

1/30/06

IN RE: PETITION FOR VARIANCE  
East Side of Cuckold Point Road, 115'  
North of c/l of 6<sup>th</sup> 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.

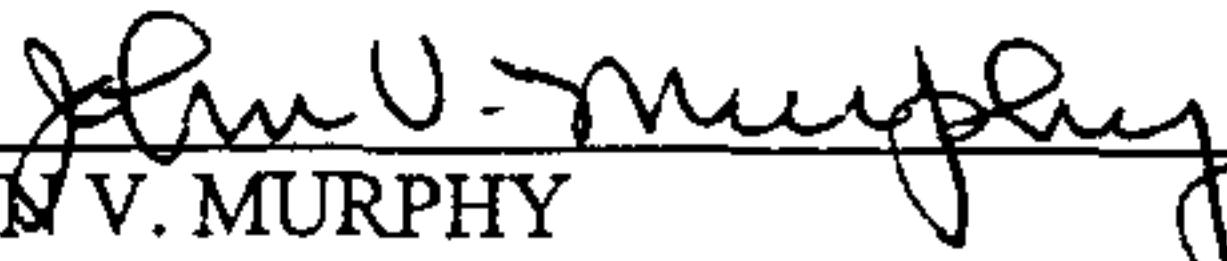
Pursuant to the posting of the property and the provisions of both the Baltimore County Code and the Baltimore County Zoning Regulations, and for the reasons given above, the requested variance should be denied.

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



15<sup>TH</sup> ELECTION DISTRICT  
7<sup>TH</sup> COUNCILMANIC DISTRICT

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* Case No. 06-309-A  
\* and  
\* Case No. 06-310-A

\* \* \* \* \*

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.

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.

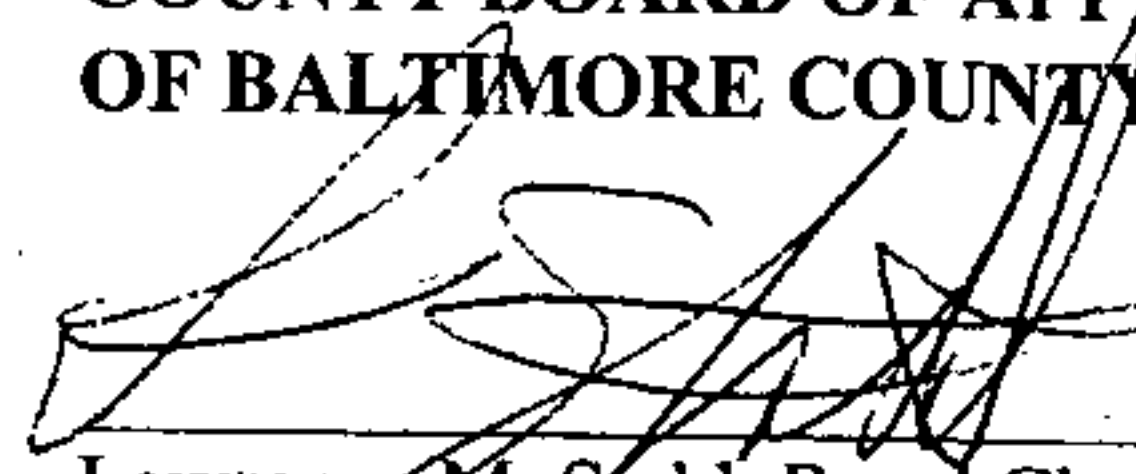
**ORDER**

IT IS THEREFORE THIS 15<sup>th</sup> 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 6<sup>TH</sup> STREET  
(9017 CUCKOLD POINT ROAD)  
15<sup>TH</sup> ELECTION DISTRICT  
7<sup>TH</sup> COUNCILMANIC DISTRICT  
AND  
PROPERTY LOCATED ON THE E/S CUCKOLD  
POINT ROAD, 115' N OF C/L OF 6<sup>TH</sup> STREET  
(9019 CUCKOLD POINT ROAD)  
15<sup>TH</sup> ELECTION DISTRICT  
7<sup>TH</sup> COUNCILMANIC DISTRICT

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* CASE NO. 06-309-A  
  
\* 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.

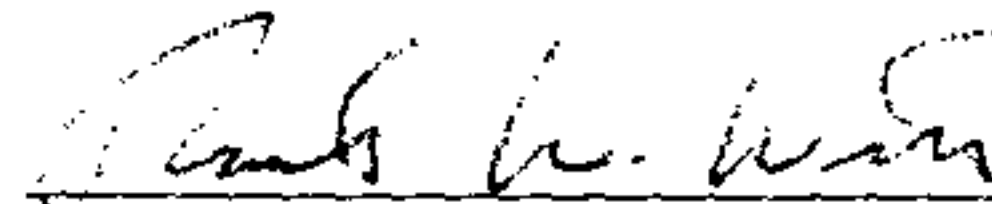
However, I believe it's important to point out that, since the decision of the Board on April 2, 2003, the characteristics of the two lots in question have changed. When the Hranickas, the original property owners, filed for an undersized lot exception and variance with the Zoning Commissioner, the two 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



8/18/06

IN RE: PETITION FOR VARIANCE \*  
East Side of Cuckold Point Road, 115  
North of c/1 of 6<sup>th</sup> Street \*  
15<sup>th</sup> Election District  
7<sup>th</sup> 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

RECEIVED  
AUG 18 2006

\* \* \* \* \*

**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.

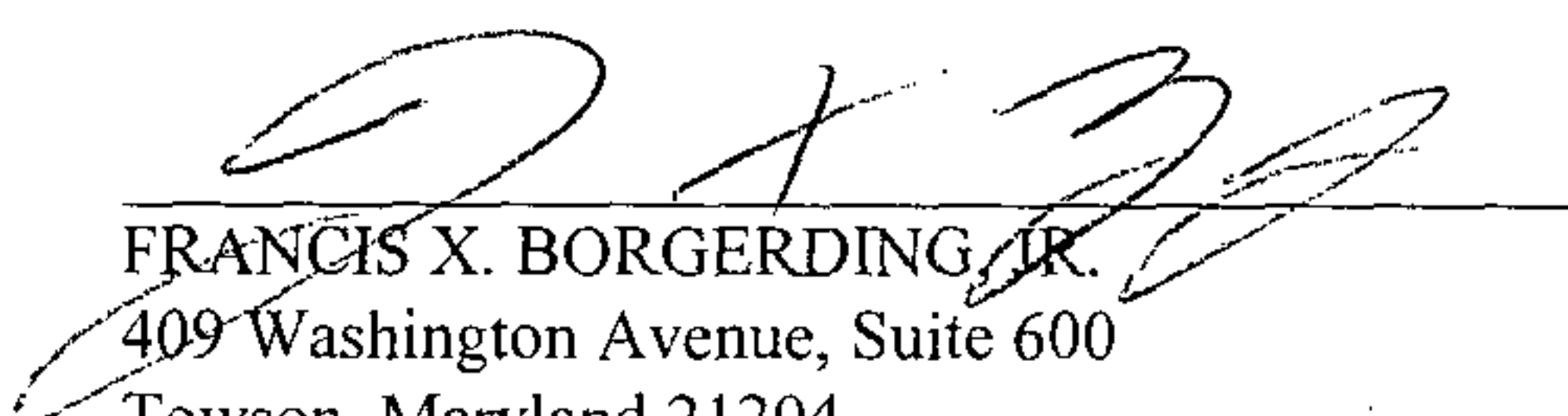


It is clear from the testimony and evidence before the Board regarding the utilization of the subject lots that there is no evidence to support a finding of an intention to merge the lots under Remes v. Montgomery County, 387 Md. 52 (2005). There have been no swimming pools, sheds or driveways or additions 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,



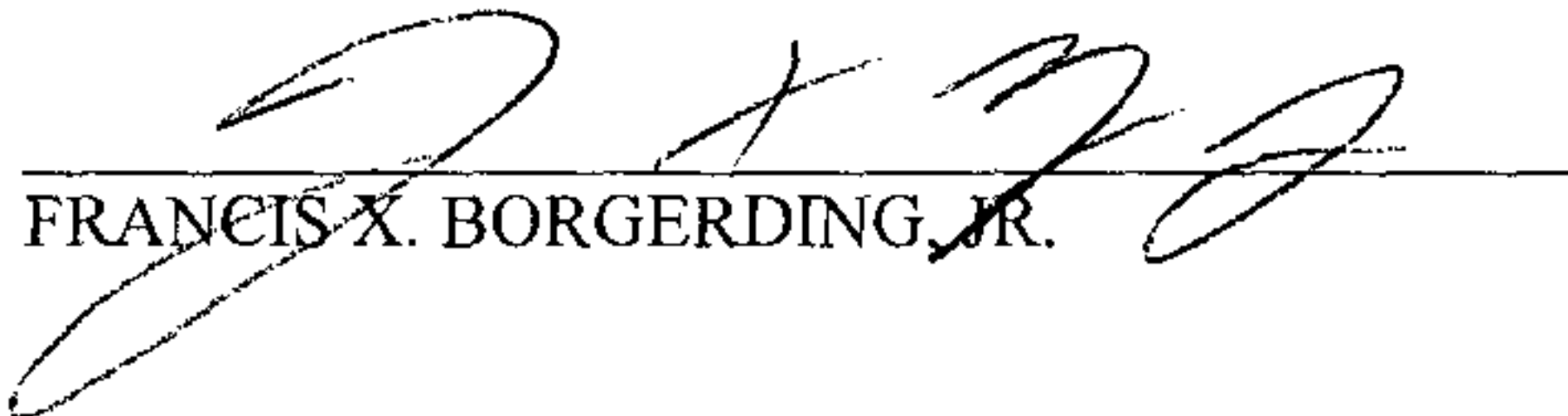
FRANCIS X. BORGERDING, JR.  
409 Washington Avenue, Suite 600  
Towson, Maryland 21204  
410-296-6820  
ATTORNEY FOR PETITIONERS,  
Charles & Daryl Wolinski



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY, that on this 19<sup>th</sup> 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 6<sup>TH</sup>  
ST (9019 CUCKOLD POINT RD); CHARLES S.  
WOLINSKI, CONTRACT PURCHASER; AND  
65' N OF C/L 6<sup>TH</sup> STREET (9017 CUCKOLD  
POINT ROAD) ERIC D. McDONALD - C.P.  
15<sup>TH</sup> ELECTION DISTRICT  
7<sup>TH</sup> 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



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

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.



8/16/06

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

\* \* \* \* \*

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

RECEIVED  
AUG 16 2006  
BALTIMORE COUNTY  
BOARD OF APPEALS

\* \* \* \* \*

**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 (9<sup>th</sup> 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 arisen, 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 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 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.

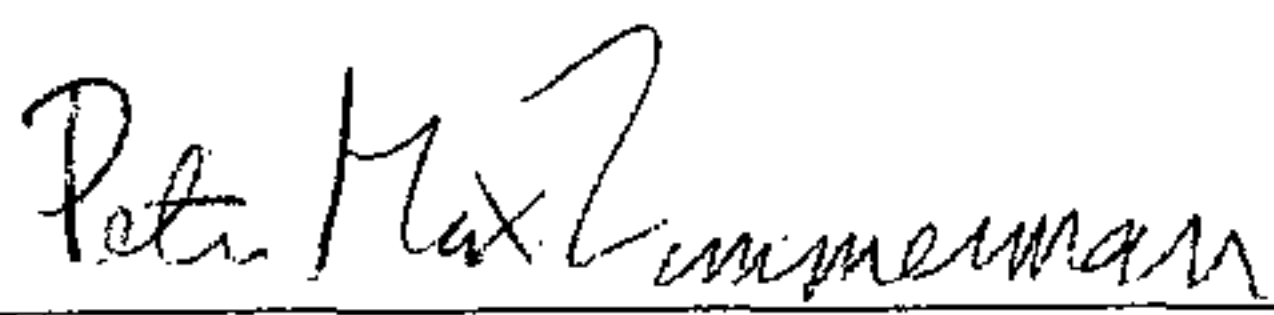


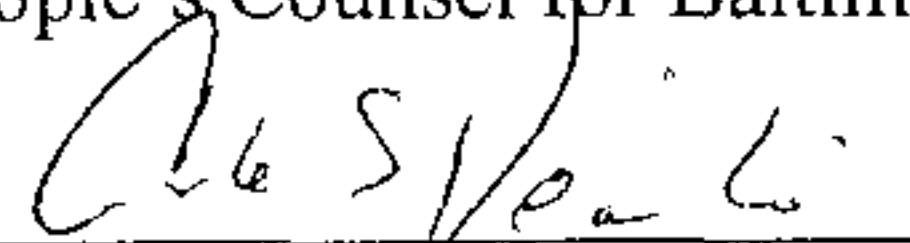
To suggest that there is anything unique about their property is delusive. To suggest that there is any real "practical difficulty" is not only delusive, but also hypocritical. The Wolinskis made a voluntary choice to purchase a property upon which they could enjoy and have in fact built a very nice 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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People's Counsel for Baltimore County

  
CAROLE S. DEMILIO  
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### CERTIFICATE OF SERVICE

I hereby certify that on this 16<sup>th</sup> 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

FOR JUDICIAL REVIEW OF THE  
DECISION OF THE COUNTY BOARD  
OF APPEALS OF BALTIMORE COUNTY

IN THE MATTER OF APPLICATION OF  
HERMAN AND GRACE MUELLER

\* IN THE  
\*  
\* CIRCUIT COURT  
\*  
\* FOR  
\*  
\* 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

FILED JAN 28 2006



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.



7/27/06

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

\* \* \* \* \*

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

**RECEIVED**  
JUL 27 2006

\* \* \* **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. Scrimgeour 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

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County

Carole S. Demilio/PAW

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 27<sup>th</sup> 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

PETER MAX ZIMMERMAN

People's Counsel for Baltimore County



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 6<sup>TH</sup>  
ST (9019 CUCKOLD POINT RD); CHARLES S.  
WOLINSKI, CONTRACT PURCHASER; AND  
65' N OF C/L 6<sup>TH</sup> STREET (9017 CUCKOLD  
POINT ROAD) ERIC D. McDONALD - C.P.  
15<sup>TH</sup> ELECTION DISTRICT  
7<sup>TH</sup> 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

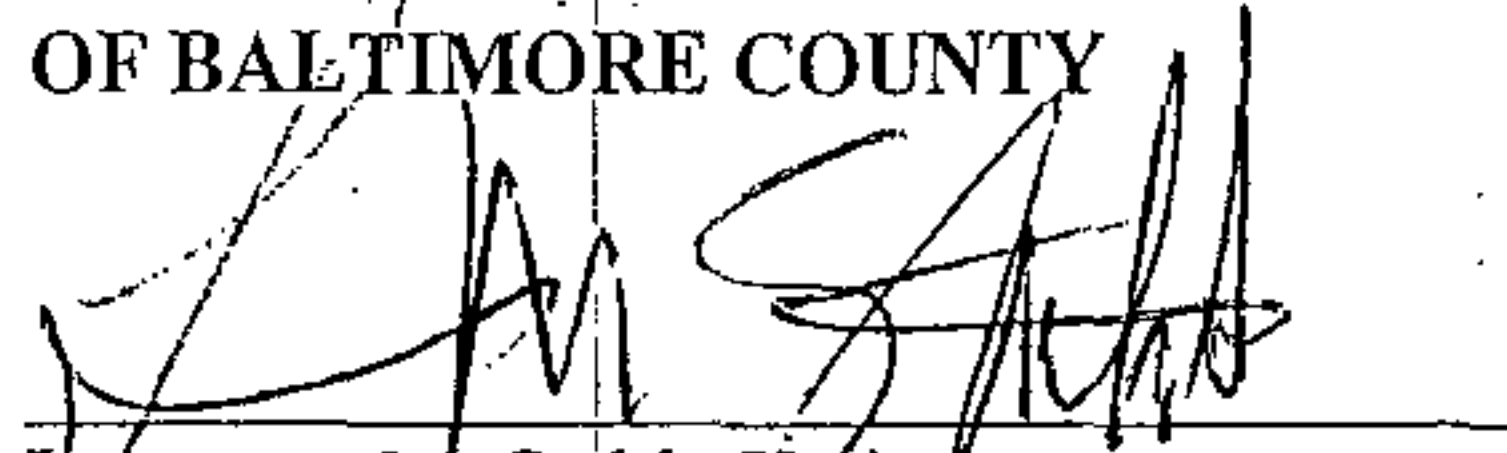
**ORDERED** that the Petitions for Variance seeking relief from § 1B02.3.C.1 and § 304.1.C



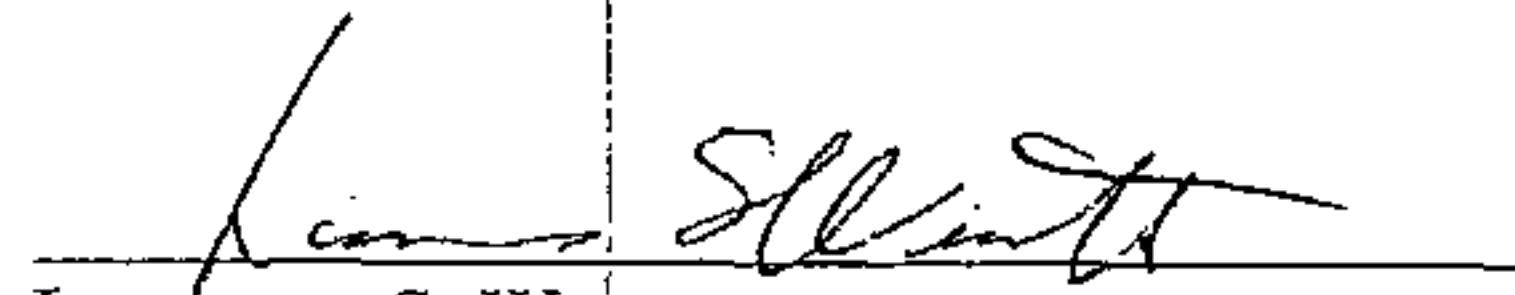
of the Baltimore County Zoning Regulations to permit a lot width of 50 feet in lieu of the required 55 feet in order to permit development of Lots 488 and 489, each with a single-family dwelling to be known as 9017 Cuckold Point Road and 9019 Cuckold Point Road, respectively, and seeking approval of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

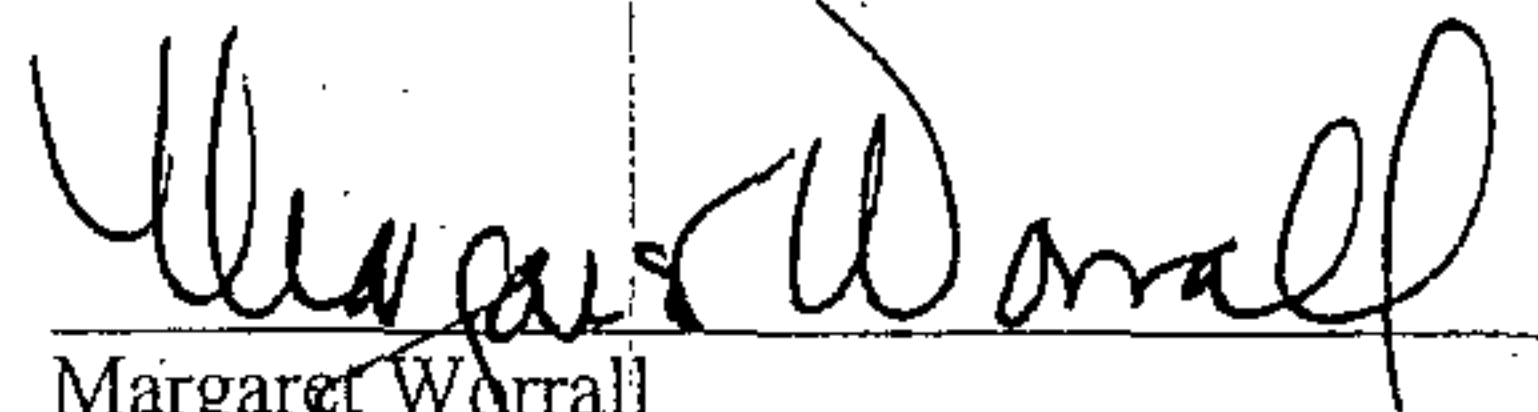
COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY



Lawrence M. Stahl, Chairman



Lawrence S. Wescott



Margaret Worrall



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)

4<sup>TH</sup> ELECTION DISTRICT  
2<sup>ND</sup> COUNCILMANIC DISTRICT

\* BEFORE THE  
\* COUNTY BOARD OF APPEALS  
\* OF  
\* BALTIMORE COUNTY  
\* 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



as are necessary to identify the dealership operations effectively and as recommended by HMA. Dealer shall in no way alter or modify such authorized signs without obtaining prior written approval from HMA."

Nothing in the agreement between Hyundai and its dealers indicates that, if the sign is smaller than 55 sq. ft., Hyundai will revoke or refuse to grant the dealership.

The second witness was Leonard Stoler, one of the principals of High Falcon Realty. He introduced various photographs of the property which is on Reisterstown Road. The dealership is near Mr. Stoler's Ford, Lexus, and Mitsubishi dealerships. He contends that the property is unique in that the dealership is in a valley of Reisterstown Road and that coming over the hill prior to reaching the dealership, someone going 50 to 55 miles per hour could not see the Hyundai sign. Mr. Stoler stated that if he was unable to erect a 55 sq. ft. sign it would cause him practical difficulty. He did not state what that practical difficulty would be.

### **Decision**

This matter was before the Board previously in Case No. 00-559-A in which the present Petitioner sought a variance from the sign regulations to erect a freestanding sign of 96.85 sq. ft. per side in lieu of the permitted 50 sq. ft. per side. At that time, the Board held that the property was not unique and that under *Cromwell v. Ward*, 102 Md.App. 691 (1995), the Board would not consider a variance since the property did not meet the first prong of *Cromwell*, which is uniqueness.

The Board stated at that time:

...In reviewing the facts of this case, the Board is unable to find that the property in question is unique. There is no question that Reisterstown Road is a rolling road which has many peaks and valleys. The property is located in a trough of



Reisterstown Road along with several other properties. There are other properties in other valleys of Reisterstown Road along the full extent of the road. In addition, the property is located within a cluster of automobile dealerships owned by the Len Stoler group. There is no question that the operation can be identified as, and is advertised as, being located 5 miles north of the Baltimore Beltway on Reisterstown Road. All of the other Stoler dealerships are located in that area, as well as other operations across Reisterstown Road and across High Falcon Road. The signs in the area which are larger than that permitted under the current law must be removed after the 15-year grace period allowed by the law.

In addition the Board does not find that the failure to grant the variance would be an unreasonable hardship on Mr. Stoler and his Hyundai operation. A 50 sq. ft. sign would certainly be visible along Reisterstown Road in addition to the signs for his other dealerships. There is no indication that failure to have the larger sign would cause Mr. Stoler to lose the Hyundai dealership. In addition, the Board does not feel that large corporations should be in the position of being able to dictate the size of the signs in Baltimore County. While the Petitioners testified there is no 50 sq. ft. sign available from Hyundai to display at dealerships, there has been no testimony that one could not be constructed to meet the requirements of the County law.

As in the previous case, the Petitioner submitted a previous case of this Board, Case No. 90-160-A, decided in August of 1991 and affirmed by the Circuit Court in May of 1992, wherein the Board granted a sign variance. These cases were decided before the passage of § 450.4(g) of the BCZR in 1998.

The Board finds that there has been no change in the topography of Reisterstown Road since the previous decision of the Board on April 18, 2002. Reisterstown Road is still a rolling road with many peaks and valleys, and this property is not unique in that other properties on Reisterstown Road are subject to the same conditions. The agreement which the Petitioner has with the Hyundai Motor Company specifies that the sign should be subject to applicable law. The Board relies on its previous decision and the fact that there has been no change in the circumstances to warrant a granting of a variance. The fact that the requested sign is 55 sq. ft. rather than 50 sq. ft. does not influence the Board in its decision. If a company is granted a variance because their sign is



only 10% larger than allowed by the law, where does the allowance stop. This Board feels that the Council has passed the sign regulation in order to curtail the use of signs in the County. We see no basis for overturning the previous decision of the Board and allowing a variance to permit a 55 sq. ft. sign rather than a 50 foot sign that is allowed. Therefore, the variance will be denied.

**ORDER**

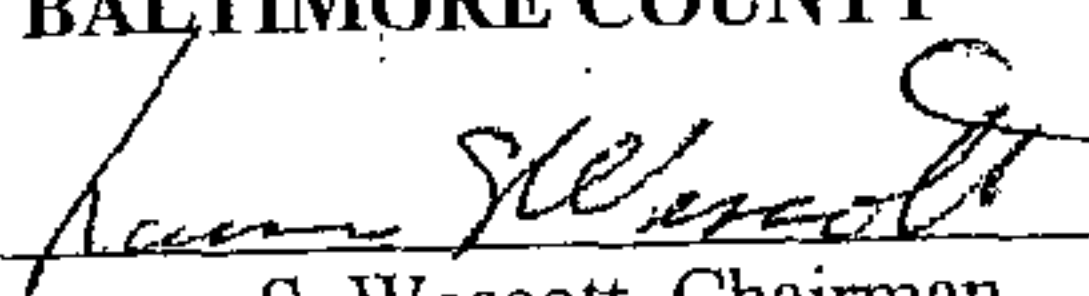
**THEREFORE, IT IS THIS** 20 day of January, 2006 by the County Board of Appeals of Baltimore County

**ORDERED** that the Petitioners' request for variance from § 450.4.5(g) of the *Baltimore County Zoning Regulations* (BCZR) to allow a double-faced illuminated free standing sign with an area of 55 square feet per side in lieu of the permitted 50 square feet per side is hereby **DENIED**; and it is further

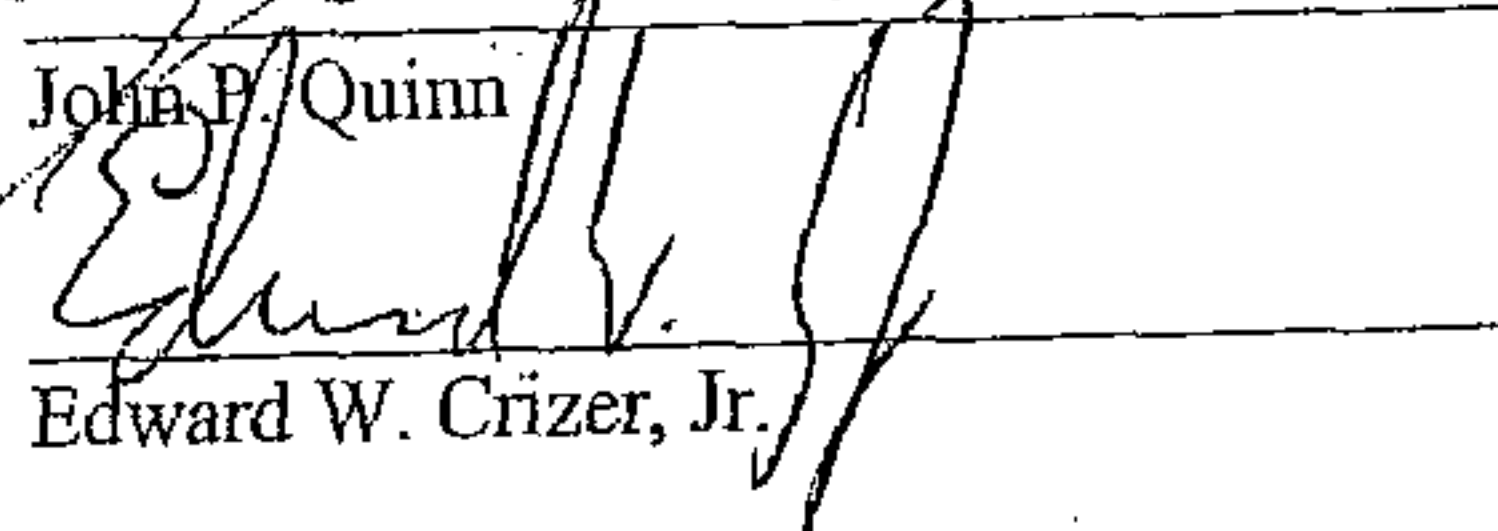
**ORDERED** that the Petitioners shall have sixty (60) days from the date of this Order to bring the subject property into compliance with all applicable zoning laws and regulations of Baltimore County.

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 S. Wescott, Chairman

  
John P. Quinn

  
Edward W. Crizer, Jr.



2/21/06  
IN RE: PETITION FOR VARIANCE \*  
East Side of Cuckold Point Road,  
115' North of c/1 of 6<sup>th</sup> Street \*  
15<sup>th</sup> Election District  
7<sup>th</sup> Councilmanic District \*  
(9017 & 9019 Cuckold Point  
Road) \*

BEFORE THE  
DEPUTY ZONING COMMISSIONER  
OF BALTIMORE COUNTY  
Case Nos.: 06-309-A & 06-310-A

Charles and Daryl Wolinski \*  
*Petitioners*

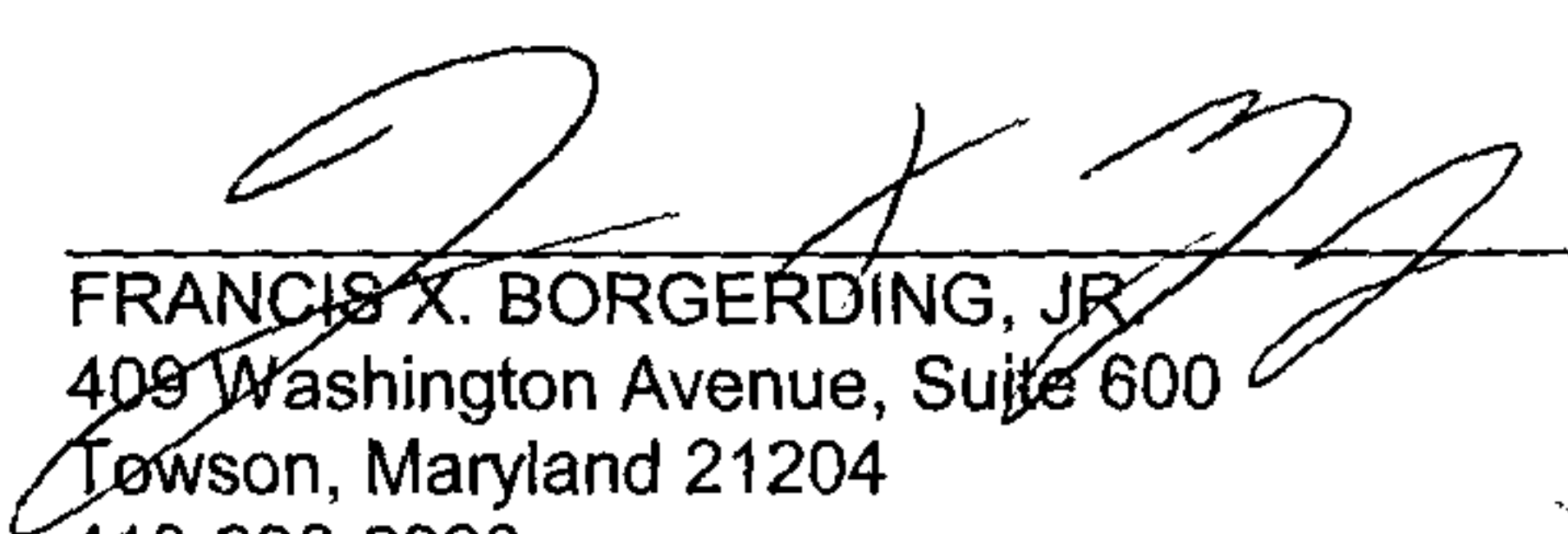
\* \* \* \* \*

**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.

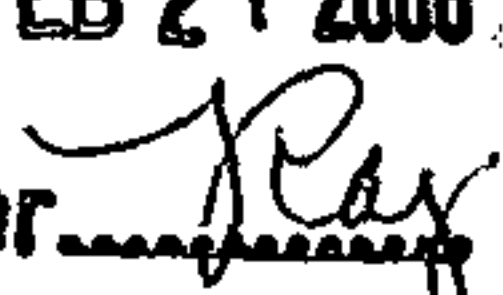
Filed concurrently with this Notice of Appeal is a check made payable to Baltimore County to cover the costs of the Appeal noted herein.

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 

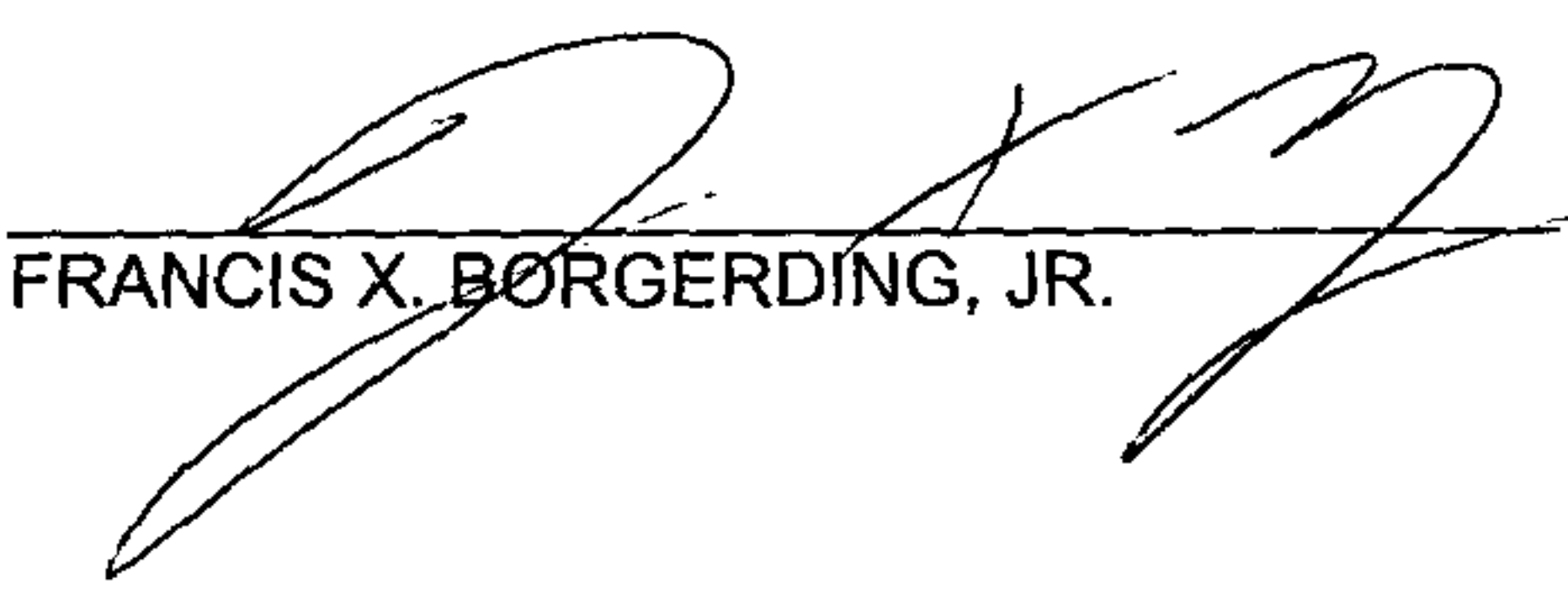


**CERTIFICATE OF SERVICE**

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.





# Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at #9019 CUCKOLD POINT RD.

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) 1 B02.3.C.1-BCR, TO ALLOW A LOT

WIDTH OF 50 FT. IN LIEU OF THE REQUIRED 55 FT. FOR  
A 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 BE PRESENTED AT HEARING

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

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

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

## Contract Purchaser/Lessee:

Name - Type or Print

Signature

Address

Telephone No.

City

State

Zip Code

## 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. 410-477-0053

Address

Telephone No.

BALTIMORE, MD.

City

State

21219

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

gum

Date

12.15.05

ORDER RECEIVED FOR FILING  
1-30-06  
REV 01/5/08

Case No. 06-310A





# Petition for Variance

to the Zoning Commissioner of Baltimore County

for the property located at #9019 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) 1802.3.C.1; BCZR, TO ALLOW

A LOT WIDTH OF 50ft. IN LIEU OF THE REQUIRED 55ft. FOR A 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 BE 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. 410-477-0053

Address

Telephone No.

City

State

Zip Code

## Representative to be Contacted:

Same

Name

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 OFFICE  
DATE 12-15-05  
CASE NO. 06-310A



## ZONING DESCRIPTION FOR 9019 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 6 th street which is 30 feet wide. Being Lot # 489 in the subdivision of Swan Point as recorded in Baltimore County Plat Book # 9, Folio # 4, containing 7,500 square feet. Also known as 9019 Cuckold Point Road and located in the 15 election district, 7 councilmanic district.



# 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: #06-310SPH

9019 Cuckold Point Road

East side of Cuckold Point Road, 115 feet from centerline of 6th Street

15th Election District - 7th Councilmanic District

Legal Owner(s): Charles Wolinski and Daryl Wolinski

Variance: to permit a lot width of 50 feet in lieu of the required 55 feet for a dwelling.

Hearing: Tuesday, January 24, 2006 at 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson 21204.

WILLIAM J. WISEMAN, III

Zoning Commissioner for Baltimore County

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

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

1/021 Jan 5

79871

## CERTIFICATE OF PUBLICATION

1/6/2006

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 1/5/2006.

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

*J. Wilkinson*

LEGAL ADVERTISING



**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: #06-310-SPH**  
9019 Cuckold Point Road  
East side of Cuckold Point Road, 115 feet from centerline of 6th Street  
15th Election District  
7th Councilmanic District  
Legal Owner(s):

Charles Wolinski and  
Garyl Wolinski

**Variance:** to permit a lot width of 50 feet in lieu of the required 55 feet for a dwelling.

**Hearing:** Friday, January 27, 2006 at 10:00 a.m. in Room 407, County Courts Building, 401 Basley 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.

J 1/093 Jan. 12 80662

# 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.

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

*S. Wilkinson*

LEGAL ADVERTISING



**BALTIMORE COUNTY, MARYLAND  
OFFICE OF BUDGET & FINANCE  
MISCELLANEOUS RECEIPT**

No. 0298

DATE 3/7/06 ACCOUNT 0010066150

AMOUNT \$ 200.00

RECEIVED FROM: W. J. Wilson, Jr. (400) d  
For "Wilton's" (400)  
FOR: Annual to Board of Physicals from  
Zoning Comm. for Case # 06-309-H d # 06-310-A

COPIES  
WHITE - CASHIER  
PINK - AGENCY  
YELLOW - CUSTOMER

**PAID RECEIPT**  
BUSINESS OFFICE THE  
3/22/2006 BALANCE 12,404.04  
AND FROM BANK OF THE  
EXCEPT 12,404.04 3/22/2006  
Dept 5 500 CASH, BALANCE  
UR 50. 1004.26  
Receipt for 1000.00  
1000.00 1000.00  
Baltimore County, Maryland

CASHIER'S VALIDATION



DE - 510 H

BALTIMORE COUNTY, MARYLAND  
OFFICE OF BUDGET & FINANCE  
MISCELLANEOUS RECEIPT

No. 2511

DATE 12-15-05 ACCOUNT Real-666-6150

AMOUNT \$ 65.00

RECEIVED FROM: PAT O'Keefe

FOR: UPR

9019 Cuckoo PT. Rd.

DISTRIBUTION  
WHITE - CASHIER      PINK - AGENCY      YELLOW - CUSTOMER

PAID RECEIPT  
DATE 12/16/2005 TIME 1:57 PM  
AMOUNT 65.00  
CASHIER UPR  
RECEIVED BY PAT O'KEEFE  
FOR UPR  
TOTAL 65.00

CASHIER'S VALIDATION



# APPEAL SIGN POSTING REQUEST

CASE NO. 06-310-A

9019 CUCKOLD POINT ROAD

15<sup>TH</sup> 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

46-C11

CASE NO.: 06-310-A

LEGAL OWNER: CHARLES & DARYL WOLINSKI

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

9019 CUCKOLD POINT ROAD  
BALTIMORE, MD 21219

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

By:

(Signature of Sign Poster)

(Print Name)

JASON SEIDEMAN



# CERTIFICATE OF POSTING

ATTENTION: KRISTEN MATTHEWS

DATE: 1/09/06

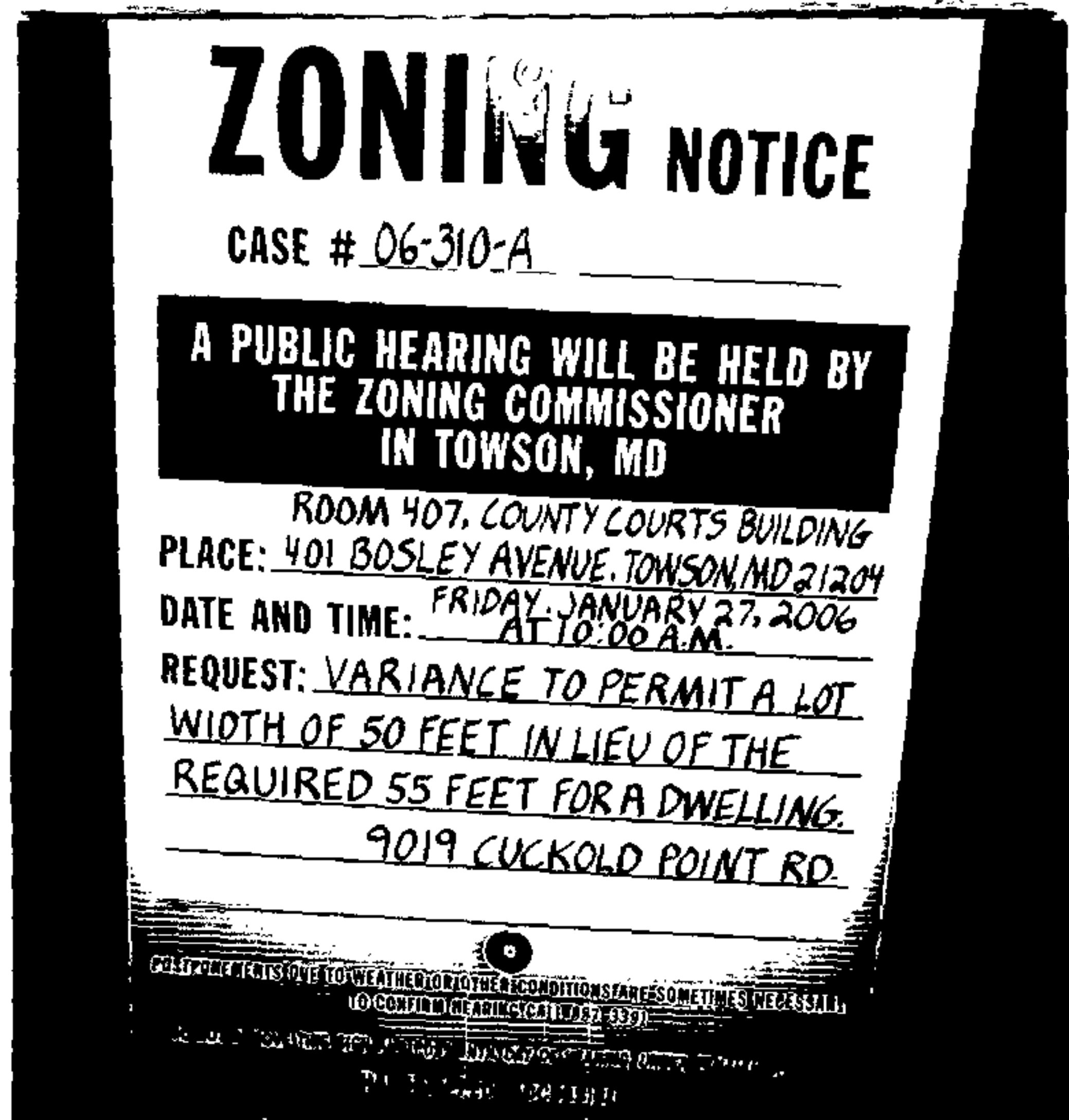
Case Number: 06-310-A

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: 9019 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)



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: 310  
Petitioner: CHARLES AND DARYL WOLINSKI  
Address or Location: #9019 CUCKOLD POINT ROAD

PLEASE FORWARD ADVERTISING BILL TO:

Name: CHARLES AND DARYL 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**



**Baltimore County**

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

Director's Office  
County Office Building  
111 W. Chesapeake Avenue  
Towson, Maryland 21204

Tel: 410-887-3353 • Fax: 410-887-5708

January 4, 2006

**CORRECTED 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: 06-310-SPH**

9019 Cuckold Point Road

East side of Cuckold Point Road, 115 feet from centerline of 6<sup>th</sup> Street

15<sup>th</sup> Election District – 7th Councilmanic District

Legal Owners: Charles Wolinski and Daryl Wolinski

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

Hearing: Friday, January 27, 2006 @ 10:00 a.m. in Room 407, County Courts Building,  
401 Bosley Avenue, Towson, MD 21204

A handwritten signature in black ink, appearing to read "Timothy Kotroco".

Timothy Kotroco  
Director

TK:klm

C: Charles & Daryl Wolinski, 9019 Cuckold Point Road, Baltimore, MD 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.





December 23, 2005

**NOTICE OF ZONING HEARING**

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

**CASE NUMBER: 06-310-SPH**

9019 Cuckold Point Road

East side of Cuckold Point Road, 115 feet from centerline of 6<sup>th</sup> Street

15<sup>th</sup> Election District – 7th Councilmanic District

Legal Owners: Charles Wolinski and Daryl Wolinski

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

Hearing: Tuesday, January 24, 2006 @ 10:00 a.m. in Room 407, County Courts Building, 401  
Bosley Avenue, Towson, MD 21204

A handwritten signature in black ink, appearing to read "Timothy Kotroco", is written over the printed name and title.

Timothy Kotroco  
Director

TK:raj

C: Charles & Daryl Wolinski, 9019 Cuckold Point Road, Baltimore, MD 21219

- NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY MONDAY, JANUARY 9, 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.**



TO: PATUXENT PUBLISHING COMPANY  
Thursday, January 5, 2006 Issue - Jeffersonian

Please forward billing to:  
Charles & Daryl Wolinski (410-477-0053)  
9019 Cuckold Point Road  
Baltimore, MD 21219

---

## 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: 06-310-SPH**

9019 Cuckold Point Road  
East side of Cuckold Point Road, 115 feet from centerline of 6<sup>th</sup> Street  
15<sup>th</sup> Election District – 7th Councilmanic District  
Legal Owners: Charles Wolinski and Daryl Wolinski

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

Hearing: Tuesday, January 24, 2006 @ 10:00 a.m. in Room 407, County Courts Building, 401 Bosley Avenue, Towson, MD 21204



WILLIAM J. WISEMAN, III  
ZONING COMMISSIONER FOR BALTIMORE COUNTY

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





**County Board of Appeals of Baltimore County**

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

**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 15<sup>th</sup> E; 7<sup>th</sup> C

and

CASE #: 06-310-A

**IN THE MATTER OF: CHARLES AND DARYL WOLINSKI**  
-Legal Owners /Petitioners 9019 Cuckold Point Road 15<sup>th</sup> E; 7<sup>th</sup> 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 Appellants /Petitioners  
Appellants /Petitioners

: 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







# 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 15<sup>th</sup> E; 7<sup>th</sup> C

and

CASE #: 06-310-A

IN THE MATTER OF: CHARLES AND DARYL WOLINSKI

-Legal Owners /Petitioners 9019 Cuckold Point Road 15<sup>th</sup> E; 7<sup>th</sup> 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  
Appellants /Petitioners

: Francis X. Borgerding, Jr., Esquire  
: 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





**Department of Permits  
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: 06-310-A, 9019 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,

A handwritten signature in black ink, reading "W. Carl Richards, Jr." in a cursive style.

W. Carl Richards, Jr.  
Supervisor, Zoning Review

WCR: clb

Enclosures

c: People's Counsel

Visit the County's Website at [www.baltimorecountyonline.info](http://www.baltimorecountyonline.info)





# BALTIMORE COUNTY, MARYLAND

## Inter-Office Correspondence



TO: Timothy M. Kotroco  
FROM: R. Bruce Seeley, DEPRM  
DATE: January 19, 2006  
SUBJECT: Zoning Item # 06-310-A  
Address 9019 Cuckold Point Road  
Wolinski Property

Zoning Advisory Committee Meeting of December 19, 2005

\_\_\_\_\_ 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



Jan 11/27

# BALTIMORE COUNTY, MARYLAND

## INTER-OFFICE CORRESPONDENCE

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

**DATE:** January 4, 2006  
**RECEIVED**

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

JAN 09 2006

**ZONING COMMISSIONER**

**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 P. Luray*

**Division Chief:**

*John Luban*

CM/LL



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



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

Maryland Department of Transportation

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

Date:

1.5.11

RE:

Baltimore County  
Item No. 310 JCM

Dear Ms. Matthews:

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

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

Very truly yours,

Steven D. Foster, Chief  
Engineering Access Permits Division

My telephone number/toll-free number is \_\_\_\_\_

Maryland Relay Service for Impaired Hearing or Speech: 1.800.735.2258 Statewide Toll Free

Street Address: 707 North Calvert Street • Baltimore, Maryland 21202 • Phone 410.545.0300 • [www.marylandroads.com](http://www.marylandroads.com)



**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. 310

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 310-01032006.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

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



**BALTIMORE COUNTY, MARYLAND****Inter-Office Correspondence**

TO: Timothy M. Kotroco  
FROM: R. Bruce Seeley, DEPRM  
DATE: January 19, 2006  
SUBJECT: Zoning Item # 06-310-A  
Address 9019 Cuckold Point Road  
Wolinski Property

Zoning Advisory Committee Meeting of December 19, 2005

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



**NOTE TO FILE: REVIEW THE  
ZONING HISTORY ON THIS CASE AND  
IT'S COMPANION, 06-309-A. THE  
REQUESTED RELIEF WAS DENIED ON  
APPEAL IN 2003. CASES 03-096-A AND  
03-97-A.**



**Department of Permits and  
Development Management**



**Baltimore County**

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

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

March 7, 2006

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

Dear Mr. Borgerding:

RE: Case: 06-310-A, 9019 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,

A handwritten signature in black ink, reading "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



## APPEAL

Petition for Variance  
9019 Cuckold Point Road  
East side of Cuckold Point Road, 115' North centerline of 6<sup>th</sup> Street  
15th Election District – 7th Councilmanic District  
Legal Owners: Charles and Daryl Wolinski

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

Petition for Variance (December 15, 2005)

Zoning Description of Property

Notice of Zoning Hearing (December 23, 2005)

Corrected Notice of Zoning Hearing (January 4, 2006)

1<sup>st</sup> Certification of Publication (January 5, 2006– The Jeffersonian)

2<sup>nd</sup> 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

**Petitioners' Exhibits (SEE CASE #06-309-A – COMPANION FILE)**

- 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) (SEE CASE #06-309-A – COMPANION FILE)**

- 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*



CASE #: 06-309-A

IN THE MATTER OF: CHARLES AND DARYL WOLINSKI –  
Legal Owners /Petitioners  
9017 Cuckold Point Road 15<sup>th</sup> E; 7<sup>th</sup> C

and

CASE #: 06-310-A

IN THE MATTER OF: CHARLES AND DARYL WOLINSKI –  
Legal Owners /Petitioners  
9019 Cuckold Point Road 15<sup>th</sup> E; 7<sup>th</sup> C

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

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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

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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.

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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.

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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)

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# Plat to accompany Petition for Zoning ☒ Variance ☐ Special Hearing

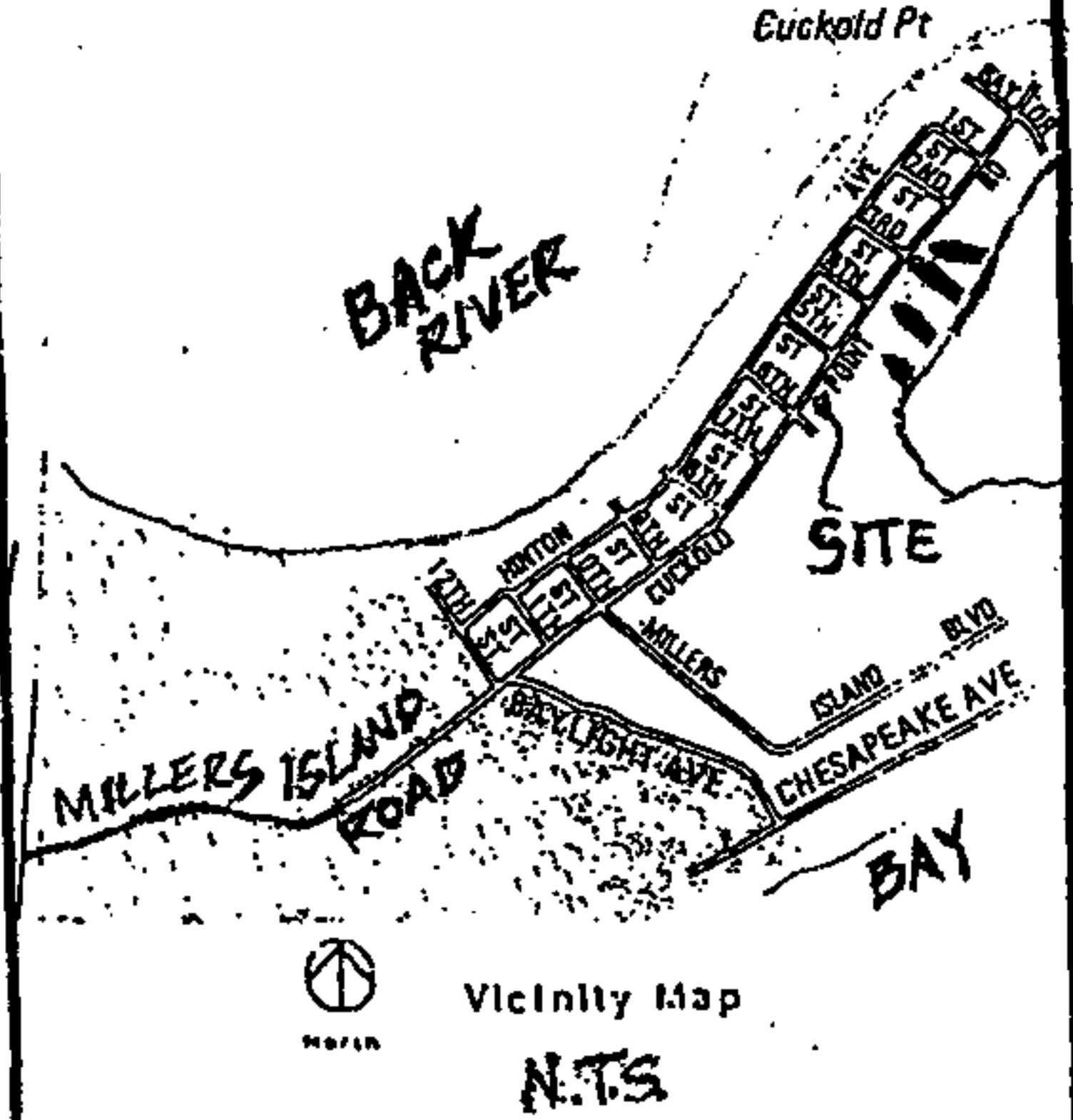
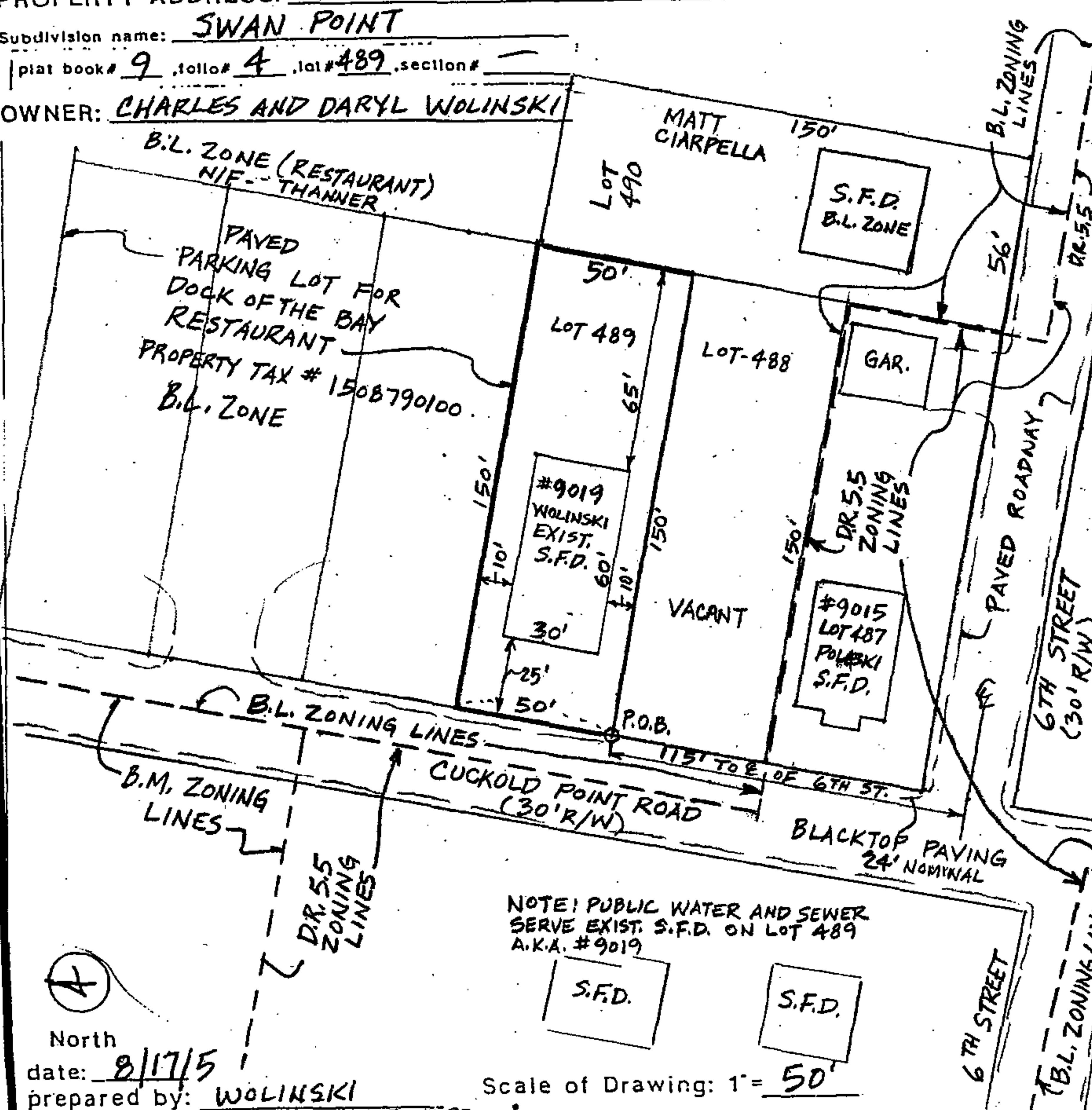
PROPERTY ADDRESS: #9019 CUCKOLD POINT ROAD

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

Subdivision name: SWAN POINT

plat book # 9 folio # 4 lot # 489 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 7,500  
acreage square feet

SEWER: ☒ public ☐ private

WATER: ☒ public ☐ private

Chesapeake Bay Critical Area: ☒ ☐

Prior Zoning Hearings: 03-096-A  
50 FOOT LOT WIDTH DENIED on Appeal

Zoning Office USE ONLY!

reviewed by: ITEM #: CASE #:

6A

North

date: 8/17/15

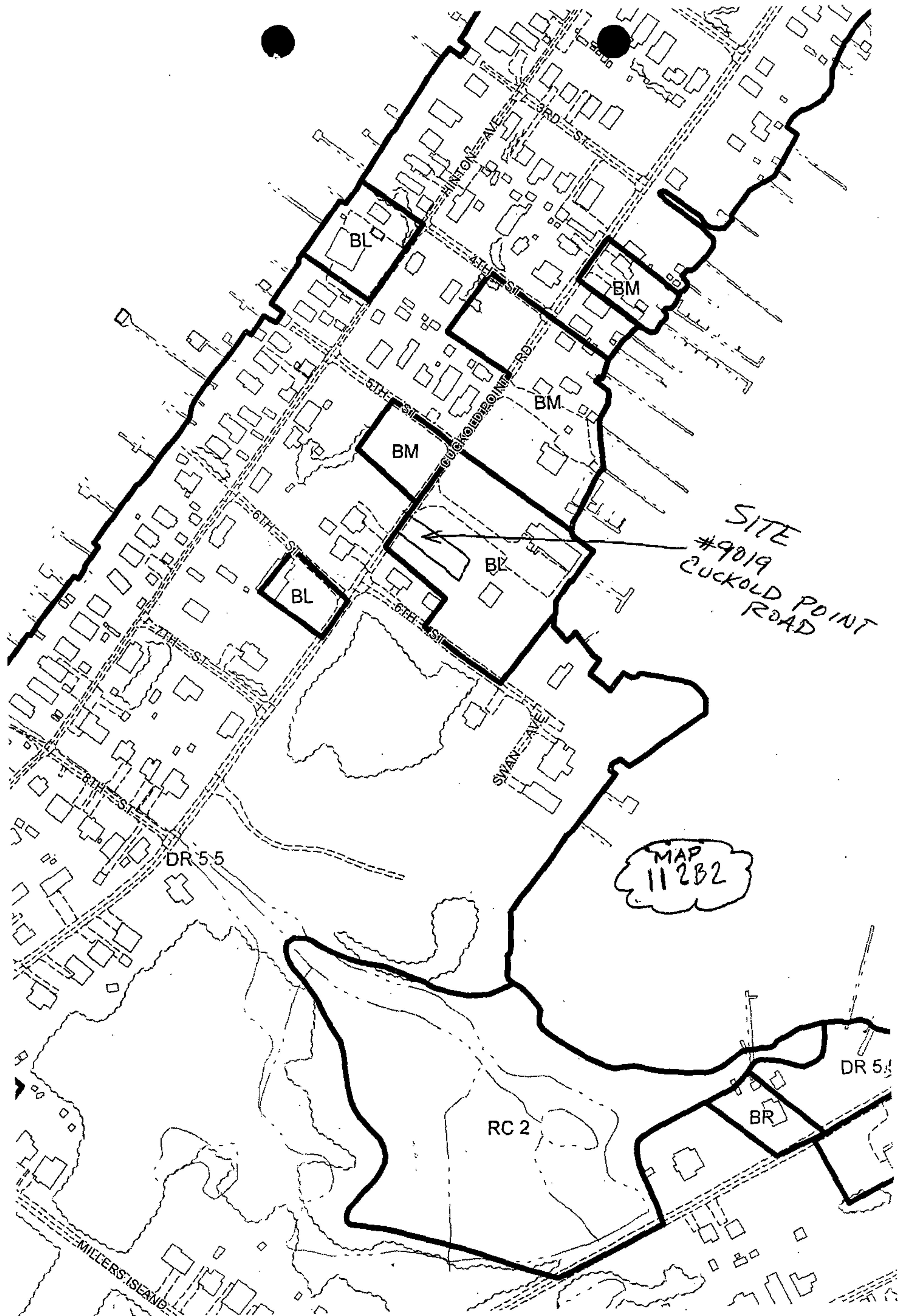
prepared by: WOLINSKI

#9019 CUCKOLD POINT RD.

Scale of Drawing: 1" = 50'

NOTE! PUBLIC WATER AND SEWER  
SERVE EXIST. S.F.D. ON LOT 489  
A.K.A. #9019







**This Deed**, MADE THIS 6<sup>TH</sup> 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.

①







[ ] City [ X ] County: Baltimore

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

Ref: B403 Acpt: # 49026  
 SK: CR Rik: # 4214  
 Date: 10, 2003 02:27 am

|                                      |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |  |                                                                                                                                                                                                                                                     |  |
|--------------------------------------|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| 1 Type(s) of Instruments             |  | <input type="checkbox"/> Check Box if Addendum Intake Form is Attached.<br><input type="checkbox"/> Deed <input type="checkbox"/> Mortgage <input type="checkbox"/> Financing <input type="checkbox"/> Other<br><input type="checkbox"/> Deed of Trust <input type="checkbox"/> Lease <input type="checkbox"/> Statement                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  | TOTAL<br>Rest RA03 Rpt # 49026<br>SH CR Rik # 4214<br>May 20, 2003 02:27 pm                                                                                                                                                                         |  |
| 2 Conveyance Type                    |  | <input type="checkbox"/> Improved Sale <input type="checkbox"/> Unimproved Sale <input type="checkbox"/> Multiple Accounts <input type="checkbox"/> Not an Arms-<br>Check Box Arms-Length /1/ Arms-Length /2/ Arms Length /3/ Length Sale /9/                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |                                                                                                                                                                                                                                                     |  |
| 3 Tax Exemptions (if Applicable)     |  | Recordation<br>State Transfer<br>County Transfer                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  | Cite or Explain Authority                                                                                                                                                                                                                           |  |
| 4 Consideration and Tax Calculations |  | Consideration Amount<br>Purchase Price/Consideration \$ 100,000.00<br>Any New Mortgage \$ 216,600.00<br>Balance of Existing Mortgage \$<br>Other: \$<br>Other: \$<br>Full Cash Value \$ 100,000.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  | Finance Office Use Only<br>Transfer and Recordation Tax Consideration<br>Transfer Tax Consideration \$<br>X ( ) % \$<br>Less Exemption Amount \$<br>Total Transfer Tax \$<br>Recordation Tax Consideration \$<br>X ( ) per \$500 \$<br>TOTAL DUE \$ |  |
| 5 Fees                               |  | Amount of Fees<br>Recording Charge \$ 25.00<br>Surcharge \$<br>State Recordation Tax \$ 500.00<br>State Transfer Tax \$ 500.00<br>County Transfer Tax \$ 1,500.00<br>Other \$<br>Other \$                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  | Doc. 1 Doc. 2 Agent<br>\$ 80.00<br>Tax Bill:<br>C.B. Credit:<br>Ag. Tax/Other:                                                                                                                                                                      |  |
| 6 Description of Property            |  | District Property Tax ID No. (1) Grantor Liber/Folio Map Parcel No. Var. LOG<br>15-1508790100<br>Subdivision Name Lot (3a) Block (3b) Sect/AR/3c Plat Ref. SqFt/Acreage(4)<br>Location/Address of Property Being Conveyed (2)<br>9019 Cuckold Point Road, Sparrows Point, MD 21219<br>Other Property Identifiers (if applicable) Water Meter Account No.<br>Residential [ X ] or Non-Residential [ ] Fee Simple [ X ] or Ground Rent [ ] Amount<br>Partial Conveyance? [ ] Yes [ X ] No Description/Amt. of SqFt/Acreage Transferred:<br>If Partial Conveyance, List Improvements Conveyed:<br>Doc. 1 - Grantor(s) Name(s) Doc. 2 - Grantor(s) Name(s)<br>Edward F. Hranicka Charles S. Wolinski<br>Josephine M. Hranicka Daryl Wolinski<br>Doc. 1 - Owner(s) of Record, if Different from Grantor(s) Doc. 2 - Owner(s) of Record, if Different from Grantor(s)<br>Doc. 1 - Grantee(s) Name(s) Doc. 2 - Grantee(s) Name(s)<br>Charles S. Wolinski Presidential Bank, FSB<br>Daryl Wolinski<br>New Owner's (Grantee) Mailing Address<br>7509 Fort Avenue, Fort Howard, MD 21052<br>Doc. 1 - Additional Names to be Indexed (Optional) Doc. 2 - Additional Names to be Indexed (Optional) |  |                                                                                                                                                                                                                                                     |  |
| 7 Transferred From                   |  | Name: Pat Muir<br>Firm: Crown Title Corporation<br>Address: One Sanford Avenue, Baltimore, MD 21228<br>Phone: 410-719-0200                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |                                                                                                                                                                                                                                                     |  |
| 8 Transferred To                     |  | Name: Pat Muir<br>Firm: Crown Title Corporation<br>Address: One Sanford Avenue, Baltimore, MD 21228<br>Phone: 410-719-0200                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |                                                                                                                                                                                                                                                     |  |
| 9 Other Names to Be Indexed          |  | Instrument Submitted By or Contact Person<br>Name: Pat Muir<br>Firm: Crown Title Corporation<br>Address: One Sanford Avenue, Baltimore, MD 21228<br>Phone: 410-719-0200                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |                                                                                                                                                                                                                                                     |  |
| 10 Contact/Mail Information          |  | Return to Contact Person<br>Hold for Pickup<br>Return Address Provided                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |                                                                                                                                                                                                                                                     |  |

|                                                                                   |     |                                     |    |                                     |                                                                                      |                        |  |                             |  |
|-----------------------------------------------------------------------------------|-----|-------------------------------------|----|-------------------------------------|--------------------------------------------------------------------------------------|------------------------|--|-----------------------------|--|
| 11 IMPORTANT: BOTH THE ORIGINAL DEED AND A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER |     |                                     |    |                                     |                                                                                      |                        |  |                             |  |
| Assessment Information                                                            | Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/>            | Will the property being conveyed be the grantee's principal residence?               |                        |  |                             |  |
|                                                                                   | Yes | <input checked="" type="checkbox"/> | No | <input type="checkbox"/>            | Does transfer include personal property? If yes, identify:                           |                        |  |                             |  |
|                                                                                   | Yes | <input type="checkbox"/>            | No | <input checked="" type="checkbox"/> | Was property surveyed? If yes, attach copy of survey (if recorded, no copy required) |                        |  |                             |  |
| Assessment Use Only - Do Not Write Below This Line                                |     |                                     |    |                                     |                                                                                      |                        |  |                             |  |
| County: Maricopa                                                                  |     | Agricultural Verification           |    | Whole                               |                                                                                      | Part                   |  | Trans. Process Verification |  |
| Tax Map Number:                                                                   |     | Date Received:                      |    | Deed Reference:                     |                                                                                      | Assigned Property No.: |  |                             |  |
| 100-1-121                                                                         |     |                                     |    | Plan                                |                                                                                      | Man                    |  | Sub                         |  |
| 100-1-121                                                                         |     |                                     |    | Zoning                              |                                                                                      | Grid                   |  | Plat                        |  |
| 100-1-121                                                                         |     |                                     |    | Use                                 |                                                                                      | Parcel                 |  | Section                     |  |
| 100-1-121                                                                         |     |                                     |    | Town Cd.                            |                                                                                      | Ex. St.                |  | Ex. Cd.                     |  |



**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.*

|          |                                                      |                                                                  |               |                                                                  |               |               |
|----------|------------------------------------------------------|------------------------------------------------------------------|---------------|------------------------------------------------------------------|---------------|---------------|
| <b>2</b> | <b>(Continued)<br/>Consideration<br/>and Fees</b>    | <b>Consideration Amount/Recordation Fees</b>                     | <b>Doc. 3</b> | <b>Doc. 4</b>                                                    | <b>Doc. 5</b> | <b>Doc. 6</b> |
|          |                                                      | Consideration, Including Assumed Indebtedness                    | \$            | \$                                                               | \$            | \$            |
|          |                                                      | Recording Charge                                                 | \$ 25.00      | \$                                                               | \$            | \$            |
|          |                                                      | Surcharge                                                        | \$            | \$                                                               | \$            | \$            |
|          |                                                      | State Recordation Tax                                            | \$            | \$                                                               | \$            | \$            |
|          |                                                      | State Transfer Tax                                               | \$            | \$                                                               | \$            | \$            |
|          |                                                      | County Transfer Tax (if Applicable)                              | \$            | \$                                                               | \$            | \$            |
|          |                                                      | Other                                                            | \$            | \$                                                               | \$            | \$            |
|          |                                                      | Other                                                            | \$            | \$                                                               | \$            | \$            |
| <b>6</b> | <b>(Continued)<br/>Transferred<br/>From</b>          | <b>Doc. 3 - Grantor(s) Name(s)</b>                               |               | <b>Doc. 4 - Grantor(s) Name(s)</b>                               |               |               |
|          |                                                      | Charles S. Wolinski                                              |               |                                                                  |               |               |
|          |                                                      | Daryl Wolinski                                                   |               |                                                                  |               |               |
|          |                                                      | <b>Doc. 5 - Grantor(s) Name(s)</b>                               |               | <b>Doc. 6 - Grantor(s) Name(s)</b>                               |               |               |
|          |                                                      |                                                                  |               |                                                                  |               |               |
|          |                                                      |                                                                  |               |                                                                  |               |               |
|          |                                                      | <b>Doc. 3 - Owner(s) of Record, if Different from Grantor(s)</b> |               | <b>Doc. 4 - Owner(s) of Record, if Different from Grantor(s)</b> |               |               |
|          |                                                      |                                                                  |               |                                                                  |               |               |
|          |                                                      | <b>Doc. 5 - Owner(s) of Record, if Different from Grantor(s)</b> |               | <b>Doc. 6 - Owner(s) of Record, if Different from Grantor(s)</b> |               |               |
|          |                                                      |                                                                  |               |                                                                  |               |               |
| <b>7</b> | <b>(Continued)<br/>Transferred<br/>To</b>            | <b>Doc. 3 - Grantee(s) Name(s)</b>                               |               | <b>Doc. 4 - Grantee(s) Name(s)</b>                               |               |               |
|          |                                                      | Presidential Bank, FSB                                           |               |                                                                  |               |               |
|          |                                                      |                                                                  |               |                                                                  |               |               |
|          |                                                      | <b>Doc. 5 - Grantee(s) Name(s)</b>                               |               | <b>Doc. 6 - Grantee(s) Name(s)</b>                               |               |               |
|          |                                                      |                                                                  |               |                                                                  |               |               |
|          |                                                      |                                                                  |               |                                                                  |               |               |
| <b>8</b> | <b>(Continued)<br/>Other Names<br/>To Be Indexed</b> | <b>Doc. 3 - Additional Names to be Indexed (Optional)</b>        |               | <b>Doc. 4 - Additional Names to be Indexed (Optional)</b>        |               |               |
|          |                                                      |                                                                  |               |                                                                  |               |               |
|          |                                                      | <b>Doc. 5 - Additional Names to be Indexed (Optional)</b>        |               | <b>Doc. 6 - Additional Names to be Indexed (Optional)</b>        |               |               |
|          |                                                      |                                                                  |               |                                                                  |               |               |
| <b>9</b> | <b>(Continued)<br/>Special Instructions</b>          | <b>Special Recording Instructions (if any)</b>                   |               |                                                                  |               |               |
|          |                                                      |                                                                  |               |                                                                  |               |               |
|          |                                                      |                                                                  |               |                                                                  |               |               |
|          |                                                      |                                                                  |               |                                                                  |               |               |

1508790100



IN RE: PETITION FOR VARIANCE  
East Side of Cuckold Point Road, 115'  
North of c/l of 6<sup>th</sup> 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



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



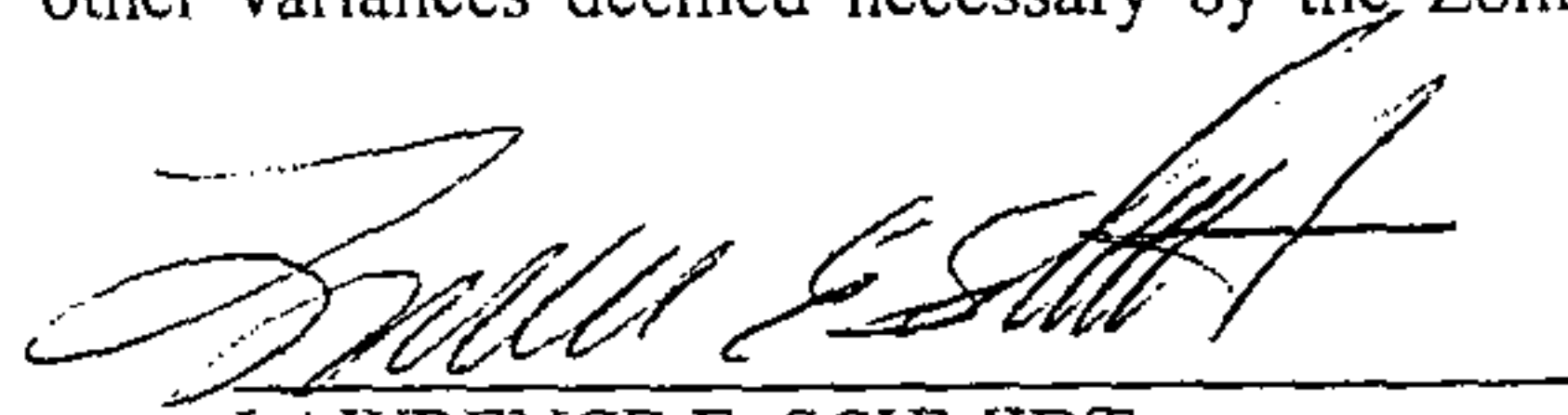
Planning, which has approved same as being compatible with the neighborhood. Thus, the proposed dwellings shall be constructed substantially in accordance with the building elevation drawings approved by the Office of Planning.

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

22nd THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 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 / tws*  
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



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 6<sup>TH</sup>  
ST (9019 CUCKOLD POINT RD); CHARLES S.  
WOLINSKI, CONTRACT PURCHASER; AND  
65' N OF C/L 6<sup>TH</sup> STREET (9017 CUCKOLD  
POINT ROAD) ERIC D. McDONALD - C.P.  
15<sup>TH</sup> ELECTION DISTRICT  
7<sup>TH</sup> 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 Ind 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



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.

①



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 6<sup>th</sup> 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 6<sup>th</sup> street  
Baltimore Md 21219

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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

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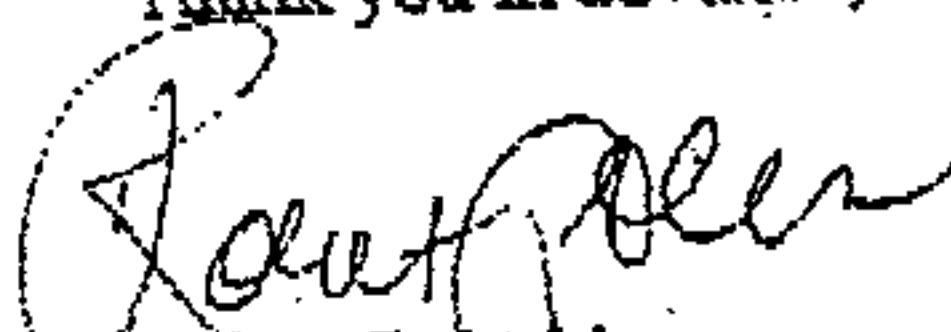
January 24, 2006

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

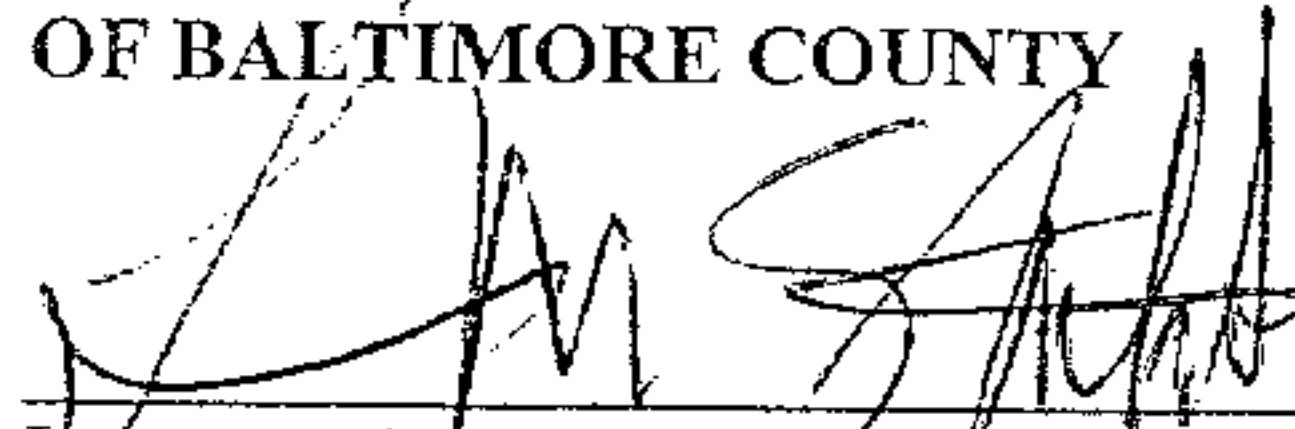
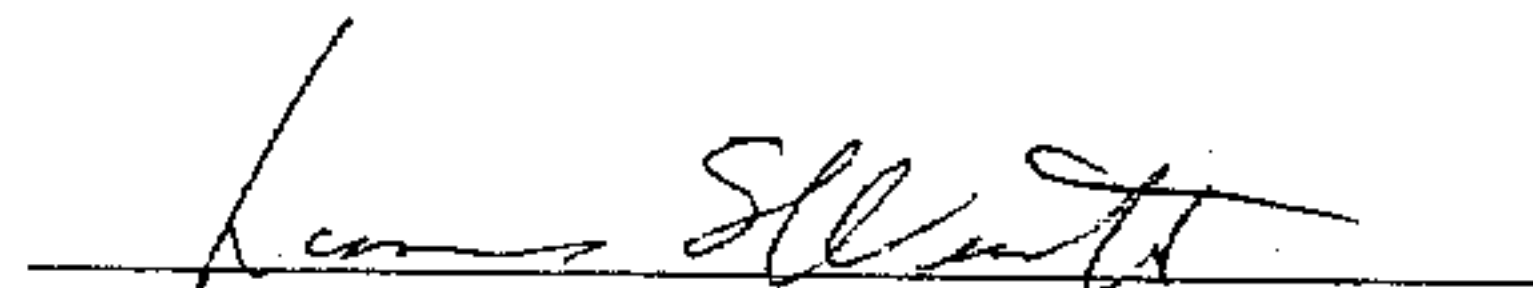
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of the Baltimore County Zoning Regulations to permit a lot width of 50 feet in lieu of the required 55 feet in order to permit development of Lots 488 and 489, each with a single-family dwelling to be known as 9017 Cuckold Point Road and 9019 Cuckold 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