1/3/06

IN RE: **PETITION FOR VARIANCE** NW/Corner Berwick Road and Locust Avenue **(1401 Berwick Road)** 9th Election District 2nd Council District Benhoff Builders, Inc. Petitioners	* * * * * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 06-257-A

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of a Petition for Variance filed by the owner of the subject property, Benhoff Builders, Inc. ("Petitioner"), through its attorney, Jennifer R. Busse, Esquire. Petitioner requests a variance from Baltimore County Zoning Regulations ("BCZR"), §1B01.2.C.1.b to permit a rear yard setback of 12 feet in lieu of the required 30 feet[1] and from BCZR §303.1 to permit a front yard setback of 30 feet in lieu of the required 42.8 feet. The subject property and requested relief are more particularly described on the site plan submitted, which was accepted into evidence as marked as Petitioners' Exhibit 1.

Appearing at the requisite public hearing in support of the request were the Petitioner, represented by Melvin C. Benhoff, Jr., Jennifer R. Busse, Esquire and Audra Trouland Cathell, Esquire, attorneys for the Petitioner, and George Grose, a neighbor and representative of the Ruxton Heights Community, who reside at 1412 LaBelle Avenue. Also appearing at the hearing as interested citizens were Nancy Horst and John M. Blaze, nearby property owners. Felicia Albright appeared at the hearing in opposition to the petition.

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[1] Petitioner could have requested relief from the development standards for small lots or tracts, pursuant to Section 1B02.3.C.1 of the B.C.Z.R. However, the required rear yard depth is 30 feet under both Sections.

The subject property is located at 1401 Berwick Road (also known as Berwick Avenue), in the Ruxton-Riderwood-Lake Roland area of Baltimore County. The property is comprised of Lot Numbers 205, 206, 206A, 207 and 208 as depicted on the Plan of Ruxton Heights dated May 1894 (the "Property"), and contains approximately 20,905 square feet, more or less, zoned D.R.3.5. The Property was previously improved with a dwelling, which was listed on the Maryland Historical Trust Inventory and assigned the Inventory Number of BA # 3109. The former dwelling was razed, pursuant to Baltimore County Building Permit No. B558162, on July 27, 2005. Prior to razing the dwelling, the Petitioner entered into an agreement with The Ruxton-Riderwood-Lake Roland Area Improvement Association, Inc. (RRLRAI) on November 30, 2003, a copy of which was recorded in the Baltimore County Land Records at Liber 19300, Folio 26 (Petitioner's Exhibit 2). Pursuant to the terms of the Agreement, the Petitioner agreed to design the dwelling proposed for Lots 205 - 208 according to plans and specifications approved by The Ruxton-Riderwood-Lake Roland Area Improvement Association which are incorporated into the Agreement. Those specifications emulate the style of the razed dwelling, and include orienting the new dwelling in the same manner as the razed dwelling.

As evidenced in a letter dated October 25, 2005 from the RRLRAI to Timothy Kotroco, Director of the Department of Permits and Development Management (Petitioner's Exhibit 3), the RRLRAI supports the Plan and the requested variances. Petitioner's Exhibit 3 contains supporting signatures of the Property's immediately adjacent property owners and owners of properties located across Berwick Road from the proposed residence. Two other letters of support were received into evidence. Petitioner's Exhibit 4 is a letter from the RRLRAI in which the community indicates its

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support for the requested variances, and Petitioner's Exhibit 5 is a letter from George Grose and Amy Macht.

No Baltimore County agency opposes the variances. The Baltimore County Office of Planning (OP) noted in a memorandum dated December 22, 2005 that the proposed dwelling would create a single lot of record of Lots 205 – 208 because it straddles those lots. The OP also noted that effective December 23, 2005, the Chairman of the Design Review Panel would be able to approve the proposed new residence administratively without the necessity of a formal DRP meeting.

At the outset of the hearing, an issue was raised regarding the permit that has already been issued for the foundation of the proposed dwelling (Baltimore County Building Permit No. B610208, issued on October 26, 2005) and whether that permit affects the decision on the requested relief. The issuance of a building permit has no impact on the outcome of the decision in this case. The Petitioner has proceeded at its own risk by laying the foundation pursuant to the permit. Moreover, Building Permit No. B610208 specifically states that it does not guarantee issuance of subsequent permits by Baltimore County.

Ms. Albright raised concerns about increased traffic, lack of shoulder and sidewalks, and the close proximity of dwellings to Berwick Road. The requested relief does not raise any issues regarding density. Accordingly, the requested relief has no impact on issues of traffic, shoulder, and sidewalks along Berwick Road. Rather, the proper issues to be determined in this case are the appearance and placement of the proposed dwelling on the Property. The proposed dwelling is consistent with other homes in the Ruxton community. The proposed dwelling is also consistent with the former dwelling that was built prior to Baltimore County's enactment of the BCZR and

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recorded on a record plat in the land records of Baltimore County at Liber 1, Folio 185. Petitioner owns Lots 205 – 213. Petitioner is entitled, by right, to build four houses on Lots 205 – 213. However, Petitioner and the RRLRAI agreed to reduce the amount of proposed dwellings on these lots from four to three and construct the proposed dwelling according to certain specifications regarding appearance and orientation on the site. Moreover, Petitioner is entitled to build a smaller house on the Property without the need for any variance and is entitled to build four houses on Lots 205 – 213, such construction would not be in accordance with the community's specifications.

Ms. Albright also raised concerns regarding the doctrine of merger. However, the doctrine of merger does not apply to the requested variances. Zoning merger occurs when a common owner of contiguous lots integrates or uses the contiguous lots in the service of a single structure or project for zoning purposes (*ie*. setback requirements, permitted uses). *Remes v. Montgomery County*, 387 Md. 52, 66 (2005) (quoting *Friends of the Ridge v. Baltimore Gas and Electric Co.*, 352 Md. 645, 658 (1999)). The former dwelling was constructed pursuant to a record plat dated May 1894. Consequently, the prior dwelling did not combine lots to satisfy zoning requirements because Baltimore County did not enact zoning regulations until the 1950s. Regardless, even if any of Lot Numbers 205 – 213 were merged at one point, such merger has been corrected by the razing of the prior dwelling. *Remes*, 387 Md. at 73, 85. One dwelling currently exists on Lot Numbers 212 – 213. That existing dwelling does not use any portion of Lot Numbers 205 – 208 to satisfy any zoning criteria. No variances are necessary to any of the other lots as a result of the proposed dwelling. Accordingly, merger is not applicable to this case.

Variances may be granted from height and area regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the

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variance request and where strict compliance with the regulations would result in practical difficulty or unreasonable hardship. Variances shall be granted only if in strict harmony with the spirit and intent of the height and area regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare. BCZR §307. This case presents an exceptional circumstance warranting the grant of the requested variances.

Petitioner presented evidence as to the Property's uniqueness and the practical difficulties that would arise without the variance relief. The Property is unique because it is subject to the restrictions and conditions imposed by the Agreement between the Petitioner and the RRLRAI. As noted above, Ms. Busse proffered that the Petitioner could construct a dwelling on the Property without the need for any variances. However, because of the conditions placed upon the Property regarding the proposed dwelling's footprint, location, size, and orientation, a front and rear setback variance is required. In other words, the community desires the proposed dwelling to look a certain way. In order to construct the dwelling in accordance with the community's specifications, the Petitioner must obtain the requested variances. Without the variances, a house could be built on the Property that would be out of character with the other homes in the neighborhood.

In addition, the Property is unique because of its historical significance. *Cromwell v. Ward,* 102 Md. App. 691, 708 (1995). The Property is located within a historic area of Baltimore County that is subject to very specific criteria for new construction. The Property is subject to Design Review Panel approval which emphasizes the importance of the appearance of new construction within the community. The former dwelling was razed as a result of the Agreement, which was intended to govern the recreation of the former dwelling to afford larger setbacks.

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Petitioner is unable to comply with both the BCZR and the Agreement. Without the variance relief, the Petitioner cannot build the dwelling mandated by the community. The granting of the requested variances is in strict harmony with the spirit and intent of the BCZR because they will preserve the character of the Ruxton community. In addition, the granting of the variances will be a substantial justice to the surrounding and supporting property owners because without the variance relief, a house that is out of character may be constructed by right. It should also be noted that the normal D.R. 3.5 front setback is met by the proposed dwelling. However, the proposed dwelling is subject to the front averaging setbacks of BCZR §303.1, which in this case, require an additional 12.8 feet.

There is no indication of any adverse impact from the requested variances to the surrounding properties. In fact, the adjacent property owners, and the RRLRAI supports the plans for the proposed dwelling and requested variances. Therefore, I find that the Property is peculiar and disproportionately affected by the area regulations contained in BCZR §§ 1B01.2.C.1.b and 303.1. I further find that strict compliance with BCZR §§ 1B01.2.C.1.b and 303.1 would create a practical difficulty upon the Petitioner, and that the granting of the variances in this case is in strict harmony with the spirit and intent of the Baltimore County Zoning Regulations and will not cause any injury to public health, safety or general welfare.

Pursuant to the advertisement, posting of the property and public hearing on this Petition held, and for the reasons set forth above, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 13th day of January, 2006, that variance from Baltimore County Zoning Regulations ("BCZR"), §1B01.2.C.1.b to permit a rear yard setback of 12 feet in lieu of the required 30 feet and from

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BCZR §303.1 to permit a front yard setback of 30 feet in lieu of the required 42.8 feet, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restrictions:

1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order; however, the Petitioners are hereby made aware that proceeding at this time is at their own risk until the 30-day appeal period from the date of this Order has expired. If an appeal is filed and this Order is reversed, the relief granted herein shall be rescinded.

2) Compliance with all of the terms and conditions set forth in the Agreement entered into by and between the Petitioner and the Ruxton-Riderwood-Lake Roland Improvement Association, Inc., dated November 30, 2003 (Petitioner's Exhibit 2).

3) When applying for any permits, the site plan filed must reference this case and set forth and address the restrictions of this Order.

IT IS FURTHER ORDERED that any appeal of this decision must be entered within thirty (30) days of the date hereof.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

ORDER RECEIVED FOR FILING
Date 1/13/04
By

IN RE: **PETITION FOR VARIANCE** NW/Corner Berwick Road and Locust Avenue **(1401 Berwick Road)** 9th Election District 2nd Council District Benhoff Builders, Inc. Petitioners	* * * * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 06-257-A

* * * * * * * * * * *

ORDER ON THE MOTION(S) FOR RECONSIDERATION

This matter comes before the Zoning Commissioner on a Motion for Reconsideration filed by Peter Max Zimmerman, Esquire, on behalf of the Office of People's Counsel for Baltimore County on February 6, 2006. By Motion, dated March 6, 2006, David F. Albright, Esquire, as counsel for Felicia Albright, adopted the arguments of People's Counsel. On July 25, 2006, John B. Gontrum, Esquire provided written opposition to the Motion(s) and a legal Memorandum on behalf of the owner of the subject property, Benhoff Builders, Inc. (Benhoff)

By way of background, this case initially came before me on a Petition for Variance to permit a new house located at 1401 Berwick Road in the Ruxton area of Baltimore County. The Petitioner sought a front yard setback variance based on the concept of averaging setbacks of adjoining dwellings and also a rear yard setback variance in order to accommodate a new dwelling in roughly the same location as the previous dwelling on the site.[1]

By my Memorandum and Order, dated January 13, 2006, I granted the Petitioner's request for the reasons set forth therein. Subsequently, People's Counsel and Ms. Albright filed their

[1] At the time of the public hearing in the instant case, December 30, 2005, the previous home known as "The Ann P. and Alfred Tyler House" had been removed pursuant to a permit (B558162) issued July 27, 2005. People's Counsel's concern properly focused on the process leading to the demolition of this house listed on the Maryland Historic Trust Inventory as "No. 3009". Messrs. Zimmerman and Gontrum have filed Memoranda keenly identifying and developing the essential grounds for the request and opposition thereto.

Date 8-8-06
By

Motions seeking a new evidentiary inquiry to explore the basis for the issuance of the demolition permit by the Department of Permits and Development Management (DPDM), the applicability of Baltimore County Code (BCC), Section 32-4-416, and the appropriateness of approving variance relief for redevelopment under the circumstances. Over Benhoff's objections, essentially arguing that the Zoning Commissioner's Office lacked jurisdiction under current law to conduct such a special hearing on a previously issued building permit to raze a dwelling, a hearing was convened and held on July 26, 2006 to receive testimony and/or argument on the Motion(s).

HISTORY AND TESTIMONY

The Tyler House is gone. The request is to build a new home ostensibly with architectural features of the Tyler House. The record of the case as well as the testimony and evidence received discloses a rather circuitous route to the present point in the process. As synopsized below, it begins with the inclusion of the Tyler House on the Maryland Inventory of Historic Properties, an inventory that is not intended to be a determination that the property, in fact, is significant to Maryland's history and culture, followed by Baltimore County's Landmark Preservation Commission proposing the house be placed on the County's Preliminary Landmark List and subsequently, ending with the County Council's election not to do so. The chronology of events was as follows:

- August 2002 – Benhoff purchases the property from Jay Elmer Weisheit
- August 30, 2002 – Demolition Permit #B497510 is applied for and issued after the Office of Planning's County Historian John McGrain signed off on the application. This permit was withdrawn and cancelled after the property was listed on the MHT Inventory subjecting it to BCC Section 26-278 (now Section 32-4-416).
- December 2002 – A Petition for Administrative Special Hearing (Case No. 03-138-ASPH) is filed requesting permission to raze the structure and following the

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requisite public hearing, then Deputy Zoning Commissioner Timothy Kotroco issued a denial stating:

"It is further ordered, that a new public hearing shall be scheduled before this Hearing Officer after such time as the Landmarks Preservation Commission shall have considered the matter and issued their written recommendations."

- Pursuant to Mr. Kotroco's Order, the matter proceeded to the Landmarks Preservation Commission where the property was again posted and a public hearing held (BCC Section 32-7-302) and findings forwarded to the County Executive and County Council (BCC Section 32-7-303) where Final Landmarks designation status was denied in late 2003.

- June 3, 2004 – Benhoff applied for and after the passage of quite some time received on July 27, 2005 from DPDM Permit #B558162 to raze the structure (Protestant's Exhibit No. 1). Subsequently, the Tyler House was demolished and the subject petition for variance filed in November, 2005. It is worthy to mention that that application for the razing permit for 1401 Berwick Road disclosed the property as "historic" and was signed off on by the Office of Planning's Landmarks Preservation Secretary Kim Abe on June 3, 2004.

- As evidenced by the agreement between Benhoff and the Ruxton-Riderwood Lake Roland Area Improvement Association (Association) - (Petitioner's Exhibit No. 2 attached to my Order in these proceedings dated January 13, 2006) as well as letters submitted at this hearing on the Motion(s) for Reconsideration and testimony presented by community members, there was public participation throughout the above described process.

ISSUES RAISED

The arguments of the parties including those of community members are fully addressed in individual letters (collectively marked and received into evidence as Petitioner's No. 1 on Reconsideration) and counsel's respective written memoranda and will not be repeated here at length. Essentially, the Office of People's Counsel and Ms. Albright observe that Baltimore County property owners and developers have consistently followed the waiver process when *razing*, altering or constructing an addition to a building on the Maryland Historical Trust Inventory of Historic Properties, including the need for a requisite public hearing in order to justify the request

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for a demolition permit pursuant to BCC Sections 32-4-107(b), 32-4-223(8) and 32-4-416(a)(2). This process, it is pointed out is essential to effectuate the legislative intent and purpose and to foster historic preservation.

Additionally, they assert that where there is unwarranted destruction of property listed on the MHT inventory the "uniqueness" attributable to that house is also lost as well as the associated practical difficulty justifying variance relief. In other words, the property is vacant with ample area to develop without variances.

Mr. Gontrum, on the other hand, argues on behalf of Benhoff that even if the building permit to raze the previous structure was issued by the county without following the correct procedure, that fact has nothing to do with the variances sought in these proceedings. Accordingly, he urges that it is inappropriate in a zoning variance proceeding to collaterally attack the issuance of a building permit, a permit that was never appealed and not properly before this Commissioner. Additionally, he points out that there is absolutely no new information, facts or legal authority that was overlooked at the previous hearing and therefore, no basis to change the outcome of that hearing.

Finally, we have the officials of the Association, both past and present, as well as other neighbors adjacent to, with a view of, and near the subject property who vigorously oppose the actions of People's Counsel and Ms. Albright and urge me to permit construction to continue at this location. They point out that there has been more than four years of hearings, discussions, and permits, followed by another seven months of delay occasioned by these proceedings. They respectfully submit that "enough is enough", that "good public policy and the interest of the community require that the project move forward". Amy Macht, who owns a home on the Final

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Landmarks List, and Fran Anderson, Vice President of the Ruxton-Riderwood Association highlighted through their testimony the many meetings, both public and private, the hard work put into this effort and that the neighborhood was given the opportunity to review and comment and believe the proposed home to be built is appropriate to the neighborhood and with the architectural style of the previous home existing on the site.

CONCLUSION

I have considered carefully the arguments of the parties and the authority set out in their Memoranda and Motions. For the reasons stated verbally at the conclusion of the hearing, I am convinced that there is no reason to reconsider the granting of the variances in this matter. Baltimore County Code Section 32-4-107 – WAIVERS, provides in pertinent part that the Hearing Officer may grant a waiver of any or all requirements contained in Subtitles 3, 4, and 5 of Title 4 ... if the Hearing Officer finds that:

(i) 1. The size, scope, and nature of a proposed development does not justify strict compliance with this title;

2. A waiver would be within the scope, purpose, and intent of this title; and

3. All other county laws and regulations have been complied with; or

(ii) Compliance with this title would cause unnecessary hardship.

Even though the house is now razed, I am persuaded to grant such a waiver in this case. I find that's what Mr. Kotroco did in his capacity as Director of Permits and Development Management pursuant to BCC Section 32-4-107(b). He specifically has the right to waive certain development process requirements including the Hearing Officer's hearing. He issued a Demolition Permit #B558162 rather than require the applicant to go through yet a third public hearing as indicated in

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his (Kotroco) December 2002 Order. There was a public hearing as provided for in BCC Section 32-7-406 before the Landmarks Commission and another public hearing occurred before the Baltimore County Council. Community members were involved in the process with agreements being reached by and between the parties, the Administration and the Baltimore County Council. At the time the razing permit was issued, and the Ann P. and Alfred Tyler House structure torn down, it (the structure) was not in a designated historic district and not on either the Preliminary Landmarks List or the Final Landmarks List. Benhoff did not act to deprive the community of its rights, and the permit was issued with the knowledge of the community. Ms. Albright may feel aggrieved by this decision, but she was not denied due process.

I further find that the Petition for Variance was properly before me and that all of the requirements of Section 307 of the Baltimore County Zoning Regulations have been met for variance relief to be granted. Moreover, I find that any other ruling, given these facts, would be tantamount to placing form over substance totally ignoring the natural impetuous to try to resolve land use controversies through negotiations, agreements, and the like … which are ever-present in the background of the zoning process.

ORDER

It is ORDERED by the Zoning Commissioner for Baltimore County this 8th day of August 2006 that the Motion(s) for Reconsideration filed in the above-captioned matter be and the same are hereby DENIED; and

It is further ORDERED that the decision in this case is applicable only to the facts of this case and is not a legal precedent that may be cited as such in any other special hearing involving the preservation of historic buildings or sites. Unless waived by the Director of Permits and

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Development Management pursuant to current Code requirements, a special hearing should be requested prior to and not after demolition of a structure on the Maryland Historical Trust Inventory.

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

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

c: John B. Gontrum, Esquire, Jennifer R. Busse, Esquire & Audra Cathell, Esquire, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Towson, Md. 21204
Mr. Melvin C. Benhoff, Jr., President, Benhoff Builders, Inc., 215 Old Padonia Road, Cockeysville, Md. 21030
David F. Albright, Esquire, 1122 Kenilworth Drive, Suite 500, Baltimore, Md. 21204
Ms. Felicia B. Albright, 1214 Berwick Road, Ruxton, Md. 21204
Mr. Joseph M. Coale, 1317 Boyce Avenue, Towson, Md. 21204
Mr. George Grose, 1412 LaBelle Avenue, Ruxton, Md. 21204
Mr. Fran Anderson, 7912 Springway Road, Ruxton, Md. 21204
Ms. Amy Macht, 1412 LaBelle Avenue, Ruxton, Md. 21204
Ms. Nancy Horst, P.O. Box 204, Riderwood, Md. 21139
Mr. John Blaze, 1209 Berwick Road, Ruxton, Md. 21204
Mr. Kent H. Walker, 1402 Berwick Road, Towson, Md. 21204
Mr. and Mrs. Philip Rauch, 1308 Locust Avenue, Towson, Md. 21204
Mr. and Mrs. Robert Schleif, 1310 Locust Avenue, Towson, Md. 21204
Mr. Joseph Coale, President, The Ruxton Lake-Roland Area Foundation, Inc., P.O. Box 204, Riderwood, Md. 21139
Mr. R. Edwards Taylor, 1406 Locust Avenue, Towson, Md. 21204
Ms. Mary Sue McCarthy and Mr. Bill Hopkinson, 1501 Berwick Road, Ruxton, Md. 21204
Mr. and Mrs. Steven Williams, 1403 LaBelle Avenue, Ruxton, Maryland 21204
Mr. L. Franklyn Lucas, Jr., 1505 Berwick Road, Towson, Md. 21204
Mr. and Mrs. Richard Neuheisel, 1404 LaBelle Avenue, Towson, Md. 21204
Mr. Joseph Adam, 1405 Berwick Road, Towson, Md. 21204
Mr. Sam Akman, 1400 Locust Avenue, Towson, Md. 21204
Mr. William F. Ryan, Jr., 1314 Locust Avenue, Towson, Md. 21204
Ms. Nyuk-Yoong H. Schleif, 1310 Locust Avenue, Towson, Md. 21204
People's Counsel, Case File

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

January 13, 2006

WILLIAM J. WISEMAN III
Zoning Commissioner

Jennifer R. Busse, Esquire
Audra Cathell, Esquire
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: **PETITION FOR VARIANCE**
NW/Corner Berwick Road and Locust Avenue
(1401 Berwick Road)
9th Election District – 2nd Council District
Benhoff Builders, Inc. - Petitioner
Case No. 06-257-A

Dear Ms. Busse & Ms. Cathell:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Variance has been granted, in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Department of Permits and Development Management office at 887-3391.

Very truly yours,

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:bjs

cc: Mr. Melvin C. Benhoff, Jr., President, Benhoff Builders, Inc.
215 Old Padonia Road, Cockeysville, Md. 21030
Ms. Nancy Horst, P.O. Box 204, Riderwood, Md. 21139
Mr. John Blaze, 1209 Berwick Road, Ruxton, Md. 21204
Ms. Felicia Albright, 1214 Berwick Road, Ruxton, Md. 21204
Mr. George Grose, 1412 LaBelle Avenue, Ruxton, Md. 21204
People's Counsel; Case File

HISTORIC

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at 1401 BERWICK RD AVE

which is presently zoned DR 3.5

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

please see attached

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

reasons to be provided 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:

NA
Name - Type or Print

Signature

Address — Telephone No.

City — State — Zip Code

Attorney For Petitioner:

Jennifer R. Busse
Name - Type or Print

Jen Busse
Signature

Smith Ford, Taylor & Preston
Company

210 W. Pennsylvania Ave — 410-832-2011
Address — Telephone No.

Towson MD 21204
City — State — Zip Code

Legal Owner(s):

BENHOFF BUILDERS INC
Name - Type or Print

Melvin C Benhoff Jr / Pres.
Signature

MELVIN C BENHOFF JR
Name - Type or Print

Signature

215 OLD PADONIA Rd. — 410-252-0007
Address — Telephone No.

COCKEYSVILLE MD 21030
City — State — Zip Code

Representative to be Contacted:

MELVIN C BENHOFF JR.
Name

215 OLD PADONIA ROAD — 410-252-0007
Address — Telephone No.

COCKEYSVILLE MD 21030
City — State — Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING 1 HR

UNAVAILABLE FOR HEARING —

Reviewed By NA **Date** 11/15/05

DROP OFF JL

ORDER RECEIVED FOR FILING
Date 11/13/06
By

Case No. 06 251 A

REV 9/15/98

Attachment to Petition for Variance

1401 Berwick Road (a.k.a. Berwick Avenue)
Zoned DR 3.5
9th Election District
2nd Councilmanic District

Requested Variance Relief:

1. Variance from BCZR §1B01.2.C.1.b to permit a rear yard setback of 12 feet in lieu of the required 30 feet.

2. Variance from BCZR § 303.1 to permit a front yard setback of 30 feet in lieu of the required 42.8 feet.

front yard averaging - either side - within 200'

348206

ZONING DESCRIPTION

1401 Berwick Road (a.k.a. Berwick Avenue)
9th Election District
2nd Councilmanic District

ZONING DESCRIPTION FOR 1401 Berwick Road.

Beginning at a point on the south side of Berwick Road (which is 40 feet wide) and at the southwest side of the intersection of Berwick Road and Locust Avenue (which is 40 feet wide). Being Lot numbers 205, 206, 206A, 207 and 208 in the subdivision of Ruxton Heights as recorded in Baltimore County Plat Book 1, Folio 185, containing 20,905 square feet, more or less. Also known as 1401 Berwick Road and located in the 9th Election District, 2nd Councilmanic district.

348306

257

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: #06-257-A
1401 Berwick Road
Northwest corner of Berwick Road and Locust Avenue
9th Election District - 2nd Councilmanic District
Legal Owner(s): Benhoff Builders, Inc., Melvin C. Benhoff, Jr.

Variance: to permit a rear yard setback of 15 feet in lieu of the required 30 feet and to permit a front yard setback of 30 feet in lieu of the required 42.8 feet.

Hearing: Friday, December 30, 2005 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson 21204.

WILLIAM J. WISEMAN, III
Zoning Commissioner for Baltimore County

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.
(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

12/151 Dec. 15 78257

CERTIFICATE OF PUBLICATION

12/16/, 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 12/15/, 2005.

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

S. Wilkinson

LEGAL ADVERTISING

CERTIFICATE OF POSTING

RE: Case No.: 06-257-A

Petitioner/Developer: BENHOFF BUILDERS, MELVIN C. BENHOFF

Date of Hearing/Closing: DEC. 30, 2005

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

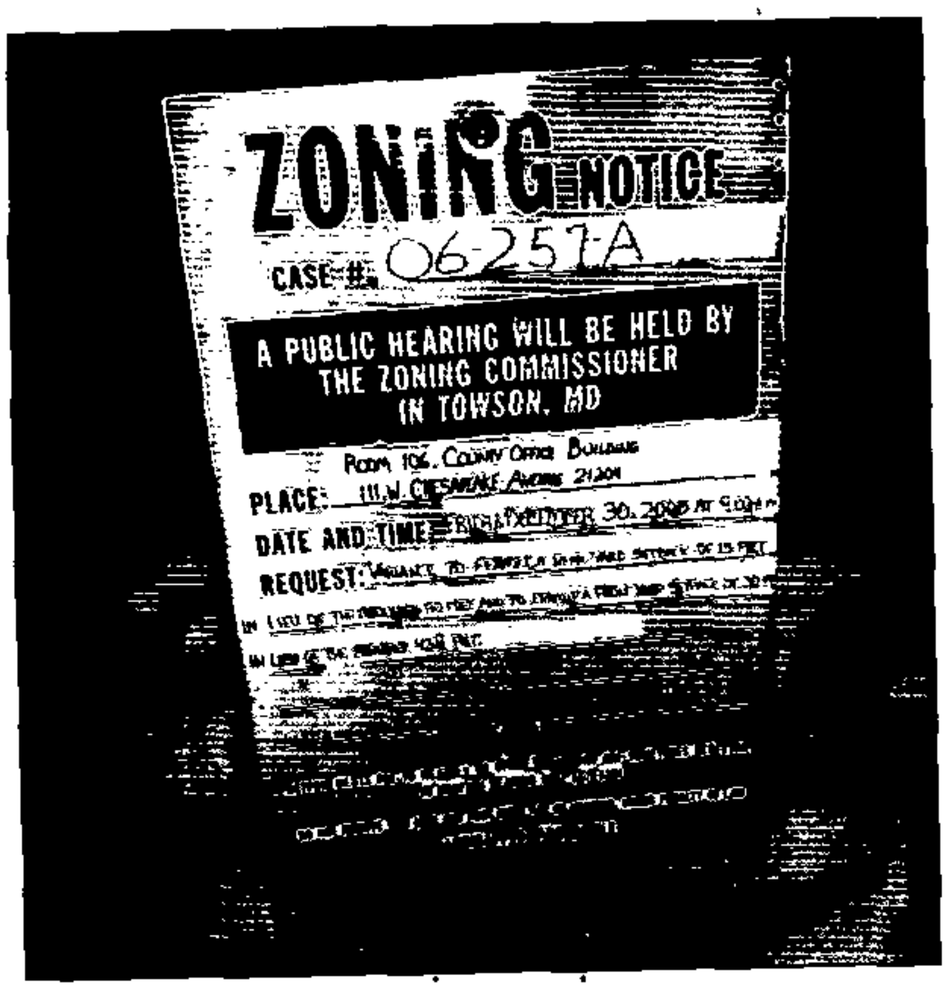
ATTN: Kristen Matthews {(410) 887-3394}

Ladies and Gentlemen:

This letter is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at: 1401 BERWICK RD

The sign(s) were posted on 12-12-05
(Month, Day, Year)

Sincerely,



1401 BERWICK CT

Robert Black 12-13-05
(Signature of Sign Poster) (Date)

SSG Robert Black
(Print Name)

1508 Leslie Road
(Address)

Dundalk, Maryland 21222
(City, State, Zip Code)

(410) 282-7940
(Telephone Number)

RECEIVED
DEC 15 2005

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

06 251 A **No.** 448151

DATE 11/15/05 ACCOUNT 001 006 6150

AMOUNT $ 65.00

RECEIVED FROM: Whitehead, Taylor Preston

FOR: Res Variance (DROP OFF FILING)

1401 BERWICK AVE

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
11/16/2005	11/15/2005	11:12:27	4

5 [illegible] [illegible]
MULTI# 41844 11/15/2005 OPLH
Rpt 5 526 ZONING VERIFICATION,
R NO. 448151
Recpt Tot $65.00
$65.00 CK $.00 CA
Baltimore County, Maryland

CASHIER'S VALIDATION

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: 06 257 A

Petitioner: BENHOFF BUILDERS INC.

Address or Location: 1401 BERWICK RD (aka Berwick Avenue)

PLEASE FORWARD ADVERTISING BILL TO:

Name: BENHOFF BUILDERS INC

Address: 215 OLD PADONIA ROAD
COCKEYSVILLE MD 21030

Telephone Number: 410-252-0007

Revised 7/11/05 - SCJ

APPEAL SIGN POSTING REQUEST

CASE NO. 06-257-A

1401 BERWICK ROAD
A/K/A BERWICK AVE

9TH ELECTION DISTRICT APPEALED: 8/16/2006

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.: 06-257-A

LEGAL OWNER: BENHOFF BUILDERS, INC./MELVIN C. BENHOFF, JR.

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

1401 BERWICK ROAD A/K/A BERICK AVENUE

MAP 26 #6

The sign was posted on 2/22, 2006/07

By: _____
(Signature of Sign Poster)

Jeff Radcliffe
(Print Name)

The Law Offices of

DAVID F. ALBRIGHT

1122 Kenilworth Drive
Suite 500
Baltimore, Maryland 21204

Telephone (410) 823-5455
Facsimile (410) 823-5453
e-mail: dalbright@verizon.net

September 6, 2006

HAND-DELIVERY
Timothy Kotroco, Director
Department of Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Re: Petition for Variance
NW/Corner Berwick Road and Locust Avenue
(1401 Berwick Road)
9th Election District; 2nd Council District
Benhoff Builders, Inc. – Petitioners
CASE NO.: 06-257-A

Dear Mr. Kotroco:

This letter is a notice of appeal to the Baltimore County Board of Appeals in the above-referenced case on behalf of Protestant Felicia Albright. The appeal is from the Order on the Motion(s) for Reconsideration dated August 8, 2006 and the incorporated Findings of Fact and Conclusions of Law dated January 13, 2006, filed by the Baltimore County Zoning Commissioner in the above-referenced case.

Enclosed you will find a check in the amount of $400.00 for the appeal. Please date stamp the copy of this letter and return with the messenger.

Thank you.

Sincerely,

David F. Albright, Esq.

cc: John B. Gontrum, Esq.
Peter Max Zimmerman, Esq.
Carole S. Demilio, Esq.

RECEIVED
SEP 06 2006
Per...

JRB:mbb

cc: Peter Max Zimmerman, Esquire
Carole S. Demilio, Esquire
Mr. William Wiseman
John B. Gontrum, Esquire

356852

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 21767

DATE 10/30/06 ACCOUNT 001-006-6150

AMOUNT $ 400.00

RECEIVED FROM: David F. Albright

FOR: Appeal
1401 Berwick Rd. 06-257-A

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

CASHIER'S VALIDATION

[illegible]
[illegible] 10/30/2006 14:31:11
[illegible]
[illegible] 10/30/2006
[illegible]
[illegible]
Check Tot 400.00
400.00 CK [illegible]
Baltimore County, Maryland

TO: PATUXENT PUBLISHING COMPANY
Thursday, December 15, 2005 Issue - Jeffersonian

Please forward billing to:
Benhoff Builders, Inc.
215 Old Padonia Road
Cockeysville, MD 21030

410-252-0007

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: 06-257-A
1401 Berwick Road
Northwest corner of Berwick Road and Locust Avenue
9th Election District – 2nd Councilmanic District
Legal Owners: Benhoff Builders, Inc., Melvin C. Benhoff, Jr.

Variance to permit a rear yard setback of 15 feet in lieu of the required 30 feet and to permit a front yard setback of 30 feet in lieu of the required 42.8 feet.

Hearing: Friday, December 30 2005 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson 21204

WILLIAM J WISEMAN III
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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

Department of Permits and Development Management

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

Baltimore County

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

November 25, 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: 06-257-A
1401 Berwick Road
Northwest corner of Berwick Road and Locust Avenue
9th Election District – 2nd Councilmanic District
Legal Owners: Benhoff Builders, Inc., Melvin C. Benhoff, Jr.

Variance to permit a rear yard setback of 15 feet in lieu of the required 30 feet and to permit a front yard setback of 30 feet in lieu of the required 42.8 feet.

Hearing: Friday, December 30, 2005 at 9:00 a.m. in Room 106, County Office Building, 111 West Chesapeake Avenue, Towson 21204

Timothy Kotroco

Timothy Kotroco
Director

TK:klm

C: Jennifer Busse, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Towson 21204
Melvin Benhoff, 215 Old Padonia Road, Cockeysville 21030

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY THURSDAY, DECEMBER 15, 2005.**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ZONING COMMISSIONER'S OFFICE AT 410-887-4386.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

The Law Offices of

DAVID F. ALBRIGHT

1122 Kenilworth Drive
Suite 500
Baltimore, Maryland 21204

Telephone (410) 823-5455
Facsimile (410) 823-5453
e-mail: dalbright@verizon.net

June 5, 2006

VIA FACSIMILE
Ms. Debbie Wiley
Office of the Zoning Commissioner
for Baltimore County
County Courts Building
401 Bosley Avenue, Suite 405
Towson, MD 21204
Fax: 410-887-3468

Re: Motion for Reconsideration; Benhoff Builders, Inc. – Petitioners; Case No. 06-257 A

Dear Ms. Wiley:

In response to Commissioner Wiseman's letter of May 31, 2006 in the above referenced matter, we are available on July 26, 2006 for a hearing. Please let us know if we can be of further assistance. Thank you.

Sincerely,

David F. Albright, Esq.

cc: Peter Max Zimmerman, Esq.
John B. Gontrum, Esq.

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

June 7, 2006

Peter Max Zimmerman
People's Counsel for Baltimore County
Office of People's Counsel
Room 47, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

John B. Gontrum, Esquire
Whiteford, Taylor & Preston, LLP
210 West Pennsylvania Avenue
Towson, Maryland 21204

David F. Albright, Sr., Esquire
1122 Kenilworth Drive, Suite 500
Baltimore, Md. 21204

RE: **MOTION FOR RECONSIDERATION**
Benhoff Builders, Inc. - Petitioners
Case No. 06-257-A

Dear Counsel of Record:

This letter is to confirm that counsel has agreed that the above-captioned matter be scheduled for Wednesday, July 26, 2005, at 9:00 A.M. but lasting no later than 3:00 P.M., in Room 407, of the County Courts Building, 401 Bosley Avenue, Towson, Maryland, 21204. In the event anyone feels we need additional time than allotted, please let me know ASAP and I'll set it in for a continuance.

Should anyone have any questions on the subject, please do not hesitate to call me.

Very truly yours,

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

c: Ms. Nancy Horst, P.O. Box 204, Riderwood, Md. 21139
Mr. John Blaze, 1209 Berwick Avenue, Ruxton, Md. 21204
Ms. Felicia Albright, 1214 Berwick Road, Ruxton, Md. 21204
Mr. George Grose, 1412 LaBelle Avenue, Ruxton, Md. 21204
Mr. Melvin C. Benhoff, Jr., President, Benhoff Builders, Inc., 215 Old Padonia Road, Cockeysville, Md. 21030
Ms. Kristen Matthews, Department of Permits & Development Management; Case File

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

50 CORPORATE CENTER
10500 LITTLE PATUXENT PARKWAY
SUITE 750
COLUMBIA, MARYLAND 21044-3585
TELEPHONE 410 884-0700
FAX 410 884-0719

JOHN B. GONTRUM
DIRECT NUMBER
410-832-2055
JGontrum@wtplaw.com

WHITEFORD, TAYLOR & PRESTON L.L.P.

210 WEST PENNSYLVANIA AVENUE, SUITE 400
TOWSON, MARYLAND 21204-4515
410 832-2000
DIRECT FAX 410 339-4058
www.wtplaw.com

1025 CONNECTICUT AVENUE, NW
SUITE 400
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

115 ORONOCO STREET
ALEXANDRIA, VIRGINIA 22314
TELEPHONE 703 836-5742
FAX 703 836-3558

April 2, 2007

Via Hand Delivery

Kathleen C. Bianco, Administrator
Board of Appeals of Baltimore County
Room 49, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

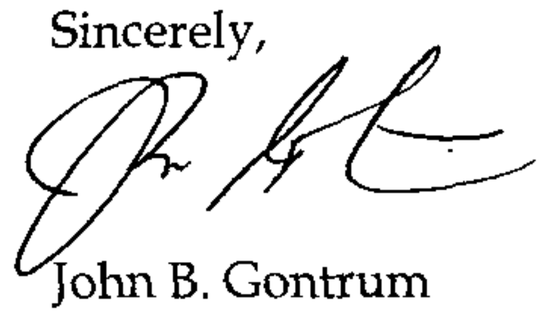
Re: Benhoff Builders, Inc. - 1402 Berwick Road
Case No. 06-257-A

Dear Ms. Bianco:

Please accept this letter as my request for a postponement of the hearing in the above-referenced matter presently scheduled for April 12, 2007 at 10:00 a.m. Unfortunately, I have a previous commitment in Aberdeen and believed that another attorney at this firm would be handling this hearing. I have now been informed that this attorney is unable to attend this hearing. I apologize for the short notice of this postponement.

Of course, if you have any questions, please feel free to contact me.

Sincerely,



John B. Gontrum

JBG:sll
cc: Peter Max Zimmerman, Esquire
David F. Albright, Esquire

380273

RECEIVED
APR 03 2007
BALTIMORE COUNTY
BOARD OF APPEALS

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

April 18, 2006

RECEIVED

APR 1 3 2006

ZONING COMMISSIONER

William J. Wiseman, III, Zoning Commissioner
County Courts Building
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

Re: Benhoff Builders, Inc.- Petitioner
Case Nos: 06-257-A

Dear Mr. Wiseman:

Thank you for your letter dated April 13, 2006. We are in receipt also of Jennifer Busse, Esquire's April 17, 2006 letter, on behalf of Petitioner, which requests a hearing.

In view of the passage of time, we also suggest that you set a schedule for the filing of memoranda and for hearing on the motion for reconsideration. We are available to cooperate with the Zoning Commissioner and other parties with respect to an appropriate schedule.

Under these circumstances, it appears at this time that the expeditious and fair thing to do is to move forward toward a resolution of the pending requests for reconsideration.

Very truly yours,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ/CSD/rmw

cc: John B. Gontrum, Esquire, Whiteford, Taylor & Preston, LLP,
210 W. Pennsylvania Avenue, Towson, MD 21204
David & Felicia Albright 1214 Berwick Road, Ruxton, MD 21204
Nancy Horst, P.O. Box 204, Riderwood, MD 21139
John Blaze, 1209 Berwick Avenue, Ruxton, MD 21204
George Grose, 1412 LaBelle Avenue, Ruxton, MD 21204

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

May 31, 2006

Peter Max Zimmerman
People's Counsel for Baltimore County
Office of People's Counsel
Room 47, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

John B. Gontrum, Esquire
Whiteford, Taylor & Preston, LLP
210 West Pennsylvania Avenue
Towson, Maryland 21204

David F. Albright, Sr., Esquire
1122 Kenilworth Drive, Suite 500
Baltimore, Md. 21204

RE: **MOTION FOR RECONSIDERATION**
Benhoff Builders, Inc. - Petitioners
Case No. 06-257-A

Dear Counsel of Record:

The purpose of this letter is to advise you that I spoke with Ms. Kristen Matthews in the Department of Permits of Development Management to determine if this matter had been set in for hearing on the Motions for Reconsideration that had been filed. She informed me that no date had been set and I, therefore, obtained three (3) dates for your consideration as follows: July 25th, 26th or 28th. I realize that we're entering the vacation season and would, therefore, appreciate your contacting Debbie Wiley in my office to advise your availability or inability to attend a hearing if scheduled on one of these three (3) days.

I look forward to receiving the benefit of your advice.

Very truly yours,

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

c: Ms. Nancy Horst, P.O. Box 204, Riderwood, Md. 21139
Mr. John Blaze, 1209 Berwick Avenue, Ruxton, Md. 21204
Ms. Felicia Albright, 1214 Berwick Road, Ruxton, Md. 21204
Mr. George Grose, 1412 LaBelle Avenue, Ruxton, Md. 21204
Mr. Melvin C. Benhoff, Jr., President, Benhoff Builders, Inc., 215 Old Padonia Road, Cockeysville, Md. 21030
Ms. Kristen Matthews, Department of Permits & Development Management; Case File

BALTIMORE COUNTY
MARYLAND

JAMES T. SMITH, JR.
County Executive

WILLIAM J. WISEMAN III
Zoning Commissioner

June 7, 2006

Peter Max Zimmerman
People's Counsel for Baltimore County
Office of People's Counsel
Room 47, Old Courthouse
400 Washington Avenue
Towson, Maryland 21204

John B. Gontrum, Esquire
Whiteford, Taylor & Preston, LLP
210 West Pennsylvania Avenue
Towson, Maryland 21204

David F. Albright, Sr., Esquire
1122 Kenilworth Drive, Suite 500
Baltimore, Md. 21204

RE: **MOTION FOR RECONSIDERATION**
Benhoff Builders, Inc. - Petitioners
Case No. 06-257-A

Dear Counsel of Record:

This letter is to confirm that counsel has agreed that the above-captioned matter be scheduled for Wednesday, July 26, 2005, at 9:00 A.M. but lasting no later than 3:00 P.M., in Room 407, of the County Courts Building, 401 Bosley Avenue, Towson, Maryland, 21204. In the event anyone feels we need additional time than allotted, please let me know ASAP and I'll set it in for a continuance.

Should anyone have any questions on the subject, please do not hesitate to call me.

Very truly yours,

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

c: Ms. Nancy Horst, P.O. Box 204, Riderwood, Md. 21139
Mr. John Blaze, 1209 Berwick Avenue, Ruxton, Md. 21204
Ms. Felicia Albright, 1214 Berwick Road, Ruxton, Md. 21204
Mr. George Grose, 1412 LaBelle Avenue, Ruxton, Md. 21204
Mr. Melvin C. Benhoff, Jr., President, Benhoff Builders, Inc., 215 Old Padonia Road, Cockeysville, Md. 21030
Ms. Kristen Matthews, Department of Permits & Development Management; Case File

The Law Offices of

DAVID F. ALBRIGHT

1122 Kenilworth Drive
Suite 500
Baltimore, Maryland 21204

Telephone (410) 823-5455
Facsimile (410) 823-5453
e-mail: dalbright@verizon.net

June 5, 2006

VIA FACSIMILE
Ms. Debbie Wiley
Office of the Zoning Commissioner
for Baltimore County
County Courts Building
401 Bosley Avenue, Suite 405
Towson, MD 21204
Fax: 410-887-3468

Re: Motion for Reconsideration; Benhoff Builders, Inc. – Petitioners; Case No. 06-257 A

Dear Ms. Wiley:

In response to Commissioner Wiseman's letter of May 31, 2006 in the above referenced matter, we are available on July 26, 2006 for a hearing. Please let us know if we can be of further assistance. Thank you.

Sincerely,

David F. Albright /JA

David F. Albright, Esq.

cc: Peter Max Zimmerman, Esq.
John B. Gontrum, Esq.

The Law Offices of

DAVID F. ALBRIGHT

1122 Kenilworth Drive
Suite 500
Baltimore, Maryland 21204

Telephone (410) 244-0350
Facsimile (410) 823-5453
e-mail: dalbright@verizon.net

1/26/07
Peter stopped by & he said he didn't have any objection to this request. J.

January 25, 2007

VIA FACSIMILE
Kathleen C. Bianco,
Administrator
County Board of Appeals of Baltimore County
Old Courthouse, Room 49
400 Washington Avenue
Towson, MD 21204

Re: Case #: 06-257-A; In the Matter of Benhoff Builders, Inc.

Dear Ms. Bianco:

I represent the Appellant/Protestant in the above referenced case. I received Tuesday 23rd of January, a Notice of Assignment dated January 18, 2007 regarding a hearing scheduled for Tuesday, February 20, 2007 at 10 a.m. in this case. I am presently scheduled for a pretrial conference and a motions hearing starting at the same time and on the same day in Baltimore City Circuit Court. I am requesting that the hearing be scheduled for a different date. I would be happy to supply alternative available dates immediately upon request.

Thank you.

Sincerely,

David F. Albright, Esq.

Cc: Office of People's Counsel
John B. Gontrum, Esq., Counsel for Petitioner
Audra T. Cathell, Esq., Counsel for Petitioner
William J. Wiseman, III, Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director PDM

RECEIVED
JAN 26 2007
BALTIMORE COUNTY
BOARD OF APPEALS

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

June 12, 2007

NOTICE OF REASSIGNMENT

CASE #: 06-102-SPH

IN THE MATTER OF: Jack Shear, Personal Representative for the ESTATE OF ROSE SAPPERSTEIN –Legal Owner; Robert P. Poleski and Michael J. Poleski, Contract Purchasers
9033 Cuckold Point Road 15th Election District; 7th Councilmanic District

3/29/06 - Z.C.'s Order in which requested zoning relief was GRANTED with restrictions.

which was continued on the record on 1/23/07 has been reassigned to the following dates and time:

REASSIGNED FOR: **WEDNESDAY, SEPTEMBER 19, 2007 @ 10 a.m. /Day #1;**
TUESDAY, SEPTEMBER 25, 2007 @ 10 a.m. /Day #2;
and WEDNESDAY, SEPTEMBER 26, 2007 @ 10 a.m. /Day #3

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

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

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

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

Kathleen C. Bianco, Administrator

---

c: Counsel for Appellant /Protestant : J. Carroll Holzer, Esquire
Appellant /Protestant : Lawrence J.Thanner, Jr.

Counsel for Legal Owners /Petitioners : Sebastian Cross, Esquire
Legal Owners /Petitioners : Jack Shear, P.R. /Est. of Rose Sapperstein
Robert P. Poleski
Michael J. Poleski

Thomas J. Hoff
Sheri Hipsley

Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
James H. Thompson, Supervisor, Code Enforcement /PDM **[Case No. 04-8710]**
Timothy M. Kotroco, Director /PDM

Printed with Soybean Ink
on Recycled Paper

5/31/07

IN THE MATTER OF THE APPLICATION OF BENHOFF BUILDERS, INC.; MELVIN C. BENHOFF, JR. - PETITIONER FOR VARIANCE ON PROPERTY LOCATED AT THE NW/COR OF BERWICK ROAD AND LOCUST AVENUE (1401 BERWICK ROAD, aka BERWICK AVE)	* * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY
9TH ELECTION DISTRICT 2ND COUNCILMANIC DISTRICT	*	Case No. 06-257-A

* * * * * * * * *

ORDER OF DISMISSAL OF PETITION

This case comes to the Board on an appeal filed by David F. Albright, Esquire, on behalf of Felicia Albright, and an appeal filed by the Office of People's Counsel from the January 13, 2006 decision of the Zoning Commissioner in which the requested variance relief was granted with restrictions, and from the August 8, 2006 denial of Motions for Reconsideration filed by People's Counsel and Protestants.

WHEREAS, the Board is receipt of a letter of withdrawal of the Petition for Variance filed via facsimile on May 2, 2007 by Adam D. Baker, Esquire, WHITEFORD, TAYLOR & PRESTON, LLP, Counsel for Benhoff Builders, Inc.; Melvin C. Benhoff, Jr., Petitioner (a copy of which is attached hereto and made a part hereof); and

WHEREAS, said Counsel for Petitioner requests that the Petition filed in the above-referenced matter be withdrawn as of May 2, 2007,

IT IS THEREFORE. this 31st day of May, 2007, by the County Board of Appeals of Baltimore County

ORDERED that said Petition filed in Case No. 06-257-A is **WITHDRAWN AND DISMISSED,** and that the Zoning Commissioner's Order on Motions for Reconsideration dated August 8, 2006 and Order dated January 13 2006, including any and all relief granted therein, are rendered **null and void.**

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Margaret Brassil

Margaret Brassil, Ph.D., Chairperson

Lawrence M. Stahl

Robert W. Witt

County Board of Appeals of Baltimore County

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

May 31, 2007

John B. Gontrum, Esquire
WHITEFORD TAYLOR & PRESTON LLP
210 W. Pennsylvania Avenue
Towson, MD 21204-4515

RE: *In the Matter of: Benhoff Builders, Inc.; Melvin C. Benhoff, Jr.* – Legal Owner / Petitioner
Case No. 06-257-A /Order of Dismissal of Petition

Dear Mr. Gontrum:

Enclosed please find a copy of the Order of Dismissal of Petition issued this date by the County Board of Appeals of Baltimore County in the above-captioned matter in which the subject Petitions have been withdrawn and dismissed.

Very truly yours,

Kathleen C. Bianco

Kathleen C. Bianco
Administrator

Enclosure

c: Office of People's Counsel
David F. Albright, Esquire
Felicia Albright
Adam B. Baker
Melvin C. Benhoff, Jr. /Benhoff Builders, Inc.
Audra Trouland Cathell, Esquire
Nancy Horst
John Blaze
George Grose
Joseph M. Coale
Fran Anderson
Amy Macht
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

Printed with Soybean Ink
on Recycled Paper

8/8/06

IN RE: **PETITION FOR VARIANCE** NW/Corner Berwick Road and Locust Avenue **(1401 Berwick Road)** 9th Election District 2nd Council District Benhoff Builders, Inc. Petitioners	* * * * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 06-257-A

* * * * * * * * * * *

ORDER ON THE MOTION(S) FOR RECONSIDERATION

This matter comes before the Zoning Commissioner on a Motion for Reconsideration filed by Peter Max Zimmerman, Esquire, on behalf of the Office of People's Counsel for Baltimore County on February 6, 2006. By Motion, dated March 6, 2006, David F. Albright, Esquire, as counsel for Felicia Albright, adopted the arguments of People's Counsel. On July 25, 2006, John B. Gontrum, Esquire provided written opposition to the Motion(s) and a legal Memorandum on behalf of the owner of the subject property, Benhoff Builders, Inc. (Benhoff)

By way of background, this case initially came before me on a Petition for Variance to permit a new house located at 1401 Berwick Road in the Ruxton area of Baltimore County. The Petitioner sought a front yard setback variance based on the concept of averaging setbacks of adjoining dwellings and also a rear yard setback variance in order to accommodate a new dwelling in roughly the same location as the previous dwelling on the site.[1]

By my Memorandum and Order, dated January 13, 2006, I granted the Petitioner's request for the reasons set forth therein. Subsequently, People's Counsel and Ms. Albright filed their

[1] At the time of the public hearing in the instant case, December 30, 2005, the previous home known as "The Ann P. and Alfred Tyler House" had been removed pursuant to a permit (B558162) issued July 27, 2005. People's Counsel's concern properly focused on the process leading to the demolition of this house listed on the Maryland Historic Trust Inventory as "No. 3009". Messrs. Zimmerman and Gontrum have filed Memoranda keenly identifying and developing the essential grounds for the request and opposition thereto.

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Motions seeking a new evidentiary inquiry to explore the basis for the issuance of the demolition permit by the Department of Permits and Development Management (DPDM), the applicability of Baltimore County Code (BCC), Section 32-4-416, and the appropriateness of approving variance relief for redevelopment under the circumstances. Over Benhoff's objections, essentially arguing that the Zoning Commissioner's Office lacked jurisdiction under current law to conduct such a special hearing on a previously issued building permit to raze a dwelling, a hearing was convened and held on July 26, 2006 to receive testimony and/or argument on the Motion(s).

HISTORY AND TESTIMONY

The Tyler House is gone. The request is to build a new home ostensibly with architectural features of the Tyler House. The record of the case as well as the testimony and evidence received discloses a rather circuitous route to the present point in the process. As synopsized below, it begins with the inclusion of the Tyler House on the Maryland Inventory of Historic Properties, an inventory that is not intended to be a determination that the property, in fact, is significant to Maryland's history and culture, followed by Baltimore County's Landmark Preservation Commission proposing the house be placed on the County's Preliminary Landmark List and subsequently, ending with the County Council's election not to do so. The chronology of events was as follows:

- August 2002 – Benhoff purchases the property from Jay Elmer Weisheit

- August 30, 2002 – Demolition Permit #B497510 is applied for and issued after the Office of Planning's County Historian John McGrain signed off on the application. This permit was withdrawn and cancelled after the property was listed on the MHT Inventory subjecting it to BCC Section 26-278 (now Section 32-4-416).

- December 2002 – A Petition for Administrative Special Hearing (Case No. 03-138-ASPH) is filed requesting permission to raze the structure and following the

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requisite public hearing, then Deputy Zoning Commissioner Timothy Kotroco issued a denial stating:

"It is further ordered, that a new public hearing shall be scheduled before this Hearing Officer after such time as the Landmarks Preservation Commission shall have considered the matter and issued their written recommendations."

- Pursuant to Mr. Kotroco's Order, the matter proceeded to the Landmarks Preservation Commission where the property was again posted and a public hearing held (BCC Section 32-7-302) and findings forwarded to the County Executive and County Council (BCC Section 32-7-303) where Final Landmarks designation status was denied in late 2003.

- June 3, 2004 – Benhoff applied for and after the passage of quite some time received on July 27, 2005 from DPDM Permit #B558162 to raze the structure (Protestant's Exhibit No. 1). Subsequently, the Tyler House was demolished and the subject petition for variance filed in November, 2005. It is worthy to mention that that application for the razing permit for 1401 Berwick Road disclosed the property as "historic" and was signed off on by the Office of Planning's Landmarks Preservation Secretary Kim Abe on June 3, 2004.

- As evidenced by the agreement between Benhoff and the Ruxton-Riderwood Lake Roland Area Improvement Association (Association) - (Petitioner's Exhibit No. 2 attached to my Order in these proceedings dated January 13, 2006) as well as letters submitted at this hearing on the Motion(s) for Reconsideration and testimony presented by community members, there was public participation throughout the above described process.

ISSUES RAISED

The arguments of the parties including those of community members are fully addressed in individual letters (collectively marked and received into evidence as Petitioner's No. 1 on Reconsideration) and counsel's respective written memoranda and will not be repeated here at length. Essentially, the Office of People's Counsel and Ms. Albright observe that Baltimore County property owners and developers have consistently followed the waiver process when *razing*, altering or constructing an addition to a building on the Maryland Historical Trust Inventory of Historic Properties, including the need for a requisite public hearing in order to justify the request

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for a demolition permit pursuant to BCC Sections 32-4-107(b), 32-4-223(8) and 32-4-416(a)(2). This process, it is pointed out is essential to effectuate the legislative intent and purpose and to foster historic preservation.

Additionally, they assert that where there is unwarranted destruction of property listed on the MHT inventory the "uniqueness" attributable to that house is also lost as well as the associated practical difficulty justifying variance relief. In other words, the property is vacant with ample area to develop without variances.

Mr. Gontrum, on the other hand, argues on behalf of Benhoff that even if the building permit to raze the previous structure was issued by the county without following the correct procedure, that fact has nothing to do with the variances sought in these proceedings. Accordingly, he urges that it is inappropriate in a zoning variance proceeding to collaterally attack the issuance of a building permit, a permit that was never appealed and not properly before this Commissioner. Additionally, he points out that there is absolutely no new information, facts or legal authority that was overlooked at the previous hearing and therefore, no basis to change the outcome of that hearing.

Finally, we have the officials of the Association, both past and present, as well as other neighbors adjacent to, with a view of, and near the subject property who vigorously oppose the actions of People's Counsel and Ms. Albright and urge me to permit construction to continue at this location. They point out that there has been more than four years of hearings, discussions, and permits, followed by another seven months of delay occasioned by these proceedings. They respectfully submit that "enough is enough", that "good public policy and the interest of the community require that the project move forward". Amy Macht, who owns a home on the Final

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Landmarks List, and Fran Anderson, Vice President of the Ruxton-Riderwood Association highlighted through their testimony the many meetings, both public and private, the hard work put into this effort and that the neighborhood was given the opportunity to review and comment and believe the proposed home to be built is appropriate to the neighborhood and with the architectural style of the previous home existing on the site.

CONCLUSION

I have considered carefully the arguments of the parties and the authority set out in their Memoranda and Motions. For the reasons stated verbally at the conclusion of the hearing, I am convinced that there is no reason to reconsider the granting of the variances in this matter. Baltimore County Code Section 32-4-107 – WAIVERS, provides in pertinent part that the Hearing Officer may grant a waiver of any or all requirements contained in Subtitles 3, 4, and 5 of Title 4 … if the Hearing Officer finds that:

(i) 1. The size, scope, and nature of a proposed development does not justify strict compliance with this title;

2. A waiver would be within the scope, purpose, and intent of this title; and

3. All other county laws and regulations have been complied with; or

(ii) Compliance with this title would cause unnecessary hardship.

Even though the house is now razed, I am persuaded to grant such a waiver in this case. I find that's what Mr. Kotroco did in his capacity as Director of Permits and Development Management pursuant to BCC Section 32-4-107(b). He specifically has the right to waive certain development process requirements including the Hearing Officer's hearing. He issued a Demolition Permit #B558162 rather than require the applicant to go through yet a third public hearing as indicated in

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his (Kotroco) December 2002 Order. There was a public hearing as provided for in BCC Section 32-7-406 before the Landmarks Commission and another public hearing occurred before the Baltimore County Council. Community members were involved in the process with agreements being reached by and between the parties, the Administration and the Baltimore County Council. At the time the razing permit was issued, and the Ann P. and Alfred Tyler House structure torn down, it (the structure) was not in a designated historic district and not on either the Preliminary Landmarks List or the Final Landmarks List. Benhoff did not act to deprive the community of its rights, and the permit was issued with the knowledge of the community. Ms. Albright may feel aggrieved by this decision, but she was not denied due process.

I further find that the Petition for Variance was properly before me and that all of the requirements of Section 307 of the Baltimore County Zoning Regulations have been met for variance relief to be granted. Moreover, I find that any other ruling, given these facts, would be tantamount to placing form over substance totally ignoring the natural impetuous to try to resolve land use controversies through negotiations, agreements, and the like ... which are ever-present in the background of the zoning process.

ORDER

It is ORDERED by the Zoning Commissioner for Baltimore County this 8th day of August 2006 that the Motion(s) for Reconsideration filed in the above-captioned matter be and the same are hereby DENIED; and

It is further ORDERED that the decision in this case is applicable only to the facts of this case and is not a legal precedent that may be cited as such in any other special hearing involving the preservation of historic buildings or sites. Unless waived by the Director of Permits and

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Development Management pursuant to current Code requirements, a special hearing should be requested prior to and not after demolition of a structure on the Maryland Historical Trust Inventory.

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

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:dlw

c: John B. Gontrum, Esquire, Jennifer R. Busse, Esquire & Audra Cathell, Esquire, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Towson, Md. 21204
Mr. Melvin C. Benhoff, Jr., President, Benhoff Builders, Inc., 215 Old Padonia Road, Cockeysville, Md. 21030
David F. Albright, Esquire, 1122 Kenilworth Drive, Suite 500, Baltimore, Md. 21204
Ms. Felicia B. Albright, 1214 Berwick Road, Ruxton, Md. 21204
Mr. Joseph M. Coale, 1317 Boyce Avenue, Towson, Md. 21204
Mr. George Grose, 1412 LaBelle Avenue, Ruxton, Md. 21204
Mr. Fran Anderson, 7912 Springway Road, Ruxton, Md. 21204
Ms. Amy Macht, 1412 LaBelle Avenue, Ruxton, Md. 21204
Ms. Nancy Horst, P.O. Box 204, Riderwood, Md. 21139
Mr. John Blaze, 1209 Berwick Road, Ruxton, Md. 21204
Mr. Kent H. Walker, 1402 Berwick Road, Towson, Md. 21204
Mr. and Mrs. Philip Rauch, 1308 Locust Avenue, Towson, Md. 21204
Mr. and Mrs. Robert Schleif, 1310 Locust Avenue, Towson, Md. 21204
Mr. Joseph Coale, President, The Ruxton Lake-Roland Area Foundation, Inc., P.O. Box 204, Riderwood, Md. 21139
Mr. R. Edwards Taylor, 1406 Locust Avenue, Towson, Md. 21204
Ms. Mary Sue McCarthy and Mr. Bill Hopkinson, 1501 Berwick Road, Ruxton, Md. 21204
Mr. and Mrs. Steven Williams, 1403 LaBelle Avenue, Ruxton, Maryland 21204
Mr. L. Franklyn Lucas, Jr., 1505 Berwick Road, Towson, Md. 21204
Mr. and Mrs. Richard Neuheisel, 1404 LaBelle Avenue, Towson, Md. 21204
Mr. Joseph Adam, 1405 Berwick Road, Towson, Md. 21204
Mr. Sam Akman, 1400 Locust Avenue, Towson, Md. 21204
Mr. William F. Ryan, Jr., 1314 Locust Avenue, Towson, Md. 21204
Ms. Nyuk-Yoong H. Schleif, 1310 Locust Avenue, Towson, Md. 21204
People's Counsel, Case File

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7/25/06

PETITION FOR VARIANCE 1401 Berwick Road, Northwest corner of Berwick Road and Locust Avenue	*	BEFORE THE
	*	
		ZONING COMMISSIONER
	*	
9th Election District 2nd Councilmanic District	*	OF BALTIMORE COUNTY
Benhoff Builders, Inc.,	*	
Petitioner.	*	Case No: 06-257-A

* * * * * * * * * * *

PETITIONER'S MEMORANDUM IN OPPOSITION TO MOTION FOR RECONSIDERATION

The Petitioner, Benhoff Builders, Inc. (hereinafter referred to by and as "Benhoff"), through its attorneys, John B. Gontrum and Whiteford, Taylor & Preston, LLP, hereby submits its Memorandum in opposition to Protestants' Motion for Reconsideration.

This matter came before the Zoning Commissioner of Baltimore County on a Petition for Zoning Variance to permit a new house located at 1401 Berwick Avenue in the Ruxton area of Baltimore County. The Petitioner sought a front yard setback variance based on the concept of averaging setbacks of adjacent dwellings and also a rear yard setback variance in order to accommodate the new dwelling in roughly the same location as the previous dwelling on the site.

Despite the fact that the requested variances did not pertain to the procedure for removal of the previous structure, the Protestants have filed Motions For Reconsideration to address the permits under which the previous dwelling was razed. Neither the Baltimore County Code (hereinafter cited as "BCC") nor the Baltimore County Zoning

Regulations (hereinafter cited as "BCZR") support the contentions contained in either of the Motions for Reconsideration that Historic Preservation Standards are applicable to this case. It is the position of the Petitioner that the Motions for Reconsideration should be denied.

ISSUES PRESENTED

I. DOES THE ZONING COMMISSIONER OF BALTIMORE COUNTY HAVE JURISDICTION UNDER CURRENT LAW TO CONDUCT A SPECIAL HEARING ON A BUILDING PERMIT TO RAZE A DWELLING ON A LOT OF RECORD UNDER EITHER THE BCC OR BCZR?

II. WAS A SPECIAL HEARING REQUIRED FOR THE DEMOLITION OF THE PREVIOUS DWELLING AT 1401 BERWICK AVENUE IF IT WAS NOT PLACED ON A FINAL LANDMARKS LIST AS DEFINED BY THE BCC?

III. WAS THE RAZING PERMIT PROPERLY ISSUED FOR THE DEMOLITION OF THE DWELLING AT 1401 BERWICK ROAD?

IV. ARE THE ISSUES PERTAINING TO THE PROCEDURE FOLLOWED FOR THE RAZING OF THE PREVIOUS STRUCTURE AT 1401 BERWICK ROAD MATERIAL OR RELEVANT TO THE CONSIDERATION OF THE ZONING VARIANCE REQUEST BY PETITIONER?

V. ARE ANY NEW ISSUES PRESENTED IN THE MOTIONS FOR RECONSIDERATION THAT WOULD WARRANT ADDITIONAL FACT-FINDING OR RECONSIDERATION BY THE ZONING COMMISSIONER?

DISCUSSION

I. DOES THE ZONING COMMISSIONER OF BALTIMORE COUNTY HAVE JURISDICTION UNDER CURRENT LAW TO CONDUCT A SPECIAL HEARING ON A

BUILDING PERMIT TO RAZE A DWELLING ON A LOT OF RECORD UNDER EITHER THE BCC OR BCZR?

NO, THERE IS NO PROVISION IN EITHER THE BCZR OR IN THE BCC THAT GIVES THE ZONING COMMISSIONER WHETHER ACTING AS A ZONING COMMISSIONER OR AS A HEARING OFFICER UNDER THE DEVELOPMENT REGULATIONS JURISDICTION TO CONDUCT SPECIAL HEARINGS ON RAZING PERMITS, WHICH ARE NOT PART OF A DEVELOPMENT PLAN.

Section 500.7 of the BCZR states in pertinent part:

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

The zoning regulations of Baltimore County do not contain any regulation pertaining to properties that are not contained in the preliminary or final landmarks lists.

Consequently, the razing of specific structures is not covered by Section 500.7 or by any other provision of the zoning regulations.

The Baltimore County Code is equally silent in giving the Zoning Commissioner any rights to conduct hearings pertaining to structures on the Maryland Historical Trust Inventory. Article 32, Title 4, Subtitle 2 of the BCC, which pertains to the development plan process in Baltimore County, only allows for hearing officer's hearings for filed

development plans subject to Subtitle 2. This process is not applicable either to the issuance of a single building permit, which is explicitly exempt from development review, or to the zoning variance process, which is the subject of this hearing.

Title 7 of Article 32 of the BCC does pertain to historical and architectural preservation, but only to properties on a preliminary or final landmarks list or in a historic district. The public hearings discussed in this Title, however, are not before the Zoning Commissioner but before the Landmarks Preservation Commission and the Baltimore County Council. Nowhere in this section can building permit cases be delegated to a Zoning Commissioner.

Subtitle 4 of Title 7 is applicable only to structures that are in a historic district or on a preliminary or final landmarks list. BCC § 32-7-401. Hearings to raze such structures are only conducted before the Landmarks Preservation Commission. BCC § 32-7-406. Ultimately, it is the Baltimore County Building Engineer who is charged with the issuance or denial of a building permit pertaining to a structure on one of those applicable lists.

For all of the above reasons, the Zoning Commissioner is without authority to hear any action pertaining to a building permit on a landmark issue.

II. WAS A SPECIAL HEARING REQUIRED FOR THE DEMOLITION OF THE PREVIOUS DWELLING AT 1401 BERWICK AVENUE IF IT WAS NOT PLACED ON A FINAL LANDMARKS LIST AS DEFINED BY THE BCC?

NO, A ZONING SPECIAL HEARING IS NOT REQUIRED FOR THE DEMOLITION OF A SINGLE STRUCTURE UNDER A SINGLE RAZING PERMIT

WHEN THE STRUCTURE IS NEITHER PART OF A DEVELOPMENT PLAN, NOR PART OF A HISTORIC DISTRICT, NOR LISTED ON EITHER A PRELIMINARY OR FINAL LANDMARKS LIST.

Not only does the Zoning Commissioner lack jurisdiction to conduct a special hearing on this issue, but, moreover, the Office of People's Counsel improperly mixes development regulations with building permit regulations in its Motion and Memorandum to conclude that a special hearing should have been held. Title 7 of Article 32 applies to individual building permits, including permits to raze individual structures. In order for that Title to be applicable, however, the structure must meet one of three criteria. It must either be in (a) a proposed or designated historic district; or (b) on the preliminary landmarks list; or (c) on the final landmarks list. BCC § 32-7-103. The dwelling at 1401 Berwick Road has never been in a proposed or designated historic district. At one time it was proposed and placed on a preliminary landmarks list, but it was later removed from the list when the county council deliberately refused to put the dwelling on the final landmarks list. The razing permit issued for the demolition of the structure (B558162) was issued after the dwelling had been removed from the preliminary list. The structure was never included on a final landmarks list. For these reasons, the provisions of Title 7 do not apply to this dwelling.

The provisions of Article 32, Title 4, Subtitle 4, also do not apply to the razing of the dwelling at 1401 Berwick Road. BCC §32-4-416 provides that "[e]ach Development Plan shall preserve: (1) Natural features, including watercourses, waterfalls, beaches, and significant vegetation; and (2) Historic structures or sites identified on any of the lists

In Case No. 03-138-SPH, a Petition for Special Hearing was filed by the property owner to obtain permission to raze the dwelling at 1401 Berwick Road. At that time, a request was pending before the Landmarks Preservation Commission of Baltimore County to place the dwelling on the Preliminary Landmarks List. The Deputy Zoning Commissioner held that BCC § 26-278, then in effect, applied to the building permit and stated:

> For the reasons stated within the body of this Order, the requests to raze the single-family residential dwelling on the subject property does [sic] constitute development as that term is defined within the Baltimore County Code. Furthermore, none of the exceptions as contained within the Baltimore County Code are applicable to this situation so as to exempt this proposal from the Development Regulations. The appropriate procedure for the property owner to follow in the event they continue to choose to raze this structure is to proceed on their petition for special hearing for a waiver of the requirements of Section 26-278 of the Baltimore County Code....

Thus, in reviewing the matter, the Deputy Zoning Commissioner found that the property did indeed meet the definition of development as contained in the Baltimore County Code. Given the broad and sweeping nature of the definition, the Petitioner agrees with that finding. The issuance of any permit pertaining to a property constitutes development as defined in the BCC. The Petitioner further agrees that Subtitle 4 of Title 4 applies generally, for it states that it applies to "all development." BCC § 32-4-401.

Since the issuance of that Opinion in December 2002, however, the law has changed. At that time, BCC § 26-278, which was the determinative section from which a waiver was requested, stated:

> Natural features (including watercourses, waterfalls, beaches and significant vegetation) and historic structures or sites identified on an of the lists referred to in

section 26-203(c)(8) must be preserved. In particular, the county must find that an adequate method of protecting any known habitat of an endangered species has been proposed.

Section 32-4-416 of the BCC now states:

> (a) *Preservation of features.* **Each Development Plan** shall preserve:
>
> (1) Natural features, including watercourses, waterfalls, beaches, and significant vegetation; and
>
> (2) Historic structures or sites identified on any of the lists referred to in §32-4-223(8) of this title.
>
> (b) *Duty to protect habitats.* The county shall require adequate protection of any known habitat of an endangered species. [emphasis added]

Some of the sections of Subtitle 4 clearly apply to "all development." Other sections such as Section 32-4-416 do not. Some sections, such as 32-4-413, refer only to plat approvals; other sections, such as 42-4-412, apply generally to every site. Consequently, it is important to apply the proper wording of the individual section to whether a hearing officer's hearing is required. The amendment to Section 26-278 in Council Bill No. 75-03 made it absolutely clear that Section 32-4-416 applies only to development plan review. An individual building permit is explicitly exempt from this review according to Section 32-4-106 and according to Section 32-4-201. Because no development plan is required for this form of development, Section 32-4-416 does not apply.

If the sections are read in a harmonized fashion, it becomes clear that development plans must note structures and show the intent to preserve historic structures unless a waiver is obtained as part of the hearing officer process. Individual permits may be obtained if the structure is indeed historic only by following the process set forth in Title 7.

If the sections are read as People's Counsel suggests, however, they conflict with the jurisdiction provisions of the Code and with each other.

The Code applies as it existed when the razing permit was sought and issued in 2005. The Director of Permits and Development Management in 2005 was explicitly authorized by the language contained in Council Bill 75-03, as codified in Section 32-4-107 to grant waivers. The notice provisions now contained in Section 32-4-107.1 were not enacted until after the permit had been issued. It is the Director of Permits and Development Management who is ultimately responsible for the issuance of the building permit. A determination was made that the issuance of the permit was proper, and because no zoning issue has been raised with respect to its issuance, the zoning commissioner now has no authority to go behind the back of the the Department of Permits and Development Management regarding the issuance of the permit.

In its Memorandum, People's Counsel raises an issue of res judicata. The issue of res judicata in administrative proceedings is far less clear than in judicial proceedings. In any event, the fact that the law has changed since the previous special hearing, as well as the fact that this is a totally different proceeding, makes that argument inapplicable.

In this case there has never been any appeal of the issued razing permit. There has never been any issue that information pertaining to the razing permit was incorrectly provided to the county or that some substantive fact was incorrect. There also is no question but, after prolonged litigation and negotiation, that virtually every involved member of the community was aware of the application and issuance of the permit. This

was one of the least secret permit applications and approvals in the history of the county. It is wrong to go behind the final approval of that permit in this proceeding.

IV. ARE THE ISSUES PERTAINING TO THE PROCEDURE FOLLOWED FOR THE RAZING OF THE PREVIOUS STRUCTURE AT 1401 BERWICK ROAD MATERIAL OR RELEVANT TO THE CONSIDERATION OF THE ZONING VARIANCE REQUEST BY PETITIONER?

NO, NEITHER SECTION 307 OF THE BCZR NOR CASE LAW SUPPORTS CONSIDERATION OF THE RAZING PERMIT IN THE ZONING VARIANCE PROCEEDING.

This case was filed as a zoning variance case pursuant to Section 307 of the BCZR. Although the presence and location of the former house on the property is an important factor for the location of the new, proposed structure, how the previous house came to be razed is not a factor germane to the consideration of the zoning variances. No mention of any such factor for consideration is made in Section 307.

Numerous recent variance cases have come about as property owners have sought to legalize actions taken without permit. Two of the most recent cases are Lewis v. Department of Natural Resources, 377 Md. 382, 833 A.2d 563 (2003) and Mastandrea v. North, 361 Md. 107, 760 A.2d 677 (2000). In both cases the variances sought were approved. In both cases the variances were sought and approved and under the "unreasonable hardship" standard applicable to the critical area cases.

In this case the variances were sought under the more lenient and less restrictive "practical difficulty" standard. In McLean v. Soley, 270 Md. 208 at 214-215, 310 A. 2d 783, 787 (1973) the Court stated:

> In 2 Rathkopf, The Law of Zoning and Planning, (3d ed. 1972) 45-28, 29, the following criteria for determining whether 'practical difficulty' has been established are set forth:
>
> '1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
>
> '2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
>
> '3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.'

The practical difficulty standard never mentions self-inflicted hardship or the owner's actions with respect to the property, and it must be contrasted with the standard the court has articulated for undue or unreasonable hardship as follows:

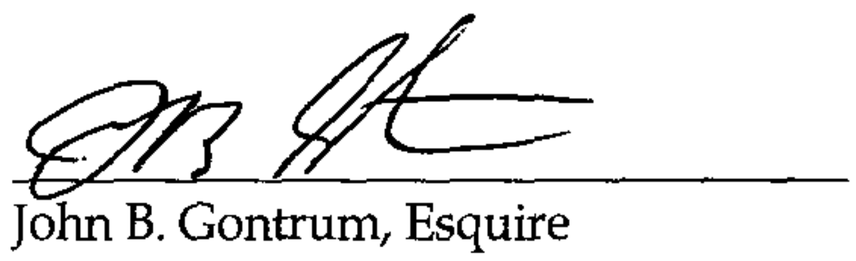
> Where the standard of undue hardship applies, the applicant, in order to justify the grant of the variance, must meet three criteria:
>
> 1) If he complied with the ordinance he would be unable to secure a reasonable return from or to make any reasonable use of his property. [citations omitted] Mere financial hardship or an opportunity to get an increased return from the property is not a sufficient reason for granting a variance. [citations omitted]
>
> 2) The difficulties or hardships were peculiar to the property in question and contrast with those of other property owners in the same district. [citations omitted]

CERTIFICATE OF SERVICE

I HEREBYCERTIFY that on this 25th day of July, 2006, a copy of the foregoing Memorandum of Petitioner on Motion for Reconsideration was hand delivered to

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
400 Washington Avenue
Room 47
Towson, Maryland 21204

David F. Albright, Esquire
1122 Kenilworth Drive
Suite 500
Baltimore, Maryland 21204



John B. Gontrum, Esquire

4/26/06

RE: PETITION FOR VARIANCE 1401 Berwick Road; NW corner Berwick Road & Locust Avenue 9th Election & 2nd Councilmanic Districts Legal Owner(s): Benhoff Builders, Inc – Melvin Benhoff, Jr. Petitioner(s)	* * * * *	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 06-257-A

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Per tem

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

Memorandum of People's Counsel for Baltimore County in Support of Motion for Reconsideration

This memorandum supports and supplements the Motion for Reconsideration filed February 6, 2006. In view of the public interest in this matter, we are requesting a public hearing. This will provide the petitioner and all interested citizens an opportunity to be heard.

I. The Applicability of the Historic Preservation Standards.

The development here, including demolition of the listed MHT property at 1401 Berwick Avenue, appears to be covered by, and not exempt from, the preservation requirements of Code Sec. 32-4-416 (2003), previously codified in Sec. 26-278. There is no dispute that the 1401 Berwick Avenue home known as the Alfred and Tyler House was listed on the Maryland Historic Trust Inventory. Code Sec. 32-4-416 states, in pertinent part:

> **"Sec. 32-4-416. PRESERVATION OF NATURAL OR HISTORIC FEATURES.**
>
> (a) *Preservation of features.* Each Development Plan shall preserve:
>
> ...
>
> (2) Historic structures or sites identified on any of the lists referred to in Sec. 32-4-223(8) of this title.

In turn, the Maryland Historic Trust inventory is one of the applicable lists enumerated in Sec. 32-4-223(8).

The language of this Code provision, the Planning Director's September 17, 2002 memorandum on the earlier demolition permit, and reinforcement by Planner Timothy Dugan's February 2, 2006 correspondence all point to the applicability of the preservation requirement, subject to potential review and public hearing upon a petition for waiver by special hearing.

Our understanding is reinforced and confirmed by our discovery of the enclosed Deputy Zoning Commissioner Timothy Kotroco's decision dated December 2, 2002 in Case 03-138-SPH, which rejected this developer's contention that the demolition permit for 1401 Berwick Avenue does not involve "development" and, therefore, is exempt from the identical predecessor Code Sec. 26-278. There was no appeal of this decision. Therefore, it is not only persuasive, but also *res judicata* or "preclusive" with respect to this issue. See Whittle v. Board of Zoning Appeals 211 Md. 36 (1956); Woodlawn Area Citizens Ass'n v. Board of Co. Comm'rs. 241 Md. 187 (1966). Batson v. Shiflett 325 Md. 684, 701, 705 (1992). Indeed, in light of this decision, it is inexplicable that Petitioner did not seek a special hearing for waiver in order to justify the subsequent request for a demolition permit.

A close look a the site plan prepared by W.T. Sadler Surveyors and filed as Petitioner's Exhibit 1 in Case No. 03-138 dated September 11, 2002 is instructive. It shows 1401 Berwick Avenue to be 1.159 acres zoned D.R. 3.5, with the single historic house as well as a building to the rear. It prominently displays "PRIOR ZONING HEARINGS – NONE FOUND." In comparison, the site plan filed in the present case is a modified version of Sadler's original site plan. The historic house is gone, as is the rear building. In its place, the 1.159 acre tract is divided into three properties. The largest of the three occupies 20, 905 square feet, almost a half acre. It fronts on Berwick Avenue and is the lot for which there is proposed the dwelling which requires setback variances. The two new lots to the rear are oriented to Labelle Avenue. One is

marked with an existing dwelling, with the words "under constr." crossed out. The other is marked with a total buildable area of 4357 square feet. Clearly, this involves Benhoff Builders, Inc.'s development plan for three residential dwelling lots.

The modified site plan deletes the reference to zoning history. That history, of course, would confirm the obvious point that this matter involves a development plan, and that there is no exemption from the historic preservation law.

A proposal to demolish a historic property typically takes place in the context of a plan to develop new homes, subdivisions, or enterprises, whether on existing or new lots. If there were a blanket exemption for demolition of historic properties on lots such as this, on the pretext that the demolition permit itself is not "development" or part of a "development plan," it would undermine and take the heart out of the historic preservation process. It would render it nugatory. That would be an absurd conclusion, contrary to the legislative intent.

This office's understanding and experience has been that property owners and developers have consistently followed the waiver process, including a public hearing, to secure approval of proposals to alter or demolish historic structures or sites. Typically, these petitions involve a single proposal for a single property on an existing parcel, whether in conjunction with a small or large development or improvement of the property. The experience with the Gardner House in Cockeysville is just one recent example, where a historic house was demolished to make way for a branch of a bank.

II. The Applicability of Waiver Requirements and Standards

Code Sec. 32-4-107(a) states,

WAIVERS.

"(a) In general

(1) At the request of a department director, the Hearing Officer may grant a waiver of any or all requirements of Subtitles 3, 4, and 5 of this Title if the Hearing Officer finds:

(i) 1. The size, scope, and nature of a proposed development does not justify strict compliance with this title;

2. A waiver would be within the scope, purpose, and intent of this title; and

3. All other county laws and regulations have been complied with; or

(ii) Compliance with this title would cause unnecessary hardship.

(2) A waiver shall be granted only in accordance with Title 8 of this article."

Because this section covers and refers to Subtitle 4 of this Title, it contemplates and encompasses both the availability of and requirements for waivers in connection with Code Sec. 32-4-416 on historic preservation. The reference to Title 8 appears to place additional restrictions on properties where floodplain management issues are involved.

III. The Relevance of the Demolition Permit to the Variance Process.

a. Overview

Pursuant to BCZR 307.1, the granting of a variance depends, first of all, on a finding that there are special circumstances or conditions that are peculiar to the land or structure (uniqueness) so that strict compliance would result in practical difficulty or unnecessary hardship. In addition, a variance cannot be approved unless the relief can be granted "without injury to public safety, health, or welfare."

A core purpose of variance law is to allow relief so a property owner has some reasonable use of his property. See 3 Young, Anderson's American Law of Zoning 4th, Sec. 20.02 (1996):

> The underlying purposes of administrative relief have been discussed in an earlier chapter, but specifically, with respect to variances, it is said that a variance is 'designed as an escape hatch from the literal terms of the ordinance which, if strictly applied, would deny a property owner all beneficial use of his land and thus amount to confiscation.'

b. Uniqueness

The first step in the review process is to determine whether there is any unique aspect of the property resulting in practical difficulty. If the answer is no, that is the end of the inquiry. Cromwell v. Ward 102 Md. App. 691 (1995); Umerley v. People's Counsel 108 Md. App. 497 cert. denied 342 Md. 584 (1996). The Cromwell decision famously explores in encyclopedic fashion the strictness of this standard and the understandable legislative intent that variances should be granted but rarely.

Cromwell quoted North v. St. Mary's County 99 Md. App.502, 512 (1994) to explain the "customized meaning" of the term "unique" in the "zoning context." The Court wrote:

> "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...." Emphasis supplied. 102 Md. App. at 710.

The logic is that the preservation of a significant historical site or building might satisfy the "uniqueness" criterion of the variance standard. The appellate courts have never entertained the absurd proposition that a variance should be granted to destroy a unique historical asset.

It should be underlined that where there is unwarranted destruction of a property listed on the MHT inventory, the most unique thing about the case is the injury done to the public safety, health, and welfare by the entire project. The demolition of the historic house and the variances for new development are integral parts of the project, two bitter sides of the same coin. Ironically, insofar as the property was and is "unique," the uniqueness called for the property owner to preserve the Tyler House. It also may have been feasible to preserve the Tyler House

and still build one or two additional homes in a compatible way. In any event, there was certainly no uniqueness resulting in practical difficulty such as to justify the demolition leading to the new house proposed here.

Indeed, even if there were not a historic house on the property, there would still be nothing unique about the property to warrant a variance. It is to be remembered that the relevant property is the entire 1.159 acre tract acquired by Benhoff Builders. Cf. Waterman v. City of Annapolis 357 Md. 484, 526-32 (2000). If the subject property were vacant, it would consist of 1.159 acres, ample area to develop one or more homes without variances. Even with the current site plan, it is likely that the proposed home could be reduced in size to meet the relevant setback standards. The tragedy is that there was room to preserve and/or renovate the Tyler House and still potentially develop other homes on the property, albeit without the grand setting of the original house. The bottom line is that there was and is nothing otherwise unique about the property.

c. Practical Difficulty

The second part of the variance test, the "practical difficulty" standard, translates mainly to three criteria. In other words, if the threshold test of uniqueness is passed, the further question is whether the unique condition results in a "practical difficulty" particular to the site. Easter v. Mayor & City Council 191 Md. 395 (1950).

The Court of Appeals articulated the criteria for judging "practical difficulty" in McLean v. Soley 270 Md.208, 213-14 (1973):

> "1) Whether compliance with the strict letter of the restrictions governing area, set backs, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.

2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.

3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured."

Here, the property owner/developer could have utilized the Tyler House for residential purposes or sold it. He could have rehabilitated it, if rehabilitation were helpful. The decision to preserve or not was a matter of choice. As noted, the developer could also have preserved the Tyler House and still likely have room to develop other lots on the acquired property. In this context, the economics of the property owner's gain or loss, or, in this case, the developer's profit, may not be used as a basis to claim "practical difficulty." Cromwell, *supra*; Burns v. Mayor & City Council 248 Md. 103 (1967))

Crucially, the demolition of the historic Tyler House without a waiver must be judged to be contrary to the public safety and welfare. The question of justice in the neighborhood is obviously a matter of controversy, with the RRLRIA having signed an agreement, and at least one area resident expressing opposition. Whatever the merits of the agreement between the developer and the RRLRIA, it is not a substitute for proof of "practical difficulty." Here, as the law did not and does not unreasonably prevent the owner from using the property for a permitted purpose, and is there is a serious public safety and welfare concern with respect to demolition of the historic house, there is no justification for a variance.

As to justice in the neighborhood, there is a legitimate concern, apparently voiced by Felicia Albright (notwithstanding the RRLRIA agreement) that the proposed variances facilitate the construction of a home which is excessive in size compared to the existing nearby homes and will detract from the traditional charm and setting in the area.

d. Self-Created Difficulty

Cromwell v. Ward 102 Md. App. 691, 721-722 (1995) involved a request for height variance for a garage and wine cellar in Ruxton. The proposed development failed to satisfy BCZR 307.1 standards. Judge Cathell observed that the property owner had voluntarily gone ahead and obtained, under questionable circumstances, a building permit. Under these circumstances, the opinion said:

> "Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively 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."

Cromwell has never been overruled and is still considered one of the key appellate decisions of the last decade.

The decision of the developer here to obtain a demolition permit under questionable circumstances gives off echoes of the Cromwell case. The present case is more problematic because the addition of the garage and wine cellar in the earlier case does not have the dramatic impact and additional legal dimension of the destruction of a house listed on the Maryland Historic Trust inventory.

IV. The Consequences in the Variance Process of a Finding that the Demolition Permit was Issued without Statutory Authority for lack of the Required Waiver

The issuance of a permit without authority cannot justify a variance. This issue usually presents itself under the guise of "estoppel." Maryland law has strongly stated since at least Lipsitz v. Parr 164 Md. 222 (1933) that a mistakenly issued permit cannot justify a use which is disallowed under the zoning law. Cromwell v. Ward 102 Md. App. 691, 722-25 (1995) sustains this position in the context of Baltimore County variance law.

V. The Importance of Historic Preservation Law.

Maryland and other states have recognized historic preservation law as an increasingly important feature of land use law, including the integral elements of the master plan, zoning and development law. See City of Annapolis v. Anne Arundel County 271 Md. 265 (1974); Faulkner v. Town of Chestertown 290 Md. 214 (1981).

The County Code has for many years included a provision (currently Code Sec. 32-4-416) to effectuate a legislative intent and purpose to foster historic preservation. The scope of preservation extends to properties listed on the Maryland Historic Trust inventory. There is also a process provided for property owners to seek waivers from the preservation standard. The County Master Plan for many years has also included provisions directed to historic preservation.

As a practical matter, the preservation of historic sites or structures typically becomes an issue, as here, in connection with some form of proposed development. This may involve proposed alteration, addition, or, in some cases, demolition of the historic site. It is particularly important that all relevant legal processes be followed where there is a proposed demolition. If the process may be bypassed here, and variances approved as if the preservation law did not exist, it would undermine the entire legal regime.

VI. Remedies.

The Tyler House is gone. Can it be reconstructed? Developers sometimes move historic structures. Here, the request is to build a new building ostensibly with some architectural features of the Tyler House. The merits of such a request could have been reviewed objectively at a special hearing for waiver filed to secure approval of the demolition. If advance approval of a waiver was necessary, it would be absurd to approve it after the fact. This would be comparable to approval of a warrantless house search because the officer could have, or might have, gotten

the required warrant. Just as the evidence gained by the officer is the fruit of that search and must be excluded, the variances here, in a sense, are the proposed fruit of the demolition.

If the demolition took place without the required permit, then what is the remedy? Is there any accountability? At the very least, it would appear that such demolition cannot, under BCZR 307.1 and Code Sec. 32-4-114 be rewarded by the approval of variances.

In this context, the Commissioner should consider Code Sec. 32-4-114 (a) and (c):

> "(a) Except as otherwise provided in this title, all development shall comply with this title and all other applicable laws or regulations of the county."
>
> * * *
>
> "(c) The county may not process plans or permits for a proposed development if the applicant owns or has an interest in property located in the county upon which there exists, at the time of the application or during the processing of the application, a violation of the zoning or development regulations of the county."

For all of the reasons given in this memorandum, it is not appropriate to segregate or isolate the variances from the historic context and the demolition of the historic home. To approve the variances would be tantamount to approval of, and reward for, the destruction of the historic home without the scrutiny of the required waiver and scrutiny in the public hearing on the merits of that waiver,

In any event, under the totality of circumstances here, the application of Cromwell v. Ward suggests that the "uniqueness" of the historic property calls for its preservation under the law in the absence of a waiver. The very uniqueness of the property does not warrant its destruction and its replacement by a new house, albeit with some architectural features ostensibly included. On this record, there is no practical difficulty which justifies the variances.

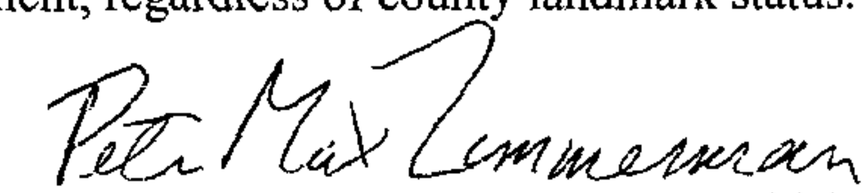
It appears to be a development of convenience and choice for the developer. It is a situation also where the most prominent local neighborhood association, the Ruxton-Riderwood-Lake Roland Improvement Association, has signed an agreement, part of which involves the

consent to the variances. But variances cannot be granted based on an agreement. Nor does the agreement allow avoidance of the preservation law and process. Moreover, upon information and belief, there are other citizens who are concerned or may express concern about the problems in this case. The record reflects, for example, that Felicia Albright has appeared in opposition to the variances and may wish to have an opportunity to be heard further in this case.

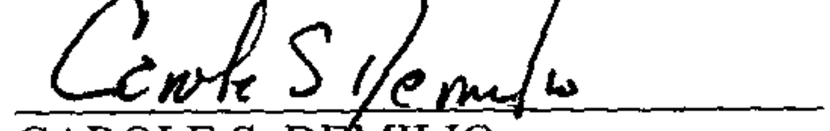
Our office is requesting a public hearing. This will give all interested parties an opportunity to be heard on the issues here, which this office considers to be of public importance.

VII. Postscript: The Landmarks Preservation Commission process is not determinative.

The Planning Office has informed us that the Landmarks Preservation Commission proposed the Tyler House be placed on the County's preliminary landmark list, but that the County Council did not place it on the list. Suffice it to say that this is a separate process. Its outcome does not determine the outcome of any special hearing for a waiver of statutory preservation requirements or supply an exemption from Code Sec. 32-4-416. A listing on the MHT inventory is sufficient to trigger that requirement, regardless of county landmark status.



PETER MAX ZIMMERMAN
People's Counsel for Baltimore County



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of April, 2006, a copy of the foregoing memorandum was mailed to John Gontrum, Esq., Jennifer R. Busse, Esquire, and Audra Cathell, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Towson, MD 21204 , Attorneys for Petitioner(s), John Beverungen, County Attorney, 400 Washington Avenue, 2nd Floor, Towson, Maryland 21204, Felicia Albright, 1214 Berwick Avenue, Ruxton, MD 21204, David Albright, Sr., 1122 Kenilworth Drive, Suite 500, Baltimore, MD 21204, and to Nancy Horst, Executive Director, RRLRIA, P.O. Box 204, Riderwood, MD 21139.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

WHITEFORD, TAYLOR & PRESTON L.L.P.

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April 17, 2006

RECEIVED
APR 18 2006
ZONING COMMISSIONER

Mr. William Wiseman
Zoning Commissioner for Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

Re: 1401 Berwick Avenue
Zoning Case No.: 06-257-A
Our File No. 5667-10

Dear Mr. Wiseman:

Please accept this letter as a request that this matter be set in for a hearing on the Motions for Reconsideration which have been filed. Thank you for your attention to this matter.

Sincerely,

Jennifer R. Busse

cc: Peter Max Zimmerman, Esquire
David F. Albright, Sr., Esquire
Mr. George Grose
Mr. Melvin C. Benhoff
John B. Gontrum, Esquire

355900v2

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RECEIVED
MAR 1 0 2006
ZONING COMMISSIONER

March 9, 2006

David F. Albright, Sr., Esquire
1122 Kenilworth Drive
Suite 500
Baltimore, Maryland 21204

Re: 1401 Berwick Road
Zoning Case No.: 06-257-A

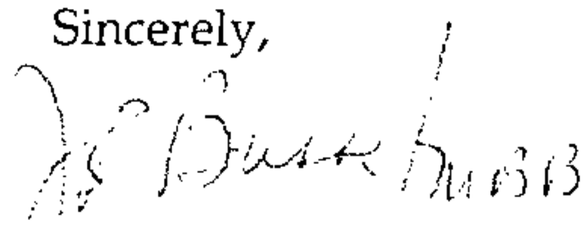
Dear Mr. Albright:

I am in receipt of your Motion to Adopt the Motion For Reconsideration filed by the People's Counsel of Baltimore County. In the body of your motion, you have essentially asked for discovery. Please know that there really is no method for discovery in matters before the Zoning Commissioner. Nevertheless, I am glad to assist you in obtaining copies of documents which are of public record and which relate to your concerns. I have been trying to reach your client, in hopes that we can identify and resolve our concerns. Now that I know that she is represented by counsel, I am directing my request to you.

Specifically, we would like to meet with you and your client to obtain an understanding of her concerns and see if there is a way to resolve them. Peter Max Zimmerman, People's Counsel of Baltimore County, has kindly offered to attend and even host such a meeting. Alternatively, we will gladly come out to your office or your client's home.

Please contact me at your earliest convenience so that we may further discuss this matter. When we meet, I will gladly provide you with copies of whatever public documents you desire.

Sincerely,



Jennifer R. Busse

JRB:mbb

cc: Peter Max Zimmerman, Esquire
Carole S. Demilio, Esquire
Mr. William Wiseman
John B. Gontrum, Esquire

356852

3/6/06

RE: Petition for Variance NW/Corner Berwick Road and Locust Avenue (1401 Berwick Rd.) 9th Election District 2nd Council District	*	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY
	*	Case No. 06-257-A
Benhoff Builders, Inc. Petitioner	*	

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MAR 0 2006
ZONING COMMISSIONER

* * * * * * * * *

MOTION TO ADOPT THE MOTION FOR RECONSIDERATION FILED BY THE PEOPLE'S COUNSEL OF BALTIMORE COUNTY

Felicia Albright, appearing in opposition to the granting of the variances, by her undersigned counsel, states as follows:

1. She adopts the arguments that the People's Counsel makes in its opposition, dated February 6, 2006, and heretofore filed in these proceedings.

2. She requests additionally that the other parties, within a reasonable time, provide all relevant information that they have concerning the matters that are raised by the People's Counsel, to enable the Opposing parties to have the benefit of said information prior to the meetings ordered by the Commissioner. This information includes, but is not limited to, all prior zoning history of this property including the parcel that Petitioner has recently developed now known as 1404 LaBelle, all old plats, agreements between the community association and the Petitioner and any other material between them including conservation easements, and all materials relating to any building and demolition permits for this property, including those associated with 1404 LaBelle. It is important that full disclosure be made at this time to protect the future integrity of the property and the zoning process.

3. If privilege is claimed on any of the documents, we will need a privilege docket.

4. The lack of disclosure by the proponent parties involved has created a situation where a historic house was torn down contrary to the laws of Maryland, creating irreparable harm.

5. The variances requested are created by self-inflicted wounds and are not caused by any unusual circumstances.

6. The zoning doctrine of merger eliminates the possibility of more than one home on the entire property bought by Petitioner in 2002, not just the portion of the property that he seeks currently to develop. The particular placement of the original house, built in 1913-1914, and the accessory structure, merged the entire property. The case of Remes v. Montgomery County, 387 Md. 52, 66 (2005) is very clear on this issue. The contractor had plenty of warning on this matter. Even if the contractor had applied for a waiver of the preservation requirement and had been granted it, the property still is merged which prevents all development under the facts of this case.

7. It is hoped that some form of settlement will be entered into to salvage what can be salvaged out of this dreadful situation.

David F. Albright, Sr., Esq.
1122 Kenilworth Drive; Suite 500
Baltimore, MD 21204
(410) 823-5455

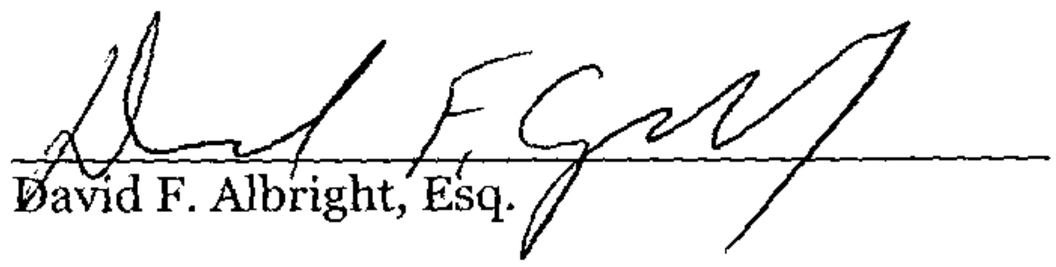
Attorney for Opposition, Felicia Albright

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of March, 2006 a copy of the foregoing motion to adopt was mailed, first class mail, postage prepaid, to:

Peter Max Zimmerman, Esq.,
People's Counsel for Baltimore County
Carole S. Demilio, Esq.,
Deputy People's Counsel for Baltimore County
400 Washington Ave, Room 47
Towson, MD 21204

John B. Gontrum, Esq.
Jennifer R. Busse, Esq.
Whiteford, Taylor & Preston
210 W. Pennsylvania Ave
Towson, MD 21204



David F. Albright, Esq.

BALTIMORE COUNTY

MARYLAND

JAMES T. SMITH, JR.
County Executive

March 1, 2006

WILLIAM J. WISEMAN III
Zoning Commissioner

Peter Max Zimmerman, People's Counsel for Baltimore County
Carole S. Demilio, Deputy People's Counsel for Baltimore County
400 Washington Avenue, Room 47
Towson, Maryland 21204

RE: **MOTION FOR RECONSIDERATION - PETITION FOR VARIANCE**
NW/Corner Berwick Road and Locust Avenue
(1401 Berwick Road)
9th Election District – 2nd Council District
Benhoff Builders, Inc. - Petitioner
Case No. 06-257-A

Dear Mr. Zimmerman & Ms. Demilio:

This is to confirm that your letter of February 6, 2006 has been accepted as a Motion for Reconsideration of the Order issued by me in the above-captioned matter on January 13, 2006. Pursuant to Rule 4K of the Rules of Practice and Procedure before the Zoning Commissioner/Hearing Officer of Baltimore County, any party may file a Motion for Reconsideration within thirty (30) days of the date of an Order. Thus, the Motion in this case was timely filed. Rule 4K further provides that, "At his discretion, the Zoning Commissioner may convene a hearing to receive testimony and/or argument on the Motion."

By letter dated February 27, 2006, Counsel for the Petitioner, Jennifer R. Busse, Esquire, has requested that the matter be scheduled for a public hearing. However, pursuant to a subsequent telephone conversation by and between co-Counsel John B. Gontrum, Esquire and the Office of People's Counsel, the parties have agreed to delay those proceedings until such time as Counsel for the Petitioners has met with adjacent neighbors in an effort to resolve their differences. Thus, a hearing on the Motion will not be scheduled until such time as I receive written word that those meetings have occurred and that the matter is ripe for further consideration.

In the meantime, should anyone have any questions on the subject, please do not hesitate to call me.

Very truly yours,

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:bjs

cc: John B. Gontrum, Esquire & Jennifer R. Busse, Esquire, Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue, Towson, Md. 21204
Mr. Melvin C. Benhoff, Jr., President, Benhoff Builders, Inc., 215 Old Padonia Road, Cockeysville, Md. 21030
Ms. Nancy Horst, P.O. Box 204, Riderwood, Md. 21139
Mr. John Blaze, 1209 Berwick Road, Ruxton, Md. 21204
Ms. Felicia Albright, 1214 Berwick Road, Ruxton, Md. 21204
Mr. George Grose, 1412 LaBelle Avenue, Ruxton, Md. 21204
Case File

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL
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PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

February 6, 2006

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FEB - 6 2006

ZONING COMMISSIONER

William J. Wiseman, III, Zoning Commissioner
County Courts Building
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

Re: Benhoff Builders, Inc.- Petitioner
Case Nos: 06-257-A

Dear Mr. Wiseman:

Please accept this letter as a Motion for Reconsideration of the Findings of Fact and Conclusions of Law and Order dated January 13, 2006. Our concern is with the process leading to demolition of the historic residence at 1401 Berwick Road and its implications for the present case.

The decision refers on page 2 to the destruction of the house on the Maryland Historic Trust inventory, "No. 3109," allowed by permit B558162, issued July 27, 2005. The site plan mentions this demolition permit, referring to MHT Inventory No. 3009. The permit itself, enclosed, makes no reference to the historic listing.

The main thing is that there is no mention, indication, or evidence of any hearing or approval of a waiver of the preservation requirement found in Baltimore County Code Secs. 32-4-416 and 32-4-223(ô). The waiver standards and procedures are found in Secs. 32-4-107 and 32-8-301, et seq.

Upon our inquiry, Timothy Dugan of the Planning Office confirmed in the attached February 2, 2006 correspondence that the residence, known as "The Ann P. and Alfred Tyler House" is still found in the MHT inventory as No. 3009, and so would be subject to the preservation standards of former Code Sec. 26-278 (now 32-4-416). Various references to "3109" in the opinion appear to result from typographical error.

Separately, we found enclosed an earlier Application 497510 dated August 30, 2002 for a demolition permit at the historic Berwick Road site. Upon review, the Director of Planning issued the enclosed memorandum on September 17, 2002, which explained that a demolition permit would be subject to review under Code Sec. 26-278, the same section found in current Sec. 32-4-416 under the 2003 comprehensive revision of the Code. As a result, the Planning Office revoked its signature on that permit.

In connection with Application 497510, we likewise could not find any evidence of a waiver application or hearing before the Commissioner to allow demolition of the historic residence, or any document showing that permit 497510 was ever issued. The application itself is marked "Cancelled – time limit" at the bottom right in handwriting. It is noteworthy that the Planning Director's memorandum also referred to a separate unlisted residence on Labelle Avenue, to which there was no objection to demolition.

It is apparent that demolition permit Application 497510 refers to the same property involved in the later Permit B558162. The address and tax account numbers are the same. The language in the description of work done appears to be the same.

In any event, in the absence of an application, public notice and opportunity to be heard, and a public hearing, as well as final approval of a waiver, the 2005 permit would appear to be defective because in conflict with Code Sec. 32-4-416 and without legal basis. Before any redevelopment is approved for this property, such as the development with variances proposed here, there should be a full explanation and account of the basis, if any, for issuance of the permit and ensuing destruction of the historic residence. If there was no legal basis for issuance of the demolition permit, then it appears to be inappropriate to approve redevelopment at this site.

Your opinion refers to an agreement between the developer and the Ruxton-Riderwood Association (RRLRIA). While we are respectful of agreements between developers and community associations, there is a public interest in the integrity of the process relating to altering and destroying buildings listed in the Maryland Historic Trust Inventory and other designated historic listings and districts. We also note that at least one neighbor appeared in opposition to the variance.

Recently, there was considerable public controversy and concern over a demolition permit issued for the Gardner house in Cockeysville after deliberation but before the County Board of Appeals' issuance of a written opinion approving a waiver and before the conclusion of any potential appeal process. That house was also listed on the MHT inventory. The rationalization for the permit was that the bank which proposed the demolition had been through enough, and needed to move forward.

There is clearly a public interest in implementation of the law concerning preservation of historic properties, and strict compliance with the process whereby waivers may be sought. Unless this law is implemented with consistency, it brings into question both the commitment to historic preservation and respect for the legal process.

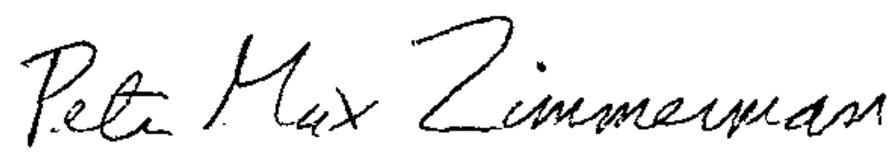
Here, there is no indication in your findings of even a waiver application. There is thus no explanation of any adequate basis for the issuance of the 2005 demolition permit.

Whether or not the destruction of the Tyler House could be legally justified, and whether the proposed new construction agreed to between the developer RRLRIA could serve as part of the justification or mitigation for the demolition, that should have been reviewed in the appropriate special hearing process on a waiver application, with public notice and opportunity to be heard for all citizens and county offices before any demolition.

Therefore, we request that you reconsider and revisit this case, and conduct a full hearing and inquiry to determine the basis, if any, for issuance of the demolition permit in July 27, 2005, the applicability and implementation of Code Sec. 32-4-416, and the appropriateness of approving redevelopment under all of the circumstances. In addition, there needs to be an exploration of the apparent relationship between the earlier Permit 497510, which the Planning Office explicitly rejected because of historic preservation status, and the more recent Permit B558162, which was nevertheless issued.

If you find, after a full review, that the demolition permit was issued in conflict with the required legal process, then the subject of remedies may be explored. At the very least, it would appear that it would be inappropriate at this time to approve redevelopment. Other remedies or actions may be explored at that time.

Very truly yours,



Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio
Deputy People's Counsel

cc: Jennifer R. Busse, Esq.
Audra Cathell, Esq.
Arnold F. Keller, Director of Planning
Timothy Dugan, Office of Planning
Timothy Kotroco, Director of Permits and Development Management
John Beverungen, Acting County Attorney

WHITEFORD, TAYLOR & PRESTON L.L.P.

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

20 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
SUITE 495
COLUMBIA, MARYLAND 21044-3528
TELEPHONE 410 884-0700
FAX 410 884-0719

JENNIFER R. BUSSE
DIRECT NUMBER
410 832-2077
jbusse@wtplaw.com

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
DIRECT FAX 410 339-4027
www.wtplaw.com

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

115 ORONOCO STREET
ALEXANDRIA, VIRGINIA 22314
TELEPHONE 703 836-5742
FAX 703 836-3558

February 27, 2006

RECEIVED

FEB 2 0 2006

ZONING COMMISSIONER

Via Hand Delivery
Mr. William Wiseman
Zoning Commissioner for Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

Re: 1401 Berwick Avenue
Zoning Case No.: 06-257-A

Dear Mr. Wiseman:

As you are aware, this office represents the property owner and petition in the above referenced matter. We are in receipt of a letter from People's Counsel of Baltimore County requesting reconsideration of your decision in the matter. Please accept this letter as our request for a hearing on Mr. Zimmerman's Motion for Reconsideration.

Sincerely,

Jennifer R. Busse

cc: Peter Max Zimmerman, Esquire
Ms. Felicia Albright
Mr. George Grose
Ms. Nancy Horst
Mr. John M. Blaze
Mr. Melvin C. Benhoff

355900

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

December 26, 2005

Jennifer R. Busse
Whiteford Taylor & Preston
210 W. Pennsylvania Avenue
Towson, Maryland 21204

Dear Ms. Busse:

RE: Case Number: 06-257-A, 1401 Berwick Avenue

The above referenced petition was accepted for processing by the Bureau of Zoning Review, Department of Permits and Development Management (PDM) on November 15, 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
Benhoff Builders, Inc. Welvin Benhoff 215 Old Padonia Road Cockeysville 21030

Printed on Recycled Paper

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

SHA
State Highway Administration
Driven to Excel

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

Maryland Department of Transportation

Date: 11.28.05

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

RE: Baltimore County
Item No. 257 JLL

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,

L. G. Gredlein

Steven D. Foster, Chief
Engineering Access Permits Division

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

November 29, 2005

ATTENTION: Zoning Review Planners

Distribution Meeting of: November 14, 2005

Item No.: 250, 252, 253, 254, 255, 256, 257, 258, 260, 262.

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.

Acting Lieutenant Don W. Muddiman
Fire Marshal's Office
410-887-4880
MS-1102F

cc: File

BW 12/30

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: December 22, 2005

RECEIVED

JAN 0 C 2006

ZONING COMMISSIONER

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

SUBJECT: 1401 Berwick Avenue - Amended

INFORMATION:

Item Number: 6-257

Petitioner: Benhoff Builders, Inc.

Zoning: DR 3.5

Requested Action: Variance

SUMMARY OF RECOMMENDATIONS:
The Office of Planning reviewed the petitioner's request and provides the following comments:

The property was the former site of a cottage which was designated BA # 3109 and was razed.
The property is within the Ruxton Riderwood Lake Roland Design Review area established by Bill 88-04.
It appears that the proposed dwelling would be constructed on Lots 205, 206, 206A, 207 and-208 in the plat of Ruxton Heights. It would straddle those lots in effect creating a single lot of record. Architectural elevation drawings have been submitted to the office for review and comment.
A copy of the agreement between the Ruxton Riderwood Lake Roland Improvement Association and Benhoff Builders was also provided.

SUMMARY OF RECOMMENDATIONS:

Bill 119-05 effective December 23, 2005 establishes an administrative review alternative to the formal Design Review Panel (DRP) meeting.

A letter of support has been provided from the Ruxton Riderwood Lake Roland Improvement Association. The area planner has also reviewed the architectural elevation drawings. After December 23, 2005, the Chairman of the Design Review Panel will be able to approve the proposed new residence administratively without the necessity of a formal DRP meeting.

These recommendations are binding upon the hearing officer.

It should also be noted that the RRLRIA requested to be given sign-off capability on construction drawings.

RE:	PETITION FOR VARIANCE 1401 Berwick Road; NW corner Berwick Road & Locust Avenue 9th Election & 2nd Councilmanic Districts Legal Owner(s): Benhoff Builders, Inc – Melvin Benhoff, Jr. Petitioner(s)	* * * *	BEFORE THE ZONING COMMISSIONER FOR BALTIMORE COUNTY 06-257-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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of November, 2005, a copy of the foregoing Entry of Appearance was mailed to, Melvin Benhoff, 215 Old Padonia Road, Cockeysville, MD 21030 and Jennifer R. Busse, Esquire, Whiteford, Taylor & Preston, 210 W. Pennsylvania Avenue, Towson, MD 21204 , Attorney for Petitioner(s).

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

RECEIVED
NOV 29 2005
Per

Department of Permits and Development Management

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

Baltimore County

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

October 30, 2006

Jennifer R. Busse
Whiteford, Taylor & Preston
210 W. Pennsylvania Avenue
Towson, MD 21204

Dear Ms. Busse:

RE: Case: 06-257-A, 1401 Berwick Road

Please be advised that two appeals of the above-referenced case were filed in this office on August 16, 2006 from the Office of People's Counsel and September 6, 2006 from David F. Albright. 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
Director

TK:amf

RECEIVED
OCT 31 2006
BALTIMORE COUNTY
BOARD OF APPEALS

c: William J. Wiseman III, Zoning Commissioner
Timothy Kotroco, Director of PDM
People's Counsel
Benhoff Builders, Inc Melvin C. Benhoff, Jr. 215 Old Padonia Rd Cockeysville 21030
Audra Cathell, Esq. 210 W. Pennsylvania Avenue Towson 21204
Nancy Horst P.O. Box 204 Riderwood 21139
John Blaze 1209 Berwick Rd Ruxton 21204
Felicia Albright 1214 Berwick Rd Ruxton 21204
George Grose 1412 LaBelle Avenue Ruxton 21204
Joseph M. Coale 1317 Boyce Avenue Towson 21204
Fran Anderson 7912 Springway Rd Ruxton 21204
Amy Macht 1412 LaBelle Avenue Ruxton 21204
David F. Albright 1122 Kenilworth Dr, Ste 500 Baltimore 21204
Peter Max Zimmerman 400 Washington Avenue Towson 21204

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL

Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

August 16, 2006

Hand-delivered
Timothy Kotroco, Director
Department of Permits and
Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Re: PETITION FOR VARIANCE
NW/Corner Berwick Road and Locust Avenue
(1401 Berwick Road)
9th Election District; 2nd Council District
Benhoff Builders - Petitioners
Case No.: 06-257-A

RECEIVED
AUG 16 2006
Per. HM

Dear Mr. Kotroco:

Please enter an appeal by the People's Counsel for Baltimore County to the County Board of Appeals from the Order on the Motion(s) for Reconsideration dated August 8, 2006 and the incorporated Findings of Fact and Conclusions of Law dated January 13, 2006, filed by the Baltimore County Zoning Commissioner in the above-entitled case.

Please forward copies of any papers pertinent to the appeal as necessary and appropriate.

Very truly yours,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

Carole S. Demilio

Carole S. Demilio
Deputy People's Counsel

PMZ/CSD/rmw

cc: John B. Gontrum, Esquire
David F. Albright, Esquire
Felicia Albright

APPEAL

Petition for Variance
1401 Berwick Road (a.k.a. Berwick Avenue)
Northwest corner of Berwick Road and Locust Avenue.
9th Election District – 2nd Councilmanic Dirstrict
Legal Owner(s): Benhoff Builders, Inc., Melvin C. Benhoff, Jr.

Case No.: 06-257-A

Petition for Variance (November 15, 2005)

Zoning Description of Property

Notice of Zoning Hearing (November 25, 2005)

Certification of Publication (The Jeffersonian – December 15, 2005)

Certificate of Posting (December 12, 2005) by SSG Robert Black

Entry of Appearance by People's Counsel (November 29, 2005)

Petitioner(s) Sign-In Sheet – 1 Sheet
Motion for Reconsideration – 1 Sheet

Protestant(s) Sign-In Sheet – None

Citizen(s) Sign-In Sheet - 1 Sheet
Motion for Reconsideration – 1 Sheet

Zoning Advisory Committee Comments

Petitioners' Exhibit – Variance Hearing
1. Revised Site Plan
2. Agreement – Benhoff, Building and RRLRAI
3. Letters of Support
4. Ruxton-Riderwood-Lake Roland Improvement Associations
5. George Grose & Amy Macht

Petitioners' Exhibit - Motion for Reconsideration
1. Letters in Support of Variance – Collectively A through I
2. Agreement from Ruxton-Riderwood-Lake Roland Improvement Associations 1/13/06

Protestants' Exhibits: None

Miscellaneous (Not Marked as Exhibit)
1) Petitioner's memorandum in opposition to motion for reconsideration
2) Memorandum of People's Counsel for Baltimore County in Support of Motion for *Reconsideration*
3) Motion to adopt the motion for reconsideration filed by the People's Counsel of Baltimore County
4) Letter of Motion for Reconsideration of the Findings of Fact and Conclusions of Law and Order.
5) Office of Planning Memo
6) Application for Permit
7) Letter from Permits Processing Supervisor
8) Office of Planning memo
9) Findings of Fact and Conclusions of Law
10) Lucas Architects, P.C. letter
11) General Permit Application Data
12) Permit application packet
13) Motion for Reconsideration scheduling letter
14) Confirmation of attendance
15) Letter dated May 31, 2006
16) Letter from People's Counsel
17) Letter dated April 17, 2006
18) Letter dated March 9, 2006
19) Motion for Reconsideration
20) Letter dated February 27, 2006
21) Bill No. 75-03, Baltimore County Council
22) Bill No. 79-01, Baltimore County Council
23) Information sheet – method for measuring setbacks
24) Letter, Maryland Department of Housing and Community Development
25) Ruxton Heights letter
26) Office of Planning comments, 12/22/05
27) Office of Planning comments, 12/19/05
28) Ruxton-Riderwood-Lake Roland Area Improvement Assoc, Inc. letter
29) Letter from George Grose
30) Frequent Flyer Attorneys' Drop-off Sheet
31) Drop-off letter from Jennifer Busse
32) Plat
33) Area map

Zoning Commissioner's Order - Variance (GRANTED in accordance w/order – 1/13/06)
Zoning Commissioner's Order – Motion for Reconsideration (GRANTED in accordance w/order – 8/8/06)

Notice of Appeal received on 8/16/06 from The People's Counsel
Notice of Appeal received on 9/6/06 from David F. Albright

c: People's Counsel of Baltimore County, MS #2010
Zoning Commissioner/Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Benhoff Builders, Inc Melvin C. Benhoff, Jr. 215 Old Padonia Rd Cockeysville 21030
Audra Cathell, Esq. 210 W. Pennsylvania Avenue Towson 21204
Nancy Horst P.O. Box 204 Riderwood 21139
John Blaze 1209 Berwick Rd Ruxton 21204
Felicia Albright 1214 Berwick Rd Ruxton 21204
George Grose 1412 LaBelle Avenue Ruxton 21204
Joseph M. Coale 1317 Boyce Avenue Towson 21204
Fran Anderson 7912 Springway Rd Ruxton 21204
Amy Macht 1412 LaBelle Avenue Ruxton 21204
David F. Albright 1122 Kenilworth Dr, Ste 500 Baltimore 21204

date sent October 31, 2006, amf

CASE #: 06-257-A

IN THE MATTER OF: BENHOFF BUILDERS, INC.;
Melvin C. Benhoff, Jr., Legal Owner /Petitioner
1401 Berwick Road (aka Berwick Ave) 9th E; 2nd C

1/13/06 - Z.C.'s Order in which requested variance relief was GRANTED with restrictions
8/08/06 – Motions for Reconsideration filed by People's Counsel and Protestants – DENIED.

11/29/06 – Letter from M. Benhoff, Petitioner – unsafe condition at subject site (requesting date for hearing per prior telephone call).

1/18/2007 - Notice of Assignment sent to following; assigned for hearing on Tuesday, February 20, 2007 at 10 a.m.:

Office of People's Counsel
David F. Albright, Esquire
Felicia Albright
John B. Gontrum, Esquire
Melvin C. Benhoff, Jr. /Benhoff Builders, Inc.
Audra Trouland Cathell, Esquire
Nancy Horst
John Blaze
George Grose
Joseph M. Coale
Fran Anderson
Amy Macht
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

1/25/07 – FAX request filed by David F. Albright, Esquire – is scheduled for pretrial conference and motions hearing in Baltimore City Circuit Court same day /same time; requesting postponement of 2/20/07 hearing.

1/26/07 – Hard copy of request for postponement received from Mr. Albright. Mr. Zimmerman verbally indicated no objection to this request.

NOTE: Due to death in family of CBA staff member, official notice as to the status of this postponement was not provided to counsel as of week before hearing. However, parties were notified that the request was granted and that written reassignment notice would be provided as soon as possible. No one need appear on 2/20/07; case pulled from CBA schedule.

3/08/07 – Having received no objection to date from counsel for Petitioner, Notice of PP and Reassignment sent to parties; case reassigned to Thursday, April 12, 2007 at 10:00 a.m.

4/02/07 – T/C from J. Gontrum – has schedule conflict; unable to find someone to substitute for him; will be requesting a postponement.

4/03/07 – Letter hand-delivered from Mr. Gontrum; has previously scheduled commitment in Harford County; attorney believed to be handling this matter in unable to at this time. Confirmed by telephone with Mr. Gontrum. Also heard from Mr. Zimmerman, who has no objection to the postponement.
- Second Notice of PP and Reassignment sent to parties; case reassigned to Thursday, May 3, 2007 at 10:00 a.m.

Baltimore County, Maryland

OFFICE OF PLANNING

Memorandum

TO: Peter Max Zimmerman
People's Counsel

DATE: February 2, 2006

FROM: Tim Dugan
Chief, Preservation Services

SUBJECT: 1401 Berwick Avenue

In response to your inquiry, please be advised that the property at 1401 Berwick Avenue in Ruxton was listed, on September 6, 2002, by the Maryland Historical Trust on the Maryland Inventory of Historic Properties, thereby making it subject to the "must be preserved" requirement in former County Code Section 26-278 (current Code section 32-7-416). The property is identified in the Inventory as number BA-3009, the "Ann P. and Alfred Tyler House."

td

8/30/03 BD

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
DEPARTMENT OF PERMITS & DEVELOPMENT MANAGEMENT
TOWSON, MARYLAND 21204

DATE: 8/5/0
OEA
HISTORIC DISTRICT/BL

PERMIT #: B 497510
RECEIPT #: A457945
CONTROL #:
XREF #:

FEE: 10 +
PAID: 10 +
PAID BY:
INSPECTOR:

I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS.

PROPERTY ADDRESS 01401 BERWICK RD
SUITE/SPACE/FLOOR
SUBDIV: LUXTON HEIGHTS
TAX ACCOUNT #: 09-23 154890

☐ YES ☐ NO
☐ DO NOT KNOW
DISTRICT/PRECINCT 9

OWNER'S INFORMATION (LAST,FIRST)
NAME: ~~WEISHEIT J. ALNER~~ BENHOFF BUILDERS, I
ADDR: 1401 BERWICK Rd 21204 6509

DOES THIS BLDG HAVE SPRINKLER
YES — NO —

APPLICANT INFORMATION
NAME: Ben Hoff Bldrs
COMPANY: BENHOFF BLDRS INC
STREET 215 OLD FADWICK RD
CITY,ST,ZIP COCKEYSVILLE MD 21030
PHONE #: 410-255-0009 MHIC # MHBR # 1597
APPLICANT SIGNATURE: Michael C. Berkoff DRC#
PLANS: CONST PLOT PLAT DATA EL 2 PL 1
TENANT
CONTR: Benhoff
ENGNR:
SELLR:

TYPE OF IMPROVEMENT
1.___ NEW BLDG CONST
2.___ ADDITION
3.___ ALTERATION
4.___ REPAIR
5.✓ WRECKING
6.___ MOVING
7.___ OTHER

DESCRIBE PROPOSED WORK: Raze bldg, To be tow down, Debris to be hauled to approved sanitary landfill in accordance w/ applicable Codes, site reg, permit expires 90 days from date of issue. Sewer capped, cap 3000

TYPE OF USE

RESIDENTIAL
01.___ ONE FAMILY
02.___ TWO FAMILY
03.___ THREE AND FOUR FAMILY
04.___ FIVE OR MORE FAMILY (ENTER NO UNITS)___
05.___ SWIMMING POOL
06.___ GARAGE
07.___ OTHER

NON-RESIDENTIAL
08.___ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09.___ CHURCH, OTHER RELIGIOUS BUILDING
10.___ FENCE (LENGTH HEIGHT)
11.___ INDUSTRIAL, STORAGE BUILDING
12.___ PARKING GARAGE
13.___ SERVICE STATION, REPAIR GARAGE
14.___ HOSPITAL, INSTITUTIONAL, NURSING HOME
15.___ OFFICE, BANK, PROFESSIONAL
16.___ PUBLIC UTILITY
17.___ SCHOOL, COLLEGE, OTHER EDUCATIONAL
18.___ SIGN
19.___ STORE ___ MERCANTILE ___ RESTAURANT
SPECIFY TYPE
20.___ SWIMMING POOL
SPECIFY TYPE
21.___ TANK, TOWER
22.___ TRANSIENT HOTEL, MOTEL (NO. UNITS
23.___ OTHER

TYPE FOUNDATION
1.___ SLAB
2.___ BLOCK
3.___ CONCRETE

BASEMENT
1.___ FULL
2.___ PARTIAL
3.___ NONE

TYPE OF CONSTRUCTION
1.___ MASONRY
2.___ WOOD FRAME
3.___ STRUCTURE STEEL
4.___ REINF. CONCRETE

TYPE OF HEATING FUEL
1.___ GAS 3.___ ELECTRICITY
2.___ OIL 4.___ COAL

TYPE OF SEWAGE DISPOSAL
1.___ PUBLIC SEWER ___ EXISTS ___ PROPOS
2.___ PRIVATE SYSTEM
___ SEPTIC ___ EXISTS ___ PROPOS
___ PRIVY ___ EXISTS ___ PROPOS

CENTRAL AIR: 1.___ 2.___
ESTIMATED COST: $ 50,000 OF MATERIALS AND LABOR

TYPE OF WATER SUPPLY
1.___ PUBLIC SYSTEM ___ EXISTS ___ PROPOSED
2.___ PRIVATE SYSTEM ___ EXISTS ___ PROPOSED

PROPOSED USE: Vacant
EXISTING USE: SFD + Shed

Cancelled Tri demo PM 3/

OWNERSHIP
1.✓ PRIVATELY OWNED 2.___ PUBLICLY OWNED 3.___ SALE 4.___ RENTAL

RESIDENTIAL CATEGORY: 1. DETACHED 2. SEMI-DET. 3. GROUP 4. TOWNHSE 5. MIDRISE

B497510

BALTIMORE COUNTY, MARYLAND

MEMORANDUM

TO: John Reisinger
Buildings Engineer
Permits and Development Management

DATE: September 17, 2002

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

SUBJECT: Application for demolition permit
1401 Berwick Road, Ruxton

The Office of Planning has received numerous visits and telephone calls from Mr. Melvin Benhoff regarding his application for a demolition permit for the home located at 1401 Berwick Road, Towson, Maryland 21204.

The application for demolition of the one existing home had originally been signed "OK to issue" by John McGrain on August 28, 2002, with the understanding (correct at the time) that the property was not then included on any of the lists of historic properties. The application did not have a PDM permit number at the time it was signed by John, but a number that appears to be B 497510 has since been added to Mr. Benhoff's (yellow) copy.

Subsequent to the Office of Planning signing off on the demolition permit for 1401 Berwick Road, the State of Maryland Historical Trust placed the structure on the Maryland Inventory of Historic Properties. Orlando Ridout, V, Chief of MHT's Division of Research, Survey and Registration, the Division that has responsibility for compiling and maintaining the Inventory, confirmed that an Inventory number BA3009 has now, in fact, been assigned to the house at 1401 Berwick Road, and will remain assigned regardless of Baltimore County permit actions pertaining to the property. Thus, the dwelling in question is now subject to County Code 26-278 and the implementation procedures established by PDM. As a result of the structure's placement on this list the Office of Planning revoked its signature on the demolition permit.

Please note, however, that the Inventory listing pertains only to the dwelling sited diagonally on the property, facing the corner of Berwick Road and Locust Avenue. Mr. Benhoff has also applied for a permit to demolish another structure that is on the same property, but it abuts LaBelle Avenue. The Office of Planning reviewed that application on the afternoon of September 10, 2002, and finds that the LaBelle Avenue structure is *not* historic, and therefore signed for approval of the permit (there is no PDM number of the application signed by John McGrain). Planning has no objection to the issuance of that permit provided that it saves as many of the existing mature trees as possible, and does not result in damage to the 1401 Berwick Road dwelling nearby.

In order to receive approval for the demolition of the existing stricture known as 1401 Berwick Road, Mr. Benhoff will have to request, and receive a hearing before the Hearing Officer. The Hearing Officer will make a determination of the appropriateness of issuing a demolition permit. The Hearing Officer may request that the Landmarks Preservation Commission provide advisory comments, however, this referral process is not mandatory on the part of the Hearing officer. The LPC does not have "approval" authority in questions pertaining to Inventory properties, nor is there any requirement for action by the LPC before an application can be submitted, or a hearing be scheduled. The LPC's role is established by the standing request from the Hearing Officer that the Commission be given the opportunity to advise the Hearing Officer on the historic merits of the property before a decision is rendered. Assuming that a hearing before the Hearing Officer is scheduled, the earliest that the matter could be presented to the Landmarks Preservation Commission is October 10, 2002, and Mr. Benhoff will be notified of his right to present his case to the Commission.

AFK:rk

C: Melvin Benhoff, Benhoff Builders, Inc.
Doug Swam, PDM

Baltimore County
Department of Permits and
Development Management

Permits and Licenses
County Office Building
111 West Chesapeake Aven
Towson, Maryland 21204
(410) 887-3900
Fax: (410) 887-2824

July 15, 2003

Re: B497510
Owner: Benhoff Builders
Location: 1401 Berwick Rd
District/Precinct: 09/01

Benhoff Builders Inc
215 Old Padonia Rd
Cockeysville, Md 21030

Dear Sir/Madam:

Your application #B497510 to raze & S.F.D

at the above referenced location has been on file for over six months. Section 112.9 of the Baltimore County Building Code, requires that we cancel any application not issued, after a period of six months from date of filing.

The following reviewing agencies have not yet approved your application:

1. plans
2. Zoning
3.
4.

Our office must have your application reviewed and approved by appropriate County Agencies to assure compliance with all pertinent laws and ordinances. Without these approvals, your permit cannot be issued. Accordingly, your application must be cancelled, without refund of any fees, on 8-15-03.

If you feel there is a reasonable cause for us to extend your application, please notify me in writing by certified mail, prior to the date cited above.

Please direct any questions you might have to Ms. Lette Duvall, Supervisor, at 410-887-3900.

Respectfully,

Douglas A. Swam
Permit Processing Supervisor

DAS:amb

Printed with Soybean Ink
on Recycled Paper

Inspector

Date 6/4/2010 RA

Any work done on this permit? Yes _____ No ✓

Is it ok to cancel this permit? Yes ~~AN~~ No ✓ 6/27/03

Still need approval from: (~~[redacted]~~ IN Litigation. Historic)

Plan

7-2-3 Comb

Please return to Room 100 by 7/27/03

Information Sheet METHOD OF MEASURING SETBACKS

IN ALL ZONES, EXCEPT R.C.'s

- Street Frontage & Building to Lot Line Orientation

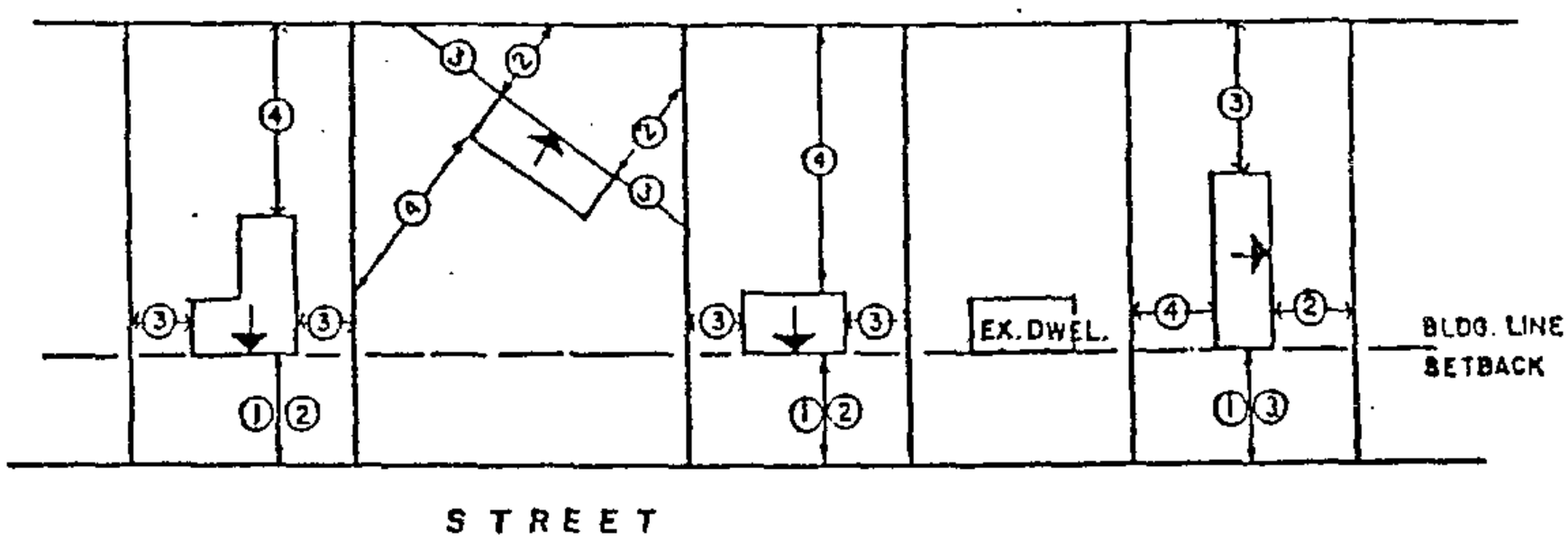
i. The front setback distance is measured radial or perpendicular to the road or front right-of-way.

ii. Side and rear setback distances are measured by extending the foundation wall lines to the nearest intersection of the property line.

iii. The building line setback required by the lot's zoning classification must be maintained from all abutting street frontages.

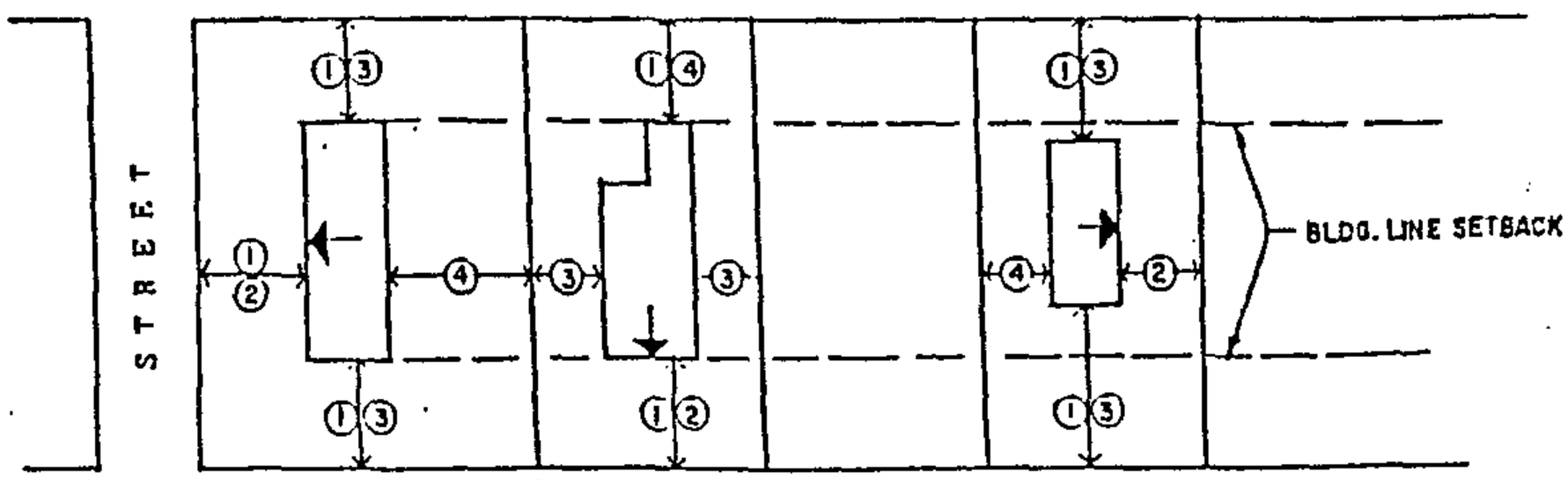
iv. Additionally, if a building is oriented so as to face or front a lot line other than a street, applicable front, side and rear setbacks relative to the building's front must also be maintained as required by the property's class.

v. Diagrams



1. Street Building Line Setback (If two setbacks conflict the greater of the two shall be maintained)
2. Front Yard Setback
3. Side Yard Setback
4. Rear Yard Setback

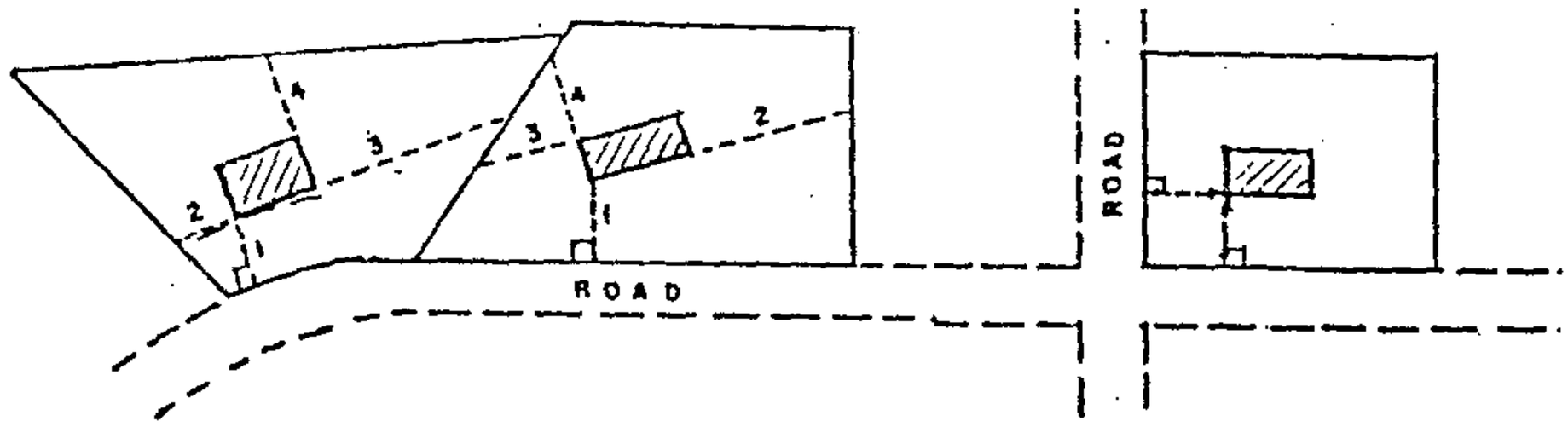
→ =FRONT OF BUILDING

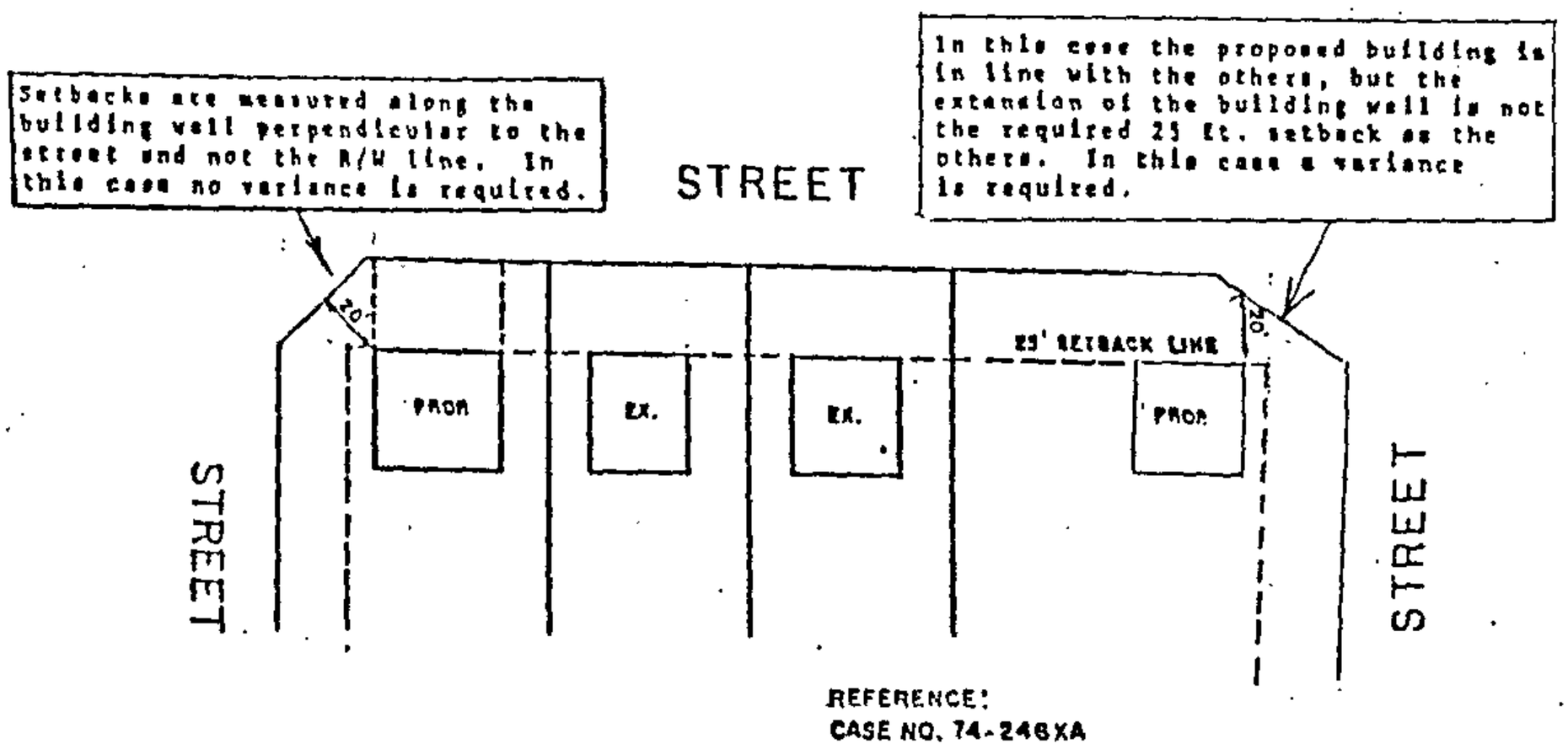


APPROVED MAY 13 1992

METHOD OF MEASURING SETBACKS

v. Diagrams



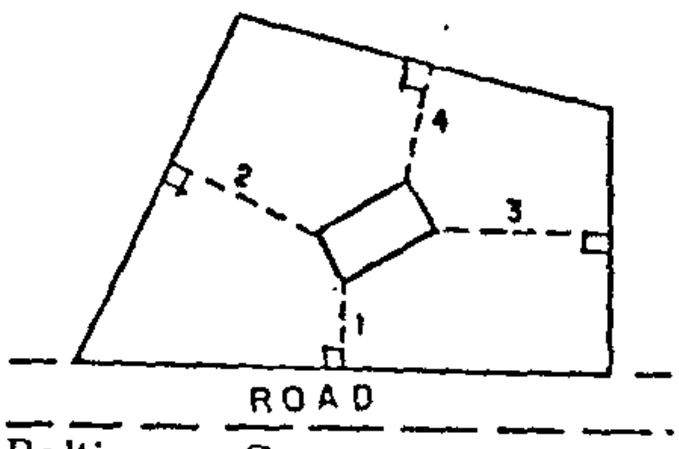


REFERENCE:
CASE NO. 74-246XA

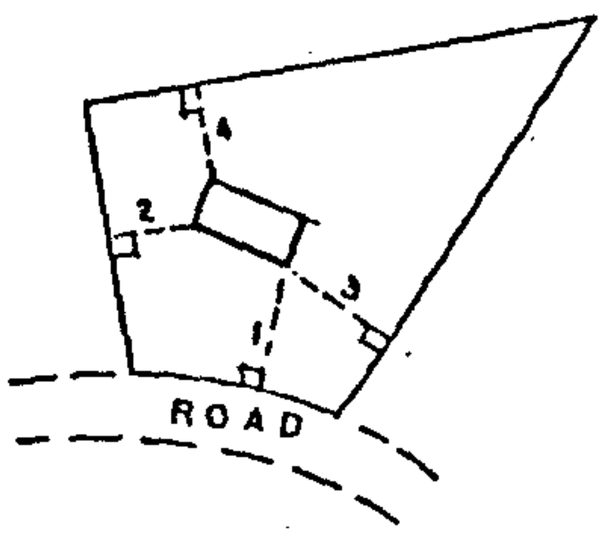
IN R.C. ZONES

METHOD OF MEASURING SETBACKS IN R.C. ZONES

Front, side and rear setbacks are measured from the nearest point on the dwelling perpendicular to the property line.



1. Front setback
2. Side setback
3. Side setback
4. Rear setback



Baltimore County
Zoning Regulations

1-136

APPROVED MAY 1 6 1992

Baltimore County, Maryland

Date 7/20/06

To: David F. Albright, Sr., Esq.

From: William J. Wiseman, III

- ☐ Please Note & File
- ☐ For Your Information
- ☐ Please Note & Return
- ☐ Please Handle
- ☐ To be Signed
- ☐ Please Comment
- ☐ Please See Me
- ☐ Investigate & Report
- ☐ Please answer, Sending me Copy of your letter
- ☐ Please Prepare reply for my Signature

Remarks: 06-257-A - Motion for Reconsideration

For your review & file.

1308 Loc
Baltimore
July 16, 2

issioner
5

1 Berwick

308 Locus
ave been i
t of the pr

s zoning va
l serve as t
constructi

CPS-004

Recycled Paper

hbors on t
opportunity to provide input and opinion. It is in everyo
be built as agreed upon, and in the quickest way possibl
structure is unsightly and --- most importantly --- very u
We hope that the Commission will act immediately to r
and allow Mr. Benhoff to finish this particular project.

Sincerely,

Lynn and Philip Rauch

Baltimore County, Maryland

Date 7/20/06

To: Peter Max Zimmerman

From: William J. Wiseman, III

- ☐ Please Note & File
- ☐ For Your Information
- ☐ Please Note & Return
- ☐ Please Handle
- ☐ To be Signed
- ☐ Please Comment
- ☐ Please See Me
- ☐ Investigate & Report
- ☐ Please answer, Sending me Copy of your letter
- ☐ Please Prepare reply for my Signature

Remarks: 06-257-A - Motion for Reconsideration

For your review & file.

1308 Locust Avenue
Baltimore, MD 21204
July 16, 2006

issioner
5

1 Berwick Road, Towsc

308 Locust Avenue, dire
ave been involved in the
t of the property since t

s zoning variance. Beca
l serve as testimony on b
construction, as plannec

CPS-004

Recycled Paper

hbors on this issue, and
opportunity to provide input and opinion. It is in everyone's best inte
be built as agreed upon, and in the quickest way possible. The partial
structure is unsightly and --- most importantly --- very unsafe for neig
We hope that the Commission will act immediately to remove this haz
and allow Mr. Benhoff to finish this particular project.

Sincerely,

Lynn and Philip Rauch

Baltimore County, Maryland

Date 7/26/06

To: Pete Zimmerman

From: Bill Wiseman

- ☐ Please Note & File
- ☐ For Your Information
- ☐ Please Note & Return
- ☐ Please Handle
- ☐ To be Signed
- ☐ Please Comment
- ☐ Please See Me
- ☐ Investigate & Report
- ☐ Please answer, Sending me Copy of your letter
- ☐ Please Prepare reply for my Signature

Remarks: RE: 06-257-A

This is the permit application I referred to during the hearing.

It is noted as Historic (top right) and signed off on by Kim Abe 6/5/04 (bottom right).

8/2 a copy of application to + documents attached

both:

Governmt +

Oesiget

er

Hold List #11

APPLICATION FOR PERMIT
BALTIMORE COUNTY MARYLAND
DEPARTMENT OF PERMITS & DEVELOPMENT MANAGEMENT
TOWSON, MARYLAND 21204

DATE: 6-3-04

OEA: 1494

PERMIT #: B558162
RECEIPT #: A496450
CONTROL #: RA
XREF #:

FEE: 10.
PAID:
PAID BY: Appl.
INSPECTOR:

I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS.

PROPERTY ADDRESS 1401 Berwick Rd.
SUITE/SPACE/FLOOR
SUBDIV: Ruxton Heights
TAX ACCOUNT #: 0923154890
OWNER'S INFORMATION (LAST,FIRST)
NAME: Benhoff Blders Inc
ADDR: 215 Old Padonia Rd
21030

HISTORIC DISTRICT/BLDG. [✓] YES [ ] NO [ ] DO NOT KNOW

DISTRICT/PRECINCT 4

DOES THIS BLDG. HAVE SPRINKLERS YES — NO —

APPLICANT INFORMATION
NAME: Benhoff Blders Inc
COMPANY: Benhoff Blders Inc.
STREET 215 Old Padonia Rd
CITY,ST,ZIP Cockeysville MD 21030
PHONE #: 410-252-0007 MHIC # — MHBR #
APPLICANT SIGNATURE: Michael C Benhoff DRC#
PLANS: CONST ___ PLOT ___ PLAT ___ DATA ___ EL 2 PL 1
TENANT
CONTR: ~~Benhoff~~ 2nd Chance
ENGNR:
SELLR:

TYPE OF IMPROVEMENT
1.___ NEW BLDG CONST
2.___ ADDITION
3.___ ALTERATION
4.___ REPAIR
5.✓ WRECKING
6.___ MOVING
7.✓ OTHER ~~Remove~~

DESCRIBE PROPOSED WORK: Raze Ex SFD. To Be Turn Down. Debris To Be Hauled To Approved Sanitary Landfill In Accordance With Applicable Baltimore County Regulations. Sewer To Be Capped. House Built 1940's. Permit Expires 90 Days From Date of Issue.

TYPE OF USE

RESIDENTIAL
01.✓ ONE FAMILY
02.___ TWO FAMILY
03.___ THREE AND FOUR FAMILY
04.___ FIVE OR MORE FAMILY (ENTER NO UNITS)___
05.___ SWIMMING POOL
06.___ GARAGE
07.___ OTHER

NON-RESIDENTIAL
08.___ AMUSEMENT, RECREATION, PLACE OF ASSEMBLY
09.___ CHURCH, OTHER RELIGIOUS BUILDING
10.___ FENCE (LENGTH ___ HEIGHT ___)
11.___ INDUSTRIAL, STORAGE BUILDING
12.___ PARKING GARAGE
13.___ SERVICE STATION, REPAIR GARAGE
14.___ HOSPITAL, INSTITUTIONAL, NURSING HOME
15.___ OFFICE, BANK, PROFESSIONAL
16.___ PUBLIC UTILITY
17.___ SCHOOL, COLLEGE, OTHER EDUCATIONAL
18.___ SIGN
19.___ STORE ___ RESTAURANT

54' x 71' = 3,172 ϕ
Copoff PS97102 finaled 7/25/05 AMB

TYPE FOUNDATION
1._ SLAB
2._ BLOCK
3._ CONCRETE

BASEMENT
1._ FULL
2._ PARTIAL
3._ NONE

TYPE ___ UNITS ___)

1401 Berwick Rd
03-138 SPA

TYPE OF CONSTRUCTION
1.___ MASONRY
2.___ WOOD FRAME
3.___ STRUCTURE STEEL
4.___ REINF. CONCRETE

TYPE O
1.___ G
2.___ O

TYPE OF

DISPOSAL
WER ___ EXISTS ___ PROPOSED
YSTEM
EPTIC ___ EXISTS ___ PROPOSED
IVY ___ EXISTS ___ PROPOSED

CENTRAL AIR: 1. 2.
ESTIMATED COST OF MATERIALS AND LABOR: $56,000
1.___ F
2.___ P

ED
D

PROPOSED USE: SF
EXISTING USE: SF

OWNERSHIP
1.✓ PRIVATELY OWNED 2.___ PU

ENTAL

RESIDENTIAL CATEGORY: 1.✓ DETACHED 4.___ TOWNHSE 5.___ MIDRISE
#EFF: #1BED: #2BED: #3 ___ TOT APTS/CONDOS: ___ 6.___ HIRISE
1 FAMILY BEDROOMS
GARBAGE DISPOSAL 1._ YES 2._ NO BATHROOMS CLASS 04
POWDER ROOMS KITCHENS LIBER 01 FOLIO 185

BUILDING SIZE
FLOOR 3172
WIDTH 54'
DEPTH 71'
HEIGHT
STORIES
LOT #'S 205
CORNER LOT
1. __ YES 2. __ NO

LOT SIZE AND SETBACKS
189.60 x
SIZE .78 Ac.
FRONT STREET
SIDE STREET
FRONT SETBK
SIDE SETBK N/A
SIDE STR SETBK
REAR SETBK
ZONING

APPROVAL SIGNATURES		DATE
BLD INSP		
BLD PLAN		
FIRE		
SEDI CTL		
ZONING		
PUB SERV		
ENVIRMNT	416 NC OK TO FILE MH Plan It 6/3/04	
PLANNING	406 NC OK to issue Entre: JWH 5.2004	
PERMITS		

MAKE CHECKS PAYABLE TO BALTIMORE COUNTY MARYLAND -- NO PERMIT FEES REFUNDED

Hold for Doug

LUCAS

3 558162

1 April 2005

Mr. Melvin C. Benhoff
Benhoff Builders
215 Old Padonia Road
Cockeysville, Maryalnd 21030

Dear Mr. Benhoff,

Thank you for submitting all of the information to date. You have submitted 1) comprensive documentation of the existing house and 2) preliminary design sketches with floor plans and elevations. In both cases, the information is satisfactory to both me and the immediate neighborhood of Ruxton Heights. With this approval, we are also understand that you will be submitting to Baltimore County for a permit to demolish the house, salvaging as much as possible of the materials you see fit for re-use. We also assume under this work, you will prepare the site for future new construction and leave it in good order until that happens.

Please continue to send us updates of the working drawing progress. When you arrive at the 100% construction documents for the building permit for the new construction, we will be happy to submit another letter hopefully confimring our review and approval.

Sincerely,
LUCAS ASSOCIATES ARCHITECTS; P.C.

L. Franklyn Lucas Jr. AIA
President

Copies:
Nancy Horst – Executive Director RRLRIA
George Grosse – Ruxton Heights Community
Walter Daniels - Architect

Department of Permits and Development Management

Permits and Licenses
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204
Tel. 410-887-3900 • Fax: 410-887-2824

Baltimore County

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

March 14, 2005

Re: B558162
Owner: Benhoff Builders Inc
Location: 1401 Berwick Rd
District/Precinct: 09/01

Benhoff Builders Inc
215 Old Padonia Rd
Cockeysville, Md 21050

Dear Sir/Madam:

Your application #B558162 to raze existing SFD

at the above referenced location has been on file for over six months. Section 112.9 of the Baltimore County Building Code, requires that we cancel any application not issued, after a period of six months from date of filing.

The following reviewing agencies have not yet approved your application:

1. hold for report
2.
3.
4.

Our office must have your application reviewed and approved by appropriate County Agencies to assure compliance with all pertinent laws and ordinances. Without these approvals, your permit cannot be issued. Accordingly, your application must be cancelled, without refund of any fees, on 4-14-05.

If you feel there is a reasonable cause for us to extend your application, please notify me in writing by certified mail, prior to the date cited above.

Please direct any questions you might have to Ms. Lette Duvall, Supervisor, at 410-887-3900.

Respectfully,

Douglas A. Swam
Permit Processing Supervisor

DAS:amb

Inspector

Date 3-4-05

Any work done on this permit? Yes _____ No ✓

Is it ok to cancel this permit? Yes ✓ No _____

Still need approval from:

~~H for C Off~~

B608162 PA

3-7-5
D. Roberts

Please return to ~~[redacted]~~ ROOM 100 by _____

APPLICATION FOR BUILDING PERMIT

PERMIT #: B558162 CONTROL #: RA DIST: 09 PREC: 01

LOCATION: 1401 BERWICK RD
SUBDIVISION: ROXTON HEIGHTS
TAX ASSESSMENT #: 0923154890

OWNERS INFORMATION
NAME: BENHOFF BUILDERS INC
ADDR: 215 OLD PADONIA RD 21030

APPLICANT INFORMATION
NAME: MELVIN BENHOFF
COMPANY: BENHOFF BUILDERS INC
ADDR1: 215 OLD PADONIA RD
ADDR2: COCKEYSVILLE,MD 21050
PHONE #: 410-252-0007 LICENSE #: MHBR975

NOTES:
KRA PER DAS
THIS PROPERTY IS LISTED ON HOLD LIST; #11

DRC#
PLANS: CONST PLOT R PLAT DATA ELEC NO PLUM YES
TENANT:
CONTR: 2ND CHANCE
ENONR:
SELLR:
WORK: RAZE EX SFD.TO BE TORN DOWN.DEBRIS TO BE HAULED
TO APPROVED SANITARY LANDFILL IN ACCORDANCE W/
APPLICABLE BALTIMORE COUNTY REGULATIONS.SEWER
TO BE CAPPED.PERMIT EXPIRES 90 DAYS FROM DATE
OF ISSUE. BUILT 1940'S. 54'X71'=3,172SF IRREG

PROPOSED USE: VACANT
EXISTING USE: SFD

BLDG. CODE:
RESIDENTIAL CATEGORY: DETACHED OWNERSHIP: PRIVATELY OWNED
ESTIMATED COST OF MATERIAL AND LABOR: 50,000.00

TYPE OF IMPRV: WRECKING
USE: ONE FAMILY
FOUNDATION: BASEMENT:
SEWAGE: PUBLIC EXIST WATER: PUBLIC EXIST
CONSTRUCTION: FUEL:
CENTRAL AIR:

SINGLE FAMILY UNITS
TOTAL 1 FAMILY BEDROOMS
MULTI FAMILY UNITS
EFFICIENCY (NO SEPARATE BEDROOMS): NO. OF 1 BEDROOM:
NO. OF 2 BEDROOMS: NO. OF 3 BEDROOMS OR MORE:
TOTAL NO. OF BEDROOMS: TOTAL NO. OF APARTMENTS:

PERMIT #: B558162

DIMENSIONS - INSTALL FIXTURES

	BUILDING SIZE		LOT SIZE AND SETBACKS
GARBAGE DISP:	FLOOR:	3172	SIZE: 189.60 X
POWDER ROOMS:	WIDTH:	54'	FRONT STREET:
BATHROOMS:	DEPTH:	71'	SIDE STREET:
KITCHENS:	HEIGHT:		FRONT SETB: NC
	STORIES:		SIDE SETB: NC
LOT NOS: 205			SIDE STR SETB:
CORNER LOT:			REAR SETB: NC

ZONING INFORMATION

DISTRICT:	BLOCK:		ASSESSMENTS
PETITION:	SECTION:		LAND: 0144000.00
DATE:	LIBER:	000	IMPROVEMENTS: 0000000.00
MAP:	FOLIO:	165	TOTAL ASS.:
	CLASS:	04	

PLANNING INFORMATION

MASTER PLAN AREA: SUBSEWERSHED: CRITICAL AREA:

DATE APPLIED: 06/03/2004 INSPECTOR INITIALS: 09R

FEE: $10.00 PAID: $10.00 RECEIPT #: A496450

PAID BY: APP

(I HAVE CAREFULLY READ THIS APPLICATION AND KNOW THE SAME IS CORRECT AND TRUE, AND THAT IN DOING THIS WORK ALL PROVISIONS OF THE BALTIMORE COUNTY CODE AND APPROPRIATE STATE REGULATIONS WILL BE COMPLIED WITH WHETHER HEREIN SPECIFIED OR NOT AND WILL REQUEST ALL REQUIRED INSPECTIONS)

COMPANY OR OWNER DATE

ADDRESS

AGENT ____
OWNER ____

SIGNATURE OF APPLICANT PHONE

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

February 6, 2006

RECEIVED

FEB - 6 2006

ZONING COMMISSIONER

William J. Wiseman, III, Zoning Commissioner
County Courts Building
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

Re: Benhoff Builders, Inc.- Petitioner
Case Nos: 06-257-A

Dear Mr. Wiseman:

Please accept this letter as a Motion for Reconsideration of the Findings of Fact and Conclusions of Law and Order dated January 13, 2006. Our concern is with the process leading to demolition of the historic residence at 1401 Berwick Road and its implications for the present case.

The decision refers on page 2 to the destruction of the house on the Maryland Historic Trust inventory, "No. 3109," allowed by permit B558162, issued July 27, 2005. The site plan mentions this demolition permit, referring to MHT Inventory No. 3009. The permit itself, enclosed, makes no reference to the historic listing.

The main thing is that there is no mention, indication, or evidence of any hearing or approval of a waiver of the preservation requirement found in Baltimore County Code Secs. 32-4-416 and 32-4-223(δ). The waiver standards and procedures are found in Secs. 32-4-107 and 32-8-301, et seq.

Upon our inquiry, Timothy Dugan of the Planning Office confirmed in the attached February 2, 2006 correspondence that the residence, known as "The Ann P. and Alfred Tyler House" is still found in the MHT inventory as No. 3009, and so would be subject to the preservation standards of former Code Sec. 26-278 (now 32-4-416). Various references to "3109" in the opinion appear to result from typographical error.

Separately, we found enclosed an earlier Application 497510 dated August 30, 2002 for a demolition permit at the historic Berwick Road site. Upon review, the Director of Planning issued the enclosed memorandum on September 17, 2002, which explained that a demolition permit would be subject to review under Code Sec. 26-278, the same section found in current Sec. 32-4-416 under the 2003 comprehensive revision of the Code. As a result, the Planning Office revoked its signature on that permit.

In connection with Application 497510, we likewise could not find any evidence of a waiver application or hearing before the Commissioner to allow demolition of the historic residence, or any document showing that permit 497510 was ever issued. The application itself is marked "Cancelled – time limit" at the bottom right in handwriting. It is noteworthy that the Planning Director's memorandum also referred to a separate unlisted residence on Labelle Avenue, to which there was no objection to demolition.

It is apparent that demolition permit Application 497510 refers to the same property involved in the later Permit B558162. The address and tax account numbers are the same. The language in the description of work done appears to be the same.

In any event, in the absence of an application, public notice and opportunity to be heard, and a public hearing, as well as final approval of a waiver, the 2005 permit would appear to be defective because in conflict with Code Sec. 32-4-416 and without legal basis. Before any redevelopment is approved for this property, such as the development with variances proposed here, there should be a full explanation and account of the basis, if any, for issuance of the permit and ensuing destruction of the historic residence. If there was no legal basis for issuance of the demolition permit, then it appears to be inappropriate to approve redevelopment at this site.

Your opinion refers to an agreement between the developer and the Ruxton-Riderwood Association (RRLRIA). While we are respectful of agreements between developers and community associations, there is a public interest in the integrity of the process relating to altering and destroying buildings listed in the Maryland Historic Trust Inventory and other designated historic listings and districts. We also note that at least one neighbor appeared in opposition to the variance.

Recently, there was considerable public controversy and concern over a demolition permit issued for the Gardner house in Cockeysville after deliberation but before the County Board of Appeals' issuance of a written opinion approving a waiver and before the conclusion of any potential appeal process. That house was also listed on the MHT inventory. The rationalization for the permit was that the bank which proposed the demolition had been through enough, and needed to move forward.

There is clearly a public interest in implementation of the law concerning preservation of historic properties, and strict compliance with the process whereby waivers may be sought. Unless this law is implemented with consistency, it brings into question both the commitment to historic preservation and respect for the legal process.

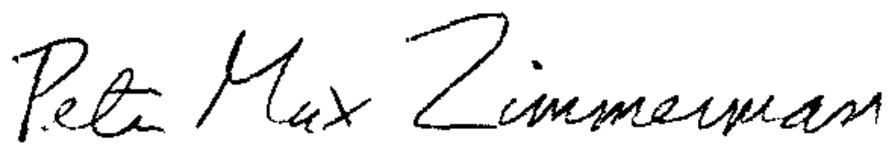
Here, there is no indication in your findings of even a waiver application. There is thus no explanation of any adequate basis for the issuance of the 2005 demolition permit.

Whether or not the destruction of the Tyler House could be legally justified, and whether the proposed new construction agreed to between the developer RRLRIA could serve as part of the justification or mitigation for the demolition, that should have been reviewed in the appropriate special hearing process on a waiver application, with public notice and opportunity to be heard for all citizens and county offices before any demolition.

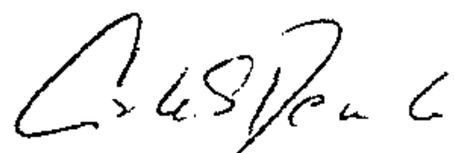
Therefore, we request that you reconsider and revisit this case, and conduct a full hearing and inquiry to determine the basis, if any, for issuance of the demolition permit in July 27, 2005, the applicability and implementation of Code Sec. 32-4-416, and the appropriateness of approving redevelopment under all of the circumstances. In addition, there needs to be an exploration of the apparent relationship between the earlier Permit 497510, which the Planning Office explicitly rejected because of historic preservation status, and the more recent Permit B558162, which was nevertheless issued.

If you find, after a full review, that the demolition permit was issued in conflict with the required legal process, then the subject of remedies may be explored. At the very least, it would appear that it would be inappropriate at this time to approve redevelopment. Other remedies or actions may be explored at that time.

Very truly yours,



Peter Max Zimmerman
People's Counsel for Baltimore County



Carole S. Demilio
Deputy People's Counsel

cc: Jennifer R. Busse, Esq.
Audra Cathell, Esq.
Arnold F. Keller, Director of Planning
Timothy Dugan, Office of Planning
Timothy Kotroco, Director of Permits and Development Management
John Beverungen, Acting County Attorney

Baltimore County, Maryland

OFFICE OF PEOPLE'S COUNSEL
Room 47, Old CourtHouse
400 Washington Ave.
Towson, MD 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

April 18, 2006

RECEIVED
APR 1 . 2006
ZONING COMMISSIONER

William J. Wiseman, III, Zoning Commissioner
County Courts Building
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

Re: Benhoff Builders, Inc.- Petitioner
Case Nos: 06-257-A

Dear Mr. Wiseman:

Thank you for your letter dated April 13, 2006. We are in receipt also of Jennifer Busse, Esquire's April 17, 2006 letter, on behalf of Petitioner, which requests a hearing.

In view of the passage of time, we also suggest that you set a schedule for the filing of memoranda and for hearing on the motion for reconsideration. We are available to cooperate with the Zoning Commissioner and other parties with respect to an appropriate schedule.

Under these circumstances, it appears at this time that the expeditious and fair thing to do is to move forward toward a resolution of the pending requests for reconsideration.

Very truly yours,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

PMZ/CSD/rmw

cc: John B. Gontrum, Esquire, Whiteford, Taylor & Preston, LLP,
210 W. Pennsylvania Avenue, Towson, MD 21204
David & Felicia Albright 1214 Berwick Road, Ruxton, MD 21204
Nancy Horst, P.O. Box 204, Riderwood, MD 21139
John Blaze, 1209 Berwick Avenue, Ruxton, MD 21204
George Grose, 1412 LaBelle Avenue, Ruxton, MD 21204

WHITEFORD, TAYLOR & PRESTON L.L.P.

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

20 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
SUITE 495
COLUMBIA, MARYLAND 21044-3528
TELEPHONE 410 884-0700
FAX 410 884-0719

JENNIFER R. BUSSE
DIRECT NUMBER
410 832-2077
jbusse@wtplaw.com

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
FAX 410 339-4027
www.wtplaw.com

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

115 ORONOCO STREET
ALEXANDRIA, VIRGINIA 22314-1685
TELEPHONE 703 836-5742
FAX 703 836-3558

November 14, 2005

Via Hand Delivery
Mr. John Lewis
Baltimore County Department of Permits and Development Management,
Zoning Review Office
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Variance
1401 Berwick Road/ Benhoff Builders, Inc.

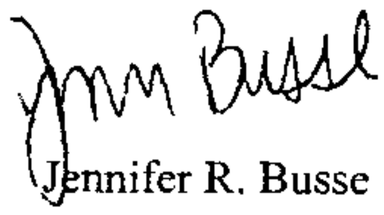
Dear Mr. Lewis:

Enclosed for filing for the above-referenced property, please find the revised filing package including the following:

(3) Petition for Variance;
(3) Zoning Description;
(1) Zoning Map;
(12) Plats;
(1) Completed Advertising Form;
(1) Check in the amount of $65.00 made payable to Baltimore County;
(1) Memo from you noting deficiencies in first attempted filing by Benhoff Builders, Inc.

Please contact me at the number noted above if you have any questions or concerns.

Sincerely,



Jennifer R. Busse

JRB:ac
Enclosures
348992

WHITEFORD, TAYLOR & PRESTON L.L.P.

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BALTIMORE, MARYLAND 21202-1626
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FAX 202 331-0573

115 ORONOCO STREET
ALEXANDRIA, VIRGINIA 22314
TELEPHONE 703 836-5742
FAX 703 836-3558

February 27, 2006

FEB 2 2006

Via Hand Delivery
Mr. William Wiseman
Zoning Commissioner for Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

Re: 1401 Berwick Avenue
Zoning Case No.: 06-257-A

Dear Mr. Wiseman:

As you are aware, this office represents the property owner and petition in the above referenced matter. We are in receipt of a letter from People's Counsel of Baltimore County requesting reconsideration of your decision in the matter. Please accept this letter as our request for a hearing on Mr. Zimmerman's Motion for Reconsideration.

Sincerely,

Jennifer R. Busse

cc: Peter Max Zimmerman, Esquire
Ms. Felicia Albright
Mr. George Grose
Ms. Nancy Horst
Mr. John M. Blaze
Mr. Melvin C. Benhoff

355900

WHITEFORD, TAYLOR & PRESTON L.L.P.

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BALTIMORE, MARYLAND 21202-1626
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jbusse@wtplaw.com

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FAX 202 331-0573

115 ORONOCO STREET
ALEXANDRIA, VIRGINIA 22314
TELEPHONE 703 836-5742
FAX 703 836-3558

RECEIVED
MAR 1 . 2006
ZONING COMMISSIONER

March 9, 2006

David F. Albright, Sr., Esquire
1122 Kenilworth Drive
Suite 500
Baltimore, Maryland 21204

Re: 1401 Berwick Road
Zoning Case No.: 06-257-A

Dear Mr. Albright:

I am in receipt of your Motion to Adopt the Motion For Reconsideration filed by the People's Counsel of Baltimore County. In the body of your motion, you have essentially asked for discovery. Please know that there really is no method for discovery in matters before the Zoning Commissioner. Nevertheless, I am glad to assist you in obtaining copies of documents which are of public record and which relate to your concerns. I have been trying to reach your client, in hopes that we can identify and resolve our concerns. Now that I know that she is represented by counsel, I am directing my request to you.

Specifically, we would like to meet with you and your client to obtain an understanding of her concerns and see if there is a way to resolve them. Peter Max Zimmerman, People's Counsel of Baltimore County, has kindly offered to attend and even host such a meeting. Alternatively, we will gladly come out to your office or your client's home.

Please contact me at your earliest convenience so that we may further discuss this matter. When we meet, I will gladly provide you with copies of whatever public documents you desire.

Sincerely,

Jennifer R. Busse

WHITEFORD, TAYLOR & PRESTON L.L.P.

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

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FAX 202 331-0573

115 ORONOCO STREET
ALEXANDRIA, VIRGINIA 22314
TELEPHONE 703 836-5742
FAX 703 836-3558

April 17, 2006

RECEIVED
APR 1 8 2006
ZONING COMMISSIONER

Mr. William Wiseman
Zoning Commissioner for Baltimore County
401 Bosley Avenue
Towson, Maryland 21204

Re: 1401 Berwick Avenue
Zoning Case No.: 06-257-A
Our File No. 5667-10

Dear Mr. Wiseman:

Please accept this letter as a request that this matter be set in for a hearing on the Motions for Reconsideration which have been filed. Thank you for your attention to this matter.

Sincerely,

Jennifer R. Busse

cc: Peter Max Zimmerman, Esquire
David F. Albright, Sr., Esquire
Mr. George Grose
Mr. Melvin C. Benhoff
John B. Gontrum, Esquire

355900v2

The Law Offices of

DAVID F. ALBRIGHT

1122 Kenilworth Drive
Suite 500
Baltimore, Maryland 21204

Telephone (410) 823-5455
Facsimile (410) 823-5453
e-mail: dalbright@verizon.net

September 6, 2006

HAND-DELIVERY
Timothy Kotroco, Director
Department of Permits and Development Management
111 W. Chesapeake Avenue
Towson, MD 21204

Re: Petition for Variance
NW/Corner Berwick Road and Locust Avenue
(1401 Berwick Road)
9th Election District; 2nd Council District
Benhoff Builders, Inc. – Petitioners
CASE NO.: 06-257-A

Dear Mr. Kotroco:

This letter is a notice of appeal to the Baltimore County Board of Appeals in the above-referenced case on behalf of Protestant Felicia Albright. The appeal is from the Order on the Motion(s) for Reconsideration dated August 8, 2006 and the incorporated Findings of Fact and Conclusions of Law dated January 13, 2006, filed by the Baltimore County Zoning Commissioner in the above-referenced case.

Enclosed you will find a check in the amount of $400.00 for the appeal. Please date stamp the copy of this letter and return with the messenger.

Thank you.

Sincerely,

David F. Albright, Esq.

cc: John B. Gontrum, Esq.
Peter Max Zimmerman, Esq.
Carole S. Demilio, Esq.

RECEIVED
SEP 06 2006
Per...

Fax Cover

From : George Grose
1412 LaBelle Avenue
Ruxton, Md. 21204
Tel: 410-321-8510
Fax: 410-337-8712
grgrose@comcast.net

To: **Jennifer Bussee**
Baltimore County Office of Planning
Fax: 410-339-4027

Mel Benhoff asked me to fax this to you. The suggested site plan that is mentioned in the agreement has been reduced so I could fax it, and therefore is not to scale. Mr. Kotroco, Mr. Kamenetz and (I thought) also the Planning Director have copies of the letter from the Ruxton Riderwood Lake Roland Area Improvement Association giving approval that Mr. Benhoff's plans complied with the agreement. That letter includes signatures of approval from the adjacent property owners, as well as others in the neighborhood.

This page should be followed by 7 more.

Copy

AGREEMENT

THIS AGREEMENT made this 30th day of Nov, 2003, between Benhoff Builders, Inc. (Benhoff) and the Ruxton Riderwood Lake Roland Area Improvement Association, Inc. (Ruxton).

WHEREAS, Benhoff is the owner of a property located on Berwick Road in Ruxton (the Property) which consisted of 1.159 acres when it was acquired by a deed dated August 9, 2002 recorded at liber, 16692, folio 293 of the Land Records of Baltimore County and it intended to demolish the existing structure located at 1401 Berwick Road which the neighborhood considered part of its historic character and construct four dwelling units on the Property; and

WHEREAS, Ruxton opposed these plans; and

WHEREAS, the parties have reached an agreement whereby the number of residences on the Property shall be reduced from four to three and the residence in the northern portion of the property, now occupied by the residence at 1401 Berwick Road, shall be designed according to plans and specifications approved by Ruxton, incorporating certain elements of the existing residence on the property and the style of architecture of the existing residence.

NOW THEREFORE the parties agree as follows:

1.No more than three residences may be located on the Property. One residence is already constructed, located in the southeast corner of the property, and has been conveyed by Benhoff pursuant to a deed dated November 14, 2002

and recorded among the Land Records of Baltimore County at liber 17088, folio167. This Agreement shall have no application to this property that has already been conveyed. One residence may be constructed located in the southwest corner of the property. This Agreement shall have no application to this residence (except for any necessary lot line adjustments as described below). A third residence (the Residence) may be constructed on the northern portion of the Property according to the standards set forth below.

2. The Residence shall be constructed in accordance with the conceptual plans, site plan and narrative description (the Plans) prepared by Lucas Associates Architects attached hereto as Exhibit I. These plans describe the process of deconstruction and reconstruction of the house in the same orientation but slightly relocated. Benhoff may make minor changes to the Plans after obtaining the reasonable approval of Ruxton. Before a building permit is applied for, final architectural plans and specifications and a final site plan conforming generally to the Plans set forth in Exhibit 1, shall be prepared and submitted to Ruxton for its reasonable approval.

3. Ruxton acknowledges that the construction of the Residence according to the Site Plan (Exhibit 1) may require a lot line adjustment or a variance and hereby grants its consent provided they are in accordance with the Plans (Exhibit 1).

4. This Agreement shall be recorded among the land records of Baltimore County and shall constitute a covenant running with the land and binding the parties, their personal representatives, successors and assigns.

5. This Agreement shall be incorporated into any building permit issued by the Baltimore County Office of Permits and into any site plan, variance or other decision approved by or rendered by a unit of Baltimore County government for the Residence.

6. This Agreement shall be recognized as a conservation easement in accordance with Section 2-118 of the Real Property Article of the Annotated Code of Maryland and the parties acknowledge Ruxton as a proper party to hold and enforce the conservation easement. The parties acknowledge that damages are an insufficient remedy for breach of this Agreement and Benhoff hereby consents to injunctive relief to enjoin violation of this agreement and that Ruxton shall be entitled to its costs and reasonable attorneys fees in the event it prevails in any such action.

IN WITNESS WHEREOF, the parties have set their hands and seals this

____day of _____, 2003.

WITNESS:

BENHOFF BUILDERS, INC.

_____

BY_____

RUXTON RIDERWOOD LAKE
Area
ROLAND IMPROVEMENT
ASSOCIATION, INC.

BY _____ / President RRLRAIA

Witness

COUNTY OF BALTIMORE, STATE OF MARYLAND, TO WIT:

I HEREBY CERTIFY, that on this _____day of _____, 2003, before me, a Notary Public in and for Baltimore County, Maryland, personally appeared_____who identified himself to me as the President of Benhoff Builders, Inc. and, as such President, made oath in due form of law that the foregoing Agreement constitutes the act and deed of the said corporation.

_____

Notary Public:

My Commission Expires:

COUNTY OF BALTIMORE, STATE OF MARYLAND, TO WIT:

I HEREBY CERTIFY, that on this 30 day of November 2003, before me, a Notary Public in and for Baltimore County, Maryland, personally appeared Michael A. Sicher who identified himself to me as the President of the Ruxton Riderwood Lake Roland Area Improvement Association, Inc. and, as such President, made oath in due form of law that the foregoing Agreement constitutes the act and deed of the said corporation.

MARGARET S. SPECHTZENI NOTARY PUBLIC BALTIMORE CO., MD.

Margaret S. Specht
Notary Public
My Commission expires 9/6/05

The Ruxton-Riderwood-Lake Roland Area Improvement Association, Inc.

P. O. Box 204
Riderwood, Maryland 21139
Phone / FAX: 410/494-7757
office@rrlraia.org

RECEIVED

DEC 2 : 2005

ZONING COMMISSIONER

December 20, 2005

Zoning Commissioner
401 Bosley Avenue - Room 405
Towson, Maryland 21204

Reference Case # 06-257-A

Dear Sir:

On behalf of the Ruxton-Riderwood-Lake Roland Area Improvement Association, Inc., I write in support of a Zoning Variance request for property owned by Mr. Melvin Benhoff at 1401 Berwick Road.

Although the RRLRAIA often opposes variances, there are occasions when support may be advantageous to the neighborhood and the community. This is one such case. Both the neighborhood and the community have worked with Mr. Benhoff for some time to restrict the lot to one house constructed in keeping with the house that formerly occupied the property in terms of size, height, style, materials, and orientation on the lot.

As per the attached letter to Mr. Kotroco, RRLRAIA and the immediate neighbors agree that Mr. Benhoff has designed the house on the lot according to the standards requested by the community.

Therefore, RRLRAIA herein grants its consent to the variance request for this property.

Sincerely,

James D. Cahn
Zoning Chair, RRLRAIA

Cc: Timothy Kotroco
Kimberly Warren
George Grose

The Ruxton-Riderwood-Lake Roland Area Improvement Association, Inc.

P. O. Box 204
Riderwood, Maryland 21139
Phone / FAX: 410/494-7757
office@rrlraia.org/ruxrider@bcpl.net

October 25, 2005

Mr. Timothy Kotroco
Baltimore County Department of Permits and Development Management
111 West Chesapeake Avenue, M.S. 1105
Towson, MD 21204

RE: 1401 Berwick Road Ruxton, Maryland 21204

Dear Mr. Kotroco:

As you know, the Ruxton Riderwood Lake Roland Area Improvement Association (the "Association") entered into an Agreement with Benhoff Builders, Inc. ("Benhoff") on November 30th, 2003, whereby the number of residences on the property at Berwick Road (the "Property") was reduced from four to three. The Agreement also stipulated that the residence at 1401 Berwick Road will be designed according to plans and specifications approved by the Association incorporating certain elements of the existing residence on the property and the style of architecture of the existing residence.

The Association reviewed Benhoff's plans, dated October 12, 2005(the "Plans"), for the new house to be built at 1401 Berwick Road and we believe Benhoff has satisfied the requirements outlined in Exhibit 1 of the Agreement. Benhoff addressed the following issues in the Plans:

- Duplicating the orientation of the old house with the new house in a slightly shifted location
- Replicating the dimensions of the original house in the main structure of the new house
- Including the footprint of the main body of the house
- The overall height, while maintaining the exterior soffit to main floor and ground relationship
- Some recycling of original materials including stone from the foundation and slate from the roof, appropriate new and matching materials.

This letter serves as the Association's notification supporting the variance required as described in the Agreement for the construction of 1401 Berwick Road. We would, however, request that your Department give the Association the opportunity to review with the neighbors and sign the County approved construction documents prior to the actual issuance of a construction permit. This request is in keeping with the requirements outlined in the Agreement.

Thank you for your attention to this matter.

Sincerely yours,

Kimberly Warren

Kimberly Warren, President

Cc: Councilman Kevin Kamenetz
Planning Director Pat Keller
Melvin Benhoff
Jamie Cahn
George Grose

DHCD
Maryland Department of Housing
and Community Development

Robert L. Ehrlich, Jr.
GOVERNOR

Michael S. Steele
LT GOVERNOR

Victor L. Hoskins
SECRETARY

Shawn S. Karimian
DEPUTY SECRETARY

December 7, 2004

James E. Matthews, Chairman
Baltimore County Landmarks Preservation Commission
401 Bosley Avenue
Towson, MD 21204

Dear Mr. Matthews:

In response to concerns raised by members of Congress, the National Conference of State Historic Preservation Officers (NCSHPO) has recently contacted each State Historic Preservation Office to heighten awareness of property rights, due process and "regulation by reference" in the historic preservation arena. What certain members of Congress apparently find most troubling is the establishment of State or local processes that create direct connections between the National Register of Historic Places or state inventories and state or local laws triggering regulatory activities that have an impact on private property owners. For additional background, NCSHPO has made briefing materials available at: www.ncshpo.org/HPFPreservation/NationalRegister.htm.

The Maryland Historical Trust (MHT) has implemented a process to ensure that due process is followed and property owner rights are taken into consideration when Maryland properties are listed on the National Register. We urge local jurisdictions to review their policies to ensure that due process is followed both in the designation of local historic districts and landmarks as well as in any locally-developed procedures that tie the review of subdivision or demolition requests to inventoried historic resources.

To that end, MHT advises local jurisdictions not to connect their regulatory process to the Maryland Inventory of Historic Properties (MIHP). The MIHP, created by an act of the Maryland General Assembly, is simply a broad record of resources with potential value to the State's historical or cultural heritage worthy of further study. Inclusion in the Inventory is not intended to be a determination that the property in fact is significant to Maryland's history or culture or to trigger any regulatory restrictions or controls. No automatic evaluation of significance is extended to inventoried properties and no protective or financial benefits are conveyed through inclusion. (For additional information on the MIHP, see *Annotated Code of Maryland*, Article 83B, Section 5-615 and *Standards and Guidelines for Architectural Investigations in Maryland (Maryland Historical Trust, 2000)*, pp. 21-22.)

Because listing of properties on the MIHP does not affect property owners' rights, the MHT does not subject such listings to normal due process procedures (e.g., owner notification). On occasion other units of government have adopted ordinances or other measures that have applied regulatory restrictions to properties listed on the MIHP. Such actions potentially may deny property owners due process rights unless they also provide for individual designation decisions, owner notifications, and owner input opportunities.

Tying local regulatory actions to the MIHP may open local jurisdictions to lawsuits. Such connections ultimately may have the tendency to limit the effectiveness of Maryland's survey and inventory program, and possibly most important, they may contribute to the erosion of Congressional support for historic preservation. MHT strongly recommends that all local jurisdictions review their preservation programs to ensure that they *do* adequately address due process concerns. MHT staff can aid local jurisdictions as part of that review. Please contact Scott Whipple, Administrator of Local Preservation Programs at 410-514-7635 or whipple@dhcd.state.md.us, for additional information.

Sincerely yours,

J. Rodney Little, Director,
Maryland Historical Trust
State Historic Preservation Officer

cc: Arnold "Pat" Keller, Director, Dept. of Planning
Jay L. Liner, County Attorney
Vicki Nevy, Staff

DIVISION OF HISTORICAL AND
CULTURAL PROGRAMS

100 Community Place
Crownsville, MD 21032

PHONE 410-514-7600
TOLL FREE 1-800-756-0119
FAX 410-987-4071
TTY/RELAY 711 or 1-800-735-2258
WEB www.mdhousing.org

GEORGE R. GROSE

1412 LaBelle Avenue
Ruxton, MD. 21204
grgrose@comcast.net

October 20, 2005

Kimberly Warren
President, RRLRAIA
605 Meadowridge Road
Towson, MD. 21204

Dear Kimberly,

This letter serves as a formal notification to the RRLRAIA from the neighbors of the property located at 1401 Berwick Road in Ruxton Heights.

With his most recently submitted plans dated 10/12/05 for the new house to be built, the owner, Mr. Mel Benhoff, has complied with all the issues listed in the Agreement with RRLRAIA and dated November 30, 2003. This includes issues addressed in Exhibit1 of the Agreement, such as duplicating the orientation of the old house with the new house in a slightly shifted location, the replication of the dimensions of the original house in the main structure of the new house, including the footprint of the main body of the house, and the overall height, while maintaining the exterior soffit to main floor and ground relationship, some recycling of original materials, including stone from the foundation and slate from the roof, appropriate new and matching materials, and other general design concerns.

Therefore, we are requesting that RRLRAIA proceed with the approval process, providing written notification to Baltimore County Department of Permits and Development Management and supporting the variance Mr. Benhoff will require, as per the Agreement.

We also recommend that the RRLRAIA request to this same Department that RRLRAIA have the opportunity to review with the neighbors of the property and sign the County approved construction documents prior to the actual issuance of a construction permit.

Thank you for your attention to this matter.

Sincerely,

George R. Grose

George R. Grose

And also signed:

** Immediately across the street
* Immediately adjacent

** J. Walker 1402 Berwick Rd.
George R. Grose 1412 LaBelle Ave. Amy Macht
** Immediately 1308 Locust Ave
** Philip J. Rich "
Kathleen AIA 1505 BERWICK
Andrea Williams 1403 LaBelle Ave.
Mary Sue McCarty 1501 Berwick Rd.
** Lynn A. Scarf 1310 Locust Ave., Towson 21204
** William F. Myers Jr., 1314 Locust Avenue 21204
** Sam Altman 1400 LOCUST AVE 21204
* Joseph Adams 1405 Berwick Rd.
* Paul Nachim Susan Reicheisel 1404 La Belle Ave., Towson 21204

2ND DROP OFF FILING ATTEMPT
ACCEPTED FOR INTAKE
11/15/05 DEFICIENCIES;

06-257-A
1401 BERWICK RD.
~~DROP OFF REVIEWED~~
~~SEE BELOW #1-8~~
~~HISTORIC.~~
~~PROVISIONAL APPVL. SEE FORM.~~
~~CALLED ATTY 10/27/05 DISC TO PULL UP & CORRECT~~

FREQUENT FLYER ATTORNEYS DROP OFF ZONING PETITIONS
POLICY PROCEDURES

(1) 2 AREAS FOR SITE ARE SHOWN ON PLAN THE FILING IS USING THE ZONING DESCRIPTION
(2) AREA FOR FILING PURPOSES COUNCIL DIST WRONG ON PLAN + DESCRIPT.

PER MR. KOTROCO; A. PROVISIONAL PERMIT APPROVAL WAS ISSUED FOR CONSTRUCTION OF A FOUNDATION ONLY FOR FUTURE DWLG ON SITE.

(3) The following zoning policy is related to the filing of zoning petitions and is aimed at expediting the petition filing process with this office:

PLANS + FORMS + DESCRIPTIONS INTERCHANGE BERWICK "RD" AND "AVE" NAME.

1. The Director of the Office of Permits and Development Management (PDM) allows zoning attorneys who frequently file for zoning hearings and who are capable of filing petitions that comply with **all** technical aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of an appointment for review by zoning personnel.

2. Any attorney using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. In the event that the petition has not been filed correctly, there is the possibility that another hearing will be required or the zoning commissioner may deny the petition due to errors or incompleteness. All petitions filed in this manner will receive a cursory review and if necessary they will be commented on by zoning personnel prior to the hearing. A corrective memo by zoning review may be placed in the hearing file to be considered by the Hearing Officer.

3. When a petition has been dropped off by the attorney, it will only be reviewed for very basic necessary input, logging, and distribution information.

SOME DEFICIENCIES REVIEWED DURING DROP OFF FILING ATTEMPT

(1) NO ATTY SIGNATURES ON PETITIONS (REQUIRED FOR CCRP.)
(2) PROP. NOT MARKED FOR LOC. ON ZONING MAP
(3) THE FRONT AVG. SETBACK (200') ALONG BERWICK AVE IS NOT SHOWN, SO COMPLIANCE WITH FRONT SETBACK CAN BE DETERMINED SEE 303.1. BCZR
(4) THE PRELIMINARY PLAN IN FILING PACKAGE DOES NOT SEEM TO HAVE ANY RELATIONSHIP WITH THIS PROPERTY
(5) PLANS ARE FOLDED BLANK SIDE OUT. REFOLD SO TITLE IS EXPOSED.
(6) THERE ARE NO ZONING DESCRIPTIONS PROVIDED.
(7) SINCE HISTORIC ON SITE NOTE HOW YOU ARE GOING TO COMPLY WITH ANY "↕" REQUIREMENTS, A SPECIAL HEARING? ETC?
(8) ADD ZONING REQUEST IN HEARING PETITION

RETURN THIS FORM WITH REVISED PACK.

RESOLVED BY 2ND FILING ATTEMPT

2/05
JLL/rjc

WHITEFORD, TAYLOR & PRESTON L.L.P.

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

20 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
SUITE 495
COLUMBIA, MARYLAND 21044-3528
TELEPHONE 410 884-0700
FAX 410 884-0719

JENNIFER R. BUSSE
DIRECT NUMBER
410 832-2077
jbusse@wtplaw.com

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
FAX 410 339-4027
www.wtplaw.com

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

115 ORONOCO STREET
ALEXANDRIA, VIRGINIA 22314-1685
TELEPHONE 703 836-5742
FAX 703 836-3558

November 14, 2005

Via Hand Delivery
Mr. John Lewis
Baltimore County Department of Permits and Development Management,
Zoning Review Office
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Petition for Variance
1401 Berwick Road/ Benhoff Builders, Inc.

Dear Mr. Lewis:

Enclosed for filing for the above-referenced property, please find the revised filing package including the following:

(3) Petition for Variance;
(3) Zoning Description;
(1) Zoning Map;
(12) Plats;
(1) Completed Advertising Form;
(1) Check in the amount of $65.00 made payable to Baltimore County;
(1) Memo from you noting deficiencies in first attempted filing by Benhoff Builders, Inc.

Please contact me at the number noted above if you have any questions or concerns.

Sincerely,

Jennifer R. Busse

JRB:ac
Enclosures
348992

3558162

1 April 2005

Mr. Melvin C. Benhoff
Benhoff Builders
215 Old Padonia Road
Cockeysville, Maryalnd 21030

Dear Mr. Benhoff,

Thank you for submitting all of the information to date. You have submitted 1) comprensive documentation of the existing house and 2) preliminary design sketches with floor plans and elevations. In both cases, the information is satisfactory to both me and the immediate neighborhood of Ruxton Heights. With this approval, we are also understand that you will be submitting to Baltimore County for a permit to demolish the house, salvaging as much as possible of the materials you see fit for re-use. We also assume under this work, you will prepare the site for future new construction and leave it in good order until that happens.

Please continue to send us updates of the working drawing progress. When you arrive at the 100% construction documents for the building permit for the new construction, we will be happy to submit another letter hopefully confimring our review and approval.

Sincerely,
LUCAS ASSOCIATES ARCHITECTS; P.C.

L. Franklyn Lucas Jr. AIA
President

Copies:
Nancy Horst – Executive Director RRLRIA
George Grosse – Ruxton Heights Community
Walter Daniels - Architect

PANEL BP1003M

TIME: 08:04:46 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 07/26/2005

DATE: 02/09/2006 GENERAL PERMIT APPLICATION DATA KRA 09:05:56

PERMIT #: B558162 PROPERTY ADDRESS

RECEIPT #: A496450 1401 BERWICK RD

CONTROL #: RA SUBDIV: RUXTON HEIGHTS

XREF #: B558162 TAX ACCOUNT #: 0923154890 DISTRICT/PRECINCT 09 01

OWNERS INFORMATION (LAST, FIRST)

FEE: 10.00 NAME: BENHOFF BUILDERS INC

PAID: 10.00 ADDR: 215 OLD PADONIA RD 21030

PAID BY: APP

DATES APPLICANT INFORMATION

APPLIED: 06/03/2004 NAME: MELVIN BENHOFF

ISSUED: 07/27/2005 COMPANY: BENHOFF BUILDERS INC

OCCPNCY: ADDR1: 215 OLD PADONIA RD

FINAL INSPECT: ADDR2: COCKEYSVILLE,MD 21050

INSPECTOR: 09R PHONE #: 410-252-0007 LICENSE #: MHBR975

NOTES: KRA PER DAS

CAPOFF P597102 FINALED 7-25-05.AMB

PASSWORD :

ENTER - PERMIT DETAIL PF3 - INSPECTIONS PF7 - DELETE PF9 - SAVE

PF2 - APPROVALS PF4 - ISSUE PERMIT PF8 - NEXT PERMIT PF10 - INQRY

- Land mult "on list"
- Thru Council must go mult

PANEL BP1004M

TIME: 08:04:52 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 07/27/2005

DATE: 02/09/2006 BUILDING DETAIL 1 PLM 12:03:41

DRC#

PERMIT # B558162 PLANS: CONST PLOT PLAT DATA EL 2 PL 1

TENANT

BUILDING CODE: CONTR: 2ND CHANCE

IMPRV 5 ENGNR:

USE 01 SELLR:

FOUNDATION BASE WORK: RAZE EX SFD.TO BE TORN DOWN.DEBRIS TO BE HAULED TO APPROVED SANITARY LANDFILL IN ACCORDANCE W/ APPLICABLE BALTIMORE COUNTY REGULATIONS. PERMIT EXPIRES 90 DAYS FROM DATE OF ISSUE. BUILT 1940'S. 54'X71'=3,172SF IRREG CAPOFF P597102 FINALED 7-25-05.AMB

CONSTRUC FUEL SEWAGE WATER

1E 1E

CENTRAL AIR

ESTIMATED COST

50,000.00 PROPOSED USE: VACANT

OWNERSHIP: 1 EXISTING USE: SFD

RESIDENTIAL CAT: 1

#EFF: #1BED: #2BED: #3BED: TOT BED: TOT APTS:

1 FAMILY BEDROOMS: PASSWORD:

ENTER - NEXT DETAIL PF2 - APPROVALS PF7 - PREV. SCREEN PF9 - SAVE

PF1 - GENERAL PERMIT PF3 - INSPECTIONS PF8 - NEXT SCREEN CLEAR - MENU

PANEL BP1018M

TIME: 08:05:07 AUTOMATED PERMIT TRACKING SYSTEM LAST UPDATE 07/27/2005

DATE: 02/09/2006 APPROVALS DETAIL SCREEN PLM 12:04:23

PERMIT #: B558162 CONTROL #:

AGENCY	DATE	CODE	COMMENTS
ENVRMNT	07/01/2004	01	EH-7/1/04 SJW/MB
PLANNING	06/03/2004	01	KA/KRA
PERMITS	07/27/2005	01	DS/RSD CAPOFF P597102 FINALED 7-25-05.AMB

01 THRU 09 INDICATES AN "APPROVAL" ** 10 THRU 99 INDICATES A "DISAPPROVAL"

ENTER - GENERAL PERMIT PF4 - ISSUE PERMIT

PF3 - INSPECTIONS PF8 - GENERAL SCREEN W/NEXT PERMIT

To Whom it may concern,

We have conflicting information on how to submit this - either directly to the Zoning Hearing officer or through Mr. Kotroco's office. Therefore, we are doing both. If we have addressed this incorrectly our apologies. The intention is for Mr. Kotroco's office to have a copy for his files and to then be copied over to the Zoning administrator or appropriate Zoning Commissioner by your office.

Thanks for your assistance.

BW 12/30

RECEIVED

JAN 0 5 2006

ZONING COMMISSIONER

Zoning Commissioner
401 Bosley Avenue
Room 405
Towson, Maryland 21204
Ref. Case # 06-257-A

Dear Sir,
We are writing as involved representatives of the Ruxton Heights neighborhood concerning the above noted case, which concerns 1401 Berwick Road, owned by Mr. Melvin Benhoff.

This property has been the basis of a neighborhood issue since the Fall of 2003, when it appeared that the existing house on the property, one of the original houses in the neighborhood, was to be demolished imminently. There was a strong neighborhood effort to save that house, but ultimately the neighborhood decided to compromise with Mr. Benhoff so as to maintain one house at the address, constructed in the same style and size as the original house, with an addition. Mr. Benhoff also agreed in this compromise to utilize some of the existing materials, maintain the height of the house from grade to peak of roof and from grade to soffit, and also, importantly, to retain the diagonal orientation of the house on the lot. This was important to the neighborhood as it maintained some historical visual continuity and reflected the house at the far diagonal of the four street island, which is also built in a diagonal orientation to its lot.

During these subsequent years, the neighborhood, particularly Mr. Frank Lucas, A.I.A. who is both a neighbor and former President of the local A.I.A. has been working with Mr. Benhoff's architect to produce a plan that accurately reflects the compromise. After some give and take, and back and forth, a plan developed which does respond to the stipulations of the compromise with the neighborhood, and although it needs variance exceptions for construction, it is both acceptable and far preferable to the original plan, which called for 2 houses on the lot.

In addition to the design considerations outlined above, the single house allows for a 30 feet side yard from the adjacent house and the street opposite instead of 10 or 15 feet if there were two houses. Therefore there is more separation from the adjacent neighbors. While the proposed house needs a variance for 15 feet instead of 30 feet in the rear yard, it is only a 16ft. by 16ft. corner of the house that violates the rear setback. Because of its

diagonal orientation, most of the house substantially exceeds the 30 ft rear setback requirement. Additionally, this 16ft. by 16 ft. corner in violation backs up to Mr. Benhoff's own property.

When we checked with the County Zoning desk, we were given a sheet with a chart showing the minimum front yard set back in a DR 3.5 zone to be 30 feet, which this house meets. However, there must be some further regulations that cause this particular situation to require 42.8 feet. Be that as it may, in the front, whereas the original house had one or two small corners that technically were in violation of the 42.8 foot setback requirement, the new structure, whose footprint was moved forward towards Berwick Road 11 feet, now has 3 corners involved. Again, because of the diagonal orientation, a substantial portion of the front of the house is in compliance. Additionally, it should be noted that the county owns a 10 foot right of way in front of the property, so although the corners in question are at least 30 feet from the front property line, they are actually 40 feet from the curb of Berwick Road.

Mr. Benhoff has further agreed to keep and extend a large existing screening hedge along Berwick Road.

In summary, although this is a neighborhood where variance requests are usually frowned upon, this is a situation where it is advantageous to the neighborhood in this case to see the variances granted. All the most immediate neighbors, both adjacent to the property and directly across the street have signed their approval for the plans. We have included a copy of this signature letter for your information. The Ruxton Riderwood Lake Roland Association, with whom the original compromise agreement was signed, also supports the neighborhood in this opinion and has so written.

Thank you for the opportunity to comment on this issue.

George Grose and Amy Macht
1412 LaBelle Avenue
Ruxton, Md. 21204

The Ruxton-Riderwood-Lake Roland Area Improvement Association, Inc.

P. O. Box 204
Riderwood, Maryland 21139
Phone / FAX: 410/494-7757
office@rrlraia.org/ruxrider@bcpl.net

October 25, 2005

Mr. Timothy Kotroco
Baltimore County Department of Permits and Development Management
111 West Chesapeake Avenue, M.S. 1105
Towson, MD 21204

RE: 1401 Berwick Road Ruxton, Maryland 21204

Dear Mr. Kotroco:

As you know, the Ruxton Riderwood Lake Roland Area Improvement Association (the "Association") entered into an Agreement with Benhoff Builders, Inc. ("Benhoff") on November 30th, 2003, whereby the number of residences on the property at Berwick Road (the "Property") was reduced from four to three. The Agreement also stipulated that the residence at 1401 Berwick Road will be designed according to plans and specifications approved by the Association incorporating certain elements of the existing residence on the property and the style of architecture of the existing residence.

The Association reviewed Benhoff's plans, dated October 12, 2005(the "Plans"), for the new house to be built at 1401 Berwick Road and we believe Benhoff has satisfied the requirements outlined in Exhibit 1 of the Agreement. Benhoff addressed the following issues in the Plans:

- Duplicating the orientation of the old house with the new house in a slightly shifted location
- Replicating the dimensions of the original house in the main structure of the new house
- Including the footprint of the main body of the house
- The overall height, while maintaining the exterior soffit to main floor and ground relationship
- Some recycling of original materials including stone from the foundation and slate from the roof, appropriate new and matching materials.

This letter serves as the Association's notification supporting the variance required as described in the Agreement for the construction of 1401 Berwick Road. We would, however, request that your Department give the Association the opportunity to review with the neighbors and sign the County approved construction documents prior to the actual issuance of a construction permit. This request is in keeping with the requirements outlined in the Agreement.

Thank you for your attention to this matter.

Sincerely yours,

Kimberly Warren

Kimberly Warren, President

Cc: Councilman Kevin Kamenetz
Planning Director Pat Keller
Melvin Benhoff
Jamie Cahn
George Grose

GEORGE R. GROSE

1412 LaBelle Avenue
Ruxton, MD. 21204
grgrose@comcast.net

October 20, 2005

Kimberly Warren
President, RRLRAIA
605 Meadowridge Road
Towson, MD. 21204

Dear Kimberly,

This letter serves as a formal notification to the RRLRAIA from the neighbors of the property located at 1401 Berwick Road in Ruxton Heights.

With his most recently submitted plans dated 10/12/05 for the new house to be built, the owner, Mr. Mel Benhoff, has complied with all the issues listed in the Agreement with RRLRAIA and dated November 30, 2003. This includes issues addressed in Exhibit1 of the Agreement, such as duplicating the orientation of the old house with the new house in a slightly shifted location, the replication of the dimensions of the original house in the main structure of the new house, including the footprint of the main body of the house, and the overall height, while maintaining the exterior soffit to main floor and ground relationship, some recycling of original materials, including stone from the foundation and slate from the roof, appropriate new and matching materials, and other general design concerns.

Therefore, we are requesting that RRLRAIA proceed with the approval process, providing written notification to Baltimore County Department of Permits and Development Management and supporting the variance Mr. Benhoff will require, as per the Agreement.

We also recommend that the RRLRAIA request to this same Department that RRLRAIA have the opportunity to review with the neighbors of the property and sign the County approved construction documents prior to the actual issuance of a construction permit.

Thank you for your attention to this matter.

Sincerely,

George R. Grose

George R. Grose

And also signed:

** Immediately across the street
* Immediately adjacent

** T. Walker 1402 Berwick Rd.
George R. Grose 1412 LaBelle Ave. Amy Macht
** Lynn Hancock 1308 Locust Ave
** Doug J. Rd "
H. Thompson AIA 1505 BERWICK
Andrea Williams 1403 LaBelle Ave.
Mary Sue McCarty 1501 Berwick Rd
** Lynn H. Scherf 1310 Locust Ave., Towson 21204
** William F. Myers Jr., 1314 Locust Avenue 21204
** Sam Altman 1400 Locust Ave 21204
* Joseph Adams 1405 Berwick Rd.
* Paul Nachimson Susan Reuheisel 1404 La Belle Ave., Towson 21204

MELVIN C BENHOFF
BENHOFF BUILDERS INC.
215 OLD PADONIA Rd.
COCKEYSVILLE MD 21030

11/29/06

BALTIMORE COUNTY
BOARD OF APPEALS
OLD COURTHOUSE BLDG
400 WASHINGTON AVE Rm 49
TOWSON MD 21204

RECEIVED
NOV 29 2006
BALTIMORE COUNTY
BOARD OF APPEALS

Re: CASE: 06-257-A 1401 BERWICK RD.

ATTN: KATHLEEN BIANCO

DEAR MRS BIANCO,

THANK YOU SO MUCH FOR PUTTING MY CASE IN THE BOARD OF APPEALS SCHEDULE. AS YOU ARE AWARE THAT I HAVE A DANGEROUS + UNSIGHTLY CONDITION AT THE BERWICK RD. SITE. I HAVE A FOUNDATION, WITH A 10' DROP TO A BASEMENT THAT I CAN NOT PROTECT FROM THE NEIGHBOR CHILDREN THAT PLAY ON THE SITE. I HAVE THE SITE POSTED + HAVE TRIED TO SEAL OFF THE ACCESS BUT TO NO AVAIL

SINCERELY
MEL BENHOFF

Joseph A. Adams, M.D.
1405 Berwick Rd.
Ruxton, MD 21204

August 22, 2006

RECEIVED
AUG 2 5 2006
ZONING COMMISSIONER

Mr. William J. Wiseman
Zoning Commissioner
Baltimore County Courts Building
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

Re: case number 06-257-A : (1401 Berwick Rd.)

Dear Mr. Wiseman,

I am writing to strongly urge you to grant Mr. Mel Benhoff the variance he requires to finish the construction that he has started at 1401 Berwick Rd.

My family and I own and live in the house directly adjacent to 1401 Berwick. We are the neighbors who live closest to this property. No other neighbors would be as affected by this construction as we would.

I have attended hearings at the Landmarks Commission and have participated in a series of meetings among neighbors throughout this process.

The neighbors as a group, including the immediate neighbors, entered into a compromise with the builder, Mr. Benhoff, under which he agreed to limit construction on the property to three houses, and to other terms and conditions. This required the developer to build the new house in a specific manner which we felt was appropriate for the neighborhood.

As the result of what appears to be a minor bureaucratic oversight, the construction has been halted, through no fault of the builder himself. The partially completed foundation has been sitting idle. It is an eyesore and a hazard to children and others in the neighborhood. I have concerns about the safety of my own two children. The neighbors want this process to be resolved promptly.

Please grant the necessary variances for Mr. Benhoff to complete the construction, as he and the neighbors have already agreed upon.

Thank you for your consideration.

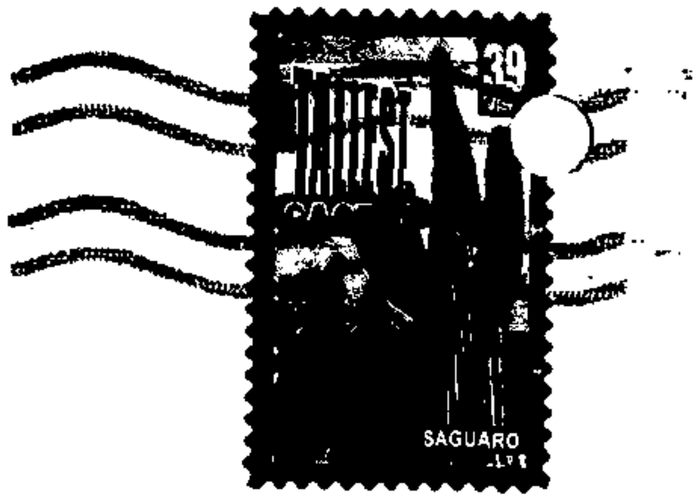
Joe Adams

Joseph Adams, M.D.

DEBBIE —
SEND to PDM
for Placement in file
Thanks

- Joseph Adams
& Linda Barr
1405 Berwick Rd.
Ruxton, MD. 21204

BALTIMORE MD 212
24 AUG 2006 PM 3 T



Mr. William J. Wiseman
Zoning Commissioner
Baltimore County Courts Building
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

Case 06-257-A

21204+4423

PLEASE PRINT CLEARLY

CASE NAME 7/26/06
CASE NUMBER
DATE

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
MEL BENHOFF	215 OLD PADONIA rd	COCKEYSVILLE MD. 21030	DIBENHOFF@AOL.COM
Joseph M. Coale	1317 Boyce Ave	Towson Md. 21204	JCoale@comcast.net
George Grose	1412 La Belle Avenue	Ruxton, Md, 21204	gngrose@comcast.net
Fran Anderson	7912 Spring Valley Rd.	Ruxton MD 21204	fran.anderson@recmp.com
Amy Macht	1412 La Belle Ave	"	amachte comcast.net
NANCY HORST	P.O. BOX 204B	Ridgewood Md. 21139	
Bd Member VP of Ruxton Ridgewood			

PLEASE PRINT CLEARLY

CASE NAME 7/26/06
CASE NUMBER
DATE

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Felicia B. Albright	1214 Berwick Rd.	Balto., MD 21204	
DAVID F. ALBRIGHT	1122 Kenilworth Dr. Suite 300	Balto., MD 21204	
PETER MAX ZIMMERMAN	COURTHOUSE, 400 WASHINGTON AVE	BALTO (TOWSON) MD 21204	

PLEASE PRINT CLEARLY

CASE NAME Benhoff / Berwick
CASE NUMBER 06-257-A
DATE 12/20/2005

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E-MAIL
MELVIN C BENHOFF	25 SPELLWOOD LANE	COCKEYSVILLE MD 21030	
Jennifer Busse, Esq	210 W. Pennsylvania Ave.	Towson MD 21204	jbusse@wtplaw.com
Audra Cottrell, Esq	" "	" "	acottrell@wtplaw.com

PLEASE PRINT CLEARLY

CASE NAME_____
CASE NUMBER_____
DATE_____

CITIZEN'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Nancy Horst	P.O. Box 204	Riderwood MD 21139	bruxnder@bcpl.net
John Blazer	1209 Berwick Rd	Ruxton, MD 21204	
Felicia Albright	1214 Berwick Rd.	Ruxton MD 21204	
George Grose	1412 LaBelle Avenue	Ruxton, MD, 21204	ggrose@comcast.net

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2001, Legislative Day No. 16

Bill No. 79-01

Mr. S.G. Samuel Moxley, Chairman
By Request of County Executive

By the County Council, September 4, 2001

A BILL
ENTITLED

AN ACT concerning

Baltimore County Code, 1998 - Eighteenth Enactment

FOR the purpose of enacting the Baltimore County Code, 1998 and adding one title to the Baltimore County Code, to be designated and known as "Title 4. Development"; to revise, restate, renumber, and recodify the laws of the County relating and pertaining to general powers and duties of various departments and officers of the County, development plats, public and private improvements, development and concept plans, hearing, appeals, and reclamation of property; providing for the construction and application of this Act; transferring certain provisions; defining certain terms; providing for a contingent effective date of this Act; and generally relating to the laws of the County.

By repealing

Sections 26-166, 26-167, 26-168, 26-169, 26-170, 26-171, 26-172, 26-173, 26-174, 26-175, 26-176, 26-177, 26-178, 26-179, 26-180, 26-181, 26-182, 26-201, 26-202, 26-203, 26-204, 26-205, 26-206, 26-206.1, 26-207, 26-208, 26-209, 26-210, 26-211, 26-212, 26-

213, 26-214, 26-215, 26-216, 26-218, 26-219, 26-220, 26-236, 26-237, 26-238, 26-239, 26-240, 26-241, 26-242, 26-243, 26-244, 26-245, 26-246, 26-247, 26-248, 26-249, 26-261, 26-262, 26-263, 26-264, 26-265, 26-266, 26-267, 26-268, 26-269, 26-270, 26-271, 26-272, 26-273, 26-274, 26-275, 26-276, 26-277, 26-278, 26-279, 26-280, 26-281, 26-282, 26-283, 26-301, 26-302, 26-303, 26-304, and 26-305
Title 26. Planning, Zoning and Subdivision Control
Baltimore County Code, 1988

By adding

Article 32. Planning, Zoning and Subdivision Control
Title 4. Development
Baltimore County Code, 1998

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the following sections of the Baltimore County Code, 1988, as amended, be and are hereby repealed:

Title 26. Planning, Zoning and Subdivision Control

Sections 26-166, 26-167, 26-168, 26-169, 26-170, 26-171, 26-172, 26-173, 26-174, 26-175, 26-176, 26-177, 26-178, 26-179, 26-180, 26-181, 26-182, 26-201, 26-202, 26-203, 26-204, 26-205, 26-206, 26-206.1, 26-207, 26-208, 26-209, 26-210, 26-211, 26-212, 26-213, 26-214, 26-215, 26-216, 26-218, 26-219, 26-220, 26-236, 26-237, 26-238, 26-239, 26-240, 26-241, 26-242, 26-243, 26-244, 26-245, 26-246, 26-247, 26-248, 26-249, 26-261, 26-262, 26-263, 26-264, 26-265, 26-266, 26-267, 26-268, 26-269, 26-270, 26-271, 26-272, 26-273, 26-274, 26-275, 26-276, 26-277, 26-278, 26-279, 26-280, 26-281, 26-282, 26-283, 26-301, 26-302, 26-303, 26-304, and 26-305

SECTION 2. AND BE IT FURTHER ENACTED, That Article 32. Planning, Zoning and Subdivision Control, Title 4. Development, be added to the Baltimore County Code, 1998,

successor unit shall be considered in all respects as having the powers and obligations granted the former unit.

SECTION 9. AND BE IT FURTHER ENACTED, that the continuity of every commission, office, department, agency, bureau, or other unit in existence on the effective date of this Act is retained. The personnel, records, files, furniture, fixtures, and other properties and all appropriations, credits, assets, liabilities, and obligations of each retained unit are continued as the personnel, records, files, furniture, fixtures, properties, appropriations, credits, assets, liabilities, and obligations of the unit under the laws enacted by this Act.

SECTION 10. AND BE IT FURTHER ENACTED, that except as expressly provided to the contrary in this Act, any person licensed, registered, certified, or issued a permit or certificate by any commission, office, department, agency, bureau, or other unit established or continued by any statute amended, repealed, or transferred by this Act is considered for all purposes to be licensed, registered, certified, or issued a permit or certificate by the appropriate unit continued under this Act for the duration of the term for which the license, registration, certification, or permit was issued, and may renew that authorization in accordance with the appropriate renewal provisions.

SECTION 11. AND BE IT FURTHER ENACTED, that this Act shall take effect contingent on the passage by the county council of a resolution stating that the council is adopting as complete the Baltimore County Code, 1998 compiled and codified in accordance with § 1005(a) of the Charter. The resolution also shall provide a date on which the Baltimore County Code, 1998 shall take effect.

b07901.WPD

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2003, Legislative Day No. 15

Bill No. 75-03

Mr. Kevin Kamenetz, Chairman
By Request of County Executive

By the County Council, August 4, 2003

A BILL
ENTITLED

AN ACT concerning

Baltimore County Code, 1998 - Corrective Bill – Article 32 and Article 33

FOR the purpose of correcting technical, non-substantive, and substantive errors in the enactments of the Code revision project codifying Article 32 and Article 33 of the Baltimore County Code, 1998; conforming revised provisions of the Baltimore County Code, 1998 with subsequent amendments to sections in the Baltimore County Code, 1988; providing for the construction and application of this Act; providing for the continuity of terms of certain officials, the status of certain transactions and employees, rights, titles, and interests, licenses, registrations, certifications, and permits; providing for a contingent effective date of this Act; and generally relating to the laws of the County.

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

Section 32-4-281(a)(2)(iv)
Article 32. Planning, Zoning and Subdivision Control
Title 4. Development
Subtitle 2. Development review and approval process
Part VIII. Appeals
Baltimore County Code, 1998 (as enacted in Bill 79-01) (as renumbered in Section 22 of this Act)
to read
Section 32-4-281(a)(2)(iii)

By repealing and reenacting, with amendments

Section 32-4-281(e)
Article 32. Planning, Zoning and Subdivision Control
Title 4. Development
Subtitle 2. Development review and approval process
Part VIII. Appeals
Baltimore County Code, 1998 (as enacted in Bill 79-01) (as renumbered in Section 22 of this Act)

By repealing and reenacting, with amendments

Sections 32-4-303 and 32-4-309(c)
Article 32. Planning, Zoning and Subdivision Control
Title 4. Development
Subtitle 3. Public and private improvements
Baltimore County Code, 1998 (as enacted in Bill 79-01)

By renumbering

Section 32-4-311(c)(i), (ii), and (iii)
Article 32. Planning, Zoning and Subdivision Control
Title 4. Development
Subtitle 3. Public and private improvements
Baltimore County Code, 1998 (as enacted in Bill 79-01)
to read
Section 32-4-311(c)(1), (2), and (3)

By repealing and reenacting, with amendments

Sections 32-4-401(b), 32-4-403(a), 32-4-404(d) and (e), 32-4-405(d), 32-4-410(c), 32-4-414, and 32-4-416(a)
Article 32. Planning, Zoning and Subdivision Control

Title 4. Development
Subtitle 4. General design standards and requirements
Baltimore County Code, 1998, as enacted in Bill 79-01

By adding

Section 32-4-417
Article 32. Planning, Zoning and Subdivision Control
Title 4. Development
Subtitle 4. General design standards and requirements
Baltimore County Code, 1998 (as enacted in Bill 79-01)

By repealing and reenacting, with amendments

Section 32-4-503(c)
Article 32. Planning, Zoning and Subdivision Control
Title 4. Development
Subtitle 5. Reclamation of property
Baltimore County Code, 1998 (as enacted in Bill 79-01)

By repealing and reenacting, with amendments

Section 1. Laws of Baltimore County 2001
Section 3.
Bill 79-01

By renumbering

Section 32-6-108(a)(2)(ii) and (ii)
Article 32. Planning, Zoning and Subdivision Control
Title 6. Adequate public facilities
Baltimore County Code, 1998 (as enacted in Bill 112-02)
to read
Section 32-6-108(a)(2)(ii) and (iii)

By repealing and reenacting, with amendments

Section 32-6-109(f)
Article 32. Planning, Zoning and Subdivision Control
Title 6. Adequate public facilities
Baltimore County Code, 1998 (as enacted in Bill 112-02)

By renumbering

1 (1) At the time of filing the development plan, the applicant shall file any request for

2 combined hearings under [§ 32-4-233] § 32-4-230 of this subtitle.

3 (2) The development plan shall contain a notation that this request has been filed.

4 REVISOR'S NOTE: The cross reference in subsection (c)(1) this section is amended to conform

5 with the change in section numbering in Section 12 of this Act.

6 32-4-223. Required existing site condition information.

7 The development plan shall identify the following information concerning existing site

8 conditions:

9 (1) topography, and existing topography for adjacent properties as shown on the county

10 photogrammetric plats or more recent information where available;

11 (2) streams, springs, seeps, bodies of water, and forest buffers;

12 (3) soil types in accordance with the Soil Survey, Baltimore County, Maryland, including

13 identification of prime and productive soils;

14 (4) wooded areas;

15 (5) buildings on the property;

16 (6) one-hundred-year floodplains or flood areas for both riverine and tidal areas;

17 (7) nontidal wetlands and tidal wetlands;

18 (8) identification of any building, property, or site within or contiguous to the proposed

19 development that is included in:

20 (i) the Maryland Historical Trust Inventory of Historic Properties;

21 (ii) the county preliminary or final landmarks list;

22 (iii) the National Register of Historic Places;

1 As to the substitution of "riverine floodplain" for the former reference to "100-year floodplain"
2 in subsection (d)(3) of this section, *see* the revisor's note for § 32-4-102(a) in Section 8 of this
3 Act.
4 In subsection (e)(1) of this section, the reference to "Except as allowed by federal or state law or
5 regulation" is deleted. The material was originally new language added by the revisor, but upon
6 review, the revisor has determined that the language will probably confuse more than it will
7 illuminate.
8 32-4-416. Preservation of natural or historic features.
9 (a) Preservation of features.
10 Each development plan shall preserve:
11 (1) natural features, including watercourses, waterfalls, beaches, and significant
12 vegetation; and
13 (2) historic structures or sites identified on any of the lists referred to in [§ 32-4-228(8)]
14 § 32-4-223(8) of this title.
15 REVISOR'S NOTE: The cross reference in subsection (a)(2) of this section is amended to
16 conform with the change in section numbering in Section 12 of this Act (the original cross
17 reference was incorrect).
18 SECTION 28. AND BE IT FURTHER ENACTED, that Section 32-4-417 be added to
19 Article 32. Planning, Zoning and Subdivision Control, Title 4. Development, Subtitle 4. General
20 design standards and requirements, of the Baltimore County Code, 1998, as enacted in Bill 79-
21 01, as amended, to read as follows:
22 32-4-417. SCENIC VIEWSHEDS

1 under this Act for the duration of the term for which the license, registration, certification, or
2 permit was issued, and may renew that authorization in accordance with the appropriate renewal
3 provisions.

4 SECTION 51. AND BE IT FURTHER ENACTED, that this Act shall take effect
5 contingent on the passage by the county council of a resolution stating that the council is
6 adopting as complete the Baltimore County Code, 1998 compiled and codified in accordance
7 with § 1005(a) of the Charter. The resolution also shall provide a date on which the Baltimore
8 County Code, 1998 shall take effect.

b07503.wpd

IN RE: PETITION FOR ADMINISTRATIVE SPECIAL HEARING	*	BEFORE THE
Intersection of S/S Berwick Road and W/S of Locust Avenue	*	DEPUTY ZONING COMMISSIONER
9th Election District	*	OF BALTIMORE COUNTY
4th Councilmanic District (1401 Berwick Road)	*	CASE NO. 03-138-ASPH
Benhoff Builders *Petitioner*	*	

PTOV

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Administrative Special Hearing filed by the legal owner of the subject property, Benhoff Builders. The special hearing request involves property located at 1401 Berwick Road in the Ruxton area of Baltimore County. The subject property is zoned D.R.3.5. The special hearing request is to raze a dwelling which has been placed on the Maryland Historical Trust (MHT) Inventory as MHT #BA 3009.

Appearing at the hearing on behalf of the special hearing petition were Mel Benhoff, representing Benhoff Builders, J. Elmer Weisheit, previous owner of the property, David Gleason, and G. Scott Barhight, attorney at law, representing the property owner. Appearing in opposition to the Petitioner's request were many residents of the surrounding community who were represented by John C. Murphy, attorney at law.

Testimony and evidence indicated that the property, which is the subject of this special hearing request, consists of 1.159 acres, more or less, zoned D.R.3.5. The property is bounded to the north by Berwick Avenue, to the east by Locust Avenue, and to the south by LaBelle Avenue. It is also known as Lots #205-#213 of the subdivision known as "Ruxton Heights". The property is currently improved with a large single-family residential dwelling which is

situated on Lots #206, #206A and #207. The current owner of the property is interested in tearing down the old single-family dwelling and constructing in its place four (4) new single-family residential dwellings. One of those dwellings is already under construction. The other three are to be built in the future.

Contained within the special hearing file is a site plan of the property showing the existence of the residential dwelling and the areas upon which new homes are to be constructed. Benhoff Builders proposes to construct a single-family residential dwelling on combined Lots #205, #206 and #206A. A second dwelling is proposed to be constructed on combined Lots #207 and #208. The third dwelling is to be constructed on combined Lots #209, #210A, #210 and #211A. Finally, the remaining dwelling is under construction on combined Lots #211, #212 and #213. If permitted, the old residential structure shall be demolished to make way for three (3) new homes.

As stated previously, the Petitioner applied for and obtained a valid Baltimore County building permit (Permit #B495105) to construct a residential dwelling on property four. In addition, the Petitioner applied for and obtained a razing permit to tear down an auxiliary structure located along LaBelle Avenue on Lots #211 and #211A. That structure has been removed from the property. Furthermore, the Petitioner applied for and obtained a razing permit to tear down the single-family dwelling which is the subject of the hearing before me. However, prior to its demolition, the property owner was notified that the permit to raze the dwelling was rescinded. Apparently, Mr. Ken Short, representing the Ruxton/Riderwood/Lake Roland Area Improvement Association, prepared and submitted a Maryland Historical Trust Inventory of Historic Properties Form and submitted that form to the Maryland Historical Trust. By virtue of this filing, the subject dwelling was given inventory number BA-3009. As a consequence of

being inventoried, the dwelling is subject to the provisions of Section 26-540 of the Baltimore County Code. That process is separate and apart from the process before this Deputy Zoning Commissioner and over which this office has no control or input. A hearing has been scheduled for December 12, 2002 before the Landmarks Preservation Commission in order to entertain whether the dwelling is of such historical significance so as to be placed on the preliminary or the final Landmarks List.

The property owner was advised by the Department of Permits & Development Management that as a result of the subject dwelling being inventoried on the Maryland Historical Trust as BA-3009, the property owner should file a petition for Administrative Special Hearing in order to obtain a waiver to allow said structure to be razed. The hearing on the Petitioner's waiver request came before me on October 25, 2002. At that time, I indicated to all those in attendance that it would be premature for me to rule upon the special hearing request until such time as the Landmarks Preservation Commission has had an opportunity to review the historical information regarding this dwelling and as to whether the property is worthy of being placed on the Preliminary Landmarks List. Furthermore, it has been the practice of this office to have the written recommendations from the Landmarks Preservation Commission before ruling upon such special hearing petition to allow the razing of any structure. Consequently, the hearing on this Special Hearing request was postponed until after the meeting of the Landmarks Preservation Commission.

As a preliminary matter, Mr. Barhight, representing the owner of the property, requested a ruling as to whether this property owner is exempt from the Development Regulations and/or that the Development Regulations are not applicable to this situation. Mr. Barhight argued at the hearing before me, and in a motion submitted after the close of the hearing, that the situation

involving this residential structure is not governed by Section 26-278 of the Baltimore County Code and therefore a waiver from that provision is not necessary. Mr. Barhight as well as Mr. Murphy, who represents the many citizens who attended the hearing, submitted written memoranda of law arguing their respective positions. The oral arguments made at the hearing before me, as well as the written memoranda have been taken into consideration in the rendering of this decision.

At issue in this case is whether the activities proposed by Benhoff Builders on the subject property constitutes "Development" as that term is defined within the Baltimore County Code. Section 26-168(p) of the Baltimore County Code defines "Development" as follows:

> "(1) The improvement of property for any purpose involving building;
>
> (2) A subdivision;
>
> (3) The combination of any 2 or more lots, tracts or parcels of property for any purpose;
>
> (4) Subjecting property to the provisions of the Maryland Condominium Act; and
>
> (5) The preparation of land for any of the purposes listed in subsections (1) through (4) of this subsection."

A determination must be made as to whether the activities proposed by this property owner satisfies this definition so as to cause these activities to be considered "Development". For the reasons that follow, I find that the request to tear down the old single-family dwelling on this property is in fact development as that term is defined.

The definition as stated within the Code is extremely broad. Subsection (1) provides that development constitutes the "improvement of property for any purpose involving building". It is obvious from the site plan contained within this special hearing file that the old single-family dwelling as situated on this property prevents the further development of the site with at least

two new single-family residential dwellings. This large old structure occupies Lots #206, 206A and #207. It is an impediment to the further development of this area of the property. Tearing down the structure is an improvement of the property that would promote the further development of the site. It can be likened to clearing trees, removing large rocks, grading uneven slopes, or any other manipulation of the property that would promote the construction of new homes on this property. Accordingly, given the very broad definition provided within the Baltimore County Code, I find that the proposal to tear down this structure in order to further develop the site is in fact development as that term is defined.

In addition, subsection (3) also appears, by its language, to cause this proposal to be considered "Development". While this entire property is under one ownership at this time, the facts show that Benhoff Builders is in fact "combining two or more lots" within this overall tract of land for the purpose of selling four (4) separate residential dwellings. That is, Lots #205, #206 and #206A are proposed to be combined whereupon a single-family residential structure is proposed to be constructed and sold to a purchaser. Similarly, Lots #207 and #208 are to be combined, as are Lots #209, #210A, #210 and #211A. Finally, the fourth dwelling is already under construction on combined Lots #211, #212 and #213. It appears, based upon the language in subsection (3) of the definition of "Development", that this property owner is combining 2 or more lots for the purpose of constructing homes thereon and consequently, these activities do constitute "Development."

Having considered the property owner's activities to be "Development", I must now determine whether the proposal falls under any of the exceptions to the Development regulations. Section 26-169 of the Baltimore County Code provides two situations whereupon the Development Regulations would not apply. After reviewing the language contained within that

section of the Code, I find that the activities proposed by this property owner do not meet any of the exceptions to these Development Regulations and accordingly, the Petitioner should be required to file the special hearing relief in order to obtain a waiver from Section 26-278 of the Code.

For the reasons stated within the body of this Order, the requests to raze the single-family residential dwelling on the subject property does constitute development as that term is defined within the Baltimore County Code. Furthermore, none of the exceptions as contained within the Baltimore County Code are applicable to this situation so as to exempt this proposal from the Development Regulations. The appropriate procedure for the property owner to follow, in the event they continue to choose to raze this structure, is to proceed on their petition for administrative special hearing for a waiver of the requirements of Section 26-278 of the Baltimore County Code. Finally, the Petitioner's assertion that Section 26-278 of the Baltimore County Code is illegal and of no effect because it deprives this property owner of due process, be and is hereby denied.

As was stated at the public hearing before me, in the event the Petitioner wishes to proceed with the razing of this structure, they should participate and attend the hearing before the Landmarks Preservation Commission, which is to occur on December 12, 2002. Once written recommendations are issued by the Landmarks Preservation Commission then the property owner may schedule a new public hearing on this petition for administrative special hearing for consideration as to whether it is appropriate to grant a waiver from Section 26-278.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this ____ day of December 2002, that the motion of the property owner asserting that

Section 26-278 of the Baltimore County Code does not apply to the razing of the structure on this property, be and is hereby DENIED.

IT IS FURTHER ORDERED, that a new public hearing shall be scheduled before this Hearing Officer after such time as the Landmarks Preservation Commission shall have considered this matter and have issued their written recommendations.

TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

LES:raj

BALTIMORE COUNTY, MARYLAND
Board of Appeals of Baltimore County
Interoffice Correspondence

DATE: January 11, 2008

TO: Timothy Kotroco, Director
Permits & Development Management

FROM: Linda B. Fliegel
Board of Appeals

SUBJECT: **CLOSED APPEAL CASE FILES/CASES DISMISSED**

NAME	*CASE NUMBER*	*DATE OF ORDER OF DISMISSAL*
2004		
ERIC DOTT PROPERTY/PDM XI-964	04-027-M	MAY 29, 2007
2006		
GEMCRAFT HOMES	CBA-06-022	SEPT. 26, 2007
2200 ROLLING ROAD	CBA-06-029	OCT. 31, 2007
TERRY WILLIAMS	CBA-06-012	OCT. 11, 2006
TERRY WILLIAMS	CBA-06-036	OCT. 11, 2006
TREAVOR & KELLY WELLS	04-343-X *and* 06-073-X	SEPT. 27, 2007
JAMES REILMAN	06-029-SPH	OCT. 18, 2007
JAMES REILMAN	06-660-SPH	OCT. 18, 2007
BENHOFF BUILDERS, INC.	06-257-A	MAY 31, 2007
FRANCIS & PHYLLIS COPPERSMITH	06-676-SPH	NOV. 7, 2007
2007		
CHARLESTOWN – DRC	CBA-07-106	SEPT. 7, 2007
RUN CROSSING	CBA-07-121	JULY 27, 2007
FULLERTON FEDERAL SAVINGS	CBA-07-127	OCT. 2, 2007
ANGELA L. SIDBURY	07-111-SPHA	SEPT. 26, 2007
WINDSOR CONDOMINIUM-PERRY HALL	07-113-SPH	AUG. 31, 2007

Case No.: 06-257-A MOTION FOR RECONSIDERATION

Exhibit Sheet

	Petitioner/Developer	Protestant
No. 1	Collectively A thru I LETTERS IN SUPPORT OF VARIANCE	B 558/62 "BUILT 1940's"
No. 2		
No. 3		
No. 4		
No. 5		
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

BW 07/26

1308 Locust Avenue
Baltimore, MD 21204
July 16, 2006

RECEIVED

JUL 19 2006

ZONING COMMISSIONER

Mr. William J. Wiseman III, Zoning Commissioner
Baltimore County Courts Building, Suite 405
Towson, MD 21204

Reference: Case 06-257-A (Property at 1401 Berwick Road, Towson)

Dear Commissioner Wiseman:

We are the owners and residents of 1308 Locust Avenue, directly across from the rear of the lot owned by Mel Benhoff. We have been involved in the meetings and discussions about Mr. Benhoff's development of the property since the beginning.

We support approval of Mr. Benhoff's zoning variance. Because we cannot attend the hearing on July 26th, this letter will serve as testimony on behalf of quick action to permit Mr. Benhoff to proceed with construction, as planned, at 1401 Berwick.

Mr. Benhoff cooperated with the neighbors on this issue, and everyone had an opportunity to provide input and opinion. It is in everyone's best interest for the home to be built as agreed upon, and in the quickest way possible. The partially completed structure is unsightly and --- most importantly --- very unsafe for neighborhood children. We hope that the Commission will act immediately to remove this hazard from our area, and allow Mr. Benhoff to finish this particular project.

Sincerely,

Lynn and Philip Rauch

BW 7/20

July 17, 2006

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JUL 19 2006

ZONING COMMISSIONER

Mr. William J. Wiseman III, Zoning Commissioner
Baltimore County Courts Building Suite 405
Towson, Maryland 21204

Reference: Case 06-257-A
Property at 1401 Berwick Road
Towson, Maryland 21204

Dear Commissioner Wiseman,

As neighbors who live directly across the street from 1401 Berwick, we have concerns about the impact of a developer's plans to build multiple houses on this and adjacent properties. Because of this concern, we have participated in numerous discussions over the years about Mr. Benhoff's plans. We feel that a satisfactory compromise has been reached on Mr. Benhoff's right to build and sell, and our desires to retain the character, beauty, and value of the immediate neighborhood and the Ruxton area in general. Therefore, we were very disappointed to learn that Mr. Benhoff's construction of the house on the lot at 1401 Berwick has been stopped due to some oversight regarding the absence of a hearing on the demolition of the former house. The stalled construction site is an eyesore to the neighborhood and unsafe for children in the area. We are in full support of the views expressed by Mr. Kent Walker and urge you to please let Mr. Benhoff complete the construction of the house.

Sincerely,

Robert Schleif
Yoong Schleif

Robert and Yoong Schleif, Residents and Owners
1310 Locust Ave.
Towson, Maryland 21204

7/26

THE RUXTON ★ RIDERWOOD ★ LAKE ROLAND AREA FOUNDATION, INC.
POST OFFICE BOX 204 Riderwood, Maryland 21139 ▪ TELE/FAX 410-494-7757 ▪ office@rrlraia.org ▪ FEDERAL TAX ID 52-2323810

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JUL 2 0 2006
ZONING COMMISSIONER

July 19, 2006

Mr. William J. Wiseman, III
County Courts Building
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

Case No. 06-257-A

Dear Mr. Wiseman,

My name is Joe Coale. I am a resident of Boyce Avenue in Ruxton and am the current President of the Ruxton-Riderwood-Lake Roland Area Foundation. This should be differentiated from the Ruxton-Riderwood-Lake Roland Improvement Association. Ours is a Foundation (501c3) dedicated to historic preservation and open space within the boundaries of the Community. As such, we have established a Land Trust Program, saved a number of historical houses to include the 1900 Riderwood Railroad Station, and have begun several public landscaping projects in the community.

I have been involved in the case concerning 1401 Berwick Avenue from the beginning and have been kept well informed of the entire process by the neighbors more local to the project. I was in attendance the night that a large group of neighbors decided it was best to come to a compromise with the builder. This was against my instincts but there was legitimate concern about County Council's Landmark approval. It seemed more practical than taking a chance on ending up with four houses of indiscriminate design and size on the lot. I approve of variances only when they clearly benefit the existing community and this is one of those rare cases. Approval will keep the new construction and the architecture in the spirit and orientation of the former house and neighborhood.

As for the issues raised by the Peoples' Counsel, Mr. Zimmerman has appealed the previous granting of the variance due to the omission of a required demolition hearing for a property with a MHT inventory number. I think it is a legitimate concern that a demolition permit was issued for the house without a Demolition Hearing held, as stated in the appeal. I have no idea why this process was omitted. It has been over 3 years since the first hearing was postponed pending the results of the Landmark status of the house, so it could have been an oversight, or it could have been that it was felt that enough hearings had been held, the house was not a Landmark, and the Community was signing on to the demolition and construction process. An MHT inventory number does not necessarily mean that a house is a historic property.
In fact, the MHT has, for years, been concerned that Baltimore County has used the inventory number as a tool to halt demolition. Nevertheless, that is the County's rule, and it probably should have been followed.

BOARD OF TRUSTEES
Joseph Coale
President
Robert C. Lewis
Vice President
Judith Wright
Secretary/Treasurer
Sophie Gerard
George R. Grose
Leigh McDonald Hall
Benjamin Hearn
Peggy S. Squitieri
Barry Truax
David Whitman

RIDER HOUSE, CIRCA 1880

A copy of our recent financial statement is available upon request by contacting the Foundation at 8013 Bellona Avenue, Box 204, Riderwood, Maryland 21139 or by calling 410-494-7757. Documents and information submitted to the State of Maryland under the Charitable Solicitations Act are available from the Office of the Secretary of State for the cost of copying and postage. The Foundation is a member of the Maryland Association of Nonprofit Organizations.

R. EDWARDS TAYLOR

RECEIVED
JUL 20 2006
ZONING COMMISSIONER

Mr. William J. Wiseman, III
Zoning Commissioner
County Courts Building, Suite 405
Towson, MD 21204

Re: case # 06-257-A

Dear Commissioner,

My wife and I live one block from the subject property in the above entitled case and we write to express our concurrence with the sentiments of Mr. Kent Walker's recent letter.

I urge you to support the re-affirmation of Mr. Benhoff's variance so that we may preserve the outcome of years of discussion in respect of the construction at 1401 Berwick Avenue.

Respectfully,

1406 LOCUST AVENUE • BALTIMORE, MARYLAND • 21204
PHONE: 410-823-1406 • FAX: 410-823-1407

10 July 2006

RECEIVED
JUL 17 2006
ZONING COMMISSIONER

Mr. William J. Wiseman III, Zoning Commissioner
Baltimore County Courts Building Suite 405
Towson, Maryland 21204

Reference: **Case 06-257-A**
Property at 1401 Berwick Road
Towson, Maryland 21204

Dear Commissioner Wiseman,

I wish to argue strongly that Mr. Benhoff be permitted to proceed post haste with the construction of the home which has been begun at 1401 Berwick Road.

My interest in the case
As owner of the property used continuously from 1914 to 1993 as a school – in its most recent iteration The Ruxton Country School – well known in my neighborhood and to countless graduates throughout the Baltimore and Baltimore County region, I am particularly sensitive to matters pertaining to significant and historic properties and old, well-loved neighborhoods. Because my property is directly across the street from the property under discussion in Case 06-257-A, I have, as well, been involved in discussions with the now owner, Mr. Benhoff; the Ruxton, Riderwood, Lake Roland Area Improvement Association, Inc.; and other neighbors adjacent to, with a view of, and near the subject property.

It may not be often that you are contacted by an interested property owner speaking on behalf of a "developer," but I am in favor of Mr. Benhoff's being permitted to proceed with construction on the home which has been begun at the subject property – with the support and cooperation of RRLRAIA and local neighbors, including an architect who lives near the subject property in an historically significant property.

My understanding of the case
My understanding is that the subject property was – at a point early in the process of interested neighbors' working to maintain the physical character of the neighborhood – assigned a Maryland Historic Trust number. However, ***because of an administrative error on the part of Baltimore County***, a hearing on the demolition of an existing home was not held as should have been once a compromise had been agreed upon by Mr. Benhoff, interested neighbors, and RRLRAIA.

According to my understanding, neither Mr. Benhoff, RRLRAIA, nor the group of neighbors who have been working with Mr. Benhoff to ensure that a home be built on the subject property appropriate to the neighborhood and in the architectural style of the home previously built on the

Motions –
PETITIONER'S
Collectively – Arthur I
EXHIBIT NO. 1

site – nor, for that matter, the various permitting agencies of the County from which Mr. Benhoff obtained permits as required – was aware that such a hearing should have been held. According to my understanding, Mr. Benhoff obtained required permits and began construction in complete good faith and with the support of the neighborhood groups involved.

My support for completion of the home which has been begun on the subject property
My reasons for urging you to permit construction to continue at the subject property are many:

1. Neighbors whose homes are adjacent to, in view of, and otherwise near the subject property have been kept well informed about the subject property since it was sold by its previous owner to Mr. Benhoff. We have had ample opportunity to be involved in matters pertaining to the property.

2. As mentioned above, the Maryland Historic Trust number was obtained simply as a stopgap measure by neighbors for two reasons: One, to prevent Mr. Benhoff from building four homes on the plot of land of which the subject property is a part: Two, we wanted to preserve an Arts & Craft style of home which is appropriate for the neighborhood. Therefore, it was our wish that three, not four, homes be situated on that plot and that the style and setting of the original home be maintained. ***Mr. Benhoff has been more than responsive*** to concerns that his building four homes on the plot–as he might well have done perfectly legally according to my understanding – would not be agreeable to immediate neighbors.

3. It became clear to the actively interested parties working to arrive at a mutually agreeable, common-sense resolution that retaining and expanding the existing home at 1401 Berwick Road would not be a viable approach. ***Mr. Benhoff worked with neighbors, with the above-mentioned architect, and with the cooperation of RRLRAIA to develop a design for a new home*** that would retain the architectural elements of the existing home and fit the character of the neighborhood. Adjacent neighbors were on several occasions given the opportunity to review and comment on the proposed design, and Mr. Benhoff modified the design in response.

4. The home on which agreement was reached was placed on a diagonal to both Berwick Road and Locust Avenue because the previous home on the subject property was so situated and adjacent neighbors felt strongly that the historic placement ought to be preserved. In order to preserve this placement, ***Mr. Benhoff applied for a zoning exception***, as the placement would require the new home's being closer to the south side of Berwick Road than the average of the proximity to the road of other homes on that side of the road. Note that homes on the north side of the road, including my own, are an average of just 17 feet from the road, much closer, by far, than the average distance of homes on the south side of the road. The zoning exception that Mr. Benhoff applied for was to build within the averaging prescribed 42.8 feet. Many homes in the immediate neighborhood are 30 feet or closer to their property lines. The proposed house is not within 30 feet of the property line at any point. There are 3 corners in the front that are within the 42.8 foot limit, but, due to the angle of the house, most of the house is well outside that limit. In the rear, the only section in violation abuts his own property.

5. In no instance has Mr. Benhoff, RRLRAIA, or the group of neighbors proposed or been granted any concessions, benefits, or other special "breaks" – not that any would have been possible given property law. ***This group of neighbors, adjacent to 1401 Berwick therefore most directly affected, have simply worked together along with others to come up with what we perceive as an equitable solution for us and Mr. Benoff.All meetings were open & efforts were made via email to keep the neighborhood informed .***

6. The subject property has been an idle construction site with a foundation and first floor decking with a huge pile of the original home's foundation stones and roof slates waiting to be used in the design and construction of the new home for well over six months. This is not the most attractive view possible for adjacent neighbors or the most safe situation for summertime play while Mr. Benhoff has been forced to wait for County action. Mr. Benhoff has erected safety fencing to help ensure the well-being of neighborhood children who play, as neighborhood children will, on the site.

7. That a demolition hearing on a historically numbered home was not held on a structure that all directly concerned parties agreed could be demolished is ***now a moot point***. The agreed-upon demolition & structure, properly permitted to the best of Mr. Benhoff's and the concerned County permitting agencies' knowledge, has been started. We acknowledge the importance of protecting historical sites. We are residents of a historically significant neighborhood and support the efforts and protection provided by the Trust. We did not intend to misuse or circumvent the Historic Trust. As stated at the beginning of this letter, we were simply ignorant of the proper procedure to follow once we had achieved the intent of the Historic Trust protection of preserving the Arts & Craft architectural style of the property.

Please let this man complete his project, let the adjacent neighbors see this appropriate Arts & Craft style home constructed, and let us all move on. There has been more than four years of hearings, discussions, permits and a seven month stoppage. **Enough is enough, most particularly when adjacent neighbors like myself, whose interests in this matter are paramount, support going forward.**

With the hope that you will let common sense prevail, I am

Sincerely,

Kent H. Walker, Resident and Owner
1402 Berwick Road
Towson, Maryland 21204-6508

1501 Berwick Road
Ruxton, Maryland 21204

July 19, 2006

Mr. William J. Wiseman III, Zoning Commissioner
Baltimore County Courts Building Suite 405
Towson, Maryland 21204

Reference: **Case 06-257-A**
Property at 1401 Berwick Road
Towson, Maryland 21204

Dear Commissioner Wiseman,

My husband and I, owners of 1501 Berwick Road respectfully request that Mr. Benhoff be permitted to proceed with the construction of the home which has been begun at 1401 Berwick Road. We have been part of the neighborhood consortium that has worked with this developer to devise a plan that was and is best for everyone. Please do all that you can to remove the current obstacles Mr. Benhoff is now facing. He has been willing to work with the neighborhood group and has done so to our satisfaction.

Thank you.

Mary Sue McCarthy Bill Hopkinson

Mary Sue McCarthy
Bill Hopkinson

cc: George Grose

7|26

RECEIVED

JUL 20 2006

ZONING COMMISSIONER

July 19, 2006

Mr. William J. Wiseman III, Zoning Commissioner
Baltimore County Courts Building, Suite 405
Towson, Maryland 21204

Reference: Case 06-257-A (property at 1401 Berwick Road, Ruxton)

Dear Commissioner Wiseman,

We are the owners of 1403 LaBelle Avenue, directly across from the lot, which Mr. Benhoff owns. We have been involved in the meetings and discussions concerning the development of this property with Mr. Benhoff.

We support approval of Mr. Benhoff's zoning variance. Because we are unable to make the hearing this letter serves as testimony on behalf of quick action to permit Mr. Benhoff to proceed with construction as planned for said property.

Mr. Benhoff cooperated with the neighbors on this issue, and everyone had an opportunity to provide input and opinion. It is in everyone's best interest for the home to be built. There is a partially completed structure, which is unsightly and more importantly unsafe for children in the neighborhood.

Please allow Mr. Benhoff to continue.

Sincerely,

Andrea Williams Steven Williams

Andrea and Steven Williams
1403 LaBelle Avenue
Ruxton, Maryland 21204

Date: 7-25-2006

To:Mr.William J. Wiseman III, zoning commissioner

Fax: 1-410-887-3468

From: Kent Walker

Re: CASE 06-257-A

In case you did not receive it,I am faxing a copy of a letter that I wrote and mailed some two weeks ago from some place along the route of my summer travels. I would definitely attend the hearing in person if I was not currently in northern Michigan.

Thank you for your attention.

10 July 2006

Mr. William J. Wiseman III, Zoning Commissioner
Baltimore County Courts Building Suite 405
Towson, Maryland 21204

Reference: **Case 06-257-A**
Property at 1401 Berwick Road
Towson, Maryland 21204

Dear Commissioner Wiseman,

I wish to argue strongly that Mr. Benhoff be permitted to proceed post haste with the construction of the home which has been begun at 1401 Berwick Road.

My interest in the case
As owner of the property used continuously from 1914 to 1993 as a school – in its most recent iteration The Ruxton Country School – well known in my neighborhood and to countless graduates throughout the Baltimore and Baltimore County region, I am particularly sensitive to matters pertaining to significant and historic properties and old, well-loved neighborhoods. Because my property is directly across the street from the property under discussion in Case 06-257-A, I have, as well, been involved in discussions with the now owner, Mr. Benhoff; the Ruxton, Riderwood, Lake Roland Area Improvement Association, Inc.; and other neighbors adjacent to, with a view of, and near the subject property.

It may not be often that you are contacted by an interested property owner speaking on behalf of a "developer," but I am in favor of Mr. Benhoff's being permitted to proceed with construction on the home which has been begun at the subject property – with the support and cooperation of RRLRAIA and local neighbors, including an architect who lives near the subject property in an historically significant property.

My understanding of the case
My understanding is that the subject property was – at a point early in the process of interested neighbors' working to maintain the physical character of the neighborhood – assigned a Maryland Historic Trust number. However, ***because of an administrative error on the part of Baltimore County***, a hearing on the demolition of an existing home was not held as should have been once a compromise had been agreed upon by Mr. Benhoff, interested neighbors, and RRLRAIA.

According to my understanding, neither Mr. Benhoff, RRLRAIA, nor the group of neighbors who have been working with Mr. Benhoff to ensure that a home be built on the subject property appropriate to the neighborhood and in the architectural style of the home previously built on the

site – nor, for that matter, the various permitting agencies of the County from which Mr. Benhoff obtained permits as required – was aware that such a hearing should have been held. According to my understanding, Mr. Benhoff obtained required permits and began construction in complete good faith and with the support of the neighborhood groups involved.

My support for completion of the home which has been begun on the subject property
My reasons for urging you to permit construction to continue at the subject property are many:

1. Neighbors whose homes are adjacent to, in view of, and otherwise near the subject property have been kept well informed about the subject property since it was sold by its previous owner to Mr. Benhoff. We have had ample opportunity to be involved in matters pertaining to the property.

2. As mentioned above, the Maryland Historic Trust number was obtained simply as a stopgap measure by neighbors for two reasons: One, to prevent Mr. Benhoff from building four homes on the plot of land of which the subject property is a part: Two, we wanted to preserve an Arts & Craft style of home which is appropriate for the neighborhood. Therefore, it was our wish that three, not four, homes be situated on that plot and that the style and setting of the original home be maintained. ***Mr. Benhoff has been more than responsive*** to concerns that his building four homes on the plot–as he might well have done perfectly legally according to my understanding – would not be agreeable to immediate neighbors.

3. It became clear to the actively interested parties working to arrive at a mutually agreeable, common-sense resolution that retaining and expanding the existing home at 1401 Berwick Road would not be a viable approach. ***Mr. Benhoff worked with neighbors, with the above-mentioned architect, and with the cooperation of RRLRAIA to develop a design for a new home*** that would retain the architectural elements of the existing home and fit the character of the neighborhood. Adjacent neighbors were on several occasions given the opportunity to review and comment on the proposed design, and Mr. Benhoff modified the design in response.

4. The home on which agreement was reached was placed on a diagonal to both Berwick Road and Locust Avenue because the previous home on the subject property was so situated and adjacent neighbors felt strongly that the historic placement ought to be preserved. In order to preserve this placement, ***Mr. Benhoff applied for a zoning exception***, as the placement would require the new home's being closer to the south side of Berwick Road than the average of the proximity to the road of other homes on that side of the road. Note that homes on the north side of the road, including my own, are an average of just 17 feet from the road, much closer, by far, than the average distance of homes on the south side of the road. The zoning exception that Mr. Benhoff applied for was to build within the averaging prescribed 42.8 feet. Many homes in the immediate neighborhood are 30 feet or closer to their property lines. The proposed house is not within 30 feet of the property line at any point. There are 3 corners in the front that are within the 42.8 foot limit, but, due to the angle of the house, most of the house is well outside that limit. In the rear, the only section in violation abuts his own property.

5. In no instance has Mr. Benhoff, RRLRAIA, or the group of neighbors proposed or been granted any concessions, benefits, or other special "breaks" – not that any would have been possible given property law. ***This group of neighbors, adjacent to 1401 Berwick therefore most directly affected, have simply worked together along with others to come up with what we perceive as an equitable solution for us and Mr. Benoff.All meetings were open & efforts were made via email to keep the neighborhood informed.***

6. The subject property has been an idle construction site with a foundation and first floor decking with a huge pile of the original home's foundation stones and roof slates waiting to be used in the design and construction of the new home for well over six months. This is not the most attractive view possible for adjacent neighbors or the most safe situation for summertime play while Mr. Benhoff has been forced to wait for County action. Mr. Benhoff has erected safety fencing to help ensure the well-being of neighborhood children who play, as neighborhood children will, on the site.

7. That a demolition hearing on a historically numbered home was not held on a structure that all directly concerned parties agreed could be demolished is ***now a moot point***. The agreed-upon demolition & structure, properly permitted to the best of Mr. Benhoff's and the concerned County permitting agencies' knowledge, has been started. We acknowledge the importance of protecting historical sites. We are residents of a historically significant neighborhood and support the efforts and protection provided by the Trust. We did not intend to misuse or circumvent the Historic Trust. As stated at the beginning of this letter, we were simply ignorant of the proper procedure to follow once we had achieved the intent of the Historic Trust protection of preserving the Arts & Craft architectural style of the property.

Please let this man complete his project, let the adjacent neighbors see this appropriate Arts & Craft style home constructed, and let us all move on. There has been more than four years of hearings, discussions, permits and a seven month stoppage. **Enough is enough, most particularly when adjacent neighbors like myself, whose interests in this matter are paramount, support going forward.**

With the hope that you will let common sense prevail, I am

Sincerely,

Kent H. Walker, Resident and Owner
1402 Berwick Road
Towson, Maryland 21204-6508

24 July 2006

Mr. William J. Wiseman III
Zoning Commissioner
Baltimore County Courts Building
Suite 405
Towson, Maryland 21204

Re: **1401 Berwick Road**
Case No. 06-257-A

Dear Mr. Wisemann,

I am writing in support of the variance application of Mr. Mel Benhoff for continued construction of a residence at 1401 Berwick Road. I live in the immediate neighborhood, 1505 Berwick, and participated with in the long process of reaching a satisfactory construction solution between Mr. Benhoff and the Ruxton Heights Neighborhood.

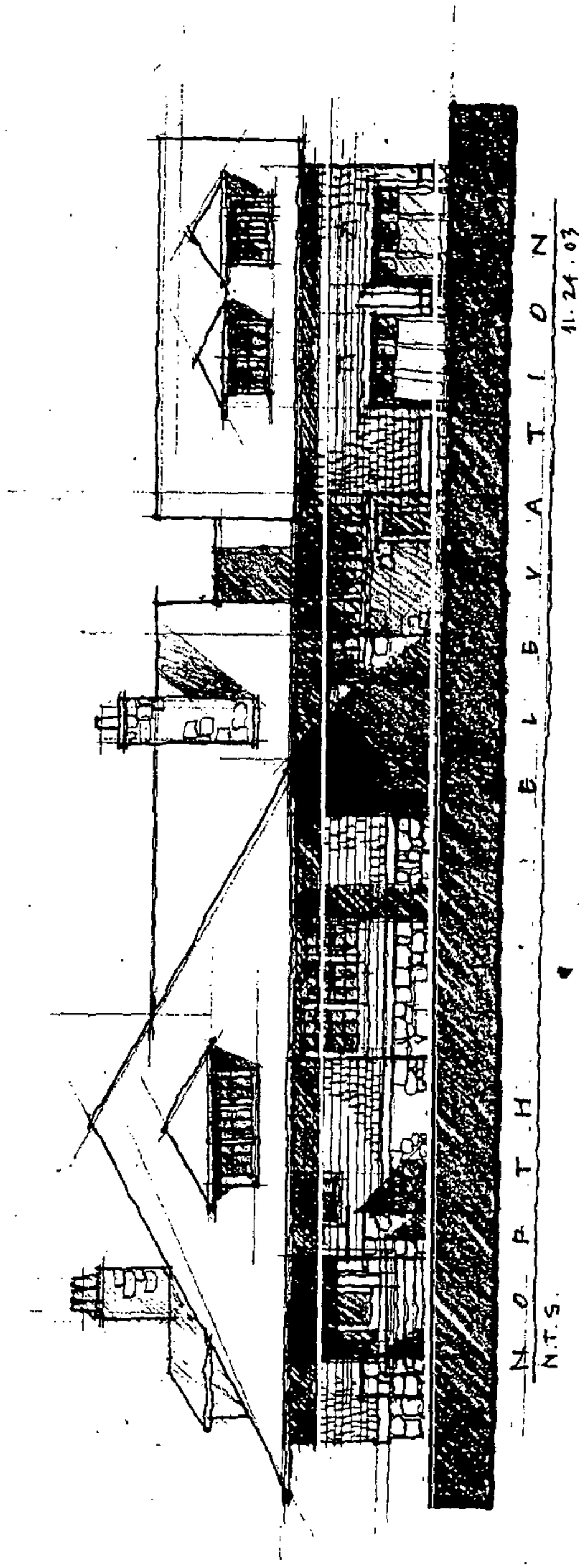
It was a process highlighted by many,many meetings both public and private between neighbors, developers, consultants, County Staff, County Commissioners, and County Council members. I was directly involved in the details of that compromise and the communication of the solution both the neighborhood and the developer. I can say that everyone in the neighborhood was given an opportunity to review and comment on the compromise solution. I can say that a unanimous consensus was reached.

In short, that consensus was reached because Mr. Benhoff agreed to follow a design that was both sympathetic to and, for much of the design, replicated the historic property that was demolished. Not only was there a verbal agreement there was review through the plan preparation to insure compliance. I attach the neighborhood desing which Mr. Benhoff followed.

It is difficult for me to understand the administrative technicalites that seem to have been breached, not by the neighborhood, but by the county's own process. However, it does seem that in this case the People's Counsel does not seem to represent the people as a whole. It would be sad for me to see all the efforts and all the good will by so many come to naught.

Sincerely,
LUCAS ASSOCIATES ARCHITECTS; P.C.

L. Franklyn Lucas Jr. AIA
President


NORTH ELEVATION
N.T.S.
41.24.03

BALTIMORE COUNTY, MARYLAND

DEPARTMENT OF PERMITS AND DEVELOPMENT MANAGEMENT
TOWSON, MARYLAND 21204

TIMOTHY M. KOTROCO
DIRECTOR

JOHN R. REISINGER
BUILDINGS ENGINEER

BUILDING PERMIT

PERMIT #: B558162 CONTROL #: RA DIST: 09 PREC: 01
DATE ISSUED: 07/27/2005 TAX ACCOUNT #: 0923154890 CLASS: 04

PLANS: CONST PLOT R PLAT DATA ELEC NO PLUM YES
LOCATION: 1401 BERWICK RD
SUBDIVISION: RUXTON HEIGHTS

OWNERS INFORMATION
NAME: BENHOFF BUILDERS INC
ADDR: 215 OLD PADONIA RD 21030

TENANT:
CONTR: 2ND CHANCE
ENGNR:
SELLR:
WORK: RAZE EX SFD.TO BE TORN DOWN.DEBRIS TO BE HAULED
TO APPROVED SANITARY LANDFILL IN ACCORDANCE W/
APPLICABLE BALTIMORE COUNTY REGULATIONS.
PERMIT EXPIRES 90 DAYS FROM DATE OF ISSUE.
BUILT 1940'S. 54'X71'=3.172SF IRREG
CAPOFF P597102 FINALED 7-25-05.AMB

BLDG. CODE:
RESIDENTIAL CATEGORY: DETACHED OWNERSHIP: PRIVATELY OWNED

PROPOSED USE: VACANT
EXISTING USE: SFD

TYPE OF IMPRV: WRECKING
USE: ONE FAMILY
FOUNDATION:
SEWAGE: PUBLIC EXIST

BASEMENT:
WATER: PUBLIC EXIST

LOT SIZE AND SETBACKS

SIZE: 189.40 X
FRONT STREET:
SIDE STREET:
FRONT SETB: NC
SIDE SETB: NC
SIDE STR SETB:
REAR SETB: NC

Motions Hearing
PROTESTANT'S

EXHIBIT NO. 1

~~OFFICE INSPECTOR COPY~~

1401 BERWICK AVE. - HISTORIC

Case No.: 06-257-A

Exhibit Sheet

	Petitioner/Developer	Protestant
No. 1	REVISED SITE PLAN	
No. 2	Agreement - Berkoff Builders and RRLRAL	
No. 3	Letters OF SUPPORT	
No. 4	Ruxton - Riderwood - Lake Roland Improv. Assoc	
No. 5	George Gross & Amy Macht	
No. 6		
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

WHITEFORD, TAYLOR & PRESTON L.L.P.

SEVEN SAINT PAUL STREET
BALTIMORE, MARYLAND 21202-1626
TELEPHONE 410 347-8700
FAX 410 752-7092

20 COLUMBIA CORPORATE CENTER
10420 LITTLE PATUXENT PARKWAY
SUITE 495
COLUMBIA, MARYLAND 21044-3528
TELEPHONE 410 884-0700
FAX 410 884-0719

JENNIFER R. BUSSE
DIRECT NUMBER
410 832-2077
jbusse@wtplaw.com

210 WEST PENNSYLVANIA AVENUE
TOWSON, MARYLAND 21204-4515
410 832-2000
FAX 410 339-4027
www.wtplaw.com

1025 CONNECTICUT AVENUE, NW
WASHINGTON, D.C. 20036-5405
TELEPHONE 202 659-6800
FAX 202 331-0573

115 ORONOCO STREET
ALEXANDRIA, VIRGINIA 22314
TELEPHONE 703 836-5742
FAX 703 836-3558

PETITIONER'S
EXHIBIT NO. 2

December 1, 2005

Diana Itter, Assistant Chief
Baltimore County Office of Planning
401 Bosley Avenue
Room 406
Towson, Maryland 21204

Re: 1401 Berwick Road
Zoning Case No. 06-257-A

Dear Diana:

Enclosed please find a copy of the Agreement between Benhoff Builders and the RRLRAI. You requested I provide you with this document. Again, I draw your attention to the fact that the Community is in support of Mr. Benhoff's zoning petition. Mr. Benhoff is proposing a house that complies with the requests of the neighborhood with regard to all set-backs.

Please contact me with any questions or concerns.

Sincerely,

Jennifer R. Busse

JRB:tdm
Enclosure
350107

Fax Cover

From : George Grose

1412 LaBelle Avenue

Ruxton, Md. 21204

Tel: 410-321-8510

Fax: 410-337-8712

grgrose@comcast.net

To: **Jennifer Bussee**

Baltimore County Office of Planning

Fax: 410-339-4027

Mel Benhoff asked me to fax this to you. The suggested site plan that is mentioned in the agreement has been reduced so I could fax it, and therefore is not to scale. Mr. Kotroco, Mr. Kamenetz and (I thought) also the Planning Director have copies of the letter from the Ruxton Riderwood Lake Roland Area Improvement Association giving approval that Mr. Benhoff's plans complied with the agreement. That letter includes signatures of approval from the adjacent property owners, as well as others in the neighborhood.

This page should be followed by 7 more.

Copy

AGREEMENT

THIS AGREEMENT made this 30th day of Nov, 2003, between Benhoff Builders, Inc. (Benhoff) and the Ruxton Riderwood Lake Roland Area Improvement Association, Inc. (Ruxton).

WHEREAS, Benhoff is the owner of a property located on Berwick Road in Ruxton (the Property) which consisted of 1.159 acres when it was acquired by a deed dated August 9, 2002 recorded at liber, 16692, folio 293 of the Land Records of Baltimore County and it intended to demolish the existing structure located at 1401 Berwick Road which the neighborhood considered part of its historic character and construct four dwelling units on the Property; and

WHEREAS, Ruxton opposed these plans; and

WHEREAS, the parties have reached an agreement whereby the number of residences on the Property shall be reduced from four to three and the residence in the northern portion of the property, now occupied by the residence at 1401 Berwick Road, shall be designed according to plans and specifications approved by Ruxton, incorporating certain elements of the existing residence on the property and the style of architecture of the existing residence.

NOW THEREFORE the parties agree as follows:

1.No more than three residences may be located on the Property. One residence is already constructed, located in the southeast corner of the property, and has been conveyed by Benhoff pursuant to a deed dated November 14, 2002

and recorded among the Land Records of Baltimore County at liber 17088, folio167. This Agreement shall have no application to this property that has already been conveyed. One residence may be constructed located in the southwest corner of the property. This Agreement shall have no application to this residence (except for any necessary lot line adjustments as described below). A third residence (the Residence) may be constructed on the northern portion of the Property according to the standards set forth below.

2. The Residence shall be constructed in accordance with the conceptual plans, site plan and narrative description (the Plans) prepared by Lucas Associates Architects attached hereto as Exhibit I. These plans describe the process of deconstruction and reconstruction of the house in the same orientation but slightly relocated. Benhoff may make minor changes to the Plans after obtaining the reasonable approval of Ruxton. Before a building permit is applied for, final architectural plans and specifications and a final site plan conforming generally to the Plans set forth in Exhibit 1, shall be prepared and submitted to Ruxton for its reasonable approval.

3. Ruxton acknowledges that the construction of the Residence according to the Site Plan (Exhibit 1) may require a lot line adjustment or a variance and hereby grants its consent provided they are in accordance with the Plans (Exhibit 1).

4. This Agreement shall be recorded among the land records of Baltimore County and shall constitute a covenant running with the land and binding the parties, their personal representatives, successors and assigns.

5. This Agreement shall be incorporated into any building permit issued by the Baltimore County Office of Permits and into any site plan, variance or other decision approved by or rendered by a unit of Baltimore County government for the Residence.

6. This Agreement shall be recognized as a conservation easement in accordance with Section 2-118 of the Real Property Article of the Annotated Code of Maryland and the parties acknowledge Ruxton as a proper party to hold and enforce the conservation easement. The parties acknowledge that damages are an insufficient remedy for breach of this Agreement and Benhoff hereby consents to injunctive relief to enjoin violation of this agreement and that Ruxton shall be entitled to its costs and reasonable attorneys fees in the event it prevails in any such action.

IN WITNESS WHEREOF, the parties have set their hands and seals this ____day of _____, 2003.

WITNESS:

BENHOFF BUILDERS, INC.

_____

BY_____

RUXTON RIDERWOOD LAKE
Area
ROLAND IMPROVEMENT
ASSOCIATION, INC.

BY _____ / President RRLRA, A

COUNTY OF BALTIMORE, STATE OF MARYLAND, TO WIT:

I HEREBY CERTIFY, that on this _____day of _____, 2003, before me, a Notary Public in and for Baltimore County, Maryland, personally appeared_____who identified himself to me as the President of Benhoff Builders, Inc. and, as such President, made oath in due form of law that the foregoing Agreement constitutes the act and deed of the said corporation.

_____

Notary Public:

My Commission Expires:

COUNTY OF BALTIMORE, STATE OF MARYLAND, TO WIT:

I HEREBY CERTIFY, that on this 30 day of November 2003, before me, a Notary Public in and for Baltimore County, Maryland, personally appeared Michael A. Sicher who identified himself to me as the President of the Ruxton Riderwood Lake Roland Area Improvement Association, Inc. and, as such President, made oath in due form of law that the foregoing Agreement constitutes the act and deed of the said corporation.

MARGARET S. SPECHT NOTARY PUBLIC BALTIMORE CO., MD.

Margaret S. Specht
Notary Public
My Commission expires 9/6/05

LUCAS
ASSOCIATES
Architects

1014 West 36th Street
Baltimore, Maryland 21211

Phone 410-467-8200
Fax 410-467-0965
info@lucasarchitects.com

www.lucasarchitects.com

To: John Murphy

From: Frank Lucas

Date: 24 November 2003

Re: of 1401 Berwick Road

M E M O R A N D U M

To begin, we have accepted the concept proposed by Mr. Benhoff of historically deconstructing, salvaging existing materials, and reconstructing an historically accurate replication, with some modifications, of the original house in a slightly relocated position in order to make the parcel boundaries of the three house development less constrained.

The attached sketches show a potential for preserving the important characteristics, eliminating the effects of poor renovations in the past, and adding to the historic house in a manner sympathetic both to the developers goals and the historic character of the house.

The important characteristics of the existing house that must be maintained in the reconstruction:

1. The orientation of the primary house massing should stay the same. This is approximately 40 degrees (plus or minus) to the property line at Berwick. In other words, if the house moves, its wall alignment must stay parallel to the original wall alignment.

2. The dimensions and proportions of the original house must be maintained, especially on the exterior. These include the overall footprint of the stone foundation (approximately 53'-6" x 48'-2"), the locations and dimensions of the stone porch on the east façade (approximately 16'-2" x 16'-0"), the height of the main floor above grade both at the front and back, the height of the main floor to the overhang, the height of the main floor to the peak of the roof and the roof slope, the projection dimension of the roof overhang, the width and height of the roof dormers. The interior dimension from the main floor to the upper floor may be increased to 9'-0" while maintaining the height of the exterior soffit of the roof overhang to the main floor.

LUCAS
ASSOCIATES
Architects

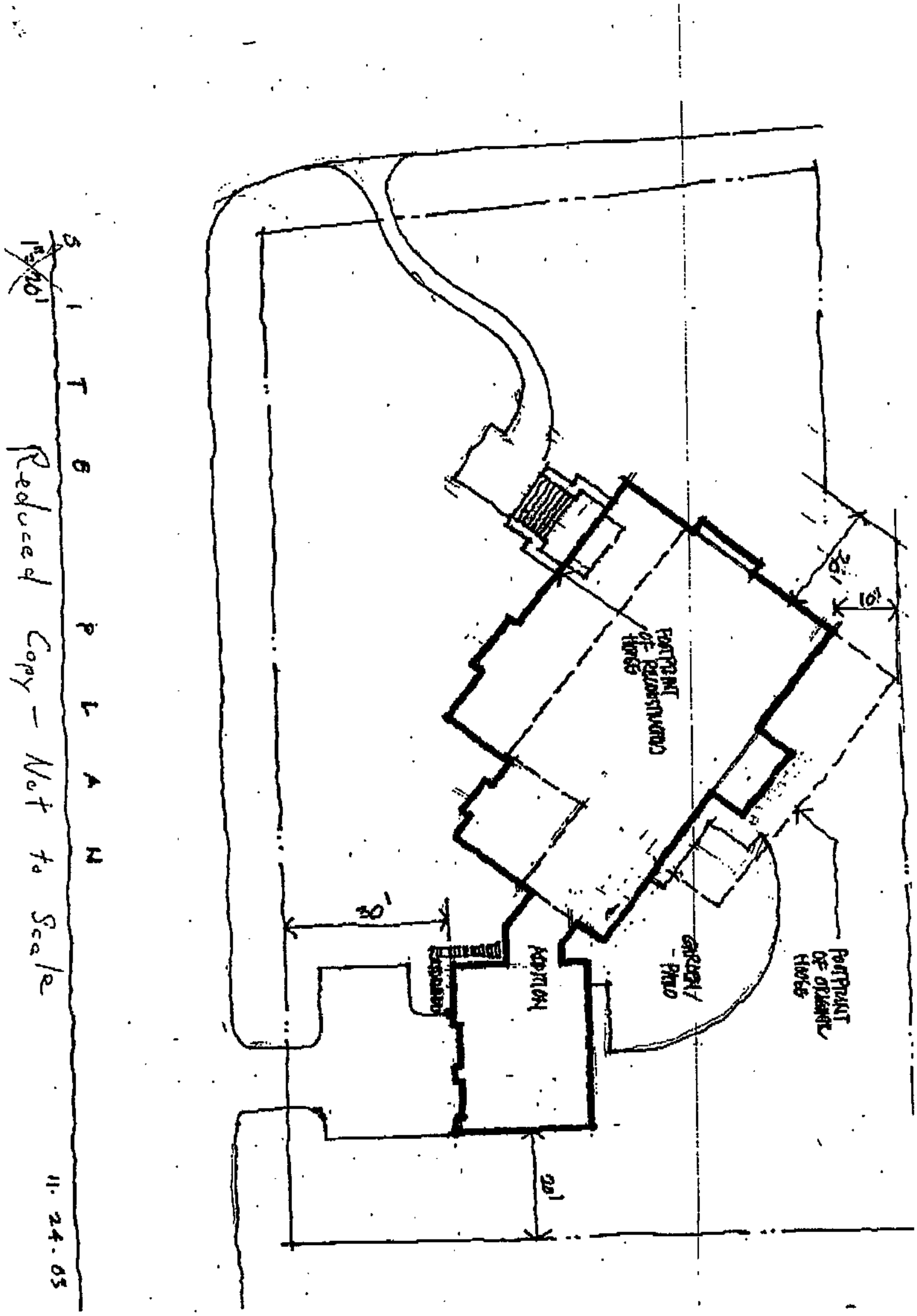
3. Other characteristics that should be maintained include the location of the two fireplaces and their masonry chimneys. One is located in the main body of the house, and as shown on the attached sketches, has become a part of the living room while staying on axis with the main entrance, off center to the main house. The other is in the stone sun porch. They are both important to maintain.

4. The windows of the dormers should be restored or replicated. The primary window of the main level facades should primarily be compositions 6 over 6 mullions in double hung windows.

5. Materials that should be salvaged for reconstruction or replicated exactly include the stone of the foundation, porch, and fireplaces, the slate of the roof, the herringbone pattern of brick on the porch floor, the diamond pattern of the terracotta tile of the main fireplace, and a replication of door and trim profiles and panels. The exterior siding material should be wood shingles.

6. One of the organizational approaches which are apparent both in the plan layouts of both 1401 Berwick and the sister house on Labelle is the use of a long great hallway, used a primary living spaces which passes through the houses connecting daylight to daylight. This organizational idea, which follows the structural organization, should also be maintained. Other plan modifications and room designations, such as the incorporation of the master bedroom into the upper level of the historic house and the use of the upper level over the garage as a guest bedroom, are acceptable with review.

The attached sketches show acceptable modifications to the original historic mass. These include bay projections, French doors, a single new dormer matching the existing on the side roof facing Locust, a larger dormer or intersecting roof on the opposite side which covers the porch and allows for more bedrooms on the upper level, and a link which connects the historic house to a new garage/bedroom wing skewed to the original, and a roof extension covering a laundry projection. In all cases these modifications do not compromise, change, or make the historic massing unrecognizable. Also, as indicated by the attached sketches, the addition cannot exceed the existing mass in height nor vary from the style. Care should be taken to maintain as closely as possible the existing grade and landscaping of the lot, including the two large oak trees on Locust Street which frame the proposed driveway for the new house on Property Three, as well as the beech and walnut trees on the west side of the property and the hemlocks along Berwick Road.


30'
20'
10'
20'
30'
ADDITION
ORIGINAL BLDG
PORTIONS OF ORIGINAL HOUSE
PORTIONS OF ORIGINAL HOUSE
Reduced Copy - Not to Scale
11.24.05

The Ruxton-Riderwood-Lake Roland Area Improvement Association, Inc

P. O. Box 204
Riderwood, Maryland 21139
Phone / FAX: 410/494-7757
office@rrlraia.org/ruxrider@bcpl.net

PETITIONER'S
EXHIBIT NO. 3

October 25, 2005

Mr. Timothy Kotroco
Baltimore County Department of Permits and Development Management
111 West Chesapeake Avenue, M.S. 1105
Towson, MD 21204

RE: 1401 Berwick Road Ruxton, Maryland 21204

Dear Mr. Kotroco:

As you know, the Ruxton Riderwood Lake Roland Area Improvement Association (the "Association") entered into an Agreement with Benhoff Builders, Inc. ("Benhoff") on November 30th, 2003, whereby the number of residences on the property at Berwick Road (the "Property") was reduced from four to three. The Agreement also stipulated that the residence at 1401 Berwick Road will be designed according to plans and specifications approved by the Association incorporating certain elements of the existing residence on the property and the style of architecture of the existing residence.

The Association reviewed Benhoff's plans, dated October 12, 2005(the "Plans"), for the new house to be built at 1401 Berwick Road and we believe Benhoff has satisfied the requirements outlined in Exhibit 1 of the Agreement. Benhoff addressed the following issues in the Plans:

- Duplicating the orientation of the old house with the new house in a slightly shifted location
- Replicating the dimensions of the original house in the main structure of the new house
- Including the footprint of the main body of the house
- The overall height, while maintaining the exterior soffit to main floor and ground relationship
- Some recycling of original materials including stone from the foundation and slate from the roof, appropriate new and matching materials.

This letter serves as the Association's notification supporting the variance required as described in the Agreement for the construction of 1401 Berwick Road. We would, however, request that your Department give the Association the opportunity to review with the neighbors and sign the County approved construction documents prior to the actual issuance of a construction permit. This request is in keeping with the requirements outlined in the Agreement.

GEORGE R. GROSS

1412 LaBelle Avenue
Ruxton, MD. 21204
grgross@comcast.net

October 20, 2005

Kimberly Warren
President, RRLRAIA
605 Meadowridge Road
Towson, MD. 21204

Dear Kimberly,

This letter serves as a formal notification to the RRLRAIA from the neighbors of the property located at 1401 Berwick Road in Ruxton Heights.

With his most recently submitted plans dated 10/12/05 for the new house to be built, the owner, Mr. Mel Benhoff, has complied with all the issues listed in the Agreement with RRLRAIA and dated November 30, 2003. This includes issues addressed in Exhibit1 of the Agreement, such as duplicating the orientation of the old house with the new house in a slightly shifted location, the replication of the dimensions of the original house in the main structure of the new house, including the footprint of the main body of the house, and the overall height, while maintaining the exterior soffit to main floor and ground relationship, some recycling of original materials, including stone from the foundation and slate from the roof, appropriate new and matching materials, and other general design concerns.

Therefore, we are requesting that RRLRAIA proceed with the approval process, providing written notification to Baltimore County Department of Permits and Development Management and supporting the variance Mr. Benhoff will require, as per the Agreement.

We also recommend that the RRLRAIA request to this same Department that RRLRAIA have the opportunity to review with the neighbors of the property and sign the County approved construction documents prior to the actual issuance of a construction permit.

Thank you for your attention to this matter.

Sincerely,

George R. Gross

George R. Gross

And also signed:

** J. Walker 1402 Berwick Rd

George R. Gross 1412 LaBelle Ave. Amy Macart

** [illegible] 1308 Locust Ave

** [illegible] Rd

[illegible] AIA 1305 Berwick

[illegible] Williams 1405 LaBelle Ave.

Mary Sue McCarty 1501 Berwick Rd

** [illegible] A. Scherf 1310 Locust Ave., Towson 21204

** William F. Murphy, 1314 Locust Avenue 21204

** Sam Alman 1400 Locust Ave 21204

* Joseph Adams 1405 Berwick Rd.

* Paul N. [illegible] Susan Deuhead 1404 La Belle Ave., Towson 21204

** immediately across the street
* immediately adjacent

Thank you for your attention to this matter.

Sincerely yours,

Kimberly Warren, President

Cc: Councilman Kevin Kamenetz
Planning Director Pat Keller
Melvin Benhoff
Janie Cahn
George Grose

PETITIONER'S EXHIBIT NO. 4

The Ruxton-Riderwood-Lake Roland Area Improvement Association, Inc.

P. O. Box 204
Riderwood, Maryland 21139
Phone / FAX: 410/494-7757
office@rrlraia.org

December 20, 2005

Zoning Commissioner
401 Bosley Avenue - Room 405
Towson, Maryland 21204

Reference Case # 06-257-A

Dear Sir:

On behalf of the Ruxton-Riderwood-Lake Roland Area Improvement Association, Inc., I write in support of a Zoning Variance request for property owned by Mr. Melvin Benhoff at 1401 Berwick Road.

Although the RRLRAIA often opposes variances, there are occasions when support may be advantageous to the neighborhood and the community. This is one such case. Both the neighborhood and the community have worked with Mr. Benhoff for some time to restrict the lot to one house constructed in keeping with the house that formerly occupied the property in terms of size, height, style, materials, and orientation on the lot.

As per the attached letter to Mr. Kotroco, RRLRAIA and the immediate neighbors agree that Mr. Benhoff has designed the house on the lot according to the standards requested by the community.

Therefore, RRLRAIA herein grants its consent to the variance request for this property.

Sincerely,

James D. Cahn
Zoning Chair, RRLRAIA

Cc: Timothy Kotroco
Kimberly Warren
George Grose

PETITIONER'S

EXHIBIT NO. 5

Zoning Commissioner
401 Bosley Avenue
Room 405
Towson, Maryland 21204
Ref. Case # 06-257-A

Dear Sir,
We are writing as involved representatives of the Ruxton Heights neighborhood concerning the above noted case, which concerns 1401 Berwick Road, owned by Mr. Melvin Benhoff.

This property has been the basis of a neighborhood issue since the Fall of 2003, when it appeared that the existing house on the property, one of the original houses in the neighborhood, was to be demolished imminently. There was a strong neighborhood effort to save that house, but ultimately the neighborhood decided to compromise with Mr. Benhoff so as to maintain one house at the address, constructed in the same style and size as the original house, with an addition. Mr. Benhoff also agreed in this compromise to utilize some of the existing materials, maintain the height of the house from grade to peak of roof and from grade to soffit, and also, importantly, to retain the diagonal orientation of the house on the lot. This was important to the neighborhood as it maintained some historical visual continuity and reflected the house at the far diagonal of the four street island, which is also built in a diagonal orientation to its lot.

During these subsequent years, the neighborhood, particularly Mr. Frank Lucas, A.I.A. who is both a neighbor and former President of the local A.I.A. has been working with Mr. Benhoff's architect to produce a plan that accurately reflects the compromise. After some give and take, and back and forth, a plan developed which does respond to the stipulations of the compromise with the neighborhood, and although it needs variance exceptions for construction, it is both acceptable and far preferable to the original plan, which called for 2 houses on the lot.

In addition to the design considerations outlined above, the single house allows for a 30 feet side yard from the adjacent house and the street opposite instead of 10 or 15 feet if there were two houses. Therefore there is more separation from the adjacent neighbors. While the proposed house needs a variance for 15 feet instead of 30 feet in the rear yard, it is only a 16ft. by 16ft. corner of the house that violates the rear setback. Because of its

diagonal orientation, most of the house substantially exceeds the 30 ft rear setback requirement. Additionally, this 16ft. by 16 ft. corner in violation backs up to Mr. Benhoff's own property.

When we checked with the County Zoning desk, we were given a sheet with a chart showing the minimum front yard set back in a DR 3.5 zone to be 30 feet, which this house meets. However, there must be some further regulations that cause this particular situation to require 42.8 feet. Be that as it may, in the front, whereas the original house had one or two small corners that technically were in violation of the 42.8 foot setback requirement, the new structure, whose footprint was moved forward towards Berwick Road 11 feet, now has 3 corners involved. Again, because of the diagonal orientation, a substantial portion of the front of the house is in compliance. Additionally, it should be noted that the county owns a 10 foot right of way in front of the property, so although the corners in question are at least 30 feet from the front property line, they are actually 40 feet from the curb of Berwick Road.

Mr. Benhoff has further agreed to keep and extend a large existing screening hedge along Berwick Road.

In summary, although this is a neighborhood where variance requests are usually frowned upon, this is a situation where it is advantageous to the neighborhood in this case to see the variances granted. All the most immediate neighbors, both adjacent to the property and directly across the street have signed their approval for the plans. We have included a copy of this signature letter for your information. The Ruxton Riderwood Lake Roland Association, with whom the original compromise agreement was signed, also supports the neighborhood in this opinion and has so written.

Thank you for the opportunity to comment on this issue.

George Grose and Amy Macht
1412 LaBelle Avenue
Ruxton, Md. 21204

AGREEMENT

THIS AGREEMENT made this 30th day of Nov, 2003, between Benhoff Builders, Inc. (Benhoff) and the Ruxton Riderwood Lake Roland Area Improvement Association, Inc. (Ruxton).

WHEREAS, Benhoff is the owner of a property located on Berwick Road in Ruxton (the Property) which consisted of 1.159 acres when it was acquired by a deed dated August 9, 2002 recorded at liber, 16692, folio 293 of the Land Records of Baltimore County and it intended to demolish the existing structure located at 1401 Berwick Road which the neighborhood considered part of its historic character and construct four dwelling units on the Property; and

WHEREAS, Ruxton opposed these plans; and

WHEREAS, the parties have reached an agreement whereby the number of residences on the Property shall be reduced from four to three and the residence in the northern portion of the property, now occupied by the residence at 1401 Berwick Road, shall be designed according to plans and specifications approved by Ruxton, incorporating certain elements of the existing residence on the property and the style of architecture of the existing residence.

NOW THEREFORE the parties agree as follows:

1.No more than three residences may be located on the Property. One residence is already constructed, located in the southeast corner of the property, and has been conveyed by Benhoff pursuant to a deed dated November 14, 2002

Original Recorded
Date 1/13/06
By

PETITIONER'S
EXHIBIT NO. 2

and recorded among the Land Records of Baltimore County at liber 17088, folio167. This Agreement shall have no application to this property that has already been conveyed. One residence may be constructed located in the southwest corner of the property. This Agreement shall have no application to this residence (except for any necessary lot line adjustments as described below). A third residence (the Residence) may be constructed on the northern portion of the Property according to the standards set forth below.

2. The Residence shall be constructed in accordance with the conceptual plans, site plan and narrative description (the Plans) prepared by Lucas Associates Architects attached hereto as Exhibit I. These plans describe the process of deconstruction and reconstruction of the house in the same orientation but slightly relocated. Benhoff may make minor changes to the Plans after obtaining the reasonable approval of Ruxton. Before a building permit is applied for, final architectural plans and specifications and a final site plan conforming generally to the Plans set forth in Exhibit 1, shall be prepared and submitted to Ruxton for its reasonable approval.

3. Ruxton acknowledges that the construction of the Residence according to the Site Plan (Exhibit 1) may require a lot line adjustment or a variance and hereby grants its consent provided they are in accordance with the Plans (Exhibit 1).

Date 1/13/16
By

4. This Agreement shall be recorded among the land records of Baltimore County and shall constitute a covenant running with the land and binding the parties, their personal representatives, successors and assigns.

5. This Agreement shall be incorporated into any building permit issued by the Baltimore County Office of Permits and into any site plan, variance or other decision approved by or rendered by a unit of Baltimore County government for the Residence.

6. This Agreement shall be recognized as a conservation easement in accordance with Section 2-118 of the Real Property Article of the Annotated Code of Maryland and the parties acknowledge Ruxton as a proper party to hold and enforce the conservation easement. The parties acknowledge that damages are an insufficient remedy for breach of this Agreement and Benhoff hereby consents to injunctive relief to enjoin violation of this agreement and that Ruxton shall be entitled to its costs and reasonable attorneys fees in the event it prevails in any such action.

IN WITNESS WHEREOF, the parties have set their hands and seals this 1st day of December, 2003.

WITNESS:

BENHOFF BUILDERS, INC.

BY Melvin C Benhoff

COPY RECEIVED FROM TRUST
Date 11/3/06
By

RUXTON RIDERWOOD LAKE
Area
ROLAND IMPROVEMENT

ASSOCIATION, INC.

BY Michael A. Sicher / President RRLRA:A

Denise R. Dunn, Witness

COUNTY OF BALTIMORE, STATE OF MARYLAND, TO WIT:

I HEREBY CERTIFY, that on this 1st day of December, 2003, before me, a Notary Public in and for Baltimore County, Maryland, personally appeared Melvin C. Benhoff who identified himself to me as the President of Benhoff Builders, Inc. and, as such President, made oath in due form of law that the foregoing Agreement constitutes the act and deed of the said corporation.

Marie B. Banusick

Notary Public:

My Commission Expires: 9/01/07

COUNTY OF BALTIMORE, STATE OF MARYLAND, TO WIT:

I HEREBY CERTIFY, that on this 30 day of November 2003, before me, a Notary Public in and for Baltimore County, Maryland, personally appeared Michael A. Sicher who identified himself to me as the President of the Ruxton Riderwood Lake Roland Area Improvement Association, Inc. and, as such President, made oath in due form of law that the foregoing Agreement constitutes the act and deed of the said corporation.

MARGARET S. SPECITTERI NOTARY PUBLIC BALTIMORE CO., MD.

Margaret S. Specitteri
Notary Public
My Commission expires 9/6/05

AMENDMENT
Date 1/13/06
By

Exhibit 1

LUCAS
ASSOCIATES
Architects

1014 West 36th Street
Baltimore, Maryland 21211

Phone 410-467-8200
Fax 410-467-0965
info@lucasarchitects.com

www.lucasarchitects.com

To: John Murphy

From: Frank Lucas

Date: 24 November 2003

Re: of 1401 Berwick Road

M E M O R A N D U M

To begin, we have accepted the concept proposed by Mr. Benhoff of historically deconstructing, salvaging existing materials, and reconstructing an historically accurate replication, with some modifications, of the original house in a slightly relocated position in order to make the parcel boundaries of the three house development less constrained.

The attached sketches show a potential for preserving the important characteristics, eliminating the effects of poor renovations in the past, and adding to the historic house in a manner sympathetic both to the developers goals and the historic character of the house.

The important characteristics of the existing house that must be maintained in the reconstruction:

1. The orientation of the primary house massing should stay the same. This is approximately 40 degrees (plus or minus) to the property line at Berwick. In other words, if the house moves, its wall alignment must stay parallel to the original wall alignment.

2. The dimensions and proportions of the original house must be maintained, especially on the exterior. These include the overall footprint of the stone foundation (approximately 53'-6" x 48'-2"), the locations and dimensions of the stone porch on the east façade (approximately 16'-2" x 16'-0"), the height of the main floor above grade both at the front and back, the height of the main floor to the overhang, the height of the main floor to the peak of the roof and the roof slope, the projection dimension of the roof overhang, the width and height of the roof dormers. The interior dimension from the main floor to the upper floor may be increased to 9'-0" while maintaining the height of the exterior soffit of the roof overhang to the main floor.

ORDER RECEIVED FOR PROCESSING
Date 11/25/03
By

LUCAS
ASSOCIATES
Architects

3. Other characteristics that should be maintained include the location of the two fireplaces and their masonry chimneys. One is located in the main body of the house, and as shown on the attached sketches, has become a part of the living room while staying on axis with the main entrance, off center to the main house. The other is in the stone sun porch. They are both important to maintain.

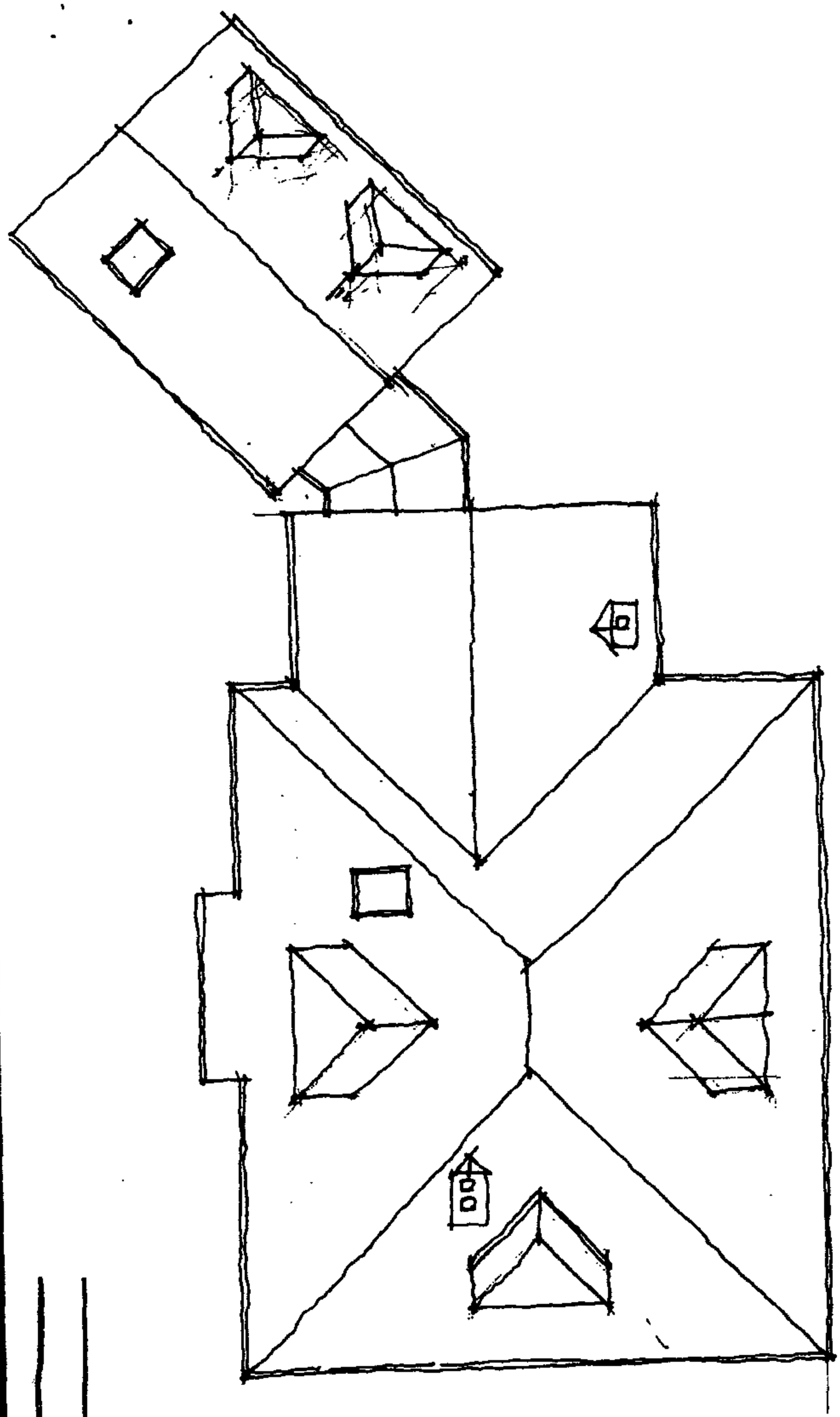
4. The windows of the dormers should be restored or replicated. The primary window of the main level facades should primarily be compositions 6 over 6 mullions in double hung windows.

5. Materials that should be salvaged for reconstruction or replicated exactly include the stone of the foundation, porch, and fireplaces, the slate of the roof, the herringbone pattern of brick on the porch floor, the diamond pattern of the terracotta tile of the main fireplace, and a replication of door and trim profiles and panels. The exterior siding material should be wood shingles.

6. One of the organizational approaches which are apparent both in the plan layouts of both 1401 Berwick and the sister house on Labelle is the use of a long great hallway, used a primary living spaces which passes through the houses connecting daylight to daylight. This organizational idea, which follows the structural organization, should also be maintained. Other plan modifications and room designations, such as the incorporation of the master bedroom into the upper level of the historic house and the use of the upper level over the garage as a guest bedroom, are acceptable with review.

The attached sketches show acceptable modifications to the original historic mass. These include bay projections, French doors, a single new dormer matching the existing on the side roof facing Locust, a larger dormer or intersecting roof on the opposite side which covers the porch and allows for more bedrooms on the upper level, and a link which connects the historic house to a new garage/bedroom wing skewed to the original, and a roof extension covering a laundry projection. In all cases these modifications do not compromise, change, or make the historic massing unrecognizable. Also, as indicated by the attached sketches, the addition cannot exceed the existing mass in height nor vary from the style. Care should be taken to maintain as closely as possible the existing grade and landscaping of the lot, including the two large oak trees on Locust Street which frame the proposed driveway for the new house on Property Three, as well as the beech and walnut trees on the west side of the property and the hemlocks along Berwick Road.

ORIGINAL RECEIVED
Date 11/3/06
By



11.24.05

PLAN OF ROOF

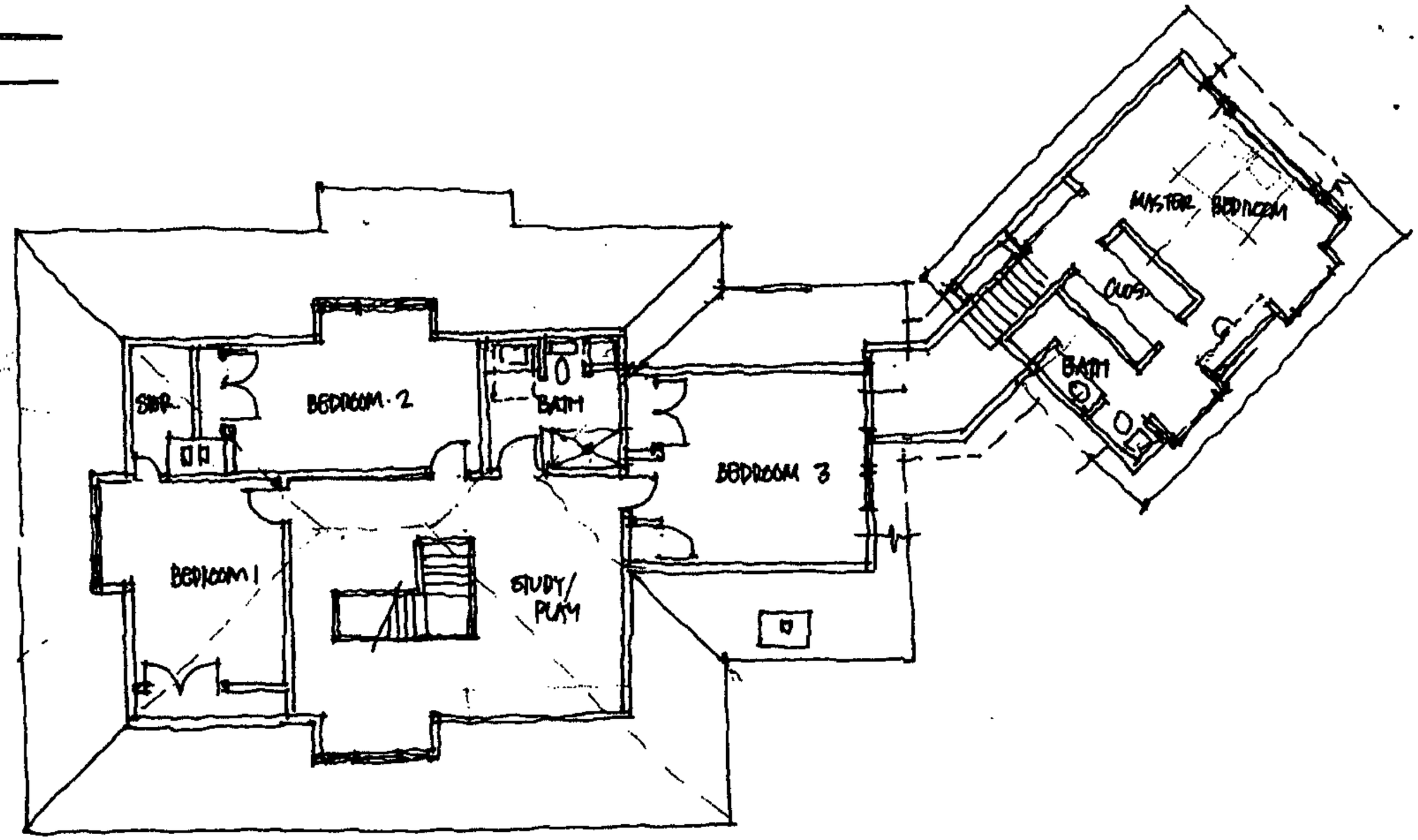
NTS

Date 11/3/06

By

ORIGINAL RECEIVED FOR FILING
Date 1/13/06
By

BA CIRCUIT COURT (Land Records) [MSA CE 62-19155] SM 19300, p. 0033



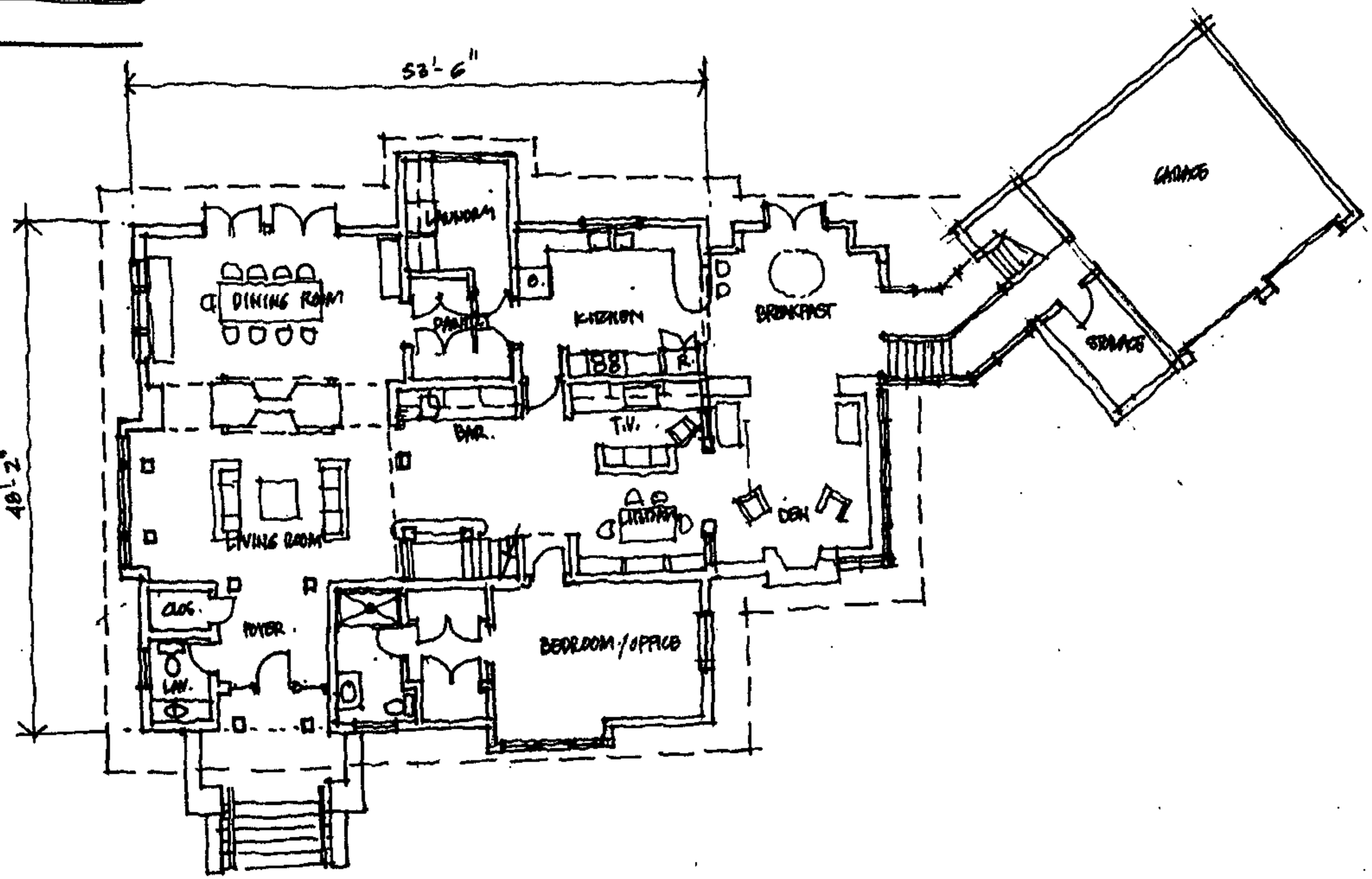
FLOOR PLAN - UPPER.

NTS.

11.24.03

0019300.033

ORI
Date 1/13/06.
By



F L O O R P L A N M A I N

1" = 10'

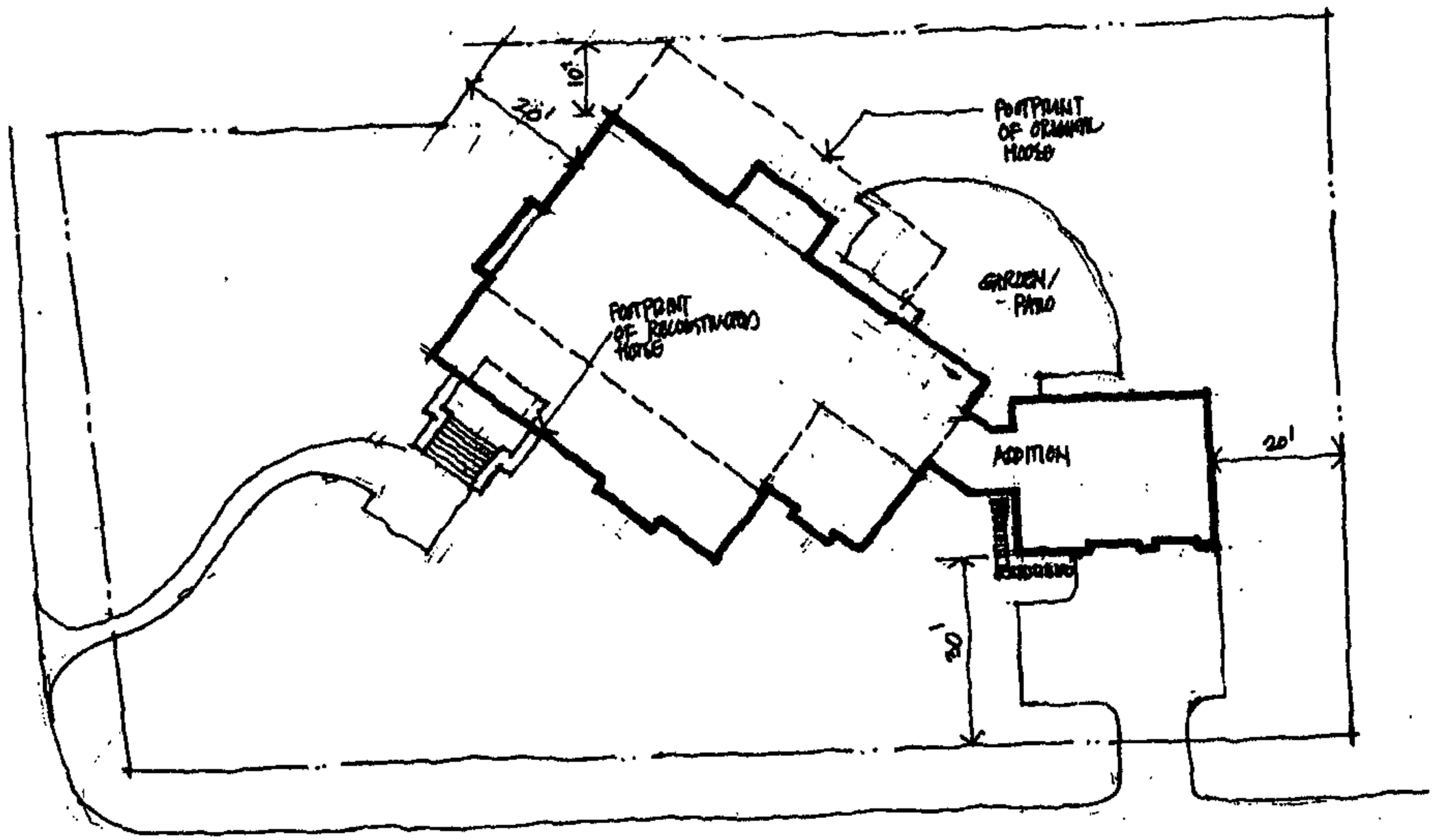
11.24.03

BA CIRCUIT COURT (Land Records) [MSA CE 62-19155] SM 19300, p. 0034

0019300.034

OR
Date 1/13/06
By

BA CIRCUIT COURT (Land Records) [MSA CE 62-19155] SM 19300, p. 0035



S I T E P L A N

1" = 20'

11. 24. 03

0019300 035

001 9300 0037

Space Reserved for Clerk Recording Validation

TRANSFER TAX $ 38.00
RECORDING FEE 75.00
TOTAL 35.00
Rcpt # 48927
Blk # 2217
Date 15 Dec 2003 04:09 PM

State of Maryland Land Instrument Intake Sheet

☐ Baltimore City ☒ County: Baltimore

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

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

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

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

2 Conveyance Type Check Box

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

3 Tax Exemptions (if Applicable) Cite or Explain Authority

Recordation
State Transfer
County Transfer

4 Consideration and Tax Calculations

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

Finance Office Use Only — Transfer and Recordation Tax Consideration	
Transfer Tax Consideration	$
X ( ) % =	$
Less Exemption Amount –	$
Total Transfer Tax =	$
Recordation Tax Consideration	$
X ( ) per $500 =	$
TOTAL DUE	$
Agent:	
Tax Bill:	
C.B. Credit:	
Ag. Tax/Other:	

5 Fees

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

EAS

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

District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG ☐ (5)

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

Location/Address of Property Being Conveyed (2)

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

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

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

If Partial Conveyance, List Improvements Conveyed:

7 Transferred From

Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
Bentoff Builders, Inc	
Doc. 1 - Owner(s) of Record, if Different from Grantor(s)	**Doc. 2 - Owner(s) of Record, if Different from Grantor(s)**

8 Transferred To

Doc. 1 - Grantee(s) Name(s)	Doc. 2 - Grantee(s) Name(s)
Ruxton Riderwood Lake Roland Area Improvement Association	

New Owner's (Grantee) Mailing Address

9 Other Names to Be Indexed

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

10 Contact/Mail Information

Instrument Submitted By or Contact Person
Name: John C. Murphy
Firm: Law Offices of John C. Murphy
Address: 516 N. Charles St. Ste 206, Baltimore MD 21201
Phone: (410) 625-4829

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

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

Assessment Information

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

Assessment Use Only - Do Not Write Below This Line

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

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

Year	20	20	Geo.	TAX NOT REQUIRED		Block
Land			Zoning	Directors' Budget and Finance		Lot
Buildings			Use	BALTIMORE COUNTY, MARYLAND		Occ. Cd.
Total			Town Cd.	Ex. St.	Ex. Cd.	

REMARKS:

COUNTY TRANSFER TAX
Per Sec. 33-130

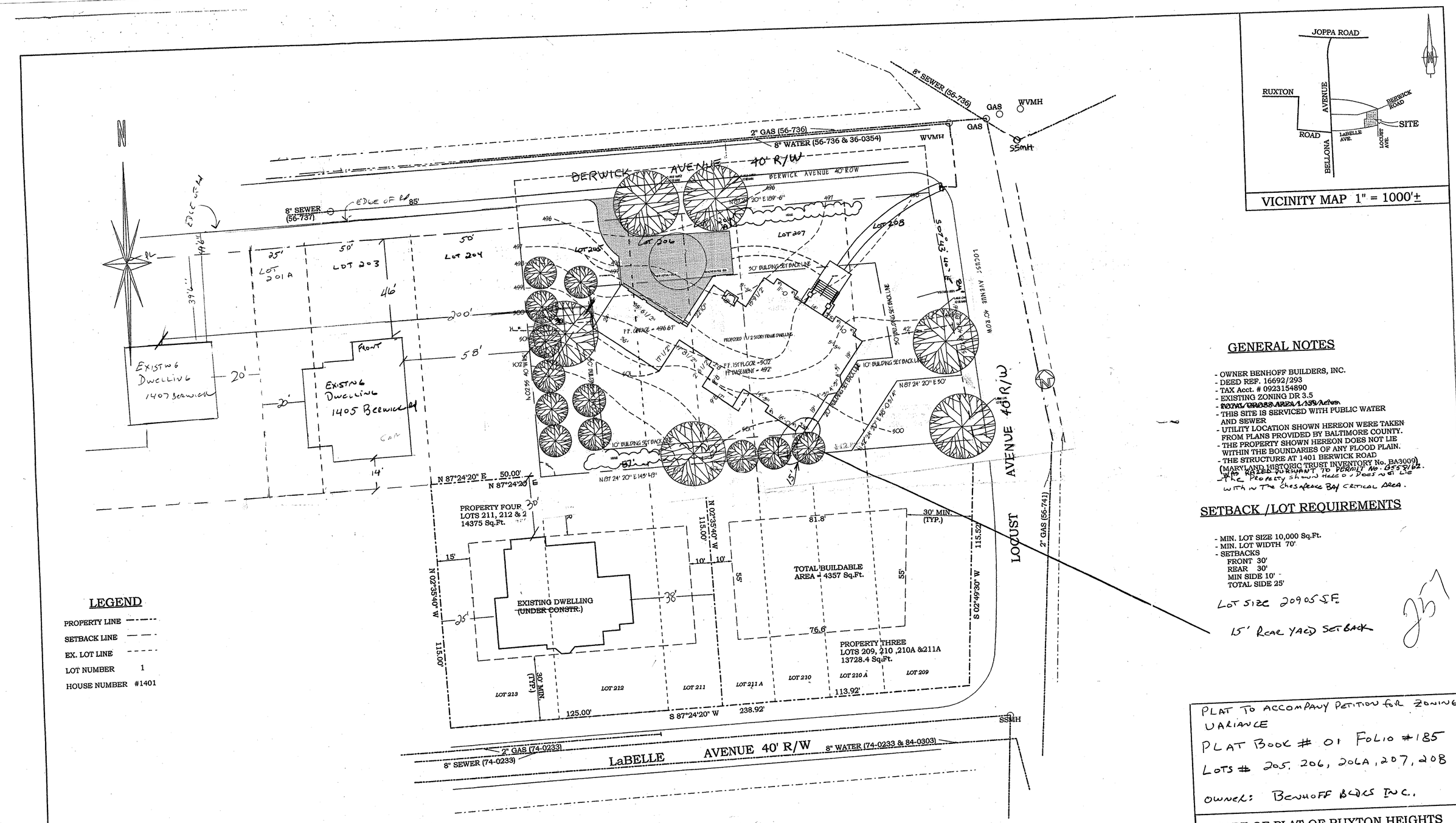
RECORDATION TAX
Per T.P. ART 12-108

Space Reserved for County Validation

Distribution: White - Clerk's Office
Canary - SDAT
Pink - Office of Finance
Goldenrod - Preparer
ABC-CC-3ab (6/98)

Date 12/15/03

ORDER RECEIVED FOR FILING
Date 12/15/03
By



VICINITY MAP 1" = 1000'±

GENERAL NOTES

- OWNER BENHOFF BUILDERS, INC.
- DEED REF. 16692/293
- TAX Acct. # 0923154890
- EXISTING ZONING DR 3.5
- ~~TOTAL GROSS AREA 1.139 Acres~~
- THIS SITE IS SERVICED WITH PUBLIC WATER AND SEWER
- UTILITY LOCATION SHOWN HEREON WERE TAKEN FROM PLANS PROVIDED BY BALTIMORE COUNTY.
- THE PROPERTY SHOWN HEREON DOES NOT LIE WITHIN THE BOUNDARIES OF ANY FLOOD PLAIN.
- THE STRUCTURE AT 1401 BERWICK ROAD (MARYLAND HISTORIC TRUST INVENTORY No. BA3009) WAS RAZED PURSUANT TO PERMIT No. 0558162.
- THE PROPERTY SHOWN HERE DOES NOT LIE WITHIN THE CHESAPEAKE BAY CRITICAL AREA.

SETBACK /LOT REQUIREMENTS

- MIN. LOT SIZE 10,000 Sq.Ft.
- MIN. LOT WIDTH 70'
- SETBACKS
  - FRONT 30'
  - REAR 30'
  - MIN SIDE 10'
  - TOTAL SIDE 25'

LOT SIZE 20905 S.F.

15' REAR YARD SETBACK

LEGEND

PROPERTY LINE
SETBACK LINE
EX. LOT LINE
LOT NUMBER 1
HOUSE NUMBER #1401

PLAT TO ACCOMPANY PETITION FOR ZONING VARIANCE
PLAT BOOK # 01 FOLIO #185
LOTS # 205, 206, 206A, 207, 208
OWNER: BENHOFF BLDRS INC.

PART OF PLAT OF RUXTON HEIGHTS

1401 BERWICK ROAD (aka Berwick Avenue)

9th ELECTION DISTRICT ~~4th~~ 2nd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MD.

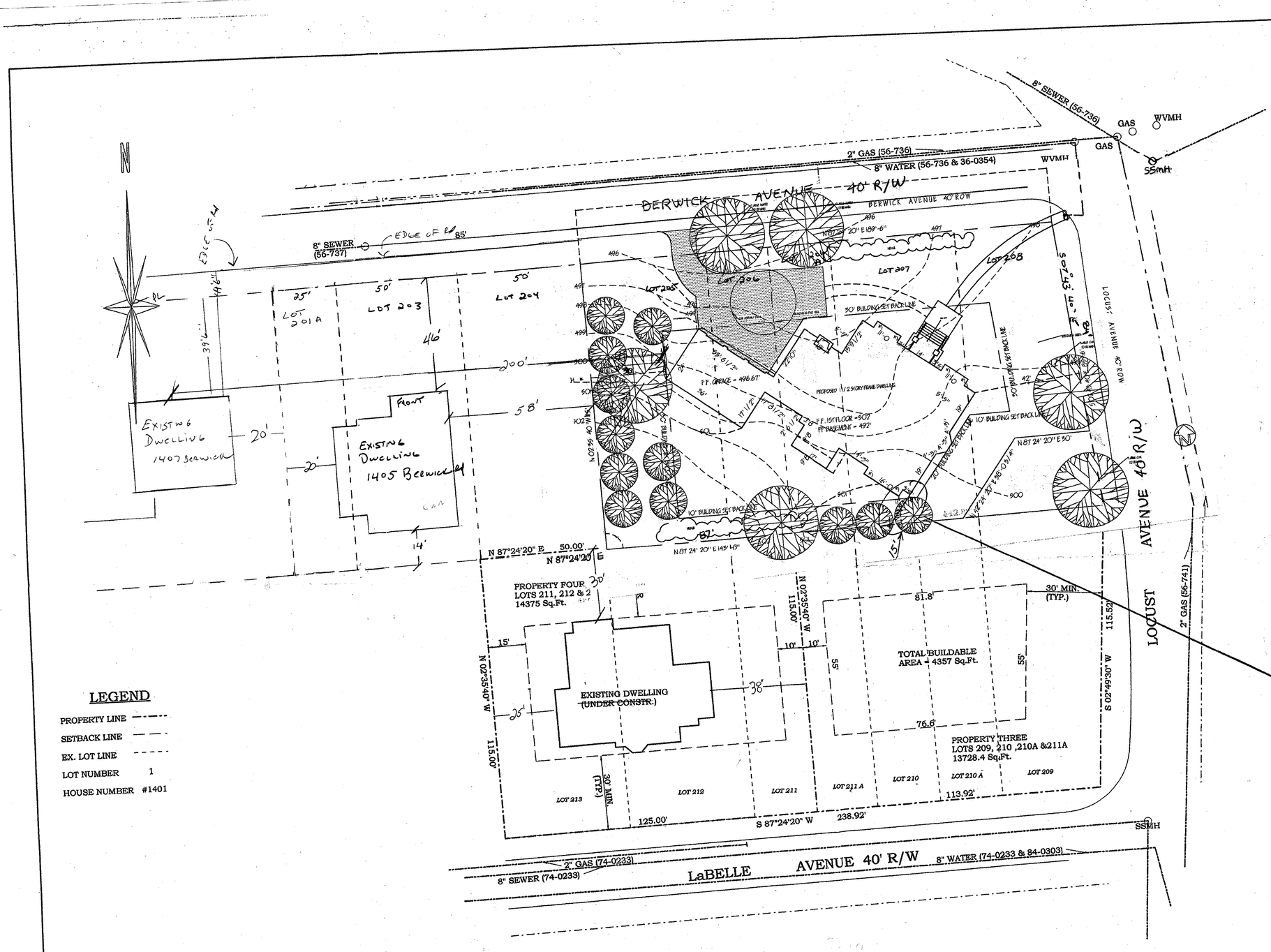
SCALE: 1"=20' DATE: MARCH 13, 2003

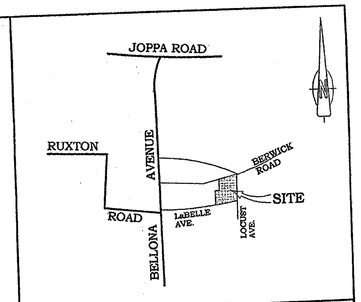
W.T. SADLER SURVEYORS
152 Westminster Pike Reisterstown, MD. 21136
410-526-5618

OWNER/DEVELOPER

BENHOFF BUILDERS INC.
Melvin C. Benhoff Jr.
215 Old Padonia Road
Cockeysville, MD. 21030

PETITIONER'S EXHIBIT NO. 1





VICINITY MAP 1" = 1000'±

GENERAL NOTES

- OWNER BENHOFF BUILDERS, INC.
- DEED REF. 16692/293
- TAX Acct. # 0923154890
- EXISTING ZONING DR 3.5
- ~~TOTAL GROSS AREA 1.151 Acres~~
- THIS SITE IS SERVICED WITH PUBLIC WATER AND SEWER
- UTILITY LOCATION SHOWN HEREON WERE TAKEN FROM PLANS PROVIDED BY BALTIMORE COUNTY.
- THE PROPERTY SHOWN HEREON DOES NOT LIE WITHIN THE BOUNDARIES OF ANY FLOOD PLAIN.
- THE STRUCTURE AT 1401 BERWICK ROAD (MARYLAND HISTORIC TRUST INVENTORY No. BA3009). THIS RAISE PUBLIANT TO PERMIT No. 95-5062.
- THE PROPERTY SHOWN HEREON DOES NOT LIE WITHIN THE CHESAPEAKE BAY CRITICAL AREA.

SETBACK /LOT REQUIREMENTS

- MIN. LOT SIZE 10,000 Sq.Ft.
- MIN. LOT WIDTH 70'
- SETBACKS
  - FRONT 30'
  - REAR 30'
  - MIN SIDE 10'
  - TOTAL SIDE 25'

LOT SIZE 20905 S.F.

15' REAR YARD SETBACK

257

LEGEND

PROPERTY LINE
SETBACK LINE
EX. LOT LINE
LOT NUMBER 1
HOUSE NUMBER #1401

OWNER/DEVELOPER

BENHOFF BUILDERS INC.
Melvin C. Benhoff Jr.
215 Old Padonia Road
Cockeysville, MD. 21030

PLAT TO ACCOMPANY PETITION for ZONING VARIANCE
PLAT BOOK # 01 FOLIO #185
LOTS # 205, 206, 206A, 207, 208
OWNER: BENHOFF BLDRS INC.

PART OF PLAT OF RUXTON HEIGHTS

1401 BERWICK ROAD (aka Berwick Avenue)

9th ELECTION DISTRICT ~~4th~~ 2nd COUNCILMANIC DISTRICT
BALTIMORE COUNTY, MD.

SCALE: 1"=20' DATE: MARCH 13, 2003

W.T. SADLER SURVEYORS

152 Westminster Pike Reisterstown, MD. 21136
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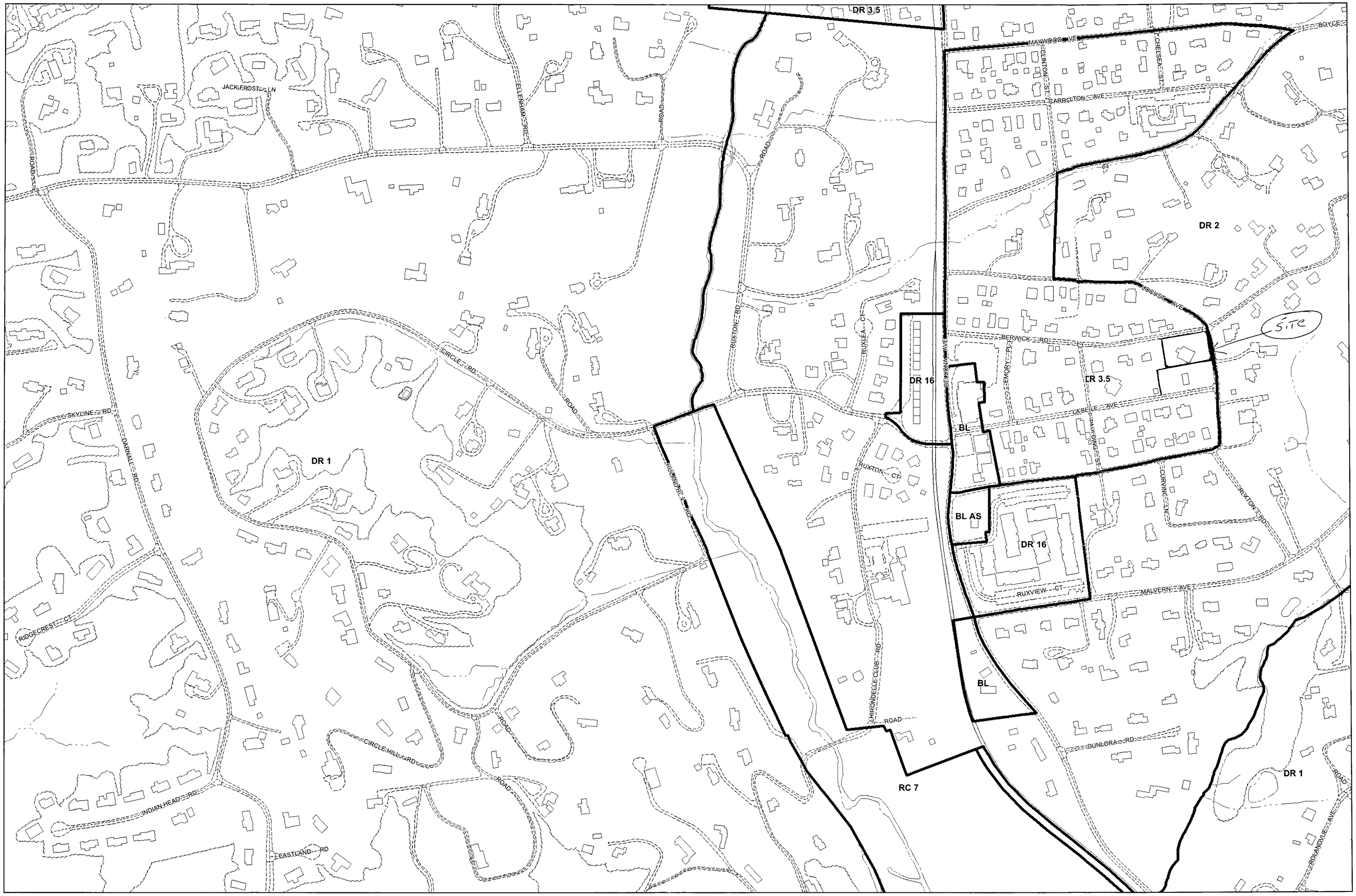


Plan Sheet: *069B2*

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

Legend

Zoning — Streams — Vegetation
Buildings — Roads — Rail Lines

Baltimore County
Office of Planning and Zoning
Official Zoning Map

068C1	069A1	069B1	069C1	070A1
068C2	069A2	069B2	069C2	070A2
068C3	069A3	069B3	069C3	070A3

Scale

1" = 200'

0 100 200 400 Feet

1

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

257

referred to in §32-4-223(8) of this title." (emphasis added). Although BCC §32-4-223(8)(i) identifies The Maryland Historical Trust Inventory of Historic Properties as a list subject to BCC §32-4-416, the subject property is not part of a Development Plan. The property consists of existing and recorded lots. Accordingly, pursuant to the plain reading of the statute, it is not subject to BCC §32-4-416. Moreover, the "preparation of land for building a dwelling... [o]n a single lot or tract that is not part of a recorded plat ...[or] on a lot of record lawfully in effect at the time of the building or preparation of the land for building" is exempt from compliance with Subtitle 2 of Article 32, Title 4 (the Development Review and Approval Process). BCC §32-4-106(a)(1) (emphasis added). Because the dwelling is exempt from Subtitle 2, it is also exempt from the hearing officer's review of development plans. Because no development plan exists for this property, there is nothing for the hearing officer to review other than the individual building permit. Finally, BCC § 32-4-223(8) pertains solely to information to be identified on a development plan. In this case the status of the former house at 1401 Berwick was indeed identified, negotiated with the Community, debated and rejected as a landmark.

III. WAS THE PERMIT PROPERLY ISSUED FOR THE DEMOLITION OF THE DWELLING AT 1401 BERWICK ROAD?

YES, THE ISSUANCE OF THE RAZING PERMIT FOR THE DWELLING AT 1401 COMPLIED WITH ALL BALTIMORE COUNTY REGULATIONS IN EFFECT AT THE TIME OF THE PERMIT'S APPROVAL.

V. ARE ANY NEW ISSUES PRESENTED IN THE MOTIONS FOR RECONSIDERATION THAT WOULD WARRANT ADDITIONAL FACT-FINDING OR RECONSIDERATION BY THE ZONING COMMISSIONER?

NO, NEITHER PEOPLE'S COUNSEL NOR PROTESTANTS RAISE ANY NEW ISSUES IN THE MOTION FOR RECONSIDERATION. THUS, NO ADDITIONAL FACT FINDING OR RECONSIDERATION IS WARRANTED.

The only issues raised by People's Counsel for Baltimore County in its Motion for Reconsideration pertained to the issuance of the permit to raze the previous dwelling. No other issues were addressed in its Motion. A subsequent Motion by David Albright, Sr., on behalf of Felicia Albright adopted the Motion by People's Counsel and added issues of self-inflicted hardship based upon the razing of the prior structure and the zoning doctrine of merger. The zoning merger issue was addressed thoroughly in the Findings of Fact and Conclusions of Law dated January 13, 2006. No additional information was presented pertaining to that issue in the Motion.

People's Counsel has filed a Memorandum in support of its Motion for Reconsideration, which attempts to legally review the evidence pertaining to the award of the variance. Since People's Counsel took no part in the case, its assessment of the presentation is based simply on its legal argument as to "uniqueness" and "practical difficulty". The argument fails to take into consideration any of the unique factors that indicate that a variance was warranted in this case and posit no new facts on which the Zoning Commissioner should revise the decision.

> 3) The hardship was not the result of the applicant's own actions. [citations omitted]
>
> Anderson v. Board of Appeals, Town of Chesapeake Beach, 22 Md.App. 28, 38-39 322 A.2d 220, (1974).

Consequently, even if the building permit to raze the previous structure was issued by Baltimore County without following the correct procedure, that fact has nothing to do with the variances sought by this proceeding.

It is inappropriate in a zoning variance proceeding to collaterally attack the issuance of a building permit. That building permit is not before the Zoning Commissioner. It was never even appealed. The evidence of how that permit came to be issued is not before the Zoning Commissioner. Even if evidence proved that the permit should not have been issued, that would not preclude the issuance of a new permit for the property. The property does not become unusable because of a prior procedural act. If the previous procedure can not impact the future use of the site, it can not impact the merits of the variance case.

What in fact the Petitioner in this case seeks to do, however, is to closely adhere to the look of the previous building and its location. Every reviewing agency and panel endorsed the location and look of the proposed building as being in harmony with the neighborhood and in keeping with the appropriate site design.

The purpose of a Motion for Reconsideration is to call to the attention of the hearing authority new information or to inform of legal authority that was somehow overlooked. The purpose of a reconsideration hearing is not to retry the matter. In the case of zoning hearings, in particular, the matter is tried on appeal de novo before the County Board of Appeals. Consequently, there are no new facts alleged or sought to be presented, and, therefore, there is nothing to change the outcome of the hearing.

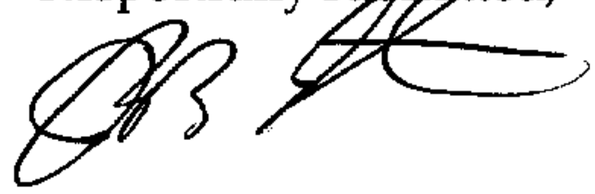
The issues presented in the Motions are legal ones, which are capable of debate as to their relevance to a variance proceeding. They add nothing to the determination of whether the variances sought for the new structure on the property are warranted. To some degree, those issues were covered at the previous hearing.

Consequently, since the Motions add nothing new in the way of factual allegations or presentation relevant to the variances, a hearing is not necessary.

CONCLUSION

In conclusion, Benhoff Builders, Inc. respectfully requests that the Motions for Reconsideration be denied.

Respectfully submitted,



John B. Gontrum, Esquire
Whiteford, Taylor & Preston, LLP
210 W. Pennsylvania Avenue
Towson, Maryland 21204
410-832-2000

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: December 5, 2005

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

SUBJECT: Zoning Advisory Committee Meeting
For November 21, 2005
Item Nos. 103, 250, 25[illegible] 257, 258, 259,
260 and 262

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-12052005.doc

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: December 19, 2005

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

SUBJECT: 1401 Berwick Avenue

INFORMATION:

Item Number: 6-257

Petitioner: Benhoff Builders, Inc.

Zoning: DR 3.5

Requested Action: Variance

SUMMARY OF RECOMMENDATIONS:
The Office of Planning reviewed the petitioner's request and provides the following comments:

The property was the former site of a cottage which was designated BA # 3109 and was razed.
The property is within the Ruxton Riderwood Lake Roland Design Review area established by Bill 88-04.
It appears that the proposed dwelling would be constructed on Lots 205, 206, 206A, 207 and-208 in the plat of Ruxton Heights. It would straddle those lots in effect creating a single lot of record. Architectural elevation drawings have been submitted to the office for review and comment.
A copy of the agreement between the Ruxton Riderwood Lake Roland Improvement Association and Benhoff Builders was also provided.

SUMMARY OF RECOMMENDATIONS:

Bill 119-05 effective December 23, 2005 establishes an administrative review alternative to the formal Design Review Panel (DRP) meeting.

A letter of support has been provided from the Ruxton Riderwood Lake Roland Improvement Association. The area planner has also reviewed the architectural elevation drawings. After December 23, 2005, the Chairman of the Design Review Panel will be able to approve the proposed new residence administratively without the necessity of a formal DRP meeting.

These recommendations are binding upon the hearing officer.

It should also be noted that the RRLRIA requested to be given sign-off capability on construction drawings.

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

Division Chief: _____

AFK/LL:kma

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As such the Office of Planning does not object to the requested variances.

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

Division Chief: Lynn Lanham

AFK/LL:kma

LUCAS
ASSOCIATES
Architects

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Baltimore, Maryland 21211

Phone 410-467-8200
Fax 410-467-0985
info@lucasarchitects.com

www.lucasarchitects.com

To: John Murphy

From: Frank Lucas

Date: 24 November 2003

Re: of 1401 Berwick Road

M E M O R A N D U M

To begin, we have accepted the concept proposed by Mr. Benhoff of historically deconstructing, salvaging existing materials, and reconstructing an historically accurate replication, with some modifications, of the original house in a slightly relocated position in order to make the parcel boundaries of the three house development less constrained.

The attached sketches show a potential for preserving the important characteristics, eliminating the effects of poor renovations in the past, and adding to the historic house in a manner sympathetic both to the developers goals and the historic character of the house.

The important characteristics of the existing house that must be maintained in the reconstruction:

1. The orientation of the primary house massing should stay the same. This is approximately 40 degrees (plus or minus) to the property line at Berwick. In other words, if the house moves, its wall alignment must stay parallel to the original wall alignment.

2. The dimensions and proportions of the original house must be maintained, especially on the exterior. These include the overall footprint of the stone foundation (approximately 53'-6" x 48'-2"), the locations and dimensions of the stone porch on the east façade (approximately 16'-2" x 16'-0"), the height of the main floor above grade both at the front and back, the height of the main floor to the overhang, the height of the main floor to the peak of the roof and the roof slope, the projection dimension of the roof overhang, the width and height of the roof dormers. The interior dimension from the main floor to the upper floor may be increased to 9'-0" while maintaining the height of the exterior soffit of the roof overhang to the main floor.

LUCAS
ASSOCIATES
Architects

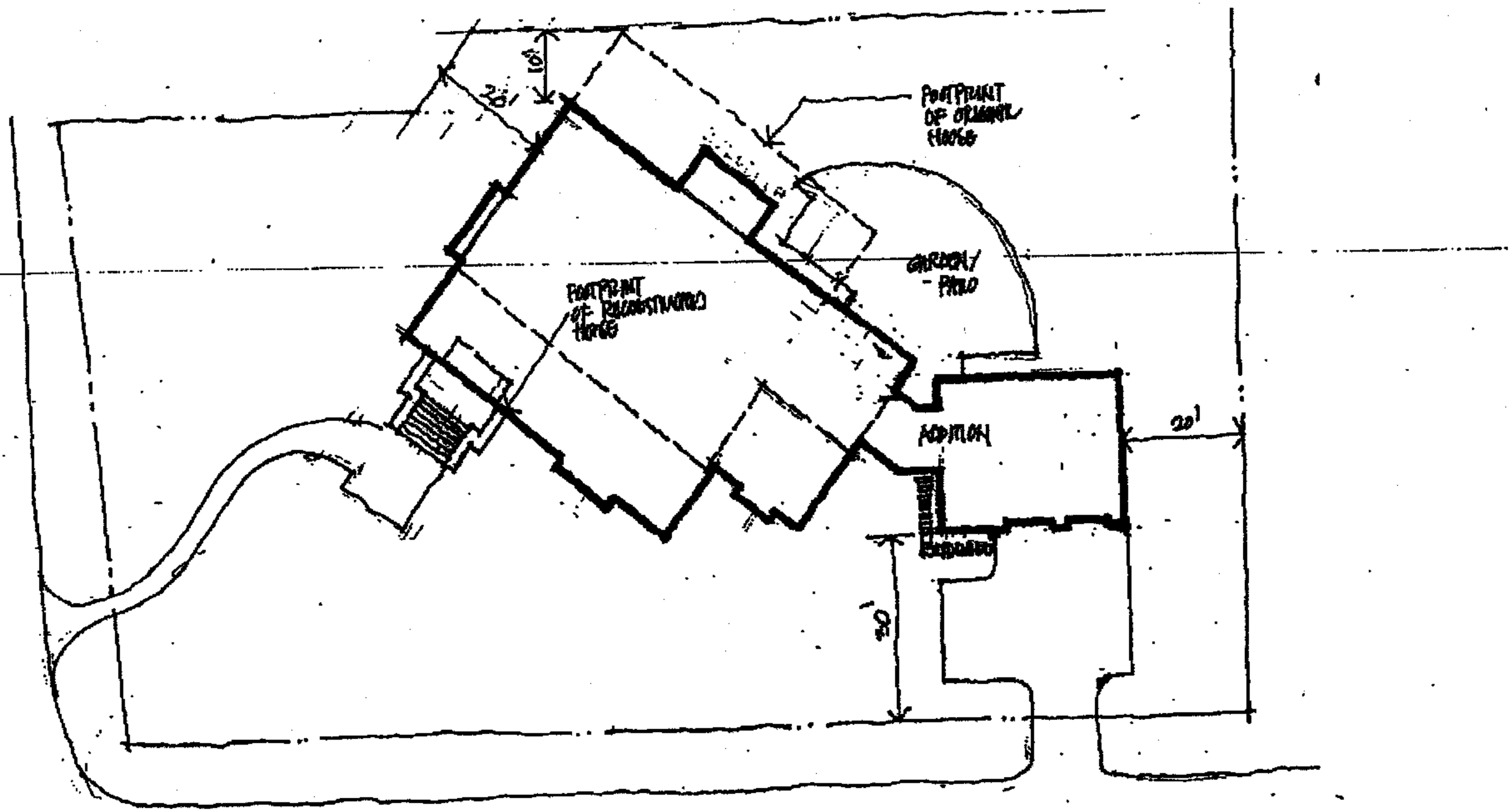
3. Other characteristics that should be maintained include the location of the two fireplaces and their masonry chimneys. One is located in the main body of the house, and as shown on the attached sketches, has become a part of the living room while staying on axis with the main entrance, off center to the main house. The other is in the stone sun porch. They are both important to maintain.

4. The windows of the dormers should be restored or replicated. The primary window of the main level facades should primarily be compositions 6 over 6 mullions in double hung windows.

5. Materials that should be salvaged for reconstruction or replicated exactly include the stone of the foundation, porch, and fireplaces, the slate of the roof, the herringbone pattern of brick on the porch floor, the diamond pattern of the terracotta tile of the main fireplace, and a replication of door and trim profiles and panels. The exterior siding material should be wood shingles.

6. One of the organizational approaches which are apparent both in the plan layouts of both 1401 Berwick and the sister house on Labelle is the use of a long great hallway, used a primary living spaces which passes through the houses connecting daylight to daylight. This organizational idea, which follows the structural organization, should also be maintained. Other plan modifications and room designations, such as the incorporation of the master bedroom into the upper level of the historic house and the use of the upper level over the garage as a guest bedroom, are acceptable with review.

The attached sketches show acceptable modifications to the original historic mass. These include bay projections, French doors, a single new dormer matching the existing on the side roof facing Locust, a larger dormer or intersecting roof on the opposite side which covers the porch and allows for more bedrooms on the upper level, and a link which connects the historic house to a new garage/bedroom wing skewed to the original, and a roof extension covering a laundry projection. In all cases these modifications do not compromise, change, or make the historic massing unrecognizable. Also, as indicated by the attached sketches, the addition cannot exceed the existing mass in height nor vary from the style. Care should be taken to maintain as closely as possible the existing grade and landscaping of the lot, including the two large oak trees on Locust Street which frame the proposed driveway for the new house on Property Three, as well as the beech and walnut trees on the west side of the property and the hemlocks along Berwick Road.



S I T E P L A N

1" = 20' Reduced Copy - Not to Scale

11. 24. 03

as amended, to read as follows:

TITLE 4. DEVELOPMENT.

SUBTITLE 1. IN GENERAL.

32-4-101. DEFINITIONS.

(A) IN GENERAL.

[(26-168).

(a) In this article, the following words have the meanings indicated:

...]

IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

REVISOR'S NOTE: This subsection formerly was § 26-128(a).

The term "title" is substituted for the former reference to "article" to clarify the scope of these definitions.

The only other changes are in style.

(B) ACCESSORY STRUCTURE.

[(26-168).

...

(b)(1) "Accessory structure" means a building or other improvement to property:

(i) where the use or intended use of which is subordinate and customarily incidental to the use of the principal building; and

(ii) that is located on the same lot, parcel or tract.

(2) "Accessory structure" includes additions or modifications to the principal building.

...

(c) On prime and productive soils within the RC-2 zone, no plan or plat may be approved unless the county finds that construction, excavations, buildings, structures, pavements, grading, clearing or other disturbances of the soils will be limited or restricted in accordance with policies established by the department of environmental protection and resource management to promote agricultural uses and protect the county's soil resources.]

ON PRIME AND PRODUCTIVE SOILS WITHIN THE RC-2 ZONE, THE COUNTY MAY NOT APPROVE A DEVELOPMENT PLAN OR PLAT UNLESS THE COUNTY FINDS THAT CONSTRUCTION, EXCAVATIONS, BUILDINGS, STRUCTURES, PAVEMENTS, GRADING, CLEARING, OR OTHER DISTURBANCES OF THE SOILS WILL BE LIMITED OR RESTRICTED IN ACCORDANCE WITH POLICIES ESTABLISHED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT TO PROMOTE AGRICULTURAL USES AND PROTECT THE COUNTY'S SOIL RESOURCES.

REVISOR'S NOTE: This section formerly was § 26-277.

Throughout this section, the reference to the "county" are added to expressly state and clarify the scope of the county's authority in administering this section.

The only other changes are in style.

3 [redacted]

(A) PRESERVATION OF FEATURES

[(26-278).

Natural features (including watercourses, waterfalls, beaches and significant vegetation) and historic structures or sites identified on any of the lists referred to in section 26-203(c)(8) must be preserved. ...]

EACH DEVELOPMENT PLAN SHALL PRESERVE:

(1) NATURAL FEATURES, INCLUDING WATERCOURSES, WATERFALLS, BEACHES, AND SIGNIFICANT VEGETATION; AND

(2) HISTORIC STRUCTURES OR SITES IDENTIFIED ON ANY OF THE LISTS REFERRED TO IN § 32-4-228(8) OF THIS TITLE.

(B) DUTY TO PROTECT HABITATS.

[(26-278).

...In particular, the county must find that an adequate method of protecting any known habitat of an endangered species has been proposed.]

THE COUNTY SHALL REQUIRE ADEQUATE PROTECTION OF ANY KNOWN HABITAT OF AN ENDANGERED SPECIES.

[redacted]

In subsection (a) of this section, the reference to "each development plan" is added to clarify whose responsibility it is to preserve certain natural and historic features.

In subsection (b) of this section, the former reference to "in particular" is deleted as surplusage.

SUBTITLE 5. RECLAMATION OF PROPERTY.

32-4-501. RECLAMATION PLAN.

(A) IN GENERAL.

1 (iv) the Maryland Archeological Survey or identification of any county historic
2 district; or
3 (v) a National Register District covering the proposed development;
4 (9) areas of critical state concern as designated under the procedures of § 5-611 of the
5 State Finance and Procurement Article of the Annotated Code of Maryland;
6 (10) as known to the applicant, location and description of hazardous material as defined
7 under § 7-101 of the Environment Article of the Annotated Code of Maryland;
8 (11) any additional information as may be required by the Department of Environmental
9 Protection and Resource Management to determine compliance with the critical areas local
10 protection program, under [§ 33-1-111] § 33-2-202 of the code.
11 REVISOR'S NOTE: The local protection program material, referenced in paragraph (11) of this
12 section, is revised at § 33-2-202 of the Code in Bill 94-02.
13 32-4-224. Required development plan information.
14 (a) In general.
15 The development plan shall contain the following development information:
16 (1) proposed lot or building layout with parking and loading areas;
17 (2) proposed street layout with existing and future paving and right-of-way widths
18 indicated, including pedestrian walkways;
19 (3) location of public and private existing and proposed easements or rights-of-way;
20 (4) existing and proposed county, state, and private streets, along with estimated
21 proposed average daily trips attributable to the development in the plan;

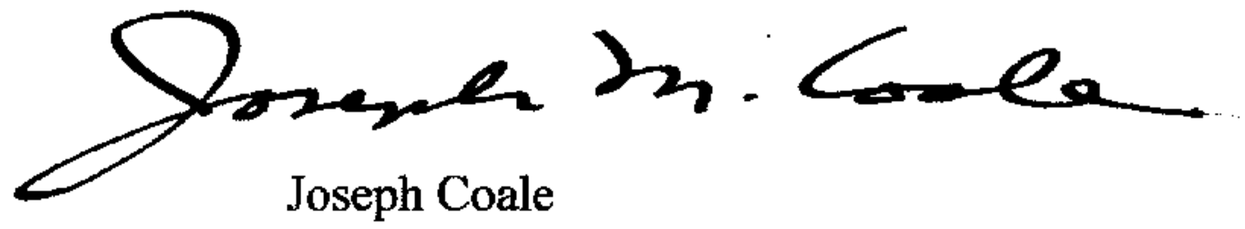
The builder filed for and received a demolition permit (so it is not his fault, he shouldn't be punished), and the house is gone. He also filed for a variance, but took the chance of constructing the new foundation prior to final approval of that variance, at his own risk.

Due to the appeal process, this foundation, along with a large pile of rocks and slate, has sat for seven months, as an endless eyesore to the neighborhood. I think for the benefit of the adjacent neighbors, all of whom have signed on as approving the project, the construction should be allowed to proceed as determined by the initial Variance Decision of January 13, 2006.

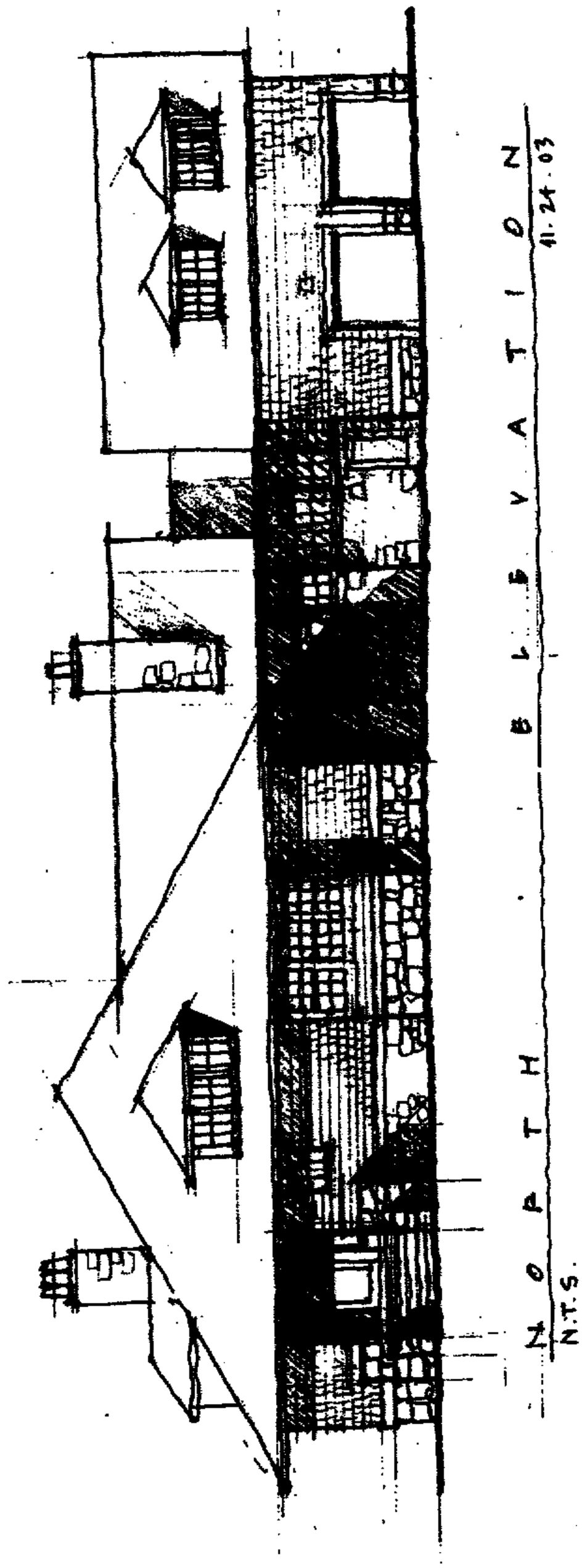
We should also use the errors made as an educational experience for the future. Permits and partial permits should not be granted prior to final zoning approval. All hearings required should be held and completed, and a better system should be determined by Baltimore County for identifying Landmark and Historical properties than simply picking up on the MHT inventory numbers. It would be better for the individual communities to work with County Planning to determine these properties ahead of time, so they are protected from the surprise "tear down" situation. It would also be more equitable for the builders and less confusing for the County Departments. Also, perhaps the decisions of the Landmarks Committee shouldn't be subject to County Council approval.

Good public policy and the interest of the community require that the project move forward. Your consideration of this request is most appreciated.

Sincerely,



Joseph Coale
President



PLAT
11.24.03

N.T.S.

Copied/Received
Date 11/3/16
By