IN RE: PETITION FOR VARIANCE East Side of Cuckold Point Road, 115' North of c/l of 6th Street 15th Election District 7th Councilmanic District **(9017 & 9019 Cuckold Point Road)** Charles and Daryl Wolinski *Petitioners*	* * * * * *	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NOS. 06-309-A & 06-310-A

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Variance filed by Charles and Daryl Wolinski, Petitioners. The variance request is for properties located at 9017 and 9019 Cuckold Point Road in the Edgemere area of Baltimore County. The variance request for both cases are from Section 1B02.3C.1 of the Baltimore County Zoning Regulations (B.C.Z.R), to allow a lot width of 50 ft. in lieu of the required 55 ft. for a single-family dwelling.

The properties were posted with a notice of the public hearing date and time on January 7, 2006 and notice was given to the general public by publication in the Jeffersonian Newspaper on January 12, 2006.

Interested Persons

Appearing at the hearing on behalf of the variance request were Charles Wolinski, Petitioners. Frank Borgerding, Esq. represented the Petitioner. There were no protestants or citizens attending the hearing. Peter Max Zimmerman, People's Counsel, entered his appearance in this case.

Zoning Advisory Committee

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: ZAC comments were received by the Department of

Exhibit A

Environmental Protection and Resource Management (DEPRM) dated January 19, 2006, the Office of Planning dated January 4, 2006, and the Bureau of Development Plans Review dated January 3, 2006, copies of which are attached hereto and made a part hereof.

Amended Petition

Mr. Borgerding requested to amend the Petition to allow a lot of 49 feet, 11 inches in Case No. 06-309-A and to allow a lot of 50 feet, 1 inch in Case No. 06-310-A. The original requests were to allow 50 foot lots. As the requested amended Petition was essentially the same as the original Petition and the public was substantially notified by the original posting and advertisement, the amended Petition was allowed.

Applicable Law

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

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

Testimony and Evidence

These cases involve adjacent 50-foot lots (Lot 488 and 489) in the Swan Point subdivision. By agreement, the cases were heard together and testimony and evidence presented apply to both cases.

The Petitioner testified that he and a friend, Eric McDonald purchased the subject properties in 2003 with the intention of building a home for himself on one (1) lot and a similar home for his friend on the second lot. Each lot contains approximately 0.172 acre, and is zoned B.L. The zoning on the adjacent residential property, which in this case happens to be DR 5.5, controls residential uses in this business zone. Since each lot is 50 feet wide, the Petitioner and Mr. McDonald filed for variances in Case Nos. 03-096-A and 03-097-A, which were granted by the Zoning Commissioner but denied by the Board of Appeals. As the result, the Petitioner built his new home on Lot 489 and bought Mr. McDonald's interest in Lot 488. See Plat to Accompany Exhibits 6A and 6 B.

Mr. Borgerding indicated that the case at the Board of Appeals was contested primarily by the adjoining property owner, Mr. Poleski. However, in the intervening years, Mr. Poleski has now become supportive of building homes on both lots as shown by Exhibit 5C. In fact, all the adjoining property owners now support building the second home on Lot 488 as shown by the letters of support in Exhibit 5A and 5B. As the result in this support, the Petitioner filed the subject requests for variance.

Mr. Borgerding described the Miller's Island community in which the subject properties are located as very tight-knit due to the very narrow peninsula on which they are located. The Petitioner has spent all his life in the area, as have his parents. Although these lots are not waterfront, they are waterview.

Mr. Borgerding proffered that the two (2) lots have never been used as one (1) lot and prior to building the Petitioner's home on Lot 489, neither lot had been improved in any manner. It was always the Petitioner's intention to treat the lots separately as shown by the prior case in which Mr. McDonald would build his home on Lot 488.

Mr. Borgerding indicated that these lots are part of the Swan Point subdivision, which was recorded in the land records in 1920 as shown by Exhibit 2. He presented extensive numbers of photographs of the Petitioner's home and compatible similar homes in the immediate area, Exhibit 4, and proffered that the new home on Lot 488 would be similarly compatible. Finally, the Petitioner indicated that he agreed to all ZAC comments including submitting elevation of the proposed new home to the Planning Office.

Findings of Fact and Conclusions of Law

Under ordinary circumstances, I would easily approve these requests. The Petitioner owns property zoned BL, and instead of using the property commercially, he proposes to build another home on the vacant lot. Presumably, this use is less valuable than the commercial uses he would be allowed by right. This will also honor his commitment to his friend starting in 2003. A new house on Lot 488 will impact his family's privacy compared to what he has now. The neighbor who protested the cases in 2003 now supports the new home on the adjacent lot. A review of the pattern on development of the neighborhood shows that homes are primarily built on 50-foot lots as is proposed. What's not to like?

The problem, of course, is that the Board of Appeals turned this request down three (3) years ago. As the Board noted in Case No. 91-129-A, once a zoning case is litigated the decision is binding in subsequent litigation involving the same property and the same parties (or their successors) in the absence of an erroneous determination of law citing Board of County Commissioners of Cecil County v Racine, 24 Md. App. 435, 332 A 2d 306 (1975).

I appreciate Mr. Borgerding's lot line adjustment at the hearing making one (1) lot 1 inch wider, while the other 1 inch narrower so as to distinguish these cases from the prior Board of Appeals cases cited above on the facts. However, I cannot in good conscience accept that this

and the prior cases are somehow different on the facts. This would be acknowledging form over substance.

In addition, the reason the Board gave for denying these requests in the prior cases was that the properties were not unique from a zoning standpoint. Had the denial been based on the pattern of development of the neighborhood, I perhaps could have found the things had changed in three (3) years and therefore distinguish the cases. But when the Board finds the properties were not unique, there is nothing that can change that would reverse this situation unless some natural calamity physically changed the land. Obviously, this did not happen.

Consequently, I must deny these requests with the understanding that the Petitioner must take the case to the Board who heard the first cases. I note, however, that this Commission and, I believe, the Board has recognized that zoning regulations imposed after the lots were laid out and recorded in the land records have a different impact on lots laid out after the regulations were enacted. As such, they have often been found to be unique even though they are usually flat rectangles with no redeeming features such as rivers, wetlands, etc., which trigger the need for a variance.

For example, RC 5 was imposed on many old lots in the eastern side of the County in the 1970's. This zone was primarily concerned with controlling development around the rural commercial centers in the northern section of the County. Lots were specified to contain one acre, as this was the minimum size for homes using private water and septic systems. Having one acre, the regulations could reasonably require 50-foot setbacks from lot lines for new homes. These regulations made great sense in the rural areas of the County.

As no public water and sewer were planned for large parts of the eastern side of the County, the Council imposed RC 5 here as well. However, there are extensive portions of the County's Chesapeake Bay waterfront which were laid out in the 1920's into 50 foot lots perhaps

with 1/8 acres of ground. The pattern of development was often one (1) house on each 50-foot lot. Clearly, no one could meet the 50-foot side yard setback regulations on a 50-foot lot. In fact, someone would have to acquire three (3) adjoining lots just to put up a home to meet the side yard setback requirements. However, someone would have to have eight (8) lots to meet the acreage requirements, and impractical task. Recently, the minimum acreage was increased to 1.5 acres to address continuing development concerns around the rural commercial centers. If the present RC 5 regulations strictly applied to the 50-foot lots along the waterfront, someone would need 12 lots to build. No homes could practically ever be built. Clearly, this was not the Council's intention. Rather, the Council addressed the issues it saw around the rural centers by means of the RC 5 regulations and left the application of the RC 5 regulations on the old 50 foot lots to the discretion of the Commission and Board via the variance procedures. As such, these lots are unique in a zoning sense because they are impacted differently from lots laid out in conformance with the RC 5 regulations.

That said, the community is protected from harmful development in these areas by the remaining requirements of Section 307 such as no greater density, spirit and intent and adverse impact. The latter often amounts to analyzing the pattern of development of the neighborhood street by street to see if the new home will adversely impact the community.

However, because the Board made the determination that the property was not unique, I find the Board and not this Commission must be the forum to review this matter.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be denied.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 30 day of January, 2006, that the variance request for both cases from Section

1B02.3C.1 of the Baltimore County Zoning Regulations (B.C.Z.R), to allow a lot width of 50 ft. in lieu of the required 55 ft. for a single-family dwelling, be and is hereby DENIED.

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

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:dlw

1/27

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: January 4, 2006

RECEIVED

JAN 0 9 2006

ZONING COMMISSIONER

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

SUBJECT: 9017 and 9019 Cuckold Point Road

ZONING ADVISORY PETITION(S): Case(s) 6-309 and 6-310 Variance(s)

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

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

1. Submit building elevations to this office for review and approval prior to the issuance any building permit. The proposed dwelling shall be compatible in size, exterior building materials, color, and architectural detail as that of the existing dwellings in the area.
2. Building footprints shall allow for a 10-foot side yard setback on both sides.

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

Prepared By: Curtis Murray

Division Chief: Lyn Lanham

CM/LL

CRA
Pet #8

W:\DEVREV\ZAC\6-309and6-310.doc

IN RE: PETITION FOR VARIANCE NE/S Cuckold Point Road, 152.77' N centerline of 6th Street 15th Election District 7th Councilmanic District (9016 Cuckold Point Road)	*	BEFORE THE
	*	DEPUTY ZONING COMMISSIONER
	*	OF BALTIMORE COUNTY
	*	CASE NO. 02-542-A
Tammy L. & Wayne E. Waldmann, Jr. *Petitioners*	*	

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Variance filed by the legal owners of the subject property, Tammy and Wayne Waldmann, Jr. The Petitioners are requesting variance relief for property they own at 9016 Cuckold Point Road, located in the Millers Island area of Baltimore County. The variance request is to approve a single-family dwelling with a lot width of 50 ft. in lieu of the required 55 ft.

Appearing at the hearing on behalf of the variance request was Wayne Waldmann, owner of the property. There were no protestants or others in attendance.

Testimony and evidence indicated that the property, which is the subject of this variance request, consists of 0.22 acres of land, zoned D.R.5.5. The subject property is unimproved at this time. Mr. Waldmann is interested in constructing a 30 ft. x 60 ft. single-family residential dwelling on this vacant lot. He owns the existing house adjacent to this property. He intends to move from his existing dwelling into this new dwelling once completed. In addition, his parents intend to move into the house that he once occupied. The Waldmann's have owned these lots and other properties in the Millers Island area of Baltimore County for several generations. In order to proceed with the construction of this new dwelling, the variance request is necessary.

ORDER RECEIVED FOR FILING
Date 7/30/02
By

CBA
Pet. 6C

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to Petitioners and their property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioners must meet the following:

1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;

2) whether a grant of the variance would do a substantial justice to the applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give sufficient relief; and,

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

Anderson v. Bd. Of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship will result if the variance is not granted. It has been established that special circumstances or conditions exist that are peculiar to the property which is the subject of this request and that the requirements from which the Petitioners seek relief will unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the relief requested will not cause any injury to the public health, safety or general welfare, and meets the spirit and intent of the B.C.Z.R.

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

ORDER RECEIVED FOR FILING
Date 7/30/02
By R. Jernigan

THEREFORE, IT IS ORDERED this 30th day of July, 2002, by this Deputy Zoning Commissioner, that the Petitioners' request for variance, to approve a single-family dwelling with a lot width of 50 ft. in lieu of the required 55 ft., be and is hereby GRANTED, subject, however, to the following restriction which is a condition precedent to the relief granted herein:

1) The Petitioners may apply for their permit and be granted same upon receipt of this Order; however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

Timothy Kotroco

TIMOTHY M. KOTROCO
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

TMK:raj

ORDER RECEIVED FOR FILING
Date 7/30/02
By

IN RE: **PETITION FOR VARIANCE** SE/S Cuckold Point Road, 50' NE of the c/l 3rd Street (9119) **(Cuckold Point Road)** 15th Election District 7th Council District George Stamoulis Petitioner	* * * * * *	BEFORE THE ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 06-037-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, George Stamoulis, through his attorney, Arnold Jablon, Esquire. The Petitioner seeks relief from Sections 1B02.3.C.1 and 307.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot width of 50 feet in lieu of the required 55 feet. The subject property and requested relief are more particularly described on the site-plan that accompanied the Petition when filed and the amended site plan submitted at the hearing, copies of which were accepted into evidence and marked as Petitioner's Exhibits 1 and 2, respectively.[1]

Appearing at the requisite public hearing in support of the request were George Stamoulis, property owner, Kypiakos Stamoulis, David Flowers, the consultant who prepared the site plan for this property, and Arnold Jablon, Esquire, attorney for the Petitioner. Appearing as an interested citizen was Samuel A. Hearn, owner of adjacent properties. In addition, this Zoning Commissioner received correspondence in support of the request from many of the residents who reside in the community of Swan Point and collectively marked as Petitioner's Exhibits 5.

Testimony and evidence offered revealed that the subject property is a rectangular shaped, unimproved waterfront lot located on Cuckold Cove near Swan Point in southeastern Baltimore County. As noted above, the property is located with frontage on the southeast side of

[1] The amended site plan prepared by David Flowers evidences that Lot 519 is actually 50' wide by 161' deep, as opposed to the dimensions depicted on the Swan Point subdivision plat recorded in the Baltimore County Plat Book 09, Folio 4 and 5 in 1928 of 50' wide by 150' deep (see Petitioner's Exhibit 3). The lot has grown since first platted.

ORDER RECEIVED FOR FILING
Date 10/18/06
By

CBA Pet 6B

Cuckold Point Road, just north of 3rd Street, in Millers Island. The property is also known as Lot 519 of Swan Point, an older subdivision which was recorded in the Land Records in the 1920s, well prior to the effective date of zoning regulations in Baltimore County. As is often the case with older subdivisions, many of the lots do not meet current area and/or width requirements. In this instance, the subject property contains a gross area of 8,100 sq.ft., more or less, zoned D.R.5.5. Those regulations require a minimum area of 6,000 sq.ft., and a minimum width of 55 feet. Thus, although the lot meets the minimum area requirements, the width of the property is deficient.

Variance relief is requested as set forth above to allow development of the subject property with a single-family dwelling. Off-street parking will be provided by way of a driveway leading into the property from Cuckold Point Road. Apparently, the Petitioner has discussed his plans with his neighbors who support the proposal. However, due to the narrow width of the property, the requested variance relief is necessary.

Section 307 of the B.C.Z.R. contains the standards for the grant of variance relief. This Section has been interpreted by the Appellate Courts of this state, most notably in Cromwell v. Ward, 102 Md. App. 691 (1995). The fact that these lots were laid out prior to the adoption of the first set of zoning regulations (1945) is a significant factor. More significantly, the configuration of the overall tract (neighborhood) is unique. Cuckold Point Road is not developed like other areas, (see Zoning Map marked as Petitioner's Exhibit 4) depicting the theme of development and zoning history. (See also, Case No. 94-153-A involving similar zoning relief for the adjacent property at 9121 Cuckold Point Road).

Second, Cromwell requires a finding of practical difficulty. The D.R.5.5 zoning regulations permit, by right, the development of the subject property with a single-family dwelling. These regulations impose a number of requirements for the construction of a home. In this instance, nearly all of those requirements are met. The lot meets the minimum area requirements, and the Petitioner proposes to provide the minimum required setbacks. The sole deficiency relates to lot width, which is due to the original layout of the overall tract.

ORDER RECEIVED FOR FILING
Date 6/18/05
By

After due consideration of the testimony and evidence presented, I am persuaded to grant the requested relief. I find that the Petitioner has met the requirements of Section 307 for relief to be granted and that strict compliance with the regulations would result in a practical difficulty and unreasonable hardship. On behalf of the Petitioner, Mr. Jablon submitted a plat and photographs demonstrating that many of the houses in this community have been constructed on 50-foot wide lots. Moreover, there were no adverse comments submitted by any County reviewing agency and the Petitioner has the support of his neighbors as evidenced by a signed Petition submitted into evidence as Petitioner's Exhibit 5. Thus, I find that there will be no detrimental impact to adjacent properties or surrounding locale. However, as a condition of approval, the Office of Planning has requested certain conditions be imposed relative to the orientation and setback of the proposed dwelling, as set forth in their comments dated September 12, 2005, copy attached hereto. Moreover, due to the property's waterfront location and its location within a floodplain, the proposed construction shall comply with Chesapeake Bay Critical Areas regulations and Federal Flood Insurance requirements as set forth in the attached comments submitted by the Department of Environmental Protection and Resource Management (DEPRM) and the Development Plans Review Division.

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 18th day of October 2005 that the Petition for Variance seeking relief from Sections 1B02.3.C.1 and 307.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot width of 50 feet in lieu of the required 55 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.

ORDER RECEIVED FOR FILING
Date 10/18/05
By

IN RE: PETITION FOR VARIANCE
E/S Cuckold Point Road, 115' & 65' N
of the c/l 6th Street
(9017 & 9019Cuckold Point Road)
15th Election District
7th Council District

Edward Hranicka & Josephine Hranicka, Owners;
Charles S. Wolinski & Eric D. McDonald,
Respective Contract Purchasers

* BEFORE THE
* ZONING COMMISSIONER
* OF BALTIMORE COUNTY
* Case Nos. 03-096-A & 03-097-A

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Zoning Commissioner for consideration of Petitions for Variance filed by the owners of the subject adjacent properties, Edward F. Hranicka and his mother, Josephine Hranicka, and the Contract Purchasers of those respective properties, Charles S. Wolinski (9019 Cuckold Point Road) and Eric D. McDonald (9017 Cuckold Point Road). Since the properties are owned by the same persons and are adjacent parcels, the two cases were heard contemporaneously. In both cases, the Petitioners seek relief from Sections 1B02.3.C.1 and 304.1.C of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot width of 50 feet in lieu of the required 55 feet, and approval of an undersized lot, pursuant to Section 304, and any other variances deemed necessary by the Zoning Commissioner to develop each property with a single family dwelling. The subject properties and requested relief are more particularly described on the site plan submitted in each case and marked into evidence as Petitioner's Exhibits 1.

Appearing at the requisite public hearing in support of the requests were Edward F. Hranicka, property owner, and the Contract Purchasers of the respective lots, Charles S. Wolinski, and Eric D. McDonald. There were no Protestants or other interested persons present.

The two lots under consideration are unimproved, rectangular shaped parcels, located on the south side of Cuckold Point Road, not far from the end of the peninsula for Millers Island in Edgemere. The properties are respectively known as Lots 488 and 489 of Swan Point, which is an older subdivision that was recorded many years ago prior to the first zoning regulations in Baltimore County. Each lot is 50' wide and 150' deep and contains a gross area of 7,500 sq.ft., zoned B.L.

Mr. Hranicka and his mother have owned the subject properties for some time. They have contracted to sell Lot 488, known as 9017 Cuckhold Point Road, to Mr. McDonald and Lot 489, known as 9019 Cuckold Point Road, to Mr. Wolinski who propose to develop their respective parcels with a single family dwelling. Variance relief is necessary due to the insufficient width of the lots. Pursuant to Section 1B02.3.C.1 of the B.C.Z.R., the minimum lot width is 55 feet. Relief is also sought from Section 304 of the B.C.Z.R. which relates to undersized lots.

Testimony and evidence offered was that Swan Point is an older subdivision that was platted and recorded in the Land Records of Baltimore County well prior to the adoption of the first zoning regulations. Apparently, all of the lots in this community are 50 feet wide. It was further indicated that most of the houses in the community were constructed on individual lots, although there are some double and triple lots in the area that have been combined and are used as one parcel. Testimony indicated that development of each of the subject lots would be consistent with other houses in the neighborhood and appropriate.

Based upon the testimony and evidence offered, I am persuaded that the development of each of the subject lots with a single family dwelling is appropriate and will not result in any detriment to the health, safety and general welfare of the surrounding locale. However, the Petitioners' request for approval of an undersized lot must be denied. Section 304 of the B.C.Z.R. permits the owner of an undersized lot to build a single family dwelling by right, when certain other requirements are met. One of those requirements is that the property owner cannot own any adjoining land. In that the same individual(s) own the subject adjacent lots, relief cannot be granted. Thus, the proposed development must meet all setback requirements.

It is also to be noted that the two parcels are located in a flood plain and within the Chesapeake Bay Critical Areas. Although not directly waterfront, the two properties do have a view of Middle River. Thus, development of the two parcels must be in compliance with all Critical Areas and flood plain regulations. Mr. McDonald and Mr. Wolinski indicated that they were aware of those requirements and that the lots would be developed accordingly. Additionally, testimony indicated that the Petitioners submitted building elevation drawings of the proposed dwellings to the Office of

Planning, which has approved same as being compatible with the neighborhood. Thus, the proposed dwellings shall be constructed substantially in accordance with the building elevation drawings approved by the Office of Planning.

Pursuant to the advertisement, posting of these properties, and public hearing on these Petitions held, the relief requested shall be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 22nd date of October, 2002, that the Petitions for Variance seeking relief from Sections 1B02.3.C.1 and 304.1.C of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a lot width of 50 feet in lieu of the required 55 feet, to permit development of Lots 488 and 489, each with a single family dwelling, to be known as 9017 Cuckold Point Road and 9019 Cuckold Point Road, respectively, in accordance with Petitioner's Exhibits 1, be and is hereby GRANTED, subject to the following restrictions:

1) The Petitioners may apply for their building permits and be granted same upon receipt of this Order; however, 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) The proposed development shall comply with all applicable environmental regulations, including Baltimore County floodplain and Chesapeake Bay Critical Areas regulations.

3) The proposed dwellings shall be constructed substantially in accordance with the building elevation drawings submitted to and approved by the Office of Planning.

4) 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 the Petition for Variance seeking approval of an undersized lot, pursuant to Section 304, and any other variances deemed necessary by the Zoning Commissioner, be and his hereby DENIED.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:bjs

County Board of Appeals of Baltimore County

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

April 2, 2003

Mr. Robert Poleski
9015 Cuckold Point Road
Baltimore, MD 21219

RE: *In the Matter of: Edward and Josephine Hranicka –Legal Owners;*
Case No. 03-096-A /Charles S. Wolinski, Contract Purchaser;
and Case No. 03-097-A /Eric D. McDonald – Contract Purchaser

Dear Mr. Poleski:

Enclosed please find a copy of the final Opinion and Order issued this date by the County Board of Appeals of Baltimore County in the subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **with a photocopy provided to this office concurrent with filing in Circuit Court. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Kathleen C. Bianco /ts

Kathleen C. Bianco
Administrator

Enclosure

c: Edward and Josephine Hranicka
Eric D. McDonald
Charles L. Wolinski
People's Counsel for Baltimore County
Pat Keller, Planning Director
Lawrence E. Schmidt, Zoning Commissioner
Arnold Jablon, Director /PDM

Printed with Soybean Ink
on Recycled Paper

1/15/08

IN THE MATTER OF:	*	BEFORE THE
THE APPLICATION OF		
CHARLES AND DARYL WOLINSKI	*	COUNTY BOARD OF APPEALS
FOR VARIANCE ON PROPERTY		
LOCATED ON THE E/S OF CUCKOLD	*	OF
POINT ROAD, 115' N C/L OF 6TH ST.		
9017 CUCKOLD POINT ROAD	*	BALTIMORE COUNTY
AND		
THE APPLICATION OF	*	Case No. 06-309-A
CHARLES AND DARYL WOLINSKI		and
ON PROPERTY LOCATED ON THE E/S	*	Case No. 06-310-A
OF CUCKOLD POINT ROAD, 115' N		
OF C/L OF 6TH STREET	*	
9019 CUCKOLD POINT ROAD		
	*	
15TH ELECTION DISTRICT		
7TH COUNCILMANIC DISTRICT	*	

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

MAJORITY OPINION

This matter comes before the Baltimore County Board of Appeals as an appeal of the decision of the Zoning Commissioner dated January 30, 2006, wherein Petitioners' request for variances for the properties known as 9017 and 9019 Cuckold Point Road were denied. The requested variances were to allow a lot width of 50 ft. in lieu of the required 55 ft. for a single - family dwelling.

Background

The Petitioners, Charles and Daryl Wolinski, are the owners of adjacent 50-foot lots (Lot 488 & 489) in the Swan Point subdivision, which is located in the Edgemere area of Baltimore County. The applicable zoning ordinances requires a 55-foot lot frontage for a single-family dwelling.

A hearing was held before the Zoning Commissioner for Baltimore County after which Petitioners' request for a variance was denied by the Zoning Commissioner citing the 2003 decision of the County Board of Appeals in Case No. 91-129-A wherein a requested variance for the same properties as the instant case was denied by the Board. An amended petition was

entered in the case before the Zoning Commissioner in which the Petitioners sought to allow a lot of 49 feet, 11 inches in case No. 0-309-A and to allow a lot of 50 feet, 11 inch in Case No. 0-310-A.

Issues Presented

1. Is this appeal under the doctrine of res judicata?
2. Is the requested variance allowable under the *Baltimore County Zoning Regulations*?

Discussion

Issue No. *1: Res Judicata*

People's Counsel participated in the hearing of this matter and in his pre-trial and post-trial memoranda raised the issue of *res judicata*. Citing the Board of Appeals decision in the *Hranicka*, Case No. 03-096-A and Case No. 03-097-A, involving the same properties, People's Counsel reminded the Board that it had determined that the petitions had failed to meet the threshold "uniqueness" test for the granting of a variance. From page 4 of that decision the following quote from the Board's decision was placed into the pre-trial memoranda.

> *Cromwell v. Ward* states that "unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without consideration of practical difficulty or unreasonable hardship."
>
> A partial map of the Swan Point development produced by the Appellant/Protestant shows that the two lots in question are 50-foot lots and are comparable to virtually every other lot located in the development. There appeared to be no dispute to this fact from either Mr. Hranicka or the Appellant, Mr. Poleski. Mr. Poleski indicated that he would have no problem if Mr. Hranicka were to build one home on the combined two lots; however, he did protest the building of a dwelling on each of the single lots.
>
> Therefore, it is quite clear that the Petitioner has failed to present any testimony or evidence to the Board showing that the two lots possess and peculiar, unusual or unique factors when compared to other properties in the neighborhood to allow a variance from Section 1B02.3C.1 of the BCZR."

The doctrine of *res judicata* precludes parties from litigating for a second time a case that has previously been tried and brought to final judgment. In the instant case it is inarguable that

the properties are the same as those considered previously by the Board. However, in the new case we do not have the same parties. The Board concluded that it would not be in the interest of justice to forever bar new parties from seeking resort to the appropriate administrative procedures because the property at issue has been involved in prior hearing or litigation. Accordingly, the Board determined that the case would proceed to hearing with the new owners as Appellants.

Issue No. 2: Is the variance allowable under the Baltimore County Zoning Regulations?

Testimony in this case was received from the Petitioners, Charles Wolinski and Daryl Wolinski, as well as neighbors, Wayne Waldman and Patty Waldman, Matthew Chiarpell and Robert Poleski, all of whom testified in support of Petitioners' request for a variance. No individuals or community groups appeared at the hearing to testify in opposition to the requested relief. The Swan Point subdivision is located within the larger area known as Millers Island. The undisputed evidence placed before the Board indicated that approximately 90% of the lots on Millers Island are developed into 50-foot lots. The evidence indicated that several variances, such as the ones sought herein, had been granted for other 50-foot lots located in Millers Island. However none of these variances had been granted after the year 2003.

The Petitioners testified that they purchased the lots now known as 9017 and 9019 Cuckold Point Road with the intention of building adjacent houses on each of the lots. Since the purchase of the lots, a house has been constructed at 9019 Cuckold Point Road. The lot known as 9017 Cuckold Point Road has remained vacant since its purchase by the Petitioners.

The threshold test for the issuance of a variance as noted in the excerpt from the Board's prior decision as cited by People's Counsel is that of "uniqueness." As was the case in this Board's prior decision involving these same lots, the Board concludes that there was no showing that lots 488 and 489 are in any way "unique" as required under the test established in the Court

of Appeals case known as *Cromwell v. Ward*, 102 Md. App. 691 (1995). Moreover the evidence produced at the hearing demonstrated that the lots are actually typical for the surrounding area.

ORDER

IT IS THEREFORE THIS 15th day of January, 2008 by the County Board of Appeals of Baltimore County

ORDERED that the request for a Variance. from § 1B02.3C.1 of the *Baltimore County Zoning Regulations* be and is hereby **DENIED**.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Panel Chairman

Wendell H. Grier

1/15/08

IN THE MATTER OF THE APPLICATION OF CHARLES AND DARYL WOLINSKI -LEGAL OWNERS /PETITIONERS FOR VARIANCE ON PROPERTY LOCATED ON THE E/S CUCKOLD POINT ROAD, 115' N C/L OF 6TH STREET (9017 CUCKOLD POINT ROAD) 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT	*	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 06-309-A
AND		
PROPERTY LOCATED ON THE E/S CUCKOLD POINT ROAD, 115'N OF C/L OF 6TH STREET (9019 CUCKOLD POINT ROAD) 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT	*	AND CASE NO. 06-310-A

* * * * * * * * *

CONCURRING OPINION

This Board member agrees with the Majority Opinion that the property does not qualify for variance because the uniqueness and hardship requirements necessary under the *Baltimore County Zoning Regulations* (BCZR) have not been satisfied. The request for variance should therefore be denied. This confirms the decision previously rendered by the Board on April 2, 2003.

However, I believe it's important to point out that, since the decision of the Board on April 2, 2003, the characteristics of the two lots in question have changed. When the Hranickas, the original property owners, filed for an undersized lot exception and variance with the Zoning Commissioner, the two lots were vacant. They were denied the undersized lot exception but granted the variance. The decision by the Zoning Commissioner was appealed by a neighbor to the Board of Appeals who denied the variance request on April 2, 2003.

Subsequently, the Wolinskis purchased the lots and built a single-family home on one of the lots. In so doing, the Wolinskis combined the two lots in order to satisfy the 55-foot requirement since the two lots were each 50 feet wide. They thus merged the two lots and made

the request for the variance moot.

I agree that the issues of uniqueness and hardship are relevant in that they are the issues that determined the denial of the request for a variance initially and needed to be examined and reaffirmed again. I do, however, believe that, because the circumstances changed as a result of the house constructed on one of the lots, the issue of zoning merger comes into play and eliminated the eligibility to file for a variance for the lots. I do, however, concur that the absence of uniqueness and hardship for both properties disqualifies the property for consideration and approval for the variance request, and that the requested variance should be denied.

Robert W. Witt

DATE: Jan. 15, 2008

8/16/06

IN RE: PETITION FOR VARIANCE East Side of Cuckold Point Road, 115 North of c/1 of 6th Street 15th Election District 7th Councilmanic District **(9017 & 9019 Cuckold Point Road)** Charles and Daryl Wolinski *Petitioners*	* * * * * *	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NOS. 06-309-A & 06-310-A

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BOARD OF APPEALS

* * * * * * * * * *

POST-HEARING MEMORANDUM IN RESPONSE TO
PEOPLE'S COUNSEL'S PRE-HEARING MEMORANDUM

Petitioners, Charles and Daryl Wolinski, by and through their attorney, Francis X. Borgerding, Jr., submits this Post-Hearing Memorandum in Response to People's Counsel's Pre-Hearing Memorandum and says:

People's Counsel asserts that Petitioners' requested relief should be denied pursuant to the principals of res judicata. People's Counsel cites the cases of Whittle v. Zoning Board of Appeals, 211 Md. 36 (1956) and Woodlawn Area Citizens Association v. Board of County Commissioners, 241 Md. 187 (1966). The Woodlawn case is distinguishable from the Petitioners in that the relief requested related to process of rezoning. The Whittle case is also distinguishable in that the original administrative case in Whittle was affirmed by the Circuit Court, a court of competent jurisdiction, prior to a subsequent case being brought. Both the Woodlawn and the Whittle cases, however, were reviewed in the later case of Board of County Commissioners of Cecil County, et al. v. Elwood Racine, 24 Md. App. 435 (1975) in which the Board of Special Appeals indicated "the Court of Appeals indicated in [Gaywood Association v. MTA, 246 Md. 93, 227 A.2d 735], supra, however, that the legal doctrine giving binding effect to decisions by Zoning Boards should not be fully equated with the doctrine of res judicata. The Court, in Racine, stated "...the principal of res judicata

should not apply to an erroneous determination of law by an administrative body. Any other course would approach, if it did not reach, a deprivation of constitutional dimension. In any event, unrelaxed application of the doctrine would constitute a manifest unfairness to Racine." Racine at pg. 542. The Court went on to state that "perpetuation of the illegality by an administrative body through application of the principal of res judicata is impermissible. Racine at 452.

The Court in Racine indicated that an administrative body may reverse its prior decision in litigation between the same parties when there has been a substantial change of conditions or it is shown that the decision was the product of fraud, surprise, mistake or inadvertence. Racine at 450.

The Black's Law Dictionary definition of res judicata forwarded to the Board as People's Counsel's Exhibit #3 indicates that the definition of res judicata involves "a final judgment rendered by a court of competent jurisdiction" not an administrative body.

In the case before the Board although Douglas and Daryl Wolinski were contract purchasers of one of the two lots in question, in prior case numbers 03-096/97, Edward Hranicka was the Petitioner. Pursuant to the Petitioner's requested amendment of its variance relief, the actual variance requested in the previous cases and the present case before the Board are slightly different. In addition, the plat regarding 9017 Cuckold Point Road, in the previous case and the present case, are different as the building envelopes requested are not in the same location.

Notwithstanding the above, the testimony received before the Board makes clear that the previous proceeding held before the Board in case numbers 03-096/97 in reality was not a full hearing on the merits of the variance requests before the Board. Testimony of Charles Wolinski and Robert Poleski, both of whom were present at the previous hearing, make clear that not only was Mr. Hranicka not represented by counsel but that he produced no documents or material evidence in

support of the requested variances, did not himself testify about any site specific matters related to his requested variances, and further did not call any witnesses in support of his requested variances. In fact, according to the testimony of Mr. Wolinski and Mr. Poleski, the entire hearing took approximately 30 minutes. The Board, without further legal argument, or Memoranda rendered a deliberation in the case the day of the proceeding. In short, the case was not "actually litigated" before the Board, a requirement for giving preclusive effect to an administrative decision. The evidence which was produced by the Petitioners in the present case now before the Board was never put before the Board for consideration. As such, the Board never actually had evidence from which to rule on the appropriateness of granting variances in relation to the subject properties.

Under the circumstances, Petitioners assert that as in Racine, supra, it would constitute manifest unfairness to themselves to prohibit the Board to consider the evidence and testimony now on the record before the Board. Further, since the prior ruling of the Board was based on little or no evidence, the Board should be permitted to consider evidence in support of Petitioners' requested variances under the principles of "surprise, mistake or inadvertence" cited in Racine. Rather than creating a precedence which is injurious to the legal system as a whole, allowing the Board to consider the evidence now presented is the appropriate decision based upon the law as well as the unique facts and circumstances of the case now before the Board.

In the present case before the Board, Petitioners, Charles Wolinski and Daryl Wolinski, as well as neighbors, Wayne Waldman and Patty Waldman, Matthew Chiarpell and Robert Poleski, all testified in support of Petitioners' variance of the requested relief. No individuals or community associations appeared or testified before the Board in opposition to the Petitioners' requested relief. The testimony and evidence produced by the Petitioners before the Board in the present case

included their testimony with regard to the uniqueness of Millers Island itself and the subject properties including evidence related to the community being platted and created in 1928, the physical view and conditions of the subject property as well as the subject property's request for residential use despite having commercial zoning. Taken as a whole the testimony and evidence before the Board is sufficient to support a finding that the property itself and indeed the community of Millers Island are unique and satisfy the threshold test of Cromwell v. Ward, 102 Md. App. 691 (1995). In addition, the Petitioners testified at length about them being lifelong residents of the area and teachers of a local school who have always had a deep desire to raise their family on Millers Island adjacent to their close friend, Eric McDonald. The Petitioners testified that this was their intention in purchasing the subject lots and has always remained their intention. The Petitioners' testified that if the requested variances are not granted, that they would suffer practical difficulty and unreasonable hardship as utilization of their lots would be prohibited in a manner consistent with the pattern of the community. The testimony and evidence before the Board indicates that approximately 90% of the lots on Millers Island are developed into 50 foot lots. In fact, several variance requests for the construction of 50 foot lots have been granted in immediate area on Cuckold Point Road. Several cases regarding such variances were entered as exhibits before the Board. Petitioners' witnesses also testified that they were not aware of any variance request for the construction of a 50 foot lot on Millers Island being denied. All the Petitioners' witnesses indicated that they believed that the construction of a residence on 9017 Cuckold Point Road would be an asset to the community. Further, they testified that they believed on the contrary that the utilization of the lots for expansion of the parking of the adjacent business or an independent business would be detrimental to the community. Matthew Chiarpelli noted that patrons of the adjacent business

sometimes park or drive on the vacant lot of 9017 Cuckold Point Road without permission. The witnesses testified that the requested relief would not cause any harm to the health, safety and welfare of the community.

Charles Wolinski testified that in light of the properties' B.L. zoning, the subject lots could be used for commercial purposes. Mr. Wolinski asserted that the requested use of the property for a residence as opposed to potential commercial use would have less of an impact of the community. Mr. Wolinski testified about the Dock of the Bay Restaurant Bar and Marina adjacent to the subject lots which was caused issues with the surrounding community. Mr. Wolinski further testified that the owner of the adjacent business had approached him about purchasing his property for expansion of the adjacent business use.

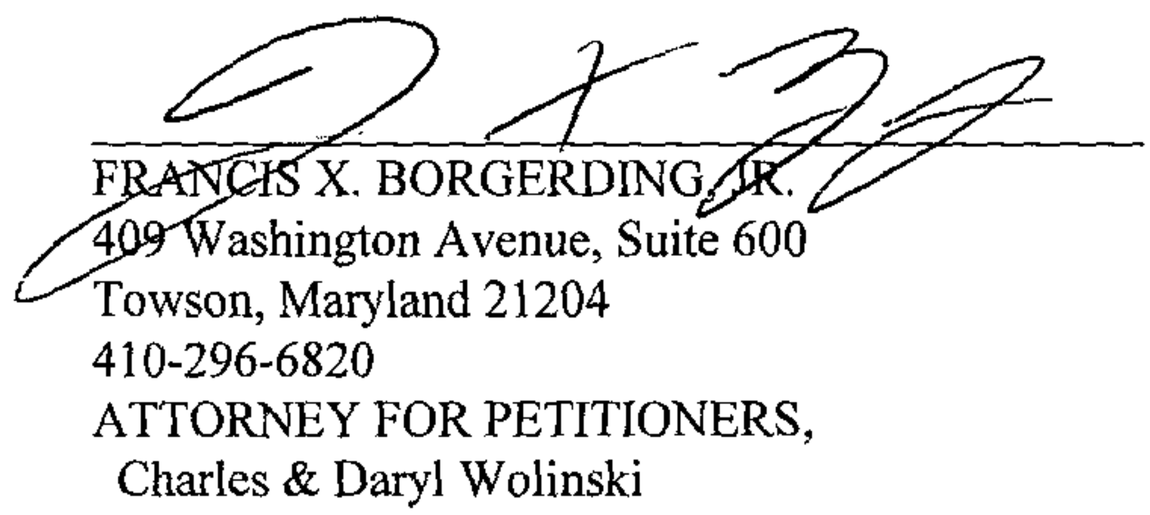
Petitioners, Charles and Daryl Wolinski, testified that after purchase of the subject lots they were pregnant with their first child and constructed a home on 9019 Cuckold Point Road in order to have a place to live. They further testified that they have always maintained their original intention to have Eric McDonald build a house on 9017 Cuckold Point Road so that the parties can raise their families as neighbors. They testified that since the purchase of the properties, Eric McDonald has lived with relatives with the ultimate hope that he could construct his home on 9017 Cuckold Point Road. Charles Wolinski testified that 9017 and 9019 Cuckold Point Road were always unimproved lots prior to the construction of his home on 9019 Cuckold Point Road and the lots have never been used for any common purpose. Further, Mr. Wolinski testified that he has never constructed anything on 9017 Cuckold Point Road, such as a shed, etc. or utilized the land on the adjacent lot.

It is clear from the testimony and evidence before the Board regarding the utilization of the subject lots that there is no evidence to support a finding of an intention to merge the lots under Remes v. Montgomery County, 387 Md. 52 (2005). There have been no swimming pools, sheds or driveways or additions on 9017 Cuckold Point Road, as in Remes, supra. Although the lots were purchased by Petitioners under one deed, the lots were described as two lots "being known and designated at Lots Nos. 488 and 489, as laid out on the Revised Plat of Swan Point..." Petitioners have maintained the use of 9019 Cuckold Point Road and 9017 Cuckold Point Road as separate lots throughout their ownership of the property. Accordingly, the doctrine of zoning merger should not prohibit the consideration of the Petitioners' variances.

CONCLUSION

In light of the above, Petitioners assert that the Board should not be prohibited from consideration of the above-captioned case and further, that pursuant to the testimony and evidence before the Board, that the Petitioners' requested variances should be granted.

Respectfully submitted,



FRANCIS X. BORGERDING, JR.
409 Washington Avenue, Suite 600
Towson, Maryland 21204
410-296-6820
ATTORNEY FOR PETITIONERS,
Charles & Daryl Wolinski

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 18th day of August, 2006, a copy of the foregoing was mailed, first-class postage prepaid, to:

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

FRANCIS X. BORGERDING, JR.

IN THE MATTER OF THE APPLICATION OF EDWARD AND JOSEPHINE HRANICKA - PETITIONERS FOR ZONING VARIANCE ON PROPERTY LOCATED ON THE E/S CUCKOLD POINT RD, 115' N OF C/L 6TH ST (9019 CUCKOLD POINT RD); CHARLES S. WOLINSKI, CONTRACT PURCHASER; AND 65' N OF C/L 6TH STREET (9017 CUCKOLD POINT ROAD) ERIC D. McDONALD – C.P. 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT	* BEFORE THE * COUNTY BOARD OF APPEALS * OF * BALTIMORE COUNTY * CASE NO. 03-096-A and CASE NO. 03-097-A *	

* * * * * * * * *

OPINION

These two cases come before the Board as a result of an appeal filed by Robert Poleski from the decision of the Zoning Commissioner which granted a Petition for Variance of lot width to the Petitioners and denied the request for an undersized lot. In the two cases, Petitioners sought relief to permit a lot width of 50 feet in lieu of the required 55 feet and approval of an undersized lot to develop each property with a single-family dwelling. The hearing was held on March 19, 2003. Present for the Petitioners was Edward Hranicka. The Appellant /Protestant, Robert Poleski, was also present. Neither party was represented by Counsel; however, People's Counsel for Baltimore County, Peter Max Zimmerman, participated in the hearing for the purpose of clarifying the issues with respect to this matter.

After the hearing was completed, the Board took a recess for the purpose of reviewing the papers and exhibits. After the recess, a public deliberation was held on the same day as the hearing with all parties present.

The two lots under consideration are unimproved, rectangular-shaped lots located on the south side of Cuckold Point Road not far from the end of the peninsula from Millers Island in Edgemere. The properties are respectively known as Lots 488 and 489 of Swan Point, which is an older subdivision that was recorded many years ago prior to the first zoning regulations in

Baltimore County. Each lot is 50 feet wide and 150 feet deep and contains a gross area of 7,500 square feet zoned B.L.

Mr. Hranicka and his mother have owned the subject properties for some time. They have contracted to sell Lot 488, known as 9017 Cuckold Point Road, to Eric D. McDonald, and Lot 489, known as 9019 Cuckold Point Road, to Charles L. Wolinski. Each of the contract purchasers proposes to place a single-family dwelling on each one of these lots. Variance relief is necessary due to the insufficient width of the lots. Pursuant to § 1B02.3C.1 of the *Baltimore County Zoning Regulations* (BCZR), the minimum lot width is 55 feet. The owners and contract purchasers also seek relief from § 304 of the BCZR which relates to undersized lots.

The testimony and evidence indicates that Swan Point is an older subdivision that was platted and recorded in the Land Records of Baltimore County prior to the adoption of the first zoning regulations. It appears that all of the lots in the community are 50 feet wide.

Mr. Hranicka testified that he built a home on a lot for his mother approximately 2 years ago. The lot was 50 feet wide. He went before the Zoning Commissioner and received a variance in order to build on the lot. No one appeared before the Zoning Commissioner to protest the granting of the variance and no one appealed the variance; therefore it was granted.

In the present case, the Zoning Commissioner granted the variances on the basis that single-family dwelling on the two undersized lots would not result in any detriment to the health, safety and general welfare of the surrounding locale. However, he denied Petitioners' request for approval of an undersized lot because § 304 of the BCZR "permits the owner of an undersized lot to build a single-family dwelling by right, when certain other requirements are met. One of these requirements is that the property owner cannot own any adjoining land. In that the same

individual(s) own the subject adjacent lots, relief cannot be granted." He therefore denied the undersized lot under the terms of § 304.

While there were no Protestants at the hearing before the Zoning Commissioner, when the Commissioner's decision was rendered, Mr. Poleski filed an appeal to the Board of Appeals. His appeal was based on the fact that Mr. Hranicka owns the two lots side by side, and that there had been changes in the zoning regulations since the lots were established. The lots are now in a D.R. 5.5 zone which requires a lots width of 55 feet in order for a lot to be built upon.

The Zoning Commissioner did deny the Petition with respect to the utilization of an undersized lot under § 304 of the BCZR. Unfortunately, however, the Zoning Commissioner also granted the variance requested from the 55-foot requirement under § 307.1.

The granting of variances is governed by § 307.1 of the BCZR which provides, in relevant part, that variances may be granted:

> ...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance would result in practical difficulty or unreasonable hardship."

The Court of Special Appeals, in *Cromwell v. Ward*, 102 Md.App. 691 (1995) has construed this regulation to mean that obtaining a variance is at least a two step process. The first step requires a finding that the subject property is unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provisions to impact disproportionately upon that property. The second step requires a finding that denial of the requested variance would result in practical difficulty or unreasonable hardship.

Cromwell v. Ward states that "unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship."

A partial map of the Swan Point development produced by the Appellant /Protestant shows that the two lots in question are 50-foot lots, and are comparable to virtually every other lot located in the development. There appeared to be no dispute to this fact from either Mr. Hranicka or the Appellant, Mr. Poleski. Mr. Poleski indicated that he would have no problem if Mr. Hranicka were to build one home on the combined two lots; however, he did protest the building of a dwelling on each of the single lots.

Therefore, it is quite clear that the Petitioner has failed to present any testimony or evidence to the Board showing that the two lots possess any peculiar, unusual or unique factors when compared to other properties in the neighborhood to allow a variance from § 1B02.3.C.1 of the BCZR.

In addition, the Board agrees with the Zoning Commissioner that the Petitioner does not qualify for an undersized lot under § 304 of the BCZR. Petitioner Hranicka owns both of the lots in question and it would be possible for a single-family dwelling to be placed on the combined lots and meet the requirements of the zoning law. Therefore, the Petition fails under § 304 of the BCZR.

ORDER

THEREFORE, IT IS THIS 2nd day of April, 2003 by the County Board of Appeals of Baltimore County

ORDERED that the Petitions for Variance seeking relief from § 1B02.3.C.1 and § 304.1.C

of the Baltimore County Zoning Regulations to permit a lot width of 50 feet in lieu of the required 55 feet in order to permit development of Lots 488 and 489, each with a single-family dwelling to be known as 9017 Cuckold Point Road and 9019 Cuckold Point Road, respectively, and seeking approval of an undersized lot, be and the same are hereby **DENIED**.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Chairman

Lawrence S. Wescott

Margaret Worrall

8/16/06

RE: PETITION FOR VARIANCE 9017 Cuckold Point Road; E/S Cuckold Point Road, 115' N c/line of 6th Street 15th Election & 7th Councilmanic Districts Legal Owner(s): Charles & Daryl Wolinski Petitioner(s)	* * * * *	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY 06-309-A

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

RE: PETITION FOR VARIANCE 9019 Cuckold Point Road; E/S Cuckold Point Road, 115' N c/line of 6th Street 15th Election & 7th Councilmanic Districts Legal Owner(s): Charles & Daryl Wolinski Petitioner(s)	* * * * *	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY 06-310-A

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BOARD OF APPEALS

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PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S
POST-HEARING MEMORANDUM

People's Counsel files this post-hearing memorandum to underline the importance of the *res judicata* doctrine and to illuminate other issues which appeared at the trial hearing on August 1, 2006. The additional issues involve the merger doctrine, the irrelevance of other variances in the area, and irrelevance of the point that zoning establishes standards which govern a previously uncontrolled subdivision.

I. The *Res Judicata* Doctrine Applies with Full Force to this Administrative Process

The *res judicata* doctrine originated in the court setting. But the reasoning behind it has led to its application with full force to the administrative process. The point is that once a case is decided with finality, the parties are precluded from bringing again the same case in an effort to get a different result. It does not matter whether a claimant

wishes to produce different evidence, new witnesses, or more persuasive argument. Once a case is decided, considerations of fairness and administrative efficiency demand that the matter not be repeated and retried.

It is delusive to suggest that there is a relaxed version of the doctrine for zoning cases. The only exception would involve a situation where there is a subsequent substantial change in the character of the neighborhood which warrants a different result. There is no exception for the increased popularity of the new proponent, the withdrawal of objection by a prior opponent, the hiring of an attorney to make a better presentation, or the granting of other variances in the area.

To grant an exception here would lead the CBA down a slippery slope and invite a new petition in every zoning case where the property or his successor has the persistence and resources to continue. In some cases, the renewed case may involve continuation of a zoning violation, in light of the notorious laxity of the zoning enforcement process. In some cases, it involves a drain on the time and resources of community groups. In every case, it forces the CBA to review again a case already decided.

In the present case, it is particularly inappropriate to revisit the matter because Petitioners were listed as contract purchasers in the earlier cases, 3-096 and 3-097. Well aware of the April 2, 2003 denial by this CBA, including the present panel Chairman, the Petitioners went ahead and bought the property. They have subsequently constructed a very nice house with a waterfront view and a swimming pool.

It should be kept in mind that zoning applies to property and land use, and does not depend on ownership. City of Baltimore v. Poe 224 Md. 428 (1961). Moreover, even

if the Wolinskis had no involvement in the earlier case, they would be in privity and thus subject to the *res judicata* effect of the earlier decision.

So there is no misunderstanding as to the application of *res judicata* to administrative cases, including zoning cases, we shall review in further detail the Court of Appeals cases cited in our Pre-Hearing Memorandum. In this context, the doctrine has also been considered under the rubric of "preclusion."

The leading administrative law case is Batson v. Shiflett 325 Md.684 (1992). There, the Court considered the preclusive effect of a final National Labor Relations Board decision concerning an unfair labor practice pitting a local union and employer against the national union which had nullified a local contract. The NLRB contractual issue turned out to be quite different from the defamation issue raised in the subsequent lawsuit involving the same parties. Therefore, there was no preclusive effect. In order to reach that conclusion, however, Judge Karwacki explained the applicable legal criteria:

> "The Court of Special Appeals used the following test for determining whether the NLRB decision is entitled to preclusive effect:
>
> > 'Whether an administrative agency's declaration should be given preclusive effect hinges on three factors: "(1) whether the [agency] was acting in a judicial capacity; (2) whether the issue presented to the district court was actually litigated before the [agency]; and (3) whether its resolution was necessary to the [agency's] decision...."'
>
> "This test was first enunciated in *Exxon Corp. v. Fischer*, 807 F.2d 842, 845-46 (9th Cir. 1987), and its three prongs are supported by the Supreme Court caselaw on issue preclusion.
>
> "In *United States v. Utah Constr. Co.* 384 U.S 394, 86 S. Ct. 1545, 16 L. d. 2d 642 (1966), the Court spoke particularly to the preclusive effect of administrative law rulings, stating that:

> 'When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply *res judicata* to enforce repose.'

"... Thus, agency findings made in the course of proceedings that are judicial in nature should be given the same preclusive effect as findings made by a court." 325 Md. at 701-02

* * *

"In *Parklane Hosiery v. Shore*, 439 U.S. 322, 99 S. Ct. 645, 58 L.Ed. 2d 552 (1979), the Court discussed the distinction between res judicata and collateral estoppel, remarking that:

> 'Under the doctrine of res judicata, a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on these same cause of action. Under the doctrine of collateral estoppel, on the other hand, the second action is upon a different cause of action and the judgment in the prior suit precludes relitigation of issues *actually litigated* and *necessary to the outcome* of the first action.' 325 Md. at 703.

The Batson opinion continued,

> "The rule in Maryland does not differ in any material respect from that adopted by the federal courts. Fn. 7" Ibid.

Here, Judge Karwacki footnoted *White v. Prince George's Co.*, 282 Md. 641, 648 (1978), in which the Court had held the *res judicata* doctrine governed administrative proceedings conducted by the Maryland Tax Court. He acknowledged that there were earlier decisions which held *res judicata* inapplicable to administrative proceedings, but that the law had evolved so that the doctrine does apply.

Well before Batson, the Court had applied the doctrine to Baltimore County zoning proceedings. A case in point is Whittle v. Board of Zoning Appeals 211 Md. 36 (1956), a special exception case. While the previous zoning board denial had gone so far as to have been affirmed by the Circuit Court, Chief Judge Brune explained,

"The general rule, where the question has risen, seems to be that after the lapse of such time as may be specified by the ordinance, a zoning appeals board may consider and act upon a new application for a special permit previously denied, but that it may properly grant such a permit only if there has been a substantial change in conditions. ... This rule seems to rest not strictly on the doctrine of *res judicata*, but upon the proposition that it would be arbitrary for the board to arrive at opposite conclusion on substantially the same set of facts and the same law."

The Court then undertook a detailed analysis and found no substantial change in the neighborhood which would warrant a different result.

There are interesting parallels between the Whittle case and the present case. There was similarly a more favorable attitude of some neighbors. But the Court ultimately observed,

"None of these witnesses, so far as we are informed, testified to any facts upon which his opinion was based which had not been presented, **or available for presentation, in the first case.**"

The opinion also reminded that zoning must not be by plebiscite.

Judge Brune arrived at a conclusion which is on the mark here,

"In general, we think that the petitioners presented a more thorough and persuasive case on the their second application than on their first. This was notably true of evidence with regard to the probable effect of the establishment of a funeral home upon land values in the neighborhood, even though the trial judge declined to accept the appraisers' views based upon comparable properties in another suburban areas, at their full face value, because they did not take sufficiently into account the general rise in land values.

"But the application of the rule of *res judicata* does not depend upon whether or not the case was as comprehensively or persuasively presented at the first trial as the second. ... The first rezoning case was litigated and all the information which could have been produced should have been produced and the second case cannot be decided on testimony which might have been introduced in the first case.

"Because essentially the same facts appeared in the second case as appeared **or could have been shown** in the first case, the appellees are barred by *res judicata*, and their petition should have been denied."

The Court of Appeals followed Whittle in Woodlawn Area Citizens Assoc. v. Board of Co. Comm'rs 241 Md. 187 (1966), a Prince George's County rezoning case. Judge Hammond summarized,

> "We think *Whittle* is dispositive of the case before us. No substantial or significant change in fact or law was shown to have occurred between the 1961 application and its disposition in 1962, and that in 1963 and its disposition in 1964."

Remarkably, the time sequence in Woodlawn is comparable to the time sequence here, spanning three years. There had been five years between the two petitions in Whittle.

A close examination of Whittle and Woodlawn reveal that the petitioners there had a more impressive array of arguable neighborhood changes than any made by the Wolinskis here. But these did not persuade the Court of Appeals to allow any change in the earlier decisions. Indeed, because the Wolinskis have constructed a sizable house on their property, this further weakens or eliminates the case for a variance.

II. The Emergence and Application of the Zoning Merger Doctrine

As noted, the CBA denied the earlier petitions for variances on April 2, 2003. The decision is admitted as P.C. Exhibit 2. It shows Edward and Joseph[ine] Hranicka as property owners, and Charles S. Wolinski and Eric McDonald as contract purchasers. There was no appeal filed.

Just one month later, on May 6, 2003, the Hranickas executed a deed of the property to Charles and Daryl Wolinski for $100,000. The deed designates the property "being known and designated at Lots Nos. 488 and 489, as laid out on the Revised Plat of Swan Point ...." It refers to the property as both part of the ground conveyed to the Hranickas by the Property Transfer Co. and part conveyed by John Herold and Jean

Herold. The deed lists one Tax Account number: 15-1508790100. The deed goes on to state that the purchasers are "To Have and To Hold the said tract of ground and premises above described and mentioned ..." The SDAT tax record, P.C. Exhibit 3, confirms the tax reference. It shows a land area of 15,000 square feet, with a home constructed in 2004 of 2,940 square feet. The tax assessment is $360,293 as of July 1, 2006.

This shows that the Wolinskis purchased the entire tract, upon which taxes were billed collectively. The tract was vacant. The Wolinskis proceeded to obtain a building permit and to construct a house. While Mr. Wolinski suggests the house is built upon and oriented to one of the two lots, the law of zoning considers the lots to be merged into a single tract.

If not already merged by deed and tax number, the lots conclusively became merged when the Wolinskis built their house. It is undisputed that the minimum front lot width for the D.R. 5.5 Zone under the 1B02.3.C small lot table is 55 feet (by reference to BCZR 230.1's allowance of uses in the adjoining residential zone). That is the premise of the request for variances to allow the construction of homes on each of two undersized lots. In the absence of a variance, Mr. Wolinski could not legally construct a home on one of the two lots. Rather, he needed the full width of the two lots, 100 feet, in order to build his home. Thus, both lots were legally in service or accessory to each other to provide sufficient lot width. This accomplished or confirmed a zoning merger.

It does not matter what Mr. Wolinski thought he was doing, or that he placed the house within the area of one of the two lots. Where the companion lot is legally required in order to meet zoning requirements, there is a merger. In that event, nothing can be

done unless there is a resubdivision. In other words, lots 488 and 489 no longer exist from a zoning point of view.

A similar situation occurred in the landmark zoning merger case of Remes v. Montgomery County 387 Md. 52 (2005). There, the issue was the legitimacy of a building permit granted for a new house on lot which previously was used in combination with the adjacent lot. The critical point was that the separate use of the two lots would cause the existing residential use to violate setback requirements. In other words, the existing residential use required the entire property (both platted lots) to comply with the zoning law. The problem related to the driveway, swimming pool, and addition to the house on the property built by the previous owner of the two lots. They were legal as long as the lots were held in common ownership. But as soon as the lots came under separate ownership and use, they would encroach upon and cross the lines of the relevant minimum setback areas. There was also the situation that the two lots had been assessed in one account before the new owner's request for separate tax assessments.

As Judge Cathell put it, rejecting the owner's reliance on the existing subdivision plat and argument to "borrow open space" for the new house, at 387 Md. 67-68:

> "Simply because an applicant submits documents articulating plan specifications, engineering details, and a plot diagram showing details of the building to be erected does not remove the fact that the instant lot may be part of some larger zoning configuration – a configuration that arose thorough a common owner's use of the property, if not through schematics. Each case must be examined on its own. In the case at bar, there is ample evidence to conclude the elder Duffies intended to use their Lot 11 and Lot 12 as one property for zoning purposes: **the pool on Lot 11 violates (or violated) the prescribed setbacks from the street and from Lot 12, unless it was dedicated for zoning purposes to Lot 12, and from the time of its creation was thus an accessory use to the structure or use of Lot 12; the additions to the house on Lot 12 encroach upon that lot's setbacks; the circular driveway traverses both Lot 11 and Lot 12; until very recently the lots were assessed as a single parcel; and the subsequent personal**

representative's deed conveying Lot 11 and Lot 12 to Mr. Duffie describe a single lot comprised of two lots, in that it reads 'Lot numbered eleven (11) and twelve (12)."

For emphasis, the opinion explained, 387 Md. at 73-74,

> "What respondents fail to acknowledge is that the zoning merger that occurred in this case forestalled the creation of a non-conformity on Lot 12. Without the use of Lot 11 as accessory to Lot 12, the uses of both the lots would have violated the zoning ordinance.
>
> "Mr. Remes urges that *Ridge* mandates that the owner of Lot 11 and Lot 12 make a choice: either formally combine the parcels so as to enable Lot 11 to satisfy the appropriate setbacks for the structure on Lot 12, or cure the setback deficiencies on Lot 12 and then subdivide the merged Lot 11 and Lot 12. Thus, petitioner argues that the fact that neither Lot 11 nor Lot 12 have ever been deemed undersized is relevant only to the issue of remedy; it has no bearing on whether these rare merger-eligible lots. He is correct. Petitioner further maintains that the *Ridge* doctrine applies without regard to the *positive* law of a municipality, *i.e.*, what affirmative steps the local *subdivision* regulations might require in order to recognize a formal zoning merger of lots, because the underlying policy of *Ridge* seeks to protect zoning requirements, requirements which are separate and part from subdivision regulations. Again he is correct."
>
> * * *
>
> "... Effectively, zoning dictates what one can build on, or how one may use his property while subdivision or planning determines how the land is divided. It is entirely possible that subdivision regulations are utilized to create separate lots while, at the same time, zoning principles establish limitation on the uses of lots, limitation that extend across lot lines."

In the present case, there is no question that application of the merger doctrine dictates the legal conclusion that Lots 488 and 499 have merged by virtue of the Wolinskis' construction of their house. It requires the accessory or combined use of both lots in order to satisfy the front lot width requirements.

In this context, the Wolinskis have merged their two lots for zoning purposes. They now have one lot with a perfectly fine house, view and swimming pool. There is nothing unique about their home. It apparently is like many others. Their property may be larger than many of the others in the area, but that does not give it any unique quality

which causes any difficulty. To be sure, they have chosen to locate their house physically within the boundaries of one of the platted lots, but that is their choice. They have the ability to use their entire property as they see fit.

In sum, the application of the merger doctrine disqualifies these petition for variances. It further reinforces the CBA's 2003 finding that there is nothing unique about this property, and certainly nothing unique which causes any practical difficulty. This case is all about the choice and convenience of the Wolinskis.

In this context, a footnote is in order about Mr. Wolinski's "hypothetical" suggestion that their property could be used or sold for business use if the variances are not granted. He suggests this is something the neighbors would not favor. He has said that this is not a threat; but it seems to function as a "scare tactic," albeit one which is unrealistic. The first thing to understand is that the Wolinski property is zoned for business use, and that business uses already exist in the area. Therefore, a business use which satisfies B.L. Zone use and area standards would be legitimate.

It appears unlikely, however, that such a use would occur. Unless the Wolinskis sell their property to a developer who wants to tear down their nice house, the Wolinskis would have to subdivide their property, leaving a possible commercial lot with 45 feet of frontage between two homes. There is no evidence that this would be a feasible commercial site. Alternatively, Mr. Wolinski has theorized that he might be tempted to sell the entire site for business use. That would involve his moving from this property, which he professes to love, and the tearing down of the nice house. This also is an unlikely scenario.

The Wolinskis have professed that they are good neighbors and would not do anything to offend their neighbors. In any event, as noted, even if it is assumed that a hypothetical small business or office use could occur, it would have to meet the use and area regulations of the B.L. Zone. That potential "hypothetical" use is not an excuse to grant a variance from the applicable residential zone law.

The Baltimore County Council has zoned this property B.L., and if the property owner wishes to have a business use, that is in accord with the regulations. With respect to the proposed variances for residential use, the CBA has ruled just three years ago that there is no legal justification.

III. The Irrelevance of Other Variances in the Area

Petitioners have submitted three Zoning Commissioner decisions approving variances said to be on similarly situated properties in the area. Two of the three predate the 2003 County Board of Appeals denial of the variances of the present case. Moreover, as shown in the 2003 decision, the CBA often finds that variances approved by the Zoning Commissioner do not stand up on close examination.

The Court of Appeals, moreover, has emphasized that the approval of other variances in an area do not justify the approval of additional variances which are found to be legally insufficient on their own merits.

This principle is reflected in a classic opinion in a Baltimore City zoning variance case. Judge Henderson rejected the argument that other exceptions, even on adjoining lots, could justify another exception. He wrote, in Easter v. Mayor & City Council 195 Md. 395, 400 (1950):

"As was said in Potts v. Board of Adjustment ... 43 A.2d 850, 854: 'Prior exceptions granted by the adjustment board are not in themselves controlling. Ill-advised or illegal variances do not furnish grounds for a repetition of the wrong. If that were not so, one variation would sustain if it did not compel others, and thus the general regulation eventually would be nullified. The annulment of zoning is a legislative function which is beyond the domain of the zoning board. ....' See also the cases collected in a note 168 A.L.R. 13, 40-44. The same principle was announced and applied in Heath v. Mayor & City Council of Baltimore, *supra, Md., 58 A.2d 896, 898; Mayor & City Council v. Byrd Md.,62 A.2d 588, 591, and Cassel v. Mayor & City Council of Baltimore Md., 73 A.2d 486.*

"The principal fact relied upon to justify an exception to the area and set-back rules adopted in the general interest under the police power, is the existence of an exception on the adjoining lot. Undoubtedly this is detrimental to the applicant, although his case is somewhat weakened by his tacit acceptance of the situation over a period of years. But we think the detriment to the applicant must be weighed against the benefit to the community in maintaining the general plan. 'It is by these gradual encroachments, individually of relative insignificance, that the integrity of the general scheme is undermined and ultimately shattered. One departure serves as justification for another * * *."

In Marino v. City of Baltimore 215 Md. 206, 220 (1957), the Court confirmed:

"Certainly a prior exception granted by the Board does not control the granting of a subsequent exception."

A year later, in Park Shopping Center v. Lexington Park Theater Co. 216 Md.271 (1958) (P.C. Exh. 16), Chief Judge Brune summarized:

"With respect to the appellants' first contention [regarding the absence of any showing of unwarranted hardship], it is evident from both the opinion of the Board of Zoning Appeals and the opinion of the Circuit Court that the Board used the existence of other violations or variances in the immediate area tolerated or granted by the Planning and Zoning Commission to justify the issuance of the Certificate of Use and Occupancy here in question.

"This Court has held that it is not proper to consider the existence of surrounding ill-advised or illegal variances as grounds for granting additional variances."

He then quoted with approval from the above language in Easter and Marino. The law on this subject has not changed in the last fifty years.

Moreover, the argument with respect to approval of other variances and their impact on the area rings particularly hollow here. It either was made or could have been made in 2003. In any event, it does not justify or warrant reversal of the 2003 decision.

IV. The Complaint that Zoning Controls a Previously Uncontrolled Subdivision

There is a myth that the establishment of zoning controls on old platted subdivisions somehow is an indication of uniqueness or presents a practical difficulty. It presented itself in the recent Mueller case, which also arose in one of the old waterfront subdivisions in southeastern Baltimore County. Because the CBA made such a finding, this office petitioned for judicial review. As a result, Judge Kathleen Cox issued the attached Circuit Court opinions dated January 25, 2006 and March 9, 2006, which reversed the CBA decision and rejected this approach as a legal error.

It is, of course, an essential characteristic of zoning law to place land use controls on properties not previously subject to such controls. Every property in Baltimore County, whether or not in platted subdivisions, is in this situation. Every lot in Swan Point is now subject to controls which did not exist in the 1920s when the subdivision occurred. There is nothing unique about the establishment of zoning controls. There is no "practical difficulty" unless we say that compliance with zoning law is itself a practical difficulty. It is virtually self-evident that such a proposition is absurd. Indeed, in McLean v. Soley 270 Md. 208, 213-14 (1973), the Court observed that consistency with the spirit and intent of the zoning regulations is one of the criteria for evaluation of a proposed variance with respect to "practical difficulty."

In Grant v. Mayor & City Council 212 Md. 301 (1957), the Court quoted from City of Los Angeles v. Gage 274 P. 2d 34, 44, in sustaining a Baltimore City ordinance which eliminated nonconforming billboards in residential areas after a tolerance period of five years:

> "Zoning as it affects every piece of property is to some extent retroactive in that it applies to property already owned at the time of the effective date of the ordinance."
>
> * * *
>
> "Every zoning ordinance impairs some vested rights because it affects property owned at the effective date."

Judge Hammond went back to the landmark Supreme Court zoning cases of Hadacheck v. Sebastian 239 U.S. 394 (1915) and Euclid v. Ambler Realty Co. 272 U.S. 365 (1926) to drive home the point that zoning is a legitimate exercise of the police power notwithstanding its substantial restrictions on land use and effect on property values. Indeed, the cases just cited involved severe and harsh changes to existing uses or investment-backed expectations. About a decade later, in Eutaw Enterprises, Inc. v. City of Baltimore 241 Md. 686 (1966), Judge Hammond rephrased the same point in upholding an ordinance which phased out nonconforming check-cashing agencies in residential areas:

> ""Because every zoning regulation affects property owned by someone at the time of its enactment, it brings about some curtailment of property rights either by restricting prospective uses or prohibiting existing ones."

It should be kept in mind that the Wolinskis have no complaint with respect to the prohibition of existing uses on their property. Moreover, they bought a vacant property

with full knowledge of the curtailment of property rights confirmed by this Board of Appeals in the April 2, 2003 Hranicka decision.

If the enactment of zoning controls on subdivisions platted prior to the establishment of zoning law were a ground to grant a variance, then a variance could be, or would have to be, granted in every case. It would make a mockery of the zoning system. Every case would be a charade in which the decision would intone that it is unique and harsh to place controls on lots previously not subject to such controls. This is to enter into the theater of the absurd.

Wolinski's Choice

There is a vein of arrogance running through the Wolinskis' position. One month after the CBA's denial of the variances, they acquired the entire property. They chose to place their house to one side of the property. They deliberately left the side of their house vacant. They could have placed a nice house in the middle of their property. They can still use the use the side of their property for a garden or other recreational use. Instead, they have left it vacant on the premise that only the granting of a variance could alleviate an unattractive situation. They also say that the property may be sold for business use if their variances are not granted.

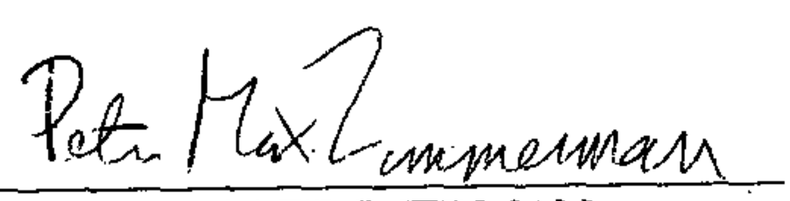
Under these circumstances, they have been successful in getting the support of their neighbors. This included the change of heart of Mr. Poleski, who had strongly and successfully opposed the variances in 2003, and given substantial reasons. But this is a legal system, and zoning is not up to Mr. Poleski or to a plebiscite of the neighbors.

To suggest that there is anything unique about their property is delusive. To suggest that there is any real "practical difficulty" is not only delusive, but also hypocritical. The Wolinskis made a voluntary choice to purchase a property upon which they could enjoy and have in fact built a very nice home with garage and swimming pool. They bought the property immediately after the denial of this CBA's denial of the variances, which they chose not to appeal.

There is some integrity to the legal process. There are legal standards for variances. There are reasons for the *res judicata* doctrine. There is a doctrine of zoning merger. The Zoning Commissioner's granting of other variances, whether or not ill-advised, is not a justification. The establishment of zoning controls on previously uncontrolled properties and subdivisions is a legitimate exercise of the police power.

Conclusion

For these reasons, the County Board of Appeals must deny the petitions for variances. These reasons are collectively even stronger than the reasons given by the Deputy Zoning Commissioner, who correctly found that the law requires denial of the petitions.



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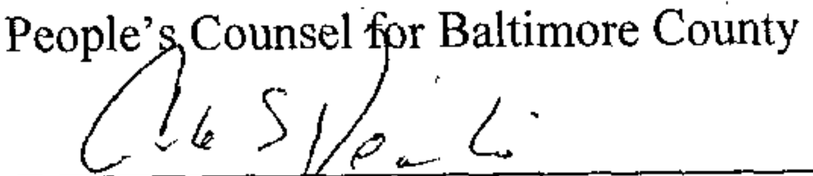

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of August, 2006, a copy of the People's Counsel for Baltimore County's Post-Hearing Memorandum was mailed first-class mail, postage prepaid to Francis X. Borgerding, Jr, Esquire, 409 Washington Avenue, Suite 600, Towson, MD, 21204, Attorney for Petitioners.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

PETITION OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY	*	IN THE
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	CIRCUIT COURT
	*	FOR
IN THE MATTER OF APPLICATION OF **HERMAN AND GRACE MUELLER**	*	BALTIMORE COUNTY
	*	Case No. 3-C-05-7736

* * * * * * * * * * *

MEMORANDUM OPINION

This matter comes before the Court on appeal from the decision of the Baltimore County Board of Appeals (the "Board") dated July 8, 2005. The Court has considered the memoranda filed by both parties, the post-hearing memoranda addressing the impact of the sale of one of the parcels of land at issue, and the arguments of counsel on January 9, 2006, in reaching the decisions set forth in this Memorandum Opinion.

I. PROCEDURAL AND FACTUAL BACKGROUND

When this zoning matter was initiated, Grace and Herman Mueller, Jr. owned two adjoining lots in Baurenschmidt Manor, a 1940 waterfront subdivision on Turkey Point in Baltimore County. In 1947, Mr. Mueller's parents, Herman and Thelma Mueller, purchased Lot 66 on Baurenschmidt Drive, along with an adjacent sliver of land. Lot 66 is approximately 8500 sq. ft., and is 50 feet wide. In accordance with the zoning then in existence, a home was constructed on Lot 66 in 1948. In 1960, Herman and Thelma Mueller purchased the adjacent parcel, Lot 67. Lot 67 is approximately 5700 sq. ft. and 60 feet wide. Both parcels were

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re-deeded to Thelma Mueller and her son, Herman Mueller, Jr., in 1978. The following year, these deeds were transferred to Herman, Jr. and his wife, Grace Mueller.

The parcels remain improved with the original dwelling on Lot 66, which serves as a weekend and summer residence, a shed set on cinder blocks that straddles the two lots, and a boat launching area located on Lot 67. The lots remain separately deeded, and receive separate tax bills. However they are known collectively as 2608 Bauernschmidt Drive.

In 1970, the Baurenschmidt Manor sub-division was re-zoned D.R. 3.5, which required a minimum lot size of 10,000 sq. ft., and a minimum lot width of 70 feet. While the lots, in combination, meet these requirements, neither of the individual lots is sufficiently large. The entire site is also located within the 100-foot Chesapeake Bay Critical Area Buffer. Baltimore County Code § 33-2-401 prohibits construction within that buffer. Baltimore County Zoning Regulation ("BCZR") 500.14 prohibits the Board from granting a variance within the 100 foot setback unless certain criteria are satisfied.

The Muellers filed a petition seeking variances to enable construction of a dwelling on Lot 67. Specifically, they sought relief under BCZR 304 and 307 for the area and width requirements in order to construct on an undersized lot. On June 23, 2004,

the Deputy Zoning Commissioner granted the Mueller's Petition for a variance. The People's Counsel filed a timely de novo appeal.

The Board conducted an evidentiary hearing on February 3, 2004. At the hearing before the Board, the Muellers testified that they sought to build a home on Lot 67 for their daughter and son-in-law. Evidence was introduced to document the purchase and development of the property, as outlined above. People's Counsel presented a signed petition along with testimony from two neighbors who opposed the requested variance. Those neighbors, together with the Petitioner's expert, James Grammer, all acknowledged that houses originally built in this development are on lots that are now considered to be undersized, in light of the 1970 zoning change. They also noted, however, that since the time of the zoning change, homes have been constructed on double lots in the area in order to comply with the current zoning requirements.

The Board issued a decision dated July 8, 2005, affirming the decision to grant a variance. People's Counsel filed a timely appeal to this Court. While this appeal was pending, the Muellers sold Lot 66, and settlement occurred on December 15, 2005.

II. STANDARD OF REVIEW

On appeal from the decision of an administrative agency, including review of a zoning decision, the determination below

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

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

III. DECISION BY THE BOARD OF APPEALS

The factual findings of the Board, pertaining to the history of the property and its development, are supported by the record and are consistent with those outlined above.

In addressing the request for a variance, the Board stated:

> The outcome of [the 1970] zoning change [to a D.R. 3.5 zone], to already existing properties,

> resulted in a legitimate nonconforming use, causing the property to become unique. Based upon the evidence and testimony received at hearing, we find that there are special circumstances or conditions, which exist that, are peculiar to the land or structure that is the subject of the variance request.

The Board next considered the case law that discusses the requirements for a finding that property is "unique" for purposes of the grant of a variance. In particular, the Board considered the discussion in Cromwell v. Ward, 102 Md. App. 691, 698, 710 (1995), and concluded:

> While it appears from *Cromwell* that there must be some physical uniqueness in the size and shape or environment of the property to qualify for a variance, we believe that the Court did not address the imposition of new zoning regulations on old subdivisions. In such cases, the imposition of the new regulations impacts the lots in the old subdivision disproportionately as compared to lots in the area developed after and in accordance with the new regulations. We therefore find that, under these circumstances, the property passes the first test and is unique.

As to the other issued raised, the Board found that profitability and inconvenience were not motivating the variance request, and that the request did not conflict with the spirit or intent of the regulations. It further found no intent by the owners to combine their lots into one unit, and therefore held the doctrine of merger to be inapplicable. Finally, it held that the issues related to the Chesapeake Bay Critical Area requirements would be addressed during the permitting process.

Overall, the Board determined that the proposed development of Lot 67 would not harm or change the area, and that to deny the variance request would limit the use of that lot to an expansion of the yard of Lot 66. Accordingly the requested variance was granted.

IV. LEGAL ANALYSIS

As stated by the Court of Appeals in Friends of the Ridge v. Baltimore Gas and Electric, 352 Md. 645, 650-651 (1999), zoning ordinances in residential districts typically establish dimensional minimums (*e.g.*, lot size, distances between structures, or the height of structures), density restrictions, or ancillary restrictions, (*e.g.*, parking or building requirements). One focus of these ordinances is to restrict development on undersized parcels.

In this case, the properties at issue were re-zoned in 1970 in a manner that increased the minimum lot size and width. Further construction was thereby limited, unless parties owned adjacent parcels or a variance was obtained. Testimony established that many, if not most, of the homes originally constructed in the subdivision are now on lots construed to be undersized, based upon the re-zoning. New construction has occurred within the subdivision on double lots, in compliance with the new zoning restrictions.

BCZR 307.1 is in accord with the general variance law and states that the Board may grant variances:

> . . . only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the zoning regulations of Baltimore County would result in practical difficulty or unreasonable hardship.

Variances are not favored under the law and presumed to be in conflict with the regulations. As stated in Cromwell v. Ward, 102 Md. App. 691, 703 (1995):

> The general rule is that the authority to grant a variance should be exercised sparingly and only under exceptional circumstances.

The Muellers sought their zoning variance under one of two county zoning provisions dealing with undersized lots. BCZR Section 304.1 permits the erection of housing on undersized properties under the following circumstances:

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

Section 4A03.4B applies similar if not identical standards, and states:

> A building permit may be issued for the construction of a dwelling on an undersized lot subject to the following conditions:
>
> 1. The owner of the lot does not own sufficient adjoining land that if combined with the adjoining land would allow the property owner to conform to the current zoning requirements;
> 2. No further subdivision of the lot is allowed;
> 3. The property owner obtains a variance as provided for in Section 307 of these Zoning Regulations; and
> 4. The property owner connects to a public sewer where available and with adequate capacity.

In addition, the Muellers rely upon BCZR Section 307.1, which states, in pertinent part:

> The Zoning Commissioner of Baltimore County and the County Board, upon appeal, shall have and they are hereby given the power to grant variances from height and area regulations, from off-street parking regulations, and from sign regulations only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance with the Zoning Regulations for Baltimore County would result in practical difficulty or unreasonable hardship. No increase in residential density beyond that otherwise allowable by the Zoning Regulations shall be permitted as a result of any such grant of a variance from height or area regulations. Furthermore, any such variance shall be granted only if in strict harmony with the spirit and intent of said height, area, off-street parking or sign regulations, and only in such manner as to grant relief without injury to public health, safety and general welfare. They shall have no power to grant any other variances.

The decision of whether to grant a variance under either provision is a two-step process. The first requires a determination of whether the property, in and of itself, is "unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provisions to impact disproportionately upon that property." Cromwell v. Ward, 102 Md. App. 691, 694 (1995). If that "uniqueness" does not exist, no variance may be granted. If it does, then the second hurdle is to determine whether practical difficulty and/or unreasonable hardship result from the disproportionate impact of the zoning ordinance caused by the property's unique quality. Cromwell, supra. at 694-695.

In Cromwell, supra., the Court of Appeals stressed that uniqueness is a condition relating to the characteristics of the property itself, and not to impact of the zoning restrictions. As the Court stated:

> {I]n the zoning context the "unique" aspect of a variance requirement does not refer to the extent of improvements upon the property, or upon the 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.

Cromwell, supra. at 710.

The Board found, and the Appellees currently argue, that application of the new zoning in 1970 disproportionately impacts undeveloped lots in the old subdivision, such as the Muellers, and that alone suffices for a finding that the property is "unique." Additionally, the Appellees cite to the testimony of their expert, James Grammer, who notes that Lot 67 would be rendered unusable for residential purposes if the variance were not granted.

This analysis ignores the requirements under Cromwell that the impact on the property at issue be somehow different from that of surrounding properties. In fact, the impact here is the same as to every undeveloped lot in the subdivision. Construction of that fact, alone, as rendering a property "unique" would effectively gut the impact of the rezoning. Every undersized lot throughout the community would then be able to claim it was unique on the basis of the re-zoning alone, and the increased lot size restrictions would be virtually meaningless.

BCZR 304.1 affords some limited relief to property owners like the Muellers who own undersized lots in older subdivisions. By its express terms, however, relief under

BCZR 304.1 is not permitted if the owner has sufficient adjoining land to conform with the area and width restrictions set forth in the applicable zoning. At the time these matters were before the Board, the combined lots permitted construction of one residence that met with the regulations. It would be contrary to the intent of this regulation, and to the zoning modification overall, to allow construction of a second structure on this same site.

The requested variance must fail for other reasons as well. At the time this case was before the Board, the Muellers owned Lots 66 and 67, which are contiguous. This fact is also crucial to the variance analysis.

The doctrine of merger has developed in zoning analysis to allow consideration of the lot sizes of contiguous parcels with common ownership, where development on a single parcel would violate the zoning restriction. This doctrine of merger was first formally recognized in Maryland in Friends of the Ridge, supra., at which time the Court of Appeals held that a landowner who clearly desires to combine or merge several parcels or lots of land into one larger parcel may do so to allow consideration of the contiguous lots in service of a single structure or project. In reaching this conclusion, the Court noted a split in the approach to merger employed in other jurisdictions. The majority required some evidence, often minimal, of the owner's

expression of intent to merge the parcels. However some jurisdictions presume merger automatically. In Friends of the Ridge, supra., the court was not required to determine which of these approaches Maryland should follow.

In Remes v. Montgomery County, 387 Md. 52 (2005), the Court of Appeals further explored the doctrine of zoning merger. In Remes, the Court held that two contiguous lots held in common ownership that were used by prior owners in service to one another had merged for zoning purposes. Thus permits could not be issued to permit construction on the vacant lot, where such construction would create a non-conforming use on the adjacent lot. As the Court noted, when zoning merger occurs, the lots remain divided, and the doctrine simply operates as an adjustment of zoning requirements. Remes at 478. However once that occurs, one can't later sell off a parcel without correcting nonconformance issues and simply seek a variance. To hold otherwise would allow the original owner to "flip-flop between his or her adjacent parcels, thwarting the intent of the land development regulations and, perhaps more egregiously, skirting [the] County's exacting requirements for subdivision." Remes at 489.

At the time the Board considered the Mueller's variance request, they had adjacent parcels. The undeveloped parcel had been used in combination with the developed parcel for over 40

years. The dock used by the family was on the undeveloped lot, and a shed straddled the property line. While never formally "merged" into a single deed, the properties had shared a common address for many years. The double lot had sufficient area to comply with the revised zoning restrictions. To allow the owners to now claim they are entitled to a variance to permit construction of a home on the undeveloped parcel would be contrary to the analysis employed by the Court in Remes.

Finally, the Respondents argue that the December sale of Lot 66, leaving them owners of only the undeveloped lot, eliminates the merger analysis. This argument must fail for several reasons. First, in the posture of this case, this Court is bound to analysis of the facts and issue before the Board. To the extent that new facts develop that may impact on the Board's analysis, the proper remedy is to remand for further review, not to analyze those facts in the first instance on appeal. Second, in the analysis under BCZR 304.1, at the time of application the Muellers owned adjoining land. Thus this development is not one that this Court may consider in the first instance as one according a basis for relief by grant of a variance.

V. CONCLUSION

For the reasons stated, the Court finds that the July 8, 2005 decision of the Board of Appeals was premised on an erroneous interpretation of the law, and thus was in error. For

that reason, the decision of the Board of Appeals is REVERSED, and this case is remanded for entry of a ruling consistent with the ruling set forth in this opinion.

JUDGE KATHLEEN GALLOGLY COX

Date: 1/25/06

Clerk: Please send copies to all parties.

A TRUE COPY Test
SUZANNE MENSH, Clerk
Deputy Clerk

PETITION OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY	*	IN THE
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	*	CIRCUIT COURT
	*	FOR
IN THE MATTER OF APPLICATION OF **HERMAN AND GRACE MUELLER**	*	BALTIMORE COUNTY
	*	Case No. 3-C-05-7736

* * * * * * * * * * *

JUDGMENT ORDER

For the reasons stated in this Court's Memorandum Opinion dated January 25, 2006, it is ORDERED this 25 day of January, 2006 as follows:

The Court finds that the July 8, 2005 decision of the Board of Appeals was premised on an erroneous interpretation of the law, and thus was in error. For that reason, the decision of the Board of Appeals is REVERSED, and this case is remanded for entry of a ruling consistent with the ruling set forth in this opinion.

JUDGE KATHLEEN GALLOGLY COX

Date: 1/25/06

Clerk: Please send copies to all parties.

Copy Test
SUZANNE MENSH, Clerk
Per
Assistant Clerk

PETITION OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY	*	IN THE
	*	CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	* *	FOR BALTIMORE COUNTY
IN THE MATTER OF APPLICATION OF **HERMAN AND GRACE MUELLER**	*	
	*	Case No. 3-C-05-7736

* * * * * * * * * * *

MEMORANDUM OPINION

Herman and Grace Mueller ("the Muellers") have filed a Motion to Alter or Amend the judgment entered on January 28, 2006, pursuant to this Court's memorandum Opinion dated January 26, 2006. The Court has reviewed the Motion and the Response, and has determined that no hearing is necessary. The Muellers raise essentially three arguments, which will be addressed separately.

1. Muellers' Claim of Error Regarding the Address of the Property.

The Muellers claim that this Court was erroneous in its conclusion that the two lots were collectively known as 2608 Bauernschmidt Drive, as each lot now has a separate address, and separate tax bills have been issued historically on these lots. While the latter facts are undoubtedly true, the property was collectively known by a unified reference for a lengthy period of time. The separate tax bills and later reference by separate street addresses does not alter the basis for this Court's factual and legal analysis.

FILED MAR 15 2006

2. **Muellers' Claim of Error Concerning Other Area Construction.**

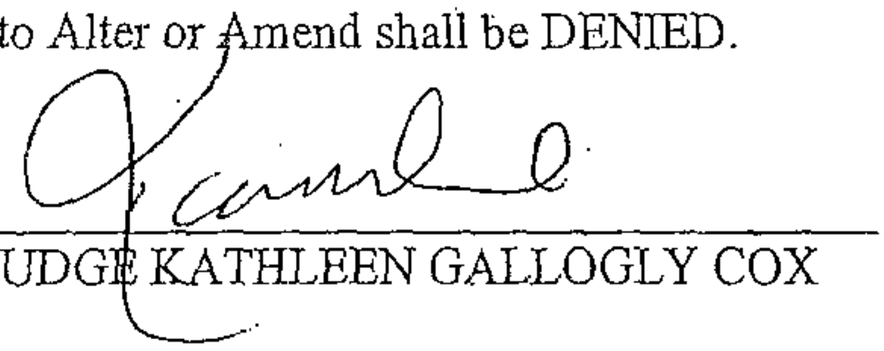
Muellers next claim error in the factual finding that area construction occurred on double lots, citing evidence of other area construction on single lots that has been approved. These facts are largely immaterial to the Court's analysis. Whether construction has been approved on other lots is not binding on this Court and isn't material under the legal standards that govern this decision.

3. **Muellers' Claim That This Court Erred In Failing To Affirm Relief Under the Standards Set Forth In BCZR §304.1**

Finally, Muellers claim this Court erred in failing to affirm the grant of a variance under the standards for undersized lots incorporated in BCZR §304.1. Essentially, the Petitioners argue that they seek to build on the undeveloped lot, and there is insufficient additional area on the developed lot to contribute to the needs of the undeveloped lot. Thus Petitioners claim they satisfy the three criteria set forth in BCZR §304.1. Petitioners' analysis ignores the doctrine of merger, as outlined in this Court's Memorandum Opinion. For the reasons previously stated, this Court does not believe BCZR §304.1 authorizes the relief granted below.

4. **Conclusion**

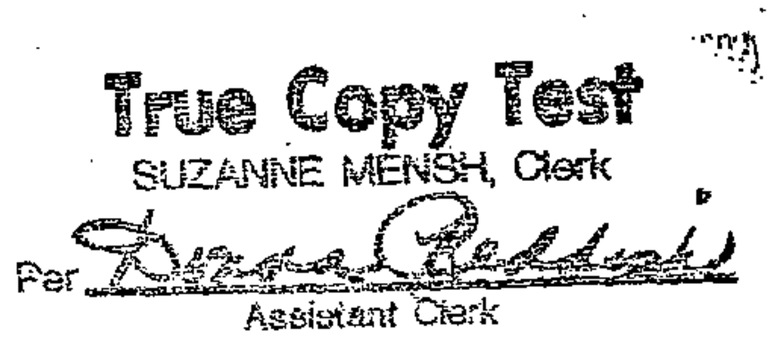
For the reasons stated, this Court finds no ground to alter or amend the Judgment previously entered. Accordingly, the Motion to Alter or Amend shall be DENIED.



JUDGE KATHLEEN GALLOGLY COX

Date: 3/9/06

Clerk: Please send copies to all parties.



PETITION OF PEOPLE'S COUNSEL FOR BALTIMORE COUNTY	*	IN THE
	*	CIRCUIT COURT
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY	* *	FOR BALTIMORE COUNTY
IN THE MATTER OF APPLICATION OF **HERMAN AND GRACE MUELLER**	*	
	*	Case No. 3-C-05-7736

* * * * * * * * * * *

ORDER

For the reasons stated in this Court's Memorandum Opinion dated March 9, 2006, Petitioner's Motion to Alter or Amend (Paper 18000) is DENIED.

JUDGE KATHLEEN GALLOGLY COX

Date: 3/9/06

Clerk: Please send copies to all parties.

True Copy Test
SUZANNE MENSH, Clerk
Per
Assistant Clerk

7/27/06

RE: PETITION FOR VARIANCE 9017 Cuckold Point Road; E/S Cuckold Point Road, 115' N c/line of 6th Street 15th Election & 7th Councilmanic Districts Legal Owner(s): Charles & Daryl Wolinski Petitioner(s)	* * * *	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY 06-309-A

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

RE: PETITION FOR VARIANCE 9019 Cuckold Point Road; E/S Cuckold Point Road, 115' N c/line of 6th Street 15th Election & 7th Councilmanic Districts Legal Owner(s): Charles & Daryl Wolinski Petitioner(s)	* * * *	BEFORE THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY 06-310-A

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BALTIMORE COUNTY
BOARD OF APPEALS

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

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S
PRE-HEARING MEMORANDUM

This is to enter our appearance and assert our office's interest and position. The County Board of Appeals (CBA) is obligated to deny the petitions because the same petitions were denied just a few years ago, and there has been no perceptible change in the property or neighborhood.

On April 2, 2003, the CBA denied the same request for variances to build two homes on undersized lots on the same property in the Hranicka case, Nos. 03-096/97(attached). The CBA there found the petitions failed to satisfy the threshold "uniqueness" test of Cromwell v. Ward 102 Md. App. 691 (1995). The CBA wrote, at page 4:

"*Cromwell v. Ward* states that "unless there is a finding that the property is unique, unusual, or different, the process tops here and the variance is denied without consideration of practical difficulty or unreasonably hardship."

A partial map of the Swan Point development produced by the Appellant/Protestant shows that the two lots in questions are 50-foot lots, and are comparable to virtually every other lot located in the development. There appeared to be no dispute to this fact from either Mr. Hranicka or the Appellant, Mr. Poleski. Mr. Poleski indicated that he would have no problem if Mr. Hranicka were to build one home on the combined two lots; however, he did protest the building of a dwelling on each of the single lots.

Therefore, it is quite clear that the Petitioner has failed to present any testimony or evidence to the Board showing that the two lots possess any peculiar, unusual or unique factors when compared to other properties in the neighborhood to allow a variance from § 1B02.3.C.1 of the BCZR.

In addition, the Board agrees with the Zoning Commissioner that the Petitioner does not qualify for an undersized lot under § 304 of the BCZR. Petitioner Hranicka owns both of the lots in question and it would be possible for a single-family dwelling to be placed on the combined lots and meet the requirements of the zoning law. Therefore, the Petitioner fails under § 304 of the BCZR."

Our office has consistently asserted that unless there has occurred a substantial change in circumstances relating to the property or neighborhood which warrants a different result, the administrative law equivalent of *res judicata* dictates rejection of the renewed petition. Whittle v. Board of Zoning Appeals 211 Md. 36 (1956); Woodlawn Area Citizens Assoc. v. Board of County Comm'rs 241 Md. 187 (1966). The Court of Appeals has confirmed the application of *res judicata* to administrative proceedings in Batson v. Shiflett 325 Md. 684, 701-04 (1992).

We also refer to High Falcon Realty Corp., Case No: 05-308-A (attached), decided January 20, 2006. There, this Board denied a sign variance, based on its previous finding that the site is not unique, even though the renewed request involved a much smaller sign and so a far more modest sign variance.

The same principle applies here. Petitioners suggest that Mr. Poleski, the property owner who opposed the petition in the 2003 case, now supports the request. This is irrelevant. The decision in a zoning variance case must be based on law, not on Mr. Poleski's state of mind. There are no new material facts which alter the correctness of the CBA's 2003 finding that the property is not unique. Nor is there any real change in the character of the neighborhood. It is apparent that the new petitions are based on the apparent increased popularity of the Petitioner. But zoning may not be based on a plebiscite. Benner v. Tribbitt 190 Md. 6 (1948); Montgomery County v. Scrimegour 211 Md. 306 (1958); Smith v. County Comm'rs 252 Md. 280 (1969); Cabin John Ltd. Partnership v. Montgomery County Council 259 Md. 661 (1970); Quinn v. County Commrs 20 Md. App. 413 (1974).

Deputy Zoning Commissioner John V. Murphy was correct insofar as he wrote, at page 5 of his January 30, 2006 opinion here,

> "But when the Board finds the properties were not unique, there is nothing that can change that would reverse this situation unless some natural calamity physically changed the land. Obviously, this did not happen."

While the CBA hearing is a *de novo* hearing, the record does not reflect any evidence to support a departure from the CBA's 2003 decision. The addition of one undersized lot, currently supported by area property owners, may seem a tempting thing to approve. But the approval would erode the important principle of *res judicata* and have an insidious effect on the integrity of the legal process.

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

CAROLE S. DEMILIO
Deputy People's Counsel
400 Washington Avenue
Towson, MD 21204
410-887-2188

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of July, 2006, a copy of the People's Counsel for Baltimore County's Pre-Hearing Memorandum was mailed first-class mail, postage prepaid to Francis X. Borgerding, Jr, Esquire, 409 Washington Avenue, St 600, Towson, MD, 21204, Attorney for Petitioners.

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

IN THE MATTER OF THE APPLICATION OF HIGH FALCON REALTY CORP. FOR A VARIANCE ON PROPERTY LOCATED ON THE SE/S HIGH FALCON ROAD, 89' NE OF C/L REISTERSTOWN ROAD (11317 REISTERSTOWN ROAD)	* BEFORE THE * COUNTY BOARD OF APPEALS * OF * BALTIMORE COUNTY
4TH ELECTION DISTRICT 2ND COUNCILMANIC DISTRICT	* CASE NO. 05-308-A

* * * * * * * * *

OPINION

This matter is before the Board on an appeal from a decision of the Deputy Zoning Commissioner in which the requested variance relief for a sign for the Petitioner's business was denied. A Petition for Variance was filed by High Falcon Realty Corp., by Leonard Stoler, one of the principals of the corporation. He was requested variance relief for the property located at 11317 Reisterstown Road in Baltimore County. The relief is requested from § 450.4 of the *Baltimore County Zoning Regulations* (BCZR) to permit the erection of a double-faced, illuminated freestanding business sign with a size of 55 sq. ft. per side in lieu of the 50-square-foot sign now permitted by the regulations. Petitioner was represented by Marvin Singer, Esquire. A hearing was held on August 23, 2005. No one appeared in opposition to the request. A public deliberation was held on October 26, 2005.

Background

The Petitioner presented Jim Collins, the District Sales Manager for the Baltimore District for Hyundai Motor Company of America. Mr. Collins testified that the Hyundai Motor Company offered various types of signs for their dealers. The standard size sign, HP-100 and HP-150, is 55 sq. ft. in area. He stated that he was familiar with the leasing agreement required of their dealers by Hyundai and that the leasing agreement on page 13, which was entered into evidence, indicates that "subject to applicable law, dealer agrees to purchase from sources designated by HMA and to erect and maintain at the dealership locations, entirely at dealer's expense, standard product and service signs of types authorized by HMA (Hyundai Motor America) as well as such other authorized signs

IN THE MATTER OF THE APPLICATION OF EDWARD AND JOSEPHINE HRANICKA - PETITIONERS FOR ZONING VARIANCE ON PROPERTY LOCATED ON THE E/S CUCKOLD POINT RD, 115' N OF C/L 6TH ST (9019 CUCKOLD POINT RD); CHARLES S. WOLINSKI, CONTRACT PURCHASER; AND 65' N OF C/L 6TH STREET (9017 CUCKOLD POINT ROAD) ERIC D. McDONALD – C.P. 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT	* * * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 03-096-A and CASE NO. 03-097-A

* * * * * * * * *

OPINION

These two cases come before the Board as a result of an appeal filed by Robert Poleski from the decision of the Zoning Commissioner which granted a Petition for Variance of lot width to the Petitioners and denied the request for an undersized lot. In the two cases, Petitioners sought relief to permit a lot width of 50 feet in lieu of the required 55 feet and approval of an undersized lot to develop each property with a single-family dwelling. The hearing was held on March 19, 2003. Present for the Petitioners was Edward Hranicka. The Appellant /Protestant, Robert Poleski, was also present. Neither party was represented by Counsel; however, People's Counsel for Baltimore County, Peter Max Zimmerman, participated in the hearing for the purpose of clarifying the issues with respect to this matter.

After the hearing was completed, the Board took a recess for the purpose of reviewing the papers and exhibits. After the recess, a public deliberation was held on the same day as the hearing with all parties present.

The two lots under consideration are unimproved, rectangular-shaped lots located on the south side of Cuckold Point Road not far from the end of the peninsula from Millers Island in Edgemere. The properties are respectively known as Lots 488 and 489 of Swan Point, which is an older subdivision that was recorded many years ago prior to the first zoning regulations in

2/21/06

IN RE: PETITION FOR VARIANCE East Side of Cuckold Point Road, 115' North of c/1 of 6th Street 15th Election District 7th Councilmanic District **(9017 & 9019 Cuckold Point Road)** Charles and Daryl Wolinski *Petitioners*	* * * * * * *	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY Case Nos.: 06-309-A & 06-310-A

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

NOTICE OF APPEAL

Appellants, Charles and Daryl Wolinski, by and through their attorney, Francis X. Borgerding, Jr., feeling aggrieved by the Zoning Commissioner's decision in the above-captioned case hereby appeal to the County Board of Appeals for Baltimore County from the Deputy Zoning Commissioner's Findings of Fact and Conclusions of Law dated January 30, 2006, a copy of which is attached hereto and incorporated as Exhibit A.

Filed concurrently with this Notice of Appeal is a check made payable to Baltimore County to cover the costs of the Appeal noted herein.

The name and address of the Appellants are Charles and Daryl Wolinski, 9017 Cuckold Point Road, Baltimore, Maryland 21219.

FRANCIS X. BORGERDING, JR.
409 Washington Avenue, Suite 600
Towson, Maryland 21204
410-296-6820
ATTORNEY FOR APPELLANTS

RECEIVED
FEB 21 2006
Per ....

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 21 day of February, 2006, a copy of the Notice of Appeal was mailed, first-class postage prepaid, to:

Peter Max Zimmerman, Esquire
People's Counsel for Baltimore County
Old Court House, Room 47
400 Washington Aveue
Towson, Maryland 21204

John B. Murphy, Esquire
Deputy Zoning Commissioner for
Baltimore County
County Courts Building
401 Bosley Avenue, Suite 405
Towson, Maryland 21204

FRANCIS X. BORGERDING, JR.

1/30/06

IN RE: PETITION FOR VARIANCE East Side of Cuckold Point Road, 115' North of c/l of 6th Street 15th Election District 7th Councilmanic District **(9017 & 9019 Cuckold Point Road)** Charles and Daryl Wolinski *Petitioners*	* * * * * *	BEFORE THE DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY CASE NOS. 06-309-A & 06-310-A

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner as a Petition for Variance filed by Charles and Daryl Wolinski, Petitioners. The variance request is for properties located at 9017 and 9019 Cuckold Point Road in the Edgemere area of Baltimore County. The variance request for both cases are from Section 1B02.3C.1 of the Baltimore County Zoning Regulations (B.C.Z.R), to allow a lot width of 50 ft. in lieu of the required 55 ft. for a single-family dwelling.

The properties were posted with a notice of the public hearing date and time on January 7, 2006 and notice was given to the general public by publication in the Jeffersonian Newspaper on January 12, 2006.

Interested Persons

Appearing at the hearing on behalf of the variance request were Charles Wolinski, Petitioners. Frank Borgerding, Esq. represented the Petitioner. There were no protestants or citizens attending the hearing. Peter Max Zimmerman, People's Counsel, entered his appearance in this case.

Zoning Advisory Committee

The Zoning Advisory Committee (ZAC) comments are made part of the record of this case and contain the following highlights: ZAC comments were received by the Department of

Environmental Protection and Resource Management (DEPRM) dated January 19, 2006, the Office of Planning dated January 4, 2006, and the Bureau of Development Plans Review dated January 3, 2006, copies of which are attached hereto and made a part hereof.

Amended Petition

Mr. Borgerding requested to amend the Petition to allow a lot of 49 feet, 11 inches in Case No. 06-309-A and to allow a lot of 50 feet, 1 inch in Case No. 06-310-A. The original requests were to allow 50 foot lots. As the requested amended Petition was essentially the same as the original Petition and the public was substantially notified by the original posting and advertisement, the amended Petition was allowed.

Applicable Law

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

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

Testimony and Evidence

These cases involve adjacent 50-foot lots (Lot 488 and 489) in the Swan Point subdivision. By agreement, the cases were heard together and testimony and evidence presented apply to both cases.

The Petitioner testified that he and a friend, Eric McDonald purchased the subject properties in 2003 with the intention of building a home for himself on one (1) lot and a similar home for his friend on the second lot. Each lot contains approximately 0.172 acre, and is zoned B.L. The zoning on the adjacent residential property, which in this case happens to be DR 5.5, controls residential uses in this business zone. Since each lot is 50 feet wide, the Petitioner and Mr. McDonald filed for variances in Case Nos. 03-096-A and 03-097-A, which were granted by the Zoning Commissioner but denied by the Board of Appeals. As the result, the Petitioner built his new home on Lot 489 and bought Mr. McDonald's interest in Lot 488. See Plat to Accompany Exhibits 6A and 6 B.

Mr. Borgerding indicated that the case at the Board of Appeals was contested primarily by the adjoining property owner, Mr. Poleski. However, in the intervening years, Mr. Poleski has now become supportive of building homes on both lots as shown by Exhibit 5C. In fact, all the adjoining property owners now support building the second home on Lot 488 as shown by the letters of support in Exhibit 5A and 5B. As the result in this support, the Petitioner filed the subject requests for variance.

Mr. Borgerding described the Miller's Island community in which the subject properties are located as very tight-knit due to the very narrow peninsula on which they are located. The Petitioner has spent all his life in the area, as have his parents. Although these lots are not waterfront, they are waterview.

Mr. Borgerding proffered that the two (2) lots have never been used as one (1) lot and prior to building the Petitioner's home on Lot 489, neither lot had been improved in any manner. It was always the Petitioner's intention to treat the lots separately as shown by the prior case in which Mr. McDonald would build his home on Lot 488.

Mr. Borgerding indicated that these lots are part of the Swan Point subdivision, which was recorded in the land records in 1920 as shown by Exhibit 2. He presented extensive numbers of photographs of the Petitioner's home and compatible similar homes in the immediate area, Exhibit 4, and proffered that the new home on Lot 488 would be similarly compatible. Finally, the Petitioner indicated that he agreed to all ZAC comments including submitting elevation of the proposed new home to the Planning Office.

Findings of Fact and Conclusions of Law

Under ordinary circumstances, I would easily approve these requests. The Petitioner owns property zoned BL, and instead of using the property commercially, he proposes to build another home on the vacant lot. Presumably, this use is less valuable than the commercial uses he would be allowed by right. This will also honor his commitment to his friend starting in 2003. A new house on Lot 488 will impact his family's privacy compared to what he has now. The neighbor who protested the cases in 2003 now supports the new home on the adjacent lot. A review of the pattern on development of the neighborhood shows that homes are primarily built on 50-foot lots as is proposed. What's not to like?

The problem, of course, is that the Board of Appeals turned this request down three (3) years ago. As the Board noted in Case No. 91-129-A, once a zoning case is litigated the decision is binding in subsequent litigation involving the same property and the same parties (or their successors) in the absence of an erroneous determination of law citing Board of County Commissioners of Cecil County v Racine, 24 Md. App. 435, 332 A 2d 306 (1975).

I appreciate Mr. Borgerding's lot line adjustment at the hearing making one (1) lot 1 inch wider, while the other 1 inch narrower so as to distinguish these cases from the prior Board of Appeals cases cited above on the facts. However, I cannot in good conscience accept that this

and the prior cases are somehow different on the facts. This would be acknowledging form over substance.

In addition, the reason the Board gave for denying these requests in the prior cases was that the properties were not unique from a zoning standpoint. Had the denial been based on the pattern of development of the neighborhood, I perhaps could have found the things had changed in three (3) years and therefore distinguish the cases. But when the Board finds the properties were not unique, there is nothing that can change that would reverse this situation unless some natural calamity physically changed the land. Obviously, this did not happen.

Consequently, I must deny these requests with the understanding that the Petitioner must take the case to the Board who heard the first cases. I note, however, that this Commission and, I believe, the Board has recognized that zoning regulations imposed after the lots were laid out and recorded in the land records have a different impact on lots laid out after the regulations were enacted. As such, they have often been found to be unique even though they are usually flat rectangles with no redeeming features such as rivers, wetlands, etc., which trigger the need for a variance.

For example, RC 5 was imposed on many old lots in the eastern side of the County in the 1970's. This zone was primarily concerned with controlling development around the rural commercial centers in the northern section of the County. Lots were specified to contain one acre, as this was the minimum size for homes using private water and septic systems. Having one acre, the regulations could reasonably require 50-foot setbacks from lot lines for new homes. These regulations made great sense in the rural areas of the County.

As no public water and sewer were planned for large parts of the eastern side of the County, the Council imposed RC 5 here as well. However, there are extensive portions of the County's Chesapeake Bay waterfront which were laid out in the 1920's into 50 foot lots perhaps

with 1/8 acres of ground. The pattern of development was often one (1) house on each 50-foot lot. Clearly, no one could meet the 50-foot side yard setback regulations on a 50-foot lot. In fact, someone would have to acquire three (3) adjoining lots just to put up a home to meet the side yard setback requirements. However, someone would have to have eight (8) lots to meet the acreage requirements, and impractical task. Recently, the minimum acreage was increased to 1.5 acres to address continuing development concerns around the rural commercial centers. If the present RC 5 regulations strictly applied to the 50-foot lots along the waterfront, someone would need 12 lots to build. No homes could practically ever be built. Clearly, this was not the Council's intention. Rather, the Council addressed the issues it saw around the rural centers by means of the RC 5 regulations and left the application of the RC 5 regulations on the old 50 foot lots to the discretion of the Commission and Board via the variance procedures. As such, these lots are unique in a zoning sense because they are impacted differently from lots laid out in conformance with the RC 5 regulations.

That said, the community is protected from harmful development in these areas by the remaining requirements of Section 307 such as no greater density, spirit and intent and adverse impact. The latter often amounts to analyzing the pattern of development of the neighborhood street by street to see if the new home will adversely impact the community.

However, because the Board made the determination that the property was not unique, I find the Board and not this Commission must be the forum to review this matter.

Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be denied.

THEREFORE, IT IS ORDERED, by the Deputy Zoning Commissioner for Baltimore County, this 30 day of January, 2006, that the variance request for both cases from Section

1B02.3C.1 of the Baltimore County Zoning Regulations (B.C.Z.R), to allow a lot width of 50 ft. in lieu of the required 55 ft. for a single-family dwelling, be and is hereby DENIED.

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

JOHN V. MURPHY
DEPUTY ZONING COMMISSIONER
FOR BALTIMORE COUNTY

JVM:dlw

CBCA FLOOD [redacted] [redacted] CRITICAL AREA

Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at #9017 CUCKOLD POINT ROAD

which is presently zoned B.L.

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) 1B02.3.C.1; BCZR, TO ALLOW A LOT WIDTH OF 50 FT. IN LIEU OF THE REQUIRED 55 FT. FOR A SINGLE FAMILY DWELLING

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

TO PRESENTED @ HEARING

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

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

Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address — Telephone No.

City — State — Zip Code

Attorney For Petitioner:

Name - Type or Print

Signature

Company

Address — Telephone No.

City — State — Zip Code

Legal Owner(s):

CHARLES WOLINSKI
Name - Type or Print

Charles Wolinski
Signature

Daryl Wolinski
Name - Type or Print

Daryl Wolinski
Signature

#9019 CUCKOLD POINT RD. — 410-477
Address — Telephone No.

BALTIMORE, MD. — 21219
City — State — Zip Code

Representative to be Contacted:

Name: SAME

Address — Telephone No.

City — State — Zip Code

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING _____

UNAVAILABLE FOR HEARING _____

Reviewed By _____ **Date** 12-15-05

ORDER RECEIVED FOR FILING
Date 1-30-06
By [illegible]

Case No. 06-309 A

REV 9/15/98

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: #06-309-A
3017 Cuckold Point Road
East side of Cuckold Point Road, 115 feet north of centerline of 6th Street
15th Election District - 7th Councilmanic District
Legal Owner(s): Charles and Daryl Wolinski
Variance: to permit a lot width of 50 feet in lieu of the required 55 feet for a single family dwelling.
Hearing: Friday, January 27, 2006 at 9:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

WILLIAM J. WISEMAN, III
Zoning Commissioner for Baltimore County
NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Zoning Commissioner's Office at (410) 887-4386.
(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.
1/092 Jan 12 80659

CERTIFICATE OF PUBLICATION

1/12/, 2006

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 1/12/, 2006

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

S. Wilkinson
LEGAL ADVERTISING

ZONING DESCRIPTION FOR 9017 CUCKOLD POINT ROAD

Beginning at a point on the east side of cuckold point road

Which is 30 feet wide at the distance of 115 feet north of the

Centerline of the nearest improved intersecting street 6th Street

Which is 30 feet wide. *Being Lot# 488, - in

The subdivision of Swan Point as recorded in Baltimore County

County Plat Book # 9, Folio # 4, containing 7500 square feet

Also known as # 9017 Cuckold Point Road and located in the

15th Election District, 7th Councilmanic District.

CERTIFICATE OF POSTING

ATTENTION: KRISTEN MATTHEWS **DATE:** 1/09/06

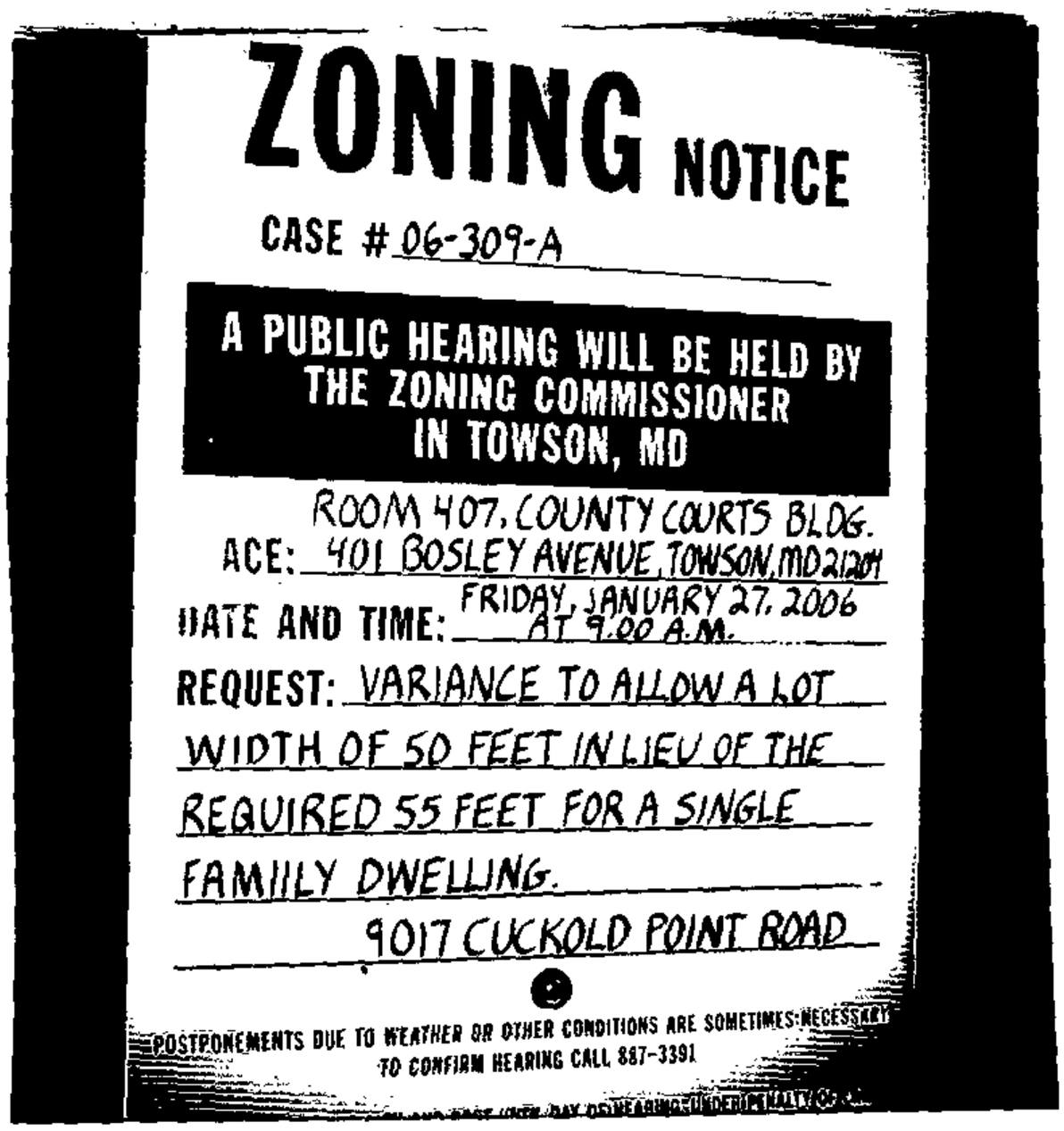
Case Number: 06-309-A

Petitioner/Developer: CHARLES & DARYL WOLINSKI

Date of Hearing (Closing): 01/27/06

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at: 9017 CUCKOLD POINT ROAD

The sign(s) were posted on: 1/07/06



Linda O'Keefe
(Signature of Sign Poster)

Linda O'Keefe
(Printed Name of Sign Poster)

523 Penny Lane
(Street Address of Sign Poster)

Hunt Valley Maryland 21030
(City, State, Zip Code of Sign Poster)

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

APPEAL SIGN POSTING REQUEST

CASE NO. 06-309-A

9017 CUCKOLD POINT ROAD

15TH ELECTION DISTRICT APPEALED: 2/21/06

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.: 06-309-A 46-611

LEGAL OWNER: CHARLES & DARYL WOLINSKI

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

9017 CUCKOLD POINT ROAD
BALTIMORE, MD 21219

The sign was posted on 3-29-06, 2006.

By: _____
(Signature of Sign Poster)

JASON SEIDELMAN
(Print Name)

309

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 2512

DATE 12-15-05 ACCOUNT R001-006-6150

AMOUNT $ 65.00

RECEIVED FROM: PAT O'Keefe

FOR: UAR

9017 Cuckolo Pt. Rd

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
MISCELLANEOUS 01.064 CHF 0001
12/14/2005 12:15:[illegible] 14:57:50 2
FG 0004 001 KIM 006 000
RECEIPT # 204157 12/15/2005 OPLH
Dept 5 SDI ZONING CLASSIFICATION
TR NO. 002512
Recpt Tot $65.00
$100.00 CK $100.00 CA
$30.00 CK
Baltimore Count Maryland

CASHIER'S VALIDATION

Charles S. Wolinski 08/01
Daryl Marie Wolinski
9019 Cuckold Point Road
Millers Island, MD 21219

7-11/520
EZShield Fraud Protection

1696

Date 3-2-06

Pay to the order of Baltimore County $ 400.00

Four hundred 00/100 Dollars

Security Features Included. Details on Back.

M&T BANK
MANUFACTURERS & TRADERS TRUST COMPANY
SPARROWS POINT OFFICE

Memo

Daryl Wolinski

⑆052000113⑆ 911438089⑈ 1696

© Image Checks, 2003 1-800-562-8768 www.imagechecks.com Guiding Lights

New London Harbor Light (CT) Artist: Nenad Markovich. Licensed by Bentley Licensing Group.

2134

FRANCIS X. BORGERDING, JR.
ATTORNEY AT LAW
GENERAL ACCOUNT
409 WASHINGTON AVE STE 600
TOWSON, MD 21204-4907
(410) 296-6820

7-61-520

DATE February 27, 2006

PAY TO THE ORDER OF Baltimore County, Md $ 400.00/100

Four Hundred DOLLARS

Security Features Details on Back

MERCANTILE BANK & TRUST
Baltimore, Maryland 21201

FOR Appeal - filing fee Charles Wolinski

⑈0000213⑈ ⑆052000613⑆ 0006444062⑈

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET & FINANCE
MISCELLANEOUS RECEIPT

No. 4296

DATE 3/7/06 ACCOUNT 001006 6150

AMOUNT $ 800.00

RECEIVED FROM: Francis Borgerding Esq. ($400) & Daryl Wolinski ($400)

FOR: Appeal to Board of Appeals from Zoning Comm. for Case # 06-309-A & # 06-310-A
9017 & 9019 Cockold Pt. Rd.

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

PAID RECEIPT
CUSTOMER ACCOUNT TIME DRN
3/08/2006 2/07/2006 12:47:04 1
REG MSD1 BALMTN TRTS PMR
RECEIPT # 276157 2/07/2006 OPLK
Dept 5 323 ZONING VERIFICATION
CR NO. 030296
Recpt Tot 1,800.00
$800.00 CK 1,00 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: 309

Petitioner: CHARLES WOLINSKI

Address or Location: #9017 CUCKOLD POINT ROAD

PLEASE FORWARD ADVERTISING BILL TO:

Name: CHARLES WOLINSKI

Address: #9019 CUCKOLD POINT ROAD
BALTIMORE, MD. 21219

Telephone Number: 410-477-0053

Revised 2/20/98 - SCJ

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

January 4, 2006

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: 06-309-A
3017 Cuckold Point Road
East side of Cuckold Point Road, 115 feet north of centerline of 6th Street
15th Election District – 7th Councilmanic District
Legal Owners: Charles & Daryl Wolinski

Variance to allow a lot width of 50 feet in lieu of the required 55 feet for a single family dwelling.

Hearing: Friday, January 27, 2006 at 9:00 a.m. in Room 407, County Courts Building,
401 Bosley Avenue, Towson, MD 21204

Timothy Kotroco
Director

TK:klm

C: Wolinski, 9019 Cuckold Point Road, Baltimore 21219

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY THURSDAY, JANUARY 12, 2006.**
(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.

Printed on Recycled Paper

County Board of Appeals of Baltimore County

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

Hearing Room – Room 48
Old Courthouse, 400 Washington Avenue

May 10, 2006

NOTICE OF ASSIGNMENT

CASE #: 06-309-A — **IN THE MATTER OF: CHARLES AND DARYL WOLINSKI**
- Legal Owners /Petitioners 9017 Cuckold Point Road 15th E; 7th C

and

CASE #: 06-310-A — **IN THE MATTER OF: CHARLES AND DARYL WOLINSKI**
-Legal Owners /Petitioners 9019 Cuckold Point Road 15th E; 7th C

1/30/2006 –D.Z.C.'s Order in which requested variance relief was DENIED.

ASSIGNED FOR: **TUESDAY, AUGUST 1, 2006 at 10:00 a.m.**

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

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

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

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

Kathleen C. Bianco
Administrator

---

c: Counsel for Appellnats /Petitioners : Francis X. Borgerding, Jr., Esquire
Appellants /Petitioners : Charles and Daryl Wolinski

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

Printed with Soybean Ink
on Recycled Paper

County Board of Appeals of Baltimore County

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

October 24, 2006

NOTICE OF DELIBERATION

IN THE MATTER OF:

CASE #: 06-309-A **IN THE MATTER OF: CHARLES AND DARYL WOLINSKI**
- Legal Owners /Petitioners 9017 Cuckold Point Road 15th E; 7th C

and

CASE #: 06-310-A **IN THE MATTER OF: CHARLES AND DARYL WOLINSKI**
-Legal Owners /Petitioners 9019 Cuckold Point Road 15th E; 7th C

Having heard this matter on 8/01/06, public deliberation has been scheduled for the following date /time:

DATE AND TIME : WEDNESDAY, NOVEMBER 15, 2006 at 9:00 a.m.

LOCATION : Hearing Room 48, Basement, Old Courthouse

NOTE: Closing Memos were filed in this matter on 8/18/06.

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

Kathleen C. Bianco
Administrator

---

c: Counsel for Appellants /Petitioners : Francis X. Borgerding, Jr., Esquire
Appellants /Petitioners : Charles and Daryl Wolinski

Dorothy Reilly

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

FYI: 2-4-6

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on Recycled Paper

Department of Permits and Development Management

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

Baltimore County

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

January 23, 2006

Charles Wolinski
Daryl Wolinski
9019 Cuckold Point Road
Baltimore, Maryland 21219

Dear Mr. Wolinski:

RE: Case Number: 06-309-A, 9017 Cuckold Point Road

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

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Timothy M. Kotroco

FROM: R. Bruce Seeley, DEPRM

DATE: January 19, 2006

SUBJECT: Zoning Item # 06-309-A
Address 9017 Cuckold Point Road
(Wolinski Property)

Zoning Advisory Committee Meeting of December 19, 2006

The Department of Environmental Protection and Resource Management has no comments on the above-referenced zoning item.

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

Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

_X_ Development of this property must comply with the Chesapeake Bay Critical Area Regulations (Sections 33-2-101 through 33-2-1004, and other Sections, of the Baltimore County Code).

Additional Comments:

Reviewer: Glenn Shaffer Date: December 28, 2005

S:\Devcoord\ZAC06-309.doc

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

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

DATE: January 4, 2006

RECEIVED

JAN 0 9 2006

ZONING COMMISSIONER

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

SUBJECT: 9017 and 9019 Cuckold Point Road

ZONING ADVISORY PETITION(S): Case(s) 6-309 and 6-310 Variance(s)

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

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

1. Submit building elevations to this office for review and approval prior to the issuance any building permit. The proposed dwelling shall be compatible in size, exterior building materials, color, and architectural detail as that of the existing dwellings in the area.
2. Building footprints shall allow for a 10-foot side yard setback on both sides.

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

Prepared By: Cindy Murray

Division Chief: Lyn Lanham

CM/LL

W:\DEVREV\ZAC\6-309and6-310 doc

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

SHA
State Highway Administration
Driven to Excel
Maryland Department of Transportation

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

Date: 1.3.02

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

RE: Baltimore County
Item No. 309 (cm)

Dear. Ms. Matthews:

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

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

Very truly yours,

S. D. Foster

Steven D. Foster, Chief
Engineering Access Permits Division

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

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

DATE: January 3, 2006

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

SUBJECT: Zoning Advisory Committee Meeting
For December 26, 2005
Item No. 309

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

The minimum right-of-way for all county roads is 40-feet. Show the right-of-way for Cuckold Point Road centered on existing 30-foot right-of-way. Setback shall be adjusted accordingly.

The base flood elevation for this site is 9.4 feet Baltimore County Datum.

The flood protection elevation for this site is 10.4 feet.

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

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

The building engineer shall require a permit for this project.

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

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

DAK:CEN:clw
cc: File
ZAC-ITEM NO 309-01032006.doc

County Office Building, Room 111 december 28, 2005

Mail Stop #1105
111 West Chesapeake Avenue
Towson, Maryland 21204

ATTENTION: Zoning Review planners

Distribution Meeting of: December 19, 2005

309

Item No.: 6-306-A thru 6-314-A

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

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

cc: File

RE:	PETITION FOR VARIANCE 9017 Cuckold Point Road; E/S Cuckold Point Road, 115' N c/line of 6th Street 15th Election & 7th Councilmanic Districts Legal Owner(s): Charles & Daryl Wolinski Petitioner(s)	*	BEFORE THE
		*	ZONING COMMISSIONER
		*	FOR
		*	BALTIMORE COUNTY
		*	06-309-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 22nd day of December, 2005, a copy of the foregoing Entry of Appearance was mailed to, Charles & Daryl Wolinski, 9019 Cuckold Point Road, Baltimore, MD 21219, Petitioner(s).

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

RECEIVED
DEC 22 2005
Per.....

NOTE TO FILE: REVIEW THE ZONING HISTORY ON THIS CASE AND IT'S COMPANION, 06-310-A. THE REQUESTED RELIEF WAS DENIED ON APPEAL IN 2003. CASES 03-096-A AND 03-97-A.

APPEAL

Petition for Variance
9017 Cuckold Point Road
East side of Cuckold Point Road, 115' North centerline of 6th Street
15th Election District – 7th Councilmanic District
Legal Owners: Charles and Daryl Wolinski

Case No.: 06-309-A
(SEE COMPANION FILE – CASE #06-310-A)

✓ Petition for Variance (December 15, 2005)

✓ Zoning Description of Property

✓ Notice of Zoning Hearing (January 4, 2006)

✓ Certification of Publication (January 12, 2006– The Jeffersonian)

✓ Certificate of Posting (January 7, 2006) by Linda O'Keefe

✓ Entry of Appearance by People's Counsel (December 22, 2005)

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

✓ Zoning Advisory Committee Comments

RECEIVED
MAR 07 2006
BALTIMORE COUNTY
BOARD OF APPEALS

Petitioners' Exhibits
- ✓ 1 MD Dept. Assess. & Tax. Records (2 pages)
- ✓ 2A Revised Plat of "Swan Point"
- ✓ 2B Cuckold Point Cove Plat
- ✓ 3 Elevation Drawings
- ✓ 4 Photographs 4a-4i ✓
- ✓ 5A Letter of Support from Matthew Ciarpella
- ✓ 5B Letter of Support from Wayne Waldman
- ✓ 5C Letter of Support from Robert Poleski
- ✓ 6A Plat to Accompany
- ✓ 6B Plat to Accompany

Miscellaneous (Not Marked as Exhibits)
- ✓ 1 Deed between Edward & Josephine Hranicka and Charles & Daryl Wolinski
- ✓ 2 October 22, 2002 Order of Zoning Commissioner denying variance request
- ✓ 3 April 2, 2003 Order issued by Board of Appeals denying approval of appeal

✓ Deputy Zoning Commissioner's Order (Petition for Variance – DENIED) dated 1/30/06

✓ Notice of Appeal received on 2/21/06 from Francis X. Borgerding, Jr., Esquire

c: People's Counsel of Baltimore County
John V. Murphy, Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Francis X. Borgerding, Esquire
Charles & Daryl Wolinski, 9019 Cuckold Point Road, Baltimore, MD 21219

date sent March 7, 2006, raj

POSS ~~TUES~~ 11/15 @
Includes 9:00 am

Dorothy Lully
2809 Third St.
21219 on
Meeting notice
Ask Bob

CASE #: 06-309-A IN THE MATTER OF: CHARLES AND DARYL WOLINSKI –
Legal Owners /Petitioners
9017 Cuckold Point Road 15th E; 7th C

and

CASE #: 06-310-A IN THE MATTER OF: CHARLES AND DARYL WOLINSKI –
Legal Owners /Petitioners
9019 Cuckold Point Road 15th E; 7th C

1/30/2006 –D.Z.C.'s Order in which requested variance relief was DENIED.

5/10/06 -Notice of Assignment sent to following; assigned for hearing on Tuesday, August 1, 2006 at 10 a.m.:

Francis X. Borgerding, Jr., Esquire
Charles and Daryl Wolinski
Office of People's Counsel
William J. Wiseman III /Zoning Commissioner
Pat Keller, Planning Director
Timothy M. Kotroco, Director /PDM

10/20/06 - Board convened on 8/01/06 for hearing (Stahl, Grier, Witt); concluded that date; memos filed on 8/18/06. Deliberation tentatively assigned for 11/15/06 at 9 a.m. pending confirmation of availability of Mr. Witt.

10/24/06 – Notice of Deliberation sent to parties; assigned for deliberation on Wednesday, November 15, 2006 at 9:00 a.m. FYI copy to 2-4-6. (Added Dorothy Reilly 2809 Third Street 21219 per t/c from Ms. Reilly regarding notice.

11/15/06 – Board convened for public deliberation (2-4-6). Board unanimously denied variance request; however, Mr. Witt will write concurring opinion regarding issues he believed should be included as part of this denial. Written Majority Opinion and Order to be issued (in addition to Mr. Witt's concurring opinion); appellate period to run from date of written Order. (4)

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

March 7, 2006

Francis X. Borgerding, Jr., Esquire
409 Washington Avenue, Suite 600
Towson, Maryland 21204

Dear Mr. Borgerding:

RE: Case: 06-309-A, 9017 Cuckold Point Road

Please be advised that we received your appeal of the above-referenced case on February 21, 2006. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals (Board).

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

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

Sincerely,

Timothy Kotroco

Timothy Kotroco
Director

TK:raj

c: John V. Murphy, Deputy Zoning Commissioner
Timothy Kotroco, Director of PDM
Office of People's Counsel, M.S. 2010
Charles & Daryl Wolinski, 9019 Cuckold Point Road, Baltimore, MD 21219

RECEIVED
MAR 08 2006
BALTIMORE COUNTY
BOARD OF APPEALS

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BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Charles & Daryl Wolinski
9017 Cuckold Point Road
Case No.: 06-309-A and 06-310-A

DATE: November 15, 2006

BOARD/PANEL Lawrence S. Stahll
Wendell Grier
Robert Witt

RECORDED BY: Linda B. Fliegel/Legal Secretary

PURPOSE: Petition for a Variance.1B02.3.C.1 of the BCZR to allow a lot width of 50' in lieu of the required 55' for a single-family dwelling.

Initially the Deputy Zoning Commissioner Denied original request on 1/30/2006.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- Merged both lots to meet the required 55' zoning requirement and built a home.
- Owners would like a variance to build on the adjoining lot, however, they need a variance to allow 50' in lieu of the 55' that is required.
- McClean v. Soley and Widdle v. Zoning Board of Appeals cases were briefly discussed.
- With respect to *res judicata,* it was clear and unanimous, that it does not apply in this instance.
- This property is similar to most other properties in the area.
- Legal standard for uniqueness has not been met and any hardship that has occurred appears to be self-imposed.
- If the variance is denied then they are stuck with a lot that they cannot build on. However, it appears that the owner themselves brought about any practical difficulty.

DECISION BY BOARD MEMBERS: The Board felt that the necessary components for granting a variance, both uniqueness and hardship, had not been met by the Petitioner.

FINAL DECISION: After a thorough review of the facts, testimony and law, the Board unanimously decided to *DENY* the Petitioner's request for variances. Mr. Witt, however, will be writing a concurring opinion expressing the merger of the two lots and the role that played in the denying of the variances.

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

Respectfully Submitted

_____

Linda B. Fliegel
County Board of Appeals

EXHIBITS Cont.

Exhibit #1 People Counsel
→ Deed of subject property (dated 5/6/03)

#2 Decision CBA April 2, 2003 (to be supplied)

#3 Tax Map SDAT

#4 Blacks Law Dictionary

#5 Decision CBA 11- -91

#6 Zoning Map Balto. County (Plan Sheet: 112B2

File No. **34751-02RAN** Parcel ID No.: 15-1508790100

This Deed, MADE THIS 6TH day of **May, 2003**, by and between **Edward F. Hranicka and Josephine M. Hranicka**, parties of the first part, Grantors; and **Charles S. Wolinski and Daryl M. Wolinski**, parties of the second part, Grantees.

Witnesseth

That for and in consideration of the sum of **ONE HUNDRED THOUSAND AND 00/100 DOLLARS ($100,000.00)**, which includes the amount of any outstanding Mortgage or Deed of Trust, if any, the receipt whereof is hereby acknowledged, the said Grantors do grant and convey to the said **Charles S. Wolinski and Daryl M. Wolinski,** as Tenants by the Entirety, their assigns, the survivor of them and the survivor's personal representatives and assigns in fee simple, all that lot of ground situate in **Baltimore County**, Maryland and described as follows, that is to say:

Beginning for the same and being known and designated at Lots Nos. 488 and 489, as laid out on the revised Plat of Swan Point, which Plat is recorded among the Land Records of Baltimore County in Plat Book L. McL. M. No. 9 folios 4 and 5.

BEING also part of the same lot of ground which by Deed dated November 6, 1968, and recorded among the Land Records of Baltimore County, Maryland in Liber No. 4938, folio 060, was granted and conveyed by Property Transfer Co., unto Edward F. Hranicka and Josephine M. Hranicka.

BEING also part of the same lot of ground which by Deed dated November 6, 1968, and recorded among the Land Records of Baltimore County, Maryland in Liber No. 4938, folio 62, was granted and conveyed by John H. Herold and Jean L. Herold, unto Josephine M. Hranicka and Edward F. Hranicka.

Tax Account No. 15-1508790100

Together with the buildings and improvements thereon erected, made or being; and all and every, the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

To Have and To Hold the said tract of ground and premises above described and mentioned, and hereby intended to be conveyed, together with the rights, privileges, appurtenances and advantages thereto belonging or appertaining unto and to the proper use and benefit of the said **Charles S. Wolinski and Daryl M. Wolinski**, as Tenants by the Entirety, their assigns, the survivor of them and the survivor's personal representatives and assigns of the survivor, in fee simple.

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

CBA R.C. # 1

As Witness the hands and seals of said Grantors, the day and year first above written.

WITNESS:

_____ _____{Seal}
Edward F. Hranicka

_____ _____{Seal}
Josephine M. Hranicka

_____ _____{Seal}

_____ _____{Seal}

STATE OF MARYLAND, Baltimore County, to wit:

I HEREBY CERTIFY, That on this **6th** day of **May, 2003**, before me, the subscriber, a Notary Public of the State of Maryland and Baltimore County, personally appeared **Edward F. Hranicka and Josephine M. Hranicka**, the Grantors herein, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged the same for the purposes therein contained, and further acknowledged the foregoing Deed to be their act, and in my presence signed and sealed the same, giving oath under penalties of perjury that the consideration recited herein is correct.

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

JANICE D. JOHNSON NOTARY PUBLIC ANNE ARUNDEL CO., STATE OF MD MY COMMISSION EXPIRES DECEMBER 01, 2004

My commission expires: 12-1-04

_____
Notary Public

THIS IS TO CERTIFY, that the within Deed was prepared by, or under the supervision of the undersigned, an Attorney duly admitted to practice before the Court of Appeals of Maryland, or by one of the parties named in the within instrument.

_____
David L. Thurston, Attorney

AFTER RECORDING, PLEASE RETURN TO:
Crown Title Corporation
One Sanford Avenue
Baltimore, MD 21228

0018027 558

State of Maryland Land Instrument Intake Sheet

[ ] City [X] County: Baltimore

Information provided is for the use of the Clerk's Office and State Department of Assessments and Taxation, and the County Finance Office only.
(Type or Print in Black Ink Only All Copies Must Be Legible)

IMP FD SURE $	5.00
RECORDING FEE	20.00
TR TAX STATE	500.00
TOTAL	525.00
Rept# BA03	Rcpt # 49026
SH CR	Blk # 4214
May 20, 2003	02:27 pm

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

1	Deed		Mortgage	3	Financing Statement		Other
2	Deed of Trust		Lease				

2 Conveyance Type Check Box

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

3 Tax Exemptions (if Applicable) Cite or Explain Authority

Recordation	
State Transfer	
County Transfer	

4 Consideration and Tax Calculations

Consideration Amount		Finance Office Use Only	
Purchase Price/Consideration	$ 100,000.00	Transfer and Recordation Tax Consideration	
Any New Mortgage	$ 216,600.00	Transfer Tax Consideration	$
Balance of Existing Mortgage	$	X ( )% =	$
Other:	$	Less Exemption Amount	$
		Total Transfer Tax	$
Other:	$	Recordation Tax Consideration	$
		X ( ) per $500 =	$
Full Cash Value	$ 100,000.00	TOTAL DUE	$

5 Fees

Amount of Fees	Doc. 1	Doc. 2	Agent:
Recording Charge	$ 25.00	$ 80.00	
Surcharge	$	$	Tax Bill:
State Recordation Tax	$ 500.00	$ 585.00	
State Transfer Tax	$ 500.00	$	C.B. Credit:
County Transfer Tax	$ 1,500.00	$	
Other	$	$	Ag. Tax/Other:
Other	$	$	

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

District	Property Tax ID No (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG [ ] (5)
	15-1508790100				

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

Location/Address of Property Being Conveyed (2)
9019 Cuckold Point Road, Sparrows Point, MD 21219

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

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

35
500.00

7 Transferred From

Doc. 1 - Grantor(s) Name(s)	Doc. 2 - Grantor(s) Name(s)
Edward F. Hranicka	Charles S. Wolinski
Josephine M. Hranicka	Daryl Wolinski
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)
Charles S. Wolinski	Presidential Bank, FSB
Daryl Wolinski	

New Owner's (Grantee) Mailing Address
7509 Fort Avenue, Fort Howard, MD 21052

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: Pat Muir
Firm: Crown Title Corporation
Address: One Sanford Avenue Baltimore, MD 21228
Phone: 410-719-0200

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

Assessment Use Only - Do Not Write Below This Line

[ ] Personal Verification [ ] Agricultural Verification [ ] Whole [ ] Part [ ] Tran. Process Verification
Transaction Number: Date Received: Deed Reference: Assigned Property No.:

Land			Geo	Map	Sub	Block
Buildings			Zoning	Grid	Plat	Lot
			Use	Parcel	Section	Occ. Cd.
			Town Cd.	Ex. St.	Ex. Cd.	

DUPLICATE PAID RECEIPT
REVALIDATION
BUSINESS ACTUAL TIME DRW
5/20/2003 5/19/2003 12:06:54 4
REG W506 WALKIN KMCM KXM
>>RECEIPT SUMMARY<< 5/20/2003 DELN
Dept 7 MDR RECORDATION TAXES
ACCOUNT NO. 1508790100 $2,585.00
RECEIPT NO. CK .00 CA
BALTIMORE COUNTY, MARYLAND

5 1903

34751-02ACC

Addendum
State of Maryland Land Instrument Intake Sheet
County: Baltimore

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

2 (Continued) Consideration and Fees

Consideration Amount/Recordation Fees	Doc. 3	Doc. 4	Doc. 5	Doc. 6
Consideration, Including Assumed Indebtedness	$	$	$	$
Recording Charge	$ 25.00	$	$	$
Surcharge	$	$	$	$
State Recordation Tax	$	$	$	$
State Transfer Tax	$	$	$	$
County Transfer Tax (if Applicable)	$	$	$	$
Other	$	$	$	$
Other	$	$	$	$

6 (Continued) Transferred From

Doc. 3 - Grantor(s) Name(s)	Doc. 4 - Grantor(s) Name(s)
Charles S. Wolinski	
Daryl Wolinski	
Doc. 5 - Grantor(s) Name(s)	**Doc. 6 - Grantor(s) Name(s)**
Doc. 3 - Owner(s) of Record, if Different from Grantor(s)	**Doc. 4 - Owner(s) of Record, if Different from Grantor(s)**
Doc. 5 - Owner(s) of Record, if Different from Grantor(s)	**Doc. 6 - Owner(s) of Record, if Different from Grantor(s)**

7 (Continued) Transferred To

Doc. 3 - Grantee(s) Name(s)	Doc. 4 - Grantee(s) Name(s)
Presidential Bank, FSB	
Doc. 5 - Grantee(s) Name(s)	**Doc. 6 - Grantee(s) Name(s)**

8 (Continued) Other Names To Be Indexed

Doc. 3 - Additional Names to be Indexed (Optional)	Doc. 4 - Additional Names to be Indexed (Optional)
Doc. 5 - Additional Names to be Indexed (Optional)	**Doc. 6 - Additional Names to be Indexed (Optional)**

9 (Continued) Special Instructions

Special Recording Instructions (if any)

1508790100

P.C.

IN THE MATTER OF THE APPLICATION OF EDWARD AND JOSEPHINE HRANICKA - PETITIONERS FOR ZONING VARIANCE ON PROPERTY LOCATED ON THE E/S CUCKOLD POINT RD, 115' N OF C/L 6TH ST (9019 CUCKOLD POINT RD); CHARLES S. WOLINSKI, CONTRACT PURCHASER; AND 65' N OF C/L 6TH STREET (9017 CUCKOLD POINT ROAD) ERIC D. McDONALD – C.P. 15TH ELECTION DISTRICT 7TH COUNCILMANIC DISTRICT	* * * * * * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO. 03-096-A and CASE NO. 03-097-A

* * * * * * * * *

OPINION

These two cases come before the Board as a result of an appeal filed by Robert Poleski from the decision of the Zoning Commissioner which granted a Petition for Variance of lot width to the Petitioners and denied the request for an undersized lot. In the two cases, Petitioners sought relief to permit a lot width of 50 feet in lieu of the required 55 feet and approval of an undersized lot to develop each property with a single-family dwelling. The hearing was held on March 19, 2003. Present for the Petitioners was Edward Hranicka. The Appellant /Protestant, Robert Poleski, was also present. Neither party was represented by Counsel; however, People's Counsel for Baltimore County, Peter Max Zimmerman, participated in the hearing for the purpose of clarifying the issues with respect to this matter.

After the hearing was completed, the Board took a recess for the purpose of reviewing the papers and exhibits. After the recess, a public deliberation was held on the same day as the hearing with all parties present.

The two lots under consideration are unimproved, rectangular-shaped lots located on the south side of Cuckold Point Road not far from the end of the peninsula from Millers Island in Edgemere. The properties are respectively known as Lots 488 and 489 of Swan Point, which is an older subdivision that was recorded many years ago prior to the first zoning regulations in

P.C. EXHIBIT #2

Baltimore County. Each lot is 50 feet wide and 150 feet deep and contains a gross area of 7,500 square feet zoned B.L.

Mr. Hranicka and his mother have owned the subject properties for some time. They have contracted to sell Lot 488, known as 9017 Cuckold Point Road, to Eric D. McDonald, and Lot 489, known as 9019 Cuckold Point Road, to Charles L. Wolinski. Each of the contract purchasers proposes to place a single-family dwelling on each one of these lots. Variance relief is necessary due to the insufficient width of the lots. Pursuant to § 1B02.3C.1 of the *Baltimore County Zoning Regulations* (BCZR), the minimum lot width is 55 feet. The owners and contract purchasers also seek relief from § 304 of the BCZR which relates to undersized lots.

The testimony and evidence indicates that Swan Point is an older subdivision that was platted and recorded in the Land Records of Baltimore County prior to the adoption of the first zoning regulations. It appears that all of the lots in the community are 50 feet wide.

Mr. Hranicka testified that he built a home on a lot for his mother approximately 2 years ago. The lot was 50 feet wide. He went before the Zoning Commissioner and received a variance in order to build on the lot. No one appeared before the Zoning Commissioner to protest the granting of the variance and no one appealed the variance; therefore it was granted.

In the present case, the Zoning Commissioner granted the variances on the basis that single-family dwelling on the two undersized lots would not result in any detriment to the health, safety and general welfare of the surrounding locale. However, he denied Petitioners' request for approval of an undersized lot because § 304 of the BCZR "permits the owner of an undersized lot to build a single-family dwelling by right, when certain other requirements are met. One of these requirements is that the property owner cannot own any adjoining land. In that the same

individual(s) own the subject adjacent lots, relief cannot be granted." He therefore denied the undersized lot under the terms of § 304.

While there were no Protestants at the hearing before the Zoning Commissioner, when the Commissioner's decision was rendered, Mr. Poleski filed an appeal to the Board of Appeals. His appeal was based on the fact that Mr. Hranicka owns the two lots side by side, and that there had been changes in the zoning regulations since the lots were established. The lots are now in a D.R. 5.5 zone which requires a lots width of 55 feet in order for a lot to be built upon.

The Zoning Commissioner did deny the Petition with respect to the utilization of an undersized lot under § 304 of the BCZR. Unfortunately, however, the Zoning Commissioner also granted the variance requested from the 55-foot requirement under § 307.1.

The granting of variances is governed by § 307.1 of the BCZR which provides, in relevant part, that variances may be granted:

> ...only in cases where special circumstances or conditions exist that are peculiar to the land or structure which is the subject of the variance request and where strict compliance would result in practical difficulty or unreasonable hardship."

The Court of Special Appeals, in *Cromwell v. Ward*, 102 Md.App. 691 (1995) has construed this regulation to mean that obtaining a variance is at least a two step process. The first step requires a finding that the subject property is unique and unusual in a manner different from the nature of surrounding properties such that the uniqueness and peculiarity of the subject property causes the zoning provisions to impact disproportionately upon that property. The second step requires a finding that denial of the requested variance would result in practical difficulty or unreasonable hardship.

Cromwell v. Ward states that "unless there is a finding that the property is unique, unusual, or different, the process stops here and the variance is denied without any consideration of practical difficulty or unreasonable hardship."

A partial map of the Swan Point development produced by the Appellant /Protestant shows that the two lots in question are 50-foot lots, and are comparable to virtually every other lot located in the development. There appeared to be no dispute to this fact from either Mr. Hranicka or the Appellant, Mr. Poleski. Mr. Poleski indicated that he would have no problem if Mr. Hranicka were to build one home on the combined two lots; however, he did protest the building of a dwelling on each of the single lots.

Therefore, it is quite clear that the Petitioner has failed to present any testimony or evidence to the Board showing that the two lots possess any peculiar, unusual or unique factors when compared to other properties in the neighborhood to allow a variance from § 1B02.3.C.1 of the BCZR.

In addition, the Board agrees with the Zoning Commissioner that the Petitioner does not qualify for an undersized lot under § 304 of the BCZR. Petitioner Hranicka owns both of the lots in question and it would be possible for a single-family dwelling to be placed on the combined lots and meet the requirements of the zoning law. Therefore, the Petition fails under § 304 of the BCZR.

ORDER

THEREFORE, IT IS THIS 2nd day of April, 2003 by the County Board of Appeals of Baltimore County

ORDERED that the Petitions for Variance seeking relief from § 1B02.3.C.1 and § 304.1.C

of the Baltimore County Zoning Regulations to permit a lot width of 50 feet in lieu of the required 55 feet in order to permit development of Lots 488 and 489, each with a single-family dwelling to be known as 9017 Cuckold Point Road and 9019 Cuckold Point Road, respectively, and seeking approval of an undersized lot, be and the same are hereby **DENIED**.

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

COUNTY BOARD OF APPEALS
OF BALTIMORE COUNTY

Lawrence M. Stahl, Chairman

Lawrence S. Wescott

Margaret Worrall

Click here for a plain text ADA compliant screen.

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

Go Back
View Map
New Search
Ground Rent

Account Identifier: **District** - 15 **Account Number** - 1508790100

Owner Information

Owner Name:	WOLINSKI CHARLES S WOLINSKI DARYL M	**Use:**	RESIDENTIAL
		Principal Residence:	YES
Mailing Address:	9019 CUCKOLD POINT RD BALTIMORE MD 21219-1635	**Deed Reference:**	1) /18027/ 556 2)

Location & Structure Information

Premises Address
9019 CUCKOLD POINT RD

Legal Description
LT 488-489
SWAN POINT

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
112	15	4		WATERFRONT			488	3	Plat Ref: 9/ 4

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

Primary Structure Built	Enclosed Area	Property Land Area	County Use
2004	2,940 SF	15,000.00 SF	04

Stories	Basement	Type	Exterior
2	YES	STANDARD UNIT	SIDING

Value Information

	Base Value	Value As Of 01/01/2006	Phase-in Assessments As Of 07/01/2005	As Of 07/01/2006
Land:	56,000	129,500		
Improvements:	246,220	346,940		
Total:	302,220	476,440	302,220	360,293
Preferential Land:	0	0	0	0

Transfer Information

Seller:	HRANICKA EDWARD F	**Date:**	05/20/2003	**Price:**	$100,000
Type:	UNIMPROVED ARMS-LENGTH	**Deed1:**	/18027/ 556	**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	
Seller:		**Date:**		**Price:**	
Type:		**Deed1:**		**Deed2:**	

Exemption Information

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

Tax Exempt: NO
Exempt Class:

Special Tax Recapture:

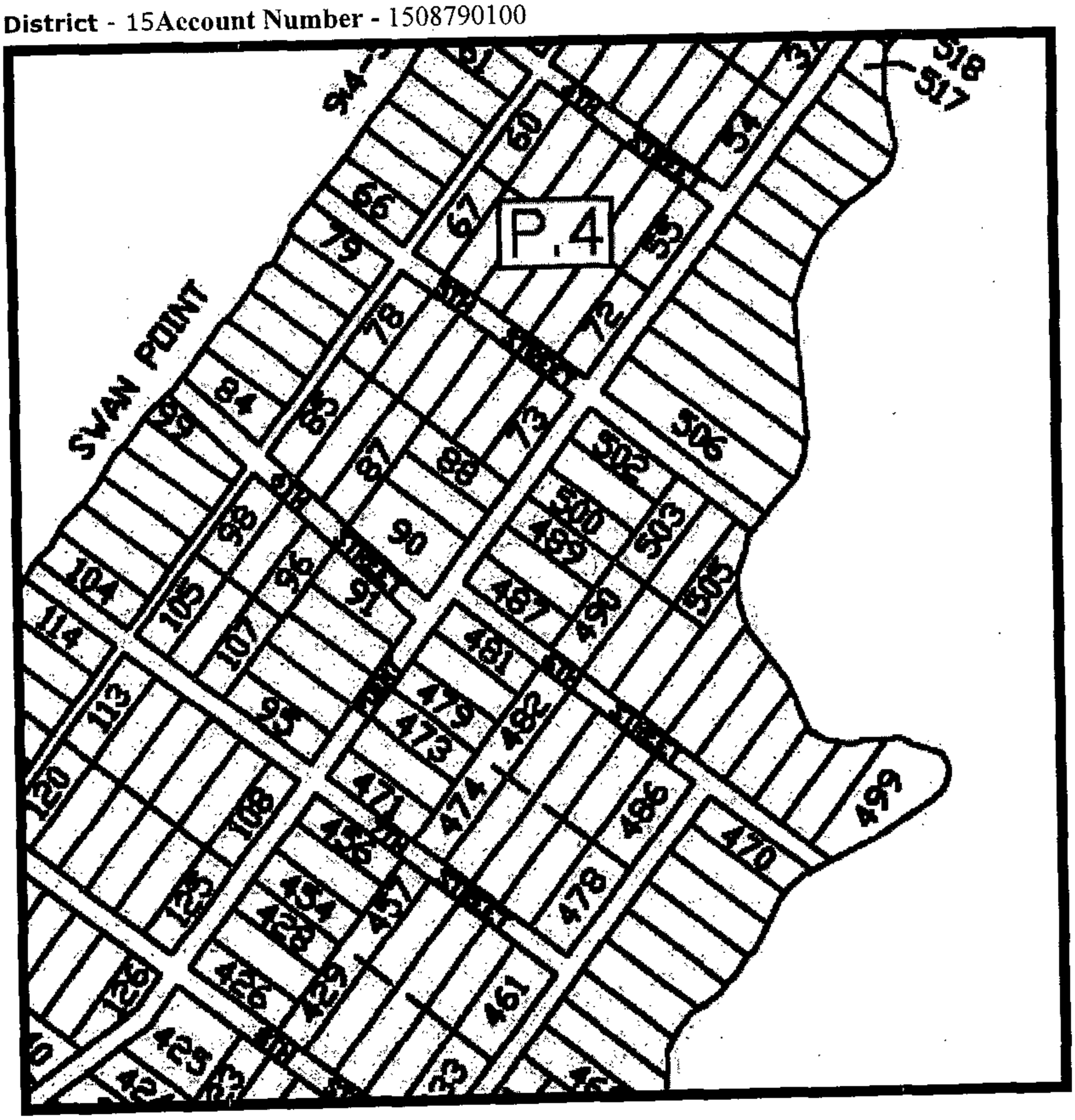
* NONE *

CBA Pl. #3

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

Go Back
View Map
New Search

District - 15**Account Number** - 1508790100



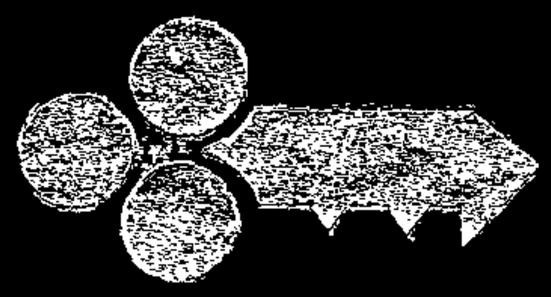
Property maps provided courtesy of the Maryland Department of Planning ©2004.
For more information on electronic mapping applications, visit the Maryland Department of Planning web site at www.mdp.state.md.us/webcom/index.html

CBA pc #4

BLACK'S LAW DICTIONARY

With Pronunciations

Fifth Edition



Res judicata /ríyz jùwdəkéydə/. A matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action. Matchett v. Rose, 36 Ill.App.3d 638, 344 N.E.2d 770, 779. And to be applicable, requires identity in thing sued for as well as identity of cause of action, of persons and parties to action, and of quality in persons for or against whom claim is made. The sum and substance of the whole rule is that a matter once judicially decided is finally decided. Massie v. Paul, 263 Ky. 183, 92 S.W.2d 11, 14. See also *Res adjudicata, supra;* and, **Collateral estoppel doctrine; Final decision rule; Issue preclusion.**

Estoppel and res judicata distinguished, see **Estoppel.**

Res litigiosæ /ríyz lətìjiyówsay/. In Roman law, things which are in litigation; property or rights which constitute the subject-matter of a pending action.

Res mancipi /ríyz mǽn(t)səpay/. See **Mancipi res.**

Res mobiles /ríyz mówbəliyz/. In the civil law, movable things; things which may be transported from one place to another, without injury to their substance and form. Things corresponding with the chattels personal of the common law.

Res nova /ríyz nówvə/. A new matter; a new case; a question not before decided.

Res nullius /ríyz nəláyəs/. The property of nobody. A thing which has no owner, either because a former owner has finally abandoned it, or because it has never been appropriated by any person, or because (in the Roman law) it is not susceptible of private ownership.

Res periit domino /ríyz péhriyət dómənow/. A phrase used to express that, when a thing is lost or destroyed, it is lost to the person who was the owner of it at the time.

Res privatæ /ríyz prəvéydiy/. In the civil law, things the property of one or more individuals.

Res publicæ /ríyz pə́bləsiy/. Things belonging to the public; public property; such as the sea, navigable rivers, highways, etc.

Res quotidianæ /ríyz kwowtìdiyéyniy/. Every-day matters; familiar points or questions.

Res religiosæ /ríyz rəlìjiyówsiy/. Things pertaining to religion. In Roman law, especially, burial-places, which were regarded as sacred, and could not be the subjects of commerce.

Res universitatis /ríyz yùwnəvə̀rsətéydəs/. In the civil law, things belonging to a community (as, to a municipality), the use and enjoyment of which, according to their proper purpose, is free to every member of the community, but which cannot be appropriated to the exclusive use of any individual; such as the public buildings, streets, etc.

Res accendent lumina rebus /ríyz əksə́ndənt l(y)úwmənə ríybəs/. One thing throws light upon others.

Res accessoria sequitur rem principalem /ríyz æksəsór(i)yə sə́kwədər prin(t)səpéyləm/. The accessory follows the principal.

Resale. Exists where a person who has sold goods or other property to a purchaser sells them again to someone else. Sometimes a vendor reserves the right of reselling if the purchaser commits default in payment of the purchase money, and in some cases (*e.g.*, on a sale of perishable articles) the vendor may do so without having reserved the right. U.C.C. § 2–706 provides the conditions under which a seller has a right of resale on breach by the buyer of the sales contract.

Term may also refer to act of retailer who purchases goods from manufacturer or wholesaler for purpose of selling such goods in normal course of business. See also **Retail; Retailer.**

Resale price maintenance. An agreement between a manufacturer and retailer that the latter should not resell below a specified minimum price. Until 1976, federal statutes exempted such state-permitted agreements from antitrust actions.

Resceit /rəsíyt/. In old English practice, an admission or receiving a third person to plead his right in a cause formerly commenced between two others; as, in an action by tenant for life or years, he in the reversion might come in and pray to be received to defend the land, and to plead with the demandant.

Resceit of homage /rəsíyd əv (h)ómij/. In old English law, the lord's receiving homage of his tenant at his admission to the land.

Rescind. To abrogate, annul, avoid, or cancel a contract; particularly, nullifying a contract by the act of a party. To declare a contract void in its inception and to put an end to it as though it never were. Russell v. Stephens, 191 Wash. 314, 71 P.2d 30, 31. Not merely to terminate it and release parties from further obligations to each other but to abrogate it from the beginning and restore parties to relative positions which they would have occupied had no contract ever been made. Sylvania Industrial Corporation v. Lilienfeld's Estate, C.C.A.Va., 132 F.2d 887, 892. See also **Rescission of contract.**

Rescissio /rəsísh(iy)ow/. Lat. In the civil law, an annulling; avoiding, or making void; abrogation; rescission.

Rescission of contract. A "rescission" amounts to the unmaking of a contract, or an undoing of it from the beginning, and not merely a termination, and it may be effected by mutual agreement of parties, or by one of the parties declaring rescission of contract without consent of other if a legally sufficient ground therefor exists, or by applying to courts for a decree of rescission. Abdallah, Inc. v. Martin, 242 Minn. 416, 65 N.W.2d 641, 644. Annulling, abrogation or unmaking of contract and the placing of the parties to it in status quo. Sessions v. Meadows, 13 Cal.App.2d 748, 57 P.2d 548, 549. It necessarily involves a repudiation of the contract and a refusal of the moving party to be further bound by it. See also **Renunciation; Repudiation.**

An action of an equitable nature in which a party seeks to be relieved of his obligations under a con-

CBA P.C. # 5

IN THE MATTER OF THE PETITION OF GERALD A. MARTIN, JR. FOR A ZONING VARIANCE ON PROPERTY LOCATED ON THE NORTH SIDE OF MAGNOLIA AVENUE, 593' EAST OF LILAC AVENUE (3224 MAGNOLIA AVENUE) 13TH ELECTION DISTRICT 1ST COUNCILMANIC DISTRICT	* * * * * *	BEFORE THE COUNTY BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO: 91-129-A

* * * \

involved the same property which is the subject of the case presently before this Board. In Case No: 86-438-A, the then property owner, Joan M. Cox, requested a variance for a 50 foot lot width and this Board denied the variance request on October 30, 1986.

Once a zoning case is litigated, the decision is binding in subsequent litigation involving the same property and the same parties (or their successors) in the absence of an erroneous determination of law. Board of County Com'rs of Cecil County v. Racine 24 Md. App. 435, 332 A.2d 306 (1975); See Whittle v. Board of Zoning Appeals of Baltimore County, 211 Md. 36, 125 A.2d 41 (1956).

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973).

The standard of unnecessary hardship or practical difficulty refers to the property situation, and not to personalties. Id.

A purchaser of a property which does not conform to zoning standards is disqualified from claiming hardship or difficulty, because the hardship and general situation is "self-created". Gleason v. Keswick Improvement Assn., 197 Md. 46, 78 A.2d 164 (1951); Anderson, American Law of Zoning, Sections 3.35, 20.44-20.47, 20.58-59.

This Board finds that the issue of a variance for the subject lot was litigated previously before the Baltimore County Board of

Appeals in Case No: 86-438-A. The law dictates that the previous decision of this Board is binding absent an erroneous determination of law. In this case, no evidence was presented regarding an erroneous determination of law. Accordingly, we have no choice but to find that there has been no erroneous determination of law.

This Board also finds that the Petitioner/Appellant purchased a property which did not conform to the Baltimore County Zoning Regulation. Therefore, this Board finds, as a matter of law, that the Plaintiff is disqualified from claiming hardship or difficulty, because the hardship and general situation is "self-created". Accordingly, the Petition for Variance will be denied and this Board will so order.

ORDER

It is therefore this 1st day of ~~October~~ November, 1991 by the County Board of Appeals of Baltimore County **ORDERED** that the requested Petition for a Variance to permit a buildable lot with a width of 50 feet in lieu of the required 55 feet is hereby **DENIED.**

Any appeal from this decision must be made in accordance with Rules B-1 through B-13 of the Maryland Rules of Procedure.

COUNTY BOARD OF APPEALS OF
BALTIMORE COUNTY

Michael B. Sauer, Acting Chairman

Judson H. Lipowitz

Harry E. Buchheister, Jr.

M.D.A.T. REAL PROPERTY SYSTEM 01/17/2006
OWNER INFORMATION BALTIMORE COUNTY

DISTRICT: 15 ACCT NO: 1508790100

USE: RESIDENTIAL

OWNER NAME: WOLINSKI CHARLES S
WOLINSKI DARYL M
MAILING ADDRESS: 9019 CUCKOLD POINT RD
BALTIMORE MD 21219-1635

PRINCIPAL RESIDENCE YES

TRANSFERRED
FROM: HRANICKA EDWARD F DATE: 05/20/2003 PRICE: $100,000

DEED REFERENCE: 1) /18027/ 556
2)

TAX EXEMPT: NO

SPECIAL TAX RECAPTURE

* NONE *

FUNCTION KEY INVALID FOR THIS SCREEN, TRY AGAIN
PRESS: <F1> LOCATION INFO <F2> VALUE INFO <F3> TRANSFER/STRUCTURE INFO
<F6> SELECT NEXT PROPERTY

Pet #1

M.D.A.T. REAL PROPERTY SYSTEM 01/17/2006
LOCATION INFORMATION BALTIMORE COUNTY

DISTRICT: 15 ACCT NO: 1508790100
NAME: WOLINSKI CHARLES S USE: RESIDENTIAL

PREMISES ADDRESS
9019 CUCKOLD POINT RD

LEGAL DESCRIPTION
LT 488-489

MAP	GRID	PARCEL	SUBDIV	SECT	BLOCK	LOT	WATERFRONT ASSESSMENT	SWAN POINT AREA		
112	15	4				488	3		PLAT NO :	
									PLAT REF:	9/ 4

SPECIAL TAX AREAS -

PRIMARY STRUCTURE DATA		PROPERTY LAND AREA	COUNTY
YEAR BUILT	ENCLOSED AREA	15,000.00 SF	USE
2004	2,940 SF		04

PRESS: <F1> OWNER INFO <F2> VALUE INFO <F3> TRANSFER/STRUCTURE INFO
<F6> SELECT NEXT PROPERTY

1-26-06

To whom it may concern,

I, Matt Ciarpella, am in support of approval for variances 9017 and 9019 Cuckold Point Rd; case numbers 06-309A and 06-310A. Both properties are adjacent to my lot at 2716 6th street. I have no problems or concerns with the Wolinski's building houses on each of the fifty foot wide lots and I fully understand the variance procedures.

Any questions please call me at 410 388 2036

Matthew Ciarpella
2716 6th street
Baltimore Md 21219

5P

Baltimore County
Zoning Commissioner
Suite 405, County Courts Building
401 Bosley Avenue
Towson, Maryland 21204

Wayne Waldman
9016 Cuckold Point Road
Sparrows Point, Maryland 21219

January 24, 2006

To Whom It May Concern:

I am writing in regards to variances for 9017 and 9019 Cuckold Point Road, case numbers 06-309A and 06-310A, respectively. My family and I live directly across the street from these properties. We have lived at this location for 64 years. The properties have always been unimproved and never used together. Mr. and Mrs. Wolinski built their home on the 9019 property two years ago and are trying to build a home for their friend on the adjacent 50 foot lot. We have no problems or concerns with this and fully support the granting of their variance so that they can build on each of the 50 foot lots. Almost every house in the area is built on a 50 foot lot, including the two homes that my family owns.

If you have any questions, please do not hesitate to contact me.

Thank you for your time and consideration,

Wayne E Waldman Jr.

Wayne Waldman
443-829-4312 cell
410-477-4779 home

5B

January 24, 2006

Frank Borgerding
406 Washington Ave
Baltimore, Maryland 21204
Re: Case no. 06-309-A
9017 Cuckold Point Road

Dear MR Borgerding:

I am writing to show my support and favor of the variance to permit a lot width of 50 feet in lieu of the required 55 feet for a single family dwelling located on the property stated above with a few exceptions. I have been a property owner of 9015 Cuckold Point Road for the past 18 years and would be one that would be most affected by the new dwelling . I ask that all buildings and structures adjacent to my lot be at a 13 foot setback from the property line and that proper grading be done to allow for proper run off of water. I hope that my request be granted. If there are any further questions or concerns please contact me at (443-326-5767)

Thank you in advance,

Robert Poleski

5C

Plat to accompany Petition for Zoning ☒ Variance ☐ Special Hearing

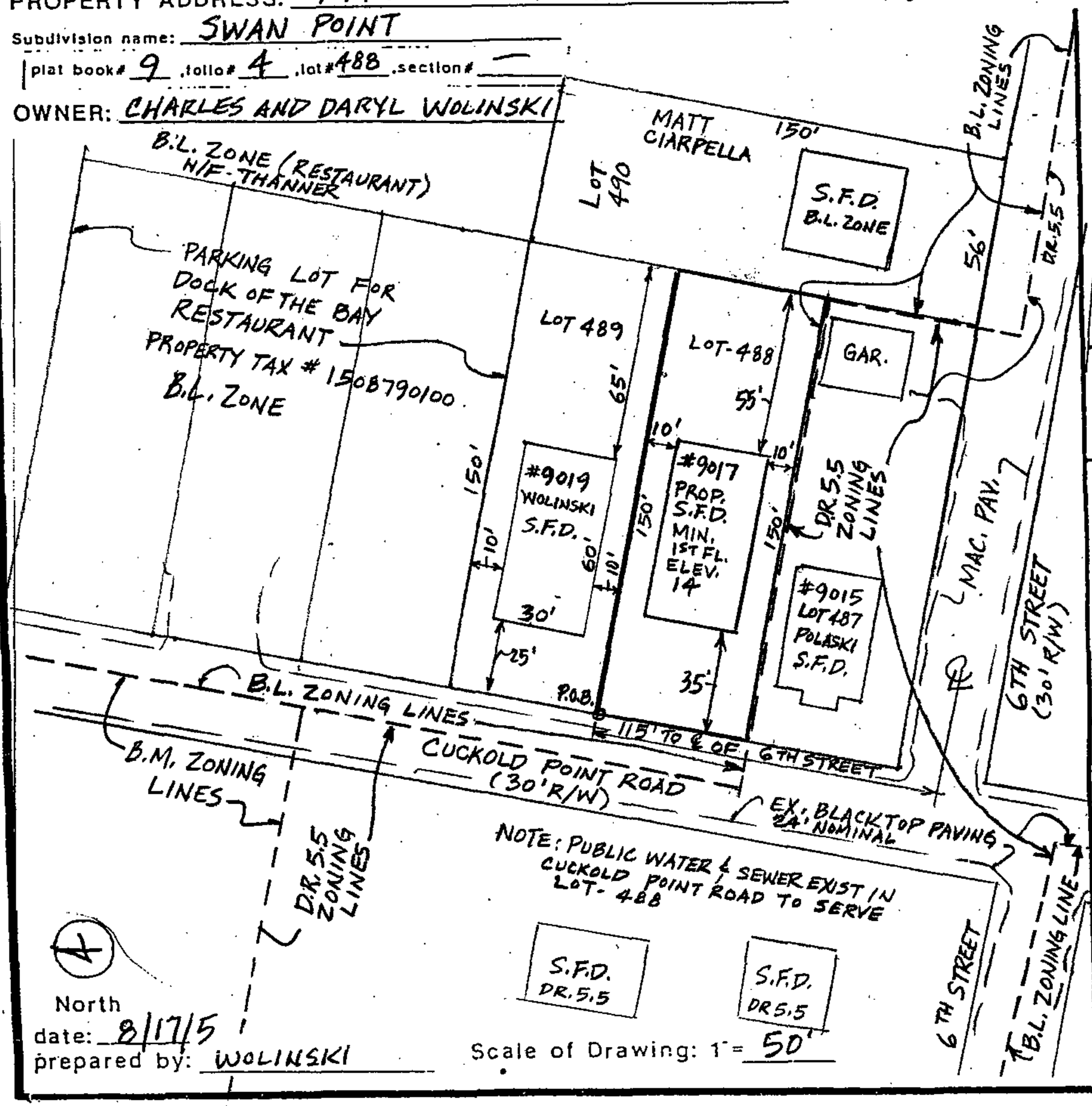
PROPERTY ADDRESS: #9017 CUCKOLD POINT ROAD

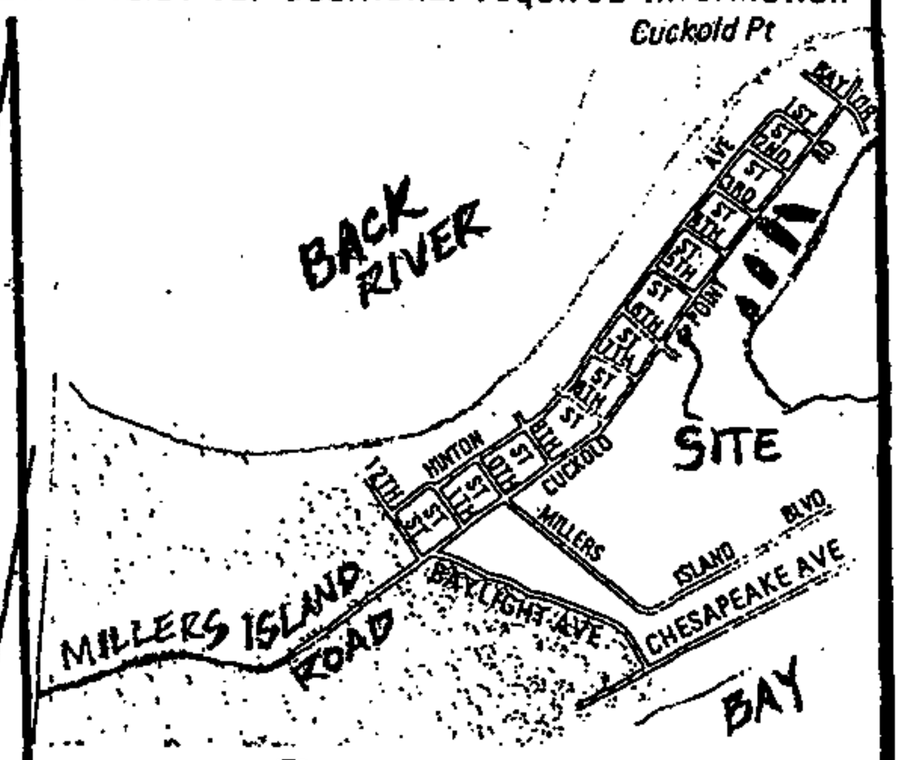
see pages 5 & 6 of the CHECKLIST for additional required information

Subdivision name: SWAN POINT

plat book# 9 ,folio# 4 ,lot# 488 ,section# —

OWNER: CHARLES AND DARYL WOLINSKI





Vicinity Map

N.T.S.

LOCATION INFORMATION

Election District: 15

Councilmanic District: 7

1"=200' scale map#: SE 6K (112B2)

Zoning: B.L.

Lot size: 0.172 acreage 7,500 square feet

	public	private
SEWER:	☑	☐
WATER:	☑	☐

Chesapeake Bay Critical Area: ☑ ☐

Prior Zoning Hearings: 03-097-A

Appeal: Denied

Zoning Office USE ONLY!

reviewed by: ITEM #: CASE#:

date: 8/17/5

prepared by: WOLINSKI

Scale of Drawing: 1" = 50'

Pet Ex. 6A

Plat to accompany Petition for Zoning [X] Variance [ ] Special Hearing

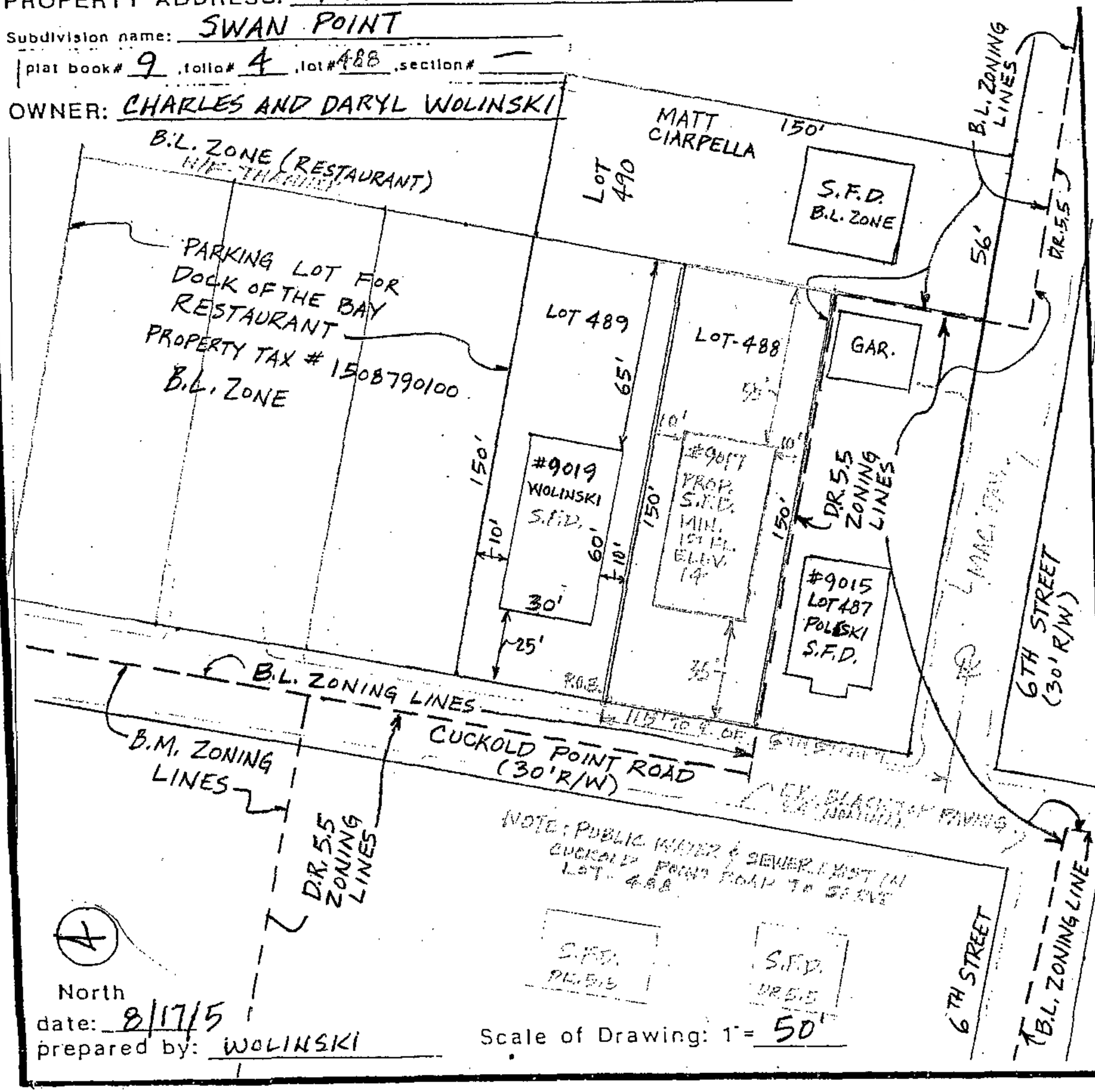
PROPERTY ADDRESS: #9017 CUCKOLD POINT ROAD

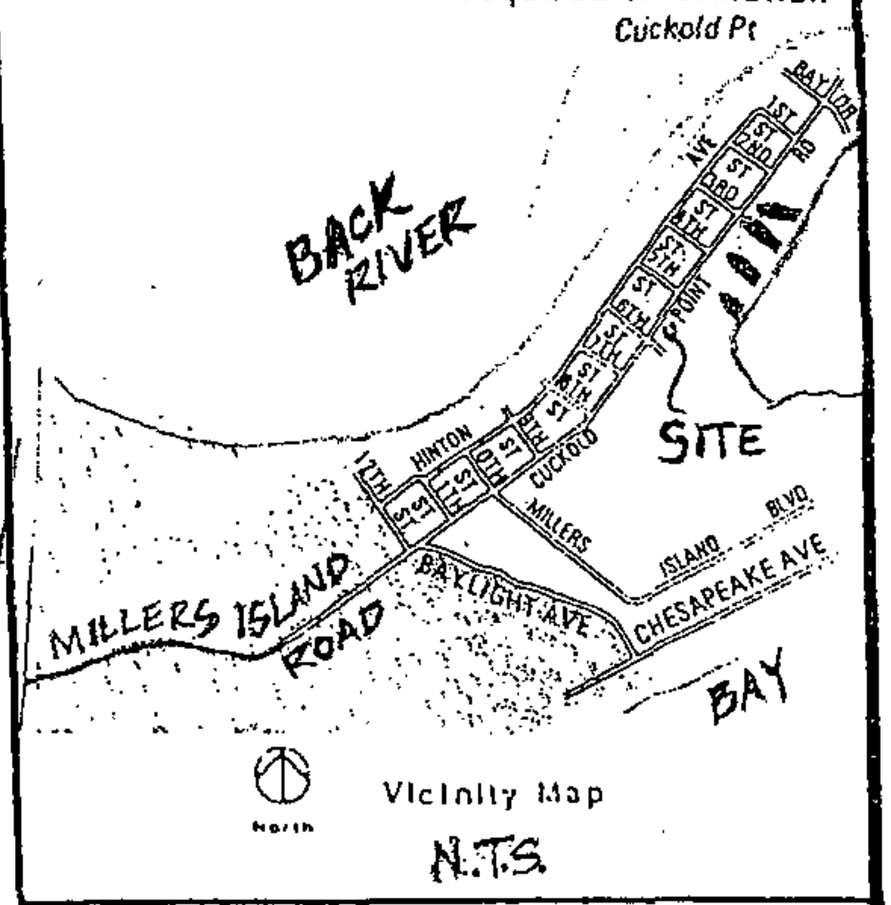
see pages 5 & 6 of the CHECKLIST for additional required information

Subdivision name: SWAN POINT

plat book# 9 ,folio# 4 ,lot# 488 ,section# —

OWNER: CHARLES AND DARYL WOLINSKI





LOCATION INFORMATION

Election District: 15

Councilmanic District: 7

1"=200' scale map#: SE 6K (112B2)

Zoning: B.L.

Lot size: 0.172 acreage 7,500 square feet

CBA Pet #4

	public	private
SEWER:	☑	☐
WATER:	☑	☐

	yes	no
Chesapeake Bay Critical Area:	☑	☐

Prior Zoning Hearings: 03-097-A

Appeal: Denied

date: 8/17/5

prepared by: WOLINSKI

Scale of Drawing: 1" = 50'

Zoning Office USE ONLY!

reviewed by:	ITEM #:	CASE#:

Attach to file.

EXHIBITS

Date 8/1/06

IN THE MATTER OF CHARLES & DARYL WOLINSKI - Case #s
06-309 A
06-310 A

(1) Petitioner's
Exhibit # 1A Plat of Swan Point (Circa 1928)
Exhibit # 1B Plat unidentified
Exhibit # (2) LF2 A Picture of App's lot 9017 (Taken 7/31/06)
Exhibit # 2B Picture of App's house + lots
Exhibit # (3) LF3 Sketch of house to be constructed on lot 9017
Exhibit # (4) LF4 Plat for lots 9017 + 9019 Dated 8/17/05
Exhibit # (5) 5A Petitioners' House
Exhibit # 5B " "
" 5C Neighbor's house (Marked on Ex. 1B)
" 5D Neighbor's house " "
" 5E " " " "
" 5F " " " "
" 5G " " " "
" 5H " " " "
" 5I " " " "
" (6) LF6 A Variance dated 11-17-93
" ~~[illegible]~~
" LF6B Variance dated
" LF6C Variance dated 7/30/02
(7) 7A Photo of 6A (above)
(7) 7B " " 6B (above)
(7) 7C " " 6C (above)
LF8 (8) Inter Office Comments 1/4/06 Planning Dept.
(9) 9A Picture from front of lot 9019 - 7/31/06
9B Picture Hart-Miller Island (7/31/06) 9019
9C Picture View of Lighthouse (7/31/06) 9019
10 Wolinski Plat for [illegible] (To be submitted

IN RE: PETITION FOR VARIANCE S/S Cuckold Point Road, 115' E of the c/l of Third Street (9121 Cuckold Point Road) 15th Election District 5th Councilmanic District Peter P. Golaboski, et ux Petitioners	* BEFORE THE * DEPUTY ZONING COMMISSIONER * OF BALTIMORE COUNTY * Case No. 94-153-A *	

* * * * * * * * * * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Variance filed by the owners of the subject property, Peter P. and Anna H. Golaboski, and the Contract Purchasers, Wayne G. and Lynn I. Kimmel. The Petitioners request relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a front lot width of 50 feet in lieu of the required 55 feet for a proposed dwelling in accordance with Petitioner's Exhibit 1.

Appearing on behalf of the Petition were Peter P. Golaboski, property owner, and Joseph V. Beall on behalf of the Contract Purchasers. There were no Protestants.

Testimony indicated that the subject property, known as 9121 Cuckold Point Road, consists of 7,850 sq.ft. more or less, zoned D.R. 5.5 and is currently unimproved. Said property is located within the Chesapeake Bay Critical Areas on Cuckold Cove. The Petitioners have entered into a contract to sell the subject property to the Contract Purchasers who are desirous of developing the property with a single family dwelling. Mr. Golaboski testified that he has owned the subject property and resided on the adjoining property, known as 9117 Cuckold Point Road, for the past 41 years. Testimony indicated that Mr. Golaboski wishes to sell the subject property to raise additional money for his retirement years. Further

Date 11/17/93
By

CBA
Pet 6A

testimony indicated that the relief requested is necessitated by the fact that this property, also known as Lot 520 of Swan Point, is located within an older subdivision which was laid out with mainly 50-foot wide lots. No one appeared in opposition to the Petitioners' request and there were no adverse comments submitted by any of the reviewing agencies of Baltimore County. However, as noted above, this property is located within the Chesapeake Bay Critical Areas and as such, is subject to compliance with Critical Areas legislation. By comments dated October 19, 1993, the Department of Environmental Protection and Resource Management (DEPRM) advised this Office that an extension of time was needed for their review of the proposed development. Therefore, the granting of this relief shall be contingent upon Petitioners' compliance with any recommendations made by DEPRM upon completion of their review of this proposal.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 270 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

> 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
>
> 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
>
> 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

Date 11/12/93
By

It is clear from the testimony that if the variance is granted, such use, as proposed, will not be contrary to the spirit of the B.C.Z.R. and will not result in any injury to the public good.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship will result if the variance is not granted. It has been established that special circumstances or conditions exist that are peculiar to the land or structure which is the subject of this variance request and that the requirements from which the Petitioner seeks relief will unduly restrict the use of the land due to the special conditions unique to this particular parcel. Further, the architectural drawings submitted indicate that the proposed dwelling will be constructed in conformance with the character of other homes in this community and will serve to increase the value of surrounding properties. In addition, the variance requested will not cause any injury to the public health, safety or general welfare and is in strict harmony with the spirit and intent of the B.C.Z.R.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the variance requested should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 17th day of November, 1993 that the Petition for Variance requesting relief from Section 1B02.3.C.1 of the Baltimore County Zoning Regulations (B.C.Z.R.) to permit a front lot width of 50 feet in lieu of the required 55 feet for a proposed dwelling in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, subject to the following restriction:

1) The Petitioners may apply for their building permit and be granted same upon receipt of this Order;

By

however, Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the relief granted herein shall be rescinded.

2) The relief granted herein is contingent upon Petitioners' compliance with any recommendations made by DEPRM upon completion of their review of this project.

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

TIMOTHY M. KOTROCO
Deputy Zoning Commissioner
for Baltimore County

TMK:bjm

Date _____
By _____

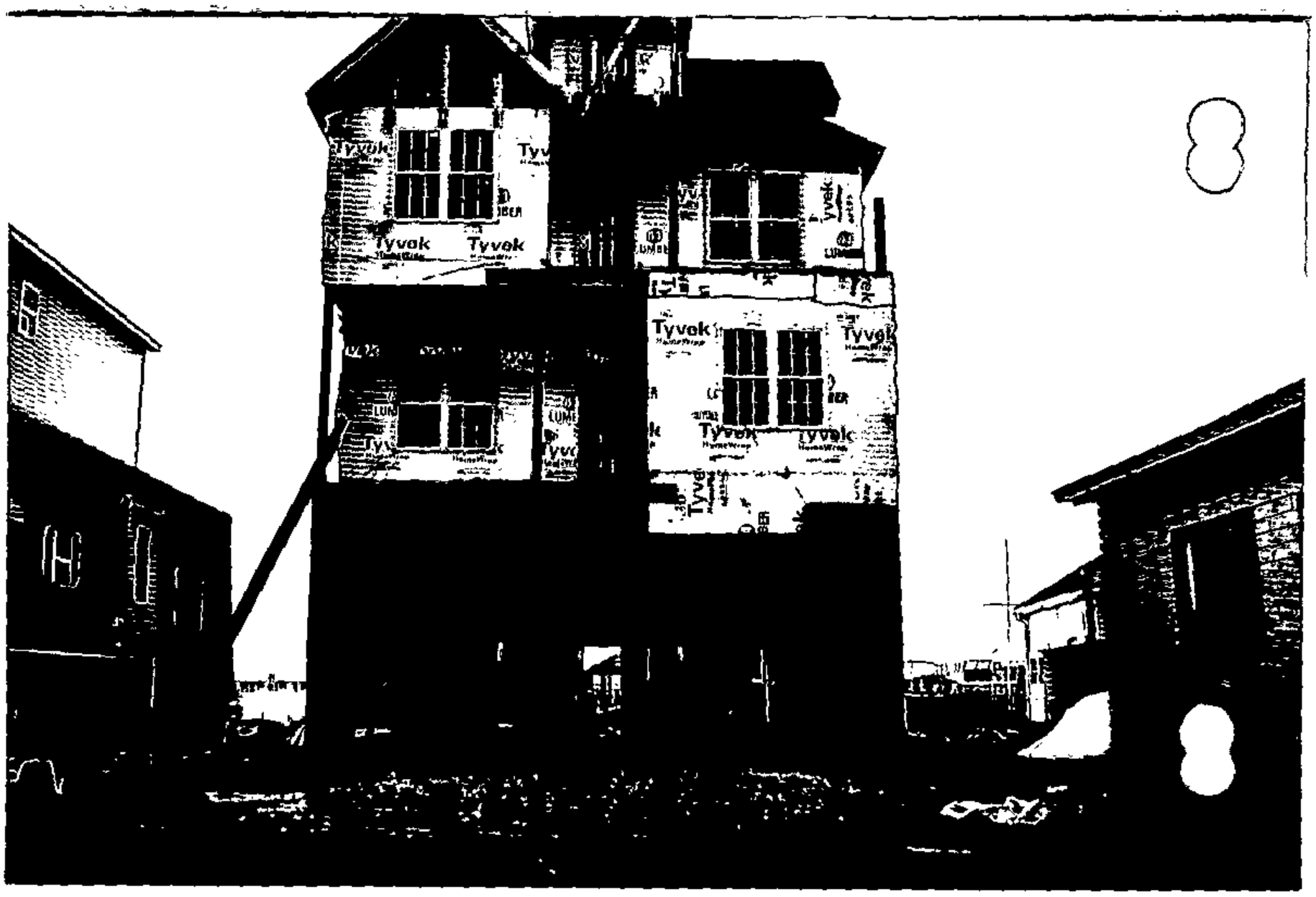
06-309-A
06-310-A

Walinski

Petitioners
2A
2B
5A-5I
6A-6C
7A-7C
9A-9C

20 photos

Checked
1/10/08
Only 18 photos
LF.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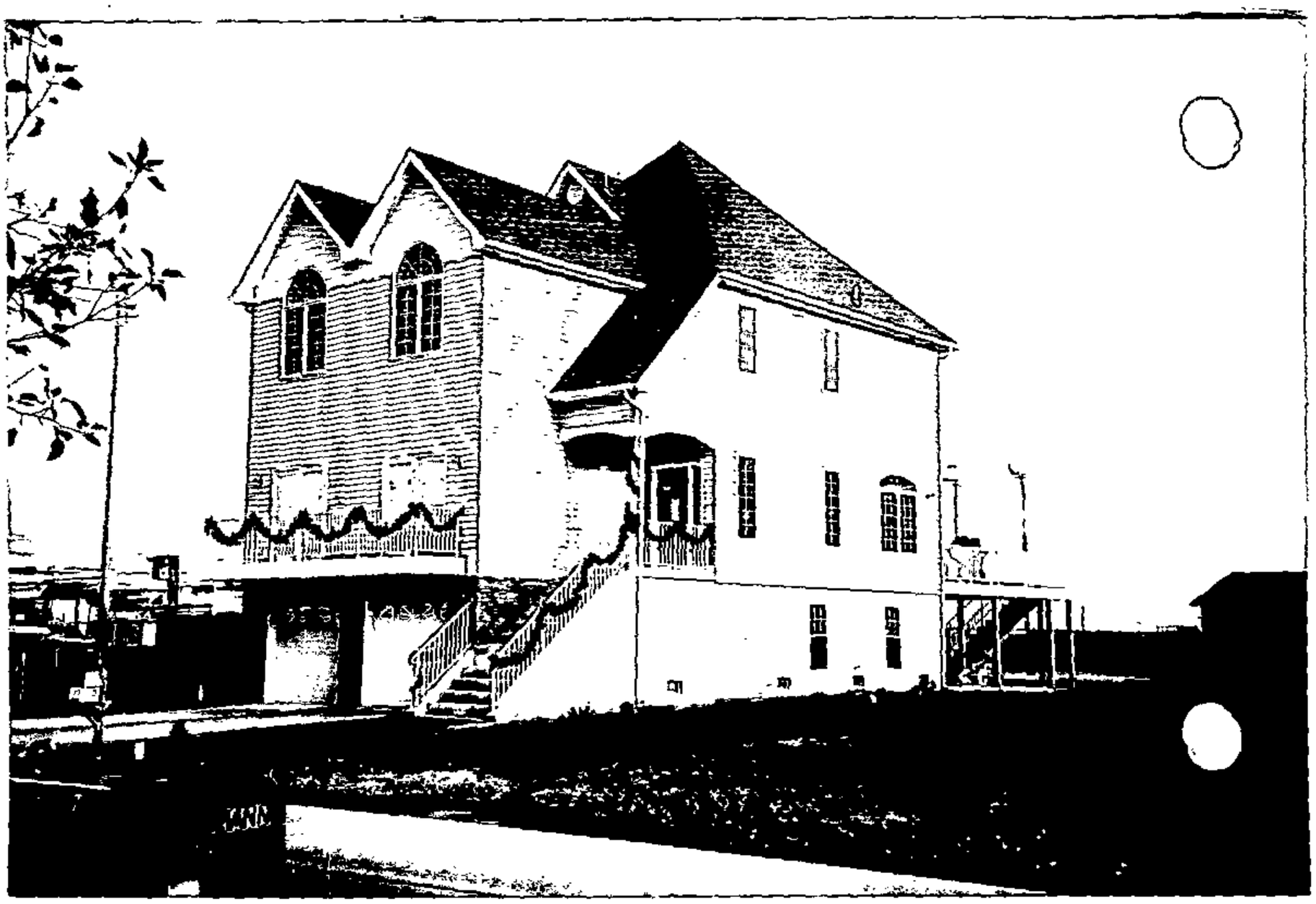
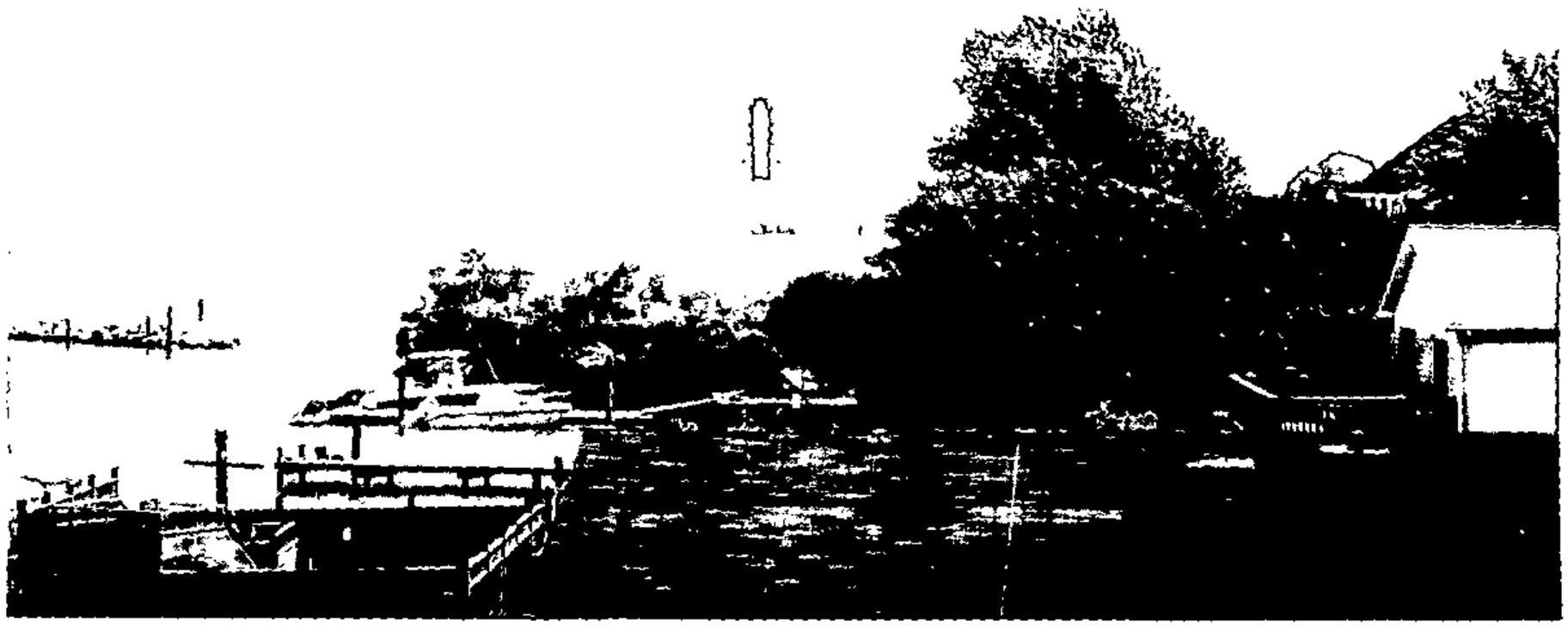
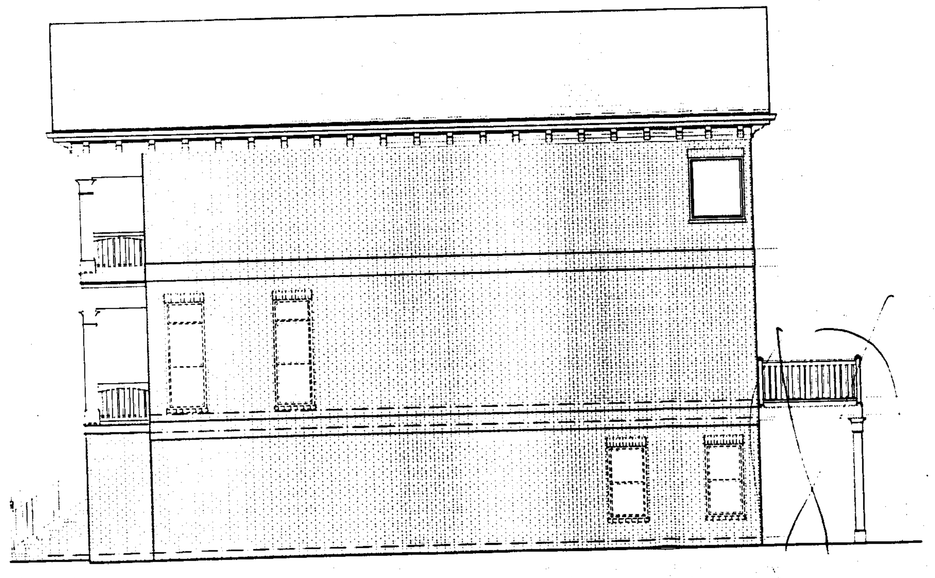
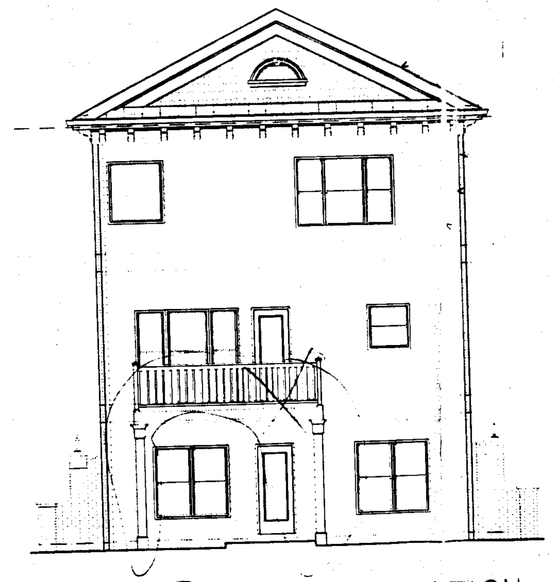




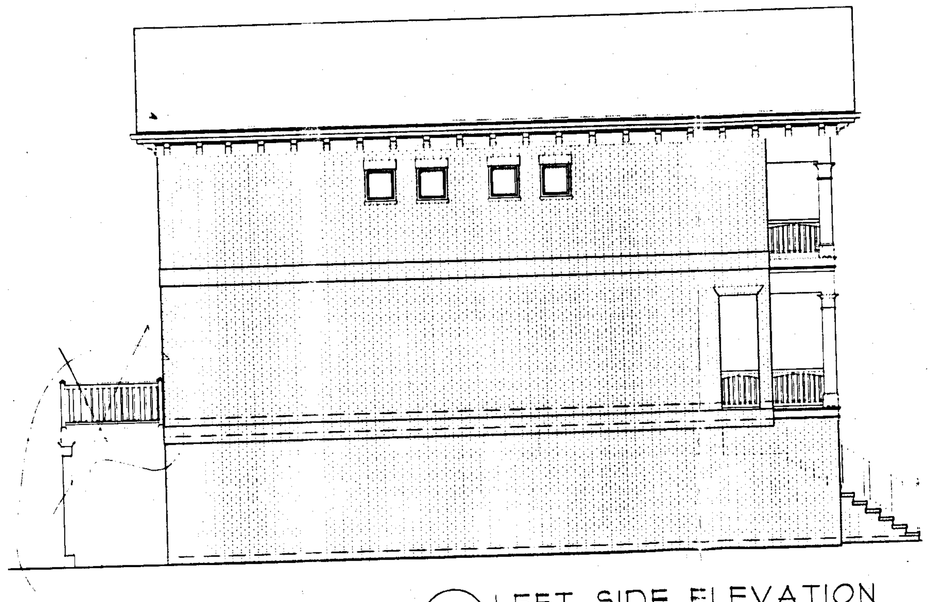
FOR
SALE
BY OWNER
3828531



2 RIGHT SIDE ELEVATION

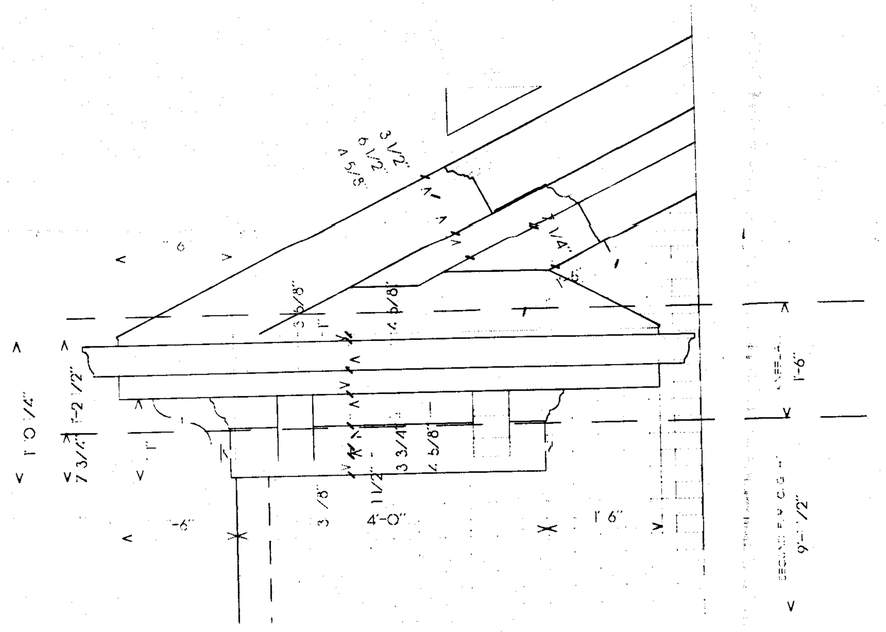


3 REAR ELEVATION

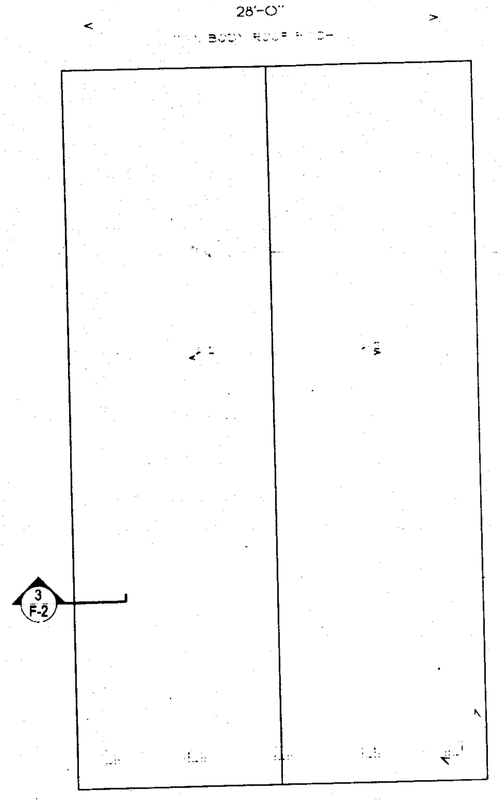


4 LEFT SIDE ELEVATION

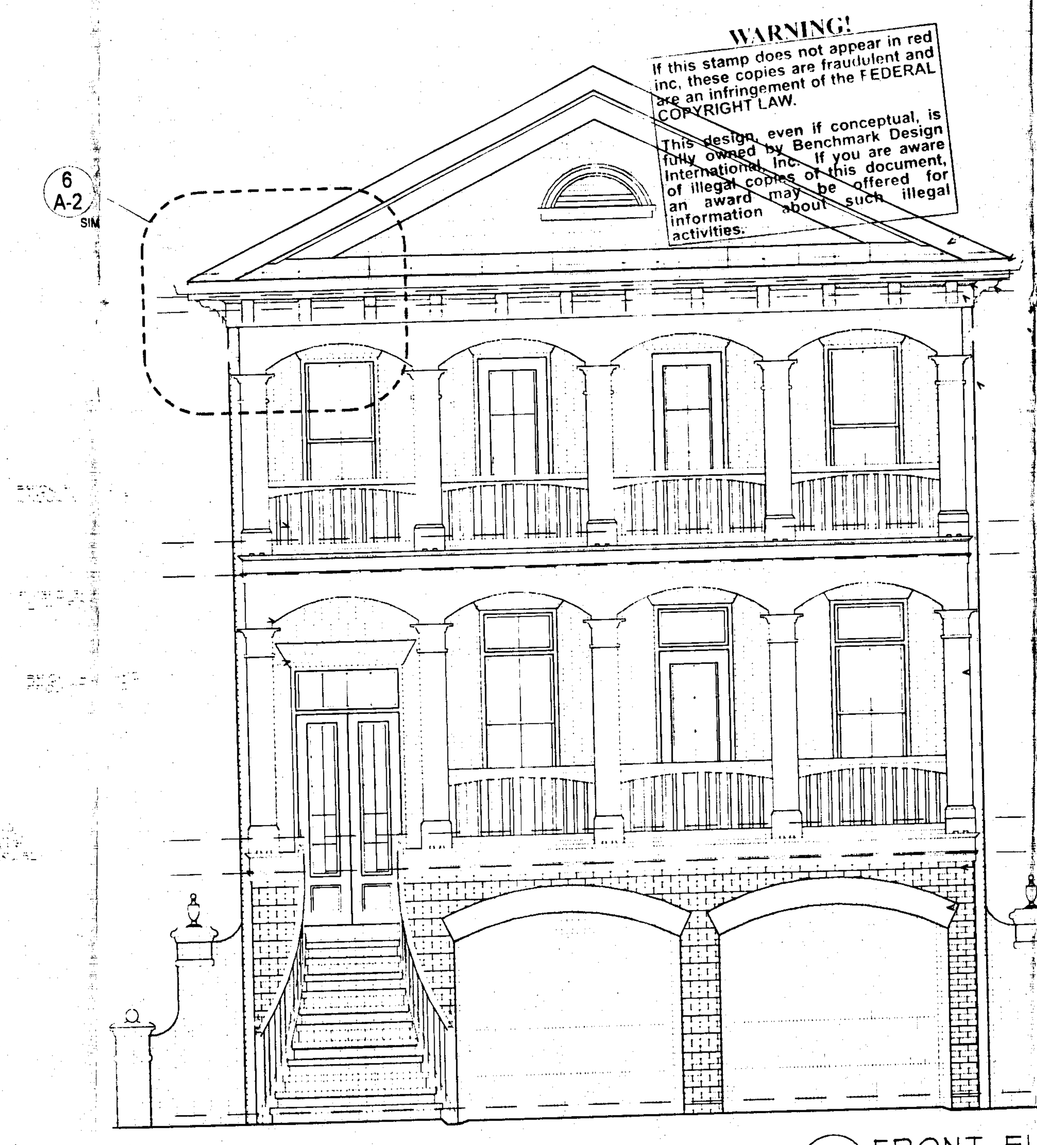
STOCK PLANS SHOULD ALWAYS BE REVIEWED BY A LOCAL ENGINEER PRIOR TO CONSTRUCTION.



ELEVATION DTL. @ OVERHANG 6



5 ROOF PLAN



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1 FRONT ELEVATION

PROVIDE TEMPERED GLASS IN HAZARDOUS GLAZING LOCATIONS INCLUDING THE FOLLOWING:

1) GLAZING IN SIDE-HINGED DOORS EXCEPT JALOUSIES.
2) GLAZING IN FIXED AND SLIDING PANELS OF SLIDING DOOR ASSEMBLIES AND PANELS IN SLIDING AND BIFOLD CLOSET DOOR ASSEMBLIES.
3) GLAZING IN STORM DOORS.
4) GLAZING IN DOORS AND ENCLOSURES FOR HOT TUBS, WHIRLPOOLS, SAUNAS, STEAM ROOMS, BATHTUBS AND SHOWERS. GLAZING IN ANY PART OF A BUILDING WALL ENCLOSING THESE COMPARTMENTS WHERE THE BOTTOM EXPOSED EDGE OF THE GLAZING IS LESS THAN 60 INCHES MEASURED VERTICALLY ABOVE ANY STANDING OR WALKING SURFACE.
5) GLAZING IN AN INDIVIDUAL FIXED OR OPERABLE PANEL ADJACENT TO A DOOR WHERE THE NEAREST VERTICAL EDGE IS WITHIN A 24 INCH ARC OF THE DOOR IN A CLOSED POSITION AND WHOSE BOTTOM EDGE IS LESS THAN 60 INCHES ABOVE THE FLOOR OR WALKING SURFACE.
6) GLAZING IN AN INDIVIDUAL FIXED OR OPERABLE PANEL THAT MEETS ALL OF THE FOLLOWING CONDITIONS:
   6.1) EXPOSED AREA OF AN INDIVIDUAL PANE GREATER THAN 9 SF.
   6.2) BOTTOM EDGE LESS THAN 18 INCHES ABOVE THE FLOOR.
   6.3) TOP EDGE GREATER THAN 36 INCHES ABOVE THE FLOOR.
   6.4) ONE OR MORE WALKING SURFACES WITHIN 36 INCHES HORIZONTALLY OF THE GLAZING.

WINDOW NOTES:

1) BASEMENTS WITH HABITABLE SPACE AND EVERY SLEEPING ROOM SHALL HAVE AT LEAST ONE OPENABLE EMERGENCY ESCAPE AND RESCUE WINDOW OR EXTERIOR DOOR OPENING FOR EMERGENCY ESCAPE AND RESCUE.
2) WHERE OPENINGS ARE PROVIDED AS A MEANS OF ESCAPE AND RESCUE, THEY SHALL HAVE A SILL HEIGHT OF NOT MORE THAN 44 INCHES ABOVE THE FLOOR.
3) MINIMUM OPENING AREA:
   ALL EMERGENCY ESCAPE AND RESCUE OPENINGS SHALL HAVE A MINIMUM NET CLEAR OPENING OF 5.7 SQ. FT. GRADE FLOOR OPENINGS SHALL HAVE A MINIMUM NET CLEAR OPENING OF 5.0 SQ. FT.
4) MINIMUM OPENING HEIGHT:
   THE MINIMUM NET CLEAR OPENING HEIGHT SHALL BE 24-INCHES.
5) MINIMUM OPENING WIDTH:
   THE MINIMUM NET CLEAR OPENING WIDTH SHALL BE 20-INCHES.
6) WINDOW WELLS:
   THE HORIZONTAL DIMENSIONS OF THE WINDOW WELL SHALL PROVIDE A MINIMUM NET CLEAR AREA OF 9 SQ. FT. WITH A MINIMUM HORIZONTAL PROJECTION AND WIDTH OF 36-INCHES.

NOTES:

1. BENCHMARK DESIGN INTERNATIONAL, INC ARCHITECTS ASSUMES NO LIABILITY FOR CHANGES OR MODIFICATIONS MADE TO THESE PLANS BY OTHERS WITHOUT PRIOR WRITTEN PERMISSION OF BDI, INC.
2. WHEN TWO ROOFS INTERSECT WITH DIFFERENT ROOF PITCHES, BLOCK TOP OF STUD WALLS AS REQ'D. TO LINE UP FASCIAS AS SHOWN
3. PROVIDE SUPPORT FOR STOOP AND STEPS TO GRADE AS REQUIRED.
4. SPECIFIC SIZE & LOCATION OF GUTTERS & DOWNSPOUTS SHALL BE DETERMINED BY THE BUILDER ACCORDING TO LOCAL RAINFALL RATES AND LOCAL PLUMBING CODE REQUIREMENTS FOR STORM DRAINAGE.
5. PROVIDE ATTIC VENTILATION PER LOCAL CODES AND REQUIREMENTS.

WINDOW SIZES

ALL WINDOW SIZES SHOWN ASSUME WOOD UNITS WILL BE UTILIZED ON THIS PROJECT. OWNER TO VERIFY WITH WINDOW MANUFACTURER THAT ADEQUATE EGRESS CLEARANCES ARE PROVIDED.

NOTE: DOWNSPOUT LOCATION TO BE COORDINATED AND CONNECTED TO SITE DRAINAGE

STRUCTURAL NOTE:

CONTRACTOR TO REFER TO AND COORDINATE WITH FLOOR AND ROOF FRAMING DRAWINGS (UNDER SEPARATE CONTRACT & COVER).

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"THE LASSITER"

THE STERLING COLLECTION

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LAST UPDATE:	03/03/05
PLAN NUMBER	LASSITER / 02025
CHECKED	T.W.
DRAWN	D.G.
SHEET NUMBER	A-2
DRAWING TITLE	EXTERIOR ELEVATIONS

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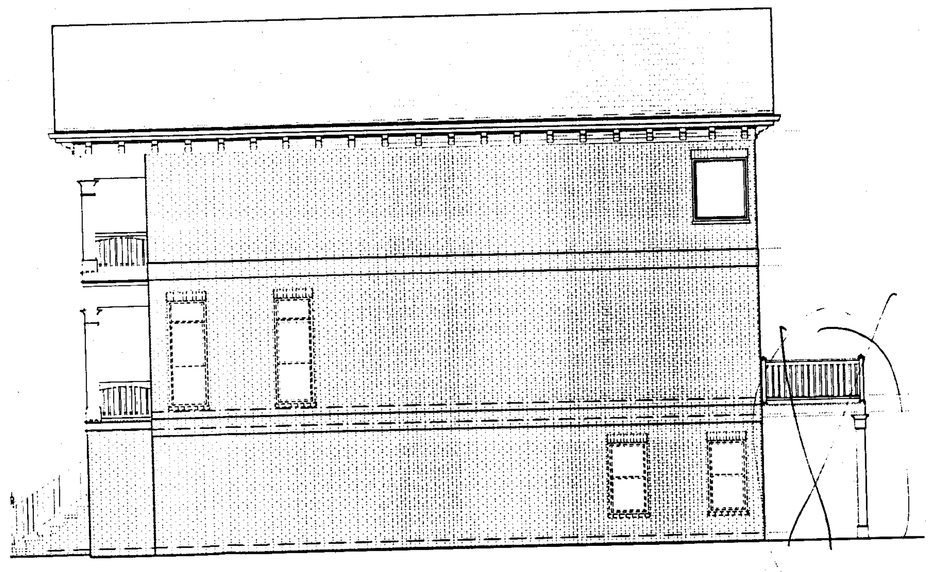
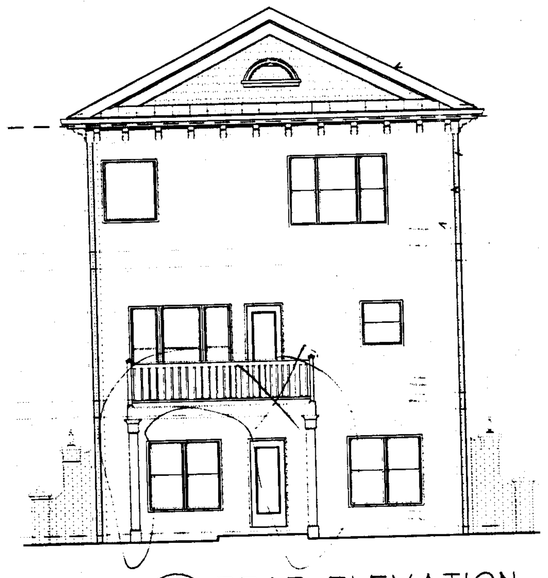
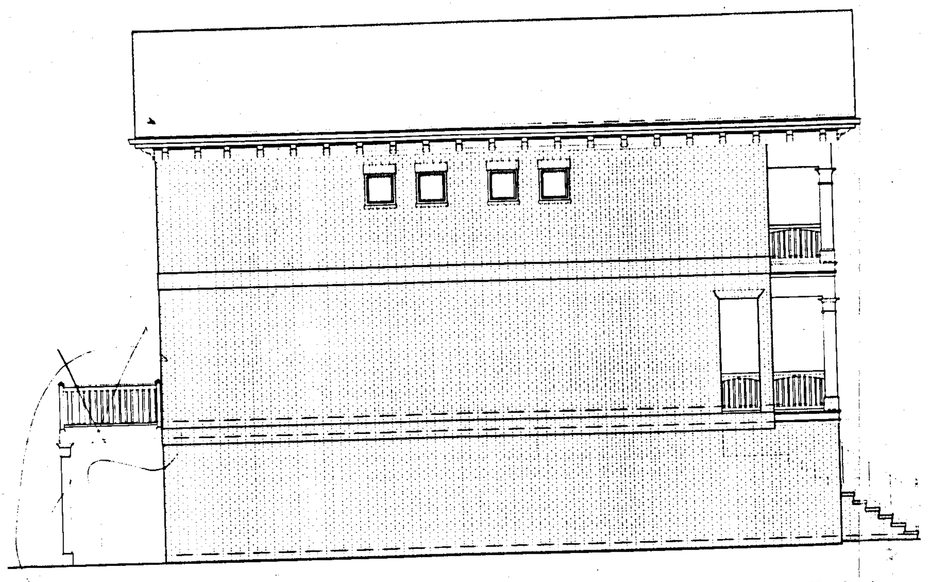
CBA Pet 3



2 RIGHT SIDE ELEVATION

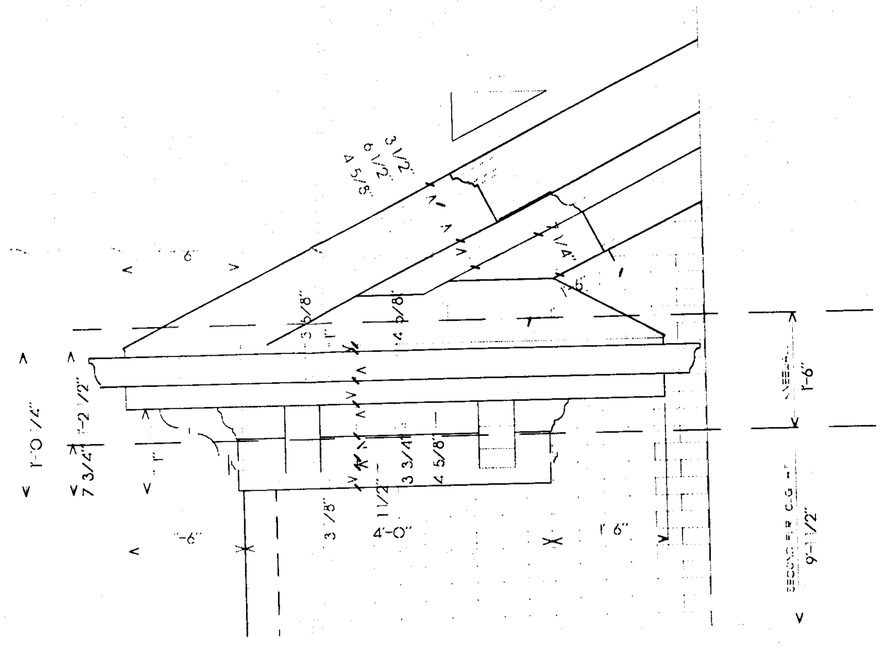


3 REAR ELEVATION

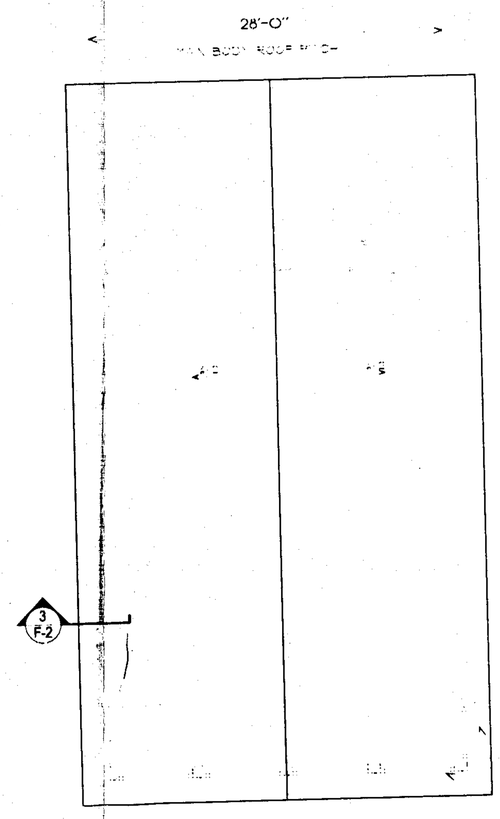


4 LEFT SIDE ELEVATION

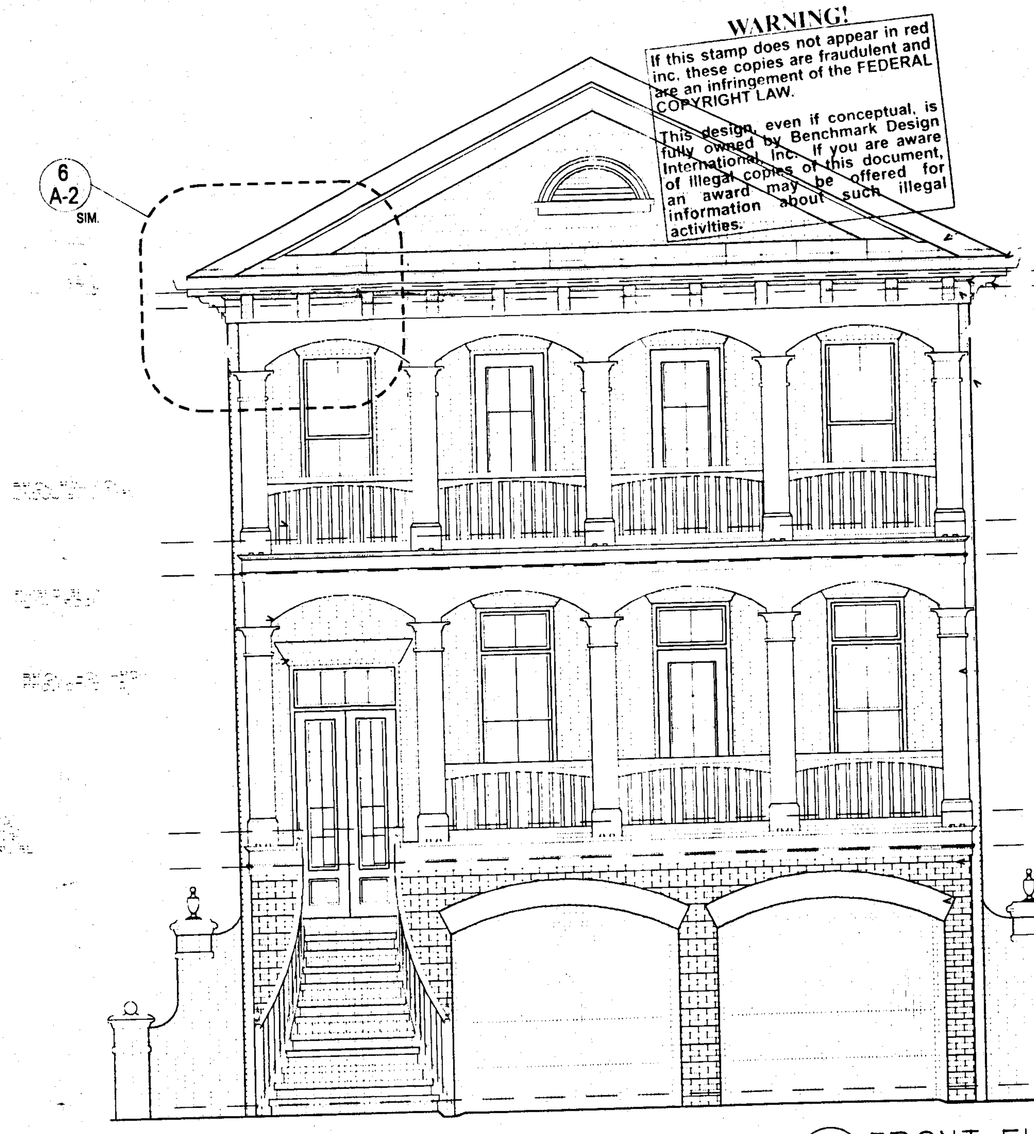
STOCK PLANS SHOULD ALWAYS BE REVIEWED BY A LOCAL ENGINEER PRIOR TO CONSTRUCTION.



ELEVATION DTL. @ OVERHANG 6



5 ROOF PLAN



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1 FRONT ELEVATION

PROVIDE TEMPERED GLASS IN HAZARDOUS GLAZING LOCATIONS INCLUDING THE FOLLOWING:

1) GLAZING IN SIDE-HINGED DOORS EXCEPT JALOUSIES.
2) GLAZING IN FIXED AND SLIDING PANELS OF SLIDING DOOR ASSEMBLIES AND PANELS IN SLIDING AND BIFOLD CLOSET DOOR ASSEMBLIES.
3) GLAZING IN STORM DOORS.
4) GLAZING IN DOORS AND ENCLOSURES FOR HOT TUBS, WHIRLPOOLS, SAUNAS, STEAM ROOMS, BATHTUBS AND SHOWERS. GLAZING IN ANY PART OF A BUILDING WALL ENCLOSING THESE COMPARTMENTS WHERE THE BOTTOM EXPOSED EDGE OF THE GLAZING IS LESS THAN 60 INCHES MEASURED VERTICALLY ABOVE ANY STANDING OR WALKING SURFACE.
5) GLAZING IN AN INDIVIDUAL FIXED OR OPERABLE PANEL ADJACENT TO A DOOR WHERE THE NEAREST VERTICAL EDGE IS WITHIN A 24 INCH ARC OF THE DOOR IN A CLOSED POSITION AND WHOSE BOTTOM EDGE IS LESS THAN 60 INCHES ABOVE THE FLOOR OR WALKING SURFACE.
6) GLAZING IN AN INDIVIDUAL FIXED OR OPERABLE PANEL THAT MEETS ALL OF THE FOLLOWING CONDITIONS:
   6.1) EXPOSED AREA OF AN INDIVIDUAL PANE GREATER THAN 9 SF.
   6.2) BOTTOM EDGE LESS THAN 18 INCHES ABOVE THE FLOOR.
   6.3) TOP EDGE GREATER THAN 36 INCHES ABOVE THE FLOOR.
   6.4) ONE OR MORE WALKING SURFACES WITHIN 36 INCHES HORIZONTALLY OF THE GLAZING.

WINDOW NOTES:

1) BASEMENTS WITH HABITABLE SPACE AND EVERY SLEEPING ROOM SHALL HAVE AT LEAST ONE OPENABLE EMERGENCY ESCAPE AND RESCUE WINDOW OR EXTERIOR DOOR OPENING FOR EMERGENCY ESCAPE AND RESCUE.
2) WHERE OPENINGS ARE PROVIDED AS A MEANS OF ESCAPE AND RESCUE, THEY SHALL HAVE A SILL HEIGHT OF NOT MORE THAN 44 INCHES ABOVE THE FLOOR.
3) MINIMUM OPENING AREA:
   ALL EMERGENCY ESCAPE AND RESCUE OPENINGS SHALL HAVE A MINIMUM NET CLEAR OPENING OF 5.7 SQ. FT. GRADE FLOOR OPENINGS SHALL HAVE A MINIMUM NET CLEAR OPENING OF 5.0 SQ. FT.
4) MINIMUM OPENING HEIGHT:
   THE MINIMUM NET CLEAR OPENING HEIGHT SHALL BE 24-INCHES.
5) MINIMUM OPENING WIDTH:
   THE MINIMUM NET CLEAR OPENING WIDTH SHALL BE 20-INCHES.
6) WINDOW WELLS:
   THE HORIZONTAL DIMENSIONS OF THE WINDOW WELL SHALL PROVIDE A MINIMUM NET CLEAR AREA OF 9 SQ. FT. WITH A MINIMUM HORIZONTAL PROJECTION AND WIDTH OF 36-INCHES.

NOTES:

1. BENCHMARK DESIGN INTERNATIONAL, INC ARCHITECTS ASSUMES NO LIABILITY FOR CHANGES OR MODIFICATIONS MADE TO THESE PLANS BY OTHERS WITHOUT PRIOR WRITTEN PERMISSION OF BDI, INC.
2. WHEN TWO ROOFS INTERSECT WITH DIFFERENT ROOF PITCHES, BLOCK TOP OF STUD WALLS AS REQ'D. TO LINE UP FASCIAS AS SHOWN
3. PROVIDE SUPPORT FOR STOOP AND STEPS TO GRADE AS REQUIRED.
4. SPECIFIC SIZE & LOCATION OF GUTTERS & DOWNSPOUTS SHALL BE DETERMINED BY THE BUILDER ACCORDING TO LOCAL RAINFALL RATES AND LOCAL PLUMBING CODE REQUIREMENTS FOR STORM DRAINAGE.
5. PROVIDE ATTIC VENTILATION PER LOCAL CODES AND REQUIREMENTS.

WINDOW SIZES

ALL WINDOW SIZES SHOWN ASSUME WOOD UNITS WILL BE UTILIZED ON THIS PROJECT. OWNER TO VERIFY WITH WINDOW MANUFACTURER THAT ADEQUATE EGRESS CLEARANCES ARE PROVIDED.

NOTE: DOWNSPOUT LOCATION TO BE COORDINATED AND CONNECTED TO SITE DRAINAGE

STRUCTURAL NOTE:

CONTRACTOR TO REFER TO AND COORDINATE WITH FLOOR AND ROOF FRAMING DRAWINGS (UNDER SEPARATE CONTRACT & COVER).

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STOCK PLANS
BENCHMARK DESIGN INTERNATIONAL

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■ PLAN NUMBER: LASSITER / 02025
■ CHECKED: T.W.
■ DRAWN: D.G.
■ LAST UPDATE: 03/03/05
■ SHEET NUMBER: A-2
■ DRAWING TITLE: EXTERIOR ELEVATIONS

Pet #3

Plan Sheet: *112B2*

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

111C1	112A1	112B1	112C1	118A1
111C2	112A2	112B2		
111C3	112A3	112B3		

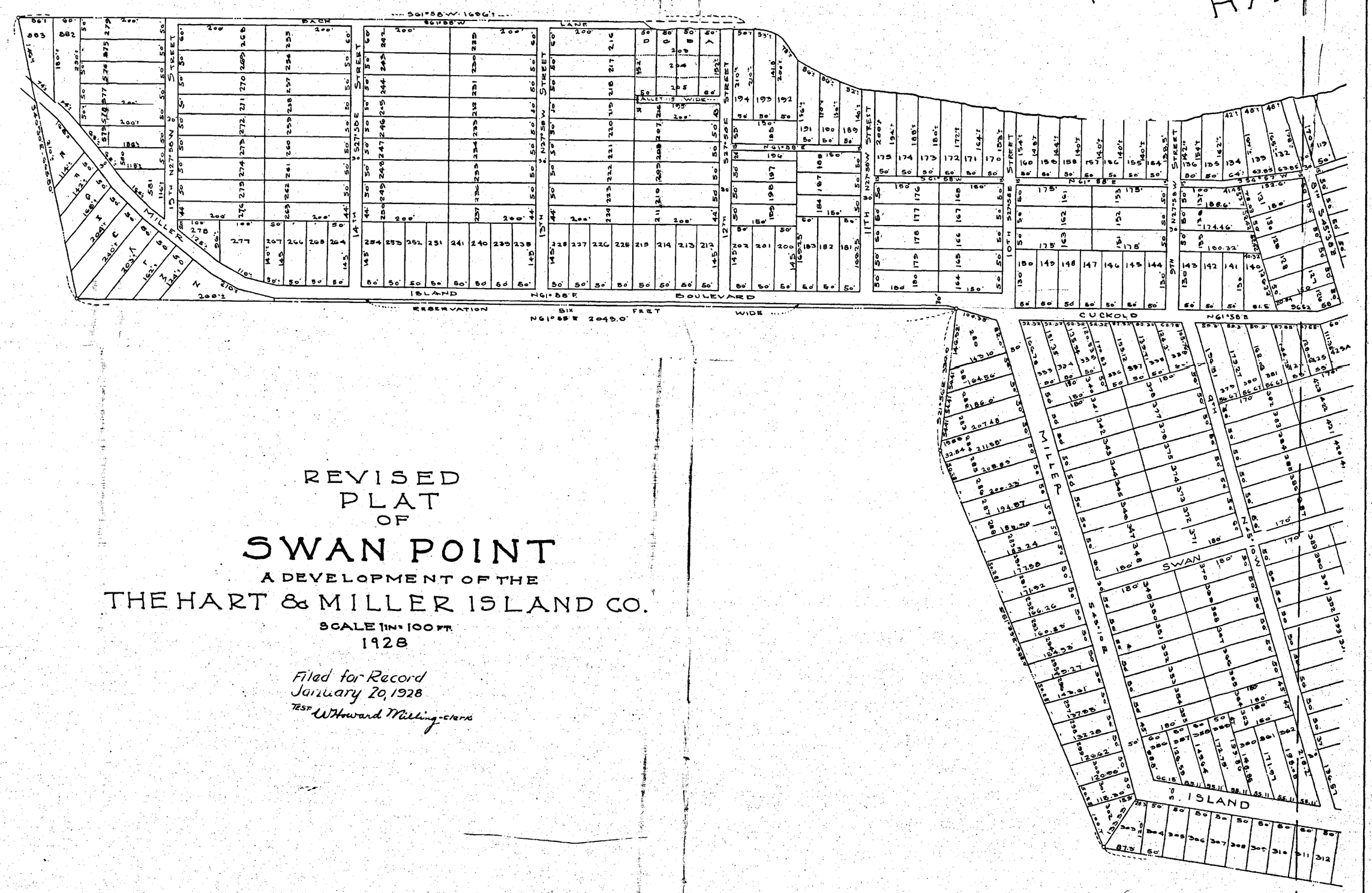
Scale

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



REVISED PLAT OF SWAN POINT

A DEVELOPMENT OF THE

THE HART & MILLER ISLAND CO.

SCALE 1 IN = 100 FT.

1928

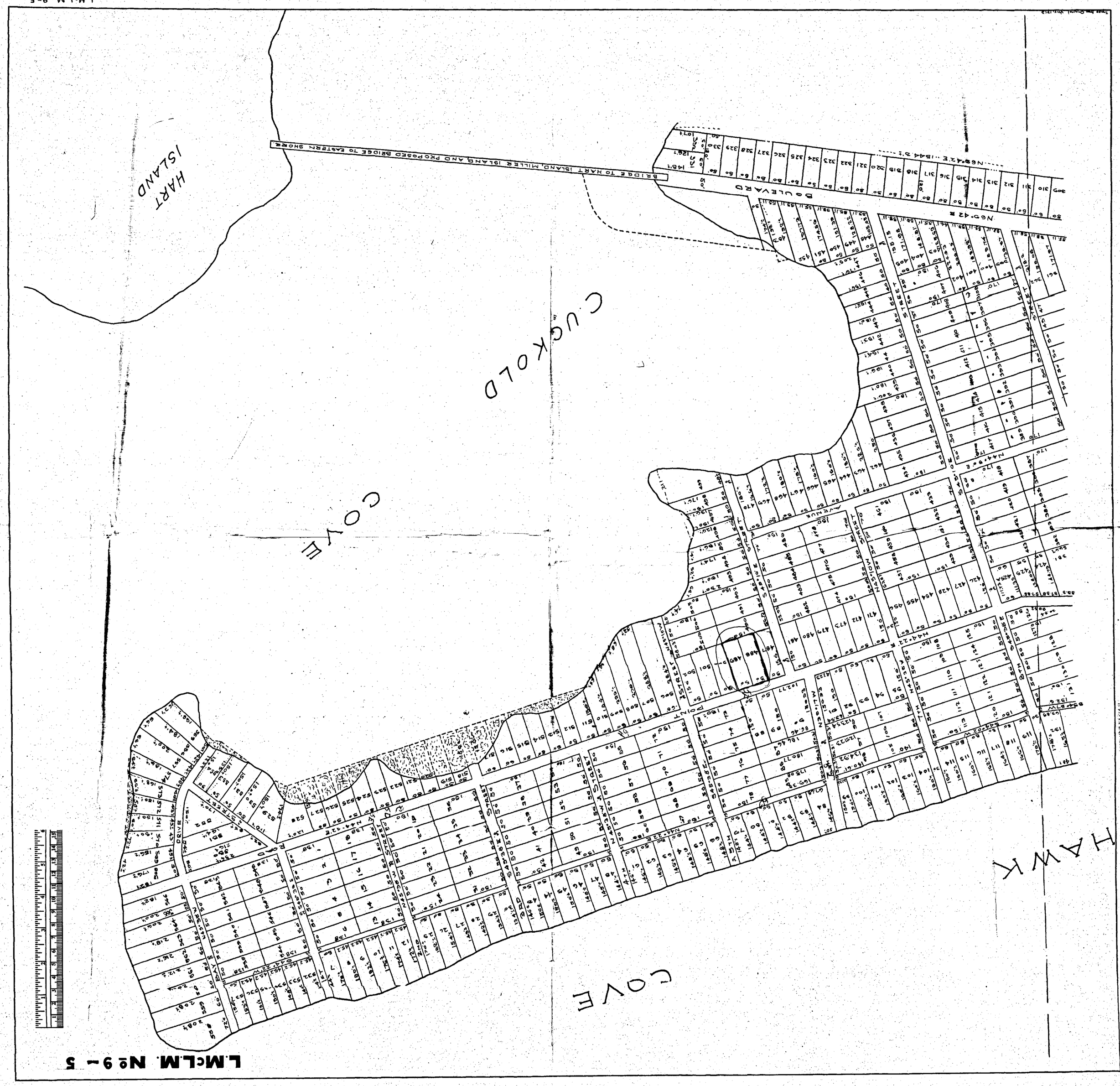
Filed for Record
January 20, 1928
Test. W. Howard Milling - Clerk

EDWARD V. COONAN & CO.
SURVEYORS & CIVIL ENGINEERS
231 COURTLAND STREET
BALTIMORE, MARYLAND
JANUARY 6, 1928

TRACE FROM ORIGINAL NOV. 1943

L. McL. M. 9~4

CBA
Pet. 1A


L.McL.M. No 9-5
HAWK
COVE
CUCKOLD
COVE
HART ISLAND
BRIDGE TO HART ISLAND, MILLER ISLAND AND PROPOSED BRIDGE TO EASTERN SHORE
BOULEVARD
N89°42'E 1844.3'
N89°42'E
STREET
AVENUE
L.McL.M. 9-5

CBH
Ref 18

30

2) Compliance with the ZAC comments submitted by DEPRM and the Bureau of Development Plans Review relative to Chesapeake Bay Critical Areas regulations and all other appropriate environmental, floodplain and B.O.C.A. regulations for the protection of water quality, streams, wetlands and floodplains. Copies of those comments have been attached hereto and are made a part hereof.

3) Compliance with the recommendations made by the Office of Planning within their revised ZAC comment, dated September 12, 2005, copy attached hereto.

4) When applying for a building permit, the site plan filed must reference this case and set forth and address the restrictions of this Order.

WILLIAM J. WISEMAN, III
Zoning Commissioner
for Baltimore County

WJW:bjs

ORDER RECEIVED FOR FILING
Date 10/18/05
By