,13 18:15 19:3,9,14,15,17,19 20:5 35:14,14 36:1
showing [2] 18:12 21:5
shown [10] 17:3,9 19:4 19:19 20:3 21:11,16,20 21:21 22:2
shows [3] 17:21 18:7 19:10
side [6] 12:17 14:5 15:1,3 15:8 28:7
signed [1] 37:10
simply [4] 27:10,12 29:18 34:16
simultaneous [1] 34:2
single [1] 28:15
situation [1] 33:20
six [8] 10:14,16 22:16 26:6 30:20 31:1 36:15,16
skip [1] 18:14
Slow [1] 25:17
small [1] 23:11
sold [2] 29:20,21
someone [1] 4:16
sorry [3] 11:21 25:20 31:4
specifically [1] 3:10
STAHL [1] 2:3
standpoint [3] 25:14 26:1,5
start [1] 4:2
state [1] 19:6
statement [1] 34:10
statements [2] 9:19 10:4
status [1] 31:20
statute [1] 33:16
statutory [1] 34:19
still [3] 21:14 25:9 32:19
stipulate [2] 32:10,14
stipulation [1] 28:21
stone [5] 17:5 20:4,5,10 20:20
street [4] 14:5 15:2,4,11
stretched [1] 21:11
structures [1] 13:7
subdivision [8] 5:14,17 5:21 8:12 11:17 26:5 30:12 36:16
subject [11] 3:12 6:5,17 8:12 9:6 14:8,15 15:4 16:1 17:2 20:9
submissions [1] 38:16
submit [8] 4:9,10 13:9 24:16 26:19 34:1,6,14
submitting [1] 28:9
substance [1] 3:21
substantially [1] 13:20
substantive [1] 28:6
sufficient [2] 28:18 29:1
suggest [1] 34:16
support [1] 27:6
surrounding [1] 24:21
survey [3] 16:1 21:6,20
surveyor [1] 16:8
Susquehanna [1] 3:17
swimming [1] 21:20

-T-

Taylor [4] 1:4 3:7 9:7 22:9
terms [2] 5:9 37:3
testified [1] 16:19
testify [10] 4:12 8:10 10:12,12 11:18 12:5,11 12:15,19 36:10
testimentary [1] 28:12
testimony [4] 11:14 27:6 28:7 35:6
thank [7] 3:19 9:3,10 36:4 38:4,12,14
theoretically [2] 20:15 32:19
theories [2] 24:15 25:2
theory [3] 25:4,12,15
therefore [1] 12:13
third [4] 25:15 26:3 36:15 37:5
thirty [1] 34:2
three [7] 16:11,13,15 17:10,10 24:15 28:17
threshold [1] 34:18
through [9] 6:14,19 8:2,4 9:9,9 18:6 30:13,13
title [2] 22:6,7
today [5] 6:7 13:3 28:8 33:6 35:5
Tonya [1] 16:18
took [1] 8:6
top [1] 8:19
totaling [1] 17:18
Towson [2] 1:10 3:17
trade [2] 12:1,2
transcript [1] 37:17
treat [1] 14:9
true [1] 29:12
trying [3] 18:17 27:18,19
tunnel [4] 17:11 19:3,3,9
Turn [1] 9:16
twelve-by-sixteen [1] 22:2
twenty-five [3] 19:10 19:12 30:11
two [15] 11:9,11,13 12:11 14:17,19,20 15:1 19:11 22:9,18 24:17 25:18,20 31:16

-U-

under [11] 7:9,20 12:20 16:7,16 25:5,6,11,14 26:1 31:11
under-sized [3] 29:11 31:10 32:15
underlying [1] 4:10
undersized [7] 12:8,20 25:6 27:21 28:3,15 32:16
understand [1] 12:6
Understood [1] 9:2
unless [3] 13:4 32:2,19
up [6] 6:1,20 21:1 24:11 28:2 29:4
used [2] 15:15 22:4

-V-

vacuum [1] 26:16
variance [3] 3:12 13:2 29:3
variances [1] 13:16
various [1] 34:11
verbally [1] 5:8
versus [1] 26:2
vicinity [1] 6:18
view [2] 14:3 33:19

-W-

wants [1] 28:7
Washington [1] 1:10
Wednesday [1] 3:5
weeks [1] 34:5
West [1] 3:16
Whittemore [3] 5:13,20 30:12
Whoa [1] 25:17
whole [1] 33:14
wide [2] 30:12 32:13
width [3] 12:12,14 28:19
Williams [2] 11:18,21
Williams' [1] 11:20
within [2] 5:13 8:12
without [2] 25:5 32:21
witnesses [8] 10:9,11 27:1,2,9,14 29:15 33:4
WITT [1] 2:5
Woolman [64] 2:9 3:14 3:14 4:1,13,19 5:12,20 6:3 6:8,13,20 7:2,10,14 8:3,8 8:16 9:2,4,10,12,15 10:3 10:10 11:2,8,21 12:2,5 13:9 20:18 23:11,15 24:1 24:5,7,11,13 25:20 27:5 27:12 29:10 30:4,9,11,15 30:20 31:2,4,6,8 32:4,12 32:16,21 34:8 35:9 36:3 36:10,19 38:1,7,8
Woolman's [1] 34:10
word [1] 15:14
words [3] 22:9 29:17 31:17
worry [1] 24:3
writing [1] 27:4

-X-

X [1] 39:1

-Y-

yard [1] 12:17

-Z-

zoned [3] 12:13 23:13,17
zoning [20] 3:11 4:21 9:20 12:16,21 13:1 23:18 24:18 25:7,13,21 26:5,7 26:10 28:14 31:11,18 34:11 36:18 37:6

a conclusion that, despite the Revisor's Note and the Report, the Legislature, *sub silentio*, desired to deprive local government employees of a benefit they had so long enjoyed. The Court of Special Appeals erred in deciding otherwise. The test for set off under § 9–610 is the same as it was under § 33, and, under that test, the county is not entitled to set off Ms. Wills's retirement benefits against her workers' compensation benefits.

JUDGMENT OF COURT OF SPECIAL APPEALS IN *BLEVINS* AND *WILLS* REVERSED; CASES REMANDED TO THAT COURT WITH INSTRUCTIONS TO REVERSE JUDGMENTS OF CIRCUIT COURT FOR BALTIMORE COUNTY; AND REMAND THE CASES TO THAT COURT WITH INSTRUCTIONS TO AFFIRM THE DECISIONS OF THE WORKERS' COMPENSATION COMMISSION; COSTS IN THIS COURT AND COURT OF SPECIAL APPEALS TO BE PAID BY BALTIMORE COUNTY.

352 Md. 645

FRIENDS OF THE RIDGE et al.

v.

BALTIMORE GAS AND ELECTRIC COMPANY.

No. 76, Sept. Term, 1998.

Court of Appeals of Maryland.

Feb. 11, 1999.

Gas and electric utility, which sought to expand existing electrical transformer substation onto contiguous parcels acquired by utility after construction of substation, petitioned for variance from side yard setback requirements. The zoning board granted petition, and neighbors appealed. The Circuit Court, Baltimore County, Lawrence R. Daniels, J., affirmed. Neighbors appealed. The Court of Special Appeals, 120 Md.App. 444, 707 A.2d 866, affirmed. Neighbors appealed. The Court of Appeals, Cathell, J., held that: (1) several parcels or lots may be merged into one larger parcel for zoning purposes by integrating or utilizing contiguous lots in service of single structure or project, and (2) no setback variance from interior lot lines was required, with respect to proposed expansion of existing substation.

Judgment of Court of Special Appeals vacated in part and case remanded with instructions.

1. Zoning and Planning ⚷254, 256, 303

Zoning ordinances do not create lots; what zoning ordinances normally do, with respect to residential districts, is establish dimensional minimums and specify number of residential units that may be placed on area of tract or parcel, ancillary requirements such as parking minimums, bathroom minimums, and square footage minimums of buildings.

2. Zoning and Planning ⚷254

In zoning cases, "doctrine of merger" generally prohibits the use of individual substandard parcels if contiguous parcels have been, at any relevant time, in the same ownership and at the time of that ownership, the combined parcel was not substandard; in other words, if several contiguous parcels, each of which do not comply with present zoning, are in single ownership and, as combined, the single parcel is usable without violating zoning provisions, one of the separate, nonconforming parcels may not then or thereafter be considered nonconforming, nor may a variance be granted for that separate parcel.

See publication Words and Phrases for other judicial constructions and definitions.

3. Zoning and Planning ⚷254

Landowner who clearly desires to combine or merge several parcels or lots of land into one larger parcel may do so.

4. Zoning and Planning ⚷254

Landowner who desires to combine or merge several parcels or lots of land into one larger parcel may do so by integrating or utilizing contiguous lots in service of single structure or project.

5. Zoning and Planning ⟹254

When landowner combines or merges several parcels or lots of land into one larger parcel by integrating or utilizing contiguous lots in service of single structure or project, the platted lot lines remain in place for title purposes until deed of conveyance or new subdivision is created, but by operation of law a single parcel emerges for zoning purposes.

6. Zoning and Planning ⟹504

Under county zoning ordinance, no setback variance from interior lot lines was required, with respect to gas and electric utility's proposed expansion of existing electrical transformer substation onto contiguous parcels utility acquired after construction of original substation, where there was no claim that any structures extended, or would extend, into any required "yards" or setbacks from exterior property lines of entire parcel.

J. Carroll Holzer, Towson, for petitioners.

John H. Zink, III (Patricia A. Malone, Venable, Baetjer and Howard, LLP, on brief), Towson, for respondent.

Argued before ELDRIDGE, CHASANOW, RAKER, WILNER, CATHELL, ROBERT L. KARWACKI (retired, specially assigned), and JOSEPH F. MURPHY, Jr. (specially assigned), JJ.

CATHELL, Judge.

In this case, Pamela and Carl Follo and Friends of the Ridge *et al.*, petitioners, appeal the affirmance by the Court of Special Appeals [1] of the decision of the Circuit Court for Baltimore County, which upheld the granting of a variance from side yard setback requirements to Baltimore Gas and Electric Company, respondent. Petitioners present three issues for our review, which we rearrange:

> [1]. Whether the Court of Special Appeals' preference given to utility companies in this zoning case conflicts with this Court's decision in *Kahl vs. Consolidated Gas and Electric*, 191 Md. 249 [60 A.2d 754] (1949[1948])[.]
>
> [2]. Whether in the absence of statutory authority, an electric utility company's status, *vel non*, as a utility, may be used to justify a zoning variance, generally, and the prerequisite of "uniqueness" specifically[.]
>
> 3. Whether the evidence relied on by the Court of Special Appeals in the instant case was sufficient to support a variance, both as to the uniqueness and practical difficulty, and whether its decision conflicts with the Court of Special Appeals' decision in *Cromwell vs. Ward*, 102 Md.App. 691 [651 A.2d 424] (1995)[.]

We shall not directly address the questions presented.[2] We shall direct that this case be remanded to the Baltimore County Board of Appeals (Board) with instructions to enter an order that no variance was needed in the case *sub judice*.[3]

Under the ordinance at issue here, and indeed in most ordinances of which we are aware, unless the ordinance's language specifically and clearly prohibits it, an owner of

1. *Friends of the Ridge v. Baltimore Gas & Elec. Co.*, 120 Md.App. 444, 707 A.2d 866 (1998).

2. We note that Respondent argues that the provisions of the ordinance applicable to variances ("where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request") should be read to indicate that a structure intended to be built once a variance is granted could itself be so unusual as to satisfy the uniqueness requirement of the statute. Under this argument, respondent contends that, given the characteristics of the equipment respondent proposes to erect and for which it seeks a variance, combined with the necessity that the equipment be within a certain distance of each other, its situation creates "peculiar or unusual circumstances relating to the substation *structures* which are the subject of the variance." Our failure to address this issue should not be construed as our approval or acceptance of that approach. We are reluctant to say that a proposition we are not resolving is wrong. Accordingly, we shall instead describe it as of doubtful logical force.

3. This is consistent with the Board's initial finding that no variance was necessary. The Board apparently felt it was required to address the variance issue because respondent filed a variance petition. Respondent may have filed the variance request because opponents to the project asserted that a variance was necessary.

contiguous parcels of real property, such as respondent, is free to combine them into larger and fewer parcels without violating the *zoning code. In this case we are con*cerned only with the zoning ordinance. We first shall recite the facts and conclude by furnishing the reasons for holding that no variance was necessary in the present case.

FACTS

Respondent, *at all times pertinent to the* case at bar has operated a facility called the "Ivy Hill Substation," which is situated on one of the parcels it owns near the intersection of Falls and Ridge Roads in Baltimore County, Maryland. The site, and all of the relevant surrounding area, is zoned RC–5. *Under that classification, public utility facili*ties are permitted as special exceptions if they comply with the requirements of the Baltimore County zoning ordinance. Respondent, anticipating a need for additional capacity in the region, proposed to increase the capacity at the Ivy Hill Substation. In order to do so, *respondent was required to* apply for a special exception to operate an enlarged facility. Respondent applied for and obtained a special exception. In their petition for certiorari, petitioners did not challenge the granting of the special exception. Accordingly, the granting of the special exception is no longer at issue.

The new, enlarged substation was planned *to extend onto a contiguous parcel from the* original site of the existing substation. The original substation was situated on a 0.4 acre parcel. Subsequently, respondents acquired *an adjacent 1.5 acre parcel and,* during the proceedings at the administrative level, acquired another 0.9 acre adjoining parcel. The record reflects that all three parcels are contiguous with each other. Petitioners assert in their brief that because the parcels never were "legally combined," the Baltimore *County ordinance required* respondent to obtain a variance to use the three parcels as one parcel. Respondent asserts that it since has caused the three lots to be combined by a resubdivision. Petitioner alleges that this was done improperly. If, in fact, it was done improperly, that is a matter for another day.[4] *We are concerned here only with the applica*bility of the zoning ordinance's variance provisions and not Baltimore County subdivision regulations.

RESOLUTION

We again note that in this case we are concerned only with the issue of the vari*ance. The primary concern* of the Board, however, was the simultaneously considered special exception request. The grant of that special exception is not before us. The Board originally found that the variance provisions, section 307.1, did not apply to respondent's request. The Board, for reasons *we shall discuss,* was *correct in that finding.*[5]

4. We often have held that subdivision is not *zoning. In most jurisdictions, including* Baltimore County, subdivision regulations are enacted and codified separately. We did state in our *recent case of Wesley Chapel Bluemount Ass'n v. Baltimore County,* 347 Md. 125, 699 A.2d 434 (1997), that planning and subdivision matters *were in the nature of zoning for the purposes of* the State Open Meetings Act. That opinion was based on our perception that the Legislature *intended planning and subdivision processes* to be considered as zoning *under that Act. See gener*ally *id.* Our opinion on that matter in that case was *meant to apply only to* Open Meetings Act concerns, and was not meant to be of general application changing, as Judge Eldridge dis*cussed in his dissent, the holdings of* "numerous opinions of this Court which have drawn a sharp distinction between 'planning' and 'zoning.' The approval or disapproval of a development plan is simply not a 'zoning matter.'" *Id.* at 151, 699 A.2d at 447. The holding in *Wesley Chapel* is limited to the context of the Open Meetings Act.

5. The Board discussed the variance request, stating, in relevant part:

> [Respondent] finally must meet the tests under Section 307.1 in pursuing variance from *lot line setbacks, said lot lines existing* between tracts owned by [respondent]. George Gavrelis clearly points out in his testimony that Sec*tion 306 of the BCZR speaks* to lot area regulations for erecting substations. [Respondent] seeks a variance under 307.1 from BCZR 1A04.3B.3 which requires a 50-foot setback from any lot line other than a street line. *The Board finds as a fact that Section 306 applies in this case and that the application for a variance under 307.1 may be treated as moot.* [Respondent] recognizes that its placement of electric utility structures on the subject site, straddling interior lot lines and certainly within *otherwise* required setbacks, *may be construed* under 1A04.3B.3 as a principal building, and is therefore requesting such variance. The Board is *compelled* to address the issue of 307.1 pursuant to the Petition. [Emphasis added.]

Nonetheless, apparently assuming it was required to address the variance issue because respondent filed a petition requesting a variance, the Board granted the petition. Because no variance was required, we direct the Court of Special Appeals to remand this matter to the circuit court for it to remand to the Board. The Board shall render a finding, consistent with its initial finding, that no variance is required for respondent to utilize the entire parcel for its proposal, so long as setback requirements are met from the exterior property lines of respondent's combined parcel.

DISCUSSION

[1] Zoning ordinances, including Baltimore County's ordinances, **do not create lots.** 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.[6]

Baltimore County's ordinance, like most zoning ordinances, does not define lots to include only lots delineated on plats in approved subdivisions. Section 101 defines "corner lot," "lot depth," "through lot" and then defines "interior lot" simply as "[a] lot other than a corner or through lot." It generically defines "lot of record," as "[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." *Id.* (emphasis added). The term "lots" as used in ordinances generally means parcels or tracts of land. In other words, when setbacks in respective districts are established, they generally apply to all tracts, parcels or pieces of land within the district, as indicated in the Baltimore County ordinance's definition of "setback." *See id.*

Generally, and in Baltimore County, the title or purpose clauses of zoning ordinances express concern with undersized parcels or lots, not with parcels that exceed the minimum dimensional requirements of the ordinances. The ordinance at issue here, in section 1A04.1(A)(1), which deals with Resource Conservation Zones (in the case *sub judice*, an "R.C.5" (Rural–Residential Zone)), states in its "legislative findings" clause:

> It is found that:
>
> . . . .
>
> c. In some cases *lot sizes are inadequate* to assure long-term adequacy of on-lot sewer and water systems;

6. When variance issues are involved, some cases regarding setbacks or height restrictions refer to them as "dimensional" variances, *see Bressman v. Gash*, 131 N.J. 517, 523–26, 621 A.2d 476, 479–81 (1993), and some as "deviational" variances. *See Sako v. Delsesto*, 688 A.2d 1296, 1298 (R.I.1997). In Maryland, they are commonly referred to as "yard" variances, distinguishing them from "use" variances, but on occasion have been referred to as "dimensional" variances. *See Easter v. Mayor of Baltimore*, 195 Md. 395, 401, 73 A.2d 491, 493 (1950) ("Use variances are doubtless more serious than dimensional changes, but that is only a matter of degree."). The proof required, however, assuming the uniqueness of a subject property, can be much greater with respect to use variances when the terms "practical difficulties" and "unwarranted [undue, unusual or unreasonable] hardship" are framed in the disjunctive, "practical difficulties or unwarranted hardship." We noted in *Zengerle v. Board of County Commissioners*, 262 Md. 1, 21, 276 A.2d 646, 656 (1971): "a use variance is customarily concerned with unusual [unwarranted] hardship where the land cannot yield a reasonable return without a variance whereas an area variance is primarily concerned with practical difficulties." Although the phrase "reasonable return" has all but disappeared from the vocabulary of zoning, except to the extent the term "reasonable investment backed expectations," has crept into "takings" jurisprudence, *see Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978) and its progeny, the distinction between yard and use variances consistently has been applied through the selective application of the practical difficulty/unwarranted hardship terminology.

d. That unless measures are implemented to assure more rational growth patterns, *including adequate lot size*, undue financial hardships will be placed on Baltimore County and the life, safety and general welfare of the citizens of the county will be adversely affected. [Emphasis added.]

The "purpose" clause provides, in relevant part:

B. Purpose. The R.C.5 zoning classification is established, pursuant to the legislative findings above, in order to:

. . . .

4. *Provide a minimum lot size* which is sufficient to provide adequate area for the proper functioning of on-lot sewer and water systems.[7]

Id. (emphasis added).

[2] Efforts throughout the country, including Baltimore County, have been to restrict undersize parcels, not oversized parcels. These efforts have resulted in the creation and evolution in zoning of the doctrine of merger, which, in zoning cases, generally prohibits the use of individual substandard parcels if contiguous parcels have been, at any relevant time, in the same ownership and at the time of that ownership, the combined parcel was not substandard.[8] In other words, if several contiguous parcels, each of which do not comply with present zoning, are in single ownership and, as combined, the single parcel is usable without violating zoning provisions, one of the separate, nonconforming parcels may not then *or thereafter* be considered nonconforming, nor may a variance be granted for that separate parcel. Some 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. 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. This, perhaps, is due to the general lack of objection to large parcels.[9] A discussion, however, of how the doctrine of merger applies conversely to the present case may help emphasize that, in the context described above, merger occurs without the need for official subdivision or conveyancing. It is accepted automatically in some jurisdictions or, most often, with minimum proof of the owner's intent in other jurisdictions and always without the necessity of official action. 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.

One of the seminal cases discussing the doctrine of merger with respect to zoning is the New Jersey case of *Loechner v. Campoli*, 49 N.J. 504, 231 A.2d 553 (1967). In 1936, Mrs. Loechner and her late husband acquired lots numbered 186 through 188 on a surveyor's map or plat. Each lot was twenty-five feet wide by one hundred feet in depth. Prior to 1952, the Loechners erected a single house on the three lots. In 1952, Rudolph Loechner acquired two adjoining lots, numbered 189 and 190. These new lots remained vacant. When Rudolph Loechner died, he devised lots 189 and 190 to his wife. Accordingly, upon his death, his wife owned all five lots, 186 through 190, and the house that had been erected on lots 186, 187, and 188.

Mrs. Loechner subsequently contracted to sell lots 189 and 190 to Anthony Villani.

7. We will address the combining of three smaller parcels into one larger parcel by respondent, *infra*. That the purpose of this section is to require adequately sized lots or parcels of land will prove especially relevant in that context.

8. We are unaware of any Maryland cases adopting the zoning doctrine of merger.

9. There are social concerns that raising minimum parcel or lot size or raising minimum square footage requirements can result in exclusionary zoning that may, in some circumstances, be invalid. Exclusionary zoning issues have not been raised in the case at bar.

Villani applied for a variance to build on his two lots, neglecting to mention that he had purchased the lots from an owner who had owned all five lots at one time. Although he obtained a variance, he was denied a building permit on grounds that subdivision approval was required because the five lots, when in common ownership, had merged into one parcel and the subsequent off-conveyance of the two lots to Villani was, in fact, a resubdivision of more parcels from a lesser number of parcels (one tract composed of the five lots). Mrs. Loechner took the position that resubdivison was unnecessary because all five lots were shown on the map or plat when she and her husband acquired the lots.

The Supreme Court of New Jersey noted that "[t]he acquisition of title by plaintiff to Lots 189 and 190 which were contiguous to Lots 186–188 created one parcel or tract of land consisting of five separate lots." *Id.* at 508, 231 A.2d at 555. Explaining that a state statute defined subdivision as "division of a lot, tract, or parcel of land into two or more lots," *id.* at 509, 231 A.2d at 555, the court discussed the meaning of the word "lot" in that context, noting that it retained its traditional meaning as a parcel or tract of land:

> The word "lot" as used in the Subdivision Act must be read in context with the words "tract or parcel of land" in order to ascertain its meaning. Consistent with recognized principles of statutory construction "lot" takes its meaning from the other two words with which it is associated. *Martell v. Lane*, 22 N.J. 110, 123 A.2d 541 (1956); *Salz v. State House Commission*, 18 N.J. 106, 112 A.2d 716 (1955); *State v. Murzda*, 116 N.J.L. 219, 183 A. 305 (E. & A.1936); 2 *Sutherland, Statutory Construction* § 4908 (3d *ed.* 1443). Thus considered "lot" is synonymous with "tract or parcel." The phrase "lot, tract or parcel of land" has traditionally been used to connote any portion or piece of realty. N.J.S.A. 40:55—1.2 contemplates supervision of the division of a large tract or parcel of land into two or more smaller tracts or parcels. The Subdivision Act is not concerned with the manner in which land is described for conveyancing purposes but rather with what use is made thereof.

Id. at 510–11, 231 A.2d at 556–57.

Much the same can be said for zoning. Zoning is concerned with dimensions and uses of land or structures, not with any particular description "lot," "parcel," or "tract" applicable to or necessary for conveyancing. Conveyancing is a separate area of law involving the transfer of property between buyers and sellers that generally is not directly connected with government regulations and restrictions on the use of property through the zoning power. In zoning, the term lot normally is generic and used interchangeably to describe parcels, tracts, pieces or sections of land.[10]

After *Loechner*, the doctrine of merger continued to evolve. It was described more concisely in *Somol v. Board of Adjustment*, 277 N.J.Super. 220, 228, 649 A.2d 422, 426 (1994): "[S]eparate *undersized* but contiguous lots fronting on the same street in single ownership ordinarily merge into one lot and conveyance of a portion will require subdivision and variance approval." (Emphasis added.) As is evident, the doctrine is designed to limit the creation of undersized parcels by *presuming* that merger can occur when contiguous lots exist in common ownership. As we have indicated, some jurisdictions presume merger automatically; in most jurisdictions, however, there must be some evidence of the owner's intent to merge. In the present case, respondent asserts a right to combine the contiguous parcels and to use them as a single parcel. Therefore, to the extent the doctrine is held to apply in this State under these converse circumstances,

10. In an earlier case, *Hutzler v. Mayor of Baltimore*, 207 Md. 424, 429, 114 A.2d 608, 611 (1955), which involved a parcel of land 200 feet by 380 feet, we noted that the statute at issue defined a "lot as '... a parcel of land now or hereafter laid out and occupied by one building and the accessory buildings or uses customarily or necessarily incident to it, including such open spaces as are required by this ordinance.'" (Omission in original.) In *Hertelendy v. Montgomery County Bd. of Appeals*, 245 Md. 554, 568–69, 226 A.2d 672, 681 (1967), we noted, without comment, that an ordinance's variance provisions addressed "parcels of property" and then, without making any distinction, described the parcel of property as "Lot 23–B."

the existence of merger is admitted in the case *sub judice*.

In *Iannucci v. Zoning Board of Appeals*, 25 Conn.App. 85, 592 A.2d 970 (1991), the applicant submitted a variance application to reposition a house entirely on one lot. At the time of the application, the house was built on two lots, with the attached porch on one lot and the main body of the house on the other. The purpose of the variance was to allow the property owner to build a new house on the vacated lot. The zoning body denied the variance, finding that "'when a portion of the dwelling on lot two was constructed over the property line, lots one and two were effectively combined.'" *Id.* at 87, 592 A.2d at 971. The Connecticut Appellate Court held:

> Contiguous land owned by the same person does not necessarily constitute a single lot. A merger can occur, however, if the owner of contiguous parcels of land intends to form one tract. The owner's intent "may be inferred from his conduct with respect to the land and the use which he makes of it." Intent is an inference of fact and "is not reviewable unless it was one which the trier could not reasonably make."
>
> ... [B]oth lots were purchased by the plaintiff's parents. A portion of the dwelling was later constructed over the property line.... It was reasonable for the [administrative agency] to infer that the actions of the plaintiff's parents effectively merged the lots. Once these lots were merged, they could not thereafter be redivided into two separate lots [without complying with the subdivision process].
>
> The plaintiff's assertion that the lots remain separate because they appear separately on the original subdivision plan is not persuasive. A reference to multiple lots "from a map filed in the land records does not compel a finding of an absence of merger.... Such a conclusion conflicts with the basic proposition that in a determination of the factual issue of merger, the intent of the property owners must be ascertained and that no single factor is dispositive."

Id. at 89–90, 592 A.2d at 972–73 (citations omitted) (some quotations marks omitted). In *Appeal of Gregor*, 156 Pa. Commw. 418, 423–24, 627 A.2d 308, 310–11 (1993), the Pennsylvania Commonwealth Court said:

> Under the doctrine of merger of estate[s] in land, a lesser estate is merged into a greater estate whenever both estates meet in the same person. This doctrine has no application, however, to zoning law and the construction of a zoning ordinance where, as here, the term "merger" is used to describe the effect of a zoning ordinance on lots held in common ownership and is related to the issue of the physical merger of adjoining lots....
>
> ... 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.]

See also Skelley v. Zoning Bd. of Review, 569 A.2d 1054, 1056 (R.I.1990) ("The concept of merger of contiguous nonconforming lots in common ownership as an appropriate method to combine nonconforming lots is gaining increased recognition.").

[3–5] 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, as respondent proposes in the instant case.[11] Although this is not the general application of the doctrine of merger as it relates to zoning, we perceive no rational objection to applying the same principles to the circumstances of this case, resulting in a larger parcel. For title purposes, the platted lot lines may remain, but by operation of law a single parcel emerges for zoning purposes.

11. 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.

At least three of our sister jurisdictions appear to have moved in the same direction. For example, the New Jersey Superior Court in *Bridge v. Neptune Township Zoning Board*, 233 N.J.Super. 587, 592–93, 595, 559 A.2d 855, 858, 859 (1989), discussed merger where a house had been constructed so it extended across the property lines of two parcels in common ownership:

> The pivotal question is whether lot 686 retained its identity as a separate and distinct parcel for land use regulation purposes. Integral to that issue is the distinction, for land subdivision regulation purposes, between (1) the assembling in common ownership of two contiguous nonconforming lots both of which front on existing streets where the owner constructs a single-family residential dwelling so as to cover all or part of both lots, and (2) such similarly assembled lots where one or both of the lots remains entirely vacant. In the latter instance, the lots *may* retain their identity, but in the former instance, the lots lose their identity and merge into a single parcel.
>
> . . . .
>
> When a person acquires ownership of contiguous non-conforming lots that are delineated as separate tracts on any map, and then builds a single-family structure so that it overlaps both lots, the lots merge into a single tract and are subject to the [Municipal Land Use Law] and its restrictions for future subdivision purposes as long as the structure remains on any part of both lots. Lot 686 cannot recover its separate identity so long as a portion of the house remains where it is. . . .

In *Molic v. Zoning Board of Appeals*, 18 Conn.App. 159, 163–65, 556 A.2d 1049, 1051–52 (1989), which did not involve the zoning doctrine of merger, the court, upholding an agency's finding that no merger had occurred where a swimming pool had been constructed across two parcels of land, nonetheless stated:

> The plaintiffs claimed that all of the property . . . had been merged by use and intent into one parcel, and that the 1984 map that showed three lots was an unapproved subdivision. . . .
>
> An owner of contiguous parcels of land *may merge those parcels to form one tract if he desires to do so.* An intent on the part of the owner to do so may be inferred from his conduct with respect to the land and the use which he makes of it. . . . Intent is a question of fact.
>
> The plaintiffs have cited no authority . . . for the proposition that an owner *must* be deemed to have merged contiguous lots. The one exception we have found . . . is that . . . some zoning regulations . . . may require, either expressly or implicitly, that under certain conditions a nonconforming lot merges with contiguous land owned by the same owner [the zoning concept of the doctrine of merger]. This is an understandable requirement because it furthers the general zoning purpose of eliminating nonconforming lots. . . .
>
> . . . .
>
> . . . Contiguous land all owned by the same person does not *necessarily* constitute a single lot. [Emphasis added.] [Citations omitted.] [Footnote omitted.]

Although *Molic* describes the general merger of parcels as being fact-based by not recognizing automatic merger, it appears to accept that the owner may combine contiguous tracts if he or she intends to do so.

The Pennsylvania Commonwealth Court, although addressing the doctrine of merger in a case involving zoning nonconformity, stated, without objection to the construction of structures across parcel boundaries, that:

> This is not to say, however, that once two adjoining lots are shown to be in "single and separate ownership" at the time of the relevant zoning ordinance, these lots must *always* be developed as two separate parcels. For example, a landowner who has acquired two adjoining lots after the passage of a zoning ordinance which rendered one or both of the lots undersized may *use* both lots in such a manner so as to integrate both lots into one large tract (explicitly demonstrated by building a house which straddles the common border).

Township of Middletown v. Middletown Township Zoning Hearing Bd., 120 Pa. Commw. 238, 245, 548 A.2d 1297, 1300 (1988).

We are especially cognizant that in those jurisdictions that have expressly or impliedly recognized the doctrine of merger in zoning cases, none has required a formal re-subdivision as an element of merger. In fact, they generally reject both attempts to resubdivide into substandard parcels after a merger into a larger parcel has occurred and attempts to obtain variances from the nonconformity of the original parcels after a merger has created a larger conforming parcel. In those cases in which the erection of structures across borders have raised merger issues, none of the cases we have examined ever question the right of property owners of multiple contiguous parcels to treat them as one parcel. These courts generally assume that it is permissible and not in violation of zoning principles.

Moreover, 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 (generally defined as the creation of more parcels from fewer parcels) is created.[12] Perhaps even more important is the implication of the definition of "setback" contained in Baltimore County Zoning Regulations, section 101:

> The required minimum horizontal distance between the building line (as defined in Section 101) and the related front, side or rear *property line.* [Emphasis added.]

Building line is defined as "[t]he line established by law beyond which a building shall not extend." *Id.* When the ordinance refers to "lot" lines with respect to setbacks, it refers to lot lines generically, *i.e.*, property lines. The ordinance's setback provisions are met when the various "yard" requirements exist between buildings and property lines.

[6] There is no claim that any structures in the case at bar extend, or will extend, into any required "yards" or setbacks from the exterior property lines of the entire parcel now owned by respondent. It thus does not need a variance. As a result, we remand to the Court of Special Appeals and order it to remand this case to the trial court so it may return this matter to the Baltimore County Board of Appeals with instructions to render a finding, consistent with its initial finding, that no setback variance from "interior lot lines" is required in the case *sub judice.* The appropriate method created by Baltimore County to address the enlargement of this substation was by way of the special exception provisions. As we have noted, the grant of the special exception was not presented as a question in the certiorari petition.

Respondent, insofar as the variance issues raised in this appeal are concerned, is entitled by right to construct the enlargement of the Ivy Hill Substation on its entire parcel without regard to the original "lot lines" that initially separated the three individual parcels, which now make up the larger combined parcel.

JUDGMENT OF THE COURT OF SPECIAL APPEALS AFFIRMED IN PART AND VACATED IN PART; THAT PORTION OF THE COURT OF SPECIAL AP-

12. The Baltimore County Zoning Regulations in its general definitions section defines subdivision as:

> The division of any tract or parcel of land, including frontage along an existing street or highway, into two or more lots, plots or other divisions of land *for the purpose, whether immediate or future, of building development for rental or sale,* and including all changes in street or lot [parcel, tract] lines; provided, however, that this definition of a subdivision shall not include divisions of land for agricultural purposes. [Emphasis added.]

The Baltimore County *Planning, Zoning and Subdivision Control* statute, in Article I, Section 26–1 defines subdivision as:

> *Subdivision* means the division of a lot, tract, or parcel of land into two (2) or more lots, sites, or other divisions of land for the purpose, whether immediate or future, of sale or building development.... Subdivision also includes resubdivision and, where appropriate to the context, relates to the process and subdividing or to the lands or territory divided.

Clearly, respondent was combining, not dividing, parcels and not combining them for purposes of rental or sale. It was not creating more parcels from less parcels, at least until pressured to seek subdivision, an issue not before us, or was it seeking to make any "dimensional" changes, or to change parcel or "lot" lines. Nor has it changed the boundaries of its total parcel. As we have said, unless otherwise indicated, "lot" as used in zoning or subdivision definition is the equivalent of "parcel" or "tract."

PEALS' JUDGMENT RELATING TO THE VARIANCE IS VACATED; CASE REMANDED TO THAT COURT WITH INSTRUCTIONS TO VACATE THAT PORTION OF THE JUDGMENT OF THE CIRCUIT COURT RELATING TO THE VARIANCE AND REMAND THE CASE TO THE CIRCUIT COURT WITH INSTRUCTIONS TO REMAND THE CASE TO THE BOARD OF APPEALS FOR A DECISION CONSISTENT WITH THIS OPINION; COSTS IN THIS COURT AND IN THE COURT OF SPECIAL APPEALS TO BE PAID BY PETITIONERS.

352 Md. 663

Timothy R. OWENS

v.

STATE of Maryland.

No. 129, Sept. Term, 1997.

Court of Appeals of Maryland.

Feb. 12, 1999.

Defendant was convicted in the Circuit Court, Baltimore County, Robert E. Cadigan, J., of second-degree rape, and he appealed. The Court of Appeals, Chasanow, J., held that defendant's rights to due process were not violated when, upon being charged with statutory rape, trial court prevented defendant from presenting his defense that he reasonably believed the victim was above 13 years of age.

Affirmed.

Eldridge, J., concurred in result only and filed concurring opinion.

Bell, C.J., dissented and filed opinion in which Cathell, J., joined.

1. Constitutional Law ⚷268(2.1)

Rape ⚷17

Defendant's rights to due process under the State and Federal Constitutions were not violated when, upon being charged with statutory rape, trial court prevented defendant from presenting his defense that he reasonably believed the victim was above 13 years of age. U.S.C.A. Const.Amend. 14; Const.Declaration of Rights, Arts. 20, 24; Code 1957, Art. 27, § 463(a)(3).

2. Criminal Law ⚷21

Within certain constitutional limits, states may create strict criminal liabilities by defining criminal offenses without any element of scienter.

3. Constitutional Law ⚷50

Absent any constitutional prohibition, it is within the legislative power to define crimes and to fix their punishment.

4. Rape ⚷13

Statutory rape is a strict liability crime. Code 1957, Art. 27, § 463(a)(3).

5. Rape ⚷2

Neither the risk of 20 years of imprisonment nor trial court's requirement that defendant register as "child sex offender" rendered unconstitutional state's statutory rape law. Code 1957, Art. 27, § 463(a)(3).

6. Constitutional Law ⚷258(1)

Constitutional due process does not impose a universal requirement that criminal laws, such as statutory rape law, include mens rea element. U.S.C.A. Const.Amend. 14; Code 1957, Art. 27, § 463(a)(3).

7. Constitutional Law ⚷251.4

Fundamental tenet of due process is that persons of ordinary intelligence and experience have reasonable opportunity to know what actions are prohibited so that they may conform their conduct according to the law. U.S.C.A. Const.Amend. 14.

8. Constitutional Law ⚷258(5)

Rape ⚷2

Statutory rape law provided sufficient notice so as to satisfy due process. U.S.C.A.

Circuit Court for Montgomery County
Case # 243716-V

IN THE COURT OF APPEALS OF MARYLAND

No. 122

September Term, 2004

David H. Remes

v.

Montgomery County, Maryland, et al.

Bell, C.J.
Raker
Cathell
Battaglia
Greene
Eldridge, John C.
(Retired, Specially Assigned)
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Cathell, J.

Filed: May 12, 2005

David H. Remes v. Montgomery County, Maryland, et al.
No. 122, September Term, 2004

Headnote: Two contiguous lots had been in common ownership. At the time of the common ownership one lot was used to comply with setback requirements of the other lot and used for the construction of a swimming pool as an accessory use. Thus, the lots had merged for zoning purposes, but remained distinct lots under subdivision regulations. Montgomery County Code § 50-8, requiring filing and approval of plat for any proposed subdivision or resubdivision of land, did not preclude a zoning merger arising out of the common owner's use, despite the fact that the common owner had never submitted a formal replatting and his purported successor in title desired to sell one of the subdivided lots.

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

---

[1] In Montgomery County height is apparently determined by first establishing the "natural grade."

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]

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

[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.

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 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.
>
> . . .

---

[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.

"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-

[5] Montgomery County Code § 8-26, "conditions of permit," requires the permit issuing agency to establish that the building complies with zoning regulations.

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 2 ½ 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 appropriate 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 (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. He later states: 'Zoning ordinances . . . **do not create lots** (emphasis in original).' *Ridge*, at 651. 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.

"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 recorded lot, and no plat has ever identified the 'merger' of Lots 11 and 12 into

---

[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 special 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*.

> 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).

II. Discussion

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. 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

---

[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.

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.

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 contiguous parcels as one parcel

---

[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 (continued...)

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).

The facts of the instant case, as one may suppose, present issues somewhat differently

---

[9](...continued)
Gas & Electric, there is no indication that the lots acquired by BG&E were undersized or otherwise substandard, in and of themselves.

[10] When we referred to the "ordinance" in this statement we were referring to the zoning ordinance, not subdivision regulations.

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 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); *Ianucci 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.

---

[11] The doctrine of zoning merger deals with zoning limitations and uses, not with title.

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 emerges for zoning purposes." *Ridge*, 352 Md. at 658, 724 A.2d at 34.

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 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

---

[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 . . . ."

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.]

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

[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.

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]

---

[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.**

. . .

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

(continued...)

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.
>
> 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

---

[14](...continued)

> 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*.

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 non-binding 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]

---

[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 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

(continued...)

Second, the respondents 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 requirements. . . ." Thus, even if the elder Duffies might have

---

[15](...continued)
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.

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.

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 therof 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); *Kelly 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 *Kelly 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."

Kelly, 304 Md. at 161, 497 A.2d at 1161-62 (citation omitted). In *Kelly*, 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 *Kelly* would not apply to all causes of action arising from a gunshot wound inflicted by a "Saturday Night Special," but would apply to the *Kelly* plaintiff as well as to other causes of action accruing after the date of the *Kelly* mandate. *Julian* and *Kelly* 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.

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] 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

---

[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 remained combined, or encumbered by the doctrine of zoning merger at the time of *Ridge*, and since, are clearly subject to its effects.

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."

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

---

[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:
>
> . . .

(continued...)

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

---

[19](...continued)

(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."

Montgomery County's 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 therof 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

---

[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."

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

---

[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.]

> 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 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

---

[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.

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.

1. What becomes of Lot 12 in the absence of Lot 11?

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

---

[24] The1955 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.

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 (N.J.Super.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 disputed that Lot 11, with an area of eight thousand square feet,

---

[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 that a building that goes right to the lot line is the same thing

(continued...)

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

---

[25](...continued)
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.

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).

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.

---

[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.

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).

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 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]

---

[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).

[30] Design-Tech obtained a building permit in December 2002. The deed from Mr. (continued...)

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

---

[30](...continued)
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.

CONSISTENT WITH OUR OPINION. COSTS TO PAID BY THE RESPONDENTS.

While those questions are limited, appellant expands in his arguments supporting the questions and argues that

> [t]he restrictions of the applicable ordinance, *taken in conjunction with the unique circumstances affecting the property,* must be the proximate cause of the hardship [Emphasis added.]

and

> Section 307.1 requires that variances only be granted in cases where special circumstances or conditions exist *that are peculiar to the land or structure* which is the subject of the variance request.... [Emphasis added.]

and

> Mr. Ward's property *is not unique* from the others in the Ruxton area. [Emphasis added.]

Although somewhat indirectly, appellant has pointed out an important aspect of the nature of the *variance* process, *i.e.*, it is at least a two-step process. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is—in and of itself—unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provision to impact disproportionately upon that property. Unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship. If that first step results in a supportable finding of uniqueness or unusualness, then a second step is taken in the process, *i.e.*, a determination of whether practical difficulty and/or[1] unreasonable hardship, resulting from the disproportionate impact of the ordinance *caused by* the property's uniqueness, exists. Further consideration must then be given to the general purposes of the zoning ordinance.

What we have recently observed in Baltimore County, and in other jurisdictions as well, and what occurred in the case at bar, is a reversal of the required process. Instead of first determining whether the subject property is unusual or unique, the zoning authorities are first determining whether a practical difficulty or unreasonable hardship exists. That determination is then used to create a unique and unusual situation as to the subject property because surrounding properties do not experience the hardship or difficulty.

In the case *sub judice*, appellee's act of constructing a building of such a height as to produce a roof pitched at the angle he desired caused the roof to extend above the fifteen-foot height limit. This fact alone was found by the Board (and affirmed by the trial court) to make the property's problems unique. Simply stated, the variance that is desired (and the difficulties that would exist if it is not granted) cannot be the source of the first prong of the variance process—an inherent uniqueness of the subject property not shared by surrounding properties.

The Facts

Appellee's contractor, Donald S. Huber and Company, Inc. (Huber), prepared plans for a garage, wine cellar, and storage area on appellee's property. Using these plans, Huber, on appellee's behalf, applied for a building permit, noting on the application that it was to construct a two story "garage and wine cellar;" "[second] story to be used as storage, [first] floor for garage and wine testing room. Cellar will be for wine." The application indicates that some prior height indication was marked over on the application for a permit and a new mark was made indicating the anticipated height of the structure to be fourteen feet. Huber admitted that he had little experience with the zoning requirements for accessory buildings and

1. Some ordinances use the conjunctive, "and," creating a requirement that both practical difficulty "and" unreasonable hardship exist. Because hardship is the most severe standard, this means that it is the standard used regardless of whether an area or use variance is sought. Some ordinances use the disjunctive, "or," to separate the two standards. These jurisdictions construe the ordinance to require the unreasonable hardship standard to be used when "use" variances are sought, because use variances are believed to be more disruptive of zoning goals and purposes, but require the lesser "practical difficulty" standard when "area" variances are sought.

was unaware of the height limitations. The County's automated tracking system, in creating its general permit application data on the subject property, noted: "Height: 14'" and "Stories: 2+ CELL."

The plans presented to the County included a "Left Side Elevation" but no height is shown on the elevation plan. Neither, as far as we have been able to find, does the plan contain a scale from which the "Left Side elevation" can be determined. The plans also include a "Front Elevation" from which actual proposed heights are also conspicuously, almost suspiciously, absent given that all other dimensions appear to be included on the plans.

We have, however, extrapolated from a horizontal distance indicated on the lower right-hand corner of the "Second Floor Plan" that fourteen feet five and one-half inches equals slightly over three and one-half inches on our ruler. It would appear that the front elevation plan indicates five and one-fourth inches on our ruler or approximately twenty-one and one-half feet in height. When measured in similar fashion, the left side elevation indicates a similar height. Thus, if the other measurements are correct, a method existed in which, even absent a scale, rough height elevations might have been discernable, though we are at a loss to understand why the elevations were not given in feet and why the plans contained no scale.[2]

After receiving a building permit, appellee proceeded to construct the building that violated the fifteen foot height requirement. During the building process, inspections were made of footings, foundations, framing, and electrical service. Final occupancy was then given. Later, the building was discovered to be twenty-one feet in height.[3] Appellee then successfully applied for an after the fact variance. Appellant appealed to the Board of Appeals and it, in a two to one decision, granted the variance that the circuit court ultimately affirmed.

The Law

The State Zoning Enabling Act was first passed in 1927 by Chapter 705 of the Acts of 1927. It has since been codified as Article 66B of the Annotated Code of Maryland (1957, 1988 Repl.Vol., 1994 Cum.Supp.). While it was generally believed that local subdivisions did not have to enact zoning regulations (and some did not), if enacted, they normally had to conform to the provisions of Article 66B.

Baltimore County, however, is a charter county and is exempt from many of the provisions in Md.Code Art. 66B. See Md. Code Art. 66B § 7.03 which provides "Except as provided in [sections not pertinent here] ... this article does not apply to the chartered counties of Maryland." Nevertheless, the language of Art. 66B relating to variances is virtually identical to the provisions of the Baltimore County ordinance.

The Article 66B provision that provides for variance authority in local zoning ordinances is section 1.00(j). As relevant to an area variance, this section defines a variance under Art. 66B as follows:

> [M]odification only of density, bulk, or area requirements in the zoning ordinance ... where *owing to conditions peculiar to the property, and not the result of any action taken by the applicant,* a literal enforcement ... would result in either, as specified by the local governing body in a zoning ordinance, unnecessary hardship or practical difficulty. [Emphasis added.]

The Baltimore County Zoning Ordinance in section 307, "Variances," provides, in relevant part, that variances from the ordinances provision, *i.e.*, height, may be granted

> 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 ... would result in practical diffi-

2. Appellee, several times in his brief, states that the plans "clearly" show the height of the building. We are tempted to respond with a short rejoinder. We resist. The heights shown on the plans are not clearly shown—they are not shown at all—but must be computed, as we have done, without the benefit of a scale by a difficult reference to dimensions that are given for horizontal distances.

3. As we have said, the application, building permit and the county data indicated that its height was to be fourteen feet.

culty or unreasonable hardship. [Emphasis added.]

Accordingly, we shall, in our discussion of cases, refer extensively to cases under the provisions relating to Art. 66B as well as cases under the Baltimore County provisions.

The Baltimore County ordinance requires "conditions ... peculiar to the land ... and ... practical difficulty...." Both must exist. But the terms "practical difficulty" and "unreasonable hardship" are stated in the ordinance disjunctively. Thus, at least as to variances other than use variances,[4] if the property is found to be unique, the practical difficulty standard would then apply. We address practical difficulty at some length hereafter. However, as is clear from the language of the Baltimore County ordinance, the initial factor that must be established before the practical difficulties, if any, are addressed, is the abnormal impact the ordinance has on a specific piece of property because of the peculiarity and uniqueness of *that* piece of property, not the uniqueness or peculiarity of the practical difficulties alleged to exist. It is only when that uniqueness is first established that we then concern ourselves with the practical difficulties (or unnecessary hardships in use variance cases).

Because we have discerned that some of the confusion in this and other jurisdictions may have arisen because of a tendency to intermingle the concepts of special exceptions/conditional uses[5] (where normally an applicant has an easier burden) and variances, we shall first discuss the cases (local as well as foreign) and treatises in which the terms are distinguished. We shall then discuss our cases and certain of those elsewhere in which the proper (and, on occasion, improper) applications of variance law have been applied. The Baltimore County statute will then be restated and applied to the facts and circumstances of the case *sub judice*.

Special Exceptions (and Conditional Uses) and Variance—Distinguished

The treatise writers define the concept as:

> A variance is an authorization for [that] ... which is prohibited by a zoning ordinance....
>
> ... [T]he difference between the two [variances and special exceptions] ... is of practical significance....
>
> "... [T]he variance and exception are designed to meet two entirely different needs. The variance contemplates a departure from the terms of the ordinance in order to preclude confiscation of property, while the exception contemplates a permitted use ... [once] the prescribed conditions therefor are met."
>
> ... [A] variance is "authority ... to use his property in a manner forbidden ...," while an exception "allows him to put his property to a use which the enactment expressly permits."
>
> ... [T]he standards for ... exceptions are usually less stringent than in the case of variances. A Maryland court summarized this difference and the reason for it.
>
> "A special exception ... is one which is controlled and ... permissible in a given zone. It is granted ... upon a finding conditions of the zoning ordinance are satisfied. A variance is authorized .... where the literal enforcement of its terms would result in unnecessary hardships."

3 Robert M. Anderson, *American Law of Zoning* § 18.02–03 (2d ed. 1977) (footnotes omitted) (quoting in part *Stacy v. Montgomery County*, 239 Md. 189, 193, 210 A.2d 540 (1965)). *See also Schultz v. Pritts*, 291 Md.

4. It is not clear that section 307, "Variances," would even permit any use variances except perhaps as to signs or parking, as the section is framed primarily in terms of "area" variance requests.

5. Matters relating to area issues are intended to be, and usually are, addressed as special exceptions. Matters relating to "use" issues are intended to be, and usually are, addressed as conditional uses. The terms, however, are, with some frequency, intermixed. Because both concepts envision that they are permitted so long as certain conditions are met, the indiscriminate use of the two terms has created little difficulty. In a pure sense, however, "conditional uses" refer to uses while exceptions normally apply to area, *i.e.*, yard, height, and density matters. In either event, conditional uses and special exceptions are permitted uses, so long as the conditions set out in the ordinance are met.

1, 11, 432 A.2d 1319 (1981); *People's Counsel v. Mangione*, 85 Md.App. 738, 748, 584 A.2d 1318 (1991).

> A distinction commonly is made between [special] exceptions ... and variances.... An "exception" ... is a dispensation permissible where a board ... finds existing those facts ... specified in the ordinance as sufficient.... "... But zoning ordinances usually provide for another kind of dispensation, ... by which a variance ... may be authorized ... where a literal enforcement ... would result in unnecessary hardship."

8 Eugene McQuillin, *Municipal Corporations* § 25.160 (3d ed. rev. 1991) (footnotes omitted).

> The general rule is that variances and exceptions are to be granted sparingly, only in rare instances and under peculiar and exceptional circumstances.... A variance should be strictly construed....

Id. § 25.162 (footnotes omitted). *See also* 5 Norman Williams, Jr. et al., *American Land Planning Law* § 133.01 (1985 rev.); 3 Arden H. Rathkopf, *The Law of Zoning and Planning* § 38.01 (4th ed. 1981); 3 E.C. Yokley, *Zoning Law and Practice* § 21–6 (4th ed. 1979); 3 Robert M. Anderson, *American Law of Zoning* § 14.55 (1968); Anderson, *supra* § 18.30 (2d ed.).

Maryland courts, and courts elsewhere, have generally made the same distinction.

> There is a marked distinction between "variance" and "special exception" in Montgomery County. A special exception ... is expressly permissible.... [A zoning board has authority to grant] variances from the strict application of this chapter when by reason of exceptional narrowness, shallowness, or shape of specific parcels of property ... or by reason of exceptional topographical conditions or other extraordinary situations ... of specific parcels of property, the strict application ... would result in ... unusual practical difficulties to, or exceptional or undue hardship....

Stacy, 239 Md. at 193, 210 A.2d 540.

Judge Hammond for the Court of Appeals noted in *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 288–91, 96 A.2d 261 (1953):

> It is the common practice to join an application for an exception with an application for a variance, leaving it to the Board to decide on which ground it will grant the application. As a result, many cases discuss exceptions and variances without differentiation, yet the two do differ, and one important distinction is that where a specific use is permitted by the legislative body in a given area ... the application can be granted without a showing of hardship or other conditions which are necessary for the allowance of a variance....
>
> ....
>
> ... There is a distinction between ... the ordinance provisions ... in those cases [Baltimore City cases] and the facts and the ordinance provision in this case....

See also our case of *Martin Marietta Aggregates v. Citizens*, 41 Md.App. 26, 34–35, 395 A.2d 179 (1978).

> A conditional use is not a variance. The primary difference between the two is that a conditional use is not an exceptional [6] use. A conditional use is a desirable use which is attended with detrimental effects which require that certain conditions be met.... While a variance is a departure from the terms of an ordinance, a conditional use is a permitted use ... so long as ... conditions are met. Therefore, conditional use grants cannot be encompassed within the ... statutory authority to grant variances.

Eberhart v. Indiana Waste Systems, Inc., 452 N.E.2d 455, 459 (Ind.App. 3 Dist.1983) (citations omitted).

In a case affirming the granting of a special exception, the court in *Ash v. Rush County Bd. of Zoning Appeals*, 464 N.E.2d 347, 350 (Ind.App. 1 Dist.1984), opined:

> A great deal of confusion has been generated ... because of the parties' failure to distinguish among rezoning amendments, variances, and special exceptions.... A variance involves a deviation ... from the

6. Exceptional is used here in its generic sense.

> legislated zoning classification.... A special exception involves a use which is permitted ... once certain statutory criteria have been satisfied. [Citations omitted.]

See also Lindquist v. Board of Adjustment, 490 So.2d 16, 18 (Ala.Civ.App.1986) ("Thus a special exception is not truly an exception to the zoning regulations at all") and ("a special exception may not be used as a substitute for a variance in order to avoid the ... burden of proving ... hardship"); *Wolfner v. Board of Adjustment*, 672 S.W.2d 147, 150 (Mo.App. 1984) ("an exception is legislatively permitted whereas a variance is legislatively prohibited, but may be allowed for special reasons"); *Urban Farms, Inc. v. Franklin Lakes*, 179 N.J.Super. 203, 431 A.2d 163, 167 (A.D.), *cert. denied*, 87 N.J. 428, 434 A.2d 1099 (1981) (special exception and variance defined—case decided on zoning estoppel basis); *A.J. Grosek & Associates v. Zoning Hearing Bd.*, 69 Pa.Cmwlth. 38, 450 A.2d 263, 265 (1982); *Bell v. City Council*, 224 Va. 490, 297 S.E.2d 810, 813–14 (1982).

VARIANCE—

The First Step—Uniqueness or Peculiarity of the Subject Property

> The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances. *See, e.g.*, A. Rathkopf, 3 The Law of Zoning and Planning § 38 (1979).

Doorack v. Board of Adjustment, 709 S.W.2d 140, 143 (Mo.App.1986). *See also McMorrow v. Board of Adjustment*, 765 S.W.2d 700, 701–02 (Mo.App.1989); *Taylor v. Board of Zoning Adjustment*, 738 S.W.2d 141, 144 (Mo.App.1987).

The requirement of uniqueness of the subject property, as we have indicated, is specifically set out for noncharter counties in the State enabling legislation, Md.Code Article 66B, and it is also set out in the Baltimore County ordinance applicable here. Additionally, it has been a necessary prerequisite almost since the inclusion of variance practice in zoning laws—and, before that, it was a part of Maryland case law. That case law is in accord generally with the case law elsewhere as we shall later discuss.

Early on, prior to the State specifically empowering local governments to delegate the granting of variances to zoning boards, the Maryland Court of Appeals found that the delegation of power to an administrative board to grant variances from the terms of a zoning "type" ordinance was improper because

> the board of zoning appeals is in effect given the power to set aside or annul the ordinance ... with no more definite standard or guide than that such action may only be taken when there are "practical difficulties or unnecessary hardships".... [U]nder our system of written constitutions it is essential that they accomplish those ... objects in conformity with the restrictions, rules, and limitations which the law itself provides and not in disregard of them.... For such phrases as "practical difficulties," "unnecessary hardships," "substantial justice," are too general and indefinite to furnish such a guide, or to mark the limits or control the exercise of the power conferred....

Jack Lewis, Inc. v. Mayor and City Council of Baltimore, 164 Md. 146, 151, 164 A. 220, *appeal dismissed*, 290 U.S. 585, 54 S.Ct. 56, 78 L.Ed. 517 (1933) (though it questioned the variance provisions under which the appellant sought a variance to operate a funeral home, it upheld the restriction prohibiting the funeral home in the first instance). In *Sugar v. North Baltimore Methodist Protestant Church*, 164 Md. 487, 165 A. 703 (1933), the Court likewise found the board's powers to grant special exceptions to permit a confectionery store where otherwise prohibited to be invalid for the same reasons.

In moving towards an acceptance of variance procedures, the Court noted that the "increasing need for garages in the cities was one of the main reasons for the rapid spread of zoning in this country." *Heath v. Mayor and City Council of Baltimore*, 187 Md. 296, 300, 49 A.2d 799 (1946). By the time of its decision in *Heath*, the Court had accepted the inevitable need for formal variance and special exception provisions, noting that "[c]haos would result if [a building engineer] were allowed to make exceptions or variances

in his own discretion." 187 Md. at 301, 49 A.2d 799. The Court further pointed to the special exception powers of the Board of Zoning Appeals as a legally acceptable alternative. The Court also observed that, in response to its decisions in *Jack Lewis* and *Sugar*, the city had amended the Baltimore City ordinance to incorporate additional standards to guide the Board. The Court then correctly defined an exception as "a dispensation permissible where the Board ... finds ... those facts ... specified in the ordinance...." *Id.* 187 Md. at 303, 49 A.2d 799.

It was then that the court, for the first time that we can discern, combined exceptions and variances when discussing conformity to the rules in regard to the grant of either. This is the first instance where the two concepts were intermingled with respect to the Baltimore City ordinance. To a certain extent, this intermingling has, from time to time, created some confusion in the cases arising out of Baltimore City. Because of the proportionately larger number of cases arising out of that jurisdiction, that confusion can be seen in subsequent cases arising from other jurisdictions. This intermingling increased over the years and, during this time, Baltimore City amended its ordinance and eventually became subject to an ordinance that does not distinguish between variances and exceptions except as to the title of their respective sections. In other words, Baltimore City, by the terms of its ordinance, applies the same standards to both variances and special exceptions; this standard is the one used elsewhere for variances. Thus, the Baltimore City special exceptions procedure is one only by title. For all practical purposes, it is also a variance procedure.

Caution should always be used therefore when a court is concerned with special exceptions, as reliance on the cases from Baltimore City may well lead one to rely on inapposite zoning concepts and cases. Judge Marbury, for the Court of Appeals, noticed this unusual circumstance in *Dampman v. Mayor and City Council of Baltimore*, 231 Md. 280, 285, 189 A.2d 631 (1963) ("In Baltimore City there appears to be no distinction between the two terms....").[7] We also attempted to indicate the problem in *North v. St. Mary's County*, 99 Md.App. 502, 510, 638 A.2d 1175 (1994), in footnote 3:

> Baltimore City's zoning code makes no distinction between special exceptions and variances. Its code treats special exceptions as if they were variances.... [I]t is generally inexact to rely on Baltimore City cases when a special exception is at issue in another jurisdiction, but would be appropriate when a variance is at issue.

In any event, as to variances, the Court of Appeals, applying the uniqueness standard, stated:

> [I]t was incumbent upon the Marinos to have shown ... (ii) that the difficulties or hardships *were peculiar to the property in question in contrast with those of other property owners in the same district, and* (iii) that the hardship was not the result of the applicants' own actions.

Marino v. Mayor and City Council of Baltimore, 215 Md. 206, 218, 137 A.2d 198 (1957) (emphasis added). *Salisbury Bd. of Zoning Appeals v. Bounds*, 240 Md. 547, 214 A.2d 810 (1965), also involved the completion of structural improvements in violation of an ordinance and a subsequent request for an after the fact variance. The Court opined:

> The only evidence before the Board as to hardship or injustice involving the property was the fact that repairs and alteration work had been substantially completed before an application for either a variance or a building permit had been made and that what had been done could not be undone without financial hardship to appellees....

240 Md. at 554, 214 A.2d 810. The Court first quoted from 2 Rathkopf, *The Law of Zoning and Planning*, § 48–1, and then noted:

> "Where property, due to unique circumstances applicable to it, cannot reasonably be adopted to use in conformity with the restrictions ... hardship

7. Another typical Baltimore City case in that regard is *Easter v. Mayor and City Council of Baltimore*, 195 Md. 395, 400, 73 A.2d 491 (1950), where the Court noted "facts to justify an exception ... [show] that the hardship affects the particular premises and is not common to other property in the neighborhood." This is a variance standard.

arises.... The restrictions of the ordinance, taken in conjunction with the unique circumstances *affecting the property* must be the proximate cause of the hardship.... [T]he hardship, arising as a result of the act of the owner ... will be regarded as having been self-created, barring relief...."

The instant case fits squarely within the above general rule.... [I]f the appellees had used proper diligence ... and then made accurate measurements ... [the resultant hardship could have been avoided]. The hardship ... was entirely self-created....

Id. at 554–55, 214 A.2d 810 (emphasis added). Had Ward's contractor, Huber, in the case at bar, checked the ordinance's height limitation, the situation that now exists could easily have been avoided. *See also Burns v. Mayor and City Council of Baltimore*, 251 Md. 554, 559, 248 A.2d 103 (1968); *Pem Constr. Co. v. Mayor and City Council of Baltimore*, 233 Md. 372, 378, 196 A.2d 879 (1964) ("[There was] no evidence of any limitation ... by ... size of yards, irregularity of shape of land or buildings, topography, grade or accessibility"....); *Mayor and City Council v. Sapero*, 230 Md. 291, 186 A.2d 884 (1962); *Frankel v. Mayor and City Council of Baltimore*, 223 Md. 97, 104, 162 A.2d 447 (1960) ("It was incumbent ... to show that the hardship ... affected his particular premises and was not ... common to other property in the neighborhood.... [H]e met the burden...."); *Park Shopping Center, Inc. v. Lexington Park Theatre Co., Inc.*, 216 Md. 271, 277–78, 139 A.2d 843 (1958).

Secs. 14(b), 14(d) and 16 ... have been held not to authorize a granting for the mere convenience to the owner but to require a showing of urgent necessity, hardship peculiar to the particular property....

Mayor and City Council v. Polakoff, 233 Md. 1, 9, 194 A.2d 819 (1963).

The Court in *Kennerly v. Mayor and City Council of Baltimore*, 247 Md. 601, 606–07, 233 A.2d 800 (1967), dismissed an appeal of the grant of a height variance for lack of standing, but, in doing so, nevertheless opined:

Our dismissal of the appeal is not to be taken as showing that if the appeal properly was here we would affirm the Board. To grant a variance the Board must find from the evidence more than that the building allowed would be suitable or desirable or could do no harm or would be convenient for or profitable to its owner. The Board must find there was proof of "*urgent necessity, hardship peculiar to the particular property*...." ... Specific reasons, specific bases to support the finding must be revealed by the evidence before the Board. [Emphasis added, citation omitted.]

In *McLean v. Soley*, 270 Md. 208, 210, 310 A.2d 783 (1973), one of the few reported Maryland appellate cases approving of a variance, the applicant for an area variance in connection with an application to build forty units asserted that it was his desire to retain the "present trees and natural growth, terrain, and topography which provides excellent drainage and natural screening and beauty." There was evidence that, if the applicant destroyed the existing trees, he could have built 330 units without needing a variance. It was established that a number of attractive trees along the western boundary would have to be destroyed absent a variance. The Court noted that "there was considerable evidence to show the natural beauty of these trees and their importance to the ecology." 270 Md. at 211, 310 A.2d 783. The Court, seeming to acknowledge that it was making a detour from Maryland variance law, opined:

Given the unique facts of this case, we think those criteria are met by this evidence: That the construction of the buildings in strict compliance with the sideyard requirements would result in the destruction of the trees; that the preservation of trees in the construction of the first section had contributed to full occupancy ... that the benefits of retaining the trees would accrue to the general public; that greater density would result from strict compliance....

....

Concededly, this is a close case, but it is nevertheless sufficient....

Id. at 215, 310 A.2d 783. We would have to agree that it is a close case. The opinion does not make mention that the practical difficulty resulted from the fact that the uniqueness of the property caused the ordinance to have a different impact on it than on adjoining property. Also, there was no evidence that the neighboring properties were in any way different than the subject property. If the presence of trees on a particular lot was unique, that might have been a basis, but the court did not make that connection. Thus, this case, coupled with *Loyola Federal Savings & Loan Assoc. v. Buschman*, 227 Md. 243, 176 A.2d 355 (1961), and *Frankel v. Mayor & City Council of Baltimore*, 223 Md. 97, 162 A.2d 447 (1960), is among the affirmances of variances that we perceive to be, at best, extremely close calls and, as we shall indicate, exceedingly rare.

The Court in the sludge storage case of *AD + Soil, Inc. v. County Comm'rs*, 307 Md. 307, 513 A.2d 893 (1986), reiterated the standards applicable to variances when it affirmed a trial court's affirmance of a zoning agency's denial of an area and other variances. The variances were necessary to satisfy the requirements for a conditional use permit to operate the sludge storage and distribution operation. The Court of Appeals noted that the trial court, in affirming the agency's denial of a variance, agreed that "the only hardships facing Ad + Soil were of its own making." 307 Md. at 317, 513 A.2d 893. After addressing the important preemption issues therein raised, the Court directed its attention to the area variances sought and, referring to the Board's findings, stated that, in Queen Anne's County, the Board's authority to grant variances was limited to a situation where "there are exceptional or extraordinary circumstances or special conditions applying to the property in question ... that do not apply generally to other properties ... in the ... district." *Id.* at 340, 513 A.2d 893. The Court concluded:

> The board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted, and, in any event, that it was not the result of exceptional or extraordinary *characteristics* of the *land itself* and therefore not the kind of hardship cognizable under the Zoning Ordinance....
>
> We think the Board's decisions ... reflect no error of law.

Id. at 340–41, 513 A.2d 893 (emphasis added).

In *Red Roof Inns, Inc. v. People's Counsel*, 96 Md.App. 219, 224, 624 A.2d 1281 (1993), after noting the standard of review, we said:

> In reviewing the zoning authority's decision, the court must consider all of the evidence in the administrative record. The reviewing court's role, however, is confined to determining the legality of the procedure employed and whether the decision was fairly debatable in light of the evidence adduced before the zoning authority.
>
> The role of this Court "is essentially to repeat the task for the circuit court; that is, to be certain the circuit court did not err in its review." [Citations omitted.]

We then discussed the legal standards to utilize in respect to variances construing the same statute that applies in the case at bar, saying that variances may be granted "where special circumstances or conditions exist *that are peculiar to the land* ... and where strict compliance ... would result in practical difficulty...." *Id.* (emphasis added). We noted that, in regards to area variances, we were only concerned that the conditions peculiar to the land in question presented practical difficulties. In concluding that the Board had not acted wrongly in denying the variance at issue (a sign variance), we noted: "Zoning matters, including sign variance requests, depend upon the unique facts and circumstances *of a particular location* and must be analyzed individually." *Id.* at 227–28, 624 A.2d 1281 (emphasis added).

In *North v. St. Mary's County*, 99 Md.App. at 512, 638 A.2d 1175, we held that the ordinance there required a finding that "special conditions or circumstances exist that are peculiar to the land...." We there stated that, in the zoning context, the term "unique" has a customized meaning:

> In the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon neighboring proper-

ty. "Uniqueness" of a property for zoning purposes requires that the subject property have an inherent characteristic not shared by other properties in the area, *i.e.*, its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to such characteristics as unusual architectural aspects and bearing or party walls.

. . . .

In some zoning ordinances, the specialness or uniqueness requirement is more explicitly set out. The Court of Appeals, in *Ad + Soil, Inc. v. County Comm'rs*, 307 Md. 307, 339, 513 A.2d 893 (1986), quoted from the Queen Anne's County ordinance:

> Where by reason of the exceptional narrowness, shallowness, or unusual shape of a specific . . . property . . ., or by reason of exceptional topographic conditions or other extraordinary situation or special condition of . . . property . . . the literal enforcement . . . would make it exceptionally difficult . . . to comply . . . and would cause unwarranted hardship and injustice. . . .

The general thrust of the meaning of special features or uniqueness of property for variance purposes relates to the type of uniqueness discussed by the Court in *Ad + Soil, Inc.*

Id. at 514–15, 638 A.2d 1175.

One indication of the general rule that variances are rarely appropriate is that, in our review of the reported Maryland cases since the creation of the state zoning enabling act in 1927, we have found only five reported Maryland cases in which the grant of a variance has been affirmed or the denial of a variance has been reversed. The cases are *McLean, supra; Stacy, supra; Sapero, supra; Loyola Federal Savings & Loan Assoc., supra* (a Baltimore County case); and *Frankel, supra.* All of these cases were decided over a twelve-year period and the last of them was decided more than twenty-one years ago. Three of them, *Frankel, Loyola,* and *McLean* appear to be somewhat at odds with accepted Maryland law. *McLean* was described by the Court as a "[c]oncededly . . . close case. . . ." *Frankel* has caused some confusion in that it has later been viewed by some as lowering the standards for the granting of variances. *Mayor and City Council of Baltimore v. Borinsky*, 239 Md. 611, 212 A.2d 508 (1965), involved one of the same issues that was presented in *Frankel, i.e.*, whether a zoning restriction so compromised the use of property as to constitute an unconstitutional taking absent the granting of a variance—a variance Frankel was granted. The Court noted that the trial court had found *Frankel* controlling. The Court of Appeals disagreed. The Court acknowledged that Borinsky had the "same expert witness," "he was asked the same general questions . . . and gave the same answers," and that the "economic suicide" present in *Frankel* was "doubly true in this instance." *Id.* 239 Md. at 624, 212 A.2d 508. The Court, nevertheless, made a factual distinction and declined to apply *Frankel.* Judge Barnes opined in dissent that, based on what the Court had done in *Frankel,* the facts for variances were stronger in *Borinsky. Sapero* and *Stacy* met traditional standards for the granting of variances. *Frankel, Loyola,* and *McLean* were anomalous cases.

In any event, nowhere in those five cases, or any others, has the Court of Appeals ever changed the Maryland rule relating to uniqueness and peculiarity of the subject property.

Cases from other jurisdictions are generally in accord.

The Supreme Court of Nebraska in *Bowman v. City of York*, 240 Neb. 201, 482 N.W.2d 537 (1992), reversed the grant of a variance for a structure after, pursuant to the variance, the structure was constructed. Citing an earlier Nebraska case, *Frank v. Russell*, 160 Neb. 354, 70 N.W.2d 306 (1955), and noting that the Nebraska statute had been made more specific in light of *Frank*, the court said 482 N.W.2d at 545: "[A] variance [may be granted] . . . only if strict application of the regulation, because of the unusual physical characteristics of the property existing at the time of the enactment, [of

the zoning ordinance] 'would result in peculiar and exceptional practical difficulties ... or exceptional ... hardships....'"

In *Shafer v. Zoning Bd. of Appeals*, 24 Mass.App. 966, 511 N.E.2d 635 (1987), the property owner had conveyed away several parcels from a larger tract leaving a parcel, the size of which was prohibited under the ordinance. The Board granted him a variance, the trial court reversed it, and the appellate court affirmed the trial court. The appellate court reiterated the trial court's finding:

> There was no evidence ... regarding "soil conditions, shape or topography of [the property] ... especially affecting [the property] but not affecting generally the zoning district in which it is located".... The ... argument that the insufficient width ... constitutes a special circumstance of "shape" is unpersuasive, particularly as the deficiency is one which they themselves produced through subdivision of the land they originally owned at a time when the 125 foot width requirement pertained.

511 N.E.2d at 636–37 (citation omitted). *See also VanLandschoot v. City of Mendota Heights*, 336 N.W.2d 503, 509 (Minn.1983) ("the plight of respondent was not due to circumstances 'unique to his property.' ... [S]ome of the problems were the result of illegal acts of respondent's predecessor in title, of which respondent was aware....")

In *St. Clair v. Skagit County*, 43 Wash. App. 122, 715 P.2d 165 (1986), a landowner applied for a variance of a lot width requirement on the grounds that the county had given him a permit to install a trailer on her fifty-foot wide lot even though the ordinance mandated a width of at least seventy feet. The zoning board, approving the variance, determined that she had applied for the permit in good faith. The Skagit County ordinance, as does the instant statute, provided that a variance had to be "because of special circumstances applicable to subject property, including size, shape, topography, location or surroundings...." 715 P.2d at 167. The code also required that an application for a variance include a narration that "special conditions and circumstances exist ... peculiar to the land...." *Id.* The court then noted that the applicant had done there what Ward attempts to do in the case *sub judice:*

> [The appellant] relied primarily upon the fact that the County issued a building permit ... and that she acted in good faith....

Id. at 168. The court responded: "Reasons for a variance must be reasons pertaining to the property itself.... Evidence of hardship or difficulty that will support a variance must relate to the land itself and not to the owner-applicant." *Id.* (citation omitted). The court added that "the 75-foot width and aggregation requirements do not put a burden on [appellant's] property which does not apply to other properties in the vicinity...." *Id.* at 169. In the case *sub judice*, the Baltimore County fifteen foot height limitation for accessory buildings does not affect Ward's property alone; it applies to all of the properties in the neighborhood.

In *Walkingstick v. Board of Adjustment*, 706 P.2d 899 (Okla.1985), the zoning board, having failed to comply with notice requirements, granted a permit for an oil drilling well. Amoco had expended considerable sums before the board's omission was discovered. The relevant part of the ordinance involved was similar to the one in the instant case. After the court noted that the hardships alleged were not peculiar to the subject site, it stated the general rule that "a hardship created by the owner ... constitutes no valid basis for a variance.... [D]eprivation of an advantage does not constitute an unnecessary hardship." 706 P.2d at 904. It concluded:

> The need to expose tools to the ravages of the environment may be peculiar to Amoco. But, the language of section 44–107(2) [as does the language in the Baltimore County ordinance] clearly refers to conditions peculiar to the property, *not to activities peculiar to the owner of such property.*

Id. at 904–05 (emphasis added).

In a decision somewhat difficult to understand, which carried the variance limitations to the extreme and predated the 1992 case of *Lucas v. South Carolina Coastal Council*,

— U.S. ——, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992), but had facts similar to *Lucas*, the Supreme Court of Delaware in *Baker v. Connell*, 488 A.2d 1303 (Del.Supr.1985), upheld a trial court's reversal of the grant of a variance even though the ordinance limited the use of applicant's entire lot to open space only. The zoning board had found that the property was unique because the entire property was zoned open space and *nothing* could be constructed there. The board permitted a variance to allow two semi-detached dwellings. The trial court reversed on the grounds that the 0–1 zoning did not make the property unique. The trial court noted that a need for a variance arises only when the plight of the property is unique in that it cannot reasonably be put to a conforming use. The trial court found that there was no evidence that the property could not conform to open space land. The appellate court affirmed, stating:

> [F]inancial return ... alone, never justifies a variance. As to the unique character of the land, the mere fact that it sits entirely within the 0–1 zone does not make it unique. There is no evidence that this lot is the only one of its type in Rehoboth. Nor does it become unique because it adjoins the R–2 zone containing multi-family units.

488 A.2d at 1309. Whether this Delaware opinion remains viable in light of *Lucas* and *Dolan v. City of Tigard*, — U.S. ——, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994), is doubtful.

The case of *Xanthos v. Board of Adjustment*, 685 P.2d 1032 (Utah 1984), involved a factual scenario similar to the case *sub judice*. The Xanthoses received notice that they were in violation of the city zoning code. The building of a duplex by the Xanthoses caused a pre-existing dwelling to lose frontage on a public street and to violate set-back and parking requirements. The Xanthoses requested variances in reference to the violations. The court initially noted that, "in order to justify a variance ... the applicant [must] show ... that there are special conditions with regard to the property...." 685 P.2d at 1035–36. The court continued:

> What must be shown ... is that the property itself contains some special circumstance that relates to the hardship complained of....
>
> ... The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of property itself. Simply having an old building on land upon which a new building has been constructed does not constitute special circumstances.
>
> ....
>
> Hardship is not demonstrated by economic loss alone. It must be tied to the special circumstances, none of which have been proven here. Every person requesting a variance can indicate some economic loss. To allow a variance anytime any economic loss is alleged would make a mockery of the zoning program. Further, the Xanthos[es] brought their losses upon themselves. The application affirmatively alleged ... that no dwelling existed....[8]

Id. at 1036–37 (footnotes omitted).

[1] The Xanthoses also argued, in a fashion similar to the argument in the case *sub judice*, that the city should be estopped because the plot plan submitted to the city showed the dwelling and the fact that the city failed to realize it misled them to their detriment. The court noted, in rejecting the Xanthoses' argument: "[T]o hold that the city should have been put on notice ... in the face of an affirmative statement that no such dwelling existed, would put a premium on prevarication ... and ... shift the burden of proof in variance cases to the city. None of these results is acceptable." *Id.* at 1038. In the case at bar, appellants' application for the permit contained a clear statement that he would comply with the zoning requirements. His plan's elevation schematics contained neither elevation dimensions nor scale. While the zoning inspectors might have been able to extrapolate dimensions from other schematics, they certainly were not required

8. The application and plans in the case *sub judice* were, at best, vague and unclear as to the height of the structure.

to do so in light of appellants' affirmative statement of compliance.

See also Chambers v. Smithfield City, 714 P.2d 1133, 1135 (Utah 1986), where the court stated: "[T]here is no evidence of special conditions attached to the property itself which do not also attach to other property in the vicinity. The property is neither unusual topographically or by shape, nor is there anything extraordinary about the piece of property itself." (Footnote omitted.) In a case involving the conversion of a garage into a dwelling, the Supreme Court of Virginia in *Prince William County Bd. of Zoning Appeals v. Bond*, 225 Va. 177, 300 S.E.2d 781 (1983), reversed a trial court decision reversing a zoning board's denial of a variance. The court noted that the conversion was underway when the Bonds discovered a need and applied for a variance. It opined that, in order to grant a variance, the hardship allegedly created by the ordinance must "not [be] shared generally by other properties in the same zoning district and the same vicinity." 300 S.E.2d at 783. It then held: "The limitation imposed by the zoning ordinance is one shared by all property owners in the A-1 district." *Id.*

The court in *Richardson v. Town of Salisbury*, 123 N.H. 93, 455 A.2d 1059, 1061 (1983), noted:

> We have defined unnecessary hardship as follows:
>
> > "A hardship exists only if due to special conditions *unique* to a *particular parcel of land*, the ordinance unduly restricts the use.... The hardship must relate to the special character of the land rather than to the personal circumstances of the landowner." [Emphasis added.]

See also Margate Motel, Inc. v. Gilford, 130 N.H. 91, 534 A.2d 717 (1987); *Ryan v. City of Manchester Zoning Bd. of Adjustment*, 123 N.H. 170, 459 A.2d 244 (1983).

In *Sibley v. Inhabitants of the Town of Wells*, 462 A.2d 27, 30-31 (1983), the Supreme Judicial Court of Maine upheld the denial of a variance, holding:

> [T]he need for a variance [must be] due to the unique circumstances of the property and not to the general conditions in the neighborhood;
>
> ....
>
> ... [T]he hardship [must] not [be] the result of action taken by the appellant or a prior owner.
>
> ....
>
> ... However, the mere fact that the lot is substandard is not a unique circumstance; all the undeveloped lots in that neighborhood are of substandard size....
>
> ... However, when a landowner purchases land with actual or constructive knowledge of the zoning restrictions, he may not be granted a variance on the grounds of undue hardship.

See also Williams v. Salem Township, 92 Pa.Cmwlth. 634, 500 A.2d 933 (1985) *alloc. denied*, 516 Pa. 615, 531 A.2d 781 (1987); *Hersh v. Zoning Hearing Bd. of Marlborough Township*, 90 Pa.Cmwlth. 15, 493 A.2d 807 (1985); *Serban v. Zoning Hearing Bd. of the City of Bethlehem*, 84 Pa.Cmwlth. 558, 480 A.2d 362 (1984) (burden sustained); *Davis v. Zoning Bd. of Adjustment*, 78 Pa. Cmwlth. 645, 468 A.2d 1183 (1983) (burden sustained); *Malakoff v. Zoning Bd. of Adjustment*, 72 Pa.Cmwlth. 109, 456 A.2d 1110 (1983); *Immordino v. Zoning Hearing Bd.*, 65 Pa.Cmwlth. 79, 441 A.2d 818, 821 (1982) ("[P]roperty owner must sustain the heavy burden of proving that the zoning ordinance imposes an unnecessary hardship *which is unique to his particular property*....") (Emphasis added.)

> A prerequisite to the granting of a hardship zoning variance is the presence of an exceptional and unique hardship to the individual landowner, *unique to that parcel* and not shared by other property owners in the area.... Indialantic's zoning restrictions are common difficulties shared by all other oceanfront lot owners in the area, and are therefore not the unique hardship required to support a variance.

Town of Indialantic v. Nance, 400 So.2d 37, 40 (Fla.App. 5th Dist.1981), *aff'd*, 419 So.2d 1041 (1982) (citation omitted). *See also Fort Lauderdale Bd. of Adjustment v. Nash*, 425 So.2d 578, 579 (Fla.App. 4th Dist.1983); *City of Naples v. Clam Court Marina Trust*, 413 So.2d 475, 477 (Fla.App. 2d Dist.1982); *Lake-*

shore Property Owners Ass'n v. City of New Orleans Zoning Bd. of Appeals and Adjustments, 481 So.2d 162, 168 (La.App. 4th Cir. 1985), *cert. denied*, 484 So.2d 674 (1986).

We mentioned earlier that there are very few Maryland cases upholding the grant of a variance (or the reversal of a denial). We likewise note that this is also the case in foreign jurisdictions. We mentioned two cases from Pennsylvania above where this occurred. We now discuss several others.

A minimum lot area variance was affirmed in *Russell v. District of Columbia Bd. of Zoning Adjustment*, 402 A.2d 1231 (D.C.App. 1979), where, due to the size of the lot, no viable economical use of the property could be had without the variance. It was determined that the lot was the only lot in the area that had been subdivided into smaller lots prior to the adoption of the zoning ordinance. The Supreme Court of New Hampshire reversed the denial of a variance in *U-Haul Co. of New Hampshire & Vermont, Inc. v. City of Concord*, 122 N.H. 910, 451 A.2d 1315, 1317 (1982), saying: "The location and characteristics of the property involved create greater security requirements ... than ... other property in the area because the parcel ... is less central ... less populated and ... less serviced by law enforcement patrols. This hardship arises from the uniqueness of the building and the land itself." In *Atwood v. City of Portland*, 55 Or.App. 215, 637 P.2d 1302 (1981), *cert. denied*, 292 Or. 722, 644 P.2d 1131 (1982), application for a variance was granted and affirmed on appeal in part because the site was a steep and rocky slope, the former site of a landfill. *See also Higgins v. Township of Radnor*, 13 Pa.Cmwlth. 195, 318 A.2d 761, 763 (1974).

The treatise writers also are in accord with the rule that variances should only be granted when the uniqueness or peculiarity of a subject property is not shared by neighboring property and where the uniqueness of that property results in an extraordinary impact upon it by the operation of the statute, thus creating undue difficulty (or unnecessary hardship in respect to use variances).

> It is *fundamental* that the difficulties or hardships must be unique to justify a variance; they must be peculiar to the application of zoning restrictions *to particular property* and not general in character.... [I]t is not uniqueness of the plight of the owner, but uniqueness of the land causing the plight, which is the criterion. If the hardship is common to the whole neighborhood, it may be ground for an exception or special use permit [if the statute so provides].... [T]he hardship [in order to justify a variance, however,] ... must relate to the particular property of the applicant....

McQuillin, *supra* § 25.167 (emphasis added, footnotes omitted).

> [I]t is held that a variance may be granted only for hardship which relates specifically to the applicant's land. Thus, a landowner was not entitled to a variance to relieve his land from a restriction which applied equally to all lots of similar size.

Anderson, *supra* § 14.55 (1968).

> It follows that the unnecessary hardship ... must relate to the land, not to the applicant-owner. Hardship which is merely personal to the current owner of real property will not justify the granting of a variance....
>
> In each case [where the variance was denied], the hardship results from an error on the part of the landowner, not from an unduly severe impact of the regulations upon the land in question....
>
> ....
>
> Reviewing a wide variety of variance applications based upon reasons personal to the applicant, the courts have consistently held that such personal difficulties do not constitute unnecessary hardship.

Anderson, *supra* § 18.30 (2d ed.) (footnotes omitted).

> The most important part of [the] law of variances depends upon a distinction between two kinds of hardship. In one type of case, hardship in developing a given lot ... arises from circumstances peculiar to that lot ...; and in that case the appropriate remedy is ... a variance.... In the other types of cases, the hardship ... may arise because of conditions which are general in the neighborhood; ... it is often

o the applica-
'o *particular*
:haracter....
plight of the
land causing
:rion. If the
ole neighbor-
exception or
ıtute so pro-
[in order to
... must re-
of the appli-

hasis added,

y be granted
s specifically
a landowner
to relieve his
ıich applied
size.

ıry hardship
not to the
ıich is mere-
vner of real
ranting of a

ariance was
'om an error
not from an
regulations

of variance
ıns personal
ıave consis-
l difficulties
hardship.
.) (footnotes

[the] law of
tinction be-
In one type
a given lot
peculiar to
ıe appropri-
... In the
ıip ... may
ch are gen-
it is often

held that the appropriate remedy is a change in the zoning.... [T]he courts have usually (but not always) held that variances are inappropriate in that situation.

Williams, *supra* § 142.

The great strengthening of the criteria for granting variances, ... has thus been particularly evident in the number of cases emphasizing the requirement that hardship must arise from circumstances unique to the particular lot in question.... Moreover, the courts have again emphasized that a variance granted to take care of some hardship personal to the applicant is not a unique hardship resulting from circumstances peculiar to the piece of land.

Id. § 142.06. *See also* Rathkopf, *supra* § 38.04; Yokley, *supra* § 21–6. ("The burden of proof is on the applicant to establish that his land is uniquely affected resulting in unnecessary hardship.").

Yokley quotes from *Taxpayers Association v. Board of Zoning Appeals*, 301 N.Y. 215, 93 N.E.2d 645, 647 (1950):

[T]he record does not show that the property suffers a unique or singular disadvantage, not common to other property in the district, through the operation of the zoning ordinance. Here, the hardship, if any, is general and characteristic of the entire area, and the remedy lies in a revision of the zoning ordinance through legislative action, not by the granting of a variance to a single property owner.

Yokley, *supra* § 21–6.

[2] We conclude that the law in Maryland and in Baltimore County under its charter and ordinance remains as it has always been—a property's peculiar characteristic or unusual circumstances relating only and uniquely to that property must exist in conjunction with the ordinance's more severe impact on the specific property because of the property's uniqueness before any consideration will be given to whether practical difficulty or unnecessary hardship exists. Before applying the facts of the instant case to the law and, thus, resolving the case *sub judice*, we must touch upon two other aspects of the process, *i.e.*, the self-inflicted injury and the zoning authorities' acquiescence in issuing a building permit based on plans that left unclear the elevation of the structure and the subsequent inspection.

Self-Inflicted Hardship

[3] We have before referred to *Marino v. Mayor and City Council of Baltimore*, 215 Md. 206, 137 A.2d 198. There, the Court said, "it was incumbent [on the applicant] to [show] ... that the hardship was not the result of the applicants' own actions." *Id.* at 218, 137 A.2d 198. The Court of Appeals noted in *AD + Soil, Inc. v. County Comm'rs*, 307 Md. at 340, 513 A.2d 893:

The essence of AD + Soil's argument ... is that the setback requirements ... would cause ... unwarranted hardship because it had obtained its first state permit and constructed its transfer station before it learned of these local requirements.... The Board declined to grant the variances, concluding that Ad + Soil's "hardship" was self-inflicted ... and therefore not the kind of hardship cognizable under the Zoning Ordinance.

The Court affirmed the Board. Foreign jurisdictions are generally in accord. *See Pollard v. Zoning Bd. of Appeals*, 186 Conn. 32, 438 A.2d 1186, 1190 (1982) ("'[S]elf-inflicted or self-created hardship ... is never considered proper grounds for a variance.' ... '[W]here the applicant ... creates a nonconformity, the board lacks power to grant a variance.'") (citations omitted); *Volkman v. City of Kirkwood*, 624 S.W.2d 58 (Mo.App. 1981); *Matter of Schrader*, 660 P.2d 135 (Okl. 1983); *Ex Parte La Quinta Motor Inns, Inc. v. Greenville County Bd. of Zoning Appeals*, 279 S.C. 598, 310 S.E.2d 438 (App.1983); *McClurkan v. Board of Zoning Appeals*, 565 S.W.2d 495 (Tenn.1977); *Steele v. Fluvanna County Bd. of Zoning Appeals*, 246 Va. 502, 436 S.E.2d 453, 456 (1993) ("[T]he hardship, if any, was self-inflicted. The placement of the improvements ... was within the control of the Garretts and their contractor, Raintree."). *See also Shafer, supra; VanLandschoot, supra; Walkingstick, supra; Xanthos, supra; St. Clair, supra.* Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, ef-

fectively not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

The Granting of the Permit

In *Francis v. MacGill*, 196 Md. 77, 75 A.2d 91 (1950), a property owner sought equitable injunctive relief. The facts were that while the enactment of a zoning ordinance was pending, the property owner obtained a building permit to construct that which would not be permitted after the enactment of the ordinance. After the ordinance was enacted, the owner constructed, pursuant to the permit, a building that had become prohibited by reason of the passage of the ordinance. The Court noted:

> "Adoption of zoning ordinance *ipso facto* revokes permit for construction ... where no construction has begun."
>
> ... They completely ignored the Zoning Regulations, and they were engaged in an unlawful act.

196 Md. at 85, 75 A.2d 91 (citation omitted). The Court affirmed the revocation of the building permit.

The Court noted, pursuant to a timely appeal, in *Mayor and City Council of Baltimore v. Shapiro*, 187 Md. 623, 634, 51 A.2d 273 (1947), *overruled on other grounds in Nutter v. Non-Profit Housing Co.*, 230 Md. 6, 185 A.2d 360 (1962), where the ordinance was changed prior to commencement of construction under a permit, and where the change made that use, which was previously permitted, prohibited, that the "mere issuance of a permit ... does not create a vested right, or estop[9] the municipal authorities from revoking it." In a case for the issuance of a mandatory injunction that involved an attempt to obtain a permit for what was alleged would be a nonconforming use the court opined in *Board of County Comm'rs v. Snyder*, 186 Md. 342, 347, 46 A.2d 689 (1946): "No permit was issued, and if it had been, it would have conferred no vested right, nor would it have created an estoppel."

In the mandamus case of *County Comm'rs v. Ward*, 186 Md. 330, 340, 46 A.2d 684 (1946), the Court held:

> The Board ..., as an administrative body, was bound to follow the regulations it adopted, in the exercise of ... delegated legislative power. The fact that it might have rezoned ... does not alter its obligation to adhere to existing regulations....

In the case of *Lipsitz v. Parr*, 164 Md. 222, 164 A. 743 (1933), a case seeking injunctive relief by way of a restraining order, a city officer mistakenly issued a building permit for an ice factory when the statute prohibited ice factories. The Court there held:

> A municipality may be estopped by the act of its officers if done within the scope and in the course of their authority or employment, but estoppel does not arise should the act be in violation of law.... [T]he ordinance forbade the officials ... to grant the permit which the plaintiff asked and obtained....
>
> ... [I]t was therefore unlawful for the officers ... to grant the permit, and it would be unlawful for the licensee to do what the purporting permit apparently sanctioned. A permit thus issued ... does not ... prevent the permit from being unlawful nor from being denounced by the municipality because of its illegality.... *Every one dealing* with the officers and agents of a municipality *is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled* by their acts when done without legal authority.

So, even where a municipality has the power, but has done nothing, to ratify or sanction the unauthorized act ... it is not estopped by the unauthorized or wrongful act of its officer ... in issuing a permit that is forbidden by the explicit terms of an ordinance.... *Valentine v. Rds. Di-*

9. The applicability of the "doctrine of zoning estoppel" has still not been accepted (or rejected) by the Court of Appeals in spite of the opportunity presenting itself to that Court as recently as our case of *Offen v. County Council*, 96 Md.App. 526, 625 A.2d 424 (1993), *rev'd in part*, 334 Md. 499, 639 A.2d 1070 (1994).

rectors, 146 Md. 199, 206 [126 A. 147] [(1924)]. . . . [Citations omitted, emphasis added.]

164 Md. at 227–28, 164 A. 743.

The Court cited *Lipsitz* in *Inlet Associates v. Assateague House Condominium Assoc.*, 313 Md. 413, 545 A.2d 1296 (1988), a case seeking specific performance and injunctive relief, and also cited *City of Hagerstown v. Long Meadow Shopping Center*, 264 Md. 481, 287 A.2d 242 (1972), a case of a timely appeal of the denial of a building permit. In *Inlet Associates*, the Court opined that "[c]onsequently, '[e]veryone dealing with officers and agents of a municipality is charged with knowledge of the nature of their duties and the extent of their powers, and therefore such a person cannot be considered to have been deceived or misled by their acts when done without legal authority.'" 313 Md. at 437, 545 A.2d 1296. The Court added: "[T]he doctrine of equitable estoppel 'cannot be . . . invoked to defeat the . . . enforcement of . . . ordinances, because of an error or mistake committed by one of its officers . . . which has been relied on by the third party to his detriment.'" *Id.*

[4] Accordingly, it appears clear that the mistake of a county official cannot be the "practical difficulty" unique to the subject property required in order to authorize the grant of the variance sought and obtained by Ward.

The authorities elsewhere are in accord.

The master also erred in finding that unnecessary hardship resulted from the plaintiffs' reliance upon representations by the selectmen. This finding disregards the principal that hardship relates to the special character of the *land*, not to the circumstances of the *owner*.

Richardson, 455 A.2d at 1062.

[R]elator argues the Board should be estopped from denying the height variance because a city building inspector visited the premises several times and observed the construction taking place but made no complaint. . . .

In any case there is no authority on the part of a building inspector to grant a variance. . . .

Katz v. Board of Zoning Adjustments, 232 So.2d 546, 548 (La.App. 4th Cir.1970). *See also Klanke v. Zoning Bd. of Adjustment*, 83 Pa.Cmwlth. 441, 477 A.2d 907, 909 (1984), and *Walkingstick, supra; Xanthos, supra; and St. Clair, supra.*

Resolution

We resolve here only the issue of the granting of the variance sought and applied for by Ward.

[5] There was no evidence submitted to the Board that the subject site was in any way peculiar, unusual, or unique when compared to other properties in the neighborhood such that the ordinance's height restriction's impact upon the subject property would be different than the restriction's impact upon neighboring properties. In essence, the impact would be the same. The first step of the variance process was thus not met. Had there been evidence before the Board indicating that the subject property was peculiar or unusual and, thus, disproportionately affected by the height restriction, then we might have been able to conclude that the Board was correct. There was, however, no such evidence presented. Therefore, the Board's granting of the variance was arbitrary and illegal.

It is not the purpose of variance procedures to effect a legalization of a property owner's intentional or unintentional violations of zoning requirements. When administrative entities such as zoning authorities take it upon themselves to ignore the provisions of the statutes enacted by the legislative branch of government, they substitute their policies for those of the policymakers. That is improper. We shall reverse.

JUDGMENT REVERSED; COSTS TO BE PAID BY APPELLEE.

building permit for accessory building did not support grant of variance sought.

Reversed.

1. Zoning and Planning ⚷461

City was not estopped from refusing to grant variance from height restriction on auxiliary building merely because owner submitted and obtained construction permit, at least where owner's plan's elevation schematics contained neither elevation dimensions nor scale and elevation was not stated; while zoning inspectors might have been able to extrapolate dimensions from other schematics, they were not required to do so in light of owner's affirmative statement in application of compliance with zoning requirements. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

2. Zoning and Planning ⚷496

Under law on variances in Maryland and under Baltimore County's charter and ordinance, property's peculiar characteristics or unusual circumstances relating only and uniquely to that property must exist in conjunction with ordinance's more severe impact on specific property because of property's uniqueness before any consideration will be given to whether requisite practical difficulty or unnecessary hardship exists. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

3. Zoning and Planning ⚷497

Practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

4. Zoning and Planning ⚷496

Mistake of county official cannot be the "practical difficulty" unique to subject property required to authorize grant of variance. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

5. Zoning and Planning ⚷503

Granting of variance from height restrictions on auxiliary building was arbitrary and illegal where subject site was not in any way peculiar, unusual or unique when compared to other properties in neighborhood and thus was not disproportionately affected by height restriction; self-created hardship arising from owner's failure to disclose height dimensions in applying for permit and construction of building in nonconformity were self-imposed or created hardships that could not support variance. Code 1957, Art. 66B, § 7.03; Baltimore, Md., Zoning Ordinance § 307.

Michael Paul Smith (Thomas G. Bodie and Bodie, Nagle, Dolina, Smith & Hobbs, P.A., on the brief) Towson, for appellants.

Newton A. Williams (Nolan, Plumhoff & Williams, Chtd., on the brief) Towson, for appellee.

Argued before WENNER, CATHELL and MURPHY, JJ.

CATHELL, Judge.

Appellant, David Cromwell, appeals from the judgment of the Circuit Court for Baltimore County (Daniels, J., presiding) affirming the order of the Board of Appeals granting a height variance for an accessory building already built by appellee, Arthur Thomas Ward, III. Appellant poses the following questions:

I. Whether the self-imposed or self-created hardship discussed in the Maryland case law on variances requires an intentional act, such as ignoring or flaunting [sic] the zoning regulations.

II. Does the record before the Honorable Lawrence Daniels support a finding that had the accessory building been built in accordance with the height regulations of Baltimore County, the accessory building would necessarily require a different pitch from all other buildings on the property?

III. Can a difference in roof pitches between an accessory building and a home constitute a "practical difficulty or unreasonable hardship" within the meaning of § 307 of the Baltimore County Zoning Regulations?

the court correctly directed Ms. Droney to transfer the home in its 1992 Order; the court's finding of contempt in the 1994 Order, based on Ms. Droney's failure to comply, was not an abuse of discretion.

III.

[13] Ms. Droney contends that even if the court did not err in finding that the term "real estate" encompassed the home, the court lacked the statutory authority to order her to transfer her interest in property, either as part of a divorce decree or in the enforcement thereof. Under Md.Fam.Law Code Ann., § 8-202(a) (1991), the court may determine ownership of disputed property when the court grants an absolute divorce, but the statute expressly denies the court the power to transfer property, other than money, as part of an award. *See also, Kline v. Kline*, 93 Md.App. 696, 703, 614 A.2d 984 (1992). At the same time, the court can merge the terms of a deed, agreement, or settlement made between the parties during the divorce as a part of the divorce decree. Md.Fam.Law Code Ann., § 8-105(a); *Goldberg v. Goldberg*, 290 Md. 204, 210 n. 6, 428 A.2d 469 (1981). Once the terms are so merged, the court has the power to enforce those terms using the contempt power. Md. Fam.Law Code Ann., § 8-105(a); Md.Rule 2-648; *Mendelson v. Mendelson*, 75 Md.App. 486, 497-98, 541 A.2d 1331 (1988).

Ms. Droney relies on the case of *McAlear v. McAlear*, 298 Md. 320, 469 A.2d 1256 (1984) for the proposition that contempt may not be used to enforce a "property disposition award." In *McAlear*, the divorced wife sought to have her ex-husband held in contempt for his failure to pay the monetary award specified in the judgment of absolute divorce. The Court held that, unlike alimony, a monetary award in a divorce case constitutes a "debt," and as the Maryland Constitution, Art. III, § 38 forbids incarceration for the failure to pay a debt, contempt was not an available method of enforcement. *Id.* at 349-52, 469 A.2d 1256.

Ms. Droney's reliance on *McAlear* is inapposite. The Court did not consider Fam. Law, § 8-105(a), and we find nothing in *McAlear* that approaches the question of whether a court may use contempt to enforce the lawful terms of its own orders. Given the clear statutory authority to merge the terms of an agreement into a judgment of divorce and to enforce such terms with contempt, the court did not err in seeking to enforce the terms of the Judgment by ordering Ms. Droney to transfer her ownership of the Property to Mr. Droney.

AFFIRMED. COSTS TO BE PAID BY APPELLANT.

102 Md.App. 691

David CROMWELL, et al.

v.

Arthur Thomas WARD, III.

No. 617, Sept. Term, 1994.

Court of Special Appeals of Maryland.

Decided Jan. 4, 1995.

The Circuit Court, Baltimore County, Lawrence Daniels, J., affirmed order of board of appeals granting height variance for accessory building already built by owner. Appeal was taken. The Court of Special Appeals, Cathell, J., held that: (1) no variance was appropriate where property was not shown to be unusual or unique from surrounding properties before variance based on practical difficulty or unreasonable hardship was sought; (2) landowner's self-created hardship arising from construction of accessory building before variance was sought was not grounds for grant; and (3) approval of

lacking. *Id.* at 394 n. 3, 105 S.Ct. at 2071 n. 3. *See also, Doering v. State*, 313 Md. 384, 398-99, 545 A.2d 1281 (1988) (interpreting *Carney*, defendant's bus, which had been converted into lodging, was subject to warrantless search as it had all of its tires fully inflated, had all its windows intact, had all its lights in apparently functional condition, and was near a road).

7/10/06

IN RE: PETITION FOR VARIANCE	*	BEFORE THE
N/W side of Taylor Avenue, 285 ft. s/east		
Of c/l of McTavis Avenue	*	BALTIMORE COUNTY
13th Election District		
1st Councilmanic District	*	BOARD OF APPEALS
(1206 Taylor Avenue)		
	*	Case No.: CBA-
Link-Link, LLC, Legal Owner		
Before the Deputy Zoning Commissioner	*	
Of Baltimore County		
Case No.: 06-166-A	*	

****

MEMORANDUM IN SUPPORT OF PETITION FOR APPEAL

I. FACTS/PROCEDURAL HISTORY

The subject property in the above captioned appeal is located within the Whittemore Park neighborhood of Baltimore County. Whittemore Park is a subdivision created in 1922, and more fully described in Petitioner's Exhibit No. 1 introduced at the hearing in this matter. The subdivision plat shows that the community was laid out in 25-foot wide lots. Due to the narrowness of these undeveloped lots, much of the community was developed and built out through the combination of two (2) lots to create 50-foot building lots that contain single family dwellings. The Petitioner in this matter proposes to construct a single family dwelling on two of the 25-foot lots, in a manner consistent with the majority of dwellings contained in the subdivision. The subject property is zoned D.R. 5.5. The proposed development meets all of the requirements of the height and area regulations except for the minimum lot width of 55 feet.

Pursuant to Baltimore County Zoning Regulations ("BCZR") Section 304.1, et seq., the Petitioner filed with the Department of Permits and Development Management ("PDM") an Application for Building Permit and a plat to accompany a Petition for Undersized Lot, a copy of which was introduced as Petitioner's Exhibit No. 2. Upon applying for the undersized lot, the Petitioner was instructed by representatives of the Baltimore County Zoning Office to forgo that

process and, instead, to file a Petition for Variance to the Zoning Commissioner to permit a lot width of 50 feet in lieu of the minimum required 55 feet. At the Petition for Variance hearing before the Deputy Zoning Commissioner held on November 2, 2005, counsel for Petitioner requested, by way of preliminary motion, that the matter be remanded to PDM, to allow the Petition for Undersized Lot to properly proceed pursuant to BCZR Section 304.1, et seq. The Deputy Zoning Commissioner denied the preliminary motion in its Findings of Fact and Conclusions of Law dated November 18, 2005, and further ruled that the Petitioner's request for variance be denied, as "the lots have merged from a zoning standpoint" and "there are no internal lot lines (from a zoning standpoint) against which variances can be granted." (Findings of Fact and Conclusions of Law, Case No. 06-166-A at Page 5)

Petitioner filed an appeal for the above captioned matter before the County Board of Appeals (CBA) on December 19, 2005. A hearing was held before the CBA on May 31, 2006, during which counsel for the parties proffered the facts in this case, which are not in dispute. Those facts include the following:

1. In March, 2005, the Petitioner purchased eight lots in the Whittemore Park subdivision. The lots are more fully described as Lot Nos. 296-299 and 342-345.
2. In May 2005, six of the eight lots (296 & 297 and 342-345) were conveyed by way of Deed to the Appellees in this matter. A copy of the Deed was introduced as Petitioner's Exhibit No. 6.
3. The remaining two lots, Lots 298 and 299, were listed for sale separately and, although the Appellee was aware of the offering, the Appellee did not purchase the remaining two lots.
4. The remaining lots, Lots 298 and 299, combined, are collectively 50 feet in width and therefore do not meet the 55-foot lot width requirement found in the BCZR for DR 5.5 property.

5. Lots 298 and 299, combined, meet all other requirements of the height and area regulations contained within the BCZR for the subject property.

6. Lots 296-299 are zoned residentially. Lots 342-345 are to the rear and are zoned industrially. Lots 296 and 297 represent the two residentially zoned lots included in the six lots purchased from the Petitioner by the Appellee. The property is improved by a large frame house that straddles the lot lines between Lots 296 and 297. Accessory structures, including a garage, patio and underground bomb shelter, exist on Lots 297 and 298.

7. The remaining four lots purchased by the Appellee are to the rear of lots 296-299 and are zoned industrial. The industrial lots contain a shed and above-ground pool with metal deck.

8. Appellee's Lots 296 and 297, combined, are also 50 feet in width, and are not in compliance with the minimum 55-foot width requirement found in the BCZR. As is the case with Petitioner's property, Appellee's lots meet all other requirements of the height and area regulations contained in the BCZR.

9. The large frame house, bomb shelter, pool, fence, patio and shed all predate Petitioner's original ownership of the eight lots, as well as Appellee's ownership of six of the eight lots.

II. ARGUMENT

The facts in this matter present three (3) theories, which the Petitioner submits, allows the use of lots 298 and 299 as a building lot, consistent with the pattern of development in the Whittemore Park subdivision. While each of these theories involve rules of law, it is also important to recognize, as the Baltimore County Zoning Commissioner's Policy Manual provides, that the intent of the parties, and the equities surrounding the facts and circumstances of this matter, should be taken into serious consideration.

A. Theory One (1)

The proper venue and procedure for this matter is an undersized lot application, pursuant to BCZR Section 304.1, et seq.

This theory is the same argument made to the Deputy Zoning Commissioner by way of preliminary motion in the zoning case below and is of paramount importance in that it encompasses the analyses and concepts within the remaining two theories set forth infra. As the undisputed facts indicate, the Petitioner, without counsel, attempted to initiate the undersized lot process and filed the requisite materials per the BZCR, only to be improperly instructed to abandon that process and file a variance instead.

BCZR Section 304 (a copy of which is attached hereto and incorporated by reference) states,

> 304.1 "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 these regulations.

It is abundantly clear that Petitioner's lot (in this case, two combined lots), meets all the requirements of BCZR 304.1. Per requirement A, the lots were recorded in the Whittemore Park subdivision in 1922; per requirement B, the lots are zoned DR 5.5; thus, the lot's area (250 feet), rear yard setback (59 feet), front yard setback (30 feet), and side yard setbacks (13 feet) (as well as the proposed two-story dwelling, as shown on Petitioner's undersized lot application) comply with all the requirements of the height and area regulations in a DR 5.5 zone. Finally (requirement C), the owner does not own sufficient adjoining land to conform to the width requirements. All of these facts are undisputed and were made part of the proffer before the CBA.

These facts beg the question: why did the Deputy Zoning Commissioner deny Petitioner's preliminary motion to proceed under BCZR Section 304 below? The answer can be found in the Baltimore County Zoning Commissioner's Policy Manual, Section 304 (a copy of which is attached hereto and incorporated by reference). Unfortunately, the Deputy Zoning Commissioner applied the "six year rule" found within that Section of the Policy Manual and narrowly constructed a limiting rule and law. The application of that rule in this case is clearly improper.

The preamble of Section 304 of the Zoning Commissioner's Policy Manual reminds us that the BCZR recognizes the existence of parcels of property that do not meet the minimum lot sizes mandated at the time that minimum lot sizes were passed; "[t]o do otherwise would have the effect of rendering such undersized lots useless, and such legislation would be unconstitutional." By not permitting the undersized lot application to go forward and denying a variance in the case below, the Deputy Zoning Commissioner has rendered the Petitioner's lot useless.

Recognizing that the pattern of development within the Whittemore Park subdivision was the clear intent of the Petitioner upon his conveyance to the Appellee in this matter further supports this proceeding under BCZR 304.1. A review of Policy Manual Section 304.2 endorses this argument:

> "It is therefore important to consider the intent of the owner who attempts to invoke 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 304.c 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 a public hearing and notice for variance."

It is important to recognize that such a "pattern of ownership" has long existed in the Whittemore Park subdivision, thus making it possible for the Petitioner to now use a "checkerboarding" method. The facts and circumstances clearly indicate that the intent of the Petitioner was to buy four undersized residentially zoned lots, two of which had a single family dwelling and two of which

remained vacant, sell the house on the first two and build a new home on the remaining two in a pattern consistent with the development in the neighborhood. Obviously, the good faith intent of the Petitioner is a paramount issue in this matter. Baltimore County Zoning Commissioner's Manual Section 304.3 states,

> "If a single owner of contiguous undersized lots has purchased the property in good faith and without any intent to avoid the area requirements, 304.c, 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, 304.c 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." (Emphasis added)

The undisputed facts in this case clearly provide an exception to the six year rule. It is agreed upon by the parties that the remaining lots owned by the Petitioner were offered for separate sale and that the Appellee was aware of that separate sale. That fact, combined with the pattern of development in the subdivision, clearly supports the contention that the Petitioner, in good faith, intended to sell the Appellee's home on two of the four residential lots, and build, consistent with the pattern of development, on the remaining two lots. The six-year rule is but only one criteria for the Zoning Commissioner to consider in determining good faith; however, it is clear that the Deputy Zoning Commissioner in the case below placed undue emphasis on one criteria by ruling that "the Policy Manual sets a six year separation before the Petitioner is viewed as not having adjacent property," (Findings of Fact and Conclusions of Law Case No. 06-166-A, at Page 5). Nowhere in the law or Policy Manual is it stated that the six-year separation is mandatory before the Petitioner can viewed as not having adjacent property. This is but one of many errors of law contained in the Deputy Zoning Commissioner's Findings of Fact and Conclusions of Law; however, it may be the

most egregious in that failing to remand the case so that the Petitioner may properly continue with his BCZR Section 304 application, resulted in the unnecessary creation of further litigation. The review of issues such as setback variances, area regulations and lot merger simply do not exist and are rendered moot by the BZCR Section 304 process. In fact, the "intent of the owner" and the facts and circumstances that will be more fully discussed in Petitioner's Theories 2 and 3, are examples of the justification for the legislation found in BCZR Section 304. It is interesting to note that permitting the Petitioner to invoke the applicability of BCZR Section 304 will not result in the rendering Appellee's property as nonconforming with regards to setback and area requirements, but, rather, will render Appellee's lot to be yet another one of the many legally existing undersized lots, pursuant to the requirements of BCZR Section 304.

B. Theory Two (2)

The lots have NOT merged from a zoning standpoint.

Assuming arguendo that this matter is to be considered pursuant to the variance petition rather than an undersized lot application under BCZR Section 304, it is the Petitioner's position that the lots at issue[1] did not merge for zoning purposes under the zoning merger doctrine enunciated in *Friends of the Ridge v. Baltimore Gas and Electric Company, 352 Md. 645, 724 A.2d, 34 (1999)* and *Remes v. Montgomery County, 385 Md. 52, 874 A.2d, 470 (2005)*. As the Zoning Commissioner's Policy Manual reminds us, all of the facts and circumstances surrounding this case shall be considered in determining this issue.

The doctrine of merger was first discussed Maryland in *Friends*. While the Court of Appeals did not need to specifically rule on the question of merger in the *Friends* case, a discussion the doctrine of merger was undertaken to help emphasize the other rulings in the case. A review of that

[1] While a total of eight lots were originally owned by the Petitioner, it is submitted that only the four residentially zoned lots, two of which contained a single family dwelling, and two of which remain vacant and are owned separately, are at issue in this case.

discussion, as well as of the analysis contained the *Remes* case, distinguishes this matter so that the Deputy Zoning Commissioner's finding of merger is revealed to be in error.

The Court of Appeals in *Friends* echoed the Baltimore County Zoning Commissioner's Policy Manual by condensing the issue of merger to the basic proposition that, "in a determination of the factual issue of merger, the intent of the property owners must be ascertained and that no single factor is dispositive," *Friends of the Ridge, 352 Md. 645, 657, 724 A.2d, 34, 40*, citing *Iannucci v. Zoning Board of Appeals, 25 Ct. App. 85, 592 A.2d 970 (1991)*. The *Iannucci* case included a finding of merger and denial of variance, however, its facts are clearly distinguishable from this case. In *Iannucci*, the zoning body denied the variance by finding that, "when a portion of the dwelling on Lot 2 was constructed over the property line, Lots 1 and 2 were effectively combined," *Iannucci v. Zoning Board of Appeals, 25 Ct. at 85, 87, 592 A.2d 970, 971* (emphasis added). In the case subjudice, the existing dwelling was constructed over the property line of Lots 296 and 297, both of which are owned by the Appellee. Lots 298 and 299 remain virtually vacant. This distinction is highlighted the Court of Appeals review of the New Jersey Superior Courts ruling in *Bridge v. Neptune Township Zoning Board, 233 Nj. Super. 587, 592, 559 A.2d 855 (1989)*. Analogous to *Iannucci*, the Court in *Bridge* discussed merger where a house was constructed so it extended across the property lines of two parcels in common ownership. In discussing merger, the Court stated,

> "The pivotal question is whether Lot 686 retained its identity as a separate and distinct parcel for land use regulation purposes. Integral to that issue is the distinction for land use regulation purposes, between: (1) The assembling and common ownership of two contiguous nonconforming lots, both of which front on existing streets where the owner constructs a single family residential dwelling so as to cover all or both lots, and (2) Such similarly assembled lots where one or both of the lot remains entirely vacant. In the latter instance, the lots may retain their identity, but in the former instance the lots lose their identity and lose their identity and merge as a single parcel." *Friends of the Ridge, 352 Md. 645, 657, 724 A.2d 34, 40 citing Bridge v. Neptune Township Zoning Board, 233 Nj. Super. 587, 592, 559 A.2d 855 (1989)*

Again, the facts in the present case are clearly distinguishable. Petitioner's Lots 298 and 299 are virtually vacant, containing only a small portion of a surface patio and allegedly an underground portion of a bomb shelter. It is clear under the law discussed in *Bridge* and applied by the Court of Appeals in *Friends* that Petitioner's lots retain their identity and do not merge with those of the Appellee.

The Court of Appeals finally had a chance to actually apply the doctrine of merger in the *Remes* case in 2005. The facts in *Remes* provide a more recent and even clearer distinction from the facts in the instant case so as to render the Deputy Zoning Commissioner's merger ruling to be in error. The Court in *Remes* repeats the general rule that must be applied in merger cases that, "each case must be examined on its own," *Remes, 387 Md. 52, 66, 874 A.2d 470, 478 (2005)*. The pattern of development and the lack of any encroachment by a dwelling upon the setbacks between Petitioners and Appellee's lots provide a strong argument against merger, while the facts in Remes support the opposite conclusion:

> "There is ample evidence to conclude the elder Duffys 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." *Id.*

Such evidence simply does not exist to support a finding of merger in the subjudice case. Counsel for the Appellee will no doubt argue that permitting Lots 298 and 299 to continue to enjoy its separate identity would result in the creation of a nonconforming lot owned by the Appellee. While Appellee's lot would become one of the many 50 foot lots containing a single dwelling within the subdivision, there would be no additional setback or lot area encroachments so that additional zoning

relief would not be required[2]. It is apparent from the review of the body of case law dealing with merger that the Courts are focused on whether or not setback encroachments will exist as a result of not finding a merger of undersized nonconforming lots. The Court in *Remes* highlights this focus, stating,

> "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. 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?" *Remes, 387 Md. 52 at 84, 874 A.2d 470 at 488*

Permitting the Petitioner's lots to be used for a home to be constructed thereon does not create the same issues in this case. Both Appellee's and Petitioner's homes would merely exist as undersized lots consistent with the pattern of development and in compliance with BCZR Section 304.1, et seq.

This case is clearly distinguishable from *Remes* and other cases which included a ruling of merger. The facts and circumstances in this case, as well as the application of the law cited above, supports the contention that Petitioner's lots do not merge with those of Appellee, thus leaving the only issue to be whether Petitioner's lot meets the requirements of an undersized lot under the BCZR. That issue is resolved in the Petitioner's favor pursuant to the arguments outlined in Theory One (1).

Theory Three (3)

A subdivision occurred when lots were conveyed from Petitioner to Appellee, thus rendering the issue of merger moot.

Assuming arguendo that the CBA does not agree with the contention that this matter should proceed pursuant to BCZR Section 304.1, et seq., and, furthermore, does not agree that the lots in this case did not merge, it is Petitioner's position that a subdivision occurred upon the conveyance of six of the eight lots at issue to the Appellee in this case.

---

[2] Obviously, the Appellee's home would also be considered a legally existing nonconforming use in that the dwelling and the lot line pertaining to it were created prior to the adoption of the Zoning Regulations.

The Deputy Zoning Commissioner states that, "the *Remes* case specifies the next steps after finding lots have merged is to resubdivide the property," (Findings of Fact and Conclusions of Law Case No. 06-166-A at Page 6). If the CBA finds that all eight of the lots merged for zoning purposes, as argued by the Appellee, clearly a subdivision occurred when six of the eight lots were conveyed to the Appellee. To rule otherwise would negate the purchase by the Appellees of their home. Once again, the facts and circumstances, and, in this instance, the intent of the parties is an important consideration when ruling in this case.

The Court of Appeals in *Friends* discussed the facts and circumstances issue in the New Jersey case of *Lochner v. Campoli, 49 Nj. 504, 231, A.2d 553 (1967)*. The facts in *Lochner* are, with respect to the subdivision in question, analogous to the facts of the case *sub judice*. Mrs. Lochner owned Lots 186-190 on the surveyor's map and subsequently contracted to sell 189 and 190 to an Anthony Villani. Villani applied and received a variance to build on his two lots, but was denied a building permit on the grounds that subdivision approval was required because the five lots, when in common ownership, had merged into one parcel and the subsequent off conveyance of the two lots to Villani was, in fact, a resubdivision of more parcels from a lesser number of parcels *Friends, 352 Md. 645 at 652, 724 A.2d 34, at 37*. An almost identical conveyance took place in this case. If the CBA rejects the arguments above and rules that merger of the eight lots had occurred, it is clear that the conveyance of six of the eight lots, leaving the two lots in the ownership of the Petitioner was a subdivision. While it may remain unclear whether full subdivision and variance approval is necessary, it is clear that a Deed was recorded, and thus, internal lot lines were created, from which variances can be granted. A review of the BCZR reveals that "subdivision" is defined as follows:

> "The division of any tract or parcel of land, including frontage along an existing street or highway, into two or more lots, plots, or other divisions of land for the purpose, whether immediate or future, of building development for rental or sale, and including all changes in street or lot lines; provided, however, that this definition of

subdivision shall not include divisions of land for agricultural purposes." BCZR Section 101

It is clear, under the law and the facts agreed upon in this case, that a subdivision has occurred, thus rendering the issue of merger moot, as it is now impossible to apply. This analysis underscores several puzzling questions in reviewing the Findings of Fact and Conclusions of Law issued by the Deputy Zoning Commissioner. If the Deputy Commissioner recognizes the separate ownership of Lots 296, 297, and 298, 299, how can there be no internal lot lines against which variances can granted? Furthermore, if the CBA agrees with Deputy Zoning Commissioner and rules that no internal lot lines exist, how could a portion of the merged lot be sold without subdivision taking place? The intent of the parties in this case, clearly, was to subdivide a previously merged lot. The Protestant did not contemplate the purchase of Lots 298 and 299. The Deputy Zoning Commissioner states that, "[h]ere the Protestants own three-quarters of the merged lot (the eight lots combined) and the Petitioner owns one-quarter of the merged lot." How such a statement can be true, absent subdivision, makes no sense considering the analysis and case law cited above. To put it simply, the Appellees cannot have it both ways. Either the lots have merged, and a subsequent subdivision occurred, or there was no subdivision and the conveyance by Petitioner to the Appellee is void.

CONCLUSION

Petitioner urges the CBA to return to the basic principle that all of the facts and circumstances, combined with the intent of the parties, be taken into consideration in resolving this dispute. Lots 296, 297 and 298, 299 were separately offered for sale. The Appellee was aware of this separate sale, and is also aware of the pattern of development in the subdivision. Appellee's purchase of Lots 296 and 297 (as well as the four industrially zoned lots to the rear) resulted in his ownership of a house, not unlike many of his neighbors. Surely, Appellee did not view Petitioner's separate listing of an

identical 50 foot lot adjacent to him to be for the purposes of maintaining a vacant side yard for his enjoyment. Petitioner's separate listing is for an undersized lot that should proceed through under BCZR Section 340.1. In the alternative, the conditions of the separate listing do not support a finding of merger and a variance can properly be considered. Finally, unless the Appellee wishes to concede that his receipt of his home and six lots was an invalid conveyance of real property, the separate listing has been subdivided from the Appellee's property, so that the doctrine at merger is rendered moot.

WHEREFORE, the Petitioner respectfully requests that the above captioned matter be remanded to the Zoning Commissioner for the conclusion of the undersized lot application process pursuant to BCZR Section 304.1.

OR IN THE ALTERNATIVE, should the CBA determine that BCZR Section 304.1 does not apply and that a merger did not occur OR a subdivision occurred by way of conveyance, the Petitioner respectfully requests the matter be remanded to the Zoning Commissioner for consideration on the Petition for Variance on its merits.

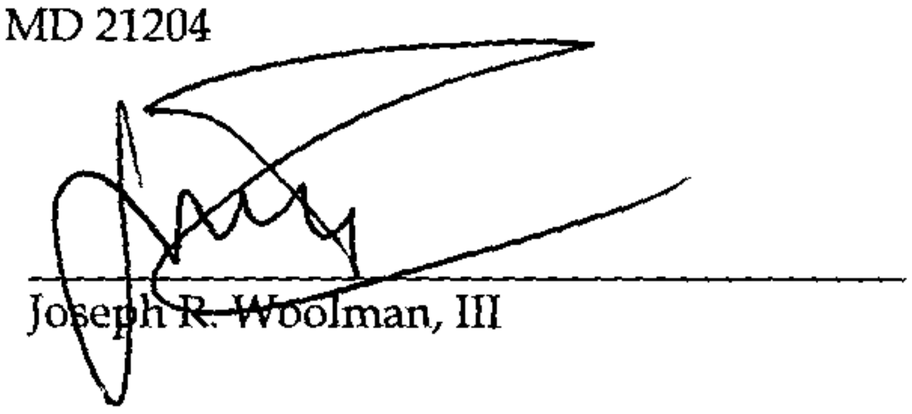
Respectfully Submitted,

Joseph R. Woolman, III
Gildea & Schmidt, LLC
300 E. Lombard Street, Suite 1440
Baltimore, MD 21202
(410) 234-0070
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 10th day of July, 2006 a copy of the foregoing Memorandum in Support of Petition for Appeal was mailed, first class, postage prepaid, to:

Benjamin Bronstein, Esquire
29 W. Susquehanna Ave., Suite 205
Towson, MD 21204



Joseph R. Woolman, III

LEXSEE 352 MD. 645

FRIENDS OF THE RIDGE et al. v. BALTIMORE GAS AND ELECTRIC COMPANY

No. 76, September Term, 1998

COURT OF APPEALS OF MARYLAND

352 Md. 645; 724 A.2d 34; 1999 Md. LEXIS 37

February 11, 1999, Filed

SUBSEQUENT HISTORY: [***1] As Corrected February 17, 1999.

PRIOR HISTORY: Certiorari to the Court of Special Appeals (Circuit Court for Baltimore County). Case # 95 CV 5315. Lawrence R. Daniels, JUDGE.

DISPOSITION: JUDGMENT OF THE COURT OF SPECIAL APPEALS AFFIRMED IN PART AND VACATED IN PART; THAT PORTION OF THE COURT OF SPECIAL APPEALS' JUDGMENT RELATING TO THE VARIANCE IS VACATED; CASE REMANDED TO THE COURT WITH INSTRUCTIONS TO VACATE THAT PORTION OF THE JUDGMENT OF THE CIRCUIT COURT RELATING TO THE VARIANCE AND REMAND THE CASE TO THE CIRCUIT COURT WITH INSTRUCTIONS TO REMAND THE CASE TO THE BOARD OF APPEALS FOR A DECISION CONSISTENT WITH THIS OPINION; COSTS IN THIS COURT AND IN THE COURT OF SPECIAL APPEALS TO BE PAID BY PETITIONERS.

HEADNOTES: The combining or merging of contiguous parcels or tracts of land in single ownership is normally permitted. Unless specifically prohibited by statute, two parcels may be combined or merged to create a larger parcel if in common ownership, so long as the common owners intend a combination or merger. Intent may be indicated whenever a structure or project is constructed across the boundaries of contiguous parcels or are proposed to be constructed.

COUNSEL: ARGUED BY J. Carroll Holzer of Towson, MD., FOR PETITIONERS.

ARGUED BY John H. Zink, III (Patricia A. Malone, Venable, Baetjer and Howard, LLP, on brief) of Towson, MD., FOR RESPONDENT.

JUDGES: ARGUED BEFORE Eldridge, Chasanow, Raker, Wilner, Cathell, Karwacki, Robert L. (retired, specially assigned), and Murphy, Joseph F. Jr. (specially assigned), JJ.

OPINIONBY: CATHELL

OPINION: [**35] [*647] Opinion by Cathell, J.Filed: February 11, 1999

In this case, Pamela and Carl Follo and Friends of the Ridge *et al.*, petitioners, appeal the affirmance by the Court of Special Appeals n1 of the decision of the Circuit Court for Baltimore County, which upheld the granting of a variance from side yard setback requirements to Baltimore Gas and Electric Company, respondent. Petitioners present three issues for our review, which we rearrange:

> n1 *Friends of the Ridge v. Baltimore Gas & Elec. Co., 120 Md. App. 444, 707 A.2d 866 (1998).*

[***2] [1]. Whether the Court of Special Appeals' preference given to utility companies in this zoning case conflicts with this Court's decision in *Kahl vs. Consolidated Gas and Electric, 191 Md. 249, 60 A.2d 754 (1949)*[.][2]. Whether in the absence of statutory authority, an electric utility company's status, *vel non*, as a utility, may be used to justify a zoning variance, generally, and the prerequisite of "uniqueness" specifically[.]3. Whether the evidence relied on by the Court of Special Appeals in the instant case was sufficient to support a variance, both as to the uniqueness and practical difficulty, and whether its decision conflicts with the Court of Special Appeals' decision in *Cromwell vs. Ward, 102 Md. App. 691, 651 A.2d 424 (1995)*[.]

[*648] We shall not directly address the questions presented. n2 We shall direct that this case be remanded to the Baltimore County Board of Appeals (Board) with instructions to enter an order that no variance was needed in the case *sub judice*. n3

n2 We note that Respondent argues that the provisions of the ordinance applicable to variances ("where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request") should be read to indicate that a structure intended to be built once a variance is granted could itself be so unusual as to satisfy the uniqueness requirement of the statute. Under this argument, respondent contends that, given the characteristics of the equipment respondent proposes to erect and for which it seeks a variance, combined with the necessity that the equipment be within a certain distance of each other, its situation creates "peculiar or unusual circumstances relating to the substation *structures* which are the subject of the variance." Our failure to address this issue should not be construed as our approval or acceptance of that approach. We are reluctant to say that a proposition we are not resolving is wrong. Accordingly, we shall instead describe it as of doubtful logical force.

[***3]

n3 This is consistent with the Board's initial finding that no variance was necessary. The Board apparently felt it was required to address the variance issue because respondent filed a variance petition. Respondent may have filed the variance request because opponents to the project asserted that a variance was necessary.

Under the ordinance at issue here, and indeed in most ordinances of which we are aware, unless the ordinance's language specifically and clearly prohibits it, an owner of [**36] contiguous parcels of real property, such as respondent, is free to combine them into larger and fewer parcels without violating the *zoning* code. In this case we are concerned only with the zoning ordinance. We first shall recite the facts and conclude by furnishing the reasons for holding that no variance was necessary in the present case.

FACTSRespondent, at all times pertinent to the case at bar has operated a facility called the "Ivy Hill Substation," which is situated on one of the parcels it owns near the intersection of Falls and Ridge Roads in Baltimore County, Maryland. The site, [***4] and all of the relevant surrounding area, is zoned RC-5. Under that classification, public utility facilities are permitted [*649] as special exceptions if they comply with the requirements of the Baltimore County zoning ordinance. Respondent, anticipating a need for additional capacity in the region, proposed to increase the capacity at the Ivy Hill Substation. In order to do so, respondent was required to apply for a special exception to operate an enlarged facility. Respondent applied for and obtained a special exception. In their petition for certiorari, petitioners did not challenge the granting of the special exception. Accordingly, the granting of the special exception is no longer at issue.The new, enlarged substation was planned to extend onto a contiguous parcel from the original site of the existing substation. The original substation was situated on a 0.4 acre parcel. Subsequently, respondents acquired an adjacent 1.5 acre parcel and, during the proceedings at the administrative level, acquired another 0.9 acre adjoining parcel. The record reflects that all three parcels are contiguous with each other. Petitioners assert in their brief that because the parcels never were "legally [***5] combined," the Baltimore County ordinance required respondent to obtain a variance to use the three parcels as one parcel. Respondent asserts that it since has caused the three lots to be combined by a resubdivision. Petitioner alleges that this was done improperly. If, in fact, it was done improperly, that is a matter for another day. n4 We are concerned here only with the applicability of the zoning [*650] ordinance's variance provisions and not Baltimore County subdivision regulations.

n4 We often have held that subdivision is not zoning. In most jurisdictions, including Baltimore County, subdivision regulations are enacted and codified separately. We did state in our recent case of *Wesley Chapel Bluemount Ass'n v. Baltimore County, 347 Md. 125, 699 A.2d 434 (1997),* that planning and subdivision matters were in the nature of zoning for the purposes of the State Open Meetings Act. That opinion was based on our perception that the Legislature intended planning and subdivision processes to be considered as zoning *under that Act. See generally id.* Our opinion on that matter in that case was meant to apply only to Open Meetings Act concerns, and was not meant to be of general application changing, as Judge Eldridge discussed in his dissent, the holdings of "numerous opinions of this Court which have drawn a sharp distinction between 'planning' and 'zoning.' The approval or disapproval of a development plan is simply not a 'zoning matter.' " *Id. at 151, 699 A.2d at 447.* The holding in *Wesley Chapel* is limited to the context of the Open Meetings Act.

[***6]

RESOLUTION

We again note that in this case we are concerned only with the issue of the variance. The primary concern of

the Board, however, was the simultaneously considered special exception request. The grant of that special exception is not before us. The Board originally found that the variance provisions, section 307.1, did not apply to respondent's request. The Board, for reasons we shall discuss, was correct in that finding. n5 [**37] Nonetheless, apparently assuming it was required to address the variance issue because respondent filed a petition requesting a variance, the Board granted the petition. Because no variance was required, we direct the Court of Special Appeals to remand this matter to the circuit court for it to remand to the Board. The Board shall render a finding, consistent with its initial finding, that no variance is required for respondent to utilize the entire parcel for its proposal, so long as setback requirements are met from the exterior property lines of respondent's combined parcel.

n5 The Board discussed the variance request, stating, in relevant part:[Respondent] finally must meet the tests under Section 307.1 in pursuing variance from lot line setbacks, said lot lines existing between tracts owned by [respondent]. George Gavrelis clearly points out in his testimony that Section 306 of the BCZR speaks to lot area regulations for erecting substations. [Respondent] seeks a variance under 307.1 from BCZR 1A04.3B.3 which requires a 50-foot setback from any lot line other than a street line. *The Board finds as a fact that Section 306 applies in this case and that the application for a variance under 307.1 may be treated as moot.* [Respondent] recognizes that its placement of electric utility structures on the subject site, straddling interior lot lines and certainly within *otherwise* required setbacks, *may be construed* under 1A04.3B.3 as a principal building, and is therefore requesting such variance. The Board is *compelled* to address the issue of 307.1 pursuant to the Petition. [Emphasis added.]

[***7] **DISCUSSION**

Zoning ordinances, including Baltimore County's ordinances, **do not create lots.** Zoning does not create parcels of [*651] 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. n6

n6 When variance issues are involved, some cases regarding setbacks or height restrictions refer to them as "dimensional" variances, *see Bressman v. Gash, 131 N.J. 517, 523-26, 621 A.2d 476, 479-81 (1993),* and some as "deviational" variances. *See Sako v. Delsesto, 688 A.2d 1296, 1298 (R.I. 1997).* In Maryland, they are commonly referred to as "yard" variances, distinguishing them from "use" variances, but on occasion have been referred to as "dimensional" variances. *See Easter v. Mayor of Baltimore, 195 Md. 395, 401, 73 A.2d 491, 493 (1950)* ("Use variances are doubtless more serious than dimensional changes, but that is only a matter of degree."). The proof required, however, assuming the uniqueness of a subject property, can be much greater with respect to use variances when the terms "practical difficulties" and "unwarranted [undue, unusual or unreasonable] hardship" are framed in the disjunctive, "practical difficulties *or* unwarranted hardship." We noted in *Zengerle v. Board of County Commissioners, 262 Md. 1, 21, 276 A.2d 646, 656 (1971):* "a use variance is customarily concerned with unusual [unwarranted] hardship where the land cannot yield a reasonable return without a variance whereas an area variance is primarily concerned with practical difficulties." Although the phrase "reasonable return" has all but disappeared from the vocabulary of zoning, except to the extent the term "reasonable investment backed expectations," has crept into "takings" jurisprudence, *see Penn Central Transp. Co. v. City of New York, 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978)* and its progeny, the distinction between yard and use variances consistently has been applied through the selective application of the practical difficulty/unwarranted hardship terminology.

[***8] Baltimore County's ordinance, like most zoning ordinances, does not define lots to include only lots delineated on plats in approved subdivisions. Section 101 defines "corner lot," "lot depth," "through lot" and then defines "interior lot" simply as "[a] lot other than a corner or through lot." It generically defines "lot of record," as "[a] *parcel of land* with boundaries [*652] 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." *Id.* (emphasis added). The term "lots" as used in ordinances generally means parcels or tracts of land. In other words, when setbacks in respective districts are established, they generally apply to all tracts, parcels or pieces of land within the district, as indicated in the Baltimore County

ordinance's definition of "setback." *See id.*Generally, and in Baltimore County, the title or purpose clauses of zoning ordinances express concern with undersized parcels or lots, not with parcels that exceed the minimum dimensional requirements of the ordinances. The ordinance at issue here, in section 1A04.1(A)(1), which deals [***9] with Resource Conservation Zones (in the case *sub judice,* an "R.C.5 " (Rural-Residential Zone)), states in its "legislative findings" clause:It is found that:. . . .c. In some cases *lot sizes are inadequate* to assure long-term adequacy of on-lot sewer and water systems; [**38] d. That unless measures are implemented to assure more rational growth patterns, *including adequate lot size*, undue financial hardships will be placed on Baltimore County and the life, safety and general welfare of the citizens of the county will be adversely affected. [Emphasis added.]

The "purpose" clause provides, in relevant part:

B. Purpose. The R.C.5 zoning classification is established, pursuant to the legislative findings above, in order to:. . . .4. *Provide a minimum lot size* which is sufficient to provide adequate area for the proper functioning of on-lot [*653] sewer and water systems.[n7]

n7 We will address the combining of three smaller parcels into one larger parcel by respondent, *infra*. That the purpose of this section is to require adequately sized lots or parcels of land will prove especially relevant in that context.

[***10]

Id. (emphasis added).Efforts throughout the country, including Baltimore County, have been to restrict undersize parcels, not oversized parcels. These efforts have resulted in the creation and evolution in zoning of the doctrine of merger, which, in zoning cases, generally prohibits the use of individual substandard parcels if contiguous parcels have been, at any relevant time, in the same ownership and at the time of that ownership, the combined parcel was not substandard. n8 In other words, if several contiguous parcels, each of which do not comply with present zoning, are in single ownership and, as combined, the single parcel is usable without violating zoning provisions, one of the separate, nonconforming parcels may not then *or thereafter* be considered nonconforming, nor may a variance be granted for that separate parcel. Some 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. 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; [***11] merger has been applied only to prohibit the later creation of undersized parcels. This, perhaps, is due to the general lack of objection to large parcels. n9 A discussion, however, of how the doctrine of merger applies conversely to the present case may help emphasize that, in the context described above, merger occurs without the need for official subdivision or conveyancing. It is accepted automatically [*654] in some jurisdictions or, most often, with minimum proof of the owner's intent in other jurisdictions and always without the necessity of official action. 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.

n8 We are unaware of any Maryland cases adopting the zoning doctrine of merger.

n9 There are social concerns that raising minimum parcel or lot size or raising minimum square footage requirements can result in exclusionary zoning that may, in some circumstances, be invalid. Exclusionary zoning issues have not been raised in the case at bar.

[***12] One of the seminal cases discussing the doctrine of merger with respect to zoning is the New Jersey case of *Loechner v. Campoli, 49 N.J. 504, 231 A.2d 553 (1967).* In 1936, Mrs. Loechner and her late husband acquired lots numbered 186 through 188 on a surveyor's map or plat. Each lot was twenty-five feet wide by one hundred feet in depth. Prior to 1952, the Loechners erected a single house on the three lots. In 1952, Rudolph Loechner acquired two adjoining lots, numbered 189 and 190. These new lots remained vacant. When Rudolph Loechner died, he devised lots 189 and 190 to his wife. Accordingly, upon his death, his wife owned all five lots, 186 through 190, and the house that had been erected on lots 186, 187, and 188.Mrs. Loechner subsequently contracted to sell lots 189 and 190 to Anthony Villani. [**39] Villani applied for a variance to build on his two lots, neglecting to mention that he had purchased the lots from an owner who had owned all five lots at one time. Although he obtained a variance, he was denied a building permit on grounds that subdivision approval was required because the five lots, when in common ownership, had merged into one parcel and the subsequent off-conveyance [***13] of the two lots to Villani was, in fact, a resubdivision of more parcels from a lesser number of parcels (one tract composed of the five lots). Mrs. Loechner took the position that resubdivison was unnecessary because all five lots

were shown on the map or plat when she and her husband acquired the lots.The Supreme Court of New Jersey noted that "the acquisition of title by plaintiff to Lots 189 and 190 which were [*655] contiguous to Lots 186-188 created one parcel or tract of land consisting of five separate lots." *Id. at 508, 231 A.2d at 555.* Explaining that a state statute defined subdivision as "division of a lot, tract, or parcel of land into two or more lots," *id. at 509, 231 A.2d at 555,* the court discussed the meaning of the word "lot" in that context, noting that it retained its traditional meaning as a parcel or tract of land:The word "lot" as used in the Subdivision Act must be read in context with the words "tract or parcel of land" in order to ascertain its meaning. Consistent with recognized principles of statutory construction "lot" takes its meaning from the other two words with which it is associated. *Martell v. Lane, 22 N.J. 110, 123 A.2d 541 (1956);* [***14] *Salz v. State House Commission, 18 N.J. 106, 112 A.2d 716 (1955); State v. Murzda, 116 N.J.L. 219, 183 A. 305* (E. & A. 1936); 2 *Sutherland, Statutory Construction* § 4908 (3*d ed.* 1443). Thus considered "lot" is synonymous with "tract or parcel." The phrase "lot, tract or parcel of land" has traditionally been used to connote any portion or piece of realty. N.J.S.A. 40:55—1.2 contemplates supervision of the division of a large tract or parcel of land into two or more smaller tracts or parcels. The Subdivision Act is not concerned with the manner in which land is described for conveyancing purposes but rather with what use is made thereof.

*49 N.J. at 510-11, 231 A.2d at 556-57.*Much the same can be said for zoning. Zoning is concerned with dimensions and uses of land or structures, not with any particular description "lot," "parcel," or "tract" applicable to or necessary for conveyancing. Conveyancing is a separate area of law involving the transfer of property between buyers and sellers that generally is not directly connected with government regulations and restrictions on the use of property through the zoning power. In zoning, the term lot normally is generic [***15] and used interchangeably to describe parcels, tracts, pieces or sections of land. n10

n10 In an earlier case, *Hutzler v. Mayor of Baltimore, 207 Md. 424, 429, 114 A.2d 608, 611 (1955),* which involved a parcel of land 200 feet by 380 feet, we noted that the statute at issue defined a "lot as '. . . a parcel of land now or hereafter laid out and occupied by one building and the accessory buildings or uses customarily or necessarily incident to it, including such open spaces as are required by this ordinance.'" (Omission in original.) In *Hertelendy v. Montgomery County Bd. of Appeals, 245 Md. 554, 568-69, 226 A.2d 672, 681 (1967),* we noted, without comment, that an ordinance's variance provisions addressed "parcels of property" and then, without making any distinction, described the parcel of property as "Lot 23-B."

[*656] After *Loechner,* the doctrine of merger continued to evolve. It was described more concisely in *Somol v. Board of Adjustment, 277 N.J. Super. 220, 228, 649 A.2d 422, 426 (1994):* "Separate [***16] *undersized* but contiguous lots fronting on the same street in single ownership ordinarily merge into one lot and conveyance of a portion will require subdivision and variance approval." (Emphasis added.) As is evident, the doctrine is designed to limit the creation of undersized parcels by *presuming* that merger can occur when contiguous lots exist in common ownership. As we have indicated, some jurisdictions presume merger automatically; in most jurisdictions, however, there must be some evidence of the owner's intent to merge. In the present case, respondent asserts a right to combine the contiguous parcels and to use them as a single parcel. Therefore, to the extent the doctrine is held to apply in this State under these converse circumstances, [**40] the existence of merger is admitted in the case *sub judice.*In *Iannucci v. Zoning Board of Appeals, 25 Conn. App. 85, 592 A.2d 970 (1991),* the applicant submitted a variance application to reposition a house entirely on one lot. At the time of the application, the house was built on two lots, with the attached porch on one lot and the main body of the house on the other. The purpose of the variance was to allow the property [***17] owner to build a new house on the vacated lot. The zoning body denied the variance, finding that "'when a portion of the dwelling on lot two was constructed over the property line, lots one and two were effectively combined.'" *Id. at 87, 592 A.2d at 971.* The Connecticut Appellate Court held:Contiguous land owned by the same person does not necessarily constitute a single lot. A merger can occur, [*657] however, if the owner of contiguous parcels of land intends to form one tract. The owner's intent "may be inferred from his conduct with respect to the land and the use which he makes of it." Intent is an inference of fact and "is not reviewable unless it was one which the trier could not reasonably make."

. . . Both lots were purchased by the plaintiff's parents. A portion of the dwelling was later constructed over the property line . . . . It was reasonable for the [administrative agency] to infer that the actions of the plaintiff's parents effectively merged the lots. Once these lots were merged, they could not thereafter be redivided into two separate lots [without complying with the subdivision process].The plaintiff's assertion that the lots remain separate because they [***18] appear separately on the original subdivision plan is not persuasive. A reference to multiple

lots "from a map filed in the land records does not compel a finding of an absence of merger. . . . Such a conclusion conflicts with the basic proposition that in a determination of the factual issue of merger, the intent of the property owners must be ascertained and that no single factor is dispositive."

Id. at 89-90, 592 A.2d at 972-73 (citations omitted) (some quotations marks omitted). In *Appeal of Gregor, 156 Pa. Commw. 418, 423-24, 627 A.2d 308, 310-11 (1993),* the Pennsylvania Commonwealth Court said:

Under the doctrine of merger of estates in land, a lesser estate is merged into a greater estate whenever both estates meet in the same person. This doctrine has no application, however, to zoning law and the construction of a zoning ordinance where, as here, the term "merger" is used to describe the effect of a zoning ordinance on lots held in common ownership and is related to the issue of the physical merger of adjoining lots. . . . . The burden is placed upon the party who asserts a physical merger to establish the landowner's intent to integrate the adjoining [***19] lots into one large parcel. [Citations omitted.]

[*658] *See also Skelley v. Zoning Bd. of Review, 569 A.2d 1054, 1056 (R.I. 1990)* ("The concept of merger of contiguous nonconforming lots in common ownership as an appropriate method to combine nonconforming lots is gaining increased recognition.").

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, as respondent proposes in the instant case. n11 Although this is not the general application of the doctrine of merger as it relates to zoning, we perceive no rational objection to applying the same principles to the circumstances of this case, resulting in a larger parcel. For title purposes, the platted lot lines may remain, but by operation of law a single parcel emerges for zoning purposes. [**41] At least three of our sister jurisdictions appear to have moved in the same direction. For example, the New Jersey Superior Court in *Bridge v. Neptune Township Zoning Board, 233 N.J. Super. 587, 592-93, 595, 559 A.2d 855, 858, 859* [***20] *(1989),* discussed merger where a house had been constructed so it extended across the property lines of two parcels in common ownership:

> n11 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.

The pivotal question is whether lot 686 retained its identity as a separate and distinct parcel for land use regulation purposes. Integral to that issue is the distinction, for land subdivision regulation purposes, between (1) the assembling in common ownership of two contiguous nonconforming lots both of which front on existing streets [***21] where the owner constructs a single-family residential dwelling so as to cover [*659] all or part of both lots, and (2) such similarly assembled lots where one or both of the lots remains entirely vacant. In the latter instance, the lots *may* retain their identity, but in the former instance, the lots lose their identity and merge into a single parcel.

. . . .When a person acquires ownership of contiguous non-conforming lots that are delineated as separate tracts on any map, and then builds a single-family structure so that it overlaps both lots, the lots merge into a single tract and are subject to the [Municipal Land Use Law] and its restrictions for future subdivision purposes as long as the structure remains on any part of both lots. Lot 686 cannot recover its separate identity so long as a portion of the house remains where it is. . . .In *Molic v. Zoning Board of Appeals, 18 Conn. App. 159, 163-65, 556 A.2d 1049, 1051-52 (1989),* which did not involve the zoning doctrine of merger, the court, upholding an agency's finding that no merger had occurred where a swimming pool had been constructed across two parcels of land, nonetheless stated:The plaintiffs claimed that [***22] all of the property . . . had been merged by use and intent into one parcel, and that the 1984 map that showed three lots was an unapproved subdivision. . . .An owner of contiguous parcels of land *may merge those parcels to form one tract if he desires to do so.* An intent on the part of the owner to do so may be inferred from his conduct with respect to the land and the use which he makes of it. . . . Intent is a question of fact.The plaintiffs have cited no authority . . . for the proposition that an owner *must* be deemed to have merged contiguous lots. The one exception we have found . . . is that . . . some zoning regulations . . . may require, either expressly or implicitly, that under certain conditions a nonconforming lot merges with contiguous land owned by the same owner [the zoning concept of the doctrine of merger]. This is an [*660] understandable requirement because it furthers the general zoning purpose of eliminating nonconforming lots. . . . . .

. . . Contiguous land all owned by the same person does not *necessarily* constitute a single lot. [Emphasis added.] [Citations omitted.] [Footnote omitted.]

Although *Molic* describes the general [***23] merger of parcels as being fact-based by not recognizing automatic merger, it appears to accept that the owner may combine contiguous tracts if he or she intends to do so.The Pennsylvania Commonwealth Court, although addressing the doctrine of merger in a case involving zoning nonconformity, stated, without objection to the construction of structures across parcel boundaries, that:

This is not to say, however, that once two adjoining lots are shown to be in "single and separate ownership" at the time of the relevant zoning ordinance, these lots must *always* be developed as two separate parcels. For example, a landowner who has acquired two adjoining lots after the passage of a zoning ordinance which rendered one or both of the lots undersized may *use* both lots in such a manner so as to integrate both lots into one large tract (explicitly demonstrated by building a house which straddles the common border).

Township of Middletown v. Middletown Township Zoning Hearing Bd., 120 Pa. Commw. 238, 245, 548 A.2d 1297, 1300 (1988). [**42] We are especially cognizant that in those jurisdictions that have expressly or impliedly recognized the doctrine of merger in zoning cases, [***24] none has required a formal re-subdivision as an element of merger. In fact, they generally reject both attempts to resubdivide into substandard parcels after a merger into a larger parcel has occurred and attempts to obtain variances from the nonconformity of the original parcels after a merger has created a larger conforming parcel. In those cases in which the erection of structures across borders have raised merger issues, none of the cases we have examined [*661] ever question the right of property owners of multiple contiguous parcels to treat them as one parcel. These courts generally assume that it is permissible and not in violation of zoning principles. Moreover, 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 (generally defined as the creation of more parcels from fewer parcels) is created. n12 Perhaps even more important is the implication of the definition of "setback" contained in Baltimore County Zoning Regulations, section 101:

n12 The Baltimore County Zoning Regulations in its general definitions section defines subdivision as:

The division of any tract or parcel of land, including frontage along an existing street or highway, into two or more lots, plots or other divisions of land *for the purpose, whether immediate or future, of building development for rental or sale*, and including all changes in street or lot [parcel, tract] lines; provided, however, that this definition of a subdivision shall not include divisions of land for agricultural purposes. [Emphasis added.]

The Baltimore County *Planning, Zoning and Subdivision Control* statute, in Article I, Section 26-1 defines subdivision as:*Subdivision* means the division of a lot, tract, or parcel of land into two (2) or more lots, sites, or other divisions of land for the purpose, whether immediate or future, of sale or building development . . . . Subdivision also includes resubdivision and, where appropriate to the context, relates to the process and subdividing or to the lands or territory divided.

Clearly, respondent was combining, not dividing, parcels and not combining them for purposes of rental or sale. It was not creating more parcels from less parcels, at least until pressured to seek subdivision, an issue not before us, or was it seeking to make any "dimensional" changes, or to change parcel or "lot" lines. Nor has it changed the boundaries of its total parcel. As we have said, unless otherwise indicated, "lot" as used in zoning or subdivision definition is the equivalent of "parcel" or "tract."

[***25] The required minimum horizontal distance between the building line (as defined in Section 101) and the related front, side or rear *property line.* [Emphasis added.]

Building line is defined as "the line established by law beyond which a building shall not extend." *Id.* When the ordinance refers to "lot" lines with respect to setbacks, it [*662] refers to lot lines generically, *i.e.*, property lines. The ordinance's setback provisions are met when the various "yard" requirements exist between buildings and property lines.There is no claim that any structures in the case at bar extend, or will extend, into any required "yards" or setbacks from the exterior property lines of the entire parcel now owned by respondent. It thus does not need a variance. As a result, we remand to the Court of Special Appeals and order it to remand this case to the trial court so it may return this matter to the Baltimore County Board of Appeals with instructions to render a finding, consistent with its initial finding, that no setback variance

from "interior lot lines" is required in the case *sub judice.* The appropriate method created by Baltimore County to address the enlargement of this [***26] substation was by way of the special exception provisions. As we have noted, the grant of the special exception was not presented as a question in the certiorari petition.Respondent, insofar as the variance issues raised in this appeal are concerned, is entitled by right to construct the enlargement of the Ivy Hill Substation on its entire parcel without regard to the original "lot lines" that initially separated the three individual parcels, which now make up the larger combined parcel.

JUDGMENT OF THE COURT OF SPECIAL APPEALS AFFIRMED IN PART AND VACATED IN PART; THAT PORTION OF THE COURT OF SPECIAL APPEALS' [43] JUDGMENT RELATING TO THE VARIANCE IS VACATED; CASE REMANDED TO THE COURT WITH INSTRUCTIONS TO VACATE THAT PORTION OF THE JUDGMENT OF THE CIRCUIT COURT RELATING TO THE VARIANCE AND REMAND THE CASE TO THE CIRCUIT COURT WITH INSTRUCTIONS TO REMAND THE CASE TO THE BOARD OF APPEALS FOR A DECISION CONSISTENT WITH THIS OPINION; COSTS IN THIS COURT AND IN THE COURT OF SPECIAL APPEALS TO BE PAID BY PETITIONERS.**

LEXSEE 387 MD. 52

David H. Remes v. Montgomery County, Maryland, et al.

No. 122, September Term, 2004

COURT OF APPEALS OF MARYLAND

387 Md. 52; 874 A.2d 470; 2005 Md. LEXIS 260

May 12, 2005, Filed

PRIOR HISTORY: [***1] Appeal from the Circuit Court for Montgomery County pursuant to certiorari to the Court of Special Appeals. Durke G. Thompson, JUDGE. *Remes v. Montgomery County, 384 Md. 581, 865 A.2d 589, 2005 Md. LEXIS 15 (2005)*

DISPOSITION: JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY REVERSED. CASES IS REMANDED TO ISSUE AN ORDER CONSISTENT WITH OUR OPINION.

CASE SUMMARY:

PROCEDURAL POSTURE: On its own initiative, the court granted certiorari and transferred to itself from the Maryland Court of Special Appeals petitioner neighbor's appeal from an affirmance, by the Montgomery County Circuit Court (Maryland), of a decision of respondent Montgomery County, Maryland, Board of Appeals that upheld the issuance of a building permit to respondent builder. The neighbor argued that the lot had merged with an adjoining lot for zoning purposes.

OVERVIEW: The builder's predecessors in title had owned two adjoining lots. If only one lot had been owned, the house built on one lot would never have satisfied local setback and other zoning requirements, but the lots together were ample to legally accommodate the house and a swimming pool built as an accessory use. The predecessors' son inherited the parcel and sold the lot that formerly contained the pool to the builder, who obtained a permit to build a dwelling. The court, elaborating on its earlier holding in the Ridge case, sustained an objecting neighbor's argument that the Maryland common law doctrine of merger for zoning purposes applied in this situation to prevent subsequent nonconforming uses of property that had been used in compliance with local zoning regulations during the period when the two lots were used as one. The fact that the lots had been subdivided as two in the original plat had no application to zoning, which concerned only legal uses of property. There had never been an illegal use of the lots during the period of their common ownership, and merger precluded their subsequent development in a manner that would make at least one lot's use nonconforming.

OUTCOME: The court reversed the judgment of the trial court; it remanded the matter to that court with directions to reverse the Board's decision and to direct the Board to issue a new decision, invalidating the issuance of the building permit.

LexisNexis(R) Headnotes

Governments > Local Governments > Licenses
Real Property Law > Zoning & Land Use > General Overview
[HN1] Montgomery County, Md., Code § 8-26, entitled "conditions of permit," requires a permit issuing agency to establish that a proposed building complies with zoning regulations.

Governments > Local Governments > Licenses
Real Property Law > Zoning & Land Use > Comprehensive Plans
[HN2] See Montgomery County, Md., Zoning Ordinance § 59-A-3.1.

Communications Law > Ownership > General Overview
Real Property Law > Zoning & Land Use > General Overview
[HN3] The Court of Appeals of Maryland has recognized the existence of the doctrine of zoning merger in Maryland. Zoning merger is 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. It is an equitable doctrine that seeks to prevent lots from being broken up in such a way as to create zoning violations.

Business & Corporate Law > Mergers & Acquisitions >

General Overview
Real Property Law > Zoning & Land Use > Nonconforming Uses
[HN4] Unless a zoning 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. Zoning merger applies 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. The Court of Appeals of Maryland has stated that 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 may 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.

Real Property Law > Subdivisions > General Overview
Real Property Law > Zoning & Land Use > General Overview
[HN5] Zoning and subdivision are normally separate and distinct regulatory entities.

Real Property Law > Zoning & Land Use > General Overview
[HN6] The doctrine of zoning merger deals with zoning limitations and uses, not with title.

Real Property Law > Zoning & Land Use > General Overview
[HN7] In Maryland, zoning merger may be derived from the common owner's intent, as evidenced by integrating or utilizing the contiguous lots in the service of a single structure or project. Intent is to be derived from the facts.

Real Property Law > Subdivisions > General Overview
Real Property Law > Zoning & Land Use > Comprehensive Plans
[HN8] 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 emerges for zoning purposes.

Governments > Local Governments > Licenses
Real Property Law > Subdivisions > General Overview
Real Property Law > Zoning & Land Use > General Overview
[HN9] 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. Simply because an applicant submits documents articulating plan specifications, engineering details, and a plot diagram showing details of the of the building to be erected does not 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.

Real Property Law > Zoning & Land Use > General Overview
[HN10] See Montgomery County, Md., Zoning Ordinance § 59-A-5.2.

Real Property Law > Zoning & Land Use > General Overview
[HN11] See Montgomery County, Md., Zoning Ordinance § 59-A-5.3.

Governments > Local Governments > Licenses
Real Property Law > Zoning & Land Use > General Overview
[HN12] See Montgomery County, Md., Code § 8-24.

Governments > Local Governments > Licenses
Real Property Law > Subdivisions > General Overview
Real Property Law > Zoning & Land Use > Ordinances
[HN13] See Montgomery County, Md., Code § 8-26(g).

Real Property Law > Zoning & Land Use > General Overview
[HN14] See former Montgomery County, Md., Zoning Ordinance § 107-4(c) (1954).

Real Property Law > Zoning & Land Use > General Overview
[HN15] See former Montgomery County, Md., Zoning Ordinance § 107-4 (1958).

Governments > Local Governments > Charters
Governments > Local Governments > Home Rule
Governments > State & Territorial Governments > Relations With Governments
[HN16] Montgomery County, Maryland, is a charter county under the Home Rule Amendment, Md. Const.

art. XI-A. Md. Ann. Code art. 25A (2001), known as the Maryland 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.

Governments > Local Governments > Duties & Powers
Real Property Law > Zoning & Land Use > Comprehensive Plans
Real Property Law > Zoning & Land Use > Ordinances
[HN17] The zoning power of Montgomery County, Maryland, derives exclusively from the Maryland Regional District Act, Md. Ann. Code art. 28 (1997 & 2001 Cum. Supp.), which created the Regional District that encompasses all of Montgomery County and most of Prince George's County, Maryland. *Md. Ann. Code art. 28, § 7-103* (1997 & 2001 Cum. Supp.).

Real Property Law > Zoning & Land Use > Administrative Procedure
Real Property Law > Zoning & Land Use > Comprehensive Plans
Real Property Law > Zoning & Land Use > Ordinances
[HN18] The Maryland Regional District Act, Md. Ann. Code art. 28 (1997 & 2001 Cum. Supp.), establishes two mechanisms for land use planning. The first mechanism is through zoning. Under the 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. *Md. Ann. Code art. 28, § 8-101(a)* (1996 & 2001 Cum. Supp.). 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. § 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. § 8-101(b)(2)(v). The second mechanism is known as the mandatory referral process. 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. *Md. Ann. Code art. 28, § 7-108* (1997 & 2001 Cum. Supp.). *Md. Ann. Code art. 28, § 7-112* (1997 & 2001 Cum. Supp.) (the mandatory referral provision) provides that proposals for certain public projects shall be referred to the M-NCPPC for non-binding review.

Governments > Local Governments > Duties & Powers
Real Property Law > Zoning & Land Use > Nonconforming Uses
Real Property Law > Zoning & Land Use > Ordinances
[HN19] The zoning authority of Montgomery County, Maryland, arises from the Maryland Regional District Act, Md. Ann. Code art. 28 (2997 & 2001 Cum. Supp.), and is regulated by the provisions of the Montgomery County Code.

Real Property Law > Zoning & Land Use > General Overview
[HN20] 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.

Real Property Law > Subdivisions > General Overview
Real Property Law > Zoning & Land Use > Ordinances
[HN21] 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. 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 may be 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.

Real Property Law > Subdivisions > General Overview
[HN22] See Montgomery County, Md., Code § 50-8.

Governments > Courts > Common Law
Real Property Law > Zoning & Land Use > Ordinances
Torts > Negligence > Defenses > Private Immunities > Spousal Immunity
[HN23] Generally, changes in the Maryland common law are applied prospectively, as well as to the case triggering that change in the common law. The Court of Appeals of Maryland 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 Maryland General Assembly. That court perceives no such declared public policy that prevents it from finding a zoning merger where two lots held in common ownership have clearly been used in the service of one another in order to satisfy zoning requirements and subsequent to the Ridge decision remained in that category. Moreover, Ridge is a statement

of the common law, not a change.

Real Property Law > Subdivisions > General Overview
[HN24] See Montgomery County, Md., Code § 50-1.

Real Property Law > Subdivisions > General Overview
[HN25] See Baltimore County, Md., Code § 32-4-101.

Real Property Law > Deeds > General Overview
Real Property Law > Subdivisions > General Overview
[HN26] See Baltimore County, Md., Code § 32-4-108(a).

Real Property Law > Subdivisions > General Overview
Real Property Law > Zoning & Land Use > Comprehensive Plans
[HN27] See Baltimore County, Md., Code § 32-4-201.

Real Property Law > Subdivisions > General Overview
Real Property Law > Zoning & Land Use > Comprehensive Plans
[HN28] See Baltimore County, Md., Code § 32-4-271(a).

Governments > Legislation > Statutes of Limitations > Time Limitations
Real Property Law > Zoning & Land Use > General Overview
[HN29] See *Md. Code Ann., Cts. & Jud. Proc. § 5-114(b)(2)* (1998).

Real Property Law > Subdivisions > General Overview
Real Property Law > Zoning & Land Use > General Overview
[HN30] Zoning concerns one's use of land, not how it is formally divided.

Real Property Law > Subdivisions > General Overview
[HN31] See Montgomery County, Md., Code § 50-29(b).

Real Property Law > Subdivisions > General Overview
[HN32] See former Montgomery County, Md., Code § 106-2 (1955).

Real Property Law > Subdivisions > General Overview
[HN33] See former Montgomery County, Md., Code § 104-7 (1961).

Real Property Law > Zoning & Land Use > Nonconforming Uses
[HN34] 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. 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.

Governments > Local Governments > Licenses
Real Property Law > Subdivisions > General Overview
[HN35] See Montgomery County, Md., Code § 50-20(b).

Civil Procedure > Declaratory Judgment Actions > State Judgments > Appellate Review
Real Property Law > Title Quality > Adverse Claim Actions > Ejectment
Real Property Law > Zoning & Land Use > Judicial Review
[HN36] 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. 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; title insurance is likewise available in most instances; actions in ejectment, quia timet (a legal doctrine that allows a person to seek equitable relief from future probable harm to a specific right or interest), 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.

Real Property Law > Title Quality > Adverse Claim Actions > General Overview
[HN37] Equity will not allow a title, otherwise clear, to be clouded by a claim that cannot be enforced in law or equity.

HEADNOTES: Two contiguous lots had been in common ownership. At the time of the common ownership one lot was used to comply with setback requirements of the other lot and used for the construction of a swimming pool as an accessory use. Thus, the lots had merged for zoning purposes, but remained distinct lots under subdivision regulations. Montgomery County Code § 50-8, requiring filing and approval of plat for any proposed subdivision or resubdivision of land, did not preclude a zoning merger arising out of the common owner's use, despite the fact that the common owner had never submitted a formal replatting and his purported successor in title desired to sell one of the subdivided lots.

COUNSEL: ARGUED BY David H. Remes, Esquire (Douglas M. Bregman and Heather Libman Blauer of Bregman, Berbert, Schwartz & Gilday, LLC of Bethesda, MD) on brief FOR APPELLANT.

ARGUED BY Marc P. Hansen, Cheif Counsel (Charles W. Thompson, Jr., County Attorney, Karen L. Federman Henry, Principal Counsel for Appeals, and Malcolm F. Spicer, Jr., Assistant County Attorney of 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 Commission of Silver Spring, MD) all on brief. William Kominers (Phillip T. Evans and Erica A. Leatham of Holland & Knight LLP of Bethesda, MD) all on brief. FOR APPELLEES.

JUDGES: ARGUED BEFORE Bell, C.J.; Raker, Cathell, Battaglia, Greene, Eldridge, John C. (Retired, Specially Assigned), Rodowsky, Lawrence F. (Retired, Specially Assigned), JJ. Opinion by Cathell, J.Bell, C.J., Raker, Cathell, Battaglia, Greene, Eldridge, John C. (Retired, Specially Assigned), Rodowsky, Lawrence F. (Retired, Specially Assigned), JJ. Opinion by Cathell, J.

OPINIONBY: Cathell

OPINION: [*55] [**471] Opinion by Cathell, J.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 [*56] 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 [**472] building permit by the Montgomery County Division of Permitting Services [***2] ("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? n1
>
> n1 In Montgomery County height is apparently determined by first establishing the "natural grade."

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 [***3] 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. n2

> n2 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.

[***4]

[*57] **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 n3 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 [***5] 12 home. At the time of its original construction around 1951, the Lot 12 home had the required [**473] seven-foot n4 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 [*58] side and rear yards of Lot 12, resulting in encroachments into the setback requirements on the Lot 11 side of the house.

n3 There is some evidence in the record that, as of January 2003, the pool may have been demolished.

n4 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.

Following [***6] 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 [***7] 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. [*59] On December 10, 2002, DPS, the agency, one of whose functions is to determine whether a proposed development complies with the zoning ordinance, n5 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 [***8] 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. [**474] 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 2 1/2 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."

n5 [HN1] Montgomery County Code § 8-26, "conditions of permit," requires the permit issuing agency to establish that the building complies with zoning regulations.

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 [***9] 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 appropriate [*60] 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 [***10] 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 [***11] or resubdivision [*61] 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 [**475] 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*. He later states: 'Zoning ordinances . . . **do not create lots** (emphasis in original).' *Ridge, at 651*. 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. [***12] They remain in place until a deed of conveyance or a new subdivision . . . is created.' *Ridge, at 661*."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.[n6] Lot 11 is a properly [*62] 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.

> n6 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:
>
> > [HN2] " **§ 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 special 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.*

[***13] 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 [**476] 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).* [*63] **II. Discussion**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 [***14] 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." n7
>
> n7 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.

[***15]

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. Co., 352 Md. 645,* [*64] *724 A.2d 34 (1999)*, wherein [HN3] 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 [***16] the assumption that no proper formal resubdivision had occurred.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 [**477] 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*, "we 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.* n8 We sustained the Board of Appeals' conclusion, reasoning that there was no need for BG&E to obtain a variance from the zoning regulations n9 because BG&E's intended use of its three [*65] 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 [***17] lines of the combined parcel. Specifically, this Court held, [HN4] "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.* n10 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 non-conforming, 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."

[***18] *Id. at 654, 724 A.2d at 38* (emphasis added).

n8 As we have generally stated, [HN5] 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.").

n9 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.

n10 When we referred to the "ordinance" in this statement we were referring to the zoning ordinance, not subdivision regulations.

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. [***19] In [*66] 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. n11

n11 [HN6] The doctrine of zoning merger deals with zoning limitations and uses, not with title.

We indicated in *Ridge* that [HN7] merger may be derived from the common owner's intent, as evidenced by "integrating or utilizing [**478] 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)* [***20] (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 "some 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.*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: [HN8] zoning merger does not cause a nullification of any subdivision that has pre-

viously 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 [*67] emerges for zoning purposes." *Ridge, 352 Md. at 658, 724 A.2d at 34.*Respondents urge that merger [***21] 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. [HN9] 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 [***22] 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 n12 does not [*68] remove the fact that the [**479] 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 [***23] 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)." n13 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:

> "[HN10] **§ 59-A-5.2. Buildings to be located on lots.** [*69] 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.[HN11] **§ 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 [***24] 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." n14

n12 Montgomery County Code, Chapter 8, Buildings, mandates, in relevant part, the required components for permit application as follows:

> [HN12] " **§ 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 . . . ."

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.**. . .[HN13] (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.]

[***25]

n13 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.

n14 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:

[HN14] **"§ 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**.. . .[HN15] **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*.

[***26]

[*70] [**480] **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)*:

[HN16] "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. [HN17] 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.*[HN18] [*71] The Regional District Act establishes two mechanisms for land use planning. The first mechanism is through [***27] 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 [**481] 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 [***28] M-NCPPC for non-binding review."

Pan American Health, 338 Md. at 217-18, 657 A.2d at 1164-65 (footnote omitted) (some alterations added) (some citations omitted). Thus, [HN19] 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. n15 Second, the respondents [*72] maintain that merger is intended to combine substandard, undersized, or nonconforming lots, n16 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, n17 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 [**482] for Lot 11. As a corollary to the latter argument, the County notes [***29] that County law, dating back at least to the mid 1950's "has prohibited the use of an adjoining lot to satisfy zoning setback requirements. . . . [*73] " 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.

n15 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 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.

[***30]

n16 This idea is apparently based on our statement

in *Ridge*:

> "As far as we can discern, [HN20] 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.

n17 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.

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 [***31] 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. As we explained in *Ridge*, zoning differs from planning; the latter of which embodies the requirements of subdivision. We stated:[HN21]

> "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 [*74] parcel (density), [***32] 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 "unlike 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 [***33] subdivision of land, which provides as follows:

> [**483] [HN22] " **§ 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 therof 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, [*75] 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 [***34] 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. Industries, 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 [***35] 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 [*76] 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 [***36] interest of justice' give their decisions only prospective effect. Contracts are [**484] 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. Industries, 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 [***37] 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 *Kelly*, 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 *Kelly* would not apply to all causes of action arising from a gunshot wound inflicted by a [*77] "Saturday Night Special," but would apply to the *Kelly* plaintiff as well as to other causes of action accruing after the date of the *Kelly* mandate. *Julian* and *Kelly* 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.[HN23] 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 [***38] 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 [***39] 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. n18 [*78] Moreover, as [**485] 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.

n18 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 remained combined, or encumbered by the doctrine of zoning merger at the time of *Ridge*, and since, are clearly subject to its effects.

Montgomery County goes on to state that "by definition, subdivision includes both the division of land into [***40] 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, to 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:

[HN24] " **§ 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 [***41] of exclusively agricultural land not for development purposes. A resubdivision is a subdivision."

[*79] 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. n19 The text [**486] 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 [*80] regulations. n20 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 [***42] doctrine of zoning merger. The issue is not subdivision combination but zoning merger.

n19 The Baltimore County Code, Planning, Zoning and Subdivision Control Article, Development Title, includes the following relevant subdivision provisions:

[HN25] " **§ 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.[HN26] " **§ 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.. . .[HN27] " **§ 32-4-201. In General.**Except as provided in §§ 32-4-105 [Agricultural exemptions], 32-4-106 [Limited ex-

emptions], 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.]. . .[HN28] " **§ 32-4-271. Required.**(a) *In general.* The applicant shall prepare a plat in accordance with the approved Development Plan for any subdivision."

[***43]

n20 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:

[HN29] " ***§ 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."

The respondents [***44] assert that the mandatory language of Montgomery County Code § 50-8 ("the subdivider therof or his agent shall file . . . .") precludes any use of the land that is inconsistent with the filed subdivision plat. As we have indicated, however, [HN30] 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). n21 Following a petition for [*81] 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 [***45] *considered* the seven statutory subdivision criteria found in Montgomery County Code § 50-29 (b)(2), n22 there was not substantial [**487] 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. [***46]

n21 This was the opposite of combining two parcels into a larger parcel through zoning merger.

n22 These seven subdivision criteria are as follows:

[HN31] "**§ 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.]

The County's position specifically, and the other respon-

dents' position generally, suggests their belief that those [*82] 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 [***47] 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 . . . ." n23 *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 n24 does [**488] not vitiate the manner in which they *used* their property.

n23 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.

n24 The1955 Montgomery County Subdivision Regulations contain the following provision:

> [HN32] " **§ 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:

> [HN33] " **§ 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.

[***48]

[*83] *1. What becomes of Lot 12 in the absence of Lot 11?*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 [HN34] 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 (N.J.Super.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 [***49] 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. n25 It is not [*84] 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, n26 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. n27 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 [**489] effectively waives the zoning requirements as to Lot 12.

n25 The subdivision regulations provide, in relevant part:

[HN35] " **§ 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 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. [***50]

n26 Lot 12 measures 11,182 square feet-well in excess of the R-60 zone's required 6,000 square foot lot size.

n27 We do not comment as to whether variance procedures can be used to obtain a variance for 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" n28 (alterations added).

n28 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.

[***51] [*85] 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.

[***52] *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 [*86] 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).[HN36] 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 [***53] purposes. *See Ridge, 352 Md. at 658, 724 A.2d at 34. See also Rouse-Fairwood Devel. Ltd. Partnership v. Supervisor of Assessments for*

[**490] *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 n29 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 [***54] to the factual applicability of zoning merger emanating from adjacent properties. The task, for competent title attorneys, is not insurmountable.

n29 "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)."And again, that [HN37] 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).

It would not be necessary as respondents speculate to trace title to an indefinite time for, as we have indicated, there are [*87] 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 [***55] obtained its building permit. n30

n30 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.

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. [***56] 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 [491] THE BOARD OF APPEALS AND DIRECT THE BOARD TO ISSUE AN ORDER CONSISTENT [*88] WITH OUR OPINION. COSTS TO PAID BY THE RESPONDENTS.**

STREET LINE — A line which divides the right-of-way of a street from other property; a street right-of-way line. **[Bill No. 111-1958]**

STRIPTEASE BUSINESS — A commercial establishment where persons appear in a state of total or partial nudity in person. Such establishment shall, for example, include, but not be limited to, a restaurant, nightclub, dance club or social hall if such entertainment is provided as an accessory or principal use. A striptease business, including the building or portion thereof that contains or advertises the business, must be located at least 1,000 feet from a dwelling, church, park, child care center or school existing on the effective date of this legislation[24] and be arranged so that the interior is not visible from the outside. A striptease business may not operate between 2:00 a.m. and 6:00 a.m.

For the purpose of this definition, an establishment which is duly licensed by the Board of Liquor Commissioners for Baltimore County and which features striptease dancing, nudity or partial nudity as an accessory use shall not be considered a striptease establishment, except that it shall satisfy the setback limitation established hereinabove for a striptease business.

The one-thousand-foot distance requirement shall be considered an area requirement and, in addition to the authority and limitations set forth in Section 307.1 of these regulations, a variance may be granted if strict compliance with said setback would result in severe economic circumstances which are not the result of actions by the petitioner. **[Bill Nos. 137-1990; 29-1998]**

SUBDIVISION — The division of any tract or parcel of land, including frontage along an existing street or highway, into two or more lots, plots or other divisions of land for the purpose, whether immediate or future, of building development for rental or sale, and including all changes in street or lot lines; provided, however, that this definition of a subdivision shall not include divisions of land for agricultural purposes.[25]

SYSTEM OF RUBBLE DISPOSAL OR LAND RECLAMATION FOR PUBLIC OR PRIVATE USE — The services, facilities or properties used in connection with the disposal of rubble or land reclamation, unless these activities are limited to rubble generated by a single individual or business and disposed of on the same property where generated. While limited operation of a rubble landfill can be accessory to agricultural use, it is not a primary agricultural activity. **[Bill No. 97-1987]**

TAVERN — An establishment which has a Baltimore County Class D liquor license. A tavern which meets the criteria of nightclub, as defined in these regulations, shall be considered a nightclub. **[Bill No. 110-1993]**

TENNIS FACILITY — A single court, or two or more adjoining courts on a single lot, for playing tennis, paddleball, handball, squash, jai alai or other similar games or sports. **[Bill No. 62-1978]**

TOURIST HOME — A rooming house primarily for transient guests.[26]

---

24 **Editor's Note: Bill No. 29-1998, which amended this definition, provided that it take effect March 20, 1998.**

25 **Editor's Note: The definition of "subdivision, cluster" which followed this definition was repealed by Bill No. 100-1970.**

26 **Editor's Note: The definition of "town" which followed this definition was repealed by Bill No. 3-1992.**

125Z00

********** Print Completed **********

Time of Request: July 06, 2006 12:40 PM EDT

Print Number: 1821:107183437
Number of Lines: 1043
Number of Pages: 19

Send To: WOOLMAN, JOSEPH
GILDEA & SCHMIDT LLC
300 E LOMBARD ST STE 300
BALTIMORE, MD 21202-3219

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,

SECTION [illegible] - USE OF UNDERSIZED SINGLE-FAMILY LOTS - [illegible]or 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.

<u>Interpretation:</u> 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)

GILDEA & SCHMIDT, LLC

DAVID K. GILDEA
DAVIDGILDEA@GILDEALLC.COM

LAWRENCE E. SCHMIDT
LSCHMIDT@GILDEALLC.COM

SEBASTIAN A. CROSS
SCROSS@GILDEALLC.COM

JOSEPH R. WOOLMAN, III
JWOOLMAN@GILDEALLC.COM

D. DUSKY HOLMAN
DHOLMAN@GILDEALLC.COM

JASON T. VETTORI
JVETTORI@GILDEALLC.COM

300 EAST LOMBARD STREET
SUITE 1440
BALTIMORE, MARYLAND 21202
TELEPHONE 410-234-0070
FACSIMILE 410-234-0072
www.gildeallc.com

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

July 10, 2006

Sent Via Hand Delivery
Ms. Kathy Bianco
Court Board of Appeals
Old Court House
400 Washington Avenue
Room 49
Towson, MD 21204

Re: In RE: Petition for Variance/ Zoning Commissioner Case No. 06-166-A

Dear Kathy:

Enclosed please find Petitioner's Closing Brief in the above captioned matter. With kind regards, I am

Very truly yours,

Joseph R. Woolman, III

JRWIII: dls
Cc: John Murphy , Baltimore County Deputy Zoning Commissioner
Benjamin Bronstein, Esquire
William Link
Lawrence E. Schmidt, Esquire

RECEIVED
JUL 10 2006
BALTIMORE COUNTY
BOARD OF APPEALS

12/19/05

IN RE: PETITION FOR VARIANCE N/W side of Taylor Avenue, 285 ft. s/east Of c/l of McTavis Avenue 13th Election District 1st Councilmanic District (1206 Taylor Avenue)	* * * *	BEFORE THE BALTIMORE COUNTY BOARD OF APPEALS Case No.:
Link-Link, LLC, Legal Owner Before the Deputy Zoning Commissioner Of Baltimore County Case No.: 06-166-A	* * *	

RECEIVED
DEC 19 2005
Per...

****

PETITION

LINK-LINK, LLC, Petitioner, in the above captioned matter, by and through its attorneys, Joseph R. Woolman, III and Gildea & Schmidt, LLC, files this Petition, pursuant to Baltimore County Code Section 32-4-281, and states as follows:

1. The subject property is located at 1206 Taylor Avenue in southwest Baltimore County.
2. The Petitioner filed a request for variance from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations ("BCZR"), to permit a lot width of 50 ft in lieu of the minimum 55 ft.
3. On November 18, 2005 the Deputy Zoning Commissioner for Baltimore County denied the request for variance and ruled that lots adjacent to the subject property had "merged from a zoning standpoint " and that "there are no internal lot lines (from a zoning standpoint) against which variances can be granted."
4. The Deputy Zoning Commissioner also denied Petitioner's request to proceed under Section 304 of the BCZR and agreed with the zoning office that the hearing needed to be a variance hearing.
5. The Deputy Zoning Commissioner erred as a matter of law by ruling lots had merged from a zoning standpoint.

6. The Deputy Zoning Commissioner erred as a matter of law by denying the request to proceed under Section 304 of the BCZR.

WHEREFORE, the Petitioner hereby appeals the Deputy Zoning Commissioner's Findings of Fact and Conclusions of Law in the above captioned matter for the reasons set forth herein and to be presented at the de novo hearing.

Respectfully Submitted,

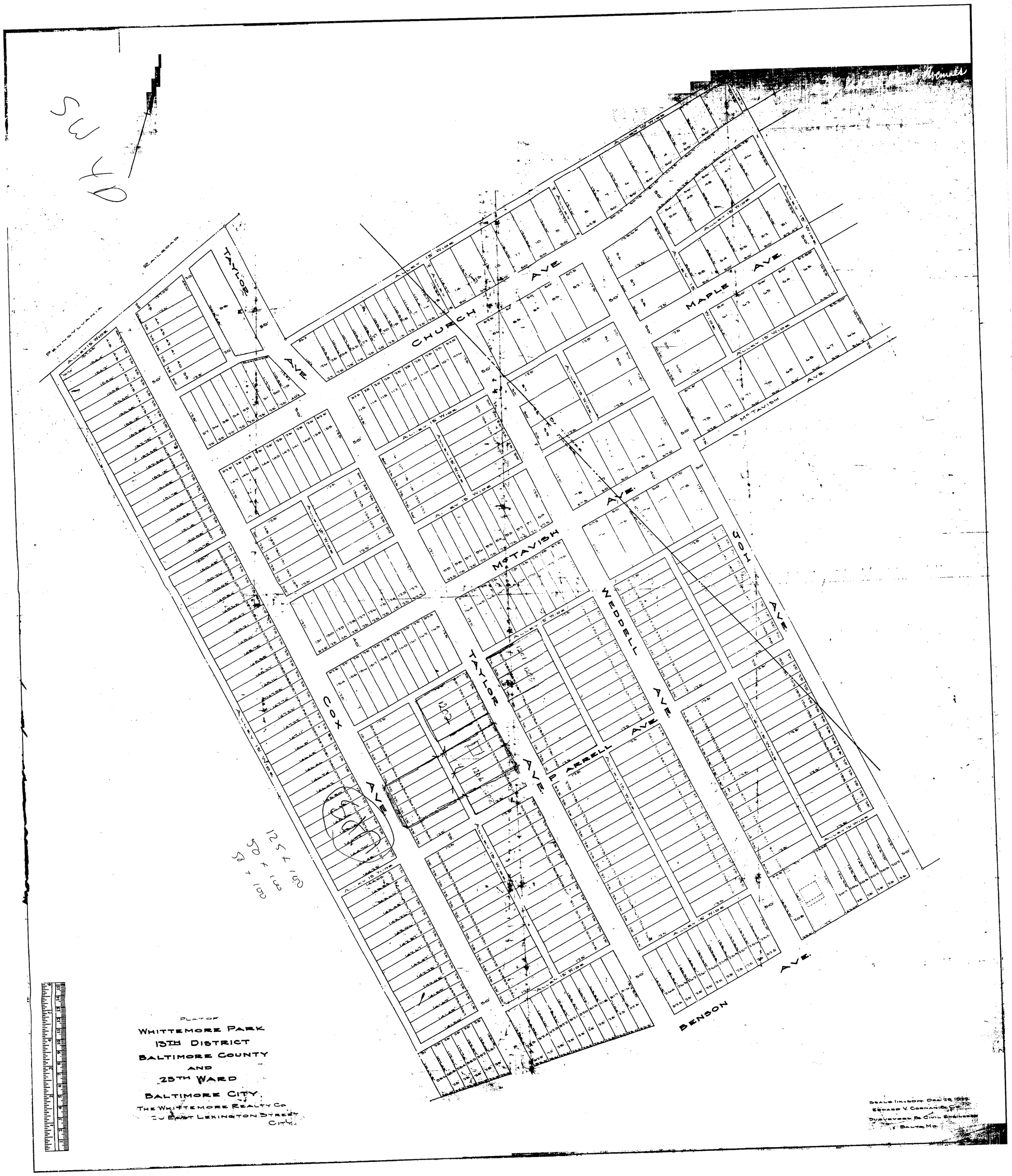
Joseph R. Woolman, III
Gildea & Schmidt, LLC
300 E. Lombard Street, Suite 1440
Baltimore, MD 21202
(410) 234-0070
Attorneys for Petitioner

CERTIFICATE OF SERVICE

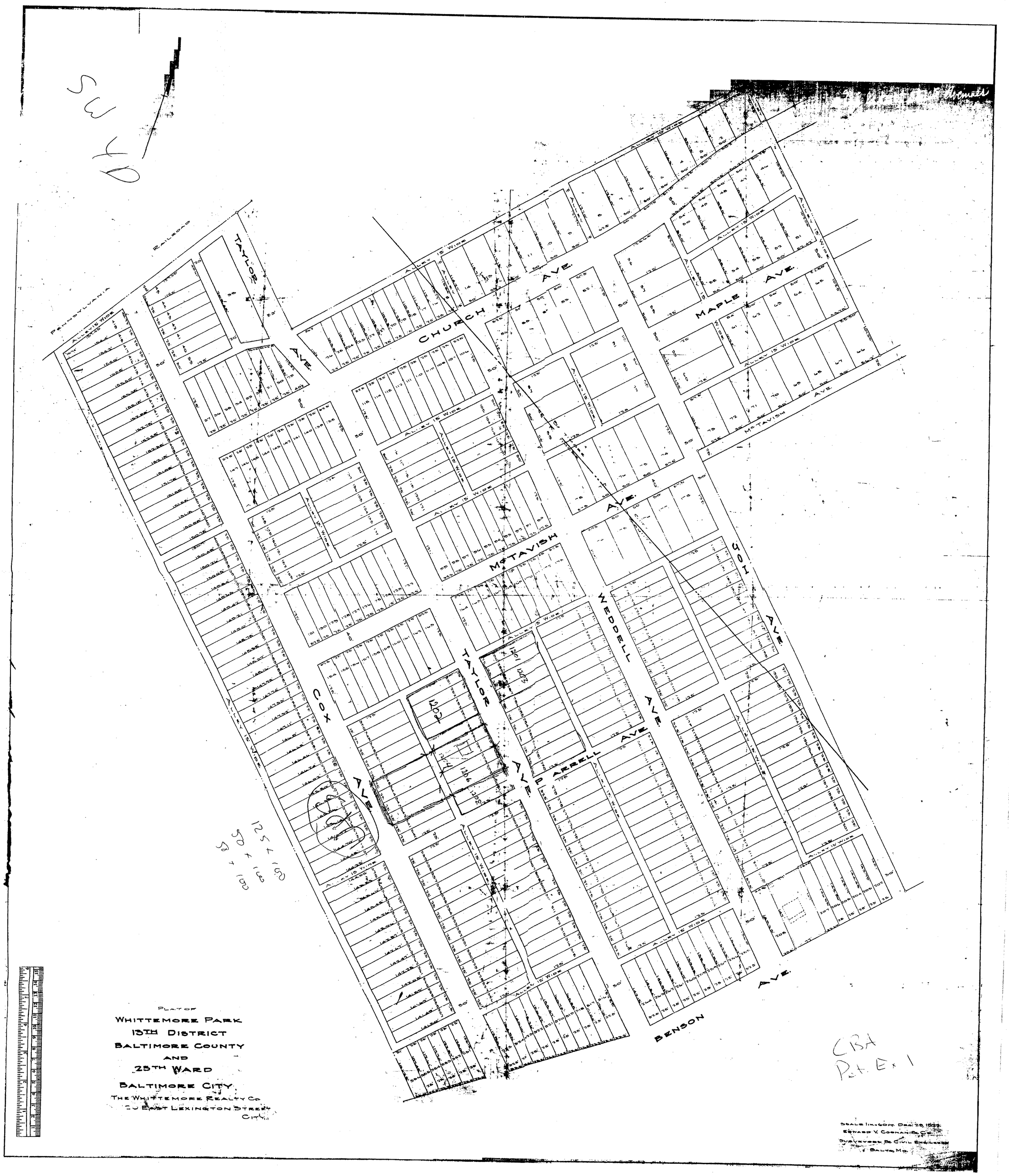
I HEREBY CERTIFY on this 15th day of December, 2005, a copy of the foregoing Petition for Appeal was mailed, first class, postage prepaid, to:

Benjamin Bronstein, Esquire
29 W. Susquehanna Ave., Suite 205
Towson, MD 21204

Joseph R. Woolman, III


PLAT OF
WHITTEMORE PARK
13TH DISTRICT
BALTIMORE COUNTY
AND
25TH WARD
BALTIMORE CITY.
THE WHITTEMORE REALTY CO.
20 EAST LEXINGTON STREET
CITY.
PENNSYLVANIA RAILROAD
TAYLOR AVE.
CHURCH AVE.
MAPLE AVE.
McTAVISH AVE.
WEDDELL AVE.
ARRELL AVE.
COX AVE.
BENSON AVE.
ALLEY 15' WIDE
125 x 150
50 x 150
50 x 150

Pat #2



PLAT OF
WHITTEMORE PARK
13TH DISTRICT
BALTIMORE COUNTY
AND
25TH WARD
BALTIMORE CITY
THE WHITTEMORE REALTY CO.
30 EAST LEXINGTON STREET
CITY

SCALE 1 IN. = 50 FT. DEC. 28, 1922
EDWARD V. COCHRAN & CO.
SURVEYORS & CIVIL ENGINEERS
BALTO. MD.

304 matte underoized lot +